START

Title: FEDERAL REGISTER.

Volume: 68 Issues: 106-117
PAGES 32955-36742

Date: JUNE 3 - JUNE 18, 2003

UMI Number: 2575.00

Notes: THE PAPER AND INK USED IN THE ORIGINAL MATERIAL AFFECT THE QUALITY OF THE MICRO-EDITION. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.
REEL NO: 10 OF 11

UMI®

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

6–3–03 Tuesday
Vol. 68 No. 106 June 3, 2003

Federal Register

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–3–03 Tuesday
Vol. 68 No. 106 June 3, 2003

Pages 32955–33338

200 001 D Sig 1

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33181–33183

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Cattle from Mexico; importation into U.S. prohibited due to tuberculosis, 33028–33030

Antitrust Division
NOTICES
National cooperative research notifications:
Salutation Consortium, Inc., 33183

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33094–33095

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33149–33150

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family Support Demonstration Projects, 33150–33161

Coast Guard
RULES
Ports and waterways safety:
Columbia River, Vancouver, WA; safety zone, 32996
Delaware River, Salem County, NJ; security zone, 32996–32998
Siuslaw and Willamette Rivers, OR; safety zones, 32998–33000

Commerce Department
See Census Bureau
See International Trade Administration

Consumer Product Safety Commission
NOTICES
Settlement agreements:
TGH International Trading, Inc., 33105–33108

Court Services and Offender Supervision Agency for the District of Columbia
RULES
Freedom of Information Act, Privacy Act, et al.; implementation, 32985–32996

Defense Department
See Navy Department
RULES
Acquisition regulations:
Transportation of supplies by sea; commercial items, 33026–33027
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment
Correction, 33231
PROPOSED RULES
Acquisition regulations:
Follow-on production contracts for products developed pursuant to prototype projects, 33057–33058
Federal Acquisition Regulation (FAR):
Deferred compensation and postretirement benefits other than pensions, 33325–33327
Unsolicited proposals, 33329–33330

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Innovation and improvement—
Parental Information and Resource Centers Program, 33331–33333
Safe and drug-free schools—
Life Skills for State and Local Prisoners Program, 33108–33111
Vocational and adult education—
Community Technology Centers Program, 33317–33323

Employee Benefits Security Administration
NOTICES
Employee benefit plans; class exemptions:
Acquisition and sale of REIT shares by individual account plans sponsored by trust REITS, 33185–33194

Employment and Training Administration
NOTICES
Adjustment assistance:
Apone's T-Shirt Cache, 33198
Bike Athletic Co., 33198–33199
Black & Decker, North American Power Tools, 33199
Fisher-Rosemount Systems, Inc., 33199
H&L Tool Co., 33199–33200
Harriet & Henderson Yarns, Inc., 33200
Hess-Armaclad, Inc., 33200
Honeywell Airframe Systems, 33200
Jabil Circuit, Inc., 33200
Keykert USA Inc., 33201
McKittrick & Assoc., Inc., et al., 33201–33202
MeadWestvaco, 33202
Oregon Screw Machine Products, Inc., 33202
P.C. Cutting & Apparel, 33202–33203
Sterling Diagnostics Imaging, Inc., 33203
Viceroy Gold Corp. et al., 33203
Adjustment assistance and NAFTA transitional adjustment assistance:
Georgia-Pacific Corp. et al., 33194–33196
Radisys Corp. et al., 33196–33198
Committees; establishment, renewal, termination, etc.:
Native American Employment and Training Council, 33203–33204

NAFTA transitional adjustment assistance:
Jabil Circuit, Inc., 33204

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
RULES
Active uranium and thorium processing sites; reimbursement for costs of remedial action; technical and administrative amendments, 32955–32958
NOTICES
Environmental statements; notice of intent:
Western Greenbrier Co-Production Demonstration Project, WV; facility for co-production of electricity, steam, and structural brick, 33111–33113

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33113–33114

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 33005–33020
Georgia, 33014–33018
Maryland, 33000–33002
Pennsylvania, 33012–33014
Tennessee, 33008–33010
West Virginia, 33002–33012
PROPOSED RULES
Air programs:
Stratospheric ozone protection—
Ozone-depleting substance; substitutes list, 33283–33316
Air quality implementation plans; approval and promulgation; various States:
California, 33042
Maryland, 33041
Pennsylvania, 33043
Tennessee, 33042
West Virginia, 33041–33043
NOTICES
Meetings:
Hazardous waste management in research and/or academic laboratories; stakeholders, 33121–33123
Science Advisory Board, 33123–33124
Superfund; response and remedial actions, proposed settlements, etc.:
Great Lakes Container Corp. Site, MO, 33124–33125
Superfund program:
Prospective purchaser agreements—
Des Moines TCE Site, IA, 33124
Toxic and hazardous substances control:
1,2-ethylene dichloride testing; enforceable consent agreement, 33125–33129
Chemical substances release and detection in environmental media; substantial risk reporting; policy clarification and guidance, 33129–33140
Water pollution control:
Great Lakes System; water quality guidance—
Bioaccumulative chemicals of concern; Pennsylvania mixing zones prohibition; submissions approval, 33141–33142

Executive Office of the President
See Presidential Documents

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33090–33091

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 32968–32971
Eurocopter France, 32967–32968
Class E airspace; correction, 33231
PROPOSED RULES
Airworthiness directives:
New Piper Aircraft, Inc., 33030–33032
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 33220–33221

Federal Communications Commission
RULES
Radio services, special:
Amateur service—
5250-5400 kHz band, secondary access; 2400-2402 MHz band, upgrade to primary status, 33020–33026
PROPOSED RULES
Frequency allocations and radio treaty matters:
76-81 GHz frequency and frequency bands above 95 GHz reallocation; domestic and international consistency realignment, 33043–33057
NOTICES
Common carrier services:
Telecommunications relay services—
State certification and renewal applications, 33142–33143

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ohio Power Co. et al., 33114–33115
Environmental statements; availability, etc.:
Orion Power New York GP II, Inc., 33115
Environmental statements; notice of intent:
Eastern Shore Natural Gas Co., 33115–33117
Hydroelectric applications, 33117–33118
Reports and guidance documents; availability, etc.:
Electric Quarterly Reports; public utility filing requirements and software demonstrations, 33118–33119

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Montgomery and Prince George's Counties, MD, 33221

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 33143
Formations, acquisitions, and mergers, 33143–33144

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Braun's rock-cress, 33058–33089
Cumberland elktoe, etc.; mussels in Tennessee and Cumberland River Basins, 33233–33282

NOTICES
Endangered and threatened species and marine mammal permit applications, 33179–33180
Environmental statements; availability, etc.:
Incidental take permits—
Denver (City and County), CO; Preble's meadow jumping mouse, 33180

Food and Drug Administration
RULES
Human drugs:
Opthalmic products (OTC); final monograph; technical amendment, 32981–32983
Total parenteral nutrition; aluminum in large and small volume parenterals; labeling requirements; effective date delay, 32979–32981
Medical devices:
General and plastic surgery devices—
Surgical suture devices; special control designation, 32983–32985
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33161–33162
Meetings:
Arthritis Advisory Committee, 33162
Drug manufacturing inspections; public workshops, 33162–33163
Harmonisation International Conference—
Brussels, Belgium, and Osaka, Japan; preparation for international meetings and conference, 33163–33164
Reports and guidance documents; availability, etc.:
Drug products containing ensulizole, hypromellose, meradimate, octinoxate, and octisalate; labeling enforcement policy, 33164–33165
Medical devices—
Surgical sutures; Class II special controls, 33165–33166
Pediatric Expertise for Advisory Panels, 33166

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33091–33092
Environmental statements; notice of intent:
Colville National Forest, WA, 33092–33093
Meetings:
National Urban and Community Forestry Advisory Council, 33093
Resource Advisory Committees—
Flathead County, 33093
Southwest Idaho, 33093
Willamette Provincial Advisory Committee, 33093–33094

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment
Correction, 33231
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred compensation and postretirement benefits other than pensions, 33325–33327
Unsolicited proposals, 33329–33330
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33144

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Medical Reserve Corps demonstration project programs, 33144–33149
Meetings:
Physical Fitness and Sports, President's Council, 33149

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Comprehensive Geriatrics Education Program; correction, 33167
Medicare Rural Hospital Flexibility Program, 33167–33168

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33176–33178
Environmental statements; notice of intent:
Yonkers, NY; affordable housing project, 33178–33179
Organization, functions, and authority delegations:
Assistant Chief Financial Officer for Budget, 33179

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panels, 33226

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 33095–33098
Freshwater crawfish tail meat from—
China, 33098–33099
Honey from—
China, 33099–33103
Iron construction castings from—
China, 33103–33104
Steel concrete reinforcing bars from—
Korea, 33105

International Trade Commission
RULES
Practice and procedure:
General application rules, safeguard investigations, and antidumping and countervailing duty investigations and reviews; technical corrections, etc., 32971–32979

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

See Antitrust Division

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33183–33184
Committees; establishment, renewal, termination, etc.:
Labor Research Advisory Council, 33184–33185

Land Management Bureau
NOTICES
Public land orders:
Arizona, 33180–33181

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Canyon Fuel Co., LLC, et al., 33204–33205

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment
Correction, 33231
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred compensation and postretirement benefits other than pensions, 33325–33327
Unsolicited proposals, 33329–33330
NOTICES
Inventions, Government-owned; availability for licensing, 33205–33207

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33207

National Credit Union Administration
RULES
Credit unions:
Investment and deposit activities and Regulatory Flexibility Program, 32958–32967

National Highway Traffic Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Child passenger protection education programs, 33221–33225

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33168–33169
Meetings:
National Center on Minority Health and Health Disparities, 33169–33170
National Heart, Lung, and Blood Institute, 33170
National Institute of Allergy and Infectious Diseases, 33171
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 33171
National Institute of Child Health and Human Development, 33170

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 33108
Meetings:
Ocean Research Advisory Panel, 33108

Nuclear Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Nuclear power plant operating license renewal; review process, 33209–33211
Meetings; Sunshine Act, 33211–33212
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 33212
Applications, hearings, determinations, etc.:
AmerGen Energy Co., LLC, 33207–33208
Pacific Gas & Electric Co., 33208–33209

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33212–33213

Presidential Documents
EXECUTIVE ORDERS
Bob Hope American Patriot Award; establishment (EO 13306), 33335–33337
European Central Bank; designation under the International Organizations Immunities Act (EO 13307), 33338

Presidio Trust
NOTICES
Meetings:
Board of Directors, 33213

Public Health Service
NOTICES
Reports and guidance documents; availability, etc.:
National Toxicology Program—
Potential endocrine disruptors detection; In Vitro test methods; alternative methods validation, 33171–33172

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Order applications—
Diamond Hill Funds et al., 33213–33216
Regulatory responsibility allocation program:
National Association of Securities Dealers, Inc., et al.; correction, 33231
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 33216–33217

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33217–33218
Disaster loan areas:
Alabama, 33218
Georgia, 33218–33219
Illinois, 33219
Mississippi, 33219
Oklahoma, 33219
Tennessee, 33219–33220
Meetings:
Regulatory Fairness Boards—
Region V; hearing, 33220

Region VII; hearing; 33220

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33172–33173
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 33173–33175
Grants and cooperative agreements; availability, etc.:
Mental Health Services Center—
Comprehensive Community Mental Health Services Program for Children and Their Families, 33175
Reports and guidance documents; availability, etc.:
Appeals policy; replacement with applicant inquiry process for grants and cooperative agreements, 33176

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Colorado, 33032–33035
North Dakota, 33035–33037
Pennsylvania, 33037–33039

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Dallas Area Rapid Transit, 33225
Regional Rail Right of Way Co., 33225–33226

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Representative services withdrawal; notice procedures, 33040–33041
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33226–22230

Western Area Power Administration
NOTICES
Power rate adjustments:
Loveland Area Projects, 33119–33120
Pick-Sloan Missouri Basin Program, Eastern Division, 33120–33121

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 33233–33282

Part III
Environmental Protection Agency, 33283–33316

Part IV
Education Department, 33317–33323

Part V
Defense Department; General Services Administration; National Aeronautics and Space Administration, 33325–33327

Part VI
Defense Department; General Services Administration; National Aeronautics and Space Administration, 33329–33330

Part VII
Education Department, 33331–33333

Part VIII
Executive Office of the President, Presidential Documents, 33335–33338

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
Proposed Rules:
93.....33028

10 CFR
765.....32955

12 CFR
703.....32958
742.....32958

14 CFR
39 (2 documents).....32967, 32968
71 (2 documents).....33231
Proposed Rules:
39.....33030

19 CFR
201.....32971
204.....32971
206.....32971
207.....32971
210.....32971
212.....32971

21 CFR
201.....32979
349.....32981
878.....32983

28 CFR
802.....32985

30 CFR
Proposed Rules:
906.....33032
934.....33035
938.....33037

33 CFR
165 (3 documents).....32996, 32998

38 CFR
Proposed Rules:
20.....33040

40 CFR
52 (8 documents).....33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018
Proposed Rules:
52 (6 documents).....33041, 33042, 33043
82.....33284

47 CFR
2.....33020
97.....33020
Proposed Rules:
2.....33043

48 CFR
2.....33231
32.....33231
52.....33231
252.....33026
Proposed Rules:
15.....33330
31.....33326
52.....33326
206.....33057

50 CFR
Proposed Rules:
17 (2 documents).....33058, 33234

Rules and Regulations

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 765

RIN 1901–AA88

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Final rule; Technical and administrative amendments.

SUMMARY: The Department of Energy (DOE) adopts several technical and administrative amendments to its procedural regulations governing the reimbursement of remedial action costs at active uranium and thorium processing sites. Since it was enacted in 1992, the original legislation authorizing the program has been amended four times to increase the amounts authorized for reimbursement and to make technical changes. Today's regulatory amendments reflect the legislative amendments and make other technical corrections that have been identified since the original rule was issued. None of the amendments raise substantive issues or represent changes in policy.

DATES: This rule will be effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: David E. Mathes, Office of Environmental Management, EM–30, U.S. Department of Energy, Germantown, Maryland 20874–1290. Telephone: (301) 903–7222. Internet: *david.mathes@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Secretary of Energy has approved today's technical and administrative regulatory amendments in order to conform 10 CFR part 765 to legislative amendments to Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486) and the need to make other corrections to the original rule published on May 23, 1994 (59 FR 26714). Congress has amended the original legislation four times since it was enacted on October 24, 1992. In 1996, Public Law 104–259 amended Title X to increase the authorized reimbursement amounts for uranium and thorium licensees from $270 million and $40 million to $350 million and $65 million, respectively, for an aggregate authorized reimbursement amount of $415 million; and to increase the maximum amount that may be reimbursed to uranium licensees per dry short ton of Federal-related byproduct material from $5.50 to $6.25. In 1998, Public Law 105–388 further amended Title X to increase the authorized reimbursement amount for the thorium licensee from $65 million to $140 million, for an aggregate authorized reimbursement amount to uranium and thorium licensees of $490 million. In 2000, Public Law 106–317 amended Title X to change the date for determining the availability of excess funds for reimbursement to uranium licensees from July 31, 2005, to December 31, 2008; to change the date after which work must be completed in accordance with an approved plan for subsequent remedial action to be eligible for reimbursement from December 31, 2002, to December 31, 2007; and to eliminate the requirement for the Department to place certain reimbursement funds in escrow. In 2002, Public Law 107–222 amended Title X to increase the authorized reimbursement amount for the thorium licensee from $140 million to $365 million, for an aggregate authorized reimbursement amount to uranium and thorium licensees of $715 million.

Part 765 is amended in several places to reflect these statutory provisions. Other technical corrections to the original rule are discussed in the following paragraphs.

Section 765.21(e) is revised to provide a licensee with an additional opportunity to provide reasonable documentation, as specified in § 765.20, for claims or portions of claims that DOE has denied during the claim year. The revised rule now gives a licensee 45 days after DOE issues a written decision to deny the claim, in which to provide the documentation for DOE reconsideration of the claim. If a licensee chooses not to submit the documentation, the licensee still has the right to file a formal appeal to the DOE's claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, DOE will consider whether the documentation results in the DOE's reversal of its initial decision to deny the claim and will inform the licensee of the DOE's subsequent decision. A licensee may also appeal that decision in accordance with § 765.22. By providing this additional opportunity to a licensee, DOE believes that both DOE and the licensee may save time and money by minimizing the number of appeals.

Section 765.23 is amended to indicate the new address for obtaining copies of the DOE status report on the reimbursement program.

Section 765.30(b) presents the procedure for submitting a plan for subsequent remedial action. The original rule indicated that licensees may submit this plan any time after January 1, 2000, but no later than December 31, 2001. Because Congress changed the date after which work must be completed in accordance with an approved plan for subsequent remedial action to be eligible for reimbursement from December 31, 2002, to December 31, 2007, this final rule correspondingly changes the dates for submitting a plan to DOE to any time after January 1, 2005, but no later than December 31, 2006.

Section 765.30(d) outlines the process for resubmitting a revised plan for subsequent remedial action if the original plan is rejected by DOE. The original rule indicated that a licensee may continue to submit revised plans for subsequent remedial action until DOE approves a plan, or September 30, 2002, whichever occurs first. This final rule changes the September 30, 2002, deadline to September 30, 2007, to correspond with the new statutory deadline for making reimbursements in accordance with a subsequent plan for remedial action.

Section 765.30(e) presents the procedures for determining the maximum amounts for which licensees may be eligible for reimbursement for work performed as described in their plans for subsequent remedial action submitted to and approved by DOE. The original rule indicated that a licensee is

eligible for the lesser of two amounts: (1) The total cost of remedial action multiplied by the Federal reimbursement ratio; or (2) $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. As drafted, the original rule could have been construed to apply the per dry short ton limit to both uranium and thorium licensees. Since Title X (42 U.S.C. § 2296a(b)(2)(A)) limits the applicability of the per dry short ton limit to uranium licensees, this final rule amends § 765.30(e)(2) to clarify that the per dry short ton limit only applies to uranium licensees.

In accordance with § 765.30(b), because licensees' plans for subsequent remedial action are now due no later than December 31, 2006, this final rule amends § 765.30(e)(2) to clarify that the potential additional reimbursement for which a licensee may be entitled will be adjusted after the approval of claims for work performed through December 31, 2007, to account for the actual approved costs of work performed through 2007.

As originally prescribed, § 765.31(a) outlined the procedures for designating specific amounts on deposit in the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of the Treasury for reimbursement of costs incurred in accordance with an approved plan for subsequent remedial action. The purpose of this paragraph was to implement the original requirement of § 1001(b)(1)(B)(ii) of Pub. L. 102–486 that funds be placed in escrow not later than December 31, 2002, in accordance with an approved plan for subsequent remedial action. Because Pub. L. 106–317 amended the original legislation by striking the requirement to place funds in escrow, this final rule removes this paragraph and renumbers the subsequent paragraphs in this section.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and therefore, the Regulatory Flexibility Act does not apply to this rulemaking proceeding.

D. Review Under the Paperwork Reduction Act

No new collection of information or recordkeeping requirements is imposed by this final rule. Accordingly, no clearance by OMB is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500—1508), DOE has established guidelines for compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). This rule makes technical corrections to procedures for the reimbursement of eligible remedial action costs incurred by licensees at active uranium and thorium processing sites. Implementation of this rule will not affect the legally required cleanup of the sites or result in any other environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings such as procedures for the review and approval of applications for grants and cooperative agreements. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulations on States, local, and tribal governments and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

Issued in Washington, DC, on May 23, 2003.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

List of Subjects in 10 CFR Part 765

Radioactive materials, Reclamation, Reporting and record keeping requirements, Uranium.

■ For the reasons set forth in the preamble, part 765 of chapter III of title 10 of the Code of Federal Regulations is amended as set forth below.

PART 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

■ 1. The authority citation for part 765 is revised to read as follows:

Authority: 42 U.S.C. 2296a *et seq.*

■ 2. In the table below, for each section indicated in the left column remove the language indicated in the middle column and add in its place the language indicated in the right column.

Section	Remove	Add
765.2(c)	"December 31, 2002"	"December 31, 2007"
765.2(e)	"$5.50"	"$6.25"
765.2(f)	"$270 million"	"$350 million"
765.2(g)	"$40 million"	"$365 million"
765.2(i)	"$310 million"	"$715 million"
765.11(b)	"December 31, 2002"	"December 31, 2007"
765.11(c)(1)	"$5.50"	"$6.25"
765.11(c)(2)	"$270 million"	"$350 million"
765.11(c)(3)	"$40 million"	"$365 million"
765.12(a)	a. "$5.50"	a. "$6.25"
	b. "$270 million"	b. "$350 million"
	c. "$40 million"	c. "$365 million"
	d. "$310 million"	d. "$715 million"
765.12(c)	"$5.50"	"$6.25"
765.23	"Uranium Mill Tailings Remedial Action Project Office, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110".	"National Nuclear Security Administration Service Center, Office of Technical Services, Environmental Programs Department, P.O. Box 5400, Albuquerque, NM 87185–5400"
765.30(b)	a. "December 31, 2002"	a. "December 31, 2007"
	b. "January 1, 2000"	b. "January 1, 2005"
	c. "December 31, 2001"	c. "December 31, 2006"
765.30(b)(2)	"December 31, 2002"	"December 31, 2007"
765.30(d)	a. "September 30, 2002"	a. "September 30, 2007"
	b. "December 31, 2002"	b. "December 31, 2007"
765.32(a)	"July 31, 2005"	"December 31, 2008"
765.32(c)	"$5.50"	"$6.25"

■ 3. In §765.3, the definitions are amended by revising the introductory text and paragraph (2) of *Maximum reimbursement amount* or *maximum reimbursement ceiling* and *Plan for subsequent remedial action* to read as follows:

§ 765.3 Definitions.

* * * * *

Maximum reimbursement amount or maximum reimbursement ceiling means the smaller of the following two quantities:

* * * * *

(2) $6.25, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

* * * * *

Plan for subsequent remedial action means a plan approved by the Department which includes an estimated total cost and schedule for remedial action, and all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2007, at an active uranium or thorium processing site.

* * * * *

■ 4. In §765.21, paragraph (e) is revised to read as follows:

§ 765.21 Procedures for processing reimbursement claims.

* * * * *

(e) A written decision regarding the Department's determination to approve, approve in part, or deny a claim will be provided to the licensee within 10 days of completion of the claim review. Within 45 days after the Department's issuance of a written decision to deny the claim due to inadequate documentation, the licensee may request the Department to reconsider its decision if the licensee provides reasonable documentation in accordance with § 765.20. If a licensee chooses not to submit the documentation, the licensee has the right to file a formal appeal to a claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, the Department will consider whether the documentation results in the Department's reversal of the initial decision to deny the claim and will inform the licensee of the Department's subsequent decision. The licensee may appeal that decision in accordance with § 765.22.

* * * * *

■ 5. In § 765.30, paragraph (e)(2) is revised to read as follows:

§ 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

* * * * *

(e) * * *

(1) * * *

(2) For the uranium site licensees only, $6.25, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. For all licensees, the

Department shall subtract from the maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled. This resulting sum will be adjusted after the approval of claims for work performed through December 31, 2007, to reflect the actual approved costs of work performed through that date.

§ 765.31 [Amended]

■ 6. Section 765.31 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as paragraphs (a) through (c).

[FR Doc. 03–13858 Filed 6–2–03; 8:45 am]
BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 742

Investment and Deposit Activities and Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule regarding the investment activities of Federal Credit Unions (FCUs). The amendments clarify and reformat the rule to make it easier to read and locate information. The amendments expand FCU investment authority to include purchasing equity-linked options for certain purposes and exempt RegFlex eligible FCUs from several investment restrictions. NCUA is also amending the Regulatory Flexibility Program to conform to the revisions to the investment rule.

DATES: The final rule is effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Hunt, Senior Investment Officer, Office of Strategic Program Support and Planning (OSPSP) at the above address or telephone (703) 518–6620; Dan Gordon, Senior Investment Officer, OSPSP at the above address or telephone; Kim Iverson, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA identified part 703 of its rules as in need of revision. To that end, NCUA issued an advance notice of proposed rulemaking (ANPR) on October 18, 2001. 66 FR 54168 (October 26, 2001). After considering the comments to the ANPR submitted by 38 commenters, NCUA issued a proposed rule on December 19, 2002. 67 FR 78996 (December 27, 2002). NCUA received 14 comment letters regarding the proposed rule: five from FCUs, one from a State credit union, five from financial services entities, and three from credit union trade organizations. The comments were generally supportive of the proposal.

B. Summary of Comments

1. Broker-dealers and Safekeeping of Investments

Throughout the rulemaking process, NCUA has expressed concern about the purchase of some brokered certificates of deposit (CDs). Deceptive practices or outright fraud on the part of some broker-dealers and safekeepers have caused losses for FCUs. NCUA does not believe, however, that more stringent standards on broker-dealers or safekeepers, such as those contemplated by the ANPR, would prevent losses. NCUA believes continued guidance to FCUs and prudent due diligence by FCUs is the best course of action. Therefore, NCUA is not making any substantive changes to broker-dealer and safekeeping requirements in this regard. The commenters generally supported this position.

The proposed rule permits the use of depository institutions whose broker-dealer activities are regulated by a State regulatory agency. This provides FCUs with greater access to broker-dealers. NCUA also believes additional broker-dealer competition promotes improved service, better execution, and reduced costs. The commenters supported this proposal. The Board adopts this proposed revision in the final rule.

Former § 703.50(c) exempts CD finders from the broker-dealer requirements. It was always NCUA's intent to carry this exemption forward in proposed § 703.8 as indicated in the preamble to the proposed rule. 67 FR 78996, 78996–97 (December 27, 2002). Specifically, if an FCU purchases a CD or share certificate directly from a bank, credit union, or other depository institution that issues the certificate, the FCU will not be bound by the broker-dealer requirements. This exemption was inadvertently omitted in the regulatory language in § 703.8 of the proposed rule through a clerical error. As stated in the proposal's preamble, NCUA indicated it was making no changes to the broker-dealer section of the rule in this regard. Thus, the inclusion of this exemption in the final rule will not change the requirements pertaining to the use of broker-dealers.

To be consistent with the broker-dealer requirements, the proposed rule added a due diligence requirement that calls for an FCU to review a safekeeper's financial condition, in addition to its registration status, and retain the documentation used to approve a safekeeper. NCUA believes these requirements represent prudent, minimum practices that FCUs should follow when evaluating a safekeeper. In addition, the proposed rule permitted State-regulated trust companies to be safekeepers for FCUs. NCUA recognizes these firms can provide a sound alternative for FCUs.

The commenters overwhelmingly concurred with this aspect of the proposed rule. NCUA adopts this proposal in the final rule.

2. Expanded Investment Authorities

The Federal Credit Union Act (Act) enumerates FCU investment powers. 12 U.S.C. 1757(7), (8), and (15). NCUA has adopted regulatory prohibitions against certain investments and investment activities permitted by the Act on the basis of safety and soundness concerns. In revising the rule, NCUA has explored ways to expand FCU investment powers. Generally, those investments currently prohibited by regulation exhibit high risks or are unsuitable for many FCUs, such as stripped mortgage-backed securities or variable rate investments tied to non-domestic interest rates.

As one means of expanding investment powers, the proposed rule permits some FCUs to purchase commercial mortgage related securities (CMRS), subject to certain restrictions. Specifically, the proposed rule limits the purchase of CMRS, which are not otherwise permitted by § 107(7)(E) of the Act, 12 U.S.C. 1757(7)(E), to RegFlex eligible FCUs. 12 CFR part 742. Further, a RegFlex eligible FCU may purchase CMRS if the CMRS: (1) Are rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization; (2) otherwise meet the definitions of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and CMRS as defined in proposed § 703.2; and (3) have an underlying pool of loans containing more than 50 loans with no one loan representing more than 10 percent of the pool. A RegFlex eligible FCU is limited to purchasing CMRS in an aggregate amount of up to 50 percent of its net worth. Most commenters supported NCUA's proposal to permit RegFlex eligible FCUs to purchase CMRS with certain limitations. NCUA adopts this proposal as final.

A few commenters suggested NCUA should adopt additional requirements or restrictions to address sound risk management practices for CMRS. NCUA believes no changes are necessary in this regard, but reminds FCUs that former § 703.30 already requires FCUs to develop investment policies that address credit, liquidity, interest rate, and concentration risks. 12 CFR 703.30. The policy must also stipulate the characteristics of any investments that are suitable for the FCU. These requirements carry over to the final rule. Thus, FCUs that purchase CMRS must develop sound risk management policies and construct limits that represent the FCU board's risk tolerance.

NCUA also proposed to permit FCUs to purchase equity options for the sole purpose of offering dividends based on the performance of an equity index. This proposal evolved from the experience gained monitoring an investment pilot program. The pilot program enabled NCUA to review the demands and risks associated with such a program before developing a regulation. Commenters agreed that the proposed regulatory language was prudent and would not pose any undue burden on FCUs. NCUA adopts the proposal.

NCUA has determined that other currently prohibited investments should remain prohibited due to the complexity of the instruments or the difficulty in managing their associated risks. However, NCUA encourages FCUs that believe they possess the skills and resources to manage such investments to apply for a pilot program. The commenters generally supported this approach to expanding investment powers. NCUA remains committed to publishing standards for pilot programs that have been approved to facilitate future applications. These guidelines will be available on the NCUA website or by contacting the appropriate NCUA regional office. Additionally, investment pilot program applicants are encouraged to submit alternative proposals for NCUA's consideration.

3. Discretionary Control of Investments and Investment Advisers

Former § 703.40(c)(6) authorizes an FCU to delegate to an outside third party discretionary control over the purchase and sale of investments, up to 100 percent of the FCU's net capital at the time of delegation. 12 CFR 703.40(c)(6). RegFlex eligible FCUs are exempt from this cap. 12 CFR 742.4.

NCUA proposed that FCUs conduct an annual evaluation of the amount of investments under discretionary control. Further, the proposal required an FCU to notify its board of directors and the appropriate regional director if the amount under discretionary control exceeds the cap at the time of the annual evaluation. An FCU must develop a plan to bring itself into compliance with the cap within a reasonable period of time.

Generally, commenters supported this proposal, although a few commenters suggested that NCUA permit all FCUs to exceed the cap, not just RegFlex eligible FCUs. These commenters stated that FCUs not meeting RegFlex eligibility may benefit most from having an investment professional manage an FCU's investments. NCUA has determined not to lift the cap for FCUs ineligible for RegFlex. NCUA notes that an FCU currently not meeting RegFlex eligibility requirements may petition its regional director for a RegFlex designation. The Board adopts the proposed revisions.

Commenters also questioned whether it was reasonable for an FCU board to be required to notify the appropriate regional director of any violation of the cap within five business days of exceeding the cap. NCUA believes this is reasonable. The regulation stipulates that an FCU only notify its regional director within five business days. An FCU is not required to submit a plan to bring it into compliance within this time frame. An FCU must develop a plan within a reasonable period of time after notification. A reasonable period of time will be decided by the regional director after considering an FCU's circumstances, including the materiality of the breach and the risk to the FCU's earnings and capital.

In response to a commenter's question, NCUA clarifies that mutual funds are not included in the calculation of funds under discretionary control.

As part of the background check of an investment advisor, the proposed rule required that an FCU analyze the background of the firm for whom an investment adviser works, in addition to the investment adviser and his or her associated personnel. No commenters objected to this requirement. This proposed change is adopted in the final rule. Several commenters urged NCUA to clarify the meaning of "associated personnel" as it is used in proposed §§ 703.5 and 703.8. NCUA notes that the proposed rule included a definition for "associated personnel" in proposed § 703.2 and it is adopted in the final.

4. Borrowing Repurchase Transaction

Borrowing repurchase transactions, formerly referred to as reverse repurchase transactions, enable an FCU to sell securities under an agreement to repurchase in order to borrow funds. 12 CFR 703.100(j). Section 703.100(j)(2) prohibits an FCU from purchasing an investment with the proceeds from a reverse repurchase agreement if the purchased investment matures after the maturity of the reverse repurchase agreement. 12 CFR 703.100(j)(2). NCUA proposed to permit RegFlex eligible FCUs to purchase securities with maturities exceeding the maturity of the borrowing repurchase transaction in an amount not to exceed the FCU's net worth.

Most of the commenters supported the proposal. Three commenters objected to the proposed rule because they believed there should be no restrictions on the maturity of any investment purchased by any FCU. These commenters indicated there are no similar restrictions applicable to other types of borrowing. NCUA believes the limitation is prudent and does not unduly impede any FCU's ability to manage its balance sheet and, therefore, adopts the proposed revision in the final rule.

5. Investment Repurchase Transaction

The proposed rule changed the term "repurchase transactions" to "investment repurchase transactions" and revised the requirements for investment repurchase transactions to be consistent with those of securities lending transactions. Other than these revisions, the proposal did not make any substantive amendments in this regard. No commenter objected. NCUA adopts the proposed revisions.

6. Securities Lending Transaction

Former § 703.100(k) addresses securities lending transactions and requires an FCU to take a perfected first priority security interest in all collateral the FCU receives. 12 CFR 703.100(k). Proposed § 703.13 removes the word "perfected", but still requires a first priority security interest through possession or control of the collateral. In addition, the proposed rule clarifies that an FCU's agent may act in its place in these transactions. No commenter objected. NCUA adopts the proposed revisions as final.

7. Recordkeeping and Generally Accepted Accounting Principles

The Act provides that the accounting principles applicable to reports or statements required to be filed with NCUA by insured credit unions, except

those with total assets of less than $10 million, must be uniform and consistent with generally accepted accounting principles (GAAP). 12 U.S.C. 1782a(a)(6)(C). NCUA proposed to revise part 703 to clarify that FCUs having total assets of $10 million or more must comply with all GAAP provisions related to the accounting principles applicable to reports or statements required to be filed with NCUA, not just selected ones. While not mandatory for FCUs with total assets of less than $10 million, NCUA encourages them also to comply with GAAP or to account for their investments consistent with the NCUA Accounting Manual for Federal Credit Unions, which can be found on the NCUA website. No commenters objected. NCUA adopts this amendment.

8. Net Worth

To be consistent with changes in the Act and NCUA's rules, NCUA proposed to replace the term "net capital" with "net worth." No commenter objected to this change. NCUA adopts it in the final rule.

9. Format

The proposal changed the question and answer format to a more traditional format to make the rule easier to read and more conducive to finding information quickly. Many commenters supported this amendment and no commenters objected to it. NCUA adopts it in the final rule.

10. State-Chartered Credit Unions

One commenter noted that State-chartered credit unions that make investments that are impermissible for FCUs must reserve for those non-conforming investments. 12 CFR 741.3. The commenter questioned whether State-chartered credit unions need to reserve for non-conforming investments that are permissible for RegFlex eligible FCUs. NCUA believes that, if a State-chartered credit union meets all the criteria for RegFlex eligibility as detailed in § 742.2, then it is not required to reserve for non-conforming investments that are permissible for RegFlex eligible FCUs. 12 CFR 742.2. If at any time a State-chartered credit union fails to meet the RegFlex eligibility criteria, then it must reserve for any non-conforming investments it owns.

Another commenter urged NCUA to revise proposed § 703.1, the purpose and scope section, to clarify that State-chartered credit unions, in addition to complying with the reserve requirement for non-conforming investments in § 741.3, must also comply with the requirements of part 703 concerning transacting business with corporate credit unions, as provided in § 741.219. 12 CFR 741.219. NCUA believes it will be helpful to include this reference in the purpose and scope section and is including it in the final rule as a technical correction.

11. Other Technical Corrections

Proposed § 703.16(a) incorrectly references § 703.14(h). The correct and intended reference, reflected in the final rule, is to § 703.14(g).

Proposed § 703.3(g) stated that only "*those individuals with investment authority* may be voting members of an investment-related committee." (Emphasis added.) The former version of the rule requires that only "*officials and employees of the Federal credit union* may be voting members of an investment-related committee." (Emphasis added.) This was an unintended change in language. NCUA received no comment on this but wishes to clarify that the prior language in part 703 remains unchanged as intended by the proposal.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $1 million in assets). This rule clarifies the investment authority granted to FCUs and conforms the Regulatory Flexibility Program to the investment rule. The final amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The current Office of Management and Budget control number assigned to part 703 is 3133–0133. NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR part 703

Credit unions, Investments.

12 CFR part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 22, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR parts 703 and 742 as follows:

PART 703—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. Revise part 703 to read as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

Sec.

703.1 Purpose and scope.
703.2 Definitions.
703.3 Investment policies.
703.4 Recordkeeping and documentation requirements.
703.5 Discretionary control over investments and investment advisers.
703.6 Credit analysis.
703.7 Notice of non-compliant investments.
703.8 Broker-dealers.
703.9 Safekeeping of investments.
703.10 Monitoring non-security investments.
703.11 Valuing securities.
703.12 Monitoring securities.
703.13 Permissible investment activities.
703.14 Permissible investments.
703.15 Prohibited investment activities.
703.16 Prohibited investments.
703.17 Conflicts of interest.
703.18 Grandfathered investments.
703.19 Investment pilot program.

§ 703.1 Purpose and scope.

(a) This part interprets several of the provisions of Sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act (Act), 12 U.S.C. 1757(7), 1757(8), 1757(15), which list those securities, deposits, and other obligations in which a Federal credit union may invest. Part 703 identifies certain investments and deposit activities permissible under the Act and prescribes regulations governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, part 703 identifies and prohibits certain investments and deposit activities. Investments and deposit activities that are permissible under the Act and not prohibited or otherwise regulated by part 703 remain permissible for Federal credit unions.

(b) This part does not apply to:

(1) Investment in loans to members and related activities, which is governed by §§ 701.21, 701.22, 701.23, and part 723 of this chapter;

(2) The purchase of real estate-secured loans pursuant to Section 107(15)(A) of the Act, which is governed by § 701.23 of this chapter;

(3) Investment in credit union service organizations, which is governed by part 712 of this chapter;

(4) Investment in fixed assets, which is governed by § 701.36 of this chapter;

(5) Investment by corporate credit unions, which is governed by part 704 of this chapter; or

(6) Investment activity by State-chartered credit unions, except as provided in § 741.3(a)(3) and § 741.219 of this chapter.

§ 703.2 Definitions.

The following definitions apply to this part:

Adjusted trading means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

Associated personnel means a person engaged in the investment banking or securities business who is directly or indirectly controlled by a National Association of Securities Dealers (NASD) member, whether or not this person is registered or exempt from registration with NASD. Associated personnel includes every sole proprietor, partner, officer, director, or branch manager of any NASD member.

Banker's acceptance means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

Bank note means a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences.

Borrowing repurchase transaction means a transaction in which the Federal credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

Call means an option that gives the holder the right to buy the underlying security at a specified price during a fixed time period.

Collective investment fund means a fund maintained by a national bank under 12 CFR part 9 (Comptroller of the Currency's regulations).

Commercial mortgage related security means a mortgage related security, as defined below, except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

Counterparty means the party on the other side of the transaction.

Custodial agreement means a contract in which one party agrees to exercise ordinary care in protecting the securities held in safekeeping for others.

Delivery versus payment means payment for an investment must occur simultaneously with its delivery.

Deposit note means an obligation of a bank that is similar to a certificate of deposit but is rated.

Derivatives means financial instruments or other contracts whose value is based on the performance of an underlying financial asset, index or other investment that have the three following characteristics:

(1) It has one or more underlyings and one or more notional amounts or payment provisions or both that determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required;

(2) It requires no initial net investment or an initial net investment that is less than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and

(3) Its terms require or permit net settlement, it can readily be settled net by means outside the contract, or it provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

Embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

Eurodollar deposit means a U.S. dollar-denominated deposit in a foreign branch of a United States depository institution.

European financial options contract means an option that can be exercised only on its expiration date.

Fair value means the amount at which an instrument could be exchanged in a current, arms-length transaction between willing parties, as opposed to a forced or liquidation sale.

Financial options contract means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.

Immediate family member means a spouse or other family member living in the same household.

Industry-recognized information provider means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.

Investment means any security, obligation, account, deposit, or other item authorized for purchase by a Federal credit union under Sections 107(7), 107(8), or 107(15) of the Act, or this part, other than loans to members.

Investment repurchase transaction means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

Maturity means the date the last principal amount of a security is

scheduled to come due and does not mean the call date or the weighted average life of a security.

Mortgage related security means a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), *e.g.*, a privately-issued security backed by first lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure, that is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization.

Mortgage servicing rights means a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage servicing is the administration of a mortgage loan, including collecting monthly payments and fees, providing recordkeeping and escrow functions, and, if necessary curing defaults and foreclosing.

Negotiable instrument means an instrument that may be freely transferred from the purchaser to another person or entity by delivery, or endorsement and delivery, with full legal title becoming vested in the transferee.

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f) of this chapter.

Official means any member of a Federal credit union's board of directors, credit committee, supervisory committee, or investment-related committee.

Ordinary care means the degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

Pair-off transaction means an investment purchase transaction that is closed or sold on, or before the settlement date. In a pair-off, an investor commits to purchase an investment, but then pairs-off the purchase with a sale of the same investment before or on the settlement date.

Put means a financial options contract that entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.

Registered investment company means an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

Regular way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular way settlement of a Treasury security includes settlement on the trade date (cash), the business day following the trade date (regular way), and the second business day following the trade date (skip day).

Residual interest means the remainder cash flows from collateralized mortgage obligations/real estate mortgage investment conduits (CMOs/REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

Securities lending means lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

Security means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(1) Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(2) Is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(3) Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

Senior management employee means a Federal credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), an assistant chief executive officer, and the chief financial officer.

Small business related security means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53), *e.g.*, a security that is rated in 1 of the 4 highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under § 107(7) of the Act.

Weighted average life means the weighted-average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

When-issued trading of securities means the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities.

Yankee dollar deposit means a deposit in a United States branch of a foreign bank licensed to do business in the State in which it is located, or a deposit in a State-chartered, foreign controlled bank.

Zero coupon investment means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

§ 703.3 Investment policies.

A Federal credit union's board of directors must establish written investment policies consistent with the Act, this part, and other applicable laws and regulations and must review the policy at least annually. These policies may be part of a broader, asset-liability management policy. Written investment policies must address the following:

(a) The purposes and objectives of the Federal credit union's investment activities;

(b) The characteristics of the investments the Federal credit union may make including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;

(c) How the Federal credit union will manage interest rate risk;

(d) How the Federal credit union will manage liquidity risk;

(e) How the Federal credit union will manage credit risk including specifically listing institutions, issuers, and counterparties that may be used, or criteria for their selection, and limits on the amounts that may be invested with each;

(f) How the Federal credit union will manage concentration risk, which can result from dealing with a single or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;

(g) Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the Federal credit union may be voting members of an investment-related committee;

(h) The broker-dealers the Federal credit union may use;

(i) The safekeepers the Federal credit union may use;

(j) How the Federal credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of this part; and

(k) How the Federal credit union will conduct investment trading activities, if applicable, including addressing:

(1) Who has purchase and sale authority;

(2) Limits on trading account size;

(3) Allocation of cash flow to trading accounts;

(4) Stop loss or sale provisions;

(5) Dollar size limitations of specific types, quantity and maturity to be purchased;

(6) Limits on the length of time an investment may be inventoried in a trading account; and

(7) Internal controls, including segregation of duties.

§ 703.4 Recordkeeping and documentation requirements.

(a) Federal credit unions with assets of $10,000,000 or greater must comply with all generally accepted accounting principles applicable to reports or statements required to be filed with NCUA. Federal credit unions with assets less than $10,000,000 are encouraged to do the same, but are not required to do so. Federal credit unions with assets less than $10,000,000 may choose to account for their investments consistent with the NCUA Accounting Manual For Federal Credit Unions.

(b) A Federal credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with § 701.12 of this chapter and examined by NCUA. The documentation should include, where applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by the Federal credit union's investment policy and this part.

(c) A Federal credit union must maintain documentation its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with § 701.12 of this chapter and examined by NCUA.

(d) A Federal credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

§ 703.5 Discretionary control over investments and investment advisers.

(a) Except as provided in paragraph (b) of this section, a Federal credit union must retain discretionary control over its purchase and sale of investments. A Federal credit union has not delegated discretionary control to an investment adviser when the Federal credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

(b)(1) A Federal credit union may delegate discretionary control over the purchase and sale of investments to a person other than a Federal credit union official or employee:

(i) Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

(ii) In an amount up to 100 percent of its net worth in the aggregate at the time of delegation.

(2) At least annually, the Federal credit union must adjust the amount of funds held under discretionary control to comply with the 100 percent of net worth cap. The Federal credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of the amount exceeding the net worth cap and notify in writing the appropriate regional director within 5 days after the board meeting. The credit union must develop a plan to comply with the cap within a reasonable period of time.

(3) Before transacting business with an investment adviser, a Federal credit union must analyze his or her background and information available from State or Federal securities regulators, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(c) A Federal credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(d) A Federal credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

§ 703.6 Credit analysis.

A Federal credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation. A Federal credit union must update this analysis at least annually for as long as it holds the investment.

§ 703.7 Notice of non-compliant investments.

A Federal credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of this part. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell it. The Federal credit union must notify in writing the appropriate regional director of an investment that has failed a requirement of this part within 5 days after the board meeting.

§ 703.8 Broker-dealers.

(a) A Federal credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or is a depository institution whose broker-dealer activities are regulated by a Federal or State regulatory agency.

(b) Before purchasing an investment through a broker-dealer, a Federal credit union must analyze and annually update the following:

(1) The background of any sales representative with whom the Federal credit union is doing business;

(2) Information available from State or Federal securities regulators and securities industry self-regulatory

organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and

(3) If the broker-dealer is acting as the Federal credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating agencies, relevant disclosure documents, and other sources of financial information.

(c) The requirements of paragraph (a) of this section do not apply when the Federal credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

§ 703.9 Safekeeping of investments.

(a) A Federal credit union's purchased investments and repurchase collateral must be in the Federal credit union's possession, recorded as owned by the Federal credit union through the Federal Reserve Book-Entry System, or held by a board-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.

(b) Any safekeeper used by a Federal credit union must be regulated and supervised by either the Securities and Exchange Commission, a Federal or State depository institution regulatory agency, or a State trust company regulatory agency.

(c) A Federal credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.

(d) Annually, the Federal credit union must analyze the ability of the safekeeper to fulfill its custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating agencies, relevant disclosure documents, and other sources of financial information.

§ 703.10 Monitoring non-security investments.

(a) At least quarterly, a Federal credit union must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions, that have one or more of the following features:

(1) Embedded options;

(2) Remaining maturities greater than 3 years; or

(3) Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(b) The requirement of paragraph (a) of this section does not apply to shares and deposits that are securities.

(c) If a Federal credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the report described in paragraph (a) of this section. If a Federal credit union has an investment-related committee, then each member of the committee must receive a copy of the report, and each member of the board must receive a summary of the information in the report.

§ 703.11 Valuing securities.

(a) Before purchasing or selling a security, a Federal credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.

(b) At least monthly, a Federal credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price quotation on the security from an industry-recognized information provider, a broker-dealer, or a safekeeper.

(c) At least annually, the Federal credit union's supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or safekeeper. The Federal credit union's supervisory committee or external auditor must follow generally accepted auditing standards, which require either re-computation or reference to market quotations.

(d) If a Federal credit union is unable to obtain a price quotation required by this section for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

§ 703.12 Monitoring securities.

(a) At least monthly, a Federal credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month-end, with summary information for the entire portfolio.

(b) At least quarterly, a Federal credit union must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held that have one or more of the following features:

(1) Embedded options;

(2) Remaining maturities greater than 3 years; or

(3) Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) Where the amount calculated in paragraph (b) of this section is greater than a Federal credit union's net worth, the report described in that paragraph must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on:

(1) The fair value of each security in the Federal credit union's portfolio;

(2) The fair value of the Federal credit union's portfolio as a whole; and

(3) The Federal credit union's net worth.

(d) If the Federal credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in paragraphs (a) through (c) of this section. If the Federal credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

§ 703.13 Permissible investment activities.

(a) *Regular way settlement and delivery versus payment basis.* A Federal credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.

(b) *Federal funds.* A Federal credit union may sell Federal funds to an institution described in Section 107(8) of the Act and credit unions, as long as the interest or other consideration received from the financial institution is at the market rate for Federal funds transactions.

(c) *Investment repurchase transaction.* A Federal credit union may enter into an investment repurchase transaction so long as:

(1) Any securities the Federal credit union receives are permissible investments for Federal credit unions, the Federal credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System, the Federal credit union, or its agent, receives a daily assessment of their market value, including accrued interest, and the Federal credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

(2) The Federal credit union has entered into signed contracts with all approved counterparties.

(d) *Borrowing repurchase transaction.* A Federal credit union may enter into a borrowing repurchase transaction so long as:

(1) The transaction meets the requirements of paragraph (c) of this section;

(2) Any cash the Federal credit union receives is subject to the borrowing limit specified in Section 107(9) of the Act, and any investments the Federal credit union purchases with that cash are permissible for Federal credit unions; and

(3) The investments referenced in paragraph (d)(2) of this section mature no later than the maturity of the borrowing repurchase transaction.

(e) *Securities lending transaction.* A Federal credit union may enter into a securities lending transaction so long as:

(1) The Federal credit union receives written confirmation of the loan;

(2) Any collateral the Federal credit union receives is a legal investment for Federal credit unions, the Federal credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book Entry Securities Transfer System; and the Federal credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest, and maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;

(3) Any cash the Federal credit union receives is subject to the borrowing limit specified in Section 107(9) of the Act, and any investments the Federal credit union purchases with that cash are permissible for Federal credit unions and mature no later than the maturity of the transaction; and

(4) The Federal credit union has executed a written loan and security agreement with the borrower.

(f)(1) *Trading securities.* A Federal credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the Federal credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.

(2) A Federal credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the Federal credit union commits, orally or in writing, to purchase or sell a security.

(3) At least monthly, the Federal credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

§ 703.14 Permissible investments.

(a) *Variable rate investment.* A Federal credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, or domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this part, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

(b) *Corporate credit union shares or deposits.* A Federal credit union may purchase shares or deposits in a corporate credit union, except where the NCUA Board has notified it that the corporate credit union is not operating in compliance with part 704 of this chapter. A Federal credit union's aggregate amount of paid-in capital and membership capital, as defined in part 704 of this chapter, in one corporate credit union is limited to two percent of its assets measured at the time of investment or adjustment. A Federal credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to four percent of its assets measured at the time of investment or adjustment.

(c) *Registered investment company.* A Federal credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for Federal credit unions.

(d) *Collateralized mortgage obligation/real estate mortgage investment conduit.* A Federal credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit.

(e) *Municipal security.* A Federal credit union may purchase and hold a municipal security, as defined in Section 107(7)(K) of the Act, only if a nationally-recognized statistical rating organization has rated it in one of the four highest rating categories.

(f) *Instruments issued by institutions described in Section 107(8) of the Act.* A Federal credit union may invest in the following instruments issued by an institution described in Section 107(8) of the Act:

(1) Yankee dollar deposits;

(2) Eurodollar deposits;

(3) Banker's acceptances;

(4) Deposit notes; and

(5) Bank notes with original weighted average maturities of less than 5 years.

(g) *European financial options contract.* A Federal credit union may purchase a European financial options contract or a series of European financial options contracts only to fund the payment of dividends on member share certificates where the dividend rate is tied to an equity index provided:

(1) The option and dividend rate are based on a domestic equity index;

(2) Proceeds from the options are used only to fund dividends on the equity-linked share certificates;

(3) Dividends on the share certificates are derived solely from the change in the domestic equity index oyer a specified period;

(4) The options' expiration dates coincide with the maturity date of the share certificate;

(5) The certificate may be redeemed prior to the maturity date only upon the member's death or termination of the corresponding option;

(6) The total costs associated with the purchase of the option is known by the Federal credit union prior to effecting the transaction;

(7) The options are purchased at the same time the certificate is issued to the member.

(8) The counterparty to the transaction is a domestic counterparty and has been approved by the Federal credit union's board of directors;

(9) The counterparty to the transaction:

(i) Has a long-term, senior, unsecured debt rating from a nationally-recognized statistical rating organization of AA – (or equivalent) or better at the time of the transaction, and the contract between the counterparty and the Federal credit union specifies that if the long-term, senior, unsecured debt rating declines below AA – (or equivalent) then the counterparty agrees to post collateral with an independent party in an amount fully securing the value of the option; or

(ii) Posts collateral with an independent party in an amount fully securing the value of the option if the counterparty does not have a long-term, senior unsecured debt rating from a nationally-recognized statistical rating organization.

(10) Any collateral posted by the counterparty is a permissible investment for Federal credit unions and is valued daily by an independent

third party along with the value of the option;

(11) The aggregate amount of equity-linked member share certificates does not exceed the credit union's net worth;

(12) The terms of the share certificate include a guarantee that there can be no loss of principal to the member regardless of changes in the value of the option unless the certificate is redeemed prior to maturity; and

(13) The Federal credit union provides it board of directors with a monthly report detailing at a minimum:

(i) The dollar amount of outstanding equity-linked share certificates;

(ii) Their maturities; and

(iii) The fair value of the options as determined by an independent third party.

§ 703.15 Prohibited investment activities.

Adjusted trading or short sales. A Federal credit union may not engage in adjusted trading or short sales.

§ 703.16 Prohibited investments.

(a) *Derivatives.* A Federal credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate agreements, except as permitted under §§ 701.21(i) and 703.14(g) of this chapter;

(b) *Zero coupon investments.* A Federal credit union may not purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(c) *Mortgage servicing rights.* A Federal credit union may not purchase mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by a member;

(d) A Federal credit union may not purchase a commercial mortgage related security that is not otherwise permitted by Section 107(7)(E) of the Act; and

(e) *Other prohibited investments.* A Federal credit union may not purchase stripped mortgage-backed securities, residual interests in collateralized mortgage obligations/real estate mortgage investment conduits, or small business related securities.

§ 703.17 Conflicts of interest.

(a) A Federal credit union's officials and senior management employees, and their immediate family members, may not receive anything of value in connection with its investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the Federal credit union's board of directors determines that the employee's involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

(b) A Federal credit union's officials and employees must conduct all transactions with business associates or family members that are not specifically prohibited by paragraph (a) of this section at arm's length and in the Federal credit union's best interest.

§ 703.18 Grandfathered investments.

(a) Subject to safety and soundness considerations, a Federal credit union may hold a CMO/REMIC residual, stripped mortgage-backed securities, or zero coupon security with a maturity greater than 10 years, if it purchased the investment:

(1) Before December 2, 1991; or

(2) On or after December 2, 1991, but before January 1, 1998, if for the purpose of reducing interest rate risk and if the Federal credit union meets the following:

(i) The Federal credit union has a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(ii) The Federal credit union uses the monitoring and reporting system to conduct and document an analysis that shows, before purchase, that the proposed investment will reduce its interest rate risk;

(iii) After purchase, the Federal credit union evaluates the investment at least quarterly to determine whether or not it actually has reduced the interest rate risk; and

(iv) The Federal credit union accounts for the investment consistent with generally accepted accounting principles.

(b) All grandfathered investments are subject to the valuation and monitoring requirements of §§ 703.10, 703.11, and 703.12 of this part.

§ 703.19 Investment pilot program.

(a) Under the investment pilot program, NCUA will permit a limited number of Federal credit unions to engage in investment activities prohibited by this part but permitted by the Act.

(b) Except as provided in paragraph (c) of this section, before a Federal credit union may engage in additional activities it must obtain written approval from NCUA. To obtain approval, a Federal credit union must submit a request to its regional director that addresses the following items:

(1) Certification that the Federal credit union is "well-capitalized" under part 702 of this chapter;

(2) Board policies approving the activities and establishing limits on them;

(3) A complete description of the activities, with specific examples of how they will benefit the Federal credit union and how they will be conducted;

(4) A demonstration of how the activities will affect the Federal credit union's financial performance, risk profile, and asset-liability management strategies;

(5) Examples of reports the Federal credit union will generate to monitor the activities;

(6) Projections of the associated costs of the activities, including personnel, computer, audit, and so forth;

(7) Descriptions of the internal systems that will measure, monitor, and report the activities;

(8) Qualifications of the staff and officials responsible for implementing and overseeing the activities; and

(9) Internal control procedures that will be implemented, including audit requirements.

(c) A third-party seeking approval of an investment pilot program must submit a request to the Director of the Office of Examination and Insurance that addresses the following items:

(1) A complete description of the activities with specific examples of how a credit union will conduct and account for them, and how they will benefit a Federal credit union;

(2) A description of any risks to a Federal credit union from participating in the program; and

(3) Contracts that must be executed by the Federal credit union.

(d) A Federal credit union need not obtain individual written approval to engage in investment activities prohibited by this part but permitted by statute where the activities are part of a third-party investment program that NCUA has approved under this section.

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756 and 1766.

■ 4. Revise § 742.4 to read as follows:

§ 742.4 From what NCUA regulations will I be exempt?

(a) RegFlex credit unions are exempt from the provisions of the following NCUA regulations without restrictions or limitations: § 701.25, § 701.32(b) and (c), § 701.36(a), (b) and (c), § 703.5(b)(1)(ii) and (2), § 703.12(c); and § 703.16(b) of this chapter.

(b) RegFlex credit unions are exempt from the provisions of the following NCUA regulations with certain restrictions or limitations:

(1) Section 703.13(d)(3) of this chapter, provided the value of the investments that mature later than the borrowing repurchase transaction does not exceed 100 percent of the Federal credit union's net worth; and

(2) Section 703.16(d) of this chapter provided:

(i) The issuer of the security is domestic;

(ii) The security is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization;

(iii) The security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in § 703.2 of this chapter;

(iv) The security's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(v) The aggregate total of commercial mortgage related securities purchased by the Federal credit union does not exceed 50 percent of its net worth.

[FR Doc. 03–13660 Filed 6–2–03; 8:45 am]

BILLING CODE 7535–01–P.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–14–AD; Amendment 39–13172; AD 2003–11–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. This action requires replacing a certain elbow adapter (adapter) with an airworthy adapter. This amendment is prompted by reports of a cracked adapter on the hydraulic reservoir resulting in leakage of hydraulic fluid and loss of hydraulic power. This condition, if not corrected, could result in failure of an adapter on the hydraulic reservoir, loss of hydraulic fluid, loss of hydraulic power, and subsequent loss of control of the helicopter.

DATES: Effective June 18, 2003.

Comments for inclusion in the Rules Docket must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003-SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, L, and L1 helicopters. The DGAC advises that a right-hand (RH) hydraulic reservoir drained while in service due to a cracked adapter on the hydraulic reservoir. Such a situation could result in the loss of hydraulic power assistance if leakage occurs on both hydraulic systems at the same time.

Eurocopter has issued Alert Service Bulletin No. 67.00.25, dated January 8, 2003 (ASB), which specifies replacing certain adapters, part number (P/N) DHS613–636–43, on the RH hydraulic reservoir to limit the risk of hydraulic fluid leakage, which can result in the loss of hydraulic power assistance in the event of leakage on both hydraulic systems. The DGAC classified this ASB as mandatory and issued AD 2003–101(A), dated March 5, 2003, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to prevent failure of an adapter on the hydraulic reservoir, loss of hydraulic fluid, loss of hydraulic power, and subsequent loss of control of the helicopter. This AD requires replacing each adapter, P/N DHS613–636–43, with a manufacturing code on the hydraulic reservoir end indicating manufacture before January 1, 2002, and not identified with a yellow mark, with an airworthy adapter, P/N DHS613–636–43, with a manufacturing code on the reservoir end indicating manufacture on or after January 1, 2002. This AD requires that both the RH and left-hand (LH) affected adapters be replaced within 15 days even though the manufacturer's service information and the DGAC AD envisioned replacing the RH adapter only. This was driven apparently by an insufficient number of airworthy replacement adapters at the time their service information was released. Now, since there should be sufficient airworthy replacement adapters, both affected RH and LH adapters must be replaced. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, this AD requires replacing the previously identified adapter with an airworthy adapter within 15 days, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we are no longer including it in each individual AD.

The FAA estimates that this AD will affect 3 helicopters, and replacing both adapters on each helicopter will take approximately 2 work hours at an average labor rate of $60 per work hour. Required parts will cost approximately $184 (2 adapters per helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is $912.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are

invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–14–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–11–13 Eurocopter France: Amendment 39–13172. Docket No. 2003–SW–14–AD.

Applicability: Model AS332C, L, and L1 helicopters with an elbow adapter (adapter), part number (P/N) DHS613–636–43, with a manufacturing code on the hydraulic reservoir end indicating manufacture before January 1, 2002, and not identified by a yellow paint mark, installed, certificated in any category.

Note 1: Accomplishment Instructions, paragraphs 2.B.2. and 2.B.3., of Eurocopter Alert Service Bulletin No. 67.00.25, dated January 9, 2003, describe how to identify the adapter.

Compliance: Required within 15 days, unless accomplished previously.

To prevent failure of an adapter on the hydraulic reservoir, loss of hydraulic fluid, loss of hydraulic power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the adapter with an airworthy adapter with a manufacturing code on the hydraulic reservoir end indicating manufacture on or after January 1, 2002.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) This amendment becomes effective on June 18, 2003.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD 2003–101(A), dated March 5, 2003.

Issued in Fort Worth, Texas, on May 27, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–13654 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–142–AD; Amendment 39–13175; AD 2003–11–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions if necessary. For certain airplanes that are subject to the existing AD, this amendment requires a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts with steel bolts. These actions are necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. These actions are intended to address the identified unsafe condition.

DATES: Effective July 8, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002, was approved previously by the Director of the **Federal Register** as of August 27, 2002 (67 FR 52401, August 12, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–22–07, amendment 39–12932 (67 FR 66043, October 30, 2002), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on March 5, 2003 (68 FR 10412). The action proposed to continue to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. The action also proposed to require, for certain airplanes that are subject to the existing AD, a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts with steel bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 821 airplanes of the affected design in the worldwide fleet. The FAA estimates that 374 airplanes of U.S. registry will be affected by this AD.

The initial inspection that is currently required by AD 2002–16–05 takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $134,640, or $360 per airplane.

For an affected airplane, the new inspection for gaps that is required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection is $60 per airplane.

For an affected airplane, the new torque test that is required by this AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required torque test is $360 per airplane.

For an affected airplane, the replacement of bolts that is required by this AD will take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,880 per airplane. Based on these figures, the cost impact of this required replacement is $2,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12932 (67 FR 66043, October 30, 2002), and by adding a new airworthiness directive (AD), amendment 39–13175, to read as follows:

2003–11–16 Boeing: Amendment 39–13175. Docket 2002–NM–142–AD. Supersedes AD 2002–22–07, Amendment 39–12932.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–22–07

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after August 27, 2002 (the effective date of AD 2002–16–05, amendment 39–12844), do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6,

2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this paragraph.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (g) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) or (f) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(c) For Model 767–400ER series airplanes: Within 90 days after August 27, 2002, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this paragraph.

(2) If any bolt is missing or any gap is found: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspections: Submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (*i.e.*, missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(d) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(e) Within 90 days after November 14, 2002 (the effective date of AD 2002–22–07, amendment 39–12932): Do the one-time general visual inspection required by paragraph (a) of this AD to determine if any bolt is missing from the inboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

New Requirements of This AD

Group 1 Airplanes: Follow-on Actions

(f) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If no bolt is missing and no gap is found during the inspections required by paragraphs (a), (a)(1), and (e) of this AD, prior to the accumulation of 5,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, perform a general visual inspection to find any gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 3 of the Accomplishment Instructions of the service bulletin.

(1) If no gap is found, before further flight, do a torque check per Part 4 of the Accomplishment Instructions of the service bulletin.

(i) If, during the torque check, the nut does not turn, remove the nut, clean the bolt and threads, and reinstall the nut per Part 4 and Figure 4 of the service bulletin. Do paragraph (g) of this AD at the time specified in that paragraph.

(ii) If the nut turns, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

(2) If any gap is found, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

Group 1 Airplanes: Replacement of Titanium Bolts

(g) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Prior to the accumulation of 10,000 total flight cycles, or within 48 months after the effective date of this AD, whichever is later, replace all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin. This action is acceptable for compliance with paragraphs (a), (e), and (f) of this AD and eliminates the need for the inspections required by those paragraphs. This action is acceptable for compliance with paragraph (b) of this AD, provided that the replacement of bolts per this paragraph is accomplished at the time specified in paragraph (b) of this AD. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the requirements of paragraphs (b) and (c)(2)(i) of this AD.

(3) Alternative methods of compliance, approved previously in accordance with paragraph (c) of AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the requirements of paragraph (g) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Unless otherwise provided in this AD, the actions shall be done per Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. This incorporation by reference was approved previously by the Director of the Federal Register as of August 27, 2002 (67 FR 52401, August 12, 2002). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on July 8, 2003.

Issued in Renton, Washington, on May 27, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13649 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 204, 206, 207, 210, and 212

Rules of General Application; Investigations of Effects of Imports on Agricultural Programs; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion and Review of Relief Actions; and Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States; Adjudication and Enforcement; Implementation of the Equal Access to Justice Act

AGENCY: International Trade Commission.

ACTION: Final rules.

SUMMARY: The United States International Trade Commission (Commission) amends its rules of practice and procedure concerning rules of general application, safeguard investigations, antidumping and countervailing duty investigations and reviews, intellectual property-related investigations, and the Equal Access to Justice Act, in 19 CFR parts 201, 206, 207, 210, and 212. The Commission also renumbers two footnotes in 19 CFR part 204. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the amendments is to facilitate compliance with the Commission's rules and improve the administration of agency proceedings.

DATES: These rules are effective August 4, 2003, without further action, unless adverse comment is received by July 3, 2003. If adverse comment is received, the Commission will publish a timely withdrawal of the rules in the **Federal Register**.

ADDRESSES: A signed original and 8 copies of each set of comments on these amendments to the Commission's Rules, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Comments may be submitted electronically to the extent provided by section 201.8 of the Commission's rules, as amended by 67 FR 68063 (Nov. 8, 2002).

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, United States International Trade Commission (telephone 202–205–3102). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its World Wide Web site (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: This preamble provides background information, a regulatory analysis of the amendments, and then a detailed section-by-section analysis of the amendments.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. To carry out its functions and duties, the Commission has issued rules of practice and procedure. The passage of time has rendered some provisions of the rules outdated. In addition, Commission practice has revealed the need for improvements in certain rules. This rulemaking updates certain outdated provisions and improves other provisions.

Consistent with its ordinary practice, the Commission is issuing these amendments in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of such comments prior to developing final amendments; and (4) publication of final amendments at least thirty days prior to their effective date. The Commission published a notice of proposed rulemaking (67 FR 38614, June 5, 2002) on which the present notice is based. No public comments were received on the notice of proposed rulemaking. Based on a continuing review of the rules to identify references that need correction or clarification, the present notice contains a number of amendments not included in the notice of proposed rulemaking.

A number of the amendments affect interim rules, *i.e.*, sections 201.201, 201.202, 201.204, 206.3. Those interim rules will be replaced with final rules in future rulemakings.

Regulatory Analysis

The Commission has determined that these amendments do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice, these amendments are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These amendments do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The amendments are not major rules as defined in the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (5

U.S.C. 801 *et seq.*) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they do not contain any new information collection requirements.

Section-by-Section Analysis of the Amendments

Part 201—Rules of General Application

Subpart A—Miscellaneous

The Commission revises section 201.1 regarding the applicability of part 201 to correctly reference parts 210, 212 and 213 in the reference to rules of special application.

The Commission amends section 201.2 by revising paragraph (c), which defines the term "Tariff Act," to include citations to 19 U.S.C. 1677m and 1677n.

The Commission amends section 201.3 by revising paragraph (c) to clarify that any document filed after Commission business hours will be considered filed the next business day, and that if filing on that day means the document is untimely filed then the document may not be accepted unless it is accompanied by a request for permission to make a late filing.

The Commission amends section 201.3a by revising paragraph (a) to update the Commission's designated point of contact for using its penalty mail in locating and recovering missing children.

The Commission amends section 201.4 by revising paragraph (d) to correctly cite to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), eliminate the citation to the former 19 U.S.C. 1303, which has been repealed, and add "*et seq.*" to the citation to 19 U.S.C. 1673 to correctly refer to all of the antidumping provisions.

The Commission amends section 201.6 by revising paragraph (a)(2) to include section 206.17 as a section having special rules for the handling of nondisclosable confidential business information. The Commission also revises paragraph (d) of section 201.6 regarding the approval or denial of requests for confidential treatment. The revision will provide for consistency by stating that approvals, like denials, would be in writing. The Commission also revises paragraph (e)(3) of section 201.6 by replacing "his consideration" with the updated reference "consideration." The Commission revises paragraph (g) of section 201.6 regarding granting confidential status to business information to clarify when business information deemed not entitled to confidential treatment will be treated as public information. The revised paragraph (g) will impose a five-day deadline for withdrawing such business information after which time it would become public.

Subpart B—Initiation and Conduct of Investigations.

The Commission amends section 201.8 by revising paragraph (a) to state that filings made within the Commission's official hours of operation will be deemed filed on the date received by the Commission, consistent with the revised paragraph (c) of section 201.3 regarding Commission hours. The Commission also amends section 201.8 by revising paragraph (c), to provide that all documents filed, other than one or two-page documents, must be double-spaced, to improve the readability of documents. In addition, the Commission amends paragraph (d) of section 201.8 to require submitters to specify when a document is being filed with no confidential counterpart.

The Commission amends section 201.13 by revising paragraph (f) to provide, for ease of consideration, that supplementary materials in nonadjudicative hearings must be marked with the name of the organization submitting them. The same paragraph is also revised to remove the page limit on supplementary material that can be filed at a hearing, so that parties may present their arguments without such a limitation. The Commission revises paragraph (i)(1) of section 201.13, to delete the unnecessary reference to the requirement to file 14 copies of briefs with the Secretary, since paragraph (d) of section 201.8 already contains a requirement concerning the requisite number of copies to be filed.

The Commission amends section 201.14 by revising paragraph (a) to simplify filing requirements. In the event of an early or all-day closing of the Commission on a business day, the revision will allow the Secretary to accept filings due the day of the early or all-day closing on the next business day, without requiring the submitter to file a request for an extension of time.

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

The Commission amends section 201.17 by revising paragraph (a)(1) to permit the filing of requests electronically. Similarly, paragraph (b) of section 201.18 is revised to permit the filing of appeals by such means. The Commission has the capability of accepting electronic filing of requests at its World Wide Web site, at *http://www.usitc.gov/foia.htm*.

The Commission amends section 201.18 by revising paragraphs (b), (d) (introductory text), and (e) to permit electronic filing of requests under the Freedom of Information Act and to correctly state that paragraph (c), and not paragraphs (a) and (b), provides for extension of time for deciding appeals of denials.

The Commission amends section 201.19 by revising paragraph (b) to clarify that the term "[s]ubmitter" includes contractors, bidders, vendors and others who have an administrative relationship with the Commission, and who provide confidential business information to the Commission. Under the amended provision, persons or entities having an administrative relationship to the Commission will qualify to receive notice before release of their confidential submission under FOIA.

The Commission amends section 201.21 by revising paragraph (a) to provide information about the Commission's World Wide Web site, consistent with the electronic reading room provisions of the FOIA.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

The Commission amends section 201.31 by revising the section heading and adding paragraph (c) to include employee conduct as part of the section and to rename the section heading to reflect this change. Consequently, the Commission removes section 201.33, which currently deals with employee conduct, and adds its text to section 201.31. This eliminates the current duplication of section numbers.

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

The Commission amends section 201.170 by revising paragraph (c) to provide an updated contact point.

Subpart H—Debt Collection

The Commission amends subpart H, regarding debt collection, to update all references to "Office of Finance and Budget" to read "Office of Finance." The Commission also amends subpart H to update citations to applicable statutes and rules, and in particular to take into account the move of the Federal Claims Collection Standards from title 4 of the Code of Federal Regulations to title 31. The revisions affect the authority citation for subpart H; paragraphs (f), (i), and (m) of section 201.201; paragraphs (a) and (b)(4) of section 201.202; paragraphs (a)(16)(ii), (g)(1), (g)(2), (h)(1)(iii), (h)(2)(iii), (h)(3), (h)(4)(ii), (j), and (n) of section 201.204; paragraphs (d), (f)(3), and (g)(1)(iv) of section 201.206; and paragraph (b)(3) of section 201.207.

Part 204—Investigations of Effects of Imports on Agricultural Programs

In section 204.1, the Commission redesignates footnote 5 as footnote 1. In section 204.2, the Commission redesignates footnote 6 as footnote 2. These changes correct a misnumbering of those footnotes. The Commission also revises the authority citation to simplify the citations.

Part 206—Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions

Subpart A—General

The Commission amends section 206.3 by revising paragraph (b) to include in the notice of institution any limits on page lengths for posthearing briefs.

The Commission amends section 206.8 by revising paragraph (b) to provide that the Secretary shall promptly notify a petitioner of approval of an application for disclosure of confidential business information under administrative protective order (APO), and that the petitioner shall then serve a copy of the confidential petition on those approved applicants within two (2) calendar days of receiving that notification. Under the revised paragraph, which is consistent with section 207.10(b)(1)(i), approved applicants will receive a copy of the confidential petition more quickly, and without having to wait for the Secretary's issuance of the service list.

The Commission amends section 206.17 by revising paragraphs (a)(2), (b)(2), (g)(1) and (g)(3). The Commission revises paragraph (a)(2) to require only a signed APO application and five (5) copies to be filed with the Commission. Filing a signed original and fourteen (14) copies pursuant to section 201.8(d) provides the Commission with unnecessary copies. Paragraph (b)(2) is revised to clarify that confidential business information can only be used in representing an interested party. The Commission revises paragraph (g)(1) to include the definition of nondisclosable confidential business information from section 201.6(a)(2) to make the rule easier to understand. The Commission also revises paragraph (g)(3) to make it consistent with existing section 207.7 (g)(3), the analogous provision in part 207.

Part 207—Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

Subpart A—General Provisions

The Commission removes section 207.6 regarding reports of progress of investigation as unnecessary as duplicative of the statute. Moreover, amendments to the statute, the Commission's rules, and Commission practice have resulted in information being disseminated as a matter of course about an investigation's schedule and status. The section number is reserved.

The Commission amends section 207.7 by revising paragraph (a)(2) to require only a signed APO application and five (5) copies to be filed with the Commission, consistent with the changes in part 206. The Commission further revises paragraph (a)(2) of section 207.7 for consistency to include a deadline for adding attorneys under the APO in remanded investigations. Paragraph (b)(2) is revised to clarify that business proprietary information can only be used in representing an interested party.

Subpart F—Five-Year Reviews

The Commission amends section 207.62 by revising paragraph (b)(2) to delete the reference to "per group," as unnecessary, since a grouped review only involves one "group."

The Commission amends section 207.64 by revising paragraph (b), regarding staff reports, to conform with agency practice by providing that the final staff report will be placed in the record.

Part 210—Adjudication and Enforcement

The Commission revises paragraph (f)(2) of section 210.4 and paragraph (a) of section 210.8 to reduce the number of copies submitters must file of documents to the minimum needed by the agency. Submitters must file an original and 12—rather than 14—copies of each submission if the investigation or related proceeding is before the Commission, except that a submitter shall file the original and 6 copies of any exhibits filed with a request or petition for related proceedings. The Commission previously had effected a partial version of this reduction in the number of required copies by publishing notice of a waiver of its rules at 66 FR 58523 (Nov. 21, 2001).

Part 212—Implementation of the Equal Access to Justice Act

The Commission amends section 212.29, regarding payment of awards, to update all references to "Finance and Budget Division" to read "Office of Finance."

List of Subjects in 19 CFR Parts 201, 204, 206, 207, 210

Administrative practice and procedure, investigations.

■ For the reasons stated in the preamble, the Commission amends 19 CFR parts 201, 204, 206, 207, and 210 as set forth below:

PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

■ 2. Revise § 201.1 to read as follows:

§ 201.1 Applicability of part.

This part relates generally to functions and activities of the Commission under various statutes and other legal authority. Rules having special application appear separately in parts 202 through 207, inclusive, and parts 210, 212 and 213, of this chapter. In case of inconsistency between a rule of general application and a rule of special application, the latter is controlling.

■ 3. Amend § 201.2 to revise paragraph (c) to read as follows:

§ 201.2 Definitions.

* * * * *

(c) *Tariff Act* means the Tariff Act of 1930, 19 U.S.C. 1202–1677j, 1677m–n;

* * * * *

■ 4. Amend § 201.3 to revise paragraph (c) to read as follows:

§ 201.3 Commission offices, mailing address, and hours.

* * * * *

(c) *Hours.* The business hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight savings time, whichever is in effect in Washington, DC. Any document filed with the Secretary of the Commission after 5:15 p.m. will be considered filed the next business day. If filing on that day would be untimely, the filing may not be accepted unless a request is made for acceptance of a late filing for good cause shown pursuant to 201.14(b)(2).

■ 5. Amend § 201.3a to revise paragraph (a) to read as follows:

§ 201.3a Missing children information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The Commission's Office of Facilities Management, telephone 202–205–2741, shall be the point of contact for matters related to the implementation of this section.

* * * * *

■ 6. Amend § 201.4 to revise paragraph (d) to read as follows:

§ 201.4 Performance of functions.

* * * * *

(d) Presentation of matter that may come within the purview of other laws. Whenever any party or person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to section 337 of the Tariff Act of 1930, or (2) a matter under an investigation pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673 *et seq.*) or the countervailing duty provisions (19 U.S.C. 1671 *et seq.*) of the Tariff Act of 1930, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

■ 7. Amend § 201.6 to revise paragraphs (a)(2), (d), (e)(3) and (g) to read as follows:

§ 201.6 Confidential business information.

(a) * * *

(2) *Nondisclosable confidential business information* is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in § 206.17 and § 207.7 of this chapter.

* * * * *

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. An approval or a denial of a request for confidential treatment shall be in writing. A denial shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) * * *

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

* * * * *

(g) *Granting confidential status to business information.* Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender within five days of its denial of confidential treatment unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings. After such five day period, the business information deemed not entitled to confidential treatment, and not withdrawn, will be treated as public information.

* * * * *

■ 8. Amend § 201.8 to revise paragraphs (a), (c) and (d) to read as follows:

§ 201.8 Filing of Documents.

(a) *Where to file; date of filing.* Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

* * * * *

(c) *Specifications for documents.* Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced.

* * * * *

(d) Number of copies. A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-sized paper (8½ inches by 11 inches), except copies of documents prepared for another agency or a court (*e.g.* patent file wrappers or pleadings papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under Sec. 201.6, at least four (4) additional copies shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked "nonconfidential" or "public inspection." In the event that confidential treatment is not requested, the document shall be conspicuously marked "No confidential version filed." The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

* * * * *

■ 9. Amend § 201.13 to revise paragraphs (f) and (i)(1) to read as follows:

§ 201.13 Conduct of nonadjudicative hearings.

* * * * *

(f) *Supplementary material.* A party to the investigation may file with the Secretary supplementary material, other than remarks read into the record, for acceptance into the record. The party shall file any such material with the Secretary at the hearing. Supplementary materials must be marked with the name of the organization submitting it. As used herein, the term *supplementary material* refers to (1) additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position and (2) information not available to a party at the time its prehearing brief was filed.

* * * * *

(i) *Briefs*—(1) *Parties.* Briefs of the information produced at the hearing and arguments thereon may be presented to the Commission by parties to the investigation. Time to be allowed for submission of briefs will be set after conclusion of testimony and oral argument, if any.

* * * * *

■ 10. Amend § 201.14 to revise paragraph (a) to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States. In the event of an early or all-day closing of the Commission on a business day, the Secretary is authorized to accept on the next full business day filings due the day of the early or all-day closing, without requiring the granting of an extension of time by the Chairman of the Commission, or such other person designated to conduct the investigation.

* * * * *

■ 11. Amend § 201.17 to revise paragraph (a)(1) to read as follows:

201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly in the request, and if the request is in paper form on the envelope, that it is a "Freedom of Information Act Request." A written request may be made either (1) in paper form, or (2) electronically by contacting the Commission at *http://www.usitc.gov/foia.htm*.

* * * * *

■ 12. Amend § 201.18 to revise paragraphs (b), (d) introductory text, and (e) to read as follows:

§ 201.18 Denial of requests, appeals from denial.

* * * * *

(b) An appeal from a denial of a request must be received within sixty days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall indicate clearly in the appeal, and if the appeal is in paper form on the envelope, that it is a "Freedom of Information Act Appeal." An appeal may be made either in paper form, or electronically by contacting the Commission at *http://www.usitc.gov/foia.htm*.

* * * * *

(d) The extensions of time mentioned in paragraph (c) of this section shall be made only for one or more of the following reasons:

* * * * *

(e) The extensions of time mentioned in paragraph (c) of this section shall not exceed ten working days in the aggregate.

■ 13. Amend § 201.19 to revise paragraph (b) to revise the definition of *submitter* to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

* * * * *

(b) *Definitions.* * * *

Submitter means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and federal governments, as well as others who have an administrative relationship with the Commission such as contractors, bidders and vendors.

* * * * *

■ 14. Amend § 201.21 to revise paragraph (a) to read as follows:

§ 201.21 Availability of specific records.

(a) *Records available.* The following information, on request to the Secretary of the Commission, is available for public inspection and copying: (1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by the agency; and (3) administrative staff manuals and instructions to staff that affect a member of the public. Available information includes, but is not limited to: (i) Applications, petitions, and other formal documents filed with the Commission, (ii) notices to the public concerning Commission matters, (iii) transcripts of testimony taken and exhibits submitted at hearings, (iv) reports to the President, to either or both Houses of Congress, or to Committees of Congress, release of which has been authorized by the President or the legislative body concerned, (v) reports and other documents issued for general distribution. Much of the information described above also is available on the Commission's World Wide Web site. The Commission's home page is at *http://www.usitc.gov*. The Web site also includes information subject to repeated Freedom of Information Act requests. Persons accessing the Web site can find instructions on how to locate Commission information by following the "Freedom of Information Act" link on the home page.

* * * * *

■ 15. Amend § 201.31 to revise the section heading and add paragraph (c) to read as follows:

§ 201.31 Fees and Employee conduct.

* * * * *

(c) The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

■ 16. Remove § 201.33 of subpart D.

§ 201.33 [Removed]

■ 17. Amend § 201.170 to revise paragraph (c) to read as follows:

§ 201.170 Compliance procedures.

* * * * *

(c) The Director, Office of Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Office of Equal Employment Opportunity, United States International

Trade Commission, 500 E Street SW., Washington, DC 20436.

* * * * *

■ 18. Amend the authority citation for subpart H of part 201 to read as follows:

Authority: 19 U.S.C. 1335; 5 U.S.C. 5514(b)(1); 31 U.S.C. 3716(b); 31 U.S.C. 3720A(b)(4); 31 CFR chapter IX; 26 CFR 301.6402–6(b).

■ 19. Amend § 201.201 to revise paragraphs (f), (i), and (m) to read as follows:

§ 201.201 Definitions.

* * * * *

(f) *Director* means the Director, Office of Finance of the Commission or an official designated to act on the Director's behalf.

* * * * *

(i) *Federal Claims Collection Standards (FCCS)* means standards published at 31 CFR chapter IX.

* * * * *

(m) *Office of Finance* means the Office of Finance of the Commission.

■ 20. Amend § 201.202 to revise paragraphs (a) and (b)(4) to read as follows:

§ 201.202 Purpose and scope of salary and administrative offset rules.

(a) *Purpose.* The purpose of sections 201.201 through 201.207 is to implement 5 U.S.C. 5514, 31 U.S.C. 3716, and 31 U.S.C. 3720A which authorize the collection by salary offset, administrative offset, or tax refund offset of debts owed by persons, organizations, or entities to the Federal government. Generally, however, a debt may not be collected by such means if it has been outstanding for more than ten years after the agency's right to collect the debt first accrued. These proposed regulations are consistent with the Office of Personnel Management regulations on salary offset, codified at 5 CFR Part 550, subpart K, and with regulations on administrative offset codified at 31 CFR part 901.

* * * * *

(b) * * *

(4) Nothing in Sections 201.201 through 201.207 precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*), namely, 31 CFR chapter IX.

■ 21. Amend § 201.204 to revise paragraphs (a)(16)(ii), (g)(1), (g)(2), (h)(1)(iii), (h)(2)(iii), (h)(3), (h)(4)(ii), (j), and (n) to read as follows:

§ 201.204 Salary offset.

(a) * * *

(16) * * *

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or under any other applicable statutory authority; or

* * * * *

(g) Notice of salary offset where the Commission is the paying agency.

(1) Upon issuance of a proper certification by the Director (for debts owed to the Commission) or upon receipt of a proper certification from another creditor agency, the Office of Finance shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(i) Of the certification that has been issued by the Director or received from another creditor agency;

(ii) Of the amount of the debt and of the deductions to be made; and

(iii) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(2) The Office of Finance shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

* * * * *

(h) * * *

(1) * * *

(iii) Deductions shall begin the pay period following the issuance of the certification by the Director or the receipt by the Office of Finance of the certification from another agency or as soon thereafter as possible.

* * * * *

(2) * * *

(iii) Lump-sum deductions from final check. In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 and 5 U.S.C. 5514(a)(1) from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

* * * * *

(3) Multiple debts. Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Office of Finance may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(4) * * *

(ii) In the event that a debt to the Commission is certified while an employee is subject to salary offset to repay another agency, the Office of Finance may, at its discretion, determine whether the debt to the Commission should be repaid before the debt to the other agency, repaid simultaneously, or repaid after the debt to the other agency.

* * * * *

(j) Interest, Penalties, and Administrative Costs. Where the Commission is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR 901.9.

* * * * *

(n) Exception to due process procedures. The procedures set forth in this section shall not apply to adjustments described in 5 U.S.C. 5514(a)(3) and 5 CFR 550.1104(c).

■ 22. Amend § 201.206 to revise paragraphs (d), (f)(3), and (g)(1)(iv) to read as follows:

§ 201.206 Administrative offset.

* * * * *

(d) Interest. Pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States. The Commission is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

(f) * * *

(3) That the Commission has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 CFR part 901 with respect to providing the debtor with due process.

* * * * *

(g) * * *

(1) * * *

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR part 901, including providing any required hearing or review.

■ 23. Amend § 201.207 to revise paragraph (b)(3) to read as follows:

§ 201.207 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

* * * * *

(b) * * *

(3) The Commission has complied with the requirements of 31 CFR 901.3, including any required hearing or review.

* * * * *

PART 204—INVESTIGATIONS OF EFFECTS OF IMPORTS ON AGRICULTURAL PROGRAMS

■ 1. Revise the authority citation for part 204 to read as follows:

Authority: 19 U.S.C. 1335.

■ 2. In § 204.1, redesignate footnote 5 as footnote 1.

■ 3. In § 204.2, redesignate footnote 6 as footnote 2.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

■ 2. Amend § 206.3 to revise paragraph (b) to read as follows:

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

* * * * *

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, limits on page lengths for posthearing briefs, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information. The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

* * * * *

■ 3. Amend § 206.8 to revise paragraph (b) to read as follows:

§ 206.8 Service, filing and certification of documents.

* * * * *

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4), an application under § 206.17(a) is approved. When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

* * * * *

■ 4. Amend § 206.17 to revise paragraphs (a)(2), (b)(2), (g)(1), and (g)(3) to read as follows:

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a) * * *

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application and five (5) copies thereof shall be filed. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

* * * * *

(b) * * *

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

* * * * *

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this Subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) * * *

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: "CBI exempted from disclosure under APO enclosed in triple brackets." The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 206.8(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

* * * * *

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

■ 2. Remove and reserve § 207.6.

§ 207.6 [Removed]

■ 3. Amend § 207.7 by revising paragraphs (a)(2), (b)(2), and (g)(1) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a) * * *

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application and five (5) copies thereof shall be filed. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

* * * * *

(b) * * *

(2) Use such business proprietary information solely for the purposes of representing an interested party in the Commission investigation then in progress or during judicial or other review of such Commission investigation;

* * * * *

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

* * * * *

■ 4. Amend § 207.62 to revise paragraph (b)(2) to read as follows:

§ 207.62 Rulings on adequacy and nature of Commission review.

* * * * *

(b) * * *

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8½ x 11 inches. Comments containing new factual information shall be disregarded.

* * * * *

■ 5. Amend § 207.64 to revise paragraph (b) to read as follows:

§ 207.64 Staff Reports.

* * * * *

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. The Director shall place the final staff report in the record. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

PART 210—ADJUDICATION AND ENFORCEMENT

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

■ 2. Amend § 210.4 to revise paragraph (f)(2) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) * * *

(2) Unless the Commission or this part specifically states otherwise,

(i) The original and 6 true copies of each submission shall be filed if the investigation or related proceeding is before an administrative law judge, and

(ii) The original and 12 true copies of each submission shall be filed if the investigation or related proceeding is before the Commission, except that a submitter shall file the original and 6 copies of any exhibits filed with a request or petition for related proceedings.

* * * * *

■ 3. Amend § 210.8 to revise paragraph (a) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

(a) Upon receipt of complaint. A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies. The complainant shall file 12 confidential copies of the complaint along with 6 copies of any exhibits filed with the complaint, 12 nonconfidential copies of the complaint along with 6 copies of any exhibits filed with the complaint, plus one confidential copy and one nonconfidential copy of the complaint and exhibits for each person named in the complaint as violating section 337 of the Tariff Act of 1930, and one nonconfidential copy for the government of each foreign country of any person or persons so named. The same requirements apply for the filing of a supplement to the complaint. If the complainant is seeking temporary relief, the complainant must file 12 confidential copies of the motion along with 6 copies of any exhibits filed with the motion, 12 nonconfidential copies along with 6 copies of any exhibits filed with the motion, plus one additional confidential copy and one additional nonconfidential copy of the motion and exhibits for each proposed respondent, and one nonconfidential copy for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the procedures applicable to a motion for temporary relief, which require service of the complaint and motion for temporary relief by the complainant.

PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

■ 1. The authority citation for part 212 continues to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

■ 2. Amend § 212.29 to read as follows:

§ 212.29 Payment of award.

An applicant seeking payment of an award shall submit to the Office of Finance of the Commission a copy of the Commission's final determination granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The address for submission to the Commission is: United States International Trade Commission, Office of Finance, 500 E Street SW., Washington, DC 20436. The Commission will pay the amount to the applicant within 60 days, unless judicial review of the award or of the underlying determination of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Issued: May 27, 2003.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13688 Filed 6–2–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 02N–0241]

Amendment of Regulations on Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to change the labeling requirements concerning aluminum in small volume parenterals (SVPs) and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). The immediate container labels of SVPs and PBPs containing 25 micrograms per liter (µg/L) or less of aluminum may state: "Contains no more than 25 µg/L of aluminum" instead of stating the exact amount of aluminum they contain. In addition, the final rule revises the aluminum regulations to reflect the fact that the effective date of the final rule published in the **Federal Register** of January 26, 2000 (65 FR 4103) (the January 2000 final rule) is delayed until July 26, 2004. The agency is taking these actions in response to a request from industry.

DATES: This final rule is effective July 26, 2004. The effective date for § 201.323, added at 65 FR 4103, January 26, 2000, is delayed until July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the January 2000 final rule, FDA amended its regulations in § 201.323 (21 CFR 201.323) to enact certain requirements regarding aluminum levels in large volume parenterals (LVPs), SVPs, and PBPs used in TPN. The January 2000 final rule was originally scheduled to become effective on January 26, 2001. In the **Federal Register** of January 26, 2001 (66 FR 7864), the agency published a document delaying the effective date to January 26, 2003. In the **Federal Register** of November 26, 2002 (67 FR 70691), the agency published a document further delaying the effective date to January 26, 2004.

Section 201.323(c) of the January 2000 final rule required the product's maximum level of aluminum at expiry to be stated on the immediate container label of SVPs and PBPs used in the preparation of TPN solutions. The January 2000 final rule required that the statement on the immediate container label read as follows: "Contains no more than _ µg/L of aluminum." For those SVPs and PBPs that are lyophilized powders used in the preparation of TPN solutions, the January 2000 final rule required that the maximum level of aluminum at expiry be printed on the immediate container label as follows: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than _ µg/L." The January 2000 final rule also required that the maximum level of aluminum be stated as the highest of: (1) The highest level for the batches produced during the last 3 years, (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after the effective date of the rule.

In the **Federal Register** of August 12, 2002 (67 FR 52429), FDA proposed to amend § 201.323 to permit the immediate container labels of SVPs and PBPs containing 25 µg/L or less of aluminum to state: "Contains no more than 25 µg/L of aluminum" instead of stating the exact amount of aluminum they contain (the 2002 proposed rule). The proposed amendment was prompted by a request from the Health Industry Manufacturers Association (HIMA, now called AdvaMed). A complete discussion of HIMA's arguments in support of the revision can be found in the 2002 proposed rule.

The agency agreed with HIMA's request for the following reasons. FDA has already determined that 25 µg/L is a safe upper limit for manufacturers to include in LVPs and believes that it is similarly appropriate for SVPs and PBPs. If an SVP or PBP that contains 25 µg/L of aluminum is added to a TPN solution that contains 25 µg/L of aluminum, the concentration of aluminum in the mixture will still be 25 µg/L. Consistent with its approach to LVPs (to which SVPs and PBPs are added) that are permitted to contain 25 µg/L, FDA believes health care practitioners will be provided with sufficient information on the aluminum content of SVPs and PBPs if the label states that the product contains no more than 25 µg/L of aluminum.

In the 2002 proposed rule, the agency also announced its intent to extend the effective date for § 201.323 as necessary to provide time for the proposal to be finalized.

II. Comments on the Proposed Rule

The agency received one comment on the 2002 proposed rule. The comment agreed with the proposal. The comment supported the agency's plan to extend the effective date of § 201.323 until the proposed rule could be finalized. The comment asked that the effective date be extended at least 18 months after January 26, 2003, to give industry sufficient time to comply with § 201.323. The comment also asked FDA to clarify that a delay of the effective date would apply to all products subject to § 201.323.

In response to this comment, the agency is delaying the effective date of

§ 201.323 until July 26, 2004. This delay applies to all products subject to § 201.323.

III. Changes From the Proposed Rule

The final rule delays the effective date of § 201.323 to July 26, 2004. The final rule also changes § 201.323(c)(3) to reflect the fact that the effective date has been delayed. Section 201.323(c)(3) provides that a manufacturer may state the maximum level of aluminum in terms of historical levels, but only until completion of production of the first five batches after the effective date of the January 2000 final rule. That effective date is the date by which manufacturers are to submit supplements describing the validated assay method used to determine aluminum content. Because manufacturers now have until July 26, 2004, to submit supplements, the final rule changes the date in § 201.323(c)(3) to July 26, 2004. The final rule also slightly modifies the introductory language in § 201.323(c) to clarify that the language "except as provided in paragraph (d) of this section" applies to both the second and third sentences in § 201.323(c). That is, the "exception" language applies generally to SVPs and PBPs used in the preparation of TPN and also to SVPs and PBPs that are lyophilized powders that are reconsituted and used in the preparation of TPN.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Analysis of Impacts

FDA has examined the impacts of this amendment to § 201.323 under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order and in these two statutes.

The purpose of this final rule is to relax the requirements of the January 2000 final rule for labeling aluminum content in SVPs and PBPs used in TPN. Specifically, this final rule allows manufacturers to use a standard statement of quantity of aluminum content in place of the exact amount for affected products that contain no more than 25 µg/L of aluminum. FDA determined that the proposed rule would not be a significant action as defined by the Executive order. FDA received one comment to the proposed rule, but the comment did not address the Analysis of Impacts section of the proposed rule.

In the Analysis of Impacts section of the January 2000 final rule, the agency relied on the Eastern Research Group (ERG) report entitled "Addendum to Compliance Cost Analysis for a Regulation for Parenteral Drug Products Containing Aluminum." In that report, ERG calculated the total relabeling costs for SVPs and PBPs to be about $523,000, or about $3,500 per product (equivalent to annualized costs totaling $128,000, or about $850 per product, discounted at 7 percent over 5 years). To the extent that manufacturers of SVPs and PBPs containing no more than 25 µg/L of aluminum use the added flexibility in labeling that this final rule provides, the compliance burden cited above could be reduced.

The single comment to the proposed rule requested that an additional 18 months be added to the effective date of § 201.323. FDA has complied with this request. Since this additional time would allow for more flexibility in implementing the compliance methods for all parts of § 201.323, it could further reduce the compliance burden.

Because this final rule could slightly decrease current compliance costs for the affected industry without imposing any additional costs, FDA has determined that the final rule is not a significant regulatory action as defined by the Executive order and thus is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA made the determination for the January 2000 final rule that very few small firms, if any, would be significantly impacted. Thus, the agency certified that the final rule would not have a significant impact on a substantial number of small entities. This final rule could slightly lessen the economic impact of the January 2000 final rule. Accordingly, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before finalizing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.323 is amended by revising the first sentence of the introductory text of paragraph (c); by removing from paragraph (c)(3) the word "January" and adding in its place the word "July"; by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively; and by adding new paragraph (d) to read as follows:

§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.

* * * * *

(c) Except as provided in paragraph (d) of this section, the maximum level of aluminum present at expiry must be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages (PBPs) used in the preparation of TPN solutions.* * *

(d) If the maximum level of aluminum is 25 µg/L or less, instead of stating the exact amount of aluminum as required in paragraph (c) of this section, the immediate container label may state: "Contains no more than 25 µg/L of aluminum." If the SVP or PBP is a lyophilized powder, the immediate container label may state: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than 25 µg/L".

* * * * *

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13752 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 03N–0193]

RIN 0910–AA01

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) ophthalmic drug products are generally recognized as safe and effective and not misbranded. This amendment updates the monograph to incorporate a United States Pharmacopeia (USP) name change for one active ingredient included in the monograph. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: This final rule is effective July 3, 2003. Submit written or electronic comments by August 4, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA issued a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). Section 349.12 of that monograph included the active ingredient hydroxypropyl methylcellulose. In 2000, the USP proposed (for inclusion in the Third Supplement to *USP* 24) a name change for this ingredient based on a name adopted by the United States Adopted Names Council (Ref. 1). The new name for hydroxypropyl methylcellulose is hypromellose. This name change became official on March 1, 2001, and was subsequently included in the *USP* with an effective date of September 1, 2002 (Ref. 2).

II. Naming Process

The Federal Food, Drug, and Cosmetic Act (the act) in section 502(e)(1)(A)(i) (21 U.S.C. 352(e)(1)(A)(i)) requires the label of a drug to bear the established name of the drug to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula). The established name of the drug is defined as:

* * * (A) the applicable official name designated pursuant to section 508 [of the act], or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient * * *.

21 U.S.C. 352(e)(3).

Section 508 of the act (21 U.S.C. 358) authorizes FDA to designate an official name for any drug if FDA determines "that such action is necessary or desirable in the interest of usefulness and simplicity." FDA does not, however, routinely designate official names for drug products under section 508 of the act (§ 299.4(e) (21 CFR 299.4(e))). In the absence of designation by FDA of an official name, interested persons may rely on the current compendial name as the established name (§ 299.4(e)).

III. The Technical Amendment

FDA has not designated an official name for the active ingredient hydroxypropyl methylcellulose. Thus, its established name is the current compendial name. The USP has now changed the compendial name for hydroxypropyl methylcellulose to hypromellose. To be consistent with the change in this official compendial name, the agency is changing this name in § 349.12 in the ingredient listing. As noted previously, this USP name change became official on March 1, 2001, with a USP effective date of September 1, 2002.

Because section 502(e)(1) and (e)(3) of the act requires the established name of a drug to be used, any ophthalmic drug product initially introduced or initially delivered for introduction into interstate commerce after September 1, 2002, would need to bear the new established name "hypromellose." However, the agency is aware that many manufacturers of OTC ophthalmic drug products have not yet implemented this name change in their product labeling. Therefore, elsewhere in this issue of the **Federal Register**, as a matter of its enforcement discretion, the agency is issuing guidance stating its intent to provide manufacturers of affected OTC ophthalmic drug products until September 1, 2003 (1 extra year from the USP effective date), to implement this labeling change. Accordingly, on or after September 1, 2003, any OTC ophthalmic drug product initially introduced or initially delivered for introduction into interstate commerce that contains the ingredient hypromellose (formerly known as hydroxypropyl methylcellulose) must bear labeling that contains the new name for this ingredient.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of agency procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. This labeling revision

represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. As discussed previously in this document, manufacturers must relabel their products as a result of the USP name change to remain in compliance with the act. This amendment updates the name of one active ingredient in the final monograph for OTC ophthalmic drug products to reflect this official name change that has already been implemented by the USP. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The UMRA does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to update the final monograph for OTC ophthalmic drug products to incorporate a USP name change for one active ingredient included in the monograph. As discussed in section II of this document, section 502(e)(1) and (e)(3) of the act requires that the established name of a drug be used. Under § 299.4(e), because FDA does not routinely designate official names under section 508 of the act, the established name under section 502(e) of the act ordinarily is the compendial name of the drug. Therefore, because FDA has not designated an official name under section 508 of the act, manufacturers must relabel their products as a result of the USP name change to remain in compliance with the act. Updating the name of the active ingredient in the ophthalmic monograph to reflect its current established name will eliminate possible confusion by the public. Because manufacturers must relabel their products as a result of the USP name change to remain in compliance with the act, this rule does not impose any additional costs on industry. Consequently, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no further analysis is required.

V. Paperwork Reduction Act of 1995

The agency concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or three paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 702–705, May and June 2000.

2. "Third Supplement," *United States Pharmacopeia* 24, National Formulary 19, The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 3041–3042, January 2, 2001.

List of Subjects in 21 CFR Part 349

Labeling, Ophthalmic goods and services, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 349 is amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 349.12 is amended by revising paragraph (a)(3) to read as follows:

§ 349.12 Ophthalmic demulcents.

* * * * *

(a) * * *

(3) Hypromellose, 0.2 to 2.5 percent.

* * * * *

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13827 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 02N–0288]

Medical Devices; Designation of Special Control for Eight Surgical Suture Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend the classification regulations for eight surgical suture devices previously reclassified into class II to specify a special control for those devices. The special control is an FDA guidance document entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" that identifies performance, testing, and labeling recommendations for the devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control. FDA is taking these actions on its own initiative because it believes they are necessary to provide reasonable assurance of the safety and effectiveness of surgical suture devices. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: This rule is effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115), and the Medical Device User Fee and Modernization Act (MDUFMA) (Public Law 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance.

SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

The 1976 amendments also broadened the definition of "device" in 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified into class III all transitional devices, i.e., those devices previously regulated as new drugs, including surgical sutures.

II. Regulatory History of the Devices

In the **Federal Register** of December 16, 1977 (42 FR 63472), FDA published a notice that identified sutures as class III devices under the transitional provisions of the act. Section 520(l)(2) of the act (21 U.S.C. 360j(l)(2)) provides that the manufacturer or importer of a device classified in class III under the transitional provisions may file a petition for reclassification of the device into class I or class II. Procedures for filing and review of classification petitions are set forth in § 860.136 (21 CFR 860.136).

In accordance with section 520(l)(2) of the act and § 860.136, and after consulting with members of the General and Plastic Surgery Devices Panel, FDA reclassified surgical suture devices from class III to class II as follows:

1. Absorbable poly(glycolide/L-lactide) surgical suture (21 CFR 878.4493), reclassification order (letter) dated September 14, 1989;
2. Stainless steel suture (21 CFR 878.4495), reclassification order (letter) dated July 30, 1986;
3. Absorbable surgical gut suture (21 CFR 878.4830), reclassification order (letter) dated September 19, 1988;
4. Nonabsorbable poly(ethylene terephthalate) surgical suture (21 CFR 878.5000), reclassification order (letter) dated July 5, 1990;
5. Nonabsorbable polypropylene surgical suture (21 CFR 878.5010), reclassification order (letter) dated July 5, 1990;
6. Nonabsorbable polyamide surgical suture (21 CFR 878.5020), reclassification order (letter) dated February 15, 1990;
7. Natural nonabsorbable silk surgical suture (21 CFR 878.5030), reclassification order (letter) dated November 9, 1990; and
8. Nonabsorbable expanded polytetrafluoroethylene surgical suture (21 CFR 878.5035), reclassification order (letter) dated September 9, 1999.

In the **Federal Register** of December 19, 2002 (67 FR 77678), FDA published a proposed rule to designate a special control for eight surgical suture devices already classified into class II. FDA proposed that surgical suture devices would remain in class II, but would be subject to a special control. The proposed rule identified the special control as an FDA guidance document entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." In the same edition of the **Federal Register**, FDA announced the availability of the draft guidance that, when final, was intended to serve as a special control (67 FR 77797). FDA invited interested persons to comment on the proposed rule and on the proposed special control guidance document by March 19, 2003.

III. FDA's Conclusion

FDA received no comments on the proposed rule or on the guidance document proposed as the special control. Therefore, under the SMDA authority, FDA is amending the classification regulations for eight surgical suture devices previously reclassified into class II, to designate a special control for those devices. The special control capable of providing reasonable assurance of safety and effectiveness for these devices is a guidance document entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" that identifies performance,

testing, and labeling recommendations for the devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the special control guidance.

Following the effective date of this final rule, any firm submitting a 510(k) premarket notification for a new surgical suture will need to address the recommendations in the special control guidance. However, the firm need only show that its device is as safe and effective as a device that meets guidance recommendations. The firm may use alternative approaches if those approaches address the performance, testing, and labeling issues identified in the guidance.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The special controls guidance document does not impose any new burdens on manufacturers of these devices. FDA has granted 201 substantial equivalence orders from 95 manufacturers of these devices in the last 10 years. The guidance document is based upon the review of the information submitted in these premarket notifications. Based on the review of the premarket notifications, FDA believes that manufacturers presently marketing these devices are in conformance with the guidance document and they will not need to take any further action. The guidance document merely assures that, in the future, devices of these generic types will be at least as safe and effective as the presently marketed devices. These devices are already subject to premarket notification and labeling requirements. The guidance document advises manufacturers on appropriate means of complying with these requirements.

The consensus standards in the guidance were recognized under section 514(c) of the act (21 U.S.C. 360d(c)) for the purpose of demonstrating certain aspects of substantial equivalency. The manufacturer may provide a declaration of conformity to a recognized standard to meet a premarket notification requirement. Ordinarily, this will provide a simplified method of meeting the requirement. The manufacturer may choose to submit other data or information to meet the requirement. The guidance document sets out options that the manufacturer has in this respect.

For the foregoing reasons, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 878

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 878.4493 is amended by revising paragraph (b) to read as follows:

§ 878.4493 Absorbable poly(glycolide/L-lactide) surgical suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 3. Section 878.4495 is amended by revising paragraph (b) to read as follows:

§ 878.4495 Stainless steel suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 4. Section 878.4830 is amended by revising paragraph (b) to read as follows:

§ 878.4830 Absorbable surgical gut suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 5. Section 878.5000 is amended by revising paragraph (b) to read as follows:

§ 878.5000 Nonabsorbable poly(ethylene terephthalate) surgical suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 6. Section 878.5010 is amended by revising paragraph (b) to read as follows:

§ 878.5010 Nonabsorbable polypropylene surgical suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 7. Section 878.5020 is amended by revising paragraph (b) to read as follows:

§ 878.5020 Nonabsorbable polyamide surgical suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 8. Section 878.5030 is amended by revising paragraph (b) to read as follows:

§ 878.5030 Natural nonabsorbable silk surgical suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

■ 9. Section 878.5035 is amended by revising paragraph (b) to read as follows:

§ 878.5035 Nonabsorbable expanded polytetrafluoroethylene surgical suture.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." See § 878.1(e) for the availability of this guidance document.

Dated: May 20, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–13825 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 802

[CSOSA–0003–F]

RIN 3225–AA01

Disclosure of Records

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") is adopting regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency ("PSA" or "Agency") records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for the production of records in response to a subpoena or other legal demand for testimony. The regulations also identify Privacy Act systems of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the Agency and that adequate safeguards are in place to protect the privacy rights of individuals.

EFFECTIVE DATE: July 3, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") is adopting regulations (28 CFR part 802) on the disclosure of records maintained by CSOSA or the District of Columbia Pretrial Services Agency ("PSA" or "Agency"). CSOSA published a proposed rule on this subject in the **Federal Register** on March 15, 2002 (67 FR 11804). As noted in the proposed rule, PSA is an independent entity within CSOSA.

Summary of Regulatory Provisions

Subpart A of the proposed regulations provides a general introduction. Subpart B covers procedures for Freedom of Information Act (FOIA) requests; subpart C covers procedures for Privacy Act requests; subpart D covers disclosures in response to subpoenas or other legal demands; and subpart E covers exemptions to CSOSA and PSA Privacy Act systems of records.

Freedom of Information Act Requests

The general guidelines for disclosure (§ 802.3) under the FOIA note that a record must be in the possession and control of the agency at the time of the request to be considered subject to release under the regulations. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. Hard copy of electronic records which are subject to FOIA, but which are available to the public through an established distribution system, the **Federal Register**, or the Internet at CSOSA's Web site (*http://www.csosa.gov*), normally do not need to be processed under the FOIA. CSOSA will process such requests under the FOIA only if the requester insists on such processing.

Definitions for certain terms used in the subpart are contained in § 802.4. The procedures for submitting and processing FOIA requests are contained in § 802.5. Section 802.6 explains how CSOSA handles requests for documents which relate to or were created by another agency.

Section 802.7 covers the denial of a request. This section also explains how the requester may appeal the denial. Section 802.8 explains how to request expedited processing. Section 802.9 covers procedures for the disclosure of business information which may have been provided to the Agency. The business submitter (any entity which provided the business information to the Agency and which has a proprietary interest in the information) will receive notice of the FOIA request and have an opportunity to object to disclosure. Section 802.10 contains the fee schedule for FOIA requests.

Privacy Act Requests

The regulations in subpart C are intended to let you know how you can determine whether CSOSA or PSA maintains records about you, how you can obtain access to your records, and how to have your records corrected or amended.

Definitions for certain terms used in the subpart are contained in § 802.12. Section 802.13 explains how to verify your identity when making a request for your own records and how to document that you have consent when you make a request for information concerning another individual. The procedures for submitting and processing requests for access to records are contained in

§ 802.14 and have been reorganized and amended to better address the technical requirements for accessing and reviewing records. Section 802.15, which covers the denial of a request, and § 802.16, which explains how the requester may appeal the denial, have similarly been adjusted (for example, appeals based upon an adverse determination of the requester's category or for fee waiver apply to FOIA only and have accordingly been removed from the final rule). Section 802.17 explains how CSOSA or PSA handle requests for documents which relate to or were created by another agency.

Section 802.18 explains how you may request to correct or amend a record about you which the Agency maintains. Section 802.19 contains procedures for appealing a denial to correct or amend your record. Section 802.19 now specifies that the system manager is responsible for granting or denying requests for corrections of records.

Section 802.20 contains the procedures for accounting for disclosures, and § 802.21 notes your appeal rights for a denial of a request for an accounting. Section 802.20 has been amended to clarify that disclosures made under the FOIA are exempt from accounting and that no accounting will be provided to the record subject for disclosures made to law enforcement agencies. Fees for Privacy Act requests are described in § 802.22 and have been reworded slightly for the sake of clarity. Section 802.23 explains the Agency's policy on the use and disclosure of social security numbers.

Subpoenas or Other Legal Demands for Testimony or Production or Disclosure of Records or Other Information

Subpart D contains procedures for the production of records in response to subpoenas or demands of courts or other authorities in connection with a proceeding to which the Agency is not a party. These regulations establish a systematic means by which the Agency can evaluate requests for production of official agency information. The regulations are intended to: (1) Conserve Agency employee's time for conducting official business, (2) minimize the possibility of involving the Agency in controversial issues that are not related to the mission of the Agency, (3) prevent the possibility that the public will misconstrue variances between personal opinions of Agency employees and Agency policy, (4) avoid spending the government's time and money for private purposes, (5) preserve the integrity of the administrative process, and (6) protect confidential, sensitive information and the deliberative process of the Agency. In adopting these provisions as final, CSOSA is clarifying the provisions in § 802.27(d) to refer to these reasons when considering factors pertinent to whether a demand should be complied with.

Exemption of Record Systems

The Privacy Act permits specific systems of records to be exempt from some of its requirements. Subpart E identifies these exemptions and explains the basis for making the exemptions. CSOSA exemptions are contained in § 802.28; PSA exemptions are contained in § 802.29. The CSOSA exemption for Employment Profile, previously identified as CSOSA–14, has been removed as that system of record is no longer in use. The full text of CSOSA and PSA systems of records appeared in a separate notice document in the March 15, 2002 **Federal Register** (67 FR 11816).

Disposition of Public Comment

CSOSA did not receive any comments on the proposed rule. CSOSA accordingly is adopting the proposed provisions as a final rule without further change other than the technical amendments to the Privacy Act procedures and the clarification to § 802.27(d) noted above.

Matters of Regulatory Procedure

Administrative Procedure Act

In accordance with the Administrative Procedure Act, CSOSA published a proposed rule on this subject in the **Federal Register**. This final rule will become effective as noted above.

Executive Order 12866

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 802

Freedom of information; Privacy; Probation and parole.

Paul A. Quander, Jr.,

Director.

■ Accordingly, we amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 802 as set forth below.

PART 802—DISCLOSURE OF RECORDS

Subpart A—General

Sec.
802.1 Introduction.

Subpart B—Freedom of Information Act.

802.2 Purpose and scope.
802.3 Guidelines for disclosure.
802.4 Definitions.
802.5 Freedom of Information Act requests.
802.6 Documents from other agencies.
802.7 Denial of request.
802.8 Expedited processing.
802.9 Business information.
802.10 Fee schedule.

Subpart C—Privacy Act

802.11 Purpose and scope.
802.12 Definitions.
802.13 Verifying your identity.
802.14 Requests for access to records.
802.15 Denial of request.
802.16 Administrative appeal.
802.17 Documents from other agencies.
802.18 Correction or amendment of record.
802.19 Appeal of denial to correct or amend.
802.20 Accounting of disclosures.
802.21 Appeals.
802.22 Fees.
802.23 Use and disclosure of social security numbers.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

802.24 Purpose and scope.
802.25 Definitions.
802.26 Receipt of demand.
802.27 Compliance/noncompliance.

Subpart E—Exemption of Record Systems Under the Privacy Act

802.28 Exemption of the Court Services and Offender Supervision System—limited access.
802.29 Exemption of the Pretrial Services Agency System.

Authority: 5 U.S.C. 301, 552, 552a; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

Subpart A—General

§ 802.1 Introduction.

This part contains regulations of the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") and the District of Columbia Pretrial Services Agency ("PSA" or "Agency") which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and provide for the production of records in response to a demand from a court or other non-congressional authority in connection with a proceeding to which the Agency is not a party.

Subpart B—Freedom of Information Act

§ 802.2 Purpose and scope.

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

§ 802.3 Guidelines for disclosure.

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system or through the **Federal Register** or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

§ 802.4 Definitions.

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrighted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review*, for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 802.5 Freedom of Information Act requests.

(a) *Submission, processing, and release procedures.*

(1) Requests for any record (including policy) ordinarily will be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope "Freedom of Information Request."

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement

to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

§ 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with paragraph (c) of this section; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (*i.e.*, to challenge the adequacy of the search for responsive records) in accordance with paragraph (c) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Administrative appeal.*

(1) A requester may appeal an initial determination when:

(i) Access to records has been denied in whole or in part;

(ii) There has been an adverse determination of the requester's category as provided in § 802.10(d);

(iii) A request for fee waiver or reduction has been denied; or

(iv) It has been determined that no responsive records exist.

(2) Appeals must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked "Freedom of Information Act Appeal."

(3) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you.

§ 802.8 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever staff determines that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester must fully explain the circumstances warranting such an expected threat so that the Agency may make a reasoned determination.

(2) With respect to a request made by a person primarily engaged in disseminating information, a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A person "primarily engaged in disseminating information" does not include individuals who are engaged only incidentally in the dissemination of information. The standard of "widespread and exceptional media interest" requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. The requester must adequately explain the matter or activity and why it is necessary to provide the records being sought on an expedited basis.

(b) If you seek expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date]."

(c) The determination as to whether to grant or deny the request for expedited processing will be made, and the requester notified, within ten days after the date of the request. Because a decision to take a FOIA request out of order delays other requests, simple fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances. The decision will be made solely based on the information contained in the initial letter requesting expedited processing.

(d) Appeals of initial determinations to deny expedited processing must be made promptly. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 2004 and must be clearly marked "Expedited Processing Appeal."

(e) The General Counsel will make an appeal determination regarding expedited processing as soon as practicable.

§ 802.9 Business information.

(a) *In general.* Business information provided to the Agency by a business submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. Any claim of confidentiality must be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(b) *Notice to business submitters.* The Agency will provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.*

(1) Notice of a request for business information falling within paragraph (c)(2)(i) or (ii) of this section will be required for a period of not more than ten years after the date of submission unless the business submitter had requested, and provided acceptable justification for, a specific notice period of greater duration.

(2) The Agency shall provide a business submitter with notice of receipt of a request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Agency shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide a detailed statement of any objection to disclosure. Such statement shall specify why the business submitter believes the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph might itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that staff may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* The Agency will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision to disclose business information over the objection of a business submitter is made, the Agency shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Agency shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 802.10 Fee schedule.

(a) The fees described in this section conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(b) The term *direct costs* means those expenditures the agency actually makes in searching for, review (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(c) Fees shall be charged in accordance with the schedule contained in paragraph (i) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(1) Services were performed without charge;

(2) The fees were waived or reduced in accordance with paragraph (f) of this section.

(d) Specific levels of fees are prescribed for each of the following categories of requesters.

(1) *Commercial use requesters.* These requesters are assessed charges, which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Agency is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for

use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fit any of the categories described in paragraphs (d)(1) through (3) of this section shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Agency may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in a systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(e) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to paragraph (g) of this section.

(f) *Waiver or reduction of fees.*

(1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the current fee waiver policy guidance issued by the Department of Justice.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004 within 30 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays and holidays).

(3) Appeals from an adverse determination of the requester's category as described in paragraphs (d)(1) through (3) of this section shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the Agency's own records. Appeals shall be addressed in writing to the office or officer specified in § 802.7(c)(2) within 30 days of the receipt of the Agency's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and holidays).

(g) *Advance notice of fees.*

(1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250.00, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(h) *Form of payment.*

(1) Payment may be made by check or money order payable to the Treasury of the United States.

(2) The Court Services and Offender Supervision Agency reserves the right to request prepayment after a request is processed and before documents are released in the following circumstances.

(i) When costs are estimated or determined to exceed $250.00, the Agency shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require the requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(ii) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or the pending request. Whenever interest is charged, the Agency shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717.

(i) *Amounts to be charged for specific services.* The fees for services performed by an employee of the Agency shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge; the first two hours of search time free; or charge which total $10.00 or less. Fees for the copies are to be calculated as follows:

(i) The duplication cost is calculated by multiplying the number of pages in excess of 100 by $0.25.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The cost of search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

(i) $7.00 per quarter hour for clerical staff;

(ii) $10.00 per quarter hour for professional staff; and

(iii) $14.00 per quarter hour for managerial personnel.

(3) *Only fees in excess of $10.00 will be assessed.* This means that the total cost must be greater than $10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100), or for both costs combined.

(j) *Searches for electronic records.* The Agency shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the "all other" category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.*, the operator), the charge for the computer search will begin.

(k) *Aggregating requests.* When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency shall aggregate any such requests and charge accordingly.

Subpart C—Privacy Act

§ 802.11 Purpose and scope.

The regulations in this subpart apply to all records which are contained in a system of records maintained by the Agency and which are retrieved by an individual's name or personal identifier. This subpart implements the Privacy Act by establishing Agency policy and procedures providing for the maintenance of and guaranteed access to records. Under these procedures:

(a) You can ask us whether we maintain records about you or obtain access to your records; and

(b) You may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

§ 802.12 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Agency* has the meaning as defined in 5 U.S.C. 552(e).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Agency. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or a photograph.

(e) *System of records* means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) *Request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(i) *Request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(j) *Request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

§ 802.13 Verifying your identity.

(a) *Requests for your own records.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(b) *Requests on behalf of another.* Information that concerns an individual and that is contained in a system of records maintained by the Agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(c) *Disclosure criteria.* Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) Pursuant to a specific exception listed under the Privacy Act (5 U.S.C. 552a(b)). For example, specific exceptions allow disclosure:

(i) To employees within the Agency who have a need for the record in the performance of their duties.

(ii) If disclosure is required under FOIA when the public interest in disclosure of the information outweighs the privacy interest involved.

(iii) For a routine use described in the agency system of records as published in the **Federal Register**.

(A) The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

(B) CSOSA publishes notices of system of records, including all pertinent routine uses, in the **Federal Register**.

§ 802.14 Requests for access to records.

(a) *Submission and processing procedures.*

(1) Requests for any agency record about yourself ordinarily will be processed pursuant to the Privacy Act, 5 U.S.C. 552a. Such a request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope "Privacy Act Request."

(2) Your request will be considered received as of the date it is received by the Office of the General Counsel. For quickest possible handling, you should mark both your request letter and the envelope "Privacy Act Request."

(3) You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(b) *Release and review procedures.* Upon written request by an individual to gain access to his or her records which are not otherwise exempted, CSOSA shall permit the individual and, upon the individual's request, a person of his or her choosing to accompany him or her, to review the record and have a copy of all or any portion of the record. If a document contains information exempt from disclosure under the Privacy Act, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

(2) A requester will be notified of the decision on the request in writing.

(3) Generally, all Privacy Act requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

§ 802.15 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the PA and FOIA exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to an administrative appeal in accordance with § 802.16; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (*i.e.*, to challenge the adequacy of the search for responsive records) in accordance with § 802.16. The notification shall specify the official or office to which the appeal shall be submitted for review.

§ 802.16 Administrative appeal.

(a) A requester may appeal an Agency initial determination when:

(1) Access to records has been denied in whole or in part; or

(2) It has been determined that no responsive records exist.

(b) Appeals of initial determinations must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked "Privacy Act Appeal."

(c) The General Counsel will make an appeal determination within 30 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you of that decision.

§ 802.17 Documents from other agencies.

(a)(1) *Documents from or pertaining to Federal agencies.* When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a Privacy Act request; thus no appeal rights accrue to the requester.

(2) When a Privacy Act request is received for a record created by the Agency that includes information originated by another Federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.18 Correction or amendment of records.

This section applies to all records kept by the Agency except for records of earnings. If you believe your record is not accurate, relevant, timely, or complete, you may request that your record be corrected or amended. A request for correction or amendment must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the correction. To amend or correct your record, you should write to the Office of the General Counsel identified in § 802.14(a)(1). You should submit any available evidence to support your request. Both the request and the envelope must be clearly marked "Privacy Act Correction Request." Your request should indicate:

(a) The system of records from which the record is retrieved;

(b) The particular record which you want to correct or amend;

(c) Whether you want to add, delete or substitute information in the records; and

(d) Your reasons for believing that your record should be corrected or amended.

§ 802.19 Appeal of denial to correct or amend.

(a) The system manager may grant or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the **Federal Register** and exempted from the Privacy Act provisions allowing amendment and correction.

(1) Any denial of a request for correction should contain a statement of the reason for denial and notice to the requester that the denial may be appealed to the General Counsel by filing a written appeal.

(2) The appeal should be marked on the face of the letter and the envelope, "PRIVACY APPEAL—DENIAL OF CORRECTION," and be addressed to the Office of the General Counsel, address cited at § 802.14(a)(1).

(3) The General Counsel will review your request within 30 days from the date of receipt. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that the record should be corrected, the record will be corrected. If, after review, the General Counsel refuses to amend the record exactly as you requested, we will inform you:

(i) That your request has been refused and the reason;

(ii) That this refusal is the Agency's final decision;

(iii) That you have a right to seek court review of this request to amend the record; and

(iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record.

(b) Requests for correction of records prepared by other federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

(c) When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

§ 802.20 Accounting of disclosures.

(a) We will provide an accounting of all disclosures of a record for five years or until the record is destroyed, whichever is longer, except that no accounting will be provided to the record subject for disclosures made to law enforcement agencies and no accounting will be made for:

(1) Disclosures made under the FOIA;

(2) Disclosures made within the agency; and

(3) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. Your request should be in accordance with the procedures in § 802.14. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record, excepting disclosures made for an authorized civil or criminal law enforcement agency as provided by subsection (c)(3) of the Privacy Act. You will be required to provide reasonable identification.

§ 802.21 Appeals.

You may appeal a denial of a request for an accounting to the Office of the General Counsel in the same manner as a denial of a request for access to records (See § 802.16) and the same procedures will be followed.

§ 802.22 Fees.

The Agency shall charge fees under the Privacy Act for duplication of records only. These fees shall be at the same rate the Agency charges for duplication fees under the Freedom of Information Act (*See* § 802.10(i)(1)).

§ 802.23 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* If the Agency requests an individual to disclose his or her social security account number, we shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

§ 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency ("CSOSA" or "Agency") and the District of Columbia Pretrial Services Agency ("PSA" or "Agency") follow in response to a demand from a Federal, state, or local administrative body for the production and disclosure of material in connection with a proceeding to which the Agency is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

§ 802.25 Definitions.

Demand means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

Employee includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired while working at the Agency, such as sensitive or confidential agency information.

Legal Proceeding includes any pretrial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

§ 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

§ 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) An employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) If the court or other authority declines to stay the effect of the demand

pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) To achieve the purposes noted in paragraphs (a)(1) through (6) of this section, the agency will consider factors such as the following in determining whether a demand should be complied with:

(1) The Privacy Act, 5 U.S.C. 522a;

(2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 *et seq.*;

(3) The Victims Rights Act, 42 U.S.C. 10606(b);

(4) D.C. statutes and regulations;

(5) Any other state or federal statute or regulation;

(6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;

(7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;

(8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection; and

(9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Background Investigation (CSOSA–2).

(ii) Supervision Offender Case File (CSOSA–9).

(iii) Pre-Sentence Investigations (CSOSA–10).

(iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA–11).

(v) Recidivism Tracking Database (CSOSA–12).

(vi) [Reserved].

(vii) Substance Abuse Treatment Database (CSOSA–15).

(viii) Screener (CSOSA–16).

(ix) Sex Offender Registry (CSOSA–18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved].

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they

are subjects of the investigation, and reveal investigative interest by not only the OPR but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OPR for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OPR may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OPR should retain this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(vii) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(viii) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(ix) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

§ 802.29 Exemption of the Pretrial Services Agency System.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Automated Bail Agency Database (ABADABA) (CSOSA/PSA–1).

(ii) Drug Test Management System (DTMS) (CSOSA/PSA–2).

(iii) Interview and Treatment Files (CSOSA/PSA–3).

(iv) Pretrial Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because defendants/offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA/PSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA/PSA personnel are able to formulate decisions and policies with regard to defendants/offenders, to prevent disclosure of information to defendants/offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from defendants/offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b) [Reserved].

[FR Doc. 03–13764 Filed 6–2–03; 8:45 am]

BILLING CODE 3129–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–001]

RIN 1625–AA00 (Formerly RIN 2115–AA97)

Safety Zone Regulation; Fort Vancouver Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Fort Vancouver Fireworks Display established by 33 CFR 165.1314 on May 28, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1314 will be enforced July 4, 2003, from 9:30 p.m. (P.d.t.) until 11 p.m. (P.d.t.).

SUPPLEMENTARY INFORMATION: On May 28, 2003, the Coast Guard published a final rule (68 FR 31609) establishing safety zones, in 33 CFR 165.1314, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Fort Vancouver fireworks display. The safety zone will include all waters of the Columbia River at Vancouver, Washington bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37″16.5 seconds N, longitude 122°40″22.5′ W; thence south along the Interstate 5 highway bridge to Hayden Island, Oregon at latitude 45°36″51.5′ N, longitude 122°40″39′ W; thence east along Hayden Island to latitude 45°36″36′ N, longitude 122°39″48′ W (not to include Hayden Bay); thence north across the river thru the preferred channel buoy, RG Fl(2+1)R 6s, to the Washington shoreline at latitude 45°37′1.5′ N, longitude 122°39″29′ W; thence west along the Washington shoreline to the point of origin. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003, from 9:30 p.m. (P.d.t.) until 11 p.m. (P.d.t.). The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–13847 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–003]

RIN 1625–AA00

Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Salem and Hope Creek Generation Stations. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. eastern daylight time on May 13, 2003, to 5 p.m. eastern standard time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP Philadelphia 03–003 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Salem and Hope Creek Generation Stations. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, State, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Delaware River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Delaware River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.1D, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–078.

§ 165.T05–078 Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, New Jersey.

(a) *Location.* The following area is a security zone: the waters of the Delaware River in the vicinity of the Salem and Hope Creek Generation Stations bounded by a line drawn from a point located at 39° 28′ 08.0″ N, 075° 32′ 31.7″ W to 39° 28′ 06.5″ N, 075° 32′ 47.4″ W, thence to 39° 27′ 28.4″ N, 075° 32′ 15.8″ W, thence to 39° 27′ 28.8″ N, 075° 31′ 56.6″ W, thence to 39° 27′ 39.9″ N, 075° 31′ 51.6″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. on May 13, 2003 to 5 p.m. on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 03–13848 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD 13–03–017]

RIN 1625–AA00

Safety Zone; Fireworks Display on Siuslaw River, Florence, Oregon and on Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the Siuslaw River near Florence, Oregon and on the Willamette River near Portland, Oregon during two fireworks displays. The Captain of the Port, Portland, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective on July 4, 2003, from 9:15 p.m. (P.d.t.) to 10:30 (P.d.t.).

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD 13–03–017) and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A final rule, which established safety zones around fireworks displays for the Captain of the Port Portland area of responsibility, was recently published in the **Federal Register** (CGD13–03–008, 33 CFR 165.1315, 68 FR XXXX, May 30, 2003). An amendment cannot be successfully be made to 33 CFR 165.1315 in time to ensure the safety of vessels and spectators gathering in the vicinity of these fireworks display. The Coast Guard intends to amend 33 CFR 165.1315 using normal rule-making procedures in the near future by adding these safety zone to that regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting 30 days for this rule to be effective is contrary to public interest. Due to the complex planning and coordination of the event, the event sponsor was unable to provide the Coast Guard with notice of details of the event in time to allow for notice and comment and a 30-day waiting period prior to the effective date after publication. Because immediate action is necessary to ensure the safety of vessels and spectators gathered in the vicinity of the fireworks launching barges it is in the public interest to make the rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing temporary safety zone regulations to allow for safe fireworks displays. These safety zones will be in effect from 9:15 p.m. (P.d.t.) to 10 p.m. (P.d.t.) on the Willamette River and from 9:30 p.m. (P.d.t.) to 10:30 p.m. (P.d.t.) on the Siuslaw River. These events will result in a large number of vessels congregating near the fireworks launching area. These safety zones are needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with fireworks displays. Without providing an adequate safety zone, the public could be exposed to falling burning debris and would likely be within the blast range should a catastrophic accident occur on the launching barge. These safety zones will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessel movements in a regulated area surrounding a fireworks launching barge. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce this safety zone. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one-half of a mile of the Willamette and Siuslaw Rivers for 75 minutes in the late evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette and Siuslaw Rivers between 9:15 p.m. (P.d.t.) and 10:30 p.m. (P.d.t.) on July 4, 2003. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for 75 minutes at night when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if it is deemed safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A temporary § 165.T13–009 is added to read as follows:

§ 165.T13–009 Safety Zone; Fireworks Display on Siuslaw River, Florence, OR and on Willamette River, Portland, OR

(a) *Oaks Park Celebration.*

(1) *Location.* An area of water 500 feet in diameter on the Willamette River located around a fireworks launching barge centered at 45°28′22″ North, 122°39′59″ West [NAD 83]. This area is located between the Sellwood Bridge and Ross Island in Portland, OR.

(2) *Enforcement period.* July 4, 2003 from 9:15 p.m. (PDT) to 10 p.m. (PDT).

(b) *Florence Chamber of Commerce.*

(1) *Location.* An area of water 1000 feet in diameter on the Siuslaw River located around a fireworks launching barge centered at 43°57′52″ North, 124°6′16″ West [NAD 83].

(2) *Enforcement Period.* July 4, 2003 from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

(c) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, this Temporary Final Rule applies to any vessel or person in the navigable waters of the United States. No person or vessel my enter the above safety zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 03–13849 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD131–3091a; FRL–7503–7]

Approval and Promulgation of Air Quality Implementation Plans, Maryland; Amendments to the Control of Volatile Organic Compounds From Chemical Production and Polytetrafluoroethylene Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to Maryland's air pollution control regulations governing specific processes that emit volatile organic compounds (VOC). These requirements initially included organic chemicals and are being expanded to include inorganic chemicals and polytetrafluoroethylene (PTFE) products. The revisions also include establishment of a VOC content limit for PTFE coating installations and clarification of applicability thresholds. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comments by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108,Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2001 and November 6, 2002, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions, submitted by the Maryland Department of the Environment (MDE), consist of amended volatile organic compound requirements to specific processes Code of Maryland Administrative Regulations (COMAR) 26.11.19. The December 6, 2001 revision (#01–15) was published in the *Maryland Register* on September 21, 2001, a public hearing was held on October 23, 2001, adopted on November 6, 2001 and became effective on December 10, 2001. The November 6, 2002 revision (#02–07) was published in the *Maryland Register* on August 9, 2002, a public hearing was held on September 11, 2002, adopted on October 3, 2002 and became effective on November 11, 2002.

II. Summary of SIP Revision

(A) On December 6, 2001, MDE submitted amendments to COMAR 26.11.19.30. The existing regulation establishes reasonably available control technology (RACT) for chemical plants that produce organic chemicals. The revised regulation is being expanded to include VOC requirements for chemical production facilities and PTFE products facilities.

(1) The revisions to COMAR 26.11.19.30B add the following definitions: (a) Dipping trough, (b) inorganic chemical production installation, (c) PTFE, (d) PTFE installation, and (e) product condenser.

(2) COMAR 26.11.19.30C, which addresses applicability, is revised to include inorganic chemical production installations and PTFE installations.

(3) COMAR 26.11.19.30D is revised to address general requirements for both organic and inorganic chemical production facilities. In addition, the date to implement good operating practice and procedures is revised from March 30, 2001 to March 30, 2002.

(4) COMAR 26.11.19.30E is revised to create general requirements for PTFE installations. These requirements are as follows: (a) A person who owns or operates a PTFE installation that has uncontrolled VOC emissions of 50 pounds or more per day shall vent the emissions into a thermal oxidizer or use other approved methods to destroy or reduce VOC emissions by 85 percent or more. (b) If a thermal oxidizer is installed, the oxidizer combustion chamber shall be operated at a specified minimum temperature that is demonstrated to achieve compliance with the regulation. In addition, the thermal oxidizer combustion chamber should be equipped with a continuous temperature monitor, an alarm system for safety, and with an interlock system. (c) If a source uses an approved alternative control method, it shall be monitored. (d) Emission treatment or monitoring equipment shall be operated, maintained and calibrated in accordance with the equipment vendor's specifications. (e) A person who owns or operates a PTFE compounding and tape or shape-forming installation shall minimize fugitive VOC emissions by enclosing all wet PTFE and covering dipping troughs when not in operation.

(B) On November 6, 2002, MDE submitted amendments to COMAR 26.11.19.30. These amendments include (a) Minor modification to the definition of PTFE, (b) Deletion of the definition of PTFE installation, and (c) The addition of definitions for PTFE coating installation, PTFE process installation and total actual uncontrolled VOC emissions. In addition, these amendments clarify applicability requirements for PTFE coating and process installations found at COMAR 26.11.19.30C. COMAR 26.11.19.30E is modified to address general requirements for PTFE process installations and to add requirements for PTFE coating installation. The new PTFE coating installation requirement states that an installation that has actual uncontrolled VOC emissions of 20 pounds or more per day may not use a coating that has a VOC content exceeding 2.9 pounds per gallon unless it is equipped with a control device that meets specified requirements. These new requirements comport with EPA standards for coating operations.

III. Final Action

EPA is approving SIP revisions submitted by MDE on December 6, 2001 and November 6, 2002. The amendments establish specific VOC requirements for the production facilities that produce organic, inorganic chemicals and PTFE products. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertains to Maryland's amendments to VOC requirements from chemical production and PTFE installations and may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(176) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(176) Revisions to the Maryland State Implementation Plan submitted by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of December 6, 2001 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan concerning VOC requirements for facilities that produce inorganic chemicals and polytetrafluoroethylene (PTFE) products.

(B) The following revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations), effective December 10, 2001:

(*1*) Revised title for COMAR 26.11.19.30.

(*2*) Addition of paragraphs .30B(3–1), .30B(3–2), .30B(4–1), .30B(4–2), .30B(5)(b), and .30E(1) through (5) inclusive.

(*3*) Renumbering of former paragraphs .30B(5), .30C(3), and .30E(1) as paragraphs .30B(5)(a), .30C(2) and .30F respectively.

(*4*) Revisions to paragraphs .30C(1), renumbered .30C(2), .30D. (paragraph title), .30D(1), .30D(2), .30D(3), .30D(4) (introductory paragraph) and .30F.

(*5*) Removal of former paragraphs .30C(2) and .30E(2).

(C) Letter of November 6, 2002 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan concerning VOC requirements for facilities that produce inorganic chemicals and polytetrafluoroethylene (PTFE) products.

(D) The following revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations), effective November 11, 2002:

(*1*) Revisions to paragraphs .30B(4–1), .30B(4–2), .30C(2), .30C(3), and .30E(1).

(*2*) Addition of paragraphs .30B(4–3), .30B(4–4), and .30E(6).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(176)(i) of this section.

[FR Doc. 03–13700 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV038/053–6026a; FRL–7500–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From the Emission of Sulfur Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control air pollution from the emission of sulfur oxides. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Jill Webster (215) 814–2033 or Ellen Wentworth (215) 814–2034, or by e-mail at *webster.jill@epa.gov* or *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 1996 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR10) to prevent and control air pollution from the emission of sulfur oxides as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 6, 1993 and became effective on April 26, 1994. This SIP revision proposes approval of a temporary sulfur dioxide emissions control and mitigation plan which would be used during periods when maintenance of coke oven desulfurization equipment is being carried out. The second SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. This SIP revision includes additional and revised definitions; new provisions for the establishment of alternative individual stack sulfur dioxide limits; a manufacturing process compliance test averaging time change; additions and revisions to compliance testing, monitoring, and recordkeeping provisions; exemptions from compliance determination requirements for gas, oil, and wood-fired fuel burning units; deletion of outdated compliance schedule provisions; and the addition of a circumvention section. Since the most recent of the SIP revisions incorporates all of the changes from the earlier SIP revisions, EPA will incorporate by reference the version of 45CSR10 submitted to EPA on September 21, 2000 into the SIP.

II. Summary and Evaluation of SIP Revision

(A) The following definitions were added: "Continuous Emission Monitoring System," "Distillate Oil," "Indirect Heat Exchanger," "Malfunction," "Natural Gas," "Potential to Emit," and "Process Heater." The following definition was deleted: "Division of Environmental Protection." The following definitions were revised: "Director;" and "Person."

(B) The SIP revision provides that no person may permit the combustion of any refinery process gas stream or any other process gas stream that contains hydrogen sulfide in a concentration greater than 50 grains per 100 cubic feet except in the case of a person operating in compliance with an emission control and mitigation plan approved by the Director and EPA. The SIP revision also establishes the conditions for approval for such a plan.

(C) The SIP revision adds provisions allowing the operator of a source subject to sulfur dioxide weight emission standards for fuel burning units which have more than one stack to petition the Director for individual stack allowable emission rates different from those calculated under subdivision 3.4.a of the regulation. These alternative stack emissions cannot be used where stack emission changes are a result of a physical change or a change in method of operation that would otherwise require pre-construction permitting. The West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying that 45CSR10 requires that alternative standards be embodied in a federally enforceable permit issued under the authority of 45CSR13. The letter also states that prior to issuing the permit, WVDEP will submit the permit establishing alternative emission limitations to EPA for review and approval. The letter further clarifies that a petition for alternative emission limitations in no way supercedes any provisions regarding pre-construction review (45CSR14) or new or modified sources (45CSR19). This letter has been included in the administrative record for the rulemaking action on this SIP revision.

A revision to compliance requirements for fuel burning units clarifies that a continuous twenty-four (24) hour period is defined as one (1) calendar day.

(D) An exemption is provided for the owner or operator of a manufacturing process source operation which has the potential to emit less than 500 pounds per year of sulfur oxides from the provisions of the emission standards for manufacturing source operations. The SIP revision also revises the compliance determination for the allowable sulfur dioxide concentration limitations from manufacturing process source operations to be based on a block three (3) hour averaging time rather than the previous averaging time of two (2) hours.

(E) A provision has been added requiring that compliance with the allowable hydrogen sulfide concentration limitations for combustion sources be based on a block three (3) hour averaging time.

(F) Specific permit time filing and review requirements have been deleted and revisions include references to the permit requirements of 45CSR13, 14, 19, and 20.

(G) Testing provisions have been revised to define the requirements applicable to any fuel burning unit(s), manufacturing process source(s) or combustion source(s) and requires those sources to comply with the emission limitations for such sources (subsections 3, 4, or 5). The provisions also require that testing be conducted in accordance with the appropriate test method set forth in 40 CFR part 60, appendix A, Method 6, Method 15, or another equivalent EPA testing method approved by the Director. The Director or his duly authorized representative, may conduct other tests deemed necessary to evaluate air pollution emissions other than sulfur dioxide. As noted previously, WVDEP submitted a letter, which is part of the administrative record for this rulemaking action, to EPA on March 19, 2003, clarifying the interpretation and implementation of certain regulations on air pollution control. In that letter, WVDEP clarified that these tests are for pollutants in addition to sulfur dioxide.

The SIP revision allows the owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) to demonstrate compliance with the requirements for such sources (sections 3, 4 and 5) by testing and/or monitoring in accordance with one or more of the following: 40 CFR part 60, appendix A, Method 6, Method 15, continuous emissions monitoring systems (CEMS) or fuel sampling and analysis as set forth in an approved monitoring plan for each emission unit. In their letter dated March 19, 2003, WVDEP clarified that fuel sampling and analysis are required to be conducted in accordance with any applicable method or procedure formally established by EPA or otherwise in accordance with methods established by the American Society for Testing and Materials (ASTM).

(H) This SIP revision provides for excursions of operating parameters in an approved monitoring plan which are not necessarily violations. In their letter

dated March 19, 2003, WVDEP clarified that WVDEP enforcement staff evaluate excursions where parametric monitoring is an element of or the primary component of a monitoring plan, on a case-specific basis. In some instances, deviations in an operating parameter would very strongly indicate a probable violation of sulfur dioxide limits or of 45CSR10–3, 4, or 5. The letter also affirms that in a situation involving a likely emission exceedance, the burden of proof would be placed on the source to demonstrate that the parametric excursion did not cause an exceedance of the sulfur dioxide limit. West Virginia has clarified that in such an instance, emissions testing under conditions identical to or very similar to the excursion situation and subsequent analysis would be required to conclude whether a violation actually occurred. It should also be noted that larger sources of sulfur dioxide are now required to use CEMs or ASTM-based fuel monitoring and analysis or periodic emissions tests (EPA Method 6), as the primary compliance determination method.

(I) A section has been added to the SIP for recordkeeping and reporting, requiring the owners or operators of fuel burning unit(s), manufacturing process source(s) or combustion source(s) subject to the regulation requirements for those sources to maintain on-site records of all required monitoring data, pursuant to monitoring plans established in the monitoring provisions of this regulation (subsection 8.2c). These records are required to be available to the Director or his duly authorized representative and are to be retained on-site for a minimum of five years. Periodic exception reports are due to the Director, and are required to detail any excursions outside the range of measured emissions or monitored parameters established in the source's approved monitoring plan. In addition, operators of fuel burning unit(s) or combustion(s) source(s) are required to maintain records of the operating schedule and the quantity and quality of fuel consumed in each unit. Fuel burning sources utilizing CEMs are exempt from this requirement.

(J) An exemption has been revised for any fuel burning unit having a design heat input under 10 million BTUs per hour to include an exemption from the registration, permitting, testing, monitoring, recordkeeping and reporting requirements for such sources (sections 6–8), as well as from the sulfur dioxide emission standards for fuel burning units (section 3). An exemption has been added for fuel burning unit(s) which combust natural gas, wood, or distillate oil, alone or in combination, exempting these units from the testing, monitoring, recordkeeping and reporting requirements for fuel burning units, manufacturing process sources or combustion sources (section 8).

(K) A section entitled, "Circumvention" has been added to this regulation which prohibits any owner or operator subject to the provisions of this regulation to build, erect, install, modify or use any article, machine, equipment or process which purposely conceals an emission which would constitute a violation of an applicable standard.

(L) A section entitled, "Inconsistency Between Rules" has been added to this regulation which provides that any inconsistencies between 45CSR10 and any other WVDEP regulation be resolved by the application of the more stringent requirement.

Additional details pertaining to these revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions, and revising and streamlining monitoring, recordkeeping and reporting requirements for sulfur dioxide fuel burning units, manufacturing process source operations, and combustion sources. The revision also adds requirements for the registration of alternative emission limits for multiple stacks at a single source.

III. Final Action

EPA is approving the revisions to 45CSR10, "To Prevent and Control Air Pollution from the Emission of Sulphur Oxides," submitted by West Virginia on April 29, 1996, and September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to prevent and control air pollution from the emission of sulfur oxides in West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(53) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to West Virginia's Regulations to prevent and control air pollution from the emission of sulfur oxides, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the emission of sulfur oxides.

(B) Revisions to Title 45, Series 10, 45CSR10, To Prevent and Control Air Pollution from the Emission of Sulfur Oxides, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of April 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the emission of sulfur oxides.

(B) Letter of March 19, 2003 from the West Virginia Department of Environmental Protection to EPA providing clarification on the interpretation and implementation of certain regulations on air pollution control.

(C) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(53)(i) of this section.

[FR Doc. 03–13702 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 267–0394a; FRL–7495–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM–10) emissions from commercial charbroiling and VOC emissions from solvent cleaning. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 4, 2003 without further notice, unless EPA receives adverse comments by July 3, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*.

Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules or rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public comment and final action
III. Background information
Why were these rules submitted?
IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule number	Rule title	Adopted or amended	Submitted
SJVUAPCD	4692	Commercial Charbroiling	Adopted 3/21/2	5/21/2.
SCAQMD	1171	Solvent Cleaning Operations	Amended 8/2/2	12/23/2.

On August 6, 2002 and December 30, 2002, respectively, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of SJVUAPCD Rule 4692 in the SIP. We approved a version of SCAQMD Rule 1171 into the SIP on August 13. 1999 (64 FR 44134). The SCAQMD adopted revisions to the SIP-approved version on October 8, 1999 and CARB submitted them to us on January 21, 2000. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules or Rule Revisions?

The purposes of new Rule 4692 are as follows;

- To reduce emissions of VOCs and PM–10 from chain-driven commercial charbroilers. The charbroiler must be equipped with a catalytic oxidizer control device on the exhaust gases, or a unit certified by the SCAQMD must be used, or another control device may be used if it is as effective as a catalytic oxidizer. The purposes of the changes to SCAQMD 1171 are as follows:
- Paragraph (c)(1)(D)(vi) on UV ink application is changed to include the similar EB ink application.
- Paragraph (c)(1) advances the requirement for lower VOC content from July 1, 2005 forward to January 1, 2003. The cleaning operations affected include (A) product cleaning and surface preparation—general, (B) repair and maintenance cleaning—general, (C) cleaning of ink application equipment—general, flexographic printing, packaging, and removable press components, and (D) cleaning of polyester resin application equipment.
- Paragraph (e)(4) prohibits the use in automotive maintenance and repair of (A) perchloroethylene, (B) methylene chloride, or (C) trichloroethylene solvents.
- Paragraphs (h)(3) and (h)(5) have deleted obsolete exemptions for cleaning of plastics and handwipe cleaning of equipment.
- Paragraph (h)(7) clarifies that the 25 grams/liter limit for general cleaning of ink application equipment shall not take place until July 1, 2005.
- The allowance for a person to apply for a Clean Air Solvent Certificate is deleted.
- Obsolete paragraphs describing future limitations on solvent concentration are deleted.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD is a severe ozone nonattainment area and a serious PM–10 nonattainment area (see 40 CFR part 81). There are no major sources of VOC in the chain-driven commercial charbroiling source category in SJVUAPCD, and therefore the rule does not need to fulfill RACT for VOC. Section 189(b) of the CAA requires serious PM–10 nonattainment areas with major sources or significant source categories of PM–10 to adopt best available control measures (BACM), including best available control technology (BACT). BACM is not required for source categories that are not significant (*de minimis*) and there are no major sources. See *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994). The chain-driven commercial charbroiling source category is *de minimis* with about 0.02% of the total PM–10 emissions and does not have any major sources. Therefore Rule 4292 does not need to fulfill BACM/BACT for PM–10.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region 9 (August 21, 2001) (the Little Bluebook).
- *Determination of RACT and BARCT for Organic Solvent Cleaning Degreasing Operations*, California Air Resources Board (July 7, 1991).
- *Control of VOE from Solvent Metal Cleaning*, EPA–450–2–77–022 (November 1977).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).
- *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 3, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 4, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(310) and (c)(311) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(310) New and amended rules for the following districts were submitted on May 21, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4692, adopted on March 21, 2002.

(311) New and amended rules for the following districts were submitted on December 23, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1171, adopted on August 2, 1991 and amended on August 2, 2002.

* * * * *

[FR Doc. 03–13705 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–213–9952(a); FRL–7506–8]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Tennessee Department of Environment and Conservation's definition of Volatile Organic Compounds submitted on February 3, 1999 by the state of Tennessee. These revisions are designed for the State Implementation Plan (SIP) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). The additional compounds HFC43–10mee, HCFC–225ca, and HCFC–225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

DATES: This direct final rule is effective August 4, 2003 without further notice, unless EPA receives adverse comment by July 3, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. [Steve Scofield, 404–562–9034 or Nacosta Ward, 404–562–9140]. Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615–532–0554.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Scofield and Ms. Ward can also be reached by telephone at 404–562–9034 and 404–562–9140, or by electronic mail at *scofield.steve@epa.gov* and *ward.nacosta@epa.gov*, respectively.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On February 3, 1999, the state of Tennessee through the Tennessee Department of Environment and Conservation submitted a revision to chapter 1200–3–18, Volatile Organic Compounds, which provides SIP definitions. The revision to chapter 1200–3–18 provides greater clarity to the existing definition. The additional compounds HFC43–10mee, HCFC–225ca, and HCFC–225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

II. Final Action

EPA is approving the aforementioned changes to the State of Tennessee's SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 4, 2003 without further notice unless the Agency receives adverse comments by July 3, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 4, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporate by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended by revising the entry for "Section 1200–3–18–.01" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Explanation
Chapter 1200–3–18 Volatile Organic Compounds				
Section 1200–3–18–.01	Definitions	01/12/98	June 3, 2003, [Insert citation of publication].	

* * * * *

[FR Doc. 03–13707 Filed 6–2–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV050–6029a; FRL–7503–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation to Prevent and Control Particulate Matter Air Pollution From Manufacturing Processes and Associated Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations such as storage facilities. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 29, 1996, December 7, 1998 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR7) to prevent and control particulate matter air pollution from manufacturing operations as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 6, 1993 and became effective on April 27, 1994. This SIP revision provides an exemption for ferroalloy electric submerged arc furnaces from visible emissions and fugitive particulate matter standards during blowing taphole, poling and oxygen lancing operations. The second SIP revision went to public hearing on March 27, 1997 and became effective on May 1, 1998. This SIP revision provides alternative stack limits for fiberglass manufacturing operations using the flame attenuation method. The third SIP revision went to public hearing on July 19, 1999. This SIP revision added several exemptions and alternative limitations for visible emission and mass particulate emission standards. Since the most recent of the three SIP revisions incorporates all of the changes from the earlier SIP revisions, EPA will incorporate by reference the version of 45CSR7 submitted to EPA on September 21, 2000 into the SIP.

II. Summary of SIP Revision

(A) The following definitions were revised: (1) Definitions of "Commission," "Ringelmann Smoke Chart," "Chief of Air Quality," "Division of Environmental Protection," were deleted, (2) "Director" was modified to include persons delegated authority by the Director; (3) "Person" was modified to include the State of West Virginia and the United States, and (4) Definitions for "Ferroalloy electric submerged arc furnace," "Furnace charge," "Tapping," "Blowing tap," "Poling," "Oxygen lancing," "Maintenance Operation," "Malfunction," "Potential to Emit" were added.

(B) As a result of a petition by Elkem Metals and American Alloys certain events at ferroalloy electric submerged arc furnaces are exempt from fugitive particulate matter and visible emission standards. These events include blowing taphole, poling and oxygen lance operations. Blowing taphole events have been considered by EPA as uncontrollable, unpredictable events best characterized as malfunctions. This rationale was explained in an EPA development document for the federal rule titled "Supplemental Information on Standards of Performance for Ferroalloy Production Facilities," issued in March 1976, which states that a blowing tap event is "a process malfunction condition which is not wholly preventable. Periods in which the tapping hood is swung aside for poling/lancing or removal of metal or slag from the spout are failures of the process to operate in a normal or usual manner. As malfunctions, these periods are not subject to the standards." EPA interprets West Virginia's exemption to apply only to the extent that the above operations qualify as malfunctions caused by circumstances beyond the control of the source that could not have been prevented through installation of proper control equipment or proper operation and maintenance.

(C) The SIP revision exempts maintenance operations from particulate matter rate limitations on the condition that such operations are conducted in a manner consistent with good air pollution control practices for minimizing emissions. The State defines maintenance activities as operations having a zero process (input) weight rate. However, process weight rate is defined as the total weight of all materials introduced into a source operation, excluding solid, liquid, and gaseous fuels used solely as fuels and excluding all process and combustion air. This means that sources such as kilns, furnaces and ovens could be exempt from mass emission standards when operated in an idling mode, regardless of the types of fuels being combusted. However, the regulation does not exempt maintenance operations from visible emissions standards. Compliance with a visible emissions standard can be assessed over a broad range of operations, unlike compliance with a weight-based particulate matter limitation which is usually assessed by stack testing during normal and/or peak manufacturing operations. Therefore, a visible emissions standard can be an appropriate means to control emissions during maintenance operations.

(D) Exemptions are provided for insignificant sources, except for particulate matter classified as hazardous air pollutants. EPA believes that these exemptions are for very small sources that have little or no impact on ambient air quality.

All of the above exemptions are predicated on operating and maintaining manufacturing processes in a manner consistent with good air pollution control practices for minimizing emissions. The proposed SIP revision states that the Director may determine whether or not the exemption should be applied based on "information available to the Director." EPA interprets this subsection to place the burden of proof on the owner or operator to document, as appropriate, that the exemption applies. In other words, failure of the source to provide documentation that it has conducted maintenance operations in a manner consistent with good air pollution control practices should not prevent either the State or EPA from exercising its enforcement authority.

(E) Revisions to 45CSR7 include provisions for alternative emission limitations. As a result of a petition by Schuller International, Inc., West Virginia set alternative particulate matter limits for fiberglass production facilities using flame attenuation in the manufacturing process in lieu of limits that would otherwise be set by the duplicate source provisions in Table 45–7A of 45CSR7. The Schuller facility, now known as John Mansville International, Inc. (JM), is located in Vienna, West Virginia. Under the duplicate source provisions in 45CSR7, the allowable emission rate for each individual source would be established using the ratio of process input weight for the individual stack to the total process input weight, times the allowable emission rate for the combined sources. Since the relationship between the allowable emission rate and the process input rate is less than linear, the duplicate source provisions become more stringent as multiple sources are added. Abatement equipment and techniques to reduce particulate matter emissions were determined by West Virginia to be economically and technically infeasible to meet the duplicate source emission limitations at the John Mansville facility. Therefore, alternative particulate emission rate limits have been set that are based on best actual limits achieved in practice.

These alternative emission limitations are framed such that they generically apply to all fiberglass production facilities that use the flame attenuation process. The John Mansville facility is the only such manufacturing facility in the state and the rule names and applies limits to the specific stacks at this facility. EPA believes that the rule is inconsistent in applying a site-specific set of emission limitations as generic standards for all flame attenuation plants, regardless of whether other plants exist. To resolve this inconsistency, EPA interprets the regulation to apply only to the Johns Mansville facility. Should other flame attenuation plants locate in the State, they will be subject to the duplicate source provisions of 45CSR7.

(F) An owner or operator may petition the Director for alternative visible emission standards during periods of start-up and shut-down. The petitioner must: (1) Demonstrate that it cannot comply with existing standards, (2) document the need for an alternative standard based on monitoring results and inspections, (3) demonstrate that mass emission standards are being met, and (4) maintain and operate manufacturing processes and air pollution control equipment in a manner consistent with good air pollution control practices. Section 110(a)(2)(A) of the Clean Air Act requires SIPs to include federally enforceable emission limitations. The West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying how the State intends to interpret and implement its air control regulations. This letter states that all alternative visible emission standards will be established as specific conditions of permits issued in accordance with federally enforceable permitting programs. The letter also states that prior to issuing such permits, the WVDEP shall submit them to EPA for review. This letter has been included in the administrative record for the rulemaking action on this SIP revision.

(G) A new section titled "Alternative Emission Limits for Duplicate Source Operations" provides a process for owners or operators to apply for alternative mass particulate emission rates. These alternative limits will not allow the overall site limit determined by Tables 45–7A and B in the regulation to be relaxed but will provide some flexibility on what may be emitted from individual stacks. The regulation requires the petitioner to conduct an air quality impact analysis to demonstrate that the alternative standard(s) will not interfere with attainment or maintenance of any federal air quality standard or cause an unacceptable increase over the baseline concentration of particulate matter. In addition, the alternative standard is required to be implemented through 45CSR13, which is a federally enforceable permit program. As noted previously, WVDEP submitted a letter to EPA on March 19, 2003, which is part of the administrative record for this rulemaking action, stating that alternative mass emission limits issued under the authority of 45CSR13 will be established and implemented as conditions of permits issued in accordance with federally approved and enforceable programs and, that prior to issuance such permits shall be submitted to EPA for review. The letter also affirms that a successful petition for alternative emission limits under this subsection may in no way supercede any provisions in 45CSR14 or 45CSR19 regarding pre-construction review of new or modified sources.

(H) The SIP revision removes the restriction that the Director may only require a stack test when there is evidence of a violation. EPA believes that this revision substantially enhances West Virginia's ability to determine compliance with the particulate matter standard.

(I) A section on delayed compliance orders was deleted and a section titled "Inconsistency Between Rules" allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

Additional details and a description of minor revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions and updating opacity standards. The revisions also require EPA review of alternative emission limits and establish acceptable periods when emission standards do not apply.

III. Final Action

EPA is approving the revisions to 45CSR7, "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations", submitted by West Virginia on September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003 without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Regulatory Assessment Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to approve West Virginia's Regulation 45CSR7, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(55) Revisions to West Virginia's Regulations to prevent and control particulate matter air pollution from manufacturing processes and associated operations, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection.

(B) Revisions to Title 45, Series 7, 45 CSR7, To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of March 19, 2003 from the West Virginia Division of Environmental Protection to EPA providing clarification on the interpretation and implementation of certain regulations on air pollution control.

(B) Letter of March 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations.

(C) Letter of December 7, 1998 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations.

(D) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(55)(i) of this section.

[FR Doc. 03–13709 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4206a; FRL–7504–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Alternative Emission Reduction Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revision removes alternative emission reduction limitations for air contaminant sources at eight facilities. EPA is approving these revisions to the SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2000, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the removal of alternative emission reduction limitations for the facilities and pollutants listed in Table 1. Public hearings were held on July 28, July 30 and August 5, 1997. The final rule removing the alternative emission reduction limitations became effective on October 19, 1999.

II. Summary of SIP Revision

As part of the Commonwealth's Regulatory Basics Initiative, the PADEP was required to review existing regulations and identify those that were, among other things, obsolete or no longer necessary. As a result of this initiative, PADEP identified certain regulations for source specific alternative emission reduction limitations, codified in title 25, chapter 128 of the Commonwealth's regulations, as no longer necessary due to changes in processes, equipment or the closing of the affected facility. Chapter 128 allows sources to submit proposals to implement an alternative emission reduction option for existing sources known as the "bubble" policy. The specific alternative emission reduction limitations to be removed from the Commonwealth's SIP, including the names of the affected sources and pollutants, are listed in Table 1.

TABLE 1.—LIST OF AFFECTED ALTERNATIVE EMISSION REDUCTION LIMITATIONS

Name of facility	PADEP citation	Pollutant	40 CFR part 52 citation
Andre Greenhouses, Inc., Southampton	§ 128.11	SO_2	52.2020(c)(35)
Andre Greenhouses, Inc., Doylestown	§ 128.12	SO_2	52.2020(c)(35)
Andre Greenhouses, Inc., Wyndmoor	§ 128.13	SO_2	52.2020(c)(35)
U.S. Steel Corp., Fairless Hills	§ 128.15	SO_2	52.2020(c)(55)
U.S. Steel Corp., Fairless Hills	§ 128.16	Particulate Matter	52.2020(c)(51)
Scott Paper Co., Chester	§ 128.17	SO_2	52.2020(c)(54)
Arbogast & Bastian, Inc., Allentown	§ 128.18	SO_2	52.2020(c)(54)
J.H. Thompson, Inc., Kennett Square	§ 128.19	SO_2	52.2020(c)(54)
Bethlehem Steel Corp., Bethlehem	§ 128.20	Particulate Matter	52.2020(c)(52)

III. Final Action

EPA is approving as a revision to the Pennsylvania SIP the removal of alternative emission reduction limitations, codified under 25 PA Code section 128, for eight facilities.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to remove eight alternative emission reduction limitations from the Pennsylvania SIP must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraphs (c)(204) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *(204) Revisions to the Pennsylvania Regulations to remove alternative emission reduction limitations for Andre Greenhouses, U.S. Steel, Scott Paper Company, Arbogast & Bastian, Inc., J.H. Thompson, Inc., and Bethlehem Steel Corp., submitted on March 6, 2000 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letter of March 6, 2000 from the Pennsylvania Department of Environmental Protection transmitting the removal of 25 Pennsylvania Code Subpart C, Article II, Chapter 128.11 through 128.13 and 128.15 through 128.20, the alternative emission reduction limitations for Andre Greenhouses, U.S. Steel, Scott Paper Company, Arbogast & Bastian, Inc., J.H. Thompson, Inc., and Bethlehem Steel Corporation, respectively.

(B) Removal of 25 Pennsylvania Code Subpart C, Article II, Chapter 128.11 through 128.13 and 128.15 through 128.20, effective September 5, 1998.

(ii) Remainder of State submittal pertaining to the revisions listed in paragraph (c)(204)(i) of this section.

[FR Doc. 03–13711 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–200325; FRL–7500–9]

Approval and Promulgation of Air Quality Implementation Plans; Georgia Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Georgia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in the Ariel Rios Building, Washington, DC and the Regional Office.

EFFECTIVE DATES: This action is effective June 3, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, Ariel Rios Building (Mail Code 6102), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin at the above Region 4 address or at (404) 562–9031. Email: *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On May 21, 1999, EPA published a document in the **Federal Register** (64 FR 27699) beginning the new IBR procedure for Georgia. In this document EPA is updating the IBR material.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 28, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. Section 52.570 paragraph (b), (c) and (d) is revised to read as follows:

§ 52.570 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to April 10, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 10, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of April 10, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register,

800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) EPA approved regulations.

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	12/26/01	7/11/02, 67 FR 45909.	
391–3–1–.02	Provisions.			
391–3–1–.02(1)	General Requirements	03/20/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)	Emission Standards	06/23/96	06/27/96, 61 FR 33372.	
391–3–1–.02(2)(a)	General Provisions	01/09/91	01/26/93, 58 FR 6093.	
391–3–1–.02(2)(b)	Visible Emissions	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(c)	Incinerators	06/15/98	12/02/99, 64 FR 67491.	
391–3–1–.02(2)(d)	Fuel-burning Equipment	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(e)	Particulate Emission from Manufacturing Processes.	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(f)	Normal Superphosphate Manufacturing Facilities.	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(g)	Sulfur Dioxide	12/03/86	58 FR 6093.	
391–3–1–.02(2)(h)	Portland Cement Plants	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(i)	Nitric Acid Plants	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(j)	Sulfuric Acid Plants	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(k)	Particulate Emission from Asphaltic Concrete Hot Mix Plants.	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(l)	Conical Burners	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(m)	repealed	06/30/75	10/03/75, 40 FR 45818.	
391–3–1–.02(2)(n)	Fugitive Dust	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(o)	Cupola Furnaces for Metallurgical Melting.	01/27/72	37 FR 10842.	
391–3–1–.02(2)(p)	Particulate Emissions from Kaolin and Fuller's Earth Processes.	12/16/75	08/20/76, 41 FR 35184.	
391–3–1–.02(2)(q)	Particulate Emissions from Cotton Gins.	01/27/72	05/31/72, 37 FR 10842.	
391–3–1–.02(2)(r)	Particulate Emissions from Granular and Mixed Fertilizer Manufacturing Units.	01/27/72	05/31/72 37, FR 10842.	
391–3–1–.02(2)(t)	VOC Emissions from Automobile and Light Duty Truck Manufacturing.	12/20/94	02/02/96, 61 FR 3817.	
391–3–1–.02(2)(u)	VOC Emissions from Can Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(v)	VOC Emissions from Coil Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(w)	VOC Emissions from Paper Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(x)	VOC Emissions from Fabric and Vinyl Coating.	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(y)	VOC Emissions from Metal Furniture Coating.	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(z)	VOC emissions from Large Appliance Surface Coating.	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(aa)	VOC Emissions from Wire Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(bb)	Petroleum Liquid Storage	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(cc)	Bulk Gasoline Terminals	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(dd)	Cutback Asphalt	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(ee)	Petroleum Refinery	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(ff)	Solvent Metal Cleaning	05/29/96	04/26/99, 64 FR 20186.	
391–3–1–.02(2)(gg)	Kraft Pulp Mills	06/03/88	09/30/88, 53 FR 38290.	
391–3–1–.02(2)(hh)	Petroleum Refinery Equipment Leaks	06/24/94	02/02/96, 61 FR 3817.	
391–3–1–.02(2)(ii)	VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products.	10/7/99	7/10/01, 66 FR 35906.	
391–3–1–.02(2)(jj)	VOC Emissions from Surface Coating of Flat Wood Paneling.	04/03/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(kk)	VOC Emissions from Synthesized Pharmaceutical Manufacturing.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(ll)	VOC Emissions from the Manufacture of Pneumatic Rubber Tires.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(mm)	VOC Emissions from Graphic Arts Systems.	04/03/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(nn)	VOC Emissions from External Floating Roof Tanks.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(oo)	Fiberglass Insulation Manufacturing Plants.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(pp)	Bulk Gasoline Plants	04/03/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(qq)	VOC Emissions from Large Petroleum Dry Cleaners.	04/03/91	10/13/92, 57 FR 46780.	

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.02(2)(rr)	Gasoline Dispensing Facility—Stage I.	12/26/01	7/11/02, 67 FR 45909	
391–3–1–.02(2)(ss)	Gasoline Transport Vehicles and Vapor Collection Systems.	12/26/01	7/11/02, 67 FR 45909	
391–3–1–.02(2)(tt)	VOC Emissions from Major Sources	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(uu)	Visibility Protection	10/31/85	01/28/86, 51 FR 3466	
391–3–1–.02(2)(vv)	Volatile Organic Liquid Handling and Storage.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(ww)	Perchloroethylene Dry Cleaners	11/15/94	06/27/96, 61 FR 33372	Repealed.
391–3–1–.02(2)(yy)	Emissions of Nitrogen Oxides from Major Sources.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(zz)	Gasoline Dispensing Facilities—Stage II.	12/26/01	7/11/02, 67 FR 45909	
391–3–1–.02(2)(aaa)	Consumer and Commercial Products	10/27/93	04/26/99, 64 FR 20186	
391–3–1–.02(2)(bbb)	Gasoline Marketing	7/18/01	2/22/02, 67 FR 8200	
391–3–1–.02(2)(ccc)	VOC Emissions from Bulk Mixing Tanks.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(ddd)	VOC Emissions from Offset Lithography.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(eee)	VOC Emissions from Expanded Polystyrene Products Manufacturing.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(fff)	Particulate Matter Emissions from Yarn Spinning Operations.	06/15/98	12/02/99, 64 FR 67491	
391–3–1–.02(2)(hhh)	Wood Furniture Finishing and Cleaning Operations.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(jjj)	NO_X Emissions from Electric Utility Steam Generating Units.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(kkk)	VOC Emissions from Aerospace Manufacturing and Rework Facilities.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(lll)	NO_X Emissions from Fuel-burning Equipment.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(mmm)	NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(nnn)	NO_X Emissions from Large Stationary Gas Turbines.	2/16/00	7/10/01,66 FR 35906	
391–3–1–.02(2)(ooo)	Heavy Duty Diese Engine Requirements.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(3)	Sampling	06/15/98	12/02/99, 64 FR 67491	
391–3–1–.02(4)	Ambient Air Standards	01/09/91	12/14/92, 57 FR 58989	
391–3–1–.02(5)	Open Burning	8/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(6)	Source Monitoring	12/28/00	7/11/02, 67 FR 45909	
391–3–1–.02(7)	Prevention of Significant Deterioration of Air Quality (PSD).	06/15/98	12/02/99, 64 FR 67491	
391–3–1.02(11)	Compliance Assurance Monitoring	06/15/98	12/02/99, 64 FR 67491	
391–3–1–.03	Permits	12/26/01	7/11/02, 67 FR 45909	Paragraph (9) Permit Fees; Paragraph (10) Title V Operating Permits are not federally approved.
391–3–1–.04	Air Pollution Episodes	11/20/75	08/20/76 41 FR 35184	
391–3–1–.05	Regulatory Exceptions	11/22/92	02/02/96, 61 FR 3819	
391–3–1–.07	Inspections and Investigations	11/20/75	08/20/76, 41 FR 35184	
391–3–1–.08	Confidentiality of Information	11/20/75	08/20/76, 41 FR 35184	
391–3–1–.09	Enforcement	11/22/92	02/02/96, 61 FR 3819	
391–3–1–.10	Continuance of Prior Rules	11/22/92	02/02/96, 61 FR 3819	
391–3–20	Enhanced Inspection and Maintenance.	12/26/01	7/11/02, 67 FR 45909.	
391–3–22	Clean Fueled Fleets	06/15/98	12/02/99, 64 FR 67491.	

(d) EPA-approved State Source specific requirements.

EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Georgia Power Plant Bowen	EPD–AQC–180	11/17/80	08/17/81, 46 FR 41498.	
Georgia Power Plant Harllee Branch.	4911–117–6716–0	04/23/80	05/05/81, 46 FR 25092.	
ITT Rayonier, Inc.	2631–151–7686–C	11/04/80	08/14/81, 46 FR 41050.	
Georgia Power Plant Bowen	EPD–AQC–163	05/16/79	01/03/80, 45 FR 781.	
Union Camp	2631–025–7379–0	12/18/81	04/13/82, 47 FR 15794.	
Blue Bird Body Company	3713–111–8601	01/27/84	01/07/85, 50 FR 765.	
Plant McDonough	4911–033–5037–0 conditions 10 through 22.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4838–0 conditions 19 through 32.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4839–0 conditions 16 through 29.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4840–0 conditions 16 through 29.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4841–0 conditions 16 through 29.	12/27/95	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1321–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1322–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–6949 conditions 5 through 10.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1320–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1319–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant McDonough	4911–033–6951 conditions 5 through 10.	11/15/94	03/18/99, 64 FR 13348.	
Atlanta Gas Light Company	4922–028–10902 conditions 20 and 21.	11/15/94	03/18/99, 64 FR 13348.	
Atlanta Gas Light Company	4922–031–10912 conditions 27 and 28.	11/15/94	03/18/99, 64 FR 13348.	
Austell Box Board Corporation	2631–033–11436 conditions 1 through 5.	11/15/94	03/18/99, 64 FR 13348.	
Emory University	8922–044–10094 conditions 19 through 26.	11/15/94	03/18/99, 64 FR 13348.	
General Motors Corporation	3711–044–11453 conditions 1 through 6 and Attachment A.	11/15/94	03/18/99, 64 FR 13348.	
Georgia Proteins Company	2077–058–11226 conditions 16 through 23 and Attachment A.	11/15/94	03/18/99, 64 FR 13348.	
Owens-Brockway Glass Container, Inc.	3221–060–10576 conditions 26 through 28 and Attachment A.	11/15/94	03/18/99, 64 FR 13348.	
Owens-Corning Fiberglass Corporation.	3296–060–10079 conditions 25 through 29.	11/15/94	03/18/99, 64 FR 13348.	

* * * * *

[FR Doc. 03–13713 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0398; FRL–7505–5]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 26, 2003 and concerns oxides of nitrogen (NO_X) emissions from stationary gas turbines. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action will approve VCAPCD Rule 74.23.

EFFECTIVE DATE: This rule is effective on July 3, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On February 26, 2003 (68 FR 8869), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.23	Stationary Gas Turbines	01/08/02	03/15/02

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the following party:

1. Manuel Ceja, Site Environmental Leader, The Procter & Gamble Paper Products Company, 8000 North Rice Avenue, Oxnard, California 93030, letter dated March 27, 2003.

The commenter fully supports the approval of VCAPCD Rule 74.23 which allows NO_X emission limit changes for LM–2500 and LM–5000 turbines. The commenter is affected by this change and encourages the EPA to proceed with this approval as expeditiously as possible.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule

implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 3, 2003.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(297) (i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(A) * * *

(*4*) Rule 74.23, adopted on January 8, 2002.

* * * * *

[FR Doc. 03–13714 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

[ET Docket No. 02–98; FCC 03–105]

Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document provides access to channels in or near the 5250–5400 kHz band on a secondary basis for the amateur service, and upgrade the existing secondary amateur service allocation to primary status in the 2400–2402 MHz band. The rule changes will enhance the ability of amateur operators to communicate at 5000 kHz when propagation conditions do not permit communication at 3500 or 7000 kHz, and provide additional protection for the amateur operators now using the 2400–2402 MHz band. We are declining to make an allocation to the amateur service in the 135.7–137.8 kHz or the 160–190 kHz bands, due to potential interference to other operations. We are also declining to add a primary allocation to the amateur satellite service in the 2400–2402 MHz band, due to possible spectrum use conflicts.

DATES: Effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Derenge, Office of Engineering and Technology (202) 418–2451, e-mail: *tderenge@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 02–98, FCC 03–105, adopted April 29, 2003, and released May 14, 2003. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Report and Order

1. The amateur radio service, governed by part 97 of the Commission's rules, provides spectrum for amateur radio service licensees to participate in a voluntary noncommercial communications service which provides emergency communications and allows experimentation with various radio techniques and technologies to further the understanding of radio use and the development of new technologies. In the *Report and Order* ("R&O"), we are providing access to 5 channels in or near the 5250–5400 kHz band on a secondary basis for the amateur service, and upgrading the existing secondary amateur service allocation to primary status in the 2400–2402 MHz band.

2. On May 2, 2002, the Commission adopted a *Notice of Proposed Rulemaking* ("NPRM") in response to three *Petitions for Rulemaking* submitted by the National Association for Amateur Radio ("ARRL"). The first of these petitions requested that a secondary allocation to the amateur service be made in the 135.7–137.8 kHz and 160—190 kHz bands to permit experimentation in the Low Frequency ("LF") range. The second petition requested a secondary amateur allocation in the 5250–5400 kHz band to enhance amateur emergency communications and experimentation when propagation conditions are not favorable in the 3500 kHz and 7000 kHz bands. The third petition requested an upgrade to primary status for the existing secondary amateur allocation and a new primary allocation for the amateur-satellite service in the 2400–2402 MHz band to protect existing amateur operations from future commercial systems which may utilize the band.

135.7–137.8 kHz and 160—190 kHz Bands (RM–9404)

3. While we agree that amateur experimentation in the 135.7–137.8 kHz and 160–190 kHz portions of the LF spectrum could serve to increase the pool of individuals having knowledge of LF transmissions, we conclude that such operations would pose the potential for harmful interference to systems protecting and controlling the national power grid. Therefore, we find that a new amateur allocation in the LF range of the radio spectrum is not justified when balanced against the greater public interest of an interference-free power grid. Further, we find that the opportunity to experiment with LF operations provided to amateur radio operators under our part 15 rules and through our experimental licensing process, while less attractive to amateur operators than their own proposal, provides the appropriate means for such use in light of the compelling uses in the band.

4. We disagree with ARRL's and the amateur operators' assertions concerning the consideration we should accord incumbent part 15 use in these bands in deciding whether to provide an allocation for amateur services. Our decision must be based upon the facts at hand and our evaluation of any potential changes to the spectral environment due to our decision. In evaluating whether new operations should be added to a band, licensed or not, we must consider the potential for interference conflicts between the operations. While unlicensed Power Line Carrier ("PLC") operations have no protection status, they provide a vital public service. Therefore, we disagree with amateur comments that we should not consider the impact on unlicensed operations when making spectrum allocation decisions.

5. We note the significant potential for interference between the proposed amateur operations and the incumbent PLCs. ARRL concedes that amateur operations and power lines with attached PLCs would have to be separated in order to prevent interference. We find that separation distances on the order of 950 meters would be necessary to protect the PLCs from interference. We also find that this distance, coupled with the larger-than-expected number of PLCs potentially impacted by this proposed allocation, increases the likelihood that a PLC-equipped powerline will be close enough to an amateur station to receive interference. We will not jeopardize the reliability of electrical service to the public.

6. We believe that the utility companies have raised a valid concern that an allocation to the amateur service could result in the need for PLCs to modify or cease their operations to avoid causing interference to amateurs. Amateur operators have expressed concern that there may be interference to their operations from the power lines and from PLC devices. While it appears that other techniques could be used to control the power grid, we find that the utility companies have come to rely on PLC systems for monitoring and control of the power grid, and that the alternatives suggested may not be as effective, and would be costly. We are persuaded that the costs of replacing PLC systems would be significant, would be disruptive to the public, and are not justified merely to open this band to amateur use on a secondary basis.

7. We decline to make an allocation to the amateur service in the LF spectrum at this time. We do believe there is potential for some limited operation in these bands under individual experimental licenses. Operations at LF under our experimental license program will allow amateur use to be coordinated with utility companies on a case-by-case basis, and allow empirical data to be developed on the sharing possibilities in this band for future consideration. In addition, amateurs may still make use of the 160–190 kHz band under our part 15 rules, which are much more restrictive, and therefore more protective of PLCs, than the limits proposed in the *NPRM*.

5250–5400 kHz Band (RM–10209)

8. We believe that frequencies in the 5250–5400 kHz range may be useful for completing disaster communications links at times when the 3 and 7 MHz bands are not available due to ionospheric conditions, and appreciate the desire of the amateur radio community to assist with disaster communications. At the same time, since the majority of the affected users are Federal government licensees with homeland security responsibilities, we give considerable weight to the concerns NTIA has expressed about the potential for interference to these users. Thus, we conclude that it is not reasonable to grant ARRL's original request for the whole of the 5250–5400 kHz band. NTIA has reviewed its assignments and has found that five channels are lightly used and could be used on a secondary basis by amateur stations. While we recognize that these five channels will not give the amateur service the 150

kilohertz of spectrum in the 5000 kHz range it originally asked for or the flexibility to use multiple transmission modes, this appears to be the best compromise available to give the amateur service access to new spectrum while assuring the Federal government agencies that their use is protected. We also concur with NTIA's basic proposals that amateur service operations on these channels be limited to SSB–SC modulation, upper sideband voice transmissions only, with power not to exceed the equivalent of 50 W PEP transmitter output power into an antenna with a gain of 0 dBd, or 50 W effective radiated power ("e.r.p"). These operating rules will decrease the interference potential between amateur stations and Federal government users. We have amended §§ 2.106, and 97.303 of our rules to provide a secondary allocation to the amateur service on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz and 5405 kHz as specified by NTIA, and to require that amateur operations be limited to an (e.r.p.) of 50 W and emission type 2K8J3E, upper sideband voice transmissions only centered on each frequency. For the purpose of computing e.r.p., the transmitter peak envelope power will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. A half wave dipole antenna will be presumed to have a gain of 0 dBd. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain. In addition, because we have permitted amateur stations to transmit on five discrete frequencies and are limiting the transmission mode to single sideband only, dividing the band into smaller sub-bands to be used for other emission types is not practical or necessary. Lastly, we have permitted these frequencies to be used by amateur service licensees with a General Class, Advanced Class, or Amateur Extra Class operator license. We believe that the limited number of frequencies and the emission restriction will protect against interference to primary service operations.

9. Because the broadband PLCs would be new services operating in new frequency bands and are not yet deployed, we do not have the same concerns as with the incumbent PLC systems in the 160–190 kHz band. Because these new PLC systems are still in development, we expect that they can be designed to be compatible with the other operations in this band, and we deny the United Power Line Council ("UPLC") and Power Line Carrier Association ("PLCA") request to delay action in this proceeding. The power levels we are adopting are 1/30th of the power levels supported by the UPLC and the e.r.p. restriction provides a limit to the antenna height. We believe that the permitted e.r.p limitation will significantly reduce the possibility of interference to and from broadband PLCs. Because the allowable power level will be very low, we do not believe that we need additional out-of-band emission limits for amateur operations in this band.

10. We deny Homeplug's request for a 10-year safe harbor. Unlicensed devices operated in accordance with the part 15 rules should not cause interference to licensed, allocated services. It is not apparent that there will be significant interference from Homeplug devices, whose signals attenuate quickly, to ARRL operations on these frequencies, which are expected to be sporadic. There is ample alternative spectrum on which Homeplug devices can operate. As a practical matter, we would expect amateur services to take into account the extant Homeplug devices, although they are not required to do so.

2400–2402 MHz Band (RM–9949)

11. We have upgraded the existing amateur service (except amateur-satellite service) allocation at 2400–2402 MHz from secondary to primary status. This modification will provide additional protection to the amateur service in this band from future licensed operations. The allocation changes we are making will not alter the interference protection rights among the current users of the band. Even under the current secondary allocation, amateur services are entitled to interference protection from part 15 devices, and ISM devices are entitled to protection from both amateur operations and part 15 devices. These relationships will remain the same under the amateur service primary allocation. We observe that the amateur operators have successfully shared this band with part 15 and part 18 operations and we have no reason to believe that this sharing will not continue to be successful. Part 15 devices are limited in power and this interference potential from them is limited to an area very close to their transmit location. We therefore modify rule §§ 2.106, 97.303(j)(2)(iii) and 97.303 (j)(2)(iv) to provide a primary allocation for the amateur service (except amateur-satellite service), consistent with our decision.

12. Our analysis regarding an amateur-satellite service allocation at 2400–2402 MHz differs from the case of terrestrial use in this band. The amateur-satellite service currently operates on a non-interference basis ("NIB") to other services under international footnote 5.282, not on a secondary basis as some parties suggest. This means that these operations are on an equal footing with part 15 devices. As both the amateur and unlicensed proponents recognize, the sensitivity of amateur satellite receivers makes them more vulnerable to aggregate interference from other users in this band. The 2400–2402 MHz band is heavily used by both part 15 and part 18 devices, and, unlike terrestrial amateur operations, amateur satellite receivers are at greater risk from aggregate interference. We thus conclude that an allocation for the amateur-satellite service would be impractical and difficult to implement, given the protection status afforded ISM devices and the large number of part 15 devices that operate in the band. Further, maintaining NIB status for the amateur-satellite service in this 2 megahertz band is consistent with the NIB status that an amateur satellite system would operate under in the 2400–2450 MHz band, so amateur satellite use of this 2 megahertz band is not prejudiced by our decision. Because we are maintaining NIB status for the amateur-satellite service, we will not place any restrictions on these operations (*e.g.*, down-link only operation as some parties suggest).

13. Although ARRL is correct that unlicensed users do not have protection rights vis-a-vis licensed users in a band, it is incorrect when it asserts that we need not consider unlicensed use of this band when deciding whether to modify the allocation. The issue here is whether different uses are compatible and promote efficient use of spectrum. This analysis requires that we consider both licensed and unlicensed use. We conclude that, in the 2400–2402 MHz band, the status quo provides the best mix of uses to promote spectrum efficiency. The extensive use of the band to date by parts 15 and 18 and amateur users under the existing rules supports this conclusion. ARRL's suggestion to license those devices that have the potential to cause interference to licensed services does not alter our analysis. Even among licensed services, we consider whether uses are compatible and promote efficient use of spectrum. ARRL's approach would merely have us identify the priority between the amateur service and another licensed service.

14. We also conclude that, because we are maintaining the relative allocation status in this band, it is not necessary to implement a "safe harbor" for part 15 devices. Unlicensed devices operated in accordance with the part 15 rules should not cause interference to the amateur service, and amateur services can take into account these well known technical characteristics used by unlicensed devices as they operate in the band. The amateur service and unlicensed devices have successfully shared this band in the past, and we have no reason to conclude that these sharing arrangements will not continue to be successful.

Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

16. In the *R&O*, we make five channels in or near the 5250–5400 kHz frequency band available on a secondary basis and upgrade the allocation of the 2400–2402 MHz frequency band to the amateur service. The amateur radio service is a voluntary non-commercial communications service comprised of individuals or groups of individuals holding amateur radio licenses issued by the Commission. [6] These individuals are prohibited from using spectrum allocated to the amateur service for communications for hire or for material compensation, or for communications in which the amateur radio operator has a pecuniary interest.[7] Therefore, amateur radio operators do not fit any part of the definition of "small entities" described above, and thus are not classified as such.

17. In addition, even if the amateur radio licensees were hypothetically considered as "small entities," the rule changes promulgated in this *R&O* simply make spectrum available for the amateur radio operations and impose no additional fees, costs, or compliance burdens on an operator. Since the amateur radio service is a voluntary service, it would be up to each individual amateur to purchase or modify equipment to use the new bands. There is no cost associated with the upgrade of the allocation. On the contrary, the amateur radio service receives the positive benefits of access to additional spectrum.

18. Lastly, the use of these five new frequencies in or near the 5250–5400 kHz band on a secondary basis by the amateur service does not impact any small entities because it is primarily used by the Federal Government. The allocation upgrade in the 2400–2402 MHz band also does not impact any small entities because there are currently only part 15 and part 18 operations in that frequency band. The part 18 operations maintain their right to operate under international footnote 5.150.[8] The current amateur service allocation status is higher than the status of part 15 operations, so that there will be no additional impact due to this action.

19. Therefore, we certify that the rules in this *R&O* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[9] In addition, the *Report and Order* and this Final Certification will be sent to the Chief Counsel for Advocacy of the SBA.[10]

Ordering Clauses

20. Pursuant to sections 1, 4, 301, 302(a), and 303(c) and (f), of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), and 303(c) and (f), parts 2 and 97 of the Commission's rules have been amended and will be effective July 3, 2003.

21. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 97

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 97 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 11 and 51 and in the list of United States footnotes, add footnote US 381 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

---

[1] The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Public Law 104–121, title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] 15 U.S.C. 632.

[6] See 47 CFR 97.1 and 97.3(a).

[7] See 47 CFR 97.113(a)(2).

[8] See 47 CFR 2.106, footnote 5.150.

[9] See 5 U.S.C. 801(a)(1)(A).

[10] See 5 U.S.C. 605(b).

5060-9040 kHz (HF) — Page 11

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5060-5250 FIXED Mobile except aeronautical mobile 5.133			5060-5450 FIXED Mobile except aeronautical mobile US212 US340 US381		Maritime (80) Aviation (87) Private Land Mobile (90) Amateur (97)
5250-5450 FIXED MOBILE except aeronautical mobile					
5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R)	5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5680 AERONAUTICAL MOBILE (R) 5.111 5.115 US283 US340		Aviation (87)
5480-5680 AERONAUTICAL MOBILE (R) 5.111 5.115					
5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115			5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340		
5730-5900 FIXED LAND MOBILE	5730-5900 FIXED MOBILE except aeronautical mobile (R)	5730-5900 FIXED Mobile except aeronautical mobile (R)	5730-5900 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87)
5900-5950 BROADCASTING 5.134 5.136			5900-5950 BROADCASTING FIXED MOBILE except aeronautical mobile (R) US340 US366		Radio Broadcast (HF) (73) Maritime (80) Aviation (87)
5950-6200 BROADCASTING			5950-6200 BROADCASTING US340		Radio Broadcast (HF) (73)
6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 5.137			6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 US82 US296 US340		Maritime (80)
6525-6685 AERONAUTICAL MOBILE (R)			6525-6685 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)

2345-2655 MHz (UHF) — Page 51

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			See previous page for 2310-2360 MHz	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 5.396	Wireless Communications (27)
			2360-2385 MOBILE US276 RADIOLOCATION G2 Fixed G120	2360-2385 MOBILE US276	
			2385-2390 US363	2385-2390 FIXED MOBILE NG174 US363	Wireless Communications (27)
			2390-2400 G122	2390-2400 AMATEUR	Amateur (97)
			2400-2402 5.150 G123	2400-2417 AMATEUR	ISM Equipment (18) Amateur (97)
			2402-2417 5.150 G122	5.150 5.282	
			2417-2450 Radiolocation G2 5.150 G124	2417-2450 Amateur 5.150 5.282	
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150 5.394		2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101)

BILLING CODE 4712–01–C

* * * * *

United States (US) Footnotes

* * * * *

US381 The frequencies 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5405 kHz are allocated to the amateur service on a secondary basis. Amateur use of these frequencies shall be limited to: (1) A maximum effective radiated power (e.r.p.) of 50 W; and, (2) single sideband suppressed carrier modulation (emission designator 2K8J3E), upper sideband voice transmissions only.

PART 97—AMATEUR RADIO SERVICE

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 4. Section 97.303 is amended by revising paragraphs (j)(2)(iii), (j)(2)(iv), and adding paragraph (s) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) * * *

(2) * * *

(iii) The 2390–2417 MHz segment is allocated to the amateur service on a primary basis, and amateur stations operating within the 2400–2417 MHz segment must accept harmful interference that may be caused by the proper operation of industrial, scientific, and medical devices operating within the band.

(iv) The 2417–2450 MHz segment is allocated to the amateur service on a co-secondary basis with the Federal Government radiolocation service. Amateur stations operating within the 2417–2450 MHz segment must accept harmful interference that may be caused by the proper operation of industrial, scientific, and medical devices operating within the band.

* * * * *

(s) An amateur station having an operator holding a General, Advanced or Amateur Extra Class license may only transmit single sideband, suppressed carrier, (emission type 2K8J3E) upper sideband on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5405 kHz. Amateur operators shall ensure that their transmission occupies only the 2.8 kHz centered around each of these frequencies. Transmissions shall not exceed an effective radiated power (e.r.p) of 50 W PEP. For the purpose of computing e.r.p. the transmitter PEP will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. A half wave dipole antenna will be presumed to have a gain of 0 dBd. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain. No amateur station shall cause harmful interference to stations authorized in the mobile and fixed services; nor is any amateur station protected from interference due to the operation of any such station.

[FR Doc. 03–13781 Filed 6–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D019]

Defense Federal Acquisition Regulation Supplement; Transportation of Supplies by Sea—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add an alternate version of a clause, pertaining to transportation of supplies by sea, to the list of clauses included in contracts for commercial items to implement statutes or Executive orders. The alternate version of the clause applies to contracts at or below the simplified acquisition threshold.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D019.

SUPPLEMENTARY INFORMATION:

A. Background

This rule corrects an oversight in the final rule published at 67 FR 38020 on May 31, 2002, under DFARS Case 2000–D014, Ocean Transportation by U.S.-Flag Vessels. That rule added requirements for contractors to use U.S.-flag vessels when transporting supplies by sea under contracts at or below the simplified acquisition threshold, in accordance with 10 U.S.C. 2631. The rule provided an Alternate III for use with the clause at DFARS 252.247–7023, Transportation of Supplies by Sea, in contracts at or below the simplified acquisition threshold, to minimize the information required from contractors under these contracts. This final rule adds Alternate III of 252.247–7023 to the list of clauses at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, as it was inadvertently omitted from the previous DFARS rule.

DoD published a proposed rule at 67 FR 65528 on October 25, 2002. DoD received no comments on the proposed rule and, therefore, is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities providing ocean transportation of freight are not small businesses, and the rule minimizes the information required from contractors under contracts valued at or below the simplified acquisition threshold.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget, under Clearance Number 0704–0245, for use through July 31, 2004.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 252 is amended as follows:

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(JUN 2003)"; and

■ b. In paragraph (b), by revising entry "252.247–7023" to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

___252.247–7023 Transportation of Supplies by Sea (MAY 2002) (Alternate I) (MAR 2000) (Alternate II) (MAR 2000) (Alternate III) (MAY 2002) (10 U.S.C. 2631).

* * * * *

[FR Doc. 03–13535 Filed 6–2–03; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–112–1]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. The regulations currently prohibit the importation of Holstein steers and Holstein spayed heifers from Mexico due to the high incidence of tuberculosis in that breed, but do not place any special restrictions on the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to the incidence of tuberculosis in Holstein steers and Holstein spayed heifers, this action is necessary to protect the health of domestic livestock in the United States.

DATES: We will consider all comments that we receive on or before August 4, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–112–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants. Section 93.427 of the regulations contains restrictions on the importation of ruminants from Mexico.

Bovine tuberculosis is an infectious disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. Any body tissue can be affected, but lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals.

Since May 1994, the regulations in § 93.427 have prohibited the importation of Holstein steers and Holstein spayed heifers from Mexico. Holstein steers and spayed heifers are much more likely to be infected with tuberculosis than other breeds of cattle, due to the fact that they almost always originate from or are raised on dairy farms, where animals are kept in close proximity, typically for several years. Because dairy cattle [1] are kept in such close proximity for extended periods of time, the potential for cattle infected with tuberculosis to transmit the disease to other cattle is considerably higher than for non-dairy cattle.

Holstein cross steers and Holstein cross spayed heifers are typically raised under the same type of conditions in Mexico as purebred Holstein steers and Holstein spayed heifers. For that reason, Holstein cross steers and Holstein cross spayed heifers from Mexico present essentially the same tuberculosis risk as purebred Holstein steers and Holstein spayed heifers from Mexico. We are, therefore, proposing to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico.

In our May 1994 final rule prohibiting the importation of Holstein steers and spayed heifers from Mexico, we did not prohibit the importation of Holstein cross steers and spayed heifers due to the fact that few Holstein cross steers and spayed heifers were being imported at the time. However, the volume of imported Mexican Holstein cross-bred cattle has increased significantly since 1997. Data on number of imports of cattle are available, but do not accurately distinguish between breeds, especially cross-breeds, or between sexually intact cattle and spayed or neutered cattle. However, the available import data, coupled with observations by APHIS personnel at ports of entry, suggest that imports of Holstein cross steers and spayed heifers have doubled or tripled since 1997.

Currently, all areas of the United States are considered to be free of tuberculosis except for Texas, Michigan, and California. Given the increased volumes of Holstein cross cattle that are being imported from Mexico and the tuberculosis risk presented by those animals, we are proposing to prohibit the importation of Holstein cross steers and spayed heifers from Mexico in order to eliminate a pathway for the introduction of tuberculosis into the United States.

[1] The regulations specifically address Holstein dairy cattle because few other breeds of dairy cattle are imported into the United States from Mexico.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the animal importation regulations to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. The regulations currently prohibit the importation of Holstein steers and Holstein spayed heifers from Mexico due to the high incidence of tuberculosis in that breed, but do not place any special restrictions on the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to the incidence of tuberculosis in Holstein steers and Holstein spayed heifers, this action is necessary to protect the health of domestic livestock in the United States.

Given the size of U.S. livestock inventories and the volume of animal and animal product sales, consequences of a large tuberculosis outbreak in the United States could be catastrophic. Cattle in U.S. herds in 2000 were valued at $67 billion, with 1999 cash receipts of $36.5 billion from the sale of cattle, calves, beef, and veal. Cash receipts from the sale of milk and cream in 1999 reached $23.2 billion. The value of fresh beef and veal exports by the United States totaled $2.7 billion in 1999 and $3 billion in 2000. A widespread tuberculosis outbreak in the United States could potentially cause significant production and trade losses.

Economic Effects of the Proposed Rule

As shown in table 1, the value of cattle imported from Mexico in 1998 through 2001 represented less than 1 percent of the value of the total U.S. domestic cattle supply.

TABLE 1.—VALUE OF U.S. SUPPLY AND IMPORTS OF LIVE CATTLE IN COMPARISON TO VALUE OF CATTLE IMPORTED FROM MEXICO MEXICAN

Year	U.S. imports of live cattle from Mexico (millions)	U.S. supply of live cattle [1] (millions)	Mexican imports as a share of total U.S. cattle supply (percent)	U.S. imports of live cattle from the world (millions)	Mexican imports as a share of total U.S. imports (percents)
1998	$208.54	$61,193.11	0.3	$1,162.87	18
1999	296.46	59,681.54	0.5	1,021.81	29
2000	405.56	67,985.32	0.6	1,157.49	35
2001	411.00	71,707.06	0.6	1,482.21	28

[1] Supply = Domestic production + Imports − Exports).

Sources: Imports and Exports: U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas. Domestic production from Table 7–1, Chapter VII, Agricultural Statistics 2000, NASS/USDA.

Further, as shown in table 2, the volume of U.S. imports of live cattle from Mexico has generally increased since 1997. Imports of Holstein cross-bred steers and spayed heifers have generally increased during the same period.

TABLE 2.—NUMBER OF LIVE CATTLE IMPORTED INTO THE UNITED STATES FROM MEXICO AND THE WORLD

	1997	1998	1999	2000	2001
Imports from Mexico	653,798	703,412	458,188	1,183,227	1,141,368
Imports from all other countries	2,083,493	2,036,746	1,949,566	2,191,199	2,439,200

Source: FAOSTAT electronic databases for "all cattle breeds" category of imports.

Effect on Small Entities

Under the Regulatory Flexibility Act, agencies are required to analyze the economic effects of their regulations on small businesses and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration's Office of Advocacy, regulations create economic disparities based on size when they have a significant economic impact on a substantial number of small entities.

U.S. livestock importers, breeders, and producers would be the entities that could be directly affected if this proposed rule is adopted. There are no specific data available on numbers of cattle importers; however, there are approximately 2,000 wholesale livestock traders (North American Industry Classification System [NAICS] code 422520), many of whom may also be cattle importers. It is likely that the majority of these firms are small entities according to the Small Business Administration's (SBA's) criterion of 100 or fewer employees. There are approximately 1 million livestock producers and breeders (NAICS code 112111) in the United States, approximately 99 percent of which are small entities according to SBA's criterion of annual receipts of $750,000 or less.

However, given that (1) imported Mexican cattle account for less than 1 percent of the value of the U.S. cattle supply, and (2) the volume of Holstein cross steers and spayed heifers imported from Mexico is believed to represent a small fraction of total cattle imports from Mexico, we expect that the economic effects on the U.S. livestock industry of the prohibition would be negligible. The proposed prohibition also would not have a significant effect on U.S. cattle importers, breeders, or producers because such persons could easily substitute other breeds of cattle for Mexican Holstein cross steers and spayed heifers.

This proposed prohibition on the importation of Holstein cross steers and spayed heifers would benefit the U.S.

livestock industry and U.S. consumers by helping to prevent the introduction of tuberculosis into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.427, paragraph (c)(4) would be revised to read as follows:

§ 93.427 Cattle from Mexico.

* * * * *

(c) * * *

(4) The importation of Holstein steers, Holstein spayed heifers, Holstein cross steers, and Holstein cross spayed heifers from Mexico is prohibited.

* * * * *

Done in Washington, DC, this 29th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–13838 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–03–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This proposed AD would require you to install an inspection hole, conduct a detailed visual inspection of the rudder torque tube and associated ribs for corrosion, and, if corrosion is found, replace the rib/rudder torque tube assembly. This proposed AD is the result of reports of rudder tube corrosion. The actions specified by this proposed AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. Such failure could lead to loss of rudder control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 11, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–03–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption "**ADDRESSES.**" We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–03–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received several reports of rudder tube and rib corrosion on Piper PA–31 Series airplanes. The area surrounding the rudder torque tube assembly and rudder rib does not have a means or access to inspect in this area and neither means nor exits for water to drain out.

What Are the Consequences if the Condition Is Not Corrected?

Corrosion in the rudder torque tube assembly and rudder rib could result in failure of the rudder torque tube. Such failure could lead to loss of rudder control.

Is There Service Information That Applies to This Subject?

Piper has issued Service Bulletin No. 1105, dated September 4, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Installing an inspection hole in the rudder skin;

—Performing an inspection for corrosion; and

—Installing/repairing with the rib/rudder torque tube assembly replacement kit.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2,269 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed installation of inspection and drain holes and inspection of torque tube and associated ribs for corrosion:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$10.	$190.	2,269 × $190 = $431,110.

We estimate the following costs to accomplish any necessary corrosion repairs/replacements of the rib/torque tube assembly that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960	$800.	$1,760.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

The New Piper Aircraft, Inc.: Docket No. 2003–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
PA–31, PA–31–300, PA–31–325.	31–2 through 31–8312019.
PA–31–350	31–5001 through 31–8553002.
PA–31P	31P–1 through 31P–7730012.
PA–31P–350 ..	31P–8414001 through 31P–8414050.
PA–31T	31T–7400001 through 31T–8120104.
PA–31T1	31T–7804001 through 31T–1104017.
PA–31T2	31T–8166001 through 31T–1166008.
PA–31T3	31T–8275001 through 31T–5575001.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. Such failure could lead to loss of rudder control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Install an inspection hole in the rudder skin for the rudder torque tube assembly.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1105, dated September 4, 2002.
(2) Visually inspect the rudder torque tube and associated ribs for corrosion.	Prior to further flight after the installation required in paragraph (d)(1) of this AD and thereafter at intervals not to exceed 12 calendar months.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1105, dated September 4, 2002.
(3) If corrosion damage is found, replace the rib/rudder torque tube assembly.	Prior to further flight after any inspection required in paragraph (d)(2) of this AD where corrosion damage is found.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1105, dated September 4, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 27, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13792 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[CO–033–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Colorado proposes revisions to and additions of rules about land use definitions, alluvial valley floor application contents, permit decisions, soil surveys, permit review criteria, requests for formal hearings on minor permit revision application decisions, bond release procedures, culverts and bridges, sedimentation ponds and other treatment facilities, topsoil handling, mulching and soil-stabilizing practices, revegetation, normal husbandry practices, and prime farmland.

Colorado also proposes a memorandum of understanding (MOU) between the Division of Minerals and Geology and the State Historic Preservation Officer.

This document gives the times and locations that the Colorado program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. on July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak until 4 p.m., m.d.t. on June 18, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to James Fulton at the address listed below.

You may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

David A. Berry, Coal Program Supervisor, Colorado Division of Minerals and Geology, 1313 Sherman Street, Room 215, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: James Fulton, Telephone: 303–844–1400, extension 1424. Internet: *jfulton@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of [the] Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the] Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated March 27, 2003, Colorado sent us a proposed amendment to its program (State Amendment Tracking System No. CO–033, administrative record No. CO–696–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the amendment in response to the letters that we sent to Colorado in accordance with 30 CFR 732.17(c) on May 7, 1986; June 9, 1987; and March 22, 1990. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

In the amendment, Colorado proposes to revise or add the following rules of the Colorado Mined Land Reclamation Board at 2 Code of Colorado Regulations (CCR) 407–2: 1.04(71)(f) and (g), land use definitions; 2.04.13(1)(e), annual reclamation report; 2.06.8(4)(a)(i), alluvial valley floor application contents; 2.06.8(5)(b)(i), permit approval or denial; 2.06.6(2)(a) and (g), soil surveys; 2.07.6(1)(a)(ii), criteria for review of permits; 2.07.6(2)(n), criteria for permit approval or denial; 2.08.4(6)(c)(iii), request for formal hearing on minor permit revision application decision; 3.03.2, bond release application decision by the Division of Minerals and Geology; 3.03.2(1)(e), procedures for seeking release of performance bond; 4.03.1(4)(e), culverts and bridges; 4.05.2, sedimentation ponds and other treatment facilities; 4.06.1(2), topsoil—general requirements; 4.15.1(5), revegetation general requirements; 4.15.4(5), mulching and other soil-stabilizing practices; 4.15.7(1), (2), (3)(b), (3)(f), and (4), determining revegetation success; 4.15.7(5), normal husbandry practices; 4.15.7(5)(a), repair of rills and gullies; 4.15.7(5)(b), weed control measures; 4.15.7(5)(c), normal husbandry practices for annual crops; 4.15.7(5)(d), normal husbandry for perennial hay cropland; 4.15.7(5)(e), normal husbandry for pastureland; 4.15.7(5)(f), limiting tree or shrub planting; 4.15.7(5)(g), interseeding to enhance rangeland/wildlife habitat; 4.15.8(3)(a), revegetation success criteria—cover; 4.15.8(4), revegetation success criteria—production; 4.15.8(7), revegetation success criteria—woody plants; 4.15.8(8), revegetation success criteria—forestry; 4.15.9, revegetation success criteria—cropland; 4.15.11, revegetation sampling methods and statistical demonstrations for revegetation success; 4.15.11(1)(a), vegetation cover; 4.15.11(1)(b), herbaceous production; 4.15.11(1)(c), woody plant density; 4.15.11(2), sample adequacy and statistical approaches; 4.15.11(3), woody plant density—alternative statistical approaches; and 4.25.2(4), prime farmlands—special requirements.

In the amendment, Colorado also proposes an MOU between the Division of Minerals and Geology and the State Historic Preservation Officer. The MOU concerns historic property reviews for coal mine applications.

Colorado revised the rules and developed the MOU with the intent of making its program consistent with SMCRA and the implementing Federal regulations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. CO–033" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844–1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law.

Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 2003.

James E. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–13851 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS ND–044–FOR, Amendment No. XXXIII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to and additions of rules pertaining to the definition of "valid existing rights," the process for determining whether or not a mine operator has valid existing rights, lands prohibited from mining, changes in the format of permit applications, general requirements for mining plans, land descriptions for partial bond release requests, filing requirements for copies of reports required by the State Health Department, sediment control measures, and removal of sedimentation ponds.

North Dakota intends to revise its program to be consistent with the corresponding Federal regulations and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., mountain standard time (m.s.t.) July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak until 4 p.m., m.s.t. on June 18, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement (OSM) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, 307/261–6550, *GPadgett@osmre.gov*.

James R. Deutsch, Director, Reclamation Division, Public Service Commission, State of North Dakota, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505–0480, *jrd@oracle.psc.state.nd.us*.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: *GPadgett@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background of the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background of the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, and 934.30.

II. Description of the Proposed Amendment

By letter dated February 10, 2003, North Dakota sent us a proposed amendment to its program (Amendment number XXXIII, administrative record No. ND–HH–01 under SMCRA (30 U.S.C. 1201 *et seq.*)). North Dakota sent the amendment in response to an April 2, 2001, letter (administrative record No. ND–HH–02) that we sent to it in accordance with 30 CFR 732.17(c), and to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise are: (1) NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights (VER); (2) NDAC 69–05.2–04–01, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining; (3) NDAC 69–05.2–05–01, Copies and format of permit applications; (4) NDAC 69–05.2–09–01, General requirements for mining plans; (5) NDAC 69–05.2–12–12, Bond release requirements; (6) NDAC 69–05.2–16–04, Sediment Control Measures under the general water management requirements; (7) NDAC 69–05.2–16–05, Water discharge reports; and (8) NDAC 69–05.2–16–09, Removal of water management structures.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. ND–044–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6555.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–13852 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–142–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the proposed removal of a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment concerns configuration and species composition for reclaimed forest land.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on June 18, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

George Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, Internet: *grieger@osmre.gov.*

Joseph Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

Federal regulations at 30 CFR 938.16(fff) require Pennsylvania to submit a proposed amendment to sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) of the Pennsylvania Code "to require that the configuration and species composition for reclaimed forest land be reviewed and approved, either on a site-by-site basis or a program wide basis, by the Bureau of Forestry [the Bureau]." These provisions of the Pennsylvania Code are excerpted below:

Section 87.151(d)

(d) When the approved postmining land use is fish and wildlife habitat, unless alternative plans are approved or required by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines

established by the Fish and Boat Commission and the Game Commission.

Section 89.86(e)(2)(ii)(C)

(C) When the approved postmining land use is wildlife habitat, a minimum of 75% of the land affected shall be planted with a mixture and minimum of 400 woody plants per acre. The configuration and species composition of the cover types shall be established in accordance with guidelines established by the Fish and Boat Commission and the Game Commission.

Section 90.155(d)

(d) When the approved postdisposal land use is wildlife habitat, unless alternative plans are approved by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines of the Fish and Boat Commission and Game Commission.

While similar to the Federal regulations at 30 CFR 816/817.116(b)(3)(i), the regulations cited above do not require that minimum stocking and planting arrangements be established upon consultation and approval by the State agencies responsible for the administration of the forestry program. In Pennsylvania, the Bureau of Forestry is responsible for the administration of the forestry program. Therefore, in the April 8, 1993 **Federal Register** (58 FR 18149), we required Pennsylvania to amend sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) to require approval by the Bureau of Forestry on either a site-by-site or program-wide basis.

By letter dated January 30, 2002, Pennsylvania Department of Environmental Protection (DEP) submitted a comparison of the State regulations referred to above and the corresponding Federal regulations along with its explanation of why Pennsylvania's regulations are as effective as their Federal counterparts. Following this correspondence, OSM's Harrisburg Field Office, by letter dated February 22, 2002 (Administrative Record No. PA–803.24), submitted a request to the Bureau that it review the regulations at issue. By letter dated March 20, 2002 (Administrative Record No. PA–803.25), the Bureau approved the subject regulations.

In its letter, the Bureau stated that it "approve[d] of the Pennsylvania DEP Protection Regulations, particularly the relevant portions of sections 87.151(d), 89.86(e)(2)(ii)(C), 90.155(d), 90.155(C), 87.155(b)(2), 89.86(e)(2)(ii), and 90.159(b)(2)." The latter four regulations approved in the Bureau's letter contain species composition and configuration rules that apply to reclaimed forest land. Because the Bureau has approved the configuration and species composition for reclaimed forest land, as required under 30 CFR 938.16(fff), we are proposing to remove the required amendment.

We note that, in its letter, the Bureau did not specify whether it was approving Pennsylvania's regulations on a site-by-site or a program wide basis, as required in 30 CFR 938.16(fff). However, in its January 30, 2002, letter to us, the State pointed out that "[c]onsultation with the Pennsylvania Bureau of Forestry occurred on a program wide basis during development of the primacy regulations in the early 1980s. In addition, the configuration and species composition for reclaiming forest land is reviewed and approved on a permit-by-permit basis by foresters in the District Mining Office."

Finally, the Bureau noted in its approval that "[w]hile we approve of the regulations as written, we would like to point out that they could be improved with language that promotes the use of native species when practical, and to *not* use the invasive species on [Department of Conservation and Natural Resources] list of invasive species." (emphasis in original). We, too, encourage the use of native species, when practical, and discourage the use of invasive species. However, because the Bureau's suggestion is not a contingency on its approval, we are proposing to remove the required amendment.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA–142–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comment

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule applies only to the Pennsylvania program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–13850 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL45

Board of Veterans' Appeals: Rules of Practice—Notice Procedures Relating to Withdrawal of Services by a Representative

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' (VA) Board of Veterans' Appeals Rules of Practice to simplify notice procedures relating to withdrawal of services by a representative after certification of an appeal. We believe that these simplified notice procedures would be adequate for establishing proof of service.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL45." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials by agencies of original jurisdiction (AOJs) of claims for veterans' benefits. This document proposes to amend the Board's Rules of Practice for the purpose of simplifying notice procedures in connection with motions to withdraw services by a representative after certification of an appeal.

Rule 608(b)(2) (38 CFR 20.608(b)(2)) contains various requirements relating to withdrawal of services by a representative after certification of an appeal. The only requirements we propose amending concern the notice procedures. Currently, a representative must send the appellant a copy of the representative's motion to withdraw services by mailing the motion, return receipt requested; after the representative receives the signed receipt showing that the motion was received, the representative must file the signed receipt with the Board. If the appellant files a response, the appellant is required to send the representative a copy of the response by mailing it, return receipt requested, and is required to file the signed receipt with the Board.

We do not believe that the current level of proof of notice is appropriate. First-class mail is used for other important documents affecting the appellants and representatives involved in these appeals, including the AOJ decisions that are the subject of the appeals and the Board's decisions. We are proposing a change to require merely use of first-class mail, postage prepaid, with a certificate of service. This proposed change would be in line with general rules of proof of service in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(d) (generally, a certificate of service by a party (or attorney) is sufficient proof of service). We believe these simplified procedures would provide adequate assurance of receipt, when considered in light of the benefits of simplification of the notice procedures. These proposed procedures would remove the extra steps of the current return receipt requirements and would more easily enable the appellant to file a response, either opposing or supporting the representative's motion. Also, these proposed procedures would shorten the time before the motion is ripe for determination by the Board, expediting the possibility of a transition, if appropriate, to a new representative.

Accordingly, we propose amending the rule in cases involving a motion to withdraw services by a representative after certification of an appeal, to provide that proof of service will be accomplished by filing a statement with the Board certifying that the motion has been sent by first-class mail, postage prepaid, to the appellant or that the response has been sent by first-class mail, postage prepaid, to the representative, as applicable.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would merely concern requirements for proof of service of motions for withdrawal of services by a representative after certification of an appeal before the Board, and for proof of service of responses to such motions. Moreover, such motions and responses are events that occur in only a minor proportion of the cases before the Board. Any economic impact on small entities would be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Attorneys, Lawyers, Legal services, Procedural rules, Veterans.

Approved: May 27, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§ 20.608 [Amended]

2. Section 20.608, paragraph (b)(2) is amended by:

A. In the third sentence, removing "permitted." and adding, in its place, "permitted, and a signed statement certifying that a copy of the motion was sent by first-class mail, postage prepaid, to the appellant, setting forth the address to which the copy was mailed."

B. Removing the sixth and seventh sentences.

C. In the eighth sentence, removing "motion." and adding, in its place, "motion and must include a signed statement certifying that a copy of the response was sent by first-class mail, postage prepaid, to the representative, setting forth the address to which the copy was mailed."

D. Removing the ninth and tenth sentences.

[FR Doc. 03–13797 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD131–3091b; FRL–7503–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland. The revisions consist of amendments to Maryland's air pollution control regulations governing specific processes on volatile organic compound (VOC) requirements that initially included organic chemicals and are being expanded to include inorganic chemicals and polytetrafluoroethylene (PTFE) products. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, at the EPA Region III address above, or by e-mail at *harris.betty@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Maryland's amendments to the control of VOCs from chemical production and PTFE installations, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 03–13701 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV038/053–6026b; FRL–7500–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution from the Emission of Sulfur Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations to prevent and control air pollution from the emission of sulfur oxides. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Jill Webster (215) 814–2033, or Ellen Wentworth (215) 814–2034, or by e-mail at *webster.jill@epa.gov*. or *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of West Virginia's regulation to Prevent and Control Air Pollution from the Emission of Sulfur Oxides, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 8, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–13703 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 267–0394b; FRL–7495–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM–10) emissions from commercial charbroiling and VOC emissions from solvent cleaning. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 3, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SJVUAPCD Rule 4292 and SCAQMD Rule 1171. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–13706 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–213–9952(b); FRL–7506–7]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving revisions to the Tennessee Department of Environment and Conservation's definitions of Volatile Organic Compounds submitted on February 3, 1999, by the State of Tennessee. These revisions are designed for the State Implementation Plan (SIP) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). The additional compounds HFC43–10mee, HCFC–225ca, and HCFC–225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 3, 2003.

ADDRESSES: All comments should be addressed to: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Steve Scofield, 404/562–9034 or Nacosta Ward, 404/562–9140). Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615–532–0554.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Scofield and Ms. Ward can also be reached by telephone at 404/562–9034 and 404/562–9140, or by electronic mail at *scofield.steve@epa.gov* and *ward.nacosta@epa.gov*, respectively.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: May 20, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–13708 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV050–6029b; FRL–7504–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation to Prevent and Control Particulate Matter Air Pollution From Manufacturing Processes and Associated Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations for the prevention and control of particulate matter air pollution from manufacturing processes and associated operations. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the State submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning and Information Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 03–13710 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4208b; FRL–7504–5]

Approval and Promulgation of Air Quality Implementation Plans; Perinsylvania; Removal of Alternative Emission Reduction Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of removing alternative emission reduction limitations for eight facilities. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 03–13712 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 03–102 and 99–261; FCC 03–90]

Above 76 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on reallocate spectrum in the 76–81 GHz frequency and the frequency bands above 95 GHz to make the domestic and international frequency allocation changes consistent with each other. The realignment is consistent with change made at the 2000 World Radiocommunication Conference (WRC–2000). The primary intent of WRC–2000 was to place scientific services, such as Earth-exploration satellite (EESS) and radio astronomy (RAS) services in spectrum better suited to their needs. This document also seeks comment on adopting the limit for maximum power spectral density that can be delivered to a fixed service transmitter antenna set forth in the U.S. proposal to WRC–2000.

DATES: Written comments are due August 4, 2003, and reply comments are due September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Shameeka Parrott, Office of Engineering and Technology, (202) 418–2062, email: *sparrott@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, ET Docket No. 03–102 and 99–261, FCC 03–90, adopted April 16, 2003, and released April 28, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 4, 2003, and reply comments on or before September 2, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rule Making

Reallocation of the Frequency Bands Above 76 GHz

1. The primary need for realigning spectrum above 76 GHz is to accommodate the requirements of the RAS and EESS services. Specifically, RAS must operate in bands that meet the requirements for spectral line and wideband continuum observations. Additionally, the EESS must operate in bands that are optimal for microwave limb sounding and nadir sounding of water vapor and other atmospheric constituents. Therefore, we proposed to incorporate WRC–2000 changes into our domestic frequency allocation table. Consistent with proposed allocation changes, we proposed to update several footnotes in the Table (US74, US211, US246, US263, and US342) to incorporate proposed bands which footnotes apply. Also, we proposed to replace international footnote 5.340 and 5.149 with U.S. footnotes US246 and US342, respectively and apply these footnotes to additional bands. Finally, to make the U.S. Table consistent with WRC–2000 changes, we proposed to remove nine U.S. footnotes that were adopted in a previous Commission proceeding. We seek comments on the proposed changes.

Maximum Power Density in the Band 55.78–56.26 GHz

2. We proposed to adopt the U.S. proposal of -28.5 dB (W/MHz) domestically as the maximum power spectral density limit delivered to fixed service transmitter antennas at 55.78–56.26 GHz. This was proposed due to WRC–200 adopting a higher power density limit of -26 dB, which NTIA believes is unacceptable for domestic use. The tighter limit proposed by the U.S. since passive measurements are extremely vulnerable to interference due to the variability of the atmosphere. A new U.S. footnote was proposed to reflect the proposed change in power spectral density limit.

3. We seek comment on the proposed power spectral density limit. Commenters should address the power spectral density in terms of its ability to protect EESS and its impact on equipment development, as well as, alternative power limits for the 55 GHz systems that would provide the same overall protection to EESS services. Commenters should address the impact of this limit on other services in the band.

Initial Regulatory Flexibility Certification

4. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that regulatory flexibility analyses be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] 15 U.S.C. 632.

5. In this proposed rule, we propose to realign allocations in the bands 76–81 GHz and 95–1000 GHz consistent with the international allocation changes obtained at WRC–2000. This proposal would align passive allocations for RAS and Earth-exploration satellite services with spectrum that is more suited for such operations and would continue the Commission's efforts to promote the commercial development and growth of the "millimeter wave" spectrum, which will provide for future developments in technology and equipment. We also propose to adopt domestically the United States proposal at WRC–2000 in regards to the maximum power density delivered by a transmitter to the antenna of a fixed service in the 55.78–56.26 GHz band. This proposal will protect EESS from unaccepted interference from fixed and mobile operations. These proposed changes will not cause a significant adverse economic impact to small entities because there are no licensed commercial uses above 76 GHz; that is, no incumbent licensees will be affected. Service rules will be adopted in later proceedings, as appropriate.

6. Therefore, we certify that the proposals in the NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including a copy of the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[6]

[6] 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 as follows:

a. Revise pages 79 and 81 through 90 of the Table.

b. In the list of United States footnotes, revise footnotes US74, US211, US246, US263, and US342; delete US369, US370, US371, US372, US373, US374, US375, US376; and US377.

c. In the list of United States footnotes, add footnote USXXX.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

50.2-65 GHz (EHF) — Page 79

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.555A			50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Mobile-satellite (Earth-to-space)			50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	
51.4-52.6 FIXED MOBILE 5.547 5.556			51.4-52.6 FIXED MOBILE		
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.556			52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive) 5.556B			54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)		
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557			55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED USxxx INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US263 US353		
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive)			56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH	

65-86 GHz (EHF) — Page 81

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH 5.547			65-66 EARTH EXPLORATION-SATELLITE FIXED MOBILE except aeronautical mobile SPACE RESEARCH	65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH	
66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554			66-71 MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	
71-74 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)			71-74 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) US270		
74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE Space research (space-to-Earth) 5.559A 5.561			74-75.5 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE		
			75.5-76	75.5-76 AMATEUR AMATEUR-SATELLITE	Amateur (97)
76-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149			76-77.5 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) US342	76-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) US342	

77.5-78 AMATEUR AMATEUR-SATELLITE Radio astronomy Space research (space-to-Earth) 5.149	77.5-78 Radio astronomy Space research (space-to-Earth) US342	77.5-78 AMATEUR AMATEUR-SATELLITE Radio astronomy Space research (space-to-Earth) US342	Amateur (97)
78-79 RADIOLOCATION Amateur Amateur-satellite Radio astronomy Space research (space-to-Earth) 5.149 5.560	78-79 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) 5.560 US342	78-79 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.560 US342	
79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149	79-81 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) US342	79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) US342	
81-84 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY Space research (space-to-Earth) 5.149 5.561A	81-84 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)		
84-86 FIXED FIXED SATELLITE (Earth-to-space) 5.561B MOBILE RADIO ASTRONOMY 5.149	84-86 FIXED MOBILE US211 US377	84-86 FIXED MOBILE BROADCASTING BROADCASTING- SATELLITE US211 US377	

86-116 GHz (EHF) Page 83

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
92-94 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149			92-95 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION		
94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Radio astronomy 5.562 5.562A					
94.1-95 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149			US342		
95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.554			95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US342		
100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341			100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		

102-105 FIXED MOBILE RADIO ASTRONOMY 5.149 5.341	102-105 FIXED MOBILE RADIO ASTRONOMY 5.341 US342	
105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341	105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
111.8-114.25 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341	111.8-114.25 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	

Page 84

116-164 GHz (EHF) Page 85

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
116-119.98 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.341			116-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.138 5.341 US211		ISM Equipment (18)
119.98-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.138 5.341					
122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138			122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 5.138	122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	ISM Equipment (18) Amateur (97)
123-130 FIXED SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.562D 5.149 5.554			123-130 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.554 US211 US342		
130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.149 5.562A			130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.562A US342		
134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy			134-136 Radio astronomy	134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy	Amateur (97)

136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.149	136-141 RADIO ASTRONOMY RADIOLOCATION US342	136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite US342	Amateur (97)
141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342		
148.5-151.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	148.5-151.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
151.5-155.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	151.5-155.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342		
155.5-158.5 EARTH EXPLORATION-SATELLITE (passive) 5.562F FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.562G	155.5-158.5 EARTH EXPLORATION-SATELLITE (passive) 5.562F FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.562G US342		
158.5-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)	158.5-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) US211		

Page 86

164-217 GHz (EHF)

Page 87

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 5.149 5.562D			167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 US211		
174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558			174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558		
174.8-182 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)			174.8-182 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)		
182-185 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.563			182-185 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246		

185-190 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)	185-190 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)	
190-191.8 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340	190-191.8 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246	
191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.341 5.554	191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.341 5.554 US211	
200-202 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A	200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	
202-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A	5.341 5.563A US246	
209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.341	209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.341 US342	

217-1000 GHz (EHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341			217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342		
226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246		
231.5-232 FIXED MOBILE Radiolocation			231.5-232 FIXED MOBILE Radiolocation		
232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation			232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation		
235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B			235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B		
238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE			238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE		
240-241 FIXED MOBILE RADIOLOCATION			240-241 FIXED MOBILE RADIOLOCATION		

241-248 RADIO ASTRONOMY RADIOLOCATION 5.138 US342	241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 US342	ISM Equipment (18) Amateur (97)	
248-250 Radio astronomy US342	248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy US342	Amateur (97)	
250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.563A US246			
252-265 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US211 US342			
265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.563A US342			
275-1000 (Not allocated) 5.565			

Page 90

241-248
RADIO ASTRONOMY
RADIOLOCATION
Amateur
Amateur-satellite

5.138 5.149

248-250
AMATEUR
AMATEUR-SATELLITE
Radio astronomy

5.149

250-252
EARTH EXPLORATION-SATELLITE (passive)
RADIO ASTRONOMY
SPACE RESEARCH (passive)

5.340 5.563A

252-265
FIXED
MOBILE
MOBILE-SATELLITE (Earth-to-space)
RADIO ASTRONOMY
RADIONAVIGATION
RADIONAVIGATION-SATELLITE

5.149 5.554

265-275
FIXED
FIXED-SATELLITE (Earth-to-space)
MOBILE
RADIO ASTRONOMY

5.149 5.563A

275-1000
(Not allocated) 5.565

* * * * *

United States (US) Footnotes

* * * * *

US74 In the bands 25.55–25.67, 73.0–74.6, 406.1–410.0, 608–614, 1400–1427, 1660.5–1670.0, 2690–2700, and 4990–5000 MHz and in the bands 10.68–10.7, 15.35–15.4, 23.6–24.0, 31.3–31.5, 86–92, 100–102, 109.5–111.8, 114.25–116, 148.5–151.5, 164–167, 200–209, and 250–252, the radio astronomy service shall be protected from extraband radiation only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with technical standards or criteria applicable to the service in which it operates. Radio astronomy observations in these bands are performed at the locations listed in US311.

* * * * *

US211 In the bands 1670–1690, 5000–5250 MHz and 10.7–11.7, 15.1365–15.35, 15.4–15.7, 22.5–22.55, 24–24.05, 31.0–31.3, 31.8–32.0, 40.5–42.5, 84–86, 123–130, 158.5–164, 167–168, 191.8–200, and 252–265 GHz, applicants for airborne or space station assignments are urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference; however, US74 applies.

* * * * *

US246 No station shall be authorized to transmit in the following bands: 608–614 MHz, except for medical telemetry equipment,[7] 1400–1427 MHz, 1660.5–1668.4 MHz, 2690–2700 MHz, 4990–5000 MHz, 10.68–10.7 GHz, 15.35–15.4 GHz, 23.6–24 GHz, 31.3–31.8 GHz, 50.2–50.4 GHz, 52.6–54.25 GHz, 86–92 GHz, 100–102 GHz, 109.5–111.8 GHz, 114.25–116 GHz, 148.5–151.5 GHz, 164–167 GHz, 182–185 GHz, 190–191.8 GHz, 200–209 GHz, 226–231.5 GHz, 250–252 GHz,

* * * * *

US263 In the bands 21.2–21.4 GHz, 22.21–22.5 GHz, 36–37 GHz, and 56.26–58.2 GHz, the space research and Earth exploration-satellite services shall not receive protection from the fixed and mobile services operating in accordance with the Table of Frequency Allocations.

* * * * *

US342 In making assignments to stations of other services to which the bands: 13360–13410 kHz, 22.81–22.86 GHz, 136–148.5 GHz, 37.5–38.25 MHz, 23.07–23.12 GHz, 151.5–158.5 GHz,

[7] Medical telemetry equipment shall not cause harmful interference to radio astronomy operations in the band 608–614 MHz and shall be coordinated under the requirements found in 47 CFR 95.1119.

322–328.6 MHz, 31.2–31.3 GHz, 209–226 GHz, 1330–1400 MHz, 36.43–36.5 GHz, 241–250 GHz, 1610.6–1613.8 MHz, 42.5–43.5 GHz, 252–275 GHz 1660–1670 MHz, 48.94–49.04 GHz, 3260–3267 MHz, 76–81 GHz, 3332–3339 MHz, 95–100 GHz, 3345.8–3352.5 MHz, 102–109.5 GHz, 4825–4835 MHz, 111.8–114.25 GHz, 14.47–14.5 GHz, 128.33–128.59 GHz, 22.01–22.21 GHz, 129.23–129.49 GHz, 22.21–22.5 GHz, 130–134 GHz, are allocated, administrations are urged to take all practicable steps to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 4.5 and 4.6 and Article 29 of the ITU Radio Regulations).

* * * * *

USxxx In the band 55.78–56.26 GHz, in order to protect stations in the Earth exploration-satellite service (passive), the maximum power density delivered by a transmitter to the antenna of a fixed service station is limited to -28.5 dB(W/MHz).

* * * * *

[FR Doc. 03–13780 Filed 6–2–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 2002–D023]

Defense Federal Acquisition Regulation Supplement; Follow-On Production Contracts for Products Developed Pursuant to Prototype Projects

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide an exception from competition requirements to apply to contracts awarded under the authority of Section 822 of the National Defense Authorization Act for Fiscal Year 2002. Section 822 provides for award of a follow-on production contract, without competition, to participants in an "other transaction" agreement for a prototype project, if the agreement was entered into through use of competitive procedures, provided for at least one-third non-Federal cost share, and meets certain other conditions of law.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D023 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D023.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371 note) provides authority for DoD to enter into transactions other than contracts, grants, or cooperative agreements, in certain situations, for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by DoD. Such transactions are commonly referred to as "other transaction" (OT) agreements for prototype projects.

Section 822 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) permits award of a follow-on production contract, without competition, to participants in an OT agreement for a prototype project if—

(1) The OT agreement provided for a follow-on production contract;

(2) The OT agreement provided for at least one-third non-Federal cost share for the prototype project;

(3) Competitive procedures were used for the selection of parties for participation in the OT agreement;

(4) The participants in the OT agreement successfully completed the prototype project;

(5) The number of units provided for in the follow-on production contract does not exceed the number of units specified in the OT agreement for such a follow-on production contract; and

(6) The prices established in the follow-on production contract do not exceed the target prices specified in the OT agreement for such a follow-on production contract.

DoD published proposed amendments to the "Other Transactions" regulations at 32 CFR part 3 on May 20, 2003 (68 FR 27497), to implement Section 822. This proposed DFARS rule provides the corresponding exemption from competition requirements for follow-on production contracts awarded under the authority of Section 822.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to production contracts for DoD weapons and weapon systems. Such contracts typically are not awarded to small business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D023.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 206 as follows:

1. The authority citation for 48 CFR part 206 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.001 is amended by adding, after paragraph (b), a new paragraph (S–70) to read as follows:

206.001 Applicability.

* * * * *

(S–70) Also excepted from this part are follow-on production contracts for products developed pursuant to the "other transactions" authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 note, subsections (f)(2)(A) and (B) (see 32 CFR 3.9(c)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

[FR Doc. 03–13536 Filed 6–2–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arabis perstellata* (Braun's Rock-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of document availability.

SUMMARY: We, the Fish and Wildlife Service (Service), determine that critical habitat is prudent and propose to designate critical habitat for the *Arabis perstellata* (Braun's rock-cress), an endangered species listed under the Endangered Species Act of 1973, as amended (Act). We propose 20 specific geographic areas (units) in Kentucky (17 units) and Tennessee (3 units) as critical habitat for *Arabis perstellata*. These units encompass approximately 408 hectares (ha) (1,008 acres (ac)). Kentucky has approximately 328 ha (810 ac) and Tennessee has approximately 80 ha (198 ac) proposed as critical habitat for *Arabis perstellata*.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory effect of the critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions with no Federal involvement are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We have conducted an analysis of the economic impacts of designating these areas as critical habitat and are announcing its availability for public review. That economic analysis has been conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*.

DATES: We will consider comments received by August 4, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 18, 2003.

ADDRESSES: If you wish to comment on this proposed rule and/or the draft economic analysis, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address or fax your comments to 931/528–7075.

3. You may send comments by electronic mail (e-mail) to *timothy_merritt@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, extension 211; facsimile 931/528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule and its associated draft economic analysis. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of *Arabis perstellata* and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Arabis perstellata* such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; and

(7) The inclusion into final critical habitat of the two recently identified populations of *Arabis perstellata*, and any foreseeable economic or other impacts resulting from including the areas encompassing these two new populations into designated critical habitat.

If you wish to comment on this proposed rule and/or the draft economic analysis, you may submit your comments and materials concerning this proposal and its associated draft economic analysis by any one of several methods (see **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include "Attn: Braun's rock-cress," your full name, and your return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Ecological Services Office in Cookeville, Tennessee (*see* **ADDRESSES**).

Copies of the proposed rule, draft economic analysis, and information regarding this proposed critical habitat designation are available on the Internet at *http://cookeville.fws.gov*.

Background

Arabis perstellata (Braun's rock-cress) is a perennial herb of the mustard family (Brassicaceae). It was originally described by E. Lucy Braun (1940) from specimens collected between 1936 and 1939 in Franklin County, Kentucky. In 1956, Braun described the growth habits of *Arabis perstellata*. This species has round stems and alternate leaves. The stems and foliage have a grayish coloration due to the large quantity of hairs. The stems arise from horizontal bases and grow up to 80 centimeters (cm) (31.5 inches (in)) long, often drooping from rock ledges. Each year, a circular cluster of leaves radiating from the center is produced close to the ground, and new flowering branches emerge from the old cluster of the previous season. The lower leaves vary from 4 to 15 cm (1.6 to 6.0 in) long and are obovate (egg-shaped) to lanceolate (lance-shaped), with the broad end at the top. The lower leaves also have slightly toothed margins and are cut to the midrib. The upper leaves are smaller—up to 3.5 cm (1.4 in) long—and have relatively rounded ends that are widest at or about the middle, but then taper to a lance shape, with the broad end at the top. The upper leaves also have coarse teeth along their margins. Both surfaces of the leaves are covered in starlike hairs. The flowering section of the plant is elongated, with numerous stalked flowers. The flowers have four petals that are 3 to 4 millimeters (mm) (0.12 to 0.16 in) long, are white to lavender, and have four pale green sepals that are 2 to 3 mm (0.08 to 0.12 in) long. There are six stamens, with two shorter than the other four. The ovary is elongate and two-chambered, and develops into an elongated fruit, much longer than it is broad. Fruiting stalks are about 1 cm (0.4 in) long at maturity; the fruits are up to 4 cm (1.6 in) long and are covered with both simple and starlike hairs. Flowering occurs from late March to early May. Fruits mature from mid-May to early June. The oblong seeds are reddish brown, somewhat flattened, about 1 mm (0.04 in) long, and in places minutely hairy (Jones 1991). Plants are reported to live up to 5 years (Jones 1991).

Although varieties of this species are not recognized in recent taxonomic treatments (Rollins 1993), in the past, two varieties were distinguished based on size and degree of pubescence (Rollins 1960). The formerly recognized varieties are also geographically separated, with the larger variety (*Arabis perstellata* var. *ampla*) occurring in Tennessee and the smaller variety (*Arabis perstellata* var. *perstellata*) occurring in Kentucky (Rollins 1993; Kentucky State Nature Preserves Commission (KSNPC) 1996a). While the final rule for the determination of endangered status for this species recognized the two varieties, these two varieties are no longer recognized by the scientific community. Consequently, we will treat the plants that occur in both geographically separated areas as one species (*Arabis perstellata*) for the purpose of designating critical habitat.

Arabis perstellata is presently known from 41 populations in two separate sections of the Interior Low Plateaus Physiographic Province—the Blue Grass Section (Kentucky) and the Central Basin Section (Tennessee). Both areas where this species is found are predominantly underlain by sediments of Ordovician age (510–438 million years ago) (Quarterman and Powell 1978). The Kentucky populations occur in Franklin, Henry, and Owen Counties along the Kentucky River and its tributaries (primarily Elkhorn Creek). The Tennessee populations occur in Davidson and Rutherford counties, principally along the Stones River, but also along the Cumberland River several miles downstream of the Stones River confluence.

Arabis perstellata occurs on slopes composed of calcium carbonate, calcium, or limestone in moderately moist to almost dry forests. The occurrence of this species does not appear to be limited to a particular slope, aspect, elevation, or moisture regime within the slope forests. The plants survive in full shade or filtered light, but are not found in full sunlight (Jones 1991). The largest and most vigorous populations occur on moist mid- to upper-slope sites. Plants are often found around rock outcrops, in protected sites on the downslope side of

tree bases, and in sites of natural disturbance with little competition, such as a sloping mass of rock debris at the base of a cliff or on animal trails. The plants have a well-developed system of rootstocks that allow them to persist in these inhospitable sites. Sometimes the plants display a weedy tendency, colonizing recent road cuts or animal paths through the woodlands. The plants are rarely found growing among the leaf litter and herbaceous cover of the forest floor.

Within the Bluegrass Section of the Interior Low Plateaus in Kentucky, the Lexington Limestone Formation is common on the slopes entrenched by the Kentucky River and its major drainages (McDowell 1986). All but one of the Kentucky populations of *Arabis perstellata* are found on the Grier and Tanglewood members (laterally continuous distinct layers within a rock formation) of this formation. The exception is the population in Henry County, Kentucky, occurring on what is mapped as Kope and Clays Ferry members that have a higher shale component (Service 1997). However, the plants actually occur on limestone outcrops at this site similar to those occupied by the populations found in the Grier and Tanglewood members.

In Tennessee, *Arabis perstellata* sites are restricted to the Central Basin Section, which, like the Blue Grass Section, is underlain by Ordovician limestones. The primary rocks of the *Arabis perstellata* populations in Davidson County are Lebanon and Carters Limestone, while the sites in Rutherford County are characterized by Leipers and Catheys Limestone, as well as Bigby-Cannon Limestone (Wilson 1965, 1966a, 1966b).

The soils at *Arabis perstellata* sites are limestone-derived, with a rock outcrop component usually present in the soil complex. A clay subsoil is also common, but a notable difference is the acidity of the Tennessee soils (True *et al.* 1977) compared with the neutral to moderately alkaline Kentucky soils (Jones 1991; McDonald *et al.* 1985). The soils at the Tennessee sites are Mimosa-Rock outcrop complexes (True *et al.* 1977). The Kentucky sites contain Fairmont-Rock outcrop complexes and Eden flaggy silty clay (McDonald *et al.* 1985). The majority of the *Arabis* populations in Kentucky occur on Fairmont soils.

Common canopy trees of the slope forests where *Arabis perstellata* occurs are *Acer saccharum* (sugar maple), *Quercus muhlenbergii* (chinquapin oak), *Celtus occidentalis* (hackberry), and *Aesculus glabra* (Ohio buckeye). Jones (1991) listed the native herbaceous species that are most indicative of *Arabis perstellata* habitat as *Saxifraga virginiensis* (early saxifrage), *Sedum pulchellum* (stonecrop), *Arabis laevigate* (smooth rock-cress), *Draba ramosissima* (branched whitlowgrass), *Phacelia bipinnatifida* (forest phacelia), *Asplenium rhizophyllum* (walking fern), *Pellaea atropurpurea* (purple cliff-brake), and *Heuchera* sp. (alum root). These herbaceous species are all common forest forbs (flowering plants) in Kentucky and Tennessee, with the exception of *Draba ramosissima*, which is rare in Tennessee.

The only nonnative species which appears to be an important part of the *Arabis perstellata* plant community is *Alliaria petiolata* (European garlic mustard). Disturbed forests are most susceptible to rapid *Alliaria petiolata* invasion, and disrupted soil is most suitable for its establishment (Nuzzo 1991). This species competes directly with *Arabis perstellata* for areas of natural disturbance once it has become established in a forest. Management schemes for the control of *Alliaria petiolata* are being tested, but the species continues to spread into natural areas. This species poses a severe threat to *Arabis perstellata*.

Arabis perstellata is never a common component of the ground flora. It usually occurs in small groups (especially around rock outcrops) or as scattered individuals. The small size of the populations, the species' specialized habitat, and its apparent inability to expand into available or similar habitats suggests that it is a poor competitor. This inability to compete has likely limited its distribution and abundance. This species cannot withstand vigorous competition from invasive weeds or even native herbaceous species.

This species is most likely pollinated by insects, but we do not know nor do we know whether *Arabis perstellata* is self-fertile. Jones (1991) assumed that the plants are pollinated by insects, most likely by small flies and bees. Seed dispersal is likely occurring through wind or gravity rather than animal movements, as this species has no specific morphological (structural) mechanisms such as hooks or burs for seed dispersal. Seeds are probably most commonly dispersed downslope. Jones (1991) suggested that plants in the stable upper slopes (usually among the rock outcropping at a slope break) may be supplying seeds to chronically eroded areas below.

Arabis perstellata produces viable seeds, and plants can easily be grown from seeds under greenhouse conditions (Service 1997). It is not known whether the plant depends on a seed bank (seeds in the soil from previous seasons) to take advantage of opportunities for seed germination and establishment. Bloom (1988) found that seeds of *Arabis laevigata*, a biennial rock-cress co-occurring with *Arabis perstellata*, remained germinable for several years and found evidence of a seed bank. Bloom (1988) also found that the presence of leaf litter suppressed germination in *Arabis laevigata*. Considering the similar habitat of the two species, it is reasonable to infer that leaf litter may also affect germination of *Arabis perstellata*. In several of the larger populations in Kentucky, the species occurs mostly in areas cleared of herbaceous vegetation and leaf litter by past colluvial slippage. It appears that the lack of leaf litter is likely a requirement for seed germination or seedling survival. The factors affecting seedling establishment are not known, nor is it known whether seed production changes in different environments.

The majority of the land containing *Arabis perstellata* populations is in private ownership. One site (Clements Bluff) in Kentucky is owned by the State and is part of the Kentucky River Wildlife Management Area. This publically owned site is under no formal management agreement at this time. One privately owned site, Strohmeiers Hills in Kentucky, is under a management agreement with the Kentucky Natural Heritage Program. Management activities include sediment and noxious weed control. The agreement is nonbinding and does not restrict the property owner's activities or property rights. Thus, the only protection granted by the management agreement is habitat enhancement.

The primary threats to this species are alteration or loss of habitat through development (primarily home and road construction), competition with native and exotic weedy species, grazing and trampling, and timber harvesting. *Arabis perstellata* is vulnerable to extinction because of its very small range, low abundance, and declining number of populations. Thirty-seven extant populations are known in Kentucky and four in Tennessee. The full range of this species in Kentucky is an approximately 518-square-kilometer (km^2) (200-square-mile (mi^2)) area, with four disjunct populations in Tennessee. This narrow range makes the species vulnerable to potential catastrophic phenomena, such as disease, extreme weather, and insect infestations. Also, population levels are declining (Deborah White, KSNPC, pers. comm. 2003). Eight sites previously known in Kentucky were found to be extirpated during a 1996 survey (KSNPC 1996a). Four historical populations in Tennessee are presumed extirpated (Jones 1991; Tennessee Department of Environment and Conservation (TDEC) 2000).

Previous Federal Action

Federal government actions on this species began with passage of section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Please refer to the final listing rule for a complete description of Federal actions concerning this species between the inception of the Act and the proposed listing rule in 1994.

On January 3, 1994, we published a rule in the **Federal Register** (59 FR 53) proposing to list *Arabis perstellata* (inclusive of the two varieties, *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata*) as endangered. In that proposed rule, we had made a determination that designation of critical habitat was not prudent because such a designation would not be beneficial to the species, but rather could further threaten the species. On January 3, 1995 (60 FR 56), we published our final rule to list *Arabis perstellata* as endangered. In the final rule, consistent with our determination in the proposed rule, we found that a critical habitat designation was not prudent.

On July 22, 1997, we finalized the *Arabis perstellata* Recovery Plan (Service 1997). The recovery plan established the criteria that must be met prior to the delisting of *Arabis perstellata*. The recovery plan also identified the actions that are needed to assist in the recovery of *Arabis perstellata*.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our not prudent critical habitat determinations for *Arabis perstellata* and 15 other federally listed species (*Southern Appalachian Biodiversity Project* v. *U.S. Fish and Wildlife Service, Babbitt, & Clark* (CN 2:00–CV–361 (E.D. TN))). On November 8, 2001, the District Court of the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determinations and submit a new prudency determination and proposed critical habitat designation, if prudent, for *Arabis perstellata* to the **Federal Register** no later than May 26, 2003, and a final decision not less than twelve months after the new prudency determination.

This proposal is the product of our reevaluation of our 1995 determination that critical habitat designation for *Arabis perstellata* was not prudent. It reflects our interpretation of recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on the species' biology and distribution, and on threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Critical Habitat Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Act, we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of scarce conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation rather than biology, forces decisions to be made before complete scientific information is available, consumes enormous agency resources that would otherwise be applied to actions of much greater conservation benefit, and may impose large social and economic costs. We believe that rational public policy demands serious attention to this issue in order to allow our limited resources to be applied to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987. Env. Manage.11(4):429–437) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

With a budget consistently inadequate to fund all of the petition review, listing determinations, and critical habitat designation duties required of us by statute, we have in the past prioritized our efforts and focused our limited resources on adding species in need of protection to the lists of threatened or endangered species. We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat designations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court-ordered designations have left us with almost no ability to provide for adequate public participation or ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA. All are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (I) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

In order for habitat to be included in a critical habitat designation, the habitat features must be "essential to the conservation of the species." Such critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species; the recovery plan; articles in peer-reviewed journals; conservation plans developed by States and Counties; scientific status surveys; studies; biological assessments; unpublished materials; and expert opinion or personal knowledge.

Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our January 3, 1995, final listing rule (60 FR 56), we determined that the designation of critical habitat was not prudent for *Arabis perstellata* because such designation would not be beneficial to the species and such a designation could further threaten the species.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the "increased threat" rationale for a "not prudent" determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit issued a ruling that limited the application of the no benefit justification and required the Service to balance the potential threats against any benefits to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a not prudent finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280).

If critical habitat is designated for *Arabis perstellata*, Federal agencies will be required to consult with us on actions they carry out, fund, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat. It may also provide information to Federal agencies and the general public of the importance of *Arabis perstellata* habitat and the need for special management considerations or protection. A critical habitat designation may assist Federal agencies in planning future actions because it establishes, in advance, those habitats that will be reviewed in section 7 consultations.

Though the identification of known plant locations in this proposed rule may increase unauthorized collection, we currently have no knowledge that unauthorized collection is or has been an issue with *Arabis perstellata*. We found no records of unauthorized collection during our literature review or in discussions with researchers. We also have found no evidence that identification of *Arabis perstellata* critical habitat would increase the degree of threat to the species. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent. We find that designation of critical habitat is prudent for *Arabis perstellata* because there is not likely to be increased threats to the species that may result from the critical habitat designation.

B. Methods

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), this proposal is based on the best scientific information available concerning the species' current and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on *Arabis perstellata*, including the physical and biological features that are essential for the conservation of the species (*see* "Primary Constituent Elements" section), and identified the areas containing these features. The information used includes known locations, our own site-specific species and habitat information, statewide Geographic Information System (GIS) coverages (*e.g.*, soils, geologic formations, and elevation contours), the Natural Resources Conservation Service's soil surveys, the final listing rule for *Arabis perstellata*, recent biological surveys and reports, peer-reviewed literature, our final recovery plan, and discussions and recommendations from *Arabis perstellata* experts.

C. Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available, and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Much of what is known about the specific physical and biological requirements of *Arabis perstellata* is described in the "Background" section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Arabis perstellata* throughout its range, and to provide those habitat components essential for the conservation of the species. These habitat components provide for the following—(1) individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that provide basic requirements for growth, such as water, light, and minerals; and (3) areas that support populations of pollinators and seed dispersal organisms; and (4) habitats that are representative of the historic geographical and ecological distribution of the species.

We believe the conservation of *Arabis perstellata* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow and the maintenance of normal ecological functions within these sites. The areas we are proposing as critical habitat provide some or all of the habitat components essential for the conservation of this species.

Based on the best available information, the primary constituent elements essential for the conservation of *Arabis perstellata* are:

(a) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*));

(b) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(c) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(d) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(e) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

D. Criteria Used To Identify Critical Habitat

We considered several factors in the selection and proposal of specific areas for critical habitat for *Arabis perstellata*. We assessed the final recovery plan objectives and criteria, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. According to the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after five years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata*, protected populations must be distributed throughout the range in order to decrease the probability of a catastrophic event impacting all the protected populations.

Our approach to delineating specific critical habitat units, based on the

recovery criteria outlined above, focused first on considering all areas of suitable habitat within the geographic distribution of this species and the known locations of the extant and historic populations. We evaluated field data collected from documented occurrences, various GIS layers, soil surveys, and United States Geological Survey (USGS) quadrangle maps. These data include *Arabis perstellata* locations, soils, elevation, topography, geologic formations, streams, and current land uses. Originally, there were eight total populations in Tennessee and 47 in Kentucky. Four of the populations in Tennessee and ten in Kentucky are historic and no longer contain one or more of the primary constituent elements present (Jones 1991; TDEC 2000; Deborah White, KSNPC, pers. comm. 2003). By lacking the primary constituent elements, they are not essential to the conservation of *Arabis perstellata*.

Of the known remaining plant sites in Kentucky (37) and Tennessee (4), we identified an additional 21 sites as having fewer than 50 plants and the habitat is degraded. These sites lack the primary constituent elements and, therefore, are not essential to the conservation of *Arabis perstellata*.

The 20 units in this proposed designation include a significant portion, but not all, of the species' historic range. They all contain the primary constituent elements essential for the conservation of *Arabis perstellata* (see "Primary Constituent Elements" section). The omission of historically occupied sites and the rest of the currently occupied sites from this proposed critical habitat designation does not diminish their individual or cumulative importance to the species. Rather, it is our determination that the habitat contained within the 20 units included in this proposed rule constitutes our best determination of areas essential for the conservation, and eventual recovery, of *Arabis perstellata*. The 20 units we are proposing as critical habitat encompass approximately 408 ha (1,008 ac) in Kentucky and Tennessee.

To the extent feasible, we will continue, with the assistance of other State, Federal, and private researchers, to conduct surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to designate additional critical habitat, delete or reduce critical habitat, or refine the boundaries of critical habitat. Sites that are occupied by this plant that are not being proposed for critical habitat will continue to receive protection under the Act's section 7 jeopardy standard where a Federal nexus may occur (see "Critical Habitat" section).

Since the drafting of this proposed critical habitat rule, we have received new information from the TDEC (D. Lincicome, pers. comm. 2003) regarding two new populations of *Arabis perstellata*. One population is located on Townsel Hill, west of the City of Murfreesboro between Newman and Coleman Hill Roads in Rutherford County, Tennessee. This site is adjacent to the proposed Sophie Hill critical habitat site (see "Proposed Critical Habitat Designation" section, unit 19) and belongs to the same private landowner. The other population is located on Grandfather Knob between Cainsville and Spain Hill Roads in Wilson County, Tennessee. This site is privately owned by two separate landowners. Both sites contain over 100 *Arabis perstellata* plants and in general, it appears that these two populations might meet the recovery criteria and contain the primary constituent elements. However, these new populations were located following the drafting of the proposed critical habitat rule. Because of time and budget constraints, we are unable to adequately and formally analyze them for inclusion as proposed critical habitat in this document. We will conduct the analysis on these two sites prior to making a final determination on this proposed rule. If we determine these areas to be essential, it would be our intent to include them in the final designation.

E. Mapping

Once we determined that 20 populations are essential to the conservation of *Arabis perstellata*, we used site-specific information to determine the extent of these populations. The proposed critical habitat units were then delineated by screen-digitizing polygons (map units) using ArcView, a computer GIS program. Based on the known plant distribution and allowing for downslope germination, we placed boundaries around the populations that included the plants, as well as their primary constituent elements. In defining these critical habitat boundaries, we made an effort to exclude all developed areas, such as housing developments, open areas, and other lands unlikely to contain the primary constituent elements essential for the conservation of *Arabis perstellata*. We used Kentucky State Plane North/North American Datum 1983 (NAD83) coordinates to designate the boundaries of the proposed critical habitat in Kentucky, and Tennessee State Plane/NAD83 coordinates to designate the boundaries of the proposed critical habitat in Tennessee.

Proposed Critical Habitat Designation

The areas proposed for designation as critical habitat for *Arabis perstellata* provide the primary constituent elements described above. Table 1 summarizes the location and extent of proposed critical habitat. All of the proposed areas require special management considerations to ensure their contribution to the conservation of *Arabis perstellata*. We provide general descriptions of the boundaries of proposed critical habitat units below.

TABLE 1.—APPROXIMATE AREA (HECTARES AND ACRES) OF PROPOSED CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*

Critical habitat unit	County/State	Land ownership	Hectares	Acres
1. Sky View Drive	Franklin/Kentucky	Private	22	54
2. Benson Valley Woods	Franklin/Kentucky	Private	37	91
3. Red Bridge Ridge	Franklin/Kentucky	Private	6	15
4. Tributary to South Benson Creek	Franklin/Kentucky	Private	10	25
5. Davis Branch	Franklin/Kentucky	Private	3	7
6. Onans Bend	Franklin/Kentucky	Private	12	30
7. Shadrock Ferry Road	Franklin/Kentucky	Private	15	37
8. Hoover Site	Franklin/Kentucky	Private	83	205
9. Longs Ravine Site	Franklin/Kentucky	Private	30	74
10. Strohmeiers Hill	Franklin/Kentucky	Private	20	49

TABLE 1.—APPROXIMATE AREA (HECTARES AND ACRES) OF PROPOSED CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*—Continued

Critical habitat unit	County/State	Land ownership	Hectares	Acres
11. U.S. 127	Franklin/Kentucky	Private	11	27
12. Camp Pleasant Branch Woods	Franklin/Kentucky	Private	14	35
13. Saufley	Franklin/Kentucky	Private	8	20
14. Clements Bluff	Owen/Kentucky	State	11	27
15. Monterey U.S. 127	Owen/Kentucky	Private	12	30
16. Craddock Bottom	Owen/Kentucky	Private	23	57
17. Backbone North	Franklin/Kentucky	Private	11	27
18. Scales Mountain	Rutherford/Tennessee	Private	36	89
19. Sophie Hill	Rutherford/Tennessee	Private	16	40
20. Indian Mountain	Rutherford/Tennessee	Private	28	69
Total			408	1,008

Critical Habitat Unit Descriptions

We are proposing a total of 20 critical habitat units for *Arabis perstellata* in Kentucky and Tennessee—14 critical habitat units in Franklin County, Kentucky; 3 in Owen County, Kentucky; and 3 in Rutherford County, Tennessee. In order to provide determinable legal descriptions of the critical habitat boundaries, we drew polygons around these units, using as criteria the plant's primary constituent elements, the known extent of the populations, and the elevation contours on the map. We made an effort to avoid developed areas that are unlikely to contribute to the conservation of *Arabis perstellata*. Areas within the boundaries of the mapped units, such as buildings, roads, clearings, transmission lines, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. As such, Federal actions limited to these areas would not trigger consultation pursuant to section 7 of the Act, unless they affect the species or primary constituent elements in the critical habitat.

On the basis of the best available scientific information, we determined that the 20 proposed critical habitat units represent the only known *Arabis perstellata* populations that meet the recovery criteria of being geographically distinct, self-sustaining, and containing 50 or more plants. These 20 sites contain the highest-quality populations in terms of size and habitat that are presently known. The remaining known populations (21) of *Arabis perstellata* do not meet these criteria, because each has fewer than 50 plants that occur on degraded sites, making their long-term viability questionable. As such, they are not essential to the conservation of this species. Once the proposed 20 sites have adequate management and permanent protection measures in place and their populations are stable or increasing for a 5-year period, we may consider this species for delisting. Consequently, the proposed units are essential for the long-term conservation and eventual recovery of this species because they constitute the 20 geographically distinct sites that are most likely to be able to support self-sustaining populations of 50 or more individuals, as outlined in the recovery criteria.

A brief description of each of these critical habitat units is given below. The population information presented in all of the unit descriptions was taken from the KSNPC's Natural Heritage Database for the Kentucky units and the TDEC's *Natural Heritage Database for the* Tennessee units.

Unit 1. Sky View Drive in Franklin County, Kentucky

Unit 1 is located on the west side of the City of Frankfort. It occurs along U.S. 127 and Skyview Drive on the slopes of the first large ravine system due west of the confluence of Benson Creek and the Kentucky River. It contains approximately 22 ha (54 ac), all of which are privately owned. This site was first observed to have *Arabis perstellata* in 1979. In 2001, surveys conducted by the KSNPC found more than 150 plants, but not all habitat was surveyed. The majority of the plants occur on the west- and south-facing slopes and are associated with bare soil on trails and tree bases.

Unit 2. Benson Valley Woods in Franklin County, Kentucky

Unit 2 is located west of the City of Frankfort. The unit lies southeast of Benson Valley Road on the south side of Benson Creek. It is privately owned and contains approximately 37 ha (91 ac). The plants occur on the southeast-facing slope. They were first observed in 1979. KSNPC personnel last observed more than 200 plants in 2001. The site is threatened by trampling and competition by weeds.

Unit 3. Red Bridge Ridge in Franklin County, Kentucky

Unit 3 is located west of Kentucky (KY) Highway 1005, at the confluence of South Benson and Benson Creeks. The site is privately owned and is approximately 6 ha (15 ac) in size. Plants at this site were first observed in 1987. In 1990, 75 plants were found along the southeast- and northwest-facing slopes.

Unit 4. Tributary to South Benson Creek in Franklin County, Kentucky

This unit is located northeast of the City of Frankfort. It occurs along the southeast side of South Benson Creek and the north and south slopes of an unnamed tributary. The site is in private ownership and is 10 ha (25 ac) in size. In 1996, over 1,000 plants were found along the northwest-facing lower, mid, and upper slopes, making this one of the best sites in Kentucky for *Arabis perstellata*.

Unit 5. Davis Branch in Franklin County, Kentucky

This unit occurs along the east side of Harvieland Drive and Davis Branch. This unit contains approximately 3 ha (7 ac) and is privately owned. Plants were first observed at this site in 1990. In 2001, more than 200 plants were found along the south-facing slope throughout the ravine system.

Unit 6. Onans Bend in Franklin County, Kentucky

Unit 6 occurs north of Onans Bend Road and east of KY Highway 12. The unit lies along the banks of an unnamed stream near its mouth with the west bank of the Kentucky River. This unit is privately owned and contains approximately 12 ha (30 ac). Plants at this unit were first observed in 1979. In 1990, more than 100 plants were found on the south-facing slope. The plants were exceptionally vigorous. The site is threatened by weed competition.

Unit 7. Shadrock Ferry Road in Franklin County, Kentucky

This unit is located along the north side of Shadrock Ferry Road (KY Highway 898). Property at this location is in private ownership. This unit is approximately 15 ha (37 ac) in size. Plants were first observed at this site in 1996. In 2001, more than 100 plants were found on the south-facing slope.

Unit 8. Hoover Site in Franklin County, Kentucky

This unit lies northwest of the City of Frankfort, along the west side of the Kentucky River on slopes bordering two unnamed tributaries. Plants are widely scattered in small groups along the Kentucky River bluff from river kilometer (km) 98.6 to 101.7 (river mile 61.3 to 63.2. This unit is in private ownership and contains approximately 83 ha (205 ac). The plants were first observed in 1990. In 1996, more than 200 plants were found.

Unit 9. Longs Ravine Site in Franklin County, Kentucky

Unit 9 is located north of the City of Frankfort and Lewis Ferry Road. This unit lies east of the Kentucky River in a large ravine and along the steep slopes above the river. This unit is privately owned. There are approximately 30 ha (74 ac) in this unit. In 1990, more than 250 plants were found on the northeast, southwest, and northwest-facing slopes.

Unit 10. Strohmeiers Hill in Franklin County, Kentucky

This unit is located south of the Town of Swallowfield and adjacent to Strohmeier Road and U.S. 127. It occurs on steep slopes on the south side of Elkhorn Creek and on the east bank of the Kentucky River, south of the confluence with Elkhorn Creek. The plants at this site were first observed in 1930. The property is privately owned. The site is approximately 20 ha (49 ac) in size. In 1994, the site contained more than 200 flowering plants. The plants were exceptionally vigorous and occurred throughout a large area, making this one of the best populations of *Arabis perstellata* in Kentucky

Unit 11. U.S. 127 in Franklin County, Kentucky

Unit 11 is located along the east side of U.S. 127 in a ravine just southeast of Elkhorn Creek. This privately owned site is approximately 11 ha (27 ac) in size. The plants were first observed in 2001, at which time approximately 100 plants were found on the west-facing slope.

Unit 12. Camp Pleasant Branch Woods in Franklin County, Kentucky

Unit 12 is located along the south side of Camp Pleasant Road (KY Highway 1707). This site is privately owned and contains approximately 14 ha (35 ac). The first observance of plants at this site was in 1987. In 2001, more than 100 plants were found along the lower northwest-facing slope. Plants at this site are threatened by competition from weeds.

Unit 13. Saufley in Franklin County, Kentucky

Unit 13 occurs west of the KY Highway 1900 bridge over Elkhorn Creek on the hillside above the creek. The land ownership for this unit is private. The site is approximately 8 ha (20 ac) in size. Plants were first observed in 1988. In 1996, more than 100 plants were found along the top of the ridge on the northeast-facing slope.

Unit 14. Clements Bluff in Owen County, Kentucky

This unit is located in a ravine facing the Kentucky River along the east side of KY Highway 355. The site is owned by the State of Kentucky and is part of the Kentucky River Wildlife Management Area. This unit is approximately 11 ha (27 ac) in size. The plants were first observed at this site in 1980 on the north-facing slope. In 1996, approximately 100 plants occurred at the site.

Unit 15. Monterey U.S. 127 in Owen County, Kentucky

Unit 15 is located 1.6 km (1 mile) north of the City of Monterey, just north of the junction of U.S. 127 and KY Highway 355. The property is privately owned and is approximately 12 ha (30 ac) in size. Plants were first observed at this site in 1996. In 1997, 150 plants were found along the southwest-facing slope of an unnamed tributary to the Kentucky River. The site is being threatened by weedy competition.

Unit 16. Craddock Bottom in Owen County, Kentucky

This unit is located south of the City of Monterey. It occurs along the west side of Old Frankfort Pike on the west-facing slope just east of Craddock Bottom. Property at this site is privately owned and contains approximately 23 ha (57 ac). In 1996, over 150 plants were found. In 1996, there was evidence of logging in the surrounding area.

Unit 17. Backbone North in Franklin County, Kentucky

Unit 17 is located north of KY Highway 1900. It occurs in an old river oxbow west of the existing Elkhorn Creek and is privately owned. The unit size is approximately 11 ha (27 ac). Plants were first observed at this site in 1981. In 1990, more than 200 plants were found on the southeast facing slope.

Unit 18. Scales Mountain in Rutherford County, Tennessee

This unit is located west of the City of Murfreesboro on Scales Mountain, 1.6 km (1 mile) south of Highway 96. The site is privately owned and is 36 ha (89 ac) in size. Plants were first observed at this site in 1985. In 2000, more than 100 plants were found on the north-facing slope. The primary threat to this site is competition from weeds.

Unit 19. Sophie Hill in Rutherford County, Tennessee

Unit 19 is located west of the City of Murfreesboro on Sophie Hill, which lies between Newman and Coleman Hill Roads. The property at this site is privately owned. The unit is approximately 16 ha (40 ac) in size. The first observance of *Arabis perstellata* on this site was in 1991. In 2000, more than 200 plants were found on the northwest side of Sophie Hill.

Unit 20. Indian Mountain in Rutherford County, Tennessee

Unit 20 is located west of the City of Murfreesboro on Indian Mountain between Highway 96 and Coleman Hill Road. This site is privately owned. The unit size is approximately 28 ha (69 ac). In 2000, over 2,600 plants were found. This is the best site for *Arabis perstellata* in Tennessee. Logging appears to be the biggest threat to this exceptional site.

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

There are no known populations of *Arabis perstellata* occurring on Federal lands. However, activities on private, State, or city lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act, a permit under section 10(a)(1)(B) of the Act from us, or some other Federal action—including funding (*e.g.*, from the Federal Highway Administration (FHWA), Federal Aviation Administration, or Federal Emergency Management Agency); permits from the Department of Housing and Urban Development; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy, or any other Federal agency; and construction of communication sites licensed by the Federal Communications Commission—will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of *Arabis perstellata* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbances that destroy or degrade primary constituent elements of the plant (*e.g.*, clearing, tilling, grading, logging, construction, and road building);

(2) Activities that directly or indirectly affect *Arabis perstellata* plants or underlying seed bank (*e.g.*, herbicide application that could degrade the habitat on which the species depends, incompatible introductions of non-native herbivores, incompatible grazing management, clearing, tilling, grading, construction, and road building);

(3) Activities that encourage the growth of *Arabis perstellata* competitors (*e.g.*, widespread fertilizer application, road building, clearing, logging); and

(4) Activities that significantly degrade or destroy *Arabis perstellata* pollinator populations (*e.g.*, pesticide applications).

Previous Section 7 Consultations

Several section 7 consultations for Federal actions affecting *Arabis perstellata* and its habitat have preceded this critical habitat proposal. The action agencies have included the USACE, U.S. Department of Agriculture Rural Development, FHWA, and EPA.

Since listing, we have conducted 33 informal and no formal consultations involving *Arabis perstellata*. The informal consultations, all of which concluded with a finding that the proposed Federal action would not affect or would not likely adversely

affect *Arabis perstellata*, addressed a range of actions, including highway and bridge construction, maintenance of utility lines (*e.g.*, water and sewer lines) along existing roads, and building construction.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Kentucky-Frankfort Ecological Services Office (502/695–0468)

Tennessee-Cookeville Ecological Services Office (931/528–6481)

To request copies of the regulations on listed wildlife and plants or inquire about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (telephone 404/679–4176; facsimile 404/679–7081).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We have completed a draft analysis of the economic impacts of designating these areas as critical habitat that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*. The results of our draft analysis suggest that the potential economic impacts of the proposed designation range from $65,000 to $272,000 over the next 10 years. Please refer to the draft analysis for more details concerning the methodological approach and finding of the analysis. Comments will be accepted on the draft economic analysis during the comment period on this proposed rule. Copies of the draft economic analysis of this proposed critical habitat designation are available on the Internet at *http://cookeville.fws.gov* or by contacting our Cookeville, TN field office (see **ADDRESSES**).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not generally prohibited by the Act on private land, listed plant species may also be covered in an HCP for wildlife species. Currently, no HCPs exist that include *Arabis perstellata* as a covered species. In the event that future HCPs covering *Arabis perstellata* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Arabis perstellata*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival and conservation of the species in the context of constructing a system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology. We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Arabis perstellata*, and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** Section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this proposed critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.*, 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.*, 175 F.3d 1027, (D.C. Cir. 1999)).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Arabis perstellata*.

If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we believe this will result in minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required because of the presence of the listed species, and consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Designation of critical habitat could result in an additional economic burden on small entities because of the requirement to reinitiate consultation for ongoing Federal activities. However, since *Arabia perstellata* was listed in 1995, we have conducted only 33 informal and no formal consultations involving this species. Most of these consultations involved Federal projects or permits to businesses that do not meet the definition of a small entity (*e.g.*, federally sponsored projects). Also, a number of USACE permit actions involved other large public entities (*e.g.*, State-sponsored activities) that do not meet the definition of a small entity. No formal consultations involved a non-Federal entity. However, about five informal consultations were on behalf of a private business. Most of these informal consultations were utility-related (*e.g.*, water lines and sewer lines), some being proposed by small entities. We do not believe that the number of utility-related small entities meets the definition of substantial described above.

All of the proposed critical habitat, with the exception of 11 ha (27 ac) of State-owned land, is under private ownership. Small entity economic activities that may require Federal authorization or permits include utility-related activities such as pipelines and powerlines. However, we are not aware of a significant number of future activities that would require Federal permitting or authorization in these areas. Historically, there have been less than two informal consultations per State per year involving both large and small private entities. There are no Federal lands included in these proposed critical habitat designations. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. We have concluded that it would not affect a substantial number of small entities. There would be no additional section 7 consultations resulting from this rule as all proposed critical habitat is currently occupied by *Arabia perstellata*, so the consultation requirement has already been triggered. These consultations are not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, we are certifying that

the proposed designation of critical habitat for *Arabia perstellata* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after review of our economic analysis and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the draft economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for *Arabis perstellata* include recreation, grazing, and logging. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no new obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing to designate approximately 408 ha (1,008 ac) of lands in Franklin and Owen counties in Kentucky, and Rutherford county in Tennessee, as critical habitat for *Arabis perstellata* in a takings implication assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State natural resource agencies in Kentucky and Tennessee. The impact of the proposed designation on State and local governments and their activities is not believed to be significant, and we are examining this more fully in the economic analysis of the proposal, on which we are seeking public comment. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than forcing/necessitating them to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act, as amended. This rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs that are essential for the conservation of *Arabis perstellata*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are not aware of any Tribal lands essential for the conservation of *Arabis perstellata*. Therefore, the proposed critical habitat for *Arabis perstellata* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Cookeville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Timothy Merritt (*see* **ADDRESSES** section), 931/528–6481, extension 211.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In section 17.12(h), revise the entry for the "*Arabis perstellata*" under "FLOWERING PLANTS" in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Arabis perstellata	Rock-cress, Braun's	U.S.A. (KY, TN)	Brassicaceae	E	570	17.96(a)	NA

3. In § 17.96, amend paragraph (a) by adding an entry for "Family Brassicaceae" *Arabis perstellata* in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress).

(1) Critical habitat units are depicted for Franklin and Owen Counties, Kentucky, and Rutherford County, Tennessee, on the maps below.

(2) Based on the best available information, primary constituent elements essential for the conservation of *Arabis perstellata* are:

(i) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*);

(ii) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(iii) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(iv) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(v) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

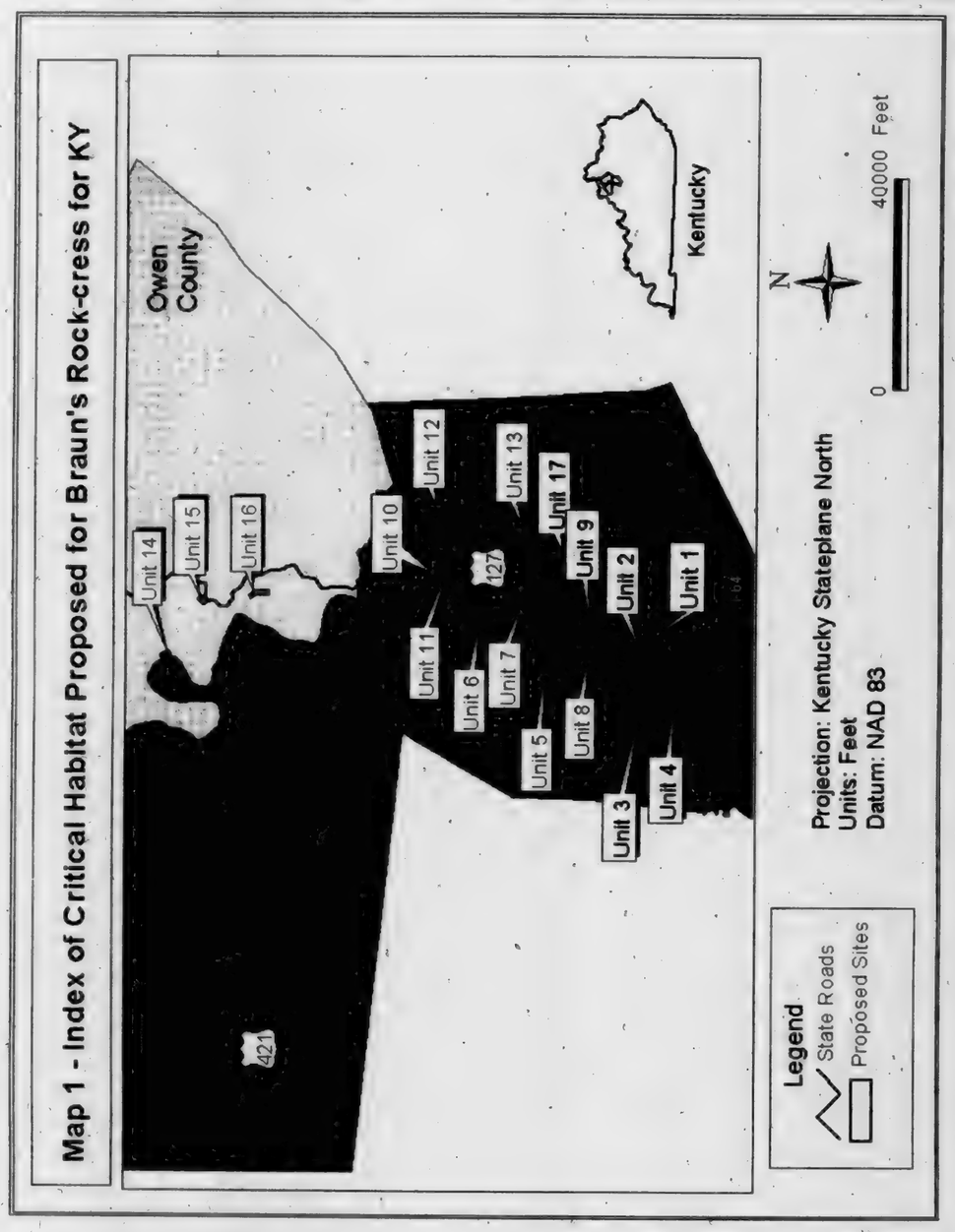
(3) Existing features and structures made by people, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements and are not critical habitat. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and proposed critical habitat units were then mapped in feet using Kentucky State Plane North, NAD 83, and Tennessee State Plane, NAD 83, coordinates.

(ii) Map 1, Index of Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310–55–P



BILLING CODE 4310-55-C

(5) Unit 1: Sky View Drive, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453158.08, 257013.95; 1455318.02, 258193.89; 1455537.40, 256159.34.

(6) Unit 2: Benson Valley Woods, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1472992.79, 265095.85; 1473291.28, 265164.80; 1473577.90, 265164.80; 1474816.35, 265479.91; 1475173.07, 265669.44; 1475272.97, 265517.23; 1474329.11, 265036.38; 1473438.80, 264939.25; 1472992.42, 264858.64.

(7) Unit 3: Red Bridge Ridge, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1442614.00, 258863.10; 1443144.60, 258502.62; 1441670.26, 257801.90; 1441581.15, 258012.52.

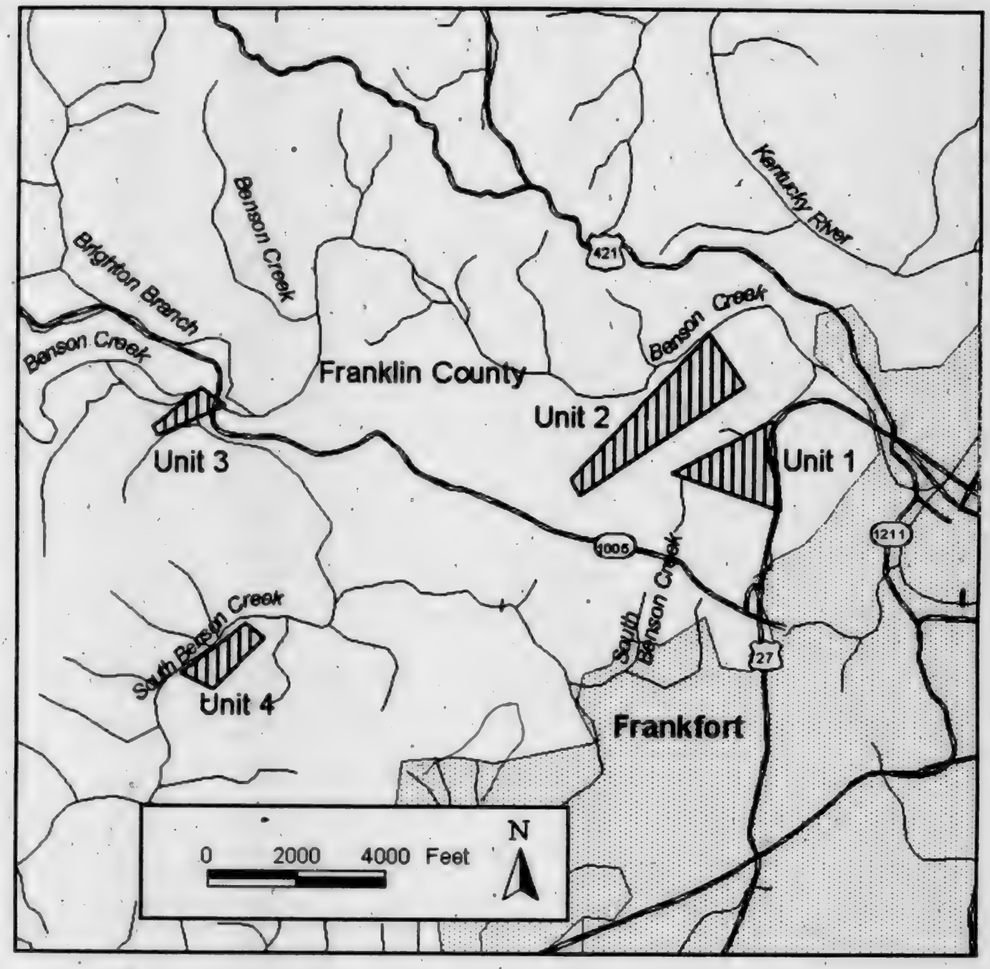
(8) Unit 4: Tributary to South Benson Creek, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1443620.37, 253609.15; 1444037.01, 253294.00; 1442925.97, 252129.54; 1442210.20, 252471.40.

(ii) Map 2, Units 1, 2, 3, and 4, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310-55-P

Map 2 - Units 1, 2, 3 and 4: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(9) Unit 5: Davis Branch, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1450167.05, 277739.69; 1450767.00, 277750.87; 1450761.41, 277314.88; 1450202.46, 277180.73.

(10) Unit 6: Onans Bend, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1458610.26, 289401.40; 1459066.14, 289401.50; 1459484.82, 288182.67; 1458210.30, 287759.68; 1458191.76, 288155.34.

(11) Unit 7: Shadrock Ferry Road, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1461695.27, 280422.79; 1462823.09, 280986.70; 1463880.43, 280256.18; 1463463.90, 279506.43.

(12) Unit 8: Hoover Site, Franklin County, Kentucky.

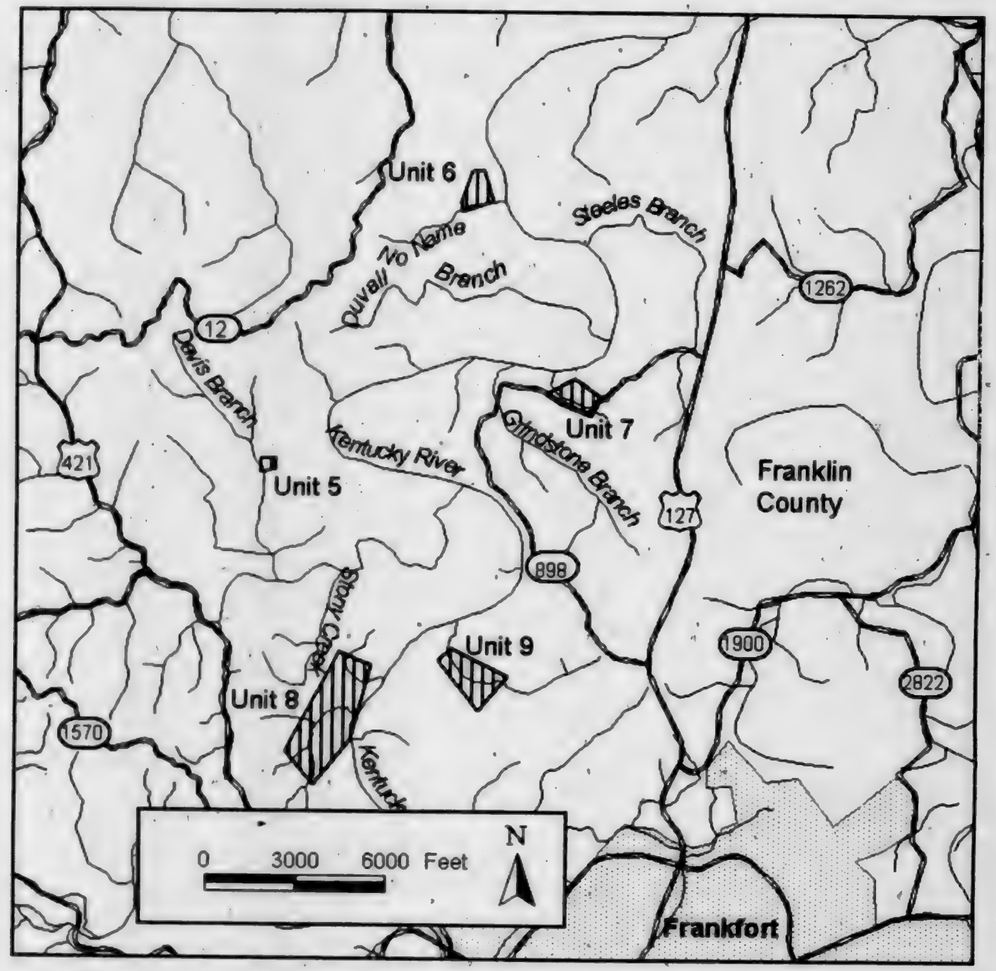
(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453446.71, 269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(13) Unit 9: Longs Ravine Site, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1457404.81, 269596.23; 1457959.89, 270126.46; 1460205.09, 268958.30; 1459003.79, 267607.86.

(ii) Map 3, Units 5, 6, 7, 8, and 9, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 3 - Units 5, 6, 7, 8 and 9: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(14) Unit 10: Strohmeiers Hills, Franklin County, Kentucky.

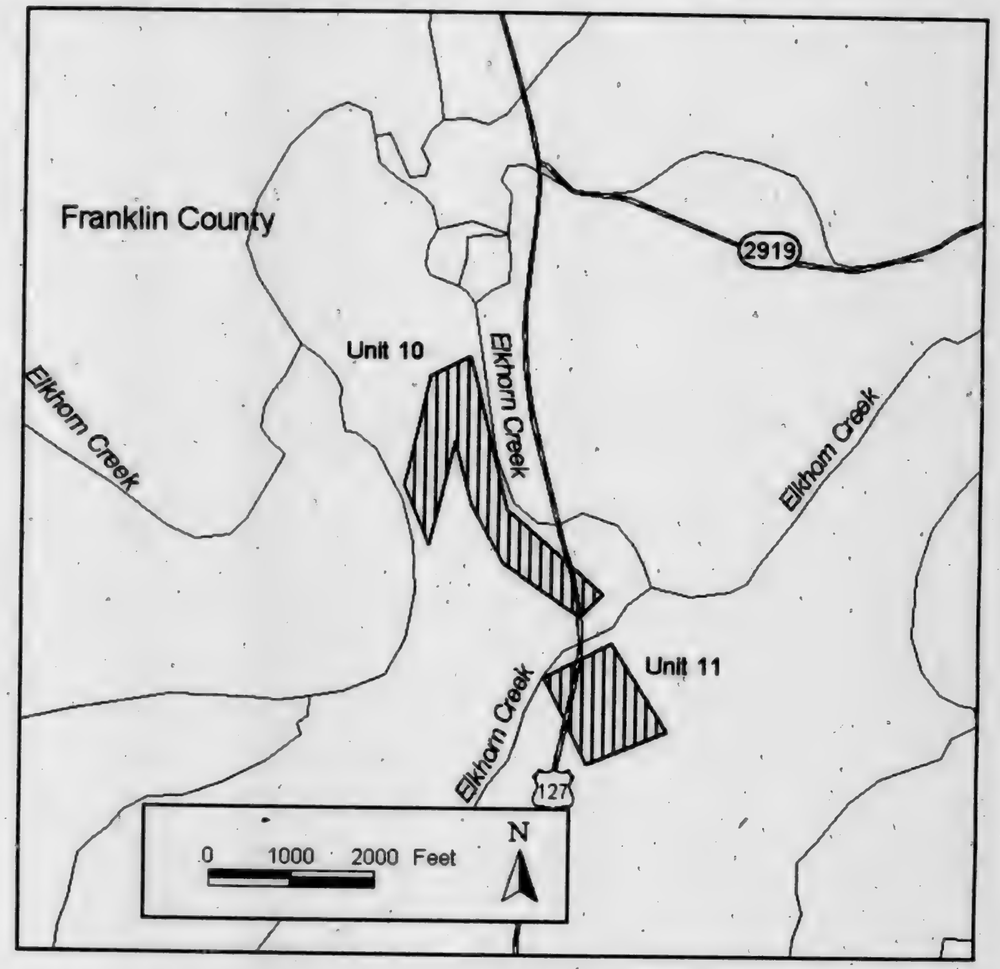
(i) From USGS 1:24,0000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1467733.92, 298729.06; 1468218.13, 298978.50; 1468695.00, 297144.38; 1469854.17, 296131.94; 1469568.53, 295848.76; 1468658.32, 296498.77; 1468247.47, 297181.06; 1468056.72, 297936.72; 1467763.26, 296704.19; 1467440.46, 297415.83.

(15) Unit 11: U.S. 127, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky. Lands bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1469164.24, 295115.19; 1469939.07, 295511.62; 1470629.82, 294466.49; 1469662.78, 294058.06.

(ii) Map 4, Units 10 and 11, Critical Habitat Proposed for Braun's-Rock-cress, Kentucky, follows:

Map 4 - Units 10 and 11: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(16) Unit 12: Camp Pleasant Branch, Franklin County, Kentucky.

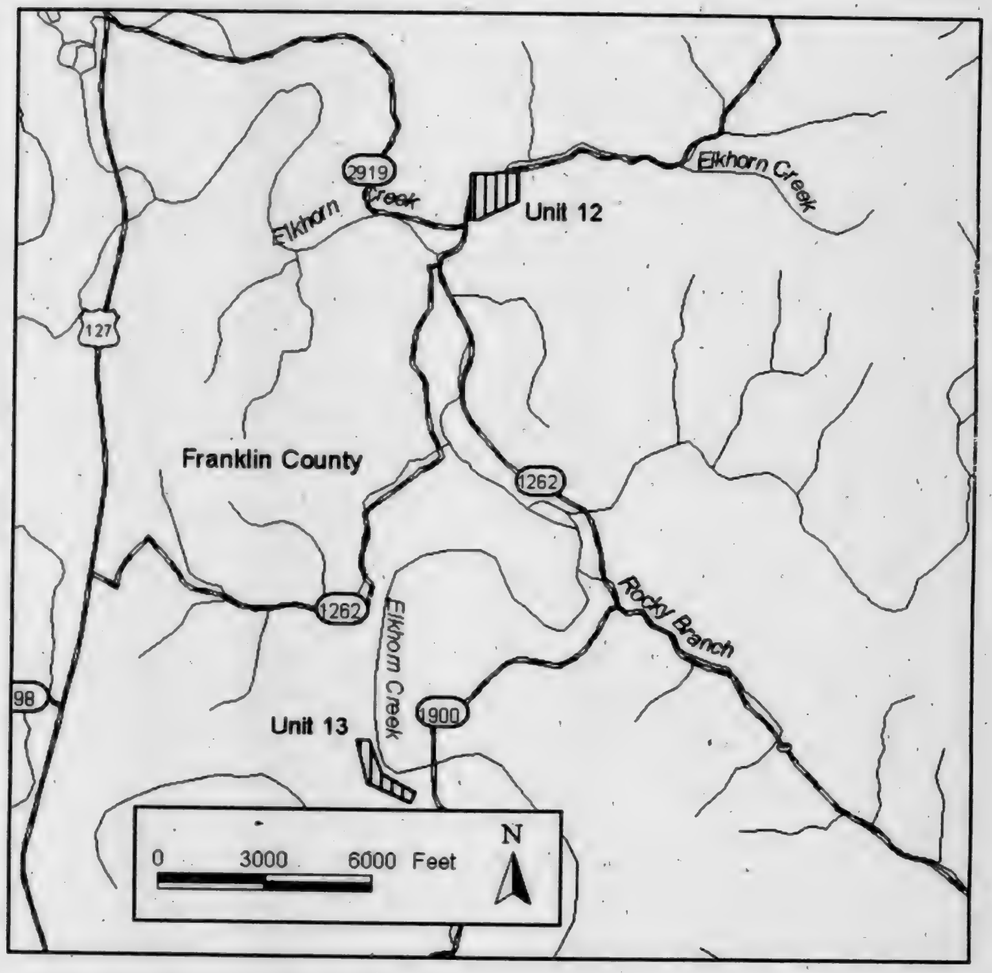
(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453446.71, 269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(17) Unit 13: Saufley, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1476234.26, 281055.05; 1476538.92, 281115.98; 1476924.83, 280171.52; 1477848.97, 279612.98; 1476538.92, 279887.17.

(ii) Map 5, Units 12 and 13, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 5 - Units 12 and 13: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(18) Unit 14: Clements Bluff, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangle Gratz, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1451615.01, 349295.36; 1452022.39, 349505.61; 1452910.30, 347908.24; 1452180.35, 347473.85.

(19) Unit 15: Monterey U.S. 127, Owen County, Kentucky.

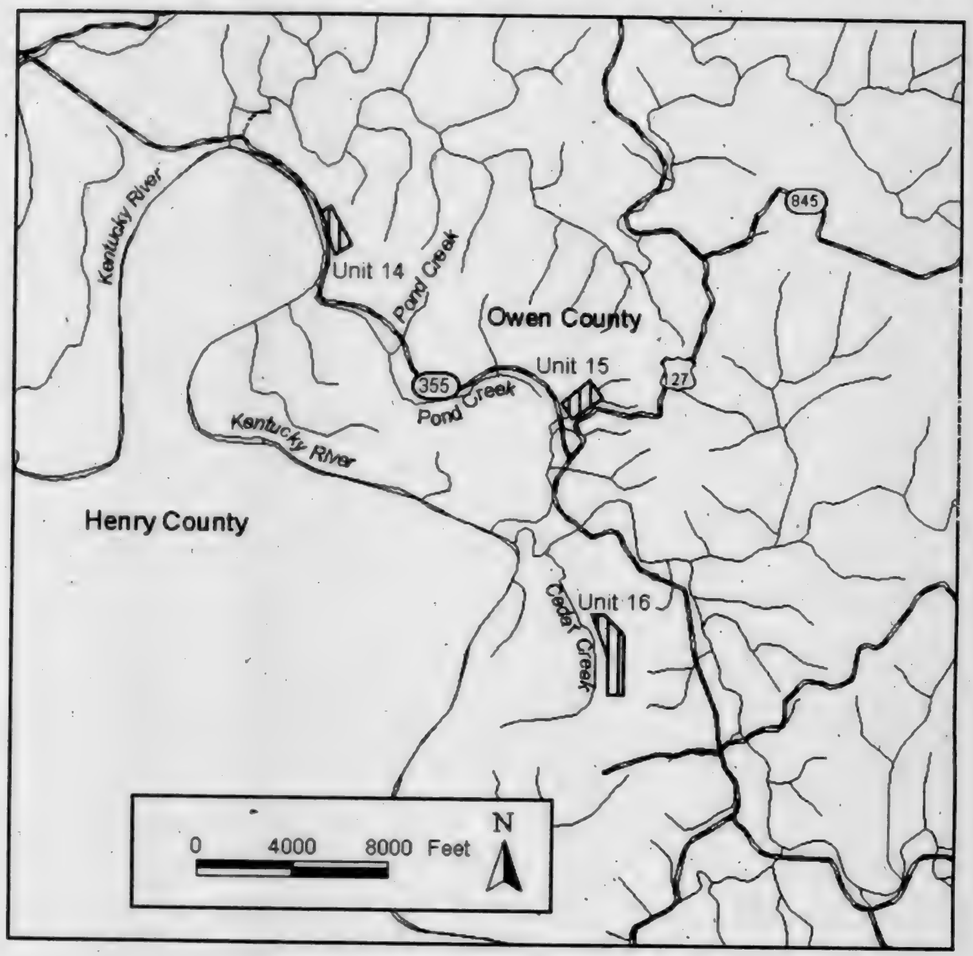
(i) From USGS 1:24,000 quadrangle Monterey, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1462791.17, 342357.03; 1463347.35, 341639.38; 1462109.41, 340778.21; 1461660.88, 341370.27.

(20) Unit 16: Craddock Bottom, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangles Frankfort East and West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1463039.86, 332602.65; 1463575.00, 332555.43; 1464377.71, 331784.20; 1464377.71, 329218.68; 1463748.13, 329202.94; 1463716.65, 330918.53.

(ii) Map 6, Units 14, 15, and 16, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 6 - Units 14, 15 and 16: critical habitat for Braun's rock-cress in Kentucky.



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

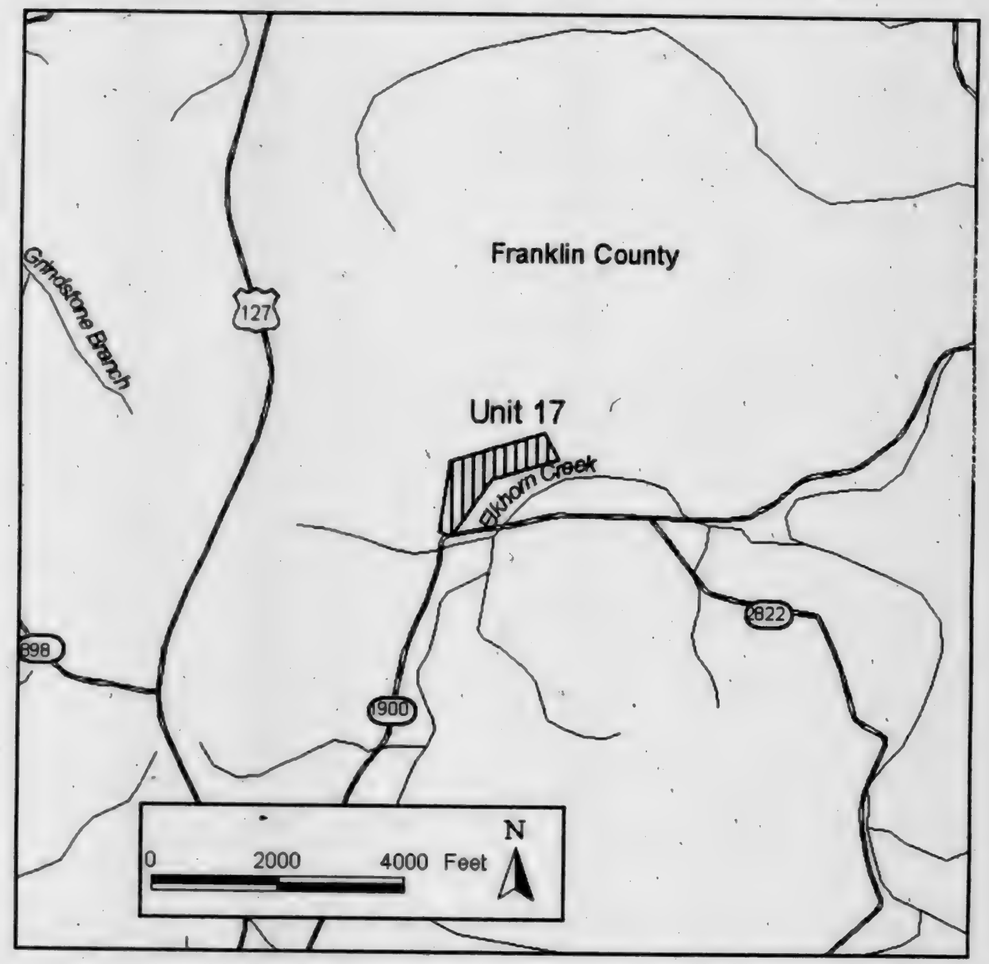
(21) Unit 17: Backbone North, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates:

1470487.13, 273240.06; 1471988.00, 273697.42; 1472199.59, 273279.29; 1471168.97, 272953.00; 1470516.94, 272031.81; 1470339.01, 272116.74.

(ii) Map 7, Unit 17, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 7 - Unit 17: critical habitat for Braun's rock-cress in Kentucky.

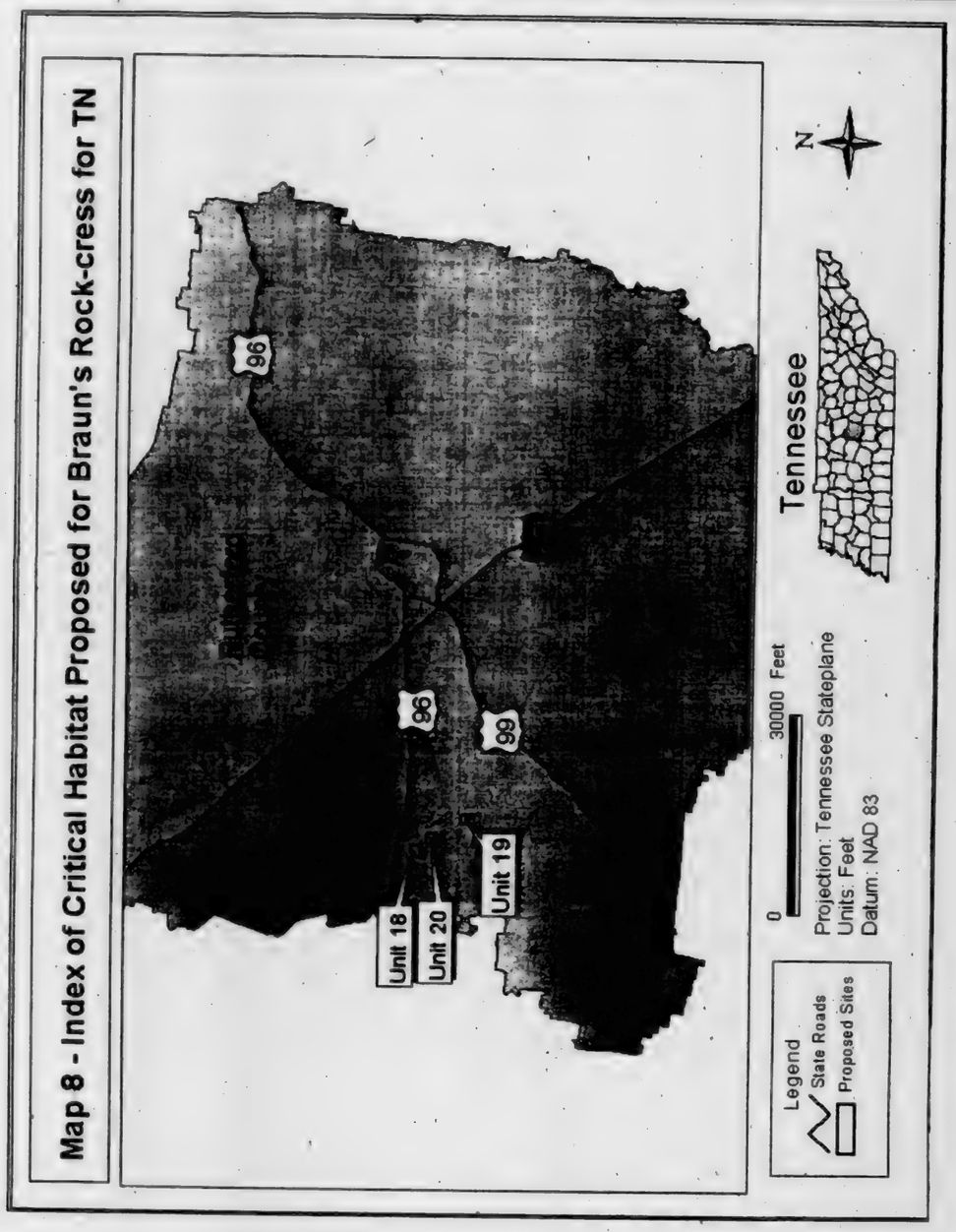


This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(21) Index map for Tennessee.

(i) Data layers defining map unit were created on a base of USGS 7.5′ quadrangles and proposed critical habitat units were then mapped in feet using Tennessee State Plane, NAD 83, coordinates.

(ii) Map 8, Index of Critical Habitat Proposed for Braun's Rock-cress, Tennessee, follows:



(22) Unit 18: Scales Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/ NAD83 (feet) coordinates (E,N): 1797871.97, 548892.57; 1800101.59, 549457.83; 1800070.19, 547856.27; 1797934.77, 547071.19.

(23) Unit 19: Sophie Hill, Rutherford County, Tennessee.

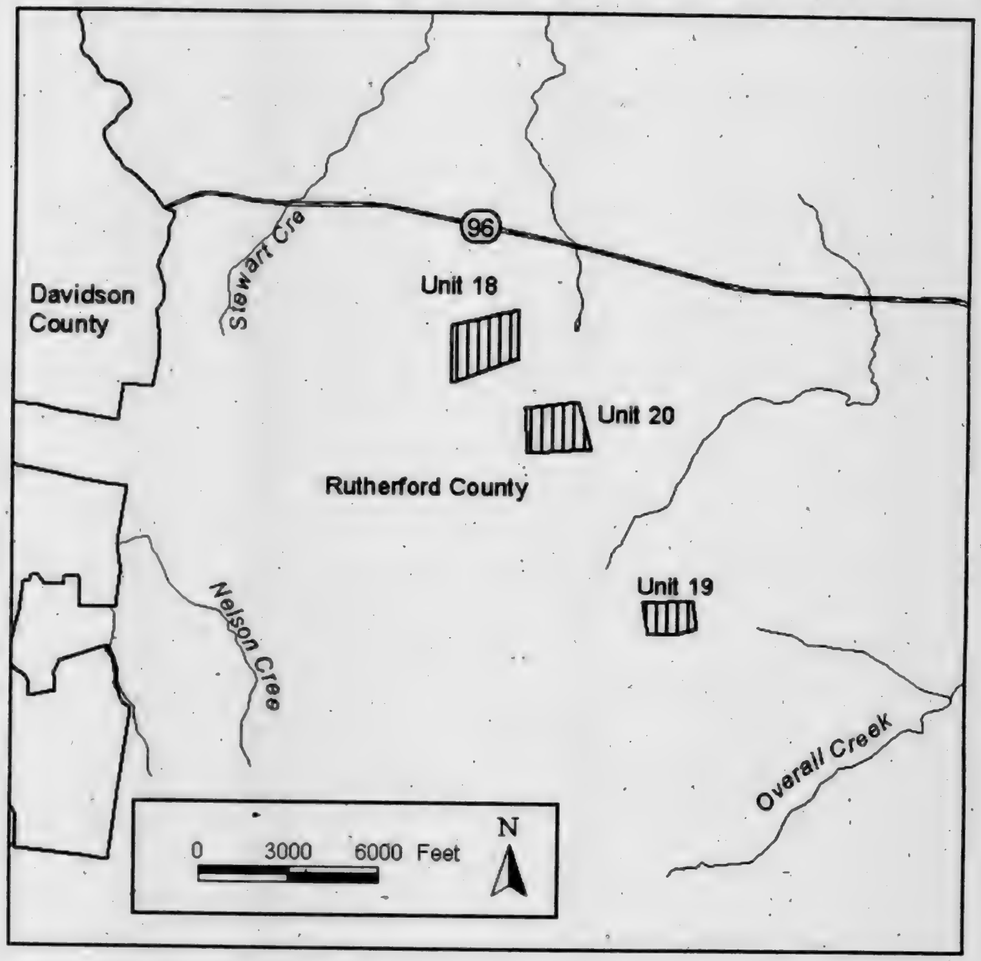
(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/ NAD83 (feet) coordinates (E,N): 1804270.37, 539691.44; 1805958.29, 539809.20; 1806076.05, 538867.10; 1804427.38, 538631.58.

(24) Unit 20: Indian Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/ NAD83 (feet) coordinates (E,N): 1800305.71, 546168.35; 1802111.40, 546443.12; 1802543.19, 544794.46; 1800423.48, 544676.69.

(ii) Map 9, Units 18, 19, and 20, Critical Habitat for the Braun's Rock-cress, Tennessee, follows:

Map 9 - Units 18, 19 and 20: critical habitat for Braun's rock-cress in Tennessee.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Dated: May 23, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–13509 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Record of Pooled Farm Allotment or Quota and Application for Transfer of Allotment or Quota From Pool

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the reinstatement with revision of a previously approved information collection associated with two forms that are used in administering the tobacco marketing quota program.

DATES: To be assured of consideration, comments about this notice must be received in writing on or before August 4, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750-S, STOP 0514, Washington, DC 20250–0514 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted via facsimile to (202) 720–0549 or by e-mail to *tob_comments@wdc.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco Division, (202) 720–2715 or *ann_wortham@wdc.usda.gov*. The public may inspect comments received and copies of the forms at the Tobacco Division at the address shown above during normal business hours. Visitors are encouraged to call ahead at (202) 720–7413 to facilitate entry into the building. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collections

Title: Record of Pooled Farm Allotment of Quota.

OMB Control Number: 0560–0033.

Form Number: MQ–177.

Type of Request: Reinstatement With Revision of a Previously Approved Information Collection.

Abstract: The 'Record of Pooled Farm Allotment or Quota' form is used to record tobacco allotments or quotas that are to be held in a reserve 'pool' for landowners who have been displaced because their farms have been taken by power of 'eminent domain' by a Federal, State, or other agency either by court proceedings to condemn the land or by negotiation between the agency and the owner of the land. When an owner is displaced from a farm in such a way, she/he shall notify the FSA County Committee at the FSA County office that serves that farm so that the farm allotment or quota may be placed in an eminent domain pool. The allotment or quota thus placed in a pool is held for the displaced owners to transfer to other farms they own or may purchase. An owner must request transfer of the allotment or quota from the pool within 3 years from the date of displacement from the farm to which the allotment or quota originally belonged. Pooled allotments or quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with tobacco marketing quota regulations. (An owner is a person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of eminent domain acquisition.)

Estimate of Annual Burden: 50 minutes.

Type of Respondents: Tobacco allotment or quota holders who are displaced from their land when such land is taken by eminent domain acquisition.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Title: Application for Transfer of Allotment or Quota From Pool.

OMB Control Number: 0560–0033.

Form Number: MQ–178.

Type of Request: Reinstatement with Revision of a Previously Approved Information Collection.

Abstract: A person who has been displaced from her/his farm by eminent domain and who placed that farm's tobacco allotment or quota in a pool, will use the 'Application for Transfer of Allotment or Quota From Pool' to transfer the pooled tobacco to another farm which she/he owns or has purchased. The request for transfer must be made within 3 years from the date of displacement and submitted for approval to the FSA County office that serves that farm.

Estimate of Annual Burden: 50 minutes.

Type of Respondents: Tobacco allotment or quota holders who are displaced from their land when such land is taken by eminent domain acquisition.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Comment is invited on: (1) Whether these collections of information are necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the submission for Office of Management and Budget Approval.

Signed in Washington, DC, on May 23, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–13768 Filed 6–2–03; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Aviation Forms

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the currently approved collection of four aviation forms that assist in the documentation of pilot and aircraft qualifications, approval, and data records. These OMB approved forms include; (1) Airplane Pilot Qualifications and Approval Record (FS–5700–20); (2) Helicopter Pilot Qualifications and Approval Record (FS–5700–20a); (3) Airplane Data Record (FS–5700–21); (4) and Helicopter Data Record (FS–5700–21a).

DATES: Comments must be received in writing on or before August 4, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Jim Barnett, Fire and Aviation Staff, Mail Stop 1107, 1400 Independence Avenue, Washington DC 20250–1107.

Comments also may be submitted via facsimile to (202) 205–1401 or by e-mail to: *jbarnett02@fs.fed.us*.

The public may inspect comments received at the Yates Building, 1400 Independence Avenue, Washington DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–0985 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Jim Barnett, Fire and Aviation Staff, (202) 205–0985. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Airplane Pilot Qualifications and Approval Record (FS–5700–20), Helicopter Pilot Qualifications and Approval Record (FS–5700–20a), Airplane Data Record (FS–5700–21), and Helicopter Data Record (FS–5700–21a).

OMB Number: 0596–0015.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension with revision.

Abstract: The Forest Service contracts with approximately 400 vendors for aviation services that are utilized in resource protection and project management. Total annual use of contract aircraft and pilots in recent years has exceeded 100,000 hours. Hence, in order to maintain an acceptable level of safety, mission preparedness, and cost effectiveness in aviation operations, Forest Service contracts call for rigorous qualifications for pilots and specific condition; equipment and performance requirements for aircraft. Aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires.

To ensure agency contracting officers that the pilots and aircraft meet the specific Forest Service qualifications and other requirements for aviation operations, prospective contract pilots must provide the information on the FS–5700–20 and FS–5700–20a forms. Contract Officers' Technical Representatives use the FS–5700–21 and FS–5700–21a forms as worksheets when checking the aircraft for contract compliance. A portion of the completed form is furnished to the contractor as proof of compliance.

The following changes were incorporated into the forms: (1) Below the title of each of the existing forms is a Reference to FSH 5709.12. This handbook no longer exists. The replacement reference should read FSH 5709.16. (2) Forms FS–5700–21 (Airplane Data Card) and FS–5700–21a (Helicopter Data Card) reflect the many changes that have occurred in the contracting and aircraft approval process since the forms were last updated. The basic changes consist of removing some unnecessary information from the "cards," and adding information to the "Authorized Uses" blocks. In the other sections of the form the changes reflect the deletion of unneeded information and the addition of blocks to meet new requirements such as updated Avionics and Synthetic Long-Line requirements.

Without the information supplied on these forms, Forest Service contracting officers and pilot and aircraft inspectors cannot determine if pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe, effective accomplishment of Forest Service-specified flying missions. Without reasonable basis to determine pilot qualifications and aircraft capability, Forest Service employees using these resources would be unnecessarily exposed to flying hazards.

The completed forms are maintained in Forest Service Regional headquarters under the care of the Regional aviation pilot and aircraft inspectors. Copies of the forms may be shared with the Office of Aircraft Services, Department of Interior, since each organization accepts contract inspections conducted by the other as meeting their own requirements.

The data collected from these forms will be used to document the basis for approval of contract pilots and aircraft for specific Forest Service aviation missions. Based upon the approvals documented on these forms, approval cards are issued to each contractor pilot and for each contractor aircraft. Forest Service personnel verify possession of properly approved cards before using contractor pilots and aircraft.

The information will be collected and revised by contracting officers or their representatives including the aircraft inspectors, and will represent data that determines whether the aircraft and/or pilots meet all contract specifications in accordance with Forest Service Handbook 5709.16, chapter 10, section 16. If the information is not collected by the Forest Service, the burden of collection, inspection and approval will be placed on another agency, most likely the Federal Aviation Administration. However, a joint study, conducted with the Department of Transportation, concluded that the Forest Service can complete their contract inspections more economically than by transferring this additional responsibility to the Federal Aviation Administration.

Estimate of Annual Burden: One hour.

Type of Respondents: Aircraft vendors that wish to contract with the Federal government for aircraft services and pilots.

Estimated Annual Number of Respondents: Hundreds of vendors will respond each year. Each of these vendors may have multiple aircraft and pilots.

Estimated Annual Number of Responses per Respondent: Contract vendors will be required to provide one response per year for each aircraft and pilot that will be involved with a Federal contract.

Estimated Total Annual Burden on Respondents: One and a half (1.5) hours per respondent per year.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 28, 2003.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 03–13784 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Final Environmental Impact Statement for Deadman Creek Ecosystem Management Projects, Colville National Forest, Ferry County, WA

AGENCY: Forest Service.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a supplement to the final environmental impact statement (EIS) for the Deadman Creek Ecosystem Management Projects on the Three Rivers Range District of the Colville National Forest. The draft supplemental EIS will display the original alternatives as described in the final EIS. Specific actions include silviculture treatments that include timber harvest, pre-commercial thinning post and pole removal, post harvest fuels treatments, natural fuels under-burning, site preparation and reforestation, establishment of marten and pileated woodpecker management requirement areas, new road construction, road reconstruction, and road maintenance. The draft supplemental EIS will add to and update the analysis described in the final EIS. The supplemental information includes updated data in all specialist reporting areas. Emphasis areas where considerable changes were made in text and/or data include recreation/visuals, soils, fishery biology, hydrology, transportation, and roadless area analysis. There will be no additional scoping period on this project. There will be a 45 day public review and comment period on the draft supplemental EIS.

ADDRESSES: Send written comments regarding the scope of this supplemental analysis to Rolando Ortegon, Acting Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114.

FOR FURTHER INFORMATION CONTACT: Tom Pawley, Deadman Creek Ecosystem Management Projects Leader, Three Rivers Ranger District, 255 West 11th, Kettle Falls, Washington 99141, phone (509) 738–7700.

SUPPLEMENTARY INFORMATION: The Notice of Intent to prepare an environmental impact statement (EIS) for this proposed action was originally published in the **Federal Register** on November 12, 1996. The draft EIS was released February 11, 2000 with the comment period ending April 28, 2000. On March 20, 2001 the Record of decision (ROD) to implement Alternative D (modified) of the Deadman Creek Ecosystem Management Projects was signed. On September 7, 2001, the Colville National Forest Supervisor withdrew the ROD. New supplemental information will be analyzed in this draft supplemental EIS to address issues raised by public and appellants in the appeal of the ROD.

The original key issues will guide the analysis. These issues are the effects of new road construction, and the effects of entry into inventoried roadless areas and other areas with similar characteristics. The supplemental information to be analyzed includes: a better defined purpose and need section; indicators or units of measure for key issues; changes in regulations and requirements regarding threatened, endangered, and sensitive wildlife and fish species, and sensitive plant species, and how that affects the proposed project; the results of additional field work conducted in soils and hydrology; supplemental information on recreation within the project areas; changes in direction regarding Inventories Roadless Areas and other areas lacking classified roads; inclusion of a required Roads Analysis report; and additional cumulative effects in most of the resource areas.

The public is invited to offer suggestions and comments in writing following the release of the draft supplemental EIS. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal for subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 127(d); and any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft supplemental EIS is expected to be filed with the Environmental Protection Agency (EPA) and released for public review June 2003. The comment period on the draft supplemental will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft supplemental EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 509, 553 (1978). Also, environmental objections that could be raised at the draft supplemental EIS stage but that are not raised until after completion of the final supplemental EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 400 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and responded to them in the final supplemental EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft supplemental EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final supplemental EIS will be completed in September 2003. In the final supplemental EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft supplemental EIS and applicable laws, regulations, and policies considered in making the decision regarding the Deadman Creek Ecosystem Management Projects. The Responsible Official is the Forest Supervisor of the Colville National Forest. The Responsible Official will determine which alternative best meets the purpose and need of the project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: May 22, 2003.

Rolando Ortegon,

Acting Forest Supervisor.

[FR Doc. 03–13787 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Reno, Nevada, June 26–28, 2003. The purpose of the meeting is to discuss emerging issues in urban and community forestry and the 2004 Challenge Cost-Share grant program.

DATES: The meeting will be held June 26–28, 2003. A tour of local projects will be held June 26 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Circus Circus Hotel, 500 North Sierra Street, Reno, Nevada. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 2000 Ascot Parkway, Unit 3816, Vallejo, California 94591. Individuals may fax their names and proposed agenda items to (707) 642–9201.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (707) 642–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: May 27, 2003.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 03–13785 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana June 16th and June 24th. The purpose of the meetings is to discuss potential Title II projects for fiscal year 2004 funded by the Secure Rural Schools and Community Self Determination Act.

DATES: June 16th and June 24th. The meetings will be held from 4 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Flathead County Commissioner's Office, Commissioner's Conference Room, 800 South Main, Kalispell, Montana 59901.

FOR FURTHER INFORMATION CONTACT: Kaaren Arnoux, Flathead National Forest, Administrative Assistant, (406) 758–5251.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Time will be available for public input on potential projects the committee may be discussing.

Allen Rowley,

Acting Public Affairs Specialist.

[FR Doc. 03–13795 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, June 18, 2003, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the Cascade American Legion Hall, Cascade, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: May 28, 2003.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 03–13962 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the

meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan (NFP) and to provide advice to federal land managers in the Province. The specific topics to be covered at the meeting include background information of the NFP for new members and updates on the on-going revisions to the NFP.

DATES: The meeting will be held June 20, 2003.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, PO Box 10607, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Neal Forrester, Willamette National Forest, (541) 225–6436,

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: May 28, 2003.

Y. Robert Iwamoto,

Deputy Forest Supervisor, Willamette National Forest.

[FR Doc. 03–13788 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 030527134–3134–01]

Proposed Data Sharing Activity

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of the Census (Census Bureau) conducts the Survey of Industrial Research and Development (R&D). The National Science Foundation (NSF) provides the funding for this data collection. The Census Bureau proposes to provide data collected from the 1997 and 1999 R&D surveys to the Bureau of Economic Analysis (BEA) for statistical purposes exclusively. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we are providing the opportunity for public comment on this data-sharing action. Through the use of these shared data, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames. The NSF will be provided non-confidential aggregate data (public use) and reports that have cleared Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

DATES: Written comments must be submitted on or before August 4, 2003.

ADDRESSES: Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–0100.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed program should be directed to Kimberly Moore, Assistant Division Chief for Special Studies and M3 Programs, Manufacturing and Construction Division, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–6900, by phone on (301) 763–7643 or by fax (301) 457–4583.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Subtitle V) allows the Census Bureau and the BEA to share certain business data for exclusively statistical purposes. Section 524(d) of the Act requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

Section 524(d) also requires us to provide information about the terms of the agreement for data sharing. For purposes of this notice, the Census Bureau has decided to group these terms by three categories. The categories are:

- Shared data
- Statistical purposes for the shared data
- Data access and confidentiality

Shared Data

The Census Bureau proposes to provide the BEA with data collected from the 1997 and 1999 Surveys of Industrial Research and Development (R&D). The agreement also calls for the BEA to share data from its 1997 Foreign Direct Investment in the United States and 1999 U.S. Direct Investment Abroad surveys with the Census Bureau. In the future, the BEA will issue a separate notice addressing this issue.

The BEA will use these data for statistical purposes exclusively. Through record linkage, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames.

Statistical Purposes for the Shared Data

The data collected from the Survey of Industrial Research and Development (R&D) estimate the expenditures of research and development performed by United States-based industrial firms. The survey is conducted annually; however, the proposed data to be shared are from the 1997 and 1999 surveys only. Statistics from the annual surveys are published in the NSF's annual publication series "Research and Development in Industry." Data collected by this survey include company characteristics and R&D spending information. Characteristics data include net sales, total employment, and employment of scientists and engineers. R&D spending data include the following: total spending; federally funded (total and by agency) spending for basic and applied R&D, for basic research by field, and for applied R&D by product group and energy and pollution abatement activities; R&D spending by state; and R&D financed by domestic firms but performed abroad. All data are collected under Sections 131, 182, 224, and 225 of Title 13, United States Code (U.S.C.).

Data Access and Confidentiality

Title 13, U.S.C., protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. All BEA employees with access to these data will attain Census Bureau Special Sworn Status—meaning that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide the BEA with expertise on the aspects of R&D performance in the United States and by U.S. companies abroad; these NSF consultants assisting with the work at the BEA also will attain Census Bureau Special Sworn Status. No confidential data will be provided to the NSF. To further safeguard the confidentiality of the data, the Census Bureau will conduct an Information Technology security review of the BEA prior to sharing any data files. Any results of this research are subject to Census Bureau disclosure protection.

Dated: May 28, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–13853 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of the Eighth New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the eighth new shipper review.

SUMMARY: The Department of Commerce is currently conducting the eighth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China covering the period April 1, 2002, through September 30, 2002. This review covers two exporters. We have preliminarily determined that sales have not been made at less than normal value with respect to the exporters subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct the U.S. Bureau of Customs and Border Protection[1] ("BCBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR"), for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of issuance of these preliminary results.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Terre Keaton or Margaritâ Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766, (202) 482–1280 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2002, the Department received timely requests from Xiangfen Hengtai Brake System Co., Ltd ("Hengtai") and Xianghe Xumingyuan Auto Parts Co., Ltd. ("Xumingyuan") for a new shipper review of this antidumping duty order in accordance with 19 CFR 351.214(c). In their requests for a new shipper review and in accordance with 19 CFR 351.214(b)(2)(i) and (iii)(A), Hengtai and Xumingyuan each certified that it did not export the subject merchandise to the United States during the period covered by the original less-than-fair-value ("LTFV") investigation and that it is not affiliated with any company which exported the subject merchandise to the United States during the period of investigation ("POI"). Hengtai and Xumingyuan also certified that their export activities are not controlled by the central government of the People's Republic of China ("PRC"). Pursuant to 19 CFR 351.214(b)(2)(iv), Hengtai and Xumingyuan submitted documentation establishing the date on which the merchandise was first shipped for export to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

On December 3, 2002, the Department published a notice of initiation of a new shipper review of Hengtai and Xumingyuan (*see Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 71934 (December 3, 2002)). On December 4, 2002, the Department issued a questionnaire to each company.

On December 19, 2002, the Department provided the parties an opportunity to submit publicly available information for consideration in the preliminary results. In January and February 2003, we received responses to the Department's questionnaires, and granted an extension until March 10, 2003, for all interested parties to submit publicly available information for consideration in the preliminary results.

On February 27, 2003, we notified the respondents of our intent to conduct verification of their responses to the antidumping duty questionnaire and provided each respondent with a verification outline for purposes of familiarizing each company with the verification process. On March 10, 2003, the respondents submitted publicly available information, and on March 14, 2003, the petitioner[2] submitted rebuttal comments to the publicly available information provided by the respondents. From March 10 through March 21, 2003, we conducted verification of the information submitted by each respondent, in accordance with 19 CFR 351.307. On April 16, 2003, we issued verification reports.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The POR covers April 1, 2002, through September 30, 2002.

Verification

As provided in section 782(i) of the Act, we verified information provided by each respondent. We used standard

[1] As of March 1, 2003, the U.S. Customs Service has been renamed the U.S. Bureau of Customs and Border Protection.

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company (*see* April 16, 2003, verification reports for Hengtai and Xumingyuan for further discussion).

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Hengtai claims that it is a limited liability company in the PRC, and Xumingyuan claims that it is a joint venture between a PRC and a foreign company. Thus, for these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("*Bicycles*") 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), and amplified in the Final *Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

Hengtai and Xumingyuan have placed on the administrative record documents to demonstrate absence of *de jure* control, including the PRC's Enterprise Legal Person Registration Administrative Regulations promulgated on June 13, 1988, and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures between PRC and foreign companies and limited liability companies in the PRC. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Hengtai and Xumingyuan.

2. *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Hengtai and Xumingyuan each asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

For Hengtai and Xumingyuan, the Department found no evidence at verification of government involvement in their business operations. Specifically, Department officials examined sales documents that showed that each of these respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales documentation, bank statements and accounting documentation that demonstrated that each of these respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda such as appointment notices, which demonstrated that each of these companies selected its own management. *See* pages four through eight of the Department's verification report for Hengtai, and pages five through seven of the Department's verification report for Xumingyuan. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of each of these companies' export functions.

Consequently, we have determined that Hengtai and Xumingyuan have each met the criteria for the application of separate rates based on our verification findings.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Hengtai and Xumingyuan to the United States were made at prices below normal value ("NV"), we compared each company's export prices to NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

For both respondents, we used export price methodology in accordance with section 772(a) of the Tariff Act of 1930, as amended ("the Act") because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

For both respondents, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (*see* "Surrogate Country" section below for further discussion of our surrogate-country selection). To value foreign inland trucking charges, we used truck freight rates published in Indian *Chemical Weekly* and distance information obtained from the following websites: *http://www.infreight.com, http://www.sitaindia.com/Packages/CityDistance.php, and http://www.abcindia.com*. Based on our verification findings, we revised the reported distance from Xumingyuan to the port of exportation (see page 10 of Xumingyuan's verification report). To value foreign brokerage and handling expenses, we relied on public information reported in the 1998 - 1999 new shipper and administrative reviews of the antidumping order on stainless steel bar from India (*See Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000)).

Normal Value

A. Non-Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value a NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India was among the countries comparable to the PRC in terms of overall economic development (*see* December 11, 2002, Memorandum from the Office of Policy to Irene Darzenta Tzafolias). In addition, based on publicly available information placed on the record (*e.g.*, Indian producer financial statements), India is a significant producer of the subject merchandise. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate-country selection.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by each of the respondents which produced the brake rotors it exported to the United States during the POR. To calculate normal value, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings at Hengtai, we revised the per-unit weight reported for adhesive tape (*see* page 14 of the Hengtai's verification report). Based on our verification findings at Xumingyuan, we revised the reported per-unit weight for three of its packing materials (*i.e.*, corrugated paper cartons, wood pallet and steel pallet), and the distance reported from Xumingyuan to its plywood supplier. (*See* pages 13 and 15 of Xumingyuan's verification report).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. (*See* Preliminary Results Valuation Memorandum dated May 27, 2003, for a detailed explanation of the methodology used to calculate surrogate values.)

To value pig iron, steel scrap, ferrosilicon, ferromanganese, limestone, lubrication oil, coking coal, and firewood, we used April 2002-August 2002 average import values from *Monthly Statistics of the Foreign Trade of India* ("*Monthly Statistics*"). We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses, as verified by the Department, for purposes of selecting surrogate values from *Monthly Statistics*.

We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

We based our surrogate value for electricity on 2000–2001 data from the Government of India's Planning Commission report entitled *The Working of State Electricity Boards & Electricity Departments Annual Report* (2001–2002).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general, and administrative ("SG&A") expenses, factory overhead and profit, we used the 2000–2001 financial data of Kalyani Brakes Limited ("Kalyani"), Mando Brake Systems India Limited ("Mando"), and Rico Auto Industries Limited ("Rico").

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For further discussion of the adjustments made, *see* the Preliminary Results Valuation Memorandum, dated May 27, 2003.

To value corrugated paper cartons, nails, plastic bags and sheets/covers, steel strip and straps/buckles, tape, pallet wood, plywood, and hot-rolled carbon steel for pallet construction, we used April 2002-August 2002 average import values from *Monthly Statistics*. Both respondents included the weight of the straps/buckles in their reported steel strip weights. Because the material of the straps/buckles and steel strip was the same for both inputs, we valued these factors using the combined weight reported by the respondents.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a freight rates published in *Indian Chemical Weekly* and distance information obtained from the following websites: *http://www.infreight.com, http://www.sitaindia.com/Packages/CityDistance.php,and http://www.abcindia.com*.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for Hengtai and Xumingyuan during the period April 1, 2002, through September 30, 2002:

Manufacturer/producer/exporter	Margin Percent
Xiangfen Hengtai Brake System Co., Ltd.	0.00
Xianghe Xumingyuan Auto Parts Co., Ltd.	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on July 14, 2003.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written *request to the Assistant Secretary for* Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than June 30, 2003. Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than July 7, 2003. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after the date of issuance of these preliminary results.

Assessment Rates

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to the BCBP within 15 days of publication of the final results of this review. For assessment purposes, we do not have the actual entered value for either respondent for which we calculated a margin because it is not the importer of record for the subject merchandise. Therefore, we calculated individual importer- or customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, at or above 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer- or customer-specific *ad valorem* ratios based on export prices. We will instruct the BCBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Hengtai or Xumingyuan of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Hengtai or Xumingyuan entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Hengtai or Xumingyuan, no cash deposit will be required if the cash deposit rates calculated in the final results are zero or *de minimis*; and (2) for subject merchandise exported by Hengtai or Xumingyuan but not manufactured by them, the cash deposit will continue to be the PRC countrywide rate (*i.e.*, 43.32 percent) made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13878 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) until no later than September 30, 2003. The period of review is September 1, 2001 through August 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Act, and section 351.213(h)(1) of the Department's regulations, require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the preliminary results within the prescribed time period, section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, allow the Department to extend the deadline to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

Background

Based on timely requests from petitioner and three respondent companies, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC, for the period of September 1, 2001 through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

Extension of Time Limits for Final Results

The Department finds that it is not practicable to complete the preliminary results within the time limits mandated by section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations, as this review encompasses a large number of companies, and several complex issues, including factor valuation. Consequently, in accordance with sections 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the preliminary results to 365 days from the last day of the anniversary month of the order. The preliminary results will now be due no later than September 30, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 28, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–13879 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–863]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to a request from Wuhan Bee Healthy Co., Ltd. (Wuhan), the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on honey from the People's Republic of China. The period of review covers the period December 1, 2001, through May 31, 2002. The preliminarily results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019 or Donna Kinsella at (202) 482–0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on honey from the PRC on December 10, 2001. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On June 25, 2002, the Department received from Wuhan Bee Healthy Co., Ltd. (Wuhan), a producer and exporter of the subject merchandise, a properly filed request for a new shipper review under the antidumping duty order on honey from the PRC, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations. Under these provisions, an exporter that is also a producer of the subject merchandise, in requesting a new shipper review, must certify to the following: (i) it did not export the merchandise to the United States during the period of investigation (POI); and (ii) it is not affiliated with any exporter or producer who exported the subject merchandise during that period. Moreover, in an antidumping proceeding involving imports from a non-market economy country, the new shipper must also certify that its export activities are not controlled by the central government. If these provisions are met, the Department will conduct a new shipper review to establish an individual weighted-average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. (*See* generally section 351.214(b)(2) of the Department's regulations.)

The regulations further require that the exporter or producer include in its request documentation establishing: (i) the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States, or, if the merchandise has not yet been shipped or entered, the date of sale; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer. *See* section 351.214(b)(2)(iv).

Wuhan's request was accompanied by information and certifications establishing that it did not export the subject merchandise to the United States during the POI, and that it was not affiliated with any company which exported subject merchandise to the United States during the POI. Wuhan provided information and certifications that demonstrated the date on which it first shipped and entered honey for consumption in the United States, the volume of that shipment, and the date of the first sale to the unaffiliated customer in the United States. Additionally, Wuhan certified that its export activities are not controlled by the central government.

Because the Department determined that Wuhan's request met the requirements of section 351.214 of its regulations, on August 6, 2002, the Department published its initiation of this new shipper review for the period December 1, 2001, through May 31, 2002,[1] (*See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (67 FR 50862, August 6, 2002).) Accordingly, the Department is now conducting this review in accordance with section 751 of the Act and section 351.214 of its regulations.

On August 6, 2002, we issued the Department's antidumping duty questionnaire to Wuhan. On September 12, 2002, Wuhan submitted its Section A questionnaire response. On October 4, 2002, Wuhan submitted its Section C and D questionnaire responses. On October 18, 2002, petitioners submitted comments on Wuhan's section A, C, and D questionnaire responses.[2] On November 7, 2002, we issued a supplemental questionnaire covering Wuhan's questionnaire responses. On November 18, 2002, petitioners

[1] We also initiated a new shipper review based on a request filed by Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd. (Dubao). However, on January 23, 2003, the Department rescinded the new shipper review with respect to Dubao. *See Honey from the People's Republic of China: Partial Rescission of Antidumping Duty New Shipper Review*, 68 FR 4760 (January 30, 2003).

[2] The American Honey Producers Association and the Sioux Honey Association are petitioners in this proceeding.

submitted a letter requesting that the Department conduct a verification of the responses submitted by Wuhan. On December 5, 2002, we received Wuhan's supplemental questionnaire response. On December 20, 2002, petitioners submitted comments on Wuhan's supplemental questionnaire response. On January 23, 2003, the Department extended the preliminary results of this new shipper review by 120 days until May 27, 2003. *See Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 68 FR 4761 (January 30, 2003). On January 31, 2003, we issued a second supplemental questionnaire to Wuhan. On February 25, 2003, we received Wuhan's second supplemental questionnaire response. On February 28, 2003, the Department provided the parties with an opportunity to submit publicly available information regarding surrogate country selection and factors of production surrogate values for consideration in the preliminary results of this review. On March 4, 2003, petitioners submitted comments for consideration in the Department's verification of Wuhan's questionnaire responses. On March 5, 2003, Wuhan submitted a revision to its February 25, 2003, second supplemental questionnaire response. On March 14, 2003, through March 18, 2003, the Department conducted verification of Wuhan's responses. *See* "Verification" section below. On March 31, 2003 and April 18, 2003, petitioners, and Wuhan submitted publicly available information to value the factors of production and rebuttal comments. On April 28, 2003, Wuhan submitted additional comments with regard to new factual information submitted by petitioners in their April 18, 2003, rebuttal comments. On May 1, 2003, petitioners submitted additional arguments regarding the *bona fides* of Wuhan's sale and certain factors of production surrogate value information. On May 9, 2003, Wuhan submitted rebuttal comments to petitioners' *bona fides* arguments and certain factors of production surrogate value information. On May 15, 2003, petitioners submitted declarations executed by researchers that gathered information regarding the Indian honey industry. On May 19, 2003, petitioners responded to comments made by Wuhan in its May 9, 2003, submission.

Scope of the Antidumping Duty Order

The products covered by this review are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) (Customs) purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(2) of the Act and section 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Wuhan. We used standard verification procedures, including on-site inspection of Wuhan's production facilities, its sales offices in Shanghai, and the examination of relevant sales and financial records. Our verification results are outlined in the New Shipper Review of Honey from the People's Republic of China (PRC) (A-570–863): Sales and Factors of Production Verification Report for Wuhan Bee Healthy Co., Ltd., dated April 22, 2003 (Wuhan Verification Report). A public version of this report is on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building.

New Shipper Status

Based on questionnaire responses submitted by Wuhan, and our verification thereof, we preliminarily determine that Wuhan has met the requirements to qualify as a new shipper during the POR. We have determined that Wuhan made its first sale and/or shipment of subject merchandise to the United States during the POR, and that Wuhan was not affiliated with any exporter or producer that previously shipped to the United States.

In submissions dated December 20, 2002 and March 4, 2003, petitioners allege that Wuhan's sale to the United States during the POR does not reflect a *bona fide* commercial transaction. Petitioners argue that the quantity of Wuhan's sale appears to be unusual because bulk honey is traded internationally in ocean-going full container load lots. In its February 25, 2003, second supplemental questionnaire response, Wuhan explains that its first sale to the United States was less than a full container load because of commercial factors unique to the U.S. market at the time the sale was made (*i.e.*, thorough testing of PRC honey for antibiotics and the application of an antidumping duty margin of 183 percent). Nonetheless, Wuhan argues that the amount shipped is still significant and represents a viable commercial quantity for a sale of honey.

In a submission dated May 1, 2003, petitioners submitted additional arguments regarding the *bona fides* of Wuhan's transaction. In particular, petitioners argue that the unreasonably high price paid for Wuhan's sale of subject merchandise to the United States demonstrates that the reported sale is not *bona fide*. Petitioners contend that the sale price is significantly higher than prevailing prices at which other PRC producers and exporters sold honey to U.S. customers during the POR. Thus, petitioners argue that Wuhan's U.S. customer could have obtained the same quality product from other PRC exporters for a substantially lower price. On May 9, 2003, Wuhan submitted rebuttal comments to petitioners' *bona fides* allegations. Specifically, Wuhan argues that petitioners' claims that its sale under review was not *bona fide* require the Department to (1) ignore verified evidence of subsequent sales by Wuhan at even higher prices, and (2) reject Wuhan's rational explanation of the reasons why its first sale consisted of a less-than-full container-load and a proper reading of the law regarding the deposit requirement prior to initiation of a new shipper review.

As an initial matter, the Department examined the average unit values (AUVs) of imports into the United States of comparable merchandise from the PRC during the POR. We note that in comparison to shipments from other PRC honey exporters/producers, the quantity of Wuhan's shipment is among the lowest and its price is among the highest.

Due to the time constraints in issuing these preliminary results, the Department was unable to complete its analysis with respect to Wuhan's pricing and terms of sale to the United States nor fully analyze submissions from petitioners and respondent dated May 1, 2003 and after. We intend to fully examine all issues pertaining to the *bona fides* of Wuhan's transaction, including the relationship between Wuhan's sale and imports into the United States of other PRC honey producers/exporters, for purposes of the final results of this review.

In summary, for purposes of these preliminary results of review, we are treating Wuhan's sale of honey to the United States as a *bona fide* transaction. However, as noted above, the Department intends to continue to carefully examine this issue for the final results of this review.

Separate Rates

In proceedings involving NME countries, the Department begins with a presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Wuhan requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Wuhan provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this producer/ exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, 20589.

Wuhan has placed on the record a number of documents to demonstrate absence of *de jure control*, including the "Foreign Trade Law of the People's Republic of China" (May 12, 1994) and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1998). The Department has analyzed such PRC laws and found that they establish an absence of de jure control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that Wuhan's business license and "Certificate of Approval-For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. *See* Wuhan Verification Report. Therefore, we preliminarily determine that there is an absence of *de jure* control over Wuhan's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Wuhan has asserted the following: (1) it is a privately-owned company; (2) there is no government participation in its setting of export prices; (3) its chief executive officer and authorized employees have the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) it is responsible for financing its own losses. Wuhan's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses during verification reveals no other information indicating the existence of government control. *See* Wuhan Verification Report, at 7–9. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that Wuhan has met the criteria for the application of a separate rate. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum to Richard Weible, Office Director, AD/CVD Enforcement Group III, dated May 27, 2003, on file in the CRU located in room B-099 of the Main Commerce Building.

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value, we compared its United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For Wuhan, we based the United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight and U.S.

Customs duty expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Wuhan did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See* Factor Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated May 27, 2003 (Factor Valuation Memo). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation of this order, we determine that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. Accordingly, we valued the factors of production using publicly available information from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, *International Financial Statistics*.

We valued the factors of production as follows:

To value raw honey, we used an average of the highest and lowest price for raw honey, as adjusted for inflation, stated in an article published in *The Tribune of India* on March 1, 2000, entitled, "Apiculture, a major foreign exchange earner" (later republished in *The Agricultural Tribune* on May 1, 2000). As noted above, petitioners and respondent submitted additional information on the record regarding the proper surrogate value for raw honey. Due to the time constraints in issuing these preliminary results, the Department was unable to fully analyze these additional submissions. However, the Department intends to continue to carefully examine this issue for the final results of this review.

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India for the POR.

To value coal, we relied upon Indian import values of "steam coal" for the period April 2001, through January 2002 as reported in the *Monthly Statistics of the Foreign Trade of India, Volume II: Imports (Monthly Statistics)*, as adjusted for inflation for the period prior to the POR (April 2001 - November 2001). We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the 2000 total average price per kilowatt hour (KWH), adjusted for inflation, for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter*, 2002. To value water, we used the average water tariff rate, adjusted for inflation, as reported in the Asian Development Bank's publication, *Second Water Utilities Data Book: Asian and Pacific Region*, 1997.

To value packing materials (*i.e.*, paint and steel drums), we relied upon Indian import data under the Indian Customs' heading "3209," and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values of packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly available information in the 2001–2002 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the Year *Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per MT basis published in the *Iron and Steel Newsletter*, April 2002. To value rail freight, we used an average rail freight cost based on rail freight costs of transporting molasses to various cities within India as stated on the Indian Railways' website (Indian Government Agency).

For details on factor of production valuation calcuations, *see* Factor Valuation Memo.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Manufacturer and Exporter	POR	Margin (percent)
Wuhan Bee Healthy Co., Ltd.	12/01/01 - 05/31/02	9.66

For details on the calculation of the antidumping duty margin, *see* the Analysis Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated May 27, 2003. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to Customs to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each of Wuhan's importer's/customer's entries during the POR.

Cash-Deposit Requirements

Wuhan may continue to post a bond or other security in lieu of cash deposits for each entry of subject merchandise produced and exported by Wuhan. Bonding will no longer be permitted to fulfill security requirements for Wuhan's shipments after publication of the final results of this new shipper review. The following cash-deposit rate will be effective upon publication of the final results of this new shipper review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Wuhan, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Wuhan, the cash-deposit rate will be the PRC country-wide rate, which is 183.80 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC country-wide rate; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13881 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–502]

Iron Construction Castings from the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a timely request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on iron construction castings (castings) from the People's Republic of China (PRC). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in*

Part, 67 FR 42573 (June 25, 2002). This review covers the period May 1, 2001 through April 30, 2002. Because the company for which the review was requested and initiated was not an exporter of the subject merchandise to the United States, the Department is rescinding this review in accordance with 19 CFR 351.213(d).

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5255 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on castings from the PRC on May 9, 1986. *See Antidumping Duty Order: Iron Construction Castings from the People's Republic of China*, 51 FR 17222 (May 9, 1986). On May 30, 2002, the Department received a timely request from Powin Corporation (Powin), an importer of subject merchandise, for an administrative review of Mucun Foundry of Fangzi District (Mucun Foundry). The Department published its initiation of the administrative review for Mucun Foundry on June 25, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 42573 (June 25, 2002) (*Initiation Notice*).

On August 26, 2002, the Department issued its antidumping duty questionnaire, and on October 11, 2002, pursuant to Powin's request, the Department extended the deadlines for the questionnaire responses to October 18, 2002, for Section A, and October 25, 2002, for Sections C and D. We received, in proper form, Section A responses on October 18, 2002, and Section C and D responses on October 25, 2002.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On December 3, 2002, in accordance with the Act, the Department extended the time limit for completion of the preliminary results of this antidumping duty administrative review until no later than May 30, 2003. *See Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Certain Iron Construction Castings From the People's Republic of China*, 67 FR 75845 (December 10, 2002).

Rescission of Antidumping Duty Administrative Review of Castings

Based on our review of questionnaire responses as well as information from the U.S. Bureau of Customs and Border Protection, the Department found that the subject merchandise had not been exported to the United States by Mucun Foundry, the only company for which the review was requested and initiated. On January 30, 2003, we issued a letter and memorandum to all interested parties in this review stating our intention to rescind this administrative review because the company for which the review was requested did not export to the United States during the period of review (POR). *See Memorandum from Javier Barrientos and Julio A. Fernandez through Sally C. Gannon to Barbara E. Tillman: Iron Construction Castings from the People's Republic of China: Intent to Rescind Antidumping Duty Administrative Review* (January 30, 2003). We invited all interested parties to comment on our stated intent to rescind the review.

On February 13, 2003, Powin submitted comments objecting to a rescission, and on February 25, 2003 the petitioners[1] submitted comments supporting a rescission. We have considered Powin's and petitioners' comments and have reached a final determination to rescind this administrative review. *See Memorandum from Matthew Renkey, Case Analyst, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, to Barbara Tillman, Director, Office of AD/CVD Enforcement VII: Iron Construction Castings from the People's Republic of China: Rescission of the 2001–2002 Administrative Review*, dated May 27, 2003 (*Rescission Memo*), which discusses in full the comments received.

Pursuant to our regulations, the Department will rescind an administrative review if the Department determines that "during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." *See* 19 CFR 351.213(d)(3). Given that Mucun Foundry was not the exporter, but only a producer, the Department has determined that this administrative review should be rescinded as Mucun Foundry did not have any entries, exports or sales of subject merchandise during the current POR. *See Certain Cased Pencils From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 66 FR 1638 (January 9, 2001). *See also Laizhou City Guangming Pencil-Making Co. Ltd., Et Al., v. United States*, No. 02–151 (Ct. Int'l Trade Dec. 18, 2002). Therefore, the Department has determined that it is reasonable to rescind this administrative review of castings for the period May 1, 2001 through April 30, 2002. The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR§ 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13880 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Allegheny Foundry Co.; Deeter Foundry Inc.; East Jordan Iron Works, Inc.; LeBaron Foundry, Inc.; Municipal Castings, Inc.; Neenah Foundry Co.; Tyler Pipe Company; and U.S. Foundry Manufacturing Co.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–844]

Steel Concrete Reinforcing Bars from the Republic of Korea: Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Preliminary Results of Administrative Review.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Johns at (202) 482–2305 or Mark Manning at (202) 482–5253, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary results of the administrative review of steel concrete reinforcing bar (rebar) from the Republic of Korea (Korea). This review covers the period from January 30, 2001 through August 31, 2002.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days from the date of publication of the preliminary determination.

Background

On October 24, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on rebar from Korea (67 FR 65336). The preliminary results are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results of Review

The Department has determined that it is not practicable to complete the preliminary results of this review within the original time limit. See Decision Memorandum from Tom Futtner, Acting Director, Office IV, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than September 30, 2003. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This notice is issued and published pursuant to section 751(a)(3)(A) of the Act.

Dated: May 27, 2003.

Holly A. Kuga,

Acting Deputy Assistant SecretaryImport Administration, Group II.

[FR Doc. 03–13877 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 03–C0001]

TGH International Trading, Inc., A Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with TGH International Trading, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 18, 2003.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 03–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 28, 2003.

Todd A. Stevenson,

Secretary.

Consent Order Agreement

1. TGH International Trading, Inc. ("TGH" or "Respondent") enter into this Consent Order Agreement (hereinafter referred to as "Agreement") with the staff of the Consumer Product Safety Commission ("the staff") pursuant to the Commission's Procedures for Consent Order Agreements, 16 CFR 1118.20. The purpose of this Agreement is to settle the staff's allegations that Respondent violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

I. The Parties

2. TGH is a corporation organized and existing under the laws of the State of California. TGH's principal place of business is 421 South Wall Street, Los Angeles, CA 90013. TGH is an importer and distributor of toys.

3. The "staff" is the "staff" of the Consumer Product Safety Commission, an independent regulatory agency established by Congress under section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

II. Allegations of the Staff

A. Violations of the Small Parts Regulation

4. On 12 occasions between May 28, 1994, and April 24, 2002, Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, 30 types of toys (49,529 retail units) intended for use by children under three years old. These toys are identified and described as follows:

Sample No.	Toy	Entry/Collec° Date	Exporter	Quantity	LOA
S–867–8292	Cathy Dolls	05/28/94	Alltrend	30	08/03/94

Sample No.	Toy	Entry/Collec* Date	Exporter	Quantity	LOA
T–867–8024	Rainbow Loco	10/05/94	Camke	600	10/19/94
T–867–8211	Savings Bank Phone	03/22/95	Development	1,440	07/19/95
T–867–8212	Telephone Plano	03/22/95	Development	720	07/19/95
96–860–5862	Pull & Push	04/15/96	Kapo	288	05/14/96
97–860–5520	Rainbow Loco	10/18/96	Kapo	240	11/20/96
97–860–5521	Animal Funny	10/18/96	Kapo	720	11/20/96
97–860–5572	Port-A-Phone	11/20/96	Kapo	7,200	01/29/97
98–860–5608	Cartoon Car	10/09/97	Sun Ta	816	11/28/97
99–860–5683	Xylophone/Panda	07/15/99	Goldoll	1,440	08/04/99
99–860–5684	Xylophone/Dog	07/15/99	Goldoll	1,440	08/04/99
99–860–5685	Xylophone/Elephant	07/15/99	Goldoll	1,440	08/04/99
99–860–5686	Ice Cream Cart/Panda	07/15/99	Goldell	2,160	08/04/99
99–860–5687	Ice Cream Cart/Dog	07/15/99	Goldoll	2,160	08/04/99
99–860–5688	Ice Cream Cart/	07/15/99	Goldell	2,160	08/04/99
00–860–6546	Rabbit Pull toy	03/14/00	Jia Mei	5,568	04/03/00
00–860–6547	Elephant Pull Toy	03/14/00	Jia Mei	5,568	04/03/00
00–860–6548	Lion Pull Toy	03/14/00	Jia Mai	5,568	04/03/00
00–860–6549	Dog Pull Toy	03/14/00	Jia Mai	5,568	04/03/00
00–860–6550	Locomotive Pull Toy	03/14/00	Jia Mai	5,568	04/03/00
00–860–6561	Funny Train Pull Toy	03/14/00	Jia Mai	192	04/10/00
00–860–6562	Dog Pull Toy	03/14/00	Jia Mai	192	04/10/00
00–860–6563	Rabbit Pull Toy	03/14/00	Jia Mei	192	04/10/00
00–860–6564	Dog Pull Toy	03/14/00	Jia Mei	192	04/10/00
00–860–6565	Lion Pull Toy	03/14/00	Jia Mai	192	04/10/00
01–840–6017	Musical Mobile	02/05/01	CSCL	8,352	03/22/01
01–840–6048	African Giraffe	03/28/01	Goldoll	1,440	04/20/01
02–840–7010	TV Man Toy	*04/24/02	Superegent	72	07/02/02
02–840–7011	Mushroom House Toy	*04/24/02	Jia Mei	48	07/02/02
02–840–7012	Guards of Crazing Land	*04/24/02	Goldoll	17	07/02/02

5. The toys identified in paragraph 4 above are intended for children under three years old and are subject to the Commission's Small Parts Regulation, 16 CFR part 1501.

6. The toys identified in paragraph 4 above failed to comply with the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder, as set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 4 above presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. Each of the toys identified in paragraph 4 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 4 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance as described in paragraph 10 above; and because it presents a mechanical hazard as described in paragraph 9 above.

10. Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys, identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

B. Violations of the Rattle Regulation

11. On one occasion in 2001, Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise a rattle set (58,800 retail units) intended for use by children. The rattle set is identified and described as follows:

Sample No.	Rattle	Entry/Collec* Date	Exporter	Quantity	LOA
01–840–6011	Musical Baby Rattle Set	01/31/01	Goldoll	8,400	03/08/01
01–840–6012	Musical Baby Rattle Set	01/31/01	Goldoll	8,400	03/08/01
01–840–6013	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6014	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6014	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6015	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6016	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01

12. The rattle set identified in paragraph 11 above is subject to, but failed to comply with the Commission's Rattle Regulations, 16 CFR part 1510, in that when tested under the procedures set forth in 16 CFR 1510.4, each rattle in the set penetrated the full depth of the test fixture.

13. Because each rattle in the set identified in paragraph 11 above penetrated the full depth of the cavity of the test fixture as specified in 16 CFR 1510.4, it presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking) and is, therefore, a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

14. The rattle set identified in paragraph 11 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(15) because it is intended for use by children and bears or contains a hazardous substance; and because it presents a mechanical hazard as defined in paragraph 13 above.

15. Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid banned hazardous rattle set identified in paragraph 11 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

C. Violations of the Labeling Requirements for Certain Toys and Games

16. On two occasions between March 28, 2001, and April 24, 2002, Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, two types of toys (2,890 retail units) intended to use by children who are at least three years old but not older than six years old. These toys are identified and described as follows:

Sample No.	Toy	Entry/Collec* Date	Exporter	Quality	LOA
01–840–6049	Snooker Set	03/28/01	Goldell	2,880	04/20/01
02–840–7013	Golf Play Toy Set	04/24/02	?	10	05/21/02

17. The toys identified in paragraph 16 above are subject to, but failed to comply with the Labeling Requirements for Certain Toys and Games under sections 24(b)(2)(B) and (b)(2)(C) of the FSHA, 15 U.S.C. 1278(b)(20)(B) and (b)(3)(B) and 16 CFR 1500.19(b)(3)(i) and (b)(4)(i) in that the toys did not bear the required cautionary label.

18. Because they lacked the required labeling, the toys identified in paragraph 16 above are "misbranded hazardous substances" pursuant to sections 2(p)(1)(D) and 24(d) of the FSHA, 15 U.S.C. 1261(p)(1)(D) and 24(d) and 16 CFR 1500.19(b)(3)(i) and 4(i).

19. Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the misbranded hazardous toys identified in paragraph 16 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c)

III. TGH's Response

20. TGH denies the allegations of the staff set forth in paragraphs 4–19 above.

IV. Agreement of the Parties

21. The Consumer Product Safety Commission has jurisdiction over Respondent under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.* and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.*

22. This Settlement Agreement is entered into for settlement purposes only and does not constitute findings by the Commission or an admission by Respondent that Respondent violated the FHSA.

23. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in the above captioned case (1) to an administrative or judicial hearing with respect to the staff's allegations cited herein, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FHSA and the underlying regulations, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access of Justice Act.

24. Upon provisions acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

25. In settlement of the staff's allegations, Respondent agrees to comply with the attached Order incorporated herein by reference.

26. Upon violation of the attached Order by Respondent, the Commission reserves the right to take appropriate legal action against Respondent for all violations listed in section II of this Agreement and for all violations occurring after the effective date of this Agreement and Respondent waives the statute of limitations.

27. If the Commission finds that Respondent has introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise any banned or misbranded hazardous substances, Respondent will pay to the Commission upon demand a penalty in the amount of five (5) times the retail value of the product in question. This provision does not preclude the Commission from taking additional legal action including, but not limited to civil and/or criminal actions under sections 5 and 8 of the FHSA, 15 U.S.C. 1264 and 1267 and sections 20, 21, and 22 of the CPSA, 15 U.S.C. 2069, 2070, and 2071.

28. Respondent reserves its right to challenge the Commission's findings under paragraph 27 of this Agreement before the Commission and to have the court review whether the Commission acted arbitrary and capricious.

29. The Commission may publicize the terms of this Agreement.

30. Agreements, understandings, representations, or interpretations made outside of this Agreement may not be used to vary or to contradict its terms.

31. This Agreement shall become effective upon issuance of the Final Order by the Commission.

32. The provisions of this Agreement shall apply to Respondent and each of its successors and assigns.

Dated: April 11, 2003.

TGH International Trading, Inc.

Teresa Chan,

President, TGH International, Inc., 421 South Wall Street. Los Angeles, CA 90013.

Dated: April 11, 2003.

Consumer Product Safety Commission

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance, U.S. Consumer Product Safety Commission.

Dennis C. Kacoyanis,
Trial Attorney, Legal Division, Office of Compliance, Washington, DC.

Order

Upon consideration of the Consent Order Agreement entered into between Respondent TGH International Trading, Inc., and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Consent Order Agreement is in the public interest, *it is ordered,* that the Consent Agreement be and hereby is accepted and it is *further ordered,* that Respondent is prohibited from introducing or causing the introduction into interstate commerce; and receiving in interstate commerce and delivering or proffering delivery thereof for pay or otherwise

(a) Any toy or other article intended for use by children under three years of age that presents a choking, aspiration, or ingestion hazard because of small parts as defined in 16 CFR part 1501 when tested in accordance with the standards published in 16 CFR 1501.4, 1500.51, and 1500.52;

(b) Any rattle that presents a choking hazard because the rattle penetrates the full depth of the cavity of the test fixture as published in 16 CFR 1510.4;

(c) Any toy or other article intended for use by children who are at least three years old but less than six years old that fails to comply with the Labeling Requirements for Certain Toys and Games under section 24 of the FHSA, 15 U.S.C. 1278 and 16 CFR 1500.19; and

(d) Any other products that do not comply with the requirements of the FHSA and the underlying regulations and it is

Further ordered that a violation of this Order shall subject Respondent to legal action for all violations listed in section II of this Agreement and for all violations occurring after the effective date of this Agreement and it is

Further ordered that a violation of this Order shall subject Respondent to a penalty in the amount of five (5) times the retail value of the banned or misbranded hazardous substance and to additional legal action under the Federal Hazardous Substances Act and the Consumer Product Safety Act.

Provisionally accepted and Provisional Order issued on the 28th day of May, 2003.

By order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 03–13747 Filed 6–2–03; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,496,301 entitled "Helica Fiber Amplifier," Navy Case No. 79,001.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

E.F.McDonnell,
Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13790 Filed 6–2–03; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.
ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meetings will be held on Monday, June 2, 2003, from 1 p.m. to 5 p.m. and Tuesday, June 3, 2003, from 8:30 a.m. to 1 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting point of contact.

ADDRESSES: The meeting will be held at The New Orleans Marriott, 55 Canal St, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 800 North Quincy St., Arlington, VA 22217–5660, telephone number (703) 696–4120.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: May 29, 2003.

E.F. McDonnell,
Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13961 Filed 5–30–03; 10:32 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.255A]

Office of Safe and Drug Free Schools—Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2002 Funds

Purpose of Program: The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Eligible Applicants: State or local correctional agencies and State or local correctional education agencies.

Applications Available: June 3, 2003.

Deadline for Transmittal of Applications: July 14, 2003.

Deadline for Intergovernmental Review: August 13, 2003.

Estimated Available Funds: $4,750,000.

Estimated Range of Awards: $315,000–$475,000

Estimated Average Size of Awards: $395,000.

Estimated Number of Awards: 12.

Note: Estimates are based on FY 2002 appropriated funds only, for the first budget period of each grant. The Department plans to use FY 2003 funds appropriated for this program to make continuation awards for the second budget period of these projects to grantees that demonstrate they are making substantial progress toward achieving the goals and objectives for their projects. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

Definitions: For purposes of this competition, terms used in this notice have the following meanings as found in 34 CFR 490.4:

Life skills includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

Local correctional agency means any agency of local government that provides corrections services to incarcerated adults.

Local correctional education agency means any agency of local government, other than a local correctional agency, that provides educational services to incarcerated adults.

State correctional agency means any agency of State government that provides corrections services to incarcerated adults.

State correctional education agency means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

Additional Awards: Contingent upon the availability of FY 2003 and FY 2004 funds, we may make additional awards under these appropriations from the rank-ordered list of unfunded applications from this competition.

Absolute Priority: Under 34 CFR 75.105(c)(3), we will consider only applications that meet the following absolute priority: Grants for projects that assist State or local correctional agencies and State or local correctional education agencies in establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Invitational Priorities: Within the absolute priority, we are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1. Projects that integrate life skills instruction and services under a comprehensive reentry plan with the State Serious and Violent Offender Reentry Initiative project funded by the U.S. Department of Justice.

Invitational Priority 2. Projects that emphasize cognitive and interpersonal skills such as goal setting, developing strong family relationships, strengthening values, and enhancing social skills.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priorities a competitive or absolute preference over other applications.

Performance Measures: The Secretary has established the following key performance measure for assessing the effectiveness of the Life Skills for State and Local Prisoners Program: the number of prisoners who attain measurable gains in one or more of the life skill domains (*e.g.*, self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, stress and anger management or others) taught under these Life Skills projects. The Secretary has set an overall performance target that calls for the number of prisoners acquiring enhanced life skills from the cohort of Life Skills grant program projects initiated under this competition to increase by five percent annually.

In applying the selection criteria that follow for "Quality of project services" and "Quality of the project evaluation", the Secretary will take into consideration the extent to which the applicant demonstrates a strong capacity (1) to help achieve this target, and (2) to provide reliable data to the Department on the project's impact as measured by number of prisoners participating in Life Skills grants acquiring enhanced life skills.

Selection Criteria: We use the following selection criteria from 34 CFR 75.210 to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance.* (20 points)—In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement.

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(c) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(d) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(2) *Quality of the project design.* (25 points)—In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(d) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(e) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(3) *Quality of project services.* (25 points)—In determining the quality of the services to be provided by the proposed project, the following factors are considered:

(a) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(c) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(4) *Quality of the management plan.* (10 points)—In determining the quality of the management plan for the

proposed project, the following factor is considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(5) *Quality of the project evaluation.* (20 points)—In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf, you may call 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs/html.* Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.255A.

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs, as well as discretionary grant competitions. The Life Skills for State and Local Prisoners Program is one of the programs included in the pilot project. If you are an applicant under this grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We invite your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED Form 424), Budget Information—Non-Construction Programs, (ED Form 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED Form 424) to the Application Control Center following these steps:

1. Print ED Form 424 from the e-Application system.
2. Make sure that the applicant's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-Application system. You will receive an automatic acknowledgement, which will include a PR/Award number an identifying number unique to your application).
4. Place the PR/Award number in the upper right corner of ED Form 424.
5. Fax ED Form 424 to the Application Control Center within three business days of submitting your electronic application at (202) 260–1349.
6. We may request that you give us original signatures on all other forms at a later date.
7. *Closing Date Extension in the Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Life Skills for State and Local Prisoners Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application via e-Application, by mail, or by hand delivery. For us to grant this extension:

(1) You must be a registered user of e-Applications, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. (ET), on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m. Eastern time on the deadline date.

The Department must acknowledge and confirm the period of unavailability before you will be granted an extension. To request this extension you must contact Carlette Huntley by e-mail at *Carlette.Huntley@ed.gov* or by telephone at (202) 260–7274 or the e-Grants help desk at (888) 336–8930.

You may access the electronic grant application for the Life Skills for State and Local Prisoners Program at: *http://e-grants.ed.gov.*

We have included additional information on the e-Application pilot project (see Parity Guidelines between paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

FOR FURTHER INFORMATION CONTACT: Carlette Huntley, U. S. Department of Education, 330 C Street, SW., Washington, DC 20202–7274. Telephone: (202) 260–7272 or via Internet: *Carlette.Huntley@ed.gov.*

Individuals with disabilities may obtain this document, or an application package, in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

Program Authority: 20 U.S.C. 1211–2 (1991).

Dated: May 27, 2003.

Judge Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–13836 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Western Greenbrier Co-Production Demonstration Project, Rainelle, WV and Notice of Floodplain/Wetlands Involvement

AGENCY: Department of Energy.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and Notice of Floodplain/Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental impacts of a proposed project by Western Greenbrier Co-Gen LLC (WGC) to design, construct, and operate, in Rainelle, Greenbrier County, West Virginia, a demonstration facility that would use an innovative atmospheric-pressure circulating fluidized-bed (ACFB) boiler as the source of heat for the co-production of electricity, steam and structural brick. The proposed project, selected under the Clean Coal Power Initiative competitive solicitation, would be the first demonstration in the United States of a compact inverted cyclone configuration for the boiler design. This design has a 40 percent smaller footprint than a conventional boiler system of similar capacity.

The proposed power station would produce 85 MW (megawatts) of net electrical power plus 10,000–30,000 pounds per hour of steam and hot water. Steam and hot water from the proposed facility would serve an industrial park, which the host municipality has planned for land adjoining the power plant. Fuel for the power plant would be coal wastes from waste piles within the surrounding area. When necessary to raise the BTU content of the fuel, quality coal would be blended with the waste coal. The proposed project would also be a first demonstration of the utilization of coal combustion ash and wood wastes for the manufacture of molded building blocks, known as Woodbrik™, to supply the regional construction materials market. All ash that is not used in by-product manufacture would be returned to the coal waste source sites to be used in the mitigation of acid leachate.

The EIS will evaluate the proposed project and reasonable alternatives. Because the proposed project would affect a floodplain and may affect wetlands, the EIS will include a floodplain assessment and wetlands assessment and DOE will prepare a floodplain statement of findings in accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022).

The EIS will help DOE decide whether to provide 50 percent (approximately $107.5 million) of the total estimated funding of $215 million for the proposed project. The purpose of this Notice of Intent is to inform the public about the proposed project; announce plans for a public scoping meeting; invite public participation in the EIS process; and solicit public comments for consideration in establishing the proposed scope and content of the EIS.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by July 3, 2003, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone [*See* **ADDRESSES** below], DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at Greenbrier West High School in Charmco, West Virginia on June 19, 2003, beginning at 7 p.m. [*See* Public Scoping Process). Greenbrier West High School is located on U.S. Route 60 approximately 10.3 miles west of I–64 Exit 156 at Sam Black Church. The public is invited to an informal session at this location beginning at 4 p.m. to learn more about the proposed action. Displays and other forms of information about the proposed agency action and the demonstration plant will be available, and DOE personnel will be present at the informal session to discuss the proposed project and the EIS process.

ADDRESSES: Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to the NEPA Document Manager for the Western Greenbrier Co-Production Demonstration Project: Mr. Mark L. McKoy, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 880, Morgantown, WV 26507–0880.

People who want to participate in the public scoping process also may contact Mr. Mark L. McKoy directly at telephone 304–285–4426; toll free number 1–800–432–8330 (extension 4426); fax 304–285–4403; or e-mail *mmckoy@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Mark L. McKoy at the address provided above. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Telephone: 202–586–4600, facsimile: 202–586–7031, or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Agency Action

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that contain long-term, high-risk activities that support the development of innovative concepts for a wide variety of coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The Clean Coal Power Initiative (CCPI) was established in 2002 as a government/industry partnership to implement the President's National Energy Policy recommendation to increase investment in clean coal technology. This recommendation addresses a national challenge of ensuring the reliability of electricity supply while simultaneously protecting the environment. The goal of the CCPI program is to accelerate commercial deployment of advanced

coal technologies that provide the United States with clean, reliable, and affordable energy. Through cooperative agreements established pursuant to the CCPI program, DOE would accelerate deployment of innovative technologies to meet near-term energy and environmental goals, reduce technological risks to the business community to an acceptable level, and provide private sector incentives required for continued activity in innovative research and development.

Proposed Action

The proposed action is for DOE to provide, through a 5-year cooperative agreement with Western Greenbrier Co-Gen LLC (WGC), financial assistance for a proposed demonstration project to co-produce heat and electric power in a new generating station at Rainelle, Greenbrier County, West Virginia. The new generating station would be designed for long-term commercial operation (at least 20 years) following completion of the cooperative agreement with DOE and would cost approximately $215 million. DOE's share would be approximately $107.5 million (50 percent).

WGC is proposing to design, construct, and operate an 85 MW (megawatt) atmospheric-pressure, circulating fluidized-bed boiler (ACFB) facility that would generate electricity and steam by burning approximately 1,800 tons per day of waste coal as the primary fuel. A coal-fired rotary kiln would be coupled with the power plant and would calcine coal ash and limestone into a cementitious material for use with wood wastes in the on-site manufacture of structural bricks and blocks (Woodbrik™).

The proposed facility would be the first commercial application within the United States of a fluidized bed combustor that would have a compact inverted cyclone design. This design would give the boiler system a 40 percent smaller footprint than a conventional boiler system of similar capacity, and would reduce structural steel requirements and construction costs by up to 60 percent. Additionally, the proposed brick making facility would be the first commercial demonstration of the Woodbrik™ process in the United States.

In addition to electricity and Woodbrik™ products, the proposed plant would co-produce steam and hot water and serve as the anchor tenant for a new environmentally balanced industrial park. This "Eco-Park" would use hot water produced from the plant's turbine exhaust to provide heating for buildings, agricultural activities and aquacultural activities. Steam would be used for various heating and industrial processes, which might include hardwood drying.

The source for the waste coal fuel for the plant would be a 4 million-ton coal refuse site in Anjean, WV. If the Anjean site is not available, other nearby sites would supply the coal wastes. Any additional heating value requirements for the waste coal as a fuel would be supplied by blending with quality coal. Coal combustion ash that is not used in by-product manufacture at the proposed facility would be used to remediate acid drainage from the source coal waste piles. If successfully demonstrated, this technology could be applied to many regions of the country for reclaiming contaminated land where waste coal is currently stockpiled.

The proposed project site comprises approximately 26 acres located within or adjoining a 30-acre industrial park that is currently under development by the city of Rainelle. The site is approximately 160 kilometers (100 miles) southeast of the city of Charleston, West Virginia. The area can be reached by State Highway 60 and is less than 14 miles from I–64. Construction of the proposed plant would be expected to require approximately 27 months, following eight months of project definition and nine months of detailed design.

Alternatives

NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose of the agency action determines the range of reasonable alternatives. In this case, the Clean Coal Power Initiative was established to help implement the President's National Energy Policy (NEP) recommendation to increase investment in clean coal technology by addressing national challenges of ensuring the reliability of domestic energy supplies while simultaneously protecting the environment. The CCPI program was structured to achieve NEP goals by promoting private sector initiatives to invest in demonstrations of advanced commerce-ready technologies through the use of Federal, cost-sharing, financial assistance awards. This approach puts DOE in a much more limited role than if the Federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive analysis of reasonable alternative locations for the project. However, when dealing with applicants for financial assistance awards under the CCPI program, the scope of alternatives is necessarily more restricted because DOE must focus on alternative ways to accomplish its purpose that reflect both the applications before it and the functions that DOE plays in the decision process. As a grantor of financial assistance awards under a competitive open solicitation, DOE must give substantial deference to each applicant's needs in establishing a project's reasonable alternatives.

The range of reasonable options to be considered in the EIS for the WGC Demonstration Project is determined in accordance with the overall NEPA strategy. Because of DOE's limited role of providing financial assistance for the proposed Western Greenbrier Co-Production Demonstration Project, DOE currently plans to give primary emphasis to the proposed action and the no-action alternative. Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the proposed project. In the absence of DOE funding, the Western Greenbrier Co-Production Demonstration Project probably would not occur. If the proposed Western Greenbrier Co-Production Demonstration Project is not built, Western Greenbrier would need to consider other approaches to meet its goals, which could include the use of conventional technologies to produce electricity or using some other currently developing technology. DOE will consider other alternatives that may be suggested during the public scoping period.

Under the proposed action, project activities would include engineering and design, permitting, fabrication and construction, and testing of facilities that would demonstrate the proposed technologies. Upon completion of the demonstration phase, the facility would continue commercial operation.

Preliminary Identification of Environmental Issues

The following environmental issues have been tentatively identified for analysis in the EIS. This list was developed from analyses of the proposed technology, the scope of the proposed project, and similar projects. It is presented to facilitate public comment on the planned scope of the EIS and is neither intended to be all-inclusive nor a predetermined set of *potential impacts*. Additions to or deletions from this list may occur as a result of the public scoping process. Environmental issues include:

(1) Air quality impacts: potential impacts resulting from air emissions during operation of the power plant and kiln, impacts on local sensitive receptors, increases in local smog and haze, water vapor plumes, dust from construction and transportation, impacts on special-use areas;

(2) Noise and light impacts: potential impacts resulting from construction, transportation of materials, and plant operation;

(3) Traffic Issues: potential impacts resulting from the construction and operation of the proposed facility including changes in local traffic patterns, deterioration of roads, traffic hazards, traffic controls;

(4) Floodplains and wetlands: potential impacts on flood flow resulting from earthen fills, access roads and dikes constructed within the floodplain; impacts to wetlands;

(5) Visual impacts associated with plant structures: views from neighborhoods, impacts on scenic views, impacts from water vapor plumes and haze; internal and external perception of the local community;

(6) Reclamation impacts: potential impacts resulting from recovery of coal waste and from the reclamation of the waste coal source sites; mitigation of acid drainage from coal waste piles, and other environmental improvements;

(7) Water quality: potential impacts resulting from wastewater utilization and discharge, water usage, and reclamation of waste coal sites;

(8) Infrastructure and land use, including potential environmental and socioeconomic effects of plant construction, delivery of feed materials, recovery of waste coal, steam and heat distribution, electric power generation and transmission, WoodbrikTM production and distribution, and site restoration;

(9) Water usage: water consumption, potential effects on surface and groundwater resources and withdrawal of water from the municipal sewage treatment plant;

(10) Solid Waste: pollution prevention and waste management, including ash, slag, and wastewater treatment facility sludge;

(11) Cumulative effects that result from the incremental impacts of the proposed project when added to the other past, present, and reasonably foreseeable future projects;

(12) Ecological: Potential on-site and off-site impacts to vegetation, terrestrial wildlife, aquatic wildlife, threatened and endangered species; and ecologically sensitive habitats;

(13) Connected actions: Use of heat and energy from the plant for the adjoining Eco-Park;

(14) Compliance with regulatory requirements and environmental permitting; and

(15) Environmental monitoring.

Parts or all of the proposed power plant and brick manufacturing facility would occupy a floodplain along Sewell Creek, in Rainelle, West Virginia. Parts of the proposed facilities may occupy jurisdictional wetland areas on the floodplain. Therefore, in accordance with DOE regulations (10 CFR Part 1022), the final EIS will include a floodplain and wetlands assessment and a floodplain statement of findings.

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will end on July 3, 2003. Interested agencies, organizations and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Written, e-mailed, faxed, or telephoned comments should be communicated by July 3, 2003 (*see* **ADDRESSES**).

DOE will conduct a public scoping meeting at Greenbrier West High School in Charmco, West Virginia on June 19, 2003 beginning at 7 p.m. Greenbrier West High School is located on U.S. Route 60 approximately 10.3 miles west of I–64 Exit 156 at Sam Black Church. In addition, the public is invited to an informational session at this location beginning at 4 p.m. to learn more about the proposed action. Displays and other information about the proposed agency action and location will be available, and DOE personnel will be present to discuss the proposed action and the NEPA process.

The formal scoping meeting will begin at 7 p.m. on June 19, 2003. Members of the public who wish to speak at this public scoping meeting should contact Mr. Mark L. McKoy, either by phone, fax, computer, or in writing (*see* **ADDRESSES** in this Notice). Those who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and may speak after previously scheduled speakers. Speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five minutes initially and provide additional opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed Western Greenbrier Co-Production Demonstration Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands the comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 28th day of May, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 03–13857 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by July 3, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (grace.sutherland@eia.doe.gov) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Appendix C—Delivery Commitment Schedule, NWPA–830G Appendix G—Standard Remittance and Advice for Payment for Fees, and Annex A to Appendix G—Standard Remittance Advice for Payment of Fees
2. Office of Civilian Radioactive Waste Management (OCRWM)
3. OMB Number 1901–0260
4. Three-year approval requested
5. Mandatory
6. NWPA–830C "Delivery Commitment Schedule," is designed for contract holders to designate the facility where DOE will accept their fuel, the number of assemblies to be accepted, and the mode of transportation to ship the assemblies. The information collected will be used to determine the Federal waste management system configuration. NWPA–830G (and Annex A of schedule G) "Standard Remittance Advice for Payment of Fees," is designed to serve as the source document for entries into DOE accounting records to transmit data from Purchasers to the DOE concerning payment into the Nuclear Waste Fund of their fees for spent nuclear fuel and high-level waste disposal.
7. Business or other for-profit
8. 2,658 hours (5.21 hours per response × 4.36 responses per year × 117 respondents).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, April 29, 2003.

Jay H. Casselberry, Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–13854 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–850–000, et al.]

Ohio Power Company, et al.; Electric Rate and Corporate Filings

May 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ohio Power Company

[Docket No. ER03–805–000]

Take notice that on May 1, 2003, Ohio Power Company and Columbus Southern Power Company tendered for filing a Notice of Cancellation on FERC Electric Rate Schedule No. 70 and No. 17, consisting of a Power Delivery Agreement among Buckeye Power, Inc., the Cincinnati Gas & Electric Company, Columbus Southern Power Company, the Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and the Toledo Edison Company dated as of January 1, 1968.

Ohio Power Company and Columbus Southern Power Company state that the Notice of Cancellation has been served upon Buckeye Power, Inc., the Cincinnati Gas and Electric Company, the Dayton Power & Light Company, Monongahela Power Company and the Toledo Edison Company, and upon the Public Utilities Commission of Ohio.

Comment Date: June 3, 2003.

2. Southern California Edison Company

[Docket No. ER03–858–000]

Take notice that on May 21, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and WM Energy Solutions, Inc. (WMES).

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and WMES.

Comment Date: June 11, 2003.

3. The Connecticut Light and Power Company

[Docket No. ER03–859–000]

Take notice that on May 21, 2003, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate The Connecticut Light and Power Company (CL&P), filed the executed Engineering, Licensing, Construction, Interconnection and Equipment Removal Agreement—Waterside Power Temporary Emergency Generation by and between CL&P and Waterside Power, LLC (Waterside) designated as Original Service Agreement No. 99 (Service Agreement) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 9. NUSCO states that the Service Agreement is a new agreement establishing the terms and conditions under which Waterside's gas turbine electrical generating facility in Stamford, Connecticut will be temporarily interconnected to CL&P's transmission system for the summer of 2003.

NUSCO states that a copy of this filing has been sent to Waterside and that Waterside fully consents to and supports this filing. NUSCO and Waterside request an effective date for the Service Agreement of May 20, 2003, and request any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: June 3, 2003.

4. Sierra Pacific Industries

[Docket No. ER03–860–000]

Take notice that on May 21, 2003, Sierra Pacific Industries (SPI), filed with the Federal Energy Regulatory Commission an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's regulations.

SPI seeks blanket market-based rate authority as well as the waiver of those Commission rules generally granted to power marketers. SPI is a California corporation.

Comment Date: June 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13740 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Orion Power New York GP II, Inc., Notice of Availability of Environmental Assessment

May 27, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for license for the Newton Falls Hydroelectric Project, located on Oswegatchie River in St. Lawrence County, New York, and prepared an environmental assessment (EA). The EA contains staff's analysis of the environmental effects of the proposal and concludes that approval, with additional staff-recommended measures, would not constitute a major federal action significantly affecting the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Please file any comments (an original and 8 copies) within 45 days from the date of this letter. The comments should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix the Project No. 7000–015 to all comments. Comments may be filed electronically via the Internet in lieu of paper (*see* 18 CFR 385.2001(a)(1)(iii)) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. The Commission strongly encourages electronic filings.

Please contact Janet Hutzel at (202) 502–8675, or by e-mail at *janet.hutzel@ferc.gov* if you have any questions or if you require further information.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13741 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–80–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 2003–2005 System Expansion Project and Request for Comments on Environmental Issues

May 27, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2003–2005 System Expansion Project involving construction and operation of natural gas pipeline facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania and New Castle County, Delaware.[1] These facilities consist of about 5.7 miles of 16-inch-diameter loop,[2] modification to an existing meter station, and construction of a new pressure regulator. Construction would be done in three phases from the fall of 2003 through 2005. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Eastern Shore provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Eastern Shore proposes to increase the capacity of its facilities in Southeastern Pennsylvania and Delaware to supply increased quantities of natural gas to existing local distribution customers. This project would allow Eastern Shore to deliver an additional 15,100 Dekatherms per day (Dt/d) of gas to these customers.

Eastern Shore proposes to construct the project in three phases. Phase I would upgrade the Parkesburg Meter Station and increase capacity 3,800 Dt/d. Phase II, constructed in 2004, would consist of 2.7 miles of 16-inch-diameter loop in Chester County, Pennsylvania and would supply an additional 4,700 Dt/d. Phase III, constructed in 2005, would consist of 3.0 miles of 16-inch-diameter loop and a pressure regulator supplying an additional 6,600 Dt/d.

[1] Eastern Shores's application was filed with the Commission on April 1, 2003, under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

The general location of Eastern Shore's proposed facilities is shown on the maps attached as appendix 1.[3]

Land Requirements for Construction

Construction of Eastern Shore's proposed facilities would require about 51.3 acres of land, including construction right-of-way for the loops, the meter station, and extra work areas needed for pipe storage yards, staging areas, and warehouse sites. The majority of the loops would be constructed directly adjacent to Eastern Shore's existing rights-of-way. For the construction of the loops, Eastern Shore proposes to use a 75-foot-wide construction right-of-way, which includes a 35-foot overlap of the existing right-of-way for workspace and temporary spoil storage. About 22.2 acres would be maintained as permanent right-of-way. Construction access to Eastern Shore's project generally would use the construction right-of-way and existing road network.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources and wetlands
- Vegetation and wildlife
- Threatened and endangered species
- Cultural resources
- Land use
- Reliability and safety

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 8.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- Resources and Wetlands
  - —Crossing 8 perennial waterbodies.
  - —Crossing 15 wetlands, including 0.6 acres of forested wetlands.
- Vegetation
  - —Clearing 3.8 acres of upland forest.
- Threatened and Endangered Species
  - —One Federally-listed amphibian specie.
- Land Use
  - —33 residences located within 50 feet of the construction work area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426; Label one copy of the comments for the attention of Gas Branch 1; Reference Docket No. CP03–80–000; and Mail your comments so that they will be received in Washington, DC on or before June 27, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] "We", "us", and "our", refer to the environmental staff of the Office of Energy Projects (OEP).

[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13738 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for A New License

May 27, 2003.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 906.

c. *Date Filed:* May 19, 2003.

d. *Submitted By:* Virginia Electric and Power Company; d.b.a. Virginia Dominion Power—current licensee.

e. *Name of Project:* Cushaw Hydroelectric Project.

f. *Location:* On the James River in Amherst County, Virginia. The project occupies federal land within the Jefferson National Forest.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act

h. *Licensee Contact:* James Thornton, Dominion Virginia Power, (Manager for Licensee), Innsbrook Technical Center, 1 NE., 5000 Dominion Boulevard, Glen Allen, VA 23060, (804) 273–3257.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.com*, (202) 502–8675.

j. *Effective date of current license:* September 1, 1980.

k. *Expiration date of current license:* June 15, 2008.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 1,550-foot-long, 27-foot-high concrete dam; (2) a 138-acre reservoir; (3) a powerhouse containing five turbine generating units with a total installed capacity of 7,500 kW; and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 15, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

Project No. 906–000

Mail List for P–906; Virginia Electric and Power Company

Dr. William E. Trout, III, American Canal Society, 35 Towana Rd, Richmond, VA 23226–3124.

Director, Bureau of Land Management, Eastern States Office, 7450 Boston Blvd, Springfield, VA 22153–3121.

Regional Engineer, Federal Energy Regulatory Commission, Atlanta Regional Office, 3125 Presidential Pkwy Ste 300, Atlanta, GA 30340–3700.

Executive Director, Historic Landmarks Commission, 2801 Kensington Ave, Richmond, VA 23221–2470.

Regional Director, National Marine Fisheries Service, Northeast Regional Office—DOC/NOAA, 1 Blackburn Dr, Gloucester, MA 01930–2237.

Administrator, National Marine Fisheries Service, 904 S Morris St, Oxford, MD 21654–1323.

Chief, National Park Service, Northeast Region—U.S. Custom House, 200 Chestnut St, Philadelphia, PA 19106–2912.

Director, Northern Virginia Regional Park Auth., 5400 Ox Rd, Fairfax Station, VA 22039–1022.

Chairman, South Carolina Dept of Natural Resources, 1201 Main St Ste 1100, Columbia, SC 29201–3265.

Regional Director, U.S. Fish & Wildlife Service, 300 Westgate Center Dr, Hadley, MA 01035–9587.

Director, U.S. Fish & Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Dr, Annapolis, MD 21401–7307.

Gloucester Point Office Director, U.S. Fish & Wildlife Service, 6669 Short Ln, Gloucester, VA 23061–4410.

Commander, U.S. Army Corps of Engineers, PO Box 1159, Cincinnati, OH 45201–1159.

U.S. Army Engineer Div., U.S. Army Corps of Engineers, North Atlantic Division—CENAD–ET–P, 405 Gen. Lee Ave., Fort Hamilton Mil. Com., Brooklyn, NY 11252–6700.

Chief, U.S. Army Corps of Engineers, District Office, 803 Front St, Norfolk, VA 23510–1011.

Fred Allgaier, U.S. Bureau of Indian Affairs, 3000 Youngfield St Ste 230, Lakewood, CO 80215–6551.

Solicitors Office, U.S. Bureau of Indian Affairs, 1849 C St NW., Rm 6454, Washington, DC 20240–0001.

Malka Pattison, U.S. Bureau of Indian Affairs, Office of Trust Responsibilities, 1849 C Street, NW., MS 4513 MIB, Washington, DC 20240–0001.

Dr. James Kardatzke, Ecologist, U.S. Bureau of Indian Affairs, Eastern Regional Office 711 Stewarts Ferry Pike, Nashville, TN 37214–2751.

Commanding Officer, U.S. Coast Guard, MSO Hampton Roads, 200 Granby St, Norfolk, VA 23510–1811.

Director, U.S. Department of Energy, Suite 501, 1880 John F Kennedy Blvd., Philadelphia, PA 19103–7422.

Director, U.S. Department of the Interior, Bureau of Land Management Region 1–V, 7450 Boston Blvd, Springfield, VA 22153–3121.
Regional Environmental Officer, U.S. Department of the Interior, 244 Custom House, 200 Chestnut St., Philadelphia, PA 19106–2912.
Regional Administrator, U.S. Environmental Protection Agency, Region III, 1650 Arch St, Philadelphia, PA 19103–2029.
Naomi Johnson, Lands Program Manager, U.S. Forest Service, George Washington & Jefferson Nat. Forests, 5162 Valleypointe Pkwy, Roanoke, VA 24019–3050.
George Allen, Honorable, U.S. Senate, Washington, DC 20510.
John W. Warner, Honorable, U.S. Senate, Washington, DC 20510.
Malcolm G Deacon Jr., Vice President, VEPCO d/b/a Dominion Generation, 5000 Dominion Blvd, IN 1 NE., Glen Allen, VA 23060–3308.
A. Michael Wood, Director-Productions, VEPCO d/b/a Dominion Generation, PO Box 280, Warm Springs, VA 24484–0280.
C. Doug Holley, Director F&H Ops., VEPCO d/b/a Dominion Generation, Innsbrook Technical Center, IN 1 NE., 5000 Dominion Blvd., Glen Allen, VA 23060–3308.
Sara S Bell, Environmental Coord., VEPCO d/b/a Dominion Generation, PO Box 289, Warm Springs, VA 24484–0289.
Jim Thornton, Technical Advisor, VEPCO d/b/a Dominion Generation, Innsbrook Technical Center, IN 1 NE., 500 Dominion Boulevard, Glen Allen, VA 23060.
Katheryn B Curtis, VEPCO d/b/a Dominion Generation, Innsbrook Technical Center, IN 1 NE., 5000 Dominion Blvd., Glen Allen, VA 23060–3308.
Cynthia Oakey, Counsel, VEPCO d/b/a Dominion Generation, PO Box 26532, Richmond, VA 23261–6532.
Director, Virginia Dept. of Agriculture Commerce, PO Box 1163, Richmond, VA 23218–1163.
Director, Virginia Dept. of Conservation & Recreat, Division of Planning & Recreation Res. 203 Governor St Ste 326, Richmond, VA 23219–2049.
Evelyn M. Glazier, Director, Virginia Dept. of Economic Development, PO Box 798, Richmond, VA 23218–0798.
Tom Felvey, Virginia Dept of Environmental Quality, PO Box 10009, Richmond, VA 23240–0009.
Director, Virginia Dept. of Environmental Quality, PO Box 10009, Richmond, VA 23240–0009.
Manager, Virginia Dept, of Game & Inland Fisheries, 209 E Cleveland Ave., Vinton, VA 24179–2540.
Director, Virginia Dept. of Game & Inland Fishers, PO Box 11104, Richmond, VA 23230–1104.
State of Virginia, Director, Virginia Dept. of Health, PO Box 2448, Richmond, VA 23218–2448.
Coordinator, Virginia Dept. of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221–2470.
Director, Virginia Dept. of Mines Minerals Energy, Division of Energy, 202 N 9th St Fl 8, Richmond, VA 23219–3402.
Director, Virginia Div. of Mined & Land Reclamation. PO Box 900, Big Stone Gap, VA 24219–0900.
Director, Virginia Div. of Mineral Resources, PO Box 3667, Charlottesville, VA 22903–0667.
Attorney General, Virginia Office of the Attorney General, 900 E Main St., Richmond, VA 23219–3513.
State of Virginia, Director, Virginia Soil & Conservation Commission, Suite 206, 203 Governor St., Richmond, VA 23219–2049.
Sherry H. Bridewell, Esquire, Virginia State Corporation Commission, PO Box 1197, Richmond, VA 23218–1197.
Environmental Engineer, Virginia State Department of Health, PO Box 2448, Richmond, VA 23218–2448.
Director, Virginia Water Control Board, PO Box 10009, Richmond, VA 23240–0009.
State of West Virginia, West Virginia Dept. of Natural Resources, Off. of Envir. & Reg. Affairs-Water Res., 1201 Greenbrier St., Charleston, WV 25311–1001.

[FR Doc. 03–13742 Filed 6–2–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–000 and RM01–8–000]

Electric Quarterly Reports, Revised Public Utility Filing Requirements; Notice of Extension of Time

May 27, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports (EQR). Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 EQR submissions to ensure that the data filed was correct. Utilities were directed to re-submit their corrected data by April 11, 2003, which was extended to April 18, 2003.

On April 23, 2003, FERC staff discovered a problem in the "Copy Forward" feature of the EQR submission software. Although the feature was fixed, filers who used this feature before it was fixed may have had to re-enter some data that was previously manually entered into the software. The Commission is committed to ensuring that high quality in the data be filed in the EQRs and subsequently extended the filing deadline for first quarter 2003 EQRs to May 15, 2003.

Despite the extended due dates, several companies requested further extensions to the filing deadlines to resolve problems they experienced with compiling and formatting their data. Notice is hereby given that the deadlines for filing EQR data are extended to the dates listed for each company identified in the attachment to this notice.

Magalie R. Salas,
Secretary.

Attachment

Utility	Quarters requested	Date of requested extension
The ANP Companies[2]	1st Q 2003	May 30, 2003.
Avista Turbine Power, Inc	4th Q 2002; 1st Q 2003	May 23, 2003.
CalPeak Power[3]	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 24, 2003.
Coral Power[4]	4th Q 2002; 1st Q 2003	May 29, 2003.
Dominion Resources Services and Affiliates	1st Q 2003	May 31, 2003.
The Duke Companies[5]	1st Q 2003	May 22, 2003.
Horsehead Industries, Inc	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 23, 2003.
Lamar Power Partners, LP	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 16, 2003.
Morgan Stanley Capital Group, Inc	4th Q 2002	June 20, 2003.
PJM Interconnection, L.L.C.	1st Q 2003	May 16, 2003.
San Diego Gas & Electric Company	4th Q 2002; 1st Q 2003	June 6, 2003.
Sempra Energy Trading Corp.	4th Q 2002; 1st Q 2003	May 30, 2003.

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

[2] Includes the following companies: ANP Funding I, LLC, ANP Marketing Company, ANP Bellingham Energy Company, LLC, ANP Blackstone Energy Company, LLC and Milford Power Limited Partnership.
[3] Includes: CalPeak Power—Border LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Midway LLC, CalPeak Power—Mission LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC.
[4] Includes Coral Power, L.L.C., Coral Energy Management, and Coral Canada US.
[5] Includes the following companies: Duke Energy North America, LLC, Duke Energy Power Marketing, LLC, Duke Energy St. Francis, LLC, Duke Energy Southaven, LLC and Duke Energy Trading and Marketing, L.L.C.

[FR Doc. 03–13739 Filed 6–2–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Order Confirming and Approving an Extension of the Firm Electric Service Rate—Rate Order WAPA No. 103

AGENCY: Western Area Power Administration, DOE.
ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Loveland Area Projects (LAP) firm electric service rate through March 31, 2004. Without this action, the existing firm electric service rate will expire September 30, 2003, and no rate will be in effect for this service.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, PO Box 3700, Loveland, CO 80539–3003, (970) 461–7442, or e-mail *dpayton@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing rate, Rate Order No. WAPA–61, was approved for a 5-year period, beginning February 1, 1994, and ending January 31, 1999. Rate Order No. WAPA–82 extended the existing rate for a 2-year period, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–89 extended the rate again through September 30, 2003.

Western's Rocky Mountain Customer Service Region is entering a public process to modify the firm electric service rate for Loveland Area Projects. Western seeks this extension to provide more time to evaluate cost and revenue projections and to assess the impact of the ongoing drought in the West. The evaluation period and public process will take more than 6 months to complete, including both informal and formal public forums. Therefore, time requirements make it necessary to extend the current rate pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–61, previously extended under Rate Order No. WAPA–82 and Rate Order No. WAPA–89, will be extended under Rate Order No. WAPA–103.

I approved Rate Order No. WAPA–103 after DOE reviewed Western's proposal. My approval extends the existing LAP firm electric service rate, Rate Schedule L–F4, through March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,
Deputy Secretary.

This firm electric service rate was established following section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a). This act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Adminstration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR part 903.23(b).

Background

The existing rate, Rate Order No. WAPA–61, was approved for 5 years, beginning February 1, 1994, and ending January 31, 1999. Rate Order No. WAPA–82 extended the existing rate for 2 years, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–89 extended the rate again beginning February 1, 2001, through September 30, 2003.

Discussion

Western's Rocky Mountain Customer Service Region is entering a public process to modify the firm electric service rate for Loveland Area Projects. Western seeks this extension to provide more time to evaluate cost and revenue projections and to assess the impact of the ongoing drought in the West on energy production and purchase power expenses. The evaluation period and public process will take more than 6 months to complete, including both informal and formal public forums. Therefore, time requirements make it necessary to extend the current rate pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–61, previously extended under Rate Order No. WAPA–82 and Rate Order No.

WAPA–89 will be extended under Rate Order No. WAPA–103.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing Rate Schedule L-F4 for firm electric service from October 1, 2003, through March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–13856 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Notice of Order Confirming and Approving an Extension of the Firm Power Service and Firm Peaking Power Service-Rate Order No. WAPA–102

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates through March 31, 2004. Without this action, the existing firm power and firm peaking power rates will expire September 30, 2003; and no rates will be in effect for these services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, PO Box 35800, Billings, MT 59107–5800, telephone (406) 247–7388, e-mail *riehl@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, approved December 6, 2001, the Secretary delegated (1) the authority to develop power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Western submitted its firm power service and firm peaking power service rates to the FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, the FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and the firm peaking power service rates for the P–SMBP–ED. The rates set forth in Rate Order No. WAPA–60 were approved for 5 years beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83, the Deputy Secretary extended the existing rates for 2 years beginning February 1, 1999, and ending January 31, 2001. On July 17, 2000, upon signing Rate Order No. WAPA–90, the Deputy Secretary further extended the existing rates for 2 years and 8 months beginning February 1, 2001, and ending September 30, 2003. On September 30, 2003, the P–SMBP–ED firm power service and firm peaking power service rates will expire.

Western's P–SMBP–ED is entering a public process to modify our firm power service and firm peaking power service rates. Western is seeking this extension to provide more time for the evaluation of costs and revenue projections, and to assess the impact of the ongoing drought in the West. Therefore, time requirements make it necessary to extend the current rates pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83 and Rate Order No. WAPA–90 will be extended under Rate Order No. WAPA–102.

I approved Rate Order No. WAPA–102 after DOE reviewed Western's proposal. My approval extends the existing Pick-Sloan firm power service and firm peaking power service Rate Schedules P–SED–F6 and P–SED–FP6 from October 1, 2003, until March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

This firm power service and firm peaking power service rate was established in accordance with section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152. This act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00, approved December 6, 2001, the Secretary delegated (1) The authority to develop power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR part 903.23(b).

Background

On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC confirmed, approved, and placed in effect on a final basis, the firm power service and firm peaking power service rates for the P–SMBP–ED. The rates were approved for 5 years beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83, the Deputy Secretary extended the existing rates for 2 years beginning February 1, 1999, and ending January 31, 2001. On July 17, 2000, upon signing Rate Order No. WAPA–90, the Deputy Secretary further extended existing rates for a 2 year and 8 month period beginning February 1, 2001, and ending September 30, 2003.

Discussion

Western's P–SMBP–ED is entering a public process to modify our firm power service and firm peaking power service rates. Western seeks this extension to provide more time for the evaluation of costs and revenue projections, and to assess the impact of the ongoing drought in the West. Therefore, time requirements make it necessary to extend the current rates pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83 and Rate Order No. WAPA–90 will be extended under Rate Order No. WAPA–102.

Western proposes to extend the existing P–SMBP–ED firm power service and firm peaking power service rates until March 31, 2004, to allow time to evaluate costs and complete the public process.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing P–SMBP–ED firm power service and firm peaking power service Rate Schedules P–SED–F6 and P–SED–FP6 from October 1, 2003, until March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–13855 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. RCRA–2003–0012; FRL–7506–9]

Announcement of a Public Stakeholder Meeting on Management of Hazardous Waste in Research and/or Academic Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public stakeholder meeting.

SUMMARY: EPA's Office of Solid Waste is holding a public meeting on Wednesday, June 18, 2003, to discuss issues associated with hazardous waste management in research and/or academic laboratories. The purpose of this meeting is to present our progress to date on issues specific to waste management in research and academic laboratories and solicit input from individual stakeholders on approaches to addressing these issues. A tentative agenda is available upon request. The following topics are planned for discussion: when/where to make a hazardous waste determination, waste labeling requirements, personnel training requirements, satellite accumulation, and types of treatment that are performed in laboratories. Interested parties may choose to attend the meeting or submit written comment. The Agency's goal is to improve the program to better protect human health and the environment through standards that are harmonious with the way laboratories operate.

DATES: The stakeholder meeting is scheduled for Wednesday, June 18 from 12 p.m. to 5 p.m. eastern time. Submit written comments on or before July 18.

ADDRESSES: EPA will hold the meeting in Washington, DC at EPA East (Conference Room 1153); 1201 Constitution Ave., NW. Interested parties also may participate via videoconferencing at the following locations:

1. North Chelmsford—EPA Region I Laboratory (Kennebunkport Room), 11 Technology Drive, North Chelmsford, MA 01863.

2. Chicago—EPA Region V Office (Lake Erie Conference Room), 77 W. Jackson Blvd., Chicago, IL 60604.

3. San Francisco—EPA Region IX Office (Conference Room R1915), 75 Hawthorne Street, San Francisco, CA 94105.

Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kate Davis, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0091; fax number: (703) 308–0514; e-mail address: *davis.kate@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Meeting Apply To Me?

While the meeting is open to the public in general, the identified topics may be of particular interest to persons who work in research and/or academic laboratory settings or persons who are concerned about the implementation of the Resource Conservation and Recovery Act (RCRA) in these settings. Potentially interested parties may include but are not limited to: Government laboratories; research and development laboratories; academic laboratories; Federal, State and local regulators; academic institutions; non-governmental organizations; and trade associations representing environmental health and safety professionals at research and/or academic laboratories. If you have any questions regarding the applicability of this meeting to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Electronic Access to This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0012. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the EPA Docket Center is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2003–0012. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA 2003–0012. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit 1.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0012.

3. *By Hand Delivery or Courier.* Deliver your comments to: OSWER Docket, EPA Docket Center, 1301 Constitution Avenue, NW., EPA West Building, Room B–102, Washington, DC, 20004, Attention Docket ID No. RCRA–2003–0012. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

4. *By Facsimile.* Fax your comments to: (202) 566–0224, Attention Docket ID. No. RCRA–2003–0012.

II. Background

EPA recognizes the unique aspects of research and academic laboratories compared with large manufacturing processes. For example, research and academic laboratories generate small amounts of many different wastes while large manufacturing processes tend to generate large amounts of a few wastes. EPA supports developing environmentally safe management alternatives for hazardous wastes in research and academic laboratories. The Agency has participated in several efforts to explore alternatives that may help target the unique lab practices and wastes more effectively. Recent efforts include the New England Labs XL project and the Howard Hughes Medical Institute (HHMI) Best Management Practices. NE Labs XL is testing the development and implementation of an Environmental Management Plan designed to minimize and more effectively manage hazardous laboratory wastes (*http://www.epa.gov/projectxl/nelabs/index.htm*). HHMI partnered with EPA to identify best practices for managing hazardous wastes in academic research institutions (*http://www.epa.gov/epaoswer/osw/specials/labwaste/r02008.pdf*). The June public stakeholder meeting builds on these efforts.

III. Tentative Agenda

Copies of the tentative agenda for this meeting are available via mail, fax, or e-mail. If you would like a copy, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. How Can I Participate in This Meeting?

You may attend this meeting in person or submit a written comment. The meeting locations have the following capacities: Washington DC, 100 people; North Chelmsford, 50 people; Chicago, 30 people; San Francisco, 17 people. Members of the public wishing to have access to the Headquarters or Regional conference rooms on the day of the meeting should register by June 11 by contacting Kate Davis, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0091; fax number: (703) 308–0514; e-mail address: *davis.kate@epa.gov.* A photo ID will be required to gain access to Headquarters and Regional conference rooms. Any person needing special accessibility accommodations at this meeting should contact the person identified above at least five business days before the meeting so we can make the appropriate arrangements.

Any person who wishes to file a written statement may do so before July 18. EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0012. Please see Unit I.C. for instructions on how to submit written comments.

V. On What Issues Will EPA Be Soliciting Input?

Stakeholders repeatedly have identified three issues: hazardous waste determination, satellite accumulation, and treatment in satellite accumulation areas.

Hazardous Waste Determination: Currently, you must make a hazardous waste determination at the "point of generation" of a waste.

1. When should the hazardous waste determination be made in a laboratory setting?

2. What training is needed for lab personnel concerning hazardous waste determinations (*e.g.*, full RCRA training or training that is made specific to chemical management duties)?

3. How should waste be labeled so it can be appropriately managed as hazardous waste (*e.g.*, the words "hazardous waste" or a detailed chemical description)?

4. Where should the hazardous waste determination be made (*e.g.*, on the bench or in the 90 to 180 day storage area)?

Satellite Accumulation Area (SAA) Accumulation Time: If more than 55 gallons of hazardous waste or more than 1 quart of acute hazardous waste is accumulated at a SAA, the excess must be removed within three days.

1. How should these requirements be applied in a laboratory context?

2. How often do laboratories accumulate more than 55 gallons of waste in their SAA?

3. What, if any, difficulties do environmental health and safety personnel have responding to waste pick-up calls, *e.g.*, within the three day time limit?

4. How would a longer time-frame for removal impact the cost of waste management and the ability to protect human health and the environment?

Treatment in SAAs: We have heard from numerous stakeholders that they would like to perform certain types of treatment.

1. What types of treatment, other than neutralization, are laboratory personnel currently performing or would like to perform?

2. What would be the benefits of the desired types of treatment?

Other Issues: The Agency also solicits your thoughts on other issues specific to research and academic laboratories. In reviewing issues raised by hazardous waste identification and management in laboratories, we will particularly focus on the way laboratories operate, and we will also take into account factors such as regulatory burden, cost, and protection of human health and the environment.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 03–13886 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7507–1]

Science Advisory Board, Environmental Health Committee; Notification of an Upcoming Meeting of the Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens (SGACS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, Science Advisory Board (SAB), announces an upcoming teleconference meeting to discuss the draft report of the Supplemental Guidance for Assessing Cancer Susceptibility from Early-life Exposure to Carcinogens (SGACS) review panel.

DATES: The teleconference meeting will take place on June 20, 2003, from 3 p.m. to 5 p.m. (eastern daylight time).

ADDRESSES: The meeting will take place at the Science Advisory Board Conference Room 6013, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Dr. Suhair Shallal, PhD., Designated Federal Officer, by telephone/voice mail at (202) 564–4566, by fax at (202) 501–0582; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Notification of Public Meeting. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Supplemental Guidance for Assessing Cancer Susceptibility (SGACS) panel of the U.S. EPA Science Advisory Board (SAB) will meet to discuss its draft report of the review the EPA's Office of Research and Development draft document entitled "Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens." This document provides a possible approach for assessing cancer susceptibility from early-life exposure to carcinogens.

The purpose of this meeting is to allow contemporaneous public access to the SGACS review panel's deliberations concerning the draft report. The meeting is open to the public; however, seating is limited and available on a first come basis. The meeting will be held at the times and dates and place specified above. A copy of the draft agenda for the meeting will be posted on the SAB Web site (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 7 days before the meeting.

For more information regarding the background on this advising activity, please refer to the **Federal Register**, 68 FR 10240, published on March 4, 2003, or the SAB Web site at *http://www.epa.gov/sab/panels/sgacsrp.html.*

The panel was charged with responding to questions concerning the document mentioned above. Information regarding these questions and the review materials are available in **Federal Register** notice, 68 FR 17803 published on April 11, 2003.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated) and no more than one hour total for all speakers. For teleconference meetings, opportunities for oral comment will usually be limited to no more than two minutes per speaker and no more than 10 minutes total for all speakers. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted in the opening of this notice in the following formats: one hard copy with original signature, and one

electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Sandra Friedman, *friedman.sandra@epa.gov* or by telephone/voice mail at (202) 564–2526 at least five business days prior to the meeting date so that appropriate arrangements can be made.

Dated: May 22, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board.

[FR Doc. 03–13885 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7505–8]

Notice of Proposed Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as Amended (CERCLA), Des Moines TCE Superfund Site, Des Moines, IA, Docket No. CERCLA–07–2003–0156

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement, Des Moines TCE Superfund Site, Des Moines, Iowa.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement regarding the Des Moines TCE Superfund Site (Site) located in Des Moines, Iowa, was signed by the United States Environmental Protection Agency (EPA) on March 17, 2003, and signed by the United States Department of Justice (DOJ) on May 8, 2003.

DATES: EPA will receive until July 3, 2003, comments relating to the proposed prospective purchaser agreement.

ADDRESSES: Comments should be addressed to Daniel J. Shiel, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to *the Des Moines TCE Superfund Site Prospective Purchaser Agreement, Docket No. CERCLA–07–2003–0156.*

The proposed agreement may be examined or obtained in person or by mail from Daniel J. Shiel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7278.

SUPPLEMENTARY INFORMATION: The Site encompasses approximately 200 acres, which is located in the south central portion of the city of Des Moines, Polk County, Iowa, adjacent to the Racoon River. The Site includes property owned by Dico, Inc. (Dico). The groundwater beneath Dico's property is heavily contaminated with trichloroethylene (TCE) and other volatile organic compounds (VOCs). Surface soil on much of Dico's property is contaminated with VOCs, pesticides, herbicides and metals. Interior building surfaces contain pesticide-laden dust, and building insulation materials include polychlorinated biphenyls (PCBs).

The City of Des Moines (the City) plans to acquire a permanent roadway easement over approximately three (3) acres of Dico's property as right-of-way for the Martin Luther King Jr. Parkway Project. The City will reserve to Dico certain specified access rights to operate and maintain existing CERCLA response actions.

As of the date the City acquires a permanent roadway easement, the United States covenants not to sue or take any other civil or administrative action against the City for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) with respect to the existing contamination.

In consideration of the United States' Covenant Not to Sue, the City hereby covenants not to sue and not to assert any claims or causes of action against the United States with respect to the Site or this Agreement.

The City will provide EPA, as of the date it acquires a permanent roadway easement, an irrevocable right of access at all reasonable times to any property to which EPA determines access is required for the implementation of response actions at the Site, to the extent of the City's interest in the property, for the purposes of performing and overseeing response actions at the Site under federal law.

With regard to claims for contribution against the City, the City is entitled to protection from contribution actions or claims as provided by CERCLA section 113(f)(2), 42 U.S.C. 9613(f)(2) for matters addressed in this agreement.

If the City fails to comply with the terms of this agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

Dated: May 16, 2003.

James B. Guilliford,

Regional Administrator, Region VII.

[FR Doc. 03–13566 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7505–7]

Notice of Proposed *De Minimis* Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as Amended, 42 U.S.C. 9622(g), Great Lakes Container Corporation Superfund Site, City of St. Louis, St. Louis County, MO, Docket No. CERCLA–07–2003–0087

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed *De minimis* Settlement, Great Lakes Container Corporation Superfund Site, St. Louis, Missouri.

SUMMARY: Notice is hereby given that a proposed *de minimis* administrative settlement regarding Saveway Petroleum (Saveway) and the United States Environmental Protection Agency (EPA) was signed by the EPA on April 3, 2003. The facility that is the subject of this *de minimis* settlement is the Great Lakes Container Corporation Superfund Site (Site), located in St. Louis, Missouri.

DATES: EPA will receive written comments relating to the proposed *de minimis* settlement until July 3, 2003.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of the Great Lakes Container Superfund Site, City of St. Louis, St. Louis County, Missouri, Docket No. CERCLA–07–2003–0087.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency,

Region VII, 901 N. 5th Street, Kansas City, Kansas 66101.

SUPPLEMENTARY INFORMATION: This proposed settlement is intended to resolve the liability of Saveway Petroleum at the Great Lakes Container Corporation Superfund Site in St. Louis, Missouri.

Great Lakes Container Corporation is a former drum reclamation company who operated at the Site from 1976 to 1985. The same business was operated as Northwestern Cooperage from the 1950's to 1976 and then operated as Great Lakes Container Corporation. EPA conducted a time-critical removal completed in 1998 that consisted primarily of soil and drum removal. The EPA incurred costs of approximately $9,127,244.30. The hazardous substances at this Site consisted primarily of lead and polychlorinated biphenyls. Liability is based on the theory that *de minimis* parties arranged for disposal of hazardous substances at the Site by shipping drums for reclamation coated with paint containing lead. The *de minimis* parties either admitted that they sent drums for reclamation to the Site or EPA had separate evidence to prove that *de minimis* parties sent drums for reclamation to the Site.

This settlement is being offered to Saveway because it is liable for no more than one quarter a percent (.25%) of EPA's past costs at the Site. The majority of *de minimis* parties are each required to pay $4,839.44 or $5,133.72 depending on whether the party was required to pay prejudgment interest. Other settlements made for six *de minimis* parties varied from $3,794.19 to $22,856.56 because more volume-specific information was available for them allowing EPA to refine the calculation. The amount and toxicity of hazardous substances contributed by Saveway was minimal as compared to other parties' shares of hazardous substances. The EPA determined this amount to be Saveway's fair share of liability based on the amount of hazardous substances generated and disposed of at the Site and the volume of waste contributed. However, because Saveway has demonstrated an inability to pay, it will not be required to pay any of EPA's past costs at the Site. As a result, Saveway has agreed to provide access to EPA and maintain records for five (5) years.

The settlement also includes contribution protection from lawsuits by other potentially responsible parties as provided for under section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5). The *de minimis* settlement provides that EPA covenants not to sue Saveway for response costs at the Site or for injunctive relief pursuant to sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6973. The settlement contains a reopener clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that Saveway no longer meets the criteria for a *de minimis* settlement set forth in section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). The United States maintains the ability to bring an action in the event that the financial information provided by Saveway was false. The covenant not to sue does not apply to the following matters:

(a) Claims based on the future arrangement for disposal or treatment of any hazardous substance, pollutant, or contaminant at the Site after the effective date of the *de minimis* settlement;

(b) Criminal liability; or

(c) Liability for damages or injury to, destruction of, or loss of the natural resources and for the costs of any natural resource damage assessments.

The *de minimis* settlement will become effective upon the date which the EPA issues a written notice to Saveway that the statutory public comment period has closed and that comments received, if any, do not require modification, of or EPA withdrawal from the settlement.

Dated: May 22, 2003.

James B. Gulliford,

Regional Administrator, Region VII.

[FR Doc. 03–13565 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0010; FRL–7300–6]

1,2-Ethylene Dichloride; Final Enforceable Consent Agreement and Testing Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with the Dow Chemical Company, Vulcan Materials Company, Occidental Chemical Corporation, Oxy Vinyls, LP, Georgia Gulf Corporation, Westlake Chemical Corporation, PPG Industries, Inc., and Formosa Plastics Corporation, U.S.A. The Companies are members of the Hazardous Air Pollutant (HAP) Task Force, which represents the manufacturers of 1,2-ethylene dichloride (EDC). The Companies have agreed to: Conduct toxicity testing, develop pharmacokinetics and mechanistic test data, and develop a computational dosimetry model for quantitative route-to-route extrapolations of dose-response for EDC for acute, subchronic, developmental, reproductive and neurotoxicity effects that were identified in a proposed test rule for hazardous air pollutants. This notice announces the ECA and Order for EDC and summarizes the terms of the EGA.

DATES: The effective date of the ECA and Order is May 13, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard Leukroth or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; fax number: (202) 564–4765; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This announcement is directed to the public in general. However, as described in Unit IV., this ECA and Order may affect others in that EPA has initiated rulemaking under TSCA section 12(b) (62 FR 67038, December 23, 1997) (FRL–5762–8). When finalized, that rulemaking will require all persons who export or intend to export EDC to comply with the export notification regulations at 40 CFR part 707, subpart D. Although others may be affected by subsequent actions related to this announcement, this ECA and Order only applies to those Companies that are specifically named in this ECA and Order. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What is EDC?

EDC is used as a chemical intermediate principally in the production of vinyl chloride, but also vinylidene chloride, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, aziridines, and ethylene diamines. It is also used as a solvent. An estimated 77,111 workders are exposed to EDC (Ref. 1). The Chemical Abstract Service Registry Number (CAS No.) for EDC is 107–06–2.

B. Why Does EPA Need Health Effects Data on EDC?

EPA proposed health effects testing under TSCA section 4(a) for a number of hazardous air pollutants ("HAPs" or "HAP chemicals"), including EDC (61 FR 33178, June 26, 1996) (FRL–4869–1), as amended at 62 FR 67466, December 24, 1997 (FRL–5742–2) and 63 FR 19694, April 21, 1998 (FRL–5780–6). In the original HAPs proposal, the Agency made preliminary findings for EDC (61 FR 33178, 33190, 33191; and Ref. 1) that:

1. EDC may present an unreasonable risk of injury to health.

2. EDC is or will be produced in substantial quantities, and there is or may be substantial human exposures to the chemical.

3. There are insufficient data to determine or predict the effects of activities on human health involving EDC.

4. Testing is necessary to develop health effects data for EDC.

The HAPs rule, as amended, proposed testing of EDC for acute toxicity, subchronic toxicity, developmental toxicity, reproductive effects toxicity, and neurotoxicity (61 FR 33178, 33198, June 26, 1996; 62 FR 67466, 67483, December 24, 1997).

III. ECA Development and Conclusion

A. How is EPA Going to Obtain Health Effects Testing on EDC?

In the proposed HAPs test rule, as amended, EPA invited the submission of proposals regarding the performance of pharmacokinetics studies that would permit extrapolation from oral data to predict risk from inhalation exposure. Such proposals could provide the scientific basis for alternative testing to the testing proposed and form the basis for developing needed HAPs data via ECAs (61 FR 33178, 33189, June 26, 1996; 62 FR 67466, 67474, December 24, 1997). EPA uses ECAs to accomplish testing where a consensus exists among EPA, affected manufacturers and/or processors, and interested members of the public concerning the need for and scope of testing (40 CFR 790.1(c)).

The procedures for ECA development are described at 40 CFR 790.22(b).

In response to EPA's request for proposals for ECAs, the HAP Task Force submitted a proposal for alternative testing that included physiologically-based pharmacokinetics (PBPK) studies and computational modeling to inform route-to-route extrapolations of dose-response for EDC on November 22, 1996 (Ref. 2). EPA responded to this proposal on June 26, 1997 (Ref. 3), indicating that the HAP Task Force alternative approach offered sufficient merit to proceed with discussions for developing an ECA for EDC. Consequently, EPA issued a document which was published in the **Federal Register** of December 19, 1997 (62 FR 66626) (FRL–5763–1), soliciting interested parties to monitor or participate in these discussions.

EPA held a public meeting to develop an ECA for EDC on January 12, 1998. Representatives of the Companies and other interested parties attended this meeting. The participants reached consensus on the general scope of the testing to be required under the ECA. Following the public meeting, the HAP Task Force submitted (March 19, 1999) a revised proposal for a testing program (Ref. 4). On February 13, 2001, EPA responded to the HAP Task Force with comments on the revised proposal and by initiating a draft ECA for consideration by the HAP Task Force (Ref. 5). A final version of the ECA was later circulated to the HAP Task Force for signature, and returned to EPA for signature. On February 3, 2003, EPA received the ECA signed by the Companies. On May 13, 2003, EPA signed the ECA and accompanying Order (Ref. 6).

B. What Testing Does the ECA for EDC Require?

The EDC ECA alternative testing program has four segments as follows: Tier I HAPs Testing, Tier I Program Review Testing, EPA Program Review, and Tier II Testing. This is described in Table 1 in this unit and includes the following testing, reporting, and review activities:

1. *Tier I HAPs Testing.* This testing consists of endpoint testing, conducted by inhalation exposure, that EPA deemed necessary to meet certain data needs identified in the proposed HAPs test rule, as amended, and includes acute toxicity with bronchoalveolar lavage (BAL) and histopathology, and acute neurotoxicity testing. These tests will be conducted under a combined protocol as described in Appendix D.1 of the ECA.

2. *Tier I Program Review Testing.* Under this segment of the EDC ECA alternative testing program, the Companies will conduct studies to extend the computational dosimetry model of D'Souza *et al.* (1987; 1988; Refs. 7 and 8) in order to apply the model to the specific health effects endpoints for EDC listed in the ECA, validate the model, and verify the model's ability to perform quantitative route-to-route extrapolations of dose-response. In addition, the Companies will sponsor development of pharmacokinetics and mechanistic (PK/MECH) data to support the application of the model for the endpoints listed under Tier II of the EDC ECA. Specifically, the PK/MECH testing will develop data to inform:

i. Oral-to-inhalation extrapolation of subchronic toxicity data reported by Daniel, *et al.* (1994; Ref. 9) relevant to corn oil gavage.

ii. Oral-to-inhalation extrapolation of subchronic neurotoxicity data relevant to drinking water exposure of a study to be conducted under Tier II Testing.

iii. Oral-to-inhalation extrapolation of reproductive effects testing conducted under Tier II Testing and each dosing paradigm of studies reported by Alumot *et al.* (1976; Ref. 10), Rao, *et al.* (1980; Ref. 11) and Lane *et al.* (1982; Ref. 12).

In addition, the Companies will provide model simulations with point and uncertainty estimates of internal dose metrics (parent chemical peak and area under the curve (AUC) concentrations in blood and brain, and 24-hour total glutathione-dependent metabolism) in rats and humans to inform quantitative route-to-route extrapolations of dose-response. These simulations will be used to evaluate the acceptability of: Subchronic neurotoxicity testing of oral exposure via drinking water in rats, extant oral subchronic toxicity data of Daniel *et al.* (1994; Ref. 9) in rats via corn oil gavage, and reproductive toxicity testing of oral exposure via drinking water in rats.

3. *EPA Program Review.* Model development and data from Tier I Program Review Testing are subject to an EPA Program Review. It is essential to the success of the EDC ECA alternative testing program for EPA to ensure that the model and the PK/MECH data used to support the route-to-route extrapolations of dose-response are of the highest quality. The purpose of the EPA Program Review will be to determine:

i. Whether it is feasible and appropriate to apply Tier I Program Review Testing data and data from other studies acceptable to EPA to support computational route-to-route extrapolations of dose-response for endpoints listed in the Tier II Testing segment of the ECA.

ii. Whether the data from the Tier I Program Review Testing segment provide a sufficient basis for conducting the endpoint testing and/or the computational route-to-route extrapolations for the dose-responses specified in the Tier II Testing segment.

iii. The nature and scope of any additional work that may be required before Tier II Testing and application of the EDC model for route-to-route extrapolation of dose-response reporting (e.g., development of additional PK/MECH data, modification to the EDC model).

4. *Tier II Testing and/or Extrapolation Reporting.* This segment of the EDC ECA alternative testing program consists of endpoint testing by drinking water exposure for subchronic neurotoxicity and reproductive toxicity. The reproductive effects toxicity testing is intended to confirm studies reported by Alumot *et al.* (1976; Ref. 10), Rao *et al.* (1980; Ref. 11), and Lane *et al.* (1982; Ref. 12), and provide data needed on fertility index, gestation index, gross necropsy, organ weight, histopathology, estrous cycle, sperm evaluation, vaginal opening, and preputial separation as described in the ECA.

This segment will also include application of the EDC model for quantitative route-to-route extrapolation reporting (oral to inhalation) for Tier II endpoint testing (subchronic neurotoxicity and reproductive toxicity) and similar computational extrapolation reporting for extant subchronic toxicity reported by Daniel *et al.* (1994; Ref. 9).

Testing conducted under this ECA will allow EPA to characterize certain potential health hazards resulting from inhalation exposure to EDC. The following Table 1 sets forth the required testing, test standard, and reporting requirements under the ECA for EDC.

TABLE 1.—REQUIRED TESTING, TEST STANDARD, AND REPORTING REQUIREMENTS FOR EDC

Testing Segment	Required testing	Test standard	Deadline for final report[1] (Months)
Tier I HAPs Testing.	Acute toxicity, with BAL and histopathology (inhalation).	40 CFR 799.9135 (as annotated in ECA Appendix D.1).	18
	Acute neurotoxicity (inhalation).	40 CFR 799.9620 (as annotated in ECA Appendix D.1).	18
Tier I Program Review Testing.	PK/MECH data to support model validation and verification of oral-to-inhalation extrapolation of dose-response for the following data needs in the F344 rat:	ECA Appendix C (1–4).	21
	a. Subchronic toxicity.		
	b. Subchronic neurotoxicity.		
	c. Reproductive toxicity.		
	PBPK model simulations.	ECA Appendix C (1–5).	21
Tier II Testing and/or Extrapolation Reporting.	Subchronic toxicity, route-to-route extrapolation of dose-response (oral Tier II Testing to inhalation) of a study reported by Daniel *et al.* (1994).	ECA Appendix C.2 and C.6.	36
	Subchronic neurotoxicity (oral).	40 CFR 799.9620 (as annotated in ECA Appendix D.2).	42
	Subchronic neurotoxicity route-to-route extrapolation of dose-response (oral Tier II Testing to inhalation).	ECA Appendix C.3 and C.6.	52
	Reproductive toxicity (oral).	40 CFR 799.9380 (as annotated in ECA Appendix D.3).	42

TABLE 1.—REQUIRED TESTING, TEST STANDARD, AND REPORTING REQUIREMENTS FOR EDC—Continued

Testing Segment	Required testing	Test standard	Deadline for final report[1] (Months)
	Reproductive toxicity route-to-route extrapolation of dose-response (oral data to inhalation, including Tier II Testing and extant studies reported by Alumot *et al.* (1976), Rao *et al.* (1980), and Lane *et al.* (1982)).	ECA Appendix C.4 and C.6.	52

[1] Number of months after the effective date of the Order that incorporates this ECA when the final report is due. In addition, every 6 months from the effective date of the Order until the end of the ECA testing program, interim reports describing the status of all testing to be performed under this ECA must be submitted by the Companies to EPA.

C. What are the Uses for the Test Data for EDC?

EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and other HAP risk assessments. EPA will also use the data from this ECA to fulfill part of the Tier I Testing portion of the Voluntary Children's Chemical Evaluation Program (VCCEP). (For more information about VCCEP, see: http://www.epa.gov/chemrtk/vceep/.) In addition, the data will be used by other Federal agencies (e.g., the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs (see the proposed HAPs test rule at 61 FR 33178, 33179, June 26, 1996).

D. Does the ECA for EDC Meet all the Testing Requirements for EDC that were Contained in the Proposed Test Rule?

In the proposed HAPs test rule, as amended, EPA proposed testing of EDC for acute, subchronic, developmental, and reproductive effects and neurotoxocity by the inhalation route of exposure. The ECA alternative testing program for EDC requires inhalation testing for acute toxicity and acute neurotoxicity, and oral drinking water testing for subchronic neurotoxicity and reproductive effects toxicity. The ECA requires the development of PK/MECH data to support computational PBPK modeling to inform quantitative route-to-route extrapolations of dose-response (oral to inhalation) for the endpoints of subchronic toxicity, subchronic neurotoxicity, and reproductive effects toxicity as described in the ECA.

During discussions to develop this ECA, EPA concluded that the developmental toxicity studies reported by Rao *et al.* (1980; Ref. 11), in rabbits, and Payan *et al.* (1995; Ref. 13), in rats, adequately fulfill the HAPs rulemaking testing requirement for developmental toxicity testing for EDC and, therefore, the ECA does not require, and the final HAPs test rule will not require this testing. In addition, the ECA does not require, and the final HAPs test rule will not require, macrophage function testing (a component of EPA's acute toxicity test gudeline 40 CFR 799.9135) because EPA considers existing data by Sherwood *et al.* (1987; Ref. 14) adequate to fulfill this aspect of the acute testing need. Furthermore, the Tier I HAPs Testing endpoints (acute toxicity and acute neurotoxicity) will not be included in the final HAPs test rule because the route of testing to be conducted under this ECA is identical to that specified in the HAPs rulemaking. Finally, depending on the outcome of EPA's Program Review, the Agency anticipates that the balance of the testing for EDC that was contained in the proposed HAPs test rule, as amended, will also not be included in the final HAPs test rule because the Companies will conduct equivalent testing as Tier II Testing and Extrapolation Reporting under this ECA alternative testing program for EDC. Therefore, EPA anticipates the fulfilling of all of the health effects testing requirements, identified in the HAPs proposed rule, as amended, by implementing the ECA and Order.

The issuance of the ECA and Order constitutes final EPA action for purposes of 5 U.S.C. 704.

E. What if EPA Should Require Additional Health Effects Testing on EDC?

If EPA decides in the future that it requires additional health effects data on EDC, the Agency will initiate a separate action.

IV. Other Impacts of the ECA for EDC

The issuance of the ECA and Order under TSCA section 4 subjects the Companies that signed the ECA to export notification requirements under TSCA section 12(b)(1), as set forth at 40 CFR part 707, subpart D, if they export or intend to export EDC.

In the 12(b) proposal published in the **Federal Register** of December 23, 1997 (62 FR 67038) (FRL–5762–8), EPA proposed to amend 40 CFR 799.5000 by adding EDC to the list of chemicals subject to testing consent orders. The listing of a chemical substance at 40 CFR 799.5000 serves as notification to all persons who export or intend to export the chemical substance that:

1. The chemical substance is the subject of an ECA and Order.

2. EPA's export notification regulations at 40 CFR part 707, subpart D, apply to those exporters who have signed the ECA, as well as those exporters who have not signed the ECA (40 CFR 799.19).

When a final rule based on the proposed rule is published in the **Federal Register**, all persons who export or who intend to export EDC will be subject to export notification requirements.

V. Paperwork Reduction Act

The ECA and Order announced in this notice do not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements related to test rules and ECAs issued under TSCA section 4 have already been approved by OMB under OMB control number 2070–0033 (EPA ICR No. 1139). The one-time public burden for this collection of information is estimated to be approximately 3,364 hours total (Ref. 15). Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

VI. References

1. U.S. EPA, OPPT. *I. Ethylene Dichloride (107–06–2).* Pp 24–27 *In*: "TSCA Section 4 Findings for 21 Hazardous Air Pollutants: A Supporting Document for Proposed Hazardous Air Pollutants (HAPs) Test Rule." (June 25, 1996).

2. The HAP Task Force. Letter from Peter E. Voytek to Charles M. Auer with attachment entitled: "Proposal for Pharmacokinetics Study of Ethylene Dichloride, November 22, 1996." (November 22, 1996).

3. U.S. EPA. Letter from Charles M. Auer to Peter E. Voytek with attachment entitled: "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Ethylene Dichloride, June, 1997." (June 26, 1997).

4. The HAP Task Force. Letter from Peter E. Voytek to Charles M. Auer, U.S. EPA. (March 19, 1999).

5. U.S. EPA. Letter from Charles M. Auer to Peter E. Voytek, HAP Task Force, Re: ECA Development of Ethylene Dichloride (EDC) (OPPTS 42197C, with attachment: "EDC ECA—DRAFT, dated February, 2001." (February 13, 2001).

6. Final Enforceable Consent Agreement for Ethylene Dichloride and Accompanying Testing Consent Order, signed by EPA on May 13, 2003.

7. D'Souza, R.W., Francis, W.R., Bruce R.D., and Andersen, M.E. *Physiologically based phamacokinetic model for ethylene dichloride and its application in risk assessment.* Pp 286–301, *In*: Pharmacokinetics in Risk Assessment. National Academy Press. Washington, D.C. (1987).

8. D'Souza, R.W., Francis, W.R., and Andersen, M.E. *Physiological model for tissue glutathione depletion and increased resynthesis after ethylene dichloride exposure.* Journal of Pharmacology and Experimental Therapeutics 245(2):563–568. 1988.

9. Daniel, F.B., Robinson, M., Olson, G.R., York, R.G., and Condie, L.W. *Ten and ninety-day toxicity studies of 1,2-dichloroethane in Sprague-Dawley rats.* Drug and Chemical Toxicology 17: 463–477. 1994.

10. Alumot, E., Nachtomi, E., Mandel, E., Holstein, P., Bondi, A., and Herzberg, M. *Tolerance and acceptable daily intake of chlorinated fumigants in the rat diet.* Food, Cosmetics and Toxicology 14: 105–110. (1976).

11. Rao, K.S., Murray, J.S., Deacon, M.M., John, J.A., Calhoun, L.L., and Young, J.T. *Teratogenicity and reproduction studies in animals inhaling ethylene dichloride.* Banbury Report 5: 149–166. (1980).

12. Lane, R.W., Riddle, B.L., and Borzelleca, J.F. *Effects of 1,2-dichloroethane and 1,1,1-trichloroethane in drinking water on reproduction and development in mice.* Toxicology and Applied Pharmacology 63: 409–421. 1982.

13. Payan, J.P., Saillenfait, A.M., Bonnet, P., Fabry, J.P., Langonne, I., and Sabate J.P. *Assessment of the developmental toxicity and placental transfer of the 1,2-dichloroethane in rats.* Fundamental and Applied Toxicology 28: 187–198. 1995.

14. Sherwood, R.L., O'Shea, W., Thomas; P.T., Ratajczak, H.V., and Aranyi, C. *Effects of inhalation of ethylene dichloride on pulmonary defenses of mice and rats.* Toxicology and Applied Pharmacology 91: 491–496. 1987.

15. U.S. EPA, OPPTS. "Burden Estimates for the Enforceable Consent Agreement for Ethylene Dichloride." (January 31, 2002).

List of Subjects

Environmental protection, Hazardous chemicals.

Dated: May 13, 2003.

Stephen Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–13721 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0067; FRL–7287–4]

TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is hereby finalizing revisions to certain parts of EPA's "Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk" (policy statement) issued March 16, 1978, concerning the reporting of "substantial risk" information pursuant to section 8(e) of the Toxic Substances Control Act (TSCA). EPA is making these revisions after having considered public comments that were solicited in 1993 and 1995. Specifically, the revisions address the reporting of information on the release of chemical substances to, and the detection of chemical substances in, environmental media, the reporting deadline for written "substantial risk" information, and the circumstances under which certain information need not be reported to EPA under section 8(e) of TSCA. EPA is republishing the policy statement in its entirety in this document, including both those portions of the policy statement that are revised and those portions that are not affected by any revisions. Since the policy statement was published in 1978, this republication is intended to ensure that a single reference source for the TSCA section 8(e) policy and guidance is easily available to the regulated community and other interested parties.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard Hefter, Chief, High Production Volume Chemicals Branch, Risk Assessment Division, Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7649; e-mail address: hefter.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, import, or distribute in commerce chemical substances and mixtures. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers, processors, and distributors (NAICS 325)
- Petroleum refiners and distributors (NAICS 324)
- Manufacturers of plastic parts and components (NAICS 325211)
- Paints and coatings and adhesive manufacturing (NAICS 3255)
- Cleaning compounds and similar products manufacturing (NAICS 3256)
- Electronics manufacturing (NAICS 334 and 335)
- Automobiles manufacturing (NAICS 3361)

• Aircraft manufacturing (NAICS 336411)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit VIII., Part II., of this document. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0067. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. Information about the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and OPPTS-related programs is available from http://www.epa.gov/opptsmnt/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

The Agency is revising and clarifying certain provisions of the TSCA section 8(e) policy statement issued in 1978. Specifically the Agency is changing the interpretation that section 8(e) notices should be submitted within 15 working days by lengthening the reporting period to 30 calendar days. The Agency is revising and clarifying the guidance regarding the release and detection of chemical substances in environmental media, which includes previously unsuspected chemical contamination such as in soil and ground water, and emergency incidents of environmental contamination such as spills to water and releases to the atmosphere. Also, the Agency is expanding the types of information that it believes need not be reported under section 8(e) and changing the reporting periods to provide additional time for industry compliance with TSCA section 8(e). In addition, EPA is updating certain reporting contact phone numbers and the address for reporting section 8(e) notices.

While the Agency is only revising portions of the 1978 guidance it has issued in earlier documents, EPA is including in this **Federal Register** document, along with the revised guidance, those portions of earlier guidance documents that are not being changed. In that way, members of the regulated community will be able to find all current EPA guidance on compliance with section 8(e) in this **Federal Register** document, without having to consult older documents as well.

The Agency is including in this guidance document its preferences for how and where section 8(e) notices should be submitted. Although these preferences could be codified in procedural rules under the Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, EPA is not at this time adopting them as rules. While submitters of section 8(e) notices are not therefore obligated to comply with the preferences articulated in this document, EPA encourages submitters to consider and follow them when preparing and submitting TSCA section 8(e) notices.

Finally, the bulk of this document contains EPA's guidance on certain types of information it currently believes generally meet the statutory standard of "information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment." Some of this guidance is new, and reflects public comment following the Agency's requests for comments in 1993 and 1995. As noted earlier, this document also contains earlier guidance issued on section 8(e) that has not been changed and that is being reprinted here for the convenience of all interested persons.

During the Compliance Audit Program (CAP) (see Unit II.C.), EPA reviewed the provisions in the reporting guidance for incidents involving chemical contamination of the environment. The changes set out in this document were developed as a result of that review. In 1993, EPA issued a **Federal Register** notice (58 FR 37735, July 13, 1993) that proposed changes to the reporting guidance. In 1995, after consideration of comments received on the 1993 proposal, EPA sought additional public comment on proposed changes to the reporting guidance (60 FR 14756, March 20, 1995) (FRL–4937–6). Unit III. describes the changes EPA proposed, the comments received on the proposed changes, and the Agency's resolution of the issues raised by the comments.

B. What is the Agency's Authority for Taking this Action?

TSCA section 8(e) states, "Any person who manufactures, [imports,] processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the [EPA] Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information." 15 U.S.C. 2607(e).

EPA hopes and expects that this guidance will be useful to manufacturers, including importers, processors, and distributers of chemical substances in fulfilling their responsibilities under section 8(e). This guidance is not, however, a substitute for rulemaking and it does not impose any binding requirements upon either the regulated community or the Agency. In any particular set of circumstances, any person who has a question about the applicability of section 8(e) to certain information is welcome to contact EPA. In responding to such person, the Agency will consider the guidance contained in this document, but the guidance will not be determinative. It is also important to point out that the guidance provided will not be unalterable, and that the Agency may revise this guidance without notice or an opportunity to comment. EPA has sought public comment on this guidance so that it can ensure the utility of the guidance for the intended audience. If it becomes necessary, the Agency will revise this guidance.

C. What is the Agency's Current Policy on and Interpretation of the TSCA Section 8(e) Reporting Requirements?

The section 8(e) reporting requirements became effective on January 1, 1977, the effective date of TSCA. The statutory language of section 8(e) requires the exercise of a certain degree of judgment in determining what information must be reported. Although section 8(e) is self-implementing, EPA issued a proposed policy statement in the **Federal Register** of September 9, 1977 (42 FR 45362), and sought public comment with regard to the Agency's interpretation and implementation of section 8(e). Following receipt and consideration of public comments, on March 16, 1978 (43 FR 11110) (FRL–849–2), EPA issued a final TSCA section 8(e) policy statement hereinafter cited as the "1978 Policy Statement." The 1978 Policy Statement described the types of information that EPA considers reportable under section 8(e) and described the procedures for reporting such information to EPA.

In the **Federal Register** of February 1, 1991 (56 FR 4128), the Agency announced a one-time voluntary TSCA section 8(e) CAP. The CAP was designed primarily to: (1) Obtain any section 8(e) information that was required to have been submitted to EPA before the CAP, and (2) encourage companies to voluntarily search ("audit") their files for data reportable under section 8(e). The TSCA section 8(e) CAP established a schedule of monetary penalties for failure to submit section 8(e) data before the CAP, and also established a ceiling on penalties that would be collected from any single company.

D. The Reason for Issuing Revised Guidance

Companies considering whether to participate in the CAP had raised questions about Parts V.(b)(1) and V.(c) of the 1978 Policy Statement. Those sections outlined the reportability of data on "widespread and previously unsuspected distribution in environmental media" and "emergency incidents of environmental contamination," respectively. In order to answer the questions raised by the companies, the Agency reviewed existing section 8(e) guidance and determined that Parts V.(b)(1) and V.(c) of the 1978 Policy Statement needed clarification and refinement. Therefore, in the **Federal Register** of June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending application of Parts V.(b)(1) and V.(c) of the 1978 Policy Statement.

That **Federal Register** document also stated that EPA was going to provide more specific guidance about the types of information on environmental releases and detection of environmental contamination that should be submitted under section 8(e). Phase 2 of the CAP, which was to deal with data on environmental contamination, would be triggered by publication of that revised guidance (phase 1 of the CAP had dealt with studies of "effects" of toxic substances on health or the environment.). On July 13, 1993, EPA issued a **Federal Register** document (58 FR 37735) that proposed changes to the 1978 Policy Statement, clarifying the types of environmental contamination data that EPA believes are subject to section 8(e) reporting.

Comments received on the proposed changes took issue with a number of the revisions proposed by the Agency as well as with the original guidance. Based on the comments received, it became apparent that any final guidance would likely be significantly different from previous guidance and should therefore be applied prospectively. Since the CAP was essentially a retrospective exercise, the decision to make substantial revisions in the guidance for reporting on environmental contamination called into question the utility of carrying out phase 2. Consequently, the Agency, in consultation with CAP participants, decided to conclude the CAP after phase 1 "effects" reporting. Letters were sent to CAP participants announcing the change in the program, and the CAP was terminated on May 15, 1996. EPA reached final settlements with CAP participants, announced those settlements on October 15, 1996, and collected payment for stipulated penalties.

III. Section 8(e) Policy Clarifications and Revisions

EPA's interpretation of section 8(e) is that it requires the reporting of certain "substantial risk" information concerning the release of chemical substances to, and the detection of chemical substances in, any environmental medium. In order to enhance implementation of TSCA section 8(e), EPA is, in this **Federal Register** document, publishing a complete version of the policy statement which reflects comments received on proposed refinements to the policy statement published on July 13, 1993 (58 FR 37735), and March 20, 1995 (60 FR 14756). EPA has also decided to reinstate application of Part V.(c) relating to "emergency incidents of environmental contamination," which was suspended on June 20, 1991 (56 FR 28458).

A. What Changes were Proposed in 1993?

In a notice published in the **Federal Register** on July 13, 1993 (58 FR 37735), EPA proposed the following changes to the 1978 Policy Statement:

1. Revise the 1978 reporting guidance as to when the discovery of "widespread and previously unsuspected [chemical] distribution in environmental media" would trigger a substantial risk notice under section 8(e). EPA indicated that the key elements to consider would be the known hazard potential of the contaminant, how "widespread" the substance is in the environment, and the potential for actual human or environmental exposure. EPA further stated that the weight to be given exposure considerations would be judged in light of hazard potential, i.e., the more hazardous the chemical the less one would weigh exposure considerations.

2. Expand the categories of information cited in the 1978 reporting guidance that EPA believed no longer need to be reported to under section 8(e). The major change proposed was intended to reduce the potential for TSCA section 8(e) submissions to be duplicative of reporting under other mandates, by allowing an exemption for information reported under other EPA reporting requirements (including those delegated to the states). Also, a clarification of what would constitute "corroborative" data not subject to reporting was proposed.

3. Change the interpretation that section 8(e) notices for information other than "emergency incidents of environmental contamination" should be submitted within 15 working days by lengthening the reporting period to 30 calendar days.

4. Eliminate the need to follow up an emergency release notification under Part V.(c) with a written report.

5. Clarify standards for claiming CBI in section 8(e) notices.

6. Correct the address under Part IX. of the 1978 Policy Statement.

B. Summary of Public Comments on the 1993 and 1995 Proposed Revisions and EPA's Responses

In addition to the brief summaries of public comments and Agency responses presented in this **Federal Register** document, EPA has prepared a "response to comments" document that addresses in greater detail the significant comments it received on the proposed changes. The public version of the "response to comments" document, which does not contain any CBI information, is publicly available in the docket described in Unit I.B.1 of this document.

1. *Comments on the 1993 proposed changes.* EPA received comments from 49 companies and industry associations in response to the 1993 **Federal Register** document. Commenters suggested that EPA's proposed plan for environmental reporting lacked criteria that were sufficiently clear to enable companies to separate "routine" releases, which need not be reported, from the "extraordinary" releases, which were to be reported under section 8(e). Commenters stated that EPA should provide clearer criteria for determining when a situation presents a "substantial risk," and should provide as many "bright lines" as possible to indicate what would and would not be reportable under section 8(e). Specifically, commenters:

- Questioned EPA's interpretation of when contamination would be "widespread."
- Stated that only a contaminant's "known" toxicity should be considered.
- Stated that for contamination to be reportable, it must be "previously unsuspected" contamination.
- Stated that the contamination must result in actual or high probability of significant exposure to humans or non-human organisms.
- Stated that any contamination to be reported under section 8(e) must "present" a substantial risk rather than only a speculative "may present."
- Proposed that EPA establish a decision tree that companies could follow to determine whether to report incidents involving environmental contamination under section 8(e). Commenters stated that if companies had sequential criteria, they would be in a much better position to comply with the reporting requirements of section 8(e).
- Supported the change to the section 8(e) notice reporting period from 15 working days to 30 calendar days.

The bulk of the remaining comments concerned circumstances under which companies need not report information to EPA. EPA had proposed to exempt from reporting under TSCA section 8(e) information companies were required to report under other EPA authorities (including those delegated to the States). However, the exemption would only apply if the information was submitted under the other authorities within 30 days of obtaining the information. Commenters believed that this would offer little relief because many of the other authorities have reporting periods longer than 30 days. The companies would either have to accelerate their reporting under authorities other than TSCA section 8(e) or submit two reports, one within 30 days under section 8(e) and another within the time frame of the other requirement. The commenters suggested allowing a longer time frame, i.e., 90 days or longer, for that information submitted under authorities other than TSCA section 8(e).

Commenters also suggested expanding the "other authorities" exemption to include reporting under all Federal environmental statutes as well as State laws and regulations, especially when a site is undergoing remediation for contamination with hazardous waste and any environmental or health threats associated with those contaminants are being addressed in the course of the remediation.

Finally, EPA received comments on the relationship of the revised guidance to phase 2 of the CAP. The sentiment expressed by all those who commented on this issue was that, given the limited guidance in the 1978 Policy Statement, EPA's suspension of the guidance section on environmental contamination, and the likelihood that EPA's final guidance would be essentially "new," the final guidance should only be enforced prospectively. Consequently, companies should not be subject to any liability for past failures to report under the criteria of the "new" guidance.

2. *EPA's response to comments on the 1993 proposed changes; the 1995 proposed draft guidance.* In response to the comments received on the 1993 proposed changes to the 1978 guidance, on March 20, 1995, EPA issued revised proposed guidance to address the commenters' concerns.

First, in the 1995 notice, EPA proposed clarifications to the situations involving environmental contamination which EPA believes would need to be reported. Language suggested in comments to the 1993 notice was adopted, specifying that the contamination must be "previously unsuspected," that "exposure" has occurred or there is a substantial likelihood that it will occur, and that the chemical(s) in question is "known" to cause serious adverse effects. EPA stated that information on those effects could be obtained from several sources:

- Databases available to the public (online or in paper versions), such as the National Library of Medicine (NLM) databases (Toxline, Medline, Hazardous Substances Data Bank, etc.), National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), EPA's Aquatic Toxicity Information Retrieval database (AQUIRE) (Now the Ecotoxicology (ECOTOX) database) www.epa.gov/ecotox/.
- Reports to EPA or other government agencies.
- Unpublished data known to the person or entity subject to reporting.

As regards the issue of what is meant by "known" to cause serious adverse effects, EPA did not mean that the effects must be conclusively shown and did not intend a higher standard of certainty than for the "effects" reporting part of the 1978 Policy Statement. In that notice, EPA stated that all that is needed for an effect to be "known" is that the information reasonably supports that the chemical can cause the effect(s) of concern. This issue is addressed in the 1978 Policy Statement in EPA's response to comments that questioned the use of "may suggest" language regarding information obtained and the reporting of substantial risk information (see Supplementary Information paragraph (3) of the 1978 Policy Statement).

In addition, EPA agreed to allow the use of "benchmark levels" to help determine if the information should be reported. EPA has established benchmark levels for various substances. Benchmark levels are concentrations that either trigger a regulatory response, or concentrations above which a substance is presumed to present a risk to health and/or the environment. For instance, the Agency has developed Reference Doses (RfD's) for numerous substances under its Integrated Risk Information System (IRIS). Reference doses establish a level of exposure where no adverse effects would be expected to be manifested. Thus, if a person found groundwater contaminated with a chemical at a level that did not exceed the RfD for that substance, the person could assume that a substantial risk does not exist. It should be noted that benchmark levels are often medium-specific, so their use should be limited accordingly. Examples of certain benchmark levels can be found at the following EPA Web sites: http://www.epa.gov/iris/ and http://www.epa.gov/ost/drinking/standards/dwstandards.pdf.

Second, EPA increased the number of types of information that it believed need not be reported under TSCA section 8(e). The types of information proposed to be exempted included:

- Draft and final reports made available to the public by other Federal agencies.
- Data obtained from scientific journals and databases, including, but not limited to, those to which EPA subscribes.
- Information obtained from news publications and radio/television broadcasts.
- Information obtained at scientific meetings or conferences where EPA is the sponsor, where the information is presented by an EPA employee or contractor acting on behalf of EPA, and at other similar meetings, provided that such information is cited or abstracted in a scientific journal or database within 90 days of a person subject to reporting under section 8(e) obtaining such information.

The rationale for these proposed changes was to relieve persons who are potentially subject to reporting under section 8(e) from the burden of considering information from secondary sources when the secondary source does not provide sufficient information for a person to judge whether the information should be reported. For instance, a manufacturer of a chemical might obtain a news article about research done by another company. A person reading the article would need the underlying study to evaluate the true significance of the results of the research and, based on that evaluation, make a judgment as to whether there is a substantial risk of injury to human health or the environment. In such a case, the potential reporting obligation falls on the company that generated the research discussed in the news article.

Third, EPA retained the interpretation proposed in the 1993 **Federal Register** notice that section 8(e) notices for information other than "emergency incidents of environmental contamination," should be submitted within 30 calendar days. EPA continues to believe that the change from 15 working days to 30 calendar days would significantly relieve the burden on persons subject to section 8(e) reporting without substantially affecting EPA's ability to appropriately evaluate and respond in a timely manner to the reported information.

Fourth, EPA identified the group of statutes for which exemptions would be granted from reporting of non-emergency information under TSCA section 8(e), specifying the other statutes administered by EPA and those for which implementation was delegated to the States. The maximum allowable reporting period, in lieu of reporting under section 8(e), under those other authorities was increased from 30 to 90 days from the date reportable non-emergency situations of chemical contamination was obtained by a person subject to section 8(e), i.e, persons reporting to the other authorities within the 90–day time frame would be exempt from reporting the information under section 8(e). EPA believed that extending the time for reporting non-emergency situations of chemical contamination would allow for those instances where assembling several types of information in order to determine whether section 8(e) applies could take more than 30 days and was consistent with the majority of the reporting periods under the other statutes.

Fifth, if the Federal government or a State requires that information be submitted on a site remediation program carried out under Federal or State regulations, that information would not have to be separately submitted under section 8(e) beyond an initial section 8(e) notification. The Agency believed that once the chemical contamination situation has been identified, such as by a notice under section 8(e), and the site is undergoing remediation, little if any additional benefit is gained by subsequent section 8(e) reporting concerning that chemical contamination situation at the same site.

Sixth, usually only the person who operates or owns a site at which environmental contamination has occurred would have the responsibility to report under section 8(e). It is unlikely that a person not associated with a site as an owner or operator would have access to a sufficiently wide range of information about an environmental contamination situation to determine whether data on the contamination meet the test for section 8(e) reporting. This is unlike the acquisition of effects test data, because data on effects are not site-specific and have general applicability for production and use of the chemical of interest in the United States. Similarly, persons subject to section 8(e) would not have to report information obtained about a site outside the United States unless there is potential for contamination from that site to enter the United States.

Seventh, because of the number of changes made to the proposed guidance in the 1995 **Federal Register** notice and the fact that it represented a significant change from the original guidance suspended on June 20, 1991, the Agency concluded that the revised guidance when issued should be applied prospectively. This eliminates the need for companies to review files currently in their possession for information that may be subject to section 8(e) reporting in accordance with the revised guidance. However, data in such files could be subject to section 8(e) reporting if data obtained by a company after issuance of the revised guidance triggered a review of such preexisting data and in doing so the combination of preexisting and new data met the section 8(e) reporting criteria.

Eighth, the Agency stated that it would develop, in cooperation with interested parties, a "question and answer" (Q. and A.) document that would provide further detail and "real world" examples to further assist persons in fulfilling their section 8(e) reporting responsibilities as regards the revised guidance. The Agency stated that it intends to work with interested parties to prepare such a Q. and A. document, which EPA expects to have available several months from the issuance of the final reporting guidance. At that time, the Agency intends to post the Q. and A. document on the TSCA section 8(e) homepage (http://www.epa.gov/oppt/tsca8e). A copy may also be obtained from the contacts listed under **FOR FURTHER INFORMATION CONTACT**. As additional examples, or questions and answers are identified as being of potential value to share broadly, the Agency will refine this Q. and A. document.

Finally, some commenters requested an additional opportunity to review the revised draft guidance developed in response to the extensive comments of the proposed revisions in the July 13, 1993 **Federal Register** notice. On March 20, 1995 (58 FR 37735), the Agency published a notice of availability in the **Federal Register** of the revised draft guidance and allowed 45 days for comment. The 1995 draft guidance substantially responded to the comments received on the 1993 proposed revisions.

3. *Comments on the 1995 proposed changes and EPA's response.* In response to the Agency's request for comment on the revised draft guidance published in 1995, EPA received

comments from 22 companies and trade associations. The commenters generally agreed that the changes made by EPA addressed most of their major comments on the 1993 proposed guidance, and that the 1995 revised guidance was a significant improvement. For example, the Monsanto Company stated: "The reproposed guidance, as summarized in the draft policy text for public comment dated March 9, 1995, is a significant improvement over the guidance published July 13, 1993. The reproposed guidance significantly minimizes the duplicative over-reporting burden that characterized the earlier guidance document. We support the reproposed guidance document and believe it is generally consistent with the Congressional intent of the original drafters of TSCA, as well as current Agency and Congressional efforts to reform government reporting requirements to minimize duplicative and unneeded over-reporting. The reproposed guidance document on environmental release/contamination is a significant move in the direction of clarifying the Agency's need for information that reasonably supports a conclusion of substantial risk." (Ref. 1).

In addition to their statements of support for the proposed changes, the commenters requested a number of clarifications/definitions of terms, editorial rewordings, and other less substantive changes that are addressed in a "response-to-comments" document that can be found in the docket as described in Unit I.B.1. Commenters expressed strong support for making the new guidance prospective, ending the CAP at phase 1, and developing a Q. and A. document. As previously discussed, EPA is in agreement with those comments.

One major area where industry commenters requested further changes was the exemption from reporting under section 8(e) for data submitted to EPA or other agencies under other authorities. The commenters were concerned about the extent to which exemptions from reporting under section 8(e) would be granted for reporting under authorities other than EPA statutes administered either by the Agency or, where implementation of an EPA statute has been delegated to the States. EPA had proposed to reduce the potential for duplicative submission under TSCA section 8(e) authorities by allowing an exemption to reporting under section 8(e) for all information which is required to be reported under other EPA statutes including where implementation had been delegated to the States, and where such reporting was required to be submitted within 90 days of being obtained. Industry commenters also questioned the length of the time period for reporting proposed by EPA. Industry commenters requested that the exemption be expanded to: (1) Include any mandatory reporting requirement whether Federal, State, or local, and (2) allow reporting within the time frame provided by the individual reporting authorities.

Regarding expanding the section 8(e) policy statement list of reporting authorities that would fall under a reporting exemption in Part VII. of the policy statement, the July 1993 and March 1995 proposals included an exemption to reporting only if the information was to be submitted under EPA statutes, including statutes such as the Clean Air Act, where implementation has been delegated in large part to the States. Delegation of implementation allowed a clear "nexus" to be shown between a State reporting requirement and EPA, thus following the statutory language of section 8(e) which does not require reporting if a company has "actual knowledge that the Administrator has been adequately informed of such information." The commenters would have EPA expand the reporting exemption by including any Federal, State, or local reporting requirements.

The issue of expanding the reporting authorities is problematic because of the statutory language in section 8(e). However, it is also relevant to look to the purpose of TSCA, and section 8(e) in particular, in light of the legislative history concerning how TSCA should be implemented. TSCA was designed to fill a number of regulatory gaps. Those included review of "new" chemicals, collection of test data on new and existing chemicals, and regulation of chemicals to address risks associated with chemicals' production, use, or disposal. Specifically, regarding the submission of test data, Congress wanted to avoid the potential for industry to withhold "information which would have revealed hazards associated with these chemicals at a much earlier date" (Ref. 2). Thus, the reporting requirement of section 8(e) of TSCA was established so that the Agency would be "adequately informed" to enable it to take corrective action if necessary. While Congress envisioned TSCA as filling a major gap in the regulatory framework protecting human health and the environment, it also directed the Administrator to avoid duplicating existing (and future) regulatory and enforcement authorities.

Given the statutory language of section 8(e), it is hard to make a case that the Administrator is adequately informed of reporting under State or local authorities, other than those reporting requirements that originate in laws administrated by EPA in which the United States Congress has provided for delegation to the States, and such delegation has occurred. Except where such delegation of EPA authority has occurred, the Agency believes reporting to a state government may not result in EPA getting important information in a timely manner and, therefore, EPA does not believe it is appropriate to exempt from section 8(e), information that is reported to state governments.

However, at least some information reported under other Federal authorities could be viewed differently. While there is not a direct statutory "nexus," often there is a considerable amount of interagency cooperation in dealing with environmental contamination situations, e.g., the National Response Center. To the extent EPA Headquarters and the Regions become involved in joint cleanups, assessments, etc., or act in advisory roles with other Federal agencies, the Administrator could reasonably be considered to be adequately informed. The Agency believes that information reported under other Federal authorities for site-specific contamination within 90 calendar days or immediately pursuant to a mandatory reporting requirement qualifies for exemption from section 8(e) reporting.

While this approach reduces the role of section 8(e) in the reporting of site-specific release/contamination information, Congress' goal in passing TSCA to ensure that important health and environmental related information are reported in a timely fashion will still be met. Further, since there is now a considerable array of Federal health and environmental reporting requirements, including section 8(e), which provide such information and for which there is enhanced public access, Congress's goal is not considered to be compromised by some of the expanded exemptions.

However, product contamination information that could be required to be submitted to the Consumer Product Safety Commission (CPSC) under their regulations is not analogous. CPSC has a more narrow purview (i.e., consumer product safety) and could not adequately assess or address chemical contamination from a product that may also have industrial/commercial applications or may present potential environmental risks during its manufacture and processing. In such instances, reporting to EPA, as well as CPSC would allow EPA, consistent with the intent of TSCA, to address all the potential risks presented, where appropriate. Consequently, EPA has concluded that section 8(e) reporting will continue to be required for chemical product contamination, because EPA, uniquely among Federal agencies, has the authority to address all potential health and environmental risk aspects of a chemical's life cycle.

Regarding the issue of expanding the reporting exemption in Part VII. of the section 8 policy statement to allow reporting within the time frame provided by the individual reporting authorities, as originally proposed in 1993, companies would not be required to report information under section 8(e) if the information was required to be submitted under other EPA or EPA-delegated authorities, so long as the other statute required reporting within 30 days from the day a person who was required to report obtained information required to be submitted. Commenters noted that only a few of the regulations required reporting within 30 days, so the exemption would be of limited value given that companies would still be required to report the information under section 8(e) as well as under the other regulations. To address this concern, the reporting policy is being changed. Companies would be exempt from reporting information under section 8(e) as long as the company complies with the relevant reporting requirement of another statute, as described in Part VII. of the TSCA section 8(e) policy and guidance, that requires reporting within 90 days from the day a person obtained information required to be submitted. This change was based on information submitted by industry showing that roughly 70 percent of the reporting requirements have reporting periods of 90 days or less (see Ref. 3 at page 29, Table 1). Further, an examination of the cited reporting requirements shows that the 90–day period will capture reports that otherwise would be required under section 8(e), namely newly found environmental contamination from spills, leaking tanks, and other types of releases. By and large, the types of reporting for which the statutory time limits for filing of mandatory reports are longer than 90 days include periodic summary reports, minor operating changes allowed by permits, etc.

It appears that most or all of the exposure-related or site-specific release/detection information that might be considered reportable under section 8(e) would be required to be reported under other authorities within 90 days of such information being obtained. Therefore, there would be a negligible reduction of the reporting burden if authorities whose reporting time limits exceed 90 days were also exempted from reporting under section 8(e). Also, such a change seems inconsistent with the statutory language that substantial risk information be "immediately" reported. Given that a 90–day limit appears to resolve most of the problem with potentially duplicative reporting, and that longer limits may not be consistent with the statutory directive for "immediate reporting," EPA has decided to keep the reporting time limit at 90 days as proposed in the 1995 draft guidance.

Additionally, as proposed in the 1993 and reproposed 1995 draft guidance, EPA is adopting the interpretation that section 8(e) notices for information other than "emergency incidents of environmental contamination" should be submitted within 30 calendar days. Thus the Agency is changing in this guidance document its interpretation of the term "immediately" in this context. EPA believes the term should be interpreted more flexibly based upon the Agency's experience of processing and use of data reported under section 8(e) and comments received from interested parties. EPA has concluded that, with the exception of reporting related to emergency incidents of environmental contamination, section 8(e) reports should be submitted to EPA within 30 calendar days of obtaining the reportable information, instead of the 15 working days that was articulated in previous guidance. The Agency believes that application of this interpretation for the statutory term "immediately" will not adversely impact section 8(e)'s purpose of assuring that the Agency becomes aware of important risk-related information in a timely manner. In addition, providing 30 calendar days for reporting to the Agency is consistent with the regulations under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, which provides that agencies should not require a written response in fewer than 30 days after receipt without demonstrating that it is necessary to satisfy a statutory requirement or other substantial need (5 CFR 1320.5(d)(2)(ii)). Although TSCA section 8(e) clearly provides the necessary statutory justification to require a shorter response time, the Agency is using the minimum time frame established under the PRA to respond to the commenters who indicated the need for additional time to process a submission.

C. EPA's reinstatement of Part V.(c)

"*Emergency incidents of environmental contamination.*" Part V.(c) of the 1978 Policy Statement, which addresses what constitutes a "substantial risk" in the context of emergency incidents of environmental contamination, was suspended on June 20, 1991 (56 FR 28458). EPA has decided, for the following reasons, to reinstate Part V.(c):

- EPA is making a number of changes to the reporting guidance that would affect emergency incident reporting. Changes include reporting to the National Response Center, elimination of follow-up written section 8(e) reports, and expansion of the list of authorities persons could report under in lieu of section 8(e).
- Part V.(c) includes the basic elements of the new Part V.(b)(1) guidance: The adverse effect(s) in question have been ascribed to the chemical; human or environmental exposure may occur; exposure (in this case, an emergency release) threatens humans and/or non-human organisms with serious adverse effects.
- EPA believes such reporting under section 8(e) is still necessary. Although many release incidents are covered under other statutes, there may be instances where chemicals that have not yet been reviewed for release reporting under other EPA programs have the requisite hazard characteristics to require a response/notification if there is a release to the environment. In this regard, EPA agrees with a comment from the Chemical Manufacturers Association (CMA—CMA is now the American Chemistry Council) indicating that, if EPA retains the distinction between emergency and non-emergency situations of environmental contamination, "emergency" should be defined. CMA stated: "CMA believes an 'emergency' should be defined as a situation in which a significant threat to human health or the environment is imminent or already present, and where immediate action is necessary to abate the hazard. Such an approach would be consistent with the Agency's previous description of non-emergency situations of environmental contamination as situations which do not require immediate action, but nevertheless reasonably support the conclusion of 'substantial risk.'" (Ref. 4). EPA believes that revised Part V.(b)(1), the reinstated Part V.(c), and the reporting procedures adequately make the distinction described by CMA in that a "substantial risk" in this context is an "emergency incident of environmental contamination" that "seriously threatens" humans or the environment.

IV. Claims of Confidentiality for Data Submitted under TSCA Section 8(e)

In general, health and safety information submitted to EPA—even as confidential—may be released to the

public, except as noted below. EPA considers information contained in a notice of substantial risk under TSCA section 8(e) to be health and safety information and, therefore, covered by the term "health and safety study," as defined in section 3(6) of TSCA. TSCA section 3(6) defines a "health and safety study" as "any study of any effect of a chemical substance or mixture on health or the environment or on both, including the underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act."

Under TSCA section 14(b), health and safety information may be disclosed to the public (i.e., may not be protected as confidential). However, the section does not authorize public release of information concerning the manufacturing process of a chemical substance or mixture which is the subject of submitted health and safety information, including data "disclosing the portion of the mixture comprised by any of the chemical substances in the mixture."

In the legislative history of TSCA, the Conference Committee stated that "[i]t is intended that the term (health and safety studies) be interpreted broadly. Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a chemical substance or mixture on health and the environment is also included. Any data that bears on the effects of a chemical substance on health or the environment would be included." (Ref. 5). EPA believes that TSCA section 8(e) information, such as information or underlying data from studies carried out to investigate the effects of a chemical (or a mixture of chemicals) on health or the environment, or reports concerning the effects of unintentional or accidental releases or exposures, is information that "bears on the effects of a chemical substance on health or the environment."

Therefore, incident information, exposure studies, and their underlying data should be considered covered under the term "health and safety study." To the extent that information contained in a section 8(e) substantial risk report falls within the meaning of the term "health and safety study" under TSCA, it will not be afforded TSCA "Confidential Business Information" (CBI) protection except as noted in the following paragraph.

EPA considers chemical identity to be part of, the underlying data to, a health and safety study. See, for example, 40 CFR 716.3 and 40 CFR 720.3(k). Consequently, the confidential identity of a chemical substance will not be protected by EPA unless otherwise provided for under section 14 of TSCA and the interpreting regulations in 40 CFR part 2.

EPA urges persons submitting data under TSCA section 8(e) to observe the limitations imposed on CBI claims by section 14 and the applicable regulations at 40 CFR part 2, subpart B, in order to save both Agency and submitter resources.

V. References

The following is a listing of the documents that are specifically cited in this guidance document, and which are available as part of the public docket described in Unit I.B.1.:

1. Monsanto Company. Letter from J. Ronald Condray. Comment #12. May 3, 1995.

2. United States Congress. (1976) Report of the Senate Committee on Commerce on S. 3149, No. 94–698: 8.

3. Chemical Manufacturers Association (CMA). Comments of the Chemical Manufacturers Association on TSCA Section 8(e) Notice of Clarification. October 28, 1993.

4. Chemical Manufacturers Association (CMA). Comments of the Chemical Manufacturers Association on TSCA Section 8(e) draft policy statement. Comment #6, p. 24. May 4, 1995.

5. United States Congress. (1976) House of Representatives, 94th Congress, 2d Session. H.R. Report 94–1679 (Conference Report and Debates): 58.

VI. Statutory and Executive Order Reviews

As discussed in Unit II.B., the guidance document articulates EPA's preferences for how and where TSCA section 8(e) notices should be submitted. The guidance document is not a regulation, and submitters of TSCA section 8(e) notices are not obligated to comply with the preferences. Since this document is not a regulation and does not impose any new binding requirements it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). For the same reason, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request as defined by the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument or form, if applicable.

This document does not contain any new information collection requirements that would require additional OMB review and approval under the PRA. The information collection activities related to the submission of information pursuant to TSCA section 8(e) have been approved by OMB under OMB control number 2070–0046 (EPA ICR No. 0794). The annual respondent burden for this information collection activity is estimated to average 27 hours per initial section 8(e) submission and 5 hours per follow-up/supplemental section 8(e) submission, which includes the average time for processing, compiling and reviewing the requested data, generating the request, follow-up correspondence with EPA, storing, filing, and maintaining the data.

As defined by the PRA and 5 CFR 1320.3(b), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This document will have a negligible impact on States, local or Tribal governments because they do not generally engage in activities that would subject them to reporting requirements under TSCA section 8(e). Further this guidance document imposes no requirements on any entities, and instead is announcing Agency policies and interpretations that generally will ease the reporting burdens under section 8(e). This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, no action is required under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action requires no special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Specific Revisions to the Policy Statement

For the reasons discussed in Unit III., EPA is making the following specific changes to the 1978 Policy Statement:

1. Part II. Persons Subject to the Requirement is amended by revising the note at the end of Part II.

2. Part IV. Requirement That a Person "Immediately Inform" the Administrator, Part VII. Information Which Need Not Be Reported, and Part IX. Reporting Requirements are revised.

3. Part V. What Constitutes Substantial Risk is amended by revising the heading of paragraph (b) and paragraph (b)(1) and adding the paragraph heading "Environmental effects." to the beginning of paragraphs (b)(2) through (b)(5).

VIII. Republication of TSCA Section 8(e) Policy Statement and Guidance

As discussed previously, the following is a republication of the entire TSCA section 8(e) Policy Statement and Guidance, as amended:

I. Definitions

The definitions set forth in TSCA section 3 apply to this policy statement. In addition, the following definitions are provided for purposes of this policy statement:

The term *manufacture or process for commercial purposes* means to manufacture or process: (1) For distribution in commerce, including for test marketing purposes, (2) for use as a catalyst or an intermediate, (3) for the exclusive use by the manufacturer or processor, or (4) for product research and development.

The term *person* includes any natural person, corporation, firm, company, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

The term *substantial-risk information* means information which reasonably supports the conclusion that a chemical substance or mixture presents a substantial risk of injury to health or the environment.

II. Persons Subject to the Requirement

Persons subject to section 8(e) requirements include both natural persons and business entities engaged in manufacturing, processing, or distributing in commerce a chemical substance or mixture. In the case of business entities, the president, chief executive officer, and any other officers responsible and having authority for the organization's execution of its section 8(e) obligations should ensure that the organization reports substantial risk information to EPA. The business organization is considered to have obtained any information which any officer or employee capable of appreciating the significance of that information has obtained. It is therefore incumbent upon business organizations to establish procedures for expeditiously processing pertinent information consistent with the schedule set forth in Part IV.

Those officers and employees of business organizations who are capable of appreciating the significance of pertinent information are also subject to these reporting requirements. An employing organization may relieve its individual officers and employees of any responsibility for reporting substantial-risk information directly to EPA by establishing, internally publicizing, and affirmatively implementing procedures for employee submission and corporate processing of pertinent information. These procedures, at a minimum, should: (1) Specify the information that officers and employees must submit; (2) indicate how such submissions are to be prepared and the company official to whom they are to be submitted; (3) note the Federal penalties for failing to report; and (4) provide a mechanism for promptly advising officers and employees in writing of the company's disposition of the report, including whether or not the report was submitted to EPA (and if not reported, informing employees of their right to report to EPA, as protected by TSCA section 23). An employee of any company that has established and publicized such procedures, who has internally submitted pertinent information in accordance with them, shall have discharged his section 8(e) obligation. Establishment of such procedures notwithstanding, all officials responsible and having authority for the organization's execution of its section 8(e) obligations retain personal liability for ensuring that the appropriate substantial-risk information is reported to EPA.

Business organizations that do not establish such procedures cannot relieve their individual officers and employees of the responsibility for ensuring that substantial-risk information they obtain, is reported to EPA. While officers and employees of such organizations may also elect to submit substantial-risk information to their superiors, for corporate processing and reporting, rather than to EPA directly, they have not discharged their individual section 8(e) obligation until EPA has received the information.

Note: Irrespective of a business organization's decision to establish and publicize procedures described above, the business organization is responsible for becoming cognizant of any "substantial risk" information obtained by its officers, employees, and agents, and for ensuring that such information is properly reported to EPA.

III. When a Person Will Be Regarded as Having Obtained Information

A person obtains substantial-risk information at the time he first comes into possession of or knows of such information.

Note: This includes information of which a prudent person similarly situated could reasonably be expected to possess or have knowledge. An establishment obtains information at the time any officer or employee capable of appreciating the significance of such information obtains it.

IV. Requirement That a Person "Immediately Inform" the Administrator

With the exception of certain information on emergency incidents of environmental contamination (see Part V.(c)) and information submitted under Part VII. (c), (d) and (e), a person has "immediately informed" the Administrator if information is received by EPA not later than the 30th calendar day after the date the subject person obtained such information. Supplementary information generated after a section 8(e) notification should, if appropriate, be immediately reported (within 30 calendar days of a person obtaining the information). This also applies to submitter responses to EPA requests for additional information related to submitted section 8(e) data. Section 8(e) reporting must be submitted to EPA and should be made as described under Part IX. For emergency incidents of environmental contamination, a person should report by telephone to the appropriate contact as directed in Part IX. as soon as the person has knowledge of the incident. The emergency incident report should contain as much of the information specified in Part IX. as is possible. A follow-up written report is not required.

Note: Preexisting information (i.e., of the kind described under Part V. (b)(1) and (c)) that predates June 3, 2003, is not subject to section 8(e) reporting unless its review is triggered by a person obtaining new information and that in combination with the preexisting information meets the criteria for section 8(e) reporting.

V. What Constitutes Substantial Risks

A "substantial risk of injury to health or the environment" is a risk of considerable concern because of (a) the seriousness of the effect (see subparts (a), (b), and (c) of this part for an illustrative list of effects of concern), and (b) the fact or probability of its occurrence. (Economic or social benefits of use, or costs of restricting use, are not to be considered in determining whether a risk is "substantial.") These two criteria are differentially weighted for different types of effects. The human health effects listed in subpart (a) of this part, for example, are so serious that relatively little weight is given to exposure: The mere fact the implicated chemical is in commerce constitutes sufficient evidence of exposure. In contrast, the remaining effects listed in subparts (b) and (c) of this part must involve, or be accompanied by the potential for, significant levels of exposure (because of general production levels, persistence, typical uses, common means of disposal, or other pertinent factors).

Note that information on the effects outlined below should not be reported: (i) If the respondent has actual knowledge that the Administrator is already informed of them, or (ii) information respecting these effects can be obtained either directly by observation of their occurrence, or inferred from designed studies as discussed in Part VI.

The Agency considers effects for which substantial-risk information should be reported to include the following.

(a) *Human health effects.* (1) Any instance of cancer, birth defects, mutagenicity, death, or serious or prolonged incapacitation, including the loss of or inability to use a normal bodily function with a consequent relatively serious impairment of normal activities, if one (or a few) chemical(s) is strongly implicated.

(2) Any pattern of effects or evidence which reasonably supports the conclusion that the chemical substance or mixture can produce cancer, mutation, birth defects or toxic effects resulting in death, or serious or prolonged incapacitation.

(b) *Non-emergency situations involving environmental contamination; environmental effects*—(1) *Non-emergency situations of chemical contamination involving humans and/or the environment.* Information that pertains to widespread and previously unsuspected distribution in environmental media of a chemical substance or mixture known to cause serious adverse effects, when coupled with information that widespread or significant exposure to humans or non-human organisms has occurred or that there is a substantial likelihood that such exposure will occur, is subject to reporting. The mere presence of a chemical in an environmental media, absent the additional information noted above, would not trigger reporting under section 8(e). Information concerning the detection of chemical substances contained within appropriate disposal facilities such as treatment, storage and disposal facilities permitted under RCRA should not be reported under this part.

Note: From time to time EPA establishes concentrations of various substances in different media that trigger a regulatory response or establish levels that are presumed to present no risk to human health or the environment. For example, EPA establishes Maximum Contaminant Levels (MCLs) in drinking water, Ambient Water Quality Criteria for receiving bodies of water, and Reference Doses (RfDs) or Concentrations (RfCs). For the purposes of section 8(e), information about contamination found at or below these kinds of benchmarks would not be reportable. Conversely, information about contamination found at or above benchmarks that trigger regulatory requirements, such as Resource Conservation and Recovery Act (RCRA) Toxicity Characteristic Limits, is to be considered for possible reporting, based on potential exposure to humans and/or non-human organisms and other relevant factors.

(2) *Environmental effects.* Measurements and indicators of pronounced bioaccumulation heretofore unknown to the Administrator (including bioaccumulation in fish beyond 5,000 times water concentration in a 30-day exposure or having an n-octanol/water partition coefficient greater than 25,000) should be reported when coupled with potential for widespread exposure and any non-trivial adverse effect.

(3) *Environmental effects.* Any non-trivial adverse effect, heretofore unknown to the Administrator, associated with a chemical known to have bioaccumulated to a pronounced degree or to be widespread in environmental media, should be reported.

(4) *Environmental effects.* Ecologically significant changes in species' interrelationships; that is, changes in population behavior, growth, survival, etc. that in turn affect other species' behavior, growth, or survival, should be reported.

Examples include: (i) Excessive stimulation of primary producers (algae, macrophytes) in aquatic ecosystems, e.g., resulting in nutrient enrichment, or eutrophication, of aquatic ecosystems.

(ii) Interference with critical biogeochemical cycles, such as the nitrogen cycle.

(5) *Environmental effects.* Facile transformation or degradation to a chemical having an unacceptable risk as defined above should be reported.

(c) *Emergency incidents of environmental contamination.* Any environmental contamination by a chemical substance or mixture to which any of the above adverse effects has been ascribed and which because of the pattern, extent, and amount of contamination (1) seriously threatens humans with cancer, birth defects, mutation, death or serious or prolonged incapacitation, or (2) seriously threatens non-human organisms with large-scale or ecologically significant population destruction, should be reported.

VI. Nature and Sources of Information Which "Reasonably Supports the Conclusion" of Substantial Risk

Information attributing any of the effects described in Part V. of this policy statement to a chemical substance or mixture should be reported if it is one of the types listed below and if it is not exempt from the reporting requirement by reason of Part VII. of this policy statement. A person should not delay reporting until he obtains conclusive information that a substantial-risk exists, but should immediately report any evidence which "reasonably supports" that conclusion. Such evidence will generally not be conclusive as to the substantiality of the risk; it should, however, reliably ascribe the effect to the chemical.

Information from the following sources concerning the effects described in Part V. will often "reasonably support" a conclusion of substantial risk. Consideration of corroborative information before reporting can only occur where it is indicated below.

(1) *Designed controlled studies.* In assessing the quality of information, the respondent should consider whether it contains reliable evidence ascribing the effect to the chemical. Not only should final results from such studies be reported, but also preliminary results from incomplete studies where appropriate. Designed, controlled studies include:

(i) *In vivo* experiments and tests.

(ii) *In vitro* experiments and tests.

Consideration may be given to the existence of corroborative information, if necessary to reasonably support the conclusion that a chemical presents a substantial risk.

(iii) Epidemiological studies.

(iv) Environmental monitoring studies.

(2) *Reports concerning and studies of undesigned, uncontrolled circumstances.* It is anticipated here that reportable effects will generally occur in a pattern, where a significant common feature is exposure to the chemical. However, a single instance of cancer, birth defects, mutation, death, or serious incapacitation in a human would be reportable if one (or a few) chemicals) was strongly implicated. In addition, it is possible that effects less serious than those described in Part V.(a) may be preliminary manifestations of the more serious effects and, together with another triggering piece of information, constitute reportable information; an example would be a group of exposed workers experiencing dizziness together with preliminary experimental results demonstrating neurological dysfunctions. Reports and studies of undesigned circumstances include:

(i) Medical and health surveys.

(ii) Clinical studies.

(iii) Reports concerning and evidence of effects in consumers, workers, or the environment.

VII. Information Which Need Not Be Reported

"Substantial risk" information need not be reported under section 8(e) if it:

(a) Is obtained in its entirety from one of the following sources:

(1) An EPA study or report.

(2) An official publication or official report (draft or final) published or made available to the general public by another Federal agency and any information developed by another Federal Agency as a result of a toxicological testing/study program, or site evaluation for chemical contamination, in which EPA is collaborating in the design, review, or evaluation of testing/sampling plans or resultant data.

(3) Scientific publications, including bibliographic databases, available electronically or in hard copy (e.g., Science, Nature, New England Journal of Medicine, Medline, Toxline, NIOSH RTECS, International Uniform Chemical Information Database (IUCLID), etc.).

(4) Scientific databases (e.g., Agricola, Biological Abstracts, Chemical Abstracts, Dissertation Abstracts, Index Medicus, etc).

(5) A news publication (i.e., newspaper, news magazine, trade press) with circulation in the United States.

(6) A radio or television news report broadcast in the United States.

(7) A public scientific conference or meeting held within the United States, provided that the information is captured accurately by way of a meeting transcript, abstract, or other such record, and has been cited in a bibliographic/abstract computerized data base, publication, or report of the type cited in paragraphs (a) (1), (2), (3), or (4) of this part within 90 days of a subject person obtaining such information.

(8) A public scientific conference sponsored or co-sponsored by EPA or at a conference where the subject information is presented by an EPA employee or contractor acting on behalf of EPA.

(b) Corroborates (i.e., substantially duplicates or confirms) in terms of, for example, route of exposure, dose, species, strain, sex, time to onset of effect, nature and severity of effect, a well-recognized/well-established serious adverse effect for the chemical(s) under consideration, unless such information concerns effects observed in association with emergency incidents of environmental contamination as described in Part V.(c) and thus should be considered for reporting under section 8(e).

(c) Is information that will be reported to EPA within 90 calendar days of obtaining the information for non-emergency information under Part V.(b)(1), immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information under Part V.(c), or within 30 calendar days of obtaining the information for the other types of information specified under Part V., pursuant to a mandatory reporting requirement of any statutory authority that is administered by EPA (including, but not limited to, the Toxic Substances Control Act; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act, the Pollution Prevention Act; the Emergency Planning and Community Right-to-Know Act).

(d) Is information that will be reported to a State within 90 calendar days of obtaining the information for non-emergency information under Part V.(b)(1), immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information under Part V.(c), or within 30 calendar days of obtaining the information for the other types of information specified under Part V., pursuant to a mandatory reporting requirement under any Federal statute administered by EPA for which implementation has been delegated to that State (e.g., National Pollutant Discharge Elimination System (NPDES) permit requirements), or pursuant to a mandatory reporting provision of an EPA-authorized State program established under a Federal statute administered by EPA, e.g., state RCRA programs.

(e) Is information that will be reported to the Federal government within 90 calendar days of obtaining the information for non-emergency site-specific contamination information under Part V.(b)(1) or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information under Part V.(c), pursuant to a mandatory reporting requirement under any Federal statute.

(f) Is information of the kind under Part V. (b)(1) and (c) submitted to the Federal government or a state that is developed in connection with an authorized (by the relevant Federal or state authority) site remediation program.

(g) Is information of the kind under Part V. (b)(1) and (c) concerning a site under the control of another person who is subject to the section 8(e) reporting authority.

(h) Is information of the kind under Part V.(b)(1) and (c) concerning a non-United States site provided the person who obtains the information does not have reason to believe that there is a substantial likelihood that the contamination will cause environmental contamination, of a nature that would be reportable under Part V. (b)(1) and (c), to occur in an area in the United States.

VIII. Information First Received By a Person Prior to the Effective Date of TSCA

Any substantial risk information possessed by a person prior to January 1,1977, of which he is aware after that date should be reported within 60 days of publication of this policy statement. The Agency considers that a person is aware of:

(a) Any information reviewed after January 1, 1971, including not only written reports, memoranda and other documents examined after January 1, 1971, but also information referred to in discussions and conferences in which the person participated after January 7, 1977;

(b) Any information the contents of which a person has been alerted to by date received after January 1, 1977, including any information concerning a chemical for which the person is presently assessing health and environmental effects;

(c) Any other information of which the person has actual knowledge.

IX. Reporting Requirements

Notices should be delivered to the Document Processing Center (7407M), (Attn: TSCA Section 8(e) Coordinator), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001

A notice should:

(a) Be sent by certified mail, or in any other way permitting verification of its receipt by the Agency.

(b) State that it is being submitted in accordance with section 8(e).

(c) Contain the job title, name, address, telephone number, and signature of the person reporting and the name and address of the manufacturing, processing, or distribution establishment with which the person is associated.

(d) Identify the chemical substance or mixture (including, if known, the Chemical Abstract Service (CAS) Registry Number).

(e) Summarize the adverse effect(s) or risk(s) being reported, describing the nature and the extent of the effect(s) or risk(s) involved.

(f) Contain the specific source of the information together with a summary and the source of any available supporting technical data.

For emergency incidents of environmental contamination (see Part V.(c)), a person should report the incident to the Administrator or the National Response Center by telephone as soon as he/she has knowledge of the incident. The report should contain as much of the information specified by paragraphs (c) through (f) of this part as possible. If any new substantial risk information concerning the incident and reportable under TSCA section 8(e) is obtained, supplementary reporting by the person is required. A twenty-four hour emergency telephone number is:

The National Response Center, (800) 424–8802 or (202) 267–2675 in the Washington, DC metropolitan area.

Region I (Maine, Rhode Island, Connecticut, Vermont, Massachusetts, New Hampshire), (617) 223–7265.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), (201) 548–8730.

Region III (Pennsylvania, West Virginia, Virginia, Maryland, Delaware, District of Columbia), (215) 814–3255.

Region IV (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida), (404) 562–8700.

Region V (Wisconsin, Illinois, Indiana, Michigan, Ohio, Minnesota), (312) 353–2318.

Region VI (New Mexico, Texas, Oklahoma, Arkansas, Louisiana), (214) 655–6428.

Region VII (Nebraska, Iowa, Missouri, Kansas), (913) 281–0991.

Region VIII (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota), (800) 227–8917.

Region IX (California, Nevada, Arizona, Hawaii, Guam), (415) 972–4400.

Region X (Washington, Oregon, Idaho, Alaska), (206) 553–1263.

X. Confidentiality Claims

(a) EPA may release to the public health and safety data claimed confidential, including information submitted in a notice of substantial risk under section 8 (e) of TSCA. EPA will disclose any information claimed confidential only to the extent, and by means of the procedures, set forth in 40 CFR part 2 (41 FR 36902, September 1, 1976)

(b) If no claim accompanies the notice at the time it is submitted to EPA, the notice will be placed in an open file to be available to the public without further notice to the submitter.

(c) To assert a claim of confidentiality for information contained in a notice, the submitter must submit two copies of the notice.

(1) The first copy should be complete and unedited, clearly reflecting what specific information is being claimed confidential. This should be done on each page by placing brackets around the specific information in question together with a label such as "confidential," "proprietary," or "trade secret."

(2) The second copy should be identical to the first copy, but with all bracketed information blanked out within the brackets.

(3) Information within the first confidential copy of the notice will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR part 2. The second copy will be placed in an open file to be available to the public

(d) Any person submitting a notice containing information for which they are asserting a confidentiality claim should send the notice in a double envelope.

(1) The outside envelope should bear the same address outlined in Part IX. of this policy statement.

(2) The inside envelope should be clearly marked "To be opened only by the OPPT Document Control Officer."

(e) The submitter should substantiate any CBI claims by answering substantiation questions according to the instructions located in the TSCA section 8(e) website: http://www.epa.gov/opptintr/tsca8e/doc/cbi.htm

XI. Failure to Report Information

Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under section 8(e). Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Pursuant to section 17, the Government may seek judicial relief to compel submittal of section 8(e) information and to otherwise restrain any violation of section 8(e).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 15, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 03–13888 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–2]

Notice of Approval of Submissions to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given of approval of submissions by the Commonwealth of Pennsylvania to prohibit mixing zones for bioaccumulative chemicals of concern (BCCs) in the Great Lakes System pursuant to section 118(c) of the Clean Water Act and the Water Quality Guidance for the Great Lakes System, as amended.

DATES: *EPA's approval is effective on* June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Denise Hakowski, U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103, or telephone her at (215) 814–5726. Copies of materials considered by EPA in its decision are available for review by appointment at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103. Appointments may be made by calling Ms. Hakowski.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance). *See* 60 FR 15366. The 1995 Guidance established minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the 1995 Guidance specified numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provided methodologies to derive numeric criteria for additional pollutants discharged to these waters. The 1995 Guidance also contained minimum implementation procedures and an antidegradation policy.

The 1995 Guidance, which was codified at 40 CFR part 132, required the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act (CWA) or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days after the notification, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance (*American Iron and Steel Institute, et al.* v. *EPA*, 115 F.3d 979 (D.C. Cir. 1997)); however, the Court vacated the provisions of the Guidance that would have eliminated mixing zones for BCCs (115 F.3d at 985). The Court held that EPA had "failed to address whether the measure is cost-justified," and remanded the provision to EPA for an opportunity to address this issue (115 F.3d at 997). In response to the Court's remand, EPA reexamined the factual record, including its cost analyses, and published the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern in the **Federal Register** on October 4, 1999 (64 FR 53632). EPA received numerous comments, data, and information from commenters in response to the proposal.

After reviewing and analyzing the information in the rulemaking record, including those comments, on November 13, 2000, EPA published the final rule amending the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, to be codified in appendix F, procedure 3.C of 40 CFR part 132. As amended, the Guidance requires that States adopt mixing zone provisions that prohibit mixing zones for new discharges of BCCs effective immediately upon adoption of the provision by the State, and to prohibit mixing zones for existing discharges of BCCs after November 15, 2010, except where a mixing zone is determined by the State to be necessary to support water conservation measures and overall load reductions of BCCs or where a mixing zone is determined by the State to be necessary for technical or economic reasons. Under the amended Guidance, States were given two years to adopt and submit revised water quality standards conforming with the amended Guidance.

The Commonwealth of Pennsylvania's regulation banning mixing zones for BCCs is found at 25 Pa. Code Chapter 93, section 93.8a. It was adopted on September 17, 2002, and the revisions were published in the Pennsylvania Bulletin on December 14, 2002. The Department of Environmental Protection's Office of Chief Counsel certified on January 23, 2003, that these regulatory changes were adopted pursuant to the Commonwealth's legal procedures, and that the Office of Attorney General and the Governor's Office of General Counsel have also approved the final regulatory changes for form and legality. In accordance with section 303(c)(2)(A) of the Clean Water Act (CWA) and 40 CFR 131.20(c), the Pennsylvania Department of Environmental Protection (PADEP) forwarded the amended regulation to the U.S. Environmental Protection Agency on February 7, 2003, and we received it on February 19, 2003.

EPA has conducted its review of Pennsylvania's submission to prohibit mixing zones for BCCs in the Great Lakes System in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of the Commonwealth's standards, policies and procedures, as well as any additional information provided by Pennsylvania clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed the Pennsylvania's submission to determine its consistency only with respect to appendix F, procedure 3.C of 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this

proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to the element of the Commonwealth's regulation submitted for EPA approval, EPA is approving this provision as a revision to the Commonwealth's water quality standards under section 303 of the CWA. EPA is also approving this submission under section 118 of the CWA. Additional explanations of EPA's review of and conclusions regarding this action are contained in the administrative record for today's actions. EPA is taking no action at this time with respect to other revisions a State may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

Dated: May 20, 2003.

Donald S. Welsh,

Regional Administrator, Region 3.

[FR Doc. 03–13887 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–1729]

Notice of Certification of State Telecommunications Relay Service (TRS) Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this document is to notify state Telecommunications Relay Service (TRS) programs that certification of their program has been granted through July 26, 2008. Notice is hereby given that the applications for certification of state Telecommunication Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once final review of those states' applications has been completed. On the basis of the state applications, the Commission has determined that: The TRS program of the states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604; the TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and the TRS programs of the listed states in no way conflict with federal law.

DATES: This certification shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this *Public Notice*, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, CC Docket No. CC 98–67, released May 19, 2003. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call Consumer & Governmental Affairs Bureau, at (202) 418–0531 (voice), (202) 418–7365 9 (tty). This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2007, the states may apply for renewal of their TRS program certification by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605 (a) and (b).

First Group of States Approved for Certification

File No: TRS–46–02
Alabama Public Service Commission
State of Alabama
File No: TRS–47–02
Commission for the Deaf and Hearing Impaired
State of Arkansas
File No: TRS–32–02
California Public Utilities Commission
State of California
File No: TRS–04–02
Commission of the Deaf and Hearing Impaired
State of Connecticut
File No: TRS–49–02
District of Columbia Public Service Commission
District of Columbia
File No: TRS–43–02
Idaho Public Service Commission
State of Idaho
File No: TRS–08–02
Indiana Telephone Relay Access
State of Indiana
File No: TRS–19–02
Alaska Public Utilities Commission
State of Alaska
File No: TRS–02–02
Arizona Council for Hearing Impaired
State of Arizona
File No: TRS–23–02
Colorado Public Utilities Commission
State of Colorado
File No: TRS–32–02
State of Delaware Public Service Commission
State of Delaware
File No: TRS–50–02
Florida Public Utilities Commission
State of Florida
File No: TRS–10–02
Illinois Commerce Commission
State of Illinois
File No: TRS–03–02
Iowa Utilities Board
State of Iowa
File No: TRS–52–02
Kentucky Public Service Commission
State of Kentucky
File No: TRS–53–02
Maine Public Utilities Commission
State of Maine
File No: TRS 37–02
Telecommunications Access Minnesota
State of Minnesota
File No: TRS–15–02
Missouri Public Utilities Commission
State of Missouri
File No: TRS–40–02
Nebraska Public Service Commission
State of Nebraska
File No: TRS–42–02
New Hampshire Public Service Commission
State of New Hampshire
File No: TRS–16–02
New York State Department of Public Service
State of New York
File No: TRS–13–02
Louisiana Administration Board
State of Louisiana
File No: TRS–33–02
Maryland Department of Budget and Management
State of Maryland
File No: TRS–55–02
Mississippi Public Service Commission
State of Mississippi
File No: TRS–56–02
Telecommunications Access Service
State of Montana
File No: TRS–25–02
Dept. of Employment, Training and Rehabilitation
State of Nevada
File No: TRS–14–02
Commission for the Deaf and Hard of Hearing
State of New Mexico
File No: TRS–30–02
Department of Health and Human Services
State of North Carolina
File No: TRS–12–02
North Dakota Information Services Division
State of North Dakota
File No: TRS–57–02
Oklahoma Telephone Association
State of Oklahoma
File No: TRS–58–02
Pennsylvania Public Utilities Commission
State of Pennsylvania
File No: TRS–20–02
Tennessee Regulatory Authority
State of Tennessee
File No: TRS–09–02
Division of Public Utilities
State of Utah
File No: TRS–04–02
Virginia Public Service Commission
State of Virginia
File No: TRS–06–02
West Virginia Public Service Commission
State of West Virginia
File No: TRS–37–02
Public Utilities Commission of Ohio
State of Ohio
File No: TRS–36–02
Oregon Public Utilities Commission
State of Oregon
File No: TRS–60–02
Department of Human Services
State of South Dakota
File No: TRS–03–02
Public Utility Commission of Texas
State of Texas
File No: TRS–44–02
Department of Public Service
State of Vermont
File No: TRS–27–02
Department of Social and Health Services
State of Washington
File No: TRS–01–02
Wisconsin Department of Administration
State of Wisconsin
File No: TRS–18–02
Wyoming Department of Administration
State of Wyoming

Federal Communications Commission.

June Taylor,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 03–13514 Filed 6–2–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 17, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Mary Bobbie Bailey, Atlanta, Georgia; to retain voting shares of Decatur First Bank Group, Inc., and thereby indirectly retain voting shares of Decatur First Bank, Decatur, Georgia.

Board of Governors of the Federal Reserve System, May 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13890 Filed 6–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Carver Financial Corporation, Savannah, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Carver State Bank, Savannah, Georgia.

Board of Governors of the Federal Reserve System, May 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13889 Filed 6–2–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274]

Office of the Chief Architect; Art in Architecture Program National Artist Registry

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding the Art in Architecture Program National Artist Registry form. A request for public comments was published at 68 FR 11395, March 10, 2003. No comments were received.

The Art in Architecture Program is the result of a policy decision made in January 1963 by GSA Administratorm Bernard L. Boudin, who had served on the Ad Hoc Committee on Federal Office Space in 1961–62. The program has been modified over the years, most recently in 1996 when a renewed focus on commissioning works of art that are an integral part of the building's architecture and adjacent landscape was instituted. The program continues to commission works of art from living American artists. One half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Harrison, Public Buildings Service, Office of the Chief Architect, Art in Architecture, Room 3341, 1800 F Street, NW., Washington, DC 20405.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0274.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art in Architecture Program actively seeks to commission works from the full spectrum of American artists, and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art In Architecture Program National Artist Registry, will be used to collect information from artists across the country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 360.

Responses Per Respondent: 1.

Hours Per Response: .25.

Total Burden Hours: 90.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0274, Art in Architecture Program National Artist Registry, in all correspondence.

Dated: May 28, 2003.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 03–13861 Filed 6–2–03; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for a Cooperative Agreement Demonstration Project for the Medical Reserve Corps, Citizens Corps, USA Freedom Corps

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the Surgeon General.

ACTION: Notice.

Authority: This program is authorized by section 301 of the Public Health Service Act, as amended, 42 U.S.C.; and, funded under Public Law 108–007.

CFDA Number: 93.008.

SUMMARY: To provide funding for a demonstration project to demonstrate approaches to establishment of community-based, citizen volunteer Medical Reserve Corps (MRC) units. Awards will provide funding to community-based organizations under the terms of cooperative agreements. The Cooperative Agreement (CA) will facilitate start-up of MRC units and provide insights into best practices in such areas as: (1) Structure and organization, (2) recruitment and verification of credentials, (3) community-level partnership building, (4) competency levels for effective action, (5) training, (6) risk assessment, and (7) strategy development and planning.

The community-based, volunteer MRC units are intended to supplement existing community emergency medical response systems as well as contribute to meeting the public health needs of the community throughout the year. MRC units are not intended to replace or substitute for local, existing emergency response systems. MRC units should help provide additional response capacity during the initial hours following an emergency before assistance from other geographic localities may arrive and, as needed, to help local authorities provide assistance to the community following an emergency in the effort to return to normalcy.

The local MRC unit is intended to provide an organized framework which will attract volunteers and provide them with planned assignments as well as skills needed to work effectively in emergency situations. An MRC unit will help to ensure that MRC volunteers are deployed locally in a manner that is fully planned and coordinated with broader emergency and medical response plans of the communities in which they are located. Moreover, the MRC unit will serve as a mechanism for helping to ensure that volunteers have appropriate credentials for assignments which they will undertake when the MRC unit is activated. The MRC unit will help facilitate not only coordinated action, but provide a greater predictability in volunteer resource capability when and where such services are needed.

The establishment of sustainable, community-based volunteer MRC units throughout the nation will help meet the goal of enabling communities in the United States to be better prepared to respond to emergencies and urgent public health needs. It is anticipated that these community-based MRC units will grow in number and in quality across the country.

The MRC demonstration project programs will be supported through the cooperative agreement mechanism. This will enable a collaborative relationship between the awardee, the local MRC unit, and the Office of the Surgeon General (OSG), Department of Health and Human Services (HHS). The OSG will coordinate, through a private sector contractor, technical assistance needed for the implementation, conduct, and assessment of program activities. The OSG will provide oversight of the program and has a senior program staff member dedicated to the continued development of the MRC initiative. The OSG has established an MRC Web site at *http://www.medicalreservecorps.gov*. This Web site includes a guidance document for local leaders who plan to develop and implement a local MRC initiative. This document is entitled Medical Reserve Corps—A Guide for Local Leaders.

The OSG is supporting the development of MRC units through four strategic approaches. Specifically, the Federal Government's support includes the following:

1. Limited financial support through the CA covered by this and earlier announcements (**Federal Register** Vol. 67, No. 139, page 47550, July 19, 2002).

2. Communication, Information and Education including the following:

- The MRC Web site at: *http://www.medicalreservecorps.gov*.
- The MRC guidance document on how to establish an MRC unit and related considerations. This document is entitled Medical Reserve Corps—A Guide for Local Leaders and is accessible on the MRC Web site.
- Information on the MRC Web site addressing new developments in the MRC, trends and issues, best practices, training opportunities, meetings, and more.
- MRC workshops which will, as appropriate, include MRC unit leaders and participants; state, county, and local citizen corps leaders and coordinators, health and emergency response system officials.
- Development of an MRC logo for marketing and identification purposes. Note: An award of funds under this RFA does not include any right to use the associated trademarks of the OSG relating to the MRC. Successful applicants must still execute a nonexclusive license under the terms and policies set by the OSG prior to any use of these marks.

3. Technical Assistance (TA) through the OSG's private sector contractor. TA will, as appropriate and available, be provided to eligible MRC units. Examples of TA might include advice on matters such as development of operational plans, evaluation approaches, etc.

4. Policy Analysis and Action. Issues currently being addressed include, but will not be limited to: liability, credentialing, and training standards.

Background

During his January 2002 State of the Union address, President Bush called on all Americans to dedicate at least two years—the equivalent of 4,000 hours of their time—to provide volunteer service to others. To help every American answer the call to service, the President created the USA Freedom Corps, and charged it with strengthening and expanding service opportunities for volunteers to protect our homeland, to support our communities, and to extend American compassion around the World. The USA Freedom Corps is a coordinating council, similar to the National Economic Council or National Security Council, that relies upon the Federal agencies and departments that are a part of the coordinating council to carry out policies and programs.

Simultaneously, the President also created the Citizen Corps initiative to offer Americans new opportunities to get involved in their communities through emergency preparation and response activities. The Citizen Corps initiative includes several new and existing programs that share the common goal of helping communities prevent, prepare for, and respond to crime, natural disasters, and other emergencies. The programs include: Community Emergency Response Teams (CERT), under the direction of the Federal Emergency Management Agency; Neighborhood Watch and Volunteers in Police Service, under the direction of the Department of Justice (DOJ); and, the MRC, under the broad guidance and support of the Department of Health and Human Services.

DATES: To be considered for review, applications must be received by close of business, 5 PM Eastern Daylight Savings Time, July 18, 2003 at the address indicated in the **ADDRESSES** section of this announcement. The submission deadline date supersedes the postmark date information as stated in the PHS–5161. Applicants that meet this deadline will receive notification that their application was received by the Office of Grants Management. Applications that do not meet the deadline will be considered late and will be returned to the applicant without comment. Applications sent via facsimile or by electronic mail will not be accepted for review.

ADDRESSES: Applications must be prepared using Form PHS 5161–1 (revised July 2000). This form is available in Adobe Acrobat format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm*. Form PHS 5161–1 includes U.S. Government Standard Form (SF) 424, the required face page for CA applications submitted for Federal assistance and SF 424 A, a budget format for non-construction projects.

Complete applications should be submitted to: Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852. Ms. Campbell can be reached by telephone at: (301) 594–0758.

FOR FURTHER INFORMATION CONTACT: Questions regarding programmatic information related to preparation of CA applications should be directed in writing to Ronald Schoenfeld, Ph.D., Acting MRC Project Officer, Office of the Surgeon General, Office of Public Health and Science, U.S. Department of Health and Human Services, Room 18–66, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *rschoenfeld@osophs.dhhs.gov*.

Information on budget and business aspects of the application may be obtained from Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852. Ms. Campbell can be reached by telephone at: (301) 594–0758.

SUPPLEMENTARY INFORMATION:

Availability of Funds

The total amount of funds for new awards competition will be $6 million. The OSG anticipates making 120 awards of up to $50,000 to new applicant communities in fiscal year 2003. Awards will be for up to three years,

with funds for years two and three subject to availability of funds and satisfactory progress of the project. The actual number and dollar amount of the awards will depend on the number of applications received as well as the number of acceptable applications that the OSG determines to fund.

Matching Requirements

The applicant is not required to match or share project costs, if an award is made.

Period of Support

The start date for the cooperative agreement will be September 30, 2003 or sooner, depending on the date of issuance of the notice of award. Support may be requested for a project period not to exceed three years. Awardees will be eligible for awards up to $50,000 total cost. Noncompeting continuation awards of up to $50,000 will be made in fiscal years 2004 and 2005, subject to satisfactory performance and the availability of funds.

Eligible Applicants

The MRC CA program applicant must be a public or private nonprofit, community-based organization. Applicants may be an entity of the local government, a local nonprofit, or a non-government organization. If a local Citizen Corps Council (CCC) meets any of these criteria, the CCC can be the applicant. Acceptable proof of non-profit status includes:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations in the IRS Code;
- A copy of a currently valid IRS tax exemption certificate;
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or
- Any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Additionally, faith-based organizations that meet the definition of a private, nonprofit, community-based organization are eligible to apply under this announcement. Tribes, tribal organizations, and local affiliates of national, state-wide, or regional organizations that meet the definition of a private nonprofit, community-based organization are eligible to apply.

To ensure wide geographic distribution of local MRC units, applications will be accepted from organizations in all of the American States and Territories.

In general, only one CA will be awarded per community. If more than one application with a qualifying score is received from the same community, the OSG will contact local officials to make a determination of which application should be given priority. It is recognized, however, that a large metropolitan area may warrant the establishment of more than one MRC unit and, therefore, could receive more than one MRC CA. For communities where more than one group/organization is planning/developing a local citizen volunteer MRC unit, it is recommended that these groups work together to submit one application. For large metropolitan areas, applications should be coordinated. In such instances, however, the applicant(s) must make a convincing case that more than one MRC unit and more than one CA is essential, and that the applicant organizations have not only coordinated their planning, but also have the imprimatur of the local health and emergency response authorities.

Program Goals

The goals of the MRC demonstration project CA are to:

1. Demonstrate whether medical response capacity in communities can be strengthened through the establishment of MRC units consisting of citizen volunteers who represent a broad range of medical/health professions;
2. Demonstrate whether additional capacity can be created at the community level to deal with emergency situations which have significant consequences for the health of the population;
3. Demonstrate whether the MRC does enable current and/or retired health professionals and related support personnel in communities to obtain additional training needed to work effectively and safely during emergency situations;
4. Demonstrate whether the MRC approach does provide an organizational framework, with a command and control system, within which appropriately trained and credentialed citizen volunteers can put their skills in health and medicine to use effectively (including prearranged assignments) when there is an emergency;
5. Demonstrate whether the MRC approach facilitates coordination of local citizen volunteer services in health/medicine with other response programs of the community/county/state during an emergency;
6. Demonstrate whether the MRC approach does provide cadres of health professionals, from within their home communities, who contribute to the resolution of public health problems and needs throughout the year; and
7. Demonstrate whether the MRC approach is sustainable beyond the CA funding period.

Project Requirements

MRC units should: (1) Be comprised of citizen volunteers from within the community, including the immediate surrounding area; (2) have an organizational framework with a command and control system and have operational policies and procedures; (3) have a plan of action that is consistent with the risks and vulnerabilities of the community; (4) be fully coordinated and appropriately integrated into the existing emergency planning and response programs of the community; (5) develop strategies for activation of the local MRC unit(s), training of MRC unit members to achieve needed competency standards, building working relationships/partnerships within the community, communications and logistics during emergencies, and practicing/drilling before emergencies occur; (6) develop plans for additional functions, beyond emergency response, to promote public health in the community; and (7) have a plan for sustaining the MRC unit after federal funding stops.

Application Requirements

In addition to the eligibility criteria cited above and use of the form PHS 5161–1 (revised July 2000), successful candidates will address the following criteria in the narrative of their applications and provide the noted documentation:

- Documentation that the applicant is a unit of local government or community-based, nonprofit organization;
- Established leadership structure for the MRC unit;
- Draft action plan, including initial measurable milestones, for establishment of a citizen volunteer MRC unit, including goals, objectives, and time lines;
- Documentation of the existence of a planning body for the MRC, including the name of the chair or lead organization, and the principals of the organization;
- Specification of any arrangements or agreements with other local public or private organizations [*e.g.*, Citizen Corps Council, Mayor's office, City Council, County Commission, County Chief Executive, Fire Department, Department of Health, Chief of Emergency Response for the Community, community hospital(s), Red Cross, local medical society and/or other health professions organizations, local-based government hospitals (VA, Indian Health Service), service organizations] for the purposes of planning, establishing, and utilization of a local MRC unit(s);
- Demonstration of linkages with and/or understanding of existing emergency medical response entities in the community (*e.g.*, minutes of a planning meeting in which there was substantive involvement of other key community stakeholders, including NGOs);
- Demonstration of a linkage with local government health and emergency response authorities;
- A proposed budget which is consistent with the approved types of expenditures set forth below;
- Other letter(s) of support are optional.

Plan for sustaining the MRC unit after federal funding stops.

Use of CA Funds

Applicants may request funds for the following types of allowable expenses, subject to Federal Government regulations regarding non-allowable expenses in Federal assistance programs:

1. Organizing an MRC unit, including establishment of a leadership and management structure;
2. Implementation of mechanisms to assure appropriate integration and coordination with existing local emergency response and health assets and capabilities;
3. Recruiting volunteers for the MRC unit;
4. Assessing the community's risks and vulnerabilities;
5. Development of plans to develop, organize and mobilize the MRC unit in response not only to urgent needs but also to address other public health needs in the community;
6. Training for leadership and preparedness; and
7. Training in specific skills.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete, non-conforming to the announcement, or arrive after the deadline will be returned without review or comment. Applications will be reviewed for conformity with the applicant eligibility criteria. Applications will be considered non-conforming and returned unread if the budget request exceeds the amount stated in the "Availability of Funds" section of this announcement, or exceeds the page limitations as stated in this section, "Review of Applications." Similarly, an application will be considered non-conforming if it requests funds in excess of the length of the projects funded years as stated in "Period of Support" section of this announcement. Accepted applications will be objectively reviewed for technical merit in accordance with HHS policies.

Applications will be evaluated by an objective review panel composed of experts in the fields of emergency medical response, medicine, public health, program management, community service delivery, and community leadership development. Consideration for award will be given to applicants that best demonstrate progress toward establishment of a local citizen volunteer MRC unit. Additionally, applications that best demonstrate the development of plausible strategies, including a time line for organizing, recruitment, and making operational a citizen volunteer MRC unit that is linked to other community-based programs for emergency response will rank more highly than those applications which do not. Applicants which have a linkage or plan a linkage with the community's Citizen Corps Council (if one has been established) should address that point, as applicable and appropriate.

Organization of Application

Applicants are required to submit: (1) an original ink-signed (blue ink in order to be distinguished from a copier product) and dated application; and (2) two photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½" x 11" white paper, using at least a 12 point font, and contain 1" margins all around.

The Project Summary and Project Narrative must not exceed a total of 20 double-spaced pages, excluding any appendices. The original and each copy must be stapled. An outline for the minimum information to be included in the "Project Narrative" section and related appendices is presented below.

I. Background (location, responsible organization/body, linkages within community)
II. Objectives
III. Summary of existing relevant community resources
IV. Organization structure, local MRC initiative leadership and key staff (with biographical sketches)
V. Strategy/plans with time line (can be in sequenced, bullet form)
VI. Summary of community partnerships and linkages developed/being developed
VII. Evaluation—how progress will be measured
VIII. Statement of willingness to contribute written information on local MRC unit experiences, particularly what has worked well and lessons learned, to the OSG for sharing with other communities establishing MRC units.
IX. Plan for sustaining the MRC unit in the years after federal funding stops.

Application Review Criteria

The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—45 points

This section should discuss:

1. Brief summary of existing community resources and linkages to deliver coordinated emergency medical response services in a large scale (for the locality) emergency.
2. The role the MRC unit will most likely play in relationship to existing services, including local health department, fire department, community hospital(s), Red Cross and other NGOs; and, if an officially recognized Citizen Corps Council (CCC) has been established in the community, the nature of any linkage to the CCC.
3. The proposed plan and time line for establishment of an MRC unit, ranging from establishment of a planning/steering group, organizational meetings, goals and objectives, development of organizational structure, policies and procedures, recruitment, liaison and partnership building, training, etc.

Although components of an MRC unit do not necessarily have to be in place at the time the application is submitted, the applicant must discuss/describe the resources available to support these components and plans for phasing in the components of the action plan and the relationship of the plans to existing programs/institutions in the community/county/area.

Factor 2: Management Plan—20 points

Applicant organization's capability to manage the project as determined by the availability and qualifications of the proposed staff (may be either volunteer or hired). Applicant organization's listing of partners in the establishment and utilization of the citizen volunteer MRC unit and their relationships and

the mechanism(s) that will be utilized to convene the partners for constructive planning and implementation.

Factor 3: Evaluation Plan—10 points

A clear but brief statement of program goals and how progress toward meeting those goals will be assessed.

Factor 4: Background—10 points

Adequacy of demonstrated knowledge of emergency medical response/care systems, and utilization of volunteers.

Factor 5: Supporting Documentation—5 points

Adequacy of supporting documentation that the MRC unit planning group is appropriately connected to local government entities (*e.g.*, Mayor's office, City Council, County Executive, County Council, Fire Department, Department of Emergency Planning and Response) and appropriate local organizations such as the Citizen Corps Council (if one has been officially established), American Red Cross, civic organizations (*e.g.*, Kiwanis, Rotary, Siroptomist, Lions, Clubs); veterans organizations, health professions organizations, and faith-based groups, etc.

Factor 6: Statement of Willingness to Share Information with OSG—5 points

A clear statement that the CA recipient is willing to contribute information on the progress, lessons learned, best practices, etc. to the OSG at 6-month intervals.

Factor 7: Sustainability Plan—5 points

This area should address, in as much detail as possible, the applicant's plan for how the MRC unit will continue to exist and thrive in the years beyond the applicant's funding eligibility (Year 4 and beyond).

Reporting and Other Requirements

General Reporting Requirements: A CA recipient under this notice will submit: (1) A six-month progress report to the OSG; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OSG, in accordance with provisions of the general regulations which apply under 45 CFR Part 74.51—74.52, with the exception of State and local governments to which CFR Part 92, Subpart C reporting requirements apply.

The OSG has established the following requirements for inclusion in the annual and/or final report(s):

- A summary of the status of development of the MRC unit (not to exceed 5 pages in the main report), including the major activities and accomplishments, objectives met and not met, lessons learned, and an evaluation plan update;
- Copy of organizational chart and brief narrative description of the structure of the MRC unit, including its chain-of-command;
- Copy of policies and procedures (*e.g.*, scope of operations, criteria for mobilization and demobilization, recruitment, and verification of credentials) for the local MRC unit;
- Copy of risk/vulnerability assessment (a copy of such an assessment prepared by other entities in the community and to which the MRC unit is linked may be submitted);
- Resource availability and needs assessment; and
- Copy of database of appropriately credentialed volunteers who are committed to participate as members of the MRC unit.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to state and local health officials to keep them apprised on proposed health services CA applications submitted by community-based non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424); and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and (3) a description of the coordination planned with state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OSG.

State Reviews: This program is subject to the requirements of Executive Order 12372, which allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs.

Because of the importance of coordination of emergency medical response and public health improvement at the state and community levels, the OSG, for purposes of this announcement, is establishing a special mechanism to enable designated state points of contact to provide comments in an orderly and uniform way to the OSG for purposes of according scores to applications from their respective states for applications submitted under this notice. The application kit available under this notice will contain a list of state points of contact. Applicants (other than federally recognized Indian tribes) should contact their state contact point as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. The due date for state process recommendations is 15 working days after the application deadline established by the OMH Grants Management Officer.

The OSG does not guarantee that it will accommodate or explain its responses to state process recommendations received after that date.

Provision of Smoke-Free Workplaces and Non-use of Tobacco Products by Recipients of PHS CA.

HHS strongly encourages all CA recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

Definitions

For the purposes of this CA program, the following definitions are provided:

Citizen Corps Council: A Citizen Corps Council established at the community or county level within the overall framework of the Citizen Corps, USA Freedom Corps. The Citizen Corps Council structure falls within the overall purview of FEMA.

Cooperative Agreement (CA): An award instrument of financial assistance where "substantial involvement" is anticipated between the HHS awarding agency and the recipient during performance of the contemplated project or activity. "Substantial involvement" means that the recipient can expect Federal programmatic collaboration or participation in managing the award.

Community-based: The locus of control and decision making powers are located at the community level,

representing the service area of the community or a significant segment of the community.

Non-governmental organization (NGO): A public or private institution of higher education; a public or private hospital; an Indian tribe or Indian tribal organization which is not a Federally-recognized Indian tribal government; and a quasi-public or private gateway.html organization or commercial organization. The term does not include a State or local government, a Federally-recognized Indian Tribal Government, an individual, a Federal agency, a foreign or international governmental organization (such as an agency of the United Nations), or a government-owned contractor-operated facility or research center providing continued support for mission oriented large scale programs that are government-owned or controlled or are developed as a Federally Funded Research and Development Center under Office of Federal Procurement Policy letter 84–1.

Office of the Surgeon General (OSG): The Office of the Surgeon General, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services, which is the designated lead agency for the MRC program.

Dated: May 28, 2003.

Richard H. Carmona,

Surgeon General and Acting Assistant Secretary for Health.

[FR Doc. 03–13799 Filed 6–2–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, President's Council on Physical Fitness and Sports.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

Date and Time: June 26, 2003, from 8:30 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Penelope S. Royall, Acting Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. Authorization to continue Council operations was given at appropriate intervals by subsequent Executive Orders. The Council has undergone two name changes and several reorganizations. Presently, the PCPFS serves as program office that is located organizationally in the Office of Public Health and Science within the Office of the Secretary in the U.S. Department of Health and Human Services.

On June 6, 2002, President Bush signed Executive Order 13256 to reestablish the PCPFS. Executive Order 13256 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include to: (1) Advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, state and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and advise the Secretary, as necessary, concerning such needs.

The PCPFS holds at a minimum, one meeting in the calendar year to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs.

Dated: May 27, 2003.

Penelope S. Royall,

Acting Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 03–13798 Filed 6–2–03; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–71]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210. CDC is requesting an emergency clearance for this data collection with a two week public comment period. CDC is requesting OMB approval of this package 7 days after the end of the public comment period.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project: Project DIRECT: Phase 2, Evaluation of Impact of Multilevel Community Interventions—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Project DIRECT (Diabetes Intervention Reaching and Educating Communities Together) is the first comprehensive

community based project in the United States to address the growing burden of diabetes in African Americans. The goal of the project is to use existing knowledge of diabetes risk factors and complications to implement community level interventions to reduce the prevalence and severity of diabetes in communities with large African American populations. A community in Raleigh, North Carolina was selected as the demonstration site for the project. An area in Greensboro, NC, was identified as a suitable comparison community. The Division of Diabetes Translation (DDT) at the Centers for Disease Control and Prevention (CDC) is collaborating with the state of North Carolina to implement and evaluate public health strategies for reducing the burden of diabetes in this predominately African American community.

Project DIRECT has three distinct intervention components—Health Promotion, Outreach, and Diabetes Care. The goals of all three interventions are to reduce or prevent diabetes and its complications, but each has a different but complimentary approach.

Project DIRECT implemented a baseline population-based survey in 1996–1997. Interventions have been employed since then and continue to the present. A follow-up study is now required to evaluate the impact of this multilevel approach to diabetes prevention and control. Data from this project will be critical to the Division of Diabetes Translation's on-going efforts to reduce the burden of diabetes, and to determine whether a similar program could be implemented successfully in other communities. A pre-post design was selected for the evaluation to determine if any changes observed for these outcomes might be attributed to the interventions used in Project DIRECT by comparing changes in the intervention and comparison communities. The baseline study for the pre-post evaluation was conducted during 1996–1997. Households in Raleigh and Greensboro communities would be selected at random using mailing lists. An interviewer will verify the address and do an initial screening for eligible participants in the household. Eligible participants will be asked to participate in the study and will have to complete a consent form. All participants will be asked to complete an interview on their health status and lifestyle and measured for height and weight. Participants who self-report a history of diabetes will be asked additional questions (diabetes module) about their management of diabetes and its complications and other related health conditions.

All participants who self-report a history of diabetes and a sub-sample of those without diabetes would be invited to participate in a household examination that will include blood pressure and waist circumference measurement and a blood draw for laboratory analysis including blood glucose and lipids concentrations. For quality control purposes, a small sample of participants will be asked to do a short telephone interview to verify information collected during the general interview.

The only cost to respondents is their time to participate in the study.

Form	Number of respondents	Responses per respondent	Average burden per response (hours)	Total burden (hours)
Screening Questionnaire	4,600	1	5/60	383
General Population Questionnaire	2,603	1	30/60	1,302
Diabetes Module	565	1	30/60	283
Verification Questionnaire	1,535	1	30/60	768
Total	4,600			2,736

Dated: May 28, 2003.

Thomas A. Bartenfeld,

Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–13786 Filed 6–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[DHHS/ACF/ADD/FY03–01]

Developmental Disabilities: Notice of Availability of Financial Assistance and Request for Applications To Fund Family Support Model Demonstration Projects Under the Projects of National Significance Program

CFDA: Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance.

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Announcement of availability of financial assistance for Family Support Demonstration Projects for fiscal year 2003.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families (ACF), is accepting applications for fiscal year 2003 Family Support Demonstration Projects.

This Program Announcement DHHS/ACF/ADD/FY03–01 consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides background information on ADD for applicants. Part III describes the application review process. Part IV describes the priority area under which ADD requests applications for fiscal year 2003 funding of projects. Part V describes the process for preparing and submitting the application.

Grants will be awarded under this Program Announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is August 4, 2003.

Deadline

Applications Submitted by Mail

Mailed applications shall be considered as meeting the announced deadline if they are received on or before the deadline date at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447–0002, Attention: Lois B. Hodge. Applications received after 4:30 p.m. on the deadline date will not be considered for competition,

Application Submitted by Courier

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday (excluding Federal holidays), at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, ACF Mailroom, 2nd Floor (near Loading Dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024. Applicants using express/overnight services should allow two working days (Monday through Friday, excluding holidays) prior to the deadline date for receipt of applications. (**Note to applicants:** Express/overnight mail services do not always deliver at the time to which they agreed.)

Receipt of Applications

Applications must either be hand delivered or mailed to the addresses listed above (under *Deadline*). Notification will not be sent to applicants regarding the receipt of their application.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Applications transmitted electronically will not be accepted. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Additional material will not be accepted, or added to an application, unless it is received by the deadline date.

Closed Captioning for Audiovisual Efforts

Applicants must include closed captioning and audio description in the development of any audiovisual products.

Late Applications

Applications that do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The Administration for Children and Families (ACF) may extend application deadlines when circumstances such as acts of God (*e.g.*, floods, hurricanes) occur, or when there is widespread disruption of the mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Notice of Intent to Submit Application: If you intend to submit an application, under this announcement, please contact, Joan Rucker of ADD at (202) 690–7898 within 15 days of the date of this announcement. Please give your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address.

The information will be used to determine the number of expert reviewers needed and to update the mailing list for program announcements.

FOR FURTHER INFORMATION CONTACT: For information about the application process, program information and application materials contact, Administration for Children and Families (ACF), Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/401–2344, *lhodge@acf.hhs.gov*, or Joan Rucker, Program Specialist, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898, *jrucker@acf.hhs.gov*. Copies of this program announcement and many of the required forms may be obtained electronically at the ADD World Wide Web page: *http://www.acf.dhhs.gov/programs/add/*.

Project Duration: The projects will be awarded for a project period of up to seventeen (17) months.

Federal Share of Project Costs: The maximum Federal shares for applicants requesting planning funds shall not exceed $200,000 for a state or $100,00 for a territory for the budget period. The maximum Federal shares for applicants requesting development funds shall not exceed $100,000 for a state and not to exceed $50,000 for a territory.

Anticipated Number of Projects to be Funded: It is anticipated that up to 14 projects will be funded.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). ADD shares goals with other ACF programs that promote the economic and social well being of families, children, individuals, and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States, and Congress that enable solutions that transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees, and migrants to address their needs, strengths and abilities;
- A recognition of the power and effectiveness of public-private partnerships, including collaboration among community groups, such as faith-based organizations, families, and public agencies; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

These goals will enable individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs to promote the self-sufficiency and protect the rights of persons with developmental disabilities. ADD administers the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act of 2000). The DD Act defines developmental disabilities, reauthorizes four major programs under ADD, authorizes States to provide advocacy, promote consumer oriented systems change and capacity building activities and facilitates network formations.

This Act supports and provides assistance to States, public, private non-profit agencies, and organizations, including faith-based organizations, to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.

The Act establishes, in part, as the policy of the United States:

- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;

• Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and

• Services, supports, and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preference, and cultural differences. Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the DD Act are:

(1) State Councils on Developmental Disabilities that engage in advocacy, capacity building and systematic change activities.

(2) Protection and Advocacy Systems (P&As) that protect the legal and human rights of individuals with developmental disabilities.

(3) The National Network of University Centers for Excellence in Developmental Disabilities, (UCEDD) that engages in training, outreach, and dissemination activities.

(4) Projects of National Significance (PNS), including Family Support Grants that support the development of family-centered and directed systems for families of children with disabilities, including children with developmental disabilities.

C. Statutory Authorities Covered Under This Announcement

This announcement is covered under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, *et seq.* Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15081, *et seq.* Provisions under this section provide for the award of grants, contracts, or cooperative agreements for Projects of National Significance that support:

• The development of national and State policies that reinforce and promote the self-determination, independence, productivity, integration, and inclusion in all facets of community life of individuals with developmental disabilities;

• Family support activities, data collection and analysis, technical assistance to entities that provide family support and data collection activities; and

• Other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities.

Part II. Background Information for Applicants

Description of Family Support Program

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C., *et seq.* was authorized on October 30, 2000. The DD Act includes a new title II, the "Families of Children With Disabilities Support Act of 1999". The purpose of this new family support program is for states to create or expand statewide systems change. It allows for the award of competitive grants to conduct training, technical assistance, and other national activities designed to address the problems that impede the self-sufficiency of families with children with disabilities, including children with developmental disabilities.

Part III. The Application Review

A. Eligible Applicants

Eligible applicants include any public or private non-profit organization, including State and local governments, Federally recognized Indian tribes, faith-based organizations, and private nonprofit organization including universities and other institutions of higher education designated by the governor or chief executive officer of the State as the lead agency for this project. A letter from the office of the governor or the chief executive officer designating the applicant as the lead agency for the State or Territory must accompany the application. This lead agency is responsible for coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities, including children with developmental disabilities.

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and the official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors.

Any nonprofit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by submitting a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of a valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation certifying nonprofit status and bearing the seal of the State in which the corporation is located. ADD cannot fund a non-profit applicant without acceptable proof of its nonprofit status.

Applicants, who have never received a Family Support grant, may submit an application for a planning grant. Applicants who have not been previously awarded family support planning grants are eligible for family support development grants under this announcement.

Before applications under this Program Announcement are reviewed, each one will be screened to determine whether the applicant is eligible for funding. Applications from organizations that do not meet eligibility requirements will not be considered or reviewed in the competition, and the applicant will be so informed.

B. Review Process and Funding Decisions

Applications from eligible applicants received by the deadline date will be reviewed and scored by a panel of at least three (3) reviewers (primarily experts in the field from outside the Federal Government). To facilitate this review, applicants should ensure that they address each minimum requirement in the program description under each section of the project Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed in part IV, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each applicant may receive per section in the review process. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government or the applicant.

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of

multiple projects funded under a particular program description.

ADD requires all applications to focus on or feature: Services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; or substantial involvement in the proposed project by national or community foundations.

Applications that are more clearly focused on, and directly responsive to, the concerns of the program description usually score better than those that are less specific and generally defined. Applicants are encouraged to tailor their responses according to the specific requirements of the program description.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country and rural and urban areas. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2003. Up to $1.5 million in Federal funds will be available to support these projects this fiscal year.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

D. Grantee Share of Project Costs

Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25 percent).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Pub. L. 95–134, as amended, which requires that the Department waive any requirement for local matching funds for grants under $200,000.

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

E. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

Applicants required to submit a full project description should prepare the project description statement in accordance with the following instructions.

Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and need for assistance: Clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or benefits expected: Identify the results and benefits to be derived. For example, extent to which the application is consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy practice, theory and research. Extent to which the proposed project cost is reasonable in view of the expected results.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data are to be collected, maintained, and disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profile: Provide information on the applicant organization(s) and cooperating partners such as with organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification

Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification: Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Part IV. Fiscal Year 2003 Families of Children with Disabilities Support Projects—Description and Requirements

Purpose: Project funds must be used to support the planning and development of family support activities contributing to the self-determination, independence, productivity, and integration and inclusion in all facets of community life of such individuals. Projects will:

(1) Ensure the full participation, choice and control of families of children with disabilities, including children with developmental disabilities, in decisions related to the provision of such family support for their family;

(2) Ensure the active involvement of families of children with disabilities, including children with developmental disabilities, in the planning, development, implementation, and evaluation of the project; increase the availability of, funding for, access to, and provision of family support for families of children with disabilities, including children with developmental disabilities;

(3) Promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with disabilities, including children with developmental disabilities, to increase participation, choice, and control in the provision of family support for families of children with disabilities, including children with developmental disabilities;

(4) Increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in these projects; and

(5) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures that facilitate or impede the availability or provision of family support for families of children with disabilities, including children with developmental disabilities.

Background Information: Promoting family support for families with a child with a disability is a new phase in the evolution of Federal disability policy. Historically, families with a child with a severe disability would only receive support once the child was placed in a state institution. In recent decades, disability policies have progressed to promote a more family-centered approach to service provision; indeed, many States have or have initiated family support legislation. This accomplishment is often the result of initiatives developed by the State Developmental Disabilities Councils. Currently, all the States and the District of Columbia offer some type of family support program. This support consists of any community-based service administered or financed by the State mental retardation/developmental disabilities agency providing for vouchers, direct cash payments to families, reimbursement, or direct payments to service providers that the State agency itself identified as family support. A broad range of services fall within family support including—cash subsidy payments, respite care, family strengthening through such services as parenting education and marriage education, architectural adaptation of the home, in-home counseling, sibling support programs, education and behavior management services, and the purchase of specialized equipment. Family support is a growing expenditure in State budgets. Family support expenditures advanced from $569 million for 279,266 families in 1996 to $1.0 billion for 385,414 families in 2000. Family support spending constituted 3.6 percent of total MR/DD State resources in 2000, up from 2.3 percent in 1996. All 50 States reported a family support initiative in either cash subsidy, or other family support activity. (Braddock, D., Hemp, R., Rizzolo, M.C., Parish, S. & Pomeranz, A. (The State of the States in Developmental Disabilities: 2002 Study Summary. Boulder, CO: Coleman Institute for Cognitive Disabilities & Department of Psychiatry, University of Colorado).

The Federal government's involvement in family support began in 1982 with what is known as the "Katie Beckett Waiver." This provision amended the Medicaid law to give States the option to waive the deeming of parental income and resources for any child 18 years of age and under who is eligible for placement in a Medicaid certified long-term care institution or hospital, ICF/MR or nursing home. This waiver allows parents access to an array of family, home and community supports. Many States use this option, which requires States to determine that (1) the child requires the level of care provided in an institution; (2) it is appropriate to provide care outside the facility; and (3) the cost of care at home is no more than the cost of institutional care. In States that use this option, parents may choose either institutional or community care for their Medicaid eligible children.

Federal disability policy in the 1980s increasingly began to reflect the principles of family-centered, community-based, coordinated care as Federal programs were established or reauthorized. Among these were:

(1) The Temporary Respite Care and Crisis Nurseries Act of 1986 that funded a variety of in-home and out-of-home respite programs;

(2) A new part H for infants, toddlers, and their families was added in 1986 to the Education of the Handicapped Act; (as of 1997, part C of the Individuals with Disabilities Education Act (IDEA));

(3) The reauthorization of the Maternal and Child Health Care Block grant in 1989 emphasized these principles in its Children with Special Health Care Needs program; and

(4) A definition of family support services was added in 1990 to the Developmental Disabilities Assistance and Bill of Rights Act.

Minimum Requirements for Project Design: ADD requires grant funds to be used to support the development of State policies that reinforce and promote, with the support of families, guardians, advocates, and communities, of individuals with developmental disabilities, the self-determination, independence, productivity and integration and inclusion in all facets of community life of such individuals through family support activities. Project activities should accomplish any of the following:

- Establishment of a State Policy Council of families with children with disabilities, including children with developmental disabilities, or utilize an existing council which will advise and assist the lead entity in the performance of activities under the project. The State Policy Council shall be composed of a majority of participants who are family members of children with disabilities, including children with developmental disabilities, or who are youth with disabilities (ages 18–21), or qualify under both categories;
- Training and technical assistance for family members, service providers, community members, professionals, members of the Policy Council, State agency staff, students and others;
- Interagency coordination of Federal and State policies, resources, and services; interagency workgroups to enhance public funding options and coordination; and other interagency activities that promote coordination;
- Outreach to locate families who are eligible for family support and to identify groups who are underserved or unserved;
- Policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities, including children with developmental disabilities;
- Hearings and forums to solicit input from families of children with disabilities, including children with developmental disabilities, regarding family support programs, policies, and plans for such families;
- Public awareness and education to families of children with disabilities, including children with developmental disabilities, parent groups and organizations, public and private agencies, students, policymakers, and the general public;
- Needs assessment;
- Data collection and analysis related to the statewide system of family support for families of children with disabilities, including children with developmental disabilities;
- Implementation plans to utilize generic community service organizations in innovative partnerships to include families of children with disabilities, including children with developmental disabilities;
- Pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with disabilities, including children with developmental disabilities, including family strengthening services such as parenting education and marriage education;
- An evaluation system using measurable outcomes based on family satisfaction indicators. Indicators include the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the individual family.

ADD expects to fund applications that include or incorporate into these activities one or more of the following populations relevant to their State: (1) Unserved and underserved populations that include populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, and individuals from underserved geographic areas (rural or urban); (2) aging families of adult children with disabilities, including children with developmental disabilities, who are over age 21 with a focus on assisting those families and their adult child to be included as self-determining members of their communities; (3) foster/adoptive families of children with disabilities, including children with developmental disabilities; (4) families participating in the State's Temporary Assistance to Needy Families Program (TANF), welfare-to-work, and/or SSI program; (5) veterans with families having a child with a developmental disability; (6) parents with developmental disabilities, especially with cognitive disabilities, having children with or without disabilities; and (7) families of children with developmental disabilities who have behavioral/emotional issues.

ADD intends to fund those applications that describe how the project will:

- Ensure consumer/self-advocate orientation and participation;
- Include key project personnel with direct life experience living with a disability;
- Have strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant;
- If the project includes research, reflect the principles of participatory action;
- Consider cultural competency ("cultural competency" as defined in the DD Act as—services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behavior of individuals who are receiving the services, supports or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved);
- Allow individuals with disabilities and their families to be involved in all aspects of the design, implementation, and evaluation of the project;
- Attend to unserved and inadequately served individuals, having developmental disabilities, from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities;
- Comply with the Americans with Disabilities Act, if applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1998 (Pub. L. 105–220);
- Use collaboration through partnerships and coalitions;
- Develop the capacity to communicate and disseminate information and technical assistance through E-mail and other effective, affordable, and accessible forms of electronic communication;
- Develop and establish system change activities beyond project period; and
- Disseminate models, products, best practices, and strategies for distribution between networks and beyond.

Applications must also include provisions for the travel of a key staff person during the project period to Washington, DC.

Evaluation Criteria: Five (5) criteria will be used to review and evaluate each application under this announcement. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for a criterion in the review process. The specific information to be included under each of these headings is described in section E of part III, General Instructions for the Uniform Project Description. Additional information that must be included is described below.

Criterion 1: Approach (Maximum 35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. Applicants are expected to present a plan that (1) reflects an

understanding of the characteristics, needs and services currently available to the targeted population; (2) provides services that directly address the needs of the target population; (3) is evidence based and grounded in theory and practice; (4) is appropriate and feasible; (5) can be reliably evaluated; and (6) if successfully implemented, can be sustained after Federal funding has ceased.

The applicant must:

(1) Outline a plan of action pertaining to the scope and detail on how the proposed work will be accomplished for each project. Define goals and specific measurable objectives for the project (8 points);

(2) Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Describe how the proposed project will be evaluated to determine the extent to which it has achieved its stated goals and objectives; and whether the methods of evaluation include the use of performance measures that are clearly related to the intended outcome of the project (8 points);

(3) Describe any unusual features of the project, such as design or technological innovation, reductions in cost or time, or extraordinary social and community involvement (5 points);

(4) Provide for each assistance program quantitative projects of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, activities should be listed in chronological order to show the schedule of accomplishments and their target date (4 points);

(5) Describe the products to be developed during the implementation of the proposed project. This can include questionnaires, interview guides, data collection instruments, software, Internet applications, reports, article outcomes and evaluation results. Also present a dissemination plan for conveying the information (4 points);

(6) Cite factors which might accelerate or decelerate the work and provide reasons for taking this approach as opposed to others (3 points);

(7) List each organization, operator, consultant, or other key individual who will work on the project along with a short description of the nature of their effort of contribution (3 points).

Criterion 2: Objectives and Need for Assistance (Maximum 25 points)

The application must describe the context of the proposed demonstration project, including the geographic location, environment, magnitude and severity of the problem(s) to be solved and the needs to be addressed. Those eligible applicants applying for development funds, in addition to providing the following information, please submit a summary/abstract of the project goals and accomplishments during your planning grant.

The applicant must:

(1) Demonstrate the need for the assistance and state the principal and subordinate objectives for the project (10 points).

(2) Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution (5 points).

(3) Provide supporting documentation or other testimonies from concerned interests other than the applicant (5 points).

(4) Provide any relevant data based on planning studies (4 points); and

(5) Provide maps and other graphic aids (1 point).

Criterion 3: Results or Benefits Expected (Maximum 20 points)

Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and research should be indicated.

The applicant must:

(1) Clearly describe project benefits and results as they relate to the objectives of the project (10 points); and

(2) Provide information as to the extent to which the project will build on current theory, research, evaluation and best practices to contribute to increased knowledge of understanding the problems, issues or effective strategies and practices in family support (10 points).

Criterion 4: Organizational Profile (13 points)

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is structured, the types and quantity of services, and the research and management capabilities it possesses. Applicants need to demonstrate that they have the capacity to implement the proposed project. Capacity includes (1) experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing sustaining work among key stakeholders; (5) experience and commitment of any proposed consultants and subcontractors; and (6) appropriateness of the organizational structure, including its management information system, to carry out the project.

The applicant must:

(1) Identify the background of the project director/principal investigator and key project staff (including name, address, and training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project; present brief resumes (4 points);

(2) Provide a brief background description of how the applicant organization is organized, the types and quantity of services it provides, and the research and management capabilities it possesses (4 points);

(3) Describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable (3 points); and

(4) Provide an organization chart showing the relationship of the project to the current organization (2 points).

Criterion 5: Budget and Budget Justification (7 points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives. The dollar amount requested must be fully justified and documented.

Applications must provide a narrative budget justification that describes how the categorical costs are derived and discuss the reasonableness and appropriateness of the proposed costs. Line item allocations and justifications are required for both Federal and non-Federal funds.

A letter of commitment of non-Federal resources must be submitted with the application in order to be given credit in the review process. A fully explained non-Federal share budget must be prepared for each funding source.

The applicant must:

(1) Discuss and justify the costs of the proposed project which are reasonable and programmatically justified in view of the activities to be conducted and the anticipated results and benefits (3 points);

(2) Describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement (2 points); and

(3) Include a fully explained non-Federal share budget and its source(s) (2 points).

This year, an additional five (5) points will be awarded in scoring for any project that demonstrates in their application a partnership and collaboration with any of the 140 Empowerment Zones/Enterprise Communities. To receive the five points, the application must specify how the involvement of the EZ/EC is related to the objectives and activities of the project. The application must also include a letter from an authorized representative of the EZ/EC indicating its agreement to participate and describing its role in the project. Applications submitted for development funds must include a letter from the EZ/EC pledging its continued support.

Applicable Administrative Regulations

Applicable administrative regulations include 45 CFR part 74, Administration of Grants, for Institutions of Higher Education, non-profit organizations and Indian Tribal Governments; and 45 CFR part 92, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

Part V. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms and other materials can be obtained by any of the following methods: from Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898; *http://www.acf.dhhs.gov/programs/add*; or from *add@acf.dhhs.gov*. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained in the program description in part IV of this announcement.

A. Required Notification of the State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under this Order, States may design their own process for reviewing and commenting on proposed Federal assistance under covered programs. Note: State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its single point of contact (SPOC), if applicable, or to ACF.

All States and Territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions, or for projects administered by federally recognized Indian tribes, need not take any action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the potential applications and to receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible. This will enable the program office to obtain and to review SPOC comments as part of the award process. It is imperative that an applicant submits all required materials and indicate the date of the submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the ADD website (*http:// www. acf.dhhs.gov/programs/add*) or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils can be found at ADD's website: *http://www.acf.dhhs.gov/programs/add* or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC 20447, 202/690–7898.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A-page 2 and Certifications/Assurances are contained in the application package that can be accessed as mentioned earlier in this announcement. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Please indicate that you are applying for new or implementation funds.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier" —Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant's organization that will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For ADD's priority area, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, *see* part III, sections C and D.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a-15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided online at *www.whitehouse.gov/omb/grants/spoc.html*. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded." —To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the total project period of 17 months or less. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants; this should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or the entire program to another agency, the applicant/grantee must complete this section (section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications; the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, parts 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. Project Summary/Abstract

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Provide a summary description that accurately and concisely reflects the proposal. The summary should describe the objectives of the project, the approaches to be used and the expected outcomes. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals must be closed captioned and audio described). The project summary description, together with the information on the SF 424, will constitute the project "abstract." This is a major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach;
(d) Organization Profile; and
(e) Budget and Budget Justification

The specific information to be included under each of these headings is described in section E of part III, General Instructions for the Uniform Project Description, and under part IV, and Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 75 pages. This will be strictly enforced. A page is a single side of an 8½" x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 75-page limit. Each page of the application will be counted to determine the total length.

5. Part V—Assurances/Certifications

Applicants are required to file a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications can be obtained from the ADD Web site (*http://www.acf.dhhs.gov/programs/add*) or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898. These forms can be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. *A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.*

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

___One original, signed and dated application, plus two copies.
___Application is from an organization that is eligible under the eligibility requirements defined in part IV under Program Description and Requirements.
___Application length does not exceed 75 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

___Application for Federal Assistance (SF 424, REV 4–92);
___A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
___Budget Information—Non-Construction Programs (SF 424A, REV 4–92);
___Budget justification for section B—Budget Categories;
___Proof of designation as lead agency;
___Table of Contents;
___Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
___Copy of the applicant's approved indirect cost rate agreement, if appropriate;
___Project Description (*see* part III, section E);
___Any appendices/attachments;
Assurances—Non-Construction Programs (Standard Form 424B, REV 4–92);
___Certification Regarding Lobbying;
___Certification of Protection of Human Subjects, if necessary; and
___Certification of the Pro-Children Act of 1994 (Environmental Tobacco Smoke), signature on the application represents certification.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

F. Paperwork Reduction Act of 1995 (Pub. L.104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Eligible State and Territory Applicants

1. Alabama
2. Arizona
3. California
4. Colorado
5. Connecticut
6. Delaware
7. Florida
8. Indiana
9. Iowa
10. North Dakota
11. Pennsylvania
12. South Dakota
13. Tennessee
14. Puerto Rico

Dated: May 19, 2003.

Patricia Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 03–13871 Filed 6–2–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0514]

Agency Information Collection Activities; Announcement of OMB Approval; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Irradiation in the Production, Processing, and Handling of Food" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 2003 (68 FR 15209), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0186. The approval expires on May 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13754 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0200]

Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices—Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for firms that intend to export certain unapproved medical devices.

DATES: Submit written or electronic comments on the collection of information by August 4, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Export of Medical Devices—Foreign Letters of Approval (OMB No. 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written

authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States.

FDA uses the written authorization from the foreign country or the certification from a responsible company official in the United States to determine whether the foreign country has any objection to the importation of the device into their country.

The respondents to this collection of information are companies that seek to export medical devices.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801(e)(2)	20	1	20	2.5	50
Total					50

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the experience of FDA's medical device program personnel, who estimate that completion of the requirements of this collection of information should take approximately 2.5 hours to complete.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13755 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 23 and 24, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 23, 2003, the committee will discuss fibromyalgia, clinical trial design, including important disease endpoints in the study, and development of therapies and treatments. On June 24, 2003, the committee will discuss the safety and efficacy of submission tracking number 103795/5123, ENBREL (etanercept), Immunex, for reducing signs and symptoms of active ankylosing spondylitis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 13, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12 noon on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact LaNise Giles at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 24, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–13757 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Manufacturing Inspections; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) is announcing a series of public workshops to discuss current good manufacturing practice (CGMP) issues, including quality subsystems, areas of change control, and quality management. There will also be a discussion of current compliance issues and trends and the status of the part 11 (21 CFR part 11) draft guidance. The first workshop will be held in June 2003, then repeated in July 2003 and August 2003 at different locations to enable as many people to attend as possible. Held in collaboration with the Consumer Healthcare Products Association (CHPA), the workshops are intended to update participants with respect to issues involving CGMP compliance. Participants will also hear from FDA and industry speakers on specific topics related to methodologies and implementation of quality systems including areas such as global change control and corrective action preventative action (CAPA) investigations.

DATES: For the dates of the workshops, see table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: For the locations of the workshops, see table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Fred Razzaghi, Consumer Healthcare Products Association, 1150 Connecticut Ave. NW., Washington, DC 20036, FAX 202–223–6835, *fred.razzaghi@chpa-info.org*; *http://www.chpa-info.org*; or Erik N. Henrikson, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301–827–9004, FAX 301–827–8907, *henriksone@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Should Attend?

This document is directed towards professionals involved in the manufacture, control, and regulation of pharmaceutical products. Examples of professionals who may be interested include process/production engineers, quality assurance/quality control and regulatory affairs professionals, auditors, repackers and relabelers, consultants, regulatory investigators, CGMP compliance officials, and FDA center and field personnel. Other entities or individuals may also be interested in attending.

B. Where and When Will The Workshops Be Held?

We have scheduled three workshops at different times and locations to enable as many people to participate as possible. Attendees can attend the workshop that is most convenient. The times and locations of the workshops are listed in table 1 of this document.

TABLE 1.—WORKSHOP LOCATIONS AND SCHEDULES

Workshop Location	Date and Time
Sheraton Meadowlands Hotel, Two Meadowlands Plaza, East Rutherford, NJ 07073, 201–896–0500, FAX 201–896–9696.	Monday, June 16, 2003, from 8:30 a.m. to 5 p.m.
San Juan Marriott Resort, 1309 Ashford Ave., San Juan, PR 00907, 800–981–8546, FAX 809–722–6800.	Monday, July 14, 2003, from 8:30 a.m. to 5 p.m.
Hyatt Regency Chicago, 151 East Wacker Dr., Chicago, IL 60601, 312–565–1234, FAX 312–565–2966.	Tuesday, August 12, 2003, from 8:30 a.m. to 5 p.m.

C. How Can I Participate?

You can participate in person. Anyone interested in attending a workshop can register through the **INFORMATION CONTACT**.

D. Is There a Registration Fee for This Workshop?

Yes, a registration fee of $ 320.00 is required. The registration fee includes workshop reference materials and lunch plus a continental breakfast and coffee breaks. Government employees qualify for a discounted rate of $75.

E. How Can I Get Additional Information?

The notice of participation form, information about the workshop, and other related documents are available from the **INFORMATION CONTACT** or from the Internet at *http://www.fda.gov.cder/workshop.htm*.

II. Background Information

A. Why is FDA Cosponsoring These Workshops?

FDA is cosponsoring this series of workshops to provide information and training opportunities for industry as well as FDA center and field personnel. The workshops are being scheduled for three different times and locations to enable as many participants to attend as possible.

B. What Will Be Covered?

The workshops will provide an update on the progress of the agency's CGMP initiative, the status of the part 11 draft guidance, and the agency's progress in developing ideas about risk management associated with CGMP. In addition, FDA and industry speakers will present information and training on specific topics related to methodologies and implementation of quality systems in categories such as global change control and CAPA investigations. Presentations by both FDA and industry will provide a regulatory and practical perspective on the current relevant critical topics.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13756 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0207]

Preparation for ICH Meetings in Brussels, Belgium, and ICH 6 Conference in Osaka, Japan: Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing a public meeting entitled "Preparation for ICH Meetings in Brussels, Belgium, July 15–18, 2003, and ICH 6 Conference in Osaka, Japan, November 12–15, 2003" to solicit information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming Meetings in Brussels, Belgium. The topic to be discussed is the Common Technical Document, GMPs Initiative and Update on other topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Brussels, Belgium, July 2003, at which discussion of the topics underway and the future of ICH will continue and also to inform the public about the ICH 6 Public Conference in Osaka, Japan in November 2003.

Date and Time: The public meeting will be held on June 24, 2003, from 10 a.m. to 1 p.m.

Location: The public meeting will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, email: Topperk@cder.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by June 9, 2003.

If you need special accommodations due to a disability, please contact

Kimberly Topper at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH) was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found on the Internet at http://www.ich.org.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 12:15 p.m. and 1 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by June 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The Agenda for the public meeting will be made available on June 9, 2003, via the internet at http://www.fda.gov/cder/calendar/meeting/ich2003.

Information on the ICH 6 Public Conference in Osaka, Japan on November 12–15, 2003, can be obtained via the Internet at http://www.ich.org/ich6bis.html.

Dated: May 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13830 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0197]

Guidance for Industry on Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy." This guidance discusses how FDA plans to exercise its enforcement discretion after September 1, 2002, with regard to drug products whose labeling does not use the established names for ensulizole, hypromellose, meradimate, octinoxate, and octisalate.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Wayne Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA is announcing the availability of a guidance for industry entitled "Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy." This guidance explains that the agency intends to exercise enforcement discretion by not initiating any enforcement action, until September 1, 2003, based on a firm's failure to bring its products' labeling into compliance with the United State Pharmacopeia (USP) monograph title changes for ensulizole, hypromellose, meradimate, octinoxate, and octisalate, as required by section 502(e)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)(A)(i)).

As explained in detail in the guidance, a series of events has lead to the development of the guidance. These events include USP monograph title changes, changes to the FDA's monograph for over-the-counter (OTC) sunscreen drug products, and the receipt of two petitions regarding these changes and their effective date (September 1, 2002).

We are issuing this level 1 guidance for immediate implementation, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this issue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13828 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0289]

Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." This guidance will serve as a special control for eight surgical suture devices. This guidance document describes a means by which surgical sutures may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to amend the classification regulations for eight surgical suture devices previously reclassified into class II to specify a special control for those devices.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA." This guidance document describes a means by which surgical suture devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that a manufacturer attempting to establish that its device is substantially equivalent to a predicate class II surgical suture will need to address the recommendations in this special control guidance. However, the firm need only show that its device is as safe and effective as a device that meets guidance recommendations. The firm may use alternative approaches if those approaches address the performance, testing, and labeling issues identified in the guidance. This guidance supercedes "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" issued on December 19, 2002.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on surgical sutures. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

The guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive "Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA" by fax, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1387) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including

lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: May 20, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–13826 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0181]

Guidance for Industry and FDA on Pediatric Expertise for Advisory Panels; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA." The guidance defines pediatric subpopulations by age and specifies when we would seek pediatric expertise on our advisory panels. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled "Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ- 400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022, ext. 133

SUPPLEMENTARY INFORMATION:

I. Background

This guidance describes internal office procedures to ensure that an advisory panel reviewing a premarket submission or other regulatory documents includes or consults with one or more pediatric experts, when appropriate.

FDA is making this guidance effective immediately because there is a statutory requirement that requires immediate implementation, and guidance is needed to help effect such implementation. On October 26, 2002, the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) was signed into law. MDUFMA amended section 515(c) (21 U.S.C. 360e(c)) Application for Premarket Approval of the Federal Food, Drug, and Cosmetic Act to read in part, "Where appropriate, the Secretary shall ensure that such panel includes, or consults with, one or more pediatric experts." The guidance describes circumstances where FDA believes that pediatric expertise on the advisory panel is appropriate as well as the steps FDA will take to ensure pediatric expertise is available.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on pediatric expertise in FDA advisory panels. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

You may obtain a copy of "Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA" via your fax machine, by calling the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document, then enter the document number (1208) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

You may also obtain a copy of the guidance though the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes: (1) Device safety alerts; (2) **Federal Register** reprints; (3) information on premarket submissions (including lists of approved and cleared applications and submissions, and manufacturers' addresses); (4) small manufacturer's assistance; (5) information on video conferencing and electronic submissions; (6) mammography matters; and (7) other device oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: May 23, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13753 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–101 Fiscal Year 2003 Competitive Application Cycle for the Comprehensive Geriatrics Education Program (CGEP)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of deadline date.

SUMMARY: In notice document FR Doc. 03–13225, in the issue of Wednesday, May 28, 2003, make the following correction:

On page 31722, under the section "Application Requests, Availability, Dates and Addresses:", in the third column, lines 23 and 24, the language "applications must be postmarked by the due date of July 7, 2003. Applicants" is corrected to read "applications must be postmarked by the due date of June 30, 2003. Applicants".

Dated: May 28, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–13831 Filed 6–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[Announcement Number: HRSA–03–094]

Medicare Rural Hospital Flexibility Program Evaluation Cooperative Agreement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of up to $1 million in fiscal year 2003 to fund a single competitive cooperative agreement to support the continuing evaluation of the Medicare Rural Hospital Flexibility grant program (Flex). The evaluation project will continue to assess the effectiveness of implementing the grant program in States and in rural communities and to provide recommendations for increasing the impact of the program to improve healthcare in rural America. Public and private entities possessing appropriate qualifications are eligible to apply. Faith based organizations are eligible to apply for these funds. Applications must be postmarked on or before June 30, 2003, to be considered. The award will be for a period of five years; continuation funding of up to $1 million annually in succeeding years is contingent upon availability of funds and grantee performance.

Name of Grant Program: Medicare Rural Hospital Flexibility Program Evaluation (MRHFPE), Catalog of Federal Domestic Assistance (CFDA) number 93.241.

Program Authorization: In 1997, section 1820 of the Social Security Act authorized the Medicare Rural Hospital Flexibility program. Reauthorization is pending. The appropriation for this program is provided in Public Law 108–7 (Consolidated Appropriations Resolution, 2003).

Submitting Applications: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 beginning June 4, 2003. This program uses the standard form PHS 5161–1 (revised 7/00) for applications (approved under OMB number 0920–0428). Applications must be received by 4 p.m. eastern time on July 3, 2003. An original and two copies must be submitted to the HRSA Grants Applications Center (GAC), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, telephone 1–877–477–2123, e-mail *HRSAGAC@HRSA.gov*. Applicants will be notified through the same channels that currently announce the availability of downloadable and paper application materials, including notices on HRSA Web sites and e-mail communications. HRSA anticipates our first on-line grant applications will be available later in 2003. On-line submission of applications will be encouraged at that time; hard copy applications will still be accepted.

SUPPLEMENTARY INFORMATION: For the 65 million people living in rural America, the U.S. Department of Health and Human Services' mission to protect health and to provide assistance for those in need is especially relevant. Healthcare in rural communities supports communities' well-being and represents a significant segment of the local economies. These programs, however, frequently lack adequate funds, personnel and support networks.

For more than a decade, the Office of Rural Health Policy (ORHP) has supported activities that assist States, localities and rural citizens as they work to build and sustain high-quality rural health care delivery systems. The Flex program provides funds to States to develop State rural health plans, support conversion of eligible small rural hospital facilities to critical access status (*see* Medicare conditions of participation for critical access hospitals), support rural EMS, and foster rural health care network development. This combination of activities is managed by each State in a manner that meets program objectives and is simultaneously most appropriate for the individual State. Taken as a whole, the purpose of the program is to improve access to care and quality of care by strengthening and integrating rural health care delivery systems while improving small hospital finances through providing cost based reimbursement.

Evaluation of the Flex program during its first four operational years has produced an important body of knowledge about rural health care, rural hospitals, financial issues, network development, EMS integration and community engagement in rural health care decision-making. This work has been performed by a consortium of six Centers: Southern Maine University, University of Minnesota, University of North Carolina Sheps Center, University of Nebraska (Rural Policy Research Institute), University of Washington and the Walsh Center of Project Hope. Information resulting from the evaluation is publicly available. As the program matures, the evaluation process will focus less on the process of converting hospitals to critical access status and more on development of rural organized systems of care, financial performance, impact on access to and quality of care, disease management, community role, and impact on health status of rural populations served by these emerging systems. Improving clinical, financial and leadership performance of rural healthcare organizations, access to capital and progress in acquisition and use of technology will be important areas of evaluation. Development of appropriate performance measures and documenting the impact of this program will provide enormous value to rural Americans.

Purpose: The purpose of this cooperative agreement is to measure and evaluate the effectiveness of implementation of the Flex program both nationally and at the level of the State, to make the information thus obtained publicly available, and to make recommendations for improving program effectiveness at all levels. Specifically, through this cooperative agreement, the grantee will:

- Design and implement appropriate mechanisms for the next phase of evaluation and dissemination;

• Maintain and disseminate data and information to public entities and the rural healthcare community;

• Design and apply a logic model to evaluate the effectiveness of State grantees in using Federal funds to improve rural healthcare in their State, achieve program objectives and perform Statewide planning and evaluation processes;

• Measure changes in quality, network development, EMS, utilization and community participation resulting from the Flex program;

• Collaborate with other entities in the evaluation process for discrete components and projects;

• Assess the impact of Flex upon the access to care and health status of rural populations served through Flex supported provider systems;

• Document the impact on clinical quality, financial performance and leadership of rural providers served through Flex.

This cooperative agreement involves substantial ORHP policy expertise and programmatic involvement with the awardee. Under the terms of this cooperative agreement in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Participation in annual project meetings conducted during the period of the agreement;

(2) Ongoing review of evaluation activities and procedures;

(3) Review of project information prior to public dissemination;

(4) Participation in design of evaluation process;

(5) Shared decision-making on collaborators and their projects;

(6) Assistance with the establishment of contacts with Federal and State agencies, grant projects and other contacts that may be relevant to the project's mission.

Eligibility: Any public or private entity is eligible to apply. Under the President's initiative, community-based and faith based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are encouraged to consider this initiative. There is no requirement for matching funds with this program.

Review criteria: Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation in accordance with HRSA grants management policies and procedures. Preference will be given to applicants who have participated in the first four years of the evaluation project. This means that applications carrying the preference and recommended for approval by the panel will be considered ahead of applications without the preference.

Applications will be reviewed using the following criteria:

• *Demonstrated knowledge and understanding of relevant issues* (30%) including the Medicare rural hospital flexibility program, rural healthcare networking, rural health care quality, performance of rural healthcare organizations, and rural organized systems of care.

• *Merits of the proposal* (20%) including: (1) Degree to which the application responds to grant guidance and project vision, 6%; (2) quality and feasibility of the design and implementation proposal, 5%; (3) understanding of collaborative relationships between the project officer and the grantee, 3%; and (4) clear and comprehensible presentation of budget with tight connection to project objectives, activities and required resources, 6%.

• *Applicant capability, capacity and relevant experience* (40%) including prior experience with and relevant knowledge of the Medicare Rural Hospital Flexibility program, prior experience in program evaluation, established working relationships with potential collaborators with relevant experience and strong capabilities, adequacy of staff, facilities and technology, and commitment and demonstrated ability to manage projects and adhere to agreed timelines and delivery schedules.

• *Appropriateness of budget* (10%) including maximization of the proportion of funds devoted to program objectives, the extent to which the proposed budget is realistic, adequately justified and consistent with the proposed project plan, and the degree to which the costs of the proposed project are economical in relation to the proposed activities.

Additional criteria may be used in the review of applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria in addition to those referenced above.

Program Contact Person: Forrest Calico, M.D., M.P.H., Office of Rural Health Policy, HRSA, Rm. 9A–55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Phone (301) 443–0835, Fax (301) 443–2803, e-mail *fcalico@hrsa.gov*.

Paperwork Reduction Act: OMB approval for any data collection in connection with this corporate agreement will be sought, as required under the Paperwork Reduction Act of 1995.

This program is subject to the provisions of executive order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Please visit the Web site *http://www.whitehouse.gov/omb/grants/spoc.html* for a listing of these States. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (*See* part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements). This program is not subject to the public health systems reporting requirements.

Dated: May 8, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13758 Filed 6–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Effectiveness of the National Institute on Drug Abuse's Publications Project

Summary: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Effectiveness of NIDA's Publications Project. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a three-year generic clearance to study the level of customer satisfaction in relation to public health information publications produced by the Institute. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The primary purpose of the Project is to assess NIDA's effectiveness in developing and disseminating selected public health information publications designed to promote the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. A multi-method approach (survey, in-person interviews, focus groups) will be used to determine the use and usefulness of selected NIDA public health information publications for several of NIDA's key audiences. Measures will include outcomes associated with the following variables: knowledge/awareness of the publications, receipt of the publications, reading of the publications, use of the publications, perceived utility of the publications, and the impact of the publications on the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. *Frequency of Response:* This project will be conducted annually or biennially. *Affected Public:* Individuals or households; state or local governments; organizations; businesses or educational institutions. *Type of Respondents:* Community coalition leaders, drug abuse treatment and prevention service providers, drug-abuse researchers, Native Americans, middle school science and health educators, public health policy makers and public health officials, and the general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 22,326; *Estimated Number of Responses per Respondent:* one for six of the seven key audiences and two for one audience. *Average Burden Hours Per Response:* .4357. *Estimated Total Annual Burden Hours Requested:* 9,727. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours
1. Community Coalition Leaders	1782	2	0.26	909
2. Drug Abuse Treatment and Prevention Service Providers	6042	1	0.42	2532
3. Drug Abuse Researchers	6020	1	0.42	2504
4. Native Americans and Native American Intermediaries	50	1	1.14	57
5. Middle School Science and Health Educators	3532	1	0.51	1784
6. Public Health Policy Makers and Public Health Officials	1800	1	0.36	645
7. The General Public	3100	1	0.42	1296
Total				9727

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project, contact Denise Pintello, Project Officer, Office of Science Policy and Communications, NIDA/NIH/DHHS, 6001 Executive Boulevard, MSC 9591, Bethesda, MD 20892; or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or e-mail your request, including your address to: *dp276v@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 23, 2003.

Laura Rosenthal,

Executive Officer, National Institute for Drug Abuse.

[FR Doc. 03–13840 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel.

Date: June 16, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Senior Advisor to the Director, National Center on Minority Health, and Health Disparities, 6707 Democracy Plaza, Room 800, Bethesda, MD 20892, 301–402–1366.

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13843 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 17, 2003.

Open: 8:30 a.m. to 1:30 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, various scientific presentations and other business of the Council.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lisa Evans, JD. Senior Advisory for Policy, National Center for Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–402–1366, *evansl@ncmhd.nih.gov.*

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13844 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SCCOR in Pediatric Heart Development and Disease.

Date: June 22–24, 2003.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: William J Johnson, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, MSC 7924, Bethesda, MD 20892, 301/435–0275.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorder Research; 93.837, Heart and Vascular Disease Research; 93.838, Lung Diseases Research; 93.839, Blood Disease and Resources Research, National Institutes of Health, HHS)

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13846 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Macrophage-Derived Oxysterol and Endometriosis.

Date: June 2, 2003.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13841 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: June 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2149, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13842 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 10, 2003.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, Bethesda, MD 20817.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13845 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Notice of Availability of the Report: "Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Evaluation of In Vitro Test Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays"

Summary

The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of the report entitled, "ICCVAM Evaluation of In Vitro Test Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays," NIH Publication 02–4503. The report contains ICCVAM's recommendations on minimum procedural standards and reference substances for standardization and validation of in vitro estrogen and androgen receptor binding and transcriptional activation assays.

Availability of Report

The report is available electronically (PDF format) on the NICEATM/ICCVAM web site at *http://iccvam.niehs.nih.gov.* A limited number of printed reports and CDs are available. To receive a printed report or CD, please send a request to Dr. William S. Stokes, Director, NICEATM, PO Box 12233, MD EC–17, Research Triangle Park, NC 27709, phone: 919–541–2384, fax: 919–541–0947, or email *niceatm@niehs.nih.gov.* Inquiries about the report or its availability should be sent to Dr. Stokes at the above address.

Background

In April 2000, the EPA asked the ICCVAM to evaluate the validation status of in vitro estrogen receptor (ER) and androgen receptor (AR) binding and transcriptional activation (TA) assays that were proposed as possible components of the EPA Endocrine Disruptor Screening Program (EDSP) Tier 1 screening battery. ICCVAM, which is charged by law (Pub. L. 106–545) to evaluate the scientific validity of new, revised, and alternative test methods proposed for specific regulatory uses, agreed to evaluate these test methods based on their potential interagency applicability and public health significance.

The NICEATM, which administers and provides scientific support for the ICCVAM, subsequently compiled available data and information on in vitro ER and AR binding and TA assays. Four draft Background Review Documents (BRDs) (available at *http://iccvam.niehs.nih.gov/methods/endocrine.htm*) were prepared according to published guidelines for submission of test methods to ICCVAM (ICCVAM 1999). This comprehensive review found that there are no adequately standardized and validated in vitro ER- or AR-based test methods. The NICEATM proposed minimum procedural standards that should be incorporated into standardized protocols for each of the four types of assays. In addition, NICEATM included within each BRD a list of proposed substances that should be used for the validation of in vitro ER and AR binding and TA assays.

In collaboration with the ICCVAM Endocrine Disruptor Working Group (EDWG), NICEATM organized an independent technical evaluation of the four types of in vitro endocrine disruptor test methods on May 20–21, 2002 in Research Triangle Park, NC (**Federal Register**. 66 FR 57: 16278–16279, March 23, 2001 and 67 **Federal Register** 66: 16415–16416, April 5, 2002). This meeting was open to the public with time set aside for public comment.

A 24-member scientific expert panel reviewed the information and recommendations provided in the four draft BRDs and developed its own conclusions and recommendations for each type of test method on the following:

- Specific test methods that should undergo further evaluation in validation studies and their relative priority for evaluation;
- The adequacy of the proposed minimum procedural standards;
- The adequacy of protocols for specific test methods recommended for validation; and
- The adequacy and appropriateness of substances proposed for validation studies.

The expert panel presented its evaluations, conclusions, and recommendations at the meeting. Following the meeting, the expert panel's written evaluations and consensus recommendations were consolidated into an independent report (*http://iccvam.niehs.nih.gov/methods/endocrine.htm*).

In October 2002 (67 FR 204: 64902–64903, October 22, 2002), the NICEATM made available for public comment the expert panels' final report. This report contains the expert panel's evaluations and consensus recommendations for the four types of assays and a revised list of proposed substances for validation of in vitro ER and AR binding and TA test methods. Following review of this report and the public comments, ICCVAM finalized its recommendations and developed recommended minimum procedural standards and the list of proposed substances that should be used to standardize and validate in vitro ER and AR binding and TA assays. The final expert panel report, public comments, and other relevant documents are appended to the ICCVAM report. The ICCVAM report, whose availability is announced in this notice (see above), will be forwarded to Federal agencies for their consideration and information.

The minimum procedural standards and the list of recommended substances for validation should facilitate standardization and validation of in vitro endocrine disruptor assays. Data from validation studies on test methods that incorporate the recommended minimum procedural standards will serve as the basis for developing minimum performance standards for acceptable in vitro ER-or AR-based test methods. The EDSP will use data generated from validated in vitro and in vivo Tier 1 screening test methods to reach weight-of-evidence decisions on whether to conduct large multi-generational in vivo studies. It is also anticipated that data obtained during the validation of the four different types of in vitro ER- and AR-based test methods will help characterize the extent to which individual or batteries of in vitro endocrine disruptor test methods might be used to prioritize chemicals for Tier 1 screening and Tier 2 testing. Finally, implementation of the recommendations in this report is expected to decrease and perhaps eventually eliminate the need to use male and female animals as a source of AR and ER, respectively, for in vitro screening assays.

Test method developers are encouraged to submit in vitro test methods for evaluation by ICCVAM that adhere to the minimum procedural standards outlined in this report and that have undergone validation using the recommended substances. Following adequate validation of in vitro endocrine disruptor test methods, ICCVAM and NICEATM will coordinate their scientific peer review. Formal ICCVAM test recommendations will then be forwarded to Federal agencies as required by the ICCVAM Authorization Act of 2000 (Pub. L. 106–545).

Dated: May 28, 2003.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–13839 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the Buprenorphine Waiver: Addiction Physician Survey—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823 (g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation by DPT of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). Some of these specialists will be prescribing and distributing buprenorphine, while others not prescribing buprenorphine may or may not provide referrals or ancillary services to patients receiving buprenorphine treatment. The survey will provide early data about the availability, effectiveness, and public health consequences associated with the Waiver Program. Specifically, the survey will assess early perceptions of physicians specializing in addiction medicine of whether buprenorphine as prescribed and distributed under the Waiver Program is a useful tool in the treatment of substance abuse, and whether there are any negative consequences associated with it. The survey will also assess whether there are early indications of limitations to the availability of the medication, related to factors such as geographic location, type of medical practice, patient population, or ability to pay. Physicians who do not respond after two mailings will receive a brief postcard to complete.

Results from this survey will influence the focus and content of two additional proposed surveys to be fielded later in 2003. A second survey will focus on the clinical practice and perceived effectiveness of buprenorphine among physicians who are actively prescribing the medication. A third survey of patients who have received buprenorphine will assess its effectiveness and availability from the patients' point of view. A separate **Federal Register** notice will be published for each of these surveys. The estimated response burden for the first survey of physicians is summarized below.

Addiction physicians	Number of respondents	Responses/ respondent	Hours per response	Total hour burden
Physician Survey	957	1	.33	316
Followup Postcard	335	1	.017	6
Total	957			322

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; because of mail delays, it is recommended that comments be sent by fax to: (202) 395–6974.

Dated: May 27, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–13789 Filed 6–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage In Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, (615) 255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, (513) 585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, (800) 445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, (800) 876–3652 / (417) 269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, (239) 561–8200 / (800) 735–5416.

Doctors Laboratory, Inc., PO Box 2658, 2906 Julia Dr., Valdosta, GA 31602, (912) 244–4468.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, (206) 386–2661 / (800) 898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., PO Box 2969, 1119 Mearns Rd., Warminster, PA 18974, (215) 674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 Street, Suite 200, Edmonton, Alberta, Canada T]5 5E2, (780) 451–3702 / (800) 661–9876.
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, (662) 236–2609.
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, (319) 377–0500.
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, (519) 679–1630.
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, (608) 267–6225.
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, (504) 361–8989 / (800) 433–3823, (Formerly: Laboratory Specialists, Inc.).
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927 / (800) 873–8845. (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, (713) 856–8288 / (800) 800–2387.
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, (908) 526–2400 / (800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, (919) 572–6900 / (800) 833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, (800) 882–7272, (Formerly: Poisonlab, Inc.).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, (715) 389–3734 / (800) 331–3734.
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, (905) 890–2555, (Formerly: NOVAMANN (Ontario) Inc.).
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, (651) 636–7466 / (800) 832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295 / (800) 950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, (612) 725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250 / (800) 350–3515.
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, (801) 293–2300 / (800) 322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, (713) 920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, PO Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, (541) 687–2134.
Pacific Toxicology Laboratories, 9348 De Soto Ave., Chatsworth, CA 91311, (800) 328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory.
Pathology Associates Medical Laboratories, 110 West Cliff Drive,, Spokane, WA 99204, (509) 755–8991 / (800) 541–7891x8991.
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, (817) 605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, (913) 339–0372 / (800) 821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, (770) 452–1590/(800) 729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, (800) 824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, (702) 733–7866 / (800) 433–2750, (Formerly: Associated Pathologists Laboratories, Inc.).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, (610) 631–4600 / (877) 642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, (800) 669–6995 / (847) 885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave.,,Van Nuys, CA 91405, (818) 989–2520 / (800) 877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130.
Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, NC 28732, (828) 650–0409.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300 / (800) 999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176x276.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, (602) 438–8507 / (800) 279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, (517) 377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052.
Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, (901) 474–6028.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, (573) 882–1273.
Toxicology Testing Service, Inc., 5426 NW., 79th Ave., Miami, FL 33166, (305) 593–2260
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, (301) 677–3714.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 03–13791 Filed 6–2–03; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 and Fiscal Year (FY) 2004 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for SAMHSA Cooperative Agreements for the Comprehensive Community Mental Health Services Program for Children and their Families.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2003 and FY 2004 funds for the cooperative agreement described below. A synopsis of this funding opportunity, as well as many other Federal government funding opportunities, is also available at the Internet site: *www.fedgrants.gov*.

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including part I, Cooperative Agreements for the Comprehensive Community Mental Health Services Program for Children and their Families, part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Cooperative Agreements for the Comprehensive Community Mental Health Services Program for Children and their Families—Short Title: Child Mental Health Initiative.

Funding Opportunity Number: SM 03–009.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section: part E of title V section 561 *et seq.* of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services is accepting applications for Fiscal Year 2003 and Fiscal Year 2004 for cooperative agreements to develop systems of care that deliver effective comprehensive community mental health services for a target population of children and adolescents with serious emotional disturbance and their families. Funds will be awarded to develop community service systems for the target population, and also to fund a broad array of services delivered through those service systems. In addition, awardees will participate in a national multi-site evaluation, conducted through a separate contract, and will be encouraged to develop the capacity for continuous evaluation of their systems of care.

Eligible Applicants: Eligibility for this program is statutorily limited to public entities such as: State governments; Indian tribes or tribal organizations (as defined in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act); governmental units within political subdivisions of a State such as a county, city, or town; the District of Columbia government; and the government of the territories of Guam, Commonwealth of Puerto Rico, Northern Mariana Islands, Virgin Islands, American Samoa, and Trust Territory of the Pacific Islands (now Palau, Micronesia, and the Marshall Islands). Additional eligibility requirements are listed in the full announcement.

Due Date for Applications: August 5, 2003, for FY 2003; October 15, 2003, for FY 2004.

Estimated Funding Available/Number of Awards: It is expected that approximately $5 million will be available for about 5 awards in FY 2003 and $5 million for about 5 awards in FY 2004. The maximum amount available in total direct and indirect costs for each year of the award will be as follows:

Year 1: $1 million
Year 2: $1.5 million
Year 3: $2.5 million
Year 4: $2 million
Year 5: $1.5 million
Year 6: $1 million

Actual funding levels will depend on the availability of funds. Applications with proposed budgets that exceed the maximum allowed in any year will be returned without review.

Is Cost Sharing Required: Yes. By statutory mandate, this program requires that the applicant entity will provide, directly or through donations from public or private entities, non-Federal contributions:

- For the first, second and third fiscal years of the cooperative agreement, the awardee must provide at least $1 for each $3 of Federal funds;
- For the fourth fiscal year, the awardee must provide at least $1 for each $1 of Federal funds; and
- For the fifth and sixth fiscal year, the awardee must provide at least $2 for each $1 of Federal funds.

Matching resources may be in cash or in-kind, including facilities, equipment, or services, and must be derived from non-Federal sources (*e.g.*, State or sub-State non-Federal revenues, foundation grants). Additional cost sharing information is provided in the full announcement.

Period of Support: Up to 6 years, with annual continuations depending on availability of funds and progress achieved.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from the National Mental Health Information Center, PO Box 42557, Washington, DC 20015, 800–789–2647. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov* (click on 'Grant Opportunities').

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Rolando L. Santiago, Ph.D., or Diane Sondheimer, M.S., M.P.H., Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, Child, Adolescent, and Family Branch, 5600 Fishers Lane, Room 11C–16, Rockville, MD 20857, (301) 443–1333, E-mail: *rsantiag@samsha.gov* or *dsondhei@samhsa.gov*.

Dated: May 27, 2003.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 03–13759 Filed 6–2–03; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Replacement of SAMHSA Appeals Policy With an Applicant Inquiry Process.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Replacement of SAMHSA Appeals Policy with an Applicant Inquiry Process.

SUMMARY: The SAMHSA Appeals System Policy was published in the **Federal Register** on June 23, 1993. Essentially, that policy provided a two-level appeals process for unsuccessful grant/cooperative agreement applicants to bring to the attention of the Agency a possible error in the grant review process.

The purpose of this notification is to inform potential applicants that effective immediately, SAMHSA is replacing the appeals process as set forth in the June 23, 1993 **Federal Register** with an inquiry policy for grant or cooperative agreement applications. This notice clarifies the previous policy and provides for technical changes as to the process and to whom inquiries, referred to in the previous policy as "appeals," are to be addressed as a result of the reorganization of the agency.

Discussion

SAMHSA is committed to the maintenance of a high quality review system that promotes fairness to applicants. Toward that end, SAMHSA believes applicants should be provided an opportunity to express concerns regarding the review of their applications. Under this policy, applicants will continue to be allowed to submit a written inquiry regarding possible errors in the review process. Inquiries will be taken seriously and SAMHSA will seek to provide a fair review of the inquiry.

The inquiry process allows applicants to communicate and discuss issues which arise from perceived shortcomings or errors in the substance or procedures of peer review. In general, inquiries under this policy may address such issues as the following: perceived factual errors, oversights, or bias in the peer review; or perceived conflict of interest on the part of one or more review members. The applicant should provide specific documentation to support the issues under inquiry.

Please note that applicants are expected to provide complete and clear applications and, accordingly, this inquiry process is not intended to permit applicants to supplement their applications, nor is it meant to be used to contest the judgment of the peer reviewers. Specifically, applicants should note that the written inquiry process under this policy is NOT intended to:

- Address differences of opinion between peer reviewers and the applicant;
- Provide a mechanism for allowing applicants to submit information that was not presented in the application;
- Provide a forum for pointing out information, requested in a particular section and deemed as missing by reviewers, that was included in the wrong section or in the Appendices of the application;
- Provide a forum for review of allegations that the documentation requested of applicants could be surmised from various pieces of information provided throughout the application; nor
- Provide a forum for disputing priority score determinations in the absence of specific and substantive evidence pointing to a flawed review.

Prior to the submission of a written inquiry, applicants are strongly urged to discuss via telephone the issues regarding their peer review results with designated staff in the review office and in the Center for Mental Health Services, Center for Substance Abuse Prevention, or Center for Substance Abuse Treatment, as appropriate. SAMHSA believes that most issues will be clarified best via a verbal discussion, during which both the applicant and SAMHSA staff may ask questions and further explain the comments provided by peer review. Nevertheless, if applicants still have concerns, a written inquiry may be sent to the Director of Grant Review, Office of Program Services, SAMHSA, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

Any questions regarding the new inquiry policy may be directed to Ms. Sandra Stephens, Extramural Policy Team Leader, Office of Policy, Planning, and Budget, SAMHSA, Room 12–05, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: May 27, 2003.

Charles G. Curie,

Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–13832 Filed 6–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4819–N–02]

Notice of Proposed Information Collection: Tracking Clearance Examination in Association With the Lead Safe Housing Rule

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 4, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joey Y. Zhou, (202) 755–1785 ext. 153 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to spend; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Proposal: Tracking Clearance Examinations in Association with the Lead Safe Housing Rule.

OMB Control Number: None.

Need for the Information and Proposed Use: The objective of the proposal survey is to determine the number of units that pass a lead clearance examination as a result of the Lead Safe Housing Rule (Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance; 24 CFR 35, subparts B–R). This information will aid the HUD in assessing its implementation of the Rule with the goal of eliminating assisted housing with lead-based paint hazards by 2010.

Agency Form Numbers: None.

Members of Affected Public: Recipients of HUD housing assistance funds.

Total Burden Estimate (First Year):

Task	Number of respondents	Frequency of responses	Total hours of responses
Respondents 17,000	1	2	34,000
Total Estimated Burden Hours			34,000

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 19, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–13745 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4819–N–03]

Notice of Proposed Information Collection: Survey of HUD Grantees To Assess Implementation of the Lead Safe Housing Rule

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 4, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joey Y. Zhou, (202) 755–1785 ext. 153 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, amended).

The notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Proposal: Survey of HUD Grantees to Assess Implementation of the Lead Safe Housing Rule.

OMB Control Number: None.

Need for the Information and Proposed Use: Lead is a highly toxic heavy metal that adversely affects virtually every organ system in the body. Young children are particularly susceptible to the effects of lead. Childhood lead poisoning is linked to reduced intelligence, low attention span, reading and learning disabilities, juvenile delinquency, behavioral problems, and other adverse health effects. Nearly 430,000 children have excessive levels of lead in their blood, making lead poisoning a leading childhood environmental disease. A larger body of evidence shows that the most common source of lead exposure for children today is lead-based paint (LBP) in older housing and the contaminated dust and soil it generates.

In an effort to alleviate the problem of lead poisoning, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, often referred to as title X. It authorized EPA, HUD, and OSHA to develop LBP regulations and conduct extensive lead hazard control work. The Final New HUD Regulation on Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance, 24 CFR 35, subparts B–R, *et al.* (the "Lead Safe Housing Rule") was published September 15, 1999, and was fully in effect January 10, 2002. This rule established performance standards for protecting children in federally assisted housing from lead poisoning, including clearance standards that must be met to ensure that dwellings are lead-safe for their occupants.

The objective of the proposed survey is to assess the level of compliance of the Rule by recipients of HUD housing assistance funds. The information is valuable for HUD to provide compliance assistance and enforcement functions regarding the Lead-Safe Housing Rule.

Agency Form Numbers: None.

Members of Affected Public: HUD Grantees.

Total Burden Estimate (First Year):

Task	Number of respondents	Frequency of responses	Total hours of responses
Respondents 1,000	1	2	2,000
Total Estimated Burden Hours			2,000

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 19, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–13746 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–11]

Notice of Intent To Prepare an Environmental Impact Statement for the Ridge Hill Village Center Development Project in the City of Yonkers, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

NOTICE: Notice of intent.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the City of Yonkers, New York, acting by Lee J. Ellman, AICP, its Planning Director, has identified a need to prepare an Environmental Impact Statement (EIS) and therefore issue this Notice of Intent in accordance with the provisions and requirements of 40 CFR 1501.7. The EIS will evaluate the impacts of the Proposed Action which consists of the development of 1 Ridge Hill (the Property), an approximately 81.4-acre parcel of real property located to the east of the New York State Thruway (I–87), west of Sprain Brook Parkway, and immediately south of Sprain Ridge Park, in the City of Yonkers.

The EIS will be prepared as a joint NEPA and New York State Environmental Quality Review Act (SEQRA) document intended to satisfy the requirements of both federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations under 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has authorized the City of Yonkers, New York to assume authority as the NEPA Responsible Entity. The City Council of the City of Yonkers is the SEQRA Lead Agency. Federal agencies with jurisdiction by law, special expertise, or other special interest should report their interests and indicate their willingness to participate in the EIS process as a Cooperating Agency. The EIS will cover the following areas: Land use and zoning; topography, soils and geology; vegetation, wildlife and wetlands; surface water resources; utilities; traffic and parking; noise; air quality; and visual/aesthetics/neighborhood character, and others.

FOR FURTHER INFORMATION CONTACT: For a copy of the Scoping Document contact: Lee J. Ellman, AICP, Planning Director, City of Yonkers, Department of Planning and Development, 87 Nepperhan Avenue, Yonkers, NY 10701–3874. Telephone: (914) 377–6558. E-mail: *lee.ellman@cityofyonkers.com.*

SUPPLEMENTARY INFORMATION: The Proposed Action consists of amendments to the Yonkers Zoning Ordinance, site plan approval from the Yonkers Planning Board, and related permits and approvals, to permit the development, construction, and use, of the Ridge Hill Village Center in the City of Yonkers, New York. The 81.4-acre Property is currently improved with a single office building of 240,000 square feet which is partially occupied for general office use; ten smaller buildings aggregating 120,000 square feet, which are unoccupied; and approximately 1,000 parking spaces. The Property is intended to be developed by FC Yonkers Associates, LLC, the project sponsor, as a planned, integrated, multi-use development to include retail, commercial, multi-family residential and hotel uses along with accessory parking.

The project is currently proposed to include approximately 1.3 million square feet of retail stores set along a traditional Main Street that will include shopping, dining and entertainment; a 350-room hotel and 40,000 square foot conference center; up to 800 residential units, a portion of which will be developed in accordance with the City of Yonkers Affordable Housing Ordinance (Article XV of the City of Yonkers Code), and approximately 150,000 square feet of office and research facilities. Approximately 5,000 parking spaces will be located appropriately throughout the site.

Vehicular access to the Property is proposed to be provided from Exit 6A of the New York State Thruway (I–87) and a new connector to the Sprain Brook Parkway to, or in the vicinity of, Tuckahoe Road. The project sponsor proposes improvements to Exit 6A, including reconstruction of the Bates Bridge, extension of the Thruway southbound service road from Stew Leonard Drive to the bridge, closure of the existing southbound Thruway entrance ramp at Stew Leonard Drive, and construction of a new southbound thruway entrance ramp at the Bates Bridge. All of these activities are included in the Proposed Action, and will be examined in the EIS.

A. Alternatives

The alternatives to be considered by the Lead Agency include a no-action alternative limited to the continued use of the existing, partially occupied office building on the Property; the development of the Property under existing zoning; alternative site access configurations; and alternative offsite highway configurations.

B. Need for the EIS

Insofar as the Proposed Action includes a residential component, it is subject to the Yonkers Affordable Housing Ordinance, Article XV of the Code of the City of Yonkers. The Decision of the United States District Court in *D'Agnillo* v. *United States Department of Housing and Urban Development*, 1999 WL 350870 (S.D.N.Y. 1999), requires environmental review, under NEPA, of all housing projects which are subject to the Affordable Housing Ordinance. The City of Yonkers has determined that the Proposed Action constitutes an action which has the potential to significantly affect the quality of the human environment and therefore requires the preparation of an EIS in accordance with NEPA.

C. Scoping

A public EIS scoping meeting will be held at 7 p.m. on June 10, 2003, at the Yonkers City Hall, Council Chamber, 40 South Broadway, Yonkers, NY 10701. In accordance with the provisions of 40 CFR 1500.2(c) the scoping meeting will be held jointly with the Yonkers City Council, which is acting as Lead Agency with respect to the Proposed Action under the New York State Environmental Quality Review Act (SEQRA), Article VIII of the New York Environmental Conservation Law and the Regulations promulgated pursuant thereto at 6 N.Y.C.R.R. Part 617. The public is invited to attend and identify the issues that should be addressed in the EIS. The public will have the opportunity to comment on the scope of the EIS orally and in writing. A written comment period during which additional written comments will be accepted by the Lead Agency will be extended through and including June 25, 2003. A scoping document that explains in greater detail the Proposed Action and alternatives identified at this time will be sent to known interested parties in advance of the public scoping meeting. The scoping document can also be viewed at *http://www.cityofyonkers.com/.*

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: May 27 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–13743 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–42]

Delegation of Authority—Apportionments/Reapportionment Schedules and Advice of Allotments Revocation of Any Prior Delegations of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority. Notice of revocation of any prior delegation of authority.

SUMMARY: On July 30, 1997, HUD transferred the Office of Budget and its functions form the Office of Administration to the Office of the Chief Financial Officer. In implementing the transfer of budget functions, on August 21, 1997, HUD's then Deputy Secretary delegated the authority to sign Apportionments/Reapportionment Schedules (SF–132), and Advice of Allotments (HUD–158) to the Director of Budget. As a result of the transfer of budget functions to the Office of the CFO, the Director of Budget is now the Assistant Chief Financial Officer (ACFO) for Budget. The ACFO for Budget has the responsibility for the Department-wide budget, including signature authority for apportionments/reapportionments for HUD. The budget office prepares and submits the Department's requested apportionments to the Office of Management and Budget (OMB) and after receiving OMB approval, provides allocations of funds to Assistant Secretaries and other officials as appropriate. Under this delegation, the Secretary is delegating the authority to sign Apportionments/Reapportionments Schedules and Advice of Allotments to the Chief Financial Officer. This delegation will more clearly define the existing chain of command and more accurately reflect the Department's current organizational responsibilities for budget functions.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roger L. Williams; Office of the Chief Financial Officer, Management Staff; 451 7th St. Southwest Room 3126, Washington, DC 20410; 202–708–0313. This is not a toll-free number. This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Chief Financial Officer is hereby delegated the authority to sign Apportionments/Reapportionment Schedules and Advice of Allotments.

Section B. Delegation Revoked

This document revokes the Deputy Secretary's August 21, 1997 delegation. All other previous delegations or re-delegations inconsistent with this delegation are hereby revoked.

Section C. Authority to Re-Delegate

The Chief Financial Officer is authorized to re-delegate to qualified employees of the Department any of the authority delegated under Section A.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: April 1, 2003.

Mel Martinez,

Secretary of Housing and Urban Development.

[FR Doc. 03–13744 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 3, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Sherwin N. Scott, Phoenix, AZ, PRT–069527

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: William E. Rypkema, Montvale, NJ, PRT–071450

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Museum of Zoology, University of Michigan, Ann Harbor, Michigan, PRT–693112

The applicant requests renewal of their permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species (excluding bald eagles) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

Applicant: Duke University Primate Center, Durham, North Carolina, PRT–679043

The applicant requests renewal of their permit to take and sell in interstate and foreign commerce, export, or re-export blood and tissue, whole cadavers, and parts from species in the families Lemuridae, Indriidae, Cheirogaleidae, Daubentoniidae, Tarsiidae, and Lorisidae for scientific research and for enhancement of the propagation and survival of the species.

This notification covers activities conducted by the applicant for a five year period.

Applicant: Tim P. Matzinger, Belgrade, MT, PRT–070830

The applicant requests a permit for the import of a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement of the survival of the species.

Applicant: Omaha's Henry Doorly Zoo, Omaha, SC, PRT–067574

The applicant requests a permit to import three male and three female captive held Indochinese tigers (*Panthera tigris corbetti*) from Zoo Malaka, Department of Wildlife and National Parks, Malaka, Malaysia for the purpose of enhancement of the species through captive propagation.

Applicant: U.S. Geological Survey, College Station, TX, PRT–050834

The applicant requests renewal of their permit to import non-viable eggs/egg shells of Aplomado falcons (*Falco femoralis septentrionalis*) from Mexico for the purpose of scientific research. This notification covers activities conducted by the applicant for a five year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Dennis B. Callender, Sand Coulee, MT, PRT–055331

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Gulf of Boothia polar bear population in Canada prior to April 30, 1994, for personal use.

Applicant: Leonard Bernstein, New Milford, NJ, PRT–071569

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Harry Brickley, Indianapolis, IN, PRT–071584

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 9, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–13775 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species for the City and County of Denver, Acting by and Through its Board of Water Commissioners, Denver, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for incidental take of threatened species.

SUMMARY: On February 11, 2003, notice was published in the **Federal Register** (68 FR 6756) that an application had been filed with the Fish and Wildlife Service (Service) by the City and County of Denver, acting by and through its Board of Water Commissioners for a permit to incidentally take Preble's meadow jumping mouse (*Zapus hudsonius preblei*), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1539), as amended. The "Environmental Assessment/Habitat Conservation Plan for the Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for the City and County of Denver's Board of Water Commissioners in Boulder, Jefferson, and Douglas Counties, Colorado," accompanied the permit application.

Notice is hereby given that on May 2, 2003, as authorized by the provisions of the Act, the Service issued a permit (TE–068418–0) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 7 a.m. and 4:30 p.m. weekdays.

Dated: April 30, 2003.

John A. Blankenship,

Regional Director, Region 6.

[FR Doc. 03–13783 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 010997]

Public Land Order No. 7568; Partial Revocation of Public Land Order No. 3263; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 720 acres of National Forest System lands withdrawn for the Clay-Gravel Plots, Pinal Mountain Plot, and Summit Watersheds Research Areas. The Forest Service has determined that the withdrawal is no longer needed on these areas. This action will open the lands to mining.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawal is no longer needed on these research areas and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3263, which withdrew National Forest System lands in aid of various Forest System programs, is hereby revoked insofar as it affects the following described lands:

Tonto National Forest

Clay-Gravel Plots Research Area

Gila and Salt River Meridian

T. 5 N., R. 12 E.,
Sec. 17, SE¼;
Sec. 28, NE¼NW¼ and NW¼NE¼.

Pinal Mountain Plot Research Area

T. 1 S., R. 15 E.,
Sec. 27, NE¼.

Summit Watersheds Research Area

T. 2 N., R. 14 E.(unsurveyed),
Sec. 3, SW¼NW¼;
Sec. 4, NE¼NW¼ and NE¼.
T. 3 N., R. 14 E.,
Sec. 33, SE¼SW¼ and SW¼SE¼.
The areas described aggregate approximately 720 acres in Gila County.

2. At 10 a.m. on July 3, 2003, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 2, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–13773 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 08106]

Public Land Order No. 7569; Partial Revocation of Public Land Order No. 1349; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects 40 acres of National Forest System land. The withdrawal is no longer needed for the Old Pinal CCC Camp. The land will be opened to mining and to such forms of disposition as may by law be made of National Forest System lands.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the Old Pinal CCC Camp land no longer needs to be withdrawn and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1349, which withdrew National Forest System land for administrative sites, is hereby revoked insofar as it affects the following described land:

Tonto National Forest

Gila and Salt River Meridian

Old Pinal CCC Camp

T. 1 S., R. 14 E.,
Sec. 22; SW¼SE¼.
The area described contains 40 acres.

2. At 10 a.m. on July 3, 2003, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 2, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–13774 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection; Application for Explosives License or Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Megan Morehouse, Public Safety Branch, 800 K Street NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individual or households. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a license or permit under 18 U.S.C. Chapter 40 and responsible persons of such companies are not prohibited form shipping, transporting, receiving, or possessing explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 1 hour and 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection;* There are an estimated 15,000 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13903 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; report of multiple sale or other disposition of pistols and revolvers.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Forest G. Webb, Bureau of Alcohol, Tobacco, Firearms and Explosives, National Tracing Center, Falling Waters, WV 25419. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of multiple Sale or Other Disposition of Pistols and Revolvers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* business or other for-profit. *Other:* Federal government, State, local or tribal government. The form is used by ATF to develop investigative leads of criminal activity. It identifies possible handgun traffickers in the illegal market. It's use along the border identifies possible international traffickers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 12 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,000 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13904 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

Action: 60-day notice of information collection under review: Revision of a currently approved collection; Interstate Firearms Shipment Report of Theft/Loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 550 respondents will complete a 20-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 182 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13905 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on May 6, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nicolae Borota (individual member), Baia Mare, ROMANIA has been added as a party to this venture. In addition, Salutation Consortium, Inc. has changed its address from Harker Heights, TX to Matsudo-shi, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 [60 FR 33233].

The last notification was filed with the Department on December 10, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 13, 2003 [68 FR 1642].

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–13763 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Benzene.
OMB Number: 1218–0129.
Frequency: On occasion.
Type of Response: Recordkeeping and third party disclosure.
Affected Public: Business or other for-profit; Federal government; and State, local or tribal government.
Number of Respondents: 13,498.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Exposure Monitoring:			
Initial, Periodic, and Additional Monitoring	0	0.00	0
Initial Exposure-Monitoring Results	0	0.00	0
Periodic Exposure-Monitoring Results	20,247	0.08	1,620
Additional Exposure-Monitoring Results	1,350	0.08	108
Written Compliance Plan	6,749	0.50	3,375
Respiratory Protection (Fit Testing)	0	0.00	0
Medical Surveillance:			
Medical Examinations:			
Initial Medical Examinations	10,800	2.00	21,600
Periodic Examinations	41,647	2.00	83,294
Additional Examinations and Referrals	109	4.00	436
Information Provided to Physician	52,556	0.08	4,204
Provide Physician's Written Opinion to employee	52,556	0.08	4,204
Communication of Benzene Hazards:			
Signs and Labels	0	0.00	0
Material Safety Data Sheets	0	0.00	0
Employee Information and Training	0	0.00	0
Record keeping:			
Exposure Monitoring Results:			
Periodic Monitoring Records	20,247	0.08	1,620
Additional Monitoring Records	1,350	0.08	108
Medical Records	52,556	0.08	4,204
Records Availability	5,256	0.08	420
Federal Access	4	0.08	1
Records Transfer	3	1.00	3
Totals	265,428		125,197

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $8,179,958.

Description: OSHA is proposing to extend the information-collection requirements specified in the Benzene Standard (29 CFR 1910.1028). The information-collection requirements specified in the Benzene Standard protect employees from the adverse health effects that may result from occupational exposure to benzene. The major information-collection requirements in the Standard include conducting employee exposure monitoring, notifying employees of their benzene exposures, implementing a written compliance program, implementing medical surveillance of employees, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-surveillance results, maintaining employees' exposure-monitoring and medical-surveillance records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the employee who is the subject of the records, the employee's representative, and other designated parties.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–13801 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Labor Research Advisory Council; Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with General Services Administration, I have determined that reestablishment of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its subcommittees are broadly representative of union organizations of all sizes of membership, with national coverage that reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed with the Library of Congress and the appropriate congressional committees.

Interested persons are invited to submit comments regarding reestablishment of the Labor Research Advisory Council. Such comments should be addressed to: Deborah P. Klein, Associate Commissioner, Office of Publications and Special Studies, Bureau of Labor Statistics, Department of Labor, Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC, 20212, telephone: 202–691–5900.

Signed in Washington, DC this 23rd day of May, 2003.
Elaine L. Chao,
Secretary of Labor.
[FR Doc. 03–13800 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–10659]

Proposed Class Exemption for Acquisition and Sale of REIT Shares by Individual Account Plans Sponsored by Trust REITS

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit the acquisition, holding or sale of publicly traded shares of beneficial interest in a real estate investment trust (REIT), that is structured under state law as a business trust (Trust REIT), by individual account plans sponsored by the REIT or its affiliates. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans involved in such transactions, as well as the REITs and their affiliates that sponsor such plans.

DATES: Written comments and requests for a public hearing shall be submitted to the Department before August 4, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: REIT Class Exemption Proposal. Comments may be sent by fax to (202) 219–0204 or by e-mail to *moffittb@ebsa.dol.gov*. The application for exemption (Application Number D–10659), as well as all comments received, will be available for public inspection in the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice that the Department is proposing a class exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. Relief for the transactions was requested in an application (Application No. D–10659) submitted by the National Association of Real Estate Investment Trusts (NAREIT or the Applicant) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1] Pursuant to its authority, the Department is proposing additional conditions with respect to the relief requested by the Applicant.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed class exemption has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f).

Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of a Proposed Class Exemption for Acquisition and Sale of REIT Shares by Individual Account Plans Sponsored by Trust REITs (referred to for the purpose of the ICR as Disclosures for Transactions with Trust REIT Shares). A copy of the ICR may be obtained by contacting Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5618, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through August 4, 2003 OMB requests that comments be received within 30 days of publication of the Notice of Proposed Exemption to ensure their consideration.

The Department has submitted a copy of the Notice of Proposed Exemption to OMB in accordance with 44 U.S.C. 3507(d) for review of its information

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

collections. The Department and OMB are particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

NAREIT has requested this class exemption in order to provide Plans established by Trust REITS with the option of offering a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares (as defined in III(j)) to participants in plans sponsored by the REIT or its Employer Affiliates. Further, NAREIT has requested retroactive relief from sections 406(a), 406(b)(1), and (b)(2) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, for certain transactions relating to the prior acquisition, holding, or sale of shares of beneficial interest in Trust REITS. The Department has proposed prospective relief for transactions occurring on or after the date of publication of the grant of the final exemption in the **Federal Register** and limited retroactive relief for transactions that occurred within six years of the publication of the final exemption in the **Federal Register**. Only Section II(b), Prospective Conditions, constitutes a collection of information under PRA 95.

Under section 408(a) of ERISA, prior to granting an exemption, the Secretary must make a finding that the exemption is: (1) Administratively feasible, (2) in the interests of the plan and its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plan. In order for the Department and others to determine that the conditions of this exemption have been met, the Department proposes to require the disclosure of certain information by administrators of Plans that acquire, hold, or sell Trust REIT shares to participants.

In its application, NAREIT has indicated that among all REITS, 228 are publicly traded, with 52 of these structured as business trusts under state law (Trust REITS). NAREIT has also indicated that of the 52 publicly traded Trust REITS, approximately 80%, or 42, offer individual account pension plans with individual investment direction of participant contributions, and that nearly all of the 42 Plans provide for some form of employer match. Finally, NAREIT has indicated that approximately 14 plans would be considered small, in that they have fewer than 100 participants (such that there are 28 large plans). NAREIT believes that nearly all of the 42 plans will make use of the exemption when it is granted.

The Department has estimated that about 5,300 participants may be affected by the proposed exemption. While the Department does not know the number of participants in plans that may include the option to purchase Trust REIT shares, it bases its estimate on information provided by NAREIT indicating that, of the 42 Trust REITS that sponsor 401(k) plans, 28 are large and 14 are small. Estimating that the 14 small plans have 80 employees each (1,120 employees), and that the remaining larger plans have 150 employees (4,200 employees), approximately 5,300 employees may be offered the option to purchase Trust REIT Shares or may have Trust REIT shares contributed to their individual accounts under the proposed exemption. The Department welcomes comments and relevant data on the estimated number of employees that might take advantage of the proposed exemption.

The information collection provisions of the proposed exemption are found in Sections II(b)(4) (pertaining to the prospectus and reports), II(b)(5) (records and statements regarding confidentiality), II(b)(10) (specific information about REIT share transactions), II(b)(11) (recordkeeping), and III(e)(5) (independent fiduciary acknowledgement). These requirements are summarized below for purposes of the submission for approval under PRA 95. The actual terms of the proposed exemption should be consulted for purposes of relief from ERISA prohibitions otherwise applicable to the purchase of Trust REIT shares.

Prospectus and Periodic Reports. In order to obtain prospective relief from statutory prohibitions, a Trust REIT traded on a national securities exchange or market system, or an agent or affiliate thereof, must furnish the person directing an investment (*i.e.*, the participant or independent fiduciary) the most recent prospectus and quarterly and annual reports concerning the Trust REIT both prior to, or immediately after, the initial investment and regularly thereafter as updated prospectuses and quarterly and annual reports are published.

NAREIT has indicated that issuers of REIT Trust shares currently provide prospectuses and annual reports to investors; therefore, this condition can be satisfied by usual business practices. However, under the proposed exemption, quarterly reports that are filed with the SEC under Rule 15d–13 of the Securities Exchange Act of 1934 must also be distributed to investors in Trust REIT Shares. Because the quarterly report is required for SEC registrants, no preparation burden arises from this requirement. The Department believes that quarterly reports will be distributed to employees in the same manner that prospectuses and annual reports are distributed, either electronically, provided that the requirements for electronic distribution under ERISA are satisfied, or through regular mail. The cost of regular mail at $.40 per mailing would be about $6,400 for the distribution of three quarterly reports. The fourth quarter report is assumed to be incorporated in the annual report. Electronic distribution would represent an annual cost savings of $6,400.

Disclosures. The Trust REIT or Employer Affiliate is required to disclose specific information about the operation of the Trust REIT. Under Section II(b)(5), the Plan must provide participants, when they become eligible to participate in the Plan, with a statement describing the procedures established for maintaining confidentiality with regard to the purchase, sale, holding, and share voting rights of Trust REIT Shares, as well as information identifying the fiduciary responsible for monitoring compliance with the confidentiality procedures.

In addition, under Section II(b)(10), the Trust REIT or the Person that is directing the investment, prior to an initial investment transaction, information about fees or transaction costs, the role of the Trust REIT, if any, as a principal in the transaction, the name of the exchange or market system on which the Qualifying REIT Shares are traded, and the fact that copies of the proposed and final exemption are available upon request. While the Department believes that all of the information required to be disclosed is readily available, each of the Trust REITS making use of the exemption is expected to expend time and resources to compile the required information and conform it with the other materials customarily used in communicating information that is either required to be provided to plan participants (such as Summary Plan Descriptions, or disclosures required to meet conditions of ERISA section 404(c) and related regulations at 29 CFR 2550.404c–1), or that the employer otherwise provides to assist plan participants in understanding and making use of their benefits. The Department estimates that compiling these disclosures will require a one-time preparation investment of about 4 hours per plan, and that they will be distributed along with other plan materials. It is expected that this work will be completed by outside professionals at a cost of $75 per hour. The resulting cost burden is estimated to be about $12,600.

Recordkeeping. Although Section II(b)(11) requires that records be maintained to demonstrate compliance with the terms of the exemption, this requirement is consistent with statutory recordkeeping requirements under ERISA, and with requirements pertaining to maintenance of tax records. As such, the provision imposes no additional burden.

Acknowledgement. Finally, based on the terms of the definition found in Section III(e)(5), where an Independent Fiduciary is involved in a Trust REIT transaction, the Independent Fiduciary must acknowledge in writing that he or she is a fiduciary and has the appropriate training and experience to perform the services contemplated by the exemption. It is anticipated that the applicable plan fiduciary will incorporate this acknowledgement in the written investment management or trustee agreement outlining the terms and conditions of its retention as a plan service provider that already exists as part of usual and customary business practice. As such, a written acknowledgement is not expected to impose any measurable additional burden.

Type of Collection: New.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Disclosures for Transactions with Trust REIT Shares (Prohibited Transaction Exemption xx–xx (number to be assigned when granted).

OMB Control Number: 1210-New.

Affected Public: Business or other for profit; Individuals or households; Not-for-profit institutions.

Respondents: 42.

Responses: 42.

Frequency of Response: On occasion; quarterly; annually.

Estimated Burden Hours: 0.

Estimated Capital/Startup Costs: $12,600.

Estimated Annual Costs (Operating & Maintenance): $6,400.

Estimated Total Annual Cost: $19,000.

I. Discussion of the Application

The application contains facts and representations with regard to the requested exemption that are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the Applicant.

The Applicant, NAREIT, is a Washington, DC-based trade association that supports the legislative, capital formation, and educational needs of the real estate investment trust (REIT) industry. REITs are entities that combine the capital of investors to acquire, or provide financing for, real estate investment. According to the Applicant, NAREIT represents nearly all of the 228 REITs in the United States whose shares are publicly traded.[2] NAREIT requests this exemption on behalf of publicly traded REITs that are structured under state law as business trusts and which issue equity interests in the form of shares of beneficial interest (Trust REITs).

The Applicant represents that REITs are customarily structured for state law purposes either as corporations or trusts. Corporate REITs issue equity interests in the form of stock. Trust REITs, under state law, issue equity interests in the form of shares of beneficial interest (shares). According to the Applicant, the use of a trust as a REIT business form is becoming more common and, of the 228 publicly traded REITs operating in the United States that are closely followed by NAREIT, 52 are structured as business trusts.

The Applicant explains that, in connection with the management of a Trust REIT's business, either the Trust REIT, or a corporation or a partnership owned by the Trust REIT, employs the individuals who engage in real estate and trust management services (an employer). The Trust REIT owns the real estate either directly or through another entity. The term "Employer Affiliate" as used herein, refers to an entity that sponsors an individual account plan and which is owned 50 percent or more by a Trust REIT. The Applicant explains that because the REIT's ownership interest in the Employer Affiliate is 50 percent or more, that entity may be deemed to be an affiliate of the REIT under section 407(d)(7) of the Act [3] and, accordingly, the REIT's shares may be considered "employer securities" for purposes of section 407(d)(1) of the Act, in connection with any plan sponsored by such Employer Affiliate.[4]

The Applicant states that many Trust REITs, or their Employer Affiliates, sponsor or have adopted tax-qualified "individual account plans," as that term is defined in section 3(34) of the Act, in which employees of the Trust REIT and/or its Employer Affiliates participate. Typically, these Plans (as defined in section III (f)) contain qualified cash or deferred arrangements within the meaning of Code section 401(k), and may provide for employer matching contributions, profit-sharing contributions, or both. The Applicant represents that in some Plans the participant's account is separated into two parts. The plan administrator may account for a participant's elective deferrals, and earnings thereon, separately from the company's contributions—*i.e.*, the company's matching or profit-sharing contributions. This separate accounting usually occurs in situations in which the participant has the right to direct investment of his or her elective salary deferral amounts and their earnings, but does not direct the investment of contributions made on his or her behalf.

The Applicant asserts that it is common for employers, including employers that are publicly traded REITs formed as corporations, to offer

[2] The Applicant has limited its request to REITs whose shares of beneficial interest are publicly traded on the following national exchanges or market systems: the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ National Market). Accordingly, the term "publicly traded" as used below refers only to shares traded on these exchanges or market systems.

[3] Section 407(d)(7) of the Act provides that "a corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of Title 26, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in each section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided by regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary * * *".

[4] No regulations have been issued under 407(d)(7) of the Act. In the absence of regulations, the Department is providing no opinion herein as to whether non-corporate entities may be deemed an affiliate of a REIT.

employer securities as an investment or investment option under the individual account plans that they sponsor. The stock of a corporate REIT may constitute "qualifying employer securities" for purposes of section 407(d)(5) of the Act,[5] and, if so, the individual account plans sponsored by corporate REITs may invest in and hold such stock without engaging in a prohibited transaction.[6] The Applicant notes that statutory provisions under the Act specifically allow plan investments in qualifying employer securities, and Department regulations specifically reference the acquisition of qualifying employer securities with respect to participant-directed individual account plans.[7]

The Applicant believes that shares issued by a publicly traded Trust REIT constitute "securities" within the meaning of section 2(1) of the Securities Act of 1933. The Applicant argues that because shares of beneficial interest issued by a Trust REIT are securities, they also constitute "employer securities" in connection with Plans covering employees of such Trust REIT and its Employer Affiliates.[8] The Applicant asserts that, while it is clear that shares issued by Trust REITs do not constitute "marketable obligations" (as defined under section 407(e) of the Act) or interests in a "publicly traded partnership," as defined under the Code, it is unclear whether such shares would constitute "stock" and, thus, satisfy the definition of "qualifying employer security" in section 407(d)(5) of the Act. In this regard, section 407(a)(1) of the Act provides that a plan may not acquire or hold any employer security, which is not a qualifying employer security. If the shares are not qualifying employer securities, the Plans sponsored by the Trust REITs and their Employer Affiliates cannot rely on sections 407[9] and 408(e)[10] of the Act to obtain relief from the prohibitions of sections 406 and 407 of the Act for the acquisition, holding or sale of Trust REIT shares.[11]

The Applicant believes that REITs structured as business trusts are virtually indistinguishable from REITs structured as corporations. The Applicant notes that under the Code, all tax-qualified REITs are treated as corporations for federal income tax purposes, notwithstanding their business structure.[12] According to the Applicant, Treasury Reg. section 1.856–1(d)(1) requires that a Trust REIT's trustees have the rights and powers "to meet the requirement of centralization of management," meaning that REIT trustees must have the "continued exclusive authority" to manage the affairs of the Trust REIT. The Applicant further notes that: the shareholders of Trust REITs possess the same limited liability protection as do stockholders of corporate REITs; Trust REITs are managed by trustees in much the same way as corporations are managed by directors; and shareholders of Trust REITs elect trustees just as stockholders of corporate REITs elect directors. According to the Applicant, in many states, Trust REITs may issue more than one class of shares, or may issue preferred or convertible classes of shares.[13] Further, in many states, the rules that govern procedures for amending a Trust REIT's declaration of trust conform to the rules that govern amending a corporate charter, and the rules governing the amendment of a Trust REIT's bylaws conform to the rules governing the amendment of a corporation's bylaws.[14] The Applicant argues that the marketplace makes no distinction between publicly traded Trust REITs and publicly traded corporate REITs. In addition, Trust REIT shareholders and corporate REIT stockholders receive the same type of disclosure documents required by the Securities and Exchange Commission, and the trading rules of the stock exchanges apply in the same manner. The Applicant concludes that the ownership and legal operation of Trust REITs and corporate REITs are virtually the same and that the hallmark of corporate status, limited liability to equity investors, is provided under state law to shareholders of Trust REITs just as it is to stockholders of corporations.[15]

The Applicant represents that, despite these similarities and uniform treatment for federal income tax purposes, the distinction in REIT business form for state law purposes creates an anomaly for those Trust REITs that sponsor individual account plans. Thus, in the absence of an administrative exemption, the Applicant asserts that a Trust REIT which has roughly the same capitalization as a corporate REIT, whose shares bear the same indicia of ownership and offer the same investor protection against liability as shares issued by a corporate REIT, whose business is managed by shareholder-appointed trustees just as a corporate REIT's business is managed by shareholder-appointed directors, whose shares are traded on the same national exchange as a corporate REIT, and whose shares are traded at nearly the same daily volume as a corporate REIT, may be prohibited from allowing its employees to share in the growth of the business through the company's individual account plan, even though it may be permissible for the corporate REIT to do so.

The Applicant requests a class exemption to permit Trust REITs whose shares are publicly traded the same opportunity as corporate REITs by allowing their employees to share in the growth of the business through their

[5] Section 407(d)(5) provides, in part: "The term qualifying 'employer security' means an employer security which is:

(A) Stock,

(B) a marketable obligation (as defined in subsection (e) of this section), or

(C) an interest in a publicly traded partnership (as defined in section 7704(b) of title 26), but only if such partnership is an existing partnership as defined in section 10211(c)(2)(A) of the Revenue Act of 1987 (Pub. L. 100–203)."

[6] Section 407(b)(1) provides that the percentage limitations of "subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan." The Department notes that, for plan years beginning on or after 1/1/99, plans may not require that more than 10 percent of an elective deferral account be invested in qualifying employer securities, subject to certain exceptions. Section 407(b)(2), as amended by Pub. L. 105–34 section 1524(a) (August 8, 1997).

[7] 29 CFR 2550.404c–1(d)(2)(ii)(E)(4).

[8] Under ERISA section 3(20), the term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933. ERISA section 407(d)(1) defines an employer security as "a security issued by an employer of employees covered by the plan, or by an affiliate of such employer."

[9] See note 5, Supra.

[10] Section 408(e) provides that: "sections 406 and 407 [29 U.S.C. 1106 and 1107] shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5) [29 U.S.C. 1107(d)(5)]) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4) [29 U.S.C. 1107(d)(4)])—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1) [29 U.S.C. 1107(e)(1)]),

(2) if no commission is charged with respect thereto, and (3) if (A) the plan is an eligible individual account plan (as defined in section 407(d)(3) [29 U.S.C. 1107(d)(3)]), or (B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a) [29 U.S.C. 1107(a)]."

[11] In proposing this exemption, the Department is providing no opinion herein as to whether shares of a Trust REIT constitute "stock" for purposes of section 407(d)(5).

[12] See Code section 856(a)(3).

[13] The Applicant provides the following citation in support of its assertion: Tex. Civ. Stat 3.1.

[14] The Applicant provides the following citations in support of its assertion: Md. Corps. & Assns. Ann. 8–501; Tex. Corps. & Assns. Ann 9.1, 23.1.

[15] The Applicant provides the following citations in support of its assertion: Md. Corps. & Assns. Ann 8–601; 3 Cal. Corp. Code 23001; Del. Code Ann. Tit. 12, 3803; Ill. Rev. Stat. Ch. 745, para. 60.2.; Tex. Corps. & Assns. Ann. 6138A–9.1, 6.138A–9.1.

individual account plans. The Applicant believes that employees of Trust REITs are disadvantaged compared with employees of REITs structured as corporations under state law, even though all REITs are treated as corporations for federal income tax purposes.

The requested exemption is limited to Plans sponsored by a Trust REIT or its affiliates in which the Plan's investment was in Qualifying REIT Shares (as defined in section III(j)) which are not subject to any restrictions on transfer other than restrictions required under applicable securities and exchange rules or to maintain REIT status under the Code. The Applicant represents that, in order to maintain REIT status, it is routine for the REIT's trust instruments to restrict shareholders from transferring shares of beneficial interest if such transfer would result in shareholders violating the Code's closely-held ownership test, or if such transfer otherwise would cause the REIT to fail to qualify as a REIT under the Code.[16] The Applicant believes that, particularly in the context of publicly traded REITs, these customary restrictions would not impair in any way the ability of Plans to quickly sell or dispose of Trust REIT shares previously acquired. According to the Applicant, no Trust REIT would contribute to, or allow the acquisition by, an individual account plan of REIT shares not subject to these customary restrictions.

The Applicant asserts that this exemption is in the interest of participants and beneficiaries because it will afford employees of publicly traded Trust REITs, or their Employer Affiliates, the opportunity to invest in shares of beneficial interest issued by their employers through individual account plans, thus enabling such persons to share in the growth of each respective employer's business. Further, the Applicant believes this investment option will generally afford participants and beneficiaries an efficient and inexpensive means to participate in the growth and profitability of the real estate sector of the economy.

The Applicant asserts that the requested exemption is protective of the rights of participants and beneficiaries because the participant determines whether or not his or her elective deferrals will be invested in shares of beneficial interest. In addition, only those Trust REITs with publicly traded shares are included in the exemption, thus providing sufficient liquidity and pricing protections. Finally, the Applicant proposes that, with respect to the participant directed portion of an Account (as defined in section III(a)), no more than 25 percent of the account balance may be invested in Trust REIT shares.

The Applicant requests prospective and retroactive relief for the contribution, purchase, holding or sale of Trust REIT shares by plans sponsored by the Trust REIT and/or its affiliates. The Applicant submits that the requested exemption meets the standards of section 408(a) for granting exemptive relief from the prohibited transaction provisions.

II. Description of the Proposed Retroactive Exemption

On the basis of the representations made by the Applicant, the Department is proposing limited retroactive relief from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code for the following transactions for the period beginning six years prior to the date of publication of the final exemption in the **Federal Register** and ending on the date of publication of the final exemption: (1) The purchase or sale of Qualifying REIT Shares where the decision to purchase or sell these securities was made by a participant, or by a fiduciary that was independent of the Trust REIT and its affiliates; (2) the contribution of Qualifying REIT Shares to the Plan by an employer; and (3) the holding of Qualifying REIT Shares; provided that the conditions of the exemption were met at the time of the transaction.

The Applicant has requested that the period of retroactive relief be sufficient to encompass transactions for which the applicable statute of limitations under the Act has not yet run.[17] Specifically, the Applicant has requested that the relief look back six years, nine months from the date of publication of the exemption, based on its belief that a court might find that the beginning of the statutory period was the date that the transaction was reported on the Form 5500,[18] rather than the date on which the transaction occurred. Because the six-year statute of limitations, unlike the three-year statute of limitations, does not require actual knowledge of the transaction, the statute of limitations runs from the date of the transaction, absent fraudulent concealment.[19] The Department has determined that it is appropriate to provide retroactive relief for a period of six years prior to the date the final exemption is published in the **Federal Register**.

The Applicant initially requested retroactive relief for all Trust REIT Share contributions, purchases, holdings, and sales. The Applicant explained that because Trust REIT plans believed that the employers' shares were covered by the statutory exemption under ERISA section 408(e) for "qualifying employer securities," some of the shares contributed by the employer were subject to a lockup, *i.e.* participants could not sell the shares contributed to their account for some period of time. The Applicant is unaware whether any shares purchased by participants or independent fiduciaries were also subject to a lockup. Therefore, the Department has determined to limit proposed retroactive relief to employer contributed shares, including those subject to a lockup. The Department is also providing relief where either the participant or an independent fiduciary had investment discretion to sell such shares. Where participants exercised their discretion to invest in Trust REIT shares for their own account they must have been permitted to give instructions to sell such shares at least quarterly. In the case of Trust REIT shares purchased by the independent fiduciary, that independent fiduciary must have had the authority to divest the Account of

[16] According to the Applicant, in order for an entity to qualify as a REIT under the Code, no more than 50 percent in value of outstanding shares of beneficial ownership may be owned, actually or constructively, by five or fewer individuals during the last half of a taxable year or during a proportionate part of a shorter taxable year. See Code section 856(h). In addition, if a REIT or an owner of 10% or more of a REIT actually or constructively own 10% or more of a tenant of that REIT (or a tenant of a partnership in which the REIT is a partner), the rent received by the REIT (either directly or indirectly) from such tenant will not be qualifying income for purposes of the REIT gross income tests of the Code unless such tenant is a taxable REIT subsidiary of the REIT and certain other requirements are met. See Code section 856(d)(2)(B). A REIT's shares also must be beneficially owned by 100 or more persons. See Code section 856(a)(5).

[17] Section 413 of the Act provides, "No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation; except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation."

[18] Section 104(a)(1) provides "The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year * * *."

[19] *Id.*

the Qualifying REIT Shares without restriction. The Department, however, specifically solicits comments from interested persons on whether the scope of the exemption should be modified to include additional retroactive relief for other transactions involving Trust REIT Shares that were subject to a lockup.

Where the participant or the independent fiduciary had discretion to purchase or sell Qualifying REIT Shares, the proposed exemption requires that the participant or a fiduciary independent of the Trust REIT had the authority to vote, tender and exercise similar ownership rights with respect to those such shares.

The Applicant suggested that any person or entity independent of the Plan Sponsor (as defined in section III(g)) or its affiliates should qualify as an independent fiduciary for purposes of the exemption. The Department has clarified the Applicant's suggestion to make it clear that the independent fiduciary must also be independent of any affiliates of the Trust REIT or its Employer Affiliates.

The Department has adopted the Applicant's suggestion that the price at which shares must have been contributed, purchased and sold must be the prevailing market price on the Primary Exchange on which these shares were traded. In addition, no commissions or other fees could be charged if share transactions were directly with the Trust REIT or the shares were contributed by the Plan Sponsor.

The Department believes that it is appropriate to narrow the Trust REIT class of shares covered by this exemption by limiting the definition of the term "Primary Exchange." Accordingly, for purposes of this proposed exemption, relief is limited to Trust REIT shares traded on: The New York Stock Exchange (NYSE), the American Stock Exchange (AMEX), or the National Association of Securities Dealers Automated Quotation System National Market (NASDAQ National Market). In this regard, the Applicant has represented that the opening and closing prices for REIT shares listed on the exchanges or the NASDAQ National Market are published daily in numerous newspapers throughout the country, and trading prices for such listed securities are readily available on the Internet. Therefore, by limiting the proposed exemption to Trust REIT shares traded on the NYSE, AMEX or the NASDAQ National Market, the Department believes that participants and beneficiaries will have easy access to the current trading prices of the Trust REIT shares held in their Accounts.

In response to the Department's concern as to whether there would be sufficient trading liquidity to ensure that Plans could readily dispose of REIT shares, the Applicant provided the following information: The NYSE, AMEX, and the NASDAQ National Market each impose requirements relating to minimum capitalization, minimum number of publicly-held shares eligible for trading, and minimum number of shareholders in order for a public company to be listed, or in the case of the NASDAQ National Market, designated, on such exchange or system.[20]

The Department adopted the Applicant's suggestion that transactions between Accounts, initiated at the direction of the participants or an independent fiduciary, be permitted in order to save brokerage costs. Under the proposed exemption, where investment decisions are implemented through the netting of purchases and sales between Accounts, the transactions would be valued at the closing market price for that day on the Primary Exchange on which the shares are traded. The Department cautions that, in order for transactions to satisfy this condition, such trades must be done in an objective and a mechanical fashion, so that neither the buying nor the selling participant is favored in the transaction.

Under the Department's proposed exemption, the covered transactions must meet an arm's-length test. Under this test, at the time of the transaction, the terms of the transaction must be at least as favorable to the Plan or the Account as the terms generally available between unrelated parties.

The Applicant had originally requested retroactive relief for all Accounts, including those whose assets were invested up to 100 percent in REIT Shares. After careful consideration of the issue, the Department has determined that it would not be practical to develop a single percentage limitation that would apply to investment in Qualifying REIT Shares by all individual account plans maintained by Trust REITs or their Employer Affiliates, in view of the variety of REITs that would be subject to the proposal and the different types of real estate activities engaged in by such entities. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and in a prudent fashion. Section 404(a)(1)(C) further requires that a fiduciary diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Section 404(a)(2) provides that, in the case of an eligible individual account plan, the diversification requirement of section 404(a)(1)(C) and the prudence requirement (only to the extent that it requires diversification) of section 404(a)(1)(B) are not violated by acquisition or holding of qualifying employer real property or qualifying employer securities. To the extent that the Qualifying REIT Shares do not constitute stock for purposes of section 407(d)(5) of the Act, the exception contained in section 404(a)(2) from the diversification requirements of the Act would not apply to a Plan's investment in Qualifying REIT Shares. Accordingly, it is the responsibility of a fiduciary of each Plan intending to take advantage of the relief provided by this proposed exemption to determine the appropriate level of investment in Qualifying REIT Shares, based on the particular facts and circumstances, consistent with its responsibilities under section 404 of the Act.

[20] According to the Applicant, the NYSE listing rules include, *inter alia*, a requirement of 2,200 public shareholders together with average monthly trading volume of 100,000 shares, or 500 public shareholders together with average monthly trading volume of 1,000,000 shares, or 2,000 shareholders holding at least 100 shares. *See* NYSE Rule 102.01A (NYSE Listed Company Manual, 2002). Rule 102.01B generally requires companies to demonstrate an aggregate market value of publicly-held shares (*i.e.*, shares held by persons other than directors, officers, their immediate families or 10% stockholders) of not less than $60 million, in the case of companies applying for listing in connection with their initial public offerings or a spin-off, or $100 million for other companies. *See* NYSE Rule 102.01B (NYSE Listed Company Manual, 2002).

The rules of the AMEX require that a listed company have (1) at least 500,000 shares publicly held and eligible for trading and a minimum of 800 public shareholders or (2) 1,000,000 shares publicly held and eligible for trading together with a minimum of 400 public shareholders. AMEX may also consider listing the equity securities of companies with at least 500,000 shares publicly held and eligible for trading, a minimum of 400 public shareholders, and an average daily trading volume of 2,000 shares for the six months prior to the date application is made for the listing. For purposes of satisfying the requirement of 400 or 800 minimum public shareholders, shares held by officers, directors and persons with a 10% interest or more are not taken into account. The AMEX also generally requires a minimum market price of $3 per share, and at least $3 million aggregate market value for publicly held shares "for a reasonable period of time prior to the filing of the listing application." See American Stock Exchange Rule 102 (The American Stock Exchange Company Guide, CCH, 2000).

The NASDAQ National Market imposes alternative criteria in order to be designated on the system, but in general an equity issuer may not be designated unless (1) at least 1,100,000 shares are held by the public and eligible for trading (shares held by officers, directors, or beneficial owners of more than 10 percent of the outstanding shares are not counted toward the 1,100,000 share requirement); (2) the market value of the publicly held shares eligible for trading are at least $8 million, $18 million, or $20 million (depending on length of operating history and number of market makers); (3) the minimum bid price is $5 or more; and (4) the issuer has a minimum of 400 shareholders who own 100 shares or more. See NASD Manual, Rule 4420 (CCH, 1998).

III. Description of the Proposed Prospective Exemption

On the basis of the representations made by the Applicant, the Department is proposing prospective relief from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code for the following transactions occurring after the date of publication of the final exemption in the **Federal Register:** (1) The purchase or sale of Qualifying REIT Shares where the decision to purchase or sell these securities is made by a participant, or by an Independent Fiduciary; (2) the contribution of Qualifying REIT Shares to the Plan by an employer; and (3) the holding of Qualifying REIT Shares; provided that the conditions of the exemption are met at the time of the transaction.

Prospectively, contributed shares may not be subject to a lockup. In addition, to help ensure that participants are not subject to pressure to invest in, or to continue to hold, employer securities, the confidentiality of their investment and voting decisions with respect to all such shares are protected under the exemption. In this regard, the proposed exemption requires the appointment of a fiduciary that is responsible for confidentiality. It also requires that the Plan provide participants, in writing, the procedures established to protect confidentiality of information relating to the purchase, holding, and sale of Qualifying REIT Shares and the exercise of voting, tender and other similar rights with respect to such shares. Further, should any situation arise where the fiduciary determines that there is a potential for undue influence upon participants and beneficiaries with respect to the exercise of shareholder rights, the Plan shall appoint an independent fiduciary (who may, but need not be, the Independent Fiduciary (as defined in section III (e)) to carry out activities related to this particular situation.[21]

If the Employer Affiliate, or the Trust REIT exerts undue influence over the shareholder decisions of the participants and beneficiaries in Plans covered by this proposed exemption, this proposed exemption shall not apply to any transactions involving shares subject to such influence. For example, tender offers, mergers and acquisitions are likely to generate the need for an independent fiduciary to provide additional safeguards for participant confidentiality.[22]

Section III(e) of the proposal defines the term "Independent Fiduciary" as a trustee or investment manager who had equity capital of at least $1 million and has assets under management of over $50 million. This fiduciary must be independent of the Trust REIT, the Employer Affiliate, and any of their affiliates. In this regard, the Trust REIT, the Employer Affiliate, or any of their affiliates, may not own any interest in the Independent Fiduciary and the Independent Fiduciary may not own more than 5 percent of the Trust REIT, the Employer Affiliate or any of their affiliates. The Independent Fiduciary must acknowledge in writing that it is a fiduciary and that it has the appropriate technical training or expertise to perform the services contemplated by this proposed exemption. The Independent Fiduciary may not receive more than one percent (1%) of its current gross income for federal tax purposes, (as measured by the prior year's taxable income) from the Trust REIT, the Employer Affiliate and their affiliates. Lastly, while serving as an Independent Fiduciary and for 6 months after it ceases to serve in this capacity, the Independent Fiduciary may not acquire property from, sell property to, or borrow any funds from the Trust REIT, the Employer Affiliate, or any affiliates thereof.

Where Qualifying REIT Shares are purchased or sold on the Primary Exchange, the broker executing the transactions must be independent of the Trust REIT, any Employer Affiliate, the Independent Fiduciary and any affiliates thereof.

Certain information must be disclosed to the participant or the Independent Fiduciary prior to the initial covered transaction that occurs after publication of the final exemption in the **Federal Register.** The disclosures must describe, among other things, any fees or transaction costs, the role, if any, of the Trust REIT as a principal in the transaction, and the exchange or market system where Qualifying REIT Shares are traded. Finally, the participant or Independent Fiduciary must be informed that copies of the proposed and final exemption are available upon request.

Consistent with the practice followed in other prohibited transaction class exemptions granted by the Department, the proposal contains a condition requiring the Trust REIT or its Employer Affiliates utilizing the exemption on a prospective basis to maintain, for a period of six years from the date of each covered transaction, subject to limited exceptions, the records necessary to enable certain persons to determine whether the applicable conditions of the exemption have been met. Such persons include any duly authorized employee or representative of the Department or the Internal Revenue Service, any plan fiduciary, any participant or beneficiary of the plan whose Account is invested in Qualifying REIT Shares, any employer of employees covered by the Plan, and any employee organizations whose members are covered by the Plan. All records must be unconditionally available at their customary location for examination during normal business hours by the above-described persons. However, the Trust REIT or its Employer Affiliates may refuse to disclose to a person, other than a duly authorized employee or representative of the Department or the Internal Revenue Service, commercial or financial information that is privileged or confidential.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible,

[21] This requirement was modeled after the regulations on "independent exercise of control" under section 404(c) of the Act. 29 CFR 2550.404c–1 (d)(2)(ii)(E)(4)(viii) & (ix).

[22] In the preamble to the 404(c) regulations cited above, the Department stated that it agreed with the commentators that "situations where the potential for undue employer influence may exist include tender offers, exchange offers and contested board elections." 57 FR 46906, 46927 (October 13,1992).

in the interests of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

IV. Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847 August 10, 1990.)

Section I. Covered Transactions

(a) For the period from six years prior to the date of publication of the final class exemption in the **Federal Register** to the date of publication of the final class exemption in the **Federal Register** the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in section II(a) below are met at the time of the transaction:

(1) The purchase or sale of Qualifying REIT Shares (as defined in section III(j)) on behalf of an Account (as defined in section III(a)) at the direction of the participant;

(2) The purchase or sale of Qualifying REIT Shares on behalf of the Plan (as defined in section III(f)) at the direction of an independent fiduciary (as defined in section II(a)(2));

(3) The contribution in-kind of Qualifying REIT Shares to a Plan by an employer; and

(4) The holding of the Qualifying REIT Shares by the Plan. (b) Effective after the date of publication of the final class exemption in the **Federal Register**, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in section II(b) below are met at the time of the transaction:

(1) The purchase or sale of Qualifying REIT Shares on behalf of an Account in a Plan at the direction of the participant;

(2) The purchase or sale of Qualifying REIT Shares on behalf of the Plan at the direction of the Independent Fiduciary (as defined in section III(e));

(3) The contribution in-kind of Qualifying REIT Shares to a Plan by an employer; and

(4) The holding of the Qualifying REIT Shares by the Plan.

Section II. Conditions

(a) Retroactive Conditions

(1) The participant has discretionary authority to direct the trustee to:

(A) Sell the Qualifying REIT Shares purchased by the participant for his own Account no less frequently than quarterly; and

(B) Vote, tender and exercise similar rights with respect to those Qualifying REIT Shares in the Account over which the participant has discretion; or

(2) An independent fiduciary has discretionary authority to sell the Qualifying REIT Shares purchased at the direction of the independent fiduciary and such independent fiduciary:

(A) Is a trustee, named fiduciary or investment manager with respect to the Qualifying REIT Shares;

(B) Is neither the Trust REIT (as defined in section III(i)) an Employer Affiliate (as defined in section III(d)) nor an affiliate thereof; and

(C) Has the discretionary authority to exercise the voting, tender and similar rights with respect to the Qualifying REIT Shares purchased on behalf of a Plan. Notwithstanding the foregoing, this paragraph (2)(C) shall be deemed met if another fiduciary that is independent of the Trust REIT had the right to exercise the voting, tender and similar rights with respect to the Trust REIT Shares.

(3) Purchases and sales of Qualifying REIT Shares by the Plan are executed:

(A) For cash;

(B) On the Primary Exchange (as defined in section III(h)) or directly with the Trust REIT; and

(C) At the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction.

(4) Notwithstanding paragraph (3) above, the exemption shall apply to purchases and sales of Qualifying REIT Shares between Accounts within a Plan in order to avoid brokerage commissions and other transaction costs, provided that the price received by each Account is equal to the closing price for the Trust REIT shares on the Primary Exchange on the date of the transaction.

(5) At the time the transaction is entered into, the terms of the transaction are at least as favorable to the Plan or the Account as the terms generally available in comparable arm's-length transactions between unrelated parties.

(6) Qualifying REIT Shares contributed to, or purchased by, the Plan from the Trust REIT:

(A) Are conveyed to the Plan at or below the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction; and

(B) Are conveyed to the Plan without the payment of any commission or other fee in connection with the transaction.

(7) Where a participant has discretionary authority to purchase or sell Qualifying REIT Shares; neither the Trust REIT, an Employer Affiliate, the independent fiduciary, nor any affiliates thereof exerts any undue influence over the decisions of the participants to acquire or sell Qualifying REIT Shares.

(b) Prospective Conditions

(1) The participant has discretionary authority to direct the trustee:

(A) To sell Qualifying REIT Shares purchased by, or contributed to, an Account no less frequently than monthly; and

(B) To vote, tender and exercise similar rights with respect to those Qualifying REIT Shares in the Account over which the participant has discretion; or

(2) An Independent Fiduciary, as defined in section III (e), has discretionary authority to purchase, hold or sell the Qualifying REIT Shares and has the discretionary authority to exercise the voting, tender and similar rights with respect to the Qualifying REIT Shares. Notwithstanding the foregoing, this paragraph (2) shall be deemed met if another fiduciary that is independent of the Trust REIT, the Employer Affiliate and any affiliates thereof; has the right to exercise the voting, tender and similar rights with respect to the Trust REIT shares.

(3) Where a participant has discretionary authority to purchase or sell Qualifying REIT Shares, neither the Trust REIT, an Employer Affiliate, the Independent Fiduciary, nor any affiliates thereof:

(A) Has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction;

(B) Renders any investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets; or

(C) Exerts any undue influence over the decisions of the participants to acquire or sell Qualifying REIT Shares.

(4) Prior to or immediately after an initial investment in Qualifying REIT Shares, either the Trust REIT, or an agent or affiliate thereof provides the person who is directing the investment (*i.e.*, the participant or the Independent Fiduciary) with the most recent prospectus, quarterly report, and annual report concerning the REIT, and thereafter, either the Trust REIT, or an agent or affiliate thereof, provides such participants and/or Independent Fiduciary with updated prospectuses, quarterly statements and annual reports as published.

(5) Information relating to the purchase, holding, and sale of Qualifying REIT Shares, and the exercise of voting, tender and similar rights with respect to such Qualifying REIT Shares by participants is maintained in accordance with procedures designed to safeguard the confidentiality of such information except to the extent necessary to comply with Federal or state laws not preempted by ERISA. To safeguard confidentiality, the Plan shall:

(A) Designate a fiduciary responsible for safeguarding confidentiality;

(B) Provide participants, when they become eligible to participate in the Plan, with a statement describing the procedures established to provide for the confidentiality of information relating to the purchase, holding and sale of Trust REIT shares, and the exercise of voting, tender and similar rights, by participants and beneficiaries and the name, address and telephone number of the fiduciary responsible for monitoring compliance with the procedures; and

(C) Appoint, if the fiduciary responsible for safeguarding participant confidentiality determines that a situation involves a potential for undue employer influence upon participants and beneficiaries with regard to the direct or indirect exercise of shareholder rights, an independent fiduciary (who may, but need not be, the Independent Fiduciary), to take appropriate action to protect the confidentiality of the participants' votes. For purposes of this subparagraph (C), a fiduciary is not independent if the fiduciary is affiliated with the Trust REIT, an Employer Affiliate, or any affiliate thereof.

(6) All purchases and sales of Qualifying REIT Shares by the Plan are executed:

(A) For cash;

(B) On the Primary Exchange (as defined in section III (h)) by a broker that is independent of the Trust REIT, the Employer Affiliate, the Independent Fiduciary, and any affiliates thereof, or directly with the Trust REIT; and

(C) At the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction.

(7) Notwithstanding paragraph (6) above, the exemption shall apply to purchases and sales of Qualifying REIT Shares between Accounts within a Plan in order to avoid brokerage commissions and other transaction costs, provided that the transaction is executed at the closing price for the Trust REIT shares on the Primary Exchange on the date of the transaction. All such transactions will take place at the closing price on the business day on which the participant instruction is received, or at the closing price on the next business day if the instruction is received after noon or such later deadline as designated by the trustee or named fiduciary.

(8) At the time the transaction is entered into, the terms of the transaction are at least as favorable to the Plan or the Account as the terms generally available in comparable arm's-length transactions between unrelated parties.

(9) Qualifying REIT Shares that are contributed to, or purchased by, the Plan from the Trust REIT:

(A) Are conveyed to the Plan at or below the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction;

(B) Can be immediately sold on the Primary Exchange; and

(C) Are conveyed to the Plan without the payment of any commission or other fee in connection with the transaction.

(10) Prior to a participant, Plan Sponsor (as defined in section III (g) or an Independent Fiduciary engaging in an initial transaction under this exemption, after the date of publication of the final class exemption in the **Federal Register**, the Trust REIT or its Employer Affiliate provides the following disclosures to the person who exercises discretionary authority with respect to the Qualifying REIT Shares (*i.e.*, the participant or the Independent Fiduciary). The disclosure must contain the following information regarding the transactions and a supplemental disclosure must be made to the person directing the covered investments if material changes occur subsequent to the initial disclosure. This disclosure must include:

(A) Disclosure of any fees for brokerage services or transaction costs that will be incurred as a result of the transactions;

(B) Disclosure of the role of the Trust REIT, if any, as a principal in the transactions;

(C) The exchange or market system where the Qualifying REIT Shares are traded; and

(D) A statement that a copy of the proposed and final exemption shall be provided to participants and the Independent Fiduciary upon request.

(11) The plan fiduciary for a period of six years maintains the records necessary to enable the persons described below in paragraph (12) to determine whether the conditions of this exemption have been met, except that:

(A) If the records necessary to enable the persons described in paragraph (12) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(B) No party in interest other than the plan fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (12) below.

(12) (A) Except as provided below in paragraph (12)(B) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (11) are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary,

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of the Plan who's Account is invested in Qualifying REIT Shares or the duly authorized employee or representative of such participant or beneficiary;

(B) None of the persons described in paragraph (12)(A)(ii)–(iv) shall be authorized to examine trade secrets of the Trust REIT, or an Employer Affiliate or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) Account—The term "Account" means the individual account of a participant in a defined contribution pension plan in which benefits are based solely upon the amount contributed to the participant's account, and any income, expenses, gains or losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(b) Affiliate—The term "affiliate" of a person means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, employee, or relative (as defined in section 3(15) of the Act) of such person or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) Control—The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Employer Affiliate—The term "Employer Affiliate" means any corporation, limited liability company (LLC), or partnership 50 percent or more owned by a Trust REIT.

(e) Independent Fiduciary—The term "Independent Fiduciary" means a person who:

(1) Is a trustee or an investment manager (as defined in 3(38) of the Act) who had equity capital of at least $1 million as of the last day of its most recent fiscal year and has client assets under management or control of over $50 million;

(2) Is not an affiliate of the Trust REIT, the Employer Affiliate or an affiliate thereof;

(3) Is not a corporation, partnership or trust in which the Trust REIT, its Employer Affiliate or an affiliate thereof has a one percent or more ownership interest or is a partner;

(4) Does not have more than a five percent ownership interest in the Trust REIT, its Employer Affiliate or an affiliate thereof;

(5) Has acknowledged in writing that:

(i) It is a fiduciary; and

(ii) It has appropriate technical training or experience to perform the services contemplated by the exemption;

(6) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year in which the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from the Trust REIT, its Employer Affiliate and affiliates thereof, (including amounts received for services as an independent fiduciary under any prohibited transaction exemption granted by the Department) exceeds 1 percent of such fiduciary's gross income for federal tax purposes in its prior tax year; and

(7) In addition, no organization or individual which is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder may acquire any property from, sell any property to or borrow any funds from the Trust REIT, its Employer Affiliate or their affiliates, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as an Independent Fiduciary.

(f) Plan—The term "Plan" means an individual account plan sponsored by the issuer of Qualifying REIT Shares or an Employer Affiliate thereof.

(g) Plan Sponsor—The term "Plan Sponsor" means the Trust REIT or the Employer Affiliate that is the employer of the employees covered by the Plan.

(h) Primary Exchange—The term "Primary Exchange" means the national securities exchange or market system on which the Trust REIT shares are primarily traded, and which is either the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation System National Market.

(i) Trust REIT—The term "Trust REIT" means a "real estate investment trust" within the meaning of section 856 of the Code that is organized as a trust under applicable law.

(j) Qualifying REIT Shares—The term "Qualifying REIT Shares" means shares of beneficial interest in a Trust REIT that:

(1) Are publicly traded (as defined in section III(k); and

(2) Have no trading restrictions other than those necessary to qualify for REIT status or otherwise to satisfy securities law or applicable exchange or market system trading rules.

(k) Publicly Traded—The term "publicly traded," for purposes of this exemption, means Trust REIT shares of beneficial interest which are traded on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation System National Market System.

(l) Participant—the term "participant" includes beneficiaries.

Signed at Washington, DC this 28th day of May, 2003.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–13899 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,366; Georgia-Pacific Corp., Operating as James River Paper Co., Inc., Consumer Products Div., Old Town, ME

TA–W–51,736; Safeharbor Technology Corp., Satsop, WA

TA–W–51,551; Comp-U-Solve International, Inc., Elgin, IL

TA–W–51,691; Coastal Apparel, LLC, Tabor City, NC

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–51,687 & A,B; Oshkosh B'Gosh, Inc., Oshkosh, WI, Oshkosh B'Gosh Retail, Inc., Oshkosh, WI and OBG Product Development and Sales, Inc., Oshkosh, WI

TA–W–51,625; Motorola, Inc., iDEN Radio Support Center, Elgin, IL

TA–W–51,744; Gateway Industrial Services, Inc., Jonesboro, AR

TA–W–51,680; Siemens Information and Communications Network, Inc., Boca Raton, FL

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,241D, E,F; Bethlehem Steel Corp. Currently Known as International Steel Group, Piedmont, NC, Columbus, OH and Jackson, MS

TA–W–50,981; Southeastern Paper Products, a subsidiary of The Siman Group, Miami, FL

TA–W–51,724; Moonlight Harbor Fisheries, Kodiak, AK

TA–W–51,796; Fishing Vessel (F/V) Northern Flyer, Ketchikan, AK

TA–W–51,767; Fishing Vessel (F/V) (Imperial, Funter Bay, AK

TA–W–51,764; Fishing Vessel (F/V) Resolute, Ketchikan, AK

The investigation revealed that criteria (a) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,336; Manufacturers Pattern and Foundry Corp., Springfield, MA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,152; Asco Valve Manufacturing, Fort Mill, SC: March 1, 2002.

TA–W–51,546; Farley's and Sathers Candy Co., New Orleans, LA: April 18, 2002.

TA–W–51,542; Ametek, Inc., Lamb Electric Div., Racine, WI: April 7, 2002.

TA–W–51,432; Marlock, Inc., Plant #1 and Plant #2, Including Leased Workers of Protemp/Office Team, Maynardville, TN: April 1, 2002.

TA–W–51,428; Knoll, Inc., East Greenville, PA: April 4, 2002

TA–W–51,161; Allura Corp., Lorane-Reading, PA: March 4, 2002.

TA–W–51,241 & A,B,C,G,H,I; Bethlehem Steel Corp., Currently Known as International Steel Group, Sparrows Point, MD, Lackawanna, NY, Coatesville, PA, Conshohocken, PA, Corp. Headquarters, Bethlehem, PA, Government Affairs Office, Washington, DC and Chicago Cold Rolling, a subsidiary of Bethlehem Steel Corp., currently known as International Steel Group, Chicago, IL: March 19, 2002.

TA–W–50,738; Alcoa, Inc., Massena, NY: January 17, 2002

TA–W–51,810; Borregaard Lignotech, Lignotech USA, Inc., Mt. Vernon, WA: May 16, 2002.

TA–W–51,804; Link-Belt Construction Equipment, Lexington, KY: May 8, 2002.

TA–W–51,743; Sychip, Inc., Murray Hill, NJ: March 13, 2002.

TA–W–51,686; Coats American, Inc., Industrial Div., Toccoa, GA: May 5, 2002.

TA–W–51,661; Preco Electronics, Inc., Boise, ID: April 30, 2002.

TA–W–51,567; BGF Industries, Inc., Heavyweight Electrical Fabrics Div., South Hill, VA: April 22, 2002.

TA–W–51,558; Lexington Fabrics, Inc., Finishing Plant, Florence, AL: May 30, 2003

TA–W–51,558A, B,C; Lexington Fabrics, Inc., Sewing Plant, Rogersville, AL, Sewing Plant, Florence, AL and Knitting, Cutting, Packing Plant, Lexington, AL: April 15, 2002.

TA–W–51,532 & A,B; Sony Technology Center, Display Device Div., San Diego, CA, Including Leased Workers of Adecco Staffing, Onsite Staffing and Remedy Staffing, San Diego, CA, Information Technologies Div., Including Leased Workers of Remedy Intelligent Staffing and Onsite Co., San Diego, CA: April 16, 2002.

TA–W–51,503; Fullarton Computer Industries, Ltd, Winterville, NC: April 14, 2002.

TA–W–51,490; Saint-Gobain Vetrotex America, Wichita Falls, TX: April 10, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,602; Sara Lee Intimate Apparel, Liberty Fabrics Div., Liberty Fabrics, Inc., Woolwine, VA: March 28, 2002.

TA–W–51,500; EMC Technologies, Inc., a Part of Smiths Interconnect, a div. of The Smiths Industrial Group, a div. of Smiths Group PLC, Cherry Hill, NJ: April 15, 2002.

TA–W–51,384; Honeywell Sensor Systems, Thermal Business Div., a subsidiary of Honeywell, Inc., Pawtucket, RI: March 31, 2002.

TA–W–51,264; Multilayer Technology, Inc., d/b/a Multek, a subsidiary of Flextronics International, Inc., Irvine, CA: March 13, 2002.

TA–W–51,130; Tyler Refrigeration, Waxahachie, TX: March 7, 2002.

TA–W–51,081; Plexus Corp., Plexus Electronic Assembly Group, Bothell, WA: February 24, 2002.

TA–W–50,936; International Mill Service, Inc., employed at Oregon Steel Mills, Inc./Portland Steel Works, Portland, OR: February 19, 2002.

TA–W–50,931; Mead Westvaco Corp., Consumer and Office Div., St. Joseph, MO: February 19, 2002.

TA–W–51,646; Wire Harness Industries, Inc., d/b/a Viasystems Harness Div., a subsidiary of Viasystems Group, Inc., Including Leased Workers of Aloche Staffing, Bucyrus, OH: April 30, 2002.

TA–W–51,156; Pacific Precision Metals, Inc., d/b/a La Verne Metal Products, La Verne, CA: March 11, 2002.

TA–W–51.717; Sandvik Materials Technology, Tubular Products Div., Clarks Summit, PA: May 7, 2002.

TA–W–51,673; Suntron Corp., Southwest Operations, Including Leased Workers of Manpower International, Phoenix, AZ: May 1, 2002.

TA–W–51,665; Cord Master Engineering Co., Inc., North Adams, MA: May 1, 2002.

TA–W–51,613; Autoliv ASP, Inc., Cushion Manufacturing Div., Including Leased workers of Adecco Staffing Agency, Ogden, UT: April 28, 2002.

TA–W–51,605; Daws Manufacturing Co., Inc., Parsons, TN: April 23, 2002.

TA–W–51,518; Skyworks Solutions, Inc., Former Alpha Industries, Inc., Woburn, MA: April 14, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–50,957; Compass Aerospace Northwest, Inc., Shelton, WA: February 18, 2002.

TA–W–51,683; Quadco Industrial Services, Tigard, OR: April 29, 2002.

TA–W–50,364; Reactive Metals and Alloys Corp., West Pittsburg, PA: December 12, 2001.

TA–W–51,740; Fishing Vessel (F/V) Lucy Lewis, Kepnuk, AK: April 28, 2002

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of May 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 23, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–13812 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,828; Radisys Corp., Hillsboro, OR

TA–W–51,438; Commonwealth Sprague Capacitor, Power Systems Div., North Adams, MA

TA–W–51,538; Agrium U.S., Inc., Kenai Nitrogen Operations Div., a subsidiary of Agrium, Inc., Kenai, AK

TA–W–51,220; Wellington Leisure Products, Crivitz, WI

TA–W–51,284; ADC Telecommunications, Systems Integration Div., including leased workers of TPS Staffing and Apple One, Chickamauga, GA

TA–W–51,369; Bombardier Aerospace, Inc., Learjet, Inc., Wichita, KS

TA–W–50,721; CPM Electronic Industries, Roseville, MI

TA–W–51,198 & A; Oregon Log Homes, Sisters, OR and Maupin, OR

TA–W–51,199; Dura Automotive Systems, Stockton, IL

TA–W–51,188; Thunderbird Mining Co., a subsidiary of Eveleth Mines, LLC, Eveleth, MN

TA–W–51,731; Fishing Vessel (F/V) Verna-C, Sitka, AK

TA–W–51,049; Raytheon Aircraft Co., Wichita, KS

TA–W–51,579; Peavy Electronics Corp., Leakesville, MS

TA–W–51386; Avaya, Inc., Connectivity Solutions Div., Omaha, NE

TA–W–51468; Alliant Tech Systems, Inc., Twin Cities Army Ammunition Plant, Arden Hills, MN

TA–W–50,988; Indiana Steel and Wire LLC, Muncie, IN

TA–W–50,771; Spartech Corp., Spartech Plastics—Conneaut, Conneaut, OH

TA–W–50,852; Micro Instrument Co., Escondido, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,970; On Semiconductor, Phoenix, AZ

TA–W–51,415; Washington Group, Manassas, VA

TA–W–51,449; IBM Global Services, a div. of IBM Corp., New York, NY

TA–W–51,469; Nortel Networks, Research Triangle Park, NC

TA–W–51,624; Stream International, Inc., a subsidiary of Solectron Corp., Silver City, NM

TA–W–51,721; Fishing Vessel (F/V) Towego, Ketchikan, AK

TA–W–51,689; Horace Mann Service Corp., Information Technology Div., Springfield, IL

TA–W–51,732; Union Tank Car Co., Longview, TX

TA–W–51,588; Zachry Construction Corp., formerly H.B. Zachry Co., Natchez, MO

TA–W–51,606; Descartes Systems (USA) LLC, an affiliate of The Descartes Systems Group, Inc., Pittsburgh, PA

TA–W–51,612; Gillette, Boston, MA

TA–W–51489; Alteon Training LLC, including Aviant Group, Long Beach, CA

TA–W–51,578; Earthlink, Inc., Pasadena, CA

TA–W–51,269A; Hamilton Beach/ Proctor-Silex, Inc., a subsidiary of Nacco Industries, Inc., Washington, NC

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,145; Halliburton Energy Services, Security DBS Manufacturing Div., Dallas, TX

TA–W–50,619 & A; Neenah Paper Co., a div. of Kimberly-Clark Corp., Neenah, WI and Stevens Point, WI

TA–W–51,515; Sanmina-SCI Corp., Wilmington, MA

The investigation revealed that criteria (a) has not been met. The workers, firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,336; Manufacturers Pattern and Foundry Corp., Springfield, MA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,278; Stanley Furniture Co., Lexington, NC: March 24, 2002

TA–W–51,650; Markwins Beauty Products, Inc., North Arlington, NJ: April 10, 2002.

TA–W–51,713; Markwins Beauty Products, Inc., Brooklyn, NY: April 10, 2002.

TA–W–51,642; Sweet-Orr, Anniston, AL: April 24, 2002.

TA–W–51,417; Leading Technologies, Inc., a wholly owned subsidiary of Composide, Inc., Leechburg, PA: March 21, 2002.

TA–W–51,379; Printed Fabrics Corp., Carrollton, GA: March 26, 2002.

TA–W–51,372; Enfield Industries, Conway, NH: March 29, 2002.

TA–W–51,592 & A; Woodard, LLC, Salisbury, NC and Maxton, NC: April 24, 2002.

TA–W–50,916; Miller Brewing Co., Tumwater Brewery, Tumwater, WA: February 18, 2002.

TA–W–50,921; NVF Hartwell, Container Div., Hartwell, GA: February 10, 2002.

TA–W–51,222; Parker Specialty Products, Engineered Seal Div., Waukesha, WI: March 17, 2002.

TA–W–50,781; Certifying Service Express (C.S.E.), Janesville, WI: January 31, 2002.

TA–W–50,659; Ainetek, U.S. Gauge Div., Sellersville, PA: October 27, 2002.

TA–W–51,408; Motorola, Global Telecom Solutions Sector, CSMA Systems div., Arlington Heights, IL: April 1, 2002.

TA–W–51,702; Marion County Shirt Co., Springfield, MO: May 5, 2002.

TA–W–51,688; Nortech systems, Inc., Bemidji Operations, Bemidji, MN: March 13, 2002.

TA–W–51,582; Jagger Brothers, Springvale, ME: April 14, 2002.

TA–W–51,591; Fayscott LLC, Dexter, ME: April 16, 2002.

TA–W–51,529; Mistequay Group, Ltd, Katmai Manufacturing, Saginaw, MI: April 8, 2002.

TA–W–51,594; Jacobs Textiles; Irvington, NJ: April 23, 2002.

TA–W–51,383; American Video Glass Co., a div. of Sony Electronics, Inc., and Corning Asahi Video Products Co., Mount Pleasant, PA: March 25, 2002.

TA–W–51,393; Stillwater, Inc., Augusta Springs, VA: March 18, 2002.

TA–W–51,474; Seneca Sawmill Co., Eugene, OR: April 8, 2002.

TA–W–51,637; Sitka Sound Seafoods, North Pacific Processors, Inc., a wholly owned by Marubeni Corp., Yakutat, AK: January 21, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,110; Moll Industries, Inc., Newberg, OR: March 5, 2002.

TA–W–51,550; Square D Co. including leased workers of Adecco Personnel, Ashville, NC: April 21, 2002.

TA–W–51,064; Dynamet, Inc., Arden Div., Washington, PA: February 17, 2002.

TA–W–51,631; Teleflex Automotive, Hillsdale, MI: April 24, 2002.

TA–W–51,501; Goodrich corp., Goodrich Landing Gear Div., Cleveland, OH: March 23, 2002.

TA–W–51,342; Hytek Finishes, Everett, WA: March 23, 2002.

TA–W–51,314; Tyco Healthcare Group, LP, a/k/a Mallinckrodt, Inc., Respiratory Div., including leased workers of Kelly Services, Inc., Irvine, CA: March 14, 2002.

TA–W–50,682; Sanborn Colorado LLC, Colorado Springs, CO: January 23, 2002.

TA–W–50,706; Oregon Steel Mills, Inc., Portland Steel Works, Portland, OR: January 27, 2002.

TA–W–50,819; Yarway Corp., a div. of Tyco International, Blue Bell, PA: January 22, 2002.

TA–W–51,695; Fishing Vessel (F/V) Vagabond Queen, Hoonah, AK: May 2, 2002.

TA–W–51,709; Nitrous Oxide Systems, Inc., a div. of Holly Performance Products, Bowling Green, KY: April 15, 2002.

TA–W–51,722; Fishing Vessel (F/V) Lisa III, Aleknagik, AK: May 6, 2002.

TA–W–51,725; Fishing Vessel (F/V) Glacier Point, Haines, AK: May 1, 2002.

TA–W–51,530; Photronics, Inc., Phoenix, AZ: April 11, 2002.

TA–W–51,573 & A; Agilent Technologies, Basic Electronic Systems & Test Unit, Loveland, CO and WBU Order Fulfillment, Loveland, CO: May 26, 2003.

TA–W–51,676; Fishing Vessel (F/V) Eileen J. II, Bethel, AK: April 24, 2002.

TA–W–51,401; SV Microwave Components Group, a div. of HCG

Technologies, Inc., Largo, FL: March 31, 2002.
TA–W–51,462; Woodburn Diamond Die, Inc., Charlevoix, MI: April 4, 2002.
TA–W–51,504; Newport Corp., ISTD Div., Plymouth, MN: April 1, 2002.
TA–W–51,521; EMGO Flow Systems, Longmont, CO: April 16, 2002.
TA–W–50,434; Sanmina-SCI Corp., Watsonville, CA: December 19, 2001.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,712; Fishing Vessel (F/V) Miss Molly, Dillingham, AK: May 6, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of May 2003. Copies of these determinations are available for inspection in Room C–5311 U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 19, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–13811 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,741]

Apone's T-Shirt Cache, Anchorage, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 14, 2003, in response to a petition filed by a company official on behalf of workers at Apone's T-Shirt Cache, Anchorage, Alaska.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13808 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,167]

Bike Athletic Company, a Division of Russell Corporation, Knoxville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 4, 2002, applicable to workers of Bike Athletic Company, Knoxville, Tennessee. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78256). The certification was amended January 14, 2003 to include all workers of the subject firm. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6213).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of (cut fabric) men's and women's athletic team apparel. New information received from the State shows that Bike Athletic Company was purchased by Russell Corporation in February 2003 and became known as Bike Athletic Company, a division of Russell Corporation. Information also shows that workers separated from employment at Bike Athletic Company had their wages reported under a separate unemployment insurance (UI) tax account for Bike Athletic Company, a division of Russell Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–50,167 is hereby issued as follows:

All workers of Bike Athletic Company, a Division of Russell Corporation, Knoxville, Tennessee who became totally or partially separated from employment on or after November 21, 2001, through December 4, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of March, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13821 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,976]

Black and Decker, North American Power Tools, Including Leased Workers of Employment Control, Inc., Barrett Business Services, Inc. and Pro-Temps Staffing, Easton, MD; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 2002, applicable to workers of Black and Decker, North American Power Tools, Easton, Maryland engaged in the production of corded power tools. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422). The certification was amended on January 8, 2003 by the request of the State agency to include all leased workers of Employment Control, Inc. working at Black and Decker, North American Power Tools, Easton, Maryland. The notice was published in the **Federal Register** on January 15, 2003 (68 FR 2076).

Recently it has come to the Department's attention that the workers are not separately identifiable by product line (corded and cordless power tools).

Also, at the request of the petitioners and the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Barrett Business Services, Inc. and Pro-Temps Staffing were employed at Black and Decker, North American Power Tools to produce corded and cordless power tools.

Based on these findings, the Department is amending the certification to include leased workers of Barrett Business Services, Inc. and Pro-Temps Staffing employed at Black and Decker, North American Power Tools, Easton, Maryland.

Therefore, it is the intent of the Department's certification to include all workers of Black and Decker, North American Power Tools and all leased workers engaged in the production of corded and cordless power tools who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,976 is hereby issued as follows:

All workers of Black and Decker, North American Power Tools, Easton, Maryland, and leased workers of Employment Control, Inc., Barrett Business Services, Inc. and Pro-Temps Staffing engaged in employment related to the production of corded and cordless power tools and administrative support workers of Employment Control, Inc. working at Black and Decker, North American Power Tools, Easton, Maryland who became totally or partially separated from employment on or after August 1, 2001, through October 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of February, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13819 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,204]

Fisher-Rosemount Systems, Inc., Emerson Process Management, Austin, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 3, 2002, applicable to workers of Fisher-Rosemount, Austin, Texas. The notice was published in the **Federal Register** on January 11, 2002 (67 FR 1511).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assemble computer process control systems.

Company information shows that Emerson Process Management is the parent firm of Fisher-Rosemount Systems, Inc. located in Austin, Texas. Workers separations have occurred at Emerson Process Management. Those workers provide support services for the assembly of computer process control systems at Fisher Rosemount Systems's production facilities including the Austin, Texas location of the subject firm.

Accordingly, the Department is amending the certification to include workers of Emerson Process Management, Austin, Texas.

The intent of the Department's certification is to include all workers of Fisher-Rosemount who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,204 is hereby issued as follows:

All workers of Fisher-Rosemount Systems, Inc., Emerson Process Management, Austin, Texas, engaged in employment related to the assembly of computer process control systems, who became totally or partially separated from employment on or after September 28, 2000, through January 3, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 10th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13817 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,080]

H & L Tool Company, Erie, Pennsylvania; Notice of Revised Determination on Reconsideration

By letter dated April 17, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 31, 2003, based on the finding that workers of Burelbach Industries, Inc., Rickreal, Oregon did not meet the "upstream supplier" group eligibility requirement of section 222(b) of the Trade Act of 1974. The denial notice was published in the **Federal Register** on April 11, 2003 (68 FR 17830).

On review of the request for reconsideration and further review and analysis of the investigation it has become apparent that the major declining customer of the subject firm increased their reliance on imports of like or directly competitive injection molds during the relevant period. The imports accounted for a meaningful

portion of the subject plant's lost sales and production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at H & L Tool Company, Erie, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of H & L Tool Company, Erie, Pennsylvania, who became totally or partially separated from employment on or after March 5, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 22nd day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13822 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,727]

Harriet & Henderson Yarns, Inc., Harriet #1 Plant, Henderson, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 9, 2003, in response to a worker petition filed by a company official on behalf of workers at Harriet & Henderson Yarns, Inc., Harriet #1 Plant, Henderson, North Carolina.

The petitioning group of workers is covered by an earlier petition filed on March 10, 2003 (TA–W–51,470), that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 15th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13807 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,636]

Hess-Armaclad, Inc., Quincy, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 30, 2003, in response to a worker petition filed by a company official on behalf of workers at Hess-Armaclad, Inc., Quincy, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13810 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,615]

Honeywell Airframe Systems, Torrance, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2003, in response to a worker petition filed by a company official on behalf of workers at Honeywell Airframe Systems, Torrance, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13806 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,227]

Jabil Circuit, Inc., Including Leased Workers of Manpower Temporary Services, Meridian, ID; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 10, 2002, applicable to workers of applicable to all workers of Jabil Circuit, Inc. located in Meridian, Idaho. The notice was published in the **Federal Register** on December 26, 2002 (67 FR 78817).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State agency shows that workers leased from Manpower Temporary Services were engaged in the production of printed circuit boards at Jabil Circuit in Meridian, Idaho.

Based on this information, the Department is amending the certification to include leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by an increase in imports.

The amended notice applicable to TA–W–42,227 is hereby issued as follows:

All workers of Jabil Circuit, Inc., Meridian, Idaho, and leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at Jabil Circuit, Inc., Meridian, Idaho, who became totally or partially separated from employment on or after September 23, 2001, through December 10, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13820 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,581]

Keykert USA, Inc., Webberville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2003, in response to a worker petition filed by a company official on behalf of workers at Keykert USA Inc., Webberville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13805 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 13, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 13, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC, this 19th day of May, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 05/05/2003 and 05/09/2003.]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,677	McKittrick and Assoc., Inc. (Comp)	Charlotte, NC	05/05/2003	04/28/2003
51,678	D and W International, Inc. (Comp)	Charlotte, NC	05/05/2003	04/28/2003
51,679	Progress Lighting Company (IBEW)	Philadelphia, PA	05/05/2003	04/10/2003
51,680	Siemen Information and Communications (FL)	Boca Raton, FL	05/05/2003	04/25/2003
51,681	Sony Ericsson Mobile Communications (Wkrs)	RTP, NC	05/05/2003	05/02/2003
51,682	Little Tikes Commercial (Wkrs)	Farmington, MO	05/05/2003	04/22/2003
51,683	Quadco Industrial Service (OR)	Tigard, OR	05/05/2003	04/29/2003
51,684	Arimon Technologies, Inc. (Comp)	Manitowoc, WI	05/05/2003	05/02/2003
51,685	ABB, Inc. (OR)	The Dalles, OR	05/06/2003	05/06/2003
51,686	Coats North America (Comp)	Toccoa, GA	05/06/2003	05/05/2003
51,687	Oshkosh B'Gosh Corp. (Wkrs)	Oshkosh, WI	05/06/2003	05/05/2003
51,687A	Oshkosh B'Gosh, Inc. (Wrks)	Oshkosh, WI	05/06/2003	05/05/2003
51,687B	Oshkosh B'Gosh, Inc. (Wrks)	Oshkosh, WI	05/06/2003	05/05/2003
51,688	Nortech Systems (Wkrs)	Bemidji, MN	05/06/2003	03/13/2003
51,689	Horace Mann Service Company (Wkrs)	Springfield, IL	05/06/2003	05/05/2003
51,690	Tyson Foods, Inc. (Comp)	Berlin, MD	05/06/2003	05/05/2003
51,691	Coastal Apparel LLC (Comp)	Tabor City, NC	05/06/2003	05/06/2003
51,692	Dana Corporation (Comp)	Pelahatchie, MS	05/06/2003	05/06/2003
51,693	International Comfort Products (IBB)	La Vergne, TN	05/06/2003	04/25/2003
51,694	Component Concepts, Inc. (Comp)	Thomasville, NC	05/06/2003	05/06/2003
51,695	Fishing Vessel (F/V) Vagabond Queen (Comp)	Hoonah, AK	05/06/2003	05/02/2003
51,696	Sanmina-SCI (Comp)	Lewisburg, PA	05/07/2003	05/07/2003
51,697	Lyall Technologies, Inc. (Comp)	Murray, IA	05/07/2003	05/05/2003
51,698	C and B, LLC (Wkrs)	Tennille, GA	05/07/2003	05/07/2003
51,699	Meadwestvaco (GCIU)	Cleveland, TN	05/07/2003	05/07/2003
51,700	Boeing (Wrks)	Salt Lake City, UT	05/07/2003	05/05/2003
51,701	Kelly's Kids (Comp)	Natchez, MS	05/07/2003	04/30/2003
51,702	Marion County Shirt Company (AR)	Springfield, MO	05/07/2003	05/05/2003
51,703	Meadwestvaco (PACE)	Escanab, MI	05/07/2003	04/28/2003
51,704	T. Raymond Forest Products, Inc. (Wkrs)	Lee, ME	05/07/2003	04/23/2003
51,705	Utica Cutlery Co. (Comp)	Utica, NY	05/07/2003	04/28/2003
51,706	Midland Steel Products (Wrks)	Cleveland, OH	05/07/2003	04/30/2003
51,707	Lucent Technologies (Wkrs)	Spokane, WA	05/07/2003	05/06/2003
51,708	Bethlehem Steel Corp. (Wkrs)	Bethlehem, PA	05/07/2003	05/06/2003
51,709	Nitrous Oxide Systems, Inc. (Comp)	Bowling Green, KY	05/07/2003	04/15/2003
51,710	Rayovac Corporation (Comp)	Fennimore, WI	05/07/2003	05/06/2003
51,711	Northern Southwest Alaska (Comp)	Sitka, AK	05/07/2003	05/01/2003

APPENDIX—Continued

[Petitions instituted between 05/05/2003 and 05/09/2003.]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,712	Fishing Vessel (F/V) Miss Molly (Comp)	Dillingham, AK	05/07/2003	05/06/2003
51,713	Markwins Beauty Products (UFCW)	Brooklyn, NY	05/08/2003	04/10/2003
51,714	A&M Thermometer Corp. (Comp)	Asheville, NC	05/08/2003	05/07/2003
51,715	Johnson Hosiery Mills, Inc. (Comp)	Hickory, NC	05/08/2003	05/02/2003
51,716	FCI Automotive (Comp)	Brecksville, OH	05/08/2003	04/27/2003
51,717	Sandvik Materials Technology (Comp)	Scranton, PA	05/08/2003	05/07/2003
51,718	LeCroy (OR)	Beaverton, OR	05/08/2003	05/07/2003
51,719	Farmer's Insurance (Wkrs)	Los Angeles, CA	05/08/2003	05/07/2003
51,720	Kidder, Inc. (Wkrs)	Agawam, MA	05/08/2003	04/22/2003
51,721	Fishing Vessel (F/V) Towego (Wkrs)	Ketchikan, AK	05/08/2003	05/05/2003
51,722	Fishing Vessel (F/V) Lisa III (Comp)	Aleknagik, AK	05/08/2003	05/06/2003
51,723	F/V Sylvia Star (Comp)	Kodiak, AK	05/08/2003	05/01/2003
51,724	Moonlight Harbor Fisheries (Comp)	Kodiak, AK	05/08/2003	04/24/2003
51,725	Fishing Vessel (F/V) Glacier Point (Comp)	Haines, AK	05/08/2003	05/01/2003
51,726	Columbia Falls Aluminum Co. (AWTC)	Columbia Falls, MT	05/09/2003	05/08/2003
51,727	Harriet and Henderson Yarns, Inc. (Comp)	Henderson, NC	05/09/2003	03/10/2003
51,728	Inland Paperboard and Packaging inc. (Comp)	Elizabethton, TN	05/09/2003	05/08/2003
51,729	Fun-Tees, Inc. (Comp)	Concord, NC	05/09/2003	05/06/2003
51,730	Bethlehem Lukens Plate (USWA)	Coatesville, PA	05/09/2003	05/07/2003
51,731	Fishing Vessel (F/V) Verna-C (Comp)	Sitka, AK	05/09/2003	05/08/2003

[FR Doc. 03–13803 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,327]

MeadWestvaco, Including Leased Workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, Es Boulos, CP Technologies, Arbon Equipment and Siemens Business Systems, Rumford, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 21, 2002, applicable to workers of MeadWestvaco, Rumford, Maine. The notice was published in the **Federal Register** on July 9, 2002 (67 FR 45544). The certification was amended on July 9, 2002 to include leased workers of the above-mentioned firms employed at the Rumford, Maine location of the subject firm.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that some employees of MeadWestvaco were leased from Siemens Business Systems to produce coated groundwood paper, freesheet paper and market pulp at the Rumford, Maine location of the subject firm.

Based on these findings, the Department is again amending the certification to include leased workers of Siemens Business Systems producing coated groundwood paper and freesheet paper and market pulp at the Rumford, Maine location of the subject firm.

The intent of the Department's certification is to include all workers of MeadWestvaco adversely affected by imports.

The amended notice applicable to TA–W–41,327 is hereby issued as follows:

All workers of MeadWestvaco, Rumford, Maine, and leased workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies, Arbon Equipment and Siemens Business Systems, Rumford, Maine, engaged in employment related to the production of coated groundwood and freesheet paper and market pulp at MeadWestvaco, Rumford, Maine, who became totally or partially separated from employment on or after March 22, 2001, through June 21, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13818 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,218]

Oregon Screw Machine Products, Inc., Portland, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 19, 2003, in response to a worker petition filed on behalf of workers at Oregon Screw Machine Products, Inc., Portland, Oregon.

The company has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13804 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,361]

P.C. Cutting & Apparel, Hialeah, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 2003, in response to a petition filed on behalf of workers at P.C. Cutting & Apparel, Hialeah, Florida.

The petition regarding the investigation has been deemed invalid. The three petitioners are in separately identifiable worker groups within the departments at the subject firm. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13809 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,279]

Sterling Diagnostic Imaging, Inc., Currently Known as AGFA, Including Workers of EDS, Brevard, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 22, 2002, applicable to workers of Sterling Diagnostic Imaging, Inc., Brevard, North Carolina. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21472).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers produce medical X-ray film and the polyester based chemicals used in its manufacture. Sterling Diagnostic Imaging, Inc. was purchased by Agfa Corporation in May 1999. New information shows that some employees of EDS, Charlotte, North Carolina, working at Sterling Diagnostic Imaging, Inc., Brevard, North Carolina were separated from employment.

The intent of the Department's certification is to provide coverage to all workers at the firm adversely affected by increased imports of x-ray film and chemicals. Therefore, the Department is amending the certification to include employees of EDS engaged in employment related to the production of x-ray film and chemicals at Sterling Diagnostic Imaging, Inc., currently known as Agfa Corporation, Brevard, North Carolina.

The amended notice applicable to TA–W–37,279 is hereby issued as follows:

All workers of Sterling Diagnostic Imaging, Inc., currently known as Agfa Corporation, Brevard, North Carolina, and workers of EDS engaged in employment related to the production of x-ray film and chemicals at Sterling Diagnostic Imaging, Inc., currently known as Agfa Corporation, Brevard, North Carolina, who became totally or partially separated from employment on or after January 6, 1999 through March 22, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13815 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,592 and TA–W–39,592A]

Viceroy Gold, Castle Mountain Mine, Searchlight, NV and Viceroy Gold, Castle Mountain Mine, Ivanpah, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 2002, applicable to workers of Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada. The notice was published in the **Federal Register** on August 23, 2001 (66 FR 44378). The certification was amended on April 23, 2002, to include workers of MK Gold Company, Searchlight, Nevada, engaged in employment related to the production of gold and silver doré at the Castle Mountain mine.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Information contained in the record and noted in the decision document shows that the mine expands into San Bernardino County, California. The company reports that workers of the mine in California, specifically Ivanpah, are being separated from employment.

It is the Department's intent to include all workers of Viceroy Gold Corporation, Castle Mountain Mine, affected by increased imports of gold and silver in doré bar form. Accordingly, the Department is amending the certification to include all workers of Viceroy Gold Corporation, Castle Mountain Mine, Ivanpah, California.

The amended notice applicable to TA–W–39,592 is hereby issued as follows:

All workers of Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada, and workers of MK Gold Company engaged in employment related to the production of gold and silver in doré bar form at Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada (TA–W–39,592); and all workers of Viceroy Gold Corporation, Castle Mountain Mine, Ivanpah, California (TA–W–39,592A), who became totally or partially separated from employment on or after June 20, 2000, through August 7, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13816 Filed 6–2–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Indian and Native American Programs under Section 166 Notice of Reestablishment of Native American Employment and Training Council

In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of Labor has determined that the reestablishment of the Native American Employment and Training Council is in the public interest consistent with the requirements of title I, section 166(h)(4) of the Workforce Investment Act (WIA).

The Council will provide advice to the Secretary of Labor regarding the overall operation and administration of the Native American employment and training programs authorized under WIA title I, section 166, as well as the implementation of other programs providing services to Native American youth and adults under this Act. The Secretary and the Assistant Secretary of Labor for Employment and Training view the Council as the primary vehicle to accomplish the Department's commitment to work closely with the Indian and Native American community on employment and training issues.

The Council shall be composed of approximately 21 members representing Indians, Alaska Natives, and Native Hawaiians. These members shall be

appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Alaska Native, or Native Hawaiian organizations. An equitable geographic distribution will be sought, including representation of both tribes and non-tribal Native American organizations. Council members shall not be compensated and shall not be deemed to be employees of the United States.

The Council shall function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the Native American Employment and Training Council. Such comments should be addressed to: Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. The voice telephone number is (202) 693–3754 (this is not a toll-free number). Mr. DeLuca's E-Mail address is: *DeLuca.James@dol.gov*. DINAP's fax number is (202) 693–3818.

Signed in Washington, DC, this 22nd day of May, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–13802 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7590]

Jabil Circuit, Inc., Including Leased Workers of Manpower Temporary Services, Meridian, ID; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on December 10, 2002, applicable to all workers of Jabil Circuit, Inc. located in Meridian, Idaho. The notice was published in the **Federal Register** on December 26, 2002 (67 FR 78817).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State agency shows that workers leased from Manpower Temporary Services were engaged in the production of printed circuit boards at Jabil Circuit in Meridian, Idaho.

Based on this information, the Department is amending the certification to include leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production of printed circuit boards to Mexico.

The amended notice applicable to NAFTA–7590 is hereby issued as follows:

"All workers of Jabil Circuit, Inc., Meridian, Idaho, and leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at Jabil Circuit, Inc., Meridian, Idaho, who became totally or partially separated from employment on or after September 23, 2001, through December 10, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC, this 6th day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13813 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Canyon Fuel Company, LLC

[Docket No. M–2003–032–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility) to its Skyline Mine No. 3 (MSHA I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the use of low voltage or battery powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings under controlled conditions. The petitioner requests a modification of the existing standard to permit the following non-permissible equipment to be used within 150 feet from pillar workings (longwall gob): laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure and flow measurement devices, signal analyzer device, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, other testing and diagnostic equipment that may be approved by the MSHA District Office. The petitioner states that non-permissible electronic testing and diagnostic equipment shall only be used when equivalent permissible equipment does not exist. The petitioner further states that a qualified person shall continuously monitor for methane immediately before and during the use of non-permissible electronic test and diagnostic equipment in or inby the last open crosscut as defined in existing standard 30 CFR 75.151. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. R & D Coal Company

[Docket No. M–2003–033–C]

R & D Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1002 now 75.1002 (Installation of electric equipment and conductors; permissibility) to its Buck Mountain Slope (MSHA I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner requests a modification in the application of the existing standard to then permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Consol Pennsylvania Coal Company

[Docket No. M–2003–034–C]

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable (trailing) cables and cords) to its Bailey Mine (MSHA I.D. No. 36–07230) located in Greene County, Pennsylvania. The petitioner proposes to increase the maximum length of trailing cables supplying power to continuous mining machines to 950 feet and other section equipment to 900 feet during longwall panel development. The petitioner states that this alternative method will only apply to trailing cables supplying three-phase, 950-volt power to continuous mining machines and trailing cables supplying three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Jim Walter Resources, Inc.

[Docket No. M–2003–035–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its No. 7 Mine (MSHA I.D. No. 01–01401) located in Tuscaloosa County, Alabama. The petitioner proposes to extend the length of the cable not to exceed 1200 feet for continuous mining machines, loading machines, roof bolting machines, shuttle cars, and section auxiliary ventilation fans during longwall panel development conditioned upon the specific terms and conditions listed in this petition for modification. The petitioner states that it proposed alternative method would apply only to trailing cables that supply 2400-volt, three-phase, alternating current to continuous mining machines, and that all miners will receive training prior to implementation of this proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. I O Coal Company, Inc.

[Docket No. M–2003–036–C]

I O Coal Company, Inc., 430 Harper Park Dr., Suite A, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.503 (503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Europa Mine (MSHA I.D. No. 46–08798) located in Boone County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring-loaded locking device to prevent the plug connector from accidentally disengaging while under load. The petitioner asserts that the application of the existing standard will result in a diminution of safety to the miners.

6. Consolidation Coal Company

[Docket No. M–2003–037–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Non-permissible diesel-powered equipment; design and performance requirements) to its Emery Mine (MSHA I.D. No. 42–00079) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit the use of a diesel grader without individual service brakes on all of the grader wheels. The petitioner proposes to equip the Grader with: (i) Service brakes on each of the Drive Wheels; (ii) stationary emergency brakes; and (iii) brakes on the Directional Wheels. The petitioner states that the tramming speed of the Grader will be restricted to 10 miles per hour, the grader operators will be trained to check brake function during pre-operational checks, and to lower the Grader blade to the ground as an additional braking mechanism. The petitioner further states that grader operators will receive task training and annual refresher training on the provisions of its alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. FMC Corporation

[Docket No. M–2003–001–M]

FMC Corporation, Box 872, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III Mines)) to its FMC Trona Mine (MSHA I.D. No. 48–00152) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit the use of a portable Leica DISTO laser distance meter inby the last open break. The petitioner states that this equipment has minimal output power that is considerably less than the 12-watt threshold for intrinsically safe electrical equipment. The petitioner has listed specific terms and conditions in this petition for modification that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before July 3, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 28th day of May 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–13760 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–055)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–31408–1–CIP: Photon Momentum Transfer Plane For Asteroid, Meteoroid, And Comet Orbit Shaping;

NASA Case No. MFS–31559–1–DIV: Phase/Matrix Transformation Weld Process And Apparatus;

NASA Case No. MFS–31689–1: Axisymmetric, Throttleable Non-Gimballed Rocket Engine;

NASA Case No. MFS–31707–1: Entertainment And Pacification System For Car Seat;

NASA Case No. MFS–31708–1: Video Monitoring System For Car Seat;

NASA Case No. MFS–31714–1: Health Monitoring System For Car Seat;

NASA Case No. MFS–31780–1: Radio Frequency Trap For Containment Of Plasmas In Antimatter Propulsion Systems Using Rotating Wall Electric Fields.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13906 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–056)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260, fax (757) 864–9190.

NASA Case No. LAR–16289–1: Electro-Active Transducer Using Radial Electric Field To Produce/Sense Out-of-Plane Transducer Motion;

NASA Case No. LAR–16363–1: Electro-Active Device Using Radial Electric Field Piezo-Diaphragm For Control Of Fluid Movement;

NASA Case No. LAR–16390–1–SB: Ruthenium Stabilization For Improved Oxidation/Reduction Catalyst Systems;

NASA Case No. LAR–16393–1: Electro-Active Device Using Radial Electric Field Piezo-Diaphragm For Sonic Applications.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13907 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–057)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Flight Center, FL 32899; telephone (321) 867–7214, fax (321) 867–1817.

NASA Case No. KSC–11937–2: Communication System With Adaptive Noise Suppression.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13908 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–058)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23444–1: Motion Sickness Treatment Apparatus And Method;

NASA Case No. MSC–23449–1: System For The Diagnosis And Monitoring Of Coronary Artery Disease, Acute Coronary Syndromes, Cardiomyopathy And Other Cardiac Conditions;

NASA Case No. MSC–23472–1: Heat Treatment Of Friction Stir Welded 7050 Aluminum Plate.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13909 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–059)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Patent Counsel, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14393–1: Light Weight Optical Mirrors Formed In Single Crystal Substrate.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13910 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–060)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104, fax (650) 604–2767.

NASA Case No. ARC–15042–1: Carbon Nanotube Interconnect.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13911 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–061)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–17129–1: Improved Non-Contacting Finger Seal;

NASA Case No. LEW–17175–1: High Speed Electromechanical Shutter For Imaging Spectrographs;

NASA Case No. LEW–17187–1: Method For Growth Of Bulk Crystals By Vapor Phase Epitaxy;

NASA Case No. LEW–17293–1: System For Controlling A Magnetically Levitated Rotor;

NASA Case No. LEW–17300–1: Method For Fabrication Of Improved Gas Sensors Using SiC Semiconductors.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13912 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 3, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on January 16, 2003 (68 FR 2368). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives and Records Administration Class Evaluation Form.

OMB number: 3095–0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 4,340.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 362 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training. NARA makes the approved form available to the course coordinators as a Word template for customization of selected elements, shown as shaded areas on the form submitted for clearance.

Dated: May 28, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–13796 Filed 6–2–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Amergen Energy Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC (the licensee), to withdraw its August 14, 2001, application, as supplemented September 11, 2002, for a proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

The proposed amendment would have revised the Technical Specifications to eliminate the requirements associated with the independent onsite safety review group.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 5, 2002, (67 FR 10009). However, by letter dated April 30, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 14, 2001, as supplemented September 11, 2002, and the licensee's letter dated April 30, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of May 2003.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13867 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

Pacific Gas and Electric Company (PG&E or the licensee) is the holder of Facility Operating Licenses Nos. DPR–80 and DPR–82, which authorize the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCNPP or the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is located at the licensee's site in San Luis Obispo County, California. The licenses authorize PG&E to possess, use, and operate the facility.

Under cover of a letter dated November 30, 2001, PG&E submitted an application requesting approval of the transfer of Facility Operating Licenses Nos. DPR–80 and DPR–82 for DCNPP from PG&E to Electric Generation LLC and Diablo Canyon LLC. The licensee also requested approval of conforming license amendments to reflect the transfer. The application was supplemented by submittals dated January 18 and May 1, 2002, collectively referred to as the "application" herein unless otherwise indicated.

Diablo Canyon LLC, a California limited liability company, is a wholly-owned subsidiary of Electric Generation LLC, also a California limited liability company. Electric Generation LLC is an indirect wholly-owned subsidiary of PG&E Corporation, the current parent of the licensee. According to the application, Diablo Canyon LLC will become the owner of the facility, while Electric Generation LLC will operate and maintain DCNPP under the terms of a lease that will make Electric Generation LLC responsible for all costs of operation. Diablo Canyon LLC will be responsible for providing decommissioning funding assurance for DCNPP. With respect to authority to possess, use, and operate the facility, the conforming license amendments would remove references to PG&E from the licenses and add references to Electric Generation LLC and Diablo Canyon LLC, as appropriate, and make other administrative changes to reflect the proposed transfer. The application also proposed certain changes to the antitrust conditions attached to the licenses, which are discussed in more detail below.

PG&E requested approval of the transfer of the licenses and conforming license amendments pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on January 17, 2002 (67 FR 2455). The Commission received petitions to intervene and requests for hearing from the following: the Northern California Power Agency (NCPA); the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company (Committee); the California Public Utilities Commission (CPUC); the Transmission Agency of Northern California, M–S–R Public Power Agency, Modesto Irrigation District, the California Cities of Santa Clara, Redding, and Palo Alto, and the Trinity Public Utility District, in a joint filing (collectively, TANC); and the County of San Luis Obispo (County). In a Memorandum and Order, dated June 25, 2002 (CLI–02–16), the Commission denied several of the petitioners' requests for intervention and referred the petitions of the County and CPUC to the NRC staff as comments for appropriate consideration. On February 14, 2003, the Commission denied the remaining petitioners' requests for hearing and terminated the proceeding. Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–03–02, 57 NRC 19 (2003).

In CLI–03–02, the Commission addressed, among other things, the changes proposed in the application to the antitrust conditions appended to the licenses, which PG&E assumed would be carried forward if the licenses were transferred. These proposed changes would have retained PG&E as a licensee in the antitrust conditions, would have added a new transmission company (ETrans LLC) to the antitrust conditions, and would have added Electric Generation LLC (but not Diablo Canyon LLC) to the conditions, for the purpose of implementing the conditions. The Commission ruled that if the proposed license transfers are approved, the antitrust license conditions should not be included in (*i.e.*, not remain part of) the transferred licenses. 57 NRC at 36. Accordingly, the conforming license amendments approved by this Order reflect the Commission's ruling in this regard.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Electric Generation LLC and Diablo Canyon LLC are qualified to be the holders of the licenses to the extent proposed in the application, and that the transfer of the licenses to Electric Generation LLC and Diablo Canyon LLC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments that reflect the transfer of authority to possess, use, and operate the facility and the transfer of authority concerning the receipt, possession, or use of nuclear material from PG&E to Electric Generation LLC and Diablo Canyon LLC complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the NRC staff's safety evaluation dated May 27, 2003.

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the transfer of the licenses as described herein to Electric Generation LLC and Diablo Canyon LLC is approved, subject to the following conditions:

(1) Before the completion of the transfer of DCNPP, Electric Generation LLC and Diablo Canyon LLC shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Electric Generation LLC and Diablo Canyon LLC have obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the bilateral power sales agreement (PSA) referenced in Enclosure 7 to the November 30, 2001, submittal must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application such that indicated sources of funds would not be sufficient to cover projected costs of operation of the facility.

(3) On the closing date of the transfer of DCNPP, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for DCNPP established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of DCNPP occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

(4) Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trust(s) is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.

(5) Notwithstanding the transfer of ownership of DCNPP to Diablo Canyon LLC, Electric Generation LLC shall at all times following the transfer of the DCNPP licenses to Diablo Canyon LLC and Electric Generation LLC be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of DCNPP (including costs associated with the receipt, possession, and use of byproduct, source, and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfers. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for DCNPP at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

(6) Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.

(7) After receipt of all required regulatory and judicial approvals of the transfer of DCNPP, PG&E shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the transfer of DCNPP no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by May 31, 2004, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 30, 2001, and supplements thereto dated January 18 and May 1, 2002, and the safety evaluation dated May 27, 2003, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 27th day of May 2003.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13866 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement for the License Renewal of Nuclear Power Plants and To Conduct Scoping Process

In 1996 and 1999, the Commission amended its environmental protection regulations in 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," to improve the efficiency of the environmental review process for applicants seeking to renew a nuclear power plant operating license for up to an additional 20 years. The final rules were published in the **Federal Register** on December 18, 1996 (61 FR 66546), and September 3, 1999 (64 FR 48507). The amendments are based on the analyses reported in NUREG–1437, "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants" (May 1996) and its Addendum 1 (August 1999).

The GEIS, prepared by the U.S. Nuclear Regulatory Commission (NRC) staff and its contractors, summarizes the findings of a systematic inquiry into the environmental impacts of refurbishment activities associated with license renewal and the environmental impacts of continued operation during the renewal period (up to 20 years for each licensing action). The significance of environmental impacts were analyzed for each of nearly 100 issues. Thereafter, the NRC categorized which of these analyses could be applied to all plants and whether additional mitigation measures would be warranted for each environmental issue. Of the 92 issues analyzed, 69 issues were resolved generically, 21 require a further site-specific analysis that applicants are required to address, and 2 require a site-specific assessment by the NRC. As part of its application to renew its operating license, an applicant submits a supplemental Environmental Report

and the NRC staff develops a site-specific supplement to the GEIS and includes a recommendation for each license renewal application. The environmental protection regulations for any NRC licensing action is contained in 10 CFR Part 51 and may be viewed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part051/index.html*. The license renewal process also includes a safety review and inspections prior to issuance of a renewed license.

In the introductory remarks to Appendix B to Subpart A of Part 51, "Environmental Effects of Renewing the Operating License of a Nuclear Power Plant," the Commission stated that, on a 10-year cycle, it intends to review the material in Table B–1 and update it, if necessary. The first 10-year cycle will end in 2006; the goal of the NRC staff is to complete this GEIS Update Project by the end of 2006.

The purpose of this notice is to inform the public that the NRC is planning to prepare an environmental impact statement (EIS), in this case it is an update to the GEIS, and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. This step is the initial opportunity for stakeholder participation in the GEIS update and it occurs before the NRC has determined results or recommendations for the update. The environmental review process for license renewal will continue under the current regulatory framework throughout the course of this effort. If, as a result of this scoping process, it is determined that an update is not necessary, then that result will be published in the **Federal Register** as well.

The GEIS and Addendum 1 to the GEIS were prepared pursuant to 10 CFR part 51 and are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR@NRC.GOV*. The GEIS, its Addendum 1, and its Supplements may also be viewed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/*. As indicated, the NRC prepares site-specific supplements to the GEIS for each license renewal application assessing the environmental impacts specific to that power plant location; these reports may be useful to scoping participants to understand the environmental review process and the environmental issues associated with the review for license renewal. The Supplements to the GEIS can also be viewed on the Internet in the context for each project and are listed by project at: *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*. The update of the GEIS is a generic activity and, therefore, is not the appropriate forum to consider site-specific issues or concerns.

This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51. As a convenience, the NRC will also issue other communications (for example, press releases and newspaper ads) to notify the public, but this notice is the formal means to inform interested parties of their opportunity to participate in the scoping process.

In keeping with the framework outlined under NEPA, the NRC will first conduct this scoping process for the update to the GEIS and, thereafter, plans to prepare a draft addendum to the GEIS for public comment outlining the results of the NRC review. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the addendum to the GEIS will be used to accomplish the following:

a. Determine whether the purpose and need for the update (the proposed action) is clear.

b. Determine the scope of the addendum to the GEIS and identify whether there are any significant issues that should be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant or which have been covered by prior environmental review.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the addendum to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the addendum to the GEIS to the NRC and any cooperating agencies.

h. Describe how the addendum to the GEIS will be prepared including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

b. Any affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

c. Any affected Indian tribe.

d. Any person who requests or has requested an opportunity to participate in the scoping process.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has determined that it is appropriate to conduct public meetings on the GEIS update early in the project to foster public participation. Since this is a generic environmental review activity, the NRC has elected to hold a public meeting in each of the four (4) NRC regions for the GEIS Update Project. The scoping meetings will be held at the following locations: July 8, 2003, DoubleTree-Atlanta Perimeter, 6120 Peachtree Dunwoody Road, Atlanta, GA 30328; July 10, 2003, Hilton-Oak Lawn, 9333 South Cicero Avenue, Oak Lawn, IL 60453; July 15, 2003, Hilton-Anaheim, 777 Convention Way, Anaheim, CA 92802; and July 17, 2003, Executive Conference Center at Bayside (adjacent to the DoubleTree-Bayside), 200 Mount Vernon Street, Boston, MA 02125. Each formal meeting will convene promptly at 7 p.m. with an NRC overview of the role of the GEIS in the license renewal process, the experience gained in its use, and criteria that may be used to consider changes. Each meeting is planned to last for three hours, as necessary, or until all members of the public have had an opportunity to present their views; therefore, the formal meeting may end prior to 10 p.m. Each meeting will be transcribed and will include (1) the overview by the NRC staff of the NEPA environmental review process, the proposed scope of the addendum to the GEIS, and the proposed schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the addendum to the GEIS. A participant may elect to submit a detailed written statement for the record and provide a brief oral summary. In addition to the formal meeting, the NRC staff will host informal discussions for members of the public one hour before the start of the session at each location; general information on the NRC and related NRC programs will be available for meeting participants as supplies permit. No formal comments on the proposed scope of the addendum to the GEIS will be accepted during the informal discussions. To be considered in the scoping process, comments must be provided either at the transcribed public meetings or in writing, as discussed below.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Barry Zalcman, by telephone at 1–800–368–5642, extension 2419, or by e-mail to the NRC at *LRGEISUpdate@NRC.GOV* no later than June 30, 2003. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, and at the discretion of the meeting facilitator, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the addendum to the GEIS. Mr. Zalcman will need to be contacted no later than June 30, 2003, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public, whether or not they participate in the public meetings, may send written comments on the environmental scope of the GEIS Update Project to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room T–6 D 59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by September 2, 2003. Electronic comments may be sent by e-mail to the NRC at *LRGEISUpdate@nrc.gov*. Electronic submissions should be sent no later than September 2, 2003, to be considered timely in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

At the conclusion of the scoping process, the NRC will prepare a summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to participants in the scoping process. The summary will also be available for inspection at the NRC PDR or through the PERR link. If necessary, the staff will then prepare and issue for comment the draft addendum to the GEIS, which will be the subject of a separate **Federal Register** notice, to report the results of the NRC's review. At this time, the NRC plans to conduct separate public meetings, at similar locations as the public scoping meetings, on the draft addendum to the GEIS. Copies of the draft addendum to the GEIS will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments on the draft, the NRC will prepare a final addendum to the GEIS, which will also be available for public inspection. Should the review indicate that one or more environmental issues enumerated in Appendix B to Subpart A of Part 51, "Environmental Effects of Renewing the Operating License of a Nuclear Power Plant," requires change, then the proposed and final rule amendments will accompany the draft and final addendum to the GEIS.

Information about the proposed action, the addendum to the GEIS, and the scoping process may be obtained from Mr. Zalcman at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 27th day of May 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13868 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of June 2, 9, 16, 23, 30, July 7, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 2, 2003.

Friday, June 6, 2003

10 a.m. Discussion of Security Issues (Closed—Ex. 1).

Week of June 9, 2003—Tentative

Wednesday, June 11, 2003

10:30 a.m. All Employees Meeting (Public Meeting).

1:30 p.m. All Employees Meeting (Public Meeting).

Week of June 16, 2003—Tentative

There are no meetings scheduled for the Week of June 16, 2003.

Week of June 23, 2003—Tentative

There are no meetings scheduled for the Week of June 23, 2003.

Week of June 30, 2003—Tentative

Tuesday, July 1, 2003

10 a.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1).

Week of July 7, 2003—Tentative

There are no meetings scheduled for the Week of July 7, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

SUPPLEMENTARY INFORMATION:

* * * * *

"Discussion of Management Issues (Closed—Ex. 2)," originally scheduled for May 28, 2003, was not held:

By a vote of 4–0 on May 28, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Order Regarding Petition for Review" be held on May 28, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: May 29, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–13981 Filed 5–30–03; 11:33 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMMISSION

[Docket No. 50–323]

Diablo Canyon Power Plant, Unit No. 2, Pacific Gas & Electric Company; Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Correction

In notice document 03–9026, beginning on page 18284, in the issue of Tuesday, April 15, 2003, make the following correction:

In the first column, beginning on line 13, the words "would revise Technical Specification (TS) 5.5.9, 'Steam Generator Tube Surveillance Program,' and TS 5.6.10, 'Steam Generator Tube Inspection Report'," should be corrected to read "would authorize revision of the Final Safety Analysis Report Update,".

Dated at Rockville, Maryland, this 22nd day of May 2003.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13869 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION; Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** on this information collection request on March 26, 2003, in 68 FR 14714, at which time a 60-calendar day comment period was announced. This comment period ended May 27, 2003. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposal form under review is summarized below.

DATES: Comments must be received on or before July 3, 2003.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; 202\395–3897.

Summary of Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is expiring.

Title: Expedited Screening Questionnaire On-Lending Transactions

Form Number: OPIC–168.

Frequency of Use: One per investor, per project

Type of Respondents: Business or other institutions (except farms): Individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies sponsoring projects overseas.

Reporting Hours: 3.5 hours per project.

Number of Responses: 300 per year.

Federal Cost: $15,750 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: May 28, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Departmental of Legal Affairs.

[FR Doc. 03–13862 Filed 6–2–03; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** notice on this information collection request on March 26, 2003, in vol. 68 No. 58 FR 14714, at which time a 60-calendar day comment period was announced. This comment period ended May 27, 2003. No comments were received in response to this notice.

This information collection submission has not been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before July 3, 2003.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is pending emergency extension.

Title: Application for Financing.

Form Number: OPIC–115.

Frequency of Use: One year investor, per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3.5 hours per project.

Number of Responses: 300 per year.

Federal Cost: $15,750 per year.

Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 129 form is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: May 29, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–13863 Filed 6–2–03; 8:45 am]

BILLING CODE 3210–01–M

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section (c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 6 p.m. to 8:30 p.m. on Tuesday, June 17, 2003, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Provide the Executive Director's report regarding the status of the Public Health Service Hospital, the status of the Main Parade Ground, and the status of the environmental remediation program; (2) consider staff's recommendation for revisions to the Presidio Trails Plan in response to public comment and a finding of no significant impact (action item); and (3) provide a report on the status of Crissy Field.

TIME: The meeting will be held from 6 p.m. to 8:30 p.m. on Tuesday, June 17, 2003.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: May 29, 2003.

Karen A. Cook,

General Counsel.

[FR Doc. 03–13972 Filed 5–30–03; 10:55 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26058; 812–12858]

Diamond Hill Funds, et al.; Notice of Application

May 28, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 ("Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY: *Summary of Application:* Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds and/or short-term bond funds.

Applicants: Diamond Hill Funds (the "Trust"), Diamond Hill Capital Management, Inc. ("Diamond Hill"), and Diamond Hill Securities, Inc. ("DHS").

Filing Dates: The application was filed on July 25, 2002 and amended on May 21, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 23, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: James F. Laird, President, Diamond Hill Funds, 375 North Front Street, Suite 300, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as an Ohio business trust and registered under the Act as an open-end management investment company. The Trust currently consists of six investment portfolios ("Funds"), including Diamond Hill Short Term Fixed Income

Fund ("Short Term Fund").[1] Diamond Hill, a wholly owned subsidiary of Diamond Hill Investment Group, Inc., serves as investment adviser to five of the Funds. DHS, a wholly owned subsidiary of Diamond Hill, serves as investment adviser to the remaining Fund. Diamond Hill and DHS are registered as investment advisers under the Investment Advisers Act of 1940.

2. Each Fund has, and may be expected to have, uninvested cash in an account at its custodian ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, such as dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment purposes, scheduled maturity of investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. Certain of the Funds may also participate in a securities lending program under which the Fund may lend its portfolio securities to registered broker-dealers or other institutional investors (the "Securities Lending Program"). The loans will be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

3. Applicants request relief to permit certain of the Funds (the "Investing Funds") to use Cash Balances to purchase shares of the Short Term Fund, as well as any future Fund that operates as a money market fund in accordance with rule 2a–7 under the Act (each, a "Money Market Fund" and together with the Short Term Fund, the "Cash Management Funds"), and the Cash Management Funds to sell their shares to, and redeem their shares from, each of the Investing Funds. The Short Term Fund seeks to provide total return consistent with current income and preservation of capital by investing in short- and intermediate-term debt securities and generally will maintain a dollar-weighted average maturity of three years or less. Investment of Cash Balances in shares of the Cash Management Funds will be made only to the extent consistent with such Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions will result in higher yields, increased investment opportunities, reduced transaction costs, increased returns, reduced administrative burdens, enhanced liquidity, and increased diversification.

[1] All investment companies that currently intend to rely on the requested relief have been named as applicants and any existing or future registered open-end management investment company that may rely on the requested relief in the future will do so only in accordance with the terms and conditions of the application. The applicants are also seeking relief for any registered open-end management investment company or series thereof that is currently, or in the future may be, advised by the Adviser, as defined below (included in the term "Funds"). Diamond Hill and DHS and any person controlling, controlled by or under common control with Diamond Hill and/or DHS that currently or in the future serves as investment adviser to a Fund are collectively referred to as the "Adviser."

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act authorizes the Commission to exempt any person, security or transaction (or classes thereof) from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption from the provisions of sections 12(d)(1)(A) and (B) to the extent necessary to permit each Investing Fund to invest Cash Balances in the Cash Management Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that section 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Cash Management Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Cash Management Fund through threat of redemption. Applicants also represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Cash Management Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules) or, if such shares are subject to any such fees, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Cash Management Fund offers more than one class of securities, each Investing Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's investment) at the time of the investment. Before the next meeting of the board of trustees (the "Board") of an Investing Fund is held for the purpose of voting on an advisory contract under section 15(a) of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Cash Management Funds. In connection with approving any advisory contract for an Investing Fund, the Board, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees") will consider to what extent, if any, the advisory fees charged to each Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in a Cash Management Fund. Applicants represent that no Cash Management Fund whose shares are held by an Investing Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that each of the Investing Funds and the Cash Management Funds may be deemed to be under common control, and therefore affiliated persons of each other, because they have a common Board and a common investment adviser or their investment advisers may be under common control. In addition, applicants submit that because an Investing Fund could acquire 5% or more of the outstanding voting shares of a Cash Management Fund, such Investing Fund might be deemed an affiliated person of the Cash Management Fund. Accordingly, applicants state that the sale of shares of the Cash Management Fund to the Investing Funds, and the redemption of such shares by the Investing Funds, may be prohibited under section 17(a).

5. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policies of each registered investment company involved, and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act if, and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of Cash Management Fund shares by the Investing Funds satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the investment by the Investing Funds in shares of the Cash Management Funds will be on the same terms and on the same basis as any other shareholders, and that the consideration paid and received by the Investing Funds on the sale and redemption of shares of a Cash Management Fund will be based on the Cash Management Fund's net asset value per share. In addition, under the proposed transactions, the Investing Funds will retain their ability to invest their Cash Balances directly in money market instruments or short-term instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that each of the Cash Management Funds reserves the right to discontinue selling shares to any of the Investing Funds if the management of the Cash Management Fund determines that such sales would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Applicants state that each Investing Fund (by purchasing shares of the Cash Management Funds), each Adviser of an Investing Fund (by managing the assets of the Investing Funds invested in the Cash Management Funds), and each Cash Management Fund (by selling shares to and redeeming them from the Investing Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 thereunder.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission will consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards because the investments by the Investing Funds in shares of the Cash Management Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the same class of the Cash Management Funds, and the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Shares of the Cash Management Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of an Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Cash Management Funds. Before approving any advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Cash Management Funds. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Cash Management Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Cash Management Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Cash Management Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information. No Investing Fund that relies on rule 2a–7 under the Act will invest in a Cash Management Fund that is not a Money Market Fund.

5. No Cash Management Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Investing Fund and Cash Management Fund that may rely on the order shall be advised by the Adviser.

7. Before a Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Fund's participation in the Securities Lending Program. Such trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral

in the Cash Management Funds is in the best interests of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13769 Filed 6–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47928; File No. SR–Amex–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to ETF and Index Options Subject to an Annual Minimum Guaranteed License Fee

May 27, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 13, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 23, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Fee Schedule to require specialist units that are allocated exchange-traded fund ("ETF") and/or index options subject to an annual minimum guaranteed license fee amount to pay the Exchange for non-reimbursed index license fees associated with such options. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on ETFs and securities indexes. This requirement to pay an index license fee to third parties is a condition to the listing and trading of these index-based options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners, which may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange previously established a licensing fee for specialists and registered options traders ("ROTs") that is collected on every transaction in designated products in which a specialist and ROT is a party.[7] The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX) and the iShares Goldman Sachs Corporate Bond Fund (LQD); (2) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF) and (3) $0.05 per contract side for options on the S&P 100 iShares (OEF).

The Exchange represents that several index license providers have recently suggested that an annual guaranteed license fee be considered for the right to use an index regardless of the volume of trading of the particular ETF option or index option. Although the Exchange to date has not entered into a significant guaranteed license fee arrangement, it is expected that this practice will become more common in the future. Accordingly, the Amex represents that the Exchange's current licensing fee (as detailed above) based on the trading volume of the particular ETF option and/or index option may not provide the Exchange with sufficient revenue for it to be able to recoup annual index licensing fees.

As a result, the Exchange proposes to amend its Options Fee Schedule to require specialists allocated ETF and index options to pay, on an annual basis, any non-reimbursed costs of the Exchange resulting from index license agreements that are subject to a recurring annual guaranteed licensing fee. The Exchange represents that any payment made by specialists to the Exchange pursuant to this filing would reflect only actual non-reimbursed costs of the Exchange in connection with the trading of the allocated ETF and/or index option, which are not offset by any other fees imposed by the Exchange (such as the per contract license fee noted above). The Exchange further submits that it will inform specialists that may wish to be allocated ETF options and index options that they may be subject to annual index license fees, and that such fees may be separate and additional from any per contract license fee that may also be charged to the specialist and ROT in connection with the trading of such product.

The Exchange believes that it is reasonable for it to recoup non-reimbursed expenses on an annual basis, that are directly associated with index license agreements that are subject to an annual guaranteed licensing fee. The Exchange submits that the existence of non-reimbursed actual costs associated with guaranteed index license fee arrangements would trigger the requirement that the specialist pay the non-reimbursed index license fee of the Exchange less any fees imposed by the Exchange that may offset the non-reimbursed license fee.

The Exchange asserts that a guaranteed license fee payment in connection with ETF and index options can be counter-productive in connection with the ability of the Exchange to offer new index products, if such products, do not trade in sufficient volumes to satisfy the Exchange's contractual commitments. Accordingly, the Exchange believes that requiring specialists units that are allocated ETF options and/or index options to pay the non-reimbursed license fee of the Exchange related to such product(s) is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that the administration of this non-reimbursed license fee by passing it along to the specialist allocated to the particular index-based option is more efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that benefit.

The Exchange notes that the Amex in recent years has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[8] The Exchange believes that implementation of this amendment to the Options Fee Schedule is further consistent with such reduced or eliminated subsidies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–26 and should be submitted by June 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13770 Filed 6–2–03; 8:45 am]

BILLING CODE 8010–01–P

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to John S. Polise, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated May 9, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced the proposed rule text in its entirety.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to John S. Polise, Senior Special Counsel, Division, Commission, dated May 22, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange replaced Amendment No. 1 in its entirety. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 23, 2003, the date the Exchange filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 C.F.R. 240.19b–4(f)(2).

[7] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001).

[8] *See* Release Nos. 34–45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 34–44286 (May 9, 2001), 66 FR 27187 (May 16, 2001). In addition, the Chicago Board of Options Exchange ("CBOE") recently made a change to its fee schedule relating to the pass-through of periodic license or royalty fees. *See* Release No. 34–47169 (January 13, 2003), 68 FR 2596 (January 17, 2003). Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Exchange, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 29, 2003).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Business Information Center Customer Satisfaction Survey.

No: 1916.

Frequency: On occasion.

Description of Respondents: Clients of BIC programs.

Responses: 1,806.

Annual Burden: 68.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13872 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: 8(a) Annual Update.
No.: 1450.
Frequency: On occasion.
Description of Respondents: 8(a) business owners.
Responses: 6,942.
Annual Burden: 13,884.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13875 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Cost of Litigation to Small Business Executive Interview Questionnaire.
No.: N/A.
Frequency: On occasion.
Description of Respondents: Small businesses.
Responses: 100.
Annual Burden: 50.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13876 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3500]

State of Alabama (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 23, 2003, the above numbered declaration is hereby amended to include Baldwin, Clarke, Escambia, Mobile, Monroe and Washington Counties in the State of Alabama as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 5, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Butler, Choctaw, Conecuh, Covington, Marengo and Wilcox in the State of Alabama; Escambia, Okaloosa and Santa Rosa in the State of Florida; and George, Greene, Jackson and Wayne Counties in the State of Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Florida is 9V5200.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 11, 2003, and for economic injury the deadline is February 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13776 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3503]

State of Georgia

Troup County and the contiguous counties of Coweta, Harris, Heard and Meriwether in the State of Georgia; and Chambers and Randolph Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms, tornadoes and flooding that occurred on May 5, 2003 and continues. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 22, 2003 and for economic injury until the close of business on February 23, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350311 for Georgia and 350411 for Alabama. The number assigned to this disaster for economic damage is 9V3500 for Georgia and 9V3600 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 23, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–13778 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3505, Amdt. 1]

State of Illinois

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 21, 2003, the above numbered declaration is hereby amended to include Greene, McDonough and Pike Counties as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 6 through May 11, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Calhoun, Jersey, Macoupin and Scott in the State of Illinois; and Pike and Ralls Counties in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 14, 2003, and for economic injury the deadline is February 17, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 22, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13767 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3506]

State of Mississippi

As a result of the President's major disaster declaration on May 23, 2003, I find that Calhoun, Clay, Chickasaw, Itawamba, Lee, Lowndes, Monroe, Pontotoc and Webster Counties in the State of Mississippi constitute a disaster area due to damages caused by severe storms, tornadoes and high winds occurring on May 5 through May 8, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 22, 2003 and for economic injury until the close of business on February 23, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Choctaw, Grenada, Lafayette, Montgomery, Noxubee, Oktibbeha, Prentiss, Tishomingo, Union and Yalobusha in the State of Mississippi; and Franklin, Lamar, Marion and Pickens counties in the State of Alabama.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350612. For economic injury the number is 9V5000 for Mississippi; and 9V5100 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 27, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13766 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3499]

State of Oklahoma (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 22, 2003, the above numbered declaration is hereby amended to include Carter, Delaware, Kay, Muskogee, Okfuskee, Osage, Pontotoc, Roger Mills, Texas and Washington Counties in the State of Oklahoma as disaster areas due to damages caused by severe storms and tornadoes occurring on May 8, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adair, Beaver, Beckham, Cherokee, Cimarron, Coal, Craig, Custer, Dewey, Ellis, Grant, Haskell, Hughes, Jefferson, Johnston, Love, Marshall, Mayes, McIntosh, Murray, Nowata, Okmulgee, Ottawa, Pawnee, Rogers, Sequoyah, Tulsa and Wagoner in the State of Oklahoma; Benton County in the State of Arkansas; Baca County in the State of Colorado; Chautauqua, Cowley, Montgomery, Morton, Seward, Stevens and Sumner Counties in the State of Kansas; McDonald County in the State of Missouri; and Hansford, Hemphill, Ochiltree, Sherman and Wheeler Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Arkansas is 9V4500; Colorado is 9V4600; Kansas is 9V4700; Missouri is 9V4800; and Texas is 9V4900.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 9, 2003, and for economic injury the deadline is February 10, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13779 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee; (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 23, 2003, the above numbered declaration is hereby amended to include Benton, Decatur, Fayette, Giles, Hickman, Humphreys, Lawrence, Lewis, Macon, Perry, Shelby, Smith, Tipton and Trousdale Counties in the State of

Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clay and Jackson in the State of Tennessee; Crittenden County in the State of Arkansas; Monroe County in the State of Kentucky; and DeSoto and Marshall Counties in the State of Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13777 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region V Regulatory Fairness Board

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, June 12, 2003, at 1 p.m. at the Minnesota State Capitol, Room 107, 75 Reverend Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Ed Daum in writing or by fax, in order to be put on the agenda. Ed Daum, District Director, U.S. Small Business Administration, Minnesota District Office, 100 North 6th Street, Butler Square, Suite 210–C, Minneapolis, MN 55403, phone (612) 370–2306, fax (612) 370–2303, e-mail *ed.daum@sba.gov*.

For more information, *see* our Web site at *http://www.sba.gov/ombudsman*.

Dated: May 27, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–13873 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VII Regulatory Fairness Board

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Monday, June 16, 2003, at 1 p.m. at the University of Iowa Town Center, 221 3rd Avenue, SE., Suite 200, Cedar Rapids, IA 52401 with interactive videos—satellite locations at: Davenport, West Burlington, Dubuque, Des Moines, Sioux City, Spencer, Fort Dodge, Mason City, Council Bluffs, Ottumwa, and Creston, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Keith W. McBride in writing or by fax, in order to be put on the agenda. Keith McBride, U.S. Small Business Administration, Cedar Rapids District Office, 215 4th Avenue S.E., the Lattner Building, Suite 200, Cedar Rapids, IA 52401, phone (319) 362–6405 Ext. 221, fax (319) 362–6405, e-mail *keith.mcbride@sba.gov*.

For more information, *see* our Web site at *http://www.sba.gov/ombudsman*.

Dated: May 27, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–13874 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for June 17 and 18, 2003, beginning at 8:30 a.m. on June 17. Arrange for oral presentations by June 12.

ADDRESS: Homewood Suites, 6955 Ft. Bent Way, Tukwila, WA 98188.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 17–18 in Renton, WA.

The agenda will include:

June 17

- Opening Remarks
- FAA Report
- Joint Aviation Authorities Report
- Transport Canada Report
- Executive Committee Report
- Harmonization Management Team Report
- ARAC Tasking Priorities Discussion/Moratorium
- Mechanical Systems Harmonization (HWG) Report
- Ice Protection HWG Report
- Powerplant Installation HWG Report
- Human Factors HWG Report
- Design for Security HWG Report

June 18

- General Structures HWG Report and Approval
- Airworthiness Assurance Working Group Report and Approval
- Avionics HWG Report
- Written or verbal reports may be provided for the Continued Airworthiness and Extended Range Operations Working Groups, and the following HWGs: Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, and Electrical Systems.

Two working groups will present documents for approval:

1. The General Structures HWG will seek approval of documents addressing fuel tank access and operations test.
2. The Airworthiness Assurance Working Group will seek approval of a multiple Supplemental Type Certificates report.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. For those participating by telephone, the call-in number is (425) 227–1570, Passcode: 5555. Details are also available on the ARAC calendar at *http://www1.faa.gov/avr/arm/arac/araccalendar.cfm*.

To ensure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by June 12. Callers outside the Renton, Washington area will be responsible for paying long distance charges.

The public must make arrangements by June 12 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on May 28, 2003.

Florence L. Hamn,

Acting Director, Office of Rulemaking.

[FR Doc. 03–13901 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement Draft Section 4(f) Evaluation: Montgomery & Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Draft Environmental Impact Statement (EIS)/Draft Section 4(f) Evaluation will be prepared for a proposed transportation project in Montgomery and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Nelson J. Castellanos, Division Administrator, Federal Highway Administration, The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland Department of Transportation and the Maryland State Highway Administration is preparing a Draft EIS/Draft Section 4(f) Evaluation for the proposed Intercounty Connector (ICC) transportation improvement project. The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency will be invited to participate as cooperating agencies. The proposed ICC project is intended to provide a multi-modal highway between I–270 in Montgomery County and I–95/US 1 in Prince George's County, Maryland, a distance of about 18 miles. The project has been designated a high priority project for expedited agency reviews under Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

Project studies pursuant to the National Environmental Policy Act (NEPA) concerning the ICC project were most recently conducted in the early to late-1990s resulting in the completion of a Draft EIS/Draft Section 4(f) Evaluation in 1997. Study alternatives were presented at four Location/Design Public Hearings in May and June 1997. The State of Maryland put the ICC project on hold shortly after the hearings.

The ICC project will involve the consideration of a reasonable range of alternatives that address the project goals. Consistent with NEPA, a full range of multi-modal highway alternatives will be considered, ranging from a No-Action Alternative to a limited access roadway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, private organizations and citizens who have previously expressed or are known to have an interest in this project. Public information Meetings are tentatively scheduled for Summer 2003 with a Location/Design Public Hearing tentatively scheduled for late Fall/early Winter 2004. Public notice will be given of the time and place for the Public Information Meetings, Location/Design Public Hearing and other public meetings as they occur.

The Draft EIS/Draft Section 4(f) Evaluation will be available for public and agency review and comment prior to the public hearing. Several scoping meetings for the public, agencies, and Metropolitan Washington Council of Governments will be conducted prior to publication of the Draft EIS/Draft Section 4(f) Evaluation. Informational meetings and public outreach will be conducted throughout the project.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are identified and addressed. Comments or questions concerning these proposed actions and the proposed Draft EIS/Draft Section 4(f) Evaluation should be directed to the FHWA at the address provided previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program)

Issued on: May 27, 2003.

Nelson J. Castellanos,

Division Administrator, Baltimore, Maryland.

[FR Doc. 03–13794 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Child Passenger Protection Education Grants

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of grants for child passenger protection education.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a grant program under Section 2003(b) of the Transportation Equity Act for the 21st Century (TEA–21) to implement child passenger protection programs that are designed to prevent deaths and injuries to children, educate the public concerning the proper installation of child restraints, and train child passenger safety personnel concerning child restraint use. This notice solicits applications from the States, the District of Columbia, Puerto Rico, the U.S. Territories and the Indian Tribes through the Secretary of the Interior.

DATES: Applications must be received by the office designated below on or before July 9, 2003.

ADDRESSES: Applications must be submitted to the appropriate National Highway Traffic Safety Administration Regional Administrator.

FOR FURTHER INFORMATION CONTACT: For program issues contact Ms. Judy A. Hammond, Office of Injury Control Operations and Resources, NTI–200, NHTSA, 400 Seventh Street, SW.,

Washington, DC 20590; telephone (202) 366–2121. For legal issues contact Ms. Dana Sade, Office of the Chief Counsel, NCC–110, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2580.

SUPPLEMENTARY INFORMATION:

Background

While motor vehicle crashes remain the leading cause of unintentional injury-related deaths among children for every age from 1 to 14 years in the United States, there has been a 16 percent decline in motor vehicle occupant deaths from 1988 to 2001. During the same period, motor vehicle occupant nonfatally injured children under age 15 decreased by 11 percent. The Nation is reaping the benefits of the many years of hard work by State and local advocates promoting correct use of child safety seats, booster seats and safety belts. A valuable cadre of trained and certified child passenger safety technicians has been established in all 50 States, the District of Columbia, and Puerto Rico to promote the correct use of these occupant protection devices. To maintain the gains, it is essential that this child passenger safety infrastructure be sustained.

For this fourth year of the program, States are encouraged to perform a program review and comprehensive evaluation of the existing infrastructure to help them strategically place limited resources to meet their unique needs, and to ensure that the needs of culturally diverse and underserved populations, special needs and booster seat size/age children are appropriately addressed.

Motor vehicle injuries and fatalities occur when children ride unrestrained or are improperly restrained. The Child Passenger Protection Education grant program is intended to help reduce injuries and deaths by educating the public about the importance of correctly installing and using child safety seats, booster seats and safety belts.

1. Children Riding Unrestrained

Approximately 20–25 percent of children ages 1 through 15 years ride unrestrained. Child safety seats reduce the risk of fatal injury in a crash by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1–4 years old). In 2001, there were 497 passenger vehicle occupant fatalities among children under 5 years of age. Of those 497 fatalities, where restraint use is known, 242 (49 percent) were totally unrestrained. The problem of riding unrestrained is not limited to infants and young children. From 1975 through 2001, the lives of an estimated 5,085 children were saved by the use of child restraints (child safety seats or adult safety belts). In 2001, among children under age 15 who were killed as occupants of passenger vehicles, where restraint use was known, 55 percent were not using safety restraints at the time of the collision.

Examination of the demographics of children killed in motor vehicle crashes (for which the most complete data available is 1999) shows that safety restraint use differs markedly by race. For example, while somewhat less than half (46.5 percent) of white children up to age 9 riding in passenger motor vehicles were using safety restraints at the time of their deaths, that was true of less than one-third (30.4 percent) of black children. Native American children under age 15 have a motor vehicle occupant death rate twice that of white children. (Injury and fatality data for other minority groups is currently being collected.) Restraint use is also lower in rural areas and low-income communities. Lack of access to affordable child safety seats and booster seats contributes to a lower usage rate among low-income families. However, research shows that 95 percent of low-income families who own a child safety seat use it. Improving access to affordable child restraint systems and educating parents and caregivers about proper installation and use are key components to improving use rates in these communities.

2. Misuse of Child Safety Seats and Improper Seating Positions

According to the National Occupant Protection Use Survey, in 2002, 99 percent of infants (children under age 1) were restrained while riding in motor vehicles, as were 94 percent of toddlers (children ages 1 through 3). The study also revealed that 83 percent of children ages 4 through 7 were restrained. However, it is estimated that approximately 80 percent of children who are placed in child safety seats are improperly restrained. Furthermore, adult safety belts do not adequately protect children ages 4 to 8 (about 40 to 80 pounds) from injury in a crash. Although car booster seats are the best way to protect them, only 6 percent of booster-age children are properly restrained in car booster seats.

In addition, there is a high risk of severe injury or fatality to children riding in the front seat of vehicles equipped with a passenger side air bag, due to the deployment force of the air bag. However, even if the air bag is shut off or there is no air bag, the back seat is the safest place for children to ride. Under no circumstances should a parent place a rear-facing infant seat in front of an air bag. It is estimated that children ages 12 and under are 36 percent less likely to die in a crash if seated in the rear seat of a passenger vehicle.

Furthermore, children are not cargo; they should not ride in the rear of pickup trucks. In 2001, 128 people died as a result of riding in the cargo area of pickup trucks. Nearly half of these were children and teenagers.

Children with special health care needs are another area of growing concern. Approximately 12 million children under 18 are in this category and many have special transportation needs that need to be addressed.

Child passenger safety professionals, educators, emergency personnel and others need to be adequately trained on all aspects of child restraint use in order to help reduce the problems of misuse and encourage the safest seating positions for all children riding in motor vehicles. In addition, parents and caregivers need easily accessible locations where they can receive information on choosing the correct child safety seat for their child, and identifying which child safety seats are compatible with various types of passenger motor vehicles. Parents and caregivers also need to know how to properly install a child safety seat, how to properly secure their child into that seat, and that the safest position in a vehicle is the back seat, away from front passenger air bags and not in the cargo area of pick-up trucks.

With these concerns in mind, the Transportation Equity Act for the 21st Century (TEA–21), which the President signed into law on June 9, 1998, established a grant program under Section 2003(b), to promote child passenger protection education and training and authorized $7.5 million each year for fiscal years 2000 and 2001. In the DOT Appropriation Act of 2002, Congress provided $7.5 million to fund the Child Passenger Protection Education grant program for fiscal year 2002. For FY 2003, Congress again provided $7.5 million to fund the Child Passenger Protection Education Grants.

Grants for Child Passenger Protection

Section 2003(b) provides Federal funds to States for activities that are designed to prevent deaths and injuries to children; educate the public concerning the design, selection, placement, and installation of child restraints; and train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. A State may expend the funds itself

or elect to distribute some or all of the funds to carry out the public education and training activities as grants to political subdivisions of the State or appropriate private entities.

Prior years funding (FY 2000 and 2001) has resulted in over 16,056 persons becoming certified child passenger safety technicians by the AAA after having completed NHTSA's 32-hour Standardized Child Passenger Safety Training course. In addition, 593 went on to become certified child passenger safety technician instructors. Funding has provided for the establishment of 900 inspection/fitting stations across the country.

Given administrative, programmatic, and funding considerations facing the States, NHTSA is working with the Governors Highway Safety Association (GHSA) to develop a Child Passenger Safety Program Assessment tool designed to help the States strategically plan and locate their child passenger safety trainings, education efforts, and inspection stations to meet the needs of the community.

A "team" of peers will review all elements of the State's Child Passenger Safety program and how training strategically fits into their overall program. The assessment will examine many aspects including: Does the child passenger safety program effectively address older children (booster seat and safety belt size/age); special needs; culturally diverse and underserved populations; does it effectively cover all areas of the State with training, public education and information; and, are inspection stations established across the State. The assessment tool should be ready for use in Fall 2003. States are strongly encouraged to use Section 2003(b) funds to pay for conducting the assessment.

States are also encouraged to direct funds obtained through this grant program to organizations that can deliver training and education to ensure positive impact in minority and low-income communities where lack of child passenger protection is especially severe.

Funds could also be used for training on the appropriate methods for restraining children with special needs in motor vehicles.

Section 2003(b) provides that the Federal share of the cost of a program carried out with the grant funds is not to exceed 80 percent. A State that receives a grant must submit a report describing the program activities carried out with the funds.

Application Procedures

1. Use of Funds

To be eligible for funding under Section 2003(b), a State must submit an application that addresses how the State will implement child passenger protection programs that meet each of the three requirements listed below (see checklist below). For the education and training components, the grant application must identify expected program accomplishments, such as the estimated number of public education messages to be distributed (*e.g.* public service announcements or printed materials) and the type of audience to be targeted by these messages (*e.g.* minority or low-income communities); the estimated number and type of training classes conducted and the individuals or groups to be trained (*e.g.* representing minority, rural or low-income communities); the number of child safety seat clinics or check-ups performed; and the number of inspection stations established. A State is encouraged to identify the proposed locations of child safety seat clinics, check-ups and inspection stations, specifying the target population to be served.

Specifically, the State must implement a child passenger protection program that:

(a) Is designed to prevent deaths and injuries to children. The State should provide a statement describing how its program supports efforts to prevent deaths and injuries to children, and indicate if it plans to conduct a program assessment;

(b) Educates the public on all aspects of child passenger safety. The public education program may include strategies that emphasize the four steps to child restraint use: infant seats for babies, forward facing child safety seats for toddlers, booster seats for young children, and safety belts for older children. It should include strategies that increase use of appropriate restraints and proper seating positions among targeted populations (*e.g.*, minority, rural, low-income, or special needs populations), or develop and implement child safety seat clinics and/or permanent locations where consumers can have child safety seats and booster seats inspected. Additional information under public education may be included relevant to proper use of child restraint systems, booster seats, proper seating positions relative to air bag safety and cargo areas of pick-up trucks, and Federal Motor Vehicle Safety Standard 225—a standardized child safety seat system known as Lower Anchors and Tethers for Children (LATCH).

At a minimum, the public education program must:

(1) Provide a summary of the information that the State intends to include or develop in the public education program. The information must address at least the following topics:

- All aspects of proper installation of child restraints using standard safety hardware, supplemental hardware, and modification devices (if needed), including special installation techniques;
- Appropriate child restraint design, selection, and placement [NHTSA interprets this to include instruction about proper seating positions for children in air bag equipped vehicles]; and
- Harness threading and harness adjustment on child restraints.

(2) Include a description of the public education information methods that the State intends to employ, how these messages will be delivered to the target population, and expected accomplishments. The methods could include billboards, public service announcements, and published materials. It is also important to deliver this information in the language of the targeted group.

(c) Trains and retrains child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. At a minimum, States should include in the application a description of or reference to the curricula that the State will use to train and retrain child passenger safety experts to reach the targeted populations; factors used to determine appropriate coverage and support to meet the needs of the community and expected accomplishments.

All persons selected for training and retraining as child passenger safety professionals should achieve and maintain at least some minimum standards of expertise. In collaboration with partners, NHTSA has developed several model curricula including: "Mobilizing America to Buckle Up Children" and "Operation Kids" for law enforcement officers; "Operation Kids" for nurses; "Moving Kids Safely In Child Care" and the "Standardized Child Passenger Safety Training Program" for child passenger safety professional candidates. States are not restricted to using only these curricula, but States are encouraged to incorporate the learning objectives of these courses into the training and retraining provided to child passenger safety experts.

Funding for this grant program is intended to help States develop and sustain adequate cadres of persons with technical expertise in child passenger protection who will directly serve the public through child safety seat clinics, checkpoints, workshops, inspection stations and other training and educational opportunities.

The State shall include in the budget for FY 2003 grant funds information on prior-year Section 2003(b) grant funds. Specifically, the State shall itemize how much of these prior year funds have not yet been expended and how they will support the FY 2003 program.

2. Certification

A. The State must submit certifications that: (i) It will use the funds awarded under this grant program exclusively to implement a child passenger protection program in accordance with the requirements of Section 2003(b) of Pub. L. 105–178 (TEA–21); (ii) It will administer the funds in accordance with 49 CFR part 18; and (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date.

3. Eligibility Requirements

Eligibility is limited to the 50 States, the District of Columbia, Puerto Rico, the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) through their Governor's Office of Highway Safety, and Indian Tribes through the Secretary of the Interior.

Award Procedures

The amount appropriated for this program in fiscal year 2003 is $7,500,000. In FY 2000, NHTSA awarded $7.5 million to 47 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. In FY 2001, NHTSA awarded $7.5 million to 48 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. In FY 2002, NHTSA awarded $7.5 million to 48 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. A new application is required to seek an award for fiscal year 2003 funds. Awards to applicants meeting the requirements of this notice will be made based upon the formula used for Section 402 apportionment, subject to the availability of funds. The amount awarded to each State qualifying under this program shall be determined by multiplying the amount appropriated for this grant program for the fiscal year by the ratio that the amount of funds apportioned to each such State under 23 U.S.C. 402 for the fiscal year bears to the total amount of funds apportioned to all such States under Section 402 for such fiscal year. Applicants will be required to submit to NHTSA within 30 days of notification that an award is made, a program cost summary (HS Form 217) obligating the Section 2003(b) funds to child passenger protection education programs. The Federal funding share may not exceed 80 percent of the program cost, and States should clearly identify their share in the program cost summary (HS Form 217).

Each State must submit one original and two copies of the application package to the appropriate NHTSA Regional Administrator. Only complete application packages submitted by a Governor's Highway Safety Representative and received on or before July 9, 2003, will be considered for funding in fiscal year 2003.

Report Requirements

A State that receives a grant must submit a report describing the activities carried out with the grant funds and the accomplishments to date. The report must be submitted to the NHTSA Regional Administrator no later than 15 months after the grant is awarded.

At a minimum, the report must contain the following:

1. A description of how the State's child passenger protection program is supporting efforts to prevent deaths and injuries to children through strategic placement of resources.

2. For the education component:

- A summary of the public education methods developed and how programs were delivered to the targeted population.
- The number of public education messages distributed (*e.g.* public service announcements or printed materials) and the type of audience targeted by those messages (*e.g.* minority or low-income communities);
- The number of child safety seat clinics or check-ups performed, and the number of inspection stations established. A State must also include the locations of child safety seat clinics, check-ups and inspection stations, specifying the target population served.

3. For the training component:

- The number of and type of training classes conducted and the individuals or groups trained (*e.g.* representing minority, rural or low-income communities);
- A description of or reference to the curricula that were used to train and retrain child passenger safety experts.
- The number of child passenger safety technicians and instructors certified during the grant period.

FY 2003 APPLICATION CHECKLIST

1.	1.
A.	A. Statement describing how the program supports efforts to prevent deaths and injuries to children.
B.	B. Statement indicating its plans to conduct a program assessment.
2.	2. Educates the public on all aspects of child passenger safety (CPS). At a minimum this must include the following:
A.	A. Summary of what the public education information will cover, to include:
(1)	(1) All aspects of proper installation of child restraints using standard seat belt hardware, supplemental hardware, and modification devices (if needed), including special installation techniques.
2.	(2) Appropriate child restraint design, selection, and placement [NHTSA interprets this to include instruction about proper seating positions for children in air bag equipped vehicles.]
(3)	(3) Harness threading and harness adjustment on child restraints.
B.	B. Methods to deliver public education messages must include:
(1)	(1) Description of the public education method.
(2)	(2) How these messages will be delivered to the targeted populations.
(3)	(3) Expected accomplishments in reaching audiences, including those in underserved areas.
3.	3. CPS Training and retraining. At a minimum, this must include the following:
A.	A. Description of or reference to the CPS curricula that the State will use to train and retrain CPS experts to ensure appropriate and adequate coverage and support for the program.
B.	B. Expected accomplishments.
C.	C. Description of how the State plans to reprogram its unexpended Section 2003(b) funds to support this year's program.
4.	4. Certification Statement

FY 2003 APPLICATION CHECKLIST—Continued

	The State must submit certifications that (i) It will use the funds awarded under this grant program exclusively to implement a child passenger protection program in accordance with the requirements of 23 U.S.C. 2003(b); (ii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circular A–87; and (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date.

NHTSA Publications Available To Support Public Education

A number of NHTSA publications are available through the *Traffic Safety Materials Catalog* that address child passenger safety program topics, including targeted education messages such as "Four Steps for Kids;" and "*Sálvele la Vida a Su Bebé.*" These materials may be ordered from the NHTSA web site at *http://www.nhtsa.dot.gov* or contacting the Office of Communications and Consumer Information by fax at (202) 493–2062.

Issued on: May 29, 2003.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 03–13902 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34347]

Regional Rail Right of Way Company—Acquisition and Operation Exemption—Lines of Dallas Area Rapid Transit

Regional Rail Right of Way Company (RRROW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire an exclusive, perpetual freight rail operating easement over the following rail lines owned by Dallas Area Rapid Transit (DART): (1) The Athens Branch East Line (a/k/a Elam Branch) between approximately milepost 314.84 (Briggs Jct.) and approximately milepost 308.8 (Pleasant Drive); (2) the Garland Line between approximately milepost D–755.27 and approximately milepost D–745.5; (3) the Rowlett Extension between approximately milepost 745.5 and approximately milepost 741.3; (4) the Carrollton Line between approximately milepost K–758.04 and approximately milepost K–741.3; (5) the Fair Park East Line between approximately milepost 210.704 (East Dallas Yard) and approximately milepost 210.078 (MP Junction); (6) the Denton Subdivision between approximately milepost K–741.3 (Carrollton) and approximately milepost K–729.5 (Lake Dallas); (7) the Sherman Subdivision between approximately milepost 290.5 (Allen) and approximately milepost 324.84 (South Sherman Jct.); (8) the White Rock/Fair Park Connector between approximately milepost 6.93 (Tenison Park) and approximately milepost 5.06 (MP Jct.); and (9) the Brookhollow Branch Line between approximately milepost 0.0 (DFW Main) and approximately milepost 3.31 (Denton Subdivision) (collectively, the lines). The total distance of the lines is approximately 92.2 miles in Collin, Dallas, Denton, Grayson, and Rockwall Counties, TX.

Pursuant to a Transfer Agreement to be entered into by and between DART and RRROW, RRROW will acquire an exclusive, perpetual freight rail operating easement and all freight common carrier obligations over the lines. RRROW states that the Dallas, Garland and Northeastern Railroad will continue to provide freight operations over the lines. In addition, DART will retain the ownership interest in the right-of-way, trackage, and other physical assets associated with the lines. Consummation of this transaction was expected to occur on or after May 12, 2003, the effective date of the exemption.

RRROW certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its projected annual revenues will not exceed $5 million, and thus the transaction will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34347, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue NW., Washington, DC 20036–1221.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 27, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13865 Filed 6–2–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34346]

Dallas Area Rapid Transit—Acquisition Exemption—Certain Assets of Regional Rail Right of Way Company

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from its affiliate, Regional Rail Right of Way Company (RRROW), certain railroad assets, consisting of approximately 56 miles of rail line and related trackage in Dallas, Collin, and Tarrant Counties, TX (the lines). The lines include: (1) The line of railroad extending between approximately milepost 632.27 near Ft. Worth, TX, and approximately milepost 578.20 near Wylie, TX; and (2) the existing trackage between Tower 19 and Oakland Avenue in East Dallas, TX.

Pursuant to a Transfer Agreement to be entered into by and between DART and RRROW, DART will acquire RRROW's right, title, and ownership interest in the right-of-way, trackage, and other physical assets associated with the lines, subject to RRROW's reservation of an exclusive, perpetual freight rail operating easement. DART will not acquire the right or obligation to conduct any freight rail operations on the lines.[1] Consummation of this transaction was expected to occur on or after May 12, 2003, the effective date of the exemption.

DART certifies that its projected annual freight revenues as a result of this transaction will not exceed $5 million, and thus the transaction will not result in the creation of a Class II or Class I rail carrier.

[1] Accordingly, DART has filed a motion to dismiss this notice of exemption. The Board will address the motion to dismiss in a separate decision.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34346, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036–1221.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 27, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13864 Filed 6–2–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, July 1, 2003 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 29, 2003.

Tershein Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13900 Filed 6–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to evaluate a trainee request for leave from Vocational Rehabilitation and Employment Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0034" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Trainee Request for Leave—Chapter 31, Title 38, U. S. Code, VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905h is used to request leave and to provide the necessary information to determine whether to approve a trainee request for leave from Vocational Rehabilitation and Employment Program. A trainer or authorized school official must verify on the form the effect the absence will have on the veteran's progress in the program. Upon approval, the veteran can receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period. Failure to collect the information would create the potential for substantial abuse through receipt of benefits for unauthorized absences.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: May 16, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13891 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the amount of educational benefits payable to veterans or eligible persons pursuing approved programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0073" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Enrollment Certification, VA Form 22–1999. (**Note:** A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, 22–1999–3, 22–1999–4, 22–1999–5, and 22–1999–6 which contains the same information as VA Form 22–1999.)

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions and job establishments use VA Form 22–1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. The information collected on VA Form 22–1999 is used by VA to determine the amount of educational benefits payable to the trainee during the period of enrollment or training and to determine whether the trainee has requested an advanced payment of benefits. Without the information, VA would not have a basis upon which to make payment.

Affected Public: Not-for-profit institutions, Business or other for-profit, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 137,424 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 916,160.

Estimated Number of Respondents: 8,180.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13892 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0565."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0565" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: State Application for Interment allowance Under 38 U.S.C. Chapter 23, VA Form 21–530A.

OMB Control Number: 2900–0565.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–530a is used to gather information from states that are seeking payment of the benefits for plot-interment allowances. The form allows states to submit a consolidated application for plot or interment allowances for eligible veteran buried in a cemetery owned by that State and is also used for the interment of persons eligible for burial in a national cemetery.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 6, 2003, at page 10782.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 40,000.

Dated: May 15, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13893 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0013."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0013" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine eligibility for issuance of a burial flag to a family member or friend of a deceased veteran. VA Form was revised to establish eligibility for certain Selected Reserve members, and certain Filipino veterans. The ineligibility provision for felons convicted of a capital crime was also included.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 30, 2003, at page 4814.

Affected Public: Individuals or households, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: May 15, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13894 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New—Foreign Medical]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to claim reimbursement for medical services outside the United States (except Canada and the Philippines) for service-connected disability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–New—Foreign Medical" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Claim Cover Sheet for Foreign Medical Program, VA Form 10–7959f.

OMB Control Number: 2900–New—Foreign Medical.

Type of Review: New collection.

Abstract: VA Form 10–7959f will be used for submitting claims for payment/reimbursement of expenses related to veterans who are residing or traveling overseas (except for Canada and the Philippines) with a service-connected disability. The form outlines the basic veteran information necessary for consideration of claims for reimbursement. Use of this form by providers or veteran is optional. VA accepts provider generated billing statement, Uniform Billing-Forms (UB) 92, HCFA 1500, Medicare Health Insurance Claims Form. This information collection is needed to carry out the health care benefits allowed by the Foreign Medical Program.

Affected Public: Individuals or households, Business or other for profit, and Not for profit institutions.

Estimated Total Annual Burden: 3,652 hours.

Estimated Average Burden Per Respondent: 11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,660.

Estimated Total Annual Responses: 19,920.

Dated: May 20, 2003.

By direction of the Secretary:

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–13895 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy and Planning, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to document pre-employment screening and special background checks for applicants seeking employment as VA police officers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Christopher Price, Department of Veterans Affairs, 4300 West 7th Street, Little Rock AR 72205 or e-mail *Christopher.price@mail.va.gov*. Please refer to "OMB Control No. 2900–0524" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Christopher Price at (501) 257–4160.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Security and Law Enforcement invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of the Office of Security and Law Enforcement's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Police Officer Pre-Employment Screening Checklist, VA Form 0120.

OMB Control Number: 2900–0524.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0120 involves a thorough pre-employment screening and special background checks for police officer applicants. Prior to employment of a qualified applicant, each VA medical center is required to conduct a FBI arrest record inquiry and to contact listed former employers for information. The form is completed by each VA facility and serves as a record of pre-employment screening to determine the qualification and suitability of the applicant. It is the policy of VA that no person be employed as a VA police officer who has been convicted of a serious crime or whose history reflects a disregard for laws and regulations, questionable character, or a pattern of misconduct or poor work habits.

Affected Public: Business or other for-profit, and State, Local or Tribal Governments.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13896 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the suitability and placement of potential volunteers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–0090" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or the use of other forms of information technology.

Title: Application for Voluntary Service, VA Form 10–7055.

OMB Control Number: 2900–0090.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–7055 is used to assist personnel of both voluntary organizations, which recruit volunteers from their membership, and the VA in selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers.

Affected Public: Individuals or households, Not-for-profit institutions.

Estimated Total Annual Burden: 8,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 32,000.

Dated: May 16, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13897 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess the health care disability compensation or rehabilitation needs of Former Prisoners of War (FPOW).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–0427" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0048 is used to collect data in response to Public Law 97–37 that liberalizes eligibility requirements and extends the existing benefits. The form is completed by veterans and submitted to a VA physician during a medical examination. Without this information VA physician would be unable to assess the health care, disability compensation or rehabilitation needs of Former Prisoners of War.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,575 hours.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,050.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13898 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 106

Tuesday, June 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32, and 52

[FAC 2001–14; FAR Case 2000–308; Item III]

RIN 9000–AJ17

Federal Acquisition Regulation; Prompt Payment Under Cost-Reimbursement Contracts for Services

Correction

In rule document 03–12303 beginning on page 28092 in the issue of Thursday, May 22, 2003, make the following correction:

On page 28092, in the second column, under the heading **DATES**, "May 23, 2003" should read, "May 22, 2003".

[FR Doc. C3–12303 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47871; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the National Association of Securities Dealers, Inc. and the International Securities Exchange, Inc.

May 14, 2003.

Correction

In notice document 03–12730 beginning on page 27869, in the issue of Wednesday, May 21, 2003, make the following correction:

On page 27869, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3–12730 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15076; Airspace Docket No. 03–ACE–44]

Modification of Class E Airspace; Kaiser, MO

Correction

In rule document 03–13046 beginning on page 28122 in the issue of Friday, May 23, 2003, make the following correction:

§71.1 [Corrected]

On page 28123, in the second column, in §71.1, under the heading **ACE MO E5 Kaiser/Lake Ozark, MO** in the 17th line, "7.8" should read "7.9".

[FR Doc. C3–13046 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15080; Airspace Docket No. 03–ACE–48]

Modification of Class E Airspace; Sibley, IA

Correction

In rule document 03–13040 beginning on page 28126 in the issue of Friday, May 23, 2003, make the following correction:

§71.1 [Corrected]

On page 28127, in the first column in §71.1, under the heading **ACE IA E5 Sibley IA**, in the second line, "long. 94°" should read "long. 95°".

[FR Doc. C3–13040 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 3, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Mussels in the Tennessee and Cumberland River Basins; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI76

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Mussels in the Tennessee and Cumberland River Basins

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for five mussels in the Tennessee and Cumberland River Basins: the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*), all of which are species listed as endangered under the Endangered Species Act of 1973, as amended (Act or ESA). We propose to designate 13 geographic areas (units) that include rivers and streams in the Tennessee and/or Cumberland River Basins as critical habitat for these five mussel species. These 13 units encompass approximately 892 river kilometers (rkm) (544 river miles (rmi)). Proposed critical habitat includes portions of Bear Creek (Mississippi, Alabama), the Duck River (Tennessee), Obed River (Tennessee), Powell River (Tennessee, Virginia), Clinch River and its tributaries (Copper Creek and Indian Creek) (Tennessee, Virginia), Nolichucky River (Tennessee), and Beech Creek (Tennessee) in the Tennessee River System and portions of Rock Creek (Kentucky), the Big South Fork and its tributaries (Bone Camp Creek, White Oak Creek, North White Oak Creek, New River, Crooked Creek, Clear Fork, and North Prong Clear Fork) (Kentucky, Tennessee), Buck Creek (Kentucky), Marsh Creek (Kentucky), Sinking Creek (Kentucky), and Laurel Fork (Kentucky) in the Cumberland River System.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We will conduct an analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation.

DATES: We will consider comments received by September 2, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 18, 2003.

ADDRESSES: If you wish to submit comments and information:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments and information to our Tennessee Field Office, at the above address, or fax your comments to (931) 528–7075.

3. You may send comments by electronic mail (e-mail) to *robert_tawes@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rob Tawes, at the above address (telephone (931) 528–6481, extension 213; facsimile (931) 528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species resulting from designation.

(2) Specific information on the amount and distribution of habitat for these five mussel and what habitat is essential to the conservation and why.

(3) Whether areas within proposed critical habitat are currently being managed to address conservation needs of these five mussel.

(4) Current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(5) Any foreseeable economic or other impacts resulting from the proposed designation, in particular, any impacts on small entities.

(6) Economic and other values associated with designating critical habitat for the mussels, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Electronic comments (e-mail) should avoid the use of special characters and encryption. Please also include "Attn: RIN 1018–AI76" and your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home addresses, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming

significant amounts of scarce conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation rather than biology, forces decisions to be made before complete scientific information is available, consumes enormous agency resources that would otherwise be applied to actions of much greater conservation benefit, and imposes huge social and economic costs. The Service believes that rational public policy demands serious attention to this issue in order to allow our limited resources to be applied to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. [Sidle (1987. Env. Manage.11(4):429–437) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."] Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

With a budget consistently inadequate to fund all of the petition review, listing, and critical habitat designation duties required of us by statute, we have in the past prioritized our efforts and focused our limited resources on adding species in need of protection to the lists of threatened or endangered species. We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

We previously provided information on these species in our Final rule (January 10, 1997; 62 FR 1647). The following presents new information.

The Cumberland elktoe, Cumberlandian combshell, oyster mussel, purple bean, and rough rabbitsfoot are all bivalve mussels (possessing a soft body enclosed by two shells) in the family Unionidae. Unionid mussels, in general, live embedded in the bottom (mud, sand, gravel, cobble/boulder substrates) of rivers, streams, and other bodies of water. These mussels siphon water into their shells and across four gills that are specialized for respiration. Mussels are known to consume detritus (organic decomposed debris), diatoms, phytoplankton, zooplankton, and other microorganisms (*i.e.* bacteria and algae) (Coker *et al.* 1921; Churchill and Lewis 1924; Fuller 1974).

Sexes in unionid mussels are usually separate. Males release sperm into the water; the sperm are then taken in by the females through their siphons during feeding and respiration. Eggs are held in the gills of the female where they come into contact with the sperm. Once eggs are fertilized, females retain them in their gills until the larvae (glochidia) fully develop. The change (metamorphosis) of the larvae of most unionid species into juvenile mussels requires a parasitic stage on the fins, gills, or skin of a fish. Late stage mussel glochidia are released into the water column and they must find and attach to a suitable host fish in order to develop into a juvenile mussel. Glochidia may be released separately or in masses termed conglutinates. Developed juvenile mussels normally detach from their fish host and sink to the stream bottom, where they continue to develop, provided they land in a suitable substrate with correct water conditions. Consequently, unionid mussels are specialized to only parasitize one or a few suitable host fish that occupy similar habitats as the mussels.

These 5 mussels are historically native to portions of the "Cumberlandian" Region of the Tennessee and Cumberland River Systems. The Cumberlandian Region, considered to be the center of freshwater mussel diversity in North America, historically contained over 100 species, 45 of which were found nowhere else (Starnes and Bogan 1988; Parmalee and Bogan 1998; Cicerello and Laudermilk 2001). The Cumberlandian Region encompasses the Cumberland River and its tributaries downstream to the vicinity of Clarksville, Montgomery County, Tennessee; the Tennessee River and its tributaries downstream to the vicinity of Muscle Shoals, Colbert and Lauderdale Counties, Alabama; the Duck River (Tennessee River system)

downstream to just below Columbia, Maury County, Tennessee (Ortmann 1924); and the Buffalo River (a lower Duck River tributary) (van der Schalie 1973). Biological factors relevant to these freshwater mussels' habitat needs are discussed in the "Methods and Analysis used to Identify Proposed Critical Habitat" section of this proposed rule. We present information below on taxonomy, life history, and distribution specific to these 5 Cumberlandian mussels. Additional information can be found in our final listing determination for these mussels (62 FR 1647) and agency draft recovery plan (April 22, 2003, 68 FR 19844) (Service 2003).

Taxonomy, Life History, and Distribution

Cumberland Elktoe (Alasmidonta atropurpurea (Rafinesque 1831))

Adult Cumblerand elktoe may reach lengths of up to 10.0 centimeters (cm) (3.9 inches (in)) (Parmalee and Bogan 1998). Gravid females (females with larvae) have been observed between October and May, but fish infected with glochidia of the Cumberland elktoe have not been encountered until March (Gordon and Layzer 1993). While glochidial infestation from this species has been recorded on 5 native fish species, glochidia successfully transformed or developed only on the northern hogsucker (*Hypentelium nigricans*) under laboratory conditions (Gordon and Layzer 1993). This species appears to prefer habitats in medium-sized streams that contain sand and mud substrata interspersed with cobbles and large boulders (Call and Parmalee 1981; Parmalee and Bogan 1998).

The Cumberland elktoe is endemic to the upper Cumberland River system in southeast Kentucky and north-central Tennessee. It appears to have historically occurred only in the main stem of the Cumberland River and primarily its southern tributaries upstream from the hypothesized original location of Cumberland Falls near Burnside, Pulaski County, Kentucky (Cicerello and Laudermilk 2001). This species has apparently been extirpated from the main stem of the Cumberland River as well as Laurel River and its tributary, Lynn Camp Creek (Service 2003). Based on recent records, the Cumberland elktoe continues to persist in 12 Cumberland River tributaries: Laurel Fork, Claiborne County, Tennessee and Whitley County, Kentucky; Marsh Creek, McCreary County, Kentucky; Sinking Creek, Laurel County, Kentucky; Big South Fork, Scott County, Tennessee, and McCreary County, Kentucky; Rock Creek, McCreary County, Kentucky; North Fork White Oak Creek, Morgan and Fentress County, Tennessee; Clear Fork, Fentress, Morgan, and Scott Counties, Tennessee; North Prong Clear Fork and Crooked Creek, Fentress County, Tennessee; White Oak Creek, Scott County, Tennessee; Bone Camp Creek, Morgan County, Tennessee; and the New River, Scott County, Tennessee (Call and Parmalee 1981; Bakaletz 1991; Gordon 1991; Cicerello 1996; Parmalee and Bogan 1998; Cicerello and Laudermilk 2001; Ronald Cicerello, Kentucky State Nature Preserves Commission, pers. comm. 2002, 2003; Service 2003).

Oyster Mussel (Epioblasma capsaeformis (Lea 1834))

According to Parmalee and Bogan (1998), adult oyster mussels can reach lengths of up to 7.0 cm (2.8 in). Ortmann (1924) was the first to note color differences in female oyster mussel mantle pads (shell lining). The mantle color appears to be bluish or greenish white in the Clinch River, grayish to blackish in the Duck River, and nearly white in the Big South Fork population (Ortmann 1924; Service 2003). In addition, the Duck River form achieves nearly twice the size of specimens from other populations. Two small projections (microattractants) at the junction of the mantle pads serve to attract host fish. Subtle differences in the morphology of these projections or structures also exist in these two populations (J.W. Jones, Virginia Tech, pers.comm. 2002).

Spawning probably occurs in the oyster mussel in late spring or early summer (Gordon and Layzer 1989). Glochidia of the oyster mussel have been identified on seven native host fish species, including the wounded darter (*Etheostoma vulneratum*), redline darter (*E. rufilineatum*), bluebreast darter (*E. camurum*), dusky darter (*Percina sciera*), banded sculpin (*Cottus carolinae*), black sculpin (*C. baileyi*), and mottled sculpin (*C. bairdi*) (Yeager and Saylor 1995; J.W. Jones and R.J. Neves, U.S. Geological Survey (USGS), unpublished (unpub.) data 1998). Oyster mussels typically occur in sand and gravel substrate in streams ranging from medium-sized creeks to large rivers (Gordon 1991; Parmalee and Bogan 1998). They apparently prefer shallow riffles and shoals and have been found associated with water willow (*Justicia americana*) beds (Ortmann 1924; Gordon 1991; Parmalee and Bogan 1998).

The oyster mussel was one of the most widely distributed Cumberlandian mussel species, with historical records existing from six States (Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia). It has apparently been eliminated from both main stems of the Cumberland and Tennessee Rivers and a large number of their tributaries (Fraley and Ahlstedt 2001; S.A. Ahlstedt, USGS, pers. comm. 2002; Service 2003). This mussel is now only extant in a handful of stream and river reaches in four States in the Tennessee and Cumberland River systems, including the Duck River, Maury and Marshall Counties, Tennessee; Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia; Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Nolichucky River, Hamblen and Cocke Counties, Tennessee; and Big South Fork of the Cumberland River, McCreary County, Kentucky, and Scott County, Tennessee (Wolcott and Neves 1990; Ahlstedt 1991; Bakaletz 1991; Gordon 1991; Ahlstedt and Tuberville 1997; S.A. Ahlstedt, pers. comm. 2002; Service 2003).

Cumberlandian Combshell (Epioblasma brevidens (Lea 1831))

Most mature Cumberlandian combshell are approximately 5 cm (2 in) in length, but may reach 8 cm (3.1 in) (Parmalee and Bogan, 1998). Spawning in this species most likely occurs in late winter (Gordon 1991). Glochidia of the Cumberlandian combshell have been identified on several native host fish species, including the wounded darter, redline darter, bluebreast darter, snubnose darter (*Etheostoma simoterum*), greenside darter (*E. blennioides*), logperch (*Percina caprodes*), banded sculpin, black sculpin, and mottled sculpin (Yeager and Saylor 1995; J.W. Jones and R.S. Neves, USGS, unpub. data 1998). This species is typically associated with riffle and shoal areas in medium to large-sized rivers (Gordon 1991; Parmalee and Bogan 1998). It is found in substrata ranging from coarse sand to cobble (Gordon 1991).

This species, like the oyster mussel, was once widely distributed, historically occurring in five States (Alabama, Kentucky, Mississippi, Tennessee, and Virginia). It has likewise apparently been eliminated from the mainstems of the Tennessee and Cumberland Rivers and several of their tributaries (Service 2003). It is now restricted to five stream reaches. The Cumberlandian combshell persists in Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi; Powell River, Claiborne and Hancock counties, Tennessee, and Lee County, Virginia; Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Big South Fork, Scott County, Tennessee and McCreary County, Kentucky; and Buck Creek, Pulaski County, Kentucky (Isom and Yokely 1968; Schuster *et al.* 1989; Ahlstedt 1991; Bakaletz 1991; Gordon 1991; Ahlstedt and Tuberville 1997; Hagman 2000; Ahlstedt, pers. comm. 2002; B. Jones, Mississippi Museum of Natural Science, pers. comm. 2002; Cicerello, pers.comm. 2003; Garner and McGregor, in press).

Purple Bean (Villosa perpurpurea (Lea 1861))

Adult purple beans are typically 2.5 to 7.5 cm (1.0 to 3.0 in) in length (R. Tawes, personal observation, 2003). Gravid females have been observed in January and February (Ahlstedt, 1991; Bob Butler, Service, pers. comm, 2003). Glochidia of the purple bean have been identified on the fantail darter (*Etheostoma flabellare*), greenside darter, and mottled sculpin (Watson and Neves 1996). This species inhabits small creeks to medium-sized rivers and can be found in a variety of substrates (Gordon 1991; Parmalee and Bogan 1998).

The purple bean is endemic to the upper Tennessee River drainage in Tennessee and Virginia. Its historical range included the Powell River, Lee County, Virginia; Clinch River system, Claiborne, Grainger, and Hancock Counties, Tennessee, and Russell, Scott, Tazewell, and Wise Counties, Virginia; Emory and Obed Rivers, Morgan and Cumberland counties, Tennessee; and Holston River System, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia. It has apparently been extirpated from the Powell River, Emory River, North Fork Beech Creek (Holston River System) and North Fork Holston River (Service 2003). The purple bean persists in portions of the Clinch River mainstem, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Copper Creek (a Clinch River tributary), in Scott County, Virginia; Indian Creek (a Clinch River tributary), in Tazewell County, Virginia; in the Obed River, Morgan and Cumberland Counties, Tennessee; and in Beech Creek, a tributary of the Holston River, Hawkins County, Tennessee (Ahlstedt 1991; Gordon 1991; Winston and Neves 1997; Watson and Neves 1998; Ahlstedt and Tuberville 1997; S.A. Ahlstedt, pers. comm. 2000, 2002, 2003; Fraley and Ahlstedt 2001).

Rough Rabbitsfoot (Quadrula cylindrica strigillata (Wright, 1898))

The rough rabbitsfoot is the largest of the five mussels, with adult specimens sometimes reaching 12 cm (5 in) in length (Parmalee and Bogan, 1998). Spawning in this species apparently occurs from May through June (Yeager and Neves 1986). Glochidia of rough rabbitsfoot have been identified on the whitetail shiner (*Cyprinella galactura*), spotfin shiner (*Cyprinella spiloptera*), and bigeye chub (*Hybopsis amblops*) (Yeager and Neves 1986). This species prefers clean sand and gravel substrate in streams ranging from medium-sized creeks to medium-sized rivers (Parmalee and Bogan 1998).

Like the purple bean, the rough rabbitsfoot is endemic to the upper Tennessee River system. The rough rabbitsfoot historically occupied the Powell River, Hancock and Claiborne Counties, Tennessee, and Lee County, Virginia; Clinch River system, Hancock and Claiborne Counties, Tennessee, and Russell, Scott, and Tazewell Counties, Virginia; and Holston River System, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia. It is apparently extirpated from the entire Holston River system (Service, 2003). It currently persists in portions of the Powell River, Claiborne and Hancock Counties, Tennessee and Lee County, Virginia; Clinch River, Hancock County, Tennessee and Scott, Russell, and Tazewell Counties, Virginia; and in Indian Creek, Tazewell County, Virginia (Ahlstedt 1981; Gordon 1991; Ahlstedt and Tuberville 1997; Winston and Neves 1997; Watson and Neves 1998; S.A. Ahlstedt, pers. comm. 2000, 2002, 2003; Fraley and Ahlstedt 2001).

The summary of these five mussels presented above represents our current understanding of their historical and current range and distribution. Research is ongoing regarding identification of some species. For example, varying mantle coloration, microattractant configuration, size differential, and spawning cycles may indicate that the oyster mussel is actually a species complex (more than one species represented). Researchers from Virginia Tech are in the process of formally describing the Duck River variety (J.W. Jones, Virginia Tech, in press), and some malacologists, molluscs biologists, believe that the Big South Fork variety is actually a distinct, undescribed species, or possibly a variant of the tan riffleshell (*Epioblasma florentina walkeri*), a closely related species (S.A. Ahlstedt, USGS, pers. comm. 2002). A recent genetic investigation on the genus *Epioblasma* using mitochondrial DNA markers suggested that the tan riffleshell and the oyster mussel may be the same species (Buhay *et al.* 2002). Because these observations have not yet been published or peer reviewed and/or are not conclusive, we believe for the purposes of this proposed rule that the Duck River and Big South Fork populations are true *E. capsaeformis*. The distributions presented above are based upon shell morphology as described and currently recognized in the scientific literature. Therefore, we will consider these species' current ranges as outlined above, until presented with new information.

Summary of Decline and Threats to Surviving Populations

These five mussels, like many other Cumberlandian Region mussel taxa, have undergone significant reductions in total range and population density (Layzer *et al.* 1993; Williams *et al.* 1993; Neves *et al.* 1997; Fraley and Ahlstedt 2000; Cicerello and Laudermilk 2001; Service 2003), primarily resulting from human-induced changes in stream and river channels, including channel modifications (*e.g.*, dams, dredging, mining) and historic or episodic water pollution events (Schuster *et al.* 1989; Gordon 1991; Neves *et al.* 1997; Parmalee and Bogan 1998; Cicerello and Laudermilk 2001). The entire length of the main stems of the Tennessee and Cumberland Rivers and many of their largest tributaries are now impounded or greatly modified by the discharge of tailwaters (Service 2003). For example, more than 3,700 rkm (2,300 rmi) (about 20 percent) of the Tennessee River and its tributaries were impounded by the Tennessee Valley Authority by 1971 (Service 2003). Dams permanently alter the free-flowing aquatic habitat required by many mussels and their host fish. None of the five mussels are known to survive in impounded waters. Riverine mussels are killed during construction of dams; they may be suffocated by sediments that accumulate behind the dams and the reduced water flow behind dams limits food and oxygen available to mussels. Mussel populations in free-flowing river sections below dams can be adversely affected or extirpated from reduced dissolved oxygen levels, unnatural flow regimes, and colder temperatures, or greatly modified by the dams or their tailwater releases (Neves *et al.* 1997). Many fish species that serve as hosts to mussel larvae are also eliminated by dams and impounded waters.

Other forms of habitat modification, such as channelization, channel clearing and de-snagging (woody debris

removal), and gravel mining, caused stream bed scour and erosion, increased turbidity, reduction of groundwater levels, and sedimentation, often resulting in severe local impacts to and even extirpation of mussel species. Sedimentation may also eliminate or reduce recruitment of juvenile mussels (Negus 1966), and suspended sediments can also interfere with feeding (Dennis 1984).

Water pollution from various point-sources such as mines, industrial plants, and municipal sewage treatment facilities also have contributed to the demise or decline of the five species in certain portions of their historical ranges. Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (*e.g.*, chlorine, ammonia, heavy metals, high concentrations of nutrients) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987; Goudreau *et al.* 1988; Keller and Zam 1991). Stream discharges from these sources could result in decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry, which may impact mussels or their host fish.

An additional major impact on individual populations of the five mussels that has resulted from historic activities (especially dam construction) was separation and isolation of populations by impoundments or large stretches of unsuitable habitat, rendering natural reproduction between those populations (and associated genetic interchange) problematic (Service 2003). Once existing in hundreds of river kilometers, these five mussels now survive in only a few relatively small, isolated populations of questionable long-term viability which cover portions of Virginia, Kentucky, Alabama, Tennessee, and Mississippi (Service 2003). Small populations are more vulnerable to natural random events such as droughts, as well as to changes in human activities and land-use practices that impact aquatic habitats (Neves *et al.* 1997). Current threats to surviving populations of these five mussels include continued habitat loss and fragmentation, cumulative effects of land use activities on aquatic environments, population isolation and associated deleterious genetic effects such as inbreeding depression, and competition with invasive exotic mussel species (Foose *et al.* 1995; Neves *et al.* 1997). Non-point source pollution, such as sediment and agrochemical run-off, which are known to adversely affect aquatic invertebrates (Waters 1995; Folkerts 1997) also poses a continuing threat to the long-term survival of these remaining mussel populations (Wolcott and Neves 1990; Neves *et al.* 1997; Service 2003). More detailed information on the threats to these species can be found in the January 10, 1997, final listing determination (62 FR 1647) and the agency draft recovery plan for these five species (Service 2003).

Previous Federal Actions

We discussed our previous Federal actions in the Final listing rule for these 5 mussel species (62 FR 1649). The following discuss our Federal actions since the Final listing rule.

On January 10, 1997, we published a final rule listing the 5 mussels as endangered. At that time, we determined that critical habitat was not prudent because it would result in no known benefit to the five species and that designation could pose a further threat to the five mussels by publishing their site-specific localities.

In June 1998, a technical draft recovery plan for the five mussels was written and underwent a technical review dealing primarily with the biological accuracy and sufficiency of the plan. We released an agency draft recovery plan on April 22, 2003, and disseminated to State and Federal agencies, universities, public officials, nongovernmental organizations, and knowledgeable individuals for review and comment on all aspects of the plan. We published in the **Federal Register** a Notice of Draft Recovery Plan Availability (68 FR 19844). The comment period will close on June 23, 2003.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed a lawsuit in U.S. District Court for the Eastern District of Tennessee against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging our not-prudent critical habitat determination for the Cumberlandian combshell, Cumberland elktoe, purple bean, rough rabbitsfoot, and oyster mussel (United States District Court, Eastern District of Tennessee (*Southern Appalachian Biodiveristy Project* v. *U.S. Fish and Wildlife Service et al.*, No. 2:00–CV–361). On November 8, 2001, the District Court issued an order directing us to re-evaluate our prudency determination for these five mussels and submit new proposed prudency determinations for the Cumberland elktoe to the **Federal Register** no later than May 19, 2003, and for the remaining four mussels to the **Federal Register** no later than June 16, 2003. We were also directed to submit by those same dates new proposed critical habitat designations, if prudent. Additionally, for these mussels in which critical habitat was found to be prudent, we were directed to finalize our designation not less than 12 months following the prudency determination.

This proposal is the product of our re-evaluation of our 1997 determination that critical habitat for these five mussels was not prudent. It reflects our interpretation of recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on the species' biology or distribution, or threats to the species, we may reevaluate this proposal to propose additional critical habitat, propose boundary refinements that substantially change existing proposed critical habitat, or withdraw our proposal to designate critical habitat.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect critical habitat. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. The Service has found that the designation of critical habitat provides little additional protection to most listed species.

In order for habitat to be included in a critical habitat designation, the habitat features must be "essential to the conservation of the species." Such

critical habitat designations identify, to the extent known and using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about which areas might be found to be essential if better information became available, or which areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then we will include the area in the critical habitat designation. Our regulations state that "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area currently occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species; the recovery plan; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys, studies, and biological assessments; unpublished materials; and expert opinion or personal knowledge.

Section 4 of the Act generally requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. There are several thousands of kilometers of perennial streams in the Cumberlandian Region. Many of these flow through private property and may not have been adequately surveyed for mussels. We recognize that additional small, limited populations for some of these species could exist in some of these streams and may be discovered over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the take prohibitions pursuant to section 9 of the Act, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our January 10, 1997, final rule (62 FR 1647), we determined that both situations applied to these five mussels, and consequently indicated that the designation of critical habitat was not prudent.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the "increased threat" rationale for a "not prudent" determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the "increased threat rationale," the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the five mussels are vulnerable to unrestricted collection, vandalism, or disturbance of their habitat and that these threats might be increased by the designation of critical habitat, publication of critical habitat maps, and further dissemination of location and habitat information. The low numbers and restricted range of these mussels make it unlikely that their populations could withstand even moderate collecting pressure, or vandalism. However, at this time we do not have specific evidence for the taking, collection, trade, vandalism, or other unauthorized human disturbance specific to these five mussels.

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a "not prudent" finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280). We are already working with Federal and State agencies, private individuals, and organizations in carrying out conservation activities for these five mussels and in conducting surveys for

additional occurrences of the species and to assess habitat conditions. These entities are fully aware of the distribution, status, and habitat requirements for these mussels, as currently known. However, the designation may provide additional information to individuals, local and State governments, and other entities engaged in long-range planning, since areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. Accordingly, we withdraw our previous determination that the designation of critical habitat will not benefit these five mussel species. Therefore, we determine that the designation of critical habitat is prudent for the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot and propose to designate critical habitat for these mussels. At this time, we have sufficient information necessary to identify specific areas as essential to the conservation of these five mussel species and are therefore proposing critical habitat (see "Methods and Analysis used to Identify Proposed Critical Habitat" section below for a discussion of information used in our reevaluation).

Methods and Analysis Used To Identify Proposed Critical Habitat for Five Mussel Species

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), we used the best scientific information available to determine critical habitat areas that contain the physical and biological features that are essential for the conservation of these 5 mussels. We reviewed the available information pertaining to the historic and current distributions, life histories, host fishes, habitats of, and threats to these species. The information used in the preparation of this proposed designation includes our own site-specific species and habitat information; recent biological surveys and reports and communications with other qualified biologists or experts; Statewide Geographic Information System (GIS) species occurrence coverages provided by the Kentucky State Nature Preserves Commission, Tennessee Department of Environment and Conservation, and Tennessee Valley Authority; peer-reviewed scientific publications; the final listing rule for the five mussels; and our draft agency recovery plan for these mussels. We considered all collection records within the last 15 years from streams currently and historically known to be occupied by one or more of the species (*see* "Taxonomy, Life History, and Distribution" section above).

As discussed in part under the "Summary of Decline" section of this rule and the agency draft recovery plan (Service 2003), the five mussels are highly restricted in distribution, generally occur in small populations, and show little evidence of recovering from historic habitat loss without significant human intervention. In fact, the draft recovery plan states that recovery for the five mussels is not likely in the near future because of the extent of their decline, the relative isolation of remaining populations, and varied threats to their continued existence. Therefore, the recovery plan emphasizes protection of surviving populations of these five mussels and their stream and river habitats, enhancement and restoration of habitats, and population management, including augmentation and reintroduction of the mussels.

Much of what is known about the specific physical and biological habitat requirements of these five mussels is summarized above in the "Background" section of this rule and in the agency draft recovery plan. In determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection, in accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

On the basis of the best available information, we include the following as primary constituent elements essential for the conservation of the five mussels:

1. Permanent, flowing stream reaches with a flow regime (*i.e*, the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of the five mussels and their host fish;

2. Geomorphically stable stream and river channels and banks (structurally stable stream cross section);

3. Stable substrates, consisting of mud, sand, gravel, and/or cobble/boulder, with low amounts of fine sediments or attached filamentous algae;

4. Water quality (including temperature, turbidity, oxygen content, and other characteristics) necessary for the normal behavior, growth, and survival of all life stages of the five mussels and their host fish; and

f. Fish hosts with adequate living, foraging, and spawning areas for them.

In considering and identifying primary constituent elements, we have taken into account the dynamic nature of riverine systems. We recognize that riparian areas and floodplains are integral parts of the stream ecosystem, important in maintaining channel geomorphology; and providing nutrient input and buffering from sediments and pollution and that side channel and backwater habitats may be important in the life cycle of fish that serve as hosts for mussel larvae.

We considered several factors in the selection and proposal of specific areas for critical habitat for these five mussels. We assessed the recovery strategy outlined in the agency draft recovery plan for these species, which emphasizes: (1) Protection and stabilization of surviving populations (2) protection and management of their habitat (3) augmentation of existing small populations (4) reestablishment/reintroduction of new populations within their historic ranges, and (5) research on species biology and ecology. Small, isolated populations are subject to the loss of unique genetic material (genetic drift) (Soulé 1980; Lacy *et al.* 1995) and the gradual loss of reproductive success or fecundity due to limited genetic diversity (Foose *et al.* 1995). They are likewise more vulnerable to extirpation from random catastrophic events and to changes in human activities and land-use practices (Soulé 1980; Lacy *et al.* 1995). The ultimate goal of the agency draft recovery plan is to restore enough viable (self-sufficient) populations of these five mussels such that each species no longer needs protection under the Act.

In the agency draft recovery plan, we selected the number of distinct viable stream populations required for delisting of each of the five mussels on the basis primarily of the historic distribution of each species (Table 1). For example, the rough rabbitsfoot is narrowly endemic to the upper Tennessee River basin. It historically occupied only three river reaches and, therefore, its conservation can be achieved with fewer populations. We have concluded that identification of critical habitat that would provide for the number of populations outlined in Table 1 for each species is essential to their conservation.

TABLE 1.—NUMBER OF DISTINCT VIABLE STREAM POPULATIONS OF FIVE CUMBERLANDIAN MUSSELS REQUIRED BEFORE DELISTING CAN OCCUR AS OUTLINED IN DRAFT AGENCY RECOVERY PLAN (SERVICE 2003)

Species	Number of populations required for delisting
Cumberland elktoe	10
Oyster mussel	11
Cumberlandian combshell	10
Purple bean	4
Rough rabbitsfoot	3

Our approach to delineating specific critical habitat units, based on the recovery strategy outlined above, focused first on considering the historic ranges of the five mussels. We evaluated streams and rivers within the historic ranges of these five mussels for which there was evidence that these species had occurred there at some point (*i.e.*, collection records). Within the historic range of these species, we found that a large proportion of the streams and rivers in the Tennessee and Cumberland River Basins that historically supported these mussels has been modified by existing dams and their impounded waters. Extensive portions of the Tennessee and Cumberland River drainages, including the mainstem of the Cumberland River, segments of the Holston River, the Powell River, the Tennessee River mainstem, and numerous tributaries of these rivers, cannot be considered essential to the conservation of these species because they no longer provide the physical and biological features that are essential for their conservation (see Primary Constituent Elements discussion above). We also did not consider several streams with single site occurrence records of a single species as essential to the conservation of these species because these areas exhibited limited habitat availability, isolation, degraded habitat, and/or low management value or potential (*e.g.*, Cedar Creek in Colbert County, Alabama; Little Pigeon River in Sevier County, Tennessee). Similarly, we did not consider as essential areas from which there have been no collection records of these species for several decades (*e.g.*, portions of the upper Holston River system in Tennessee and Virginia, Buffalo River, Little South Fork of the Cumberland River, Laurel River).

We then identified 13 stream or river reaches (units) within the historic range of these species for which our data (*i.e.*, collection records over the last 15 years and view of experts) indicate that one or more of the 5 mussel species are present along with the primary constituent elements (*see* Table 2; Index map). These units total approximately 892 rkm (544 rmi), in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. We believe that these areas support darters, minnows, sculpins, and other fishes that have been identified as hosts or potential hosts for one or more of the mussels, as evidenced by known fish distributions (Etnier and Starnes 1998), the persistence of the mussels over extended periods of time, or field evidence of recruitment (Ahlstedt pers. comm. 2002, B. Butler, pers.comm. 2002). We consider all of these 13 reaches essential for the conservation of these 5 mussels. As discussed in the agency draft recovery plan, long-term conservation of these five mussels is unlikely in their currently reduced and fragmented state. Therefore, it is essential to include in this designation these 13 reaches within the historic range of all 5 mussels that still contain mussels and the primary constituent elements of habitat.

We then considered whether these essential areas were adequate for the conservation of these five mussels. As indicated in the agency draft recovery plan, threats to the five species are compounded by their limited distribution and isolation and it is unlikely that currently occupied habitat is adequate for the conservation of all five species. Conservation of these species requires expanding their ranges into currently unoccupied portions of their historic habitat because small, isolated, fragmented aquatic populations, as discussed previously, are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction.

Each of the 13 habitat units is currently occupied by 1 or more of the 5 listed mussels. Because portions of the historic range of each of the 5 mussels are shared with three or more of the other mussel species, there is considerable overlap between species' current and historic distribution within the 13 habitat units. This offers opportunities to increase each species' current range and number of extant populations into units currently occupied by other listed species included in this designation. For example, the oyster mussel historically inhabited seven units and currently inhabits five. Successful reintroduction of the species into units that they historically occupied (and that are currently occupied by one or more of the five mussels) would expand the number of populations, thereby reducing the threat of extinction.

We believe that the habitat proposed for designation in these 13 units is essential to the conservation of all 5 mussels and that the 13 units encompass sufficient habitat necessary for the recovery of 3 of these 5 species (the Cumberland elktoe, purple bean, and rough rabbitsfoot.) However, we do not believe that the 13 units provide sufficient essential habitat for the conservation of the oyster mussel and Cumberlandian combshell, based on the number of viable populations required for conservation and recovery of these two species (Table 1). For example, these 13 proposed units include occupied habitat for 5 existing oyster mussel populations and include unoccupied habitat in three other areas that could support oyster mussel populations. Our agency draft recovery plan, however, requires 11 viable populations of the oyster mussel before it may be delisted. The essential area as defined by our 13 units is not adequate to ensure the conservation of the oyster mussel and Cumberlandian combshell. Therefore, we then considered free-flowing river reaches that historically contained the Cumberlandian combshell and oyster mussel but that have had no collection records for the past 15 years, and that, resulting from water quality and quantity improvements, likely contain suitable habitat for these mussels. Through our analysis, we identified 4 such reaches that are separated by dams and impoundments from free-flowing habitats that contain extant populations of oyster mussels and Cumberlandian combshells. These areas are the lower French Broad River below Douglas Dam to its confluence with the Holston River, Sevier and Knox Counties, Tennessee; the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River, Jefferson, Grainger, and Knox Counties, Tennessee; the Tennessee River mainstem below Wilson Dam in Colbert and Lauderdale Counties, Alabama; and a stretch of the Rockcastle River in Laurel, Rockcastle, and Pulaski Counties, Kentucky. Natural recolonization of these areas by these two species is unlikely; however, these

species can be reintroduced into these areas to create the additional viable populations necessary to conserve and recover the species. We have therefore concluded that these four reaches are also essential to the conservation of the oyster mussel and Cumberlandian combshell.

Although we have concluded that they are essential, we are not proposing to designate critical habitat in each of these 4 reaches, due to their current or potential status as nonessential experimental population areas. Section 10(j) of the Act states critical habitat shall not be designated for any experimental population determined to be not essential to the continued existence of the species. On June 14, 2001, we published a final rule to designate nonessential experimental population status under section 10(j) of the Act for the reintroduction of 17 Federally listed species (including the oyster mussel and Cumberlandian combshell) to the free-flowing reach below Wilson Dam, in the Tennessee River (66 FR 32250). Therefore, we are not proposing critical habitat for the oyster mussel and Cumberlandian combshell in the Tennessee River mainstem below Wilson Dam in Colbert and Lauderdale Counties, Alabama.

In addition, we are actively considering the remaining three reaches (the lower French Broad, lower Holston, and Rockcastle Rivers) for designation as nonessential experimental populations in order to facilitate the reintroduction of the oyster mussel and Cumberlandian combshell, as well as numerous other listed mussels, fishes, and snails. Therefore, while we recognize their likely importance to our recovery strategy for these species, we are not proposing these three river reaches as critical habitat. A further discussion of these areas can be found below (*see* Exclusions under 4(b)(2) section).

In summary, the habitat contained within the 13 proposed units described below and the habitat within the 4 historic reaches designated or under consideration for nonessential experimental population status constitute our best determination of areas essential for the conservation, and eventual recovery, of these 5 Cumberlandian mussels. We are proposing as critical habitat only 13 habitat units encompassing approximately 849 rkm (528 rmi) of stream and river channels in Alabama, Mississippi, Tennessee, Kentucky, and Virginia. Each of these units is occupied by one or more of the 5 mussels. Although these 13 areas represent only a small proportion of each species' historic range, these habitat units include a significant proportion of the Cumberlandian Region's remaining highest-quality free-flowing rivers and streams, and reflect the variety of small-stream-to-large-river habitats historically occupied by each species. Because mussels are naturally restricted by certain physical conditions within a stream or river reach (*e.g.*, flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation. Proposed critical habitat may be revised for any or all of these species should new information become available prior to the final rule, and existing critical habitat may be revised if new information becomes available after the final rule.

Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (*see* "Primary Constituent Elements" section), and that may require special management considerations or protection. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed in the "Effects of Critical Habitat" section as "Federal Actions That May Affect Critical Habitat and Require Consultation." None of the proposed critical habitat units is presently under special management or protection provided by a legally operative plan or agreement for the conservation of the five mussel species. Therefore, we have determined that the proposed units require special management or protection.

Proposed Critical Habitat Designation

The areas that we are proposing for designation as critical habitat for the five mussels provide one or more of the primary constituent elements described above. Table 2 summarizes the location and extent of proposed critical habitat, and whether or not that critical habitat is currently occupied or unoccupied. These areas require special management considerations to ensure their contribution to the conservation of these mussels. For each stream reach proposed as a critical habitat unit, the up-stream and downstream boundaries are described in general detail below; more precise estimates are provided in the Regulation Promulgation section of this rule.

TABLE 2*.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE AREA, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE FIVE ENDANGERED MUSSEL SPECIES

Species	Approximate river distances currently occupied by the species		Approximate river distances currently unoccupied by the species	
	River kilometers	River miles	River kilometers	River miles
Cumberland elktoe	204	128		
Oyster mussel	511	322	119	74.5
Cumberlandian combshell	527	330	82	51
Purple bean	330	216	154	94
Rough rabbitsfoot	390	244.5	21	13
Total	1962	1240.5	376	232.5

*Table 2 refers to the location and extent of proposed critical habitat for each species. For more detail, refer to § 17.95

Species, Stream (Unit), and State	Currently occupied		Currently unoccupied	
Cumberland elktoe:				
Rock Creek (Unit 8), KY	11	7		
Big South Fork (Unit 9), TN, KY	43	27		
North Fork White Oak Creek (Unit 9), TN	11	7		
New River (Unit 9), TN	14.5	9		
Clear Fork (Unit 9), TN	40	25		
White Oak Creek (Unit 9), TN	10	6		
Bone Camp Creek (Unit 9), TN	6	4		
Crooked Creek (Unit 9), TN	14.5	9		
North Prong Clear Fork (Unit 9), TN	14.5	9		
Sinking Creek (Unit 11), KY	13	8		
Marsh Creek (Unit 12), KY	19	12		
Laurel Fork (Unit 13), TN, KY	8	5		
Total	204	128		
Oyster mussel:				
Duck River (Unit 1), TN	74	46		
Bear Creek (Unit 2), AL, MS			40	25
Powell River (Unit 4), TN, VA	154	94		
Clinch River (Unit 5), TN, VA	242	150		
Copper Creek (Unit 5), VA			21	13
Nolichucky River (Unit 6), TN	8	5		
Big South Fork (Unit 9), TN, KY	43	27		
Buck Creek (Unit 10), KY			58	36
Total	511	322	119	74.5
Cumberlandian combshell:				
Duck River (Unit 1), TN			74	46
Bear Creek (Unit 2), AL, MS	40	25		
Powell River (Unit 4), TN, VA	154	94		
Clinch River (Unit 5), TN, VA	242	148		
Nolichucky River (Unit 6), TN			8	5
Big South Fork (Unit 9), TN, KY	43	27		
Buck Creek (Unit 10), KY	58	36		
Total	527	330	82	51
Purple bean:				
Obed River (Unit 3), TN	40	25		
Powell River (Unit 4), TN, VA			154	94
Clinch River (Unit 5), TN, VA	242	148		
Copper Creek (Unit 5), VA	21	13		
Indian Creek (Unit 5), VA	4	2.5		
Beech Creek (Unit 7), TN	23	14		
Total	330	216	154	94
Rough rabbitsfoot:				
Powell River (Unit 4), TN, VA	154	94		
Clinch River (Unit 5), TN, VA	242	148		
Copper Creek (Unit 5), VA			21	13
Indian Creek (Unit 5), VA	4	2.5		
Total	390	244.5	21	13

Critical Habitat Unit Descriptions

The critical habitat units described below include the stream and river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. We are proposing the following units for designation as critical habitat for these five mussels.

Unit 1. Duck River, Maury and Marshall Counties, Tennessee

Unit 1 encompasses 74 rkm (46 rmi) of the mainstem of the Duck River channel from rkm 214 (rmi 133) (0.3 rkm (0.2 rmi) upstream of the First Street Bridge) in the City of Columbia, Maury County, Tennessee, upstream to Lillards Mill Dam at rkm 288 (rmi 179), Marshall County, Tennessee. This reach of the Duck River contains a robust, viable population of the oyster mussel (Ahlstedt 1991; Gordon 1991; S.A. Ahlstedt USGS, pers. comm. 2002) and historically supported the Cumberlandian combshell (Hinkley and Marsh 1885; Ortmann 1925; Isom and

Yokley 1968; van der Schalie 1973; Gordon 1991).

Unit 2. Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi

Unit 2 encompasses 40 rkm (25 rmi) of the mainstem of Bear Creek from the backwaters of Pickwick Lake at rkm 37 (rmi 23), Colbert County, Alabama, upstream through Tishomingo County, Mississippi, ending at the Mississippi/Alabama State line. Recent mussel surveys in the Mississippi section of Bear Creek confirmed that the Cumberlandian combshell is still extant there (R.M. Jones, MMNS, pers. comm. 2002), and continues to be present in the Colbert County, Alabama portion of the unit (Isom and Yokley 1968; Garner and McGregor, in press). Bear Creek is in the historical range of the oyster mussel (Ortmann 1925).

Unit 3. Obed River, Cumberland and Morgan Counties, Tennessee

Unit 3 encompasses 40 rkm (25 rmi) and begins at the confluence of the Obed with the Emory River, Morgan County, Tennessee, and continues upstream to Adams Bridge, Cumberland County, Tennessee. This unit currently contains a population of the purple bean (Gordon 1991; S.A. Ahlstedt, USGS, pers. comm. 2002) and is also within designated critical habitat for the Federally listed spotfin chub (*Erimonax monacha*) (*see* "Existing Critical Habitat" and Table 3). Unit 3 is located within the Obed National Wild and Scenic River, a unit of the National Park Service, and the Catoosa Wildlife Management Area, which is owned by the Tennessee Wildlife Resources Agency.

Unit 4. Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia

Unit 4 encompasses 154 rkm (94 rmi) and includes the Powell River from the U.S. 25E Bridge in Claiborne County, Tennessee, upstream to river mile 159 (upstream of Rock Island in the vicinity of Pughs) Lee County, Virginia. This reach is currently occupied by the Cumberlandian combshell (Ahlstedt 1991; Gordon 1991), rough rabbitsfoot (Service 2003), and oyster mussel (Wolcott and Neves 1990), and was historically occupied by the purple bean (Ortmann 1918). It is also existing critical habitat for the Federally listed slender chub (*Erimystax cahni*) and yellowfin madtom (*Noturus flavipinnis*)(*see* "Existing Critical Habitat" and Table 3).

Unit 5. Clinch River and tributaries, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia

Unit 5 totals 272 rkm (171 rmi), including 242 rkm (148 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island, Hancock County, Tennessee, upstream to its confluence with Indian Creek in Cedar Bluff, Tazewell County, Virginia; 4 rkm (2.5 rmi) of Indian Creek from its confluence with the Clinch River upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke, Tazewell County, Virginia; and 21 rkm (13 rmi) of Copper Creek from its confluence with the Clinch River upstream to Virginia State Route 72, Scott County, Virginia. The Clinch mainstem currently contains the oyster mussel, rough rabbitsfoot, Cumberlandian combshell, and purple bean (Gordon 1991; Ahlstedt and Tuberville 1997; S.A. Ahlstedt, USGS, pers. comm. 2002). Indian Creek currently supports populations of the purple bean and rough rabbitsfoot (Winston and Neves 1997; Watson and Neves 1998). Copper Creek is currently occupied by a low density population of the purple bean, and contains historic records of both the oyster mussel and rough rabbitsfoot (Ahlstedt 1981; Fraley and Ahlstedt 2001; Ahlstedt, pers. comm. 2003). Copper Creek is critical habitat for the yellowfin madtom and a portion of the proposed Clinch River mainstem section is critical habitat for both the slender chub and the yellowfin madtom (*see* "Existing Critical Habitat" and Table 3).

Unit 6. Nolichucky River, Hamblen and Cocke Counties, Tennessee

Unit 6 includes 8 rkm (5 rmi) of the mainstem of the Nolichucky River and extends from rkm 14 (rmi 9) (approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam) to Susong Bridge in Hamblen, Cocke Counties, Tennessee. The Nolichucky River currently supports a small population of the oyster mussel (S.A. Ahlstedt, USGS, pers. comm. 2002) and was historically occupied by the Cumberlandian combshell (Gordon 1991).

Unit 7. Beech Creek, Hawkins County, Tennessee

Unit 7 encompasses 23 rkm (14 rmi) and extends from rkm 4 (rmi 2) of Beech Creek (in the vicinity of Slide, Tennessee) upstream to the dismantled railroad bridge at rkm 27 (rmi 16). It supports the best remaining population of purple bean and the only remaining population of this species in the Holston River drainage (Ahlstedt 1991; S.A. Ahlstedt, USGS, pers. comm. 2002).

Unit 8. Rock Creek, McCreary County, Kentucky

Unit 8 includes 11 rkm (7 rmi) of the mainstem of Rock Creek and begins at the Rock Creek/White Oak Creek confluence and extends upstream to Dolan Branch at rkm 18 (rmi 11) in McCreary County, Kentucky. This unit, which is bounded by the Daniel Boone National Forest and some private inholdings, is currently occupied by the Cumberland elktoe (Cicerello 1996).

Unit 9. Big South Fork and Tributaries, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky

Unit 9 encompasses 153 rkm (95 rmi) and consists of 43 rkm (27 rmi) of the Big South Fork of the Cumberland River mainstem from its confluence with Laurel Crossing Branch (downstream of Big Shoals), McCreary County, Kentucky, upstream to its confluence with the New River and Clear Fork, Scott County, Tennessee; 11 rkm (7 rmi) of North Fork White Oak Creek from its confluence with the Big South Fork upstream to Panther Branch, Fentress County, Tennessee; 14.5 rkm (9 rmi) of the New River from its confluence with Clear Fork upstream to U.S. Highway 27, Scott County, Tennessee; 40 rkm (25 rmi) of Clear Fork from its confluence with the New River upstream to its confluence with North Prong Clear Fork, Morgan, Fentress Counties, Tennessee; 10 rkm (6 rmi) of White Oak Creek from its confluence with Clear Fork upstream to its confluence with Bone Camp Creek, Morgan County, Tennessee; 6 rkm (4 rmi) of Bone Camp Creek from its confluence with White Oak Creek upstream to Massengale Branch, Morgan County, Tennessee; 14.5 rkm (9 rmi) of Crooked Creek from its confluence with Clear Fork upstream to Buttermilk Branch, Fentress County, Tennessee; and 14.5 rkm (9 rmi) of North Prong Clear Fork from its confluence with Clear Fork upstream to Shoal Creek, Fentress County, Tennessee. The mainstem of the Big South Fork currently supports the Cumberland elktoe and the best remaining Cumberlandian combshell population in the Cumberland system (Bakaletz 1991; Gordon 1991; R.R. Cicerello, Kentucky State Nature Preserves Commission (KSNPC), pers. comm. 2003). The mainstem of the Big South Fork also currently contains the oyster mussel (S.A. Ahlstedt, USGS, pers. comm. 2002; Service 2003). The remainder of the unit contains habitat currently occupied by the Cumberland elktoe (Call and Parmalee 1981; Bakaletz 1991; Gordon 1991). The largest population of Cumberland elktoe in Tennessee is in the headwaters of the Clear Fork system (Call and Parmalee 1981; Bakaletz 1991). The Big South Fork and its many tributaries may actually serve as habitat for one large interbreeding population of the Cumberland elktoe (Service 2003).

Unit 10. Buck Creek, Pulaski County, Kentucky

Unit 10 encompasses 58 rkm (36 rmi) and includes Buck Creek from the State Route 192 Bridge upstream to the State Route 328 Bridge in Pulaski County, Kentucky. Buck Creek is currently occupied by the Cumberlandian combshell (Gordon 1991; Hagman 2000; R.R. Cicerello, KSNPC, pers. comm. 2003) and historically supported the oyster mussel (Schuster *et al.* 1989; Gordon 1991).

Unit 11. Sinking Creek, Laurel County, Kentucky

Unit 11 encompasses 13 rkm (8 rmi) and extends from the Sinking Creek/Rockcastle River confluence upstream to Sinking Creek's confluence with Laurel Branch in Laurel County, Kentucky. This unit contains a strong population of Cumberland elktoe (R.R. Cicerello, KSNPC, pers. comm. 2002). This unit is primarily within land owned by the Daniel Boone National Forest, but also includes private lands.

Unit 12. Marsh Creek, McCreary County, Kentucky

Unit 12 includes 24 rkm (15 rmi) and consists of Marsh Creek from its confluence with the Cumberland River upstream to the State Road 92 bridge. This unit, which is bounded by lands owned by the Daniel Boone National Forest and private landowners, currently contains the State of Kentucky's best population of Cumberland elktoe (R.R. Cicerello, KSNPC, pers. comm. 2003) and the best remaining mussel fauna in the Cumberland River above Cumberland Falls (Cicerello and Laudermilk 2001).

Unit 13. Laurel Fork, Claiborne County, Tennessee, and Whitley County, Kentucky

Unit 13 includes 8 rkm (5 rmi) of Laurel Fork of the Cumberland River from the Campbell/Claiborne County line upstream through Claiborne County, Tennessee to 11 rkm (6.85 rmi) in Whitley County, Kentucky. The upstream terminus is 2 river miles upstream of the Kentucky/Tennessee State line. A "sporadic" population of Cumberland elktoe currently persists in this area (Cicerello and Laudermilk 2001).

Existing Critical Habitat

Approximately 206.5 miles (38 percent) of the proposed critical habitat for the five mussels (within three units) are already designated critical habitat for the yellowfin madtom, slender chub, or spotfin chub (Table 3). The spotfin chub, slender chub, and yellowfin madtom are listed as threatened species under the Act. Our consultation history on these existing critical habitat units is provided in the "Effects of Critical Habitat Designation Section."

TABLE 3.—WITHIN PROPOSED CRITICAL HABITAT DESIGNATION FOR THE FIVE MUSSELS, REACHES AND STREAMS THAT ARE CURRENTLY DESIGNATED CRITICAL HABITAT FOR OTHER FEDERALLY LISTED SPECIES

Unit (unit #)	Species	Reference	Length of overlap (km/mi)
Obed River (3)	spotfin chub	(42 FR 45527)	40/25
Powell River (4)	yellowfin madtom, slender chub	(42 FR 45527)	154/94
Clinch River (5) (and Copper Creek)	yellowfin madtom, slender chub	(42 FR 45527)	142/87.5
Total			336/206.5

Land Ownership

Streambeds of non-navigable waters and most navigable waters are owned by the riparian landowner. Waters of navigable streams are considered public waters by the States of Mississippi, Alabama, Tennessee, Kentucky, and Virginia. Table 4 summarizes primary riparian land ownership in each of the proposed units. Approximately 79 percent, 671 rkm (418 rmi), of stream channels proposed as critical habitat are bordered by private lands.

Public land adjacent to proposed critical habitat units consists of approximately 170 km (107 mi) of riparian lands, including the Obed Wild and Scenic River and the Catoosa Wildlife Management Area in the Obed River Unit (40 km (25 mi)); Daniel Boone National Forest in the Rock Creek, Sinking Creek, and Marsh Creek Units (30 km (19 mi)); and the Big South Fork National River and Recreation Area in the Big South Fork Unit (109 km (68 mi)).

TABLE 4.—ADJACENT RIPARIAN LAND OWNERSHIP IN PROPOSED CRITICAL HABITAT UNITS (RKM/RMI) IN THE TENNESSEE AND CUMBERLAND RIVER BASINS

Critical habitat units	Private	State	Federal
1. Duck River	74/46		
2. Bear Creek	40/25		
3. Obed River		32/20	8/5
4. Powell River	154/94		
5. Clinch River and tributaries	272/171		
6. Nolichucky River	8/5		
7. Beech Creek	23/14		
8. Rock Creek	11/7		
9. Big South Fork and tributaries	44/27		109/68
10. Buck Creek	58/36		
11. Sinking Creek	8/5		5/3
12. Marsh Creek	10/6		14/9

TABLE 4.—ADJACENT RIPARIAN LAND OWNERSHIP IN PROPOSED CRITICAL HABITAT UNITS (RKM/RMI) IN THE TENNESSEE AND CUMBERLAND RIVER BASINS—Continued

Critical habitat units	Private	State	Federal
13. Laurel Fork	8/5	.....	
Totals	689/434	32/20	170/107

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which apply only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. During a conference on the effects of a Federal action on proposed critical habitat, we make nonbinding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved. Also, if we conduct a formal consultation during conference, we may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat, or both. The Services' Consultation Handbook states that the destruction or adverse modification analysis focuses on the entire critical habitat area designated unless the critical habitat rule identifies another basis for the analysis, such as discrete units or groups of units necessary for different life cycle phases or units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. The extent of the five mussels' decline, the fragmentation and isolation of their habitats, and continuing impacts upon their habitats, and the importance of every unit to the recovery of the species suggests that individual units or groups of units that are used by populations which fulfill essential geographic distribution requirements are the appropriate scale for the analysis. An action occurring only within a unit or group of units may appreciably reduce the value of the critical habitat for the recovery of the species and therefore result in a determination of adverse modification.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under "Conference for Proposed Critical Habitat." Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify Critical Habitat for the Five Mussels

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a federal agency, may destroy or adversely modify critical habitat for the five mussels include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation.

(2) Actions that would significantly alter water chemistry or temperature to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(3) Actions that would significantly increase sediment deposition within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Actions that would significantly increase the filamentous algal community within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Actions that would significantly alter channel morphology or geometry to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include but are not limited to channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation.

Previous Section 7 Consultations

We have consulted on over 100 Federal actions (or activities that required Federal permits) involving these 5 species since they received protection under the Act. Nine of these were formal consultations. Federal actions that we have reviewed include Federal land management plans, road and bridge construction and maintenance, water quality standards, recreational facility development, dam construction and operation, surface mining proposals, and issuance of permits under section 404 of the Clean Water Act. Federal agencies involved with these activities included the U.S. Army Corps of Engineers; Tennessee Valley Authority; U.S. Forest Service; Environmental Protection Agency; Office of Surface Mining, Reclamation and Enforcement; National Park Service; Federal Highway Administration; and the Service. The nine formal consultations that have been conducted all involved Federal projects, including five bridge replacements in Tennessee, Kentucky, and Virginia; two Federal land management plans; and the review of two scientific collecting permits for one or more of the five mussel species. None of these formal consultations resulted in a finding that the proposed action would jeopardize the continued existence of any of the five species or destroy or adversely modify existing critical habitat previously designated in the area.

In each of the biological opinions resulting from these consultations, we included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions also included nondiscretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of these five mussels. Section 3(18) of the Act defines the term take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." Harm is further defined in our regulations (50 CFR 7.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Conservation recommendations and reasonable and prudent measures provided in previous biological opinions for these mussels have included maintaining State water quality standards, maintaining adequate stream flow rates, minimization of work in the wetted channel, restriction of riparian clearing, monitoring of channel morphology and mussel populations, sign installation, protection of buffer zones, avoidance of pollution, cooperative planning efforts, minimization of ground disturbance, use of sediment barriers, use of best management practices to minimize erosion, mussel relocation from bridge pier footprints, and funding research useful for mussel conservation. In reviewing past formal consultations, we anticipate the need to reinitiate only one consultation on Federal actions as a result of this proposed designation. The Daniel Boone National Forest in Kentucky is in the process of finalizing their Forest Plan. The Forest Service may be required to revise this plan to account for proposed critical habitat designations in Rock Creek, Sinking Creek, and Marsh Creek.

As mentioned in the "Existing Critical Habitat" section, 36 percent of the areas proposed critical habitat is currently designated critical habitat for the spotfin chub, yellowfin madtom, or slender chub. We have conducted 56 informal consultations involving existing critical habitat for these fish in the areas proposed as critical habitat for the five mussels in the Obed River, Powell River, and Clinch River in Tennessee. All of these consultations involved both the potential adverse effects to the species and the potential adverse modification or destruction of critical habitat. These consultations, which were similar to consultations carried out for the five mussel species, primarily included utility lines, bridge replacements and reconstructions, gravel dredging, and an oil spill on Clear Creek (a tributary of the Obed River and designated critical habitat for the spotfin chub). We have consulted on seven projects that involved existing critical habitat for the yellowfin madtom and/or slender chub in Virginia. Three of these consultations were formal, involving projects like bridge crossing on the Clinch and Powell Rivers. None of these formal consultations resulted in a finding that the proposed activity would destroy or adversely modify existing critical habitat previously designated in the area.

The designation of critical habitat for these five mussels will have no impact on private landowner activities that do not involve Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact: Alabama—Daphne, FWS Ecological Services Office (251/441–5181); Kentucky—Frankfort, FWS Ecological Services Office (502/695–0468); Mississippi—Jackson, FWS Ecological Services Office (601/965–4900); Tennessee—Cookeville, FWS Ecological Services Office (931/528–6481); Virginia—Abingdon, FWS Ecological Services Office (276/623–1233).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available, and after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat if the benefits of

exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. Our preliminary analysis (discussed below) of the following three river reaches: the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River, Sevier and Knox Counties, Tennessee; the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River, Jefferson, Grainger, and Knox Counties, Tennessee; and the free flowing reach of the Rockcastle River from the backwaters of Cumberland Lake upstream to Kentucky Route 1956 Bridge, in Laurel, Rockcastle, and Pulaski Counties, Kentucky, finds that the benefits of excluding these areas from the designation of critical habitat for the oyster mussel and Cumberlandian combshell outweighs the benefits of including them. Therefore, on the basis of our analysis below, we are proposing to exclude these three river reaches from critical habitat.

Benefits of Inclusion

The principal benefit of designating these portions of the lower French Broad, lower Holston, and Rockcastle Rivers as critical habitat would result from the requirement under section 7(a)(2) of the Act that Federal agencies consult with us to ensure that any actions that they fund, authorize, or carry out do not destroy or adversely modify critical habitat. No consultations have occurred for the oyster mussel and Cumberlandian combshell in these areas since they are not occupied by these two species. However, consultations are already occurring for other federally listed species, like the endangered pink mucket (*Lampsilis abrupta*) mussel (found in the Holston River), the threatened snail darter (*Percina tanasi*) (found in both the French Broad and Holston Rivers), and the Cumberland bean (*Villosa trabalis*) mussel (found in the Rockcastle River) in these areas. Even though these species do not have designated critical habitat, consultations evaluating impacts to the species would still take into consideration habitat and habitat impacts which may constitute take of the species. Projects that would adversely affect critical habitat for the Cumberlandian combshell and oyster mussel (if it were designated) would likely also trigger consultation with us under section 7 of the Act because of their potential to adversely affect the listed species already present. Thus, we find that the additional benefit through section 7 consultation due to designation of critical habitat for the oyster mussel and Cumberland combshell would be minimal.

Since 1997, we have been involved in 25 consultations regarding the snail darter and pink mucket in the lower French Broad and Holston Rivers. Approximately 10 of these consultations have involved the Tennessee Valley Authority (TVA). TVA manages the dams upstream of the area on the lower French Broad and Holston Rivers, and issues permits for docks and recreational structures along these two river reaches. The TVA has improved water quality in the two subject reaches by instituting minimum flows for the protection of aquatic life and by increasing the dissolved oxygen content of the water. In a letter to us dated December 9, 1998, TVA expressed its support for mussel recovery efforts in the Tennessee Valley streams and tailwaters. TVA would likely be involved in consultations regarding critical habitat (if it were designated) on the Holston and French Broad Rivers. Because TVA is already working with us to improve water quality in the two subject reaches and below other dams in Tennessee, designation may reduce the success of these continued cooperative efforts.

Similarly, the segment of the Rockcastle River is listed as a State Scenic River and designated as an "Outstanding State Resource Water" (OSRW) by the State of Kentucky because of the presence of federally protected species. OSRWs are given more consideration during the State environmental review process, and their designation provides some additional protections for streams from proposed development activities, all of which affords them increased recognition and additional protections under the State's environmental review process. Since 1994, we have had only 12 informal consultations on this stretch of the Rockcastle River, all involving the Cumberland bean. These consultations included a forest management plan for the Daniel Boone National Forest. Oyster mussels and Cumberlandian combshells placed into the Rockcastle River through NEP designations would be treated as species proposed for listing by the Forest Service, and therefore would still be considered during Federal management actions under section 7 of the Act. Because this stretch has very little consultation history and possesses current protections from existing State designations and the presence of the Cumberland bean, the benefit that would be gained for the oyster mussel and Cumberlandian combshell through section 7 protections provided by a critical habitat designation is relatively minor.

The identification of habitat essential to the conservation of the species can provide some informational benefits to the public, State and local governments, scientific organizations, and Federal agencies, and may facilitate conservation efforts. However, we believe that there would be little additional informational benefit from including the lower Holston, lower French Broad River, and Rockcastle Rivers as critical habitat, because this proposal identifies all areas that are essential to the conservation of the species, regardless of whether all of these areas are designated as critical habitat. Consequently, we believe that informational benefits will be provided to the lower Holston, French Broad, and Rockcastle Rivers, even though these areas are not proposed as critical habitat.

Benefits of Exclusion

Congress made significant changes to the Act, with the addition of section 10(j) in 1982, which provides for the designation of specific reintroduced populations of listed species as "experimental populations." This section was designed to provide us with innovative means to introduce a listed species into unoccupied habitat within its historic range when doing so would foster the conservation and recovery of the species. Experimental populations provide us with a flexible, proactive means to meet recovery criteria while not alienating stakeholders, such as municipalities and landowners, whose cooperation is essential for eventual success of the reintroduced population.

Section 10(j) increases our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations located outside the National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing, while on National Wildlife Refuges or National Parks the species is treated as threatened. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands only. Experimental populations determined to be "essential" to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely affect critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

As mentioned above, the recovery strategy for the oyster mussel and Cumberlandian combshell outlined in the agency draft recovery plan requires the reestablishment/reintroduction of these two mussels into areas of their historic ranges. Because of their currently reduced and fragmented state, the mussels face enhanced threats and would never be able to repopulate these reaches naturally. We strongly believe that, in order to achieve recovery for these mussels, in accordance with the Service's Recovery Plan we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of reestablishing these mussels in the specified areas of the lower French Broad, Rockcastle, and Holston Rivers which have been identified as having medium to high recovery potential. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Nonessential experimental populations in certain areas are often our only mechanism to achieve recovery. We believe it is crucial for recovery of these two mussels that we have the support of the public in these three river reaches when we move forward in the reintroduction efforts required in our agency draft recovery plan. However, critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (Patlis 2001).

The specified areas in the lower Holston and French Broad Rivers represent years of planning and coordination between the Service, the State of Tennessee, TVA, and others to recover aquatic species and their habitat. We have cooperation and support from the State of Tennessee, TVA, and others in considering these areas an NEP. We continue to have extensive cooperation and support from these stakeholders in working towards aquatic species recovery in general in the Tennessee and Cumberland River Basins. Due to work done in large part by these agencies as well as by landowners, municipalities, and other stakeholders, we have collectively improved the water and habitat quality in these areas to the point where there are suitable reintroduction sites in certain areas for a host of listed species, including 1 federally listed, endangered, aquatic snail, 5 federally listed fishes (2 endangered and 3 threatened), and 14 additional federally listed, endangered, freshwater mussels. Designating these 2 reaches as critical habitat could jeopardize the establishment and success of the reintroductions as well as this cooperative effort that we are considering for the Cumberlandian combshell and oyster mussel as well as these other species to achieve their recovery criteria.

Similarly, the Rockcastle River contains a robust mussel community (Thompson 1985; Cicerello 1992) second only to the Big South Fork as the best remaining representation of preimpoundment (before the water was dammed) mussel fauna in the Cumberland River System (R.R. Cicerello, KSNPC, pers. comm. 2003). However, the oyster mussel and Cumberlandian combshell no longer occur in this river. We have worked for years with the Daniel Boone National Forest to protect the water quality and unique mussel community found in the Rockcastle River. Designating unoccupied critical habitat in the Rockcastle River would be viewed as an unnecessary regulatory intrusion into a cooperative relationship between our agencies. It would also likely be viewed negatively by local stakeholders, whose very support we need to effect the recovery of these rare mussel taxa by reintroducing them into suitable historic habitat found there.

In summary, we believe that the benefits of excluding the lower French Broad, Rockcastle, and Holston Rivers areas outweigh the benefits of their inclusion as critical habitat. Including these areas may result in some benefit through additional consultations with Federal agencies whose activities may affect critical habitat. However, overall this benefit is minimal because of the presence of other listed species with similar habitat requirements which are, and will continue to be, considered in consultation. A proposed designation in these two river reaches would also provide little additional informational benefit to the public, State and governmental agencies, and others. On the other hand, an exclusion will greatly benefit the overall recovery of the oyster mussel and Cumberlandian combshell (as well as 20 other federally listed species) by allowing us to use the flexibility and greater public acceptance of section 10(j) of the Act to reestablish the oyster mussel and Cumberlandian combshell in other portions of their historic range where they no longer occur. We also believe that the exclusion of the specified areas in the lower French Broad, lower Holston, and Rockcastle Rivers will not lead to the extinction of these two mussels based on their occurrences in other river and stream stretches, and the cooperative partnerships in place for establishing these NEPs. We seek comment on our preliminary determination to exclude these areas from critical habitat.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if

requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Tennessee Field Office (*see* **ADDRESSES** section). Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is not a significant rule and, therefore, was not reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action, and will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of any of these five mussels. We will make this analysis available for public comment before we finalize this designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, the analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *American Trucking Associations, Inc.* v. *EPA*).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with the Services under section 7 of the Act on activities that they fund, permit, or implement that may affect the five mussels.

If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we believe this will result in only minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required because of the presence of the listed mussel species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Since the five mussels were listed (1997), we have conducted nine formal consultations involving one or more of these species. These formal consultations, which all involved Federal projects, included five bridge replacements, two Federal land management plans, an intra-agency review of the Wilson Dam NEP and associated collecting permits, and an intra-agency review of collection permits needed by researchers involved in endangered mussel propagation. These nine consultations resulted in non-jeopardy biological opinions.

We also reviewed approximately 100 informal consultations that have been conducted since these 5 species were listed involving private businesses and industries, counties, cities, towns, or municipalities. At least 15 of these were with entities that likely met the definition of small entities. These informal consultations concerned activities such as excavation or fill, docking facilities, transmission lines, pipelines, mines, and road and utility development authorized by various Federal agencies, or review of National Pollution Discharge Elimination System permit applications to State water quality agencies by developers, municipalities, mines, businesses, and others. Informal consultations regarding the mussels usually resulted in recommendations to employ Best Management Practices for sediment control, relied on current State water quality standards for protection of water quality, and resulted in little to no modification of the proposed activities. In reviewing these past informal consultations and the activities involved in light of proposed critical habitat, we do not believe the outcomes would have been different in areas designated as critical habitat.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities and find that it would not. Informal consultations on approximately 100 activities in the Tennessee and Cumberland River Basins, by businesses and governmental jurisdictions that might affect these species and their habitats, resulted in little to no economic effect on small entities. In the 6 years since the five mussels were listed; there have been no formal consultations regarding actions by small entities. This does not meet the definition of "substantial." In addition, we see no indication that the types of activities we review under section 7 of the Act will change significantly in the future. There would be no additional section 7 consultations resulting from this rule as all 13 of the proposed critical habitat units are currently occupied by one or more listed mussels, so the consultation requirement has already been triggered. Future consultations are not likely to affect a substantial number of small entities. This rule would result in major project modifications only when proposed activities with a Federal nexus would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for these 5 mussels will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after the close of the comment period and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service will use the economic analysis to further evaluate this rule's effect on nonfederal governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing to designate approximately 544 rmi in 13 river and stream reaches in Alabama, Mississippi, Tennessee, Kentucky, and Virginia. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, the Service requested information from, and coordinated development of this critical habitat proposal with, appropriate State resource agencies in Mississippi, Alabama, Tennessee, Kentucky, and Virginia. The designation of critical habitat for these five species imposes no additional restrictions to those currently in place, and, therefore, has little additional impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and this identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than leaving them to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the five mussel species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned clearance No. 1018–0094, Forms 3–200–55 and 3–200–56, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR part 17. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these five mussels. Therefore, designation of critical habitat for the five mussels has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Cookeville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this notice is Rob Tawes (931/528–6481, extension 213) (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise each of the entries here, listed in alphabetical order under "CLAMS" in the List of Endangered and Threatened Wildlife, so that they read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Bean, Purple	*Villosa perpurpurea*	U.S.A. (TN, VA)	NA	E	602	17.95(f)	NA
Combshell, Cumberlandian.	*Epioblasma brevidens.*	U.S.A. (AL, KY, MS, TN, VA).	NA	E	602	17.95(f)	NA
Elktoe, Cumberland	*Alasmidonta atropurpurea.*	U.S.A. (KY, TN)	NA	E	602	17.95(f)	NA
Mussel, oyster	*Epioblasma capsaeformis.*	U.S.A. (AL, GA, KY, MS, NC, TN, VA).	NA	E	602	17.95(f)	NA
Rabbitsfoot, rough	*Quadrula cylindrica strigillata.*	U.S.A. (TN, VA)	NA	E	602	17.95(f)	NA

3. In § 17.95, at the end of paragraph (f), add an entry for five Cumberland and Tennessee River Basin mussels species to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

* * * * *

Five Tennessee and Cumberland River Basin mussels species: Purple bean (*Villosa perpurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*).

(1) Primary constituent elements.

(i) The primary constituent elements essential for the conservation of the purple bean (*Villosa perpurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*) are those habitat components that support feeding, sheltering, reproduction, and physical features for maintaining the natural processes that support these habitat components. The primary constituent elements include:

(A) Permanent, flowing stream reaches with a flow regime (*i.e*, the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of the five mussels and their host fish;

(B) Geomorphically stable stream and river channels and banks;

(C) Stable substrates consisting of mud, sand, gravel, and/or cobble/boulder, with low amounts of fine sediments or attached filamentous algae;

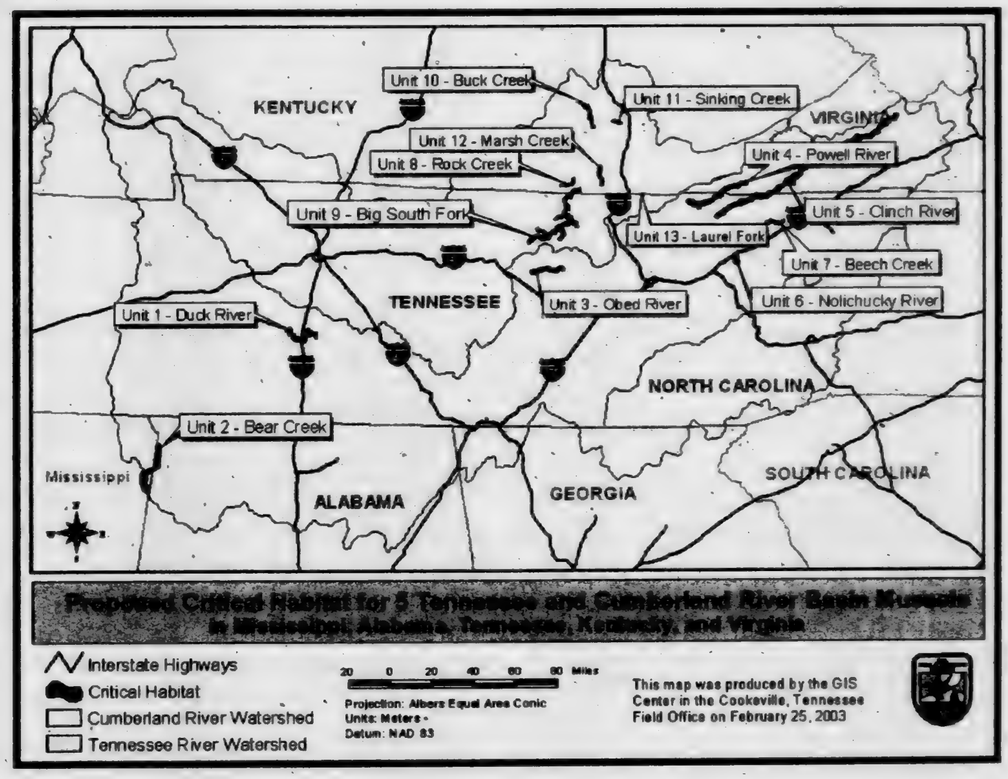
(D) Water quality (including temperature, turbidity, oxygen content, and other characteristics) necessary for the normal behavior, growth, and survival of all life stages of the five mussels and their host fish; and

(E) Fish hosts with adequate living, foraging, and spawning areas.

(ii) [Reserved]

(2) Critical habitat unit descriptions and maps.

(i) Index map. The index map showing critical habitat units in the States of Mississippi, Alabama, Tennessee, Kentucky, and Virginia for the five Tennessee and Cumberland River Basin mussels follows:



(ii) Table of protected species and critical habitat units. A table listing the protected species, their respective critical habitat units, and the States that contain those habitat units follows. Detailed critical habitat unit descriptions and maps appear below the table.

TABLE OF FIVE TENNESSEE AND CUMBERLAND RIVER BASIN MUSSELS, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS

Species	Critical habitat units	States
Purple bean, (*Villosa perpurpurea*)	Units 3, 4, 5, 7	TN, VA.
Cumberlandian combshell, (*Epioblasma brevidens*)	Units 1, 2, 4, 5, 6, 9, 10	AL, KY, MS, TN, VA.

TABLE OF FIVE TENNESSEE AND CUMBERLAND RIVER BASIN MUSSELS, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS—Continued

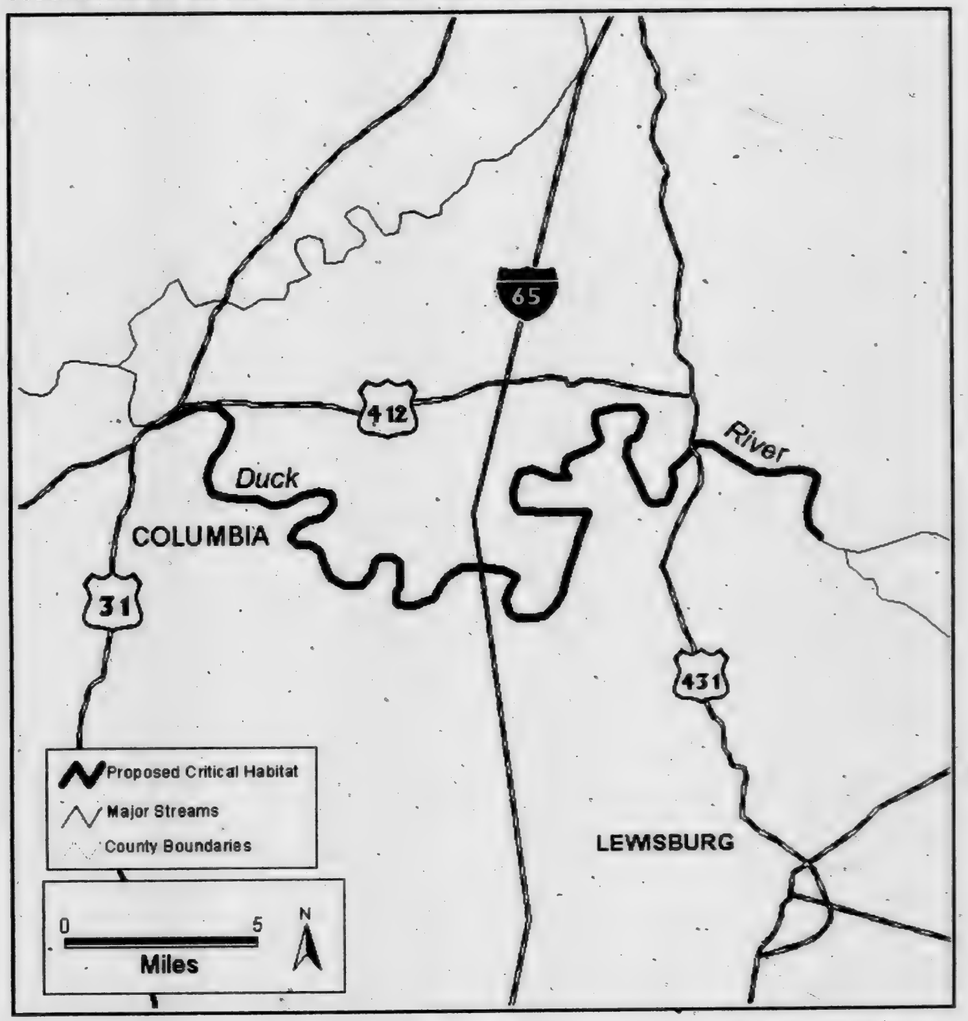
Species	Critical habitat units	States
Cumberland elktoe, (*Alasmidonta atropurpurea*)	Units 8, 9, 11, 12, 13	KY, TN.
Oyster mussel, (*Epioblasma capsaeformis*)	Units 1, 2, 4, 5, 6, 9, 10	AL, KY, MS, TN, VA.
Rough rabbitsfoot (*Quadrula cylindrica strigillata*)	Units 4, 5	TN, VA.

(iii) *Unit 1.* Duck River, Marshall and Maury Counties, Tennessee. This is a critical habitat unit for the oyster mussel and Cumberlandian combshell.

(A) Unit 1 includes the mainstem of the Duck River from rkm 214 (rmi 133) (0.3 rkm (0.2 rmi) upstream of the First Street Bridge) (−87.03 longitude, 35.63 latitude) in the City of Columbia, Maury County, Tennessee, upstream to Lillards Mill Dam at rkm 288 (rmi 179) (−86.78 longitude, 35.58 latitude), Marshall County, Tennessee.

(B) Map of Unit 1 follows:

Unit 1 - Duck River: Critical Habitat for Oyster musssel and Cumberlandian combshell



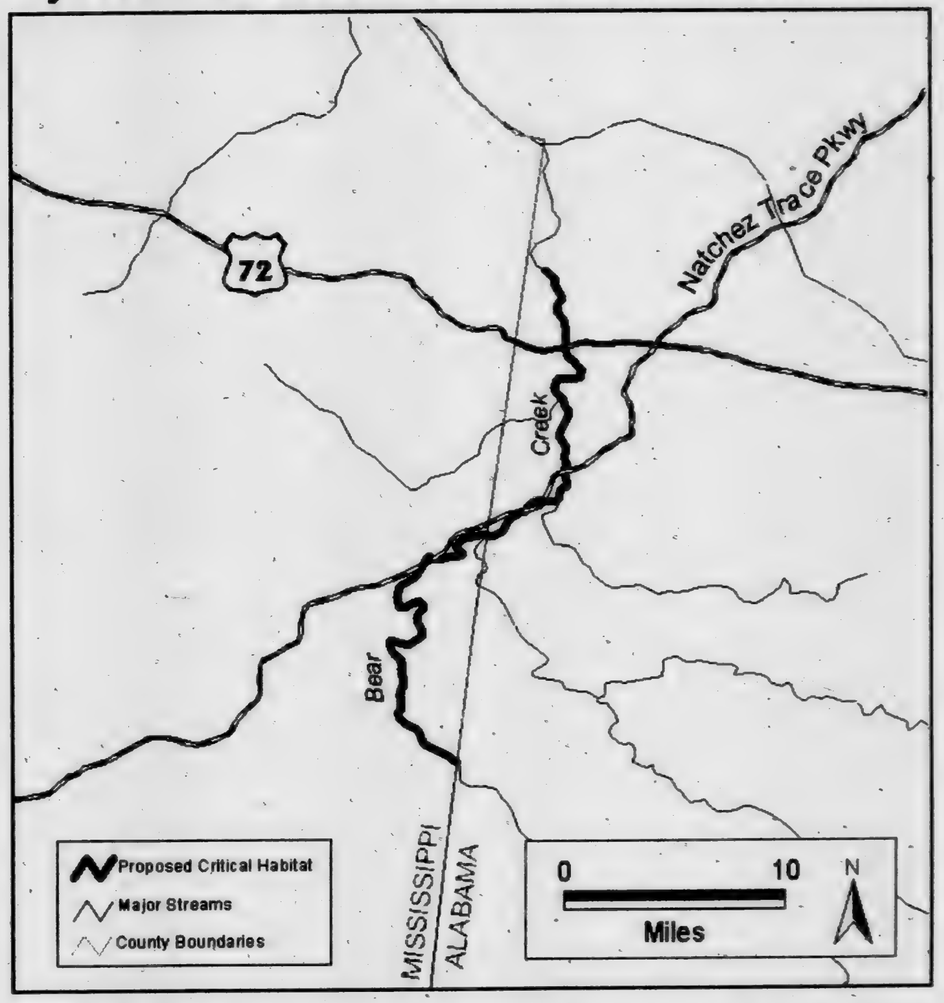
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(iv) *Unit 2.* Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi. This is a critical habitat unit for the oyster mussel and Cumberlandian combshell.

(A) Unit 2 consists of the mainstem of Bear Creek from the backwaters of Pickwick Lake at rkm 37 (rmi 23) (−88.09 longitude, 34.81 latitude), Colbert County, Alabama, upstream through Tishomingo County, Mississippi, ending at the Mississippi/Alabama state line.

(B) Map of Unit 2 follows:

Unit 2 - Bear Creek: Critical Habitat for Oyster mussel and Cumberlandian combshell



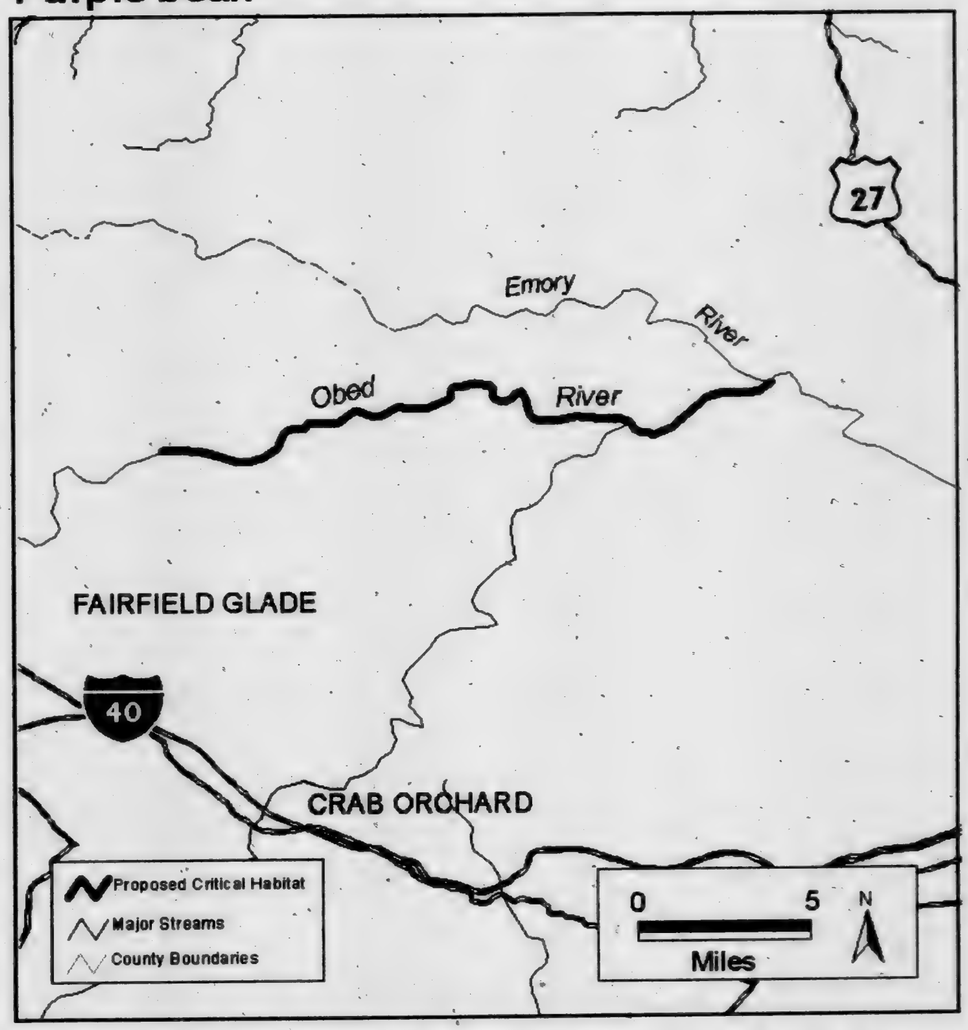
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(v) *Unit 3.* Obed River, Cumberland and Morgan Counties, Tennessee. This is a critical habitat unit for the purple bean.

(A) Unit 3 includes the Obed River mainstem from its confluence with the Emory River (−84.69 longitude, 36.09 latitude), Morgan County, Tennessee, upstream to Adams Bridge, Cumberland County, Tennessee (−84.95 longitude, 36.07 latitude).

(B) Map of Unit 3 follows:

Unit 3 - Obed River: Critical Habitat for Purple bean



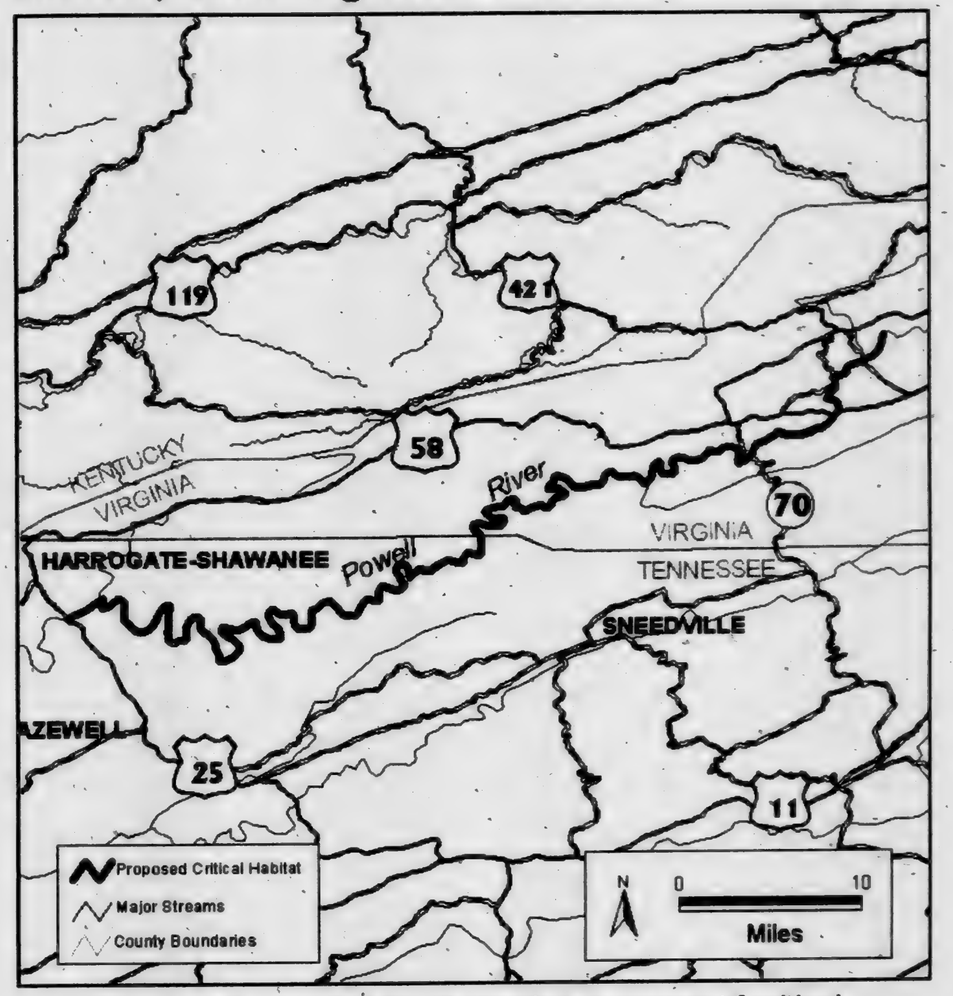
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(vi) *Unit 4.* Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia. This is a critical habitat unit for the purple bean, Cumberlandian combshell, oyster mussel, and rough rabbitsfoot.

(A) Unit 4 includes the mainstem of the Powell River from the U.S. 25E bridge in Claiborne County, Tennessee (−83.63 longitude, 36.53 latitude), upstream to river mile 159 (upstream of Rock Island in the vicinity of Pughs) Lee County, Virginia.

(B) Map of Unit 4 follows:

Unit 4 - Powell River: Critical Habitat for Purple bean, Cumberlandian combshell, Oyster mussel, and Rough rabbitsfoot



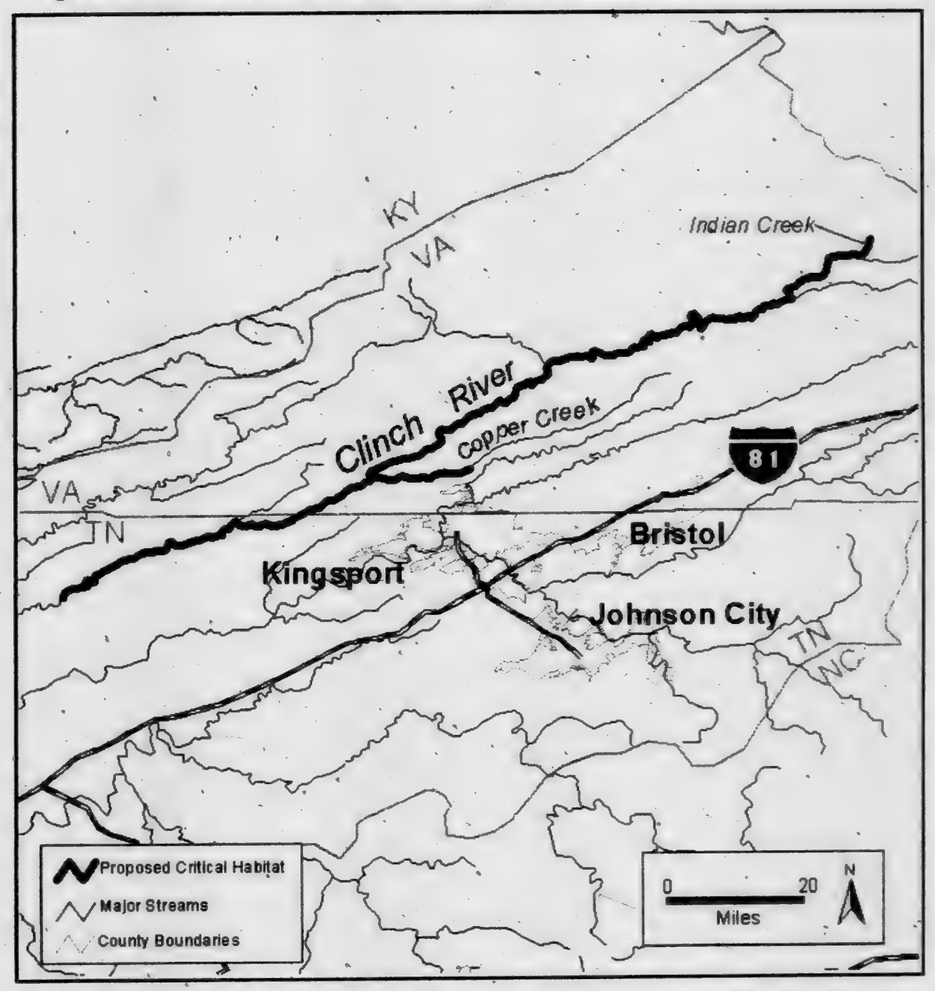
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(vii)-*Unit 5.* Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Copper Creek, Scott County, Virginia; and Indian Creek, Tazewell County, Virginia. This is a critical habitat unit for the purple bean, Cumberlandian combshell, oyster mussel, and rough rabbitsfoot.

(A) Unit 5 includes the Clinch River mainstem from rkm 255 (rmi 159) (−83.36 longitude, 36.43 latitude) immediately below Grissom Island, Hancock County, Tennessee, upstream to its confluence with Indian Creek in Cedar Bluff, Tazewell County, Virginia (−81.80 longitude, 37.10 latitude); Copper Creek in Scott County, Virginia, from its confluence with the Clinch River (−82.74 longitude, 36.67 latitude) upstream to Virginia State Route 72 (−82.56 longitude, 36.68 latitude); and Indian Creek from its confluence with the Clinch River upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke, Tazewell County, Virginia (−81.77 longitude, 37.14 latitude).

(B) Map of Unit 5 follows:

Unit 5 - Clinch River: Critical Habitat for Purple bean, Cumberlandian combshell, Oyster mussel, and Rough rabbitsfoot.



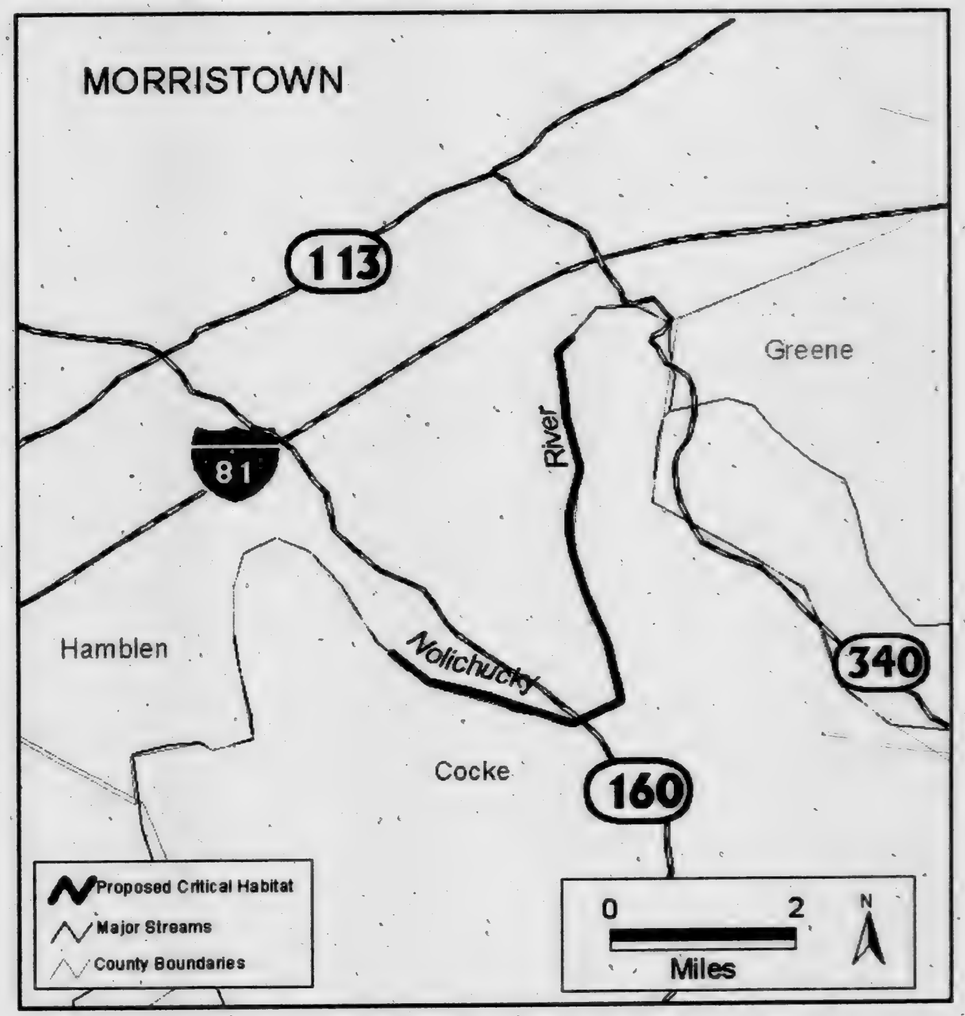
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(viii) *Unit 6.* Nolichucky River, Hamblen and Cocke Counties, Tennessee. This is a critical habitat unit for the Cumberlandian combshell and oyster mussel.

(A) Unit 6 consists of the mainstem of the Nolichucky River from rkm 14 (rmi 9) (−83.18 longitude, 36.18 latitude) (approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam) upstream to Susong Bridge (−83.20 longitude, 36.14 latitude) in Hamblen and Cocke Counties, Tennessee.

(B) Map of Unit 6 follows:

Unit 6 - Nolichucky River: Critical Habitat for Cumberlandian combshell and Oyster mussel



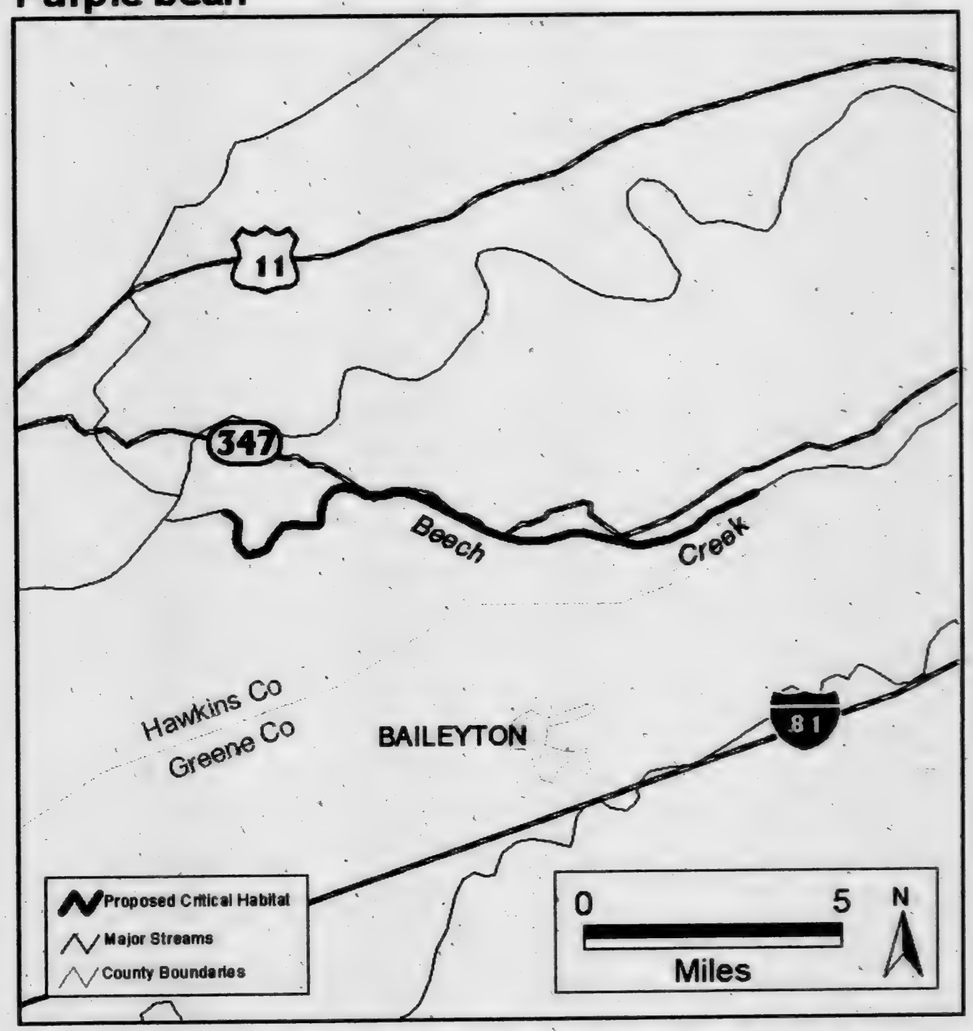
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(ix) *Unit 7.* Beech Creek, Hawkins County, Tennessee. This is a critical habitat unit for the purple bean.

(A) Unit 7 includes the Beech Creek mainstem from rkm 4 (rmi 2) (−82.92 longitude, 36.40 latitude) of Beech Creek (in the vicinity of Slide, Tennessee) upstream to the dismantled railroad bridge at rkm 27 (rmi 16) (−82.77 longitude, 36.40 latitude).

(B) Map of Unit 7 follows:

Unit 7 - Beech Creek: Critical Habitat for Purple bean



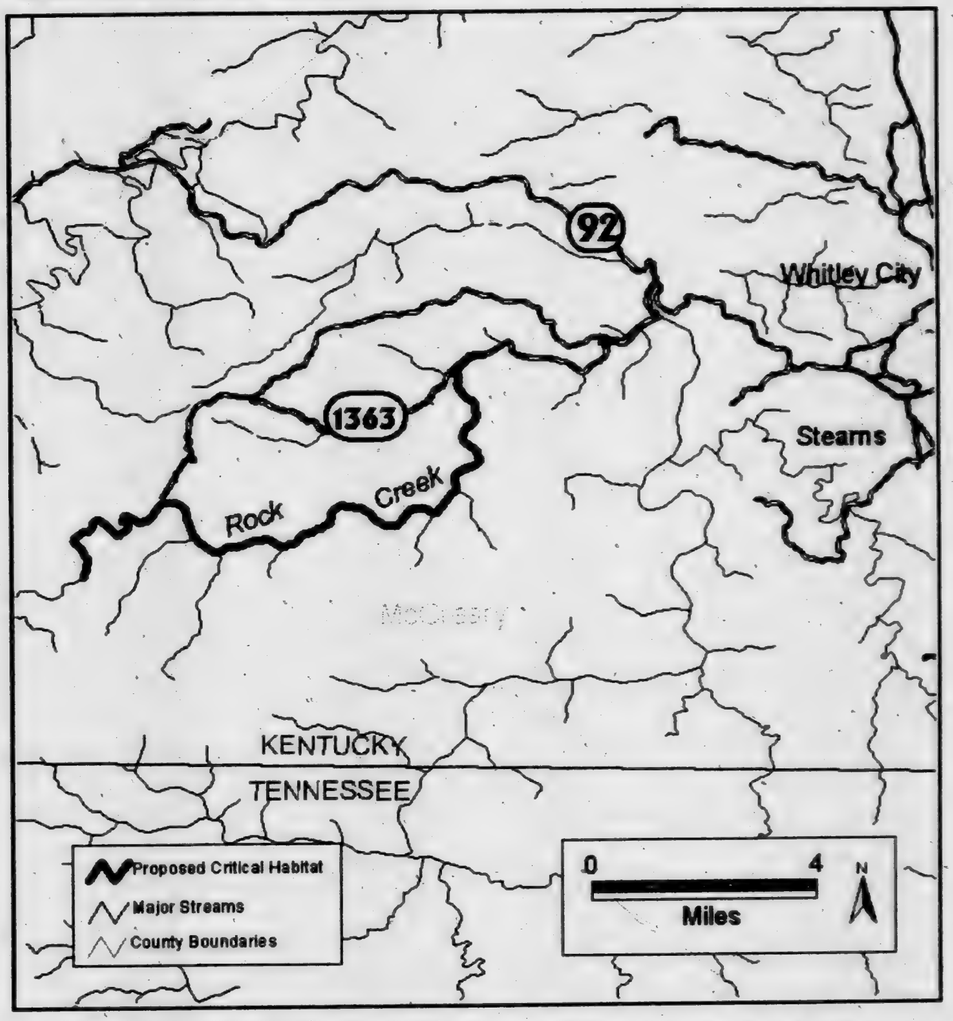
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(x) *Unit 8.* Rock Creek, McCreary County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 8 includes the mainstem of Rock Creek from its confluence with White Oak Creek (−84.59 longitude, 36.71 latitude), upstream to Sinking Creek rkm 18 (rmi 11) (−84.69 longitude, 36.65 latitude), McCreary County, Kentucky.

(B) Map of Unit 8 follows:

Unit 8 - Rock Creek: Critical Habitat for Cumberland elktoe



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

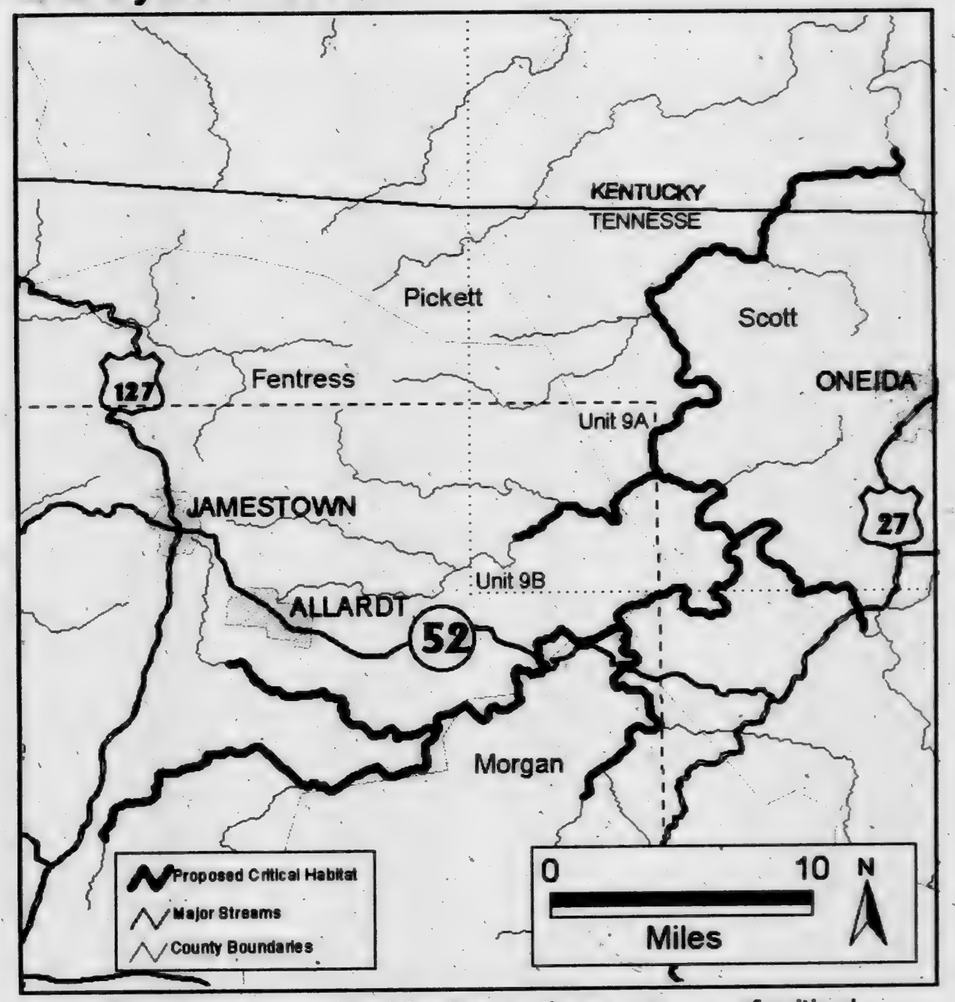
(xi) *Unit 9.* Big South Fork of the Cumberland River and its tributaries, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky. This is a critical habitat unit

for the Cumberlandian combshell, Cumberland elktoe, and oyster mussel.

(A) Unit 9 consists of the Big South Fork of the Cumberland River mainstem from its confluence with Laurel Crossing Branch (−84.54 longitude, 36.64 latitude), McCreary County, Kentucky, upstream to its confluence with the New River and Clear Fork, Scott County, Tennessee; North White Oak Creek from its confluence with the Big South Fork upstream to Panther Branch (−84.75 longitude, 36.42 latitude), Fentress County, Tennessee; New River from its confluence with Clear Fork upstream to U.S. Highway 27 (−84.55 longitude, 36.38 latitude), Scott County, Tennessee; Clear Fork from its confluence with the New River upstream to its confluence with North Prong Clear Fork, Morgan and Fentress Counties, Tennessee; White Oak Creek from its confluence with Clear Fork upstream to its confluence with Bone Camp Creek, Morgan County, Tennessee; Bone Camp Creek from its confluence with White Oak Creek upstream to Massengale Branch (−84.71 longitude, 36.28 latitude), Morgan County, Tennessee; Crooked Creek from its confluence with Clear Fork upstream to Buttermilk Branch (−84.92 longitude, 36.36 latitude), Fentress County, Tennessee; and North Prong Clear Fork from its confluence with Clear Fork upstream to Shoal Creek (−84.97 longitude, 36.26 latitude), Fentress County, Tennessee.

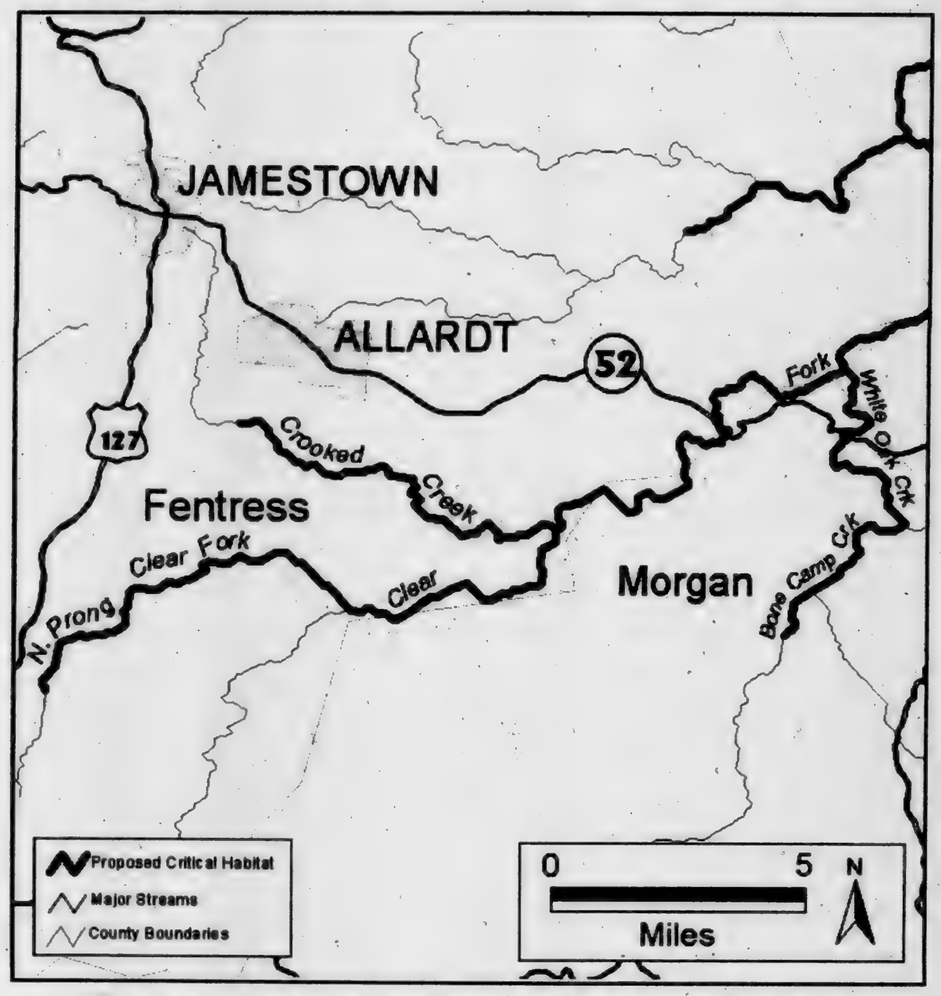
(B) Maps of Unit 9 follow:

Unit 9 - Big South Fork: Critical Habitat for Cumberland combshell, Cumberland elktoe, and Oyster mussel



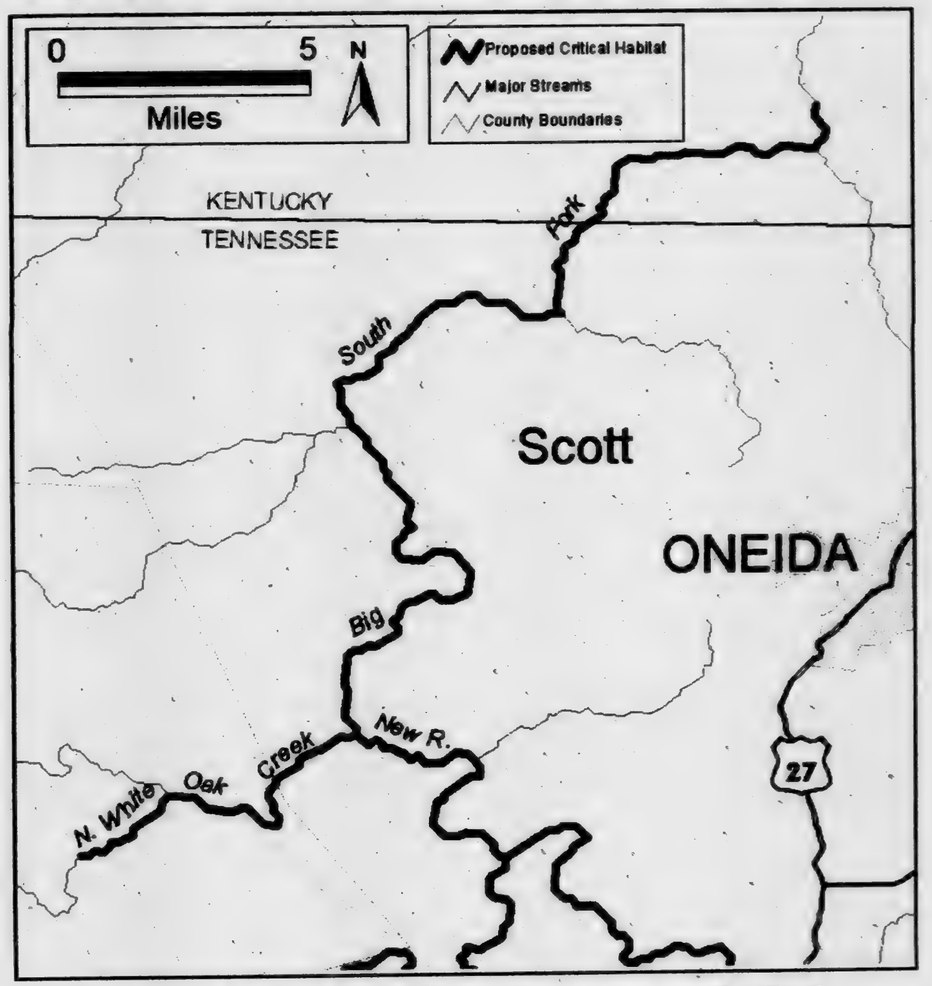
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Unit 9A - Big South Fork: Critical Habitat for Cumberlandian combshell, Cumberland elktoe, and Oyster mussel



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Unit 9B - Big South Fork: Critical Habitat for Cumberlandian combshell, Cumberland elktoe, and Oyster mussel



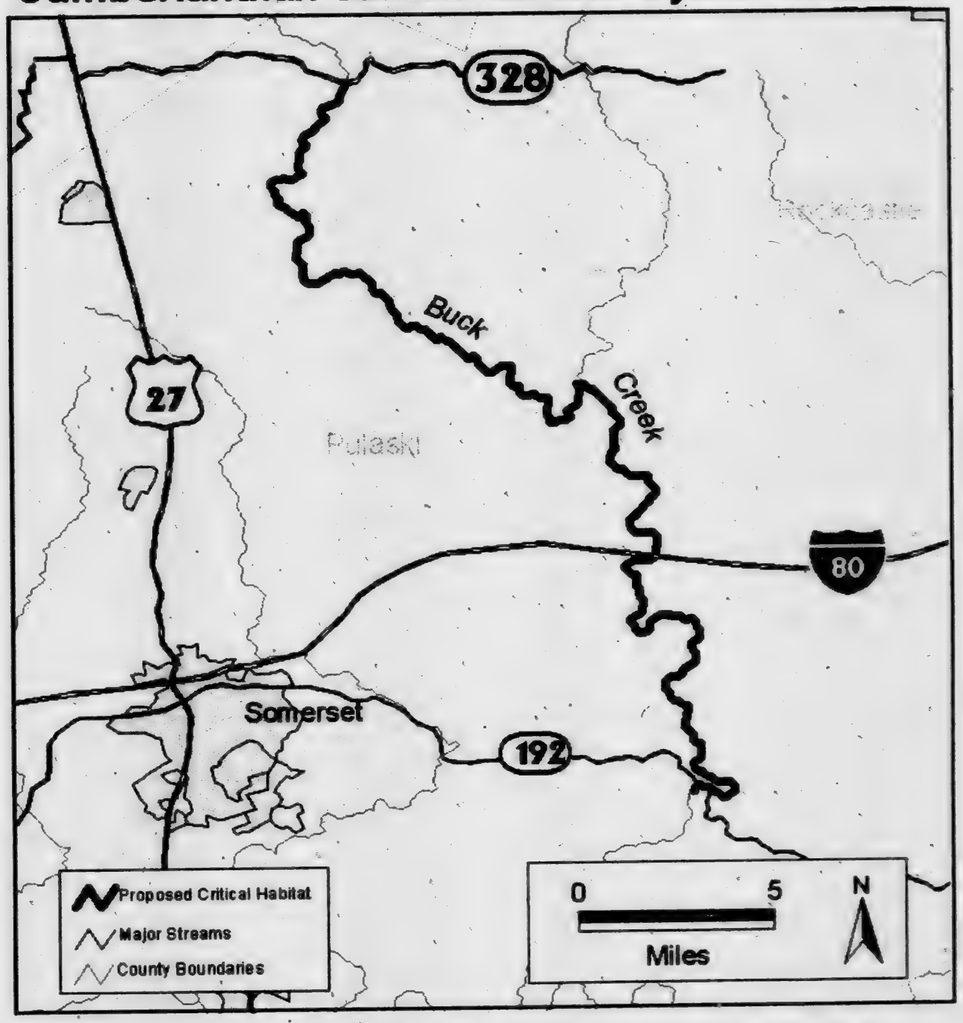
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xii) *Unit 10.* Buck Creek, Pulaski County, Kentucky. This is a critical habitat unit for the Cumberlandian combshell and oyster mussel.

(A) Unit 10 includes the Buck Creek mainstem from the State Road 192 Bridge (−84.43 longitude, 37.06 latitude) upstream to the State Road 328 Bridge (−84.56 longitude, 37.32 latitude) in Pulaski County, Kentucky.

(B) Map of Unit 10 follows:

Unit 10 - Buck Creek: Critical Habitat for Cumberlandian combshell and Oyster mussel



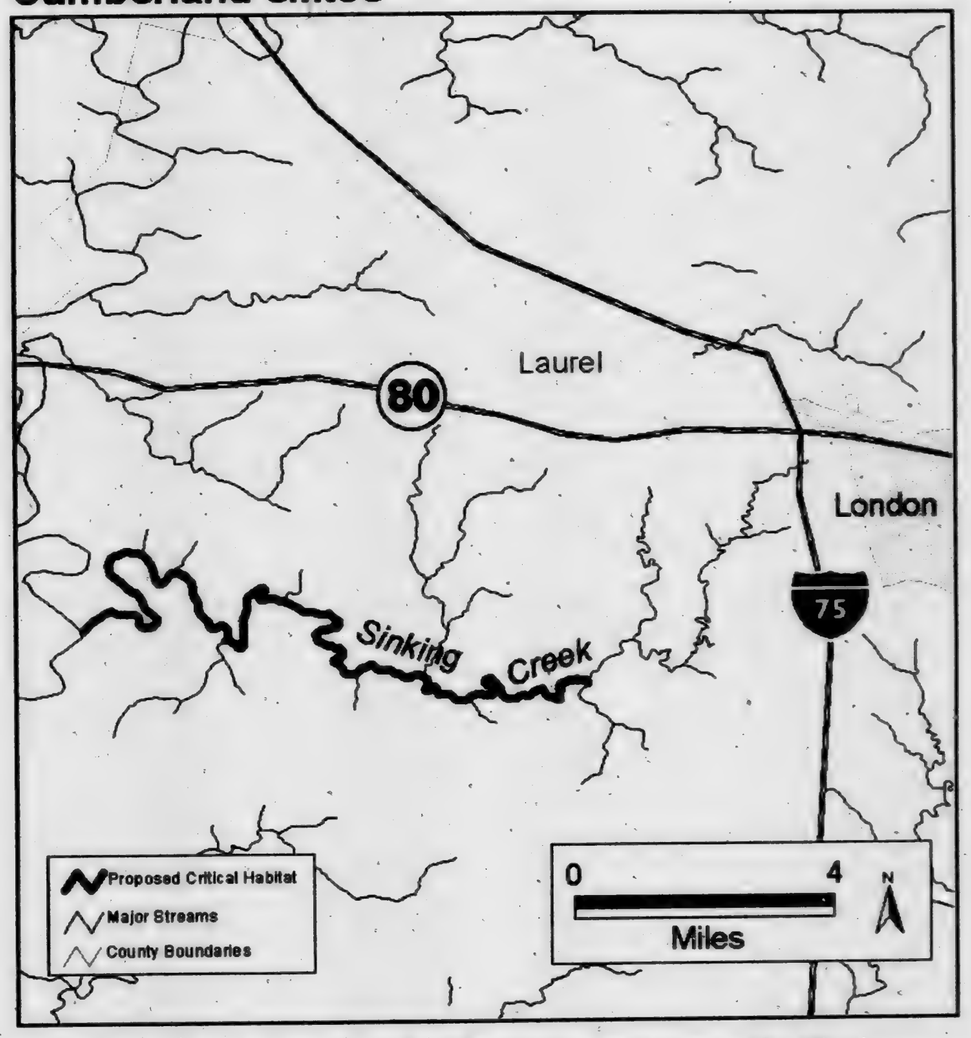
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xiii) *Unit 11.* Sinking Creek, Laurel County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 11 includes the mainstem of Sinking Creek from its confluence with the Rockcastle River (−84.28 longitude, 37.10 latitude) upstream to its confluence with Laurel Branch (−84.17 longitude, 37.09 latitude) in Laurel County, Kentucky.

(B) Map of Unit 11 follows:

Unit 11 - Sinking Creek: Critical Habitat for Cumberland elktoe



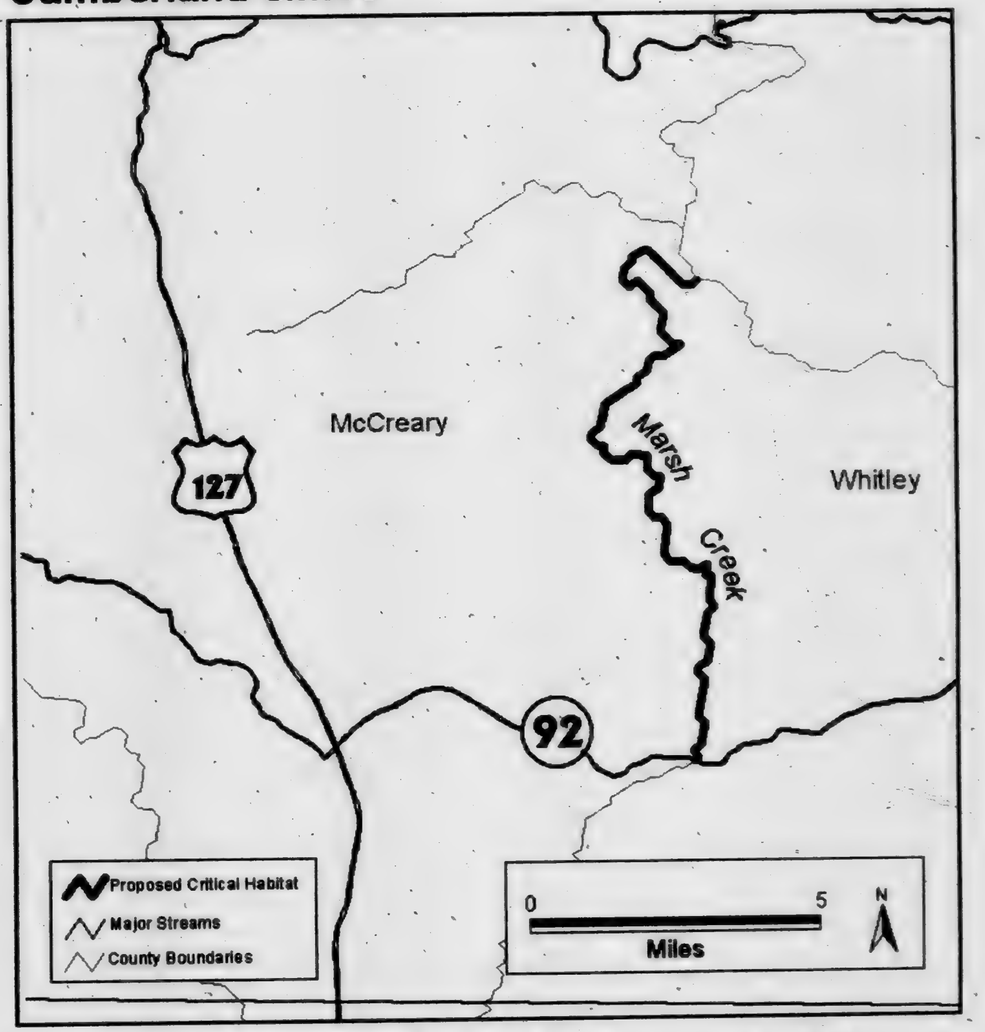
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xiv) *Unit 12.* Marsh Creek, McCreary County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 12 includes the Marsh Creek mainstem from its confluence with the Cumberland River (−84.35 longitude, 36.78 latitude) upstream to State Road 92 bridge (−84.35 longitude, 36.66 latitude) in McCreary County, Kentucky.

(B) Map of Unit 12 follows:

Unit 12 - Marsh Creek: Critical Habitat for Cumberland elktoe



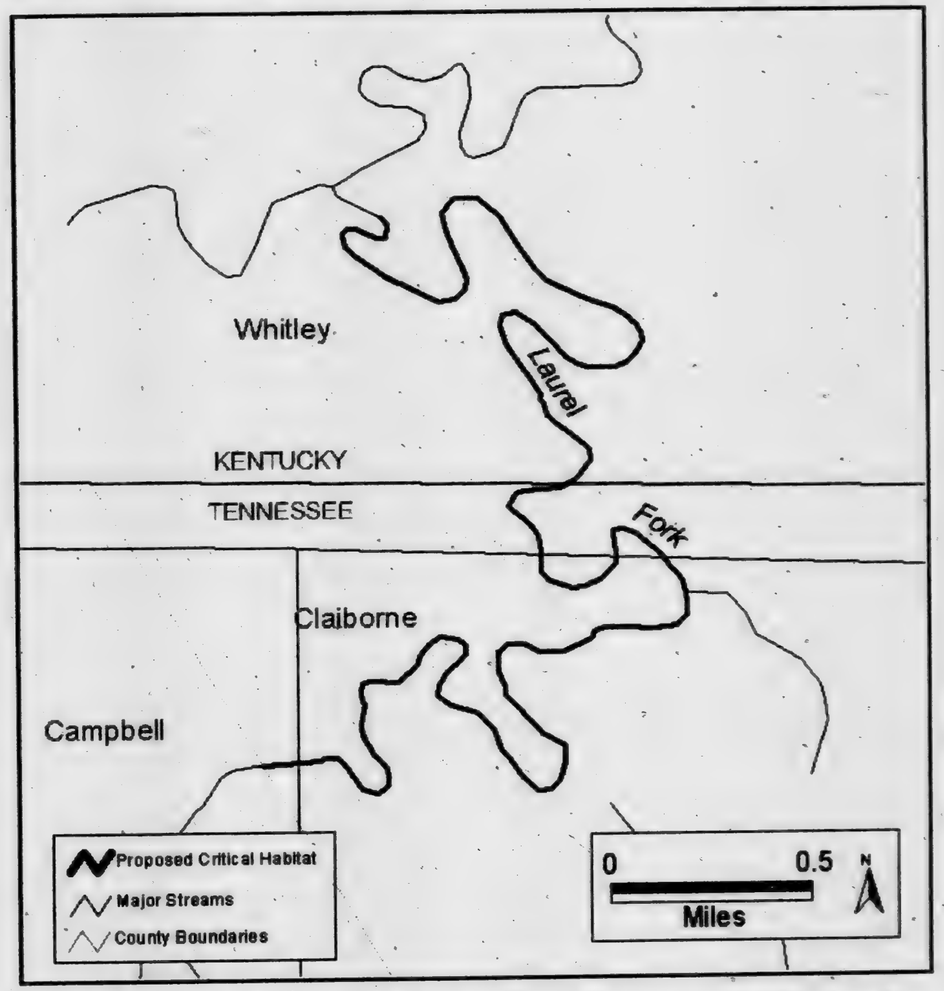
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xv) *Unit 13.* Laurel Fork, Claiborne County, Tennessee, and Whitley County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 13 includes the mainstem of the Laurel Fork of the Cumberland River from the boundary between Claiborne and Campbell Counties (−84.00 longitude, 36.58 latitude) upstream to rkm 11 (rmi 6.85) in Whitley County, Kentucky. The upstream terminus is 2 river miles upstream of the Kentucky/Tennessee State line (−84.00 longitude, 36.60 latitude).

(B) Map of Unit 13 follows:

Unit 13 - Laurel Fork: Critical Habitat for Cumberlandian elktoe



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Dated: May 19, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–12944 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
June 3, 2003

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7504–3]

RIN 2060–AK28

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to list n-propyl bromide (nPB) as an acceptable substitute for ozone-depleting substances (ODSs), subject to use conditions, in the solvent cleaning sector and aerosol solvents and adhesive end uses under the U.S. Environmental Protection Agency's (EPA or "we") Significant New Alternatives Policy (SNAP) program. The SNAP program implements section 612 of the amended Clean Air Act of 1990 (CAA), which requires EPA to evaluate substitutes for ODSs in order to reduce overall risk to human health and the environment.

While we find that nPB has a short atmospheric lifetime and low ozone depletion potential when emitted from locations in the continental U.S., the Agency cautions that significant use of nPB closer to the equator poses significant risks to the stratospheric ozone layer. Further, if workplace exposure to nPB is poorly controlled, it may increase health risks to workers. In the interim, until the Occupational Safety and Health Administration (OSHA) develops a mandatory workplace exposure limit under Section 6 of the Occupational Safety and Health Act, the Agency recommends that users of nPB adhere to an acceptable exposure limit of 25 parts per million (ppm) over an eight-hour time-weighted average.

In today's action, EPA proposes that the use of nPB is acceptable subject to a use condition, in a limited number of specific applications where emissions can be tightly controlled for both environmental and exposure concerns. The proposal only allows the use of nPB as a solvent in metals, precision, and electronics cleaning, and in aerosol solvent and adhesive end-uses. EPA is proposing to list nPB as an acceptable substitute for chlorofluorocarbon (CFC)-113, hydrochlorofluorocarbon (HCFC)-141b, and methyl chloroform when used in aerosol solvent and adhesive end uses, subject to the condition that nPB used in these end uses not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. We are also proposing to list nPB as an acceptable substitute for CFC–113 and methyl chloroform in general metals cleaning, electronics cleaning, and precision cleaning, subject to the condition that nPB used in these end uses not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals.

DATES: Comments must be received in writing by August 4, 2003.

ADDRESSES: Comments may be submitted by mail to: Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0064. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided at the beginning of the "supplementary information" section.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Margaret Sheppard by telephone at (202) 564–9163, or by e-mail at *sheppard.margaret@epa.gov*. Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone World Wide Web site at *http://www.epa.gov/ozone/snap/regs*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
A. Regulated entities
B. How can I get copies of related information?
C. How and to whom do I submit comments?
D. How should I submit CBI to the agency?
E. Acronyms and abbreviations used in the preamble
II. How does the Significant New Alternatives Policy (SNAP) program work?
A. What are the statutory requirements and authority for the SNAP program?
B. How do the regulations for the SNAP program work?
C. Where can I get additional information about the SNAP program?
III. Is EPA listing n-propyl bromide as an acceptable substitute for ozone-depleting substances?
A. What is EPA proposing today?
B. What is n-propyl bromide?
C. What industrial sectors are included in our proposed decision?
IV. What did EPA consider in preparing today's proposal?
A. Toxicity
1. What Acceptable Exposure Limit is EPA recommending for n-propyl bromide, and why?
a. Summary of toxicity studies
b. Derivation of an AEL for nPB
c. Overview of the Center for Evaluation of Risk to Human Reproduction (CERHR) Expert Panel Report
d. AELs suggested by other reviewers and outside parties
e. Feasibility of meeting the AEL for nPB in each sector
2. Are there other entities that may set workplace standards for nPB?
3. Is the general population exposed to too much nPB?
4. What limit is EPA setting on isopropyl bromide contamination of n-propyl bromide as a condition of acceptability, and why?
B. Ozone depletion potential
C. Global warming potential
D. Flammability
E. Other environmental concerns
F. Comparison of nPB to other solvents
V. What other factors did EPA consider that are unique to nPB?
A. Continued review of nPB by other federal and international programs
B. Potential market for n-propyl bromide
C. Estimated economic impacts on businesses
VI. How is EPA responding to comments on the advance notice of proposed rulemaking and December 18, 2000 notice of data availability?
VII. What should I include in my comments on EPA's proposal?
VIII. What is the federal government doing to help businesses use nPB safely?
IX. How can I use nPB as safely as possible?
X. Statutory and Executive Order Reviews
XI. References

I. General Information

A. Regulated Entities

Today's proposal would regulate the use of n-propyl bromide as a solvent used in industrial equipment for metals cleaning, electronics cleaning, or precision cleaning, and as an aerosol solvent and a carrier solvent in adhesives. Businesses that currently might be using nPB, or might want to use it in the future, include:

- Businesses that clean metal parts, such as automotive manufacturers, machine shops, machinery manufacturers, and electroplaters.
- Businesses that manufacture electronics or computer equipment.
- Businesses that require a high level of cleanliness in removing oil, grease, or wax, such as for aerospace applications or for manufacture of optical equipment.
- Foam fabricators that glue pieces of polyurethane foam together or foam cushion manufacturers that glue fabric around a cushion.
- Furniture manufacturers that use adhesive to attach wood parts to floors, tables and counter tops.

Regulated entities may include:

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	331	Primary metal manufacturing
Industry	332	Fabricated metal product manufacturing
Industry	333	Machinery manufacturing
Industry	334	Computer and electronic product manufacturing
Industry	336	Transportation equipment manufacturing
Industry	337	Furniture and related product manufacturing
Industry	326150	Urethane and other foam product (except polystyrene) manufacturing

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2002–0064 (continuation of Docket A–2001–07). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Hard copies of documents from prior to the public comment period are found under Docket ID No. A–2001–07. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. Electronic Access

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets.Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0064. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *A-And-R-*

Docket@epa.gov, Attention Docket ID No. OAR–2002–0064. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington DC, 20460, Attention: Docket ID No. OAR–2002–0064.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2002–0064. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention: Docket ID No. OAR–2002–0064.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Margaret Sheppard, U.S. EPA, 4th floor, 501 3rd Street NW., Washington DC 20001, via delivery service. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. Acronyms and Abbreviations Used in the Preamble

Below is a list of acronyms and abbreviations used in this document.

1,1,1—the ozone-depleting chemical 1,1,1-trichloroethane, CAS Reg. No. 71–55–6; also called TCA, methyl chloroform, or MCF

1–BP—the chemical 1-bromopropane, C_3H_7Br, CAS Reg. No. 106–94–5; also called n-propyl bromide or nPB

2–BP—the chemical 2-bromopropane, C_3H_7Br, CAS Reg. No. 75–26–3; also called isopropyl bromide or iPB

2–D—two-dimensional

3–D—three dimensional

ACGIH—American Congress of Governmental Industrial Hygienists

AEL—acceptable exposure limit

AFEAS—Alternative Flurocarbon Environmental Acceptability Study

AIC—Akaike Information Criterion

AIHA—American Industrial Hygienists Association

ANPRM—Advance Notice of Proposed Rulemaking

ASTM—American Society for Testing and Materials

BMD—benchmark dose

BMDL—benchmark dose lowerbound, the lower 95%-confidence level bound on the dose/exposure associated with the benchmark response

BMR—benchmark response

BSOC—Brominated Solvents Consortium

CAA—Clean Air Act

CAS Reg. No.—Chemical Abstracts Service Registry Identification Number

CBI—Confidential Business Information

CERHR—Center for the Evaluation of Risks to Human Reproduction

CFC–113—the ozone-depleting chemical trifluorotrichloroethane, $C_2Cl_3F_3$, CAS Reg. No. 76–13–1

CFCs—chlorofluorocarbons

CFR—Code of Federal Regulations

CNS—Central nervous system

EPA—the United States Environmental Protection Agency

FR—**Federal Register**

GLP—Good Laboratory Practice

GWP—global warming potential

HCFC–123—the ozone-depleting chemical 1,2-dichloro-1,1,2-trifluoroethane, CAS Reg. No. 306–83–2

HCFC–141b—the ozone-depleting chemical 1,1,1-trichloro-2-fluoroethane, CAS Reg. No. 1717–00–6

HCFC–225ca/cb—the commercial mixture of the two ozone-depleting chemicals 3,3-dichloro-1,1,1,2,2-pentafluoro-propane, CAS Reg. No. 422–56–0 and 3,3-dichloro-1,1,2,2,3-pentafluoropropane, CAS Reg. No. 507–55–1

HCFCs—hydrochlorofluorocarbons

HEC—human equivalent concentration

HESIS—Hazard Evaluation System and Information Service of the California Department of Health Services

HFC–245fa—the chemical 1,1,3,3,3-pentafluoropropane, CAS Reg. No. 460–73–1

HFC–365mfc—the chemical 1,1,3,3,3-pentafluorobutane, CAS Reg. No. 405–58–6

HFC–4310mee—the chemical 1,1,1,2,3,4,4,5,5,5-decafluoropentane, CAS Reg. No. 138495–42–8

HFCs—hydrofluorocarbons

HFEs—hydrofluoroethers

HHE—health hazard evaluation

HSIA—Halogenated Solvents Industry Alliance

IARC—International Agency for Research on Cancer

ICF—ICF Consulting

ICR—Information Collection Request

iPB—isopropyl bromide, C_3H_7Br, CAS Reg. No. 75–26–3, an isomer of n-propyl bromide; also called 2-bromopropane or 2-BP

IPCC—International Panel on Climate Change

IRTA—Institute for Research and Technical Assistance

LOAEL—Lowest Observed Adverse Effect Level

MF—modifying factor

MSDS—Material Safety Data Sheet

NAICS—North American Industrial Classification System

NESHAP—National Emission Standards for Hazardous Air Pollutants

NIEHS—National Institute of Environmental Health Services

NIOSH—National Institute for Occupational Safety and Health

NOAEL—No Observed Adverse Effect Level

NOEL—No Observed Effect Level

nPB—n-propyl bromide, C_3H_7Br, CAS Reg. No. 106–94–5; also called 1-bromopropane or 1–BP

NPRM—Notice of Proposed Rulemaking

NTP—National Toxicology Program

NTTAA—National Technology Transfer and Advancement Act

ODP—ozone depletion potential

ODS—ozone-depleting substance

OMB—U.S. Office of Management and Budget

OSHA—U.S. Occupational Safety and Health Administration

PCBTF—parachlorobenzotrifluoride, CAS Reg. No. 98–56–6

PEL—Permissible Exposure Limit

PERC—perchloroethylene, also called tetrachloroethylene; C_2Cl_4, CAS Reg. No. 127–18–4

POD—point of departure

ppm—parts per million

RCRA—Resource Conservation and Recovery Act

RFA—Regulatory Flexibility Act

RfC—reference concentration

RfD—reference dose

SBREFA—Small Business Regulatory Enforcement Fairness Act

SNAP—Significant New Alternatives Policy

STEL—short term exposure limit

TCA—the ozone-depleting chemical 1,1,1-trichloroethane, CAS Reg. No. 71–55–6; also called 1,1,1, methyl chloroform, or MCF

TCE—trichloroethylene, C_2Cl_3H, CAS Reg. No. 79–01–6

TEAP—Technical and Economic Assessment Panel of the United Nations Environmental Programme

TSCA—Toxic Substances Control Act

TWA—time-weighted average

UF—uncertainty factor

UMRA—Unfunded Mandates Reform Act

UNEP—United Nations Environmental Programme

VMSs—volatile methyl siloxanes

VOC—volatile organic compound

II. How Does the Significant New Alternatives Policy (SNAP) Program Work?

A. What Are the Statutory Requirements and Authority for the SNAP Program?

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances, referred to as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. We must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). EPA has 90 days to grant or deny a petition. Where the Agency grants the petition, we must publish the revised lists within an additional six months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. How Do the Regulations for the SNAP Program Work?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued our first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting substances.

Anyone who produces a substitute for an ODS must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

The Agency has identified four possible decision categories for substitutes: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable.

Use conditions and narrowed use limits are both considered "use restrictions" and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant sector end-use. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. It is illegal to replace an ODS with a substitute listed as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. We describe such substitutes as "acceptable subject to use conditions." If you use these substitutes without meeting the associated use conditions, you use these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

For some substitutes, the Agency may permit a narrowed range of use within a sector (that is, we may limit the use of a substitute to certain end-uses or specific applications within an industry sector), to allow alternatives to be used in specific uses that would otherwise be deemed unacceptable. We describe these substitutes as "acceptable subject to narrowed use limits." If you use a substitute that is acceptable subject to narrowed use limits, but use it in applications and end-uses which are not specified as acceptable in the narrowed use limit, you are using these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

The Agency publishes its SNAP program decisions in the **Federal Register**. For those substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, we first publish these decisions as proposals to allow the public opportunity to comment, and we publish final decisions as final rulemakings.

In contrast, we publish substitutes that are deemed acceptable with no restrictions in "notices of acceptability," rather than as proposed and final rules. As described in the rule implementing

the SNAP program (59 FR 13044), we do not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include "comments" or "further information." These statements provide additional information on substitutes that we determine are either unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. Since this additional information is not part of the regulatory decision, you are not required to follow these statements to use a substitute unless they specifically reference regulatory requirements. The further information does not necessarily include all other legal obligations pertaining to the use of the substitute. However, we encourage users of substitutes to apply all statements in the "Further Information" column in their application of these substitutes, regardless of any regulatory requirements. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require the affected industry to make significant changes in existing operating practices.

C. Where Can I Get Additional Information About the SNAP Program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, look at EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/lists/index.html*. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044), codified at Code of Federal Regulations at 40 CFR part 82, subpart G. You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at *http://www.epa.gov/ozone/snap/chron.html*.

III. Is EPA Listing n-Propyl Bromide as an Acceptable Substitute for Ozone-Depleting Substances?

A. What Is EPA Proposing Today?

EPA is proposing today to list n-propyl bromide (nPB) acceptable, subject to use conditions, for use as a substitute for CFC–113 and methyl chloroform [1] in metals, precision and electronics cleaning, and acceptable, subject to use conditions, for use as a substitute for CFC–113, methyl chloroform and HCFC–141b in adhesives and aerosol solvent end uses. The use conditions for each end use provide that nPB not contain more than 0.05% isopropyl bromide (iPB)[2] by weight before adding stabilizers or other chemicals. By this, we mean the chemical n-propyl bromide that is produced by the manufacturer or reclaimed by a recycler before other substances are added, such as stabilizers, other solvents, or adhesive solids. End users would need to keep documentation for two years from the date on the documentation to show that the nPB-based product that they are using contains no more than 0.05% iPB in the nPB. EPA's decision is based upon comparing environmental and health risks associated with the use of nPB in specific applications in the United States, compared to other available alternatives. Based on our review, the impact of using nPB in the U.S. does not warrant listing the chemical as an unacceptable substitute under the SNAP program.

We recommend, but do not require, that users in all industrial sectors adhere to EPA's recommended guideline for worker exposure of 25 parts per million (ppm) over an eight-hour time-weighted average. While we believe it is possible to achieve the recommended exposure limit of 25 ppm in the kinds of applications listed above, we are concerned about potentially high emissions and exposure levels of nPB in adhesive applications in particular. Consequently, EPA intends to work with the National Institute for Occupational Safety and Health (NIOSH) to develop information for employers and workers at facilities that use, or could use, nPB. NIOSH and state occupational safety and health agencies will provide technical assistance to help ensure a safe workplace environment if owners or workers request it.

EPA strongly recommends that users follow responsible use practices suggested by the manufacturer when using nPB. You can also reduce risk in the workplace by monitoring workers' levels of exposure to nPB. These practices will reduce the risk of toxic effects to workers, as well as reducing the impact of emissions on the environment.

B. What Is n-Propyl Bromide?

n-propyl bromide (nPB), also called 1-bromopropane, is a non-flammable organic solvent with a strong odor. Its chemical formula is C_3H_7Br. Its identification number in Chemical Abstracts Service's registry (CAS Reg. No.) is 106–94–5. nPB is used to remove wax, oil, and grease from electronics, metal, and other materials. It also is used as a carrier solvent in adhesives. Some brand names of products using nPB are: Abzol®, EnSolv®, and Solvon® cleaners, and Whisper Spray and Fire Retardant Soft Seam 6460 adhesives.

C. What Industrial Sectors Are Included in Our Proposed Decision?

EPA has received petitions under CAA Section 612(d) to add nPB to the list of acceptable alternatives for CFC–113, methyl chloroform, and HCFC–141b in the solvent cleaning sector for general metals, precision, and electronics cleaning, as well as in aerosol solvent and adhesive applications.[3] Today's proposal does not list nPB as a substitute for HCFC–141b for the solvent cleaning sector, but does list nPB as an acceptable substitute for HCFC–141b, subject to use conditions, for aerosol solvents. This is because EPA previously listed HCFC–141b as unacceptable for use in non-aerosol solvent cleaning applications because of the availability of safer alternatives (59 FR 13090; March 18, 1994), and listed HCFC–141b as acceptable for use in aerosol solvents. No one may legally use HCFC–141b for non-aerosol solvent cleaning and, therefore, no one would substitute for its use.

The proposal for aerosol solvents only applies to a limited number of aerosol solvent applications because of the Nonessential Products Ban promulgated under Section 610 of the Act which prohibits the sale, distribution, or offer for sale or distribution in interstate commence of many products containing CFCs and HCFCs. All aerosol products, pressurized dispensers and foam products containing or manufactured with CFCs and HCFCs—except those specifically exempted by the regulations at 40 CFR part 82, subpart C, and those that are listed as essential medical devices by the Food and Drug Administration at 21 CFR 2.125(e)—are banned from sale and distribution in the United States. Users of aerosol solvents can purchase them only for those applications that are exempted from the Non-Essential Products Ban. The SNAP program applies to the use of substitutes for ODSs, and thus, applies only to those applications where ODSs may be used. Therefore, today's proposed listing only applies to those specific aerosol solvent applications where ODSs are allowed to be sold. This list of permissible uses is subject to change. Of the allowable applications for aerosol solvents, it is most likely that nPB would be used as a solvent in:

- Lubricants, coatings, or cleaning fluids for electrical or electronic equipment;
- Lubricants, coatings, or cleaning fluids for aircraft maintenance; or
- Spinnerrette lubricants and cleaning sprays used in the production of synthetic fibers.

In addition, no one has specifically stated that they use, or intend to use, nPB in coatings or inks. Thus, our proposed ruling only addresses nPB use in the adhesives end use, in the adhesives, coatings, and inks sector. We would require a separate SNAP submission and additional information on nPB use and exposure data in coatings and inks to consider its acceptability in those applications.

EPA notes that the SNAP program currently does not cover some uses of solvents, such as manual cleaning, carriers for flame retardants, dry cleaning, or paint stripping. Ozone-depleting solvents were never used in significant quantities in these applications, compared to applications that are covered by the SNAP program, such as vapor degreasing or cold batch cleaning. For further discussion, see the original SNAP rule (March 18, 1994; 59 FR 13089–13090 and 59 FR 13117–13120).

We summarize our proposed actions by sector and end use in Table 2 below.

TABLE 2.—SUMMARY OF PROPOSED ACTIONS BY SECTOR AND END USE

For this industrial sector...	in this end use...	we propose to list nPB as follows...	as a substitute for these ozone depleting substances:		
			CFC–113	methyl chloroform	HCFC–141b
Solvents Cleaning	Metals Cleaning	Acceptable, subject to use conditions[1]	X	X	
	Electronics Cleaning	Acceptable, subject to use conditions[1]	X	X	
	Precision Cleaning	Acceptable, subject to use conditions[1]	X	X	
Aerosols	Aerosol Solvents	Acceptable, subject to use conditions[1]	X	X	X
Adhesives, Coatings, and Inks.	Adhesives	Acceptable, subject to use conditions[1]	X	X	X

[1] In order to use nPB, the nPB would have to contain no more than 0.05% iPB by weight before adding stabilizers or other chemicals.

At the end of today's action, you will find language that we are proposing to add as Appendix L to subpart G of 40 CFR part 82 to summarize our proposed listing decisions. Information contained in the "Further Information" column of those tables provides additional information on nPB. Although EPA expects nPB users to conform to all information shown in Appendix L, the "further information" is not part of the regulatory decision, and, therefore, is not mandatory. Also, there may be other legal obligations pertaining to the manufacture, use, handling, disposal of nPB that are not included in the comments listed in Appendix L.

IV. What Did EPA Consider for Today's Acceptability Decision?

To assess the acceptability of any substitute, including nPB, EPA reviews the environmental and health risks potentially posed by the substitute, including ozone depletion potential, global warming potential, flammability, and toxicity. Today's action on nPB follows the publication of an Advanced Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** on February 18, 1999, at 64 FR 8043. The ANPRM provided the public an opportunity to review the information available to the Agency at that time, and requested additional information and comment to assist in the development of regulatory options. In particular, the ANPRM asked for information on those key parameters where information was limited—that is, the toxicity, ozone depletion potential, and market potential of nPB. The Agency also issued a notice on December 18, 2000 which provided the public with an update on the information EPA had received regarding nPB's ODP and toxicity, and provided a summary of anticipated next steps in developing regulations under SNAP for nPB (65 FR 78977).

Based on all information now available, EPA is proposing to find nPB acceptable subject to use conditions. The Agency is concerned that excessive exposure to nPB can pose risks of adverse health effects and is recommending a workplace exposure guideline that we believe will protect workers who are exposed to this chemical. EPA is basing this recommendation on several factors, including a review of the toxicological literature and a subsequent risk evaluation conducted according to EPA guidelines (adjusted to represent workplace exposure), and consideration of risk management principles. EPA finds that it is possible to reduce workplace exposure to nPB to acceptable levels with commonly available control equipment or ventilation equipment. Thus, the Agency has concluded that it is appropriate to list nPB as acceptable because there is evidence that it can be used in a way that does not present greater risk than other substitutes.

Based on these data, the Agency is proposing to list nPB as acceptable, subject to a use condition, for the non-aerosol solvents cleaning sector, aerosol solvents end use, and adhesives end use because we believe it is feasible to meet the recommended AEL of 25 ppm in the solvents cleaning sector, the aerosol solvents end use, and the adhesives end use. However, EPA expects users to defer to any permissible exposure limit ultimately established by OSHA. We note that section 6 of the Occupational Safety and Health Act requires OSHA to make specific legal findings to support a standard. Specifically, under the case law OSHA can set a standard only where there is "substantial evidence" that the particular standard will provide

[1] Methyl chloroform is also referred to as 1,1,1-trichloroethane, TCA, or 1,1,1.

[2] iPB is also referred to as 2-bromopropane, 2-propyl bromide, or 2-BP. Its CAS registration number is 75–26–3.

[3] EPA also received petitions for using nPB in the foam blowing and fire suppression sectors. Because the information in these petitions about the use of nPB is incomplete, EPA was unable to consider them. Therefore, today's action does not address nPB's use in the foam blowing and fire suppression sectors.

"significant" risk reduction of a "material" adverse health effect to workers. Because OSHA operates under a different statute, employs different methodology, and will presumably have additional data at some point in the future, OSHA's derivation of a permissible exposure limit (PEL) may result in a different number than the AEL we set using EPA's own methodology and the data available today.

Today's proposed decision to find nPB acceptable under the SNAP program is based in part on its relatively low ozone depletion potential when emitted within the continental United States. However, the ODP of nPB varies with latitude; therefore, this decision should not guide decisions of other countries. For example, nPB emitted closer to the equator has a significantly higher ozone depleting potential than nPB emitted from the middle and northern latitudes, which include the continental United States (for a further discussion, see section IV.B. below on Ozone Depletion Potential). EPA recommends that any decisions on the use of nPB outside the U.S. should be based on latitude-specific ODPs and volumes of the chemical projected to be used in those regions.

A. Toxicity

A primary concern regarding nPB use in the United States is its potential adverse health effects to exposed workers. Since EPA recommended a preliminary exposure guideline in 1999, additional studies have been conducted on the toxicity of nPB and its isomer, iPB. EPA has reviewed available toxicity data in order to develop a contamination limit for iPB and an Acceptable Exposure Limit (AEL)[4] for occupational exposure to nPB that are protective of human health. EPA has also reviewed workplace exposure measurements from several facilities where nPB has been used.

1. What Acceptable Exposure Limit Is EPA Recommending for n-Propyl Bromide, and Why?

Today, EPA is recommending an AEL for nPB of 25 ppm as an eight-hour time-weighted average. Based upon currently available data, EPA believes that workers can be exposed to an average nPB concentration of 25 ppm without appreciable risk of adverse health effects. In addition, like many halogenated solvents, nPB has the potential to be absorbed through the skin, so we recommend avoiding skin exposure to nPB by wearing protective clothing and flexible laminated gloves. The discussion below describes the derivation of the recommended AEL of 25 ppm for workplace exposure.

a. Summary of toxicity studies. EPA reviewed all the studies listed in docket numbers A–2001–07 and A–91–42 and the studies cited as references in Section XI at the end of this preamble. The epidemiological data on nPB are limited. An anecdotal report by Sclar described neurotoxic effects seen in one patient who used an nPB-based solvent (Sclar, 1999). Another recently published paper describes three women exhibiting signs of peripheral and central nervous system toxicity, such as stumbling, numbness, urinary incontinence, diarrhea, nausea, difficulty in concentrating, dizziness, and headaches which was attributed to nPB exposure (Ichihara, 2002a). Because detailed exposure data are not available in either of these papers, it is difficult to use this information in a risk assessment. Vibration sense deficits, decreased nerve conduction, and reduced scores on neurological functional tests were reported in female workers in China exposed to nPB between <1 ppm and 49 ppm (Ichihara *et al.*, 2002b). The study authors concluded that their findings suggest that exposure to nPB at levels below or around 50 ppm may affect peripheral and central nervous system function. However, because only an abstract of the study was available to EPA, it was not possible to determine if the exposures and effects were well-characterized or if the sample was large enough to draw reliable conclusions. As discussed below in section IV.A.1.e, "Feasibility of meeting the AEL for nPB in each industrial sector," NIOSH has performed a number of health hazard evaluations with measured workplace exposures to nPB. However, only one of these studies attempted to assess health effects (NIOSH, 2002). In this study, NIOSH conducted a voluntary medical survey and performed a complete blood count on those workers who chose to participate (43 out of 70 workers participated). The medical survey included questions on whether workers had headaches at least once per week, and whether workers had difficulty having children. No exposure-response relationship could be identified from these data. The survey was not designed to fully characterize effects on the reproductive system, nor did the study employ a control group (a group of workers who were not exposed to nPB), further limiting the utility of this data for risk assessment.

The acute toxicity of nPB has been studied in Sprague-Dawley rats for inhalation (Elf Atochem, 1997), oral (Elf Atochem, 1993), and dermal (Elf Atochem, 1995b) routes of exposure. The 4-hour LC50 (lethal concentration for 50% of the test animals) for inhalation of nPB was 35,000 mg/m3 (Elf Atochem, 1997), with death resulting from pulmonary edema. The LD50 (lethal dose for 50% of the test animals) for gavage dosing of nPB was greater than 2,000 mg/kg (Elf Atochem, 1993).

Animals receiving 2,000 mg/kg nPB dermally (with occlusion of the exposure area) showed no cutaneous reactions and no evidence of toxicity (Elf Atochem, 1995b). A skin sensitization test in Guinea pigs was also negative (Elf Atochem, 1995c).

Key chronic and subchronic toxicological studies on nPB include a 28-day inhalation study (ClinTrials, 1997a), a 90-day inhalation study (ClinTrials, 1997b), a two-generation reproductive toxicity study (WIL, 2001), and various papers and abstracts published in peer-reviewed scientific journals (Ichihara, 1998, 1999, 2000a, 2000b; Kim, 1999; Wang, 1999; Yu, 2001; Ichihara 2002a, 2002b). The results of these studies consistently show that sensitive health endpoints[5] (*i.e.*, the biological effects occurring at the lowest levels of nPB exposure) include effects on the liver (centrilobular vacuolation—cellular changes in the central area of the liver) and on the male reproductive system (decreases in absolute and relative seminal vesicle weights, and reduced sperm count, motility and maturation, and effects on sperm shape).

The ClinTrials 90-day inhalation study showed liver effects at exposures of 400 ppm and above, which is consistent with the effects seen by Kim *et al.* (1999). Effects of nPB on the central and peripheral nervous system have also been reported, including peripheral nerve degeneration and axonal swelling in the spinal cord at 1000 ppm (Yu, 2001), degeneration of the myelin of peripheral nerves at 800 ppm (Ichihara, 1999), and significantly decreased hind limb grip strength (a measure of motor nerve function) at 400 ppm (Ichihara, 2000b).

Concerns over potential reproductive toxicity associated with nPB were initially raised because exposure to iPB, a structural analog of nPB, was associated with significant reproductive effects in both male and female workers (Kim, 1996; Park, 1997; Ichihara, 1997). In animal studies, iPB has been shown to induce estrous cycle alterations, decreases in accessory sex gland weights (*e.g.* seminal vesicle, prostate), reductions in sperm counts and sperm motility, and changes in sperm morphology (Yu, 1997; Ichihara, 1997; Kamijima, 1997). Results presented by Ichihara and colleagues indicated that nPB exerts some level of reproductive toxicity in rats (Ichihara *et al.*, 1998, 1999; Wang, 1999).

More recently, two studies have reported effects of nPB on the female reproductive system in rats. In the first study, female rats were dosed at 0, 200, 400, and 800 ppm for eight hours a day for 7 weeks. Tests of vaginal smears showed a significant increase in the number of irregular estrous cycles with extended diestrus[6] in the 400 and 800 ppm dose groups, and dose dependent reduction of the number of normal antral follicles in the 400 ppm group (Yamada, 2003). In the second study, female rats were exposed to 1000 ppm nPB for 7 days per week for three weeks. The ratio of the number of estrous cycles of 6 days or longer to the total number of estrous cycles was calculated for the 1000 ppm exposure group and the control group. This ratio was two times higher in the exposed animals than controls, however, this difference was not statistically significant (Sekiguchi, 2002).

In 1999, the Brominated Solvents Consortium (BSOC), a group of several nPB manufacturers, initiated a two-generation study (WIL, 2001) designed to investigate thoroughly the reproductive toxicity of nPB, as well as to provide additional information on other toxic endpoints of concern, including liver effects, and effects on the central nervous system (CNS). In this study, groups of 25 male and female rats were exposed to nPB via whole-body inhalation. The F0, or first generation, animals were exposed to target air concentrations of 0, 100, 250, 500, or 750 parts per million (ppm) of nPB for 6 hours/day, 7 days/week for at least 70 days prior to mating. The F1, or second generation, animals were exposed to 0, 100, 250, or 500 ppm nPB (infertility in the F0 750 ppm group precluded having an F1 750 ppm group). Exposure of male animals in both generations continued throughout mating to the day prior to study termination. Exposure for female animals in both generations continued throughout mating and gestation through gestation day 20. After birth of the pups, the females' exposure continued on lactation day 5 through the day prior to study termination.

In this study, fertility was compromised significantly at 500 ppm, and no live offspring were produced at 750 ppm. There was strong evidence of dose-response in both the parent (F0) and offspring (F1) generations for a constellation of reproductive effects in both males and females, including decreases in sperm motility and changes in sperm morphology, reduced numbers of implantation sites and changes in estrous cycles, and reduced litter size. There were slight decreases (only some of which were statistically significant) at 250 ppm, and even 100 ppm for some reproductive endpoints. Statistically significant effects were observed at 250 ppm for reduced prostate weight in F0 males and increased estrous cycle length F1 females. Sperm motility in the 250 ppm group of F1 males was slightly reduced (84.8%) compared to the control group (88.9%). The difference was statistically significant ($p<0.05$). The study authors noted, however, that the sperm motility percentage for F1 males was slightly higher than the mean value in the WIL Research Laboratories historical control data (83.2%). Therefore, the authors did not attribute the reduction in sperm motility to exposure to nPB at 250 ppm. Male reproductive effects were consistent with those identified in the Japanese studies previously cited (Ichihara *et al.*, 1998, 1999, 2000a; Wang, 1999).

Liver effects similar to those reported in the ClinTrials (1997b) 90-day inhalation study were observed in males and females in both generations. Increases in liver weights occurred in both sexes following exposure to 500 ppm; corresponding increases in the incidence of minimal to mild hepatocellular vacuolation were observed at 250 ppm in males and 500 ppm in females. The adverse effects on the central and peripheral nervous system reported by Yu (2001) and Ichihara (1999, 2000b) occurred at higher doses than those associated with reproductive and liver effects in the two-generation study.

Carcinogenicity/Mutagenicity. Limited *in vitro* screening assays testing for mutagenicity and potential carcinogenicity have been conducted on nPB. Two studies have been performed investigating the potential mutagenicity of nPB in bacterial strains. Barber *et al.* (1981) exposed five *S. typhimurium* strains (TA98, TA100, TA1535, TA1537 and TA1538) to five different vapor concentrations of nPB ranging from 1.1 to 20.3 µmol/plate (135–2497 µg/plate). Exposures were performed in a closed incubation system in the presence and absence of liver S9 fraction (from Arochlor-induced rats). Increases in revertants were observed in only strains TA100 and TA1535 in both the absence and presence of S9; increases were not reported in the other strains. Elf Atochem (1994) exposed the same bacterial strains to nPB concentrations of 100 to 100,000 µg/plate in both the absence and presence of liver S9 (from male Sprague-Dawley rats induced with Arochlor 1254). This protocol also used a closed system (closed stainless-steel vessels). The highest concentration was slightly cytotoxic; however, this assay did test up to the limit dose (5,000 µg/plate) recommended for bacterial reversion assays. Appropriate positive and negative controls were used to determine spontaneous background revertant frequency. No increases in revertants were reported in any strain or condition. Given these conflicting studies, the current data regarding mutagenicity of nPB in bacterial strains are equivocal. Unpublished studies of in vivo micronucleus formation (Elf Atochem 1995a) indicate that nPB is not clastogenic, and a published dominant lethal assay with NPB was negative (Saito-Suzuki *et al.* 1982).

In a cell death bioassay using cultured human liver cells (HepG2 hepatoma), the cytotoxicity of nPB was evaluated at concentrations ≤500 ppm (SLR 2001a). Results of the bioassay indicated that nPB was cytotoxic (measured as decreased cell viability) at the highest concentration tested (500 ppm). There were no positive responses reported at any concentration for tests that evaluated enzyme function, DNA damage, or DNA damage and repair when tested at concentrations up to 500 ppm. A closely related compound, ethyl bromide, is weakly carcinogenic in rodents (Haseman and Lockhart 1994), and iPB has been shown to induce reverse mutations in bacteria (Maeng and Yu 1997). Results from these screening assays for short-term genotoxicity do not suggest significant concerns regarding nPB's potential carcinogenicity, although more data are needed.

The National Institute of Environmental Health Sciences' National Toxicology Program (NTP) is planning to conduct carcinogenicity studies in both sexes of rats and mice, which will allow for more definitive conclusions. To date, the NTP has not initiated new experimental studies on nPB, and the data will not be available for several years.

[4] An AEL is the SNAP program's generic term for an eight-hour time-weighted average occupational exposure limit.

[5] An endpoint is an observable or measurable biological event or chemical concentration (*e.g.*, metabolite concentration in a target tissue) used as an index of an effect of a chemical exposure.

[6] Diestrus is a period of sexual inactivity during the estrous cycle.

b. Derivation of an AEL for nPB, Benchmark Dose Modeling Background. EPA considered two methods to derive a recommended acceptable exposure level for workplace exposure: (1) The use of the no-observed-adverse-effect level (NOAEL) to define the starting point of departure (POD) for the computation of a reference value, and (2) the use of benchmark dose-response (BMD) modeling to define the POD. Both methods are essentially a two-step process, the first step defining a POD, and then the second extrapolating from the POD to a lower, environmentally relevant exposure level. EPA's in-depth analysis uses the BMD modeling approach, for reasons explained below; however, under either approach, one arrives at a similar value.

The traditional approach to derive safe exposure limits for numerous chemicals regulated in a variety of programs, including the SNAP program, has been to first determine the NOAEL (or LOAEL if a NOAEL cannot be identified), use the NOAEL as the POD, and then apply uncertainty factors based on EPA's guidelines to determine an appropriate reference value. Using the NOAEL to determine a reference value has long been recognized as having limitations in that it: (1) Is limited to one of the doses in the study; (2) does not account for variability in the estimate of the dose-response, which is due to the characteristics of the study design; (3) does not account for the slope of the dose-response curve; and (4) cannot be applied when there is no NOAEL, except through the application of an additional uncertainty factor (Crump, 1984; Kimmel and Gaylor, 1988).

A newer analytic approach is to use benchmark dose modeling to define a point of departure for deriving a reference value or slope factor that is more independent of study design. For risk assessment of nPB, EPA followed the BMD guidelines to develop an AEL. The EPA Risk Assessment Forum has written guidelines for the use of the BMD approach in the assessment of non-cancer health risk (USEPA, 1995b), and the EPA Benchmark Dose Workgroup is in the process of drafting technical guidance for the application of the BMD approach in cancer and non-cancer dose-response assessments. Use of BMD methods involve fitting mathematical models to dose-response data and using the results to select a BMD that is associated with a predetermined benchmark response (BMR) at the low end of the observed range in the studies used, such as a 10% increase in the incidence of a particular lesion or a 10% decrease in body weight gain. The BMD derived from mathematical modeling is the central estimate of the dose/exposure associated with the BMR. The point of departure derived from BMD modeling, however, is the Benchmark Dose Lowerbound (BMDL), or the lower 95% bound on the dose/exposure associated with the BMR. Using the lower bound accounts for the uncertainty inherent in a given study (*e.g.*, small sample size), and assures (with 95% statistical confidence) that the desired BMR is not exceeded.

The advantage of the benchmark dose approach is that it considers response data across all exposure groups. For example, a benchmark dose can be calculated even in studies where a NOAEL could not be identified, *i.e.*, in studies where responses even in the lowest exposure group tested were considered adverse. Unlike the NOAEL/LOAEL, the benchmark dose does not have to be one of the exposure levels (dose groups) chosen in the experimental design. In a hypothetical experiment where groups of rats are exposed to a chemical at 0 ppm, 100 ppm, 500 ppm and 1,000 ppm, the NOAEL or LOAEL must be either 100 ppm, 500 ppm, or 1,000 ppm simply because those were the only levels tested in the experiment. However, the benchmark dose derived from the data in the same experiment could be 200 ppm, 750 ppm, or even 997 ppm depending on the shape of the dose response curve described by the data. EPA uses the BMD approach whenever possible because it provides a more quantitative alternative to identification of a point of departure than the traditional NOAEL/LOAEL approach (US EPA 1995b).

Dosimetric adjustments and application of uncertainty factors. Under either approach—NOAEL/LOAEL or BMD modeling—an adjustment to the point of departure for the calculation of a reference value may be necessary to calculate a "human equivalent concentration" (HEC) if there are differences between the exposure regime used in the toxicity studies and a typical workweek of 8 hours per day and 5 days per week. Once a POD and the corresponding HEC is identified, uncertainty factors (UFs) are applied to account for extrapolation uncertainties that could underestimate the chemical's toxicity potential for exposed humans (in this case, workers using nPB). According to standard risk assessment methods as delineated in Agency guidance (US EPA, 1994), UFs of up to 10 may be applied for each of the following conditions:

(1) Data from animal studies are used to estimate effects on humans;

(2) Data on healthy people or animals are adjusted to account for variations in sensitivity among members of the human population (*e.g.*, interindividual variability);

(3) Data from subchronic studies are used to provide estimates for chronic exposure;

(4) Studies that only provide a lowest observed adverse effect level (LOAEL) rather than a no observed adverse effect level (NOAEL) or benchmark dose; or

(5) An incomplete data base of toxicity information exists for the chemical (US EPA, 1995b).

Finally, a modifying factor (MF), which is an additional uncertainty factor that is greater than zero and less than or equal to 10, may be used. The magnitude of the MF depends upon the professional assessment of scientific uncertainties of the study and data base not explicitly treated above, *e.g.*, the completeness of the overall data base and the number of species tested. The default value for the MF is 1.

It is important to note that EPA does not have specific guidelines for occupational studies. As such, EPA is applying its general risk assessment principles and adapting its methodologies, as appropriate to consider risk in an occupational setting. For example, as mentioned above, EPA is adjusting its exposure scenario to derive a human equivalent concentration (HEC) that is representative of workplace exposure, rather than continuous lifetime exposure.

Selection of Endpoints for Benchmark Dose Modeling. Based on EPA guidance, endpoints were selected for BMD analysis and for potential use as a point of departure using the following principles:

- Toxicological significance of the endpoint
- Relevance to humans
- Quality of study and dose-response data
- Reproducibility of effects across multiple studies.

EPA selected reduced sperm motility and increased liver vacuolation for BMD analysis because they met the above criteria, and because these effects were seen consistently throughout the toxicological database at low exposures. EPA guidance states that endpoints selected as appropriate for risk assessment should be modeled if their LOAEL is up to 10-fold above the lowest LOAEL. This ensures that no endpoints with the potential to have the lowest BMDL are excluded from the analysis. The selection of the most appropriate BMDs to use for determining the point of departure must be made by the risk assessor using scientific judgement and principles of risk assessment, as well as the results of the modeling process.

Toxicological Evaluation for AEL Derivation. Benchmark dose modeling was conducted following EPA guidelines. EPA modeled six data sets for liver vacuolation and reduced sperm motility based on results from two studies to identify the lowest BMDL as a point of departure (POD).[7] EPA selected these endpoints for BMD analysis because they were consistently found to be the most sensitive effect across the many studies that were conducted on the compound. Further, these particular studies provided robust data on these endpoints so that BMD analysis could be conducted. Based on this analysis, sperm motility in the F1 males from the WIL (2001) study was selected as the POD as it would be protective for all effects of nPB. SLR conducted a BMD analysis using data sets for numerous endpoints from 5 studies, including the WIL (2000) and ClinTrials (1997b) studies used by EPA (SLR International Corp., 2001b).[8] SLR also identified sperm motility in F1 males from the WIL (2001) study as the lowest BMDL. The SLR BMD analysis is discussed further in section IV.A.1.d. The methods used in development of the AEL based on sperm motility are described below. It is important to note that the animals in the 2-generation study were dosed every day for six hours. As such, the dosing scenario used for the testing procedure does not exactly mirror the human exposure scenario in the workplace of 8 hours per day 5 days per week. However, it is still appropriate to consider the data because they address the most sensitive health endpoints, and because the BMDL is adjusted by deriving a HEC to account for workplace exposures. A more complete discussion of EPA's adjustment of the BMDL is contained in ICF, 2002a.

EPA did not use neurotoxic effects as endpoints for deriving an AEL value since we did not consider this to be one of the most sensitive endpoints. No neurotoxic effects were reported in the 2-generation reproductive toxicity assay (WIL, 2001), and no adverse effects were observed in the functional observational battery analysis, either in an abbreviated form in the 28-day study at exposure concentrations of 400 and 1,000 ppm (ClinTrials, 1997a), nor in the 90-day study at concentrations of 400 and 600 ppm (ClinTrials, 1997b). Although the NIOSH voluntary medical survey performed in 1999 attempted to assess symptoms of neurotoxic effects, no exposure-response trend for headache or other neurological effects could be identified from the data.

The vacuolation of the white brain matter that was observed in the 28-day study at all exposure concentrations was not observed in the 90-day study, indicating that this effect may be a transient response and not adverse. Further, the vacuolation was not dose-dependent and did not correlate with other gross CNS effects observed at 1,600 ppm in the 28-day study. In the 2-generation study, clinical signs were monitored and CNS effects were not observed at any exposure concentration (0, 100, 250, 500, and 750 ppm) in the F0 or F1 animals, nor were histopathologic lesions observed in the brain, spinal cord or peripheral (sciatic) nerve of rats in the 750-ppm group of the F0 generation in the 2-generation study or in the F1 population.

EPA's Benchmark Dose Software (BMDS) was used for model fitting and BMD and BMDL estimation. To derive a BMD and BMDL for reduced sperm motility in the F0 and F1 males from WIL (2001), the data were modeled as continuous effects. Following EPA's Benchmark Dose guidelines, BMDs and BMDLs were defined based on benchmark responses (BMRs) of 10% extra risk—that is, the level at which 10% of the animals would show adverse effects for a particular endpoint. BMDLs were defined as the 95% lower confidence bound on the corresponding BMD estimates. Confidence bounds were calculated by BMDS using a likelihood profile method. The data sets for the reduced sperm motility endpoint were quantitatively summarized by group means and measures of variability (standard errors or standard deviations). The models used to represent the dose-response behavior of these continuous endpoints are those implemented in EPA's Benchmark Dose Software which are the Power model, the Hill model, and the polynomial model. Goodness-of-fit for each model for a given data set was determined based on a likelihood ratio statistic. In particular, maximized log-likelihoods associated with the modeling were sequentially compared.

Based on the criteria below, the most appropriate mathematical model and its corresponding BMDL was chosen as the best fit for each of the data sets modeled:

1. Models with an unacceptable fit (including consideration of local fit in the low-dose region) were excluded. Visual fit, particularly in the low-dose region, was assessed for models that had acceptable global goodness-of-fit.

2. If the BMDL values for the remaining models for a given endpoint were within a factor of 3, no model dependence was assumed, and the models were considered indistinguishable in the context of the precision of the methods. The models were then ranked according to the Akaike Information Criterion (AIC), which is reported by the BMDS software to aid in comparing the fit of different models. The model with the lowest AIC (within the family of models) was chosen as the basis for the BMDL.

3. If the BMDL values were not within a factor of 3, some model dependence was assumed, and the lowest BMDL was selected as a reasonable conservative estimate, unless it was an outlier compared to the results from all of the other models. Note that when outliers are removed, the remaining BMDLs may then be within a factor of 3, and so the criteria given in item 2 would be applied.

BMDs for reduced sperm motility in F1 and F0 males were 276 ppm and 362 ppm respectively, and BMDLs were 169 ppm and 282 ppm. Consistent with EPA risk assessment guidance, the BMDL of 169 ppm for reduced sperm motility in F1 males (WIL, 2001) was selected as the POD. EPA considered whether a BMDL derived from the F1 generation should be used to determine a workplace exposure limit, particularly in relation to the potential mechanisms by which nPB exerts its effects on the reproductive system. While some mechanistic data are available on this subject, they are inconclusive and limited. The available data do not rule out the possibility that the effects on the F1 generation occurred as a result of effects on parental germ cells (sperm or ova) or effects mediated by changes to the endocrine system. Because of the lack of mechanistic data on developmental and potential transgenerational effects, it is most appropriate and protective, as well as consistent with EPA risk assessment

[7] Data sets that were modeled from the WIL study include sperm motility and liver vacuolation in the F0 and F1 generations. Data sets modeled from ClinTrials (1997b) were liver vacuolation in both males and females.

[8] SLR International Corp. (2001b) conducted BMD modeling on the following studies: ClinTrials (1997a), ClinTrials (1997b), Ichihara, *et al.* (2000a and b), and WIL (2001). Reproductive endpoints modeled included sperm count, retained sperm in seminiferous tubules, sperm deformities, sperm motility, epididymal sperm count, fertility index, litter viability, and plasma glucose levels. Other toxicological endpoints modeled included forelimb strength, hind limb strength, motor conduction velocity, distal latency time, plasma creatinine phosphokinase levels, brain cell vacuolation, liver vacuolation in males, and analysis in various parameters associated with effects on blood formation.

guidelines, to use the endpoint observed at the lowest effect level to derive the AEL. In this case, that endpoint is decreased sperm motility in the F1 generation.

The BMDL was multiplied by 6/8 and 7/5 in order to derive the HEC, which accounts for temporal differences between the exposure duration used in the study (6 hours per day, 7 days per week) and an 8-hour per day, 5-day work week. This results in a HEC for spermatic effects of 177 ppm. Uncertainty factors were then applied to the HEC, taking into account the following considerations listed below.

(1) An uncertainty factor is needed to account for physiological differences between humans and rats. EPA reference concentration (RfC) guidelines describe the factors that must be considered and state that an uncertainty factor 10 may be used for potential differences between study animals and humans. This factor of 10 is often thought to consist of two uncertainty factors of 3—the first to account for differences in pharmacokinetics [9] and another uncertainty factor to account for differences in pharmacodynamics [10] between the study animal and humans. (The value of 3 is the closest whole number to the square root of 10.) According to EPA RfC guidelines, no adjustment for differences in pharmacokinetics is necessary in this case since the blood/air partition coefficient [11] for nPB in the human (7.1) is less than in the rat (11.7), indicating that the delivered dose of nPB into the bloodstream in rats is slightly higher than in humans.

However, EPA recognizes that the lack of an uncertainty adjustment for pharmacokinetic differences between animals and humans rests on a default approach applied to category 3 gases described in Appendix J of its guidelines for deriving an inhalation RfC. This default approach assumes that the pharmacokinetics of nPB conform to a model that requires several assumptions, in particular: (1) The toxicity is directly related to the inhaled parent compound in the arterial blood, and (2) the critical metabolic pathways scale across species, with respect to body weight, in the same way as the ventilation rate (*e.g.*, $BW^{3/4}$). Given the hypothesized metabolic pathways for nPB (ICF, 2002a; CERHR, 2002a), it is plausible that toxicity in rats may be related to a reactive metabolite in the target tissue rather than the blood level of the parent compound. EPA is not aware of any quantitative data on nPB metabolism in humans, or evidence implicating the biologically active agent or mode of action. EPA requests additional data and comment from the public on nPB pharmacokinetics, metabolism, and mode of action that will help determine whether an interspecies uncertainty factor greater than 1 is appropriate to account for pharmacokinetics. If data become available indicating that nPB does not conform to the constraints assumed by the default pharmacokinetic model in the RfC guidelines, EPA would refine its risk assessment for nPB as necessary, and apply an uncertainty factor for pharmacokinetics in extrapolating from animal to humans. We would also revise our acceptability determinations accordingly.

With regard to the UF for pharmacodynamics, no data exist to compare the effect of nPB on human spermatocytes and rat spermatocytes. EPA does not have data suggesting that the default of 3 for pharmacodynamics should not be used. Thus, the full uncertainty factor of 3 for differences in pharmacodynamics was applied. EPA also requests comments and data on this uncertainty factor.

(2) Although workers employed in the types of industrial sectors that are part of this SNAP review likely represent a generally healthy population, pre-existing reproductive conditions as well as general variability in fertility would not impact a worker's overt health or employment status, and would be largely unobserved. It is estimated that 6% of adult males are infertile (Purves, 1992), and that 40%–90% of these cases are due to deficient sperm production of unidentifiable origin (Griffin, 1994). Given this information, EPA concludes that a significant portion of the male population has pre-existing reproductive deficits. EPA's risk guidelines for deriving community-based reference concentrations recommend a factor of 10 in accounting for intraspecies variability. EPA believes that in the case of nPB, a lower uncertainty factor is appropriate to account for variability within the worker population. This UF is intended to protect for potential "unobserved" reproductive medical conditions (*e.g.*, decreased sperm motility, aberrant sperm formation) that are known to exist among otherwise healthy males of working age. Because we are concerned about exposures in the workplace, not exposures to the full population, and because exposures would not be continuous, such as would be expected when developing an RfC, we employed an UF of three as an upper bound instead of the full uncertainty factor of 10 for intrahuman variability.

The following equation describes how EPA derives 18 ppm as a starting point in the development of a recommended AEL using a UF of 3 for variations in the human population, and 3 for pharmacodynamics:

$169 \text{ ppm} * 6/8 * 7/5 * 1/3 * 1/3) = 18 \text{ ppm}$

This derivation rests on assumptions that some may consider conservative, including the use of the F1 generation as the point of departure for workplace exposure, and the fact that reduced sperm motility may be a particularly sensitive endpoint for male reproductive effects. For a further discussion, see the next section below, "AEL adjustment based on risk management principles."

AEL adjustment based on risk management principles. Risk management uses risk characterization, along with directives of the enabling regulatory legislation and other factors, to decide whether to control exposure to the suspected agent and the level of control. Risk management decisions also consider socioeconomic, technical, and political factors (EPA Reproductive Risk Assessment Guidelines, 1996). Unlike many other chemicals being reviewed by SNAP, nPB is already in use. Therefore, a decision on the AEL that incorporates risk management considerations may be appropriate. Doing so is consistent with one of the original "Guiding Principles" of the SNAP program (59 FR 13046, March 18, 1994):

> EPA does not intend to restrict a substitute if it poses only marginally greater risk than another substitute. Drawing fine distinctions concerning the acceptability of substitutes would be extremely difficult given the variability in how each substitute can be used within a specific application and the resulting uncertainties surrounding potential health and environmental effects. The Agency also does not want to intercede in the market's choice of available substitutes, unless a substitute has been proposed or is being used that is clearly more harmful to human health and the environment than other alternatives.

If EPA adopted 18 ppm as the AEL, we would likely propose that use of nPB be listed as unacceptable in adhesives applications, based on data indicating that exposure to nPB in such uses regularly exceed 18 ppm on average. However, EPA has determined that adhesive operations can meet an AEL of 25 ppm with proper ventilation and controls (see Section IV.A.1.e., "Feasibility of meeting the AEL for nPB in each industrial sector"). The AEL of 18 ppm was derived using assumptions that some may consider conservative. Following the SNAP principle referenced above, some slight adjustment of the AEL may be warranted after applying judgment based on the available data, and after considering alternative derivations.

To assess how much of an adjustment may be appropriate that would still be protective of human health, EPA considered potential sources of conservatism in the AEL derivation—specifically, the use of the BMDL in the F1 generation as a point of departure. To assess the magnitude of this conservatism, we derived an AEL based on the BMDL for reduced sperm motility in the F0 generation (282 ppm), the second most sensitive endpoint found in the 2-generation study. Deriving an HEC (296 ppm), and applying the same uncertainty factors as applied to the F1 generation (3 for intraspecies variability and 3 for differences in pharmacodynamics), would result in an occupational exposure limit of approximately 30 ppm. A derivation based on F0 data could be considered as a reasonable and protective upper bound for the occupational exposure limit. EPA requests comment on whether it appropriate to interpret 30 ppm as an upper bound for an occupational exposure limit.

EPA has determined that 18 ppm is a reasonable but possibly conservative starting point, and that exposure to 25 ppm would not pose substantially greater risks, while still falling below an upper bound on the occupation exposure limit. An AEL of 25 ppm would reduce overall risk to worker health while adhering to EPA's SNAP guiding principle of not finding a substitute unacceptable unless the proposed substitute is clearly more harmful than other alternatives. EPA specifically requests comment on this approach.

Dermal Exposure. EPA believes that workers should use good workplace practices and proper handling procedures to avoid unnecessary dermal exposure to all industrial solvents, including nPB. Similar to other halogenated solvents, nPB may defat the skin and may cause local irritation due to this characteristic. A skin notation is applied to those chemicals where "dermal absorption contributes substantially to the overall systemic toxicity" (skin notation documentation for methyl chloride; ACGIH, 1991). As described previously, the available acute dermal toxicity study in rats (Elf Atochem, 1995) indicates that acute dermal exposure to nPB does not result in systemic toxicity. Because significant dermal absorption of nPB was not demonstrated in this study, EPA is not including a skin notation for nPB along with our recommended AEL in the comments section of the regulatory text. The database regarding dermal toxicity for nPB is not as conclusive as the data for chemicals that have a skin notation, (*e.g.*, methyl chloride, dichlorvos). To apply a skin notation to nPB would imply that the dermal toxicity of this compound is similar to that of these other compounds. It is also noteworthy that there is no skin notation for other halogenated solvents such as methylene chloride or perchloroethylene, and there is no evidence that absorption through the skin is greater for nPB than for the other halogenated compounds. Thus, in EPA's judgement the database currently does not support the need for a skin notation for nPB.

However, we note that the acute dermal study did not provide information regarding chronic dermal absorption. Further, NIOSH evaluated the potential of nPB to permeate skin and promote chronic, systemic toxicity using a mathematical model and the log octanol::water coefficient for nPB, which is approximately 2. This evaluation found that nPB dermal exposure may be an additional source of exposure to workers if the unprotected skin of both hands is exposed (NIOSH, 2003). Given the above information, EPA specifically requests comment on whether to add a skin notation to our recommended AEL in the final rule if there are data that support this change.

c. Overview of the Evaluation of Risks to Human Reproduction (CERHR) Expert Panel Report on nPB. In December 1999, NIOSH submitted an assessment nomination to the National Toxicology Program's (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) for both nPB and iPB. The NTP and the National Institute of Environmental Health Sciences (NIEHS) established CERHR in June 1998. CERHR's purpose is to provide timely, unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed.

nPB (1-Bromopropane) was nominated by NIOSH and selected for evaluation by the CERHR based primarily on documented evidence of worker exposures and published evidence of reproductive and developmental toxicity in rodents (this evidence is reviewed above in section IV.A.1.a). The evaluation of nPB was a four-month effort by a ten-member Expert Panel of academic, private and government scientists that culminated in a public meeting in December 2001. At that meeting, the Expert Panel reviewed the scientific evidence on nPB and reached conclusions regarding its potential effects on human reproduction and development. The Expert Panel Report on nPB was issued in March 2002 (CERHR, 2002a). An Expert Panel Report on iPB was issued at the same time and is discussed in section IV.A.4. of this preamble (CERHR, 2002b).

The Expert Panel Report on nPB is intended to: (1) Interpret the strength of scientific evidence that a given exposure or exposure circumstance may pose a hazard to reproduction and the health and welfare of children; (2) provide objective and scientifically thorough assessments of the scientific evidence that adverse reproductive/developmental health effects are associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties that would diminish confidence in assessment of risks; and (3) identify knowledge gaps to help establish research and testing priorities.

NTP–CERHR sought public comment on the Expert Panel Report through a Federal Register notice on March 8, 2002 (67 FR 10734). The NTP has issued a final report, and has published all the public comments that were received on that report. These documents may be accessed through the CERHR Web site at *http://cerhr.niehs.nih.gov/news/bromo/index.html*.

The conclusions of the March 2002 Expert Panel Report on nPB were as follows:

- Available human data are insufficient to draw conclusions on the potential for reproductive or developmental toxicity.
- Available toxicological data were sufficient to conclude that nPB exposure can induce developmental and reproductive toxicity in rats. In evaluating the potential effects on human reproduction, the rat data are assumed to be relevant for humans.
- The mechanisms that lead to reproductive or developmental toxicity are unknown.
- There are no relevant kinetic or metabolism data for nPB to compare human and animal exposure levels.

The Expert Panel identified LOAELs from the body of animal data as follows:

- A LOAEL for male reproductive effects of 200 ppm based on decreases in absolute and relative seminal vesicle weight reported in Ichihara (2000b). A

[9] Pharmacokinetics refers to the activity or fate of chemicals in the body, including the processes of absorption, distribution, localization in tissues, biotransformation, and excretion.

[10] Pharmacodynamics refers to the biochemical and physiological effects of chemicals in the body and the mechanisms of their actions.

[11] A ratio of a chemical's concentration between blood and air when at equilibrium.

NOAEL of 100 ppm was identified based on decreases in prostate weight observed at 250 ppm in WIL (2001).

• A LOAEL of 250 ppm, and a NOAEL of 100 ppm for female reproduction based on increased estrous cycle length in WIL (2001).

• A LOAEL of 250 ppm and a NOAEL of 100 ppm for mineralization of the kidney pelvis in both F0 and F1 generations, based on WIL (2001).

EPA agrees with the panel's conclusions that the available human data are insufficient to draw conclusions on the reproductive or developmental toxicity of nPB and that the mechanisms that lead to reproductive or developmental toxicity are unknown. EPA also agrees with the panel that a NOAEL for reproductive effects (male) would be considered to be 100 ppm under a traditional risk assessment analysis. However, based on the criteria described previously for selecting endpoints for BMDL analysis, we believe the CERHR endpoints are not appropriate for developing the AEL for nPB, as explained below.

Reduced seminal vesicle weight. EPA did not conduct BMD analysis for reduced seminal vesicle weight observed in the Ichihara (2000b) study because there is no consistency of effect across available studies for this endpoint. Reduced seminal vesicle weight was not found to be a sensitive endpoint in WIL (2001). In fact, a statistically significant reduction in seminal vesicle weight was only seen in the 750 ppm group in the F0 generation, and there were no statistically significant effects on seminal vesicle weight in the F1 generation. Because there were other endpoints that were more sensitive in the WIL study, we regard those endpoints to be of greater toxicological importance. Further, EPA believes that because the Ichihara study was not performed according to GLP guidelines, and there were conflicting reports regarding the exposure regime and the number of animals used, it is not appropriate to use this study in quantitative risk assessment.

Reduced absolute prostate weight. Based on the WIL study, the CERHR Expert Panel identified a NOAEL of 100 (with a LOAEL of 250) for reduced absolute prostate weight in the F0 males. The toxicological relevance of absolute prostate weight reduction is questionable since this endpoint may be associated with reduction in overall weight gain. To assess the significance of this particular endpoint, EPA calculated the mean relative prostate weights for exposed dose groups from the WIL (2001) study. Relative prostate weights (organ weight/body weight) in F0 males were 0.0040, 0.0039, 0.0036, 0.0035, and 0.0035 at 0, 100, 250, 500, and 750 ppm respectively, revealing that relative prostate weight at exposures greater than or equal to 250 ppm decreased only 10% relative to controls. Because the dose-response relationship in other endpoints was more pronounced, EPA did not conduct BMD modeling on this endpoint.

Increased estrous cycle length. The Expert Panel identified 250 ppm as a LOAEL for females based on increased estrous cycle length in the F1 generation of the WIL (2001) study. EPA agrees that the slight increase in estrous cycle length may be a result of nPB exposure. However, because the estrous cycle length of 4.9 days at 250 ppm is within the range of historical controls, the effect cannot be conclusively attributed to exposure without statistical analysis. The study report also notes lack of cycling in some females, which may have caused difficulty in accurately determining the average estrous cycle length for each affected group. Because these data are lacking, this endpoint should not be used for developing the AEL.

Mineralization of the kidney pelvis. The Expert Panel concluded that mineralization of the pelvis of the kidneys at 250 ppm was an adverse effect. EPA notes that mineralization of the kidney was not consistently associated with nPB exposure across different studies, and that in WIL (2001) the severity of mineralization did not increase above a category of minimal except at 750 ppm where it was mild. Therefore, EPA did not consider using this endpoint as useful for developing the AEL.

Sperm Motility. The Expert Panel identified 500 ppm as the LOAEL for reduced sperm motility. The Panel agreed with the WIL (2001) study authors that the slight but statistically significant reduction in the percentage of motile sperm in the F1 males at 250 ppm (85% vs. 89% in concurrent control animals) could not be attributed to nPB exposure since the percentage of motile sperm in this dose group slightly exceeded that of historic controls (83%). The data indicate that the small changes observed at 250 ppm are consistent with larger changes in sperm motility observed at 500 and 750 ppm. Thus, results for sperm motility in F0 and F1 males exhibited dose-related trends, and conformed to other principles for the selection of endpoints for BMD analysis (See earlier discussion in section IV.A.1.b.). Thus, regardless of whether a LOAEL of 500 ppm or 250 ppm is assigned to this particular endpoint, the Agency determined that reduction in the percentage of motile sperm in the F1 males is a good candidate for BMD analysis. In addition, it is important to note that the Panel did not have access to either the ICF or SLR International benchmark dose analyses. As discussed in section IV.A.1.b, benchmark dose modeling overcomes the issue of drawing a "bright line" in the form of a LOAEL or NOAEL and instead uses the full set of data across all exposure levels (ICF, Inc., 2002a; SLR International, 2001b). Using the results of benchmark dose modeling, it becomes clear that sperm motility is a sensitive effect, and is an appropriate effect upon which to base an AEL.

d. AELs suggested by other reviewers and outside parties. In the draft final nPB risk screen conducted for EPA in preparation for today's proposal, ICF Consulting states that "Given the strength of the data base and the extrapolation of the data to occupational exposures, a range of uncertainty factors to account for variability in the human population of 2 to 3 is considered appropriate." (ICF, 2002a). EPA recognizes that the choice of UF relates to a wide range of considerations including the strength of the data base. Applying a range of UFs between 2 and 3 to account for intrahuman variability would yield a range of occupational exposure limits between 18 and 30 ppm. ICF suggested that the midpoint of this range, 25 ppm, was an appropriate occupational limit value for the purposes of the risk screen for nPB. EPA requests comment on this recommended approach in deriving an occupational exposure limit, including the application of uncertainty factors.

EPA's Office of Atmospheric Programs solicited comments regarding ICF Consulting's analysis and derivation of a recommended AEL from EPA's Office of Research and Development (ORD), external toxicologist William Brock, external toxicologist Darol Dodd, and the State of California, Department of Health Services, Hazard Evaluation System & Information Service (HESIS). The comments are available in docket A–2001–07.

ORD's comments focused on the WIL Research Laboratories two-generation study and its use in identifying sensitive endpoints. ORD noted that the study's results indicated dose-related trends, that a number of endpoints were significantly affected at 500 ppm in both generations, and there were slight—though in most cases not statistically significant—decreases at 250 ppm and even 100 ppm for some endpoints. They also stated that "[i]n the absence of evidence of dominant lethality or trans-generational effects typical of endocrine disrupting chemicals, it is reasonable to conclude that the effects of [nPB] are elicited in both sexes via their exposure as adults." They also noted that "the modest degree of change in the 250 ppm F1 sperm motility endpoint (and lack of significance in the F0 at this dose) compared to the collective more robust changes at 500 ppm, in both the F0 and F1, indicates that 250 ppm could reasonably be considered a NOAEL for nPB, with 500 ppm being a LOAEL." Finally, ORD noted that "even if the F1 data may not be directly applicable for occupational exposures in males, it certainly is applicable to occupational exposures of pregnant women." They conclude with suggestions for further research (Klinefelter and Darney, 2002).

EPA asked William Brock to review the draft AEL report from a general toxicological point of view. Dr. Brock is currently a senior manager with Environ Corporation. In his review, Dr. Brock noted that several subchronic studies in rats have been conducted with nPB with concentrations ranging from approximately 100 ppm to 1800 ppm. Biological effects have been on liver, male reproductive tissue, and, to some extent, hematological parameters. Although some of the studies have not been conducted according to GLP, this fact does not necessarily limit the usefulness of the studies to recommend an exposure limit. Overall, the sperm effect observed at 400 ppm and the effects on fertility at 500 ppm with hepatic vacuolation at 250 represent the PODs for setting exposure limits for nPB. The NOAEL for these effects would be 200 ppm. Dr. Brock notes that "exposure limits that have historically been established are generally, but no[t] always, an order of magnitude below the NOAEL. Taking this approach would result in an occupational limit of 20 ppm (200/10). Although the ICF report could be improved by being more specific on effects and concentrations, the logic provided in the report and the end result, *i.e.*, a 25 ppm exposure limit, is certainly justified" (Brock, 2002).

EPA asked Darol Dodd to review and comment on the draft AEL report (ICF, 2000a). Dr. Dodd is currently the Laboratory Director for ManTech Environmental Technology, Inc. In his comments, Dr. Dodd stated that the ICF report provided logical and consistent explanations for selection of the BMDL and uncertainty factors. He noted that several of the studies show LOAEL or NOAEL values at 200 ppm to 250 ppm. In his opinion, "a recommended AEL value that is about one order of magnitude lower than LOAELs/NOAELs in a number of laboratory rodent studies does not appear to be overly protective" (Dodd, 2002).

HESIS provided comments on the AEL derivation for nPB that focused on the available studies useful for low-dose risk assessment, identifying the LOAELs and NOAELs from these studies, and identifying their disagreements with the ICF evaluation. Overall, HESIS took issue with the approach used by ICF to derive an AEL: "ICF repeatedly ignores or discounts effects seen with low-level exposures. At most points where a decision based on professional judgment must be made, ICF makes the choice that leads to the highest possible AEL." HESIS states that, contrary to the ICF approach, an appropriate risk assessment methodology would take a NOAEL, LOAEL or appropriate BMDL, and apply uncertainty factors of 10 for each of the following conditions: (1) Interspecies variation, (2) intraspecies variation, (3) reliance on a LOAEL rather than a NOAEL where necessary, and (4) extrapolation from acute or subchronic exposure to chronic exposure. The total uncertainty factor would be between 1,000 and 10,000. HESIS stated that appropriate endpoints and points of departure would be reduced pup weight seen in the Huntingdon (2001) study at 103 ppm, the neurotoxicity seen in Ichihara (2000a) at 200 ppm, reduced seminal vesicle weight and increase in tailless sperm seen at 200 ppm in Ichihara (2001a), reduced sperm motility at 200 ppm in Wang (1999), CNS pathology (vacuolation of white matter) at 400 ppm seen in ClinTrials (1997a), and from the WIL (2001) study, reduced fertility observed at 100 ppm and other adverse reproductive and kidney effects observed at 250 ppm or the lowest BMDL calculated from all studies. Using any of these points of departure, HESIS suggests that a reasonable AEL could range from less than 0.05 ppm to less than 5 ppm, and recommends an AEL of 1 ppm.

HESIS stated that, in deriving the AEL for the liver vacuolation, ICF used no uncertainty factor for interspecies pharmacokinetic variation, assuming "without any basis, that gas exchange within the lung constitutes the entire pharmacokinetic variation between the species, simply because the blood-air partition coefficient is lower in humans than in rats." HESIS also disagreed with the use of no uncertainty factor for intraspecies variation for liver vacuolation. With regard to ICF's derivation of an AEL for sperm motility, HESIS disagreed with ICF's use of no uncertainty factor for interspecies pharmacokinetic variation for the same reason given for liver vacuolation. HESIS also stated that there "is no data base at all on which to determine the likelihood and degree of interhuman variability in sensitivity to the spermatotoxic effect of [nPB] * * * ." Finally, HESIS stated that nPB "is an organic solvent that is probably well absorbed through the skin and should be listed with a skin notation * * * ."

A response from ICF Consultants to HESIS's comments is included in the docket (ICF 2002c). EPA concluded that the issues HESIS raises are, in fact, questioning EPA's risk assessment guidelines that were the basis for the AEL report, rather than comments unique to the AEL for nPB. For example, EPA's risk assessment guidelines allow use of a default uncertainty factor of 1 instead of 3 for pharmacokinetics for nPB and other inhaled gases where the toxicity is from the parent compound, rather than metabolites. As discussed above in section IV.A.1.b, we request comment and data that would confirm or refute the appropriateness of the assumptions in Appendix J of EPA's risk assessment guidelines. In addition, EPA disagrees that the uncertainty factor for variability in the worker population should be the same as that for variability in the general population (10). Because the working population does not include children or the elderly, as is the case for the general population, we do not believe that a full UF of 10 for sensitive subpopulations is necessary. Further, workers are only potentially exposed during a 40-hour workweek and not continuously, as would be expected for the general population. Finally, because of the length of the WIL Laboratories study, we do not believe that it is necessary to add an uncertainty factor to extrapolate from subchronic to chronic exposures.

Various chemical manufacturers and solvent formulators have derived their own recommended industrial exposure limits. Albemarle Corporation and Dead Sea Bromine Group, both of whom continue to produce nPB, recommend an AEL of 25 ppm in their Material Data Safety Sheets. Great Lakes Chemical and Atofina recommended AELs of 10 ppm and 5 ppm respectively, although neither of these companies currently sells nPB. Petroferm produces nPB formulations and recommends an exposure limit of 25 ppm. Finally, Enviro Tech International, Poly Systems International, TULSTAR Products, and Amity International, all of whom produce nPB formulations, recommend an exposure limit of 100 ppm.

In a November 6, 2000, meeting with EPA, Albemarle explained that its derivation of a workplace exposure guideline of 25 ppm is based upon raw

data from the two-generation reproductive study (WIL, 2001). In the fall of 2000, Albemarle analyzed preliminary data from the two highest exposure groups in two-generation study, 750 ppm and 500 ppm, and found evidence of reproductive effects. As a proactive measure while completing analysis of the data, Albemarle started with an exposure level of 250 ppm and divided by a safety factor of 10, yielding an exposure guideline of 25 ppm. EPA has not seen the derivation of Great Lakes Chemical Corporation's workplace exposure guideline of 10 ppm or Atofina's guideline of 5 ppm.

The AEL recommended by Enviro Tech International is based on two separate analyses. In the first analysis, Rozman and Doull (2001) recommend an AEL of 60–90 ppm based on the results obtained from a health questionnaire administered as a part of a NIOSH Health Hazard Evaluation at a site where nPB is used as an adhesive (NIOSH, 1999). This AEL derivation was subsequently published in *Applied Occupational Environmental Hygiene*, the ACGIH's journal, in 2002 (Rozman and Doull, 2002).

In their analysis, Rozman and Doull identified the most sensitive endpoint for nPB toxicity as peripheral/central neurotoxicity followed by reproductive toxicity and then liver toxicity. This ranking was based on a subchronic inhalation study by Ichihara (2000b) in which decreased hind limb strength in mice was observed following 4 weeks of exposure at 200 ppm. Rozman and Doull concluded that rats are more sensitive to reproductive effects of nPB than humans based on the NIOSH health survey (NIOSH 2002b), which did not identify any statistically significant reproductive effects in humans exposed to nPB. Based on the NIOSH health survey data, conducted at a facility where nPB was used as an adhesive solvent, Rozman and Doull identified 170 ppm as a no observed effect level (NOEL) in workers who reported having a headache more than once per week. They then applied a safety of 2 to protect nearly all workers, and a safety factor of 3 to provide a larger margin of safety from this adverse effect. This approach resulted in a recommended industrial exposure guideline for nPB of 60–90 ppm.

EPA does not agree with Rozman and Doull's AEL recommendation. First, their ranking of neurotoxicity as the most sensitive toxicological endpoint fails to take into account that in the Ichihara study, rats were dosed 8 hours per day for 12 weeks, while in the two-generation study, animals were exposed to nPB for 6 hours per day. Therefore, the exposure levels in the Ichihara study must be adjusted by a factor of 0.75 in order to directly compare doses to the 2 generation study. If this adjustment is made, the LOAEL for the Ichihara study becomes 266 ppm, higher than the LOAEL of 250 ppm for reproductive and liver effects identified in the two-generation study. Further, the results of the Ichihara study conflict with the results of the 90-day inhalation study (ClinTrials, 1997b), in which decreases in grip strength were not observed in rats exposed to levels up to 600 ppm nPB for 6 hours/day for 5 days/week. In fact, in the ClinTrials study, there were no consistent treatment-related changes reported in the rats following 4, 8, or 13 weeks of exposure in any parameter evaluated in a full functional observational battery (a suite of tests designed to assess a full spectrum of neurotoxic effects). Because the LOAEL for neurotoxic effects in Ichihara *et al.* (2000b) is actually higher than the LOAEL identified in the two-generation study, and because the findings on neurotoxicity from the Ichihara study conflict with the results of the 90-day ClinTrials (1997b) study, it is erroneous to conclude that neurotoxicity is the most sensitive endpoint for nPB exposure.

Second, the NIOSH medical survey used by Rozman and Doull is not a suitable basis for deriving an AEL. Use of epidemiological data for a quantitative risk assessment requires that the exposures be well-characterized, that the sample size be large enough to allow for the detection of subtle effects in a statistically significant way, and that comparisons to an unexposed control group be made. The data provided in the NIOSH evaluation do not fit these criteria: (1) The sample size in this study was relatively small (46 participants); (2) the health survey was not given to an unexposed control population for comparison; (3) no obvious exposure-response trend for headache was seen, since the low and medium exposure groups had similar prevalence of headache. For each of the neurological symptoms evaluated in the NIOSH health survey, air concentrations of nPB were not statistically different between those employees reporting the symptom compared to those not reporting the symptom (NIOSH 2002).

Finally, EPA disagrees with Rozman and Doull's conclusion that reproductive toxicity did not occur in workers exposed to up to 190 ppm of nPB, which is the basis for their assertion that humans are less sensitive to reproductive health effects of nPB compared to rats (Rozman and Doull, 2001). The NIOSH report states that 3 workers (2 male and 1 female) who had been exposed to between 110 and 157 ppm of nPB reported difficulty in having a child. However, as noted by the authors of the NIOSH report, due to the small sample size and the personal nature of the questions, there were significant limitations in the ability of the NIOSH medical survey to detect reproductive or fertility problems. The data from the NIOSH medical survey should not be used to conclude that rats are more sensitive than humans to reproductive effects of nPB, or to draw any general conclusions regarding the potential reproductive toxicity of nPB in humans.

In the second analysis submitted by Enviro Tech, SLR International Corporation derived an AEL for nPB of 156 ppm (SLR International, 2001b). We understand that this derivation is currently undergoing peer review for potential publication in a scientific journal. This analysis used benchmark dose-response modeling using data sets for several effects taken from the various animal toxicity tests that have been conducted with nPB. SLR derived a BMDL at a 10% response level of 156 ppm, based on reduced sperm motility in F1 males from the WIL (2001) study. This BMDL is similar to EPA's BMDL for sperm motility of 169 ppm. SLR stated that "Due to the relative completeness of the toxicological database on nPB, including data on human *in vitro* bioassays, use of a UF is likely not considered necessary for this chemical." Thus, SLR's recommended AEL is equivalent to their BMDL. EPA maintains that an uncertainty factor is necessary for protection of sensitive individuals since low sperm count is a condition that can occur in otherwise healthy workers. There are no data indicating that human sperm are less sensitive than rat sperm. In fact, sperm production is less efficient in humans, suggesting that human males are likely to be more susceptible than rats to nPB (Amann, 1986). Further, based on EPA's RfC guidelines, an uncertainty factor of 3 is necessary to account for interspecies differences in pharmacodynamics between rats and humans. Had SLR applied what EPA considers appropriate uncertainty factors, their recommended AEL would have been 17 ppm.

In a memorandum submitted to Poly Systems International, Joel Charm, a certified industrial hygienist, supported the analyses by both SLR and Rozman and Doull. Mr. Charm suggested that establishing an occupational exposure level of 100 ppm as a ceiling value (i.e., a level not to be exceeded during any part of the working day), coupled with an effective Product Stewardship program, would help companies maintain exposure to their workers as low as reasonably achievable. He suggests that a Product Stewardship program focused on: (1) Training material on how nPB can be handled and used safely; (2) conducting industrial hygiene evaluations as a service to customers, to develop actual exposure level information for a variety of end uses under varying circumstances; and (3) monitoring the health (including reproductive parameters) of workers would, over time, aid in assessing the validity of the occupational exposure limit selected. He also states that through the Product Stewardship program and the regulatory reporting requirements of the Toxic Substances Control Act (TSCA), Section 8, corrective actions could be taken if necessary.

While we do not agree with the AELs derived by Rozman and Doull or by SLR, EPA agrees that producers and formulators of nPB should engage in responsible Product Stewardship programs. Albermarle Corporation has been conducting an extensive stewardship program for nPB involving air sampling and workplace practice evaluation for customers to help ensure exposures below 25 ppm. We also note that, in order to verify if exposure levels are below a ceiling value, it would be necessary to monitor workplace exposure continuously. Periodic evaluations of exposure levels would be sufficient for determining long-term exposure to workers. EPA recommends that workplace exposures should be controlled to levels at or below the AEL in order to avoid risk of adverse health effects.

e. Feasibility of meeting the AEL for nPB in each industrial sector. Each of the three sectors EPA is considering in today's proposal could potentially expose workers to nPB in different ways. Therefore, we considered separately whether it is feasible to meet the AEL in each of the three sectors. If EPA becomes aware of further information showing that nPB use is likely to pose unacceptable risks to human health in particular applications or end uses; we will find nPB unacceptable in those applications or end uses.

Solvents cleaning. When using industrial cleaning equipment, workers are likely to be exposed to solvent vapors continually over the course of a workday. However, users can control nPB emissions from vapor degreasers by changes to the equipment, as well as changes in operating practice. For example, a user can install an additional set of condensation coils to prevent vapor from leaving the vapor degreaser or defluxer. An operator can tilt pieces to be cleaned to allow the solvent to drain off inside the vapor degreaser instead of evaporating outside of the degreaser where workers will breathe the vapors.

Exposure data on nPB used in vapor degreasers indicate that it is possible to maintain exposure levels from 2 to 24 ppm over an 8-hour average, as measured using personal samplers (Albemarle, 1997). In 1998, Albemarle Corporation also collected workplace monitoring data from metal cleaning operations. Many, although not all, of the samples collected showed concentrations that, extrapolated to an 8-hour period, would remain under 25 ppm. In addition, another manufacturer and distributor of nPB-based solvents stated that, "For a properly designed, installed, operated, and maintained traditional open-top vapor degreaser, experience has shown that eight-hour time weighted operator exposure levels will be < 20 ppm. For enclosed and automated degreasers, lower exposures can be achieved" (Amity UK Ltd, 2001).

EPA has only one set of direct exposure data for equipment that cleans using nPB below its boiling point ("cold cleaning"). These data are from a NIOSH Health Hazard Evaluation for a company that produces instrumentation and components for radio and microwave frequency communications. In this study, NIOSH measured exposures to nPB from a cold batch cleaner that was in a special enclosed room with a local exhaust ventilation system. The highest exposure level was 8.4 ppm (NIOSH, 2000b). However, the type of enclosure and ventilation used at this site is not typical of most facilities using cold cleaning equipment.

In general, it is expected that it will be more difficult to control emissions from cold cleaning equipment than from vapor degreasers. The design of vapor degreasers reduces emissions from the equipment by boiling the solvent and then causing it to condense, rather than allowing solvent vapors to be emitted. Because cold cleaning equipment may expose workers to high levels of nPB, we recommend that nPB not be used in cold cleaning equipment unless additional engineering controls are instituted to keep worker exposure to levels below the recommended AEL of 25 ppm.

The limited data available on manual cleaning indicate that it may be difficult to attain exposures less than 50 ppm when wiping with nPB by hand (Albemarle, 2001). The SNAP program currently does not regulate manual cleaning with solvents. However, we recommend that nPB not be used for manual cleaning because of the likelihood of high exposures.

Aerosol Solvents. Only limited data are available on exposure levels to nPB from aerosol solvent usage. Four measurements on a single user showed exposures to nPB that ranged from 5 to 14 ppm over an 8-hour time-weighted average (Albemarle, 2001). Since the user was cleaning brakes on public works equipment, it is possible that the mechanic was working outdoors, or in an area that was only partially enclosed. EPA expects that these data are not representative of the diverse conditions under which aerosol solvents are used. Confidential data from another facility revealed that exposures vary greatly and in some instances can be higher than 200 ppm. In contrast to vapor degreasers, aerosol solvents tend to be used intermittently for short periods of 1–2 minutes. In some cases, aerosols containing nPB are used in confined spaces without ventilation ducts and fans where workers could be exposed to high levels over a short time. Emissions from aerosols are typically not controlled with equipment that captures the nPB vapor, although aerosol users can improve ventilation and reduce exposure levels through a variety of approaches (e.g., fume hoods). Given this information, EPA requests further workplace exposure data on nPB's use as an aerosol solvent. In addition, we request comment on whether nPB should be acceptable for use as an aerosol solvent, or if its use should be limited in this end use (e.g., use limit restricting nPB only to applications with ventilation equipment).

EPA believes that users should adhere to a short-term exposure limit (time weighted average over 15 minutes) of three times the AEL. We recommend this short-term exposure limit, which would equal 75 ppm over 15 minutes, in addition to the 8-hour time weighted average of 25 ppm. We believe that limiting short-term exposure to 75 ppm in a 15 minute period of exposure is feasible with proper ventilation and/or low use volumes. We also recommend only using aerosols containing nPB in open or well-ventilated areas. This procedure is recommended for use of any aerosol solvent, compared to use in enclosed, unventilated areas.

Adhesives. In adhesives applications, exposures are expected to vary depending upon the particular kind of application. For example, in the foam-fabrication industry, workers generally are exposed to evaporating solvents on

a long-term basis. When adhering tops on counters or tables, workers are more likely to have breaks between exposure, with short-term exposure being of greater concern (HSIA, 2001).

EPA is aware that it may be difficult to meet the recommended 25 ppm AEL in adhesive applications that are highly emissive. Exposure data from nPB used in adhesives in the foam-fabrication industry show high nPB concentrations within the workplace. At three different foam-fabrication facilities, NIOSH investigators reported that mean exposures to nPB ranged from 60 to 381 ppm (8-hour time weighted averages) (NIOSH, 1999, 2000a, 2000c, 2001). In one facility, average nPB exposures were reduced from 169 ppm to 19 ppm, following installation of ventilation equipment recommended by NIOSH (NIOSH, 2000c). Although use of spray booths at this facility had a dramatic effect of reducing average exposures to nPB, a significant percentage of workers whose jobs required direct use of spray adhesive containing nPB continued to have exposures in excess of 25 ppm. Among sprayers and assemblers working in the Assembly area, 2 of 10 (20%) full-shift samples exceeded 25 ppm, and among sprayers working in the Covers department, 9 of 11 (81%) of samples exceeded 25 ppm, with a maximum of 58 ppm (time-weighted average, TWA). These findings indicate that it may be necessary for employees to wear appropriate respiratory protection where engineering controls do not reduce exposures to or below the AEL. Where respirators are used to protect workers against nPB, employers should be aware that OSHA's Respiratory Protection standard (29 CFR 1910.134) would apply.

Because there is evidence that workplace exposures to nPB can be reduced to levels close to or below the recommended AEL, the Agency has concluded that it is appropriate to find the use of nPB acceptable in adhesive applications. Nevertheless, EPA expects that businesses using nPB in adhesive applications may have difficulty meeting the recommended exposure limit without some form of engineering controls such as confining operations to spray booths with ducts and a fan providing ventilation. Further, although use of spray booths at this facility had a dramatic effect of reducing exposures to nPB, as discussed above, some workers whose jobs required direct use of spray adhesive containing nPB continued to be exposed to nPB in excess of 25 ppm. Given this information, EPA requests comment on whether nPB should be acceptable for use in adhesives.

EPA conducted a detailed risk screen for nPB use in adhesives applications in the foam fabrication industry (ICF, 2001a , Attachment C) since this represents the most emissive use, and the use where workers and the general population have the highest exposures. Because this highly emissive use passed our risk screen, we did not conduct a formal risk screen for the solvents cleaning sector and aerosol solvents sectors end use, because emissions and worker exposures in these uses are expected to be lower than the adhesives end use.

2. Are There Other Entities That May Set or Recommend Workplace Standards?

Under the National Technology Transfer and Advancement Act of 1995, Section 12(d), Public. Law. 104–113, Federal agencies are required to consider using technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities. No such standards for occupational exposure to nPB currently exist. In comparison, the American Conference of Governmental Industrial Hygienists (ACGIH) has established threshold limit values (TLVs) for the primary chlorinated solvents used in the same applications as nPB. The most current TLVs for these solvents—25 ppm for perchloroethylene, and 50 ppm for trichloroethylene and methylene chloride—are identical or moderately higher than our proposed recommended guideline for nPB. It is possible that the American Industrial Hygiene Association (AIHA) or the ACGIH will review the toxicity of nPB in the future and set a voluntary standard. AIHA may develop a Workplace Environmental Exposure Limit (WEEL) for nPB. Further, in 2002, the ACGIH listed 1-Bromopropane and 2-Bromopropane (nPB and iPB, respectively) in its list of "Chemical substances and other issues under study." If either of these standard-setting bodies recommends an exposure limit on nPB, we would make that information available to the public for comment.

In the future, OSHA may develop a mandatory exposure limit for nPB use in the workplace. The result of OSHA's review could result in a permissible exposure limit (PEL) different from EPA's recommended exposure limit of 25 ppm. Unlike nPB, the chlorinated solvents are regulated by OSHA and have been regularly re-evaluated by OSHA, NIOSH, and EPA (*e.g.*, as a National Emission Standard for Hazardous Air Pollutants). The most current permissible exposure limits for these solvents established by OSHA are 25 ppm for methylene chloride and 100 ppm for perchloroethylene and trichloroethylene. The OSHA permissible exposure levels for perchlorethylene and trichloroethylene of 100 ppm were originally issued on 1971 based on the 1968 threshold limit values established by the ACGIH. Since then, ACGIH has issued TLVs of 25 ppm for perchloroethylene and 50 ppm for trichloroethylene and OSHA has issued a PEL of 25 ppm for methylene chloride; as such, the Agency does not believe that a 25 ppm recommended AEL for nPB would result in a significant competitive advantage for any of these solvents. As stated earlier in this preamble, EPA defers to OSHA in regulating workplace safety. The recommended AEL in today's proposal is an interim measure in the absence of an OSHA PEL. Thus, any PEL that OSHA sets would supersede EPA's recommended AEL.

3. Is the General Population Exposed To Too Much nPB?

As a part of the SNAP review process for alternative chemicals, EPA also considers exposure to the general population. Near facilities that use nPB in non-emissive applications such as vapor degreasing, exposure is expected to be insignificant. For emissive applications of nPB, such as an adhesive solvent in foam fabrication, we conducted a more detailed assessment of potential exposure to people living in the immediate vicinity of a facility. We first estimated a community exposure guideline, using EPA's Methods for Derivation of Reference Concentration Guidelines (1994) as a risk index to compare against potential community exposure. This community exposure guideline is an estimate of a continuous inhalation exposure (averaged over 24 hours per day, 7 days per week) to the general public (including sensitive subgroups) that is likely to be without an appreciable risk of adverse health effects during a lifetime. Community exposure guidelines can be derived from a NOAEL, LOAEL, or benchmark concentration, with uncertainty factors generally applied to reflect limitations of the data used. Average daily exposures of people living close to facilities where nPB is used in an emissive application were then estimated and compared to the community exposure guideline to determine whether nPB exposure presents an appreciable risk to the general population.

EPA derived the community exposure guideline for nPB using the same critical studies and BMDLs for spermatic effects and liver effects that were used in developing the AEL. Adjustments were made to account for continuous lifetime exposure and sensitive subpopulations. The lowest BMDL of 110 ppm was based on the incidence of liver effects (centrilobular vacuolation) in the two-generation reproductive study (WIL, 2001). Using EPA's dosimetry guidelines for a category 3 gas (US EPA, 1994), and making adjustments to account for continuous exposure, the human equivalent concentration (HEC) is 110 ppm * (6 hours/24 hours) = 27.5 ppm. No adjustment for differences in pharmacokinetics was necessary based on EPA's RfC guidelines. EPA applied an UF of 3 for extrapolation from rat to human pharmacodynamics. An additional factor of 10 was applied for intrahuman variability including the protection of sensitive subpopulations (*e.g.*, individuals with liver disease, children, or the elderly). Therefore, the total uncertainty factor was 30 (3 for differences in pharmacodynamics, 10 for sensitive subpopulations). The application of the uncertainty factor of 30 to the HEC of 27.5 ppm results in a community exposure guideline of approximately 1 ppm. EPA requests comment on the appropriate use of uncertainty factors for the community exposure guideline.

The next lowest BMDL (169 ppm) was for the effects on sperm motility in the second generation of male rats in the two generation study. In the derivation of a community exposure guideline RfC for this endpoint, EPA adjusted the BMDL to account for continuous exposure averaged over 24 hours a day, resulting in an HEC of 42 ppm. An uncertainty factor of up to 10 may be applied for animals to human extrapolation in consideration of potential differences in pharmacokinetics and pharmacodynamics. However, for the reasons listed earlier, we did not consider an uncertainty factor necessary to account for differences in pharmacokinetics. The results of the in vitro studies conducted with liver cells do not allow us to draw any conclusions regarding the relative sensitivity of the human and rat spermatocyte to nPB. Consequently, EPA applied a factor of 3 for differences in pharmacodynamics. Finally, an uncertainty factor of 10 was applied for intrahuman variability including the protection of sensitive individuals in the general population (*e.g.*, children whose sex organs are in development, pregnant women, and individuals with low fertility). An overall uncertainty factor of 30 results (3 for differences in pharmacodynamics, and 10 for the protection of sensitive individuals). The application of the overall uncertainty factor (30) to the HEC (42 ppm) results in a community exposure guideline an RfC of approximately 1 ppm. The estimated community exposure guideline values are identical for both liver and reproductive effects. Consequently, EPA estimated that a RfC community exposure guideline of 1 ppm would be protective for all health endpoints—that is, someone exposed to an average of 1 ppm of nPB, 24 hours of every day during a lifetime, would not be at appreciable risk for adverse health effects during their lifetime.

The next step was to determine whether people living close to sites where nPB is used in emissive applications could potentially be exposed to levels above the estimated RfC community exposure guideline of 1 ppm. Data collected from actual facilities (CCPCT, 2001) used to characterize two scenarios: (1) A typical large, high-use adhesive application facility where the closest resident is 100 meters away; and (2) a smaller facility with average-use adhesive application in an urban area, where the nearest resident is only 3 meters away.

EPA's SCREEN3 (US EPA, 1995a) air dispersion model was used to assess the likely maximum-potential concentration of nPB from single sources. This technique is typically used to evaluate air quality impacts of sources pursuant to the requirements of the Clean Air Act, such as New Source Review and air toxic regulations. The approach applied here was the initial-phase approach used to determine if either: (1) The source clearly poses no air quality problem or (2) the potential for an air quality problem exists. If a potential problem exists, then a more refined analysis is necessary.

The results from our screen indicated that modeled exposures in either scenario did not exceed the RfC of 1 ppm. The urban scenario where a facility uses fans to ventilate nPB horizontally (through windows or other openings in the walls as opposed to openings in the roof), modeled exposures of 0.24 ppm at a distance of 3 meters away from the source, 0.19 ppm at 5 meters from the source, and 0.13 ppm at 10 meters from the source. These levels were by far the highest concentrations of nPB exposures modeled. The majority of modeled exposures were at least an order of magnitude lower, and ranged from 0 ppm to 0.08 ppm. Because the community exposure guideline was not exceeded for any of the exposure scenarios in this conservative screening approach, EPA has concluded that nPB exposure to populations living close to adhesive application sites is not a major concern. A memo describing the risk screen in detail may be found in the public docket (ICF, 2002a).

4. What Limit Is EPA Proposing on Isopropyl Bromide Contamination of nPB as a Condition of Acceptability, and Why?

Isopropyl bromide (iPB or 2-bromopropane), an isomer of nPB (1-bromopropane), is a contaminant that is created to different degrees in the manufacture of some nPB formulations. In reviewing the toxicological risks of iPB, EPA initially was concerned that its molecular structure was similar to chemicals that are potent reproductive toxins and carcinogens. This concern focussed on the position of the halogen atom within the compound. There are toxicological data that indicate that when the halogen atom is located on the second carbon, there may be increased potential for the compound to cause cancer when compared to the compound with the halogen atom on carbon number 1. One example of this is the differential toxicity of 1-nitropropane and 2-nitropropane. Inhalation exposure to 2-nitropropane has been linked to liver toxicity in humans and has resulted in liver, and to a lesser extent, lung toxicity in male and female Sprague-Dawley rats (US EPA, 1991); it has also been shown to induce liver cancer in both Sprague-Dawley (IARC, 1992) and Fischer rats (Fiala, 1995). 1-Nitropropane has shown no carcinogenic potential to date.

Direct data on the carcinogenic potential of iPB are limited, although it has been shown to induce reverse mutations in bacteria (Maeng and Yu, 1997). Further, iPB was shown to be more cytotoxic and genotoxic to human liver cells than nPB and other toxins, including methylene chloride and trichloroethylene (SLR, 2001a). The combination of the position of the bromine atom in iPB (and its relationship to the carcinogenic potential of the compound) and the genotoxicity of the compound in bacterial and human cells indicate that caution is necessary when recommending an acceptable exposure concentration for iPB.

In the limited animal testing data available, iPB has been shown to be inherently more toxic than nPB on reproductive and hematopoietic endpoints. In two separate studies, significant disruptions in the estrous cycles and abnormal growth in uterine cells were reported in female rats

exposed to iPB daily for 9 weeks (Kamijima, 1997a, 1997b; Yu, 2001). Daily exposure of male rats to iPB at 300, 1000, and 3000 ppm was associated with effects ranging from reduced body and organ (e.g., kidneys, liver, testis) weight, reduced sperm counts and sperm motility, abnormal sperm, reduced red blood cell and platelet counts, and hemoglobin volume (Ichihara, 1997). A recent study has been published (Sekiguchi, 2002) in which the effects of iPB exposure on the reproductive physiology of female F344 rats were investigated. The rats were exposed to air (in the control group, the number of animals, n, is 7) or 50 (n=6), 200 (n=7), or 1000 (n=9) ppm of iPB via whole-body inhalation for 8 hours/day for 21–24 days (exact number of days not specified in the article). A larger number of females at the high concentration exhibited an estrous cycle of >6 days (7 of 9 animals) than those at the control, low- and mid-concentration (4, 2, and 3, respectively) which corresponded to the greater number of estrous cycles lasting >6 days (9 of 34 animals) in the high-concentration group as compared to the other groups (4 of 31, 4 of 30, 3 of 30). A dose-dependent increase in the number of days/cycle was observed in rats at 200 and 1000 ppm. These increases did not reach statistical significance, however. A smaller number of females per group was analyzed for uterine and ovary weights because only rats showing the estrous stage upon vaginal smear test were chosen for autopsy (5, 5, 5, and 7, respectively in the low-, mid-, and high-concentration groups). No changes were noted in the weights of ovaries or uterus, or in the number of ovulated ova among any of the female groups (exposed or controls). Although this study indicates that iPB was not a strong reproductive toxin in the female rat, the small number of animals exposed is a significant limitation to the study. The dose dependent increase in estrous cycles observed at 200 and 1000 ppm suggest the potential for reproductive failure from exposure to this compound. These results also indicate the need for additional studies using greater numbers of exposed animals.

Both male and female workers occupationally exposed to iPB have been found to exhibit some of the same effects reported in animal toxicological studies. Ichihara (1999) reported low sperm motility, low semen volume, abnormal sperm cells, and decreased blood cell count, hemoglobin and hematocrit in otherwise healthy Chinese male workers exposed to a wide range of iPB concentrations (2.5–111 ppm). Abnormal or an absence of menstruation was associated with iPB exposure in several female workers, as well as reduced blood cell count, hemoglobin, and hematocrit. Employees of an electronics factory in South Korea showed similar effects following exposure to iPB (Kim, 1996). In female workers, disrupted or absent menstruation, abnormal hormone levels, hot flashes, and abnormal bone marrow were found, while male workers exhibited significantly reduced sperm counts and sperm motility.

CERHR convened an Expert Panel to consider existing toxicological studies on effects of both nPB and iPB. (See section IV.A.1.c. for a discussion of CERHR review process and the Expert Panel Report.) The CERHR Expert Panel came to the following conclusions on the existing studies on iPB (CERHR, 2002b, p. 44):

- Available human and animal data are insufficient to draw conclusions on the potential for developmental toxicity due to iPB.
- There is sufficient evidence that iPB is a reproductive hazard in men and women, particularly based upon the epidemiological data from Korea.
- At low levels (less than 0.004 ppm), there is minimal concern for human reproduction. At higher levels up to 1.35 ppm, there is some concern.
- For reproductive data from male rats, the panel identified a NOAEL of 100 ppm.

The toxicological studies on male reproductive endpoints for iPB have limitations which (*e.g.*, small number of dose groups) make them inappropriate for use in quantitative risk assessment. Although the occupational exposure studies also are limited, given the mutagenicity of the compound and that human exposures have resulted in significant health effects consistent with those reported in the available animal studies, the Agency considers it appropriate to limit the amount of iPB exposure resulting from nPB use to the maximum extent feasible.

Today's action proposes to limit SNAP acceptability of nPB to those formulations of nPB that contain concentrations less than 0.05% iPB by weight before adding stabilizers or other chemicals. The current American Society for Testing and Materials (ASTM) standard for vapor degreasing grade and general grade nPB specifies that unstabilized nPB must have less than 0.1% of iPB as a contaminant. EPA believes that this level should be reduced to 0.05% given the toxicity of iPB, and the fact that achieving a level of 0.05% is technologically feasible and would not cause significant economic impacts (US EPA, 2003). The Agency also requests comment on the appropriateness of alternative concentration limits for iPB in nPB, including 0.1%. If this provision is finalized, the iPB concentration limit would be a condition that all users in the U.S. must observe in all sectors and end uses where nPB is listed as acceptable.

In order to show compliance with the use condition, end users would need to keep records to demonstrate that the nPB used in the product contains no more than 0.05% iPB by weight before adding stabilizers or other chemicals. Documentation could involve, for example, keeping a certificate of analysis or purity provided by the manufacturer or formulator for two years from the date of creation of that record. Such records are customary business information that chemical companies provide to their customers, so we do not expect that this requirement will impose an additional paperwork burden.

B. Ozone Depletion Potential

The ozone depletion potential (ODP) of a chemical compound provides a measure of its impact on stratospheric ozone levels relative to the impact of an equal mass emission of CFC–11. The Parties to the Montreal Protocol have used the ODP benchmark index as a means of characterizing the relative risks associated with the various ozone-depleting compounds subject to the requirements of the Protocol and to calculate the total allowable production and consumption of different classes of ozone depleting substances. Every four years the World Meteorological Organization publishes the *Scientific Assessment of Ozone Depletion*. These assessments are authored by leading experts in the fields of atmospheric science and atmospheric chemistry, and include the most current research findings relevant to the science of ozone depletion. These assessments, along with other studies in the field of atmospheric chemistry, have traditionally focused on compounds with relatively long atmospheric lifetimes (in excess of 3 months).

Two-dimensional (2–D) models that base calculations on latitude and altitude are sufficient for calculating the ODP of long-lived chemicals. However, 2–D models cannot simulate the complex atmospheric transport pathways that are necessary to determine the ODP of short-lived compounds like nPB (Wuebbles, 2000). nPB is estimated to remain in the atmosphere for only 11 to 20 days after emission.[12] The short lifetime of nPB complicates the calculation of its ODP because it is not valid to make the standard simplifying assumption that concentrations are "well mixed" in the troposphere. Thus, a meaningful comparison can be made between the ODP of nPB and the longer-lived compounds already controlled under the Montreal Protocol only by using the results from a 3–D model that bases calculations on longitude, latitude, and altitude to augment the ODP calculation using a 2–D model.

Generally, a compound emitted in the troposphere travels toward the equator and into the tropics before rising convectively into the stratosphere. As a result, a compound emitted at high latitudes, such as the northern United States or the southern tip of Brazil, will take longer to reach the stratosphere than one emitted in the tropics. For a long-lived chemical, this difference in travel time is insignificant. But for a short-lived compound such as nPB, which is subject to degradation in the troposphere, the latitude of emission can have a significant impact on the amount of ozone-destroying bromine that is delivered to the stratosphere.

Using a combination of 2–D and 3–D models, Wuebbles *et al.* (2001) estimated the ODP to be between 0.016 and 0.019 for nPB emissions over the United States. In the tropical latitudes, over India, Southeast Asia and Indonesia, nPB emissions have a larger ODP of 0.087 to 0.105. A more recent paper by Wuebbles found that the ODP of nPB emissions from the United States would be closer to 0.013–0.018, while nPB emissions in the tropics would have an ODP of 0.071 to 0.100 (Wuebbles, 2002).

In proposing to list nPB as an acceptable substitute for CFC–113, methyl chloroform and HCFC–141b, EPA has considered that the ODP for nPB at the latitude of the continental U.S. is substantially less than the ODPs for the chemicals it would replace (0.8 for CFC–113, 0.1 for methyl chloroform, and 0.11 for HCFC–141b). Given that fact, we do not believe that nPB's ODP is a compelling reason to list it as an unacceptable substitute for CFC–113, methyl chloroform, and HCFC–141b for use in the U.S.

While advances in modeling are producing more specific methods to better estimate nPB's ODP, the value will never be pinpointed to a single number that may be applied to all latitudes. EPA notes that if the ODP were as high in the U.S. as it is in the tropics (0.071 to 0.100), we would have found it unacceptable as a substitute. When making regulatory determinations, governments or users in other latitudes should consider the ODP at their latitude as well as the toxicity of other solvents available for use. For example, users in other counties may find nPB preferable to carbon tetrachloride, which has a high ODP (1.1) and is highly toxic. On the other hand, users in the tropics should realize that nPB at their latitude has an ODP comparable to substances controlled by the Montreal Protocol (methyl chloroform or HCFC–141b). EPA also recommends that any decisions on the use of nPB outside the U.S. should be based on latitude-specific ODPs and volumes of the chemical projected to be used in those regions.

Few commenters on the ANPRM discussed the ODP of nPB. However, the Agency agrees with two commenters who stated that nPB's low ODP should be balanced against the much longer atmospheric lifetime of other choices.

We have attempted to gather and assess all available information from the full range of experts on nPB's ODP. EPA continues to be interested in receiving from the public any other information pertaining to the atmospheric effects and ODP of short-lived atmospheric chemicals, especially nPB. In the event that data become available after final rulemaking that are contrary to the current scientific understanding, section 612 of the CAA allows the Agency to reconsider our decision under the SNAP program.

C. Global Warming Potential

The global warming potential (GWP) index is a means of quantifying the potential integrated climate forcing of various greenhouse gases relative to carbon dioxide. Thus, the GWP of carbon dioxide is, by definition, equal to one. Since GWP is a measure of the climate forcing integrated over time, the value of the index depends on the choice of time horizon. The standard GWP used for making climate-related policy decisions is based on a 100-year time horizon (called the 100yr GWP).[13]

The 100yr GWP of nPB is 0.31 (Atmospheric and Environmental Research, Inc., 1995). This is a relatively low GWP, representing a climate forcing approximately one third that of carbon dioxide, by weight. Estimations of the net climate impact must take into consideration the amount of the compound expected to be emitted. As will be discussed in section V.B. below, nPB will most likely be emitted in small enough quantities worldwide that there should not be a concern about its causing climate change. Additionally, the GWP of nPB is considerably lower than that of the chemicals it potentially replaces. (100yr GWP values are 6000 for CFC–113, 140 for methyl chloroform and 700 for HCFC–141b.)[14] Therefore, we conclude that the use of nPB as a substitute for CFC–113, HCFC–141b, or methyl chloroform should not be restricted based on its GWP.

D. Flammability

nPB forms flammable mixtures in air within only a narrow range. All estimates that EPA reviewed fall somewhere within the range of 3.5%–9%. Most, but not all, of the material safety data sheets we reviewed state that nPB has no flashpoint. The 1998 Report of the United Nations Environment Programme's Solvents, Coatings and Adhesives Technical Option Committee stated that "under certain test conditions, using standard flash point testing apparatus, pure nPB has demonstrated a flash point at −10°C * * * [O]ther ASTM test methods have resulted in no observed flash point" (UNEP, 1999). In response to information requests in the nPB ANPRM, various commenters asserted that nPB has a flashpoint of 10°C, 14°C, and 21°C–25°C, 70°F (21°C), and 70°C. These data are inconclusive about the flashpoint of nPB and whether nPB is likely to be flammable under normal use conditions.

In addition, we are aware that many manufacturers of foam cushions use adhesives containing nPB because it is essentially non-flammable compared to many other solvents used in adhesives, such as acetone or heptane. Also, one company has submitted a fire suppressant containing nPB as the active ingredient for review by the SNAP program. (We are not addressing this incomplete submission in today's proposed rule.) It is not surprising that nPB would have little or no flammability, given that many organic compounds containing bromine have little or no flammability, such as halons or hydrobromofluorocarbons.

Based on the full range of available information, we do not currently believe that the use of nPB as a substitute for CFC–113, methyl chloroform, or HCFC–141b should be restricted because of flammability. EPA, however, invites

[12] Wuebbles *et al.*, 1998; Wuebbles *et al.*, 2000.

[13] The 100yr GWP is the index recommended by the Intergovernmental Panel on Climate Change (IPCC) for comparing the climate impacts of various global warming gases. The United States employs the standard 100yr GWP index for making climate policy decisions and reporting of greenhouse gases.

[14] All GWPs (other than that of nPB) discussed in this NPRM are taken from the *Scientific Assessment of Ozone Depletion: 1998* (WMO, 1999).

commenters to submit more specific information concerning the flashpoint of pure nPB. We are aware that nPB blends may have flashpoint characteristics different from that of pure nPB, depending on the nature of the additives or stabilizers. In this rulemaking, EPA is evaluating only pure nPB as a substitute for CFC–113 and methyl chloroform. We therefore are not interested in receiving information concerning the flashpoints of blends that contain nPB. Commenters providing information on nPB's flashpoint should refer to the specific test methodology and apparatus used to determine the flashpoint, such as ISO 1523, American Society of Testing Materials (ASTM) E–681, D92, D93–85—Pensky-Martens closed cup, or D56–96—Tag closed cup. EPA also invites readers to submit information concerning any potential fire or explosion hazards that may result from the use in solvent cleaning of compounds that have flashpoints within the range of normal atmospheric pressures and temperatures.

E. Other Environmental Concerns

Because nPB breaks down in the atmosphere within 21 days, and is not particularly soluble in water, it is unlikely that "rain out" from nPB released into the atmosphere could cause contamination of water supplies. However, as with all chemicals, significant contamination of soil and water can result when directly introduced into water or onto the ground. Thus, EPA expects that users will dispose of nPB in accordance with relevant regulations under the Resource Conservation and Recovery Act, and with applicable state and local regulations. Compliance with these regulations will mitigate the possibility that nPB might enter water supplies or top soil.

nPB is a volatile organic compound (VOC). VOCs are associated with the formation of ground-level ozone, a respiratory irritant. Therefore, nPB use currently is controlled under state and local regulations implementing Federal clean air requirements at 40 CFR part 51. These regulations are intended to bring areas into compliahce with the National Ambient Air Quality Standards for ground-level ozone. Users located in ozone non-attainment areas may need to consider using other alternatives for cleaning that are not VOCs or control emissions.

F. Comparison of nPB to Other Solvents

Section 612 of the Clean Air Act directs EPA to determine the acceptability of a replacement substance ("substitutes") for class I and class II ozone depleting substances based on whether such substitute creates an overall greater risk to human health and the environment than other substitutes that are available. Section 612(c) specifically states that the Administrator shall issue regulations:

> providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—
>
> (1) reduces the overall risk to human health and the environment; and
>
> (2) is currently or potentially available.

Thus, EPA must compare the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available. In addition, EPA also considers whether the substitute for class I and class II ODSs "reduces the overall risk to human health and the environment" compared to the ODSs being replaced, consistent with the safe alternatives policy of § 612.

In our evaluation, we considered the substitutes available within a given end use. In other words, we compared nPB as a metal cleaning solvent against other metal cleaning alternatives, and we compared nPB as a carrier solvent in adhesives to other adhesive alternatives. Because of the large amount of overlap in the alternatives available in the different end uses, the discussion below will mention alternatives from multiple end uses where nPB is used.

Although EPA does not judge the effectiveness of alternatives, this factor is an additional one that we consider when determining what alternatives are available in a particular application within an end use. For example, aqueous cleaners are the substitute of choice for many in the metal cleaning end use and many electronics applications now use the "no clean" technology. However, some types of soils are especially difficult to remove and some applications require a high degree of cleanliness; thus, in some applications, particularly in precision cleaning, there may still be a need for organic solvents for cleaning. Depending on the particular application, it may be necessary to use an aggressive cleaning solvent such as nPB.

nPB has an ODP of 0.013 to 0.018 at the latitudes of the continental U.S. Thus, nPB reduces risk compared to CFC–113, methyl chloroform, and HCFC–141b, the ODSs it replaces, which have ODPs of 0.8, 0.1, and 0.11, respectively. HCFC–225ca/cb has an ODP of approximately 0.03. HCFC–225ca/cb is acceptable in metals cleaning and aerosol solvents, and acceptable subject to use conditions in precision cleaning and electronics cleaning. Although HCFC–141b has been phased out of production in the U.S., its use is currently acceptable in aerosol solvents; HCFC–141b has a higher ODP than nPB. HCFC–123 has an ODP of 0.0124, which is comparable to that of nPB. HCFC–123 is acceptable in precision cleaning. There are other acceptable cleaners that essentially have no ODP (aqueous cleaners, hydrofluoroethers (HFEs), hydrofluorocarbon (HFC)-4310mee, HFC–365mfc, HFC–245fa, hydrocarbons, volatile methyl siloxanes (VMSs), methylene chloride, trichloroethylene (TCE), perchloroethylene (PERC), and parachlorobenzotrifluoride (PCBTF).

nPB has a GWP of only 0.31, which is lower than or comparable to that of the lowest GWP solvents. Acceptable HCFC, HFC and HFE solvents all have GWPs that are two to four orders of magnitude higher than that of nPB (55 to 1700 on a 100 year time horizon compared to CO_2).

nPB is a volatile organic compound for purposes of EPA regulations, although there are petitions with EPA requesting its exemption. Thus, nPB currently is subject to regulations for ground-level ozone and local air quality. nPB is not currently regulated as a hazardous air pollutant and is not listed as a hazardous waste under RCRA.

nPB is less flammable than many acceptable substitutes, such as ketones, alcohols, terpenes, and hydrocarbons. nPB is comparable in its low flammability to chlorinated solvents, HCFCs, HFEs, HFC–245fa, HFC–4310mee, and aqueous cleaners.

EPA used an acceptable exposure limit of 25 ppm as the basis for comparison with measured exposure levels in the workplace to determine whether nPB could be used safely, and thus, to determine the acceptability of nPB. EPA found that nPB could be used as safely at 25 ppm as other acceptable solvents when they are used at their AELs or other relevant occupational exposure limits, such as OSHA PELs or ACGIH TLVs.[15] Based on the assumption that most users will attain exposure levels at or below the AEL of 25 ppm, EPA finds nPB acceptable in terms of its human health risks. As discussed in section IV.A.4, "What limit is EPA proposing on isopropyl bromide contamination of nPB as a condition of acceptability, and why?" iPB is a contaminant in nPB formulations that is considerably more toxic than nPB. Therefore, in order for nPB formulations to "reduce overall risk to human health and the environment," EPA finds it necessary for users to use nPB formulations that have minimal levels of iPB. Hence, the Agency's proposed decision of acceptability depends on the condition that users use nPB formulations that limit the amount of iPB. EPA's proposes that this limit be 0.05% before other chemicals are added.

Balancing these different factors, it is not clear that nPB poses greater risks than other substitutes in the same end uses, so long as nPB is used consistent with the use condition and recommended AEL. Further, it appears that nPB reduces overall risk compared to the ozone depleting substances being replaced. Thus, EPA proposes to find that nPB is acceptable, subject to a use condition.

[15] The recommended AEL for nPB is lower than that for many acceptable solvents (HFEs, ketones, HFCs, HCFC–225ca/cb, hydrocarbons), but is higher or comparable to the AEL for some acceptable solvents (d-limonene, VMSs, dichlorobenzotrifluoride, HCFC–123, methylene chloride, PCBTF). However, a direct comparison between two compounds with different AELs does not necessarily mean that using a compound with a higher AEL is more risky. Actual exposure levels will vary based upon factors other than the AEL, such as emission controls in place, work practices, ventilation, rate of spraying, and vapor pressure of the solvent.

V. What Other Factors Did EPA Consider That Are Unique to nPB?

A. Review of nPB by Other Federal and International Programs

In proposing to find nPB acceptable in solvents cleaning, and as a solvent in adhesive and aerosol applications, we have sought to avoid overlap with other existing regulatory authorities. EPA's mandate under the CAA is to list agents that "reduce overall risk to human health and the environment" for "specific uses." In light of this authorization, EPA is recommending an occupational exposure limit which, if adhered to, would result in the safe use of nPB in the workplace. This is an interim measure until OSHA issues a PEL for nPB. EPA defers to OSHA on workplace safety standards, and is not in any way assuming that agency's responsibility for regulating workplace safety.

As stated in a footnote in today's proposed rule language at the end of this document, "In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this [rule] shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)." EPA's recommended workplace exposure guidelines, which are not regulatory, and use requirements, which are not expressly related to use in the workplace, will not bar OSHA from regulating under authority of the Occupational Safety and Health Act.

As mentioned above in section IV.E, nPB is a VOC. Two companies have petitioned EPA to exempt nPB from VOC regulations. To date, EPA has not received sufficient information on photochemical reactivity of nPB and thus, has no plans to exempt it. In contrast to other solvents, nPB is not controlled as a hazardous air pollutant under the CAA and generates wastes that are not considered hazardous under regulations implementing the Resource, Conservation and Recovery Act (RCRA). Several commenters on the ANPRM argued that because no U.S. environmental authorities regulate nPB use, EPA's SNAP program has all the more obligation to establish an acceptable exposure limit for the workplace, even if it is recommended rather than mandated (IRTA, 1999). With today's proposed rule, EPA is recommending a workplace exposure limit to protect workers exposed to nPB in the absence of OSHA regulations.

While the Montreal Protocol currently does not control the production and distribution of nPB worldwide, nPB may be controlled by the Protocol in the future. At the Thirteenth Meeting of the Parties to the Montreal Protocol in Colombo, Sri Lanka, the Parties made a decision regarding nPB. Decision XIII/7 states:

> Noting the Technology and Economic Assessment Panel's report that n-propyl bromide (nPB) is being marketed aggressively and that nPB use and emissions in 2010 currently projected to be around 40,000 metric tonnes,
>
> A. To request Parties to inform industry and users about the concerns surrounding the use and emissions of nPB and the potential threat that these might pose to the ozone layer;
>
> B. To request Parties to urge industry and users to consider limiting the use of nPB to applications where more economically feasible and environmentally friendly alternatives are not available, and to urge them also to take care to minimize exposure and emissions during use and disposal;
>
> C. To request the Technology and Economic Assessment Panel to report annually on nPB use and emissions.

B. Potential Market for nPB

There are varying estimates of the total market for nPB. The Brominated Solvents Consortium, which consists of producers of nPB, estimated in 2001 that approximately 9.2 million pounds of nPB were sold worldwide in 2000, with that number expected to rise to 15 million pounds in 2002 (Biles, 2001). In contrast, the Technology and Economic Assessment Panel (TEAP) of the United Nations Environment Programme (UNEP) estimated that the "most likely" amount of nPB use in 2010 would be between 44 million and 132 million pounds worldwide, pending the result of toxicity testing and price trends of various solvents (UNEP, 2001). EPA believes that the actual market size in 2010 may be lower than the 44–132 million pounds cited by the TEAP report. Further, since the TEAP report was published, some manufacturers and blenders of nPB have withdrawn their products from the market.

EPA notes that the TEAP report based its estimates of how much nPB would be used by assuming that nPB will displace significant amounts of chlorinated solvents and HCFCs in the marketplace. The report states, "If occupational exposure limits for nPB were 2–4 times higher than exposure limits of methylene chloride, nPB would replace a substantial portion of methylene chloride solvent use even if nPB had a significantly higher price. High rates of market penetration will require U.S. EPA SNAP listing, a favorable AEL, and market confidence" (UNEP, 2001). Given that today's proposal recommends an AEL equivalent to that for methylene chloride (OSHA PEL) and perchloroethylene (ACGIH TLV) and slightly lower than that for trichloroethylene (ACGIH TLV = 50 ppm, 8 hour TWA), it is likely that the TEAP's estimates for market penetration of nPB are too high.

In addition, we note that producers of HCFC–141b, a solvent with slightly lower cost and similar solvency to nPB, never sold more than 36 million pounds per year as a solvent, even at the height of its usage (AFEAS, 2002). HCFC–141b has recently been phased out of production in the U.S. and the Agency expects nPB to be only one of several alternative solvents that will substitute for it. Further, experience with the growth of the market for HCFC–141b suggests that the growth in the market for nPB is unlikely to continue at its current pace for more than a few years. The most recent information from suppliers of nPB indicates that in 2001, sales were approximately 9 million pounds, similar to the level in 2000 (Biles, 2002).

C. Estimated Economic Impacts on Businesses

As part of our rulemaking process, EPA estimated potential economic impacts of today's proposed regulation. In our analysis, we assumed that capital costs are annualized over 10 years and that the discount rate for determining net present value is 7.0%. We found the following impacts from the regulatory use condition on the iPB content in nPB formulations:

- In general, users in the solvent cleaning sector and aerosol solvent end use are already using nPB formulations containing less than 0.05% iPB by weight, and will experience little or no rise in prices. Most of the costs of compliance would fall upon adhesives users, since some of them currently use nPB formulations containing as much as 1% iPB.
- If today's proposed rule were to become final, the cost of the regulatory condition to the user community would be in the range of $2 to $3 million per year.

EPA also considered potential costs end users could incur if they implemented the recommended acceptable exposure limit. Qualitatively, EPA found that those users using nPB-based solvents in a vapor degreaser would save money by reducing solvent losses, and that the savings would recover the costs of emissions controls (*e.g.*, secondary cooling coils, automated lifts or hoists) within a year of installation. Based on evidence from solvent suppliers, EPA believes that some of those users would have chosen to use nPB in order to avoid meeting requirements of the national emission standard for halogenated solvents cleaning and that they would only become aware of the potential savings due to reduced solvent usage as a result of today's proposal (Ultronix, 2001; Albemarle, 2003). Based on the experience of companies that assist their customers in meeting an exposure limit of 25 ppm for nPB, we assumed that 75% to 90% of nPB users in the non-aerosol solvent cleaning sector already have exposure levels of 25 ppm or less. Of those nPB users with exposure levels above 25 ppm, we examined the cost associated with reducing emissions by 50% to 75%. EPA also found:

- Balancing the savings due to reduced solvent loss and the cost of emission controls on vapor degreaser, the range of costs for solvent cleaning ranged from a net savings of $83,900 to a cost of $2000 per user.
- Installing ventilation equipment was a minor expense for aerosol solvent users ($124 to $1230 annualized cost per user).
- The more extensive ventilation equipment necessary for adhesive users was more expensive ($24,000 to $39,000 annualized cost per user).
- EPA estimated that full implementation of the recommended workplace exposure guideline across all nPB users in all three industrial sectors would range in cost from a potential net savings up to $1.9 million to a cost of $5.5 million dollars per year. The value will depend on the number of users that attempt to meet the recommended exposure guideline, the initial exposure level of cleaning solvent users, the price of nPB, and the amount of emission control equipment or ventilation equipment installed. The high end of the range likely would be an overestimate of actual impacts because, among other things, it does not consider that some users may choose to switch to other alternatives.
- When the potential costs of compliance with the regulatory use condition and implementation of the recommended acceptable exposure limit are considered together, EPA found the total cost to range from a savings of $0.1 million to a cost of $8.1 million.

For purposes of comparison with these costs numbers, average values of shipments as a proxy for revenues for different types of businesses are as follows:

TABLE 3.—EXAMPLES OF NPB USERS BY NAICS CODE OR SUBSECTOR AND AVERAGE ANNUAL VALUE OF SHIPMENTS

NAICS code for subsector code	NAICS description	Example Uses of nPB	Average annual value of shipments by each company in subsector (million)
326150	Urethane and other foam product (except polystyrene) manufacturing.	Carrier solvent in adhesivs to stick together foam pieces in foam fabrication.	10.1
332	Fabricated Metal Product Manufacturing.	Metals cleaning to remove oil, grease, and wax from metal parts.	3.9
333	Machinery Manufacturing	Metals cleaning to remove oil, grease, and wax from metal parts.	8.9
334	Computer and Electronic Product Manufacturing.	Electronics cleaning, and aerosol solvent use to remove solder flux from circuit boards.	25.2
336	Transportation Equipment Manufacturing.	Aerosol solvent use for cleaning aerospace equipment; carrier solvent in adhesives for aircraft seating.	44.6
337	Furniture and Related Product Manufacturing.	Carrier solvent in adhesives for cushions or kitchen countertops; metals cleaning to remove grease from metal furniture parts.	3.1

For more detailed information, see section X.C. below and EPA's analysis in the docket (US EPA, 2003).

VI. How is EPA Responding to Comments on the Advance Notice of Proposed Rulemaking (ANPRM) and December 18, 2000 Notice of Data Availability?

EPA received 66 comments on the February 18, 1999, Advance Notice of Proposed Rulemaking (64 FR 8043) from 61 commenters. Forty-eight commenters advocated listing nPB as an acceptable substitute for CFC–113 and methyl chloroform under SNAP; ten commenters opposed listing nPB as acceptable; and three commenters responded to the information requests contained in the ANPRM without taking a position on the acceptability of nPB. Close to one-third of the commenters were manufacturers of products that require solvent cleaning. Other commenters included chemical manufacturers, solvent and lubricant distributors, consultants, academicians, adhesive manufacturers, product repair companies, vapor degreaser manufacturers, an aerosol manufacturer, an adhesive distributor, a machinery distributor, the U.S. Army, the U.S. Department of Energy, a solvent blender, a printed circuit board repair facility, and a labor union. Almost all of the comments focused on the use of nPB in solvent cleaning, although the Agency did receive a few comments on the use of nPB in adhesives and aerosols applications. No commenter suggested using nPB in coatings or inks.

Many of the commenters described the complex task of searching for an optimal substitute for CFC–113 or methyl chloroform. Factors they have considered include maintaining superior performance, minimizing contamination, maintaining cost-effective and efficient processes, complying with local and other national regulatory requirements, assuring employee safety, and meeting exacting customer standards. These commenters often described their specific experiences using nPB, and compared nPB with other solvents and with other cleaning processes such as aqueous cleaning. Proponents of nPB listed as its chief advantages its lower cost compared to some alternatives (*e.g.*, HFCs, HFEs), lack of corrosiveness, potency as a solvent, low conductivity, minimal residues, and quick drying time. They also noted its ODP, short atmospheric lifetime and low GWP.

One commenter stated that because of its expense, users may use nPB more efficiently than they would use other, less expensive solvents. The commenter, a manufacturer of precision electromagnetic relays, formerly used about 5,000 pounds of methyl chloroform each year, and now uses about 1,500 pounds of nPB. Another commenter noted that nPB's bad odor provides users with an incentive to minimize evaporative losses. Commenters who oppose listing nPB as an acceptable substitute cited its instability, reactivity, and toxicity. Several commenters argued that nPB should not be used in solvent cleaning because it is largely uncontrolled and relatively little is known about its health effects.

In response to the Agency's December 18, 2000, SNAP notice and update on nPB (65 FR 78977), one commenter expressed concern about the use of nPB in cleaning and adhesive applications because of data showing that nPB is a reproductive toxin. The commenter also noted that the chemical sold as nPB contains fairly high quantities of iPB, a potent reproductive toxin. In addition, the commenter expressed concern that one manufacturer of nPB had recently left the market, and asked EPA to seek input on setting the proper exposure level from NIOSH, OSHA, and toxicologists who are not from industry or EPA.

Our proposal today reflects the Agency's agreement with those commenters who stated that there are some cleaning operations for which only nPB (and presumably, the CFC–113 or methyl chloroform that it replaced) meets all of the criteria necessary for the success of those operations. However, we also agree that some, but not all, cleaning operations that formerly relied on CFC–113 or methyl chloroform can use alternative cleaning agents, or alternative processes such as aqueous or semi-aqueous cleaning. EPA has discussed the results of the 2-generation reproductive study (WIL, 2001) and the recommended exposure limit with NIOSH as well as outside toxicologists not involved with the solvent industry or EPA, as one commenter suggested. We agree that the quantity of iPB in nPB is of concern. In response, we are proposing today to limit the iPB content in nPB to 0.05% by weight. We also are recommending an acceptable exposure limit for nPB of 25 ppm as an eight-hour time-weighted average, and recommending that users employ controls to minimize worker exposure to nPB to the lowest levels reasonably possible. The Agency believes that today's proposed rule takes into account environmental and workplace safety concerns associated with nPB, and that adhering to the recommended AEL of 25 ppm will protect against adverse health effects.

VII. What Should I Include in My Comments on EPA's Proposal?

In your comments, please explain what you think EPA should do in this rulemaking and why you think your suggested approach is appropriate. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number, OAR–2002–0064 in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

EPA invites comment on all aspects of today's proposed rule. A number of specific issues are raised throughout the **SUPPLEMENTARY INFORMATION** section of today's preamble. We request your comments on the following issues in particular:

(1) Is it appropriate for EPA to find nPB acceptable for use in the solvents metals, electronics and precision cleaning, aerosol solvents, and adhesives, coatings, and inks sectors? Why or why not? Should EPA have different decisions for different sectors or end uses? In particular, given that the CERHR Expert Panel expressed concern about "poorly controlled spray adhesive applications," should EPA find nPB acceptable, subject to use conditions, for use in spray adhesives? Should the Agency find nPB acceptable, subject to use conditions, for use in aerosol solvents, or should nPB's use be limited to certain applications in this end use? (See section III of today's notice and CERHR, 2002a, p. 50.)

(2) What is an appropriate and achievable limit on the content of isopropyl bromide (iPB) in unstabilized nPB? Should this impurity limit be 0.1%, 0.05%, or 0.025% iPB by weight? Why? How much does each of these purity levels add to the cost of cleaning solvents or adhesives made using nPB, in terms of $/drum and as a percentage of the current cost? (See section IV.A.4. of today's notice.)

(3) What is an appropriate acceptable exposure limit for EPA to recommend, and why? If you disagree with the proposed recommended exposure limit of 25 ppm, why do you disagree? Should EPA consider risk management principles in developing a recommended AEL? Please cite specific points of concern (*e.g.*, studies considered, endpoints considered in BMD analysis, uncertainty factors applied). (*See* sections IV.A.1.a through d. of today's notice.)

(4) Should nPB be listed acceptable with a skin notation? (*See* section IV.A.1.b of today's notice.)

EPA also invites commenters to submit any new, relevant data pertaining to nPB and iPB beyond what is discussed in today's notice. Under EPA guidelines, there is a preference for peer reviewed data because of the potential to improve the quality and credibility of the product. Peer-reviewed data are studies/analyses that have been reviewed by qualified individuals (or organizations) who are independent of those who performed the work, but who are collectively equivalent in technical expertise (*i.e.*, peers) to those who

performed the original work. A peer review is an in-depth assessment of the assumptions, calculations, extrapolations, alternate interpretations, methodology, acceptance criteria, and conclusions pertaining to the specific major scientific and/or technical work products and of the documentation that supports them (US EPA, 2000b).

To ensure that we have time to consider your comments, please submit them to EPA's Air Docket by the date in the **DATES** section at the beginning of this document. You may submit them via e-mail to *A-And-R-Docket@epa.gov*. Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions provided in sections I.B through I.D. To give us more time to consider your comments, please also send a copy via e-mail to our staff directly at *sheppard.margaret@epa.gov*. EPA's responses to comments, whether the comments are written or electronic, will be in a final rule published in the **Federal Register** or in a response-to-comments document placed in the rulemaking docket. We will not reply to respondents electronically other than to seek clarification of electronic comments that may be disrupted in transmission or during conversion to paper form.

VIII. What Is the Federal Government Doing To Help Businesses Use nPB Safely?

EPA is concerned that careless use of nPB will place those exposed at risk of serious adverse health effects. We are also concerned that some users perceive nPB as a "path of less resistance" because it has similar properties to methyl chloroform, but, unlike methyl chloroform, OSHA has not issued a permissible exposure limit (PEL) for nPB. In particular, the adhesives industry widely used methyl chloroform and then methylene chloride as carrier solvents. Since the introduction of OSHA workplace regulations for methylene chloride, some companies appear to prefer nPB-based adhesives because nPB is not yet regulated, and because nPB is not flammable under normal conditions. Because of these concerns, EPA is working with NIOSH to develop outreach materials to share with facilities that use, or could use, nPB to inform them of good workplace practices.

Further, EPA recommends that users contact OSHA's consultation service. OSHA funds confidential consultation services to users through state government staff. Employers can find out about potential hazards at their worksites, improve their occupational safety and health management systems, and even qualify for a one-year exemption from routine OSHA inspections. The consultation service is separate from inspections and enforcement. To request a consultation, telephone or write to the appropriate state consultation service, listed on the web at *http://www.osha.gov/oshdir/consult.html*. For example, if you have a facility in North Carolina, call the North Carolina Department of Labor at (919) 807–2899. See OSHA's web site at *http://www.osha.gov/html/consultation.html* for further information on consultation services.

IX. How Can I Use nPB as Safely as Possible?

As discussed above in section IV.A.1.e, EPA believes that the AEL of 25 ppm can be met in all the industrial sectors being reviewed today, including solvent cleaning applications, adhesives applications, and aerosol solvents applications, as long as appropriate controls are put in place. However, EPA also realizes that this exposure guideline is relatively low and that in many cases, users will have to implement additional emissions control measures to reach this level. Below are actions that will help nPB users meet the exposure guideline recommended in today's proposed rule:

- All users of nPB should wear appropriate personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. Special care should be taken to avoid contact with the skin since nPB, like many halogenated solvents, can be absorbed through the skin.
- Follow guidelines in the National Emission Standard for Hazardous Air Pollutants (NESHAP) for halogenated solvents cleaning if you are using nPB for non-aerosol solvent cleaning. The equipment and procedural changes described in the halogenated solvents NESHAP can reduce emissions, reduce solvent losses and lower the cost of cleaning with organic solvents. For more information on the halogenated solvents NESHAP, visit *http://www.epa.gov/ttn/atw/eparules.html* and *http://www.epa.gov/ttn/atw/degrea/halopg.html*.
- Use the employee exposure monitoring programs and product stewardship programs where offered by manufacturers and formulators of nPB-based solvents and adhesives.
- Follow all recommended safety precautions specified in the manufacturer's Material Safety Data Sheets (MSDSs).
- Use sufficient ventilation and emissions controls to meet the 25 ppm AEL in adhesives or aerosol applications (or, once developed, the applicable OSHA PEL). Examples of ventilation equipment for aerosol uses include ventilation hoods and fans. Adhesive appliers can use spray booths, ventilation hoods or ducts, and fans to reduce exposure.
- Request a confidential consultation from your State government. You can contact the appropriate state agency that participates in OSHA's consultation program. These contacts are on OSHA's Web site at *http://www.osha.gov/oshdir/consult.html*. For further information on OSHA's confidential consultancy program, visit OSHA's web page at *http://www.osha.gov/html/consultation.html*.
- If the manufacturer or formulator of your nPB-based product does not have an exposure monitoring program, we recommend that you start your own exposure monitoring program, and/or request a confidential consultation from your State government.
- A medical monitoring program should be established for the early detection and prevention of acute and chronic effects of exposure to nPB. The workers' physician(s) should be given information about the adverse health effects of exposure to nPB and the workers' potential for exposure.
- Workers should receive safety training and education that includes potential health effects of exposure to nPB, covering information included on the appropriate material data safety sheets, as required by OSHA's Hazard Communication Standard (29 CFR 1910.1200).

We note that these steps are useful for reducing exposure to any industrial solvent, and not just nPB.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this action a "significant regulatory action" within the meaning of the Executive Order, and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Today's proposal is an Agency determination. It contains no new requirements for reporting. The only new recordkeeping requirement involves customary business practice. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.05). This ICR included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to use restrictions, and record-keeping for small volume uses. Today's proposed rule, if finalized, would require minimal record-keeping for two years from the date of creation of the record to demonstrate that the nPB contains no more than 0.05% iPB. Because it is customary business practice that chemical companies provide certificates of analysis to their customers, we believe this requirement will not impose an additional paperwork burden.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 566–1676. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has consulted with the Small Business Administration's Office of Advocacy on the alternate small business definition of 500 employees. For today's rule, we chose to use 500 employees, rather than use the individual size standards for the numerous NAICS subsectors and codes to simplify the economic analysis. Furthermore, this size standard was set by SBA for all NAICS codes for businesses using nPB-based adhesives, which is the end use that could experience the greatest cost impacts under today's rule. We solicit comments on the choice of this alternate definition for this analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Types of businesses that would be subject to today's proposed rule, if it became final, would include:

- Manufacturers of computers and electronic equipment that clean with nPB cleaning solvents (NAICS subsector 334).
- Manufacturers of fabricated metal parts, including plating, ball and roller bearings, machined parts, and other metal parts that require oil and grease to be cleaned off (NAICS subsectors 332 and 333).
- Manufacturers of transportation equipment, such as aerospace equipment that requires cleaning either in a tank or with aerosols, and aircraft seating, which is assembled using adhesives containing nPB as a carrier solvent (NAICS subsector 336).
- Manufacturers of furniture, including various kinds of furniture with cushions and countertops assembled using adhesives containing nPB as a carrier solvent (NAICS subsector 337).
- Foam fabricators, who assemble foam cushions using adhesives containing nPB as a carrier solvent (NAICS code 326150).

EPA estimates that up to 7330 small industrial end users currently use nPB and thus could be subject to this rule. This number includes approximately 500 to 2300 users of nPB industrial cleaning solvents (*e.g.*, cleaning with vapor degreasers), 900 to 4750 users of nPB-based aerosol solvents, and 40 to 280 users of nPB-based adhesives.

In order to consider the resources that affected small businesses have available to operate and to respond to regulatory requirements, EPA compared the cost of meeting regulatory requirements to small businesses' annual sales. In our analysis for today's proposal, we used the average value of shipments for the products manufactured by the end user as a proxy for sales or revenues, since these data are readily available from the U.S. Department of Commerce. The following tables display the average value of shipments for different sizes of business and different NAICS subsectors or codes in the affected industrial sectors. EPA then used data from these sources to determine the potential economic impacts on small businesses of today's proposed rule.

TABLE 4.—AVERAGE VALUE OF SHIPMENTS IN NAICS SUBSECTORS PERFORMING SOLVENT CLEANING [1], BY NUMBER OF EMPLOYEES AT BUSINESS

Number of employees at business	Average value of shipments per company ($) by NAICS subsector code				
	332, Fabricated metal products	333, Machinery	334, Computer and electronic products	336, Transportation equipment	337, Furniture and related products
1–4	174,832	230,806	279,683	d [2]	141,654
5–9	d [2]	766,045	903,756	d [2]	501,193
10–19	1,393,019	d [2]	1,925,077	1,897,347	1,102,104
20–49	3,596,222	d [2]	4,270,554	4,190,678	2,744,633
50–99	9,283,654	10,429,360	10,440,847	10,140,871	6,908,332
100–249	24,566,631	25,781,244	d [2]	27,861,502	17,898,851
250–499	55,392,738	64,822,617	d [2]	69,529,351	d [2]
Average—All Small Businesses in Subsector	3.2 million	4.2 million	2.4 million	8.9 million	1.7 million
Average—All Businesses in Subsector	3.9 million	8.9 million	25.2 million	44.6 million	3.1 million

[1] Aerosol solvents are used in NAICS subsectors 334 and 336. Non-aerosol solvents are used in all five NAICS subsectors.
[2] "d" designates "Data withheld to avoid disclosing data of individual companies; data are included in higher level totals." The average value of shipments for small businesses does not include those values marked with "d," and thus may be overestimated or underestimated.

TABLE 5.—AVERAGE VALUE OF SHIPMENTS IN NAICS CATEGORIES USING nPB AS A CARRIER SOLVENT IN ADHESIVES, BY NUMBER OF EMPLOYEES AT BUSINESS

Number of employees at business	Average Value of Shipments per Small Company ($) by NAICS Code				
	337121, Upholstered household furniture	337110, Wood kitchen cabinet and counter tops	326150, Urethane and other foam products (except polystyrene)	336360, Motor vehicle seating and interior trim	337124, Metal household furniture
1–4	135,545	135,046	287,744	174,500	170,820
5–9	428,646	457,310	1,211,200	532,875	582,725
10–19	913,225	1,015,967	2,537,028	2,490,455	1,299,671
20–49	2,582,340	2,326,857	5,892,653	3,901,979	3,730,479
50–99	5,680,148	5,655,585	11,608,984	8,981,786	7,522,129
100–249	14,832,151	16,139,988	26,480,552	44,153,730	16,911,474
250–499	d	47,943,433	59,104,111	100,579,000	33,330,714
Average—All Small Businesses in NAICS Code	3.3 million	0.9 million	9.4 million	18.3 million	4.1 million
Average—All Businesses in NAICS Code	4.9 million	1.1 million	10.1 million	29.1 million	6.0 million

Today's proposed rule would require that users use nPB that contains no more than 0.05% iPB by weight. Most chemical manufacturers and solvent formulators already make products that meet this requirement. Some users of adhesives containing nPB use formulations that do not meet the proposed limit on iPB content. These users may need to purchase a more expensive grade of nPB-based adhesives that contains less iPB. Many users of adhesives containing nPB are small businesses that fabricate foam to be used in cushions for furniture.

If the requirements of today's proposed rule were to be finalized, we estimate that between 0 and 13 small businesses using nPB-based adhesives, or less than 5% of the 280 or so small businesses that use nPB-based adhesives, would experience a cost increase (*i.e.*, an impact) of greater than 1.0% of annual sales. Because solvent and aerosol solvent formulations of nPB already contain less than 0.05% iPB by weight, there were no impacts on end users in the non-aerosol solvent cleaning sector and aerosol solvents end use; only the 0 to 13 adhesive end users experienced a significant impact. An even smaller percentage of all 7330 or so small businesses choosing to use nPB would experience an impact of greater than 1.0% of annual sales. In addition, we estimate that no small businesses would experience an impact of greater than 3.0% of annual sales. We conclude that no small business subject to today's rule would go out of business as a result of the rule's requirements, if they were to become final. Because of the small total number and small percentage of affected businesses that would experience an impact of greater than either 1.0% or 3.0% of annual sales, EPA does not consider this rule to have a significant impact on a substantial number of small businesses.

The recommended acceptable exposure limit is only a recommendation and not an enforceable requirement of today's rule, and thus, EPA is not required to analyze the cost associated with implementing the recommended exposure limit. Nevertheless, the Agency did analyze the cost impacts of the combination of implementing the exposure limit and complying with the regulatory use condition in order to provide additional information about potential effects on small businesses. We found that, when the costs to comply with the regulatory use condition and to implement the recommended acceptable exposure limit are considered together, at most 47 small businesses choosing to use nPB would experience an impact of greater than 1.0% of annual sales, and none would experience an impact of greater than 3.0% of annual sales. All of the small businesses that would experience significant impacts are users of nPB-based adhesives. Thus, slightly less than 17% of the 280 or so small businesses choosing to use nPB-based adhesives would experience significant impacts, and less than 1% of all 7330 or so small businesses choosing to use nPB would experience significant impacts. Based on the relatively small number and percentage of small businesses that would experience significant impacts, EPA concludes that even if costs of implementing the recommended exposure limit were considered together with costs of complying with the regulatory use condition, today's rule would not have a significant impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Before selecting the regulatory options proposed today, we considered a number of regulatory options that would have had greater impacts on small businesses, such as:

- Finding nPB unacceptable for use in adhesives. This approach would require hundreds of small businesses to use other types of adhesives, with no option to improve ventilation to reduce worker exposure. Although small businesses could potentially save money by using a less expensive adhesive, such as a flammable adhesive, the capital costs of fire-proofing currently discourage small businesses from using inexpensive flammable adhesives. In addition, requirements of the Federal Aviation Administration for aircraft seating cushions effectively require either using nPB-based or methylene chloride-based adhesive or receiving a special waiver from the Administration. Recent regulations for hazardous air pollutants disallow use of methylene chloride in foam fabrication facilities. Thus, it is useful for adhesive users to have the option of nPB-based adhesives.
- Placing a narrowed use limit on the use of nPB in adhesives that would allow its use only in those cases where alternatives are technically infeasible due to performance or safety issues.
- Requiring that users clean metal, electronics, or other parts with nPB in vapor degreasing equipment that meets the requirements of the national emission standards for halogenated solvent cleaning.

In developing our regulatory options, we considered information we learned from contacting small businesses using or selling nPB. EPA staff visited the site of a small business using nPB for cleaning electronics. We contacted several fabricators of foam cushions that have used adhesives containing nPB. We participated in meetings with a number of adhesive manufacturers and users of adhesives in furniture construction. We have developed a fact sheet and have updated our program web site to inform small businesses about this proposed rule and to request their comments. We continue to be interested in the potential impacts of the proposed rule on small entities and request comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule does not affect State, local, or tribal governments. The enforceable requirements of the rule for the private sector affect only a small number of manufacturers and importers of nPB in the United States, and most of them already claim to meet the proposed standard prior to regulation. Therefore, the impact of this rule on the private sector is less than $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal

implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The exposure limits and acceptability listings in this proposed rule apply to the workplace. These are areas where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

Further, today's proposed rule provides both regulatory restrictions and recommended exposure guidelines based upon toxicological studies in order to reduce risk of exposure to reproductive toxins, both iPB and nPB. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to nPB or iPB.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact manufacturing of various metal, electronic, medical, and optical products cleaned with solvents containing nPB and products made with adhesives containing nPB. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking involves technical standards since EPA is proposing to limit the amount of iPB as a contaminant of nPB formulations to 0.05%, which is lower than the 0.1% limit set by the ASTM standard for vapor degreasing grade and general grade nPB. Based on the relatively potent toxicity of iPB (see discussion in section IV.A.4 of the preamble), EPA believes it is prudent to reduce the level of iPB to 0.05% to protect worker health. EPA has consulted with producers and formulators of nPB products, and all have stated that an iPB limit of 0.05% is achievable. EPA requests comment on this aspect of the proposed rulemaking and, specifically, invites the public to comment on the level of iPB contamination that EPA should set, and to explain why such limits should be set in this regulation.

XI. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section I.B.1 at the beginning of this document. Unless specified otherwise, all documents are available in hard copy in docket number A–2001–07 (legacy docket number for Docket ID No. OAR–2002–0064). Numbers listed after the reference indicate the item number within the docket.

Flammability

UNEP, 1999. 1998 Report of the United Nations Environment Programme Ozone Secretariat, Solvents, Coatings and Adhesives Technical Options Committee, April, 1999. (II–A–22)

Ozone-Depletion Potential and Global Warming Potential

Atmospheric and Environmental Research, Inc., 1995: Estimates of the Atmospheric Lifetime, Global Warming Potential and Ozone Depletion Potential of n-Propyl Bromide. Independent study prepared for Albemarle Corporation. (II–D–17)

WMO (World Meteorological Organization), 1999: Scientific Assessment of Ozone Depletion: 1998, Global Ozone Research and Monitoring Project—Report No. 44, Geneva, 1998. (II–A–20)

Wuebbles, D. J., R. Kotamarthi, and K. O. Patten, 1999: "Updated evaluation of Ozone Depletion Potentials for Chlorobromomethane and 1-bromo-propane." *Atmospheric Environment*, Vol. 33, p. 1641–1643. (A–91–42, IX–A–62)

Wuebbles, D. J., K. O. Patten, and M. T. Johnson, 2000: "Effects of n-propyl bromide and other short-lived chemicals on stratospheric ozone." Proceedings, Symposium on Atmospheric Chemistry Issues in the 21st Century, American Meteorological Society, Boston. (II–A–4)

Wuebbles, Donald J., Patten, Kenneth O., Johnson, Matthew T., Kotamarthi, Rao, 2001: "New methodology for Ozone Depletion Potentials of short-lived compounds: n-propyl bromide as an example." *Journal of Geophysical Research*, Vol. 106, No. D13, p. 14,551. (II–A–3)

Wuebbles, Donald J. 2002. "The Effect of Short Atmospheric Lifetimes on Stratospheric Ozone." Written for Enviro Tech International, Inc. Department of Atmospheric Sciences, University of Illinois-Urbana. (II–D–29)

Toxicity

Albemarle, 1997. Attachment 5 to August 7, 1997 submission to EPA, Air Monitoring Data. (Docket A–91–42, item VI–D–114)

Albemarle, 2001. November 16, 2001 e-mail from Mick Kassem, Albemarle Corporation, concerning exposure levels using nPB in various applications. (II–A–19)

Amity UK Ltd, 2001. Amity Product Information Bulletin Sheet Ref. No. 00–003: Vapor Degreasing Good Practice. 5 June 2001. (II–A–18)

Barber E.D., Donish W., Mueller K. 1981. A procedure for the quantitative measurement of the mutagenicity of volatile liquids in the Ames Salmonella/microsome assay. *Mutat Res* 90:31–48. (II–A–9)

Barber E., Donish W. 1982. An exposure system for quantitative measurements of the microbial mutagenicity of volatile liquids in genotoxic effects of airborne agents. *Environ Sci Res* 25:3–18. (II–A–29)

Brock, W. 2002. Letter to Jeff Cohen, EPA re: Comments on Acceptable Exposure Limit Derivation for n-Propyl Bromide (II–D–57)

Biles, 2002. Personal communication between Jeff Cohen, EPA and Blake Biles, Arnold & Porter, counsel to the Brominated Solvents Consortium (II–B–18)

CCPCT (The Center for Clean Products and Clean Technologies) August 2001. Alternative Adhesive Technologies in the Foam Furniture and Bedding Industries: A Cleaner Technologies Substitutes Assessment. Volume 2: Risk Screening and Comparison. The University of Tennessee Center for Clean Products and Clean Technologies. (II–D–70)

CERHR, 2002a. NTP-Center for the Evaluation of Risks to Human Reproduction Expert Panel Report on the Reproductive and Developmental Toxicity of 1-Bromopropane [nPB]. March 2002. (II–A–11)

CERHR, 2002b. NTP-Center for the Evaluation of Risks to Human Reproduction Expert Panel Report on the Reproductive and Developmental Toxicity of 2-Bromopropane [iPB]. March 2002. (II–A–12)

Charm, 2001. Letter to Dov Shellef, President, Poly Systems USA, Inc. from Joel Charm CIH, Charm HS&E International Inc. re: n-Propyl Bromide (II–D–16).

ClinTrials, 1997a. A 28-Day Inhalation Study of a Vapor-Formulation of ALBTA1 in the Albino Rat. Report No. 91189. Prepared by ClinTrials BioResearch Laboratories, Ltd., Senneville, Quebec, Canada. May 15, 1997. Sponsored by Albemarle Corporation, Baton Rouge, LA. (A–91–42, X–A–4)

ClinTrials, 1997b. ALBTA1: A 13-Week Inhalation Study of a Vapor Formulation of ALBTA1 in the Albino Rat. Report No. 91190. Prepared by ClinTrials BioResearch Laboratories, Ltd., Senneville, Quebec, Canada. February 28, 1997. Sponsored by Albemarle Corporation, Baton Rouge, LA. (A–91–42, X–A–5)

Crump, K.S. 1984. A new method for determining allowable daily intakes. *Fundam. Appl. Toxicol.* 4:854–871. (II–A–30)

Dodd, D. 2002. Letter to Jeff Cohen, EPA re: Comments on Acceptable Exposure Limit Derivation for n-Propyl Bromide (II–D–56)

Elf Atochem, 1995. Micronucleus Test by Intraperitoneal Route in Mice. n-Propyl Bromide. Study No. 12122 MAS. Study Director, Brigitte Molinier. Study performed by Centre International de Toxoicologie, Misery, France, September 6, 1995. (A–91–42, X–A–9)

Fiala ES, Sodum RS, Hussain NS, Rivenson A, Dolan L. 1995. Secondary nitroalkanes: induction of DNA repair in rat hepatocytes, activation by aryl sulfotransferase and hepatocarcinogenicity of 2-nitrobutane and 3-nitropentane in male F344 rats. *Toxicology* May 5; 99(1–2):89–97. (A–91–42, X–A–16)

Griffin, E., Wilson D. Disorders of the Testes. In: Isselbacher K, Baunwald E, Wilson J, Martin B., *et al.* eds. *Harrison's Principles of Internal Medicine.* 13th ed. New York, McGraw Hill; 1994: 2006–2017. (II–A–35)

HESIS, 2002. Comments on ICF's proposed AEL for 1-Bromopropane from Dr. Julia Quint, California Department of Health Services, Hazard Evaluation System & Information Service (II–D–62)

Huntingdon Life Sciences, August 23, 2001. A Developmental Toxicity Study in Rat Via Whole Body Inhalation Exposure. (II–D–27)

HSIA (Halogenated Solvents Industry Alliance), 2001. Minutes of EPA meeting with Halogenated Solvents Industry Alliance, 10/17/2001. (II–B–6)

IARC (International Agency for Research on Cancer), 1992. Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans: Some Industrial Chemicals and Dyestuffs, Vol. 29, pages 331–343. (II–A–34)

ICF, Inc., 2001. "Brief Discussion of the BMD Approach: Overview of its Purpose, Methods, Advantages, and Disadvantages." Prepared for U.S. EPA. (II–A–52)

ICF, Inc., 2002a. "Risk Screen for Use of N Propyl Bromide." Prepared for U.S. EPA, May, 2002. (II–A–13)

ICF, Inc. 2002c. "Response to California HESIS comments on AEL for nPB" (II–A–55)

Ichihara G., Asaeda N., Kumazawa T., *et al.* 1997. Testicular and hematopoietic toxicity of 2-bromopropane, a substitute for ozone layer-depleting chlorofluorocarbons. *J Occup Health* 39:57–63. (A–91–42, X–A–32)

Ichihara M., Takeuchi Y., Shibata E., Kitoh J., *et al.* 1998. Neurotoxicity of 1-Bromopropane. Translated by Albemarle Corporation. (A–91–42, X–A–33)

Ichihara G., Jong X., Onizuka J., *et al.* 1999. Histopathological changes of nervous system and reproductive organ and blood biochemical findings in rats exposed to 1-bromopropane. (Abstract only) Abstracts of the 72nd Annual Meeting of Japan Society for Occupational Health. May 1999. Tokyo. (II–A–15)

Ichihara G., Yu X., Kitoh J., *et al.* 2000a. Reproductive toxicity of 1-bromopropane, a newly introduced alternative to ozone layer depleting solvents, in male rats. *Toxicol Sciences* 54:416–423. (II–A–7)

Ichihara G., Kitoh J., Yu, X., *et al.* 2000b. 1-Bromopropane, an alternative to ozone layer depleting solvents, is dose-dependently neurotoxic to rats in long-term inhalation exposure. *Toxicol Sciences* 55:116–123. (II–A–8)

Ichihara G. *et al.*, 2002a. Neurological Disorders in Three Workers Exposed to 1-Bromopropane. *J Occu. Health* 44:1–7. (II–D–64)

Ichihara G. *et al.*, 2002b. Poster presentation titled: "Neurological abnormality in workers of 1-bromopropane factory." Presented at the Society of Toxicology Meeting, Wednesday, March 20, 2002. Poster ID:1236. (II–D–35)

Kamijima M., Ichihara G., Kitoh J., *et al.* 1997a. Disruption in ovarian cyclicity due to 2-bromopropane in the rat. *J Occu. Health* 39:3–4. (A–91–42, X–A–35)

Kamijima M., Ichihara G., Kitoh J. *et al.* 1997b. Disruption in ovarian cyclicity due to 2-bromopropane in the rat. *J*

Occu. Health 39:3–4. (A–91–42, X–A–35)
Kamijima M., Ichihara G., Kitoh J., *et al.* 1997b. Ovarian toxicity of 2-bromopropane in the nonpregnant female rat. *J Occu. Health* 39:144–149. (A–91–42, X–A–36)
Kim Y., Jung K., Hwang T., Jung G., Kim H., Park J., Kim J., Park J., Park D., Park S., Choi K., Moon Y. 1996. Hematopoietic and reproductive hazards of Korean electronic workers exposed to solvents containing 2-bromopropane. *Scand J Work Environ Health* 22:387–391. (A–91–42, X–A–39)
Kim H.-Y., Chung Y.-H., Jeong J.-H., Lee Y.-M., Sur G.-S., Kang J.-K. 1999. Acute and repeated inhalation toxicity of 1-bromopropane in SD rats. *J Occup Health* 41:121–128. (II–D–23)
Kimmel, C. and Gaylor, D. 1988. Issue in qualitative and quantitative risk analysis for developmental toxicology. *Risk Anal* 8:15–21. (II–A–28)
Kleinfelter, G. and Darney, S. 2002. Memorandum from EPA's Office of Research and Development, Reproductive Toxicology Division, to J. Cohen, Office of Air and Radiation, Comments on Acceptable Exposure Limit for n-Propyl Bromide (II–C–1)
Maeng S.H., Yu I.J. 1997. Mutagenicity of 2-bromopropane. *Ind Health* 35:87–95. (A–91–42, X–A–47)
NIOSH, 1999. U.S. Dept. of Health and Human Services, Letter to Custom Products Inc., December 1, 1999. Re: results of Dec. 1998 survey of workplace exposure to nPB at Custom Products. (HHE Report 98–0153) (II–D–6)
NIOSH, 2000a. U.S. Dept. of Health and Human Services, Letter to Marx Industries, Inc., February 1, 2000. Re: results of nPB exposure assessment survey conducted Nov. 16–17, 1999. (II–D–7)
NIOSH, 2000b. NIOSH Health Hazard Evaluation Report of nPB exposure from cold vapor degreasers at Trilithic, Inc. (HHE Report 2000–0233–2845) (II–D–11)
NIOSH, 2000c. U.S. Dept. of Health and Human Services, Letter to Custom Products Inc., December 21, 2000. Re: results of nPB exposure assessment survey conducted Nov. 16, 2000. (HHE Report 98–0153) (II–D–8)
NIOSH, 2001. U.S. Dept. of Health and Human Services, Letter to STN Cushion Company, March 7, 2001. Re: Results of nPB exposure assessment survey conducted November 14, 2000. (II–D–9)
NIOSH, 2002. NIOSH Health Hazard Evaluation Report of nPB exposure from spray adhesives at STN Cushion Company. August, 2002. (HHE Report 2000–0410–2891) (II–A–31)
NIOSH, 2003. Comments of the National Institute for Occupational Safety and Health of the draft Environmental Protection Agency Federal Register Notice Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide (III–C–6)
Park, Jung-Sun et. al. 1997. "An Outbreak of Hematopoietic and Reproductive Disorders Due to Solvents Containing 2-Bromopropane in an Electronic Factory, South Korea: Epidemiological Survey." *J Occu. Health* 1997; 39: 138–143. (II–A–1)
Purvis K., Christiansen E., 1992, Male infertility: current concepts. *Ann Med* 1992; 24:258–272. (II–A–36)
Rozman K. and Doull J., 2002. "Derivation of an Occupational Exposure Limit for n-Propyl Bromide Using an Improved Methodology" *App Occu. Env. Hyg.* 17: 711–716 (II–D–63)
Saito-Suzuki R., Teramoto S., Shirasu Y. 1982. Dominant lethal studies in rats with 1,2-dibromo-3-chloropropane and its structurally related compounds. *Mutat Res* 101:321–327. (A–91–42, X–A–55)
Sclar, 1999. Sclar, Gary, "Case Report: Encephalomyeloradicu lo-neuropathy following exposure to an industrial solvent" *Clinical Neurology and Neurosurgery* Vol. 01(1999) 99–202. (II–D–34)
Sekiguchi S., Suda M., Zhai Y.L., Honma T., "Effects of 1-bromopropane, 2-bromopropane, and 1,2-dichloropropane on the estrous cycle and ovulation in F344 rats." *Toxicol Lett* 2002 Jan 5;126(1):41–9 (II–D–39)
SLR International Corp, 2001a. Human *in vitro* bioassays conducted by EnviroMed Laboratories (II–D–2)
SLR International Corp., 2001b. "Inhalation Occupational Exposure Limit for n-Propyl Bromide." Prepared for Enviro Tech International, Inc. 2001. (II–D–15)
US EPA, 1991a. Toxicity summary for 2-nitropropane. U.S. Environmental Protection Agency. Integrated Risk Information System. Last updated 1 March 1991. (II–A–10)
US EPA, 1991b. Guidelines for Developmental Toxicity Risk Assessment. U.S. Environmental Protection Agency. (II–A–51)
US EPA, 1994. U.S. Environmental Protection Agency (USEPA). 1994. Methods for derivation of inhalation reference concentrations and application of inhalation dosimetry. EPA/600/8–90/066F. Office of Health and Environmental Assessment, Washington, DC. 1994. (II–A–16)
US EPA, 1995a. SCREEN3 air dispersion model. (II–A–53)
US EPA, 1995b. The Use of the Benchmark Dose Approach in Health Risk Assessment. EPA/630–R–94–007. Risk Assessment Forum, Washington, DC. (II–A–17)
US EPA, 2000b. Science Policy Council Handbook: Peer Review, 2nd Edition. EPA Report 100–B–00–001, Office of Science Policy, Office of Research and Development. December 2000. (II–A–46)
US EPA, 2002. E. Birgfeld, EPA, Letter transmitting comments on the Expert Panel report of the Center for Evaluation of Risks to Human Reproduction on 1-bromopropane and 2-bromopropane. May 9, 2002. (II–A–14)
US EPA, 2003. EPA staff report, "Economic Impacts: Options for SNAP Decision on n-Propyl Bromide." (III–A–3)
Wang H., Ichihara G., Yamada T. 1999. Subacute effects of 1-bromopropane on reproductive organs and the nervous system. Abstracts of the 72nd Annual Meeting of Japan Society for Occupational Health. May 1999. Tokyo. (II–A–33)
WIL, 2001. WIL Research Laboratories. "An inhalation two-generation reproductive toxicity study of 1-bromopropane in rats." Sponsored by the Brominated Solvent Consortium. May 24, 2001. (II–D–10)
Yamada T. *et al.*, 2003. Exposure to 1-Bromopropane Causes Ovarian Dysfunction in Rats. *Toxicol Sci* 71:96–103 (II–A–32)
Yu X, Ichihara G, Kitoh J, Xie Z, Shibata E, Kamijima M, Takeuchi Y. 2001. Neurotoxicity of 2-bromopropane and 1-bromopropane, alternative solvents for chlorofluorocarbons. *Environ Res* 85(1):48–52. (II–D–20)

Potential Market, Lack of Regulatory Controls, and Economic Impacts

AFEAS (Alternative Fluorocarbon Environmental Acceptability Study), 2002. Data from the Web Site of the Alternative Fluorocarbon Environmental Acceptability Study. 2002. (II–A–27)
Biles, 2001. Email from Blake Biles to Jeff Cohen on behalf of the Brominated Solvents Consortium (BSOC). Contains the BSOC estimates of world-wide nPB sales for the calendar years 2000, 2001, 2002. (II–D–18)
Institute for Research and Technical Assistance (IRTA), April 29, 1999. Re: comments on nPB. (Docket A–91–42, item X–B–58)
Kassem, 2003. January 10, 2003 Letter from O. M. Kassem, Albemarle Corporation to K. Bromberg, Small Business Administration Re: n propyl bromine SNAP. (II–D–78)
UNEP (United Nations Environmental Programme), 2001: Geographic Market Potential and Estimated Emissions of n-Propyl Bromide. Report by the Technology and Economic Assessment Panel (TEAP) Task Force of the Solvents, Coatings and Adhesives Technical Options Committee (STOC). April, 2001. (II–A–21)
US EPA, 2003. EPA staff report, "Economic Impacts: Options for SNAP Decision on n-Propyl Bromide." (III–A–3)
Wolf, 2001. July 9, 2001, Letter from C. Wolf, Ultronix to M. Sheppard, EPA (II–D–85)

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 21, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding the following appendix M to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix M to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [publication date of final rule] final rule

SOLVENT CLEANING SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use condition	Further information
Metals cleaning	n-propyl bromide (nPB) as a substitute for CFC–113 and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.
Electronics cleaning.	nPB as a substitute for CFC–113 and methyl chloroform.	Acceptable subject to use conditions	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.
Precision cleaning	nPB as a substitute for CFC–113 and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.

Note: In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this appendix shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

AEROSOLS SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use condition	Further information
Aerosol solvents ...	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.

Note: In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this appendix shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

ADHESIVES, COATINGS, AND INKS SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use Condition	Further information
Adhesives	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.

Note: In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this appendix shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

[FR Doc. 03–13254 Filed 6–2–03; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Tuesday,
June 3, 2003

Part IV

Department of Education

Community Technology Centers Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.341]

Community Technology Centers Program

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice of final priorities, program requirements, and selection criteria for Fiscal Year (FY) 2003.

SUMMARY: The Assistant Secretary for Vocational and Adult Education has established priorities, selection criteria, and program requirements under the Community Technology Centers (CTC) program. The Assistant Secretary will use these priorities, selection criteria, and program requirements for competitions in FY 2003. The Department takes this action to target Federal resources on improving the academic achievement of low-achieving students enrolled in, or entering, grades 9 through 12 at low-performing secondary schools. The Department intends the priorities, selection criteria, and program requirements to support the goal of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), that all students will attain, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments, particularly in the core academic subjects of reading or language arts, and mathematics.

EFFECTIVE DATE: These priorities, program requirements, and selection criteria are effective May 30, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions pertaining to the application, need further assistance, or need to speak with someone in the CTC program, you may contact Gisela Harkin, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 4324, Washington, DC 20202 7100, Telephone: (202) 205–4238 or via e-mail: *commtech.center@ed.gov*. Please type "CTC Notice Correspondence" as the subject line of your electronic message.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Note: This notice does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications specifies the deadline date by which applications for an award must be received or hand-delivered to the Department if a waiver to the electronic submission requirement is granted.

SUPPLEMENTARY INFORMATION:

General

As authorized by Title V, Part D, Subpart 11, Section 5511–13 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB) of 2001, the purpose of the CTC Program is to assist eligible applicants to create or expand community technology centers that will provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training. Eligible applicants are community-based organizations (including faith-based organizations), State and local educational agencies, institutions of higher education, and other entities such as foundations, libraries, museums, public and private nonprofit organizations, and for-profit businesses, or consortia thereof. To be eligible, an applicant must also have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

The focus of the CTC program competition has changed to give absolute priority to those applicants who will focus on improving the academic achievement of low-achieving high school students while continuing to provide a community technology center for all members of their community. Thus, grant recipients must meet this priority as they use grant funds to create or expand community technology centers that expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities and to evaluate the effectiveness of their projects. Funds may be used to provide services and activities that use technology to improve academic achievement, such as academic enrichment activities for children and youth, career development, adult education, and English language instruction for individuals with limited English proficiency. Other authorized activities include, among other things, support for personnel, equipment, networking capabilities, and other infrastructure costs. No funds may be used for construction.

Improving the academic achievement of our nation's secondary school students has become an urgent need. Current National Assessment of Educational Progress (NAEP) data indicate that, despite some slow and steady progress in secondary student achievement over the past few decades, many of our nation's secondary students are still not attaining the academic skills and knowledge required for graduation, postsecondary education, or careers. This is particularly true among students who are entering secondary school, with two in ten scoring below basic levels in reading, over three in ten scoring below basic levels in math, and four in ten scoring below basic levels in science. Moreover, as students move through secondary school, their academic progress wanes. Except in the area of science, students actually make greater academic gains between grades 4 and 8 than between grades 8 and 12.

To support the goal of the NCLB that all students attain proficiency in challenging State academic achievement standards, the Assistant Secretary has established priorities, selection criteria, and program requirements for the CTC program that will focus program resources on providing effective supplemental instruction to low-achieving students who are entering or enrolled in grades 9 through 12 at high-poverty, low-performing secondary schools.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Public Law 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, the Department is taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our processes.

The Department is requiring that applications for the FY 2003 Community Technology Centers program competition be submitted electronically using e-Application through the U.S. Department of Education's e-GRANTS system. The e-GRANTS system is accessible through its portal page at *http://e-grants.ed.gov*.

Applicants who are unable to submit an application through the e-GRANTS systems may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent(s) them from using the Internet to submit their applications. The reason(s) must be outlined in a letter addressed to: Gisela Harkin, U.S. Department of Education, Office of Vocational and Adult Education, 330 "C" Street, S.W., Washington, D.C., 20202–7100. Please mark your envelope "CTC competition waiver request." The letter requesting the waiver is to be submitted no later than two (2) weeks before the deadline for transmittal of applications; last minute requests will not be considered.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula programs and additional discretionary grant competitions. The Community Technology Centers (CTC) program (CFDA 84.341) is one of the programs included in the pilot project. If you are an applicant under the CTC Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

—Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-Application system, you must contact the Help Desk by 4:30 p.m. EST on the deadline date.

—Keep in mind that e-Applications is not operational 24 hours a day, 7 days a week. Click on "Hours of Web Site Operation" for specific hours of access during the week.

—You will have access to the e-Application Help Desk for technical support: 1(888)336–8930 (TTY: 1[866]697–2696, local [202]401–8363). The Help Desk hours of operation are limited to 8 a.m.–6 p.m. EST Monday through Friday.

You must submit all documents electronically, including the Application for Federal Education Assistance (ED424), Budget Information—Non-Construction Programs (ED524), and assurances, certifications, and appendices, as appropriate.

—After you electronically submit your application, you will receive an acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

—Within three (3) working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED424) to the Application Control Center after following these steps:

(1) Print the ED424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED424.

(4) Fax the signed ED424 to the Application Control Center at (202) 260–1349.

—The Department may request that you give us original signatures on all other forms at a later date.

Closing Date Extension in Case of System Unavailability

If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one (1) business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension:

(1) You must be a registered user of e-Application and have initiated an e-Application for this competition; and (2)(A) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. EST, on the deadline date; or (B) The e-APPLICATION system must be unavailable for any period of time during the last hours of operation (that is, for any period of time between 3:30 and 4:30 p.m. EST) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension, you must contact the e-Grants Help Desk at 1(888) 336–8930.

You may access the electronic grant application for CFDA No. 84.341 at *http://e-grants.ed.gov*.

Page Limit: The application narrative (Part VI of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part VI to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5" x 11" on one side only, with 1" margins on the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

In addition, you must limit Part VII (budget narrative) to four (4) pages and Part X (Appendices) to 15 pages, using the aforementioned standards. We will reject your application if:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Scoring of Applications

Applications received under this notice will be screened for eligibility and scored according to the criteria that follow in this notice. Each application under this competition must meet Absolute Priority 1 and Absolute Priority 2 in order to be eligible for funding. An application that does not meet both priorities will not be evaluated and scored under the selection criteria, which are the same for both competitions. Once eligibility is established, each application may earn up to 100 points under the selection criteria. In addition, each application may earn up to an additional five (5) points for satisfying the competitive preference priority. The highest possible score is 105 points.

Waiver of Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities and requirements of this notice. However, section 437(d)(2) of the General Education Provisions Act (GEPA) exempts from this requirement rules that would cause extreme hardship to the intended beneficiaries of the program that would be affected by those rules. In accordance with section 437(d)(2) of GEPA, the Secretary has decided to forgo public comment with respect to the rules in this grant competition in order to ensure timely and high-quality awards. The rules

established in this notice apply only to the FY 2003 grant competition.

Discussion of Priorities

When inviting applications, we designate each priority as absolute or competitive preference. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Priorities: Applicants must meet both Absolute Priority 1 and Absolute Priority 2 to be considered for funding under this notice. Eligible applicants may be either State or local entities.

Absolute Priority 1: Each application must be submitted by an eligible applicant. In addition, each proposed project must include a partnership with a community-based organization and a local educational agency (or school). The application must clearly identify the partnering agencies and must include a detailed plan of their working relationship. Thus, under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to projects in which the delivery of instructional services includes:

1. a Community-Based Organization (CBO), which may include a faith-based organization, and

2. a Local Educational Agency (LEA) (or school, including private, non-profit schools).

A CBO is not required to submit a joint application with an LEA or school when applying for funds; however, the proposed project must deliver the educational services in partnership with an LEA (or school).

Likewise, an LEA is not required to submit a joint application with a CBO when applying for funds; however, the proposed project must deliver the educational services in partnership with a CBO.

Applicants who are neither CBOs nor LEAs must enter into a partnership that includes a CBO and an LEA (or school) in the delivery of educational services.

The Secretary has determined that the participation of both CBOs and LEAs (or schools) is critical to the success of the projects that will be funded in this competition. Many academic support programs for adolescents report that securing and maintaining a high level of student participation can be challenging. Involving CBOs in service delivery will help projects better master this challenge, such as by providing expanded outreach and support to students, joint programming, or alternative service sites that are in or near the neighborhoods where students live. Community-based and faith-based partners bring other important resources to the table as well, such as assistance in recruiting staff and volunteers. LEAs (or schools) are essential partners as well. Their involvement is needed to identify the students who are most in need of academic support and to ensure that the project's curriculum, assessment, and instructional practices are consistent with those of the schools the students attend.

Applications that do not show evidence of a partnership with a CBO and an LEA (or school) will be ineligible for funding.

Note: Applicants should bear in mind that LEAs are eligible applicants, but individual schools are not eligible applicants.

Absolute Priority 2: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to projects that meet the following criteria:

Applicants in this program must state whether they are proposing a local or State project. A local project must include one or more CTCs; a State project must include two or more CTCs. In addition, the project must be carried out by or in partnership with one or more LEAs or secondary schools that provide supplementary instruction in the core academic subjects of reading or language arts, or mathematics, to low-achieving secondary school students. Projects must serve students who are entering or enrolled in grades 9 through 12 and who have academic skills significantly below grade level, or who have not attained proficiency on State academic assessments as established by NCLB. Supplementary instruction may be delivered before or after school or at other times when school is not in session. Instruction may also be provided while school is in session, provided that it increases the amount of time students receive instruction in core academic subjects and does not require their removal from regular academic classes. The instructional strategies used must be based on practices that have proven effective for improving the academic performance of low-achieving students. If these services are not provided directly by an LEA, they must be provided in partnership with an LEA or secondary school.

Competitive Preference Priority—Low-Performing Secondary Schools

In addition to the points to be awarded under the selection criteria, the Secretary awards up to five (5) additional points to projects that serve students in secondary schools that have not met adequate yearly progress for two (2) or more consecutive years.

Selection Criteria

The following selection criteria will be used to evaluate applications submitted for grants. Please note:

(1) The maximum score is 105 points. Up to 100 points will be awarded in response to the selection criteria listed below. A maximum of 5 additional points may be awarded to those applicants that respond to the competitive preference priority described earlier in the notice.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Need for the Project (10 points):*

In evaluating the need for the proposed project, we consider the extent to which the proposed project will:

(1) Serve students from low-income families;

(2) Serve students entering or enrolled in secondary schools that are among the secondary schools in the State that have the highest numbers or percentages of students who have not achieved proficiency on the State academic assessments required by Title I of ESEA, or who have academic skills in reading or language arts, or mathematics, that are significantly below grade level;

(3) Serve students who have the greatest need for supplementary instruction, as indicated by their scores on State or local standardized assessments in reading or language arts, or mathematics, or some other local measure of performance in reading or language arts, or mathematics; and

(4) Create or expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities.

(b) *Quality of the Project Design (35 points):*

In evaluating the quality of the proposed project, we consider the extent to which the proposed project will:

(1) Provide instructional services that will be of sufficient size, scope, and intensity to improve the academic performance of participating students;

(2) Incorporate strategies that have proven effective for improving the academic performance of low-achieving students;

(3) Implement strategies in recruiting and retaining students that are likely to prove effective;

(4) Provide instruction that is aligned with the secondary school curricula of the schools in which the students to be served by the grant are entering or enrolled, and supports the efforts of the State or LEA to improve the academic achievement of these students; and

(5) Provide high-quality, sustained, and intensive professional development for personnel who provide instruction to students.

(c) *Quality of the Management Plan (15 points):*

In evaluating the quality of the management plan, we consider the extent to which the proposed project:

(1) Outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project;

(2) Assigns responsibility for the accomplishment of project tasks to specific project personnel, and provides timelines for the accomplishment of project tasks;

(3) Requires appropriate and adequate time commitments of the project director and other key personnel to achieve the objectives of the proposed project; and

(4) Includes key project personnel, including the project director, teachers, counselors, and administrators, with appropriate qualifications and relevant training and experience.

(d) *Adequacy of Resources (20 points):*

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant;

(2) The extent to which a preponderance of project resources will be used for activities designed to improve the academic performance of low-achieving students in reading or language arts, and/or mathematics;

(3) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project; and

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(e) *Quality of the Evaluation (20 points):*

In determining the quality of the evaluation, we consider the extent to which the proposed project:

(1) Includes a plan that utilizes evaluation methods that are feasible and appropriate to the goals and outcomes of the project;

(2) Will regularly examine the progress and outcomes of participating students on a range of appropriate performance measures, including their performance on State or local standardized academic assessments;

(3) Will use an independent, external evaluator with the necessary background and technical expertise to assess the performance of the project; and

(4) Effectively demonstrates that the applicant has adopted a rigorous evaluation design.

Program Requirements

Project Period: 12 months.

Range of Awards: $300,000–$500,000. Applicants who request more than $500,000 will be ineligible for funding.

Matching Requirement: Pursuant to Section 5512(c) of ESEA, as amended by NCLB, Federal funds may not pay for more than 50 percent of total project costs. In order to apply for and receive a grant award under this competition, each applicant must furnish from nonfederal sources at least 50 percent of its total project costs. Applicants may satisfy this requirement in cash or in kind, fairly evaluated, including services.

Reporting Requirements: In accordance with Education Department General Administrative Regulations (EDGAR) cited elsewhere in this notice, grantees are required to submit to the Secretary a final performance report that:

(1) Summarizes project progress with respect to the specific, measurable goals, objectives, and outcomes proposed in the management plan;

(2) Summarizes project impact with respect to the achievement of participants, as measured by standardized State or local assessments;

(3) Identifies barriers to progress as well as solutions; and

(4) Provides information about the project's success in identifying funding to sustain its operations after the cessation of the grant.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Applicable Program Regulations: 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

CFDA No. 84.341 Community Technology Centers Program

Program Authority: 20 U.S.C. 7263–7263b.

Dated: May 29, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–13834 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.341]

Community Technology Centers Program

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: As authorized by Title V, Part D, Subpart 11, Section 5511–13 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB) of 2001, the purpose of the Community Technology Centers (CTC) program is to assist eligible applicants to create or expand community technology centers that will provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training. Eligible applicants are community-based organizations (including faith-based organizations), State and local educational agencies, institutions of higher education, and other entities such as foundations, libraries, museums, public and private nonprofit organizations, and for-profit businesses, or consortia thereof. To be eligible, an

applicant must also have the capacity to expand significantly access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

The focus of the CTC program competition has changed to give absolute priority to those applicants who will focus on improving the academic achievement of low-achieving high school students while continuing to provide a community technology center for all members of their community. Thus, grant recipients must meet this priority as they use grant funds to create or expand community technology centers that expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities and evaluate the effectiveness of this project.

Eligible Applicants: Eligible applicants shall be an institution of higher education, a State Education Agency, a Local Educational Agency, an entity (such as a foundation, museum, library, for-profit business, public or private nonprofit organization, or community based organization, including faith based organizations), or a consortium thereof. In addition, eligible applicants shall have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

Applications Available: May 30, 2003.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, the Department is taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our processes.

The Department is requiring that applications for the FY 2003 Community Technology Centers Program competition for new awards be submitted electronically using e-APPLICATION through the U.S. Department of Education's e-GRANTS system. The e-GRANTS system is accessible through its portal page at *http://e-grants.ed.gov*.

Applicants who are unable to submit an application through the e-GRANTS systems may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent(s) them from using the Internet to submit their applications. The reason(s) must be outlined in a letter addressed to: Gisela Harkin, U.S. Department of Education, Office of Vocational and Adult Education, 330 "C" Street, SW., Washington, DC 20202–7100. Please mark your envelope "CTC competition waiver request." The letter requesting the waiver is to be submitted no later than two (2) weeks before the deadline for transmittal of applications; last minute requests will not be considered.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula programs and additional discretionary grant competitions. The Community Technology Centers (CTC) program (CFDA 84.341) is one of the programs included in the pilot project. If you are an applicant under the CTC program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

—Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-APPLICATION system, you must contact the Help Desk by 4:30 p.m. EST on the deadline date.

—Keep in mind that e-APPLICATIONS is not operational 24 hours a day, 7 days a week. Click on "Hours of Web Site Operation" for specific hours of access during the week.

—You will have access to the e-APPLICATION Help Desk for technical support: 1 (888) 336–8930 (TTY: 1–[866] 697–2696, local [202] 401–8363). The Help Desk hours of operation are limited to 8 a.m.–6 p.m. EST Monday through Friday.

You must submit all documents electronically, including the Application for Federal Education Assistance (ED424), Budget Information—Non-Construction Programs (ED524), and assurances, certifications, and appendices, as appropriate.

—After you electronically submit your application, you will receive an acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

—Within three (3) working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED424) to the Application Control Center after following these steps: (1) Print the ED424 from the e-Application system. (2) The institution's Authorizing Representative must sign this form. (3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED424. (4) Fax the signed ED424 to the Application Control Center at (202) 260–1349.

—The Department may request that you give us original signatures on all other forms at a later date.

Closing Date Extension in Case of System Unavailability

If you are prevented from submitting an application on the closing date because the e-APPLICATION system is unavailable, we will grant you an extension of one (1) business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension:

(1) You must be a registered user of e-APPLICATION and have initiated an e-APPLICATION for this competition; and

(2) (a) The e-APPLICATION system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. EST, on the deadline date; or

(b) The e-APPLICATION system must be unavailable for any period of time during the last hours of operation (that is, for any period of time between 3:30 and 4:30 p.m. EST) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension, you must contact the e-Grants Help Desk at 1 (888) 336–8930.

You may access the electronic grant application for CFDA No. 84.341 at *http://e-grants.ed.gov*.

Page Limit: The application narrative (Part VI of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part VI to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5" x 11" on one side only, with 1" margins on the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

In addition, you must limit Part VII (budget narrative) to four (4) pages and Part X (Appendices) to 15 pages, using the aforementioned standards. We will reject your application if you:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Deadline for Transmittal of Applications: June 30, 2003.

Deadline for Intergovernmental Review: August 29, 2003.

Estimated Available Funds: $24,318,750. Note: Under 34 CFR 75.225(c)(1), the Department will conduct a separate competition for an estimated $8,106,250 in additional available funds. Only a "novice applicant," as that term is defined in 34 CFR 75.225(a–b), may apply for funds in that competition.

Range of Awards: $300,000–$500,000.

In previous grant competitions, applicants have routinely requested more money than the above award ranges dictate. As a result, plans submitted to the Department have included any number of activities that could only be made possible if an applicant received a funding amount much higher than intended in the award range. Based on this experience, the Department will fund only those applications that correctly request funds within the award range specified in this notice. Therefore, applicants who request more than $500,000 will be declared ineligible and will not receive funding.

Note: The size of awards will be based on a number of factors. These factors will include the scope, quality, and comprehensiveness of the proposed program, and the recommended range of awards indicated above.

Matching Requirement: Pursuant to section 5512(c) of ESEA, as amended by NCLB, Federal funds may not pay for more than 50 percent of total project costs. In order to apply for and receive a grant award under this competition, each applicant must furnish from nonfederal sources at last 50 percent of its total project costs. Applicants may satisfy this requirement in cash or in kind, fairly evaluated, including services.

Note: The U.S. Department of Education is not bound by any estimates in this notice.

Project Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99 and (b) the regulations in the notice of final priorities, application requirements, and selection criteria for FY 2003 as published elsewhere in this issue of the **Federal Register**.

Priorities: This competition gives absolute and competitive priorities to applicants that meet the conditions outlined in the Notice of Final Priorities for this program, which is published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you need further assistance and need to speak with someone in the CTC program, you may contact Gisela Harkin by phone at (202) 205–4238, by mail at 330 C Street, SW., Room 4324, Washington, DC 20202, or via e-mail at commtech.center@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using PDF, call the U.S. Government Printing Office (GPO); toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7263–7263b.

Dated: May 29, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–13835 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P



Federal Register

Tuesday,
June 3, 2003

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 31 and 52
Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 2001–031]

RIN 9000–AJ67

Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by revising the paragraphs of the "compensation for personal services" cost principle relating to deferred compensation and postretirement benefits other than pensions.

DATES: Interested parties should submit comments in writing on or before August 4, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–031@gsa.gov*.

Please submit comments only and cite FAR case 2001–031 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501-0650. Please cite FAR case 2001–031.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils propose the following changes:

1. FAR 31.205–6, at paragraph (k), Deferred compensation other than pensions, amend the cost principle by—

a. Deleting the first two sentences of paragraph (k)(l) which duplicate the definition of deferred compensation at FAR 31.001, the third sentence of paragraph (k)(l) which duplicates requirements at FAR 31.205–6(a), and paragraph (k)(3) which is obsolete;

b. Moving the fourth sentence of paragraph (k)(l) to (k)(2); and

c. Changing the phrase "measured, allocated, and accounted for" in paragraph (k)(2) to "measured, assigned, and allocated" to be consistent with the language used in cost accounting standards; and

d. Making related editorial changes.

2. FAR 31.205–6, at paragraph (o), Postretirement benefits other than pensions, amend the cost principle by—

a. Moving (and revising) the language in paragraphs (o)(3) through (o)(5) to paragraph (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding;

b. Adding language to the current paragraph (o)(6) (new paragraph (o)(3)) specifying how the contractor must handle refunds and credits; and

c. Making related editorial changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 31 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–031), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: May 28, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR parts 31 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205–6 by revising paragraphs (k) and (o) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(k) *Deferred compensation other than pensions.* The costs of deferred compensation awards are allowable subject to the following limitations:

(1) The costs shall be measured, assigned, and allocated in accordance with 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(2) The costs of deferred compensation awards are unallowable if the awards are made in periods subsequent to the period when the work being remunerated was performed.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraph (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Cash basis.* Costs recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor uses terminal funding the contractor shall—

(A) Accrue and pay the entire PRB liability to an insurer or trustee in a lump sum payment upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees; and

(B) Amortize the lump sum over a period of 15 years.

(iii) *Accrual basis.* If a contractor uses accrual costing other than terminal funding, the PRB costs shall be—

(A) Measured and assigned in accordance with generally accepted accounting principles. However, the portion of PRB costs attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, cannot exceed the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106;

(B) Paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees;

(C) Calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board; and

(D) Funded by the time set for filing the Federal income tax return or any extension. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, are not allowable in any subsequent year. Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(3) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to subpart 31.2. The contractor shall credit the equitable share to the Government either as a cost reduction or by cash refund at the option of the Government.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 52.215–18 to read as follows:

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Date)

The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce a PRB plan. If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government, at the option of the Government, for its equitable share as required by FAR 31.205–6(o)(3). The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j). (End of clause)

[FR Doc. 03–13859 Filed 6–2–03; 8:45 am]

BILLING CODE 6820–EP–P



Federal Register

Tuesday,
June 3, 2003

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 15
Federal Acquisition Regulation;
Unsolicited Proposals; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2002–C27]

RIN 9000–AJ66

Federal Acquisition Regulation; Unsolicited Proposals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 834 of the Homeland Security Act of 2002 (Public Law 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

DATES: Interested parties should submit comments in writing on or before August 4, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.
Submit electronic comments via the Internet to—*farcase.2002–027@gsa.gov*.

Please submit comments only and cite FAR case 2002–027 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–027.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost-related or price-related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–027), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: May 29, 2003

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.603 by removing "and" from the end of paragraph (c)(4); removing the period from the end of paragraph (c)(5) and adding "; and" in its place; and adding a new paragraph (c)(6) to read as follows:

15.603 General.

* * * * *

(c) * * *

(6) Not address a previously published agency requirement.

* * * * *

3. In section 15.606–1, amend paragraph (a) by—

a. Revising paragraph (a)(4);

b. Redesignating paragraphs (a)(5) and (a)(6) as (a)(6) and (a)(7), respectively; and

c. Adding a new paragraph (a)(5). The revised and added text reads as follows:

15.606–1 Receipt and initial review.

(a) * * *

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

* * * * *

[FR Doc. 03–13860 Filed 6–2–03; 8:45 am]
BILLING CODE 6820–EP–P

Federal Register

Tuesday,
June 3, 2003

Part VII

Department of Education

Office of Innovation and Improvement; Parental Information and Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.310A]

Office of Innovation and Improvement; Parental Information and Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purposes of Program: The Parental Information and Resource Centers (PIRC) program provides resources that eligible applicants can use in pursuit of the objectives of the No Child Left Behind (NCLB) Act, which provides resources to enable all elementary and secondary students to achieve to high standards and holds schools, local educational agencies, and States accountable for ensuring that they do so. In particular, this program provides an opportunity for eligible entities to focus on assisting the parents of children who attend schools identified for improvement, corrective action, or restructuring under Title I, Part A of the Elementary and Secondary Education Act (ESEA).

The PIRC program supports school-based and school-linked parental information and resource centers that—

(1) Help implement effective parental involvement policies, programs, and activities that will improve children's academic achievement;

(2) Develop and strengthen partnerships among parents (including parents of children from birth through age five), teachers, principals, administrators, and other school personnel in meeting the educational needs of children;

(3) Develop and strengthen the relationship between parents and their children's school;

(4) Further the developmental progress of children assisted under the program;

(5) Coordinate activities funded under the program with parental involvement initiatives funded under section 1118 and other provisions of the ESEA; and

(6) Provide a comprehensive approach to improving student learning, through coordination and integration of Federal, State, and local services and programs.

Eligible Applicants: Non-profit organizations, or consortia of non-profit organizations and local educational agencies (LEAs). LEAs alone are *not* eligible to apply for funding.

A "non-profit organization" is an organization whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity. Faith-based and community organizations are eligible to apply for funding provided that they are nonprofit organizations.

For purposes of the PIRC program, the term "non-profit organization" does *not* include institutions of higher education, State educational agencies, LEAs, intermediate school districts, schools, government entities, or hospitals.

Applications Available: June 3, 2003.

Deadline for Transmittal of Applications: July 18, 2003.

Deadline for Intergovernmental Review: September 16, 2003.

Notification of Intent to Apply for Funding: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send, by June 18, 2003, a notification of its intent to apply for funding to the following address: *patricia.kilby-robb@ed.gov.*

The notification of intent to apply for funding is *optional* and should not include information regarding the proposed application. Eligible applicants that fail to provide the notification may still submit an application by the application deadline.

Estimated Available Funds: $20.5 million.

Estimated Range of Awards: $200,000 to $700,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 40.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations and Statute: (a) *Regulations.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 97, 98, and 99. The regulations in 34 CFR Part 80 also apply to an LEA that is part of a consortium receiving assistance. (b) *Statute.* Sections 5561 to 5565 of the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001.

Priority

Under 34 CFR 75.105(c)(2), we have established the following two competitive preferences for the FY 2003 PIRC competition:

(1) The Secretary will give up to 20 additional points to each applicant that proposes specific strategies to assist parents in understanding their State accountability system and the opportunities for supplemental services and public school choice afforded to their children under section 1116 of the ESEA. The Secretary believes that this competitive preference will increase the likelihood that the activities of the funded PIRCs will improve services to parents of students who are attending low-performing schools (the schools that are not making adequate academic progress), leading to enhancements in student academic achievement.

(2) The Secretary will give 10 additional points to each "novice applicant". For the purposes of this grant competition a novice applicant is an applicant that (1) has never received a grant under the PIRC program; (2) has never been a member of group application (submitted in accordance with 34 CFR 75.127–75.129) that received a grant under the PIRC program; and (3) has not had an active discretionary grant from the Federal Government in the five years before July 18, 2003.

These points will be in addition to any points the applicant earns under the selection criteria.

Performance Measures: The Secretary has established the following key performance measure for assessing the effectiveness of the PIRC program: the number of parents who receive the information necessary for them to understand their State accountability system and the opportunities for supplemental services and public school choice afforded to their children under section 1116 of the ESEA. The Secretary has set an overall performance target that calls for the number of parents receiving such information from PIRC projects to increase by five percent annually.

In applying the selection criteria that follow for the "Quality of the project design" and the "Quality of the project evaluation", the Secretary will take into consideration the extent to which the applicant demonstrates a strong capacity (1) to help achieve this nationwide target, and (2) to provide reliable data to the Department on the project's impact as measured by the number of parents participating in PIRC activities that are designed to provide parents with the information necessary for them to understand their State accountability system and the opportunities for supplemental services and public school choice afforded to their children under section 1116 of the ESEA.

Selection Criteria: We will use the following selection criteria and factors to evaluate applications under this competition.

The maximum score for all of the selection criteria is 100 points. The total maximum score of an application is 130 points (100 points under the selection criteria and an additional 30 points under the competitive preferences).

The Secretary will use the following selection criteria to evaluate applications for PIRC projects under this competition:

(a) *Need for project* (15 points).

In determining the need for the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals; and

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Quality of the project design* (25 points).

In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(3) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;

(4) The extent to which the proposed project represents an exceptional approach to meeting statutory purposes and requirements; and

(5) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(c) *Quality of project services* (15 points).

In determining the quality of the services to be provided by the project, the Secretary considers the following factors:

(1) The likely impact of the services to be provided by the proposed project on the intended recipients of those services; and

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(d) *Quality of project personnel* (10 points).

In determining the quality of project personnel, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of key personnel (including the project director); and

(2) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources* (5 points).

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(2) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of management plan* (10 points).

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(2) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(g) *Quality of the project evaluation* (20 points).

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(2) The extent to which the methods of evaluation will provide for performance feedback and permit periodic assessment of progress toward achieving intended outcomes. *Waiver of Proposed Rulemaking:* It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553) to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the competitive priority and selection criteria in this notice. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this rulemaking requirement those rules where the Secretary determines it would cause extreme hardship to the intended beneficiaries of the program that would be affected by those rules. The Secretary, in accordance with section 437(d)(2) of GEPA, has decided to forgo public comment with respect to the competitive priority in this grant competition in order to ensure timely and high-quality awards. These rules will apply only to the FY 2003 grant competition.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Patricia Kilby-Robb, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E209, FOB–6, Washington, DC 20202–6254. Telephone: (202) 260–2225 or via Internet: *patricia.kilby-robb@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7273 *et seq.*

Dated: May 29, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–13837 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
June 3, 2003

Part VIII

The President

Executive Order 13306—Establishing the Bob Hope American Patriot Award

Executive Order 13307—European Central Bank

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

Presidential Documents

Title 3—

The President

Executive Order 13306 of May 28, 2003

Establishing the Bob Hope American Patriot Award

By the authority vested in me as President and as Commander in Chief by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. *Establishment of the Award.* In order to encourage love of country, service to the people of the United States, and support for our Armed Forces, and in order to recognize the unique and lifelong service of Bob Hope to the United States Armed Forces and to the Nation through his unwavering patriotism and dedication to maintaining the morale of the troops he entertained for nearly six decades, and on the occasion of his 100th birthday, there is hereby established the Bob Hope American Patriot Award (Award).

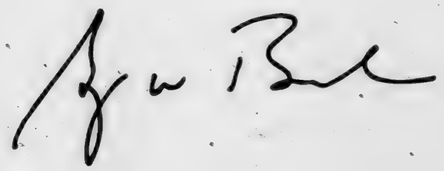
Sec. 2. *Granting and Presentation of the Award.*

(a) The Award may be granted by the President, in his sole discretion, to any civilian individual who has demonstrated extraordinary love of country and devotion to the personnel of the United States Armed Forces, in the form of true patriotism. The Award may also be granted by the President to an organization that meets the same criteria.

(b) Other than in exceptional circumstances, no more than one Award may be granted in any given year.

(c) The presentation of the Award may take place at any time during the year.

(d) Subject to the provisions of this order, the Award may be conferred posthumously.



THE WHITE HOUSE,
May 28, 2003.

[FR Doc. 03–14116
Filed 6–2–03; 9:30 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13307 of May 29, 2003

European Central Bank

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1 and 15 of the International Organizations Immunities Act (22 U.S.C. 288 and 288f–5), I hereby extend to the European Central Bank the privileges, exemptions, and immunities provided to public international organizations designated by the President under the International Organizations Immunities Act.

This extension of such privileges, exemptions, and immunities is not intended to abridge in any respect privileges, exemptions, or immunities that the European Central Bank otherwise may have acquired or may acquire by international agreements or by law.

THE WHITE HOUSE,
May 29, 2003.

[FR Doc. 03–14117
Filed 6–2–03; 9:30 am]
Billing code 3195–01–P

Reader Aids

Federal Register
Vol. 68, No. 106
Tuesday June 3, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR
800 32623
Proposed Rules:
3560 32872

9 CFR
Proposed Rules:
93 33028

10 CFR
765 32955

12 CFR
703 32958
742 32958
1700 32627

14 CFR
39 ..... 32629, 32967, 32968
71 ..... 32633, 33231
97 32633
Proposed Rules:
39 ..... 32691, 32693, 32695, 33030

19 CFR
201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

21 CFR
201 32979
349 32981
878 32983
888 32635

26 CFR
Proposed Rules:
157 32696
602 32698

27 CFR
Proposed Rules:
7 32698
25 32698

28 CFR
802 32985

29 CFR
1910 32637

30 CFR
Proposed Rules:
906 33032
934 33035
938 33037

31 CFR
1 32638

33 CFR
100 ..... 32639, 32641
117 32643
165 ..... 32643, 32996, 32998

38 CFR
Proposed Rules:
20 33040

40 CFR
52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018
261 32645
Proposed Rules:
51 32802
52 ..... 33041, 33042, 33043
82 33284

43 CFR
3800 32656

44 CFR
64 32657
65 ..... 32659, 32660
67 ..... 32664, 32669
Proposed Rules:
67 ..... 32699, 32717

47 CFR
2 ..... 32676, 33020
73 32676
74 32676
80 32676
87 32676
90 32676
95 32676
97 ..... 32676, 33020
Proposed Rules:
2 33043
15 32720
64 32720

48 CFR
2 33231
32 33231
52 33231
252 33026
Proposed Rules:
15 33330
31 33326
52 33326
206 33057

49 CFR

107.....32679
171.....32679
173.....32679
177.....32679
180.....32679

50 CFR

660.....32680

Proposed Rules:

17.....33058, 33234

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 03, 2003

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Payment limitations and eligibility:
Program participation; income limits; published 6-4-03

DEFENSE DEPARTMENT
Acquisition regulations:
Transportation of supplies by sea; commercial items; published 6-3-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Georgia; published 6-3-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; published 4-29-03
Pratt & Whitney; published 4-29-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-9-03; published 4-9-03 [FR 03-08650]
Onions (sweet) grown in—
Washington and Oregon; comments due by 6-9-03; published 4-9-03 [FR 03-08648]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
Medical records maintenance; comments due by 6-10-03; published 4-11-03 [FR 03-08928]
Viruses, serums, toxins, etc.:
Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc.; comments due by 6-9-03; published 4-9-03 [FR 03-08599]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 6-10-03; published 5-23-03 [FR 03-13013]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-13-03; published 5-16-03 [FR 03-12315]

DEFENSE DEPARTMENT
Acquisition regulations:
Tangible item marking and valuing; contractor possession of government property; comments due by 6-9-03; published 5-12-03 [FR 03-11726]

ENERGY DEPARTMENT
Polygraph Examination Regulations; counterintelligence polygraph program; comments due by 6-13-03; published 4-14-03 [FR 03-09009]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11910]
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11911]
Air pollution; standards of performance for new stationary sources:
Stationary gas turbines; comments due by 6-13-03; published 5-28-03 [FR 03-13416]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11751]
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11749]
Hazardous wastes:
Identification and listing—
Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions); comments due by 6-9-03; published 4-8-03 [FR 03-08154]
Solid wastes:
Project XL (eXcellence and Leadership) program; site-specific projects—
Anne Arundel County Millersville Landfill, Severn, MD; comments due by 6-12-03; published 5-13-03 [FR 03-11909]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Current good manufacturing practice—
Dietary supplements and dietary supplement ingredients; comments due by 6-11-03; published 3-13-03 [FR 03-05401]
Human drugs and biological products:
Bar code label requirements; comments due by 6-12-03; published 3-14-03 [FR 03-05205]

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Communicable diseases control—
Quarantine of persons believed to be infected with communicable diseases; comments due by 6-9-03; published 4-10-03 [FR 03-08736]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations and ports and waterways safety:
Lake Michigan—
Chicago, IL; safety zone; comments due by 6-10-03; published 5-20-03 [FR 03-12494]
Boating safety:
Regulatory review; impact on small entities; comments due by 6-12-03; published 2-12-03 [FR 03-03461]
Drawbridge operations:
Florida; comments due by 6-9-03; published 4-10-03 [FR 03-08690]

Ports and waterways safety:
Chesapeake Bay, MD; Cove Point Liquefied Natural Gas Terminal; safety and security zone; comments due by 6-12-03; published 5-15-03 [FR 03-12050]
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area; comments due by 6-12-03; published 5-13-03 [FR 03-11811]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 6-8-03; published 4-4-03 [FR 03-08175]

LABOR DEPARTMENT
Employment and Training Administration
Senior Community Service Employment Program; comments due by 6-12-03; published 4-28-03 [FR 03-09579]

PERSONNEL MANAGEMENT OFFICE
Group life insurance; Federal employees:
Premium rates and age bands; comments due by 6-9-03; published 4-9-03 [FR 03-08610]

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned:
General policy statements; comments due by 6-9-03; published 5-9-03 [FR 03-11634]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd.; comments due by 6-9-03; published 4-29-03 [FR 03-10516]
Boeing; comments due by 6-9-03; published 4-24-03 [FR 03-10117]
EXTRA Flugzeugbau GmbH; comments due by 6-9-03; published 5-2-03 [FR 03-10846]
Lockheed; comments due by 6-13-03; published 4-29-03 [FR 03-10513]
Class D and Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11030]
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11034]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Cargo tank motor vehicles transporting flammable liquids; external product piping; safety requirements; comments due by 6-10-03; published 2-10-03 [FR 03-03262]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Stern anchors and navigation underway; comments due by 6-12-03; published 5-13-03 [FR 03-11895]

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology; comments due by 6-9-03; published 4-9-03 [FR 03-08645]

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
Electronic filings by national banks; comments due by 6-13-03; published 4-14-03 [FR 03-08995]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Stock dispositions; suspension of losses; comments due by 6-12-03; published 3-14-03 [FR 03-06118]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering program for persons involved in real estate closings and settlements; comments due by 6-9-03; published 4-10-03 [FR 03-08688]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

AER SMITH212J DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704

A renewal notice will be sent approximately 90 days **before the shown date.**

AERDO SMITH212J DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code: * 5468

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)
Additional address/attention line
Street address
City, State, ZIP code
Daytime phone including area code
Purchase order number (optional)
May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ - ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

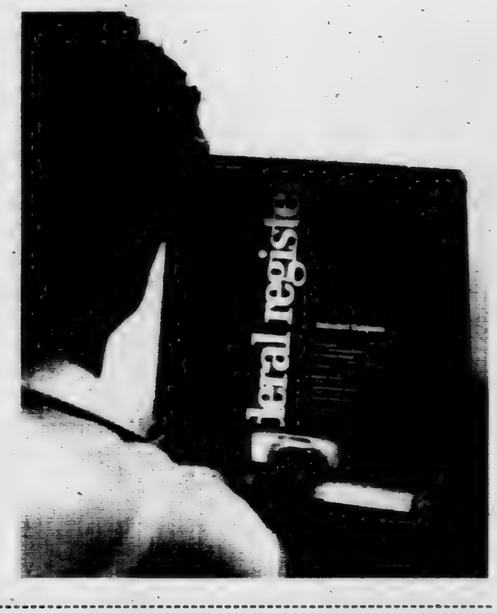
Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00



Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5419**

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office.

Federal Register

Updated Daily by 6 a.m. ET

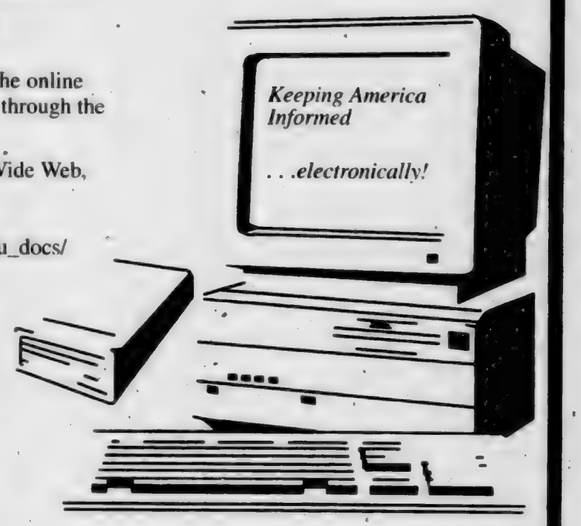
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

6–4–03 Wednesday
Vol. 68 No. 107 June 4, 2003

Federal Register

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–4–03 Wednesday
Vol. 68 No. 107 June 4, 2003

Pages 33339–33610

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 2003

Agriculture Department
See Commodity Credit Corporation
See Farm Service Agency
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
NOTICES
Program payments; income tax exclusion; primary purpose determinations:
Forest Land Enhancement Program, 33443
Program payments; income tax exclusion; primary purpose determinations:
Texas Forest Service—
Oak Wilt Suppression Program, 33443–33444
Wisconsin Department of Natural Resources—
Forest Landowner Grant Program, 33444

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33493–33494
Meetings:
National Institute for Occupational Safety and Health—
Respiratory protective devices for protection against chemical, biological, radiological, and nuclear agents; standards, 33494–33495

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare:
Hospital inpatient prospective payment systems and 2004 FY rates
Correction, 33579
NOTICES
Medicare:
End stage renal disease; disease management demonstration, 33495–33506

Citizenship and Immigration Services Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33510–33514

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
California, 33472

Coast Guard
RULES
Ports and waterways safety:
Biscayne Bay, Miami, FL; safety zone, 33396–33398
Columbia River—
Kennewick, WA; safety zone, 33402
Lantana, FL; safety zone, 33398–33399
Miami, offshore from Coral Reef Yacht Club, FL; safety zone, 33392–33393
Portland Captain of Port Zone—
Oregon; safety zone, 33384–33386, 33401–33402
Rivera Beach, Northwest of Peanut Island, FL; safety zone, 33395–33396
San Francisco Bay, CA; security zones, 33382–33384
Schuylkill River, PA; Limerick Generating Station; security zone, 33386–33388
St. Lucie River, Stuart, FL; safety zone, 33393–33395
St. Thomas, U.S. Virgin Islands; security zone, 33390–33392
Susquehanna River, PA—
Peach Bottom Atomic Power Station; security zone, 33388–33390
Three Mile Island Generating Station; security zone, 33399–33401
Willamette River, Portland, OR—
Safety zone, 33402
NOTICES
Committees; establishment, renewal, termination, etc.:
Merchant Marine Personnel Advisory Committee, 33514

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Payment limitations and eligibility:
Program participation; income limits, 33341–33347

Commodity Futures Trading Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33478–33480

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 33480

Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33514–33519

Defense Department
See Navy Department

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33480–33481
Meetings:
Postsecondary Education Improvement Fund National Board, 33481–33482

Energy Department
See Federal Energy Regulatory Commission
See National Nuclear Security Administration
NOTICES
Patent license; non-exclusive, exclusive, or partially exclusive:
Cooper Environmental Services, LLC, 33482

Environmental Protection Agency
PROPOSED RULES
Radiation protection program:
Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—
Hanford Site, WA, 33429–33431

Executive Office of the President
See Presidential Documents

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations—
Asset-backed and mortgage securities investments; capital adequacy, 33347–33348

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33469–33471

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 33355–33356
Piper Aircraft, Inc., 33356–33358
Rolls-Royce plc, 33358–33360
Class E airspace, 33360–33362
Class E airspace; correction, 33579
PROPOSED RULES
Airworthiness directives:
Airbus, 33416–33418
McDonnell Douglas, 33418–33420
Mitsubishi Heavy Industries, Ltd., 33423–33426
Raytheon, 33420–33423
Class E airspace, 33426–33428
NOTICES
Advisory circulars; availability, etc.:
Turbine engines; initial maintenance inspection test, 33563–33564
Airport noise compatibility program:
Noise exposure maps—
Guam International Airport, Guam, 33564–33565
Committees; establishment, renewal, termination, etc.:
Weight and Balance Control Program Committee; correction, 33565
Exemption petitions; summary and disposition, 33565–33567
Passenger facility charges; applications, etc.:
Indianapolis International Airport, IN, 33567
Reno/Tahoe International Airport, NV, 33568
Southwest Georgia Regional Airport, GA et al., 33568–33570

Federal Communications Commission
PROPOSED RULES
Television stations; table of assignments:
Texas, 33431

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Tampa Electric Company, et al., 33485–33486
Meetings:
Midwest Independent Transmission System Operator, Inc.; technical conference, 33486
Natural gas price formation; energy price discovery and indices; technical conference and workshop, 33486–33487
Applications, hearings, determinations, etc.:
Cheyenne Plains Gas Pipeline Co., 33482–33483
Colorado Interstate Gas Co., 33483–33484
Commonwealth Edison Co., 33484
Enogex Inc., 33484
Southern Star Central Gas Pipeline, Inc.; refund report, 33485

Federal Housing Enterprise Oversight Office
NOTICES
Reports and guidance documents; availability, etc.:
Strategic plan update; comment request, 33520–33521

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33488
Ocean transportation intermediary licenses:
Brisk International Express, Inc. et al., 33488
Brit-Am Logistics Management Services, Inc., et al., 33488
PMK International LLC et al., 33488–33489

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Boyne, Michael C., et al.; vision requirement exemptions, 33570–33572

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 33489
Permissible nonbanking activities, 33489
Meetings:
Consumer Advisory Council, 33489–33490
Meetings; Sunshine Act, 33490

Federal Trade Commission
NOTICES
Prohibited trade practices:
Southern Union Co. et al, 33490–33492

Fish and Wildlife Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Copper River and fish wheel marketing; seasonal adjustments, 33402–33404
PROPOSED RULES
Importation, exportation, and transportation of wildlife:
Injurious wildlife—
Black carp, 33431–33432
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Volusia County, FL; Florida scrub-jay, 33521–33522
Reports and guidance documents; availability, etc.:
European Green Crab; national management, 33522–33524

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Farnham Co, Inc., 33381

Human drugs:
Skin protectant drug products (OTC); final monograph, 33362–33381
PROPOSED RULES
Human drugs:
Internal analgesic, antipyretic, and antirheumatic products (OTC); tentative final monograph and related labeling, 33429

Food Safety and Inspection Service
NOTICES
Codex Alimentarius Commission:
International sanitary and phytosanitary standard-setting activities, 33444–33460

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Copper River and fish wheel marketing; seasonal adjustments, 33402–33404
National Forest System lands; projects and activities; notice, comment, and appeal procedures, 33581–33602
NOTICES
Appealable decisions; legal notice:
Northern Region, 33460
Environmental statements; notice of intent:
Land Between The Lakes National Recreation Area, KY and TN; land and resource management plan, 33460–33463
San Juan National Forest, CO, 33463
Meetings:
Resource Advisory Committees—
Colville, 33463

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Wheat; U.S. standards, 33408–33412

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33492–33493

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Policy-oriented rural health services research, 33506–33507
Ryan White CARE Act Title III Early Intervention Services Program, 33507–33510

Homeland Security Department
See Citizenship and Immigration Services Bureau
See Coast Guard
See Customs and Border Protection Bureau
See Immigration and Customs Enforcement Bureau

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office

Immigration and Customs Enforcement Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33519–33520

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Stock dispositions; suspension of losses Correction, 33381–33382
NOTICES
Privacy Act:
Systems of records, 33577–33578

International Trade Administration
NOTICES
Antidumping:
Helical spring lock washers from—
China, 33472
Stainless steel plate in coils from—
Taiwan, 33472–33474

International Trade Commission
NOTICES
Import investigations:
Hydraulic magnetic circuit breakers from—
South Africa, 33536

Justice Department
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Internet Crimes Against Children Task Force Program, 33603–33609

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Alaska, 33524
Realty actions; sales, leases, etc.:
Arizona, 33524–33525
Recreation management restrictions, etc.:
West Mojave Desert Planning Area, CA; off-road vehicle designations, 33525
Resource management plans, etc.:
Missoula Field Office, MT; Canada lynx management direction, 33525–33526
Utah; coal information and invitation to participate in identification issues and planning criteria, 33526–33527
Utah; Vernal, Price, and Richfield Field Offices; revisions, 33528
Withdrawal and reservation of lands:
Nevada, 33528

Maritime Administration
RULES
Regulations affecting maritime carriers and related activities:
Inflation adjustment of civil monetary penalties, 33405–33407

NOTICES
Coastwise trade laws; administrative waivers:
C.J. VICTORIA, 33572–33573
FANDANGO, 33573
INTEGRITY, 33573–33574
LADYHAWKE, 33574
LEID BACK, 33574–33575
SECOND WIND, 33575

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas lease sales, 33528
Oil and gas operations, 33528–33530
Removal of sand resources from Ship Shoal; offshore Central Louisiana, 33530–33531
Environmental statements; notice of intent:
Gulf of Mexico OCS—
Oil and gas lease sales, 33531–33532
Outer Continental Shelf Lands Act:
Civil/criminal monetary penalties; list, 33532–33536

National Archives and Records Administration
RULES
Public availability and use:
NARA facilities; telephone numbers, 33404–33405

National Nuclear Security Administration
NOTICES
Environmental statements; availability, etc.:
A Modern Pit Facility; Stockpile Stewardship and Management Program, 33487–33488

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Northeastern United States fisheries and Northeast Skate Complex Fisheries; Skate Fishery Management Plan, 33432–33442
NOTICES
Marine mammals:
Commercial fishing operations; incidental taking—
Atlantic Large Whale Take Reduction Plan, 33474–33476
Incidental taking; authorization letters, etc.—
Vandenburg Air Force Base, CA; 30th Space Wing, U.S. Air Force; rocket launches; seals and sea lions, 33476
Meetings:
Caribbean Fishery Management Council, 33476–33477
New England Fishery Management Council, 33477
Permits:
Marine mammals, 33477–33478

Natural Resources Conservation Service
NOTICES
Conservation Practices National Handbook:
Conservation practices standards, new or revised; comment request, 33463–33469
Field office technical guides; changes:
Tennessee, 33469

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 33480

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33538

Occupational Safety and Health Administration
NOTICES
Reports and guidance documents; availability, etc.:
Ergonomics for prevention of musculoskeletal disorders; poultry processing guidelines comment request, 33536–33538

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Presidential Documents
PROCLAMATIONS
Special observances:
National Child's Day (Proc. 7683), 33339–33340

Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33469–33471

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33469–33472

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33469–33471

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Order applications—
Societe Generale, et al., 33541–33545
Vanguard Convertible Securities Fund, et al., 33538–33540
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 33545–33554
National Securities Clearing Corp., 33554–33555
Philadelphia Stock Exchange, Inc., 33555–33558
Stock Clearing Corp. of Philadelphia, 33558–33563

Small Business Administration
RULES
Small business size standards:
Forest fire suppression and fuels management services, 33348–33355
PROPOSED RULES
Small business size standards:
Small Business Innovation Research Program; small businesses owned and controlled by another business allowance, 33412–33416
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33563
Disaster loan programs:
Pre-disaster Mitigation Loan Program; availability, 33563

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
National Express Corp., 33575–33576

Railroad services abandonment:
Burlington Northern & Santa Fe Railway Co., 33576

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 33563

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Agriculture Department, Forest Service, 33581–33602

Part III
Justice Department, Juvenile Justice and Delinquency Prevention Office, 33603–33609

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7683.....33339

7 CFR
1400.....33341
Proposed Rules:
810.....33408

12 CFR
615.....33347

13 CFR
121.....33348
Proposed Rules:
121.....33412

14 CFR
39 (3 documents).....33355, 33356, 33358
71 (5 documents).....33360, 33361, 33579
Proposed Rules:
39 (4 documents).....33416, 33418, 33420, 33423
71 (2 documents).....33426, 33427

21 CFR
310.....33362
347.....33362
352.....33362
510.....33381
524.....33381
Proposed Rules:
201.....33429
343.....33429

26 CFR
1.....33381

33 CFR
165 (15 documents).....33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 38402

36 CFR
215.....33582
242.....33402
1253.....33404

40 CFR
Proposed Rules:
194.....33429

42 CFR
Proposed Rules:
412.....33579
413.....33579

46 CFR
221.....33405

47 CFR
Proposed Rules:
73.....33431

50 CFR
100.....33402
Proposed Rules:
16.....33431
648.....33432

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 2003

Presidential Documents

Title 3—

The President

Proclamation 7683 of May 30, 2003

National Child's Day, 2003

By the President of the United States of America

A Proclamation

On National Child's Day, we celebrate the future of our Nation and the promise of America's youth. As a Nation, as parents, and as community members, we have a responsibility to build a secure and nurturing society so that our children have the opportunity to grow, learn, work, and succeed.

Creating an environment that instills important values, builds strong character, and provides sound education for our children is a vital national priority. With a firm foundation, children will be better able to face the challenges of the future.

Parents are a child's first teachers, and they can be the most effective instructors. One of the most helpful activities parents can do with their children is read with them. Children who develop a love for reading expand their imaginations and cultivate a thirst for learning that lasts a lifetime. By talking, listening, and reading to our children, we can help them build the confidence they need to succeed in life. Parents' role as educators becomes even more important as schools across the country prepare for summer recess. Summertime is not only a time for children to relax and play, it is also a time for parents to strengthen their ties to their children by spending time with them and helping them to broaden their experiences.

To expand on the important work that parents do, my Administration has taken significant steps to help give our children greater opportunities to learn. By improving our education system and encouraging early reading and language skills, we give our children the tools they will need to succeed in the world they will inherit from us. Children also benefit from the immeasurable care and support of their teachers, and are inspired by the model they set.

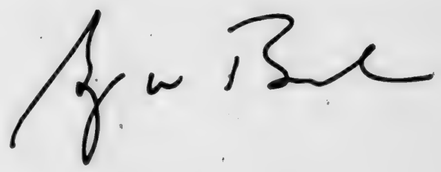
Outside the home and the classroom, there are many adults who touch children's lives. Family, mentors, neighbors, and friends can help mold America's next generation through their positive examples, showing children how to help those in need and encouraging them to set high standards for themselves. To help instill the value of volunteer service, the USA Freedom Corps, through the Students in Service to America initiative, is helping to create ways for young people to give back to their communities. By using their time, talents, and compassion to make a difference in the lives of others, America's children are learning to become responsible and engaged leaders in our democratic society.

On this special day, we celebrate the possibility of every boy and girl in America. In their faces, we see the hope of our Nation. America is dedicated to their welfare and the full development of their potential.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 1, 2003, as National Child's Day. I urge parents to spend more time with their children, read to them, listen to their concerns, offer guidance and love, and encourage their dreams. I also urge all Americans to set a positive example for our children and to assist parents in setting them on the path to success. And

I call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–14230
Filed 6–3–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560–AG86

Income Limits

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth at 7 CFR part 1400 the regulations to implement provisions of the Farm Security Act of 1985 (1985 Act) as amended by the Farm Security and Rural Investment Act of 2002 (2002 Act) regarding limits on the income of individuals and entities eligible for certain USDA commodity and conservation programs. These regulations set forth the criteria to determine whether income limits have been exceeded by an applicant for those benefits. The final rule, generally, provides that, for individuals, CCC will use the adjusted gross incomes reported in the prior three years to the United States Department of the Treasury, Internal Revenue Service (IRS), and a comparable measure for other entities such as corporations, limited partnerships, and charitable organizations. This rule also includes an addition to subpart C of this part concerning payment eligibility determinations for program participants who are reservist military personnel called to active duty as the result of Operation Iraqi Freedom, and other similar military operations. The rule is intended, as provided by the 1985 Act, to impose limits on the amount of average adjusted gross income that a program participant can have and still remain eligible for program benefits and also allow reservist military personnel called to active duty to remain eligible for payments in certain circumstances.

DATES: This rule is effective on June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: *Dan_McGlynn@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Because the provisions of this rule are not effective until the 2003 crop, and due to the complexity of the issues presented in the rule, it was determined that it was in the public's interest to solicit comments on the proposed rule before it became effective.

Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC was not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities

needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The form that applicants will use to certify their income has been developed for on-line use. However, because of the nature of the other paperwork and documentation that may be needed to verify eligibility based on income, the use of electronic means of submission for those information collections is not feasible at this time.

Discussion of the Final Rule

Background

The 2002 Act authorized new programs and benefits, including direct payments and counter-cyclical payments for producers of certain covered commodities and for payments and other benefits under a number of new and revised conservation programs. Section 1604 of that Act amended the 1985 Act by adding a new section, 1001D, to provide that individuals or entities shall not be eligible to receive direct payments, counter-cyclical payments, marketing loan gains or a payment under any of the conservation programs authorized under title XII of the 1985 Act, nor a payment under the conservation programs of title II of the 2002 Act, if the three-year average of the adjusted gross income of the individual, or comparable measure for an entity, exceeds $2.5 million. An exemption, though, is provided where not less than 75 percent of the average adjusted gross income is derived from farming, ranching, or forestry operations. Section 1001D also requires a commensurate reduction in the shares of payments to an entity proportional to the interest held in the entity by parties whose adjusted gross income is more than $2.5 million.

CCC published a proposed rule as to its intentions for implementing income limits on October 28, 2002 at 67 FR 65738. The Agency received 72 timely filed letters containing 129 comments. Respondents included the following: 21 individuals, 15 corporations and similar entities, 8 commodity groups and similar organizations, 7 State and Federal agencies, 4 churches, colleges and universities, 2 Certified Public Accountants, 1 financial institution, 10 farm management companies, and 4 research and environmental organizations. Comments were received from respondents in the following States: California, Colorado, Florida, Georgia, Hawaii, Iowa, Indiana, Kansas, Louisiana, Missouri, Minnesota, Mississippi, North Dakota, Nebraska, New York, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Washington, and the District of Columbia.

Discussion of Comments and Changes

Specific comments received, addressed in the same sequence as the final rule, are as follows:

Section 1400.600 Applicability

Comments were received from 32 respondents who were concerned about the programs to which the income limits are applied. Some respondents commented that the income limitation will adversely affect participation in conservation and environmental programs. These respondents suggested that conservation and environmental program participants be exempted from income limits. The respondents asserted an exemption was appropriate because the rule may preclude large landowners participation in these programs and thus defeat the purposes of environmental projects and initiatives, both State and Federal. It was also argued that under certain programs, such as the Wetland Reserve Program, easement payments are for reimbursing landowners for rights foregone. As such, in their opinion, these payments should not be classified as benefits and, therefore, not subject to the adjusted gross income limitation. It was also commented that the income limitation would adversely impact compliance with highly erodible land conservation and wetland conservation provisions. Several respondents commented that other programs, not referenced in the proposed rule, which have a gross revenue restriction should use the average adjusted gross income limitation instead. It was also commented that private colleges and educational institutions should be exempt from the rule altogether, as are public institutions, since the missions of the institutions are the same.

The statute provides that the average adjusted gross income limitation applies to any program authorized by title XII of the 1985 Act or titles I or II of the 2002 Act. There are no exceptions for conservation and environmental programs and, in fact, they are specifically included. Section 1604 of the 2002 Act applies to all payments and covered benefits of the programs under the titles specified. Therefore, no exceptions are made in the final rule for payments and benefits authorized by these titles.

As to the comments concerning the application of this rule to other programs not referenced in the 2002 Act, it is true that a gross revenue restriction has been applied as a requirement for eligibility for other programs not included in the proposed rule. Although the gross revenue restriction and the average adjusted gross income limitation share a similar purpose, there are significant differences, different statutory schemes, and this rule is limited to application of the test provided for in the 2002 Act. For example, although the desire for one rule for all programs is understandable, the application of a qualifying gross revenue restriction per "person" to payments under the Noninsured Crop Disaster Assistance Program (NAP) is required by the statute authorizing NAP. However, for flexibility, provision is made to apply this subpart to other programs if so provided by statute or regulation in the future.

As to the program participants to be covered by these income limits, section 1001D(a)(1) of the 2002 Act provides that "* * * the term 'average adjusted gross income,' with respect to an individual or entity (for purposes of this section as defined in section 1001(e)(2)(A)(ii)), means the three-year average of the adjusted gross income or comparable measure of the individual or entity over the preceding tax years, as determined by the Secretary." Section 1001 of the 1985 Act sets forth the statutory payment limitations applicable to certain commodity and conservation program benefits. Generally, these provisions have been the same since the enactment in 1987, and provide that the total amount of specified payments that a "person" may receive is limited to specified amounts per year.

Section 1001(e)(2)(A) defines the term "person" as follows:

> * * * the term "person" means—
>
> (i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);
>
> (ii) A corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor or a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and
>
> (iii) A State, political subdivision, or agency thereof.

In determining who is a "person" for purposes of section 1001D, an "entity" is specifically defined to be the same as an "entity" as provided in section 1001(e)(2)(A)(ii) of the 1985 Act. Notably, section 1001D does not contain such a mandate to use the definitions in sections 1001(e)(2)(A)(i) and (iii). Accordingly, this final rule provides that the definition of an "entity" shall be the same for purposes of sections 1001 and 1001D of the 1985 Act. Further, in order to provide consistency in the application of both sections 1001 and 1001D, the final rule also provides that the definition of an "individual" will be the same for both purposes.

As to the respondents" suggestion that private schools be exempted from income limits, the definition of "entity" in the 1985 Act does not include States, political subdivisions, and agencies thereof (which include a public school or university), but does include charitable organizations and other nonprofit organizations (including churches and private schools). Furthermore, the 2002 Act does not exempt any charitable or nonprofit organization from the average adjusted gross income limitation. Also, this final rule does not extend the average adjusted gross income limitation to States, counties, political subdivisions, agencies thereof, or recognized Indian tribes because Governmental organizations do not have "income" similar to the other listed individuals and entities. Although a private institution may indeed serve some of the same purposes as some public institution, there is no statutory authority to treat them the same within the context of this rule. Accordingly, this comment was not adopted and this provision of the proposed rule is not changed in the final rule. However, the final rule does recognize the special nature of some activities of such charitable organizations as was set out in the proposed rule.

A respondent commented that the disqualification should include all payment methods for certain benefits, including commodity certificates issued under marketing assistance loans. The respondent believed that the use of such certificates undermines the intent of Congress to limit program payments. Under the 2002 Act, the average adjusted gross income limitation applies to loan deficiency payments and marketing loan gains, but does not include certificate transactions or to other forms in which loan benefits might otherwise be obtained (such as loan forfeitures). Accordingly, the provisions of this rule cannot be extended to include such transactions.

Other comments on this section included: the $2.5 million level is too high; the adjusted gross income limitation will force landowners to switch from share leases to cash leases and thus place the operators at substantially greater risk; and the adjusted gross income limitation is not equitable in that a test based on the assets of the potential recipient would be a more equitable test for payment eligibility. The dollar amount of the average adjusted gross income limitation and the disqualifications are provided by statute. There is no discretion to modify the amount or impose an alternative requirement for payment eligibility. Therefore, the final rule makes no changes in this provision.

Section 1400.601 Determination of Average Adjusted Gross Income

Comments were received from 14 respondents on this section of the proposed rule. The comments dealt primarily with the manner in which average adjusted gross income is determined, either by tax information or comparable measure, and the definition of income from farming, ranching and forestry operations. It was commented that "comparable measure" needed to be better defined. Other concerns were that compliance with the average adjusted gross income limitation would be adversely affected if income from various sources that the respondents believed were agricultural or farm-related, but do not fit in certain taxing categories for Internal Revenue Service (IRS) purposes, would not be considered income from farming, ranching or forestry operations. One respondent commented that there are occasions when 2 or more corporations are allowed to file a single, consolidated tax return and suggested that a certification indicating the amount each entity would have paid if separate returns had been filed should be allowed to be submitted.

The term "adjusted gross income," for IRS purposes, applies only to taxpayers who are "individuals." As previewed in the proposed rule, this final rule provides, for individuals, that adjusted gross income be generally based on the IRS definition of that term and associated filings. Section 1001D(a)(1) of the 2002 Act takes into account the limited IRS use of this term by providing that the Secretary is to fashion a "comparable measure" for other entities. Here also, as indicated in the proposed rule, prior years' tax filings will be the starting point of reference. Due to the severe penalties associated with the filing of a false tax return, such information may be the most credible evidence available to make income determinations.

While this rule defines the adjusted gross income for the different types of program participants, it does not specify the line item on tax returns for participants from which critical information will be gathered since such references may likely change from year-to-year. However, the CCC forms that will be used to make these determinations will specify the specific lines from various IRS forms that will be used to the extent practicable. Also to the extent practicable, for information from the entity that is needed which cannot be ascertained solely from the IRS forms, CCC will specify in its forms what other information is needed.

For individuals, the adjusted gross income would generally be the amount so specified on the individual's final (including amendments) income tax return for the applicable year. Where there is a joint return filed, the adjusted gross income specified on the joint return will be used unless a certified public accountant or attorney provides a certified statement delineating the distribution of income and expenses of the individual seeking payments had such individual filed a separate return. Accordingly, it is possible that one tax return will be used by more than one individual for purpose of this rule.

For corporations, including a "sub-chapter S corporation," the adjusted gross income will be the final taxable income plus charitable contributions. Charitable contributions are included in order to provide equitable treatment vis-a-vis individuals. For an individual, charitable deductions are deducted from adjusted gross income, along with a variety of other items, to determine the individual's taxable income. Generally, the other items deducted from an individual's adjusted gross income, such as personal exemptions and child care credits, do not have a corresponding relevancy on a corporate return.

No change is made in the final rule to response to the comment about the treatment of corporations filing a single, consolidated tax return. Certifications of average adjusted gross income are required from a payment entity and all individuals and entities with an interest in the payment entity. If one corporation is a subsidiary of another corporation, the average adjusted gross income of the parent corporation would include the average adjusted gross income of the

subsidiary corporation. If the consolidated tax returns indicate the average adjusted gross income of the parent company exceeds the limitation, all subsidiaries of the parent company would also be ineligible according to this subpart.

For charitable or nonprofit organizations with income that is not subject to Federal income taxation, the comparable measure of adjusted gross income is defined in this rule to be the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service less any other income CCC determines to be from non-commercial activities. Currently, that amount is specified on line 34 of Internal Revenue Service Form 990–T. Generally, this excludes receipts that are gifts, grants and contributions that are tax deductible by the donor. Effectively, the adjusted gross income for these entities is the net income from only their commercial activities.

For a limited liability company, limited partnership, limited liability partnership or similar organization, the adjusted gross income is the sum of the income from trade or business activities plus the guaranteed payments to the members as reported for the applicable tax year. Charitable contributions will be dealt with in the same manner as with other entities.

For an estate or trust, the adjusted gross income is the sum of the adjusted total income plus the charitable deductions as reported for the applicable tax year.

As indicated, individuals and entities who have average adjusted gross income in excess of $2.5 million may still be eligible for covered benefits where their average adjusted gross income from farming, ranching, and forestry is not less than 75 percent of the total. Generally, the average adjusted gross income (AGI) of the individual or entity derived from farming, ranching or forestry will be, under the rule, determined based on the amounts as reported to IRS. The amount reported on applicable forms, currently IRS form 4835 and Schedule F, represent the net income from the farming operation after deductions for the cost of production. Income derived from forestry operations, to the extent it is not reported on these forms, will be the subject of a separate certification by the individual or entity as will be the case with other special income allowed to be counted toward the 75 percent level by the provisions of this rule.

Several respondents were concerned whether income from certain sources would be considered income from farming, ranching and forestry operations. Of particular concern was the consideration of gains from the sale of assets used in the enterprise; income from the leasing of farmland; income from commercial hunting operations on the farm; proceeds from the sale of water rights; income from contract operations; and, whether income from participation in the Conservation Reserve Program, Wetlands Reserve Program, Environmental Quality Incentives Program and similar programs would be considered farm income.

By denying program benefits to those individuals and entities who have exceeded the $2.5 million threshold, Congress intended that those individuals and entities who are dependent upon farming, ranching and forestry should be accorded deferential treatment. However, taking that into account and in response to the concerns expressed by respondents, the following clarifications and revisions are made:

(1) Income of a landowner generated by selling the landowner's land (including the sale of easements and development rights) used by the landowner or others for farming, ranching, or forestry operations will be considered to be income derived from farming, ranching or forestry operations;

(2) Income generated by selling farm water rights will be considered to be income derived from farming, ranching or forestry operations;

(3) Income from sales by a retail dealership of implements used in farming, ranching or forestry will not be considered to be income derived from farming, ranching or forestry operations, but income derived from the sale of a farm's agricultural equipment otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F will be considered to be such income;

(4) Income from the rental of land used for farming, ranching or forestry operations will be considered to be income derived from farming, ranching or forestry operations, regardless of whether the rental arrangement is on a cash or crop share basis;

(5) Income from agricultural or conservation program payments will be considered to be income from farming, ranching or forestry operations;

(6) Income from commercial hunting operations on farmland will be considered to be income derived from farming, ranching, or forestry operations;

(7) Income from sales at a market will only be considered to be income derived from farming, ranching or forestry operations if the commodity being sold was produced by the individual or entity or a joint operation in which the individual or entity had an interest;

(8) Income from sales as a commission broker, auctioneer or warehouse operator or similar enterprise will not be considered to be income derived from farming, ranching or forestry operations; and

(9) In integrated operations, undifferentiated income (for example, income from a forestry operation that could not be differentiated between income from the production of the tree and from the sale of a finished product) will not be considered to be income derived from farming, ranching or forestry operations.

The proposed rule provided that, for the purpose of applying the average adjusted gross income limitation and calculating the three-year average, the average shall be the adjusted gross income for the three tax years immediately preceding the applicable crop, program, or fiscal year, as determined by CCC, excluding any year in which the individual or entity did not have income or had adjusted gross income considered to be zero. Several respondents suggested the exclusion of any year an individual or entity is not required to file a tax return, rather than excluding any year the individual or entity did not have income or the adjusted gross income was zero. The proposed rule was drafted to provide that a producer would not be allowed to average a loss year with a profitable year. Based on the suggestions, the wording of the final rule has been revised to allow for averaging loss years and no-income years with others, but for ongoing operations only. In some cases, the income of new entities will be averaged with those they replace in order to assure proper application of the average. Relief can be provided from that combination to the extent it would work unfairly in a particular instance.

Section 1400.602 Compliance

A total of 18 respondents provided comments on this section of the proposed rule. Some comments suggested that in addition to allowing the certification of compliance by a CPA or an attorney as provided in the proposed rule, certification from other professionals, such as farm management firms, should be allowed. One respondent commented that it would be a burdensome task for an entity with a large number of stockholders to obtain certifications of compliance with the average AGI limitation from stockholders. It was suggested that an exemption be made for corporations with more than 500 stockholders, and that the average AGI limitation be applied to the corporation, but not to the individual stockholders. There were also concerns expressed as to whether the business information provided to the local FSA offices would remain confidential. In other words, there were concerns about what safeguards and confidentiality measures would be implemented to ensure this information would remain private and not made public in some manner.

The statute requires that to comply with the average AGI limitation, an individual or entity shall provide either: (1) A certification from a "* * * certified public accountant or another third party that is acceptable to the Secretary;" or (2) information and documentation regarding the average adjusted gross income of the individual or entity through other procedures established by the Secretary. The proposed rule indicated that, in addition to a certification from a CPA, the only other acceptable certification from a third party would be from an attorney. Although others may have knowledge of the average adjusted gross income of an individual or entity, the Agency believes that limiting third party certifications to a CPA or an attorney is unlikely to create any hardship on participants and will provide a convenient and proper way of guaranteeing some expertise and training in the particular matter at issue. As to the comment about the application of the average AGI limitation to stockholders of a corporation, the statute requires a reduction in payments to an entity, general partnership or joint venture commensurate with the interest held by each individual who has an average adjusted gross income in excess of the limitation. There is no authority provided in the statute for any exemption to the requirement for a commensurate reduction when an individual who holds an interest in an entity has an average adjusted gross income in excess of the limitation. Therefore, the final rule makes no changes regarding the certification of compliance with this subpart.

With respect to confidentiality, the provisions of the final rule avoid conflict with existing regulations and procedures. All information submitted with respect to AGI matters will be treated with regard to confidentiality concerns in accordance with existing rules. Those rules take into account concerns like those expressed in the comments.

Section 1400.603 Commensurate Reduction

Comments were received from 4 respondents on this section of the proposed rule. It was commented that the number of levels should be lessened to 2 or 3 rather than 5 before a commensurate reduction is applied. However, it was also commented that no level of restriction for the commensurate reduction should be established.

Based upon the agency's experience in administering section 1001 relating to the maximum payments a "person" may receive, CCC has determined that business enterprises comprised of layered ownership are often established simply to maximize the receipt of government payments. The rule should allow sufficient layering to accomplish legitimate business need while affording what otherwise would be a dodge of a statutory test or endless tracing of corporate interests back to individuals. Accordingly, no changes were made in the final rule to this section on commensurate reduction.

Miscellaneous

Miscellaneous comments were received suggesting editorial and grammatical corrections and such. A few editorial changes are made from the text and structure of the proposed rule for clarity and for ease of administration. This rule also includes an addition to the "actively engaged in farming" provisions subpart C of part 1400 to address eligibility issues relating to reservist military personnel called to active duty.

Cost Benefit Assessment

The average adjusted gross income limitation not only applies to payments under the commodity and price support programs, but to all payments and benefits under the conservation and related programs. It includes, but is not limited to, direct and counter-cyclical payments, conservation reserve and environmental quality incentive program payments, loan deficiency payments and marketing loan gains.

For the 2003 through 2007 crop, program or fiscal years, individuals and entities are not eligible for payments or benefits from the above-mentioned programs if their average adjusted gross income exceeds $2.5 million for the three tax years immediately preceding the applicable crop, program or fiscal year. This requirement applies unless 75 percent or more of that average adjusted gross income amount was derived from farming, ranching or forestry operations.

The determinations necessary for compliance with the average adjusted gross income limitation will be generally based on Internal Revenue Service concepts and information included on final tax filings. Comparable measures for adjusted gross income have been developed for entities, partnerships and for organizations that do not have such a line item on tax filings, and that are non-profit, or are not required to file tax information.

By statute, under the average adjusted gross income provisions, there is a required commensurate reduction of program payments in the situations where an owner of an entity applying for benefits fails the test. Accordingly, any program payment or benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount commensurate with the direct or indirect interest held by that individual or entity that is determined to have an average adjusted gross income that exceeds the limitation.

Note that those ineligible for marketing loan gains and loan deficiency payments because of the adjusted gross income restriction may still be eligible to participate to a degree in the marketing assistance loan programs. Loans may be obtained and forfeited when commodity prices decrease. An individual or entity that fails the test will still be able to use commodity certificates to repay those loans at a rate lower than the original loan rate. Benefits they realize from the reduced payment rate, essentially the same as marketing loan gains, are not subject to payment limits or the adjusted gross income restrictions.

The 2002 Act mandates that the adjusted gross income limitation apply to the 2003 through 2007 crop years. In May 2002, the Congressional Budget Office estimated that savings from the average adjusted gross income limitation will total $22 million in fiscal years 2002 through 2006.

The Cost/Benefit Assessment of the adjusted gross income limitation is available from James Baxa, Production, Emergencies, and Compliance Division, United States Department of Agriculture (USDA), 1400 Independence Ave, SW., Washington, DC 20250. Phone: (202) 720–4189. E-mail: *James Baxa@wdc.usda.gov.*

List of Subjects in 7 CFR Part 1400

Agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 7 CFR part 1400 is amended as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority section for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

Subpart A—General Provisions

■ 2. Section 1400.1 is revised to add a new paragraph (h), to read as follows:

§ 1400.1 Applicability.

* * * * *

(h) As provided in Subpart G of this part, additional requirements are applicable to certain of the payments specified in paragraph (g) of this section.

Subpart C—Actively Engaged in Farming Determinations

■ 3. Section 1400.213 is added to read as follows:

§ 1400.213 Military personnel.

If an individual is called to active duty in the military because of Operation Iraqi Freedom, or any other similar military operation, before a determination is made that the individual is actively engaged in farming, the individual may be considered to be actively engaged in farming if the determining authority determines that such individual did make a conscious effort to, and would have been determined to be, actively engaged in farming if the individual would not have been called to active duty. If the individual is called to active duty after being determined to be actively engaged in farming, such determination shall remain in effect for the program year.

■ 4. Subpart G is added to read as follows:

Subpart G—Average Adjusted Gross Income Limitation

Sec.

1400.600 Applicability.
1400.601 Determination of average adjusted gross income.
1400.602 Compliance.
1400.603 Commensurate reduction.

Subpart G—Average Adjusted Gross Income Limitation

§ 1400.600 Applicability.

(a) For the 2003 through 2007 crop years, program years, or fiscal years, an individual or entity is not eligible for any payment or benefit identified in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income exceeds $2.5 million for the three tax years immediately preceding the applicable crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.

(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, is derived from farming, ranching, or forestry operations.

(c) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into for the 2003 through 2007 crop, program or fiscal years for the following programs:

(1) The program authorized by part 1466 of this chapter or its successor regulations;

(2) The program authorized by part 1467 of this chapter or its successor regulations;

(3) The program authorized by part 636 of this chapter or its successor regulations;

(4) Any other program authorized by Title XII of the 1985 Act, as amended, or Title II of the 2002 Act.

(5) Any other program to which this subpart is made applicable by statute or regulation.

(d) Determinations made under this subpart with regard to the programs described in paragraphs (c)(1) through (c)(5) of this section will be based on the year for which the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.

(e) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.

(f) Payments to an escrow agent or other of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(g) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes are not subject to this subpart.

§ 1400.601 Determination of average adjusted gross income.

(a) For purposes of this subpart, *income from farming, ranching or forestry operations* means income of an individual or entity derived from:

(1) Producing crops, livestock or unfinished raw forestry products;

(2) Selling (including the sale of easements and development rights) their own farm, ranch or forestry land or water rights;

(3) Selling, but not as a dealer, equipment purchased to conduct farm, ranch or forestry operations when the equipment is otherwise subject to depreciation expense on the IRS Form 4835 or Schedule F;

(4) Renting land used for farming, ranching or forestry operations; and

(5) Payments made under any program authorized under chapters VI, VII or XIV of this title.

(b) For purposes of this subpart, except as otherwise provided in this subpart, *adjusted gross income* means:

(1) For an individual filing a separate tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the individual for the applicable tax year;

(2) For an individual filing a joint tax return, the amount reported as "adjusted gross income" on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported "taxable income" as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt entity, the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. For an entity that is not required to file a federal income tax return, or an individual or entity that did not have taxable income in one or more tax years, the average shall be the adjusted gross income, including losses, averaged for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. However, a new entity will have its adjusted gross income averaged only for those years of the base period for which it was in business, but a new entity shall not be considered "new" to the extent it takes over a existing operation and has any elements of common ownership or interests with the preceding entity, or with individuals or entities with an interest in the "old" entity. When there is such commonality, income of the "old" entity will be averaged with that of the "new" entity for the base period.

§ 1400.602 Compliance.

(a) To comply with the average adjusted gross income limitation, an individual or entity, including all interest holders in an entity, general partnership or joint venture, shall provide the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the individual or entity does not exceed this limitation;

(2) A certification in the manner prescribed by CCC from the individual or entity that the average adjusted gross income of the individual or entity does not exceed this limitation; or

(3) Submission to CCC of the relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the individual's or entity's income.

(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit income tax returns may be requested and if requested must be supplied. Relevant income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested. If an individual or entity has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such individual or entity shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(c) The individual or entity shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

(d) All information provided to CCC for the purposes of determining compliance with this subpart will remain confidential and not be subject to any request submitted under the Freedom of Information Act.

§ 1400.603 Commensurate reduction.

(a) Any program payment or benefit subject to this subpart provided to an entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each individual or entity determined to have an average adjusted gross income in excess of the limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.

(b) Ownership interest in an entity shall be reviewed to the fifth level of ownership to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by an individual in the fifth level of ownership in an entity, no payment or benefit shall be made with respect to such interest.

Signed in Washington, DC, on May 28, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–13946 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–05–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC14

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—ABS and MBS Investments; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published an interim final rule with request for comments under part 615 on March 28, 2003 (68 FR 15045). This interim final rule amends our regulatory capital standards to allow Farm Credit System institutions to use a lower risk weighting for highly rated investments in non-agency asset-backed securities (ABS) and mortgage-backed securities (MBS) that have reduced exposure to credit risk. We are adopting this rule so that the capital requirements for risk weighting of highly rated non-agency ABS and MBS investments will more closely reflect an institution's relative exposure to credit risk and help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies. In accordance with 12 U.S.C. 2252, the effective date of the interim final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 13, 2003.

EFFECTIVE DATE: The regulation amending 12 CFR part 615 published on March 28, 2003 (68 FR 15045) is effective May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 30, 2003.
Jeanette C. Brinkley,
Secretary, Farm Credit Administration Board.
[FR Doc. 03–14029 Filed 6–3–03; 8:45 am]
BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE89

Small Business Size Standards; Forest Fire Suppression and Fuels Management Services

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting a size standard of $15 million in average annual receipts for the activities of "Forest Fire Suppression and Fuels Management Service" classified within the "Support Activities for Forestry" industry (North American Industry Classification System (NAICS) 115310). This action will better define the size of businesses in these activities that the SBA believes should be eligible for Federal small business assistance programs. The size standard for the remainder of activities in this industry remains at $6 million.

DATES: This rule is effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Program Analyst, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: On July 19, 2002, the SBA published a proposed rule in the **Federal Register** (67 FR 47480) to establish a $15 million size standard for forest fire suppression and fuels management services under NAICS code 115310, the Support Activities for Forestry industry. The SBA proposed to establish a size standard for these activities after reviewing requests from firms in the forestry industry. These firms believe that this action is warranted in light of the increased emphasis by the Federal Government on removing biomass fuels from the Nation's forest, the dramatic increase in funding for this effort, and the Federal Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires.

Based on these concerns, the SBA conducted a review of this industry's size standard. In addition to reviewing patterns of Federal procurement in this industry, it collected and evaluated data on the industry's structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs, and the degree of concentration of economic activity among very large firms in the industry. Based on its review of each of these evaluation factors, and the nature and patterns of Federal contracting for forest fire suppression and fuels management services, the SBA concluded that the data supported a size standard for forest fire suppression and fuels management services industry activities of $15 million in average annual receipts. The SBA did not propose a change to the $6 million size standard for all the other remaining forestry activities within the industry. (For more information on the reasons for the proposed establishment of a $15 million size standard, see the July 19, 2002, proposed rule.) After careful consideration of the comments received on the proposed rule, the SBA has decided to adopt its proposed size standard of $15 million.

Discussion of Comments on the Proposed Rule

The SBA received 19 comments on the proposed size standard from eight environmental and economic associations, five firms, three Federal agencies, two individuals, and one trade association. In summary, eight commenters supported the proposed size standard and 11 commenters opposed that change. Below is a summary of the major issues raised by the comments received on the proposed rule and the SBA's response.

Comments Supporting a Higher Size Standard

One organization supported the proposed increase in the size standard, but claimed that the increase could be greater than $15 million due to the 2002 fire season. This commenter did not provide any supporting statistics or documentation.

The SBA does not adopt this comment. In the proposed rule, the SBA discussed the reasons for proposing the size standard at $15 million. Even though the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) expended record contract dollars for the 2002 fire season, the SBA found that the firms impacted the most were those whose revenues were below $6 million before the 2002 season. Several of these firms now exceed the current size standard. The increased revenues from this past fire season support the SBA's reasons for establishing a size standard above the current $6 million level for forest fire suppression and fuels management services activities. The SBA believes that a $15 million size standard is sufficient to allow these companies to grow to a size to meet the capital requirements of forest fire suppression and fuels management services contracts. The SBA is reluctant to adopt a higher size standard than it proposed without more information on the structure of the industry that demonstrates a stronger basis for a higher size standard.

Three commenters supported the proposed size standard because of the importance it has on firms engaged in forest fire suppression and fuels management services. One commenter pointed out that the firms performing these tasks have been developed primarily for Federal Government work. The commenter contends "it is a logical extension of the effort that Federal agencies have pursued to allow companies that have been developed for Federal work to continue this work * * * The higher standard allows continued growth as well as expansion of the small business pool through subcontracting." Another commenter added that the Federal Government's reliance on the private sector is expected to significantly increase due to the emphasis on contract use under the National Fire Plan and the effort to outsource commercial work that can be done by private concerns.

One Federal agency expressed concern about the shift in the forestry industries away from logging and into forest fire suppression and fuels management services. The commenter stated that if a firm exceeds the size standard, there is no commercial market for these types of firms, as "The Government is in the only game in town." These firms make up a significant portion of one of its contracting offices' fire fighting resources. It also pointed out that normally small business set-aside programs are designed to help small businesses graduate and go onto bigger and more lucrative commercial contracts. In this industry, the Federal Government far exceeds the amount of work done by private landowners, or even by the states and counties.

The SBA agrees with these comments. As stated in the preamble to the proposed rule, over the last several years the Federal Government has placed greater reliance upon contractors to perform these services, resulting in a dramatic increase in contract funding for forest fire suppression and fuels management activities. This is especially true in the western part of the country where the Federal Government owns vast amounts of land. This development has significantly changed the size structure of firms engaged in these activities, and supports the need to establish a higher size standard.

Two commenters cited increased contractor costs as a basis for increasing the size standard. One commenter identified the increasing prevailing wages mandated by the U.S. Department of Labor; the increases in fuels costs for mechanical equipment, chain saws, and drip torches for igniting prescribed fires; and the use of specialty personal protective clothing and equipment as factors leading to the increased costs. Another commenter applauded the SBA's acknowledgment of the increased capital costs placed upon companies due to the Federal Government's reliance upon these firms.

The SBA agrees with these comments. As stated in the proposed rule, because of the shift in forest fire fighting and fuels management services policies by the Federal Government, many firms have had to make capital investments in equipment and specialized clothing. In addition, the SBA obtained from the National Interagency Fire Center (NIFC) information on the average fire crew labor costs for fiscal year 2002. This information shows that the Federal Government's labor costs contracted for fire crews range between $23 and $35 per hour, with an average being $30 per hour. The level of labor costs and capital investments supports the SBA's proposal for a higher size standard.

One Federal agency commented that the increase will benefit the Government by increasing the number of viable small businesses eligible for small business set-aside awards for forest fire suppression and fuels management services. This agency noted that it has witnessed a decreasing number of business bidding on fuels reduction road maintenance contracts. Many of the firms no longer qualify under the $6 million size standard. Many of these firms qualify under the higher size standard of their primary industry (*e.g.*, Other Waste Collection (which includes brush removal) with a $10.5 million size standard and Site Preparation Contractors with a $12 million size standard). In addition, the agency is aware of one contractor who is already hiring fewer crews and refusing fire assignments in order to stay under the size standard.

The agency also expressed concern that it may receive little or no competition for small business set-aside projects because of the number of firms doing fire suppression work and who have also qualified to do prescribed burns are at or above the current size standard. The commenter pointed out that substantial costs are incurred in the acquisition and maintenance of equipment as well as the training and retention of quality employees. In addition, the agency has several contractors who are now running crews under State contracts, and "with the number of fire emergencies in the 2 years, these firms are near or at the current size standard."

The agency's comments support the SBA's findings discussed in the proposed rule that due to the increased funding for fuels management services and the severe fire seasons, many firms who perform these services for the Federal Government have had a significant increase in their revenues. Without an increase to the size standard, the Federal Government may help small business to develop their abilities in forest fire suppression and fuels management services only to have them either restrict their growth or force the agency to find and develop a new group of inexperienced firms. This, coupled with the earlier comment that the Federal Government is the primary source of revenues for the industry, strongly supports increasing the current size standard.

Comments Opposing a Size Standard Increase

Four commenters opposed an increase to the current size standard because they believe that there are ample small businesses to perform fuels management services. One of these commenters provided calendar year 2000 data on the number of employees in the Support Activities for Forestry industry for the State of Oregon from the U.S. Bureau of Census' County Business Patterns statistical database. These data show that firms with 99 or less employees comprise 97% of the firms in Oregon, while 60% of the firms have four employees or less. This commenter also stated that in fiscal year 2001, using the BLM and the USFS databases for contracts awarded to firms in the States of Oregon and Washington, $87 million was expended for forestry services. The average income per contractor was $156,000, with the largest contractor capturing $7.2 million. Only 16 firms captured more than $1 million in work, while 396 captured contracts totaling $100,000.

The SBA does not agree with the comment that a size standard increase is unnecessary. The information presented by one of the commenters does not accurately reflect all firms, nationwide, that are involved in forest fire suppression and fuels management services. When developing size standards, the SBA looks at industry statistics on a national level, as its size standards affect all industry firms and Federal programs. One commenter relied on a Census Bureau report for the State of Oregon that presented information only on the number of employees in the Support Activities for Forestry industry. This report did not give data on industry receipts, which is a more accurate representation of the size distribution of firms in this industry because of its seasonal nature. The SBA's reasons for using receipts instead of employees were discussed in the proposed rule. In addition, the information presented by these commenters was for the entire Support Activities for Forest industry in Oregon, which includes firms that estimate timber, provide forest pest control services, consultant on wood attributes and reforestation, plant trees, and provide land treatment services. As explained in the proposed rule, the SBA could not use the Census Bureau data it usually relies upon to evaluate industry structure. Although that database (a special tabulation of the 1997 Economic Census) provides national industry data on firms by receipts size, it does not provide firm data on specific activities within the industry. Moreover, the significant increase in spending for forest fire suppression and fuels management services occurred after the 1997 Economic Census, and thus, the data do not reflect the impact of this increased spending on the size distribution of firms in the industry.

This commenter also presented Federal contract awards limited to firms in the States of Oregon and Washington for all forestry support services. As stated in the proposed rule, the SBA obtained information from the Federal Data Procurement Center on forest fire suppression and fuels management services contract awards from fiscal years 1998—2000, which showed that the contract awards to firms increased from $29 million in fiscal year 1998 to $173 million in fiscal year 2000. During that period the percentage of Federal contract award dollars to small business for forest fire suppression decreased from 76% to 51%. During the period of 1998 through the first two quarters of fiscal year 2002, the percentage of Federal contract award dollars to small business for fuels management decreased from 100% to 75%. The SBA believes that these trends reflect the changing composition of businesses in forest fire suppression and fuels management services and the need to establish a new size standard.

Two commenters stated that the SBA's approximation for forest fire

suppression firm size is unrealistically large. These commenters stated that the SBA's estimate of 20 fire crews (one crew has 20 members) for 90 days is overestimated. They pointed out that the largest firms in the Pacific Northwest have 10 crews, and that 60 days is more of a realistic fire season. One of these commenters also used a labor cost of $20.25 per hour.

The SBA does not agree with this comment. In the proposed rule, the SBA stated that it had received a request from an organization, representing forest fire suppression firms, to increase the size standard for forest fire suppression and fuels management services to 500 employees or $27.5 million. This organization justified its recommendations, in part, by stating that 20 fire crews for 90 days could generate $10.8 million.

The SBA obtained information on fire crew lists and labor and engine rates on the national fire fighting contract from NIFC for the 2002 season. The national average labor rate for fire crews was $30 per hour and the average rate for a fire engine was $1,500 per day. The average number of fire crews was four and the average number of engines was three. In addition, the 2002 fire season was unusually long, starting in April and ending in October, a 150–180 day season. Using this information the SBA calculated the potential revenues of firms engaged in forest fire suppression. With the extended fire season, the SBA recognized that the crews would not work everyday, and used a 120 estimate of days crews worked. The table below estimates the potential revenues by the number of crews.

TABLE 1.—POTENTIAL REVENUES BY NUMBER OF CREWS

Average hourly rate	12 hour work day	Average days worked	# of 20 person crews	Total # of employees	Potential 2002 revenues
$30	12	120	4	80	$3.5M
$30	12	120	9	180	$7.8M
$30	12	120	15	300	$12.9M

Using these estimates, the average firm with four crews would have the potential to generate $3.5 million in revenues just from forest fire suppression activities. Add in the cost of three fire engines at $1,500 per engine, $4,500 per day, for the 120 days, $540,000, and the average firm's 2002 revenues for just fire suppression is greater than $4 million. Given that many of the firms that fight forest fires are in other industries, these firms potentially will have revenues in excess of $6 million. The SBA believes that the size standard must be set at a level above $6 million to properly take into account these higher cost activities.

Two commenters stated that increasing the size standard will cause greater market concentration in the fuels management services. Two other commenters stated that an increase would allow for "dominant industries" to out-compete small businesses.

The SBA disagrees with these comments. Federal procurement statistics show that there has been a dramatic drop in the percentage of award dollars going to small business in fuels management services. In 1998, 100% went to small businesses. However, in the first two quarters of fiscal year 2002 small business captured only 75% of the award dollars. The percentage of contract dollars going to small business will continue to decrease because of the dramatic increase in fire suppression dollars in 2002, the growth in Federal monies for fuels reduction, and because many of the fuels management firms also are forest fire suppression contractors. As discussed in the proposed rule, the SBA believes that increasing the size standard will increase competition in the industry, thereby increasing opportunities for small business.

Seven commenters stated that the problem of size growth stems from the way the Federal Government is issuing contracts, *i.e.*, the size of each requirement, the use of Request for Proposals and Indefinite Delivery Indefinite Quantity (IDIQ) type contracts, and the bundling of requirements. Two of these commenters recommended that Federal land management agencies issue smaller contracts that would be accessible to smaller businesses. Both claimed that the rapid growth of the largest firms in the industry is a result of the Federal Government offering increasing large contracts.

The SBA does not agree with this comment. The SBA reviewed the fiscal year 2003 procurement forecasts for the BLM and USFS and found that these agencies were structuring their requirements for specific areas and not offering large bundled contracts. All but two of the BLM's fiscal year 2003 projected solicitations and three of the USFS fiscal year 2003 projected solicitations have estimated values not to exceed $250,000. Also, this issue is not relevant to adopting or rejecting the proposed size standard. Additionally, issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see its recently proposed rule on this issue (68 FR 5134, dated January 31, 2003).

One commenter stated that $15 million was not a small business. In fact, this commenter stated that $1 million is larger than any small business operation existing in her area. The commenter claimed that a $15 million business would not be a local forestry small business.

The SBA does not agree with this recommendation. Firms with revenues below $1 million are not representative of all small businesses that perform forest fire suppression and fuels management contracts. Data the SBA analyzed on firms engaged in forest fire suppression and fuels management services clearly support a size standard above the current $6 million size standard.

Separate Forest Fire Suppression and Fuels Management Services Categories

The SBA received five comments recommending that forest fire suppression be separated from fuels management services. All five commenters claimed that many of the small firms were well below the current size standard and are capable of doing fuels management services. Three of these commenters acknowledge that the forest fire suppression activity may have higher capital costs, start up costs, and training costs. These firms stated that the capital costs, start up costs, and training needs may be more limited for fuels management services. Two commenters claimed that combining these two activities into one industry activity may inaccurately merge businesses of two different types together. Two different commenters stated that fuels management firms are more like firms in other forestry services than they are like forest fire suppression firms. The equipment and skill levels for mechanical thinning are unrelated to fire suppression equipment.

The SBA acknowledges that some misinterpretation may have been caused by combining forest fire suppression and fuels management services into a single sub-industry description. Both are separate activities under the Support Activities for Forestry industry. Instead of listing one exemption for both forest fire suppression and fuels management services, the SBA will modify its table of small business size standards by listing two separate exceptions under Support Activities for Forestry—one for forest fire suppression and one for fuels management services.

The SBA does not agree with the comments regarding mechanical thinning, capital costs, training, and skill levels. Mechanical thinning is only one aspect of fuels management services. As stated in the definition of fuels management services in the proposed rule, this activity also involves prescribed fire, establishment of fuel breaks, as well as thinning, pruning, and piling. In addition, contracts for these services include the removal and/or disposal of biomass. The use of prescribed fire for these services requires firms experienced in controlling forest fires. Firms who perform this portion of fuels management have expended capital on fire retardant clothing, fire fighting equipment, and training. These firms also pay higher insurance premiums because of the danger in working with controlled fire. These firms, along with their fire engines, are also certified for controlling fires by the USFS. Firms that establish fuel breaks as part of their fuel management services, require capital investment in heavy equipment such as yarders, and earth moving equipment. Many times, these firms are also involved as excavation contractors and heavy equipment contractors (site preparation contractors have a $12 million size standard and heavy equipment contractors have a $28.5 million size standard). In addition, fuels management contracts may include the removal and/or disposal of the biomass (brush removal contractors have a size standard of $10.5 million size standard). Fuels management services is not limited to mechanical thinning, as suggested by some commenters. The costs, training, and equipment for various fuels management contractors may be just as high as for forest fire suppression contractors.

Periodic Reviews and Adjustments Aside From Inflationary Adjustments

One commenter recommended that the SBA perform periodic reviews on the Forestry industry aside from inflationary adjustments. The SBA agrees with this comment. As stated in the proposed rule, the SBA would continue to monitor this activity in the future to determine if another increase is warranted. If the review shows that another change in the size standard is needed, the SBA will issue a proposed rule, outlining the reasons for the change.

Use of Receipts Over Number of Employees

One commenter, a contracting officer, supported the SBA's decision to establish this size standard by receipts instead of number of employees because of the great fluctuation in employment which rises and falls throughout the year due to the fire suppression season. During a severe fire season, like 2002, some firms may operate 25 20-person crews for a period of weeks or a few months. The number of employees then drops to the amount needed to conduct fuels management.

As discussed in the proposed rule, the SBA believes that using a number of employees size standard is not appropriate for forest fire suppression and fuels management services, as most firms performing these activities have fluctuating numbers of employees because of the seasonal nature of forest fire suppression. A receipts-based size standard is a more appropriate measure of a firm's operations in these activities.

Contrary to National Fire Plan

Three commenters stated that the SBA's actions would be contrary to the National Fire Plan, which was developed to reduce forest fire hazards and increase preparedness for fire suppression. All three emphasized that Congress' approach was not to create larger businesses but to build new capacity in rural communities near national forests and other public lands, and that they provided authority to direct work to small and micro businesses.

The SBA does not agree with this comment. The SBA believes its actions are aligned with Congress' intent for the National Fire Plan. Because of the devastating fire seasons during the past 5 years, and the establishment of National Fire Plan, funding to firms in forest fire suppression and fuels management services has dramatically increased. With this rule and because of the National Fire Plan, the SBA is recognizing the effect this dramatic increase in funding has had, and will continue to have, on firms in this industry.

Workers' Health and Safety in Jeopardy

One commenter claimed that increasing the size standard would "allow firms to grow beyond the point where contractors can ensure adequate attention to worker health and safety." This issue does not pertain to factors related to establishing a size standard. Health and safety issues are the function of the administrative contracting officer as they monitor the compliance with the clauses in the contract that regulate these issues.

Negative Environmental Outcome

One commenter stated that the SBA actions would "open the doors to the potentially damaging new industry of removing unsustainable quantities of biomass fuel from the nation's forest." This comment deals with environmental issues and does not relate to the size of a firm in the forest fire suppression and fuels management services.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. Below is a regulatory impact analysis of this size standard change.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of

financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, the SBA believes that a size standard for forest fire suppression and fuels management services is needed to better define small businesses engaged in these industry activities.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 50 to 60 additional firms will obtain small business status and become eligible for these programs. These programs include the SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone), including the application of a HUBZone or SDB price evaluation preference or adjustment for contracts awarded through full and open competition. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA size standards for a variety of regulatory and program purposes. In situations where the SBA's size standard is not appropriate for an agency's program, the agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.902).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan program. Under this program the SBA estimates that $100,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 50 to 60 additional businesses will likely result in only one or two small business guaranteed loans to businesses in this industry.

The newly defined small businesses would also benefit from the SBA's Economic Injury Disaster Loan (EIDL) program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected. During fiscal years 2001–02, however, no loans were made to firms in the Support Activities for Forestry industry.

Awards to small businesses for forest fire suppression and fuels management services have decreased 27% over the last three fiscal years. Small business award dollars to firms in the forestry services activities, most of which were for forest fire suppression and fuels management services, amounted to $185 million. If this rule becomes final, small business status would be restored to several firms that have lost small business status because of the rapid growth in Federal funding and contracting in this industry. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year ($185 million × 27%) under the small business set-aside program, the 8(a) and HUBZone programs, or unrestricted contracts.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Federal contractors with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 50 to 60 additional firms could become active in Federal Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking the SBA guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net database program. Among businesses in this group seeking the SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since procurements may be set aside for small businesses or under the 8(a), and HUBZone programs only if awards are expected to be made at fair and reasonable prices.

The new size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to the current size standard for forest fire suppression and fuels management services is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. The SBA estimates that an additional 50 to 60 businesses may obtain small business status as a result of this rule. Also, small businesses may obtain an additional $50 million in Federal contracts.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with the SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the need for and objective of the rule; a description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objective of the Rule?

The SBA's objective of this rule is to establish an appropriate small business definition of businesses engaged in forest fire suppression and fuels management services, and therefore, eligible for Federal small business assistance programs. The significant increase in Federal funding and the Federal Government's increased use of contractors to perform these services has altered the structure of the industry and support the need for a new size standard for these activities.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

The SBA received no comments in response to the IRFA of the proposed rule.

(3) What Is the SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

The SBA estimates that 200 to 300 businesses are engaged in forest fire suppression and fuels management services. These businesses come from industries in the Forestry and Logging Subsector (NAICS codes 113110, 113210, 113310, and 115310). As this is an emerging industry, the SBA developed its estimate from discussions with, and information provided by the USFS, the BLM, and industry groups. From these discussions, the SBA estimates that approximately 50% of these firms are small businesses, many of which may be currently at or just below the $6 million threshold. With the adoption of this rule, 50 to 60 additional businesses will gain small business status. Although this may not represent a substantial number of small businesses, the SBA is preparing an FRFA to ensure that the impact on small businesses of higher size standards are known and have been considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and the SBA's knowledge of contracting in these areas, the SBA estimates that small business coverage will increase by 12% of total revenues in this activity. These revenue estimates were calculated from the size distributions of the parent industries in which forest fire suppression and fuels management service firms are presently classified.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

A new size standard does not impose any additional reporting, record keeping or other compliance requirements on small entities for the SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determines "voluntary" access to the SBA and other Federal programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Business Zones (HUBZone); and (2) eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year under the small business set-aside program, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents approximately 27% of the $185 million

in total Federal expenditures for forest fire suppression and fuels management.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act, 15 U.S.C. 632, and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The increased emphasis by the Federal Government on removing biomass fuels from the Nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires supports establishing a separate size standard of $15 million.

(b) What Alternatives Did the SBA Reject?

One commenter recommended a $1 million size standard, stating that $15 million was not a small business. In fact, this commenter stated that $1 million is larger than any small business operation existing in the commenter's area and that a $15 million business would not be a local forestry small business.

The SBA does not consider this alternative realistic. Firms with revenues below $1 million are not representative of all small businesses that perform forest fire suppression and fuels management services. A $1 million size standard is well below the $6 million size standard for all forestry industries, including Support Activities for Forestry. In addition, a $1 million size standard is below the base size standard for non-manufacturing industries.

By adopting the size standard at $15 million, the SBA will minimize the impact on the small businesses in these emerging activities. Increased Federal funding and requirements, the Federal Government's growing reliance on the private sector for these services, and the severe fire seasons over the last several years have caused many firms to outgrow the $6 million size standard, thus reducing small business competition for these services. The $15 million size standard will allow firms in these activities to grow to an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other small businesses.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Small businesses.

■ For the reasons stated in the preamble, amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

■ 2. Amend § 121.201 as follows:

■ a. In the table "Small Business Size Standards by NAICS Industry" under the heading "Subsector 115—Support Activities for Agriculture and Forestry," revise the entry for 115310 to read as follows; and

■ b. Add footnote 17 at the end of the table to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Subsector 115—Support Activities for Agriculture and Forestry			
115310	Support Activities for Forestry	$6.0	
EXCEPT	Forest Fire Suppression [17]	[17] 15.0	
EXCEPT	Fuels Management Services [17]	[17] 15.0	

Footnotes

[17] *NAICS code 115310 (Support Activities for Forestry)*—Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

Dated: April 25, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–14037 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–125–AD; Amendment 39–13174; AD 2003–11–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that requires replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. This action is necessary to ensure that the lanyards on the pressure relief door have adequate strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 9, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on February 27, 2003 (68 FR 9034). That action proposed to require replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $10,080, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–11–15 McDonnell Douglas: Amendment 39–13174. Docket 2001–NM–125–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the lanyards on the pressure relief door for the thrust reverser have adequate strength so that the door will not detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the door striking and damaging the horizontal stabilizer, accomplish the following:

Replacement of Lanyards on the Thrust Reverser Pressure Relief Door

(a) Within 18 months after the effective date of the AD, replace the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and accomplish associated modifications, per the Accomplishment Instructions of Boeing Service Bulletin MD90–78–048, dated February 15, 2001. The associated modifications include removing the pressure relief door, modifying the pressure relief door (including replacing existing brackets with new brackets and reidentifying the door with a new part number), modifying the lower track beam (including removing terminals, replacing the aft quick-release pin with a new pin, and reidentifying the beam with a new part number), modifying the heat shield on the lanyard assembly attach lugs, and re-installing the pressure relief door.

Note 2: Boeing Service Bulletin MD90–78–048, dated February 15, 2001, refers to International Aero Engines Service Bulletin V2500–NAC–78–0184, dated February 16, 2001, for instructions on replacing the lanyards on the pressure relief door for the thrust reverser.

Spares

(b) After the effective date of this AD, no person may install a lanyard having part number (01–250) or (01–255) on the pressure relief door for the thrust reverser on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin MD90–78–048, dated February 15, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on July 9, 2003.

Issued in Renton, Washington, on May 27, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13648 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–23–AD; Amendment 39–13173; AD 2003–11–14]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes that have a model 91E92–1 or model 91E93–1 combustion heater fuel pump installed. This AD requires you to accomplish a one-time inspection of the combustion heater fuel pumps for fuel leakage. If leakage is found, repair or replace the fuel pump. This AD is the result of recent reports of fuel leakage. The actions specified by this AD are intended to correct quality control problems with the heater fuel pump, which could result in failure of the heater fuel pump. Such failure could lead to fire or explosion in the cockpit.

DATES: This AD becomes effective on June 20, 2003.

The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulation as of June 20, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–23–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received several reports of fuel leakage from the combustion heater fuel pumps installed on Piper Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes.

Improper torque was applied to the mounting screws of the fuel pump filter cover. This condition was found during a quality control inspection.

Improper torquing of the mounting screws may result in sealing surface abnormalities such as nicks, gouges, or warping.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the combustion heater fuel pump and lead to fire or explosion in the cockpit.

Is There Service Information That Applies to This Subject?

Piper has issued Service Bulletin No. 1127, dated February 26, 2003. This Piper service bulletin includes Kelly Aerospace Service Information Letter Bulletin No. A–110A, dated March 6, 2003.

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—Inspecting the combustion heater fuel pump for leaks; and

—Inspecting the sealing surface of the fuel pump.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Piper Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in fire or explosion in the cockpit, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–23–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–11–14 The New Piper Aircraft, Inc.: Amendment 39–13173; Docket No. 2003–CE–23–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category, equipped with a model 91E92–1 or model 91E93–1 aircraft heater fuel pump:

Model	Serial Nos.
PA–34–200T	34–7570002 through 34–8170092.
PA–34–220T	34–8133002 through 3449278.
PA–44–180	44–7995001 through 4496168.
PA–44–180T	44–8107001 through 44–8207020.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct quality control problems with the heater fuel pump, which could result in failure of the heater fuel pump. Such failure could lead to fire or explosion in the cockpit.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Visually inspect any aircraft heater fuel pump (mode A–91E92–1 or model 91E93–1) for leakage.	Within the next 10 hours time-in-service (TIS) after June 20, 2003 (the effective date of this AD), unless already accomplished.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. installed 1127, dated February 26, 2003; Kelly Aerospace Power Systems Service Information Letter Bulletin No. 110A, dated March 6, 2003; and the applicable airplane maintenance instructions.
(2) If any leak is found, inspect the pump sealing surface for abnormalities (for example, nicks, gouges, or warping). Correct any abnormality found. If any abnormality cannot be corrected, replace the heater fuel pump.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1127, dated February 26, 2003; Kelly Aerospace Power Systems Service Information Letter Bulletin No. A–110A, dated March 6, 2003; and the applicable airplane maintenance instructions.
(3) Do not install any heater fuel pump (model 91E92–1 or model 91E93–1) unless you have visually inspected the pump for leakage.	As of June 20, 2003 (the effective date of this AD).	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1127, dated February 26, 2003; Kelly Aerospace Power Systems Service Information Letter Bulletin No. A–110A, dated March 6, 2003; and the applicable airplane maintenance instructions.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1127, dated February 26, 2003, and Kelly Aerospace Power Systems Service Information Letter Bulletin No. A–110A, dated March 6, 2003.The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on June 20, 2003.

Issued in Kansas City, Missouri, on May 27, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13650 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–12–AD; Amendment 39–13182; AD 2003–10–03R1]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. The existing AD will become effective on June 20, 2003, and requires removal from service of certain high pressure (HP) turbine discs before they reach newly established life limits. This amendment requires the same actions, but removes the model RB211–535E4–37 turbofan engine from the applicability. This revision to the existing AD is prompted by further data gathering by the FAA that demonstrates that the model RB211–535E4–37 turbofan engine is not affected by machining-induced cracking within the currently published life of the HP turbine disc. The actions specified in this AD are intended to prevent machining-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane.

DATES: Effective June 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On May 9, 2003, the FAA issued AD 2003–10–03, Amendment 39–13148 (68 FR 26481, May 16, 2003), to require removal from service of certain HP turbine discs in RR model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, before the discs reach newly established life limits. That action was prompted by the manufacturer's inspections and analysis of HP turbine discs that have accumulated high cycles. That AD will become effective on June 20, 2003.

The FAA is revising this amendment to remove the model RB211–535E4–37 turbofan engine from the applicability. The FAA has received additional details of the engineering analysis based on field inspection data from the Civil Aviation Authority (CAA), which is the aviation authority for the U.K., and has determined that the model RB211–535E4–37 turbofan engine is not affected by machining-induced cracking within the currently published life of the HP turbine disc. This revised AD will be effective on June 20, 2003, in order to reduce the burden on operators.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RR model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines of the same type design, this AD is being issued to prevent machining-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane. This AD requires removal from service of certain HP turbine discs before they reach newly established life limits.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–12–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13148 (68 FR 26481, May 16, 2003) and by adding a new airworthiness directive, Amendment 39–13182, to read as follows:

2003–10–03R1 Rolls-Royce plc: Amendment 39–13182. Docket No. 2002–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines with high

pressure (HP) turbine disc, P/N UL10323, UL27680, and UL27681, installed. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent machining-induced cracking of the HP turbine disc, which could cause an uncontained HP turbine disc failure and damage to the airplane, do the following:

(a) Remove HP turbine discs P/Ns UL27680 and UL27681 from service before accumulating 15,000 cycles-since-new (CSN).

(b) Remove HP turbine discs P/N UL10323 from service before accumulating 14,800 CSN.

(c) After the effective date of this AD, do not install any HP turbine disc P/N UL27680 or UL27681 that exceeds 15,000 CSN, or any HP turbine disc P/N UL10323 that exceeds 14,800 CSN.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(f) This amendment becomes effective on June 20, 2003.

Issued in Burlington, Massachusetts, on May 29, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–13973 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14847; Airspace Docket No. 03–ACE–32]

Modification of Class E Airspace; Eureka, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Eureka, KS.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 17, 2003 (68 FR 18857) [FR Doc. 03–9508]. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 19, 2003.

Donald F. Hensley,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–14067 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14707; Airspace Docket No. 03–ASO–3]

Establishment of Class E2 Airspace, Amendment of Class E5 Airspace; Waycross, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E2 airspace and amends Class E5 airspace at Waycross, GA. The Ware County Airport Authority has requested Class E2 surface area airspace at Waycross-Ware County Airport to provide airport operations within controlled airspace. Jacksonville Air Route Traffic Control Center (ARTCC) will provide air traffic services at the airport and a federally commissioned automated weather observing system is in operation. In order to conduct these operations, Class E2 surface area must be established. This action will establish Class E2 surface area airspace within a 4.1-mile radius of the airport.

As a result of an evaluation, it has been determined a modification should be made to the Waycross, GA, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) to Waycross-Ware County Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP. Additionally, the 7-mile radius of the Waycross-Ware County Airport will be reduced to a 6.6-mile radius.

DATES: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On April 15, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E2 airspace and amending Class E5 airspace at Waycross, GA, (68 FR 18173). This action provides adequate Class E2 and Class E5 airspace for IFR operations at Waycross-Ware County Airport. Designations for Class E are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace and amends Class E5 airspace at Waycross, GA.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Waycross, GA [New]

Waycross-Ware County Airport, GA
(Lat. 31°14'57" N, long. 82°23'43" W)
Waycross VORTAC
(Lat. 31°16'10" N, long. 82°33'23" W)

Within a 4.1-mile radius of the Waycross-Ware County Airport, within 1.2 miles each side of the 099° radial from the Waycross VORTAC, extending from the 4.1-mile radius to 4.7 miles west of the airport.

* * * * *

ASO GA E5 Waycross [Revised]

Waycross-Ware County Airport, GA
(Lat. 31°14'57" N, long. 82°23'43" W)
WIKET NDB
(Lat. 31°19'32" N, long. 82°23'53" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Waycross-Ware County Airport, and within 4 miles west and 8 miles east of the 003° bearing from the WIKET NDB extending from the 6.6-mile radius to 16 miles north of the WIKET NDB; excluding that airspace within the Alma, GA, Class E airspace area.

* * * * *

Issued in College Park, Georgia on May 27, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–14068 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14673; Airspace Docket No. 03–ASO–2]

Establishment of Class E2 Airspace; Elizabeth City, NC; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–14673; 03–ASO–2), which was published in the **Federal Register** on May 23, 2003 (68 FR 28128), establishing Class E2 airspace at Elizabeth City, NC. This action corrects an error in the legal description for the Class E2 airspace at Elizabeth City CGAS/Regional Airport, NC.

EFFECTIVE DATE: Effective 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 03–12816, Docket No. FAA–2003–14673; Airspace Docket 03–ASO–2, published on May 23, 2003, (68 FR 28128), establishes Class E2 airspace at Elizabeth City CGAS/Regional Airport, NC. An error was discovered in the legal description, describing the Class E2 airspace area. The name of the airport should be changed from Elizabeth City CGAS/ Municipal Airport to Elizabeth City CGAS/Regional Airport. This action corrects the error.

Designations for Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9k, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error which incorrectly identifies the name of the airport. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E2 airspace area at Elizabeth City, NC, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on May 23, 2003, (68 FR 28128), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO MS E2 Elizabeth City, NC [Corrected]

Elizabeth City CGAS/Regional Airport, NC
(Lat. 36°15'38" long. 76°10'29")

That airspace extending upward from the surface within a 4.1-mile radius of the Elizabeth City CGAS/Regional Airport.

* * * * *

Issued in College Park, Georgia, May 28, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–14071 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 347, and 352

[Docket Nos. 78N–0021 and 78N–021P]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective and not misbranded as part of the ongoing review of OTC drug products conducted by FDA. The final monograph includes OTC skin protectant drug products for minor cuts, scrapes, burns, chapped skin and lips, poison ivy, poison oak, poison sumac, and insect bites. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on skin protectant drug products for these specific uses that have come to the agency's attention. This final rule amends the regulation that lists nonmonograph active ingredients by adding those OTC skin protectant ingredients that have been found to be not generally recognized as safe and effective. This final rule also lifts the stay of 21 CFR part 352 (published at 66 FR 67485, December 31, 2001) to amend the final monograph for OTC sunscreen drug products to include sunscreen-skin protectant combination drug products, and then stays § 347.20(d) (21 CFR 347.20(d)) and part 352 until further notice in the **Federal Register**.

DATES: *Effective Date*: This rule is effective June 4, 2004.

Compliance Dates: The compliance date for products subject to parts 310 and 347 (21 CFR parts 310 and 347) with annual sales less than $25,000 is June 6, 2005. The compliance date for all other products subject to parts 310 and 347 is June 4, 2004. The compliance date for combination products containing skin protectant and sunscreen active ingredients in § 347.20(d) and for all products subject to part 352 is stayed until further notice.

Comment Date: Submit written or electronic comments on specific labeling items discussed in section X of the **SUPPLEMENTARY INFORMATION** section of this document by September 2, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 4, 1978 (43 FR 34628), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC skin protectant drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class (§ 330.10(a)(6) (21 CFR 330.10(a)(6))).

In the **Federal Register** of February 15, 1983 (48 FR 6820), FDA published the proposed regulation for OTC skin protectant drug products in the form of a tentative final monograph (TFM). In the **Federal Register** of October 3, 1989 (54 FR 40808), the agency published a document to amend the TFM to include OTC drug products for poison ivy, oak, and sumac and for the treatment and/or neutralization of insect bites. This final rule completes the TFMs published on February 15, 1983, and October 3, 1989, amends the final monograph for OTC skin protectant drug products used as astringents in part 347 published on October 21, 1993 (58 FR 54458), and incorporates the name change ("witch hazel") published in the **Federal Register** of June 3, 1994 (59 FR 28767).

In the **Federal Register** of May 10, 1993 (58 FR 27636), the agency issued a final rule establishing that certain active ingredients, including some skin protectant active ingredients, in OTC drug products are not generally recognized as safe and effective or are misbranded. These skin protectant ingredients are listed in § 310.545(a)(18). This final rule adds several ingredients to that section.

On or after 12 months after date of publication in the **Federal Register**, and 24 months after date of publication in the **Federal Register**, for products with annual sales less than $25,000, except combination products containing skin protectant and sunscreen active ingredients, and for combination products containing skin protectant and sunscreen active ingredients, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application or abbreviated new drug application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective dates of the final rule must be in compliance with the monographs regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

All "OTC Volumes" cited throughout this document refer to information on public display in the Dockets Management Branch (*see* **ADDRESSES**).

II. The Agency's Conclusions on the Comments

(Comment 1) One comment stated its continuing position that OTC drug monographs are interpretive, as opposed to substantive, regulations.

The agency addressed this issue and reaffirms its conclusions stated in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products (37 FR 9464 at 9471 to 9472, May 11, 1972); in paragraph 3 of the preamble to the TFM for OTC antacid drug products (38 FR 31260, November 12, 1973); and in paragraph 1 of section I of the preamble to the TFM in the present proceeding (48 FR 6820 at 6821).

(Comment 2) One comment requested that the definition of "skin protectant" be reworded to add a primary effect of skin protectants, i.e., temporary relief of the effects of harmful or annoying stimuli and to include the word "product". The agency agrees and is revising the definition of "skin protectant" in § 347.3(d).

(Comment 3) Four comments opposed the agency's "exclusivity policy," which limits the indications used in OTC drug product labeling to the "specific words and phrases" approved by FDA in a final OTC drug monograph.

After these comments were submitted, the agency published a final rule in the **Federal Register** of May 1, 1986 (51 FR 16258) changing its labeling policy (§ 330.1(c)(2) (21 CFR 330.1(c)(2))) for stating the indications for use of OTC drug products. That policy was revised and discussed in the **Federal Register** of March 17, 1999 (64 FR 13254 at 13270 to 13271, and 13294). The final rule in this document is subject to that new labeling policy.

(Comment 4) Three comments disagreed with the agency's position of prohibiting cosmetic claims from appearing in any portion of the labeling that is required by an OTC drug monograph and the agency's view that this type of labeling could be misleading (*see* 48 FR 6820 at 6823). One comment noted its support for the distinction made by the agency between "drug" and "cosmetic" claims for the same ingredient. Two comments cited current agency regulations in § 701.3(d) (21 CFR 701.3(d)) regarding the combined label declarations of active drug ingredients and cosmetic ingredients and requested that cosmetic indications be allowed to be stated in a manner that is not false or misleading, without regard to their position on the label.

The agency has revised its labeling requirements for OTC drug products by adding § 201.66 (21 CFR 201.66) and amending § 701.3(d) since stating its position on drug-cosmetic labeling in the TFM. Section 701.3(d) now requires separate listing of the active drug ingredients and the cosmetic ingredients where a cosmetic product is also an OTC drug product. FDA does not review and approve cosmetic terminology in OTC drug monographs. Under the new OTC drug product labeling format in § 201.66, the "Drug Facts" area of a product's labeling only contains the indication(s) for the drug part of the product. Thus, manufacturers are not allowed to commingle drug and cosmetic claims within this specific area of the labeling. However, there are no specific restrictions on commingled information outside of the "Drug Facts" area of a product's labeling. The agency's position is that if commingled drug and cosmetic labeling information is confusing or misleading, the product's labeling may be misleading within the meaning of the Federal Food, Drug, and Cosmetic Act (the act) and the product misbranded under sections 502(a) or 602(a) of the act (21 U.S.C. 352(a) or 362(a)). The agency will review the labeling of affected products on a case-by-case basis.

(Comment 5) Several comments suggested that limiting the statement of identity to one term ("skin protectant") is too restrictive, requested other equally descriptive appropriate terms, and asked for distinct statements of identity for each indication proposed in the monograph, e.g., "minor cut protectant."

The agency does not find it necessary to have distinct statements of identity for each use of a skin protectant drug product. The statement of identity is intended to provide information on the "general pharmacological category(ies) of the drug or the principal intended action(s) of the drug" (*see* § 201.61(b) (21 CFR 201.61(b))). This position is consistent with the statement of identity proposed by the agency as "external analgesic" for all drug products that provide relief of pain and itching caused by a number of conditions (48 FR 5852 at 5868, February 8, 1983) and as "analgesic (pain reliever)" for all drug products that relieve pain due to various conditions (53 FR 46204 at 46211, November 16, 1988).

The agency concurs with one comment's suggestion of adding the dosage form to the statement of identity, i.e., "skin protectant (dosage form)." The *United States Pharmacopeia* (*USP*) lists a number of dosage forms that might be used for OTC topical drug products (Ref. 1). From a marketplace survey (Refs. 2, 3, and 4), the agency finds that the most widely used dosage forms for OTC skin protectant drug products are lotions, creams, ointments, and gels. The examples of dosage forms listed in the statement of identity in § 347.50(a) of this final monograph are not all inclusive and depend on products' historical marketing as skin protectants.

(Comment 6) One comment questioned the agency's statement that the term "soothes" is a cosmetic claim in the context of skin protectant products (48 FR 6820 at 6828).

The agency considers claims such as "temporarily protects" and "helps relieve" to be more informative than "soothes" in conveying to consumers that a drug product provides therapeutic action. The term "soothes" may appear elsewhere in the product's labeling.

(Comment 7) Several comments contended that the indications proposed were too restrictive and omitted indications recommended by the Panel. The comments suggested additional labeling claims.

The agency agrees with some of the comments' suggestions for the indications in § 347.50(b)(2). While the agency wishes to emphasize the "protectant" function of these ingredients, they may also help provide some relief for chapped or cracked skin and lips. Therefore, the agency is allowing manufacturers to add, at their option, the words "and helps relieve" after the word "protects" in the indications in § 347.50(b)(2). The agency also agrees that the words "cold" and "wind" are informative to consumers, and possibly easier to understand than the word "windburned." Accordingly, the agency has made this revision in an optional labeling statement.

The agency considers other suggested claims to be better represented in the agency's proposed indications.

The agency is deleting "sunburn" from the indication proposed in § 347.50(b)(1) because the agency has reexamined the data and determined that they do not support a "protection of sunburn" claim for these ingredients. The "sunburn" claim proposed in the TFM originated from the Panel when it recommended the use of "skin protectant active ingredients for symptoms of dryness: 'For symptoms of chapping, peeling or scaling' (optional, any or all of the following) 'due to minor burns, sunburn, windburn, scrapes, abrasions, or cracked lips'" (*see* 43 FR 34628 at 34648). The Panel also recommended that the ingredients allantoin, cocoa butter, dimethicone, glycerin, petrolatum, and shark liver oil be included in the monograph as active ingredients for symptoms of dryness. Of these ingredients, petrolatum was the only one that the Panel discussed effectiveness for sunburn (43 FR 34628 at 34639). The Panel stated that "the use of petrolatum as an emollient has been well accepted for dry skin conditions, especially with flaking skin such as sunburn, and chapping" (43 FR 34628 at 34639).

The Panel's claim was revised in the TFM to a shortened "drug" claim that stated: "For the temporary protection of minor cuts, scrapes, burns, and sunburn" (*see* 48 FR 6820 at 6832). The agency did not include peeling or scaling claims in the TFM (48 FR 6820

at 6828). The Panel's reference to symptoms of dryness was not included in the TFM because the agency considers the use of skin protectants for dryness to be a cosmetic claim. The agency has now determined that it should not have included the "sunburn" claim in the TFM because the only context in which the Panel discussed it was cosmetic in nature.

The agency is also concerned that skin protectants may inappropriately be used for "sunburn" because the data indicate that it is not desirable to apply a skin protectant to sunburn that has just occurred. As the Panel noted, when petrolatum is applied to sunburn, evaporation is curtailed (43 FR 34628 at 34639). The agency is concerned that application of skin protectants, such as petrolatum and the other igredients for which the Panel recommended a dryness claim for sunburn, to sunburn that has just occurred would occlude the area and prevent evaporation from occurring or significantly reduce evaporation. Thus, there are no data in the administrative record for this rulemaking to support a "protection of sunburn" claim for these ingredients. The agency would consider including such a claim for these ingredients, however, if adequate supporting data are provided.

The agency has determined that insufficient data were submitted to include the words "to allow healing to begin" and to include uses for heat rash, burning feet, and foot discomfort in § 347.50(b)(3). The agency concludes that the expanded "uses" section in this final monograph provides manufacturers an adequate number of options for labeling OTC skin protectant drug products.

(Comment 8) One comment mentioned that no wound healing claim or Category I labeling was provided for three skin protectant ingredients: Allantoin, live yeast cell derivative (LYCD), and zinc acetate.

The Panel classified these ingredients as Category III skin protectants for wound-healing based on the lack of effectiveness data (43 FR 34628 at 34644 through 34647). Insufficient data were submitted for LYCD (*see* section II. comment 25 of this document) and no additional data were submitted for allantoin or zinc acetate to support a "wound healing" use.

(Comment 9) One comment requested that compound benzoin tincture be included as a Category I topical skin protectant. The comment mentioned the conclusion of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel) that compound benzoin tincture was safe for use in boiling water as a steam inhalant for expectorant purposes (41 FR 38312 at 38360, September 9, 1976). The comment also cited the recommendation of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products (Dental Panel) that compound benzoin tincture was safe and effective for use as an oral mucosal protectant (47 FR 22712 at 22746 and 22747, May 25, 1982). The comment cited acceptance of compound benzoin tincture in several pharmacopeias, experience over decades of use, and the low incidence of adverse reactions or significant side effects in the published literature. The comment cited several skin protectant uses from well-established references or current product labeling: "* * * to small cuts and to intact skin under occlusive plasters and bandages" (Ref. 5), "* * * ulcers, bedsores, cracked nipples, and fissures of the lips and anus" (Ref. 6), and "apply to the skin under adhesive dressings, to treat skin fissures and bedsores, to reduce skin sensitivity to adhesive plasters, and to prevent skin irritation in ischemic areas" (Ref. 7).

Compound benzoin tincture is included in the *USP* as a fixed formulation containing 10 percent benzoin, 2 percent aloe, 8 percent storax, 4 percent tolu balsam, and 74 to 80 percent ethanol (Ref. 8). The agency finds that use as a steam inhalant for expectorant purposes evaluated by the Cough-Cold Panel (41 FR 38312 at 38360) has little relevance to use as a skin protectant. Although the agency acknowledges that standard references (Refs. 5 and 6) and literature articles describe numerous uses for compound benzoin tincture, no data from controlled clinical studies were provided.

Gosselin et al. (Ref. 9) indicated that the alcohol in benzoin tincture would be responsible for major toxic effects if ingested. The Dental Panel discussed literature reports of three cases of irritation and hypersensitivity resulting from topical use of benzoin tincture (47 FR 22712 at 22746 and 22747). In addition, the published literature contains numerous other reports of allergic contact dermatitis and sensitivity attributed to compound benzoin tincture and benzoin tincture. Cullen, Tonkin, and May (Ref. 10) stated that the literature was replete with reports of cutaneous sensitivity to compound benzoin tincture and its components, citing reports following local application. Rademaker and Kirby (Ref. 11) reported two cases of bullous contact dermatitis to a skin adhesive spray and mentioned that Fisher (Ref. 12) recommends that benzoin no longer be used as a skin adhesive. Marks and Rainey (Ref. 13) and James, White, and Yanklowitz (Ref. 14) reported other cases of allergic contact dermatitis. Sixteen cases resulted when benzoin was applied to prevent friction blisters. Other authors report contact dermatitis from benzoin used as an ingredient in greasepaint makeup (Ref. 15) and as an antioxidant in food additives (Ref. 16). In addition, benzoin provokes pemphigus erythematosus (Ref. 17), complicates management of venous leg ulcers (Ref. 18), and adversely affects wound healing after circumcision in children (Ref. 19).

Based on these reports of adverse events and the availability of other monograph skin protectant ingredients, the agency concludes that compound benzoin tincture is not safe for use as a general OTC skin protectant ingredient and would be inappropriate for many of the uses included in this final monograph.

(Comment 10) One comment requested that camphorated metacresol be included as an active ingredient in the final monograph for OTC skin protectant drug products, as long as the amount of metacresol did not exceed 1.5 percent (by weight) and the amount of camphor did not exceed 3 percent. Noting that phenol (0.5 to 1.5 percent) and camphor (0.1 to 3 percent) were proposed Category I ingredients in the TFM for OTC external analgesic drug products (48 FR 5852 at 5867, February 8, 1983) and citing an agency letter (Ref. 20) agreeing that metacresol was less toxic than phenol, the comment contended that there should be no safety concern about products containing camphor and metacresol in these concentrations.

Because information has not been provided to demonstrate a skin protectant effect, camphorated metacresol is not included in this final monograph.

(Comment 11) One manufacturer submitted data and information (Refs. 21 and 22) to FDA's Miscellaneous External Panel in response to the call-for-data notice published in the **Federal Register** of November 16, 1973 (38 FR 31697). The data were for a drug product containing water-soluble chlorophyllins in an ointment and a solution dosage form with a label indication "to promote healing and to relieve itching and discomfort of minor wounds, burns, surface ulcers, cuts, abrasions and skin irritations."

The Miscellaneous External Panel was disbanded before reviewing these submissions. Subsequently, because the product label contained a claim for wound healing and products with this claim had previously been included in the skin protectant rulemaking, the agency placed the submissions in the skin protectant rulemaking as a comment to the February 15, 1983, TFM, and the manufacturer submitted a more recent study on effectiveness for wound healing (Ref. 23).

The Dental Panel evaluated water-soluble chlorophyllins as oral wound healing agents in its report on OTC oral mucosal injury drug products (44 FR 63270, November 2, 1979) and concluded that water-soluble chlorophyllins were safe but that there were insufficient data available to permit final classification of effectiveness for OTC use as an oral wound healing agent (44 FR 63270 at 63286). The agency accepted the Dental Panel's classification in the TFM for OTC oral mucosal injury drug products (48 FR 33984 at 33991, July 26, 1983). No additional data were submitted and, in the final rule (51 FR 26112, July 18, 1986), the agency included water soluble chlorophyllins in the list of nonmonograph ingredients in 21 CFR 310.534.

The agency has reviewed the manufacturer's submissions (Refs. 21, 22, and 23). One submission (Ref. 21) contained information on various kinds of wounds that were treated with water-soluble chlorophyllins by health-care professionals. None were self-treatment conditions. Another (Ref. 22) contained translations of three foreign articles reporting laboratory and animal studies on water-soluble chlorophyllins that contain background information but do not support general recognition of safety and effectiveness in humans. A research report (Ref. 23) did not assess OTC uses, lacked subject and placebo controls, and questioned whether the observed effects were due to the products or the manner of caring for the wounds.

The agency concludes that the data submitted do not support effectiveness of water-soluble chlorophyllins for promoting wound healing for conditions treated with OTC skin protectant drug products.

(Comment 12) Cod liver oil was not categorized by the Panel for use as an OTC skin protectant because it was not included among the labeled ingredients in marketed products submitted to the Panel for review. In evaluating cod liver oil for use in diaper rash drug products, the agency considered the long history of clinical use as a skin protectant ingredient (55 FR 25204 at 25213, June 20, 1990).

In the rulemaking for OTC anorectal drug products, the Advisory Review Panel on OTC Hemorrhoidal Drug Products (Hemorrhoidal Panel) classified cod liver oil as Category I for use as an anorectal protectant and recommended a maximum daily dose of 10,000 I.U. (International Units equivalent to USP Units) for vitamin A and 400 I.U. for vitamin D (cholecalciferol) per 24 hours (45 FR 35576 at 35630, May 27, 1980). The Hemorrhoidal Panel stated that an extensive review of the literature on cod liver oil revealed no adverse effects when applied topically as a protectant and concluded that the effectiveness of cod liver oil, as a protectant, is due to its bland and soothing effect associated with its oily nature. In the TFM (53 FR 30756 at 30767, August 15, 1988) and final monograph (55 FR 31776 at 31780, August 3, 1990) for OTC anorectal drug products, the agency affirmed the Hemorrhoidal Panel's Category I classification and specified that cod liver oil may be used only in combination with one to three other protectant active ingredients.

The agency has surveyed the marketplace and determined that cod liver oil is marketed only in combination with other ingredients in several products with skin protectant claims (Refs. 3 and 24). One product contains 12.5 percent (Ref. 24), but in most cases the cod liver oil concentration is not provided.

Therefore, the agency is including cod liver oil as an active ingredient in skin protectant drug products in accord with § 347.20(a)(1) and (a)(2), only in combination with certain other skin protectant active ingredients, within the concentrations (5 to 13.56 percent) specified in § 347.10(e), provided that the product is labeled so that the amount of the product that is used in a 24-hour period represents a quantity that does not exceed 400 USP Units of vitamin D and 10,000 USP Units of vitamin A.

(Comment 13) In the notice of proposed rulemaking (54 FR 40808 at 40810), the agency stated that it was necessary to have publicly available chemical information for colloidal oatmeal. One manufacturer submitted a proposed standard for colloidal oatmeal, which it stated was patterned after standards for starch and psyllium (Ref. 25). The agency sent this information to the U.S. Pharmacopeial Convention (USPC) (Ref. 26). Compendial standards were proposed in the Pharmacopeial Forum of January and February 1992 (Ref. 27) and a final *USP* monograph became effective on November 15, 1992 (Ref. 28).

(Comment 14) One comment requested that colloidal oatmeal be included in the skin protectant monograph as a safe and effective ingredient for the claim: "For prompt temporary relief of itchy, sore, sensitive skin due to rashes, eczema/psoriasis, hemorrhoidal and genital irritations, diaper rash, chicken pox, prickly heat, hives, poison ivy/oak, and sunburn." The comment cited references (Refs. 29 through 33) to support this claim.

The agency previously discussed poison ivy/oak claims in comment 1 of the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking (54 FR 40808 at 40809 to 40811). The agency has determined the additional references cited by the comment show that colloidal oatmeal can provide temporary skin protection and relieve minor irritation and itching due to a number of conditions. Further, the agency has no adverse reaction reports on file for colloidal oatmeal. Thus, the agency is expanding the indications for colloidal oatmeal in § 347.50(b)(4) in this final monograph. In addition, manufacturers can opt to select one or more of the "due to" conditions to list in the product's labeling. However, since no data were submitted using colloidal oatmeal for chicken pox, sunburn, or hives, these indications are nonmonograph. The agency will discuss a "prickly heat" claim in the skin protectant diaper rash drug products final rule.

(Comment 15) Two comments noted that the agency's proposed directions in § 347.50 (54 FR 40808 at 40818) for the use of colloidal oatmeal as a soak in a tub do not allow for the range of use concentrations or dosage forms that have been reported in the clinical literature and requested that FDA specify a use concentration range. The comment stated that colloidal oatmeal is unusual in comparison to other barrier skin protectants because it is often intended for dispersion in water and is formulated in a variety of other dosage forms.

One comment summarized and calculated the colloidal oatmeal concentrations used in baths (Refs. 32 and 34 through 41). The comment noted that the most common concentration ranges of colloidal oatmeal are from 0.007 to 10 percent in use but added that colloidal oatmeal is present in commercial products from 1 to 100 percent. Another comment recommended changing the proposed directions in § 347.50(d)(2) from one "cupful" to "up to a cupful."

The agency has reviewed the recommended concentrations of colloidal oatmeal reported in the literature and reference texts (Refs. 4, 29 through 32, 34 through 45, 47, 48, and 49) and has considered the range of

concentrations for colloidal oatmeal used in bath additive products and in other dosage forms. Products containing colloidal oatmeal have been formulated in the following dosage forms: Lotion (1 and 10 percent colloidal oatmeal), cleansing cream (8 percent colloidal oatmeal), shampoo (5 percent colloidal oatmeal), and cleansing bars (30, 50, and 51 percent colloidal oatmeal) (Refs. 4, 46, and 47). The agency has calculated the approximate minimum and maximum concentrations of colloidal oatmeal that have been used as follows: For regular colloidal oatmeal, a range of 0.023 to 0.625 percent when used as a tub bath soak (Refs. 29, 34 through 38, and 44), a range of 0.24 to 1.2 percent when used as a foot bath soak (Refs. 30, 31, and 34), a range of 0.24 to 15 percent in aqueous solution when used in a wet pack (Refs. 30, 31, 32, 34, and 45), and a range of 3.75 to 15 percent in aqueous solution when used as a topical lotion (Refs. 30, 32, and 34); for oilated colloidal oatmeal, a range of 0.003 to 0.03 percent when used as a tub bath soak (Refs. 35 and 39 through 43).

With regard to dosage forms, the agency agrees with the comment that colloidal oatmeal as a skin protectant does not need to be dosage-form specific and can be used in a variety of "barrier type" topical dosage forms, except for "cleanser type" topical dosage forms, for which the agency has no data to support use as a skin protectant. Therefore, based on the additional information that has been submitted, the agency is revising the directions for use in § 347.50(d)(2) in this final monograph.

(Comment 16) One comment requested that colloidal oatmeal be included in the skin protectant monograph for the claim: "For prompt temporary relief of itchy, sore, sensitive skin due to * * * hemorrhoidal and genital irritations * * *." The comment provided reports recommending use of colloidal oatmeal baths and creams for rectal itching and other conditions in the genital area (Refs. 50 through 54).

Claims for itching in the genital area (e.g., pruritus vulvae) are included in the rulemaking for OTC external analgesic drug products. A comment to that rulemaking (Ref. 55) specifically requested a claim for colloidal oatmeal for "prompt temporary relief of itchy, sore, sensitive skin due to rashes, eczema/psoriasis, hemorrhoidal and genital irritations, diaper rash, chicken pox, prickly heat, hives, poison ivy/oak, and sunburn." Therefore, the agency will address this comment in the final rule for OTC external analgesic drug products.

The agency concludes that the comment's requested claims for relief of rectal itching and hemorrhoids are similar to the indication (21 CFR 346.50(b)(1)) for OTC anorectal drug products that include protectant active ingredients under 21 CFR 346.14, and to the definition of a protectant drug under 21 CFR 346.3(i) as a drug that provides a physical barrier, forming a protective coating over skin or mucous membranes. Since colloidal oatmeal was not reviewed during any stage of the rulemaking for OTC anorectal drug products, interested parties should provide necessary information to demonstrate that colloidal oatmeal meets the standards of an OTC anorectal protectant active ingredient and petition the agency to include colloidal oatmeal in the final monograph for OTC anorectal drug products (Ref. 56).

(Comment 17) One comment requested that colloidal oatmeal be allowed to be combined with other Category I skin protectants for the treatment of minor irritation and itching caused by insect bites and poisonous plants. The comment cited reports using an oilated colloidal oatmeal bath additive to help treat various dermatoses.

The agency has reviewed the cited studies (Refs. 34, 43, 57, 58, and 59), and finds that these reports support the combination of colloidal oatmeal with mineral oil to treat the irritation, itching, and dryness of various dry skin dermatoses. The agency is including the combination of colloidal oatmeal and mineral oil in new § 347.20(a)(4) for the uses included in new § 347.50(b)(7) of this final monograph. Nevertheless, poison ivy, oak, and sumac are not exclusively dry skin dermatoses; they are characterized by a phase of weeping, oozing exudation. The studies cited by the comment fail to demonstrate the value of adding an additional skin protectant (an oilating component) for the treatment of these conditions in the exudative phase, and also fail to specify how many of the cases of contact dermatitis were due to poisonous plants. In addition, only one case of insect bite was identified in the studies. The agency concludes that the data are insufficient to support the combination of colloidal oatmeal with other skin protectants to treat insect bites and poison ivy, oak, and sumac.

(Comment 18) One comment responded to the agency's request in the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking (54 FR 40808 at 40810) to provide information and directions to support the use of colloidal oatmeal on children under 2 years of age. The comment stated that most barrier type skin protectant active ingredients have not been restricted to any age group and submitted reports of use of colloidal oatmeal in infants (Refs. 34, 45, 50, 51, and 57). The comment added that the Miscellaneous External Panel had evaluated colloidal oatmeal and placed it in Category I for relief of itching claims with no age restrictions (Ref. 61).

The agency has reviewed the reports submitted by the comment, which described the effective use of colloidal oatmeal on infants and children from 2 months to 18 years of age for various dermatoses associated with dry skin. No adverse effects were reported. The Miscellaneous External Panel (Ref. 61) at its twenty-third meeting concluded that colloidal oatmeal, at all concentrations, is safe and effective for "the symptomatic relief and treatment of itching." Based on the Miscellaneous External Panel's evaluation and the references provided by the comment, the agency is including colloidal oatmeal in the final monograph for use on infants and children under 2 years of age in the same concentrations, dosage forms, and directions for use for adults.

(Comment 19) One comment noted that in the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking the agency proposed (in § 347.50(c)(9)) a specific warning for colloidal oatmeal: "Take special care to avoid slipping when getting into and out of the tub" (54 FR 40808 at 40818). The comment agreed that a warning against slipping is proper and appropriate, but contended that the agency's warning is unnecessarily longer than the warning on its labels, "Take special care to avoid slipping." Furthermore, the comment contended, the reference to entering and leaving the tub may lessen the consumer's perception of need for care during bathing or when bathing a child.

The agency notes that a number of authors have expressed concerns about slipping in the bath tub with oil baths in general, and with colloidal oatmeal baths in particular (Refs. 29, 40, 44, 48, 54, and 62). Two authors (Refs. 29 and 48) recommended use of a mat to reduce the possibility of slipping. Accordingly, the agency has revised the warning, which appears in § 347.50(c)(5) of the final monograph, to read: "When using this product [bullet] to avoid slipping, use mat in tub or shower."

(Comment 20) One comment objected to the highly specific directions for colloidal oatmeal the agency proposed in § 347.50(d)(2) of the skin protectant poison ivy, oak, and sumac notice of proposed rulemaking (54 FR 40808 at 40818). The comment requested that FDA modify the directions for use to allow for other concentrations and to address the use of other dosage forms, such as ointments, lotions, and cleansing bars. The comment objected to a specified frequency of use ("once or twice daily") because absorption of active agent seems unlikely to occur.

The agency has reviewed the literature and agrees with the comment that other directions may also provide safe and effective use concentrations. Since a bathtub, foot bath, sitz bath, or infant bath can be used to soak and a compress or wet dressing can be applied as a soak, the agency is including all of these forms of a "soak" in the final monograph. Colloidal oatmeal can also be formulated in other topical products intended for direct application (e.g., ointment, lotion), and the monograph provides directions for these products.

Frequent and prolonged exposure to water may have a drying effect. Authors have different views on recommended frequency and duration of bathing (Refs. 37, 48, and 63 through 67) depending on the condition. The Miscellaneous External Panel noted that bathing can dry the skin out and exacerbate some conditions (Ref. 68). Given the variety of conditions for which colloidal oatmeal preparations may be used, the agency agrees with the comment and is not specifying a frequency of use in the directions but is providing for a warning statement in § 347.50(c)(7) to fully inform consumers.

(Comment 21) One comment inquired whether two high-molecular weight dimethylpolysiloxanes, designated as SF96–350 and SF96–1000, were acceptable active ingredients for skin protectant use. The comment included general safety and toxicity information on silicone products, and stated that dimethicone, a proposed Category I skin protectant ingredient, belongs to the same chemical family as the dimethylpolysiloxanes.

In the notice of proposed rulemaking for OTC skin protectant diaper rash drug products, the agency stated that silicone is a general term, but it is often used to describe dimethicone (55 FR 25204 at 25218). The agency did not classify silicone per se because there are various silicone compounds and because the agency considered dimethicone, the only silicone ingredient for which data were submitted.

The agency notes that the information provided by the comment summarizes the results of chronic and acute toxicity studies and irritation studies for specific classes of silicones. However, no specific information was provided for the individual dimethylpolysiloxanes SF96–350 and SF96–1000. In addition, no information was provided to describe the chemical structure of these dimethylpolysiloxanes. The agency concludes that the data provided are inadequate to support general recognition of the safety and effectiveness of these ingredients for OTC skin protectant use in this final monograph.

(Comment 22) In the TFM for OTC skin protectant drug products, the agency discussed a submission on 2 percent glycerin and stated that the skin protectant final monograph would not be issued until these data were reviewed by the agency and interested persons provided an opportunity to comment on an agency proposal (48 FR 6820 at 6823). The submission (Ref. 69) contained data on the use of glycerin for the indications of dry skin, minor skin irritation, skin protectant, and chapping and included a double-blind study.

The agency has reviewed the data and determined that the study was inadequately controlled and failed to demonstrate that 2, 10, or 18 percent glycerin is effective for the indication "helps prevent and temporarily protects chafed, chapped, cracked, or windburned skin and lips," as proposed by the agency for 20 to 45 percent glycerin in the TFM for OTC skin protectant drug products (48 FR 6820 at 6832). The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 70). The agency concludes that glycerin at concentrations other than 20 to 45 percent is nonmonograph for use in OTC skin protectant drug products.

(Comment 23) One comment requested the agency to reopen the administrative record to include the ingredient "hard fat," as described in the "National Formulary" (NF) (Ref. 71), as a Category I skin protectant.

In the **Federal Register** of December 19, 1991 (56 FR 65873), the agency agreed with the petition that it would be appropriate to reopen the administrative record and include data and information on "hard fat" in the rulemaking for OTC skin protectant drug products. The agency stated that, based on its action in the rulemaking for OTC anorectal drug products (55 FR 31776), hard fat would be classified as a monograph ingredient in the final skin protectant monograph. Since no adverse comments on hard fat were received in response to this reopening of the administrative record, the agency is including hard fat in § 347.10 at concentrations of 50 to 100 percent as a single active ingredient. Hard fat is also allowed in permitted combinations in § 347.20(a)(1), (a)(2), (b), (c), and (d) of this final monograph. Products containing hard fat may be labeled for the indications in § 347.50(b)(1), (b)(2)(i), and (b)(2)(ii) and should bear the warnings in § 347.50(c)(1) through (c)(4) and the directions in § 347.50(d)(1). In a future issue of the **Federal Register**, the agency will address claims for hard fat in OTC skin protectant cold sore/fever blister drug products (*see* proposed § 347.50(b)(2)(ii), 55 FR 3362 at 3370).

(Comment 24) One comment requested that lanolin be categorized as an active ingredient in the skin protectant monograph for use as a single ingredient or in combination, as permitted by the monograph. In support of lanolin's safety and effectiveness as a skin emollient, the comment cited animal and human test data submitted to the Miscellaneous External Panel (Ref. 72), Kligman, Grove, and Studemayer (Ref. 73), and the Advisory Review Panel on OTC Ophthalmic Drug Products' (Ophthalmic Panel) Category I classification of lanolin as an ocular emollient for the treatment of conditions involving ocular membranes (43 FR 30002 at 30044 and 30045, May 6, 1980).

The agency has considered lanolin as a protectant or emollient active ingredient in several OTC drug rulemakings. In the TFM for OTC skin protectant diaper rash drug products (55 FR 25204 at 25218 to 25219), the agency determined that the data submitted supported the use of 15.5 percent lanolin as a skin protectant active ingredient only in combination with other skin protectant active ingredients for the treatment and prevention of diaper rash.

In the final rule for OTC ophthalmic drug products (53 FR 7076 at 7090, March 4, 1988), lanolin and anhydrous lanolin were included as monograph conditions at a 1 to 10 percent concentration in combination with one or more oleaginous emollients included in the monograph. In the final rule for OTC anorectal drug products (55 FR 31776 at 31780), lanolin was included as a monograph protectant active ingredient at concentrations of 50 percent and above as a single ingredient or between 12.5 and 50 percent in combinations.

The agency has surveyed the marketplace (Refs. 3, 74, 75, and 76), and found that lanolin is being marketed as a skin protectant both as a single ingredient and in combination with other ingredients. The concentration in two single ingredient products is 37 and 50 percent. In almost all cases, the concentration of the lanolin in the combination products is not provided. Based on the agency's market survey and its previous actions

in the rulemakings for OTC diaper rash, anorectal, and ophthalmic drug products, the agency is including lanolin in the final skin protectant drug products monograph as a single ingredient and in combination with certain other skin protectant active ingredients, depending on the labeled use of the product. The use concentration included in the final monograph is 12.5 to 50 percent in accord with the concentration of marketed single ingredient skin protectant drug products and the concentration used in anorectal protectant combination drug products. The use concentration of 15.5 percent proposed in § 347.10(o) for OTC diaper rash skin protectant drug products (55 FR 25204 at 25232) will be addressed in the final rule for those drug products.

(Comment 25) One comment submitted data (Refs. 77 through 89), including two clinical studies by Kaplan (Refs. 77, 78, 80, 81, and 84), in support of reclassifying LYCD from Category III to Category I as a wound healing aid. The first Kaplan study (Ref. 77) has been published (Ref. 90). The comment also submitted data included earlier in the rulemaking for OTC anorectal drug products and transcripts of meetings of the Hemorrhoidal Panel (Ref. 87).

The ingredient LYCD was reviewed by both the Hemorrhoidal Panel and the Topical Analgesic Panel. Neither panel found LYCD to be effective. The agency determined that the data were inadequate to support the use of LYCD in the final rule for OTC anorectal drug products (58 FR 46746, September 2, 1993).

The agency has reviewed the wound healing studies (Refs. 77, 78, 80, 81, and 84) submitted to this rulemaking for OTC skin protectant drug products and determined that the studies are inadequate to include LYCD as a wound healing aid in this final monograph. The agency's detailed comments and evaluations of the nonconfidential data are on file in the Dockets Management Branch (Refs. 91 and 92).

The agency also informed the company that additional information is needed on the chemical and physical characterization of LYCD before a final classification can be made and suggested the company provide information to establish a compendial monograph for the ingredient (Ref. 93). The company submitted information, both nonconfidential (Refs. 88 and 89) and confidential, but it also was not adequate. The agency's detailed comments on the information are on file in the Dockets Management Branch (Refs. 94 and 95).

(Comment 26) The agency has included in the rulemaking for OTC skin protectant drug products several submissions (Refs. 96, 97, and 98) for drug products containing mineral oil that were originally submitted to the Miscellaneous External Panel for review. One submission (Ref. 96) did not contain any data on mineral oil as an individual ingredient and the other submissions (Refs. 97 and 98) were discussed in the TFM for OTC skin protectant diaper rash drug products (55 FR 25204 at 25220 to 25221). The agency concluded that the ingredient's physical properties were sufficient, along with the Category I findings of two other panels (Hemorrhoidal and Ophthalmic Panels), to support the effectiveness of mineral oil in § 347.10(p) of the skin protectant diaper rash TFM (55 FR 25204 at 25232) for diaper rash claims proposed in § 347.50(b)(5). In this final monograph for OTC skin protectant drug products, mineral oil in the first concentration listed in § 347.10(l) (50 to 100 percent) may be labeled for the claims listed in § 347.50(b)(1) and (b)(2). In addition, mineral oil in the second concentration listed in § 347.10(1) (30 to 35 percent) when combined with colloidal oatmeal may be labeled for the claims listed in § 347.50(b)(7).

(Comment 27) One comment urged FDA to consider a single statement of identity for the ingredient petrolatum because of its multi-purpose uses in OTC drug products. The comment suggested the term "protectant."

Petrolatum is generally recognized as safe and effective in two other OTC drug final monographs: Ophthalmic (part 349 (21 CFR part 349)) and anorectal (21 CFR part 346). The statement of identity for ophthalmic use is "lubricant" or "emollient (lubricant) eye ointment" (*see* § 349.65(a)).

The agency previously considered a related issue in the proposed rulemaking for OTC anorectal drug products (*see* comment 39, 53 FR 30756 at 30771) and determined that a comment's suggested statement of identity (topical protectant and lubricant) did not make it clear that such a product could be used anorectally and thus did not fully satisfy the requirements of § 201.61(b). The agency believes that the same is true of the currently suggested statement of identity "protectant." Thus, the agency is not adopting a single statement of identity for the ingredient petrolatum and is using "skin protectant" as the statement of identity for drug products containing petrolatum included in this final monograph (part 347).

(Comment 28) One comment argued that petrolatum should be exempt from the "directions for use" proposed in § 347.50(d), citing petrolatum's long history of consumer use, efficacy, and safety and contending that petrolatum meets the requirements for such exemption under § 201.116 (21 CFR 201.116).

The agency disagrees. Section 201,116 allows for exemption from section 502(f)(1) of the act which requires adequate directions for use, if adequate directions for common uses are known to the ordinary individual. While some individuals may know that petrolatum may be applied as needed, the agency believes that not all people who use this drug would know that it can be applied on an as needed basis. Therefore, the agency is requiring the standard direction in § 347.50(d)(1) for products that contain petrolatum.

(Comment 29) One comment contended that petrolatum should be exempt from the warnings proposed in the TFM (48 FR 6820 at 6832 to 6833). The comment argued that sufficient evidence to exempt these warnings is provided by the universal use of petrolatum over many decades for a wide variety of topical indications, the clinical and marketing experience over this long period of extensive and universal use, the Panel conclusion that "large amounts of petrolatum are essentially nontoxic when ingested * * *" (43 FR 34628 at 34639), the results of a long-term chronic feeding study by Oser et al. (Ref. 99) as demonstrating safety on ingestion, and the fact that petrolatum is regulated as an approved direct food additive (under § 172.880 (21 CFR 172.880)) and is listed in the Food Chemicals Codex (Ref. 100).

Although the comment suggested a revision, it agreed in principle with the warning "Not to be applied over deep or puncture wounds, infections, or lacerations. Consult a doctor." A second comment requested, in the interest of brevity, clarity, and conservation of scarce label space, that the warning be shortened to read: "Do not apply over deep or puncture wounds or infections."

The agency discussed the importance of each of the proposed warnings in comments 25 through 31 of the TFM (48 FR 6820 at 6828 to 6830) and stated that these warnings are necessary for petrolatum used as a skin protectant. In comment 31 of the TFM, however, the agency proposed not to require the "For external use only warning" for all products (including those containing petrolatum) formulated as lip balms. The agency is finalizing that proposal in this document.

In this final monograph, products containing the skin protectant ingredients mineral oil or sodium bicarbonate may omit the "For external use only" warning if they also provide labeling for oral use of the product. The agency believes that it could be confusing to consumers if products that contain petrolatum do not have the "For external use only" warning. Therefore, the agency is not exempting petrolatum (except in lip protectant products) from the "For external use only" warning in §§ 201.66(c)(5)(i) and 347.50(c)(1).

The agency considers the warning about not getting the product into the eye useful to help prevent possible improper use of skin protectant drug products which are often marketed in nonsterile, multiple use containers. The agency believes that the first comment misconstrued the purpose of the "if condition worsens" warning (§ 347.50(c)(3) of this final monograph). The warning is intended to direct consumers to seek medical attention for a condition if it gets worse or has not improved after 7 days of treatment and not to set 7 days as a maximum safe treatment period. The agency has shortened this warning for products containing petrolatum (or white petrolatum) as a single ingredient to state: "See a doctor if condition lasts more than 7 days."

With regard to the suggestion that the warning in § 347.50(c)(4) be revised, after the submission of this comment, the agency published a similar warning for OTC first aid antibiotic drug products (52 FR 47312 at 47324, December 11, 1987) and OTC first aid antiseptic drug products (56 FR 33644 at 33677, July 22, 1991). The agency is revising the warning in § 347.50(c)(4), accordingly, in the new format required by § 201.66.

(Comment 30) One comment considered the two general warnings in § 330.1(g) unnecessary for 100 percent petrolatum. The comment cited two references (Refs. 99 and 100) to support its contention that petrolatum is a uniquely safe OTC drug and presents no risk to the health of children from misuse, overuse, or abuse.

The agency finds the information in the cited references (as well as the information in § 172.880 regarding the regulation of petrolatum as an approved food additive) insufficient to support an exemption for 30 to 100 percent petrolatum from the two general warnings in § 330.1(g). References 99 and 100 list petrolatum concentrations at 0.02 to 5 percent, significantly lower than the concentration range included in the monograph. The agency revised the wording of these warnings in § 330.1(g) in the final rule for the new OTC drug product labeling format (64 FR 13254 at 13294).

(Comment 31). One comment stated that the agency's proposed directions for sodium bicarbonate for use as a soak in a tub allow for a topical use concentration of about 0.3 percent, which is less than the dosage range for topical use of 1 to 100 percent (54 FR 40808 at 40818).

The agency has reviewed its calculations and agrees with the comment that the proposed directions for use as a soak in a tub allow for a topical concentration of less than 1 percent, depending on the amount of water in the tub and the size of the cup used. However, these directions are consistent with those suggested in the literature (Refs. 101 through 104). When these measurements are made by consumers, they may not be precise. Accordingly, in this final monograph, the agency recognizes that it is not possible or critical to make a precise determination of the use concentration for this ingredient. Thus, the agency has revised its recommendations.

(Comment 32) The agency has considered topical starch (formerly known as corn starch) in several rulemakings. In the advance notice of proposed rulemaking for OTC skin protectant drug products (43 FR 34628 at 34636), the TFM for OTC skin protectant drug products (48 FR 6820 at 6828), the TFM for OTC skin protectant poison ivy, poison oak, poison sumac, and insect bites drug products (54 FR 40808 at 40811 to 40812), the Miscellaneous External Panel's statement on OTC diaper rash drug products (47 FR 39436 at 39439, September 7, 1982), the TFM for OTC skin protectant diaper rash drug products (55 FR 25204 at 25232), and the TFM (53 FR 30756 at 30782) and final monograph (55 FR 31776 at 31780) for OTC anorectal drug products.

Based on the evaluations of the Topical Analgesic, Miscellaneous External, and Hemorrhoidal Panels, and the subsequent inclusion of topical starch as a protectant in the final monograph for OTC anorectal drug products and in the TFM for OTC diaper rash drug products, the agency is including topical starch at a concentration of 10 to 98 percent as an active ingredient under § 347.10(q) of this final monograph for OTC skin protectant drug products. The agency is including a minor skin irritation indication for the skin protectant uses of topical starch in § 347.50(b)(6). Because topical starch should not be used on broken skin, other conditions (e.g., cuts, scrapes, chapped/cracked skin and lips) are not included in this final monograph. Warnings applicable to topical starch drug products in a powder dosage form are included in § 347.50(c)(6).

(Comment 33) Two comments from the same company requested that vitamins A and D be added to the list of Category I active ingredients in the skin protectant monograph. The comments stated that shark liver oil, which contains significant quantities of vitamins A and D, is an oleaginous substance that provides lubricity and emolliency. The comments mentioned that vitamins A and D, like cod and shark liver oils, have an emollient nature that provides a physical barrier to an irritant and aids in the temporary relief of minor skin irritations. The comments added that these oleaginous substances can lessen dermal injury caused by friction and lessen itching and dryness caused by water loss from the stratum corneum, thereby providing additional protection for exposed skin. The comments cited the Hemorrhoidal Panel's recommendations on the safety and topical use of vitamins A and D (45 FR 35576 at 35630 and 35634). Another comment stated that a number of the claims recommended by the Hemorrhoidal Panel in the advance notice of proposed rulemaking for OTC skin protectant drug products (43 FR 34628 at 34648) should be listed in the monograph for the ingredients vitamin A and vitamin D.

The Hemorrhoidal Panel did not review vitamin A or vitamin D (cholecalciferol) as single ingredients for use as protectants in OTC anorectal drug products but did consider these ingredients in its review of ingredients used for wound healing (45 FR 35576 at 35655 and 35656). The Hemorrhoidal Panel concluded that the data submitted were insufficient to prove effectiveness of vitamins A and D as wound healing agents and classified these ingredients in Category III for this use (45 FR 35576 at 35655 and 35656). The agency did not include vitamins A or D in the anorectal final monograph because no data were submitted to support the effectiveness of these ingredients for protectant uses. However, the Hemorrhoidal Panel recommended that cod liver and shark liver oils be included in the Category I list of active ingredients for use as protectants in OTC anorectal drug products (45 FR 35576 at 35630 and 35634) and the agency concluded that these oils are monograph ingredients (55 FR 31776 at 31780). The agency pointed out in its proposed rulemaking for OTC diaper rash drug products (55 FR 25204 at 25225) that vitamins A and D have not been classified as skin protectants in

any rulemaking in the OTC drug review, concluded that additional data are needed, and placed these ingredients in Category III.

Because no data were submitted to support the effectiveness of vitamins A and D for skin protectant uses, the agency concludes that these ingredients are nonmonograph when used individually or in combination other than as a component of cod liver oil listed in § 347.10(e) of this final monograph.

(Comment 34) In the TFM for OTC first aid antiseptic drug products (56 FR 33644 at 33650), the agency deferred data on a physical barrier cream product with protective claims to the rulemaking for OTC skin protectant drug products. The cream product contains a combination of ingredients: Cetyl alcohol, glyceryl stearate, isopropyl palmitate, stearyl alcohol, and beeswax, labeled as "skin wound protectant" ingredients. The product labeling states "helps protect minor cuts, burns, and skin irritations against contamination." This claim is very similar to the claim included in § 347.50(b)(1) of this final monograph. The submission included the results of animal and human safety studies on the finished product, including LD50 in mice and rats, acute dermal toxicity studies in rabbits, 48-hour and 72-hour primary irritation studies in humans using occlusive patch tests, and 21-day cumulative irritation studies. The submission also included reports of studies on the cream product's protective barrier effect and a clinical study to evaluate safety and effectiveness. The clinical study was described as a randomized, controlled, double-blind, parallel-group comparison of two products to determine the cream product's safety and effectiveness under actual use conditions. The control formulation was not provided.

The agency finds the submitted data insufficient to establish the skin protectant effect of any of the ingredients present in the cream product because the contribution, if any, of each of the individual active ingredients cannot be determined. The Panel recommended that there need be no limit to the number of skin protectant ingredients that may be combined in a product (43 FR 34628 at 34631). However, each ingredient must make a contribution to the claimed effect(s) in order to be deemed an active ingredient (§ 330.10(a)(4)(iv)). Further, the agency notes that the Miscellaneous External Panel classified the ingredients cetyl alcohol and stearyl alcohol as inactive in the advance notice of proposed rulemaking for OTC alcohol drug products (47 FR 22324 at 22326, May 21, 1982). In addition, the Dental Panel classified beeswax as inactive in the advance notice of proposed rulemaking for OTC drug products for the relief of oral discomfort (47 FR 22712 at 22715). No additional data on these three ingredients have been submitted to any rulemaking in the OTC drug review. The other two listed active ingredients, glyceryl stearate and isopropyl palmitate, have not been considered in any rulemaking in the OTC drug review. Consequently, the agency concludes that the safety and effectiveness data are insufficient on beeswax, cetyl alcohol, glyceryl stearate, isopropyl palmitate, and stearyl alcohol. Therefore, these ingredients are being included in § 310.545(a)(18) as nonmonograph.

(Comment 35) Two comments contended that, as a class, skin protectant ingredients may be combined with more different types of therapeutic categories than any other class of ingredients. However, in the TFM, proposed § 347.20 does not list any ingredients other than skin protectant ingredients that may be combined. The comments stated that skin protectant ingredients have been found appropriate for use in combination with several other ingredient categories in other OTC drug product rulemakings. The comments requested that the agency include a provision in the final monograph allowing the combination of skin protectant ingredients with any therapeutic class of ingredients when such a combination has been found appropriate by any other OTC advisory review panel.

Proposed § 347.20 in the skin protectant TFM was published in the **Federal Register** on February 15, 1983, before the TFMs for many other categories of OTC drug products. Subsequently, based on panel recommendations in other OTC drug rulemakings and the TFMs for OTC external analgesic drug products (48 FR 5852 at 5868), OTC first aid antiseptic drug products (56 FR 33644 at 33677), and OTC sunscreen drug products (58 FR 28194 at 28296, May 12, 1993), this final monograph includes skin protectant active ingredients in combination with other ingredients from these therapeutic classes.

Therefore, the agency has further considered and expanded the ingredient combinations included in § 347.20 of this final monograph, including skin protectant-sunscreen combinations in § 347.20(d). The agency is also amending the final monograph for OTC sunscreen drug products (64 FR 27666, May 21, 1999) to include sunscreen-skin protectant drug products. Further, the agency may be expanding the permitted combinations in § 347.20(b) and (c) as data submitted to the rulemakings for OTC external analgesic and first aid antiseptic drug products are evaluated and the final monographs for those OTC drug classes are issued.

III. Conclusion

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC skin protectant drug products are generally recognized as safe and effective and not misbranded. Any drug product labeled, represented, or promoted for use as an OTC skin protectant drug that contains any of the ingredients listed in § 310.545(a)(18)(i)(A) or (a)(18)(i)(B) or that is not in conformance with the monograph (part 347) may be considered a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) and misbranded under section 502 of the act. Such a drug product cannot be marketed for skin protectant uses unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). An appropriate citizen petition to amend the monograph may also be submitted in accord with 21 CFR 10.30 and 330.10(a)(12)(i). Any OTC skin protectant drug product initially introduced or initially delivered for introduction into interstate commerce after the compliance dates of the final rule for § 310.545(a)(18)(i)(A) or this final rule that is not in compliance with the regulations is subject to regulatory action.

Our decision to revise the warnings set forth in this final rule is based on comments made in response to the proposed rule. Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the the act. This judgment balances the benefits of these drug products against their potential risks (*see* 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F. 3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, *see* the final rule entitled "Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use" (67 FR 72555, December 6, 2002).

IV. Labeling Guidance

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA established a standardized format and standardized content for the labeling of OTC drug products. Table 1 of this document shows how the warnings proposed in the TFM have been revised in this final rule based on comments received and using the new format in § 201.66. Using the format in § 201.66(c)(4), the warnings in §§ 347.50(c) and 347.52(c) appear as follows:

TABLE 1.—REVISION OF PROPOSED MONOGRAPH WARNINGS TO NEW FORMAT

Skin Protectant Tentative Final Monograph	Skin Protectant Final Monograph
Not to be applied over deep or puncture wounds, infections, or lacerations. Consult a doctor. Do not use on broken skin.	Do not use on • deep puncture wounds • animal bites • serious burns • broken skin[1]
Avoid contact with the eyes. Keep powder away from child's face to avoid inhalation, which can cause breathing problems. Take special care to avoid slipping when getting into and out of the tub.	When using this product • do not get into eyes • keep away from face and mouth to avoid breathing it • in some skin conditions, soaking too long may overdry • to avoid slipping, use mat in tub or shower
If condition worsens or does not improve within 7 days, consult a doctor.	Stop use and ask doctor if • condition worsens • symptoms last more than 7 days or clear up and occur again within a few days
For external use only.	For external use only[2]

[1] Only required for powder products containing kaolin or topical starch. *See* § 347.50(c)(6).
[2] In bold type on the line immediately following the line for the Warnings heading. *See* § 201.66(c)(5)(i) and (d)(6).

Section 201.66(d)(10) (21 CFR 201.66(d)(10)), which sets forth format and content requirements for OTC drug product labeling, establishes a modified labeling format for small packages that need more than 60 percent of their total surface area available to bear labeling to meet the format requirements of § 201.66(d)(1) through (d)(9). The agency stated in the final rule that established these labeling requirements that it would consider additional approaches for accommodating certain products in their respective monographs, taking into consideration the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population (64 FR 13254 at 13270).

In the final monograph for OTC sunscreen drug products (64 FR 27666 at 27678), the agency discussed modified warnings for lip balm products and stated that it expects to adopt the same modifications when it issues the final monograph for OTC skin protectant drug products. Accordingly, the agency is establishing additional labeling exemptions for lip balm/lip protectant products that meet the criteria established in § 201.66(d)(10). The specifications for products formulated and labeled as a lip protectant or lip balm that meet the criteria established in § 201.66(d)(10) are in § 347.50(e) of the skin protectant final monograph. In making this determination for lip protectant/lip balm products, the agency considered a number of factors that were discussed in the final rule that established the new OTC drug product labeling format in § 201.66 (64 FR 13254 at 13270). These factors include the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population. Lip protectant/lip balm products are typically packaged in small amounts, applied to limited areas of the body, have a high therapeutic index, carry extremely low risk in actual consumer use situations, provide a favorable public health benefit, require no specified dosage limitation, and require few specific warnings and no general warnings (e.g., pregnancy or overdose warnings). For these reasons, the agency has concluded that minimal information is needed for the safe and effective use of such products.

The agency is also including in this final rule some modified labeling requirements in § 347.50(f) of the final monograph for products containing only cocoa butter, petrolatum, or white petrolatum singly or in combination with each other when marketed other than as a lip protectant or lip balm. In making this decision for cocoa butter, the agency considered the factors discussed in the previous paragraphs and the Panel's recommendations on cocoa butter. The Panel stated in its safety evaluation of cocoa butter (43 FR 34628 at 34635) that "No reports regarding the safety of cocoa butter have been specifically identified. However, the Panel recognizes that its safety has been established by its wide and continuous use in pharmaceutical products and cosmetics. Clinical and marketing experience has confirmed that cocoa butter is safe in the dosage range used as a skin protectant." Thus, these products have an extremely low risk in actual consumer use situations. In addition, the agency has considered the OTC uses for this ingredient as providing temporary protection of minor cuts, scrapes, burns, and chapped or cracked skin and lips. Application to these areas for these uses will likely be infrequent and to limited areas of the body. In making this decision for petrolatum and white petrolatum, the agency considered the factors discussed in the previous paragraphs, the Panel's recommendations, and the evidence and data described in section II., comment

29 of this document. The Panel stated in its safety evaluation of petrolatum preparations (43 FR 34628 at 34639) that "Petrolatum is not absorbed through intact or injured skin and is neither sensitizing nor irritating. Large amounts are essentially nontoxic when ingested in liquid laxative preparations. Clinical and marketing experience has confirmed that petrolatum is safe in the OTC dosage range used as a skin protectant." As noted for cocoa butter, the agency has considered the OTC uses for these ingredients and believes that application to these areas for these uses will likely be infrequent and to limited areas of the body. The agency concludes that petrolatum and white petrolatum have an extremely low risk in actual consumer use situations. Moreover, both products provide a favorable public health benefit, require no specified dosage limitation, and require few specific warnings nad no general warnings (e.g., pregnancy or overdose warnings).

V. Stay of § 347.20(d) and Part 352

The agency is lifting the stay for the sunscreen monograph in part 352 for the sole purpose of amending the codified language as set forth in the skin protectant final monograph. Once the codified language is amended, part 352 will remain stayed indefinitely. The agency is also staying § 347.20(d) because it involves combination products that contain sunscreen active ingredients. To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. The agency complied with the notice and comment procedures in 5 U.S.C. 553 when it issued the skin protectant final monograph set forth in this notice. The agency is lifting the stay for part 352 in order to revise part 352 to be consistent with that monograph. As the agency stated in the **Federal Register** of December 31, 2001 (66 FR 67485), FDA intends to publish a proposal to amend part 352 in order to develop a comprehensive sunscreen monograph that addresses formulation, labeling, and testing requirements for both ultraviolet B (UVB) and ultraviolet A (UVA) radiation protection. That amendment will propose a new effective date for part 352 and for § 347.20(d). Thus, there will be an opportunity for public comment on the new effective date within the proposed amendment to part 352. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this partial stay should be modified or revoked.

VI. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the TFM for OTC skin protectant drug products (48 FR 6820 at 6831). The agency certified that under the Regulatory Flexibility Act the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rulemaking.

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The proposed rules that have led to the development of this final rule were published on February 15, 1983, and October 3, 1989, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to establish allowable monograph ingredients and labeling under which OTC skin protectant drug products are generally recognized as safe and effective. Of the 29 active ingredients considered in this final rule, 19 are being included in the final monograph while 10 are not. Of the 10 not included, 1 is deferred to the final rule on OTC skin protectant diaper rash drug products and 1 may be included pending development of a USP/NF monograph for the ingredient.

Products containing the remaining eight active ingredients will need to be reformulated to delete and replace the ingredient(s) with another (monograph) skin protectant active ingredient or an inactive vehicle. As discussed in section II, comment 34 of this document, at least three and maybe five of these eight ingredients also could be used as inactive (vehicle) ingredients in topical drug products. Therefore, some of these manufacturers may be able to relabel their products without reformulations to comply with this rule.

The agency's Drug Listing System identifies approximately 4,000 drug products containing these 8 ingredients; however, only a limited number of these products list these ingredients as active for a skin protectant drug product (table 2) in the next paragraph of this document.

TABLE 2.—NUMBER OF MARKETERS AND PRODUCTS LISTING INGREDIENTS AS ACTIVE

Ingredient	No. of Marketers	No. of Products
Beeswax	2	2
Boric acid	21	22
Cetyl alcohol	3	9

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Some of the 33 manufacturers of the 50 products containing nonmonograph active ingredients may not have to reformulate. For those products that need reformulation, the cost can be significant. Because of the large number of monograph active ingredients available for reformulation, no manufacturer should need to change its dosage form; however, it will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records. The agency estimates the cost of reformulation to range from $100,000 to $500,000. Therefore, if all 50 products are reformulated, the midpoint of the cost estimate implies total costs of $15 million. However, the agency believes the total costs will be much smaller because not all manufacturers will have to reformulate and some may choose to discontinue a product line if sales are too low to justify the added cost and/or they also produce substitute products that do not require reformulation.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms would have the necessary skills and personnel to perform these tasks either in-house or by contractual arrangement. No additional professional skills are needed.

This final rule establishes the monograph for OTC skin protectant drug products and will require relabeling of all products covered by the monograph. The agency's Drug Listing System identifies approximately 1,300 OTC skin protectant drug products containing the 29 ingredients covered by this final rule. It is likely that there are a number of additional products that are not currently included in the agency's system. Also, as indicated previously, a number of the skin protectant ingredients can be and often are used as inactive ingredients in many of the OTC drug products included in the Drug Listing System. While it is difficult to determine an exact number, the agency estimates that 2,000 to 2,500 OTC stockkeeping units (SKUs) (individual products, packages, and sizes) will need to be relabeled based on this final rule. Based on information in the Drug Listing System, the agency estimates there are at least 200 manufacturers and 700 marketers of these products. Marketers, however, generally do not incur these costs because manufacturers of OTC drug products are usually responsible for product labeling, testing, and formulation.

Estimates of relabeling costs for the type of changes required by this rule vary greatly and range from $500 to $15,000 per SKU depending on whether the products are nationally branded or private label. The agency assumes the same weighted average cost to relabel (i.e., $3,600 per SKU) that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281). Assuming 2,000 to 2,500 affected OTC SKUs in the marketplace, total one-time costs of relabeling would be $7.2 to $9.0 million. Because frequent labeling redesigns are a recognized cost of doing business in the OTC drug industry, these costs may be less. Manufacturers that make voluntary market-driven changes to their labeling during the implementation period can implement the regulatory requirements for a nominal cost. The final rule would not require any new reporting or recordkeeping activities.

This final rule may have an economic impact on some small entities. The agency's Drug Listing System indicates that about 700 marketers will need to relabel, and that this relabeling will be prepared by about 200 manufacturers, most of which are private label or contract manufacturers. Based on the Small Business Administration's determination that a small firm in this industry has fewer than 750 employees, roughly 70 percent of the firms are considered small. The economic impact on any particular firm is very difficult to measure, because it will vary with the type and number of products affected, the number of SKUs per product, and the ability to coordinate these label changes with those required for other purposes. For example, assuming average industry costs, a small company that had 5 products with 3 SKUs each, for a total of 15 SKUs, would experience a one-time cost of $54,000 (15 x $3,600). A small private label manufacturer with the same product line and 10 customers per SKU, for a total of 150 SKU's, would experience a one-time cost of $540,000 (150 x $3,600). If one or more products needed to be reformulated, the costs would increase by $100,000 to $500,000 per reformulation. Some of these relabeling costs may be mitigated to the extent that manufacturers can coordinate this relabeling with relabeling requirements for the standardized format and content labeling requirements of OTC drug products (§ 201.66) and the sunscreen rule. Products with annual sales less than $25,000 have 1 additional year. Therefore, many of the labeling revisions may be done in the normal course of business. These steps should help to minimize the impact on small entities by providing enough time for implementation to enable entities to use up existing labeling stock. The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, a longer time period would unnecessarily delay the benefit of new labeling and revised formulations, where applicable, to consumers. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities. However, a longer (24-month) compliance date is being provided for products with annual sales less than $25,000.

This analysis shows that the agency has undertaken important steps to reduce the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

X. Request for Comments

This final rule includes reduced labeling requirements for products formulated and labeled as a lip protectant that meet the criteria established in § 201.66(d)(10) (*see* § 347.60(e)); for products containing only cocoa butter, petrolatum, or white petrolatum identified in § 347.10(d), (m), and (r), used singly or in combination with each other, and marketed other than as a lip protectant (*see* § 347.60(f)); for sunscreen drug products labeled for use only on specific small areas of the face (e.g., lips, nose, ears, and/or around eyes) and that meet the criteria established in § 201.66(d)(10) (*see* § 352.52(f)); and for combinations of skin protectant and sunscreen active ingredients (*see* § 352.60(b)(2), (c), and (d)). Some of this reduced labeling results from the modified labeling format for OTC drug products in § 201.66(d)(10), which did not exist when the TFM and amended TFM were published. Some of this reduced labeling is in response to comments specifically addressing petrolatum and white petrolatum, which the agency has extended to cocoa butter. The agency is providing 90 days for comment on the specific labeling requirements discussed in this section. Comments should be identified with the docket number found in brackets in the heading of this document. Three copies of all mailed comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Received comments may be seen in the Dockets Management Branch (*see* **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. If the comments justify a change in labeling, the agency will propose to amend the final monographs accordingly at a later date. Because the amendment process can take a significant period of time, manufacturers of the products covered by this final rule should implement the labeling stated therein at this time, unless the compliance date has been stayed.

XI. References

The following references are on display in the Dockets Management Branch (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *The United States Pharmacopeia 24—National Formulary 19*, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 2107–2118, 1999.

2. *Physicians' Desk Reference for Nonprescription Drugs and Dietary Supplements*, 20th ed., Medical Economics Co., Inc., Montvale, NJ, pp. 214–218, 1999.

3. "Emollients" and "Skin Protectants," in *Drug Facts and Comparisons*, Facts and Comparisons, Inc., St. Louis, MO, pp. 608–612, 1992.

4. Billow, J. A., "Dermatologic Products," in *Handbook of Nonprescription Drugs*, 10th ed., American Pharmaceutical Association, Washington, DC, pp. 521–541, 1993.

5. "Balsams and Resins" in *Martindale, The Extra Pharmacopeia* 28th ed., edited by J. E. F. Reynolds, The Pharmaceutical Press, London, England, p. 314, 1982.

6. *Remington's Pharmaceutical Sciences*, 15th ed., Mack Publishing Co., Easton, PA, p. 715, 1975.

7. Comment No. C00045, Docket No. 78N–0021, Dockets Management Branch.

8. *The United States Pharmacopeia 26—National Formulary 21*, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 225, 2002.

9. Gosselin, R. E. et al., *Clinical Toxicology of Commercial Products*, 4th ed., Williams and Wilkins, Baltimore, MD, pp. 156–157, 1976.

10. Cullen, S. I., Al. Tonkin, and F. E. May, "Allergic Contact Dermatitis to Compound Tincture of Benzoin Spray," *The Journal of Trauma* 14:348–350, 1974.

11. Rademaker, M. and J. D. T. Kirby, "Contact Dermatitis to a Skin Adhesive," *Contact Dermatitis* 16:297–298, 1987.

12. Fisher, A. A., *Contact Dermatitis*, 3d ed., Lea and Febiger, Philadelphia, PA, pp. 665–671, 1986.

13. Marks, J. G. and M. A. Rainey, "Cutaneous Reactions To Surgical Preparations and Dressings," *Contact Dermatitis* 10:1–5, 1984.

14. James, W. D., S. W. White, and B. Yanklowitz, "Allergic Contact Dermatitis to Compound Tincture of Benzoin," *Journal of the American Academy of Dermatology* 11:847–850, 1984.

15. Hoffman, T. E. and R. M. Adams, "Contact Dermatitis to Benzoin in Greasepaint Makeup," *Contact Dermatitis* 4:379–380, 1978.

16. Fisher, A. A., "Dermatitis of the Hands from Food Additives," *Current Contact News, Cutis* 30:304, 308, 312, 318, 414, 1982.

17. Lynfield, Y. L., L. P. Pertschuk, and A. Zimmerman, "Pemphigus Erythematosus Provoked by Allergic Contact Dermatitis," *Archives of Dermatology* 108:690–693, 1973.

18. Kokelj, F. and A. Contarutti, "Contact Dermatitis in Leg Ulcers," *Contact Dermatitis* 15:47–49, 1986.

19. Gough, D. C. S. and N. Lawton, "Circumcision—Which Dressing?," *British Journal of Urology* 65:418–419, 1990.

20. Letter from W. E. Gilbertson, FDA, to L. Gilson, Otis Clapp & Son, Inc., coded ANS002, Docket No. 78N–0301, Dockets Management Branch.

21. OTC Vol. 160034.

22. OTC Vol. 160165.

23. Comment No. C00062, Docket No. 78N–0021, Dockets Management Branch.

24. *Physicians' Desk Reference for Nonprescription Drugs*, 11th ed., Medical Economics Co., Inc., Oradell, NJ, p. 606, 1990.

25. Comments No. C0001 and SUP1, Docket No. 78N–021P, Dockets Management Branch.

26. Letters from J. S. Davis, FDA, to J. G. Valentino, U.S.P.C., dated April 10, 1990, and August 7, 1990, included in OTC Vol. 06DFM, Docket No. 78N–0021, Dockets Management Branch.

27. *Pharmacopeial Forum*, The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 2798–2799, January through February 1992.

28. *Seventh Supplement to The United States Pharmacopeia 22—National Formulary 17*, The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3034, 1992.

29. Grais, M. L., "Role of Colloidal Oatmeal in Dermatologic Treatment of the Aged," *A.M.A. Archives of Dermatology and Syphilology* 68:402–407, 1953.

30. Friedman, B. E. and M. L. Sabia, "Chiropodical Aspects of Over Treatment Dermatitis," in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

31. Freeman, D. W., "Tape Dermatitis and Podiatry," in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

32. Ignatoff, W. B., "The Use of Colloidal Oatmeal Therapy in Chiropody," in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

33. Kürner, H., "Report on Therapeutic Experience With the Aveeno Series," *Zeitschrift für Hautkrankheiten* 50:631–635, 1975, Translation from German in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

34. O'Brasky, L., "Management of Extensive Dry Skin Conditions," *Connecticut Medicine* 23:20–21, 1959.

35. Whyte, H. J., "Atopic Dermatitis," in OTC Vol. 160070.

36. Lewis, G. M. and C. E. Wheeler, Jr., "Practical Dermatology," in OTC Vol. 160070.

37. Davis, R. G., "Pityriasis Rosea," in *Current Therapy*, p. 634–635, 1973, in OTC Vol. 160070.

38. Kierland, R. R. and M. Ede, "New Type of Colloid Bath," *A.M.A. Archives of Dermatology and Syphilology* 63:502, 1951.

39. Epstein, W. L., "Contact Dermatitis," in OTC Vol. 160070.

40. Glaser, J., "Treatment of Atopic Dermatitis" in *Allergy in Childhood*, p. 111, 1965.

41. *Drug Evaluations*, 1st ed., American Medical Association, Chicago, IL, p. 492, 1971.

42. Leibsohn, E., "The Erythemas," in *Current Therapy*, 1982, in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

43. Dick, L. A., "Colloidal Emollient Baths in Geriatric Dermatoses," *Skin* 1:89–91, 1962.

44. Sulzberger, M. D. et. al., "Principles of Topical Medication," in *Dermatology: Diagnosis and Treatment*, 2d ed., The Year Book Publishers, Inc., Chicago, IL, pp. 41–43, 1961, in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

45. Sompayrac, L. M. and C. Ross, "Colloidal Oatmeal in Atopic Dermatitis of the Young," *The Journal of the Florida Medical Association* 45:1411–1412, 1959.

46. OTC Vol. 160069.

47. Smith, G. H., "Diaper Rash and Prickly Heat Products," in *Handbook of Nonprescription Drugs*, 10th ed., American Pharmaceutical Association, Washington, DC, p. 546, 1993.

48. Wormser, H., "Poison Ivy and Poison Oak Products," in *Handbook of Nonprescription Drugs*, 10th ed., American Pharmaceutical Association, Washington, DC, p. 589–596, 1993.

49. *Physicians' Desk Reference for Nonprescription Drugs*, 15th ed., Medical Economics Data Production Co., Montvale, NJ, pp. 673 and 674, 1994.

50. Fabrizi, G., P. Morganti, and L. Cataldi, "Effecto Barriera Dell'Avena Colloidale in Dermatologia Pediatrica," *Chronica Dermatologica* 12:465–468, 1981.

51. Raab, W., "Allergologic and Clinical Trials with Aveeno Baby Cream," December 31, 1980, in Comment SUP1, Docket No. 78N–021P, Dockets Management Branch.

52. Fisher, A. A., "Pruritus Ani and Vulvae," in *Current Therapy—1982*, edited by H. F. Conn, W. B. Saunders Co., Philadelphia, PA, pp. 686–688, 1982.

53. Barkoff, J. R., "Pruritus Ani and Vulvae," in *Current Therapy—1973*, edited by H. F. Conn, W. B Saunders Co., Philadelphia, PA, pp. 639–641, 1973.

54. Lewis, G. M. and C. E. Wheeler, Jr., *Practical Dermatology*, 3d ed., W. B. Saunders Co., Philadelphia, PA, p. 630, 1967.

55. Comment No. C77, Docket No. 78N–0301, Dockets Management Branch.

56. Letter from W. E. Gilbertson, FDA, to G. L. Carlson, S. C. Johnson & Son, Inc., coded LET 25, Docket No. 78N–0021, Dockets Management Branch.

57. Dick, L., "Colloidal Emollient Baths in Pediatric Dermatoses," Archives of Pediatrics 75:506–508, 1958.

58. Franks, A. G., "Dermatologic Uses of Baths," *American Practitioner and Digest of Treatment* 9:1998–1999, 1958.

59. Smith, G. C., "The Treatment of Various Dermatoses Associated With Dry Skin," *Journal of the South Carolina Medical Association* 54:282, 1958.

60. Memorandum of telephone conversation between G. L. Carlson, S. C. Johnson & Son, Inc., and T. North, FDA, dated June 20, 1994, in OTC Vol. 06DFM, Docket No. 78N-0021, Dockets Management Branch.

61. Summary Minutes of the Twenty-Third Meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products, January 29 and 30, 1978, included in OTC Vol. 06DFM, Docket No. 78N–0021, Dockets Management Branch.

62. "Bath Dermatologicals Emollient Preparations," in *Drug Facts and Comparisons*, Facts & Comparisons, Inc., St. Louis, MO, p. 613, 1992.

63. Labeling for Aveeno Bath and Aveeno Bath Oilated for Dry Skin, in OTC Vol. 06DFM, Docket No. 78N–0021, Dockets Management Branch.

64. Perry, H. O., "Treatment of Bullous Dermatoses" in *Pharmaceutical Therapeutics in Dermatology*, edited by M. Waisman, Charles C. Thomas, Springfield, IL, pp. 141–142, 1968.

65. Kligman, A. M., M. W. Greaves, and H. Steinman, "Water-induced Itching Without Cutaneous Signs," *Archives of Dermatology* 122:183–186, 1986.

66. Bartlett, B. H., "Atopic Dermatitis: Aetiology and Management," *Current Therapeutics*, 18:41–8, 1977.

67. Verbov, J., "Atopic Dermatitis," *The Practitioner* 223:820–825, 1979.

68. Transcript of the Twenty-Third Meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products, January 29, 1978, p. 98, in OTC Vol. 06DFM, Docket No. 78N–0021, Dockets Management Branch.

69. OTC Vol. 160167.

70. Letter from W. E. Gilbertson, FDA, to H. Dickstein, Warner-Lambert Co., coded LET27, Docket No. 78N–0021, Dockets Management Branch.

71. *The United States Pharmacopoeia 22—National Formulary 17*, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1931, 1989.

72. OTC Vol. 160179.

73. Kligman, A. M. et al., "Some Aspects of Dry Skin and Its Treatment," in Safety and Efficacy of Topical Drugs and Cosmetics, edited by A. M. Kligman and J. J. Leyden, Grune & Stratton, Inc., New York, NY, pp. 221, 235, 1982.

74. *Physicians' Desk Reference for Nonprescription Drugs and Dietary Supplements*, 20th ed., Medical Economics Co., Inc., Montvale, NJ, p. 738, 1999.

75. *Handbook of Nonprescription Drugs*, 10th ed., American Pharmaceutical Association, Washington, pp. 840–853, 1993.

76. Letter from H. Jenkins, Summit Industries, Inc., to G. Rachanow, FDA, in OTC Vol. 06DFM, Docket No. 78N–0021, Dockets Management Branch.

77. Kaplan, J. Z., "Acceleration of Wound Healing by a Live Yeast Cell Derivative," study WM–185 dated April 5, 1983, submitted by Whitehall Laboratories. Comment No. C00034, vol. I, section I–A, Docket No. 78N–0021, Dockets Management Branch.

78. Kaplan, J. Z., "A Comparison of the Efficacy and Safety of Live Yeast Cell Derivative in Ointment Base (no Shark Liver Oil) vs. Ointment Base (no Live Yeast Cell Derivative and no Shark Liver Oil) As A Wound Healing Accelerator in Skin Graft Donor Sites," study WM–288, dated January 22, 1985, submitted by Whitehall Laboratories, Comment No. LET 12, vol. I, appendix 1 (medical summary) and vol. II (case report forms), Docket No. 78N–0021, Dockets Management Branch.

79. Comment No. SUP, Docket No. 78N–0021, Dockets Management Branch.

80. Kaplan, J. Z., "Acceleration of Wound Healing by a Live Yeast Cell Derivative," updated May 5, 1983, to include supporting raw data, submitted by Whitehall Laboratories, Comment No. AMD, Docket No. 78N–0021, Dockets Management Branch.

81. Statistical evaluations, reviews, and statements submitted by Whitehall Laboratories, Comment No. C00034, vol. I, sections I–B through I–F, Docket No. 78N–0021, Dockets Management Branch.

82. Comment No. C00057, Docket No. 78N–0021, Dockets Management Branch.

83. Comment No. LET 11, Docket No. 78N–0021, Dockets Management Branch.

84. Comment No. LET 12, vol. I, appendix 2 and appendix 3, Docket No. 78N–0021, Dockets Management Branch.

85. Comment No. LET 13, Docket No. 78N–0021, Dockets Management Branch.

86. Comment No. LET 14, Docket No. 78N–0021, Dockets Management Branch.

87. Comment No. C00034, vol. II, Docket No. 78N–0021, Dockets Management Branch.

88. Comment No. C00059, Docket No. 78N–0021, Dockets Management Branch.

89. Comment No. C00061, Docket No. 78N–0021, Dockets Management Branch.

90. Kaplan, J. Z., "Acceleration of Wound Healing by a Live Yeast Cell Derivative," *Archives of Surgery*, 119:1005–1008, 1984.

91. Letter from W. E. Gilbertson, FDA, to S. F. Barshay, Whitehall Laboratories, coded LET 10, Docket No. 78N–0021, Dockets Management Branch.

92. Letter from W. E. Gilbertson, FDA, to E. V. Henry, Whitehall Laboratories, coded LET 26, Docket No. 78N–0021, Dockets Management Branch.

93. Letter from W. E. Gilbertson, FDA, to E. V. Henry, Whitehall Laboratories, coded LET 15, Docket No. 78N–0021, Dockets Management Branch.

94. Letter from W. E. Gilbertson, FDA, to E. V. Henry, Whitehall Laboratories, coded LET 18, Docket No. 78N–0021, Dockets Management Branch.

95. Letter from W. E. Gilbertson, FDA, to J. R. Jacobs, Whitehall Laboratories, coded LET 21, Docket No. 78N–0021, Dockets Management Branch.

96. OTC Vol. 160060.

97. OTC Vol. 160052.

98. OTC Vol. 160086.

99. Oser, B. L. et al., "Toxicologic Studies of Petrolatum in Mice and Rats," *Toxicology and Applied Pharmacology* 7:382–401, 1965.

100. *Foods Chemicals Codex*, 3d ed., National Academy Press, Washington, DC, p. 221, 1981.

101. Lyght, E. E., ed., *The Merck Manual*, 9th ed., Merck & Co., Rahway, NJ, p. 1756, 1956.

102. Sollmann, T., *A Manual of Pharmacology*, 7th ed., W. B. Saunders Co., Philadelphia, PA, p. 122, 1948.

103. Schalek, A., *Fundamentals of Dermatology*, 2d ed., Lea & Febiger, Philadelphia, PA, p. 34, 1931.

104. Tobias, N., *Essentials of Dermatology*, 4th ed., J. B. Lippincott Co., Philadelphia, PA, p. 552, 1952.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Parts 347 and 352

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310, 347, and 352 are amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

■ 2. Section 310.545 is amended by revising paragraphs (a)(18)(i), (a)(18)(v), (a)(18)(vi), and (d)(1), and by adding paragraph (d)(32) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(18) * * *

(i)(A) *Ingredients—Approved as of May 7, 1991.*

Allantoin (wound healing claims only)
Sulfur
Tannic acid
Zinc acetate (wound healing claims only)

(B) *Ingredients—Approved as of* June 4, 2004; June 6, 2005, *for products with annual sales less than $25,000.*

Beeswax
Bismuth subnitrate
Boric acid
Cetyl alcohol
Glyceryl stearate
Isopropyl palmitate
Live yeast cell derivative
Shark liver oil
Stearyl alcohol

* * * * *

(v) *Insect bite and sting drug products.*

(A) *Ingredients—Approved as of May 7, 1991.*

Alcohol
Alcohol, ethoxylated alkyl
Ammonia solution, strong
Ammonium hydroxide
Benzalkonium chloride
Camphor
Ergot fluid extract
Ferric chloride
Menthol
Peppermint oil
Phenol
Pyrilamine maleate
Sodium borate
Trolamine
Turpentine oil
Zirconium oxide

(B) *Ingredients—Approved as of* June 4, 2004; June 6, 2005, *for products with annual sales less than $25,000.*

Beeswax
Bismuth subnitrate
Boric acid
Cetyl alcohol
Glyceryl stearate
Isopropyl palmitate
Live yeast cell derivative
Shark liver oil
Stearyl alcohol

* * * * *

(vi) *Poison ivy, poison oak, and poison sumac drug products.*

(A) *Ingredients—Approved as of May 7, 1991.*

Alcohol
Anion and cation exchange resins buffered
Benzethonium chloride
Benzocaine
Benzyl alcohol
Bismuth subnitrate
Bithionol
Boric acid
Camphor
Cetalkonium chloride
Chloral hydrate
Chlorpheniramine maleate
Creosote
Diperodon hydrochloride
Diphenhydramine hydrochloride
Eucalyptus oil
Ferric chloride
Glycerin
Hectorite
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Lidocaine
Menthol
Merbromin
Mercuric chloride
Panthenol
Parethoxycaine hydrochloride
Phenol
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Salicylic acid
Simethicone
Tannic acid
Topical starch
Trolamine
Turpentine oil
Zirconium oxide
Zyloxin

(B) *Ingredients—Approved as of* June 4, 2004; June 6, 2005, *for products with annual sales less than $25,000.*

Beeswax
Bismuth subnitrate
Boric acid
Cetyl alcohol
Glyceryl stearate
Isopropyl palmitate
Live yeast cell derivative
Shark liver oil
Stearyl alcohol

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), (a)(16) through (a)(18)(i)(A), (a)(18)(ii) (except as covered by paragraph (d)(22) of this section), (a)(18)(iii), (a)(18)(iv), (a)(18)(v)(A), and (a)(18)(vi)(A) of this section.

* * * * *

(32) June 4, 2004, for products subject to paragraphs (a)(18)(i)(B), (a)(18)(v)(B), and (a)(18)(vi)(B) of this section. June 6, 2005, for products with annual sales less than $25,000.

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 3. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 4. Part 347 is amended by revising the heading for subpart A to read as follows:

Subpart A—General Provisions

* * * * *

■ 5. Section 347.3 is revised to read as follows:

§ 347.3 Definitions.

As used in this part:

Astringent drug product. A drug product applied to the skin or mucous membranes for a local and limited protein coagulant effect.

Lip protectant drug product. A drug product that temporarily prevents dryness and helps relieve chapping of the exposed surfaces of the lips; traditionally called "lip balm."

Poison ivy, oak, sumac dermatitis. An allergic contact dermatitis due to exposure to plants of the genus Rhus (poison ivy, poison oak, poison sumac), which contain urushiol, a potent skin-sensitizer.

Skin protectant drug product. A drug product that temporarily protects injured or exposed skin or mucous membrane surfaces from harmful or annoying stimuli, and may help provide relief to such surfaces.

■ 6. Section 347.10 is redesignated as § 347.12 and revised, and subpart B, consisting of a new § 347.10, newly redesignated § 347.12, and new § 347.20, is added to read as follows:

Subpart B—Active Ingredients

Sec.
347.10 Skin protectant active ingredients.
347.12 Astringent active ingredients.
347.20 Permitted combinations of active ingredients.

Subpart B—Active Ingredients

§ 347.10 Skin protectant active ingredients.

The active ingredients of the product consist of any of the following, within the concentration specified for each ingredient:

(a) Allantoin, 0.5 to 2 percent.
(b) Aluminum hydroxide gel, 0.15 to 5 percent.
(c) Calamine, 1 to 25 percent.
(d) Cocoa butter, 50 to 100 percent.
(e) Cod liver oil, 5 to 13.56 percent, in accordance with § 347.20(a)(1) or (a)(2), provided the product is labeled so that the quantity used in a 24-hour period does not exceed 10,000 U.S.P. Units vitamin A and 400 U.S.P. Units cholecalciferol.
(f) Colloidal oatmeal, 0.007 percent minimum; 0.003 percent minimum in combination with mineral oil in accordance with § 347.20(a)(4).
(g) Dimethicone, 1 to 30 percent.
(h) Glycerin, 20 to 45 percent.
(i) Hard fat, 50 to 100 percent.
(j) Kaolin, 4 to 20 percent.
(k) Lanolin, 12.5 to 50 percent.
(l) Mineral oil, 50 to 100 percent; 30 to 35 percent in combination with colloidal oatmeal in accordance with § 347.20(a)(4).
(m) Petrolatum, 30 to 100 percent.
(n) [Reserved]
(o) Sodium bicarbonate.
(p) [Reserved]
(q) Topical starch, 10 to 98 percent.
(r) White petrolatum, 30 to 100 percent.
(s) Zinc acetate, 0.1 to 2 percent.
(t) Zinc carbonate, 0.2 to 2 percent.
(u) Zinc oxide, 1 to 25 percent.

§ 347.12 Astringent active ingredients.

The active ingredient of the product consists of any one of the following within the specified concentration established for each ingredient:

(a) Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate).
(b) Aluminum sulfate, 46 to 63 percent (the concentration is based on the anhydrous equivalent).
(c) Witch hazel.

§ 347.20 Permitted combinations of active ingredients.

(a) *Combinations of skin protectant active ingredients.* (1) Any two or more of the ingredients identified in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r) may be combined provided the combination is labeled according to § 347.50(b)(1) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(2) Any two or more of the ingredients identified in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r) may be combined provided the combination is labeled according to § 347.50(b)(2) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(3) Any two or more of the ingredients identified in § 347.10(b), (c), (j), (s), (t), and (u) may be combined provided the combination is labeled according to § 347.50(b)(3) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(4) The ingredients identified in § 347.10(f) and (l) may be combined provided the combination is labeled according to § 347.50(b)(7) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(b) *Combinations of skin protectant and external analgesic active ingredients.* Any one (two when required to be in combination) or more of the active ingredients identified in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r) may be combined with any of the following generally recognized as safe and effective external analgesic active ingredients: Single amine and "caine"-type local anesthetics, alcohols and ketones, antihistamines, or any permitted combination of these ingredients, but not with hydrocortisone, provided the product is labeled according to § 347.60(b)(1).

(c) *Combinations of skin protectant and first aid antiseptic active ingredients.* Any one (two when required to be in combination) or more of the active ingredients identified in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r) may be combined with any generally recognized as safe and effective single first aid antiseptic active ingredient, or any permitted combination of these ingredients, provided the product is labeled according to § 347.60(b)(2).

(d) *Combinations of skin protectant and sunscreen active ingredients.* Any one (two when required to be in combination) or more of the skin protectant active ingredients identified in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r) may be combined with any generally recognized as safe and effective *single sunscreen active* ingredient, or any permitted combination of these ingredients, provided the product meets the conditions in § 352.20(b) of this chapter and is labeled according to §§ 347.60(b)(3) and 352.60(b) of this chapter.

■ 7. Section 347.20(d) is stayed until further notice.

■ 8. Section 347.50 is redesignated as § 347.52 and revised, and subpart C, consisting of a new § 347.50, newly redesignated § 347.52, and new § 347.60, is added to read as follows:

Subpart C—Labeling

Sec.
347.50 Labeling of skin protectant drug products.
347.52 Labeling of astringent drug products.
347.60 Labeling of permitted combinations of active ingredients.

Subpart C—Labeling

§ 347.50 Labeling of skin protectant drug products.

A skin protectant drug product may have more than one labeled use and labeling appropriate to different uses may be combined to eliminate duplicative words or phrases as long as the labeling is clear and understandable. When the labeling of the product contains more than one labeled use, the appropriate statement(s) of identity, indications, warnings, and directions must be stated in the labeling.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product with one or more of the following:

(1) *For any product.* "Skin protectant" (optional, may add dosage form, e.g., "cream," "gel," "lotion," or "ointment").

(2) *For products containing any ingredient in § 347.10(b), (c), (j), (s), (t), and (u).* "Poison ivy, oak, sumac drying" (optional, may add dosage form, e.g., "cream," "gel," "lotion," or "ointment").

(3) *For products containing any ingredient in § 347.10(b), (c), (f), (j), (o), (s), (t), and (u).* "Poison ivy, oak, sumac protectant."

(b) *Indications.* The labeling of the product states, under the heading "Uses," one or more of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing

only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing any ingredient in § 347.10(a), (d), (e), (i), (k), (l), (m), and (r).* The labeling states "temporarily protects minor: [bullet][1] cuts [bullet] scrapes [bullet] burns".

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)—(i).* The labeling states "temporarily protects" (which may be followed by: "and helps relieve") "chapped or cracked skin" (which may be followed by: "and lips"). This statement may be followed by the optional statement: "helps protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant.* The labeling states "temporarily protects" (which may be followed by: "and helps relieve") "chapped or cracked lips". This statement may be followed by the optional statement: "helps protect lips from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(3) *For products containing any ingredient in § 347.10(b), (c), (j), (s), (t), and (u).* The labeling states "dries the oozing and weeping of poison: [bullet] ivy [bullet] oak [bullet] sumac".

(4) *For products containing colloidal oatmeal identified in § 347.10(f).* The labeling states "temporarily protects and helps relieve minor skin irritation and itching due to: [select one or more of the following: '[bullet] rashes' '[bullet] eczema' '[bullet] poison ivy, oak, or sumac' '[bullet] insect bites']."

(5) *For products containing sodium bicarbonate identified in § 347.10(o).* The labeling states "temporarily protects and helps relieve minor skin irritation and itching due to: [bullet] poison ivy, oak, or sumac [bullet] insect bites".

(6) *For products containing topical starch identified in § 347.10(q).* The labeling states "temporarily protects and helps relieve minor skin irritation".

(7) *For products containing the combination of ingredients in § 347.20(a)(4).* The labeling states "temporarily protects and helps relieve minor skin irritation and itching due to: [select one or more of the following: 'rashes' or 'eczema']," [If both conditions are used, each is preceded by a bullet.]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only" in accord with § 201.66(c)(5)(i) of this chapter. For products containing only mineral oil in § 347.10(l) or sodium bicarbonate in § 347.10(o), this warning may be omitted if labeling for oral use of the product is also provided.

(2) "When using this product [bullet] do not get into eyes".

(3) "Stop use and ask a doctor if [bullet] condition worsens [bullet] symptoms last more than 7 days or clear up and occur again within a few days".

(4) For products labeled according to § 347.50(b)(1) or (b)(2): "Do not use on [bullet] deep or puncture wounds [bullet] animal bites [bullet] serious burns".

(5) For products containing colloidal oatmeal identified in § 347.10(f) when labeled for use as a soak in a tub. "When using this product [bullet] to avoid slipping, use mat in tub or shower".

(6) For powder products containing kaolin identified in § 347.10(j) or topical starch identified in § 347.10(q)—(i) "Do not use on [bullet] broken skin".

(ii) "When using this product [bullet] keep away from face and mouth to avoid breathing it".

(7) For products containing colloidal oatmeal identified in § 347.10(f) or sodium bicarbonate identified in § 347.10(o) when labeled for use as a soak, compress, or wet dressing. "When using this product [bullet] in some skin conditions, soaking too long may overdry".

(d) *Directions.* The labeling of the product contains the following statements, as appropriate, under the heading "Directions":

(1) *For products labeled according to § 347.50(b)(1), (b)(2), (b)(3), (b)(5), or (b)(6).* The labeling states "apply as needed".

(2) *For products containing colloidal oatmeal identified in § 347.10(f)*—(i) *For products requiring dispersal in water.* The labeling states "[bullet] turn warm water faucet on to full force [bullet] slowly sprinkle" (manufacturer to insert quantity to be used) "of colloidal oatmeal directly under the faucet into the tub or container [bullet] stir any colloidal oatmeal settled on the bottom".

(A) *For products used as a soak in a bath.* The manufacturer must provide adequate directions to obtain a solution containing a minimum of 0.007 percent colloidal oatmeal or 0.003 percent colloidal oatmeal in the oilated form for a tub bath, sitz bath, or infant bath, or a minimum of 0.25 percent colloidal oatmeal for a foot bath. "For use as a soak in a bath: [bullet] soak affected area for 15 to 30 minutes as needed, or as directed by a doctor [bullet] pat dry (do not rub) to keep a thin layer on the skin".

(B) *For products used as a compress or wet dressing.* The manufacturer must provide adequate directions to obtain a solution containing a minimum of 0.25 percent colloidal oatmeal. "For use as a compress or wet dressing: [bullet] soak a clean, soft cloth in the mixture [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard mixture after each use".

(ii) *For topical products intended for direct application.* The labeling states "apply as needed".

(3) *For products containing sodium bicarbonate identified in § 347.10(o).* The labeling states "[bullet] adults and children 2 years of age and over:"

(i) The labeling states "For use as a paste: [bullet] add enough water to the sodium bicarbonate to form a paste [bullet] apply to the affected area of the skin as needed, or as directed by a doctor".

(ii) The labeling states "For use as a soak in a bath: [bullet] dissolve 1 to 2 cupfuls in a tub of warm water [bullet] soak for 10 to 30 minutes as needed, or as directed by a doctor [bullet] pat dry (do not rub) to keep a thin layer on the skin".

(iii) The labeling states "For use as a compress or wet dressing: [bullet] add sodium bicarbonate to water to make a mixture in a container [bullet] soak a clean, soft cloth in the mixture [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard mixture after each use".

(iv) Any of the directions in paragraphs (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section shall be followed by the statement: "[bullet] children under 2 years: ask a doctor".

(4) *For products containing aluminum hydroxide gel identified in § 347.10(b).* The labeling states "[bullet] children under 6 months: ask a doctor".

(5) *For products containing glycerin identified in § 347.10(h).* The labeling states "[bullet] children under 6 months: ask a doctor".

(6) *For products containing zinc acetate identified in § 347.10(s).* The labeling states "[bullet] children under 2 years: ask a doctor".

[1] *See* § 201.66(b)(4) of this chapter for definition of bullet symbol.

(e) *Products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10) of this chapter.* The title, headings, subheadings, and information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications:

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the title, headings, and information described in § 201.66(c)(1), (c)(3), (c)(6), and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(2), (c)(4), and (c)(5) may be presented as follows:

(i) The active ingredients (§ 201.66(c)(2) of this chapter) shall be listed in alphabetical order.

(ii) The heading and the indication required by § 201.66(c)(4) may be limited to: "Use [in bold type] helps protect" (which may be followed by "and relieve") "chapped lips".

(iii) The "external use only" warning in § 347.50(c)(1) and in § 201.66(c)(5)(i) of this chapter may be omitted. The warnings in § 347.50(c)(2) and (c)(4) are not required and the warning in § 347.50(c)(3) may be revised to read "Stop use and ask a doctor if condition lasts more than 7 days."

(iv) The subheadings in § 201.66(c)(5)(iii) through (c)(5)(vi) of this chapter may be omitted, provided the information after the heading "Warning" contains the warning in § 347.50(e)(1)(iii).

(v) The warnings in § 201.66(c)(5)(x) of this chapter may be omitted.

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(1), (c)(3), (c)(6), and (c)(7), and the horizontal barlines and hairlines described in § 201.66(d)(8), may be omitted.

(f) *Products containing only cocoa butter, petrolatum, or white petrolatum identified in § 347.10(d), (m), and (r), singly or in combination with each other, and marketed other than as a lip protectant.* (1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the headings and information described in § 201.66(c)(3) and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(2), (c)(4), and (c)(5) may be presented as follows:

(i) The active ingredients (§ 201.66(c)(2) of this chapter) shall be listed in alphabetical order.

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to "Use [in bold type] helps protect minor cuts and burns" or "Use [in bold type] helps protect chapped skin" or "Use [in bold type] helps protect minor cuts and burns and chapped skin".

(iii) The warning in § 347.50(c)(3) may be revised to read "*See* a doctor if condition lasts more than 7 days."

(iv) The subheadings in § 201.66(c)(5)(iv) through (c)(5)(vii) of this chapter may be omitted, provided the information after the heading "Warnings" contains the warnings in § 347.50(c)(2), (c)(4), and (f)(1)(iii).

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(3) and (c)(7) may be omitted.

§ 347.52 Labeling of astringent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "astringent."

(b) *Indications.* The labeling of the product states, under the heading "Uses" any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition of section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing aluminum acetate identified in § 347.12(a).* "For temporary relief of minor skin irritations due to: [select one or more of the following: 'poison ivy,' 'poison oak,' 'poison sumac,' 'insect bites,' 'athlete's foot,' or 'rashes caused by soaps, detergents, cosmetics, or jewelry']."

(2) *For products containing aluminum sulfate identified in § 347.12(b) for use as a styptic pencil.* "Stops bleeding caused by minor surface cuts and abrasions as may occur during shaving."

(3) *For products containing witch hazel identified in § 347.12(c).* "Relieves minor skin irritations due to: [select one or more of the following: 'insect bites,' 'minor cuts,' or 'minor scrapes']." [If more than one condition is used, each is preceded by a bullet.]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only. Avoid contact with the eyes."

(2) *For products containing aluminum acetate identified in § 347.12(a) or witch hazel identified in § 347.12(c).* "If condition worsens or symptoms persist for more than 7 days, discontinue use of the product and consult a" [select one of the following: 'physician' or 'doctor']."

(3) *For products containing aluminum acetate identified in § 347.12(a) used as a compress or wet dressing.* "Do not cover compress or wet dressing with plastic to prevent evaporation."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing aluminum acetate identified in § 347.12(a)*—(i) *For products used as a soak.* "For use as a soak: Soak affected area in the solution for 15 to 30 minutes. Discard solution after each use. Repeat 3 times a day."

(ii) *For products used as a compress or wet dressing.* "For use as a compress or wet dressing: saturate a clean, soft white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Discard solution after each use. Repeat as often as necessary."

(2) *For products containing aluminum sulfate identified in § 347.12(b) for use as a styptic pencil.* "Moisten tip of pencil with water and apply to the affected area. Dry pencil after use."

(3) *For products containing witch hazel identified in § 347.12(c).* "Apply to the affected area as often as necessary."

§ 347.60 Labeling of permitted combinations of active ingredients.

The statement of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading

"Uses," the indication(s) for each ingredient in the combination as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established in the applicable OTC drug monographs or listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act. In addition to the required information identified in this paragraph (b), the labeling of the product may contain any of the "other allowable statements" that are identified in the applicable monographs, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(1) *Combinations of skin protectant and external analgesic active ingredients in § 347.20(b).* In addition to any or all of the indications for skin protectant drug products in § 347.50(b)(1), any or all of the allowable indications for external analgesic drug products may be used if the product is labeled for concurrent symptoms.

(2) *Combinations of skin protectant and first aid antiseptic active ingredients in § 347.20(c).* In addition to any or all of the indications for skin protectant drug products in § 347.50(b)(1), the required indications for first aid antiseptic drug products should be used.

(3) *Combinations of skin protectant and sunscreen active ingredients in § 347.20(d).* In addition to any or all of the indications for skin protectant drug products in § 347.50(b)(2)(i), the required indications for sunscreen drug products should be used and any or all of the additional indications for sunscreen drug products may be used.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings section of the applicable OTC drug monographs unless otherwise stated in this paragraph (c).

(1) *For combinations containing a skin protectant and a sunscreen identified in §§ 347.20(d) and 352.20(b).* The warnings for sunscreen drug products in § 352.60(c) of this chapter are used.

(2) [Reserved]

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and may not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient.

(1) *For combinations containing a skin protectant and a sunscreen identified in §§ 347.20(d) and 352.20(b).* The directions for sunscreen drug products in § 352.60(d) of this chapter are used.

(2) [Reserved]

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 9. The authority citation for 21 CFR part 352 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 10. The stay of 21 CFR part 352 published at 66 FR 67485, December 31, 2001, is lifted.

■ 11. Section 352.20 is amended by adding paragraph (b) to read as follows:

§ 352.20 Permitted combinations of active ingredients.

* * * * *

(b) *Combinations of sunscreen and skin protectant active ingredients.* Any single sunscreen active ingredient or any permitted combination of sunscreen active ingredients when used in the concentrations established for each ingredient in § 352.10 may be combined with one or more skin protectant active ingredients identified in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r) of this chapter. The concentration of each sunscreen active ingredient must be sufficient to contribute a minimum SPF of not less that 2 to the finished product. The finished product must have a minimum SPF of not less than the number of sunscreen active ingredients used in the combination multiplied by 2, and the product must be labeled according to § 352.60.

■ 12. Section 352.52 is amended by revising the heading in paragraphs (c)(2) and (d)(4) and by revising paragraphs (f)(1)(ii) and (f)(1)(vi) to read as follows:

§ 352.52 Labeling of sunscreen drug products.

* * * * *

(c) * * *

(2) *For products containing any ingredient identified in § 352.10 marketed as a lip protectant or lipstick.*

* * *

(d) * * *

(4) *For products marketed as a lip protectant or lipstick.* * * *

* * * * *

(f) * * *

(1) * * *

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to: "Use [in bold type] helps protect against sunburn." For a lip protectant product, the heading and the indication required by § 201.66(c)(4) may be limited to: "Use [in bold type] helps protect against sunburn and chapped lips."

* * * * *

(vi) For a lip protectant product or lipstick, the warnings "Keep out of eyes" in § 352.52(f)(1)(iv) and "Keep out of reach of children" in § 352.52(f)(1)(v) and the directions in § 352.52(d) may be omitted.

* * * * *

13. Section 352.60 is amended by revising paragraphs (b)(2), (c), and (d) to read as follows:

§ 352.60 Labeling of permitted combinations of active ingredients.

* * * * *

(b) * * *

(2) For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b), any or all of the applicable indications for sunscreens in § 352.52(b) and the indication for skin protectants in § 347.50(b)(2)(i) of this chapter should be used. For products marketed as a lip protectant, the indication in § 352.52(f)(1)(ii) should be used.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings section of the applicable OTC drug monographs, except that the warning for skin protectants in § 347.50(c)(3) of this chapter is not required for permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b). For products marketed as a lip protectant or lipstick, § 352.52(f)(1)(iii), (f)(1)(iv) (except "Keep out of eyes," which may be omitted), and (f)(1)(vi) apply.

(d) *Directions.* The labeling of the product states, under the heading "directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and may not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient. For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b), the directions for sunscreens in § 352.52(d) should be used. For products marketed as a lip protectant or lipstick, § 352.52(d)(4) applies.

■ 14. Part 352 is stayed until further notice.

Dated: May 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13751 Filed 6–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Combe, Inc., to Farnham Companies, Inc.

DATES: This rule is effective June 4, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Combe, Inc., 1101 Westchester Ave., White Plains, NY 10604, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 5–236 for SULFODENE Medication for Dogs to Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928. Accordingly, the agency is amending the regulations in 21 CFR 524.1376 to reflect the transfer of ownership.

Following this change of sponsorship, Combe, Inc., is no longer the sponsor of any approved application. Accordingly, § 510.600(c) is being amended to remove the entries for Combe, Inc.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended].

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Combe, Inc." and in the table in paragraph (c)(2) by removing the entry for "011509".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1580b [Amended]

■ 4. Section 524.1376 *2–Mercaptobenzothiazole solution* is amended in paragraph (b) by removing "011509" and by adding in its place "No. 017135".

Dated: May 19, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14107 Filed 6–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9048]

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document corrects temporary regulations (TD 9048), which was published in the **Federal Register** on Friday, March 14, 2003 (68 FR 12287). The temporary regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and also suspend certain losses recognized on the disposition of stock of a subsidiary member.

DATES: This correction is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 9048 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–35T is amended by:
■ 1. Removing the word "or" at the end of paragraph (b)(3)(ii)(B).
■ 2. Removing the word "or" at the end of paragraph (b)(3)(ii)(C).
■ 3. Adding the word "or" at the end of paragraph (b)(3)(ii)(D).
■ 4. Adding new paragraph (b)(3)(ii)(E) to read as follows:

§ 1.1502–35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

* * * * *

(b) * * *
(3) * * *
(ii) * * *

(E) The deconsolidation of the subsidiary member results from a termination of the group.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–14062 Filed 6–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–010]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). The need for this security zone is based on recent terrorist actions against the United States and for national security reasons to protect the public and areas surrounding MOTCO from potential terrorist attacks. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding MOTCO unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: This regulation is effective from 7 a.m. PDT on May 29, 2003 to 11:59 p.m. PDT on June 6, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This action was taken at the request of the United States Army and is a joint military operation with the U.S. Army, U.S. Navy and U.S. Coast Guard. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents, criminal actions, or other causes of similar nature. This zone is also necessary to protect military operations from compromise and interference. Additionally, the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism* (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). As a result, this security zone is needed for national security reasons to protect the United States and more specifically the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of operations in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in, and necessary to military operations. Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons outlined above.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, bounded by the following coordinates: latitude 38°03′07″N and longitude 122°03′00″W; thence to latitude 38°03′15″N and longitude 122°03′04″W; thence to latitude 38°03′30″N and longitude 122°02′35″W; thence to latitude 38°03′50″N and longitude 122°01′15″W; thence to latitude 38°03′43″N and longitude 122°00′28″W; thence to latitude 38°03′41″N and longitude 122°00′03″W; thence to latitude 38°03′18″N and longitude 121°59′31″W, and along the shoreline back to the beginning point.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because, although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels will receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where located under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T11–084 to read as follows:

§ 165.T11–084 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, bounded by the following coordinates: latitude 38°03′07″N and longitude 122°03′00″W; thence to latitude 38°03′15″N and longitude 122°03′04″W; thence to latitude 38°03′30″N and longitude 122°02′35″W; thence to latitude 38°03′50″N and longitude 122°01′15″W; thence to latitude 38°03′43″N and longitude 122°00′28″W; thence to latitude 38°03′41″N and longitude 122°00′03″W; thence to latitude 38°03′18″N and longitude 122°00′03″W; thence to latitude 38°03′18″N and longitude 121°59′31″W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective Dates.* This section becomes effective at 7 a.m. PDT on May 29, 2003, and will terminate at 11:59 p.m. PDT on June 6, 2003.

Dated: May 27, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–14015 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD 13–03–016]

RIN 1625–AA00

Safety Zone; Fireworks Display on the Willamette River, Milwaukie, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone during a fireworks display in the vicinity of Willamette River mile 19 in Milwaukie, Oregon. The Captain of the Port, Portland, is taking this action to safeguard watercraft and their occupants from safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective on July 26, 2003 from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD 13–03–016] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A Final Rule, which established safety zones around fireworks displays for the Captain of the Port Portland area of responsibility, was recently published in the **Federal Register** (CGD13–03–008, 33 CFR 165.1315, 68 FR 13487, May 30, 2003). An amendment cannot successfully be made to 33 CFR § 165.1315 in time to ensure the safety of vessels and spectators gathering in the vicinity of this fireworks display.

The Coast Guard intends to amend 33 CFR § 165.1315 using normal rule-making procedures in the near future by adding this safety zone to that regulation.

Background and Purpose

The Coast Guard is establishing a temporary safety zone regulation to allow for a safe fireworks display. It is scheduled to start on July 26, 2003 at 9:30 p.m. (PDT) and last until 10:30 p.m. (PDT). This event will result in a large number of vessels congregating near the fireworks launching area. This safety zone is needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with fireworks displays. Without providing an adequate safety zone, the public could be exposed to falling burning debris and would likely be within the blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessel movements in a regulated area surrounding a fireworks launching barge. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce this safety zone. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one-half of a mile of the Willamette River for one hour in the late evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River between 9:30 p.m. (PDT) and 10:30 p.m. (PDT) on July 4, 2003. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for one hour at night when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if it is deemed safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A temporary § 165.T13–010 is added to read as follows:

§ 165.T13–010 Safety Zone; Fireworks Display on the Willamette River, Milwaukie, OR.

(a) *Location.* An area of water 600 feet in diameter located around a fireworks launching barge centered at 45°26′33″ North, 122°38′45″ West [NAD 83]. This area is in the vicinity of Willamette River mile 19, Milwaukie, OR.

(b) *Enforcement period.* July 26, 2003 from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

(c) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, this Temporary Final Rule applies to any vessel or person in the navigable waters of the United States. No person or vessel may enter the above safety zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S, Coast Guard, Captain of the Port.

[FR Doc. 03–14014 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–004]

RIN 1625–AA00

Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Limerick Generating Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. Eastern Daylight Time on May 13, 2003, to 5 p.m. Eastern Standard Time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–004 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B)and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Limerick Generating Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Schuylkill River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Schuylkill River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: The restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–090.

§ 165.T05–090 Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Schuylkill River in the vicinity of the Limerick Generation Station bounded by a line drawn from a point located at 40° 13′ 21.34″ N, 075° 35′ 27.49″ W to 40° 13′ 18.92″ N, 075° 35′ 29.83″ W, thence to 40° 13′ 11.36″ N, 075° 35′ 27.57″ W, thence to 40° 13′ 12.97″ N, 075° 35′ 22.74″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. Eastern Standard Time on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–14018 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–006]

RIN 1625–AA00

Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Peach Bottom Atomic Power Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. Eastern Daylight Time on May 13, 2003, to 5 p.m. Eastern Standard Time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–006 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Peach Bottom Atomic Power Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Susquehanna River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Susquehanna River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.1D, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–092.

§ 165.T05–092 Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Peach Bottom Atomic Power Station bounded by a line drawn from a point located at 39° 45′ 36.36″ N, 076° 16′ 08.93″ W to 39° 45′ 38.72″ N, 076° 15′

57.00″ W, thence to 39° 45′ 28.95″ N, 076° 15′ 49.74″ W, thence to 39° 45′ 28.20″ N, 076° 16′ 02.24″ W.

All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 16. The Captain of the Port can be contacted at (215) 271–4940.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 16.

(c) *Definitions.* For the purposes of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–14017 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan–03–024]

RIN 1625–AA00

Security Zone; St. Thomas, U.S. VI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones 50 yards around all cruise ships entering, departing, moored or anchored in the Port of Charlotte Amalie, U.S. Virgin Islands. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port of San Juan or his designated representative.

DATES: This rule is effective July 7, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket [COTP San Juan–03–024] and are available for inspection or copying at Coast Guard Marine Safety Office San Juan, Rodriguez and Del Valle Building, San Martin Street, Carr. #2, Km. 4.9, Guaynabo, Puerto Rico, 00968, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 19, 2003, we published a notice of proposed rulemaking (NPRM) entitled: "Security Zone, St. Thomas, U.S. Virgin Islands, in the **Federal Register** (68 FR 7958). We received one letter commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charlotte Amalie, St. Thomas, U.S. Virgin Islands, against cruise ships entering, departing and moored within the Port of Charlotte Amalie. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing security zones around all cruise ships entering, departing and moored within the Port of Charlotte Amalie. We previously published two temporary final rules entitled "Security Zones; St. Thomas, U.S. Virgin Islands." in the **Federal Register** on February 1, 2002 (67 FR 4909) and on November 13, 2002 (67 FR 68760). These temporary final rules contained similar provisions as those in this rulemaking.

The security zone for a cruise ship entering port is activated when the vessel passes: St. Thomas Harbor green lighted buoy 3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy 2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy 4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from the Port of Charlotte Amalie.

Persons and vessels are prohibited from entering into or transiting through a security zone unless authorized by the Captain of the Port (COTP), or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port. The Captain of the Port will notify the public of these security zones through Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

Discussion of Comments and Changes

We received one letter commenting on the proposed rule. This comment addressed whether or not this rule would affect the use of a "dinghy dock" adjacent to the Crown Bay Cruise Ship terminal. The originator of the comment stated that the establishment of a 50 yard security zone around cruise ships moored at the Crown Bay terminal should not impact the use of this "dinghy dock" as users would have enough sea room to use the dock and not enter the security zone. The Coast Guard agrees that this rule will not affect the use of the dock as vessels may transit to and from it without entering the 50 yard security zone. The Coast Guard will allow the continued use of this dock while cruise ships are moored at the Crown Bay terminal.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "Small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Port of Charlotte Amalie when a cruise ship is entering, departing, moored or anchored in the Port of Charlotte Amalie. This rule will not have a significant economic impact on a substantial number of small entities because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Chip Lopez at (787) 706–2444 for assistance in understanding this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and has determined that, under figure 2–1, paragraph (34)g, of Commandant Instruction M16475.ID, that this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Section 165.762 is added to read as follows:

§ 165.762 Security Zone; St. Thomas, U.S. Virgin Islands.

(a) *Location.* Moving and fixed security zones are established 50 yards around all cruise ships entering, departing, moored or anchored in the Port of St. Thomas, U.S. Virgin Islands. The security zone for a cruise ship entering port is activated when the vessel passes: St. Thomas Harbor green lighted buoy 3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy 2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy 4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from the Port.

(b) *Regulations.* (1) Under general regulations in § 165.33 of this part, entering, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port of San Juan.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at the Greater Antilles Section Operations Center at (787) 289–2041 or via VHF radio on Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(3) The Marine Safety Office San Juan will attempt to notify the maritime community of periods during which these security zones will be in effect by providing advance notice of scheduled arrivals and departures of cruise ships via a broadcast notice to mariners.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: May 15, 2003.

William J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–14016 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Miami 03–075]

RIN 1625–AA00

Safety Zone; Coral Reef Club 4th of July Fireworks Display, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone offshore from Coral Reef Yacht Club in Miami, FL. The safety zone is established to protect boaters from the hazards associated with the Coral Reef Yacht Club fireworks display being held offshore from Coral Reef Yacht Club in Miami. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–075 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, an NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 350-foot circle surrounding a barge in approximate position 25° 44.10 N, 080° 14.30 W offshore from Coral Reef Yacht Club in Miami for the Coral Reef Yacht Club 4th of July fireworks display. This rule is needed to increase safety in Miami from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the Coral Reef Yacht Club 4th of July fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity offshore from Coral Reef Yacht Club in Miami, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area offshore from Coral Reef Yacht Club in Miami, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–075 is added to read as follows:

§ 165.T07–075 Safety Zone: Offshore from Coral Reef Yacht Club Miami, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 350-foot circle surrounding a barge in approximate position 25°44.10 N, 80°14.30 W offshore from Coral Reef Yacht Club in Miami for the Coral Reef Yacht Club 4th of July fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14025 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Miami 03–083]

RIN 1625–AA00

Safety Zone; City of Stuart 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in the St. Lucie River 1200 feet from the shore of City Hall in Stuart, FL. The safety zone is established to protect boaters from the hazards associated with the City of Stuart 4th of July fireworks display being held in the St. Lucie River 1200 feet from the shore of City Hall in Stuart, FL. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–083 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, an NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 1680-foot circle surrounding a barge in approximate position 27°12.55 N, 080° 15.00 W in the St. Lucie River 1200 feet from the shore of City Hall for the City of Stuart 4th of July fireworks display. This rule is needed to increase safety in Stuart, FL from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the City of Stuart 4th of July fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity in the St. Lucie River 1200 feet from the

shore of City Hall in Stuart, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in the St. Lucie River 1200 feet from the shore of City Hall in Stuart, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–083 is added to read as follows:

§ 165.T07–083 Safety Zone: St. Lucie River 1200 feet from the shore off of City Hall Stuart, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 1680-foot circle surrounding a barge in approximate position 27°12.55 N, 80°15.00 W in the St. Lucie River 1200 feet from the shore off of City Hall in Stuart for the City of Stuart 4th of July fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14024 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Miami 03–082]

RIN 1625–AA00

Safety Zone; Rivera Beach 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in the ICW Northwest of Peanut Island in Rivera Beach, FL. The safety zone is established to protect boaters from the hazards associated with the Rivera Beach 4th of July fireworks display being held in the ICW Northwest of Peanut Island in Rivera Beach. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–082 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, Fl 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 850-foot circle surrounding a barge in approximate position 26°46.06 N, 080° 02.09 W in the ICW Northwest of Peanut Island in Rivera Beach for the Rivera Beach 4th of July fireworks display. This rule is needed to increase safety in Rivera Beach from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the Rivera Beach 4th of July fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity in the ICW Northwest of Peanut Island in Rivera Beach, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in the ICW Northwest of Peanut Island in Rivera Beach, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46, Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–082 is added to read as follows:

§ 165.T07–082 Safety Zone; ICW Northwest of Peanut Island Rivera Beach, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 850-foot circle surrounding a barge in approximate position 26°46.06 N, 80°02.09 W in the ICW Northwest of Peanut Island in Rivera Beach for the Rivera Beach 4th of July fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14023 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard CFR 33 CFR 165

[COTP Miami 03–073]

RIN 1625–AA00

Safety Zone; The Grand Opening Miami One, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in Biscayne Bay in Miami, FL. The safety zone is established to protect boaters from the hazards associated with the Grand Opening of Miami One fireworks display being held in Biscayne Bay in Miami. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on June 5, 2003 until 10 p.m. on June 5, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–073 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, Fl 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 1300-foot circle surrounding a barge in approximate position 25°45.40 N, 080° 10.24 W in Biscayne Bay in Miami for the Grand Opening of Miami One fireworks display. This rule is needed to increase safety in Miami from 9 p.m. June 5, 2003 to 10 p.m. on June 5, 2003 during the Grand Opening of Miami One fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity of Biscayne Bay in Miami, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in Biscayne Bay in Miami, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–073 is added to read as follows:

§ 165.T07–073 Safety Zone: Biscayne Bay Miami, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 1300-foot circle surrounding a barge in approximate position 25°45.40 N, 80°10.24 W in Biscayne Bay in Miami for the Grand Opening of Miami One fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 9 p.m. on June 5, 2003 until 10 p.m. on June 5, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U. S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14022 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[COTP Miami 03–081]

RIN 1625–AA00

Safety Zone: Town of Lantana July 4th Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in the ICW at East Ocean Avenue in Lantana, FL. The safety zone is established to protect boaters from the hazards associated with the Town of Lantana July 4th fireworks display being held in the ICW at East Ocean Avenue in Lantana. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–081 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, tel: (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 850-foot circle surrounding a barge in approximate position 26° 34.36 N, 080° 02.51 W in the ICW at East Ocean Avenue in Lantana for the Town of Lantana July 4th fireworks display. This rule is needed to increase safety in Lantana from 9 p.m. July 4, 2003 to 10 p.m. on July 4, 2003 during the Town of Lantana July 4th fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity in the ICW at East Ocean Avenue in Lantana, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the area in the ICW at East Ocean Avenue in Lantana, FL.

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Temporary § 165.T07–081 is added to read as follows:

§ 165.T07–081 Safety Zone: ICW at East Ocean Avenue, Lantana, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing an 850-foot circle surrounding a barge in approximate position 26°34.36 N, 80°02.51 W in the ICW at East Ocean Avenue in Lantana for the Town of Lantana July 4th fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates.* This rule is effective from 9 p.m. on July 4, 2003 until 10 p.m. on July 4, 2003.

Dated: May 27, 2003.

James A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 03–14021 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–007]

RIN 1625–AA00

Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Three Mile Island Generating Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. Eastern Daylight Time on May 13, 2003, to 5 p.m. Eastern Standard Time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–007 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Three Mile Island Generating Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within

the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Susquehanna River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Susquehanna River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–093.

§ 165.T05–093 Security Zone; Three Mile Island Generating Station, Susquehanna River, York County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station bounded by a line drawn from a point located at 40° 09′ 14.74″ N, 076° 43′ 40.77″ W to 40° 09′ 14.74″ N, 076° 43′ 42.22″ W, thence to 40° 09′ 16.67″ N, 076° 43′ 42.22″ W, thence to 40° 09′ 16.67″ N, 076° 43′ 40.77″ W.

All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. Eastern Standard Time on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–14020 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual fireworks events in the Captain of Port Portland Zone, Columbia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Astoria Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Astoria fireworks display. The safety zone will include all waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123°50′1″ West to 46°11′50″ North, thence east to 123°49′15″ West, thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14013 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual Fireworks Events in the Captain of Port Portland Zone, Coos River, North Bend, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Cedco Inc. Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 3, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). A rain date is scheduled for July 4.

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Cedco Inc. fireworks display. The safety zone will include waters on the Coos River bounded by shoreline to the east and west and 1000 feet of water to the north and south of the launching barge which is centered at 43°23′45″ North, 124°12′50″ West. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 3, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

A rain date is scheduled for July 4. The Captain of the Port may be assisted by other Federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14012 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual Fireworks Events in the Captain of Port Portland Zone, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Oregon Food Bank Blues Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Oregon Food Bank Blues fireworks display. The safety zone will include all waters on the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14011 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zone; Annual Fireworks Events in the Captain of Port Portland Zone, Columbia River, Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Tri-City Fireworks Display to be established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT).

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard is publishing a final rule establishing safety zones, in 33 CFR 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Tri-City fireworks display. The safety zone will include waters on the Columbia River bounded by shoreline to the north and south, Interstate 395 bridge to the east, and 1000 feet of water to the west of the launching barge which is centered at 46°13′38″ North, 119°08′52″ West. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003 from 9:30 p.m. (PDT) until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–14010 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River and Fish Wheel Marking Adjustments

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest opportunity. This also provides notice of new options for identifying fish wheels in the Copper River. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 12, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2003 regulatory year.

DATES: The fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective May 15, 2003, through June 8, 2003. The fish wheel identification provision is effective May 15, 2003, through February 29, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 fishing seasons, harvest limits, and methods and means were published on February 12, 2003, (68 FR 7276).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to maintain the viability of salmon stocks in the Copper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e).

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. The salmon season is closed until the first open period scheduled for June 7, 2003, at 8 a.m. Shown below is the first anticipated fishing schedule openings for the Chitina Subdistrict of the Copper River: Saturday, June 7, 8 a.m.–Sunday, June 8, 8 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2003. No deviation from this date is anticipated.

Copper River—Fish Wheel Identification

The new fish wheel identification requirements for the Copper River parallel State regulations recently enacted by the Alaska Board of Fisheries for the Glennallen Subdistrict. Fish wheel owners are provided with the flexibility of being identified by gear registration number and a sign bearing either their name and address, or their Alaska driver's license number, or their Alaska State identification card number. This allows for improved confidentiality, while maintaining the capability needed for enforcement purposes. The fish wheel owner is responsible for the fish wheel. Retaining the requirement to display name and address for operators other than the owner is necessary for effective enforcement.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska,

Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: May 15, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: May 15, 2003.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 03–13994 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB20

NARA Facilities; Phone Numbers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is updating the phone numbers for its Presidential libraries and regional records facilities. The Presidential libraries and regional records facilities are open to the public and other Federal agency staff for visitation and use of records for research. This final rule also corrects the hours for the Washington National Records Center, which are from 8 a.m. to 4:30 p.m. This final rule affects the public.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: This rule is effective upon publication for good cause as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes that delaying the effective date for 30 days is unnecessary as this rule represents minor technical amendments. Moreover, as the public benefits immediately being provided with corrections to phone numbers for Presidential libraries and the regional records facilities, and a correction to the hours that the Washington National Records Center is open to the public, any delay in the effective date would be contrary to the public interest.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1253 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.3 by revising paragraphs (b), (e), (f), and (j) to read as follows:

§ 1253.3 Presidential Libraries.

* * * * *

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 845–486–7770 and the fax number is 845–486–1147. The email address is *roosevelt.library@nara.gov.*

* * * * *

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 617–514–1600 and the fax number is 617–514–1593. The email address is *kennedy.library@nara.gov.*

(f) Lyndon Baines Johnson Library is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–721–0200 and the fax number is 512–721–0236. The email address is *johnson.library@nara.gov.*

* * * * *

(j) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–691–4000 and the fax number is 979–691–4050. The email address is *bush.library@nara.gov.*

■ 3. Revise § 1253.4 to read as follows:

§ 1253.4 Washington National Records Center.

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD, 20746–8001). The hours are 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. The phone number is 301–778–1600.

■ 4. Amend § 1253.6 by revising paragraphs (a) through (d) to read as follows:

§ 1253.6 Records Centers.

* * * * *

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–663–0139.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 413–236–3600.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 215–305–2003.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7063.

* * * * *

■ 5. Amend § 1253.7 by revising paragraphs (a) through (d) to read as follows:

§ 1253.7 Regional Archives.

* * * * *

(a) NARA—Northeast Region (Boston) is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–663–0121.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 413–236–3600.

(c) NARA—Northeast Region (New York City) is located at 201 Varick St., New York, NY 10014–4811. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 212–401–1620.

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at 900 Market St., Philadelphia, PA 19107–4292. The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–597–0921.

* * * * *

Dated: May 29, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–13917 Filed 6–3–03; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD 2003–15288]

RIN 2133–AB48

Regulated Transaction Involving Documented Vessels and Other Maritime Interests; Inflation Adjustment of Civil Monetary Penalties

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1996, as amended by the Debt Collection Improvement Act of 1996, this final rule incorporates inflation adjustments for the civil monetary penalties described in procedural regulations of the Maritime Administration (MARAD, we, us, our) contained in Subpart E of 46 CFR part 221.

EFFECTIVE DATE: This final rule is effective on June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Macey, Attorney-Advisor, Office of Chief Counsel, Division of Maritime Programs, Maritime Administration, at (202) 366–5182, fax (202) 366–7485.

SUPPLEMENTARY INFORMATION:

The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil monetary penalties (CMPs) and promote compliance with law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996

(Pub. L. 104–134) to require Federal agencies to regularly adjust CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, with specified exemptions, and to make further adjustments at lease once every four years thereafter. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996, the Act's effective date, and (ii) should not exceed 10 percent of the penalty indicated.

Method of Calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost of living adjustment. The "cost of living" adjustment is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any calculated increase under this adjustment is subject to a specific rounding formula set in the Act.

Civil Penalties Under 46 U.S.C. 31309 and 31330; 46 App. U.S.C. 808

MARAD has provisions in its regulations at 46 CFR part 221 prescribing procedures for three civil penalties that it may assess under the following authorities:

1. 46 U.S.C. 31309-a general civil penalty of up to $11,000 for violation of 46 U.S.C. Chapter 313-Commercial Instruments and Maritime Liens.

2. 46 U.S.C. 31330-a penalty of up to $27,500 for violation of 46 U.S.C. 31328 or 31329, relating to requirements for trustees of mortgaged vessels and vessel interests and purchasers of documented vessels under order of a district court.

3. 46 App. U.S.C. 808-a penalty of up to $11,000 for the unlawful transfer of a documented vessel or interests therein.

MARAD is amending its regulations at 46 CFR 221.61 to adjust the maximum amount of each of these three civil monetary penalties. Each of the $11,000 maximum penalties in being increased to $12,000. The $27,500 maximum penalty is being increased to $30,000.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104–121

This final rule is exempt from review of OMB under E.O. 12866 because it is limited to the adoption of statutory language without interpretation. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. It also is not considered a major rule for purposes of Congressional review under Pub. L. 104–121.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are so minimal that no further analysis is necessary. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to the notice and comment procedures because they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with notice and comment since this rule only implemented statutory authority as mandated in Pub. L. 104–134, with no issues of policy discretion. Accordingly, opportunity for public comment is unnecessary.

Federalism

We analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Regulatory Flexibility

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Any penalties that may be assessed by MARAD will take into account the party's ability to pay and the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, and history of prior offenses, and other factors that justice may require. The aggregate impact of any enforcement action that might be taken by MARAD on violations will not have a significant economic impact on small businesses entities.

Environmental Assessment

We have analyzed this Final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves civil penalties and has no environmental impact.

Paperwork Reduction

This rulemaking contains no new or amended information collection or recordkeeping requirements which have been or require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This final rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the Federal Civil Monetary Penalty Inflation Adjustment Act of 1996, as amended by the Debt Collection Improvement Act of 1996.

List of Subjects in 46 CFR Part 221

Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Trust and trustees.

■ Accordingly, 46 CFR part 221 is amended as follows:

■ 1. The authority citation continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66 2.

■ 2. Section 221.61 is revised to read as follows:

§ 221.61 Purpose.

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d)), pursuant to 49 U.S.C. 336.

Note: Pursuant to 46 U.S.C. 31309, a general penalty of not more than $12,000 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than $30,000 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than $12,000 for each violation. These penalty amounts are in accordance with Pub. L. 101–410, amended by Pub. L. 104–134. Criminal penalties may also apply to violations of these statutes.

Dated: May 29, 2003.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13954 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–M

Proposed Rules

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 810

[Docket No. FGIS–2003–001]

United States Standards for Wheat.

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), proposes to revise the United States Standards for Wheat to amend the definition of the class Hard White wheat to insert subclasses. The proposed rule would also change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat. Additionally, the rule will insert language into the wheat standard to specify the sample size used to determine sample grade factors. These changes would further help to facilitate the marketing of wheat.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Written comments must be submitted to Tess Butler at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755; or E-mailed to *comments.gipsa@usda.gov*. Please indicate your comment refers to Docket No. FGIS–2003–001, United States Standards for Wheat.

All comments received are available for public inspection at Room 1652, South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, telephone (202) 720–4684 at GIPSA, USDA, STOP 3630, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Fax Number (202) 720–1015.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 33 *export facilities. All of these facilities* are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Further, the regulations are applied equally to all entities. The U.S. wheat industry, including producers (approximately 240,000), handlers (approximately 6,800 domestic elevators), traders (approximately 200 active wheat futures traders), processors (approximately 184 flour mills), merchandisers and exporters are the primary users of the U.S. Standards for Wheat and utilize the official standards as a common trading language to market wheat. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 90 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year (FY) 2002 totaled approximately 24,073,138 metric tons (MT). While most of the 90 registrants are large businesses, we assume that some may be small.

Background

GIPSA established the class Hard White wheat on May 1, 1990. In the Final Rule (54 FR 48735), FGIS stated "that classification by varietal kernel characteristics rather than vitreousness of the kernel is practicable at this time for HWW and SWW since only a few hard endosperm white white (sic) varieties are being produced. FGIS recognizes that if more hard endosperm varieties are released into the marketplace in the future, the classification system may become less practical." FGIS further stated "* * * if clear quality or market distinctions develop * * * it would consider subclasses at a future date".

At that time, a minimum visual color line was established based on the variety *Klasic*, which was produced in California. GIPSA abandoned the *Klasic* color line in 1994, and in 1995 GIPSA issued Program Bulletin 95–15 which in part stated that GIPSA would class all hard endosperm white wheat as hard white. Due to pending release of a hard white variety which closely resembled hard red spring, GIPSA, with industry input and support, established a new color line in 1999 (Program Bulletin 99–8).

In 2001, environmental conditions caused a significant increase in the vitreous kernel content, hence darker visual appearance in some varieties of hard white, resulting in a GIPSA decision to suspend the color line for classification purposes (Program Notice 01–06). The rationale for abandoning the color line was that color had not been an issue in hard white, as grain handlers efficiently segregated it from

red wheat. Producers received premiums for hard white where it was appropriate and processors used the hard white primarily without incident. In addition to the 2001 environmental effect on color, the Hard White wheat market has been impacted by the introduction of many new varieties released by both public and private breeding programs. GIPSA proposes to amend the U.S. Standards for Wheat to better reflect the current and future needs of the Hard White wheat market.

The specific issues for consideration in this rule are (1) designation of subclasses in the class hard white, and (2) amending the definition of Contrasting Classes in hard red wheat classes. While proposing to amend the standards due to Hard White Wheat issues, GIPSA will also propose to include language in the standards which states the amount of wheat within which sample grade factors are determined. This action is proposed to help clarify the application of the standards for U.S. Sample Grade factors.

1. Subclass Designation

Under Program Notice 01–06, "All hard white wheat varieties are considered hard white wheat regardless of color." A common conception is that the domestic milling industry will accept any hard white regardless of seed coat color. This may or may not be true depending on which milling company is being interviewed. Discussions with some U.S. millers led to the conclusion that some millers do consider seed coat color when making purchase and processing decisions. Some milling companies do not yet process much Hard White wheat, thus have few concerns about bran color, and feel if darker Hard White wheat processes well and has acceptable protein content, there is no perceived problem due to bran color.

Depending on the target flour product and the miller's flour extraction goal, the darker colors can present processing challenges. For some high extraction rate flours, darker seed coat color anticipated darker flour color hence final product color problems, requiring millers to add additional bleaching agents and/or cut flour streams in order to meet final product specifications. These processes add additional production costs.

In addition to the domestic millers' position, marketing of Hard White wheat to export customers must be considered. Currently there is interest in Hard White wheat from international customers. Many of these customers view Australian wheat as the benchmark of seed coat color. The major Asia-Pacific customers of U.S. wheat may not have an incentive to purchase Hard White wheat if they view the seed coat color as a detriment. Despite assigning the reason for darker color in 2001 to vitreous kernel content, a high percentage of which is perceived to be a benefit in milling (*e.g.* dark northern spring and hard amber durum), these customers may be hesitant to buy dark Hard White wheat because it may not meet their processing needs. Other international customers may have cultural considerations impacting purchase decisions: red wheat is viewed as appropriate for feeding animals while white wheat is viewed as appropriate for human food. The annual effect of environment cannot be predicted, thus making it impossible to say whether hard white from a given future harvest will be vitreous or not, whether bran coat will be light or dark, and which varieties will be more susceptible to environmental influences and genetic x environmental interactions. One way to facilitate marketing of hard white is to create subclasses which delineate a particular desirable quality factor.

Subclasses tend to highlight positive quality factors. In the case of Hard Red Spring and Durum wheat, subclasses based on vitreous kernel content convey quality factors which are considered indicative of improved *performance, vis-á-vis* milling yield, and premiums are often paid to sellers for these improved performance factors. To delineate the desirable nature of Hard White wheat including both lighter and darker kernels, the subclass approach could be used for Hard White wheat.

For Hard White wheat, the proposed subclass names are Hard White wheat and Hard Amber White wheat, for wheat meeting and exceeding (darker than) the interpretive color line, respectively. These names descriptively reflect the appearance of the kernel color in the overall sample. The naming of the subclasses maintains the convention utilized for Soft White wheat, which includes the subclass Soft White Wheat.

2. Contrasting Classes

Contrasting classes and wheat of other classes are "grade determining" factors. Contrasting classes in wheat essentially means the presence of wheat of opposite color commingled with the dominant class, thus white wheat is contrasting in red wheat and red wheat is contrasting in white wheat. A special case is Durum wheat, which is contrasting in all other market classes except Unclassed wheat, and all other classes are contrasting in Durum wheat. Wheat of other classes essentially means wheat of the same color but of different endosperm texture or growth habit, thus soft red winter and hard red spring are both wheat of other classes in the market class Hard Red Winter wheat.

Grade limits for contrasting classes are substantially tighter than the grade limits for wheat of other classes (2.0 percent vs. 5.0 percent, respectively, at U.S. #2). The tighter grade limit for contrasting classes is due to the perception that quality is compromised by the appearance of a contrasting class and the potential effect on flour color and end product color. In the case of durum wheat, the reasons are the difference in milling behavior of durum, the color of flour from durum and the need to make primarily semolina from Durum wheat.

Commingling of hard white and hard red wheat is problematic depending on which class is dominant. The presence of red wheat in white wheat may degrade the visual appearance of the lot and may raise quality concerns. Since Hard White wheat is a relatively new class, it is important to keep its quality as high as possible in order to expand its marketability, both domestically and internationally.

While flour functionality is not compromised, flour color and enzymatic browning problems may result when these classes are commingled. For some domestic millers, and most millers overseas, flour color is more critical than flour ash. For example, millers selling flour for Asian noodle manufacturing would be highly critical of the presence of red wheat in white wheat, as final product color would be jeopardized. These millers typically grind Australian wheat, which has only white seed coats. While this currently applies primarily to non-U.S. millers, noodles are growing in popularity globally and will likely become an opportunity for U.S. millers in the future.

In the second case, red wheat contains the enzyme polyphenol oxidase (PPO) which when activated, causes the color of a raw noodle to become darker—a serious defect in noodle making. White wheat has much lower PPO than red wheat, therefore causes negligible color change in raw noodles. Minimizing the amount of red wheat in white wheat cargoes is one way to improve the performance of Hard White wheat.

The presence of white wheat in red wheat is perceived by most as different from the presence of red wheat in white wheat. It is useful to examine the situation for classing wheat, especially contrasting classes in hard red. The current practice is to select only distinct white and lightly colored kernels as contrasting. Darker kernels are left in

the sample and count as red wheat kernels.

Most flour milling companies have little to-no concern over the amount of Hard White wheat in a lot of hard red wheat. For these millers, there would be no reason to consider hard white as a contrasting class in hard red wheat. The proposed rule would change the definition of Contrasting Classes for Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class in these two red wheat classes.

The following tables illustrate the current and proposed changes for contrasting classes.

TABLE I (CURRENT)

Minor class	Primary class						
	DU	HRS	HRW	SRW	HW	SWH	UNCL
DU		CCL	CCL	CCL	CCL	CCL	WOCL
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL
HW	CCL	CCL	CCL	WOCL		WOCL	WOCL
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL
UNCL	CCL	CCL	CCL	CCL	CCL	CCL	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

TABLE II (PROPOSED)

Minor class	Primary Class						
	DU	HRS	HRW	SRW	HW	SWH	UNCL
DU		CCL	CCL	CCL	CCL	CCL	WOCL
HRS	CCL		WOCL	WOCL	CCL	CCL	WOCL
HRW	CCL	WOCL		WOCL	CCL	CCL	WOCL
SRW	CCL	WOCL	WOCL		CCL	CCL	WOCL
HW	CCL	WOCL	WOCL	WOCL		WOCL	WOCL
SWH	CCL	CCL	CCL	WOCL	WOCL		WOCL
UNCL	CCL	CCL	CCL	CCL	CCL	CCL	

CCL: Contrasting class.
WOCL: Wheat of other Classes.

3. Sample Size for Sample Grade Factors

GIPSA has received inquiries about the portion size of wheat used to determine Maximum Count Limits of Other Material such as stones, crotalaria seeds, glass, etc., these being Sample Grade factors. In the Official United States Standards for Grain (7 CFR part 810), subparts for certain grains define this portion size. The procedures in the Grain Inspection Handbook—Book II specify the portion size upon which the determination of Other Materials is made on wheat. This proposed change is needed because the standards should transmit this information. Thus GIPSA proposes to amend subpart M to define this amount.

Proposed GIPSA Action

GIPSA is issuing this proposed rule to invite comments and suggestions from all interested persons on how GIPSA can further enhance and best facilitate the marketing of Hard White wheat by inserting subclasses. In addition, the proposed rule would also change the definition of contrasting classes for Hard Red Winter wheat and Hard Red Spring wheat, and specify the sample size used to determine sample grade factors.

Subclass Designation

GIPSA is proposing to establish subclasses in Hard White wheat called Hard White wheat and Hard Amber White wheat. Further, GIPSA will use the existing interpretive color line as the benchmark for determining subclass, whereby wheat darker than the interpretive color line will be classed as Hard Amber White wheat.

To accomplish this, GIPSA proposes to revise § 810.2202(a)(5) to read: "Hard White wheat. All hard endosperm white wheat varieties. This class is divided into the following two subclasses:

(i) Hard White wheat. Wheat which is lighter than or equivalent in color to the interpretive color line photograph.

(ii) Hard Amber White wheat. Wheat which is darker than the interpretive color line photograph."

Contrasting Classes

GIPSA is proposing to amend the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat and its subclasses are not contrasting classes but are considered as wheat of other classes. The grade limit will remain unchanged. For kernel identification, Hard White wheat kernels would be determined by visual assessment and would include the dark colored, amber, white wheat kernels, per the Grain Inspection Handbook, Book II, Chapter 13, Section 13.26. In the case where samples challenge the normal visual inspection process, the alkali test would be utilized to determine kernel color (FGIS-Program Notice 01–07).

GIPSA proposes to revise § 810.2202(b)(1) *Contrasting Classes* to read: "Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.".

Sample Size

GIPSA is proposing to amend the grain standards for wheat to specify the amount of wheat upon which sample grade factor determinations are made. GIPSA proposes to amend § 810.2204 *Grade and grade requirements of wheat* to read: "Other material in one kilogram:" under the sub-heading "Maximum count limits of:".

Comments, including data, views, and other information are solicited from interested persons. Pursuant to section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Secretary, the public health, interest, or safety require that they become effective sooner.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set out in the preamble 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 810.2202 is amended by revising paragraphs (a)(5) and (b)(1) to read as follows:

§ 810.2202 Definition of other terms.

* * * * *

(5) *Hard White wheat.* All hard endosperm white wheat varieties. This class is divided into the following two subclasses:

(i) *Hard White wheat.* Wheat which is lighter than or equivalent in color to the interpretive color line photograph.

(ii) *Hard Amber White wheat.* Wheat which is darker than the interpretive color line photograph.

* * * * *

(b) * * *

(1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

* * * * *

3. Section 810.2204(a) is revised as follows:

Grades and Grade Requirements

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels:					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0
Total [1]	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: [2]					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total [3]	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other material in one kilogram:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substances	3	3	3	3	3
Total [4]	4	4	4	4	4
Insect-damaged kernels in 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
(b) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor) or

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
(c) Is heating or of distinctly low quality.					

[1] Includes damaged kernels (total), foreign material, shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, or unknown foreign substance.

* * * * *

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–13772 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–EN–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245–AE76

Small Business Size Regulations; Small Business Innovation Research Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to revise its small business size regulations to allow a small business that is owned and controlled by another business concern to be eligible for funding agreements under the SBA's Small Business Innovation Research (SBIR) Program. The proposed rule does not change the size standard requiring that an eligible small business concern, with its affiliates, have no more than 500 employees. The rule proposes to modify the small business eligibility requirements so that the SBIR awardee must meet one of the two following additional criteria: It must be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently requires); or it must be a for-profit business concern that is 100% owned and controlled by another for-profit business concern that is itself at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States.

DATES: Comments must be received on or before July 7, 2003. Upon request, the SBA will make all public comments available.

ADDRESSES: Address written comments to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416. You may submit comments via email to *sizestandards@sba.gov*, or via facsimile at (202) 205–6390. You may also submit comments electronically to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Maurice Swinton, Assistant Administrator for Technology, at (202) 401–6365. You may also email questions to *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The Small Business Innovation Development Act of 1982 (SBIDA) (Pub. L. 97–219) established the SBIR Program. This document can be found at *http://thomas.loc.gov/bss/d097/d097laws.html*. According to its legislative history, SBIDA was enacted to increase the rate of productivity in the United States by increasing technological innovations, especially those innovations of small concerns. In addition, the SBIR Program was created to increase the efficiency of federally funded research and development (R&D) by providing a long-needed mechanism to enable agency personnel to tap the resources of small, innovative firms; to facilitate the conversion of federally funded research results into commercially viable products and services; and to increase the share of the Federal R&D budget awarded to small businesses.

The SBA's Small Business Size Regulations establish small business eligibility criteria for receiving awards under the SBIR Program (13 CFR 121.701–121.703). Section 121.702(a) states that to be eligible to compete for award of an SBIR funding agreement, a business concern must "(b)e at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; * * *." A concern may not receive an SBIR award if it is more than 50% owned and controlled by another business concern, such as a corporation or partnership, even if that concern is at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States.

SBIR Program managers at participating agencies will often receive a proposal from a concern that is owned by another concern. The concern's size, together with its parent company, will often be below the 500 employee small business size standard for an award, while its parent is at least 51% owned and controlled by one or more U.S. citizens or permanent resident aliens. However, because it is more than 50% owned by this other concern, it is ineligible for an SBIR award. Consequently, potential SBIR awards go unawarded because there may be no other meritorious and feasible proposals from qualified concerns, and the innovations of otherwise eligible small business concerns go unfunded.

The SBA believes that when Congress established the SBIR Program and when the SBA initially wrote its regulations to comply with SBIDA, there were few if any small businesses wholly owned by other entities interested in participating in the program. SBIDA did not preclude the SBA from including them in the program with its original regulations, which it could have done had it been aware that they existed as potential participants.

The SBA's experience over the last several years has led it to believe that it should reconsider its policy on this eligibility restriction. The SBA is particularly concerned about the anomalous situation that occurs under the current regulations. A parent company with a wholly owned subsidiary can compete as an eligible small business for SBIR funding, but its wholly subsidiary cannot compete in its own name. The SBA believes this is an unnecessary restriction which results in either a wholly owned subsidiary not competing or having to compete through the parent company (which it would not otherwise do).

The SBA's Proposals

Without modifying the size standard requiring that a concern, together with its affiliates, may have no more than 500 employees, the SBA proposes to revise § 121.702 to allow an SBIR funding awardee to be either:

(1) A for-profit business concern, as defined in § 121.105, that is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; *or,*

(2) A for-profit business concern that is 100% owned by another for-profit business concern, as defined in § 121.105, that is itself at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States.

The SBA also proposes to revise the first sentence of § 121.702 by changing "To be eligible to compete for award * * *" to "To be eligible for award * * *" Under this proposed change, an applicant for an SBIR award would not need to meet the eligibility requirements when it submits its proposal. Rather, the applicant would have to be eligible at the time of the award. Section 121.702 is the only regulatory reference requiring that the applicant be eligible for an award. This proposed change would make § 121.702 consistent with § 121.704, which sets forth when the SBA determines the size status of a business concern, and with the "Policy Directive for the Small Business Innovation Research (SBIR) Program" (Directive) (67 FR 60072, dated September 24, 2002), both of which require that the concern be eligible when it receives the SBIR award.

This proposed rule broadens program eligibility, but at the same time it adheres to the purpose of the SBIR Program—it seeks to increase productivity in the U.S. by increasing innovations of U.S. owned small business concerns. This proposed rule addresses only the ownership component pertaining to SBIR eligibility, maintains the 500 employee size standard, and changes no part of the definition of "concern" in § 121.105 and in the Directive. That is, a concern must be, besides meeting the 500 employee size standard, organized for profit, have a place of business located in the United States, and operate primarily within the United States or make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

Request for Comments

The SBA seeks the public's comment on this proposed rule, and requests specific comments on at least the following:

(1) Whether a business concern owned by another business concern should be eligible for award of funding agreements in the SBA's SBIR Program;

(2) Whether ownership of the SBIR awardee should be limited to only one other concern, or whether the awardee could be owned by more than one business concern;

(3) If the SBIR awardee could be owned by more than one other concern, how SBIR Program managers could be assured that the ultimate ownership of the awardee is "at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States;"

(4) How many firms may become eligible for SBIR awards under this proposed rule, if the SBA adopts it as a final rule;

(5) Whether the increased number of eligible business enterprises would create additional competition that would adversely affect research and development (R&D) concerns that meet the current ownership requirement;

(6) Whether permitting an R&D concern owned and controlled by another for-profit business concern that is itself "at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States" is consistent with the Congressional intent that the SBIR Program benefit small U.S. business concerns.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Small business size standards determine what businesses are eligible for Federal small business programs. This proposed rule will not affect small business size standards, but may affect the number of awards to different small businesses pursuant to the SBIR Program. The SBA's Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Need for This Regulatory Action

The SBA believes it should revise its Small Business Size Regulations to allow small businesses wholly owned by other for-profit business concerns to participate in the SBIR Program, because doing so will render the SBIR size eligibility requirements more consistent with the intent of Congress in SBIDA. Under § 121.702(a), an R&D company eligible for SBIR funding can be of any legal form, and must meet two criteria: (1) it must be organized for profit, that is, it must meet the definition of "business concern" in § 121.105; *and* (2) it must be 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. However, if that eligible concern has a wholly owned subsidiary, the rule precludes the subsidiary from being eligible for SBIR funding. This is true, even though the employees of the subsidiary are included in determining whether the eligible concern meets the 500 employee size standard. As discussed in the Preamble, the SBA believes this is an unnecessary restriction on potential SBIR participants.

Modifying the type of concern that could receive an SBIR award will raise the number and quality of technological innovations by small concerns, as Congress intended in SBIDA. Agency SBIR Program managers will be able to involve more small businesses in the SBIR Program, make awards that Congress and their agencies have funded but would likely go unawarded, and administer the program more consistently.

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of what it means to be a small business and define what small businesses are eligible for various Federal Government programs. The Small Business Act (15 U.S.C. 632(a)) delegates responsibility for establishing small business definitions to the SBA Administrator.

R&D concerns compete for SBIR awards based on technology, merit, feasibility and commercialization plans, not on cost. Newly eligible concerns might compete with one another for the SBIR awards that generally go unawarded, and with current program participants for all program awards as well. The proposed revision is consistent with the SBA's statutory mandate to assist small business. This proposed regulatory action will promote the Administrator's objectives. One of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit. Reviewing and modifying the SBA's Small Business Size Regulations, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

2. Potential Benefits and Costs of This Regulation

Small R&D concerns that become eligible for SBIR Program awards will be the primary beneficiaries of this rule. Specifically, benefits will flow to some concerns that are currently ineligible for SBIR awards solely because they are wholly owned subsidiaries. If the SBA adopts this proposal as a final rule, small concerns that are 100% owned and controlled by another for-profit business concern that is itself 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, will be eligible for SBIR awards; that is, provided it meets the 500 employees size standard and any other SBIR eligibility requirements.

The SBA cannot accurately determine how many concerns will be competing for SBIR awards because there are no data on business size by organizational structure to support a reasonable estimate. However, the SBA believes that there are about 50 to 100 concerns that might benefit. The SBA bases this estimate on the fact that a small number of such concerns have made inquiries about the program or expressed an interest in participating. Also, SBIR Program managers have relayed to the SBA their experiences with having to deny awards to those concerns that do apply. The SBA believes that these companies should not be precluded from participating. The SBA welcomes comments discussing the potential number of concerns that could become eligible under this rule and on the effect their eligibility would have on other small concerns.

In fiscal year 2002, SBIR awards totaled about 5,000 and $1.5 billion in funding. The SBA estimates that as much as $85 million could be awarded annually to newly eligible concerns. Phase I awards are as large as $100,000, and Phase II awards can be as high as $750,000. The maximum number of annual awards could be as high as 100, a 2% increase each year. If the maximum number of SBIR awards were made for their maximum possible award amounts, this could represent an additional $85 million awarded to small R&D concerns. However, the average SBIR award is about $300,000, based on the SBIR Program's current annual average of approximately 5,000 awards and $1.5 billion. An additional 100 (estimated maximum number) SBIR awards to R&D concerns would more likely total about $30 million. This, rather than $85 million, reflects the more realistic benefits to the newly eligible concerns.

Federal Government agencies with SBIR Programs will also benefit, because they will be able to tap the resources of small innovative firms, to facilitate the conversion of federally funded research results into commercially viable products and services, and to increase the share of the Federal R&D budget awarded to small businesses, as discussed in SBIDA's legislative history, more than they do now. Because that is Congress' intent, the rule, if the SBA adopts it as final, will further help Federal agencies to meet their mandate to assist small business concerns. There could be up to 2% more small business concerns that receive SBIR awards. Not only will there be more concerns competing for SBIR awards, but there will be more awards made to more small businesses.

The Federal Government's increased cost will equal the additional SBIR awards made because more concerns will be eligible under this proposed rule. However, it will require no additional appropriations for the participating agencies. Presently, some SBIR funds are unspent. Applicants with meritorious and feasible proposals are ineligible because they are wholly owned subsidiaries of other concerns, not because they with their affiliates exceed the 500 employee size standard. This rule, therefore, may possibly increase the cost to the government by up to $85 million per year in funds spent. However, the awards would come from already appropriated and budgeted SBIR funds, ordinarily left unspent.

The SBA estimates that there will be relatively few distributional effects if this proposed rule is adopted. The 50 to 100 annual awards that are unawarded not only do not go to small businesses, but they do not go to any concerns. Again, as stated above, The SBA cannot accurately determine how many concerns might become eligible for these awards, because there are no data to support an estimate of the distributional effects, but the SBA believes it could be no more than 100 awards made to newly eligible concerns. These newly eligible concerns may obtain SBIR funding that would otherwise be awarded to existing small concerns. With the relatively small proportion of additional firms and the fact that few small concerns obtain multiple SBIR awards, the SBA believes only a few small concerns could lose SBIR opportunities. If so, it is important to note that the newly eligible firms are not more competitive due to size, but differ only on the basis of organizational structure. The SBA specifically requests comments on the proposal's impact on current SBIR participants.

This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or recordkeeping requirements, other than those now required of the SBA and Federal agencies that request R&D proposals under the SBIR Program. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, the SBA has determined that this rule may have a significant economic effect on a substantial number of small entities. The SBA estimates that an additional 50 to 100 small concerns may become eligible for the SBIR Program and obtain up to $85 million in funding agreements. Immediately below, the SBA sets forth an Initial Regulatory Flexibility Analysis (IRFA) of this rule providing the following: (1) The need for and objective of the rule; (2) a description and estimate of the number of small concerns to which the rule will apply; (3) projected reporting, recordkeeping, and other compliance requirements of the rule; (4) relevant Federal rules that may duplicate, overlap or conflict with the rule; and (5) alternatives to allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities.

(1) Need and Objective of the Rule

There are, the SBA believes, a number of concerns that are currently precluded from participating in the SBIR Program, solely because of their ownership structure. Approximately 50 to 100 SBIR awards go unawarded annually because there are no meritorious and feasible proposals from qualified concerns that could be eligible, except for the fact that they do not meet the ownership criteria to participate in the SBIR Program. Congress, with SBIDA, did not define what concerns were eligible based on ownership; it stated that the purpose of the SBIR Program is to increase the share of the Federal R&D budget awarded to small businesses. The SBA proposes to make eligible concerns that are wholly owned by other for-profit business concerns eligible for SBIR awards. If the parent concern is not organized for profit, the subsidiary would not be eligible because not-for-profit entities are not eligible for the SBIR Program. Further, the legislative history of SBIDA states that small business concerns have trouble competing with not-for-profit entities. The proposed change to size eligibility for the SBIR Program will more accurately define the type of small concern that the SBA believes meets the intent of Congress in SBIDA.

(2) Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The SBA cannot determine precisely how many concerns would become eligible as a result of this rule, if adopted, because it has no data on how many wholly owned subsidiaries there are in the United States. In fiscal year 2002, there were about 5,000 annual SBIR awards for approximately $1.5 billion, less than 2% of which are multiple awards. The SBA believes that between 50 to 100 concerns will become eligible under this rule, as discussed above.

The SBA believes that the additional eligible concerns will not have a significant impact on existing small concerns. While there are approximately 5,000 annual SBIR awards, over 98% are awarded to concerns that receive no other awards during the year. That is, there are approximately 4,900 awards in any given year to approximately 4,900 individual concerns. The SBA estimates that there are on average three concerns competing for any given award. There would be, therefore, about 15,000 concerns seeking SBIR awards. The SBA does not believe that an additional 100 competitors, about 0.7%, will add significant competition for SBIR awards.

The SBA recognizes that newly eligible firms might be viewed as competition for those firms now receiving awards, because this rule could increase the number of concerns eligible for SBIR. However, newly eligible firms under this rule will not be larger in size than current participants. This rule will not increase the population of eligible firms by adding larger concerns; it will only add concerns with different ownership structures. Therefore, newly eligible concerns competing for SBIR awards will not have the benefits that generally accrue to larger concerns. While there will be a small increase in the number of concerns competing, they will not be more competitive due to their size.

The SBA also believes that many of the applicants who have been denied SBIR awards, or others that do not apply, are wholly owned subsidiaries of current and past participants in the SBIR Program. If the proposed rule is implemented as final, wholly owned subsidiaries of concerns that have in the past or that now participate in the SBIR Program can receive SBIR awards, provided they are otherwise eligible. The SBA's experience is that some participating concerns subcontract, to the degree permitted by the Directive, some of their projects to their subsidiaries. The SBA does not object to this practice. The SBA believes these concerns would prefer to have their subsidiaries eligible to submit proposals and receive awards. Further, when the parent concern is eligible, the SBA does not consider its newly eligible subsidiary as adverse competition for SBIR Program awards. The SBA has specifically requested comments on this issue in the Supplementary Information above to assess how this proposed rule will effect competition in the SBIR Program.

Participating agencies have no limit to the number and amount of awards they may make in a given fiscal year. The agencies have goals and objectives, but they are not limited to those levels. This rule, if the SBA adopts it as a final rule, will open up opportunities for more small R&D concerns to participate in the SBIR Program.

(3) Projected Reporting or Recordkeeping, or Other Compliance Requirements of This Rule

This proposed eligibility requirement does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA's programs. It also does not create additional costs on a business to determine whether or not it qualifies as a small business. A business need only examine existing business information to determine its eligibility, such as its Federal tax returns. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(4) Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Rule

The SBA's Small Business Size Regulations may in some instances overlap other Federal rules that use the SBA's small business size standards to define a small business. However, this proposed rule is limited to a single program and does not conflict with other regulatory requirements, or any small business program, other than the SBIR Program's Policy Directive. However, if this proposed change is adopted as final, the SBA will amend the Directive so that it is consistent with this rule.

(5) Alternatives To Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities

The SBA considered permitting concerns that are less than wholly owned by other concerns, or are owned by more than one other concern, to be eligible for SBIR awards. The SBA believes that in such cases it would be virtually impossible to assure that SBIR awardees are ultimately at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. To verify eligibility under those circumstances could require more reporting requirements for SBIR applicants. The SBA believes that the additional reporting requirements from applicants to prove their small business status would unnecessarily burden small concerns. The SBA is also concerned about how SBIR Program managers could be assured that the ultimate ownership of the awardee is an eligible small business for the SBIR Program under this alternative. However, the SBA specifically requests comment on whether this alternative is administratively feasible.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the Preamble, the SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 638, 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.702 to read as follows:

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the following criteria:

(a) The concern must be either:

(1) At least 51 percent owned and controlled by one or more individuals who are citizens of the United States, or

permanent resident aliens in the United States; or,

(2) 100 percent owned and controlled by another business concern that is itself at least 51 percent owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; and

(b) Not have more than 500 employees, including affiliates.

Dated: April 9, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–14036 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–50–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600); A310; A319; A320; A321; A330; and A340 Series Airplanes; Equipped With PPG Aerospace Windshields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain PPG Aerospace windshields. This proposal would require replacement of certain windshields manufactured by PPG Aerospace with new windshields. This action is necessary to prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–50–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–50–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain windshields manufactured by PPG Aerospace. The DGAC advises that, after landing, an operator reported breakage (failure of both structural plies) of a windshield. Investigations performed by the manufacturer identified the cause of the failure of both structural plies as abnormal localized overheating of the power lead wire located between the structural plies of the windshield. The localized overheating was caused by electrical arcing between the power lead wires that supply power to the upper bus bar from the terminal block due to damage to the wire during manufacturing rework in production. During rework, the wire migrated away from the windshield interlayer and was accidentally damaged by a sharp tool during removal of the windshield pressure seal. Failure of both structural plies of the windshield caused by overheating of the power lead wire, if not corrected, could result in reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight.

Explanation of Relevant Service Information

Airbus has issued the All Operators Telexes (AOT) specified in Table 1 of this AD, which describe procedures for replacement of certain windshields manufactured by PPG Aerospace with new windshields. Accomplishment of the actions specified in the AOTs is intended to adequately address the identified unsafe condition. The DGAC classified these AOTs as mandatory and issued French airworthiness directive 2001–606(B), dated December 12, 2001, in order to assure the continued airworthiness of these airplanes in France.

The Airbus AOTs reference PPG Aerospace Service Bulletin NP–175201–56–001, dated September 26, 2001, as an additional source of service information for accomplishing the replacement proposed in this AD.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOTs described previously.

Clarification of AOT Document Number

Operators should note that the French airworthiness directive incorrectly references the document number for the AOT applicable to Model A300–600 series airplanes as Airbus AOT A300–56A6004. The correct document number is A300–600–56A6004.

Cost Impact

We estimate that 622 airplanes of U.S. registry would be affected by this proposed AD. Currently, there are no Model A340 series airplanes on the U.S. registry.

The following table shows the estimated cost impact to do the proposed actions for airplanes affected by this proposed AD. The following table also shows the estimated cost impact for Model A340 series airplanes affected by this proposed AD, should an affected airplane be imported and placed on the U.S. Register in the future. The average labor rate is $60 per work hour, and there are 2 windshields per airplane. The estimated maximum cost for all airplanes affected by this proposed AD is $11,979,720 (assuming both windshields must be replaced on all affected airplanes); however, some warranty relief may be available.

Model	Number of U.S.-registered airplanes	Work hours per windshield (estimated)	Parts cost per windshield (estimated)	Maximum cost per airplane (estimated)
A300 B2 and B4, A300–600, A310, A319, A320, A321, A330	622	8	$9,150	$19,260
A340	0	8	9,150	19,260

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–50–AD.

Applicability: Airplanes listed in Table 1 of this AD, certified in any category, as follows:

TABLE 1.—APPLICABILITY

Model—	Equipped with PPG Aerospace windshields having—	
	Part Nos. (P/N)—	And Serial Nos. (S/N) as listed in—
A300 B2 and B4 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A300–56A0011, dated October 2, 2001.
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600 airplanes.	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A300–600–56A6004, dated October 2, 2001.
A310 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A310–56A2005, dated October 2, 2001.
A319, A320, and A321 series airplanes	NP–165311–2, NP–165311–3, NP–165311–4, NP–165311–5, or NP–165311–6.	Airbus All Operators Telex A320–56A1010, Revision 01, dated October 1, 2001.
A330 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A330–56A3005, dated October 2, 2001.
A340 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A340–56A4005, dated October 2, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight, accomplish the following:

Windshield Replacement

(a) Within 6 months after the effective date of this AD, replace windshields manufactured by PPG Aerospace having certain P/Ns and S/Ns listed in the applicable Airbus all operators telex (AOT) listed in Table 1 of this AD with new windshields, per the applicable Airbus AOT listed in Table 1 of this AD.

Note 2: The Airbus AOTs reference PPG Aerospace Service Bulletin NP–175201–56–001, dated September 26, 2001, as an additional source of service information for accomplishing the replacement required by this AD.

Part Installation

(b) As of the effective date of this AD, no person shall install on any airplane a windshield manufactured by PPG Aerospace having a certain P/N and S/N listed in the applicable AOT listed in Table 1 of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–606(B), dated December 12, 2001.

Issued in Renton, Washington, on May 28, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13977 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model 717–200 airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). This action is necessary to detect and correct fatigue cracking of certain safe-life structure and certain PSEs, which could adversely affect the structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–325–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–325–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As service experience is accumulated on airplanes or as the result of post-certification testing and evaluation, it may become necessary to revise removal limits for removal of certain life-limited components of the airplane or revise the interval for certain structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations document to include more restrictive life limits or revise repetitive intervals for certain non-destructive inspection (NDI) techniques and procedures for each principal structural element (PSE). For the purposes of this airworthiness directive, a PSE is defined as an element of structure that contributes significantly to carrying flight, ground, and pressurization loads. If a failure occurs on any of those PSEs, it could adversely affect the structural integrity of the airplane.

Boeing has completed analyses of certain safe-life structure on Model 717–200 airplanes. The results of these analyses indicate that removal limits of certain components of the flap system must be revised. Additionally, new data also indicate that the interval for inspections to detect fatigue cracking for certain PSEs also must be revised.

The actions specified by the proposed AD are intended to detect fatigue cracking of certain safe-life structure and certain PSEs and to require removal of certain safe-life structure in a timely manner. Such fatigue cracking, if not detected and corrected, could adversely affect the structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing 717–200 Airworthiness Limitations Instructions (ALI), Boeing Report Number MDC–96K9063, Revision 3, dated August 2002. Among other things, Revision 3 contains mandatory removal limits for certain components of the flap system and revises some intervals for inspections for fatigue cracking of certain PSEs. Additionally, Revision 3 corrects certain part numbers specified in an earlier ALI revision, adds some flap idler hinge parts to the PSE removal limits, and corrects some typographical errors that appeared in an earlier ALI revision. Accomplishment of the actions specified in the ALI is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require operators to revise the Boeing 717–200 ALI to incorporate Boeing Report Number MDC–96K9063, Revision 3, dated August 2002.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to special flight permits and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

Cost Impact

There are approximately 133 Model 717–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,480, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–325–AD.

Applicability: All Model 717–200 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain safe-life structure and certain principal structural elements, which could adversely affect the structural integrity of the airplane; accomplish the following:

Revising Airworthiness Limitations Section

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspection intervals or removal times may be approved for the safe-life limited parts specified in Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on May 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13978 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 97–22–16, which applies to certain Raytheon Model 1900, 1900C, and 1900D airplanes. AD 97–22–16 currently requires you to replace the bearings on the vent blower assemblies with improved design bearings and install a thermal protection device for the vent blowers. That AD resulted from reports of vent blower assembly bearings seizing and locking the blower motor on several of the affected airplanes. This proposed AD is the result of reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning. This proposed AD would retain the actions required in AD 97–22–16 for certain vent blower assemblies and require you to incorporate further product improvement modifications on all affected vent blower assemblies. The actions specified by this proposed AD are intended to prevent smoke from entering the cockpit and cabin due to the current configuration of vent blower assemblies, which could result in the pilot becoming incapacitated or impairing her/his judgment. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 4, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–16–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–16–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–16–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Reports of the vent blower assembly bearings seizing and locking the blower motor on several Raytheon Model 1900, 1900C, and 1900D airplanes caused us to issue AD 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997). AD 97–22–16 currently requires the following on certain Raytheon Model 1900, 1900C, and 1900D airplanes:

—Incorporating a modification to replace the bearings in the vent blower assemblies with improved design bearings (Electromech Technologies Kit No. EM630–201–1 or EM630–201–2 (as appropriate for the blower serial number)); and

—Installing a thermal protection for the vent blowers (Electromech Technologies Kit No. EM630–201–1 or EM630–201–2 or Advanced Industries Kit No. BC80A905 (as appropriate for the blower serial number)).

What Has Happened Since AD 97–22–16 To Initiate This Proposed Action?

The FAA has received reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning.

Is There Service Information That Applies to This Subject?

Raytheon has issued Mandatory Service Bulletin SB 21–3448, Issued: October, 2002.

What Are the Provisions of This Service Information?

This service bulletin includes procedures for incorporating Electromech Technologies Modification Kit No. P/N 630–203–1 and Advanced Industries Modification Kit No. Kit No. P/N BC80A–901–3.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 1900, 1900C, and 1900D airplanes of the same type design;

—The actions specified in AD 97–22–16 and the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 97–22–16 with a new AD that would retain the actions required in AD 97–22–16 for certain vent blower assemblies and require you to incorporate further product improvement modifications for all affected vent blower assemblies.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 300 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$415 (for both the forward and aft ventilation blower assemblies).	$595	$595 × 300 = $178,500

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997), and by adding a new AD to read as follows:

Raytheon Aircraft Company: Docket No. 2003–CE–16–AD; Supersedes AD 97–22–16, Amendment 39–10187.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with vent blower assembly, part number 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7.

Model	Serial Nos.
1900	UA–3.
1900C	UB–1 through UB–74 and UC–1 through UC–174.
1900 (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–427.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent smoke from entering the cockpit and cabin due to the current configuration of vent blower assemblies, which could result in the pilot becoming incapacitated or impairing his/her judgment. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the maintenance records to determine if a part number (P/N)114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed.	Within the next 800 hours time-in-with service (TIS) after the effective date of this AD, unless already accomplished.	In accordance Raytheon Aircraft Mandatory Service is Bulletin SB 21–3448, Issued: October, 2002. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(2) If, by checking the maintenance records, the owner/operator can definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is not installed, no further action is required by this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Prior to further flight after the maintenance records check required in paragraph (d)(1) of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(3) If, by checking the maintenance records, the owner/operator can definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed, accomplish the following for each P/N: (i) *P/N 114–380028–1:* modify in accordance with Raytheon Service Bulletin No. 2721, Issued: January, 1997, prior to incorporating Electromechanic Technologies Modification Kit No. P/N 630–203–01 and changing the P/N to 114–380028–11. (ii) *P/N 114–380028–3:* incorporate Advanced Industries Modification Kit No. P/N BC80A–901–3 and change the P/N to 114–380028–9. (iii) *P/N 114–380028–5 with a serial number (S/N) of 2162 or above or with a S/N of 2162 with an "A" suffix:* no modification is required. Change the part number to 114–380028–11 and make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Accomplish all modifications prior to further flight after the maintenance check required in paragraph (d)(1) unless already accomplished.	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.

Actions	Compliance	Procedures
(iv) *P/N 114–380028–5 with a S/N prior to 2162 without an "A" suffix:* incorporate Electromechanic Technologies Modification Kit No. P/N 630–203–01 and change the P/N to 114–380028–11. (v) *P/N 114–380028–7:* incorporate Advanced Industries Modification Kit No. P/N BC80A–901–3 and change the P/N to 114–380028–9.		
(4) If the pilot cannot definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed through the maintenance records check, an appropriately-rated mechanic must perform an inspection to determine the P/N of the installed ventilation blower assembly and accomplish the applicable modification required in paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) of this AD.	Inspect within the next 800 hours TIS after the effective date of this AD. Perform all modifications prior to further flight.	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.
(5) Do not install any P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly, unless it has been modified as specified in paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) of this AD.	As of the effective date of this AD	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 97–22–16, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 97–22–16, Amendment 39–10187.

Issued in Kansas City, Missouri, on May 28, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13979 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 97–20–14, which applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. AD 97–20–14 currently requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before flight into known or forecast icing conditions after a certain date. AD 97–20–14 was the result of the Federal Aviation Administration's analysis that the training level of the pilots-in-command (PIC) of the MU–2B series airplanes made it difficult for pilots to recognize adverse operating conditions and operate safely while flying in icing conditions. Since issuance of AD 97–20–14, a new training video has been developed that includes information that is critical to safety of the MU–2B series airplanes. This proposed AD would require updating the AFM information to require this new video as the mandatory pilot training. The actions specified by this proposed AD are intended to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 5, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–22–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may view information related to this proposed AD at the address above.

FOR FURTHER INFORMATION CONTACT: Contact one of the following for questions or more information related to this subject:

—*For General Icing Related Questions:* Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097;
—*For Questions Relating to Airplanes on Type Certificate Data Sheet (TCDS) A2PC:* Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; or
—*For Questions Relating to Airplanes on TCDS A10SW:* Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–22–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Analysis that the training level of the pilots-in-command (PIC) of the MU–2B series airplanes made it difficult for them to recognize adverse operating conditions and operate safely while flying in icing conditions caused FAA to issue AD 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997). AD 97–20–14 currently requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation consists of the following:

On or after November 15, 1997, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Biennial Icing Awareness Training (IAT), Mitsubishi Training Video No. YET–97336. This eight-hour training became available September 22, 1997, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Mitsubishi at (972) 980–5001. Training is also available at the Flight Safety International (Houston) and Reese Howell Enterprises training facilities. Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

What Has Happened Since AD 97–20–14 To Initiate This Proposed Action?

Since issuance of AD 97–20–14, Mitsubishi has developed a new training video, and FAA has determined that it includes information that is critical to the safety of the MU–2B series airplanes. This information includes:

—Procedures to recognize severe icing conditions that may overpower the propeller ice protection system and result in rapid airspeed loss without significant airframe ice accretion;
—Pneumatic deicing boot activation procedures as required by AD 2000–02–25, Amendment 39–11543 (65 FR 5422, February 4, 2000); and
—A clarified definition of icing conditions that is critical for operation of the engine ice protection system.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design Mitsubishi MU–2B series airplanes if the PIC is not proficient in the operating conditions of these airplanes;
—The actions of AD 97–20–14 should be changed to incorporate the new training video; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 97–20–14 and would require incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation would consist of the following:

On or before ____ (6 months after the effective date of this AD), no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi Icing Awareness Training (IAT) video YET–01295. If training mandated by AD 97–20–14 has been received in the 24 months before ____ (6 months after the effective date of this AD), then the new training must be done no later than 24 months after the date of the AD 97–20–14 training. This eight-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 248–3108. Training is also available at the Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 300 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

The pilot can accomplish all the work associated with this proposed action. We estimate less than 1 hour to incorporate the information into the AFM and another 8 hours to view the training video.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of the proposed AFM incorporation is "within the next 10 days after the effective date of this AD." The actual viewing of the training video would be incorporated into the current schedule of the video required by AD 97–20–14.

Why Is This Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The unsafe condition described in this proposed AD is not a direct result of airplane design or operation, but is attributed to the expertise and knowledge of the PIC. For this reason, FAA has determined that a compliance time based upon calendar time should be proposed instead of a certain number of hours TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997), and by adding a new AD to read as follows:

Mitsubishi Heavy Industries, Ltd.: Docket No. 2003–CE–22–AD; Supersedes AD 97–20–14, Amendment 39–10150.

(a) *What airplanes are affected by this AD?* This AD affects Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Incorporate information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation would consist of the following: "On or before _____ (6 months after the effective date of this AD), no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi IAT video YET–01295. If training mandated by AD 97–20–14 has been received in the 24 months before _____ (6 months after the effective date of this AD), then the new training must be done no later than 24 months after the date of the AD 97–20–14 training. This eight-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 248–3108. Training is also available at Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement".	Do the AFM incorporation within the next 10 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the AFM incorporation requirement of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4110; facsimile: (816) 329–4090.

(2) For information on any already approved alternative methods of compliance, contact Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

(3) Alternative methods of compliance approved in accordance with AD 97–20–14, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may view information related to this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 97–20–14, Amendment 39–10150.

Issued in Kansas City, Missouri, on May 28, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13980 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14905; Airspace Docket No. 03–AGL–04]

Proposed Modification of Class E Airspace; Cheboygan, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Cheboygan, MI. Standard Instrument Approach Procedures (SIAPS) have been developed for Cheboygan County Airport, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Cheboygan County Airport.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–14905/ Airspace Docket No. 03–AGL–04, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14905/Airspace Docket No. 03–AGL–04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Cheboygan, MI, for Cheboygan County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Cheboygan, MI [Revised]

Cheboygan County Airport, MI
(Lat. 45°39′13″ N., long. 84°31′09″ W.)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cheboygan County Airport.

* * * * *

Issued in Des Plaines, Illinois on May 20, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–14069 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14906; Airspace Docket No. 03–AGL–05]

Proposed Modification of Class E Airspace; West Union, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at West Union, OH. Standard Instrument Approach Procedures (SIAPS) have been developed for Alexander Salamon Airport, West Union, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing

controlled airspace for Alexander Salamon Airport.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–14906/ Airspace Docket No. 03–AGL–05, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14906/Airspace Docket No. 03–AGL–05." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at West Union, OH, for Alexander Salamon Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 7.1. [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 West Union, Oh [Revised]

West Union, Alexander Salamon Airport, OH
(Lat. 38°51'05" N., long. 83°33'59" W.)
That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Alexander Salamon Airport.

* * * * *

Issued in Des Plaines, Illinois on May 20, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–14070 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 343

[Docket No. 77N–0941]

RIN 0910–AA01

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of the Tentative Final Monograph, and Related Labeling; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until September 2, 2003, the comment period on the agency's proposal to amend the tentative final monograph (TFM) for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic (IAAA) drug products to include ibuprofen as a generally recognized safe and effective analgesic/antipyretic active ingredient for OTC use and to amend its regulations to include consistent allergy warnings for OTC IAAA drug products containing nonsteroidal antiinflammatory active ingredients. The proposal was published in the **Federal Register** of August 21, 2002 (67 FR 54139). FDA is taking this action in response to a request for an extension of 90 days for the submission of comments on the proposed rule. The comment period for this information closed on November 19, 2002.

DATES: Submit written or electronic comments by September 2, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 21, 2002 (67 FR 54139), FDA published a proposed rule to amend the TFM for OTC IAAA drug products to include ibuprofen as a generally recognized safe and effective analgesic/antipyretic active ingredient for OTC use and to amend its regulations to include consistent allergy warnings for OTC IAAA drug products that contain nonsteroidal antiinflammatory active ingredients.

The proposed rule was in response to a citizen petition and a comment to that petition and is part of FDA's ongoing review of OTC drug products. Based on the information submitted and other relevant information, FDA determined that ibuprofen in a 200-milligram (mg) tablet formulation for use in adults and children 12 years of age and older, at a maximum daily dose of 1,200 mg, qualifies as safe and effective for inclusion in an OTC drug monograph when labeled with adequate warnings and directions for use. Therefore, FDA proposed to include ibuprofen 200 mg, in tablet formulation, in 21 CFR 343.10(g) as a safe and effective ingredient for the relief of pain and fever in adults and children 12 years of age and older and to include specific warnings and directions for use in 21 CFR 343.50(c) and (d).

The agency also tentatively concluded that, for consistency, the "Allergy alert" and additional allergy warning statements required for certain OTC NSAID IAAA drug products should be extended to all such products, whether marketed under an OTC drug monograph or an NDA/ANDA. These standardized allergy alert and warning statements (in proposed § 201.324) would provide the following information:

(a) "**Allergy alert:** [insert name of active ingredient (first letter of first word for ingredient in uppercase)] may cause a severe allergic reaction which may include:

- hives.
- facial swelling.
- asthma (wheezing).
- shock".

(b) "**Do not use** if you have ever had an allergic reaction to any other pain reliever/fever reducer" (This statement appears as the first warning under the subheading "Do not use.")

(c) "**Stop use and ask a doctor if** an allergic reaction occurs. Seek medical help right away." (These statements appear as the first warning under the subheading "Stop use and ask a doctor if.")

On October 11, 2002, FDA received a request (Ref. 1) for an extension of 90 days for submission of comments on the proposed rule. The comment stated that it had delayed its response to the proposal so that consideration could be given to the impact of FDA's Nonprescription Drug Advisory Committee (NDAC) discussions on the labeling of all OTC IAAA drug products, including ibuprofen, at its September 19 and 20, 2002, meeting. Therefore, the comment stated that it needed additional time to evaluate and comment on labeling suggestions that arose from the NDAC meeting and to review the preclinical and clinical safety data that the agency used to support label warning statements. Further, the comment stated that it was considering conducting consumer research on information relevant to crafting an appropriate OTC label for these products.

FDA has carefully considered the request and acknowledges that additional time may be beneficial to fully evaluate and respond to the issues. FDA considers an extension of time for comments to be in the public interest. Therefore, the agency is providing additional time for comments by reopening the comment period for 90 days from the date of this notice.

II. Request for Comments

Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Reference

The following reference is on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT1.

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13914 Filed 6–3–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7507–5]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Hanford site proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–44, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste characterization systems and processes at Hanford to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of June 16, 2003.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before July 7, 2003.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–566–1741; e-mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of Hanford's technical program for waste characterization in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the applicable technical activities related to the Hanford TRU waste characterization program. We will confirm the continued adequacy of waste characterization processes at Hanford for (a) retrievably-stored, contact-handled debris at the Waste Receiving and Processing (WRAP) facility, and (b) homogeneous solids characterized at the Plutonium Finishing Plant (PFP) approved previously by EPA. These include: (1) Segmented Gamma Scanning Assay System at the Plutonium Finishing Plant for characterizing debris and solids; (2) Gamma Energy Assay (GEA) System Units A and B at the Waste Receiving and Processing (WRAP) facility used for characterizing retrievably-stored CH-debris waste; (3) visual examination at WRAP and PFP; and (4) other processes (such as acceptable knowledge, radiography, visual examination, data verification & validation). Also, we will evaluate capabilities of the following new equipment to characterize debris and solids, as applicable: (1) SGSAS at PFP Room 172; (2) seven calorimeters at PFP; (3) two Integrated Passive and Active Neutron (IPAN) systems at WRAP; and (4) visual examination technique at WRAP. The inspection is scheduled to take place the week of June 16, 2003.

EPA has placed DOE documents pertinent to the inspection in the public docket described in **ADDRESSES.** These include: (1) Hanford Site Transuranic Waste Certification Plan, HNF2600, Rev. 10, May 2003 and (2) Hanford Site Transuranic Waste Characterization Quality Assurance Project Plan, HNF 2599, Draft Rev. 9, May 2003. The documents are included in item II–A2–44 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at Hanford adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste characterized by the approved processes from Hanford to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed. Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: May 30, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–14186 Filed 6–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1684, MB Docket No. 03–121, RM–10707]

Television Broadcast Service; Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Estes Broadcasting, Inc., permittee of channel 54+, proposing the substitution of channel 38 – for channel 54+ at Longview, Texas. TV Channel 38 –, can be allotted to Longview, Texas, with a minus offset at reference coordinates 32–35–23 N. and 95–23–27 W.

DATES: Comments must be filed on or before July 14, 2003, and reply comments on or before July 29, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Estes Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–121, adopted May 14, 2003, and released May 21, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing Channel 54+ and adding Channel 38 – at Longview.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–14007 Filed 6–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AG70

Injurious Wildlife Species; Black Carp (*Mylopharyngodon piceus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the reopening of the public comment period on the proposed rule to add black carp (*Mylopharyngodon piceus*) to the list of injurious fish, mollusks, and crustaceans under the Lacey Act. We are reopening the comment period at this time in order to collect the best and most current scientific and economic data available on the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and will be fully considered in the preparation of the next action.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Comments may be hand-delivered, mailed, or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203; FAX (703) 358–1800. You may send comments by electronic mail (e-mail) to: *BlackCarp@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species, at (703) 358–2464 or *kari_duncan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service published a proposed rule to add black carp to the list of injurious fish, mollusks, and crustaceans under the Lacey Act on July 30, 2002 (67 FR 49280). This listing would have the effect of prohibiting the importation of any live animal or viable egg of the black carp into the United States and prohibiting the movement of black carp or viable eggs between States without a permit issued by the Director of the Service. The best available information indicates that this action is necessary to protect the interests of human beings, and wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of black carp populations into ecosystems of the United States. As proposed, live black carp or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live black carp or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. The proposal would prohibit interstate transportation of live black carp or viable eggs currently held in the United States for any other purpose.

The 60-day comment period on the proposed rule to add black carp to the list of injurious wildlife closed on

September 30, 2002. During that comment period, we received information indicating that we had identified only one of the two parasites affecting the catfish, baitfish, sportfish, largemouth bass, and hybrid striped bass aquaculture facilities and that we had underestimated the economic impact that the proposed rulemaking may have on those facilities. However, we did not receive sufficient information on the magnitude of the effects of these parasites on those facilities to complete the economic analysis. We are reopening the comment period to gather more economic and scientific data on black carp. In addition to seeking general scientific and economic information on black carp, we are seeking specific information relative to the magnitude of impact that yellow grubs (*Clinostomum complanatum*) and flatworms (*Bolbophorus confusus*) have had on catfish, baitfish, sportfish, largemouth bass, and hybrid striped bass aquaculture facilities; alternative chemical and/or biological methods used to control the parasites affecting these aquaculture facilities; potential or known distribution of black carp; and potential or known impact of black carp on native species.

Public Comments Solicited

We are reopening the comment period at this time in order to collect the best and most current scientific and economic data available regarding the proposal to add black carp to the list of injurious wildlife under the Lacey Act. Previously submitted comments on the proposed rule need not be resubmitted. We will accept new and/or additional written comments and information during this reopened comment period.

Submit comments as identified in **ADDRESSES.** If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018–AG70]" in your e-mail subject line and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our office at telephone number 703–358–2148 during normal business hours. Please note that this e-mail address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

Dated: May 22, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–13996 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030519127–3127–01; I.D. 042403A]

RIN 0648–AO10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex (Skate) Fisheries; Skate Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Northeast (NE) Skate Fishery Management Plan (FMP). This proposed rule would establish: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit. This proposed rule would also implement other measures for administration and enforcement. The purpose of this proposed action is to manage the NE skate complex pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of skate resources.

DATES: Comments must be received at the appropriate address or fax number, (*See* **ADDRESSES**), on or before 5:00 p.m., local time, on July 7, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate FMP." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Policy Analyst, 978–281–9283, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) in response to concerns that the continued harvest and increased landings in the skate fisheries required implementation of management measures to prevent overfishing and to allow for the collection of catch information on the status of the stocks. A notice of availability for the FMP was published in the **Federal Register** on May 1, 2003 (68 FR 23275). The comment period on the FMP ends on June 30, 2003.

Skates are harvested in two very different fisheries, one for lobster bait and one for wings for human consumption. The fishery for lobster bait is a more traditional and directed skate fishery that lands skates in whole form. The bait fishery involves vessels, primarily from ports in southern New England that target a combination of little skates (estimated to be ≤90 percent of landings) and, to a much lesser extent, juvenile winter skates (>10 percent of landings). Juvenile winter skates and little skates are difficult to differentiate due to their nearly identical appearance. The fishery for skate wings evolved in the 1990s as skates were promoted as an underutilized species, and fishermen shifted effort from groundfish and other troubled fisheries to skates and dogfish. The wing fishery is a more incidental fishery that involves a larger number of vessels located throughout the region. Vessels tend to catch skates when targeting other species such as groundfish, monkfish, and scallops, and land them if the price is sufficient to warrant the labor associated with cutting the wings.

On January 15, 1999, NMFS requested information from the public on barndoor skate for possible inclusion on the list of candidate species under the Endangered Species Act (ESA). In March and April 1999, several petitions were received from conservation groups requesting that NMFS immediately list barndoor skate as an endangered or threatened species and designate Georges Bank and other appropriate areas as critical habitat. This provided the impetus to complete a benchmark stock assessment for the entire skate complex. NMFS identified the need to develop an FMP to end overfishing and rebuild the resources based on the conclusions presented in late 1999 at the 30th Stock Assessment Workshop (SAW 30).

In March 2000, NMFS informed the Council of its decision to designate it as the responsible body for the development and management of the seven species included in the NE skate complex. In November 2000, the Council's Skate Committee approved the scoping document for the FMP. During the development of the FMP, the Skate Plan Development Team (PDT) continued to update the status determinations for the skate species based on the biomass reference points used during SAW 30. Currently (through the autumn 2001 survey), only two species remain in an overfished condition: Barndoor and thorny skates. In January 2001, the Council published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's FMP scoping process (66 FR 91).

On September 27, 2002, NMFS published its findings relative to the petitions to list barndoor skate as an endangered species as a notice of petition finding in the **Federal Register** at 68 FR 61005. After review of the best available scientific and commercial information, NMFS determined that listing the barndoor skate was not warranted at this time. The following factors all indicate a positive trend for barndoor skate populations: Recent increases in abundance of barndoor skate observed during trawl surveys; the expansion of known areas where barndoor skate have been encountered; increases in size range; and an increase in the number of small barndoor skates collected.

The Council held four public hearings on the draft FMP to provide an opportunity for public testimony by industry and other interested parties. During the public hearings, industry members expressed concerns about species identification problems in relation to the reporting requirements, as well as the species prohibitions (i.e., barndoor and thorny skates throughout their range, and smooth skates in the GOM RMA). Provincetown fishermen supported the lower trip limits, while New Bedford fishermen supported the higher trip limits. In terms of the proposed species prohibitions, many people were concerned about the potential for inadvertent retention of prohibited species that may result in violations, especially on high-volume trips. For this reason, some industry members did not support the prohibitions on possession and instead supported prohibitions on landing or sale. Overall, however, the proposed measures were generally well-supported and everyone who attended the public hearings and commented on the draft FMP agreed that it was important to collect more and better information on the skate resources.

Very little information is available about the individual skate species and the fisheries of which they are a component. Because skates have not been managed through a Federal FMP, few accurate and complete fishery data are available (e.g., landings and discards by species, amount of skate bait sold directly to lobster vessels, etc.). While developing the measures proposed in the FMP, the Council wrestled with difficult issues related to overfishing definition reference points and appropriate management measures to address individual skate species in need of rebuilding. Moreover, effective plan monitoring and appropriate recommendations for management adjustments, especially for fisheries in which skates are caught incidentally, hinge on the availability of more comprehensive information about these species, which will come once the FMP is implemented.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other FMPs and regulations are discussed in the FMP and FEIS.

Status of the Stock Complex

There are no direct estimates of biomass available for the seven individual skate species in the complex, so biomass indices from the Northeast Fisheries Science Center (NEFSC) trawl surveys have been used to characterize stock size. More specifically, for each species in the complex, information on the weight of the catch per tow (kg/tow) from the most representative trawl survey series over the longest possible time span was assembled. The data in the selected series were then used to characterize the distribution of biomass over the examined time period. Finally, candidate reference points were selected from the distribution so as to provide proxies for biomass targets that have a high probability of correctly characterizing the stock level that produces maximum sustainable yield (MSY).

For the aggregate skate complex, the NEFSC spring survey index of biomass was relatively constant from 1968 to 1980, then increased significantly to peak levels in the mid to late 1980s. The biomass of large-sized skates (barndoor, winter, and thorny) has declined steadily since the mid–1980s, while the recent increase in aggregate skate biomass has been attributed to an increase in little skates.

Overfishing Definitions

This FMP proposes overfishing definitions for each of the seven skate species in the complex, in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) of 1996. Determining the maximum fishing mortality rate (F) threshold for the skate species is problematic, given the current inability to directly estimate fishery exploitation rates. Therefore, the approach chosen by the Council was to use biomass levels indexed by the NEFSC trawl surveys as an indicator of exploitation. More specifically, a decline in the biomass of a species (for several years or based on a moving average), would indicate that current/

recent removals are in excess of the stock's ability to maintain its current population size. If an analysis of biomass levels leads to the determination of overexploitation, the Council would adopt measures to eliminate overfishing via either a framework adjustment or an amendment to the FMP.

The thresholds for F are based on annual percentage declines of the three-year average of the NEFSC trawl survey (spring or autumn, depending on the species). The percentages are specified for each species individually, based on historical variation within the survey. The F thresholds also include a precautionary "backstop" that indicates that overfishing is occurring if the trawl survey mean weight per tow declines for three consecutive years. The reference points and selected time series could be re-specified through a peer-review process and/or as updated stock assessments are completed.

Winter and thorny skates

Winter and thorny skates would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 20 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Smooth and clearnose skates

Smooth and clearnose skates would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Barndoor skate

Barndoor skate would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the mean weight per tow observed in the autumn trawl survey from 1963–1966 (currently 0.81 kg/tow). Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Little skate

Little skate would be considered to be in an overfished condition when the three-year moving average of the spring survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the spring trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the spring survey mean weight per tow declines by 20 percent or more, or when the spring survey mean weight per tow declines for three consecutive years.

Rosette skate

Rosette skate would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 60 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

These proposed overfishing definitions incorporate the biomass targets and thresholds that were developed at SAW 30. The FMP contains additional discussion of the rationale for the biomass reference points for each skate species.

Optimum Yield (OY)

The SAW 30 Working Group determined that the traditional approaches that are used to estimate MSY are not appropriate in the case of skates for two principal reasons: There is no reliable time series of commercial fishery landings or discards for any of the individual species, and the time series for the complex as a whole is considered to be incomplete; and, very little reliable and current growth and maturity information is available for any of the species in the complex and very little information is available on the length composition of the landings and discards. Together, these factors preclude the estimation of MSY from sequential population (e.g., age- or length-based virtual population analysis), biomass dynamics (e.g., surplus production models), or dynamic pool models (e.g., yield-per-recruit analysis). Therefore, MSY for the individual skate species and/or the complex as a whole cannot be estimated at this time. A discussion of the alternative methodologies that were considered to estimate MSY (e.g., sequential population analysis, dynamic pool models, catch history models, etc.) and the conclusions that were drawn are provided in the FMP.

The National Standard Guidelines (NSGs) allow the specification of a fishery-wide OY for a mixed-stock fishery, where management measures for separate target harvest levels for individual stocks may be specified, but are not required. For the same reasons discussed relative to MSY, these approaches cannot be adopted to estimate OY at this time.

The following OY specifications for each species in the NE skate complex are based on the management measures that the Council included in the FMP. Consistent with the NSGs, the Council intends that OY cannot exceed MSY or the allowable portion of MSY necessary to be consistent with the MSY-based control rule. As better fishery information becomes available, these OY specifications may be revised and/or refined.

Winter skate

Because fishery data are lacking, there is currently no time series of catch or landings of winter skate on which to base an absolute specification of OY. The OY for winter skate would therefore be defined as the amount of winter skates that are harvested legally under the provisions of the FMP and the yield that results from the management measures in other fisheries, to the extent that these measures further impact (and likely reduce) the harvest of winter skates.

Little skate

Since abundance of the little skate resource has increased considerably over a time period that coincides with the operation of the bait fishery, it can be assumed that the resource is being harvested at an F that is below FMSY. The OY for little skate would therefore be defined as the amount of little skates that are harvested for bait legally under the provisions of the FMP.

Smooth, thorny, and barndoor skates

The interaction of skate fishing and multispecies fishing suggests that even more benefits will be afforded to smooth, thorny, and barndoor skates as fishing effort is reduced further in the NE multispecies fishery. Moreover, the year-round groundfish closed areas in the GOM, as they are currently defined, provide a great deal of protection to smooth, thorny, and barndoor skates.

Because barndoor and thorny skates are currently in an overfished condition, the Council is proposing management action to rebuild these resources to their long-term sustainable level. Smooth skate is not overfished, but it has not yet rebuilt to its long-term biomass target. Therefore, to be as precautionary as possible, the Council proposes to set the OY for smooth, thorny, and barndoor skates at zero.

Clearnose and rosette skates

Since abundance of the clearnose and rosette skates have increased considerably over a time period and in an area that coincides with the operation of many fisheries, it can be assumed that the resources are being harvested at an F that is below FMSY. Therefore, the OY for clearnose and rosette skates is proposed to be defined as the amount of clearnose and rosette skates that are harvested legally under the provisions of the FMP.

Even in this situation of extremely sparse data, it is possible to judge whether current management strategies are sustainable or whether fishing effort needs to be curtailed to facilitate rebuilding. The Council has specified management measures in this FMP and in other fisheries that enhance the probability of future stock increases, with the expectation that progressively more data will become available to continually evaluate management strategies and more reliably estimate SFA reference points over time. Therefore, the specification of MSY and OY would be items that the Council could adjust through a framework adjustment to the FMP, provided that the specifications would not require management adjustments that are outside of the range of management measures that may be changed under the framework adjustment process.

Management Area

The boundaries of the management area, also called the management unit, would be limited to the waters north of 35° 15.3′ N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and the seaward extent of the U.S. exclusive economic zone (EEZ) in the east. These boundaries for the management unit are consistent with other relevant NE FMPs.

Fishing Year

The skate fishing year would be the same as the NE multispecies fishing year, currently May 1 April 30. If the multispecies fishing year changes in the future, the skate fishing year would change automatically to remain consistent with the NE multispecies fishing year.

Essential Fish Habitat (EFH)

The Council proposes to use relative abundance data to differentiate areas with relatively greater abundance of a species to identify EFH in contrast to areas with relatively lower abundance. Typically, areas of relatively high abundance or density are indicative of more suitable habitats. Research has demonstrated that, as populations decline, their range contracts and they are most abundant in available areas of best suited habitat.

The Council proposes to use the best available information on the distribution and relative abundance of the skate species as reflected in the NMFS otter trawl survey data. There are data available from the Massachusetts Inshore Trawl Survey on all but barndoor skate, and there are data available from the Hudson-Raritan Trawl Survey for little and clearnose skates. The NOAA Estuarine Living Marine Resources Program (ELMR) information does not differentiate between different species of skates, but provides information on the occurrence of skate species in the estuaries and embayments of New England and the Mid-Atlantic for the skate complex (identified as *Raja* spp.) as a whole.

Permitting Requirements

The owners of any commercial vessel that intends to fish for, catch, possess, transport, land, sell, trade, or barter skates in or from the skate management unit would be required to obtain an annual Federal skate permit (open-access).

Dealers who purchase or receive skates or skate parts from any vessel would be required to obtain a Federal dealer permit on an annual basis. Skates harvested from the skate management unit could only be sold to federally permitted dealers.

Operators of vessels issued a Federal skate vessel permit would be required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery would not need to reapply, since there is no qualification or test for this permit.

Vessel and Dealer Reporting Requirements

The Council clearly recognizes the problems associated with skate species identification. Because species-specific information is critical to the long-term success of this FMP, the Council is working closely with NMFS and the NEFSC to develop a species-identification guide for skate vessels and dealers, as well as sea samplers and enforcement agents. Vessels holding skate permits and dealers authorized to purchase skates would be required to report species-level information on skates in existing Vessel Trip Reports.

The Council recognizes that mandating the reporting of discards by individual species may not be practical and may actually increase discard mortality for some species of skates. It is likely that unwanted skates would stay on the deck of a fishing vessel longer if the crew is required to sort the bycatch and differentiate the species that are being discarded. For this reason, the Council proposes that vessels holding Federal permits (regardless of the fishery) report skate discards by size category only (i.e., large and small skates).

Skate Wing Possession Restrictions

The retention and landing of skate wings would be limited to 10,000 lb (4,536 kg) per trip of less than or equal to 24 hours duration (and a limit of one trip per day) and 20,000 lb (9,072 kg) per trip exceeding 24 hours. The days-at-sea (DAS) call-in programs (groundfish, scallop, and monkfish) would be used to determine whether a vessel's trip is less than or greater than 24 hours.

By discouraging large-scale directed fishing for skate wings, the possession limit is expected to reduce overall fishing mortality on winter skates. However, the benefits of a wing possession limit include not only fishing mortality reductions for winter skate, but also long-term benefits to the wing species if the possession limit can discourage expansion of the fishery and/or an influx of new entrants into the fishery.

Bait-only Letter of Authorization (LOA)

This action would allow vessel owners and operators that fish for skates as bait only to be exempt from the wing possession limits, provided they obtain an LOA from the Regional Administrator. Vessel owners/operators that fish for a combination of bait and wings and vessels that do not obtain the LOA would be subject to the wing possession limits.

Skate Possession Prohibitions

Barndoor and thorny skates are in an overfished condition, so, in addition to the benefits that are likely to accrue to these species as a result of the NE multispecies regulations (closed areas,

DAS reductions, mesh increases), this action proposes to prohibit the possession of thorny skates and barndoor skates on all vessels fishing from, and all dealers who would purchase skates caught in, the EEZ portion of the Skate Management Unit. Although no longer considered to be in an overfished condition, the smooth skate resource is depleted and still well below its target biomass level. Therefore, in addition to the benefits that are likely to accrue to this species as a result of the NE multispecies regulations, this action proposes a prohibition on possession of smooth skates in the GOM RMA to conserve the smooth skate resource and promote the rebuilding of its biomass to target levels.

Annual Monitoring and Framework Adjustment Measures

The skate fishery would be monitored on at least an annual basis starting 1 year after the implementation of the FMP. The status of the resource and the fishery would be reviewed by the Council, its Skate Oversight Committee and Advisory Panel, and the Skate PDT. The Council would prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. If the Council determined that an adjustment to the measures is needed, it would implement either a framework adjustment or an amendment to the FMP.

The framework adjustment process would be similar to that used in other NE Region fisheries. This process would allow changes to measures below, as appropriate, to be made to the FMP or regulations in a timely manner, without going through the plan amendment process. The framework adjustment process may not be appropriate when it is determined that a proposed change would not be within the scope of the FMP, or the amendment process would be better suited to implement the proposed change. The framework process would provide a formal opportunity for public comment to supplement the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP, and if sufficient opportunity for public comment on the framework action existed, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act. The management measures and/or changes to them that could be implemented and adjusted through the framework process include the following: (1) Skate permitting and reporting requirements; (2) overfishing definitions and related targets and thresholds; (3) prohibitions on possession and/or landing of individual skate species; (4) skate possession limits; (5) skate closed areas (and consideration of exempted gears and fisheries); (6) seasonal skate fishery restrictions and specifications; (7) target TACs for individual skate species; (8) hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries; (9) establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons; (10) onboard observer requirements; (11) gear modifications, requirements, restrictions, and/or prohibitions; (12) minimum and/or maximum sizes for skates; (13) adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP; (14) measures to address protected species issues, if necessary; (15) description and identification of EFH; (16) description and identification of habitat areas of particular concern; (17) measures to protect EFH; (18) adjustments and or/resetting of the "baseline" of management measures in other fisheries; (19) OY and/or MSY specifications; and (20) any other measures contained in the FMP.

Baseline Trigger and Review

The FMP identifies and characterizes a "baseline" of management measures in other fisheries that provide conservation benefits to skate species. The FMP also establishes a process for reviewing changes to the management measures included in this baseline, particularly changes that make the measures less restrictive. This approach allows adjustments to management measures in other fisheries while ensuring that skate rebuilding is not compromised. The proposed baseline measures and review process are described in detail in the FMP and Classification section of this rule.

The baseline review is intended to address potential significant impacts to skate mortality. Total skate mortality should be considered, including mortality resulting in increased directed fishing effort on skates and mortality resulting from the bycatch of skates. Therefore, this approach addresses National Standard 9, as considerations of bycatch and bycatch mortality are incorporated into the assessment of whether or not changes to the baseline measures will result in significant changes to skate mortality.

The lack of fishery-specific data precludes a quantitative assessment of the impacts of current baseline measures on skates and is likely to preclude such an assessment of the impacts of changes to these measures, at least in the near future. Over time, as data are collected through the FMP permit and reporting requirements, increased observer coverage, study fleets, and efforts to collect better information in other fisheries, the Skate PDT's ability to quantify the impacts of management measures on skates should improve greatly. However, qualitative assessments must suffice in the short-term, as quantitative assessments cannot be completed at this time.

Classification

At this time, NMFS has not determined that the FMP, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the FMP; a notice of availability for the DEIS was published on August 30, 2002 (67 FR 55858). A copy of the FEIS may be obtained from the Council (*see* **ADDRESSES**). The Council has selected a set of preferred alternatives intended to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the skate resources and their environment. Overall, the proposed action is expected to have significant positive effects on the skate resources relative to the no action alternative.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action, are contained in the preamble to this rule and in the SUMMARY. This rule does not duplicate, overlap, or conflict with any relevant Federal rules.

Quantitative information is limited for the NE skate fisheries because the detailed reporting requirements necessary to collect sufficient quantitative information do not currently exist. When possible, the quantitative impacts of the alternatives were considered, but in many instances it was only possible to describe potential impacts qualitatively. Because

costs of individual vessel operations were not available, gross revenues were used as a proxy for vessel profitability.

The proposed measures, and the alternatives, for addressing management of the NE skate fisheries could affect any commercial vessel holding an active Federal NE fishing permit. Data from the NE permit application database show that 4,828 vessels are currently permitted to fish in Federal waters, with 1,722 vessels permitted to fish for NE multispecies, monkfish, and/or sea scallops. Of these vessels, the Council considered the economic impacts on 775 vessels that have reported landings of skates or skate parts at least once in the last 3 years, and on another 120 from which skates or skate parts were reported to have been purchased at least once in the last 3 years. These 895 vessels are considered the universe of vessels most likely to be directly affected by the proposed action. All of the federally permitted vessels considered in this analysis readily fall within the Small Business Administration's (SBA's) definition of small business and the RFA's definition of "small entity." Therefore, there are no disproportionate economic impacts between large and small entities.

In addition to the proposed action, the Council considered alternatives to the management measures, including a "no action" alternative. The "no action" alternative represents the regulatory environment that would exist if the Council did not initiate management of the NE skate complex and develop an FMP. A summary of the IRFA follows:

The proposed action would establish a skate wing possession limit of 10,000 lb (4,536 kg) per day and 20,000 lb (9,072 kg) per trip. Possession limits of 10,000 lb (4,536 kg), 20,000 lb (9,072 kg), and 30,000 lb (13,608 kg) were considered for both daily and trip limits. Based on the average ex-vessel price received for wings in 2000 ($0.36/lb ($0.16/kg)), the expected per trip revenue loss for vessels that would have exceeded the limit would be approximately $2,500 with a 10,000–lb (4,536–kg) possession limit, $2,400 with a 20,000–lb (9,072–kg) possession limit, and $2,700 with a 30,000–lb (13,608–kg) possession limit. Per vessel, the expected revenue loss would be approximately $3,100/year with a 30,000–lb (13,608–kg) possession limit, approximately $5,000/year with a 20,000–lb (9,072–kg) possession limit, and approximately $8,500/year with a 10,000–lb (4,536–kg) possession limit. The Council chose a combination of the 10,000–lb (4,536–kg) and 20,000–lb (9,072–kg) options to provide limits on landings in the wing fishery and protect winter skate while minimizing economic impacts on the industry. Impacts on annual vessel revenues are likely to be even smaller than these data might suggest, once the landings of other species on the same trips and in other fisheries are considered. For example, the potential revenue loss for the 18 vessels that landed more than 20,000 lb (9,072 kg) of skate wings on at least one trip during 2000 was less than 5 percent of total annual revenues for each vessel; the impact was less than 1 percent for 14 of these vessels.

The Council rejected the 30,000–lb (13,608–kg) possession limit because the analysis showed that only a very small conservation benefit could be expected with such a high possession limit. Options 1 and 2, when combined, were shown to produce up to a 14–percent reduction in landings and yet maintain income for both nearshore and offshore fishermen.

The impacts of the prohibitions on possession of barndoor skate, thorny skate, and smooth skate in the GOM cannot be quantified, but the status of these resources and information provided by industry suggest little, if any, impact would be expected on fishermen.

The options to prohibit either the landing or sale of these skate species, rather than the proposed prohibition on possession, would not be expected to make any difference from an economic perspective, as under all three options, the sale of these species would be prohibited and any potential revenue from these species would be foregone. Only the no action alternative could mitigate any adverse economic impacts, but this option was not acceptable from a conservation perspective.

The proposed action would also establish a geographical limit for the prohibition on possession of smooth skate. The overlap of the smooth skate resource with the skate bait fishery is unknown; for this reason, the prohibition would be limited to the GOM RMA. The majority of smooth skates are distributed in the GOM, so the geographical limitation should not compromise the conservation benefits of this action. Because smooth skates are not targeted in the GOM/GB skate fishery and are therefore not a significant component of the skate landings, this is expected to have only minimal economic impacts on vessels fishing in the GOM.

The proposed action would require Federal open-access skate permits for vessels, operators, and dealers engaged in any aspect of the skate fisheries. Some vessels, operators, and dealers are currently issued permits as a result of their participation in other managed fisheries. For these entities, the skate fishery would be added to an existing permit and there would be no additional impacts. Some vessel owners, operators, and dealers may have to obtain Federal permits for the first time. In these instances, the estimated costs associated with completing the necessary applications would be: Vessel permit, $4.50/applicant; dealer permit, $2.00/applicant; and operator permit, $30.00/applicant.

In order to collect information necessary to monitor the effectiveness of the FMP and to better understand the skate species and the skate fisheries, vessels landing skates or skate parts would need to submit logbook reports, and dealers purchasing skates or skate parts would need to submit dealer reports. Annual costs associated with completing vessel trip reports are estimated at $30.00/vessel. Annual costs associated with dealer reporting are estimated at $13.00/dealer.

The proposed action would allow vessels that fish for skates as bait only to obtain an LOA from NMFS so as to be exempt from the skate wing possession limits, but would require these vessels to only land whole skates smaller than 23 inches (58.42 cm) total length. This action would not have an economic impact on fishing vessels. The only significant alternative to this measure considered by the Council was to not implement the LOA program. This would have resulted in adverse economic impacts because bait-only vessels would have been subject to the potentially restrictive skate wing possession limit.

The FMP and FEIS discuss alternatives to the proposed action, including those considered by the Council but ultimately not recommended. The potential impacts of several of the proposed measures were mitigated by the Council's recommendations, as follows:

1. The proposed prohibition on possession of smooth skates was restricted to the GOM RMA, thus mitigating the potential adverse economic impact to vessels participating in the southern New England bait fishery.

2. The Council combined two of the possession limit options for the skate wing fishery. The 10,000–lb (4,536–kg) limit applies to short trips (24 hours or less) where it would be much less likely to result in adverse economic impacts to fishermen.

3. Requirements to land skates whole for identification purposes would create significant amounts of shoreside waste for processors. The additional cost

borne by dealers and processors would reduce dockside prices for fishermen. For these reasons, the Council did not recommend this measure.

4. The Council recommended against restricting the bait fishery to little skates only (as a method of protecting small winter skates) because it is too difficult to tell the two species apart. The time required to differentiate these two species in the high-volume bait fishery would have resulted in an adverse economic impact on fishing operations.

5. Potential possession limits in the bait-only fishery were rejected due to potential adverse economic impacts on the lobster fishery, which utilizes skates as bait.

6. A proposal to require heavier twine in sink gillnet fisheries to reduce incidental catches of skates was rejected because gillnet fishermen land only about 20 percent of total skates and the added costs to gillnet fisheries were perceived to be out of proportion with the expected conservation benefits.

Collection-of-Information Requirements

This rule contains eight collection-of-information requirements, which have been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new and revised reporting requirements and the estimated time for a response are as follows: 8 minutes for a vessel trip report; 3 minutes for a dealer purchase report; 15 minutes for an open access vessel permit; 5 minutes for a dealer permit; 60 minutes for an operator permit; 2 minutes for a notification for observer deployment; 2 minutes for a bait-only fishery exemption notification (Letter of Authorization); and 2 minutes for bait transfer-at-sea documentation.

Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: May 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). * * *

3. In § 648.2, the definitions of "Council" and "fishing year" and "skate" are revised, and new definitions for "NE skate complex (skates)", and "Skate Management Unit" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies and monkfish fisheries; and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish.

* * * * *

Fishing year means: (1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year. (2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year. (3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate Management Unit means an area of the Atlantic Ocean from 35°15.3' N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught or retained in or from such area.

* * * * *

4. In § 648.4, paragraph (a)(14) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) * * * Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

7. In 648.7, paragraphs (a)(1)(iii) and (b)(1)(iii) are added, and the last sentence of paragraph (b)(1)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(a) * * *

(1) * * *

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Dealers will be provided with a skate species identification guide.

* * * * *

(b) * * *

(1) * * *

(i) * * * With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(2)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. Vessel owners or operators that intend to land skates will be provided with a skate identification guide to assist in this data collection program.

* * * * *

8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

* * * * *

9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such

exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

10. In § 648.13, paragraph (h) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, or at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of one year from the date of the transfer, a copy of said documentation.

11. In § 648.14, paragraphs (x)(13), (ee), and (ff) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(13) *Skates.* All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.

* * * * *

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel in possession of whole skates less than the maximum size specified at § 648.322(b)(2) for use as bait only.

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.82, 648.53, and 648.92, for the multispecies, scallop, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.322(c).

(8) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

(9) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

12. In § 648.80, paragraphs (b)(5)(i)(C) and (b)(6)(i)(D) are added and paragraphs (b)(5) introductory text, (b)(5)(i)(A), (b)(6) introductory text, (b)(6)(i)(A), and (h)(2)(i)(8) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish and skate regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * * (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section;

* * * * *

(C) A vessel not operating under a multispecies DAS may fish for, possess on board or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section, the monkfish regulations, as applicable under §§ 648.91 through 648.94, and the skate regulations, as applicable under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * * (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(D) A vessel not operating under a multispecies DAS may fish for, possess on board or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent by weight of all other species on board.

* * * * *

13. Subpart O is added to read as follows:

Subpart O—Management Measures for the NE Skate Complex Fisheries

Sec.

648.320 Skate FMP review and monitoring.
648.321 Framework adjustment process.
648.322 Skate possession and landing restrictions.

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review.* The Council, its Skate Plan Development Team (PDT), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions.

(2) If new and/or additional information becomes available, the PDT shall consider it during this annual review. Based on this review, the Skate PDT may provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(b) *Biennial review.* The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review*—(1) *Baseline review process.* If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or may change one or more of the baseline measures such that the change is likely to have an effect the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures.* The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) Multispecies year-round closed areas (§ 648.81);

(ii) Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§§ 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.312(b). The Council will publish notice of its intent to take action and provide the public with any

relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting requirements;

(2) Overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession limits;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries;

(9) Establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) Adjustments and or/resetting of the "baseline" of management measures in other fisheries, described in § 648.320(c);

(19) OY and/or MSY specifications; and

(20) Any other measures contained in the FMP.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

§ 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under a multispecies, scallop, or monkfish DAS as specified at §§ 648.82, 648.53, and 648.92, respectively, unless otherwise exempted under paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 1 month.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[FR Doc. 03–13726 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 107
Wednesday, June 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forest Land Enhancement Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Forest Land Enhancement Program (FLEP) are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination permits recipients to exclude certain payments under FLEP from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed May 21, 2003.

ADDRESSES: Questions may be addressed to Hal Brockman, Program Manager, Forest Land Enhancement Program, Cooperative Forestry Staff, Forest Service, USDA, 1400 Independence Avenue, SW., Mail Stop 1123, Washington, DC 20250–1123. A copy of the determination is available upon request. Information about the Forest Land Enhancement Program may also be obtained from the World Wide Web/Internet at *http://www.fs.fed.us/spf/coop/flep.htm.*

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Cooperative Forestry Staff, USDA Forest Service, (202) 205–1694.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code (26 U.S.C. 126, as amended) provides that all or part of payments made to persons under certain cost-sharing programs in 26 U.S.C. (a)(1) through (10) may be excluded from the recipient's gross income for Federal income tax purposes under two conditions: (1) If the Secretary of Agriculture determines that the payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife (the criteria for making such a determination are set forth in 7 CFR part 14, Determining the Primary Purpose of Certain Payments for Federal Tax Purposes), and (2) If the payments are determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

To make such a determination, the Secretary of Agriculture evaluates a cost-share conservation program based on the criteria set out in 7 CFR part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine that payments made under the cost-share conservation program do not substantially increase the annual income derived from the property benefited by the payments.

Therefore, having carefully examined the authorizing legislation for the Forest Land Enhancement Program (FLEP) (Title VIII of the Farm Security and Rural Investment Act of 2002; Pub. L. 107–171) and the planned operating procedures, the Secretary of Agriculture has determined, according to the criteria set forth in 7 CFR part 14, that the cost-share payments for implementing approved practices under FLEP are made primarily for the purpose of conserving soil and water resources, improving forests, protecting and restoring the environment, and providing a habitat for wildlife.

Subject to further determination by the Secretary of the Treasury that payments made under FLEP do not substantially increase the annual income derived from the property benefited by these payments, this determination by the Secretary of Agriculture permits payment recipients to exclude from gross income for Federal income tax purposes, all or part of the cost-share payments made under this program to the extent allowed by the Internal Revenue Service.

Dated: May 21, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13928 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Texas Oak Wilt Suppression Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the State of Texas, Forest Service, Oak Wilt Suppression Program, are made primarily for the purpose of protecting and restoring the environment and improving forests. This determination permits recipients to exclude all or part of certain cost-share payments under this program from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed on May 22, 2003.

ADDRESSES: Questions may be addressed to Dr. Linda Wang, Texas Forest Service, John B. Connally Bldg., 301 Tarrow, Suite 364, College Station, TX 77840–78796. A copy of the determination is available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Linda Wang, Texas Forest Service, (979) 458–6650.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code (26 U.S.C. 126, as amended) provides that all or part of certain payments made to persons under State programs may be excluded from the receipient's gross income for Federal income tax purposes under two conditions: (1) If the Secretary of Agriculure determines that the payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing habitat for wildlife (the criteria for making such a determination are set forth in 7 CFR part 14, Determining the Primary Purpose of Certain Payments for Federal Tax Purposes), and (2) If the payments are determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

To make such a determination, the Secretary of Agriculture evaluates a

cost-share conservation program based on the criteria set forth in 7 CFR part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine that payments made under the conservation program do not substantially increase the annual income derived from the property benefited by the payments.

Therefore, having carefully examined the authorizing legislation, regulations, and operating procedures regarding the Texas Oak Wilt Suppression Program, the Secretary of Agriculture, according to the criteria set forth in 7 CFR part 14, has determined that the cost-share payments made for planning and implementation of projects under the Texas Oak Wilt Suppression Program are made primarily for the purpose of conserving soil and water resources, improving forests, and protecting and restoring the environment.

Subject to further determination by the Secretary of the Treasury that payments made under the Texas Oak Wilt Suppression Program do not substantially increase the annual income derived from the property benefited by these payments, this determination by the Secretary of Agriculture permits payment recipients to exclude from gross income for Federal income tax purposes all or part of the cost-share payments made under this program to the extent allowed by the Internal Revenue Service.

Dated: May 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13929 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Wisconsin Forest Landowner Grant Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the State of Wisconsin, Department of Natural Resources, Forest Landowner Grant Program (WFLGP) are made primarily for the purpose of conserving soil and water resources, improving forests, and protecting and restoring the environment. This determination permits recipients to exclude all or part of certain cost-share payments under WFLGP from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed on May 22, 2003.

ADDRESSES: Questions may be addressed to Linda DePaul, Wisconsin Department of Natural Resources, Bureau of Forestry, PO Box 7921, 101 Webster St., Madison, WI 53707–7921. A copy of the determination is available upon request.

FOR FURTHER INFORMATION CONTACT: Linda DePaul, Wisconsin Department of Natural Resources, Bureau of Forestry, (608) 266–2388.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code (26 U.S.C. 126, as amended) provides that all or part of certain payments made to persons under State programs may be excluded from the recipient's gross income for Federal income tax purposes under two conditions: (1) If the Secretary of Agriculture determines that the payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing wildlife habitat (the criteria for making such a determination are set forth in 7 CFR part 14, Determining the Primary Purpose of Certain Payments for Federal Tax Purposes), and (2) If the payments are determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

To make such a determination, the Secretary of Agriculture evaluates a cost-share conservation program based on the criteria set forth in 7 CFR part 14. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury must determine that payments made under the conservation program do not substantially increase the annual income derived from the property benefited by the payments.

Therefore, having carefully examined the authorizing legislation for the Wisconsin Forest Landowner Grant Program (WFLGP) and the planned operating procedures, the Secretary of Agriculture, according to the criteria set forth in 7 CFR part 14, has determined that the cost-share payments for implementing approved practices under WFLGP are made primarily for the purpose of conserving soil and water resources, improving forests, protecting and restoring the environment, and providing a habitat for wildlife.

Subject to further determination by the Secretary of the Treasury that payments made under WFLGP do not substantially increase the annual income derived from the property benefited by these payments, this determination by the Secretary of Agriculture permits payment recipients to exclude from gross income for Federal income tax purposes, all or part of the cost-share payments made under the program to the extent allowed by the Internal Revenue Service.

Dated: May 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13930 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–006N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 2002, to May 31, 2003, and June 1, 2003, to May 31, 2004, seeks comments on standards currently under consideration and recommendations for new standards.

ADDRESSES: Submit any written comments to: FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, Washington, DC 20250–3700. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex, U.S. Department of Agriculture, Office of the Undersecretary for Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 to this notice.) Documents pertaining to Codex are accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net*. The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/OA/Codex/index.htm*.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, Codex, International Office of Epizootics, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the sanitary and phytosanitary standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The sanitary or phytosanitary standards under consideration or planned for consideration; and
2. For each sanitary or phytosanitary standard specified:
   a. A description of the consideration or planned consideration of the standard;
   b. Whether the United States is participating or plans to participate in the consideration of the standard;
   c. The agenda for United States participation, if any; and
   d. The agency responsible for representing the United States with respect to the standard.

To obtain copies of those standards listed in Attachment 1 that are under consideration by Codex, please contact the Codex delegate or the U.S. Codex Office. This notice also solicits public comment on those standards that are under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States' delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States' delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States' delegation activities to interested parties. This information will include the current status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same information available through its web page, *http://www.fsis.usda.gov/OA/Codex*. Please visit the web page or notify the appropriate U.S. delegate or the Office of U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, if you would like to access or receive information about specific committees.

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2002 to May 31, 2003, and June 1, 2003 to May 31, 2004. In addition, the following attachments are included:

Attachment 2; List of U.S. Codex Officials (includes U.S. delegates and alternate delegates).
Attachment 3; Timetable of Codex Sessions (June 2002 through June 2004)
Attachment 4; Definitions for the Purpose of Codex Alimentarius
Attachment 5; Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts
Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts
Attachment 6; Nature of Codex Standards

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the FSIS web page, located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC on: May 28, 2003.

F. Edward Scarbrough,

United States Manager for Codex.

Attachment 1: Sanitary and Phytosanitary Activities of Codex, Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Twenty-sixth Session June 30–July 7, 2003, in Rome, Italy. At that time it will consider the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, *ad hoc* Task Forces and member delegations. It will also consider options or strategies regarding the recent Joint FAO/WHO Evaluation of the Codex Alimentarius and Other FAO and WHO Work on Food Standards. At this Session, the Commission will elect a Chair, three Vice Chairs, and Regional Members of the Executive Committee as well as appoint Regional Coordinators.

Prior to the Commission meeting, the Executive Committee will meet at its Fifty-second Session on June 26–27, 2003. It is composed of the chairperson, vice-chairpersons and seven members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific. It will consider matters arising from reports of Codex Committees including review of standards at step 5, requests for new work, and other items brought to its attention. It will also hear a report on, and make recommendations concerning, the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or dairy animals, poultry, fish or bees, for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

A Codex Maximum Limit for Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is adopted by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRLVD is based on the Acceptable Daily Intake (ADI) and indicates the amount of residue in food that is considered to be without appreciable toxicological hazard. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

*Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The following matters, contained in ALINORM 03/31 and ALINORM 03/31A, will be considered by the Codex Alimentarius Commission at its 26th Session:

To be considered at Step 8:
- Abemectin
- Carazolol
- Chlortetracycline/oxytetracycline/tetracycline
- Clenbuterol
- Cyfluthrin
- Deltamethrin
- Eprinomectrin
- Phoxim
- Porcine somatotropin

To be considered at Step 5/8:
- Cyhalothrin
- Dihydrostreptomycin/Streptomycin
- Ivermectin
- Lincomycin

To be considered for final adoption at Step 5 Accelerated Procedure:
- Draft amendments to the Glossary of Terms and Definitions

To be considered at Step 5:
- Cefuroxime

Other Work of the Committee:
- Proposed Draft Code of Practice to Minimize and Contain Antimicrobial Resistance
- Proposed Draft Revised Guidelines for the Establishment of a Regulatory Program for Control of Veterinary Drug Residues in Foods.
- Risk Analysis Principles and Methodologies, including Risk Assessment Policies in the Codex Committee on Residues of Veterinary Drugs in Foods
- Proposed Draft Appendix on the Prevention and Control of Veterinary Drug Residues in Milk and Milk Products
- Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation
- Methods of Analysis and Sampling Issues
- Performance-based Criteria
- Identification of Routine Methods of Analysis

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additives and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The following matters are under consideration by the Commission at its 26th Session in July 2003. The relevant documents are ALINORM 03/12 and ALINORM 03/12A.

Risk Analysis

To be considered at Step 5:
- Proposed Draft Risk Analysis Principles Applied by the Codex Committee on Food Additives and Contaminants

Food Additives

To be considered at Step 8:
- Codex General Standard for Food Additives: Draft Food Additive Provisions in Table 1 and Table 2
- General Standard for Food Additives: Draft Revisions to the Annex to Table 3
- Draft Revised Codex General Standard for Irradiated Foods

- Codex Advisory Specifications for the Identity and Purity of Food Additives arising from the 57th and 59th meetings of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Draft Revisions to the INS for Food Additives

To be considered at Step 5/8 of the Accelerated Procedure:
- Proposed Draft Revised Recommended International Code of Practice for Radiation Processing of Food
- Draft Revisions to the Codex International Numbering System for Food Additives
- Codex General Standard for Food Additives: Proposed Draft Food Additive Provisions in Table 1 and Table 2

To be considered at Step 5:
- Proposed Draft Revised Food Category System of the Codex General Standard for Food Additives

Proposed New Work:
- Proposed Draft Revised Preamble to the Codex General Standard for Food Additives
- Proposed Draft Code of Practice for the Safe Use of Active Chlorine

The Committee is continuing work on:
- General Standard for Food Additives: Draft Food Additive Provisions (in Tables 1, 2 and 3)
- International Numbering System
- Specifications for the Identity and Purity of Food Additives
- Discussion paper on Processing Aids and Carriers
- Discussion paper on the Harmonization of Terms Used by Codex and JECFA for Sub-Classes and Technological Functions

Contaminants

To be considered at Step 8:
- Codex General Standard for Contaminants and Toxins: Maximum Level for Patulin in Apple Juice and Apple Juice Ingredients in Other Beverages
- Codex General Standard for Contaminants and Toxins: Maximum Level for Ochratoxin A in Wheat, Barley, Rye and Derived Products
- Draft Code of Practice for the Prevention and Reduction of Patulin Contamination in Apple Juice and Apple Juice Ingredients in Other Beverages
- Draft Code of Practice for the Prevention and Reduction of Mycotoxin Contamination in Cereals, Including Annexes on Ochratoxin A, Zearalenone, Fumonisins, and Trichothecenes
- Codex General Standard for Contaminants and Toxins: Revocation of maximum level for lead in milkfat.

To be considered at Step 5:
- Proposed Draft Principles for Exposure Assessment of Contaminants and Toxins in Foods
- Proposed Draft Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts
- Proposed Draft Code of Practice for the Prevention and Reduction of Lead Contamination in Foods
- Proposed Draft Maximum Levels for Cadmium

Proposed New Work:
- Proposed Draft Maximum Levels for Aflatoxins in Tree Nuts (Almonds, Hazelnuts and Pistachios)
- Proposed Draft Code of Practice for the Prevention and Reduction of Tin Contamination in Foods
- Proposed Draft Maximum Levels for Deoxynivalenol
- Proposed Draft Revised Guideline Levels for Radionuclides in Foods following Accidental Nuclear Contamination for Use in International Trade (CAC/GL 5–1989), including Guideline Levels for Long-Term Use
- Discussion Paper on Acrylamide

The Committee is continuing work on:
- Proposed Draft Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts (Almonds, Hazelnuts and Pistachios)
- Proposed Draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin-like PCB Contamination of Foods
- Codex General Standard for Contaminants and Toxins: Draft Maximum Levels for Lead in Fish
- Codex General Standard for Contaminants and Toxins: Proposed Draft Maximum Levels for Cadmium in Rice, Soybeans, Peanuts, and Mollusks (including cephalopods)
- Codex General Standard for Contaminants and Toxins: Proposed Draft Maximum Levels for Tin in Liquid Canned Foods Other Than Beverages and in Canned Beverages
- Schedule 1 of the Proposed Draft Codex General Standard for Contaminants and Toxins in Foods
- Codex General Standard for Contaminants and Toxins: Maximum Level for Patulin in Apple Juice Ingredients in other beverages. The CCFAC is collecting data on the level of patulin in apple juice and apple juice ingredients for other beverages with the intent of reconsidering the maximum level once the Code of Practice had been implemented (*i.e.*, after four years)
- Position Paper on Dioxins and Dioxin-like PCBs
- Position Paper on Chloropropanols
- Position Paper on Aflatoxin in Tree Nuts
- Mycotoxin Contamination in Sorghum

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Residue Limit for Pesticide (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI*, should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices, and;

(b) toxicological assessment of the pesticide and its residue.

The following items will be considered by the Commission at its 26th Session in July 2003. The relevant documents are ALINORM 03/24 and ALINORM 03/24A.

To be considered at Step 8:
- Draft Amendments to the Guidelines on Good Laboratory Practice in Pesticide Residue Analysis and the Introduction Section of the Recommended Methods of Analysis for Pesticide Residues
- Draft and Draft Revised Maximum Residue Limits

To be considered at Step 5/8:
- Proposed Draft and Proposed Draft Revised Maximum Residue Limits

To be considered at Step 5:

• Proposed Draft and Proposed Draft Revised Maximum Residue Limits

The committee is continuing work on:

• Consideration of Draft and Proposed Draft Residue Limits in Foods and Feeds

• Paper on Pilot Project for the Examination of National MRLs as Interim Codex MRLs for Safer Alternative Pesticides

• Paper on Acute Dietary Risk Assessment

• Revision of Regional Diets and Information on Processing

• Revision of the List of Recommended Methods of Analysis for Pesticide Residues

• Revision of the Codex Classification of Foods and Animal Feeds

• Consideration of Elaboration of MRLs for Spices

• Revision of Codex Priority Lists of Pesticides for review by JMPR

• Paper on the establishment of MRLs for processed commodities.

• Paper on the elimination of environmental fate data review from the work of JMPR

*Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Responsible Agency: EPA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The following guidelines and proposed amendments to the procedural manual will be considered by the 26th Commission in July 2003. The relevant document is ALINORM 03/23.

To be considered at Step 5:

• Proposed Draft General Guidelines on Sampling

• Proposed Draft Guidelines on Measurement Uncertainly

For consideration by the Commission:

• IUPAC Guidelines for Single-Laboratory Validation of Methods of Analysis (for adoption by reference)

• Proposed amendments to the Procedural Manual:

• Amendment to the General Criteria for the Selection of Methods of Analysis Using the Criteria Approach

• New section on Working Instructions for the Implementation of the Criteria Approach in Codex New Work:

• Review current Analytical Terminology for Codex

The Committee will continue work on:

• Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis

• Validation of methods

• Single Laboratory Validation

• Use of Proficiency Testing Schemes

• Endorsement of Methods of Analysis and Sampling Provisions in Codex Standards

• Proposed Draft Guidelines for Settling of Disputes on Analytical (test) Results

• Criteria for Methods of Analysis for Foods derived from Biotechnology

Responsible Agency: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Certification and Inspection Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to facilitate trade. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements, especially statutory health requirements. This encompasses work on: equivalence of food inspection systems including equivalence agreements, processes and procedures to ensure that sanitary measures are implemented; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade also are included in the Committee's terms of reference.

The following guidelines, found in ALINORM 03/30 and 03/30A, will be considered for adoption by the Codex Alimentarius Commission at its 26th Session in July 2003:

To be considered at Step 8:

• Draft Guidelines for Food Import Control Systems

• Draft Guidelines on the Judgement of Equivalence on Sanitary Measures Associated with Food Inspection and Certification Systems

The committee is continuing work on:

• Proposed Revised Draft Guidelines for the Exchange of Information in Food Control Emergency Situations

• Discussion paper on the Judgement of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems

• Discussion paper on "traceability/product tracing" in the context of inspection and certification systems

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles deals with procedure and general matters as are referred to it by the Codex Alimentarius Commission. The relevant documents are ALINORM 03/33 and ALINORM 03/33A. The following items will be considered at the 26th Session of the Commission in July 2003:

To be considered at Step 8:

• Draft Working Principles for Risk Analysis for Application within the Framework of Codex

The Committee continues to work on:

• Proposed Draft Working Principles for Risk Analysis as Guidance to National Governments

• Proposed Draft Revised Code of Ethics for International Trade in Foods

• Guidelines for Cooperation with International Intergovernmental Organizations

• Membership in the Codex Alimentarius Commission of Regional Economic Integration Organizations

• Consideration of a Definition for "Traceability"/product tracing

• The role of the Committee in implementation of recommendations from the Joint FAO/WHO Evaluation of Codex Alimentarius and Other FAO and WHO Work on Food Standards

Responsible Agency: USDA/FSIS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling issues assigned by the Codex Alimentarius Commission. The reference documents are ALINORM 03/22 and ALINORM 03/22A. The Committee held its Thirty-First Session in Ottawa, Canada, on April 28–May 2, 2003. It considered the following items:

• Draft Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods Proposed Revised Sections: Section 5—Criteria and Annex 2—Permitted Substances

• Draft Amendment to the General Standard for the Labelling of Prepackaged Foods—(Draft Recommendations for the Labelling of Foods Obtained through Certain Techniques of Genetic Modification/Genetic Engineering) Section 4.2.2 (allergenicity) and Section 2. (Definitions)

• Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods (Class Names) (Milk Protein/Milk Protein Products)

• Proposed Draft Amendment to the Guidelines on Nutrition Labelling

• Proposed Draft Recommendations for the Use of Health Claims: Proposed Draft Guidelines for the use of Nutrition and Health Claims

• Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods: Quantitative Declaration of Ingredients

• Discussion paper on Misleading Claims

• Discussion paper on Country of Origin Labelling

• Discussion paper on "Traceability"/Product Tracing

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has four primary responsibilities. First, the Committee drafts basic provisions on food hygiene applicable to all food. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (*e.g.* bottled water) or group of commodities (*e.g.*, milk and milk products). Second, the Committee suggests and prioritizes areas where there is a need for microbiological risk assessment at the international level and considers microbiological risk management matters in relation to food hygiene and in relation to the risk assessment activities of FAO and WHO. This often takes the form of developing general guidance documents such as the Principles and Guidelines for the Conduct of Microbiological Risk Assessment and the proposed draft Principles and Guidelines for the Conduct of Microbiological Risk Management, but can also take the form of developing microbiological risk management guidance documents for the control of specific microbial pathogens in food. Third, the Committee considers, amends if necessary, and endorses food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. These provisions normally contain generic wording referencing the Recommended Code of Hygienic Practice: General Principles for Food Hygiene (ref: CAC/RCP 1–1969, Rev. 3–1997) and the Principles for the Establishment and Application of Microbiological Criteria for Foods (CAC/GL 21–1997), but may also include other provisions. Fourth, the Committee provides such other general guidance to the Commission on matters relating to food hygiene as is necessary. The following items will be considered by the Codex Alimentarius Commission at its 26th Session in July 2003. The relevant documents are ALINORM 03/13 and ALINORM 03/13A.

To be considered at Step 8:

• Draft Code of Hygienic Practice for Fresh Fruits and Vegetables

• Draft Revised Guidelines for the Application of HACCP System

To be considered at Step 5:

• Proposed Draft Code of Hygienic Practice for Milk and Milk Products

The committee continues to work on:

• Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management

• Proposed Draft Guidelines on the Application of the General Principles of Food Hygiene to the [management] of Listeria monocytogenes in Foods

• Proposed Draft Guidelines for Validation of Food Hygienic Control Measures

• Proposed Draft Revision of the Code of Hygienic Practice for Egg Products

• Discussion paper on Risk Management Strategies for *Salmonella* spp. in Poultry

• Discussion paper on Risk Management Strategies for *Campylobacter* spp. in Poultry

• Risk Profile for Enterohemorrhagic *E. coli* Including the Identification of Commodities of Concern, including Sprouts, Ground Beef and Pork

• Proposed Draft Process by Which the Committee on Food Hygiene Could Undertake its Work in Microbiological Risk Assessment/Risk Management

• Discussion Paper on the Proposed Draft Revision of the Recommended International Code of Practice for Foods for Infants and Children

• Discussion Paper on Development of Process, Procedures and Criteria to Establish Priorities for the Work of the Codex Committee on Food Hygiene

• Discussion Paper on the Development of Options for a Cross-Committee Interaction Process

Responsible Agency: HHS/FDA; FSIS/USDA.

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating world-wide standards and codes of practice for fresh fruits and vegetables. The following standards will be considered by the 26th Session of the Commission in July 2003. The relevant document is ALINORM 03/35.

To be considered at Step 8:

• Draft Standard for Sweet Cassava

• Draft Standard for Pitahayas

• Section 3—Provisions concerning sizing and Section 6.2.4—Commercial Identification in the grapefruit, lime and pummelo standards.

To be considered at Step 5:

• Proposed Draft Standard for Table Grapes

The Committee continues work on:

• Draft Standard for Oranges retained at Step 7

• Proposed Draft Standard for Tomatoes

• Proposed Draft Standard for Apples

• Proposed Draft Guide for the Quality Control of Fresh Fruits and Vegetables

New work subject to approval by 26th CAC:

• Proposed Draft Standard for Rambutan

Responsible Agency: USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses. A request for new work will be made to the 26th Session of the Commission in July 2003. The relevant documents are ALINORM 03/26 and ALINORM 03/26A.

The committee continues work on:

- Proposed Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children
- Proposed Draft Revised Standard for Infant Formula
- Proposed Draft Guidelines for Vitamin and Mineral Supplements
- Proposed Draft Revision of the Advisory Lists of Nutrient Compounds for Use in Foods for Special Dietary Uses intended for use by Infants and Young Children

New Work:

- Proposed Draft Recommendations on the Scientific Basis of Health Claims

When new scientific information becomes available, the committee plans to resume work on:

- Guidelines for Use of Nutrition Claims—Draft Table of Conditions for Nutrient Contents Claims (Part B containing Provisions on Dietary Fibre)
- Proposed Draft Revised Standards for Gluten-Free Foods
- Discussion Paper on Energy Conversion Factors

Responsible Agency: HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh, frozen and otherwise processed fish, crustaceans and mollusks. The following will be considered by the 26th Session of the Commission when it meets in July 2003. The relevant document is ALINORM 03/18.

To be considered at Step 8:

- Draft Standard for Dried Salted Anchovies
- Draft Code of Practice for Fish and Fishery Products (specific sections 1, 2, 3, 4, 5, 8, and 16)

To be considered at Step 5/8:

- Draft Code of Practice for Fish and Fishery Products (section 9, Surimi)

To be considered at Step 5:

- Proposed Draft Model Certificate for Fish and Fishery Products (sanitary certificate)
- Proposed Draft Amendment to the Standard for Quick Frozen Lobsters (inclusion of the species *Pleurooncondes monodon* and *Cervimundia johni*)

New Work:

- Proposed Draft Standard for Sturgeon Caviar
- Proposed Draft Amendment to the Standard for Salted Fish and Dried Salted Fish of the *Gadidae* family (Determination of water and salt by selecting certain sections of the fish)

The Committee continues work on the following:

- Proposed Draft Standard for Salted Atlantic Herring and Salted Sprats at Step 6
- Proposed Draft Code of Practice for Fish and Fishery Products (other sections 2, 6, 7, 10, 11, 12, 13, 14, 15, 17, and 18) at Step 3
- Proposed Draft Standard for Live and Processed Bivalve Mollusks
- Proposed Draft Standard for Smoked Fish
- Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat
- Fish Content Definition and its Method of Determination in Fish Sticks
- Revision of the Procedure for the Inclusion of Species
- Proposed Draft Model Certificate for Fish and Fishery Products (other than sanitary)

Responsible Agency: HHS/FDA; USDC/NOAA/NMFS.
U.S. Participation: Yes.

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The following will be considered by the 26th Session of the Commission when it meets in July 2003. The relevant document is ALINORM 03/11.

To be considered at Step 8:

- Proposed Draft Revised Standard for Cream and Prepared Creams
- Proposed Draft Revised Standard for Fermented Milk Products
- Proposed Draft Revised Standard for Whey Powders

To be considered at Steps 5/8:

- Proposed Draft Amendment to the Codex General Standard for Cheese (Appendix on cheese rind, surface, and coating)

The Committee continues work on:

- Proposed Draft Standard for Products in Which Milk Components are Substituted by Non-Milk Components
- Evaporated Skimmed Milk with Vegetable Fat
- Sweetened Condensed Skimmed Milk with Vegetable Fat
- Skimmed Milk Powder with Vegetable Fat
- Proposed Draft Amendment to Section 3.3 (Composition) of the Codex General Standard for Cheese
- Proposed Draft Model Export Certificate for Milk and Milk Products
- Methods of Analysis and Sampling for Milk Products
- Draft Revised Standards for Individual Cheeses
- Draft Revised Standard for Processed Cheese
- Draft Revised Standard for Dairy Spreads
- Proposed Draft Revised Standard for Whey Cheese

Responsible Agency: USDA/AMS; HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The relevant document is ALINORM 03/17. The following will be considered by the Commission at its 26th Session in July 2003.

To be considered at Step 8:

- Draft Revised Standard for Olive Oils and Olive Pomace Oils
- Draft Amendment to the Standard for Named Vegetable Oils
- Palm superolein
- Mid-oleic sunflower oil
- Inclusion of new desmethysterol data and tocopherol and tocotrienol data for palm olien, palm stearin

New Work:

- Amendment to the Standard for Named Vegetable Oils: Rice Bran Oil

The Committee continues work on:

- Draft Standard for Fat Spreads and Blended Spreads
- Proposed Draft Amendments to the List of Acceptable Previous Cargoes

Responsible Agency: HHS/FDA; USDA/ARS.
U.S. Participation: Yes.

Codex Committee on Cocoa Products and Chocolate

The Codex Committee on Cocoa Products and Chocolate is responsible for elaborating world-wide standards for cocoa products and chocolate. The following standard will be considered by the 26th Session of the Commission in July 2003. The relevant document is ALINORM 03/14.

To be considered at Step 8:

- Draft Revised Standard for Chocolate and Chocolate Products

The Committee agreed to adjourn *sine die* as it had completed its program of work.

Responsible Agency: HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables is responsible for elaborating standards for Processed Fruits and Vegetables. After having been adjourned *sine die*, the Committee reconvened in Washington, DC, in March 1998 to begin work revising the standards. The following standards will be considered by the 26th Session of the Commission in July 2003. The relevant document is ALINORM 03/27.

To be considered at step 8:

- Draft Standard for Bamboo Shoots
- Draft Revised Standard for Canned Stone Fruits
- Draft Codex Guidelines for Packing Media for Canned Fruit
- Draft Codex Standard for Aqueous Coconut Products—Coconut Milk and Coconut Cream

The committee is continuing work on:

- Draft Codex Standard for Pickled Products
- Proposed Draft Revised Standards for:
- *Processed Tomato Concentrates*
- Canned Tomatoes
- Canned Vegetables including Guidelines for Packing Media for Canned Vegetables
- Jams, Jellies and Marmalades
- Soy Sauce
- Canned Citrus Fruits

Other work:

- Methods of Analysis for Processed Fruits and Vegetables
- Proposed Draft Code of Practice for the Processing and Handling of Quick Frozen Foods
- Priority List for the Standardization of Processed Fruits and Vegetables

Responsible Agency: USDA/AMS; HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Meat and Poultry Hygiene

The 24th Session of the Commission decided to reactivate the Codex Committee on Meat Hygiene and agreed to rename it the Codex Committee on Meat and Poultry Hygiene, with New Zealand as Host Government. The Terms of Reference were amended to reflect the inclusion of poultry in its mandate. The following, contained in ALINORM 03/16 and ALINORM 03/16A, will be considered by the Codex Alimentarius Commission at its 26th Session in July 2003.

To be considered at Step 8:

- Draft General Principles of Meat Hygiene

Other:

- Request to change the name back to the Codex Committee on Meat Hygiene

To be considered at Step 5:

- Proposed Draft Code of Hygienic Practice for Meat
- Requested the Commission to change the name back to the Codex Committee on Meat Hygiene

The Committee continues to work on:

- Proposed Draft Annex on Risk-Based Post-Mortem Examination Procedures for Meat
- Proposed Draft Annex on Microbiological Verification of Process Control of Meat Hygiene
- Discussion paper on Hygiene Provisions for Processed Meat

Responsible Agency: USDA/FSIS.
U.S. Participation: Yes.

Certain Codex Commodity Committees [1]

Several Codex Alimentarius Commodity Committees have adjourned *sine die*. The following Committees fall into this category:

- *Cereals, Pulses and Legumes*

Responsible Agency: HHS/FDA, USDA/GIPSA
U.S. Participation: Yes

- *Natural Mineral Water*

Responsible Agency: HHS/FDA
U.S. Participation: Yes

- *Sugars*

Responsible Agency: USDA/ARS; HHS/FDA
U.S. Participation: Yes

- *Vegetable Proteins*

Responsible Agency: USDA/ARS, HHS/FDA
U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology

The Commission established this task force to develop standards, guidelines, or recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices. The Task Force, established by the 23rd (1999) Session of the Codex Alimentarius Commission for a four year period of time, has completed its work. The following, contained in ALINORM 03/34 and ALINORM 03/34A, will be considered by the Codex Alimentarius Commission at its 26th Session in July 2003.

To be considered at Step 8:

- Draft General Principles for the Risk Analysis of Foods Derived from Modern Biotechnology
- Draft Guidelines for the Conduct of Safety Assessment of Foods Derived from Recombinant-DNA Plants
- Draft Guidelines for the Conduct of Food Safety Assessment of Recombinant-DNA Microorganisms

Responsible Agency: HHS/FDA; USDA/APHIS.
U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Animal Feeding

The Commission at its 23rd Session established the *Ad Hoc* Intergovernmental Task Force on Animal Feeding to develop guidelines or standards, as appropriate, on good animal feeding practices. An Interim Report of the work of the Task Force, as required under its Terms of Reference, was presented to the 24th Commission by Denmark, the host government. The Task Force held its 4th Session on March 25–28, 2003. The following will be considered by the Commission at its 26th Session in July 2003:

To be considered at Step 5/8:

- Revised Draft Code of Practice for Good Animal Feeding

Responsible Agency: HHS/FDA/CVM; USDA/APHIS.
U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

The Commission at its 23rd Session established this Task Force to revise and consolidate the existing Codex standards and guidelines for fruit and vegetable juices and related products, giving preference to general standards. These standards were originally developed by the Joint UNECE/Codex Group of Experts on the Standardization of Fruit Juices which had been abolished by its parent organizations. The Task Force held its third session in Brasilia, Brazil, on May 6–9, 2003. The reference documents are ALINORM 03/39 and 03/39A.

The committee is discussing:

- Proposed Draft Codex General Standard for Fruit Juices and Nectars
- Proposed Draft Revised Codex General Standard for Vegetable Juices
- Methods of Analysis and Sampling for Fruit and Vegetable Juices and Nectars

Responsible Agency: HHS/FDA; USDA/AMS.
U.S. Participation: Yes.

FAO/WHO Regional Coordinating—Committees

The Codex Alimentarius Commission is made up of an Executive Committee,

[1] *Adjourned sine die.* The main tasks of these Committees are completed. However, the committees may be called to meet again if required.

as well as approximately 30 subsidiary bodies. Included in these subsidiary bodies are coordinating committees for groups of countries located in proximity to each other who share common concerns. There are currently six Regional Coordinating Committees:

- Coordinating Committee for Africa
- Coordinating Committee for Asia
- Coordinating Committee for Europe
- Coordinating Committee for Latin America and the Caribbean
- Coordinating Committee for the Near East
- Coordinating Committee for North America and the South-West Pacific

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings. Each regional committee:

- Defines the problems and needs of the region concerning food standards and food control;
- Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;
- Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and
- Exercises a general coordinating role for the region and such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the region. The Seventh Session of the Committee was hosted by Canada October 29–November 1, 2002. Items on the agenda included:

- Trust Fund for the Participation of Developing Countries in Codex Standard Setting Procedures
- Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards
- Consideration of the Draft Medium-Term Plan 2003–2007
- Consideration of Traceability/ Product Tracing
- Strategic Plan for the Coordinating Committee for North America and the Southwest Pacific
- Nomination of Samoa as the next Coordinator for the Region

Responsible Agency: USDA/FSIS.
U.S. Participation: Yes.

Attachment 2

U.S. Codex Alimentarius Officials Codex Committee Chairpersons

Codex Committee on Food Hygiene

Dr. Karen Hulebak, Senior Advisor for Scientific Affairs, Office of the Administrator, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 3130, South Building, Washington, DC 20250–3700, Phone #: 202–720–8609, Fax #: 202–720–9893, E-mail: *karen.hulebak@fsis.usda.gov*

Codex Committee on Processed Fruits and Vegetables,

Mr. David L. Priester, International Standards Coordinator, Fruit & Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049, South Building, Stop 0140, 1400 Independence Avenue, SW., Washington, DC 20250–0240, Phone #: (202) 720–2185, Fax #: (202) 720–8871, E-mail: *david.priester@usda.gov*

Codex Committee on Residues of Veterinary Drugs in Foods

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone #: (301) 827–2950, Fax #: (301) 827–8401, E-mail: *ssundlof@cvm.fda.gov*

Codex Committee on Cereals, Pulses and Legumes (adjourned *sine die*)

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Boulevard, Kansas City, MO 64153–1394, Phone #: (816) 891–0401, Fax #: (816) 891–0478, E-mail: *stanner@tsd.fgiskc.usda.gov*

Listing of U.S. Delegates and Alternates Worldwide General Subject Codex Committees

Codex Committee on Residues of Veterinary Drugs in Foods (Host Government—United States)

U.S. Delegate
Dr. Pamela L. Chamberlain, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place HFV–130, Rockville, MD 20855, Phone #: (301) 827–8566, FAX #: (301) 827–4299, E-mail: *pchambe1@cvm.fda.gov*
Alternate Delegate
Dr. Alice Thaler, Staff Director, Animal and Egg Production Food Safety Staff, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Phone #: (202) 690–2683, Fax #: (202) 720–8213, E-mail: *alice.thaler@fsis.usda.gov*

Codex Committee on Food Additives and Contaminants (Host Government—The Netherlands)

U.S. Delegate
Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1700, Fax #: (301) 436–2632, E-mail: *Terry.Troxell@cfsan.fda.gov*
Alternate Delegate
Dr. Dennis M. Keefe, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (202) 418–3113, Fax #: (202) 418–3131, E-mail: *dennis.keefe@cfsan.fda.gov*

Codex Committee on Pesticide Residues (Host Government—the Netherlands)

U.S. Delegate
Edward Zager, Associate Director, Health Effects Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone #: (703) 305–5035, Fax #: (703) 305–5147, E-mail: *Zager.Ed@epamail.epa.gov*
Alternate Delegate
Dr. Robert Epstein, Associate Deputy Administrator, Science and Technology, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3522S, Mail Stop 0222, 1400 Independence Avenue, SW., Washington, DC 20090, Phone #: (202) 720–2158, Fax #: (202) 720–1484, E-mail: *Robert.Epstein@usda.gov*

Codex Committee on Methods of Analysis and Sampling (Host Government—Hungary)

U.S. Delegate

Dr. Gregory Diachenko, Director, Division of Chemistry, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration (HFS–245), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1898, Fax #: (301) 436–2364, E-mail: *Gregory.Diachenko@cfsan.fda.gov*
Alternate Delegate
Dr. Thomas B. Whitaker, Senior Scientist, Agricultural Research Service, U.S. Department of Agriculture, 124 Weaver Laboratory, North Carolina State University, Raleigh, NC 27695–7625, Phone #: (919) 515–6731, Fax #: (919) 515–7760, E-mail: *Thomas_whitaker@ncsu.edu*

Codex Committee on Food Import and Export Certification and Inspection Systems (Host Government—Australia)

U.S. Delegate
Dr. Catherine Carnevale, Director, Office of Constituent Operations, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–550), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–2380, Fax #: (301) 436–2618, E-mail: *Catherine.Carnevale@cfsan.fda.gov*
Alternate Delegate
Ms. Karen Stuck, Chief, International Policy Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2137, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Phone #: 202–720–3470, Fax #: 202–720–7990, E-mail: *Karen.Stuck@fsis.usda.gov*

Codex Committee on General Principles (Host Government—France)

U.S. Delegate

Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee.

Codex Committee on Food Labeling (Host Government—Canada)

U.S. Delegate
Dr. Christine Taylor, Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Harvey E. Wiley Federal Building, 5100 Paint Branch Parkway (HFS–800), College Park, MD 20740–3835, Phone #: (301) 436–2373, Fax #: (301) 436–2636, E-mail: *Christine.Taylor@cfsan.fda.gov*
Alternate Delegate
Dr. Robert Post, Director, Labeling & Consumer Protection Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Room 602, Cotton Annex, Washington, DC 20250–3700, Phone #: (202) 205–0279, Fax #: (202) 205–3625, E-mail: *Robert.Post@fsis.usda.gov*

Codex Committee on Food Hygiene (Host Government—United States)

U.S. Delegate
Dr. Robert L. Buchanan, Director, Office of Science, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–006), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–2369, Fax #: (301) 436–2642, E-mail: *Robert.Buchanan@cfsan.fda.gov*
Alternate Delegates
Mr. John Mowbray, Food Technologist, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, Room 1B064, College Park, MD 20740, Phone #: (301) 436–1490, Fax #: (301) 436–2632 E-mail: *John.Mowbray@cfsan.fda.gov*
Dr. Barbara Masters, Acting Associate Deputy Administrator, Field Operations, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Phone #: (202) 720–3697, Fax #: (202) 720–5439, E-mail: *Barbara.Masters@fsis.usda.gov*

Codex Committee on Nutrition and Food for Special Dietary Uses (Host Government—Germany)

U.S. Delegate
Dr. Elizabeth Yetley, FDA Lead Scientist for Nutrition, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–006), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1671, Fax #: (301) 436–2641, E-mail: *Elizabeth.Yetley@cfsan.fda.gov*
Alternate Delegate
Dr. Christine Taylor, Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway (HFS–800), College Park, MD 20740–3835, Phone #: (301) 436–2373, Fax #: (301) 436–2636, E-mail: *Christine.Taylor@cfsan.fda.gov*

Worldwide Commodity Codex Committees

Codex Committee on Fresh Fruits and Vegetables (Host Government—Mexico)

U.S. Delegate
Mr. David Priester, International Standards Coordinator, Fruit & Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building 1400 Independence Avenue, SW., Washington, DC 20250 Phone #: (202) 720–2184, Fax #: (202) 720–0016, E-mail: *david.priester@usda.gov*
Alternate Delegate
Mr. Dorian LaFond, International Standards Coordinator, Fruit and Vegetables Program, Agricultural Marketing Service, Room 2086, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 690–4944, Fax #: (202) 720–4722, E-mail: *dorian.lafond@usda.gov*

Codex Committee on Fish and Fishery Products (Host Government—Norway)

U.S. Delegate
Mr. Philip C. Spiller, Director, Office of Seafood, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–400), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–2300, Fax #: (301) 436–2599, E-mail: *Philip.Spiller@cfsan.fda.gov*
Alternate Delegate
Vacant

Codex Committee on Cereals, Pulses and Legumes (Host Government—United States)

U.S. Delegate
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1714, Fax #: (301) 436–2618, E-mail: *Charles.Cooper@cfsan.fda.gov*
Alternate Delegate
Mr. David Shipman, Deputy

Administrator, Federal Grain Inspection Division, Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, Room 1661, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–9170, Fax #: (202) 205–9237, E-mail: *dshipman@gipsadc.usda.gov*

Codex Committee on Milk and Milk Products (Host Government—New Zealand)

U.S. Delegate
Mr. Duane Spomer, Chief, Dairy Standardization Branch, U.S. Department of Agriculture, Agricultural Marketing Service, Room 2750, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–9382, Fax #: (202) 720–2643, E-mail: *duane.spomer@usda.gov*

Alternate Delegate
John F. Sheehan, Director, Division of Dairy and Egg Safety, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740, Phone #: (301) 436–1488, Fax #: (301) 436–2632, E-mail: *john.sheehan@cfsan.fda.gov*

Codex Committee on Fats and Oils (Host Government—United Kingdom)

U.S. Delegate
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1714, Fax #: (301) 436–2618, E-mail: *Charles.Cooper@cfsan.fda.gov*

Alternate Delegate
Ms. Kathleen Warner, U.S. Department of Agriculture, 1815 N. University Street, Peoria, IL 61604, Phone #: (309) 681–6584, Fax #: (309) 681–6668, E-mail: *warnerk@ncaur.usda.gov*

Codex Committee on Cocoa Products and Chocolate (Host Government—Switzerland)

U.S. Delegate
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1714, Fax #: (301) 436–2618, E-mail: *Charles.Cooper@cfsan.fda.gov*

Alternate Delegate
Dr. Michelle Smith, Food Technologist, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–2024, Fax #: (301) 436–2651, E-mail: *Michelle.Smith@cfsan.fda.gov*

Codex Committee on Sugars (Host Government—United Kingdom)

U.S. Delegate
Dr. Thomas L. Tew, Research Geneticist, Sugarcane Research Unit, Agricultural Research, USDA—FSIS, 5883 USDA Road, Houma, LA 70360, Phone #: (504) 872–5042, Fax #: (504) 868–8369, E-mail: *ttew@nola.srrc.usda.gov*

Alternate Delegate
Dr. Dennis M. Keefe, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–255), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (202) 418–3113, Fax #: (202) 418–3131, E-mail: *dennis.keefe@cfsan.fda.gov*

Codex Committee on Processed Fruits and Vegetables (Host Government—United States)

U.S. Delegate
Mr. Dorian Lafond, International Standards Coordinator, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2086, South Building, 1400 Independence Ave. SW., Washington, DC 20250, Phone #: (202) 690–4944, Fax #: (202) 720–0016, E-mail: *Dorian.Lafond@usda.gov*

Alternate Delegate
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1714, Fax #: (301) 436–2618, E-mail: *Charles.Cooper@cfsan.fda.gov*

Codex Committee on Vegetable Proteins (Host Government—Canada)

U.S. Delegate
Dr. Wilda H. Martinez, Area Director, ARS North Atlantic Area, Agricultural Research Service, U.S. Department of Agriculture, 600 E. Mermaid Lane, Wyndmoor, PA 19038, Phone #: (215) 233–6593, Fax #: (215) 233–6719, E-mail: *wmartinez@ars.usda.gov*

Alternate Delegate
Dr. Jeanne Rader, Director, Division of Research and Applied Technology, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1786, Fax #: (301) 436–2640, E-mail: *Jeanne.Rader@cfsan.fda.gov*

Codex Committee on Meat Hygiene (Host Government—New Zealand)

U.S. Delegate
Dr. Perfecto Santiago, Assistant Deputy Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Room 402, Cotton Annex, Washington, DC 20250–3700, Phone #: (202) 205–0699, Fax #: (202) 401–1760, E-mail: *Perfecto.Santiago@fsis.usda.gov*

Alternate Delegate
Dr. William James, Director, Food Animal Sciences Division, Office of Public Health and Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Mail Drop 343, 900 D Street, SW., Washington, DC 20024, Phone #: (202) 690–6572, Fax #: (202) 690–6565, E-mail: *william.james@fsis.usda.gov*

Codex Committee on Natural Mineral Waters (Host Government—Switzerland)

U.S. Delegate
Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety & Applied Nutrition, Food and Drug Administration (HFS–300), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1700, Fax #: (301) 436–2632, E-mail: *Terry.Troxell@cfsan.fda.gov*

Alternate Delegate
Ms. Shellee Anderson, Division of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–820), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1491, Fax #: (301) 436–2637, E-mail: *Shellee.Anderson@cfsan.fda.gov*

Ad Hoc Intergovernmental Task Forces
Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices (Host government—Brazil)

U.S. Delegate
Mr. Martin Stutsman, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–1642, Fax #: (301) 436–2651, E-mail: *Martin.Stutsman@cfsan.fda.gov*

Alternate Delegate
Mr. David Priester, International Standards Coordinator, Fruit & Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 720–2184, Fax: (202) 720–0016, E-mail: *david.priester@usda.gov*

Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology (Host government—Japan)

U.S. Delegate
L. Robert Lake, Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–004), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone #: (301) 436–2379, Fax #: (301) 436–2668, E-mail: *RLake@cfsan.fda.gov*

Alternate Delegate
Dr. Sally L. McCammon, Science Advisor to the Administrator, Animal Plant Health Inspection Service, U.S. Department of Agriculture, 4700 River Road (Unit 98), Riverdale, MD 20737, Phone #: (301) 734–5761, Fax #: (301) 734–5992, E-mail: *Sally.L.Mccammon@usda.gov*

Ad Hoc Intergovernmental Task Group on Animal Feeding (Host government—Denmark)

U.S. Delegate
Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place (HFV–1), Metro Park N. 4, Rockville, MD 20855, Phone #: (301) 827–2950, Fax #: (301) 827–4401, E-mail: *ssundlof@cvm.fda.gov*

Alternate Delegate
Dr. Lawrence E. Miller, Program Manager, Veterinary Regulatory Support, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Unit 129, Room 4D79, 4700 River Road, Riverdale, MD 20737, Phone #: (301) 734–7633, Fax #: (301) 734–8538, E-mail: *Lawrence.E.Miller@usda.gov*

There are six regional coordinating committees:

Coordinating Committee for Africa
Coordinating Committee for Asia
Coordinating Committee for Europe
Coordinating Committee for Latin America and the Caribbean
Coordinating Committee for the Near East
Coordinating Committee for North America and the South-West Pacific

Contact

Dr. F. Edward Scarbrough, Manager, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Phone #: (202) 205–7760, Fax #: (202) 720–3157, E-mail: *ed.scarbrough@fsis.usda.gov*

ATTACHMENT 3.—TIMETABLE OF CODEX SESSIONS

[June 2002 through June 2004]

2002:			
CX 702–50	Executive Committee of the Codex Alimentarius Commission (50th Session).	26–28 June	Rome.
CX 706–23	FAO/WHO (Codex) Regional Coordinating Committee for Europe (23th Session).	10–13 September	Bratislava.
CX 727–13	FAO/WHO (Codex) Regional Coordinating Committee for Asia (13th Session).	17–20 September	Kuala Lumpur.
CX 713–21	Codex Committee on Processed Fruits and Vegetables (21st Session).	23–27 September	San Antonio, TX.
CX 732–7	FAO/WHO (Codex) Regional Coordinating Committee for North America and the South-West Pacific (7th Session).	29 October–1 November	Vancouver, BC.
CX 720–24	Codex Committee on Nutrition and Foods for Special Dietary Uses (24th Session).	4–8 November	Berlin.
CX 715–24	Codex Committee on Methods of Analysis and Sampling (24th Session).	18–22 November	Budapest.
CX–707–15	FAO/WHO (Codex) Regional Coordinating Committee for Africa (15th Session).	25–29 November	Kampala.
CX 725–13	FAO/WHO (Codex) Regional Committee for Latin America and the Caribbean (13th Session).	3–6 December	Santo Domingo.
2003:			
CX–734–2	FAO/WHO (Codex) Regional Coordinating Committee for the Near East (2nd Session).	20–23 January	Cairo.
CX 712–35	Codex Committee on Food Hygiene (35th Session)	27 January–1 February	Orlando, FL.
CX 709–18	Codex Committee on Fats and Oils (18th Session)	3–7 February	London.
CX–702–51	Executive Committee of the Codex Alimentarius Commission (51st [Extraordinary] Session).	10–11 February	Geneva.
CX–701–25	Codex Alimentarius Commission (25th [Extraordinary] Session)	12–15 February	Geneva.
CX 723–9	Codex Committee on Meat Hygiene (9th Session)	17–21 February	Wellington.
CX 730–14	Codex Committee on Residues of Veterinary Drugs in Foods (14th Session).	4–7 March	Arlington, VA.

ATTACHMENT 3.—TIMETABLE OF CODEX SESSIONS—Continued

[June 2002 through June 2004]

CX 802–4	*Ad hoc* Intergovernmental Task Force on Biotechnology (4th Session).	10–14 March	Yokohama.
CX 711–35	Codex Committee on Food Additives and Contaminants (35th Session).	17–21 March	Arusha.
CX 803–4	*Ad hoc* Intergovernmental Task Force on Animal Feeding (4th Session).	24–26 March	Copenhagen.
CX 718–35	Codex Committee on Pesticide Residues (35th Session)	31 March–4 April	Rotterdam.
CX 716–18	Codex Committee on General Principles (18th Session)	7–11 April	Paris.
CX 714–31	Codex Committee on Food Labelling (31st Session)	28 April–2 May	Ottawa.
CX 801–3	*Ad hoc* Intergovernmental Task Force on Fruit and Vegetable Juices (3rd Session).	6–9 May	Brasilia.
CX 702–52	Executive Committee of the Codex Alimentarius Commission (52st Session).	26–27 June	Rome.
CX 701–26	Codex Alimentarius Commission (26th Session)	30 June–5 July	Rome.
CX 731–11	Codex Committee on Fresh Fruits and Vegetables	8–12 September	Mexico City.
CX 722–26	Codex Committee on Fish and Fishery products	13–17 October	Aalesund, Norway.
CX–720–25	Codex Committee on Nutrition and Foods for Special Dietary Uses.	3–7 November	Berlin.
CX–733–123	Codex Committee on Food Import and Export Inspection and Certification.	1–5 December	TBA.
2004:			
CX 702–53	Executive Committee of the Codex Alimentarius Commission (53rd Session).	4–6 February	Geneva.
CX–723–10	Codex Committee on Meat and Poultry Hygiene (10th Session).	16–20 February	Auckland.
CX 715–25	Codex Committee on Methods of Analysis and Sampling (25th Session).	7–14 March	Budapest.
CX 711–36	Codex Committee on Food Additives and Contaminants (36th Session).	22–26 March	Rotterdam.
CX 712–36	Codex Committee on Food Hygiene (36th Session)	29 March–3 April	Washington, DC.
CX 718–36	Codex Committee on Pesticide Residues (36th Session)	19–24 April	New Delhi.
CX–703–06	Codex Committee on Milk and Milk Products (6th Session)	26–30 April	Auckland.
CX 716–19	Codex Committee on General Principles (19th Session)	3–7 May	Paris.
CX 714–32	Codex Committee on Food Labelling (32nd Session)	10–14 May	Ottawa.
CX–702–54	Executive Committee (54th Session)	24–26 June	Geneva.
CX–701–27	Codex Alimentarius Commission (27th Session)	28 June–2 July	Geneva.

Attachment 4

Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius. For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before of after harvest to protect the commodity from deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner that leaves a residue, which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxological effects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) toxological assessment of the pesticide and its residue, and

(b) review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or µg/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs* (GPVD) is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Definitions of Risk Analysis Terms Related to Food Safety

Hazard: A biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

Risk: A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.

Risk analysis: A process consisting of three components: risk assessment, risk management and risk communication.

Risk assessment: A scientifically based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

Hazard identification: The identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

Hazard characterization: The qualitative and/or quantitative evaluation of the nature of the adverse health effects associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

Dose-response assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).

Exposure assessment: The qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

Risk characterization: The qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard characterization and exposure assessment.

Risk management: The process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair trade practices, and, if needed, selecting appropriate prevention and control options.

Risk communication: The interactive exchange of information and opinions throughout the risk analysis process concerning risk, related risk factors and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions.

Attachment 5

Part 1

Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the "Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies," to elaborate a Worldwide Codex Standard and also decides which

subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Part 2

Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission or the Executive Committee between Commission sessions, on the basis of a two-thirds majority of votes cast, taking into account the "Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies"; shall identify those standards which shall be the subject of an accelerated elaboration process. The identification of such standards may also be made by subsidiary bodies of the Commission, on the basis of a two-thirds majority of votes cast, subject to confirmation at the earliest opportunity by the Commission or its Executive Committee by a two-thirds majority of votes cast.

(2) The Secretariat arranges for the preparation of a *proposed draft standard*. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to Members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests. When standards are subject to an accelerated procedure, this fact shall be notified to the Members of the Commission and the interested international organizations.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

In the case of standards identified as being subject to an accelerated elaboration procedure, the draft standard is submitted through the Secretariat to the Commission together with any written proposals received from Members and interested international organizations for amendments with a view to its adoption as a Codex standard. In taking any decision at this step, the Commission will give due consideration to any comments that may be submitted by any of its Members regarding the implications which the proposed draft standard or any provisions thereof may have for their economic interests.

Attachment 6

Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, a subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definitions are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors that are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on page 84 of the Codex Procedural Manual and may take the following form:

"The following provisions in respect of food additives and their specifications as contained in section * * * of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants."

A tabulation should then follow, viz.:

"*Name of additive, maximum level* (in percentage or mg/kg)."

Contaminants

(a) *Pesticide Residues:* This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants:* In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form:

"The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants."

A tabulation should then follow, viz.:

"*Name of contaminant, maximum level* (in percentage or mg/kg)."

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given in the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear:

"The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene."

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, *e.g.*, where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, *e.g.* multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given in the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear:

"The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling."

Methods of Analysis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given in the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternatives and included in this section either specifically or by reference. The following statement should also appear:

"The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling."

[FR Doc. 03–13771 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, Grasslands, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 1, 2003. The list of newspapers will remain in effect until another notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana); Rapid City Journal (South Dakota)
Dakota Prairie National Grasslands—Bismarck Tribune (North and South Dakota)
Flathead—Daily Inter Lake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Inter Lake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: May 28, 2003.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 03–13966 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between The Lakes National Recreation Area; Land and Resources Management Plan; Trigg and Lyon Counties, KY, Stewart County, TN

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service intends to prepare an environmental impact statement (EIS) in conjunction with development of a Land and Resources Management Plan (hereafter, "LRMP" or "Area Plan") for Land Between The Lakes National Recreation Area (hereafter "LBL" or "Area"). The Area Plan will be prepared pursuant to requirements of 16 U.S.C. 1600 *et seq.*; the planning process will be initiated under the 1982 version of the Forest Service planning regulations (36 Code of Federal Regulations 219 *et seq.*, as is provided for at 36 CFR 219.35(b) of the current regulations). The EIS will be prepared pursuant to requirements of 42 U.S.C. 4321 *et seq.* and 40 CFR 1500–1508. This notice identifies topics that will help focus our planning effort, displays the estimated dates for filing a Draft Environmental Impact Statement (DEIS), provides information concerning public participation, and provides the names and addresses of the responsible agency official and the individuals who can provide additional information.

DATES: Comments concerning the scope of the analysis must be received in writing on or before July 21, 2003. The draft environmental impact statement is expected by March, 2004 and the final environmental impact statement is expected by November, 2004.

ADDRESSES: Send written comments to Area Planner, Land Between The Lakes National Recreation Area, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Information also will be posted on the LBL Web page at *http://www2.lbl.org/lbl/ADMIN/plan.htm.* Electronic mail should be sent to *focuslbl@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Barbara Wysock, Area Planner, at (270) 924–2161.

SUPPLEMENTARY INFORMATION:

Background—The Setting: Located in western Kentucky and Tennessee, LBL encompasses 170,000 acres of rolling forested hills abundant with wildlife; more than 300 miles of undeveloped shoreline; 281 miles of trails, campgrounds, interpretive and educational facilities, and numerous lake access areas. Annual visitation to the Area averages around two million people. About 30 million people can reach LBL within 5–6 hours, and one-third of the population of the United States is only a day's drive away. LBL is bounded on the west by Kentucky Lake (an impoundment of the Tennessee River) and on the east by Lake Barkley (an impoundment of the Cumberland River). A canal that constitutes LBL's northern boundary connects the two lakes; the southern boundary is located just north of the community of Dover, Tennessee. President Kennedy established LBL by Executive Order in 1963.

Title V of Public Law 105–277 (commonly known as the "LBL Protection Act of 1998", enacted October 28, 1998) transferred administrative jurisdiction of LBL from the Tennessee Valley Authority (TVA) to the United States Forest Service. The purposes for LBL as set forth in the Act include the following: (a) To protect and manage the resources of the National Recreation Area for optimum yield of outdoor recreation and environmental education through multiple use management; (b) to authorize, research, test, and demonstrate innovative programs and cost-effective management; (c) and to help stimulate the development of the surrounding region and extend the beneficial results as widely as practicable.

Current LBL Management Plan and Planning Regulations: The LBL Protection Act of 1998 directed the Forest Service to prepare an LRMP for LBL that conforms to the National Forest Management Act of 1976 (NFMA). The Act also provided that the Forest Service could continue to use the existing TVA Natural Resources Management Plan as appropriate to provide management direction for LBL until such time as an LRMP is adopted. By virtue of this fact, the preparation of the Area Plan is thus subject to the planning regulations contained in 36 CFR 219 *et seq.*

On May 20, 2002 the Department issued an interim final rule to extend the date by which LRMPs would otherwise be subject to the November 2000 regulations (67 FR 35431). The interim final rule allows units of the National Forest System to continue to use the 1982 version of the 36 CFR 219 regulations until such time as a revision to the November 2000 rule is adopted. Accordingly, LBL will develop the Area plan under the 1982 regulations.

The Role of the Area Plan: The Area Plan will guide the overall management of LBL to achieve Area-wide goals and objectives (or desired conditions). The Area Plan will be analogous to a county or municipal zoning plan. The results of these management goals will contribute to ecological sustainability, as well as to stimulate the development of local communities affected by LBL management activities. By direction of the LBL Protection Act of 1998, the Plan will have these emphases: Public recreational opportunities; conservation of fish and wildlife and their habitat; provision for diversity of native and desirable non-native plants, animals; opportunities for hunting and fishing; and environmental education. Decisions made in the Area Plan do not compel the agency to undertake particular site-specific projects and, thus, do not normally make any irreversible or irretrievable commitment of resources. The Area Plan, however, will strive to achieve these provisions; establish limitations on what actions may be authorized; prescribe the general distribution of activities across the landscape; and provide standards for conditions project decisions will meet. The following six decisions will be made in the Area Plan:

- *Area-wide multiple-use goals and objectives.* Goals describe a condition to be achieved sometime in the future. Objectives are concise, time-specific statements of measurable planned results that respond to the goals.
- *Area-wide management requirements.* These are standards for management activities, or advisable courses of action that apply across the entire area.
- *Management area direction applying to future activities in each management area.* This is the desired condition specified for certain portions of the Area, and the standards to help achieve that condition.
- Lands suited and not suited for natural resource management.
- Monitoring and evaluation requirements to gauge how well the plan is being implemented.
- Recommendations to Congress, such as wilderness designation, if any. It should be noted that these requirements are cited from the 1982 36 CFR 219 planning regulations.

Purpose and Need for Action

As discussed above, both the National Forest Management Act and the LBL Protection Act of 1998 require that an LRMP be prepared for the Area. The Area Plan will provide a blueprint to guide management decisions within the Area for a period of 10–15 years after the Plan is developed and approved. In addition to satisfying legal requirements, the Area Plan is necessary because:

1. TVA's 1994 Natural Resources Management Plan for LBL does not fully address planning regulations and policy required of the Forest Service. The plan also does not provide adequate guidance on some of the issues discussed below.

2. Certain resource conditions, trends, and visitor use patterns have changed during the past nine years. The new Area Plan will provide a conduit to incorporate new information and to address the changed conditions.

Proposed Action

Develop an Area plan that will meet the requirements of the National Forest Management Act and address the public issues.

Possible Alternatives

The actual alternatives presented in the DEIS will portray a full range of responses to the significant issues. The DEIS will examine the effects of implementing strategies to achieve desired conditions and will develop management objectives that would move LBL toward those desired conditions. A preferred alternative will be identified in the DEIS. The range of alternatives presented in the DEIS will include one that continues current management direction (that is, a "no action" alternative) and others that will address the range of issues developed in the scoping process.

Responsible Official

The Regional Forester for the Southern Region, located at 1720 Peachtree Street, NW., Atlanta, Georgia 30309, is the Responsible Official.

Nature of Decision To Be Made

The decision to be made and documented in a Record of Decision will be an Area plan that will meet the requirements of the National Forest Management Act and address all of the significant public issues developed through scoping.

Scoping Process

Public participation will be sought throughout the revision process, but will be particularly important at specific points along the way. The first formal opportunity to comment is during the scoping process. Scoping for the LBL Area Plan/EIS will include identifying visions for the future of the Area, as well as issues that should be addressed in the Area Plan/EIS. Scoping for the LBL Area Plan/EIS will be conducted in phases. The first phase is intended to encourage the public to describe their vision for the future of the Area. The following five public workshops are scheduled during this phase. Background information or announcements of additional meetings will be issued in news releases and on the LBL Web site. Requests to be added to the project mailing list can be directed to the Area Planner at the address above.

Date	Time	Location
Saturday, June 28, 2003	1 p.m. to 5 p.m	Lakeland Jamboree, Cadiz, Kentucky.
Monday, June 30, 2003	6:30 p.m. to 9:30 p.m	Weaks Community Center, Murray, Kentucky.

Date	Time	Location
Tuesday, July 1, 2003	6:30 p.m. to 9:30 p.m	Mayfield Extension Office, Benton, Kentucky.
Thursday, July 10, 2003	6:30 p.m. to 9:30 p.m	Dover Elementary School, Dover, Tennessee.
Saturday, July 12, 2003	1 p.m. to 5 p.m	Lee S. Jones Community, Bldg, 304, Lee S. Jones Park Road (In The Park).

Preliminary Issues

The following is a summary of the preliminary issues. They are the product of the deliberations of Forest Service staff, historical input received from users of LBL, interested groups, and government agencies; as well as reviews of laws, regulations, policies, existing LBL plans, and scientific information. Additional information on these topics may be found by contacting LBL as stated above.

The following issues will evolve based on public input received through the scoping process. Some issues identified during scoping may not be appropriate for decision at the Plan level. Some may be more appropriate for project level decisions or be addressed through other processes outside of the land management planning process.

1. Recreation and Environmental Education

A primary part of the mission of LBL is to protect and manage the resources of LBL for optimum yield of outdoor recreation and environmental education for the American people. The 1994 NRMP addresses program objectives and guidelines for the management of natural resources, but does not adequately address the strategies for recreation and environmental education. These strategies must be articulated to accomplish the emphases of the LBL Protection Act and the requirements of NFMA. LBL receives over two million visits annually. Sightseeing is the primary attraction for visitors (33%), followed by fishing (19%), camping (12%), and hunting (10%). (TVA 1987) Less than 4%, or 6,400 acres, of LBL is developed with facilities for recreation, environmental education, or administration. Examples of special interest areas in LBL include Turkey Bay Off Highway Vehicle (OHV) area, Elk & Bison Prairie, Wranglers Campground, and Brandon Spring Group Center.

Issue: Management direction for the recreation resource must be added to the area plan. Should the current recreation-related services be maintained, increased, or decreased in the new plan to provide optimum yield of outdoor recreation, environmental education, and stimulation of regional economies?

2. Vegetation Management Practices

Forests: The current condition of LBL's 151,550 acres of forestland is largely the oak/hickory cover type (80%). The remaining 20% include cover types of maple/beech, pine and others.

LBL currently manages for a predominantly oak/hickory forest for these purposes: wildlife habitat; enhanced visual quality; increased environmental awareness about the use of environmentally responsible management practices; research methods and techniques in ecosystem management; and demonstration of sustainable forest management's compatibility with other uses.

The following methods are currently used to achieve these stated objectives: even-aged management; uneven-aged management; timber stand improvement; passive forest management for the biosphere reserve core areas; and deferred management where the determination of a management category has not been made.Open Lands: Approximately 12,050 acres (7%) of the land at LBL is in open land. LBL currently manages the open land to enhance viewing of the forest and lakes, provide early successional habitat for wildlife, and provide for native species restoration.

Issue: How will the vegetation on LBL be managed and what desired conditions would contribute best to the optimum yield of outdoor recreation, environmental education, and stimulation of regional economies?

3. Special Designations

LBL will evaluate areas for possible addition to a roadless inventory. This inventory would contain any areas that are suitable for recommendation in the Plan and subsequent Wilderness designation by Congress. NFMA requires that the Area conduct an inventory of these suitable areas and consider making recommendations in the Plan for Wilderness.

LBL currently maintains specially designated wildlife refuge areas and biosphere reserve core areas. Bear Creek (180 acres); Long Creek (40 acres), and Prior Creek (5 acres) Waterfowl Management Units are wetlands to provide habitat for shorebirds and migrating waterfowl. Approximately 42,500 acres of LBL land is placed in protected status under the UNESCO international biosphere reserve designation. Wildlife refuges and no-hunting areas are maintained on approximately 12,250 acres.

Issue: Should areas with special management designation continue to be managed under these designations or be changed? Should additional areas be designated for special management?

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. The public involvement process creates an atmosphere of openness where all members of the public are free to share information with the Forest Service on a regular basis. The Forest Service is seeking information, ideas, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies that may be interested or affected by the proposed action. Public participation will be solicited by notifying (in person, by mail, and/or by e-mail) known interested and affected publics. News releases will be used to inform the public of various steps of the planning process and locations of public involvement opportunities. This information also will be listed on the LBL Web site. Public participation opportunities include written comments, open houses, focus groups, and collaborative forums.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions.

Vermont Yankee Nuclear Power Corp. v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 29, 2003.

Roberta A. Moltzen,

Deputy Regional Forester, NR.

[FR Doc. 03–13964 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Missionary Ridge Burned Area Timber Salvage and Public Scoping; San Juan National Forest, CO

AGENCY: U.S. Forest Service, USDA.

ACTION: Revision of Notice of Intent to Prepare an Environmental Impact Statement (EIS) and conduct public scoping; San Juan National Forest, Colorado.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the U.S. Forest Service (USFS), is revising the Notice of Intent For the Missionary Ridge Burned area Timber Salvage Published in the **Federal Register** September 26, 2002 (volume 67 Number 187) page 60640. The revision changes the Deciding official on Page 60640 from the Regional Forester, USDA Forest Service Rock Mountain Region, PO Box 25127, Lakewood CO 80225.] TO [the Forest Supervisor, San Juan National Forest, USDA Forest Service, 15 Burnett Court Durango CO 81301.]

FOR FURTHER INFORMATION CONTACT: Dave Dallison or Jim Powers, (970) 247–4874.

Dated: May 27, 2003.

Mark Stiles,

Forest Supervisor, San Juan National Forest, USFS, Colorado.

[FR Doc. 03–13955 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–BS–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Thursday, June 19, 2003 at the Spokane Community College, Colville Campus, Monumental Room, 985 South Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) RAC officer (chair) election; (2) RAC budget, expenses, and communication strategies; (3) Bylaws and Charter Review and Update; (4) Fiscal Year 2004 Title II projects review and recommendation to the forest designated official; and, (5) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to designated federal official, Rolando Ortegon or Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114: (509) 684–7000.

Dated: May 28, 2003.

Rolando Ortegon,

Acting Forest Supervisor.

[FR Doc. 03–13965 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a revised conservation practice standard in its National Handbook of Conservation Practices. This standard is: Pest Management (NY595).

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Paul W. Webb, Resource Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made to the NRCS regarding disposition of those comments and final determination of change will be made.

Dated: May 15, 2003.

Steven L. Machovec,

Asst. State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

BILLING CODE 3410–16–P

Draft 5 NY595 - 1

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION PRACTICE STANDARD

PEST MANAGEMENT

NEW YORK

(Acre)

CODE NY595

DEFINITION

Utilizing environmentally sensitive prevention, avoidance, monitoring and suppression strategies, to manage weeds, insects, diseases, animals and other organisms (including invasive and non-invasive species), that directly or indirectly cause damage or annoyance.

PURPOSES

This practice is applied as part of a Resource Management System (RMS) to support one or more of the following purposes:

- Enhance quantity and quality of commodities.
- Minimize negative impacts of pest management on soil, water, air, plants, and animal resources and/or human considerations.

CONDITIONS WHERE PRACTICE APPLIES

Wherever pests will be managed.

CRITERIA

General Criteria Applicable to All Purposes

A pest management plan shall be a component of an overall conservation plan.

All methods of pest management must comply with Federal, State, and local regulations, including management plans for invasive pest species, noxious weeds and disease vectors. Compliance with the Food Quality Protection Act (FQPA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Worker Protection Standard (WPS); and Interim Endangered Species Protection Program (H7506C) is required for chemical pest control.

Integrated pest management (IPM) that strives to balance economics, efficacy and environmental risk, where available, shall be incorporated into planning alternatives. IPM is a sustainable approach to pest control that combines the use of prevention, avoidance, monitoring and suppression strategies, to maintain pest populations below economically damaging levels, to minimize pest resistance, and to minimize harmful effects of pest control on human health and environmental resources. The IPM strategy includes biological controls, cultural controls, mechanical and physical controls, the use of pest resistant cultivars, and the judicious use of chemical controls when needed.

As a minimum, the following core pest management elements will be applied:

- Scouting for economically important pests at the appropriate times of year.
- Development of site-specific pest management recommendations based on scouting results. Use of local history of pest outbreaks, grower experience,

Conservation practice standards are reviewed periodically, and updated if needed. To obtain the current version of this standard, contact the Natural Resources Conservation Service.

NRCS, NHCP- NY

May 2003

DRAFT NY 595 -2

and professional judgement of pest management advisors will increase efficacy of pest management control measures and adoption of IPM techniques.

- Record keeping consistent with conservation practice standard NY748.
- Calibrating of sprayer/planter at least once per year

All methods of pest management must be integrated with other components of the conservation plan.

Clients shall be instructed to pay special attention to all environmental hazards and site-specific application criteria listed on pesticide labels and contained in Cornell Cooperative Extension and Crop Consultant recommendations.

Pest management environmental risks, including the impacts of pesticides in ground and surface water on humans and non-target plants and animals, must be evaluated for all identified water resource concerns. For analysis of individual fields, use the NRCS' Windows Pesticide Screening Tool (WIN-PST). When developing Comprehensive Watershed Plans the National Agricultural Pesticide Risk Analysis (NAPRA) tool shall be employed in addition to WIN-PST.

When a chosen alternative has significant potential to negatively impact the environment, mitigation is required. Additionally, if the evaluated site is in the drainage area of a priority water body, a water supply reservoir, or wellhead area, mitigation may be required.

If the Soil - Pesticide Interactions Report for WIN-PST indicates a "Very High", or "High" risk rating, an appropriate set of mitigation techniques or conservation practices must be put into place to address risks to humans and non-target plants and animals.

Additionally, if the Soil – Pesticide Interactions Report from WIN-PST indicates an "Intermediate" risk rating, and the site evaluated is in a drainage area of a priority water body, a water supply reservoir, or wellhead area, the mitigation requirements from a "Very High" or "High" rating , as outlined above, must be followed.

Cornell Cooperative Extension develops and maintains guidelines for IPM for specific crops. These are called IPM Elements. Mitigation techniques will be considered adequate when a rating of 80% of Cornell Cooperative Extension IPM elements is achieved.

Where crop specific IPM guidelines have not been developed, use professional judgement to mitigate the adverse impact(s) of pesticides. Refer to the Field Office Technical Guide, Section I, General References, Water Quality and Quantity Technical Note Pesticide Mitigation Effectiveness Guide. This document provides guidance for Conservation Practice selection and management techniques that may provide a mitigatory effect on pesticide loss pathways.

Additional Criteria to Protect Quantity and Quality of Commodities

As an essential component of both commodity-specific IPM and IPM general principles, clients shall be encouraged to use the minimum level of pest control necessary to meet their objectives for commodity quantity and quality.

Additional Criteria to Protect Soil Resources

In conjunction with other conservation practices, the number, sequence and timing of tillage operations shall be managed to maintain soil quality and maintain soil loss at or below the soil loss tolerance (T), as predicted by using the current NRCS approved soil and water erosion prediction equation.

NRCS, NHCP - NY

May 2003

Additional Criteria to Protect Water Resources

If the area is irrigated, the Irrigation Water Management standard shall be employed.

The number, sequence and timing of tillage operations shall be managed in conjunction with other sediment control tactics and practices, in order to minimize sediment losses to nearby surface water bodies.

CONSIDERATIONS

If commodity-specific IPM is not available, the following IPM principles should be considered:

- Prevention, such as using pest-free seeds and transplants, treated seed, cleaning tillage and harvesting equipment between fields, irrigation scheduling to avoid situations conducive to disease development, etc.
- Avoidance, such as using pest resistant varieties, crop rotation, trap crops, etc.
- Monitoring, such as pest scouting, soil testing, weather forecasting, disease risk models, degree day models, etc., to help target suppression strategies and avoid routine preventative pest control.
- Suppression, such as cultural, biological and chemical controls, that can reduce a pest population or its impacts. Chemical controls should be used judiciously in order to minimize environmental risk, human exposure, and pest resistance.

Adequate plant nutrients and soil moisture, including favorable pH and soil conditions, should be implemented to reduce plant stress, improve plant vigor and increase the plant's overall ability to tolerate and resist pests.

On irrigated land, irrigation water management should be designed to minimize pest management environmental risk.

PLANS AND SPECIFICATIONS

The pest management component of a conservation plan shall be prepared in accordance with the criteria of this standard and shall describe the requirements for applying the practice to achieve its intended purpose(s).

As a minimum, the pest management component of a conservation plan shall include:

- Plan map and soil map of managed site, if applicable (use RMS plan maps if available).
- Location of sensitive resources and setbacks, if applicable (use RMS plan maps if available).
- Environmental risk analysis, with approved tools and/or procedures, for probable pest management recommendations by crop (if applicable) and pest.
- Interpretation of the environmental risk analysis and identification of appropriate mitigation techniques.
- Operation and maintenance requirements.

OPERATION AND MAINTENANCE

The pest management component of a conservation plan shall include appropriate operation and maintenance items for the client. These may include:

- Review and update the plan periodically in order to incorporate new IPM technology, respond to cropping system and pest complex changes, and avoid the development of pest resistance.
- Maintain mitigation techniques identified in the plan in order to ensure continued effectiveness.

NRCS, NHCP - NY

May 2003

- Develop a safety plan for individuals exposed to chemicals, including telephone numbers and addresses of emergency treatment centers for individuals exposed to chemicals and the telephone number for the nearest poison control center. The National Pesticide Information Center (NPIC) telephone number in Corvallis, Oregon may also be given for non-emergency information:

1-800-858-7384

Monday - Friday
6:30 a.m. to 4:30 p.m. Pacific Time

Additionally, the NPIC supports a website:

http://npic.orst.edu

For advice and assistance with emergency spills that involve agrichemicals, the local emergency telephone number should be provided. The national 24-hour CHEMTREC telephone number may also be given:

1-800-424-9300

CHEMTREC also supports a website:

www.chemtrek.org

- Follow label requirements for mixing/loading setbacks from wells, intermittent streams and rivers, natural or impounded ponds and lakes, or reservoirs. (State or local regulations may be more restrictive).
- Post signs according to label directions and/or Federal, State, and local laws around sites that have been treated. Follow restricted entry intervals.
- Dispose of pesticides and pesticide containers in accordance with label directions and adhere to Federal, State, and local regulations.
- Read and follow label directions and maintain appropriate Material Safety Data Sheets (MSDS).
- Calibrate application equipment according to Extension and/or manufacturer recommendations before each seasonal use and with each major chemical change.
- Replace worn nozzle tips, cracked hoses, and faulty gauges.
- Maintain records of pest management activities, such as scouting records, calibration rates, etc., for at minimum of three years. Refer to Conservation Standard NY748 for additional criteria.
- Pesticide application records shall also be in accordance with USDA Agricultural Marketing Service's Pesticide Record Keeping Program.

REFERENCES

Pesticide Mitigation Effectiveness Guide. Section I, USDA-NRCS Field Office Technical Guide. Syracuse, NY, 2003.

Resource Management System Guide Sheets. Section III, USDA-NRCS Field Office Technical Guide. Syracuse, NY. 1998.

Cornell Guide for Integrated Field Crop Management. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Pest Management Guidelines for Commercial Tree Fruit Production. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Pest Management Guidelines for Berry Crops. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

New York and Pennsylvania Pest Management Recommendations for Grapes. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Guide for the Integrated Management of Greenhouse Florist Crops. Cornell Cooperative Extension, Ithaca, NY. Updated yearly.

NRCS, NHCP - NY

May 2003

DRAFT NY 595 -5

Cornell Pest Management Guide for Commercial Production and Maintenance of Trees and Shrubs. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

Cornell Cooperative Extension Pest Management Guidelines for Vegetables. Cornell Cooperative Extension. Ithaca, NY. Updated yearly.

WIN-PST: A Windows Based Pesticide Screening Tool, USDA-NRCS. Amherst, MA. 2000.

National Agricultural Pesticide Risk Analysis (NAPRA). USDA-NRCS. Amherst, MA. 1995.

Core 4. Conservation Tillage Information Center. West Lafayette, IN. 1998

Pesticides Management Program. Division of Solid & Hazardous Materials, New York State Department of Environmental Conservation. Albany, NY. Updated periodically.

New York State IPM Program, Elements of IPM. Cornell Cooperative Extension, Ithaca, NY. Updated periodically.

NRCS, NHCP - NY
May 2003

[FR Doc. 03–14043 Filed 6–3–03; 8:45 am]
BILLING CODE 3410–16–C

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service—Tennessee; Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, Section IV, for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standard Cover Crop (Code 340) to account for improved technology. These practice standards can be used in systems that treat highly erodible cropland.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203, telephone number (615) 277–2531. Copies of the practice standard will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standard.

Dated: May 8, 2003.

James W. Ford,

State Conservationist.

[FR Doc. 03–14044 Filed 6–3–03; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Agencies to request an extension for a currently approved information collection in support of compliance with the National Environmental Policy Act and other applicable environmental requirements.

DATES: Comments on this notice must be received by August 4, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Richard A. Davis, Director, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave., SW., Washington, DC 20250–0761, Telephone (202) 720–9619.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1940 Subpart G, "Environmental Program."

OMB Number: 0575–0094.

Expiration Date of Approval: August 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0094 enables the Agencies to effectively administer the policies, methods, and responsibilities for compliance with the National Environmental Policy Act and other applicable environmental laws, executive orders, and regulations.

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the potential environmental impacts of proposed major federal actions in Agency planning and decision-making processes. For the Agencies to comply, it is necessary that they have information on the types of environmental resources on site or in the vicinity that might be impacted by the proposed action, as well as information on the nature of the project selected by the applicant (the activities to be carried out at the site; any air, liquid and solid wastes produced by these activities, etc.). The applicant is the only logical source for providing this information. In fact, the vast majority of Federal Agencies that assist non-Federal applicants in sponsoring projects require these applicants to submit such environmental data.

The Agencies provide forms and/or other guidance to assist in the collection and submission of information. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agency officer who is processing the application for financial assistance or request for approval. Having environmental information on the proposed project site and the activities to be conducted there enables the Agency official to determine the magnitude of the potential environmental impacts and to take such impacts into consideration in Agency planning and decision-making as required by NEPA. The analysis of the potential environmental impacts of a proposed action is considered to be a full disclosure process, and therefore, can involve public information meetings and public notification.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.94 hours per response.

Respondents: Individuals or households, local governments, farms, business or other for-profit, non-profit institutions, and small businesses and organizations.

Estimated Number of Respondents: 3050.

Estimated Number of Responses per Respondent: 1.71.

Estimated Total Annual Burden on Respondents: 15,320 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 22, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: May 22, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: May 28, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

Dated: May 28, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–13998 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Utilities Service

Rural Business-Cooperative Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by August 4, 2003 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Avenue, SW., Washington, DC 20250–0761, Telephone (202) 720–9653.

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, "Planning and Performing Construction and Other Development".

OMB Number: 0575–0042.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables the Agencies to effectively administer the policies, methods, and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, repair, replace, or rehabilitate dwellings; farm buildings; and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas.

Section 506 of the act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 of the act grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban-Rural Recovery Act of 1983 amended section 509 (a) and section 515 to require residential buildings and related facilities comply with the standards prescribed by the Secretary of Agriculture, the Secretary of Housing and Urban Development, or in any of the nationally recognized model building codes.

Similar authorizations are contained in sections 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended.

In several sections of both acts, loan limitations are established as percentages of development cost, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken economically and will not be of elaborate or extravagant design or materials.

Other information collection is required to conform to numerous Public Laws applying to all Federal agencies, such as: Civil Rights Acts of 1964 and 1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act; and to conform to Executive Orders governing use of Federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work, and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies' loan/grant programs and to monitor the prudent use of Federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with Federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 25,340.

Estimated Number of Responses per Respondent: 12.00.

Estimated Total Annual Burden on Respondents: 94,924 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 23, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: May 6, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: April 30, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

Dated: May 7, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–14031 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Prepayment and Displacement Prevention of Multiple Family Housing Loans.

DATES: Comments on this notice must be received by August 4, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Senior Loan Officer, Office of Rural Housing Preservation, Multi-Family Housing Portfolio Management Division, Rural Housing Service, U.S. Department of Agriculture, Ag Box 0782, Washington, DC 20250, Telephone (202) 720–1940.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1965–E, "Prepayment and Displacement Prevention of Multiple Family Housing Loans.".

OMB Number: 0575–0155.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The rural Housing Service (RHS) is authorized under section 514, 515, 516 and 521 of Title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such multiple family housing projects are intended to meet the housing needs of persons or families have with low-to moderate-incomes, senior citizens, the handicapped, and domestic farm laborers.

RHS has the responsibility of assuring the public that the housing projects financed are owned and operated as mandated by Congress. RD Instruction 1965–E was issued to insure proper servicing actions are accomplished for projects financed with multiple family housing loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are carried out as intended and to improve the Agency's ability to assure the continued availability of the facilities financed under RHS multiple housing programs to eligible users.

Without the provisions of this regulation, RHS would be unable to provide the necessary guidance to the RHS field staff to assist borrowers in processing servicing actions affecting their projects. RHS also would not be able to quickly respond to servicing requests from borrowers, initiate servicing actions or establish a uniform procedure for processing such requests from borrowers. RHS must be able to assure Congress and the general public that all projects financed with multiple family housing funds will be maintained for the purposes for which they are intended and for the benefit of those they are mandated to serve.

The Housing and Community Development Act of 1987 required that rural rental housing borrowers wishing to prepay their RHS financed loans must be offered a fair incentive to not prepay the loan when RHS makes the decision that the housing continues to be needed to serve low- and moderate-income tenants. If the borrower rejects the incentive, the housing must be offered for sale to a non-profit organization or public agency. Prepayment can only be accepted if RHS decides there is no need for the housing or if no nonprofit organization or public agency can be found to purchase the project at fair market value.

The information required is collected on a project-by-project basis and is in accordance with the Housing Act of 1949, as amended, so that RHS can provide guidance and be assured of compliance with the terms and conditions of loan, grant, and subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.6 hours per response.

Respondents: Individuals or households, State or local governments, farms, businesses or other for-profits, non-profit institutions, existing borrowers, transferors and/or transferees.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.15.

Estimated Total Annual Burden on Respondents: 587 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, Support Services Division, Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of [Agency], including whether the information will have practical utility; (b) the accuracy of [Agency's] estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 14, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–14030 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the California State Advisory Committee will convene at 4 p.m. (PDT) and adjourn at 5:30 p.m., Monday, June 2, 2003. The purpose of the conference call is to plan future SAC activities.

This conference call is available to the public through the following call-in number: 1–800–473–8693, access code number 17051391. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Friday, May 30, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14079 Filed 5–30–03; 4:56 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Ninth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the ninth administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. The period of review is October 1, 2001 through September 30, 2002.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Geoffrey Craig, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–5256, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner, Shakeproof Assembly Components Division of Illinois Tool Works, and the respondent, Hang Zhou Spring Washer Co., Ltd., also known as Zhejiang Wanxin Group Co., Ltd., (Hangzhou), requested an administrative review of the antidumping duty order on certain helical spring lock washers for the period from October 1, 2001 to September 30, 2002, on October 21, 2002 and October 31, 2002, respectively. Hangzhou also requested revocation of the order with respect to itself. The Department initiated the ninth antidumping duty administrative review of certain helical spring lock washers from the People's Republic of China, covering the period from October 1, 2001 to September 30, 2002, and on the request for revocation of the antidumping duty order in part on November 22, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 70402 (November 22, 2002). The preliminary results are currently due on July 3, 2002.

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of the order for which a review is requested. However, if it is not practicable to issue the preliminary results within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 365 days.

We are currently developing factor value information. In addition, we plan to verify Hangzhou's response, in accordance with 19 CFR 351.307(b)(1)(iii). Accordingly, the Department has determined that it is not practicable to issue the preliminary results within the 245-day time period. Therefore, we are extending the time limit for completion of the preliminary results of this administrative review for 120 days, until no later than October 31, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 29, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–14038 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Preliminary Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the Preliminary Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan.

SUMMARY: On June 25, 2002, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on stainless steel plate in coils from Taiwan. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* ("*Notice of Initiation*") 67 FR 42753 (June 25, 2002). This review covers two manufacturers/exporters of the subject merchandise, Yieh United Steel

Corporation ("YUSCO"), a Taiwan producer and exporter of subject merchandise, and Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), a Taiwan producer and exporter of subject merchandise. The period of review ("POR") is May 1, 2001 through April 30, 2002. We are preliminarily rescinding this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the POR from the respondents.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–3207.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department of Commerce ("Department") published the antidumping duty order on stainless steel plate in coils from Taiwan. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999). On May 6, 2002, the Department published a notice of opportunity to request an administrative review of this order for the period May 1, 2001 through April 30, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 30356 (May 6, 2002). On May 7, 2002, Petitioners[1] timely requested that the Department conduct an administrative review of sales by YUSCO, a Taiwan producer and exporter of subject merchandise, and Ta Chen, a Taiwan producer and exporter of subject merchandise. On June 25, 2002, in accordance with section 751(a) of the Tariff Act of 1930 as amended ("the Act"), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by YUSCO and Ta Chen for the period May 1, 2001 through April 30, 2002. *See Notice of Initiation*.

On July 10, 2002, the Department issued its antidumping duty questionnaire to YUSCO and Ta Chen. On July 15, 2002, Ta Chen stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR, and requested that it not be required to answer the Department's questionnaire. On July 18, 2002, YUSCO stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR. On October 8, 2002, we sent an inquiry to the U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) ("BCBP") to confirm that YUSCO and Ta Chen had no shipments of subject merchandise into the United States during the POR. On October 29, 2002, BCBP responded to the inquiry. BCBP determined that there were no entries of subject merchandise by Ta Chen during the POR. However, BCBP informed the Department that potential shipment(s) of subject merchandise from YUSCO to the United States during the POR existed. On January 15, 2003, the Department requested that YUSCO explain the potential shipment(s). See letter from the Department to YUSCO, dated January 15, 2003. On January 16, 2003, Petitioners requested that the Department place the proprietary information regarding the potential shipment(s) on the record. *See* Petitioners letter to the Department, dated January 16, 2003. On January 22, 2003, YUSCO informed the Department that it would like the Department to place proprietary information on the record so that YUSCO may be able to identity the potential shipment(s). *See* YUSCO's letter to the Department, dated January 22, 2003. On January 27, 2003, the Department placed certain proprietary information on the record regarding the potential shipment(s) of subject merchandise from YUSCO. See Department's letter to YUSCO, dated January 27, 2003. Additionally, during the months of January and February 2003, the Department contacted BCBP to confirm that no shipments from Ta Chen entered the United States during the POR. During that time, BCBP provided the Department with information regarding the potential Ta Chen shipments. See Department's letter to BCBP on February 3, 2003, and Memorandum to the File on February 25, 2003, in which the Department determined that each potential shipment from Ta Chen that we analyzed was not subject merchandise.

On February 5, 2003, we extended the preliminary results by sixty days. *See Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 5869 (February 5, 2003). On March 21, 2003, we extended the preliminary results by sixty days. *See Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 13897 (March 21, 2003).

On February 11, 2003, the Department sent BCBP a letter to inquire about a possible discrepancy in the documentation sent to the Department by BCBP relating to YUSCO and the existence/non-existence of entries of subject merchandise during the POR. On March 19, 2003, BCBP sent the Department a response to its February 11, 2003 letter, in which BCBP stated that it was re-classifying the material in question and that, upon review of its records, it no longer considered the material to be subject merchandise.

Petitioners have placed various submissions on the record alleging that Ta Chen and YUSCO are affiliated with other companies that may have shipped subject merchandise to the United States during the POR. Respondent YUSCO has denied Petitioner's allegations. *See e.g.*, Petitioners' March 30, 2003 and Respondent's April 16, 2003 submissions.

Scope of the Review

For purposes of this review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this review are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process. The merchandise subject to this review is currently classifiable in the HTS at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.0070, 7219.12.00.80, 7219.31.00.10,

[1] Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization are collectively "Petitioners" for this review.

7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and BCBP purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The POR is May 1, 2001 through April 30, 2002.

Preliminary Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Both Ta Chen and YUSCO certified on the record that they did not export subject merchandise to the United States during the POR. The Department then conducted a BCBP inquiry and pursued additional questions following the BCBP inquiry pertaining to Ta Chen and YUSCO. In response to our requests, BCBP supplied further information to the Department. For Ta Chen, all the documentation provided to the Department by BCBP indicates that there were no shipments of subject merchandise during the POR. *See* Memorandum to the File dated February 25, 2003.

Petitioners allege Ta Chen was affiliated with other Taiwanese companies during the POR. *See* Petitioners submission to the Department, dated April 4, 2003. Absent entries of subject merchandise produced and exported to the Unites States by Ta Chen during the POR, however, the Department has preliminarily determined to rescind this administrative review. *See* Memorandum to the File on February 25, 2003. The parties being reviewed in this case are Ta Chen and YUSCO, *not* the other parties which have been alleged to be affiliated with Ta Chen and YUSCO. Neither the Petitioners nor any other party requested an administrative review of Ta Chen's alleged affiliates. As it is, Ta Chen has been found preliminarily to have exported no subject merchandise to the Unites States during the POR. Therefore, absent entries, there is no reason for the Department to conduct an affiliation analysis. If the Petitioners believe other parties potentially affiliated with Ta Chen and YUSCO are exporting subject merchandise to the United States, then a review in subsequent periods of reviews for those companies should be requested. However, for purposes of *this* administrative review, the Department preliminarily finds that Ta Chen had no entries of subject merchandise in the United States during the POR. *See* 19 CFR 351.213(b) providing that the domestic industry must specify the exporter or producer it wishes the Department to review in its request for an administrative review.

For YUSCO, the Department found a discrepancy in the BCBP database and contacted BCBP on this matter. BCBP agreed that a discrepancy existed and resolved it. *See* BCBP letter to Edward Yang from Alfred Morawski, placed on the record of this proceeding on March 20, 2003. As a result of BCBP's efforts, the BCBP's database now confirms that YUSCO had no shipments of subject merchandise to the Unites States during the POR.

Petitioners provided affiliation arguments for YUSCO as well, but again, absent entries to the United States by YUSCO during the POR, the Department has preliminarily determined to rescind this administrative review. Petitioners did not request a review of the alleged affiliated parties. Had they made such an allegation, we would have conducted a review accordingly. The record indicates YUSCO had no entries to the United States of subject merchandise during the POR. Thus, the Department has preliminarily determined to rescind this administrative review. *See* 19 CFR 351.213(b).

As discussed above, in this case the Department is satisfied, after a review of information on the record, certification from YUSCO and Ta Chen of no exports to the United States during the POR, the inquiry on data from BCBP, and further communications with BCBP, that there were no entries of stainless steel plate in coils produced or exported from Ta Chen or YUSCO during the POR to the United States. Therefore, the Department is preliminarily rescinding this administrative review. The cash deposit rate for YUSCO will remain at 8.02 percent, for Ta Chen the cash deposit rate will remain at 10.20 percent, and for "all other" producers/exporters of the subject merchandise the cash deposit rate will remain at 7.39 percent, the rates established in the most recently completed segment of this proceeding. *See Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan*, 67 FR 40914 (June 14, 2002).

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this preliminary rescission. Case briefs must be submitted within 30 days after the date of publication of this notice and rebuttal briefs, limited to arguments raised in the case briefs, must be submitted no later than 7 days after the time limit for filing case briefs. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14039 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052303E]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces that lobster trap/pot and anchored gillnet fishermen are requested to remove on a voluntary basis their gear from an area totaling approximately 925 square nautical miles (nm2) (1,714 km2), northeast of Cape Cod, MA, for 15 days. These fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours May 29, 2003, through 2400 hours June 13, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION: *Electronic Access.* Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm2 (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On May 18, 2003, NMFS Aerial Survey Team reported a sighting of 3 right whales in the proximity of 42° 13′ N latitude and 69° 37′ W longitude. This position lies northeast of Cape Cod, MA, in an area called Wilkinson Basin. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Because the Seasonal Area Management (SAM) East zone overlaps a portion of the DAM zone, this area is excluded the DAM zone.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. NMFS requests the voluntary removal of lobster trap/pot and anchored gillnet gear and asks lobster trap/pot and anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The DAM zone is bound by the following coordinates:

42°33′N, 69°56′W (NW Corner)
42°33′N, 69°24′W
41°55′N, 69°24′W
41°55′N, 69°56′W

NMFS requests voluntary action within the DAM zone because of the minimal amount of fishing gear in these waters during this time of year and, based on what we know about right whale migration, the animals should be moving into other protected areas such as the SAM East zone and the Great South Channel Critical Habitat. The request for removal of gear and no setting of additional gear will be in effect beginning at 0001 hours May 29, 2003, through 2400 hours June 13, 2003, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**.

The request for voluntary action will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator for Fisheries(AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (ADDRESSES).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: May 28, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–13913 Filed 5–29–03; 4:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Adminisration

[I.D. 052803D]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that an authorization for June 1, 2003 through December 31, 2003 to take small numbers of seals and sea lions has been issued to the 30th Space Wing, U.S. Air Force.

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and *reporting of such taking. Regulations* governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Issuance of this letter of authorization is based on a finding that the total takings will have no more than a negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: May 28, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 03–13919 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053003A]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on June 18–20, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Buccaneer Hotel, #7 Estate Shoys, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will convene on Wednesday, June18th, 2003, from 9 a.m. to 4 p.m., and the Administrative Committee will meet from 4:15 p.m. to 5:30 p.m. The Council will reconvene on Thursday, June 19, 2003, from 9 a.m. to 5 p.m., approximately, and Friday, June 20, 2003, from 9 a.m. to 5 p.m. The Council will hold its 112th regular public meeting to discuss the items contained in the following agenda:

June 28, 2003

9 a.m. - 4 p.m.

Call to Order
Adoption of Agenda
Consideration of 111th Council Meeting Verbatim Minutes
Executive Director's Report
Queen Conch Geographic Information System (GIS) - Dr. M. Barreto
Culebra's Marine Reserve Survey - Dr. Edwin Hernandez
Updates
-Marine Conservation District (MCD) Mapping Project - Jose Rivera
-MCD Photographic Survey - Graciela Garcia-Moliner
-Hydro-acoustic Survey - Jose Rivera and Aida Rosario
-West Coast of Puerto Rico Side Scan Sonar Projects - Aida Rosario
Essential Fish Habitat- Draft Environmental Impact Statement (EFH-DEIS) - Bob Trumble

4:15 p.m. - 5:30 p.m.

Administrative Committee Meeting
-Advisory Panel (AP)/Scientific and Statistical Committee/Habitat AP Membership
-Budget: 2002, 2003, 2004–5
-Queen Conch Initiative—Projects for Education and Scientific Literature
-Personnel Issues and Statement of Organization Practices and Procedures
-Other Business

June 19, 2003

9 a.m. - 5 p.m.

EFH/DEIS Continuation of Discussio
-Schedule for the submission of EFH/DEIS

June 20, 2003

9 a.m. - 12 noon

NOAA Fisheries 2003 Constituents Session - Dr. W. Hogarth

1 p.m. to 5 p.m.

Enforcement
-Federal Government
-Puerto Rico
-U.S. Virgin Islands
-U.S. Coast Guard
Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: May 30, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14042 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Mid-Atlantic Plans and Habitat Oversight Committee in June, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on June 17 and 18, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at The Village Inn, 1 Beach Street, Narragansett, RI 02882; telephone: (401) 783–6767.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, June 17, 2003 at 9:30 a.m.–Mid-Atlantic Plans Committee Meeting.

The committee will review and develop a position to be taken by the New England Council regarding upcoming amendments in the Mid-Atlantic region. They will recommend measures for Amendment 9 and Amendment 10 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP).

Wednesday, June 18, 2003 at 9:30 a.m.–Habitat Oversight Committee Meeting.

The Committee will review the gear specific alternatives for minimizing adverse effects on monkfish Essential Fish Habitat (EFH) in Amendment 2 to the Monkfish FMP. They will review the information prepared by the EFH Technical Team on the presence of deep-sea corals in the North Atlantic region and the possible interaction between the monkfish fishery. Also on the agenda will be the review the draft workplan for the Omnibus Habitat Amendment #2.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 29, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–13920 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703G]

Marine Mammals; File Nos. 782–1702, 782–1708, 782–1719, and 358–1585–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for permits and application for permit amendment.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit or permit amendment to take marine mammals for purposes of scientific research:

File Nos. 782–1702, –1708, and –1719 - National Marine Fisheries Service [NMFS], National Marine Mammal Laboratory [NMML], 7600 Sand Point Way, N.E. Seattle, WA 98115; and

File No. 358–1585–02 - Alaska Department of Fish and Game [ADF&G], Division of Wildlife Conservation, P.O. Box 25536, Juneau, AK 99802–5526.

DATES: Written or telefaxed comments on the new applications and amendment request must be received on or before July 7, 2003.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7235; fax (907)586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region,

NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027. Only Files 782–1708 and 782–1719 are available in the Southwest Region.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, Carrie Hubard, or Amy Sloan 301/713–2289, or email: Ruth.Johnson@noaa.gov.

SUPPLEMENTARY INFORMATION: The subject permits and amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications for Permit

The NMML has submitted three applications to take marine mammals for scientific research.

(1) Application 782–1702 - NMML proposes to conduct aerial, ground and boat surveys of pinnipeds; capture and release of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*). Aerial, ground and boat surveys are proposed annually for stock assessment of these species. Capture and release of harbor seals will include tagging and branding for long term identification of individuals for information on reproductive success, survival, and longevity; blood sampling for disease screening; blubber biopsy for contaminant analysis; tissue sampling for genetics and for fatty acid analysis; some seals will be instrumented with VHF radio transmitters and/or Time-Depth Recorders (TDR) or satellite tags or sonic tags to document movements, activity and foraging patterns. Capture and release of California sea lions will include tagging and branding for long-term identification of individuals to determine predation rates on endangered salmonids; blood sampling for disease screening; blubber biopsy for contaminant analysis; and instrumentation with VHF radio transmitters, TDRs, or satellite tags to document movements and migration rates. Capture and release of Steller sea lions will include tagging and branding for long-term identification of individuals to determine predation rates on endangered salmonids; blood sampling for disease screening; tissue sampling for genetic analysis and instrumentation with VHF radio transmitters, TDRs, or satellite tags to document movements and migration rates. Tagging of northern elephant seals will document survival, movements, and site fidelity. In addition, scat will be collected from harbor seal, California sea lion, and Steller sea lion haulout areas for food habits analysis. Activities will occur in the States of Washington, Oregon and California.

(2) Application 782–1708 - NMML proposes to take Northern fur seals during scientific research. Seals will be captured, tagged, sampled and annual censuses will be conducted. All of this work is essential for: (1) monitoring the status and trends of the northern fur seal population, (2) evaluating the condition of animals from each cohort (health and strength of year-class), (3) monitoring the diet, and (4) documenting the movement patterns, foraging behavior, and essential foraging habitat of various age and sex classes of fur seals. This is a continuation of work authorized in Permit No. 782–1455. The information collected under this permit will be important for assessing the recovery of this depleted species and for evaluating management actions.

(3) Application 782–1719 - NMML is requesting authority to take marine mammals during-MMPA mandated stock assessment activities. NMML proposes to conduct Level B harassment during overflights, vessel-based observations, and approaches for photography, and by Level A harassment when doing biopsy sampling or tagging. This permit application is divided into three Projects: Project I is specifically for aerial surveys, including circling animals for making identifications, counts, or photography; Project II covers vessel surveys, including transects and approaches for photography and biopsies; Project III is in regard to tagging through remote deployment (via crossbow, gun, or pole) or capture, holding and release.

Amendment request

The ADF&G requests an amendment to permit 358–1585–02 to conduct the following activities on harbor seals: (1) permanently mark (hot brand) all female seals that receive VHF implants to enable identification from a distance, without disturbance, to determine whether a radio-tagged female has a pup; (2) place PIT tags in all live-captured seals to identify recaptured individuals while in the field to ensure that historic data are compared with subsequent samples for those individuals to assess changes in health or contaminant loads over time; (3) conduct transrectal ultrasound to diagnose pregnancy in seals, a technique that has been safely used in domestic and wild ungulates for several decades; (4) attach small sonic depth tags to seal pelage to facilitate real-time tracking of seal foraging behavior while simultaneously conducting acoustical surveys of prey availability; and (5) attach an Underwater Timed Picture Recorder (UTPR), equipped with a time depth recorder, to some seals for 24–hour periods. These data will be used in a study of optimal foraging behavior under predation risk and will allow acquisition of detailed dive data to predict the probability of encounter with predators for different age classes of seals; from the video data, prey selection, and pursuit and handling times can be readily calculated.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14041 Filed 6–3–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0019, Stocks of Grain in Licensed Warehouses

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity futures Trading Commission ("the Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), *44 U.S.C. 3501 et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX (202) 418–5527; email: *jpayne@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, *44 U.S.C. 3506(c)(2)(A)*, requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Stocks of Grain in Licensed Warehouses, OMB Control No. 3038–0019—Extension

Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.42 & 1.43	3	Weekly	156	1.0	156

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 29, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–13984 Filed 6–3–03; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("the Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), *44 U.S.C. 3501 et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Comments may be mailed to Steven A. Grossman, Office of Financial Management, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Steven A. Grossman, (202) 418–5192; FAX (202) 418–5529; e-mail: *sgrossman@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, *44 U.S.C. 3506(c)(2)(A)*, requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic; mechanical, or other technological collection techniques or other forms of

information technology; *e.g.*, permitting electronic submission of responses.

Procurement Contracts, OMB Control No. 3038–0031—Extension

The information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of the collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
180	Annually	180	2	360

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly/data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 29, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–13985 Filed 6–3–03; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 68, No. 77, Tuesday, April 22, 2003, pages 19789–19790.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Monday, June 9, 2003.

CHANGES IN MEETING: The public hearing on Commission Agenda and Priorities/Government Performance and Results Act (GPRA) for fiscal year 2005 is canceled.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–7923.

Dated: June 2, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–14227 Filed 6–2–03; 3:06 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Number 6,375,726 entitled "Corrosion Resistant Coatings for Aluminum and Aluminum Alloys", Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing.//U.S. Patent Number 6,511,532 entitled "Post Treatment for Anodized Aluminum", Navy Case No.83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filing.//U.S. Patent Number 6,521,029 entitled "Pretreatment for Aluminum and Aluminum Alloys", Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003.//U.S. Patent Number 6,527,841 entitled "Post Treatment for Metal Coated Substrates", Navy Case No. 83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing.

ADDRESSES: Requests for data, samples of Trivalent Chromium Pre/Post-Treatment (TCP), panels treated with TCP, and inventor interviews should be directed to David Weston (406) 994–7477, *dweston@montana.edu;* or Dan Swanson (406) 994–7736, *dds@montana.edu,* TechLink, 900 Technology Blvd., Suite A, Bozeman, MT, 59718. TechLink is an authorized DOD partnership intermediary. Requests should be made prior to July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Kohler, Office of Research and Technology Applications, Building 150/2, Naval Air Warfare Center, Lakehurst, NJ 08733–5000, telephone (732) 323–2948, E-Mail: *Hans.Kohler@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. Licensing application packages are available from TechLink and all applications and commercialization plans must be returned to TechLink by August 15, 2003. Additional information and revisions to applications may be requested by TechLink through August 30, 2003. TechLink will turn over all completed applications to the U.S. Navy for evaluation, final negotiation and award during the month of September 2003.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to small business firms, and consortia involving small business firms.

The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

PCT applications have been filed for each of the patents as noted above. The Navy intends that licensees interested in a license in Europe, Canada, China, and Japan will assume foreign prosecution and pay the costs of such prosecution.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 29, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13967 Filed 6–3–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 7, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 30, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Talent Search and EOC Programs Annual Performance Report Form (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.
Burden Hours: 3690.

Abstract: Talent Search and EOC grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2244. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Free Application for Federal Student Aid (FAFSA) (JS).

Frequency: Annually.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 13985297.
Burden Hours: 7770355.

Abstract: Collects identifying and financial information from students applying for Federal student aid for postsecondary education. Used to calculate Expected Family Contribution and determine eligibility for grants and loans, under title IV of the HEA.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2223. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14045 Filed 6–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the schedule and a summary of the agenda for an upcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This notice is published less than 15 days prior to the date of the meeting due to unexpected delays in finalizing arrangements for the meeting.

DATE AND TIME: June 9, 2003, 9 a.m. to 3:30 p.m.

ADDRESSES: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036. Telephone: (202) 530–3600.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544; telephone (202) 502–7500; e-mail *donald.fischer@ed.gov.*

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in the preceding paragraph as soon as possible.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 742 of the Higher Education Act of 1965 (20 U.S.C. 1138a). The Board is authorized to advise the Director of the Fund and the Assistant Secretary for Postsecondary Education on (1) priorities for the improvement of postsecondary education, including recommendations for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice; and (2) the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund.

On Monday, June 9, 2003, from 9 a.m. to 11 a.m. and from 12 p.m. to 3:30 p.m., the Board will meet in open session. The proposed agenda for the open portion of the meeting will include discussions of the Fund's programs and special initiatives. A special topic of discussion will be costs of higher education.

On Monday, June 9, 2003, from 11 a.m. to 12 p.m., the meeting will be closed to the public for the purpose of discussing personnel matters associated with the work of the Board. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and exemptions (2) and (6) of the Government in the Sunshine Act, 5 U.S.C. 552b (c)(2) and (6). The review and discussion of Board personnel matters will relate solely to the internal personnel rules and practices of an agency, and may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

Records are kept of all Board proceedings and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 6th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–13963 Filed 6–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Cooper Environmental Services, LLC

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Cooper Environmental Services, LLC, of Portland, Oregon, an exclusive license to practice the invention described in U.S. Patent No. 6,200,816 B1, entitled "Method For Measuring Particulate And Gaseous Metals In A Fluid Stream; Device For Measuring Particulate And Gaseous Metals In A Fluid Stream." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than June 19, 2003.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(a) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that granting the license is a reasonable and necessary incentive to call forth the investment capital and expenditures needed to bring the invention to practical application, or to otherwise promote the invention's utilization by the public. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Cooper Environmental Systems, LLC, of Portland, Oregon, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 6,200,816 B1, and has a plan for commercialization of the invention.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209, unless, within 15 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will grant the license if, after consideration of written responses to this notice, a determination is made, that the license grant is in the public interest.

Issued in Washington, DC, on May 30, 2003.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 03–14027 Filed 6–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–302–000, CP03–303–000, and CP03–304–000]

Cheyenne Plains Gas Pipeline Company; Notice of Application

May 28, 2003.

Take notice that on May 20, 2003, Cheyenne Plains Gas Pipeline Company (Cheyenne Plains), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–302–000, CP03–303–000 and CP03–304–000, an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, and parts 157 and 284 of the regulations of the Federal Energy Regulatory Commission (Commission) for: (1) A certificate of public convenience and necessity authorizing the construction, ownership, and operation of new interstate natural gas pipeline facilities; (2) a blanket certificate of public convenience and necessity authorizing Cheyenne Plains to provide open-access transportation services, with pre-granted abandonment approval; and (3) a blanket certificate of public convenience and necessity to construct, operate and/or abandon certain eligible facilities, and services related thereto. Cheyenne Plains is also requesting approval for its proposed recourse rates for transportation service and its Pro Forma Tariff, which includes the authority to enter into negotiated rate agreements. In addition, Cheyenne Plains requests that the Commission make a Preliminary Determination on Non-Environmental Issues by November 20, 2003, that includes the review and preliminary approval of various financing, rate and tariff provisions, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Cheyenne Plains, a proposed natural gas pipeline company, states that it has been formed to construct, own, and operate approximately 380 miles of 30" O.D. pipeline that extends southeastward from interconnections with Colorado Interstate Gas Company (CIG) and Wyoming Interstate Company, Ltd. at the Cheyenne Hub, located near the Colorado/Wyoming border, to new interconnections with six interstate and one intrastate transmission pipeline systems located toward the eastern portion of the pipeline in Kansas. Cheyenne Plains states that CIG is filing a companion section 7(c) application with the Commission seeking authorization to install a jumper compressor unit at its Cheyenne Compressor Station in order to provide a compression service. Installation of this jumper compressor unit will permit gas being delivered from CIG to meet the minimum suction pressure requirements of the Cheyenne Plains compressors. Accordingly, following an open season, Cheyenne Plains executed an agreement with CIG for this compression service.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Cheyenne Plains Gas Pipeline Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Cheyenne Plains Gas Pipeline Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13988 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–301–000]

Colorado Interstate Gas Company; Notice of Application

May 28, 2003.

Take notice that on May 20, 2003, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–301–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing the construction, ownership, and operation of additional compressor facilities at its Cheyenne Compressor Station located in Weld County, Colorado. CIG states that these facilities will serve as "jumper" compression between CIG's existing transmission system and the future transmission system of Cheyenne Plains Gas Pipeline Company (Cheyenne Plains).[1] CIG further explains that, pursuant to part 154 of the regulations, CIG seeks approval of its proposed firm Cheyenne Compression Service Rate Schedule CS–1 which details the service to be provided by the proposed jumper compressor. This project is referred to as the Cheyenne Plains Jumper Compressor Project (Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

In addition, CIG states that it is requesting the Commission make a Preliminary Determination on Non-Environmental Issues by November 20, 2003, that includes the review and preliminary approval of new firm compression service, rate and tariff provisions.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs,

[1] Contemporaneously with CIG's filing, Cheyenne Plains is submitting its section 7(c) application requesting the Commission's authority to construct, own and operate its natural gas transmission system.

Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13987 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–127–000]

Commonwealth Edison Company, Complainant, v. Midwest Generation, L.L.C., Respondent; Notice of Complaint

May 28, 2003.

Take notice that on May 27, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint and Request for Fast Track Processing against Midwest Generation, L.L.C. (MWGen) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, and rule 206 of the Commission's rules of practice and procedure, 18 CFR 385.206.

Commonwealth Edison seeks relief from what it alleges is MWGen's violation of its black start obligations under filed Interconnection Agreements.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13990 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–002]

Enogex Inc.; Notice of Compliance Filing

May 28, 2003.

Take notice that on May 22, 2003, Enogex Inc. tendered for filing a revised Statement of Operating Conditions in compliance with the Commission's order dated May 9, 2003. Enogex Inc., 103 FERC ¶ 61,161 (2003).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13992 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–241–004]

Southern Star Central Gas Pipeline, Inc. (Formerly Williams Gas Pipelines Central, Inc); Notice of Refund Report

May 28, 2003.

Take notice that on May 22, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) formerly Williams Gas Pipelines Central, Inc., tendered for filing a refund report, pursuant to the Commission's order issued April 15, 2003, in the above referenced proceeding, and Southern Star's report of penalty revenue filed April 30, 2002, with subsequent corrections on July 23, 2002, and August 6, 2002.

Southern Star states that the April 15 order directed Southern Star to make refunds within 10 days of the receipt of the order. Southern Star states that it made such refunds on April 25, 2003, and supplied the identical refund report at that time to those parties. Southern Star further states that the refund results from the amount of penalty revenue and the proposed distribution of such revenue collected, for Periods of Daily Balancing (PODB) in 1996 and 1997, pursuant to the provisions of section 9.6 of the General Terms and Conditions (GT&C) of its FERC tariff.

Southern Star states that a copy of its report filing was served on all parties receiving refunds, jurisdictional customers and interested state commissions and parties appearing on the service list for the docket number listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13993 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–93–000, et al.]

Tampa Electric Company, et al., Electric Rate and Corporate Filings

May 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tampa Electric Company, Florida Power Corporation

[Docket No. EC03–93–000]

Take notice that on May 23, 2003, Tampa Electric Company (Tampa Electric) and Florida Power Corporation, d/b/a Progress Energy Florida, Inc. (Florida Power) tendered for filing a joint application requesting authorization under section 203 of the Federal Power Act for the transfer by Tampa Electric to Florida Power of a 2.75-mile-long segment of transmission line located in Polk County, Florida.

Comment Date: June 13, 2003.

2. NRG Power Marketing Inc.

[Docket No. ER02–2463–003]

Take notice that on May 22, 2003, NRG Power Marketing Inc., (NRG) tendered for filing an affidavit and accompanying rate model showing cost data specific to Devon Unit Nos. 7, 8 and 10 that support the proposed rates under the Reliability Agreement, dated August 8, 2002, between ISO New England Inc., and Devon Power LLC.

Comment Date: June 12, 2003.

3. Southern California Edison Company

[Docket No. ER03–142–003]

Take notice that on May 22, 2003, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's "Order on Compliance and Rehearing" issued on May 12, 2003, in Docket Nos. ER03–142–001 and ER03–142–002, certain documents supporting its position in this proceeding that Reliability Service costs are not included in any transmission service rates paid by Existing Transmission Contract customers.

SCE states that copies of this filing were served upon the parties listed on the Commission's official Service List in this proceeding.

Comment Date: June 12, 2003.

4. Public Service Company of New Hampshire

[Docket No. ER03–569–001]

Take notice that on May 22, 2003, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate Public Service Company of New Hampshire (PSNH), filed a compliance filing regarding Original Service Agreement No. 95 by and between PSNH and AES Londonderry, LLC (AES) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 9. NUSCO states that a copy of this filing has been mailed to AES.

Comment Date: June 12, 2003.

5. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–856–001]

Take notice that on May 22, 2003, Deseret Generation & Transmission Co-operative, Inc., submitted a correction to its informational filing that was filed in Docket No. ER03–856–000 on May 19, 2003.

Comment Date: June 12, 2003.

6. New England Power Pool

[Docket No. ER03–864–000]

Take notice that on May 19, 2003, New England Power Pool (NEPOOL) tendered for filing with the Federal Energy Regulatory Commission (Commission) an informational filing to notify the Commission that as of May 15, 2003, NEPOOL, ISO New England Inc. (the ISO) and NRG Power Marketing Inc. (NRG Power), acting on behalf of itself and several affiliates (the NRG Affiliates and, together with NRG Power, the NRG Participants), entered into an extension of the Weekly Billing Agreement dated November 15, 2002, that implemented a weekly billing and prepayment schedule for the NRG Participants.

The NEPOOL Participants Committee states that copies of these materials were served on the governors and electric utility regulatory agencies for the six New England states. In addition, all NEPOOL Participants Committee members have been furnished with an electronic copy of this filing.

Comment Date: June 9, 2003.

7. ICPM, Inc.

[Docket No. ER03–865–000]

Take notice that on May 22, 2003, ICPM, Inc. (ICPM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: June 12, 2003.

8. NDR Energy Group LLC

[Docket No. ER03–866–000]

Take notice that on May 22, 2003, NDR Energy Group, LLC (NDR) tendered for filing a petition for acceptance of NDR Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: June 12, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–867–000]

Take notice that on May 22, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, PPL Susquehanna L.L.C. and PPL Electric Utilities Corporation.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an April 24, 2003, effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: June 12, 2003.

10. Ameren Energy Marketing Company

[Docket No. ER03–868–000]

Take notice that on May 22, 2003, Ameren Energy Marketing Company (AEM) submitted for filing a power sales agreement pursuant to which AEM will sell energy to Central Illinois Light Company (AmerenCILCO). AEM requests an effective date of June 1, 2003.

AEM states that copies of this filing have been served on AmerenCILCO and on all affected state commissions.

Comment Date: June 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13989 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–323–000, ER03–323–001, ER03–323–002, and ER03–323–003]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

May 28, 2003.

Take notice that a technical conference will be held on Thursday, June 26, 2003, at 9 a.m. in a room to be determined, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will address the Midwest Independent Transmission System Operator, Inc.'s Market Mitigation Measures, as proposed in its filings in the above dockets.

Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons and Staff are permitted to attend the conference, and registration is not required.

There will be no transcript of the conference and there will be no telephone link communications. For more information about the conference, please contact Jeffrey Hitchings at (202) 502–6042 or *jeffrey.hitchings@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13991 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–7–001]

Natural Gas Price Formation; Notice of Staff Technical Conference & Workshop on Energy Price Discovery & Indices

May 29, 2003.

The Federal Energy Regulatory Commission (FERC) will hold a technical conference on Tuesday, June 24, 2003, at FERC headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C). The Commodity Futures Trading Commission (CFTC) and the National Association of Regulatory Utility Commissioners (NARUC) are participating.

At an April 24, 2003, conference on Natural Gas Price Formation in this docket, Commission staff explored issues relating to the sufficiency of currently collected and published natural gas price information. Authenticity and reliability of the data and adequacy of coverage were discussed. At the upcoming conference we intend to weigh options and facilitate solutions that would ensure accurate, transparent and reliable gas and electric price indices.

We seek consensus on the best near-term option that will satisfy public policy goals in a timely, effective and efficient fashion. The discussion will be focused on comparing the merits of various options, including industry solutions and solutions involving regulatory or self-regulatory oversight, and what would be required to implement each option. Staff plans to issue an options paper in this docket and on the Commission's Web site by June 13. To advance public understanding of the options, the conference will include panelists to explain some of the less familiar options such as Self-Regulating Organizations (SROs) and audited data hubs.

This one-day meeting will begin at 9 a.m. and conclude about 5 p.m. All interested parties are invited to attend. There is neither a registration fee nor preregistration to attend this conference.

We look forward to an informative discussion of the options and a determination of which would best provide all participants in the market clear, transparent, dependable, and accurate price signals with which to make informed decisions.

The Capitol Connection offers coverage of all open and special Commission meetings held at the Commission's headquarters live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit *http://www.capitolconnection.org*. Capitol Connection also offers FERC open meetings through its Washington, DC-area television service.

The conference will be transcribed. Those interested in obtaining transcripts of the conference should contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646. Transcripts will be made available to view electronically under this docket number seven working days after the conference. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

We will issue further details on the conference, including the Agenda and a list of participants, as plans evolve. For additional information, please contact Saida Shaalan of the Office of Market Oversight & Investigations at 202–502–8278 or by e-mail, *Saida.Shaalan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14019 Filed 6–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Draft Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) is responsible for the safety and reliability of the U.S. nuclear weapons stockpile, including production readiness to maintain that stockpile. Since 1989, the DOE has been without the capability to produce certified plutonium pits, which are an essential component of nuclear weapons. The NNSA, the Department of Defense, and Congress have highlighted the lack of long-term pit production capability as a national security issue requiring timely resolution. While a small interim capability is currently being established at the Los Alamos National Laboratory (LANL), classified analyses indicate that long-term support of the nuclear stockpile, which is a cornerstone of U.S. national security policy, will require a long-term pit production capability. Accordingly, the NNSA has prepared a Draft Supplement to the Programmatic Environmental Impact Statement (EIS) on Stockpile Stewardship and Management (SSM) for a Modern Pit Facility (MPF) [hereafter, that document will be referred to as the MPF Draft EIS], which is now available, in order to decide: (1) Whether to proceed with the MPF; and (2) if so, where to locate the MPF. This Notice of Availability also sets forth the dates, times, and locations for public meetings on the MPF Draft EIS.

DATES: NNSA is inviting comments related to the MPF Draft EIS. Comments should be submitted by August 5, 2003, and will assist the NNSA in finalizing the MPF Draft EIS. Comments submitted after August 5, 2003 will be considered to the extent practicable. Public meetings to discuss issues and receive comments on the MPF Draft EIS will be held in the vicinity of sites associated with the proposed action, as well as in Washington, DC. The public meetings will provide the public with an opportunity to present comments, ask questions, and discuss issues with NNSA officials regarding the MPF Draft EIS. The locations, dates, and times for these public meetings are as follows:

Pantex Site—June 26, 2003, 7 p.m.–10 p.m., College Union Building, Oak Room, Amarillo College, Washington Street Campus, 24th and Jackson Streets, Amarillo, TX 79178, (806) 371–5100.

Carlsbad Site, NM—June 30, 2003, 6 p.m.–10 p.m., U.S. Department of Energy, Carlsbad Area Office, 4021 National Parks Highway, Carlsbad, NM 88220, (505) 234–7227.

Los Alamos Site—July 1, 2003 7 p.m.–10 p.m., Cities of Gold Hotel, Highway 84/285, Pojoaque, NM 87544, (505) 455–0515.

Nevada Site—July 2, 2003, 7 p.m.–10 p.m., University of Nevada Las Vegas, 4505 Maryland Parkway, Student Union Building, Room 201, Las Vegas, NV 89154, (702) 895–4449.

Savannah River Site—July 7, 2003, 6 p.m.–10 p.m, North Augusta Community Center, 495 Brookside Avenue, North Augusta, SC 29841, (803) 441–4290.

Washington, DC—July 16, 2003, 10 a.m.–1 p.m., U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–245, Washington, DC 20585, (202) 586–5484.

The NNSA will publish additional notices on the dates, times, and locations of the public meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

ADDRESSES: General questions concerning the MPF Draft EIS, including requests for the document, can be asked by calling 1–800–832–0885, ext. 65484, or by writing to: Mr. Jay Rose, MPF EIS Document Manager, Forrestal Building, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585. Comments can be submitted at the address above; faxed to: 1–202–586–5324; e-mailed to *James.Rose@nnsa.doe.gov.*; or submitted via the World Wide web at *http://www.mpfeis.com/*. Please mark correspondence as "MPF Draft EIS Comments."

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Mr. James J. Mangeno, NNSA NEPA Compliance Officer, NA–3.6, Forrestal Building, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585; or telephone 1–800–832–0885, ext. 68395. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The MPF Draft EIS evaluates the environmental impacts associated with constructing and operating a MPF at the following sites: (1) Los Alamos Site, New Mexico; (2) Nevada Test Site; (3) Carlsbad Site, New Mexico; (4) Savannah River Site, South Carolina; and (5) Pantex Site, Texas. The MPF Draft EIS also evaluates an upgrade to the plutonium pit manufacturing capabilities currently being established at the TA–55 facility at LANL, and the No Action Alternative of relying on the small interim capability being established at LANL. The MPF Draft EIS evaluates a range of pit production capabilities consistent with national security requirements.

Additional NEPA analysis will be required for the specific siting of such a facility should the decision be made that a MPF is required. As identified in the MPF Draft EIS, constructing and operating a MPF is the preferred alternative. A preferred site for a MPF has not yet been determined, but will be identified in the MPF Final EIS.

Issued in Washington, DC this 28th day of May 2003.

Everet H. Beckner,

Deputy Administrator for Defense Programs, National Nuclear Security Administration.

[FR Doc. 03–14028 Filed 6–3–03; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011702–001.

Title: Hapag-Lloyd/Lykes Space Charter Agreement.

Parties: Lykes Lines Ltd., LLC, Hapag-Lloyd Container Linie GmbH.

Synopsis: The proposed agreement modification adds Puerto Rico to the geographic scope and revises the port rotation reflected in the Appendix of the agreement.

By Order of the Federal Maritime Commission.

Dated: May 30, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14051 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
16338N	Brisk International Express, Inc., 8542 NW. 66th Street, Miami, FL 33166	April 13, 2003.
16529N	Newmark Shipping Ltd. dba R S Freight Inc. dba R S F Inc., 4455 Torrance Blvd., Suite 848, Torrance, CA 90503.	May 1, 2003.
16731N	Providence Services, Inc., 8565 NW 68 Street, Miami, FL 33166	April 25, 2003.

Dated: May 30, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–14050 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 18040NF.
Name: Brit-Am, Logistics Management Services, Inc.
Address: 6425 Woodstone Way, Morrow, GA 30260.
Date Revoked: May 7, 2003.
Reason: Failed to maintain valid bonds.

License Number: 17950N.
Name: CK Logistics, Inc.
Address: 500 Sandau Road, Suite 600, San Antonio, TX 72816.
Date Revoked: February 26, 2003.
Reason: Surrendered license voluntarily.

License Number: 6064N.
Name: Container Management, Inc.
Address: 3250 NW North River Drive, Miami, FL 33142.
Date Revoked: May 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 770F.
Name: Francesco Parisi, Inc..
Address: C/O George Funaro & Co., P.C., One Penn Plaza, Suite 3515, New York, NY 10119.
Date Revoked: May 22, 2003.
Reason: Surrendered license voluntarily.

License Number: 16006N.
Name: Grand Bell, Inc. dba Grand Bell Maritime U.S.A.
Address: 17785 Center Court Drive, Suite 260, Cerritos, CA 90703.
Date Revoked: June 14, 2001.
Reason: Failed to maintain a valid bond.

License Number: 8188N.
Name: Interocean Transporters Network Corporation.
Address: 821 East 230th Street, Carson, CA 90745.
Date Revoked: May 12, 2003.
Reason: Surrendered license voluntarily.

License Number: 61F.
Name: Rue Forwarding Company, Inc.
Address: 45 John Street, New York, NY 10038.
Date Revoked: May 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17264N.
Name: Trans Atlantic Container Lines Inc.
Address: 1200 Fuller Road, Bldg. M–2, Suite 217, Linden, NJ 07036.
Date Revoked: May 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17149N.
Name: Triple Star International Freight Inc. dba Tagumpay Cargo.
Address: 31883 Alvarado Blvd., Union City, CA 94587.
Date Revoked: February 14, 2002.
Reason: Failed to maintain a valid bond.

Dated: May 30, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–14052 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

PMK International LLC, 18913 8th Avenue SW., Seattle, WA 98166, Officers: Mary E. Kastner, President (Qualifying Individual), Patrick M. Kastner, Vice President.

K.E.I. Enterprise dba KEI Logix, 375 W. Victoria Street, Gardena, CA 90248, Officer: Kevin Kim, President (Qualifying Individual).

Ba-Shi Yuexin Logistics Development Co. Ltd., 17890 Castleton Street, Suite 367, City of Industry, CA 91748, Officers: Qi Ding, Secretary (Qualifying Individual), Ke Fei Liu, President/CEO.

Ocean Freight, Forwarder—Ocean Transportation Intermediary Applicant

CR International, 192 Cherry Hill Road, NW., Cedar Rapids, IA 52405, Roxann M. Von Lienen, Sole Proprietor.

Dated: May 30, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14049 Filed 6–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. American Pacific Bancorp, Portland, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of American Pacific Bank, Portland, Oregon.

Board of Governors of the Federal Reserve System, May 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13931 Filed 6–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 18, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Citizens Bancshares of Hutchinson, Inc., Hutchinson, Minnesota; to acquire Citizens Investment Services, LLC, Hutchinson, Minnesota, and thereby engage in financial planning, and providing investment services, pursuant to section 225.28(b)(6)(v), (b)(6)(vi), and (b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, May 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–13932 Filed 6–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 26, 2003. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 24, by completing the form found on–line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Fair Credit Reporting Act: Discussion of the renewal of federal preemption of state laws, set to expire at year–end.

Financial Privacy: Discussion of standardized short-form privacy notices that institutions could provide to customers about the institutions' privacy policies.

Predatory Lending: Discussion of responsible lending programs and products to counter predatory lending.

Issuance of Debit and Credit Cards: Discussion of rules for unsolicited issuance of debit cards under Regulation E (Electronic Fund Transfer Act) and credit cards under Regulation Z (Truth in Lending Act) – specifically whether card issuers should be permitted to issue at any time unsolicited, activated, supplemental debit or credit cards to current cardholders.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, May 29, 2003.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 03–13933 Filed 6–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

TIME AND DATE: 11:30 a.m., Monday, June 9, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 30, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–14110 Filed 5–30–03; 4:34 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 031 0068]

Southern Union Co., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 27, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2712.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 29, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/05/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has made public a draft complaint ("Complaint") alleging that the proposed acquisition of Panhandle Eastern Pipeline Company ("Panhandle") from Respondent CMS Energy Corporation ("CMS") by Respondent Southern Union Company ("Southern Union" or "SU") would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has entered into an agreement containing consent order ("Agreement Containing Consent Order") pursuant to which Respondents agree to be bound by a proposed consent order ("Proposed Consent Order") that remedies the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint.

II. Description of the Parties and the Transaction

Southern Union, headquartered in Wilkes-Barre, Pennsylvania, is engaged either directly or through affiliates in the distribution and sale of natural gas to residential, commercial and

industrial customers located in certain states, including Missouri, Pennsylvania, Rhode Island and Massachusetts. For the fiscal year ended June 30, 2002, SU reported sales of nearly $1.3 billion and assets of approximately $2.67 billion.

Pursuant to an agreement executed November 20, 2002, which continued until the agreement was terminated on May 12, 2003, Respondent SU's subsidiary, Energy Worx, Inc. ("Energy Worx"), served as the operator and manager of the Central pipeline. The Central pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri, is owned by American International Group, Inc. ("AIG") through its affiliate Southern Star Central Corp. ("Southern Star").

CMS, headquartered in Dearborn, Michigan, is engaged either directly or through affiliates in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services. Panhandle, a subsidiary of CMS, owns and operates the Panhandle pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri.

Pursuant to an agreement dated December 21, 2002, and a letter of understanding dated December 20, 2002, Southern Union and affiliates of AIG agreed to acquire all of the capital stock of Panhandle from CMS. The agreement provided that Southern Union would own approximately 77.9%, and affiliates of AIG would own approximately 22.1%, of the equity interest in Panhandle. On May 12, 2003, in order to resolve competitive issues arising from this transaction, Southern Union, Southern Union Panhandle Corp., and CMS Gas Transmission Company entered into an amended and restated stock purchase agreement pursuant to which Southern Union Panhandle Corp., a wholly-owned subsidiary of Southern Union, intends to purchase all of the capital stock of Panhandle from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS. AIG is not a party to the revised transaction and will have no ownership interest in Panhandle. The total value of the transaction is approximately $1.8 billion.

III. The Complaint

The Complaint alleges that the acquisition of Panhandle from Respondent CMS by Respondent SU would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the transportation of natural gas by pipeline into the Kansas City area. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondent Southern Union, prior to the proposed acquisition, to terminate the Management Services Agreement with AIG for the management of the Central pipeline. The proposed order also prohibits Southern Union from acquiring an equity position in AIG or the Central Pipeline. In addition, the Proposed Order prohibits Respondents Southern Union and CMS from transferring or otherwise providing any ownership interest in the Panhandle pipeline to AIG.

The Complaint alleges that a relevant line of commerce, or product market, in which to analyze the effects of the proposed acquisition is the transportation of natural gas by pipeline. The only way to economically transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines. Transportation of natural gas by other methods would be unsafe, prohibitively expensive, and otherwise not viable. Buyers of natural gas transportation services could not and would not switch to other means of transportation, or to alternative fuels, if the cost of pipeline transportation of natural gas were to increase by 5% to 10%.

The Complaint further alleges that the proposed transaction would lessen competition in a geographic market in the Kansas City area, consisting of Cass, Henry, Jackson, Johnson, Lafayette, Pettis and Saline Counties in Missouri, and Anderson, Butler, Chase, Coffey, Franklin, Johnson, Lyon, Marion, Miami and Osage Counties in Kansas. Buyers of natural gas in this geographic market can receive natural gas only from pipelines that travel through or terminate in that geographic market, and cannot economically access natural gas pipelines outside that area.

The only pipelines that transport natural gas to the relevant geographic market are the Panhandle pipeline, the Central pipeline, and two smaller pipelines that service only part of the western portion of the relevant geographic market. These other two pipelines could not act as a pricing constraint on Central or Panhandle because of operational limitations, capacity constraints, and distance limitations. As a result, for many buyers of natural gas transportation services in the relevant geographic market, Central and Panhandle are the only viable alternatives.

Pursuant to a Management Services Agreement with an affiliate of AIG, Southern Union's subsidiary, Energy Worx, served as the operator and manager of the Central pipeline from November 20, 2002, until the parties to that Management Services Agreement terminated it on May 12, 2003, in order to resolve competitive issues arising from this transaction. The Central pipeline transports a significant portion of the natural gas delivered to the relevant geographic market. Pursuant to the Management Services Agreement, Southern Union had effective control over the business of the Central pipeline, access to confidential competitive information about the Central pipeline, and a financial interest in the Central pipeline. The Management Services Agreement also contemplated that Southern Union would have an equity position in the Central pipeline.

The market for the pipeline transportation of natural gas to the relevant geographic market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. As originally proposed, common ownership interest and/or common management and control would exist between the only two alternatives for the transportation of natural gas for many buyers in the relevant geographic market.

Entry into the relevant line of commerce in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that are likely to result from the proposed acquisition. Building a new pipeline is capital intensive, would involve significant sunk costs, is subject to significant regulatory constraints, and would require more than two years to accomplish. As a result, new entry would not be able to prevent a 5–10% increase in the price of pipeline transportation of natural gas.

The Complaint charges that the proposed acquisition, absent relief, is likely to substantially lessen competition and lead to higher prices for the transportation of natural gas by pipeline to the Kansas City area, by eliminating direct competition between the Panhandle pipeline and the Central pipeline; by placing the Panhandle pipeline and the Central pipeline under common ownership and/or common management and control; by increasing the likelihood that unilateral market power would be exercised in the

relevant geographic market; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction in the relevant geographic market.

IV. Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Order with Respondents Southern Union and CMS in settlement of the Complaint. The Agreement Containing Consent Order contemplates that the Commission would issue the Complaint and enter the Proposed Order to remedy the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint.

The parties have agreed to a proposed consent order that requires Southern Union to terminate the Management Services Agreement with AIG for the management of the Central pipeline by Southern Union's wholly-owned subsidiary, Energy Worx, prior to the proposed acquisition. Southern Union and AIG terminated the Management Services Agreement on May 12, 2003. In addition, the Proposed Order prohibits Southern Union and CMS from transferring any ownership interest in the Panhandle pipeline to AIG. The Proposed Order remedies the anticompetitive effects that are likely to result from common ownership and/or common management of the Panhandle pipeline and the Central pipeline in the relevant geographic market.

Paragraph II of the Proposed Order requires Respondents SU and CMS, prior to the acquisition date, to secure the consent or waiver of AIG for the termination of the Management Services Agreement and to absolutely terminate the Management Services Agreement. The Proposed Order explicitly prohibits Southern Union and CMS from consummating the proposed transaction until the agreement has been terminated. Following the acquisition, Respondent SU shall not, directly or indirectly, operate or manage the Central Pipeline. Additionally, the Proposed Order prohibits Respondent SU from acquiring any ownership interest in AIG or the Central pipeline. This paragraph is designed to ensure that Southern Union will not have an ownership interest in AIG, or any role in managing or operating the Central pipeline.

Paragraph III of the Proposed Order prohibits Respondents Southern Union and CMS from transferring any ownership interest in Southern Union, Panhandle or the Panhandle pipeline to AIG. If either Respondent SU or CMS transfers a non-public ownership interest in Southern Union, Panhandle, or the Panhandle Pipeline to someone other than AIG, it must transfer such interest subject to a restriction that prohibits the sale of such interest to AIG. Paragraph III is designed to prevent the parties from providing any interest in the Panhandle pipeline to AIG.

Paragraphs IV through VII contain standard reporting, notice and access provisions. Pursuant to Paragraph IV, Respondents are required to submit to the Commission a verified written report of compliance every thirty days until the Order is complied with and annually for nine years after the first year the Order becomes final. Paragraph V of the Proposed Order provides for notification to the Commission in the event of any corporate changes in the Respondents. Paragraph VI requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Finally, Paragraph VII terminates the Order ten years from the date it becomes final.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this thirty day comment period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order and to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–14032 Filed 6–3–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0937–0166]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: 42 CFR subpart B: Sterilization of Persons in federally Assisted Family Planning Projects; Form No.: OMB #0937–0166; Use: These regulations and informed consent procedures are associated with Federally funded sterilization services. Selected consent forms are audited during the site visits and program reviews by Federal programs to ensure compliance with the regulations and protection of individual's rights.

Frequency: On Occasion.

Affected Public: Individuals or households, not for profit institutions, and/or State, local or tribal government.

Number of Respondents: 50,000.

Total Annual Responses: 50,000.

Total Annual Hours: 50,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E–mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov.*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer; OMB Human Resources and Housing Branch, Attention: Allison Eydt (OMB #0937–0166, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 27, 2003.

John P. Burke, III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–13956 Filed 6–3–03; 8:45 am]

BILLING CODE 4150–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–72]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Work-related assaults treated in hospital emergency departments (0920–0575)—Extension—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Workplace violence, both fatal and non fatal, is recognized as an important occupational safety and health issue. Various data systems have provided fairly detailed information on fatal workplace violence, but much less is known about the circumstances and risk factors for non-fatal workplace violence. A number of strategies have been suggested for reducing the incidence and severity of workplace violence in various settings (*e.g.*, taxicabs, health care, law enforcement, social services), but again, little empirical knowledge exists about what has been implemented and what impact such strategies may have. The report, *Workplace Violence: A Report to the Nation*, published by the University of Iowa based on recommendations from a workshop of experts states, "* * * research focused on a much broader understanding of the scope and impact of workplace violence is urgently needed to reduce the human and financial burden of this significant public health problem." In 2000, there were 677 workplace homicides in the U.S. From 1993–1999, there were an estimated 1.7 million nonfatal victimizations "while at work or on duty" every year, accounting for 18 percent of all violent crime during the seven-year period. In December 2001, Congress directed NIOSH to "* * * develop an intramural and extramural prevention research program that will target all aspects of workplace violence * * *"

The Consumer Product Safety Commission (CPSC) maintains a database of injuries treated in a nationally-representative sample of U.S. hospital emergency departments (ED) called the National Electronic Injury Surveillance System (NEISS). Data routinely collected through NEISS include a brief narrative description of the injury event as well as basic demographic information, intent and mechanism of injury, work-relatedness, principal diagnosis, part of body affected, location where the injury occurred, involvement of consumer products, and disposition at ED discharge. For assaults, summary data are also being collected on the relationship of the perpetrator to the injured person and the context (*e.g.*, altercation, robbery, sexual assault, etc.). For work-related cases, occupation and industry information is collected. The data system does not, however, include any information on issues such as the specific workplace circumstances and risk factors for workplace violence, security measures in place in the workplace and whether they were utilized/worked appropriately, training in workplace violence risk factors and prevention strategies, previous incidents of workplace violence, return to work after assault, and other specific workplace violence information.

For the last ten years, NIOSH has been collaborating with CPSC to collect surveillance data on work-related injuries treated in the NEISS EDs. In addition, NIOSH has utilized the capacity of NEISS to incorporate follow-back surveys. Follow-back surveys allow collection of first-hand, detailed knowledge that does not exist in administrative or other records. CPSC routinely uses this mechanism to collect information on various types of injuries (*e.g.*, fireworks-related injuries, injuries to children in baby walkers, etc.). NIOSH has used this mechanism to collect information on the circumstances of injury, training, protective equipment (if appropriate), and other issues important to more fully understanding the risk factors for work-related injuries and to make appropriate recommendations for preventing other such injuries in the future.

The current proposed study will consist of a telephone interview survey of workers treated in NEISS hospital emergency departments for injuries sustained during a work-related assault over a one-year period. CPSC will hire a contractor to conduct the actual telephone interviews. NIOSH will review potential cases to identify those cases that should be forwarded to the contractor for interview. The survey includes an extended narrative description of the injury incident as well as items regarding general workplace organization; personal characteristics of the worker; work tasks at the time of the assault; training on workplace violence risk factors and prevention strategies; security measures in place and how they impacted the outcome of the incident; medical care received for injuries; time away from work; and return to work after the assault. This study will provide critical information for understanding the nature and impact of nonfatal assault among U.S. workers. In combination with data collected from other sources, this information will ultimately contribute to the prevention of violence in the workplace. The only cost to respondents is their time in participating in the survey.

Survey	Number of respondents	Number of responses/ respondent	Average burden/ response (hours)	Total burden (hours)
Work-related assaults treated in hospital emergency departments	1,600	1	20/60	533
Total				533

Dated: May 29, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–13968 Filed 6–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Continue Conceptual Discussions for Escape Respirator Standards Development Efforts Used for Respiratory Protection Against Chemical, Biological, Radiological, and Nuclear (CBRN) Agents, and Provide an Update on the Quality Assurance/ Administrative Module.

Date and Time: June 25, 2003; 9 a.m.–5 p.m.

Place: Hilton Garden Inn Pittsburgh/ Southpointe, 1000 Corporate Drive, Canonsburg, Pennsylvania.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 175 people. Interested parties should make hotel reservations directly with the Hilton Garden Inn Pittsburgh/Southpointe (724/743–5000/ 1–800–HILTON) before the cut-off date of June 10, 2003. A group rate of $55 per night has been negotiated for meeting guests. The NIOSH/NPPTL Public Meeting must be referenced to receive this special rate. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*confserv@netl.doe.gov*) or fax (304–285–4459) to the Event Management Office. A registration form may be obtained from the NIOSH Homepage (*www.cdc.gov/niosh*) by selecting Conferences and then the event.

An opportunity to make presentations regarding the conceptual discussions of standards and testing processes for escape respirator standards suitable for respiratory protection against CBRN Agents will be given. Requests to make such presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/ S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285, E-mail *niocindocket@cdc.gov*. All requests to present on the CBRN topics should contain the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. Participants will be given the opportunity to comment on the Quality Assurance/Administrative module.

After reviewing the requests for presentations, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513/533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov*. E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than July 25, 2003, and should reference docket number, NIOSH–002, in the subject heading if they pertain to the CBRN topics, or reference docket number, NIOSH–001, in the subject heading if they pertain to the Quality Assurance/Administrative Module.

Purpose: NIOSH will continue conceptual discussions of standards and testing processes for escape respirator standards suitable for respiratory protection against CBRN Agents. In addition, an update on the development of the Quality Assurance/ Administrative module will be presented.

NIOSH, along with the U.S. Army Soldier and Biological Chemical Command (SBCCOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development for the Escape Respirator CBRN standard. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain the latest copy of the Escape Respirator CBRN concept paper, as well as earlier versions of the concept papers used during the standard development effort, from the NIOSH contact identified below, or from the NIOSH National Personal Protective Technology Laboratory Web site, address: *http://www.cdc.gov/niosh/npptl*. The June 15, 2003, concept paper will be used as the basis for discussion at the public meeting, as well as forming the basis for the new Escape Respirator CBRN statement of standard.

Recent acts of terrorism have created an urgent awareness of domestic security and preparedness issues. Municipal, states, and federal responder groups, particularly those in locations considered potential targets, have been developing and modifying response and consequence management plans. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resources requirements for coping with such events. The federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, National Fire Protection Association, and the Occupational Safety and Health Administration have entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and SBCCOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators.

NIOSH, SBCCOM, and NIST have hosted public meetings on April 17 and 18, 2001; June 18 and 19, 2002; October 16 and 17, 2002; and April 29, 2003, presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates, and the status in evaluating test methods and performance standards that may be applicable as future CBRN respirator standards or guidelines were discussed at these meetings.

The Quality Assurance/ Administrative update module had been under development prior to the introduction of the CBRN topics and has been previously presented in an open format, the last of which were public meetings held on August 8, 2000, in Washington, DC, and on August 16, 2000, in San Francisco, California. More recent developments have necessitated revisions that will be highlighted at this meeting.

FOR FURTHER INFORMATION CONTACT: Event Management, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507, Telephone 304–285–4750, Fax 304–285–4459, E-mail *confserv@netl.doe.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–13969 Filed 6–3–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5003–N]

RIN 0938–ZA39

Medicare Program; Demonstration: End-Stage Renal Disease—Disease Management

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs interested parties of an opportunity to apply for a waiver allowing them to participate in the End-Stage Renal Disease (ESRD) Disease Management Demonstration. We are planning a demonstration that will increase the opportunity for Medicare beneficiaries with ESRD to receive integrated disease management services and to test the effectiveness of paying for services received by these beneficiaries in a new way. The demonstration aims to test the effectiveness of disease-management models to increase quality of care for ESRD patients while ensuring that this care is provided more effectively and efficiently. The demonstration features two distinct payment options: (1) Capitation, and (2) a fee-for-service bundled payment option. Organizations participating under the capitation payment option will be responsible for providing all Medicare covered services for beneficiaries who choose to participate in the demonstration. We plan to use risk-adjusted ESRD capitation rates being developed for use in the demonstration. A similar system of payment rates for ESRD is planned for the M+C program in 2005.

Organizations participating under the fee-for-service bundled payment model will provide disease management services and dialysis services. They will receive payment for an expanded set of dialysis services, which includes items additional to those included under the current composite rate for outpatient dialysis services. Organizations under this option will be required through disease management to coordinate non-ESRD services, but will not have to provide or contract for these services directly.

Organizations under both capitation and fee-for-service bundled payment models will be subject to a reconciliation around the risk-adjusted ESRD payment rate. Organizations under the capitation model will be able to propose risk-sharing arrangements, which would allow them to share any losses or gains with us. Applicants under the fee-for-service bundled payment model will share 50 percent/50 percent on gains and losses (or a similar arrangement to assure budget neutrality). The maximum amount of the incurred gain or loss for the applicant under the fee-for-service bundled payment model will be the amount of the additional payment for the expanded set of dialysis services.

A competitive application process will be used to select organizations to participate in this demonstration. The demonstration is planned for 4 years.

DATES: Applications will be considered timely if we receive them on or before September 2, 2003.

ADDRESSES: Mail applications to: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Research, Development, and Information, Division of Demonstration Programs, Attn: Sid Mazumdar, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the executive summary, resumes, forms, and documentation supporting the cost proposal. Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for panel review, will be considered late applications.

FOR FURTHER INFORMATION CONTACT: Sid Mazumdar, CMS Project Officer, at (410) 786–6673, or *smazumdar@cms.hhs.gov*.

Eligible Organizations

Potentially qualified applicants are companies experienced with providing services to ESRD patients. The demonstration will be especially appropriate for dialysis providers and disease management organizations. It will also be open to Medicare+Choice organizations and integrated health care systems.

SUPPLEMENTARY INFORMATION:

I. Background

A. Problem

Many Medicare+Choice organizations and private insurers have realized the importance of the effective coordination of care for persons with chronic conditions. The quality and cost of the care generally can be improved through better integration of the delivery system. The Medicare program is evaluating payment methods to create incentives to improve the quality of care, encourage

the coordination of services, and control costs.

Beneficiaries with (ESRD) are the only group eligible for benefits under Medicare Parts A and B who are prohibited from enrolling in M+C organizations, although a beneficiary who develops ESRD after enrolling in an M+C plan may remain enrolled.

Medicare coverage of individuals with ESRD was initiated in 1972 with the goal of providing life-saving treatment to patients with chronic renal failure. Over 30 years, the number of individuals with ESRD covered by the Medicare program has grown far beyond its expected size and budget, from 7,000 patients in the first year to more than 350,000 in 2001. The ESRD population is currently growing at 7 percent per year and has doubled in the past decade.

In recent years, the ESRD population has accounted for an increasing proportion of Medicare outlays. Between 1992 and 2001, Medicare spending for outpatient dialysis services furnished by freestanding facilities increased by about 10 percent per year. Intravenous medications have also increased Medicare spending for ESRD. Spending for injectible drugs increased from $1.3 billion in 1998 to $2.3 billion in 2001. In 2001, Medicare expenditures for ESRD amounted to $15 billion. The total Medicare cost for the ESRD program is projected to more than double in the next 10 years.

B. Approaches and Demonstration Project

This demonstration follows an earlier ESRD managed care demonstration. In 1993, the Congress required the Secretary to conduct an ESRD Managed Care Demonstration Project. As a result of this mandate, section 13567(b) of the Omnibus Budget Reconciliation Act (OBRA) 1993, Pub. L. 103–66, we implemented a demonstration that allowed ESRD patients to enroll in managed care settings. Participating managed care organizations were to be responsible for the total medical care of ESRD enrollees as well as provide specific case management functions and additional benefits of utility to the ESRD population.

Responding to our solicitation, three organizations joined the demonstration; Kaiser Permanente in southern California, Health Options Incorporated in Florida, and Xantus Corporation in Tennessee. Kaiser Permanente and Health Options Incorporated remained in the demonstration. Xantus discontinued demonstration operations in March 2000. The organizations that remained were a health maintenance organization (HMO) and an HMO subsidiary, both with separate M+C contracts.

The CMS-sponsored evaluation for the project shows the demonstration approach to be operationally feasible and the quality of care was maintained or improved. Overall, the patients who were enrolled in the demonstration reported high satisfaction, improved quality of life, and positive clinical outcomes. The executive summary of this report is available at *http://cms.hhs.gov/researchers/reports/2002/execsum.pdf.*

We plan the new demonstration to foster more types of integrated care for Medicare beneficiaries with ESRD. We seek to test innovative approaches to integrating the chronic care management services for patients with ESRD with other acute care services. Responding to published research on the effectiveness of disease management methods in treating ESRD patients, the demonstration aims to test the effectiveness of disease management models to increase quality of care for ESRD patients while ensuring that this care is provided more effectively and efficiently. Disease management techniques are intended to improve patient care and save money by coordinating interventions and educating patients about managing ESRD and its comorbid conditions.

National organizations have defined approaches to disease management, in order to improve patient outcomes while containing health care costs. Disease management programs tend to target persons whose primary health problem is a specific disease, along with comorbid conditions. Interventions tend to be highly structured and emphasize the use of standard protocols and adherence to clinical guidelines.

Common features to disease management include:

- Identification of patients and matching the intervention with the need.
- Use of evidence-based practice guidelines.
- Services designed to enhance patient self-management and treatment plan adherence, including education and behavior modification programs.

Additional features essential for disease management of ESRD include:

- A central role for the nephrologist.
- Management of the many comorbid conditions of ESRD.
- Care managers with specialized knowledge of diet, medications, total health status, and personal needs of ESRD patients.
- Integrated administrative and financial arrangements among providers of services to ESRD beneficiaries.

The new demonstration includes three delivery models and two payment models, or options. The delivery models are: (1) Managed care, (2) models similar to the approach taken under the Program for All-Inclusive Care for the Elderly (PACE-type) under sections 1894 and 1934 of the Social Security Act, and (3) fee-for-service. The two payment options are (1) capitation and (2) fee-for-service bundled payment. The capitation payment option applies to both managed care and PACE-type delivery models. The fee-for-service bundled payment delivery option would apply only to the fee-for-service model. The delivery and payment models have different implementation methods that are discussed in this solicitation. For each model, the organization will take responsibility for operations such as enrollment (capitation payment model), disease management, care coordination, and financial management.

An additional component to the demonstration payment method, for both managed care and fee-for-service is an incentive payment for quality. Under the demonstration, we will reserve five percent of the payment, either capitation or bundled payment, to be available for quality incentive payments. Capitation payments would be set at 95 percent of the risk-adjusted ESRD payment rate. Ninety-five percent of the additional payment for an expanded bundle will be paid for the fee-for-service option.

For both models, goals for a demonstration organization would be to implement clinical protocols for common clinical events, as well as for objectives as anemia management and diabetes management, and for quality of care in areas such as dialysis treatment modality, consideration for transplantation, post-transplantation follow-up, management of vascular access, prevention of peritoneal catheter exit site infections, and monitoring of dialysis adequacy. A site would coordinate inpatient, outpatient, and home-based services, ensuring continuity of care for multiple chronic care problems and comorbidities, in particular, cardiovascular disease, hypertension, and diabetes.

II. Capitation Payment Model (Managed Care and PACE-Type Delivery Models)

Under the capitation payment model, organizations serving ESRD patients would receive a risk-adjusted ESRD capitation payment in order to test the effectiveness of disease management models in increasing quality of care for ESRD patients while containing costs. Organizations participating under capitation arrangements would be responsible for managing the care of ESRD patients and providing all Medicare covered services for enrolled beneficiaries. Participating organizations may propose to cover additional services that are not currently covered by Medicare. The following are examples of these additional services:

- Transportation.
- Nutritional services.
- Dental services.
- Prescription drugs (full or limited).
- Preventive care aimed at comorbidities.
- Home care services.
- Exercise programs.
- Education on disease.
- Counseling (including spiritual).
- Diabetes management.
- Cardiovascular management.

Beneficiaries would agree, as a condition of participation in the demonstration, to receive services through the participating organization. Organizations responding must demonstrate capability to identify beneficiaries for the demonstration, and they must be licensed to bear risk. Organizations would be required to meet M+C conditions regarding access and availability of care.

A. Managed Care Model

The managed care delivery model may be attractive to organizations such as large dialysis providers and entities that currently offer M+C plans. The optimal approach for these organizations would consider arrangements with hospitals and other providers to service the entire range of health care needs for ESRD patients, including transplantation. These companies would coordinate referrals for the comorbidities of ESRD patients and therefore should be able to manage treatments to improve quality and reduce costs compared to fee-for-service. Care coordination has the potential to enhance the continuity of patient care, improve clinical outcomes, and improve patient satisfaction. Managed care organizations would contract with disease management entities or directly provide disease management to all participating beneficiaries.

Studies have reported the growth over the past decade of for-profit dialysis facilities and chains of dialysis facilities under common ownership. According to a recent report, the five largest dialysis corporations provide services to more than 70 percent of all dialysis patients in the U.S. (Source: United States Renal Data System). The capitation payment model will provide an incentive for these companies to combine their services with those of other healthcare providers to create efficient systems for the care of ESRD patients. The demonstration also will capitalize on the clinical, financial, and organizational expertise of independent dialysis companies. Other companies, including single-or multi-site disease management companies, have shown potential for cost savings through clinical and organizational innovations. Networks that coordinate the entire range of patients' care will enhance the continuity of care for illnesses and conditions that impact ESRD patients. Since ESRD patients will choose whether to participate or remain in fee-for-service, companies already serving patients on a fee-for-service basis that participate in the managed care model of this demonstration will be required to continue these fee-for-service arrangements for patients who do not choose to participate in the demonstration. However, it is expected that many, if not all, will enroll.

B. PACE-Type Model

The PACE program provides for managed care services for very frail community dwelling elderly, most of who are dually eligible for Medicare and Medicaid. The PACE-type model is a variation of the managed care model described above, although with greater emphasis on patient care coordination. For the purposes of this project, the PACE-type model would be a delivery option, receiving no additional payment beyond the risk-adjusted ESRD rates. In the PACE-type model, the provider would ensure that all services, including those provided by contracted providers, would be controlled by an interdisciplinary team composed of professional and para-professional staff (for example, physicians, nurse practitioners, registered nurses, licensed practical nurses, occupational therapists, physical therapists, dietitians, day health center supervisors, recreation therapists, social workers, health workers, and drivers). The team would have responsibility for assessing participant needs, formulating care plans, directly delivering services, managing the care provided by contracted providers, and providing ongoing monitoring of treatment outcomes. Constant monitoring effectively would disclose potential needs for care plan adjustments. The team also would have the responsibility for maintaining high quality of care while simultaneously controlling program costs.

Organizations providing dialysis as well as other health care services exclusively to ESRD patients may base their delivery system on a variation of the PACE-type model emphasizing disease management protocols and multidisciplinary team management at one central site. Flexibility would be allowed in designing service delivery provisions, to be negotiated during the period before implementation. Organizations proposing the PACE-type model will not be required to only include dual eligible ESRD beneficiaries.

C. Eligibility Requirements

For the capitation model, an applicant organization must have at least preliminary arrangements with other organizations to assure the integrated provision of all Medicare-covered services. We expect organizations to select geographic areas where they will make arrangements with hospitals and other providers to service the entire range of Medicare-covered health-care needs of ESRD patients. All services should be geographically accessible to all ESRD patients in a service area (for example, within one hour or 50 miles of a patient's residence). However, special transportation arrangements may be needed to make transplant services available. Applications should include discussion of proximity of service providers, including hours of availability and other aspects of access. Maps would be useful. We encourage programs to allow a wide choice of modalities, while recognizing that for certain qualified applicants this choice is necessarily limited to in-center dialysis only.

All persons eligible for the Medicare ESRD benefit and in the service area would have the opportunity to participate on a voluntary basis except for patients who become eligible for the Medicare hospice benefit prior to enrolling in the demonstration. Demonstration sites could exclude patients according to particular criteria, including those under 18 years old, if justified. The demonstration organization would make clear that patient participation is entirely voluntary and that the ESRD beneficiary who chooses not to do so remains entitled to all Medicare-covered services.

Information provided by the provider to beneficiaries would include the network of providers who have contracted with the demonstration organization, including dialysis facilities, hospitals, and transplant surgeons, and that receiving services

through this network is a condition of participation in the demonstration.

D. Payment

For the managed care and PACE-type models, we plan to use risk-adjusted ESRD capitation payment rates being developed for the demonstration. These rates are part of the development of the "selected significant conditions" model for M+C risk adjustment. A similar set of payment rates for ESRD is planned for the M+C program in 2005. This risk adjuster will factor a greater number of comorbidities into the payment. The capitation payment method would depend on an organization's ability to submit data for relevant diagnoses recorded during hospital inpatient stays, hospital outpatient visits and physician visits. For the proposed new payment methodology for M+C ESRD, see *http://www.cms.hhs.gov/healthplans/rates/2004/45day-section-b.asp*. The actual ESRD risk-adjusted payment rates for 2004 will be available on our Web site in the near future.

The methodology will pay separate payment rates for dialysis, transplant, and post-transplant modalities. The organization would submit monthly data indicating the modality status for enrollees. The developmental phase for the demonstration would offer a period when CMS and organizations would be able to work together to establish the operational requirements of specific payment options. There will be no phase-in of the risk adjusted ESRD rates for the demonstration—payment will begin with one hundred percent, or full, risk adjustment. The actual payment amount will be reduced by five percent, which will be available later depending on performance on quality measures.

III. Fee-for-Service Bundled Payment Model

This delivery and payment model is appropriate for organizations such as disease management companies, dialysis facilities, and integrated health systems that will conduct disease management for ESRD patients and provide dialysis services under a new bundled payment methodology. Organizations will be expected to coordinate all services utilized by patients receiving dialysis through the organization. They will not be responsible for providing services other than disease management and dialysis services, and Medicare will process and pay all claims on a fee-for-service basis.

However, the organizations will be partially at risk for expenses incurred by Medicare for patients who receive dialysis services through the organization. Annually, we will conduct a reconciliation, wherein patients' total Medicare costs will be compared to what their risk-adjusted payment amounts would be. (See Financial Risk, below.) For the purposes of the reconciliation, organizations will be accountable for a patient's Medicare expenses until a patient either begins to receive dialysis services in another dialysis facility or in a nursing home, that is, the patient's care is no longer managed by the organization. (As an example, if a patient receiving services in a demonstration dialysis facility is admitted to a hospital and then returns to the facility for dialysis, the Medicare cost for the hospital stay will be counted as part of the demonstration organization's expenses.) Under this payment option, the maximum amount of incurred gain or loss for the organization will be equivalent to the total amount of the add-on payment for the expanded bundle.

The organization would identify distinct facilities that will participate in the demonstration. To minimize favorable selection, all, or nearly all, patients treated within the set of facilities that are included in the demonstration would be paid for under the bundled rate. The beneficiaries would be informed that the organization is participating in a new payment and disease management project. The organization would make special arrangements for those patients who choose to opt out of the demonstration. An acceptable arrangement would involve placing a patient who chooses to opt out in another facility, while ensuring that location and transportation arrangements are convenient for the patient. If this condition is not met, we would make arrangements for these people to continue in the facility under a separate payment from the demonstration. In addition, we would not include dialysis patients in the demonstration who are members of M+C plans.

The demonstration payment for the bundle is constructed as an add-on to the otherwise applicable specific composite rate payment for each geographic area, as listed in the CMS Program Memorandum for February 1, 2001 (Transmittal A–01–19). The expanded bundle add-on includes payment for several classes of drugs: Erythropoietin, Levocarnitine, phosphate binders, iron supplements, and Vitamin D analogs; necessary laboratory tests; and radiology. (See appendix I for a full list of items under the bundled payment.) Applicants for this option will have the choice of also including vascular access services in the expanded bundle add-on. Nearly all routine dialysis services are included in the bundle. Other items and services will be separately billable outside the bundle. Organizations will not be able to bill separately for items in the bundle.

The Medicare add-on payment for the expanded bundle not including vascular access services is $71.63 per session. The add-on payment for the bundle including vascular access services is $86.63. (These numbers include a one percent deduction for Medicare savings.) These payments do not include any potential co-payments and were calculated on Medicare claims data from July 2000 through December 2001, and will be used exclusively for this demonstration. We will update the payment for the expanded bundle to reflect changes in Medicare payment levels.

The add-on bundle rates include payment for disease management services. Organizations must provide a detailed description of the disease management services they will provide, including information on their proposed interventions, the type and number of patients to whom each intervention is targeted, and the frequency with which such interventions are expected. Applicants should also describe how these services will increase quality and reduce costs.

In accordance with the withhold for quality, five percent will be subtracted from the bundled payment rate. As described below, the five percent will be available later depending on performance on quality measures.

In rare circumstances when patients use other dialysis facilities, the organization will be responsible for reimbursing the facility at Medicare fee-for-service payment levels. It will have received the bundled payment on behalf of the beneficiary who is temporarily absent from the geographic area. Applicants should consider in their proposals what constitutes a temporary absence. The organization will continue to provide disease management services and coordinate other Medicare services while the patient is away.

Applicants proposing the fee-for-service option with the bundled dialysis payment should be aware that the implementation period will be at least six months, because of significant bill-paying systems changes. We will update the payment for the expanded bundle on an annual basis to reflect changes in Medicare payment levels. Facilities will be able to participate under this option for patients receiving home dialysis services under Method I. Demonstration payments will not be made for Method II home dialysis patients.

IV. Supplemental Coverage

The demonstration will be open to ESRD beneficiaries for whom Medicare is either primary or secondary payer. In the case of demonstration participants for whom another payer is primary, the demonstration organization must submit valid bills with the primary payer to collect the appropriate payment amount as specified by the demonstration's payment rules.

To make the demonstration financially viable, participating organizations may collect cost-sharing in the form of premiums, deductibles, and co-payments to beneficiaries in lieu of the cost-sharing amounts for which beneficiaries are responsible under the ordinary fee-for-service payment rules. To be financially attractive to beneficiaries, these should have actuarial values that are lower than current Medicare fee-for-service cost-sharing.

A beneficiary participating in the demonstration may choose to retain his or her Medigap policy. Participating organizations should clearly explain to beneficiaries the advantages of retaining and risks of discontinuing their Medigap coverage. Under the fee-for-service bundled payment option, participating organizations will be able to bill any supplemental insurance plan that the enrolled beneficiary holds for cost-sharing purposes. If a secondary payer is Medicaid or a group health plan, that payer may pay some or all of a beneficiary's monthly premium for enrollment.

Under the demonstration, an organization receiving a fully capitated payment may pursue the possibility of billing existing Medigap policies held by a beneficiary participating in the demonstration, or bill Medicaid, for the amount of cost-sharing that otherwise would be paid under Medicare fee-for-service. The demonstration organizations may attempt to make such arrangements with Medigap plans, State Medicaid agencies, and State insurance regulators.

Beneficiaries participating in the capitation demonstration will have the option of terminating supplementary coverage. In these cases, the selected demonstration organizations must work with the beneficiaries to ensure that either their policy is maintained at the end of the demonstration, or that beneficiaries understand that if they drop supplemental coverage, enrollment in their supplemental plans is not guaranteed at the end of the demonstration. It will be incumbent on the demonstration organizations to provide proper notice to potentially participating beneficiaries about their Medigap rights if the individual's participation in the demonstration ceases. Specifically, the demonstration organization should be explicit in its marketing information to beneficiaries about the scope of rights that accrue to patients under age 65 in the particular State.[1]

If the beneficiary intends to cancel a Medigap policy and if the arrangements with the supplemental insurer do not guarantee that the beneficiary has the same coverage at the end of the demonstration, it must be clear that the beneficiary chooses to participate in the demonstration with full knowledge of this possibility. Providers and beneficiaries are advised that the demonstration is time-limited, and that dropping a Medigap policy presents a significant risk. We will ensure that demonstration organizations communicate the advisability of maintaining Medigap coverage to potential participants.

When demonstration awards are made, the Terms and Conditions will require that the awardee submit for our approval a Phasedown Plan explaining how demonstration participants are to be assisted in converting back to previous insurance coverage and fee-for-service care at the conclusion of the demonstration, as well as during the project. This requirement will apply to organizations under both capitation and fee-for-service bundled payment models.

[1] Generally, an individual who voluntarily disenrolls from a managed care demonstration will not have guaranteed issue rights. If an individual is enrolled in a managed care demonstration and enrollment ceases under circumstances set forth in section 1851(e)(4) of the Act (for example, the demonstration is terminated), the individual will have the right to buy certain Medigap plans on a guaranteed issue basis (generally Plans A, B, C or F). This right generally will not accrue to an individual who wishes to voluntarily disenroll from the managed care demonstration. It also generally will not apply if an individual is enrolled in the fee-for-service model of the demonstration, since the statutory provision in section 1882(s)(3)(B)(iii) of the Act provides guaranteed issue rights to individuals in a managed care organization.

If an individual drops a Medigap policy to enroll in the ESRD managed care demonstration and it is the first time the individual has enrolled in Medicare managed care, that individual has a 12-month trial period. The individual may disenroll from the demonstration within the first 12 months and purchase his or her former Medigap policy, if it is still available from the same issuer. If the former policy is not available, the individual can buy Medigap Plans A, B, C, or F. Individuals who join the demonstration upon first becoming eligible for Medicare Part A at age 65 would not have "trial period" rights.

It is important to note that Federal law does not require a Medigap open enrollment period for beneficiaries under age 65, so Medigap insurers do not have to sell policies to this population. State law governs what Medigap choices are available to Medicare beneficiaries under age 65. Currently, twenty-two States have laws that provide Medigap rights to beneficiaries under 65. The Medigap plans available to the under-65 population vary by State.

V. Financial Risk

A. Risk-Bearing Requirements

We will work with organizations that have requested capitation payment in the pre-implementation period to assure they meet the risk-bearing requirements under their State. We will consider the individual circumstances of the provider in relation to State law and the demonstration project, but we cannot exempt organizations from State law. Organizations will be required to meet all of the State's insurance requirements to the extent applicable. There is no risk-bearing licensure requirement for the fee-for-service model.

B. Risk Sharing

Organizations may propose risk-sharing arrangements under either the capitation or fee-for-service bundled payment options. If risk sharing is included for the capitation option, a year-end reconciliation will be conducted to compare an actual Medical-Loss-Ratio (MLR) to a target Medical-Loss-Ratio. Any differences, either gains or losses, would be shared on a symmetrical basis by the organization and us. As part of the proposal, organizations should submit a projected revenue and expense statement showing calendar year 2004 estimated per member per month Medicare revenue and member premium; benefit expenses (hospital inpatient, hospital outpatient, dialysis, professional, other Medicare services, and non-Medicare services); and administrative expenses. The statement should show any co-payment credits for the various services and reflect payment from Medicaid or supplemental insurers. A target MLR will result from the ratio of benefit expenses to revenues. One year after the end of each operational year, the organization should send a certified actual revenue and expense report to determine the actual MLR.

If risk sharing is proposed, there should be three calculations of projected savings/losses—optimistic or best case assumptions, expected or normal assumptions, and pessimistic or worst-case assumptions. Budget neutrality should be assessed for each situation. The risk-sharing proposal must include a 2 percent full-risk corridor above and below the targeted Medical-Loss-Ratio. In addition, prior to awards, we will work with applicants to determine whether the proposed Medical-Loss-Ratio is set at a level where the risk-

sharing arrangement is projected to be budget neutral under expected or normal assumptions. If risk sharing is proposed for the capitation model, we will share risk only on medical benefit expenses. Administrative expenses must be reasonable and consistent with prior practices. Applicants can propose the percentages of risk sharing and risk corridors, but these must be symmetrical, for example, 50 percent organization/50 percent CMS beyond the 2 percent full risk corridor; 40 percent organization/60 percent CMS beyond the 2 percent full risk corridor on gains and losses. Seventy-five percent is the most we will share on gains or losses.

For the fee-for-service option, a CMS reconciliation will be conducted to compare total Medicare payments made on behalf of patients receiving dialysis and disease management services to total risk-adjusted ESRD payments that would have been received under the capitation payment model (minus the dollar amount of the one percent subtracted from the payment for the expanded bundle). It is expected that through efficiencies generated by disease management and a bundled dialysis payment, organizations will break even or achieve overall savings. Similar to the capitation model, there will be a 2 percent full-risk corridor above and below the targeted payment amount. Organizations will share with CMS 50 percent/50 percent on gains and losses resulting from the reconciliation beyond the full-risk corridor on gains and losses (or a similar arrangement to assure budget neutrality). The maximum amount of incurred gain or loss will be equivalent to the amount of the add-on payment for the expanded bundle. For the purposes of the reconciliation, organizations will be responsible for a patient's Medicare expenses until a patient either begins to receive dialysis services in another dialysis facility or in a nursing home. A 12-month period will be allowed for claim lag.

Similar to the capitation model, fee-for-service applicants should outline calculations of budget neutrality under optimistic or best-case assumptions, expected or normal assumptions, and pessimistic or worst-case assumptions.

VI. Legislative Authority

Depending on the model chosen by the applicant and approved by us, the demonstration project and the waivers granted to permit it would be authorized by one of two statutory provisions, or by both such provisions. The original ESRD managed care demonstration described above was, as noted, conducted in accordance with specific Congressional authority for such a demonstration in the context of "Social HMO" or "SHMO" demonstration projects. The managed care model demonstrations, as well as those we are referring to as "PACE-type", would be authorized under this broad authority. These types of demonstration models would also be authorized by the authority in section 402 of the Social Security Amendments of 1967, 42 U.S.C. section 1395b-1, which permits demonstrations, testing "changes in methods of payment" and the waiver of rules relating to payment, as well as the coverage of services not otherwise covered by Medicare. In the case of a fee-for-service demonstration model, this latter authority would authorize the demonstration.

A. SHMO Authority

Section 2355 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) required the Secretary to approve applications to carry out SHMO demonstrations to provide for the integration of health and social services under the direct financial management of a provider of services. Up to four additional projects were mandated by section 4207(b)(4) of the Omnibus Budget Reconciliation Act (OBRA) of 1990, Pub. L. 101–508. (This authority, as amended, is referred to as SHMO II.) In accordance with the previous demonstration, we are interpreting the term "project" to refer to the overall demonstration project, and that a significant number of organizations can participate in the proposed demonstration.

Section 13567(b)(2)(B) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) mandated that these demonstration waivers be extended through the end of 1997 and required at least one of the four new projects: "to demonstrate * * * the effectiveness and feasibility of innovative approaches to refining, targeting and financing methodologies and benefit design, including the effectiveness and feasibility of integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services."

The Congress subsequently mandated that these demonstrations be extended. Section 631 of the Medicare, Medicaid and SCHIP Benefits Improvement Act of 2000 (BIPA) mandated an extension through August of 2003. While under current statute, a mandate that the demonstrations continue would expire on that date; we believe that to the extent a demonstration is otherwise permitted under the SHMO authority, it can be conducted under this authority subsequent to this date.

The Congress in Section 4207(b) of the Omnibus Budget Reconciliation Act of 1990 provided authority to waive "any requirements of titles XVIII or XIX of the Social Security Act that, if imposed, would prohibit such project from being conducted."

B. Section 402 Authority

Section 402(a)(1)(A) of the Social Security Amendments of 1967, 42 U.S.C. section 1395b–1(a)(1)(A), authorizes the Secretary to develop and engage in demonstrations "* * * to determine whether, and if so which, changes in the method of payment or reimbursement * * * for health care and services under health programs established by the Social Security Act * * * would have the effect of increasing efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services * * *." Section 402(a)(1)(B), 42 U.S.C § 1395b–1(a)(1)(B) authorizes a demonstration to determine whether covering services not otherwise covered by Medicare (in this case, disease management services) would result in more economical provisions of Medicare covered services.

Under section 402(b) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(b)), the Secretary may waive requirements in title XVIII that relate to reimbursement or payment. This authority will allow payment on a capitation basis rather than under the Medicare fee-for-service rules, and would allow fee-for-service/bundled payment and risk sharing around a traditional fee-for-service payment system. Section 402(a)(2), 42 U.S.C. § 1395b–1(a)(2), authorizes Medicare trust funds to cover the costs of the additional services under section 402(a)(1)(B).

VII. Quality Assurance and Improvement

A. Quality Indicators

Under the demonstration, we would link financial incentives to improvements in quality outcome indicators. Five percent of the capitation or expanded bundle payment rates will be reserved for incentive payments related to quality improvement activities.

For determining the incentive payment, we will use indicators profiled in the ESRD Clinical Performance Measures (CPM) Project. Indicators for the incentive payment will include adequacy of dialysis, anemia management, serum albumin, bone disease, and vascular access.

Organizations will be able to earn all or part of the five percent withheld for quality. For each of the five measures, an organization will earn one half of one percent for achieving either of the improvement or the threshold targets outlined below. Appropriate targets will be used for patients receiving peritoneal dialysis. For each measure, the amount of incentive would be weighted according to the proportion of hemodialysis to peritoneal dialysis patients.

The demonstration will require further indicators for the evaluation of disease management efforts. Although not representing factors in the calculation of the financial incentive, organizations will be monitored for quality indicators measuring potential outcomes of disease management. Indicators of particular interest include blood pressure control, comprehensive diabetes care, adult immunizations, measures of successful transplantation or referrals for transplant evaluation, quality of life (QoL or CAHPS surveys), patient safety, psychiatric evaluation, referral and follow-up, and the percentage of referrals with consult and discharge summaries. The evaluation of the demonstration will assess all available measures of quality of care in the context of the demonstration. In addition, the demonstration will require at its initiation an updated Form CMS–2728 (that is, ESRD Medical Evidence Report Medicare Entitlement and/or Patient Registration) to be submitted for each patient. The 2728 will be used as a baseline for patient demographics, clinical lab values, and co-morbid conditions. This baseline data will be used along with the CPM Data to monitor patient enrollment so that selection bias is minimized. They will also be used for patient care monitoring to ensure that patients receive at least the same level of medically necessary services and medications as determined by the patient's phyisican as they received, prior to enrollment.

B. Incentive Payment for Quality

There will be two kinds of quality outcome targets—targets for an organization's improvement over time and those that measure an organization against a predetermined threshold level that takes into account nationwide performance for a quality indicator.

Improvement targets would be set using a methodology that bases the target on improvements in the "quality deficit". The quality deficit would be defined as 100 percent minus the organization's actual rate for assigned beneficiaries in the previous year. Improvement targets would be set at 10 percent over the deficit from 100 percent. Threshold targets would be set at 20 percent above the nationwide percent deficit from 100 percent.

Improvement Target = [Percent of patients in previous year meeting quality indicator + (10 percent * (100 percent – Percent of patients in previous year meeting quality indicator))]

Threshold Target = [Nationwide percent of patients meeting quality indicator + (20 percent * (100 percent – Nationwide percent of patients meeting quality indicator))]

The targets would be re-evaluated annually. Each measure would be worth an equal proportion of the total five percent reserved for quality improvement. Allowing organizations to earn incentive payments by meeting/exceeding either predefined thresholds or improvement targets would require bigger improvements for low performers than high performers and would take into account that it may be more difficult to improve on already high performance.

Example

(Quality Indicator: Adequacy of Hemodialysis, Percent of patients receiving hemodialysis with KT/V ≥ 1.2. Nationwide Percent: 86 percent, Source: 2001 Annual Report on ESRD Clinical Performance Measures Project)

For Organization A, 80 percent of hemodialysis patients in the previous year had a Kt/V ≥ 1.2.

- The organization's improvement target would be 82 percent [80 percent + (10 percent * (100 – 80))].

If 82 percent of the organization's hemodialysis patients have a Kt/V ≥ 1.2 in the operational year, the organization would earn half of the incentive payment for this quality indicator for meeting the improvement target.

- The nationwide percent of patients with Kt/V ≥ 1.2 is 86 percent; therefore, the threshold target is 88.8 percent [86 percent + (20 percent * (100 – 86))].

If 89 percent of the organization's hemodialysis patients have a Kt/V ≥ 1.2 in the operational year, then the organization would earn half of the incentive payment for this quality indicator for meeting the threshold target.

C. Clinical Quality Data Collection

For quality data assurance, we would use the Clinical Performance Measures Project data system, which is administered by the Quality Measurement and Health Assessment Group, Center for Beneficiary Choices, CMS. The CPM Project would provide data within 9 to 12 months for all five measures discussed above. By way of contrast, data using claims are less complete and take longer to obtain. Currently, CPM data are collected annually over a three-month time frame. For the demonstration, we intend to collect these data quarterly to examine trends more closely. Although the current CPM project only reports these indicators for a small percentage of dialysis patients, this demonstration would require a 100 percent reported sample. A CMS pilot project under development for electronic submission of clinical ESRD data may be ready within the next year. If feasible, we would require demonstration sites to utilize this system. The developmental period will be used to verify the details of reporting for individual sites, for example, how values will be established for patients with multiple observations in a quarter.

D. Quality Improvement

An optimal organization would include an approach to improving and ensuring quality of care for Medicare ESRD patients. Quality of care strategies would be beneficial if they are patient-centered and focus on outcomes of care and could be measured and monitored. The quality improvement program would include the following features:

- Written quality improvement policies and procedures
- Written patient education program
- A standing quality improvement committee
- Patient grievance and appeal systems
- Provider credentialing system

VIII. Budget Neutrality

This demonstration must be budget neutral. This means that the expected costs that are incurred to Medicare for each site under the demonstration can be no more than the expected costs were the demonstration not to occur. Before awards are made, our actuaries will review and approve documentation to support budget neutrality calculations.

IX. Evaluation and Reporting Requirements

We plan to award a separate contract to evaluate the ESRD demonstration. Awardees for the demonstration would agree to cooperate with our evaluation contractor, including participation in periodic site visits and providing information necessary to conduct the evaluation. The specific requirements for sites related to the evaluation of the demonstration would be finalized once

an evaluation contract has been awarded.

In addition, awardees under the fee-for-service bundled payment option will be required to provide line item billing for all non-composite expanded bundle services. For both capitation and fee-for-service bundled payment options, ability to submit data under the CPM project will be beneficial.

X. Submission of Applications

A. Purpose

This notice solicits applications for demonstration projects that increase the opportunity for Medicare beneficiaries with ESRD to receive integrated care management. The demonstration aims to test the effectiveness of disease management models to increase quality of care for ESRD patients while ensuring that this care is provided more effectively and efficiently.

Participating organizations will be able to solicit participation in the demonstration by patients whom they currently treat in the fee-for-service system as well as new patients. Organizations under both capitation and fee-for-service bundled payment models will be subject to a reconciliation around the risk-adjusted ESRD rates. (For the fee-for-service bundled payment option, one percent of the amount of the add-on to the bundled payment will be subtracted from this target.) Organizations under the capitation model will be able to propose symmetrical risk sharing arrangements around a two percent corridor, which would allow them to share any losses or gains with us. Applicants under the fee-for-service bundled payment model will share around a two percent corridor with CMS 50 percent/50 percent on gains and losses. The maximum amount of incurred gain or loss will be equivalent to the amount of the add-on payment for the expanded bundle. An incentive payment for quality is also included in the demonstration. The demonstration is planned for four years.

B. Submission of Applications

Each applicant organization is to submit one application regardless of the number of proposed demonstration sites. The application is to be coordinated and submitted by a component of the organization that currently treats or organizes the treatment of ESRD patients. If applicable, variations related to proposed sites should be outlined in the application text or supplemental materials.

We are seeking innovative proposals from qualified organizations that can test whether care of Medicare beneficiaries with ESRD can be more efficiently and effectively provided using models involving disease management, and whether clinical outcomes can be improved with a cost that is budget neutral to the Medicare program.

Interested organizations are able to use the capitation and fee-for-service bundled payment models outlined in this solicitation. Organizations in the demonstration will adopt one of the managed care, PACE-type or fee-for-service bundled payment delivery models. For the capitation models, the entire range of medical needs of ESRD patients must be addressed through a network of contracted or affiliated providers.

In order to be considered for review by the technical review panel, applicants must submit their applications in the standard format outlined in our Medicare Waiver Demonstration Application. Applications not received in this format will not be considered. The Medicare Waiver Demonstration Application may be accessed at the following Internet address: *http://www.cms.hhs.gov/healthplans/research*. The application outlines all application requirements including the format and content requirements.

Queries for the narrative portion of the application should be submitted in writing by mail, fax, or e-mail to: Sid Mazumdar, 7500 Security Boulevard, C4–17–27, Baltimore, MD 21244–1850: FAX: 410 786–1048, E-mail: *smazumdar@cms.hhs.gov*, or *ESRDDEMO@cms.hhs.gov*.

Applications should be sent to: Sid Mazumdar, Project Officer, Division of Demonstration Programs, Centers for Medicare & Medicaid Services, C4–17–27, 7500 Security Boulevard, Baltimore, MD 21244–1850.

C. Evaluation Process and Criteria

If the application meets the basic eligibility requirements (that is, responds to all components of the solicitation), it will be referred to a technical review panel for evaluation and scoring. Panels of experts from the government or private sector will conduct an independent review. The panelists' comments and evaluations will be transcribed into a summary statement that will serve as the basis for award decisions. The panelists' evaluations will contain numerical ratings based on the rating criteria specified in this section, the ranking of all applications, and a written assessment of each application. In addition, we will conduct a financial analysis of the recommended proposals and evaluate the proposed projects to assure that they are budget neutral.

The evaluation criteria and weights are described below. These criteria are intended to identify specific information that will be useful for evaluating the application for the ESRD Disease Management Demonstration and how the applicant will be evaluated on that information in accordance with the Medicare Demonstration Waiver Application referenced above.

1. Purpose of Project/Statement of Problem (10 points)

The applicant will be evaluated on how it defines the purpose of the ESRD demonstration project, that is, the specific goals and objectives to be achieved, and how taking part in the demonstration will lead to these goals. A successful applicant should include an explanation of its ability to manage care, access, additional benefits, and costs for ESRD patients. A successful application would also include specific indicators that could be used to measure these goals and, if possible, appropriate comparison groups.

2. Technical Approach (40 points)

(a) *Organizational Structure and Service Delivery Capacity*. Organizations may consist of single or multiple sites, and the central component may be an organization other than a dialysis company (for example, an organization specializing in disease management). If the central component of the demonstration organization is a disease management or other kind of organization, it would have established relationships with facilities that provide dialysis services.

(b) *Description of Sites Specific to the Demonstration*. Applicants will be evaluated on their operational structure. In addition, an applicant will be evaluated on its explanation of how its organizational components will coordinate to provide medical treatment and disease management to ESRD patients. It will also be evaluated on the experience and background of its component parts in serving ESRD patients.

An applicant organization may propose to operate the demonstration at more than one site. The applicant will identify which of the three delivery options—managed care, PACE-type, or fee-for-service bundled payment options it chooses for the demonstration, as well as explain the nature of any affiliations with providers, persons, and organizations. An applicant for the capitation option will also be evaluated on how it will provide non-ESRD medical services to its population.

Applicants will be evaluated on their infrastructure to carry out the selected delivery model. This may include:

- Facilities.
- Equipment.
- Appropriate information and financial services.
- Ability to handle claims to pay providers (for the managed care and PACE-type models).
- Composition of the multidisciplinary team and how the team will function (for the PACE-type model).
- Any special arrangements that may be needed to make transplant services available.

Applicants under all three delivery options—managed care, PACE-type and the fee-for-service bundled payment—should identify the dialysis facilities where services will be provided, and how patients receiving services in those facilities will receive information about the demonstration project, including information on the advantages of retaining and risks of discontinuing Medigap coverage. It is expected that the bundled payment will be for all patients at the facility. In the event that a patient does not want to receive services at the facility, the applicant organization should identify other dialysis facilities conveniently located and with openings so as to allow a patient to receive services. If such a facility is not located within a reasonable distance, the applicant organization should state how it will accommodate patients who do not wish to participate. Applicants should also address what arrangements it will make for traveling patients who receive care in other facilities.

Whether an applicant proposes to serve a disadvantaged population or area will be an important consideration as to whether it is selected for the demonstration. Applications will be evaluated on how they propose to reach out to minorities or other disadvantaged individuals. A demographic profile of the service area, including estimated numbers of ESRD patients by age, sex, race and ethnicity, treatment status/modality and poverty status, along with any relevant socioeconomic or transportation issues, will be considered in determining the demonstration site's potential for assisting a disadvantaged population or area.

(c) *Disease Management Features*. Applicants will be evaluated on their disease management program, including their understanding of the role of the nephrologist in the care of the ESRD patient and the role of the care manager in providing or coordinating services beyond the dialysis facility. In addition, applicants will be evaluated on:

- The proposed disease management services and how they will increase quality and reduce costs.
- The proposed roles of the physician, case managers, and other appropriate staff such as advanced practice nurses, in planning for and coordinating the care of ESRD patients.
- The schedule of visits with the nephrologist and frequency of dialysis.
- The methods of training to ensure a team of care managers with specialized knowledge of diet and medications, as well as other personal needs of ESRD patients.
- How multidisciplinary teams will be used to serve ESRD patients, including the composition of these teams and proposed activities.
- The development and use of protocols to guide case managers' activities.
- If applicable, accreditation specific to disease management by a national organization.

(d) *Service Package*

Under the capitation option, all Medicare-covered services are to be provided. If a demonstration organization participates in a State Medicaid program, then it must work with that State program to meet its requirements. Applicants will be evaluated on their experience with the special clinical, service, and social support needs of the ESRD population and any measures they plan to take to enhance these measures in the demonstration. Applicants will be evaluated on their ability to offer patients a wide choice of treatment modalities, although it is recognized that certain providers may be limited in offering this choice.

3. Financial and Organizational Capability (35 points)

(a) *Ability to Bear Risk*. Applicants must be in compliance with State laws and regulations. Any activities undertaken by an organization under the capitation payment model cannot place the organization in conflict with State requirements on financial risk-bearing. If applicable, applicants will be evaluated on their ability to meet risk-bearing requirements.

(b) *Ability to Meet Enrollment Projections*. Applications will also be evaluated on how many beneficiaries are expected to be treated each year at each site. Under the capitation options, the applicant will be evaluated on its marketing strategy, including its plans to enroll both current and new patients to the demonstration. In addition, the applicant will be evaluated on how it explains how beneficiaries will be informed about supplemental insurance (Medigap) policies and protections. The applicant may restrict eligibility of enrollees by age or other criteria, as long as it gives an acceptable justification.

(c) *Staffing*. Applicants will be evaluated on demonstrated expertise among key personnel, including the following:

- Clinical knowledge and experience, including nephrology.
- Managed care and disease management expertise.
- Financial management expertise.

(d) *Financial and Organizational Provisions*. Applicants will be evaluated on the attractiveness to beneficiaries of Medicare cost-sharing arrangements under the demonstration.

Applicants choosing either the capitation payment or fee-for-service bundled payment options will be evaluated on their projection for attaining budget neutrality for the Medicare program. Applicants for the fee-for-service bundled payment option should include the expanded bundle payment as a medical expense, and project budget neutrality by comparing the payment to costs savings from the disease management intervention on an annual basis. Applicants should justify their proposed cost savings by projections of reduced utilization, references to disease management literature, and the organization's experience. An applicant for the fee-for-service bundled payment option should estimate the amount of ESRD and non-ESRD Medicare claims for its patient population.

If proposing risk sharing for the capitation option, an applicant will be evaluated on the quality of their projected revenue and expense statements, as well as on their analysis of budget neutrality. An applicant for the capitation option will be evaluated on the appropriateness of its Medical Loss Ratio.

(e) *Ability to Implement*. The applicant's organization will be evaluated on the basis of its ability to effectively develop and implement this demonstration project (including evidence of approval by governing boards), commitment of funds to planning and development, and formation of multi-disciplinary and cross-component task forces. The demonstration allows organizations to shift from treating patients in fee-for-service to treating them in managed care. Applicants choosing the managed care or PACE-type delivery option must explain how this change in service delivery will be completed, including

articles of incorporation and protocols for patients. The applicant should state how these elements will impact care, as well as service integration, utilization, access and availability.

Also, the applicant will be judged on its experience in conducting projects of similar clinical scope and organizational complexity as that proposed for the demonstration.

(f) *Information Systems and Management Plan.* Applicant organizations will be evaluated on whether they have sufficient management and clinical information systems and reporting mechanisms to implement the demonstration, including the ability and commitment to provide individual health status (for example, the Health Outcomes Survey) and utilization data. In addition, the applicant should delineate the information that will be collected to support this demonstration, for example, the CMS 2728 (both for new patients and existing patients pending demonstration entry), line item costs for prescribed medications, labs, radiology and other services, all comorbid conditions, patient demographics and facility characteristics.

4. Capability for Quality Assessment and Improvement (15 points)

Under the demonstration, we will link financial incentives to improvements in quality outcome indicators.

Knowledge and participation in our ESRD Clinical Performance Measures Project will be beneficial.

Applicants will also be evaluated on their quality improvement system, including the following:

- Written quality improvement policies and procedures.
- A standing quality improvement committee.
- Patient grievance and appeal systems.
- Provider credentialing system.
- Organizational modification methodology for applicants planning to shift from fee-for-service to the managed care model.

An organization's application will be evaluated on how it will measure improvements in health outcomes attributable to its disease management interventions.

XI. Final Awards

From among the most highly qualified applicants, the final selection of projects for the demonstration will be made by the Administrator and will take into consideration a number of factors, including operational feasibility, budget neutrality, geographic location, and program priorities (such as testing a variety of approaches for delivering services, targeting beneficiaries, and payment). We reserve the right to determine the scope of the project, which includes limiting the number of awards and beneficiaries covered under the demonstration. In evaluating applications, we rely on our past experience with successful and unsuccessful demonstrations. We expect to make the awards in 2003.

XII. Collection of Information Requirements

The application and instructions associated with this solicitation are approved under OMB control number 0938–0880, with a current expiration date of 05/31/03. We have requested a three year extension of the application. Pending OMB approval, this current application is valid through the interim period. The form and instructions can be obtained from the CMS web site referenced elsewhere in this notice.

Appendix I: Services Included in the Expanded Dialysis Bundle

A. Drugs

EPO (Erythropoietin, Epoetin Alpha) HCPCS Codes Q9920–Q9940 Aranesp (J0880)
Iron (J1750, J1755, J1760, J1770, J1780, J2915, J2916)
Vitamin D (J0630, J0635, J0636, J2500, J1270)
Levocarnitine (J1955)
Phosphate Binders (J0610)

B. Labs/Radiology

Laboratory HCPCS Codes (208 codes)

73120	X-Ray Exam Hand
75710	Artery X-Rays Arm/Leg
75716	Artery X-Rays Arms/Legs
75774	Artery X-Ray, Each Vessel
75893	Venous Sampling by Catheter
75964	Repair Artery Blockage; Each
76070	CT Scan, Bone Density Study
76075	Dual Energy X-Ray Study
76092	Mammogram, Screening
76778	Echo Exam Kidney Transplant
78070	Parathyroid Nuclear Imaging
78351	Bone Mineral Dual Photon
80048	Basic Metabolic Panel
80051	Electrolyte Panel
80053	Comp Metabolic Panel
80061	Lipid Panel
80069	Renal Function Panel
80074	Acute Hepatitis Panel
80076	Hepatic Function Panel
80156	Assay Carbamazepine
80162	Assay for Digoxin
80185	Assay for Phenytoin
80186	Assay for Phenytoin, Free
80197	Assay for Tacrolimus
80198	Assay for Theophylline
80202	Assay for Vancomycin
80410	Calcitonin Stimulation Panel
81000	Urinalysis, Nonauto, W/Scope
81001	Urinalysis, Auto, W/Scope
81002	Urinalysis, Nonauto W/O Scop
81003	Urinalysis, Auto, W/O Scope
81005	Urinalysis
81007	Urine Screen for Bacteria
81015	Microscopic Exam Urine
82009	Test for Acetone/Ketones
82010	Acetone Assay
82017	Acylcarnitines, Quant
82040	Assay Serum Albumin
82042	Assay Urine Albumin
82108	Assay, Aluminum
82232	Beta–2 Protein
82247	Bilirubin Total
82248	Bilirubin Direct
82270	Test Feces Blood
82306	Assay Vitamin D
82307	Assay Vitamin D
82308	Assay Calcitonin
82310	Assay Calcium
82330	Assay Calcium
82374	Assay Blood Carbon Dioxide
82379	Assay Carnitine
82435	Assay Blood Chloride
82465	Assay Serum Cholesterol
82550	Assay CK (CPK)
82565	Assay Creatinine
82570	Assay Urine Creatinine
82575	Creatinine Clearance Test
82607	Vitamin B–12
82728	Assay Ferritin
82746	Blood Folic Acid Serum
82747	Folic Acid, RBC
82800	Blood PH
82803	Blood Gases: PH, PO2, PCO2
82805	Blood Gases W/O2 Saturation
82810	Blood Gases, O2 Sat Only
82945	Glucose Other Fluid
82947	Assay Quantitative, Glucose
82948	Reagent Strip/Blood Glucose
82950	Glucose Test
82977	Assay GGT
83036	Glycated Hemoglobin Test
83540	Assay Iron
83550	Iron Binding Test
83718	Blood Lipoprotein Assay
83735	Assay Magnesium
83937	Assay Osteocalcin
83970	Assay Parathormone
83986	Assay Body Fluid Acidity
84075	Assay Alkaline Phosphatase
84100	Assay Phosphorus
84105	Assay Urine Phosphorus
84132	Assay Serum Potassium
84133	Assay Urine Potassium
84134	Assay Prealbumin
84155	Assay Protein
84160	Assay Serum Protein
84295	Assay Serum Sodium
84315	Body Fluid Specific Gravity
84443	Assay Thyroid Stim Hormone
84450	Transferase (AST) (SGOT)
84460	Alanine Amino (ALT) (SGPT)
84466	Transferrin
84478	Assay Triglycerides
84520	Assay Urea Nitrogen
84540	Assay Urine Urea-N
84545	Urea-N Clearance Test
84630	Assay Zinc
85002	Bleeding Time Test
85004	Automated Diff WBC Count
85007	Differential WBC Count
85008	Nondifferential WBC Count
85009	Differential WBC Count
85013	Hematocrit
85014	Hematocrit
85018	Hemoglobin
85021	Automated Hemogram
85022	Automated Hemogram
85025	Automated Hemogram
85027	Automated Hemogram
85032	Manual Cell Count, Each

85041	Red Blood Cell (RBC) Count
85044	Reticulocyte Count
85045	Reticulocyte Count
85046	Reticyte, HGB Concentrate
85048	White Blood Cell (WBC) Count
85049	Automated Platelet Count
85345	Coagulation Time
85347	Coagulation Time
85348	Coagulation Time
85520	Heparin Assay
85595	Platelet Count, Automated
85610	Prothrombin Time
85611	Prothrombin Test
85651	RBC SED Rate, Nonauto
85652	RBC SED Rate, Auto
85730	Thromboplastin Time, Partial
85732	Thromboplastin Time, Partial
86140	C-Reactive Protein
86317	Immunoassay, Infectious Agen
86590	Streptokinase, Antibody
86644	CMV Antibody
86645	CMV Antibody, IGM
86687	HTLV–I
86688	HTLV–II
86689	HTLV/HIV Confirmatory Test
86692	Hepatitis, Delta Agent
86701	HIV–1
86702	HIV–2
86703	HIV–1/HIV–2, Single Assay
86704	HEP B Core AB Test
86705	HEP B Core AB Test
86706	HEP B Surface AB Test
86707	HEP BE AB Test
86708	HEP A AB Test
86709	HEP A AB Test
86803	HEP C AB Test
86804	HEP C AB Test Confirm
86812	HLA Typing, A, B, /C
86813	HLA Typing, A, B, /C
86816	HLA Typing, DR/DQ
86817	HLA Typing, DR/DQ
86900	Blood Typing, ABO
86901	Blood Typing, RH (D)
86903	Blood Typing, Antigen Screen
86904	Blood Typing, Patient Serum
86905	Blood Typing, RBC Antigens
86906	Blood Typing, Rh Phenotype
87040	Blood Culture Bacteria
87070	Culture Specimen, Bacteria
87071	Culture Bact
87072	Culture Specimen By Kit
87073	Culture Bact
87075	Culture Specimen, Bacteria
87076	Bacteria Identification
87077	Culture Bact
87081	Bacteria Culture Screen
87084	Culture Specimen By Kit
87086	Urine Culture, Colony Count
87088	Urine Bacteria Culture
87147	Culture Typing, Serologic
87163	Culture, Any Source, Add'l ID Reqd
87181	Antibiotic Sensitivity, Each
87184	Antibiotic Sensitivity, Each
87185	Enzyme Detection
87186	Antibiotic Sensitivity, MIC
87187	Antibiotic Sensitivity, MBC
87188	Antibiotic Sensitivity, Each
87190	TB Antibiotic Sensitivity
87197	Bactericidal Level, Serum
87205	Smear/Stain, Interpret
87271	CMV, DFA
87340	HEP B Surface AG, EIA
87341	HEP B HBSAG Neutral AG, EIA
87350	HEP B AG, EIA
87380	HEP Delta AG, EIA
87390	HIV–1 AG, EIA
87391	HIV–2 AG, EIA
87515	HEP B, DNA, Direct
87516	HEP B, DNA, AMP
87517	HEP B, DNA, Quant
87520	HEP C, RNA, Direct
87521	HEP C, RNA, AMP
87522	HEP C, RNA, Quant
87525	HEP G, DNA, DIRECT
87526	HEP G, DNA, AMP
87527	HEP G, DNA, Quant
89050	Body Fluid Cell Count
89051	Body Fluid Cell Count
93000	Electrocardiogram Complete
93005	Electrocardiogram Tracing
93010	Electrocardiogram Report
93040	Rhythm ECG w/Report
93041	Rhythm ECG Tracing
93042	Rhythm ECG Report
93307	Echo Exam Heart
93308	Echo Exam Heart
G0001	Drawing Blood for Specimen
G0202	Screening Mammography, Digital

C. Vascular Access

Vascular Access HCPCS Codes (122 Codes)

00350	Anes-Major Vessels Neck; Nos
00532	Anes-Access Cent Venous Circ
01784	Anesthesia-AV Fistula
01844	ANES–VASC Shunt, Shunt Revis
35180	Repair Blood Vessel Lesion
35190	Repair Blood Vessel Lesion
35206	Repair Blood Vessel Lesion
35226	Repair Blood Vessel Lesion
35236	Repair Blood Vessel Lesion
35256	Repair Blood Vessel Lesion
35450	Repair Arterial Blockage
35451	Repair Arterial Blockage
35452	Repair Arterial Blockage
35453	Repair Arterial Blockage
35454	Repair Arterial Blockage
35455	Repair Arterial Blockage
35456	Repair Arterial Blockage
35457	Repair Arterial Blockage
35458	Repair Arterial Blockage
35459	Repair Arterial Blockage
35460	Repair Venous Blockage
35470	Repair Arterial Blockage
35471	Repair Arterial Blockage
35472	Repair Arterial Blockage
35473	Repair Arterial Blockage
35474	Repair Arterial Blockage
35475	Repair Arterial Blockage
35476	Repair Venous Blockage
35860	Explore Limb Vessels
35875	Remove Clot In Graft
35876	Remove Clot In Graft
35900	Excision Of Infected Graft—Extremity
35903	Excise Graft Extremity
35910	Excision Of Infected Graft—Extremity
36000	Place Needle In Vein
36005	Injection, Venography
36011	Place Catheter In Vein
36140	Establish Access To Artery
36145	Artery To Vein Shunt
36215	Place Catheter In Artery
36216	Place Catheter In Artery
36217	Place Catheter In Artery
36245	Place Catheter In Artery
36246	Place Catheter In Artery
36247	Place Catheter In Artery
36400	Drawing Blood
36406	Drawing Blood
36410	Drawing Blood
36420	Establish Access To Vein
36425	Establish Access To Vein
36488	Insert Catheter Vein
36489	Insert Catheter Vein
36490	Insert Catheter Vein
36491	Insert Catheter Vein
36493	Reposition CVC
36533	Insert Access Port
36534	Revise Access Port
36535	Remove Access Port
36550	Declot Vascular Device
36800	Insert Cannula
36810	Insert Cannula
36815	Insert Cannula
36819	AV Fusion By Basilic Vein
36820	AV Anastomosis-Perm Access
36821	Artery-Vein Fusion
36825	Artery-Vein Graft
36830	Artery-Vein Graft
36831	AV Fistula Excision
36832	AV Fistula Revision
36833	AV Fistula
36834	Repair A–V Aneurysm
36835	Artery To Vein Shunt
36860	Ext Cannula Declotting
36861	Cannula Declotting
36870	Thrombectomy
37190	Repair A–V Aneurysm
37201	Transcatheter Therapy Infuse
37205	Transcatheter Stent
37206	Transcatheter Stent Add-On
37207	Transcatheter Stent
37208	Transcatheter Stent Add-On
37209	Exchange Arterial Catheter
37607	Ligate Fistula
49420	Insert Abdominal Drain
49421	Insert Abdominal Drain
49422	Remove Perm Cannula/Catheter
71010	Chest X-Ray
71015	Chest X-Ray
71020	Chest X-Ray
71021	Chest X-Ray
71022	Chest X-Ray
71030	Chest X-Ray
71035	Chest X-Ray
75790	Visualize A–V Shunt
75820	Vein X-Ray Arm/Leg
75822	Vein X-Ray Arms/Legs
75860	Vein X-Ray Neck
75894	X-Rays Transcatheter Therapy
75896	X-Rays Transcatheter Therapy
75898	Follow-Up Angiogram
75900	Arterial Catheter Exchange
75901	Mechanical Removal Of Pericath Obstructive Material
75902	Mechanical Removal Of Intraluminal Obstructive Material
75960	Transcatheter Intro Stent
75961	Retrieve Broken Catheter
75962	Repair Arterial Blockage
75978	Repair Venous Blockage
76080	X-Ray Exam Fistula
76942	Echo Guide For Biopsy
76960	Echo Guidance Radiotherapy
93900	Duplex Scan Of Hemodialysis Access
93922	Extremity Study
93923	Extremity Study
93925	Lower Extremity Study
93926	Lower Extremity Study
93930	Upper Extremity Study
93931	Upper Extremity Study
93965	Extremity Study
93970	Extremity Study
93971	Extremity Study
A4300	Cath Impl Vasc Access Portal
M0900	Excision Without Graft

Authority: Section 402 of the Social Security Act Amendments of 1967 (42 U.S.C. 1395b1).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: May 10, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–13829 Filed 5–29–03; 12:09 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Grants for Policy-Oriented Rural Health Services Research; Grant Announcement Number HRSA–03–091

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy (ORHP) announces that approximately $900,000 in Fiscal Year (FY) 2003 funds are available for competitive grants for policy-oriented rural health services research. Individual research projects that address rural health services will be funded under this announcement. This program is authorized by Section 301 of the Public Health Service Act. Eligibility is open to public, private, and non-profit—including faith-based and community-based—organizations. Further information is provided in the Eligibility Requirements section. Grant awards will be limited to $150,000 per grantee. It is anticipated that six (6) awards will be made. The project period is twelve months.

APPLICATION DEADLINES: Applications must be received by 4 p.m. Eastern Time on July 7, 2003. Completed applications must be sent to HRSA Grants Application Center (GAC), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks are not acceptable as proof of timely mailing. Late applications will not be reviewed. Applicants will receive a confirmation of receipt notice from the HRSA Grants Application Center.

The standard application form and general instructions for completing applications (Form PHS 398) have been approved by the Office of Management and Budget. To receive an application kit, contact the HRSA Grants Application Center toll-free at 1–877–477–2123 or write them at HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. To order an application kit for this program, you must identify the program citing the following program name, catalogue of federal domestic assistance number, and announcement number: Grant Program for Policy-Oriented Rural Health Services Research, Catalogue Of Federal Domestic Assistance Number: 93.155, Grant Announcement Number: HRSA–03–091.

On-line grant application: Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Letter of intent: In order to allow the ORHP to plan for the objective review process, applicants are requested to notify the ORHP in writing of their intent to apply. This notification is not binding, but serves to inform the ORHP of anticipated numbers of applications that may be submitted. Do not fax notification. Notification is requested no later than June 11, 2003. The address for notification is: Emily Costich, Policy-Oriented Rural Health Services Research Program, Office of Rural Health Policy, Health Resources and Services Administration, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Information or technical assistance regarding business, budget, or financial issues should be directed to the Division of Grants Management Operations, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–89, Rockville, Maryland 20857, 301–443–2280. Specific contacts are:

Janice M. Gordon, Grants Management Officer, Division of Grants Management Operations, Telephone: 301–443–2385, E-mail: *jgordon@hrsa.gov.*

Darren S. Buckner, Grants Management Specialist, Division of Grants Management Operations, Telephone: 301–443–1913, E-mail: *dbuckner@hrsa.gov.*

Requests for technical or programmatic information on this announcement should be directed to Emily Costich, Office of Rural Health Policy, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0502, E-mail: *ecostich@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Policy-oriented rural health services research is useful because it informs policy-makers concerned with rural health issues and it enhances knowledge about rural health and rural health services. In addition, rural health services research addresses critical concerns facing rural communities in their quest to secure adequate, affordable, high quality health services. Research findings are useful to inform a wide audience of national, state, and local decision-makers about rural health issues. Research findings have been instrumental in bridging gaps between policy and program needs.

Research Priorities: These grants are designed to provide support both for entities established in the rural health services research field as well as those entering this field. These grants are also intended to advance specific areas of rural health services research in which a limited amount of research exists. To determine what specific rural health services research is in progress in the areas of applicant interest, query the Database for Rural Health Research in Progress at: *http://www.rural-health.org.* This grant program will support individual research projects and excludes clinical/biomedical research and the expenditure of funds for delivery of services.

Research Areas

Applications are sought for the research areas specified below, either singly or in combination. These areas are not listed in any priority order. Applications falling outside these research areas may be returned at the discretion of the Office of Rural Health Policy as being non-responsive.

(1) Mental Health
(2) Substance Abuse
(3) Oral Health
(4) American Indian/Alaska Native/ Native Hawai'ian Health Issues
(5) Integration of Native and Non-Native Health Care
(6) Special Populations—Children, Women, Homeless, Elderly
(7) Chronic Disease (*e.g.*, Asthma and Diabetes)
(8) Bioterrorism Preparedness
(9) Frontier Issues
(10) Medicaid
(11) S–CHIP
(12) End of Life Care
(13) Continuum of Care
(14) Public Health Issues
(15) Quality of Life
(16) Uninsured
(17) Disabled/Disability
(18) Low Income Populations
(19) Quality of Care
(20) EMS (for all populations, with a special interest in children)
(21) Dual Eligibles

Geographic Coverage

Applications are sought for research products that are national in scope or generalizable to the nation. Research covering a single community, multiple communities, a single state, or a single region are not acceptable and will not be reviewed.

Criteria and Maximum Points: Applications will be evaluated on the basis of the following criteria:

- Principal Investigator and Support Personnel (25 Points) [This criterion includes evaluation of qualifications and achievements of principal investigator and support personnel, as well as multidisciplinary mix of personnel.]
- Organizational, Physical and Institutional Arrangements and Institutional Commitment to Rural Research (10 points) [This criterion includes evaluation of administrative capabilities to manage research activities and accounting capabilities to manage grant funds.]
- Project Proposal (30 points).
- Budget (5 points).
- Demonstrated Commitment and Experience in Rural Health Research, Policy or Service (15 points).
- Research Applicability to National Issues, Policy Relevance and Breadth of Scope (*e.g.*, geographic coverage) (15 points).

Eligibility Requirements: Eligibility is open to public, private, and non-profit—including faith-based and community-based—organizations. Institutions that received a Rural Health Research Center Award covering September 1, 2000–August 31, 2004 and those with Fiscal Year 2000–2003 ORHP awards under special congressional initiatives are ineligible for this grant program. Although multiple applications may be submitted, only one award will be made to the same entity. Receipt of a grant will not disqualify the recipient from the Rural Health Research Center competition in 2004.

In addition to the above criteria, applicants must be capable of receiving the grant funds directly and must have the capability to manage the project. Applicants must be able to exercise administrative and program direction over the grant project; must have the administrative and accounting capabilities to manage the grant funds; and must have some permanent research staff at the time the application is submitted.

Matching Requirements: Applicant will not be required to match or share the project cost if an award is made.

Funding Preferences: A funding preference will be awarded to any qualified applicant that demonstrates substantial inclusion of the following in the project proposal: The applicant is, or is located within, an institution of higher learning or a department or agency within a State or local government. Institutions of higher learning are preferred because they bring academic knowledge and expertise to the application of new scientific techniques to solve the complex problems of rural communities. It is essential that research conclusions are based on the knowledgeable application of scientific research techniques that an institution of higher learning can provide. Departments or agencies within a State or local government are preferred because of their expertise in assessing the impacts of national policies on state governance and rural communities. This expertise provides their research with a unique policy-oriented perspective about rural communities and their members. Approved applications that receive a funding preference will be ranked ahead of those that receive no preference. Applications recommended for approval that do not receive a preference will be given full and equitable consideration but will not be funded until all applications recommended for approval that do receive the preference and fall within the funding line are funded. The funding line is the threshold score that determines the cut-off point for funding in a given fiscal year as determined by available funds. Applicants who are eligible for a preference and wish to receive it, must request a preference by following the instructions described in the application kit.

Special considerations: HRSA wants to fund a variety of research areas in making new awards under this announcement. Therefore, HRSA will consider the variety of research areas when selecting which applications to fund or those recommended for approval. See the list of 21 research areas in the Research Areas section above.

HRSA wants to achieve a geographic balance among awardees in making new awards under this announcement. Therefore, HRSA will consider geographic distribution when selecting which applications to fund of those recommended for approval.

Executive Order 12372

This grant program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State.

The due date for State process recommendations is 60 days after the application deadline for new applications. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. (*See* part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements).

Dated: May 15, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13916 Filed 6–3–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Title III Early Intervention Services Program, Existing Geographic Areas (EISEGA); CFDA 93.918; HRSA 04–005

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the anticipated availability of fiscal year (FY) 2004 funds to be awarded under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title III Early Intervention Services (EIS) Program for existing geographic areas to support outpatient HIV early intervention and primary care services for low-income, medically underserved people in

existing primary care systems. Grants will be awarded for a 3-year period.

Program Purpose: The purpose of this funding is to provide, on an ongoing outpatient basis, high quality, culturally competent, early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health services entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected.

Program Requirements: As described in section 2651(b) of the Public Health Service Act, funded programs must provide the following services on an outpatient basis:

(A) Counseling individuals with respect to HIV disease;

(B) Testing individuals with respect to HIV disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(C) Referrals of individuals with HIV disease to appropriate providers of health and support services;

(D) Other clinical and diagnostic services regarding HIV disease and periodic medical evaluations of individuals with the disease; and,

(E) Providing therapeutic measures as described in (B).

Funded programs must provide the proposed services directly and/or through formal agreements with public or nonprofit private entities. They may also provide services through agreements with private for-profit entities if such entities are the only available providers of quality HIV care in the area. A minimum of 50 percent of funds awarded MUST be spent on primary care services as described in items B–E above. No more than 10 percent of funds awarded may be spent on administration, including planning and evaluation.

Eligible Applicants: Applicants are limited to public or private nonprofit entities that are currently funded under the Title III program whose project periods expire in FY 04 and other public or private nonprofit organizations, which meet the qualifications as described in section 2652(a) of the PHS Act, proposing to serve the same populations currently being served by these existing projects. Faith-based and community-based organizations which meet these qualifications are eligible to apply. The available service areas are:

State and Service Areas of Project Periods Ending 12/31/03 and 3/31/04

AL AUTAUGA; LOWNDES; BUTLER; DALLAS; CHILTON; ELMORE; MACON; BULLOCK; LEE; RUSSELL; PIKE; BARBOUR; DALE; GENEVA; HOUSTON; CRENSHAW; CONECUH; COFFEE; CHAMBERS; TALLAPOOSA; WILCOX; MONROE; PERRY, CALHOUN; CHAMBERS; CLEBURNE; COOSA; CLAY; CHEROKEE; DEKALB; ETOWAH; RANDOLPH; TALLADEGA; TALLAPOOSA, COLBERT; CULLMAN; FRANKLIN; JACKSON; LAUDERDALE; LAWRENCE; LIMESTONE; MADISON; MARION; MARSHALL; MORGAN; WINSTON, MOBILE; BALDWIN

AZ PIMA; TUCSON, MARICOPA; YAVAPAI; GILA; PINAL

CA SAN BERNARDINO, SAN FRANCISCO, SAN JOAQUIN; SOLANO; YOLO; CALAVERAS, LOS ANGELES, ALAMEDA, SAN FERNANDO VALLEY, SANTA CLARA, SANTA CRUZ; MONTEREY, ORANGE, NORTH SAN DIEGO COUNTY

DC DISTRICT OF COLUMBIA

FL DADE; MIAMI, MIAMI BEACH; SOUTH BEACH; NORTHSIDE; NORMANDY ISLE, MONROE; KEY WEST; MARATHON; TAVENIER

GA BULLOCH; CANDLER; EVANS; TOOMBS; TATTNALL; JEFF DAVIS; APPLING; WAYNE; COFFEE; BACON; PIERCE; BRANTLEY; ATKINSON; WARE; CHARLTON; CLINCH, FULTON; DEKALB, BURKE; COLUMBIA; EMANUEL; GLASCOCK; JEFFERSON; JENKINS; LINCOLN; MCDUFFIE; RICHMOND; SCREVEN; TALIAFERRO; WARREN; WILKES, CHATHAM; EFFINGHAM; LIBERTY; BRYAN; GLYNN, FULTON, BALDWIN; BIBB; CRAWFORD; HANCOCK; HOUSTON; JASPER; JONES; MONROE; DEKALB; PUTNAM; TWIGGS; WASHINGTON; WILKINSON, BUTTS; CARROLL; COWETA; FAYETTE; HEARD; LAMAR; MERIWETHER; PIKE; SPALDING; TROUP; UPSON

HI MAUI; WAIKIKI

IL COOK, WINNEBAGO; JO DAVIESS; STEPHENSON; WHITESIDE; LEE; OGLE; BOONE; MCHENRY; DEKALB

IN MARION

KS SEDGWICK; CHEYENNE; RAWLINS; DECATUR; NORTON; SMITH; JEWELL; REPUBLIC; SHERMAN; THOMAS; SHERIDAN; GRAHAM; ROOKS; OSBORNE; MITCHELL; CLOUD; WALLACE; LOGAN; GOVE; TREGO; ELLIS; RUSSELL; LINCOLN; OTTAWA; BARTON; ELLSWORTH; SALINE; RICE; MCPHERSON; DICKINSON; MARION; STAFFORD; RENO; HARVEY; PRATT; KINGMAN; BUTLER; GREENWOOD; GREELEY; WICHITA; SCOTT; LANE; NESS; RUSH; HAMILTON; KEARNY; FINNEY; HODGEMAN; PAWNEE; STANTON; GRANT; HASKELL; GRAY; FORD; KIOWA; EDWARDS; MORTON; STEVENS; SEWARD; MEADE; CLARK; COMANCHE; BARBER; HARPER; SUMNER; COWLEY; CHAUTAUQUA; ELK; CHASE; WOODSON; ANDERSON; LINN; ALLEN; BOURBON; WILSON; NEOSHO; CRAWFORD; MONTGOMERY; LABETTE; CHEROKEE, JOHNSON; WYANDOTTE; MIAMI; LEAVENWORTH

LA CALCASIEU; ALLEN; BEAUREGARD; CAMERON; JEFFERSON DAVIS;WASHINGTON

MA HAMPDEN; FRANKLIN

MI KENT; LAKE; IONIA; MUSKEGON; OCEANA; NEWAYGO; MASON; MANISTEE

MI WAYNE; OAKLAND; MACOMB; LAPEER; ST. CLAIR; MONROE

MO VERNON; BARTON; JASPER; NEWTON; MCDONALD; CEDAR; ST. CLAIR; DADE; LAWRENCE; BARRY; HICKORY; POLK; GREENE; CHRISTIAN; STONE; TANEY; DALLAS; WEBSTER; DOUGLAS; OZARK; LACLEDE; WRIGHT; PULASKI; TEXAS; HOWELL; PHELPS; DENT; SHANNON; OREGON, JACKSON; CLAY; RAY; PLATTE; CASS; CLINTON; LAFAYETTE

MS ATTALA; BOLIVAR; CARROLL; HOLMES; HUMPHREYS; LEFLORE; MONTGOMERY; SUNFLOWER; COAHOMA; TUNICA; DESOTO; TATE; PANOLA; QUITMAN; TALLAHATCHIE; SUNFLOWER; COVINGTON; ISSAQUENA; JONES; HUMPHREYS; HOLMES; WAYNE; SHARKEY; YAZOO; WARREN; LAMAR; CLAIBORNE; HINDS; MADISON; FORREST; PERRY; ATTALA; COPIAH; GREENE; RANKIN; SIMPSON; PEARL RIVER; LEAKE; NESHOBA; STONE; KEMPER; SCOTT; NEWTON; GEORGE; LAUDERDALE; SMITH; JASPER; CLARKE; JEFFERSON DAVIS

NC AVERY; BUNCOMBE; HAYWOOD; HENDERSON; MADISON; MITCHELL; MCDOWELL; RUTHERFORD; TRANSYLVANIA; POLK; YANCEY, ALAMANCE; CASWELL; CHATHAM; DAVIDSON; DAVIE; FORSYTH; GUILFORD; LEE; ORANGE; RANDOLPH; ROCKINGHAM; STOKES; SURRY; YADKIN, FRANKLIN; VANCE; WARREN; GRANVILLE; PERSON

NJ ESSEX; UNION

NM BERNALILLO; CIBOLA; MCKINLEY; SANDOVAL; SAN JUAN; VALENCIA; TORRANCE; SOCORRO, DONA ANA; OTERO; SIERRA; LUNA; HIDALGO; GRANT; CATRON; DEBACA; ROOSEVELT; LINCOLN; CHAVES; LEA; EDDY; GUADALUPE

NV WASHOE, CLARK

NY ERIE; CHAUTAUQUA; NIAGARA; CATTARAUGUS; WYOMING; ALLEGANY; ORLEANS; GENESEE, NEW YORK, BRONX; STATEN ISLAND, MANHATTAN; NEW YORK, KINGS, LIVINGSTON; MONROE; ONTARIO; SENECA; YATES; CHEMUNG; SCHUYLER; STEUBEN, QUEENS

OH HAMILTON; CLERMONT; BROWN; BUTLER; KENTON; HIGHLAND; FAYETTE; CLINTON; WARREN; CAMPBELL; BOONE; GRANT; KENTUCKY; OHIO; ADAMS, CUYAHOGA; LORAIN; ASHTABULA; LAKE

OK ADAIR; CHEROKEE; CRAIG; CREEK; DELAWARE; HASKELL; LATIMER; LE FLORE; MAYES; MCINTOSH; MUSKOGEE; NOWATA; OKFUSKEE; OKMULGEE; OSAGE; OTTAWA; PAWNEE; PITTSBURG; ROGERS; SEQUOYAH; TULSA; WAGONER; WASHINGTON

PA PHILADELPHIA, LEHIGH; NORTHAMPTON, BEAVER; BUTLER; ARMSTRONG; INDIANA; CAMBRIA; SOMERSET; WESTMORELAND; FAYETTE; GREENE; WASHINGTON

PR SAN JUAN, HUMACAO; CAGUAS; NAGUABO; SAN LORENZO; LAS PIEDRAS; GURABO; JUNCOS; FAJARDO

RI BRISTOL; KENT; NEWPORT; PROVIDENCE; WASHINGTON

TX COLLIN; DALLAS; DENTON; ELLIS; HENDERSON; HUNT; KAUFMAN; ROCKWALL; DENTON; JOHNSON; PARKER; TARRANT, HARRIS, BASTROP; BLANCO; BURNET; CALDWELL; FAYETTE; HAYS; LEE; LLANO; TRAVIS; WILLIAMSON, ERATH; SOMERVELL; PALO PINTO; JOHNSON; HOOD; DENTON; NAVARRO; WISE; ELLIS; ROCKWALL;HUNT; TAYLOR; SHACKELFORD; RUNNELS; THROCKMORTON

UT BEAVER; BOX ELDER; CACHE; CARBON; DAGGETT; DAVIS; DUCHESNE; EMERY; GARFIELD; GRAND; IRON; JUAB; KANE; MILLARD; MORGAN; PIUTE; RICH; SALT LAKE; SAN JUAN; SANPETE; SEVIER; SUMMIT; TOOELE; UINTAH; UTAH; WASATCH; WASHINGTON; WAYNE; WEBER

State and Service Area of Project Periods Ending 6/30/04 or 9/29/04

AK MUNICIPALITY OF ANCHORAGE

AR ARKANSAS; ASHLEY; CHICOT; DESHA; DREW; JEFFERSON; LINCOLN; PULASKI; LONOKE; PRAIRIE, CRITTENDEN; CROSS; LEE; MISSISSIPPI; MONROE; ST. FRANCIS; WOODRUFF.

CA LOS ANGELES; KERN

CT NEW HAVEN; FAIRFIELD

FL BROWARD; ST. LUCIE; MARTIN; FT. PIERCE; INDIANTOWN; COLLIER

IA IOWA, DALLAS; POLK; WARREN, BUREAU; APPANOOSE; CEDAR; CLINTON; DAVIS; DES MOINES; HENRY; IOWA; JACKSON; JEFFERSON; JOHNSON; KEOKUK; LEE; LOUISA; MAHASKA; MONROE; MUSCATINE; POWESHIEK; SCOTT; VAN BUREN; WAPELLO; WASHINGTON; HANCOCK; WARREN; HENDERSON; KNOX; MCDONOUGH; MERCER; ROCK ISLAND; WHITESIDE

ID ADA; BOISE; ELMORE; VALLEY; OWYHEE; CANYON; GEM; PAYETTE; WASHINGTON; ADAMS; BUTTE; BINGHAM; POWER; BANNOCK; CARIBOU; ONEIDA; FRANKLIN; BEAR LAKE

KY PIKE

LA WASHINGTON

MA BARNSTABLE; PLYMOUTH; WORCESTER; SUFFOLK; NORFOLK

MI WAYNE

MS BOLIVAR; SUNFLOWER; WASHINGTON; LA

MT BEAVERHEAD; BIG HORN; BLAINE; BROADWATER; CARBON; CARTER; CASCADE; CHOUTEAU; CUSTER; DANIELS; DAWSON; DEER LODGE; FALLON; FERGUS; FLATHEAD; GALLATIN; GARFIELD; GLACIER; GOLDEN VALLEY; GRANITE; HILL; JUDITH BASIN; LAKE; LEWIS AND CLARK; LIBERTY; LINCOLN; MCCONE; MADISON; MEAGHER; MINERAL; MISSOULA; MUSSELSHELL; PARK; PETROLEUM; PHILLIPS; PONDERA; POWELL; PRAIRIE; RAVALLI; ROOSEVELT; ROSEBUD; SANDERS; SILVER BOW; STILLWATER; SWEET GRASS; TETON; TOOLE; TREASURE; VALLEY; WHEATLAND; WIBAUX; YELLOWSTONE; YELLOWSTONE NATIONAL PARK

NC DURHAM; WAKE; ORANGE; GRANVILLE; VANCE

NJ UNION; MONMOUTH; MERCER; MIDDLESEX; SOMERSET; HUNTERDON

NY ALBANY; RENSSELAER; WESTCHESTER; PUTNAM; DUTCHESS; COLUMBIA; ORANGE; ULSTER; BRONX

PA PHILADELPHIA; YORK

PR LARES; BARRANQUITAS; CAMUY; CIALES; CIDRA; COMERIO; COROZAL; FLORIDA; NARANJITO; HATILLO; PATILLAS; OROCOVIS, GURABO; CAGUAS; SAN LORENZO; CIDRA; CAYEY, MAYAGUEZ; SAN SEBASTIAN; WESTERN PUERTO RICO

SC BEAUFORT; HAMPTON; JASPER

TX BEXAR

VA COVINGTON CITY; CLIFTON FORGE CITY; ALLEGHANY; BOTETCOURT; CRAIG; ROANOKE CITY; SALEM CITY; ROANOKE; AMHERST; APPOMATTOX; BEDFORD; BEDFORD CITY; CAMPBELL; LYNCHBURG CITY; BUCHANAN; DICKENSON; RUSSELL; TAZEWELL; DANVILLE CITY; PITTSYLVANIA; FRANKLIN; HENRY; MARTINSVILLE CITY; PATRICK; LEE; NORTON CITY; SCOTT; WISE; BLAND; BRISTOL CITY; CARROLL; GALAX CITY; GRAYSON; SMYTH; WASHINGTON; WYTHE; FLOYD; GILES; PULASKI; RADFORD CITY; AUGUSTA; BATH; HIGHLAND; ROCKBRIDGE; ROCKINGHAM; FREDERICK; PAGE; SHENANDOAH; CLARKE; WARREN; CULPEPER; FAUQUIER; MADISON; ORANGE; RAPPAHANNOCK; ALBERMARLE; FLUVANNA; GREENE; LOUISA; NELSON; CAROLINE; KING GEORGE; SPOTSYLVANIA; STAFFORD

VT ADDISON; BENNINGTON; CALEDONIA; CHITTENDEN; ESSEX; FRANKLIN; GRAND ISLE; LAMOILLE; ORANGE; ORLEANS; RUTLAND; WASHINGTON; WINDHAM; WINDSOR

WI DANE; ADAMS; BUFFALO; CRAWFORD; COLUMBIA; DODGE; GREEN; FOND DU LAC; CALUMET; PEPIN; TREMPEALEAU; JACKSON; LA CROSSE; MONROE; VERNON; GRANT; LAFAYETTE; IOWA; JEFFERSON; SAUK; RICHLAND; JUNEAU; MARQUETTE; WAUSHARA; WAUPACA; WINNEBAGO; SHEBOYGAN; ROCK; GREEN LAKE

Funding Priorities and/or Preferences: HRSA shall give preference to applicants experiencing an increase in the burden of providing services regarding HIV disease, as described in Section 2653 of the PHS Act. Under section 2653(d), of the applicants who qualify for preference under this section, (1) HRSA shall give preference to applicants that will expend the grant under section 2651 to provide early intervention under such section in rural areas; and (2) HRSA shall give special consideration to areas that are underserved with respect to such services. These may include organizations serving communities of color that are highly affected by HIV/AIDS.

Authorizing Legislation: The EIS program is authorized by section 2651(a) of the Public Health Service Act, as amended (42 U.S.C. 300ff–51)

Availability of Funds: Approximately $71,268,567 will be available for this initiative. HRSA expects to fund approximately 120 grants. These estimates are subject to change if an appropriations act providing otherwise is enacted. The project and budget periods for approved projects will begin on January 1, April 1, July 1 and September 30, 2004. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Application Deadline: Applications for this grant for programs with project periods ending 12/31/03 or 3/31/04 must be received in the HRSA Grants Application Center by close of business July 21, 2003. The applications for this grant for programs with project periods ending 6/30/04 or 9/29/04 must be received by December 22, 2003. New proposals for existing service areas must apply by the same deadline that existing programs serving those areas must meet. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legible dated receipt from a commercial carrier or the U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications postmarked after the deadline may be returned.

Where to Request and Send an Application: To obtain the official grant application kit (Form PHS–5161–1) and program guidance materials for this announcement call the HRSA Grant Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number 93.918A, HRSA 04–005, Program Code EISEGA. HRSA anticipates accepting grant applications online in the last quarter of the fiscal year (July through September). Please refer to the HRSA Grants Schedule at *http://www.hrsa.gov/grants/* for more information.

ADDRESSES: All applications should be mailed or delivered to HRSA Grant Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879. Grant applications sent to any other address may be returned. The Internet address for HAB is *http://www.hab.hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information related to the program may be requested from the Division of Community Based Programs, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane Room 7A–30, Rockville, Maryland 20857. The telephone number is (301) 443–0493; and the fax number is (301) 443–1884.

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee. The review criteria will include: (1) Justification of need, (2) organizational capabilities and experience, (3) coordination and linkage with other HIV programs, (4) adequacy of scope of work for providing early intervention services, (5) work plan, (6) program evaluation, (7) appropriateness and justification of budget, and (8) adherence to program guidance.

There is no matching requirement for this program.

Public Health System Reporting Requirements: Under these requirements (approved under OMB No. 0937–0195), a community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include (1) A copy of the face page of the application (SF424) and (2) A summary of the project, not to exceed one page, which provides (a) a description of the population to be served; (b) a summary of the services to be provided; and (c) a description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372: This program has been determined to be a program which is subject to the provision of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for the State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of Public Health Service Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: May 12, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13915 Filed 6–3–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application to Preserve Residence for Naturalization; Form N–470.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 4, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Reserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Bureau of Citizenship and Immigration Services.

Affected public who will be asked or required to respond, as well as brief abstract: Primary: Individuals or households. The information furnished on this form will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 375 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Customs and Immigration Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 30, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Customs and Immigration Enforcement, Department of Homeland Security.

[FR Doc. 03–14001 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Report

ACTION: Request OMB emergency approval; affidavit of support; form I–134.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (l)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue to be utilized after its expiration of June 30, 2003. Therefore, OMB approval has been requested by June 20, 2003.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer, 202–395–5887. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for 60 days until August 4, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. The information collected on this form is used to determine if an applicant for an benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, NW. Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14002 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; application for advance permission to return to unrelinquished domicile; form I–191.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (1)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue to be utilized after its expiration of June 30, 2003. Therefore,

OMB approval has been requested by June 20, 2003..

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725–17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer, 202–395–5887. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected concerning this information collection. Comments are encouraged and will accepted for 60 days until August 4, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Permission to Return to Unrelinquished Domicile.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–191. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. The information collected on this form is used to determine an applicant's eligibility for discretionary relief under section 212(c) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW. 10th Floor, NW., Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14003 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: immigration bond, form I–352.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 18, 2002, at 67 FR 77511, allowing for a 60-day public comment period. No comments were received by the agency on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–352, Detention and Deportation, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on this form is used by DHS to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Lewis Oleinick, Chief Information Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, NW., Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14004 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; interagency record of individual requesting change/adjustment to or from A or G status; or requesting A, G or NATO dependent employment authorization; form I–566.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (l)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue to be utilized after its expiration of June 30, 2003. Therefore, OMB approval has been requested by June 20, 2003.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer, 202–395–5887. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for 60 days until August 4, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status; or Requesting A, G or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. The form facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by the DHS and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,400 responses at 15 minutes (.250) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 29, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14005 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15234]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U. S. merchant marine.

DATES: Applications should reach us on or before August 30, 2003.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U. S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Please submit applications to the same address.

FOR FURTHER INFORMATION CONTACT: Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet at *http://dms.dot.gov/search/searchFormSimple.cfm* under the docket number [USCG–2003–15234]. The application form is also available on the Internet at *http://www.uscg.mil/hq/g-m/advisory/app.pdf*. You may also obtain an application by calling Mr. Mark Gould at (202) 267–6890; by e-mailing him at *mgould@comdt.uscg.mil*; by faxing him at (202) 267–4570; or by writing him at the location in **ADDRESSES** above.

MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Environmental Protection, on matters of concern to seamen serving in our merchant marine, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended.

MERPAC meets normally twice a year, once at or near Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific tasks as required.

The Coast Guard will consider applications for seven positions that expire or become vacant in January 2004. It needs applicants with one or more of the following backgrounds to fill the positions:

(a) Licensed deck officer;
(b) Marine educator;
(c) Licensed engineer;
(d) Member of the public;
(e) Unlicensed member of the engine department; and
(f) Two marine educators affiliated with state maritime academies.

Each member serves for a term of three years. No member may serve more than two consecutive three-year terms. MERPAC members serve without compensation from the Federal Government; however, they do receive travel reimbursement and per diem.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act [5 U.S.C. 552a].

Dated: May 28, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Standards.

[FR Doc. 03–14009 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Bonded Warehouse Proprietor's Submission

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Bonded Warehouse Proprietor's Submission. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form Number: Form 300.

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time Per Respondent: 24 hours and 18 minutes.

Estimated Total Annual Burden Hours: 43,740.

Estimated Total Annualized Cost on the Public: $787,320.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14054 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: General Declaration

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: General Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5701) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: General Declaration (Outward/Inward).

OMB Number: 1651–0002.

Form Number: Customs Form 7507.

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 166 minutes.

Estimated Total Annual Burden Hours: 83,333.

Estimated Total Annualized Cost on the Public: $1,512,500.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14055 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Lien Notice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Lien Notice. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5700) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: Form 3485.

Abstract: The Lien Notice, CBP Form-3485, enable the carriers, cartmen, and similar businesses to notify CBP that a lien exists against an individual/business for non-payment of freight charges, etc., so that the CBP will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 2,240.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 9,296.

Estimated Total Annualized Cost on the Public: $104,092,250.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14056 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Importers of Merchandise Subject to Actual Use Provisions

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5696–5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032:

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 13,000.

Estimated Total Annualized Cost on the Public: $380,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14057 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Proof of Use for Duty Rates Dependent on Actual Use

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Proof of Use for Duty Rates Dependent on Actual Use. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5696–5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of the Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Proof of the Use for Rates of Duty Dependent on Actual Use.

OMB Number: 1651–0038.

Form Number: None.

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty-free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annualized Cost on the Public: $250,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14058 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration of Persons Who Performed Repairs or Alterations

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration of Persons Who Performed Repairs or Alterations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5695) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1651–0048.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: $150,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14059 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Country of Origin Marking Requirements for Containers or Holders

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Country of Origin Marking Requirement for Containers or Holders. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5699) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated,

(4) electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651–0057.

Form Number: N/A.

Abstract: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annualized Cost on the Public: $533.00.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14060 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Customs Modernization Act Recordkeeping Requirements

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Customs Modernization Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5698) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub.L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651–0076.

Form Number: N/A.

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 6,070.

Estimated Time Per Respondent: 957 hours.

Estimated Total Annual Burden Hours: 5,812,010.

Estimated Total Annualized Cost on the Public: $104,092,250.

Dated: May 29, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14061 Filed 6–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review: Application—Alternative Inspection Services; Form 1–823.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 4, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection.

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Alternative Inspection Services.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–823, Inspections Division, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 70 minutes (1.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 291,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcements, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 30, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 03–14000 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Strategic Plan

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Solicitation of comments for updating the Strategic Plan.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is soliciting comments as it updates its Strategic Plan. In accordance with the requirements of the Government Performance and Results Act of 1993 that agencies update their Strategic Plans every three years, OFHEO is developing its 2003–2008 Strategic Plan and soliciting the views and suggestions of those entities potentially affected by or interested in the plan. OFHEO's current Strategic Plan, for FY 2000–2005, may be viewed on the OFHEO Web site at *http://www.ofheo.gov* in the "About OFHEO" section.

DATES: Written comments regarding the Strategic Plan may be received through June 18, 2003.

ADDRESSES: All comments concerning the notice should be addressed to: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552. Comments may also be submitted via electronic mail to: *StrategicPlan@ofheo.gov*. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (PDF) on 3.5″ disk.

FOR FURTHER INFORMATION CONTACT: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552, telephone (202) 414–3821 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress, as established in title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, with the mandate of overseeing the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, Fannie Mae and Freddie Mac (the "Enterprises").

Three years ago, OFHEO adopted a Strategic Plan covering FY 2000–2005. Section 306 of the Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1115 *et seq.*, requires that agencies update and revise their Strategic Plans every three years. OFHEO is currently drafting a new plan for FY 2003–2008 that will describe the agency's mission, strategic goals and objectives, and strategies to achieve them. This plan will provide a framework for the years ahead. OFHEO uses its Strategic Plan to guide each year's performance goals, which are described in OFHEO's Annual Performance Plans. They may be viewed on the OFHEO Web site at *http://www.ofheo.gov* in the "Public Documents" section, "Reports" section.

In today's notice, OFHEO is soliciting the views and suggestions that may be considered in the development of its revised plan. Additionally, OFHEO will publish a draft plan on the OFHEO Web site in late summer and will continue to encourage comments. OFHEO will then submit its Strategic Plan pursuant to the statutory requirements.

Dated: May 22, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–13282 Filed 6–3–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction on a Single-Family Lot, in Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Royce Winslow (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of the Florida scrub-jay (*Aphelocoma coerulescens*), on a single family lot for land clearing and other activities associated with the construction of a single family home on a 0.134-acre lot in City of Ormond Beach, Volusia County, Florida (Project).

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE059232–0 in such comments. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see* **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before July 7, 2003.

ADDRESSES: Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permit Coordinator), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 South Point Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE059232–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–7313; or Ms. Jane Monaghan, Fish and Wildlife Biologist, Jacksonville Field Office, (*see* **ADDRESSES**), telephone 904/232–2580, extension 128.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys indicate that one family of Florida scrub-jays occupies the Project site. The 0.134 acre of occupied habitat on the site is very overgrown due to fire suppression and a lack of any kind of management. The surrounding area is intensely developed with only scattered fragments of scrub habitat remaining. Construction of the Project's infrastructure, commercial construction and construction of the individual home sites will likely result in death of, or injury to, Florida scrub-jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

Section 9 of the Act, and implementing regulations, prohibits taking the Florida scrub-jay. Taking, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to an otherwise lawful activity. Section 10 requires the applicant to submit a Habitat Conservation Plan that specifies the impacts that are likely to result from the taking and the measures the permit applicant will undertake to minimize and mitigate such impacts. Section 10(a)(2)(B) of the Act provides statutory criteria that must be satisfied before an incidental take permit can be issued. The issuance criteria are as follows:

1. The taking is incidental to, and not the purpose of otherwise lawful activities.

2. Applicant will to the maximum extent practicable, minimize, and mitigate the impacts of such taking.

3. Applicant will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided.

4. The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

5. Applicant will ensure that other measures that the Service may require as being necessary or appropriate will be provided.

6. The Service has received such other assurances as may be required that the HCP will be implemented.

The HCP describes measures by the Applicant to avoid and mitigate "take" that would occur as a result of the project. To minimize impacts, the Applicant will ensure that clearing of vegetation within 150 feet of active nests will not take place during the nesting season for Florida scrub-jays (March 1 through July 1). To mitigate for the up to 0.134 acres of occupied habitat that would be eliminated on-site, the Applicant will contribute $1,688.00 to the National Fish and Wildlife Foundation Fund for the conservation and management of the Florida scrub-jay. This money will be used, along with other funds received from Section 10(a)(1)(B) permits, to purchase scrub-jay habitat in Volusia County, Florida. This amount is based on replacement at a rate of 2:1 (0.268 acre purchased to replace 0.134 acre at a current cost of $5,000.00 per acre for a final cost of $1,340.00), provides a $1,000 per acre ($268.00) management endowment for perpetual management, and includes a five percent fee ($84.00) for the administration of the National Fish and Wildlife Foundation account. Once purchased, the land will be transferred to a third party land management organization along with the $1,000 per acre management endowment. This management will be accomplished through the use of a conservation easement specifying that the land be left undeveloped and managed into perpetuity. It is believed that ensuring the protection and viability of quality, occupied habitat in a large contiguous preserve such as that which will be purchased in Volusia County, is more beneficial to the scrub-jay than any on-site mitigation plan could offer.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an Environmental Assessment or Environmental Impact Statement. This preliminary information may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Plan qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: May 8, 2003.

Christine E. Eustis,

Acting Regional Director.

[FR Doc. 03–13970 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft National Management Plan for the European Green Crab

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and request for comments.

SUMMARY: This notice announces the availability of a draft Management Plan for the European Green Crab, *Carcinus maenas*, for public review and comment. Comments received will be considered in preparing the final Management Plan for *C. maenas*, which will become the basis for cooperative and integrated management of the European Green Crab, *C. maenas*, with the involvement of Federal, State, Tribal, and local resource agencies.

DATES: Comments on the draft Management Plan for the European Green Crab should be received by July 31, 2003.

ADDRESSES: Mail written responses and requests for copies of the draft management plan to Fred Kern, Chair, Green Crab Control Working Group, NOAA National Ocean Service, Cooperative Oxford Laboratory, 904 South Morris Street, Oxford, MD 21654. The draft Management Plan for the European Green Crab is also available on the ANS Task Force Web site (*http://www.anstaskforce.gov*). You may also request copies of the draft plan by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Fred Kern, Chair, Green Crab Control Working Group, at 410–226–5193 or by e-mail at *fred.kern@noaa.gov* or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at *sharon_gross@fws.gov*.

SUPPLEMENTARY INFORMATION: The European green crab, *Carcinus maenas*, is one of the most ecologically and economically damaging predators in nearshore coastal communities of both eastern and western North America. Native of northern Europe, green crabs colonized eastern North America in the early 19th century and now occur abundantly from Nova Scotia to Maryland. In contrast, green crabs are a recent arrival to western North America, where they successfully colonized San Francisco Bay, CA, in 1989–90. Their impacts on both natural ecosystems and commercial fisheries are well established, as is their ability to rapidly expand their range.

The western North America invasion has undergone a rapid range expansion, with green crabs expanding their range by more than 750 km in less than ten years since their initial invasion. Green crabs are now firmly established in every significant bay and estuary from Monterey Bay, CA, to Gray's Harbor, WA, and have the potential become established from the Gulf of Alaska to Baja, California. The uniformity of the green crab distribution strongly suggests that green crabs can rapidly expand their range once they are established. In 2000 they continued to expand their northern range in eastern North America by invading the Gulf of St. Lawrence at Prince Edward Island, Canada.

Green crabs are both eurythermic and eurohaline and can survive a temperature range from freezing to 30 °C while utilizing a broad range of habitat types. They exploit a wide range of prey types, including molluscs (clams and snails), crustaceans, annelids, fish, and algae. Several native species have declined significantly as a direct result of green crab predation in western North America. Green crabs have had substantial impacts on some commercially important clam species, *Mya arenaria*, and *Mercenaria mercenaria*, and on the scallop species, *Argopecten irradians*. Green crab predation in invaded communities may indirectly affect feeding rates and foraging efficiency of shorebirds.

Recognizing the ecological and economic impacts, as well as expanding geographic range of the green crabs in North America, *Carcinus maenas* was the first marine organism to be designated as an aquatic nuisance species in 1998 by the Aquatic Nuisance Species (ANS) Task Force. In 2000, the Green Crab Control Working Group was appointed by the ANS Task Force to develop a Management Plan. The management strategies available in the plan to limit the impact of the European green crab, as well as that of other invaders, include a combination of prevention, eradication, and control measures. This plan is the result of several years of planning and research and has identified the following management options for prevention, eradication, and control of *Carcinus maenas* in the United States:

- Prevention and Containment
- Detection and Forecasting
- Eradiction, Control, and Mitigation
- Information Access and Data Management

Prevention and Containment

This option provides a detailed description of the priority activities that the Working Group has identified to prevent further spread of the green crab. The goals of prevention and containment are to:

- Identify pathways of invasion and quantify the risk of each pathway; and
- Identify management options available for reducing the risk associated with each pathway.

The Management Plan also discusses the types of information needed to accomplish this management option, as well as the strategies that may be most effective.

Detection and Forecasting

This option provides a detailed description of the priority activities to be undertaken as soon as possible to implement a comprehensive program to detect new invasions and range expansions of the European green crab and to forecast pollution irruptions at invaded sites. The goals for this option are to do the following:

- Outline specific procedures for detecting the presence of juvenile green crabs in previously uninvaded areas. This will provide an "early warning" of new invasions and provide additional time for restricting activities that would potentially delay further spread. It also allows time to develop local education/outreach efforts or other activities aimed at heightening public awareness in order to minimize the probability of unintentional movement of green crabs;
- Track the approximate abundances of green crab populations in previously invaded areas to allow forecasting of "outbreak" years. The ecological and economic impacts of green crabs are directly related to their abundance, so if outbreak years can be forecasted, this would provide an important warning for resource managers, production fisheries, aquaculture, and others that may be negatively affected by a large year class of green crabs. This would also provide additional time to jumpstart necessary management activities, and increase education and outreach efforts that might ameliorate the impacts of these species in years of high abundance;
- Monitor uninvaded areas to detect new invasions and range expansions. This would most effectively be accomplished by detecting the presence of postlarval green crabs and/or the presence of young-of-the-year (YOY) juvenile green crabs. To detect the presence of green crab postlarvae, biweekly to monthly sampling between April and June would be involved. Postlarvae can be sampled by deploying bag collectors attached to docks, moorings, and buoys at replicate sites in harbors and bays. Bags are exchanged at the desired interval, and collected organisms are rinsed off the collectors, sorted, preserved, and counted. Young-of-the-year (YOY) juvenile green crabs are best sampled by deploying baited minnow traps in intertidal areas at replicate sites in harbors and bays in August and September; and
- Monitor invaded areas to forecast "outbreak" years. This is most effectively accomplished through monitoring the abundance of postlarval green crabs, including juvenile as well as adult crab populations.

Eradication, Control, and Mitigation

The Management Plan has identified and discussed various actions for this option. These actions are dependent upon the data, population abundance, and control tools currently available. Just as crab abundance differs by location, so too may the tools available for controlling the population be different. For example, early detection of new invasions may permit successful rapid response and extirpation at a local level. Small populations with no local recruitment may be easy to eradicate by selective harvest, chemical control, biological control, or genetic control measures, while population established with local recruitment may need control and containment in addition to selective harvest, chemical control, biological control, or genetic control measures. However, if the invasion has proceeded to the point that achieving population control on a broad scale is either perceived to be insurmountable or is not presently being addressed, mitigative control measures may be used in concert with broader regional or local control. Cooperative research on the seasonal dynamic of green crab recruitment and predation, along with field tests on the efficacy of various mitigation measures, should be conducted in those areas where green crab are abundant.

Information Access and Data Management

The objective for this component of the management plan is to share the information source(s) and data management needed to efficiently implement the national management plan. The objectives for this component of the plan are to:

- Provide current information on the research and management activities being conducted under the plan;
- describe standardized research and management protocols that allow others

to participate and contribute to full implementation of the plan;

• sustain a current synthesis of regional, national, and international results in the areas of research and management activities;

• create a directory of relevant contacts, activities, and information in support of the plan at the local, state, and regional levels; and

• develop educational outreach components in support of the plan.

The following three elements are discussed in detail in the Management Plan to meet the objectives for this component: (1) A system for information management and dissemination, (2) an advisory committee to guide development of the information system, and (3) a core group of scientists to provide syntheses of current research and management information. The implementation section of the plan has identified possible funding source(s), lead organization(s), and estimated cost to implement each task element identified and discussed in the plan.

This document was prepared by the Green Crab Control Working Group of the ANS Task Force, as authorized by section 4722(c) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*).

Dated: May 7, 2003.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–13995 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held July 10, 2003, 1–4 p.m., at the Wiseman Community Center, near milepost 188 of the Dalton Highway. The council will conduct a brief meeting in conjunction with a field tour of the Dalton Highway, visit with area residents, and hear public comment.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3322 or e-mail *Teresa_McPherson@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 13-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

• Management of the Dalton Highway Utility Corridor

• Status of planning in the National Petroleum Reserve Alaska (NPR–A)

• Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: May 28, 2003.

Henri R. Bisson,

State Director.

[FR Doc. 03–13971 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1020–00–241A; AZA 31042]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to Mohave County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Mohave County Board of Supervisors proposes to use the land for a Library Station.

Gila and Salt River Meridian, Mohave County, Arizona

Township 21 N., R. 18 W., Sec 8,
N½SE¼SE¼NE¼NE¼.
Containing 2.5 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations.

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by permit number AZA–17931.

5. Those rights for the purposes granted to the Golden Valley Chamber of Commerce permit number AZA–24652.

6. Subject to other valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the Kingman Field Manager, 2475 Beverly Avenue, Kingman, Arizona 86401. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Janna Paronto, Realty Specialist, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401, Telephone (928) 692–4449.

Dated: April 23, 2003.

John R. Christensen,

Field Manager.

[FR Doc. 03–13923 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Proposed Amendment; West Mojave Planning Area; California Desert Conservation Area Plan; Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of proposed amendment; West Mojave Planning Area; California Desert Conservation Area (CDCA) Plan; off-road vehicle designations.

SUMMARY: The California Desert District of the Bureau of Land Management (BLM) is considering off-road vehicle designations for the West Mojave Desert Planning Area in accordance with the criteria and procedures of 43 Code of Federal Regulations subpart 8342. These designations, when approved by BLM, will amend the existing designations established under the CDCA plan in the West Mojave Area. This planning area encompasses approximately 3.3 million acres of public land managed by the BLM's California Desert District, located in Inyo, Kern, Los Angeles and San Bernardino Counties in southern California.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be received no later than the last day of the 30-day protest period established by the BLM California Desert District. More specific instructions and requirements for protests are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

SUPPLEMENTARY INFORMATION: Instructions for filing a protest with the Director of the BLM may be found at 43 CFR 1610.5. Any person who participated in the planning process and has an interest, which is or may be affected by the approval of the proposed Resource Management Plan, may protest such approval. A protest may raise only those issues that were submitted for the record during the planning process. New issues raised in the protest period should be directed to the West Mojave Project Office for consideration in plan implementation, as potential plan amendments, or as otherwise appropriate. Protests must be in writing and to be considered "timely," the protest must be received no later than the last day of the 30-day protest period. Also, although not a requirement, it is recommended that the protest be sent by certified mail, return receipt requested. E-mail protests will not be accepted. Faxed protests will be considered as potential valid protests provided (1) that the signed faxed letter is received by the Washington Office protest coordinator by the closing date of the protest period and (2) that the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Please direct faxed protests to "BLM Protest Coordinator" at 202–452–5112. Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;

ii. A statement of the issue or issues being protested;

iii. A statement of the part or parts of the plan or amendment being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc., included in the proposed amendment;

iv. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

v. A concise statement explaining why the State Director's decision is believed to be wrong. This is a critical part of the protest. Take care to document all relevant facts. As much as possible, reference or cite the planning documents, environmental analysis documents, available planning records (*i.e.*, meeting minutes or summaries, correspondence, etc.).

A protest which merely expresses disagreement with proposed decision without supporting data will not provide additional basis for the Director's review of the decision. Please note that comments, including names and street addresses of respondents, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality.

Respondents who wish to withhold name and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of the written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety. The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior. File written protest by Surface mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035 or Overnight mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact William Haigh, Project Manager, at (760) 252–6080 (Phone), e-mail at *whaigh@ca.blm.gov.*

Howard Stark,

Acting Deputy State Director for Natural Resources.

[FR Doc. 03–14201 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT100–03–1610–DU]

Intent To Prepare an Amendment to the Garnet Resource Management Plan (RMP) and an Associated Environmental Assessment (EA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an amendment to the Garnet Resource Management Plan and an associated EA. This process will incorporate management direction for the Canada lynx, listed as a threatened species under the Endangered Species Act (ESA), which is based on the best scientific information available. If approved, the amendment would preserve the overall multiple-use direction of the RMP, while establishing management direction for Canada lynx conservation and recovery including: reducing or eliminating potential

adverse effects from management activities and protecting and restoring lynx, snowshoe hare, and alternate prey species habitat.

Public Participation: The BLM is seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The scoping comment period will commence with the publication of this notice. Formal scoping will end 30 days after publication of this notice. Comments should be received on or before the end of the scoping period at the address listed below. While public participation is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the EA. To assist the BLM in identifying and considering issues and concerns on the proposed action, comments on the proposed EA should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

ADDRESSES: Send written comments to Lynx Amendment EA, Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804. Comments, including names and addresses of respondents, may be published as part of this EA. Individual respondents may request confidentiality; if you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information, contact George Hirschenberger, Missoula Field Office, (406) 329–3908.

SUPPLEMENTARY INFORMATION: The BLM in the Montana State Office proposes to amend one land use plan, the Garnet Resource Management Plan, in the State of Montana. The proposed amendment would preserve the overall multiple-use direction of the RMP and modify or add management direction to the plan for Canada lynx conservation and recovery. The direction would be based on the management recommendations in the Canada Lynx Conservation Assessment and Strategy (LCAS), the Lynx Biological Assessment, the U.S. Fish and Wildlife Service Final Listing rule, **Federal Register**, Volume 65, Number 127, 40601–40606, March 24, 2000, and the best scientific information available. The BLM has identified preliminary issues and management concerns. The following represents the BLM's knowledge to date on potential planning issues: recreation, transportation, oil and gas leasing, mineral development, wildlife habitat restoration, prescribed fire, and livestock grazing and forest management, including timber harvesting, timber stand improvement and forest development. The BLM is seeking comments on the issues related to the proposed action.

Background: The Canada lynx inhabits coniferous forests with cold, snowy winters and a prey base of snowshoe hares. The lynx occupies approximately 44,000 acres of habitat on BLM lands administered by this resource management plan, which are located in Granite, Missoula, and Powell Counties, Montana. The U.S. Fish and Wildlife Service (Service) listed the lynx as threatened, effective March 24, 2000. The Service concluded that the chief threat to the lynx in the contiguous United States is the lack of guidance to conserve the species in current Federal land management plans. The Ecology and Conservation of Lynx in the United States, a compendium of current scientific knowledge about lynx, was completed in 2000 by an international team of experts in lynx ecology, directed by the Rocky Mountain Research Laboratory. Based on this information, the *Canada Lynx Conservation Assessment and Strategy* (LCAS) was completed and later revised by a team of biologists from the Forest Service, Bureau of Land Management, National Park Service and U.S. Fish and Wildlife Service in February 2000 and August 2000, respectively. After the lynx was proposed for listing in July 1998 under the ESA, conferencing was initiated on the effects of agency plans on the lynx. A Biological Assessment (BA) was prepared, which indicated that some adverse effects on lynx were likely on each of the 56 BLM and 57 Forest Service units evaluated. This BA was submitted to the U.S. Fish and Wildlife Service in February 2000. After listing, formal consultation on the plans was initiated, and was completed in October 2000. Because of the likelihood of adverse effects under current plans, and possible risk to lynx viability, the Assistant Director for Renewable Resources and Planning for the BLM Washington Office, and two Fish and Wildlife Service Regional Directors signed the Lynx Conservation Agreement in August 2000. It incorporates a staged approach to modifying management direction to better conserve the Canada lynx.

Dated: May 2, 2003.

Scott W. Lieurance,

Acting Missoula Field Manager.

[FR Doc. 03–13924 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 060–1610–DO–016J; UT 090–1610–DO–017J]

Notice of Intent To Prepare Two Resource Management Plan Revisions for Public Lands and Resources Managed by the Moab and Monticello Field Offices, Respectively, and Call for Coal Information

AGENCY: Bureau of Land Management, Moab and Monticello Utah Field Offices.

ACTION: Notice of Intent to prepare two Resource Management Plan Revisions (RMPs) for public lands and resources managed by the Moab and Monticello Field Offices, respectively, and Call for Coal Information. These two plan revisions will require preparation of a single Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare two RMP revisions and a single associated EIS for lands managed by the Moab and Monticello Field Offices. These planning activities encompass approximately 2.46 million acres of public land in Grand and San Juan Counties, Utah. The plan revisions will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, tribal, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing RMP in the context of the needs and interests of the public.

The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Comments on issues and planning criteria will be most useful if received on or before the end of the scoping period at the address listed below.

Public Participation: Public meetings will be held throughout the region in order to promote public involvement in this process. In order to ensure local community participation and input, public meetings will be held, at a minimum, in Salt Lake City, Moab, Monticello, Blanding, Montezuma Creek, Bluff and Green River, Utah, and in Grand Junction, Colorado. Other locations will be announced in local and regional news media, planning bulletins and on BLM web sites. Early participation by all interested parties is encouraged and will help shape the future management of the public lands in the Moab and Monticello Field Offices. Written comments will be accepted throughout the planning process at the address shown below. In addition to the ongoing public scoping process, formal opportunities for public participation will be provided during a comment period for the draft alternatives and upon publication of the draft RMP/EIS.

ADDRESSES: For the Moab Field Office RMP revision, written comments should be sent to RMP Comments, Bureau of Land Management, Moab Field Office, 82 East Dogwood, Moab, Utah 84532; or Fax 435–259–2106. Documents pertinent to this proposal may be examined at the BLM's Moab Field Office. For the Monticello Field Office RMP revision, written comments should be sent to RMP Comments, Bureau of Land Management, Monticello Field Office, 435 North Main Street, Monticello, Utah 84535; or Fax 435 587–1518. Documents pertinent to this proposal may be examined at the BLM's Monticello Field Office.

All comments must be specific to either the Moab RMP or the Monticello RMP. All comments and or data received, including names and street addresses of respondents, will be available for public review at each of the Field Offices during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Moab RMP revision and/or to have your name added to this mailing list, contact Brent Northrup, Resource Advisor/RMP Project Manager, Bureau of Land Management, Moab Field Office, 82 East Dogwood, Moab, UT 84532, phone: 435–259–2151, or e-mail: *brent_northrup@ut.blm.gov*. For further information regarding the Monticello RMP revision and/or to have your name added to the mailing list, contact Gary Torres, Supervisory Planner, Bureau of Land Management, Monticello Field Office, 435 North Main Street, P.O. Box 7, Monticello, Utah 84535, phone: 435–587–1524 or e-mail: *gary_torres@ut.blm.gov*.

SUPPLEMENTARY INFORMATION:

Preliminary issues and management concerns have been identified by BLM personnel during planning evaluations and pre-planning analysis for each of the RMPs. They represent the BLM's knowledge to date of the existing issues and concerns with current management. The major issue themes that will be addressed in the plan revisions are: Management and protection of public land resources; management of conflicting and competing uses; access to and transportation on the public lands; and balancing multiple uses. Other specific issues may include cultural resource management, fire management, woodland harvest and management, lands and realty management, rangeland health and management, wild horse and burro management, potential establishment of special designation areas, and special status species management.

43 CFR 3420.1–2(a) requires that the BLM publish a call for coal and other resource information in the **Federal Register** if there are areas with coal occurrence in the planning area. Parties interested in coal leasing and development should provide coal resource data for their area(s) of interest. Identification of interests in future coal leasing, substantiated with adequate coal resource data, allows the BLM to address development potential during the RMP revision process and helps avoid unnecessary work, delays, or RMP amendments.

Proprietary data marked as confidential may be submitted in response to this call for coal resource information and other resource information. Please submit all proprietary information submissions to the individuals at the addresses listed above. The BLM will treat submissions marked as "Confidential" in accordance with the laws and regulations governing the confidentiality of such information.

In addition to coal resource data, the BLM seeks resource information and data for other public land values (*e.g.*, air quality, archaeology, fire/fuels, fisheries, forestry, geologic hazards, lands and realty, oil and gas (including coalbed methane), paleontology, rangeland management, recreation, trona, water quality, and wildlife).

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase for the plan revisions. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include, but not be limited to, rangeland management, minerals and geology, outdoor recreation, archaeology, paleontology, special designations, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics. Each Field Office is seeking public involvement at the earliest possible stages of this planning endeavor to enhance collaboration. If you have information, or concerns you would like to share, including ideas or opportunities that could enhance data collection, resource inventories, formulation of issues or alternatives, or development of planning criteria that would be applicable to the Moab or Monticello planning efforts, please submit them to the above addresses as appropriate. A reasonable range of alternatives that resolve those issues and management concerns identified during the scoping process will be developed and analyzed for each of the RMPs and a single Draft RMP/Draft EIS will be published and made available for public review.

Dated: April 11, 2003.

Gene Terland,

Associate State Director.

[FR Doc. 03–13921 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 934–1610–DP]

Modification of Previous Notices of Intent to Prepare Proposed Plan Revisions for the Vernal Field Office Resource Management Plan (RMP), Price Field Office RMP, and the Richfield Field Office RMP in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice of modification is to advise the public that the Bureau of Land Management, Utah, will not consider establishing additional Wilderness Study Areas in the above named plans.

FOR FURTHER INFORMATION CONTACT: Maggie Kelsey, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111: phone: (801) 539–4068.

Background Information: On April 14, 2003, a settlement agreement was reached between the Department of the Interior and the State of Utah, Utah School and Institutional Trust Lands Administration, and Utah Association of Counties regarding the designation of Wilderness Study Areas (WSAs) through the Bureau of Land Management's (BLM's) planning process. As a result of the settlement, the BLM will not consider the designation of new WSAs or the classification or management of BLM lands as if they are or may become new WSAs in the above named Resource Management Plans.

Dated: May 5, 2003.

Sally Wisely,

Utah State Director.

[FR Doc. 03–13922 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–52289]

Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency, Region IX, on behalf of the City of Sparks, has cancelled its withdrawal application N–52289 for a sewage sludge disposal site in Warm Springs Valley, Nevada. The original Notice of Proposed Withdrawal was published as FR Doc. 89–28634, 54 FR 50659, December 8, 1989. A Notice of Termination of the segregative effect of the withdrawal application was published as FR Doc. 91–30739, 56 FR 66870, December 26, 1991.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Suglian, Land Law Examiner, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: The United States Environmental Protection Agency requested that the application be withdrawn at this time. The City of Sparks currently contracts with a private company for land application of sewage sludge on privately owned lands and plans to use this option in the foreseeable future.

Dated: April 25, 2003.

Elayn Briggs,

Acting Manager, Carson City Field Office.

[FR Doc. 03–13925 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Eastern Planning Area Final Environmental Impact Statement

AGENCY: Minerals Management Service, Interior.

ACTIONS: Notice of availability of the final environmental impact statement on proposed eastern planning area oil and gas lease sales 189 and 197.

SUMMARY: The U.S. Department of the Interior, Minerals Management Service (MMS) has prepared a final environmental impact statement (EIS) on two proposed oil and gas lease sales in the Eastern Planning Area (EPA) Outer Continental Shelf (OCS) of the Gulf of Mexico (GOM).

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

SUPPLEMENTARY INFORMATION: This EIS addresses two proposed Federal actions that offer for lease OCS areas in the EPA of the GOM that may contain economically recoverable oil and gas resources. Because each proposed lease sale and its projected activities is very similar, a single EIS has been prepared for the two proposed EPA lease sales scheduled in the *Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007* (the 5-Year Program). Under the 5-Year Program, proposed Lease Sale 189 is scheduled for 2003, while proposed Lease Sale 197 is scheduled for 2005. At the completion of this EIS process, a decision will be made only for proposed Lease Sale 189. An additional National Environmental Policy Act review will be conducted in the year prior to proposed Lease Sale 197 to address any new relevant information.

EIS Availability: To find out which libraries along the Gulf of Mexico Coast have copies of the final EIS for review or to obtain single copies of the final EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). A list of libraries and their locations is also available on the MMS Internet Web site at *http://www.gomr.mms.gov.*

Dated: May 20, 2003.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

Dated: May 27, 2003.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–13959 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

This listing includes all proposals for which the Gulf of Mexico OCS region prepared a FONSI in the period subsequent to publication of the preceding notice dated August 13, 2002.

Activity/operator	Location	Date
Murphy Exploration & Production Company, Supplemental Development Operations Coordination Plan, SEA No. S–5940.	South Timbalier Area, Block 86, Lease OCS 0605, located approximately 20 miles south of Lafourche Parish, Louisiana.	12/17/02
Shell Offshore, Inc., Initial Exploration Plan, SEA No. N–7565	Desoto Canyon Area, Blocks 622 and 666, Leases OCS–G 10467 and OCS–G 10468 respectively, located 99 miles from the nearest Louisiana coastline, 127 miles from the Alabama coastline, and 136 miles from the Florida coastline.	01/08/03
Global Geo Services ASA, Geological & Geophysical Exploration Plan, SEA No. M03–01.	Located in the eastern Gulf of Mexico south of Apalachicola, Florida.	01/27/03
Ridgelake Energy, Inc., Initial Development Operations Coordination Plan and Lease-Term Pipeline, SEA Nos. N–7665 and P–14094.	High Island Area, Block A–352, Lease OCS–G 24424, located 114.5 miles from the nearest Texas coastline.	03/14/03
Shell Offshore, Inc., Initial Exploration Plan, SEA No. N–7621 ...	Desoto Canyon Area, Block 269, Lease OCS–G 23502, located 86 miles from the Louisiana shoreline, 127 miles from the Alabama shoreline, and 136 miles from the Florida shoreline.	01/08/03
Ocean Energy, Inc., Initial Exploration Plan, SEA No. N–7622 ...	DeSoto Canyon Area, Blocks 180 and 224, Leases OCS–G 23493 and OCS–G 23497, located 82 miles from the Louisiana shoreline, 102 miles from the Alabama shoreline, and 108 miles from the Florida shoreline, respeotively.	01/15/03
Conoco, Inc., Initial Development Operation Coordination Plan, PEA No. N–7506.	Garden Banks Area, Blocks 783 and 784, Lease OCS–G 11573 and 11574, respectively, located approximately 150 miles from the nearest Louisiana shoreline.	02/28/03
J.M. Huber Corporation, Structure Activity, SEA ES/SR Nos. 03–001, 03–002, 03–003 and 03–004.	South Timbalier Area, Block 21, Lease OSC 00263, located 4 miles south of Lafourche Parish, Louisiana, and 6 miles southwest of Removal Fourchon, Louisiana.	01/09/03
Pioneer Natural Resources USA, Inc., Structure Removal Activity, SEA ES/SR No. 03–007.	Matagorda Island Area, Block 624, Lease OCS–G 03306, located 25 miles southeast of Calhoun County, Texas, and 280 miles southwest of Intracoastal City, Louisiana.	01/22/03
Energy Resource Technology, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–008 and 03–009.	Matagorda Island Area, Block 705, Lease OCS–G 09001, and South Timbalier (South Addition) Area, Block 252, Lease OCS–G 10842, located 30 miles southeast of Calhoun County, Texas, and 195 miles southwest of Sabine Pass, Texas; located 50 miles south of Lafourche Parish, Louisiana, and 105 miles southeast of Morgan City, Louisiana, respectively.	01/29/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–012.	High Island Area, Block A–20, Lease OCS–G 06178, located 34 miles south-southeast of Galveston County, Texas, and 53 miles south-southwest Sabine Pass, Texas.	02/06/03
Walter Gas & Oil Corporation, Structure Removal Activity, SEA ES/SR No. 3–013.	South Pelto Area, Block 6, Lease OCS–G 09651, located 8 miles from the nearest Louisiana shoreline.	03/11/03
Walter Gas & Oil Corporation, Structure Removal Activity, SEA ES/SR No. 3–014.	West Delta Area, Block 35, Lease OCS–G 13641, located 10 miles from the nearest Louisiana shoreline.	03/13/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–015.	Chandeleur Area, Block 17, Lease OCS–G 04493, located 7 miles east of Chandeleur Islands, Louisiana, and 100 miles northeast of Fourchon, Louisiana.	02/05/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR Nos. 03–016 and 01–091A.	West Cameron Area (South Addition), Block 576, Lease OCS–G 02019, High Island Area (East Addition South Extension), Block A286, Lease OCS–G 03486, located 100 miles west-southwest of Cameron Parish, Louisiana, and 114 miles south-southeast of Sabine Pass, Texas; located 89 miles southeast of Galveston County, Texas, and 98 miles south of Sabine Pass, Texas, respectively.	02/12/03
W & T Offshore Incorporated, Structure Removal Activity, SEA ES/SR No. 03–017.	Eugene Island Area, Block 90, Lease OCS–00229, located 23 miles south-southeast of Iberia Parish, Louisiana, and 54 miles southeast of Intracoastal City, Louisiana.	02/14/03
Stone Energy Corporation, Structure Removal Activity, SEA ES/SR No. 03–018.	Eugene Island Area, Block 65, Lease OCS–G 16343, located 15 miles southwest of St. Mary Parish, Louisiana, and 50 miles southeast of Intracoastal City, Louisiana.	02/13/03

Activity/operator	Location	Date
Remington Oil and Gas Corporation, Structure Removal Activity, SEA ES/SR No. 03–019.	East Cameron Area (South Addition), Block 305, Lease OCS–G 16270, located 89 miles south-southwest of Vermilion Parish, Louisiana, and 111 miles southeast of Cameron, Louisiana.	02/12/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–020.	South Marsh Island Area (South Addition), Block 80, Lease OCS–G 14439, located 60 miles southwest of St. Mary Parish, Louisiana, and 90 miles southwest of Morgan City, Louisiana.	02/14/03
El Paso Production, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–021 and 03–022.	South Marsh Island Area, Block 229, Lease OCS–G 00310, and Block 245, Lease OCS–G 16336, located 10 miles southwest of St. Mary Parish, Louisiana, and 85 miles east-southeast of Cameron, Louisiana, located 20 miles southwest of St. Mary Parish, Louisiana, and 85 miles east-southeast of Cameron, Louisiana, respectively.	02/26/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–023 and 95–071A.	Eugene Island Area, Block 119, Lease OCS–G 00049, and Block 129, Lease OCS–G 00054, located 25 miles southwest of Terrebonne Parish, Louisiana, and 55 miles southwest of Morgan City, Louisiana, located 30 miles southwest of Terrebonne Parish, Louisiana, and 60 miles southwest of Morgan City, Louisiana, respectively.	02/26/03
Samedan Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–024.	Ship Shoal Area, Block 80, Lease OCS–G 05537, located 25 miles southwest of Terrebonne Parish, Louisiana, and 80 miles southeast of Intracoastal City, Louisiana.	03/18/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–025 through 03–029, and 95–21A.	Eugene Island Area, Block 119, OCS–G 00049 and OCS–G 00797, located 18 to 22 miles southwest of Terrebonne Parish, Louisiana, and 50 to 55 miles south-southwest of Morgan City, Louisiana.	03/03/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–030.	Eugene Island Area, Block 105, OCS–G 00797, located 20 miles from the nearest Louisiana shoreline.	03/18/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR Nos. 03–031 and 03–032.	Eugene Island Area, Block 126, OCS–G 00052, and Brazos Area, Block 399, OCS–G 07218, located 25 miles from the nearest Louisiana shoreline, and located 15 miles from the nearest Texas shoreline, respectively.	03/18/03
Exxon Mobil Production Company, Structure Removal Activity, SEA ES/SR No. 03–065.	South Timbalier (South) Area, Block 55, Lease OCS–G 00421, located 15 miles from the nearest Louisiana shoreline.	03/18/03
Exxon Mobil Production Company, Structure Removal Activity, SEA ES/SR No. 03–066.	West Delta Area, Block 32, OCS–G 00367, located 10 miles from the nearest Louisiana shoreline.	03/26/03
GX Technology Corporation, Geological & Geophysical Exploration for Mineral Resources, Sea No. L03–08, for China Offshore Geophysical Corporation International.	Located in the central Gulf of Mexico south of Cocodrie, Louisiana.	03/18/03
C & C Technologies, Inc., Geological & Geophysical Exploration Plan, SEA No. L03–09, for C & C Technologies, Inc.	Located in the central Gulf of Mexico southwest of Fourchon, Louisiana.	03/20/03
Chevron U.S.A. Production Company, Structure Removal Activity, SEA ES/SR No. 03–079.	Ship Shoal Area, Block 108, Lease OCS–G 00814, located 20 miles from the nearest Louisiana shoreline.	03/26/03
Newfield Exploration Company, Structure Removal Activity, SEA ES/SR No. 03–085.	Ship Shoal (South) Area, Block 111, Lease OCS–G 06739, located 12 miles northwest of Plaquemines Parish, Louisiana, and 163 miles southeast of Intracoastal City, Louisiana.	03/26/03
Newfield Exploration Company, Structure Removal Activity, SEA ES/SR No. 03–086.	Eugene Island Area, Block 324, Lease OCS–G 05516, located 65 miles from the nearest Louisiana shoreline.	03/26/03
Exxon Mobil Production Company, Structure Removal Activity, SEA ES/SR Nos. 03–033 through 03–064.	Main Pass Area, Block, 7, Lease OCS–G 01366; Blocks 18–19, Lease OCS–G 01963; Block 92, Leases OCS–G 01366 and 01500; Block 103, Lease OCS–G 01627; located approximately 25 miles from the nearest Louisiana shoreline.	03/28/03
Shell Offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03–084.	South Timbalier (South) Area, Block 239, Lease OCS–G 22754, located 63 miles south-southeast of Cameron, Louisiana, and 56 miles south-southwest of Vermilion Parish, Louisiana.	03/28/03

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: April 7, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–13999 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of a Multi-Project Environmental Assessment To Evaluate the Potential Environmental Impacts Associated With the Removal of Sand Resources From Ship Shoal, Offshore Central Louisiana

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: MMS is preparing an environmental assessment (EA) to examine the potential effects on the marine and coastal environments of using sand from Ship Shoal, a sand shoal located approximately 10 miles south of Isle Dernieres, offshore the central coast of Louisiana. Geological and geophysical studies of Ship Shoal have determined that the shoal's sand is an ideal source of material to place on the rapidly eroding Louisiana barrier islands. Several coastal restoration and storm protection projects that propose to use sand from Ship Shoal are already in the planning stages. The Louisiana Department of Natural Resources (LDNR), the U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (USACE) are assisting during development of the EA. We will publish an announcement in the **Federal Register** when the EA has been completed and is available to the public.

Public Comment: MMS requests interested parties to submit comments specific to the environmental issues related to the removal of sand resources from Ship Shoal. Comments should be sent to Chief, Leasing Division, Minerals Management Service, 381 Elden Street, Mail Stop 4030, Herndon, Virginia 20170. In addition, comments may be sent by e-mail to *barry.drucker@mms.gov*. Your comments should be submitted on or before July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Leasing Division, Sand and Gravel Unit, 381 Elden Street, Mail Stop 4030, Herndon, Virginia 20170, Mr. Barry Drucker, telephone (703) 787–1296, e-mail: *barry.drucker@mms.gov*.

SUPPLEMENTARY INFORMATION: Louisiana's coastal land loss problem continues at a rate of more than 30 square miles per year severely affecting the storm buffering capacity and the protection that nearshore barrier islands provide to human populations, oil and gas infrastructure, inland bays, estuaries, and wetlands. The bays inshore of the islands are huge estuaries where freshwater and saltwater mix and most of Louisiana's commercial and recreational fish depend on them during parts of their life cycle. Without barrier islands, coastal fisheries will experience significant adverse impacts. The entire Isle Dernieres chain in offshore central Louisiana, a critical component of the Louisiana barrier island system, is projected to be lost by the year 2010. A study by the Coastal Wetlands Planning, Protection and Restoration Act task force recommended returning Isles Dernieres and the Timbalier Islands to 1992 conditions (pre-Hurricane Andrew), which would require adding sand to build them to a width of about 1,230 feet wide and 8–9 feet above sea level. The current overall strategy is to restore the island chains to a condition suitable for providing coastal protection and for maintaining the integrity of the estuarine system.

Geological and geophysical studies of Ship Shoal indicate that very significant similarities exist among the properties of Ship Shoal and the nearby barrier islands. Ship Shoal sand is considered ideal material for use in restoration and nourishment projects along the Louisiana coast within the Terrebonne and Barataria Basins. Resource estimates for the volumes of sand comprising the Ship Shoal structure are 1.2 billion cubic meters.

MMS has already been notified by LDNR and EPA that they will seek leases for the use of Ship Shoal sand for planned projects at Whiskey Island and New Cut, Louisiana. In addition, USACE is considering using Ship Shoal sand as a base for the levee system for the Morganza to the Gulf Hurricane Protection Project. Besides these efforts, MMS anticipates that Ship Shoal will serve as a long-term source of material for further Louisiana coastal restoration efforts well into the future.

Public Law 103–426, enacted October 31, 1994, gave MMS the authority to convey, on a noncompetitive basis, the rights to Federal sand, gravel, or shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or in part by or authorized by the Federal Government.

Dated: May 12, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 03–13957 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Planning Area, Oil and Gas Lease Sale 190 (2004)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an Environmental Assessment.

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed Lease Sale 190 (scheduled for March 2004) in the Central Planning Area (CPA) of the Gulf of Mexico (GOM). The preparation of this EA is the first step in the decision process for Lease Sale 190. The proposal and alternatives for Lease Sale 190 were identified by the Director of MMS in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the *Final Environmental Impact Statement for Proposed Central Gulf of Mexico OCS Oil and Gas Lease Sales 185, 190, 194, 198, and 201, and Proposed Western Gulf of Mexico OCS Oil and Gas Lease Sales 187, 192, 196, and 200* (Final EIS). A CPA proposed action analyzed in the Final EIS was the offering of all available unleased acreage in the CPA. Three alternatives were analyzed: exclude blocks within 15 miles of Baldwin County, Alabama, coast; exclude blocks near biologically sensitive topographic features; and cancel the lease sale. The analysis in the EA will reexamine the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Final EIS was prepared.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Joseph Christopher, telephone (504) 736–2774.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Final EIS, which addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine CPA and Western Planning Area (WPA) lease sales scheduled in the *Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007* (the 5-Year Program). Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Final EIS; a separate

EA was prepared for that proposal. The Final EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Final EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional National Environmental Policy Act review will be conducted to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether Lease Sale 190 is consistent with their Federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of affected States on the size, timing, and location of Lease Sale 190. The tentative schedule for the prelease decision process for Lease Sale 190 is: EA FONNSI or Supplemental EIS decision, October 2003; CD's sent to affected States, November 2003; PNOS sent to governors of affected States, November 2003; Final Notice of Sale published in the **Federal Register**, February 2004; and Lease Sale 190, March 2004.

Public Comments: Federal, State, and local government agencies, and other interested parties are requested to send within 30 days of this Notice's publication comments regarding any new information or issues that should be addressed in the EA to the Regional Supervisor, Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled "Comments on CPA Lease Sale 190 EA." You may also send comments to the MMS e-mail address: *environment@mms.gov*. Comments, including the names and home addresses of respondents, will be made available for public review during regular business hours. You may request that your name, home address, or both be withheld from the public record by stating so at the beginning of your submission. The MMS will honor such a request to the extent allowable by law. All comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses will be made available for inspection in their entirety. Anonymous comments will not be considered. To obtain single copies of the Final EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Final EIS or check the list of libraries that have copies of the Final EIS and their locations on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: April 23, 2003.

Charles J. Schoennagel, Jr.,

Deputy Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–13960 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil/Criminal Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice summarizing OCS civil penalties paid, January 1, 2003 through December 31, 2003.

SUMMARY: This notice provides a listing of civil penalties paid January 1, 2002 through December 31, 2002, for violations of the OCS Lands Act. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Doug Slitor,(Program Coordinator), Safety and Enforcement Branch, Engineering and Operations Division, (703) 787–1030.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the OCS Lands Act Amendments of 1978. Subtitle B of OPA 90, titled "Penalties," increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $25,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997 (62 FR 42668), MMS published new regulations implementing the civil penalty provisions of the OCS Lands Act. Written in "plain English," the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of the OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increased the maximum civil penalty to $25,000 per day, per violation. Please note, subsequent to publishing the new regulations, MMS made several corrections and amendments, including the appeals procedures. These were published at 63 FR 42711, 8/11/98; 64 FR 9066, 2/24/99; 62 FR 9065, 2/24/99, and 64 FR 26257, 5/13/99.

Between August 18, 1990, and January 2003, MMS initiated 450 civil penalty reviews. Operators have paid 341 civil penalties for a total of $9,353,342 in fines. Sixty-two cases were dismissed, 5 cases were merged, and 44 are under review.

On September 1, 1997, the Associate Director of Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid between January 1, 2002, and December 31, 2002. Please note that the MMS published a direct final rule (5/29/98, 63 FR 29477) that renumbers each section in 30 CFR part 250. A quarterly update of the list, along with additional information related to the renumbering of the regulations, is posted on the MMS worldwide web home page, *http://www.mms.gov*.

OCS Civil/Criminal Penalties Program

The goal of the MMS OCS Civil/Criminal Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations.

The following acronyms are used in this table:

ESD (emergency shutdown device);
INC (incident of noncompliance);
LACT (liquid automatic custody transfer);
LSH (level safety high);
LSL (level safety low);
MAWP (maximum allowable working pressure);
NON (notice of noncompliance);
PSH (pressure safety high);
PSHL (pressure safety high/low);
PSL (pressure safety low);
PSV (pressure safety valve);
SDV (shutdown valve);
SSSV (surface-controlled subsurface safety valve);
SSV (surface safety valve).

2002 Civil/Criminal Penalties Summary

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
The Louisiana Land and Exploration Company—G–2000–047.	The master shutdown devices for bad oil pump number 1, bad oil pump number 2 and for 7 wells were bypassed; as well as the pressure safety low on the fuel gas scrubber. 06/14/00–06/14/00	$85,000 01/11/02	250.803(c)(1)
Fairways Specialty Sales & Service, Inc.—G–2001–004.	Operator did not conduct an annual crane inspection and the Low Pressure Oil Separator was operating above the MAWP. 06/03/00–10/26/00 09/23/00–10/30/00	$83,000 04/12/02	250.107(a) 250.108
El Paso Production Oil & Gas Company—G–2001–005.	The level safety high on the sump tank was bypassed. 10/13/00–10/13/00	$13,000 02/13/02	250.803(c)(1)
Matrix Oil & Gas, Inc.—G–2001–006.	INC issued for a hole was in piping caused by corrosion approximately 1 foot down stream of the PSV on the test separator. 09/14/00–09/29/00	$17,000 11/19/02	250.107
Fairways Specialty Sales & Service, Inc.—G–2001–009.	Facility was not identified as required and the operator did not correct the violation until 209 days after being cited. Civil Penalty is being pursued as a failure to correct. Facility had corrosion problems including rusty handrails, nuts, bolts, nipples, and valves and the operator did not correct the violation until 213 days after being cited. Civil Penalty is being pursued as a failure to correct. 07/11/00–02/04/01 07/11/00–02/08/01	$84,800 04/12/02	250.154 250.107
Fairways Specialty Sales & Service, Inc.—G–2001–010.	Facility was not identified as required and the operator did not correct the violation until 90 days after being cited. Civil Penalty is being pursued as a failure to correct. Facility had corrosion problems including rusty piping, handrails, nuts, bolts, nipples, and valves, and the operator did not correct. 11/06/00–02/01/01 11/06/00–02/05/01	$26,200 04/12/02	250.107 250.154
EEX Corporation—G–2001–013	Pressure safety low on condensate pump bypassed. 12/01/00–12/01/00	$7,500 03/19/02	250.803(c)(1)
El Paso Production Oil & Gas Company—G–2001–015.	There were 5 wells where the downhole tubing plug was not tested within the required timeframe. 06/04/00–02/20/01	$7,000 02/01/02	250.804(a)(1)(iii)
Texaco Exploration and Production Inc.—G–2001–017.	Inoperable Gas Detection system in the drilling mud returns. 04/17/01–04/17/01	$12,500 01/29/02	250.410(c)(2)(iv)
Amerada Hess Corporation—G–2001–018.	ESD (emergency shutdown) station on boat landing was bypassed; the PSHL (pressure safety high/low) on the departing oil pipeline was found bypassed; and the PSV (pressure safety valve) on the bulk oil dual separator was bypassed. 04/11/01–04/11/01 03/31/01–03/31/01 03/31/01–03/31/01	$36,000 04/18/02	250.803(c)(1) 250.803(c)(1) 250.1004(b)(3)
The Louisiana Land and Exploration Company—G–2001–020.	The SSSV for Wells Nos. B–1 and B–3 was bypassed. 03/07/01–03/07/01	$20,000 01/11/02	250.803(c)(1)
Texaco Exploration and Production Inc.—G–2001–021.	Bypassed manual reset relay for the test separator. 05/21/00–05/21/00	$10,000 01/23/02	250.803(c)(1)
Chevron U.S.A. Inc.—G–2001–024.	The surface safety valve (SSV) for Well C–7 was bypassed. 06/15/01–06/16/01	$20,000 01/23/02	250.803(c)(1)
BP Corporation North America Inc.—G–2001–025.	Level safety low (LSL) for glycol/hydrocarbon separator was found bypassed. 06/12/01–06/13/01	$20,000 01/10/02	250.803(c)(1)
El Paso Production GOM Inc.—G–2001–026.	Burner safety low on glycol reboiler was found bypassed. It was not flagged or being monitored at the time. 05/24/01–05/24/01	$12,000 06/05/02	250.803(c)(1)
El Paso Production Oil & Gas Company—G–2001–027.	ESD station blocked out of service by a closed manual isolation block valve located on the sub-cellar deck exit stairway to the boating landing. 06/19/01–06/19/01	$17,000 04/15/02	250.803(c)(1)

2002 CIVIL/CRIMINAL PENALTIES SUMMARY—Continued

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Chevron U.S.A. Inc.—G–2001–028.	Pollution occurred when both the wet oil tank and sump tank carried over. The level safety high (LSH) on the wet oil tank did not shut in the platform as indicated on SAFE chart. 05/25/01–05/25/01 05/25/01–05/25/01	$36,000 01/29/02	250.300(a) 250.802(e)
Denbury Resources Inc.—G–2001–029.	A major component of the approved dry chemical firefighting system was inoperable. 05/08/01–05/08/01	$15,000 03/07/02	250.803(b)(8)
Panaco, Inc.—G–2001–030	The ultraviolet (UV) fire detection system for turbine generators was bypassed plus no record of testing the fire detection system from 5/2/99 to 5/2/01. 05/02/99–05/02/01 05/02/01–05/02/01	$151,000 02/12/02	250.804(a)(8) 250.803(c)(1)
NCX Company, Inc.—G–2001–031.	The 2" ball valve for the bypass line, near the fuel gas scrubber shutdown valve (SDV), was in the half-open position rendering the SDV inoperative. 07/11/01–07/11/01	$12,000 04/24/02	250.803(c)(1)
Stone Energy Corporation—G–2001–034.	Five barrels of oil polluted the Gulf of Mexico. The pressure safety high/low and independent pressure safety high were bypassed. 07/05/01–07/05/01 07/05/01–07/05/01	$35,000 05/03/02	250.803(c)(1) 250.300(a)
Energy Partners, Ltd.—G–2001–035.	The surface safety valve on Well C–1A was bypassed. 07/22/01–07/22/01	$10,000 06/10/02	250.803(c)(1)
Devon Energy Production Company, L.P.—G–2001–036.	Operating with an inoperable inlet SDV on the compressor suction scrubber while the compressor remained in service and on production for 76 days. 04/25/01–07/09/01	$15,200 08/12/02	250.803(b)(7)(iii)
Amoco Production Company—G–2001–037.	Fuel Gas Scrubber SDV bypassed and PSH nonfunctional. 07/17/01–07/17/01	$15,000 04/02/02	250.803(c)(1)
Energy Resource Technology, Inc.—G–2001–038.	The high-pressure freewater knockout separator panel was pinned out of service. 11/30/00–11/30/00	$15,000 06/11/02	250.803(c)(1)
NCX Company, Inc.—G–2001–039.	The manual emergency shutdown (ESD) station located on the east production deck stairway exit to the cellar deck was found disconnected from the facility ESD system, and the platform's monitoring gas detection system (ASH) was found bypassed. 07/17/01–07/17/01 07/17/01–07/17/01	$24,500 03/22/02	250.803(c)(1) 250.803(b)(4)
BP Exploration & Oil Inc.—G–2001–040.	Rig floor hand injured after receiving a shock from an improperly grounded skid mounted electrical pressure washer. 03/15/01–03/15/01	$23,000 05/09/02	250.114(c)
Apache Corporation—G–2001–041.	Surface safety valve (SSV) on Well No. A–5 was found pinned out of service. 07/16/01–07/16/01	$13,000 05/10/02	250.803(c)(1)
GOM Shelf LLC—G–2001–042 ..	The emergency shutdown stations (ESD's) at the southeast and northwest stairways at the +10 deck were discovered inoperable. The ESD's at the southwest and northeast boat landings were also discovered inoperable. 07/24/01–07/24/01	$60,000 09/24/02	250.803(b)(4)
Devon Energy Production Company, L.P.—G–2001–044.	The "total system bypass" was found in the bypass position on a slave panel. This bypassed the pressure safety high/low and level safety high on the fuel gas scrubber. 06/27/01–06/27/01	$3,000 06/20/02	250.803(c)(1)
Union Oil Company of California—G–2001–045.	The level safety high on the sump tank was bypassed. 07/23/01–07/23/01	$10,000 04/16/02	250.803(c)(1)
Union Oil Company of California—G–2001–047.	The emergency shutdown (ESD) station at the boat landing was found blocked out of service. 08/12/01–08/12/01	$5,000 09/11/02	250.803(c)(1)
Union Oil Company of California—G–2002–001.	The emergency shutdown (ESD) stations on the northwest, southwest, east, and west boat landings were all bypassed. 09/18/01–09/18/01	$20,000 09/11/02	250.803(c)(1)
Nuevo Energy Company—P–2002–001.	Failure to test fire and gas detection systems on required basis (every 3 months); 1 testing period missed. Failure to conduct required monthly testing for flow safety valves on water injection wells for 2 months; 2 testing periods missed. 06/22/01–07/23/01 06/23/01–07/13/01	$6,000 08/08/02	250.804(a)(8) 250.804(a)(8)

2002 CIVIL/CRIMINAL PENALTIES SUMMARY—Continued

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Union Oil Company of California—G–2002–003.	Pressure safety high/low and level safety high on fuel gas scrubber were found bypassed. 09/25/01–09/25/01 09/25/01–09/25/01	$17,500 09/11/02	250.803(c)(1) 250.803(c)(1)
Fairways Specialty Sales & Service, Inc.—G–2002–004.	Oil was observed entering the Gulf of Mexico from two different sources associated with the water clarifier: from the open end of an unapproved 4" PVC line installed on the water overboard discharge line and extending approximately 20' into the air, and directly from the water overboard discharge line due to a malfunctioning dump valve. 09/28/01–09/28/01 09/28/01–09/28/01	$42,500 08/20/02	250.802(e) 250.300(a)
J.M. Huber Corporation—G–2002–005.	The sump pump was not operational resulting in pollution of crude oil into Gulf waters. 10/30/01–10/30/01 10/30/01–10/30/01	$35,000 08/16/02	250.300(b)(4) 250.300(a)
Fairways Specialty Sales & Service, Inc.—G–2002–006.	Emergency shutdown stations at two boat landings and the shutdown valve to the test separator were bypassed. 11/07/01–11/07/01 11/08/01–11/08/01	$28,000 08/20/02	250.803(c)(1) 250.803(c)(1)
Linder Oil Company, A Partnership—G–2002–008.	The walkway to the sump tank, handrails on a stairway and +12 walkway, and grating at the wellbay area on the +12 level were not maintained in a safe condition. The walkway and handrails had corroded to the point of separation and the grating had missing sections. 08/28/01–09/20/01	$25,000 09/10/02	250.107
Union Oil Company of California—G–2002–010.	Three emergency shutdown stations were bypassed at the +10 deck level. 10/29/01–11/06/01	$15,000 09/11/02	250.803(c)(1)
Kerr-McGee Corporation—G–2002–011.	The surface-controlled subsurface safety valves in Wells A–6 & A–6D were bypassed for 11 days. 09/14/01–09/24/01	$66,000 10/22/02	250.803(c)(1)
Vastar Resources, Inc.—G–2002–012.	Two emergency shutdown stations were inoperable; one at the boat landing on the F structure and one at the boat landing on the I structure. 12/03/01–12/03/01	$37,000 08/13/02	250.803(b)(4)
Kerr-McGee Oil & Gas Corporation—G–2002–013.	Rusty vessel, walkways, stairways, and grating preventing safe operations. 12/21/01–12/21/01	$20,000 10/22/02	250.107
Shell Offshore Inc.—G–2002–014.	Flowline pressure-activated relay had a pin inserted in it thereby bypassing the pressure safety high/low for flowline segment FA–2. 10/01/01–10/01/01	$12,000 12/09/02	250.803(c)(1)
Exxon Mobil Corporation—G–2002–015.	Secondary sump pump, approved in lieu of level safety high on sump tank, found out of service. 01/10/02–01/11/02	$15,000 09/09/02	250.802(e)
Seneca Resources Corporation—G–2002–016.	Surface-controlled subsurface safety valve (SSSV) for Well No. 15 was bypassed and out of service. 12/11/01–12/14/01	$32,000 08/28/02	250.803(c)(1)
J. M. Huber Corporation—G–2002–017.	Relay for Well Number 81 Surface Safety Valve pinned out of service. 01/08/02–01/08/02	$7,000 08/27/02	250.803(c)(1)
BP Exploration & Production Inc.—G–2002–018.	The oil low level sensor on the heater treater was not tested within the required timeframe (missed 13 monthly tests). 12/13/00–12/03/01	$39,000 09/16/02	250.804(a)(3)
Chevron U.S.A. Inc.—G–2002–019.	The gas sales pipeline (KAH 827) did not have secondary over-pressure protection. 11/13/01–11/13/01	$23,000 09/30/02	250.1002(d)
Burlington Resources Offshore Inc.—G–2002–020.	The firewater pump was in the manual mode instead of the automatic mode, as required by the approved SAFE chart. The float cell oil pump's shutdown valve was bypassed. 04/20/01–04/20/01 04/20/01–04/20/01	$47,500 12/05/02	250.802(e) 250.803(c)(1)
Remington Oil and Gas Corporation—G–2002–024.	Remote BOP control station was found inoperable. 04/18/02–04/18/02	$12,500 12/04/02	250.406(d)(3)
Vastar Resources, Inc.—G–2002–030.	Leaking valves causing gas blow by and incorrectly operated Flotation Cell causing gas accumulation resulting in a fire which required an emergency evacuation of personnel and a shut in of the facility. 02/12/02–02/12/02	$20,000 12/10/02	250.107
Conoco Inc.—G–2002–032	Surface-controlled subsurface safety valve for Well A–6 was blocked out of service. 05/08/02–05/08/02	$10,000 11/27/02	250.803(c)(1)

2002 CIVIL/CRIMINAL PENALTIES SUMMARY—Continued

[Paid in Calendar Year 2002]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Conoco Inc.—G–2002–035	Surface-controlled subsurface safety valve for Well A–5 was blocked out of service. 05/09/02–05/09/02	$5,000 11/27/02	250.803(c)(1)

Total Penalties Paid: 1/1/02–12/31/02. 54 Cases: $1,448,700.

Dated: May 6, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–13958 Filed 6–3–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1033 (Preliminary)]

Hydraulic Magnetic Circuit Breakers From South Africa

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from South Africa of hydraulic magnetic circuit breakers, provided for in subheadings 8535.21.00 and 8536.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 14, 2003, a petition was filed with the Commission and Department of Commerce (Commerce) by Airpax Corp., Cambridge, MD, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of hydraulic magnetic circuit breakers from South Africa. Accordingly, effective April 14, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1033 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 22, 2003 (68 FR 19849). The conference was held in Washington, DC, on May 5, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 29, 2003. The views of the Commission are contained in USITC Publication 3600 (June 2003), entitled *Hydraulic Magnetic Circuit Breakers from South Africa: Investigation No. 731–TA–1033 (Preliminary).*

Issued: May 30, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14040 Filed 6–3–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–2]

Request for Comments on Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing (draft guidelines). The draft guidelines are available on OSHA's Web page and through its publications office. Interested persons may submit written or electronic comments on the draft guidelines. The Agency will also hold a stakeholder meeting where the public is invited to express its views on the draft guidelines.

DATES: *Written Comments:* Comments must be submitted by the following dates.

Hard Copy: You must submit your comments (postmarked or sent) by August 4, 2003.

Facsimile and electronic transmission: You must submit comments by August 4, 2003.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting: OSHA will hold a one-day stakeholder meeting in the Washington, DC metropolitan area to discuss the draft guidelines. OSHA will announce the exact location and date of the stakeholder meeting prior to the close of the comment period. OSHA requests that interested parties submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax or electronic means by August 4, 2003.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2003–2, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST. You must submit one copy of your intention to participate in the stakeholder meeting by regular mail, express delivery, hand delivery, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2003–2, in your comments. You may also fax your intention to participate in the stakeholder meeting.

Electronic: You may submit comments and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov.* (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines for the poultry processing industry from OSHA's Web site at *http://www.osha.gov* A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web site. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments and intentions to participate in the stakeholder meeting by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web site at *http://www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web site and for assistance in using the web site to locate docket submissions.

OSHA is providing the public with 60 days to provide comments on the poultry processing ergonomics guidelines. During the development of the nursing home ergonomics guidelines (the final version was published March 13, 2003), the Agency provided 30 days for comment, then extended the comment period an additional 30 days at the request of several stakeholders. The 60-day period provided adequate time for the public to provide comments on the nursing home guidelines, so OSHA is also allowing 60 days for the public to comment on the poultry processing ergonomics guidelines.

II. Background

On April 5, 2002, the Department of Labor announced a four-pronged comprehensive approach for addressing musculoskeletal disorders (MSDs), which calls for OSHA to develop industry and task-specific guidelines. OSHA's third industry-specific guidelines address ergonomic concerns in poultry processing facilities. The draft poultry are compatible with OSHA's 1990 Ergonomic Program Management Guidelines for Meatpacking Plants. The two documents are similar in several key respects, recommending an ergonomics process that relies on management support, employee involvement, training, problem identification, solutions, addressing reports of injuries, and evaluating ergonomics efforts. However, the documents are also different in some respects, reflecting the advances in understanding that have occurred during the 13 years that have passed since the publication of the meatpacking guidelines. The poultry guidelines are based on the meatpacking guidelines, but have been shortened and formatted to resemble OSHA's more recent ergonomics guidelines for nursing homes and the retail grocery industries. The other major differences are that the poultry guidelines:

- Use terms "musculoskeletal disorder" and "MSD" instead of "cumulative trauma disorder" and "CTD",
- Include many more examples of practical ergonomic solutions tailored to the poultry industry, and
- Are less detailed and more flexible about how to address reports of injuries and provide medical management.

OSHA invites comment on the similarities and differences between the two guidelines, particularly whether the draft guidelines affect the ergonomics efforts that poultry processors have developed using the meatpacking guidelines.

The draft guidelines contain an introduction and two main sections. The introduction provides an overview of MSDs in poultry processing and explains the role of ergonomics in reducing the incidence of these injuries. A section entitled "Ergonomics Process" describes a process for developing and implementing a strategy for analyzing the workplace, implementing ergonomic solutions, training, addressing reports of injuries, and evaluating progress.

The heart of the guidelines, the Implementing Solutions section, describes examples of ergonomic solutions (engineering solutions, work practices, and personal protective equipment) that may be used in poultry processing to control exposure to ergonomic risk factors commonly encountered in the industry. The recommendations cover workstation design, tools, manual material handling, and fitting/selection of personal protective equipment. The draft guidelines finish with a list of references and sources of additional information poultry processing facilities can use to help them with their ergonomics efforts.

OSHA encourages interested parties to comment on all aspects of the draft guidelines. The Agency is particularly interested in:

- Information about successful ergonomics efforts firms in the poultry processing industry have used to address ergonomic concerns,
- Innovative solutions poultry processing firms have used to effectively solve ergonomic problems, and
- Checklists or flowcharts poultry processing firms use to identify workplace problems, identify risk factors, or evaluate aspects of their ergonomics process. OSHA is particularly interested in short, user-friendly checklists for identifying workplace problems that employers have successfully in their workplaces.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will hold a stakeholder meeting in the Washington, DC metropolitan area during the week of August 18. The Agency will announce the exact date and location of the stakeholder meeting at a later date.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and

Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 30th day of May, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–14080 Filed 6–3–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* "Reports Concerning Possible Non-Routine Emergency Generic Problems".

3. *The form number if applicable:* Not Applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Nuclear power plant, non-power reactor, and materials applicants and licensees.

6. *An estimate of the number of annual responses:* 204 (104 reactor licensees; 100 material licensees).

7. *The estimated number of annual respondents:* 204 (104 reactor licensees; 100 material licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 53,680 (43,680 for reactor licensees and 10,000 for materials licensees).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC is requesting approval authority to collect information concerning possible non-routine generic problems which would require prompt action from NRC to preclude potential threats to public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 7, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0012), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of May, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–13997 Filed 6–3–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26062; 812–12380]

Vanguard Convertible Securities Fund, et al.; Notice of Application

May 29, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order to permit them to enter into and amend sub-advisory agreements without shareholder approval and to grant relief from certain disclosure requirements. The order would supersede a prior order ("Prior Order").[1]

APPLICANTS: Vanguard Convertible Securities Fund; Vanguard Explorer Fund; Vanguard Fenway Funds; Vanguard Fixed Income Securities Funds; Vanguard Horizon Funds; Vanguard Malvern Funds; Vanguard Morgan Growth Fund; Vanguard PRIMECAP Fund; Vanguard Quantitative Funds; Vanguard Specialized Funds; Vanguard Trustees' Equity Fund; Vanguard Variable Insurance Fund; Vanguard Wellesley Income Fund; Vanguard Wellington Fund; Vanguard Whitehall Funds; Vanguard Windsor Funds; Vanguard World Fund (each, a "Trust"); and The Vanguard Group, Inc. ("VGI").

FILING DATES: The application was filed on December 15, 2000 and amended on May 8, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Sarah A. Buescher, Senior Counsel, The Vanguard Group, Inc., P.O. Box 2600, Mail Stop V26, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611 or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

[1] The Vanguard Group, Inc., *et al.*, Investment Company Act Release Nos. 19411 (April 16, 1993) (notice) and 19471 (May 12, 1993) (order).

Applicants' Representations

1. Each Trust is registered under the Act as an open-end management investment company and is organized as a Delaware statutory trust. Each Trust is a member of The Vanguard Group ("The Vanguard Group"), a group of 33 investment companies with more than 100 series (each, a "Fund" and together, the "Funds"), each of which has its own investment objectives, policies, and restrictions.[2]

2. VGI is a Pennsylvania corporation that is wholly and jointly owned by the members of The Vanguard Group. VGI is a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and a registered transfer agent under the Securities Exchange Act of 1934 ("Exchange Act"). VGI provides each Trust, at cost, with corporate management, administrative, transfer agency and distribution services. VGI also provides certain Funds with investment advisory services at cost.

3. VGI's Portfolio Review Group evaluates, selects and recommends investment advisers ("Selected Advisers") to the relevant boards of trustees of each Trust (each, a "Board"). Each Selected Adviser is an investment adviser as defined in section 2(a)(20) of the Act and is registered under the Advisers Act or exempt from registration. Selected Advisers are not "affiliated persons" of the applicants, as defined in section 2(a)(3) of the Act other than by virtue of serving as investment advisers to one or more Funds. Each Selected Adviser operates pursuant to a written advisory contract ("Selected Advisory Agreement") approved by the relevant Board, including a majority of the Board's trustees who are not "interested persons" of the Trust, as defined in section 2(a)(19) of the Act ("Independent Trustees"). The Portfolio Review Group monitors the compliance of each Selected Adviser with the respective Fund's investment objectives and other policies, reviews each Adviser's performance, and recommends to the relevant Boards the allocation and reallocation of a Fund's assets among the Selected Advisers and/or VGI.

4. The Prior Order exempted applicants from section 15(a) of the Act and rule 18f–2 under the Act to permit the Funds to hire Selected Advisers and revise Selected Advisory Agreements without obtaining a shareholder vote, subject to the approval by the relevant Board and certain other conditions.[3] Applicants state that recent orders providing similar relief have conditions that would permit the Board to serve shareholders more efficiently. Applicants seek to update the conditions in the Prior Order to make them similar to conditions in the recent orders. Applicants therefore request an order to supersede the Prior Order to permit VGI, subject to Board approval, to enter into and amend Selected Advisory Agreements without Fund shareholder approval.[4] The requested relief will not extend to an investment adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Funds or VGI, other than by reason of serving as investment adviser to one or more of the Funds (an "Affiliated Adviser"). Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid to each Selected Adviser. An exemption is requested to permit the Funds to disclose (as both a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid by the Fund to VGI and Affiliated Advisers; (b) aggregate fees paid by the Fund to Selected Advisers, and (c) the fees paid by the Fund to each Affiliated Adviser (collectively, the "Aggregate Fee Disclosure").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Selected Advisers.

5. Regulation S–X sets forth the requirements for financial statements that must be included in investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that shareholders are relying on VGI's experience to select and monitor the Selected Advisers best suited to achieve a Fund's investment objectives. Applicants contend that from the perspective of the investor, the role of the Selected Advisers is comparable to that of individual portfolio managers

[2] Applicants also request relief with respect to any other registered open-end management investment company or series thereof that (a) is organized or advised currently or in the future by VGI or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with VGI; (b) operates in substantially the same manner described in the application; and (c) complies with the terms and conditions in the application ("Future Funds," and together with the Funds, the "Funds"). Any Fund that currently intends to rely on the requested order is named as an applicant. If the name of a Fund contains the name of a Selected Adviser, the name of the Selected Adviser will be preceded by the word "Vanguard."

[3] The term "shareholder" includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which the Fund serves as a funding medium.

[4] As described in the application, the requested order would revise the conditions in the Prior Order to make them more consistent with conditions in recent similar orders granted by the Commission and would also make certain other modifications to the conditions related to disclosure relief based upon the applicants' unique management structure. For Funds that were relying on the Prior Order, applicants will provide a notification to shareholders that describes the principal differences between the Prior Order and the requested order.

employed by investment advisory firms. Applicants state that requiring shareholder approval of the Selected Advisory Agreements would impose unnecessary costs and delays on the Funds, and may preclude the Board from acting in a prompt manner. Applicants note that investment advisory agreements with Affiliated Advisers would remain subject to section 15(a) of the Act and rule 18f–2 thereunder.

8. Applicants assert that many Selected Advisers charge their customers for advisory services according to a "posted" fee schedule. Applicants state that while Selected Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Selected Advisers to accept lower advisory fees from the Funds, resulting in a direct benefit to Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Unless a Fund's shareholders have previously approved the Fund's use of a multi-manager arrangement pursuant to the Prior Order, before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or in the case of a Fund whose public shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholders(s) (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, by the initial unitholder of the sub-account) before the shares of the Fund are offered to the public.

2. Each Fund will operate as a member of The Vanguard Group of Investment Companies with "internalized" corporate management and distribution services provided on an "at cost" basis.

3. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. Each Fund's prospectus will prominently disclose that VGI has the ultimate responsibility (subject to oversight by the Board) to oversee the Selected Advisers and recommend their hiring, termination, and replacement.

4. Within 90 days of the hiring of any new Selected Adviser for any fund, VGI will furnish to the applicable Fund's shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) all information about the new Selected Adviser that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Selected Adviser. To meet this obligation, VGI will provide shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) of the applicable Fund an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. A Fund will not enter into an advisory agreement with any Affiliated Adviser without that agreement, including the compensation to be paid thereunder, being approved by the Fund's shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

6. At all times, a majority each Fund's Board will be Independent Trustees, subject to the suspension of this requirement for the death, disqualification or bona fide resignation of trustees as provided in rule 10e–1 under the Act, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

7. When a change in a Selected Adviser is proposed for a Fund with an Affiliated Adviser, the Fund's Board, including a majority of the Board's Independent Trustees, will make a separate finding, reflected in the affected Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, the best interests of the Fund and unitholders of any such sub-account), and does not involve a conflict of interest from which VGI or the Affiliated Adviser derives an inappropriate advantage.

8. VGI will provide general management services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund, and, subject to review and approval by each Board, will: (a) Set the Funds' overall investment strategies; (b) evaluate, select and recommend Selected Advisers to manage all or part of a Fund's assets; (c) monitor and evaluate the performance of Selected Advisers; (d) implement procedures reasonably designed to ensure that the Selected Advisers comply with the Funds' investment objectives, policies and restriction; and (e) allocate and, when appropriate, reallocate a Fund's assets among Selected Advisers.

9. No trustee or officer of a Trust, or director or officer of VGI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director, or officer), any interest in a Selected Adviser or Affiliated Adviser, except for: (a) Ownership of interests in VGI or any entity that controls, is controlled by, or is under common control with VGI; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Selected Adviser or Affiliated Adviser or an entity that controls, is controlled by, or is under common control with a Selected Adviser or Affiliated Adviser.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

11. Any person who acts as legal counsel for the Board's Independent Trustees must be independent legal counsel as defined in rule 0–1(a)(6) under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14046 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26063; 812–12972]

Société Générale, et al.; Notice of Application

May 29, 2003.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(F)(ii) of the Act, under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act and section 14(a) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would (a) permit certain existing and future registered closed-end investment companies (each, an "SG Trust," and collectively "SG Trusts") that are sponsored by SG Cowen Securities Corporation ("SG Cowen"), or any entity controlling, controlled by or under common control with SG Cowen, to offer and sell shares to the public with a sales load that exceeds the limit in section 12(d)(1)(F); (b) permit the SG Trusts to purchase certain securities from Société Générale ("SG Paris") or other issuers that are involved in securities-related activities; (c) exempt the SG Trusts from the initial net worth requirements of section 14(a); (d) permit SG Cowen to deposit with each SG Trust the components of that SG Trust's portfolio; and (e) permit SG Paris to write certain put or index options deposited with an SG Trust and to make payments pursuant to the terms of such options to the SG Trust, and to purchase and exercise certain call options from the SG Trust.

APPLICANTS: SG Paris, SG Cowen, and SG Cowen Principal Protection Trust I ("SG Trust I").

FILING DATES: The application was filed on May 9, 2003, and amended on May 22, 2003.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 23, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: SG Cowen and SG Trust I, 1221 Avenue of the Americas, New York, New York 10020; SG Paris, 29, Boulevard Haussmann, 75009 Paris, France.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each SG Trust will be organized as a limited life grantor trust under Delaware law and registered under the Act as a closed-end management investment company. SG Cowen, or an entity controlling, controlled by or under common control with SG Cowen, will serve as sponsor to GS Trust I and all future SG Trusts.[1] No SG Trust will have a separate investment adviser, but each will be managed by a board of trustees ("Board") consisting of three or more trustees, a majority of whom are not interested persons, as defined in section 2(a)(19) of the Act, of the SG Trust or SG Cowen ("Independent Trustees"). A Commercial bank or trust company, unaffiliated with SG Cowen and qualified to serve as a trustee under the Trsut Indenture Act of 1939, will serve as administrator to each SG Trust to carry out the day-to-day administration of that SG Trust. SG Cowen will serve as principal underwriter, as defined in section 2(a)(29) of the Act, of the shares issued by SG Trust I. Future SG Trusts may employ different principal underwriters. The investment objectives of each SG Trust will be to preserve the initial capital of investors at maturity of the SG Trust, while also giving investors the opportunity to participate in a possible increase in the value of a securities market index during the term of the investment.

2. SG Cowen is a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). SG Paris is a French limited liability company, registered in France and having the status of a bank. SG Cowen and SG Paris are part of the Société Générale Group (the "Group"), an international banking and financial services group based in France that includes approximately 300 French and foreign banking and non-banking companies.

3. Before an SG Trust begins operations, SG Cowen will purchase units of the Nasdaq-100 Trust ("QQQ"),[2] securities issued by another ETF, or securities issued by one or more other issuers not registered or required to be registered as an investment company, such as an operating company[3] (these securities are collectively referred to as "Reference Securities"). SG Cowen will purchase the Reference Securities on the open market at their market price at the time of purchase ("Purchase Price"). In addition, the Board of an SG Trust will employ an unaffiliated agent ("Independent Agent") to solicit competitive offers from at least three unaffiliated third party derivatives dealers and SG Paris to sell to SG Cowen over-the-counter put options on the Reference Securities ("Portfolio Puts").[4] The strike price of each Portfolio Put will equal the Purchase Price. The Independent Agent will also solicit competitive bids from at least three Unaffiliated Bidders and SG Paris to purchase from SG Cowen over-the-counter call options on the Reference Securities ("Portfolio Calls") at the same

[1] SG Trust I is currently the only existing SG Trust intending to rely on the requested order. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.

[2] QQQ are units of an exchange-traded fund ("ETF"). An ETF is an investment company that is registered under the Act as an open-end management investment company or unit investment trust ("UIT") and that has received certain exemptive relief in order that its securities may be traded at "negotiated prices" on a national securities exchange in the same manner as other equity securities.

[3] Issuers will not include entities that rely on sections 3(c)(1) or 3(c)(7) of the Act.

[4] The derivatives dealers will consist of major broker-dealers and/or financial institutions that are in the business of making bids or offers on Derivatives (as defined below) and that are not affiliated persons, promoters or principal underwriters of an SG Trust, or affiliated persons of such persons ("Unaffiliated Bidders"). The Independent Agent will solicit offers only from derivatives dealers with a credit rating of A or better by S&P and A2 or better by Moodys' and that are subject to bankruptcy or insolvency laws providing exemptions from any automatic stay imposed under those laws to the extent necessary to permit the liquidation of the Portfolio Puts and Index Options (as defined below).

strike price. Because the sale price of the Portfolio Calls should exceed the purchase price of the Portfolio Puts, an amount of cash will be generated ("Net Premium") which SG Cowen will use to purchase over-the-counter cash-settled options tied to the performance of a securities market index ("Index Options").[5] The Independent Agent will also solicit competitive offers from at least three Unaffiliated Bidders and SG Paris to sell these Index Options to SG Cowen. The Portfolio Puts, Portfolio Calls and Index Options (collectively, the "Derivatives") will be European-style options, and will all expire on the same day ("Termination Date").

4. The Independent Agent will solicit bids or offers for each Derivative pursuant to procedures adopted by the Board and communicated to the Independent Agent as set forth in condition 1 below. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. SG Cowen may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris on behalf of an SG Trust unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees.

5. SG Cowen will deposit with each relevant SG Trust the Reference Securities, the obligations under the Portfolio Calls, the Portfolio Puts, the Index Options, and an amount of cash for operational expenses (collectively, the "Portfolio"). Except in the event of the bankruptcy or insolvency of the writer of a Portfolio Put or Index Option, the SG Trust will hold each component of the Portfolio until the Termination Date. Certain future SG Trusts may also hold a separate guarantee of principal provided by a bank or insurance company that would provide additional protection in the event that a writer of a Portfolio Put defaulted.[6]

6. During the initial offering, shares of an SG Trust ("Shares") will be sold to the public at a price equal to the net asset value per share, as determined by or under the direction of the Board, plus a sales load and an amount intended to compensate SG Cowen for the organizational expenses of the relevant SG Trust.[7] Shares will be listed on the AMEX, and will subsequently trade at market prices. Applicants state that the secondary market value of the Shares is expected to depend primarily on market interest rates, market volatility, and the value of the Index Options. Each SG Trust will calculate the net asset value of its Shares on a weekly basis in accordance with procedures adopted by the Board.

7. Applicants state that an SG Trust will protect principal primarily through the use of the Portfolio Puts. Applicants indicate that the combination of the Portfolio Puts and Portfolio Calls will effectively eliminate any possibility of gain or loss on the Reference Securities. Applicants state that the potential return on the investment in an SG Trust is therefore derived solely from the performance of the Index Options. Applicants believe that structuring the SG Trusts in this manner will offer investors certain advantages over other types of principal protected products, including certain tax and performance benefits.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other required investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that, among other provisions, the acquired company does not impose a sales load of more than 1.5%. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

2. An SG Trust will invest in shares of QQQs or other ETFs in reliance on section 12(d)(1)(F). Applicants request an exemption under section 12(d)(1)(J) from section 12(d)(1)(F)(ii) so that the SG Trusts may offer shares to the public with a sales load that exceeds 1.5%. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to shares of any SG Trust will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules applicable to a fund or funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the aggregate sales charges would not exceed the limit that otherwise lawfully could be charged at any single level. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

B. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or an affiliated person of those entities. In addition, rule 12d3–1(b)(3) does not permit a registered investment company to invest more than five percent of the value of its total assets in securities of an issuer that derived more than 15% of its gross revenues from securities related activities. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

2. Applicants state that because SG Paris is an affiliated person of SG Cowen, a promoter of the SG Trust, the exemption afforded by rule 12d3–1 would not be available to an SG Trust with respect to the purchase of Portfolio Puts and/or Index Options from SG Paris at the time SG Cowen deposits the Portfolio into an SG Trust. Applicants also state that it is possible that the Index Options or the Portfolio Puts may represent more than five percent of the value of the total assets of an SG Trust. Applicants request an exemption under section 6(c) from section 12(d)(3) to the extent necessary to permit SG Cowen to make the initial deposit of Portfolio Puts and Index Options into each SG Trust.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies form exposing their assets to the entrepreneurial risks of securities related businesses and to prevent reciprocal practices between investment companies and securities related businesses. Applicants assert that the SG Trusts' holdings of Portfolio Puts and Index Options will not raise these concerns. Applicants state that neither the Portfolio Puts nor the Index Options will subject an SG Trust to the entrepreneurial risks of an investment in a general partnership interest in a securities related issuer. In addition, Applicants assert that there will be no conflicts of interest or potential for reciprocal practices because the Portfolio Puts and Index Options will be purchased from the derivatives dealer offering the best value on the Portfolio Puts and Index Options, and the Portfolio Puts and Index Options will be deposited with an SG Trust before sales of an SG Trust's Shares are effected. In addition, each SG Trust will have a fixed portfolio.

C. Section 14(a) of the Act

1. Section 14(a) of the Act requires, in pertinent part, that a registered investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 under the Act exempts from section 14(a) UITs that meet certain conditions in recognition of the fact that once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement, provided that the UIT holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Applicants request an order under section 6(c) exempting the SG Trusts from the requirements of section 14(a), provided that each SG Trust complies with all conditions of rule 14a–3 under the Act, other than the condition that all portfolio investments be limited to "eligible trust securities." Applicants assert that while each SG Trust will be registered as a closed-end management investment company, the SG Trusts will have the characteristics of UITs. Investors in an SG Trust, like investors in a UIT, will not be purchasing interests in a managed pool of securities, but rather in a fixed portfolio. Applicants believe therefore, that there will be no need for an ongoing commitment on the part of the underwriter.

D. Section 17(a) of the Act

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants assert that section 17(a) precludes: (a) An SG Trust from purchasing a Portfolio from SG Cowen; (b) SG Paris from making payments under the Portfolio Puts and Index Options and/or exercising the Portfolio Calls upon the termination of any SG Trust; (c) SG Paris from purchasing the Portfolio Calls, and (d) SG Paris from writing the Portfolio Puts and Index Options deposited with any SG Trust. Applicants request an exemption under sections 6(c) and 17(b) to permit each of these proposed transactions.

3. Applicants assert that given the static nature of the Portfolio, any overreaching by SG Paris would reduce the returns that an SG Trust is able to offer shareholders and would make the SG Trusts a relatively less attractive alternative to competing products. Applicants note that they are only seeking relief with respect to the initial purchase of and deposit of the underlying securities (and the sale of the Portfolio Calls and deposit of the obligations under the Portfolio Calls) and the exercise of the Derivatives upon the termination of the SG Trust, and not with respect to an ongoing course of business. Consequently, the terms of the components of the Portfolio and of their purchase will be fully disclosed to potential investors prior to their making an investment decision. Applicants also state that since there are relatively few equity derivatives dealers that can write instruments such as the Derivatives and since SG Paris is one of the largest participants in that market, the requested relief will help promote competition and allow the SG Trusts to obtain more favorable terms on the various Derivatives.

4. Applicants also assert that SG Cowen will purchase Portfolio Puts and Index Options from SG Paris and sell Portfolio Calls to SG Paris only if the value offered by SG Paris on the relevant Derivative is more favorable than the value offered by Unaffiliated Bidders. Applicants state that the proposed bidding procedures for Derivatives will be designed to ensure that the bidding or offering process with respect to a Derivative is conducted in a neutral manner. Applicants state that the Group's roles as sponsor, principal underwriter, and bidder/offeror for the Derivatives will not give it an advantage in structuring the Derivatives or assessing their value. Applicants state that the participants in the over-the-counter options markets are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates, all of which employ similar valuation models and technology to price options. Furthermore, applicants state that prospective bidders will have a copy of an SG Trust's prospectus and a draft of the relevant Derivative a reasonable amount of time prior to the day the final bids are due. Applicants assert that the Portfolio Puts and Portfolio Calls are typical over-the-counter options, and although the Index Options will not be typical over-the-counter options, they will not be of such a customized nature as to make it unlikely for other broker-dealers or financial institutions to submit offers. The form of each Derivative will be similar to other types of Derivatives used in privately negotiated transactions, and since all of the Derivatives' terms will have been set, other than price, applicants assert that the bidding/offering procedure has been made as simple as possible. Accordingly, applicants state that the

[5] The Index options may be based on indices that are broad-based, narrow-based, sector specific, customized, or based on the performance of a single security. The value of any index will be publicly disseminated throughout the trading day on each day that the American Stock Exchange ("AMEX") is open for normal trading.

[6] No guarantee would be purchased from an affiliate of SG Cowen unless applicants first obtained a separate order of exemption permitting such a purchase, the Commission issued one or more exemptive rules that would permit such a purchase, or the guarantee were structured in a manner that complied with, among other things, the then-current interpretations of the Commission and its staff regarding sections 12(d)(3) and 17(a) of the Act.

[7] SG Cowen will retain a portion of the Net Premium as compensation for organizing, structuring, and paying the operational expenses of an SG Trust. In addition, the Portfolio will include an amount of cash to be periodically disbursed to SG Cowen to cover structuring, organization and ongoing expenses of the SG Trust. Any expenses in excess of the cash amount will be borne by SG Cowen; any cash in excess of the actual expenses will be retained by SG Cowen. These expenses will be disclosed in advance in the prospectus for each SG Trust.

notice period and information provided in the bidding/offering process should be sufficient to ensure competitive, bona fide bids/offers.

5. Applicants believe that the safeguards set forth in the application are sufficient to ensure that neither SG Cowen nor SG Paris will be able to overreach any SG Trust to the detriment of that SG Trust or its shareholders, and that the proposed transactions will be reasonable and fair, consistent with the general policy of the relevant SG Trust, and consistent with the general purposes of the Act. Applicants also submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Prior to recommending to the Board that an SG Trust purchase a Portfolio Put or Index Option from or sell a Portfolio Call to, SG Paris, an Independent Agent will conduct a competitive bidding process in which the Independent Agent solicits bids or offers on each type of Derivative form at least three Unaffiliated Bidders. At a reasonable amount of time prior to the date bids are to be submitted, the Independent Agent will solicit bids by supplying prospective bidders with a bid invitation letter that includes any requirement for the bidder to include audited financial statements in the SG Trust's registration statement, a copy of the draft prospectus of the SG Trust, and a draft of the terms of the relevant Derivative. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. An SG Trust may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders.

2. If the Independent Agent recommends that the Board approve the purchase or sale of a Derivative in a transaction with SG Paris, the Independent Agent must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Board will represent an SG Trust in any negotiations relating to a Derivative purchased from or sold to SG Paris, including the negotiation of the final terms of the Derivative and any negotiations with SG Paris in conjunction with a default on a Derivative.

4. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees, who will determine that the purchase or sale of the Derivative is in the best interests of the SG Trust and its shareholders and meets the standards specified in section 17(b) of the Act. In considering the purchase and sale of the Derivatives, the Board will determine that (a) the offer price on a Portfolio Put and the bid price on a Portfolio Call will maximize the Net Premium, and (b) the offer price on an Index Option will maximize the return to the SG Trust. In the event that SG Paris and an Unaffiliated Bidder both submit the best bid for a particular Derivative, the bidders will be permitted to submit another bid. If the bids are still the same, the relevant Derivative will not be purchased from or sold to SG Paris, except as described below. Under normal circumstances, the Board will approve the purchase of the Portfolio Put and the sale of the Portfolio Call to the bidders offering the best price on each. However, to avoid potential adverse tax consequences, the Portfolio Call will not be sold to the same entity from which the Portfolio Put is purchased. Accordingly, if the same bidder offers the best price on both the Portfolio Call and the Portfolio Put, the Board will consider the second most favorable bids on both the Portfolio Call and Portfolio Put, and select the Derivatives that would maximize the Net Premium. In the event that the next best bid on either the Portfolio Call or Portfolio Put would generate an identical Net Premium and SG Paris has offered the next best bid on either the Portfolio Call or Portfolio Put, the Board will approve the purchase of the Portfolio Put from or sale of the Portfolio Call to the Unaffiliated Bidder. All Board findings relating to the purchase and sale of the Derivatives, and the basis for the findings, will be reflected in the Board minutes. The terms of the Derivatives will not be subject to any material modification without the approval of the Board, including a majority of the Independent Trustees, after the purchase and sale of the Derivatives have been approved.

5. SG Paris will not purchase or sell a Derivative to an SG Trust on less favorable terms than for similar transactions with unaffiliated parties that are similarly situated to the SG Trust.

6. The Administrator will immediately report any default on either a Portfolio Put or Index Option to the Board. The Board, including a majority of Independent Trustees, will evaluate the default and will determine the amounts due to the SG Trust. The SG Trust will not settle any default for less than the full amount determined by the Board without obtaining a further exemptive order from the Commission.

7. No less than a majority of a Board will consist of Independent Trustees.

8. The Independent Trustees will be represented by independent legal counsel within the meaning of Rule 0–1 under the Act.

9. The administrator, under the supervision of the Board, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (a) An explanation of the basis upon which the Independent Agent selected prospective bidders; (b) a list of all bidders to whom a bid invitation letter (or similar electronic invitation) was sent and copies of the bid invitation letters and accompanying materials; (c) copies of all bids received, including the winning bids; (d) the materials provided to the Board in connection with the Independent Agent's recommendation regarding the sale and purchase of each Derivative; (e) the final price and terms of each Derivative with an explanation of the reason the purchase or sale is considered an affiliated transaction; and (f) records of any negotiations with the counterparties to the Derivatives, including with respect to any default in connection with a Portfolio Put or Index Option and the satisfaction of any obligations to an SG Trust. All such records will be maintained for a period ending not less than six years after the Termination Date, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

10. The underwriting allocations of an SG Trust will be determined at least one business day prior to the day the Independent Agent invites financial institutions to bid and will not in any way be based on participation in the bidding process.

11. The applicants will not have any involvement with respect to the Independent Agent's selection of prospective bidders or the bids approved by the Board and will not attempt to influence or control in any way the sale or purchase of the Derivatives aside from placing a bid for each Derivative.

12. Each SG Trust will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

13. No investment company whose shares are purchased by an SG Trust will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

14. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Shares of an SG Trust will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

15. The SG Trusts and SG Cowen will comply in all respects with the requirements of rule 14a–3 under the Act, except that the SG Trusts will not restrict their portfolio investments to "eligible trust securities."

16. No fee, spread, or other remuneration shall be received by the SG Cowen in connection with the deposit of the Reference Securities and Derivatives with an SG Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14047 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47936; File No. SR–NASD–2003–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U–4) and Uniform Termination Notice for Securities Industry Registration (Form U–5)

May 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On April 16, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On April 30, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to revise the Uniform Application for Securities Industry Registration or Transfer ("Form U–4") and Uniform Termination Notice for Securities Industry Registration ("Form U–5") to: (1) Add disclosure questions to the "Regulatory Disciplinary Actions" subsection of section 14 (Disclosure Questions) of the Form U–4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"); (2) add a Disclosure Reporting Page ("DRP") and a question to the Form U–5 that parallels the Form U–4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U–4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes to facilitate accurate reporting and filing.

The text of the proposed rule change and the Exhibits related thereto are available at the principal offices of NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose[5]

The Form U–4 is the Uniform Application for Securities Industry Registration or Transfer. Representatives of broker-dealers and investment advisers must use this form to become registered in the appropriate jurisdictions and/or with appropriate self-regulatory organizations ("SROs"). The Form U–5 is the Uniform Termination Notice for Securities Industry Registration. Broker-dealers and investment advisers must use this form to terminate registration of an individual in the various SROs and jurisdictions. (Form U–4 and Form U–5 are together hereinafter referred to as the "Forms.")

The proposed revisions to the Forms would (1) Add disclosure questions to the "Regulatory Disciplinary Actions" subsection of Section 14 (Disclosure Questions) of the Form U–4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U–5 that parallels the DRP and Form U–4 question relating to terminations for cause; (3) streamline the language associated with questions on the Form U–4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes on the Forms to facilitate accurate reporting.[6]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, NASD stated that the rule filing would be effective on July 14, 2003, instead of June 30, 2003.

[4] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division, SEC, dated April 29, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD amended the filing to correct typographical errors on pages 51 of 100 and 68 of 100 of the filing. On page 51 of 100, the NASD added the following language to renumbered question 14D(1)(e): "denied, suspended, or revoked your registration license or." On page 68 of 100, the NASD eliminated the word "or" before "commodities exchange."

[5] The NASD requested that the Commission make certain non-substantive organizational changes to the Purpose section (and the corresponding numbered introductory text throughout the notice). In addition, the NASD requested that the Commission include footnotes in the notice that specifically provide the new definitions for the following new defined Form U–4 terms: (1) "Affiliated Firm;" (2) "Federal Banking Agency;" and (3) "Final Order." Telephone conference between Shirley H. Weiss, Office of General Counsel, NASD Regulation, Richard E. Pullano, Chief Counsel and Associate Director, CRD/Public Disclosure, NASD Regulation, Elizabeth Badawy, Senior Policy Liaison, Division, Commission, and Christopher B. Stone, Special Counsel, Division, Commission (May 22, 2003).

[6] On April 6, 2003, the North American Securities Administrators Association, Inc. ("NASAA") voted to approve the proposed listed Forms revisions at its Membership meeting.

New Disclosure Questions Required by Enactment of the Sarbanes-Oxley Act

Section 604 of the Sarbanes-Oxley Act amended the Act by adding new categories of "statutory disqualification." Under the expanded definition, members and their associated persons may be subject to a statutory disqualification (*i.e.*, may be required to obtain regulatory approval before becoming a member of NASD or becoming associated with an NASD member) if they are subject to certain orders issued by a state securities commission or state insurance commissioner (or any agency or officer performing like functions); state authorities that supervise or examine banks, savings associations, or credit unions; an appropriate federal banking authority, or the National Credit Union Administration. Specifically, persons (including members) may be subject to a statutory disqualification based on orders issued by the above agencies that (1) bar a person from association or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities or (2) are based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.[7]

The Form U–4 has historically been the vehicle for the reporting of events that may cause a person to become subject to statutory disqualification. NASD generally takes the lead in amending the Forms. Accordingly, with the concurrence of a working group of regulators, including state regulators, representatives of other SROs, and SEC observers, NASD is proposing to amend section 14 (Disclosure Questions) of the Form U–4 to elicit reporting of regulatory actions that may now make individuals subject to a statutory disqualification under the expanded definition of "statutory disqualification" in the Act created by passage of the Sarbanes-Oxley Act.

The proposed rule change renumbers current Regulatory Action Disclosure Question 14D on the Form U–4 as Question 14D(1), adds Question 14D(2) to mirror the language in section 15(b)(4)(H) of the Act,[8] and modifies the "Regulatory Action DRP" on the Forms. To aid in reporting events under Question 14D(2), NASD proposes amending the "Specific Instructions" section of the Form U–4 with respect to section 14 (Disclosure Questions). NASD proposes adding two new defined terms, "final order" [9] and "federal banking agency," [10] to the "Explanation of Terms" section of the Form U–4. NASD also proposes amending the "Regulatory Action" DRP on the Form U–4 to aid in reporting events required to be reported pursuant to the Sarbanes-Oxley Act.

Form U–5 DRP and Question Addition Relating to Terminations for Cause

NASD proposes adding to the Form U–5 a new disclosure question (Question 7F) and corresponding DRP to mirror Question 14J on the Form U–4. This question would allow firms to report that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise, and would further clarify the individual's obligation to report the termination on the Form U–4. Currently, NASD staff must rely on the reason for termination or a firm-initiated internal review as reported (by the former employing firm) on an individual's Form U–5 to determine whether that individual is required to answer Question 14J (on the Form U–4) affirmatively. The new Question 7F on the Form U–5 should clarify for NASD staff and terminated individuals the basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U–4 question) and will enable firms appropriately to identify and provide supporting details regarding terminations for cause. Similarly, NASD proposes adding "resign or resigned" as an explained term on the Form U–5 to parallel the same term on the Form U–4 for purposes of the new Question 7F.

Modifications to the Form U–4 Relating to Fingerprinting Requirements

NASD proposes to streamline the language associated with questions under section 2 (Fingerprint Information) and section 6 (Registration Requests with Affiliated Firm) on the Form U–4 to clarify fingerprinting requirements, including electronic filing representations, exceptions to the fingerprint requirement, and fingerprint requirements for investment adviser representative only applicants. In conjunction with the proposed changes relating to the fingerprint questions, NASD is proposing to amend the "Specific Instructions" section of the Form U–4 with respect to section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms).

Under section 2 (Fingerprint Information), NASD proposes to modify the "Electronic Filing Representation" subsection to address two situations that are not adequately covered by the current language. The first involves a firm's submitting fingerprint results on behalf of an individual whose fingerprints were processed through another SRO, in lieu of submitting fingerprint cards. The second occurs when a firm is seeking registration for an individual who (1) is currently employed by the firm (usually in an unregistered capacity) and (2) previously has been fingerprinted (either through NASD or another SRO).

The current electronic filing representation states that the firm is submitting or will promptly submit fingerprint cards as required by applicable SRO rules. In the two situations described above, firms will not be submitting fingerprint cards contemporaneously with, or within 30 days of, filing a Form U–4. The proposed language will allow firms and individuals to represent that the filing firm has continuously employed the individual since the last submission of a fingerprint card to NASD (and therefore is not required to resubmit a card at this time) or has continuously employed the individual since the individual had his or her fingerprints processed through another SRO, and the individual will submit (or has submitted) the processed results to the Central Registration Depository ("CRD") system.

Also, under section 2 (Fingerprint Information), NASD proposes to modify the "Exceptions to the Fingerprint Requirement" subsection. Currently, firms can claim an exception to the fingerprint requirement by affirming that the individual has been continuously employed by the filing firm in an unregistered capacity (and had previously submitted a fingerprint card in connection with that employment) or meets one or more exemptions under SEC Rule 17f–2.[11] The proposed modification to the "Exceptions to the Fingerprint Requirement" questions would allow a firm to select the specific permissive exemption under SEC Rule 17f–2(a)(1)(i) and/or (a)(1)(iii).[12] Additional proposed changes to section 2 (Fingerprint Information) will clarify fingerprint filing requirements for investment adviser representative only applicants.

Individuals use the Form U–4 to register with states in an investment adviser representative capacity (shown as "RA" on the Form U–4). Some states have advised NASD that individuals are confused about which radio button [13] to select when applying solely for registration as an investment adviser. In some cases, these individuals have previously submitted a fingerprint card for registration with a broker-dealer. NASD proposes to amend the "Investment Adviser Representative Only Applicants" section by adding additional instructions under the heading "Fingerprint Information for Affiliated Firms" that will explain the fingerprint filing requirements for these applicants.

The proposed language will clarify the circumstances under which an individual may need to file a fingerprint card when submitting an application for state licensure as an investment adviser representative notwithstanding having previously submitted a fingerprint card with an unaffiliated broker-dealer. The proposed language will also address situations in which an investment adviser representative previously has satisfied a state fingerprint requirement by allowing the representative to make that representation on the Form U–4.[14]

Under section 6 (Registration Requests With Affiliated Firms) of the Form U–4, NASD is proposing to add a fingerprint question to section 6 (Registration Requests with Affiliated Firms) on the Form U–4 to create appropriate options for individuals requesting new registrations with a firm affiliated with the filing firm.[15] The proposed "Electronic or Other Filing Representation" subsection will provide three additional radio buttons. Filers can select the current standard representation (*i.e.*, "I am submitting, have submitted, or promptly will submit to the appropriate SRO a fingerprint card * * *"). In the alternative, the proposed representations would enable the individual to indicate that (1) he or she has been employed continuously by the filing firm since the last submission of a fingerprint card and he or she is not required to resubmit a fingerprint card; or (2) the individual has been employed continuously by the filing firm and his or her fingerprints have been processed by an SRO other than NASD and the individual is submitting, has submitted, or promptly will submit the processed results for posting to the CRD. Section 6 (Registration Requests With Affiliated Firms) will also contain a radio button that allows the applicant to select an exemption to the fingerprint requirement pursuant to SEC Rule 17f–2.[16]

Conforming Changes

(1) NASD proposes replacing all references to "NASD Regulation" or "NASD Regulation, Inc." with "NASD" consistent with NASD's current corporate structure. NASD also proposes changing "U–4" to "U4" and "U–5" to "U5."

(2) NASD proposes making grammatical and other modifications that will make the Form U–4 and Form U–5 more consistent and better clarify the disclosure information that is required to be reported on the Forms. For example, NASD proposes rewording the summary field of the DRPs on the Form U–4 and Form U–5 to emphasize that those fields are optional for comments by representatives and firms, respectively.

(3) NASD proposes modifying the Customer Complaint DRP on both Forms to distinguish the fields that are required for reporting a customer complaint, arbitration and/or litigation. The proposed changes add instructions and rearrange the questions in a more logical order; however, the content of the customer complaint disclosure question and DRP fields will not change.

(4) NASD proposes revising the language in Question 14F (on Form U–4) to clarify the intent of the reporting obligation.[17]

(5) NASD proposes changes to the current hair and eye color codes to match the codes used by the Federal Bureau of Investigation's fingerprint system.

(6) NASD proposes other consistency changes that relate to bolding or highlighting certain instructions in the DRPs to facilitate appropriate reporting on the Forms.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) [18] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by making changes to the Forms that would (1) add disclosure questions to elicit reporting of events that may cause a person to be subject to a statutory disqualification as a result of the expansion of the federal definition of statutory disqualification, based on the enactment of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U–5 (new Question 7F) that parallels Question 14J on the Form U–4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U–4 relating to fingerprinting requirements; and (4) make other technical, clarifying, and conforming changes that are intended to facilitate accurate reporting.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[7] Section 15(b)(4)(H) of the Act, 15 U.S.C. 78o(b)(4)(H).

[8] *Id.*

[9] The new term "final order" is to be defined in the Form U–4 as follows: FINAL ORDER, for purposes of Question 14D(2), means a written directive or declaratory statement issued by an appropriate federal or state agency (as identified in Question 14D(2)) pursuant to applicable statutory authority and procedures, that constitutes a final disposition or action by that federal or state agency.

[10] The new term "federal banking agency" is to be defined in the Form U–4 as follows: FEDERAL BANKING AGENCY shall include any Federal banking agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

[11] 17 CFR 240.17f–2.

[12] SEC Rule 17f–2, 17 CFR 240.17f–2, governs the fingerprinting requirements of securities personnel. SEC Rule 17f–2(a)(1)(i), 17 CFR 240.17f–2(a)(1)(i), permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. SEC Rule 17f–2(a)(1)(iii), 17 CFR 240.17f–2(a)(1)(iii), generally exempts the partners, directors, officers, and employees of a broker-dealer that is engaged exclusively in the sales of certain securities, such as variable contracts, limited partnership interests, and unit investment trusts.

[13] A "radio button" is a navigation and selection device that allows a filer to select a particular option in an electronic filing environment.

[14] This addition should be particularly helpful to investment adviser representatives who became licensed in a jurisdiction through the submission of a hard copy Form U–4 before that jurisdiction accepted electronic filings via the Investment Adviser Registration Depository and who are now being "transitioned" onto an electronic system via an electronically filed Form U–4 amendment.

[15] The new term "Affiliated Firm" is to be defined in the Form U–4 as follows: AFFILIATED FIRM means a broker-dealer under common ownership or control with the filing firm.

[16] 17 CFR 240.17f–2.

[17] Currently, Question 14F asks, "Has your authorization to act as an attorney, accountant or federal contractor ever been revoked or suspended?" The proposed Question 14F asks, "Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?"

[18] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, as amended, or

B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–57 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–13938 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47930; File No. SR–NASD–2003–66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Rebate Certain Past Primex Auction System Logon Charges for Certain Participants

May 27, 2003.

On April 2, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market. Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rebate certain past Primex Auction System ("Primex") logon charges for certain participants. Specifically, Nasdaq proposes to modify NASD Rule 7010(r) to enable Nasdaq to waive all Primex logon charges for the period of August 2002 through November 2002 for participants who, in connection with their participation in Primex during that period, were customers of the Brass Service Bureau and Order Management System ("Brass").

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.[3] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] Specifically, the Commission finds that the proposed rule change promotes the objectives of Section 15A(b)(5) of the Act[5] which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that the proposed waiver of certain Primex logon charges for the named period is equitable because Primex participants, who are users of Brass, were unable to route orders to Primex and were therefore effectively unable to use the full range of Primex services.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2003–66) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13944 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47692 (April 17, 2003), 68 FR 20197 (April 24, 2003).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47925; File No. SR–NASD–98–80]

Self-Regulatory Organizations; Order Granting Approval to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, and 5 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Two-Year Pilot Program Relating to the Issuance of Temporary Cease and Desist Orders

May 23, 2003.

On October 28, 1998, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] Under its proposal, NASD establishes procedures to enable it to issue temporary cease and desist orders. The proposed rule change and Amendment No. 1[3] to the proposal were published for comment in the **Federal Register** on December 30, 1998.[4] The Commission received five comment letters on the proposal.[5] On May 17, 1999, August 19, 2002, and April 15, 2003, the NASD filed Amendment Nos. 3, 4 and 5 respectively.[6] The Commission is approving the proposed rule change, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 3, 4, and 5 to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The first amendment to the proposal included changes to the evidentiary standard and the tenure of a temporary cease and desist order. *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 15, 1998 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 40826 (December 22, 1998), 63 FR 71984. On December 22, 1998, the NASD submitted a written extension of time for the public comment period as Amendment No. 2. The amendment is not subject to notice and comment. *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 21, 1998.

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Dan Jamieson, dated December 29, 1998 ("Jamieson Letter"); Sam Scott Miller, Orrick, Herrington & Sutcliffe, dated February 9, 1999 ("Orrick Letter"); Peter C. Hildreth, President, North American Securities Administrators Association, Inc., dated March 2, 1999 ("NASAA Letter"); Barbara M.G. Lynn, Chair, Section of Litigation, and James H. Cheek III, Chair, Section of Business Law, Ad Hoc Task Force of the American Bar Association's Sections of Litigation and Business Law, dated March 8, 1999 ("ABA Sections Letter"); and Lee B. Spencer, Chairman, Federal Regulation Committee, R. Gerald Baker, Chairman, Self Regulation & Supervisory Practices Committee, and James Tricarico, President, Compliance & Legal Division, Securities Industry Association, dated March 5, 1999 ("SIA Letter").

[6] *See* Letters to Katherine A. England, Assistant Director, Division, Commission, from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation, dated May 14, 1999 ("Amendment No. 3"), from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, dated August 16, 2002 ("Amendment No. 4"), and from Sarah J. Williams, Associate General Counsel, NASD, dated April 14, 2003 ("Amendment No. 5"). In Amendment No. 3, the NASD responded to comments and clarified the context in which the NASD would seek a permanent cease and desist order. In Amendment No. 4, the NASD (i) proposed that the rule change operate for a two-year period, unless extended or permanently adopted before the expiration of the two-year period; (ii) extended the minimum amount of time between service of notice of a hearing and the hearing from four to seven days; (iii) supplemented the discussion of the applicability of Section 19(d) of the Act to a temporary cease and desist order; (iv) made certain technical changes to the rule language to conform the proposal to current NASD practices; and (v) made further non-substantive changes to the discussion of the proposed rule change. In Amendment No. 5, the NASD responded to comments and clarified the discussion of Rule 9850 in which a respondent may seek to have a temporary cease and desist order modified, set aside, limited or suspended and how a respondent may seek to challenge the order, and, in recognition of the U.S. Court of Appeals for the District of Columbia's denial of reconsideration of the SEC's decision against KPMG, LLP, the NASD provided clarifying discussion of the context in which a permanent cease and desist order would be sought.

I. Description of the Proposal

NASD is proposing to establish, for a two-year period, procedures to enable NASD to issue temporary cease and desist orders. The proposal also would provide NASD with the authority to issue permanent cease and desist orders. Furthermore, the proposed rule change would grant NASD authority to initiate non-summary proceedings when temporary or permanent cease and desist orders are violated.

1. Due Process Procedures

NASD recognizes that temporary cease and desist orders are powerful measures that should be used very cautiously. Consequently, the NASD states that it has designed the rules to ensure that the proceedings are used to address only the most serious types of misconduct and that the interests of respondents are protected. For example, to ensure that temporary cease and desist proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs to issue written authorization before NASD Department of Enforcement ("Enforcement") or the Department of Market Regulation ("Market Regulation") can institute a temporary cease and desist proceeding.

In addition, NASD has proposed limiting use of this tool to what it views as the most serious offenses. Under the proposal, a temporary cease and desist proceeding can be initiated only with respect to alleged violations of certain sections of the securities laws and certain NASD rules.[7]

Moreover, the proposed rules are based upon the rules that govern NASD disciplinary proceedings, with certain modifications made to reflect that temporary cease and desist proceedings are expedited proceedings. The NASD believes, therefore, that the proposed rules provide respondents with many procedural protections.

In addition, once the initiation of a temporary cease and desist proceeding has been authorized, Enforcement or Market Regulation must file a notice with the Office of Hearing Officers and serve the respondent with a copy of the notice. The notice must set forth the rule or statutory provision the respondent is alleged to have violated, must include a declaration of facts that specifies the acts or omissions that constitute the alleged violation,[8] and must include a proposed order that contains the required elements of a temporary cease and desist order.[9] In addition, if Enforcement or Market Regulation has not already issued a complaint under NASD Rule 9211 against the respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provisions specified in the notice initiating the temporary cease and desist proceeding, Enforcement or Market Regulation must serve the complaint with the notice initiating the temporary cease and desist proceeding.

Further, a hearing to determine whether a temporary cease and desist order should be issued must be held within 15 days after service of the notice (unless a Hearing Officer or Hearing Panelist is recused or disqualified or the parties agree to extend the 15-day period for good cause shown),[10] and the respondent must be served with notice of the date, time, and location of the hearing not later than seven days before the hearing, unless the Hearing Officer orders otherwise.[11]

Each hearing panel would be appointed by NASD's Chief Hearing Officer, and would be comprised of a hearing officer and two panelists. The two panelists would be selected from a roster of candidates that is comprised of current or former members of the National Adjudicatory Council, NASD Board of Governors, or NASD Regulation Board of Directors, and at least one panelist would have to be an associated person. A hearing officer, who is an attorney and an employee of NASD, would preside over each proceeding and would have the authority to do all things necessary and appropriate to discharge his or her duties as set forth in NASD Rule 9235.

The proposed rules also set a specific standard that must be met before a hearing panel can issue an order. A hearing panel must find by a preponderance of the evidence that the alleged violation has occurred, which is the same evidentiary standard used in the underlying disciplinary proceeding. The hearing panel also must find that the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors before completion of the disciplinary proceeding under the Rule 9200 and 9300 Series. The NASD states that this standard is designed to ensure

[7] The sections and rules are specified in proposed NASD Rule 9810(a) and are limited to alleged violations of Section 10(b) of the Act and Rule 10b–5 thereunder; Rules 15g–1 through 15g–9 under the Act; or NASD Rules 2110, 2120, or 2330. The alleged violations of NASD rules for which a temporary cease and desist proceeding can be initiated are further limited. For NASD Rule 2110, which governs standards of commercial honor and just and equitable principles of trade, the alleged violations are limited to violations of Section 17(a) of the Securities Act of 1933 or circumstances involving unauthorized trading or misuse or conversion of customer assets. For NASD Rule 2330, which governs members' use of customers' securities or funds, the alleged violations for which a temporary cease and desist proceeding can be initiated are limited to circumstances involving misuse or conversion of customer assets.

[8] The declaration of facts must be signed by a person with knowledge of the facts contained in the declaration.

[9] The required elements of a temporary cease and desist order are set forth in proposed Rule 9840(b).

[10] *See* Proposed Rule 9830(a).

[11] *See* Amendment No. 4.

that a temporary cease and desist order cannot be issued for technical violations of rules; it can be issued only if the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors before completion of the underlying disciplinary proceeding.

A hearing panel must issue a written decision within ten days of receiving the transcript of the hearing, unless otherwise extended by the Hearing Officer with the consent of the Parties upon a showing of good cause. If a hearing panel decides that a temporary cease and desist order should be issued, the order must direct the respondent to cease and desist from violating a specific rule or statutory provisions, and, where applicable, to cease and desist from dissipating or converting assets or causing other harm to investors. The order also must set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of the order, and it must describe in reasonable detail the act or acts the respondent is to take or refrain from taking. A temporary cease and desist order issued to stop unauthorized trading, for example, would order a respondent to cease and desist from violating NASD Rule 2110 by directing the respondent to stop the practice of executing unauthorized trades for customers' accounts. The order would not instruct the respondent to cease and desist conducting business with customers.

2. Publicizing Issuance of a Temporary Cease and Desist Order

If a hearing panel issues a temporary cease and desist order, NASD would publicize the issuance of the order, just as it publicizes the issuance of decisions in disciplinary proceedings that result in significant sanctions. Accordingly, the proposed rule change modifies IM–8310–2 to permit the release of this information. When issuance of a temporary cease and desist order is made public, if applicable, a statement would accompany the public release indicating that the decision could still be appealed to the SEC or that the appeal is pending.

3. Duration of Temporary Cease and Desist Orders

Once a temporary cease and desist order has been issued, it will remain in effect until a decision is issued in the underlying disciplinary proceeding.[12] In any disciplinary proceeding for which a temporary cease and desist order has been issued, every hearing shall be held and every decision shall be rendered at the earliest possible time.

In addition, if a respondent believes the underlying disciplinary proceeding is not being conducted on an expedited basis, the respondent may seek to have the order modified, set aside, limited or suspended under proposed Rule 9850.[13]

Further, the respondent may seek to challenge a temporary cease and desist order by filing an application for review with the SEC pursuant to Section 19 of the Act.[14] A respondent's application to challenge an order, however, will not stay the effectiveness of the order, unless otherwise ordered by the Commission.[15]

4. Enforcement of Cease and Desist Orders

The proposed rule change provides the NASD with the authority to suspend or cancel a respondent's membership or association if it is found, after a proceeding pursuant to the Rule 9510 Series,[16] that a respondent violated a temporary cease and desist order or a permanent cease and desist order. The proposed rule change provides that a proceeding to suspend or cancel a respondent's association or membership for violating an order cannot be initiated unless it is authorized in writing by the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs. NASD believes that this provision ensures that decisions that can have a significant impact on a respondent are made only at the highest staff level.

In addition, in any proceeding initiated pursuant to the Rule 9510 Series to sanction a member or associated person for violating a temporary or permanent cease and desist order, NASD would be required to specifically identify in the notice initiating the proceeding the provision of the temporary or permanent cease and desist order that is alleged to have been violated, and the notice must contain a statement of facts specifying the alleged violation.

5. Two-Year Trial Period for Proposed Rule Change

NASD recognizes that temporary cease and desist orders are new and powerful enforcement tools. Therefore, NASD believes the proposed rule change should be adopted on a trial basis, for a two-year period.[17] At the expiration of the two-year period, NASD will review its experience with temporary cease and desist orders, and, if it believes the proposed rule change should be extended or adopted on a permanent basis, NASD will file a proposed rule change with the Commission seeking an extension or adoption. The proposed rule change will describe the staff's experience with the rule and its basis for seeking extension or adoption.

6. Context in Which Permanent Cease and Desist Orders Will Be Sought

NASD staff does not anticipate seeking permanent cease and desist orders on a routine basis. Factors that NASD staff will consider in determining whether a permanent cease and desist order is appropriate include whether the party's violation was isolated or part of a pattern, whether the violation was flagrant and deliberate or merely technical in nature, and whether the party's business will present opportunities to engage in future violative conduct.[18]

II. Summary of Comments

The Commission received five comment letters on the proposed rule change.[19] While all of the commenters applauded the NASD's objective of effective enforcement and fair regulation of the securities industry, especially in the area of microcap securities fraud, only NASAA generally supported the proposal. The remaining commenters expressed a number of concerns regarding certain provisions of the proposed rule change. The comments submitted to the Commission, and the NASD's response to the comments, are summarized by issue below.

1. Consistent with the Act

NASAA stated its belief that the proposed rule change would be consistent with the provisions of the Act relating to member enforcement, promotion of fair practices and appropriate disciplinary actions by an SRO against its members.[20] Three commenters disagreed, questioning the existence of statutory authority for a grant of temporary cease and desist power to NASD.[21] Two of these commenters argued that this authority falls outside the definition of the term "sanction" under Section 15A of the Act,[22] with one of these commenters contending that temporary cease and desist orders are quasi-judicial powers primarily intended to preserve the status quo pending a formal decision, not sanctions.

NASD responded that several provisions of the Act provide SROs with the authority to issue temporary cease and desist orders. Section 15A(b)(2) of the Act, among other things, requires that an association of brokers and dealers have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the association. In addition, Section 15A(b)(6) of the Act requires that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Finally, section 15A(b)(7) of the Act permits an association to sanction its members and persons associated with members through the imposition of any "fitting sanction," and Section 15A(b)(8) of the Act, among other things, requires that the rules of an association, in general, provide a fair procedure for disciplining members and persons associated with members. The NASD contends, therefore, that the proposed rules are consistent with NASD's obligations under Section 15A(b)(2), (6), (7) and (8) of the Act because temporary cease and desist orders are fitting sanctions designed to stop violative conduct that is likely to cause significant dissipation or conversion of assets or other significant harm to investors.

2. Justification for Temporary Cease and Desist Powers

The Commission specifically requested public comment on whether the NASD has sufficiently justified the need for temporary cease and desist powers. NASAA responded that the exponential growth of the securities markets and in the number of participants, particularly in the area of microcap securities, justifies the need for regulators to utilize all of the enforcement tools available, including the authority to issue a temporary cease and desist order.[23] Three commenters contend, however, that the NASD has not sufficiently justified the need for the extraordinary power to issue temporary cease and desist orders.[24] One commenter noted that no other SRO has ever requested temporary cease and desist authority and the Commission has used its cease and desist authority only once in eight years, thereby casting doubt on its usefulness as an enforcement tool.[25] Two commenters questioned why the NASD could not refer any matter for which a temporary cease and desist order may be appropriate, along with the supporting documentation required to be recited in the notice and underlying complaint, to the Commission or appropriate state regulator.[26]

In response, the NASD stated that there is a clear need for an additional tool to stop members' or associated persons' misconduct where NASD believes significant dissipation or conversion of assets or other significant harm to investors is likely to occur before a disciplinary proceeding under NASD Rules 9100–9300 is concluded. The NASD notes that, under its current rules, it takes a minimum of four months to complete a disciplinary proceeding. Without a temporary cease and desist rule, NASD believes it has no immediate remedy to order cessation of egregious, ongoing violative conduct.

With respect to its current authority, the NASD notes that it can summarily suspend a member or associated person only in the limited situations that are described in Section 15A(h)(3) of the Act, which do not include the types of situations NASD is attempting to address with the temporary cease and desist rules. Similarly, the NASD's non-summary suspension rules[27] are designed to limit or stop a member's or associated person's ability to conduct business, whereas temporary cease and desist orders are designed to stop ongoing, violative conduct while an underlying disciplinary proceeding is being litigated.

With respect to referring cases to the SEC or a state regulatory authority for prosecution where an emergency exists, NASD responds that its experience demonstrates that this is not a viable alternative to the proposed rule. Even though NASD, the SEC and other regulators have made great strides in coordinating their respective enforcement efforts, this is not a substitute for temporary cease and desist authority. The NASD believes that there are situations where it is in the best position to take immediate action, based on its preexisting investigation and access to case-specific information. In such situations, having to refer the case to another regulatory authority might result in unacceptable delay and would not be an efficient use of NASD's or other regulators' resources.

3. Scope of Predicate Violations

The Commission specifically requested public comment on whether the scope of possible violations should be narrowed. NASAA responded that the scope of predicate violations should not be limited beyond the current restrictions in the proposed rule change because all of the possible violations raise concerns of fraudulent or manipulative conduct or the need for preservation of investor assets and funds.[28]

Three commenters believe, however, that the predicate rule violations are overly broad. Two of these commenters argued that the predicate violations are broad enough to encompass virtually any alleged violation of securities laws and rules because the proposed violations include basic anti-fraud and manipulation provisions.[29] One of the commenters argued that, if the purpose is primarily to protect against potential customer losses, the predicate violations should be limited to alleged violations involving microcap securities.[30] In particular, this commenter felt that many alleged cases of unauthorized

[12] The Hearing Panel issuing the decision in the underlying disciplinary proceeding, however, may issue a permanent cease and desist order as part of any sanctions imposed pursuant to the underlying disciplinary proceeding. NASD will not stay the effectiveness of a permanent cease and desist order if the respondent appeals the decision in the underlying disciplinary proceeding.

[13] *See* Amendment No. 5.

[14] Section 19 of the Act provides for the appeal of final disciplinary sanctions imposed by self-regulatory organizations ("SROs").

[15] *See* Amendment No. 5.

[16] The Rule 9510 Series sets forth the procedures for summary and non-summary suspension, cancellation, bar, limitation, or prohibition. Pursuant to the proposed amendment to Rule 9511, the sanctions for a violation of a temporary or permanent cease and desist order are limited to suspension or cancellation of the membership of a member or the registration of a person.

[17] *See* Amendment No. 4.

[18] *See* Amendment No. 3. *Cf. In Re KPMG*, Exchange Act Release No. 43862 (Jan. 12, 2001), *petition denied*, 289 F.3d 109 (D.C. Cir. 2002), where the SEC indicated that in determining whether a cease and desist order is appropriate, it would consider factors that provide some showing of risk of future violation, although such showing need not be as great as that required for the imposition of an injunction. The NASD staff states that nothing in this proposed rule change is intended to impose any standards on NASD staff in exercising its prosecutorial discretion in any particular matter, nor is it intended to require that Hearing Officers find that the standards advocated by the SEC in the *KPMG* litigation described above are met in imposing a permanent cease and desist order. *See* Amendment No. 5.

[19] *See supra* note 5.

[20] *See* 15 U.S.C. 78o–3(b)(2), (6) and (7). *See* NASAA Letter, p. 2.

[21] *See* Jamieson Letter, p. 1, Orrick Letter, p. 5, and SIA Letter, p. 2.

[22] *See* Orrick Letter, p. 5, and SIA Letter, p. 2.

[23] *See* NASAA Letter, p. 3.

[24] *See* ABA Sections Letter, pgs. 6–7, Orrick Letter, p. 3, SIA Letter, p. 1.

[25] *See* ABA Sections Letter, p. 2.

[26] *See* Orrick Letter, p. 3, and SIA Letter, p.

[27] NASD Rules 9511(a)(2) and 9513.

[28] *See* NASAA Letter, p. 2.

[29] *See* SIA Letter, p. 3 and Orrick Letter, p. 3.

[30] *See* ABA Sections Letter, pgs. 7–8.

trading and fraudulent markups are inappropriate for temporary cease and desist proceedings.

In response, the NASD noted that the proposal does not permit it to seek a temporary cease and desist order for any securities law violation because Rule 10b-5 under the Act requires a showing of fraud. In addition, the NASD believes the proposed rule only addresses the forms of misconduct most likely to result in rapid dissipation of investor funds, such as unauthorized trading and charging fraudulent, excessive markups.

4. Due Process

While NASAA believes the proposed rule change contains sufficient safeguards to ensure adequate due process,[31] Orrick contends that the timetable for a hearing on a temporary cease and desist order fails to give the respondent an adequate amount of time to prepare for the hearing.[32] In response to Orrick's concerns, the NASD extended the minimum amount of time between service of notice of a hearing and the hearing date from four to seven days.[33]

5. Standard for Issuance of a Temporary Cease and Desist Order

Two commenters believe that the "preponderance of evidence" standard, alone, is an inadequate basis for granting the extraordinary relief of a temporary cease and desist order.[34] These commenters contend that there should be a finding that investors will be irreparably harmed or that their chances of subsequent recovery will be damaged by the standard disciplinary process. One commenter further believes that, in cases that do not involve potential investor losses, there should be a finding that there is a substantial likelihood that respondents will engage in future violations. Another commenter contends that the standard for issuance of a temporary cease and desist order invites arbitrary imposition of orders based on subjective interpretation of the standard.[35]

NASD responds that the "likelihood of success" standard is an inappropriate standard in the context of the other required showings, and that an irreparable harm standard would frustrate its attempt to stop ongoing fraudulent activity. Under such a standard, as long as a member could show that it is solvent and, at the time the disciplinary action is proceeding, could pay any potential arbitration or mediation awards, NASD would be unable to stop the ongoing fraudulent activity until the completion of the regular disciplinary proceeding. The NASD notes that the member's financial condition often significantly changes after the conclusion of the disciplinary proceeding. Finally, NASD believes that once it has been shown that the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors, the potential harm to the respondent if an order is issued is overshadowed by the harm that is likely to occur if the order is not issued.

6. Review of Temporary Cease and Desist Order

Two commenters noted that, unlike a temporary cease and desist order issued by the Commission, entry of a temporary cease and desist order issued by the NASD cannot be immediately appealed to a U.S. District Court. These commentators raised a concern about the ability of a respondent to appeal decisions issuing temporary cease and desist orders to the SEC because it was unclear whether temporary cease and desist orders are final disciplinary decisions of NASD.[36]

NASD responded that it believes a temporary cease and desist order should be considered a final disciplinary sanction of NASD under Section 19(d) of the Act and, therefore, should be appealable to the SEC as soon as the order is issued. A temporary cease and desist order is issued after notice and an opportunity for a hearing and upon a finding by a preponderance of the evidence that a violation of a statutory provision or rule has occurred. The temporary cease and desist order is an "other fitting sanction" under Section 15A(b)(7) of the Act because the order directs a respondent to cease violating a rule, to cease specified violative conduct, and, as appropriate, to cease and desist dissipating or converting assets. In addition, NASD notes that a temporary cease and desist order is immediately effective and enforceable and, moreover, a respondent that violates the terms of a temporary cease and desist order can have its membership or registration suspended or canceled.[37]

7. Permanent Cease and Desist Authority

One commenter strongly opposed the provision that allows the NASD to impose a permanent cease and desist order on the grounds that the industry and other interested parties had not been provided adequate notice of the provision.[38] This commenter further stated that the NASD has not articulated either a purpose or need for permanent cease and desist powers, a compelling justification for the authority, the circumstances in which a permanent cease and desist order would be sought, or the evidentiary standard for issuance.

The NASD responded that it did not highlight the issue of permanent cease and desist authority because it believes it already has the authority to issue them as an "other fitting sanction" under NASD Rule 8310. In response to the commenter's concerns, however, the NASD added language that it does not anticipate seeking permanent cease and desist orders on a routine basis, and listed the factors the NASD will consider in determining whether a permanent cease and desist order is appropriate.[39]

8. Collateral Consequences

The Commission solicited comments on what impact, if any, the issuance of a temporary cease and desist order will have on other laws (other than the federal securities laws). Two commenters responded that the proposal did not contain any consideration of the potential collateral consequences of a temporary cease and desist order.[40] These commenters contend that the NASD should evaluate the potential collateral consequences of the issuance of a temporary cease and desist order and report the results before Commission approval of the proposed rule change.

NASD responded that it believes the use of temporary cease and desist authority will have limited collateral effects. The NASD reviewed the state securities laws and did not find any state statute that would mandate the denial, suspension, or revocation of a broker-dealer's registration based on the imposition of a cease and desist order by the NASD.[41] In addition, the NASD does not believe that respondents will be collaterally estopped from contesting issues in customer disputes because arbitrators are not required to apply the same legal standards as the courts. Finally, the NASD stated that it would work with other regulators in coordinating the use of the cease and desist authority as an enforcement tool to help prevent regulators from "piling" sanctions on respondents.

[31] *See* NASAA Letter, p. 2.

[32] *See* Orrick Letter, p. 4.

[33] *See* Amendment No. 4.

[34] *See* ABA Sections Letter, p. 9, and Orrick Letter, p. 4.

[35] *See* SIA Letter, p. 4.

[36] *See* SIA Letter, p. 4, and Orrick Letter, p. 4.

[37] NASD believes that its view that temporary cease and desist orders are subject to Commission review under Section 19(d) of the Act is further supported by the Commission's Order Accepting Jurisdiction issued *In the Matter of the Application of Martin Lee Eng*, Release No. 42962 (June 20, 2000). NASD states that the Commission found that it had jurisdiction to review NASD's imposition of a letter of caution in a disciplinary action because the letter of caution constituted a "sanction" under Section 19(d). The NASD contends that the Commission based its finding of jurisdiction on the fact that the letter of caution resulted from a finding in a formal NASD disciplinary proceeding that the respondent violated an NASD rule and that the letter of caution had been reported to the Central Registration Depository ("CRD").

[38] *See* ABA Sections Letter, pgs. 17–19.

[39] *See* Amendment Nos. 3 and 5.

[40] *See* ABA Sections Letter, pgs. 14–15, and SIA Letter, pgs. 4–5.

[41] *See* Amendment No. 3.

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)[42] of the Act, in general, and furthers the objectives of Section 15A(b)(6),[43] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[44] The Commission believes that the proposed rule change will protect investors and the public interest by improving the NASD's capability to prevent fraudulent and manipulative acts and practices, such as unauthorized trading in a customer's account.

The Commission further finds that the proposed rule change is a "fitting sanction" under Section 15A(b)(7) of the Act. One commenter's argument that temporary cease and desist orders are "quasi-judicial powers primarily intended to preserve the status quo" and are "not designed to function as sanctions" is not accurate in this context. For the Commission to issue a temporary cease and desist order under Section 21C of the Act, it must only find that an alleged or threatened violation specified in the permanent cease-and-desist complaint is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest before completion of the permanent cease-and-desist proceeding. Thus, unlike a NASD issued temporary cease and desist order, the Commission does not have to find an actual violation before issuing a temporary cease and desist order.

The NASD's proposal requires the NASD to prove its case by finding an actual violation by a preponderance of the evidence; in other words, there is a ruling on the merits. Accordingly, the imposition of a temporary cease and desist order can be a "sanction" for the finding of wrongdoing under Section 15A(b)(7) of the Act.

The Commission further finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act in that it provides for a fair procedure for disciplining members and persons associated with members. Temporary cease and desist proceedings are designed to occur on an expedited basis to help stop ongoing violations that are likely to result in a significant dissipation or conversion of assets or other significant harm to investors. In response to a commenter's concerns that there was inadequate time to prepare for a hearing, however, the NASD extended the minimum amount of time between service of notice of a hearing and the hearing date from four to seven days. This should give respondents sufficient time to prepare a response to the NASD's detailed allegations set forth in the notice.

Commenters also believe that the "preponderance of evidence" standard, alone, is an inadequate basis for granting a temporary cease and desist order. The preponderance of the evidence standard, however, is consistent with the standard in civil actions generally, including Commission actions.[45]

With respect to the ability of the NASD to impose a permanent cease and desist order, the NASD has articulated the factors it will consider before imposing an order. The Commission notes in *In Re KPMG* that, in determining whether a cease and desist order is appropriate, it would consider factors that provide some showing of risk of future violation, although such showing need not be as great as that required for the imposition of an injunction.[46]

IV. Accelerated Approval of Amendment Nos. 3, 4 and 5

The Commission finds good cause for approving Amendment Nos. 3, 4 and 5 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that NASD has responded adequately to commenters' concerns and suggestions by incorporating certain commenters' recommendations into the proposed rule language and discussion in Amendment Nos. 3, 4 and 5, and by explaining why it was not incorporating others. Further, the Commission notes that there were no language changes to the rule in Amendment Nos. 3 and 5, and the only substantive changes to the rule language in Amendment No. 4 are the implementation of the proposal relating to the temporary cease and desist orders as a two-year pilot program and the extension of the minimum amount of time between the notice of the hearing and the hearing date. Both of these changes were made in response to commenters' concerns. Thus, the substance of the proposed rule change was provided in the Notice and has been the subject of a full comment period. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,[47] to approve Amendment Nos. 3, 4 and 5 to the proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4 and 5, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–80 and should be submitted by June 25, 2003.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–98–80) as amended by Amendment No. 1 be, and it hereby is, approved, and that Amendment Nos. 3, 4 and 5 to the proposed rule change be, and they hereby are, approved on an accelerated basis. With respect to the NASD's authority to issue a temporary cease and desist order, it is hereby approved on an accelerated basis as a two-year pilot

[42] 15 U.S.C. 78o–3(b).

[43] 15 U.S.C. 78o–3(b)(6).

[44] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[45] *See Steadman v. Securities and Exchange Commission*, 450 U.S. 91 (1981); *Seaton v. Securities and Exchange Commission*, 670 F.2d 309 (D.C. Cir. 1982).

[46] *See also* footnote 18.

[47] 15 U.S.C. 78f(b) and 78s(b).

program. The NASD will publish a Notice to Members announcing the effectiveness of the temporary cease and desist order pilot. The pilot will expire two years after the date of publication of Notice to Members.[48]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[49]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13945 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47935; File No. SR–NSCC–2003–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Balance Order Transaction Data Reporting and Other Technical Corrections

May 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 10, 2003, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC Procedure V to allow NSCC to report Balance Order transaction data on the Consolidated Trade Summary delivered to participants. The proposed rule change will also correct errors in NSCC Procedure VII.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of NSCC's straight through processing development efforts, NSCC is revising its Continuous Net Settlement and Balance Order processing. As part of this initiative, NSCC has decided to modify the manner in which it reports Balance Order transaction data to participants in order to make such information more readily available in a more efficient and cost effective manner. Starting on July 25, 2003, Balance Order information will be reported on the Consolidated Trade Summary.

The proposed modification to Procedure V, "Balance Order Accounting Operation," implements this change. In addition, the proposed rule change clarifies that the Consolidated Trade Summary is issued on each day that is a settlement day. The proposed rule change further corrects erroneous cross references and a typographical error in Procedure VII, section E, subsections 4(a) and (b), respectively.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder because it will enable NSCC to report Balance Order transaction data to its participants in an easier, more cost efficient manner thereby facilitating the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC consulted with the Securities Industry Association's Straight Through Processing Subcommittee in developing the reporting modifications. NSCC advised participants of the proposed modifications in Important Notice A 5482, P&S 5052 (September 25, 2002). NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will take effect on July 25, 2003, pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule effects a change in an existing service of NSCC which neither (1) adversely affects the safeguarding of securities or funds in NSCC's custody or control or for which NSCC is responsible nor (2) significantly affects the rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2003–07 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13943 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–U

[48] *See* Amendment No. 4.

[49] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q(b)(3)(F).

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47937; File No. SR–Phlx–2003–21]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to a Disclaimer by Susquehanna Indices, LLP

May 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On May 23, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Rule 1104A, *Susquehanna Indices, LLP Indexes*, to provide a disclaimer with regards to SIG Investment Managers Index™ ("Index"). Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Susquehanna Indices, LLP Indexes

Rule 1104A. Susquehanna Indices, LLP makes no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the SIG Investment Managers Index or any data included therein in connection with the trading of option contracts thereon, or for any other use. Susquehanna Indices, LLP makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the SIG Investment Managers Index or any data included therein.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is proposing to adopt new Phlx Rule 1104A, which applies to the Index developed and maintained by Susquehanna Indices, LLP ("SI").[4] The Index is a modified capitalization-weighted index that reflects the performance of 19 publicly traded investment management companies. The composition of the Index includes managers of mutual funds; trust banks, and broker-dealers with substantial asset management components. According to the Phlx, SI selects component securities for the Index, and is also responsible for all necessary maintenance of the Index. The Phlx currently lists options on the Index pursuant to a license agreement with SI and Phlx Rule 1009A(b).[5]

The Exchange is filing this proposed rule change pursuant a requirement in the license agreement. Proposed Rule 1104A would provide that SI makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Index and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the Index or any data included therein. The Exchange believes that the disclaimer proposed in Rule 1104A is appropriate given that it is similar to disclaimer provisions of American Stock Exchange LLC ("Amex") Rule 902C relating to index options listed on the Amex.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule should encourage SI to develop and maintain stock indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated May 22, 2003 ("Amendment No. 1"). Amendment No. 1: (1) Clarifies in the proposed rule text that the proposed disclaimer specifically applies to the SIG Investment Managers Index; and (2) provides more detail on the Susquehanna Indices, LLP disclaimer in the purpose section of the proposal.

[4] SIG Investment Managers Index™ is a trademark of Susquehanna Indices, LLP.

[5] On June 3, 1994, the Commission approved a Phlx proposed rule change adopting Phlx Rule 1009A(b) in accordance with the Generic Index Option Approval Order for the listing and trading of narrow-based index options. Under Rule 1009A(b), the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–21 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–13936 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47940; File No. SR–Phlx–2002–77]

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Adopt a Specialist Revenue Sharing Program for Trades in the Nasdaq-100 Index Tracking Stock

May 29, 2003.

On December 16, 2002, The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to adopt a Specialist Revenue Sharing Program for trades in the Nasdaq-100 Index Tracking Stock℠ ("QQQ"). The Phlx amended the proposed rule change on February 28, 2003.[2] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on March 13, 2003.[3] The Commission received one comment on the proposal.[4] On May 14, 2003, the Phlx responded to the NYSE Letter.[5]

The Exchange proposes a Specialist Revenue Sharing Program in which it would share with the QQQ specialist unit a portion of the revenues that the Exchange receives under the Consolidated Tape Association ("CTA") Plan attributable to the QQQ (which is reported on Tape B).[6] The Exchange proposes to apply its program as of November 1, 2002.

As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),[7] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The Phlx has proposed to operate market data revenue sharing program that is similar to existing programs at other self-regulatory organizations.[8] Thus, the Commission believes it is reasonable to allow the Phlx to operate a market data revenue sharing program as outlined in the proposal.

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of section 6 of the Act[10] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the Phlx to establish the market data revenue sharing program described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2002–77), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–13937 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety.

[3] *See* Securities Exchange Act Release No. 47456 (March 6, 2003), 68 FR 12138.

[4] *See* April 3, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The NYSE Letter asked the Commission to institute disapproval proceedings and to also eliminate all market data rebate programs in both the equities and options markets. Because the NYSE Letter does not specifically address the Phlx proposed rule change, the Commission has not included a full summary of comments in this Order. The NYSE Letter is available for review in the Public Reference Room at the Commission.

[5] *See* May 14, 2003, letter from Edith Hallahan, Deputy General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission ("Phlx Response Letter"). The Phlx Response Letter is available for review in the Public Reference Room at the Commission.

[6] This proposal applies only to QQQ and to no other Tape B security, nor any Tape A security.

[7] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[8] *See e.g.*, Securities Exchange Act Release Nos. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999)(SR–CSE–99–03), 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR–BSE–2002–10), and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2003)(SR–NASD–2002–149).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5)

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47942; File No. SR–PHLX–2003–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend the Exchange's Rule 229 To Provide for the Automatic Execution of Odd-Lot Market and Marketable Limit Orders Received Over PACE During Locked and Crossed Markets at the PACE Quote

May 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 229,[3] Supplementary Material .08 to modify the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System[4] to provide for the automated execution of odd-lot market and marketable limit orders received over PACE during locked markets[5] and crossed markets[6] at the PACE Quote.[7] Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 229 Philadelphia Stock Exchange Automated Communications and Execution System (PACE).

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

Supplementary Material

.01–.07 No change.

.08 Odd-lot market orders entered after the opening will be executed on the PACE [q]*Quote. When the PACE Quote is locked, odd-lot market orders and marketable limit odd-lot orders entered after the opening will be executed at the locked price. If the PACE Quote is crossed, and the bid is higher than the offer by $ .05 or less, odd-lot market and marketable limit orders will be executed at the mean of the crossed bid and offer. If the mean does not fall at a one-cent increment, the execution will be rounded up to the nearest $ .01. If a crossed market exists and the bid is higher than the offer by more than $ .05, then the odd-lot order will not be automatically executed by the PACE system, but will be executed manually at the price of the next unlocked and uncrossed PACE Quote.*

.09–.22 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the handling and execution of certain odd-lot orders sent over the PACE System to increase efficiency. At the present time, during a locked and/or crossed market, odd-lot market orders in all securities entered after the opening of trading are not executed automatically, but instead are handled manually by the specialist. The Exchange now proposes to change this by providing for automated handling of these orders. The Exchange believes that this, in turn, would increase the efficiency of order handling, relieving the burden of specialists of dealing with manual orders of less than a round-lot during periods of locked and crossed markets. Furthermore, the Exchange believes that the quality of execution of these orders would be improved and enhanced, because execution time of these orders would be reduced while the orders would still receive the best bid or offer. The Exchange states that the speed of execution is an important aspect of the best execution of orders. In terms of price, the Exchange believes the proposed pricing procedure for odd-lot market orders after the opening when markets are locked or crossed should result in a customer receiving execution prices that accurately reflect market conditions. For instance, an execution at the PACE Quote when it is locked reflects the current market price, notwithstanding that it is locked.

In automating the execution of odd-lot market orders during locked and certain crossed markets, the Exchange determined that such orders should be executed at the PACE Quote, or in the case of crossed market, when the bid is higher than the offer by $ .05 or less, at the mean of the crossed best bid and offer. If the mean does not fall at a one-cent increment, the execution would be rounded up to the nearest $ .01. The Exchange states that this simple algorithm may enable the few crossed market orders that are actually received on the Exchange to be automatically executed at a fair execution price. The Exchange has determined that the $ .05

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange states that its proposed rule change to Phlx Rule 229, Supplementary Material .08 is substantially similar to a pilot filed by the American Stock Exchange, LLC ("Amex") for Amex Rule 118 (Trading in Nasdaq National Market Securities) and Rule 205 (Manner of Executing Odd-Lot Orders). *See* Securities Exchange Act Release No. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002).

[4] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

[5] A locked market is when the bid and offer for the security are the same.

[6] A crossed market is when the bid exceeds the offer.

[7] The PACE Quote is the best bid/ask quote among the American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, Chicago Stock Exchange, New York Stock Exchange, Pacific Stock Exchange or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted execution System ("ITS/CAES") quote, as appropriate.

is a reasonable spread between a crossed market to select a price that reflects current market conditions. In contrast, in crossed markets that exceed the $ .05 parameter, true market conditions are less clear and require manual handling and, perhaps, price discovery, by a trading professional. The Exchange believes that this proposal may even reduce such conditions by executing an incoming marketable order against a locked or crossed bid or offer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5)[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by providing for automatic execution of certain odd-lot market orders for equities traded over the PACE system, thereby increasing automated handling.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with regard to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–31 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14048 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47924; File No. SR–SCCP–2002–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of its Pilot Program to Implement its Existing Fee Schedule for Electronic Communications Networks

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 30, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends SCCP's pilot program for an additional one year period thereby continuing the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. ("Phlx") for Electronic Communications Networks ("ECNs").[2] The current pilot program expires on January 23, 2003.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.[5] Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges and Nasdaq 100 Trust, Series 1 ("QQQ") charges,[6] but not account fees, research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.[7] At this time, SCCP proposes to continue the existing fee schedule for ECNs through January 24, 2004.

This rule change affects ECN trades not related to an ECN acting as a Phlx specialist or floor broker. Thus, an ECN may incur specialist or floor brokerage transaction fees if it acts in that capacity. Currently, no ECN operates from Phlx's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting its non-ECN floor operation.[8] In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee as would any ECN's specialist trades. Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather as an ECN, would be eligible for this waiver.

The proposed rule change extends SCCP's existing fee schedule for ECNs for an additional one year period in order to have the opportunity to fully review and evaluate the overall structure of the ECN program, including whether to impose volume threshold requirements.

SCCP believes that its current ECN fee schedule provides competitive fees with appropriate incentives thus proving a reasonable method to attract large order flow providers such as ECNs to Phlx and SCCP. Additional order flow should enhance liquidity and improve Phlx's and therefore SCCP's competitive position in equity trading and clearing.

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing the existing SCCP fee waivers described above for ECNs, is consistent with section 17A(b)(3)(D) of the Act[9] because it provides for the equitable allocation of reasonable dues, fees, and other charges. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to Phlx. Specifically, SCCP points out that ECNs operate a unique electronic agency business similar to a securities exchange as opposed to directly executing orders for their own customers as principal or agent.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b-4(f)(2) thereunder.[11] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–SCCP–2002–06. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13939 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[2] ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter ("OTC") market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

[3] Exchange Release No. 45533 (March 11, 2002), 67 FR 11739 (March 15, 2002) (SR–SCCP–2002–02).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR–SCCP–2001–01).

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠ and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[7] Certain provisions of the SCCP fee schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges, buy-ins, PACE specialist credit, and specialist QQQ charges. At this time, SCCP is also adding to its fee schedule the language "except ECNs" next to the fees applicable to trades in the QQQs, which was missing due to an oversight; the waiver has applied to these QQQ fees because the ECN fee waiver has always applied to transaction fees.

[8] For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47923; File No. SR–SCCP–2003–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Processing Transactions in DIAMONDS® Exchange Traded Funds

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 24, 2003, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's schedule of dues, fees, and charges to adopt fees for the processing of participant transactions in DIAMONDS® Exchange Traded Funds ("DIAMONDS®").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change provides for SCCP fees that will apply to trading of DIAMONDS®. The proposed rule change amends SCCP's fee schedule to adopt: (1) a non-specialist charge of $0.30 per trade side for non-PACE executions with no charge for PACE executions and (2) a specialist charge of $0.50 per trade for the first 1,000 trades and $0.25 per trade for all subsequent trades with no further volume discounts.[3] No other SCCP transaction fees will apply to trades in DIAMONDS®. This proposal is scheduled to become effective for transactions upon the implementation of trading in DIAMONDS®.

SCCP believes that these competitively priced fees should encourage trading of DIAMONDS®, which should provide market participants with a more affordable market for the trading of this product. SCCP further believes that a more affordable, competitive market for trading should attract more order flow in the DIAMONDS® to the Philadelphia Stock Exchange, Inc., which should, in turn, further increase liquidity of DIAMONDS® and create a tighter, more liquid market. Increased market competition should both benefit investors and protect the public interest in general.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies to all participants that would be trading the DIAMONDS®.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–SCCP–2003–02. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13940 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified parts of these statements.

[3] This is the same fee schedule that is currently in effect for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1, traded under the symbol and widely known as QQQ and Standard & Poor's Depositary Receipts". *See* Securities Exchange Act Release No. 44218 (April 25, 2001), 66 FR 21803 (May 1, 2001) (SR–SCCP–00–06) and SR–SCCP–2003–01.

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47922; File No. SR–SCCP–2002–08]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Recording Fees and Value Fees for Pace Trades

May 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend SCCP's schedule of dues, fees, and charges to clarify the definition of a PACE trade as it relates to the imposition of SCCP's trade recording fees and value fees.[2] Currently, SCCP does not charge trade recording fees or value fees for PACE trades. SCCP proposes to define a PACE trade with greater specificity in order to clarify the imposition of trade recording fees and value fees as they relate to PACE trades only.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

First, the proposed rule change clarifies that the trade recording fees and value fees apply in situations where an order, after being delivered to Phlx by the PACE system, is executed by way of an outbound Intermarket Trading System ("ITS") commitment[4] when such outbound ITS commitment reflects the PACE order's clearing information. In this situation, the trade is not considered to be a PACE trade for purposes of the imposition of trade recording fees and value fees and thus becomes subject to both charges.

Secondly, the proposed rule change clarifies that the trade recording fees and value fees do not apply where a PACE trade was executed against an inbound ITS commitment. The execution on the Phlx against an inbound ITS commitment is considered a PACE trade and therefore, SCCP trade recording fees and value fees do not apply to these transactions.

Lastly, the proposed rule change rebates to any participants that were charged trade recording fees or value fees for PACE trades that were executed against an inbound ITS commitment for the months of September, October, November, and December 2002.

SCCP believes that not charging SCCP participants these fees for PACE trades that are executed against an inbound ITS commitment should encourage greater use of the PACE system which in turn should promote a more active and liquid equities market. Also, SCCP believes that this clarification should help to avoid any participant confusion.

Previously, SCCP's billing system charged trade recording fees and value fees for PACE trades executed against an inbound ITS commitment due to the difficulties in identifying executions of orders in this manner. Due to advances in billing, SCCP can now more readily identify PACE trades that are executed against inbound ITS commitments. SCCP believes that by not charging trade recording fees and value fees and by providing a rebate, as described above for the months of September through December 2002, it will encourage future use of the PACE system and will reimburse participants who were charged the trade recording fees and value fees when the application of these charges may not have been clear. Also, SCCP believes that going forward for trades settling on or after January 2, 2003, there should be no charge for these PACE trades due to the fact that the method of execution of these trades is outside of the customer's control.

SCCP believes that its proposal is consistent with Section 17A(b)(3)(D) of the Act[5] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b-4(f)(2) thereunder.[7] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–SCCP–2002–08. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13941 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[2] PACE is the acronym for the Philadelphia Stock Exchange Inc.'s ("Phlx") automated communication and execution system. It is Phlx's order routing, delivery, execution, and reporting system for its equity trading floor. *See* Phlx Rules 229 and 229A.

[3] The Commission has modified parts of these statements.

[4] ITS means the application of the system that permits intraday trading in eligible listed securities between participant markets as set forth in the ITS Plan. *See* Phlx Rule 2001.

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47921; File No. SR–SCCP–2003–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Processing Transactions in Standard & Poor's Depositary Receipts®

May 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 14, 2003, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of, the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to adopt new fees for the processing of participant transactions in Standard & Poor's Depositary Receipts® ("SPDRs"). The proposed rule change also makes minor clarifying amendments to its fee schedule regarding trades matching with PACE trades on the opening.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change adopts: (1) A non-specialist charge of $0.30 per trade side for non-PACE executions, with no charge for PACE executions and (2) a specialist charge of $0.50 per trade for the first 1,000 trades and $0.25 per trade for all subsequent trades with no further volume discounts.[3] No other SCCP transaction fees will apply to trades in SPDRs.[4] The proposed rule change also makes minor amendments to its fee schedule to clarify that the non-specialist charge of $0.30 is assessed per trade side and that the specialist charges of either $0.50 per trade and $0.25 per trade are not applicable to specialist trades matching with PACE trades on the opening.[5]

The purpose of the proposed rule change is to specifically provide for SCCP fees that will apply to trading of SPDRs. SCCP believes that these competitively priced fees should encourage trading of SPDRs, which should provide market participants with a more affordable market for the trading of this product. SCCP states that a more affordable, competitive market for trading should attract more order flow in the SPDRs to the Philadelphia Stock Exchange, Inc., which should, in turn, further increase liquidity of SPDRs and create a tighter, more liquid market. Increase market competition should both benefit investors and protect the public interest in general. This proposal is scheduled to become effective for transactions upon the implementation of trading in SPDRs.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act[6] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies to all participants that would be trading the SPDRs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–SCCP–2003–01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] This is the same fee schedule that is currently in effect for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1, traded under the symbol and widely known as QQQ. *See* Securities Exchange Act Release No. 44218 (April 25, 2001), 66 FR 21803 (May 1, 2001) (SR–SCCP–00–06).

[4] Specialists will be eligible for a SCCP credit for specialist trades matching with PACE trades on the opening. *See* Securities Exchange Act Release No. 44278 (May 8, 2001), 66 FR 27193 (May 16, 2001) (SR–SCCP–2001–05). Additionally, there are optional services offered by SCCP to which a specialist firm may subscribe, such as research requests.

[5] *See* supra note 5.

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13942 Filed 6–3–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 7, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Small Business Size Determination.

No: 355.

Frequency: On Occasion.

Description of Respondents: Small Businesses.

Responses: 10,500.

Annual Burden: 42,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13982 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Pre-Disaster Mitigation Loans (Pilot Program)

As a result of the Pre-Disaster Mitigation Loans Final Rule published in the **Federal Register** October 7, 2002, the SBA is announcing the availability of Pre-Disaster Mitigation Loans. This notice establishes the application filing period for Pre-Disaster Mitigation Loans. Effective June 16, 2003, small businesses located in eligible participating communities determined by the Federal Emergency Management Agency may apply for low interest, fixed rate loans for the purpose of implementing mitigation measures that will protect their commercial real property (building) or leasehold improvements or contents from disaster related damage. The filing period for small businesses to apply for Pre-Disaster Mitigation Loans ends on July 16, 2003. The interest rate for eligible small businesses is 2.953 percent.

Applications for Pre-Disaster Mitigation Loans may be obtained and filed at the addresses listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303, 1–800–659–2955.

Area 1 serves the following: Connecticut, District of Columbia, Delaware, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, Puerto Rico, Virgin Islands (Dec. # M103).

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, 1–800–359–2227.

Area 2 serves the following: Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Wisconsin (Dec. # M203).

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 75155, 1–800–366–6303.

Area 3 serves the following: Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Oklahoma, Texas, Utah, Wyoming (Dec. # M303).

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795. 1–800–488–5323.

Area 4 serves the following: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, the Federated States of Micronesia, Guam, Republic of the Marshall Islands, Commonwealth of the Northern Mariana Islands (Dec. # M403).

(Catalog of Federal Domestic Assistance Program No. 59008.)

Dated: May 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13983 Filed 6–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 23, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15273.

Date Filed: May 23, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0519 dated 16 May 2003
Within Europe Expedited Resolutions 002bi, 078y r1–r2.

PTC2 EUR 0522 dated 23 May 2003
Within Europe Expedited Resolutions r3–r–19.

PTC2 EUR 0523 dated 23 May 2003
Within Europe Expedited Resolution 002bn r20.

PTC2 EUR 0524 dated 23 May 2003
Within Europe Expedited Resolution 002bt r21.

PTC2 EUR 0525 dated 23 May 2003
Within Europe Expedited Resolution 002br r22.

PTC2 EUR 0526 dated 23 May 2003
Within Europe Expedited Resolution 002bs r23.

Minutes—PTC2 EUR 0521 dated 23 May 2003.

Intended effective date: 15 June, 1 July, 1 August, 1 September, 1 October, 1 November 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–14026 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Initial Maintenance Inspection (IMI) Test for Turbine Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed advisory circular (AC) number 33.90–1, Initial Maintenance Inspection (IMI) Test for Turbine Engines.

DATES: Comments must be received on or before August 29, 2003.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7120; fax: (781) 238–7199; e-mail: *marc.bouthillier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl.* The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

Background

This AC describes acceptable methods, but not the only methods, for demonstrating compliance with the test requirements of 14 CFR 33.90, Initial maintenance inspection (IMI). This AC provides guidance for the following: Test methods and procedures, test pass/fail criteria; and entry-into-service (EIS) IMI or overhaul requirements or recommendations established for the type design.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on May 28, 2003.

Francis Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14074 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Updated Noise Exposure Maps and Request for Review of the Noise Compatibility Program for Guam International Airport, Guam

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by A.B. Won Pat Guam International Airport Authority for Guam International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14, Code of Federal Regulation (CFR), Part 150, are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Guam International Airport under Part 150 in conjunction with the Noise Exposure Maps, and that this program will be approved or disapproved on or before November 15, 2003.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is May 19, 2003. The Public comment period ends on July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Western-Pacific Region, Honolulu Airports District Office, Federal Aviation Administration, Box 50244, Honolulu, Hawaii 96850–0001, Telephone: 808–541–1232, Street Address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Guam International Airport are in compliance with applicable requirements of Federal Aviation Regulation (FAR), Part 150, effective May 19, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport, which will be approved or disapproved on or before November 15, 2003. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Act, an airport operator may submit to the FAA Noise Exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non-compatible uses.

A.B. Won Pat Guam International Airport Authority submitted to the FAA on March 18, 2003, noise exposure maps, descriptions and other documentation which were produced during Guam International Airport's March 2003 noise compatibility study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by A.B. Won Pat Guam International Airport Authority. The specific maps under consideration are Figure 5.1, "Noise Exposure Map—2003" and Figure 5.2, "Noise Exposure Map—2008," in the submission. The FAA has determined that these maps for the Guam International Airport are in compliance with applicable requirements. This determination is effective on May 19, 2003. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Guam International Airport, effective on May 19, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 15, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community and Environmental Needs Division, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii 96813.

Mr. William R. Thompson, Executive Manager, A.B. Won Pat Guam International Airport Authority, 355 Chalan Pasaheru, Tamuning, Guam 96911.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 19, 2003.

Mark McClardy,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 03–14073 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Weight and Balance Control Program Committee; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for participation; correction.

SUMMARY: This document makes corrections to the notice of request of participation published in the **Federal Register** on May 28, 2003 (68 FR 31740), which announces the formation of the Weight and Balance Control Program Aviation Rulemaking Committee to conduct a review of AC 120–27C and other related guidance, and provide advice and recommendations.

FOR FURTHER INFORMATION CONTACT: Mr. Darcy Reed, 202–267–9948, or e-mail: *Darcy.D.Reed@faa.gov.*

Correction

In the notice FR Doc. 03–13243, published on May 28, 2003 (68 FR 31740), make the following correction:

On page 31741, in the first column, fourth full paragraph, line two, correct "docket number FAA–2003–XXXX" to read "docket number FAA–2003–15281."

Issued in Washington, DC on May 30, 2003.

Carol E. Giles,

Assistant Division Manager, Air Maintenance Division, Flight Standards Service.

[FR Doc. 03–14072 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 24, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the

Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14910.
Petitioner: Conrad Kropf.
Section of 14 CFR Affected: 14 CFR 61.3(a)(2).
Description of Relief Sought: To permit Conrad Kropf to obtain a private pilot certificate without having a photo identification that is in his possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization.

[FR Doc. 03–14063 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–33]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 24, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003-XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15115.
Petitioner: Martinaire, Inc.
Section of 14 CFR Affected: 14 CFR 135.105(c)(1).
Description of Relief Sought: To permit Martinaire, Inc., to carry passengers, specifically certified airmen employed by other airlines, on board their aircraft with a 2 axis autopilot installed and operating.

Docket No.: FAA–2002–13131.
Petitioner: Starfighters, Inc.
Section of 14 CFR Affected: 14 CFR 91.319(a).
Description of Relief Sought: To permit Starfighters, Inc. to use its Lockheed F–104 Starfighter aircraft, which has an experimental airworthiness certificate, to conduct spaceflight orientation training and to receive compensation for such training.

[FR Doc. 03–14064 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–32]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 21, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13573.
Petitioner: Regional Aviation Partners.
Section of 14 CFR Affected: 14 CFR 119.21(a)(1).
Description of Relief Sought: To permit Regional Aviation Partners to conduct domestic operations with airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, to comply with the provisions of § 119.21(a)(4) and part 135 rather than part 121.

[FR Doc. 03–14065 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–31]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 29, 2003.

Richard D. McCurdy

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12947.
Petitioner: Trans States Airlines, Inc. d.b.a. American Connection and U.S. Airways Express.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought: To permit Trans States Airlines, Inc. d.b.a. American Connection and U.S. Airways Express to substitute a qualified and authorized check airman or aircrew program designee for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 05/13/2003, Exemption No. 8054.*

Docket No.: FAA–2002–13224.
Petitioner: Petersen Aviation.
Section of 14 CFR Affected: 14 CFR 135.269(b)(5).
Description of Relief Sought: To allow Petersen Aviation to operate on-demand charter flights of more than 10 hours but less than 12 hours without having adequate sleeping facilities on the aircraft for the relief pilot. *Denial, 05/14/2003, Exemption No. 8053.*

[FR Doc. 03–14066 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–IND To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Lisa Cottingham, Treasurer, Indianapolis Airport Authority, at the following address: Indianapolis International Airport, 2500 S. High School Road, Suite 100, 5th Floor Administration, Indianapolis, Indiana 46241–4941.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Indianapolis Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Regan, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7525. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Indianapolis Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 26, 2003.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2022.
Proposed charge expiration date: November 1, 2022.
Level of the proposed PFC: $3.00.
Total estimated PFC revenue: $59,000.
Brief description of proposed project: Impose and Use—Preparation costs of PFC application and amendment (2003).
Level of the proposed PFC: $4.50.
Total estimated PFC revenue: $443,870,000.
Brief description of proposed project: Use Only—Midfield Terminal.
Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Non-scheduled on-demand air carriers (formerly called air taxi/commercial operators-ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Indianapolis Airport Authority.

Issued in Des Plaines, Illinois, on May 27, 2003.

Robert A. Huber,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–14076 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Christopher Horton, Manager of Finance, Airport Authority of Washoe County, at the following address: 2001 East Plumb Lane, Reno, NV 89502. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Lingsch, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 16, 2003, the FAA determined that the application to impose and use a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 20, 2003.

The following is a brief overview of the impose and use application No. 03–07–C–00–RNO:

Level of proposed PFC: $4.50.

Proposed charge effective date: November 1, 2003.

Proposed charge expiration date: March 1, 2006.

Total estimated PFC revenue: $21,188,948.

Brief description of the proposed impose only project: Southern Central Disposal Facility; Airfield Maintenance Replacement Facilities; 3.6 Acres Wetlands Mitigation Bank; and 10 Acres Wetlands Mitigation Bank. Brief description of the proposed impose and use projects: Design of Terminal Apron Reconstruction; Terminal Apron Reconstruction-Phase VI; Replace Four Jet Bridges; Ground Service Equipment Ramp Pavement Reconstruction; Replace Chiller No. 2 Mechanical System Master Plan; Geographic Information System; and Second Floor Concourse Build Out.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Nonscheduled/on-demand air carriers filling FAA Form 1800–31 and Foreign Flag Carriers filing DOT Form T–100(F).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Hawthorne, California, on May 16, 2003.

Mark McClardy,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–14075 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In April 2003, there were four applications approved. This notice also includes information on three applications, one approved in January 2003, and the other two approved in March 2003, inadvertently left off the January 2003 and March 2003 notices, respectively. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Albany-Dougherty Aviation Commission, Albany, Georgia.

Application Number: 03–03–C–00–ABY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $454,849.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: July 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Southwest Georgia Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Install airfield fencing and replace locks.

Baggage claim enclosure.

Terminal environmental (phase I) update air handlers.

PFC application charges.

Construct air cargo apron—phases I and II (design).

Install runway visual guidance system.

Purchase rapid response aircraft rescue and firefighting (ARFF) vehicle and ARFF generator.

Construct air cargo apron—phases I and II.

Decision Date: January 31, 2003.

For Further Information Contact: Philip Cannon, Atlanta Airports District Office, (404) 305–7152.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 03–09–C–00–MRY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $688,938.

Earliest Charge Effective Date: July 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 air taxi operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and Use:

Access security control.

Extension of fire alarm system to safety building.

Acquisition of property at 2825 Salinas/Monterey Highway.

Passback security system.

Terminal improvements and modifications.

Terminal fire door replacements, phase 2.

Generator power to security gate, phase 2.

Terminal expansion—second level.

Environmental impact report—airport roadway circulation projects (terminal road, north access road, and 28L service road).

Decision Date: March 28, 2003.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of St. George, Utah.

Application Number: 03–03–C–00–SGU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,354,902.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: October 1, 2011.

Class of Air Carriers Not Required To Collect PFC'S: Non-scheduled, on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at St: George Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire ARFF vehicle.

Acquire a self-contained regenerative air airfield sweeper.

ARFF building improvements.

Replacement airport planning.

Replacement airport environmental impact statement.

Replacement airport phase II environmental impact statement.

Brief Description of Project Approved for Collection and Use: Construct replacement airport.

Decision Date: March 31, 2003.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Houghton, Hancock, Michigan.

Application Number: 03–09–C–00–CMX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $104,266.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: May 1, 2007.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment, 4 by 4 pickup truck with plow.

Access road lighting.

Airport directional signage and entrance road sign.

New electrical service to ARFF building.

Public address system rehabilitation in passenger terminal.

Terminal landside entrance rehabilitation.

Airport terminal apron pavement crack sealing.

Terminal airside entrance rehabilitation.

Thermal imaging cameras.

Unicom radio procurement.

Brick screen wall.

Runway 13 protection zone hazard removal.

PFC application preparation reimbursement.

Wildlife control/security fencing with perimeter road.

Snow removal equipment procurement, multi-purpose tractor with power broom.

Terminal bathroom rehabilitation.

Decision Date: April 1, 2003.

For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 03–05–C–00–BUR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $17,509,405.

Earliest Charge Effective Date: January 1, 2008.

Estimated Charge Expiration Date: November 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burbank-Glendale-Pasadena Airport.

Brief Description of Project Approved for Collection and Use: Terminal security enhancements.

Decision Date: April 11, 2003.

For Further Information Contact: Ruben Cabalbag, Western Pacific Region Airports Division, (310) 725–3630.

Public Agency: City of Greenville, Mississippi.

Application Number: 03–03–I–00–GLH.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $88,495.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: June 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air tax/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mid-Delta Regional Airport.

Brief Description of Projects Approved for Collection:

Terminal area drainage improvement and parking lot reloation.

Rehabilitate runway 9/27 and convert to taxiway.

Terminal building fire escape stairwell.

Decision Date: April 11, 2003.

For Further Information Contact" Patrick D. Vaught, Jackson Airports District Office, (601) 664–9885.

Public Agency: Port of Chelan County and Port of Douglas County, Wenathee, Washington.

Application Number: 03–04–C–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $123,500.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required To Collect PFC's:

None.

Brief Description of Projects Approved for Collection and Use:

Phase II pavement overlay—taxiway G slurry seal.

Equipment garage..

Security fencing.

Acquire vacuum runway sweeper.

Acquire curb sweeper.

Segmented circle and wind tee.

Update master plan.

Runway snow blower.

Decision Date: April 25, 2003.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–04–MRY, Monterey, CA	03/21/03	$4,077,754	$4,104,131	10/01/00	10/01/00
00–06–C–01–MRY, Monterey, CA	03/21/03	335,031	376,338	10/01/01	10/01/01
02–08–C–01–MRY, Monterey, CA	03/21/03	320,122	341,066	05/01/03	07/01/03
*00–03–C–01–CSG, Columbus, GA	04/01/03	1,251,387	1,251,387	11/01/04	11/01/04
99–04–C–01–PBI, West Palm Beach, FL	04/02/03	18,933,000	11,999,332	12/01/00	03/01/01
93–01–C–01–MTJ, Montrose, CO	04/04/03	1,461,745	1,422,535	02/01/09	08/01/03
92–01–C–04–STL, St. Louis, MO	04/10/03	71,642,933	67,933,947	08/01/95	08/01/95
95–01–C–03–LYH, Lynchburg, VA	04/18/03	296,723	185,940	08/01/98	07/01/96
00–02–C–01–LYH, Lynchburg, VA	04/18/03	832,756	827,616	06/01/02	06/01/02
01–03–C–02–LYH, Lynchburg, VA	04/18/03	705,654	705,654	06/01/05	06/01/05
00–01–C–02–VPS, Valparaiso, FL	04/21/03	34,278,718	34,407,710	11/01/19	08/01/18

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Columbus, GA, this change is effective on June 1, 2003.

Issued in Washington, DC, on May 29, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–14077 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2003–14504]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On April 21, 2003, the FMCSA published a Notice of its receipt of applications from 29 individuals, and requested comments from the public (68 FR 19598). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Michael C. Boyne, Clifford D. Carpenter, Bobby R. Carter, Sr., Darryl D. Cassatt, Timothy H. Dubois, Robert E. Ezell, Jr., Orasio Garcia, Reginal Gillis, Raymond D. Gromley, Dennis K. Harris, Donald E. Howell, Tommy T. Hudson, William D. Johnson, Raymond T. Jones, Jr., Edward J. Kasper, Jimme D. Kline, Phillip L. Mangen, Paul V. Mattingly, Steven M. Montalbo, Bernard E. Roche, Charles J. Rowsey, Vincent Rubino, Randy G. Spilman, Wyatt W. Thayer, Jr., Thomas S. Thompson, Robert A. Wegner, John E. Wertz, John W. Williams, and Christopher D. Yates.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant the exemptions to all of them. The comment period closed on May 21, 2003. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supported the agency's view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 10 of the applicants were either born with their vision impairments or have had them since childhood. The 10 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 33 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, four of the drivers have had convictions for traffic violations. Two of these convictions were for speeding and two were for "failure to obey stop sign." Four drivers were involved in an accident but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 21, 2003 notice (68 FR 19598). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 68 FR 19598.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecufive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only four accidents and four traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian

and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 29 applicants listed in this notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 29 exemption applications, the FMCSA exempts Michael C. Boyne, Clifford D. Carpenter, Bobby R. Carter, Sr., Darryl D. Cassatt, Timothy H. Dubois, Robert E. Ezell, Jr., Orasio Garcia, Reginal Gillis, Raymond D. Gromley, Dennis K. Harris, Donald E. Howell, Tommy T. Hudson, William D. Johnson, Raymond T. Jones, Jr., Edward J. Kasper, Jimme D. Kline, Phillip L. Mangen, Paul V. Mattingly, Steven M. Montalbo, Bernard E. Roche, Charles J. Rowsey, Vincent Rubino, Randy G. Spilman, Wyatt W. Thayer, Jr., Thomas S. Thompson, Robert A. Wegner, John E. Wertz, John W. Williams, and Christopher D. Yates from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: May 29, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–14008 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15291]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel C.J. VICTORIA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15291 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15291. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel C.J. VICTORIA is:

Intended Use: "Charter Fishing. My home port is Winthrop. I will be fishing all over Mass bay and points south and north. Charter fishing will be Mass Bay".

Geographic Region: "State of Massachusetts".

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13951 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORATION

Maritime Administration

[Docket Number: MARAD 2003–15294]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FANDANGO.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15294 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15294. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FANDANGO is:

Intended Use: "Carry passengers for Eco-tourism along the Florida Gulf Coast."

Geographic Region: "Panama City, Fl. To Tarpon Springs, Fl."

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13948 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15293]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel INTEGRITY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15293 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15293. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel INTEGRITY is:

Intended Use: "Charter services near Galveston, Texas, coastal waters."

Geographic Region: "Texas Gulf Coast."

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13949 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15292]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADYHAWKE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15292 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15292. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LADYHAWKE is:

Intended Use: "The intended use of the vessel is to operate as a tour boat offering tours in shallow waters where other vessels cannot operate. This craft rides on a cushion of air 30 inches above the surface producing no wake and having no negative impact on the environment. Our intention is to work the craft on the East Coast during summer and then work our way to Florida when the weather gets cooler on the East Coast."

Geographic Region: "The geographic region for the operation is in the following States; Florida, Georgia, South Carolina, New York and New England States. I would be providing tours in areas not accessible by other conventional boats. We presently have a MARAD waiver to operate this craft in waters from Miami to the Keys. Docket No. 2002–13047."

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13950 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15289]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEID BACK.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15289 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15289. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LEID BACK is:

Intended Use: "Private chartered catamaran sailing with an inter-island service in the "Leeward Oahu" geographic area of Hawaii."

Geographic Region: "Coastwise trade in Hawaii."

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13953 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15290]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SECOND WIND.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15290 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15290. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SECOND WIND is:

Intended Use: "Charter & day trips.".

Geographic Region: "Florida.".

Dated: May 29, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13952 Filed 6–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20999]

National Express Corporation—Intra-Corporate Family Transaction Exemption

National Express Corporation (NEC), a noncarrier, has filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1182.9.[1] The exempt transaction involves the corporate restructuring of NEC's student transportation division, which, in addition to providing exempt school bus services, also provides charter passenger carrier services to the public.[2]

Under the transaction, NEC, a Delaware corporation merged certain directly and indirectly controlled subsidiaries into a single Delaware limited partnership, Durham School Services, L.P. (DSSLP), a motor passenger carrier. As part of the reorganization, Durham Transportation, Inc., a California corporation (DTI CA) was re-incorporated as Durham Transportation, Inc., a Delaware corporation (DTI DE), through the incorporation of DTI DE in Delaware and the merger of DTI CA into DTI DE. NEC assigned shares of DTI DE to Durham Holding I, L.L.C. (Durham Holding I), a noncarrier and a limited partner of DSSLP, in exchange for the sole membership interest in Durham Holding I, and it assigned the remaining shares of DTI DE to Durham Holding II, L.L.C. (Durham Holding II), a noncarrier and the general manager of DSSLP, in exchange for the sole membership interest in Durham Holding II. DTI DE was converted into Durham School Services, L.P. (DSSLP), a Delaware limited partnership with Durham Holding I and Durham II as its limited and general partner, respectively. NEC merged its second-tier subsidiaries, Winkels Transportation Co., School Services and Leasing of Massachusetts, Inc.; and Student Bus Services, Inc., into its first tier subsidiaries, Crabtree-Harmon Corporation, Robinson Bus Services, Inc., Educo Transit Company, Kenneth E. Bauman Bus, Inc., School Services and Leasing, Inc., Helweg & Farmer Transportation Co., Inc., and Stock Transportation L.L.C. All of the outstanding shares of the first tier operating subsidiaries were contributed to Newco, a newly formed Delaware corporation. The first-tier operating subsidiaries were merged into Newco and Newco was merged into DSSLP. NEC retains ultimate ownership and control of DSSLP because DSSLP is the sole member of Durham Holding I and Durham Holding II.

The transaction was consummated on or about December 31, 2002.[3]

[1] The Board exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions,* STB Finance Docket No. 33685 (STB served Feb. 18, 2000).

[2] The Board previously exempted the acquisition of control of five motor passenger carriers by National Express Group plc, NEC's parent, and NEC in *National Express Group plc, et al.—Control Exemption—School Services and Leasing, Inc., et al.*, STB Docket No. MC–F–20968 (STB served Aug. 28, 2000).

[3] NEC states that it completed the transaction without the benefit of transportation counsel. Upon learning that the transaction is subject to the Board's jurisdiction, NEC consulted with and

Continued

According to NEC, the transaction will provide for certain financial, operational and other efficiencies. As a result of the reorganization, NEC states that it will be able to maximize the value of each of the business segments, position the business segments for strategic alliances and/or growth, and protect intellectual property assets. NEC also states that the reorganization will simplify accounting and accountability for revenue, expenses, and profits of the operations.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1182.9. NEC states that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. NEC also states that, because it directly or indirectly holds all of the stock of the affected entities, no agreement or contract was entered into, except for the corporate documentation and filings required to implement the reorganization. NEC further states that there will be no effect upon employees because all of them will be retained.

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time. *See* 49 CFR 1182.9(c).

An original and 10 copies of all pleadings, referring to STB Docket No. MC–F–20999, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas W. Wilcox, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 23, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13674 Filed 6–3–03; 8:45 am]

BILLING CODE 4915–00–P

retained counsel and then filed this notice of exemption.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 404X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Webster County, NE

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 9.28-mile line of railroad between BNSF milepost 87.02, near Blue Hill, and milepost 96.30, near Bladen, in Webster County, NE. The line traverses United States Postal Service Zip Codes 68928 and 68930.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1105.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 4, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 16, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152. 28 must be filed by June 24, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 9, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, D.C. 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by June 4, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A Williams,

Secretary.

[FR Doc. 03–13538 Filed 6–3–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1102.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new privacy act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled "Treasury/IRS 22.012—Health Coverage Tax Credit Program Records."

DATES: Comments must be received no later than July 7, 2003. This new system of records will be effective July 14, 2003, unless the IRS receives comments, which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying upon request in the Freedom of Information Reading Room (1621), at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Reniker, HCTC Program Manager, Union Center Plaza (CNN Building) 820 First Street, NE., Washington, DC, (202) 962–0540 (not a toll free number).

SUPPLEMENTARY INFORMATION: This system of records is for implementation of health coverage tax credit provisions of sections 201 and 202 of Public Law 107–210, Trade Act of 2002. The proposed system will allow the IRS to administer the health care credit provisions of Public Law 107–210.

The Health Coverage Tax Credit (HCTC) is a federal tax credit that equals 65 percent of the premium paid by eligible individuals for "qualified" health coverage. Sections 201 and 202 of The Trade Act of 2002 created the credit to help pay for private health coverage for two categories of persons: (1) Displaced workers certified to receive certain Trade Adjustment Assistance (TAA) benefits and (2) individuals receiving benefits from the Pension Benefit Guaranty Corporation (PBGC). The HCTC can also be used to help purchase health coverage for an eligible individual's spouse and family members that can be claimed on the individual's tax return as dependents.

The IRS is responsible for administering the HCTC program in cooperation with the Department of the Treasury. It is anticipated that a broad range of HCTC information and services will be provided by the IRS" contractor at the Customer Contact Center located in Waterloo, IA. HCTC financial and accounting operations will be performed by the IRS" contractor at the HCTC Delivery Center located in Houston, TX.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed new system of records entitled "Treasury/IRS 22.012—Health Coverage Tax Credit Program Records," is published in its entirety below.

Dated: May 29, 2003.

W. Earl Wright Jr.,

Chief Management and Administrative Programs Officer.

Treasury/IRS 22.012

SYSTEM NAME:

Health Coverage Tax Credit Program Records-Treasury/IRS.

SYSTEM LOCATION:

(1) IRS Martinsburg Computing Center (MCC) in Martinsburg, WV; (2) Production System located in Sterling, VA; (3) Customer Contact Center located in Waterloo, IA; (4) HCTC Delivery Center located in Houston, TX; (5) HCTC Program Office in Washington DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for, and are eligible for the credit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records required to administer the Health Coverage Tax Credit program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 201 and 202 of Public Law 107–210, The Trade Act of 2002, codified at 26 U.S.C. 35, 6103(l)(18) and 7527, Credit for Health Insurance Cost of Eligible Individuals, and the Department of the Treasury, under Title II, grants authority for maintenance of the HCTC system.

PURPOSE(S):

The purpose is to administer the health care credit provisions of sections 201 and 202 of Public Law 107–210, Trade Act of 2002. The program assists in the payment for private health coverage for displaced workers certified to receive certain Trade Adjustment Assistance (TAA) benefits, and for individuals receiving benefits from the Pension Benefit Guaranty Corporation (PBGC) and their qualifying family members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may only be disclosed as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, electronic and magnetic media.

RETRIEVABILITY:

By name, taxpayer identification number, health care insurance policy number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Manager's Security Handbook, IRM 1.16 and the Automated Information System Security Handbook, IRM 25.10.2.

RETENTION AND DISPOSAL:

Record retention will be established in accordance with the National Archives and Records Administration Regulations Part 1228, Subpart B-Scheduling Records.

SYSTEM MANAGER(S) AND ADDRESS:

HCTC Program Manager, Union Center Plaza (CNN Building), 820 First Street, NE., Washington, DC., (202) 962–0540 (not a toll free number).

NOTIFICATION PROCEDURE:

Individuals may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager address listed above.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its contents; may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager address listed above.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Individuals Eligible under HCTC program; Internal Revenue Service Taxpayer Account Information; Health

Coverage Providers; Department of Labor; Pension Benefit Guaranty Corporation; State workforce agencies, and the Department of Health and Human Services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–14006 Filed 6–3–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 107

Wednesday, June 4, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1470–P]

RIN 0938–AL89

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

Correction

In proposed rule document 03–11966 beginning on page 27154 in the issue of Monday, May 19, 2003, make the following correction:

On page 27154, in the first column, under **DATES**, in the last line "July 18, 2003" should read "July 15, 2003".

[FR Doc. C3–11966 Filed 6–3–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15077; Airspace Docket No. 03–ACE–45]

Modification of Class E Airspace; Pocahontas, IA

Correction

In rule document 03–13047 beginning on page 28121 in the issue of Friday, May 23, 2003, make the following corrections:

1. On page 28121, in the second column, in the first paragraph, in the second line, after the word "revealed" add "discrepancies in the Pocahontas Municipal Airport airport reference point used in the legal".

2. On the same page, in the same column, under the **SUPPLEMENTARY INFORMATION** heading, in the 11th line, after the word "revised" add "Pocahontas Municipal Airport airport reference point and brings the legal description of the".

[FR Doc. C3–13047 Filed 6–3–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15078; Airspace Docket No. 03–ACE–46]

Modification of Class E Airspace; Red Oak, IA

Correction

In rule document 03–13045 beginning on page 28123 in the issue of Friday, May 23, 2003, make the following correction:

On page 28123, in the third column, under the **SUMMARY** heading, in the seventh line, after the word "area." add the sentence "This action corrects the discrepancies by modifying the Red Oak, IA Class E airspace area.".

[FR Doc. C3–13045 Filed 6–3–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 4, 2003

Part II

Department of Agriculture

Forest Service

36 CFR Part 215

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 215

RIN 0596–AB89

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the notice, comment, and appeal procedures for projects and activities implementing land and resource management plans on National Forest System lands. The final rule changes the procedures in the current rule to clarify and reduce the complexity of certain provisions, to improve efficiency of processing appeals, to encourage early and effective public participation in the environmental analysis of projects and activities, and to ensure consistency with the provisions of the statutory authority. Changes address emergency situations; notice and comment procedures and time periods; substantive comments; who may appeal; Deciding Officers; content of an appeal; and the formal disposition process.

EFFECTIVE DATE: This rule is effective June 4, 2003, except for those provisions concerning electronic comments and electronic appeals at 36 CFR 215.5(b)(vi–vii), 215.6(a)(4)(iii), 215.7(b)(2)(i) and (iii), and 215.15(c)(1) and (3), which are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Segovia, Assistant Director for Appeals and Litigation, Ecosystem Management Coordination, telephone (202) 205–1066.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is responsible for managing 192 million acres in National Forests, National Grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors and district rangers, manages the surface resources and, in some instances, the subsurface resources of these lands.

The United States Department of Agriculture (Department), at its own discretion, provides processes by which persons or organizations may appeal or object to significant amendment, revision, or approval of a land and resource management plan (36 CFR part 219). For plans prepared using the 1982 planning regulations, Appendix A to § 219.35(b) provides the option to select the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000). A separate process for notice, comment, and appeal of National Forest System projects and activities was mandated by section 322 of Interior and Related Agencies Appropriation Act of Fiscal Year 1993 (Pub. L. 102–381, 106 Stat. 1419) (hereinafter "Appeals Reform Act" (ARA)), with implementing regulations promulgated on November 4, 1993 at 36 CFR part 215 (58 FR 58904).

On December 18, 2002, the Forest Service published a proposal to amend the rule at 36 CFR part 215 (67 FR 77451). A 60-day comment period was provided. In addition, the Forest Service gave direct notice of the proposed amendment and invited comment from more than 150 national organizations and Federal agencies. Approximately 25,000 comment letters were received from individuals; representatives of Federal, State, and local government agencies; environmental groups; Indian tribes; professional associations; and both commodity and non-commodity industry groups. The responses were form letters as well as unique individual letters, some sent electronically and others mailed hard copy. All suggestions and comments have been reviewed and considered in preparation of this final rule.

General Comments

Comments were received from those who favored and those who disagreed with the same proposed changes, addressing many of the same issues from opposing viewpoints. Many requests for clarifications were received as well as numerous suggestions for additional changes.

Those who generally supported the proposed rule changes stated that the changes would improve procedural effectiveness and efficiency, reduce the abuse of the appeals process, and improve forest health.

Those who generally opposed the proposed rule changes contended that the changes would reduce a citizen's right to participate in the project planning process, might result in increased litigation, and would decrease forest health.

Comments were received on nearly every section asserting that various portions of the proposed rule were in violation of the Appeals Reform Act (ARA). Rather than answer each ARA violation assertion individually, the Department is choosing to respond generally. The Department does not believe that any provision, requirement, section, or paragraph is in violation of the ARA. The Department has carried out the intent of Congress with this rule and the changes in the final rule reflect that intent. The preamble to the proposed rule (67 FR 77451, December 18, 2002) contains an extensive discussion of the ARA and the response to the ARA provisions in the development of the 1993 rule (58 FR 58904, November 4, 1993) and the changes proposed to the rule in 2002.

Native American tribes commented on almost every aspect of the proposed rule. The tribes expressed a general concern that the proposed rule failed to recognize particular rights granted under various statutes, treaties, and other legal instruments. They believed that tribal participation in many Forest Service decisions would be greatly reduced by the proposed changes, and that consultation is required to negotiate a process for harmonizing the proposed rule with their concerns. Because the concerns expressed were primarily general in nature, the Department is responding generally, rather than including a response in every section. Native Americans have a special and unique legal and political relationship with the United States government, including the Department of Agriculture and the Forest Service. Tribal governments are sovereign governments that are separate and distinct from other governmental entities. In addition, land and resources hold a special and unique meaning in the spiritual and everyday lives of many Native Americans. National Forest System lands contain many traditional, historic, and contemporary use areas of critical importance to Native Americans. Tribal cultural practices occur commonly on National Forest System lands. Thus, it is critical that the Forest Service respect and work with all tribes in a Government-to-Government relationship during project planning and engage in consultation regarding Government actions affecting tribal rights and interests, consistent with Government policy. However, the Department does not believe it is appropriate to include special provisions relating to tribes in the final rule.

After publication of the proposed rule, the Department became aware of an inconsistency with the use of the terms "substantive comment" and "comment." Respondents noted this inconsistency also. Throughout the final rule, only the phrase "substantive comment(s)" is used, as defined at § 215.2.

Section-by-Section Comments

The following discusses and responds to the public comments on the proposed changes to 36 CFR part 215 received during the Department's 60-day comment period. It also discusses differences between the proposed rule and the final rule and why those changes were made. The final rule has been reorganized. As a result, some sections have new titles and/or a new designation as shown in the table below:

BILLING CODE 3410–11–P

Proposed section number and title	Final section number and title
§215.1 Purpose and scope	§215.1 Purpose and scope
§215.2 Definitions	§215.2 Definitions
§215.3 Proposed actions subject to legal notice and opportunity to comment	§215.3 Proposed actions subject to legal notice and opportunity to comment
§215.4 Proposed actions not subject to legal notice and opportunity to comment	§215.4 Proposed actions not subject to legal notice and opportunity to comment
§215.5 Legal notice of proposed action and opportunity to comment	§215.5 Legal notice of proposed actions
§215.6 Consideration of comments	§215.6 Comments on proposed actions
§215.7 Legal notice of decision	§215.7 Legal notice of decision
	§215.8 Appeal Deciding Officer
§215.8 Decision implementation	§215.9 Decision implementation
§215.9 Emergency situations	§215.10 Emergency situations
§215.10 Decisions subject to appeal	§215.11 Decisions subject to appeal
§215.11 Decisions and actions not subject to appeal	§215.12 Decisions and actions not subject to appeal
§215.12 Who may appeal	§215.13 Who may appeal
§215.13 Where to file appeals	[incorporated in §215.8]
§215.14 Appeal time periods and process	[redesignated at §215.15]
§215.15 Appeal content	§215.14 Appeal content
	§215.15 Appeal time periods and process
§215.16 Dismissal of appeal without review	§215.16 Dismissal of appeal without review
§215.17 Informal disposition	§215.17 Informal disposition
§215.18 Formal review and disposition procedures	§215.18 Formal review and disposition procedures
§215.19 Appeal Deciding Officer's authority	[redesignated at §215.8]
§215.20 Appeal Reviewing Officer's responsibilities	§215.19 Appeal Reviewing Officer
§215.21 Secretary's authority	§215.20 Secretary's authority
§215.22 Judicial proceedings	§215.21 Judicial proceedings
§215.23 Applicability and effective date	§215.22 Applicability and effective date
§215.24 Information collection requirements	[removed]

BILLING CODE 3410–11–C

Proposed section 215.1 discussed the purpose and scope of the rule.

Comment. Some of the respondents believed that the purpose should include a reference to the public law or statute that established the requirement for the rule; others wanted to know which phase of public comment was affected by this rule; and some wondered what scope of activities were covered, specifically activities concerning special uses.

Response. Every rule is required to cite its authority. The Authority citation (including the U.S. Code, public law, and statute) for this rule follows the table of contents and precedes § 215.1.

The 30-day comment period provided for proposed actions documented in an environmental assessment (EA) is not a "phase of public comment" pursuant to the National Environmental Policy Act (NEPA). It is a separate action mandated by the Appeals Reform Act (ARA). In the case of proposed actions documented in a draft environmental impact statement (EIS), the requirements of the ARA for notice and comment utilize existing procedures in NEPA's implementing regulations at 40 CFR parts 1503 and 1506.10 and agency policy in Forest Service Handbook (FSH) 1909.15.

In response to confusion about the scope of activities covered, specifically activities affecting special uses, the final rule clarifies in § 215.1(b) that decisions which affect an authorized use or occupancy of National Forest System lands are subject to appeal procedures in either part 215 or part 251, subpart C, but not both. Also, in response to public comment, the final rule removes the issue preclusion language from paragraph (b); the proposed rule at §§ 215.1 and 215.15 would have limited appeals to those issues raised during the comment period. The reason for this change is discussed further under § 215.15 below.

Proposed section 215.2 clarified and revised definitions for specific terms used in the proposed rule. The proposed revision added six new definitions, removed three definitions, and revised and updated several other definitions from the 1993 rule.

Comment. Several comments were received regarding both the proposed changes and definitions without proposed changes. One definition that generated a number of comments, both supporting and disagreeing with the change, was emergency situation. Those supporting the proposed definition believe that the threat of substantial economic loss to adjacent communities and property owners, as well as the loss of resource value, should be factored into an emergency situation determination. Some of those commenting believed that it minimized the economic burden "shouldered by local communities" that "results from delayed decisions." Those disagreeing with the proposed definition were unhappy that the definition had been broadened to include substantial loss of economic value as a factor in determining emergency situations. They believe this change places economic interests above environmental and social concerns. Others said that it would lead to increased logging because the definition has been broadened to the point that almost any timber sale would fit the new definition. Others believe that the new definition was arbitrary and capricious, and that it violated the ARA. Some respondents wanted the reference "to the Government" omitted because potential economic losses to anyone should be considered. Others wanted the definition to apply to county- or State-declared emergencies because such actions are aligned with the Department philosophy of cooperation, consideration, and collaboration with local governments.

Response. The ARA does not provide a statutory definition for emergencies nor does it specify particular criteria for making such determinations. The definition in the 1993 rule attempted to provide the necessary guidance. Experience has shown there is a need for refinement and clarification because of the belief by some that emergencies were limited to those situations included as examples. The result has sometimes been additional taxpayer cost when timber could not be sold, but was still in need of removal for fuel reduction. Fire-impacted forest ecosystems and damaged watersheds impose a variety of environmental and economic costs to communities, particularly when immediate action is not taken. These implementation delays often result in lost opportunities for the Department to address resource problems in an environmentally sound and fiscally responsible manner. The Department believes the intent of an emergency situation determination is to allow immediate implementation of all or part of a proposed action when necessary to remedy these problems.

Comment. In addition to comments related to emergencies discussed above, one commenter suggested changing the definition of the Appeal Deciding Officer to specify that the Appeal Deciding Officer is only one level above the "decisionmaking officer's" (Responsible Official) position.

Response. After careful consideration, the Department concurs. The Department believes that it is appropriate that the position deciding an appeal should be at the field level. The final rule reflects this change. A corresponding change is made in § 215.8 Appeal Deciding Officer.

Comment. Other commenters believed there was a need for both further clarification and new definitions.

Response. The final rule adds 10 new definitions that did not appear in the 1993 rule. The final rule also revises 13 definitions, removes 4 definitions, and leaves 4 definitions unchanged from the 1993 rule. The Department believes these changes will help clarify the requirements and intent of the rule.

The 10 new definitions are: *Address, Appeal disposition, Emergency situation, Lead appellant, Name, National Forest System land, Newspaper(s) of record, Projects and activities implementing a land and resource management plan, Substantive comments,* and *Transmittal letter.*

The 13 revised definitions are: *Appeal, Appeal Deciding Officer, Appeal period, Appeal record, Appeal Reviewing Officer, Appellant, Categorically excluded (CE), Comment period, Decision documentation, Environmental Assessment (EA), Forest Service line officer, Proposed action,* and *Responsible Official.*

The 4 removed definitions are: *Decision document, Decision Memo, Interested party,* and *Proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4.*

The 4 unchanged definitions are: *Decision Notice (DN), Environmental Impact Statement (EIS), Finding of No Significant Impact (FONSI),* and *Record of Decision (ROD).*

Proposed section 215.3 discussed projects and activities subject to legal notice and opportunity to comment.

Comment. Respondents questioned the term "nonsignificant amendment to a land and resource management plan" (part 219) and whether "private party actions" are subject to this part.

Response. The term "nonsignificant amendment to a land and resource management plan" is a term used in the Department's 1982 implementing regulation at part 219 for the National Forest Management Act (as discussed in the **Background** section). Any proposed action implementing a land and resource management plan and resulting in a Decision Notice (DN) or Record of Decision (ROD) is subject to part 215, including those referred to by respondents as "private party actions" and "private projects," assuming that the respondents were referring to special use authorizations.

Proposed section 215.4 revised current regulatory text concerning actions not subject to legal notice and comment. The proposed rule redefined **paragraph (b)** on categorical exclusions and added **paragraph (d)** addressing determinations by the Responsible Official concerning revision of an environmental assessment. **Proposed paragraph (a)** excluded from notice and comment draft environmental impact statements (EIS) because notice and comment procedures are provided pursuant to CEQ's regulations at 40 CFR parts 1500–1508.

Comment. Those commenting believed that the rule should state that these documents are subject to notice and comment but clarify that it may be a different mechanism.

Response. After review of the comments, the Department concurs that it may be confusing to say that draft EISs are excluded from notice and comment. In the final rule, proposed paragraph (a) is now § 215.3(b) and the remaining paragraphs in § 215.4 are redesignated accordingly.

Comment. Respondents requested clarity or questioned all of the actions not subject to legal notice and comment.

Proposed paragraph (b), which discussed proposed actions categorically excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS), generated the majority of the comments related to this section. Respondents supportive of this provision felt it was consistent with the intent and purpose of the ARA. Those opposed raised a variety of concerns, including their belief that categorical exclusions not being subject to this part would increase litigation, exempt a majority of projects from comment, and preclude proper analysis.

Some questioned specifically why Categorical Exclusion 4, Timber Harvest, is no longer included in this section.

Response. While respondents questioned all of the actions not subject to legal notice and comment, it should be noted that only one is new; the remainder have been in place since the rule was promulgated in 1993 (58 FR 58904). Regarding categorical exclusions (paragraph (b)), Congress did not express a specific intent regarding where the "line should be drawn" regarding which activities would be subject to notice, comment, and appeal. While both agency policy in FSH 1909.15 and regulations at 40 CFR 1508.4 made provision for public involvement in categorically excluded actions for many years prior to passage of the ARA, Congress knew that not every decision of the Forest Service was subject to appeal before they passed the ARA. There was no indication in the ARA that Congress intended to extend the notice, comment, and appeal requirements to all classes of categorically excluded activities. This was a determination left to the discretion and judgment of the Secretary. It is evident in the language of the ARA that Congress granted the Secretary authority to establish a flexible process through rulemaking. The Department believes that Congress used the phrase "proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans" to delineate between administrative appeals of forest plans and project level decisions, rather than define a comprehensive or precise set of activities. Congress could, of course, have provided a specific definition; but Congress did not do so. The Department believes that both the current and revised regulations are within the scope of the Secretary's delegated authority to establish a notice, comment, and appeal process as set forth in the ARA. Further, this assumption is supported by the fact that during the 10 years of implementation of the current regulations, Congress has not sought to amend the ARA to adjust the agency's implementation.

It is important to note that, absent a statutory definition, the courts have recognized that agencies are free, indeed expected, to fill in the gaps and that such regulatory interpretations are due deference. Through the 1993 rulemaking process, the Secretary concluded that the Forest Service's categorically excluded activities were generally not of the sort for which Congress intended to apply additional notice, comment, and appeal requirements given the generally minor potential for environmental effects. By their very nature, activities that have been categorically excluded generally have no significant environmental effect. Proposed actions that are categorically excluded were determined not to cross the NEPA "significance threshold" based on the agency's experience, judgment, and analysis from implementing similar activities over many years. Therefore, they typically do not include preparation of extensive records; in fact, decision documents or project files are not required by Forest Service procedures to be maintained for many categorical exclusions. Congressional intent was to streamline the appeal process, not entangle the agency in a costly and time-consuming exercise for minor decisions by Forest Service decisionmakers. While projects and activities that the Forest Service categorically excludes are not subject to this rule, nothing in this part exempts them from NEPA. Agency procedures at FSH 1909.15, Chapter 10, section 11 state that, "Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS preparation, the Forest Service has broadened the concept to apply to all proposed actions." The Department believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional procedures for notice, comment, and appeal contained in this rule and that applying the provisions of this rule to categorically excluded actions is neither intended nor required by the ARA. Thus, proposed activities that are categorically excluded are exempt from the final rule.

Regarding Categorical Exclusion 4, Timber Harvest, the preamble of the proposed rule discussed Categorical Exclusion 4 being removed because the Forest Service no longer used a timber harvest categorical exclusion of that nature. That situation remains true. However, subsequent to publication of the proposed revision to part 215, the Forest Service published proposals for new categorical exclusions for limited timber harvest (67 FR 1026, January 8, 2003) and for fire management activities (67 FR 77038, December 16, 2002). It is important to note that the proposed categorical exclusions are not of the same nature and not intended to replace the former Categorical Exclusion 4. These new categorical exclusions are limited by size and application and are more specific about the types of harvest methods when compared to the Forest Service's former Categorical Exclusion 4. The proposed categorical exclusions are, therefore, much more limited in scope than the former Categorical Exclusion 4.

Comment. Several comments referenced the *Heartwood, Inc.* v. *United States Forest Service* litigation, Civ. No. 99–4255 (S.D. Ill).

Response. On September 15, 2000, a Federal District Court approved an agreement to settle litigation challenging the Department's 1993 regulations at 36 CFR part 215 implementing the ARA. In that agreement, the Forest Service agreed to provide notice, comment, and appeal opportunities for certain defined categories of projects and activities. The Forest Service agreed to make these procedural opportunities available, first through a nationwide directive published in the **Federal Register**. On October 17, 2000, the Forest Service, in compliance with section I(A) of the settlement agreement, published the nationwide directive in the **Federal Register** (65 FR 61302) announcing the terms of the settlement and notifying the public that notice, comment and appeal procedures would be applied to the projects and activities set forth in the settlement agreement for decisions made after October 24, 2000. Second, the Forest Service agreed to issue an interim final rule announcing the same procedural changes, with opportunity for public comment, within 5 months from the date the District Court issued an order approving the terms of the settlement. The settlement anticipated that a subsequent rulemaking process, with an opportunity for public comment, would supersede these interim procedures.

On September 27, 2000, several groups filed motions with the District Court to intervene and set aside the settlement agreement. The District Court subsequently allowed the intervention and on February 6, 2001, the District Court vacated the order approving the settlement agreement. In response, the Forest Service reinstated the procedures for notice, comment, and appeal, as they

existed prior to the settlement. The Heartwood plaintiffs appealed the District Court's orders involving intervention and setting aside the settlement agreement. On January 14, 2003, the United States Circuit Court of Appeals for the Seventh Circuit reversed and remanded the District Court's intervention order and vacated the District Court's February 6, 2001, order that vacated the settlement agreement.

During the pendency of the Heartwood appeal in the Seventh Circuit, the Forest Service commenced the current rulemaking process. This process was envisioned by the parties to the settlement as a final step in addressing the Forest Service's 1993 rule governing notice, comment, and appeal procedures at part 215. In other words, the Heartwood settlement resolved those plaintiffs' legal challenge to the Forest Service's 1993 rule for notice, comment, and appeal at part 215 by establishing interim procedures that provided additional notice, comment, and appeal opportunities for a set of defined types of activities, that, under the 1993 rule, would not be required. These interim measures, however, would remain viable only as long as the 1993 rule was in place.

Prior to the District Court's vacation of the settlement and subsequent to the Seventh Circuit's reinstatement of the settlement, the Forest Service began implementation of the settlement agreement's "initial commitment" phase allowing for notice, comment, and appeal of certain projects and activities that may not have been previously subject to these procedures. However, the current rulemaking for part 215 constitutes a step anticipated by the settlement agreement whereby the Forest Service would promulgate new regulations that would replace both the existing regulations and the interim measures set forth in the settlement agreement. This rulemaking was commenced during the time that the settlement agreement was vacated, but was anticipated by all parties as a final step that would supersede the interim procedures provided by the settlement agreement. Therefore, upon the effective date of this final rule, the Forest Service will cease to implement the procedures set forth in the "interim" provisions and the settlement agreement will no longer have any applicability.

Comment. Other paragraphs in § 215.4 that generated comments were proposed paragraphs (d), (e), and (f). Some commenters felt that determinations not to revise an EA or supplement an EIS, based on new information or changed circumstances, should be subject to notice, comment, and appeal. Comments related to proposed paragraph (e) included the belief that Forest Service Manual and Handbook changes should be subject to this rule. Those expressing concerns about proposed paragraph (f) questioned why nonsignificant amendments to a land and resource management plan made separately were excluded from notice and comment.

Response. With regard to proposed paragraph (d), determinations regarding whether or not to revise an EA are not "decisions" of the nature discussed in the ARA. Guidance for making such determinations is found in FSH 1909.15, Chapter 10, section 18. With regard to paragraph (e), changes to the Manual and Handbooks are not subject to this part because they also are not projects or activities implementing a land and resource management plan. Similarly, in regard to proposed paragraph (f), these types of amendments are not associated with a proposed action; therefore, they are not the type of decision discussed in the ARA. However, as discussed above, they are subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000).

Proposed section 215.5 described the requirements for legal notice of proposed actions and the opportunity to comment. **Proposed paragraph (a)** gave the Responsible Official discretion to determine the most effective timing for providing the 30-day comment period.

Comment. Those favoring the proposed change believed that it would help focus participation earlier in the process and allow for more effective decisionmaking. Those who disagreed thought the proposed change would reduce the public's ability to be involved, was contrary to NEPA, and were concerned that it would be applied unevenly. Some respondents wanted a longer comment period, while others wanted a shorter one.

Response. It is critical to achieving the goals of the ARA that those interested in or affected by a proposed action make their concerns and objections known to the Responsible Official when they can be considered and responded to meaningfully, *i.e.*, before a decision has been made. The change in the final rule is intended to clarify and highlight this important point. And, allowing the Responsible Official flexibility in determining when to give legal notice for the opportunity to comment meets the intent of the ARA. It provides a clearly defined, uniform period when public comment on specific Forest Service projects and activities is solicited. Comments referring to the "removal of the current two or three scoping periods allowed presently" lead the Department to believe further clarification is needed here to differentiate between the notice and comment provisions of this rule pursuant to the ARA and scoping pursuant to NEPA. The 30-day comment period in this section meets the requirements of the ARA. This rule is not related to nor does it affect anything in the implementing regulations for NEPA (40 CFR parts 1500–1508) or agency policy in FSH 1909.15. Further, nothing in the proposed rule or this final rule inhibits public participation in project planning. In the case of EISs, the Department has chosen to meet the ARA requirements by utilizing the notice and comment period on a draft EIS required by 40 CFR parts 1503 and 1506.10 rather than provide two separate comment periods. Forest Service Handbook 1909.15 and 40 CFR parts 1500–1508 do not specify a comment period for EAs.

Proposed section 215.5, paragraph (b) described giving notice. One proposed change was that the actual date the comment period ended would not be stated in the legal notice. Other changes included a provision for accepting electronic comments, specifying that the 30 days could not be extended, and noting that appeal eligibility is tied to providing substantive comments during the 30-day comment period.

Comment. Those responding had concerns about not publishing the actual end date of the comment period in the legal notice and not allowing for extension of the 30-day period.

Response. Currently, the rule directs that the last date for submission of public comment must be published. As a result, in many cases the agency has had to estimate the date of publication when preparing legal notices. While the agency can request that newspapers publish legal notices on a certain date, a publication date is not guaranteed. When publication occurs on a different date than estimated, the result has been conflicting dates and confusion. The Department believes that removing this requirement resolves the potential for conflicts and leaves all parties with the same information.

In the final rule, proposed paragraph (b)(1)(iv) is modified to apply only to proposed actions documented in an EA. A new paragraph (b)(1)(v) is added for proposed actions documented in draft EISs, and the remaining subparagraphs are redesignated accordingly. These changes are made to accommodate the change discussed in § 215.4 above. New paragraph (b)(1)(vii) is modified to say that the legal notice shall include the business hours for the Responsible Official's office for those wishing to hand-deliver their comments. The final rule also modifies paragraph (b)(2)(ii) to state that if the proposed action is a Regional Forester or Chief's decision, notice shall be given in the appropriate newspaper(s) of record for the affected Forest Service unit(s) and to explicitly state that the newspaper of record is the exclusive means for calculating the time to submit comments for EAs and the Notice of Availability in the **Federal Register** is the exclusive means for calculating the time to submit comments for EISs. Here and throughout the rule, the term "principal newspaper" is changed to "newspaper of record." While the term "principal newspaper" has been used since the rule was promulgated, the Department believes the term "newspaper of record" better defines this concept.

Proposed section 215.5, paragraph (c) described the requirements regarding the content of comments, including the submission of substantive comments. Other changes included requiring signatures and clarifying where and how oral comments will be accepted. Also included was a provision noting that if an organization provides comments, then only the organization is eligible to appeal. Individual members of the organization would not be eligible to appeal simply by membership in that organization.

Comment. Those supporting the changes thought they would be instrumental in ensuring the Forest Service is aware of who is providing comments and their specific issues. Those disagreeing with the changes expressed concerns regarding the signature requirement and oral commenters. Several respondents questioned why an organization's comments did not apply to an individual member's appeal.

Response. Because appeal eligibility is linked to commenting, the Department must be able to verify who submitted substantive comments. However, after reviewing the public comment on the proposal to require a signature, the final rule clarifies that verification of the commenter's identity is required for appeal eligibility but that a signature will normally satisfy that requirement. If a signature is not provided or is illegible, the commenter may be asked to verify authorship. With regard to those who provide oral comments, the final rule addresses the concern of verification in the same manner as those providing comments by other means.

Concerning the comments about why an organization's comments did not apply to an individual member's appeal eligibility, the ARA discusses "a person who was involved in the public comment process though submission * * * of written or oral comments." The Department believes an organization is its own entity for purposes of submitting comments. There is nothing in this section that prohibits individual members of an organization from submitting the same or similar comments.

After additional review of the proposed rule, the Department determined it would add clarity if the requirements for legal notice were separate from the requirements for commenting. Therefore, in the final rule this section is now titled "Legal notice of proposed actions" and is reorganized. Paragraph (a) outlines the Responsible Official's duties and paragraph (b) describes legal notice procedures. While paragraph (a) is new, the contents are not. Proposed paragraph (c) is moved to § 215.6.

Proposed section 215.6 set out procedures for the consideration of comments, emphasizing that while the Responsible Office accepts all comments, only substantive comments would be considered for project planning purposes.

Comment. The proposed requirement that comments must be substantive generated a number of comments. While some were supportive, "a must to have responsible and constructive comments," the majority did not support this change. Those disagreeing gave a variety of reasons, including: The definition for "substantive comment" was too vague; it limited the public's ability to participate; substantive issues may arise after the comment period is past; the Department would label comments in opposition to the proposed action as non-substantive and therefore unfairly limit the public's ability to appeal; and the Department wants to reduce the number of comments it has to consider. The question of who would decide whether or not a comment was substantive was also asked.

Response. As discussed in a Congressional colloquy during enactment of the ARA and in the **Federal Register** notice announcing the proposed revision to this rule (67 FR 77451), the notice and comment period is intended to solicit information, concerns, and any issues specific to the proposed action and to provide such comments to the Responsible Official before the decision is made. Experience has shown that when comments are received that are not within the scope of the proposed action or are not specific to the proposed action, or do not include supporting reasons for concerns, they are not useful for consideration in project planning. The intent in requiring substantive comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning. If new information comes to light after the decision, the agency provides guidance for this eventuality in FSH 1909.15, Chapter 10, section 18.

In the final rule, this section is now titled "Comments on proposed actions." Paragraph (a) discusses the opportunity to comment in terms of time period, computation of the time period, comment requirements, and evidence of timely submission (proposed § 215.5(b)(5)). In conjunction with the changes discussed in proposed § 215.4 and § 215.5 concerning draft environmental impact statements (EIS), the final rule modifies paragraph (a)(1)(i), addressing only environmental assessments (EAs); adds a new paragraph (a)(1)(ii) addressing draft EISs; and redesignates the remaining paragraphs accordingly. Paragraph (a)(2) is modified to accommodate computation of both time periods. Paragraph (a)(4)(i) is rewritten to clarify the difference between EAs and EISs as discussed earlier and to indicate that the end of the calendar day is 11:59 p.m.; paragraph (4)(ii) is clarified to indicate that for hand-delivered comments the end of the calendar day is the close of the business day; and paragraph (4)(iii) is rewritten to be consistent with the e-mail provisions in § 215.15(c), clarifying that when comments are submitted electronically, the sender should receive an automatic acknowledgment. This was an oversight in the proposed rule. The final rule revises the definition of the term "substantive comments" (§ 215.2) to clarify the meaning and address the concerns about this definition. And, § 215.5(a)(6) clarifies that it is the Responsible Official's responsibility to determine if comments received meet the definition of "substantive comments." Paragraph (b) discusses consideration of comments (proposed § 215.6).

Proposed section 215.7 detailed the content of the legal notice for the decision. **Proposed paragraph (a)** changes included a provision that the ending date for the appeal period would not be stated in the legal notice and a provision for acceptance of electronic appeals.

Comment. Concerns similar to those expressed for § 215.5 regarding legal

notice, were expressed in regard to not having the deadline to file an appeal stated in the legal notice. Those wanting the deadline published said it is just as easy for the Forest Service to calculate as it is for members of the public and that not publishing it places an undue burden on potential appellants. Some respondents stated that the appeal period should start when the appeal decision is made; others wanted it to state that a dated photocopy of the legal notice is an exception to not using information provided by any other source. Some commenters objected to what they described as the Forest Service requiring them to subscribe to each newspaper of record for every Forest for which they have an interest. Some respondents stated that the appeal period should start when the appeal decision is made.

Response. While the Department is sympathetic to those having to subscribe to several different newspapers of record, the requirement for publishing the legal notice in the newspaper of record is not a change. The Department believes the rule as stated is the most accurate method for potential appellants to know the filing end date. The Department made the decision to link the appeal period to publication of a legal notice when the final rule was promulgated in 1993 to give those wishing to appeal the benefit of a level playing field, even though the ARA does not require a notice as it does for requesting comments. There is no need to address acceptance of a dated photocopy of the legal notice because nothing in this paragraph prohibits it. In fact, the legal notice is the exclusive means for calculating the time to file an appeal. The reasons for not stating the date of publication in the legal notice are addressed in the response to § 215.5. The Department believes that past inconsistencies in informing the public of the correct date resulted in more problems than will occur with having the appellant calculate the appeal filing deadline.

Proposed section 215.7, paragraph (b) required the decision documentation to be mailed to those who requested it and those who commented.

Comment. Respondents questioned when the mailing of the decision document would occur, being of the opinion that it should occur before the legal notice so that time would not be lost within the 45-day appeal period. Other respondents wanted a requirement that each unit keep a list of persons who are interested in Forest Service decisionmaking and mail them a copy of all decisions.

Response. Inadvertently, the order of the paragraphs made it appear that the notice would be published prior to mailing the decision notice. In the final rule, proposed paragraphs (a) and (b) are reversed to indicate that the documents should be mailed prior to the legal notice being published. New paragraph (b)(2)(i) is modified to include the business hours for the Deciding Officer's office for those wishing to hand-deliver their appeals and paragraph (b)(2)(ii) now states that the newspaper of record is the exclusive means for calculating the time to submit comments. Maintaining a list of persons interested in Forest Service project planning is outside the scope of this rulemaking. However, some units may choose to maintain such a list.

Proposed section 215.8 discussed decision implementation.

Comment. Comments were received on proposed paragraph (b), opposing automatic stays of projects during the appeal process.

Response. The stay provisions in paragraph (b) implement a statutory requirement of the ARA and cannot be changed. In the final rule, paragraph (a) is rewritten for clarity and proposed § 215.8 is now § 215.9.

Proposed section 215.9 set out procedures for emergency situations in a separate section for ease of use in finding all pertinent information quickly. Additionally, the proposed rule clarified that an emergency situation determination can be delegated to the Regional Forester or Station Director, and the examples were removed.

Comment. Those supporting the proposed change stated that it made sense to place the decision at the local level with those familiar with the situation and that it would improve the Forest Service's ability to address emergency situations in a timely manner. Some of those not supporting this change said they believed that it was not allowed by the ARA and expressed the concern that it may not be equally applied and could be abused. Some of those commenting asked that some of the examples be retained.

Response. Authorities granted by statute to the Chief may be delegated to subordinate officials within the Forest Service to carry out, unless the Chief specifically reserves the authority or is prohibited by law, regulation, or order from delegating the authority. The ARA does not prohibit delegation of the authority granted by this act. Delegations of authority and responsibility to Forest Service officials are provided in the agency's regulations and directives, with the broad delegations set out in Forest Service Manual (FSM) Chapter 1230. This chapter delegates to the Associate Chief the authority to perform all duties and exercise all functions vested in the Chief (except for those the Chief reserves or is prohibited from delegating). The final rule has been revised to acknowledge that the Associate Chief, by virtue of the authority inherent in this position, is authorized to carry out the Chief's responsibilities related to determinations of emergency situations. The final rule also identifies the officials to whom the Chief or Associate Chief may delegate the authority for emergency situation determinations. The Secretary of Agriculture and the Chief expect those responsible for making emergency situation determinations as provided in this rule do so in a judicious manner, applying the provisions of this rule in a professional and equitable way.

The final rule clarifies that the Chief or the Associate Chief may delegate the authority for making emergency situation determinations and that this authority may be delegated only to the Deputy Chief for National Forest System and Regional Foresters. The rule also clarifies that persons acting in these positions may exercise this authority for making emergency situation determinations only when they are filling vacant positions and have been formally delegated full acting authority for the positions; persons acting in positions during temporary absences of the incumbents shall not be delegated this authority. Station Directors were inadvertently included in the proposed rule, and this reference is removed in the final rule. Also, proposed § 215.9 is redesignated § 215.10 in the final rule; paragraph (a) is split in the final rule into paragraph (a), titled Authority, and paragraph (b), titled Determination.

Comment. Some of those commenting wanted clear standards established for making emergency situation determinations. Some respondents thought that the determination should be subject to appeal, while other respondents suggested that appeals should not be allowed when an emergency situation determination has been made. Some respondents commented that when an emergency situation is not stayed it should be declared the final agency action so that the appellant is free to go to court.

Response. There is no indication that Congress intended that the determination itself would be subject to appeal. The final rule sets out the procedures and criteria by which agency officials will determine whether an emergency situation exists. The ARA itself makes an exception to the automatic stay provision for emergency situations. While the determination that an emergency situation exists eliminates the automatic stay, it does not exempt the activity from appeal.

Proposed section 215.9, paragraph (b) clarified when implementation of the project or activity may begin and differentiated between decisions documented in a ROD and a DN.

Comment. Some commenters suggested that the implementation requirements for decisions documented in a DN be the same as for a ROD.

Response. The regulations at 40 CFR 1506.10(b)(2) govern implementation of decisions documented in a Record of Decision. However, this rule governs implementation of decisions documented in an appeal. In the final rule, this paragraph is now paragraph (c) of § 215.10.

Proposed section 215.9, paragraph (c) clarified how legal notice for emergency situations would occur.

Comment. This paragraph elicited concern that the Responsible Official could notify the public of emergency situation determinations only when the legal notice of the decision was published.

Response. The Responsible Official has the discretion to request an emergency situation determination as the need arises. However, if an emergency determination has been requested or determined when public comment is sought on a proposed action (§ 215.5), then the Responsible Official is required to so state in the legal notice. In the final rule, this paragraph is now paragraph (d) of § 215.10.

Comment. As noted in § 215.2 above, the proposed rule included substantial loss of economic value as a consideration in determining an emergency situation. Some respondents commented that the Department has not demonstrated the need for using economics as a factor in emergency situation determinations. Quite a few comments disagreed with adding economic considerations as a factor in determining an emergency situation.

Response. These comments are addressed earlier in § 215.2.

The final rule designates proposed § 215.9 Emergency situation as § 215.10.

Proposed section 215.10 addressed decisions subject to appeal. Two paragraphs were added: **paragraph (a)(2)** concerning new decisions resulting from new information or changed circumstances and **paragraph (a)(3)** concerning decisions affecting National Forest System lands made in conjunction with other Federal agencies.

Comment. Commenters responding to *proposed paragraph (a)(2)* expressed the opinion that if a new decision results from new information or changed circumstances, then the entire decision should be subject to appeal, not just the portion that changed.

Response. Agency guidance in FSH 1909.15 Chapter 10, section 18 provides that upon completion of a revised EA, the original decision must be reconsidered based on the EA and FONSI. When a Responsible Official issues a new decision, it may address all or a portion of the original decision. It is this new decision that is subject to appeal.

Comment. Some respondents suggested that *proposed paragraph (b)*, regarding holders of special use authorizations, should be deleted. They believed that it allowed such parties to appeal the same decision twice using the two appeal processes.

Response. It is appropriate to have paragraph (b). Many decisions affecting special use authorizations implement a land and resource management plan, meeting the intent of the ARA. Allowing a holder of a permit to choose between part 251, subpart C and this rule does not make two methods of appeal available. Paragraph (b) specifically says that holders may use one appeal process or the other but not both for a given decision.

In the final rule, proposed paragraphs (a)(1)–(3) are designated (a)–(c), proposed paragraph (b) is designated (d); and proposed § 215.10 is designated § 215.11.

Proposed section 215.11 listed decisions not subject to appeal. Two new paragraphs were added in the proposed rule: (b) new information not requiring a new decision, and (g) concurrences and recommendations to other Federal agencies.

Comment. Some of those commenting on the proposed section requested that additional types of decisions be included in this section. They cited the following: Emergency situations; catastrophic damaged timber; certain low impact operations; decisions that may affect treaty rights and trust resources (federally recognized Indian tribes); and a determination that a new decision is not needed when an EIS is modified (paragraph (b)). Other respondents thought there should be fewer decisions listed, citing all the decisions currently not subject to appeal.

Response. The decisions and actions listed in § 215.11 as not subject to appeal, with the exception of paragraphs (b) and (g), have been in effect since 1993. The Department has reviewed what is listed, as well as the additions and deletions suggested, and believes those listed in the final rule meet the intent of the ARA.

Comment. A number of commenters said they believed that *proposed paragraph (e)* regarding categorical exclusions should not be included.

Response. Similar comments were received about categorical exclusions not being subject to notice and comment. All comments concerning categorical exclusions are addressed in § 215.4.

Comment. Some of those commenting believed that the addition of *proposed paragraph (g)* regarding concurrences and recommendations to other Federal agencies, meant that Forest Service "terms and conditions" under section 4(e) of the Federal Power Act (FPA) would no longer be appealable under this rule.

Response. This paragraph was added to clarify situations when the agency was asked for concurrences and/or recommendations on other Federal agencies' projects where the Forest Service had no jurisdiction for making a decision. The preamble for the proposed rule incorrectly referred to "concurrences and recommendations from other agencies" instead of "concurrences and recommendations to other agencies" as stated correctly in the text of the proposed rule.

The addition of proposed paragraph (g) "concurrences and recommendations to other agencies" has no bearing upon the Forest Service's issuance of terms and conditions under section 4(e) of the FPA. The proposed language was intended to clarify that there would be no appeal opportunity in those instances where the Forest Service is only concurring with another agency's decision or issuing non-binding recommendations. The proposed language of paragraph (g) is inapplicable in the FPA context, as the Forest Service's issuance of 4(e) terms and conditions does not constitute a "concurrence" with the Federal Energy Regulatory Commission's (FERC's) licensing decision and is binding in nature. The Forest Service is in the process of reviewing its Hydropower Manual and Handbook, in coordination with the current ongoing FERC hydropower licensing rulemaking and will clarify portions addressing NEPA disclosure documents.

Additional comments on section 4(e) terms and conditions of the FPA were beyond the scope of this rule; *e.g.*, comments suggesting how the Forest Service should develop 4(e) terms and conditions and what should and should

not be included. These comments were referred to appropriate agency officials.

The final rule makes clear in paragraph (a) that if an amendment, revision, or adoption of a land and resource management plan has a project embedded in it, the project decision will be subject to this rule after the appeal/objection process is completed on the land and resource management plan decision. Proposed § 215.11 is designated as § 215.12 in the final rule; paragraph (c) is split and a new paragraph (d) is added; and paragraphs (d) through (g) in the proposed rule are redesignated as (e) through (h) in the final rule.

Proposed section 215.12 designated who can appeal. The proposed revision removed the provision for "interested party" because the Department does not believe the provision fulfills the intent of the ARA.

Comment. Comments both supported and opposed this change. Those supporting the change stated that interested parties should be involved early in project planning. Those opposed believed that this change could lead to more appeals and that it would restrict public involvement. They believed there is no other way for non-appellants to be involved in settlement meetings with appellants. Others said that interested parties provide helpful information to the Reviewing Officer. Some of those commenting believed that the appeal process was a continuation of public involvement. There was a suggestion that parties who receive funding from the Forest Service or who have a contractual involvement with the proposed action should not be allowed to appeal Forest Service decisions.

Response. The ARA provides distinct provisions regarding predecisional notice and comment and post decisional appeal opportunities. The intent is for interested persons to participate early in the project planning process and not wait until after the decision has been issued to become involved. While the appeal process is an opportunity to voice concerns about a decision, it is more advantageous to both the Responsible Official and the public for those who have helpful and important information that could affect a decision, to bring it forward during project planning. The belief that informal disposition meetings between the Responsible Official and an appellant are "settlement agreement meetings" is a misconception. The informal disposition meeting between an appellant(s) and Responsible Official is not for the purpose of making a new decision. Rather, it is an opportunity for the Responsible Official and appellant(s) to discuss the appeal, agree on facts, and explore opportunities to resolve the issues by means other than formal review and decision on the appeal. As an example, there have been occasions when appellants had a better understanding of the decision after meeting with the Responsible Official and withdrew their appeal.

Proposed section 215.12, paragraph (a) restricted appeal eligibility to those who submitted substantive comments during the comment period and included a provision making it clear that membership in an organization submitting comments on behalf of the organization does not grant appeal eligibility to individuals with membership in that organization.

Comment. Those supporting the change stated that it facilitated the intent of the ARA and strengthened constructive and meaningful public participation. Some respondents suggested that the Forest Service should impose additional requirements for those who wish to appeal. Those opposing the change cited such reasons as substantive comments are not easily defined; it denies "standing" to appeal to persons who submitted comments deemed to be nonsubstantive or "expressed an interest'; and it was not right to not allow individual members of an organization to appeal when the organization submitted comments because the organization represents its members.

Response. The Department believes that an "expression of interest," such as someone who simply requests a copy of the decision, does not meet the Congressional intent for participation by those who have the "right to appeal" as expressed in the ARA language. This conclusion is based on a reading of those portions of the ARA and the Congressional colloquy regarding the appeal process, which make clear that an individual's participation in the statutorily mandated public comment period is required to establish standing to appeal. One of the basic goals of this rulemaking was to encourage early and meaningful public participation when it is most useful to the Responsible Official during project planning. The proposed rule restructured both the comment and appeal procedures to encourage early and meaningful public involvement by requiring the submission of substantive comments and linking appeal eligibility to those who submitted substantive comments. The Department believes it is appropriate to require individual members of an organization to meet appeal eligibility standards. The ARA itself does not mention "organizations"; it makes reference to "a person who was involved in the public comment process." However, as discussed in the response to similar comments in § 215.5, the Department has always considered an organization the same as a "person." While the Department believes it is appropriate to accord an organization eligibility to appeal as an organization when it submits substantive comments, it is not appropriate to give individual members in that organization appeal eligibility just because their organization submitted comments.

Proposed section 215.12, paragraph (b) clarified that if an appeal listed multiple names or multiple organizations, each individual or organization listed must meet the test of having submitted comments during the comment period.

Comment. One commenter asked if a new group formed of individuals and groups who provided comments could appeal.

Response. The ability to appeal as a newly formed group rests on whether each member of the group met the comment requirements as individuals during the notice and comment period.

Proposed section 215.12, paragraph (c) does not allow Federal agencies to appeal.

Comment. Those who commented on this paragraph suggested Federal agencies should have the opportunity to appeal under this part.

Response. Other avenues are available to Federal agencies for working through concerns they might have with a proposed action. It is more appropriate, and in fact expected, that the Department and other Federal agencies work cooperatively during project planning.

Proposed section 215.12, paragraph (d) allowed Federal employees to appeal as individuals but limited the information they could use to that information already released to the public.

Comment. One commenter was opposed to the limitation, stating that information available under the Freedom of Information Act (FOIA), even if not released to the public, should be available to Federal employees to use.

Response. The Department agrees, and this was the intent of the proposed paragraph. The final rule clarifies this point. Additionally, the final rule clarifies that the requirements of paragraph (a) of this section must be met also.

In the final rule, proposed section § 215.12 is designated as § 215.13.

Proposed section 215.13 set forth where appeals are filed.

Comment. One supportive comment was received for the inclusion of Research Station Directors as Responsible Officials.

Response. In the final rule, the table in proposed § 215.13 showing Appeal Deciding Officers is revised to reflect the change discussed in § 215.2. In past appeal rules, appeals were filed with the decisionmaker's direct supervisor. When the 1993 rule was promulgated, the Forest Service thought a more centralized approach would promote both better and more efficient appeal decisionmaking. However, the ARA did not require elevating decisions to a central point. The current rule has had unintended adverse consequences. With the agency's decentralized organization, it has interfered with the healthy relationship existing in the chain of command as well as creating disincentives for collaboration at the decisionmaking level. Therefore, in the final rule, the Appeal Deciding Officer is the next level above the Responsible Official. And, proposed § 215.13 and proposed § 215.19 are combined and designated § 215.8, titled Appeal Deciding Officer. This change is made to set forth all the information concerning the Appeal Deciding Officer in one section.

Proposed section 215.14 discussed appeal time periods and process.

Comment. Some comments suggested additional changes such as creating a specific entity to hear Forest Service appeals, similar to the Department of the Interior Board of Land Appeals; requiring a filing fee for appeal submission (to be returned if appeal is upheld); setting a penalty proportional to any timber devaluation as a result of delays caused by appeals that are not upheld; and setting higher fees for Freedom of Information Act (FOIA) requests.

Response. The Department did not address the requested changes because they are beyond the scope of this rulemaking and/or existing authorities granted to the Department.

Proposed section 215.14, paragraph (a) set out the time period for appeals to be filed. **Proposed paragraph (b)** described the computation of the 45-day period, which includes weekends and holidays.

Comment. Some commenters suggested changes or flexibility in filing period and in how the 45-day period is calculated, *i.e.*, not counting holiday or weekend days in the 45-day calculation.

Response. The ARA specifically provides that appeals must be filed within 45 days.

Proposed section 215.14, paragraph (c) described evidence for timely filing, including filing appeals electronically.

Comment. One comment supported electronic filing of appeals, while another said that electronic appeals should not be allowed since an appellant should make the effort to sign an appeal. One comment suggested the rule address what happens if the Forest Service's "email goes down." Respondents also questioned how to determine when an appeal is due.

Response. The proposed rule discusses how timeliness (45 days) is determined for each of the methods available for filing appeals. Concerning the specific requests for addressing potential problems with various means of delivery, the rule is not the appropriate place to address possible scenarios. Each circumstance is more appropriately addressed on a case-by-case basis. The final rule stipulates that if appellants do not receive an automatic acknowledgment electronically that their filing was received, it is their responsibility to file a timely appeal by some other method.

Proposed section 215.14, paragraph (d) specified that there will be no time extensions.

Comment. Several commenters thought that provision should be made allowing for extensions under certain circumstances.

Response. The ARA does not provide for time extensions. In the final rule, paragraphs (a) and (c) are rewritten for clarity and paragraph (d) now requires the Responsible Official to include a list of individuals and organizations who submitted substantive comments during the comment period. This change is linked to appeal eligibility and dismissal. And, proposed § 215.14 is designated § 215.15.

Proposed section 215.15 described appeal content. **Proposed paragraph (b)** of this section and proposed § 215.1(b) limited appeal issues to those raised during the comment period.

Comment. Commenters responding to this proposed paragraph expressed both support and disagreement with the limitation. Some respondents suggested that appeal issues should be limited to those that have a significant effect on the environment, or should be limited to violations of law, regulation, or policy. Those who disagreed expressed several concerns: the inability to raise issues in an appeal that might not arise until after the comment period; changes between a draft and final EIS; the FONSI determination; and loss of the ability to challenge the record.

Response. Limiting appeal issues to those raised during the comment period was proposed as a means of encouraging early participation in project planning rather than raising concerns for the first time after a decision is made. However, after reviewing comments, the Department understands and agrees with the concerns. The final rule removes the requirement from this section and § 215.1 that precluded issues from being raised in an appeal that were not raised during the comment period and paragraph (b) of this section is further rewritten and reorganized. And, as discussed in § 215.19 below, paragraph (b)(3) now asks those filing an appeal with more than one individual or organization to identify a lead appellant as defined in § 215.2.

Proposed section 215.15, paragraph (c) addressed non-acceptance of an appeal.

Comment. Those commenting opposed not accepting an appeal without a signature, and questioned how authors of electronic appeals will be verified. Additional criteria for not accepting appeals were suggested also.

Response. After consideration of the comments, this paragraph has been rewritten in the final rule clarifying the intent of requiring a signature. The phrase "not accept" is replaced with "not process," reflecting what was actually intended by "not accept." It is important for the Department to know the identity of appellants and how to contact them. Not having this information has caused problems in the past. The final rule makes clear that if an appeal is filed and the appellant cannot be identified, and a way to contact the appellant has not been provided, the appeal will not be processed. Further, paragraph (c)(1) is added to clarify that if an appeal is deemed illegible for any reason, it will not be processed. The suggested additional criteria for not accepting appeals (a notarized signature, copy of site visit certification, and description of economic or environmental impact the appellant will suffer by approval of the proposed action) are contrary to the ARA. Proposed § 215.15 is designated § 215.14 in the final rule.

Proposed section 215.16 detailed when an appeal would be dismissed. It added allowing dismissal when an appellant withdraws an appeal.

Comment. All of the comments were in the form of suggestions for additional reasons to dismiss or to delete some of the reasons for dismissal. One commenter cautioned that dismissal without review for reasons of insufficient information should be employed judiciously (paragraph (a)(8)).

Response. Many of the suggestions do not comply with the ARA. The Department agrees that proposed paragraph (8) should be used only with great care. Concerning paragraph (a)(1), it was not the intent of the Department to imply in the proposed rule that if an attachment is untimely, the appeal itself is untimely and would be dismissed. Therefore, the final rule makes clear in paragraph (b) that any additional information that is untimely will not be considered as a part of the appeal. Proposed paragraph (b) is designated paragraph (c).

Proposed section 215.17 discussed the informal disposition process.

Comment. Two general suggestions were received. One suggested clarifying whether the Responsible Official is to meet with each of the appellants together or separately. A second suggested making a specific provision for all appellants and interested parties to communicate with the Responsible Official during the informal disposition process.

Response. The Department believes there is a better chance of achieving a successful outcome if the rule does not regulate how such meetings are conducted but rather allows the Responsible Official maximum discretion and flexibility in holding informal disposition meetings. Neither does the Department see a need to impose further regulatory requirements regarding communications between the Responsible Official and the appellant.

Proposed section 215.17, paragraph (a) discussed the Responsible Official's responsibility to contact the appellant with an offer to meet.

Comment. One comment suggested that the Responsible Official be required to contact each appellant when an appeal listed multiple names, while another wondered what the phrase "as soon as practicable" meant.

Response. The question about contacting each appellant from an appeal listing multiple names or organizations is clarified in the final rule and explained more fully in § 215.15 above and § 215.19 below. The phrase "as soon as practicable" means there is an expectation that it will be done at the earliest possible time.

Proposed section 215.17, paragraph (b) discussed the time and location of informal resolution meetings.

Comment. Comments requested that the Forest Service build discretion into the requirements to ensure that meetings are in a location convenient and accessible to all parties; that time extensions for the initial meeting should be allowed if all parties agree; and a deadline for completion of the informal disposition process should be specified.

Response. While not specifically requiring meetings in a location convenient and accessible to all parties, the agency believes this request is met with the requirement that meetings should generally be held at a location within or near the National Forest. However, when that is not possible, this paragraph allows for teleconference. Concerning the timeframe comments, the ARA statutorily sets the 15-day requirement for meeting. The timeframe for completing informal disposition meetings is limited only by the 45-day requirement for the appeal disposition to be completed.

Proposed section 215.17, paragraph (c) discussed the structure of the meeting.

Comment. Many of the comments received discussed who participates in the informal disposition meeting, including allowing "other participants" at informal disposition meetings and having the meeting open to the public. Other comments requested that the recording of informal disposition meetings and telephone meetings be allowed.

Response. After reviewing the comments and the intent of the informal disposition meeting as previously discussed earlier in this section, the final rule omits the reference to "any other participants." However, meetings are still open to the public. Telephone meetings are allowed. Recording of informal disposition meetings is allowed; however, submitting the tape to the Reviewing or Deciding Official is not because the Reviewing Official's recommendation and Deciding Officer's appeal disposition must be based on the same information that was available to the Responsible Official, as well as the appeal.

Proposed section 215.17, paragraph (d) described outcomes.

Comment. There was a suggestion about the "Forest Service making a good faith effort to resolve the appeal" should be addressed, and a suggestion to eliminate the requirement for the Responsible Official to advise the Appeal Deciding Officer when an appellant declines to meet. One comment pointed out an inconsistency between paragraphs (d)(1) and (d)(3).

Response. The Department expects Responsible Officials to meet the intent of the ARA and put forth a good faith effort to achieve a successful outcome at the informal disposition meeting. However, it does not see the need to regulate this expectation. The requirement for the Responsible Official to provide information on the outcome of the informal disposition meeting to the Appeal Deciding Officer is necessary as it lets both the Appeal Reviewing Officer and Appeal Deciding Officer know whether the appeal has or has not been resolved and whether formal review should continue. Whether or not an appellant meets with the Responsible Official does not prejudice review of an appeal.

The final rule is rewritten, clarifying that the only information transmitted to the Appeal Deciding Officer is the outcome. It also modifies paragraph (d)(3) to read "unresolved portion," removing the inconsistency pointed out in the comments.

Proposed section 215.18 described the appeal review and disposition process. It added a paragraph clarifying procedures for the Responsible Official when an appeal decision includes instructions and added other clarifications regarding appeal disposition.

Comment. General comments received expressed concerns about what should be in the appeal decision letter and availability of appeal decisions.

Response. The Department believes it is not appropriate for a rule to specify the information an appeal decision should include. However, it is appropriate to provide such guidance through other means, and this has been done through Forest Service guidance. Appeal decisions also are posted on the Forest Service and Regional Office World Wide Web/Internet pages.

Proposed section 215.18, paragraph (b) described the formal disposition process.

Comment. Some of the comments received disagreed with the provision allowing for disposing of an appeal without issuing a decision or giving the reason for not issuing a decision. Other comments addressed length of time (45 days) for responding to an appeal and when notification of an appeal decision occurs.

Response. Paragraph (b)(2) was added to ensure that appellants would be notified of the final agency action. The statutory language in the ARA controls not only the length of time within which an appeal decision must be issued (45 days), but also provides for the disposition of an appeal after 45 days has elapsed without an appeal decision. To alleviate concerns about the timing between when an appeal decision is mailed to the appellant(s) and when implementation of the project begins, the final rule clarifies that an appeal decision (paragraph (b)(1)) must be sent within 5 days of its being rendered.

Proposed section 215.19 detailed the Appeal Deciding Officer's authority.

Comment. Some of those commenting wanted the Appeal Deciding Officer's independence from the Responsible Official clarified; others sought to have the Appeal Deciding Officer publish the procedures under which an appeal is reviewed. Some respondents thought the rule should clarify the level of communication permissible between the Responsible Official and the Appeal Deciding Officer, while others wanted the difference between the Appeal Deciding Officer and Appeal Reviewing Officer roles better defined.

Response. The Department believes the roles of the Appeal Deciding Officer and Appeal Reviewing Officer are clearly defined in the rule. Concerning the question about the level of communication permissible between the Responsible Official and the Appeal Deciding Officer, one must keep in mind the need to maintain a fair and objective review. The Appeal Deciding Officer's decision must be based on the same information that was available to the Responsible Official, as well as the appeal. Therefore, in order to maintain fairness and objectivity, discussions between the Appeal Deciding Officer and the Responsible Official, or between the Appeal Deciding Officer and the appellant(s), concerning the merits of the appeal are not allowed. The rule already states that the Appeal Deciding Officer's review is based on the appeal record and Appeal Reviewing Officer's recommendation, and § 215.2 states what is included in the appeal record and its use by the Appeal Deciding Officer.

Proposed section 215.19, paragraph (a) discussed procedural determinations.

Comment. One suggestion was to make a provision addressing what happens when certain situations are not addressed in the rule.

Response. The Department understands the concern and believes the current policy of addressing unique situations on a case-by-case basis is working. It would be impossible to identify and provide for all possible scenarios.

Proposed section 215.19, paragraph (b) allowed the Appeal Deciding Officer to consolidate appeals and issue one or more appeal decisions while **proposed paragraph (c)** gave the Appeal Deciding Officer the authority to select a representative when an appeal lists multiple names and/or organizations.

Comment. Some respondents wanted clarification for dealing with appeals by multiple groups; some wanted clarification on how paragraph (c) relates to paragraph (b); some wanted the rule to ensure that when multiple appeals are combined, that the combination is based on similar issues, while others stated the Forest Service has no legal authority to consolidate multiple appeals with multiple appellants and multiple issues or appoint a representative. Some respondents did not see the need for the Forest Service to appoint a representative, while others suggested the Appeal Deciding Officer should have the discretion to request appellants to select their own representative.

Response. There is not a direct relationship between proposed paragraph (b) and proposed paragraph (c). For efficiency, proposed paragraph (b) allowed the Appeal Deciding Officer to consolidate appeals for the purpose of issuing one or more appeal decisions. Proposed paragraph (c) allowed the Appeal Deciding Officer to appoint a representative when an appeal lists several different organizations and/or individuals. The Department does have the authority to implement both paragraphs as the ARA left the discretion to the Department to develop and implement a process. If individuals and groups meeting appeal eligibility want to join together to appeal, the Department agrees that it is better for them to appoint their own representative for the purposes of communications. Therefore, in the final rule, § 215.14 (b)(2)(i) now asks those filing an appeal with more than one individual or organization to identify a lead appellant as defined in § 215.2. However, the final rule clarifies in this section that the Appeal Deciding Officer has the authority to appoint the first individual/organization listed if a lead appellant is not identified in the appeal (§ 215.8(b)(2)(ii)).

Proposed section 215.19, paragraph (d) clarified that the Appeal Deciding Officer's decision could be different from the Appeal Reviewing Officer's recommendation.

Comment. The only comment on this proposed paragraph requested that when this happens, it should be disclosed to the appellants.

Response. Currently, the rule already provides for releasing the Appeal Reviewing Officer's recommendation after the appeal decision is rendered. The Appeal Deciding Officer's decision is based on review of the appeal record, including the Appeal Reviewing Officer's recommendation, so releasing it after the decision is appropriate.

In reviewing the proposed rule, the Department determined that it would be more efficient to combine the two sections concerning the Appeal Deciding Officer. Therefore, the final rule combines proposed § 215.13, Where to file appeals, and proposed § 215.19, Appeal Deciding Officer's authority, into one section designated at § 215.8, Appeal Deciding Officer, in the final rule.

Proposed section 215.20 discussed the Appeal Reviewing Officer's responsibilities.

Comment. One respondent wanted to delete the Appeal Reviewing Officer's position.

Response. The Secretary does not have the authority to remove the Appeal Reviewing Officer from the process. The ARA mandates an Appeal Reviewing Officer and the responsibilities.

Proposed section 215.20, paragraph (b) discussed the Appeal Reviewing Officer's recommendation.

Comment. Some of those commenting on the proposed paragraph asked that the Appeal Reviewing Officer address all procedural issues that develop after an appeal is filed. Others thought the Appeal Reviewing Officer should consult with the Responsible Official whenever there is a question about the record; that their recommendation should always be made public; and review procedures they must follow should be detailed.

Response. Because the authority for making the appeal decision lies with the Appeal Deciding Officer, the Department believes it is more appropriate for the Appeal Deciding Officer to make the procedural decisions. While the ARA discusses the Appeal Reviewing Officer's responsibilities, it does not mandate the details of the review process. The Department believes that maximum flexibility should be given to an Appeal Deciding Officer to decide what is expected from the Appeal Reviewing Officer in terms of their recommendation. The final rule does limit the review to the decision documentation and appeal. The current rule already states that the Appeal Reviewing Officer's recommendation is available once the disposition of the appeal is concluded. The appeal process, including the Appeal Reviewing Officer's recommendation, is intended to be an independent review at the same or higher organizational level as the Responsible Official. The integrity of the appeal record must be maintained consistently because the Appeal Reviewing Officer's recommendation must be based on the same information that was available to the Responsible Official, as well as the appeal. To maintain a fair and objective review, communication between the Responsible Official and the Appeal

Reviewing Officer, or between the Appeal Reviewing Officer and the appellant(s), concerning the merits of the appeal is not appropriate.

Proposed section 215.20, paragraph (c) allowed the Appeal Reviewing Officer to consolidate appeals for the purpose of issuing one or more recommendations.

Comment. Those commenting on the proposed paragraph disagreed with this provision, expressing the opinion that it is inequitable for them to have the authority to consolidate multiple appeals and appoint a single individual to represent all appellants on all issues raised in all appeals.

Response. It appears there might be some confusion between combining appeals for purposes of reviewing issues in this section and the Appeal Deciding Officer's authority to select a representative when a single appeal lists multiple names and/or organizations. Appeals may be consolidated for purposes of reviewing issues and rendering one or more recommendations.

The final rule designates proposed § 215.20 as § 215.19 and retitles it Appeal Reviewing Officer, consistent with § 215.8, Appeal Deciding Officer.

Proposed section 215.21 detailed the Secretary's authority. Proposed paragraph (b) exempts decisions signed by the Secretary or Under Secretary of Agriculture from the provisions of this rule.

Comment. All of those responding to this provision opposed it. Reasons cited included concerns that: it evades the appeal process; it excludes local expertise and the public in general; it will cost the taxpayer money because it will cause the public to go directly to court; it violates NEPA, NFMA, and the ARA; it should be a regulatory issue regardless of which administration is in power; sound science will be removed from decisions made at this level; and an entire class of decisions will be exempt from appeal based solely on the origin of the decision.

Response. Congress has charged the Secretary with the responsibility to protect, manage and administer the national forests. The Secretary has delegated that mission to the Under Secretary for Natural Resources and Environment and the Forest Service. USDA's general regulations make it clear that the Secretary and Under Secretary of Agriculture retain authority to make decisions on matters that have been delegated to the Forest Service. Nothing in the ARA alters the Secretary's long-established authority to make decisions affecting the Forest Service. The ARA directed the Secretary to promulgate rules to "establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans * * * and shall modify the procedure for appeals of decisions concerning such projects." Secretarial decisions have never been subject to appeal under any of the Forest Service's administrative appeal systems and there is no indication that Congress intended to work such a change through the ARA. Nothing in this section allows a Responsible Official, Departmental or Forest Service, to avoid any applicable notice and comment requirements; for example, circulating a draft or supplemental EIS for comment (40 CFR 1505.2). This should alleviate some of the concerns from the public about not having an opportunity to comment.

The final rule is rewritten to improve clarity; however, the changes do not alter the original intent. Proposed § 215.21 is designated § 215.20 in the final rule.

Proposed section 215.22 discussed judicial proceedings and deleted the opportunity to waive this rule and proceed directly to court.

Comment. The only comment received wanted the waiver of the exhaustion requirement from the current rule retained.

Response. The USDA Reorganization Act of 1993 details when judicial proceedings can occur.

Proposed § 215.22 is designated § 215.21 in the final rule.

Proposed section 215.23 discussed when this rule would become effective.

Comment. No comments were received on this section.

Response: In the final rule, proposed § 215.23 is designated § 215.22, and this section provides that the rule is effective June 4, 2003, except as noted in paragraph (b) discussed below. Pursuant to the requirements of 5 U.S.C. 553, the Department has elected not to delay the effective date of the final rule. In doing so, confusion resulting from implementation of interim procedures established through the settlement agreement cited in the response to § 215.4 will be reduced. See the discussion in paragraph (c) below for further discussion.

Paragraph (a) makes clear that the notice, comment, and appeal procedures of this part apply to all projects and activities for which legal notice is published on or after the effective date of this rule, June 4, 2003, with one exception, discussed in paragraph (b) below.

Paragraph (b) provides for a 30-day delay in implementation of the provisions for electronic comments and appeals (§§ 215.5, 215.6, 215.7, 215.15). Even though the final rule becomes effective immediately, it will take some time to establish electronic mailboxes across the Forest Service to receive electronic comments and appeals, as provided for in the final rule.

Paragraph (c) makes clear that projects and activities for which legal notice is published prior to the effective date of the final rule are subject to the notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003. This rule can be found in the edition of 36 CFR parts 200 to 299, Revised as of July 1, 2002. As explained in the discussion of § 215.4, effective June 4, 2003, the Forest Service will cease to implement the procedures set forth in the interim provisions of the settlement agreement addressed in the § 215.4 discussion above.

Proposed section 215.24 stated that this rule contained information collection requirements and would be assigned an OMB control number.

Comment. No comments were received on this section.

Response. Subsequent to the publication of the proposed rule, the Forest Service and the Department determined that the proposed rule did not contain any information collection or recordkeeping requirements and therefore is not subject to OMB review pursuant to the Paperwork Reduction Act. *See* "Controlling Paperwork Burdens on the Public" in the following Regulatory Certifications for further discussion. Proposed § 215.24 is not included in the final rule.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant action. This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this final rule.

Environmental Impacts

This final rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." This final rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this final rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and thereby imposes no paperwork burden on the public and is not subject to the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. part 3501 *et seq.*) and implementing regulations at 5 CFR part 1320.

Federalism

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has determined that the final rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on the proposed rule, the Department has determined that additional consultation is not needed with State and local governments prior to adopting a final rule.

Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required before issuance of the final rule.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This final rule would only revise the administrative procedures and requirements that guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this final rule. Nevertheless, in the event that such a conflict were to be identified, the final rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this final rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 215

Administrative practice and procedure, National forests.

■ Therefore, for the reasons set forth in the preamble, revise part 215 of Title 36 of the Code of Federal Regulations to read as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Sec.

215.1 Purpose and scope.
215.2 Definitions.
215.3 Proposed actions subject to legal notice and opportunity to comment.
215.4 Actions not subject to legal notice and opportunity to comment.
215.5 Legal notice of proposed actions.
215.6 Comments on proposed actions.
215.7 Legal notice of decision.
215.8 Appeal Deciding Officer.
215.9 Decision implementation.
215.10 Emergency situations.
215.11 Decisions subject to appeal.
215.12 Decisions and actions not subject to appeal.
215.13 Who may appeal.
215.14 Appeal content.
215.15 Appeal time periods and process.
215.16 Dismissal of appeal without review.
215.17 Informal disposition.
215.18 Formal review and disposition procedures.
215.19 Appeal Reviewing Officer.
215.20 Secretary's authority.
215.21 Judicial proceedings.
215.22 Applicability and effective date.

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381 (Appeals Reform Act), 106 Stat. 1419 (16 U.S.C. 1612 note).

§ 215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) *Scope.* The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's

project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) implementing regulations and procedures at 40 CFR parts 1500–1508, the National Forest Management Act (NFMA) implementing regulations at part 219, and the pertinent requirements at part 216 regarding notice and comment for certain Forest Service Manual (FSM) directives. The appeal process is available to those who submit substantive comments during the comment period. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture. Throughout this part, references to decisions which affect an authorized use or occupancy of National Forest System lands and meet all other applicable requirements of this part, are subject to appeal by the holders of such authorizations under either this part or part 251, subpart C, but not under both parts. In addition, certain other parties meeting requirements of § 251.86 may also be eligible to appeal projects under either this part or part 251, subpart C, but not under both parts.

§ 215.2 Definitions.

Address—An individual's or organization's current physical mailing address. An e-mail address is insufficient for identification.

Appeal—The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

Appeal Deciding Officer—The Secretary of Agriculture (USDA) or the USDA or Forest Service designee having the delegated authority and responsibility to render a decision on an appeal filed under this part. The Appeal Deciding Officer is the next higher-level supervisor of the Responsible Official.

Appeal disposition—Either a written appeal decision or written notification in cases where the original decision is the final agency action and no appeal decision is issued.

Appeal period—The 45-calendar-day period following publication of the legal notice in the newspaper of record of a decision during which an appeal may be filed with the Appeal Deciding Officer.

Appeal record—The information upon which review of an appeal is conducted, consisting of the transmittal letter, the appeal, decision documentation, the legal notice of decision, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.

Appeal Reviewing Officer—A Forest Service line officer or USDA official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on disposition of the appeal.

Appellant—An individual or organization filing an appeal who submitted substantive oral or written comments during the comment period on a specific project or activity.

Categorically excluded (CE)—Proposed actions, which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; FSH 1909.15, Chapter 30).

Comment period—The 30-calendar-day period following publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment (40 CFR parts 1503 and 1506.10; FSH 1909.15, Chapter 20). The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day.

Decision documentation—The Decision Notice (DN) or Record of Decision (ROD) and all relevant environmental and other analysis documentation and records, including all comment letters received, on which the Responsible Official bases a decision under appeal.

Decision Notice (DN)—A concise written record of a Responsible Official's decision based on an environmental assessment and a Finding of No Significant Impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Emergency situation—A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; or that would result in substantial loss of economic value to the Federal Government if implementation of the decision were delayed.

Environmental Assessment (EA)—A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental Impact Statement (EIS)—A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI)—A document prepared by a Federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR1508.13; FSH 1909.15, Chapter 40).

Forest Service line officer—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.

Lead appellant—For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term "appellant" applies to lead appellant also.

Name—The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land—All lands, waters or interests therein administered by the Forest Service (§ 251.51).

Newspaper(s) of record—Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register** by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

Projects and activities implementing a land and resource management plan—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.

Proposed action—A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.

Record of Decision (ROD)—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official—The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

Substantive comments—Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.

Transmittal letter—The Responsible Official's letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.

§ 215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice (§ 215.5) and opportunity to comment procedures (§ 215.6) apply only to:

(a) Proposed projects and activities implementing land and resource management plans (§ 215.2) for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities described in a draft environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR parts 1500–1508 also;

(c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;

(d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in § 215.18(b)(1); and

(e) Proposed research activities to be conducted on National Forest System lands.

§ 215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice (§ 215.5) and opportunity to comment (§ 215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31;

(b) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219;

(d) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (part 216).

§ 215.5 Legal notice of proposed actions.

(a) *Responsible Official.* The Responsible Official shall:

(1) Provide notice of the opportunity to comment on a proposed action implementing the land and resource management plan.

(2) Determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment.

(3) Promptly mail notice about the proposed action to any individual or organization who has requested it and to those who have participated in project planning.

(4) Publish a legal notice of the opportunity to comment on a proposed action as provided for in paragraph (b)(2).

(5) Accept all written and oral comments on the proposed action as provided for in § 215.6(a)(4).

(6) Identify all substantive comments.

(b) *Legal notice of proposed action.*

(1) *Content of legal notice.* All legal notices shall include the following:

(i) The title and brief description of the proposed action.

(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location.

(iii) A statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in § 215.10, when applicable.

(iv) For a proposed action to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (§ 215.6(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.

(v) For a proposed action that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (§ 215.6(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(vi) A statement that only those who submit timely and substantive comments will be accepted as appellants.

(vii) The Responsible Official's name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) to whom comments are to be submitted and the Responsible Official's office business hours for those submitting hand-delivered comments (§ 215.6(a)(4)(ii)).

(viii) A statement indicating that for appeal eligibility each individual or representative from each organization submitting substantive comments must either sign the comments or verify identity upon request.

(ix) The acceptable format(s) for electronic comments.

(x) Instructions on how to obtain additional information on the proposed action.

(2) *Publication.*

(i) Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.

(ii) Legal notice of the opportunity to comment on a proposed action shall be published in the applicable newspaper of record identified in paragraph (b)(2)(i) for each National Forest System unit. When the Chief is the Responsible Official, notice shall also be published in the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit comments on a proposed action to be analyzed and documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit comments on a proposed action that is analyzed and documented in a draft EIS.

§ 215.6 Comments on proposed actions.

(a) *Opportunity to comment.*

(1) *Time period for submission of comments.*

(i) *Environmental Assessment.* Comments on the proposed action shall be accepted for 30 days following the date of publication of the legal notice.

(ii) *Draft Environmental Impact Statement.* Comments on the proposed action shall be accepted for 45 days following the date of publication in the **Federal Register** pursuant to 40 CFR parts 1500–1508.

(iii) It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4).

(iv) The time period for the opportunity to comment on environmental assessments shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m.).

(i) *Environmental Assessment (EA).* The 30-day comment period for proposed actions to be analyzed and documented in an EA begins on the first day after publication of the legal notice.

(ii) *Draft Environmental Impact Statement (EIS).* The 45-day comment period for proposed actions that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the **Federal Register**.

(3) *Requirements.* Individuals and organizations wishing to be eligible to appeal must provide the following:

(i) Name and address.

(ii) Title of the proposed action.

(iii) Specific substantive comments (§ 215.2) on the proposed action, along with supporting reasons that the Responsible Official should consider in reaching a decision.

(iv) Signature or other verification of identity upon request; identification of the individual or organization who authored the comment(s) is necessary for appeal eligibility.

(A) For appeals listing multiple organizations or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each organization and for each individual in the case of multiple names, to meet appeal eligibility requirements.

(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or organizational representative may be necessary for electronically submitted comments or comments received by telephone.

(v) Individual members of an organization must submit their own substantive comments to meet the requirements of appeal eligibility; comments received on behalf of an organization are considered as those of the organization only.

(vi) Oral comments must be provided at the Responsible Official's office during normal business hours via telephone or in person, or if during non-business hours, must be at an official agency function (such as a public meeting) which is designed to elicit public comment.

(4) *Evidence of timely submission.* When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct Responsible Official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For electronically mailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments.*

(1) The Responsible Official shall consider all substantive written and oral comments submitted in compliance with paragraph (a).

(2) All written comments received by the Responsible Official shall be placed in the project file and shall become a matter of public record.

(3) The Responsible Official shall document and date all oral comments received in response to the legal notice (§ 215.5) and place them in the project file.

§ 215.7 Legal notice of decision.

(a) The Responsible Official shall promptly mail the Record of Decision (ROD) or the Decision Notice (DN) and Finding of No Significant Impact (FONSI) to those who requested the decision document and those who submitted substantive comments during the comment period (§ 215.6).

(b) The Responsible Official shall publish a legal notice of any decision documented in a ROD or DN in the applicable newspaper of record (§ 215.5(b)(2)). The legal notice shall:

(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the DN and FONSI or ROD.

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:

(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, the acceptable format(s) for appeals electronically filed, and the Appeal Deciding Official's office business hours for those filing hand-delivered appeals.

(ii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§ 215.15 (a)) and that those wishing to appeal should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.

(iii) A statement that an appeal, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Appeal Deciding Officer (§ 215.8) within 45 days following the date of publication of the legal notice.

(iv) A statement indicating that individuals or organizations who submitted substantive comments during the comment period (§ 215.6) may appeal.

(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§ 215.10), and which portion of the project is covered by that determination as provided for in § 215.10.

(vi) A statement indicating how many days following publication of the decision that implementation may begin (§ 215.9), including those portions covered by an emergency situation determination, if applicable (§ 215.10).

(3) When no substantive comments expressing concerns or only supportive comments are received, include a statement indicating that the decision is not subject to appeal pursuant to § 215.12.

§ 215.8 Appeal Deciding Officer.

(a) *Appropriate Appeal Deciding Officer.* Appeals must be filed with the Appeal Deciding Officer as follows:

If the responsible official who made the decision is:	Then the Appeal Deciding Officer is:
Chief	Secretary of Agriculture.
Regional Forester or Station Director.	Chief of the Forest Service.
Forest Supervisor	Regional Forester.
District Ranger	Forest Supervisor.

(b) *Authority.* The Appeal Deciding Officer makes all procedural determinations. Such determinations are not subject to further administrative review.

(1) *Consolidation of appeal decisions.* In cases involving more than one appeal of a decision, the Appeal Deciding Officer may consolidate appeals and may issue one or more appeal decisions.

(2) *Appeals with multiple names (organization(s) or individuals).*

(i) When an appeal lists multiple names, the Appeal Deciding Officer shall identify all qualified appellants (§ 215.13).

(ii) The Appeal Deciding Officer may appoint the first name listed as the lead appellant (§ 215.2) to act on behalf of all parties to that appeal when the appeal does not specify a lead appellant (§ 215.14(b)(3)).

(3) *Appeal disposition.*

(i) The Appeal Deciding Officer shall render the final disposition on an appeal and notify the appellant(s) in writing concerning the disposition of the appeal (§ 215.15(e)(2)).

(ii) The Appeal Deciding Officer may issue an appeal decision different from the Appeal Reviewing Officer's recommendation.

§ 215.9 Decision implementation.

(a) When no appeal is filed within the 45-day time period, implementation of the decision may begin on, but not before, the 5th business day following the close of the appeal-filing period (§ 215.15).

(b) Except for emergency situations (§ 215.10(c)), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§ 215.2). In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.

(c) When a project or activity decision is not subject to appeal (§ 215.12), implementation may occur as follows:

(1) Immediately after publication (§ 215.7(b)) of a decision documented in a Decision Notice; or

(2) Immediately when documented in a Record of Decision after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2).

§ 215.10 Emergency situations.

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation (§ 215.2) exists, and they may delegate this authority only to the Deputy Chief for National Forest System and to the Regional Foresters. Persons acting in these positions may exercise this authority only when they are filling vacant positions and they have been formally delegated full acting authority for the positions. Persons acting in positions during temporary absences of the incumbents shall not be delegated this authority to make emergency situation determinations.

(b) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested.

(c) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately after publication (§ 215.7(b)) of a decision documented in a Decision Notice, for that portion of the decision determined to be an emergency.

(2) Immediately when documented in a Record of Decision, after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.

(d) *Notification.* The Responsible Official shall notify the public in the legal notice of the decision (§ 215.7) that the Forest Service made a determination that all or part of a project decision is an emergency situation.

§ 215.11 Decisions subject to appeal.

The following decisions are subject to appeal under this part:

(a) Decisions for projects and activities implementing land and resource management plans (§ 215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which contain a non-significant amendment to a land and resource management plan as a part of the decision;

(b) A new DN after revision of an environmental assessment (EA), or a new ROD after supplementation or revision of an environmental impact statement (EIS), pursuant to FSH 1909.15, Chapter 10, section 18. However, only that portion of the decision that is changed is subject to appeal.

(c) Decisions made in conjunction with other Federal agencies and meeting the requirements of preceding paragraph (a). However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§ 215.2) is subject to appeal under this part.

(d) Decisions which affect the holders of a special use authorization or certain applicants for special use authorizations for use or occupancy of National Forest System lands (§ 251.86) and meeting the requirements of preceding paragraph (a), are subject to appeal by those same parties under either this part or part 251, subpart C, but not under both parts.

§ 215.12 Decisions and actions not subject to appeal.

The following decisions and actions are not subject to appeal under this part, except as noted:

(a) The amendment, revision, or adoption of a land and resource management plan that includes a project decision, except that the project portion of the decision is subject to this part. The amendment, revision, or adoption portion of a decision is subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(b) Determination, with documentation, that a new decision is not needed following supplementation of an environmental impact statement (EIS) or revision of an environmental assessment (EA) pursuant to FSH 1909.15, Chapter 10, section 18.

(c) Preliminary findings made during planning and/or analysis processes on a project or activity. Such findings are appealable only upon issuance of a decision document.

(d) Subsequent implementing actions that result from the initial project decision that was subject to appeal.

(e) Projects or activities for which notice of the proposed action and opportunity to comment is published (§ 215.5) and

(1) No substantive comments expressing concerns or only supportive comments are received during the

comment period for a proposed action analyzed and documented in an EA (§ 215.6); or

(2) No substantive comments expressing concerns or only supportive comments are received during the comment period for a draft EIS (40 CFR 1502.19), and the Responsible Official's decision does not modify the preferred alternative identified in the draft EIS.

(f) Decisions for actions that have been categorically excluded from documentation in an EA or EIS pursuant to FSH 1909.15, Chapter 30, section 31.

(g) An amendment, revision, or adoption of a land and resource management plan that is made independent of a project or activity (subject to either the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000)).

(h) Concurrences and recommendations to other Federal agencies.

§ 215.13 Who may appeal.

(a) Individuals and organizations who submit substantive written or oral comments during the 30-day comment period for an environmental assessment, or 45-day comment period for a draft environmental impact statement (§ 215.6, 40 CFR 1506.10; FSH 1909.15, Chapter 20), except as provided for in paragraph (c) of this section, may file an appeal. Comments received from an authorized representative(s) of an organization are considered those of the organization only; individual members of that organization do not meet appeal eligibility solely on the basis of membership in an organization; the member(s) must submit substantive comments as an individual in order to meet appeal eligibility.

(b) When an appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section. Individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted as appellants.

(c) Federal agencies may not appeal.

(d) Federal employees, who otherwise meet the requirements of this part for filing appeals in a non-official capacity, shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty nor use government property or equipment in the preparation or filing of an appeal. Further, employees shall not incorporate information unavailable to the public, *i.e.* Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§ 215.14 Appeal content.

(a) It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official's decision should be reversed (paragraph (b)(6–9)).

(b) The appeal must be filed with the Appeal Deciding Officer § 215.8 in writing. At a minimum, an appeal must include the following:

(1) Appellant's name and address (§ 215.2), with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);

(3) When multiple names are listed on an appeal, identification of the lead appellant (§ 215.2) and verification of the identity of the lead appellant upon request;

(4) The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;

(5) The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§ 215.11(d));

(6) Any specific change(s) in the decision that the appellant seeks and rationale for those changes;

(7) Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;

(8) Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and

(9) How the appellant believes the decision specifically violates law, regulation, or policy.

(c) The Appeal Deciding Officer shall not process an appeal when one or more of the following applies:

(1) An appellant's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided.

(2) The appellant has not provided a reasonable means of contact.

(3) The decision cannot be identified.

(4) The appeal is illegible for any reason, including those submitted electronically in a format different from that specified in the legal notice.

§ 215.15 Appeal time periods and process.

(a) *Time to file an appeal.* Written appeals, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the publication date of the legal notice of the decision in the newspaper of record (§ 215.7). It is the responsibility of appellants to ensure that their appeal is received in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m.).

(2) The day after the publication of the legal notice of the decision in the newspaper of record (§ 215.7) is the first day of the appeal-filing period.

(3) The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* When there is a question about timely filing of an appeal, timeliness shall be determined by:

(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) an appeal and any attachment;

(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal and any attachments; or

(3) When an appeal is electronically mailed, the appellant should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the appellant does not receive an automated acknowledgment of the receipt of the appeal, it is the appellant's responsibility to ensure timely receipt by other means.

(d) *Extensions.* Time extensions, except as noted in paragraph (b) of this section, are not permitted.

(e) *Other timeframes.* Unless an appeal is resolved through the informal disposition process (§ 215.17), the following timeframes and processes shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer including a list of those individuals or organizations who submitted substantive comments.

(2) *Appeal disposition.* Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer should render a written decision to the appellant(s) concerning their appeal. When an appeal decision is not rendered by day 45, the Appeal Deciding Officer shall notify the appellant(s) in writing that an appeal decision will not be issued (§ 215.18(b).

(3) When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action.

§ 215.16 Dismissal of appeal without review.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The postmark on an appeal mailed or otherwise filed (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal is not within the 45-day appeal-filing period (§ 215.15).

(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal is not within the 45-day appeal-filing period (§ 215.15).

(3) The requested relief or change cannot be granted under law or regulation.

(4) The appellant has appealed the same decision under part 251 (§ 215.11(d)).

(5) The decision is not subject to appeal (§ 215.12).

(6) The individual or organization did not submit substantive comments during the comment period (§ 215.6).

(7) The Responsible Official withdraws the decision.

(8) The appeal does not provide sufficient information in response to § 215.14(b)(6) through (b)(9) for the Appeal Deciding Officer to render a decision.

(9) The appellant withdraws the appeal.

(b) Any additional information or attachment to an appeal that is not filed within the 45-day appeal-filing period shall not be considered with the appeal.

(c) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.

§ 215.17 Informal disposition.

(a) *Offer to meet.* When an appeal is received, the Responsible Official, or designee, must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after the Appeal Deciding Officer receives the appeal and the Responsible Official is notified. In the case of multiple names or organizations, it is the responsibility of the lead appellant (§ 215.2) to contact any other persons named in their appeal who may desire to participate in the informal disposition meeting. If the appellant(s) decline to meet, the Responsible Official shall so advise the Appeal Deciding Officer.

(b) *Time and location of meeting.* When an appellant agrees to meet, the initial meeting shall take place within 15 days after the closing date for filing an appeal (§ 215.15). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor, Regional Forester, or the Chief is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Meeting structure.* Generally, the appellant(s) should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.

(d) *Outcome.* After the informal disposition meeting, the Responsible Official shall notify the Appeal Deciding Officer in writing of the meeting participants and which of the following three outcomes occurred.

(1) An appellant and the Responsible Official reach agreement on disposition of all or a portion of an appeal. The appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal shall continue.

(2) As a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed. The Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18, and §§ 215.3 and 215.4.

(3) An appeal is not entirely resolved through informal disposition. Formal review and disposition of the unresolved portion of the appeal shall continue (§ 215.18).

§ 215.18 Formal review and disposition procedures.

(a) *Scope of review.* The Appeal Deciding Officer shall complete a review based on the appeal record (§ 215.2) and the Appeal Reviewing Officer's recommendation (§ 215.19(b)).

(b) *Disposition.* The Appeal Deciding Officer shall either:

(1) Issue a written appeal decision within 45 days following the end of the appeal-filing period, which affirms or reverses the Responsible Official's decision, either in whole or in part, and which may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18 and §§ 215.3, 215.4, 215.11, and 215.12. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant(s), the Appeal Reviewing Officer, and the Responsible Official within 5 days; or

(2) Not issue an appeal decision and so notify the appellant(s) in writing that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final agency action of the Department of Agriculture (§ 215.15(e)(2)). Notification shall be sent no sooner than 46 days nor later than 50 days following the end of the appeal-filing period.

(c) *Final administrative determination.* The Appeal Deciding Officer's appeal disposition constitutes the final administrative determination of the Department of Agriculture.

§ 215.19 Appeal Reviewing Officer.

(a) *Designation.* The Appeal Reviewing Officer shall be:

(1) Designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided; or

(2) Designated by the Secretary in the case of Chief's decisions.

(b) *Review and recommendation.* The Appeal Reviewing Officer shall review an appeal and the decision documentation and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) *Multiple appeals.* In cases involving more than one appeal of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

§ 215.20 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Decisions of the Secretary of Agriculture or Under Secretary, Natural Resources and Environment are not subject to the notice, comment, and appeal procedures set forth in this part. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§ 215.21 Judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6912 (e)).

§ 215.22 Applicability and effective date.

(a) The notice, comment, and appeal procedures set out in this part, except as noted in paragraph (b) below, apply to all projects and activities for which legal notice is published pursuant to § 215.5 on or after June 4, 2003.

(b) The provisions concerning electronic comments (§§ 215.5(b)(vi–vii) and 215.6(a)(4)(iii)) and electronic appeals (§§ 215.7(b)(2)(i) and (iii) and 215.15(c)(1) and (3)) are effective July 7, 2003.

(c) The notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003 remain in effect for those projects and activities for which legal notice (§§ 215.5 or 215.7) is published prior to June 4, 2003 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2002).

Dated: May 13, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–13927 Filed 6–3–03; 8:45 am]

BILLING CODE 3410–11–P

Federal Register

Wednesday,
June 4, 2003

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Internet Crimes Against Children Task Force Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1376]

Program Announcement for the Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications from state and local law enforcement agencies interested in participating in the Internet Crimes Against Children (ICAC) Task Force Program. In an effort to expand ICAC Regional Task Force coverage to areas that do not currently have an ICAC Regional Task Force presence, this solicitation is limited to State and local law enforcement agencies in the following states and localities: Arkansas; New Jersey; northern Florida;[1] the Los Angeles, California, metropolitan area;[2] and the northern Virginia/Washington, DC metropolitan area (excluding Maryland).[3] Only one grant will be awarded per State/locality listed above. This program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses committed by offenders who use online technology to victimize children.

DATES: Applications must be received by July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Chris Holloway, 202–305–9838, ICAC Program Manager, Child Protection Division, Office of Juvenile Justice and Delinquency Prevention.

SUPPLEMENTARY INFORMATION:

Purpose

Due to an increase in funding, this solicitation is being extended to further expand the ICAC Task Force program to provide national coverage beyond that established through grants awarded under this program in 2002. Funding the specific states and regions identified in this solicitation will further this goal.

The purpose of this program is to help state and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technologies to sexually exploit children. Throughout this program announcement, "Internet crimes against children" refers to the sexual exploitation of children that is facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

Unlike some adults who view the benefits of the Information Age dubiously, children and teenagers have seized the Internet's educational and recreational opportunities with astonishing speed. Adapting information technology to meet everyday needs, young people are increasingly going online to meet friends, get information, purchase goods and services, and complete school assignments. Currently, 28 million children and teenagers have access to the Internet; industry experts predict that they will be joined by another 50 million globally by 2005. Although the Internet gives children and teenagers access to valuable resources, it also increases their risk of being sexually exploited or victimized.

When online, large numbers of young people encounter sexual solicitations they do not want and sexual material they do not seek. In the most serious cases, they are targeted by offenders seeking children for sex. Research conducted by the University of New Hampshire revealed that one in five children between ages 10 and 17 received a sexual solicitation over the Internet in 1999. One in 33 received an aggressive solicitation from someone who asked to meet them somewhere, called them on the telephone, or sent them mail, money, or gifts.

Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children and seek victims with little risk of detection. Preferential sex offenders no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room, trolling for children susceptible to victimization. This alarming activity has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet is also rapidly becoming the new marketplace for offenders seeking to acquire material for their child pornography collections. Child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control their victims. Child pornography is used to break down inhibitions, validate sex between children and adults as normal, and control victims throughout their molestation. When offenders lose interest in their victims, child pornography is often used as blackmail to ensure the child's silence; when posted on the Internet, pornography becomes an enduring and irretrievable record of victimization and a relentless violation of that child's privacy.

OJJDP recognizes that the increasing online presence of children, the lure of predators searching for unsupervised contact with underage victims, and the proliferation of child pornography present a significant threat to the health and safety of children and a formidable challenge to law enforcement today and into the foreseeable future. Three main factors complicate law enforcement's response to these challenges.

First, conventional definitions of jurisdiction are practically meaningless in the electronic universe of cyberspace; very few investigations begin and end within the same geographical area. Because they involve multiple jurisdictions, most investigations require close coordination and cooperation between Federal, State, and local law enforcement agencies.

Second, evidence collection in ICAC investigations typically requires specialized expertise and equipment. Because preferential sex offenders tend to be avid recordkeepers, their computers, magnetic media, and related equipment can be valuable sources of evidence. However, routine forensic examination procedures are insufficient for seizing, preserving, and analyzing this information. In addition, the seizure of computers and related technology may lead to specific legal issues regarding property and privacy rights.

Third, routine interviewing practices are inadequate for collecting testimonial evidence from child victims of Internet crimes. Some children deny they are victims because they fear embarrassment, ridicule from their peers, or discipline from their parents. Other victims bond with the offender, remain susceptible to further manipulation, or resent what they perceive as interference from law enforcement. Investigators who do not fully understand the dynamics of juvenile sexual exploitation risk losing critical information that could help convict perpetrators or identify additional victims. When appropriate, medical and psychological evaluations should be a part of law enforcement's response to cases involving child victims. In addition to ensuring that injuries or diseases related to the victimization are treated, forensic medical examinations provide crucial corroborative evidence.

The above factors almost routinely complicate the investigative process. Although no two cases raise identical issues of jurisdiction, evidence collection, and victim services, it is logical to presume that investigations characterized by a multijurisdictional, multidisciplinary approach will more likely result in successful prosecutions.

A variety of Federal activities are helping and can further help law enforcement respond to these offenses. For example, the Innocent Images National initiative, managed by the Federal Bureau of Investigation's (FBI's) Cyber Division, Innocent Images Unit, works specifically on cases involving computer-facilitated child sexual exploitation. The U.S. Customs Service (USCS) and the U.S. Postal Inspection Service (USPIS) have successfully investigated hundreds of child pornography cases.

The Child Exploitation and Obscenity Section (CEOS) of the U.S. Department of Justice prosecutes Federal violations and offers advice and litigation support to Federal, State, and local prosecutors working on child pornography and sexual exploitation cases.

With support from OJJDP and private-sector funding, the National Center for Missing and Exploited Children (NCMEC) serves as the nation's primary resource center and clearinghouse for issues involving missing and exploited children. NCMEC's Training Division coordinates a comprehensive training and technical assistance program that includes prevention and awareness activities. Gathering information from citizens and Internet service providers, the CyberTipline (*http://www.missingkids.com*) collects online reports regarding the computer-facilitated sexual exploitation of children and rapidly forwards this information to the law enforcement agencies with investigative jurisdiction. Brought online in March 1998, the CyberTipline has provided law enforcement officers with information that has enabled them to arrest individuals seeking sex with underage victims and to safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with OJJDP, the FBI, USCS, USPIS, and CEOS. NCMEC has also developed an education and awareness campaign that features the Kids and Company curriculum, the Know the Rules teen awareness program, and two pamphlets (*Child Safety on the Information Highway* and *Teen Safety on the Information Highway*) that provide information about safe Internet practices for children and youth. These programs and materials are offered free of charge, and OJJDP encourages communities working on child victimization issues to use them. Additional information about NCMEC's services for children, parents, educators, and law enforcement officers can be obtained by calling 800–THE–LOST or by accessing NCMEC's Web site at *http://www.missingkids.com*.

Since fiscal year 1998, OJJDP has awarded funds to 35 State and local law enforcement agencies to develop regional multijurisdictional and multiagency task forces to prevent, interdict, and investigate ICAC offenses. The following jurisdictions currently receive ICAC Regional Task Force Program funding: Alabama Department of Public Safety; Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Clark County, Nevada, Las Vegas Metropolitan Police Department; Colorado Springs, Colorado, Police Department; Connecticut State Police; Cuyahoga County, Ohio, District Attorney; Dallas, Texas, Police Department; Delaware County, Pennsylvania, District Attorney; Georgia Bureau of Investigation; Hawaii Office of the Attorney General; Illinois State Police; Indiana State Police; Kentucky State Police; Knoxville, Tennessee, Police Department; Louisiana Office of the Attorney General; Maryland State Police; Massachusetts Department of Public Safety; Michigan State Police; Nebraska State Patrol; New York State Division of Criminal Justice Services; North Carolina Division of Criminal Investigation; Oklahoma State Bureau of Investigation; Phoenix, Arizona, Police Department; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; Saint Paul, Minnesota, Police Department; San Diego, California, Police Department; San Jose, California, Police Department; Seattle, Washington, Police Department; Sedgewick County, Kansas, Sheriff's Office; South Carolina Office of the Attorney General; Utah Office of the Attorney General; Wisconsin Department of Justice; and the Wyoming Division of Criminal Investigation. These agencies have become regional clusters of ICAC technical and investigative expertise, offering prevention and investigation services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. Collectively, task force agencies have made more than 800 arrests, seized more than 900 computers, and provided forensic or investigative assistance in nearly 3,000 cases.

Despite these accomplishments, law enforcement agencies continue to be increasingly challenged by sex offenders who use computer technology to victimize children. To help meet this challenge, OJJDP is continuing the ICAC Regional Task Force Program, which will competitively award cooperative agreements to state and local law enforcement agencies seeking to improve their investigative responses to the computer-facilitated sexual exploitation of children.

Program Strategy

The ICAC Task Force Program seeks to enhance the nationwide response to child victimization by maintaining and expanding a State and local law enforcement network composed of regional task forces. The program encourages communities to develop multijurisdictional, multiagency responses and provides funding to State and local law enforcement agencies to help them acquire the knowledge, personnel, and specialized equipment needed to prevent, interdict, and investigate ICAC offenses. Although the ICAC Task Force Program emphasizes law enforcement investigations, OJJDP encourages jurisdictions to include intervention, prevention, and victim services activities as part of their comprehensive approach.

OJJDP Program Management

During the past four years of managing the ICAC Task Force Program, OJJDP has made the following observations:

1. The Internet challenges traditional thinking about law enforcement jurisdiction and renders city, county, and State boundaries virtually meaningless. Because of this jurisdictional ambiguity, offenders are often able to frustrate enforcement actions and conceal their criminal activities.

2. Nearly all ICAC investigations (95 percent) involve substantial communication and coordination efforts among Federal, State, and local law

[1] For the purpose of this solicitation, northern Florida is defined as counties and cities north of, and including, Hillsborough County, Indian River County, Osceola County, and Polk County.

[2] For the purpose of this solicitation, the Los Angeles metropolitan area is defined as cities and towns within, and including, Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County.

[3] For the purpose of this solicitation, the northern Virginia/Washington, DC, metropolitan area (excluding Maryland) is defined as the cities of Washington, DC; Alexandria, Virginia; and Falls Church, Virginia, and the cities and towns in Virginia within, and including, Arlington County, Fairfax County, Loudoun County, Prince William County, and Stafford County.

enforcement agencies. Without meaningful case coordination, law enforcement agencies may inadvertently investigate identical suspects and organizations, target undercover operatives of other law enforcement agencies, or disrupt clandestine investigations of other agencies.

• The obvious need for interagency cooperation and coordination has sustained interest in maintaining standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations that are based on referrals from outside agencies—referrals that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.

• The clandestine nature of undercover operations, the anonymity of Internet users, and the unclear jurisdictional boundaries of cyberspace significantly exacerbate these investigative concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement agencies to go on the offensive and, most important, protect children from revictimization. Although carefully managed undercover operations by well-trained officers can be very effective, these operations also generate concerns regarding legal, coordination, communication, and resource management issues.

3. Although Internet awareness appears to be growing, many children, teenagers, and parents are not sufficiently informed about the potential dangers and repercussions of releasing personal information to, or meeting with, individuals encountered online.

4. Although Federal agencies are responsible for monitoring illegal interstate and telecommunications activities, protecting children is primarily the responsibility of State and local law enforcement agencies. The production of child pornography or the sexual assault of a child—whether originating online or not—usually creates both a jurisdictional interest and a responsibility for State and local authorities.

• Despite the belief that these cases are usually manufactured by undercover operations in which officers pose as minors in chat rooms, most ICAC investigations are initiated in response to a citizen complaint or a request from law enforcement. Unfortunately, these cases often involve multiple victims who require a response by both local law enforcement and victim services.

5. The Internet is placing a new demand on forensic resources. Computers are piling up in evidence rooms across the country because many agencies do not have the forensic capacity to meet the needs of investigative efforts.

6. A generation ago, officers beginning their law enforcement careers would be issued a uniform, a service weapon, and a notebook. Those items rarely changed during a 20-year career. Today, changes in equipment and software occur seemingly overnight. Officers are hard-pressed to stay current not only with the technological changes but also with a motivated offender community that is adapting these new technologies to exploit children.

To address these observations and concerns, the ICAC Task Force Program implements the following management strategies:

• Maintaining and expanding the nationwide network of State and local law enforcement agencies participating in the program.

• Ensuring that ICAC Task Force personnel are adequately trained and equipped.

• Establishing and/or maintaining ICAC Task Force investigative standards to facilitate interagency case referrals.

• Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.

• Fostering meaningful information-sharing to avoid redundant investigations or activities that could disrupt the ongoing investigations of other agencies.

• Maintaining an ICAC Task Force Board composed of local law enforcement executives and prosecutors to advise OJJDP, formulate policy recommendations, and assess the law enforcement community's needs for training and technical assistance related to investigating Internet crimes.

• Convening an annual ICAC Task Force training conference to focus on child exploitation, emerging technology, and its relevance to criminal activity and enforcement efforts and to enhance the networking essential for sustaining an effective State and local law enforcement response to online crime.

OJJDP established the ICAC Task Force Program Standards through a collaborative process involving the ten original ICAC Task Force agencies, the FBI, NCMEC, USCS, USPIS, CEOS, and the Executive Office for United States Attorneys. The standards were designed by the task force agencies to foster information-sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals by standardizing investigative practices. In 2002, the ICAC standards were revised and updated to reflect twenty additional ICAC Regional Task Forces and an expanded program focus on the protection of children.

OJJDP has also established an ICAC Task Force Board (the Board) to help administer the ICAC Task Force Program. As a condition of the award, each grantee must designate a policy-level law enforcement official or prosecutor to be a Board member. Although its primary responsibility is to serve as an advisory group to OJJDP, the Board also encourages case coordination and facilitates information-sharing on trends, innovative investigative techniques, and prosecution strategies. Technical advice is provided to the Board by NCMEC, CEOS, the FBI, USCS, and USPIS.

The award also requires that each ICAC Regional Task Force member send at least one investigator and one policy-level official to an ICAC Task Force Program orientation seminar. The seminars, which were developed by OJJDP and NCMEC in consultation with Federal law enforcement agencies, provide information on legal issues, specific investigative techniques, undercover operation documentation requirements, behavioral characteristics of preferential sex offenders, and other topics relevant to child exploitation cases.

To learn about the next seminar scheduled at NCMEC's Jimmy Ryce Law Enforcement Training Center in Alexandria, VA, contact NCMEC at *http://www.missingkids.com*. Expenses associated with attendance at the orientation seminar will be reimbursed by OJJDP and NCMEC. Expenses associated with Board responsibilities will be covered by grant funds.

Goal

The program's goal is to enhance the ICAC investigative response of State and local law enforcement agencies.

Objectives

Projects must accomplish the following objectives:

• Develop or expand multiagency, multijurisdictional regional task forces that include, but are not limited to, representatives from law enforcement, prosecution, victim services, and child protective services agencies. Regional task forces should include large regional geographic areas, entire States, or, when applicable, multiple States. Relevant nongovernment organizations may also be included. OJJDP encourages applicants to invite Federal law enforcement agencies to participate in the task force.

• Institute policies and procedures that comply with the ICAC Task Force Program Standards (*see* "OJJDP Program Management" above). Requests from eligible law enforcement agencies for copies of the ICAC Program Operational and Investigative Standards must be faxed on official letterhead to the Juvenile Justice Clearinghouse at 301–519–5600.

• Enhance investigative capacity by properly equipping and training ICAC Task Force investigators. Task force investigators should be computer-literate, knowledgeable about child exploitation issues, and familiar with Federal and State statutes and caselaw pertaining to ICAC investigations.

• Develop and maintain case management systems to record offenses and investigative results, make or receive outside agency referrals of ICAC cases, and comply with the reporting requirements of the ICAC Task Force Monthly Performance Measures Report.

• Develop response protocols or memorandums of understanding that foster collaboration, information-sharing, and service integration among public and private organizations that provide services to sexually exploited children.

Eligibility Requirements

Applicants must be State and/or local law enforcement agencies located in Arkansas; New Jersey; northern Florida;[4] the Los Angeles, California, metropolitan area,[5] or the northern Virginia/Washington, DC, metropolitan area (excluding Maryland).[6] Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly designated as the primary applicant (for correspondence, award, and management purposes) and the other(s) designated as coapplicant(s).

[4] For the purpose of this solicitation, northern Florida is defined as counties and cities north of, and including, Hillsborough County, Indian River County, Osceola County, and Polk County.

[5] For the purpose of this solicitation, the Los Angeles metropolitan area is defined as cities and towns within, and including, Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County.

[6] For the purpose of this solicitation, the northern Virginia/Washington, DC, metropolitan area (excluding Maryland) is defined as the cities of Washington, DC; Alexandria, Virginia; and Falls Church, Virginia, and the cities and towns in Virginia within, and including: Arlington County, Fairfax County, Loudoun County, Prince William County, and Stafford County.

Selection Criteria

OJJDP is committed to establishing a network of state and local law enforcement agencies to respond to offenses involving online enticement and child pornography. Within this network, ICAC Task Forces positioned throughout the country will serve as regional sources of technical, educational, and investigative expertise, providing assistance to parents, teachers, law enforcement officers, and other professionals working on child sexual exploitation issues. Successful applicants will be expected to serve as regional clusters of ICAC technical and investigative expertise, collaborate with existing ICAC Task Forces, and become part of a nationwide law enforcement network designed to protect children from computer-facilitated victimization. To accomplish this goal, regional task forces should include large regional geographic areas, entire States, or, when applicable, multiple States.

Applications should include evidence of multidisciplinary, multijurisdictional partnerships among public agencies, private organizations, community-based groups, and prosecutors' offices. Successful applicants will develop or enhance an investigative ICAC response that includes prevention, education, and victim services activities.

OJJDP will convene a peer review panel to evaluate and rank applications and to make funding recommendations to the OJJDP Administrator. Although peer review recommendations are given weight, they are advisory only. Final award decisions will be made by the OJJDP Administrator. OJJDP will negotiate the specific terms of the award with applicants who are being considered. Applicants will be evaluated and rated according to the criteria outlined below.

Application Procedures

The Office of Justice Programs (OJP) requires that applications be submitted through its online Grants Management System (GMS). This online application system is designed to streamline the processing of requests for funding. A toll-free telephone number (888–549–9901) is available to provide applicants with technical assistance as they work through the online application process.

Applicants should use the following application guidelines when preparing their application for this grant program. Applications must be submitted to OJP electronically through GMS no later than 8 p.m., e.t., on July 7, 2003. However, in order to allow adequate time to register with GMS, applicants must create a "user profile" before June 19, 2003. Applicants who have previously registered with GMS and have a GMS password should log on to GMS prior to June 19, 2003, to determine whether the password is still valid. If the password has expired, follow the on-screen instructions or call the GMS Hotline (888–549–9901). OJJDP will begin accepting applications immediately.

Application Requirements

Applicants to the Internet Crimes Against Children Task Force Program solicitation must submit the following information online through GMS:

• *Application for Federal Assistance (SF–424).* This form is generated by completing the Overview, Applicant Information, and Project Information screens in GMS.

• *Assurances and Certifications.* The Assurances and Certifications must be reviewed and accepted electronically by the authorizing official or the designated authorizing official.

• *Budget Detail Worksheet (Attachment #1).* The Budget Detail Worksheet—including budget worksheets and detailed budget narratives for each year in the project period—accounts for 15 of the possible 100 points allotted by the peer reviewers.

• *Program Narrative (Attachment #2).* The Program Narrative—including Problem(s) To Be Addressed, Goals and Objectives, Project Design, and Management and Organizational Capability—accounts for 85 out of the possible 100 points allotted by the peer reviewers. Point values for specific sections of the Program Narrative are as follows: Problem(s) To Be Addressed (10 points), Goals and Objectives (10 points), Project Design (35 points), and Management and Organizational Capability (30 points).

• *Other Program Attachments (Attachment #3).* The Other Program Attachments—including resumes of key personnel and a project timeline—will not be included in the peer reviewers' scoring of the application. However, these materials are required and must be attached *in one file* to your GMS application.

Detailed instructions and descriptions of each of the required elements are provided below. **Note:** Applications that do not include all the required elements will not be considered for funding.

Application for Federal Assistance (SF–424)

The Application for Federal Assistance is a standard form used by most Federal agencies. The Catalog of

Federal Domestic Assistance (CFDA) number for this program is 16.543.

Assurances and Certifications

Applicants are required to review and accept the Assurances and Certifications. Please verify that the name, address, phone number, fax number, and e-mail address of the authorizing official on these online forms are correct.

- *Assurances.* Applicants must comply with the Assurances to receive Federal funds under this program. It is the responsibility of the recipient of the Federal funds to fully understand and comply with these requirements. Failure to comply may result in the withholding of funds, termination of the award, or other sanctions.
- *Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and the Drug-Free Workplace Requirement.* Applicants are required to review and check off the box on the certification form included in the online application process. This form commits the applicant to compliance with the certification requirements under 28 CFR part 69, "New Restrictions on Lobbying," and 28 CFR part 67, "Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants)."

The authorizing official must review the Assurances and Certifications forms in their entirety. To accept the Assurances and Certifications in GMS, click on the Assurances and Certifications link and click the "Accept" button at the bottom of the screen.

Budget Detail Worksheet (Attachment #1) (15 Points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. Budgets must allow for required travel, including four trips for one individual to attend the quarterly ICAC Task Force Board meetings. Budgets must also allow for the participation of at least two agency representatives at the annual ICAC Training Conference.

Applicants must submit budget worksheets and budget narratives *in one file.* The worksheet provides the detailed computation for each budget item (often in spreadsheet format). The narrative justifies or explains each budget item and relates it to project activities.

- *Budget Worksheet.* The budget worksheet must list the cost of each budget item and show how the cost was calculated. For example, costs for personnel should show the annual salary rate and the percentage of time devoted to the project for each employee to be paid through grant funds. The budget worksheet should present a complete and detailed itemization of all proposed costs.
- *Budget Narrative.* The budget narrative should closely follow the content of the budget worksheet and provide justification for all proposed costs. For example, the narrative should explain how fringe benefits were calculated, how travel costs were estimated, why particular items of equipment or supplies must be purchased, and how overhead or indirect costs (if applicable) were calculated. The budget narrative should justify the specific items listed in the budget worksheet (particularly supplies, travel, and equipment) and demonstrate that all costs are reasonable.

A sample Budget Detail Worksheet form that can be used as a guide to help applicants prepare the budget worksheet and budget narrative is available at *http://www.ojp.usdoj.gov.* (Use the main search engine to search for "Budget Detail Worksheet.")

Program Narrative (Attachment #2) (85 Total Points)

Problem(s) To Be Addressed (10 Points)

Applicants must clearly identify the need for this project in their communities and demonstrate an understanding of the program concept. Applicants must include data that illustrate the size and scope of the problem in their State or region. If statistics or other research findings are used to support a statement or position, applicants must provide the relevant source of information.

Goals and Objectives (10 Points)

Applicants must establish clearly-defined, measurable, and attainable goals and objectives for this program.

Project Design (35 Points)

Applicants must explain in clear terms how the State or regional task force will be developed and implemented. Applicants must define the region, State, or, when applicable, the multistate area in which the task force intends to concentrate its efforts. Applicants must present a clear workplan that contains program elements directly linked to achieving the project objectives. The workplan must indicate project milestones, product due dates, and the nature of the products to be delivered.

Management and Organizational Capability (30 Points)

The management structure and staffing described in the application must be adequate and appropriate for the successful implementation of the project. Applicants must identify individuals responsible for the project and their time commitments. Applicants must provide a schedule of major tasks and milestones. Applicants must describe how activities that prevent Internet crimes against children will be continued after Federal funding is no longer available. In addition, applicants must provide signed letters of support from State and local prosecution offices and the local district United States Attorney.

Other Program Attachments (Attachment #3)

At a minimum, resumes of key personnel and a project timeline should be included.

Application Format

The narrative portion of this application (excluding forms, assurances, and appendixes) must not exceed 35 pages and must be submitted on 8½- by 11-inch paper and double spaced on one side in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative and project abstract, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform consideration among all applicants. If the narrative and abstract do not conform to these standards, OJJDP will deem the application ineligible for consideration.

Project and Award Period

These cooperative agreements will be funded for up to an 18-month budget and project period and will begin June 1, 2003, and end November 30, 2004. Funding beyond the initial project period will be contingent upon the grantee's performance and the availability of funds.

Award Amount

The total amount available for this program is $1.5 million. OJJDP intends to award five cooperative agreements of up to $300,000 each for the 18-month project period.

Performance Measurement

To ensure compliance with the Government Performance and Results Act, Pub. L. 103–62, this solicitation notifies applicants that they are required to collect and report on data that measure the results of the program implemented by this grant. To ensure the accountability of this data (for which OJP is responsible) the following performance measures are provided:

- The number of investigations.
- The number of computer forensic examinations.

Under this solicitation, applicants will be required to supply OJJDP with the above performance information. In addition, OJJDP will measure the performance of the ICAC Task Force Program. Data collection will be covered within the existing ICAC Monthly Performance Report (MPR) forms. MPR is a required data-reporting document that was created by OJJDP to collect ICAC data related to arrests, subpoenas, search warrants, technical assistance (investigative and computer forensic), and prevention and intervention activities performed by ICAC Regional Task Forces and ICAC Investigative Satellites. Data gathered from MPRs will track the number of arrests made and the outcomes of those arrests (plea bargains, prosecutions, etc.), assist in the identification of victims who need resources such as counseling and therapy, and track tips and aid in target area identification.

Data collected from MPRs will provide crucial baseline data necessary for a future evaluation of the ICAC Task Force Program after it has been fully established throughout the country. Assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable program results of Federally funded programs.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice requests that applicants provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) rendered to the program or project described in the application.

Bibliography

Burgess, A., and Grant, C. 1988. Children Traumatized in Sex Rings. Alexandria, VA: National Center for Missing and Exploited Children.

Cage, R., and Pence, D. 1997. Criminal Investigation of Child Sexual Abuse. Portable Guide. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Dressler, K. 1997. Multijurisdictional Task Forces: Ten Years of Research and Evaluation: A Report to the Attorney General. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

Finkelhor, D., Mitchell, K., and Wolak, J. 2000. Online Victimization: A Report on the Nation's Youth. Alexandria, VA: National Center for Missing and Exploited Children.

Hammerschlag, M. 1996. Sexually Transmitted Diseases and Child Sexual Abuse. Portable Guide. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Lanning, K. 1992. Child Molesters: A Behavioral Analysis for Law Enforcement Officers Investigating Cases of Child Sexual Exploitation. Alexandria, VA: National Center for Missing and Exploited Children.

Lanning, K. 1992. Child Sex Rings: A Behavioral Analysis for Criminal Justice Professionals Handling Cases of Child Sexual Exploitation. Alexandria, VA: National Center for Missing and Exploited Children.

Lanning, K., and Farley, R. 1997. Understanding and Investigating Child Sexual Exploitation. Portable Guide. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Magid, L. 1994. Child Safety on the Information Highway. Pamphlet. Alexandria, VA: National Center for Missing and Exploited Children.

Magid, L. 1998. Teen Safety on the Information Highway. Pamphlet. Alexandria, VA: National Center for Missing and Exploited Children.

National Center for Missing and Exploited Children. 1998. Know the Rules. Pamphlet. Alexandria, VA: National Center for Missing and Exploited Children.

Quarantiello, L. 1997. Cyber Crime: How to Protect Yourself from Computer Criminals. Lake Geneva, WI: Tiare Publications.

Rosenblatt, K. 1995. High-Technology Crime: Investigating Cases Involving Computers. San Jose, CA: KSK Publications.

Saywitz, K., and Faller, K. 1997. Interviewing Child Witnesses and Victims of Sexual Abuse. Portable Guide. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Whitcomb, D. 1995. Child Sexual Exploitation: Improving Investigations and Protecting Victims: A Blueprint for Action. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

Dated: May 30, 2003.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 03–14035 Filed 6–3–03; 8:45 am]

BILLING CODE 4410–18–P

Reader Aids

Federal Register

Vol. 68, No. 107

Wednesday, June 4, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33609	4

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7683 33339

7 CFR

800 32623
1400 33341

Proposed Rules:
810 33408
3560 32872

9 CFR

Proposed Rules:
93 33028

10 CFR

765 32955

12 CFR

615 33347
703 32958
742 32958
1700 32627

13 CFR

121 33348

Proposed Rules:
121 33412

14 CFR

39 ..... 32629, 32967, 32968, 33355, 33356, 33358
71 ..... 32633, 33231, 33360, 3361, 33579
97 32633

Proposed Rules:
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423
71 ..... 33426, 33427

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

21 CFR

201 32979
310 33362
347 33362
349 32981
352 33362
510 33381
524 33381
878 32983
888 32635

Proposed Rules:
201 33429
343 33429

26 CFR

1 33381

Proposed Rules:
157 32698
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698

28 CFR

802 32985

29 CFR

1910 32637

30 CFR

Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638

33 CFR

100 ..... 32639, 32641
117 32643
165 ..... 32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402

36 CFR

215 33582
242 33402
1253 33404

38 CFR

Proposed Rules:
20 33040

40 CFR

52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018
261 32645

Proposed Rules:
51 32802
52 ..... 33041, 33042, 33043
62 33284
194 33429

42 CFR

Proposed Rules:
412 33579
413 33579

43 CFR

3800 32656

44 CFR

64.....32657
65.....32659, 32660
67.....32664, 32669

Proposed Rules:

67.....32699, 32717

46 CFR

221.....33405

47 CFR

2.....32676, 33020
73.....32676
74.....32676
80.....32676
87.....32676
90.....32676
95.....32676
97.....32676, 33020

Proposed Rules:

2.....33043
15.....32720
64.....32720
73.....33431

48 CFR

2.....33231
32.....33231
52.....33231
252.....33026

Proposed Rules:

15.....33330
31.....33326
52.....33326
206.....33057

49 CFR

107.....32679
171.....32679
173.....32679
177.....32679
180.....32679

50 CFR

100.....33402
660.....32680

Proposed Rules:

16.....33431
17.....33058, 33234
648.....33432

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 4, 2003

AGRICULTURE DEPARTMENT
Forest Service
National Forest System lands; projects and activities; notice, comment, and appeal procedures; published 6-4-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; published 5-5-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Farnham Co, Inc.; published 6-4-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Willamette River, Portland, OR; security zone; published 5-29-03

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Public availability and use:
NARA facilities; telephone numbers; published 6-4-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; published 5-20-03

TRANSPORTATION DEPARTMENT
Maritime Administration
Regulations affecting maritime carriers and related activities:
Inflation adjustment of civil monetary penalties; published 6-4-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-9-03; published 4-9-03 [FR 03-08650]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Onions (sweet) grown in—
Washington and Oregon; comments due by 6-9-03; published 4-9-03 [FR 03-08648]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
Medical records maintenance; comments due by 6-10-03; published 4-11-03 [FR 03-08928]
Viruses, serums, toxins, etc.:
Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc.; comments due by 6-9-03; published 4-9-03 [FR 03-08599]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 6-10-03; published 5-23-03 [FR 03-13013]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-13-03; published 5-16-03 [FR 03-12315]

DEFENSE DEPARTMENT
Acquisition regulations:
Tangible item marking and valuing; contractor possession of government property; comments due by 6-9-03; published 5-12-03 [FR 03-11726]

ENERGY DEPARTMENT
Polygraph Examination Regulations; counterintelligence polygraph program; comments due by 6-13-03; published 4-14-03 [FR 03-09009]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11910]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11911]
Air pollution; standards of performance for new stationary sources:
Stationary gas turbines; comments due by 6-13-03; published 5-28-03 [FR 03-13416]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11751]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11752]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11749]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11750]
Hazardous wastes:
Identification and listing—
Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions); comments due by 6-9-03; published 4-8-03 [FR 03-08154]
Solid wastes:
Project XL (eXcellence and Leadership) program; site-specific projects—
Anne Arundel County Millersville Landfill, Severn, MD; comments due by 6-12-03; published 5-13-03 [FR 03-11909]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:

Current good manufacturing practice—
Dietary supplements and dietary supplement ingredients; comments due by 6-11-03; published 3-13-03 [FR 03-05401]
Human drugs and biological products:
Bar code label requirements; comments due by 6-12-03; published 3-14-03 [FR 03-05205]

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Communicable diseases control—
Quarantine of persons believed to be infected with communicable diseases; comments due by 6-9-03; published 4-10-03 [FR 03-08736]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations and ports and waterways safety:
Lake Michigan—
Chicago, IL; safety zone; comments due by 6-10-03; published 5-20-03 [FR 03-12494]
Boating safety:
Regulatory review; impact on small entities; comments due by 6-12-03; published 2-12-03 [FR 03-03461]
Drawbridge operations:
Florida; comments due by 6-9-03; published 4-10-03 [FR 03-08690]
Ports and waterways safety:
Chesapeake Bay, MD; Cove Point Liquefied Natural Gas Terminal; safety and security zone; comments due by 6-12-03; published 5-15-03 [FR 03-12050]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area; comments due by 6-12-03; published 5-13-03 [FR 03-11811]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 6-8-03; published 4-4-03 [FR 03-08175]

LABOR DEPARTMENT
Employment and Training Administration
Senior Community Service Employment Program; comments due by 6-12-03; published 4-28-03 [FR 03-09579]

PERSONNEL MANAGEMENT OFFICE
Group life insurance; Federal employees:
Premium rates and age bands; comments due by 6-9-03; published 4-9-03 [FR 03-08610]

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned:
General policy statements; comments due by 6-9-03; published 5-9-03 [FR 03-11634]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd.; comments due by 6-9-03; published 4-29-03 [FR 03-10516]
Boeing; comments due by 6-9-03; published 4-24-03 [FR 03-10117]
EXTRA Flugzeugbau GmbH; comments due by 6-9-03; published 5-2-03 [FR 03-10846]
Lockheed; comments due by 6-13-03; published 4-29-03 [FR 03-10513]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class D and Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11030]
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11034]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11031]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11029]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-10-03; published 5-19-03 [FR 03-12378]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Cargo tank motor vehicles transporting flammable liquids; external product piping; safety requirements; comments due by 6-10-03; published 2-10-03 [FR 03-03262]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Stem anchors and navigation underway; comments due by 6-12-03; published 5-13-03 [FR 03-11895]

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology; comments due by 6-9-03; published 4-9-03 [FR 03-08645]

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
Electronic filings by national banks; comments due by 6-13-03; published 4-14-03 [FR 03-08995]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Stock dispositions; suspension of losses; comments due by 6-12-03; published 3-14-03 [FR 03-06118]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering program for persons involved in real estate closings and settlements; comments due by 6-9-03; published 4-10-03 [FR 03-08688]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

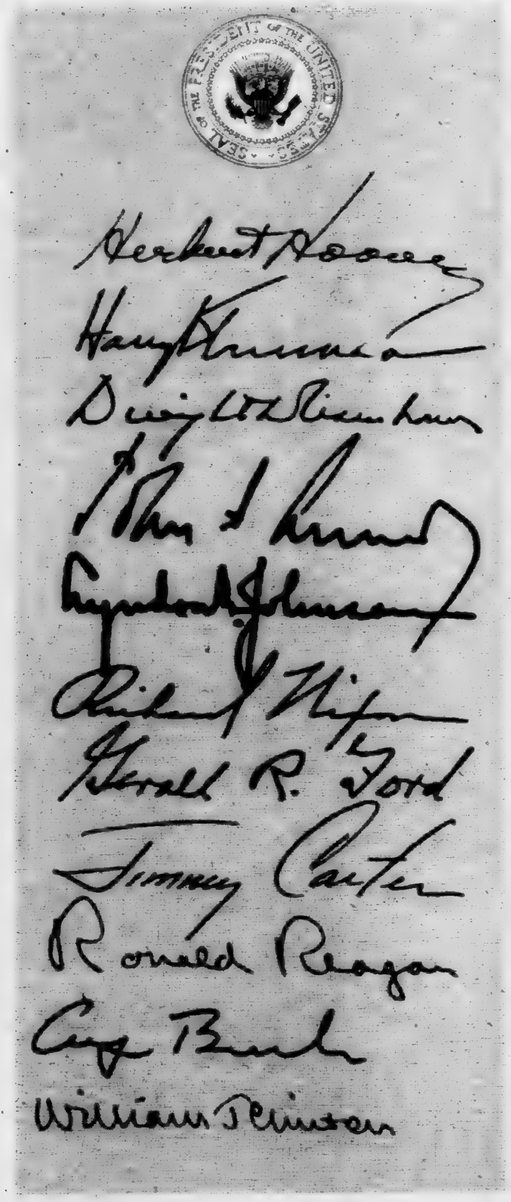
S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**
1998 (Book I)	**$74.00**
1998 (Book II)	**$75.00**
1999 (Book I)	**$71.00**
1999 (Book II)	**$75.00**
2000–2001 (Book I)	**$68.50**
2000–2001 (Book II)	**$63.00**
2000–2001 (Book III)	**$75.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS • PERIODICALS • ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code
***7917**

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
____ **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.
International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

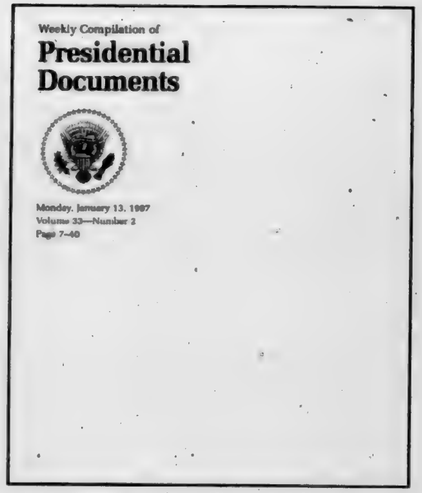
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
1
0
7
JE
4
003
MI

Printed on recycled paper .

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.



Federal Register

6–5–03 Thursday
Vol. 68 No. 108 June 5, 2003

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6–5–03
Vol. 68 No. 108

Thursday
June 5, 2003

Pages 33611–33830

Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Fish advisories in Michigan; pilot program to educate vulnerable populations, 33699–33701
Tremolite asbestos exposure in vermiculite ore, 33701–33704

Agricultural Research Service
NOTICES
Meetings:
Biotechnology and 21st Century Agriculture Advisory Committee; correction, 33672

Agriculture Department
See Agricultural Research Service
See Commodity Credit Corporation
See Forest Service

Army Department
See Engineers Corps
NOTICES
Military traffic management:
DOD Personal Property Program, 33683–33684
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Handheld and hand powered centrifuge device, 33684
Taqman internal positive control, 33684

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Assessing folic acid knowledge and behaviors program, 33704–33706
Autism spectrum disorders and other developmental disabilities; population-based surveillance, 33706
Human immunodeficiency virus (HIV)—
Minority HIV/AIDS Research Initiative, 33706–33711
State and local health information and data systems improvement program, 33711–33714
Meetings:
National Advisory Committee on Children and Terrorism, 33714

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33714–33716

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Kentucky, 33674

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
NOTICES
Beet sugar; State marketing allotments and allocations; public hearing, 33672–33673

Commodity Futures Trading Commission
RULES
Foreign futures and foreign options transactions:
Foreign non-narrow-based security indexes traded on board of trade; information submission guidance, 33623–33625

Defense Department
See Army Department
See Engineers Corps
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33682
Meetings:
Capabilities Assessment for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction Advisory Panel, 33682–33683
Science Board task forces, 33683

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
AMG, Inc., et al., 33674–33675

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Senior Community Service Employment Program, 33745–33747

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
National Energy Technology Laboratory—
GHG emissions from fossil fuel energy systems; cost-effective solutions, 33687–33688

Engineers Corps
NOTICES
Environmental statements; notice of intent:
McNary and Lower Snake River Reservoirs, OR, et al.: dredged material management plan, 33684–33685
Talbot County, MD; Poplar Island Enviromental Restoration Projects, 33685–33687

Environmental Protection Agency
RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Regional haze rule; Western States and eligible Indian Tribes; sulfur dioxide milestones and backstop emissions trading program, 33763–33791
Air quality implementation plans; approval and promulgation; various States:
California, 33633–33638
District of Columbia, 33638–33640
Minnesota, 33631–33633
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 33665

District of Columbia, 33665–33666
Minnesota, 33665
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33688–33690
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
Kansas, 33690
Meetings:
Exposure Modeling Work Group, 33690–33691
National Drinking Water Advisory Council, 33691–33692
Science Advisory Board, 33692
Reports and guidance documents; availability, etc.:
Allocation of Fiscal Year 2003 Youth and the Environment Training and Employment Program Funds; memorandum, 33692
Superfund; response and remedial actions, proposed settlements, etc.:
Petroleum Products Site, GA, 33692–33693
Prestige Chemical Co. Site, GA, 33693
Water pollution control:
Clean Water Act—
California; water quality limited segments and association pollutants, 33693

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations—
Capital adequacy; miscellaneous amendments, 33617

Federal Aviation Administration
RULES
Airworthiness directives:
Eurocopter France, 33618–33621
International Aero Engines, 33621–33623
Class E Airspace, 33623
PROPOSED RULES
Airworthiness directives:
Eurocopter Deutschland GmbH, 33663–33664
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes, 33659–33663
NOTICES
Meetings:
RTCA, Inc., 33756–33757

Federal Communications Commission
RULES
Frequency allocations and radio treaty matters:
Mobile satellite service providers; flexible use of assigned spectrum over land-based transmitters, 33640–33654
Radio stations; table of assignments:
Alabama, 33654
Oregon, 33654–33655
PROPOSED RULES
Frequency allocations and radio treaty matters:
Non-geostationary orbit mobile-satellite service systems in 1.6/2.4 GHz bands; spectrum sharing plan, 33666–33668
Radio stations; table of assignments:
Georgia, 33668–33669
Tennessee, 33669
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33694–33696

Federal Energy Regulatory Commission
NOTICES
Meetings:
Midwest Independent Transmission System Operator, Inc.; market mitigation measures; technical conference, 33688

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Los Angeles County, CA, 33757
Nicollet Co., MN, 33757–33758

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Transpacific Stabilization Agreement, 33696–33697

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 33697
Committees; establishment, renewal, termination, etc.:
Consumer Advisory Council; nominations for membership, 33697–33699

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 33699

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Financial Management Service:
Automated Clearing House; Federal agency participation, 33825–33830

Fish and Wildlife Service
PROPOSED RULES
Endangered Species Act; interagency cooperation:
National Fire Plan; implementation, 33805–33812
NOTICES
Endangered and threatened species permit applications, 33732–33736
Environmental statements; notice of intent:
Incidental take permits—
East Contra Costa County, CA; habitat conservation plan, 33736–33737
Solano County, CA; habitat conservation plan, 33737–33739

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33716–33718
Committees; establishment, renewal, termination, etc.:
Center for Drug Evaluation and Research—
Public advisory committees and panels; nonvoting industry representative members, 33718–33719
Medical Devices Advisory Committee—
Public advisory committees and panels; nonvoting industry representative members, 33719–33720
Public Advisory Panels, 33720–33723
Meetings:
Endocrinologic and Metabolic Drugs Advisory Committee, 33723

Innovative drugs and biologics delivery systems; scientific, clinical, and regulatory challenges public workshop, 33723–33724
Useful written prescription drug information for consumers; private sector efforts, 33724–33727
Organization, functions, and authority delegations:
Food Safety and Applied Nutrition Center; program priorities, 33727–33728

Forest Service
NOTICES
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 33673
Resource Advisory Committees—
Colville, 33673
Mineral County, 33673–33674
Tuolumne County, 33673
National Environmental Policy Act; implementation:
Fire management activities; documentation; categorical exclusions, 33813–33824

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33728–33730

Homeland Security Department
See Secret Service

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33730–33732

Indian Affairs Bureau
RULES
Land and water:
Indian Reservation Roads Program, 33625–33629

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
RULES
Hearings and appeals procedures:
Wildfire management decisions, effect; amendments, 33793–33804
NOTICES
National Environmental Policy Act; implementation:
Fire management activities; documentation; categorical exclusions, 33813–33824

Internal Revenue Service
NOTICES
Meetings:
Area 6 Taxpayer Advocacy Panel, 33760
Taxpayer Advocacy Panel, 33760–33761

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 33675–33676
Corrosion-resistant carbon steel flat products from—
Japan, 33676–33679
Countervailing duties:
Hot-rolled carbon steel flat products from—
South Africa, 33679–33680

International Trade Commission
NOTICES
Meetings; Sunshine Act, 33739

Justice Department
See Justice Programs Office
RULES
Foreign Agents Registration Act; amendments, 33629–33631
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33740
Pollution control; consent judgments:
Gopher State Ethanol, Inc., 33740
Lockheed Martin Corp., 33741
Owens Corning, 33741–33742
R.E.P. Industries Inc., et al., 33742
San Diego Baykeeper, 33742
Todd Pacific Shipyards Corp., 33742–33743

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33743–33744

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33744–33745

Land Management Bureau
RULES
Hearings and appeals procedures:
Wildfire management decisions, effect; amendments, 33793–33804

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act; implementation—
Tire safety information, 33655–33658
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors North America, 33758–33759

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered Species Act; interagency cooperation:
National Fire Plan; implementation, 33805–33812
Environmental statements; notice of intent:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 33670–33671
NOTICES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 33680

Meetings:
Marine Protected Areas Federal Advisory Committee, 33680–33681
New England Fishery Management Council, 33681
Permits:
Marine mammals, 33681–33682

Nuclear Regulatory Commission
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Event notification requirements, 33611–33617

Public Debt Bureau
See Fiscal Service

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33747

Research and Special Programs Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33759–33760

Secret Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33730

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Deregistration applications—
Merrill Lynch Emerging Markets Debt Fund, Inc., et al., 33747–33748
Securities Exchange Act:
Intermarket Trading System; exchange-traded funds transactions; de minimis exemption, 33748–33749
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 33749–33751
Cincinnati Stock Exchange, Inc., 33751–33752
National Association of Securities Dealers, Inc., 33753–33754
Philadelphia Stock Exchange, Inc., 33754–33755

State Department
NOTICES
Art objects; importation for exhibition:
Small Wonders: Dutch Still Lifes by Adriaen Coorte, 33755

Tennessee Valley Authority
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33756

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 33756

Treasury Department
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 33763–33791

Part III
Interior Department; Interior Department, Land Management Bureau, 33793–33804

Part IV
Commerce Department, National Oceanic and Atmospheric Administration; Interior Department, Fish and Wildlife Service, 33805–33812

Part V
Agriculture Department, Forest Service and Interior Department, 33813–33824

Part VI
Treasury Department, Fiscal Service, 33825–33830

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
72 33611
73 33611

12 CFR
615 33617

14 CFR
39 (2 documents) 33618, 33621
71 33623
Proposed Rules:
25 33659
39 33663

17 CFR
30 33623
40 33623

25 CFR
170 33625

28 CFR
5 33629

31 CFR
210 33826

40 CFR
3 33764
52 (4 documents) 33631, 33633, 33635, 33638
Proposed Rules:
52 (3 documents) 33665

43 CFR
4 33794
4100 33794
5000 33794

47 CFR
2 33640
25 33640
73 (2 documents) 33654
Proposed Rules:
2 33666
25 33666
73 (2 documents) 33668, 33669

49 CFR
567 33655
571 33655
574 33655
575 33655
597 33655

50 CFR
Proposed Rules:
402 33806
660 33670

Rules and Regulations

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72 and 73

RIN 3150–AG90

Event Notification Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its event notification regulations that apply to an Independent Spent Fuel Storage Installation (ISFSI) and to a Monitored Retrievable Storage (MRS) installation. The final rule will also amend safeguards event notification requirements that apply to facilities such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and gaseous diffusion plants. Some changes will reduce licensee burden by consolidating some notifications and lengthening, where appropriate, the reporting period for other notifications. These changes will not impact public health and safety. New requirements will be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries during events or conditions at licensees' facilities. These changes will also align the standards for both the event notification requirements and the safeguards event notification requirements with previous changes made to the power reactor event notification requirements.

EFFECTIVE DATE: This final rule is effective on October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, [telephone (301) 415–6196, e-mail, *MFH@nrc.gov*].

SUPPLEMENTARY INFORMATION:

Background

An advance notice of proposed rulemaking (ANPR) was published on July 23, 1998, (63 FR 39522), notifying the public that the NRC was considering amending its event notification reporting requirements. Although the ANPR was primarily directed at potential changes to power reactor event notification requirements in 10 CFR 50.72 and 50.73, the notice also requested public comments to identify areas where other event notification reporting requirements could be simplified and/or modified to be less burdensome and more risk informed.

In SECY–99–022, "Rulemaking to Modify Reporting Requirements for Power Reactors" (January 20, 1999), the NRC staff presented recommendations for changes to reporting requirements beyond those to §§ 50.72 and 50.73, including the following:

- 10 CFR 72.75 (Reporting requirements for specific events and conditions) contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.
- 10 CFR 73.71 (Reporting of safeguards events) and 10 CFR part 73, Appendix G (Reportable safeguards events) contain requirements for 1-hour reports. Amend these requirements to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.

The Commission subsequently issued a final rule revising the event reporting requirements in §§ 50.72, 50.73, and 72.216 (65 FR 63769; October 25, 2000), and directed the NRC staff to consider, under a separate rulemaking, similar changes to the event notification requirements in 10 CFR parts 72 (Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste) and 10 CFR part 73 (Physical Protection of Plants and Materials).

Proposed Rule

The NRC published the proposed rule, "Event Notification Requirements" in the **Federal Register** on August 22, 2002 (67 FR 54360). The comment period closed on November 5, 2002. The NRC received four comment letters on the proposed rule. These comments and responses are discussed in the "Public Comments on the Proposed Rule" section.

On September 6, 2002, the NRC published a proposed rule (67 FR 57120) and a concurrent direct final rule (67 FR 57084) on "Electronic Maintenance and Submission of Information." This rulemaking would have revised, in part, § 73.71(a)(4). On December 4, 2002 (67 FR 72091), the NRC published a notice withdrawing the direct final rule, because the agency had received significant adverse comments on the proposed rule. However, no comments were received on either the specific changes to § 73.71(a)(4) proposed by 67 FR 57120 or the changes to § 73.71(a)(4) proposed by 67 FR 54360. Accordingly, the NRC is consolidating these proposed rules, with respect to § 73.71(a)(4), in this final rule. The consolidated changes to § 73.71(a)(4) are described in the section-by-section changes below.

Discussion and Regulatory Action

This final rule will amend the NRC's regulations at 10 CFR part 72 to change several event notification requirements that apply to Independent Spent Fuel Storage Installations (ISFSIs) and Monitored Retrievable Storage (MRS) installations. The final rule will also amend safeguards event notification requirements that apply to facilities subject to 10 CFR part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, MRSs, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. The NRC evaluated the issues and concerns of the §§ 50.72 and 50.73 event notification reporting requirements and considered this regulatory framework as a basis for concluding that similar changes to the event notification reporting requirements in 10 CFR parts 72 and 73 are also warranted. The event reporting requirements of 10 CFR parts 72 and 73 affect both material licensees and nuclear power plant licensees. Most of the facilities subject to the event notification reporting requirements in 10 CFR parts 72 and 73 (power reactors and ISFSIs) are either physically co-

located with reactor facilities or are reactor facilities. Most 10 CFR part 72 licensees also hold a 10 CFR part 50 (Domestic Licensing of Production and Utilization Facilities) license. These licensees share the same management structure and share the same emergency preparedness organization. Thus, conforming the reporting requirements of 10 CFR part 72 with the revised requirements of 10 CFR part 50 will reduce regulatory burden and potential confusion, will maintain safety, and will take advantage of the work already performed to relate risk to reporting requirements for these types of facilities.

The NRC is removing § 72.216, "Reports." Section 72.216 does not contain separate requirements, but merely directs a 10 CFR part 72 general licensee to comply with the reporting requirements of §§ 72.74 and 72.75. The addition of § 72.13, "Applicability," to the 10 CFR part 72 regulations in a final rule issued on August 21, 2000 (65 FR 50606), eliminated the need for this section. Section 72.13 contains direction on the 10 CFR part 72 regulations that apply to specific licensees, general licensees, or certificate holders. Section 72.216, paragraphs (a) and (b) were removed and reserved in a previous rulemaking (65 FR 63788; October 25, 2000). Paragraph (c) currently requires a general licensee to comply with §§ 72.74 and 72.75. Therefore, § 72.216 is no longer needed and will be removed and reserved, in its entirety. In addition, § 72.9 is revised as a conforming change because of the removal of § 72.216. Also, the reference to § 72.19 is removed from § 72.9 because there is no § 72.19 in 10 CFR part 72.

With respect to the 10 CFR part 73 event notification requirements, the 30-day period for submitting written follow-up reports for safeguards events will be extended to 60 days to be consistent with § 50.73. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take timely corrective actions commensurate with the safety significance of the issue. The extension is based on simplicity for reporting, importance to risk, and having the required reporting time be consistent with the need for NRC action. Furthermore, the increased time for follow-up reporting will more likely allow for the completion of required root cause analyses, engineering evaluations, and full identification of corrective actions after event discovery; preparation of more complete and accurate event reports; and fewer event report revisions and supplemental reports. However, the NRC believes the verbal safeguards event notification requirements should remain at 1 hour because the NRC may need to respond expeditiously to licensee safeguards notifications and notify other licensees and Federal agencies of the event, particularly in light of the current threat environment after the terrorist attacks of September 11, 2001.

Revising the 10 CFR parts 72 and 73 event notification reporting requirements to be consistent with those in 10 CFR part 50 will maintain safety and take advantage of the work already performed on the risk impacts of the event notification requirements for 10 CFR part 50 licensees. The revision of 10 CFR parts 72 and 73 will also reduce licensee burden through consolidation of some notifications and lengthening the reporting period for other notifications to correspond to the times required under 10 CFR part 50. The current event notification reporting requirements in 10 CFR part 50 require written notification within 60 days and verbal notification within 1 hour (emergency events), and within 1 hour, 4 hours and 8 hours for some non-emergency events. The need for a 4-hour versus an 8-hour non-emergency notification is based on the urgency of the situation and the NRC's need to take prompt action.

Public Comments on the Proposed Rule

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received four comment letters on the proposed rule. Two were from the nuclear industry (Strategic Teaming and Resource Sharing (STARS) and the Nuclear Energy Institute (NEI)), one from the Idaho National Engineering and Environmental Laboratory (INEEL), and one from the Florida Department of Environmental Health. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

In general, none of the commenters were opposed to amending the regulations to make the ISFSI and MRS event notification requirements and the safeguards event notification requirements consistent with changes to the power reactor event notification requirements. Several of the commenters provided specific recommendations to improve the final rule. The NRC is also making some clarifications for consistency and editorial changes in the final rule.

Comment 1: Three of the four commenters stated that they support the proposed rule change and the fourth (State of Florida) found that the proposed change is consistent with their existing Florida Coastal Management Program. INEEL, a national laboratory (and an NRC ISFSI licensee), also stated that the proposed changes to 10 CFR parts 72 and 73 are welcomed and as currently described will not be difficult to implement.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the support for this rulemaking.

Comment 2: The two industry commenters (STARS and NEI) indicated that certain events that require verbal notification under § 50.72 do not require follow-up written notifications under § 50.73. The commenters suggested a similar approach be taken in § 72.75. Specifically, written follow-up notification need not be submitted for an emergency declaration [paragraph (a)], issuance of a press release or notification of another Government agency [paragraph b(2)], of transportation of a radioactively contaminated individual to an offsite medical facility for treatment [paragraph c(3)].

Response: The NRC agrees with the comments. The Commission has previously concluded and affirmed in its 10 CFR part 50 rulemaking (65 FR 63769; October 25, 2000), that written follow-up notifications are not required for reactor licensees who make verbal event notifications relating to the declaration of an emergency, issuance of a press release, notification to another Government agency, or transportation of a radioactively contaminated individual to an offsite medical facility for treatment.

Verbal and written notification requirements serve different purposes. A written follow-up notification provides a detailed analysis by the licensee of a reportable event (*e.g.*, identification of root causes and identification of corrective action to prevent recurrence). The written analysis provides the NRC an opportunity to perform review and analysis as resources are available and to perform reviews for generic issues. In contrast, verbal notifications serve to alert the NRC of an event that may require immediate NRC response and mobilization of NRC and other Government resources. Consequently, written follow-up notification of some types of events do not add any value to the NRC's understanding of the event. For example, the NRC's goal is to be able to promptly respond to public or media inquires if a licensee issues a press release or transports an injured worker, who is also contaminated, to an offsite facility for treatment. Sixty days after such an event, the NRC is not likely to receive inquires requiring an immediate response.

With respect to emergency declarations, the NRC is already following the event closely and event notifications are sometimes retracted (*i.e.*, the licensee makes an initial conservative judgement, that upon further review is determined to be unnecessary). Therefore, a written follow-up notification would be both unnecessary and burdensome. Additionally, the absence of a written follow-up requirement on the declaration of an emergency does not obviate the licensee's responsibility in submitting a written follow-up event report based upon other § 72.75 criteria (which may have been the initiating cause that led to the emergency declaration).

Accordingly, the first sentence in the introductory paragraph to § 72.75(g) is revised to exempt verbal notifications made under §§ 72.75(a), (b)(2), and (c)(3) from the requirement for follow-up written notifications.

Comment 3: INEEL recommended that §§ 72.75(e)(3)(iv) and 72.75(g)(2)(xii) be modified to add at the end of the sentences in each of these sections the words "affected by the event." The commenter believes that information provided to the NRC should be limited to the quantities and chemical and physical forms of the spent fuel, high-level waste (HLW), or reactor-related greater than Class C (GTCC) waste involved in the event, rather than the licensee's entire inventory.

Response: The NRC agrees with the intent of the commenter. The wording in the proposed rule for § 72.75(e)(3)(iv) and (g)(2)(xii) inadvertently left off the word "involved." This word is used in the existing § 72.75(d)(1)(iv). Accordingly, § 72.75(e)(3)(iv) and (g)(2)(xii) are revised to include the phrase "involved in the event."

Comment 4: INEEL recommended that § 72.75(g)(8) be deleted, because it is a characteristic of the information provided in the written report, and not part of the report's content. The commenter suggested that § 72.75(g)(8) of the proposed rule be moved to the last sentence of § 72.75(g), "Preparation and submission of written reports."

Response: The NRC agrees with the comment. The second to last sentence of the introductory paragraph of § 72.75(g) is revised to incorporate legibility requirements and § 72.75(g)(8) is removed.

Section-by-Section Changes

The following section is provided to assist the reader in understanding the specific changes made to each section or paragraph in 10 CFR parts 72 and 73. For clarity of content in reading a section, much of that particular section may be repeated, although only a minor change is being made. This section should allow the reader to effectively review the specific changes without reviewing existing material that has been included for content, but has not been significantly changed.

In § 72.9, paragraph (b) is revised to remove §§ 72.19 and 72.216 as a conforming change.

Current § 72.75(b) is split into two new paragraphs, § 72.75(b) and (c) for 4-hour and 8-hour notifications, respectively. In new § 72.75(b), the existing 4-hour notification requirement remains unchanged for departing from a certificate condition or technical specification during an emergency (current § 72.75(b)(4)); a new requirement is added to notify the NRC when another Government agency is notified or a news release is planned to permit the NRC to promptly respond to public, media, and other stakeholder inquiries during events; and the current 4-hour notification is removed for events that require immediate action to avoid exposure or unplanned fires or explosions (current § 72.75(b)(1) and (b)(6)) because these notifications are redundant with the requirements in § 72.75(a).

In new § 72.75(c), the existing 4-hour event notifications are changed to an 8-hour notification for (1) a defect in any spent fuel, high-level radioactive waste, or reactor-related GTCC waste storage structure, system, or component important to safety [1] (current paragraph 72.75(b)(2)); (2) a significant reduction in the effectiveness of any spent fuel, high-level radioactive waste, or reactor-related GTCC storage confinement system in use (current § 72.75(b)(3)); and (3) an event that requires the transport of a radioactively contaminated person to an offsite medical facility for treatment (revision of current § 72.75(b)(5)).

Current § 72.75(c) for 24-hour reports is redesignated as § 72.75(d) and revised as follows: The current notification is retained for events in which equipment important to safety fails to function (current § 72.75(c)(2)). The requirement for notification of unplanned contamination events requiring controls restricting worker access for greater than 24 hours is removed, because such an event occurring at an ISFSI or MRS does not rise to a level of significance that would warrant notification. Facilities that store and manipulate spent fuel assemblies are by their very nature subject to identification of contamination outside of posted radiological contamination control areas (*i.e.*, hot particles). The NRC considers the identification, control, and decontamination of these areas a routine radiation protection function, not an event requiring NRC notification—even if it takes the licensee more than 24 hours to clean up the contamination. Furthermore, although these 24-hour verbal reports are due within 24 hours of the discovery of the event, their relative lack of significance allows that this notification requirement be revised to permit these notifications to be delayed to the next working day (*i.e.*, 8 a.m. Eastern time) when the end of the 24-hour period falls outside of normal NRC working hours (7:30 a.m.–5 p.m. Eastern time), a weekend, or a Federal holiday.

Current § 72.75(d) is split into three paragraphs and redesignated as new paragraphs (e), (f), and (g) (*i.e.*, initial notification, follow-up notification, and preparation and submission of written reports) to provide greater clarity and consistency with §§ 50.72 and 50.73 event notification requirements.

In new § 72.75(e), the current requirement is retained to notify the NRC Headquarters Operations Center by telephone of emergency and non-emergency conditions [current § 72.75(d)(1)]. A new requirement is added to identify the Emergency Class declared or the respective paragraph of § 72.75 under which either a 4-hour, 8-hour, or 24-hour notification is being made. This notice will reduce confusion and facilitate NRC response to the emergency. The current requirement remains unchanged to provide supporting information [current § 72.75(d)(1)(i) through (v)]. Additionally, § 72.75(e)(3)(iv) is revised to include the words "involved in the event" to clarify the scope of the affected material that the licensee needs to describe.

[1] 10 CFR 72.3—*Definitions*. Structures, systems, and components important to safety means those features of the ISFSI, MRS, and spent fuel storage cask whose functions are—(1) To maintain the conditions required to store spent fuel, high-level radioactive waste, or reactor-related GTCC waste safely; (2) To prevent damage to the spent fuel, the high-level radioactive waste, or reactor-related GTCC waste container during handling and storage; or (3) To provide reasonable assurance that spent fuel, high-level radioactive waste, or reactor-related GTCC waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

In new § 72.75(f), new requirements are added for licensees to immediately make follow-up notifications to report degrading conditions, declaration of any Emergency Class, change of an Emergency Class, termination of the Emergency Class, the results of evaluations, the effectiveness of responses or protective measures, and information on unexpected ISFSI or MRS behavior. These added requirements will ensure that the information on a degrading condition or termination of the event is promptly communicated to the NRC. Consistent with current policy for reactor licensees, the NRC expects a 10 CFR part 72 licensee to make any follow-up notifications to the NRC as soon as possible, but no later than 1 hour from the time of identification. Additionally, a requirement is added to maintain an open, continuous communication channel with the NRC Headquarters Operations Center upon request by the NRC. This requirement is consistent with the current 10 CFR part 50 event reporting requirements and ensures that during an ongoing emergency, the communications between the licensee and the NRC are not interrupted by the inability to complete a phone call when telephone circuits could be temporarily overloaded.

In new § 72.75(g), the current 30-day requirement is revised to require that written reports be submitted within 60 days [current § 72.75(d)(2)] to reduce the occurrence of supplemental reports and licensee burden. The requirements for human performance events [current § 72.75(d)(2)(i) through (d)(7), except § 72.75(d)(2)(ii)(I)] are revised to be consistent with currently revised § 50.73(b)(2)(ii)(J). The first sentence of the introductory paragraph of § 72.75(g) is revised to exclude events reported under § 72.75(a), (b)(2), and (c)(3) from the written follow-up notification requirements. The second to the last sentence in the introduction of § 72.75(g) is revised to incorporate legibility requirements for the written notifications.

New § 72.75(h) is added to indicate that the Commission may require a licensee to submit supplemental information if this information is necessary for the NRC to obtain a complete understanding of an unusually complex or significant event.

New § 72.75(i) is added to clarify that the requirements of § 72.75 apply (1) after a specific 10 CFR part 72 license has been issued to an applicant; (2) after a 10 CFR part 72 general licensee has first placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the reactor facility's protected area) or when the spent fuel is being transferred outside of the reactor facility's protected area to an ISFSI storage pad (if the ISFSI storage pad is located outside of the reactor facility's protected area); and (3) to non-emergency events that occurred within 3 years of the date of discovery. This paragraph will reduce licensee confusion about when the provisions of this section become applicable. The 3-year limitation will eliminate notifications for events that are no longer significant and will be consistent with the current §§ 50.72 and 50.73.

Section 72.216 (Reports) is removed and reserved because it is no longer needed.

In § 73.71, paragraph (a)(4) is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days. In addition, the filing location and method are revised to require written safeguards event notifications to be submitted in accordance with § 73.4. A copy of the notification must also be provided to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, in addition to the Director of the NRC program office responsible for the license (as specified in § 73.4).

In § 73.71, paragraph (d) is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days.

10 CFR part 73, Appendix G, Paragraph I, is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days.

Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule to amend 10 CFR parts 72 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations to change several event notification requirements for ISFSI and MRS facilities and safeguards event notification requirements to more closely align them with event notifications for reactor facilities. This action does not constitute the establishment of a standard that establishes generally-applicable requirements and the use of a voluntary consensus standard is not applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements contained in 10 CFR parts 72 and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150–0132 and 3150–0002.

The burden to the public for the information collections in 10 CFR part 72 is estimated to average 1 hour per response, and the burden for the information collections in 10 CFR part 73 is estimated to be reduced an average 6 hours per response. There is also an annualized (over three years) implementation burden for 10 CFR part 72 of 700 hours (33.3 hours per licensee) and for 10 CFR part 73 of 2720 hours (13.5 hours per licensee). This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0132 and –0002), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a final Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail, *mfh@nrc.gov*.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The majority of companies that own these facilities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that, as in the final rule 10 CFR parts 50 and 72, "Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites," the backfit rule (10 CFR 50.109, 10 CFR 70.76, 10 CFR 72.62, and 10 CFR 76.76) does not apply to information collection and reporting requirements such as those reporting requirements contained in this final rule. A backfit analysis is not required because this final rule does not involve any provisions that would impose backfits as defined in the backfit rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistle blowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transport, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 72 and 73.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142 (b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162 (b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, and 72.248.

■ 3. Section 72.75 is revised to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

(a) *Emergency notifications:* Each licensee shall notify the NRC Headquarters Operations Center upon the declaration of an emergency as specified in the licensee's approved emergency plan addressed in § 72.32. The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies, but not later than one hour after the time the licensee declares an emergency.

(b) *Non-emergency notifications:* Four-hour reports. Each licensee shall notify the NRC as soon as possible but not later than four hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor-related GTCC waste:

(1) An action taken in an emergency that departs from a condition or a technical specification contained in a license or certificate of compliance issued under this part when the action is immediately needed to protect the public health and safety, and no action consistent with license or certificate of compliance conditions or technical specifications that can provide adequate or equivalent protection is immediately apparent.

(2) Any event or situation related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other

Government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(c) *Non-emergency notifications:* Eight-hour reports. Each licensee shall notify the NRC as soon as possible but not later than eight hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor-related GTCC waste:

(1) A defect in any spent fuel, HLW, or reactor-related GTCC waste storage structure, system, or component that is important to safety.

(2) A significant reduction in the effectiveness of any spent fuel, HLW, or reactor-related GTCC waste storage confinement system during use.

(3) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(d) *Non-emergency notifications:* 24-hour reports. Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel, HLW, or reactor-related GTCC waste:

(1) An event in which important to safety equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation, license condition, or certificate of compliance to be available and operable to prevent releases that could exceed regulatory limits, to prevent exposures to radiation or radioactive materials that could exceed regulatory limits, or to mitigate the consequences of an accident; and

(ii) No redundant equipment was available and operable to perform the required safety function.

(2) For notifications made under this paragraph, the licensee may delay the notification to the NRC if the end of the 24-hour period occurs outside of the NRC's normal working day (*i.e.*, 7:30 a.m. to 5:00 p.m. Eastern time), on a weekend, or a Federal holiday. In these cases, the licensee shall notify the NRC before 8:00 a.m. Eastern time on the next working day.

(e) Initial notification: Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a), (b), (c), or (d) of this section by telephone to the NRC Headquarters Operations Center.[2]

[2] The commercial telephone number of the NRC Headquarters Operations Center is (301) 816–5100. Those licensees with an available Emergency Notification System (ENS) shall use the ENS to notify the NRC Headquarters Operations Center.

(2) When making a report under paragraphs (a), (b), (c), or (d) of this section, the licensee shall identify:

(i) The Emergency Class declared; or

(ii) Paragraph (b), "four-hour reports," paragraph (c), "eight-hour reports," or paragraph (d), "24-hour reports," as the paragraph of this section requiring notification of the non-emergency event.

(3) To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste involved in the event; and

(v) Any personnel radiation exposure data.

(f) *Follow-up notification:* With respect to the telephone notifications made under paragraphs (a), (b), (c) or (d) of this section, in addition to making the required initial notification, each licensee shall during the course of the event:

(1) Immediately report any further degradation in the level of safety of the ISFSI or MRS or other worsening conditions, including those that require the declaration of any of the Emergency Classes, if such a declaration has not been previously made; or any change from one Emergency Class to another; or a termination of the Emergency Class.

(2) Immediately report the results of ensuing evaluations or assessments of ISFSI or MRS conditions; the effectiveness of response or protective measures taken; and information related to ISFSI or MRS behavior that is not understood.

(3) Maintain an open, continuous communication channel with the NRC Headquarters Operations Center upon request by the NRC.

(g) *Preparation and submission of written reports.* Each licensee who makes an initial notification required by paragraphs (b)(1), (c)(1), (c)(2), or (d)(1) of this section shall also submit a written follow-up report to the Commission within 60 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be of sufficient quality to permit legible reproduction and optical scanning and must be submitted to the NRC in accordance with § 72.4. These reports must include the following information:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(2) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of an ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(i) The ISFSI or MRS operating conditions before the event;

(ii) The status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(iii) The dates and approximate times of occurrences;

(iv) The cause of each component or system failure or personnel error, if known;

(v) The failure mode, mechanism, and effect of each failed component, if known;

(vi) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vii) For wet spent fuel storage systems only, after the failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(viii) The method of discovery of each component or system failure or procedural error;

(ix) For each human performance related root cause, the licensee shall discuss the cause(s) and circumstances;

(x) For wet spent fuel storage systems only, any automatically and manually initiated safety system responses;

(xi) The manufacturer and model number (or other identification) of each component that failed during the event; and

(xii) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste involved in the event;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics; and

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(h) *Supplemental information:* The Commission may require the licensee to submit specific additional information beyond that required by paragraph (g) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing, and the licensee shall submit, as specified in § 72.4, the requested information as a supplement to the initial written report.

(i) *Applicability:* The requirements of this section apply to:

(1)(i) Licensees issued a specific license under § 72.40; and

(ii) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under part 50 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee's protected area to the ISFSI storage pad (if the ISFSI is located outside the collocated protected area, for a reactor licensed under part 50 of this chapter).

(2) Those non-emergency events specified in paragraphs (b), (c), and (d) of this section that occurred within 3 years of the date of discovery.

§ 72.216 [Reserved]

■ 4. Section 72.216 is removed and reserved.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 5. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 6. In § 73.71, paragraph (a)(4) and (d) are revised to read as follows:

§ 73.71 Reporting of safeguards events.

(a) * * *

(4) The initial telephonic notification must be followed within a period of 60 days by a written report submitted to the NRC by an appropriate method listed in § 73.4. In addition to the addressees specified in § 73.4, the licensee shall also provide one copy of the written report addressed to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

(d) Each licensee shall submit to the Commission the 60-day written reports required under the provisions of this section that are of a quality that will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

■ 7. In Appendix G to Part 73, the introductory sentence in paragraph I is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events.

* * * * *

I. Events to be reported within one hour of discovery, followed by a written report within 60 days.

* * * * *

Dated at Rockville, Maryland, this 15th day of May, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–14168 Filed 6–4–03; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC05

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published a final rule under part 615 on April 16, 2003 (68 FR 18532). This final rule amends the capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation, limit the amount of term preferred stock that may count as total surplus, clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System institution, and make several nonsubstantive technical changes. These amendments update, modify, and clarify certain capital requirements. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 5, 2003.

EFFECTIVE DATES: The regulation amending 12 CFR part 615 published on April 16, 2003 (68 FR 18532) is effective June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a) (9) and (10))

Dated: June 2, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–14148 Filed 6–4–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–20–AD; Amendment 39–13181; AD 2003–08–53]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N1, AS365–N2, AS 365 N3, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting a superseding Airworthiness Directive (AD) 2003–08–53, sent previously to all known U.S. owners and operators of the specified Eurocopter France (Eurocopter) model helicopters by individual letters. This AD requires, in addition to the checks and tapping test inspections required in the existing AD, adding the Eurocopter Model AS 365 N3 to the applicability and correcting tail rotor blade (blade) part numbers. Also, this AD requires doing tapping tests for bonding separation on blades and removing certain blades at specified intervals. The actions specified by this AD are intended to prevent failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective June 20, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–53, issued on April 23, 2003, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On May 9, 2000, the FAA issued AD 2000–10–08, Amendment No. 39–11732 (65 FR 31256, May 17, 2000), to require inspecting each blade for bonding separation, measuring the clearance between the tip of each blade and the circumference of the air duct, and replacing a blade if necessary. After issuing that AD, based on further analysis, we determined that a pilot should be able to check for a cracked, blistered, or wrinkled blade and that some debonding of the blade is acceptable and issued AD No. 2000–10–08R1 on September 25, 2001 (66 FR 50307, October 3, 2001), which amended AD No. 2000–10–08.

On April 23, 2003, we issued Emergency AD 2003–08–53 for the specified model helicopters, which requires, in addition to the checks and tapping test inspections required in the existing AD, adding the Eurocopter Model AS 365 N3 to the applicability, correcting blade part numbers, additional tapping tests for bonding separation on blades at specified intervals, and removing certain blades at specified intervals. That action was prompted by reports of an incident involving failure of the blade and an in-flight failure of a blade due to a fatigue crack. This condition, if not corrected, could result in failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter.

The FAA has reviewed Edition No. 1, Revision No. 0, of Eurocopter Alert Service Bulletin No. 05.09 for Model SA366G1 helicopters and No. 05.00.17 for Model AS 365 N1 and N2 helicopters, both dated April 16, 2003, which describe procedures for blade monitoring and limitations.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on these helicopter models. The DGAC advises that fatigue failure of the Kevlar tie bar of a blade and loss of the anti-torque function led to an accident. The DGAC classified the alert service bulletins as mandatory and issued AD Nos. T2003–155(A) for Eurocopter Model AS 365 N helicopters and T2003–156(A) for Eurocopter Model SA 366 helicopters, both dated April 17, 2003, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since the previously described unsafe condition is likely to exist or develop on other Eurocopter model helicopters of these same type designs, the FAA issued Emergency AD 2003–08–53 to prevent failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter. Therefore, in addition to the checks and tapping test inspections required in AD 2000–10–08R1, this AD requires the following:

- Add the Eurocopter Model AS 365 N3 to the applicability.
- Correct blade, P/N 365A12–0020-all dash numbers, to P/N 365A12–0020–00, –01, –02, or –03.
- At intervals not to exceed 25 hours time-in-service (TIS), do tapping tests for bonding separation on blades.
- Within 10 hours TIS, remove blades with 150 or more hours TIS.
- On or before 160 hours TIS, remove blades with less than 150 hours TIS.

This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a 160-hour TIS life limit for blades, P/N 365A12–0020–02 and 365A12–0020–03, with a serial number (S/N) equal to or greater than 32944, except for S/N 32963 through 33091, S/N 33116 through 33187, and S/N 33232 through 33319.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, adding the Eurocopter Model AS 365 N3 to the applicability; correcting the blade part numbers; conducting tapping tests at intervals not to exceed 25 hours TIS; within 10 hours TIS, removing blades with 150 or more hours TIS; and on or before 160 hours TIS, removing blades with less than 150 hours TIS are required, and this AD must be issued immediately.

An owner/operator (pilot) may perform the visual checks for a crack, blister, or wrinkle in the blade. Pilots may perform these checks because they require no tools and can be accomplished by observation and may be performed equally well by a pilot or a mechanic. However, the pilot must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD

effective immediately by individual letters issued on April 23, 2003, to all known U.S. owners and operators of the specified Eurocopter model helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 34 helicopters of U.S. registry and take approximately 4 work hours per helicopter to replace the blades at an average labor rate of $60 per work hour. Required parts will cost approximately $3,527 per blade. At 11 blades per helicopter, the cost per helicopter is $38,797. Based on these figures, we estimate the total cost impact of the AD to be $1,327,258, assuming 11 blades are replaced and assuming no additional cost for the pilot check. Eurocopter has stated in service documents that they are supplying replacement blades at no cost, which would result in a cost to the operator of $240 per helicopter and $8,160 for the fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–20–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–08–53 Eurocopter France: Amendment 39–13181. Docket No. 2003–SW–20–AD. Supersedes AD 2000–10–08, Amendment 39–11732, and 2000–10–08R1, Amendment 39–12452, both Docket No. 99–SW–34–AD.

Applicability: Model SA–365N1, AS365–N2, AS 365 N3, and SA–366G1 helicopters, with a tail rotor blade (blade), part number 365A33–2131-all dash numbers; 365A12–0010-all dash numbers; or 365A12–0020–00, –01, –02, or –03; installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) and thereafter before the first flight of each day, visually check each blade for a crack, blister, or wrinkling. An owner/operator (pilot), holding at least a private pilot certificate, may perform the visual check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)). *See* Figure 1 as follows:

BILLING CODE 4910–13–P

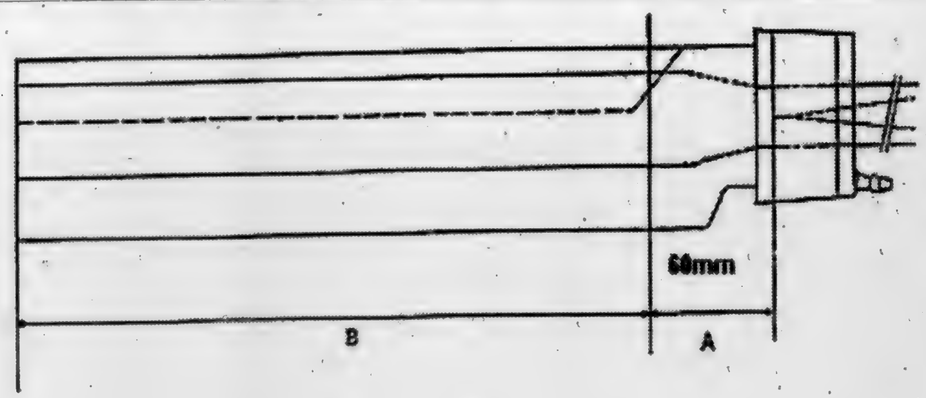


Figure 1

BILLING CODE 4910–13–C

(b) If a crack, blister, or wrinkling is found as a result of the visual check, accomplish the following before further flight (see Figure 1 of this AD):

(1) Zone A: If a blister is detected on the blade suction face, conduct a tapping test inspection on the whole blade for bonding separation.

(i) For blades, P/N 365A33–2131-all dash numbers, 365A12–0010-all dash numbers, and 365A12–0020–00, and –01, if bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(ii) For blades, P/N 365A12–0020–02, and –03, if bonding separation exceeds 900 mm^2 in a 30 x 30 mm square or if there is a crack, replace the blade with an airworthy blade before further flight.

(2) Zone B: If a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

(c) Within 10 hours TIS, conduct a tapping test inspection on each blade. If there is bonding separation that exceeds the criteria in paragraphs b(1)(i) and b(1)(ii) of this AD, replace the blade with an airworthy blade before further flight.

Note 1: Edition No. 1, Revision No. 0, of Eurocopter France Service Bulletin Nos. 05.09 and 05.00.17, both dated April 16, 2003, pertain to the subject of this AD.

(1) Thereafter, at intervals not to exceed 25 hours TIS or every 50 cycles (each takeoff and landing equals 1 cycle), whichever occurs first, conduct a tapping test inspection for bonding separation on all blades with a serial number (S/N) less than 18912, and blades, P/N 365A12–0020–00 or 365A12–0020–01, with a S/N equal to or greater than 18912. If bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(2) Thereafter, at intervals not to exceed 25 hours TIS, conduct a tapping test inspection for bonding separation on blades, P/N 365A12–0020–02 or 365A12–0020–03, in Zone A as depicted in Figure 1 of this AD.

(i) If bonding separation exceeds the criteria specified in paragraph (b)(1)(ii) of this AD or if a crack is found, replace the blade with an airworthy blade before further flight.

(ii) If bonding separation is present and within tolerance of the criteria specified in paragraph (b)(1)(ii) of this AD, conduct a tapping test before the first flight of the day and as often as necessary during the day ensuring that the TIS between tapping tests does not exceed 10 hours TIS between tapping tests.

(iii) Within 25 hours TIS after the discovery of skin debonding in Zone A, remove and replace the blade with an airworthy blade.

(3) Thereafter, at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, conduct a tapping test inspection for bonding separation on blades, P/N 365A12–0020–02 or 365A12–0020–03, in Zone B as depicted in Figure 1 of this AD. If a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

(d) Within 10 hours TIS, and thereafter at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, measure the blade-to-air duct clearance. If the clearance is less than 3 mm, replace the blade with an airworthy blade before further flight.

(e) For blades, P/N 365A12–0020–02 or 365A12–0020–03, with a S/N equal to or greater than 32944, except for S/N 32963 through 33091, S/N 33116 through 33187, or S/N 33232 through 33319:

(1) Within 10 hours TIS, replace blades with 150 or more hours TIS with an airworthy blade.

(2) On or before 160 hours TIS, replace blades with less than 150 hours TIS with an airworthy blade.

(f) This AD revises the Limitations section of the maintenance manual by establishing a 160-hour TIS life limit for blades, P/N 365A12–0020–02 and 365A12–0020–03, with a S/N equal to or greater than 32944, except for S/N 32963 through 33091, S/N 33116 through 33187, and S/N 33232 through 33319.

(g) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(h) This amendment becomes effective on June 20, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–53, issued April 23, 2003, which contained the requirements of this amendment.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. T2003–155(A) and T2003–156(A), both dated April 17, 2003.

Issued in Fort Worth, Texas, on May 28, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–14134 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–21–AD; Amendment 39–13183; AD 2003–11–23]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines. This AD requires initial and repetitive inspections of the master magnetic chip detector (MCD) or the No. 1, 2, 3 bearing chamber MCD. This AD is prompted by reports of No. 3 bearing failures that resulted in in-flight engine shutdowns (IFSDs) and significant smoke in the cockpit and cabin. The actions specified in this AD are intended to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin.

DATES: Effective June 20, 2003.

We must receive any comments on this AD by August 4, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may get the service information referenced in this AD from International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This AD applies to IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines with a serial number (SN) from V10600 through V11250 inclusive. This AD requires initial and repetitive inspections of the master MCD or the No. 1, 2, 3 bearing chamber MCD for contamination, and if the contamination is bearing material, replacement of the engine before further flight.

This AD is prompted by 19 failures of the No. 3 bearing attributed to ball spalling and race fracture. Of the 19 failures, seven resulted in IFSDs and 12 resulted in unscheduled engine removals (UERs). Of the seven IFSDs, two were associated with smoke in the cockpit and cabin. The smoke is a result of the failure of the No. 3 bearing. Ball spalling and race fracture of the No. 3 bearing occurs when there is hard particle contamination in the oil system. The contamination is caused by the release of coating particles on HPC stubshafts with low-energy plasma coating. The problem exists on the FAG bearings, part number 2A1165, which are less tolerant to damage from this contamination. The actions specified in this AD are intended to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines with a SN from V10600 through V11250 inclusive of the same type design. Therefore, we are issuing this AD to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin. This AD requires:

- Initial inspection of the master MCD or the No. 1, 2, 3 bearing chamber MCD within 125 hours time-in-service (TIS) after the effective date of this AD,
- Repetitive inspections of the master MCD or the No. 1, 2, 3 bearing chamber MCD within 125 hours time-since-last inspection.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for prior public comment are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–21–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov*.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–21–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–11–23 International Aero Engines AG: Amendment 39–13183. Docket No. 2003–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 20, 2003.

Affected ADs

(b) None.

Applicability: (c) This AD is applicable to International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines with a serial number (SN) from V10600 through V11250 inclusive. These engines are installed on, but not limited to, Airbus Industries A319, A320, and A321 series airplanes.

Unsafe Condition

(d) This AD was prompted by reports of No. 3 bearing failures that resulted in in-flight shutdowns (IFSDs) and smoke in the cockpit and cabin. The actions specified in this AD are intended to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Inspection of the Master Magnetic Chip Detector (MCD) or the No. 1, 2, 3 Bearing Chamber MCD

(f) For engines that have a No. 3 bearing, part number 2A1165, installed, do the following:

(1) Within 125 hours time-in-service (TIS) after the effective date of this AD, inspect the master MCD or the No. 1, 2, 3 bearing chamber MCD.

(2) Thereafter, within 125 hours time-since-last inspection, inspect the master MCD or the No. 1, 2, 3 bearing chamber MCD.

(3) If you find bearing material on the master MCD or No. 1, 2, 3 bearing chamber MCD, replace the engine before further flight.

Alternative Methods of Compliance

(g) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(h) None.

Related Information

(i) You can find information on inspecting the master MCD and the No. 1, 2, 3 bearing chamber MCD in section 79–00–00–601 of the Aircraft Maintenance Manual.

Issued in Burlington, Massachusetts, on May 29, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14133 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13971; Airspace Docket No. 02–AAL–08]

Establishment of Class E Airspace; Marshall, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Monday, May 5, 2003, (68 FR 23580). The final rule established Class E airspace at Marshall, AK.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–11022 published on Monday, May 5, 2003; (68 FR 23580) established Class E airspace at Marshall, AK. The Class E airspace was defined with reference to the Airport Reference Point for the Marshall Don Hunter Sr. Airport, Marshall, AK. The published coordinates of the Marshall Don Hunter Sr. Airport were wrong and the name of the airport was incorrectly stated.

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace at Marshall, AK as published in the **Federal Register** on Monday, May 5, 2003 (68 FR 23580) is corrected as follows:

PART 71—[Corrected]

§ 71.1 [Corrected]

■ On page 23581, Column 2, second paragraph second line, change "(Marshall Airport, AK)" to read "(Marshall Don Hunter Sr. Airport, AK)." On page 23581, Column 2, second paragraph third line, change "(Lat. 61°51′53″ N., long. 162°01′28″ W.)" to "(Lat. 61°51′ 51″ N., long. 162°01′34″ W.)"

Issued in Anchorage, AK, on May 28, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–14162 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 30 and 40

Amendment to Appendix C of Part 40 and Redesignation as Appendix D of Part 30

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is revising its guidance specifying the information that a foreign board of trade should submit to Commission staff when seeking no-action relief to offer and sell to persons located in the United States a futures contract on a foreign non-narrow-based security index traded on that board of trade. Specifically, the Commission is adding an introductory section to provide an explanation of how its staff evaluates information submitted by the foreign board of trade, is deleting information that it no longer deems necessary, and is adding a provision specifying that the foreign board of trade should, if applicable, make a request to make the futures contract available for trading in accordance with the terms and conditions of its Foreign Trading System No-Action letter received from Commission staff and certification of its continued compliance with that letter.

DATES: Effective June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Senior Assistant General Counsel (Regulation), (202) 418–5120, electronic mail: *hhardman@cftc.gov*; Julian E. Hammar, Counsel, (202) 418–5118, electronic mail: *jhammar@cftc.gov*, Office of General Counsel, or Thomas M. Leahy, Jr., Financial Instruments Unit Chief, (202) 418–5278, electronic mail: *tleahy@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In June of 1999, the Commission added Appendix E to Part 5 of 17 CFR Chapter I, which specified the information that a foreign board of trade should submit to Commission staff when seeking no-action relief to offer and sell to persons located in the United States ("U.S."), a futures contract on a foreign security index traded on that foreign board of trade.[1] After the enactment of the Commodity Futures Modernization Act of 2000 ("CFMA"),[2] which extensively amended the Commodity Exchange Act ("Act"),[3] the Commission reorganized its rules, and redesignated Appendix E as Appendix C to Part 40 of 17 CFR Chapter I.[4] The Commission later made technical amendments to the Appendix amending that guidance to incorporate the changes made by the CFMA to the criteria for approving non-narrow-based security index futures contracts.[5]

[1] 64 FR 29217 (June 1, 1999).

[2] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[3] 7 U.S.C. § 1 *et seq.* (2000).

[4] 66 FR 42255 (Aug. 10, 2001).

[5] 67 FR 62873 (Oct. 9, 2002). Generally, foreign exchange-traded security futures products (futures or options on narrow-based security indices or single securities), may not be offered or sold in the

Continued

Today, the Commission is further amending the guidance in Appendix C to part 40. Specifically, the Commission is adding introductory language that explains to the public how its staff uses the information requested by the Appendix in evaluating requests for no-action relief by foreign boards of trade seeking to offer and sell their futures contracts on security indices to persons located in the U.S. The Commission also is deleting certain information that it no longer deems necessary in evaluating such requests. Further, the Commission is adding a provision to the guidance specifying that the foreign board of trade should, if applicable, make a request to the staff to make the futures contract available for trading in accordance with the terms and conditions of its Foreign Trading System No-Action letter received from Commission staff and provide a certification of its continued compliance with that letter.[6] This provision will obviate the need for the foreign board of trade to seek a separate letter from the Division of Market Oversight ("DMO") in order to allow the offer and sale of its approved futures contract on its trading system in the U.S. pursuant to no-action relief provided by DMO staff.

In addition, the Commission is redesignating Appendix C of part 40 as Appendix D of part 30 of 17 CFR, Chapter I. The Commission's rules in Part 30 govern foreign futures and options transactions, and accordingly it would be more appropriate for the guidance to foreign exchanges on foreign exchange-traded products to be placed there.

Because the information in newly designated Appendix D of part 30 represents guidance only, this amendment does not constitute a rule under the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.*, and accordingly, the provisions of the APA that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable. For the same reason, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, concerning the impact of rules on small entities, and the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), concerning rules that contain collections of information, are inapplicable.

■ In view of the forgoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 1. Appendix C to Part 40 is redesignated as Appendix D to Part 30.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 2. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

■ 3. In Part 30, newly designated appendix D is revised to read as follows:

Appendix D—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief To Offer and Sell, to Persons Located in the United States, a Futures Contract on a Foreign Non-Narrow-Based Security Index Traded on That Foreign Board of Trade

A. Section 2(a)(1)(C)(iv) of the Commodity Exchange Act ("Act") generally prohibits any person from offering or selling a futures contract based on a security index in the U.S., except as otherwise permitted under the Act, including Section 2(a)(1)(C)(ii) of the Act. By its terms, Section 2(a)(1)(C)(iv) of the Act applies to futures contracts on security indices traded on both domestic and foreign boards of trade. Section 2(a)(1)(C)(ii) of the Act sets forth three criteria to govern the trading of futures contracts on a group or index of securities on contract markets and derivatives transaction execution facilities:

(1) The contract must provide for cash settlement;

(2) The contract must not be readily susceptible to manipulation or to being used to manipulate any underlying security; and

(3) The group or index of securities must not constitute a narrow-based security index.

B. While Section 2(a)(1)(C)(ii) of the Act provides that no board of trade or derivatives transaction execution facility may trade a security index futures contract unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to a foreign security index futures contract traded on a foreign board of trade. The Office of General Counsel has applied those same three criteria in evaluating requests by foreign boards of trade to allow the offer and sale within the United States of their foreign security index futures contracts when those foreign boards of trade do not seek designation as a contract market or registration as a derivatives transaction execution facility to trade those products.[1]

C. In the analysis of a no-action request for a foreign security index futures contract traded on a foreign board of trade, the Office of the General Counsel asks the Division of Market Oversight (Division) to evaluate the foreign security index futures contract to ensure that it complies with the three criteria of Section 2(a)(1)(C)(ii) of the Act.

D. Because security index futures contracts are cash settled, the Division also evaluates the contract to ensure that the contract terms and conditions relating to cash settlement are consistent with the Commission's Guideline No. 1 requirements for cash settled contracts. In that regard, Guideline No. 1 requires that the cash price series be reliable, acceptable, publicly available and timely; that the cash settlement price be reflective of the underlying cash market; and that the cash settlement price not be readily susceptible to manipulation. In making its determination, the Division considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and any other relevant factors.

E. In considering the susceptibility of an index to manipulation, the Division examines several factors, including the structure of the primary and secondary markets for the component equities, the liquidity of the component stocks, the method of index calculation, the total capitalization of stocks underlying he index, the number, weighting and capitalization of individual stocks in the index, and the existence of surveillance sharing agreements between the board of trade and the securities exchange(s) on which the underlying securities are traded.

F. To verify that the index is not narrow based, the Division considers the number and weighting of the component securities and the value of average daily trading volume of the lowest weighted quartile of securities. Under the Act, a security index is narrow-based if it meets any one of the following criteria:

(1) The index is composed of fewer than 10 securities;

(2) Any single security comprises more than 30% of the total index weight

(3) The five largest securities comprise more than 60% of the total index weight; or

(4) The lowest-weighted securities that together account for 25% of the total weight of the index have an aggregate dollar value of average daily trading volume of less than US$30 million (or US$50 million if the index includes fewer than 15 securities).

G. Accordingly, a foreign board of trade seeking no-action relief to offer and to sell, to persons located in the U.S., a futures contract on a non-narrow based foreign security index traded on that foreign board of trade should submit to the Office of General Counsel the following in English:

(1) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the exchange on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(3) Assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly;

(4) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts;

(5) Information and data denoted in U.S. dollars (and the conversion date and rate used) relating to:

(i) The method of computation, availability, and timeliness of the index;

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the case-settlement price and the timing of its public release;

(v) Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to Commission Rule 41.11; and

(vi) If applicable, average daily futures trading volume;

(6) A statement that the index is not a narrow-based security index as defined in Section 1a(25) of the Act and the analysis supporting that statement; and

(7) When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, the Foreign Trading System No-Action letter that the foreign board of trade received from Commission staff and a certification from the foreign board of trade that it is in compliance with the terms and conditions of that no-action letter.

Issued in Washington, DC on May 21, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–13414 Filed 6–4–03; 8:45 am]

BILLING CODE 6351–01–M

U.S. until the Commission and the U.S. Securities and Exchange Commission (SEC) adopt rules governing such products. *See* Section 2(a)(1)(E) of the Act, 7 U.S.C. § 2(a)(1)(E) and Section 6(k) of the Securities Exchange Act of 1934, 15 U.S.C. § 78f(k). *But see* Section 2(a)(1)(F) of the Act, 7 U.S.C. § 2(a)(1)(F).

[6] *See* the Commission's Statement of Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Place Electronic Trading Devices in the U.S., 65 FR 41641–01 (July 6, 2000).

[1] With regard to the third criterion, and CFTC and SEC jointly promulgated Rule 41.13 under the Act and Rule 3a55–3 under the Securities Exchange Act of 1934 ("Exchange Act"), governing security index futures contracts traded on foreign boards of trade. These rules provide that "[w]hen a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market or registered derivatives transaction execution facility." CFTC Rule 41.13, 17 C.F.R. § 41.13; Exchange Act Rule 3a55–3, 17 C.F.R. § 240.3a55–3.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE34

Distribution of Fiscal Year 2003 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary rule and request for comments.

SUMMARY: We are issuing a temporary rule requiring that we distribute 75 percent of available fiscal year 2003 Indian Reservation Roads (IRR) Program funds to projects on or near Indian reservations using the relative need formula. As we did in fiscal years 2000, 2001 and 2002, we are using the Federal Highway Administration (FHWA) Price Trends report for information to calculate the relative need formula, with appropriate modifications to address non-reporting states. We will distribute the balance of the remaining 25 percent of fiscal year 2003 IRR Program funds according to the relative need formula.

DATES: This temporary rule is effective June 5, 2003, through September 30, 2003. We will accept comments on this temporary rule until July 7, 2003.

ADDRESSES: You may send comments on the formula for distribution of the Fiscal Year 2003 IRR Program funds to: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 208–4359.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone), or 202–208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads Program, the Relative Need Formula, the FHWA Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR Program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** Notice dated February 15, 2000 (65 FR 7431).

What Was the Basis for Distribution of Fiscal Years 2000, 2001 and 2002 IRR Program Funds?

For fiscal year 2000 IRR Program funds, the Secretary published a temporary and final distributing one-half of the funds in February 2000 and the second half of the funds in June 2000. For fiscal years 2001 and 2002 IRR Program funds, the Secretary published a temporary distributing 75 percent of the funds in January 2001 and January 2002 and the remaining 25 percent of the funds in March 2001 and July 2002. These distributions followed the TEA–21 Negotiated Rulemaking Committee's

recommendation to distribute fiscal years 2000, 2001 and 2002 IRR Program funds under the relative need formula used in 1999, while continuing to develop a proposed formula to publish for comment as part of the 25 CFR 170 Notice of Proposed Rulemaking. In addition, in each of these years we modified the Federal Highway Administration Price Trends Report indices to account for non-reporting states.

What Is the Basis for Distribution of Fiscal Year 2003 IRR Program Funds?

The Transportation Equity Act for the 21st Century (TEA–21) provides that the Secretary develop rules and a funding formula for fiscal year 2000 and subsequent fiscal years to implement the Indian Reservation Roads Program section of the Act. The Negotiated Rulemaking Committee created under section 1115 of TEA–21 and comprised of representatives of tribal governments and the Federal Government has been diligently working to develop a funding formula that addresses the Congressionally identified criteria, Committee and tribal recommendations, and is consistent with overall Federal Indian Policy.

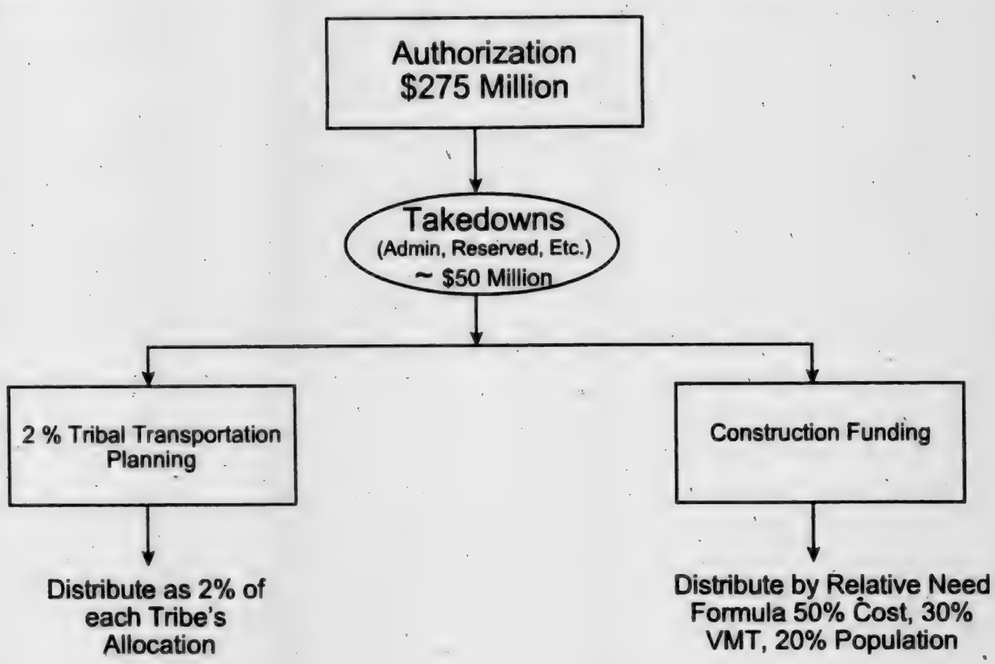
The Committee proposed a permanent funding formula that was published on August 7, 2002 (67 FR 51328) in the **Federal Register** for public comment. The Secretary is completing the review of comments and drafting a final rule at this time. In the meantime, there are about 1300 ongoing road and bridge construction projects on or near Indian reservations which need fiscal year 2003 funding to continue or complete work. Partially constructed road and bridge projects could pose safety threats. Other road and bridge projects need to be planned or initiated in this fiscal year. This rule is published as a temporary rule only for interim funding for fiscal year 2003 and sets no precedent for the final rule to be published as required by section 1115 of TEA–21. We expect to publish the final rule and funding formula before the beginning of fiscal year 2004. The interim formula for the current fiscal year will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2004. The Secretary is basing this distribution on similar methodologies used in fiscal year 2000, 2001 and 2002.

How Will the Secretary Distribute Fiscal Year 2003 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute 75 percent of fiscal year 2003 IRR Program funds based on the current relative need formula used in fiscal years 2000, 2001 and 2002, and the indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process. We will distribute fiscal year 2003 IRR Program funds to the twelve BIA regions using this distribution process. We are requesting comments on the use of the current relative need formula for distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds.

What Formula Components Are We Using for Distribution of Fiscal Year 2003 IRR Program Funds and How Are They Related?

The following diagram shows the relationship between components for fiscal year 2003 IRR Program funds distribution:



What Data Are We Using for the Interim Distribution Funding Formula?

We are using the most current road inventory data (June 2002) maintained by the Bureau of Indian Affairs.

Are There Any Differences in the Distribution of Fiscal Year 2003 IRR Program Funds as Compared to the Distributions of Fiscal Years 2000, 2001 and 2002 IRR Program Funds?

The distribution of fiscal year 2003 IRR Program funds is based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted fiscal years 2000, 2001 and 2002 distribution. In February 2000 the Secretary partially distributed fiscal year 2000 IRR Program funds using the relative need formula. In June 2000 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two nonreporting states, Washington and Alaska, that impact tribes in those nonreporting states. In January 2001 the Secretary partially distributed fiscal year 2001 IRR Program funds using the relative need formula. In June 2001 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for non-reporting states. In January 2002 the Secretary partially distributed fiscal year 2002 IRR Program funds using the relative need formula. In July 2002 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for non-reporting states. We are using the same modification process for non-reporting states for distribution of fiscal year 2003 IRR Program funds. For fiscal years 2001 and 2002 we distributed funds in the same manner as in fiscal year 2000, except that we reserved up to $19.53 million for administrative capacity building for federally recognized tribes. We are distributing fiscal year 2003 funds in the same way as fiscal year 2000 IRR Program funds.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2002 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on the first partial distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this temporary rule for distribution of 75 percent of fiscal year 2003 IRR Program funds effective immediately under 5 U.S.C. 553(d)(3).

Notice and public procedure would be impracticable because of the urgent need to distribute 75 percent of fiscal year 2003 IRR Program funds. Approximately 1300 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 220 deficient bridges and the construction of approximately 7300 miles of roads. Fiscal year 2003 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate partial distribution of fiscal year 2003 IRR Program funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Approximately 40 percent of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 600 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This temporary rule is going into effect immediately because of the urgent need for partially distributing fiscal year 2003 IRR Program funds to continue these construction projects. Distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds will be distributed under the same relative need formula as the first 75 percent of the funds after we review and consider comments.

Clarity of This Temporary Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this temporary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the temporary rule clearly stated? (2) Does the temporary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the temporary rule (grouping and order of sections, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the temporary rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the temporary rule? What else could we do to make the temporary rule easier to understand?

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action requiring review by the Office of Management and Budget because it will have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2003 IRR Program funds is approximately $196 million and we are distributing approximately $147 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2003 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This temporary rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This temporary rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This temporary rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This temporary rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the distribution of fiscal year 2002 IRR Program funds.

Approximately 1300 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* is not required for this temporary rule because it applies only to tribal governments, which are not covered by the Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of $100 million or more. We are distributing approximately $147 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this temporary rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This temporary rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this temporary rule is to immediately provide 75 percent of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This temporary rule should not affect the relationship between State and Federal governments because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process to set up a permanent funding formula distributing IRR Program funds. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to 75 percent of fiscal year 2003 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 218), consultation with representatives of Indian tribal governments who serve on the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee has occurred. Distributing IRR Program funds under this interim rule has tribal implications in that transportation planning and projects rely on this funding. Distributing funds under this interim rule does not impose direct compliance costs on Indian tribal governments and does not preempt tribal law. While TEA–21 Negotiated Rulemaking Committee tribal representatives agree that we use the funding method for distributing IRR Program funds we have used since 1993, as they have agreed for fiscal years 2000, 2001, and 2002, there is disagreement among tribal representatives about reserving funds (approximately $20 million) to distribute $35,000 to each Federally-recognized tribe for administrative capacity building for fiscal year 2003. We reserved administrative capacity building funds in fiscal years 2001 and 2002 and distributed $35,000 to each Federally-recognized tribe in each year. For fiscal year 2003, however, since there is no consensus to provide administrative capacity building funds, the method of formula distribution of all available funds will reflect the same distribution as in FY2000, FY2001 and FY2002.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

■ For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

■ 2. Effective June 5, 2003, through September 30, 2003, revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute 75 percent of fiscal year 2003 Indian Reservation Roads funds?.

On June 5, 2003, we will distribute 75 percent of fiscal year 2003 IRR Program funds authorized under section 1115 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. We are modifying the formula to account for non-reporting States by inserting the latest data reported for those States for use in the relative need formula process.

Dated: May 26, 2003.

Aurene M. Martin,

Assistant Secretary-Indian Affairs.

[FR Doc. 03–14184 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 2674–2003]

RIN 1105–AA45

Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending its existing regulations implementing the Foreign Agents Registration Act of 1938, as amended. The rule establishes new regulations needed as a result of the passage of the Lobbying Disclosure Act of 1995 (LDA) and the Lobbying Disclosure Technical Amendments Act of 1998 (LDTAA), both of which amended the Foreign Agents Registration Act, and makes technical amendments to existing regulations.

DATES: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Heather H. Hunt, Attorney, Registration Unit, Counterespionage Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, NW., Washington, DC 20530, telephone (202) 514–1216, facsimile (202) 514–2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Why Is the Department Changing the Foreign Agents Registration Act Regulations?

Under the Foreign Agents Registration Act of 1938 (FARA or the Act), 22 U.S.C. 611–621, agents of foreign principals are required to register with the Department of Justice in order to make periodic public disclosure of their relationship with the foreign principal, activities on behalf of the foreign principal, and receipts and disbursements in support of these activities. In the Lobbying Disclosure Act of 1995, Pub. L. 104–65, 2 U.S.C. 1601–1613 (LDA), and the Lobbying Disclosure Technical Amendments Act of 1998, Pub. L. 105–166 (LDTAA), Congress amended FARA in several respects. First, Congress generally narrowed the scope of FARA to agents of foreign governments and foreign political parties. Under new section 3(h) of FARA, 22 U.S.C. 613(h), agents of foreign principals other than foreign governments or foreign political parties need not register under FARA if such agents engage in lobbying activities and register under the LDA. Second, Congress repealed section 1(q) of the Act, 22 U.S.C. 611(q), which had provided a safe harbor specifying circumstances in which agents of multinational corporations would be exempt from registration under section 3(d)(2) of the Act, 22 U.S.C. 613(d)(2). When Congress authorized registration under the LDA rather than FARA for lobbying activities on behalf of foreign principals other than foreign governments and foreign political parties, section 1(q) became largely unnecessary.

In addition, in the LDA, Congress clarified the applicability of an exemption in section 3(g), 22 U.S.C. 613(g), for legal representation of a foreign principal in certain proceedings. Finally, Congress substituted the term "informational materials" for the term "political propaganda" throughout FARA, except in section 4(e), 22 U.S.C. 614(e), which concerns the dissemination of materials on behalf of the foreign principal, and in section 11, 22 U.S.C. 621, which concerns the filing of a semi-annual report with Congress. These amendments require changes in the FARA regulations.

Did the Department Solicit Public Comments?

On July 9, 1999, a proposed rule was published in the **Federal Register** (64 FR 37065). Interested persons were afforded the opportunity to participate in the regulatory process. The comment period ended on September 7, 1999. No written comments were received on the proposed rule. Notwithstanding the fact that comments were not received, the Department made minor clarifying adjustments to the proposed rule under 28 CFR 5.304 and 5.307 to more clearly construe the section 3(d)(2) and 3(h) exemptions.

How Does This Final Rule Change the Current Regulations?

The amendments to FARA required changes implementing, among others, sections 3(d)(2), 3(g), 3(h) and 4 of FARA. First, this rule clarifies the reach of section 3(d)(2) in light of the repeal of section 1(q) of FARA. Section 3(d)(2) of the Act exempts from registration under FARA activities of a political nature "not serving predominantly a foreign interest." Under the rule, political activities of an agent on behalf of a foreign corporation, even if the foreign corporation is owned in whole or in part by a foreign government, where the political activities further the bona fide commercial, industrial, or financial operations of the foreign corporation, are not directed by a foreign government or foreign political party, and do not directly promote the public or political interests of a foreign government or foreign political party, do not require registration under FARA because such activities do not "serve predominantly a foreign interest" for purposes of 3(d)(2). Even after the deletion of section 1(q), any person, including a foreign or domestic corporation, who engages in political activities, not in furtherance of the bona fide commercial, industrial, or financial operations of a foreign corporation, but, on behalf of a foreign government or foreign political party, is required to register under FARA, as these activities will "serve predominantly a foreign interest" and thus not be exempt under section 3(d)(2).

Second, the rule clarifies the circumstances in which agents of foreign principals, other than foreign governments or foreign political parties, can claim the new exemption provided in section 3(h), and it clarifies the reach of the revised "attorneys' exemption" in section 3(g). In addition, the rule strikes

the term "political propaganda" wherever it appears in the regulations and substitutes the LDA term, "informational materials." Finally, the rule makes certain technical amendments to the existing regulations to delete references to other repealed sections of the Act and to enable the Registration Unit to administer the statute more effectively by allowing for electronic filing in the future.

Certifications and Determinations

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The rule primarily affects those persons required to register pursuant to FARA, currently approximately 500 primary registrants and 2,500 individual short form registrants. The rule merely conforms Department regulations to changes made by the LDA and the LDTAA. These acts reduced the number of people who had to file reports with the Department.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that it does not constitute "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly it has not been reviewed by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department of Justice certifies that this rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. The rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language

We try to write clearly. If you can suggest how to improve the clarity of these regulations, contact Heather H. Hunt, Attorney, Registration Unit, Counterespionage Section, Criminal Division, United States Department of Justice, telephone (202) 514–1216.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

■ Accordingly, the Department of Justice amends Part 5 of title 28 of the Code of Federal Regulations, chapter 1, as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

§ 5.5 [Amended]

■ 2. a. Amend § 5.5 in paragraph (d)(10) by adding the words "informational materials," following "reports,".
■ b. Amend § 5.5 in paragraph (d)(11) by adding the words "informational materials," following "reports,".

§ 5.100 [Amended]

■ 3. a. Amend § 5.100 in paragraph (c) by removing "1(q),".
■ b. Amend § 5.100 in paragraph (d) by removing "1(q),".

§ 5.200 [Amended]

■ 4. Amend § 5.200 in paragraph (b) by removing the words "Form OBD–63" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.201 [Amended]

■ 5. a. Amend § 5.201 in paragraph (a)(1) by removing the words "Form OBD–67" and adding, in their place, the words "a form provided by the Registration Unit".
■ b. Amend § 5.201 in paragraph (a)(2) by removing the words "Form OBD–65" and adding, in their place, the words "a form provided by the Registration Unit"".

§ 5.202 [Amended]

■ 6. a. Amend § 5.202 in paragraph (b) by adding the word "registrable" before the word "activity".
■ b. Amend § 5.202 in paragraph (e) by removing the words "Form OBD–66" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.203 [Amended]

■ 7. Amend § 5.203 in paragraph (a) by removing the words "Form OBD–64" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.204 [Amended]

■ 8. Amend § 5.204 in paragraph (a) by removing the words "Form OBD–68" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.205 [Amended]

■ 9. Amend § 5.205 in paragraph (a) by removing the words "OBD–64" and adding, in their place, the words "the supplemental statement form".

§ 5.206 [Amended]

■ 10. Amend § 5.206 in paragraph (b) by adding the words ", or if it is filed in an electronic format acceptable to the Registration Unit" following the word "ink".
■ 11. Revise paragraph (c) of § 5.304 to read as follows:

§ 5.304 Exemptions under section 3(d) and (e) of the Act.

* * * * *

(c) For the purpose of section 3(d)(2) of the Act, a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.

* * * * *

■ 12. Revise paragraph (a) of § 5.306 to read as follows:

§ 5.306 Exemption under section 3(g) of the Act.

* * * * *

(a) Attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record, shall include only such attempts to influence or persuade with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; and

* * * * *

§ 5.306 [Amended]

■ 13. Amend § 5.306 in paragraph (b) by removing the word "like" and adding, in its place, the word "fall".
■ 14. Add § 5.307 to read as follows:

§ 5.307 Exemption under 3(h) of the Act.

For the purpose of section 3(h) of the Act, the burden of establishing that registration under the Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq.* (LDA), has been made shall fall upon the person claiming the exemption. The Department of Justice will accept as prima facie evidence of registration a duly executed registration statement filed pursuant to the LDA. In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.

§ 5.400 Filing of informational materials.

■ 15. a. The section heading of §5.400 is revised to read as set forth above.
■ b. Amend § 5.400 in paragraph (a) by removing the words "two copies of each item of political propaganda" and adding, in their place, the words "informational materials", and by adding, before the period, the words "no later than 48 hours after the beginning of the transmittal of the informational materials".
■ c. Amend § 5.400 in paragraph (b) by removing the words "two copies of an item of political propaganda" and adding, in their place, the words "informational materials" and by removing the word "material" and adding, in its place, the word "materials".
■ d. Amend § 5.400 in the first sentence of paragraph (c) by removing the words "two copies of a motion picture containing political propaganda" and adding, in their place, the words "a copy of a motion picture".

§ 5.401 [Removed]

■ 16. Remove § 5.401.

§ 5.402 Labeling informational materials.

■ 17. a. The section heading of § 5.402 is revised to read as set forth above.
■ b. Amend § 5.402 in paragraph (a) by removing the words "political propaganda" and adding, in their place, the words "informational materials", by removing the words "it has" and adding, in their place, the words "they have", and by removing the word "its" and adding in its place, the word "their".
■ c. Amend § 5.402 in paragraph (b) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials which are", and by removing the word "is" from the phrase "which is in the form of prints" and adding, in its place, the word "are", and by removing the word "item" from the phrase "such item" and adding, in its place, the word "materials".
■ d. Amend § 5.402 in paragraph (c) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials", and by removing the word "is" from the phrase "which is not in the form of prints" and adding, in its place, the word "are".
■ e. Amend § 5.402 in paragraph (d) by removing the words "Political propaganda as defined in section 1(j) of the Act which is" and adding, in their place, the words "Informational materials that are", and by removing the word "is" before the word "caused" and adding, in its place, the word "are".
■ f. Amend § 5.402 in paragraph (e) by removing the words "political propaganda as defined in section 1(j) of the Act" and adding, in their place, the words "informational materials".
■ g. Amend § 5.402 in paragraph (f) by removing the words "political propaganda" and adding, in their place, the words "informational materials".

§ 5.500 [Amended]

■ 18. Amend § 5.500 in paragraph (a)(4) by removing the words "political propaganda has" and adding, in their place, the words "informational materials have".

§ 5.600 [Amended]

■ 19. Amend § 5.600 by adding the words "informational materials," following the words "Registration statements," and by removing the words "from 10 a.m. to 4 p.m." and adding, in their place, the words "during the posted hours of operation."

§ 5.601 [Amended]

■ 20. a. Amend § 5.601 in paragraph (a) by adding the words "informational materials," following the word "thereto,".
■ b. Amend § 5.601 in paragraph (b) by adding the words "informational materials," following the word "thereto,".

Dated: May 28, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–13947 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN81–7306a; FRL–7493–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for Flint Hills Resources, L.P. (formerly known as Koch Petroleum Group, L.P.). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision request on March 13, 2003. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This direct final rule will be effective August 4, 2003, unless EPA receives adverse comment by July 7, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking this action?
3. What is the background for this action?
II. Review of State Implementation Plan Revision
1. Why did the State submit this SIP Revision?
2. What did Minnesota submit for approval into the SIP?
3. How does the SIP revision show attainment of the SO_2 standards?
III. Final Rulemaking Action
IV. Statutory and Executive Order Reviews

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO_2 SIP a site-specific revision for Flint Hills Resources L.P. (FHR), located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving and thereby incorporating Amendment No. 6 to FHR's administrative order (order) into the Minnesota SO_2 SIP.

2. Why Is EPA Taking this Action?

EPA is taking this action because the state's submittal for FHR is fully approvable. The SIP revision provides for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfies the applicable SO_2 requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is in EPA's March 20, 2003 Technical Support Document (TSD).

3. What Is the Background for this Action?

EPA redesignated the Pine Bend area from a primary SO_2 nonattainment area to attainment of the SO_2 NAAQS in a direct final notice published on May 31, 1995 (60 FR 28339).

On December 20, 2000, MPCA submitted a SIP revision consisting of Amendment No. 4 to FHR's order. EPA approved Amendment No. 4 into the SO_2 SIP on June 12, 2001 (66 FR 31545). On May 2, 2001, MPCA submitted a SIP revision consisting of Amendment No. 5 to FHR's order. EPA approved Amendment No. 5 into the SO_2 SIP on February 21, 2002 (67 FR 7957). Amendment No. 4 and Amendment No. 5 were required to reduce emissions of nitrogen oxides (NO_X) and SO_2 at FHR.

Koch Petroleum Group, L.P. changed its corporate name to Flint Hills Resources, L.P. on January 1, 2002.

II. Review of State Implementation Plan Revision

1. Why Did the State Submit this SIP Revision?

This is the third revision to the order initiated by FHR to reduce emissions of NO_X and SO_2 pursuant to a December 22, 2000 consent decree in United States v. Koch Petroleum Group, L.P., Civil Action No. 00–2756–PAM–SRN. The revised order contains changes needed to reduce emissions as required by the consent decree, changes supporting the production of lower-sulfur fuels, and changes affecting the refinery that have occurred since the Order was first issued.

2. What Did Minnesota Submit for Approval into the SIP?

The March 13, 2003 revision submitted by MPCA requests that EPA approve Amendment No. 6 to FHR's order into the Minnesota SO_2 SIP. Amendment No. 6 will allow FHR to modify its refinery in order to meet the requirements established in the consent decree and to make other changes, such as allowing FHR to make lower sulfur gasoline (Tier 2 gasoline) and lower-sulfur diesel fuels. The revised order also reflects other changes previously made at the refinery, such as the removal or addition of equipment, the elimination of fuel oil combustion, limiting the sulfur content of diesel fuel used at the refinery, and reducing the number of locations for decoking.

3. How Does the SIP Revision Show Attainment of the SO_2 Standards?

The MPCA submitted air quality modeling in support of FHR's SO_2 SIP revision. The modeled attainment demonstration included all significant SO_2 emission sources at FHR and included emissions from several nearby facilities. A background concentration was also added to the modeled values for comparison to the NAAQS. The modeling demonstrates attainment and maintenance of the SO_2 NAAQS in the Pine Bend area. A more detailed discussion is in EPA's March 20, 2003 TSD.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for Flint Hills Resources, L.P., located in the Pine Bend area of Rosemount, Dakota County, Minnesota. Specifically, EPA is incorporating Amendment No. 6 to FHR's Administrative Order into the Minnesota SO_2 SIP. The State submitted this SIP revision on March 13, 2003 as a result of negotiations to a consent decree between EPA, MPCA and FHR, in which FHR proposed a series of modifications at the Pine Bend refinery. The revised Order contains changes needed to reduce emissions as required by the Consent Decree, changes supporting the production of lower-sulfur fuels, and changes affecting the refinery that have occurred since the Order was first issued. As described above, this project provides for attainment and maintenance of the SO_2 NAAQS in the Pine Bend area and is therefore fully approvable.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective August 4, 2003 without further notice unless we receive relevant adverse comments by July 7, 2003. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective August 4, 2003.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 17, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1220 is amended by removing and reserving paragraphs (c)(57) and (c)(60) and adding paragraph (c)(62) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(57) [Reserved]

* * * * *

(60) [Reserved]

* * * * *

(62) On March 13, 2003, the State of Minnesota submitted a site-specific State Implementation Plan (SIP) revision for the control of emissions of sulfur dioxide (SO_2) for Flint Hills Resources, L.P., located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the SO_2 SIP Amendment No. 6 to the Administrative Order previously approved in paragraph (c)(35) and revised in paragraphs (c)(57) and (c)(60) of this section.

(i) Incorporation by reference.

(A) An administrative order identified as Amendment Six to Findings and Order by Stipulation, for Flint Hills Resources, L.P., dated and effective March 11, 2003, submitted March 13, 2003.

[FR Doc. 03–13570 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA275–0393c; FRL–7495–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern BAAQMD Rule 8–5—Storage of Organic Liquids and 8–18—Equipment Leaks.

DATES: This interim final determination is effective on June 5, 2003. However, comments will be accepted until July 7, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental

Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On October 10, 2001, (66 FR 51568), we published a limited approval and limited disapproval of BAAQMD Rules 8–5 and 8–18 as adopted locally on December 15, 1999 and January 7, 1998, respectively, and submitted by the State on March 28, 2000. We based our limited disapproval action on certain deficiencies in each submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after November 9, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On November 27, 2002, BAAQMD adopted revisions to Rules 8–5 and 8–18 that were intended to correct the deficiencies identified in our limited disapproval action. On January 21, 2003, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of these submittals because we believe they correct the deficiencies identified in our October 10, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our October 10, 2001 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised BAAQMD Rules 8–5 and 8–18, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with BAAQMD Rules 8–5 and 8–18 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. § 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 5, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–13882 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA275–0393a; FRL–7495–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage, equipment leaks at petroleum refineries, and wood product coating operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse comments by July 7, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109; and,
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA recommendations to further improve the rules
D. Public comment and final action
III. Background Information
Why were these rules submitted?
IV. Stationary and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No:	Rule title	Adopted	Submitted
SDCAPCD	67.11.1	Large Wood Product Coating Operations	09/25/02	11/19/02
BAAQMD	8–5	Storage of Organic Liquids	11/27/02	01/21/03
BAAQMD	8–18	Equipment Leaks	11/27/02	01/21/03

EPA found that these rule submittals met the completeness criteria in 40 CFR part 51, appendix V on February 7, 2003. These completeness criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

We approved versions of BAAQMD Rule 8–5 and 8–18 into the SIP on October 10, 2001 (*see* 66 FR 51568).

Between these SIP incorporations and today, CARB has made no intervening submittals of these BAAQMD rules. SDCAPCD Rule 67.11.1 has not been approved into the SIP.

C. What Is the Purpose of the Rule Revisions?

SDCAPCD Rule 67.11.1, Large Wood Product Coating Operations, is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in preparing and coating wood products such as furniture, cabinets, shutters, frames, and art objects. The rule applies to these industrial sites emitting 25 tons per year or more of VOCs. The provisions of this rule apply to any person who applies, specifies the use of, or supplies coatings for the surface preparation and coating of these wood products.

BAAQMD Rule 8.5, Storage of Organic Liquids is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in storing or transferring organic liquids. VOCs are emitted from containment vessels such as tanks and transfer lines due to the high vapor pressure of the processed crude oil and organic liquids.

BAAQMD's November 27, 2002 amendments to Rule 8.5 included significant changes to the 2001 SIP version. While some were editorial, BAAQMD made many of these changes either to correct the deficiencies cited in EPA's October 2001 limited disapproval, or to implement Measure SS–12 from the 2001 Ozone Attainment Plan. Editorial changes included reformatting the section on control requirements, deleting ambiguous or misleading terms, and certain rule sections were relocated to allow for the revised rule's structure. Substantive changes to the rule are described in detail within our TSD and its attached BAAQMD Staff Report.

BAAQMD Rule 8.18, Equipment Leaks is a rule designed to reduce volatile organic compound (VOC) emissions at petroleum refineries by reducing leaking in valves, flanges, connectors, pumps, compressors, and pressure relief valves. Rule 8.18 defines what constitutes a leak and prohibits use of that component until the component is repaired. The rule also specifies inspection schedules for pumps, compressors, and valves.

BAAQMD's November 27, 2002 amendments to Rule 8.18 included limited but significant changes to the 2001 SIP version. BAAQMD made these changes to correct the deficiencies cited in EPA's October 2001 limited disapproval.

—Section 8–18–405 was amended to require that alternative compliance plans be submitted to EPA and approved by EPA prior to action by the Air Pollution Control Officer (APCO).

—Section 8–18–406 was amended to require that a facility comply with all rule requirements until an alternative compliance plan is approved by both EPA and the APCO.

The subject TSD has more information about each rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The BAAQMD and SDCAPCD regulate an ozone nonattainment area (*see* 40 CFR part 81), so each of the subject rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

—Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;

—"Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook);

—"Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook);

—"Guideline Series: Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations," USEPA, April, 1996;

—"Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978; and

—"Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, " EPA–450/2–77–036, USEPA, December 1977.

B. Do the Rules Meet the Evaluation Criteria?

We believe SDCAPCD Rule 67.11.1, BAAQMD Rule 8–5, and BAAQMD Rule 8–18 are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

Both BAAQMD Rule 8–5 and Rule 8–18 were subjects of a limited approval and limited disapproval in our October 10, 2001 rulemaking. We believe that the deficiencies that provided cause for our limited disapproval have been corrected.

Specifically, Rule 8–5 corrected the deficiencies related to its inconsistency with EPA's Excess Emission Policy. These deficiencies are described below.

—Revise Rule 8–5 to define "stock change", "tank cleaning", and "temporary removal from service" within Section 8–5–111.

—Revise Rule 8–5 to define "roof repair" and "primary seal inspection" within Section 8–5–112.

—Clarify the language in sections 8–5–111 and 8–5–112 to be consistent with the Excess Emissions Policy. Also, demonstrate via a discussion within the Staff Report how these sections are consistent with the policy's requirement that use of the control measure is technically infeasible during the startup and shutdown periods described by these exemptions.

BAAQMD addressed these deficiencies with revisions to Sections 8–5–111, 8–5–112, and added definitions. We believe that these amendments are sufficient to make the rule consistent with the Excess Emissions Policy. Prior to relaxing the control requirements of the rule via the exemptions, sources are required to notify the APCO and explain the work required, why rule requirements must be relaxed, and how they will minimize emissions during the shutdown, repair, or inspection. Given prior notification, the APCO may observe or inspect the work that proceeds under the exemption.

BAAQMD corrected the deficiencies within Rule 8–18 related to "director's discretion" by making the revisions described earlier to sections 8–18–405 and 8–18–406.

C. EPA Recommendations to Further Improve the Rules

The TSD for SDCAPCD Rule 67.11.1 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 7, 2003, we will

publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 4, 2003. This action will incorporate these rules into the federally enforceable SIP and terminate permanently all sanction and Federal Implementation Plan obligations associated with our October 10, 2001 limited disapproval action.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Stationary and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(307)(i)(C)(*2*) and (c)(312) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(307) * * *

(i) * * *

(C) * * *

(*2*) Rule 67.11.1, adopted on September 25, 2002.

* * * * *

(312) New and amended rules for the following districts were submitted on January 21, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rules 8.5 and 8.18, amended on November 27, 2002, and adopted on January 1, 1978 and October 1, 1980, respectively.

* * * * *

[FR Doc. 03–13883 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC042–2031a; FRL–7507–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Determining Conformity of Federal Actions to State or Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a State Implementation Plan (SIP) revision submitted by the District of Columbia. The revision includes the District's regulation for conformity, which sets forth policy, criteria and procedures for demonstrating and assuring conformity of transportation and non-transportation related Federal actions to state or Federal implementation plans. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003 without further notice, unless EPA receives adverse written comment by July 7, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, N.E., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 1998, the District of Columbia Department of Health (DCDH) submitted a revision consisting of the District's regulation for determining conformity of Federal actions to state or Federal implementation plans (DCMR Chapter 4, section 403.1). The purpose of this SIP revision is to meet the requirements of 40 CFR part 51, subpart W, which requires states to submit a plan revision containing criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan. Subpart W is also known as the General Conformity Rule. It pertains to non-transportation related Federal actions.

II. Summary of SIP Revision

The District's regulation at 20 DCMR Chapter 4, section 403.1 incorporates by reference the Federal regulations at 40 CFR part 93, in effect as of September 30, 1997, which establishes requirements for determining conformity of both general and transportation related Federal actions to state or Federal implementation plans. Under 40 CFR part 51, subpart W, states are only required to have SIP-approved general conformity regulations. By incorporating by reference all of 40 CFR part 93, the District has adopted and submitted as a SIP revision a rule that includes regulations for determining conformity of general as well as transportation-related Federal actions.

40 CFR part 51, subpart W and 40 CFR part 93 were promulgated to implement section 176(a) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), which requires that all Federal actions conform to applicable air quality implementation plans. The Federal conformity rule in 40 CFR part 93 establishes standards and procedures to follow when evaluating the conformity of Federal projects to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. This rule only applies to areas designated as nonattainment or maintenance under the CAA. By adopting a rule that incorporates by reference 40 CFR part 93, and submitting this rule to EPA as a SIP revision, the District has satisfied the requirement to submit a plan revision containing criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan.

III. Final Action

EPA is approving as a SIP revision the District's regulation at Title 20, DCMR Chapter 4, Section 403.1, Determining Conformity of Federal Actions to State or Federal Implementation Plans, submitted as a SIP revision on December 16, 1998.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003 without further notice unless EPA receives adverse comment by July 7, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the District's conformity regulations must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the District of Columbia's general conformity rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: May 23, 2003.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by revising the entry for Chapter 4 after the second existing entry to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
Chapter 4	Ambient Monitoring, Emergency Procedures, Chemical Accident Prevention and Conformity			
Section 403	Determining Conformity of Federal Actions to State or Federal Implementation Plans.	11/6/98	6/5/03 68 FR 33639.	

[FR Doc. 03–14033 Filed 6–4–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 01–185; FCC 03–15]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document is a summary of the Report and Order adopted by the Commission in this proceeding. The Commission permitted certain mobile-satellite service (MSS) providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands to integrate ancillary terrestrial components (ATCs) into their MSS networks. Specifically, MSS operators are allowed to seek authority to integrate ATCs into their networks for the purpose of enhancing their ability to offer high-quality, affordable mobile services on land, in the air and over oceans without using any additional spectrum resources beyond spectrum already allocated and authorized by the Commission for MSS in these bands. The Commission found that permitting MSS ATC in the manner prescribed in the Report and Order should increase the efficiency of spectrum use through MSS network integration and terrestrial reuse and permit better coverage in areas that MSS providers could not otherwise serve; provide additional communications that may enhance public protection; and provide new services in the markets served by MSS. Thus, it concluded that making ATC available to licensed MSS operators serves the public interest.

DATES: Effective July 7, 2003, except for §§ 25.149, 25.252, 25.253, 25.254, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The incorporation by reference of certain publications listed in § 25.254 will be approved by the Director of the Federal Register as of the effective date announced in the **Federal Register**. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before August 4, 2003.

FOR FURTHER INFORMATION: Trey Hanbury, Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460. For information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in IB Docket No. 01–185, FCC No. 03–15, adopted January 29, 2003, and released on February 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–15A1.pdf*. The complete text may also be purchased from the Commission's copy contractor, Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com*.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–3. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

Summary of Report and Order

On August 9, 2001, the Commission adopted a notice of proposed rulemaking in this proceeding (66 FR 47621, September 13, 2001) to obtain comment on proposals to bring flexibility to the delivery of communications by mobile satellite service (MSS) providers. On February 3, 2003, the Commission released a Report and Order and notice of proposed rulemaking in this proceeding. The notice of proposed rulemaking relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the Report and Order, the Commission permitted flexibility in the delivery of communications by MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band, the L-band and the Big LEO bands. Specifically, we permit MSS licensees to integrate ATCs into their MSS networks. The Commission permits MSS operators to seek authority to integrate ATCs into their networks for the purpose of enhancing their ability to offer high-quality, affordable mobile services on land, in the air and over the oceans without using any additional spectrum resources beyond spectrum already allocated and authorized by the Commission for MSS in these bands. The Commission will authorize MSS ATC subject to conditions that ensure that the added terrestrial component remains ancillary to the principal MSS offering. The Commission does not intend, nor will it permit, the terrestrial component to become a stand-alone service. Permitting MSS ATCs in this manner should: (1) Increase the efficiency of spectrum use through MSS network integration and terrestrial reuse and permit better coverage in areas that MSS providers could not otherwise serve; (2) reduce costs, eliminate inefficiencies and enhance operational ability in MSS systems; (3) provide additional communications that may enhance public protection; and (4) strengthen competition in the markets served by MSS. An Errata was issued on March 7, 2003, to correct minor errors in the text and appendices of the Report and Order. The summary and rules that appear herein reflect the corrected text.

Procedural Matters

Paperwork Reduction Act

This Report and Order contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due August 4, 2003. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

Final Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." *See* 5 U.S.C. 601–612, the RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, title II, 110 Stat. 857 (1996). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA). *See* 15 U.S.C. 632. The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $12.5 million or less in annual revenue. *See* 13 CFR 121.201, NAICS code 517410.

Pursuant to the RFA, the Commission incorporated an Initial Regulatory *Flexibility Analysis* (IRFA) into the *Flexibility NPRM*. (*Flexibility Notice*, 16 FCC Rcd at 15565–67, paragraphs 85–93.) We received no comments in response to the IRFA. For the reasons described below, we now certify that the policies and rules adopted in the present *Flexibility Order* will not have a significant economic impact on a substantial number of small entities.

The *Flexibility Order* provides additional operational flexibility for MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band, the L-band, and the Big LEO bands. The flexibility consists of permitting the MSS providers to integrate ancillary terrestrial components (ATC) into their networks. We find that providing this flexibility will have no significant economic impact on small entities because the MSS operators will not be required to make use of the additional capability. We believe that permitting the additional flexibility will enhance the ability of MSS operators to offer American consumers high quality, affordable mobile services on land, in the air, and over the oceans without using spectrum resources beyond the spectrum already allocated and authorized for MSS use in these bands. Operational flexibility will: (1) Increase efficient spectrum use through MSS network integration and terrestrial reuse; (2) reduce costs, eliminate inefficiencies, and enhance operational ability in MSS systems; (3) encourage technological innovation and the development of new wireless applications; and (4) strengthen competition in the telecommunications marketplace both in the United States and in other nations. We implement the *Flexibility Order* through the addition of a footnote to the U.S. Table of Frequency Allocations, found in § 2.106 of our rules, 47 CFR 2.106.

We also find that our action—which brings additional flexibility to existing MSS licensees—will not affect a substantial number of small entities. There are currently five 2 GHz MSS licensees, two Big LEO MSS licensees and three L-band MSS licensees authorized to provide service in the United States. Although at least one of the 2 GHz MSS system licensees and one of the Big LEO licensees are small businesses, small businesses often do not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. We expect that, by the time of MSS ATC system implementation, these current small businesses will no longer be considered small due to the capital requirements for launching and operating a proposed system.

Ordering Clauses

It is ordered that, pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this Report and Order is adopted and that part 25 of the Commission's rules is amended, as specified in the rule changes, effective August 4, 2003.

It is further ordered that the petition for rulemaking filed by Iridium Satellite LLC is granted in part to the extent described above and is denied in all other respects.

It is further ordered that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act and as set forth in Appendix D of the Report and Order, is adopted.

It is further ordered that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act and as set forth in Appendix D of the Report and Order, is adopted.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 25

Incorporation by reference, Radio, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising pages 43, 44, 45, 46, 48, 49, and 52 of the Table of Frequency Allocations and adding footnote US380 to the list of United States (US) Footnotes, to read as follows:

§ 2.106 Table of Frequency Allocations.

BILLING CODE 6712–01–P

1430-1610 MHz (UHF)

Page 43

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1429-1452 FIXED MOBILE except aeronautical mobile 5.341 5.342	1429-1452 FIXED MOBILE 5.343 5.341		1429.5-1432 5.341 US352	See previous page 1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) FIXED-SATELLITE (space-to-Earth) US368 5.341 US350 US352	See previous page Private Land Mobile (90) Personal (95)
			1432-1435 5.341 US361	1432-1435 FIXED MOBILE except aeronautical mobile 5.341 US361	Wireless Communications (27)
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.341 5.342	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.341 5.344		1435-1525 MOBILE (aeronautical telemetry) 5.341 US78		Aviation (87)
1492-1525 FIXED MOBILE except aeronautical mobile 5.341 5.342	1492-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348A 5.341 5.344 5.348	1492-1525 FIXED MOBILE 5.341 5.348A			
1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile except aeronautical mobile 5.349 5.341 5.342 5.350 5.351 5.352A 5.354	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile 5.349 5.341 5.351 5.352A 5.354	1525-1530 MOBILE-SATELLITE (space-to-Earth) US380 Mobile (aeronautical telemetry) 5.341 5.351 US78		Satellite Communications (25) Aviation (87)

1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.341 5.342 5.351 5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354	1530-1535 MOBILE-SATELLITE (space-to-Earth) US380 MARITIME MOBILE-SATELLITE (space-to-Earth) Mobile (aeronautical telemetry) 5.341 5.351 US78 US315		
1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.351A		1535-1544 MOBILE-SATELLITE (space-to-Earth) US380 MARITIME MOBILE-SATELLITE (space-to-Earth) 5.341 5.351 US315		Satellite Communications (25) Maritime (80)
		1544-1545 MOBILE-SATELLITE (space-to-Earth) 5.341 5.356		
		1545-1549.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) Mobile-satellite (space-to-Earth) US380 5.341 5.351 US308 US309		Aviation (87)
		1549.5-1558.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US380 5.341 5.351 US308 US309		
5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A		1558.5-1559 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) 5.341 5.351 US308 US309 US380		
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329A 5.341 5.362B 5.362C 5.363		1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) 5.341 US208 US260		Note: The NTIA Manual (footnote G126) states that differential GPS stations may be authorized in the 1559-1610 MHz band, but the FCC has not yet addressed this footnote.

Page 44

1610-1670 MHz (UHF) Page 45

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 US380 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION 5.149 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.149 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 US380 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.372 US208		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) 5.341 5.355 5.359 5.363 5.364 5.365 5.366 5.367 5.368 5.369 5.371 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.370 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.365 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.372 US208 US380		

1626.5-1660 MOBILE-SATELLITE (Earth-to-space) 5.351A	1626.5-1645.5 MOBILE-SATELLITE (Earth-to-space) US380 MARITIME MOBILE-SATELLITE (Earth-to-space) 5.341 5.351 US315	Satellite Communications (25) Maritime (80)
	1645.5-1646.5 MOBILE-SATELLITE (Earth-to-space) 5.341 5.375	
	1646.5-1651 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) Mobile-satellite (Earth-to-space) US380 5.341 5.351 US308 US309	Aviation (87)
	1651-1660 MOBILE-SATELLITE (Earth-to-space) US380 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) 5.341 5.351 US308 US309	
5.341 5.351 5.353A 5.354 5.355 5.357A 5.359 5.362A 5.374 5.375 5.376		
1660-1660.5 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY 5.149 5.341 5.351 5.354 5.362A 5.376A	1660-1660.5 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) RADIO ASTRONOMY 5.149 5.341 5.351 US308 US309 US380	
1660.5-1668.4 RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.341 5.379 5.379A	1660.5-1668.4 RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
1668.4-1670 METEOROLOGICAL AIDS FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.341	1668.4-1670 METEOROLOGICAL AIDS (radiosonde) RADIO ASTRONOMY US74 5.149 5.341 US99	

Page 46

			1755-1850 FIXED MOBILE G42	1755-1850	
5.149 5.341 5.385 5.386 5.387 5.388			1850-2025	1850-2000 FIXED MOBILE NG177	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1930-1970 FIXED MOBILE 5.388A 5.388	1930-1970 FIXED MOBILE 5.388A Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388			
1970-1980 FIXED MOBILE 5.388A 5.388				2000-2020 MOBILE-SATELLITE (Earth-to-space) US380 NG156	Satellite Communications (25)
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F					
2010-2025 FIXED MOBILE 5.388A 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389D 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347	2025-2110 FIXED NG23 NG118 MOBILE 5.391 5.392 US90 US222 US346 US347	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)

Page 48

2110-2345 MHz (UHF)

Page 49

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2155 FIXED NG23 MOBILE US252	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2120-2160 FIXED MOBILE 5.388A 5.388	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A	2120-2200	2155-2160 FIXED NG23	Domestic Public Fixed (21) Fixed Microwave (101)
2160-2170 FIXED MOBILE 5.388A 5.388 5.392A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389D 5.389E 5.390			2160-2180 FIXED NG23 NG153 MOBILE NG178	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F 5.392A				2180-2200 MOBILE-SATELLITE (space-to-Earth) US380 NG23 NG168	Satellite Communications (25)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

2483.5-2500 MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space- to-Earth) 5.351A 5.403 5.405 5.407 5.412 5.414	2500-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.404 5.407 5.414 5.415A	2500-2655 FIXED 5.409 5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING- SATELLITE NG101
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING- SATELLITE 5.413 5.416	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING- SATELLITE 5.413 5.416	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING- SATELLITE 5.413 5.416 5.403 5.415A 2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING- SATELLITE 5.413 5.416
5.339 5.403 5.405 5.412 5.418 5.418B 5.418C	5.339 5.403 5.418B 5.418C	5.339 5.418 5.418A 5.418B 5.418C
2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION- SATELLITE (space-to- Earth) 5.398 5.150 5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION- SATELLITE (space-to- Earth) 5.398 5.150 5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2655	2500-2655 FIXED 5.409 5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING- SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
5.339 US205 US269	5.339 US269	Page 52

BILLING CODE 6712-01-C

* * * * *

United States (US) Footnotes

* * * * *

US380 In the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, 2000–2020 MHz, 2180–2200 MHz, and 2483.5–2500 MHz, a non-Federal Government licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.117 is amended by adding paragraph (f) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(f) An application for modification of a space station license to add an ancillary terrestrial component to an eligible satellite network will be treated as a request for a minor modification if the particulars of operations provided by the applicant comply with the criteria specified in § 25.149.

■ 5. Section 25.143 is amended by adding paragraphs (i), (j), and (k) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and the 2 GHz mobile-satellite service.

* * * * *

(i) *Incorporation of ancillary terrestrial component base stations into a 1.6/2.4 GHz mobile-satellite service network or a 2 GHz mobile-satellite service network.* Any licensee authorized to construct and launch a 1.6/2.4 GHz or a 2 GHz mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(j) *Pre-operational testing.* An MSS ATC licensee may, without further authority from the Commission, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, its ATC authorization, the rules and regulations in this part and the applicable engineering standards. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.149 and must have been granted ATC authority through a modification of its space station license.

(k) *Aircraft.* ATC mobile terminals must be operated in accordance with § 25.136(a). All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 2000–2020/2180–2200 MHz or 1610–1626.5 MHz/2483.5–2500 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

■ 6. Section 25.146 is amended by revising the section heading and paragraphs (g), (h), and (i) to read as follows:

§ 25.146 Licensing provisions for the L-Band mobile-satellite service.

* * * * *

(g) *Incorporation of ancillary terrestrial component base station into an L-band Mobile-Satellite Service System.* Any licensee authorized to construct and launch an L-band mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(h) *Pre-operational testing.* An MSS ATC licensee may, without further authority from the Commission, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, its ATC authorization, the rules and regulations in this part and the applicable engineering standards. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority through a modification of its space station license.

(i) *Aircraft.* All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5–1660.5 MHz and 1525–1559 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

* * * * *

■ 7. Section 25.149 is added to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

(a) Applicants for ancillary terrestrial component authority shall demonstrate compliance with the following through certification or explanatory technical exhibit, as appropriate:

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 2000–2020 MHz/2180–2200 MHz bands (2 GHz band), the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), and the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band).

(2)ATC operations shall be limited to certain frequencies:

(i) In the 2000–2020 MHz/2180–2200 MHz bands (2 GHz MSS band), ATC operations are limited to the selected assignment of the 2 GHz MSS licensee that seeks ATC authority.

(ii) In the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), ATC operations are limited to the frequency assignments authorized and internationally coordinated for the MSS system of the MSS licensee that seeks ATC authority.

(iii) In the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band), ATC operations are limited to the 1610–1615.5 MHz, 1621.35–1626.5 MHz, and 2492.5–2498.0 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority.

(3) ATC operations shall not exceed the geographical coverage area of the mobile-satellite service network of the applicant for ATC authority.

(4) ATC base stations shall comply with all applicable antenna and structural clearance requirements established in part 17 of the Commission's rules.

(5) ATC base stations and mobile terminals shall comply with part 1 of the Commission's rules, Subpart I—Procedures Implementing the National Environmental Policy Act of 1969, including the guidelines for human exposure to radio frequency

electromagnetic fields as defined in §§ 1.1307(b) and 1.1310 of this chapter for PCS networks.

(6) ATC base station operations shall use less than all available MSS frequencies when using all available frequencies for ATC base station operations would exclude otherwise available signals from MSS space-stations.

(b) Applicants for an ancillary terrestrial component shall demonstrate compliance with the following criteria through certification:

(1) *Geographic and temporal coverage.* (i) For the 2 GHz MSS band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, consistent with the coverage requirements for 2 GHz MSS GSO operators.

(ii) For the L-band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, unless it is not technically possible for the MSS operator to meet the coverage criteria from its orbital position.

(iii) For the Big LEO band, an applicant must demonstrate that it can provide space-segment service: to all locations as far north as 70° North latitude and as far south as 55° South latitude for at least seventy-five percent of every 24-hour period, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5° for at least 18 hours each day; and on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5° at all times.

(2) *Replacement satellites.* (i) Operational NGSO MSS ATC systems shall maintain an in-orbit spare satellite.

(ii) Operational GSO MSS ATC systems shall maintain a spare satellite on the ground within one year of commencing operations and launch it into orbit during the next commercially reasonable launch window following a satellite failure.

(iii) All MSS ATC licensees must report any satellite failures, malfunctions or outages that may require satellite replacement within ten days of their occurrence.

(3) *Commercial availability.* Mobile-satellite service must be commercially available (*viz.*, offering services for a fee) in accordance with the coverage requirements that pertain to each band as a prerequisite to an MSS licensee's offering ATC service.

(4) *Integrated services.* MSS ATC licensees shall offer an integrated service of MSS and MSS ATC. Applicants for MSS ATC may establish an integrated service offering by affirmatively demonstrating that:

(i) The MSS ATC operator will use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component to provide the proposed ATC service; or

(ii) Other evidence establishing that the MSS ATC operator will provide an integrated service offering to the public.

(5) *In-band operation.* (i) In the 2 GHz MSS band, MSS ATC is limited to an MSS licensee's selected assignment. MSS ATC operations on frequencies beyond the MSS licensee's selected assignment are prohibited.

(ii) In the Big LEO band, MSS ATC is limited to no more than 5.5 MHz of spectrum in each direction of operation. Licensees in these bands may implement ATC only on those channels on which MSS is authorized, consistent with the Big LEO band-sharing arrangement.

(iii) In the L-band, MSS ATC is limited to those frequency assignments available for MSS use in accordance with the Mexico City Memorandum of Understanding, its successor agreements or the result of other organized efforts of international coordination.

(c) *Equipment certification.* (1) Each ATC MET utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its certification procedure for use under this part.

(2) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

(3) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. MSS ATC base stations must comply with the requirements specified in § 1.1307(b) of this chapter for PCS base stations. MSS ATC mobile terminals must comply with the requirements specified for mobile and portable PCS transmitting devices in § 1.1307(b) of this chapter. MSS ATC mobile terminals must also comply with the requirements in §§ 2.1091 and 2.1093 of this chapter for Satellite Communications Services devices. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) Applicants for an ancillary terrestrial component authority shall demonstrate compliance with the provisions of §§ 1.924 of this chapter and 25.203(e) through (g) and with §§ 25.252, 25.253, or 25.254, as appropriate, through certification or explanatory technical exhibit.

(e) Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and §§ 25.252, 25.253, or 25.254, as appropriate.

■ 8. Section 25.201 is amended by adding the following definitions in alphabetical order to read as follows:

§ 25.201 Definitions.

* * * * *

Ancillary terrestrial component. The term "ancillary terrestrial component" means a terrestrial communications network used in conjunction with a qualifying satellite network system authorized pursuant to these rules and the conditions established in the Report and Order issued in IB Docket 01–185, *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.*

Ancillary terrestrial component base station. The term "ancillary terrestrial component base station" means a terrestrial fixed facility used to transmit communications to or receive communications from one or more ancillary terrestrial component mobile terminals.

Ancillary terrestrial component mobile terminal. The term "ancillary terrestrial component mobile terminal" means a terrestrial mobile facility used to transmit communications to or receive communications from an ancillary terrestrial component base station or a space station.

* * * * *

Selected assignment. The term "selected assignment" means a spectrum assignment voluntarily identified by a 2 GHz MSS licensee at the time that the licensee's first 2 GHz mobile-satellite service satellite reaches its intended orbit, or other mobile-satellite service spectrum in which the Commission permits a 2 GHz mobile-satellite service licensee to conduct mobile-satellite service operations with authority superior to that of other in-band, mobile-satellite service licensees.

* * * * *

Structural attenuation. The term "structural attenuation" means the signal attenuation caused by transmitting to and from mobile terminals which are located in buildings or other man-made structures that attenuate the transmission of radiofrequency radiation.

* * * * *

■ 9. Section 25.252 is added to read as follows:

§ 25.252 Special requirements for ancillary terrestrial components operating in the 2000–2020 MHz/2180–2200 MHz bands.

(a) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC base stations shall not:

(1) Exceed an EIRP of −100.6 dBW/4 kHz for out-of-channel emissions at the edge of the MSS licensee's selected assignment.

(2) Exceed a peak EIRP of 27 dBW in 1.23 MHz.

(3) Exceed an EIRP toward the physical horizon (not to include man-made structures) of 25.5 dBW in 1.23 MHz.

(4) Be located less than 190 meters from all airport runways and aircraft stand areas, including takeoff and landing paths.

(5) Exceed an aggregate power flux density of −51.8 dBW/m^2 in a 1.23 MHz bandwidth at all airport runways and aircraft stand areas, including takeoff and landing paths and all ATC base station antennas shall have an overhead gain suppression according to the following.

(6) Be located less than 820 meters from a U.S. Earth Station facility operating in the 2200–2290 MHz band. In its MSS ATC application, the MSS licensee should request a list of operational stations in the 2200–2290 MHz band.

(7) Exceed an EIRP in the 1559–1610 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW in the 1559–1605 MHz band for narrow-band emissions (discrete emissions of less than 700 Hz bandwidth). The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the base station is transmitting.

(8) Use ATC base station antennas that have a gain greater than 17 dBi and must have an overhead gain suppression according to the following:

Angle from direction of maximum gain, in vertical plane, above antenna (degrees)	Antenna discrimination pattern (dB)
0	Gmax
2	Not to Exceed Gmax − 14
8 to 180	Not to Exceed Gmax − 25

Where: Gmax is the maximum gain of the base station antenna in dBi.

(b) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC mobile terminals shall:

(1) Observe a peak EIRP limit of 1.0 dBW in 1.23 MHz.

(2) Limit out-of-channel emissions at the edge of a MSS licensee's selected assignment to an EIRP density of −67 dBW/4 kHz.

(3) Not exceed an EIRP in the 1559–1610 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW in the 1559–1605 MHz band for narrow-band emissions (discrete emissions of less than 700 Hz bandwidth). The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the mobile terminal is transmitting.

(c) For ATC operations in the 2000–2020 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency within the 2000 to 2020 MHz band outside the licensee's frequency band(s) of operations, emissions shall be attenuated by at least 43 + 10 log (P) dB.

(2) Emissions on frequencies lower than 1995 MHz and higher than 2025 MHz shall be attenuated by at least 70 + 10 log P. Emissions in the bands 1995–2000 MHz and 2020–2025 MHz shall be attenuated by at least a value as determined by linear interpolation from 70 + 10 log P at 1995 MHz or 2025 MHz, to 43 + 10 log P dB at the nearest MSS band edge at 2000 MHz or 2020 MHz respectively.

(3) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, in its discretion, require greater attenuation than specified in paragraphs (c)(1) and (2) of this section.

(4) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater.

Note to § 25.252: The preceding rules of § 25.252 are based on cdma2000 system architecture. To the extent that a 2 GHz MSS licensee is able to demonstrate that the use of a different system architecture would produce no greater potential interference than that produced as a result of implementing the rules of this section, an MSS licensee is permitted to apply for ATC authorization based on another system architecture.

■ 10. Section 25.253 is added to read as follows:

§ 25.253 Special requirements for ancillary terrestrial components operating in the 1626.5–1660.5 MHz/1525–1559 MHz bands.

(a) An applicant for an ancillary terrestrial component in these bands shall:

(1) Implement the maximum available power control for all ATC base stations and mobile terminals under GSM.800 or GSM 1800 standard (dynamic range of 30 dB in steps of 2 dB).

(2) Implement a variable rate vocoder in the ATC mobile terminal such that the duty cycle of the mobile terminal is reduced when the EIRP of the mobile terminals requested by the power control system is increased above a nominal − 7.4 dBW. The duty cycle will be reduced by refraining from transmitting on consecutive time slots. The duty cycle of the mobile terminal, as measured over a 0.25 second period, shall comply with the following schedule:

Nominal mobile terminal peak EIRP	Mobile terminal transmit duty cycle (percent)
Equal to or less than −7.4 dBW	100
Greater than −7.4 dBW	50
Greater than −4.4 dBW	25
Greater than −1.4 dBW	20
Greater than −0.4 dBW	18.2

(3) Implement the provisions of paragraph (a)(2) of this section in a manner that precludes other ATC mobile terminals from using the open time slots.

(4) Demonstrate, at the time of application, how the ATC network will comply with the requirements of paragraphs (a) and (b)(1) through (b)(3) of this section.

(5) Demonstrate, at the time of application, how its ATC network will comply with the requirements of footnotes US308 and US315 to the table of frequency allocations contained in § 2.106 of this chapter regarding priority and preemptive access to the L-band MSS spectrum by the aeronautical mobile-satellite en-route service (AMS(R)S) and the global maritime distress and safety system (GMDSS).

(6) Demonstrate how its ATC network base stations and mobile terminals will comply with the Global Mobile Personal Communications by Satellite (GMPCS) system requirements to protect the radionavigation satellite services (RNSS) operations in the allocation above 1559 MHz.

(7) Coordinate with the terrestrial CMRS operators prior to initiating ATC transmissions when co-locating ATC base stations with terrestrial commercial mobile radio service (CMRS) base stations that make use of Global Positioning System (GPS) time-based receivers.

(8) Demonstrate that the cellular structure of the ATC network design includes 18 dB of link margin allocated to structural attenuation. If less structural attenuation is used, the maximum number of base stations permitted under paragraph (c) of this section must be reduced or a showing must be made that there would be no increase in interference to other MSS operators and that the applicant's satellite would continue to meet the other requirements of this section.

(b) ATC base stations shall not exceed an out-of-channel emissions measurement of −57.9 dBW/MHz at the edge of a MSS licensee's authorized and internationally coordinated MSS frequency assignment.

(c) The maximum number of base stations operating in the U.S. on any one 200 kHz channel shall not exceed 1725. During the first 18 months following activation for testing of the first ATC base station, the L-band ATC operator shall not implement more than 863 base stations on the same 200 kHz channel. L-band ATC operators shall notify the Commission of the date of the activation for testing of the first ATC base station and shall maintain a record of the total number of ATC base stations operating in the U.S. on any given 200 kHz of spectrum. Upon request by the Commission, L-band ATC operators shall provide this information to resolve any claim it receives from an L-band MSS operator that ATC operations are causing interference to its MSS system.

(d) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC base stations shall not:

(1) Exceed peak EIRP of 19.1 dBW, in 200 kHz, per carrier with no more than three carriers per sector;

(2) Exceed an EIRP toward the physical horizon (not to include man-made structures) of 14.1 dBW per carrier in 200 kHz;

(3) Locate any ATC base station less than 470 meters from all airport runways and aircraft stand areas, including takeoff and landing paths;

(4) Exceed an aggregate power flux density level of −73.0 dBW/m²/200 kHz at the edge of all airport runways and aircraft stand areas, including takeoff and landing paths;

(5) Locate any ATC base station less than 1.5 km from the boundaries of all navigable waterways or the ATC base stations shall not exceed a power flux density level of −64.6 dBW/m²/200 kHz at the water's edge of any navigable waterway;

(6) Exceed a peak antenna gain of 16 dBi;

(7) Exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the base station is transmitting.

(e) Applicants for an ancillary terrestrial component in these bands must demonstrate, at the time of the application, that ATC base stations shall use left-hand-circular polarization antennas with a maximum gain of 16 dBi and overhead gain suppression according to the following:

Angle from direction of maximum gain, in vertical plane, above antenna (degrees)	Antenna discrimination pattern (dB)
0	Gmax
5	Not to Exceed Gmax −5
10	Not to Exceed Gmax −19
15 to 30	Not to Exceed Gmax −27
30 to 55	Not to Exceed Gmax −35
55 to 145	Not to Exceed Gmax −40
145 to 180	Not to Exceed Gmax −26

Where: Gmax is the maximum gain of the base station antenna in dBi.

(f) Prior to operation, ancillary terrestrial component licensees shall:

(1) Provide the Commission with sufficient information to complete coordination of ATC base stations with Search-and-Rescue Satellite-Aided Tracking (SARSAT) earth stations operating in the 1544–1545 MHz band for any ATC base station located either within 27 km of a SARSAT station, or within radio horizon of the SARSAT station, whichever is less.

(2) Take all practicable steps to avoid locating ATC base stations within radio line of sight of MAT receive sites in order to protect U.S. MAT systems consistent with ITU–R Recommendation ITU–R M.1459. MSS ATC base stations located within radio line of sight of a MAT receiver must be coordinated with the Aerospace and Flight Test Radio Coordinating Council (AFTRCC) for non-Government MAT receivers on a case-by-case basis prior to operation. For government MAT receivers, the MSS licensee shall supply sufficient information to the Commission to allow coordination to take place. A listing of current and planned MAT receiver sites can be obtained from AFTRCC for non-Government sites and through the FCC's IRAC Liaison for Government MAT receiver sites.

(g) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC mobile terminals shall:

(1) Be limited to a peak EIRP level of 0 dBW and an out-of-channel emissions of −67dBW/4 kHz at the edge of an MSS licensee's authorized and internationally coordinated MSS frequency assignment.

(2) Take all practicable steps to avoid ATC mobile terminals from causing interference to U.S. radio astronomy service (RAS) observations in the 1660–1660.5 MHz band.

(3) Not exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the mobile terminal is transmitting.

Note to § 25.253: The preceding rules of § 25.253 are based on GSM/TDMA 800 or GSM 1800 system architecture. To the extent that an L-band MSS licensee is able to demonstrate that the use of a different system architecture would produce no greater potential interference than that produced as a result of implementing the rules of this section, an MSS licensee is permitted to apply for ATC authorization based on another system architecture.

■ 11. Section 25.254 is added to read as follows:

§ 25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483.5–2500 MHz bands.

(a) An applicant for an ancillary terrestrial component in these bands must demonstrate that ATC base stations shall:

(1) Not exceed a peak EIRP of 32 dBW in 1.25 MHz;

(2) Not cause unacceptable interference to systems identified in paragraph (c) of this section and, in any case, shall not exceed out-of-channel emissions of −44.1 dBW/30 kHz at the edge of the MSS licensee's authorized frequency assignment;

(3)At the time of application, that it has taken, or will take steps necessary to avoid causing interference to other services sharing the use of the 2450–2500 MHz band through frequency coordination; and

(4)Not exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the base station is transmitting.

(b) An applicant for an ancillary terrestrial component in these bands must demonstrate that mobile terminals shall:

(1) Meet the requirements contained in § 25.213 to protect radio astronomy service (RAS) observations in the 1610.6–1613.8 MHz band from unacceptable interference;

(2) Observe a peak EIRP limit of 1.0 dBW in 1.25 MHz;

(3) Observe an out-of-channel EIRP limit of −57.1 dBW/30 kHz at the edge of the licensed MSS frequency assignment.

(4) Not exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the mobile terminal is transmitting.

(c) Applicants for an ancillary terrestrial component to be used in conjunction with a mobile-satellite service system using CDMA technology shall coordinate the use of the Big LEO MSS spectrum designated for CDMA systems using the framework established by the ITU in Recommendation ITU–R M.1186 "Technical Considerations for the Coordination Between Mobile Satellite Service (MSS) Networks Utilizing Code Division Multiple Access (CDMA) and Other Spread Spectrum Techniques in the 1–3 GHz Band" (1995). Recommendation ITU–R M.1186 is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendations can also be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

Note to § 25.254: The preceding rules of § 25.254 are based on cdma2000 and IS–95 system architecture. To the extent that a Big LEO MSS licensee is able to demonstrate that the use of different system architectures would produce no greater potential interference than that produced as a result of implementing the rules of this section, an MSS licensee is permitted to apply for ATC authorization based on another system architecture.

■ 12. Section 25.255 is added to read as follows:

§ 25.255 Procedures for resolving harmful interference related to operation of ancillary terrestrial components operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz bands.

If harmful interference is caused to other services by ancillary MSS ATC operations, either from ATC base stations or mobile terminals, the MSS ATC operator must resolve any such

interference. If the MSS ATC operator claims to have resolved the interference and other operators claim that interference has not been resolved, then the parties to the dispute may petition the Commission for a resolution of their claims.

[FR Doc. 03–14081 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1124, MM Docket No. 01–104, RM–10103, RM–10323, and RM–10324]

Radio Broadcasting Services; Auburn, Birmingham, Camp Hill, Dadeville, Gardendale, Goodwater, Homewood, Jemison, Northport, Pine Level, Thomaston, and Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration granted.

SUMMARY: This document grants a petition for reconsideration, reinstates, and conditionally grants two counterproposals subject to the outcome of an earlier proceeding. Originally, the *Report and Order* in this proceeding dismissed the two counterproposals because they relied on an effective but non-final action in an earlier rulemaking proceeding. See 67 FR 57203 (September 9, 2002). This document reverses that policy, finding that the counterproposals did not have to await final action in the earlier rulemaking proceeding. *See also* Supplemental Information.

DATES: Effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket 01–104, adopted May 16, 2003, and released May 20, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

In granting the first counterproposal, this document reallotted and changed the community of license for Station WLXY(FM), Channel 263C1 from Northport, Alabama, to Helena, Alabama, as a first local service, at reference coordinates 33–07–07 and 87–15–18. To prevent the removal of the sole local service in Northport, the document reallotted and changed the community of license of Station WTUG(FM), Channel 225C1, from Tuscaloosa to Northport. The reference coordinates for Channel 225C1 at Northport are 33–03–20 and 87–32–59.

In granting the second counterproposal, the document upgraded, reallotted, and changed the community of license for Station WODL(FM) from Channel 247A at Homewood, Alabama, to Channel 247C2 at Gardendale, Alabama The coordinates for Channel 247C2 at Gardendale are 33–34–55 and 86–56–46. To accommodate this action, the document made seven other changes to the FM Table of Allotments. First, the document substituted Channel 262A for Channel 247A at Dadeville, Alabama, at reference coordinates 32–52–58 and 85–49–16, and modified the license for Station WZLM(FM) accordingly. Second, the document substituted Channel 300A for Channel 247A at Orrville, Alabama, at a new site. The reference coordinates for Channel 300A at Orrville are 32–19–35 and 87–11–57. Third, the staff reallotted and changed the community of license for Station WSSY-FM, Channel 248A from Talladega, Alabama, to Goodwater, Alabama, at reference coordinates 33–02–22 and 86–00–21.

Fourth, the documented modified the reference coordinates for vacant and unapplied for Channel 248A, Pine Level, Alabama. The new reference coordinates for Channel 248A at Pine Level are 31–59–33 and 86–00–05. Fifth, the document reallotted and changed the community of license for Station WEZZ–FM, Channel 249A from Clanton, Alabama, to Jemison, Alabama, at reference coordinates of 32–56–23 and 86–46–11. Sixth, the document modified the reference coordinates for Station WAYI(FM), Channel 249A, Thomaston, Alabama, to 32–17–45 and 87–44–45. Seventh, to prevent the removal of the sole local service at Homewood, the document reallotted and changed the community of license for Station WBPT(FM), Channel 295C, from Birmingham to Homewood, Alabama, at reference coordinates of 33–29–19 and 86–45–78.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 295C at Birmingham, by removing Clanton, Channel 249A, by removing Channel 247A and by adding Channel 262A at Dadeville, by removing Channel 247A and by adding Channel 295C at Homewood, by adding Gardendale, Channel 247C2, by adding Goodwater, Channel 248A, by adding Helena, Channel 263C1, by adding Jemison, Channel 249A, by removing Channel 263C1 and by adding Channel 225C1 at Northport, by removing Channel 247A and by adding Channel 300A at Orrville, by removing Channel 248A at Talladega, and by removing Channel 225C1 at Tuscaloosa.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14093 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1709; MB Docket No.03–41; RM–10642]

Radio Broadcasting Services; Lincoln City and Monmouth, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 236C3 for Channel 236C2 at Lincoln City, Oregon, reallots Channel 236C3 to Monmouth, Oregon, and modifies the license for Station KSND to specify operation Channel 236C3 at Monmouth in response to a petition filed by Radio Beam, LLC. *See* 68 FR 10681, March 6, 2003. The coordinates for Channel 236C3 at Monmouth are 44–50–43 and 123–30–07. With this action, this proceeding is terminated.

DATES: Effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03–41, adopted May 16, 2003, and released May 20, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 236C2 at Lincoln City by adding Monmouth, Channel 236C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14091 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574, 575, and 597

[Docket No. NHTSA–03–15278]

RIN 2127–AI32

Tire Safety Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final Rule; response in part to petitions for reconsideration; delay of effective date.

SUMMARY: On November 18, 2002, NHTSA published a final rule that established a new Federal Motor Vehicle Safety Standard and amended existing standards to improve the information readily available to consumers about tires. The final rule specified an effective date of September 1, 2003 for the vehicle labeling provisions. Subsequently, the agency received petitions for reconsideration of the rule. Several petitioners requested a delay of that effective date. In response to this request, this document delays the effective date for the vehicle labeling provisions of the final rule to September 1, 2004.

DATES: This rule is effective June 5, 2003. The effective date of the final rule amending 49 CFR parts 567, 571, 574, 575, and 597, published at 67 FR 69600, Nov. 18, 2002, is delayed from Sept. 1, 2003, to Sept. 1, 2004. Any petitions for reconsideration of this final rule must be received by NHTSA not later than July 21, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Mary Versailles, Office of Planning and Consumer Standards. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Final Rule

On November 18, 2002, NHTSA published a final rule that established a new Federal Motor Vehicle Safety Standard and amended existing standards to improve the information readily available to consumers about tires. (67 FR 69600)(Docket No. NHTSA–02–13678) The final rule was published in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. It established a new Federal Motor Vehicle Safety Standard, FMVSS No. 139, *New pneumatic tires for light vehicles*, requiring improved labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. The final rule also required other consumer information to increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. The final rule applies to all new and retreaded tires for use on vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and to all vehicles with a GVWR of 10,000 pounds or less, except for motorcycles and low speed vehicles.

The final rule made numerous modifications to the vehicle labeling requirements. The agency made four sets of revisions to the presentation of tire inflation pressure and load limit information on the vehicle placard required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this rule.[1] This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

Under the first set of revisions, the agency is requiring that tire inflation pressure information be visually separated by a red colored border from the other information on the existing vehicle placard or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard is to contain only the information specified in the adopted version of S4.3 (paragraphs (a)–(e)).[2] This information will not be combined with other labeling or certification requirements. The vehicle placard will also have to

[1] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR.

[2] (a) Vehicle capacity weight expressed as "THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS";

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) "SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION".

meet the color and content requirements as discussed below.

Second, the agency is requiring that the tire inflation pressure label and vehicle placard meet the following three requirements: (1) The tire inflation pressure information is in color—red, yellow, and black on a white background, (2) contain a black and white tire symbol icon in the upper left corner, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) tall/high, and (3) include the phrases "Tire and Loading Information" and "Tire Information" and "See Owner's Manual For Additional Information" in yellow text on a black background.

Third, the agency is replacing the vehicle capacity weight statement on the vehicle placard with the following sentence: "[t]he combined weight of occupants and cargo should never exceed XXX kg or XXX pounds." The "XXX" amount equals the "vehicle capacity weight" of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Fourth, the agency is replacing the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision ensures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer. The original tire size designation and accompanying recommended inflation pressure will be indicated by the headings "original tire size" or "original size" on the placard or label.

This rule also requires that the placard or placard and label be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and label must be placed on the edge of the driver's door. If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label must be affixed to the inward facing surface of the vehicle next to the driver's seating position.

Finally, with regard to vehicle requirements, the agency is requiring that owner's manuals for light vehicles discuss the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the information listed above will aid consumers by providing the information that they need to properly maintain their tires and adhere to recommended load limits.

II. Petitions for Reconsideration

In response to the November 2002 final rule, NHTSA received petitions for reconsideration from tire and vehicle manufacturers and their associations. These petitions made requests addressing various aspects of the both tire and vehicle labeling, e.g., Tire Identification Number (TIN) placement, placement of the vehicle placard and label, content of vehicle placard and label, and effective dates for the tire and vehicle labeling provisions. This final rule will, however, only address the requests regarding the effective date for the vehicle labeling provisions scheduled under the November 2002 final rule to become effective on September 1, 2003.

In January 2003, the Alliance of Automobile Manufacturers (Alliance) and National Truck Equipment Association (NTEA) petitioned the agency to extend the effective date of the vehicle labeling provisions of the final rule. The Alliance petitioned the agency to change the effective date to September 1, 2004, or one year after addressing the issues raised in this petition, and/or issuing the final rule establishing the performance requirements of FMVSS No. 139, whichever is later. NTEA asked for an extension to September 1, 2004.

The Alliance argued that the new labeling requirements for vehicle placards, labels, and owner's manuals were complex and there was a lack of justification of urgently providing this information to customers. The Alliance concluded that it would therefore be reasonable for the agency to allow additional lead time for implementation.

More specifically, the Alliance explained that the final rule will require major changes to the end-of-line manufacturing process and associated facilities. They stated that automotive plants are not currently equipped to compute certain loading information or print a multicolored label as required by the final rule. The vehicle manufacturers will need additional time to procure equipment to print labels and install computers with extensive programming to create the interface to generate occupant and cargo weight information required on each label. NTEA expressed similar concerns about their members' ability to alter processes and acquire necessary equipment for the revised placards and labels during the provided lead time.

With regard to the new owner's manual requirements, the Alliance stated that the writing and publishing of owner's manuals is a 1-year to 2-year process. Because owner's manuals are typically completed in April or May for the following model year, the Alliance argued that the current effective date does not allow sufficient lead time to make the major changes required by the final rule to every owner's manual published.

In addition to considering the Alliance's petition, the agency met with representatives from General Motors (GM) on March 13, 2003 and Ford Motor Company (Ford) on April 22, 2003. GM echoed the Alliance's recommendations concerning the effective date. Ford briefed us in greater detail on why the 8 months lead time presents an obstacle to manufacturers. The new label contains VIN specific data, including payload, seating capacity and spare tire information, not previously required on the label. To comply with the new requirement, Ford is developing a new system and associated processes for their plants to allow them to manage the engineering data required for the label. Ford estimates that Spring 2004 is the earliest that it can have the system operational.

III. Agency Decision

After considering the Alliance's petitions and the discussions with GM and Ford, the agency is modifying the mandatory compliance date for vehicle labeling, including owner's manual requirements. The agency concurs with the Alliance, GM and Ford that manufacturers of light trucks will need to make calculations regarding occupant and cargo weights that they have not needed to make in the past. For many car lines, manufacturers will have to calculate a number of different occupant/cargo weight combinations, depending on the specific model selected by the purchaser. For car lines with a variety of placard/label possibilities, manufacturers also will have to develop processes to ensure that the correct label is applied to each vehicle as it comes off the assembly line. Unlike other rules that may entail relatively greater challenges for small manufacturers, the number of new calculations required by this final rule may be especially challenging for manufacturers with many product lines. Additionally, for all car lines, manufacturers will be required to make extensive changes to their owner's manuals and these changes typically require a longer lead time than that provided by the final rule. For these reasons, the agency is granting the Alliance's and NTEA's recommendation to extend the mandatory compliance date of the vehicle labeling provisions to September 1, 2004.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 Fed. Reg. 51735; October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This final rule delays the effective date of a November 18, 2002 final rule. There are no additional costs associated with today's final rule. Additionally, there are no loss of benefits since compliance was not possible by the originally specified date.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the November 18, 2002 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Bearing that certification in mind, I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this final rule, which delays the effective date of that earlier final rule, will not have a significant economic impact on a substantial number of small entities. There are no additional costs associated with this final rule.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Since it only delays the effective date of a final rule, this final rule does not impose any new collections of information requirements for which a 5 CFR part 1320 clearance must be obtained.

D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 13132, Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the regulation.

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to manufacturers of light vehicles and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the

aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Executive Order 13045—Economically Significant Rules Disproportionately Affecting Children

Executive Order 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental, health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: May 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14160 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM248; Special Conditions No. 25–03–03–SC]

Special Conditions: Embraer Model ERJ–170 Series Airplanes; Electronic Flight Control Systems; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions; reopening of comment period.

SUMMARY: This document revises proposed special conditions which were previously published in the **Federal Register** for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) Electronic Flight Control Systems and (2) Automatic Takeoff Thrust Control System (ATTCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. This revision adds a limitation on the amount of performance credit to be given for the propulsive thrust provided by the ATTCS that was omitted from the original notice. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170 series airplanes.

DATES: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM248, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM248. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate. Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; e-mail *tom.groves@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Special conditions—pertaining to Electronic Flight Control Systems and to the ATTCS—were proposed as part of the type certification basis applicable to Embraer Model ERJ–170 series airplanes. These proposed special conditions were initially published in the **Federal Register** on April 23, 2003 (68 FR 19958). Shortly thereafter, the Federal Aviation Administration (FAA) received new information which indicated the need for a limitation on the amount of performance credit to be given for the propulsive thrust provided by the ATTCS that was omitted from the original notice. The purpose of the limitation is to reduce adverse performance effects of a failure of the ATTCS and to ensure adequate all-engines-operating go-around performance.

Upon consideration, the FAA determined that a limitation reflecting the new information must be incorporated into the special conditions for the Embraer Model ERJ–170 series airplanes. Accordingly, the FAA is issuing this supplemental notice of proposed special conditions. A description of the proposed limitation is provided in the preamble of this document (*see* Novel or Unusual Design Features, paragraph II), and the proposed limitation itself is included as paragraph 2.(e) of The Proposed Special Conditions.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–170 series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety

standards for Embraer Model ERJ–170 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model ERJ–170 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporates the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Embraer Model ERJ–170 series airplanes will incorporate the following novel or unusual design features:

I. Electronic Flight Control System

In airplanes with electronic flight control systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that does not require a large control input may require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in either manually piloted or autopilot flight and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, control of the airplane by the pilot or autoflight system may be inadvertently continued so as to cause loss of control of the airplane or other unsafe characteristics of stability or performance.

Given these possibilities, a special condition is proposed for Embraer Model ERJ–170 series airplanes to address control surface position awareness. This special condition would require that suitable display or annunciation of flight control position be provided to the flightcrew when near full surface authority (not crew-commanded) is being used, unless other existing indications are found adequate or sufficient to prompt any required crew actions. Suitability of such a display or annunciation must take into account that some piloted maneuvers may demand the airplane's maximum performance capability, possibly associated with a full control surface deflection. Therefore, simple display systems—that would function in both intended and unexpected control-limiting situations—must be properly balanced to provide needed crew awareness and minimize nuisance alerts. A monitoring system that compares airplane motion, surface deflection, and pilot demand could be useful in eliminating nuisance alerting.

II. Automatic Takeoff Thrust Control System (ATTCS)

The Embraer Model ERJ–170 series airplane will incorporate an Automatic Takeoff Thrust Control System (ATTCS) in the engine's Full Authority Digital Electronic Control (FADEC) system architecture. It has been proposed that the FAA allow performance credit to be taken for use of this function during go-around to show compliance with the requirement of § 25.121(d) regarding the approach climb gradient.

Section 25.904 and Appendix I refer to operation of ATTCS only during takeoff. Model ERJ–170 series airplanes have this feature for go-around also. The ATTCS will automatically increase thrust to the maximum go-around thrust available under the ambient conditions in the following circumstances:

- If an engine failure occurs during an all-engines-operating go-around, or
- If an engine has failed or been shut down earlier in the flight.

This maximum go-around thrust is the same as that used to show compliance with the approach-climb-gradient requirement of § 25.121(d). If the ATTCS is not operating, selection of go-around thrust will result in a lower thrust level.

The part 25 standards for ATTCS, contained in § 25.904 [Automatic takeoff thrust control system (ATTCS) and Appendix I], specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered when the standards were issued but was not accepted because of the effect on the flightcrew's workload. As stated in the preamble to amendment 25–62:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb [§ 25.119]. The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase." (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on Embraer Model ERJ–170 series airplanes allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed for the go-around phase, it will function automatically following an engine failure and advance the remaining engine to the ATTCS thrust level. This design adequately addresses the concerns about pilot workload which were discussed in the preamble to Amendment 25–62.

The system design allows the pilot to enable or disable the ATTCS function for takeoff. If the pilot enables ATTCS, a white "ATTCS" icon will be displayed on the Engine Indication and Crew Alerting System (EICAS) beneath the thrust mode indication on the display. This white icon indicates to the pilot that the ATTCS function is enabled. When the throttle lever is put in the TO/GA (takeoff/go-around) detent position, the white icon turns green, indicating to the pilot that the ATTCS is armed. If the pilot disables the ATTCS function for takeoff, no indication appears on the EICAS.

Regardless of whether the ATTCS is enabled for takeoff, it is automatically enabled when the airplane reaches the end of the take-off phase (that is, the thrust lever is below the TO/GA position and the altitude is greater than 1,700 feet above the ground, 5 minutes have elapsed since lift-off, or the airplane speed is greater than 140 knots).

During climb, cruise and descent, when the throttle is not in the TO/GA position, the ATTCS indication is inhibited. During descent and approach to land, until the thrust management system go-around mode is enabled—either by crew action or automatically when the landing gear are down and locked and flaps are extended—the ATTCS indication remains inhibited.

When the go-around thrust mode is enabled, unless the ATTCS system has failed, the white "ATTCS" icon will again be shown on the EICAS, indicating to the pilot that the system is enabled and in an operative condition in the event a go-around is necessary. If the thrust lever is subsequently placed in the TO/GA position, the ATTCS icon turns green, indicating that the system is armed and ready to operate.

If an engine fails during the go-around or during a one-engine-inoperative go-around in which an engine had been shut down or otherwise made inoperative earlier in the flight, the EICAS indication will be GA RSV (go-around reserve) when the thrust levers are placed in the TO/GA position. The GA RSV indication means that the maximum go-around thrust under the ambient conditions has been commanded.

The propulsive thrust used to determine compliance with the approach climb requirements of § 25.121(d) is limited to the lesser of (i) the thrust provided by the ATTCS system, or (ii) 111 percent of the thrust resulting from the initial thrust setting with the ATTCS system failing to perform its uptrim function and without action by the crew to reset thrust. This requirement limits the adverse performance effects of a failure of the ATTCS and ensures adequate all-engines-operating go-around performance.

These special conditions would require a showing of compliance with the provisions of § 25.904 and Appendix I applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case is of primary importance. During this time it must be extremely improbable to violate a flight path derived from the gradient requirement of § 25.121(d). That gradient requirement implies a minimum one-engine-inoperative flight path with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ–170 series airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model ERJ–170 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer Model ERJ–170 series airplanes.

I. Electronic Flight Control System

In addition to compliance with §§ 25.143, 25.671 and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action. Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

II. Automatic Takeoff Thrust Control System (ATTCS)

To use the thrust provided by the ATTCS to determine the approach climb performance limitations, the Embraer Model ERJ–170 series airplane must comply with the requirements of § 25.904 and Appendix I, including the following requirements pertaining to the go-around phase of flight:

1. Definitions.

(a) *TOGA—(Take Off/Go-Around).* Throttle lever in takeoff or go-around position.

(b) *Automatic Takeoff Thrust Control System—(ATTCS).* The Embraer Model ERJ–170 series ATTCS is defined as the entire automatic system available in takeoff when selected by the pilot and always in go-around mode; including all devices, both mechanical and electrical, that sense engine failure, transmit signals, and actuate fuel controls or power levers or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and to furnish cockpit information on system operation.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in appendix I, § I25.2(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as 120 seconds. A shorter time interval may be used if justified by a rational analysis. An accepted analysis that has been used on past aircraft certification programs is as follows:

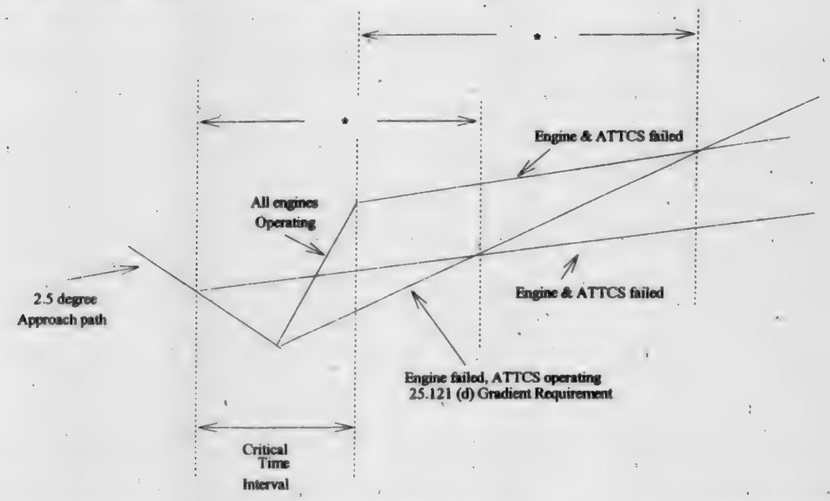
(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb-gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative, approach-climb-gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach

climb performance data are presented in the Airplane Flight Manual (AFM).

(3) The critical time interval is illustrated in the following figure:



The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

2. Performance and System Reliability Requirements.

The applicant must comply with the following performance and ATTCS reliability requirements:

(a) An ATTCS failure or combination of failures in the ATTCS during the critical time interval:

(1) Shall not prevent the insertion of the maximum approved go-around thrust or power or must be shown to be an improbable event.

(2) Shall not result in a significant loss or reduction in thrust or power or must be shown to be an extremely improbable event.

(b) The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

(c) All applicable performance requirements of part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS system functioning.

(d) The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(e) The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d) may not be greater than the lesser of:

(i) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning; or

(ii) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power and without any action by the crew to reset thrust or power.

3. Thrust Setting.

(a) The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

(b) For approval of an ATTCS for go-around, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

4. Powerplant Controls.

(a) In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

(b) The ATTCS must be designed to accomplish the following:

(1) Following any single engine failure during go around: Apply thrust or power on the operating engine(s) to achieve the maximum approved go-around thrust without exceeding engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure. Any such means must be located on or forward of the power levers; be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meet the requirements of § 25.777(a), (b), and (c);

(3) Provide a means to verify to the flightcrew before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

(4) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

5. In addition to the requirements of § 25.1305, the following requirements pertaining to powerplant instruments must be met:

(a) A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

(b) If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during go-around.

Issued in Renton, Washington, on May 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14161 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–08–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 P1, P2, T1, and T2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Eurocopter Deutschland GmbH (ECD) Model EC135 P1 and EC135 T1 model helicopters. That AD currently requires adding the AD or a statement to the Rotorcraft Flight Manual (RFM) informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight. That AD also requires visually inspecting the main rotor drive torque strut assembly (strut) for a crack or a break, recording the inspections in the historical or equivalent record, and re-marking and relocating the strut, as appropriate, and replacing any unairworthy strut with an airworthy strut. Also, that AD establishes life limits for certain struts and revises the life limit for other struts. This action would retain the same requirements but would add the ECD Model EC135 P2 and EC135 T2 helicopters to the applicability and would require replacing certain life-limited struts with titanium struts. This proposal is prompted by the manufacture of a titanium strut that provides a permanent correction to the unsafe condition that led to limiting the life of other struts that have failed. The actions specified by the proposed AD are intended to prevent failure of a strut and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–08–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On September 4, 2001, the FAA issued AD 2001–18–13, Amendment 39–12439 (66 FR 47878, September 14, 2001), to require adding the AD or a statement in the Emergency Procedures section of the RFM informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight. That AD also requires inspecting struts, part number (P/N) L633M1001 103 and L633M1001 105; replacing any cracked or broken strut with an airworthy strut before further flight; and recording each inspection in the helicopter's historical or equivalent record. That AD revised the Airworthiness Limitations section of the maintenance manual by establishing life limits for certain struts. That action was prompted by a report of a thump-like sound heard during flight followed by unusual vibrations due to failure of the right-hand (RH) strut between the main transmission and the fuselage. The requirements of that AD are intended to prevent failure of a strut and subsequent loss of control of the helicopter.

Since issuing that AD, the Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, advises that struts, (P/N) L633M1001 103 and L633M1001 105, should not be used beyond December 31, 2004. The LBA advises replacing those struts with torque struts, P/N L633M1001 104, after January 1, 2005.

ECD has issued Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002 (ASB), which specifies inspecting for a crack, marking strut locations and serial numbers, and transferring the location side of the torque struts or replacing each strut, P/N L633M1001 103 or L633M10001 105, with a torque strut, P/N L633M1001 104, that is anodized and not coated with paint, which have no life limit. The LBA classified this ASB as mandatory and issued AD No. 2001–107/2, dated September 19, 2002, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for

operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would supersede AD 2001–18–13 to require the same actions but would add ECD Model EC135 P2 and EC135 T2 helicopters to the applicability. Also, the proposed AD would require replacing each strut, P/N L633M1001 103 or L633M1001 105, upon reaching its life limit with a titanium strut, P/N L633M1001 104, which would constitute terminating action for the requirements of this AD. The titanium strut must be used in pairs, one on each side of the transmission, and may not be used in conjunction with a strut, P/N L633M1001 103 or L633M1001 105. The titanium strut has no life limit. The proposed AD would require a weight and balance adjustment after installing the titanium strut. The proposed AD would also require on or before December 31, 2004, replacing each strut, P/N L633M1001 103 or L633M1001 105, with a strut, P/N L633M1001 104.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we have not included it in this AD action.

The FAA estimates that this proposed AD would affect 50 helicopters of U.S. registry. The proposed actions would take approximately ½ work hour for the flashlight and mirror inspection; 2.5 work hours to remark, relocate, and inspect with a magnifying glass; and 1 hour to replace both struts. The average labor rate is $60 per work hour. Required parts would cost approximately $9,696 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $496,800.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12439 (66 FR 47878, September 14, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter Deutschland GmbH: Docket No. 2003–SW–08–AD. Supersedes AD 2001–18–13, Amendment 39–12439, Docket No. 2001–SW–19–AD.

Applicability: Model EC135 P1, P2, T1, and T2 helicopters, with main rotor drive torque strut assembly (strut), part number (P/N) L633M1001 103 or L633M1001 105, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, insert a copy of this AD or a statement into the Emergency Procedures Section of the Rotorcraft Flight Manual (RFM) to inform the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight.

(b) Within 10 hours time-in-service (TIS), visually inspect each strut with 950 or more hours TIS for a crack or a break using a flashlight and a mirror in accordance with the Accomplishment Instructions, paragraph 3.B.(1) and 3.B.(2), of Eurocopter Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002 (ASB). Replace any cracked or broken strut with an airworthy strut before further flight.

(c) Inspect the following struts for a crack or a break, using a 6-power or higher magnifying glass, and re-mark and relocate each strut in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB. This AD does not require you to return any part to the manufacturer.

(1) For a strut with less than 950 hours TIS, inspect before accumulating 1000 hours TIS.

(2) For a strut with 950 or more hours TIS, inspect within 50 hours TIS.

(3) Replace any cracked or broken strut with an airworthy strut before further flight.

(d) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a life limit of 1000 hours TIS for each strut, P/N L633M1001 103 and L633M1001 105, in its original location, with an additional 1000 hours TIS if properly re-marked and relocated (2000 hours total TIS) in accordance with the Accomplishment Instructions, paragraph 3.C.(3) of the ASB.

(e) Record details of the inspections in the historical or equivalent records in accordance with the Accomplishment Instructions, paragraph 3.C.(4) of the ASB.

(f) When a strut, P/N L633M1001 103 or L633M1001 105, reaches its life limit, replace it with a titanium strut, P/N L633M1001 104, which must be used in pairs, one strut on each side of the transmission. The titanium struts have no life limit. After installing a strut, P/N L633M1001 104, adjust the weight and balance by using the weight and moment stated in the Planning Information, paragraph 1.H., of the ASB.

(g) On or before December 31, 2004, replace each strut, P/N L633M1001 103 or L633M1001 105, with a strut, P/N L633M1001 104.

(h) Replacing struts, P/N L633M1001 103 and L633M1001 105, with titanium struts, P/N L633M1001 104, constitutes terminating action for the requirements of this AD.

(i) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–107/2, dated September 19, 2002.

Issued in Fort Worth, Texas, on May 30, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–14136 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN81–7306b; FRL–7494–1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a State Implementation Plan (SIP) revision for Dakota County, Minnesota, for the control of emissions of sulfur dioxide (SO_2) in the Pine Bend Area of Rosemount. The site-specific SIP revision for Flint Hills Resources, L.P. (formerly known as Koch Petroleum Group, L.P.), was submitted by the Minnesota Pollution Control Agency on March 13, 2003, and is approvable because it satisfies the requirements of the Clean Air Act. Specifically, EPA is proposing to approve into the SO_2 SIP Amendment No. 6 to the Administrative Order for Flint Hills Resources. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 7, 2003.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice which is located in the Rules section of this **Federal Register**.

Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: April 17, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–13569 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0393b; FRL–7495–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage, equipment leaks at petroleum refineries, and wood product coating operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 7, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109; and,

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SDCAPCD Rule 67.11.1—Large Wood Product Coating Operations; BAAQMD Rule 8–5—Storage of Organic Liquids; and, BAAQMD 8–18—Equipment Leaks. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–13884 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC042–2031b; FRL–7507–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Determining Conformity of Federal Actions to State or Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for the purpose of establishing

regulations for demonstrating and assuring conformity of transportation and non-transportation related Federal actions to state or Federal implementation plans. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 7, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 23, 2003.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 03–14034 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 02–364; FCC 03–15]

Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comment on redistributing spectrum in the 1.6/2.4 GHz band (Big LEO band). The Commission initiated the notice of proposed rulemaking in this proceeding because recent rule changes, as well as changing traffic patterns and consumer demands, suggest that it is an appropriate time for the Commission to re-examine the Big LEO spectrum. In addition, a licensed Big LEO operator requested access to additional spectrum in this band.

DATES: Comments are due July 7, 2003, and reply comments are due July 21, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC, 20554.

FOR FURTHER INFORMATION: Trey Hanbury, Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking in IB Docket No. 02–364, FCC No. 03–15, adopted January 29, 2003, and released on February 3, 2002. The full text of this document is available for public inspection and copying during normal reference room hours at the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–15A1.pdf.* The document may be obtained from Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Summary of Notice of Proposed Rulemaking

On February 3, 2003, the Commission released a Report and Order and Notice of Proposed Rulemaking (NPRM) in this proceeding. The Report and Order relating to this proceeding is published elsewhere in this issue of the **Federal Register**. The NPRM seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands. At the time that the Commission developed the Big LEO spectrum sharing plan, it explained that it might be appropriate to re-visit the plan in the future. Since then, two MSS systems deployed and have begun to operate, while several other systems have either surrendered their license or failed to meet the terms of their license. These changes, as well as changing traffic patterns and consumer demands, suggest that now is an appropriate time to re-examine the Big LEO spectrum plan. In addition, Iridium, one of the two licensed Big LEO operators, has requested access to additional spectrum in the Big LEO band. In the NPRM, the Commission tentatively concludes that a rebalancing of spectrum in the Big LEO band would serve the public interest and seeks comment on the proposal in Iridium's petition and on various alternative uses for the Big LEO spectrum, including whether the Commission should reallocate spectrum for unlicensed services, an additional commercial mobile radio service (CMRS) licensee or other services, or initiate a second processing round by which the Commission could authorize new MSS entry.

The Commission seeks specific technical detail and cost-benefit analysis on the current and projected use of the Big LEO band in the NPRM. For example, given Iridium's request for additional spectrum, how is Iridium utilizing its current spectrum allocations and what are its future spectrum requirements? If the Commission were to make more Big LEO spectrum available, exactly how much additional spectrum would be appropriate? What type of system would Iridium deploy in this additional spectrum? How is Globalstar utilizing its currently assigned Big LEO spectrum? What are Globalstar's projected spectrum needs? Will it require additional Big LEO spectrum in the future? If Globalstar does not use or is not permitted to use the entire Big LEO service downlink spectrum, what should the Commission do with any unused spectrum? Will changes to the Big LEO spectrum sharing plan have any effect on GLONASS, the Russian Global Navigation System, and radioastronomy service (RAS) operations in the band? How does the current U.S. Big LEO spectrum sharing plan fit with international band plans for Big LEO operations and what impact will changes to the U.S. plan have on plans in other regions?

The Commission also seeks comment on the possibility of making any returned spectrum available in a second Big LEO processing round. How much spectrum would need to be made available to provide sufficient incentive for applicants to participate in a second Big LEO processing round? Are the current Big LEO processing rules sufficient to handle a second processing round or would the Commission need to conduct a rulemaking to develop appropriate rules for second round applicants and licensees?

In addition, the Commission seeks comment on possibility of re-allocating any returned Big LEO spectrum. Should unlicensed devices be allowed to operate in the band? Should this band be allocated for site-based or critical infrastructure licensees? Alternatively, should the Commission pair spectrum in the uplink and downlink service bands for assignment to a terrestrial CMRS licensee? The Commission seeks comment on implementation of ATC in the portion of the Big LEO bands beyond those authorized for ATC in the *Report and Order* adopted in this docket, *see In the Matter of Flexibility for Delivery of Communications by Mobil Satellite Service Providers in the 2 GHz Band,* the L-Band, and the 1.6/2.4 GHz Bands, Report and Order, IB Docket 01–185, FCC No. 03–15. This Report and Order is published elsewhere in this issue of the **Federal Register**. The Commission asks whether there are any advantages or disadvantages to allowing CDMA or TDMA systems to deploy ATC in particular parts of the unresolved portions of the Big LEO service up and downlink spectrum.

Procedural Issues

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." In the *NPRM,* the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. Pursuant to the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities by the policies and actions considered in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* Comments are due July 7, 2003. The Commission will send a copy of the document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM. See* 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). *See* 5 U.S.C. 601 *et seq.,* title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Need for and Objectives of the Proposed Rules

This *NPRM* seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands. Given the state of the Big LEO MSS industry including changing traffic patterns, consumer demand and a recent request for additional spectrum by Iridium, one of the Big LEO operators, the *NPRM* seeks comment on: (1) the Commission's original spectrum sharing plan, (2) the proposal of Iridium for additional spectrum and (3) other possible uses of the band.

Legal Basis

This action is taken pursuant to sections 1, and 4(i) and (j) of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 201(c)(11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c)(11), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. *Id.* section 632

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. *See* 13 CFR 121.201, NAICS Code 51334. This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the L-band, Big LEO or 2 GHz MSS category. Of those, approximately 775 reported annual receipts of $11 million or less

and qualify as small entities. The options proposed in this *NPRM* apply only to entities providing Big LEO MSS. Small businesses may not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. At least one of the Big LEO licensees may be considered a small business at this time. We expect, however, that by the time of implementation they will no longer be considered small businesses due to the capital requirements for launching and operating their proposed systems. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by this rulemaking to a great extent.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed action in this *NPRM* would affect those entities applying for Big LEO MSS space station authorizations and those applying to participate in assignment of Big LEO MSS spectrum, including through potential re-allocation. In this *NPRM*, we tentatively conclude that a re-balancing of the Big LEO MSS band will serve the public interest. We seek comment on the current use of the Big LEO MSS uplink band (1610–1626.5 MHz) by the current licensees, Iridium and Globalstar, any potential impact on GLONASS, the Russian Global Navigation Satellite System, and radioastronomy, and Big LEO MSS service downlink (2483.5–2500 MHz) spectrum uses. We also seek comment on the possibility of making Big LEO MSS spectrum available in a second Big LEO processing round, re-allocating a portion of the Big LEO spectrum for other uses, including unlicensed devices, site-based or critical infrastructure licensees, or assignment to terrestrial commercial mobile radio service licensees. We do not propose any other reporting, recordkeeping or compliance requirements in the *NPRM*.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In developing the tentative conclusion and the proposals contained in this *NPRM*, we have attempted to allow flexibility for efficient operations in the Big LEO MSS market, regardless of size, consistent with our other objectives. We have also sought comment on other uses of the spectrum that may enhance service to the public. We believe that our tentative conclusion that the Big LEO MSS band should be re-balanced, our request for comment on the current use of the band by the Big LEO licensees, and our request for comment on other uses of the band will not impose a significant economic impact on small entities because: (1) The information sought is reasonable and not overly burdensome; and (2) as mentioned above, we do not expect small entities to be impacted by this *NPRM* due to the substantial implementation costs involved to use the spectrum at issue in this *NPRM*. Nonetheless, we seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize any such impact.

Federal Rules and May Duplicate, Overlap, or Conflict With Proposed Rules

None.

Ordering Clauses

It is ordered that, pursuant to sections 1, 4(i)–4(j), 201–205, 214, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–154(j), 201–205, 214, 303(r), 309, this notice of proposed rulemaking is hereby adopted.

It is ordered that, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this notice of proposed rulemaking, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14082 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1707; MB Docket No. 03–119; RM–10694]

Radio Broadcasting Services; Savannah, Springfield and Tybee Island, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Cumulus Licensing Corp. ("Petitioner"), requesting the substitution of Channel 280C2 for 280C3 at Springfield, Georgia, reallotment of Channel 280C2 to Tybee Island, Georgia, and modification of the license for Station WEAS accordingly. The coordinates for Channel 280C2 at Tybee Island are 32–00–45 and 80–50–44. The license for Station WSIS, Springfield, Georgia, was modified from Channel 280A to Channel 280C3 in a one-step application (BPH–19990325IE) which has not been reflected in the FM Table of Allotments. Upon termination of this proceeding, we shall correct the FM Table of Allotments to reflect the correct class of channel. Petitioner further requests the reallotment of Channel 226C1, Station WSIS from Savannah, Georgia, to Springfield, Georgia, as a replacement service for Station WEAS. The coordinates for Channel 226C1 at Springfield are 32–02–48 and 81–20–27. Petitioner is the licensee for Station WEAS and WSIS. The proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channels 280C2 at Tybee Island and 226C1 at Savannah.

DATES: Comments must be filed on or before July 11, 2003, and reply comments on or before July 28, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, Interested parties should serve the petitioners' counsel, as follows: Mark N. Lipp, Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–119, adopted May 16, 2003, and released May 20, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 226C1 at Savannah, by removing Channel 280A and adding Channel 226C1 at Springfield, and by adding Tybee Island, Channel 280C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14092 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1708; MB Docket No. 03–120, RM–10591]

Radio Broadcasting Services; Chattanooga and Lake City, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Ronald C. Meredith ("petitioner") to allot Channel 244A to Lake City, Tennessee, as that community's first local aural transmission service. To accommodate this proposal, petitioner requests substitution of Channel 243C0 for Channel 243C at Chattanooga, Tennessee. WDOD of Chattanooga, Inc., the licensee of WDOD–FM operating on Channel 243C at Chattanooga, has stated, in response to an order to show cause, that it does not intend to seek authority to modify WDOD–FM's technical facilities to minimum Class C standards. Channel 243C0 can be allotted at Chattanooga, Tennessee, at the current coordinates for Channel 243C. If Channel 243C0 is substituted for Channel 243C at Chattanooga, Tennessee, Channel 244A can be allotted to Lake City, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 km (4.2 miles) west of Lake City. The coordinates for Channel 244A at Lake City are 36–12–08 North Latitude and 84–13–36 West Longitude.

DATES: Comments must be filed on or before July 11, 2003, and reply comments on or before July 28, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Vincent Pepper, Womble, Carlyle, Sandridge & Rice, PLLC, 1401 Eye Street, NW., Washington 20005; and Coe W. Ramsey, Brooks Pierce McLendon, Post Office Box 1800, Raleigh, NC 27602.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–120; adopted May 16, 2003 and released May 20, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 243C and by adding Channel 243C0 at Chattanooga, and by adding Lake City, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14090 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 052803C]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Intent to Prepare an Environmental Impact Statement for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement (EIS); announcement of public scoping period; request for written comments.

SUMMARY: NMFS, in cooperation with the Pacific Fishery Management Council (Council), announces its intention to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to assess the impacts of the 2004 Pacific Coast groundfish fishery specifications and management measures on the human environment.

DATES: Written comments must be received no later than 5 p.m, local time (l.t.), on July 7, 2003. Two public scoping meetings are scheduled as part of the Council's June 16–20, 2003, meeting in Foster City, CA (*see* **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Comments may also be sent via facsimile (fax) to 503–820–2299 or via e-mail (*pfmc.comments@noaa.gov* and write "2004 groundfish specifications EIS" in subject line).

FOR FURTHER INFORMATION CONTACT: John DeVore, Groundfish Fishery Management Coordinator; phone: 503–820–2280 and e-mail: *john.devore@noaa.gov* or Matthew Harrington, NMFS Northwest Region NEPA Coordinator; phone: 206–526–4742 and email: *Matthew.Harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background and Need For Agency Action

There are more than 80 species managed under the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP), nine of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in nongroundfish fisheries, most notably the trawl fisheries for pink shrimp, spot/ridgeback prawns, California halibut, and sea cucumber.

The proposed action is needed to establish commercial and recreational harvests levels in 2004 that will ensure groundfish stocks are maintained at, or restored to, sizes and structures that will produce the highest net benefit to the nation, while balancing environmental and social values.

The Proposed Action

The proposed action is to implement management measures consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that constrain total fishing mortality during 2004 within limits that maintain fish stocks at, or rebuild them to, a level capable of producing maximum sustained yield (MSY), or to a stock size less than this if such stock size results in long-term net benefit to the nation.

These fishing mortality limits are harvest specifications that include acceptable biological catches (ABCs) and optimum yields (OYs) for groundfish species or species groups in need of particular protection; OYs may be represented by harvest guidelines or quotas for species that need individual management. The allocation of commercial OYs between the open access and limited entry segments of the fishery is also part of the proposed action. The FMP requires that the groundfish specifications be annually evaluated and revised as necessary, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Act and the Groundfish FMP also require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks. These specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the U.S. exclusive economic zone (3–200 nm offshore).

Alternatives

NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. The purpose and need for agency action determines the range of reasonable alternatives. A preliminary set of alternatives will be developed during the June 16–20, 2003, Council meeting. Alternatives will be structured around a range of ABCs/OYs for assessed groundfish species. This range of ABCs/OYs is based on stock assessments, including seven new assessments completed since 2003 harvest specification were established, rebuilding analyses for overfished species based on these assessments, and a stock assessment of cabezon due to be completed before the end of 2003. This last assessment, although it will not be completed and peer-reviewed early in the decision process, will be used to identify different management measures for nearshore fisheries. For some species ABC/OY ranges that would be used to develop alternatives may be based on consultations by the Council with state and Federal agencies, Indian tribes, and the affected public on the allocation of harvest opportunity between sectors. Allocation decisions can affect OYs because different sectors may catch fish of different ages, allowing different sustainable harvest levels.

For each set of ABCs/OYs used in a given alternative, a set of management measures will be identified that will constrain total harvest mortality (across all fisheries intercepting groundfish). Restrictive management measures intended to rebuild overfished species have been adopted and implemented over the past several years for most commercial and recreational fishing sectors. Management measures intended to control the rate at which different groundfish species or species groups are taken in the fisheries include trip limits, bag limits, size limits, time/area closures, and gear restrictions. Large area closures, intended to reduce bycatch of overfished species and referred to as Rockfish Conservation Areas were first implemented in late 2002. These closed areas will continue to be a key feature of alternatives considered in the EIS to manage groundfish fisheries in 2004.

Preliminary Identification of Environmental Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS. The EIS evaluates a range of feasible alternatives (described above) to determine their likely impacts on the human environment and identify significant impacts. Council and NMFS staff conducted initial screening to identify the potentially significant impacts of the range of alternatives that will be developed. They identified the following potentially significant impacts: (1) effects of fishing operations on essential fish habitat; (2) effects of fishing operations on protected species listed under the Endangered Species Act and Marine Mammal Protection Act and their critical habitat; and (3) effects on the sustainability of target and non-target fish stocks, and especially overfished groundfish stocks. Socioeconomic impacts are also considered in terms of the effect changes in projected harvests will have on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

Public Scoping Process

Two public scoping meetings will occur at the June 16–20, 2003, Council meeting as part of the Council's regular agenda. The meeting will take place at the Crown Plaza Hotel, 1221 Chess Drive, Foster City, CA. The first public scoping meeting will be held on Tuesday, June 17, 2003, as part of agendum *B.4, Preliminary Range of Harvest Levels for 2004*. The second scoping meeting will be held on Friday, June 20, 2003, as part of agendum *B.14, Adoption of Proposed Range of Alternatives for 2004 Groundfish Management Measures*. A public comment period is scheduled for each agendum and comments on the scope of the DEIS are encouraged during these comment periods. Because these scoping opportunities will occur as part of the regular agenda, the time at which they will begin depends on the agenda as a whole. Council business begins at 8 a.m. each day and usually ends not later than 5 p.m. A scoping document identifying the management issues, and an outline of the proposed analysis will be made available at the June 16–20, 2003 Council meeting and on the Council's Web site (*www.pcouncil.org*). A full agenda and other information about this meeting is also available on this website or by request from Council offices (*see* **ADDRESSES** above).

NMFS invites comments and suggestions on the scope of the analysis to be included in the DEIS. The scope includes the range of alternatives to be considered and potentially significant impacts to the human environment that should be evaluated in the DEIS. In addition, NMFS is notifying the public that, in conjunction with the Council, it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

A DEIS will be prepared for comment later on in the process. The comment period on the DEIS environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the DEIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA CFR 1503.3 in addressing these points.) Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter 503–820–2280 (voice) or 503–820–2299 (fax), at least 5 days prior to the scheduled meeting date.

Authority: 16 U.S.C. 1801 *et seq:*

Dated: May 30, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14177 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service.

ACTION: Notice of meeting; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on June 2, 2003 (68 FR 32725), which announced the first meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture. This action is necessary to correct erroneous dates listed for the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The announcement of the first meeting of the USDA Advisory Committee on Biotechnology and 21st Century Agriculture in the June 2, 2003 edition of the **Federal Register** incorrectly listed the dates for the meeting. The correct dates for the meeting are June 16–17, 2003, from 8:30 am to 5 pm each day. On June 16, 2003, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration from members of the public who wish to make statements. Individuals wishing to make such statements should also inform Dr. Schechtman in writing or via E-mail at the indicated addresses at least three business days before the meeting.

Michael G. Schechtman,
Designated Federal Official, Advisory Committee on Biotechnology and 21st Century Agriculture.
[FR Doc. 03–14226 Filed 6–2–03; 3:34 pm]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation 2003-Crop Year Beet Sugar Marketing Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on (1) a new entrant's beet sugar allocation request and possible impacts on existing beet processors and producers, and (2) increasing an existing beet processor's allocation beginning in FY 2004.

DATES: The public hearing will be held June 16, 2003, in room 107–A of the U.S. Department of Agriculture (USDA) Jamie L. Whitten Federal Building, 12th and Jefferson Drive, SW., Washington, DC. The hearing will start at 9:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: USDA will hold a public hearing regarding the application of Cargill, Inc. (Cargill), for a new entrant beet sugar marketing allocation for the 2003 crop year. Cargill is requesting a 2003-crop year allocation of 80,000 short tons, raw value, annually, for years 2003 through 2007. The facility will be located in Renville, Minnesota.

Section 359d(b)(2)(H)(i) of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002, authorizes CCC to assign an allocation for beet sugar to any entity who (1) starts processing sugar beets after the date of enactment of this section, and (2) does not already have an allocation of beet sugar. The statute provides that the allocation of beet sugar to the new entrant shall provide a fair and equitable distribution of the allocations for beet sugar while reducing the allocations of beet sugar of all other processors on a pro rata basis to reflect the new allocation.

Cargill has requested a beet sugar marketing allocation as a new entrant through an agreement with Southern Minnesota Beet Sugar Cooperative's (Southern Minnesota) growers for a beet supply and a tolling agreement with Southern Minnesota to extract the sugar from Cargill's beets.

CCC will also use this hearing to collect comments on any adverse effects that the allocation to Cargill would have on existing sugar beet processors and producers.

In addition, CCC will hear comments on the request by the Pacific Northwest Sugar Company, LLC (PNS) to increase its allocation 1.5 percent of the sum of all beet sugar producers' production history. Of this increase, 0.25 percent is requested based on the opening of a molasses desugaring facility in summer 1999. The balance, 1.25 percent, is based on PNS's request for a 1998-crop quality loss adjustment as required by Section 359d(b)(2)(D)(ii)(IV) of the Agricultural Adjustment Act of 1938, as amended. CCC notes that PNW certified on September 13, 2002, to CCC that it had not opened an eligible desugaring facility or suffered an eligible quality loss when they were surveyed about those issues.

The hearing will be held on June 16, 2003, from 9:30 a.m. to 12 p.m. EDT in room 107–A of the Jamie L. Whitten Building, 12th and Jefferson Drive, SW., Washington, DC. Attendance is open to interested parties.

Anyone wishing to make an oral statement may do so, time permitting. Each comment will be limited to 5 minutes. A sign up sheet for oral statements will be available at the entrance of room 107–A one hour before the hearing begins. Oral statements will be made in the order the requests are received. Anyone wishing to make a written statement in lieu of or in addition to an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; e-mail: *barbara.fecso@usda.gov*. Statements must be received by close of business on June 15, 2003.

Persons with disabilities who require special accommodations to attend or participate in the hearing should contact Barbara Fecso.

Signed in Washington, DC on June 2, 2003.

James R. Little,
Executive Vice President, Commodity Credit Corporation.
[FR Doc. 03–14250 Filed 6–2–03; 4:05 pm]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting of June 26, 2003, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held June 26, 2003, beginning at 9 a.m. and ending at 3 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 543–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Budget Subcommittee report, status report on the Final Draft Report to Congress by the Lands Subcommittee, Lake Tahoe Environmental Education public outreach, Pathway 2007 Phase II Science update, Review of the USFS Lake Tahoe Restoration Act Project Priority List for FY 2004, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Maribeth Gustafson,
Forest Supervisor.
[FR Doc. 03–14122 Filed 6–4–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on June 16, 2003 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review Forest Service project submittals in detail, based on presentations made by project proponents, and follow-up question and answer sessions.

DATES: The meeting will be held June 16, 2003, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Status of replacement member applicants; (2) Presentation of nine Forest Service, and two related (non-Forest Service) project submittals by project proponents, with follow-up question and answer sessions. Time allocated for each presentation and question/answer session is 15 minutes; and, (3) Public comment on meeting proceedings. This meeting is open to the public.

Dated: May 21, 2003.

Tom Quinn,
Forest Supervisor.
[FR Doc. 03–14088 Filed 6–4–03; 8:45 am]
BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Thursday, June 19, 2003 at the Spokane Community College, Colville Campus, Monumental Room, 985 South Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) RAC officer (chair) election; (2) RAC budget, expenses, and communication strategies; (3) Bylaws and Charter Review and Update; (4) Fiscal Year 2004 Title II projects review and recommendation to the forest designated official; and (5) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Rolando Ortegon, Designated Federal Officer or to Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114, (509) 684–7000.

Dated: May 28, 2003.

Rolando Ortegon,
Acting Forest Supervisor, Colville National Forest.
[FR Doc. 03–14121 Filed 6–4–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on June 3 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: June 3, 2003.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior

Ranger District, Lolo National Forest, at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include the review and selection of project proposals, as authorized under Title II of Pub. L. 106–393. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent, the Clark Fork Wagon Wheel, and the Missoulian.

Dated: May 23, 2003.

Deborah L.R. Austin,

Designated Federal Official.

[FR Doc. 03–14174 Filed 6–2–03; 3:32 pm]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Kentucky Advisory Committee will convene at 2 p.m. And adjourn at 4 p.m. On Wednesday, June 4, 2003. The purpose of the conference call is to receive a briefing from key public and private civil rights officials, regarding civil rights problems in the state.

This conference call is available to the public through the following call-in number: 1–800–923–4217, access code 17077814. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Bobby Doctor of the Southern Regional Office 404–562–7000 (TDD 404–562–7004), by 4 p.m. on Tuesday, June 3, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 2003.[1]

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14231 Filed 6–2–03; 4:05 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD APRIL 23, 2003–MAY 19, 2003

Firm name	Address	Date petition accepted	Product
AMG, Inc	301 Jefferson - Ridge Parkway, Lynchburg, VA 24501.	04/21/03	Custom designed machined components for the telecommunications and fiber optic industries.
Butler Technologies, Inc	231 West Wayne Street, Butler, PA 16001.	05/19/03	Commercial printer producing membrane switches and automobile gauges.
Dow Precision Hydraulics, Inc	1835 Wright Avenue, La Verne, CA 91730.	04/23/03	Hydraulic parts for aircraft.
Du-Co Ceramics Company	155 South Rebecca Street, Saxonburg, PA 16056.	05/08/03	Electrical ceramic insulators.
Eric Engebretsen dba F/A Humboldt	P.O. Box 534, Homer, AK 99603	04/29/03	Salmon.
Garcia U-Pick Farms	P.O. Box 1640, San Elizario, TX 79849.	05/19/03	Chili pepper decorations.
Harold C. Haynes, dba F/V Chasina Bay.	148 Mattle Road, Ketchikan, AK 99901.	05/19/03	Salmon.
Martinez Manufacturing, Inc	1175 Alexander Court, Cary, Il 60013.	05/14/03	Mobil phone earpieces, automotive wiring sets and appliance parts.
Materials Processing, Inc	17423 W. Jefferson, Riverview, MI 48192.	05/19/03	Paints and lacquers for purchased automotive parts.
N. M. Sargents Sons, Inc	Potato Hill Rd., Industrial Park, Boonville, NY 13309.	05/09/02	Unfinished hardwood chairs primarily of maple.
Orbit Machining Company, Inc	9440 Ainslie Street, Schiller Park, IL 60176.	05/14/03	Machined metal components of valves and metal rollers for industrial machinery.
PDT Holdings, Inc	600 Heathrow Drive, Lincolnshire, IL 60069.	05/01/03	Injection molds for plastics and dies for die castings.
Pro-Mold, Inc	350 Buell Road, Rochester, NY 14624.	05/09/03	Injection and compression molds for rubber and plastic.
Peak Industries, Inc	4300 Road 18, Longmont, CO 80504.	05/09/03	Electro-medical instruments and appliances, recording devices, patient monitoring systems and optical instruments for inspecting semiconductor wafers.
R & M Apparel, Inc	721 Donahue Street, Gallitzin, PA 16641.	04/29/03	Women's shirts and pants.
Robert L. Hall, dba F/V Sea Comber	P.O. Box 1284, Sitka, AK 99835	04/29/03	Salmon.
Russell Cockrum, dba F/V Viking Maid.	4677 Tongass Highway, Ketchikan, AK 99901.	05/19/03	Salmon.

[1] *Editorial note:* This document was received at the office of the Federal Register and filed for public inspection on June 2, 2003.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD APRIL 23, 2003–MAY 19, 2003—Continued

Firm name	Address	Date petition accepted	Product
Sandy Farms, Inc	34500 SE Highway 211, Boring, OR 97009.	04/29/03	Blackberries.
Sooner Trailer Manufacturing Company, Inc.	1515 McCurdy Road, Duncan, OK 23533.	05/12/03	Trailers for transporting animals.
Spico, Inc	1099 Morgan Road, Meadville, PA 16335.	05/12/03	Molds and tooling used in Village the plastics industry.
Star Printing Company	107 North Flores, Rio Grande City, TX 78582.	04/28/03	Men's T-shirts.
TAM Metal Products, Inc	55 Whitney Road, Mahwah, NJ 07430.	05/09/03	Precision fabricated metal products.
Taylor Valve Technology, Inc	8400 SW 8th Street, Oklahoma City, OK 73128.	04/23/03	Safety relief valves.
Value Company, Inc	1252 County Road 106, Fayette, AL 35555.	04/29/03	Dies for drawing or extruding metal, with and without diamonds.
Waltco Engineering Company	401 West Redondo Beach Blvd., Gardena, CA 90248.	04/23/03	Precision machined components for wireless communications, aircraft and computer hardware.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 28, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–14123 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of the Ninth New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(d), we are initiating a review for Anda Industries Co., Ltd, Laizhou City Luqi Machinery Co., Ltd, and Qingdao Rotec Auto Parts Co., Ltd.

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Terre Keaton or Margarita Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766, (202) 482–1280 or 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Anda Industries Co., Ltd ("Anda"), Laizhou City Luqi Machinery Co., Ltd ("Luqi"), and Qingdao Rotec Auto Parts Co., Ltd ("Rotec"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), which has an April anniversary date.

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), each of the exporters identified above, which are also producers, has certified that it did not export brake rotors to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Anda, Luqi and Rotec each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating a new shipper review for Anda, Luqi and Rotec.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Anda, Luqi and Rotec (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides

sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. The preliminary results of this new shipper review would normally be issued not later than 180 days after initiation of this review. However, on May 16, 2003, Anda, Luqi and Rotec agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the sixth annual administrative review of this order for the period April 1, 2002–March 31, 2003, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the preliminary results of this review not later than 245 days after the last day of the anniversary month.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A–570–846:	
Anda Industries Co., Ltd	04/01/02–03/31/03
Laizhou City Luqi Machinery Co., Ltd	04/01/02–03/31/03
Qingdao Rotec Auto Parts Co., Ltd	04/01/02–03/31/03

We will instruct the U.S. Bureau of Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies in accordance with 19 CFR 351.214(e). Because Anda, Luqi and Rotec certified that they produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: May 30, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–14182 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan.

SUMMARY: On April 21, 2003, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the anti-circumvention review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan. *See Notice of Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan*, 68 FR 19499 (April 21, 2003) ("Preliminary Results"). Based on the comments received, we have not changed our results from the Preliminary Results.

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2003, the Department published in the **Federal Register** the Preliminary Results. We invited parties to comment on our Preliminary Results. On May 5, 2003, we received comments from respondents Nippon Steel Corporation ("NSC"), and NKK Steel Corporation ("NKK"). We received no comments or rebuttal comments from any other parties.

Scope of the Order

The scope of this order is as follows: The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: Carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: Carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: Carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: Carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: Carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: Carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: Under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than ±0.2; Lankford value = ≥1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal

conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

Also, excluded from this order are products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as "ASE Iron Flash" and either: (A) Having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 *micrometer in thickness and the other* side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length.

Analysis of Comments Received

As stated above, the only comments the Department received on the Preliminary Results were from two respondents, NKK and Nippon, who each expressed support of the Department's analysis and decision. Since we received no comments in opposition to the Preliminary Results, we find it is not necessary to discuss these comments which were in support of the Department's decision.

Changes Since the Preliminary Results

As none of the submitted comments recommended changing the Preliminary Results and as the Department's analysis has not changed regarding any aspect of the Preliminary Results, we have not changed our results from the Preliminary Results.

Final Results

After our analysis, the Department found the following: (1) The increase of imports from Japan to the United States of corrosion-resistant steel ("CRS") with boron-added was only temporary; (2) there were imports to the United States from Japan of boron-added CRS at the time the scope of the order was proposed by the domestic industry and published by the Department; (3) there are commercially and metallurgically viable reasons for the addition of boron in the context of the Continuous Annealing Process ("CAP"), which was used by the two respondents who *exported the vast majority of the* boron-added CRS to the United States; and (4) under the five factor test normally applied to determine if an article has been altered in form or appearance in minor respects so as to result in circumvention of the order, which includes an analysis of the overall physical characteristics, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of modification, we found that, for companies that use the CAP, the addition of boron is not a minor alteration. Therefore, the evidence on the record of this inquiry, taken as a whole, leads to our final results that the United States imports of boron-added corrosion-resistant carbon steel flat products from the respondents were not minor alterations of the subject merchandise, within the meaning of section 781(c) of the Act, and are not circumventing the antidumping duty order on CRS from Japan.

We are issuing and publishing this notice in accordance with section 781(c) of the Act and §351.225(i) of the Department's regulations.

Dated: May 29, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14180 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–810]

Certain Hot-Rolled Carbon Steel Flat Products From South Africa: Notice of Rescission of Countervailing Duty Administrative Review for the Period January 1, 2001, Through December 31, 2001

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a timely request from Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (petitioners), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from South Africa, covering the period January 1, 2001, to December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003). Because petitioners have submitted a withdrawal of their request for an administrative review, and there was no request for review from any other interested party, the Department is rescinding this review in accordance with § 351.213(d)(1) of the Department's regulations.

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Julio Fernandez, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–0961, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 200*2*, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from South Africa. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation* (67 FR 78219). On December 31, 2002, the Department received a timely request from petitioners for an administrative review covering the period from January 1, 2001 through December 31, 2001, in accordance with 19 CFR 351.213(b)(1).

The Department published a notice of initiation of this countervailing duty administrative review on January 22, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003). This review covered two manufacturers/exporters of the subject merchandise, Iscor, Ltd. and Saldanha Steel, Ltd., for the period January 1, 2001 through December 31, 2001. On April 24, 2003, petitioners withdrew their request for review.

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). The Department is authorized to extend this deadline if it decides that it is reasonable to do so. Although petitioners submitted their withdrawal request 92 days after the initiation publication date, *i.e.*, after the 90-day period had expired, the Department has decided that it is reasonable to extend the deadline and accept the request. Petitioners were the

only parties to request this review, and the review has not progressed beyond a point where it would have been unreasonable to allow petitioners to withdraw their request for review. *See Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review*, 68 FR 16764 (April 7, 2003). Additionally, we conclude that this withdrawal does not constitute an "abuse" of our procedures. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27317 (May 19, 1997). Thus, the Department is rescinding the countervailing duty administrative review on certain hot-rolled carbon steel flat products from South Africa for the period January 1, 2001 through December 31, 2001. The Department will issue appropriate assessment instructions to the United States Bureau of Customs and Border Protection.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 30, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–14181 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052003C]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a request for exempted fishing permits (EFPs); request for comments.

SUMMARY: NMFS announces the receipt of a request for EFPs for tuna purse seine vessels to begin fishing prior to the traditional start date in order to improve market conditions and to allow retention of all incidental catch of bluefin tuna between 73 and 81 inches. NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

DATES: Written comments on this fishing activity will be considered by NMFS in issuing such EFPs if received on or before June 20, 2003.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

The East Coast Tuna Association (ECTA) has requested EFPs for five tuna purse seine vessels to begin fishing for their giant Atlantic bluefin tuna allocation on July 15, rather than the traditional start date of August 15. The ECTA believes that beginning the purse seine fishing season 30 days early could enhance marketing opportunities and therefore benefit the entire U.S. commercial bluefin tuna fishery.

ECTA also requests an exemption to allow these vessels to exceed the 10–percent tolerance level for incidental catch of bluefin tuna between 73 and 81 inches (185 to 206 cm). In their request, ECTA states that the minimum size tolerance was a restrictive factor limiting the success of last year's start date experiment and above normal water temperatures may also have been a contributing factor. ECTA also states that due to the prevalence of mixed schools of giant and large medium bluefin tuna throughout the fishing season, purse seine vessels would likely exceed the 10–percent tolerance for undersized fish. ECTA feels that the purse seine quota has not been caught in recent years because purse seine vessels have refrained from setting on mixed schools. ECTA notes that the purse seine vessels have the largest average minimum size of any of the U.S. Atlantic tuna commercial categories and that most purse seine vessels targeting mixed schools would not catch bluefin tuna below 75 inches (190 cm). Thus, they are requesting an exemption from the 10 percent tolerance level in order to ensure the purse seine quota is filled, to increase fishing efficiency, and to reduce the potential for bycatch mortality.

NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: May 30, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14178 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the first meeting of the Marine Protected Areas Federal Advisory Committee (MPAFAC) in Washington, DC.

DATES: The meeting will be held Tuesday, June 24, from 8:30 a.m. to 5:15 p.m., and Wednesday, June 25, from 8:30 a.m. to 4 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held both days at the Commerce Department Auditorium, 1401 Constitution Avenue, NW., Washington, DC 20230. (Please use the main entrance on 14th Street).

FOR FURTHER INFORMATION CONTACT: Marjorie Ernst, Designated Federal Officer, MPAFAC, National Marine Protected Areas Center, NOAA, Rm. 12227, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–563–7111; Fax: 301–713–3110; E-mail: *Marjorie.Ernst@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The MPAFAC, composed of external, knowledgeable representatives of stakeholder groups, has been established by the Department of Commerce to provide advice to the Secretaries of Commerce and Interior on implementation of section 4 of Executive Order 13158 on MPAs. While the two-day meeting is open to the public, a one-hour time period has been reserved late in the morning on Wednesday for the Committee to receive verbal comments or questions from the public. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes and written statements submitted either on site or beforehand, if possible.

Matters To Be Considered

On Tuesday, June 24, high-level officials from the Departments of Commerce and the Interior will provide opening remarks, followed by FAC member introductions. Presentations will be made by Commerce Department counsel to orient members regarding Federal Advisory Committee Act requirements and ethical guidelines. In the afternoon, officials from NOAA and the Department of the Interior will present on the background of the Executive Order and an overview of National MPA Center goals and activities. This will be followed by a presentation and discussion of the scope and charge to the Committee.

On Wednesday, June 25, the Committee will elect a chairperson before receiving more detailed presentations to develop the foundation for conducting its work. During the afternoon, the Committee will discuss various administrative and operational matters related to getting organized to fulfill its mission.

Dated: May 14, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–14139 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050203B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee (SSC) in June, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, June 19, 2003, at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Logan Airport, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will provide the Council guidance on developing management reference points for the Atlantic Sea Herring Fishery Management Plan (FMP) in light of the stock assessments presented at the U.S. - Canada Transboundary Resource Assessment Committee in February 2003. The Council will consider the SSC's guidance in the development of Amendment 1 to the Herring FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 2, 2003.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14179 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052003B]

Marine Mammals; File No. 1003–1665

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Jennifer Moss Burns, University of Alaska Anchorage, Department of Biological Sciences, College of Arts and Sciences, 3211 Providence Drive, Anchorage, AK 99508, has been issued an amendment to scientific research Permit No. 1003–1665–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, PO Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 7, 2003, notice was published in the **Federal Register** (69 FR 16786) that an amendment of Permit No. 1003–1665–00, issued April 12, 2002 (67 FR 19167), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit was amended to increase the number of takes of harbor seals (*Phoca vitulina richardsi*) in Southeast Alaska by disturbance incidental to capture and surveys from 500 to 2,000 per year.

Dated: May 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14175 Filed 6–4–03; 8:45am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050503A]

Marine Mammals; File No. 763–1534–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Zoological Park, Smithsonian Institution, Washington, D.C. 20008–2598 [Principal Investigator: Dr. Daryl Boness], has been issued an amendment to scientific research Permit No. 763–1534–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9346; fax (508)281–9371.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 28, 2003, notice was published in the **Federal Register** (68 FR 14585) that an amendment of Permit No. 763–1534–00 issued March 10, 2000 (65 FR 14947), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit authorizes the Holder to import/export samples taken from non-endangered species of the Orders Cetacea and Pinnipedia [except walrus].

Dated: May 29, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14176 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Continuing Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 4, 2003.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA. 22041–3206, Attn: Major Joann Kelsch.

FOR FURTHER INFORMATION CONTACT: To request more information on the continuation of this information collection, please write to the above address or contact TRICARE Management Activity, DHP Management Control and Financial Studies at 703–681–3492.

Title, Associated Form and OMB Number: Third Party Collection Program—Record of Other Health Insurance, DD Form 2569; OMB Number 0704–0323.

Needs and Uses: The information contained in the DD Form 2569 will be used to collect reimbursement from private insurers for medical care provided to family members of retirees and deceased Service members having health insurance. Such monetary benefits accruing to the Military Treatment Facility (MTF) will be used to enhance healthcare delivery in the MTF. Information will also be used by MTF staff and CHAMPUS Fiscal Intermediaries to determine eligibility for care, deductibles, and co-payments and by Health Affairs for program planning and management.

Affected Public: Family members of retirees and deceased Service members having health insurance.

Annual Burden Hours: 115,096 hours (.041 × 2,807,212).

Number of Respondents: 2,807,212.

Responses Per Respondent: 1.

Average Burden Per Response: .041 hrs (2.5 minutes).

Frequency: Annually or on occasion when insurance information changes.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This is a reinstatement of a previously approved collection that will expire July 31, 2003.

The administration has placed increased emphasis upon recovery of health care expenses under the Federal Medical Care Recovery Act. Completion of this form, while increasing total burden hours, will aid in increasing revenues (O&M dollars), services, and operating efficiency and effectiveness within the Military Health Services System. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure.

Dated: May 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14145 Filed 6–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: June 16–17, 2003.

ADDRESSES: RAND, 1200 S. Hayes Street, 4th floor, Arlington, VA 22202–5050.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its Web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100 extension 5683.

SUPPLEMENTARY INFORMATION:

Proposed Schedule and Agenda

Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 11 a.m. to 5 p.m. on June 16, 2003 and from 8:30 a.m. until 3 p.m. on June 17, 2003. Time will be allocated for public comments by individuals or organizations at the end of the meeting on June 17th. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Hillary Peck, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: May 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14147 Filed 6–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on the Smallpox Vaccine Down Select Process will meet in closed session on July 24, 2003, in Washington, DC. The Task Force will perform an independent evaluation of the Department of Defense and Department of Health and Human Services smallpox vaccine candidates.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will evaluate each of the smallpox vaccine candidates to include the following type of issues: choice of cell line and viral strain used; preclinical data in appropriate animal models; review of vaccine production methodology to include rates of production and surge capacity; review of protocols for clinical trials to include adverse reaction rates; review of cost issues as they relate to production of the vaccine; review of critical regulatory issues associated with the use of the vaccine; and any other issues that the Task Force feels, based on its experience, are relevant.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(4) and that, accordingly, the meeting will be closed to the public.

Dated: May 29, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14146 Filed 6–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Mandatory Use of USBank's PowerTrack System by Department of Defense Personal Property Transportation Service Providers

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for the Household Goods and Personal Property Program, proposes the mandatory use of USBank's PowerTrack System as the transaction and payment system for all DOD Transportation Service Providers (TSP), beginning with the implementation of Phase I of the Defense Future Personal Property Program, (Families First). Furthermore, the use of MTMC's Centralized Web Application (CWA) will also be mandatory. Implementation of PowerTrack at all Military Services and Coast Guard installations is the goal of Families First, which is the first stop in moving toward the reengineered Personal Property Program of the future.

This announcement is being made to afford TSPs ample time to comment and plan for potential future data feeds to PowerTrack. The Electronic Billing and Payment portion of the Families First Web site is located at *http://www.mtmc.army.mil,* under the Personal Property Program. The site offers industry access to updates on the Business Rules, Concept of Operations (CONOPS), and System Interface Specifications.

DATES: The initial rollout of PowerTrack and CWA is proposed to begin October 1, 2003. Comments must be submitted on or before 30 days from publication.

ADDRESSES: Comments may be sent by e-mail to: *thomasg@mtmc.army.mil;* or by courier to: Headquarters, Military Traffic Management Command, ATTN: MTPP–PD, Room 10N35–58 (George Thomas), Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Mr. George Thomas at (703) 428–2237.

SUPPLEMENTARY INFORMATION: The initial rollout (*see* **DATES**) is proposed to serve as the Evaluation Period for the Phase I process, and involve a limited number of Personal Property Shipping Office's (PPSO) and TSP's. Expansion to the remaining PPSO's and TSP's is proposed to commence on or about April 2004. It is important to note that not all PPSO's will be impacted during the Evaluation Period. For this reason, TSPs should file their rates for the Winter Cycle assuming that PowerTrack and CWA will not be used.

Transportation Providers wishing to transport personal property shipments for the DOD must have an agreement with USBank and be PowerTrack certified for the electronic payment of commercial transportation services. It is important that TPs begin the PowerTrack signup process by calling USBank at 1–800–417–1844. Additional information on PowerTrack is available at *http://www.usbank.com/powertrack.* Only those TPs that are PowerTrack certified will be eligible to receive personal property shipments.

I. Background

On 7 July 1997, the Under Secretary of Defense (Comptroller) issued a memorandum, which required the reengineering of defense transportation documentation and financial processes as part of an effort to revolutionize DOD business practices across all Military Services and Agencies. A major component of the reengineering effort is the implementation of USBank's PowerTrack System. Powertrack has been implemented for DOD freight shipments for all modes of transportation and now is under consideration for DOD personal property shipments. In June 2002, the USTRANSCOM Personal Property report was released, and USTRANSCOM directed that work begin on the future Personal Property program. USTRANSCOM tasked MTMC, in conjunction with the Military Services and Industry, to map our

Families First by August 31, 2002. As a part of the Families First effort, DOD declared that PowerTrack would be utilized as the commercial business-to-business payment system.

To begin moving forward with Families First, MTMC developed a CONOPS outlining the implementation of Phase I. Key elements of Phase I CONOPS are electronic bill payment and the CWA. The CWA will be used for approval authorization and for costing shipments, based on the current Military Rate Tender.

II. Objective

The objective of Phase I is to implement the new electronic bill payment portion of Families First. The electronic bill payment processes for Phase I will:

- Use USBank's PowerTrack system to pay Transportation Service Providers;
- Use CWA as a tool to track and approve services performed by Transportation Service Providers; and,
- Provide information visibility for Stakeholders (Personal Property Shipping Offices, Military Services, General Service Administration, Transportation Service Providers, etc.).

Regulation Flexibility Act

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 et seq., does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

Thomas Hicks,

Chief, Personal Property Division.

[FR Doc. 03–14154 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Handheld and Hand Powered Centrifuge Device

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application No. 60/391,945 entitled "Handheld and Hand Powered Centrifuge Device," filed June 28, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to centrifuge devices. More particularly, this invention relates to portable, handheld and hand-powered centrifuge devices, and methods using the same.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–14156 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Taqman Internal Positive Control

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Provisional Patent Application No. 60/361,455 entitled "Taqman Internal Positive Control," filed March 4, 2002. Foreign rights are also available (PCT/US03/06347). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The prevent invention generally relates to probes comprising a reporter molecule and a quencher molecule for use in nucleic acid assays. In particular, the present invention relates to a universal internal positive control that may be used in polymerase chain reaction (PCR) based assays.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–14155 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement to the July 2002 Final Dredged Material Management Plan and Environmental Impact Statement, McNary Reservoir and Lower Snake River Reservoirs, in the States of Oregon, Washington, and Idaho

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Walla Walla District, intends to prepare a Supplemental Environmental Impact Statement (SEIS) to the July 2002 Final Dredged Material Management Plan (DMMP) and Environmental Impact Statement (EIS): McNary Reservoir and Lower Snake River Reservoirs. The DMMP/EIS addressed a 20-year, programmatic approach the Corps would use to maintain the navigation channel within the Walla Walla District. The study reach considered includes Lake Wallula above McNary Dam on the Columbia River in Oregon and Washington; the four lower Snake River reservoirs extending from the mouth of the Snake River upstream to the communities of Lewiston, Idaho, and Clarkston, Washington; and the lower 2 miles of the Clearwater River from its confluence with the Snake River at Lewiston upstream to the U.S. Highway 12 Bridge. This supplement will reorganize and clarify information already included in the DMMP/EIS, expand the discussions and evaluations of measures considered in the DMMP/EIS, incorporate new information and data collected subsequent to the issuance of the DMMP/EIS, and modify alternatives, as needed, including the preferred alternative. When completed and approved, this SEIS, along with the DMMP/EIS, will constitute the Corps' long-term programmatic plan for maintaining the congressionally-authorized channel within the Walla Walla District.

The Environmental Protection Agency (EPA), Region 10, was a cooperating agency for the DMMP/EIS, and will also be a cooperating agency for this SEIS. The Corps will work with EPA during development of the SEIS to consider and incorporate, as appropriate, the policies and procedures currently evolving for the Northwest Regional Dredging Team (RDT), as referred to in the April 26, 2002, policy letter jointly signed by Brigadier General David A. Fastabend, Corps of Engineers, Northwestern Division Commander, and L. John Iani, EPA Region 10 Administrator.

DATES: Submit comments by July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Sands, Project Manager, Walla Walla District, Corps of Engineers, CENWW–PM–PPM, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7287, or Ms. Sandra Simmons, NEPA Coordinator, Walla Walla District, Corps of Engineers, CENWW–PD–EC, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7265.

SUPPLEMENTARY INFORMATION: The DMMP/EIS defined the programmatic approach the Corps planned to follow for the next 20 years for maintaining the congressionally authorized navigation channel by managing sediment deposition, dredging, and disposing of dredged material removed from those reaches of the Columbia, Snake, and Clearwater Rivers that make up that portion of the Columbia/Snake Rivers Inland Navigation Waterway within the Walla Walla District boundaries. The DMMP/EIS also addressed the need to provide flow conveyance at the confluence of the Snake and Clearwater Rivers at Lewiston, Idaho, as dredging has been used to maintain adequate flow conveyance in this area. The DMMP/EIS considered four alternatives: (1) No Action (No Change), Maintenance Dredging With In-Water Disposal; (2) Maintenance Dredging With In-Water Disposal to Create Fish Habitat and a 3-Foot Levee Raise; (3) Maintenance Dredging With Upland Disposal and a 3-Foot Levee Raise; and (4) Maintenance Dredging With Beneficial Use of Dredged Material and a 3-Foot Levee Raise.

The DMMP/EIS and September 2002 Record of Decision (ROD) were challenged in court and have not been implemented. Information regarding the case, which was filed in the U.S. District Court for the Western District of Washington, can be viewed on the Walla Walla District Web site at *http://www.nww.usace.army.mil/dmmp/hot_topics_dmmp.htm*.

In response to the court challenge, the Corps decided to withdraw the ROD for the Final DMMP/EIS and prepare an SEIS. The SEIS will reorganize and clarify information already included in the DMMP/EIS, expand the discussions and evaluations of measures considered in the DMMP/EIS, incorporate new information and data collected subsequent to the issuance of the DMMP/EIS, and modify alternatives, as needed, including the preferred alternative. Additional measures and alternatives identified during the evaluation will also be considered. The SEIS will address measures, alternatives, and impacts on a programmatic level, but will not address site-specific actions. However, the SEIS will present the coordination and environmental review steps the Corps will take with regard to subsequent site-specific actions. The SEIS will also continue to include input from a local, interagency sediment management group formed under the Northwest RDT. After public review of the final SEIS, the Corps intends to sign a new ROD for the programmatic plan.

As per 40 CFR 1502.20 and 1508.28 of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), the Corps intends to use a tiered approach for addressing site-specific activities performed subsequent to the SEIS and ROD. For each activity, the Corps plans to prepare the compliance documentation necessary to tier off of the programmatic plan.

The site-specific documentation will address details of the proposed activity and the impacts of that activity.

As per 40 CFR section 1502.9(c)(4) of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, the Corps does not plan to conduct scoping for this SEIS. However, affected Federal, state, and local agencies; Indian tribes; and other interested organizations and parties are invited to provide input to the Corps on the scope of this SEIS. To ensure consideration, input on the scope should be provided to the Corps by comment date (See **DATES**). Additional opportunities for public input on the SEIS will be provided during the normal review periods for the draft and final SEIS.

The draft SEIS is currently scheduled to be available for public review in late 2003. The final SEIS is currently scheduled to be available for public review in early 2004.

Edward Kertis, Jr.,

LTC, EN, Commanding.

[FR Doc. 03–14157 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–0C–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a General Reevaluation Report and Draft Supplemental Environmental Impact Statement for the Poplar Island Environmental Restoration Project, Talbot County, MD

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers (Corps) is initiating a General Reevaluation Report (GRR) and Draft Supplemental Environmental Impact Statement (DSEIS) to evaluate the potential for additional expansion of the Poplar Island Environmental Restoration Project (PIERP), located in the Chesapeake Bay in Talbot County, Maryland. A DSEIS will be integrated into the GRR to document existing conditions, proposed project actions, and potential project effects and products. The Maryland Department of Transportation (MDOT), under the auspices of the Maryland Port Administration (MPA), is the non-Federal sponsor for this GRR and DSEIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be addressed to Ms. Gwen Meyer, Study Team Leader, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, MD 21203–1715, telephone (410) 962–9502. E-mail address: *gwendolyn.c.meyer@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. This GRR is being conducted under the existing PIERP authorization, section 537 of the Water Resources Development Act of 1996 (WRDA96). Certain proposed project modifications may be able to be implemented without further Congressional authorization, subject to section 902 of the Water Resources Development Act of 1986 (WRDA86), which limits cost increases in authorized projects to 20 percent.

Other proposed project modifications may require Congressional authorization.

2. The group of islands known as Poplar Island are located in Talbot County, Maryland, in the upper-middle portion of the Chesapeake Bay, 34 nautical miles south-southeast of Baltimore Harbor, and one mile northwest of Tilghman Island. Poplar Island has been identified by the U.S. fish and Wildlife Service (USFWS), the Maryland Department of Natural Resources, National Marine Fisheries Service, and other resource agencies as a valuable nesting and nursery area for many species of wildlife, including bald eagles, osprey, heron, egrets, and least terns.

The PIERP was developed through cooperative efforts of the Corps, MPA, and many other Federal, State and local agencies, public and private organizations, and the general public. The PIERP reconstructed the island to its approximately 1847 footprint. The Maryland Environmental Service (MES) completed environmental and technical reconnaissance-level studies at Poplar Island. The PIERP was studied by the Corps under the authority of section 204 of WRDA 1992. Section 204 provides authority for the Corps to implement projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with the construction, operation, or maintenance of an authorized Federal navigation project. A feasibility report and Environmental Impact Statement (EIS) were completed in February 1996. The feasibility report was approved by the Assistant Secretary of the Army for Civil Works on September 4, 1996. The environmental restoration project, through the beneficial use of dredged material, was approved for construction under section 537 of WRDA96. *See* section 3, paragraph D, below for sources of this dredged material.

The PIERP containment dikes were constructed in three stages. Phase I included construction of the northern 640 acres contained by sand dikes, construction of rock reefs at the northern end of the project, construction of a rock breakwater between Poplar Island and Coaches Island and construction of geotextile tube breakwaters along the southwest side of Coaches Island as protection until Phase II. Phase I was completed in March 2000. Phase II included dike construction to contain the southern 500 acres and was completed in February 2002. Phase III construction raised the dikes in Cell No. 2, the northern upland cell, from an initial elevation of 10 feet mean lower low water (MLLW), to an elevation of 20 feet MLLW. Raising of the dikes in Cell Nos. 2 and 6 to the authorized elevation of 23 feet will be accomplished in future phases. To date, approximately 8 million cubic yards (mcy) of dredged material has been placed at Poplar Island in the Phase I area.

The current project design includes development of half of the land area as wetlands (570 acres) with the remaining portion as upland habitat (570 acres). Of the wetlands, 80 percent are being developed as low marsh and 20 percent as high marsh (456 acres low marsh, 114 acres high marsh). Small upland islands, ponds, and dendritic guts or channels will be created to increase habitat diversity within the marsh areas. It is expected that habitat diversity will be increased in the upland areas by the construction of small ponds and providing for areas of native forest, open shrub and native grasses.

The original project at Poplar Island was envisioned for construction during a 24-year period through the placement of up to 2 mcy of dredged material per year. The actual dredged material placement at Poplar Island has increased beyond planned levels due to the continued need to improve and to maintain the Chesapeake Bay approach channels to the Port of Baltimore and the restrictions of other placement options.

The proposed PIERP expansion would increase the dredged material capacity of the island and add further environmental and possibly recreational features at the facility.

3. The GRR is a decision document that will comply with NEPA through supplemental documentation to the existing Poplar Island EIS. An integrated Supplemental Environmental Impact Statement (SEIS) addressing raising the dikes above the authorized height of 23 feet and the proposed footprint expansion alternatives will be prepared. If during the study period it is determined that an EIS is not needed to comply with NEPA, an Environmental Assessment (EA) would be prepared instead. The Corps, Baltimore District proposes that the Poplar Island Expansion general reevaluation study further investigate and fully evaluate solutions to expand the placement capacity at Poplar Island by dike raising in the upland cells of the island and/or expanding the footprint with additional enhancements. The report will therefore consider the following:

a. *Dike Raising*—The study will evaluate raising the upland cell dikes (Cell Nos. 2 and 6) above the authorized height of 23 feet MLLW) at Poplar Island to an unspecified elevation to be determined during the study. This modification is not expected to change the beneficial use of the project. This alternative may increase placement capacity by 10 to 20 million cubic yards or more depending on the final elevation.

b. *Expansion of the Existing Footprint*—Expanding the footprint of the island to increase the placement capacity of the island as well as adding additional environmental benefits to the project will be studied. Proposed alignments will consider potential expansion along the northeastern side of the island and southern side of the island. All alignments would increase dredged material capacity and add environmental habitat. The northeastern alignment would also provide increased protection to Poplar Harbor and Jefferson Island.

The Talbot County government requested that Poplar Island expansion investigations include recreation and education opportunities at the island. Features of this type may include, but are not limited to recreational beach creation, hiking trails, educational facilities, bird watching, camping, and other passive recreation. The study will determine whether such features could be incorporated into the design of the island without compromising the restoration goals and intent of the project. Issues to be addressed include transportation to and from the island (and the impacts thereof) and providing facilities that allow for minimal human impact to environmentally sensitive areas. These issues will be coordinated extensively with interested agencies.

c. *Environmental Enhancements—Poplar Harbor*—To the east of the Poplar Island project is Poplar Island. This area is protected from the wave energy of the open Chesapeake Bay by the project to the west, Coaches Island to the south, and Jefferson Island to the north. One of the goals of the project is to facilitate the return of submerged aquatic vegetation (SAV) within the harbor by protecting the harbor and providing quiescent shallow water habitat. Efforts should be made to maximize this restoration potential through further protection of the northern side of the harbor. Expansion of the footprint could be designed to accomplish this goal, but if that is not considered feasible, other structural means (breakwaters, jetty, etc.) should be considered.

Jefferson Island—Jefferson Island was one of the remaining remnants of Poplar Island that existed prior to the restoration project. The project does not incorporate Jefferson Island into the footprint. Jefferson Island is toward the northern end of Poplar Harbor and acts as a barrier to protect the harbor from waves and currents from the north. Restoration of Poplar Island does not protect the east side of Jefferson Island from continued erosion. The continued erosion of the island not only threatens to remove important protection of the harbor, but it also adds sediment to the water column that could hinder the re-colonization of SAV in the harbor. For these reasons, protection of Jefferson Island may be warranted and should be considered in the GRR.

Terrapin habitat—The diamondback terrapin is an important species in the Chesapeake ecosystem. It requires remote, sandy beaches to lay eggs. Such habitat is becoming increasingly scare in the Chesapeake Bay due to human development and activities, sea-level rise and erosion. In the spring and summer of 2002, dozens of terrapins nested on the dikes at Poplar Island resulting in the tagging and release of over 500 hatched terrapins back into the Bay. This experience has proven that the island is well situated and isolated enough for terrapin habitat. As part of the GRR study, new features will be considered at the island to enhance terrapin habitat, such as creation of non-recreational sandy beaches.

d. *Acceptance of Dredged Material from other Channels at Poplar Island*—The original Poplar Island project is limited to accepting only material from certain outer Bay channel reaches (the Craighill Entrance Channel, Craighill Channel, Craighill Angle, Craighill Upper Range, Cutoff Angle, Brewerton Channel Eastern Extension, Tolchester Channel, and Swan Point Channel). Dredged material from the channels north of the Tolchester Channel (the southern approach channels to the Chesapeake and Delaware Canal) is currently placed at the Pooles Island open water placement site. State of Maryland law requires this site to close by 2010, thereby leaving those channels with insufficient capacity until a new facility is developed. Also to be considered is the acceptability of material from State and local dredging projects for placement at Poplar Island. It is unlikely that the quantities of material that may be generated from such projects would have much impact in the overall operation and capacity of the island. This GRR will investigate sediment quality and environmental considerations before recommending that the material from these channels be accepted at Poplar Island. While the established criteria of determining dredged material acceptability at Poplar Island will not change, a modification to include fill material from additional channels may require additional authorization and will require an amendment to the existing Project Cooperation Agreement with the non-Federal sponsor.

4. The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, will be balanced against its reasonably foreseeable costs. The Baltimore District is preparing a DSEIS, which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and on the overall public interest. The DSEIS will be prepared in accordance with NEPA and will document all factors which may be relevant to the proposal, including the cumulative effects thereof. Among these factors are habitat restoration, channel and erosion control, improvements to water quality, storm water management, conservation, economics, energy needs, general environmental concerns, fish and wildlife values, wetlands, historic and cultural values, navigation, shoreline erosion and accretion, flood hazards, flood plain values, land use, recreation, safety, food production, and, in general, the needs and welfare of the people. The work will not be accomplished unless it is found to be in the public interest. If applicable, the DSEIS will also apply guidelines issued by the Environmental Protection Agency, under the authority of section 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

5. Public involvement activities for the study will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state, and local agencies, the Poplar Island Working Group, and the State's Dredged Material Management Plan Citizen's Advisory Group. Coordination letters and newsletters have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, radio and television announcements.

6. In addition to the Corps, Talbot County, and the MPA, other participants that will be involved in the study and DSEIS process include the following: U.S. Environmental Protection Agency; USFWS; National Marine Fisheries Service; U.S. Forest Service; U.S. Geological Survey; Natural Resource Conservation Service and the Maryland Departments of Natural Resources and the Environment. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

7. The Poplar Island GRR and integrated DSEIS are tentatively scheduled for public review in November 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–14158 Filed 6–4–03; 8:45 am].

BILLING CODE 3710–41–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41777 entitled "Novel Approaches to the Management of Greenhouse Gases from Fossil Fuel Energy Systems." The objective of this solicitation is to solicit applications for grants for research projects directed at novel approaches to the management of GHG emissions from fossil-fuel energy systems. Specifically, the solicitation will provide for the development of cost-effective solutions to the GHG emissions problem from fossil-fuel electric utilities.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about May 22, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Angela Delmastro, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochran's Mill Road, Pittsburgh PA 15236, E-mail Address: *Angela.Delmastro@NETL.DOE.GOV,* Telephone Number: 412–386–5038.

SUPPLEMENTARY INFORMATION: It is anticipated that there will be 5–15 awards resulting from this solicitation.

It is estimated that $4.5 million ($1.5–$2.0 million FY04) will be available for award under this solicitation, subject to the availability of funds. The number of

awards and range of funding will depend on the number of applications received and selected for award. Future year funding will depend upon suitable progress and the availability of funds.

The objective of this solicitation is to solicit applications for grants for research projects directed at novel approaches to the management of GHG emissions from fossil-fuel energy systems. Specifically, the solicitation will provide for the development of cost-effective solutions to the GHG emissions problem from fossil-fuel electric utilities.

The goals call for resolving outstanding scientific issues and establishing reduced-cost paths to energy and cost-efficient systems to manage or mitigate GHG emissions. Proposals exploring new and innovative approaches for capturing, separating, or storing carbon, or carbonaceous compounds, are particularly welcome. Applications submitted under this solicitation should clearly describe how a successful technology or approach will reduce or mitigate the GHG emissions from fossil-fuel electric utilities. Of specific interest to DOE are CO_2 emissions resulting from the generation of electricity using coal.

The main thrust of the research efforts funded under this solicitation is experimental. As such, applications submitted under this solicitation should present a clear path forward such that, at the end of the project term, the R&D work and cost necessary to commercialize the concept can be clearly described. The anticipated term for projects is one (1) to three (3) years.

Collaborative research projects involving more than one institution are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on May 27, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–14167 Filed 6–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–323–000, ER03–323–001, ER03–323–002 and ER03–323–003]

Midwest Independent Transmission System Operator, Inc.; Supplemental Notice of Technical Conference

May 30, 2003.

The May 28, 2003 Notice of Technical Conference in this proceeding indicated that a technical conference regarding the Midwest ISO's Market Mitigation Measures will be held on June 26, 2003 at 9 a.m. This conference will be held in the Commission Meeting Room at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, unless otherwise notified. All interested persons may attend the conference, and registration is not required. However, attendees are asked to register on-line at *http://www.ferc.gov/home/conferences.asp*.

The agenda for the technical conference is attached. The topics will commence with a presentation by the Midwest ISO and/or the Midwest ISO Independent Market Monitor, followed by a discussion. After the conference, Commission Staff will set a schedule for Comments and Reply Comments to be filed.

Magalie R. Salas,

Secretary.

Technical Conference Agenda

9–9:15 a.m. Introductions—Commission Staff; and Midwest ISO and/or Midwest ISO Market Monitor.

9:15–12 p.m.—BCA Mitigation, NCA Mitigation and Reference Levels.

- Definition of BCA and application of BCA mitigation;
- NCA designations and mitigation thresholds;
- Reference Levels.

12–1 p.m.—Lunch Break.

1–3:45 p.m.—Interaction between Mitigation Measures and Other Mechanisms.

- Physical Withholding Penalties and Day-Ahead Resource Adequacy Assessment;
- Interaction of the Mitigation Measures with, and status of:

—Resource Adequacy Requirements;
—Safety-net Bid Caps;
—Scarcity Pricing and Demand Response.

3:45–4 p.m. Break.

4–5 p.m. Other Issues and Next Steps.

[FR Doc. 03–14211 Filed 6–4–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0087; FRL–7507–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): "Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products," EPA No. 1764.02, OMB No. 2060–0348, expires June 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Emission Standards Division (C504–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5460; fax number: (919) 541–0072; electronic mail (e-mail) address: *moore.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this ICR under Docket ID number OAR–2003–0087 (formerly A–95–40), which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *A-and-R-Docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, National Volatile Organic Compound Emission Standards for Consumer Products, 40 CFR part 59, subpart C (6102T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Regulated entities. Entities potentially affected by this action are those which manufacture, distribute, or import consumer products for sale or distribution in the United States, including the District of Columbia and all United States territories.

Title. National Volatile Organic Compound Emission Standards for Consumer Products, OMB Control No. 2060–0348; EPA ICR No. 1764.02; expires June 30, 2003.

Abstract. The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C—National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Burden Statement. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0087 (formerly A–95–40), which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EDOCKET at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. (OAR–2003–0087, formerly A–95–40) and

OMB control number 2060–0348 in any correspondence.

Dated: May 21, 2003.

Henry C. Thomas, Jr.,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–14197 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–6]

Adequacy Determination for the Kansas City Area Ozone Maintenance State Implementation Plan (SIP) for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is informing the public that we have found the motor vehicle emissions budgets for volatile organic compounds and nitrogen oxides in the Kansas City area adequate for conformity purposes. The budgets were submitted with the Kansas City Maintenance Plan for Control of Ozone which addresses the second ten-year period from the years 2003 through 2012. The Plan was submitted under two separate SIP submittals by the state of Kansas and the state of Missouri. The motor vehicle emissions budgets in each SIP were for the Kansas City Maintenance area and the budgets were the same for both states. We have determined that the budget submitted by the state of Kansas is adequate, and that the budget submitted by the state of Missouri is adequate.

DATE: This finding is effective June 20, 2003.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/traqconf.htm* (click on "Adequacy Web Pages").

You may also contact Heather Hamilton, Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101, or e-mail at *hamilton.heather@epa.gov*, telephone (913) 551–7039.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

We sent a letter to the Kansas Department of Health and Environment and the Missouri Department of Natural Resources on March 17, 2003, stating that the motor vehicle emissions budgets in the Kansas City area submitted with the Kansas City Maintenance Plan for Control of Ozone were adequate. The Kansas City Maintenance Plan for Control of Ozone addresses the second ten-year period from the years 2003 through 2012.

On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our adequacy finding, the Kansas City Area must use the motor vehicle emissions budgets from the submitted Kansas City Maintenance Plan for Ozone for future conformity determinations.

We described our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999, entitled, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." We followed this guidance in making our adequacy determination.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether SIP motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We applied these criteria in finding that the submitted budgets are adequate. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401–7671 q.

Dated: May 22, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14195 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0334; FRL–7311–1]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on June 10, 2003. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on June 10, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Michael R. Barrett, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 305–6309; e-mail address: *barrett.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0334. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action.

Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. Electronic access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

On a quarterly interval, the Exposure Modeling Workgroup meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Tentative Agenda

This section provides tentative agenda topics for the 1–day meeting:

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
   - European Union activities.
   - U.S. Department of Agriculture/Agricultural Research Service (USDA/ARS) Pesticide Properties Database.
   - Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) Model.
   - Rice modeling.
   - Watershed Regression for Pesticides (WARP) Model.
   - Spray Drift Task Force progress.
   - AgDrift EPA review.
   - EXAMINER.
   - Pesticide Leaching U.S. (PLUS).
   - Cumulative and Aggregate Risk Evaluation System (CARES).
   - Drinking water exposure estimates for dietary risk.
   - Environmental Fate and Effects Division's (EFED) water quality projects.
   - Perspective Groundwater (PGW) Database,
   - EFED current issues in fate modeling.
4. Major topics:
   - A rapid laboratory method for studying synergism.
   - Techniques for estimating exposure time series and peak exposure levels.
   - Geographic Information System (GIS) watershed analysis for refined aquatic risk assessments.
   - Update on pesticide usage estimation procedures to support interpretation of monitoring data.
   - PRZM/EXAMS quality control issues update.
   - Software integrating frameworks for pesticide models.
5. Wrap-up and action items.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: June 2, 2003.

Elizabeth Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–14311 Filed 6–3–03; 1:31 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–7]

Meeting of the National Drinking Water Advisory Council (NDWAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming conference call meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will discuss follow-up actions relating to a report presented at the May 2003 meeting by NDWAC's work group on Affordability. The Council will determine whether it will make specific recommendations to EPA relating to the Affordability report.

DATES: The Council meeting will be held on June 20, 2003, from 11 a.m. to 1 p.m., Eastern Standard Time.

ADDRESSES: Council members teleconference into Room 2123 of the EPA East Building, which is physically located at 1201 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, submit a written statement in advance, or make arrangements to teleconference call into the meeting should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by June 13, 2003. Ms. Johnson can be reached at (202) 564–3791; by e-mail at *johnson.brendap@epa.gov*, or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate 30 minutes for this purpose. A limited number of additional phone lines may be available for members of the public that are outside of the Washington, DC, metropolitan commuting area and are unable to attend in person. Any additional teleconferencing lines that are available will be reserved on a first-come, first-serve basis by the Designated Federal Officer. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information. Any person needing special accommodations at this meeting, including wheelchair access, should contact the Designated Federal Officer, at the number or e-mail listed under the **FOR FURTHER INFORMATION CONTACT** section, at least five business days before the meeting so that the appropriate arrangements can be made.

Dated: May 29, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–14196 Filed 6–4–03; 8:45 am]

BILLING CODE 6450–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7509–7]

Science Advisory Board, Advisory Council on Clean Air Compliance Analysis; Notification of Changes in an Upcoming Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Advisory Council on Clean Air Compliance Analysis (Council) is announcing changes in a previously announced meeting.

DATES: Instead of holding a full meeting of the Council as previously announced for June 11–13, 2003, the Air Quality Modeling Subcommittee (AQMS) of the Council will meet for one day only on June 12, 2003 at 8 a.m. and adjourn no later than 5 p.m (EST) on that day. The meeting agenda will be posted on the SAB Web site, *http://www.epa.gov/sab/agendas.htm* by June 6, 2003.

ADDRESSES: The public meeting of the Subcommittee will be held in Washington, DC. The meeting location will be announced on the SAB Web site, *http://www.epa/sab*. For further information concerning the public meeting, please contact Dr. Angela Nugent, DFO (*see* contact information below).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 564–4562 or via e-mail at *nugent.angela@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, Notice was given in the **Federal Register** (68 FR 25882–25883, May 14, 2003) that the Advisory Council on Clean Air Compliance Analysis would hold a public meeting on June 11–13, 2003 to provide advice to the EPA on the Agency's plan to develop the second prospective study, the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act. This meeting was to include sessions for its two subcommittees, the Air Quality Modeling Subcommittee and the Health Effects Subcommittee. Background on the Council, its subcommittees, and on the advisory project was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

The Agency provided review material and detailed charge questions for the Council and its two subcommittees in mid May. These review materials for the "Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis' can be found at the following Web site, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/*. Material provided there contains the analytical plan, including individual technical appendices and charge questions submitted by EPA to the Council.

The Agency informed the SAB Staff Office and Council on May 30, 2003 that it plans to revise parts of the analytical plan and to defer many of the charge questions. Based on that information, the Council decided not to meet as planned on June 11–13, 2003. Most of the questions pertaining to the work of the Air Quality Modeling Subcommittee, however, have not been deferred. Therefore the Subcommittee will hold a short meeting on June 12, 2003 to begin providing advice on those issues.

Dated: June 2, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–14312 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7509–1]

Availability of "Allocation of Fiscal Year 2003 Youth and the Environment Training and Employment Program Funds"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Allocation of Fiscal Year 2003 Youth and the Environment Training and Employment Program Funds" issued on May 21, 2003. This memorandum provides National guidance for the allocation of funds used under section 104(b)(3) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch, U.S. EPA, 1200 Pennsylvania Avenue, NW., (4204–M), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski, (202) 564–0636 or *baranowski.curt@epa.gov*.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from Program's Web page at *www.epa.gov/owm/youth.htm* under the *Grant Guidance* link:

Dated: May 21, 2003.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 03–14191 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–1]

Petroleum Products Superfund Site; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed *de minimis* settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a *de minimis* settlement at the Petroleum Products Superfund Site (Site) under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Approximately 58 parties have returned signature pages accepting EPA's settlement offer. EPA will consider public comments on the proposed settlement until July 7, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comment may be submitted to Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 16, 2003.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–14193 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–9]

Prestige Chemical Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative order on consent.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative order on consent for a removal action pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1989 (CERCLA), as amended, regarding the Prestige Chemical Company Superfund Site located in Senoia, Coweta County, Georgia, with Ranew's Paint and Body Shop Inc. The settlement is designed to resolve fully this *de minimis* party's liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and contribution protection. EPA will consider public comments on the cost recovery component of the proposed settlement, section VII, until July 7, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that section VII is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: May 16, 2003.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–14192 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–3]

Clean Water Act Section 303(d): Availability of List Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an EPA decision identifying water quality limited segments and associated pollutants in California to be listed pursuant to Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On June 5, 2003, EPA partially approved and partially disapproved California's list submittal for the 2002 listing cycle. Specifically, EPA approved California's listing of 679 waters, associated pollutants, and associated priority rankings. EPA disapproved California's decisions not to list 5 water quality limited segments and associated pollutants, and additional pollutants for 15 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to California's 2002 section 303(d) list, as required by EPA's Public Participation regulations (40 CFR part 25). EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on California's list.

DATES: Comments must be submitted to EPA on or before July 8, 2003.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Team Leader, Water Division, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3416, facsimile (415) 947–3537, e-mail *smith.davidw@epa.gov*. Oral comments will not be considered. Copies of EPA's decision concerning California's list that explain the rationale for EPA's decisions can be obtained at EPA Region 9's Web site at *http://www.epa.gov/region09/water/TMDL* by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for these decisions is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 972–3416 or *smith.davidw@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, California submitted to EPA its listing decisions under section 303(d)(2) on March 3, 2003 along with several followup submittals. On June 5, 2003, EPA approved California's listing of 679 waters and associated priority rankings. EPA disapproved California's decisions not to list 5 water quality limited segments and associated pollutants, and additional pollutants for 15 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 section 303(d) list. EPA solicits public comment on its identification of 5 additional waters and associated pollutants, and additional pollutants for 15 waters already listed by the State, for inclusion on California's 2002 section 303(d) list.

Dated: May 30, 2003.

Karen Schwinn,

Acting Director, Water Division, Region IX.

[FR Doc. 03–14194 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 4, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.
Title: Annual Employment Report.
Form Number: FCC Form 395–A.
Type of Review: Revision of a currently approved collection.
Respondents: Business and other for-profit, not-for-profit institutions.
Number of Respondents: 2,200.
Estimated Time per Response: 10 mins to 2.5 hrs.
Frequency of Response: Recordkeeping; Annual reporting requirement.
Total Annual Burden: 3,188 hours.
Total Annual Costs: None.
Needs and Uses: Following the D.C. Circuit's decision in *MD/DC/DE Broadcasters Association* v. *FCC ("Association")* in January 2001, vacating the FCC's broadcast EEO rules for recruitment, on January 31, 2001, the Commission suspended its EEO program requirements for both broadcasters and Multichannel Video Programming Distributors (MVPD's), including the requirement to file FCC Forms 395–A. and 395–M. The FCC is now revising Form 395–A, Annual Employment Report, to incorporate FCC Form 395-M. The new FCC Form 395-A is a data collection device used to report industry trends. The report identifies employees by gender, race, and ethnicity in fifteen job categories. The FCC Form 395–A contains a grid which collects data on full and part-time employees and requests a list of employees by job title, indicating the job category and full or part-time status of the position. However, Form 395–A omits the old EEO program report section, which is now in the new FCC Form 396–C, OMB Control No. 3060–1033.

OMB Control Number: 3060–0390.
Title: Broadcast Station Annual Employment Report, FCC Form 395–B.
Form Number: FCC Form 395–B.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entities; State, Local or Tribal Government.
Number of Respondents: 14,000.
Estimated Time Per Response: 0.88 hours.
Frequency of Response: Annual reporting requirement.
Total Annual Burden: 12,320 hours.
Total Annual Costs: None.
Needs and Uses: FCC Form 395–B is used to compile statistics on the workforce employed by broadcast licensees/permitees. It is filed by all AM, FM, TV, international and low power TV broadcast licensees/permittees that employ five or more full-time employees. The FCC staff use the data to compile a report showing the five-year employment trends the broadcast industry.

OMB Control Number: 3060–0568.
Title: Commercial Leased Access Rates, Terms and Conditions.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 6,330.
Estimated Time per Response: 2 mins to 10 hrs.
Frequency of Response: Recordkeeping; Third party disclosure.
Total Annual Burden: 94,171 hours.
Total Annual Costs: $74,000.
Needs and Uses: The FCC and prospective leased access programmers use this information to verify rate calculations for leased access channels and to eliminate uncertainty in negotiations for leased commercial access. The Commission's leased access requirements are designed to promote programming diversity and competition in programming delivery as required by Section 612 of the Cable Television Consumer Protection and Competition Act of 1992.

OMB Control Number: 3060–0938.
Title: Application for a Low Power FM Broadcast Station License.
Form Number: FCC Form 319.
Type of Review: Extension of currently approved collection.
Respondents: Not-for-profit institutions; State, local or Tribal Government.
Number of Respondents: 1,200.
Estimated Time per Response: 1.5 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 1,800 hours.
Total Annual Costs: $105,000.
Needs and Uses: The FCC Form 319 is required to apply for a new or modified low power FM broadcast station. The data are used by FCC staff to determine whether an applicant has constructed its station in accordance with the outstanding construction permit and to update FCC station files. Data are extracted from the FCC Form 319 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14094 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0750.
Title: Section 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit entities; Individuals or households.
Number of Respondents: 1,825.
Estimated Time per Response: 1 to 5 minutes.
Frequency of Response: Annual and eight year reporting requirements; Third party disclosure.
Total Annual Burden: 56,940 hours (multiple responses per year).
Total Annual Costs: $0.00.
Needs and Uses: On April 13, 2001, the Commission released a Memorandum Opinion and Order on Reconsideration, In the Matter of Establishment of a Class A Television Station, MM Docket 00–10, FCC 01–123. This rule expanded the scope of 47 CFR section 73.673 to include Class A television station licensees. 47 CFR section 73.673 implements the Children's Television Act of 1990 (CTA). The rule requires that commercial TV broadcasters identify programs specifically designed to educate and inform children. This identification will occur at the beginning of the programs. In addition, licensees will provide to publishers of program guides information identifying children's programs and the intended age groups. The rule provides greater clarity about broadcasters' obligations to air programming "specifically designed" to serve the educational and informational needs of children and to improve public access to information about the availability of these programs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14095 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0589.
Title: FCC Remittance Advice and Continuation Sheet.
Form No.: FCC Forms 159 and 159–C.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, federal government, state, local or tribal government.
Number of Respondents: 300,000.
Estimated Time Per Response: .50 hours.
Frequency of Response: On occasion reporting requirement, third party disclosure requirement.
Total Annual Burden: 150,000 hours.
Total Annual Cost: N/A.
Needs and Uses: These forms are required for payment of regulatory fees, and for use when paying for multiple filings with a single payment instrument, or when paying by credit card for federal benefits. The FCC Form 159 has been revised to eliminate the Taxpayer Information Number (TIN) and to add Discover and American Express to the credit cards allowable. The form requires specific information to track payment history, and to facilitate the efficient and expeditious processing of applications and other services by a lockbox bank. The information will be used by the Commission for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government.

OMB Control No.: 3060–0824.
Title: Service Provider Identification Number and Contact Information Form.
Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Administrator of the Universal Service Program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The administrator uses the FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receive payments directly from the Administrator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14096 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season; Amended Order of Investigation

May 30, 2003.

The Federal Maritime Commission ("Commission") instituted this nonadjudicatory fact finding proceeding on August 23, 2002, to investigate allegations that the ocean common carrier members of the Transpacific Stabilization Agreement ("TSA") had engaged in practices in the inbound Far East-United States trade during the 2002–2003 service contract season that were potentially in violation of various provisions of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq* ("1984 Act"). Commissioner Joseph E. Brennan was appointed as Investigative Officer and was authorized to conduct public and non-public hearings, administer oaths and utilize compulsory process, including orders pursuant to section 15 of the 1984 Act in order to obtain relevant information. Hearings were held in Long Beach and San Francisco, CA, Seattle, WA, and Washington, DC, where testimony and documents were received under oath. Commissioner Brennan conducted the investigation and submitted a confidential Report and Recommendations to the Commission on April 10, 2003.

Allegations that the members of TSA were engaged, individually and jointly, in conduct prohibited by the 1984 Act were raised in a joint petition filed by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") and the International Association of NVOCCS ("IANVOCC") on May 10, 2002. Specifically, the petitioners alleged that TSA members had entered into an agreement to complete service contract negotiations with proprietary shippers before beginning negotiations with non-vessel-operating common carriers ("NVOCCs"). Petitioners further alleged that TSA members discriminated against NVOCCs by subjecting NVOCC contracts to general rate increases ("GRIs") and a peak season surcharge ("PSS"), but not including similar provisions in contracts with proprietary shippers.

Following receipt of the joint petition, the Commission directed the staff to obtain and assess additional information regarding TSA member practices during the 2002–2003 contracting season. Due to the seriousness of the allegations, comments received thereon, and the decision of TSA members to institute a second GRI with the knowledge that certain shippers would be exempt from the increase due to the terms of their contracts with TSA, the Commission ordered this fact finding investigation to gather additional facts and data on the following issues, among others:

1. Refusals to deal with NVOCCs until the substantial completion of negotiations with proprietary shippers;

2. The discriminatory application in NVOCC service contracts of GRIs and/or a PSS, while waiving or otherwise not requiring similar application in proprietary shipper service contracts;

3. The extent and degree to which the rate increases and service contract policies, practices, and guidelines of TSA have been, and remain, voluntary and non-binding upon its respective members;

4. The extent and degree to which TSA and its members have maintained and transmitted to the Commission full, complete, and accurate minutes of all meetings required to be filed with the Commission; and

5. The development and utilization of open-ended provisions that permit the unilateral implementation of GRIs and/or a PSS by TSA members in their service contracts with NVOCCs, without genuine further negotiation, while waiving or not requiring similar provisions in their service contracts with proprietary shippers.

The Commission has now determined to continue to pursue certain of these issues, together with related issues developed during this fact finding investigation, through further investigation and possible actions under sections 5, 6, 8, 10, 11, 12 and 15 of the 1984 Act, as appropriate. The Commission has further determined to extend the period under review to include the 2003–2004 service contract season and, in particular, the impact of any 2003 general rate increase and peak season surcharge on proprietary shippers and NVOCCs. To facilitate such investigation, the Commission is continuing this fact finding proceeding to assist in developing the most current evidence of the activities of TSA and its members in the eastbound transpacific trades, as related to the following issues, among others:

1. The extent and degree to which TSA members may have violated section 10(b)(13) of the 1984 Act by disclosing confidential shipper information related to individual service contracts, including the identity of the shipper signatories.

2. Whether and to what extent TSA members may have violated sections 10(a)(2) and/or 10(a)(3) of the 1984 Act by systematically removing tonnage from the transpacific trades, individually, or through carrier alliances, following detailed discussions and exchanges of information on capacity reduction within TSA.

3. Whether and to what extent TSA's failure to file minutes of meetings of senior executives held in conjunction with Presidents, Owners, and Revenue Policy Committee meetings, as well as its failure to file full and complete minutes of other meetings, may have resulted in violations of the Commission's minute filing regulations at 46 CFR 535.706(a) and (b).

4. Whether and to what extent TSA and/or its members have engaged in unjustly discriminatory practices in the matter of rates and charges with respect to NVOCCs as a class in violation of section 10(c)(7) of the 1984 Act.

5. Whether and to what extent TSA and/or its members have unduly or unreasonably prejudiced or disadvantaged NVOCCs as a class in violation of section 10(c)(8) of the 1984 Act.

6. Whether TSA and/or its members have engaged in practices which actively discourage members from taking independent rate actions, contrary to the Congressional policy, embodied in sections 5(c)(1) and (3) of the 1984 Act and its legislative history, to foster individual, confidential service contracts to offset the anticompetitive impact of rate fixing agreements.

7. Whether and to what extent, the TSA agreement and/or other related agreements to which TSA or its members are parties, have produced, or are likely to produce, by a reduction in competition, an unreasonable decrease in transportation service or an unreasonable increase in transportation cost, as described in section 6(g) of the 1984 Act.

In addition, the Commission is designating Vern W. Hill, Director, and George A. Quadrino, Attorney, Bureau of Enforcement, as the Investigative Officers for the continued phase of this proceeding. Mssrs. Hill and Quadrino will have all of the powers formerly delegated to Commissioner Brennan to pursue the issues set forth above.

Interested persons are invited and encouraged to contact the Investigative Officers named herein, at (202) 523–5783 (Phone) or (202) 523–5785 (Fax); should they wish to provide testimony or evidence, or to contribute in any other manner to the development of a complete factual record in this proceeding.

Therefore, it is ordered, that pursuant to sections 5, 6, 8, 10, 11, 12 and 15 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1705, 1707, 1709, 1710, 1711 and 1714, and part 502, subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, *et seq.*, this nonadjudicatory investigation into practices of the ocean common carriers listed in Appendix A in the eastbound Transpacific trades is continued in order to develop the issues set forth above and to provide a basis for any subsequent regulatory, adjudicatory or injunctive action by the Commission;

It is further ordered, that the Investigative Officers shall be Vern W. Hill, Esq., Director, and George A. Quadrino, Attorney, Bureau of Enforcement, of the Commission. The Investigative Officers shall be assisted by staff members as may be assigned by the Commission's Executive Director and shall have full authority to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpoenas *ad testificandum* and *duces tecum*), to administer oaths, to require reports, and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, that the Investigative Officers shall issue a report of findings and recommendations no later than December 2, 2003, and interim reports if it appears that more immediate Commission action is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

It is further ordered, That this proceeding shall be discontinued upon acceptance of the final report of findings and recommendations by the Commission, unless otherwise ordered by the Commission; and

It is further ordered, That notice of this Order be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

Appendix A

1. American President Lines ("APL")
2. A.P. Moller Maersk-Sealand
3. CMA CGM, S.A.
4. Cosco Container Lines Ltd.
5. Evergreen Marine Corp.
6. Hanjin Shipping Company, Ltd.
7. Hapag-Lloyd Container Linie, GmbH
8. Hyundai Merchant Marine Co., Ltd.
9. Kawasaki Kisen Kaisha, LTD.
10. Mitsui O.S.K. Lines, Ltd.
11. Nippon Yusen Kaisha ("NYK")
12. Orient Overseas Container Line, Ltd.
13. P&O Nedlloyd, B.V.
14. P&O Nedlloyd, LTD.
15. Yang Ming Marine Transport Corp.

[FR Doc. 03–14219 Filed 6–4–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Mercantile Bankshares Corporation, Baltimore, Maryland; to merge with F&M Bancorp, Frederick, Maryland, and thereby indirectly acquire Farmers & Merchants Bank, Frederick, Maryland.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Continental Bancorporation, Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Continental Bank, Salt Lake City, Utah (in organization).

Board of Governors of the Federal Reserve System, May 30, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–14115 Filed 6–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. New members will be selected for three-year terms that will begin in January 2004. The Board expects to announce the selection of new members by year-end 2003.

DATE: Nominations must be received by August 15, 2003. *NOMINATIONS NOT RECEIVED BY AUGUST 15, MAY NOT BE CONSIDERED.*

ADDRESSES: Nominations, including a résumé for each nominee, must be received by August 15, 2003. Electronic nominations are preferred. The appropriate form can be accessed at: *http://www.federalreserve.gov/forms/cacnominationform.cfm*

If electronic submission is not feasible, the nominations can be mailed (not sent by facsimile) to Sandra F. Braunstein, Senior Associate Director,

Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Ann Bistay, Secretary of the Council, Division of Consumer and Community Affairs, (202) 452–6470, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2004, to replace members whose terms expire in December 2003; the Board expects to announce its appointment of new members by year-end. Nomination letters should include:

- a résumé;
- information about past and present positions held by the nominee;
- a description of special knowledge, interests or experience related to community reinvestment, consumer protection regulations, consumer credit, or other consumer financial services;
- full name, title, organization name, organization description for both the nominee and the nominator;
- current address, telephone and fax numbers for both the nominee and the nominator; and
- positions held in community organizations, and on councils, and boards.

Individuals may nominate themselves.

The Board is interested in candidates who have familiarity with consumer financial services, community reinvestment, and consumer protection regulations, and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to participate in conference calls, and prepare for and attend meetings three times a year (usually for two days, including committee meetings), held at the Board's offices in Washington, D.C. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 2003, are:

Anthony Abbate
President and Chief Executive Officer
Interchange Bank
Saddle Brook, New Jersey

Manuel Casanova, Jr.
Executive Vice President
International Bank of Commerce
Brownsville, Texas

Constance Chamberlin
President/CEO
Housing Opportunities Made Equal
Richmond, Virginia

Earl Jarolimek
Vice President/Corporate Compliance Officer
Community First Bankshares
Fargo, North Dakota

J. Patrick Liddy
Director of Compliance
Fifth Third Bancorp
Cincinnati, Ohio

Oscar Marquis
Attorney
Hunton and Williams
Park Ridge, Illinois

Ronald Reiter
Supervising Deputy Attorney General
California Department of Justice
San Francisco, California

Elizabeth Renuart
Staff Attorney
National Consumer Law Center
Boston, Massachusetts

Council members whose terms continue through 2004 and 2005 are:

Janie Barerra
President and Chief Executive Officer
ACCION Texas
San Antonio, Texas

Kenneth Bordelon
Chief Executive Officer
E Federal Credit Union
Baton Rouge, Louisiana

Susan Bredehoft
Senior Vice President/Compliance Risk Management
Commerce Bank, N.A.
Cherry Hill, New Jersey

Robin Coffey
Vice President
Harris Trust and Savings Bank
Chicago, Illinois

Dan Dixon
Group Senior Vice President
World Savings Bank, FSB
Washington, District of Columbia

Thomas FitzGibbon
Senior Vice President
MB Financial Bank, N.A.
Chicago, Illinois

James Garner
Senior Vice President and General Counsel
North America Consumer Finance for Citigroup
Baltimore, Maryland

R. Charles Gatson
Vice President
Midtown Community Development Corporation
Kansas City, Missouri

Larry Hawkins
President and Chief Executive Officer
Unity National Bank
Houston, Texas

James King
President and Chief Executive Officer
Community Redevelopment Group
Cincinnati, Ohio

Ruhi Maker
Senior Attorney
Public Interest
Law Office of Rochester
Rochester, New York

Patricia McCoy
Professor of Law
Department of Economics
Cambridge, Massachusetts

Elsie Meeks
Executive Director
First Nations Oweesta Corporation
Kyle, South Dakota

Mark Pinsky
President and Chief Executive Officer
National Community Capital Association
Philadelphia, Pennsylvania

Debra Reyes
President
Neighborhood Lending Partners, Inc.
Tampa, Florida

Benson Roberts
Vice President for Policy
Local Initiatives Support Corporation
Washington, District of Columbia

Benjamin Robinson
Senior Vice President, Strategy Management Executive
Bank of America
Charlotte, North Carolina

Agnes Bundy Scanlan
Managing Director and Chief Privacy Officer
FleetBoston Financial
Boston, Massachusetts

Diane Thompson
Supervising Attorney
Land of Lincoln Legal Assistance Foundation, Inc.
East St. Louis, Illinois

Hubert Van Tol
Co—Director
Fairness in Rural Lending
Sparta, Wisconsin

Clint Walker
General Counsel/Chief Administrative Officer
Juniper Bank
Wilmington, Delaware

Board of Governors of the Federal Reserve System, May 30, 2003.

Jennifer J. Johnson
Secretary of the Board

[FR Doc. 03–14114 Filed 6–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), June 16, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of minutes of the May 12, 2003, Board member meeting.
2. Executive Director's report.
3. Semiannual Report of status of audit recommendations.
4. Status of new record keeping system.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Thomas K. Emswiler,
Associate General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 03–14358 Filed 6–3–03; 3:29 p.m.]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03084]

A Pilot Program To Educate Vulnerable Populations About Fish Advisories in Michigan; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)(1)(E) and (15)). The Catalog of Federal Domestic Assistance number is 93.208.

B. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a grant program for A Pilot Program to Educate Vulnerable Populations about Fish Advisories in Michigan. This program addresses the "Healthy People 2010" focus area(s) of Educational and Community-Based Programs, Environmental Health, and Maternal, Infant, and Child Health.

The purpose of the program is to conduct community-based research to assess the knowledge of and adherence to fish health advisories in vulnerable populations who reside in the Upper Peninsula of the state of Michigan. These vulnerable populations would include such populations as American Indians, sport and subsistence anglers, pregnant women, young children, and the elderly.

The Upper Peninsula area has a specific need for health education about fish advisories. Many residents fall in the vulnerable groups of reproductive-age men and women, sport and subsistence anglers and their families, and minorities, including the various tribal groups in the Upper Peninsula. In addition, many of the residents depend heavily on sport fish as a subsistence food. Because the population is spread out over a large and often remote area, the process of educating people there is difficult.

ATSDR encourages collaborative research efforts among potential applicants as well as the inclusion of community members and community organizations as partners in this pilot program.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Agency for Toxic Substances and Disease Registry (ATSDR): (1) Develop and provide reliable, understandable information for affected communities, tribes, and stakeholders, and (2) Build and enhance effective partnerships.

C. Eligible Applicants

Eligible applicants are political subdivisions of the state of Michigan, including federally recognized Indian tribal governments and tribal organizations. State organizations, including State universities, State colleges, and State research institutions, must affirmatively establish that they meet the State's legislative definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 is available in FY 2003 to fund two awards. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities, and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds. However, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Property may be acquired only when authorized in the grant. The grantee, as part of the application process, should provide a justification of need to acquire property, the description, and the cost purchase versus lease. At the completion of the project, the equipment must be returned to ATSDR.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

The funding preference is a state entity or political subdivision with a close working relationship with tribal governments and tribal organizations as evidenced by letters of support.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following priority areas of research which include:

1. Identifying the barriers (including specific cultural practices) to following current fish consumption advisories and fish preparation guidelines among vulnerable populations.
2. Engaging vulnerable community members and institutions in identifying more effective communication channels for fish advisories that recognize and work within existing cultural practices.
3. Designing new targeted fish advisory interventions incorporating effective communication channels, dissemination methods, and community programs.
4. Implementing and assessing the effectiveness of pilot program messages, communications channels, and community-based educational programs in increasing the effectiveness of fish advisories among vulnerable populations.
5. Sharing the results of the pilot program for broader replication in the Great Lakes region.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to determine level of interest in the announcement, and should include the following information: (1) Investigator's name and affiliation, (2) brief description of the research project, and (3) estimated cost.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of: (1) Proposed research, (2) Objectives, (3) Methods and procedures, (4) Three-Year Timetable for research activities, (5) Proposed personnel, and (6) Budget.

G. Submission and Deadline

Letter of Intent (LOI) Submission:

On or before June 25, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS–398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

Follow the instructions in the Errata sheet (posted on the CDC web site) for PHS–398. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 21, 2003. Submit the application to: Technical Information Management-PA#03084, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified priority areas of research of the grant. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Proposed Research—60 percent

The extent to which the applicant's project addresses:

a. The scientific merit of the hypothesis of the proposed project, including the originality of the approach and the feasibility, adequacy, and rationale of the design (the design of the study should ensure statistical validity for comparison with other research projects).

b. The technical merit of the methods and procedures (analytic procedures should be state of the art), including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement.

c. The proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured.

d. The proposed mechanism to be utilized as a resource to address community concerns and opinion, and create lines of communication.

e. The prooposed method to disseminate the study results to State and local public health officials, tribal governments, Indian Health Service, community residents, and to other concerned individuals and organizations.

f. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Program Personnel—30 percent

The extent to which the proposal has described:

a. The qualifications, experience, and commitment of the Principal Investigator, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The competence of associate investigators to accomplish the proposed study, their commitment, and time devoted to the study.

3. Applicant Capability—10 percent

Description of the adequacy and commitment of the institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

5. Human Subjects—(Not Scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

(a) An Interim progress report, due June 15th. The progress report will serve as your non-competing continuation application, and must contain the following elements:

(1) Current Budget Period Activities Objectives.

(2) Current Budget Period Financial Progress.

(3) New Budget Period Program Proposed Activity Objectives.

(4) Detailed Line-Item Budget and Justification.

(5) Additional Requested Information.

(b) Financial status report, due no later than 90 days, after the end of the budget period.

(c) Final financial and performance reports, due no later than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements.

The following additional requirements are applicable to this program.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements *
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobby Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements

For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

* OMB Clearance under the Paperwork Reduction Act is not required for this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ms. Edna Green, Grant Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2743, E-mail address: *ECG4@cdc.gov*.

For program technical assistance, contact: Dr. Heraline E. Hicks, Research Implementation Branch, Division of Toxicology. 1600 Clifton Road, NE., Mail Stop E29, Atlanta, Georgia 30333, Telephone: (404) 498–0717, E-mail address: *HEH2@cdc.gov*.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14129 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03079]

Exposure to Tremolite Asbestos in Vermiculite Ore; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104(i)(1)(E), (6), (7), (14) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604 (i)(1)(e), (6), (7), (14) and (15)). The Catalog of Federal Domestic Assistance number is 93.161.

B. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to conduct site-specific health activities due to exposure to tremolite asbestos in vermiculite ore. This program addresses the "Healthy People 2010" focus area of Environmental Health. The purpose of the program is to conduct site-specific health activities related to human exposure to contaminated vermiculite ore at sites identified by the Environmental Protection Agency (EPA) as receiving and/or processing ore from the mine in Libby, Montana.

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR:

1. Evaluate human health risks from toxic sites and take action in a timely and responsive public health manner.

2. Ascertain the relationship between exposure to toxic substances and disease.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents or instrumentalities. State organizations, including State universities, must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $250,000 is available in FY 2003 to fund approximately one to four awards. It is expected that the awards will range from $10,000 to $250,000 ($10,000 per site evaluated for the conduct of health statistics reviews; $100,000 for mesothelioma surveillance; and a maximum of $250,000 for epidemiologic investigations.) It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Funds may not be used to purchase equipment.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preference

For the mesothelioma surveillance, preference will be given to states with at least 100 cases of mesothelioma per year and at least eight sites that received the asbestos contaminated ore.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and ATSDR will be responsible for the activities listed in 2. ATSDR Activities.

1. Recipient Activities

a. Health Statistics Reviews

Analyze existing health outcome data of select asbestos-related diseases. Mortality data will be the most readily available data for asbestos-related diseases such as mesothelioma, lung cancer, and asbestosis, although cancer registry data should be utilized where available. Using disease rates by site, determine if there is any excess in disease that would require additional follow-up in years two and three.

b. Epidemiologic Investigations

After demonstrating an increase of asbestos related disease at a specific site (*e.g,* through a health statistics review), develop a protocol, conduct the investigation and prepare a final report of the study. This protocol and report will undergo scientific peer review as required by ATSDR.

c. Mesothelioma Surveillance

Determine if a particular site which received Libby ore is contributing to the mesothelioma burden in the state. (Please see Attachment 1 of this announcement as posted on the CDC Web site for information about vermiculite ore from Libby, Montana). Identify cases of mesothelioma in the State and interview the cases and next-of-kin. Provide information to ATSDR to combine with other State information. Prepare a final report of the project. This report will undergo scientific peer review as required by ATSDR.

d. Provide proof, by citing a State code or regulation or other State pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

e. If a demonstrated excess of disease is found, develop a mechanism for ongoing interaction with, and education of the affected community.

2. ATSDR Activities

a. Health Statistics Review

(1) Provide a standard protocol to use to analyze existing health outcome data of select asbestos-related diseases.

(2) Provide scientific and epidemiologic assistance.

b. Epidemiologic Investigations

Provide consultation and assist in monitoring the data; participate in the study analysis and collaborate in interpreting the study findings.

c. Mesothelioma Surveillance

(1) Provide a standard protocol and questionnaire to be used to trace and interview cases of mesothelioma, and analyze the risk of environmental exposure to asbestos contaminated vermiculite ore from Libby, MT, and link it to the cases of mesothelioma.

(2) Provide scientific and epidemiologic assistance.

d. Conduct technical and peer review

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 21, 2003. Submit the application to: Technical Information Management—PA#03079, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Proposed Program (50 percent)

The criteria will include the extent to which the application addresses (a) the approach, feasibility, adequacy, and rationale of the proposed project design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective, and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (c) the proposed project timeline, including clearly established project objectives towards which progress can and will be measured; (d) the proposed community involvement strategy; (e) the proposed method to disseminate the results to State and local public health officials, community residents, and other concerned individuals and organizations; and (f) the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. Program Personnel (30 percent)

The criteria will include the extent to which the application has described (a) the qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; and (b) the competence of associates to accomplish the proposed activity, their commitment, and the time they will devote.

3. Applicant Capability and Coordination Efforts (20 percent)

The extent to which the application has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study and (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community.

4. Program Budget—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

5. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and

associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Edna Green, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2743, E-mail Address: *ecg4@cdc.gov.*

For program technical assistance, contact Kevin Horton, Epidemiologist, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4, Suite 2300, MS E–31, Atlanta, GA 30305, Telephone: (404) 498–0571, E-mail Address: *Dhorton@cdc.gov.* Or: Maggie Warren, Public Health Advisor, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd., NE., MS E–31, Atlanta, GA 30333, Telephone (404) 498–0546, E-mail Address: *mcs9@cdc.gov.*

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14127 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04002]

Cooperative Agreement for Assessing Folic Acid Knowledge and Behaviors; Notice of Availability of Funds

Application Deadline: August 4, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317C of the Public Health Service Act, (2 U.S.C. 241 and 247b–4 of the PHS Act, as amended). The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for the assessment of knowledge of the relationship between folic acid consumption and the prevention of spina bifida and anencephaly and the broad dissemination of findings for educational purposes. This program addresses the "Healthy People 2010" focus area of Maternal, Infant, and Child Health.

The purpose of this program is to provide for the evaluation of the effectiveness of public health programs to prevent birth defects through (1) an assessment of the current state of knowledge among reproductive-age women and their health care providers relative to folic acid consumption and the prevention of spina bifida and anencephaly; and, (2) the broad dissemination of findings to audiences who can use the findings for educational purposes.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): Increase the consumption of folic acid among women of reproductive age to prevent serious birth defects.

C. Eligible Applicants

Assistance will be provided only to applicants that are well-established national, non-profit organizations with experience in: (1) Conducting birth defects prevention research; (2) conducting science-based educational outreach activities; and, (3) communicating research findings effectively to national, regional, state, and local level media outlets in coordination with partners.

To be eligible, applicants must:

1. Demonstrate that the organization's mission is explicitly committed to the prevention of birth defects. This may be demonstrated by submission of the charter, articles of incorporation, or other governing documents.

2. Demonstrate that the organization is a nonprofit and recognized as tax exempt under Section 501(C)(3) of the Internal Revenue Code. This may be demonstrated through inclusion of your Internal Revenue Service determination letter.

3. Demonstrate the organization has the capacity and experience providing health education to women who are at risk of having a Neural Tube Defects (NTD)-affected pregnancy. This may be demonstrated through letters of support.

4. Demonstrate that the organization has a national membership and a national network of local organizations. This may be done through a letter from the organization's leadership which describes the national network.

This information should be placed directly behind the face page (first page) of your application. Applications that do not include the above information will be determined as non responsive and will be returned without review.

Note: Title 2 of the United States Code Section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $180,000 is available in FY 04 to fund approximately one award. It is expected that the award will begin on or about December 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Conduct studies of women of reproductive age (18 to 45) to measure their awareness, knowledge, and behaviors related to folic acid, pregnancy, and birth defects' prevention.

b. Conduct studies to measure the awareness, knowledge, and practices of health care professionals and others who interact with women of reproductive age in health care/health education settings related to their knowledge of folic acid and birth defects prevention.

c. Develop surveys/studies of women of reproductive age.

d. Evaluate the results of surveys to determine if changes are occurring.

e. Publish the results of each survey and comparison analyses of the surveys in peer reviewed publications such as Teratology, Morbidity and Mortality Weekly Report (MMWR), etc.

f. Coordinate and collaborate with partners, including the National Center on Birth Defects and Developmental Disabilities (NCBDDD), to ensure effective dissemination of survey results to key audiences.

g. Use survey findings to encourage the development of new and/or enhanced birth defects prevention programs.

2. CDC Activities

a. Provide technical and scientific consultation and assistance for the implementation aspects of this project.

b. Provide technical and scientific consultation as needed in evaluating the indicators of changes in knowledge, attitude and behaviors of the general public, women who are at risk, and health care professionals.

c. Provide assistance in coordinating the release of survey findings with key partners so that wide dissemination occurs among key audiences.

d. Provide technical and scientific assistance for the evaluation and dissemination of the findings.

e. Provide technical and scientific assistance for the development of surveys/studies of women of reproductive age.

F. Content

Letter of Intent (LOI)

A letter of intent (LOI) is requested for this program. The LOI should identify the program announcement number and the proposed project director. The LOI should be no more than three pages, doubled spaced, printed on one side, with one-inch margins, and unreduced font. It should describe the intent of the proposed intervention, the target population, and describe those activities and collaborations already in place to fully meet the requirements of the announcement. The LOI will be used to determine the level of interest in the announcement, and assist CDC in the planning for the conduct of the application review process.

Application

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The program plan should address activities to be conducted over the entire five year project period. The narrative should be no more than 30 pages, double spaced, printed on one side, with one-inch margins, and unreduced font. The narrative should consist of, at a minimum, the following elements:

1. Understanding of the Project.
2. Technical Approach.
3. Organizational Capacity.
4. Budget.
5. Human Subjects.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 7, 2003, submit the LOI to the Public Health Analyst identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS Form 5161–1 (OMB Number 0920–0428). Forms can be found at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700. Application forms can be mailed to you.

Application Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time August 4, 2003. Submit the application to: Technical Information Management—PA #04002, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Forms may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of Intent and applications will be considered as meeting the deadline if they are received before 4:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be returned. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various tasks of the cooperative agreement. Measures of effectiveness must relate to the performance goal as stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. It is suggested that applications be organized to be compatible with the evaluation scoring criteria, as that is the process by which the review committee will assess the quality of the applications.

1. Organizational Capacity—(50 Points)

The extent to which the applicant has described:

a. The qualifications and commitment of the organization to birth defects prevention.

b. The qualifications and commitment of the professional staff.

c. The allocation of time and effort of key project staff to agreed upon project activities.

d. Previous experience (of both the organization and the proposed staff) conducting survey research and disseminating research findings to multiple audiences to develop and/or improve educational efforts.

2. Understanding of the Project—(30 Points)

The applicant's understanding of the requirements, intent, and objectives for a successful project including:

a. The extent to which the applicant outlines a methodologically sound approach to conducting survey research activities.

b. The extent to which the applicant describes a plan for widely disseminating research findings to the public that is coordinated with NCBDDD and other key partners.

c. The extent to which the applicant describes a plan for using survey research findings to improve birth defects prevention educational efforts.

d. The extent to which the applicant describes processes that facilitate

cooperation among partners and other funded agencies to standardize research and communication activities.

3. Technical Approach—(20 Points)

a. The extent to which the applicant describes its plan for carrying out the overall project, including study management, data collection, data analysis, and dissemination activities.

b. The extent to which the applicant describes ways they will monitor/evaluate implementation of their overall project plan (including research and dissemination activities).

c. The extent to which the applicant addresses the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences, when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the grant funds.

5. Human Subjects

Does the applicant adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your noncompeting continuation application and must include the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement as posted on the CDC Internet address.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirement
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management assistance, contact: Sheryl L. Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2723; E-mail address: *slh3@cdc.gov*.

For program technical assistance, contact: Stephanie Henry, Public Health Analyst, Division of Birth Defects and Developmental Disabilities, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop F–45, Atlanta, GA 30341–3724, Telephone: (770) 488–7167, E-mail address: *sxh1@cdc.gov*.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14124 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03065]

Building Capacity for Population-Based Surveillance of Autism Spectrum Disorders and Other Developmental Disabilities; Notice of Availability of Funds-Amendment

A notice announcing the availability of Fiscal Year 2003 funds to fund cooperative agreements to population-based surveillance of autism spectrum disorders and other developmental disabilities was published in the **Federal Register** on May 19, 2003, Volume 68, Number 96, pages 27073–27078. The notice is amended as follows: On page 27074, under Section D., Funding, Availability of Funds, line 9, change "three years" to "two years".

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14125 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03097]

Minority Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Research Initiative To Build Capacity in Black and Hispanic Communities and Among Researchers Who Conduct HIV/AIDS Epidemiologic and Prevention Research in These Communities; Notice of Availability of Funds

Application Deadline: August 4, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program called the Minority HIV/AIDS Research Initiative (MARI) that is funded by the Minority AIDS Initiative (MAI). The MARI program has been established to build capacity for HIV epidemiologic and prevention research in Black and Hispanic communities and to promote the independent research careers of HIV/AIDS investigators working in these communities. In addition, MARI aims to engage in capacity building among researchers at Historically Black Colleges and Universities, Hispanic Serving Institutions and Hispanic Serving Health Professions Schools as stipulated in Federally promulgated Executive Orders 13256 and 13230, respectively. You may reference these Executive Orders at the following Web Sites: *http://www.whitehouse.gov/news/releases/2001/10/20011012–10.html* and *http://www.whitehouse.gov/news/releases/2002/02/20020212–3.html*

This initiative addresses the "Healthy People 2010" focus area of HIV as well as the CDC's HIV prevention strategic plan through 2005. The overarching national goal stated in the CDC's HIV prevention strategic plan is to reduce the number of new HIV infections in the U.S. by 50 percent by 2005 by focusing on eliminating racial and ethnic disparities in new HIV infections. The CDC 2001 year-end HIV/AIDS surveillance report, which outlines the racial disparities in HIV/AIDS, reveals that Blacks and Hispanics together represented 57 percent of reported AIDS cases and 62 percent of reported HIV cases in 2001. Furthermore, of the new HIV cases in 2001, 58 percent of Black and Hispanic men and approximately 40 percent of Black and Hispanic women had unknown or unreported risk upon presentation for HIV testing. These statistics highlight the urgent need for HIV epidemiologic and prevention research in Black and Hispanic populations that are at-risk for HIV infection.

The goals of the MARI program are to:

(1) To build HIV prevention research capacity in Black and Hispanic communities in which insufficient research has been conducted by partnering with and developing new investigators from these communities to address pertinent research questions.

(2) To engage in career development and provide research opportunities for new investigators from Black and Hispanic communities through collaboration with the Division of HIV/AIDS Prevention at CDC. This will be achieved by encouraging these scientists to develop independent research skills needed to gain experience in HIV epidemiologic and prevention research, to present the results of their research at national conferences and to publish their results in peer-reviewed journals.

(3) Develop and conduct HIV epidemiologic prevention research, in the form of limited case-control, cross-sectional or qualitative projects that have public health relevance to Black and Hispanic communities.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP):

(1) Decrease the number of persons at high risk for acquiring or transmitting HIV infection;

(2) Increase the proportion of HIV-infected people who know they are infected;

(3) Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services; and

(4) Strengthen the capacity to develop and implement effective HIV prevention interventions.

Given the goals of MARI and the CDC's HIV strategic plan, this program announcement calls for epidemiologic and prevention research that will advance scientific knowledge about HIV transmission, testing and treatment patterns, as well as social and environmental factors that influence risk behaviors in Black and Hispanic communities. This announcement specifically invites applications addressing a variety of scientific research topics outlined below in sections "I" and "II".

Section I

Participation of Minorities in Government-Sponsored Research

The participation of communities of color in HIV vaccine research is critical to ensuring that HIV vaccine candidates are effective across diverse racial and ethnic groups and that all groups have equal access to eventual vaccines. Community-based studies are needed to understand facilitators and barriers related to participation in government-sponsored research, which may include examination of the following: (1) Perceptions of AIDS in relationship to other community health issues, (2) community and individual attitudes of research related to HIV/AIDS, particularly vaccine trials, (3) the relationship between socioeconomic status, stigma, and disenfranchisement to research involvement, (4) strategies for enhancing community partnerships in the support and conduct of research, and (5) the historical context of government-sponsored research in minority communities such as the Tuskegee Syphilis Study.

Voluntary HIV Testing and Counseling of Young Men Who Have Sex with Men (MSM)

Recent data indicate that up to 90 percent of young MSM of color who are infected with HIV are unaware of their seropositive status. Other studies indicate that HIV+ men who become aware of their status substantially reduce their sexual risk behaviors. Studies are needed to increase HIV testing among young MSM of color who are at risk for transmitting or contracting HIV and to determine motivating factors in the desire to seek HIV testing. Of particular interest are studies that test different types of persuasive communications to promote HIV testing in this population.

Prevalence of Intravenous Drug Use (IDU) Related HIV in the Southeast

The epidemiology of the HIV among intravenous drug users has been well defined in the United States, with the exception of the Southeast region. Epidemiologic and surveillance studies are needed to assess the prevalence, incidence and risk factors for HIV infection among Southeastern U.S. intravenous drug users. In addition, data are needed to quantify the seroprevalence of Hepatitis B and C and attendant risks for acquisition of these diseases in southern populations.

Missed Opportunities for Prevention of Perinatal Transmission

Perinatal transmission in the U.S. has been drastically reduced since 1993. However, greater than 75 percent of babies with HIV continue to be born to Black and Hispanic mothers. Elimination of perinatal transmission can only be achieved by reducing missed opportunities that occur among these women and by addressing issues associated with failures of prevention efforts. Reasons for these missed opportunities and prevention failures vary and warrant investigation. Studies are needed to understand why prevention failures occur among Black and Hispanic women and infants who access the required services and to address the reasons that these mothers and infants may not access prevention

services required to reduce perinatal transmission.

Section II

Behavioral, Psychosocial, and Cultural Determinants of HIV Risk Behavior

The majority of HIV prevention research in the U.S. has been conducted in gay, white male populations. Consequently, many of the current prevention interventions have been informed and developed based on data from this population. Qualitative and quantitative studies of Black and Hispanic populations are needed to understand the unique psychological, social, and cultural factors that influence HIV-related knowledge, attitudes, perceptions and behaviors in these minority populations. Studies are needed to understand a wide-range of issues including but not limited to perceptions of risk, injection drug-use, sexual risk-taking, response to HIV prevention messages, decisions to seek HIV testing and counseling, and decisions to seek HIV care and related treatment. Specific areas of interest include:

(1) Effect of social, community (including religious influences), and family dynamics on attitudes, knowledge, risk perceptions, and willingness to seek HIV testing.

(2) The role of gender and sexual identity and their relationship to HIV attitudes and risk behaviors.

(3) How social, economic, and cultural environments influence attitudes about HIV, response to prevention messages, and behavior change.

(4) The role of social and sexual networks in HIV transmission.

(5) Pilot studies to assess explanations for disparities in HIV rates in minority populations.

(6) Identification of factors associated with sexual- and drug-risk behavior in persons of color who have tested positive for HIV.

Treatment Adherence

Studies are needed to understand many aspects of treatment adherence in Black and Hispanic HIV-infected patients such as (but not limited to), its relationship to mental illness, patient/provider concordance and/or relationships, pill burden and structural barriers impacting adherence.

Biological Disparities

Ethnicity may play a role in the biological and immunological responses to HIV, as well as the responses to treatment and therapy for opportunistic infections. Studies are needed to determine the role of immunology, virology and the host response(s) in any of these areas.

C. Eligible Applicants

- Applications may be submitted by:
- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Technical schools
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

The primary investigator from the applying entity must also meet and be able to demonstrate the following additional requirements:

(1) Possession of a research or a health-professional masters or doctorate-level degree from an accredited school/program;

(2) Have never been a primary investigator on a National Institute of Health (NIH) R–01 award for $250,000 or greater;

(3) Be knowledgeable about HIV/AIDS epidemiology and prevention, as well as have basic but minimal research experience in or related to the field of HIV/AIDS;

(4) Have a documented history of working in Black and Hispanic communities;

(5) Have documented linkages to Black and Hispanic communities that are impacted by HIV;

(6) Have the ability to establish effective and well-defined working relationships with community advisory boards, community-based organizations or similar entities which will ensure appropriateness of proposed research and implementation of the proposed activities. The investigator must demonstrate efforts to develop this relationship by submitting letters of support or equivalent statement(s); and

(7) Demonstrate willingness to partner with HIV epidemiologic and prevention researchers at CDC to ensure timely development of protocols and study instruments, submission of protocols to required human subjects review boards, conduct of investigations and to analyze, present and publish study results.

Documentation of the above requirements must be included in the application. This includes, but is not limited to letters indicating involvement in HIV/AIDS research or HIV/AIDS-related publications, curriculum vitas and/or letters of support.

Applications are encouraged from organizations that serve predominantly racial and ethnic minority populations that are disproportionately impacted by HIV/AIDS or those who are representative of the minority communities targeted in this program announcement.

D. Funding

Availability of Funds

Approximately $1.4 million is available in FY 2003, to fund approximately six to ten awards. Up to five awards may be granted for each section "I" and "II". It is expected that the average award will be $200,000, ranging from $75,000 to $300,000. The awards will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of one to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Priority

Priority will be given to:

(1) Projects that demonstrate strong community partnerships and access to predominantly Black and Hispanic communities that are disproportionately affected by the HIV/AIDS epidemic.

(2) Projects that are cross-sectional or pilot in nature and that will require one to three years of funding to ensure the availability of funding for a greater number of applicants.

Funding Preferences

Preference will be given to applicants that:

(1) Have the ability to implement culturally and linguistically competent methodology within the study design;

(2) Have a history of service to Black and Hispanic communities;

(3) Are indigenous to the targeted population; and

(4) Have linkages to the targeted population.

Funding decisions will attempt to achieve regional diversity. Preference will be given to proposals addressing HIV prevention needs in Black and Hispanic communities with the highest rates of HIV. In addition, preference will be given to proposals targeting areas with increasing rates of HIV such as the Southeast.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities in 1. Recipient Activities and CDC will be responsible for the activities listed in 2. CDC Activities:

1. Recipient Activities

a. Collaborate with CDC researchers and community-based organizations or similar community liaisons for duration of project period on several activities such as development of data collection instruments, specimen collection protocols, and data management procedures.

b. Identify, recruit, obtain informed consent form, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

c. Follow study participants as determined by the study protocols.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols

f. Present and publish research findings

g. Participate in conference calls with CDC project officer(s) and research team

h. Attend initial and annual meetings with other MARI-funded grantees to promote research dissemination and networking among investigators.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the research.

b. Facilitate and assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist in designing a data management system.

d. Assist in performance of selected laboratory tests.

e. Assist in the analysis of research data information and the presentation and publication of research findings.

f. Conduct site visits to ensure that venues are properly selected, collaborations outlined in proposals are true and that the community is involved in the research activities, and that investigators are complying with the research protocol.

g. Conduct initial and annual meetings of MARI-funded investigators to facilitate the exchange of research progress among recipients and to offer additional technical expertise for the conduct of research.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page, single-spaced or two pages double-spaced. Your letter of intent will be used to assess the number of applications to anticipate, plan the review process more effectively and efficiently, and determine the level of interest in the MARI goals and objectives.

Your letter of intent should include the following information: Name, address and affiliation of the primary investigator, a brief description of the scope and intent of the proposed research, any plans/provisions to collaborate with community agencies.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and 12-point font.

The narrative at a minimum should include a plan, objectives, methods, evaluation, budget and timeline.

The program plan should address activities to be conducted over the entire one to three-year project period. The budget must cover the first one-year budget period.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 15, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet (posted on the CDC Web site) for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time and Address

The application must be received by 4 p.m. Eastern Time August 4, 2003. Submit the application to: Technical Information Management—PA# 03097, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the

various identified objectives of MARI or cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

(1) Description and Justification of Research Plan, Objectives and Methodology (35 points)

a. Applicability and relevance of study objectives to Black and Hispanic communities.

b. Integration of culturally competent and relevant study methodology for Black and Hispanic communities.

c. Study questions address gaps in the HIV/AIDS research literature or build on the findings of previously conducted research in Black and Hispanic populations.

d. Applicant's understanding of research objectives as evidenced by the quality of the proposed research plan and specific study design and methods.

e. Feasibility of plan to sample, recruit and enroll study participants in a culturally appropriate manner and design study instruments that are culturally appropriate to Black and Hispanic populations.

f. Plan to ensure confidentiality of participants.

(2) Familiarity with and access to Black and Hispanic communities most adversely and disproportionately affected by the HIV/AIDS epidemic (30 points)

a. Experience conducting research *and working in Black and Hispanic* communities.

b. Ability of the investigator to identify with Black and/or Hispanic populations at-risk for HIV.

c. Extent of applicant's knowledge of issues faced by Black and/or Hispanic communities affected by HIV.

d. Demonstrable ability to recruit study population and obtain valid data through the use of culturally appropriate methods and instruments.

(3) Demonstration of community collaboration during study design, recruitment and project implementation. (20 points)

a. Evidence of plan for establishing a partnership with at least one community organization to consult on all aspects of conducting the study and to link participants with prevention and medical services as needed.

b. Evidence that plans for recruitment and outreach for study participants will include establishing partnerships with communities.

c. Feasibility of plans to involve the study population, their advocates, or service providers in the development of research activities and to inform them of research results.

(4) Demonstration of Capability to Conduct Research (15 points)

a. Applicant's ability to carry out the proposed research as demonstrated by the experience of the principal investigator and the proposed research team and organizational setting.

b. Demonstration of epidemiologic, behavioral, clinical, laboratory, administrative, and management expertise needed to conduct the proposed research.

c. Demonstration that principal investigator and staff have experience working with the targeted population of study participants.

Budget (reviewed, but not scored)

Extent to which budget is reasonable, itemized, clearly justified and within funding limits of this program announcement.

Human subjects: (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with Community(ies) and recognition of mutual benefits.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Carlos Smiley, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2722, e-mail address: *Csmiley1@cdc.gov*.

For program technical assistance, contact: Lisa K. Fitzpatrick, MD, MPH, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention, 1600 Clifton Rd. #E–45, Atlanta, GA 30333, 404–639–5166.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14128 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03114]

Improve State and Local Health Information and Data Systems; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to improve the capability of state and local health information and data systems to monitor and improve the health of U.S. populations and their communities. This program addresses the "Healthy People 2010" focus area of Public Health Infrastructure.

The purpose of the program is to better enable state and local health departments to regularly and systematically collect, assemble, analyze, and disseminate information on the health of their populations and communities. Further background may be found in the 1988 Institute of Medicine report "The Future of Public Health," which described the three core functions of public health: assessment, policy development, and assurance. As part of the assessment function, every public health agency should regularly and systematically collect, assemble, analyze, and make available information on the health of the community, including statistics on health status, community health needs, and epidemiologic and other studies of health problems.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Epidemiology Program Office (EPO):

1. Maximize the distribution and use of scientific information and prevention messages through modern communication technology.

2. Encourage state health departments to develop efficient and comprehensive public health information and surveillance systems by promoting the use of the Internet and by focusing on development of standards for communications and data elements.

3. Implement accessible training programs to provide an effective work force for staffing state and local health departments, laboratories, and ministries of health in developing countries.

C. Eligible Applicants

Assistance will be provided only to national non-profit organizations. Eligible national organizations must have affiliate offices and local, state, or regional membership constituencies in a minimum of 10 states and territories. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office. No other applications are solicited. Limiting assistance to national organizations is necessary to produce the maximum possible enhancement, given available resources, of the assessment capacities of state and local health departments throughout the nation.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $200,000 is available in FY 2003 to fund approximately two awards. It is expected that the average award will be $100,000, ranging from $50,000 to $150,000. It is expected that the awards will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

No matching funds are required for this program.

Funding Preferences

Funding preference may be given to organizations whose primary mission is to support state and local health agencies.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Establish and maintain activities which support health information and data systems for state and local health departments.

b. Implement projects and activities with specific, measurable, and feasible goals, objectives, and timelines. Evaluate the effectiveness of the activities related to this program including possible indicators of success.

c. Participate in the annual CDC Assessment Initiative Conference each budget year of the project period for the purpose of sharing best practices learned from the planned activities.

d. Disseminate project-related information and findings through a variety of methods.

e. Implement an operational plan for one or more of the following activities:

(1) Data and Statistical Standards: Develop guidelines to facilitate the implementation of data and statistical specifications and standards in health information systems by state and local health agencies. These specifications and standards should take advantage of existing national and international data and information standards (e.g., products of the Public Health Data Standards Consortium), and work already done in the public and private sectors.

(2) Technical Assistance: Develop a plan to address the technical needs of state and local health departments in such areas as methods of linking or matching data; methods of managing and storing data; methods of analyzing data; methods of querying or otherwise accessing data; methods of displaying and disseminating information; and methods of ensuring the integrity and security of data, the confidentiality of data about individual persons, and compliance with the privacy and security standards of the Health Insurance Portability and Accountability Act. Identify the most common requests for information that state and local health agencies receive, assess information and service needs, and provide direct technical assistance to requesting agencies.

(3) National Health Information Systems Training: In conjunction with various partners develop a national plan to address the changing training needs of state and local health departments in the area of health information systems; develop new training, as appropriate, to address emerging topics (*e.g.*, the "Guide for Public Health Agencies Developing, Adopting, or Purchasing Interactive Web-based Data Dissemination Systems"); and identify other training opportunities for state and local health agency staff.

2. CDC Activities

a. Coordinate with national, state, and local health information and data agencies, as well as other relevant organizations, in developing programs which will enable state and local health departments to regularly and systematically collect, assemble, analyze, and disseminate information on the health of their populations and communities.

b. Provide guidance related to program planning, implementation, and evaluation; assessment of program objectives; use of indicators; and dissemination of successful strategies, experiences, and evaluation reports.

c. Plan and conduct the annual CDC Assessment Initiative Conference to address issues and program activities related to this cooperative agreement.

d. Assist in the evaluation of program activities.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of:

1. Executive Summary

Provide a concise, two-page summary that clearly states the health information and data systems needs being addressed and describes the organization's eligibility, including (a) its status as a national organization; (b) the number and membership of affiliate offices; and (c) the experience and capacity of the organization to work with state and local health departments. The summary should also include the major proposed goals, objectives, and activities for the project, and describe how anticipated project outcomes will interface with other relevant public health systems.

2. Background and Need

a. Describe the organization's background and experience in assessing and addressing the needs related to health information and data systems.

b. Describe the need for the specific activities proposed in the project plan.

c. Describe the criteria that were used to select the project and the alternative approaches that were considered.

3. Operational Plan

a. Goals: List goals that specifically relate to program requirements that indicate where the program will be at the end of the projected three-year project period.

b. Objectives: List objectives that are specific, measurable, and feasible to be accomplished during the first 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

c. Activities: Describe in narrative form, and display on a timetable, specific activities that are related to each first-year objective. Indicate when each activity will occur as well as when preparations for activities will occur. Indicate who will be responsible for each activity. The program plan should briefly address activities to be conducted over the entire three-year project period.

d. Milestones: List major milestones that will be accomplished during years two and three.

e. Dissemination: Describe how project materials and accomplishments will be shared with others. Identify appropriate audiences for this information.

4. Evaluation

Describe a plan to evaluate the project's effectiveness in meeting its goals and objectives. Describe the type of evaluation that will be used (process, outcome, or both). Specify the evaluation question(s) to be answered, evaluation measures (quantitative measures of effectiveness that are used to measure the intended outcome of a goal or objective) to be obtained, the type(s) of analyses to be performed, to whom they will be reported, and how the evaluation will be used to improve the program. The plan should indicate major steps in the evaluation and who will be responsible for each step.

5. Ability To Carry Out the Proposed Project

a. Describe the organization's constituents and affiliates as follows: type of constituency; number of constituents and affiliates; location of constituents and affiliates; how the constituency can influence and work with health information and data systems.

b. Describe the organization's current and previous experience related to the proposed program activities; current and previous coordination with other national organizations and partners; and activities related to building alliances, networks, or coalitions.

c. Describe the organization's structure and how it supports health information and data systems. Submit a copy of the applicant's organizational chart.

d. Identify the proposed project staff and describe their qualifications and experience in areas relevant to the project's focus. Submit a curriculum vitae (limited to two pages) for each professional staff member named in the proposal, and job descriptions for existing and proposed positions.

e. Describe the purposes of proposed collaborations and the agencies and organizations with which collaboration will be conducted. If other organizations will participate in proposed activities, provide the name(s) of the organization(s), and state who in each organization will coordinate the activity. For each organization listed, provide a letter from them that acknowledges their specific role and describes their capacity to fulfill it. Do not include letters of support from organizations that will not have specific roles in the project.

6. Budget and Accompanying Justification

Provide a detailed budget narrative and line-item justification of all operating expenses. The budget should be consistent with the stated objectives and planned activities of the project. Budget requests should include funding for two staff members to make one two-day trip for a planning meeting and one three-day trip for the annual CDC Assessment Initiative Conference. (Base cost estimates on travel to Atlanta, Georgia.)

7. Appendix

Attach an appendix containing organizational chart(s), curricula vitae, job descriptions, and letters of support from proposed collaborating organizations.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4:00 p.m. Eastern Time July 21, 2003. Submit the application to: Technical Information Management—PA#03114, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Note: For the purposes of this cooperative agreement, "measures of effectiveness" are defined as the "evaluation measures" discussed with the Evaluation Plan criteria.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Operational Plan (40 Points)

a. The extent to which the applicant describes three-year project goals that specifically relate to program requirements.

b. The extent to which the first-year objectives are specific, measurable, feasible, and relate directly to the project goals and recipient activities.

c. The extent to which the applicant describes specific activities that are related to each first-year objective, with timelines and responsible persons for each activity.

d. The extent to which the applicant describes reasonable milestones to be accomplished during years two and three.

e. The extent to which the applicant describes how project materials and accomplishments will be shared with others.

2. Ability to Carry Out the Proposed Plan (30 Points)

a. The extent to which the applicant describes the organization's ability to access and influence state and local health agencies through a network of affiliates, constituents, or members.

b. The extent to which the applicant describes current and previous experience administering or coordinating health-related, public health, or community-based data or information programs in conjunction with other national organizations and partners.

c. The extent to which the applicant's organizational structure; the qualifications, experience, and responsibilities of proposed staff; and available physical facilities and information technology resources demonstrate the ability to successfully carry out the project.

d. The extent to which the applicant describes proposed collaborative activities and provides evidence of the support, commitment, and capacity of proposed collaborating organizations.

3. Background and Need (15 Points)

a. The extent to which the applicant demonstrates an understanding of the needs of state and local health agencies with respect to population-based health information and data systems, and provides evidence of previous experience in addressing these needs.

b. The extent to which the applicant demonstrates the need for the specific activities proposed in the project plan.

c. The extent to which the applicant describes sound criteria for selecting the proposed project over possible alternatives.

4. Evaluation Plan (15 Points)

The extent to which the applicant presents an evaluation plan, with reasonable evaluation measures (*i.e.*, required "measures of effectiveness"), to measure the achievement of program objectives and monitor the implementation of proposed activities.

5. Budget Justification (not scored)

The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web site.

AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the

CDC Web site, Internet address: *http://www.cdc.gov*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Mattie B. Jackson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2696, E-mail address: *MJackson2@cdc.gov*.

For program technical assistance, contact: Timothy A. Green, Ph.D., Chief, Applied Sciences Branch, Division of Public Health Surveillance and Informatics, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–74, Atlanta, GA 30341–3717, Telephone: 770–488–8378, E-mail address: *TGreen@cdc.gov*.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14126 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Advisory Committee on Children and Terrorism: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Advisory Committee on Children and Terrorism (NACCT).

Time and Date: 10:30 a.m.—11:30 p.m., June 5, 2003.

Place: The conference call will originate at the Office of Terrorism Preparedness and Emergency Response (OTPER), in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The committee is charged with advising the Secretary, Health and Human Services, on (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary, to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Matters to be Discussed: The National Advisory Committee on Children and Terrorism will convene by conference call to discuss the draft report to the Secretary.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the meeting.

Supplementary Information: This conference call is scheduled to begin at 10:30 a.m., Eastern Standard Time. To participate in the conference call, please dial 1–888–455–9652 and enter conference code 25687. Leader name: Dr. Victor Balaban. You will then be automatically connected to the call.

Contact Person for More Information: Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE, (D–44), Atlanta, Georgia 30333, telephone 404/639–7428, fax 404/639–7977. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14260 Filed 6–3–03; 11:56 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Multi-site Evaluation of Foster Youth Programs.

OMB No.: New Collection.

Description: The Foster Care Independence Act of 1999 (Public Law 106–169) mandates evaluations of promising Independent Living Programs administered by state and local child welfare agencies. The Administration for Children and Families proposes an evaluation of four Independent Living Programs (ILP) over a five year period using a randomized experimental design. Youth ages 14–21 years receiving ILP services and their caseworkers will be interviewed at three points during the evaluation period. Program administrators, staff, and supplementary youth will also participate in interviews and focus groups will be conducted at each program site.

Respondents: Youth, caseworkers, and program administrators, and staff.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth survey	1,400	1	1.5	2,100
Caseworker survey	2,800	1	.5	1,400
Program site visits, administrators, staff, youth	300	1	1.0	300
Estimated Total Annual Burden Hours				3,800

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov*.

Dated: June 2, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14152 Filed 6–4–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Head Start Family and Child Experiences Survey (FACES) and Quality Research Centers.

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151).

Description: The Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to collect data on a new cohort for the Head Start Family and Child Experiences Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Xtria, LCC and the CDM Group as their subcontractors) (contract #GS23F8144H; order #03Y00318101D) to collect information on Head Start performance measures.

FACES will involve four waves of data collection. The first wave will occur in Fall 2003. Data will be collected on a sample of approximately 2,600 children and families from about 260 classrooms across 70 programs. Data collection will include assessments of Head Start children, interviews with their parents, and ratings by their Head Start teachers. Further, site visitors will interview Head Start teachers and make observations of the types and quality of classroom activities.

The second wave, which will be a repeat of the Fall 2003 data collection, will occur in Spring 2004 when the sample children are at the end of their first year of Head Start.

The third wave will occur in Spring 2005, and will involve follow-up with children who at this time are either comleting a second year in Head Start, or completing kindergarten. For those children who are still attending Head Start, data collection will follow the same procedures as in Spring 2004. For those children attending kindergarten, data collection will include assessments of Head Start children, an "update" survey of the information collected from the parent interview, and ratings of the children's academic progress and school adjustment by kindergarten teachers.

The fourth wave of data collection will occur in Spring 2006. Children who attended kindergarten the previous year will not be included in this wave. The procedures for this effort will be the same as for kindergartners in Spring 2005.

For the Head Start Quality Research Centers, 100 children in eight sites will be followed during each of two program years, 2003–2004 and 2004–2005. FACES procedures will be carried out, including child assessments, parent and teacher interviews, and observations of types and quality of classroom activities.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Head Start Family and Child Experiences Survey (FACES 2003)—Fall 2003, Spring 2004, Spring 2005, Spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2003)				
Head Start Parent Interview	2,600	1	1.00	2,600
Head Start Child Assessment	2,600	1	0.66	1,716
Teacher Child Rating	260	10	0.25	650
Program Director Interview	70	1	1.00	70
Center Director Interview	130	1	1.00	130
Education Coordinator Interview	130	1	0.75	98
Teacher Interview	260	1	1.00	260
Year 2 (2004)				
Head Start Parent Interview	2,210	1	0.75	1,658
Head Start Child Assessment	2,210	1	0.66	1,459
Teacher Child Rating	260	8	0.25	520
Family Service Coordinator Interview	130	1	0.75	173
Year 3 (2005)				
Head Start Parent Interview	730	1	0.75	548
Head Start Child Assessment	730	1	0.66	482
Teacher Child Rating	85	6	0.25	128
Kindergarten Parent Interview	1,480	1	0.75	1,110
Kindergarten Child Assessment	1,480	1	0.75	1,110
Kindergarten Teacher Questionnaire	1,480	1	0.50	740
Year 4 (2006)				
Kindergarten Parent Interview	740	1	0.75	555
Kindergarten Child Assessment	740	1	0.75	555
Kindergarten Teacher Questionnaire	740	1	0.50	370
Estimated Total Annual Burden Hours				14,932

Estimated Response Burden for Respondents to the Head Start Quality Research Centers (FACES QRC 2003)—Fall 2003, Spring 2004, Spring 2005.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2003)				
Head Start Parent Interview	800	1	1.00	800
Head Start Child Assessment	800	1	0.66	528
Teacher Child Rating	80	10	0.25	20
Teacher Interview	80	1	1.00	80
Year 2 (2004)				
Head Start Parent Interview	1,480	1	1.00	1,480
Head Start Child Assessment	1,480	1	0.66	977
Teacher Child Rating	160	8	0.25	320
Year 3 (2005)				
Head Start Parent Interview	680	1	1.00	680
Head Start Child Assessment	680	1	0.66	449
Teacher Child Rating	180	6	0.25	270
Estimated Total Annual Burden Hours				5,604

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 2, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14153 Filed 6–4–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0079]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer and Producer Surveys on Economic Issues

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection by July 7, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Consumer and Producer Surveys on Economic Issues (OMB Control Number 0910–0478)—Extension

Under section 903(d)(2) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research relating to regulated articles and to collect information relating to responsibilities of the agency. Executive Order 12866, the Regulatory Flexibility Act (RFA), and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) direct Federal agencies to conduct regulatory impact analysis, and to consider flexible regulatory approaches. In order to perform the mandatory analysis, it is often necessary to survey regulated producers to determine existing practices and the changes in those practices likely under various policy options, both consumers and manufacturers to explore attitudes towards policy proposals, and industry experts to solicit expert opinion. FDA is seeking OMB clearance to conduct future surveys to implement Executive Order 12866, RFA, and SBREFA. Participation in the surveys will be voluntary. This request covers regulated entities, such as food processors, dietary supplement manufacturers, health professionals, or other experts and consumers.

FDA will use the information gathered from these surveys to identify current business practices, expert opinion, and consumer or manufacturer attitudes towards existing or proposed policy. FDA projects approximately 2 to 6 surveys per year, with a sample of between 10 and 1,000 respondents each for mail and telephone surveys, and a sample of up to 3,000 respondents for cable or Internet surveys.

In the **Federal Register** of March 12, 2003 (68 FR 11867), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the upper bound burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Mail questionnaire	1,000	1	1,000	3	3,000
Phone Survey	1,000	1	1,000	.5	500
Internet or Cable Survey	3,000	1	3,000	1	3,000
Total					6,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the expected number of respondents necessary to obtain a statistically significant stratification of the average to large size industries—including small business entities covered by FDA regulations—and consumers of regulated products.

Dated: May 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14105 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0202]

Agency Information Collection Activities; Proposed Collection; Comment Request; Assessment of Public Perceptions and Knowledge of Clinical Trials and Informed Consent Human Subject Protection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of U.S. consumers' knowledge and attitudes about clinical research and informed consent in clinical research.

DATES: Submit written or electronic comments on the collection of information by August 4, 2003.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information set forth in this document.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Assessment of Public Perceptions and Knowledge of Clinical Trials and Informed Consent

FDA regulates clinical research of products subject to section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and title 21 of the Code of Federal Regulations (21 CFR) to ensure that products approved for marketing are safe and effective for use. FDA is also charged with ensuring protection of the rights and welfare of human subjects participating in clinical research. Matters involving human subject protection during clinical drug trials are evaluated within the Division of Scientific Investigations in FDA's Center for Drug Evaluation and Research.

FDA regulations describe the requirements for informed consent of study subjects in clinical research in part 50 (21 CFR part 50). Part 50 requires that, to protect clinical research subjects, subjects must be adequately informed before they consent to participate in clinical research. The informed consent process, which is an essential part of human subject protection in clinical trials, is a process of information exchange: A person who is considering participating in clinical

research learns about the research, makes an educated decision about participating, and is provided with additional information on a continuing basis, as needed, so as to remain adequately informed throughout participation in the study.

Examination of the available medical literature provides little information on the extent to which persons who may consider participating in FDA regulated clinical research understand clinical research or the informed consent process. We (FDA) propose to perform a survey, the goal of which is to gain information about the general public's perceptions and knowledge about clinical research and informed consent. To accomplish this goal, a sample of the general public will be asked to answer a questionnaire in a mall-intercept survey.

Seven hundred and fifty adult males and females (over the age of 18) who come from varied socioeconomic, ethnic, and educational backgrounds will be recruited for participation. A sample of nine subjects will be interviewed in a 30-minute pretest that will be used to help refine the questionnaire as needed, based on feedback from the pretest participants. Thereafter, the remaining subjects will participate in 15-minute interviews conducted at appropriate facilities in three geographically distributed shopping malls in the United States: Northeast, Midwest, and West.

Individuals who appear to be age appropriate will be approached by recruiters in public areas of the shopping malls. The recruiters will be clearly identified with name badges or other identification showing their affiliation with the study contractor. The recruiter will briefly explain the purpose of the study and ask the individuals if they are interested in participating in the interview. Those who agree to participate will be interviewed.

The survey questionnaire that will be used is available for review upon request.

Results of the proposed research will be used to help design a plan to educate U.S. consumers about clinical research, human subject protection, and the role of the informed consent process in clinical trials. It is expected that future consumer education programs will enhance protection for future research subjects by making subjects better informed about the clinical research process, their rights in clinical research, and the importance of the informed consent process to their protection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
9 (pre-test)	1	9	0.5	4.5
741 (consumer survey)	1	741	0.25	185.25
Total				189.75

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14216 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Notification From Industry Organizations Interested in Participating in Selection Process for Nonvoting Industry Representatives on Public Advisory Committees and Request for Nominations for Nonvoting Industry Representatives on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Drug Evaluation and Research (CDER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CDER's public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to the FDA by July 7, 2003 for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by July 7, 2003.

ADDRESSES: All letters of interest and nominations should be submitted in writing to Igor Cerny (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Igor Cerny, Advisors and Consultants Staff (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001.

SUPPLEMENTARY INFORMATION: Section 120 of the FDA Modernization Act of 1997 (FDAMA) (21 U.S.C. 355) requires that newly formed FDA advisory committees include representatives from the drug manufacturing industries. Although not required for existing committees, to keep within the spirit of FDAMA, the agency intends to add nonvoting industry representatives to all CDER advisory committees identified in the following paragraphs.

I. CDER Advisory Committees

1. Advisory Committee for Pharmaceutical Science

Advises on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases.

2. Advisory Committee for Reproductive Health Drugs

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in obstetrics, gynecology, and contraception.

3. Anesthetic and Life Support Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

4. Anti-Infective Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

5. Anti-Viral Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), HIV-related illnesses, and other viral, fungal, and mycobacterial infections.

6. Arthritis Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

7. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational and human drug products for use in the treatment of cardiovascular and renal disorders.

8. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human of dermatologic and ophthalmic disorders.

9. Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee)

Advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services and the Department of Justice with the regard to safety, efficacy, and abuse potential, risk management, risk communication and quantitative evaluation of spontaneous reports, and recommends actions to be taken by the Food and Drug Administration with regard to marketing, investigation and control of such drugs or other substances.

10. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

11. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal disorders.

12. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of the over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

13. Oncologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for the use in the treatment of cancer.

14. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic disease.

15. Psychopharmacologic Drug Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

16. Pulmonary-Allergy Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (*see* **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document. Within the subsequent 15 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner of Food and Drugs will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. A current curriculum vitae and the name of the committee of interest should be sent to the FDA contact person. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for that committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from drug manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14215 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting industry

representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2004.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations for vacancies listed in this notice should be received by July 7, 2003.

ADDRESSES: All nominations and curricula vitae (which includes nominee's office address, telephone number and e-mail address) for industry representatives should be submitted in writing to Kathleen L. Walker, Office of Systems and Management (HFZ–17), CDRH, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *klw@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting members representing industry interests for the vacancies listed as follows:

Medical Devices Panels	Approximate Date Representative Is Needed
Clinical Chemistry and Clinical Toxicology	Mar. 1, 2004
Gastroenterology and Urology	Jan. 1, 2004
General and Plastic Surgery	Sept. 1, 2003
Hematology and Pathology	Mar. 1, 2004
Microbiology	Mar. 1, 2004
Molecular and Clinical Genetics	June 1, 2004
Radiological	Feb. 1, 2004

I. Functions

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act)); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Industry Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of interests of the medical device manufacturing industry.

III. Nomination Procedure

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vita of each nominee. The term of office is up to 4 years, depending on the appointment date.

IV. Selection Procedure

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14213 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, the Device Good Manufacturing Practice Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2004.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: Send all nominations and curricula vitae to:

1. *For the device panels*: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022, e-mail: *NJP@CDRH.FDA.GOV*.

2. *For the National Mammography Quality Assurance Advisory Committee, excluding consumer representatives*: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *CAF@CDRH.FDA.GOV*.

3. *For health professional, industry representatives and government representatives for the Device Good Manufacturing Practice Advisory Committee*: Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, e-mail: *SMK@CDRH.FDA.GOV*.

4. *For government representatives and industry representatives for the Technical Electronic Product Radiation Safety Standards Committee*: Richard V. Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, *RVK@CDRH.FDA.GOV*.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *KLW@CDRH.FDA.GOV*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

1. *Anesthesiology and Respiratory Therapy Devices Panel*: Four vacancies immediately, one vacancy occurring November 30, 2003; anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilatory support, pharmacology, physiology, or the effects and complications of anesthesia.

2. *Circulatory System Devices Panel*: Three vacancies occurring June 30, 2004; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Clinical Chemistry and Clinical Toxicology Devices Panel*: Three vacancies occurring February 28, 2004; doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, and/or clinical laboratory medicine.

4. *Dental Products Panel*: Two vacancies immediately, three vacancies occurring October 31, 2003; dentists, engineers and scientists who have expertise in the areas of lasers, temporomandibular joint implants and/or endodontics; or experts in tissue engineering and/or bone physiology relative to the oral and maxillofacial area.

5. *General and Plastic Surgery Devices Panel*: Four vacancies immediately, one vacancy occurring August 31, 2003; general surgeons, plastic surgeons, thoracic surgeons, abdominal surgeons, pelvic surgeons and reconstructive surgeons, biomaterials experts, laser experts, wound healing experts, or endoscopic surgery experts.

6. *Hematology and Pathology Devices Panel*: Three vacancies immediately; hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular biologists with special interests in development of predictive and prognostic biomarkers.

7. *Immunology Devices Panel*: Three vacancies occurring February 28, 2004; persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.

8. *Molecular and Clinical Genetics Devices Panel*: Four vacancies occurring May 31, 2004; experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.*, pediatricians, obstetricians, neonatologists. The agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics as well as ancillary fields of study will be considered.

9. *Obstetrics and Gynecology Devices Panel*: One vacancy occurring January 31, 2004; experts in perinatology, embryology, reproductive endocrinology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, post-operative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; expert in gynecology in the older patient; experts in diagnostic (optical) spectroscopy.

10. *Ophthalmic Devices Panel*: One vacancy occurring October 31, 2003; ophthalmologists specializing in cataract and refractive surgery, vitreo-retinal surgery, pediatric ophthalmology, and the treatment of glaucoma; in addition to vision scientists, electrophysiologists, and optometrists.

11. *Orthopaedic and Rehabilitation Devices Panel*: Two vacancies occurring August 31, 2004; doctors of medicine or philosophy with experience in tissue engineering, calcification or biomaterials; orthopedic surgeons experienced with prosthetic ligament devices, joint implants, or spinal instrumentation; physical therapists experienced in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologists; or biomedical engineers.

12. *Radiological Devices Panel*: One vacancy immediately, two vacancies occurring January 31, 2004; statistician with biomedical expertise including the design of clinical trials, ROC (receiver operating characteristic) analysis, diagnostic test evaluation, and data testing.

13. *National Mammography Quality Assurance Advisory Committee*: Three vacancies occurring January 31, 2004; physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.

14. *Device Good Manufacturing Practice Advisory Committee*: six vacancies occurring immediately; three government representatives, two industry representatives, and one health professional.

15. *Technical Electronic Product Radiation Safety Standards Committee*: Four vacancies immediately, one government representative and three industry representatives; three vacancies occurring December 31, 2003, two government representatives and one industry representative.

II. Functions

A. Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) Advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health

associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the act, (7) advises on the necessity to ban a device, and (8) responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

B. National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities, (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program, (3) developing regulations with respect to sanctions, (4) developing procedures for monitoring compliance with standards, (5) establishing a mechanism to investigate consumer complaints, (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities, (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas, (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999, and (9) determining the costs and benefits of compliance with these requirements.

C. Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360j), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

D. Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act, as amended by the Safe Medical Devices Act of 1990 (21 U.S.C. 360kk(f)), provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

III. Qualifications

A. Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

B. National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

C. Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a government representative or health professional should have knowledge of or expertise in any one or more of the following areas: quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

D. Technical Electronic Product Radiation Safety Standards Committee

Persons nominated must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14210 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 9, 2003, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–366, CRESTOR (rosuvastatin calcium) tablets, AstraZeneca Pharmaceuticals LP, agent for iPR Pharmaceuticals, Inc., for the proposed indication of treatment of hypercholesterolemia and mixed dyslipidemia.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 1, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 1, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dornette Spell-LeSane at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14214 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0203]

Innovative Systems for Delivery of Drugs and Biologics: Scientific, Clinical, and Regulatory Challenges Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss innovative systems for delivery of drugs and biologics. The purpose of this workshop is to serve as a forum for the academic and clinical communities, industry, consumer and patient advocacy groups, and FDA to discuss the latest scientific and clinical developments for these products, as well as any regulatory concerns and challenges. FDA hopes to facilitate the development of new technology by addressing and clarifying regulatory uncertainty and by increasing the predictability of product development. This project is a part of the Commissioner of the Food and Drug Administration's initiative entitled "Improving Innovation in Medical Technology: Beyond 2002." For reference, the white paper describing the entire initiative is available at *http://www.fda.gov/bbs/topics/NEWS/2003/NEW00867.html*. The input received at the workshop and from written comments will be considered in drafting guidance or other information for industry.

Date and Time: The public workshop will be held on July 8, 2003, from 8 a.m. to 5:30 p.m.

Addresses: The public workshop will be held at the Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814, 301–897–9400, FAX 301–897–0192. Submit written or electronic comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: *FDADockets@oc.fda.gov*. Additional information about the meeting and directions to the facility are available on the Internet at: *http://www.fda.gov/cdrh/meetings/070803.html*.

Contact Person: Cynthia Benson, Center for Devices and Radiological Health (HFZ–3), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–7989, e-mail: *cmh@cdrh.fda.gov*.

Agenda: At the workshop, FDA will hear presentations and receive comments from stakeholders likely to be affected by FDA policies or procedures regarding the review and approval of innovative medical products. Stakeholders include, but are not limited to device, drug, and biological product manufacturers; members of the academic and clinical communities; and consumer and patient advocacy groups.

Registration: Preregistration is required by July 1, 2003, and will be accepted on a first-come, first-served basis; however, notwithstanding attendance at the workshop, interested persons are encouraged to provide comments (see the *Request for Comments* section of this document). There will be no onsite registration. FDA is pleased to provide the opportunity for interested persons to listen from a remote location to the live proceedings of the public workshop. In order to ensure that a sufficient number of call-in lines are available, please register to listen to the meeting at *http://www.fda.gov/cdrh/meetings/070803.html*. Persons without Internet access may call 1-888-203-6161. The registration deadline is July 1, 2003. For technical reasons, persons wishing to make an oral presentation at the public workshop must do so in person. Those who wish to make presentations should submit written notification including: (1) The specific issue related to the topic you intend to address; (2) the names and addresses of all individuals that will participate in your presentation; (3) the approximate amount of time your presentation will require; and (4) two copies of all presentation materials to Cynthia Benson by June 27, 2003. Presentations will be limited to the topics outlined in the **SUPPLEMENTARY INFORMATION** section of this document and, depending on the number of speakers, FDA may limit the time allotted for each presentation. If you need special accommodations due to a disability, please contact Anne Marie Williams at 301–594–1283 at least 7 days in advance.

Request for Comments: Regardless of attendance at the workshop, interested persons may submit written or electronic comments to the Dockets Management Branch (see the *Addresses* section of this document). You should annotate and organize your comments to identify the specific issues to which they refer. Submit two paper copies of any mailed comments. Individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The comments that FDA receives will be made available at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Transcripts: Following the workshop, transcripts will be available for review at the Dockets Management Branch (see the *Addresses* section of this document).

SUPPLEMENTARY INFORMATION: FDA believes that innovative and novel medical technologies have the potential to greatly improve the public health in many different areas. By addressing and clarifying regulatory uncertainty, the agency believes that the development of these technologies will be expedited and the predictability in product development will be increased, thus allowing more of these products to reach the marketplace in a timely manner. As part of a broad effort to increase the development of novel medical technologies, FDA is seeking information on how to expedite the review and approval of innovative devices for the delivery of drugs and biologics. For this effort, these products will be broadly defined. We are including any combination of drug and device or biologic and device products in which the two components work together to have a desired effect on the patient. Some examples of the innovative products to be included in this effort are:

- Novel, specialized catheters to permit localized delivery of drugs or biologics (*e.g.*, chemotherapeutic agents, thrombolytics, cells/biologics);
- Lasers or other energy delivery devices for delivery or enhancement of drug or biologic effectiveness (*e.g.*, electroporetic or laser systems to enhance the transport of drugs to the target site);
- Device/drug or device/biologic combinations that permit new routes of administration for drugs (*e.g.*, devices for inhalation of drugs formerly administered intravenously);
- Devices that activate drugs in the body (*e.g.*, photodynamic therapy);
- Drug-eluting stents designed to prevent restenosis; and
- Orthopedic repair products containing bone morphogenic proteins or other cytokines.

The lead for review of the products to be discussed in the workshop may be in any of the FDA medical products centers (the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health, *i.e.*, CDER, CBER or CDRH) and the products may reach the market through several different regulatory pathways (*e.g.*, investigational device exemption/premarket approval applications (IDE/PMA), investigational new drug application/new drug application (IND/NDA), IND/biological license application (BLA), IDE/510(k), or a combination of these). This workshop is being held to provide a forum for the academic and clinical communities, industry, consumer and patient advocacy groups and FDA to discuss the latest scientific and clinical developments for these products as well as any regulatory concerns and challenges. In addition to increasing our understanding of the latest technological developments in this field, FDA is seeking input to specifically address the following:

1. What are the most critical challenges in developing and bringing to market a novel, innovative technology for delivery of drugs or biologics?
2. Which areas are most important for the agency to provide guidance to developers of these novel products?
3. How can the agency best collaborate with industry, academia, other government agencies, and other scientific bodies in this area of rapidly evolving technology?

The agency hopes to use the information from the workshop to guide the future development of guidance documents, memoranda of understanding, or other position papers.

Dated: May 27, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–14209 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0168]

Current Status of Useful Written Prescription Drug Information for Consumers: Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the current status of the private sector's efforts to provide useful written prescription drug information to consumers. Public Law 104–180 adopted a goal that useful written information would be distributed to 75 percent of individuals receiving new prescriptions by the year 2000. An FDA-commissioned study of written information disseminated during 2001 with four widely-used prescription drugs reported the average "usefulness" of the information was only about 50 percent. The statute's goal for 2006 is that 95 percent of individuals receiving new prescriptions would receive useful written information. FDA is soliciting comments on and convening a public meeting to discuss what steps can be taken to improve the usefulness of such written prescription drug information in order to meet the year 2006 goal. FDA is posing four specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

Date and Time: The public meeting will be held on July 31, 2003, from 9 a.m. to 5 p.m. Registration to speak at the meeting must be received by June 30, 2003. Written or electronic comments will be accepted to the docket until September 2, 2003.

Location: The public meeting will be held at the National Transportation Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594. (Phone: 202–314–6421; Metro: L'Enfant Plaza station on the green, yellow, blue, and orange lines). *See: http://www.ntsb.gov/events/newlocation.htm*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

For Information Regarding This Notice Contact: Christine Bechtel, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5458, email *bechtelc@cder.fda.gov*. If you need special accommodations due to a disability, please inform the contact person.

Registration and Requests for Oral Presentation: No registration is required if you only plan to attend the meeting. Seating will be on a first-come, first-served basis. If you wish to make an oral presentation during the open public comment period of the meeting, you must register to speak at the meeting by submitting your name, title, business affiliation, address, telephone number, fax number, and e-mail address and you must specify on your registration that you wish to make a presentation. You must also submit the following: (1) A written statement for each question addressed, (2) the names and addresses of all who plan to participate, and (3) the approximate time requested to make your presentation. Individuals who register to make an oral presentation will be notified of the scheduled time for their presentation prior to the meeting. Depending on the number of presentations, FDA may have to limit the time allotted for each presentation. All participants are encouraged to attend the entire day. Presenters must submit two hard copies of each presentation given.

For Registration Information Contact: Christine Bechtel, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5458, email *bechtelc@cder.fda.gov*. Electronic registration for this meeting is available at: *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*, or, registration requests and materials can be sent to Christine Bechtel.

SUPPLEMENTARY INFORMATION:

I. Background

Access to useful written patient information is an important aspect of helping to ensure appropriate use of prescription medicines, thereby preventing serious personal injury and avoiding excess costs to consumers and the health care system. FDA telephone surveys have shown that the rate of distribution of written prescription drug information has increased over the past 20 years.

Historically, written patient information has either been required by regulation for particular prescription drug products or product classes, or has been distributed on a voluntary basis by the manufacturer. Since 1968, FDA has occasionally required that prescription drug labeling written specifically for patients in nontechnical language be distributed to patients whenever certain prescription drugs, or classes of prescription drugs, are dispensed. In the 1970s, FDA began evaluating the usefulness of patient labeling for prescription drug products generally, and published a proposed rule to require written patient information for prescription drugs in 1979 (44 FR 40016, July 6, 1979). In 1980, FDA published a final rule establishing requirements and procedures for the preparation and distribution of FDA-approved patient labeling for a large number of prescription drugs (45 FR 60754, September 12, 1980). FDA revoked those regulations in 1982 based, in part, on assurances by the private sector that the goals of the final rule would be met (47 FR 39147, September 7, 1982). A decision was made to allow voluntary private sector initiatives to proceed before a determination was made whether to impose a mandatory program.

In 1995, FDA published a proposed rule entitled "Prescription Drug Product Labeling; Medication Guide Requirements" that would have required manufacturers to prepare and distribute "Medication Guides" to accompany a limited number of prescription drug products that posed a serious or significant public health concern, and set forth the requirements for the Medication Guide program (the 1995 proposed rule) (60 FR 44182, August 24, 1995). FDA's proposed goal for prescription drugs that did not require Medication Guides was that, by the year 2000, at least 75 percent of people receiving new prescriptions would receive useful written patient information, and that by 2006, 95 percent of people who receive new prescriptions would also receive useful written patient information. The 1995 proposed rule set criteria by which written information would be judged to determine whether it was "useful" and should therefore count toward accomplishment of the target goals. FDA defined "useful" as written in nontechnical language and containing a summary of the most important information about the drug. FDA also specified that the usefulness of written patient information would be evaluated according to its scientific accuracy, consistency with a standard format, nonpromotional tone and content, specificity, comprehensiveness, understandable language, and legibility.

On August 6, 1996, as FDA was reviewing the public comments on the 1995 proposed rule, Public Law 104–180 that adopted goals consistent with the 1995 proposed rule for the distribution of useful written patient information by the private sector, was enacted. The legislation also required that, no later than 30 days after its enactment, the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) would request that national organizations representing health care professionals, consumer organizations, voluntary health agencies, the pharmaceutical industry, drug wholesalers, patient drug information database companies, and other relevant parties collaborate to develop a long-range comprehensive action plan (Action Plan) to achieve goals consistent with the goals of the 1995 proposed rule. Required elements of the Action Plan included: an assessment of the effectiveness of the current private-sector approaches to providing consumer medication information; the development of guidelines for providing effective

consumer medication information consistent with the findings of such assessment; the identification of components necessary to ensure the transmittal of useful information to the public expected to use the product, including the criteria identified in the 1995 proposed rule; and the development of a mechanism to periodically assess the quality of prescription information and the frequency with which it is provided to consumers.

Under subsection (d) of section 601 of Public Law 104–180, FDA could not implement the portion of the proposed rule, or any other regulation or guideline, that specified a uniform, FDA-approved content or format for written information voluntarily provided to consumers about prescription drugs, if private sector organizations met the requirements of the long-range Action Plan within the timeframe provided by the law.

The law also required DHHS to review the status of the private sector initiatives designed to achieve the goals of the action plan by January 1, 2001. Public Law 104–180 required that if 75 percent of individuals receiving new prescriptions did not receive useful written information by the year 2000, the limitation in subsection (d) of section 601 would not apply and the Secretary was required to seek public comment on other initiatives that could meet the goals.

Initially following the enactment of Public Law 104–180, the Secretary asked the Keystone Center to convene a Steering Committee to collaboratively develop the Action Plan. The Action Plan accepted by the Secretary in January 1997 reiterated the target goals specified in Public Law 104–180. The Action Plan endorsed the criteria specified in Public Law 104–180 for defining the usefulness of medication information. Specifically, the Action Plan stated that such materials should be: (1) Scientifically accurate; (2) unbiased in content and tone; (3) sufficiently specific and comprehensive; (4) presented in an understandable and legible format that is readily comprehensible to consumers; (5) timely and up to date; and (6) useful, that is, enables the consumer to use the medicine properly and appropriately, receive the maximum benefit, and avoid harm. [The Action Plan, including descriptions of the criteria, is available on the Internet at *http://www.keystone.org*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after the document publishes in the **Federal Register**.)

Consistent with Public Law 104–180, the Action Plan called for the development of a mechanism to periodically assess the quality of written prescription information provided to patients. To test a methodology for collecting patient information materials and assessing their usefulness, FDA contracted with the National Association of Boards of Pharmacy (NABP). The contract called for the selection of several State Boards of Pharmacy, which would arrange for collecting, from a sample of State pharmacies, written materials given to patients when new prescriptions for three commonly prescribed drugs were filled. The contract also called for the development of an expert panel to create evaluation materials to assess the usefulness of the information through application of the Action Plan criteria. The written prescription drug information was collected in 1999, and the final report from the pilot study was completed in December 1999 and presented by FDA at a public workshop on February 29-March 1, 2000.

In 2001, FDA commissioned NABP to subcontract a national study to assess the usefulness of written prescription drug information being distributed to patients. A professional shopper firm was hired to bring prescriptions for four widely prescribed drugs in different drug classes to 384 pharmacies selected in a statistically random fashion from a national list. All written materials received with the prescriptions were sent to an expert panel for evaluation against the criteria endorsed by the Action Plan. The results of the study were announced in 2002. The evaluation found that, on average, 89 percent of patients received some form of written medication information. However, the expert panel found that the average "usefulness" of the information was only about 50 percent. The report of the evaluation is available at *http://www.fda.gov/cder/reports/prescriptioninfo/default.htm*.

The report findings were presented at an FDA Drug Safety and Risk Management Advisory Committee (the Advisory Committee) meeting on July 17, 2002. The Advisory Committee recommended that FDA take a more active role in advising and encouraging the private sector to meet the 2006 goal. FDA accords the recommendations of all advisory committees significant weight, but such recommendations are not binding on the agency. A transcript of FDA's Drug Safety and Risk Management Advisory Committee meeting on July 17, 2002, is available at *http://www.fda.gov/ohrms/dockets/ac/02/transcripts/3874T1.htm*.

II. Scope of Discussion

In view of the facts described in section I of this document, FDA is soliciting comments on several issues and is convening this public meeting on July 31, 2003, to discuss the current status of the private sector's efforts to provide useful written prescription drug information to consumers. Interested persons are invited to submit comments to the docket and to attend the public meeting and present their views. Issues that we are asking interested parties to address in their comments, at the public meeting, or both, are as follows:

1. What steps is the private sector taking to improve the usefulness of the written information patients receive with prescription drugs and to meet the Year 2006 goal?

2. What barriers exist for the private sector to meet the Year 2006 goal, and what plans exist to overcome these barriers?

3. What should the role of FDA be in assuring full implementation of the Action Plan to meet the Year 2006 goal?

4. What other initiatives should FDA consider for providing patients with useful written information about prescription drugs as endorsed by Public Law 104–180? Such initiatives could include the possibility of FDA requiring manufacturers to provide authorized dispensers with the means to distribute useful written information approved by FDA.

III. Comments

Interested persons may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments on or before September 2, 2003. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document. Submit electronic comments by September 2, 2003, to *fdadockets@oc.fda.gov* or at *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. You should annotate and organize your comments to identify the specific questions to which they refer. Comments to the docket can be reviewed in the Dockets Management Branch, Monday through Friday between 9 a.m. and 4 p.m. or on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm* (select docket # 03N–0168).

IV. Transcripts

You may request a copy of the transcript in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 days after the meeting at a cost of 10 cents per page. You may also examine the transcript Monday through Friday between 9 a.m. and 4 p.m. in the Dockets Management Branch or on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm* (select docket # 03N–0168). The transcript will be available 4–6 weeks after the meeting.

V. Electronic Access

Persons with access to the Internet may obtain a copy of the commissioned study report at *http://www.fda.gov/cder/reports/prescriptioninfo/default.htm*, the Action Plan at *http://www.keystone.org*, and a transcript of FDA's July 17, 2002, Drug Safety and Risk Management Advisory Committee meeting at *http://www.fda.gov/ohrms/dockets/ac/02/transcripts/3874T1.htm*.

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14212 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2004. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by August 4, 2003.

ADDRESSES: Submit written comments concerning this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1697, or e-mail: *Dcarring@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 10, 2003, CFSAN released a document entitled "2003 CFSAN Program Priorities." The document, a copy of which is available on CFSAN's Web site (*www.cfsan.fda.gov*), constitutes the center's priority work plan for FY 2003, i.e., October 1, 2002, through September 30, 2003. (Copies also are available from the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.) The 2003 work plan is based on input we received from our stakeholders as well as input generated internally. Throughout the priority-setting process, we focus on one central question: "Where do we do the most good for consumers?"

The FY 2003 work plan focuses heavily on ensuring the security of our country's food supply as a primary goal. With the enactment in June 2002 of the Public Health Security and Bioterrorism Preparedness and Response Act (Public Law 107–188), much of our effort during the current fiscal year will focus on issuing the necessary regulations to implement this statute. We will also continue to enhance our level of emergency preparedness, particularly our laboratory preparedness.

The FY 2003 work plan continues to place a high priority on food safety, food additives, and dietary supplements, and also highlights our desire to revitalize our nutrition program. In December 2002, FDA announced a major initiative to enhance "Consumer Health Information for Better Nutrition." Accordingly, this year's plan includes the steps needed to implement that initiative, including increased enforcement against unsubstantiated claims on food and dietary supplement products.

Outside of these priorities, the FY 2003 work plan identifies eight other program areas and cross-cutting areas that need emphasis: (1) Cosmetics; (2) enhancing the science base; (3) international activities; (4) food biotechnology; (5) enhancing internal processes; (6) focused economic-based regulations; (7) equal employment opportunity/diversity initiatives; and (8) management initiatives.

The FY 2003 work plan contains two lists of activities—the "A-list" and the "B-list." Our goal is to fully complete at least 90 percent of the 145 "A-list" activities by the end of the fiscal year, September 30, 2003. Activities on the "B-list" are those we plan to make progress on, but may not complete, before the end of the fiscal year.

CFSAN intends to issue a mid-year progress report on what program priority activities already have been completed to date in FY 2003 as well as any adjustments in the work plan (i.e., additions or deletions) for the balance of the fiscal year.

CFSAN has responsibility for many important ongoing activities that are not identified in the work plan. For example, the center's base programs in data collection, research, and enforcement are important and ongoing. Rather, the work plan addresses primarily those initiatives representing something new or different that we need to address in 2003 as well as priority initiatives that are being continued from the 2002 work plan. In addition, the work plan does not address the myriad of unanticipated issues that often require a substantial investment of CFSAN resources (e.g., response to outbreaks of foodborne illness).

II. 2004 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for FY 2004, and the input will be used to develop CFSAN's 2004, work plan. The work plan will set forth the center's program priorities for October 1, 2003, through September 30, 2004. FDA intends to make the 2004 work plan available in the fall of 2003.

The format of the 2004 work plan will be similar to last year's work plan. FDA expects there will be considerable continuity and followthrough between the 2003 and 2004 work plans. For example, new initiatives aimed at increasing the security of our country's food supply and revitalizing our nutrition program will continue to be a high priority in FY 2004.

FDA is in the process of developing a major strategic plan and has identified the following five top priority areas for the agency: (1) A strong FDA; (2) efficient risk management; (3) patient and consumer safety; (4) better informed consumers; and (5) counter-terrorism. Action items implementing the strategic plan will be incorporated into CFSAN's priorities for FY 2004.

As noted in the previous paragraphs, many of the "B-list" activities are 2-year projects that we are positioning to be candidates for the "A-list" next year.

FDA requests comments on which "B-list" activities should be elevated to the "A-list" for completion in 2004. Finally, as noted, FDA requests comments on new program areas or activities that should be added as a high priority for FY 2004.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14106 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—Revision

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(5)(C) to develop audit guidelines and because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Pharmacy Affairs Branch (PAB) has developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

Audit Guidelines

A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must notify the covered entity in writing when it believes the covered entity has violated the provisions of section 340B. If the problem cannot be resolved, the manufacturer must then submit an audit work plan describing the audit and evidence in support of the reasonable cause standard to the HRSA PAB for review. The office will review the documentation to determine if reasonable cause exist. Once the audit is completed, the manufacturer will submit copies of the audit report to the HRSA PAB for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General.

Dispute Resolution Guidelines

Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA PAB has developed an informal dispute resolution process which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA PAB, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA PAB. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, but two disputes have reached the level where a committee review may be needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below:

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours/ response	Total burden hours
AUDITS					
Audit Notification of Entity [1]	2	1	2	4	8
Audit Workplan [1]	1	1	1	8	8
Audit Report [1]	1	1	1	1	1
Entity Response	0	0	0	0	0
DISPUTE RESOLUTION					
Mediation Request	2	4	8	10	80
Rebuttal	2	1	2	16	32
Total	8	1.8	14	9.2	129

[1] Prepared by the manufacturer.

Recordkeeping requirement	Number of recordkeepers	Hours of recordkeeping	Total burden
Dispute records	10	.5	5

The total burden is 134 hours.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 30, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–14217 Filed 6–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Care for the Homeless Program User/Visit Surveys—NEW

The Bureau of Primary Health Care (BPHC) of HRSA is planning to conduct User/Visit Surveys of the Health Care for Homeless Program (HCHP). The purpose of this study is to conduct nationally representative surveys, which have the following components: (1) A personal interview survey of HCHP site users; and (2) a record-based study of visits to HCHP sites.

The HCHP is the Federal program with the sole responsibility for addressing the critical primary health care needs of homeless individuals. The HCHP is administered by the BPHC. The BPHC is interested in knowing more about the general and specific characteristics of the HCHP users and their visits to the HCHP sites. As a consequence, a personal interview survey (User Survey) will be administered to a nationally representative sample of HCHP users and a representative sample of medical visits of HCHP sites (Visit Survey) will be examined as well.

These surveys are designed and intended to be primary sources of information on the health and visits of the HCHP users. The information will provide policy makers with a better understanding of the services that HCHP users are receiving at HCHP sites and how well these sites are meeting the needs of HCHP users.

Data from the surveys will provide quantitative information on the homeless population served by the HCHP, specifically: (a) Sociodemographic characteristics, (b) health care access and utilization, (c) health status and morbidity, (d) health care experiences and risk behaviors, (e) content of medical encounters, (f) preventive care, and (g) and living conditions. These surveys will provide data useful to the HCHP and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden on respondents and HCHP site staff is as follows:

Form	Number of respondents	Responses per respondent	Total response	Hours per response	Total burden hour
Grantee Recruitment	30 grantees	1	30	1	30
Grantee Sampling Methods	30 grantees	1	30	3	90
User Survey	1,020 users	1	1,020	1	1,020
Visit Survey	1,020 visits	1	1,020	.25	255
Total	2,070		2,070		1,395

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eyte, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax number 202–395–6974.

Dated: May 30, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–14218 Filed 6–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

United States Secret Service

Notice of Proposed Information Collection

ACTION: Notice of Proposed Information Collection.

SUMMARY: The U.S. Department of Homeland Security, Office of the Chief Information Officer, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995. Currently, the U.S. Secret Service, within the U.S. Department of Homeland Security is soliciting comments concerning the SSF 86A, Supplemental Investigative Data.

DATES: Interested persons are invited to submit comments on ore before August 4, 2003.

ADDRESSES: Direct all written comments to United States Secret Service, Recruitment and Personnel Security Division, Attn: Robin DeProspero, Personnel Security Branch, 950 H St., NW., Washington, DC 20373–5824, Suite 3800, 202/406–5433. Individuals who use a telecommunications device for the deaf (TDD) may either call the Federal Information Relay Service (FIRS) at 1–800–877–8339 or call directly (TTY) 202–406–5390.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Recruitment and Personnel Security Division, Attn: Althea Washington, Personnel Security Branch, 950 H Street, NW., Washington, DC 20373–5824. Telephone number: (202) 406–9403.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or Recordkeeping burden. The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) is the estimate of burden for this information collection accurate; (3) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Abstract: Respondents are all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possible SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that the applicant meets all internal agency requirements.

United States Secret Service

Title: Supplemental Investigative Data.

OMB Control Number: 1620–0001.

Form Number: SSF 86A.

Frequency: Occasionally.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Reporting and Recordkeeping Hour Burden:

Responses: 10,000.

Burden Hours: 30,000.

Dated: May 30, 2003.

Adam Becker,

Branch Chief—Policy Analysis and Records Systems Branch U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. 03–14083 Filed 6–4–03; 8:45 am]

BILLING CODE 4810–42–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–27]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0533) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax nnmber (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market).

OMB Approval Number: 2502–0533.

Form Numbers: HUD–9624, HUD–9625.

Description of the Need for the Information and Its Proposed Use: The Mark-to-Market Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997. The information collection is used to determine the eligibility of FHA-insured multifamily properties for participation in the Mark-to-Market program and the terms on which parficipation should occur. The program reduces Section 8 rents to market and restructures debt as necessary. The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance, including project-based assistance, and minimizing the adverse effect on the FHA insurance funds.

Respondents: Business or other for-profit, Not-for-Profit Institutions.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	438		1		288		125,947

Total Estimated Burden Hours: 125,947.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14084 Filed 6–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–28]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Insurance Benefits Claims

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0415) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Insurance Benefits Claims.

OMB Approval Number: 2502–0415.

Form Numbers: HUD–2742, 2744–A, 2744–B, 2744–C, 2744–D, and 2744–E.

Description of the Need for the Information and Its Proposed Use: When terms of a multifamily contract are breached or when a mortgagee meets conditions stated within the multifamily contact for an automated assignment, the holder of the mortgage may file for insurance benefits. The information requested in the Multifamily Insurance Benefits Claim is necessary to determine insurance benefits to which a claimant mortgagee may be entitled under 12 U.S.C. 1713(g) and Title II, Section 207(g) of the National Housing Act.

Respondents: Individuals or households, Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	118		1		3.5		411

Total Estimated Burden Hours: 411.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14085 Filed 6–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–29]

Notice of Submission of Proposed Information Collection to OMB: A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2539–0017) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance.

OMB Approval Number: 2539–0017.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Despite dramatic reductions in blood-lead levels over the pass 15 years, lead poisoning continues to be significant health risk for young children. The Third National Health and Nutrition Examination Survey suggests that the greatest risk exists for children under the age of two. The development of a viable national strategy for the primary prevention of lead poisoning in these young children is a difficult task. The City of Milwaukee has enacted an ordinance requiring owners of pre-1950 rental properties in two target neighborhoods to carry out specified essential maintenance practices and standard treatments by April 30, 2000. The purpose of this information collection activity is to evaluate the feasibility, costs, and effectiveness (in terms of reducing residential dust-lead levels and preventing elevated blood-lead levels in children under two years of age) of the comprehensive primary prevention program being conducted in the two target Milwaukee neighborhoods. The collection information will be used as vital input for developing a viable national strategy for the primary prevention of childhood lead poisoning.

This information collection will involve conducting brief on-site interviews of tenants, conducting visual inspections of rental units, collecting dust-wipe samples for lead analysis from selected floor and window sill locations, and obtaining bold-samples from study subjects. If appropriate, the results of this information collection will be used to improve existing HUD guidance for primary prevention lead-hazard control activities.

Respondents: Individuals or households; State, Local Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,250	449		0.34		421

Total Estimated Burden Hours: 421.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14086 Filed 6–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before July 7, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–043628

Applicant: Institute for Applied Technology, Corvallis, Oregon.

The permittee requests an amendment to collect seeds of *Erigeron decumbens* var. *decumbens* (Willamette daisy) in conjunction with research in Polk, Benton, and Lane Counties, Oregon for the purpose of enhancing its survival.

Permit No. TE–025733

Applicant: Dynamac Corporation, Corvallis, Oregon.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Oregon chub (*Oregonichthys crameri*), the White River spinedace (*Lepidomeda albivallis*), the shortnose sucker (*Chasmistes brevirostris*), and the Lost River sucker (*Deltistes luxatus*) in conjunction with surveys in Oregon and Nye County, Nevada for the purpose of enhancing their survival.

Permit No. TE–022230

Applicant: Jeff Kidd, Perris, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Arroyo toad (*Bufo californicus*) in conjunction with surveys in California for the purpose of enhancing its survival.

Permit No. TE–065988

Applicant: Peninsula Open Space Trust, Menlo Park, California.

The applicant requests a permit to take (harass by survey, capture, handle, transport, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with habitat manipulation in San Mateo County, California for the purpose of enhancing its survival.

Permit No. TE–071098

Applicant: North Coast Resource Management, Calpella, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Sonoma County District Population Segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–018078

Applicant: Hawaii Volcanoes National Park, Hawaii National Park, Hawaii.

The permittee requests an amendment to remove/reduce to possession *Argyroxiphium kauense* (Mauna Loa silversword), *Argyroxiphium sandwicense* ssp. *sandwicense* ('Ahinahina), *Hibiscadelphus giffardianus* (hau kuahiwi), *Ischaemum byrone* (Hilo ischaemum), *Melicope zahlbruckneri* (alani), *Neraudia ovata* (no common name), *Nothecestrum breviforum* ('aiea), *Plantago hawaiensis* (kuahiwi laukahi), *Pleomele hawaiiensis* (hala pepe), *Portulaca sclerocarpa* (po'e), *Pritchardia affinis* (lo'ulu), *Sesbania tomentosa* ('ohai), and *Sicyos alba* ('anunu) in conjunction with captive propagation and outplanting throughout the range of the species in Hawaii for the purpose of enhancing their survival.

Permit No. TE–071433

Applicant: Stephanie Dunbar, Honolulu, Hawaii.

The applicant requests a permit to remove/reduce to possession *Plantago princeps* var. *princeps*, *Plantago princeps* var. *anomala*, *Plantago princeps* var. *laxiflora*, *Plantago princeps* var. *longibracteata*, and *Plantago hawaiensis* (all of which have the same common name kuahiwi laukahi) in conjunction with research studies throughout the range of the species in Hawaii for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: May 23, 2003.

David J. Wesley,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–14130 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit application must be received on or before July 7, 2003.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional Permits Coordinator, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number TE056061–1

Applicant: EnviroScience, Inc., Stow, Ohio.

The applicant requests a permit to take (capture and release) listed unionid mussel species throughout Kentucky. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE070773

Applicant: Genevieve Spanjer, Toronto, Ontario, Canada.

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*) and Virginia big-eared bat (*C. t. viginianus*)

in the States of Alabama, Georgia, Indiana, Kentucky, New York, Ohio, Tennessee, Vermont, Virginia, and West Virginia. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE070779

Applicant: Daniel A. Maltese, Pittsburgh, Pennsylvania.

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*) in Ohio. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE070782

Applicant: Barbara J. Barton, Ypsilanti, Michigan.

The applicant requests a permit to take Mitchell's satyr (*Neonympha mitchellii mitchellii*) in Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE071066

Applicant: Bat Conservation and Management, Inc., Carlisle, Pennsylvania.

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*) in Iowa. The scientific research is aimed at enhancement of survival of the species in the wild.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov*, telephone (612) 713–5343, or FAX (612) 713–5292. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents. Please refer to the respective permit numbers when submitting comments.

Dated: May 7, 2003.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–14131 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of a Permit for Endangered Species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the date below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
065981	Matson's Laboratory, LLC	68 FR 2069; January 15, 2003	May 7, 2003.

Dated: May 16, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14149 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 7, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–067587

Applicant: Patricia Szczys, University of Massachusetts-Boston, Boston, MA.

The applicant requests a permit to export DNA taken from blood sampled from wild roseate terns (*Sterna dougallii*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–072089

Applicant: Wesley Carl Bates, Columbus, OH.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–072073

Applicant: James H. Zindl, Sussex, WI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–072106

Applicant: William R. Meyers, Chattanooga, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–071899

Applicant: Branko A.Terkovich, Mendham, NJ.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Mellville Sound polar bear population in Canada for personal use.

PRT–072002

Applicant: Michael J. Vandemaele, Mattawan, MI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Mellville Sound polar bear population in Canada for personal use.

PRT–072004

Applicant: Alfred E. Delgreco, E. Patchogue, NY.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Mellville Sound polar bear population in Canada for personal use.

PRT–072007

Applicant: Felix G. Widlacki, Orland, IL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–072044

Applicant: Scott Garrett Olds, Grangeville, ID.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal use.

PRT–072088

Applicant: Thomas H. Essex, Falmouth, VA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 16, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14150 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 7, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–072379

Applicant: Lynn C. Thompson, Ventura, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or

marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–072135.

Applicant: Paul M. Vial, Fresno, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Mark D. Nuessle, Scottsdale, AZ

PRT–072138.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Michael B. Thomas, Atlanta, GA

PRT–072240.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Scott S. Snyder, McCook, NE

PRT–072383.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 23, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14151 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of Incidental Take Permits Associated With a Habitat Conservation Plan for East Contra Costa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (Service) are advising the public that we intend to gather information necessary to prepare, in coordination with the East Contra Costa County Habitat Conservation Plan Association (Association), a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) on the East Contra Costa County Habitat Conservation Plan (Plan), which is being prepared in conjunction with a Natural Community Conservation Plan. The Plan is being prepared under Section 10 (a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (ESA); whereas the Natural Community Conservation Plan is being prepared under the State of California's Natural Community Conservation Planning Act. The Association intends to request an ESA permit for 7 species federally listed as threatened or endangered and 18 unlisted species that may become listed during the term of the permit. The permit is needed to authorize take of listed species that could occur as a result of activities implemented under the Plan.

We provide this notice to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure that the full range of issues related to the permit request are identified.

DATES: Written comments should be received on or before August 4, 2003. Public meetings will be held on: July 17, 2003, 3:30 p.m. to 5:30 p.m, and 7 p.m. to 8:30 p.m., Pittsburg, CA.

ADDRESSES: The public meetings will be held at: Pittsburg City Hall, 65 Civic Drive, Pittsburg, CA, 94565. Information, written comments, or questions related to the preparation of the EIS/EIR and the NEPA process should be submitted to Sheila Larsen, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Sheila Larsen as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the "take" of a species listed as endangered or threatened. Take is defined under the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17.22.

We anticipate that the Association will request an ESA incidental take permit. The Association is a Joint Powers Authority consisting of seven member agencies: Contra Costa County; cities of Brentwood, Clayton, Oakley, and Pittsburg; Contra Costa Water District; and East Bay Regional Park District.

Currently, 26 species are proposed for coverage under the Plan. These include the federally listed endangered San Joaquin kit fox (*Vulpes macrotus mutica*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), the threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*), giant garter snake (*Thamnophis gigas*), California red-legged frog (*Rana aurora draytonii*), vernal pool fairy shrimp (*Branchinecta lynchi*), and the proposed California tiger salamander (*Ambystoma californiense*), and their habitats. The 18 unlisted species proposed to be covered under the Plan include the Townsend's western big-eared bat (*Corynorhinus townsendii townsendii*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), western burrowing owl (*Athene cunicularia hypugea*), Swainson's hawk (*Buteo swainsoni*), silvery legless lizard (*Anniella pulchra pulchra*), foothill yellow-legged frog (*Rana boylii*), midvalley fairy shrimp (*Branchinecta mesovalliensis*), Mount Diablo manzanita (*Arctostaphylos auriculata*), brittlescale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joaquiniana*), big tarplant (*Blepharizonia plumosa*), Mount Diablo fairy lantern (*Calochortus pulchellus*), recurved larkspur (*Delphinium recurvatum*), Diablo helianthella (*Helianthella castanea*), Brewer's dwarf flax (*Hesperolinin breweri*), showy madia (*Madia radiata*), and adobe navarretia (*Navarretia nigelliformis* spp. *nigelliformis*). Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment.

The Plan area consists of approximately 170,000 acres in East Contra Costa County, California, including watersheds that drain the eastern flanks of Mount Diablo. The boundaries of the Plan area are generally defined by the Alameda-Contra Costa county line, the San Joaquin-Contra Costa county line, the Sacramento-Contra Costa county line, the Solano-Contra Costa county line, and the eastern flanks of Mount Diablo and adjacent foothills in the Diablo Range. Excluded areas include current and historic tidal areas, the City of Antioch, the community of Discovery Bay, and the Clifton Court Forebay.

Implementation activities that may be covered under the Plan include urban development and associated infrastructure, and County and/or city projects related to road maintenance/ construction, water delivery infrastructure, flood control, sanitary systems, and recreational opportunities. Under the Plan, the effects of covered activities are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the Plan. The focus of a conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area. The Plan is also a Natural Community Conservation Plan, therefore it will provide protection at an ecosystem level while accommodating compatible land use and economic growth.

Components of a conservation program are now under consideration by the Service and Association. These components will likely include: Avoidance and minimization measures, monitoring, adaptive management, research, and mitigation measures consisting of preservation, restoration and enhancement of habitat.

Environmental Impact Statement/ Report

The Association and the Service have selected Jones & Stokes to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although Jones & Stokes will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for NEPA purposes, and the County will be responsible for the scope and content of the document for CEQA purposes.

The EIS/EIR will consider the proposed action, the issuance of an incidental take permit, no action (no permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. We anticipate that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources, water resources, economics, and other environmental resource issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/ EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. We are publishing this notice in accordance with Section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. More specifically, we provide this notice: (1) To describe the proposed action and possible alternatives; (2) to advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) to announce the initiation of a public scoping period; and (4) to obtain suggestions and information on the scope of issues to be included in the EIS/EIR. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. We invite written comments from interested parties to ensure that the full range of issues related to the permit request are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: May 23, 2003.

D. Kenneth McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–14109 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of Incidental Take Permits Associated With a Habitat Conservation Plan for Solano County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (USFWS) are advising the public that we intend to gather information necessary to prepare, in coordination with the National Marine Fisheries Service (NMFS), as a cooperating agency, and the Solano County Water Agency, a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) on the Solano Habitat Conservation Plan (Plan), which is being prepared in conjunction with a Natural Community Conservation Plan. The Plan is being prepared under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (ESA); whereas the Natural Community Conservation Plan is being prepared under the State of California's Natural Community Conservation Planning Act.

Solano County Water Agency, six of its eight member agencies, and

Reclamation District No. 2068 (collectively, the Applicants) intend to request ESA permits from the USFWS and NMFS (collectively, the Services) for 76 species that are federally listed as threatened or endangered or that may become federally listed during the term of the permits. The permits are needed to authorize take of listed species that could occur as a result of activities implemented under the Plan.

We provide this notice to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure that the full range of issues related to the permit requests are identified.

DATES: Written comments should be received on or before July 7, 2003. Public meetings will be held on:

1. June 12, 2003, 7 p.m. to 9 p.m., Fairfield, CA.
2. June 16, 2003, 7 p.m. to 9 p.m., Vacaville, CA.

ADDRESSES: The public meeting locations are:

1. Fairfield—Fairfield City Council Chambers, 1000 Webster Street, Fairfield, CA 94533.
2. Vacaville—Ulatis Cultural Center, 1000 Ulatis Drive, Vacaville, CA 95687.

Information, written comments, or questions related to preparation of the EIS/EIR and the NEPA process should be submitted to Deblyn Mead, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Deblyn Mead, Fish and Wildlife Biologist, Conservation Planning, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Deblyn Mead as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the meetings. Information regarding this proposed action is available in alternative formats upon request.

Related Documents

Persons wishing to obtain background materials on the proposed Plan should contact David Okita, General Manager, Solano County Water Agency, 508 Elmira Road, Vacaville, CA 95867 at (707) 451–2904. Information is also available on the Solano County Water Agency Web page at *http://www.scwa2.com*.

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) permit applications expected from the Applicants. Therefore, the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect unlisted animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out otherwise lawful activity. USFWS regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. NMFS regulations governing permits for threatened and endangered species of salmonids that may be covered in the Plan are promulgated in 50 CFR 222.22.

In 1999, the Bureau of Reclamation renewed its Solano Project Water Service Contract with Solano County Water Agency for the continued delivery of 192,350 acre-feet of water per year to 7 public agencies within Solano County (City of Vacaville, City of Fairfield, City of Suisun City, City of Vallejo, Solano Irrigation District, Maine Prairie Water District, and the California Medical Facility/California State Prison, Vacaville) and the University of California at Davis, which is located partially in Yolo County, for a 25-year period. The water is to be used by these contracting agencies within Solano County Water Agency's contract service area for agricultural, municipal and industrial purposes. The USFWS completed its formal consultation on the water service contract renewal and issued a biological opinion on March 19, 1999. To ensure that implementation of the Solano Project Water Service Contract renewal was not likely to jeopardize the continued existence of federally listed species or result in destruction or adverse modification of designated critical habitat, the Solano County Water Agency and its member agencies that contract for Solano Project water committed to completion of the Plan as part of their proposed project on which the USFWS consulted.

We anticipate that the Applicants will request ESA incidental take permits. The Applicants include the Solano County Water Agencies member agencies, with the exception of the University of California at Davis and the California Medical Facility/State Prison in Vacaville. The University of California at Davis is independently developing a separate habitat conservation plan. The California Medical Facility/State Prison in Vacaville will be included as part of the City of Vacaville's participation in the Plan. Reclamation District No. 2068, a public agency, has elected to participate in the Plan. Solano County may elect to participate in the Plan.

Currently, up to 76 species are proposed for coverage under the Plan. The Solano County Water Agency and its member agencies committed to covering 36 species in the biological opinion for the Solano Project Water Service Contract renewal. Of these 36 species, 17 are federally listed as threatened or endangered under the ESA (1 mammal, 1 bird, 1 reptile, 1 amphibian, 2 fish, 6 invertebrates, and 5 plants) and 19 are plant species that may become listed during the term of the permits. Also proposed to be covered under the Plan are 5 salmonid species, 4 of which are federally listed, one amphibian species that is a candidate for listing, and 34 species that are currently unlisted, but which may become listed during the term of the permits. Some of these species are listed as threatened or endangered under the California Endangered Species Act. Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment.

The Plan area includes approximately 576,927 acres and consists of all of Solano County and a small part of Yolo County. The Yolo County portion of the Plan area includes approximately 2,500 acres within Reclamation District No. 2068's service area and a portion of the riparian zone on the Yolo County side of Putah Creek.

The Plan area and the activities proposed to be covered by the Plan are organized into three zones. Zone 1 is proposed to consist of the planned growth areas of the cities. Proposed covered activities in this zone consist of residential, commercial, industrial, institutional, and recreational development, as well as development of public infrastructure such as roads and utilities. Zone 2 is proposed to consist of the service areas of Solano Irrigation District, Maine Prairie Water District, Reclamation District No. 2068, and the Solano County Water Agency flood control channels. Proposed covered activities in this zone consist of the inclusion, expansion or annexation of service areas by these districts, and ongoing operation, maintenance, and construction of new irrigation, flood control, and drainage facilities. Zone 3 consists of the remainder of the Plan area within Solano and Yolo counties. Proposed covered activities in Zone 3 consist primarily of activities related to implementation of the Plan conservation measures including habitat management, habitat enhancement, and habitat restoration and construction, monitoring, scientific collection, and associated compatible activities on designated reserves, mitigation sites, mitigation banks and open space lands, and lands adjacent to conservation areas. Zone 3 may also include non-agricultural activities carried out by the cities on lands outside of their respective jurisdictional boundaries, such as construction, operation and maintenance of communication facilities, water supply reservoirs and recreational facilities management. Activities proposed to be covered in Yolo County, as part of Zone 3, are those activities related to Reclamation District No. 2068 and the potential implementation of conservation measures in the Putah Creek riparian zone.

Under the Plan, the effects of covered activities on the covered species are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the Plan. The focus of this conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area, thereby providing protection at an ecosystem level while accommodating compatible land use and economic growth.

Critical Habitat has been designated for one of the listed salmonid species, two other animal species, and a candidate salmonid species within the Plan area. Critical Habitat is proposed for several listed vernal pool invertebrate and vernal pool plant species proposed for coverage in the Plan.

Components of a conservation program are now under consideration by the Services and the Applicants. These components will likely include: Avoidance and minimization measures, monitoring, adaptive management, research, and mitigation measures consisting of preservation, restoration and enhancement of habitat.

Environmental Impact Statement/ Report

The Solano County Water Agency and the Services have selected CH2M Hill to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although CH2M Hill will prepare the EIS/EIR, the USFWS will be responsible for the scope and content of the document for NEPA purposes, and the Solano County Water Agency will be responsible for the scope and content of the document for CEQA purposes.

The EIS/EIR will consider the proposed action (issuance of section 10(a)(1)(B) ESA permits), no action (no permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use planning (land use development patterns), air quality, water quality, mineral resources, water resources, economics, and other environmental issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*,) its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. We are publishing this notice in accordance with Section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR and the alternatives to be considered. More specifically, we provide this notice: (1) To describe the proposed action and possible alternatives; (2) to advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) to announce the initiation of a public scoping period; and (4) to obtain suggestions and information on the scope of issues to be included in the EIS/EIR. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. We invite written comments from interested parties to ensure that the full range of issues related to the permit requests are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: May 23, 2003.

D. Kenneth McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–14111 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–016]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 12, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1013 (Final)(Saccharin from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 25, 2003.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 2, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14333 Filed 6–3–03; 2:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of Information Collection Under Review: Extension of a Currently Approved Collection; Annuity Broker Qualification Declaration Form.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 49, page 12103 on March 13, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annuity Broker Qualification Declaration Form.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Civil Division, Torts Branch, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Annuity Brokers. *Other:* None. The information collection requirement contained in this rule will be used to determine whether a broker meets the minimum qualifications to be listed as an annuity broker pursuant to section 11015(b) of Public Law 107–273.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to repond/reply:* It is estimated that 400 respondents will complete the application in approximately 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 400 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20503.

Dated: May 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14119 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on May 22, 2003, a proposed Amended Consent Decree in *United States* v. *Gopher State Ethanol, Inc.*, ("Gopher State"), Civil Action No. CV02–3793 JEL/RLE, was lodged with the United States District Court for the District of Minnesota.

In this action the United States asserted claims against the owners and operators of an ethanol dry mill in St. Paul, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. The original Consent Decree with Gopher State was lodged on October 2, 2002. The public comment period closed on January 24, 2003. This Amended Consent Decree includes changes made to the settlement in response to comments received during the public comment period. The changes include additional limitations on Gopher State's "wet cake" production, a by-product of the ethanol manufacturing process used as animal feed, and the requirement to install an additional baghouse for further reductions of particulate matter emissions.

The Department of Justice will receive comments relating to the Gopher State Amended Consent Decree for a period of fifteen (15) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Gopher State Ethanol, Inc.*, D.J. Ref. 90–5–2–1–07784/8.

The Amended Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period the Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 03–14100 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 22, 2003, a proposed Consent Decree (the "Decree") in *United States* v. *Lockheed Martin Corp.*, Civil Action No. CV03–1180–C was lodged with the United States District Court for the Western District of Washington.

In this action the United States sought injunctive relief and recovery of costs in connection with cleanup of hazardous substances located in the vicinity of Harbor Island, in Seattle, Washington. The Decree provides that Lockheed Martin will perform cleanup work and pay past and future costs incurred by the United States in connection with the cleanup.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Lockheed Martin Corp.*, D.J. Ref. 90–11–2–970/2.

The Decree may be examined at the Office of the United States Attorney, 601 Union Street, Suite 5100, Seattle, WA 98101–3903, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $44.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $15.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14102 Filed 6–14–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in *In Re Owens Corning* Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 20, 2003, a proposed Settlement Agreement was lodged with the United States Bankruptcy Court for the District of Delaware in *In re Owens Corning*, No. 00–03837 (Bankr. D. Del.). The Agreement between the United States on behalf of the Environmental Protection Agency, Department of Interior, and National Oceanic and Atmospheric Administration of the Department of Commerce, and Debtors Owens Corning and certain of its affiliates resolves CERCLA claims against the Debtors for the following forty hazardous waste sites, denominated as "Liquidated Sites" under the Agreement: the Amenia Town Landfill site in Amenia, New York; the Bayonne Barrel & Drum site in Newark, New Jersey; the Bessie Williams Landfill site in Copley, Ohio; the Bohaty Drum site in Medina, Ohio; the Bridgeport Rental and Oil Services (BROS) site in Logan Township, New Jersey; the Butterworth Landfill site in Grand Rapids, Michigan; the Caldwell Systems site in Caldwell County, North Carolina; the Casmalia Disposal site in Santa Barbara, California; the Chem-Dyne site in Hamilton, Ohio; the Conservation Chemical site in Gary, Indiana; the Distler Brickyard and Distler Farm sites in Hardin and Jefferson Counties, Kentucky; the Doepke-Holliday site in Johnson County, Kansas; the Double Eagle Refinery site in Oklahoma City, Oklahoma; the Erie Coatings and Chemicals, Inc. site in Erie, Michigan; the Fisher-Calo site in LaPorte County, Indiana; the French Limited, Inc. site near Crosby, Texas; the Great Lakes Container site in St. Louis, Missouri; the Gurley Pit site near Edmonson, Arkansas and the related South Eighth Street Landfill site near west Memphis, Arkansas; the Hayford Bridge Road site in St. Charles, Missouri; the Lipari Landfill site in Mantua Township, New Jersey; the Lowry Landfill site in Arapahoe County, Colorado; the Maxey Flats Disposal site in Hillsboro, Kentucky; the Memphis Container (Tri-State Drum) site in Memphis, Tennessee; the Mercer Drum site in Alexandria, Ohio; the Metro Container Drum site in Trainer, Pennsylvania; the Milt Adams/Approved Oil site in Denver, Colorado; the Operating Industries, Inc. Landfill site in Monterey Park, California; the Osage Metal Co. site in Kansas City, Kansas; Operable Unit 1 of the Peterson/Puritan, Inc. site in Lincoln and Cumberland, Rhode Island; the Petroleum Product site in Pembroke Park, Florida; the Rodale Manufacturing site in Emmaus, Pennsylvania; the Rouse Steel Drum site in Duvall, Florida; the Seymour Recycling Corp. site near Seymour, Indiana; the Sixty-Eighth Street dump in Baltimore County, Maryland; the Strausburg Landfill in Newlin Township, Pennsylvania; the Tremont City Landfill site (barrel disposal area) in German Township, Ohio; the Tulalip Landfill site near Marysville, Washington; the Western Processing Company, Inc. site in Kent, Washington; the Wheeling Disposal site in Amazonia, Missouri; and the Zellwood Drum site in Orange County, Florida.

Under the Agreement, in addition to amounts previously paid, the Debtors have agreed to allowed claims in the total amount of $1,749,206. The Agreement also contains provisions pertaining to the treatment of three other categories of sites: Debtor-Owned Sites, Work and Work Consent Decree Sites, and Additional Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Owens Corning*, D.J. Ref. 90–11–2–07347. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy

of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14099 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on May 23, 2003, a proposed consent decree in *United States* v. *R.E.P. Industries Inc. et al.*, Civil Action No. 03–CV–3255 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the R.E.P. Industries property at the North Penn Area Six Superfund Site ("Site"), which consists of a contaminated groundwater plume and a number of separate parcels of property within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against R.E.P. Industries Inc., Geraldine K. Penniman, and Richard E. Penniman ("Settling Defendants") in connection with the R.E.P. Industries property at the Site. Under the terms of the proposed consent decree, Settling Defendants will make a cash payment to the United States of $113,478.00 plus interest to address their liability for the Site and will receive a covenant not to sue by the United States with regard to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *R.E. Industries Inc., et al.*, D.J. Ref. 90–11–2–06024/14.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14097 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *San Diego Baykeeper* v. *United States Department of Defense*, 02–CV–0499 IEG (AJB) (S.D. Cal.), was lodged with the United States District Court for the Southern District of California on May 16, 2003. The parties' settlement addresses alleged violations of the Clean Water Act at Marine Corps Base Camp Pendleton.

The proposed Consent Decree would require the Marine Corps to implement plans to upgrade its wastewater treatment facilities at Camp Pendleton to comply with the discharge requirements contained in its NPDES permits, to enhance its monitoring and reporting under those permits, and to reduce sanitary sewer overflows at the Base.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Martha Mann, Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *San Diego Baykeeper* v. *United States Department of Defense*, 02–CV–0499 IEG (AJB) (S.D. Cal.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of California, 4290 Edward J. Schwartz Federal Building, 880 Front Street, San Diego, California, or at the following Web site: *http://www.usdoj.gov/enrd/open.html*.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 03–14098 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 22, 2003, a proposed Consent Decree (the "Decree") in *United States* v. *Todd Pacific Shipyards Corp.*, Civil Action No. CV03–1179–Z was lodged with the United States District Court for the Western District of Washington.

In this action the United States sought injunctive relief and recovery of costs in connection with cleanup of hazardous substances located in the vicinity of Harbor Island, in Seattle, Washington. The Decree provides that Todd Pacific Shipyards Corp. will perform cleanup work and pay past and future costs incurred by the United States in connection with the cleanup.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Todd Pacific Shipyards Corp.*, D.J. Ref. 90–11–2–970/1.

The Decree may be examined at the Office of the United States Attorney, 601 Union Street, Suite 5100, Seattle, WA 98101–3903, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $42.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14101 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day notice of information collection under review; Extension of currently approved collection; Local law enforcement block grants program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 4, 2003.

If you have additional comments, suggestions, or need a copy of the proposed information instrument with instructions or additional information, please contact Zephyr Fraser at 202–616–0416, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, and Tribal Governments. *Other:* None. Public Law 107–10 funds the Local Law Enforcement Block Grants Program. This program awards funds to local units of governments, states, and territories to reduce crime and improve public safety. Each eligible State and unit of local government electronically provides information to apply.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 3,274 respondents will apply, at approximately 10 responses each at 1 hour per response.

(6) *As estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 32,740 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: May 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14118 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Revision of a currently approved collection; 2003 survey of state and local law enforcement agencies.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 47, page 11582 on March 11, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* 2003 Survey of State and Local Law Enforcement Agencies.

(3) *The agency form number, if any, and the applicable components of the Department sponsoring the collection:* The form numbers will be updated from CJ–38L and CJ–38S to CJ–44L and CJ–44S, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* State, Local or Tribal. *Other:* None. This information collection is a sample survey of State and local law enforcement agencies. The information will provide statistics on agency personnel, budgets, equipment, and policies and procedures.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,065 respondents will complete a 2 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hours to complete the data collection is 6,130.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14120 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 28, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number); within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Personal Protective Equipment (PPE) for Shipyard Employment.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0215.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 665.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Update or Revise hazard Assessment and Equipment Selection:			
Firms with 1–10 employees	65	0.25	16
Firms with 11–20 employees	18	0.33	6
Firms with 21–99 employees	29	0.40	12
Firms with 100–499 employees	14	0.73	10
Firms with 500–999 employees	6	1.25	7
Firms with 1,000 + employees	2	1.50	3
Verification that Hazard Assessment has been Performed:			
Maintain certification record for currently trained employees	68,265	0.02	1,365
Generate and maintain training documentation for new or retrained employees	6,827	0.05	341
Disclose training records to OSHA	9	0.03	1
Totals	75,234		1,761

Description: The collections of information in the standard are necessary for implementation of the requirements of the Standards. The Standards specify several paperwork requirements. The following sections describe the information-collection requirements, and who will use the information.

(A) *Hazard Assessment and Equipment Selection (1915.152(b)).* Paragraph 1915.152(b) requires the employer to assess work activities to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. If such hazards are present, or likely to be present, the employer must: (1) Select the type of PPE that will protect the affected employee from the hazards identified in the occupational-hazard assessment; (2) communicate selection decisions to affected employees; (3) select PPE that properly fits each affected employee; and (4) verify that the required occupational hazard assessment has been performed through a document that contains the following information: Occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

(B) *Verification That Hazard Assessment Has Been Performed (1915.152(e)(4)).* Paragraph 1915.152(e)(4) requires that the employer verify that each affected employee has received the PPE training through a document that contains the following information: Name of each employee trained, the date(s) of training, and the type of training the employee received.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–14141 Filed 6–4–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Procedures for Recapture and Reobligation of Unexpended Program Year Grant Funds.

SUMMARY: the Employment and Training Administration interprets Federal law requirements pertaining to the 2000 Amendments to the Older Americans Act (OAA), Pub. L. 106–501, for the administration of the Senior Community Service Employment Program (SCSEP) authorized under Title V of the Act. These interpretations are issued in Older Worker Bulletins transmitted to SCSEP grantees. The Older Worker Bulletin described below is published in the **Federal Register** in order to inform the public.

Older Worker bulletin No. 03–04 advises SCSEP grantees of the procedures for the recapture and reobligation of unexpended Program Year SCSEP grant funds, as authorized under section 515(c) of the OAA. The recaptured funds will retain their original fiscal identity—*e.g.*, recaptured Program Year 2001 funds will still be considered as Program Year 2001 funds when reobligated.

The Employment and Training Administration is authorized to reobligate such funds within two succeeding Program Years to be used for incentive grants technical assistance or grants or contracts for any other SCSEP program. The operating instructions in Older Worker bulletin No. 03–04 are issued to SCSEP grantees as guidance provided by the Employment and Training Administration in its role as administrator of Title V of the OAA.

Pending the issuance of regulations implementing the provisions of the 2000 Amendments to the OAA, the procedures in Older Worker Bulletin No. 03–04 constitute the controlling guidance for SCSEP grantees relative to this section of the Amendments.

Signed at Washington, DC this 27 day of May, 2003.

Emity Stover DeRocco,

Assistant Secretary of Labor.

Attachment: Older Worker Bulletin No. 03–04.

BILLING CODE 5001–08–M

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W
Washington, D.C. 20210

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION
	CORRESPONDENCE SYMBOL TDNO
	DATE MAY 22 2003

ADVISORY : Older Worker Bulletin No. 03-04

TO : All Senior Community Service Employment Program Grantees

FROM :
John R. Beverly, III
Administrator
Office of National Programs

Ria Moore Benedict
Chief
Division of Older Worker Programs

SUBJECT: Procedures for Recapture and Reobligation of Unexpended Program Year Senior Community Service Employment Program (SCSEP) Grant Funds

1. **REFERENCES:** 2000 Amendments to the Older Americans Act (OAA), P.L. 106-501.

2. **BACKGROUND:** Under section 515(c) of the OAA, the Department has the authority to recapture unexpended funds from SCSEP recipients at the end of the Program Year (PY) and reobligate such funds within the two succeeding PYs to be used for incentive grants, technical assistance or grants or contracts for any other SCSEP program.

3. **PROCEDURES:** The SCSEP grant closeout process will be used to identify and recapture unexpended funds for use in subsequent SCSEP grant cycles. The Department currently intends to recapture PY 2001 funds for use in PY 2003. Such funds may be used to support activities as authorized under section 515(c).

4. **ACTION REQUIRED:** The grant closeout procedures identified under 20 CFR 641.414 of the current regulations will govern this process, beginning with the now-expired PY 2001 SCSEP grants. All PY 2001 recipients who have not yet submitted their closeout packages must do so as soon as possible, consistent with the closeout procedures required at 29 CFR 97.50 (for States) and 29 CFR 95.71 (for non-profits). Failure to timely submit closeout packages is one of the grounds for finding a grantee non-responsible. The final Financial Status Report (SF 269) should be simultaneously entered into the Sponsor Support System, so as to notify the Division of Older Workers Program staff of a closeout package submission at the same time as the Grant Officer's staff.

A Proud Member of America's Workforce Network

Upon receipt of all required closeout documents, the Department will notify the grantees of any financial discrepancies, and make appropriate adjustment to the available allotment. If there is a difference between payments received by the grantee from the Payment Management System (PMS) and costs incurred by the grantee, the grantee must refund to the Department the difference immediately upon completion of closeout documents. After Department/agency financial reconciliation, the PMS account will be closed accordingly. After the grant has been officially closed, later disallowances and adjustments, as authorized at 29 CFR 97.51 (for States) and 29 CFR 95.51 (for non-profits) may occur.

Grantee cooperation in expediting the completion and submittal of PY 2001 grant closeout packages is of critical import since recaptured PY 2001 funds will enable the Department to increase amounts for incentive grants, technical assistance or for other SCSEP programs.

5. **EFFECTIVE DATE:** Immediately.

6. **INQUIRIES:** Questions should be directed to your Federal Representative.

[FR Doc. 03–14142 Filed 6–4–03; 8:45 am]
BILLING CODE 5001–08–C

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee Representatives' Status and Compensation Reports.
(2) *Form(s) submitted:* DC–2a, DC–2.
(3) *OMB Number:* 3220–0014.
(4) *Expiration date of current OMB clearance:* 7/31/2003.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Business or other for-profit.
(7) *Estimated annual number of respondents:* 65.
(8) *Total annual responses:* 65.
(9) *Total annual reporting hours:* 33.
(10) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 03–14087 Filed 6–4–03; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26065]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 30, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 24, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Merrill Lynch Emerging Markets Debt Fund, Inc. [File No. 811–7794]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 24, 2003, applicant transferred its assets to Merrill Lynch World Income Fund, Inc., based on net asset value. Expenses of $240,457 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Dates: The application was filed on May 6, 2003, and amended on May 21, 2003.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Hyperion 2002 Term Trust, Inc. [File No. 811–7070]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 2, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $747,500 incurred in connection with the liquidation were paid by applicant. American Stock Transfer & Trust Company is holding assets for unlocated shareholders. Any unclaimed assets will eventually escheat to the various states.

Filing Date: The application was filed on May 8, 2003.

Applicant's Address: One Liberty Plaza, 165 Broadway, 36th Floor, New York, NY 10006–1404.

Bergstrom Capital Corporation [File No. 811–1641]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 11, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $125,618 incurred in connection with the liquidation were paid by applicant. Applicant has retained cash in the amount of approximately $383,805, which is being held in a deposit account at its custodian, to cover outstanding accrued liabilities. Applicants expect any assets remaining after payment of all outstanding obligations will be distributed to shareholders of record on June 6, 2003.

Filing Dates: The application was filed on April 8, 2003, and amended on May 7, 2003.

Applicant's Address: 221 First Ave. West, Suite 320, Seattle, WA 98119–4224.

CTB Securities Trust Fund [File No. 811–10091]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as an unregistered real estate investment trust in reliance on sections 3(c)(1), 3(c)(5), and/ or 3(c)(7) of the Act.

Filing Dates: The application was filed on March 14, 2003, and amended on May 8, 2003.

Applicant's Address: 22939 Hawthorne Boulevard, Torrance, CA 90505.

Kenilworth Fund, Inc. [File No. 811–7620]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 2002, applicant transferred its assets to AHA Diversified Equity Fund, based on net asset value. Expenses of $30,253 incurred in connection with the reorganization were paid by applicant and Institutional Portfolio Services, Ltd., applicant's investment adviser.

Filing Dates: The application was filed on February 28, 2003, and amended on May 9, 2003.

Applicant's Address: 21 S. Clark St., Suite 2594, Chicago, IL 60603.

Montgomery Partners Absolute Return Fund LLC [File No. 811–10595]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and has fewer than one hundred investors. Applicant will operate in reliance on section 3(c)(1) of the Act until its illiquid assets can be liquidated.

Filing Dates: The application was filed on March 28, 2003, and amended on April 29, 2003.

Applicant's Address: 101 California St., 34th Floor, San Francisco, CA 94111.

Merrill Lynch KECALP L.P. 1986 [File No. 811–4387]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 22, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $64,091 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on December 22, 2000, and amended on May 2, 2003.

Applicant's Address: 4 World Financial Center, 23rd Floor, New York, New York 10080.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14169 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47950]

Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3–2(f) Thereunder Extending a De Minimis Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

May 30, 2003.

Effective September 4, 2002, the Commission granted a nine-month *de minimis* exemption to the provisions of the Intermarket Trading System Plan ("ITS Plan"),[1] a national market system plan,[2] governing intermarket trade-throughs.[3] This order extends this *de minimis* exemption.

The ITS Plan system is an order routing network designed to facilitate intermarket trading in exchange-listed securities among participating SROs based on current quotation information emanating from their markets. Quotations in exchange-listed securities are collected and disseminated by the Consolidated Quote System ("CQS"), which is governed by a national market system plan that the Commission has approved pursuant to Rule 11Aa3–2 under the Act.[4] Under the ITS Plan, a member of a participating SRO may access the best bid or offer displayed in CQS by another Participant by sending an order (a "commitment to trade") through ITS to that Participant. Exchange members participate in ITS through facilities provided by their respective exchanges. NASD members participate in ITS through a facility of the Nasdaq Stock Market ("Nasdaq") known as the Computer Assisted Execution System ("CAES"). Market makers and electronic communications networks ("ECNs") that are members of the NASD and seek to display their quotes in exchange-listed securities through Nasdaq must register with the NASD as ITS/CAES Market Makers.[5]

The Commission's August 2002 order granted a *de minimis* exemption from compliance with Section 8(d)(i) of the ITS Plan with respect to three specific exchange-traded funds ("ETFs"), the Nasdaq-100 Index ETF ("QQQ"), the Dow Jones Industrial Average ETF ("DIA"), and the Standard & Poor's 500 Index ETF ("SPY").[6] Section 8(d)(i) of the ITS Plan provides that participants should not purchase or sell any security that trades on the ITS Plan system at a price that is worse than the price at which that security is otherwise being offered on the ITS Plan system.[7] By its terms, the Commission's order exempts from the trade-through provisions of the ITS Plan any transactions in the three ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the CQS for a period of nine months, which ends on June 4, 2003.

The three cent *de minimis* exemption allows ITS participants and their members to execute transactions, through automated execution or otherwise, without attempting to access the quotes of other participants when the expected price improvement would not be significant. In providing the three cent *de minimis* exemption, the Commission believed that, on balance, exempting the specified transactions from the ITS trade-through provisions would provide investors increased liquidity and expand the choice of execution venues, while limiting the possibility that investors would receive significantly inferior prices.

The Commission granted the three cent *de minimis* exemption on a temporary, nine-month basis, in order to gather the data necessary to study the effects of an exemption from the ITS trade-through provisions and the desirability of extending the exemption. The Commission is currently assessing trading data associated with the *de minimis* exemption, and over the next nine-months intends to consider whether to adopt the *de minimis* exemption on a permanent basis, to adopt some other alternative solution, or to allow the exemption to expire.

In view of the foregoing, the Commission believes that an extension of the *de minimis* exemption for an additional nine-month period is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. The Commission emphasizes, as it did in its August 2002 order, that the *de minimis* exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, *it is ordered*, pursuant to Section 11A of the Act and Rule 11Aa3–2(f) thereunder,[8] that participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in QQQs, DIAs, and SPYs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This Order extends the *de minimis* exemption from June 4, 2003 through March 4, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14113 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The self-regulatory organizations ("SROs") participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "participants"). *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[2] Securities Exchange Act of 1934 ("Act") Rule 11Aa3–2(d), 17 CFR 240.11Aa3–2(d), promulgated under Section 11A, 15 U.S.C. 78k–1, of the Act requires each self-regulatory organization ("SRO") to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 11Aa3–2(f), 17 CFR 240.11Aa3–2(f), under the Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member of an SRO, or specified security from the requirement of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

[3] *See generally* Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002).

[4] 17 CFR 240.11Aa3–2.

[5] *See* Securities Exchange Act Release No. 42536 (March 16, 2000), 65 FR 15401 (March 22, 2000). Market Makers and ECNs are required to provide their best-priced quotations and customer limit orders in certain exchange-listed and Nasdaq securities to an SRO for public display under Commission Rule 11Ac1–1 and Regulation ATS. 17 CFR 240.11Ac1–1 and 242.301(b)(3).

[6] The Commission limited the *de minimis* exemption to the three securities because they share certain characteristics that may make immediate execution of their shares highly desirable to certain investors. In particular, trading in the three ETFs is highly liquid and market participants may value an immediate execution at a displayed price more than the opportunity to obtain a slightly better price.

[7] Each ITS participant has adopted a trade-through rule substantially similar to the rule of the ITS Plan. *See* ITS Plan, Section 8(d)(ii); *See, e.g.*, NYSE Rule 15A, NASD Rule 5262.

[8] 17 CFR 240.11Aa3–2(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47948; File No. SR–CBOE–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Reinstate the Imposition of a Marketing Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to reinstate a marketing fee, which it previously had suspended effective October 1, 2001, to be imposed on certain transactions of market-makers, including Designated Primary Market Makers ("DPMs"), for the purpose of attracting order flow to the CBOE. The fee will be imposed at a rate of $.40 per contract on market-maker transactions, including those of DPMs, in all classes of options in which a DPM has been appointed. The marketing fee will be effective as of June 1, 2003. The text of the proposed rule change is available at the CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective August 1, 2001, the CBOE suspended its $.40 per contract marketing fee that was used by the appropriate DPM to attract order flow to the CBOE.[4] The CBOE previously had established its marketing fee effective as of July 1, 2000.[5] At the time the CBOE suspended the assessment of the marketing fee, it expressly noted that it reserved the right to reinstate the marketing fee at a future date if it deemed appropriate, and that it might establish a pre-contract fee different from the former $.40 per contract marketing fee. At the time the CBOE suspended its marketing fee, both the American Stock Exchange and the Philadelphia Stock Exchange also suspended their marketing fee programs. Two other options exchanges (the Pacific Exchange and the International Securities Exchange) continued to impose a marketing fee program for the purpose of attracting order flow to those exchanges. The Philadelphia Stock Exchange has since reinstated its marketing fee program. The CBOE believes that these programs operate to the competitive disadvantage of the CBOE.

The CBOE states that it has determined to reinstate its marketing fee program in a modified form, effective June 1, 2003. The fee will be imposed at a rate of $.40 per contract on market-maker transactions, including those of DPMs, in all classes of options in which a DPM has been appointed as described below. According to the CBOE, this program, like the CBOE's prior marketing fee program, provides for the equitable allocation of a reasonable fee among the CBOE members and is designed to enable the CBOE to compete with other markets in attracting options order flow in multiply traded options from firms that include payment as a factor in their order routing decisions in designated classes of options. However, the CBOE has slightly modified its marketing fee program with the goal of imposing the fee only with respect to those market-maker transactions involving customer orders from firms that accept payment for their orders. Accordingly, the marketing fee will be assessed only on market-maker transactions involving customers of firms that accept payment pursuant to agreements with DPMs.

The CBOE states that it will not have any role with respect to the negotiations between DPMs and payment accepting firms. Rather, the CBOE proposes to pass through to market-makers and DPMs the fee to be collected. In those classes for which a DPM has advised the CBOE that it has negotiated with a payment accepting firm to pay for that firm's order flow, the CBOE will provide administrative support for the program. Specifically, the CBOE asserts that it will keep track of the number of qualified orders each payment accepting firm directs to the CBOE, and make the necessary debits and credits to the accounts of the DPMs, market-makers, and the payment accepting firms to reflect the payments that are to be made. The CBOE represents that all of the funds generated by the fee will be used only to pay the firms for the order flow sent to the CBOE.

The CBOE believes that $.40 per contract is an equitable allocation of a reasonable fee among CBOE members. The CBOE states that it has designed this program to enable it to compete with other markets in attracting options order flow in multiply traded options. If a DPM advises the CBOE that it has negotiated a lower amount, the CBOE will refund to market-makers and DPMs the excess fee collected.

The CBOE states that the marketing fee will be assessed only on transactions of market-makers (including DPMs) resulting from orders for 200 contracts or less from customers of payment accepting firms. In the CBOE's view, because the marketing fee will be passed through only to those market-makers' transactions resulting from orders from customers of a payment accepting firm that the DPM has independently negotiated with to pay for that firm's order flow, there will be a direct and fair correlation between those members who pay the costs of the marketing program funded by the fee and those who receive the benefits of the program.

The CBOE represents that after the marketing fee has been in effect for three months, the members of a particular trading crowd may determine not to participate in this marketing fee program pursuant to the procedures that the CBOE is proposing in a new Interpretation .12 to CBOE Rule 8.7. These procedures are described in a separate proposed rule change, SR–CBOE–2003–20, that the CBOE has filed with the Commission.[6] The CBOE is proposing to institute these procedures as a pilot program, which is to expire one year after the Commission approval.

According to the CBOE, it is important to note that although market-maker transactions resulting from customer orders from firms that do not accept payment for their orders are not subject to the fee, CBOE market-makers will have no way of identifying prior to execution whether a particular order is from a payment-accepting firm, or from a firm that does not accept payment for their order flow.

In connection with any program involving payment for order flow that may be funded by the CBOE's proposed marketing fee, the CBOE will issue appropriate regulatory or educational circulars to its members that emphasize the disclosure and best execution obligations of members who may accept such payment.

2. Statutory Basis

The CBOE believes that because this marketing fee will serve to enhance the competitiveness of the CBOE and its members, this proposal is consistent with and furthers the objectives of the Act, including specifically section 6(b)(5) thereof,[7] which requires the rules of exchanges to be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and section 11A(a)(1) thereof,[8] which reflects the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers and among exchange markets. The CBOE also believes that the proposed rule change

[4] *See* Exchange Act Release No. 44717 (August 16, 2001), 66 FR 44655 (August 24, 2001), (SR–CBOE–2001–43).

[5] *See* Exchange Act Release No. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000), (SR–CBOE–00–28).

[6] Contemporaneous with the filing of this proposed rule change, CBOE filed SR–CBOE–2003–20, which sets forth the procedures by which a trading crowd may manifest its intention that it does not want to participate in the CBOE's marketing fee program. The CBOE has requested accelerated approval of this proposed rule change as a pilot program.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

is consistent with section 6(b) of the Act,[9] and furthers the objectives of section 6(b)(4) of the Act[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CBOE, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and subparagraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–19 and should be submitted by June 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14171 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(3)(a).

[12] 17 CFR 240.19b–4.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47941; File No. SR–CSE–2003–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, To Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

May 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change for a pilot period through December 1, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of the pilot that amends CSE Rule 12.6, Customer Priority, by adding new Interpretation .02, which requires a CSE Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.[3] Under the pilot rule, the Specialist is required to better a customer limit order at the national best bid or offer ("NBBO") by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is requesting an extension of the pilot, and the exemption letters associated therewith.[4] The proposed extension of the pilot requires no changes to the Initial Pilot rule text, which is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 12.6[5] by adding an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) ("Initial Pilot"); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) ("Pilot Extension"); and 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002) ("Second Extension").

[4] *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Initial Exemption Letter") in response to letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 27, 2001) ("Initial Exemption Request"); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, General Counsel, CSE (September 25, 2002) (amending and extending the Initial Exemption Letter) ("Amended Exemption Letter") in response to letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (September 18, 2002) ("Amended Exemption Request"); letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 27, 2002) ("Second Exemption Extension Letter") in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 20, 2002) ("Second Exemption Request").

[5] CSE Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for

Continued

interpretation to the rule covering the trading of securities in subpenny increments.[6] New Interpretation .02 to the Rule will require a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or by at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[7]

The purpose of the new Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[6] In conjunction with this proposed rule change, the CSE has requested that the Commission extend the relief provided by the Second Exemption Extension Letter pursuant to Rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (May 19, 2003) ("Third Exemption Request"). Concurrent with the instant accelerated approval, the Commission has granted the Third Exemption Request. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (May 29, 2003) (extending the Second Exemption Extension Letter) ("Third Exemption Extension Letter").

[7] Interpretation .01 to Rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange requests that this rule be approved on a pilot basis through December 1, 2003, to be co-extensive with the conditional temporary exemptive relief granted concurrently by the Commission in the Third Exemption Extension Letter.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2003–05 and should be submitted by June 26, 2003.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular section 6(b)(5) of the Act.[11] As discussed above, through the Third Exemption Extension Letter, the Division has extended the relief granted by the Second Exemption Extension Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and listed securities.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CSE–2003–05) is hereby approved on an accelerated basis for a pilot period through December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14170 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[10] In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47943; File No. SR–NASD–2003–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System

May 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 23, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Nasdaq under section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the rule immediately effective upon filing with the Commission. Nasdaq plans to begin assessing fees pursuant to the revised fee schedule beginning on June 1, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex").

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eleni Constantine, Office of General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 22, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made typographical corrections to the rule text originally submitted in the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 23, 2003, the date Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Nasdaq will make the new fees effective June 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

* * * * *

Rule 7010(r). Nasdaq Application of the Primex Auction System

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) [No change.]

(2) Monthly Access fees.

Software:

Workstation license or unique logon:	Per workstation logon:
Stations/logons 1	*No charge if firm uses a dedicated circuit*
Stations/logons 2–11	*$100*
Stations/logons 11 and above.	*$50*
[Stations/logons 1–10	$200
Stations/logons 11–25	$100
Stations/logons 26 and above.]	$50]

Proprietary interface license:	Per license:
API specification	$500
FIX (customized protocol)	$500

Network:

Dedicated line:	Per line:
256K	$1,781
64K with non-guaranteed 256K.	$1,564
burst capacity	
56K	$712
Installation/Unistall	$1,000 per Nasdaq Staff site visit

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the monthly access fee for workstation logons so that the first workstation per firm is free, workstations 2 to 11 are charged $100 and workstations 11 and up are charged $50.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were determined in 2000.[6] Nasdaq represents that since that time transaction prices in the overall market have decreased and, as a result, the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the workstation fee.

Customers choosing to connect to the Primex Auction System have several options including programming their own interface using Computer to Computer Interface (CTCI), Application Programming Interface (API) or FIX (a customized protocol), or using the Primex workstation available over a dedicated network.

Since Primex was launched in December 2001, the monthly charges for the Primex workstation logons have been as follows:

Workstation logons 1–10 (per firm)—$200

Workstation logons 11–25 (per firm)—$100

Workstation logons 26 and up—$50

Since the product launch, firms have complained that the workstation charges are too high and a disincentive for participation in the system. Primex's current transaction charge structure is based on the interaction of orders and Predefined Relative Indications (PRIs) residing in the system. Although there are currently 40,000 to 50,000 orders flowing through the system on a daily basis, PRI submission has remained limited. The workstation is a user-friendly and easy way to submit PRIs into the system, and Primex and Nasdaq staff believe that the proposed reduction in logon charges will encourage more use of the workstation and PRIs.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent

[6] *See* Securities Exchange Act Release No. 45285 (Jan. 15, 2002), 67 FR 3521 (Jan. 24, 2002) (SR–NASD–2001–93). In this filing, which established the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. Nasdaq began assessing fees on August 1, 2002 according to a revised fee schedule. Thus, fees were never charged under the original fee schedule. *See* Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002) (SR–NASD–2002–102).

with the provisions of section 15A of the Act,[7] in general and with section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable fees among members. The Nasdaq represents that the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. In addition, the Nasdaq represents that the workstation fees will be charged consistently to all members that choose that particular connection option.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder[10] because it establishes or changes a due, fee, or other charge for use of a Nasdaq system. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change, as amended, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–84 and should be submitted by June 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14112 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78*s*(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47938; File No. SR–Phlx–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Elimination of the Prospectus Delivery Requirement

May 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2003, the Philadelphia Stock Exchange LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to eliminate all references in its rules to "prospectus" in connection with options trading, due to the fact that standardized options issued by The Options Clearing Corporation (the "OCC") have become exempt from the Securities Act of 1933 ("Securities Act") (except for its antifraud provisions) and from the registration provisions of the Act[4].

Phlx Rule 1029(b) requires that every member and member organization deliver a current OCC Prospectus to each customer on request (the "Prospectus Delivery Requirement"). The Exchange is proposing to delete Phlx Rule 1029(b) and renumber current Phlx Rule 1029(c) as Phlx Rule 1029(b). A conforming change is being made to the title of Phlx Rule 1029 and to Commentary .03 to eliminate references to a prospectus.

Other Phlx rules refer tangentially to the Prospectus Delivery Requirement, such as Phlx Rules 213 and 454 (each of which refer to exchange-traded options "covered by a prospectus") and Commentary .05 to Phlx Rule 1024 (which makes reference to Phlx Rule 1029).[5] The Exchange is proposing to delete references to a prospectus in each of these rules. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate all references to a "prospectus" in connection with options trading on the Exchange due to the fact that standardized options issued by the OCC have become exempt from the Securities Act (except for its antifraud provisions)[6] and from the registration provisions of the Act.

On January 2, 2003, final Commission rules became effective regarding whether standardized options should be registered with the Commission under the Securities Act or the Act.[7] In this release, the Commission concluded that standardized options issued by registered clearing agencies, such as the OCC, and traded on a registered national securities exchange or a registered national securities association, shall be exempt from all provisions of the Securities Act (other than the anti-fraud provisions) and shall be exempt from the registration requirements of the Act.

Given this recent development, there is no longer a need for the delivery of OCC Prospectuses to options customers on request pursuant to Phlx Rule 1029(b). Other references to a "prospectus" in connection with options trading on the Exchange are no longer necessary. These changes do not affect the requirement that an Options Disclosure Document be delivered to customers of members and member organizations at the time such customer's account is approved to trade options.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(5) of the Act[10] in particular, in that it is designed to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934, Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

[5] Phlx Rule 784 refers to a prospectus in respect of "options." However, the Exchange represents that the rule is not applied to standardized options, so Phlx is not proposing to amend the language in Phlx Rule 784. Information about standardized options positions held by members and member organizations, that is also requested by Phlx Rule 784 in respect of options, is instead obtained by the Exchange pursuant to Phlx Rule 1003.

[6] On January 10, 2003, the OCC filed a post-effective amendment to its registration statement under the Securities Act to remove from registration all put and call options that remain unsold as of the date of the post-effective amendment.

[7] *See supra* note 4.

[8] *See* Phlx Rule 1029(a).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,[11] it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–22 and should be submitted by June 26, 2003.

[11] *See* e-mail from Mark Salvacion, Director and Counsel, Phlx, to Frank N. Genco, Attorney, Division of Market Regulation, Commission, dated April 30, 2003.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14172 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4379]

Culturally Significant Objects Imported for Exhibition Determinations: "Small Wonders: Dutch Still Lifes by Adriaen Coorte"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Small Wonders: Dutch Still Lifes by Adriaen Coorte," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about June 29, 2003, to on or about September 28, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 27, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–14183 Filed 6–4–03; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 106–398; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information including copies of the information collection proposed and supporting documentation should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee, 37402–2801; (423) 751–2523. Comments should be sent to the Agency Clearance Officer no later than August 4, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular Submission.

Title of Information Collection: Macro Opinion Benchmark.

Frequency of Use: On occasion.

Small Businesses or Organizations Affected: Yes.

Estimated Number of Annual Responses: 3000.

Estimated Total Annual Burden Hours: 550.

Estimated Annual Burden Hours Per Response: 11 minutes.

Need For and Use of Information: TVA is committed to strengthening relationships with its stakeholders. One way the TVA will accomplish this is by using the proposed public opinion research to understand, measure and manage positive and negative perceptions that stakeholders hold about TVA. This will enable TVA to develop and implement actions that will help TVA achieve excellence in stakeholder relations and communications processes for Valley residents.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–14132 Filed 6–4–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Murray Air, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–5–36) Dockets OST–03–14320 and OST–03–14321.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Murray Air, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than June 18, 2003.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–03–14320 and OST–03–14321 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: May 30, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–14166 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135/ EUROCAE Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135/EUROCAE Working Group 14 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135/Eurocae Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held June 18–20, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at Embry-Riddle University, Haas Commons—Bldg. #73, Prescott, AZ.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org,* (2) Jim Lyle at Embry Riddle; telephone (520) 708–3833; e-mail *lyallj@erau.edu.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- June 18–20:
  - Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting)
  - Review Table of Changes
  - Determine if Sub-Group Breakout Meetings are required
  - Review Drafts of all Changed Sections
  - Review Schedule for DO–160E, Environmental Conditions and Test Procedures for Airborne Equipment.
  - Closing Plenary Session (Debrief of Subgroup Meetings, New/ Unfinished Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 28, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–14163 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held June 23–27, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at the Honeywell Learning Center, 14980 NE 31st Circle, Redmond, WA 98052

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Honeywell Contact, Christophe Hamel; telephone 536–886–8336; fax 602–436–5575; e-mail *christophe.hamel@Honeywell.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting. The agenda will include:

- June 23:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report
- June 24–26:
  - Sub-group Meetings
  - Review and resolve comments on PU–26 V3.0, Safety and Performance Requirements Standard for Initial Air Traffic Data Link Services in Continental Airspace (SPR IC)
  - Continue work on Safety and Performance Requirements Standard for Initial Air Traffic Data Link Services in Oceanic Airspace (SPR IO)
  - Continue Interoperability Work
- June 27:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 28, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–14164 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed 1st Street Bridge Widening and Road Realignment project in the city and county of Los Angeles, California in accordance with the National Environmental Policy Act of 1969 (NEPA).

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, 980 Ninth St., Suite 400, Sacramento, CA, Telephone: (916) 498–5860.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Caltrans, will prepare an EIS on a proposal to widen the 1st Street Bridge and realign 1st Street in the city and county of Los Angeles, California. The proposed improvements would involve construction over the Los Angeles River between Vignes Street and Clarence Street for a distance of approximately 1.25 miles (1.6 kilometers).

The study will determine the type of facility required to meet the transportation needs of this traffic corridor. Existing and proposed industrial, commercial and residential development along the 1st Street corridor is expected to induce traffic demand in excess of the capacity of the existing east-west transportation corridor. The proposed EIS will discuss the sufficiency rating of the bridge in terms of its functional serviceability and the realignment 1st Street to accommodate construction of the Metropolitan Transportation Authority (MTA) Los Angeles Eastside Corridor Light Rail Transit (LRT) line in the median, while maintaining the existing four traffic lanes and adding shoulders on the bridge. Also included in the proposal is the realignment and lowering of local streets at Santa Fe Avenue and Myers Street meet vertical and horizontal clearance requirements. Alternatives under consideration include (1) no-build; (20 widen bridge on the north side; and (3) construct a separate structure on the north side of existing bridge.

The public information program and project development team meetings will continue throughout the design and environmental process. There will be ongoing project development team meetings that involve concerned parties such as the city of Los Angeles and the Metropolitan Transportation Agency (MTA). The draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternatives and impacts of the proposed action. Public notice will given for the time and place of the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant concerns are identified, comments and are invited from all interested parties. Comments or questions about this proposed action and the EIS should be directed to FHWA at the address indicated herein.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued: May 30, 2003.

Cesar E. Perez,

Senior Transportation Engineer.

[FR Doc. 03–14137 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Nicollet, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 14 from State Highway 15, just east of New Ulm, to County Road 6 near North

Mankato, a distance of approximately 22 miles, in Nicollet County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Mark Scheidel, Project Manager, Minnesota Department of Transportation—District 7, 501 South Victory Drive, PO Box 4039, Mankato, Minnesota 56002–4039, Telephone (507) 389–6149; (800) 627–3529 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS on a proposal to reconstruct TH 14 from State Highway 15, just east of New Ulm, to County Road 6 near North Mankato, a distance of approximately 22 miles, in Nicollet County, Minnesota. The proposed action is being considered to address future transportation demand, safety problems, and geometric design issues. The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build and (2) variations of four-lane urban design and four-lane rural design "Build" alternatives involving reconstruction and capacity expansion of TH 14 along the existing highway corridor, including individual or combined bypass alignments north of Courtland and south of Nicollet.

The "Trunk Highway 14 West Interregional Corridor North Mankato to New Ulm Scoping Document/Draft Scoping Decision Document" was published in March 2003. A press release was published to inform the public of the document's availability. Copies of the scoping document were distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document was provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting was also held during the comment period. Public notice was given for the time and place of the meeting. The scoping comment period closed on May 2, 2003. At the time of publication of the scoping document, there was uncertainty as to the immediate completion of an EIS for this project due to a lack of funding. However, funding has been identified and, therefore, a Draft EIS will be prepared based on the outcome of and closely following the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 27, 2003.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 03–14187 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15154; Notice 1]

General Motors North America, Receipt of Application for a Decision of Inconsequential Noncompliance

General Motors North America (GM), has determined that certain 2003 model year Silverado/Sierra pickup trucks, Tahoe/Suburban/Escalade sport utility vehicles, and Savanna/Express vans do not comply with either S5.3.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 105, or S5.5.3 of FMVSS No. 135, whichever standard is applicable based on gross vehicle weight rating.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

A total of approximately 251,000 vehicles are involved. Specifically, the red "BRAKE" telltale, if illuminated, will be extinguished for the duration of an Antilock Brake System (ABS) activation event that involves the front wheels. Stated briefly, the "BRAKE" telltale will not be illuminated while ABS is modulating the front brakes.

GM considers the momentary deactivation of the "BRAKE" telltale while ABS is cycling to be inconsequential to motor vehicle safety for the following reasons:

The owner's manual of the noncompliant vehicles includes the following text regarding the "BRAKE" telltale:

> If the light comes on while you are driving, pull off the road and stop carefully. You may notice that the pedal is harder to push. Or, the pedal may go closer to the floor. It may take longer to stop. If the light is still on, have the vehicle towed for service.

The instructions and caution are intended to prompt drivers to take immediate corrective action when the "BRAKE" telltale is illuminated, thereby minimizing any likelihood that the vehicle will experience ABS cycling subsequent to initial illumination of the telltale.

S5.3.4 of FMVSS 105 allows the subject "BRAKE" telltale to be "steady burning or flashing." The corresponding language in S5.5.4 of FMVSS 135 is "continuous or flashing". This explicit regulatory allowance for flashing demonstrates that momentary absence of telltale illumination is not per se a safety issue.

The "BRAKE" and "ABS" telltales on the subject vehicles otherwise comply with all applicable provisions of S5.3 of FMVSS 105 and S5.5 of FMVSS 135. The noncompliance is limited in scope to the single word "whenever" in S5.3.3(a) of FMVSS 105 or S5.5.3 of FMVSS 135. GM is not aware of any crashes, injuries, owner complaints or field reports related to this condition.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto the Dockets Management System Web site at <*http://dms.dot.gov*>. Click on "Help" to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 7, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 2, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14220 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4957]

Pipeline Safety: Revision of Natural Gas Distribution Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments on revision of Information Collection OMB 2137–0522.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA's Office of Pipeline Safety (OPS) is publishing its intention to revise forms RSPA F 7100.1, Incident Report For Gas Distribution Systems, and RSPA F 7100.1–1, Annual Report For Gas Distribution Systems, and the Instructions for those forms. The purpose of this notice is to request public comment on the proposed changes in the forms and on the information collection burden.

DATES: Comments on this notice must be received on or before August 4, 2003.

ADDRESSES: You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. Comments should identify the docket number of this notice, RSPA–98–4957. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard.

You may also submit or review comments electronically by accessing the Docket Management System's home page at *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

The forms are available for review in Docket No. RSPA–98–4957.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by mail at DOT, RSPA, OPS 400 Seventh Street, SW., Room 7128, Washington, DC, 20590, or by e-mail at *roger.little@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: RSPA/OPS collects information on distribution pipeline incidents as part of its efforts to minimize natural gas distribution pipeline failures. The revised forms request additional information concerning the characteristics of an operator's pipeline system. This information is needed to "normalize" incident information for safety trend analysis. The process of making elements of data comparable for comparison purposes (as in finding a common denominator, for example) is known as "normalizing" the data. The requirements for reporting incidents are found in 49 CFR part 191. The regulations require submission of the natural gas distribution annual report form by March 15 of each year for the preceding year's operations. Reports on distribution incidents must be submitted to RSPA/OPS in writing within 30 days of the incident's occurrence.

Natural gas distribution incident and annual reports are important tools for identifying safety trends in the gas pipeline industry. The National Transportation Safety Board (NTSB), DOT's Office of the Inspector General and General Accounting Office have urged RSPA/OPS to revise the information collected on the natural gas distribution pipeline incident and annual report forms.

NTSB Safety Recommendation P–96–1 urges RSPA/OPS to:

> * * * develop within 1 year and implement within 2 years a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide the Research and Special Programs Administration with the capability to perform methodologically sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

RSPA/OPS worked with representatives of the American Gas Association (AGA) to revise the natural gas distribution incident and annual report forms to make the information collected more useful to industry, government, and the public. RSPA/OPS also received suggestions for improvements from the National Association of Pipeline Safety Representatives, which represents state pipeline safety offices. State pipeline safety offices conduct safety inspections of natural gas distribution operators' records and facilities. They rely on report information for safety trending and inspection targeting.

The improvements to the natural gas distribution incident and annual report forms are necessary to address deficiencies in the current information collection. The form features more incident cause categories, impacts, failure mechanisms, locations, and other details about natural gas pipeline distribution incidents. The information derived from use of the form will make pipeline safety statistics more useful and more meaningful.

The proposed natural gas distribution operator annual report asks for pipeline mileage by decade installed. From 1970 through 1984, RSPA/OPS had a category for mileage by decade installed on the natural gas distribution operator annual report but the category was removed after the passage of the Paperwork Reduction Act.

Proposed Revision to Information Collection

Abstract: The forms to be revised are two of the four gas pipeline reporting forms authorized by Information Collection OMB 2137–0522, "Incident and Annual Reports for Gas Operators." The proposed revisions represent the

final phase of an ongoing process to revise all incident and annual reports. RSPA/OPS revised the natural gas transmission operator incident and annual report forms in 2001 for collection beginning in 2002.

The revisions proposed by this notice align cause categories for natural gas distribution incident reports with cause categories for natural gas transmission incident reports and hazardous liquid accident reports. The American Society of Mechanical Engineers (ASME) B31.4 committee, a hazardous liquid pipeline data group, has conducted annual studies of RSPA/OPS incident reports since the forms were last revised in 1984. The committee developed the cause categories for hazardous liquid pipeline accidents. RSPA/OPS has adopted the 22 categories for both hazardous liquid and natural gas transmission reports and added three other categories. RSPA/OPS proposes to adopt the ASME B31.4 committee's cause categories for all of the RSPA/OPS pipeline incident and accident report forms. The proposed revisions address the recommendations to improve pipeline safety information collection made by the NTSB, DOT's Office of Inspector General and General Accounting Office, and others.

RSPA/OPS needs this information for safety analysis and believes that the benefits of having the information outweigh the burden. For this reason, RSPA/OPS recently added the "mileage by decade" category to the natural gas transmission annual report (66 FR 23316; May 8, 2001.) On July 26, 2002, RSPA/OPS proposed to require hazardous liquid pipeline operators to submit "mileage by decade installed" information on a new hazardous liquid annual report (67 FR 48844; July 26, 2002.) Hazardous liquid pipeline operators were not previously required to submit annual reports. The collection of information on pipeline age addresses a widely acknowledged gap in pipeline safety information.

Title: Proposed Revisions to the Natural Gas Distribution Incident Report (RSPA F 7100.1) and the Annual Report For Gas Distribution Systems (RSPA F 7100.1–1).

OMB Number: 2137–0522.

Respondents: Gas distribution pipeline operators.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden on Respondents: 15,120 hours.

The average number of burden hours per response is approximately 6 hours for the revised distribution incident report (approximately 75 fields × 5 minutes per field = approximately 6 hours per incident form) and 12 hours for the revised distribution annual report (approximately 150 fields × 5 minutes per field = approximately 12 hours per annual report form).

Estimated Number of Responses per Respondent per Year (average over the last ten years): Incident Reports: 0.08 (120 per year per 1,200 operators = .1); Annual Reports: 1.0.

The average number of burden hours per response is approximately 6 hours for the revised natural gas distribution system incident report form and 12 hours for the revised natural gas distribution system annual report form. For all 1,200 gas distribution pipeline operators the burden estimate is 720 hours (6 hours × 1,200 operators × 0.1 incidents) for incidents and 14,400 hours (12 hours × 1,200 operators × 1 annual report) for annual reports, for a total burden of 15,120 hours per annum.

(Authority: 49 U.S.C. 5103(b), 60102, 60104, 60117)

Issued in Washington, DC on May 30, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–14159 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 6 Taxpayer Advocacy Panel (including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, June 16, 2003 from 2 p.m. PDT to 4 p.m. PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 29, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14208 Filed 6–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, July 7, 2003 from 8 am PDT to 9 am PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 29, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14207 Filed 6–4–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
June 5, 2003

Part II

Environmental Protection Agency

40 CFR Part 51

Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7504–4]

Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to revise EPA's regional haze rule to incorporate certain provisions for Western States and eligible Indian Tribes.

The Western Regional Air Partnership (WRAP) submitted an Annex to the 1996 report of the Grand Canyon Visibility Transport Commission (GCVTC) to EPA on September 29, 2000. This submittal was required under the regional haze rule in order for nine Western States (and Indian Tribes within the same geographic region) to have the option of submitting plans implementing the GCVTC recommendations. The Annex contains recommendations for implementing the regional haze rule in nine Western States, including a set of recommended regional emissions milestones. The milestones address, for the time period between 2003 and 2018, emissions of sulfur dioxide (SO_2), a key precursor to the formation of fine particles and regional haze.

DATES: The regulatory amendments announced herein take effect on August 4, 2003.

ADDRESSES: The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919–541–4718), Environmental Protection Agency, Air Quality Strategies and Standards Division, C504–02, Research Triangle Park, NC 27711 or Thomas Webb (telephone 415–947–4139), EPA Region 9 (AIR–5), 75 Hawthorne Street, San Francisco, CA 94105. Internet addresses: *smith.tim@epa.gov* and *webb.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
- A. Regulated Entities
- B. How can I get copies of this document and other related information?

II. Overview of the Stationary Source SO_2 Reduction Program Covered by this Rule
- A. What is the regional haze rule?
- B. What are the special provisions for Western States and eligible Indian Tribes in 40 CFR 51.309 of the regional haze rule?
- C. What was required to be included in the Annex to the GCVTC report?
- D. What are the next steps in implementing this program?
- E. What topics were covered in EPA's May 6, 2002 proposal?
- F. What public comments were received on the proposal?
- G. What topics are covered in this preamble?

III. Discussion of Issues Raised in Comments on the May 6, 2002 Proposal
- A. General and Overarching Issues
- B. Milestones
- C. Annual Process for Determining Whether a Trading Program is Triggered
- D. Requirements for the Backstop Trading Program
- E. Provisions Related to Time Period After 2018
- F. Provisions Related to Indian Tribes

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are nine States in the Western United States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming) and Indian Tribes within that same geographic area. This action, and an earlier action taken by EPA in 1999, provides these States and Tribes with an optional program to protect visibility in Federally protected scenic areas. The portion of the program addressed by today's action is a program for stationary sources of SO_2, involving a set of regional annual emissions milestones for the years between 2003 and 2018 that would apply to the total SO_2 emissions from all stationary sources emitting more than 100 tons of SO_2 per year. Examples of potentially affected sources currently emitting at this level are listed in the following table.

Examples of Regulated Entities

Coal-fired power plants
Industrial boilers
Petroleum refineries
Natural gas processing facilities with sulfur recovery plants
Cement kilns
Paper mills

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

II. Overview of the Stationary Source SO_2 Reduction Program Covered by This Rule

The purpose of this rule is to revise 40 CFR 51.309 of the regional haze rule to incorporate additional provisions to address visibility impairment in 16 Class I areas on the Colorado Plateau.

A. What Is the Regional Haze Rule?

Section 169A of the CAA establishes a national goal for protecting visibility in Federally-protected scenic areas. These "Class I" areas include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutants emitted by numerous sources across a broad region. The EPA uses the term regional haze to distinguish this type of visibility problem from those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans that will make "reasonable progress" toward the national visibility goal, (64 FR 35714, July 1, 1999). The first State plans for regional haze are due between 2003 and 2008. The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the GCVTC during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility in the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of Western States to implementing the GCVTC recommendations. The WGA's comments also suggested the translation of the GCVTC's recommendations into specific regulatory language. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA proposal and regulatory language based upon the WGA's recommendations. Based on the comments received on this **Federal Register** notice, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible Tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003,[2] when the implementation plans are due, and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

One element of the GCVTC's strategy to address regional haze is a program to reduce stationary source emissions of SO_2. This program calls for setting a series of declining caps on emissions of SO_2. These declining caps on emissions are referred to as emissions milestones and provide for a reduction in SO_2 emissions over time. In designing this program, the GCVTC intended for these milestones to be reduced through voluntary measures, but also included provisions for an enforceable market-based program that would serve as a "backstop" if voluntary measures did not succeed. At the time the regional haze rule was published, however, it was broadly recognized that the specific emission milestones, and the details of how both the voluntary and enforceable phases of the program would be implemented, were necessary elements of a regulatory program. Accordingly, the regional haze rule, in 40 CFR 51.309(f), required the development of an "Annex" to the report of the GCVTC that would fill in these details. The regional haze rule provided that the option afforded by 40 CFR 51.309 would only be available if an Annex, addressing the specific requirements of 40 CFR 51.309(f), were submitted to EPA by October 1, 2000. The EPA required the submission of an Annex by this date to ensure that EPA would be able to act on it before the December 31, 2003 deadline for SIPs under 40 CFR 51.309(c).

C. What Was Required To Be Included in the Annex to the GCVTC Report?

The regional haze rule required the GCVTC (or a regional planning body formed to implement the Commission recommendations, such as the Western Regional Air Partnership (WRAP) to provide recommendations to fill in the details for two main aspects of the program:

—Emissions reductions milestones for stationary source SO_2 emissions for the years 2003, 2008, 2013, and 2018. The milestones must provide for "steady and continuing emissions reductions" for the 2003–2018 time period. In addition, the milestones must ensure greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to §51.308(e)(2).

—Documentation setting forth the details for how a market trading program would be implemented in the event that voluntary measures are not sufficient to meet the required milestones. This documentation must include model rules, memoranda of understanding, and other documentation describing in detail how emissions reductions progress will be monitored, what conditions will result in the activation of the market trading program, how allocations will be performed, and how the program will operate.

The EPA received the Annex from the WRAP in a timely manner, on September 29, 2000. The EPA recognizes the significant amount of work that was devoted to developing the Annex and we commend the WRAP participants for their efforts. Under 40 CFR 51.309(f)(3), if EPA finds that the Annex meets the requirements of the regional haze rule, EPA committed to revise the regional haze rule based on the Annex to incorporate provisions requiring compliance with the milestones and backstop trading program. Along with the existing elements of 40 CFR 51.309, these new

[1] *Recommendations for Improving Western Vistas.* GCVTC, June 10, 1996.

[2] Indian Tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

provisions would also be addressed in the 2003 SIPs by the 9 Western States.

D. What Are the Next Steps in Implementing This Program?

Today's rule modifies the requirements in 40 CFR 51.309 of the regional haze rule. As a result, 40 CFR 51.309 provides a complete regulatory framework to be used by Western States and Tribes in developing regional haze implementation plans. The EPA will continue to work closely with the States and Tribes to support their efforts to develop plans that meet the applicable requirements of the regional haze rule. Once State and tribal plans that meet the applicable requirements of the regional haze rule are reviewed and approved by EPA, they will be federally enforceable.

E. What Topics Were Covered in EPA's May 6, 2002 Proposal?

The May 6, 2002 proposal addressed the following topics:

- The proposed regional SO_2 milestones and WRAP's determination that the milestones meet the criteria for approval in the regional haze rule. The EPA reviewed the WRAP's methodology for developing specific milestones for SO_2 for the years between 2003 and 2018. The EPA proposed to approve the milestones as satisfying the requirements of the regional haze rule. The EPA noted its conclusion that the milestones provide for "steady and continuing emissions reductions." The EPA also proposed to conclude that the milestones provide for "greater reasonable progress" than the BART emission limits that would otherwise be required by the regional haze rule.
- Ways in which the milestones may be adjusted in the future. The proposal discusses the limited circumstances under which the milestones may be adjusted in the future and the proposed administrative process for making those changes.
- The stationary sources of SO_2 that are included in the program. The proposal discussed the stationary sources of SO_2 that would be required to participate in the program, and whose cumulative emissions would be compared to the milestones.
- The annual process for determining whether a milestone is exceeded, thereby triggering the trading program. The proposal described the steps to be followed in evaluating emissions data at the State, tribal and regional levels. It also described a mechanism by which States and Tribes can activate the trading program in 2013 if evidence indicates that the 2018 milestone will not be reached without such action.
- Key trading program elements that are required in SIPs and tribal implementation plans (TIPs). The preamble discussed proposed requirements regarding the backstop trading program, and discussed trading program elements such as: Issuance of and compliance with allowances; emissions quantification protocols and tracking system; the annual reconciliation process; and penalty provisions.
- Status of the program after 2018. The proposal discussed EPA's understanding of what happens to the milestones and backstop trading program at the completion of the first implementation period, in 2018.

The preamble to the May 6, 2002 proposal described each of these programmatic areas in detail, including EPA's review of the relevant portion of the WRAP submittal.

F. What Public Comments Were Received on the Proposal?

On May 6, 2002 (67 FR 30418), the proposed rule was published in the **Federal Register**. The EPA requested written comments on the proposal and held a public hearing. The public hearing was held in Phoenix, Arizona on June 4, 2002. A transcript for this public hearing is available in the public docket for the regulation (Docket OAR–2002–0076). The EPA received eleven written comments on the package, primarily from Western stakeholder groups.

G. What Topics Are Covered in This Preamble?

The EPA has made a number of changes to the proposed rule in response to the comments we received. The comments on the proposal were limited to a relatively small subset of the broad range of topics discussed in detail in the proposal. Accordingly, EPA believes that it is not necessary to repeat the comprehensive discussion contained in the preamble to the proposal. Instead, EPA has limited the discussion in this preamble to issues raised by commenters, and changes made to the final rule based on those issues.

III. Discussion of Issues Raised in Comments on the May 6, 2002 Proposal

A. General and Overarching Issues

1. Impact of May 24, 2002 American Corn Growers Decision

On May 24, 2002, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *American Corn Growers et al.* v. *EPA*, 291 F.3d 1 (D.C. Cir., 2002) that invalidated part of EPA's regional haze rule. Because the WRAP Annex would be incorporated into the regional haze rule, a number of commenters asked whether the court's decision would have an impact on this rulemaking regarding the Annex. Some commenters recommended that EPA not proceed with the final rule until EPA has addressed the issues raised by the court regarding the regional haze rule in general. In contrast, a number of commenters agreed with the position that EPA took in a June 7 letter[3] that the Annex is fully consistent with the court's ruling. A number of commenters requested that EPA clarify its position and rationale on this issue. The EPA continues to believe that the decision in *American Corn Growers* does not in any way affect the WRAP Annex or EPA's ability to incorporate the Annex into its regional haze rule.

In order to better understand EPA's conclusion regarding the Annex, EPA believes it is helpful to review the history of the GCVTC and the WRAP. In its 1996 report to EPA, the GCVTC recommended a wide range of control strategies to address regional haze, including strategies to reduce emissions of SO_2 from large stationary sources. Thus, the GCVTC specifically recognized that stationary sources would need to be an important part of an overall visibility strategy and, in particular, that controlling sulfates from these sources was a key strategy for addressing haze. As part of this overall strategy, the GCVTC also concluded that interim targets that provided for "steady and continuing emission reductions" over the entirety of the planning period might also be needed.

In 1997, EPA proposed the regional haze rule, and in 1998, the WGA submitted comments to EPA requesting the addition of specific language to the rule to address the recommendations of the GCVTC. In these comments, the WGA reemphasized the commitment of the Western governors to the GCVTC recommendations. Following public notice and an opportunity to comment on the WGA's proposal, EPA issued the final regional haze rule (64 FR 35714, July 1, 1999). In 40 CFR 51.309 of the rule, EPA established a specific set of SIP requirements for the States and Tribes that participated in the GCVTC. As EPA noted in the preamble to the rule, these requirements acknowledged and gave effect to the substantial body of work already completed by the GCVTC and the WRAP.

[3] June 7, 2002 letter from Lydia Wegman, EPA, to Rick Sprott and Julie Simpson, co-chairs, WRAP Initiatives Oversight Committee.

One of the requirements in 40 CFR 51.309 addressed the GCVTC's recommendation that the States establish a cap on regional emissions of SO_2 from stationary sources. Under 40 CFR 51.309(f) of the regional haze rule, the WRAP was required to submit an annex to the GCVTC Report that would contain specific emission reduction milestones for the years 2003, 2008, 2013, and 2018. This provision explicitly references the recommendations of the GCVTC for "steady and continuing emissions reductions * * * consistent with the Commission's definition of reasonable progress" and its goal of 50 to 70 percent reduction in emissions of SO_2 between 1990 and 2040. In the preamble to the final regional haze rule, EPA explained that the WRAP would have to take into account four specific factors in setting these milestones. The preamble specifically noted that "[t]he first factor affecting the selection of interim milestones is the GCVTC's definition of reasonable progress." (64 FR 35756). The other factors listed in the rule are: (1) The ultimate target in 2040 of a 50 to 70 percent reduction in emissions of SO_2 from stationary sources; (2) the requirement that the emissions cap provide for greater progress than would be achieved through source-specific BART requirements; and (3) the timing of progress assessment and the identification of mechanisms to address the cases where emissions exceed milestones.

In the regional haze rule, EPA concluded that the specific SIP requirements in 40 CFR 51.309 provide for reasonable progress toward the national visibility goal. The WRAP's plan for capping SO_2 emissions from stationary sources is a part of the Western States' and Tribes' long-term strategy for achieving reasonable progress. As described above, the SO_2 program grew out of the GCVTC's recommendations for measures to remedy adverse impacts on visibility.

Some commenters expressed concerns that the WRAP's program for controlling SO_2 emissions in the West, as further defined by the Annex to the GCVTC's Report, is a "BART provision" subject to the *American Corn Growers* court remand. For several reasons, EPA believes that this is not the case.

Under the CAA, the BART provisions require the installation of control technology on specific sources that were built between 1962 and 1977. Nothing in the Annex requires specific controls on any individual source. A key component of the Annex's SO_2 program is the goal that all reductions called for by the program remain voluntary. If the reductions are achieved through voluntary measures, then there will be no requirements of any kind. Even if the SO_2 milestones are not achieved through voluntary actions, the Annex does not provide for source-specific controls. Rather, the failure to achieve these milestones would trigger a "backstop" emissions trading program. Such a program, by its very nature, does not dictate that any particular source install control technology or otherwise reduce its emissions.

The EPA also notes that the Annex covers all stationary sources that emit more than 100 tons per year of SO_2—not just sources built between 1962 and 1977—and thus goes well beyond the scope of the statutory BART provisions. For this reason (and others noted above), EPA believes that the SO_2 program is a component of the WRAP's strategy for ensuring reasonable progress, an aspect of the regional haze program that was not addressed by the *American Corn Growers* decision.

The EPA approved the WRAP's long-term strategy for addressing visibility consistent with the broad discretion afforded States by section 169A and title I of the CAA in developing strategies to meet reasonable progress goals and national standards. *See Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976); *Train* v. *NRDC*, 421 U.S. 60 (1975). The SO_2 program, which caps emissions of SO_2 from all large stationary sources, reflects the WRAP States' and Tribes' judgement as to one appropriate means for addressing haze and ensuring reasonable progress. The decision to limit emissions from this category of sources is well within the discretion of the States and Tribes. The court's decision in *American Corn Growers*, which addresses only the BART provisions, does not in any way limit the general authority of the States to choose appropriate control measures to ensure reasonable progress. Any suggestion that the decision requires States to undertake a source specific analysis of a source's contribution to the problem of regional haze before the State can subject a source to regulation would go far beyond the actual holding in the case.

As discussed above, 40 CFR 51.309 does not require participating States to assess and impose BART on individual sources. Best available retrofit technology is only relevant as one of four factors that the WRAP must consider in establishing the appropriate emission reduction milestones for SO_2—*i.e.*, the level of the cap. The regional haze rule requires that the milestones in the Annex to the GCVTC Report "must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2)." 40 CFR 51.309(f)(1)(i). This is not a requirement for BART. The requirement that the milestones "provide for greater reasonable progress" than BART is based on the decision by EPA to provide States with the flexibility to adopt alternative measures in lieu of the BART requirements set forth in statute so long as these alternative measures were "better than BART." *See* 40 CFR 51.308(e)(2). In short, the SO_2 program described in the regional haze rule, as further defined by the Annex, does not impose controls on specific sources but rather ensures that greater reasonable progress is made than would be through installation of source specific controls on the BART sources. The regional haze rule accordingly authorizes States to achieve improvements in visibility through the most cost-effective measures available.

The *American Corn Growers* court decision did not address the provisions in the regional haze rule allowing States to adopt a trading program or other alternative measures in place of source specific control measures for BART sources. The EPA finds nothing in the court's decision that would invalidate the trading program alternative to BART, as provided for in 40 CFR 51.308(e)(2). In the preamble to the regional haze rule, EPA sets forth the basis for its decision to allow States this flexibility and describes the process for States to make a showing that the alternative measures provide for greater reasonable progress. Significantly, nothing in the D.C. Circuit's opinion suggests that such an alternative is in conflict with the requirements of the visibility provisions of the CAA. An approach that allows States to adopt alternative measures in lieu of BART fully comports with the court's view of the States' broad authority in this area. Accordingly, the Annex meets the requirements set out in 40 CFR 51.309(f), and EPA believes that it may approve the proposed revisions to the regional haze rule incorporating the emission reduction milestones and other measures set forth in the Annex.

2. Whether the December 31, 2003 SIP Deadline Should Be Extended

Under 40 CFR 51.309 of the regional haze rule, SIPs for the optional program for the nine Western States are due by December 31, 2003. The EPA received a number of comments on the proposed rule with respect to this deadline. Four commenters, including the State of Colorado and three industry trade

groups, requested that EPA extend the deadline for SIPs under 40 CFR 51.309. One commenter, representing an environmental organization, recommended that this deadline should not change.

The primary argument of those recommending an extension of the December 31, 2003 deadline, is that the *American Corn Growers* decision creates additional uncertainty for States deciding whether to submit regional haze SIPs under 40 CFR 51.309 or 40 CFR 51.308. Some commenters requested that EPA extend the deadline by the amount of time it takes to resolve the remanded portions of the regional haze rule. The environmental group commenter opposed to the extension stated that there is no legal or policy basis for an extension because the deadline is required by the rule. In addition, this commenter noted that States have had several years to prepare SIPs under 40 CFR 51.309, and that the market-based alternative to BART is unaffected by the court decision. Finally, this commenter believed that delays in the SIP submittals could undermine EPA's finding that the 40 CFR 51.309 program constitutes greater reasonable progress than BART.

In the final rule, EPA retains the December 31, 2003 deadline for a number of reasons. First, as noted above, EPA does not believe that the *American Corn Growers* decision affects the WRAP States' ability to move forward in implementing 40 CFR 51.309. While the court decision may affect a State's decision on whether to pursue the optional program under 40 CFR 51.309, EPA does not believe that this is an adequate justification for delaying the program. Second, EPA believes that the 2003 deadline is a fundamental element of the overall optional strategy provided by 40 CFR 51.309. The strategy was supportable under the regional haze rule in large part because it was an early strategy that would be in place well before SIPs under 40 CFR 51.308. The fact that it was received early and contained comprehensive strategies was an important part of the rationale for its acceptance. The EPA believes that the longer the strategy is delayed in its implementation, the less valid this rationale becomes.

3. Procedural Issues

One commenter stated that EPA cannot approve the Annex because of procedural flaws related to 40 CFR 51.309(f)(1) of the regional haze rule. The commenter asserted that EPA's rulemaking to approve the Annex is procedurally flawed because EPA did not publish the Annex upon its receipt. Additionally, the commenter notes that EPA did not amend the regional haze rule within 1 year after receipt of the Annex.

The EPA disagrees with the assertions that this rulemaking is procedurally flawed. The EPA published a Notice of Availability in the **Federal Register** for the Annex on November 15, 2000 (65 FR 68999), indicating where the Annex could be found on EPA's Web site. The commenter is correct that EPA established a deadline for itself of 1 year for the Agency to incorporate the provisions of the Annex if EPA found that the Annex met the requirements of the rule. Although the statement that EPA "will act" within 1 year signaled EPA's intentions to act within that time period, nothing in the regional haze rule precludes EPA from acting after this self-imposed deadline. In particular, action within the 1-year deadline should not be interpreted as a prerequisite for approving the Annex or for incorporating the Annex into the regional haze rule. It is clear from the commenter's statements, however, that the statement that EPA will act within 1 year has created confusion as to the meaning of the provision. The EPA is clarifying this provision by removing the phrase "1 year" from section 309(f)(3).

B. Milestones

A central feature of the program in the WRAP annex, and in EPA's proposed rule, is a set of emissions milestones for SO2 from stationary sources for the time period between 2003 and 2018. In the proposed rule, EPA included the Annex milestones. In the final rule, EPA includes the same milestones as proposed.

In addition, the proposed rule included specific language to allow for future adjustments to the milestones. In the Annex, the WRAP described a limited set of future circumstances that would necessitate adjustments to the milestones. For each of these circumstances, the Annex included a detailed description of how the milestone would be adjusted, including a discussion of the administrative process for making each adjustment. In the proposed rule, EPA included regulatory language for each adjustment, closely following the provisions of the Annex. In the final rule, EPA has made a few changes to the adjustments based upon comments received.

In this unit of the preamble, we discuss comments received related to the milestones and the adjustments.

1. Whether Milestones Satisfy Requirements in the Regional Haze Rule

Proposed rule. In the proposal, EPA indicated its agreement with the WRAP's conclusion that the emissions milestones meet the requirements of the CAA and the regional haze rule. The EPA devoted a significant portion of the preamble of the proposed rule to a discussion of its rationale for this proposed finding, (67 FR 30420–30426). In this discussion, EPA concluded that the WRAP's program for SO2 was appropriate in lieu of source specific BART limits because the milestone for the year 2018 provided for "greater reasonable progress" in visibility improvement than WRAP States would obtain by implementing the requirement for source-specific BART. In addition, the preamble to the proposal discusses EPA's finding that the milestones for the years between 2003 and 2017 provide for "steady and continuing" progress.

With respect to EPA's findings on BART, the preamble discussion for the proposed rule focused largely on the demonstration provided by the WRAP in Attachment C of the Annex. The EPA noted the WRAP used the following procedure to identify the year 2018 milestone:

- Developed an estimate of baseline SO2 emissions for the year 2018, (*i.e.*, the predicted SO2 emissions in the year 2018 in the absence of a program to reduce SO_2 emissions);
- Developed a list of BART-eligible sources in the region;
- Developed an estimate of the emissions reductions that BART sources could achieve, and
- Selected a year 2018 milestone that reduces the baseline emissions by an amount that would achieve greater reasonable progress in improving visibility than by requiring each BART-eligible source to install BART.

In the proposal, EPA discussed the data and methods relied on by the WRAP for each of these steps. The EPA agreed with the conclusion reached by the WRAP that the 2018 milestone meets the requirements of the regional haze rule, taking into account the uncertainties inherent in the calculations of predicted emissions in 2018.

Public Comments. Public comments, with one exception, were supportive of EPA's finding that the year 2018 milestone represented "greater reasonable progress" than BART. One commenter, representing the trucking industry, disagreed with this finding, citing a number of areas where it believed that the demonstration was lacking or inadequate.

The WRAP commented that EPA's preamble discussion did not completely capture the scope and methodology of the year 2018 milestone decision. In their comments, the WRAP agreed that EPA had correctly described the method the WRAP used to determine that the program achieved greater reasonable progress than BART. However, the WRAP's comments stress that while the milestones were informed by these calculations, the milestones were negotiated numbers reflecting a broader view of the backstop trading program and the relevant factors in the CAA. In addition, the WRAP notes that individual elements of the calculations do not represent a consensus position in isolation from the balanced package in the Annex.

The commenter from the trucking industry was critical of EPA's acceptance of the year 2018 milestones. The commenter noted that in the preamble EPA appeared to have concerns with: (1) How the WRAP identified BART-eligible sources, (2) how the WRAP calculated emissions reductions from those sources, and (3) the WRAP's inclusion of the 35,000 tons for "headroom and uncertainty." This commenter believed that taken overall, EPA should have considered the WRAP's milestone for year 2018 to be deficient. The commenter was also critical of the provision for a backstop trading program, arguing that such a program would allow for emissions reductions far away from the Colorado Plateau to be substituted for more effective reductions at a closer distance.

The comments, with one exception, supported EPA's proposed conclusion that the milestones for the years 2003 through 2017 represented "steady and continuing" progress. Comments from the trucking industry were critical of this finding. In their view, the milestones do not provide for steady and continuing progress because some of the early year milestones exceed year 2000 actual emissions levels.

Final rule. The final rule retains the milestones contained in the proposed rule. The EPA continues to believe that the milestones provide for "greater reasonable progress than BART" and for "steady and continuing progress." The EPA disagrees with comments that the milestones are deficient in this regard. The EPA agrees with stakeholders that it is a critical consideration that the WRAP's milestones provide a "cap" on emissions which may not be exceeded. Any program providing for case-by-case controls on a specific set of sources does not establish such a "cap" for the region. Moreover, this cap applies to a population of sources that includes all sources in the region emitting more than 100 tons of SO_2, which is a much broader population than if only the BART-eligible sources were included. The EPA continues to conclude that the WRAP milestones are reasonable in light of the inherent uncertainties that exist in any forecast to the year 2018. Modeling results showed predicted visibility improvements equivalent to, or greater than, those that would result from a "command and control" scenario.

The EPA disagrees with comments that the milestones cannot be considered to provide for "steady and continuing" reductions if actual emissions were allowed to increase in the early years. As noted in the proposal, EPA believes that the WRAP appropriately used the GCVTC goal of a 13 percent reduction in emissions between 1990 and 2000 as a starting point or frame of reference, rather than an estimate of actual emissions for the year 2000. Given that a greater than expected degree of reduction has already occurred, EPA agrees that the region should not be effectively penalized for achieving early reductions in emissions.

2. Adjustments for States and Tribes That Choose Not To Participate

Proposed rule. When developing the Annex, the WRAP understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309. Thus, the WRAP provided to EPA individual opt-out amounts for each State and Tribe and for each year from 2003 to 2018. These opt-out amounts represented the amount of emissions that would be deducted from the milestones for each State and Tribe that does not participate. The EPA included a table in the proposed rule (67 FR 30446, May 6, 2002) that shows these opt-out amounts for each State and Tribe. The proposed rule noted, as the WRAP recommended, that the emissions amounts budgeted in this table are only for the purpose of determining the milestones at the beginning of the program if some States and Tribes choose not to participate. The EPA cautioned that the amounts budgeted to each State and Tribe in this table are not necessarily the amounts that will be allocated to sources within the relevant State's or Tribe's jurisdiction if a trading program is triggered.

The proposal described the process by which the milestones would be adjusted to take into account the individual State and tribal opt-out amounts. For States, SIPs for all participating States are due by the December 31, 2003 deadline. Accordingly, EPA assumed in the proposal that after this deadline has passed it will be known which States are participating and which are not. Thus, the proposal called for SIPs to provide for deducting the State-specific amounts in Table 2 (67 FR 30446, May 6, 2002) for "opt-out States" from the amounts in Table 1 (67 FR 30425, May 6, 2002) at the outset of the program. For Tribes, the proposed rule provides flexibility for opting into the program after the 2003 SIP submission deadline. Under the proposal, for Tribes that have not opted into the program by the 2003 deadline, the amounts in Table 2 (67 FR 30446, May 6, 2002) would be deducted from the amounts in Table 1 at the outset of the program. For Tribes that opt into the program at a later date, the proposal required these amounts to be automatically added to the amounts in Table 1 (67 FR 30425, May 6, 2002), beginning with the first year after a TIP implementing 40 CFR 51.309 is approved by EPA.

In the proposal, EPA stated that for the program under 40 CFR 51.309 to achieve the WRAP and GCVTC objectives, a sufficient number of States must participate in the program. The EPA proposed to defer to the WRAP's judgment on the issue of how many States would constitute a "critical mass" for the program, and we requested comment on this issue.

Public Comments. A few comments were received on issues related to the proposed opt-out amounts and discussion.

Two commenters agreed with EPA's clarification that the opt-out amounts did not necessarily represent the amount of allocations that a State's or Tribe's sources would receive if the backstop trading program were triggered. One commenter recommended that the State opt-out amounts *should* be treated as the amount of allocations for a given State, because: (1) The opt-out amounts represent the best estimate of emissions reductions for the BART-eligible sources in each State or Tribe, and (2) inclusion of the tables may create a perception that any State that issues fewer allocations than the opt-out amounts is treating the sources within the State inequitably.

Several commenters agreed with EPA's recommendation to defer judgments on "critical mass" issues to the WRAP. One environmental group commenter recommended that, in evaluating whether there are enough States and Tribes participating in 40 CFR 51.309, EPA must thoroughly consider the extent to which the SO_2 declining cap will effectively prevent

degradation from the visibility impairing emissions from new source growth across the region.

Subsequent to the comment period, the Western States Air Resources Council (WESTAR) Model Rule/MOU Working Group noted[4] that as States and Tribes follow their process for adopting SIPs and TIPs under 40 CFR 51.309, the States and Tribes will not necessarily be aware of which other States and Tribes will choose to participate in the program. Accordingly, the WESTAR Working Group believed that States and Tribes would need to include all of Table 2 and calculation procedures in their SIP/TIP submittals, such that the SIP/TIP submittal could account for all possibilities of participation by other States and Tribes. Further, the WESTAR Working Group noted that in the initial years of the program, EPA may not have approved the SIP for all participating States before the date of the annual determination of whether the milestone is exceeded. Lastly, Tribes are not required to submit a TIP by 2003 and can choose to participate in the program at anytime. Accordingly, the WESTAR Working Group recommended that EPA clarify whether the comparison of emissions to the milestones would take into account all States that have submitted SIPs, or only those with approved SIPs as of the date of the determination.

Final Rule. The final rule retains the opt-out tables from the proposal. The EPA continues to agree with the WRAP that the opt-out tables do not necessarily represent the amounts that would be allocated to a given State or Tribe under a trading program. The WRAP has developed a detailed methodology for determining and establishing trading program allocations for each source. This methodology is described in detail in sections II.D and III.D.7 of the Annex. It is this methodology that will result in allocations should the trading program be needed. The EPA believes that establishing the amounts in the opt-out tables as the amounts for trading program allocations would unnecessarily constrain the WRAP from implementing its methodology.

The EPA continues to believe, as discussed in the proposal, that judgments on the issue of "critical mass" are best left to the WRAP. Regarding the comment that the SO_2 declining cap may not effectively prevent degradation of visibility from new sources throughout the region if not enough States and Tribes participate, EPA notes that visibility progress issues as a general matter will need to be addressed in SIPs submitted under 40 CFR 51.308. Accordingly, EPA does not believe that this comment warrants any change to the proposed rule language.

The EPA agrees with the WESTAR Working Group that States and Tribes submitting their SIPs and TIPs under 40 CFR 51.309 should include Table 2 and the calculation procedures in their SIP or TIP regulations in order to account for all possibilities of participation by other States and Tribes. The EPA also agrees with the WESTAR Working Group recommendation to add to the final rule clarification that the opt-out adjustment under 40 CFR 51.309(h)(1)(i) will include the States and Tribes for which SIPs and TIPs have not been approved by EPA as of the date of the determination.

3. Adjustments for Smelter Operations

Proposed rule. At the time the WRAP was submitted to EPA, two copper smelters in the region, the Phelps Dodge Hidalgo smelter and the BHP San Manuel smelter, had suspended operations. In the Annex, the WRAP recommended that the program specifically account for the possibility that these smelters could come back on line should economic conditions change. Accordingly, the Annex contained a specific set of complex decision criteria to adjust the milestones in the future for a number of specific scenarios related to the two smelters. The EPA in the proposal attempted to clarify the WRAP's adjustments with a series of "if-then" tables, and we requested comment on whether these tables accurately reflect the decision criteria in the Annex.

Public comments. Commenters agreed that the EPA's proposed table accurately reflected the Annex. Two commenters noted that subsequent to the development of the Annex, a third smelter, the Phelps Dodge Chino smelter, suspended operations. These two commenters recommended that the regional haze rule should recognize this without reopening the negotiated agreement on the milestones. Further, the commenters recommended that the regional haze rule should provide some assurance that when the Chino Smelter comes back on line again, its 16,000 allowances will be available to it without prematurely triggering the program.

Final rule. The final rule retains the smelter adjustment tables as proposed. The EPA considered whether the final rule should contain contingencies for the Chino Smelter similar to those for Hidalgo and San Manuel. For example, one approach would be to deduct the amount from the Chino smelter from the milestones and to develop a series of adjustments to account for the possibility that it may come back on line, similar to the approach for the other two smelters. The EPA has not taken this approach, because of the complexity that would be added to the adjustments, and because this scenario was not specifically discussed as the WRAP was negotiating the Annex.

4. Adjustments for Utility Boilers Opting To Use More Refined Flow Rate Methods

Proposed rule. The proposed rule requested comment on the specific method and process for adjusting the milestones for sources using a refined method for measuring stack flow rates. This was seen as a significant issue, because the flow rate affects the determination of emissions rate from a continuous emissions monitoring system (CEMS).

In 1999, EPA adopted revisions to EPA's Reference Method 2, the standard method for measuring stack flow rates (64 FR 26484, May 14, 1999). The revisions provided three new procedures: Methods 2F, 2G, and 2H. The new procedures, if used for a given source, allow for a more detailed assessment of the stack flow rates to provide more accurate flow rate results. The changes addressed concerns raised by utilities that Reference Method 2 may over-estimate flow in certain cases, such as when the flow is not going straight up the stack. If the flow rate is over-estimated, this would also lead to the overestimation of SO_2 emissions because the facility's continuous flow rate monitor is calibrated to correspond to the flow test method. Facilities subject to the acid rain program under title IV of the CAA must perform these flow tests at least once a year to determine the accuracy of their continuous flow monitors. Facilities have an option to use either the old Method 2, or one or more of the new methods.

When the WRAP made its emission projections for purposes of developing the milestones, the new methods were not yet in place. Accordingly, if a source owner chooses to use the new flow methods, and if as expected it results in a reduced flow rate for the same level of operation, then there will be a corresponding decrease in the measured emissions. In the preamble to the proposal, EPA agreed with the WRAP that this would create the possibility of a "paper" decrease relative to the milestone if the milestone reflects the old method. As discussed in section III.A.5 of the Annex, the WRAP notes

[4] *See* memorandum from Lily Wong, EPA Region 9, to Docket OAR–2002–0076. March 2003.

that a protocol is needed for adjusting the milestones to reflect changes in the baseline emission for utility boilers any time that a source opts to change its CEMs method. The WRAP addressed this issue in greater detail in a supplemental paper entitled "Emissions Tracking Prior to Triggering the Backstop Trading Program," which was submitted to EPA on June 1, 2001.

The WRAP has identified three possible technical procedures for developing an "adjustment factor" for the new flow method. The EPA agrees that any of these three procedures would be acceptable. Under the first procedure, there would be a side-by-side comparison of flow rates using both the new and the old flow reference methods. For example, if the new method measured 760,000 cubic feet per minute, and the old method measured 800,000 cubic feet per minute, the adjustment factor would be (760,000/800,000), or 0.95. The second method would use annual average heat rate, which is reported to the Energy Information Administration (EIA), as a surrogate for the flow rate. Under this method, the flow adjustment factor would be calculated using the annual average heat rate using acid rain heat input data (MMBtu) and total generation (MWHrs)reported to EIA, calculated as the following ratio:

$$\frac{\text{Heat Input/MW-hrs for first full year of data using new flow rate method}}{\text{Heat Input/MW-hrs for last full year of data using old flow rate method}}$$

The third method would use data reported to EPA's acid rain program. Under this method, there would be a comparison of the standard cubic feet per minute (CFM) per megawatt(MW) before and after the new flow reference method based on CEMs data, calculated as the following ratio:

$$\frac{\text{SCF/Unit of Generation for first full year of data using new flow rate method}}{\text{SCF/Unit of Generation for last full year of data using old flow rate method}}$$

In the supplemental information paper, the WRAP identified three possible approaches for using the adjustment factors for making a correct comparison of emissions to the milestones. The WRAP did not indicate a preference for any single approach. The three options are as follows:

(a) Using one of the options described above for determining the flow adjustment factor, revise the source's baseline emissions forecast for 2003, 2008 and 2013. For each year following the adoption of the new flow reference method through 2017, reduce the interim milestone by the corresponding amount. To illustrate how this approach would work, the proposal used an example where the adjustment factor for a given stack is 0.95. As discussed above, this means that the emissions with the new method is deemed to be 0.95 times the emissions with the old method. For this example, for option (a) this means that the previous baseline emissions for that source would be multiplied by 0.95. The annual compliance check would then be done by comparing regional SO_2 emissions (unadjusted, as reported to EPA's acid rain program) to the revised milestone.

(b) Using one of the options described above for determining the flow adjustment factor, revise the source's reported emissions on an annual basis, and do not adjust the milestone. For the example noted above, under option (b) the emissions reported to EPA's acid rain program would be adjusted upward by multiplying the amount times (1/0.95). For each year following the adoption of the new flow reference method through 2017, the annual compliance check would be done by comparing the adjusted regional SO_2 emissions to the unadjusted milestones.

(c) Use a combination of the two approaches. Under this approach, interim milestones would be adjusted only every 5 years (using option (a) above) and the reported emissions for additional sources making the change in the intervening years are adjusted for comparison to the milestones (using option (b) above).

In the proposal, EPA stated that any one of these three approaches would be acceptable, but that a specific approach needs to be selected for the final rule. The EPA also noted its view that these adjustments to the milestone or to the reported emissions would not necessarily require SIP or TIP revisions, because the precise method for making the adjustment, and the publicly available data elements that will be used for making the adjustment, could be specifically identified in the final rule.

Public comments. Commenters generally agreed with EPA's assessment that any of the three approaches for determining an adjustment factor would be acceptable.

The WRAP noted in its comments that the 2018 milestone already included assumptions about the effect of this flow rate adjustment. The WRAP recognized that the preamble to the rule implies this distinction but the WRAP recommended that this be reflected in the regulatory text as well.

Regarding the three options related to the process for using the adjustment factors, the WRAP recommended option (c) in its comments. That is, the milestones would be adjusted every 5 years with the periodic SIP revisions, and adjustments would be made to the reported emissions for the interim period. Other commenters, while supporting the concept of adjusting the milestones with the SIP revisions, did not address whether the reported emissions should be adjusted in the interim period. The EPA infers from these comments that these commenters are likely recommending that emission adjustments need not be made in the interim period.

Final rule. The final rule includes regulatory language agreeing with the WRAP's recommendations regarding the flow rate adjustment. States are required in the SIPs to provide for reporting of "adjusted" emission rates pending an update to the milestones, which would occur at the time of the plan revisions required under 40 CFR 51.309(d)(10).

5. Adjustments for Enforcement Actions

Proposed rule. The proposed rule included a provision in the Annex for adjustments to the milestones for "illegal emissions." In developing the milestones, the WRAP identified the baseline emissions for each source during the base year, and "forecasted" emissions for the source during the 2003 to 2018 time period, taking into consideration growth, utilization, retirement, and the absence of any additional requirements. The

compilation of these source-specific baseline emissions resulted in the baseline emission inventory totals, which serve as a "starting point" for measuring progress from the program. The WRAP recognized in the Annex that if a source was in violation of applicable requirements during the base year when its emissions were determined, the baseline emissions during 2003–2018 would be overestimated.

In the proposal, EPA included this provision with general regulatory language providing for the adjustment of baseline emissions for illegal emissions, and we requested comment on possible ways of clarifying the provision in the final rule. The EPA noted in the preamble to the proposal that there are instances where it may be unclear whether under the approach in the Annex, emissions would be considered as "illegal," for example where:

—Disputing parties resolve their differences through (1) A consent decree that is either entered through Federal or State courts, or (2) an administrative enforcement proceeding by either a State, Tribe, or EPA; or

—A State disagrees with EPA or a citizens' group over whether or not a particular alleged violation occurred.

The EPA requested comment on how these situations should affect the milestones. Specifically, EPA requested comment on the following possible options:

Option 1. Under this option, the rule would require that if there is any resolution [5] to alleged illegal SO_2 emissions, then all of the reductions resulting from the resolution would be considered as "illegal emissions." Taking into account these reductions, the State or Tribe would then "re-forecast" the source's emissions and its effect on the milestone. "Re-forecast" means to re-apply the forecasting process, that is the process the WRAP originally used to project future emissions and develop the milestones, using the corrected baseline SO_2 emissions for the affected source. A comparison of this re-forecast of emissions with the previous forecast of emissions would determine the amount of the adjustment for each year up through 2018.

Option 2. Under this option, the rule would allow for case-by-case judgments on the appropriateness of adjusting baseline emissions following resolution of allegations of illegal SO_2 emissions. The rule would, however, clarify the entity responsible for deciding whether a case involves illegal emissions warranting an adjustment to the milestones. Under this option, we requested comment on which entity should be responsible for this determination, that is, whether the rule should clarify whether the parties entering into a settlement, the States, the Tribes, the WRAP, or EPA would determine the settlement's impact on the milestones.

The EPA noted that under any of the proposed options, adjustments to the milestone would occur only after the source in the enforcement case has achieved the requisite reduction of SO_2 emissions. Consequently, adjustments to the milestones would have no effect on any other facility's operation because all of the reductions would be achieved by the source subject to the enforcement action.

The EPA also solicited comments in the proposal on how to treat any extra SO_2 emissions reductions that a facility might achieve as a result of a settlement. The EPA will often allow a company that is settling through a consent decree or settlement agreement to perform a supplementary environmental project and allow the expenditures on this project to partially offset penalties that the company would otherwise be assessed. The EPA noted in the preamble to the proposal that if the milestones are not reduced by the amount of extra emissions reductions from this type of project, then the environment may see little benefit, since another company would be allowed more SO_2 emissions. Thus, in the proposal, EPA sought input on whether these "extra" emissions reductions should be considered part of this "illegal emission" adjustment and factored into a recalculation of the milestone.

Public Comments. The EPA received a number of comments on this provision.

A few commenters recommended that this provision be deleted from the rule entirely. Some commenters criticized this provision because it would lower the milestones and reduce the potential pool of allowances under the backstop trading program. Accordingly, these commenters believed that the provision would serve to punish the "non-violators" in the program at large. Another commenter believed that any adjustment for "illegal emissions" is not appropriate unless it has been demonstrated that the provision would improve visibility.

Other commenters supported the provision but recommended that the term "adjustments for illegal emissions" be replaced with the term "adjustments due to enforcement actions." Some commenters requested clarification on whether these adjustments would only apply to enforcement actions that would have affected the assumptions used in baseline emissions projections. One commenter recommended that the proposed adjustment for illegal emissions should apply only to emissions reductions resulting from consent decrees or administrative orders where the EPA or authorized State has commenced the enforcement action, and not where emissions reductions arise out of "voluntary settlements" initiated by the company.

Regarding the two options for clarifying this provision, the WRAP and other commenters recommended the second option. These commenters noted that case-by-case judgments will be needed to determine whether and the degree to which the milestones should be adjusted. Responding to EPA's request to clarify the entity responsible for calculating the adjustment, the WRAP recommended that the entity responsible should be the parties entering into a settlement, in conjunction with the relevant State or Tribe. The commenters envisioned that EPA would have an oversight role in the SIP approval process to determine that the adjustment agreed to through the enforcement process is properly reflected in the milestone adjustment.

The WRAP comments recommended that specific language be added to the final rule requiring States and Tribes to document, and include in the administrative record,[6] a discussion of whether any adjustments to the milestones are appropriate based upon administrative or judicial enforcement actions, and to include an explanation of the basis for the State's or Tribe's decision.

Regarding EPA's request for comment on how "extra" emissions reductions in enforcement actions should be treated, the WRAP and other commenters believed that these extra emissions reductions should also be treated on a case-by-case basis. The WRAP commenters recommended that EPA include a provision in the rule requiring States or Tribes to address in the periodic SIP revision whether SO_2 allowances should be retired or confiscated [7] as a result of an administrative or judicial enforcement action and the rationale for the State's or Tribe's decision.

Final rule. The EPA has retained this provision in the final rule. The EPA agrees with the WRAP that this provision is necessary to ensure that the "baseline," the starting point for the milestone calculations, reflects compliance with regulations. So long as the reductions to the milestones do not occur before the date a source comes back into compliance, EPA does not believe that this adjustment has the effect of "penalizing" the other sources. Regarding the comment that this provision is deficient due to a lack of demonstrated visibility improvements, EPA believes that the WRAP was not required to make a demonstration of the visibility improvements of this specific provision, which is part of the WRAP's overall program for SO_2 reductions from stationary sources.

The final rule reflects EPA's agreement with recommendations of commenters to replace the term "adjustments for illegal emissions" with the term "adjustments due to enforcement actions." The EPA agrees that this terminology better encompasses the types of situations that the provision would address. The EPA interprets the term "enforcement action" in these comments to be used broadly to include any type of enforcement action including administrative orders, settlements, consent decrees, court orders, and compliance schedules in title V permits.

As recommended by some commenters, we have added language consistent with Option 2. The EPA agrees with commenters that there will be case-by-case considerations in enforcement actions that could affect whether an adjustment to the milestones is appropriate. The EPA generally agrees with comments suggesting that the entity responsible for calculating the amount of the adjustment should be the parties entering into the settlement, and that where those parties do not include the State or Tribe, the State or Tribe should be consulted to assure that correct assumptions are used for the adjustment. Further, EPA believes that if the parties involved in the action are responsible for recommending the amount of the adjustment, or whether an adjustment is appropriate, this would allow a source entering a voluntary settlement to negotiate whether or not an adjustment should be made.

The EPA believes it is useful to clarify a few points regarding actions where EPA or a citizens' group is the plaintiff in the enforcement action. Such cases would be brought to the U.S. District Court. Pursuant to longstanding Department of Justice policy, in any such case members of the public, including an interested State or Tribe, would have an opportunity to review and comment on the proposed consent decree settling the enforcement case. *See* 28 CFR 50.7. For any such case before the U.S. District Court, EPA intends to provide the State or Tribe an opportunity to review and comment on the proposed settlement. If a settlement or order from the U.S. District Court is issued and contains an adjustment to the milestones, such a settlement or order from the court is binding and the State and Tribe would be required to adjust the milestones as directed by the court. For instances where such court actions are silent on reforecasting the baseline emissions and adjusting the milestones, EPA believes the State or Tribe must determine whether such a reforecast and adjustment is appropriate.

The EPA agrees with the WRAP's recommendations that the State or Tribe should provide documentation of these adjustments for enforcement cases in the administrative record for the 5-year SIP or TIP revision. Specifically, the rule requires the following documentation:

—Identification of each source that has reduced SO_2 emissions under an administrative or judicial enforcement action,

—Whether the milestones were adjusted in response to the reduction in SO_2 emissions under the enforcement action,

—The rationale for the State's or Tribe's decision on the milestone adjustment,

—If extra SO_2 emissions reductions (over and above those reductions needed for compliance) were part of the settlement, whether those reductions resulted in any adjustment to the milestones or allowance allocations.

C. Annual Process for Determining Whether a Trading Program Is Triggered

The proposed rule describes an annual process to determine whether the emissions from participating States exceed the milestones and thus trigger the backstop trading program. This proposed process contained a number of deadlines for steps in the annual process, and contained special provisions for certain years. Only a few comments were received on these provisions.

1. Date for the Annual Determination

Proposed rule. The proposed rule contained annual deadlines for determining whether the milestone is exceeded. This proposed schedule called for a draft determination not later than December 31 of each year, beginning with a draft determination for the year 2003 by December 31, 2004. The proposed schedule called for a final determination, taking into account public comments, by the end of the following March, beginning with a final determination by March 31, 2005 for calendar year 2003.

Public comments. In their comments on the proposal, the WRAP recommended that this annual deadline be extended by 1 year. For example, pursuant to this recommendation, EPA would extend the deadline for the final determination for calendar year 2003 from March 31, 2005 to March 31, 2006. Because certain States or Tribes may have more numerous or complex sources, the WRAP believed that additional time may be needed to collect, validate, and analyze emissions data. In support of this request for additional time, the WRAP notes that adding time for the annual determination would not affect the timing for implementing the backstop trading program. For example, even if the annual determination for calendar year 2003 were not made until 2006, this would not affect the date for the onset of the trading program. If the calendar year 2003 milestone were triggered, sources would still need to hold allowances for emissions in calendar year 2009.

Final rule. In the final rule, EPA has retained the deadline for the annual determination as proposed. The EPA recognizes that some States within the region may have more complex technical and administrative procedures for collecting annual emissions inventory data. The EPA's current judgment is that for States who have indicated possible participation in the program under 40 CFR 51.309, these obstacles do not exist. The EPA believes that it is not desirable to move the deadline forward in time unless it is absolutely necessary. While, as the WRAP correctly notes, this would not affect the deadlines for implementation of the backstop trading program, it would have the effect of reducing the amount of time for planning and implementation if the trading program were triggered. If the States needing more time do, in fact, decide to participate in the program, EPA believes that the regional haze rule could be

[5] For option 1, the proposal used the broad term "resolution" to refer to all types of emissions reductions resulting from enforcement actions.

[6] The EPA interprets the term "administrative record" in the WRAP's comments to refer to information made available in support of the State's or Tribe's implementation plan submittal to EPA under 40 CFR 51.309(d)(10).

[7] This comment responded to EPA's question on how the milestones should be adjusted with a recommendation on whether allowances should be retired or confiscated. The EPA interprets this comment as addressing both the milestones and the allowances, which add up to the milestones.

revised at a later date to reflect this need.

2. Option for Triggering the Trading Program in the Year 2013

Proposed rule. The proposed rule provided States and Tribes with the option at a specific point in time to consider emission projections for the year 2018, in addition to actual emissions inventory reports for previous years in deciding whether or not to trigger the backstop market trading program. For this option, if States and Tribes so choose, the emissions inventory reports for the year 2012—which are collected in calendar year 2013—may also contain emissions projections for the year 2018. If the projections indicate that the year 2018 milestone will be exceeded, then under the proposal, States and Tribes may choose to implement the market trading program beginning in the year 2018.

Public comments. One commenter representing Western business interests recommended that the WRAP develop, and the final rule contain, specific criteria for the option of triggering the trading program in 2013. The commenter recommended that, for example, the final rule should contain criteria for a specific emissions level in 2013, or a specific level of emissions reductions yet to be achieved between 2013 and 2018.

Final rule. In the final rule, EPA has retained the 2013 option as proposed. The EPA believes that the intent of this provision in the Annex is to provide broad flexibility to the States and Tribes for deciding whether this 2013 option should be exercised. The EPA does not believe that it is desirable or feasible to develop specific decision criteria for this purpose in the final rule.

3. Requirements for Recordkeeping

Proposed rule. The proposal, in 40 CFR 51.309(h)(iii), included a requirement for the retention of records relevant to the annual comparison of SO_2 emissions to the milestones for at least 5 years from the establishment of the record. For records that provided the basis for an adjustment to the milestone, the proposed rule required retention of records for at least 5 years after the date of the SIP revision.

Final rule. No public comments were received on this issue during the comment period. Following the close of the comment period, however, the WESTAR model rule working group [8] questioned whether this recordkeeping requirement would be adequate in all cases, if EPA's intent were to retain the records for 5 years after they are relevant to the annual determination. Given the design of the program, 4 and ¼ years can elapse between the creation of a record and the use of the record in the annual comparison of regional SO_2 emissions against the milestone. This is because for all except the first 2 years of the program, the annual determination is based on a 3-year average of the regional SO_2 emissions for the preceding 3-year period. Additionally, the formal comparison with the milestone is not accomplished until 15 months after the end of this 3-year period. Thus, close to 5 years can pass from the establishment of a record to its use. The working group believed that the intent of the recordkeeping requirement was to maintain relevant records for 5 years after the determination of whether the milestone was exceeded for a given year, which could mean that some records relevant to the determination would be needed for approximately 10 years from the date they were generated. The EPA agrees that this was the intent of the recordkeeping requirement in 40 CFR 51.309(h)(iii) of the proposed rule; accordingly, the final rule extends the time period for the retention of records from 5 to 10 years.

[8] See note from Lily Wong, EPA Region 9, to docket OAR–2002–0076, March 2003.

D. Requirements for the Backstop Trading Program

A fundamental feature of the Annex is a backstop market trading program that would be triggered if any annual milestone is exceeded. The Annex, as required by 40 CFR 51.309(f) of the regional haze rule, provided documentation and details for the backstop trading program. Attachment A to the annex was a draft model rule for use by States in implementing the backstop trading program. In the proposal, EPA included ten fundamental elements that SIPs under 40 CFR 51.309 must contain, and the basic requirements for those elements to help guide EPA's review of the SIPs. The fundamental elements described in the proposed rule were as follows:

(1) Provisions for the allocation of allowances to each source in the program;

(2) Emissions quantification protocols;

(3) Provisions for the monitoring, recordkeeping and reporting of emissions;

(4) Provisions for a centralized system to track allowances and emissions;

(5) Provisions requiring the identification of an authorized account representative for each source in the program;

(6) Provisions requiring the account representative to demonstrate annual compliance with allowances;

(7) Provisions for the process of transferring allowances between parties;

(8) Provisions describing the "banking" of extra emissions reductions for use in future years, if the implementation plan allows for banked allowances;

(9) Provisions establishing enforcement penalties for noncompliance with the trading program; and

(10) Provisions for periodic evaluation of the trading program.

In the proposed rule, EPA included basic requirements for each of these 10 provisions, and we requested comment on whether we had addressed each requirement in an appropriate level of detail, and on whether the substance of the requirement was sufficient to ensure the integrity of the trading program.

The EPA did not receive any adverse comments regarding the level of detail of the proposed requirements for the trading program. We did receive comment on the substance of a few of the provisions that we discuss in this section of the preamble.

1. Allowances

Proposed rule. The proposed rule required the backstop trading program to include allowances. An allowance authorizes a source included within a market trading program to emit one ton of SO_2 during a given year. At the end of the compliance period, which is a 12-month period ending with each calendar year, a source owner's allowances must exceed or equal its annual emissions.

The proposed rule would require States and Tribes to include initial source-specific allowances for each source included within the program. Under the proposal, these initial allocations must specify the tons per year allocated for each source for each year between 2009 and 2018. The Annex contains a detailed discussion of the methodology for distributing allowances to sources. The EPA proposed, however, that the details of this methodology were not needed in EPA's rule. If those allowances add up to the appropriate regional total, EPA proposed that the objectives of the program would be met. The EPA proposed one exception to this approach, a requirement that 20,000 tons of allowances be reserved as a "set-aside" for use by Tribes.

Public comments. The EPA received comments on three issues related to allowances. First, the WRAP and one electric utility commenter recommended that the proposed rule be modified such that initial SIPs would not be required to have source-specific amounts for each source. Instead, these commenters recommended that EPA allow the initial SIPs to include a formula that will be used to calculate the allowances when the program is triggered.

Second, the WRAP and one environmental group commenter recommended specific regulatory language for reserving a portion of allowances for renewable energy resources such as wind, solar photovoltaic and solar thermal technologies, geothermal, landfill gas and biomass technologies, and hydropower projects meeting Low-impact Hydropower Institute criteria. This regulatory language consisted of a regulatory definition of "eligible energy resource." In addition, the recommendation included specific regulatory language for inclusion in 40 CFR 51.309(h)(4)(i) that would provide "eligible energy resources" with 2.5 tons of SO_2 allowances per megawatt of installed nameplate capacity per year.

Final rule. The EPA has amended the proposed rule as requested by the WRAP and other commenters. The EPA agrees that a clear and definitive formula for issuing source-specific allowances is an acceptable approach. The approach to distributing allowances described in the Annex provides for adjustments of the allocations over time, for example providing "bonus" allocations for early reductions. Because the allocations provide for adjustments over time, it is likely that individual source allocations could change between the date of the 2003 SIPs and the date a trading program would be triggered. Accordingly, EPA believes that re-calculation of the source-specific allowances when the program is triggered would be likely in any case. If the program is triggered, the subsequent SIP revision must include the source-specific allocations.

The EPA has also incorporated the WRAP's recommended provision regarding renewable energy credits. Given the WRAP's desire that this provision be a feature of the backstop trading program, EPA agrees that regulatory language is needed to ensure that this feature is included in SIPs. The EPA has incorporated the regulatory language recommended by the WRAP with two modifications. First, EPA includes only the first sentence of the WRAP's recommended definition ("Eligible renewable energy resource, for purposes of 40 CFR 51.309, means electricity generated by non-nuclear and non-fossil low or no air emission technologies"). The EPA believes that it is not necessary to include, and would be difficult to interpret, the WRAP's recommended additional language limiting the definition to only those technologies "using resources that are virtually inexhaustible, reduce haze, and are environmentally beneficial." The EPA agrees with the WRAP that it is useful to clarify that this definition specifically includes:

—Electricity generated by wind energy technologies;
—Solar photovoltaic and solar thermal technologies;
—Geothermal technologies;
—Technologies based on landfill gas and biomass sources; and
—New low-impacts hydropower that meets the Low-Impact Hydropower Institute criteria.

Similarly, EPA agrees with the WRAP that it is useful to clarify that "biomass" includes agricultural, food and wood wastes, but does not include biomass from municipal solid waste, black liquor, or treated wood, and that for purposes of this definition, low-impacts hydropower does not include pumped storage. At the same time, EPA has concerns that the various lists in the WRAP's proposed definition may not be exhaustive, and that it would be preferable that the list be able to change without necessitating a change to 40 CFR 51.309.

The EPA has also included an amendment to 40 CFR 51.309(h)(4)(i) which requires that the backstop market trading program include the WRAP's recommended provision for renewable energy credits. This amendment requires SIPs under 40 CFR 51.309 to include a provision that eligible renewable energy resources that begin operation after October 1, 2000 will receive 2.5 tons of SO_2 allowances per megawatt of installed nameplate capacity per year. The rule also includes language consistent with the WRAP's recommendation that allowance allocations for renewable energy resources that begin operation prior to the program trigger will be retroactive to the time of initial operation. The EPA believes, however, that it is important for States to preserve flexibility over time with respect to implementing this provision. Accordingly, the final rule allows, but does not require, that implementation plans may provide for an upper limit on the number of allowances provided for eligible renewable energy resources.

2. Emissions Quantification Protocols

Proposed rule. The proposed rule required that implementation plans under 40 CFR 51.309 must include specific emissions quantification protocols, that is, procedures for determining actual emissions. These procedures will be used to measure, or determine, annual emissions from each source in the trading program if the trading program is triggered. The proposed rule also required that States include the necessary monitoring, recordkeeping, and reporting provisions to measure and track results.

In the Annex, the WRAP recognized the need to have detailed and prescribed emission quantification protocols and recommended that the participating States and Tribes establish such provisions in the SIPs submitted under 40 CFR 51.309. The Annex describes the WRAP's approach to monitoring in section II, pages 39–41, in section III, item III.D.3 on page 64, and in Attachment A, Draft Model Rule section C.2.3 Monitoring Requirements, and section C9 Emissions Monitoring. In particular, the WRAP recognized the need for emission monitoring protocols which ensure that emissions estimates are accurate and comparable for participating sources. For the trading program, the emissions become a tradeable, fungible commodity. Accordingly, it is important to the integrity of the program to ensure that one ton of emissions from one source is equivalent to one ton of emissions from another source.

In the Annex, the WRAP proposed that sources subject to the acid rain program under title IV of the CAA would continue to follow the continuous emissions monitoring procedures in the acid rain program, which appear in 40 CFR part 75. Because continuous emissions monitoring represents the best available method for determining emissions, EPA would not require separate emission protocols for these sources as part of implementing 40 CFR 51.309.

For other categories of sources not covered by part 75, the WRAP in the Annex recognized the need to develop protocols based upon "best available" monitoring techniques for each source category. In the proposed rule, for source categories with sources in more than one State submitting an implementation plan under 40 CFR 51.309, EPA required each State to use the same protocol. Further, in the proposal, EPA included criteria for determining the acceptability of these protocols in the implementation plans. These criteria are the same criteria listed in section 5.2 and 5.3 of EPA's Economic Incentive Program (EIP) guidelines. These guidelines state that emission quantification protocols:

—Must ensure reliable results, and that they must ensure that repeated application of the protocol obtains results equivalent to EPA-approved test methods;
—Must be replicable, that is, the protocol ensures that different users will obtain the same or equivalent results in calculating the amount of emissions and/or emissions reductions.

These EIP guidelines also specify that trading programs need to include monitoring, recordkeeping, and reporting provisions to provide adequate information for determining a source's compliance with the program. Adequate monitoring, recordkeeping and reporting procedures have several key attributes, including representativeness (characteristic of the source category and available monitoring techniques), reliability, replicability, frequency (that is, the monitoring is sufficiently repeated within the compliance period), enforceability (that is, the monitoring is independently verifiable), and timeliness.

Public comments. Comments on this provision were generally supportive of the notion that stringent protocols are needed to ensure the integrity of the "currency" for the trading program. Consistent with this view, one commenter representing electric utilities recommended that non-utility sources need to employ emissions quantification protocols that are equivalent to those of electric utilities. In the WRAP's comments, a few changes to the regulatory language were recommended. Some comments expressed concerns that the proposal did not provide enough flexibility in the use of quantification protocols.

The WRAP comments recommended that the proposal be modified to state:

> For source categories with sources in more than one State submitting an implementation plan under this section, each State must use protocols that are "sufficiently rigorous and comparable to ensure that emissions in the region are measured in a reliable and a consistent manner.

The WRAP believed that the terms "sufficiently rigorous and comparable" were preferable to the word requirement of the "same" methodology for each State. The WRAP also sought clarification that the proposed language in 40 CFR 51.309(h)(4)(iii) requiring that "the protocols must provide consistent approaches for all sources within a given source category" would not limit the WRAP States' and Tribes' ability to establish different monitoring requirements within source categories based on established criteria such as the size of an emission unit. For example, the WRAP comments noted that it may be appropriate to require the use of a CEMS on a large industrial boiler while using emission factors for a smaller boiler that is used as a backup unit.

Finally, the WRAP expressed concerns that this provision should provide for the use of flexible monitoring options that make sense for this particular trading program. Because smaller sources are anticipated to have greater difficulty meeting stringent monitoring requirements, the WRAP's market trading forum (MTF) is considering adopting more flexible monitoring provisions for these smaller sources. For smaller sources, the MTF goals are:

—To provide assurances that the milestone goals will still be met,
—To ensure that data are sound and reliable,
—To obtain data that are consistent with the assumptions of the Annex, and
—To ensure the integrity of the trading program.

While these MTF discussions are still in the preliminary stages, the WRAP comments seek assurance from EPA that the final rule will allow consideration of different approaches.

Another commenter noted that emission quantification protocols are continually evolving and becoming more refined. This commenter expressed concerns that if improved protocols, different from those used to establish the baseline, are used to determine steady and continuing progress and if the program is triggered, this could have the effect of penalizing sources for developing and using improved protocols. This commenter noted that EPA should not create a disincentive to such innovation. The commenter believed that if the quantification protocols remain static for SO_2 measurements until the program is triggered, at which time sources will be required to implement different reduction programs, then sources will be better able to adapt to the more precise measurements resulting from new quantification protocols. This commenter also believed that as a result, the sources will be able to factor in the need, if any, for greater reductions resulting from improved quantification protocols.

Final rule. The EPA has retained the language as proposed. The EPA believes that it is important to retain the requirement that sources in similar categories use the same method for determining emissions under the trading program. The EPA wishes to clarify that this does not preclude the MTF from making distinctions within a given category regarding the appropriate technique for determining emissions. However, we believe that it is important that any such distinctions be done consistently to ensure that the same methods are being used for similar sources.

The EPA does not believe that the proposed rule discourages innovation in the development of monitoring techniques. For the "pre-trigger" portion of the program, that is, the time period before a trading program, the program specifically provides for adjustments to the milestones to ensure that changes in monitoring techniques are appropriately considered.

3. Enforcement Penalties

Proposed rule. The proposed rule required that the backstop trading program include specific enforcement penalties to be applied if the emissions from a source exceed the allowances held by the source. In the preamble, EPA noted that the Annex provides for two types of automatic penalties when excess emissions occur:

—The automatic surrender of two future-year allowances for every ton of excess emissions, and
—A financial penalty ($5000 per ton, indexed to inflation from the year 2000) deemed to exceed the expected cost of allowances by a factor of three to four.

In addition, the proposed rule required that in establishing enforcement penalties, the State or Tribes must ensure that:

—When emissions from a source in the program exceed the allowances held by the source, each day of the year is a separate violation, and
—Each ton of excess emissions is a separate violation.

Public comments. The WRAP and a number of industry group commenters objected to the proposed requirements that when emissions from a source in the program exceed the allowances held by the source, each day of the year be considered a separate violation and that each ton of excess emissions be considered a separate violation. First, the WRAP and some industry comments asserted that the maximum penalty is punitive, and cannot be justified for a program that has been established to meet a welfare-based regional goal. Second, commenters believed that because this provision involved greater case-by-case judgments than the penalties in the Annex, the provision could lead to inconsistencies between the various State and tribal agencies.

The WRAP and other commenters recommended that EPA replace the penalty provisions in the proposal with the provisions that were recommended in the Annex, which were, in turn, based upon the acid rain program.

Final rule. The EPA has made a few changes to the final rule based upon public comments received. First, EPA has decided to include in the final rule the two specific types of automatic penalties listed in the Annex for excess emissions. The EPA believes that by including a requirement for these penalty provisions in the final rule, EPA can remove any ambiguity that may exist over whether the types of provisions envisioned by the WRAP would be acceptable to EPA for SIPs submitted under 40 CFR 51.309. The EPA agrees with the commenters that the program should establish sufficient penalties to deter non-compliance. The final rule includes a requirement to forfeit two allowances for each ton of excess emissions, and a requirement for monetary penalties. The EPA uses the WRAP's specific $5000 per ton amount in the final rule. At the same time, EPA believes that because it will be a number of years before the onset of any backstop trading program, it is possible that the appropriate $/ton figure could change over this time period, and that there may be additional factors that may need to be taken into account. The final rule provides for the development of an alternative to this amount, if the value is consistent across States and Tribes and the value substantially exceeds the expected costs of allowances, in order to provide a strong incentive for sources to hold allowances at least equal to their emissions.

The EPA believes that many commenters may have misunderstood the proposed regulatory language requiring that each day of the year be considered a separate violation and that each ton of excess emissions be considered a separate violation. The EPA wishes to clarify that we view these provisions as clarifying the *liabilities* that exist for violations under the CAA, and that these penalties are not automatic. The EPA believes that it is important to recognize that while the penalty structure devised by the WRAP will represent the principle way to deter violations, EPA believes that it is useful to clarify that the additional liabilities exist under the CAA. We believe this is consistent with the acid rain program. For example, under 40 CFR 77.1(b), EPA clarifies that the automatic penalties in the acid rain program do not negate other penalties under the CAA, as follows:

> (b) Nothing in this part shall limit or otherwise affect the application of sections 112(r)(9), 113, 114, 120, 303, 304, or 306 of the Act, as amended. Any allowance deduction, excess emission penalty, or interest required under this part shall not affect the liability of the affected unit's and affected source's owners and operators for any additional fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Act.

While EPA agrees with the WRAP that the penalty structure contained in the backstop trading program, which is patterned after the acid rain program, should be effective and should constitute the principal way penalties would be imposed, it is nonetheless useful and important to clarify that sources are potentially liable for other penalties under the CAA.

The EPA also clarifies in the final rule language, as noted on page 46 of the Annex (Annex section II.D.6.f.), that in addition to excess emissions, violations are possible with respect to other program requirements (such as monitoring and reporting requirements). We agree with the WRAP that CAA civil and criminal penalties would apply to such violations, including liability for each day as an individual violation.

4. Requirements for Periodic Evaluation

Proposed rule. The proposed rule required the backstop trading program to include a provision for periodic evaluations of the program. Such periodic evaluations are required as a means of determining whether the program, in its actual implementation, would need any mid-course corrections. The proposal included a list of nine questions that the program evaluations should address. These proposed questions, which were derived from EPA's guidance for EIP, section 5.3(b), were as follows:

(A) Whether the total actual emissions could exceed the milestones, even though sources comply with their allowances;

(B) Whether the program achieved the overall emission milestone it was intended to reach, and a discussion of the actions that have been necessary to reach the milestone;

(C) The effectiveness of the compliance, enforcement and penalty provisions;

(D) The administrative costs of the program to sources and to State and tribal regulators, including a discussion of whether States and Tribes have enough resources to implement the trading program;

(E) Whether the market trading program has likely led to decreased costs for reaching the milestone relative to a non-market based approach, including a discussion of the market price of allowances relative to control costs that might have otherwise been incurred;

(F) Whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects;

(G) Whether the actions taken to reduce SO_2 have led to any unintended increases in other pollutants;

(H) Whether there are any changes needed in emissions monitoring and reporting protocols, or in the administrative procedures for program administration and tracking;

(I) The effectiveness of the provisions for interstate trading, and whether there are any procedural changes needed to make the interstate nature of the program more effective.

Public comments. The only comments on the periodic evaluation provision were from the WRAP. The WRAP, while supporting items (A), (C), (H) and (I) without changes, recommended changes to items (B) and (D) and recommended deletion of items (E), (F) and (G).

The WRAP's comments recommended deleting the phrase "and a discussion of the actions that have been necessary to reach the milestones" from the end of item (B). The WRAP noted that the backstop trading program is intended to provide incentives for long-term business planning. The program also allows other concerns, such as the need to meet the $PM_{2.5}$ NAAQS, to bring about some of the emissions reductions needed to meet the regional haze goals. The WRAP stated that it could be difficult to determine what actions were required to achieve all of the emissions reductions in the region, because most of the reductions would follow from individual business decisions. Accordingly, in its comments, the WRAP recommended that this provision not be mandated by the rule.

The WRAP comments recommended deletion of the phrase "the administrative costs of the program to sources and to State and tribal regulators" from item (D), such that this item would be modified to read "a discussion of whether States and Tribes have enough resources to implement the trading program." The WRAP stated that States and Tribes will be monitoring the costs of the program as part of their on-going internal program review, but that this should not be mandated by EPA. Rather, the WRAP recommended that the rule should be focused on what is needed to meet the visibility improvement goals, and that the development of the most cost-effective

strategies to meet those goals should be left to the States and Tribes.

The WRAP's comments recommended deletion of item (E) from the rule. The WRAP indicated that while States and Tribes may choose to perform an analysis of the cost effectiveness of the program, this should not be mandated by EPA. The WRAP also recommended deletion of items (F) and (G) from the rule. In its comments, the WRAP explained its view that it could be very difficult to determine what changes in emissions in the region are due to the milestones because so many different factors will come into play in a backstop trading program. Moreover, the WRAP comments noted that the regional haze rule already includes provisions for a 5-year SIP review of the entire program under 40 CFR 51.309, and that new SIPS will be developed every 10 years. The WRAP stated that it believes that existing requirements in the rule are adequate to ensure that there are not any unintended consequences due to implementation of the backstop trading program, and that the additional audit requirements in (F) and (G) could prove to be difficult and expensive to analyze.

Final rule. The final rule incorporates the WRAP's recommended changes to items (B) and (D), and accepts the WRAP's recommendation to delete item (E). The EPA has, however, retained items (F) and (G). The EPA believes that it is important that a program evaluation of the trading program determine whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects and whether the actions taken to reduce SO_2 have led to any unintended increases in other pollutants. While the WRAP correctly notes that there are SIP reviews every 5 years, and new SIPS every 10 years, EPA believes that the program evaluations should be designed to provide information that indicate whether these SIP reviews should contain any mid-course corrections. The EPA does not believe that it will require a burdensome or exhaustive analysis to determine whether, qualitatively, such effects have occurred. If it is known that these detrimental effects have occurred, EPA believes that WRAP States should take this into account in the SIP revisions.

E. Provisions Related to Time Period After 2018

Proposed rule. In the proposal, EPA noted that the Annex did not attempt to address the fate of this program beyond calendar year 2018. In the proposal, EPA believed that it is reasonable for WRAP States and Tribes to defer until a later date any judgment on the specific levels of SO_2 that can be achieved. Finally, in the proposal, EPA noted its belief that any actions that occur after 2018 should not be allowed to increase SO_2 emissions beyond the 2018 milestone. Accordingly, EPA proposed to indicate in the language in Table 1 of the proposed rule that any milestone developed for years after 2018 must not allow increases over and above those for the year 2018.

Public comments. One commenter, supported by two other commenters, believed that, because the WRAP Annex covers the period from 2003 to 2018, EPA's approval of the Annex should not be dependent on what occurs after 2018. The EPA interprets this comment as requesting that the final rule be silent on the time period after 2018. The WRAP's comments recommended that the language in Table 1 of the proposed rule be modified to read "no more than 510,000 tons (480,000 tons if suspended smelters do not resume operation) unless the milestones are replaced with a different program that meets any BART and 'reasonable progress' requirements established in this rule."

Final rule. The EPA has incorporated language similar to that requested by the WRAP into Table 1. This ensures that the progress made by participating States and Tribes in addressing the visibility impairment will not be eroded in the event that the SIP revisions due in 2018 are not in place at the beginning of 2019. At the same time, this provision clearly indicates that this SIP revision is the expected means of addressing visibility after that date.

F. Provisions Related to Indian Tribes

Proposed Rule. Western Indian Tribes have been directly involved during the development of the GCVTC report and the subsequent development of the WRAP Annex report. Through this involvement, they have been able to ensure that unique issues of importance to Tribes have been carefully considered by all stakeholders. The Annex addresses issues of tribal interest, including a specific provision of the program for Tribes in the market trading program. The EPA believes that tribal participation is important for the success of the visibility protection program in the Western United States and reflected this in the proposed rule.

When developing the backstop trading program, the WRAP established a 20,000 ton allowance amount (called the "set-aside") to be allocated to Tribes. In the event that the backstop market trading program is triggered, the set-aside would be available to Tribes to either (1) allow for new source growth over and above the amounts allocated for new sources by the Annex; (2) sell for revenue; or (3) retire. Note that this set-aside amount is in addition to any allocations to individual sources within Indian Country. For example, if the Navajo Nation participates in the program, there would be an allocation for the Four Corners Power Plant and for the Navajo Power Plant, which are located on the Navajo Reservation. The WRAP's backstop trading program includes within the overall milestones an amount for each such existing source in addition to the tribal set-aside. For more discussion of this issue, see 67 FR 30438, May 6, 2002.

In the proposal, EPA included the 20,000 ton tribal set-aside as a requirement of the backstop trading program. In addition, EPA discussed in the preamble its views of EPA's role with respect to allocation of the 20,000 ton set-aside. In this discussion, EPA stated its view that allocation of the 20,000 ton amount was not a critical short-term need, because the backstop trading program would be triggered, at the earliest, in the year 2009. The EPA indicated its expectation that Tribes will develop the method for allocating the 20,000 tons, but that EPA will seek to provide assistance as necessary to facilitate the process.

In the proposed rule, EPA reiterated its position that it will "pursue the principle of tribal 'self government' and will work with tribal governments on a 'government-to-government' basis." The CAA Amendments of 1990 added section 301(d) which authorizes EPA to "treat Tribes as States" for the purposes of administering CAA programs. The EPA promulgated regulations implementing section 301(d) in the Tribal Authority Rule, which elaborates on EPA's tribal policies, on February 12, 1998, (63 FR 7254). For a more detailed discussion of EPA's tribal policies, see the Tribal Authority Rule (63 FR 7254) and the proposed rule (67 FR 30418).

Public Comments. The EPA received several comments relating to tribal issues, including the set-aside for Tribes in the market trading program and the need for providing assistance (such as developing a model TIP) to Indian Tribes.

The WRAP's comments agreed with the proposed language in § 51.309(h)(4)(i) regarding the set-aside and added that the final rule should say that tribal participation in the market trading program would not be affected by States that do not choose to participate in the market trading program. The WRAP comments included an example: "if California opts out of the backstop trading program, all Tribes that are located in California may still participate in the distribution of the tribal set-aside." The WRAP also suggested that EPA make assistance in developing a TIP a high priority, and that EPA should develop a model implementation plan which could be appropriately modified and used by any Tribe choosing to participate in the market trading program.

One commenter representing industrial sources located in Indian country expressed the concern that participation by Tribes with large stationary sources was important for the program to reach "critical mass." Additionally, this commenter believed that EPA should work to serve the interests of sources located in Indian country by assisting the Tribes in developing a program under 40 CFR 51.309.

The WRAP's comments agreed with EPA's assessment that allocation of the 20,000 ton tribal set-aside does not need to be completed in the near-term, and strongly agreed that the distribution of the set-aside should be determined by the Tribes and not EPA or the WRAP. However, the WRAP recommended that the final rule contain a provision that will require the determination of a method to allocate or manage the set-aside by no later than 1 year after the market trading program is triggered.

Final Rule. The EPA agrees with commenters regarding participation of Indian Tribes in the regional SO_2 emissions reductions program. The EPA agrees that Tribes should be allowed to participate in the program and their participation is not dependent on the participation of the States that surround them. As stated in the Tribal Authority Rule (63 FR 7271)

> [t]ribes * * * shall be treated in the same manner as states with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in section 49.4 and the regulations that implement those provisions. (63 FR 7271).

Because the CAA provisions for the regional haze rule are not listed in section 49.4, Tribes should have the opportunity to be treated in the same manner as States for purposes of implementing 40 CFR 51.309. Accordingly, eligible Tribes may submit a plan regardless of the participation of neighboring States.

The EPA concurs with the comments regarding the importance of assisting Tribes in developing TIPs. As stated in the proposal, "For Tribes which choose to implement 40 CFR 51.309, EPA believes there are a number of ways that EPA can provide assistance." The EPA will help those Tribes with major SO_2 sources to comply with the pre-trigger emissions tracking requirements, and to assist Tribes interested in participating in the backstop trading program. To this end, EPA has met, or plans to meet, with all Tribes that have major SO_2 sources. In these meetings, EPA is explaining the regional haze rules and options for participating in the SO_2 reduction program.

The EPA agrees with the WRAP's comments that a model TIP could serve to facilitate implementation of the program in Indian country. The EPA will work with Tribes to further assess the needs for such a model TIP. The EPA also agrees with the WRAP's recommendation to establish a 1-year deadline for allocation of the 20,000 ton set-aside, and we have added this language to the final rule.

EPA is committed to protecting tribal air resources, building tribal air program capacity, and working with Tribes on a government-to-government basis.

IV. Statutory and Executive Order Reviews

In preparing any final rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this section of the preamble, we discuss how the final rule addresses these administrative requirements. Except where EPA committed in the proposal to further efforts, these discussions reflect EPA's assessments for the proposed rule. No public comments were received regarding EPA's proposed treatment of these administrative requirements.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

Today's final rulemaking amends the regional haze rule by incorporating a specific set of SO_2 emission targets for regionwide stationary sources of SO_2 emissions for a nine-State region in the Western United States. The emission targets would affect and have potential economic impacts only for States choosing to participate in the optional program provided by 40 CFR 51.309 of the regional haze rule. The emissions reductions resulting from the program vary over the 2003 to 2018 time period. If all nine States participate in the program, the WRAP estimates that for the year 2018, SO_2 emissions would be reduced from a projected baseline of 612,000—642,200 tons to an enforceable milestone of 480,000—510,000 tons. If the milestones are not achieved through voluntary emissions reductions by the affected sources, then they will be achieved through an enforceable backstop market trading program.

In order to understand the possible regulatory impacts of this rule, it is necessary to review the previous analysis that EPA completed for the entire regional haze program. In 1999, EPA prepared a Regulatory Impact Analysis (RIA) for the regional haze rule (see regional haze rule docket (A–95–38)). In that RIA, EPA assessed the costs, economic impacts, and benefits for four illustrative progress goals, two sets of control strategies, two sets of assumptions for estimating benefits, and systems of nationally uniform progress goals versus regional varying progress goals (64 FR 35760, July 1, 1999). Because we had no way of predicting the visibility goals each State would pick under the regional haze rule requirements, we conducted an extensive analysis of eight "what if" scenarios. For each scenario, the RIA determined the control measures needed to achieve the given degree of visibility improvement and the associated costs. The RIA also presented results for six specific sub-regions, such as "Rocky Mountain," "West," and others. These emission reduction scenarios are provided in the RIA in Tables 6–7 and 6–8.

The EPA believes that some of the emissions reductions from the Annex provisions for stationary source SO_2, assuming States choose this optional 40

CFR 51.309 approach, may result from environmental obligations under the CAA. To the extent this is the case, the emissions reductions required the WRAP's SO_2 milestones and backstop trading program may have already been addressed in other regulatory impact analyses for those programs.

The remainder of the emissions reductions resulting from the WRAP's program for stationary source SO_2 would be over and above those required to meet other environmental obligations. Where this is the case, we believe that the control costs and other potential economic consequences of achieving the reductions are reflected in the RIA for the 1999 regional haze rule. The range of results for the eight scenarios analyzed in the RIA resulted in predicted SO_2 emissions reductions that are within the range of emissions reductions included in the Annex. Two of the eight scenarios resulted in 284,000 tons of stationary source reductions in regions containing one or more of the WRAP Annex States. Five other scenarios include SO_2 emissions reductions ranging from 95,000 to 128,000 tons per year. Hence, the costs and benefits associated with the WRAP's program are captured in the RIA for the 1999 final regional haze rule.

The EPA received no public comments regarding Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in today's rule have been submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1813.05) and a copy may be obtained from Susan Auby, by mail at Office of Environmental Information—Information Strategies Branch, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

The EPA has prepared burden estimates for the specific burden impacts of today's rule. These burden estimates are calculated using the assumption that seven eligible States and four tribes would participate in the program. The results of the calculations indicate 16,100 hours to 19,990 hours for affected sources, 14,010 to 14,430 hours for States, 2,520 to 2,600 hours for Tribes, 1,305 to 1,375 hours for the Federal government, and 240 hours for regional planning organizations.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA sought comments on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden. The EPA received no comments regarding the burden or the Paperwork Reduction Act as it applies to today's rulemaking.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html);* (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the potential for economic impacts of today's rule on small entities, I certify that today's rule will not have a significant economic impact on a substantial number of small entities. Today's rule amends the requirements of the regional haze program to provide nine Western States and a number of Tribes with an optional method for complying with the requirements of the CAA. No State or Tribe is required to submit an implementation plan meeting its requirements. For States or Tribes that choose to submit an implementation plan under this optional program, however, today's rule requires those States and/or Tribes to meet a series of regional SO_2 emission milestones. The EPA will determine whether these milestones are met based on the actual emissions from stationary sources with SO_2 emissions of more than 100 tons per year. From data EPA obtained from the WRAP's Web site, it appears that there are 194 establishments meeting the 100 tons per year of SO_2 criterion for this program, including 39 utility power plants, and 155 non-utility sources.[9] The vast majority of these establishments—which include sources such as power plant boilers, copper smelters, chemical plants, petroleum refineries, natural gas production plants, large manufacturing operations, mills—are not small entities. The EPA estimates that 12 facilities are likely to be owned by small entities, and 164 are owned by entities that are not small. The EPA has been unable to determine the size of 16 entities that own 18 of the establishments.[10] Even if all 18 were determined to be owned by small entities, and all nine States and those Tribes with covered sources adopted the optional approach to complying with the visibility requirements of the CAA, less than 30 small entities would be potentially affected by this rule.

The goal of the WRAP is for the regional SO_2 milestones established by the rule to be met through voluntary measures and EPA believes that participating States and Tribes may be able to meet the milestones through such measures. However, as a backstop in the event the milestones are not met in this manner, today's rule requires the implementation of a market trading program to ensure that emissions in the relevant region do not exceed the milestones. Today's rule gives the States and Tribes the discretion to allocate emissions credits to sources, as the States and Tribes determine appropriate. Ultimately, the impact on small entities will not be determined by this rule, but rather by how the relevant State or Tribe exercises its discretion in adopting the optional program and allocating emissions credits, We encourage States and Tribes to consider the impact of its market trading program on small entities. Nonetheless, EPA believes that no more than 28 small entities will be affected by this rule, and most likely less, given that EPA does not anticipate that all nine States with the option to participate in this program will do so. We did not receive any public comments regarding the RFA or the Small Business Regulatory Enforcement Fairness Act of 1996. The EPA continues to believe that today's rulemaking will not have a significant economic impact on a substantial number of small entities.

[9] The number of power plants was obtained from "Data Worksheets from ICF Consulting Detailing Utility Emissions Projections," Item 3 in supplemental information transmitted to Tim Smith, EPA, from Patrick Cummins, WRAP. June 29, 2001. The non-utility estimate was obtained from: *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program.* Section 2.A. Revised Appendix A for the Pechan Report, table A–1.

[10] The EPA provides documentation of these estimates in a technical memorandum, "Size of Potentially Affected Entities Should the Western Regional Air Partnership States Choose to Adopt Regulations in Accordance with the Draft Proposed Rule Revising § 51.309(h)." Allen Basala, EPA, October 17, 2001. This memorandum is included in the docket for today's final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

By incorporating into the regional haze rule the provisions of the Annex for a voluntary emissions reductions program and backstop trading program, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise. The program is not required and thus is clearly not a "mandate." Thus, EPA is not obligated to develop a small government agency plan, as required under section 203 of UMRA.

The EPA also believes that because today's rule provides those States potentially subject to the rule with substantial flexibility, today's rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for SIPs for visibility protection that address BART. Today's rule provides States and sources with the flexibility to achieve regional SO_2 reductions in a way that is both cost and administratively effective. Sources are given the opportunity to achieve voluntary reductions. If such reductions do not occur, then the rule provides for the establishment of a trading program to achieve targeted emissions reductions. If a trading program is implemented, sources have the flexibility to buy and sell allowances in order to reach emissions reductions milestones in the most cost-effective way. Today's rule, therefore, inherently provides for adoption of the least costly, most-cost effective, and least-burdensome alternative that achieves the objective of this rule.

The EPA believes that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule, (64 FR 35761, July 1, 1999). However, today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for States, local, or tribal governments or the private sector. The program contained in 40 CFR 51.309, including today's rule, is an optional program.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

Today's rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As an optional program, today's rule will not directly impose significant new requirements on State and local governments. In addition, even if today's rule did have federalism implications, it will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law.

Consistent with EPA policy, we nonetheless consulted with State and local officials early in the process of developing this regulation, to provide them with an opportunity for meaningful and timely input into its development. These consultations included a working meeting with State and local officials and numerous discussions with committees and forums of the WRAP. In the spirit of Executive Order 13132 and consistent with EPA policy to promote

communications between EPA and State and local governments, EPA specifically solicited comment on today's rule from State and local officials. We received no comments regarding this executive order from State and local officials or any other public commenters.

As required by section 8(a) of Executive Order 13132, EPA included a certification from its Federalism Official stating that EPA had met the Executive Order's requirements in a meaningful and timely manner, when it sent the draft of this final rule to OMB for review pursuant to Executive Order 12866. A copy of this certification has been included in the public version of the official record for this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to, among other things, ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the executive order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults tribal officials early in the process of developing today's regulation. Under section 5(c) of the Executive Order, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless EPA consults with tribal officials early in the process of developing today's regulation.

Today's rule may have tribal implications, but we believe that it will neither impose substantial direct compliance costs on the Tribes nor preempt tribal law. The EPA sought input from potentially affected Tribes before reaching a conclusion on whether this rule will have tribal implications. This was due, in a large part, to the voluntary nature of this program and the uncertainty of potential impacts on Tribes in the event a State or Tribe chooses to participate in the program. Possible impacts on Tribes choosing to opt into this program are discussed above in unit III of this preamble.

The EPA notes that the WRAP, consulted extensively with tribal representatives in the development of the Annex, the document which provided the basis for today's rulemaking. The Annex provides recognition of Tribes throughout the document and there is a specific discussion of tribal issues in Attachment F of the Annex. Today's rulemaking closely mirrors the recommendations of the WRAP and therefore reflects discussions between the WRAP and Western Tribes.

In keeping with EPA policies regarding Tribes and Executive Order 13175, prior to the issuance of the final rule, EPA provided additional opportunities for consultation with tribal officials or authorized representatives of tribal governments on the potential impacts of today's rule on Tribes. After consulting with a tribal representative, EPA provided Tribes with several opportunities to provide comments on today's rulemaking. During the public comment period, EPA met with tribal environmental staff at tribal environmental forums in Portland, Oregon and Sparks, Nevada. Also, during the public comment period, EPA sent letters to all Western Tribes describing the regional haze rules and, in particular, today's rule, alerting them to the public comment period and seeking their opinions on the rulemaking. Finally, EPA staff met with Tribes in the Western United States, that have sources located on their tribal lands, with sources potentially subject to BART requirements. Although EPA did receive public comments on Tribal issues, we did not receive any public comments specific to this executive order.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under 5–501 of the Order has the potential to influence the regulation. Today's rule to codify the SO_2 emission reduction program is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risk. There were no public comments received pertaining to this executive order.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) Any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies should the proposal or rule be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

While this rulemaking is a "significant regulatory action" under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In today's rule, if States chose to implement the option provided by 40 CFR 51.309, this would lead to a regional reduction in SO_2 emissions in order to meet the WRAP's SO_2 milestones for the 2003–2018 time period. The WRAP's analysis of the program's requirements results in the following projections: [11]

- No reduction in crude oil supply;
- No reduction in fuel production;
- 0.0 percent to 0.2 percent increase in wholesale electricity prices in 2018;
- Production cuts in coal in the Western States balanced by increases in coal production in the Appalachian region;
- No increase in energy distribution costs;
- No significantly increased dependence on foreign supplies of energy;
- Adverse impacts on employment, gross regional product, and real disposable incomes in the affected Western States of less than 0.05 percent in 2018;
- Room for new sources of electrical generating capacity within the target SO_2 emission levels.

Given the particular concern in the West regarding needed electrical generating capacity, EPA believes it important to note the WGA statement that "the conclusion [* * * of their analysis * * *] is that sulfur dioxide emissions reductions milestones should in no way impede the construction of new coal-fired power plants in the West [12] * * *"

Furthermore, an assessment by WGA of the effects of the WRAP Annex indicates that it is possible to build 7000 megawatts or more of new coal-fired generation at any time between 2001 and 2018 without exceeding the SO_2 emission milestones in the Annex.[13] However, the amount of megawatts that could be built is affected by analytical assumptions regarding fuel mix and quality, capacity utilization, control levels, and the demarcation of fuel use regions. Additional scenarios included in the WGA analysis show that there could be room for 19,000 megawatts of generation capacity.

The EPA believes that the program contained in the Annex and in today's rule will not result in energy reduction of 500 or more megawatts installed production capacity. Under this program, considerable flexibility is afforded to electricity generators on how to comply with the program. Even if the trading program is triggered and sources must comply with allowances, we believe that the least-cost solutions afforded by the trading program, and the ability to secure emissions reductions from other sources, will make it very unlikely that the program would lead to plant shutdowns. The EPA did not receive any public comments specifically addressing this executive order or EPA's findings.

[11] ICF consulting, Final Report on Regional Economic Impacts of Annex. Transmitted to Tim Smith, EPA/OAQPS by Patrick Cummins, WRAP Co-Project Manager, June 29, 2001.

[12] Memorandum from Jim Souby to Staff Council, State Environmental Directors and State Air Directors, "Energy and Air Quality Issues." February 23, 2001.

[13] Technical Memorandum, "Analysis of New Coal-Fired Power Plants Under the Proposed Sulfur Dioxide Emission Reduction Milestones for the Nine-State Grand Canyon Visibility Transport Region." February 22, 2001.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

However, today's rule does not incorporate any requirements to use any particular technical standards, such as specific measurement or monitoring techniques. Therefore, EPA is not considering the use of any voluntary consensus standards in this rulemaking. Today's rule does require States to develop emissions quantification protocols and monitoring procedures for their SIPs as part of the market trading program. However, EPA generally defers to the choices the States make in their SIPs when the CAA does not prescribe requirements, so EPA is not requiring the use of specific, prescribed techniques, or methods in those SIPs. Nevertheless, while EPA believes that it is not necessary to consider the use of any voluntary consensus standards for this proposal, we will encourage States and Tribes to consider the use of such standards in the development of these protocols. The EPA did not receive any public comments concerning this executive order.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that today's rule should not raise any environmental justice issues. The overall result of the program is regional reductions in SO_2. Because this program would likely reduce regional and local SO_2 levels in the air and because there are separate programs under the CAA to ensure that SO_2 levels do not exceed national ambient air quality standards, it appears unlikely that this program would permit any adverse affects on local populations. The EPA did not receive any public comments regarding this executive order.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on August 4, 2003.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen oxides, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: May 21, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart P—Protection of Visibility

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410–7671q.

■ 2. Section 51.309 is amended by:
■ a. Revising paragraph (b)(5).
■ b. Adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12) and (b)(13).
■ c. Revising paragraph (c).
■ d. Revising paragraphs (d)(4)(i)through(d)(4)(iv).
■ e. Revising paragraph (f)(1)(i) and (f)(3).
■ f. Adding paragraph (h).

The revisions and additions read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(5) Milestone means the maximum level of annual regional sulfur dioxide emissions for a given year, assessed annually consistent with paragraph (h)(2) of this section beginning in the year 2003.

* * * * *

(8) Base year means the year, generally a year between 1996 and 1998, for which data for a source included within the program were used by the WRAP to calculate base year emissions as a starting point for development of the Annex required by paragraph (f) of this section.

(9) Forecast means the process used by the WRAP to predict future emissions for purposes of developing the milestones required by paragraph (f) of this section.

(10) Reforecast means a corrected forecast, based upon reapplication of the forecasting process after correction of base year emissions estimates.

(11) BHP San Manuel means:

(i) the copper smelter located in San Manuel, Arizona which operated during 1990, but whose operations were suspended during the year 2000,

(ii) The same smelter in the event of a change of name or ownership.

(12) Phelps Dodge Hidalgo means:

(i) The copper smelter located in Hidalgo, New Mexico which operated during 1990, but whose operations were suspended during the year 2000,

(ii) the same smelter in the event of a change of name or ownership.

(13) Eligible renewable energy resource, for purposes of 40 CFR 51.309, means electricity generated by non-nuclear and non-fossil low or no air emission technologies.

(c) *Implementation Plan Schedule.* Each Transport Region State may meet the requirements of § 51.308(b) through (e) by submitting an implementation plan that complies with the requirements of this section. Each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the 16 Class I areas no later than December 31, 2003. Indian Tribes may submit implementation plans after the December 31, 2003 deadline. A Transport Region State that does not submit an implementation plan that complies with the requirements of this section (or whose plan does not comply with all of the requirements of this section) is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.

* * * * *

(d) * * *

(4) * * *

(i) Sulfur dioxide milestones consistent with paragraph (h)(1) of this section.

(ii) Monitoring and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the annual monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting data must be sufficient to determine whether a 13 percent reduction in actual emissions has occurred between the years 1990 and 2000, and for determining annually whether the milestone for each year between 2003 and 2018 is exceeded, consistent with paragraph (h) (2) of this section. The plan submission must provide for reporting of these data by the State to the Administrator and to the regional planning organization consistent with paragraph (h)(2) of this section.

(iii) Criteria and Procedures for a Market Trading Program. The plan must include the criteria and procedures for activating a market trading program consistent with paragraphs (h)(3) and (h)(4) of this section. The plan must also provide for implementation plan assessments of the program in the years 2008, 2013, and 2018.

(iv) Provisions for market trading program compliance reporting consistent with paragraph (h)(4) of this section.

* * * * *

(f) * * *

(1) * * *

(i) The annex must contain quantitative emissions milestones for stationary source sulfur dioxide emissions for the reporting years 2003, 2008, 2013 and 2018. The milestones must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2) and would be approvable in lieu of BART.

(2) * * *

(3) The EPA will publish the annex upon receipt. If EPA finds that the annex meets the requirements of paragraph (f)(1) of this section and assures reasonable progress, then, after public notice and comment, EPA will amend the requirements of this section to incorporate the provisions of the annex. If EPA finds that the annex does not meet the requirements of paragraph (f)(1) of this section, or does not assure reasonable progress, or if EPA finds that the annex is not received, then each Transport Region State must submit an implementation plan for regional haze meeting all of the requirements of § 51.308.

* * * * *

(h) *Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide.* The first implementation plan submission must include a stationary source emissions reductions program for major industrial sources of sulfur dioxide that meets the following requirements:

(1) *Regional sulfur dioxide milestones.* The plan must include the milestones in Table 1, and provide for the adjustments in paragraphs (h)(1)(i) through (iv) of this section. Table 1 follows:

TABLE 1.—SULFUR DIOXIDE EMISSIONS MILESTONES

Column 1	Column 2	Column 3	Column 4
For the year . . .	. . . if BHP San Manuel and Phelps Dodge Hidalgo resume operation, the maximum regional sulfur dioxide milestone is . . .	. . . if neither BHP San Manuel nor Phelps Dodge Hidalgo resumes operation, the minimum regional sulfur dioxide milestone is . . .	. . . and the emission inventories for these years will determine whether emissions are greater than or less than the milestone:
2003	720,000 tons	682,000 tons	2003.
2004	720,000 tons	682,000 tons	Average of 2003 and 2004.
2005	720,000 tons	682,000 tons	Average of 2003, 2004 and 2005.
2006	720,000 tons	682,000 tons	Average of 2004, 2005 and 2006.
2007	720,000 tons	682,000 tons	Average of 2005, 2006 and 2007.
2008	718,333 tons	680,333 tons	Average of 2006, 2007 and 2008.
2009	716,667 tons	678,667 tons	Average of 2007, 2008 and 2009.
2010	715,000 tons	677,000 tons	Average of 2008, 2009 and 2010.
2011	715,000 tons	677,000 tons	Average of 2009, 2010 and 2011.
2012	715,000 tons	677,000 tons	Average of 2010, 2011 and 2012.
2013	695,000 tons	659,667 tons	Average of 2011, 2012 and 2013.
2014	675,000 tons	642,333 tons	Average of 2012, 2013 and 2014.
2015	655,000 tons	625,000 tons	Average of 2013, 2014 and 2015.
2016	655,000 tons	625,000 tons	Average of 2014, 2015 and 2016.
2017	655,000 tons	625,000 tons	Average of 2015, 2016 and 2017.
2018	510,000 tons	480,000 tons	Year 2018 only.
Each year after 2018	no more than 510,000 tons unless the milestones are replaced with a different program that meets any BART and reasonable progress requirements established in § 51.309.	no more than 480,000 tons unless the milestones are replaced with a different program that meets any BART and reasonable progress requirements established in § 51.309.	3-year average of the year and the two previous years, or any alternative provided in any future plan revisions under § 51.308(f).

(i) Adjustment for States and Tribes Which Choose Not to Participate in the Program, and for Tribes that opt into the program after the 2003 deadline. If a State or Tribe chooses not to submit an implementation plan under the option provided in § 51.309, or if EPA has not approved a State or Tribe's implementation plan by the date of the draft determination required by § 51.309(h)(3)(ii), the amounts for that State or Tribe which are listed in Table 2 must be subtracted from the milestones that are included in the implementation plans for the remaining States and Tribes. For Tribes that opt into the program after 2003, the amounts in Table 2 or 4 will be automatically added to the milestones that are included in the implementation plans for the participating States and Tribes, beginning with the first year after the tribal implementation plan implementing § 51.309 is approved by the Administrator. The amounts listed in Table 2 are for purposes of adjusting the milestones only, and they do not represent amounts that must be allocated under any future trading program. Table 2 follows:

TABLE 2.—AMOUNTS SUBTRACTED FROM THE MILESTONES FOR STATES AND TRIBES WHICH DO NOT EXERCISE THE OPTION PROVIDED BY § 51.309

State or tribe	2003	2004	2005	2006	2007	2008	2009	2010
1. Arizona	117,372	117,372	117,372	117,372	117,372	117,941	118,511	119,080
2. California	37,343	37,343	37,343	37,784	37,343	36,363	35,382	34,402
3. Colorado	98,897	98,897	98,897	98,897	98,897	98,443	97,991	97,537
4. Idaho	18,016	18,016	18,016	18,016	18,016	17,482	16,948	16,414
5. Nevada	20,187	20,187	20,187	20,187	20,187	20,282	20,379	20,474
6. New Mexico	84,624	84,624	84,624	84,624	84,624	84,143	83,663	83,182
7. Oregon	26,268	26,268	26,268	26,268	26,268	26,284	26,300	26,316
8. Utah	42,782	42,782	42,782	42,782	42,782	42,795	42,806	42,819
9. Wyoming	155,858	155,858	155,858	155,858	155,858	155,851	155,843	155,836
10. Navajo Nation	53,147	53,147	53,147	53,147	53,147	53,240	53,334	53,427
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintahand Ouray Reservation	1,129	1,129	1,129	1,129	1,129	1,131	1,133	1,135
13. Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

State or tribe	2011	2012	2013	2014	2015	2016	2017	2018
1. Arizona	119,080	119,080	116,053	113,025	109,998	109,998	109,998	82,302
2. California	34,402	34,402	33,265	32,128	30,991	30,991	30,991	27,491
3. Colorado	97,537	97,537	94,456	91,375	88,294	88,294	88,294	57,675
4. Idaho	16,414	16,414	15,805	15,197	14,588	14,588	14,588	13,227

State or tribe	2011	2012	2013	2014	2015	2016	2017	2018
5. Nevada	20,474	20,474	20,466	20,457	20,449	20,449	20,449	20,232
6. New Mexico	83,182	83,182	81,682	80,182	78,682	78,682	78,682	70,000
7. Oregon	26,316	26,316	24,796	23,277	21,757	21,757	21,757	8,281
8. Utah	42,819	42,819	41,692	40,563	39,436	39,436	39,436	30,746
9. Wyoming	155,836	155,836	151,232	146,629	142,025	142,025	142,025	97,758
10. Navajo Nation	53,427	53,427	52,707	51,986	51,266	51,266	51,266	44,772
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintahand Ouray Reservation	1,135	1,135	1,135	1,135	1,135	1,135	1,135	1,135
13. Northern Arapaho and Shoshone Tribes of the Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

(ii) Adjustment for Future Operation of Copper Smelters.

(A) The plan must provide for adjustments to the milestones in the event that Phelps Dodge Hidalgo and/or BHP San Manuel resume operations or that other smelters increase their operations.

(B) The plan must provide for adjustments to the milestones according to Tables 3a and 3b except that if either the Hidalgo or San Manuel smelters resumes operation and is required to obtain a permit under 40 CFR 52.21 or 40 CFR 51.166, the adjustment to the milestone must be based upon the levels allowed by the permit. In no instance may the adjustment to the milestone be greater than 22,000 tons for the Phelps Dodge Hidalgo, greater than 16,000 tons for BHP San Manuel, or more than 30,000 tons for the combination of the Phelps Dodge Hidalgo and BHP San Manuel smelters for the years 2013 through 2018. Tables 3a and 3b follow:

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS

Scenario	If this happens . . .	and this happens . . .	. . . then you calculate the milestone by adding this amount to the value in column 3 of Table 1
1	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 tons PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.
2	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes operation in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) Expected emissions for Phelps Dodge Hidalgo (not to exceed 22,000 tons), PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.
3	BHP San Manuel Manuel resumes operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel resumes production consistent with past operations and emissions.	A. 16,000 tons PLUS B. Any amounts identified in Table 3b.
4	BHP San Manuel resumes operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel resumes operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Expected emissions for BHP (not to exceed 16,000 tons) PLUS B. Any amounts identified in Table 3b.
5	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	Both smelters resume production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increase by 38,000 tons. B. For the years 2013 through 2018, the milestone increases by 30,000 tons.

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS—Continued

Scenario	If this happens . . .	and this happens . . .	. . . then you calculate the milestone by adding this amount to the value in column 3 of Table 1
6	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions, but BHP San Manuel resumes operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 PLUS (2) Expected emissions for San Manuel (not to exceed 16,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
7	Both Phelps Dodge Hidalgo and BHP San Manuel resumes operations.	BHP San Manuel resume production consistent with the past operations and emissions, but Phelps Dodge Hidalgo resumes operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, milestone increases by: (1) 16,000 PLUS (2) Expected Hidalgo emissions (not to exceed 22,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
8	Both Phelps Dodge Hidalgo and BHP San Manuel do not resume operations.		A. Any amounts identified in Table 3b.

TABLE 3B.—ADJUSTMENTS FOR CERTAIN COPPER SMELTERS WHICH OPERATE ABOVE BASELINE LEVELS

[In tons]

Where it applies in table 3a, if the following smelter . . .	complies with *existing* permits but has actual annual emissions that exceed the following baseline level . . .	. . . the milestone increases by the *difference* between actual emissions and the baseline level, or the following amount, whichever is less
Asarco Hayden	23,000	3,000
BHP San Manuel	16,000	1,500
Kennecott Salt Lake	1,000	100
Phelps Dodge Chino	16,000	3,000
Phelps Dodge Hidalgo	22,000	4,000
Phelps Dodge Miami	8,000	2,000

(iii) Adjustments for changes in emission monitoring or calculation methods. The plan must provide for adjustments to the milestones to reflect changes in sulfur dioxide emission monitoring or measurement methods for a source that is included in the program, including changes identified under paragraph (h)(2)(iii)(D) of this section. Any such adjustment based upon changes to emissions monitoring or measurement methods must be made in the form of an implementation plan revision that complies with the procedural requirements of § 51.102 and § 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due date for a periodic report under paragraph (d)(10) of this section following the change in emission monitoring or measurement method.

(iv) Adjustments for changes in flow rate measurement methods for affected sources under 40 CFR 72.1. For the years between 2003 and 2017, the implementation plan must provide for adjustments to the milestones for sources using the methods contained in 40 CFR part 60, appendix A, Methods 2F, 2G, and 2H. For any year for which such an adjustment has not yet been made to the milestone, the implementation plan must provide for an adjustment to the emissions reporting to ensure consistency. The implementation plan must provide for adjustments to the milestones by no later than the date of the periodic plan revision required under § 51.309(d)(10).

(v) Adjustments due to enforcement actions arising from settlements. The implementation plan must provide for adjustments to the milestones, as specified in paragraph (h)(1)(vii) and (viii) of this section, if:

(A) an agreement to settle an action, arising from allegations of a failure of an owner or operator of an emissions unit at a source in the program to comply with applicable regulations which were in effect during the base year, is reached between the parties to the action;

(B) the alleged failure to comply with applicable regulations affects the assumptions that were used in calculating the source's base year and forecasted sulfur dioxide emissions; and

(C) the settlement includes or recommends an adjustment to the milestones.

(vi) Adjustments due to enforcement actions arising from administrative or judicial orders. The implementation plan must also provide for adjustments to the milestones as directed by any final administrative or judicial order, as specified in paragraph (h)(1)(vii) and (viii) of this section. Where the final administrative or judicial order does not include a reforecast of the source's baseline, the State or Tribe shall evaluate whether a reforecast of the source's baseline emissions is appropriate.

(vii) Adjustments for enforcement actions. The plan must provide that, based on paragraph (h)(1)(v) and (vi) of this section, the milestone must be decreased by an appropriate amount based on a reforecast of the source's decreased sulfur dioxide emissions. The adjustments do not become effective until after the source has reduced its sulfur dioxide emissions as required in the settlement agreement, or administrative or judicial order. All adjustments based upon enforcement actions must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(viii) Documentation of adjustments for enforcement actions. In the periodic plan revision required under 51.309(d)(10), the State or Tribe shall include the following documentation of any adjustment due to an enforcement action:

(A) identification of each source under the State or Tribe's jurisdiction which has reduced sulfur dioxide emissions pursuant to a settlement agreement, or an administrative or judicial order;

(B) for each source identified, a statement indicating whether the milestones were adjusted in response to the enforcement action;

(C) discussion of the rationale for the State or Tribe's decision to adjust or not to adjust the milestones; and

(D) if extra SO_2 emissions reductions (over and above those reductions needed for compliance with the applicable regulations) were part of an agreement to settle an action, a statement indicating whether such reductions resulted in any adjustment to the milestones or allowance allocations, and a discussion of the rationale for the State or Tribe's decision on any such adjustment.

(ix) Adjustment based upon program audits. The plan must provide for appropriate adjustments to the milestones based upon the results of program audits. Any such adjustment based upon audits must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due date after the audit for a periodic report under paragraph (d)(10) of this section.

(x) Adjustment for individual sources opting into the program. The plan may provide for adjustments to the milestones for any source choosing to participate in the program even though the source does not meet the 100 tons per year criterion for inclusion. Any such adjustments must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(2) *Requirements for monitoring, recordkeeping and reporting of actual annual emissions of sulfur dioxide.*

(i) *Sources included in the program.* The implementation plan must provide for annual emission monitoring and reporting, beginning with calendar year 2003, for all sources with actual emissions of sulfur dioxide of 100 tons per year or more as of 2003, and all sources with actual emissions of 100 tons or more per year in any subsequent year. States and Tribes may include other sources in the program, if the implementation plan provides for the same procedures and monitoring as for other sources in a way that is federally enforceable.

(ii) *Documentation of emissions calculation methods.* The implementation plan must provide documentation of the specific methodology used to calculate emissions for each emitting unit included in the program during the base year. The implementation plan must also provide for documentation of any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year.

(iii) *Recordkeeping.* The implementation plan must provide for the retention of records for at least 10 years from the establishment of the record. If a record will be the basis for an adjustment to the milestone as provided for in paragraph (h)(1) of this section, that record must be retained for at least 10 years from the establishment of the record, or 5 years after the date of the implementation plan revision which reflects the adjustment, whichever is longer.

(iv) *Completion and submission of emissions reports.* The implementation plan must provide for the annual collection of emissions data for sources included within the program, quality assurance of the data, public review of the data, and submission of emissions reports to the Administrator and to each State and Tribe which has submitted an implementation plan under this section. The implementation plan must provide for submission of the emission reports by no later than September 30 of each year, beginning with reports due September 30, 2004 for emissions from calendar year 2003. For sources for which changes in emission quantification methods require adjustments under paragraph (h)(1)(iii) of this section, the emissions reports must reflect the method in place before the change, for each year until the milestone has been adjusted. If each of the States which have submitted an implementation plan under this section have identified a regional planning organization to coordinate the annual comparison of regional SO_2 emissions against the appropriate milestone, the implementation plan must provide for reporting of this information to the regional planning body.

(v) *Exceptions reports.* The emissions report submitted by each State and Tribe under paragraph (h)(2)(ii) of this section must provide for exceptions reports containing the following:

(A) identification of any new or additional sulfur dioxide sources greater than 100 tons per year that were not contained in the previous year emissions report;

(B) identification of sources shut down or removed from the previous year emissions report;

(C) explanation for emissions variations at any covered source that exceed plus or minus 20 percent from the previous year's emissions report;

(D) identification and explanation of changed emissions monitoring and reporting methods at any source. The use of any changed emission monitoring or reporting methods requires an adjustment to the milestones according to paragraph (h)(1)(iii) of this section.

(vi) *Reporting of emissions for the Mohave Generating Station for the years 2003 through 2006.* For the years 2003, 2004, 2005, and for any part of the year 2006 before installation and operation of sulfur dioxide controls at the Mohave Generating Station, emissions from the Mohave Generating Station will be calculated using a sulfur dioxide emission factor of 0.15 pounds per million BTU.

(vii) *Special provision for the year 2013.* The implementation plan must provide that in the emissions report for calendar year 2012, which is due by September 30, 2013 under paragraph (h)(2)(iv) of this section, each State has the option of including calendar year 2018 emission projections for each source, in addition to the actual emissions for each source for calendar year 2012.

(3) *Annual comparison of emissions to the milestone.*

(i) The implementation plan must provide for a comparison each year of annual SO_2 emissions for the region against the appropriate milestone. In making this comparison, the State or Tribe must make the comparison, using its annual emissions report and emissions reports from other States and Tribes reported under paragraph (h)(2)(iv) of this section.

(ii) The implementation plan must provide for the State or Tribe to make available to the public a draft report comparing annual emissions to the milestone by December 31 of each year. The first draft report, comparing annual emissions in 2003 to the year 2003 milestone will be due December 31, 2004.

(iii) The implementation plan must provide for the State or Tribe to submit to the Administrator a final determination of annual emissions by March 31 of the following year. The final determination must state whether or not the annual emissions for the year exceed the appropriate milestone.

(iv) A State or Tribe may delegate its responsibilities to prepare draft reports and reports supporting the final determinations under paragraphs (h)(3)(i) through (iii) of this section to a regional planning organization designated by each State or Tribe submitting an approvable plan under this section.

(v) Special considerations for year 2012 report. If each State or Tribe submitting an approvable plan under this section has included calendar year 2018 emission projections under paragraph (h)(2)(vii) of this section, then the report for the year 2012 milestone which is due by December 31, 2013 under paragraph (h)(3)(ii) of this section may also include a comparison of the regional year 2018 emissions projection with the milestone for calendar year 2018. If the report indicates that the year 2018 milestone will be exceeded, then the State or Tribe may choose to implement the market trading program beginning in the year 2018, if each State or Tribe submitting an approvable plan under this section agrees.

(vi) Independent review. The implementation plan must provide for reviews of the annual emissions reporting program by an independent third party. This independent review is not required if a determination has been made under paragraph (h)(3)(iii) of this section to implement the market trading program. The independent review shall be completed by the end of 2006, and every 5 years thereafter, and shall include an analysis of:

(A) the uncertainty of the reported emissions data;

(B) whether the uncertainty of the reported emissions data is likely to have an adverse impact on the annual determination of emissions relative to the milestone; and,

(C) whether there are any necessary improvements for the annual administrative process for collecting the emissions data, reporting the data, and obtaining public review of the data.

(4) *Market trading program.* The implementation plan must provide for implementation of a market trading program if the determination required by paragraph (h)(3)(iii) of this section indicates that a milestone has been exceeded. The implementation plan must provide for the option of implementation of a market trading program if a report under paragraph (h)(3)(v) of this section indicates that projected emissions for the year 2018 will exceed the year 2018 milestone. The implementation plan must provide for a market trading program whose provisions are substantively the same for each State or Tribe submitting an approvable plan under this section. The implementation plan must include the following market trading program provisions:

(i) *Allowances.* For each source in the program, the implementation plan must either identify the specific allocation of allowances, on a tons per year basis, for each calendar year from 2009 to 2018 or the formula or methodology that will be used to calculate the allowances if the program is triggered. The implementation plan must provide that eligible renewable energy resources that begin operation after October 1, 2000 will receive 2.5 tons of SO_2 allowances per megawatt of installed nameplate capacity per year. Allowance allocations for renewable energy resources that begin operation prior to the program trigger will be retroactive to the time of initial operation. The implementation plan may provide for an upper limit on the number of allowances provided for eligible renewable energy resources. The total of the tons per year allowances across all participating States and Tribes, including the renewable energy allowances, may not exceed the amounts in Table 4 of this paragraph, less a 20,000 ton amount that must be set aside for use by Tribes. The implementation plan may include procedures for redistributing the allowances in future years, if as the amounts in Table 4 of this paragraph, less a 20,000 ton amount, are not exceeded. The implementation plan must provide that any adjustment for a calendar year applied to the milestones under paragraphs (h)(1)(i) through (vii) of this section must also be applied to the amounts in Table 4. Table 4 follows:

TABLE 4.—TOTAL AMOUNT OF ALLOWANCES BY YEAR

For this year:	If the two smelters resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:	If the two smelters do not resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:
2009	715,000	677,000
2010	715,000	677,000
2011	715,000	677,000
2012	715,000	677,000
2013	655,000	625,000
2014	655,000	625,000
2015	655,000	625,000
2016	655,000	625,000
2017	655,000	625,000

TABLE 4.—TOTAL AMOUNT OF ALLOWANCES BY YEAR—Continued

For this year:	If the two smelters resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:	If the two smelters do not resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:
2018	510,000	480,000

(ii) *Compliance with allowances.* The implementation plan must provide that, beginning with the compliance period 6 years following the calendar year for which emissions exceeded the milestone and for each compliance period thereafter, the owner or operator of each source in the program must hold allowances for each ton of sulfur dioxide emitted by the source.

(iii) *Emissions quantification protocols.* The implementation plan must include specific emissions quantification protocols for each source category included within the program, including the identification of sources subject to part 75 of this chapter. For sources subject to part 75 of this chapter, the implementation plan may rely on the emissions quantification protocol in part 75. For source categories with sources in more than one State or tribal area submitting an implementation plan under this section, each State or Tribe should use the same protocol to quantify emissions for sources in the source category. The protocols must provide for reliability (repeated application obtains results equivalent to EPA-approved test methods), and replicability (different users obtain the same or equivalent results that are independently verifiable). The protocols must include procedures for addressing missing data, which provide for conservative calculations of emissions and provide sufficient incentives for sources to comply with the monitoring provisions. If the protocols are not the same for sources within a given source category, and where the protocols are not based upon part 75 or equivalent methods, the State or Tribes must provide a demonstration that each such protocol meets all of the criteria of this paragraph.

(iv) *Monitoring and Recordkeeping.* The implementation plan must include monitoring provisions which are consistent with the emissions quantification protocol. Monitoring required by these provisions must be timely and of sufficient frequency to ensure the enforceability of the program. The implementation plan must also include requirements that the owner or operator of each source in the program keep records consistent with the emissions quantification protocols, and keep all records used to determine compliance for at least 5 years. For source owners or operators which use banked allowances, all records relating to the banked allowance must be kept for at least 5 years after the banked allowances are used.

(v) *Tracking system.* The implementation plan must provide for submitting data to a centralized system for the tracking of allowances and emissions. The implementation plan must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized data base. In the system, each allowance must be uniquely identified. The system must allow for frequent updates and include enforceable procedures for recording data.

(vi) *Authorized account representative.* The implementation plan must include provisions requiring the owner or operator of each source in the program to identify an authorized account representative. The implementation plan must provide that all matters pertaining to the account, including, but not limited to, the deduction and transfer of allowances in the account, and certifications of the completeness and accuracy of emissions and allowances transactions required in the annual report under paragraph (h)(4)(vii) of this section shall be undertaken only by the authorized account representative.

(vii) *Annual report.* The implementation plan must include provisions requiring the authorized account representative for each source in the program to demonstrate and report within a specified time period following the end of each calendar year that the source holds allowances for each ton per year of SO_2 emitted in that year. The implementation plan must require the authorized account representative to submit the report within 60 days after the end of each calendar year, unless an alternative deadline is specified consistent with emission monitoring and reporting procedures.

(viii) *Allowance transfers.* The implementation plan must include provisions detailing the process for transferring allowances between parties.

(ix) *Emissions banking.* The implementation plan may provide for the banking of unused allowances. Any such provisions must state whether unused allowances may be kept for use in future years and describe any restrictions on the use of any such allowances. Allowances kept for use in future years may be used in calendar year 2018 only if the implementation plan ensures that such allowances would not interfere with the achievement of the year 2018 amount in Table 4 in paragraph (c)(4)(i) of this section.

(x) *Penalties.* The implementation plan must:

(A) provide that if emissions from a source in the program exceed the allowances held by the source, the source's allowances will be reduced by an amount equal to two times the source's tons of excess emissions,

(B) provide for appropriate financial penalties for excess emissions, either $5000 per ton (year 2000 dollars) or an alternative amount that is the same for each participating State and Tribe and that substantially exceeds the expected cost of allowances,

(C) ensure that failure to comply with any program requirements (including monitoring, recordkeeping, and reporting requirements) are violations which are subject to civil and criminal remedies provided under applicable State or tribal law and the Clean Air Act, that each day of the control period is a separate violation, and that each ton of excess emissions is a separate violation. Any allowance reduction or penalty assessment required under paragraphs (h)(4)(x)(A) and (B) of this section shall not affect the liability of the source for remedies under this paragraph.

(xi) *Provisions for periodic evaluation of the trading program.* The implementation plan must provide for an evaluation of the trading program no later than 3 years following the first full year of the trading program, and at least every 5 years thereafter. Any changes warranted by the evaluation should be incorporated into the next periodic implementation plan revision required under paragraph (d)(10) of this section. The evaluation must be conducted by an independent third party and must include an analysis of:

(A) Whether the total actual emissions could exceed the values in § 51.309(h)(4)(i), even though sources comply with their allowances;

(B) Whether the program achieved the overall emission milestone it was intended to reach;

(C) The effectiveness of the compliance, enforcement and penalty provisions;

(D) A discussion of whether States and Tribes have enough resources to implement the trading program;

(E) Whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects;

(F) Whether the actions taken to reduce sulfur dioxide have led to any unintended increases in other pollutants;

(G) Whether there are any changes needed in emissions monitoring and reporting protocols, or in the administrative procedures for program administration and tracking; and

(H) The effectiveness of the provisions for interstate trading, and whether there are any procedural changes needed to make the interstate nature of the program more effective.

(5) *Other provisions.*

(i) *Permitting of affected sources.* The implementation plan must provide that for sources subject to part 70 or part 71 of this chapter, the implementation plan requirements for emissions reporting and for the trading program under paragraph (h) of this section must be incorporated into the part 70 or part 71 permit. For sources not subject to part 70 or part 71 of this chapter, the requirements must be incorporated into a permit that is enforceable as a practical matter by the Administrator, and by citizens to the extent permitted under the Clean Air Act.

(ii) *Integration with other programs.* The implementation plan must provide that in addition to the requirements of paragraph (h) of this section, any applicable restrictions of Federal, State, and tribal law remain in place. No provision of paragraph (h) of this section should be interpreted as exempting any source from compliance with any other provision of Federal, State, tribal or local law, including an approved implementation plan, a Federally enforceable permit, or any other Federal regulations.

[FR Doc. 03–13255 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
June 5, 2003

Part III

Department of the Interior

Office of the Secretary

Bureau of Land Management

43 CFR Parts 4, 4100, and 5000
Special Rules Applicable to Public Land Hearings and Appeals; Grazing Administration—Exclusive of Alaska, Administrative Remedies; Grazing Administration—Effect of Wildfire Management Decisions; Administration of Forest Management Decisions; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 4100 and 5000

RIN 1090–AA83

Special Rules Applicable to Public Land Hearings and Appeals; Grazing Administration—Exclusive of Alaska, Administrative Remedies; Grazing Administration—Effect of Wildfire Management Decisions; Administration of Forest Management Decisions

AGENCY: Office of Hearings and Appeals; Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its existing regulations governing hearings and appeals to codify who has a right of appeal, to expedite its review of wildfire management decisions, and to simplify proof of service. The Bureau of Land Management (BLM) is adding regulations allowing BLM to make its wildfire management decisions effective immediately when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, and to expedite review of those decisions. The amendments to both the OHA and BLM regulations are needed to clarify and expedite administrative review procedures.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, Phone: 703–235–3750, or Michael H. Schwartz, Group Manager, Regulatory Affairs, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Room 401 LS, Washington, DC 20240, Phone: 202–452–5198. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2002, the Office of Hearings and Appeals (OHA) and the Bureau of Land Management (BLM) jointly proposed rules that would make BLM wildfire management decisions effective immediately and would expedite OHA decisions on appeals from such BLM decisions. 67 FR 77011 (Dec. 16, 2002). OHA also proposed to amend its existing rules governing the right to appeal and proof of service.

The Department received approximately 9,000 comments on the proposed rule. Of these, the great majority were divided between nearly identical form communications expressing general support for the proposal and nearly identical form communications expressing general opposition to the proposal. The remainder were specific and substantive comments from trade and governmental associations, commercial public land users, environmental interest groups, local and tribal governmental entities, and individuals. We have summarized and paraphrased the comments in order to keep this final rulemaking document manageable and comprehensible.

We have organized our discussion of topics in the order they were presented in the preamble to the proposed rule, *i.e.*, (A) standing to appeal, (B) effectiveness of BLM wildfire management decisions, (C) expedited OHA review of appeals from those decisions, and (D) proof of service. *See* 67 FR 77011, 77012–13 (Dec. 16, 2002).

A. Standing to Appeal

OHA proposed to codify decisions of the Interior Board of Land Appeals (IBLA) that have determined whether a person had a right to appeal a BLM decision. OHA proposed to define the phrases "party to a case" and "adversely affected," both of which appear in the existing regulation governing who may appeal, 43 CFR 4.410(a). "Party to a case" was defined in proposed § 4.410(b) to mean "one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action." "Adversely affected" was defined in proposed § 4.410(d) to mean that "a party has a legally cognizable interest, and the decision on appeal has caused, or will cause, injury to that interest." OHA also proposed to reflect in § 4.410(c) the limitation found in IBLA decisions that a party may only raise on appeal to IBLA issues it previously presented to BLM.

Some comments stated that only persons who can show direct economic damage should have a right of appeal, while others suggested that the scope of "legally cognizable interest" should be broadened. While many comments approved of the proposals, several expressed a concern that the proposals would do away with or limit public participation in BLM's decisionmaking or restrict access to the appeals process.

We emphasize that the proposed rules were—and these final rules are—intended to codify existing IBLA precedents, not to either restrict or expand who has a right to appeal. We therefore decline either to limit or extend that right in this rulemaking.

If in the circumstances of a particular appeal, a person or organization can demonstrate that a BLM decision has caused or has a substantial likelihood of causing injury to a "legally cognizable interest" as IBLA has interpreted and applied that phrase in numerous decisions, then that person or organization is adversely affected under § 4.410(d). If a person or organization with an adversely affected legally cognizable interest has also been a party to the case, as defined in § 4.410(b), then that person or organization has a right of appeal. See, *e.g.*, *San Juan Coal Co.*, 155 IBLA 389, 393 (2001); *Legal and Safety Employer Research, Inc.*, 154 IBLA 167, 171–72 (2001); *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992); and cases cited. The definition of "party to a case" in § 4.410(b) does not affect a person's ability to participate in BLM's decisionmaking; rather, it defines one of the two requirements for standing to appeal a BLM decision to IBLA.

Some comments expressed concern that the selection of the three IBLA decisions cited above implied that other decisions in which appellants were found to have a right of appeal, *e.g.*, *National Wildlife Federation* v. *Bureau of Land Management*, 129 IBLA 124 (1994); *Donald K. Majors*, 123 IBLA 142 (1992); and *High Desert Multiple-Use Coalition*, 116 IBLA 47 (1990), were now discredited. No such implication was intended. The three decisions were cited in the preamble to the proposed rule to illustrate circumstances that IBLA has encountered in determining whether a particular appellant did or did not have a right to appeal. Other IBLA decisions are also relevant in making such determinations, including those holding that an organization may have a right of appeal on behalf of its members and that not only an interest in the land but also an interest in resources affected by a decision may be legally cognizable.

Some comments correctly pointed out that the language in proposed

§ 4.410(d)—"has caused, or will cause, injury" to a legally cognizable interest—does not reflect the holding in *San Juan Coal Co., supra*, and other decisions that a "substantial likelihood" of causing injury is sufficient. We have modified the language in the final § 4.410(d) to provide "and the decision on appeal has caused or is substantially likely to cause injury to that interest."

Some comments requested clarification of the statement in the preamble to the proposed rule that a person who uses land in trespass, without claim or color of right, would not have a legally cognizable interest. That statement is illustrated by IBLA's decision in *Fred J. Schikora*, 89 IBLA 251 (1985), which held that the interest of a trespasser who made improvements upon land in Alaska, without color or claim of right, was not a legally cognizable interest for a right to appeal a BLM decision that granted a conflicting Native allotment application for the land. The statement was not intended to imply that a member of the public who accesses public lands from private lands or uses public lands for recreational or other purposes would be in trespass and would not have a right of appeal from a decision involving the public lands, assuming he or she were a party to the case and had a legally cognizable interest that would be adversely affected by the decision.

A comment from a state governor was "concerned with the apparent lack of standing for states and local governments under the proposed changes. The amendments to this section of regulations are silent as to whether or not states and local governments will have standing based on their sovereignty alone." Similar comments came from associations of counties and a county board of supervisors. For example: "It is important that local government be recognized as an entity that does have standing to appeal. It is becoming more and more common for county government to become involved in those federal land planning decisions that affect their citizens, tax [rolls], or the local economy." We are codifying IBLA's decisions on who has a right of appeal. IBLA's decisions have not granted standing to state or county governments when they have not been adversely affected but have sought to represent their citizens in a *parens patriae* role. *Blaine County Board of Commissioners*, 93 IBLA 155, 157–158 (1986); *The Klamath Tribes*, 135 IBLA 192, 194 (1996); *State of Missouri Department of Natural Resources*, 142 IBLA 201, 207 (1998). Therefore, we do not accept the suggestion that we provide standing to state or local governments based on their sovereignty alone. Of course, if a state or local government demonstrates that it was a party to a case and was adversely affected, it would have a right of appeal.

Some comments were concerned that proposed § 4.410(c) would limit a party's ability to raise on appeal issues that could not have been raised during the party's participation in BLM's decisionmaking process. For example, the comments suggested, BLM might include information in a decision that was not available during the comment period on the draft decision, the decision might differ from the alternatives considered during that period, or the circumstances on the ground may have changed during the decisionmaking or after the decision is issued. We agree that a party should be able to raise additional issues in such circumstances, and in the final rule we have amended § 4.410(c) accordingly.

Some comments expressed concern that limiting a party to presenting only those issues on appeal that it had raised before the agency would force every party to raise every issue it could conceive of and that this could "not possibly save the agency any time in the appeals process. The agency would have already considered the comments initially and the appellant would certainly not be raising a completely new issue if it had been raised by someone else, it would be something the agency had already considered (and rejected). This provision will likely increase the number, length, and volume of comments, since no one would be able to rely on the comments of others."

We believe this concern is more hypothetical than real. Under existing precedent, IBLA will not adjudicate issues raised for the first time on appeal, except in extraordinary circumstances. *See Henry A. Alker*, 62 IBLA 211 (1982). Since a party cannot assume that IBLA will find extraordinary circumstances in any given appeal, the party has every incentive to raise with BLM any issues it deems significant. Nor can a party assume that someone else will raise the party's issues on its behalf, unless two or more parties coordinate their comments, which they are free to do. Parties may submit joint comments or may incorporate others' comments by reference. If an issue was not important enough to a party to raise with BLM, IBLA should not be obligated to consider it on appeal.

In summary, § 4.410(b) is adopted as proposed and §§ 4.410(c) and (d) are adopted as amended. Also, we have amended the cross-reference in § 4.410(a)(4) to reflect the changes made in this section.

B. Effectiveness of BLM Wildfire Management Decisions

BLM proposed to add two provisions, in 43 CFR 4190.1 and 5003.1, that would make its wildfire management decisions affecting rangelands and forests effective immediately, that is, when issued. The proposal defined "wildfire management" as including but not limited to (1) fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods and (2) projects to stabilize and rehabilitate lands affected by wildfire.

In the following paragraphs, we will discuss the substantive comments that addressed the BLM portion of the proposed rule, that is, the proposed addition of 43 CFR 4190.1 and the proposed revision of 43 CFR 5003.1. These comments addressed four principal topics:

- Placing BLM wildfire management decisions in full force and effect pending appeals;
- How BLM defines wildfire management decisions;
- Where and to what lands the new regulations should apply; and
- How the changes BLM proposed in these areas relate to the regulations of the Office of Hearings and Appeals and the proposed changes to those regulations.

Accordingly, we will discuss the comments under headings based on these topics.

1. How Should BLM Put Fire Management Decisions Into Effect?

Many of the substantive comments supported the proposed rule placing BLM fire management decisions in full force and effect pending appeal. These comments, from logging interests, grazing interests, forestry associations, and local government organizations, basically agreed with the preamble statement in the proposed rule that the faster BLM is able to take action to reduce future threats of wildland fires, the more likely BLM can safeguard public and firefighter health and safety, protect property, and improve environmental baseline conditions in the wildland-urban interface and other priority areas. They agreed that wildfire management decisions are by their nature urgent, both to prevent or reduce catastrophic wildfires in upcoming dry seasons, and to speed recovery from past fires and thereby prevent erosion, water pollution, and other harmful legacies that they have caused.

In a comment supporting the proposed rule, a professional forestry society said that wildfire management decisions to perform fuels reduction and fire rehabilitation and stabilization should be implemented efficiently to protect communities, watersheds, wildlife habitat, and adjacent properties from the potentially devastating effects of wildfire. The comment said, however, that these decisions should remain consistent with the pre-defined objectives and goals outlined in the applicable Resource Management Plan and should adhere to all applicable environmental laws. We agree with this comment. Our fire management projects will be consistent with our Resource Management Plans and applicable environmental laws. No change is necessary in the final rule.

Other comments, mainly from national and regional environmental organizations, raised specific objections and concerns that require discussion. This discussion follows.

One comment stated that the proposed rule would discourage public appeals from agency actions, which are essential to public participation. The comment cited the Federal Land Policy and Management Act (FLPMA), at Section 309(e), which requires the Secretary to give the public adequate notice and "opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. 1739(e). The comment went on to say (1) that the proposed rule would allow a project to begin before a decision is made on the appeal, effectively discounting public opinion; (2) that a decision on appeal to reject a proposed project has less effect if the project has already commenced and the negative effects of the action have already occurred; and (3) that the public is less likely to participate in the decisionmaking process when it can have no real or immediate effect on a proposed project. The comment concluded that a "policy discouraging public involvement should not be adopted because it contradicts the spirit of FLPMA, which encourages public comment on proposed actions and participation in the appeal process for a management decision."

Another comment addressing the same theme said that the purpose of a stay pending appeal is to allow project planners the opportunity to review citizen concerns and modify the project's parameters to address such concerns, as warranted, prior to project implementation. The comment went on to say that project stays have two fundamental benefits: (1) To ensure that potentially unsound environmental ramifications of project decisions, as identified by interested parties, do not compromise the landscape in question; and (2) to promote trust between those citizens who have sought to comment on the management of public lands and the agency responsible for carrying out those actions. The comment concluded by saying that the rule change undermines the value of public comment by allowing citizen concerns to be effectively ignored, further eroding the trust citizens have in public land management agency decisions.

The appeal process is not part of the public participation required by Section 309(e) of FLPMA. The rule may discourage some appeals; but contrary to the concern expressed in the comment, it encourages public participation by making it more essential at the project design/environmental review stage. It is at this stage that BLM gathers evidence and public input upon which to base its fire management plans/projects and decisions. Also, the purpose of staying a decision pending appeal is not to give the BLM further opportunity to consider issues raised by the appellant, but to protect the interests of the appellant and the public while IBLA is considering the appeal. Finally, while the proposed provision made these decisions effective immediately, an adversely affected party may appeal the decision and petition the Office of Hearings and Appeals for a stay of the decision pending appeal under 43 CFR 4.21(b), which, if granted, would minimize whatever harm the appellant alleges.

One comment said that the proposed revision is entirely unnecessary, since BLM and the Office of Hearings and Appeals already have the authority to make a decision effective immediately if it is determined to be in the "public interest" to do so. The comment went on to say that the authority for this determination should remain with IBLA on a case-by-case basis to avoid any abuse of the provision by line officers in the field. Another comment from an environmental interest group also stated that the new provisions were unnecessary, since in appropriate circumstances OHA or an appeals board could find that the public interest requires that particular fire management decisions should be placed in full force and effect notwithstanding the filing of appeals.

The final rule eliminates a bureaucratic step—requesting OHA to place a decision in full force and effect—in making often very urgent decisions to help reduce the severity of upcoming fire seasons, without unduly impairing the ability of persons to appeal those decisions and to seek stays of the decisions pending appeal.

The authorities to which the first of these comments refers are 43 CFR 4160.3(f), which allows BLM to place certain grazing decisions into effect immediately or on a date certain and to remain in effect pending appeal; 43 CFR 5003.1 (paragraph (a) as this section is revised in the proposed rule), which provides that appealing does not automatically suspend the effect of a forest management decision; and 43 CFR 4.21, which authorizes the OHA Director or IBLA to stay a decision in the public interest pending appeal. Of these authorities, section 4160.3(f) limits full force and effect to certain decisions unrelated to wildfire management.

In light of the disastrous fire seasons in recent years and the ongoing drought in much of the West, BLM views its ability to carry out fire management practices as a matter of great urgency. We also view the fire management practices we contemplate, mentioned in the proposed rule and listed in sections 4190.1(a) and 5003.1(b) of this final rule, as scientifically justified. Therefore, we think that these fire management decisions need to be effective immediately if BLM finds a substantial risk of wildfire due to such problems as drought and fuels buildup, or an immediate risk of erosion due to wildfire. We have added language to sections 4190.1 and 5003.1 requiring BLM to make such a threshold finding before making a decision effective immediately.

If wildfire has destroyed the vegetation on a tract of land, especially sloped land, it is clear that wind or rain will cause erosion. It is also clear that wind or rain or both are common occurrences in most environments covered by these regulations. Therefore, the time-related standard of "immediate risk" is appropriate for determining whether a decision to rehabilitate a denuded slope, for example, especially one situated in a sensitive circumstance like above a trout stream or a salmon spawning ground, should be made effective immediately.

However, it is not so obvious whether prescriptive decisions aimed at preventing or reducing catastrophic wildfires would routinely meet a threshold of "immediate risk." We therefore believe it is appropriate to use a qualitative threshold of "substantial risk" for these decisions. In deciding whether there is a substantial risk of wildfire, BLM field managers will analyze the situation based on the Fire Condition Class of the tract of range or forest land in question.

BLM recognizes three Fire Condition Classes, found in the Implementation Plan for the 10-Year Comprehensive Strategy, A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, May 2002.

Fire Condition Class 1 refers to lands that have experienced burns in their normal range of fire frequency. The risk of losing key ecosystem components from the occurrence of fire remains relatively low, and the lands will be subject to maintenance management.

Fire Condition Class 2 refers to lands that have been moderately altered from their historical range of fire frequency by either increased or decreased fire frequency. BLM has identified a moderate risk of losing key ecosystem components, as well as human property, in these lands. To restore their historical fire regimes, these lands may require some level of restoration through prescribed fire, mechanical or chemical treatments, and the subsequent reintroduction of native plants.

Fire Condition Class 3 lands have been significantly altered from their historical range. Because fire regimes have been extensively altered (*i.e.*, fire has not occurred for far longer than normal frequency would predict), risk of losing key ecosystem components from fire is high. We consider such lands to be at high risk because of the danger posed to people and property and the severe, long-lasting damage likely to result to species and watersheds when a fire burns on these lands, particularly during drought years. To restore their historical fire regimes—before BLM can employ prescribed fire to manage fuel or obtain other desired benefits—these lands may require multiple mechanical or chemical restoration treatments, or reseeding.

Under this rule, Fire Condition Class 3 would be considered to pose substantial risk of wildfire, and BLM would make wildfire management decisions for these lands effective immediately. Most Fire Condition Class 2 lands would also be regarded this way, but field managers would decide on a case-by-case basis whether to make these decisions effective immediately (or on a date established in the decision). BLM would generally not make maintenance decisions for lands in Fire Condition Class 1 effective immediately.

Two comments stated that BLM already has several categorical exclusions under the National Environmental Policy Act (NEPA) that we may utilize for fuel reduction strategies and other wildfire management activities, referring to the Departmental Manual of the Department of the Interior at 516 DM 6, Appendix 5. One comment said that this rendered the proposed regulation change unnecessary. The other comment stated that BLM should continue to utilize these categorical exclusions where they are appropriate to protect communities from loss of life and property, so long as these projects will not individually or cumulatively cause significant environmental effects; but it urged us to withdraw the proposed rule lifting the automatic stay provision for wildfire management decisions.

There are categorical exclusions that pertain to some of the techniques that BLM would likely use for fire management:

- Precommercial thinning and brush control using small mechanical devices;
- Sale and removal of individual trees and small groups of trees that are dead, diseased, injured, or that pose a safety hazard, where no new roads are necessary;
- Reforestation; and
- Disposal for Christmas trees, personal firewood use, etc.

However, categorical exclusions have nothing to do with the appeals process, but merely allow BLM to perform expedited NEPA reviews as set forth in CEQ regulations. Under a categorical exclusion, BLM must still document its environmental review and must still consider circumstances such as endangered species, air quality, and cultural resources. Categorical exclusions do not provide for an immediate effective date or expedited administrative review of decisions to implement these practices. Further, the categorical exclusions do not cover such techniques as prescribed burns and more extensive thinning that might be necessary in a fire management program.

2. How Should BLM Define a Wildfire Management Decision?

One comment from a state farm bureau federation said that the role of livestock grazing needs to be further defined in this process, and suggested that livestock grazing can be an effective fuels reduction technique and can also be a tool to control noxious weeds. The comment urged that livestock grazing be incorporated into fuel reduction projects as one element of effectively controlling wildfire, disease, or invasive species.

The language in the proposed rule does not rule out the incorporation of livestock grazing in a fuel reduction (or pest or disease control) program. Under 43 CFR 4160.3, BLM has the discretion to make a grazing decision connected to wildfire management effective immediately. However, such decisions will not routinely be made effective immediately under this rule. Decisions as to pest or disease control are beyond the scope of this rule.

The same comment went on to relate grazing to open space preservation and other desirable social results. However, these ideas go beyond the narrow focus of this rule, which is wildfire management.

One comment suggested that the list of types of fire management decisions that BLM should make effective immediately pending appeal should include removal of lightning-attracting snags. The comment stated that removing snags proved to be the key to stopping the Tillamook burns. Only after an enormous number of such snags were felled were the fires subject to control, according to the comment.

The language in the rule, "Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods," is certainly broad enough to include removal of snags (or dead trees) when appropriate (leaving aside the question whether snags attract lightning more than living trees). However, due to the recognized value of snags (wildlife habitat, nutrient cycling, longer-term source of large woody debris, etc.) many land management plans contain best management practices or project design features that specifically require retention of an appropriate number of snags. The removal of snags is best reviewed in the context of an overall forest health restoration or post-fire salvage project. In order to preserve the field manager's ability to make reasoned decisions based on the particular circumstances at hand, we do not want to list specific fire management tactics in these regulations.

One comment from a lumber company suggested that BLM replace the word "thinning" with the word "removal" because, depending on the ecosystem and landscape, some wildfire management actions may include more than just thinning, and "removal" is a broader term. We have amended this provision to allow thinning with or without removal. Whether the thinned material is removed from the site is determined by the local BLM manager based on how best to achieve the primary objective of the action: Forest health or fuels hazard reduction or both. Thinning activities not related to these objectives will continue to be subject to section 5003.1(a) of the final rule.

Several comments from environmental interest groups stated

that the proposed rule was overbroad in characterizing fire management decisions that would be made effective immediately. These comments said that the proposed rule did not require any determination that the proposed action will safeguard public and firefighter health and safety, protect property, or improve conditions in the wildland-urban interface, and that the proposed rule thus threatens to allow projects having no appreciable fire reduction benefit to go forward before there is any opportunity for administrative review.

We have amended the rule to require that BLM determine that vegetation, soil, or other resources on the public land are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, before making wildfire management decisions effective immediately. Further, the decisions that BLM will implement under this rule are still analyzed under the National Environmental Policy Act during their development. If BLM prepares an Environmental Impact Statement or Environmental Assessment, the "Purpose" and "Need" sections of those documents will clearly make the link to the project's fire hazard reduction benefits. Similarly, the criteria for use of the categorical exclusion for fuels hazard reduction clearly specify that the project must be for this purpose. Finally, this rule does not prohibit a petition for a stay under section 4.21(b).

Another comment stated that the proposed revision of section 5003.1 is overly broad and vague, providing unhampered discretion to BLM line officers to remove large trees far from human habitation in thinning projects. It went on to say that, in recent history, many BLM projects purporting to reduce fire danger have included removal of large trees, which is an extremely controversial and scientifically unjustifiable action. The comment concluded that, while thinning of small trees and removal of brush are generally acceptable as fuel reduction treatment in the vicinity of homes and communities, there is no scientific evidence to suggest that logging of large trees, which are more fire resistant, reduces fire danger in the forest or other areas.

The text of the regulation in question defines wildfire management as including: "Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods." We have not adopted a one-size-fits-all diameter limit on tree size in this rule, although tree size may have a bearing on the decision. BLM intends the fuel reduction contemplated in this language to refer to projects that we implement with fuels hazard reduction or forest health as the primary objective. Further, BLM follows the NEPA process in reaching and justifying its decisions.

Another comment expressed concern that the proposed rule would cause and exacerbate adverse environmental impacts of wildfire in extremely sensitive areas, including soil erosion and water pollution. The comment went on to suggest that salvage logging could be authorized as a "wildfire management decision," but would have a devastating effect on recently burned landscapes. It said that a 1995 report prepared by a group of independent scientists, known as the Beschta Report, concludes that logging in recently burned areas will have significant adverse impacts on the environment, causing soil compaction and erosion, loss of habitat for cavity nesting species, and loss of structurally and functionally important large woody debris, and that leaving large woody debris will not significantly increase the risk of reburn. According to the comment, the U.S. Forest Service confirmed the findings of the Beschta Report in its report entitled "Environmental Effects of Postfire Logging: Literature Review and Annotated Bibliography," stating that "[f]ollowing Beschta and others (1995) and Everett (1995), we found no studies documenting a reduction in fire intensity in a stand that have [sic] previously burned and then been logged."

The second element of wildfire management stated in the proposed rule, "[p]rojects to stabilize and rehabilitate lands affected by wildfire," contemplates reseeding and soil stabilization, not salvage logging as suggested in the comment. BLM may authorize salvage logging in appropriate circumstances, after conducting the appropriate level of NEPA review. We do not normally consider salvage logging as constituting a stabilization and rehabilitation activity. We do not agree that the Forest Service literature review confirms the findings of the Beschta Report, which to our understanding has never been subject to peer review. Salvage logging will continue to be subjected to required environmental review and implemented on a case-by-case basis.

One comment stated that "mechanical" thinning is not defined in the proposed rule, and that the proposal purports to "apply only to fire management decisions, not to other decisions relating to grazing or timber sales." It went on to say that if mechanical thinning techniques include cutting trees, this contradicts the statement that this action does not apply to timber sales. The comment concluded by saying that unless the cut trees are disposed of, rather than sold, the action will qualify as a timber sale, and that appeals of timber sale decisions must go through the current administrative appeals process. Another comment along the same lines said that, if the BLM's own record is an appropriate reference, this definition will include large scale commercial green tree logging as well as salvage logging.

A timber sale, planned for as such in BLM Resource Management Plans, is not a wildfire management project, and would not be covered by section 5003.1(b). However, sales of small amounts of lumber may be incidental to fire management thinning projects. Thinning stands of timber is more difficult and expensive than clearcutting the same stands, and less profitable for companies engaged in such activities, for two reasons: the small trees are less valuable, and cutting them down individually is more labor intensive and expensive. Such incidental sales may be authorized as part of a wildfire management project under the new regulations. The key to the application of the rule is the intent of the project. As long as the primary objective of the action is fuels hazard reduction, this rule applies.

The same comment went on to say that it is a generally accepted conclusion that the sciences of fuel reduction and post-fire restoration are not well-advanced and that there is a great deal of uncertainty that logging large trees can in fact reduce the probability of undesirable fire behavior. On the contrary, the comment said, removing large trees increases the probability of catastrophic fire by opening up the canopy, warming and drying the forest floor and producing large amounts of fuels. The comment also stated that there is a great deal of scientific uncertainty that salvage logging can be considered ecologically beneficial and a genuine form of rehabilitation. It also challenged the effectiveness of thinning by citing both Federal and academic scientists who have recently doubted that thinning actually reduces fire severity. It quoted a September 17, 2002, letter by 12 leading academic scientists in the field of forest ecology:

> The most debated response to alleviating destructive fires in the future—mechanically thinning trees—has had limited study, and that has been conducted primarily in dry forest types. Thinning of overstory trees, like building new roads, can often exacerbate the situation and damage forest health. * * * Although a few empirically based studies have shown a systematic reduction in fire intensity subsequent to some actual thinning, others have documented increases in fire intensity and severity.

Franklin, J., *et al.* 09/17/02 letter to President Bush and Members of Congress.

We agree that more research would be useful, as scientists agree that there is a lack of science-based information about what specific fuel treatments to apply to balance a complex and conflicting mix of objectives. However, there is general consensus from more than 90 years of fire research that fires burn hotter and faster when there is more fuel available to feed them. The basic objective of fuels hazard reductions treatment is to remove this fuel. Fuels treatment programs prescribed under the 10-Year Comprehensive Strategy and Implementation Plan for the National Fire Plan do not prescribe a thin-only strategy. Thinning is accompanied by follow-up treatments. The scientific rationale for the fire behavior benefits of slash treatment after thinning and of understory prescribed burning are well-documented and longstanding. There is peer-reviewed science and general consensus in the scientific community that properly implemented and maintained fuel treatments that include prescribed burning will result in reduced fire severity within the treated areas. Fire reduction benefits outside the treated areas will depend on a number of variables. Understanding the effect of these variables will increase with additional research.

However, the problem of uncharacteristically intense and volatile wildfire behavior in certain ecosystems is getting worse. We cannot afford to wait until every conceivable scientific study is completed before we take action.

One comment requested an expansion of the definition for wildfire management under proposed sections 4190.1 and 5003.1 to add mention of restoration treatment of unburned acres. The comment stated that wildfire restoration of lands may not always deal with fuel treatments, but rather may require other management actions that would return the land to its historical fire regimes. It gave the example of altering species composition through tree planting. It suggested adding some language on landscape restoration treatments related to wildfire to these two proposed sections. Another comment stated that the list of wildfire decisions should be expanded to include decisions necessary to mitigate insect and disease outbreaks, the control of invasive species, and the impacts of other natural disasters such as severe weather events and seismic activity. The comment went on to say that these outbreaks are affecting millions of acres of the nation's forests and rangelands and are easily spread to nearby lands, and that, in many cases, adjacent landowners are powerless to address the problem without action from their Federal neighbors.

We believe that changes to reflect these comments would be too far beyond the scope of the proposed rule to be adopted in this final rule, and unnecessary. We agree that, in many instances, forest or rangeland restoration treatments are complementary to fuels management decisions. We also agree that forest and rangeland restoration is more than simple fuels hazard reduction, as it includes other components such as species composition, re-introduction of native plants in the understory, control of exotic or invasive species, and density management to improve the vigor of residual vegetation for resistance to insects and disease. A well-designed fuels hazard project, with interdisciplinary input, may be a highly cost-effective and efficient way to begin to address a range of issues relating to forest health. A fuels hazard project designed with such interdisciplinary input and made effective immediately may serve as an important first step, and follow-up actions to implement the non-fuels-reduction aspects of the project will be subject to appropriate review and administrative appeal. Existing section 5003.1 (section 5003.1(a) of this rule) provides that filing an appeal does not automatically suspend the effect of forest management decisions, which would include such follow-up actions. This provision has long been available to help expedite such projects.

3. Where and to What Lands Should the Regulations Apply?

One comment, questioning language in the preamble of the proposed rule, asked what BLM meant when we intimated that the new provisions would be implemented in "wildland-urban interface and other priority areas" (67 FR 77011, 77012), but did not specify in the regulatory text any particular lands to be covered. The comment stated that "priority area" is not defined in the proposal, and that if the scope of the project is truly limited to two types of areas, wildland-urban interface and priority areas, then "priority area" should be defined. If, however, the comment said, the rules affect all BLM land, the scope should be clearly stated. Additionally, the comment concluded, clarifying these definitions will allow the rules to be construed narrowly and avoid inclusion of areas not intended to be covered by the rule.

As the proposed rule stated, BLM will first use its limited wildfire management resources in priority areas, including wildland-urban interface lands. The rule does not define "priority areas"; BLM has discretion to identify such areas based on site-specific circumstances. In general, priority areas will include lands containing or near human habitation and business structures, sensitive resources such as archaeological sites, endangered species habitat, municipal watersheds, and burned-over watersheds subject to erosion. BLM will choose many wildfire management projects in a collaborative process as defined in BLM's 10-Year Comprehensive Strategy and Implementation Plan for implementation of the National Fire Plan. Local conditions and resources will guide the field manager in making wildfire management decisions.

Several comments faulted the proposed rule for not being limited to or not focusing on the wildland-urban interface, where wildfires have the greatest potential for property damage and for impacts on human health and safety. Some of the same comments questioned how, even if the wildland-urban interface were to be specifically targeted, the public would interact in good faith with such management activities when they proceed on the ground immediately, potentially without NEPA review, offering to the public only the judicial system for recourse.

We recognize the urgency of dealing with fire management issues on forest land near developed areas, but it would be unduly narrowing to limit the effect of the rule to those lands. Other resources, such as endangered species habitat, archaeological or other cultural features, or sensitive watersheds, may make fuel reduction or treatment under section 5003.1(b)(1) or land stabilization and rehabilitation under section 5003.1(b)(2) equally urgent on more remote lands.

A categorical exclusion does not exempt an agency action from environmental review. Rather, it requires the agency to scrutinize the proposed action to see whether it meets the criteria for categorical exclusion, that is, whether it is the type of action that the agency has decided, through its procedures adopted under 40 CFR 1507.3 of the regulations of the Council on Environmental Quality, does not individually or cumulatively have a

significant effect on the human environment. In practice, this will normally be done through a documented checklist of criteria.

As we stated earlier in this preamble, making decisions effective immediately encourages public participation by making it more essential at the project design/environmental review stage. It is at this stage that BLM gathers evidence and public input upon which to base its decisions.

One comment from an association of professional foresters suggested that BLM should give priority to areas outside the wildland-urban interface area when dangerous fuel buildup or post-wildfire conditions originating on BLM-administered public lands could have impacts on adjacent private lands.

We are not stating any priorities in this rule. The local field manager will determine where to initiate wildfire management projects, and will consult with appropriate local interests, including state and local government agencies, private property owners, academic experts, and environmental interest groups, in order to identify resources or properties that need protection.

In practice, BLM plans and implements forest health and fuel reduction treatments both within and outside the wildland-urban interface. Targeting of appropriated dollars for both fiscal year 2002 and 2003 was apportioned approximately 60 percent to wildland-urban interface and 40 percent to non-wildland-urban interface lands. Also, BLM selects all fuels and hazard reduction projects with input from a variety of Federal and non-federal stakeholders. Thus, a wide variety of parties aids in the project priorization process.

The same comment went on to suggest that BLM lands for which state forestry agencies have initial attack responsibilities (due to the location or situation of the land, or under cooperative agreements or other arrangements) should also be included in the immediate implementation of fire management decisions. Since the rule applies to all fire management decisions, the decisions that the comment refers to will be effective immediately when BLM makes the determination required by section 4190.1(a) or 5003.1(b).

4. How Should BLM's Wildfire Management Procedures Relate to the Regulations of the Office of Hearings and Appeals?

One comment said that, because public lands decisions often involve irretrievable natural resources, such as wildlife habitat, BLM should at least defend its actions in the internal appeals process before moving forward with a disputed action.

The problem of uncharacteristically intense and volatile wildfire behavior in certain ecosystems is getting worse. The intensity of some of these fires can result in post-fire conditions that limit the ability of the site to be rehabilitated/restored. It is precisely because wildfire management decisions often involve irretrievable natural or cultural resources, or human habitations, that these decisions must be made effective immediately and the appeals process expedited.

One comment stated that the proposed rule failed to explain its relationship with 43 CFR 4.21(a)(2)–(3) and (b), dealing with requests for stays of bureau decisions. It said that the preamble stated only that "the BLM decision will not be subject to the automatic stay of 43 CFR 4.21(a)." Under current regulations, the comment continued,

> A decision becomes effective on the day after the appeals period expires, unless a petition for stay pending appeal is filed. The proposed regulation does not state that its intent is to eliminate the possibility of the IBLA's granting a stay under the standards of 43 CFR § 4.21(b). Yet it is silent as to the effect of filing a petition for such a stay. If the intent of the rule is to eliminate the 45-day stay triggered, under current regulations, by the filing of such a petition, then it effectively eliminates any possibility of meaningful IBLA review of "wildfire management decisions." If the BLM can proceed to implement a decision despite the filing of a petition for a stay, that decision may well be implemented before the IBLA ever rules on the petition, effectively eliminating any opportunity for administrative review. Parties adversely affected will have no alternative but to proceed immediately to federal court.

The comment has uncovered a drafting error in the proposed rule. Rather than exempting wildfire management decisions from the provisions of all of section 4.21, it should have referred specifically to section 4.21(a)(1). The final rule corrects this error. The stay provisions of section 4.21(b) will apply to decisions made effective immediately under this final rule.

OHA is developing a proposed rule reorganizing section 4.21. When that rule is published in final form, it will include conforming amendments to correct any cross-reference discrepancies in the regulations promulgated today in this rule.

C. Time Limit for Decisions on Appeals From BLM Wildfire Management Decisions

OHA proposed to add a new section, 43 CFR 4.416, requiring IBLA to decide appeals from BLM wildfire management decisions within 60 days after all pleadings have been filed. Some comments stated that the 60-day deadline that the proposed rule sets for the IBLA to decide appeals in "wildfire management" cases is unreasonable for several reasons: (1) It may not be possible for the IBLA to decide "wildfire management" cases within the time period provided; (2) expediting these cases may impose additional delays on the remainder of the Board's cases; and (3) the rule imposes no consequences for the IBLA's failure to meet the 60-day deadline, so that the result of the Board's failure to meet the deadline would simply be for the challenged decision to continue in effect indefinitely, frustrating any opportunity for meaningful administrative review prior to a project's implementation and its potentially irreversible effects. Other comments said that the effect of the rule would be to moot the issues involved in the decision before an objective decisionmaker can resolve them.

The possibility of such delay in other appeals does exist, depending on how many appeals from BLM wildfire management decisions there are; but the trade-off in the use of IBLA's resources is appropriate in view of the necessity for rapid implementation of wildfire management decisions. The severity of the effects of recent fire seasons on the land and resources, and on the national and local economies, justifies whatever impacts the rule may have on other cases on IBLA's docket. Imposing a 60-day deadline on an IBLA decision on the merits has no effect on the ability of an appellant to petition for a stay of the decision appealed. Petitioning for a stay is the mechanism for preventing a decision from remaining in effect indefinitely pending appeal, if the appellant can demonstrate a sufficient basis for staying the decision.

One comment suggested adding to proposed § 4.416, "and within 180 days after the appeal is filed." We have adopted this suggestion in the final rule. The added language will provide a definite deadline for deciding appeals from wildfire management decisions.

Proposed section 4.416 is adopted as amended.

D. Proof of Service

OHA also proposed to amend three sections—43 CFR 4.401(c)(2), 4.422(c)(2), and 4.450–5—to provide that proof of service of documents on other parties may be made by a statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service. Although some comments said these provisions should not be amended, on the grounds that it is not unreasonable to require an appellant to provide hard proof that it has filed a timely appeal, most comments approved the proposed amendments as bringing IBLA's practice into line with current rules in Federal and state courts.

The amendments to these sections are adopted as proposed.

II. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government or communities. A cost-benefit and economic analysis is not required. These amended regulations will have virtually no effect on the economy because they merely simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions should have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will not affect costs or prices for citizens, individual industries, government agencies, or geographic regions.

3. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. This rule does not raise novel legal or policy issues. These regulations merely simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will have no appreciable effect on small entities. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

1. This rule will not have an annual effect on the economy of $100 million or more. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions should have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will not affect costs or prices for citizens, individual industries, government agencies, or geographic regions.

3. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

1. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. Small government entities rarely appeal BLM wildfire management decisions. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will neither uniquely nor significantly affect these governments. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

E. Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule will not have significant takings implications. A takings implication assessment is not required. These amendments to existing regulations that will simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions will have no effect on property rights. The rule should have the effect of enabling BLM better to protect private property from catastrophic wildfire.

F. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, these final regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions. A Federalism Assessment is not required.

G. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule, by merely simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire

management decisions effective immediately, and expediting review of those decisions, will not unduly burden either administrative or judicial tribunals.

Comments from environmental interest groups addressed this issue by saying that, because the proposed rule will allow BLM to move forward with projects despite a pending appeal, the proposed rule would force citizens to go directly to court to prevent activities that they believe adversely affect the environment. These comments concluded that, for reasons of time, expense, and the necessity of retaining counsel, the Federal courts represent an impracticable and even unavailable venue for many members of the public to resolve these issues.

However, the final rule has been amended to make it clear that it does not prevent appellants from seeking a stay of the decision being appealed. Also, we do not believe that the wildfire management decisions we contemplate making will be appealed as frequently as the comment writers expect. Finally, if BLM's wildfire management projects are properly planned, with extensive public participation in the spirit of the Secretary of the Interior's philosophy of coordination, communication, and consultation in support of conservation, there should be few administrative or court challenges. Even if the final rule leads to increased resort to the Federal courts, the urgency of wildfire management justifies the arguable increased burden on the courts.

H. Paperwork Reduction Act

These regulations do not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions. They do not require the public to provide information.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that the final rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to the final rule. The final rule is an administrative and procedural rule, relating to the timing of the effectiveness of BLM wildfire management decisions and the Department's administrative appeals process. The rule will not change the requirement that projects must comply with NEPA. Therefore, an environmental assessment or environmental impact statement under NEPA is not required.

One comment expressed concern about the cumulative impacts of the proposed rule and other elements of the President's "Healthy Forests Initiative." It cited—

- Changes in Forest Service regulations implementing the Appeals Reform Act,
- Direction to expedite Endangered Species Act consultation on fuel treatment projects, and guidance from the Council on Environmental Quality on conducting environmental assessments of such projects,
- The proposed revision of the National Forest Management Act regulations,
- The proposed Categorical Exclusions for salvage logging projects up to 250 acres, and
- The proposed Categorical Exclusions for fuel reduction projects on both Forest Service and BLM administered lands.

The comment went on to say that the Categorical Exclusion proposals would exempt Forest Service and BLM fuel reduction projects from NEPA documentation requirements, and that the proposed BLM wildfire regulations would not provide for a project stay on BLM-specific wildfire projects pending appeal. Consequently, the comment said, the cumulative effect of these two proposed rule changes is to eliminate environmental review of purported fuel reduction projects while allowing them to proceed on the ground during an administrative review. The comment concluded that it is critical to evaluate the cumulative effect of these numerous rule changes. Another comment stated that this rule "may result in significant effects that are unknown and thus require at least an EA."

This rule is strictly procedural in nature, and is a small part of the overall wildfire management and Healthy Forests Initiative. It does not change any environmental review process that BLM must follow before implementing a wildfire management decision. The rule expedites the implementation of Federal decisions that still require proper NEPA documentation. BLM is preparing an Environmental Impact Statement to address the overall environmental effects of other aspects of the Initiative. We decline to address those concerns in this procedural final rule.

J. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

As required by Executive Order 13175 and 512 DM 2, the Department of the Interior has evaluated potential effects of the final rule on Federally recognized Indian tribes and has determined that there are no potential effects. The final rule will not affect Indian trust resources; it simplifies proof of service, codifies who has a right of appeal, allows BLM to make wildfire management decisions effective immediately, and provides for expedited review of those decisions.

We received one comment from a commission representing the interests of several Indian Tribes with respect to fishing, hunting, and gathering, and pasturing livestock. The comment expressed some of the same concerns shown in the comments of environmental organizations discussed elsewhere in this preamble as to the cumulative effects of this rule and other initiatives of the Administration affecting the environment. The comment said that the cumulative effect of these proposals would "allow potentially harmful projects to be planned and implemented without adequate tribal consultation, environmental review, or opportunity for appeal or public oversight." The comment went on to say:

> These proposed regulations cannot be reviewed in a vacuum, but must be considered together with the Departments [sic] recent addition of a categorical exclusion from NEPA review for "hazardous fuel reduction" activities. The categorical exclusions have the potential to allow logging and even grazing projects to proceed without environmental review or adequate consultation with Tribes. The proposed appeal changes then would allow these projects to proceed and start implementation despite the concerns or an appeal. Coupled together, this will greatly reduce the Tribes', or any interested party's, ability to provide substantive input on the adverse effects of a proposed project.

We recognize these concerns. While we do not believe there is a necessity to consult with specific Tribes or their representatives about this rule beyond accepting their public comments about it, there certainly may be need to consult with them regarding specific wildfire management projects if they may have impacts on Indian trust resources. Further, as stated earlier in this preamble, BLM is preparing an Environmental Impact Statement reviewing the possible impacts of the Healthy Forests Initiative, and these tribal concerns will be considered there.

K. Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, we have found that this final rule will not have a significant effect on the nation's energy supply, distribution, or use. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will not affect energy supply or consumption.

L. Authors

The principal authors of this final rule are Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, and Michael H. Schwartz and Ted Hudson, Bureau of Land Management, assisted by Michael Hickey and Amy Sosin, Office of the Solicitor, Department of the Interior.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Grazing lands, Public lands.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

43 CFR Part 5000

Administrative practice and procedure, Forests and forest products, Public lands.

Dated: May 19, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

Dated: May 14, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

■ For the reasons set forth in the preamble, part 4, subpart E, and part 5000, subpart 5003 of Title 43 of the Code of Federal Regulations are amended, and part 4100, subpart 4190 of Title 43 of the Code of Federal Regulations is added, as set forth below:

43 CFR Subtitle A—Office of the Secretary of the Interior

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

■ 1. The authority for 43 CFR part 4, subpart E, continues to read:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

■ 2. In § 4.401, revise paragraph (c)(2) to read as follows:

§ 4.401 Documents.

* * * * *

(c) * * *

(2) At the conclusion of any document that a party must serve under the regulations in this part, the party must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

* * * * *

■ 3. In § 4.410, redesignate paragraph (b) as (e), and revise paragraph (a)(4) and add paragraphs (b), (c), and (d) to read as follows:

§ 4.410 Who may appeal.

(a) * * *

(4) As provided in paragraph (e) of this section.

(b) A party to a case, as set forth in paragraph (a) of this section, is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

(c) Where BLM provided an opportunity for participation in its decisionmaking process, a party to the case, as set forth in paragraph (a) of this section, may raise on appeal only those issues:

(1) Raised by the party in its prior participation; or

(2) That arose after the close of the opportunity for such participation.

(d) A party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.

* * * * *

■ 4. Section 4.416 is added under the undesignated center heading "actions by board of land appeals" to read as follows:

§ 4.416 Appeals of wildfire management decisions.

The Board must decide appeals from decisions under § 4190.1 and § 5003.1(b) of this title within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed.

■ 5. In § 4.422, revise paragraph (c)(2) to read as follows:

§ 4.422 Documents.

* * * * *

(c) * * *

(2) At the conclusion of any document that a party must serve under the regulations in this part, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

* * * * *

■ 6. In § 4.450–5, revise the introductory paragraph to read as follows:

§ 4.450–5 Service.

The complaint must be served upon every contestee in the manner provided in § 4.422(c)(1). Proof of service must be made in the manner provided in § 4.422(c)(2). In certain circumstances, service may be made by publication as provided in paragraph (b)(1) of this section. When the contest is against the heirs of a deceased entryman, the notice must be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged incompetent, service of notice must be made by delivering a copy of the notice to the legal guardian or committee, if there is one, of such infant or incompetent person. If there is no guardian or committee, then service must be by delivering a copy of the notice to the person having the infant or incompetent person in charge.

* * * * *

43 CFR Chapter II—Bureau of Land Management, Department of the Interior

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

■ 7. The authority citation for part 4100 continues to read:

Authority: 43 U.S.C. 315, 315a–315r, 1181d; 1740.

■ 8. Add subpart 4190, consisting of 4190.1, to read as follows:

Subpart 4190—Effect of Wildfire Management Decisions

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

PART 5000—ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

■ 9. The authority citation for part 5000 continues to read as follows:

Authority: 43 U.S.C. 1181(a); 43 U.S.C. 1701; 30 U.S.C. 601 *et seq.*

Subpart 5003—Administrative Remedies

■ 10. Revise § 5003.1 to read as follows:

§ 5003.1 Effect of decisions; general.

(a) Filing a notice of appeal under part 4 of this title does not automatically suspend the effect of a decision governing or relating to forest management as described under sections 5003.2 and 5003.3.

(b) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a wildfire management decision made under this part and parts 5400 through 5510 of this chapter effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(c) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (b) of this section within the time limits prescribed in 43 CFR 4.416.

[FR Doc. 03–14103 Filed 6–2–03; 12:53 pm]

BILLING CODE 4310–70–P

Federal Register

Thursday,
June 5, 2003

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 402

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AJ02

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. 030506115–3115–01]

RIN 0648–AR05

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: As part of the President's Healthy Forests Initiative announced in August 2002, the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) (singly or jointly, Service), in cooperation with the U.S. Department of Agriculture, Forest Service (FS) and the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS), are proposing joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA) to streamline consultation on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce risks of catastrophic wildland fires and restore fire-adapted ecosystems. These counterpart regulations, authorized in general at 50 CFR 402.04, will provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP. The alternative consultation process contained in these proposed counterpart regulations will eliminate the need to conduct informal consultation and eliminate the requirement to obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

DATES: Comments on this proposal must be received by August 4, 2003, to be considered in the final decision on this proposal.

ADDRESSES: Comments or materials concerning the proposed rule should be sent to the Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Comments can also be accepted if submitted via e-mail to *healthyforests@fws.gov*. Comments and materials received in conjunction with this rulemaking will be available for inspection, by appointment, during normal business hours at the above address.

The FWS has agreed to take responsibility for receipt of public comments and will share all comments it receives with NMFS and the Action Agencies. All the agencies will work together to compile, analyze, and respond to public comments.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Implementation of National Fire Plan

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season in 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled Managing the Impact of Wildfires on Communities and the Environment, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. Because of nearly a century of policies to exclude fire from performing its historical role in shaping plant communities, fires in our public forests and rangelands now threaten people, communities, and natural resources in ways never before seen in our Nation's history.

Many of the Nation's forests and rangelands have become unnaturally dense as a result of past fire suppression policies. Today's forests contain previously unrecorded levels of fuels, while highly flammable invasive species now pervade many rangelands. As a result, ecosystem health has suffered significantly across much of the Nation. When coupled with seasonal droughts, these unhealthy forests and rangelands, overloaded with fuels, are vulnerable to unnaturally severe wildland fires. The geographic scope of the problem is enormous, with estimates approaching 200 million acres of forest and rangeland at risk of catastrophic fire. The problem has been building across the landscape for decades. Its sheer size makes it impossible to treat all the acres needing attention in a few years or even within the next decade.

In 2002 alone, the Nation experienced over 88,000 wildland fires that cost the Federal government $1.6 billion to suppress. Many of these wildfires significantly impacted threatened or endangered species. The Biscuit Fire burned an area of 499,570 acres in Oregon and California that included 49 nest sites and 50,000 acres of designated critical habitat for the threatened northern spotted owl and 14 nesting areas and 96,000 acres of designated critical habitat for the threatened marbled murrelet. The estimated fire suppression cost was $134,924,847. The Rodeo-Chediski fire in Arizona, the largest fire in the State's post-settlement history, burned through 462,614 acres, including 20 nesting areas for the threatened Mexican spotted owl. Unless fuel loads can be reduced on the thousands of acres classified at high risk of catastrophic wildfires, more adverse effects like those of the 2002 fire season are certain to occur.

The long-term strategy for the NFP is to correct problems associated with the disruption of natural fire cycles as a result of fire suppression policy or fire-prone non-native invasive species and minimize risks to public safety and private property due to the increase in amount and complexity of the urban/wildland interface. The NFP calls for a substantial increase in the number of acres treated annually to reduce unnaturally high fuel levels, which will decrease the risks to communities and to the environment caused by unplanned and unwanted wildland fire. These types of preventative actions will help ensure public safety and fulfill the goals of the President's Healthy Forests Initiative.

The FS, BIA, BLM, and NPS, as Federal land management agencies, play an important role in implementing actions under the NFP that will reduce the potential risks of catastrophic wildland fire. The FWS also develops and carries out actions in support of the NFP on National Wildlife Refuges or National Fish Hatcheries. These five agencies constitute the Action Agencies who may use the counterpart regulations proposed herein. The types of projects being conducted by these agencies under the NFP include prescribed fire (including naturally occurring wildland fires managed to benefit resources), mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Prompt implementation of these types of actions will substantially improve the condition of the Nation's forests and rangelands and substantially diminish potential losses of human lives and property caused by wildland fires. The Service and the Action Agencies are proposing these counterpart regulations to accelerate the rate at which these type of activities can be implemented such that the likelihood of catastrophic wildland fires is reduced.

Federal Fuels Treatment Activities

Each of the Action Agencies has substantial experience in planning and implementing projects that further the goals of reducing risks associated with wildland fires, while improving the condition of our public lands and wildlife habitat. The FS works collaboratively with its partners to design and implement projects to meet a variety of land and resource management objectives, including projects to improve habitat for wildlife and fish species. Through several hundred rehabilitation, restoration and hazardous fuels reduction projects under the NFP, the FS treats over 2 million acres each year to benefit natural resources, people, and communities. All of these projects have long-term multiple resource benefits, and several have short-term wildlife benefits as well. On the Winema and Fremont National Forests in Oregon, a thousand acres of forest were thinned and underburned to protect stands and large trees from wildfire, and to increase the longevity of those trees used by bald eagles for nesting and roosting. On the Santa Fe National Forest in New Mexico, after habitat loss due to the Cerro Grande Fire, ground cover in the form of large fallen woody material has been restored to benefit the Jemez Mountain salamander. Habitat that had been damaged by post-wildland fire debris flows has been restored to reduce erosion and benefit Yellowstone cutthroat trout on the Custer National Forest in Montana. On the Jefferson National Forest in Virginia, prescribed fire is used every 3 years on Mt. Rogers to maintain the grassy bald area in a grass-forb stage and prevent woody vegetation from becoming established that would out compete rare plant species. Similarly, on the National Forests in Mississippi, prescribed burning reduces woody vegetation and fuels, encourages fire-dependent perennials, and restores and expands remnants of native prairie.

The BIA has planned many beneficial projects under the NFP that are designed to reduce wildland fire risk on Indian lands and to increase public safety around tribal and non-tribal communities. For example, one project will utilize both mechanical treatments and prescribed fire in lodgepole pine and Engelmann spruce forests to reduce fuel loadings and protect residents and residences around the Blackfeet Indian Reservation communities of East Glacier, Little Badger, Babb, St. Mary, Heart Butte, and Kiowa, in northwestern Montana. A second project would also utilize mechanical treatments and prescribed fire to reduce fuel loadings in Douglas-fir, ponderosa pine, and grass fuel types that pose a high level of risk to the residents around the Rocky Boy's Indian Reservation communities of Box Elder Village, Box Elder Creek, Rocky Boy Townsite, Duck Creek, and Parker Canyon, in Central Montana. A third project would reduce fuels in about 1,300 acres of pine, juniper, oak, and grasses, by combining prescribed fire with mechanical fuels treatment techniques on Zuni Tribal forest and woodland resources in New Mexico. This project would create fuel breaks in large contiguous fuels that are at high risk for catastrophic wildfires. Finally, a fourth project will stabilize and rehabilitate 276,000 acres of White Mountain Apache Tribal lands severely damaged in the Rodeo-Chediski Fire. This project will reduce the potential threats to human life and property in surrounding communities, along with threats to cultural resources, water quantity and quality, and soil productivity.

Across the Nation, NPS is implementing numerous projects to support the goals of the NFP. Park superintendents use prescribed fire (including wildland fire), mechanical fuels treatments, and invasive species control to restore or maintain natural ecosystems, to mitigate the effects of past fire suppression policies, and to protect communities from catastrophic wildfires. NPS fire management and restoration efforts generally focus on restoring ecosystem processes rather than on the management of specific species. However, these projects provide important long-term habitat benefits to a variety of threatened or endangered species. For example, Great Smoky Mountains National Park is completing a 1,034-acre yellow pine restoration burn, the largest prescribed burn in the Park's history. The central purpose of the Park's use of fire is to replicate as nearly as possible the role that naturally occurring fires played in shaping and maintaining the Park's biologically diverse ecosystems, while also minimizing the risk of future wildfires. At Washita Battlefield National Historic Site, the use of prescribed fire is intended to restore and maintain grassland/prairie habitats in a healthy condition. The operation was an interagency effort between the FS and the NPS. Similarly, Gulf Islands National Seashore has conducted prescribed burns for habitat restoration and to reduce hazardous fuels. These burns both restore key vegetative communities and provide habitat for relocated gopher tortoises. Other projects have improved habitat for red-cockaded woodpeckers at Big Thicket National Preserve and bald eagles at Lavabeds National Monument. All of these fuels treatment projects will

enhance public safety for the communities around the Parks.

The BLM is proceeding with many NFP projects to restore dense pinyon pine and juniper forests and woodlands, nearly devoid of understory shrubs, grasses, and forbs, to a more natural savannah, or open woodland conditions. In the Farmington Field Office, New Mexico, the Pump Mesa project is a multiple phase project to open up the pinyon pine and juniper forest canopy by thinning, wood removal, and prescribed burning, to make space, sunlight, water, and nutrients available for the manual seeding of native understory species that were formerly present on the site. Densities of trees in the pinyon pine systems have increased to the point that large proportions of these woodlands have become highly combustible, supporting crown fires that can produce catastrophic habitat loss for wildlife and high risk to nearby communities. In the Richfield Field Office, the Praetor Slope Fuel Reduction project will mechanically displace patches of juniper and sagebrush to reduce the risk created by large, dense contiguous areas of fuel, while creating valuable deer and elk range, complete with islands and feathered woodlands that provide necessary animal cover. In the Central Montana Fire Management Zone, a number of small and moderate-sized prescribed burns, such as in Cow Creek, Little Bull Whacker, and Fergus Triangle, have been completed to increase wildlife habitat diversity, reduce fuel loads, and increase forage for both livestock and wildlife.

Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of the Service, insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in destruction or adverse modification of designated critical habitat. Section 7(b) of the ESA describes the consultation process, which is further developed in regulations at 50 CFR part 402.

The existing ESA section 7 regulations require an action agency to complete formal consultation with the Service on any proposed action that may affect a listed species or designated critical habitat, unless following either a biological assessment or informal consultation with the Service, the action agency makes a determination that a proposed action is "not likely to adversely affect" any listed species or designated critical habitat and obtains written concurrence from the Service for the NLAA determination. The alternative consultation process contained in these proposed counterpart regulations will allow the Service to provide training, oversight, and monitoring to an Action Agency through an alternative consultation agreement (ACA) that enables the Action Agency to make an NLAA determination for a project implementing the NFP without informal consultation or written concurrence from the Service.

Using the existing consultation process, the Action Agencies have consulted with the Service on many thousands of proposed actions that ultimately received written concurrence from the Service for NLAA determinations. Those projects had only insignificant or beneficial effects on listed species or posed a discountable risk of adverse effects. The concurrence process for such projects has diverted some of the consultation resources of the Service from projects in greater need of consultation and caused delays. The proposed counterpart regulations will effectively reduce these delays by increasing the Service's capability to focus on Federal actions requiring formal consultation by eliminating the requirement to provide written concurrence for actions within the scope of the proposed counterpart regulations.

The Action Agencies have engaged in thousands of formal and informal consultations with the Service in the 30 years since the passage of the ESA, and have developed substantial scientific, planning, mitigation, and other expertise to support informed decision-making and to meet their responsibilities under ESA section 7 to avoid jeopardy and contribute to recovery of listed species. To meet their obligations, the Action Agencies employ large staffs of qualified, experienced, and professional wildlife biologists, fisheries biologists, botanists, and ecologists to help design, evaluate, and implement proposed activities carried out under land use and resource management plans. All of the Action Agencies consult with the Service on actions that implement land use and resource management plans that contribute to the recovery of proposed and listed species and the ecosystems upon which they depend. In particular, the informal consultation and concurrence process has given the Action Agencies considerable familiarity with the standards for making NLAA determinations for their proposed actions.

Action Agencies have developed familiarity with the standards over time through various activities. The Action Agencies develop proposals and evaluate several thousand actions for possible effects to listed species and designated critical habitat. Agency biologists are members of listed species recovery teams, contribute to management plans that provide specific objectives and guidelines to help recover and protect listed species and designated critical habitat, and cooperate on a continuing basis with Service personnel. In many parts of the country, personnel from the Action Agencies and the Service participate in regular meetings to identify new management projects and the effects to proposed and listed species through formalized streamlined consultation procedures.

The Action Agencies' established biological expertise and active participation in the consultation process provides a solid base of knowledge and understanding of how to implement section 7 of the ESA. By taking advantage of this expertise within the Action Agencies, the proposed counterpart regulations process will help ensure more timely and efficient decisions on planned NFP actions while retaining the protection for listed species and designated critical habitat required by the ESA and other applicable regulations. The Service can rely upon the expertise of the Action Agencies to make NLAA determinations that are consistent with the ESA and its implementing regulations. Moreover, the Action Agencies are committed to implementing this authority in a manner that will be equally as protective of listed species and designated critical habitat as the current procedures that require written concurrence from the Service.

The Healthy Forests Initiative builds from the recognition that faster environmental reviews of proposed land management projects will provide greater benefits to the range, forest lands, and wildlife by reducing the risk of catastrophic wildfire while the reviews are pending. These proposed counterpart regulations provide an additional tool for accomplishing faster reviews. Streamlining the NLAA concurrence process offers a significant opportunity to accelerate NFP projects while providing equal or greater protection of the resources. Under current procedures, the Action Agencies already must complete and document a full ESA analysis to reach an NLAA determination. The proposed counterpart regulations permit a project to proceed following an Action Agency's NLAA determination without an overlapping review by the Service, where the Service has provided specific training and oversight to achieve comparability between the Action Agency's determination and the likely outcome of an overlapping review by the Service. These counterpart regulations should significantly accelerate planning, review, and implementation of NFP actions, and by doing so, should contribute to achieving the habitat management and ecosystem restoration activities contemplated under the NFP.

Proposed Counterpart Regulations

Regulations at 50 CFR 402.04 provide that "the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service." The preamble to the 1986 regulations for implementing section 7 of the ESA states that "such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7." The approach proposed in these counterpart regulations is consistent with § 402.04 because it leaves the standards for making NLAA determinations unchanged. The proposed joint counterpart regulations establish an optional alternative process to conduct consultation under section 7 of the ESA for actions that the FS, BIA, BLM, FWS, or NPS might authorize, fund, or carry out to implement the NFP. The procedures outlined in the proposed counterpart regulations differ from the existing procedures in 50 CFR part 402 subparts A and B, § 402.13 and § 402.14(b), by allowing an Action Agency to enter into an ACA with the Service that will allow the Action Agency to make an NLAA determination on a proposed NFP project without informal consultation or written concurrence from the Service. Further, Action Agencies operating under these proposed counterpart regulations retain full responsibility for compliance with section 7 of the ESA.

Under the proposed counterpart regulations, the Action Agencies will enter into an ACA with either FWS, NMFS or both. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. By following the procedures in these counterpart regulations and the ACA, the Action Agencies fulfill their ESA section 7 consultation responsibility for actions covered under these proposed regulations.

The purpose of the jointly developed training program between the Action Agency and the Service is to ensure that the Action Agency consistently interprets and applies the relevant provisions of the ESA and the regulations (50 CFR part 402) relevant to these counterpart regulations with the expectation that the Action Agency will reach the same conclusions as the Service. It is expected that the training program will be consistent among Action Agencies, subject to differing needs and requirements of each agency, and will rely upon the ESA Consultation Handbook as much as possible. The training program may include jointly developed guidelines for conducting the ESA section 7 effects analysis for the particular listed species and critical habitat that occur in the jurisdiction of the Action Agency requesting the agreement. Training may also emphasize the use of project design criteria for listed species where they have been developed between the Service and the Action Agency.

Because the Service maintains information on listed species, the Service may supply any new information it receives that would be relevant to the effects analysis that the Action Agencies will conduct to make the NLAA determinations. In addition, the Service will coordinate with the Action Agency when new listed species or designated critical habitat are proposed.

The Service will use monitoring and periodic program reviews to evaluate an Action Agency's performance under the ACA at the end of the first year of implementation and then at intervals specified in the ACA. The evaluation may be on a subunit basis (*e.g.*, a particular National Forest or BLM district) where different subunits of an Action Agency begin implementation of the ACA at different times. The Service will evaluate whether the implementation of this regulation by the Action Agency is consistent with the best available scientific and commercial information, the ESA and section 7 regulations. The result of the periodic program review may be to recommend changes to the Action Agency's implementation of the ACA. These recommendations could include suspending or excluding any participating Action Agency subunit, but more likely may include additional training. The Service will retain discretion for terminating the ACA if the requirements under the counterpart regulations are not met. However, any such suspension, exclusion, or termination will not affect the legal validity of NLAA determinations made prior to the suspension, exclusion, or termination.

Upon completion of an ACA, the Action Agency and the Service will implement the training program outlined in the ACA. At the Action Agency's discretion, the training program may be designed such that some subunits may begin implementing the ACA before agency personnel in other subunits are fully trained. The Action Agency will assume full responsibility for the adequacy of the NLAA determinations that it makes.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and effective as possible. We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the address specified in **ADDRESSES.** You may also comment via the Internet to *healthyforests@fws.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1018–AJ02" and your name and return address in your Internet message. If you do not receive confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2106. Finally, you may hand-deliver comments to the address specified in **ADDRESSES.** Our practice is

to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, available for public inspection in their entirety.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant proposed rule because it may raise novel legal or policy issues, and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This counterpart regulation will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The counterpart regulation for the evaluation of conservation efforts when making listing decisions does not pertain to commercial products or activities or anything traded in the marketplace.

(b) This counterpart regulation is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This counterpart regulation is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, we certified to the Small Business Administration that these regulations would not have a significant economic impact on a substantial number of small entities. The purpose of the rule is to increase the efficiency of the ESA section 7 consultation process for those activities conducted to implement the NFP. The proposed changes will lead to the same protections for listed species as the section 7 consultation regulations at 50 CR part 402 and will only eliminate the need for the Action Agency to conduct informal consultation with and obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

Regulations at 50 CFR 402.04 provide that "the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service." The preamble to the 1986 regulations for implementing section 7 states that "such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7."

Under the proposed counterpart regulations, the Action Agencies will enter into an Alternative Consultation Agreement (ACA) with either or both of the Services as appropriate. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. The purpose of the training program is to ensure the Action Agency consistently interprets and applies the relevant provisions of the ESA and regulations (50 CFR 402), with the expectation that the Action Agency will reach the same conclusion as the Service.

The proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The proposed joint counterpart ESA section 7 regulations only apply to ESA section 7 determinations made by one of the five Federal Action Agencies that implement the NFP; (2) the proposed rule will only remove the requirement for the Action Agencies to conduct informal consultation with and obtain written concurrence from FWS or NMFS on those NFP actions they determine that are NLAA listed species or designated critical habitat; and (3) the proposed regulations are designed to reduce potential economic burdens on the Services and Action Agencies by improving the efficiency of the process. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small businesses, organizations, or governments pursuant to the RFA.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) These counterpart regulations will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that these counterpart regulations will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

(b) These counterpart regulations will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. These counterpart regulations impose no obligations on State, local, or tribal governments.

Takings

In accordance with Executive Order 12630, these counterpart regulations do not have significant takings implications. These counterpart regulations pertain solely to ESA section 7 consultation coordination procedures, and the procedures have no impact on personal property rights.

Federalism

In accordance with Executive Order 13132, these counterpart regulations do not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce regulations under section 7 of the ESA, we coordinated development of these counterpart regulations with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose these counterpart regulations consistent with 50 CFR 402.04 and section 7 of the ESA.

Paperwork Reduction Act

This proposed rule would not impose any new requirements for collection of information that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

These counterpart regulations have been developed by FWS and NMFS, jointly with FS, BIA, BLM, and NPS according to 50 CFR 402.04. The FWS and NMFS are considered the lead Federal agencies for the preparation of this proposed rule, pursuant to 40 CFR 1501. We have analyzed these counterpart regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 and have determined that an environmental assessment will be prepared prior to finalization of the rule.

Government-to-Government Relationship With Indian Tribes

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); E.O. 13175; and the Department of the Interior's 512 DM 2, we understand that we must relate to recognized Federal Indian Tribes on a Government-to Government basis. However, these counterpart regulations do not directly affect Tribal resources. These counterpart regulations may have an indirect effect on Native American Tribes as the Bureau of Indian Affairs may, at its discretion, implement the procedures outlined in the counterpart regulations for those activities affecting Tribal resources that they may authorize, fund, or carry out under the NFP. The intent of these counterpart regulations is to streamline the consultation process; therefore, the extent of this indirect effect will be wholly beneficial.

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly the Service proposes to amend part 402, title 50 of the Code of Federal Regulations as follows:

PART 402—[AMENDED]

1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Add a new Subpart C to read as follows:

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

402.30 Definitions.
402.31 Purpose.
402.32 Scope.
402.33 Procedures.
402.34 Oversight.

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

§ 402.30 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

Action Agency refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

Alternative Consultation Agreement (ACA) is the agreement described in § 402.33 of this subpart.

Fire Plan Project is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

National Fire Plan (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled Managing the Impact of Wildfire on Communities and the Environment outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

Service Director refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

§ 402.31 Purpose.

The purpose of these counterpart regulations is to improve the consultation process under section 7 of

the ESA for Fire Plan Projects by providing an optional alternative to the procedures found in §§ 402.13 and 402.14(b) of this part. These regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the Service, as described in § 402.33, which will allow the Action Agency to determine that a Fire Plan Project is "not likely to adversely affect" (NLAA) a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA, as described in § 402.33, completes the Action Agency's statutory obligation to consult with the Service for that Project. In situations where the Action Agency does not make an NLAA determination under the ACA, the Action Agency would still be required to conduct formal consultation with the Service when required by § 402.14. This process will be as protective to listed species and designated critical habitat as the process established in subpart B of this part. The standards and requirements for formal consultation under subpart B for Fire Plan Projects that do not receive an NLAA determination are unchanged.

§ 402.32 Scope.

(a) Section 402.33 establishes a process by which an Action Agency may determine that a proposed Fire Plan Project is not likely to adversely affect any listed species or designated critical habitat without conducting formal or informal consultation or obtaining written concurrence from the Service.

(b) Section 402.34 establishes the Service's oversight responsibility and the standard for review under this subpart.

(c) Nothing in this subpart C precludes an Action Agency at its discretion from initiating early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14, respectively.

(d) The authority granted in this subpart is applicable to an Action Agency only where the Action Agency has entered into an ACA with the Service. An ACA entered into with one Service is valid with regard to listed species and designated critical habitat under the jurisdiction of that Service whether or not the Action Agency has entered into an ACA with the other Service.

§ 402.33 Procedures.

(a) The Action Agency may make an NLAA determination for a Fire Plan Project without informal consultation or written concurrence from the Director if the Action Agency has entered into and implemented an ACA. The Action Agency need not initiate formal consultation on a Fire Plan Project if the Action Agency has made an NLAA determination for the Project under this subpart. The Action Agency and the Service will use the following procedures in establishing an ACA.

(1) *Initiation:* The Action Agency submits a written notification to the Service Director of its intent to enter into an ACA.

(2) *Development and Adoption of the Alternative Consultation Agreement:* The Action Agency enters into an ACA with the Service Director. The ACA will, at a minimum, include the following components:

(i) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations under this subpart C.

(ii) Procedures for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency.

(iii) A description of the standards the Action Agency will apply in assessing the effects of the action, including direct and indirect effects of the action and effects of any actions that are interrelated or interdependent with the proposed action.

(iv) Provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis of proposed actions.

(v) A mutually agreed upon program for monitoring and periodic program evaluation to occur at the end of the first year following signature of the ACA and periodically thereafter.

(vi) Provisions for the Action Agency to maintain a list of Fire Plan Projects for which the Action Agency has made NLAA determinations. The Action Agency will also maintain the necessary records to allow the Service to complete the periodic program evaluations.

(3) *Training:* Upon completion of the ACA, the Action Agency and the Service will implement the training program outlined in the ACA to the mutual satisfaction of the Action Agency and the Service.

(b) The Action Agency may at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public.

§ 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this regulation by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency's implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

Dated: May 28, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: May 27, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service, National Oceanic and Atmospheric Adminstration.

[FR Doc. 03–14108 Filed 6–2–03; 12:53 pm]

BILLING CODE 4310–55–P

Federal Register

Thursday,
June 5, 2003

Part V

Department of Agriculture

Forest Service

Department of the Interior

National Environmental Policy Act Determination Needed for Fire Management Activities; Categorical Exclusions; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

RIN 0596–AB99

National Environmental Policy Act Documentation Needed for Fire Management Activities; Categorical Exclusions

AGENCY: Forest Service, USDA, and Department of the Interior.

ACTION: Notice of final National Environmental Policy Act implementing procedures.

SUMMARY: The Department of Agriculture, Forest Service and the Department of the Interior give notice of revised procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These final implementing procedures are being issued in Forest Service Handbook 1909.15, Chapter 30, Section 31.2, and Department of the Interior Manual 516 DM, Chapter 2, Appendix 1, which describe categorical exclusions, *i.e.*, categories of actions, which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement. The revision adds two such categories of actions to the agencies' NEPA procedures: (1) Hazardous fuels reduction activities; and (2) rehabilitation activities for lands and infrastructure impacted by fires or fire suppression. The Departments reviewed the effects of over 2,500 hazardous fuel reduction and rehabilitation projects and concluded that these are categories of actions which do not individually or cumulatively have a significant effect on the human environment. The agencies have also conducted a review of peer-reviewed scientific literature identifying the effects of hazardous fuels reduction activities, which is available at *http://www.fs.fed.us/emc/hfi*. This combination of reviews give the agencies confidence that the categorical exclusions are appropriately defined. These two categorical exclusions will facilitate scientifically sound, efficient, and timely planning and decisionmaking for the treatment of hazardous fuels and rehabilitation of areas so as to reduce risks to communities and the environment caused by severe fires.

The hazardous fuels reduction category will apply only to activities identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan" (hereafter called 10-Year Comprehensive Strategy Implementation Plan). An example of the framework's structure is available at *http://www.fireplan.gov/reports/mou/fuelstreatment.pdf*. Moreover, these hazardous fuels reduction activities: (1) Will not be conducted in wilderness areas or where they would impair the suitability of wilderness study areas for preservation for wilderness; (2) will not include the use of herbicides or pesticides; (3) will not involve the construction of new permanent roads or other infrastructure; (4) will not include sales of vegetative material that do not have hazardous fuels reduction as their primary purpose; (5) will not exceed 1,000 acres for mechanical hazardous fuels reduction activities and will not exceed 4,500 acres for hazardous fuels reduction activities using fire; (6) will only be conducted in wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

Activities carried out under the rehabilitation category will take place only after a wildfire. These activities cannot use herbicides or pesticides, nor include the construction of new permanent roads or other infrastructure, and they must be completed within three years following a wildland fire. Activities carried out under the rehabilitation categorical exclusion will not exceed 4,200 acres.

Activities conducted under these categorical exclusions must be consistent with agency and Departmental procedures and with applicable land and resource management plans, and must comply with all applicable Federal, State, and Tribal laws for protection of the environment. These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archaeological, cultural, or historic sites.

In response to comments on the proposed categorical exclusions, several revisions were made to the original proposal: (1) Grazing activities for the maintenance of fuel breaks were removed from the hazardous fuels reduction category; (2) the hazardous fuels reduction category was clarified to explicitly state that a proposed action could only include the sale of vegetative material where the primary purpose of hazardous fuels reduction; (3) one of the requirements for hazardous fuels reduction activities was revised to state that such activities must be identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan, rather than be consistent with the framework; (4) the hazardous fuels reduction category was modified to make the list of activities an exhaustive one instead of illustrative; (5)) the hazardous fuels reduction category was modified to limit its use to wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; (6) hazardous fuels reduction activities using fire are limited to 4,500 acres; (7) mechanical hazardous fuels reduction activities are limited to 1,000 acres; (8) fire rehabilitation activities are limited to 4,200 acres; and (9) the definition of rehabilitation was revised to be consistent with the National Wildland Fire Coordinating Group interagency definition.

EFFECTIVE DATE: The categorical exclusions are effective June 5, 2003.

ADDRESSES: The new Forest Service categorical exclusions are set out in Interim Directive No. 1909.15–2003–1, available electronically via the Internet at *http://www.fs.fed.us/im/directives*. The new Department of the Interior categorical exclusions are set out in 516 DM, Chapter 2, Appendix 1, available electronically via the Internet at *http://elips.doi.gov/table.cfm*. Single paper copies are available by contacting Dave Sire, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104 or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance (Mail Stop 2342), 1849 C Street, NW., Washington, DC 20240. Additional information and analysis can be found at *http://www.fs.fed.us/emc/hfi*.

FOR FURTHER INFORMATION CONTACT: Dave Sire, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205–2935, or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance, (202) 208–3891. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 22, 2002, President Bush established the Healthy Forest Initiative, directing the Department of Agriculture and the Interior and the Council on Environmental Quality to improve regulatory processes to ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfires by restoring forest health.

In response to this direction, the Departments of Agriculture and the Interior proposed two new categorical exclusions on December 16, 2002 (67 FR 77038). The first, addressing hazardous fuels reduction activities, is intended to better protect lives, communities, and ecosystems from the risk of high-intensity wildland fire. The second, addressing rehabilitation activities, is intended to better restore natural resources and infrastructure after a fire. The supplementary information section of the notice published in December contains comprehensive background information on the need, development, and rationale for these categorical exclusions. The specific language for the proposed categories of actions are set out for comment in the notice was as follows:

- Hazardous fuels reduction activities (prescribed fire, and mechanical or biological methods such as crushing, piling, thinning, pruning, cutting, chipping, mulching, grazing and mowing) when the activity has been identified consistent with the framework described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan." Such activities:
- Shall be conducted consistent with agency and Departmental procedures and land and resources management plans; and
- Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and
- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.
- Activities (such as reseeding or planting, fence construction, culvert repair, installation of erosion control devices, and repair of roads and trails) necessary for the rehabilitation of habitat, watersheds, historical, archeological, and cultural sites and infrastructure impacted by wildfire and/or wildfire suppresion. Such activities:
- Shall be conducted consistent with agency and Departmental procedures and land and resource management plans; and
- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.

Comments on the Proposal

Almost 39,000 responses in the form of letters, postcards, faxes, and e-mail messages were received during the comment period. These comments came from private citizens, elected officials, and groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of nearly 1,900 individual letters and over 37,000 form letters.

Public comment on the proposal addressed a wide range of topics, many of which were directed generally at the President's Healthy Forest Initiative and hazardous fuels reduction. Many people supported the proposal or favored further expansion, while many other opposed the proposal or recommended further restrictions.

Comment: Some respondents voiced general agreement with the proposal. Some indicated that they think current analysis and documentation requirements are too burdensome and that the proposal would provide for more efficient management. Others believed that the proposal had appropriate limitations on the use of the categorical exclusions and that the agencies had done sufficient analysis to include that the categories of hazardous fuels reduction activities and fire rehabilitation activities do not individually or cumulatively have significant effects. Still others agreed that the collaboration requirements ensure that local affected communities will be involved.

Response: These comments were in support of the proposal and need no specific response. A summary of the remainder of public comments and the agencies' responses follows:

Comment: Some respondents stated that the proposal is not needed inasmuch as current laws and policies allow sufficient action to be taken to lower the forest fire risk in urban-wildland interface areas. They stated that agency policies already provide sufficient authority of using categorical exclusions.

Response: The Forest Service and the land management agencies within the Department of the Interior have various categorical exclusions for fire management in their NEPA procedures. Consequently, there are inconsistencies among agencies. Some agencies have the ability to categorically exclude some or all hazardous fuels reduction activities and some of or all fire rehabilitative activities while others cannot. For example, the U.S. Fish and Wildlife Service has utilized similar categories for fire management activities since 1997. In contrast, before the issuance of the categories set out in this notice, a jointly proposed Forest Service and Bureau of Land Management (BLM) hazardous fuels reduction activity using prescribed fire would have required BLM to prepare an environmental assessment, while the Forest Service may have categorically excluded such an action. These final categories provide a tool for more efficient planning of hazardous fuels reduction and fire rehabilitation activities. Having the same categories available to all of these land management agencies will facilitate inter-agency coordination and allow for more efficient planning and more timely decisions across agency jurisdictions. It will also provide greater consistency of practice. The addition of these categories, however, does not represent a substantial change for some agencies nor does it replace or prevent the use of existing categories with similar purposes. *See* "Comparision of USDA Forest Service and Department of the Interior Agency Categorical Exclusions" at *http://www.fs.fed.us/emc./hfi*.

Comment: Some respondents stated that the proposal inappropriately adopts a nationwide approach over a site-specific approach and that certain geographical regions or areas with specific ecological characteristics should not be included in the category. They suggested that fire does not play a significant role in some areas due to high precipitation and humidity. Suggestions included taking the Southern Appalachian forests, national monuments, Eastern forests, forests in the Pacific Northwest, old growth, and alpine forests out of these categories of actions.

Response: Data on hazardous fuels reduction and fire rehabilitation activities was collected from field units within the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, Fish and Wildlife Service, and National Park Service, across the United States. Based on a review of this data, it is the professional judgment of the Departments that the categories of actions identified in the hazardous fuels reduction and fire rehabilitation categorical exclusions do not individually or cumulatively have significant effects on the human environment. The data represents a broad spectrum of hazardous fuels reduction activities across vegetation types, geographic regions, and agency jurisdictions. Indeed, it is this broad representation of activities that leads the

agencies to conclude that the hazardous fuels reduction and fire rehabilitation categories should not be restricted to any specific geographic area, vegetation type, or jurisdiction. Additional information is available at *http://www.fs.fed.us/emc/hfi*. The categorical exclusion are provided as a tool to improve planning efficiency.

The applicability of hazardous fuels reduction activities and the level of NEPA documentation appropriate to any given area is a matter for informed professional judgment on the part of the local resource manager. The hazardous fuels categorical exclusion has been modified to limit its use to areas in wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups, I, II, or III, outside the wildland-urban interface. Further, hazardous fuels reduction actions using this category will be identified through a collaborative process as described in "A Collaborative Approach for Reducing Wildland Fire risks to communities and the Environment 10-Year Comprehensive Strategy Implementation Plan" (hereafter called the 10-Year comprehensive Strategy implementation Plan). Therefore, if hazardous fuels reduction activities are not needed or appropriate, they are not likely to be identified through this process.

The rehabilitation category is to be used only for rehabilitation of resources and infrastructure after a wildfire, so it is already limited to those areas impacted by wildland fire and wildfire suppression. Further restricting this category to certain geographic areas may exclude areas that, while not typically susceptible to wildland fire, may be subject to wildland fire because of conditions such as extreme drought, blow down, or insect infestation.

Moreover, the two categories will not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archaeological, cultural, or historic sites.

Comment: Some respondents stated that the public cannot adequately comment until they have reviewed the results of the required Council on Environmental Quality (CEQ) consultation for the proposed categorical exclusions.

Response: Pursuant to regulations at 40 CFR 1505.1 and 1507.3, the USDA Forest Service and the Department of the Interior consulted with CEQ during the development of the categorical exclusions. Prior to the publication of these final categorical exclusions, CEQ provided written confirmation that amending the Forest Service and Department of the Interior NEPA procedures by adding the new categorical exclusions was in conformity with NEPA and the CEQ regulations.

Comment: Some respondents stated that the agencies should have provided addresses listing where hard copies of information can be obtained. These respondents said that they do not have access to the Internet and that they have not been able to obtain information.

Response: Two contacts and their phone numbers were provided in the **Federal Register** notice (67 FR 77038) as sources for additional information. Paper copies of the information were available on request from the two contacts.

Comment: Some respondents questioned why the public should have to cite specific laws, regulations, or policies when making comments.

Response: There was no request for the public to cite specific laws, regulations, or policies when making comments.

Comment: Some respondents stated that, according to the **Federal Register** notice, instructions for applying the proposed fire management categorical exclusions will not be issued until after the procedures are finally established; thus neither the agencies nor the public can comment on how, where, and how often these categorical exclusions will be utilized.

Response: The only instructions not yet produced are those providing Department of the Interior agencies guidance for the format and content of memos that will document the agency's use of either of these two categorical exclusions. Historically, requirements for documenting decisions concerning categorically excluded activities have varied across agencies within the Department of the Interior. The new Department of the Interior instructions will be consistent with existing Forest Service requirements and provide for standardized documentation for using the hazardous fuels reduction and fire rehabilitation categorical exclusions among agencies. The Forest Service requirements are available at *http://www.fs.fed.us/im/directives/fsh/1990.15/1909.15,30.txt*. The Department of Interior instruction can be found at *http://www.doi.gov/oepc/esms. html*.

Comment: Some respondents said they believe that the proposal will restrict public involvement and that timber harvest for purposes other than hazardous fuels reduction will be categorically excluded.

Response: The hazardous fuels reduction categorical exclusion explicitly states that it may only be used where the primary purpose of the project is hazardous fuels reduction. Moreover, it is restricted to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan. As stated in the 10-Year Comprehensive Strategy Implementation Plan, "Local level collaboration should involve participants with direct responsibility for management decisions affecting public and/or private land and resources, fire protection responsibilities, or good working knowledge and interest in local resources. Participants should include Tribal representatives, local representatives, local representatives from Federal and State agencies, local governments, landowners and other stakeholders, and community-based groups with a demonstrated commitment to achieving the four goals described in the Comprehensive Strategy 10-Year Implementation Plan (improve fire prevention and suppression, reduce hazardous fuels, restore fire-adapted ecosystems, and promote community assistance). Existing resource advisory committees, watershed councils, or other collaborative entities may serve to achieve coordination at this level. Local involvement, expected to be broadly representative, is a primary source of planning, project prioritization, and resource allocation and coordination at the local level."

This requirement supports public involvement and collaboration, and helps ensure a focus on reducing wildland fire risks. Through such collaboration, actions believed necessary to abate the risk of high-intensity wildfire will be identified. This collaboration will, where appropriate, seek to address conflicts concerning alternative uses of resources and be used by the federal agencies to consider, as appropriate, reasonable alternatives to recommend courses of action. 42 U.S.C. 4332(2)(E). The hazardous fuels reduction category will utilize a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan even after the ten years of the 10-Year Comprehensive Strategy Implementation Plan have passed. In addition, the use of the hazardous fuels reduction category is limited to the reduction of fuels in the wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

Comment: Some respondents asked the agencies to clarify the public involvement process for the rehabilitation categorical exclusion.

Response: Responsible officials will consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process, commensurate with public interest in a proposed action, regardless of how the analysis is documented.

Comment: Various respondents questioned the methodology used to gather and interpret activity information used in the agencies' conclusion that the proposed category of hazardous fuels reduction actions do not individually or cumulatively have a significant environmental effect on the human environment. Some do not believe there is sufficient evidence for this conclusion. Others suggest various biases are reflected in the activities selected. Some respondents suggested that the time period in which the data were collected from field units was too short to gather accurate data.

Response: To identify activities for review, the Forest Service relied on a national database implemented in October 2000. The database includes fuel hazard reduction and rehabilitation and stabilization projects accomplished in fiscal years 2001 and 2002. The Forest Service reviewed 100 percent of the completed projects in the database. The Department of the Interior, having comprehensive fuel hazard reduction and rehabilitation and stabilization project records dating back many years, chose a 100 percent sample of projects accomplished in fiscal year 2002 and a 10 percent random sample of projects accomplished in fiscal years 1998 through 2001. As the request of both the Forest Service and Department of the Interior, field units added additional hazardous fuels reduction and rehabilitation projects that had not been entered in their respective national databases. The information request was distributed to field units to verify and supplement the project information because that is the organizational level where project information would be readily available. Field units responded to questions about projects for which they had already reported accomplishments through their agency reporting systems. Field units responded with over 3,000 hazardous fuels reduction and fire rehabilitation projects. The information supplied included 30 different data items for each activity, including information on activity location and size, vegetation cover type, fuels treatment type, predicted environmental effects, actual environmental effects after activity completion, and mitigation measures. Over 2,400 of the projects reviewed had some form of validation of the environmental effects predicted, in the form of formal monitoring, forest plan monitoring, or personal observation. Some of these included multiple activities. Environmental effects included ecological, aesthetic, historic, cultural, economic, social, or health effects as defined in 40 CFR 1508.8. The agencies identified some inconsistencies and missing information in the data provided by the field units and followed up with specific units for clarification.

The agencies relied on the professional judgment of the responsible officials concerning the significance of environmental effects. The agencies believe that resource specialists and stakeholders involved in the design and analysis of each specific on-the-ground project were best qualified to identify resulting environmental effects or whether extraordinary circumstances were present.

Comment: Some respondents questioned the fire statistics presented in the proposal. Some said that the fire statistics fail to provide sufficient information to make any conclusions that justify the proposal.

Response: The fire statistics in the preamble to the proposal where drawn from the Administration's "Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities" and "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy." Statistics for past fire seasons are also available from the National Interagency Fire Center at *http://www.nifc.gov/stats*. The statistics were provided to explain why the agencies believed the proposal was necessary and timely. These statistics are not a basis for evaluating the significance of the environmental effects of hazardous fuels reduction or rehabilitation activities.

The proposal is focused on how the attendant environmental analyses will be documented. The CEQ regulations implementing NEPA direct agencies to reduce excessive paperwork by using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The agencies believe that the projects they reviewed provided ample information to define the two categorical exclusions.

Comment: Some respondents believe that the initiative is contrary to the Roadless Area Conservation Rule which prohibits road construction in roadless areas unless needed to protect public health and safety under an imminent threat of a catastrophic event that would cause the loss of life or property. Others say that roadless areas should be included in the proposed categorical exclusions.

Response: Categorically excluded actions must be consistent with applicable law, regulations and policy. The Roadless Area Conservation Rule (36 CFR 294) prohibits certain activities in inventoried roadless areas. Further, Forest Service NEPA procedures continue to require an environmental impact statement for proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more (FSH 1909.15, Section 20.6(3)).

Comment: Some respondents state that the agencies should strengthen the proposed fire management categorical exclusions by adding a paragraph that specifies that they also apply in extraordinary circumstances in either Presidential Disaster Declaration areas; or areas where it is demonstrated that a high risk to human life, safety, property, or infrastructure exists.

Response: The categorical exclusions are based on the agencies' conclusion that these are categories of actions, which do not individually or cumulatively have a significant effect on the human environment. The need for emergency actionis not justification for a categorical exclusion. CEQ regulations provide for procedures that allow action in emergencies when an environmental impact statement would be required (40 CFR 1506.11).

Comment: Some respondents stated that the agencies should modify the initiative to specify that the proposed fire management categorical exclusions can be used in storm/wind damaged forest areas.

Response: The proposed categorical exclusion for hazardous fuels reduction may be used in storm/wind damaged areas as long as the criteria in the text of the categorical exclusion are met. The agencies do not believe that such additional specificity is necessary.

Comment: Some respondents suggest specific criteria to further define and limit the proposed categories of actions, *e.g.*, project goals, outcomes, acreage limitations, the number of activities within a single watershed, and the types of forests for which methods apply. Some respondents state that the

agencies should limit the size of the proposed fire management categorical exclusions to 40 acres or less and within one-half mile of communities. Some state that the agencies should limit activity size to no more than 250 acres, while others suggest that the agencies should restrict removal for a specific activity to 250,000 board feet.

Response: The categorical exclusions are limited to activities with a specific goal and outcome as suggested by some respondents. Accordingly, activities could include the sale of vegetative material only if hazardous fuels reduction is the primary purpose of the activity. The hazardous fuels categorical exclusion is limited to activities identified through a collaborative process as described in the 10-Year Comprehensive Strategy Implementation Plan. The collaborative process will identify areas that are a priority for treatment using the hazardous fuels reduction categorical exclusion.

Project data was collected from five land management agencies across the United States. The data represents the spectrum of hazardous fuels reduction and fire rehabilitation projects of different sizes across vegetation types, geographic regions, agency jurisdictions. Not all projects reviewed had post activity validation of the predicted environmental effects. The agencies focused on an analysis of the acreage figures from over 2,500 hazardous fuels reduction and rehabilitation activities where the environmental effects were predicted to not be significant and where those predictions were validated. Hazardous fuels reduction activities using fire, ranged in size from less than one acre to 90,000 acres. Mechanical hazardous fuels reduction activities, ranged in size from less than one acre to 11,690 acres. Fire rehabilitation activities, ranged in size from one acre to 39,000 acres.

In response to requests fromore specificity of limits, the agencies have further constrained the hazardous fuels categorical exclusion ot activities within wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

The wildland urban interface is defined in the Forest Service and Department of the Interior **Federal Register** notice "Urban Wildland Interface Communities Within the Vincinity of Federal Lands That Are at High Risk From Wildfire" published January 4, 2001 (66 FR 753), as an "interface community" and an "intermix community". For purposes of defining these communities, a structure is understood to be either a residence or a business facility, including Federal, State, and local government facilities. Structures do not include small improvements such as fences and wildlife watering devices.

The "interface community" exists where structures directly abut wildland fuels. The wildland interface community exists where humans and their development meet or intermix with wildland fuel. There is a clear line of demarcation between residential, business, and public structures and wildland fuels. Wildland fuels do not generally continue into the developed area. The development density for an interface community is usually 3 or more structures per acre, with shared municipal services. Fire protection is generally provided by a local government fire department with the responsibility to protect the structure from both an interior fire and an advancing wildland fire. An alternative definition of the interface community emphasizes a population density of 250 or more people per square mile.

The "intermix community" exists where structures are scattered throughout a wildland area. There is no clear line of demarcation; wildland fuels are continuous outside of and within the developed area. The development density in the intermix ranges from structures very close together to one structure per 40 acres. Fire protection districts funded by various taxing authorities normally provide life and property fire protection and may also have wildland fire protection responsibilities. An alternative definition of intermix community emphasizes a population density of between 28–250 people per square mile.

Based on coarse scale national data, Fire Condition Classes measure general wildfire risk as follows:

Condition Class 1. For the most part, fire regimes in this Fire Condition Class are within historical ranges. Vegetation composition and structure are intact. Thus, the risk of losing key ecosystem components from the occurrence of fire remains relatively low.

Condition Class 2. Fire regimes on these lands have been moderately altered from their historical range by either increased or decreased fire frequency. A moderate risk of losing key ecosystem components has been identified on these lands.

Fire Regime Groups are defined in the 10-Year Comprehensive Strategy Implementation Plan, which is available on a number of Web sites including *http://www.fs.fed.us/emc/hfi.* A fire regime is a generalized description of the role fire plays in an ecosystem. It is characterized by fire frequency, predictability, seasonality, intensity, duration, scale (patch size), as well as regularity or variability. Five combinations of fire frequency, expressed as fire return interval in fire severity, are defined as Groups I through V. Groups I and II include fire return intervals in the 0–35 year range. Group I includes ponderosa pine, other long needle pine species, and dry site Douglas-fir. Group II includes the drier grassland types, tall grass prairie, and some Pacific chaparral ecosystems. Groups III and IV include fire return intervals in the 35–100+ year range. Group III includes interior dry site shrub communities such as sagebrush and chaparral ecosystems. Group IV includes lodgepole pine and jack pine. Group V is the long interval (infrequent), stand replacement fire regime and includes temperate rain forest, boreal forest, and high elevation conifer species.

In response to requests to consider acreage limitations on the categorical exclusions for hazardous fuel reduction and fire rehabilitation activities, the agencies reviewed the data to determine prudential limits on the scope of these categorical exclusions. Although the data did not establish a relationship between acres treated and environmental effects, the agencies have elected to limit the categorical exclusion for hazardous fuels reduction activities using fire to 4,500 acres, hazardous fuels reduction activities using mechanical methods up to 1,000 acres, and fire rehabilitation activities to 4,200 acres. These acreages are well within the range of the data. This responds to public concerns while maintaining the effectiveness of the categorical exclusions as a management tool.

Using timber volume as a limitation, instead of acreage, does not reflect the size of an activity inasmuch as a small project in one part of the country may result in as much timber volume as a much larger project in another part of the country. Moreover, activities in the review that were identified as having significant environmental effects were not those of a particular activity, location, or size but were identified as having extraordinary circumstances, which precluded the use of a categorical exclusion.

These acreage limits for the hazardous fuels reduction and fire rehabilitation categories differ from those in a separate Forest Service proposal for three categorical exclusions for limited timber harvest (68 FR 1026). In conducting the review for its limited timber harvest categories, the Forest Service selected projects that would have qualified under the agency's former Categorical Exclusion 4, which allowed up to 1 million board feet of salvage and 250,000 board feet of merchantable wood products. As previously discussed, volume per acre can vary considerably from place to place or by treatment method. However, by limiting timber harvests in the Forest Service's review for its limited timber harvest categorical exclusions to actions limited by a specified volume, the projects in the review were still inherently limited in acreage. Conversely, the activities reviewed for the hazardous fuels reduction and fire rehabilitation categorical exclusions were not constrained by a acreage or board feet limitations. Accordingly, the acreage limits proposed for the Forest Service's three limited timber harvest categorical exclusions are smaller than the acreage limits in these hazardous fuels and fire rehabilitation categorical exclusions. Since the Forest Service's limited timber harvest categorical exclusion data is constrained, it is not comparable to the hazardous fuels and fire rehabilitation categorical exclusions data.

Comment: Some respondents stated that the initiative contradicts the original intent of categorical exclusions, which is to expedite minor, routine administrative actions. According to these respondents, there will be more stringent requirements for administrative actions such as moving and trail maintenance than for vegetation management on hundreds of thousands of acres of land, under this initiative.

Response: Categorically excluded actions include those that are minor, routine, and administrative. Forest Service NEPA procedures do apply the term "routine" in reference to some of the actions that are currently categorically excluded. In addition, the categorical exclusions are intended to expedite actions that fit within categories of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required. In this case, the agencies have analyzed a substantial body of data. As the agencies' experience with environmental analysis for natural resource management activities grows, it stands to reason that additional categorical exclusions will be defined.

Comment: Some respondent said the application of extraordinary circumstances screens is insufficient and open to abuse. Others stated a belief that hazardous fuels reduction and fire rehabilitation actions automatically trigger the Department of the Interior's exceptions to categorical exclusions, including "controversy," "uncertainty," and "precedent for future action" and, as such, cannot be categorically excluded.

Response: When using these two categorical exclusions, the responsible officials will consider, on a project-by-project basis, whether or not any of the Department of the Interior's exceptions and Forest Service extraordinary circumstances apply. The responsible official will prepare a decision memo that will be available for public review.

Comment: Some respondents suggested that the agencies monitor categorically excluded hazardous fuels and rehabilitation activities actions to ensure that they do not have significant environmental effects.

Response: Monitoring would take place after the categories are established and after they are used for a particular action. Monitoring is not relied upon as a basis or rationale for establishing these categorical exclusions. Although the data established that the covered activities do not individually or cumulatively have a significant effect on the human environment, the agencies, nevertheless, recognize the need for a scientifically sound and consistent approach to environmental monitoring for both hazardous fuels reduction and rehabilitation actions and agree that a monitoring program should apply to a representative sampling of those hazardous fuels reduction and rehabilitation projects conducted using these new categorical exclusions. Therefore, guidance for the development of monitoring protocols, one for fuels treatments and one for rehabilitation actions, is being prepared. It will be peer reviewed and is scheduled for completion in May. Monitoring protocols will be prepared shortly thereafter. The agencies will monitor the effects of categorically excluded hazardous fuels reduction and fire rehabilitation activities to assess whether the categorical exclusions are being applied within their prescribed parameters and to confirm the agencies' assessment of their individual and cumulative environmental impacts.

Comments: Some respondents suggested changing the categorical exclusion language to specify that the proposed fire management categorical exclusions will be "guided by" rather than "be consistent with" the 10-Year Comprehensive Strategy Implementation Plan. They state that failure to implement such changes will result in new causes for appeals and litigation due to "inconsistency."

Response: The agencies have modified the proposal to limit it to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan. The change was made to eliminate any confusion concerning consistency.

Comment: Some respondents stated the initiative's list of routine actions (*e.g.*, reseeding and replanting) is misleading inasmuch as the effects from the listed actions are not comparable to the effects that will be created by road construction, skid trail and landing construction, and timber harvest. Some respondents also stated that phrases such as "small combustibles," "overstocked stands," and "brush thinning" are inadequate with reference to likely timber harvest activities under the initiative.

Response: Reseeding and replanting are allowed under the fire rehabilitation category, which does not include skid trail and landing construction, or timber harvest. Fuel reduction activities involving the sale of vegetative material are allowed under the hazardous fuels category only where the primary purpose of the activity is hazardous fuels reduction. Thinning brush and overstocked stands characterize common tasks allowed under the hazardous fuels reduction categorical exclusion. The phrase "small combustibles" was not used in the proposed or final text. The examples provided in the proposal were intended to illustrate a range of possible activities. The text of the hazardous fuels reduction categorical exclusion defines the specific actions for which each may be applied.

The agencies' review of hazardous fuels reduction and fire rehabilitation projects encompassed the specific activities included in the two categorical exclusions. Hazardous fuels reduction activities reviewed involved broadcast burning and burning of piles, and mechanical treatments consisting of crushing, piling, thinning, pruning, cutting chipping, mulching, and mowing.

Comment: Some respondents assert that the stated requirements that activities must be consistent with land and resource management plans is misleading since Forest Service plans will be categorically excluded.

Response: Forest Service NEPA procedures do not presently provide a categorical exclusion for amendments to land and resource management plans. The Forest Service may, if it implements its proposed planning rule, identify a category of plan decisions which do not individually or cumulatively have a significant effect on the human environment and may, therefore, be

categorically excluded from NEPA documentation in an environmental assessment or an environmental impact statement. The public would have an opportunity to review and comment on such an amendment to the Forest Service handbook if such a categorical exclusion proposal is made.

It should be noted that under the proposed Forest Service planning regulations, new plans, plan revisions, and amendments continue to require a rigorous public involvement process. Categorical exclusions apply to the level of documentation required under CEQ's regulations implementing NPEA (40 CFR 150.4(p) and 1508.4). Any action that is not consistent with an applicable land and resource management plan's standards, guidelines, goals, and objectives would require a plan amendment. The Forest Service will continue to conduct the appropriate level of environmental analysis and disclosure commensurate with the significance of environmental effects, for both land and resource management plans and project-level planning.

Comment: Some respondents suggested that the agencies should clearly define such terms as "hazardous fuels," "primary purpose" "ecosystem integrity," and "adverse effect" as they pertain to extraordinary circumstances.

Response: "Hazardous fuels" consist of combustible vegetation (live or dead) such as grass, leaves, ground litter, plants, shrubs, and trees, that contribute to the threat or ignition, and high fire intensity and/or high rate of spread. The term "primary purpose" is not a term of art and has only the dictionary definition. Synonymous phrasing is that the "main reason" for the activity must be hazardous fuels reduction. "Ecosystem integrity" is defined in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy" as the completeness of an ecosystem that at geographic and temporal scales maintains its characteristic diversity of biological and physical components, composition, structure, and function. The use of the term "adverse effect" was used in conjunction with the agencies' descriptions of extraordinary circumstances in their NEPA procedures. Specific agency direction pertinent to identifying extraordinary circumstances may be found in Forest Service Handbook 1909.15, section 303.3 (67 FR 54622), and Department of the Interior Manual 516 DM 2, Appendix 2.

Comment: Some respondents commented that the proposal was misleading because it stated that the proposed hazardous fuels reduction categorical exclusion would not cover timber sales that do not have hazardous fuel reduction as their primary purpose, but then several pages later stated that products would be sold.

Responses: The intent of the statement concerning timber sales was to point out that only timber sales with hazardous fuel reduction as their primary purpose could be categorically excluded under the proposal. The categorical exclusion for hazardous fuels reduction allows for the sale of vegetative material as one method for removal. The sale of vegetative material includes all types of products from plant material, including biomass, posts, poles, and sawlogs. The hazardous fuels reduction categorical exclusion has been edited to add that activities may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

Comment: Some respondents suggested that, without NEPA analysis, categorically excluded actions would not consider the best available science and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

Response: The agencies have repeatedly conducted NEPA analyses for hazardous fuels reduction and fire rehabilitation projects using the best available science. Based upon the projects reviewed for these categorical exclusions, the agencies have concluded that these categorical exclusions describe categories of actions which do not individually or cumulatively have a significant effect on the human environment.

Consistent with existing direction, agencies must conduct sufficient review to determine that no extraordinary circumstances exist when using categorical exclusions. This determination includes appropriate surveys and analyses, using the best available science, attendant in appropriate consultation with Tribes and consultation with regulatory agencies, such as those required by the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clear Air Act.

The agencies will take the additional measure of monitoring to determine that these categories are being appropriately used and to further validate the agencies' conclusions regarding environmental significance.

Comment: Some respondents stated that NEPA and other environmental laws have served the country well for years, and the agencies should follow these laws in conducting fuels reduction efforts. Respondents suggest that if rule changes are needed, they should be made through Congress, not through administrative actions.

Response: The agencies are not changing laws or regulations. The CEQ regulations implementing NEPA provide for three levels of environmental documentation: environmental impact statements; environmental assessments; and categorical exclusions. The agencies are following CEQ's regulations, which direct agencies to define categorical exclusions to reduce excessive paperwork. Activities conducted under those categories must be consistent with all applicable Federal, State, local, and Tribal laws and requirements imposed for protection of the environment.

Comment: Some respondents indicated that there should be no restriction on new road construction, while others believe that no roads should be constructed, as the absence of roads indicates an activity is too far from a community. Other respondents suggested that up to one mile of low-standard road should be allowed, while others believed that roads should only be constructed in rare cases.

Response: Hazardous fuels reduction activities and rehabilitation activities involving new permanent roads are not included in the proposed categorical exclusions. Proposals for activities that involve new permanent road construction would be analyzed and documented in an environmental assessment or an environmental impact statement.

Comment: Some respondents suggested that any road construction should only be carried out following a thorough environmental analysis. Others indicated that culverts should not be replaced or upgraded without a watershed analysis.

Response: The categorical exclusions provide only for construction of temporary roads. Where temporary road construction or culverts are being proposed, agencies must review the proposed action to ensure that no extraordinary circumstances exist.

Comment: Some respondents suggested that the categorical exclusions should specify that temporary roads will be constructed only where the project ensures that they will be reclaimed/obliterated upon activity completion.

Response: Whether temporary roads are needed and to what extent, along with how they are closed, reclaimed, and/or obliterated are project-specific decisions and therefore appropriately decided at the project level.

Comment: Some respondents asked the agencies to clarify the role of grazing in the proposal. Other respondents suggest that the agencies should not allow grazing to be categorically excluded as a fuels reduction technique because grazing removes grasses, allowing woody vegetation to invade, which contributes to hotter, more intense fires.

Response: The grazing activity included in the proposed hazardous fuels reduction categorical exclusion, as the sole biological method, was intended to be limited to livestock grazing to maintain fuelbreaks. Subsequent review determined that only four of the projects reviewed involved livestock grazing for fuelbreak maintenance. While some agencies have effectively used livestock grazing to maintain fuelbreaks in certain circumstances without significant environmental effects, the agencies believe they have not gathered sufficient data for its inclusion in this categorical exclusion. The agencies will continue to review the effects of this type of activity. Therefore, the hazardous fuels reduction categorical exclusion has been modified to remove "biological" and "grazing" from the list of included activities.

Comment: Some respondents stated that some prescribed burns have resulted in unanticipated effects such as burns too cool/hot to meet objectives and increases in noxious weeds/non-target grasses.

Response: The agencies' review of hazardous fuels reduction and fire rehabilitation projects found 11 cases where the actual results were other than what was predicted. These cases reported that prescribed fires burned either cooler or hotter than anticipated. Cooler than expected burns resulted in less fuel being consumed by fire, and, therefore, not completely achieving the project's fuel reduction objective. Hotter than expected burns resulted in increased scorch of tree crowns and more tree mortality than predicted. In some instances undesirable grass species occupied the site after treatment. In each of these cases, however, the unanticipated effects were found not to be significant.

Comment: Some respondents asked that the categorical exclusion for rehabilitation be modified to include, but not be limited to, specific suggested activities such as fire and safety hazard tree removal, natural or mechanical soil rehabilitation, and rehabilitation of recreation sites.

Response: The rehabilitation categorical exclusion does not include removal of fire and safety hazard trees. Removal of fire hazards is addressed in the hazardous fuels reduction categorical exclusion. Safety hazard trees associated with roads, trails, recreation facilities, and administrative sites may be removed as part of routine maintenance of those facilities. Most agencies already categorically exclude these maintenance activities from further analysis and documentation in an environmental assessment or environmental impact statement. Post-fire soil rehabilitation, either natural or mechanical, and recreation site rehabilitation are included in the category of actions described in the rehabilitation categorical exclusion. The list of examples is not exhaustive.

Comment: Some respondents indicated a belief that the proposal for rehabilitation is unnecessary as existing legal frameworks provide for emergency fire rehabilitation.

Response: In January 2003, the Wildland Fire Leadership Council, a cooperative, interagency organization dedicated to achieving consistent implementation of the goals, actions, and policies in the National Fire Plan and the Federal Wildland Fire Management Policy, identified three types of fire recovery activities: Emergency stabilization; rehabilitation; and restoration. Emergency stabilization is defined as planned actions within one year of a wildland fire to stabilize and prevent unacceptable degradation to natural and cultural resources, to minimize threats to life or property resulting from the effects of a fire, or to repair/replace/construct physical improvements necessary to prevent degradation of land or resources. The rehabilitation categorical exclusion does not cover emergency stabilization. The Wildland Fire Leadership Council defines rehabilitation as "Post-fire efforts (<3 years) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire." The Wildland Fire Leadership Council defines restoration as the continuation of rehabilitation beyond three years. The rehabilitation categorical exclusion has been edited to be consistent with the Wildland Fire Leadership Council's definition of rehabilitation. The scope of fire rehabilitation activities allowed under the proposed categorical exclusion has not changed as a result of this new definition. What has changed is the time limit of three years for completion of those activities and a size limit of 4,200 acres.

Comment: Some respondents believe that rehabilitation activities should require an environmental impact statement. Others believe that these activities should not be carried out at all. They say the use of heavy equipment generates noise, air and water pollution, soil compaction, vegetation and habitat changes, and ecosystem modifications greater than those which follow fires. Still others cite research studies (*e.g.*, Beschta, *et al.*, 1995) that report that there is generally no ecological need to act, and that quick actions may create new problems.

Response: The agencies have repeatedly conducted NEPA analyses for fire rehabilitation projects using the best available science. Based upon approximately 300 fire rehabilitation projects reviewed, the agencies have concluded that the category of activities described do not individually or cumulatively have a significant effect on the human environment. When using the rehabilitation categorical exclusion, agencies must review the proposed action to ascertain whether extraordinary circumstances exist.

While the Beschta report focused on salvage logging, there are also statements on rehabilitation practices in the report. This report questions, in general, the effectiveness of installation of hard structures and their siting on the landscape. This report also criticizes introduction of non-native species. Situations such as steep slopes, drinking water protection, and threats of invasive species may influence the need to act in local situations. Years of research since the Beschta report have informed current choices of technologies. The utility of fire rehabilitation practices chosen and the need for these practices will be decided on a site-specific basis using current knowledge and technologies. Thus, the projects selected, based on local scientific expertise, will both meet the environmental protection goals for the projects and have no potential to individually or cumulatively have a significant effect on the human environment.

Comment: Some respondents requested that herbicide use be allowed under the fire rehabilitation categorical exclusion, while others oppose herbicide use and even want an explicit prohibition against herbicide use on future activities that follow categorically excluded actions.

Response: the agencies will continue to review and analyze new information on the effects of herbicides used for hazardous fuel reduction. At the present time, the agencies have elected to not include actions involving herbicide use.

Comment: Some respondents are concerned that 30 days was insufficient time to review the proposed categorical exclusions along with the other proposals. Others criticized the release

of the proposal during the Christmas holidays.

Response: The agencies extended the comment period through January 31, 2003.

Comment: Some respondents expressed frustration with e-mail errors near the comment period deadline.

Response: The office receiving e-mail comments notes that many e-mail comments were received during the final days of the comment period. The office receiving the e-mail comments analyzed e-mail server performance. No problems were identified.

Comment: Some respondents said they do not believe that the agencies should block e-mail originating from a third party e-mail generator. These respondents said that such e-mail generators are important to groups interested in the environment and that such blocking prevents voices from being heard.

Response: The Forest Service regrets any difficulty experienced in submitting comments. The Forest Service is committed to electronic government and is a participant in the Regulations.gov project, which will allow third-party e-mail generators to submit electronic comments. In the meantime, the Forest Service has provided maintainers of public comment web pages with a simple procedure that they can use to keep their messages from being blocked by the Forest Service's spam filter. For more information please contact Sandra Watts, (703) 605–4695.

Comment: Some respondents stated that agencies should accept and consider all comments and not just those deemed to be "original and substantive."

Response: The agencies agree and accepted and considered all comments. Each comment was considered on its own merits.

Comment: Some respondents said that the 10-Year Comprehensive Strategy Implementation Plan should have been included with the proposal.

Response: The 10-Year Comprehensive Strategy Implementation Plan is available on a number of Web sites including *http://www.fs.fed.us/emc/hfi.* In addition, two contacts were provided in the **Federal Register** notice for additional information. These contacts were available to provide more information on this strategy.

Comment: Some respondents expressed a desire for public hearings to record testimony.

Response: The agencies believe that the public comment opportunity provided was the most efficient means of gathering public input for a proposal of this nature and that public hearings were not necessary.

Comment: Some respondents wanted the agencies to specify which implementation tasks within the 10-Year Comprehensive Strategy Implementation Plan are addressed by the proposed fire management categorical exclusions.

Response: The categorical exclusions contribute to the implementation task, "Assess state and federal regulatory process governing projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and identify measures to improve timely decision-making." This task is under "Goal Two—Reduce Hazardous Fuels."

Comment: Some respondents suggested that the agencies should provide opportunities for public involvement on the initiative following the release of the report from the General Accounting Office on the relationship between administrative appeals and fuels reduction activities.

Response: Because of controversy over whether appeals and litigation have delayed implementation of Forest Service hazardous fuels reduction activities, the General Accounting Office was requested to provide information to Congress on the number of decisions involving hazardous fuels reduction activities, the number of these decisions appealed or litigated, and the acreages affected. The agencies did not believe that this information would be helpful in defining these categorical exclusions, nor aid the public in commenting on the agencies' proposal.

Comment: Many respondents asked that the agencies adhere to various laws, executive orders, and agency policies such as: the Endangered Species Act, Clean Air Act, Clean Water Act, National Forest Management Act, Migratory Bird Treaty Act, National Historic Preservation Act, Forest Service Transportation System Management Policy, Northwest Forest Plan, the Grizzly Bear Recovery Plan, and executive orders on management of floodplains and wetlands, and Tribal consultation.

Response: The agencies agree. The level of NEPA consideration does not affect agency responsibility to follow applicable laws, regulations, executive orders, and policies. For example, categorically excluded hazardous fuels reduction and fire rehabilitation actions are reviewed for their potential to impact waters listed as impaired by State water quality agencies and for compliance with smoke management plans. When appropriate, the Forest Service and the Department of the Interior agencies conduct appropriate consultation with Federal, State, and Tribal agencies for hazardous fuels and fire rehabilitation actions. For example, agencies must consult with Tribal governments when an action may have Tribal implications, even though it may be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement. Agencies must also review the potential effects from these types of actions on threatened and endangered species and designated critical habitat and consult as appropriate with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA), Fisheries. Similarly, categorically excluded actions are reviewed for potential effects on properties protected by the National Historic Preservation Act along with appropriate consultation with State and Tribal Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant.

Comment: Some respondents stated that rehabilitation work should only be carried out in areas already consumed by fires.

Response: The agencies agree. The proposed and final categorical exclusion for rehabilitation activities state that it is for rehabilitation of habitat, watersheds, historical, archaeological, and cultural sites and infrastructure damaged by wildfire and/or wildfire suppression.

Comment: Some respondents said that agencies should follow the 10-Year Comprehensive Strategy Implementation Plan and that additional laws or regulations are not needed.

Response: The categorical exclusions are prepared in conformity with the law (NEPA) and CEQ regulations. They contribute to the implementation task under the 10-Year Comprehensive Strategy Implementation Plan's "Goal Two—Reduce Hazardous Fuels," which says, "Assess state and federal regulatory process governing projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and identify measures to improve timely decision-making." In addition, the hazardous fuels reduction categorical exclusion will apply only to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan.

Comment: Some respondents asked that the agencies work collaboratively with Federal and State agencies in developing proposed activities and determining effects on wildlife resources prior to approval of specific activities.

Response: Hazardous fuels reduction activities will be identified collaboratively with governments and stakeholders, through a collaborative framework as described in 10-Year Comprehensive Strategy Implementation Plan.

Comment: Many respondents offered suggestions about Forest Service and Department of the Interior management and funding, where and how to focus hazardous fuels reduction efforts, the efficacy of various hazardous fuels treatments and post-fire rehabilitation measures, technologies for utilization of small-diameter trees, alternative fiber sources, fire suppression tactics, land acquisition, multiple-use, the President's Healthy Forests Initiative, and the 10-Year Comprehensive Strategy Implementation Plan.

Response: Respondents offered many creative and original suggestions that addressed issues beyond the proposal. The agencies provided these comments to appropriate personnel for their consideration.

Comment: Some respondents stated that the agencies should comply with Executive Order 12866 by assessing the economic costs and benefits of the initiative. Respondents say that this assessment should include the non-market costs of the initiative to landowners, businesses, communities, water quality, recreation, scenery, non-traditional forest products, and game.

Response: In compliance with Executive Order 12866, the agencies have determined that these categorical exclusions will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic effect expected to result from this action is a reduction in the administrative burden of preparing unnecessary environmental assessments and findings of no significant impact, and benefits to the environment and nearby communities as a result of expeditious fuel reduction and post-fire rehabilitation activities. These benefits were not quantified due to the level of uncertainty associated with the amount of time saving and the number of projects that would use these categorical exclusions.

Conclusion

The USDA Forest Service and the Department of the Interior find that the categories of action defined in the categorical exclusions presented at the end of this notice do not individually or cumulatively have a significant effect on the human environment. The agencies' findings is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and determinations in the hazardous fuels and fire rehabilitation projects reviewed; the resource specialists who validated the predicted effects of the reviewed activities through monitoring or personal observation of the actual effects; synthesis of peer-reviewed scientific publications; and finally, the agencies' belief that the profile of the past hazardous fuels reduction and fire rehabilitation activities represents the agencies' past practices and is indicative of the agencies' future activities.

Regulatory Certifications

Environmental Impact

These categorical exclusions add direction to guide field employees in the USDA Forest Service and the Department of the Interior regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for fire management activities. The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3, and the USDA Forest Service and the Department of the Interior have provided an opportunity for public review and have consulted with the Council on Environmental Quality during the development of these categorical exclusions. The determination that establishing categorical exclusions do not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill.1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

These categorical exclusions have been reviewed under Departmental procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, this action is subject to OMB review under Executive Order 12866 and OMB has reviewed these categorical exclusions at both the proposed and final stages.

This action to add two categorical exclusions to the agencies' NEPA procedures will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. This action may interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this action has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the categorical exclusions will not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The agencies have considered these categorical exclusions under the requirements of Executive Order 13132, Federalism, and have concluded that they conform with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agencies have determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

These categorical exclusions do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

No Takings Implications

These categorical exclusions have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed categorical exclusions do not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

In accordance with Executive Order 12988, it has been determined that these categorical exclusions do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agencies have assessed the effects of these categorical exclusions on State, local, and Tribal governments and the private sector. These categorical exclusions do not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

These categorical exclusions have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these categorical exclusions do not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

These categorical exclusions do not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, impose no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: May 29, 2003.

For the Forest Service, U.S. Department of Agriculture.

Sally D. Collins,

Associate Chief.

Dated: May 29, 2003.

For the U.S. Department of the Interior:

P. Lynn Scarlett,

Assistant Secretary—Policy, Management, and Budget.

Categorical Exclusions

Note: The USDA Forest Service and the Department of the Interior have issued the categorical exclusions in their respective NEPA procedures. The categorical exclusions appear in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures, ID 1909.15–2003–1, and Department of the Interior Manual 516 DM, Chapter 2, Appendix 1, Departmental Categorical Exclusions. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy electronically from the USDA Forest Service directives page on the World Wide Web at *http://www.fs.fed.us/im/directives/*. Reviewers who wish to view the Department of the Interior Manual 516 DM may obtain a copy electronically from the Department of the Interior page at *http://elips.doi.gov/table.cfm*.

Following is the text of the two categorical exclusions:

- Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:
  - Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;
  - Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;"
  - Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;
  - Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness;
  - Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.
- Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:
  - Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;
  - Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and
  - Shall be completed within three years following a wildland fire.

[FR Doc. 03–14104 Filed 6–2–03; 12:53 pm]

BILLING CODE 3410–11–M; 4310–70–M

Federal Register

Thursday,
June 5, 2003

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA89

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: We're issuing an interim rule to amend our regulation at 31 CFR part 210 (part 210), which governs the use of the Automated Clearing House (ACH) system by Federal agencies. Part 210 adopts, with some exceptions, the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by Federal agencies. We're amending part 210 to address changes that NACHA has made to the ACH Rules during the past year. We are requesting public comment on all aspects of the interim rule.

DATES: The interim rule is effective July 7, 2003. Comments on the interim rule must be received by August 4, 2003. The incorporation by reference of the publication listed in the interim rule is approved by the Director of the Federal Register as of July 7, 2003.

ADDRESSES: You can download the interim rule at the following World Wide Web address: *http://www.fms.treas.gov/ach*. You may also inspect and copy the interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may send comments on the interim rule electronically to the following address: *210comments@fms.treas.gov*. You may also mail your comments to Stephen M. Vajs, Director, Risk Management Division, Financial Management Service, U.S. Department of the Treasury, Room 423, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Donald J. Skiles, Senior Financial Program Specialist, at (202) 874–6994 or *donald.skiles@fms.treas.gov;* Natalie H. Diana, Senior Attorney, at (202) 874–6680 or *natalie.diana@fms.treas.gov;* or Stephen M. Vajs, Director, Risk Management Division, at (202) 874–1229 or *steve.vajs@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Part 210 governs the use of the ACH system by Federal agencies. The ACH system is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

We're issuing an interim rule amending part 210 to reflect certain changes that NACHA has made to the ACH Rules since the publication of NACHA's 2002 rule book. The interim rule addresses the following seven NACHA rulemaking actions: (1) Voting on ACH Rule Amendments; (2) Rules Enforcement; (3) Accounts Receivable (ARC) Entry and Internet-Initiated (WEB) Entry Warranties; Re-presented Check (RCK) Entries Eligible Items; (4) Change Codes; ARC Stop Payments; ARC Individual Name Field; (5) Unauthorized Corporate Debits; Copies of Authorization; Definitions of Point-of-Purchase (POP) Entries and RCK Entries; Destroyed Check (XCK) Entry Check Serial Number Field; ACH Operator Edit Criteria; Elimination of Automated Return (RET) Entry Code; (6) Audit Requirements and (7) Telephone-Initiated (TEL) Reporting. We are requesting comment on all of these topics.

As discussed above, part 210 incorporates the ACH Rules, with certain exceptions. Each year NACHA publishes a new rule book that reflects the changes to the ACH Rules that have been approved since the publication of the previous rule book. Part 210 currently provides that any amendment to the ACH Rules published in NACHA's 2002 rule book that takes effect after March 15, 2002 will not apply to Federal government ACH entries unless we publish a notice of acceptance of the amendment in the **Federal Register**. 31 CFR 210.3(b)(2). NACHA published its 2003 rule book earlier this year. We're publishing this interim rule in order to incorporate in part 210 all of the amendments to the ACH Rules set forth in NACHA's 2003 rule book (including the supplement thereto approved February 27, 2003 and effective June 13, 2003), other than those relating to rules enforcement, ARC and WEB warranties, audit requirements, and TEL reporting.

We have not previously sought comment on the issues addressed in this interim rule. We are requesting comment on all aspects of the interim rule discussed below.

1. Voting on ACH Rule Amendments

NACHA has amended its rules by eliminating a provision that allows certain depository financial institutions that are members of a Regional Payments Association to vote directly with NACHA on amendments to the rules. Amendments to the ACH Rules will continue to be voted on by NACHA's Payments Association members and Direct Financial Institution members. This rule amendment became effective January 1, 2003.

Federal agencies do not vote on ACH Rule amendments and this rule change does not affect Federal agencies' use of the ACH system. There is no need to provide an exception to this ACH Rule for Federal agencies and we therefore are accepting this ACH rule change.

2. Rules Enforcement

NACHA has amended its rules regarding the enforcement process for violations of the ACH Rules, including the fines that may be imposed when a financial institution violates the ACH Rules. Specifically, this ACH Rule amendment:

- Eliminates the second warning provided to an alleged offender before a recurrence is considered for a fine;
- Increases the amounts of the fines assessed for violations of the ACH rules;
- Enables recurrences to be tracked not only to the Originating Depository Financial Institution (ODFI) and its Originator, but also to any third-party service provider that is responsible for the violation;
- Extends the time period for subsequent violations to be counted as recurrences of the initial violation;
- Requires that ACH Operators provide statistical data on ACH returns to NACHA on a monthly basis to address potential fraud; and
- Enables NACHA staff to present an alleged rules violation that significantly harms other financial institutions to the ACH Rules Enforcement Panel immediately for its review and consideration.

These changes became effective on June 14, 2002.

The national system of fines does not apply to ACH entries originated or received by Federal agencies. 31 CFR 210.2(d)(3). Accordingly, we are not incorporating in Part 210 these changes to the enforcement provisions of the ACH Rules.

3. ARC and WEB Warranties; RCK Eligible Items

NACHA has amended the ACH Rules to (1) clarify the warranty provisions associated with the ARC and WEB applications, and (2) clarify that items eligible to be re-presented as RCK entries must contain a pre-printed check serial number.

When NACHA replaced the PPD Accounts Receivable Truncated Check Debit Entry pilot program with the ARC entry application, the legal foundation for the application was modified from a legal framework based on check law to one based on Regulation E. During development of the ACH Rules governing ARC entries, however, a key component of an ODFI's liability was omitted with regard to an ODFI's breach of warranty that causes a Receiving Depository Financial Institution (RDFI) to be out of compliance with Regulation E. NACHA therefore has amended the ACH Rule 2.9.3.5 (Liability for Breach of Warranty) to expand the subsection governing the ODFI's liability for breach of warranty for ARC entries to specifically include claims, demands, loss, liability, or expenses incurred by the RDFI resulting from its inability to comply with Regulation E because of a violation of the Rules by the ODFI.

Similarly, as a result of an oversight during the development of the ACH Rules governing WEB entries, no specific provision was included to explicitly address an ODFI's breach of liability associated with WEB entries. NACHA has amended ACH Rule 2.10.2 to specifically address ODFI liabilities for breaches of warranty associated with WEB entries.

NACHA also has amended the ACH Rules to clarify that an item that is truncated and transmitted as an RCK entry must contain a pre-printed check serial number. The ACH Rules related to electronic check applications (*i.e.*, ARC and POP entries) require that an eligible source document used for the application contain a pre-printed check serial number. However, no similar requirement was explicitly stated in the electronic check rules for RCK entries. To avoid operational problems and to provide consistency among electronic check applications, NACHA has added an explicit requirement that to be eligible for truncation and transmission as an RCK entry, an item must contain a pre-printed check serial number. These ACH Rules changes became effective on September 13, 2002.

Under part 210, the ACH Rules addressing warranties for ARC and WEB entries are not applicable to ACH entries originated or received by Federal agencies. *See* 31 CFR 210.2(d)(6), (7) (excluding ACH Rule 2.9 and 2.10 from the definition of Applicable ACH Rules). The liability of Federal agencies to RDFIs in connection with the origination of unauthorized debit entries is set forth at 31 CFR 210.6(d). Pursuant to 31 CFR 210.6(d), an agency's liability in connection with the origination of an ACH debit entry is limited to the amount of the entry. Accordingly, we are not incorporating in part 210 NACHA's rule changes related to breach of warranties for ARC and WEB entries. We are, however, incorporating in part 210 the ACH Rule amendment requiring that an item that is truncated and transmitted as an RCK entry contain a pre-printed check serial number.

4. Change Codes; ARC Stop Payments; ARC Individual Name Field

NACHA has amended the ACH rules to remove certain codes, create a new return reason code for ARC entries and remove a requirement for ARC entries. Specifically, the amendment removed Notification of Change Codes C10 (Incorrect Company Name), C11 (Incorrect Company Identification), and C12 (Incorrect Company Name and Company identification), because these codes were seldom used by RDFIs.

The amendment also created new Return Reason Code R38 for a stop payment on the source document related to an ARC entry to separate it from Return Reason Code R08. Prior to the amendment, Return Reason Code R08 had two timeframes associated with its use: two days for a stop payment order placed on an ACH debit entry and sixty days for a stop payment order placed on a source document (check) related to an ARC entry. The use of two return time frames associated with one return reason code was confusing to many ACH participants and was inconsistent with other Return Reason Codes. Return Reason Code R08 (Stop Payment) will retain the standard two-day return time frame for stop payments placed on ACH entries.

The amendment also modified the Individual Name Field of the ARC Entry to make it optional to include the individual's name in this field. Prior to the amendment, the Individual Name Field was a required field for ARC entries. In an automated processing environment, where electronic capture of source document information is required, capture of the consumer's name is not possible without manual intervention. The purpose of the rule amendment was to decrease the manual processing required to originate ARC entries and to improve the efficiency with which ARC entries may be originated by making the Individual Name Field in the ARC Entry an optional field, as is the case with POP entries.

These rule amendments became effective on March 14, 2003. We believe that these rule changes improve the operational efficiency of the ACH system and improve the consistency of the rules that govern the system. Therefore, we are incorporating all of these ACH Rule changes in part 210.

5. Unauthorized Corporate Debits; Copies of Authorization; Definitions of POP and RCK Entries, XCK Check Serial Number Field; ACH Operator Edit Criteria; Elimination of RET Code

NACHA has amended the ACH Rules to (1) revise Return Reason Code R29 (Corporate Customer Advises Not Authorized); (2) clarify the right of an RDFI to request a copy of a Receiver's authorization both before and after receiving an entry; (3) establish a 10-banking day timeframe for an ODFI to provide an RDFI with a copy of an authorization when requested by the RDFI; (4) clarify that an ODFI must provide a copy of an authorization to the RDFI without charge; (5) clarify the definitions of POP and RCK entries to define them as Single-Entry transactions; (6) modify the Check Serial Number Field within the XCK format to make it a mandatory field; (7) update the ACH Operators' batch rejection edit criteria regarding valid transaction codes to incorporate loan and general ledger transactions; and (8) eliminate the RET Standard Entry Class Code.

Return Reason Code R29

This rule amendment clarified Return Reason Code R29, Corporate Customer Advises Not Authorized. The prior description of Return Reason Code R29 stated, "the RDFI has been notified by the Receiver (non-consumer) that the Originator of a given transaction has not been authorized to debit the Receiver's account." Some ACH participants were misinterpreting the intended use of this return reason code because of its wording. Return Reason Code R29 is used to return a specific ACH debit entry that was not authorized by the corporate Receiver. NACHA did not intend that this return reason code be used to revoke a corporation's authorization for all future ACH debit entries. This amendment clarified Return Reason Code R29 by removing the reference in the description to the Originator of the entry, stating, "the RDFI has been notified by the Receiver (non-consumer) that a specific transaction has not been authorized by the Receiver."

Right to Request a Copy of Authorization

This rule amendment clarified that an RDFI may request a copy of an authorization both before AND after receiving an ACH entry, by removing the phrase "Prior to acting as an RDFI for a Receiver" from Article Four, Subsection 4.1.1 (Right to Information Regarding Entries). Prior to the amendment, Article Four, Subsection 4.1.1 stated that "Prior to acting as an RDFI for a Receiver, the RDFI may request, in writing, that an ODFI provide a copy of the Receiver's authorization * * *" NACHA's intent was that under this section, in addition to requesting a copy of an authorization after an RDFI has received an ACH entry, an RDFI may also request a copy of an authorization prior to receiving the first ACH entry. NACHA has reworded the section because some ODFIs misinterpreted it, believing that an RDFI is only permitted to request a copy of an authorization prior to receiving an ACH entry.

Time Frame to Produce Copy of Authorization

NACHA has amended the ACH rules to require that the ODFI provide a copy of an authorization within 10 banking days of receiving a written request for the copy from the RDFI. Prior to the amendment, the ACH Rules did not define a specific time frame for an ODFI to provide a copy of an authorization to the RDFI.

Copy of Authorization to RDFI Without Charge

NACHA has amended the ACH Rules to clarify that an ODFI may not charge the RDFI for providing either the original or a copy of an authorization. Prior to this amendment, the ACH Rules did not explicitly state that the ODFI must provide either the original or a copy of an authorization to the RDFI without charge.

Single-Entry Transactions

This rule amendment modified the ACH Rules to define POP and RCK entries as Single-Entry transactions. Prior to the amendment, the ACH Rules defined specific one-time debits (*i.e.*, ARC entries, TEL entries, and certain WEB entries) as Single-Entry debits. Other one-time debit transactions (*i.e.*, RCK and POP), which were developed prior to use of the defined term "Single Entry," were described as non-recurring debits. This amendment provides consistency among the definitions of similar one-time debit entries.

Check Serial Number Field

This rule amendment modified the Check Serial Number Field of the XCK format to make this a mandatory field, making it consistent with other electronic check applications. The amendment also requires that the information in this field for an XCK entry be included by the RDFI on a consumer's periodic statement. Prior to this amendment, the Check Serial *Number Field for XCK was optional, not* edited by the ACH Operators, and not required to be included on the consumer's periodic statement.

Automatic Batch Rejection Edit

This rule amendment updated the description of the ACH Operator edit concerning transaction codes for Notifications of Change to reflect all applicable transaction codes. Specifically, the transaction codes 41, 46,51, and 56 were added for Standard Entry Class Code COR. Prior to the amendment, in Appendix Three, Section 3.5 (Automatic Batch Rejection) of the ACH Rules, the description of the ACH Operator edit for valid transaction codes for Notifications of Change did not list the transaction codes for general ledger or loan entries (series 40 and 50).

RET Standard Entry Class Code

This rule amendment eliminated the RET Standard Entry Class Code because of the low volume of paper return conversion currently performed by the ACH Operators and the low volume of entries processed using this SEC Code. The RET Standard Entry Class Code was used by ACH Operators to convert paper returns into electronic format on behalf of an ACH participant when the original SEC Code was unavailable. The ACH Operators currently require that the original Standard Entry Class Code be provided. As a result, use of the RET Standard Entry Class Code for converted returns became unnecessary.

The foregoing eight amendments to the ACH Rules became effective on March 14, 2003. We believe that these rule changes improve the operational efficiency of the ACH system and improve the clarity and consistency of the rules that govern the system. Therefore, we are incorporating all of these ACH Rule changes into part 210.

6. Audit Requirements

NACHA has updated the rules compliance audit requirements of Appendix Eight of the ACH Rules to include (1) provisions related to new ACH products and applications, and (2) additional provisions designed to strengthen the audit requirements. This rule amendment became effective on March 14, 2003.

Federal agencies are not subject to the audit requirements of Appendix Eight. 31 CFR 210.2(d)(3). Accordingly, we are not incorporating these changes to the audit requirements into part 210.

7. TEL Reporting

NACHA has amended the ACH Rules to allow NACHA, in cases where the return rate for unauthorized TEL transactions appears to exceed 2.5%, the right to request an ODFI to provide NACHA with specific information relating to Originators of those TEL entries. Under the new rule, ODFIs are obligated to provide the requested information within 10 banking days of receipt of NACHA's written request to the Chief Operating Officer of the financial institution. Failure to provide the requested information in a timely manner will constitute willful disregard of the ACH Rules and will subject ODFIs to applicable fines. This amendment becomes effective on June 13, 2003.

We are not incorporating this ACH Rule change into part 210. We do not believe that Federal agencies are experiencing excessive return rates for unauthorized TEL transactions. Moreover, Federal agencies are subject to various requirements regarding the privacy of information they maintain, including the Privacy Act, which restrict the disclosure of information regarding individuals who enter into TEL transactions.

II. Section-by-Section Analysis

Section 210.2(d)

We are amending the definition of "applicable ACH rules" at § 210.2(d). Current § 210.2(d) defines applicable ACH rules to mean the ACH Rules with an effective date on or before March 15, 2002, as published in Parts II, III, and IV of the "2002 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," with certain exceptions. We are amending § 210.2(d) to refer to the ACH Rules with an effective date on or before June 13, 2003.

The effect of this amendment to § 210.2(d) is to incorporate in Part 210 the following changes to the ACH Rules:

- Voting on ACH Rule Amendments;
- RCK Eligible Items;
- Change Codes; ARC Stop Payments; ARC Individual Name Field; and
- Unauthorized Corporate Debits; Copies of Authorization; Definitions of POP and RCK Entries, SCK Check Serial Number Field; ACH Operator Edit Criteria; Elimination of RET Code.

We are also adding a new subsection (7) to § 210.2(d), which excludes ACH Rule 2.11.3 from the definition of applicable ACH rules. The effect of this amendment is to provide an exception to NACHA's TEL reporting requirements for Federal agencies. Because the ACH Rules relating to rules enforcement, ARC and WEB warranties, and audit requirements are already excluded from the definition of applicable ACH Rules, no change to part 210 is necessary in order to exclude from Part 210 NACHA's amendments to those ACH Rules.

Section 210.3(b)

We are amending subsection 210.3(b), "Incorporation by reference—applicable ACH Rules," by replacing the references to the ACH Rules as published in the 2002 rule book with references to the ACH Rules as published in the 2003 rule book.

III. Procedural Requirements

Request for Comment

We invite public comment on all aspects of this interim rule.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the interim rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

Notice and Comment and Effective Date

We find that good cause exists for issuing the interim rule without prior notice and comment. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 553(b)(B). We believe that it is important to address the publication of new ACH Rules as quickly as possible in order to mitigate the uncertainty and inconvenience to financial institutions and agencies that would result from a time lag in responding to NACHA's rule changes. When we proposed to address changes to the ACH Rules by reviewing and responding to rule changes on an annual basis, we received many comments expressing concern over the potential consequences of such a time lag. Those consequences include uncertainty as to the rules governing government ACH transactions, as well as the inability of financial institutions to segregate the processing of those transactions.

Executive Order 12866

The interim rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for the interim rule, it is not subject to the provisions of the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. Although the Unfunded Mandates Reform Act of 1995 does not apply to the interim rule, we have determined that it will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies, including FMS, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The interim rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Authority and Issuance

■ For the reasons set forth in the preamble, part 210 of title 31 of the Code of Federal Regulations is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Revise § 210.2(d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the "2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," including the supplement thereto approved February 27, 2003 and effective June 13, 2003, except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.10; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two);

(6) ACH Rule 2.10.2.2 (requiring that originating depository financial

institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries); and

(7) ACH Rule 2.11.3 (requiring reporting regarding unauthorized Telephone-initiated entries).

* * * * *

■ 3. Revise § 210.3(b) to read as follows:

* * * * *

(a) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the "2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," including the supplement thereto approved February 27, 2003 and effective June 13, 2003. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the "2003 ACH Rules" are available from NACHA—The Electronic Payments Association, 13665 Dulles Technology Drive, Suite 300, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 420, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that takes effect after June 13, 2003, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

Dated: May 29, 2003.

Richard L. Gregg,

Commissioner.

[FR Doc. 03–13833 Filed 6–4–03; 8:45 am]

BILLING CODE 4810–35–P

Reader Aids

Federal Register

Vol. 68, No. 108

Thursday, June 5, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7683 33339

7 CFR

800 32623
1400 33341

Proposed Rules:
810 33408
3560 32872

9 CFR

Proposed Rules:
93 33028

10 CFR

72 33611
73 33611
765 32955

12 CFR

615 ..... 33347, 33617
703 32958
742 32958
1700 32627

13 CFR

121 33348

Proposed Rules:
121 33412

14 CFR

39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621
71 ..... 32633, 33231, 33360, 3361, 33579, 33623
97 32633

Proposed Rules:
25 33659
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663
71 ..... 33426, 33427

17 CFR

30 33623
40 33623

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

21 CFR

201 32979
310 33362
347 33362
349 32981
352 33362
510 33381
524 33381
878 32983
888 32635

Proposed Rules:
201 33429
343 33429

25 CFR

170 33625

26 CFR

1 33381

Proposed Rules:
157 32698
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698

28 CFR

5 33629
802 32985

29 CFR

1910 32637

30 CFR

Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826

33 CFR

100 ..... 32639, 32641
117 32643
165 ..... 32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402

36 CFR

215 33582
242 33402
1253 33404

38 CFR

Proposed Rules:
20 33040

40 CFR

51 33764
52 ..... 32799, 33000, 33002,

33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638
261.....32645

Proposed Rules:
51.....32802
52.....33041, 33042, 33043, 33665
82.....33284
194.....33429

42 CFR

Proposed Rules:
412.....33579
413.....33579

43 CFR
4.....33794
3800.....32656
4100.....33794
5000.....33794

44 CFR
64.....32657
65.....32659, 32660
67.....32664, 32669

Proposed Rules:
67.....32699, 32717

46 CFR
221.....33405

47 CFR
2.....32676, 33020, 33640
25.....33640
73.....32676, 33654
74.....32676
80.....32676
87.....32676
90.....32676
95.....32676
97.....32676, 33020

Proposed Rules:
2.....33043, 33666
15.....32720
25.....33666
64.....32720
73.....33431, 33668, 33669

48 CFR
2.....33231
32.....33231
52.....33231
252.....33026

Proposed Rules:
15.....33330
31.....33326
52.....33326
206.....33057

49 CFR
107.....32679
171.....32679
173.....32679
177.....32679
180.....32679
567.....33655
571.....33655
574.....33655
575.....33655
597.....33655

50 CFR
100.....33402
660.....32680

Proposed Rules:
16.....33431
17.....33058, 33234
402.....33806
648.....33432
660.....33670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 5, 2003

COMMODITY FUTURES TRADING COMMISSION
Foreign futures and foreign options transactions:
Foreign non-narrow-based security indexes traded on board of trade; information submission guidance; published 6-5-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 6-5-03

FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations—
Capital adequacy; miscellaneous amendments; published 6-5-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Mississippi; published 5-27-03
Ports and waterways safety:
Biscayne Bay, Miami, FL; safety zone; published 6-4-03

INTERIOR DEPARTMENT
Indian Affairs Bureau
Land and water:
Indian Reservation Roads Program; published 6-5-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; published 5-1-03
MORAVAN a.s.; published 6-2-03

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act; implementation—
Tire safety information; published 6-5-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-9-03; published 4-9-03 [FR 03-08650]
Onions (sweet) grown in—
Washington and Oregon; comments due by 6-9-03; published 4-9-03 [FR 03-08648]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
Medical records maintenance; comments due by 6-10-03; published 4-11-03 [FR 03-08928]
Viruses, serums, toxins, etc.:
Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc.; comments due by 6-9-03; published 4-9-03 [FR 03-08599]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 6-10-03; published 5-23-03 [FR 03-13013]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-13-03; published 5-16-03 [FR 03-12315]

DEFENSE DEPARTMENT
Acquisition regulations:
Tangible item marking and valuing; contractor possession of government property; comments due by 6-9-03; published 5-12-03 [FR 03-11726]

ENERGY DEPARTMENT
Polygraph Examination Regulations; counterintelligence polygraph program; comments due by 6-13-03; published 4-14-03 [FR 03-09009]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11910]
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11911]
Air pollution; standards of performance for new stationary sources:
Stationary gas turbines; comments due by 6-13-03; published 5-28-03 [FR 03-13416]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11751]
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11749]
Hazardous wastes:
Identification and listing—
Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions); comments due by 6-9-03; published 4-8-03 [FR 03-08154]
Solid wastes:
Project XL (eXcellence and Leadership) program; site-specific projects—
Anne Arundel County Millersville Landfill, Severn, MD; comments due by 6-12-03; published 5-13-03 [FR 03-11909]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Current good manufacturing practice—
Dietary supplements and dietary supplement ingredients; comments due by 6-11-03; published 3-13-03 [FR 03-05401]
Human drugs and biological products:
Bar code label requirements; comments due by 6-12-03; published 3-14-03 [FR 03-05205]

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Communicable diseases control—
Quarantine of persons believed to be infected with communicable diseases; comments due by 6-9-03; published 4-10-03 [FR 03-08736]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations and ports and waterways safety:
Lake Michigan—
Chicago, IL; safety zone; comments due by 6-10-03; published 5-20-03 [FR 03-12494]
Boating safety:
Regulatory review; impact on small entities; comments due by 6-12-03; published 2-12-03 [FR 03-03461]
Drawbridge operations:
Florida; comments due by 6-9-03; published 4-10-03 [FR 03-08690]
Ports and waterways safety:
Chesapeake Bay, MD; Cove Point Liquefied Natural Gas Terminal; safety and security zone; comments due by 6-12-03; published 5-15-03 [FR 03-12050]
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area; comments due by 6-12-03; published 5-13-03 [FR 03-11811]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 6-8-03; published 4-4-03 [FR 03-08175]

LABOR DEPARTMENT
Employment and Training Administration
Senior Community Service Employment Program; comments due by 6-12-03; published 4-28-03 [FR 03-09579]

PERSONNEL MANAGEMENT OFFICE
Group life insurance; Federal employees:
Premium rates and age bands; comments due by 6-9-03; published 4-9-03 [FR 03-08610]

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned:
General policy statements; comments due by 6-9-03; published 5-9-03 [FR 03-11634]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd.; comments due by 6-9-03; published 4-29-03 [FR 03-10516]
Boeing; comments due by 6-9-03; published 4-24-03 [FR 03-10117]
EXTRA Flugzeugbau GmbH; comments due by 6-9-03; published 5-2-03 [FR 03-10846]
Lockheed; comments due by 6-13-03; published 4-29-03 [FR 03-10513]
Class D and Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11030]
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11034]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Cargo tank motor vehicles transporting flammable liquids; external product piping; safety requirements; comments due by 6-10-03; published 2-10-03 [FR 03-03262]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Stern anchors and navigation underway; comments due by 6-12-03; published 5-13-03 [FR 03-11895]

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology; comments due by 6-9-03; published 4-9-03 [FR 03-08645]

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
Electronic filings by national banks; comments due by 6-13-03; published 4-14-03 [FR 03-08995]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Stock dispositions; suspension of losses; comments due by 6-12-03; published 3-14-03 [FR 03-06118]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering program for persons involved in real estate closings and settlements; comments due by 6-9-03; published 4-10-03 [FR 03-08688]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

VOL
68
ISS
1
0
8
JE
5
2003
UMI



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.



Federal Register

6–6–03 Friday
Vol. 68 No. 109 June 6, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–6–03 Friday
Vol. 68 No. 109 June 6, 2003

Pages 33831–34260

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche — 202–512–1800
Assistance with public subscriptions — 202–512–1806

General online information — 202–512–1530; 1–888–293–6498

Single copies/back copies:
Paper or fiche — 202–512–1800
Assistance with public single copies — 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:
Paper or fiche — 202–741–6005
Assistance with Federal agency subscriptions — 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 109
Friday, June 6, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Natural Resources Conservation Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Organization, functions, and authority delegations:
Subordinate ATF officials, 33968–33969

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Bursal disease-Marek's disease vaccine; use in chickens; field testing, 33903–33904
Feline leukemia vaccine, live canarypox vector; use in cats; field testing, 33904–33905

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33910

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Community-Based Interventions to Reduce Motor Vehicle-Related Injuries; correction, 33952
Controlling Asthma in American Cities Project, 33952–33955
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 33956
Organization, functions, and authority delegations:
National Center for Health Statistics, 33956–33957

Centers for Medicare & Medicaid Services
RULES
Medicare:
Long-term care hospitals; prospective payment system; annual payment rate updates and policy changes, 34121–34190

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arizona, 33909
Connecticut, 33909
Texas, 33909
Washington, 33909

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Columbia River, Astoria, OR; safety zone, 33894–33896
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area, 33896–33898

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 33907–33908

Committee for the Implementation of Textile Agreements
NOTICES
African Growth and Opportunity Act and United States-Caribbean Basin Trade Partnership Act:
Textile and apparel "short supply" provisions; request consideration procedures, 33922–33923

Community Development Financial Institutions Fund
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34032–34033

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33923–33924

Disability Employment Policy Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Customized Employment Program, 33969–33989
High School/High Tech Program, 33989–34007

Employment and Training Administration
NOTICES
Adjustment assistance:
E.J. Footwear LLC, 34007
Agency information collection activities; proposals, submissions, and approvals, 34007–34008

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34008–34009
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 34009–34010

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts; withdrawn, 33875–33876
North Carolina, 33873–33875
Wisconsin; withdrawn, 33875
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Thymol and eucalyptus oil, 33876–33882

PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 33899–33902
North Carolina, 33898–33899
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
All Appropriate Inquiry Negotiated Rulemaking Committee
Meeting, 33898
Water supply:
Underground Injection Control Program—
Florida; Class I municipal wells; meetings, 33902
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33932–33934
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 33934
Grants and cooperative agreements; availability, etc.:
Environmental Justice Collaborative Problem-Solving Grant Program, 33934–33942
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus thuringiensis VIP3A, 33942–33946
Reports and guidance documents; availability, etc.:
Agency public involvement policy; public involvement in regulatory and program implementation decisions, 33946–33949

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier, 33854–33856
Dornier, 33842–33844
Pilatus Aircraft Ltd., 33840–33842
Pratt & Whitney, 33844–33854
Turbomeca; correction, 33854
Airworthiness standards:
Special conditions—
Bombardier Model BD-100-1A10 airplane; automatic takeoff thrust control system, 33836–33840
Raytheon Aircraft Co. Model HS.125 series 700A and 700B airplanes, 33834–33836
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney Canada, 33885–33887
Noise standards:
Propeller-driven small airplanes; noise certification standards, 34255–34259

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33949–33950

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 33950

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 33950

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
D.E. Shaw Plasma Power, L.L.C., et al., 33927–33928
Gilroy Energy Center, LLC, et al., 33928–33930
Whiting Clean Energy, Inc., et al., 33930–33931
Practice and procedure:
Off-the-record communications, 33931–33932
Visits to facilities, 33932
Applications, hearings, determinations, etc.:
CenterPoint Energy - Mississippi River Transmission Corp., 33924
MIGC, Inc., 33924
Northwest Pipeline Corp., 33924–33925
Overthrust Pipeline Co., 33925
Panhandle Eastern Pipe Line Co. et al., 33925
Questar Southern Trails Pipeline Co., 33926
Transwestern Pipeline Co., 33926
USG Pipeline Co., 33926–33927

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34030–34032

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 33950

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Acepromazine maleate injection, 33856

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Ready-to-eat meat and poultry products; listeria monocytogenes control, 34207–34254
NOTICES
Meetings:
Codex Alimentarius Commission—
Twenty-sixth session agenda items; comment request, 33905–33906

Foreign Assets Control Office
RULES
Global terrorism; sanctions regulations, 34195–34205

Forest Service
NOTICES
Environmental statements; notice of intent:
Idaho Panhandle National Forests, ID, 33906–33907

General Accounting Office
RULES
General Accounting Office records; public availability, 33831–33834

General Services Administration
NOTICES
Acquisition regulations:
Online posting of Federal contracts; pilot implementation; comment request, 33950–33951

Health and Human Services Department
See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family planning; male reproductive health research; correction, 33951

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33961–33962
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 33962–33963

Industry and Security Bureau
RULES
Designated terrorists; control imposition and expansion, 34191–34196

Interior Department
See National Park Service

Internal Revenue Service
RULES
Procedure and administration:
Agriculture Department; return information disclosure, 33857–33858
PROPOSED RULES
Procedure and administration:
Agriculture Department; return information disclosure, 33887

International Trade Administration
NOTICES
Antidumping:
Canned pineapple fruit from—
Thailand, 33910–33911
Circular welded non-alloy steel pipe from—
Korea, 33911
Malleable iron pipe fittings from—
China, 33911–33920
Countervailing duties:
Alloy and pure magnesium from—
Canada, 33920–33921
Softwood lumber products from—
Canada, 33921–33922
Applications, hearings, determinations, etc.:
University of—
North Carolina et al., 33920

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

Labor Department
See Disability Employment Policy Office
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Management and Budget Office
PROPOSED RULES
Grants, other financial assistance, and nonprocurement agreements, 33883–33885

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 33957–33958
National Institute of Allergy and Infectious Diseases, 33959
National Institute of Child Health and Human Development, 33958
National Institute of Mental Health, 33958–33959
National Institute on Alcohol Abuse and Alcoholism, 33959
Recombinant DNA Advisory Committee, 33960

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Inseason adjustments; CFR correction, 33882
NOTICES
Grants and cooperative agreements; availability, etc.:
Gulf of Mexico and off U.S. South Atlantic Coastal States; research and development projects; correction, 33922

National Park Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Native American Graves Protection and Repatriation Review Committee, 33964–33965
Environmental statements; availability, etc.:
Great Smoky Mountains National Park and Blue Ridge Parkway, TN and NC; proposed land exchange between NPS and Eastern Band of Cherokee Indians, 33965–33966
Wilson's Creek National Battlefield, MO; final general management plan, 33966
Meetings:
Delaware Water Gap National Recreation Area Citizen Advisory Commission, 33966–33967
National Register of Historic Places:
Pending nominations, 33967–33968

Natural Resources Conservation Service
NOTICES
Environmental statements; notice of intent:
Second Creek Watershed, MS, 33907

Nuclear Regulatory Commission
NOTICES
Meetings:
Construction inspection program for reactors; workshop, 34012
Regulatory guides; issuance, availability, and withdrawal, 34012–34013
Applications, hearings, determinations, etc.:
J.L. Shepherd & Associates, 34010–34012

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards, etc.:
Respiratory protection—
Assigned protection factors, 34035–34119
Controlled negative pressure REDON fit testing protocol, 33887–33894

Office of Management and Budget
See Management and Budget Office

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34013–34014

Personnel Management Office
NOTICES
Pay under General Schedule:
Basic and locality pay for certain Federal employees; adjustments, 34014

Postal Service
RULES
Domestic Mail Manual:
Restricted or nonmailable articles and substances—
Infectious substances; mailing and packaging standards, 33858–33873

Railroad Retirement Board
NOTICES
Privacy Act:
Systems of records, 34014–34015

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34015–34017
Meetings; Sunshine Act, 34017
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 34017–34026
Philadelphia Stock Exchange, Inc., 34026–34028

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34028–34029

State Department
NOTICES
Meetings:
Private International Law Advisory Committee, 34029

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Mental Health Services Center—
National Consumer and Consumer Supporter Self-Help Technical Assistance Centers, 33960–33961

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 34029–34030

Treasury Department
See Community Development Financial Institutions Fund
See Foreign Assets Control Office
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34033
Privacy Act:
Computer matching programs, 34033–34034

Separate Parts in This Issue

Part II
Labor Department, Occupational Safety and Health Administration, 34035–34119

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 34121–34190

Part IV
Commerce Department, Industry and Security Bureau, 34191–34196
Treasury Department, Foreign Assets Control Office, 34195–34205

Part V
Agriculture Department, Food Safety and Inspection Service, 34207–34254

Part VI
Transportation Department, Federal Aviation Administration, 34255–34259

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

2 CFR
Proposed Rules:
Subtitles A and B.....33883

4 CFR
81.....33831

9 CFR
430.....34208

14 CFR
25 (2 documents).....33834, 33836
39 (5 documents).....33840, 33842, 33844, 33854
Proposed Rules:
36.....34256
39.....33885

15 CFR
744.....34192
772.....34192

21 CFR
522.....33856

26 CFR
301.....33857
Proposed Rules:
301.....33887

29 CFR
Proposed Rules:
1910 (2 documents).....33887, 34036
1915.....34036
1926.....34036

31 CFR
594.....34196

33 CFR
Proposed Rules:
165 (2 documents).....33894, 33896

39 CFR
111.....33858

40 CFR
52 (3 documents).....33873, 33875
180.....33876
Proposed Rules:
Ch. I.....33898
52 (2 documents).....33898, 33899
146.....33902

42 CFR
412.....34122

50 CFR
648.....33882

Rules and Regulations

Federal Register
Vol. 68, No. 109
Friday, June 6, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Part 81

Public Availability of General Accounting Office Records

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule amends General Accounting Office (GAO) regulations regarding the pubic availability and disclosure of GAO records. The amendments are necessary in order for the GAO to voluntarily adopt certain procedural principles of the Electronic Freedom of Information Act Amendments of 1996. Specifically, the amendments make it clear that the public may request and obtain electronic records under the regulations. Further, they inform the public that GAO published documents may easily be obtained from GAO's Internet Web site. Other minor changes and "housekeeping" amendments are made to clarify current policy and to correct titles, addresses, telephone numbers, and the hours of operation of the GAO public reading facility, which is located in the Law Library at the GAO Building. The overall effect of the amendments is for GAO to generally take less time in processing information requests.

DATES: Effective on June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Forman (Assistant General Counsel), 202–512–9763 or 617–788–0546; e-mail: *formanj@gao.gov*.

SUPPLEMENTARY INFORMATION: Over thirty years ago, Congress established a policy of openness toward public disclosure of government information by enacting the Freedom of Information Act (FOIA) (5 U.S.C. 522). Under FOIA, any member of the public may request access to information within control of a federal executive branch agency. GAO is a legislative agency and is, therefore, not subject to the FOIA. Nevertheless, GAO has voluntarily adopted an information disclosure policy that includes many of the procedural principles contained in FOIA. GAO also is not subject to the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA), Public Law 104–231, which amended FOIA to provide greater public access to information maintained in an electronic format. This final rule amends GAO regulations addressing the public availability of GAO records by adopting practices similar to E–FOIA procedures.

GAO adopts only certain procedural features of the FOIA and E–FOIA, as opposed to adopting substantive law. Application of the FOIA and the E–FOIA to the GAO is not to be inferred (4 CFR 81.1). This rule is published as a final rule without notice or an opportunity for comment. The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, does not apply to GAO. GAO voluntarily follows key principles set forth in the APA, like it voluntarily follows many of the procedural principles set forth in FOIA. Since this rule is procedural in nature, rather than substantive, it is consistent with the principles of the APA for GAO to issue it as a final rule without providing notice and an opportunity for public comment. This has been GAO's past practice as GAO has amended part 81 on previous occasions without soliciting public comment. (See for example 53 FR 50913 (Dec. 19, 1988), 49 FR 38527 (Oct. 1, 1984), and 46 FR 47053 (Sept. 24, 1981).)

Other changes to GAO's records disclosure regulations are made to reflect current GAO policy, practices, and procedures, including but not limited to organizational changes, which resulted in new titles, addresses, telephone numbers, and hours of operation that relate to GAO processing requests for GAO records and documents.

In accordance with the spirit of E–FOIA, a new provision is added to section 81.1 informing the public that GAO publications (testimonies, reports, decisions, and listings of publications) are now expressly included within the scope of the regulations to the extent that the public may readily obtain copies of them from the GAO Web site, *http://www.gao.gov* or from the U.S. General Accounting Office, 441 G Street NW., Room LM, Washington, DC 20548. The address for writing and the telephone numbers for calling GAO to obtain copies of GAO published documents are moved from section 81.2 to section 81.1 for consistency to have all pertinent information for obtaining published documents provided in the same section.

Section 81.2 is updated by correcting the title of the GAO official who has the authority and responsibility for administering the GAO records disclosure program, including issuing necessary supplemental rules and regulations. Paragraph (b) of section 81.3 revises the definition of the term "records" to expressly include electronically created or maintained materials. The language is amended to state in plain language that only existing records and records under GAO control are covered.

Recognizing that some requests may have more urgency than others, paragraph (f) is added to § 81.3 to provide a definition of "compelling need" for purposes of determining whether to honor requests for expedited processing. Section 81.4 revisions provide requesters with the correct name and address for sending to GAO requests for documents that have not been published. The GAO Internet home page address is also provided so requesters may submit their requests electronically.

Under § 81.4 as it is amended, GAO will respond to a requester by acknowledging or honoring the request within 20 days of receipt. In light of this procedure, the requirement that GAO promptly honor requests when no valid objection exists for withholding the records is no longer necessary and is therefore eliminated. Expedited requests where a requester provides GAO with a certified statement demonstrating a compelling need will be processed before other requests. A 60-day time limit for requesting an administrative appeal of a denial of a request is established. Section 81.5, concerning records originating outside GAO and records involving work in progress, is not changed.

Revisions to section 81.6 clarify and set out in greater detail current GAO policy and practice regarding records exempt from disclosure. In this regard, paragraph (l) is divided into two paragraphs, (l) and (m). Other revisions to section 81.6 reflect changes to

organizational structure by correcting the title of the GAO official with discretion to release exempt records from the Director of Policy to the Chief Quality Officer. The GAO fee schedule set out in section 81.7 is updated to reflect current costs associated with processing requests. Other revisions inform requesters of the recent change in the title of the official responsible for deciding whether a fee should be waived or reduced. Changes to section 81.8 delineate that the GAO's public reading facility is maintained in the GAO Law Library, and its location and hours of operation. The hours of operation for public use of the Law Library are changed to 8:30 a.m. to 4 p.m. GAO's public reading facility was previously open to the public from 8:30 a.m. to 5 p.m. It continues to be closed on Saturdays, Sundays, and holidays.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Computer technology, Electronic products, Freedom of information.

■ For the reasons set forth in the preamble, GAO amends Title 4, Chapter I, Subchapter F of the Code of Federal Regulations by revising part 81 to read as follows:

PART 81—PUBLIC AVAILABILITY OF GENERAL ACCOUNTING OFFICE RECORDS

Sec.

81.1 Purpose and scope of part.
81.2 Administration.
81.3 Definitions.
81.4 Requests for identifiable records.
81.5 Records originating outside GAO, or records involving work in progress.
81.6 Records which may be exempt from disclosure.
81.7 Fees and charges.
81.8 Public reading facility.

Authority: 31 U.S.C. 711.

§ 81.1 Purpose and scope of part.

(a) This part implements the policy of the U.S. General Accounting Office (GAO) with respect to the public availability of GAO records. While GAO is not subject to the Freedom of Information Act (5 U.S.C. 552), GAO's disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress. Application of this act to GAO is not to be inferred from the provisions of these regulations.

(b) GAO published testimonies, reports, and decisions or listings of publications are included within the scope of this part to the extent that they may be obtained from the GAO Web site, *http://www.gao.gov*, or from the U.S. General Accounting Office, 441 G Street NW., Room LM, Washington, DC 20548, or phone 202–512–6000, FAX 202–512–6061, TDD 202–512–2537. [Please note that this address is for published GAO documents only, other records requests should be sent to the address provided in section 81.4(a).]

§ 81.2 Administration.

The Chief Quality Officer administers this part and may promulgate such supplemental rules or regulations as may be necessary.

§ 81.3 Definitions.

As used in this part:

(a) *Identifiable* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, etc., which will permit location or retrieval of the record.

(b) *Records* includes all books, papers, manuals, maps, photographs, reports, and other documentary materials, regardless of physical form or characteristics, including electronically created or maintained materials, under the control of GAO in pursuance of law or in connection with the transaction of public business. As used in this part, the term "records" is limited to an existing record under GAO's control and does not include compiling or procuring records, library or museum material made, acquired, or preserved solely for reference or exhibition purposes, or extra copies of documents preserved only for convenience of reference.

(c) *Records available to the public* means records which may be examined or copied or of which copies may be obtained, in accordance with this part, by the public or representatives of the press regardless of interest and without specific justification.

(d) *Disclose* or *disclosure* means making available for examination or copying, or furnishing a copy.

(e) *Person* includes an individual, partnership, corporation, association, or public or private organization other than a Federal agency.

(f) *Compelling need* means that a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or the records are needed urgently, with respect to a request made by a person primarily engaged in disseminating information, for the requester to inform the public concerning actual or alleged Federal Government activity.

§ 81.4 Requests for identifiable records.

(a) A request to inspect or obtain a copy of an identifiable record of GAO must be submitted in writing to the Chief Quality Officer, U.S. General Accounting Office, 441 G Street, NW., Washington, DC 20548. Requests may also be made via a link from GAO's Internet Home page at *http://www.gao.gov*. Requests also may be emailed to *recordsrequest@gao.gov*. The Chief Quality Officer will either acknowledge or honor the request within 20 days of receipt.

(b) The Chief Quality Officer will honor requests for expedited processing before all other requests in cases in which the person requesting the records demonstrates a compelling need. A demonstration of compelling need shall be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief.

(c) In the event of an objection or doubt as to the propriety of providing the requester with a copy of the record sought, every effort will be made to resolve such problems as quickly as possible, including consultation with appropriate GAO elements. If it is determined that the record should be withheld, the Chief Quality Officer shall inform the requester in writing that the request has been denied, shall identify the material withheld, and shall explain the basis for the denial.

(d) A person whose request is denied in whole or part may administratively appeal the denial within 60 days after the date of the denial by submitting a letter to the Comptroller General of the United States at the address listed in paragraph (a) of this section, explaining why the denial of the request was unwarranted.

§ 81.5 Records originating outside GAO, or records involving work in progress.

(a) It is the policy of GAO not to provide records from its files that originate in another agency or nonfederal organization to persons who may not be entitled to obtain the records from the originator. In such instances, requesters will be referred to the person or organization that originated the records.

(b) In order to avoid disruption of work in progress, and in the interests of fairness to those who might be adversely affected by the release of information which has not been fully reviewed to assure its accuracy and completeness, it is the policy of GAO not to provide records which are part of ongoing reviews or other current projects. In response to such requests, GAO will inform the requester of the estimated completion date of the review or project so that the requester may then ask for the records. At that time, the records may be released unless exempt from disclosure under § 81.6.

§ 81.6 Records which may be exempt from disclosure.

The public disclosure of GAO records contemplated by this part does not apply to records, or parts thereof, within any of the categories listed below. Unless precluded by law, the Chief Quality Officer may nevertheless release records within these categories.

(a) Congressional correspondence and other records relating to work performed in response to a congressional request (unless authorized by the congressional requester), and congressional contact memoranda.

(b) Records specifically required by an Executive Order to be kept secret in the interest of national defense or foreign policy. An example of this category is a record classified under Executive Order 12958, Classified National Security Information.

(c) Records related solely to the internal personnel rules and practices of an agency. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of an agency function. Examples within the purview of this exemption are guidelines and procedures for auditors, investigators, or examiners, and records concerning an agency's security practices or procedures.

(d) Records specifically exempted from disclosure by statute provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(e) Records containing trade secrets and commercial or financial information obtained from a person that are privileged or confidential. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(f) Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy. This exemption excludes from disclosure all personnel and medical files, and all private or personal information contained in other files, which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person. An example of such other files within the exemption would be files compiled to evaluate candidates for security clearance.

(g) Records and information compiled for law enforcement purposes.

(h) Records having information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Records containing geological and geophysical information and data (including maps) concerning wells.

(j) Inter-agency or intra-agency memoranda, letters, or other materials that are part of the deliberative process. For example, this exemption includes internal communications such as GAO or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice, or evaluative remarks of GAO employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency decision making.

(k) Records in addition to those described in paragraph (j) of this section containing information customarily subject to protection as privileged in a court or other proceedings, such as information protected by the doctor-patient, attorney-work product, or lawyer-client privilege.

(l) Records GAO has obligated itself not to disclose, including but not limited to, records for which GAO officials have made a pledge of confidentiality, and records the release of which would adversely impact significant property interests or negatively affect public safety.

(m) Unsolicited records containing information submitted by any person to GAO in confidence. An example of records covered by this exemption would be information obtained by the GAO Office of General Counsel (GAO FraudNET).

§ 81.7 Fees and charges.

(a) No fee or charge will be made for:

(1) Records provided under this part when the direct costs involve less than one hour of search time and 50 pages of photocopying.

(2) Staff-hours spent in resolving any legal or policy questions pertaining to the request.

(3) Copies of records, including those certified as true copies, furnished for official use to a federal government officer or employee.

(4) Copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending before GAO, when necessary or desirable to the performance of a GAO function.

(b) The fees and charges described below will be assessed for the direct costs of search, review, and reproduction of records available to the public under this part.

(1) The cost for reproduction per page shall be 20 cents.

(2) The cost for a certification of authenticity shall be $10 for each certificate.

(3) Manual search and review for records by office personnel will be assessed at $12, $25, or $45 per hour, depending on the rate of pay of the individual actually conducting the search or review, and the complexity of the search.

(4) Other direct costs related to the request may be charged for such items as computer searches.

(5) Except as noted immediately below, requesters generally will be charged only for document duplication. However, there may be times when a search charge will be added, for example, if records are not described with enough specificity to enable them to be located within one hour. Requesters seeking records for commercial use will be charged for document duplication, search, and review costs. Additionally, representatives of the news media, in support of a news gathering or dissemination function, and education or noncommercial scientific institutions not seeking records for commercial use will be charged only for document duplication, unless such request requires extraordinary search or review.

(c) GAO shall notify the requester if an advance deposit is required.

(d) Fees and charges shall be paid by check or money order payable to the U.S. General Accounting Office.

(e) The Chief Quality Officer may waive or reduce the fees under this section upon a determination that disclosure of the records requested is in the public interest, is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. Persons seeking a waiver or fee reduction may be required to submit a statement setting forth the intended purpose for which the records are requested, indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this paragraph are solely within the discretion of GAO.

§ 81.8 Public reading facility.

GAO maintains a public reading facility in the Law Library at the General Accounting Office Building, 441 G Street, NW., Washington, DC. The facility shall be open to the public from 8:30 a.m. to 4 p.m. except Saturday, Sundays, and holidays.

Anthony H. Gamboa,

General Counsel, General Accounting Office.

[FR Doc. 03–14304 Filed 6–5–03; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM256, Special Conditions No. 25–236–SC]

Special Conditions: Raytheon Model HS.125 Series 700A and 700B Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Rockwell Collins AFD 2000 Electronic Flight Instrument System (EFIS) that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 22, 2003. Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM 113), Docket No. NM256, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM256.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for public comment in accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 23, 2002, Raytheon Aircraft Services, Inc., 1115 Paul Wilkins Road, San Antonio, Texas 78216, applied for a supplemental type certificate (STC) to modify Raytheon Model HS.125 Series 700A and 700B airplanes. These models are currently approved under Type Certificate No. A3EU. The HS.125 Series 700A and 700B airplanes are two flightcrew, two-engine airplanes, each with a maximum takeoff weight of 25,500 lbs. The modification incorporates the installation of a Rockwell Collins AFD 2000 EFIS. This equipment will replace the equipment originally installed in these airplanes which presents the required flight information in the form of analog displays. The avionics/electronics and electrical system to be installed has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Raytheon Aircraft Services, Inc. must show that the modified Model HS.125 Series 700A and 700B airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Model HS.125 Series 700A and 700B airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Model HS.125 Series 700A and 700B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Raytheon Aircraft Services, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, the Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. will incorporate an EFIS that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. These special conditions require that new avionic/electronic and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionic/electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. Should Raytheon Aircraft Services, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. It is not a rule of general applicability and affects only the applicant which applied

to the FAA for approval of these features on the airplane.

The FAA has determined that notice and opportunity for public comment in accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 22, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14336 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM255; Special Conditions No. 25–03–04–SC]

Special Conditions: Bombardier Model BD–100–1A10 Airplane; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model BD–100–1A10 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is associated with an Automatic Takeoff Thrust Control System (ATTCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for approach climb performance using an ATTCS. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 28, 2003.

Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM255, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. You must mark your comments: Docket No. NM255. Comments may be inspected in the Rules Docket at that address on weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Reising, FAA, Propulsion/Mechanical Systems Branch, Transport Airplane Directorate, Aircraft Certification Office, ANM–112, 1601 Lind Avenue SW., Renton, Washington, telephone (425) 227–2683; fax (425) 227–2683.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable, because those procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA has determined that notice and opportunity for public comment in accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, and views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with the FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 26, 1999, Bombardier Aerospace submitted an application to Transport Canada for type certification of the Bombardier Model BD–100–1A10. On June 28, 1999, Transport Canada made application on behalf of Bombardier for type certification of the Model BD–100–1A10 by the FAA. The Bombardier Model BD–100–1A10 will be type certificated in Canada and in the United States. The Model BD–100–1A10 is a medium-sized transport category airplane, powered by two Allied Signal high bypass turbofan engines mounted on the aft fuselage. Each engine can deliver up to 6,500 pounds of thrust at takeoff. The airplane will be capable of operating with two flight crewmembers and up to 16 passengers.

The Bombardier Model BD–100–1A10 airplane will incorporate an unusual design feature to show compliance with the approach climb requirements of § 25.121(d) ("Climb: One-engine-inoperative"). This design feature is the Automatic Takeoff Thrust Control System (ATTCS). Appendix I to Title 14, Code of Federal Regulations (CFR), part 25, limits the application of performance credit for ATTCS to takeoff. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17, Bombardier must show that Bombardier Model BD–100–1A10 meets the applicable provisions of 14 CFR part 25, effective February 1, 1965, including amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Bombardier Model BD–100–1A10 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

The certification basis also may include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Bombardier Model BD–100–1A10 airplane includes the following:

- 14 CFR part 34, effective September 10, 1990, including amendment 34, effective February 3, 1999, and
- 14 CFR part 36, effective December 1, 1969, including amendments 36–1 through 36–23 or through 36–24, as elected by the applicant.

These special conditions form an additional part of the type certification basis. The certification basis also may include other special conditions that are not relevant to these specific special conditions.

If the Administrator finds that the applicable airworthiness regulations (in this case, part 25) do not contain adequate or appropriate safety standards for the Bombardier Model because of a novel or unusual design feature, the FAA may prescribe special conditions under the provisions of § 21.16 ("Special conditions"). The special conditions become part of the type certification basis in accordance with § 21.101(b)(2) ("Designation of applicable regulations").

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As stated previously, the Bombardier Model BD–100–1A10 airplane will incorporate an unusual design feature—ATTCS—to show compliance with the approach climb requirements of § 25.121(d). This airplane is powered by two Allied Signal turbofan engines mounted on the aft fuselage and equipped with Full Authority Digital Engine Controls (FADEC) that, in part, protect against exceeding engine limits.

The airplane also incorporates a non-moving throttle system that functions by placing the throttle levers in detents for the takeoff and climb phases of flight or for a go-around; this throttle system allows the FADEC to schedule the power setting, based on the phase of flight. With the ATTCS and associated systems functioning as designed, all applicable requirements of part 25 will be met without requiring any action by the flight crew to increase power.

Automatic takeoff power control on the Bombardier Model BD–100–1A10 airplane involves uptrimming the operating engine to maximum takeoff power. This action will be controlled by the FADEC. At takeoff, when the power levers are set to the Takeoff Go-Around (TOGA) detent, if there are no FADEC fault or failure messages displayed, the system is armed, and ATTCS uptrim will occur without any further action by the crew if an engine fails. During a go-around, the uptrim is automatically armed.

For a go-around, the thrust levers are placed in the TOGA detent. The value of TOGA for the current ambient conditions will be calculated and set by the FADEC. If an engine fails, the ATTCS will change the power reference on the operating engine to achieve the maximum go-around power for the ambient conditions. The propulsive thrust used to determine compliance with the approach climb requirements of § 25.121(d) is limited to the lesser of (i) the thrust provided by the ATTCS system, and (ii) 111 percent of the thrust resulting from the initial thrust setting with the ATTCS system failing to perform its uptrim function and without action by the crew to reset thrust. This requirement serves to limit the performance effects of an ATTCS system failure and ensures that all-engines-operating go-around performance is not significantly degraded.

The engine operating limits (turbine temperature and N1) for TOGA are set and displayed to the pilot when that rating is selected. These limits are set in such a way that the engine redline limits are not exceeded when an ATTCS is engaged. When the maximum takeoff power rating is selected or triggered, the engine limits are reset automatically to reflect the uptrimmed engine redline limits.

The system is armed during all phases of the flight. The power levers will continue to function normally if the ATTCS should fail. Maximum takeoff/go-around power is available if the pilot elects to push the power levers past the takeoff/go-around power detent into the overtravel range.

Operations of all systems and equipment will be designed to function within the engine power range. Thrust increase from the initial to the maximum approved takeoff/go-around power level will be free of hazardous engine response characteristics.

The ATTCS function, as described above, is part of the powerplant control system. The ATTCS is always armed whenever power levers are above the idle detent. The system is verified before each flight via the FADEC built-in test feature. When the ATTCS is triggered following an engine failure, an "APR" message will appear on the engine display.

The FADEC installed on the Bombardier Model BD–100–1A10 airplane will ensure that inherent flight characteristics of the airplane do provide adequate warning, if an engine failure occurs during takeoff. The natural yawing tendency of the airplane, coupled with flashing master warning and master caution lights, will provide

the pilot with a clear indication of any engine failure during takeoff.

The part 25 standards for ATTCS, contained in § 25.904 (Automatic takeoff thrust control system (ATTCS)") and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered at the time the standards were issued, but flight crew workload issues precluded further consideration. As stated in the preamble to amendment 25–62:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase." (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on the Bombardier Model BD–100–1A10 airplane allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed, it will function automatically following an engine failure, and advance the remaining engine to the ATTCS thrust level. Therefore, this design adequately addresses the pilot workload concerns identified in the preamble to amendment 25–62.

Accordingly, these special conditions will require a showing of compliance with those provisions of § 25.904 and Appendix I that are applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the gradient requirement of § 25.121(d), is of primary importance. That gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model BD–100–1A10 airplane. Should Bombardier apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Bombardier Model BD–100–1A10 airplane. It is not a rule of general applicability and affects only the applicant that applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and public comment process in several prior instances, and has been derived without substantive change from those special conditions previously issued. It is unlikely that prior public comment on this action would result in a significant change from the substance contained in this document. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model BD–100–1A10 airplane.

1. *General.* An Automatic Takeoff Thrust Control System (ATTCS) is defined as the entire automatic system, including all devices, both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

2. *ATTCS.* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements stated in paragraphs 2.a, 2.b, and 2.c:

a. *Performance and System Reliability Requirements.*

(1) The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(2) The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.12(d) may not be greater than the lesser of:

(i) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS system functioning; or

(ii) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS system failing to reset thrust or power and without any action by the crew to reset thrust or power.

b. *Thrust or Power Setting.*

(1) The initial thrust or power setting on each engine at the beginning of the takeoff roll or go-around may not be less than any of the following:

(i) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; and

(ii) That shown to be free of hazardous engine response characteristics and not to result in any unsafe aircraft operating or handling characteristics when thrust or power is increased from the initial takeoff or go-around thrust or power to the maximum approved takeoff thrust or power.

(2) For approval of an ATTCS system for go-around, the thrust or power setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

c. *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(1) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(2) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

3. *Critical Time Interval.* The definition of the Critical Time Interval in appendix I, § I25.2(b) shall be expanded to include the following:

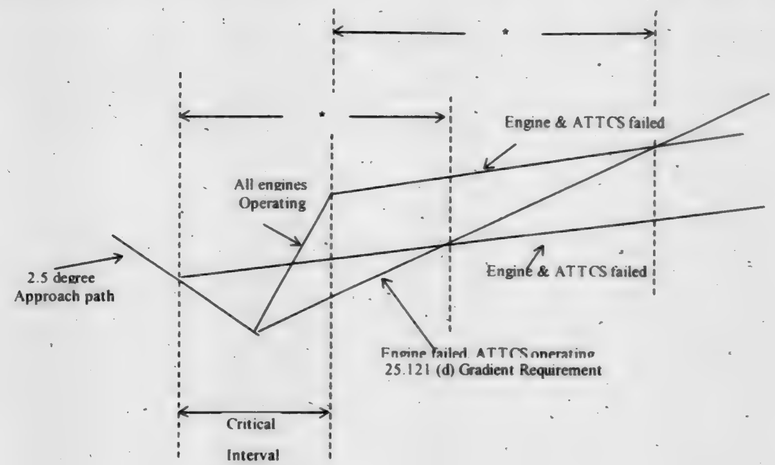
a. When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(1) The critical time interval begins at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval ends at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

b. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual (AFM).

c. The critical time interval is illustrated in the following figure:



* The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with 125.2(b) for ATTCS use during takeoff.

Issued in Renton, Washington, on May 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14337 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–53–AD; Amendment 39–13176; AD 2003–11–17]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to inspect the front and rear surfaces of the pressure dome for damage and cracks, and, if necessary, accomplish repairs. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and correct damage and cracks to the pressure dome, which could lead to rapid decompression.

DATES: This AD becomes effective on July 28, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 28, 2003.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–53–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that drill and/or rivet tool damage could have occurred in areas around the edges of the rear pressure dome during assembly of the Models PC–12 and PC–12/45 airplanes.

Pilatus has received 19 reports of damaged pressure domes. The reported damage included nicks and scratches. This type of damage could also occur on the forward surface of the pressure dome.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 14, 2003 (68 FR 1802). The NPRM proposed to require you to inspect the front and rear surfaces of the pressure dome for damage and cracks, and, if necessary, accomplish repairs.

What Is the Potential Impact if FAA Took No Action?

The damage to the pressure dome could result in cracks in the pressure dome and lead to rapid decompression.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: How To Obtain a Repair Scheme Is Unclear

What Is the Commenter's Concern?

The commenter states that the current wording in the proposed AD is incorrect and implies that the repair scheme will come from FAA. Additionally, the commenter states that the repair scheme will come from the manufacturer; FAA will provide approval of the repair.

What Is FAA's Response to the Concern?

We do not concur that the current wording of the proposed AD is incorrect. Since the service information, which is referenced in the proposed AD, does not address repairs for this type of damage, FAA has to individually approve each repair as needed. This gives the manufacturer the option to develop other generic repair procedures, which were not developed at the time of the NPRM, for this type of damage and submit them to FAA for approval. Therefore, we have not changed the final rule AD based on this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 280 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	No parts required	$480	$480 × 280 = $134,400.

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960	No parts required	$960.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is within 90 days after the effective date of this AD, unless already accomplished.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the pressure dome is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for as airplane with 500 hours TIS. For this reason, FAA has determined that a compliance based on calendar time will be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: *49 U.S.C. 106(g), 40113, 44701.*

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–11–17 Pilatus Aircraft Company Ltd.: Amendment 39–13176; Docket No. 2002–CE–53–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, that are certificated in any category, with the following serial numbers: 101 through 380, 382 through 385, 387 through 395, 398 through 406, 408, 409, 413, 415, and 417.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage and cracks to the pressure dome, which could lead to rapid decompression.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the pressure dome for nick/scratch damage.	Within the next 90 days after July 28, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.
(2) If during the inspection required by paragraph (d)(1) of this AD, type "A" or "B" nick/scratch damage (as specified in the service information) is found, accomplish repairs.	Prior to further flight after the inspection in which the type "A" or "B" nick/scratch damage is found.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.
(3) If any nick or scratch is found that is more than 0.008 inches (0.2 millimeter) during the inspection required in paragraph (d)(1) of this AD, then you have type "C" damage and you must: (i) Use a 10X magnified visual inspection to inspect for cracks. (ii) You may fly the airplane pressurized with type "C" damage for 90 days or 600 takeoff/landings after the type "C" damage is found, whichever occurs first. (iii) After the 90 days or 600 takeoff/landings (whichever occurs first), to fly pressurized, you must do one of the following:	Inspect for cracks prior to further flight and every 10 hours TIS thereafter. Obtain an FAA approval before further flight, if cracks are found. An FAA approval is required to fly pressurized beyond 90 days or 600 landings/takeoffs, whichever occurs first, from the date of the type "C" damage finding.	In accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002, and the applicable maintenance manual.

Actions	Compliance	Procedures
(A) Incorporate an FAA-approved repair scheme obtained from the manufacturer; or (B) Fly the airplane "unpressurized only" and continue to inspect for cracks every 10 hours TIS.		
(iv) If any crack is found during an inspection required by paragraph (d)(3), the airplane may not be utilized until an FAA-approved repair scheme (obtained from the manufacturer) is incorporated.		

Note 1: As earlier specified in this AD, flight is not permitted if crack damage is found.

Note 2: As earlier specified in this AD, FAA approval is required to fly pressurized beyond 90 days or 600 takeoffs/landings, whichever occurs first, from date of repair for type "C" damage.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 53–003, Revision 1, dated July 26, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swiss AD Number HB 2002–608, dated November 1, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on July 28, 2003.

Issued in Kansas City, Missouri, on May 27, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13793 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–102–AD; Amendment 39–13184; AD 2003–11–24]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This action requires installation of retainers instead of washers in the upper and lower torsion bars of the rudder tab. This action is necessary to prevent a spring tab torsion bar from slipping through its retaining adapters, which could result in a loose spring tab; the loss of both tension springs could allow the spring tab to flutter and result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 2003.

Comments for inclusion in the Rules Docket must be received on or before July 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2003–NM–102–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that, on an affected airplane, a lower torsion spring was found to be loose and an upper torsion spring had migrated. The torsion spring system is part of the rudder tab control and comprises two torsion springs and adapters. The design of the torsion spring and structure adapters could result in a poor fit, allowing the spring to slip through the adapters. Loss of both tension springs, if not corrected, could allow the spring tab to flutter and result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–27–298, Revision 1, dated November 21, 2002, which describes procedures for installation of a retainer instead of a washer in the upper and lower torsion bars of the rudder tab. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2003–104, dated April 3, 2003, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a spring tab torsion bar from slipping through its retaining adaptors, which could result in a loose spring tab; the loss of both tension springs could allow the spring tab to flutter and result in reduced controllability of the airplane. This AD requires installation of a retainer instead of a washer in the upper and lower torsion bars of the rudder tab. The actions are required to be accomplished in accordance with the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material will no longer be included in each individual AD; however, the office authorized to approve AMOCs will be defined in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–11–24. Dornier Luftfahrt GMBH: Amendment 39–13184. Docket 2003–NM–102–AD.

Applicability: Model 328–100 series airplanes, certificated in any category, as listed in Dornier Service Bulletin SB–328–27–298, Revision 1, dated November 21, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent a spring tab torsion bar from slipping through its retaining adaptors, which could result in a loose spring tab; and to further prevent the loss of both tension springs, which could allow the spring tab to flutter and result in reduced controllability of the airplane, accomplish the following:

Retainer Installation

(a) Within 2 months after the effective date of this AD: Install a retainer instead of a washer in the upper and the lower torsion bars of the rudder, in accordance with Dornier Service Bulletin SB–328–27–298, Revision 1, dated November 21, 2002. Installation of a retainer before the effective date of this AD in accordance with Dornier Service Bulletin SB–328–27–298, dated March 26, 1999, is acceptable for compliance with the requirements of this paragraph.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) Unless otherwise specified in this AD, the actions shall be done in accordance with Dornier Service Bulletin SB–328–27–298, Revision 1, dated November 21, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The subject of this AD is addressed in German airworthiness directive 2003–104, dated April 3, 2003.

Effective Date

(d) This amendment becomes effective on June 23, 2003.

Issued in Renton, Washington, on May 29, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13974 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–13177; AD 2003–11–18]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Pratt and Whitney (PW) model 4000 series turbofan engines. That AD currently requires interim actions to address engine takeoff power loss events until the high-pressure-compressor (HPC) case is redesigned and available for incorporation on the PW4000 engines. This amendment requires the same actions as that AD, adds on-wing Testing–21 to engines installed on Boeing 747 and MD–11 airplanes, and adds the requirement to install a new Ring Case Configuration (RCC) rear HPC on engines installed in the Boeing fleet as terminating action to the requirements of this AD. This amendment is prompted by the development of an RCC rear HPC for PW4000 series turbofan engines installed in the Boeing fleet. The actions specified by this AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Effective July 7, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, were approved previously by the Director of the Federal Register as of January 17, 2002 (67 FR 1, January 2, 2002), and November 12, 2002 (67 FR 65484, October 25, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–21–10, Amendment 39–12916 (67 FR 65484, October 25, 2002), which is applicable to PW model 4000 series turbofan engines was published in the **Federal Register** on April 7, 2003, (68 FR 16736). That action proposed to require interim actions to address engine takeoff power loss events until the HPC case is redesigned and available for incorporation on the PW4000 engines. That action also proposed to add on-wing Testing–21 to engines installed on Boeing 747 and MD–11 airplanes, and add the requirement to install a new RCC rear HPC on engines installed in the Boeing fleet as terminating action to the requirements of this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Embedded Engine Configuration

One commenter states that proposed paragraph (u)(1)(ii) embeds an engine configuration that is not listed in Table 1 of the proposed AD and requires operators to replace the rear hook regardless of whether or not it is worn beyond serviceable limits. In addition, the commenter states that it is an undue burden on the operators to track and maintain an additional build configuration not previously tracked.

The FAA does not agree. For engines installed on Boeing airplanes, after the effective date of this AD, any time a Segmented Case Configuration (SCC) HPC module is disassembled to a level that separates the HPC rear case assembly from the HPC module at the H flange, the RCC rear HPC must be incorporated making the replacement of the rear hook a non-issue. After May 31, 2006, any SCC HPC engine installed on Boeing airplanes must have incorporated a Haynes material HPC inner case rear hook. This requirement maintains the appropriate safety level and the intent of the fleet management plan to reduce the risk of a group 3 surge event. The FAA does not agree that tracking SCC engines with a Haynes material HPC inner case rear hook as well as RCC HPC engines imposes an undue burden on operators.

Service Bulletin Updated

One commenter notes that proposed paragraphs (j)(5), (m), (o)(1), (t)(1), (u), (u)(3), and Table (9) reference service bulletin (SB) PW4ENG 72–755, dated February 28, 2003, however the subject SB has been updated to Revision 1, dated April 8, 2003.

The FAA agrees. Since the issuance of the proposed rule, Revision 1 to SB PW4ENG 72–755 was issued on April 8, 2003, to correct various typographical errors, and Revision 2 was issued on May 23, 2003, to change the part number of two brackets due to interference concerns. The FAA has reviewed the data and concurs with these minor changes to the SB. The final rule incorporates SB PW4ENG 72–755, Revision 2, dated May 23, 2003.

Alternate Shroud Repair

Two commenters state that proposed paragraph (m) defines a minimum build standard for Boeing 747 and 767 airplanes that requires an HPC module to incorporate the requirements of SB PW4ENG 72–755. One of the requirements of that SB changes the abradable sealing surface material for the stage 5, 6, and 7 shrouds from felt metal (PWA 24–1) to plasma spray (PWA279), and states that this work should be done by a PW repair facility. The commenters note that Chromalloy Georgia has an FAA-approved procedure for repairing these shrouds with plasma spray and request that the FAA include the alternate Chromalloy Georgia process in the Additional Service Information section of the AD, and in paragraphs (m), (u) and (u)(3).

The FAA does not agree. The AD mandates the incorporation of the RCC HPC into the module in accordance with SB PW4ENG 72–755 and mandates any concurrent requirements of SB PW4ENG 72–755. The other provisions of SB PW4ENG 72–755 may be done by any method, technique, and practice that is either prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness or is acceptable to the administrator. Thus, the final rule requires only that after the effective date of that AD, the RCC rear HPC must have a plasma spray abradable sealing surface, but does not mandate how that surface must be applied. In this instance, the Chromalloy Georgia procedures numbers 96 CGT 073–08 and 96 CGT 085–05 are acceptable methods for applying plasma spray abradable material for this shroud repair.

Accuracy of Economic Analysis

Two commenters question the accuracy of the economic analysis. These commenters suggest that the NPRM's economic analysis understated the required parts cost of approximately $119,500 per engine.

The FAA does not agree. The NPRM's economic analysis reflects the average incremental cost of incorporating the RCC per engine during a heavy maintenance HPC compressor shop visit. This is based on the cost of the RCC hardware including the valve and harness changes, and deducts the cost of the SCC overhaul. While the actual cost for an engine may be higher or lower than the $119,500, based on variations between the worldwide overhaul facilities to perform a SCC HPC overhaul and variations of work done in-house by the operator, the FAA believes its use of an average cost fairly estimates the economic burden of this AD.

Typographical Error

Three commenters note a typographical error in proposed Table 1, item 9 (Configuration I), where Service Bulletin "PW4ENG 72–55" should read "PW4ENG 72–755".

The FAA agrees, and has changed the final rule accordingly.

Clarifications

One commenter notes that in proposed paragraph (c) (1) the text of CSN limits should be revised to read "CSN or CST limits", to eliminate any possible confusion.

The FAA agrees and has changed the final rule accordingly.

One commenter suggests a wording change to proposed paragraph (e)(3) and (e)(4) from "remove from service", to "remove from service or perform on-wing Testing-21". The commenter states that this change would highlight that on-wing Testing-21 is an option.

The FAA agrees and has changed the final rule accordingly.

Service Bulletin 72–749

One commenter requests that proposed paragraph (u)(2)(ii) include a reference to PW SB PW4ENG 72–749, Revision 1, dated January 8, 2003, since this SB incorporates the Haynes material HPC inner case rear hook and HPC inner case mid hook.

The FAA agrees and has added a reference to PW SB PW4ENG 72–749, dated June 2002, and Revision 1 of that SB, dated January 8, 2003, as additional methods of compliance to this paragraph as well as paragraph (u)(1)(ii) of the final rule.

Requirements Too Restrictive

Two commenters state that proposed paragraph (o)(2) is too restrictive and will result in numerous requests for alternative methods of compliance (AMOC). The commenters gave examples when the flange between "A" and "T" can be separated, without disturbing the gas path. These commenters request that the FAA remove the requirement for Testing-21 on engines that, during a shop visit, have a flange separation without disturbing the gas path hardware.

The FAA agrees. Paragraph (o)(2) of the final rule has been changed to be less restrictive for engines in the shop that have had a flange separation between "A" and "T" flanges by removing the Testing-21 requirement if, the engine is reassembled with the gas path-related components remaining in the as-removed condition.

Remove Reference to Service Document

One commenter states that in paragraph (i)(2)(i) of the proposed rule, the PW Clean, Inspect, and Repair (CIR) Manual 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001, or dated March 15, 2002, should have only used the March 15, 2002 date.

The FAA does not agree. The final rule retains the September 15, 2001, reference and adds CIR 72–35–68 Insp/Chk-04, Indexes 8–11, dated December 15, 2002, as an additional method to inspect the HPC mid hook and rear hook of the HPC inner case for wear.

Table 1 Serial Number Errors

One commenter states that proposed Table 1 has serial number errors in the configuration designator "G" where the table identifies the Phase 3, 1st Run Subpopulation Engines by model and serial numbers. The serial numbers for the PW4052, PW4056, PW4060, PW4060A, PW4060C, and PW4062 rating are incorrect. The commenter states that the correct serial numbers should be SN 727732 through SN 728000 inclusive and SN 729001 through SN 729010 inclusive.

The FAA agrees and has changed the final rule accordingly.

Configuration Designator G Description

One commenter states that the description for configuration designator G in Table 1 of the proposed rule, should be more specific with respect to the Haynes material, and should reference PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Chromalloy Florida Repair procedure 00CFL–039–0 dated December 27, 2000.

The FAA does not agree. Configuration G engines, listed by serial number, are first run Phase 3 engines produced without Haynes material in the HPC inner case rear hook. Since these engines specifically do not have Haynes material HPC inner case rear hooks, the FAA does not believe it is necessary to list out the PW SBs or Chromalloy Florida Repair procedure. However the wording in the description has been changed for clarification.

Include Future Revisions of Documents

One commenter requests that the FAA consider the practice of referencing a document with a specified control date, inclusive of future revisions in an effort to eliminate the errors to NPRMs and the need to request AMOCs when the referenced material is subsequently revised.

The FAA does not agree. The FAA cannot incorporate by reference a document before that document has been published. Therefore, since each revision to a SB is considered a separate document for purposes of incorporation by reference, it is not legally possible for the FAA to approve future revisions before they are published. The FAA will continue to use the AMOC process to approve a later revision of an SB or other service documents incorporated by reference in an AD as an AMOC to the original SB.

Use Compressor Age to Control Ring Case Configuration Incorporation

One commenter feels it would be more appropriate for the AD to control RCC incorporation based on compressor age, as opposed to a specified date based on forecasted aircraft utilization.

The FAA does not agree. The compliance dates within the final rule use the current average airplane and engine utilization rates for the total fleet. If an operator has a utilization rate outside of this average, the operator can use the AMOC process to seek relief. The risk accumulation of the operator's fleet would be evaluated against the risk model predictions of the total fleet.

Add Terminating Action for Engines Installed on Airbus Fleet

One commenter suggests that this final rule include the incorporation of the RCC rear HPC as terminating action for engines installed on the Airbus fleet.

The FAA does not agree. The FAA is currently evaluating proposals for terminating actions for Airbus and McDonnell Douglas fleets. Once those proposals are found to meet the airworthiness standards for both engines and transport category aircraft, the FAA will incorporate those terminating actions into this AD. The FAA believes, however, that the current rule should be revised now in order to maintain the desired level of safety based on the fleet-wide risk analysis.

Request to Add PW4062A Model to Applicability

One commenter states that the applicability section of the proposal does not include the PW4062A model engine. Since this engine is currently used on the Boeing 747–400F airplane and is subject to takeoff power losses due to HPC surges, this commenter requests that this model be included in the applicability section.

The FAA does not agree. The PW4062A engine model is intentionally not added to the applicability section of this AD. The amended Type Certificate adding the PW4062A model included as part of the PW4062A design the interim measures applied to other engine models to address this known high power surge issue. Those measures appear in the Limitation Section of Chapter 5 in the PW4062A Engine Manual. The terminating action for PW4062A model engines installed on Boeing aircraft, the installation of a ring case compressor (RCC), will be addressed in a separate AD that applies to the PW4062A model. The FAA will consider adding the PW4062A engine model to this AD in the future once terminating action is developed and approved for the Airbus and McDonnell Douglas fleets.

Minimum Build Requirements Inadvertently Omitted

One commenter notes that proposed paragraph (m) does not include the minimum build HPT/HPC mismatch requirement, or the incorporation of SB PW4ENG 72–514, both previously mandated for the SCC HPC engines installed on Boeing airplanes. This commenter points out that it is feasible to have a SCC HPC engine enter the shop, have no work done to the HPC, and be returned to a Boeing airplane. This commenter questions whether these omissions were an oversight.

The FAA agrees that these omissions were an oversight. While the HPC/HPT mismatch or SB PW4ENG 72–514 minimum build standard requirements are not required for RCC HPC engines, the FAA intended that these two requirements form part of the minimum build standard for all SCC HPC engines, regardless of whether the engine is installed on Boeing, Airbus or MD–11 airplanes. Therefore, the FAA revised paragraph (m) of the final rule to include these two requirements for the SCC HPC engines installed on the Boeing fleet.

AD Compliance Considered More Restrictive Than PW SB Compliance

One commenter states that the compliance of proposed paragraph (m), which requires the ring case incorporation when the HPC module is disassembled to a level that separates the HPC rear case assembly from the HPC module at the H flange, is more restrictive than the PW SBs compliance category 6. This commenter requests that paragraph (m) define the compliance to be the same as a PW SB compliance category 6.

The FAA agrees. It was intended that the compliance for paragraph (m) of the AD be equivalent to a PW SB compliance category 6. Therefore, for clarification, the FAA has added the word "fully", to paragraphs (m) and (u) of the final rule, to clarify that a fully separated H flange from the HPC module is the same as PW SB compliance category 6.

Request for Drawdown Time

One commenter requests that the FAA allow one or two months of drawdown time from the effective date of the AD, for RCC incorporation. The commenter asks that the FAA consider that some operators may not be ready to do the incorporation by the time the AD is in effect.

The FAA does not agree. The final rule will not be effective until 30 days after publication, providing adequate time to prepare to comply with this AD.

Request for Reduced Test Interval

One commenter asks the FAA to consider as an addition to proposed paragraph (u)(2)(i) to allow two SCC HPC engines on an airplane after January 31, 2007, provided that the Testing-21 interval be reduced in half, to 400 hours-since-last-test. The commenter suggests that the reduced interval can account for an additional SCC HPC engine installation.

The FAA does not agree. Proposing two SCC HPC engines on-wing after January 31, 2007, with a Testing-21 interval reduction by half, results in a dual engine group 3 surge risk greater than the FAA proposal. Since the commenter's proposal does not have an equivalent risk to the requirement of proposed (u)(2)(i), the FAA has not made this change.

Additional Clarification

In addition, the FAA has added clarification to proposed paragraph (f) to ensure that the intent of this AD is, after the effective date, to allow only new Airbus operators to apply the initial categorization criteria of proposed paragraphs (f)(1) through (f)(9). Those operators who have complied with paragraph (f) in accordance with the current AD, AD 2002–21–10, should not re-apply paragraphs (f)(1) through (f)(9) of the final rule after the effective date of this AD.

Revised or Added Service Documents

Since the issuance of the NPRM, service documents PW SB PW4ENG 72–714, Revision 2, dated February 28, 2003; PW SB PW4ENG 72–749, Revision 1, dated January 8, 2003; PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003; PW CIR PN51357, Section 72–35–68, Inspection/Check-04, Index 8–11, dated December 15, 2002, and PW4000 EM 50A605, 71–00–00, Testing 21, dated June 15, 2003, and, have been issued as revisions to service documents referenced in the proposed rule. The FAA has reviewed and approved these documents, has added them to the appropriate compliance paragraphs as additional methods of compliance, and has added them to the list of documents that have been incorporated by reference.

Removal of a Service Document

The manufacturer has submitted data which supports removing from the final rule CIR 51A357, Section 72–35–68, Repair-16, which is an HPC inner rear case mid hook Greek Ascoloy weld repair. Currently, the existing AD allows the repair of the HPC inner mid hook using either Greek Ascoloy or Haynes material. Service Bulletin PW4ENG 72–749 replaces both the HPC inner rear case mid hook and inner case rear hook with hooks made of Haynes material. There is evidence that indicates that the best configuration for a SCC HPC inner rear case is to have Haynes material mid and rear hooks. The FAA has reviewed the data, and based on the incorporation of the RCC HPC modules, believes this configuration has low impact on the fleet. Therefore, proposed paragraph (l)(2)(i) has been revised to remove CIR 51A357, Section 72–35–68, Repair-16.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12916 (67 FR 65484, October 25, 2002) and by adding a new airworthiness directive, Amendment 39–13177, to read as follows:

2003–11–18 Pratt & Whitney: Amendment 39–13177. Docket No. 2000–NE–47–AD. Supersedes AD 2002–21–10, Amendment 39–12916.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (w) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent engine takeoff power losses due to high-pressure-compressor (HPC) surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration designator	Description
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back stator (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any Revision of service bulletin (SB) PW4ENG 72–514.

TABLE 1.—ENGINE CONFIGURATION LISTING—Continued

Configuration	Configuration designator	Description
(2) Phase 1 with 1TVCB	B	Same as Configuration A except that HPT 1TVCB has been incorporated using any Revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(4) Phase 3, 1st Run	D	Same as Configuration C except that the engine has not had an HPC overhaul since new, except those engines that are defined as Configuration Designator G.
(5) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any Revision of SBs PW4ENG 72–706, PW4ENG 72–704, or PW4ENG 72–711.
(6) Engines that have passed Testing-21	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (i) or (j) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.
(7) Phase 3, 1st Run Subpopulation Engines. These engines are identified by model and serial numbers (SNs) as follows: PW4152: SN 724942 through SN 724944 inclusive; PW4158: SN 728518 through SN 728533 inclusive; PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062: SN 727732 through SN 728000 inclusive and SN 729001 through SN 729010 inclusive; PW4460, PW4462: SN 733813 through SN 733840 inclusive.	G	Engines that incorporated the Phase 3 configuration and did not incorporate Haynes material HPC inner case rear hook at the time they were originally manufactured, that were built from August 29, 1997 up to the incorporation of the HPC inner rear case with Haynes material rear hook at the original engine manufacturer and have not had an HPC overhaul since new.
(8) Engines from Configuration G that have passed Testing-21.	H	Engines that have successfully passed Testing-21 performed in accordance with paragraph (i) or (j) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration H engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.
(9) Engines installed on Boeing airplanes with a build standard that incorporates a ring case configuration (RCC) rear HPC.	I	Engines that have incorporated PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003, or have been manufactured with an RCC rear HPC.

Configuration E Engines Installed on Boeing 747, 767, and MD–11 Airplanes

(b) For Configuration E engines, do the following:

(1) Before further flight, limit the number of engines with Configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with Configuration E from service before accumulating 1,300 cycles-since-new (CSN) or cycles-since-conversion (CSC) to Configuration E, whichever is later.

Configuration G and H Engines Installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 Airplanes

(c) For Configuration G and H engines installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 airplanes, except as provided in paragraph (b) of this AD:

(1) Before further flight, remove from service engines that exceed the CSN or cycles-since-Testing-21 (CST) limits listed in the following Table 2. Thereafter, ensure that no Configuration G or H engines exceed the HPC CSN or CST limits listed in Table 2 of this AD.

TABLE 2.—CONFIGURATION G AND H LIMITS

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462	A300/310 PW4152 PW4156A PW4158
G	1,700 CSN 600 CST	3,000 CSN 600 CST	2,100 CSN 600 CST	1,350 CSN 600 CST	1,150 CSN 600 CST	2,800 CSN 600 CST
H						

(2) Prior to return to service and installed on Boeing 747 and 767 airplanes, Configuration G and H engines must meet the requirements of paragraph (j) of this AD.

(3) Prior to return to service and installed on Airbus or McDonnell Douglas airplanes, Configuration G or H engines must meet the requirements of paragraph (i) of this AD.

Engines Installed on Boeing 767 and MD–11 Airplanes

(d) For engines installed on Boeing 767 and MD–11 airplanes, except as provided in paragraph (b) and (c) of this AD:

(1) Before further flight, limit the number of engines that exceed the HPC CSN, HPC cycles-since-overhaul (CSO), or HPC CST limits in Table 3 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit in Table 3 of this AD.

(2) Prior to return to service and installed on MD–11 airplanes, engines must meet the requirements of paragraph (i) of this AD.

(3) Prior to return to service and installed on Boeing 767 airplanes, engines must meet the requirements of paragraph (j) of this AD.

Engines Installed on Boeing 747 Airplanes

(e) Except as provided in paragraph (b) and (c) of this AD, before further flight, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of Configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 3 of this AD, to not more than one engine per airplane. Table 3 follows:

TABLE 3.—ENGINE LIMITS FOR BOEING AIRPLANES

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462
A	1,400 CSN or CSO 2,100 CSN or CSO 2,100 CSO 2,600 CSN 750 CSN or CSO 800 CST	3,000 CSN or CSO 4,400 CSN or CSO 4,400 CSO 4,400 CSN 750 CSN or CSO 800 CST	1,600 CSN or CSO 2,800 CSN or CSO 2,800 CSO 3,000 CSN 750 CSN or CSO 800 CST	900 CSN or CSO 2,000 CSN or CSO 2,000 CSO 2,200 CSN 750 CSN or CSO 800 CST	800 CSN or CSO 1,200 CSN or CSO 1,300 CSO 2,000 CSN 750 CSN or CSO 800 CST
B					
C					
D					
E					
F					

(2) The single Configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 3 of this AD, must be limited to 2,600 HPC CSN or CSO for Configuration A, B, or C engines, or 1,300 HPC CSN or CSC to Configuration E, whichever is later, for Configuration E engines.

(3) Remove from service or perform on-wing Testing-21 in accordance with paragraph (j)(3) for Configuration D engines, before accumulating 2,600 CSN.

(4) Remove from service or perform on-wing Testing-21 in accordance with paragraph (j)(3) for Configuration F engines, before accumulating 800 CST.

(5) Prior to return to service and installed on Boeing airplanes, Configuration A, B, C, D, and F engines must meet the requirements of paragraph (j) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(f) For Airbus operators that began operation of their A300 fleet after the effective date of this AD, use paragraphs (f)(1) through (f)(9) to determine which Airbus A300 PW4158 engine category 1, 2, or 3 limits of the following Table 4 of this AD apply to your engine fleet. For Airbus operators that have been in operation before the effective date of this AD, use your PW4158 engine category classification previously determined for your fleet and continue to apply the A300 PW 4158 Category limits in Table 4 of this AD, to your fleet.

TABLE 4.—ENGINE LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 Category 1, and A310 PW4156 and PW4156A	A300 PW4158 Category 2, and A310 PW4152	A300 PW4158 Category 3
A	900 CSN or CSO 2,200 CSN or CSO 2,200 CSO 4,400 CSN Not Applicable 800 CST	1,850 CSN or CSO 4,400 CSN or CSO 4,400 CSO 4,400 CSN Not Applicable 800 CST	500 CSN or CSO 1,600 CSN or CSO 1,600 CSO 4,400 CSN Not Applicable 800 CST
B			
C			
D			
E			
F			

(1) Determine the number of Group 3 takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW 4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (*i.e.* 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. See paragraph (v)(5) of this AD for a definition of a Group 3 takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 takeoff surges determined in paragraph (f)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (f)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (f)(3) of this AD is less than 0.005, go to paragraph (f)(5) of this AD. If the surge rate calculated in paragraph (f)(3) of this AD is greater than or equal to 0.005, go to paragraph (f)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (f)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 4 of this AD. If less than 200,000 cycles, go to paragraph (f)(7) of this AD.

(6) If the surge rate calculated in paragraph (f)(3) of this AD is greater than 0.035, use A300 PW 4158 Category 3 limits of Table 4 of this AD. If less than or equal to 0.035, go to paragraph (f)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that has occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (v)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (f)(7) of this AD, use A300 PW4158 Category 3 limits of Table 4 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is greater than 31%, use A300 PW 4158 Category 3 limits listed in Table 4 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is less than or equal to 31%, use A300 PW 4158 Category 1 limits listed in Table 4 of this AD.

(g) For engines installed on Airbus A300 or A310 airplanes, except as provided in paragraph (c) of this AD, before further flight, limit the number of engines that exceed the

CSN, CSO, or CST limits listed in Table 4 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 4 of this AD. See paragraph (i) of this AD for return to service requirements.

(h) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (f)(6) of this AD, re-evaluate your fleet category within 6 months from the last evaluation, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (v)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is greater than 31%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is less than or equal to 31%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (v)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(2) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than or equal to 21% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is less than 21%, use A300 PW4158 Category 2 limits listed in Table 4 of this AD.

Return to Service Requirements for Engines To Be Installed on Airbus or McDonnell Douglas Airplanes

(i) Engines removed from service in accordance with paragraph (c), (d), or (g) of this AD may be returned to service and installed on Airbus or McDonnell Douglas airplanes under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manuals (EM) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 EM 50A443, 71–00–00, TESTING–21, dated March 15, 2002.

(ii) PW4000 EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002.

(2) Engines tested before the effective date of this AD, in accordance with PW4000 EM 50A443, 71–00–00, Testing-21, dated November 14, 2001; or PW4000 EM 50A822, 71–00–00, TESTING–21, dated November 14, 2001; or PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001; or PW4000 EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001; or PW Internal Engineering Notice (IEN) 96KC973D, dated October 12, 2001, meet the requirements of TESTING–21; or

(3) After passing an on-wing Testing-21 on PW4460 and PW4462 engines installed on the MD–11 airplanes that has been done in accordance with Major IEN 02KCW13H, dated December 9, 2002 or done prior to the approval of Major IEN 02KCW13H, dated December 9, 2002 in accordance with Minor IEN 02KCW13F, dated October 14, 2002 except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(5) The engine HPC has been overhauled, or the engine HPC replaced with an overhauled HPC with zero cycles since overhaul; or

(6) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c), (d), or (g) of this AD are met at the time of engine installation.

Return to Service Requirements for Engines To Be Installed on Boeing 747 or 767 Airplanes

(j) Engines removed from service in accordance with paragraph (c), (d), or (e) of this AD may be returned to service and installed on Boeing airplanes under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with PW4000 EM 50A605, 71–00–00, Testing-21, dated June 15, 2003, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(2) Engines tested before the effective date of this AD, in accordance with PW4000 EM 50A605, 71–00–00, Testing-21, dated March 15, 2002; or PW IEN 96KC973D, dated October 12, 2001; or PW4000 EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001 meet the requirements of Testing-21; or

(3) For PW4056 engines installed on Boeing 747 airplane, after successfully completing on-wing Testing-21 in accordance with Major IEN 02KCW13E, dated November 21, 2002 or if done prior to the approval of Major IEN 02KCW13E dated November 21, 2002 in accordance with Minor IENs 02KCW13, dated October 14, 2002, 02KCW13A, dated October 14, 2002, 02KCW13C, dated July 25, 2002, or 02KCW13D, July 29, 2002 except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c), (d), or (e) of this AD are met at the time of engine installation.

(5) Engine has incorporated the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003. Completing this SB changes the engine configuration to Configuration I.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(k) For Configuration A, B, C, D, E, F, G, and H engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001), AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001), do the following:

(1) Operators complying with the ADs listed in paragraph (k) of this AD using the weight restriction compliance method, must perform Testing-21 in accordance with paragraph (i) or (j) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between "A" flange and "T" flange, does not occur.

(2) If an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method after the effective date of this AD, testing-21 in accordance with paragraph (i) or (j) of this AD is required each time fan blade leading edge recontouring is done, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard For Engines Installed on Airbus and McDonnell Douglas Airplanes

(l) Use the following minimum build standards for engines to be returned to service and installed on Airbus and McDonnell Douglas airplanes:

(1) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or greater than the CSN or CSO of the HPT.

(2) For any engine that undergoes an HPC overhaul after the effective date of this AD:

(i) Inspect the HPC mid hook and rear hook of the HPC inner case for wear in accordance with PW Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check-04, Indexes 8–11, dated December 15, 2002, or March 15, 2002, or September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG 72–714, Revision 1, dated November 8, 2001, or Revision 2, dated February 28, 2003; or Chromalloy Florida Repair Procedure 00 CFL–039–0, dated December 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with PW SB PW4ENG 72–749, dated June 17, 2002, or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair Procedure 02 CFL–024–0, dated September 15, 2002.

(ii) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of PW SB PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG. 72–514.

(3) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

Minimum Build Standard for Engines Installed on Boeing 747 and 767 Airplanes

(m) For engines to be returned to service and installed on Boeing 747 and 767 airplanes, after the effective date of this AD:

(1) Any SCC HPC module that is disassembled to a level that fully separates the HPC rear case assembly at H flange from the HPC module may not be returned to service unless the RCC rear HPC is incorporated in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003. Any SCC HPC module that is not disassembled in accordance with (m)(1), must meet the following minimum build standard:

(i) Do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or more than the CSN or CSO of the HPT.

(ii) Any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard defined by PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72–514.

Stability Testing Requirements for Engines To Be Installed on Airbus or McDonnell Douglas Airplanes

(n) For engines to be installed on Airbus or McDonnell Douglas airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (i) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The engine HPC was overhauled, or replaced with an overhauled HPC with zero cycles since overhaul; or the engine HPC was replaced with an HPC that is new from production with no time in service, or

(2) Engine maintenance intended to maintain the airworthiness of the engine between planned shop visits, that requires separation of a major engine flange located between "A" flange and "T" flange, that results in the engine being reassembled with all gas path-related components remaining in the as-removed condition, or

(3) Engines with an HPC having zero CSN or CSO, or engines that successfully passed Testing-21 with zero CST; and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable Engine Manual.

Stability Testing Requirements for Engines To Be Installed on Boeing 747 or 767 Airplanes

(o) For engines to be installed on Boeing 747 or 767 airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (j) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) Engine HPC has incorporated the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003. Completing this SB changes the engine configuration to Configuration I; or

(2) Engine maintenance intended to maintain the airworthiness of the engine between planned shop visits, that requires separation of a major engine flange located between "A" flange and "T" flange, that results in the engine being reassembled with all gas path-related components remaining in the as-removed condition; or

(3) Engines that successfully passed Testing-21 with zero CST, and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable EM.

Thrust Rating Changes, Installation Changes, and Engine Transfers

(p) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul, use the lowest cyclic limit of Table 3 or Table 4 of this AD, associated with any engine thrust rating change or with any installation change made during this period. See paragraph (v)(2) for definition of HPC overhaul period.

(q) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 4 of this AD that was used or will be used during the affected HPC overhaul period.

(r) When a PW4158 engine operator whose engine fleet changes category in accordance with paragraph (h) of this AD, use the lowest cyclic limits in Table 4 of this AD that were used or will be used during the affected HPC overhaul period.

(s) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (h) of this AD in the direction of lower to higher Table 4 limits, are exempt from the lowest cyclic limit requirement in paragraphs (p), (q), and (r) of this AD.

Engines That Surge

(t) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service before further flight and for engines that will be installed on Airbus or McDonnell Douglas airplanes, perform an HPC overhaul; or for engines that will be installed on Boeing airplanes, incorporate the RRC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For Configuration A, B, C, D, F, G, and H engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (i) or (j) of this AD, as applicable.

(ii) For Configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

(3) Paragraphs (t)(1) and (t)(2) are not applicable to engines that incorporate the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003.

Terminating Action for Boeing Airplanes

(u) For Boeing operators with PW4000 engines installed on Boeing 747 or Boeing 767 airplanes, modify the engine HPC assembly by incorporating the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003 as follows:

(1) For engines installed on Boeing 767 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By May 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the airplane.

(ii) After May 31, 2006, the non-Configuration I engine (SCC HPC module) installed on the airplane must have incorporated the Haynes material in the HPC inner case rear hook during the original engine build or during an HPC overhaul in accordance with PW4ENG 72–714, Revision 1, dated November 8, 2001, or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002, or Revision 1, dated January 8, 2003; or Chromalloy Florida

Repair procedure 00CFL–039–0, dated December 27, 2000.

(2) For engines installed on Boeing 747 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By January 31, 2007 and thereafter, ensure that no more than one non-Configuration I engine is installed on the airplane.

(ii) After January 31, 2007, the non-Configuration I engine installed on the airplane must have incorporated the Haynes-material in the HPC inner case rear hook during the original build or during an HPC overhaul in accordance with SB PW4ENG 72–714, dated June 27, 2000, or Revision 1, dated November 8, 2001, or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002, or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(3) Prior to June 30, 2009 or whenever the HPC module is disassembled to a level that fully separates the HPC rear case assembly at H flange from the HPC module, whichever occurs first, incorporate the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003. Engines incorporating the RCC rear HPC are Configuration I engines. See paragraph (v)(7) for definition of HPC rear case assembly.

(4) Incorporation of the RCC rear HPC constitutes terminating action to the Testing-21 requirements as specified in paragraph (o) of this AD, and engine stagger limit requirements as specified in paragraphs (c), (d), and (e) of this AD for engines installed on Boeing airplanes.

Note 2: Terminating action to this AD for engines installed on Airbus and McDonnell Douglas airplanes is pending RCC rear HPC certification to 14 CFR part 25. Once approved, this AD will be superseded to add terminating action requirements for the Airbus and McDonnell Douglas fleets.

Definitions

(v) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (–3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a "CN" suffix after the engine serial number if the engine was converted using PW SBs PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms that usually occur in combination during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after completing airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud "bang(s)."

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (see Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25–0.30 Mn, using an aircraft automatic data recording system.

(7) HPC rear case assembly is defined as the HPC rear case with heat shields and other minor detail parts installed within the HPC rear case, but not including the HPC rear segmented stators.

Alternative Methods of Compliance

(w) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Special Flight Permits and Testing-21 Reports

(x) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done. Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) and on-wing Testing-21 to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to *9-ane-surge-ad-reporting@faa.gov*. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test or on-wing Testing-21, as applicable.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Documents That Have Been Incorporated By Reference

(y) The actions must be done in accordance with the following Pratt and Whitney (PW) service bulletin (SB), Internal Engineering Notice (IEN), Temporary Revisions, (TR's), Clean, Inspection, and Repair Manual (CIR) repair procedures, engine manual (EM) sections, and Chromalloy Florida Repair Procedure:

Document No.	Pages	Revision	Date
PW SB PW4ENG72–714	1–2	1	Nov. 8, 2001.
	3	Original	Jun. 27, 2000.
	4	1	Nov. 8, 2001.
	5–12	Original	Jun. 27, 2000.
Total pages: 12			
PW SB PW4ENG72–714	All	2	Feb. 28, 2003.
Total pages: 14			
PW SB PW4ENG72–749	All	Original	Jun. 17, 2002.
Total pages: 14			
PW SB PW4ENG72–749	1	1	Jan. 8, 2003.
	2–4	Original	Jun. 17, 2002.
	5–7	1	Jan. 8, 2003.
	8	Original	Jun. 17, 2002.
	9–10	1	Jan. 8, 2003.

Document No.	Pages	Revision	Date
	11	Original	Jun. 17, 2002.
	12–14	1	Jan. 8, 2003.
Total pages: 14			
PW SB PW4ENG72–755	1	2	May 23, 2003.
	2–37	1	Apr. 8, 2003.
	38–39	2	May 23, 2003.
	40–54	1	Apr. 8, 2003.
	55	2	May 23, 2003.
	56–152	1	Apr. 8, 2003.
	153	2	May 23, 2003.
	154–166	1	Apr. 8, 2003.
	167–171	2	May 23, 2003.
	172–179	1	Apr. 8, 2003.
	180–183	2	May 23, 2003.
	184–195	1	Apr. 8, 2003.
	196	2	May 23, 2003.
	197–233	1	Apr. 8, 2003.
	234	2	May 23, 2003.
	235–287	1	Apr. 8, 2003.
Total pages: 287			
PW IEN 96KC973D	All	Original	Oct. 12, 2001.
Total pages: 19			
PW TR 71–0018	All	Original	Nov. 14, 2001.
Total pages: 24			
PW TR 71–0026	All	Original	Nov. 14, 2001.
Total pages: 24			
PW TR 71–0035	All	Original	Nov. 14, 2001.
Total pages: 24			
PW CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11.	All	Original	Sep. 15, 2001.
Total pages: 5			
PW CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11.	All	N/A	Mar. 15, 2002.
Total pages: 5			
PW CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11.	All	N/A	Dec. 15, 2002.
Total pages: 10			
PW4000 EM 50A443, 71–00–00, TESTING–21	All	Original	Mar. 15, 2002.
Total pages: 20			
PW4000 EM 50A605, 71–00–00, TESTING–21	All	Original	Mar. 15, 2002.
Total pages: 20			
PW4000 EM 50A605, 71–00–00, TESTING–21	1–7	Original	Mar. 15, 2002.
	8–25	N/A	Jun. 15, 2003.
Total pages: 25			
PW4000 EM 50A822, 71–00–00, TESTING–21	All	Original	Mar. 15, 2002.
Total pages: 20			
Chromalloy Florida Repair Procedure, 00 CFL–039–0			
Summary	1–3	Original	Dec. 27, 2000.
Insp/chk-01	801	Original	Dec. 27, 2000.
Repair-01	901–903	Original	Dec. 27, 2000.
Total pages: 7			
Chromalloy Florida Repair Procedure, 02 CFL–024–0			
Summary	1–5	Original	Sep. 15, 2002.
Inspection	801–802	Original	Sep. 15, 2002.
Repair	901–906	Original	Sep. 15, 2002.
Total pages: 13			

The incorporation by reference of IEN 96KC973D, dated October 12, 2001; TR 71–0018, TR 71–0026, and TR 71–0035, all dated November 14, 2001; and CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001 was approved by the Director of the Federal Register as of January 17, 2002 (67 FR 1, January 2, 2002). The incorporation by reference of SB PW4ENG 72–714, Revision 1, dated November 8, 2001, SB PW4ENG 72–749, dated June 17, 2002; EM 50A443, Section 71–00–00, Testing-21, EM 50A822, Section 71–00–00, Testing-21, EM 50A605, and Section 71–00–00, Testing-21, all dated March 15, 2002; Chromalloy Florida Repair Procedure, 00 CFL–039–0, dated December 27, 2000; and Chromalloy Florida Repair Procedure, 02 CFL–024–0, dated September 15, 2002; was approved by the Director of the Federal Register as of November 12, 2002 (67 FR 65484, October 25, 2002). The incorporation by reference of SB PW4ENG 72–714, Revision 2, February 28, 2003, SB PW4ENG 72–755, Revision 2, dated May 23, 2003; SB PW4ENG 72–749, Revision 1, dated January 8, 2003; SB PW4ENG 72–714, Revision 2, dated February 28, 2003; CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated March 15, 2002; and dated December 15, 2002; and EM 50A605, Section 71–00–00, Testing-21, dated June 15, 2003, was approved by the Director of the Federal Register on June 23, 2003, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. PW document copies may be obtained from Pratt and Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600; fax (860) 565–4503. Chromalloy Florida document copies may be obtained from Chromalloy Florida, 630 Anchors St., NW., Walton Beach, FL 32548; telephone (850) 244–7684; fax (850) 244–6322. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(z) This amendment becomes effective on July 7, 2003.

Issued in Burlington, Massachusetts, on May 28, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–13782 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–12–AD; Amendment 39–13168; AD 2003–11–09]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Turmo IV A and IV C Series Turboshaft Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–11–09 applicable to Turbomeca Turmo IV A and IV C series turboshaft engines that was published in the **Federal Register** on May 29, 2003 (68 FR 31970). The engine model in the regulatory section, under applicability, is incorrect. This document corrects that model. In all other respects, the original document remains the same.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 03–13115 applicable to Turbomeca Turmo IV A and IV C series turboshaft engines, was published in the **Federal Register** on May 29, 2003 (68 FR 31970). The following correction is needed:

§ 39.13 [Corrected]

■ On page 31970, in the third column, in the regulatory section, under applicability, in the first paragraph, in the fifth line, "FA 330–PUMA" is corrected to read "SA 330–PUMA".

Issued in Burlington, MA, on June 2, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14275 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–311–AD; Amendment 39–13179; AD 2003–11–20]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that currently requires repetitive lubrication of the slide shaft of the input plunger of the brake control valve assembly. This amendment adds requirements for modifying the brake control valve assembly, which terminates the repetitive lubrications required by the existing AD. This amendment also adds subsequent repetitive lubrications of the valve utilizing the grease fittings installed during the modification. This amendment is prompted by reports of temporary loss of braking action upon landing. The actions specified by this AD are intended to prevent temporary loss of braking action due to the freezing of moisture on the input plunger of the brake control valve during steep descent.

DATES: Effective July 11, 2003.

The incorporation by reference of Bombardier Service Bulletin 601R–32–017, dated November 9, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of July 11, 2003.

The incorporation by reference of Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 4, 1994 (59 FR 2952, January 20, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office (ACO), 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–21–04, amendment 39–8801 (59 FR 2952, January 20, 1994), which is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100) series airplanes, was published in the **Federal Register** on January 13, 2003 (68 FR 1566). The action proposed to require repetitive lubrication of the slide shaft of the input plunger of the brake control valve assembly; modification of the brake control valve assembly, which would terminate the repetitive lubrications required by the existing AD; and subsequent repetitive lubrications of the valve utilizing the grease fittings that are installed during the modification.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Identification of Regional Jet Series 100

One commenter requests that the proposed AD be revised to either remove the reference to "Regional Jet Series 100" in association with the affected airplanes throughout the document or add a reference to series 440 airplanes. The commenter explains that the proposed AD applies to Model CL–600–2B19 airplanes. The type certificate data sheet (TCDS) identifies the affected airplane model as "CL–600–2B19 (Regional Jet Series 100 & 440)." The commenter suggests that the references to this airplane model should be revised to reflect both the 100 and 440 series.

The FAA concurs with the request. After the proposed AD was issued, the TCDS was revised to incorporate this change. The final rule has been revised accordingly to correctly identify the affected airplanes where appropriate.

Request To Incorporate AD Actions Into the Maintenance Program

Paragraph (c) of the proposed AD proposed to require repetitive lubrication of the brake control valve in accordance with Bombardier Service Bulletin 601R–32–017. One commenter requests that the proposed AD be revised to instead require incorporation of the lubrication task (task 32–43–06–05 of the CL–600–2B19 Maintenance Requirements Manual (MRM)) into the approved maintenance program. The commenter asserts that the lubrication task, if incorporated into the MRM, would be considered a routine task subject to normal maintenance program development and escalation. The commenter adds that incorporating the task into the MRM would terminate the repetitive lubrication requirements specified in the proposed AD.

The FAA does not concur with the request. An AD's requirements are mandated for all affected airplanes, but the applicable section of the MRM (Part 1, CSP A–053) is not approved by the FAA (although it is "accepted"). Consequently, the FAA does not control revisions to Part 1 of the MRM. If a task were to be subsequently altered or deleted, the intent of the AD would then become nullified. However, under the provisions of 14 CFR 39.19 and paragraph (d)(1) of this AD, an operator may request approval of an alternative method of compliance (AMOC) to allow use of a particular task card for this AD. However, the AMOC granted would require adherence to a particular revision of the task card; use of any subsequent revisions would require a new AMOC request and approval to enable the cognizant ACO to determine that the intent of the AD requirement has not been altered. No change to the final rule is necessary regarding this issue.

Clarification of Requirements

Certain portions of the preamble and paragraph (b) of this final rule have been revised to clarify that the modification includes applying grease to the grease fittings that are installed during the modification.

The repetitive lubrication interval was clarified in paragraph (c) of this final rule. Whereas the proposed AD specified that the lubrication be done "at intervals of 1,500 flight hours," this final rule will require that the lubrication be done "at intervals not to exceed 1,500 flight hours."

Paragraph (d)(2) has been revised in this final rule to clarify that AMOCs approved previously in accordance with AD 93–21–04 are approved as alternative methods of compliance with paragraph (a) of this AD only.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, the office authorized to approve AMOCs is identified in paragraph (d)(1) of this AD.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry are affected by AD 93–21–04. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

Approximately 194 airplanes of U.S. registry will be affected by this AD.

The modification required by this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,812 per airplane. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $786,088, or $4,052 per airplane.

The lubrication of the brake control valve required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $11,640, or $60 per airplane, per lubrication.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8801 (59 FR 2952, January 20, 1994), and by adding a new airworthiness directive (AD), amendment 39–13179, to read as follows:

2003–11–20 Bombardier, Inc. (Formerly Canadair): Amendment 39–13179. Docket 2000–NM–311–AD. Supersedes AD 93–21–04, Amendment 39–8801.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent temporary loss of braking action due to the freezing of moisture on the input plunger of the brake control valve during steep descent, accomplish the following:

Requirements of AD 93–21–04

Lubrications

(a) Within 3 days after February 4, 1994 (the effective date of AD 93–21–04, amendment 39–8801), and thereafter at intervals not to exceed 3 days, lubricate, with grease, the sliding shaft of the input plunger of the brake control valve assembly, per Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993, until modification of the brake control valve, as required by paragraph (b) of this AD, is accomplished.

New Actions Required by This AD

Modification

(b) Within 12 months after the effective date of this AD: Modify the brake control valve assembly by accomplishing all the actions (including the application of grease to the grease fittings) specified in Bombardier Service Bulletin 601R–32–017, dated November 9, 1993, per the service bulletin. Such modification terminates the repetitive lubrications of the sliding shaft of the input plunger of the brake control valve assembly required by paragraph (a) of this AD.

Repetitive Lubrications

(c) Within 1,500 flight hours after doing the modification required by paragraph (b) of this AD, and thereafter at intervals not to exceed 1,500 flight hours, lubricate with grease the brake control valve per paragraph 2.B.(18) of the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–017, dated November 9, 1993.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 93–21–04, amendment 39–8801, are approved as alternative methods of compliance with paragraph (a) of this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993; and Bombardier Service Bulletin 601R–32–017, dated November 9, 1993; as applicable.

(1) The incorporation by reference of Bombardier Service Bulletin 601R–32–017, dated November 9, 1993, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Canadair Regional Jet Alert Service Bulletin S.B.A601R–32–016, dated October 14, 1993, was approved previously by the Director of the Federal Register as of February 4, 1994 (59 FR 2952, January 20, 1994).

(3) Copies of these service bulletins may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office (ACO), 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–93–26R2, dated January 18, 1994.

Effective Date

(f) This amendment becomes effective on July 11, 2003.

Issued in Renton, Washington, on May 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13975 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Acepromazine Maleate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the use of acepromazine maleate injectable solution in dogs, cats, and horses as a tranquilizer.

DATES: This rule is effective June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed ANADA 200–319 that provides for use of Acepromazine Maleate (acepromazine maleate) Injection as a tranquilizer. Phoenix Scientific's Acepromazine Maleate Injection is approved as a generic copy of Fort Dodge Animal Health's PROMACE Injectable approved under NADA 015–030. The ANADA is approved as of March 25, 2003, and the regulations are amended in 21 CFR 522.23 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.23 [Amended]

■ 2. Section 522.23 *Acepromazine maleate injection* is amended in paragraph (b), introductory text, by removing "No. 000856" and by adding in its place "Nos. 000856 and 059130".

Dated: May 27, 2003.

Steven F. Sundlof,

Center for Veterinary Medicine.

[FR Doc. 03–14348 Filed 6–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9060]

RIN 1545–BB91

Disclosure of Return Information to the Department of Agriculture

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that incorporate and clarify the phrase "return information reflected on returns" in conformance with the terms of section 6103(j)(5) of the Internal Revenue Code (Code). These temporary regulations also remove certain items of return information that the IRS currently discloses, but the Department of Agriculture no longer needs, for conducting the census of agriculture. The text of the temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective on June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Irwin at (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations incorporate the phrase "return information reflected on returns" into § 301.6103(j)(5)–1 in conformance with the statutory language that describes the type of return information that the IRS may disclose to the Department of Agriculture under section 6103(j)(5) of the Code. These temporary regulations are consistent with a recent clarification of the same phrase (*i.e.*, return information reflected on returns) in § 301.6103(j)(1)–1, involving the disclosure of return information to the Bureau of the Census. *See* 68 FR 2691.

Also, currently § 301.6103(j)(5)–1 provides an itemized description of the return information authorized for disclosure in conjunction with the census of agriculture. These temporary regulations remove certain items of return information currently listed in § 301.6103(j)(5)–1 that the Department of Agriculture no longer needs in conjunction with the census of agriculture.

Explanation of Provisions

These temporary regulations adopt the phrase "return information reflected on returns" in lieu of the phrase "return information" that currently appears in § 301.6103(j)(5)–1. (The phrase "return information reflected on returns" encompasses the phrase "return information reflected thereon" in section 6103(j)(5) of the Code.) These temporary regulations clarify the phrase "return information reflected on returns" by explaining that the phrase includes, but is not limited to, information on returns, information derived from processing such returns, and information derived from other sources for the purposes of establishing and maintaining taxpayer information relating to returns. The phrase includes information derived from returns, monthly corrections of, and additions to, taxpayer information contained in IRS databases (*e.g.*, taxpayer address and name changes) that are obtained from other sources, and computer codes the IRS derives from returns and/or tax forms and integrates within taxpayer data bases.

On March 4, 2003 and March 17, 2003, the Department of Agriculture's National Agriculture Statistics Service (NASS) notified the IRS that certain items of return information that are currently listed in § 301.6103(j)(5)–1 are no longer needed in conjunction with the census of agriculture. Specifically, the Department of Agriculture no longer needs the following items currently extracted from IRS forms: (1) From Form 1040, Schedule F (Profit or Loss from Farming): sales of livestock and produce raised; (2) From Form 1120 series: Parent corporation Employer Identification Number, and related Name and Principal Business Activity (PBA) code for entities with agricultural activity; and (3) From Form 851 (Affiliations Schedule): subsidiary taxpayer identity information, annual accounting period, subsidiary PBA code, parent taxpayer identity information, parent PBA code, Master File Tax Code, Document Locator Number, and cycle posted. As a result, these items of return information currently listed in § 301.6103(j)(5)–1 will be removed by this document.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, the IRS will submit this Treasury decision to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Christine Irwin, Office of the Associate Chief Counsel, Procedure & Administration (Disclosure & Privacy Law Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART PART 301—PROCEDURE AND ADMINISTRATION

■ **1.** The authority citation for part 301 is amended by removing the entry for "Section 301.6103(j)(5)–1" and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ Section 301.6103(j)(5)–1T also issued under 26 U.S.C. 6103(j)(5). * * *

§ 301.6103(j)(5)–1 [Removed]

■ **2.** Section 301.6103(j)(5)–1 is removed.

■ **3.** Section 301.6103(j)(5)–1T is added to read as follows:

§ 301.6103(j)(5)–1T Disclosures of return information reflected on returns to officers and employees of the Department of Agriculture for conducting the census of agriculture (temporary).

(a) *General rule.* Pursuant to the provisions of section 6103(j)(5) of the Internal Revenue Code and subject to the requirements of paragraph (c) of this section, officers or employees of the Internal Revenue Service will disclose return information reflected on returns to officers and employees of the Department of Agriculture to the extent, and for such purposes, as may be provided by paragraph (b) of this section. "Return information reflected on returns" includes, but is not limited to, information on returns, information derived from processing such returns, and information derived from other sources for the purposes of establishing

and maintaining taxpayer information relating to returns.

(b) *Disclosure of return information reflected on returns to officers and employees of the Department of Agriculture.* (1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns in this paragraph (b) for individuals, partnerships and corporations with agricultural activity, as determined generally by industry code classification or the filing of returns for such activity, to officers and employees of the Department of Agriculture for purposes of, but only to the extent necessary in, structuring, preparing, and conducting, as authorized by chapter 55 of title 7, United States Code, the census of agriculture.

(2) From Form 1040 (Schedule F)—
(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Internal Revenue Code);
(ii) Spouse's Social Security Number;
(iii) Annual accounting period;
(iv) Principal Business Activity (PBA) code;
(v) Taxable cooperative distributions;
(vi) Income from custom hire and machine work;
(vii) Gross income;
(viii) Master File Tax (MFT) code;
(ix) Document Locator Number (DLN);
(x) Cycle posted;
(xi) Final return indicator;
(xii) Part year return indicator; and
(xiii) Taxpayer telephone number.

(3) From Form 943—
(i) Taxpayer identity information;
(ii) Annual accounting period;
(iii) Total wages subject to Medicare taxes;
(iv) MFT code;
(v) DLN;
(vi) Cycle posted;
(vii) Final return indicator; and
(viii) Part year return indicator.

(4) From Form 1120 series—
(i) Taxpayer identity information;
(ii) Annual accounting period;
(iii) Gross receipts less returns and allowances;
(iv) PBA code;
(v) MFT Code;
(vi) DLN;
(vii) Cycle posted;
(viii) Final return indicator;
(ix) Part year return indicator; and
(x) Consolidated return indicator.

(5) From Form 1065 series—
(i) Taxpayer identity information;
(ii) Annual accounting period;
(iii) PBA code;
(iv) Gross receipts less returns and allowances;
(v) Net farm profit (loss);
(vi) MFT code;
(vii) DLN;
(viii) Cycle posted;
(ix) Final return indicator; and
(x) Part year return indicator.

(c) *Procedures and Restrictions.* (1) Disclosure of return information reflected on returns by officers or employees of the Internal Revenue Service as provided by paragraph (b) of this section will be made only upon written request designating, by name and title, the officers and employees of the Department of Agriculture to whom such disclosure is authorized, to the Commissioner of Internal Revenue by the Secretary of Agriculture and describing—

(i) The particular return information reflected on returns for disclosure;

(ii) The taxable period or date to which such return information reflected on returns relates; and

(iii) The particular purpose for the requested return information reflected on returns.

(2)(i) No such officer or employee to whom the Internal Revenue Service discloses return information reflected on returns pursuant to the provisions of paragraph (b) of this section shall disclose such information to any person, other than the taxpayer to whom such return information reflected on returns relates or other officers or employees of the Department of Agriculture whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(ii) If the Internal Revenue Service determines that the Department of Agriculture, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Internal Revenue Code or regulations or published procedures thereunder, the Internal Revenue Service may take such actions as are deemed necessary to ensure that such requirements are or shall be satisfied, including suspension of disclosures of return information reflected on returns otherwise authorized by section 6103(j)(5) and paragraph (b) of this section, until the Internal Revenue Service determines that such requirements have been or will be satisfied.

(d) *Effective date.* This section is applicable on June 6, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: May 12, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–14205 Filed 6–5–03; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Hazardous Materials: Domestic Mail Manual Revisions for Division 6.2 Infectious Substances and Other Related Changes

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts revisions to the mailing standards in *Domestic Mail Manual* (DMM) C023 related to the requirements and packaging standards for mailable types of Division 6.2 infectious substances. These DMM revisions adopt many of the regulatory and packaging changes for infectious substances that the U.S. Department of Transportation (DOT) made to Title 49 Code of Federal Regulations (49 CFR) in the **Federal Register** final rule published on August 14, 2002 (67 FR 53117–53144) and the subsequent change published on August 27, 2002 (67 FR 54967). As adopted by the Postal Service, these DMM revisions will provide a greater level of safety for handling and transporting mailable infectious substances in the mailstream. These changes will also facilitate domestic and international air transportation by aligning the Postal Service mailing standards with the current international standards for the transport of hazardous materials.

Other minor changes and clarifications are also adopted to the hazardous materials mailing standards in DMM C021, C023, C024, C050, and F010 to improve clarity and reduce misunderstandings; to ensure the packaging integrity of mailable hazardous materials during Postal Service handling; and to provide a greater level of safety for Postal Service employees and the public.

EFFECTIVE DATE: June 12, 2003. However, mailers using a business reply mail format for diagnostic (clinical) specimen mailpieces or a merchandise return service format for sharps waste or regulated medical waste mailpieces, are provided with a phase-in period through January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jane Stefaniak (703) 292–3548, Mailing Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: On December 19, 2002, the Postal Service published a proposed rule in the **Federal Register** (67 FR 77726–77737) that proposed revisions to the standards in DMM C023 for mailing Division 6.2 infectious substances. The proposal was initiated to align the Postal Service standards with the DOT Federal regulations in 49 CFR and to make other minor changes and clarifications to the related mailing standards in DMM C021, C023, C024, C050, and F010.

Part A of this document provides background information on why the Postal Service needs to adopt these changes. Part B identifies and responds to the comments received by the Postal Service on the proposed rule. Part C summarizes the changes adopted by the Postal Service in this final rule. The actual changes to the DMM appear at the end of this final rule.

Part A—Background Information

The carriage of U.S. mail by the United States Postal Service (Postal Service) is regulated by Title 39 Code of Federal Regulations (39 CFR). Unlike commercial carriers, the Postal Service is not subject to the Federal regulations of the U.S. Department of Transportation (DOT) in Title 49 Code of Federal Regulations (49 CFR). The Postal Service is, however, subject to the legal restrictions in Title 18 United States Code 1716 (18 U.S.C. 1716) which prohibits the mailing of * * * "all disease germs, or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property"* * * if that matter is outwardly or of its own force dangerous to life, health, or property. Accordingly, for legal and safety reasons, the mailing standards for hazardous materials in the Domestic Mail Manual (DMM) not only closely adhere to the DOT regulations in 49 CFR, but also include many additional limitations and prohibitions.

In many instances, the Postal Service standards are more restrictive than the DOT requirements that apply to shipments being transported in domestic commerce. As an example, commercial shippers are permitted under the DOT regulations in 49 CFR to send certain types of flammable materials via air transportation. In contrast, the Postal Service prohibits the mailing of all flammable materials via air transportation.

Under Postal Service mailing standards, most hazardous materials are nonmailable. With few exceptions, the Postal Service generally limits the mailing of hazardous materials to only those materials that can be reclassified as an ORM–D material under the DOT Federal regulations in 49 CFR 173.144 and that can be renamed with the proper shipping name of "Consumer Commodity." Additionally, mailable hazardous materials must meet the Postal Service quantity and packaging requirements, which in many instances are more restrictive than the DOT requirements in 49 CFR. Of all regulated hazardous materials, ORM–D materials present the lowest level of risk during handling and transportation.

Over the past few years, the Postal Service has encountered increasing difficulties with the commercial carriers who are contracted to provide air transportation services for the carriage of U.S. mail. Many carriers have refused to transport mailpieces containing mailable hazardous materials. In some instances, an air carrier has established a corporate policy not to carry hazardous materials. In other cases, an air carrier has refused to carry a specific type of hazardous material (*e.g.*, diagnostic specimens) because Postal Service packaging standards, which met Federal standards, did not meet the international standards followed by the air carrier industry.

To ensure an acceptable level of safety and to facilitate domestic and international transportation, the Postal Service is adopting some of the regulatory and packaging changes for Division 6.2 infectious substances that DOT adopted as revisions to 49 CFR in the **Federal Register** (67 FR 53117–53144 and 67 FR 54967). The DOT changes are consistent with the current international standards found in the *Technical Instructions for the Safe Transport of Dangerous Goods* published by the International Civil Aviation Organization (ICAO).

It should also be noted that many of the DOT Federal regulations in 49 CFR involve requirements for the transport of hazardous materials that have moderate, high, or very high risk levels and that are shipped in very large quantities (exceeding 70 pounds in weight). Such hazardous materials are not permitted in the U.S. mail due to the legal restrictions in 18 U.S.C. 1716, concerns for employee and public safety, and Postal Service size and weight limitations. Accordingly, the Postal Service is adopting only the DOT regulations for Division 6.2 infectious substances that apply to materials that can be safely handled in the U.S. mail. As an example, the Postal Service will not adopt the new DOT bulk packaging options for regulated medical waste because under DOT regulations in 49 CFR, a bulk packaging is defined as a receptacle that has a capacity greater than 450L (119 gallons) for liquid materials or a net mass greater than 400 kg (882 pounds) for solid materials. As established by law, the maximum size and weight limits per mailpiece are 70 pounds and 108 inches in combined length and girth (130 inches for Parcel Post). A bulk packaging receptacle as defined by DOT is nonmailable in the U.S. mail because it exceeds the maximum size and weight limits for mailing and it also would pose an unacceptable risk level during Postal Service transport and handling.

Part B—Comments on the Proposed Rule

On December 19, 2002, the Postal Service published a proposed rule in the **Federal Register** (67 FR 77726–77737) that provided information on the revisions to the mailing standards in the DMM that the Postal Service proposed to adopt. The Postal Service solicited comments on the proposed rule from members of the general public and responses were received from nine parties. The parties represented: four authorized sharps mailers; three commercial medical laboratories that process diagnostic (clinical) specimens received through the mail; one institute comprised of two separate trade associations that represented members involved in private waste services and manufacturing businesses; and one law firm representing a group of manufacturers of healthcare products.

The comments received generally fell into one of the following four categories: comments on the proposed effective date; comments on the proposed rules for diagnostic (clinical) specimens; comments on the proposed rules for mailable types of regulated medical waste and sharps waste; and comments in support of the Postal Service proposed rule. A summary of the comments grouped by category is detailed in items 1 through 4.

1. Comments Related to the Effective Date of the Final Rule

Four commenters, including three of the sharps mailers and the institute, opposed the Postal Service proposal of an effective date of April 30, 2003. Two of the sharps mailers requested an effective date of six months after the date of the final rule, while the other two commenters requested an effective date of one year after the date of the final rule. All commenters felt that a

delayed effective date was needed to allow them and their clients a sufficient amount of time in which to use up preexisting packaging that is already in circulation. The Postal Service agrees that a phase-in period is needed and in this final rule has adopted an effective date of June 12, 2003, with a phase-in period through January 1, 2004. This phase-in period will allow for mailer implementation of the new packaging requirements for diagnostic (clinical) specimen mailpieces using a business reply mail format and regulated medical waste or sharps waste mailpieces using a merchandise return service format.

2. Comments Related to the Proposed Changes Affecting Diagnostic (Clinical) Specimens

Four commenters, including the three medical laboratories and the law firm, submitted comments related to the proposed requirements for clinical specimens.

Two of the medical labs and the law firm all maintained that the Postal Service proposal to require placement of the biohazard symbol on the primary container of a Risk Group 1, 2 or 3 diagnostic (clinical) specimen was impractical. They noted that mailers would incur added costs to place the symbol on the primary container. One commenter also noted that under the Federal requirements issued by the U.S. Department of Occupational Health and Safety Administration (OSHA), the biohazard symbol is required to appear on the secondary container. For these reasons, in this final rule the Postal Service has changed the placement requirement for the biohazard symbol on Risk Group 1, 2, and 3 specimens. For mailable types of Risk Group 1, 2, and 3 specimens, the biohazard symbol is required to appear on the secondary packaging, except in the instance where the secondary packaging also serves as the outer shipping container for a Risk Group 1 specimen. In that instance, then the biohazard symbol must appear on the inner packaging or on the primary container. The biohazard symbol must not appear on the outer shipping container of a mailable Risk Group 1, 2, or 3 specimen.

One of the medical labs opposed the Postal Service proposal to include diagnostic (clinical) specimens in the description of Division 6.2 materials in DMM C023.8.1 because they felt it could be confusing to most mailers. The text in DMM C023.8.1 is intended to generally identify the items that are described under the category of Division 6.2, some of which are regulated as infectious substances, and some of which are not. The definition of a Division 6.2 material (infectious substance) is defined in DMM C023.8.2a, and that definition very closely mirrors the definition adopted by DOT in 49 CFR. The Postal Service does not feel that the general explanation in DMM C023.8.1 is confusing or misleading, but has made some minor changes to the text in the final rule for the purpose of clarity.

The same medical lab also asked whether it was the intent of the Postal Service to mirror the risk group classifications adopted by DOT. The answer is yes. The Postal Service believes this intent was clearly stated in the proposed rule, and it is also restated in Part C of this final rule. This commenter also asked whether the Postal Service classified all diagnostic (clinical) specimens collected for insurance purposes or through drug testing programs as Risk Group 1 materials. The Postal Service cannot make such a determination. In the proposed rule and in this final rule, the Postal Service has placed the responsibility for the proper determination of the Risk Group on the sender (*i.e.* generally the health care professional or individual who collects the specimen) as stated in DMM C023.8.2f. The Postal Service position on this point is in alignment with the stance DOT adopted in 49 CFR. The Postal Service suggests that packaging distributors include information to inform the collector of the specimen that the packaging may only be used to send Risk Group 1 specimens and that different packaging with stricter requirements must be used to send Risk Group 2, 3, or 4 specimens.

Another one of the medical labs that provided comments requested that the Postal Service clarify what materials are acceptable for a primary and secondary container holding a dry specimen. They also asked the Postal Service to clarify what would constitute a "securely sealed" primary receptacle in DMM C023.8.10b. Unlike the DOT regulations, the Postal Service proposed packaging requirements for dry clinical specimens since these types of specimens are routinely sent through the U.S. mail. Dry specimens often include materials such as saliva swabs, dried blood spots, and fecal smears. In the final rule, the Postal Service has made a few minor changes to the text for packaging a dry specimen in order to clarify the requirements. The Postal Service believes these changes are sufficient.

3. Comments Related to the Proposed Changes Affecting Regulated Medical Waste and Sharps Waste

Five parties, including the four sharps mailers and the institute, submitted comments related to the proposed changes affecting the mailing of regulated medical waste and sharps waste. For Postal Service purposes, regulated medical waste is defined in DMM C023.8.2e and sharps waste is defined in DMM C023.8.2g.

All four sharps mailers opposed the Postal Service proposal to limit the capacity of a sharps primary receptacle to a maximum of 3 gallons. Two commenters requested a limit of 5 gallons, one requested a limit of 11 gallons, and the other specified no maximum limit. Over the past few years, the Postal Service has experienced instances in which mailpieces containing sharps waste and having a 5-gallon primary receptacle have been found broken open in the mailstream. Although the number of incidents is small, the Postal Service believes that when properly designed and packaged prior to mailing, no approved sharps container should break open while in the mailstream. It was for this reason, and to ensure the safety of postal employees who handle these mailpieces, that the Postal Service proposed the new design requirement. The Postal Service does not agree with the commenters that a primary receptacle used to collect sharps (and designed for return via the U.S. mail) needs to be larger than 3 gallons in capacity. Most sharps container systems previously approved by the Postal Service have a primary receptacle with a capacity of less than 1 gallon. Primary receptacles having a capacity of 3 gallons or greater are not generally used to collect sharps waste for mail-back purposes, rather they are used to collect other types of nonsharps waste. Accordingly, the Postal Service will adopt a 3-gallon limit for a primary receptacle used to collect sharps waste as defined in DMM C023.8.2g and a 5-gallon limit for a primary receptacle used to collect regulated medical waste as defined in DMM C023.8.2e.

One sharps mailer opposed the Postal Service proposal to change the requirements for the secondary container for regulated medical waste and sharps waste packaging systems. The same sharps mailer also opposed the Postal Service proposal to prohibit easy-fold bottoms on outer shipping containers if they are not reinforced with a water-resistant tape. The commenter felt that the previous Postal Service requirement which allowed a secondary container to consist of a 3 mil plastic bag with a reinforced fiberboard sleeve (open on the top and bottom) was sufficient. They also felt that requiring a reinforced bottom on the outer shipping container was unnecessary and would increase their production costs. The Postal Service feels these changes are necessary for safety reasons. At least two incidents have occurred in which the bottom of an auto-fold style outer shipping container gave way during postal handling causing the bagged primary receptacle to slide out of the reinforced sleeve and through the bottom of the outer shipping container. In this situation, the only level of protection from the primary container was the 3 mil plastic bag, which increased the safety risk to postal employees. For this reason, the Postal Service adopts the packaging change for regulated medical waste and sharps waste mailpieces that requires the secondary container be completely enclosed in a watertight container or containment system. The secondary container may consist of more than one component. If one of the components is a plastic bag, it must be at least 3 mil thick and be used in conjunction with a strong and securely sealed fiberboard box. A plastic bag by itself will not meet the requirement for a secondary container. The Postal Service also adopts the packaging change for regulated medical waste and sharps waste mailpieces to require that the bottom of the outer shipping container and all joints and flaps be securely taped, glued, or stitched to maintain the integrity of the container. When tape or glue is used to secure an outer shipping container, the material must be water-resistant.

One sharps mailer and the institute commented that the Postal Service proposed definition of "regulated medical waste" should also include sharps. Both felt that the Postal Service should not maintain a separate category for sharps waste since DOT had no such distinction. One commenter further stated that if sharps waste were included in the definition of regulated medical waste, then the Postal Service would only need one set of packaging requirements and mailers would not have to use different marking requirements for mailpieces containing regulated medical waste and sharps waste. The Postal Service does not agree with those arguments. Since the Postal Service began allowing medical waste in the mail more than ten years ago, there has been, and continues to be, a great deal of concern involving the potential dangers associated with sharps waste should package failure occur during postal handling. The Postal Service has experienced a few instances in which a used syringe was found protruding from a sharps waste mailpiece that was not properly packaged prior to mailing. For this reason, the Postal Service will continue to maintain separate categories for sharps waste and other mailable types of regulated medical waste. This distinction will include separate requirements for the primary receptacles and different marking requirements for the outer shipping container. The Postal Service does not feel this will present a hardship on mailers since many already design and market their waste container systems for specific uses. It can also be noted that healthcare professionals generally do not mix sharps waste in the same containers used to collect other nonsharps medical waste.

Although not proposed by the Postal Service, one sharps waste mailer recommended the Postal Service require that sharps container systems be tested by "certified" labs, rather than by independent labs, as already permitted in DMM C023.8.7d. The Postal Service has not noted any significant problems with the use of independent labs, and therefore, sees no reason to adopt this recommendation. The problems associated with package failure of sharps waste container systems appear to be caused by container system design or the improper assembly of the container system by the end user prior to mailing.

The institute recommended that the Postal Service establish a "performance-based" standard for packaging rather than adopt new requirements for sealing the outer shipping container. The institute further suggested that the Postal Service allow a manufacturer or distributor to prove that their packaging material is safe when placed in the mail. We believe the commenter misinterpreted our intent and might not be aware of the preexisting requirements for package testing. The Postal Service has always required that packaging systems for sharps waste be tested by an independent testing facility using several of the tests detailed in 49 CFR part 178. Because the Postal Service has not experienced any significant problems with the test reports provided by the independent testing facilities, we do not feel there is a need to change the previously existing requirements for package testing. Additionally and as stated previously, the Postal Service will adopt new securing requirements for the outer shipping container to further reduce the potential for package failure during postal processing. The adoption of this requirement is directly related to specific instances of package failure that have occurred during postal handling.

The institute also recommended the that Postal Service require the assembly instruction sheet for each sharps container system also include a customer service telephone number for the end user to call if they need assistance or find a component part is missing. Although the Postal Service did not include this requirement in the proposed rule, it will adopt a variation of it in this final rule. The adopted text will require that each assembly sheet for a sharp waste or regulated medical waste container system list a customer service telephone number or provide specific information on where such a telephone number is located elsewhere on the container system. The Postal Service does not feel this will present a hardship for mailers, since many already display a customer service phone number on their assembly instruction sheets. The adoption of this requirement will help provide one more support level to the third-party end user who is being relied on to properly assemble the container system before depositing it into the mail. Proper assembly of a sharps container system prior to mailing is critical to ensuring it will be safely handled and transported without deterioration or package failure.

The institute further recommended that the Postal Service discontinue the use of the term "waste manifest" in the requirements that apply to the mailing of sharps waste and replace the term with "shipping paper." The Postal Service did not propose this change and feels it is unnecessary. The text in DMM C023.8.7c(3) states that the waste manifest serves as the shipping paper. In addition, such a change could pose a hardship for regulated medical waste and sharps waste mailers who presently identify this document as a waste manifest, by causing them to incur the cost for redesigning and replacing the documents.

4. Comments Supporting the Proposed Changes

Seven of the commenters, including three sharps mailers, two medical labs, the institute, and the law firm, submitted comments that supported some of the requirements in the Postal Service proposed rule. Those comments are summarized in this section.

Two of the sharps mailers stated that they did not oppose the Postal Service proposal to limit the maximum weight of a mailpiece containing regulated medical waste or sharps waste to 25 pounds. Another further stated that, in

general, they supported the Postal Service proposed rule.

One medical lab stated they were pleased with the Postal Service changes that would improve packaging integrity and they supported them. The commenter further stated that they approved of the text in DMM C023.8.10a that included the phrase "* * * for drug testing programs or for insurance purposes * * *" within the definition of the term diagnostic (clinical) specimen. The commenter stated that the slightly stricter packaging requirements would help to ensure their receipt of safely packaged specimens.

Three commenters, including one medical lab, the institute, and the law firm, supported the Postal Service effort to align the mailing standards with the DOT regulations in 49 CFR. These commenters felt that harmonization of the packaging requirements among all agencies and regulators would be a positive benefit for all mailers and shippers.

The institute also stated that they recognized and supported the continued role of the Postal Service in providing mailing options for senders of infectious substances and mail-back systems.

One medical lab stated they appreciated the Postal Service proposal to provide specific packaging requirements for dry specimens. They further noted they supported the development of mailing standards that benefit both the industry and the Postal Service.

Part C—Summary of Changes

In this final rule, the Postal Service adopts the following changes to the mailing standards in DMM C023.8.0 for Division 6.2 infectious substances:

- New classification criteria for Division 6.2 infectious substances based on the defining criteria developed by the World Health Organization (WHO) and consistent with the DOT Federal regulations in 49 CFR for domestic transport and the International Civil Aviation Organization (ICAO) technical instructions for international transport.
- New DOT packaging requirements that are applicable to the mailable types of Division 6.2 materials and consistent with the ICAO technical instructions. For safety reasons, in some instances the Postal Service volume limits are lower than the DOT limits.
- New DOT Federal requirements that regulate diagnostic (clinical) specimens in Risk Groups 2, 3, or 4 as hazardous materials.
- New DOT Federal requirements that do not regulate certain Risk Group 1 materials, including diagnostic (clinical) specimens, as hazardous materials.
- Revisions and modifications in the DOT Federal regulations related to the definitions of Division 6.2 materials and clarification of the use of the biohazard symbol on regulated and nonregulated material.

In addition, the Postal Service is adopting a few minor clarifications and changes to the hazardous materials standards in DMM C023 and certain related standards in DMM C021, C023, C024, C050, and F010. These changes will improve clarity in the standards and reduce misunderstandings. They will also improve packaging integrity for mailable types of regulated medical waste and sharps waste, and provide a greater level of safety during handling for both Postal Service employees and the public. These changes include:

- Minor revisions to the text in DMM C021 to improve clarity.
- Minor clarifications to the definitions in DMM C023.1.1 including added text in the definition for "air transportation requirements" to note that the Postal Service does not guarantee air transportation service for any class of mail. Air transportation service is usually provided for First-Class Mail®, Priority Mail®, and Express Mail® destined to zones 5 through 8; however, air transportation service is dependent on the ability of the Postal Service to procure an air carrier.
- Standardization of the terminology used in DMM C023 for identifying the different components required for the proper packaging of mailable hazardous materials.
- Expansion of the requirements in DMM C023.8.0 to establish that mailable types of regulated medical waste are subject to the same authorization requirements as sharps waste.
- Clarifications and minor changes to the requirements in DMM C023.8.0 for regulated medical waste and sharps waste containers to enhance the accuracy of the regulations and reduce misunderstanding of the standards. In addition, the Postal Service adopts additional limitations for regulated medical waste and sharps waste containers to ensure packaging integrity during Postal Service handling and to provide a greater level of safety for Postal Service employees and the public.
- Standardization of the maximum weight limit in DMM C023 for several different types of mailable hazardous materials as 25 pounds or less. This change affects nonflammable compressed gases, matches, regulated medical waste, sharps waste, and nonspillable wet batteries.
- Reinstatement of former DMM C024.18.0 (DMM Issue 56) with revised text to clarify the mailability of odd-shaped items in paper envelopes and to support the restrictions for harmful matter in DMM C021. Additional clarifying text is also added to DMM C050.2.2d.
- Revisions to DMM F010 that prohibit the use of the ancillary service endorsement "Change Service Requested" on Priority Mail, First-Class Mail, Standard Mail, and Package Services mail containing mailable hazardous materials under DMM C023. Also, a revision to require a return or forwarding endorsement on Standard Mail containing mailable hazardous materials.

These changes are effective June 12, 2003. However, mailers are provided with a phase-in period through January 1, 2004, for implementation of the new packaging requirements for diagnostic specimen mailpieces using a business reply mail format and medical waste mailpieces (including sharps waste) using a merchandise return service format. This time period will allow mailers to exhaust any existing packaging stock already in circulation.

The Postal Service believes that the adoption of the changes in this final rule will help to ensure an acceptable level of security and safety during Postal Service handling for the limited types and quantities of hazardous materials that are permitted in the U.S. mail.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following changes to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111:

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

C000 General Information

* * * * *

C020 Restricted or Nonmailable Articles and Substances

C021 Articles and Substances Generally

* * * * *

2.0 NONMAILABLE ARTICLES AND SUBSTANCES—GENERAL

2.1 Basic Information

[Delete the last two sentences of 2.1 and insert the following text to read as follows:]

* * *The mailability standards that apply to perishable, hazardous, and restricted matter are detailed in C022, C023, and C024, respectively. Publication 52, *Hazardous, Restricted, and Perishable Mail*, contains additional clarification and further describes the conditions of preparation and packaging under which the USPS accepts for mailing potentially harmful matter that is otherwise nonmailable. Publication 52 also contains detailed information on the mailability of specific hazardous materials.

* * * * *

3.0 INJURIOUS AND HARMFUL ARTICLES

3.1 General

Except as provided in this document, any article, composition, or material is nonmailable if it can kill or injure another or injure the mail or other property. Harmful matter includes but is not limited to:

* * * * *

[Revise item b to read as follows:]

b. All poisonous animals except scorpions mailed for medical research purposes or for the manufacture of antivenom; all poisonous insects; all poisonous reptiles; and all types of snakes, turtles, and spiders.

* * * * *

3.2 Hazardous Materials

[Revise the first sentence to read as follows:]

Harmful matter also includes regulated hazardous materials as defined in C023 that are likely to harm USPS employees or to destroy, deface, or otherwise damage mail or postal equipment.* * *

4.0 MARKING

* * * * *

4.2 Addressing

[Revise 4.2 to read as follows:]

For any matter mailed under the provisions in C020, the recipient's name and address must be affixed or applied directly to the mailpiece using a material or method that is not water-soluble and not easily smeared or rubbed off. Except for diagnostic specimen mailpieces using a business reply mail format and nonregulated materials, a return address that includes the sender's name and address must appear on all matter mailed under C020. The return address, when required, must be applied using a material or method that is not water-soluble and not easily smeared or rubbed off.

4.3 Warning Label

[Revise the last sentence in 4.3 to read as follows:]

* * *See C023 for the warning label requirements that apply to the mailing of hazardous materials.

* * * * *

C023 Hazardous Materials

Summary

[Revise the Summary to read as follows:]

C023 describes the general standards, restrictions, and prohibitions that apply to the mailability of hazardous materials.

1.0 GENERAL

1.1 Definitions

The following conditions apply:

[Revise the last sentence in item a to read as follows:]

a. * * *In international commerce, hazardous materials are known as dangerous goods.

[At the end of item b, add a new sentence to read as follows:]

b. * * *Almost all limited quantity materials are nonmailable.

[At the end of item c, add a new sentence to read as follows:]

c. * * *ORM–D materials having the proper shipping name of "consumer commodity" are mailable subject to USPS quantity and packaging standards.

* * * * *

[Revise items e and f to read as follows:]

e. *Air transportation requirements*, for the purposes of C023 only, apply to all mailable hazardous materials sent at the First-Class Mail, Priority Mail, or Express Mail rates. All mailable hazardous materials sent at those rates must meet the requirements that apply to air transportation. Mailable hazardous materials sent at any of those rates may or may not be transported via air depending on the distance between the point of origination and the point of destination, and the ability of the USPS to obtain an air carrier between those points.

f. *Surface transportation requirements*, for the purposes of C023 only, apply to all mailable hazardous materials sent at the Standard Mail or Package Services rates. All mailable hazardous materials sent at the Standard Mail or Package Services rates must meet the requirements that apply to surface transportation.

* * * * *

[Revise item h to read as follows:]

h. *Secondary container* is the packaging component into which the primary receptacle(s) and any required absorbent and cushioning material is securely placed. The packaging of certain mailable hazardous materials does not require the use of a secondary container.

[Revise item i to read as follows:]

i. *Outer shipping container* is the exterior packaging component into which a primary receptacle, along with any required absorbent and cushioning material, and the secondary container (if required) are securely placed. The outer shipping container bears the addressing information along with all required markings.

1.2 U.S. Department of Transportation

[Revise 1.2 to read as follows:]

The U.S. Department of Transportation (DOT) regulates the surface and air carriage of hazardous materials within the United States via any means of transportation. The DOT regulations for the transport of hazardous materials are codified in Title 49, *Code of Federal Regulations* (49 CFR) 100–185. USPS mailing standards for hazardous materials generally adhere to 49 CFR, but also include many additional limitations and prohibitions.

[Renumber current 1.3 through 1.9 as new 1.4 through 1.10 and insert new 1.3 to read as follows:]

1.3 USPS Standards

The USPS standards generally restrict the mailing of hazardous materials to ORM–D materials with the proper shipping name of "consumer commodity" that meet USPS quantity limitations and packaging requirements. The few non-ORM–D materials permitted to be mailed are subject to the standards in C023. Detailed information on the mailability of specific hazardous materials is contained in Publication 52, *Hazardous, Restricted, and Perishable Mail*.

1.4 Hazard Class

* * * * *

[Renumber "Exhibit 1.3 DOT Hazard Classes and Mailability Summary" as "Exhibit 1.4 DOT Hazard Classes and Mailability Summary."]

* * * * *

1.6 Mailability Rulings

[In the first sentence, change "package" to "mailpiece."]

1.7 Warning Labels

[Change "division 6.2 materials under 8.3" to "Division 6.2 materials under 8.5" and "as required in 1.7" to "as required in 1.8".]

1.8 Package Markings

[Delete the last sentence in 1.8 and insert two new sentences to read as follows:]

* * *The designation "ORM–D" or "ORM–D AIR", as required, must be placed within a rectangle that is approximately 6.3 mm (¼ inch) larger on each side than the designation. Mailable ORM–D materials sent as Standard Mail or Package Services must also be marked on the address side as "Surface Only" or "Surface Mail Only."

1.9 Shipping Papers

[Revise 1.9 to read as follows:]

A shipper's declaration for dangerous goods (*i.e.*, shipping paper) prepared under 49 CFR 172.200 through 172.205 is required for certain types of hazardous materials when mailed. The shipping paper must be completed and signed in triplicate by the mailer. It must be affixed to the outside of the mailpiece within an envelope or similar carrier that can be easily opened and resealed to allow viewing of the document. Shipping papers are required as follows:

a. *Air transportation requirements.* Except for nonregulated materials sent under 8.3 or 8.10 and diagnostic specimens sent under 8.6, mailpieces containing mailable hazardous materials sent at the First-Class Mail, Priority Mail, or Express Mail rates must include a shipping paper.

b. *Surface transportation requirements.* Except for nonregulated materials sent under 8.3 or 8.10 and mailable ORM–D materials, mailpieces containing mailable hazardous materials sent at the Standard Mail or Package Services rates must include a shipping paper.

1.10 Air Transportation Prohibitions

[Revise the first two sentences in 1.10 to read as follows (the remainder of 1.10 is unchanged):]

All mailable hazardous materials sent at the First-Class Mail, Priority Mail, or Express Mail rates must meet the requirements for air transportation. The following types of hazardous materials that are prohibited from carriage on air transportation must not be sent at the First-Class Mail, Priority Mail, or Express Mail rates:

* * * * *

2.0 EXPLOSIVES (HAZARD CLASS 1)

2.1 Definition

[In the second sentence, change "Exhibit 1.3" to "Exhibit 1.4".]

2.2 Mailability

[In the second sentence, change "division 1.4" to "Division 1.4S."]

3.0 GASES (HAZARD CLASS 2)

3.1 Definition

[In item b, change "division 2.1 or 2.3" to "Division 2.1 or 2.3".]

3.2 Mailability

[In the second, third, and fourth sentences, change "division" to "Division."]

3.3 Container

[Revise 3.3 to read as follows:]

An other-than-metal primary receptacle containing a mailable gas may be acceptable if the water capacity of the primary receptacle is 4 fluid ounces (7.22 cubic inches) or less per mailpiece and the primary receptacle meets 49 CFR requirements. Mailable nonflammable and flammable compressed gases are acceptable in metal primary receptacles that have a water capacity up to 33.8 fluid ounces (1 liter or 61.0 cubic inches), depending on their internal pressure. A DOT 2P container must be used as the primary receptacle if the internal pressure is from 140 to 160 psig at 130°F (55°C). A DOT 2Q container must be used as the primary receptacle if the pressure is from 161 to 180 psig at 130°F (55°C). A container with an internal pressure over 180 psig at 130°F (55°C) is prohibited from mailing. Mailable flammable compressed gases are restricted to 33.8 fluid ounces (1 liter) per mailpiece. Mailable nonflammable compressed gases are permitted in individual 33.8 fluid ounce (1 liter) containers that must be securely packed within an outer shipping container. Each mailpiece must not exceed a total weight of 25 pounds.

3.4 Marking

[In the first sentence, change "Surface Mail Only" to ""Surface Only" or "Surface Mail Only."".]

4.0 FLAMMABLE AND COMBUSTIBLE LIQUIDS (HAZARD CLASS 3)

* * * * *

4.2 Flammable Liquid Mailability

[In items a and b, change "secondary packaging" to "secondary container"; change "outer packaging" to "outer shipping container"; and change "Surface Mail Only" to ""Surface Only" or "Surface Mail Only.""]

4.3 Combustible Liquid Mailability

[In items a and b, change "secondary packaging" to "secondary container"; change "outer packaging" to "outer shipping container"; and change "Surface Mail Only" to " "Surface Only" or "Surface Mail Only." "]

[Revise item c to read as follows:]

c. For air or surface transportation, if the flashpoint is above 200°F (93°C) the material is not regulated as a hazardous material. Such nonregulated materials must be properly and securely packaged to prevent leakage under the general packaging requirements in C010.

4.4 Cigarette Lighters

[In the second sentence, change "division 2.1" to "Division 2.1".]

[In item c, change "Surface Mail Only" to " "Surface Only" or "Surface Mail Only." "]

5.0 FLAMMABLE SOLIDS (HAZARD CLASS 4)

* * * * *

5.2 Mailability

[Change "outer packaging" to "outer shipping container" and change "Surface Mail Only" to " "Surface Only" or "Surface Mail Only." "]

5.3 Matches

* * * * * *

[Revise items c and d to read as follows:]

c. They are tightly packed in a securely sealed primary receptacle to prevent any shifting or movement that could cause accidental ignition by rubbing against adjoining items. The primary receptacle(s) is placed securely within an outer shipping container made of fiberboard, wood, or other equivalent material.

Multiple primary receptacles may be placed in a single outer shipping container. The address side of the mailpiece must be marked "Surface Only" or "Surface Mail Only", and "Book Matches", "Strike-on-Card Matches", or "Card Matches", as appropriate. A shipping paper is not required.

d. The gross weight of each mailpiece is not more than 25 pounds.

6.0 OXIDIZING SUBSTANCES, ORGANIC PEROXIDES (HAZARD CLASS 5)

* * * * *

6.2 Mailability

[Revise 6.2 to read as follows:]

Oxidizing substances and organic peroxides are prohibited in international mail. For domestic mail, a material that can qualify as an ORM–D material is permitted via air or surface transportation. Liquid materials must be enclosed within a primary receptacle having a capacity of 1 pint or less; the primary receptacle(s) must be surrounded by absorbent cushioning material and held within a leak-resistant secondary container that is packed within a strong outer shipping container. Solid materials must be contained within a primary receptacle having a weight capacity of 1 pound or less; the primary receptacle(s) must be surrounded with cushioning material and packed within a strong outer shipping container. Each mailpiece may not exceed a total weight of 25 pounds. The address side of each mailpiece must be plainly and durably marked with "ORM–D AIR" or "ORM–D," as applicable, immediately following or below the proper shipping name. A mailable Class 5 material sent via surface transportation must be marked "Surface Mail" or "Surface Mail Only" on the address side. A mailable material sent via air transportation must bear a shipper's declaration for dangerous goods.

7.0 TOXIC SUBSTANCES (HAZARD CLASS 6, DIVISION 6.1)

7.1 Definitions

[In the first sentence, change "division 6.1" to "Division 6.1".]

7.2 Mailability

[In the second sentence, change "division 6.1" to "Division 6.1".]

7.3 Authorized Parties

[In the first sentence, change "division 6.1" to "Division 6.1".]

7.4 Packaging and Marking

[In item a, change "inner receptacle(s)" to "primary receptacle(s)"; change "secondary packaging" to "secondary container"; change "outer packaging" to "outer shipping container"; and change "Surface Mail Only" to " "Surface Only" or "Surface Mail Only." "]

[In item b, change "secondary leakproof (for liquids) or siftproof (for solids) packaging" to "leakproof (for liquids) or siftproof (for solids) secondary container"; change "secondary packaging" to "secondary container"; change "outer packaging" to "outer shipping container"; and change "Surface Mail Only" to " "Surface Only" or "Surface Mail Only." "]

* * * * *

8.1 General

The materials covered under Division 6.2 include infectious substances (*i.e.*, etiologic agents), biological products, cultures and stocks, diagnostic (clinical) specimens, regulated medical waste, sharps waste, toxins, and used health care products. Division 6.2 materials are not permitted in international mail or domestic mail, except when they are intended for medical or veterinary use, research, or laboratory certification related to the public health; and only when such materials are properly prepared for mailing to withstand shocks, pressure changes, and other conditions related to ordinary handling in transit. Mailable Division 6.2 materials sent as international mail must meet the standards in *International Mail Manual* 135. For domestic mail, mailable Division 6.2 materials must meet the applicable standards in 8.0. Unless otherwise noted, all mailable Division 6.2 materials in Risk Groups 2, 3, or 4 must be prepared to meet the requirements for air transportation.

8.2 Definitions

The terms used in the standards for Division 6.2 materials are defined as follows:

a. *Division 6.2 (infectious substance)* means a material known to contain or suspected of containing a pathogen. A pathogen is a virus or microorganism (including its viruses, plasmids, or other genetic elements, if any) or a proteinaceous infectious particle (prion) that has the potential to cause disease in humans or animals. A Division 6.2 material must be assigned to a risk group as defined in 8.2f. Assignment to a risk group is based on the known medical condition and history of the source patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgment concerning individual circumstances of the source patient or animal. Infectious substances are subject to applicable requirements in 42 CFR part 72 (Interstate Shipment of Etiologic Agents).

b. *Biological product* means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product used in the prevention, diagnosis, treatment, or cure of diseases in humans or animals. A biological product includes a material manufactured and distributed in accordance with one of the following provisions: 9 CFR part 102 (Licenses for Biological Products); 9 CFR part 103 (Experimental Products, Distribution, and Evaluation of Biological Products Prior to Licensing); 9 CFR part 104 (Permits for Biological Products); 21 CFR part 312 (Investigational New Drug Application); 21 CFR part 314 (Applications for FDA Approval to Market a New Drug); 21 CFR part 600–680 (Biologics); or 21 CFR part 812 (Investigational Device Exemptions). A biological product known to contain or suspected of containing a pathogen in Risk Group 2, 3, or 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate, unless otherwise excepted by standard.

c. *Cultures and stocks* means a material prepared and maintained for growth and storage and containing a Risk Group 2, 3, or 4 infectious substance.

d. *Diagnostic (clinical) specimen* means any human or animal material, including excreta, secreta, blood and its components, tissue, and tissue fluids being transported for diagnostic or investigational purposes, but excluding live infected animals. A diagnostic specimen is not assigned a UN identification number unless the source patient or animal has or may have a serious human or animal disease from a Risk Group 4 pathogen, in which case it must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate. Assignment to UN 2814 or UN 2900 is based on known medical condition and history of the patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgment concerning individual circumstances of the source patient or animal.

e. *Regulated medical waste,* for USPS purposes, means a soft waste material (other than a sharp) known to contain or suspected of containing an infectious substance in Risk Group 2 or 3 and generated in the diagnosis, treatment, or immunization of human beings or animals; research on the diagnosis, treatment, or immunization of human beings or animals; or the production or testing of biological products. Soft medical waste includes items such as

used rubber gloves, swabs, gauze, tongue depressors, etc. Regulated medical waste classified in Risk Group 4 is nonmailable.

f. *Risk group* means a ranking of a microorganism's ability to cause injury through disease. A risk group is defined by criteria developed by the World Health Organization (WHO) that are based on the severity of the disease caused by the organism, the mode and relative ease of transmission, the degree of risk to both an individual and a community, and the reversibility of the disease through the availability of known and effective preventive agents and treatment. There is no relationship between a risk group and a DOT packing group. Assignment to a risk group is based on the known medical condition and history of the source patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgment concerning individual circumstances of the source patient or animal. The sender is responsible for accurately ranking a mailable material within the correct risk group. Exhibit 8.2f details the criteria for each risk group according to the level of risk.

Exhibit 8.2f Risk Group Criteria

Risk group	Pathogen	Risk to individuals	Risk to community
4	A pathogen that usually causes serious human or animal disease and that can be readily transmitted from one individual to another, directly or indirectly, and for which effective treatments and preventive measures are not usually available.	High	High.
3	A pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another, and for which effective treatments and preventive measures are available.	High	Low.
2	A pathogen that can cause human or animal disease but is unlikely to be a serious hazard, and, while capable of causing serious infection on exposure, for which there are effective treatments and preventive measures available and the risk of spread of infection is limited.	Moderate	Low.
1	A microorganism that is unlikely to cause human or animal disease. A material containing only such microorganisms is not subject to regulation as a hazardous material, but it is subject to the packaging requirements in 8.10, unless otherwise noted in 8.0.	None or Very Low.	None or Very Low.

g. *Sharps,* for USPS purposes, means any object contaminated with a pathogen or that may become contaminated with a pathogen through handling or during transportation and that is also capable of cutting or penetrating skin or a packaging material. Sharps include used medical waste such as needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires. Sharps waste classified in Risk Group 4 is nonmailable.

h. *Toxin* means a Division 6.1 material from a plant, animal, or bacterial source. A toxin containing an infectious substance or a toxin contained in an infectious substance must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.

i. *Used health care product* means a medical, diagnostic, or research device or piece of equipment, or a personal care product used by consumers, medical professionals, or pharmaceutical providers that does not meet the definition of a diagnostic specimen, biological product, regulated medical waste, or sharps waste, is contaminated with potentially infectious body fluids or materials, and is not decontaminated or disinfected to remove or mitigate the infectious hazard prior to transportation. A used health care product classified in Risk Group 4 is nonmailable.

8.3 Nonregulated Materials

The following materials are not subject to regulation as Division 6.2 hazardous materials and are mailable when the packaging requirements in 8.10 are met:

a. A diagnostic (clinical) specimen known to contain or suspected of containing a microorganism in Risk Group 1, or that does not contain a pathogen. Also, a diagnostic specimen in which the pathogen has been neutralized or inactivated so that exposure to it cannot cause disease.

b. A biological product known to contain or suspected of containing a microorganism in Risk Group 1, or that does not contain a pathogen. Also any biological product, including an experimental product or component of a product, subject to Federal approval, permit, or licensing requirements, such as those required by the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) or the U.S. Department of Agriculture (USDA).

c. Blood collected for blood transfusion or the preparation of blood products; blood products; tissues intended for use in surgical procedures; and human cell, tissues, and cellular and tissue-based products regulated under authority of the Public Health Service Act and/or the Food, Drug, and Cosmetic Act. Also, blood collected for blood transfusion or the preparation of blood products and sent for testing as part of the collection process, except where the person collecting the blood has reason to believe it contains a pathogen in Risk Group 2 or 3, in which case the test sample must be packaged under 8.6.

d. A material, including a Division 6.2 waste, that previously contained an infectious substance that has been treated by steam sterilization, chemical disinfection, or other appropriate method, so it no longer meets the definition of an infectious substance in Risk Group 2, 3, or 4.

e. Forensic material in Risk Group 1 transported on behalf of a U.S. government, state, local, or Indian tribal government agency.

f. Environmental microbiological samples, such as samples of dust from a ventilation system or mold from a wallboard, collected to evaluate occupational and residential exposure risks.

8.4 Packaging—General

All materials mailable under the provisions in 8.0 must be properly packaged. Exhibit 8.4a lists the specific reference in 8.0 under which each type of mailable material must be packaged.

Exhibit 8.4A Packaging References for Materials Mailable Under 8.0

Material	Risk group 1	2	3	4
Blood for Transfusion	8.10	8.6	8.6	nm
Biological Product	8.10	8.5	8.5	8.5
Culture or Stock	8.10	8.5	8.5	8.5
Diagnostic Specimen	8.10	8.6	8.6	8.5
Division 6.2 (Infectious Substance)	8.10	8.5	8.5	8.5
Forensic Material	8.10	8.9	8.9	8.5
Regulated Medical Waste	8.7	8.7	8.7	nm
Sharps Waste	8.7	8.7	8.7	nm
Toxin (Division 6.2)	8.10	8.5	8.5	8.5
Treated Medical Waste	8.10	n/a	n/a	n/a
Used Health Care Product	8.8	8.8	8.8	nm

nm—nonmailable.
n/a—not applicable.

8.5 Packaging of Division 6.2 Infectious Substances

Division 6.2 materials include infectious substances (etiologic agents), biological products, cultures or stocks, and toxins known or suspected to contain a Risk Group 2, 3, or 4 pathogen. It also includes diagnostic specimens known or suspected to contain a Risk Group 4 pathogen: The packaging of Division 6.2 infectious substances is subject to these standards:

a. All Division 6.2 materials must meet the packaging requirements in 49 CFR 173.196. Either the primary receptacle or the secondary container must be capable of withstanding, without leakage, an internal pressure that produces a pressure differential of not less than 0.95 bar, 14 psi (95 kPa), and temperatures in the range of −40°F to 131°F (−40°C to 55°C) as required by 49 CFR 173.196.

b. The material must be packaged in a securely sealed and watertight primary receptacle (test tube, vial, etc.) that is enclosed in another watertight and durable secondary container that is securely sealed. Several primary receptacles may be enclosed in the secondary container if there is adequate cushioning material between them to prevent breakage during normal handling, and if the total volume of the material in all enclosed primary receptacles does not exceed 50 ml for liquids or 50 g for solids. The primary receptacle(s) and the secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

c. The space between the primary receptacle(s) and the secondary container at the top, bottom, and sides must contain enough absorbent material to take up the entire contents of the primary receptacle(s) in case of breakage or leakage.

d. The primary receptacle(s) and the secondary container must be securely enclosed in an outer shipping container constructed of fiberboard or other equivalent material. No external surface of the outer shipping container may be less than 3.9 inches (100 mm) as required by 49 CFR 173.196. An itemized list of the contents of the primary receptacle(s) must be enclosed between the secondary container and the outer shipping container.

e. Each mailpiece must be designed and constructed so that, if it were subject to the environmental and test conditions in 49 CFR 178.609, there would be no release of the contents to the environment and no significant reduction in the effectiveness of the packaging.

f. All mailpieces sent under 8.5 must be sent First-Class Mail or Priority Mail and must be marked on the address side with the proper shipping name and UN number of the material (*e.g.*, "UN 2814, Infectious Substances, Affecting Humans" or "UN 2900, Infectious Substances, Affecting Animals"). Each mailpiece must bear a DOT Class 6 label for infectious substances (etiologic agents), proper UN package specification markings, and orientation markings. A shipping paper is required. Any mailpiece classified as a Risk Group 4 material and that contains any of the select agents or toxins listed in 42 CFR 73.4 or 73.5 must meet all requirements in 42 CFR 72 and must also be sent using Registered Mail service.

g. Articles that include dry ice as a refrigerant for the infectious substance must meet the requirements in 49 CFR 173.196(b)(2)(ii).

8.6 Packaging for Diagnostic Specimens in Risk Group 2 or 3

A diagnostic (clinical) specimen known or suspected to contain a Risk Group 4 pathogen must be packaged under 8.5. A diagnostic specimen classified in Risk Group 1 must be packaged under 8.10. A diagnostic specimen classified in Risk Group 2 or 3 and that meets the definition in 8.2d must be sent as First-Class Mail, Priority Mail, or Express Mail. Such materials must be packaged in a triple packaging, consisting of a primary receptacle, secondary container, and outer shipping container, subject to the following specific requirements:

a. *Liquid Diagnostic (Clinical) Specimens.*

(1) The specimen must be contained in a leakproof and securely sealed primary receptacle. A single primary receptacle may not contain more than 500 ml of a specimen. Multiple primary receptacles are permitted in a single mailpiece if the mailpiece does not contain more than 4,000 ml. The primary receptacle(s) must be surrounded with sufficient cushioning material to withstand shock and pressure changes and with absorbent material capable of taking up the entire liquid contents should the primary receptacle(s) leak.

(2) The primary receptacle(s) and the absorbent material must be securely packed within a secondary container in such a way that, under normal conditions of transport, the primary receptacle cannot break, be punctured, or leak its contents into the secondary container.

(3) The secondary container must be leakproof, securely sealed, and placed within a strong outer shipping container having suitable cushioning material such that any leakage of the contents does not impair the protective properties of the cushioning material or the outer shipping container. The secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

(4) The primary receptacle(s) or the secondary container must be capable of withstanding, without leakage, an internal pressure producing a pressure differential of not less than 0.95 bar, 14 psi (95 kPA). The completed mailpiece must be capable of successfully passing

the drop test in 49 CFR 178.603 at a drop height of at least 1.2 meters (3.9 feet). The address side of the outer shipping container must be clearly and durably marked "Diagnostic Specimen." A shipping paper is not required.

b. *Solid (or Dried) Diagnostic Specimens.*

(1) The primary receptacle must be siftproof with a capacity of not more than 500 g (1.1 pounds).

(2) If several fragile primary receptacles are placed in a single secondary container, they must be individually wrapped or separated with sufficient cushioning material to prevent contact between them. The secondary container must be siftproof to contain the contents should the primary receptacle(s) leak. The secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

(3) The outer shipping container may not exceed 4 kg (8.8 pounds) capacity. The outer shipping container must be clearly and durably marked "Diagnostic Specimen." A shipping paper is not required.

8.7 Sharps Waste and Other Mailable Regulated Medical Waste

Regulated medical waste and sharps waste known to contain or suspected of containing an infectious substance in Risk Group 4 are nonmailable. Regulated medical waste and sharps waste as defined in 8.2e and 8.2g, respectively, and classified in Risk Group 1, 2, or 3 are permitted for mailing only using merchandise return service (see S923) with First-Class Mail or Priority Mail, subject to the following requirements:

a. *Authorization.* Each distributor or manufacturer of a complete regulated medical waste or sharps waste mailing container system (including all component parts required to safely mail such waste to a storage or disposal facility) must obtain authorization from the USPS prior to mailing. Before applying for authorization, each type of mailing container system must be tested and certified under the standards in 8.7d by an independent testing facility. The manufacturer or distributor in whose name the authorization is being sought must submit a written request to the manager, Mailing Standards, USPS Headquarters (see G043 for address). The request for authorization must contain the following:

(1) An irrevocable $50,000 surety bond or letter of credit as proof of sufficient financial responsibility to cover disposal costs if the manufacturer (or distributor) ceases doing business before all its waste container systems are disposed of or to cover cleanup costs if spills occur while the containers are in USPS possession. The surety bond or letter of credit must be issued in the name of the manufacturer or distributor seeking the authorization and must name the USPS as the beneficiary or obligee, as appropriate.

(2) Address of the headquarters or general business office of the distributor or manufacturer seeking the authorization.

(3) Address of each disposal and storage site.

(4) List of all types of mailing container systems to be covered by the request, a complete sample of each mailing container system, and proof of package testing certifications performed by the independent testing facility that subjected the packaging materials to the testing requirements in 8.7d.

(5) Copy of the proposed waste manifest (*i.e.*, shipping paper) to be used with each mailing container system.

(6) 24-hour toll free telephone number for emergencies.

(7) List of the types of waste to be mailed for disposal in each mailing container system.

(8) Copy of the merchandise return service label to be used with each mailing container system.

b. *Packaging.* Regulated medical waste and sharps waste in Risk Group 4 are nonmailable. A waste material treated by steam sterilization, chemical disinfection, or other appropriate method, so it no longer meets the definition of an infectious substance in Risk Group 2, 3, or 4, must be packaged under 8.10. The packaging for regulated medical waste and sharps waste in Risk Group 1, 2, or 3 is subject to these standards:

(1) Regulated medical waste and sharps waste meeting the definitions in 8.2e and 8.2g, respectively, must be collected in a rigid, securely sealed, and leakproof primary receptacle. For sharps waste, the primary receptacle must also be puncture-resistant and may not have a maximum capacity that exceeds 3 gallons in volume. For regulated medical waste, the primary receptacle may not have a maximum capacity that exceeds 5 gallons in volume. Each primary receptacle may not contain more than 50 ml (1.66 ounces) of residual waste liquid. Each primary receptacle must display the international biohazard symbol shown in Exhibit 8.7c(2). Each primary receptacle must maintain its integrity when exposed to temperatures between 0° and 120°F.

(2) The primary receptacle must be packaged within a watertight secondary container or containment system. The secondary container may consist of more than one component. If one of the components is a plastic bag, it must be at least 3 mil in thickness and be used in conjunction with a strong fiberboard box. A plastic bag by itself does not meet the requirement for a secondary container. Several primary receptacles may be enclosed in a secondary container. The primary receptacle(s) must fit securely and snugly within the secondary container to prevent breakage during ordinary processing.

(3) The secondary container must be enclosed in a strong outer shipping container constructed of 200-pound grade corrugated fiberboard. The joints and flaps of the outer shipping container must be securely taped, glued, or stitched to maintain the integrity of the container. When tape or glue is used to secure an outer shipping container, the material must be water-resistant. Fiberboard boxes with interlock bottom flaps (*i.e.*, easy-fold) are not permitted as outer shipping containers unless reinforced with water-resistant tape. The secondary container must fit securely and snugly within the outer shipping container to prevent breakage during ordinary processing.

(4) There must be enough material within a watertight barrier to absorb and retain three times the total liquid allowed within the primary receptacle (150 ml per primary receptacle) in case of leakage.

(5) Each mailpiece must not weigh more than 25 pounds.

(6) In each mailing container system, the authorized manufacturer or distributor must include a step-by-step instruction sheet that clearly details the proper sequence and method of container system assembly prior to mailing to prevent package failure during transport due to improper assembly. The instruction sheet must also include a customer service telephone number, or provide specific information on where such a telephone number is located elsewhere on the container system, for third-party end users to contact if they have assembly questions or find a component part is missing.

c. *Mailpiece Labeling, Marking, and Documentation.* Regulated medical waste and sharps waste must meet the following requirements:

(1) Each primary receptacle and outer shipping container must bear a label, which cannot be detached intact, showing: (a) The company name of the manufacturer or the distributor to which the mailing authorization is issued; (b) the USPS Authorization Number, and; (c) the container ID number (or unique model number) signifying that the packaging material is certified and that the manufacturer or distributor obtained the authorization required by 8.7a.

(2) The primary receptacle(s) and the outer shipping container must bear the international biohazard symbol in black with either a fluorescent orange or fluorescent red background as shown in Exhibit 8.7c(2).

Exhibit 8.7c(2) International Biohazard Symbol



(3) Each mailpiece must have a four-part waste manifest, which also serves as the shipping paper. The manifest must be affixed to the outside of the mailpiece in an envelope or similar carrier that can be easily opened and resealed to allow review of the document. The manifest must comply with all applicable requirements imposed by the laws of the state from which the container system is mailed. At a minimum, the information in Exhibit 8.7c(3) must be on the manifest.

Exhibit 8.7c(3)
Manifest for Regulated Medical Waste and Sharps Waste Containers

1. Generator (Mailer):
a. Name. b. Complete address (not a Post Office box). c. Telephone number. d. Description of contents of mailing container. "Regulated Medical Waste" or "Regulated Medical Waste—Sharps" is required as appropriate. e. Date container was mailed. f. State permit number of approved facility in which contents are to be disposed of.
2. Destination Facility (Disposal Site)
Complete address (not a Post Office box).
3. Generator's (Mailer's) Certification
The following certification statement must be printed on manifest: "I certify that this container has been approved for the mailing of [insert either "regulated medical waste" or "sharps waste," as appropriate], has been prepared for mailing in accordance with the directions for that purpose, and does not contain excess liquid or nonmailable material in violation of the applicable Postal Service regulations. I AM AWARE THAT FULL RESPONSIBILITY RESTS WITH THE GENERATOR (MAILER) FOR ANY VIOLATION OF 18 USC 1716 WHICH MAY RESULT FROM PLACING IMPROPERLY PACKAGED ITEMS IN THE MAIL. I also certify that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and in proper condition for carriage by air according to the national governmental regulations." This statement must be followed by printed or typewritten name of generator (mailer), signature of generator, and date signed.
4. Destination Facility (Storage or Disposal Site)
The following certification statement of receipt, treatment, and disposal must be printed on manifest: "I certify that the contents of this container have been received, treated, and disposed of in accordance with all local, state, and federal regulations." This statement must be followed by printed or typewritten name of an authorized recipient at destination facility, signature of authorized recipient, and date signed.
5. Transporter Intermediate Handler Other Than the Postal Service (If Different From Destination Facility)
a. Name. b. Complete address (not a Post Office box). c. Printed or typewritten name of transporter or intermediate handler. d. Signature of transporter or intermediate handler and date signed.
6. Serialized Waste Manifests
Each waste manifest or mail disposal service shipping record must be serialized using a unique numbering system for identification purposes.
7. Comment Area
Each manifest must contain an area designated for entering comments or noting discrepancies.

8. Completion and Distribution of Waste Manifest
Each manifest must contain instructions for properly completing the four-part form. Copies of the form must be distributed as follows: a. One copy must be kept by generator (mailer). b. One copy must be kept by transporter or intermediate handler for 90 days. c. One copy must be kept by destination facility for 90 days. d. One copy must be mailed to generator by destination facility.
9. Emergency Telephone Number
Each manifest must bear the following statement with appropriate information: "IN CASE OF EMERGENCY, OR THE DISCOVERY OF DAMAGE OR LEAKAGE, CALL 1–800–###–####."

(4) The outer shipping container must bear a properly prepared merchandise return service label (see S923). The merchandise return service permit must be held in the same name as that of the authorized medical waste mailer.

(5) The outer shipping container must be marked on two opposite side walls with the package orientation marking in 49 CFR 173.312 to identify the proper upright position of the mailpiece during handling.

(6) Mailpieces containing regulated medical waste or sharps waste must be marked on the address side with the correct UN number and proper shipping name (*e.g.*, "Regulated Medical Waste, UN 3291" or "Regulated Medical Waste—Sharps, UN 3291").

d. *Package Testing.* Testing must be performed by an independent testing facility on one sample of each type of mailing container system to prove compliance with 8.7a. The sample mailing container system must withstand the tests in 49 CFR 178.604 (leakproof test), 178.606 (stacking test), 178.608 (vibration standard), and 178.609(e), (f), and (h) (test requirements for packaging for infectious substances). In addition, the absorbent material must withstand an absorbency test that satisfies the requirements in 8.7b(4). The test results must show that if every container system prepared for mailing were to be subject to the environmental and test conditions in 49 CFR, there would be no release of the contents to the environment and no significant reduction in the effectiveness of the packaging. Periodic retesting must be performed whenever a change is made to the design of the container system or every 24 months, whichever occurs first.

8.8 Packaging of Used Health Care Products

A used health care product known or suspected to contain a Risk Group 4 pathogen is nonmailable. A used health care product meeting the definition in 8.2i, classified in Risk Group 1, 2, or 3, and being returned to the manufacturer or manufacturer's designee is mailable as First-Class Mail, Priority Mail, or Express Mail subject to the following packaging requirements:

a. Each used health care product must be drained of liquid to the extent possible and placed in a watertight primary receptacle designed and constructed to ensure that it remains intact under normal conditions of transport. For a used health care product capable of cutting or penetrating skin or packaging material, the primary receptacle must be capable of retaining the product without puncture of the packaging under normal conditions of transport. The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

b. Each primary receptacle must be placed inside a watertight secondary container designed and constructed to ensure that it remains intact under normal conditions of transport. The secondary container must also be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

c. The secondary container must be placed inside an outer shipping container with sufficient cushioning material to prevent movement between the secondary container and the outer shipping container. An itemized list of the contents of the primary receptacle and information concerning possible contamination with a Division 6.2 material, including its possible location on the product, must be placed between the secondary container and the outer shipping container. A shipping paper and a content marking on the outer shipping container are not required.

8.9 Packaging of Forensic Material in Risk Groups 2 and 3

Forensic material in Risk Group 1 sent on behalf of a U.S. government, state, local, or Indian tribal government agency must be packaged under 8.10. Forensic material known or suspected to contain a Risk Group 4 infectious substance must be packaged under 8.5. Forensic material known or suspected to contain a Risk Group 2 or 3 pathogen is mailable as First-Class Mail, Priority Mail, or Express Mail when packaged in a triple packaging, consisting of a primary receptacle, secondary container, and outer shipping container as follows:

a. The forensic material must be held within a securely sealed primary receptacle. The primary receptacle must be surrounded by sufficient absorbent material (for liquids) and cushioning material to protect the primary container from breakage. The absorbent material must be capable of taking up the entire liquid contents of the primary receptacle in case of leakage. The primary receptacle must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2).

b. The primary receptacle and the absorbent and cushioning material must be enclosed in a watertight and securely sealed secondary container. The secondary container must also display the international biohazard symbol as shown in Exhibit 8.7c(2).

c. The secondary container must be firmly and snugly packed within a strong outer shipping container that is securely sealed. A shipping paper and a content marking on the outer shipping container are not required.

8.10 Packaging for Risk Group 1 Materials

Division 6.2 materials in Risk Group 1 are not subject to regulation as hazardous materials (see 8.3), but when presented for mailing they must be properly packaged. Regulated medical waste, sharps waste, and used health care products classified in Risk Group 1 must be packaged and mailed under the applicable requirements in 8.7 or 8.8. All other Risk Group 1 materials are mailable as First-Class Mail, Priority Mail, Express Mail, or Package Services. Such materials must be held within a securely sealed primary receptacle. The primary receptacle must be surrounded by sufficient absorbent material (for liquids) and cushioning material to protect the primary receptacle from breakage. The absorbent material must be capable of taking up the entire liquid contents of the primary receptacle in case of leakage. Either the primary receptacle or the inner packaging must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2). The primary receptacle and the absorbent and cushioning material must be snugly enclosed in a strong outer shipping container that is securely sealed. A shipping paper and a content marking on the outer shipping container are not required. Risk Group 1 diagnostic specimens and biological products are subject to the following packaging standards:

a. *Liquid Diagnostic (Clinical) Specimens and Biological Products.* A diagnostic (clinical) specimen in Risk Group 4 or a biological product in Risk Group 2, 3, or 4 must be packaged under 8.5. A diagnostic specimen in Risk Group 2 or 3 must be packaged under 8.6. The packaging of a diagnostic specimen in Risk Group 1 (*e.g.*, a urine specimen or blood specimen used in drug-testing programs or for insurance purposes) or a biological product (*e.g.*, polio vaccine) in Risk Group 1 is subject to the following standards:

(1) *Not Exceeding 50 ml.* A diagnostic specimen or biological product consisting of 50 ml or less per mailpiece must be packaged in a securely sealed primary receptacle. Two or more primary receptacles whose combined volume does not exceed 50 ml may be enclosed within a single mailpiece. Sufficient absorbent material and cushioning material to withstand shock and pressure changes must surround the primary receptacle(s), or be otherwise configured to take up the entire liquid contents in case of leakage. The primary receptacle(s) and the absorbent cushioning must be enclosed in a secondary container having a leakproof barrier that can prevent failure of the secondary container if the primary receptacle(s) should leak during transport. The secondary container must be securely sealed and it may serve as the outer shipping container provided it has sufficient strength to withstand ordinary postal processing. The secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2), except when the secondary packaging also serves as the outer shipping container. In that case, the biohazard symbol must appear either on the inner packaging or on the primary container. A shipping paper and a content marking on the outer shipping container are not required.

(2) *Exceeding 50 ml.* A clinical specimen or biological product that exceeds 50 ml must be packaged in a securely sealed primary receptacle. A single primary receptacle must not contain more than 500 ml of specimen. Two or more primary receptacles whose combined volume does not exceed 500 ml may be enclosed in a single secondary container. Sufficient absorbent material and cushioning material to withstand shock and pressure changes must surround the primary receptacle(s), or be otherwise configured to take up the entire liquid contents in case of leakage. The primary receptacle(s) and the absorbent cushioning must be enclosed in a secondary container having a leakproof barrier that can prevent failure of the secondary container if the primary receptacle(s) should leak during transport. The secondary container cannot serve as the outer shipping container. The secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2). The secondary container must be securely and snugly enclosed in a fiberboard box or container of equivalent strength that serves as the outer shipping container. The maximum amount of a specimen that may be enclosed in a single mailpiece must not exceed 4,000 ml. A shipping paper and a content marking on the outer shipping container are not required.

b. *Solid (or Dried) Specimens.* A solid or dry specimen, such as a saliva swab, blood spot, or fecal smear in Risk Group 1 must be completely dried prior to placing it in or on a secure primary receptacle. Cushioning material to withstand shock and pressure changes is only required if the dry specimen is held in a breakable primary receptacle. When required, the cushioning material must surround the primary receptacle to prevent breakage or damage to the primary receptacle. The primary receptacle (and cushioning material, if required) must be enclosed in a secondary container having a leakproof barrier that can prevent failure of the secondary container if the primary receptacle breaks during shipment. The secondary container must be securely sealed and it may serve as the outer shipping container provided it has sufficient strength to withstand ordinary postal processing. The secondary container must be marked with the international biohazard symbol as shown in Exhibit 8.7c(2), except when the secondary packaging also serves as the outer shipping container. In that case, the biohazard symbol must appear either on the inner packaging or on the primary container. A shipping paper and a content marking on the outer shipping container are not required.

9.0 RADIOACTIVE MATERIALS (HAZARD CLASS 7)

[Change "Publication 52, Acceptance of Hazardous, Restricted, or Perishable Matter" to "Publication 52, Hazardous, Restricted, or Perishable Mail."]

10.0 CORROSIVES (HAZARD CLASS 8)

* * * * *

10.2 Mailability

[In item a, change "secondary packagings" to "secondary containers"; change "secondary packaging" to "secondary container"; and change "outer packaging" to "outer shipping container".]

[In item b, change "secondary packaging" to "secondary container" and change "outer packaging" to "outer shipping container".]

10.3 Marking

[In the first sentence, change "Surface Mail Only" to "'Surface Only" or "Surface Mail Only."']

10.4 Nonspillable Wet Electric Storage Batteries

* * * * *

[Revise item a to read as follows:]

a. The nonspillable battery must be protected from short circuits, surrounded with sufficient cushioning material, and securely packaged in a strong fiberboard box that serves as the outer shipping container.

[In item b, change "outer packaging" to "outer shipping container".]

* * * * *

[In item d, change "50 pounds" to "25 pounds."]

11.0 MISCELLANEOUS HAZARDOUS MATERIALS (HAZARD CLASS 9)

11.1 Definition

[In the second sentence, remove "magnetized materials,".]

* * * * *

11.3 Marking

[In the first sentence, change "Surface Mail Only" to "'Surface Only" or "Surface Mail Only."']

11.4 Dry Ice

[In item a, change the heading "Air Transportation" to "Air Transportation Requirements."]

[In item b, change the heading "Surface Transportation" to "Surface Transportation Requirements". Also change "Surface Mail Only" to "'Surface Only" or "Surface Mail Only."']

* * * * *

[Renumber current 11.5 as new 12.0 to read as follows:]

12.0 OTHER REGULATED MATERIALS—MAGNETIZED MATERIALS

[Change the introductory paragraph in new 12.0 to read as follows (the remainder of new 12.0 is unchanged):]

A magnetized material is not classified within any of the nine hazard classes. Such material is regulated as a hazardous material only if offered for carriage on air transportation and when it has a magnetic field strength capable of causing the deviation of aircraft instruments. Regulated magnetized materials are mailable subject to the following limitations:

a. Definition.

[In the second sentence in item a, change "a hazard class 9 material" to "a hazardous material."]

b. Mailability.

[In the third sentence in item b, change "Publication 52" to "Publication 52, Hazardous, Restricted, and Perishable Mail."]

* * * * *

C024 Other Restricted or Nonmailable Matter

* * * * *

[Renumber current 18.0 and 19.0 as new 19.0 and 20.0, and insert new 18.0 to read as follows:]

18.0 ODD-SHAPED ITEMS IN PAPER ENVELOPES

Pens, pencils, key rings, bottle caps, and other similar odd-shaped items are not permitted in letter-size or flat-size paper envelopes unless they are wrapped within the other contents of the envelope to streamline the shape of the mailpiece and prevent damage during postal processing. If an odd-shaped item is not properly wrapped, it could burst through the envelope and cause injury to employees and damage to USPS processing equipment. Odd-shaped items that are properly wrapped within paper envelopes and sent at the First-Class Mail or Standard Mail nonautomation rates may be subject to the nonmachinable surcharge under E130 or E620, as applicable. Certain types of odd-shaped items, when properly wrapped, are permitted as automation rate letter-size mail subject to the standards in C810. Flat-size automation rate mail is subject to the uniform thickness requirement in C820.

* * * * *

C050 Mail Processing Categories

* * * * *

2.0 LETTER-SIZE MAIL

* * * * *

2.2 Nonmachinable Criteria

A letter-size piece is nonmachinable if it has one or more of the following characteristics (see C010.1.3 to determine the length, height, top, and bottom of a mailpiece):

* * * * *

[Revise item d by adding a reference to C024.18.0 to read as follows:]

d. Contains items such as pens, pencils, or loose keys or coins that cause the thickness of the mailpiece to be uneven (see C024.18.0).

* * * * *

F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 First-Class Mail and Priority Mail

* * * * *

[Revise item e to read as follows:]

e. "Change Service Requested" is not permitted for the following:

(1) Priority Mail, other than Priority Mail containing perishable matter under C022 (except for live animals).

(2) First-Class Mail or Priority Mail containing hazardous materials under C023.

(3) First-Class Mail or Priority Mail with a special service other than Delivery Confirmation or Signature Confirmation.

Exhibit 5.1 Treatment of Undeliverable First-Class Mail and Priority Mail

[Revise the listing for "Change Service Requested" to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
"Change Service Requested"[2].	Option 1[2] In all cases (regardless of whether a change-of-address order is on file): Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS. Option 2[2] If no change-of-address order on file: Piece disposed of by USPS; separate notice of reason for nondelivery provided (address correction fee charged). If change-of-address order on file: Months 1 through 12: piece forwarded (no charge); separate notice of new address provided (address correction fee charged). Months 13 through 18: piece disposed of by USPS; separate notice of new address provided (address correction fee charged). After month 18: piece disposed of by USPS; separate notice of reason for nondelivery provided (address correction fee charged). Restrictions (for Options 1 and 2): The following restrictions apply: (1) This endorsement is limited to use on valid mailpieces bearing a proper ACS participant code and only for: (a) Priority Mail containing perishable matter (other than live animals) and the marking "Perishable" and; (b) First-Class Mail (excluding hazardous materials). (2) Delivery Confirmation and Signature Confirmation are the only special services permitted with this endorsement.

* * * * *

[Revise the text of footnote 2 to read as follows:]

2. Valid only for ACS participating pieces (subject to F030) other than pieces containing hazardous materials.

* * * * *

5.3 Standard Mail

* * * * *

[Reletter current items c through j as new items d though k, and add new item c to read as follows:]

c. The endorsement "Change Service Requested" is not permitted for Standard Mail containing hazardous materials under C023. Standard Mail containing hazardous materials must bear the endorsement "Address Service Requested," "Forwarding Service Requested," or "Return Service Requested."

* * * * *

Exhibit 5.3a Treatment of Undeliverable Standard Mail

[Revise the listings for "No endorsement", "Address Service Requested", and "Change Service Requested" to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
No endorsment[1]	In all cases: Piece disposed of by USPS. Restrictions: Standard Mail containing hazardous materials must bear a permissible endorsement (see 5.3e).
"Address Service Requested"[2].	* * * * *
*	* * * * * * * * *
"Change Service Requested"[1,3].	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS. Restrictions: The following restrictions apply: (1) Delivery Confirmation is the only special service permitted with this endorsement. (2) This endorsement is not permitted for Standard Mail containing hazardous materials.

[Renumber footnote 1 as 2, and add new footnotes 1 and 3, to read as follows:]

1. Not valid for pieces containing hazardous materials.

2. Valid for all pieces, including Address Change Service (ACS) participating pieces.

3. Not valid for pieces containing hazardous materials. Valid for all other pieces, including ACS participating pieces.

* * * * *

5.4 Package Services

* * * * *

[Reletter current items c through e as new items d through f, and add new item c to read as follows:]

c. The endorsement "Change Service Requested" is not permitted for Package Services mail containing hazardous materials under C023.

* * * * *

Exhibit 5.4 Treatment of Undeliverable Package Services Mail

[Revise the listing for "Change Service Requested" to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
*	* * * * * * * * *
"Change Service Requested"[2].	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS. Restrictions: The following restrictions apply: (1) Delivery Confirmation and Signature Confirmation are the only special services permitted with this endorsement. (2) This endorsement is not permitted for Package Services Mail containing hazardous materials.

* * * * *

[Add new footnote 2 to read as follows:]

2. Not valid for pieces containing hazardous materials. Valid for all other pieces, including ACS participating pieces.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Neva Watson,

Attorney, Legislative.

[FR Doc. 03–14185 Filed 6–5–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 97–200319b; FRL–7498–1]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to the Visible Emissions Regulation Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 16, 2001, the North Carolina Department of Environment and Natural Resources submitted revisions to the North Carolina State Implementation Plan (SIP). Addressed in this rulemaking is a revision to rule 15 NCAC 2D .0521. The purpose of this revision is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990. The EPA is approving the revision.

DATES: This direct final rule is effective August 5, 2003, without further notice, unless EPA receives adverse comment by July 7, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 2001, the North Carolina Department of Environment and Natural Resources submitted a revision to the North Carolina State Implementation Plan (SIP) modifying rule 15A NCAC 2D .0521 Visible Emissions. These revisions include an exemption to this rule for engine maintenance and testing controls where visible emissions controls are infeasible.

Additionally, rule .0521 is being amended to establish an equitable reasonable procedure for sources using continuous opacity monitors (COM) to show compliance with the visible emission standard. This amendment is designed to provide sources using COMs the same opportunity to comply with the visible emissions rule as sources that do not use COM devices. Under the previous rule, the opacity is violated if two six minute averages exceed the standard in one hour or if five six-minute averages exceed the standard in 24 hours. Under the new amendment, sources with COMs are allowed to exceed the current opacity limit for up to .8 percent of the total operating hours without violating the visible emissions rule. Exceedances of the opacity limit greater than .8 percent of the total operating hours will be considered a violation of this rule.

In a letter dated March 29, 2002, EPA provided comments to North Carolina explaining the additional requirements that must be met in order for EPA to approve this rule. These requirements included the submittal of a worst case demonstration proving that such an exemption would not violate the National Ambient Air Quality Standards. On July 10, 2002, North Carolina submitted this demonstration to EPA. After a detailed review of this demonstration, EPA finds that North Carolina's amendments to rule .0521 Visible Emissions are approveable.

In addition to the revision being addressed within this notice, several other revisions were contained in this submittal and approved in 67 FR 51527. The additional revisions included the adoption of rules 15 NCAC 2Q .0316 and .0317, and the amending of rules .0109, .0803 and .0805 through .0808.

II. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 5, 2003, without further notice unless the Agency receives adverse comments by July 7, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 5, 2003, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 30, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. In the table in § 52.1770(c), table 1 is amended under subchapter 2D by revising the entry for ".0521 Cotrol of Visible Emissions" to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D	**Air Pollution Control Requirements**			
Section .0500	Emission Control Standards.			
Sect. .0521	Control of Visible Emissions	4/01/01	6/06/03 [Insert citation of publication].	

* * * * *

[FR Doc. 03–12024 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–113–7343; FRL–7508–4]

Approval and Promulgation of Implementation Plans; Wisconsin; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing the direct final rule providing new compliance options for sources subject to Wisconsin rules that limit emissions of nitrogen oxides (NO_X) from large electricity generating units in the Milwaukee-Racine ozone non-attainment area. In the direct final rule published on April 10, 2003 (68 FR 17551), we stated that if we receive any adverse comments by May 12, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on April 10, 2003 (68 FR 17576). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 22, 2003.

Steven Rothblatt,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the addition of 40 CFR 52.2570(c)(108) is withdrawn as of June 6, 2003.

[FR Doc. 03–14188 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–088–7216C; A–1–FRL–7509–2]

State of Massachusetts; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On April 8, 2003, EPA published a proposed rule (68 FR 17002) and a direct final rule (68 FR 16959) conditionally approving revisions to section 310 CMR 7.06 entitled "Visible Emissions" as a State Implementation Plan (SIP) revision for the Commonwealth of Massachusetts. In the direct final rule published on April 8, 2003, we stated that if we received adverse comment by May 8, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments, and thus EPA is withdrawing the final rule. EPA will address the comments received in a subsequent final action based upon the proposed action also published on April 8, 2003 (68 FR 17002). EPA will not institute a second comment period on this action.

DATES: This withdrawal of the direct final action is made as of June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, (617) 918–1665; *butensky.jeff@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 28, 2003.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 03–14189 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0002; FRL–7308–1]

Thymol and Eucalyptus Oil; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited exemptions from the requirement of a tolerance for residues of thymol and eucalyptus oil on honey and honeycomb. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides in beehives. This regulation eliminates the need to establish a maximum permissible level for residues of thymol and eucalyptus oil in or on honey and honeycomb. These time-limited exemptions from the requirement of a tolerance for residues of the thymol and eucalyptus oil will expire and are revoked on June 30, 2005.

DATES: This regulation is effective June 6, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0002, must be received on or before August 5, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

•Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0002. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing time-limited exemptions from the requirement of a tolerance for residues of thymol and eucalyptus oil in or on honey and honeycomb. These time-limited exemptions from the requirement of a tolerance for residues of the thymol and eucalyptus oil will expire and are revoked on June 30, 2005. EPA will publish a document in the **Federal Register** to remove the revoked exemptions from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Thymol and Eucalyptus Oil on Honey and Honeycomb and FFDCA Tolerances

The varroa mite is an ectoparasite of honey bees. It was first detected in the continental United States in Maryland in 1979, and found in Florida and Wisconsin by 1987. Currently, it is the most important pest of honey bee colonies. The mites feed on the hemolymph of the developing bee larva, pupa, and adult bees. Dead or dying newly emerged bees have malformed wings, legs, abdomens, and thoraces. Recent anecdotal evidence suggests that bee viruses and varroa mites are closely linked. The mites have been shown to activate some of these viruses; causing virus outbreaks that ultimately lead to colony mortality.

Fluvalinate is currently registered for the control of varroa mites; however, populations of varroa mites have developed resistance to fluvalinate. Varroa mite resistance to fluvalinate has been well documented by the United States Department of Agriculture (USDA), Agricultural Research Service (ARS). According to USDA, ARS many hives treated with fluvalinate have resulted in wholesale colony losses. Due to the destructive nature of this pest coupled with the importance of honey bees (for honey production and pollination of numerous agricultural crops) to the U.S. economy, it is imperative that alternative means of controlling the varroa mite be developed.

The Agency has authorized the use of coumaphos in beehives to control varroa mites under section 18 of FIFRA since 1999 in up to 46 states. During the 2001 use season there were limited reports of mites resistant to coumaphos in Maine and Florida. Resistance to coumaphos in Florida was confirmed by the USDA's Texas Bee Lab in December of 2001. In Maine, bees are primarily imported during the growing season from Florida. South Carolina has indicated that the beekeeping industry is migratory in nature, especially in the coastal region of the state and subject to the introduction of coumaphos resistant mites from Florida. Therefore, the states have requested use of the unregistered product ApiLife VAR, containing thymol and eucalyptus oil to control mites resistant to coumaphos. EPA has authorized under FIFRA section 18 the use of thymol and eucalyptus oil in beehives for control of varroa mites in Maine, Minnesota, Mississippi, Utah, Indiana, and South Carolina. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thymol and eucalyptus oil in or on honey and honeycomb. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary exemptions from the requirement of a tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these exemptions without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these exemptions from the requirement of a tolerance will expire and are revoked on June 30, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide in the tolerance remaining in or on honey and honeycomb after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these exemptions earlier if any experience with, scientific data on, or other relevant information on these pesticides indicate that the residues are not safe.

Because these exemptions from the requirement of a tolerance are being approved under emergency conditions, EPA has not made any decisions about whether thymol and eucalyptus oil meets EPA's registration requirements for use on honey and honeycomb or whether permanent exemptions for this use would be appropriate. Under these circumstances, EPA does not believe that these exemptions from the requirement of a tolerance serve as a basis for registrations of thymol and eucalyptus oil by a State for special local needs under FIFRA section 24(c). Nor do these exemptions serve as the basis for any State other than Maine and South Carolina to use these pesticides in beehives under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for thymol and eucalyptus oil, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety for Thymol

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of thymol and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for exemptions from the requirement of a tolerance for residues of thymol in or on honey and honeycomb. EPA's assessment of the dietary exposures and risks associated with establishing these exemptions from the requirement of a tolerance follows.

A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by thymol is discussed in this unit.

The EPA has not received nor does it have available any guideline studies on the mammalian toxicity of thymol. Thymol is found naturally occurring in

thyme herb (e.g., *Thymus vulgaris, T. zygis*). Thyme herb is used as a food seasoning ingredient, and is generally recognized as a safe (GRAS) natural seasoning by the Food and Drug Administration (FDA) (21 CFR 182.10). Thyme oil also is recognized as a GRAS essential oil by FDA (21 CFR 182.20).

In September of 1993, the EPA issued a Reregistration Eligibility Decision (RED) for thymol. At that time the Agency concluded that thymol is an active ingredient that should be considered for a broad waiver of generic data requirements. This conclusion was based on the following information:

Thymol is a component of many non-pesticidal consumer products currently marketed in the United States. Thymol is listed as a food additive by the Food and Drug Administration (21 CFR 172.515; synthetic flavoring substances and adjuvants). Thymol is rapidly degraded in the environment to elemental constituents by normal biological, physical, and/or chemical processes that can be reasonably expected to exist where the pesticide is applied.... The phenols of thymol are considered GRAS as set forth in 21 CFR 172.515 (synthetic flavoring substances and adjuvants)....

Thymol toxicity data reported available literature cite acute oral LD_{50} values as 980 milligrams/kilogram (mg/kg) and 880 mg/kg for the rat and guinea pig, respectively (Sax; 1984). The acute oral toxicity reported for the rat and guinea pig, respectively corresponds to Toxicity Category III. The Material Safety Data Sheet (MSDS) for the manufacture of technical grade thymol cites human health effects as irritating when exposed by inhalation, dermal or eye contact. The MSDS also estimates a human ingestion LD_{50} at 2 grams of the synthetic thymol. Based upon an estimated thymol dermal toxicity LD_{50} of greater than 2,000 mg/kg, the dermal toxicity would be Toxicity Category III. (Refer to pages 6 and 7 of the RED)

A summary of the submitted information on thymol toxicity allows for the statements that the acute oral LD_{50} in the rat is 980 mg/kg and in the mouse is 640 to 1,800 mg/kg. Thymol is corrosive to the rabbit eye and skin, and is not reported as a dermal sensitizer in the guinea pig. Thymol is readily absorbed from the gastrointestinal tract and is essentially excreted in the urine as a glucuronate and sulfate conjugate of the parent compound. Dosing of rats with thymol in the feed at 667 mg/kg body weight/day (highest dose tested) for 19 weeks did not produce any harmful effects. Thymol is not mutagenic in Salmonella, but gives statistically significant positive results in an Unscheduled DNA synthesis and Sister Chromatid Exchange tests, and in a cell transformation test with Syrian hamster embryonic cells. Multiple malformations are noted when thymol is injected into the air bubble or yolk sac of embryonic chickens.

B. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*—i. *Food.* Thymol is found naturally occurring in thyme herb (e.g., *Thymus vulgaris, T. zygis*). Thyme herb is used as a food seasoning ingredient, and is generally recognized as a safe (GRAS) natural seasoning by FDA (21 CFR 182.10). Thyme oil also is recognized as a GRAS essential oil by FDA (21 CFR 182.20). The volatile oil component of thyme herb is about 2% to 5% content, and thyme oil is reported to contain from 30% to 75% thymol, and even up to 90%. Thymol may be safely used in foods as a synthetic flavoring substance when used in the minimum quantity to produce the intended effect (21 CFR 172.515). Levels of thymol reported in foods where it is permitted as a direct food additive have been stated as 44 ppm in ice cream, ices, etc.; 2.5 ppm to 11 ppm in non-alcoholic beverages; 9.4 ppm in candy, 5 ppm to 6.5 ppm in baked goods, and 100 ppm in chewing gum. Thymol is a natural component of lime blossom honey, where the maximum thymol content has been determined to be 0.16 mg/kg.

Studies in Europe showed that when ApiLife Var was used for 8 weeks in the autumn over 1 to 5 years the maximum thymol residue observed was 0.48 mg/kg. The average (median) residue value for thymol was 0.16 mg/kg in honey. When export and import tonnage values of honey are taken into consideration with U.S. honey production, the average yearly per capita intake of honey is about 2 pounds, roughly equivalent to 1 kg. If all the honey contained 0.5 mg/kg thymol then the per capita intake of thymol would be about 1.4 µg/day. For a 60 kg adult the chronic exposure value is about 0.022 µg/kg body weight/day. If a 60 kg adult consumed 1 kg of honey containing 0.5 mg thymol in 90 days the subchronic dietary exposure to thymol would be about 2 µg/kg body weight/day. Even if all 2 kg of the thymol-containing honey were consumed in one sitting, the acute exposure to thymol still would be as low as 83 µg.

2. *Drinking water exposure.* No drinking water exposure is expected from the pesticidal use of thymol which is confined to placement in beehives. Thymol is currently registered for use on ornamental plants, shrubs and grasses so there is some potential for exposure to water. However, thymol is a constituent of a mixture of organic compounds known to be rapidly degraded in the environment to elemental compounds by normal biological, physical and/or chemical processes. In the RED, the Agency concluded that the registered uses of thymol will result in negligible exposure of the environment and nontarget organisms (refer to page 7 of the RED). Therefore, thymol is not expected to be found in drinking water.

3. *Other non-occupational exposure.* The potential for non-dietary exposure to thymol residues for the general population, including infants and children, is unlikely because the proposed use site is limited to beehives. Thymol is a normal constituent of the human diet, as a component of thyme and thyme oil, and as a direct food additive. Therefore, while there exists a great likelihood of prior exposure for most, if not all individuals to thymol, any increased exposure due to the proposed use would be negligible. Thyme, which contains thymol, is a pesticide active ingredient for the control of aphids on ornamental plants. Thyme and thyme oil are considered minimum risk pesticides, and are exempted as active ingredients under FIFRA [40 CFR 152.25(g)].

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether thymol has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, thymol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this exemption from the requirement of a tolerance, therefore, EPA has not assumed that thymol has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population, Infants and Children

The dietary exposure to residues of thymol to the U. S. population from use of ApiLife Var is not likely to add significantly to current dietary exposure to thymol. For instance, thymol has been measured in chewing gum at 100 mg/kg, in candy at 9.4 mg/kg, and in ice cream at 44 mg/kg. These values respectively are 200–, 20–, and 100–fold greater than the highest level of thymol (i.e., 0.48 mg/kg) measured in honey treated with ApiLife Var. In addition, thymol as measured in ice cream is about 300–fold higher than the average residue level of thymol (i.e., 0.16 mg/kg) in hives treated with ApiLife Var. Additionally, it is typical for language to appear on labels of honey that states "Do not feed to infants under 1 year," so there likely would be no exposure of this population to residues of thymol in the honey. Older children likely have been exposed to thymol residues from consumption of candy, ice cream, and baked goods. Consumption of honey from hives treated with ApiLife Var is unlikely to significantly increase exposure to thymol. Therefore, based on the long history of use of thyme, thyme oil, and thymol in the diet with no known adverse effects, it is reasonable to conclude that no harm will result from exposure to thymol in honey from beehives treated with ApiLife Var. Accordingly, EPA finds that exempting thymol from the requirement of a tolerance will be safe.

V. Aggregate Risk Assessment and Determination of Safety for Eucalyptus Oil

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of eucalyptus oil and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for exemptions from the requirement of a tolerance for residues of eucalyptus oil in or on honey and honeycomb. EPA's assessment of the dietary exposures and risks associated with establishing these exemptions from the requirement of a tolerance follows.

A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by eucalyptus oil is discussed in this unit.

The EPA has not received nor does it have available any guideline studies on the mammalian toxicity of eucalyptus oil. Eucalyptus oil is obtained from steam distillation of the leaves of Eucalyptus globulus and, in addition to cineole, contains triterpenes, monoterpenes, sesquiterpenes, aldehydes and ketones. Information submitted by the applicant allows for the statements that acute oral LD_{50} value for eucalyptus oil in rats is 2,480 mg/kg. Eucalyptol (1,8-cineole) which makes up 70% or more of eucalyptus oil may be safely used in foods as a synthetic flavoring substance when used in the minimum quantity to produce the intended effect (21 CFR 172.515). Eucalyptus globulus leaves also may safely be used in foods (21 CFR 172.510).

B. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure.*—i. *Food.* Eucalyptus oil is obtained from steam distillation of the leaves of Eucalyptus globulus and, in addition to cineole, contains triterpenes, monoterpenes, sesquiterpenes, aldehydes and ketones. Levels of eucalyptus oil reported in foods where it is permitted as a direct food additive have been stated as 0.5 to 50 ppm in ice cream, ices etc.; 1.7 ppm in non-alcoholic beverages; 1.0 ppm in alcoholic beverages; 130 ppm in candy; and 76 ppm in baked goods. Cineole in foods has been reported at 0.13 ppm in non-alcoholic beverages; 0.50 ppm in ice cream, ices, etc.; 15 ppm in candy; 0.5 to 4.0 ppm in baked goods, and 190 ppm in chewing gum.

Studies in Europe showed that when ApiLife Var was used for 8 weeks in the autumn over 1 to 5 years, residues of eucalyptus oil (measured as 1,8-cineole) were less than the limit of detection, i.e., <0.01 ppm.

ii. *Drinking water exposure.* No drinking water exposure is expected from the pesticidal use of eucalyptus oil which is confined to placement in beehives. Further, there are no products registered that will result in exposure to drinking water. Therefore, eucalyptus oil is not expected to found in drinking water.

2. *Other non-occupational exposure.* The potential for non-dietary exposure to eucalyptus oil residues for the general population, including infants and children, is unlikely because the proposed use-site is limited to beehives. Eucalyptus oil is a constituent of the human diet as a direct food additive. Eucalyptus oil is used as a component of decongestant products, as an expectorant component of cough and cold products, in various oral dosage forms (e.g., lozenges and syrups), and as an inhalant in vapor baths. It is used in dermally applied products for burns, blisters, and for muscle and joint aches. It may be a component of toothpaste, soaps, detergents and toiletries. It is reported to be used internally at 0.3 to 0.6 grams/day, and externally at 5% to 20% in paraffin, jelly, or vegetable oil bases. Oil of eucalyptus has antimicrobial properties, and has been registered as an active pesticide ingredient in an herbal flea collar pet product (active ingredient is in the product at 1.00%).

3. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether eucalyptus oil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, eucalyptus oil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this exemption from the requirement of a

tolerance, therefore, EPA has not assumed that eucalyptus oil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population, Infants and Children

The dietary exposure to residues of eucalyptus oil to the U.S. population from use of ApiLife Var is not likely to add significantly to current dietary exposure to eucalyptus oil. This is because no residues of eucalyptus oil were detectable (i.e., <0.01 ppm; measured as 1,8-cineole) when ApiLife was used in hives in the autumn in Europe for up to 5 years. Even if oil of eucalyptus residues were found in honey from hives treated with Apilife Var, they would have to be present at 5,000 times greater than the limit of detection to reach the level reported in ice cream (i.e., 50 mg/kg) and 170 times greater than the limit of detection to reach the level reported in non-alcoholic beverages (i.e., 1.7 mg/kg). Therefore, based on the long history of use of eucalyptus oil in the diet with no known adverse effect, coupled with the expectation of no to minimal residues from use of ApiLife Var in hives, it is reasonable to conclude that no harm will result from this pesticidal use. Accordingly, EPA finds that exempting eucalyptus oil from the requirement of a tolerance will be safe.

VI. Other Considerations

A. Analytical Enforcement Methodology

The Agency has not reviewed the method, nor its accuracy or reliability, used to previously analyze thymol and eucalyptus oil residues in honey; nor has it confirmed that prior use of ApiLife Var in European hives will give equivalent residues in hives in the United States. However, review of information submitted on a gas chromatographic method of analysis to measure thymol and eucalyptus oil in European hives, and the similarity of the European hives to U.S. hives allow for the conclusion that thymol and eucalyptus oil residues in honey from these hives will not be significantly greater, provided ApiLife Var is applied at the same rates to overwintering hives in the United States as was done previously in Europe.

The method may be requested from: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:(703) 305–6463; e-mail address: madden.barbara@epa.gov.

B. International Residue Limits

No Codex Maximum Residue Levels (MRL) are established for thymol. However, Switzerland has established an MRL of 0.8 mg/kg, apparently not from a safety finding, but rather arising from legislation that prohibits foreign odors or tastes in honey. According to the World Health Organization, thymol residues in food are safe to consumers at up to 50 mg/kg. According to European Union regulation Nr. 2377/90, thymol is in group II of the non-toxic veterinary drugs which do not require a MRL. No Codex Maximum Residue Levels (MRL) are established for eucalyptus oil.

VII. Conclusion

Therefore, time-limited exemptions from the requirement of a tolerance are established for residues of thymol and eucalyptus oil in or on honey and honeycomb.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0002 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 5, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0002, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes a time-limited exemption from the tolerance requirement under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 23, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.1240 is added to subpart D to read as follows:

§ 180.1240 Thymol; exemption from the requirement of a tolerance.

Time-limited exemptions from the requirement of a tolerance are established for residues of thymol in or on honey and honeycomb in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. These time-limited exemptions from the requirement of a tolerance for residues of the thymol will expire and are revoked on June 30, 2005.

■ 3. Section 180.1241 is added to subpart D to read as follows:

§ 180.1241 Eucalyptus oil; exemption from the requirement of a tolerance.

Time-limited exemptions from the requirement of a tolerance are established for residues of eucalyptus oil in or on honey and honeycomb in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. These time-limited exemptions from the requirement of a tolerance for residues of the eucalyptus oil will expire and are revoked on June 30, 2005.

[FR Doc. 03–14198 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States

CFR Correction

In Title 50 of the Code of Federal Regulations, Part 600 to End, revised as of October 1, 2002, § 648.21 is corrected by removing paragraph (e) appearing on page 337 and reinstating the paragraph (e) appearing on page 316 in the 2000 edition. The reinstated text reads as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the Federal Register stating the reasons for such an action and providing a 30–day public comment period.

* * * * *

[FR Doc. 03–55515 Filed 6–5–03; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 68, No. 109
Friday, June 6, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Subtitles A and B

Office of Federal Financial Management; Government-wide Guidance for Grants and Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Notice of proposed relocation of policy guidance for grants and other agreements.

SUMMARY: OMB proposes two changes to the framework of Federal government policies for grants and other financial assistance and nonprocurement agreements that will make it easier for applicants and recipients to use the policies.

First, OMB proposes to publish in a single title in the Code of Federal Regulations (CFR) its guidance to Federal agencies for grants and agreements that is currently located in seven separate OMB circulars and other policy documents.

Second, OMB proposes to create in the same new title of the CFR a subtitle in which Federal agencies will co-locate their regulations for the award and administration of grants and agreements.

DATES: All comments on this proposal should be in writing, and must be received by July 7, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic mail comments may be submitted to: *ephillip@omb.eop.gov*. Please include "Relocating Grant Policy" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: *ephillip@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: This **Federal Register** document seeks public comment on two proposed changes to the Federal government's policy framework for grants and agreements. As discussed in the following sections, the proposed changes provide a good foundation for future streamlining and simplification of the policy framework that may be accomplished through the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

I. First Proposal: Publish OMB's Guidance in the Code of Federal Regulations

OMB's government-wide guidance for grants and other financial assistance and nonprocurement agreements currently resides in seven OMB circulars that are accessible at OMB's Internet site and two separate OMB guidance documents that are less easily found. To help make all of the guidance easier to use and more accessible for both Federal agencies and recipients of grants and agreements, OMB proposes to publish the separate documents in a single location in the CFR. Although located in the CFR, the nature and status of the OMB guidance will remain the same. The OMB guidance is directed to Federal agencies, which adopt and implement it through regulations or policy documents and require recipients to comply with the agency implementation. The OMB guidance documents are:

For administrative requirements:

• OMB Circular A–102, "Grants and Cooperative Agreements with State and Local Governments," and

• OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."

These two circulars provide to Federal agencies OMB's guidance related to administrative requirements for grants and agreements with different types of recipients, including States, local governments, Indian Tribal governments, institutions of higher education, hospitals, and other non-profit organizations.

For guidance related to costs:

• OMB Circular A–21, "Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements with Educational Institutions;"

• OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments;" and

• OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

These three circulars provide guidance related to the costs that may be charged to Federal awards.

For audit guidance:

• OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

A–133 provides guidance implementing the requirements of the Single Audit Act of 1984, as amended (31 U.S.C., Chapter 75).

For other guidance:

• OMB Circular A–89, "Federal Domestic Assistance Program Information," which provides guidance to agencies for implementing the Federal Program Information Act, as amended (31 U.S.C., Chapter 61);

• OMB guidance on nonprocurement suspension and debarment, issued under Section 6 of Executive Order 12549, and last amended on June 26, 1995, at 60 FR 33036, which includes OMB guidance on drug-free workplace that is issued under the Drug-Free Work Place Act of 1988, as amended (41 U.S.C. 701 *et seq.*); and

• OMB guidance on lobbying restrictions (last amended on January 19, 1996, at 61 FR 1412), for Federal agencies' implementation of the requirements of 31 U.S.C. 1352.

A. Relationship of First Proposal to Grants Streamlining Under Pub. L. 106–107

In parallel with this proposal to relocate in the CFR the OMB circulars and guidance documents in their current form, which will make those documents available to the public in a single location, interagency work groups are developing proposals under Public Law 106–107 to streamline the award and administration of Federal grants and agreements. Public comments that OMB and Federal agencies received under Public Law 106–107 noted that the public finds the current policy framework for grants and agreements to be very confusing. The commenters cited a need to better align the various OMB circulars and guidance documents with each other to provide greater commonality in cross-cutting areas like definitions. They also identified a need to make Federal agency regulations that implement the OMB guidance more consistent with that guidance, to make it easier for applicants and recipients to understand their obligations and those of their subrecipients. Therefore, some interagency work group proposals may involve significant revision of current OMB circulars and guidance documents; for example, one group's effort to develop standard award terms and conditions may lead to future proposals to revise the OMB circular guidance on post-award administrative requirements. The proposal in this notice to provide a single CFR location for OMB guidance is a good first step that provides a foundation for any future streamlining of the policy framework. Any revision to an OMB circular or guidance document would be proposed in a **Federal Register** notice separate from this notice, with an opportunity for public comment.

B. Structure of 2 CFR To Implement the First Proposal

OMB proposes to establish a subtitle A for its guidance in Title 2 of the CFR, a title that currently is reserved and that would be redesignated "Government-wide Grants and Agreements." OMB proposes to locate its current circulars and guidance documents within Chapter II of subtitle A. Chapter I would be reserved at this time, as the future location of the OMB guidance after any revisions due to the Public Law 106–107 streamlining efforts.

Subtitle A, Chapter II also will include a part with general information about 2 CFR. That part will address the purpose and scope of the title, the applicability of the various portions of the OMB guidance to different types of agreements, and the responsibilities of the OMB and Federal agencies with respect to the guidance.

II. Second Proposal: Co-Locate OMB Guidance and Related Agency Regulations

Most Federal agencies issue regulations related to some or all of OMB's government-wide guidance for grants and agreements. Because each agency's regulations currently are in its own title in the CFR, an entity that may receive awards from more than one Federal agency must read regulations in multiple locations in the CFR. To reduce this burden, an interagency working group under the Public Law 106–107 grants streamlining effort recommended that agencies co-locate their implementing regulations with the OMB guidance in Title 2 of the CFR. An applicant or recipient then could more easily find the agencies' implementing regulations, as well as the OMB guidance, in one location.

Note that this proposal entails only Federal agency regulations for nonprocurement instruments. Some portions of the OMB guidance (specifically, the cost principles in OMB Circulars A–21, A–87, and A–122, and the guidance on single audits in OMB Circular A–133) apply to both procurement and nonprocurement instruments. The Federal Acquisition Regulation (FAR) implements those portions for procurement contracts. The current proposal is to co-locate the OMB guidance with agency implementing regulations only for grants and agreements; the proposal would not relocate the implementation of the OMB guidance for procurement contracts, which will continue to be in the FAR.

To accomplish the co-location, OMB proposes to establish a second subtitle in Title 2 of the CFR. Subtitle B would be "Federal Agency Regulations for Grants and Agreements." Ultimately, each Federal agency that has regulations implementing OMB's guidance will establish a chapter in Subtitle B where its regulations will appear. Each agency will be responsible for organizing the subject matter in its chapter.

III. Relative Timing of Changes Resulting From First and Second Proposals

As explained above, OMB is proposing to establish its guidance in 2 CFR in two phases. In the first phase, the circulars and guidance documents would be moved into Chapter II of the new CFR title in their current form (adapted to CFR codification). In the second phase, after any revisions due to the Public Law 106–107 streamlining effort, they would be moved into Chapter I of the new title.

The timeframe for agencies to complete their move of regulations would correspond to the second of the two phases. Once OMB establishes the guidance documents in Chapter I, with any revisions, the revised guidance would require agencies to locate their implementing regulations in 2 CFR. Agencies could elect to move existing regulations during the first phase, in parallel with OMB's relocation of current circulars and guidance, but they would not be required to do so.

IV. Summary of Proposals

In summary, OMB proposes to establish in the near term, after considering public comments received in response to this notice:

- Title 2 of the CFR, which would be entitled "Government-wide Grants and Agreements;"
- Subtitle A of Title 2, which would be "Government-wide Guidance for Grants and Agreements;"
- Chapter I of Subtitle A, which would be reserved;
- Chapter II of Subtitle A, which would contain all existing OMB Circulars and other guidance;
- Subchapter A of Chapter II, which would be "General Matters" related to Chapter II.
- Subtitle B of Title 2, which would be "Federal Agency Regulations for Grants and Agreements," where Federal agencies may now choose to locate, and eventually will be required to locate, agency regulations implementing the OMB guidance on the award and administration of grants and agreements.

OMB in the longer term plans to move its guidance, with any revisions resulting from the streamlining under Pub. L. 106–107, to Chapter I of Subtitle A. During that transition, Federal agencies will establish their chapters in Subtitle B and add content to that subtitle.

V. Invitation To Comment

OMB welcomes your input on any aspect of the two proposals described in this notice. You may wish to comment on the merits of either proposal individually or the two in combination.

Joseph L. Kull,
Deputy Controller.

TABLE 1.—PROPOSED ORGANIZATION OF TITLE 2

Title 2, Government-wide Grants and Agreements
Subtitle A—Government-wide Guidance for Grants and Agreements
Chapter I—[Reserved.]
Chapter II—Office of Management and Budget Circulars and Guidance
Subchapter A—General matters
Part 1—General
Subchapter B—Circulars
Subchapter C—Other guidance documents
Subtitle B—Federal Agency Regulations for Grants and Agreements
Chapters III and following—Each Federal agency will establish a chapter under Subtitle B for its regulations on grants and agreements

[FR Doc. 03–14335 Filed 6–5–03; 8:45 am]
BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Models PW118, PW120, PW120A, and PW121 Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) models PW118, PW120, PW120A, and PW121 turboprop engines. This proposed AD would require replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. This proposed AD is prompted by a report of an internal oil fire in the engine intercompressor case (ICC). A fire in the ICC could cause the existing tubes to disengage due to melted brazing on the tubes. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity. The actions specified in this proposed AD are intended to prevent fire in the engine nacelle cavity, in-flight engine shutdown, and airplane damage.

DATES: We must receive any comments on this proposed AD by August 5, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You may get the service information identified in this proposed AD from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–11–AD" in the subject line of your comments.If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC models PW118, PW120, PW120A, and PW121 turboprop engines. Transport Canada advises that they have received a report of an internal oil fire in the engine ICC. An ICC fire melts the brazing on the external air tube connected to the P2.5/P3 switching valve, and on the low pressure rotor speed (NL) sensor port sealing tube, allowing both to disengage. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity, resulting in in-flight engine shutdown and potential airplane damage.

Relevant Service Information

We have reviewed and approved the technical contents of PWC Service Bulletin (SB) No. 20914, Revision 4, dated December 14, 2001. That SB describes procedures for replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. Transport Canada classified this SB as mandatory and issued airworthiness directive No. CF–2002–10, dated January 28, 2002, in order to ensure the airworthiness of these PWC models PW118, PW120, PW120A, and PW121 turboprop engines in Canada.

FAA's Determination and Requirements of the Proposed AD

These PWC models PW118, PW120, PW120A, and PW121 turboprop

engines, manufactured in Canada, are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept us informed of the situation described above. We have examined Transport Canada's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. The proposed AD would require that these actions be done using the service information described previously.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 1,933 PWC models PW118, PW120, PW120A, and PW121 turboprop engines of the affected design in the worldwide fleet. We estimate that 1,160 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 2 work hours per installed engine to replace the parts, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,966 per engine. Based on these figures, the total replacement cost of the proposed AD to U.S. operators is estimated to be $2,419,760. We also estimate that it would take approximately 2 work hours per tube to perform the rework in lieu of tube replacement, and required parts for rework would cost approximately $197 per engine. Based on these figures, the total rework cost of the proposed AD to U.S. operators is estimated to be $367,720. PWC has informed the FAA that it may provide the parts and labor to the operators at no cost, thereby substantially reducing the cost of the proposed rule.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–11–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 2003–NE–11–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by August 5, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Pratt & Whitney Canada (PWC) models PW118, PW120, PW120A, and PW121 turboprop engines. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica (EMBRAER) EMB–120RT, 120ER, and 120FC, Bombardier Inc. (formerly Dehavilland of Canada) DHC–8–100 series, and Aerospatiale ATR 42–200, –300, and –320 airplanes.

Unsafe Condition

(d) This AD was prompted by a report of an internal oil fire in the engine intercompressor case (ICC). A fire in the ICC could cause the low pressure rotor speed (NL) sensor port sealing tube and the external air tube connecting the P2.5/P3 switching valve to the rear inlet case, to disengage due to melted brazing on the tubes. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity. The actions specified in this AD are intended to prevent fire in the engine nacelle cavities, in-flight engine shutdown, and airplane damage.

Compliance

(e) Compliance with this AD is required at the next engine shop visit, or within 90 days after the effective date of this AD, whichever occurs first, unless already done.

Low Pressure Rotor Speed (NL) Sensor Port Sealing Tube

(f) Replace the low pressure rotor speed (NL) sensor port sealing tube with an improved durability tube, in accordance with paragraphs 2.A. and 2.B., Accomplishment Instructions of PWC Service Bulletin (SB) No. 20914, Revision 4, dated December 14, 2001.

Switching Valve-to-Rear Inlet Case Sealing Air Tube Assembly

(g) Remove the switching valve-to-rear inlet case sealing air tube assembly, in accordance with paragraph 2.C., Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001, and do the following:

(1) Either install an improved durability switching valve-to-rear inlet case sealing air tube assembly, in accordance with paragraph 2.G., Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001; or

(2) Rework the switching valve-to-rear inlet case sealing air tube assembly and install tube assembly, in accordance with paragraphs 2.D., 2.F., and 2.G., Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(i) The replacements and rework must be done in accordance with PWC SB No. 20914, Revision 4, dated December 14, 2001.

Related Information

(j) The subject of this AD is addressed in Transport Canada airworthiness directive No. CF–2002–10, dated January 28, 2002.

Issued in Burlington, Massachusetts, on May 30, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14276 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103809–03]

RIN 1545–BA58

Disclosure of Return Information to the Department of Agriculture

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: The IRS is issuing regulations to incorporate and clarify the phrase "return information reflected on returns" in conformance with the terms of section 6103(j)(5) of the Internal Revenue Code (Code). These temporary regulations also remove certain items of return information that the IRS currently discloses, but the Department of Agriculture no longer needs, for conducting the census of agriculture. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by August 1, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–103809–03), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–103809–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Christine Irwin at (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR Part 301) relating to Code section 6103(j)(5). The temporary regulations contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Agriculture for conducting the census of agriculture.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the IRS will submit this notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before adoption of these proposed regulations as final regulations, the IRS will consider any written (a signed original and 8 copies) or electronic comments that the IRS timely receives. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. The IRS may schedule a public hearing if any person who timely submits written comments requests such a hearing in writing. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Christine Irwin, Office of the Associate Chief Counsel, Procedure & Administration (Disclosure & Privacy Law Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 301.6103(j)(5)–1 is added to read as follows:

§ 301.6103(j)(5)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Agriculture for conducting the census of agriculture.

[The text of this proposed section is the same as the text of § 301.6103(j)(5)–1T published elsewhere in this issue of the **Federal Register**.]

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–14206 Filed 6–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–049D]

RIN 1218–AC05

Controlled Negative Pressure REDON Fit Testing Protocol

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: OSHA is proposing to approve an additional controlled negative pressure (CNP) fit testing protocol for its Respiratory Protection Standard. The proposed protocol would affect OSHA respiratory protection standards for shipyard employment and construction. The proposed protocol is referred to as the CNP REDON fit testing protocol. Provisions contained in OSHA's current Respiratory Protection Standard allow individuals to propose additional fit testing protocols. This proposed revision is based on a new quantitative fit testing protocol submitted to OSHA for addition to the standard.

The proposed protocol requires three different test exercises followed by two

redonnings of the respirator, while the currently approved CNP protocol specifies eight test exercises, including one redonning of the respirator. In addition to amending the Respiratory Protection Standard to include the proposed protocol, this rulemaking is proposing to make several editorial and non-substantive technical revisions to this standard associated with the proposed protocol and the approved CNP protocol.

DATES: Submit written comments regarding this proposal, including comments on the information-collection determination described in section IV.C (Paperwork Reduction Act) of this notice, by the following dates:

Hard copy. Submitted (postmarked or sent) by September 4, 2003.

Facsimile and electronic transmission. Sent by September 4, 2003.

Please see the section below entitled **SUPPLEMENTARY INFORMATION** for additional information on submitting written comments.

ADDRESSES: Submit comments and attachments to comments using one of the procedures described below:

Regular mail, express delivery, hand-delivery, and messenger service. Submit three copies of written comments and attachments to the OSHA Docket Office, Docket No. H–049D, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Please note that security-related problems may result in significant delays in receiving comments and other written materials by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures associated with delivery of materials by express delivery, hand delivery, and messenger service.

Facsimile. Transmit written comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. H–049D, in your comments.

Electronic. You may submit comments electronically through the Internet on OSHA's Homepage at *http://ecomments.osha.gov*. If you would like to submit additional studies or journal articles, you must submit three copies of them to the OSHA Docket Office at the address above. These materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

All comments and submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's web page will be available at *http://www.osha.gov*. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available on the OSHA web page and for assistance in using this web page to locate docket submissions. Because comments sent to the docket or to OSHA's web page are available for public inspection, the Agency cautions against including in these comments personal information such as social security numbers and birth dates.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Mr. John E. Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2289 or facsimile (202) 693–1678. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1888. For an electronic copy of this notice, go to OSHA's website (*http://www.osha.gov*), and select "**Federal Register**," "Date of Publication," and then "2003."

SUPPLEMENTARY INFORMATION:

I. Background

The Respiratory Protection Standard currently includes three (3) quantitative fit testing protocols: Generated aerosol fit testing protocol; ambient aerosol condensation nuclei counter (CNC) fit testing protocol; and controlled negative pressure (CNP) fit testing protocol. The standard specifies the procedure to be followed to add new test protocols as they are developed and validated. The criteria for determining that a fit testing protocol is valid include: (1) A test report prepared by an independent government research laboratory (*e.g.*, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory tested the protocol and found it to be accurate and reliable; or (2) an article published in a peer-reviewed industrial hygiene journal describing the protocol and explaining how the test data support the protocol's accuracy and reliability. When a protocol meets such criteria, OSHA conducts a notice-and-comment rulemaking under Section 6(b)(7) of the Occupational Safety and Health Act of 1970. OSHA believes the CNP REDON meets these criteria as described below.

II. Summary and Explanation of the Proposal

Introduction. In his letter submitting the protocol for review, Dr. Crutchfield included copies of two peer-reviewed articles from industrial hygiene journals describing the accuracy and reliability of the CNP REDON fit testing protocol. (See Exs. 2 and 3; Section III below provides complete reference information on these articles.) In this submission, Dr. Crutchfield also described in detail the equipment and procedures required to administer the proposed protocol. According to this description, the proposed protocol is a variation of the controlled negative pressure (CNP) fit testing protocol developed by Dr. Crutchfield in the early 1990s, which OSHA approved for inclusion in Part I.C of Appendix A when the Agency developed the final Respiratory Protection Standard. The proposed protocol uses the same fit test requirements and test instrumentation specified for the CNP fit testing protocol in paragraphs (a) and (c) of Part I.C.4 of Appendix A of this standard. However, the proposed protocol includes only three test exercises followed by two redonnings of the respirator, instead of the eight test exercises and one respirator redonning required in paragraph (b) of the CNP fit testing protocol. The three tests, listed in order of administration, are normal breathing, bending over, and head shaking. The procedures for administering these three test exercises and the two respirator donnings to an employee, and for measuring respirator leakage during each test, are described below:

- *Facing forward.* In a normal standing position, without talking, the test participant shall breathe normally; then, while facing forward, he/she shall hold his/her breath for 10 seconds for test measurement.
- *Bending over.* The test participant shall bend at the waist as if he/she is going to touch his/her toes; then, while facing parallel to the floor, he/she shall hold his/her breath for 10 seconds for test measurement.
- *Head shaking.* The test participant shall shake his/her head back and forth vigorously several times while shouting for approximately three seconds; then, while facing forward, he/she shall hold his/her breath for 10 seconds for test measurement.
- *First redonning (REDON–1).* The test participant shall remove and redon the respirator mask; after redonning the mask, he/she shall face forward and hold his/her breath for 10 seconds for test measurement.
- *Second redonning (REDON–2).* The test participant shall remove and redon the respirator mask again; after redonning the mask, he/she shall face forward and hold his/her breath for 10 seconds for test measurement.

As noted earlier, Dr. Crutchfield submitted two peer-reviewed journal articles that provided information on the accuracy and reliability of the proposed CNP REDON fit testing protocol. In the first of these articles, the most important conclusion made by the authors is that the proposed CNP REDON fit testing protocol results in substantially lower respirator fit factors overall than the most commonly used ambient aerosol (AA) fit testing protocol. Accordingly, lower fit factors indicate that the proposed protocol would detect more respirator leaks than the AA protocol, thereby providing employees with an increased margin of safety when they select respirators. The main conclusion reached by the authors in the second article is that the overall fit factors obtained from the three exercises and two redonnings required by the proposed protocol are the same as the overall fit factors found when using the eight-exercise CNP protocol described in the Respiratory Protection Standard. Therefore, compared to the eight-exercise CNP protocol, the same overall fit factors can be obtained in less time using the proposed protocol.

Peer-reviewed articles. In the first peer-reviewed article, entitled "Effect of exercise and mask donning on measured respirator fit" and published in *Applied Occupational and Environmental Hygiene*, Dr. Crutchfield and his colleagues tested 14 Air Force personnel who wore elastomeric full facepiece or half mask air purifying respirators while being fit tested using either AA fit testing equipment (the Portacount Plus®, manufactured by TSI, Inc., St. Paul, MN) or CNP fit testing equipment (FitTester 3000®, manufactured by Occupational Health Dyanmics, Birmingham, AL) (Ex. 2). The study participants wore their usual respirator mask for half of the tests (mask 1), and a respirator mask that was either a size larger or smaller than their usual mask for the other half of the tests (mask 2). The purpose of using the second mask was to obtain poor respirator fit (*i.e.*, to ensure respirator leakage on some of the tests). Each study participant received three fit tests per day for five consecutive days; they removed and redonned the respirator between fit tests. During a fit test, they engaged in one of two test-exercise procedures. The first procedure (procedure 1) consisted of the three test exercises described in the proposed protocol (*i.e.*, facing forward, bending over, and head shaking), with no repeated donnings. The second procedure (procedure 2) consisted of the following nine exercises (listed in order of administration): Normal breathing; deep breathing; side-to-side head turning (pausing to inhale at each extreme position); up-and-down head nodding (pausing to inhale at each extreme position); talking loudly (reading a standard passage, counting backward from 100, or reciting a memorized poem or song); grimacing (contracting the facial muscles); bending over (as if touching the toes); jogging in place; and normal breathing. Only the first AA fit test administered each day with each mask (1 and 2) used the second test-exercise procedure; the remaining AA fit tests, and all of the CNP fit tests, used the first test-exercise procedure.

The authors used the AA fit test equipment to compare fit factors for both procedures 1 and 2 under the two mask conditions. This comparison showed that, for mask 1, the log-transformed median overall fit factor obtained under procedure 1 was significantly lower than it was for procedure 2, while no significant difference was found between the procedures for mask 2. Additionally, the authors compared fit factors obtained from the two types of fit test equipment (*i.e.*, CNP and AA) under procedure 1. Accordingly, they found that the log-transformed median fit factors obtained using either type of equipment did not differ significantly among the three test exercises (*i.e.*, facing forward, bending over, and head shaking) for mask 1. However, for mask 2, the data obtained using both types of equipment showed that the bending over test exercise resulted in a significantly lower log-transformed mean fit factor than was obtained using the normal breathing test exercise.

Assessing the fit factors for procedure 2 using the AA fit test equipment, the authors found that the talking exercise resulted in a significantly lower log-transformed mean fit factor than the fit factor determined using the normal breathing exercise for mask 1; for mask 2, the log-transformed mean fit factors for both the talking and bending over exercises were significantly lower than the fit factor obtained for the normal breathing exercise. A subsequent analysis showed that the initial normal breathing exercise, as well as the bending over and the head shaking exercises, accounted for most of the fit testing failures. Finally, after collapsing the data across mask conditions and exercise procedures, the authors found that the log-transformed median fit factor for the CNP equipment was significantly lower than the log-transformed median fit factor for the AA equipment.

The authors concluded that the results obtained using the AA equipment showed that the three exercises in procedure 1 were as effective in determining poor mask fit as the nine exercises that composed procedure 2. In reaching this conclusion, they specifically discounted the talking exercise, which was assessed in this study using only the AA equipment. In doing so, they asserted that the prolonged exhalation associated with the talking exercise may increase particle migration from the lungs to the sampling probe, which would cause the probe to detect an increase in particle concentration; consequently, the talking exercise likely results in artificially low fit factors. They also concluded that CNP equipment used with the three exercises in procedure 1 detected more poorly fitting masks than AA equipment used with either exercise procedure. The authors noted as well that the study participants took substantially less time to perform the three exercises in procedure 1 than the nine exercises in procedure 2, regardless of the type of equipment used.

The second peer-reviewed article, entitled "A faster, more rigorous protocol for fit testing emergency response respirators" and published in *Semiconductor Safety Association Journal*, describes a study in which 511 firefighters were fit tested for the Scott Model AV–2000 self-contained breathing apparatus using CNP fit testing equipment (Ex. 3). To detect respirator leakage, the authors converted the respirator, which normally operates at positive pressure, to operate in the negative pressure mode. During fit testing, the firefighters performed one of two exercise procedures. The first exercise procedure (procedure 1), administered to 407 firefighters, consisted of the full complement of exercises described in the proposed protocol (*i.e.*, facing forward, bending over, head shaking, and two mask redonnings). The second procedure (procedure 2), administered to 104 of the firefighters, replicated the CNP test exercises listed in Part I.4(b) of Appendix A in the Respiratory Protection Standard, including (listed in order of administration): Normal breathing; deep breathing; side-to-side head turning (pausing to inhale at each extreme position); up-and-down head nodding (pausing to inhale at each

extreme position); talking (reading a standard passage, counting backward from 100, or reciting a memorized poem or song); grimacing (contracting the facial muscles); bending over (as if touching the toes); and breathing normally (remove and redon the respirator mask, then breathe normally). In addition, the authors used a short screening procedure to identify firefighters who could not pass the a complete fit testing protocol. Eighty-five (85) of the firefighters in procedure 1 (20.9%) and 30 of the firefighters in procedure 2 (28.8%) did not pass this screening test.

Comparisons among the firefighters who completed a fit testing protocol showed that the log-transformed median overall fit factor did not vary significantly between the two exercise procedures. However, after plotting the overall fit factors of the individual firefighters for the two exercises (*i.e.*, one plot for each exercise), the authors noted that the overall fit factors for procedure 1 were substantially less than the fit factors for procedure 2 at the low end of the two distributions. They interpreted this difference as indicating that the fit factors obtained using procedure 1 were more conservative (*i.e.*, lower) than the fit factors obtained for procedure 2 at lower levels of respirator fit. Based on these results, the authors concluded that the two exercise procedures resulted in similar fit factors, and that procedure 1, with three exercises and two respirator redonnings, took substantially less time to administer than procedure 2, with eight exercises (including one redonning).

Editorial and technical revisions to the Respiratory Protection Standard. In addition to proposing the CNP REDON fit testing protocol, this rulemaking is proposing to make several editorial and technical revisions to the Respiratory Protection Standard. The first editorial revision would add the proposed CNP REDON protocol to the exception already specified for the approved CNP protocol under paragraph 14(a) of Part I.A in Appendix A of the Standard. Accordingly, paragraph 14(a) would except both the approved CNP protocol and the CNP REDON protocol from the test exercises specified for the other approved fit testing protocols listed in the appendix. OSHA believes that this revision is necessary because the proposed protocol consists of a test exercise procedure that differs substantially from the procedure required for the other approved fit testing protocols.

The second editorial revision involves the introductory paragraph describing the CNP protocol under Part I.C.4 of Appendix A. The eighth sentence in this paragraph refers to the CNP instrument manufacturer as "Dynatech Nevada." However, the instrument manufacturer now is Occupational Health Dynamics of Birmingham, Alabama. OSHA is proposing to revise this sentence to identify the current manufacturer of this instrument.

In an earlier comment to OSHA (Ex. 14), Dr. Crutchfield noted that test administrators use either an auditory warning device or the screen tracing currently provided on the CNP test instrument to detect participants' failure to hold their breath for the required 10-second period when measuring respirator fit. While using the screen tracing for this purpose was not part of the CNP protocol approved earlier by OSHA, the Agency believes that such a visual warning device would be useful in measuring respirator fit under both the approved CNP protocol and the proposed CNP REDON protocol. Therefore, OSHA is proposing to revise paragraph (c) of the approved CNP protocol (under Part I.A.4 of the standard) to include the screen tracing currently provided on the CNP test instrument as a visual warning device to detect non-compliance with the breath hold procedure.

In a 1998 journal article entitled "CNP fit testing under OSHA's updated respiratory protection standard" published in *Respiratory Protection Update*, Dr. Crutchfield indicated that OSHA's description of the CNP fit test requirements in paragraphs (a)(2) and (a)(5) of the approved CNP protocol contained several errors (Ex. 8). In this regard, the default test pressure in paragraph (a)(2) should read −15 (not −1.5) mm of water, while the breath hold requirement in paragraph (a)(5) should be 10 (not 20) seconds. Accordingly, the Agency is proposing to revise these parameters because implementing correct fit test procedures will improve the assessment of respirator fit factors using the approved CNP protocol, as well as the proposed CNP REDON protocol should the Agency approve it in a final rulemaking.

Conclusions. OSHA believes that the information submitted by Dr. Crutchfield in support of the proposed protocol meets the criteria for proposed fit testing protocols established by the Agency in Part II of Appendix A of the Respiratory Protection Standard. Therefore, the Agency concludes that the proposed protocol warrants notice-and-comment rulemaking under Section 6(b)(7) of the OSH Act, and is initiating this rulemaking to determine whether to approve the proposed protocol for inclusion in Part I of Appendix A of the standard. However, because the only difference between the proposed protocol and the existing CNP protocol in Part I.C.4 of Appendix A is the exercise procedure used during fit testing, the Agency is limiting the proposed regulatory text (see section V below) to a description of the exercise procedure, and is referring to paragraphs (a) and (c) of Part I.C.4 for information on the CNP fit test requirements and the CNP test instrument. In addition, if approved, the protocol would be an alternative to the existing quantitative fit testing protocols already listed in the Part I of Appendix A; employers would be free to select this alternative or to continue using any of the other protocols currently listed in the appendix. The Agency also believes that the proposed editorial and technical revisions to Part I of Appendix A are necessary for proper implementation of both the approved CNP protocol and the proposed CNP REDON protocol.

Issues for public comment. OSHA invites comments and data from the public regarding the accuracy and reliability of the CNP REDON protocol, as well as its effectiveness in detecting respirator leakage and its usefulness in selecting respirators that will protect employees from airborne contaminants in the workplace. Specifically, the Agency invites public comment on the following issues:

- Were the studies described in the peer-reviewed articles well controlled, and conducted according to accepted experimental design practices and principles?
- Were the results of the studies described in the peer-reviewed articles properly, fully, and fairly presented and interpreted?
- Will the proposed protocol reliably identify respirators with unacceptable fit as effectively as the quantitative fit testing protocols already listed in Part I.C of Appendix A of the Respiratory Protection Standard?
- Will the proposed protocol generate reproducible fit testing results?
- Should OSHA expand application of the proposed protocol fit test exercises to other quantitative fit tests (*e.g.*, ambient aerosol tests)?
- Will the proposed editorial and technical revisions to Part I of Appendix A improve proper implementation of the approved CNP protocol and the proposed CNP REDON protocol?

III. References

The preamble to this proposal cites the following references:

(1) Crutchfield C.D., E.O. Fairbank, and S.L. Greenstein. "Effect of exercise and mask donning on measured respirator fit." *Applied Occupational and Environmental Hygiene*, vol. 14 (no. 12), pages 827–837, 1999. (See Ex. 2:)

(2) Crutchfield, C.D., W.F. Peate, and D.W. Kautz. "A faster, more rigorous protocol for fit testing emergency response respirators." *Semiconductor Safety Association Journal*,[1] vol. 13 (no. 4), pages 23–29, 1999. (See Ex. 3.)

Copies of these references are available from the OSHA's Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–2350 or facsimile (202) 693–1648.

IV. Procedural Determinations

A. Legal Considerations

Employers covered by this proposal already must comply with the fit testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134. Accordingly, these provisions currently are protecting their employees from the significant risk that results from poorly fitting respirators. For this proposal, the Agency preliminarily determined that the new CNP fit testing protocol provides employees with protection that is comparable to the protection afforded to them by the existing fit testing provisions. In this regard, the proposal is not expected to replace existing fit testing protocols, but instead would be an alternative to them. Therefore, OSHA preliminarily finds that the proposal would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following section, the proposal may reduce employers' compliance burdens by decreasing the time required for fit testing respirators for employee use.

B. Preliminary Economic Analysis and Regulatory Flexibility Certification

The proposal is not a significant rulemaking under Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501) or Section 801 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601). The proposal would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for a significant or major rule specified by the Executive Order or relevant statutes.

The proposal offers employers an additional option to fit test their employees for respirator use. In addition to the existing CNP protocol, which would continue to be an option, the Agency would add the CNP REDON protocol as a supplemental option. According to a recent NIOSH–BLS survey of respirator use, approximately 25,000 establishments currently use the existing CNP fit testing protocol out of some 282,000 establishments requiring respirator use (Ex. 6–3, Docket H–049C). Employers would have a choice between the existing protocol consisting of eight exercises, including one redonning of the respirator, or the new protocol, which involves three exercises and two redonnings of the respirator. By providing regulatory flexibility to these employers, the proposal may reduce their costs in terms of decreasing fit testing time. In this regard, OSHA assumes that the proposed CNP REDON protocol would be adopted by some employers who use the existing CNP protocol, as well as some employers who are purchasing new or replacement equipment for administering fit tests; these employers would adopt the proposed protocol because it consists of fewer exercises than the existing CNP and ambient aerosol protocols, thereby decreasing the time and cost required for fit testing. However, the Agency believes that the proposed protocol is unlikely to be adopted by employers who currently use the ambient aerosol protocols because of the equipment and training investment they have already made to administer these protocols. Finally, the Agency proposes to include the screen tracing in the existing and proposed CNP fit testing protocols as a visual warning device to detect non-compliance with the breath hold procedure. OSHA concludes that this proposal would add no additional cost burden to employers because, as noted earlier, the manufacturer already provides this capability on the CNP test equipment. Therefore, the Agency preliminarily concludes that this proposed rulemaking would impose no additional costs on these employers. Consequently, the proposal requires no Preliminary Economic Analysis. Furthermore, because the proposal imposes no costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small businesses. Accordingly, the Agency need not prepare an Initial Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

After thoroughly analyzing the proposed fit testing provisions in terms of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* and 5 CFR part 1320), OSHA believes that these provisions would not add to the existing collection-of-information (*i.e.*, paperwork) requirements regarding fit testing employees for respirator use. The paperwork requirement specified in paragraph (m)(2) of the existing Respiratory Protection Standard at 29 CFR 1910.134 specifies that employers must document and maintain the following information on quantitative fit tests administered to employees: The name or identification of the employee tested; the type of fit test performed; the specific make, model, style, and size of respirator tested; the date of the test; and the strip chart recording or other recording of the test results. The employer must maintain this record until the next fit test is administered. However, this paperwork requirement would remain the same whether employers currently use the other fit testing protocols already listed in Part I of Appendix A of the Respiratory Protection Standard, or implement the proposed fit testing protocol instead. Therefore, use of the proposed fit testing protocol in the context of the existing fit testing protocols does not require an additional paperwork burden determination because OSHA already accounted for this burden during the final rulemaking for the Respiratory Protection Standard (*see* 63 FR 1152–1154; OMB Control Number 1218–0099).

Interested parties who wish to comment on OSHA's determination that the proposed fit testing protocol contains no additional paperwork requirements compared to the existing paperwork requirements must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency also encourages commenters to submit their comments on this paperwork determination to OSHA along with their other comments on the proposed rule.

D. Federalism

The Agency reviewed the proposal according to the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43225, August 10, 1999). This Executive Order requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. The Executive Order allows Federal agencies to preempt state law

[1] Now the *Semiconductor Environmental Safety and Health Association Journal.*

only with the expressed consent of Congress. In such cases, Federal agencies must limit preemption of state law to the extent possible.

Under section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), Congress expressly provides OSHA with authority to preempt state occupational safety and health standards to the extent that the Agency promulgates a Federal standard under section 6 of the OSH Act. Accordingly, section 18 of the OSH Act authorizes the Agency to preempt state promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the state has an OSHA-approved occupational safety and health plan (*i.e.*, is a State-plan State). (*See Gade* v. *National Solid Wastes Management Association*, 112 S. Ct. 2374 (1992).) Therefore, with respect to states that do not have OSHA-approved plans, the Agency concludes that this proposal conforms to the preemption provisions of the OSH Act. Additionally, section 18 of the OSH Act prohibits states without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation.

OSHA has authority under Executive Order 13132 to propose adding the CNP REDON fit testing protocol to its Respiratory Protection Standard at 29 CFR 1910.134 because the problems addressed by these requirements are national in scope. In this regard, the proposal offers hundreds of thousands of employers across the nation an opportunity to adopt an additional protocol to use in assessing respirator fit among their employees. Therefore, the proposal would provide employers in every state with an alternative means of complying with the fit testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard.

Should OSHA adopt the proposed fit testing protocol in a final rulemaking, section 18(c)(2) of the OSH Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt the same protocol, or develop an alternative that is at least as effective as that protocol. However, compliance with the new fit testing protocol would only provide employers with an alternative to the existing requirements for fit testing protocols specified in its Respiratory Protection Standard; therefore, the alternative is not, itself, a mandatory standard. Accordingly, State-plan States are not obligated to adopt the final provisions that result from this rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide compliance options to employers in their states.

E. State Plans

The Agency strongly encourages the 24 states and two territories with their own OSHA-approved occupational safety and health plans to revise their current Respiratory Protection Standard should the Agency adopt the proposed fit testing protocol based on this rulemaking. OSHA believes that such a revision would provide employers in the State-plan States with any economic benefits that may accrue from its enactment, while protecting the safety and health of employees who use respirators against airborne hazardous substances in the workplace. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA-approved State Plans that apply to state and local government employees only.

F. Unfunded Mandates

OSHA reviewed the proposal according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed above in section IV.B (Preliminary Economic Analysis and Regulatory Flexibility Certification) of this preamble, the Agency has made a preliminary determination that the proposal imposes no additional costs on any private or public sector entity. The substantive content of the proposal applies only to employers whose employees use respirators for protection against airborne workplace contaminants, and compliance with the proposal would be strictly optional for these employers. Accordingly, the proposal would require no additional expenditures by either public or private employers.

OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt a State Plan approved by the Agency. Consequently, the proposal does not meet the definition of a "Federal intergovernmental mandate" (*see* section 421(5) of the UMRA (2 U.S.C. 658(5)). In conclusion, the proposal does not mandate that state, local, and tribal governments adopt new, unfunded regulatory obligations.

G. Applicability of Existing Consensus Standards

When OSHA promulgated its original respirator fit testing protocols on January 8, 1998 under Appendix A of its final Respiratory Protection Standard (29 CFR 1910.134), no national consensus standards addressed these protocols. However, the American National Standards Institute (ANSI) subsequently developed a national consensus standard on fit testing protocols as an adjunct to its respiratory protection program, ANSI Z88.2–1992. ANSI approved this national consensus standard, entitled "Respirator Fit Testing Methods," on June 8, 2001 as ANSI Z88.10–2001.

Paragraph 7.3 of ANSI Z88.10–2001 provides the requirements for conducting the CNP fit test, including requirements for test instrumentation and administering the fit test; these requirements are consistent with the CNP fit test requirements specified in 1998 by OSHA in Part I.C.4 of its Respiratory Protection Standard. In addition, section 9 and Table 1 of ANSI Z88.10–2001 describe the exercises required during CNP fit testing; these required exercises duplicate the exercises described in this CNP REDON proposal, except that the second respirator redonning is optional under the ANSI standard.[2] However, paragraph 9.2 of the ANSI standard specifies that one optional exercise must be included with the required exercises.

OSHA concludes that the CNP REDON fit testing protocol proposed in this rulemaking closely matches the requirements of the recent ANSI Z88.10–2001 standard. The proposed CNP REDON protocol relies on the CNP test procedures and instrumentation described in paragraphs (a) and (c) of Part I.C.4 in Appendix A of the Respiratory Protection Standard, which are similar to requirements specified in paragraph 7.3 of the ANSI standard. Any differences between these OSHA requirements and the provisions of the ANSI standard appear to be minor. In addition, the fit testing exercises in the proposed CNP REDON protocol are the same exercises in the ANSI standard when a second respirator redonning is selected as the optional exercise.

[2] Other optional exercises include deep breathing, side-to-side head movement, up-and-down head movement, stepping up and down, a second normal breathing exercise, grimacing followed by normal breathing, painter or sand-blaster movements, and other job-specific movements.

H. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health (ACCSH)

This proposal would revise Part I.C of Appendix A of OSHA's current Respiratory Protection Standard (29 CFR 1910.134) by including the CNP REDON protocol with the three fit testing protocols already approved by the Agency, and would also make several technical revisions to the approved CNP protocol. Accordingly, this proposal would revise the fit testing requirements specified by the Respiratory Protection Standard for the construction industry (see 29 CFR 1926.103).

OSHA's regulation governing the Advisory Committee on Construction Safety and Health (ACCSH) at 29 CFR 1912.3 requires the Agency to consult with the ACCSH whenever the Agency proposes a rulemaking that involves the occupational safety and health of construction employees. OSHA met with the ACCSH and described the CNP proposed rule at the ACCSH meeting on December 5, 2002. The ACCSH members had no questions or comments on this proposal at this meeting. Subsequently, OSHA distributed the proposed CNP rule to the ACCSH membership for their review prior to their next regular meeting on May 22, 2003. OSHA staff discussed the CNP proposal and answered questions from the ACCSH members during their meeting on May 22, 2003. The ACCSH then recommended that OSHA proceed with publishing the proposal.

I. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include objections to the proposal, as well as comments that endorse or support the proposed amendment set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a balanced public response on the issues involved. (See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and information to the Agency.) Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

J. List of Subjects in 29 CFR Part 1910

Hazardous substances; Health; Occupational safety and health; Quantitative fit testing; Respirators; Respirator selection.

K. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act; 40 U.S.C. 333); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR part 1911.

Signed at Washington, DC on May 28, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

V. Proposed Amendment to Standard

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart I—[Amended]

1. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Section 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act; 40 U.S.C. 333); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); and Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable.

Sections 29 CFR 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911.

Sections 29 CFR 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

2. Appendix A to § 1910.134 is amended as follows in Part I:

A. In Section A, revise the introductory text of paragraph 14(a);

B. In Section C, paragraph 4, 8th sentence, remove the name "Dynatech Nevada" and add, in its place, "Occupational Health Dynamics of Birmingham, Alabama."

C. In Section C, paragraphs 4(a)(2) and (5) are revised.

D. In Section C, paragraph 4(c)(1) is revised.

E. In Section C, paragraph 5 is added at the end of Part I.

The revised and added text reads as follows:

§ 1910.134 Respiratory protection.

* * * * *

Appendix A to § 1910.134: Fit Testing Procedures (Mandatory)

* * * * *

Part I. OSHA—Accepted Fit Testing Protocols

A. Fit Testing Procedures—General Requirements

* * * * *

14. Test Exercises. (a) Employers shall perform the following test exercises for all fit testing methods prescribed in this appendix, except for the CNP quantitative fit testing protocol and the CNP REDON quantitative fit testing protocol. For these two protocols, employers shall ensure that the test subjects (*i.e.*, employees) perform the exercise procedure specified in Part I.C.4(b) of this appendix for the CNP quantitative fit testing protocol, or the exercise procedure described in Part I.C.5(b) of this appendix for the CNP REDON quantitative fit testing protocol. For the remaining fit testing methods, employers shall ensure that the test exercises are performed in the appropriate test environment in the following manner:

* * * * *

C. * * *

* * * * *

(a) * * *

* * * * * *

(2) The CNP system default selected for test pressure shall be set at −15.0 mm (−0.58 inches) of water, and the modeled inspiratory flow rate shall be 53.8 liters per minute for performing fit tests.

* * * * *

(5) The test subject shall be trained to hold his/her breath for at least 10 seconds.

* * * * *

(c) * * *

(1) The test instrument shall have an effective audio warning device, or a visual warning device in the form of a screen tracing, that indicates when the test subject fails to hold his/her breath during the test. The test shall be terminated if the test subject fails to hold his/her breath during the test. The test subject then may be refitted and retested.

* * * * *

5. Controlled negative pressure (CNP) REDON quantitative fit testing protocol.

(a) When administering this protocol to test subjects, employers shall comply with the requirements specified in paragraphs (a) and (c) of Part I.C.4 of this appendix (Controlled negative pressure (CNP) quantitative fit testing protocol), except they may use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in paragraph (b) of Part I.C.4 of this appendix.

(b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and measurement procedures, including the order of administration, described below in Table A–1 of this appendix.

TABLE A–1.—CNP REDON QUANTITATIVE FIT TESTING PROTOCOL

Name of exercise [1]	Exercise procedure	Measurement procedure
Facing Forward	Stand and breathe normally, without talking	Face forward while holding breath for 10 seconds.
Bending Over	Bend at the waist as if going to touch his/her toes	Face parallel to the floor while holding breath for 10 seconds.
Head Shaking	For about three seconds, shake head back and forth vigorously several times while shouting.	Face forward while holding breath for 10 seconds.
REDON–1	Remove and redon the respirator mask	Face forward while holding breath for 10 seconds.
REDON–2	Remove and redon the respirator mask again	Face forward while holding breath for 10 seconds.

[1] Exercises are listed in the order in which they are to be administered.

(c) After completing the test exercises, the test administrator shall question each test subject regarding the comfort of the respirator. If the test subject states that the respirator is unacceptable, the employer shall ensure that the test administrator repeats the protocol using another respirator model.

(d) When calculating the overall fit factor for each test subject, employers shall determine the harmonic mean of the fit factors measured for each test exercise.

[FR Doc. 03–13748 Filed 6–5–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–013]

RIN 1625–AA00

Safety Zone; Fireworks Display, Columbia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone for an annual fireworks display on the waters of the Columbia River in the vicinity of Astoria, Oregon. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard by July 7, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217. U.S. Coast Guard Group/MSO Portland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, OR 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Group/MSO Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a safety zone regulation to allow a safe annual fireworks display. The fireworks will occur annually on the second Saturday in August. This event will result in a number of vessels congregating near the fireworks launching area. The safety zone is needed to provide for the safety of the spectators and their watercraft from the inherent safety hazards associated with the fireworks display. Without providing an adequate safety zone, the public could be exposed to falling burning debris within blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies. The Cost Guard plans to publish a notice of implementation at least 30 days prior to the event.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the rule would encompass less than one mile of the Columbia River for a period of only one hour, annually.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Columbia River during the one hour fireworks display. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one hour, annually, in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Tad Drozdowski at (503) 240–2584.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because the safety zone would not last longer than one week in duration. A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

2. Section 165.13–1316 is added to read as follows:

§ 165.1316 Safety Zone; Columbia River Astoria, Oregon

(a) *Location.* All waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123°49′36″ West to 46°11′ 51″ North, thence east to 123°48′53″ West, thence south to the Oregon shoreline and finally westerly along the Oregon Shoreline to the point of origin.

(b) *Regulations.* In accordance with the general regulations § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized

by the Captain of the Port or his designated representatives.

(c) *Enforcement period.* This section will be enforced on the second Saturday of August from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

Dated: May 16, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–14305 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–069]

RIN 1625–AA11

Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a regulated navigation area in Port Everglades Harbor, Fort Lauderdale, Florida to improve the security and safety of the harbor, and increase the safety of law enforcement officers and high-risk vessels in the vicinity of Port Everglades Harbor. This rule would establish a slow speed zone in the harbor to control vessel speed and allow law enforcement vessels to control vessel movement in this waterway.

DATES: Comments and related material must be received on or before July 21, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard, Marine Safety Office, 100 MacArthur Causeway, Miami, Florida 33139. The Captain of the Port Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Coast Guard Marine Safety Office Miami, Waterways Management at (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–069], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer, Marine Safety Office Miami at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States. The President declared national emergencies following the September 11, 2001 terrorist attacks and has continued them, specifically: The continuing national emergency with respect to terrorist attacks, at 67 FR 58317 (Sep. 13, 2002); and continuing national emergency with respect to persons who commit, threaten to commit, or support terrorism, at 67 FR 59447 (Sep. 20, 2002). The President found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered since the terrorist attacks on the United States of September 11, 2001, and that such disturbances continue to endanger the security of the United States, at Executive Order 13,273, 67 FR 56215 (Aug. 21, 2002). Following the attacks of well-trained and clandestine terrorists, national security and intelligence officials warned that future terrorist attacks are likely.

The Captain of the Port (COTP) Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to Port Everglades because of the numerous high-capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities including propane and petroleum processing facilities, and U.S. military vessels that utilize the port. Implementation of a port-wide slow speed regulated navigation area would greatly aid law enforcement officers in managing vessel traffic as any vessels not complying with the slow speed zone would quickly draw attention giving law enforcement more time to assess the situation and take appropriate action in protecting vessels within the port and port facilities.

On April 25, 2003, the Coast Guard issued a temporary final rule entitled "Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, Florida" (68 FR 25498) creating a temporary regulated navigation area identical to this proposed rule. That temporary rule expires at 12:01 a.m. on September 1, 2003. Prior to the creation of that temporary final rule, vessels were able to enter the harbor from sea at a high rate of speed and maintain that high rate of speed in the harbor until coming within close proximity of high capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities and U.S. military vessels that are often moored within an existing security zone or naval vessel protection zone. Law enforcement officers did not have sufficient time to react to vessels that failed to slow their speed prior to reaching the limits of the existing security zone or naval vessel protection zone. This regulated navigation area is necessary to protect the public, port, law enforcement officials, and waterways of the United States from potential subversive acts.

Nothing in this proposed rule would relieve vessels or operators from complying with all state and local laws in the regulated area, including manatee slow speed zones.

Discussion of Rule

The rule would require all vessels within the regulated navigation area to proceed at slow speed. Slow speed is defined as the speed at which a vessel proceeds when it is fully off plane, completely settled into the water and not creating excessive wake. This rule would minimize the potential national security hazards that could result from a vessel being permitted to transit through the harbor, in the vicinity of high capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities and U.S. military vessels, at a high rate of speed and would facilitate law enforcement control of vessel movement.

The regulated navigation area would be in the vicinity of Port Everglades Harbor, Fort Lauderdale, Florida, and include all waters of the Atlantic Intracoastal Waterway and Port Everglades Harbor, from shore to shore, south of the 17th Street Bridge (at a line connecting 26° 06.04′ N, 080°07.17′ W and 26° 06.04′ N, 080°07.05′ W), north of the intersection of the Dania Cut Off Canal and the Intracoastal Waterway (latitude 26° 04.72′ N) and west of a north-south line connecting red day board #6 and green day board #7 at the entrance to Port Everglades Harbor (longitude 080° 06.30′ W).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed regulated navigation area is narrowly tailored to protect the public, ports, and waterways of the United States. Watercraft would still be permitted to transit through the regulated navigation area but would have to proceed at slow speed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed regulated navigation area is narrowly tailored to protect the public, ports, and waterways of the United States. Watercraft would still be permitted to transit through the regulated navigation area but would be required to proceed at slow speed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8701 for assistance in understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that this proposed rule would not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add a new § 165.765 to read as follows:

§ 165.765 Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, Florida.

(a) *Location.* The following area in the vicinity of Port Everglades Harbor is a regulated navigation area: all waters of the Atlantic Intracoastal Waterway and Port Everglades Harbor, from shore to shore, south of the 17th Street Bridge (at a line connecting 26° 06.04′ N, 080°07.17′ W and 26°06.04′ N, 080°07.05′ W), north of the intersection of the Dania Cut Off Canal and the Intracoastal Waterway (latitude 26° 04.72′ N) and west of a north-south line connecting red day board #6 and green day board #7 at the entrance to Port Everglades Harbor (longitude 080° 06.30′ W).

(b) *Regulations.* Vessels entering and transiting through the regulated navigation area shall proceed at a slow speed. Nothing in this rule alleviates vessels or operators from complying with all state and local laws in the area, including manatee slow speed zones.

(c) *Definition.* As used in this section, *slow speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A vessel is not proceeding at slow speed if it is:

(1) On a plane;

(2) In the process of coming up on or coming off of plane; or

(3) Creating an excessive wake.

Dated: 27 May 2003.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–14306 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–7509–6]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of an upcoming meeting of the Negotiated Rulemaking Committee On All Appropriate Inquiry.

DATES: A meeting of the Federal Advisory Committee on Regulatory Negotiation for All Appropriate Inquiry is scheduled for July 8 and July 9, 2003.

ADDRESSES: The meeting will take place at the Hotel Washington, 15th and Pennsylvania Avenue NW., Washington, DC 20004. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on both days. Dates and locations of subsequent meetings will be announced in later notices.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on July 8 and 9, the Committee will continue substantive deliberations on the proposed rulemaking including discussion of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii). These criteria include:

"(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility."

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on both July 8 and July 9, 2003.

Dated: June 2, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 03–14322 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC97–200319a; FRL–7497–9]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to the Visible Emissions Regulation Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environment and Natural Resources for the purpose of amending rule NCAC 2D .0521 Visible Emissions. In the Final Rules Section of this **Federal Register**, the EPA is approving the North Carolina SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 7, 2003.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information *see* the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: April 30, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–12023 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 140–0396; FRL–7509–4]

Disapproval of State Implementation Plan Revisions, Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mojave Desert Air Quality Management District, and Shasta County Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove revisions to the Antelope Valley Air Quality Management District (AVAQMD), Butte County Air Quality Management District (BCAQMD), Kern County Air Pollution Control District (KCAPCD), Mojave Desert Air Quality Management District (MDAQMD), and Shasta County Air Quality Management District (SHAQMD) portions of the California State Implementation Plan (SIP) concerning excess emissions. We are proposing action on local rules that regulate these emissions under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 7, 2003.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Antelope Valley AQMD, 43301 Division St., Ste. 206, Lancaster, CA 93535–4649.

Butte County AQMD, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Kern County APCD, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310.

Shasta County AQMD, 1855 Placer Street, Ste. 101, Redding, CA 96001–1759.

Copies of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Proposed action and public comment
III. Administrative Requirements

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules proposed for disapproval with the date that they were adopted and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	430	Breakdown Provisions	03/17/98	02/16/99
BCAQMD	275	Reporting Procedures for Excess Emissions	02/15/96	05/10/96
KCAPCD	111	Equipment Breakdown	05/02/96	07/23/96
MDAQMD	430	Breakdown Provisions	12/21/94	01/24/95
SHAQMD	3:10	Excess Emissions	12/05/95	05/10/96

On April 23, 1999, we determined that the AVAQMD Rule 430 submittal met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On July 19, 1996, we determined that the BCAQMD Rule 275 submittal and the SHAQMD Rule 3:10 submittal met the completeness criteria. On October 30, 1996, we determined that the KCAPCD Rule 111 submittal met the completeness criteria and on February

24, 1995, we determined that the MDAQMD Rule 430 submittal met the completeness criteria.

B. Are There Other Versions of These Rules?

There are no previous versions of AVAQMD Rule 430, BCAQMD Rule 275, MDAQMD Rule 430 or SHAQMD Rule 3:10 in the SIP. We approved a version of KCAPCD Rule 111 into the SIP on October 24, 1980. The Kern County Air Pollution Control District adopted a revision to the SIP-approved version on May 2, 1996, and CARB submitted it to us on July 23, 1996.

C. What Is the Purpose of the Submitted Rules?

AVAQMD Rule 430, KCAPCD Rule 111, and MDAQMD Rule 430 establish that the Air Pollution Control Officer (APCO) may, in his discretion, refrain from enforcement action against an owner or operator of any equipment which has violated a technology-based emission limitation provided that a breakdown has occurred and certain other conditions are met. BCAQMD Rule 275 and SHAQMD Rule 3:10 establish that an emergency constitutes an affirmative defense to any action brought for non-compliance with technology-based emission limits. SHAQMD Rule 3:10 also provides that excess emissions during start-up and shutdown shall not be considered a violation if the owner or operator can demonstrate that the excess emissions are unavoidable. Finally, SHAQMD Rule 3:10 states that the APCO may provide an exemption for excess emissions during start-up and shutdown in the permit for a particular source. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA Office of Air and Radiation, and EPA Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").
4. "Guidelines for Including State and Local Rules in SIPs," EPA Region IX, December 17, 1998. These guidelines were transmitted to the California Air Resources Board in a letter dated December 23, 1998 from David P. Howekamp, Director, Air Division, EPA Region IX, to Michael Kenny, Executive Officer, California Air Resources Board.

B. Do the Rules Meet the Evaluation Criteria?

The submitted SIP revisions conflict with section 110 and part D of the Act for the following reasons:

1. AVAQMD Rule 430, KCAPCD Rule 111, and MDAQMD Rule 430 describe how the districts intend to apply their enforcement discretion in instances where facilities exceed emissions limits due to breakdown. As stated in EPA's Excess Emissions Policy, a state or EPA may exercise its enforcement discretion to refrain from taking an enforcement action where excess emissions result from sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator. However, the September 20, 1999 policy also makes clear that EPA will not approve SIP revisions that allow a state director's decision to bar EPA's or citizens' ability to take enforcement action. Accordingly, were EPA to approve enforcement discretion rules such as these, we would do so only while making clear that such action had no effect on EPA's or citizens' enforcement prerogatives. Under these circumstances, such a SIP revision would have no effect on the SIP. For this reason EPA considers it unproductive and potentially confusing to approve these enforcement discretion rules into the SIP.
2. As stated in the Excess Emissions Policy, EPA interprets the Act to require that all periods of excess emissions are violations of the applicable emissions limitation. A SIP revision may provide an affirmative defense for excess emissions so long as a State director's decision not to take an enforcement action does not bar EPA's or citizens' ability to take enforcement action. Further, acceptable affirmative defense provisions may only apply to actions for penalties, but not to actions for injunctive relief. BCAQMD Rule 275 and SHAQMD Rule 3:10 do not limit the applicability of the affirmative defense for excess emissions during an emergency to actions for penalties, but rather apply the defense to any action brought for non-compliance with technology-based emissions limits. BCAQMD Rule 275 and SHAQMD Rule 3:10 also fail to make clear that the excess emissions are violations of the applicable emissions limitation and that a determination by the APCO not to take an enforcement action (or a finding by the APCO that an emergency exists) would not bar EPA or citizen action.

These and other rule provisions which do not meet the evaluation criteria are discussed further in the TSDs.

C. Proposed Action and Public Comment

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted AVAQMD Rule 430, BCAQMD Rule 275, KCAPCD Rule 111, MDAQMD Rule 430 and SHAQMD Rule 3:10. These are not required SIP submittals, so this disapproval would have no sanction implications under CAA section 179 or FIP implications under CAA section 110(c).

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rulemaking action will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply disapprove for inclusion in the SIP requirements that the State is already imposing. Therefore, because the Federal SIP disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rulemaking action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These proposed rule disapprovals do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to these rule disapprovals.

EPA specifically solicits additional comment on these proposed rule disapprovals from tribal officials.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rulemaking on children, and explain why the planned action is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rulemaking is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rulemaking is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 15, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–14320 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–7509–5]

Underground Injection Control Program—Revision of Underground Injection Control Requirements for Class I Municipal Wells in Florida; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 5, 2003, the Environmental Protection Agency published two notices in the **Federal Register**. The first announced the Notice of Availability (NOA) (68 FR 23673) of EPA's "Relative Risk Assessment of Management Options for Treated Wastewater in South Florida" and the second announced the Notice of Data Availability (NODA) (68 FR 23666) which summarizes information from the relative risk assessment and solicits public comment on how the deep well injection findings should inform the final determination on the July 7, 2000 proposed rule, Revision to the Federal Underground injection Control (UIC) requirements for Class I Municipal Wells in Florida (65 FR 42234). This notice announces two (2) public meetings on the NODA.

DATES: The meeting dates are: June 24, 2003, 6 p.m. to 9 p.m., West Palm Beach, Florida; and June 25, 2003, 6 p.m. to 9 p.m., Tampa, Florida.

ADDRESSES: For additional information see the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**. The meeting locations are: Florida Department of Environmental Protection, Southeast District, Public Meeting Room, 2nd Floor, 400 N. Congress Ave., West Palm Beach, Florida 33401; and Tampa Marriott Waterside Hotel, 700 South Florida Avenue; Tampa, FL 33602.

FOR FURTHER INFORMATION CONTACT: For inquiries, and/or to access the risk assessment report, contact Nancy H. Marsh, Ground Water & UIC Section, EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303 (phone: (404) 562–9450; E-mail: *marsh.nancy@epa.gov*) or Howard Beard, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, EPA East, 1200 Pennsylvania Ave., NW., Mail Code 4606M, Washington, DC 20460 (phone: (202) 564–3874; E-mail: *beard.howard@epa.gov*) or contact the Safe Drinking Water Hotline, phone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern daylight-saving time.

SUPPLEMENTARY INFORMATION: Comments may be given orally or in writing at the public meeting. If giving written comments please submit an original and three copies of your comments and enclosures (including any references). Comments should be limited to those issues discussed in the NODA and not the entire "Relative Risk Assessment of Management Options for Treated Wastewater in South Florida." Written comments may also be mailed to Nancy H. Marsh at the address in the For Further Information Contact section. The public comment period ends July 7, 2003.

Dated: May 30, 2003.

James D. Giattina,

Director, Water Management Division, Region 4.

[FR Doc. 03–14321 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 109

Friday, June 6, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–043–1]

Availability of an Environmental Assessment for Field Testing Bursal Disease-Marek's Disease Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Bursal Disease-Marek's Disease Vaccine for use in chickens. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before July 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–043–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–043–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–043–1" on the subject line.

You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Patricia L. Foley, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245, fax (301) 734–4314. For information regarding the environmental assessment or the risk analysis, contact Dr. Patricia L. Foley, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Merial Select, Inc.

Product: Bursal Disease-Marek's Disease Vaccine, Serotype 3, Live Marek's Disease Virus, Serotype 3 Vector, Code 1A88.R0.

Field Test Locations: Georgia, North Carolina, and Texas.

The above-mentioned product is a combination Bursal Disease-Marek's Disease Vaccine prepared using serotype 3 Marek's disease virus which has been genetically modified to express a bursal disease virus antigen. The vaccine is for use in chickens as an aid in the prevention of disease caused by bursal disease virus and serotype 3 Marek's disease virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends

to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 3rd day of June, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14301 Filed 6–5–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–060–1]

Availability of an Environmental Assessment for Field Testing Feline Leukemia Vaccine, Live Canarypox Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed feline leukemia vaccine for use in cats. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before July 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–060–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–060–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–060–1" on the subject line.

You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Eleanor Eagly, USDA, APHIS, VS, CVB–PEL, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the environmental assessment or the risk analysis, contact Dr. Eleanor Eagly, USDA, APHIS, VS, CVB–PEL, 510 South 17th Street, Suite 104, Ames, IA 50010; (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Merial Select, Inc.

Product: Feline Leukemia Vaccine, Live Canarypox Vector, Code 1555.R2.

Field Test Locations: California, Missouri, Indiana, Georgia, Florida, Virginia, Connecticut, and Pennsylvania.

The above-mentioned product is a canarypox vectored recombinant vaccine containing the genes of the feline leukemia virus. The vaccine is for use in cats as an aid in the prevention of disease caused by feline leukemia virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 3rd day of June, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14302 Filed 6–5–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–019N]

Codex Alimentarius Commission: 26th Session of the Codex Alimentarius Commission (Codex)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA) is sponsoring a public meeting on June 12, 2003. The purpose of this meeting is to provide information and receive public comments on agenda items that will be discussed at the Twenty-sixth Session of the Codex Alimentarius Commission which will be held in Rome, Italy from June 30 to July 7, 2003. The Under Secretary recognizes the importance of providing interested parties with information about the Codex Alimentarius Commission.

DATES: The public meeting is scheduled for Thursday, June 12, 2003, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Whitten Building, U.S. Department of Agriculture (Smithsonian Metro Stop), Washington, DC 20250.

If you have comments, please send an original and two copies to: FSIS Docket Clerk, Docket 03–019N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex Alimentarius, Room 4861, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 205–7760.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. Codex meets biennially. The Executive Committee serves as the executive body of Codex between the biennial meetings.

The Provisional Agenda for the 26th Session of the Codex Alimentarius Commission is as follows:

Part I: Introduction
1. Adoption of the Agenda
2. Report by the Chairperson on the 49th, 50th and 52nd Sessions of the Executive Committee
3. Reports of FAO/WHO Regional Coordinating Committees
Part II: Procedural Matters
4. Amendments to the Procedural Manual
(a) Amendments to the Rules of Procedure
(b) Other amendments to the Procedural Manual
Part III: Codex Standards and Related Texts
5. Draft Standards and Related Texts at Step 8 of the Procedure (including those submitted at Step 5 with a recommendation to omit Steps 6 and 7 and those submitted at Step 5 of the Accelerated Procedure)
6. Proposed Draft Standards and Related Texts at Step 5
7. Withdrawal or revocation of existing Codex Standards and Related Texts
8. Proposals for the elaboration of new Standards and Related Texts
Part IV: Policy and General Matters
9. Risk Analysis Policies of the Codex Alimentarius Commission
10. Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards
11. FAO/WHO Trust Fund for Participation of Developing Countries in Codex Standard-Setting
12. Other Matters arising from FAO and WHO
13. Matters arising from the reports of Codex Committees and Task Forces
Part V: Programme and Budgetary Matters
14. Financial and Budgetary Matters 2002/2003 and Proposed Budget 2004/2005
15. Proposed Schedule of Codex Meetings 2003–2005
Part VI: Elections and Appointments
16. Election of Chairperson and Vice-Chairpersons and Election of Members of the Executive Committee
17. Appointment of Regional Coordinators
18. Designation of Countries for Appointing the Chairpersons of Codex Committees and Task Forces
Part VII: Other Matters
19. Other Business
20. Adoption of the Report

Public Meeting

The public meeting is scheduled on Thursday, June 12th in Room 107A, Whitten Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. Attendees will hear brief descriptions of the issues and will have the opportunity to pose questions and offer comments.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations,

Federal Register notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*.

Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC on June 3, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–14300 Filed 6–5–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle National Forests, Bonner County, Idaho and Pend Oreille County, Washington; Chips Ahoy Project

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service published a Notice of Intent to prepare and environmental impact statement for the Chips Ahoy Project in the **Federal Register** on December 6, 2002 (Vol. 67, No. 235, pages 72635–72637). A revised Notice of Intent is being issued due to two major changes (Forest Service Handbook 1909.15 part 21.2):

1. There will be a delay of more than six months in filing the final EIS;

2. There has been a change in the project's proposed action and purpose and need.

The Priest Lake Ranger District on the Idaho Panhandle National Forests will prepare an Environmental Impact Statement on a proposal to treat forest vegetation over approximately 2,000 acres. The treatments are being proposed to restore forest communities to a more historical composition and structure and to re-introduce fire into these ecosystems. Treatments will include regeneration harvest, thinning, and underburning. A Roads Analysis Process will be completed as a part of the Environmental Impact Statement. The Roads Analysis may suggest changes in the administrative and recreation use of roads and trails in the analysis area to protect forest and watershed resources.

DATES: Comments concerning the scope of the project analysis must be received within 30 days from the date of this notice in the **Federal Register** and during the Draft Environmental Impact Statement comment period of 45 days. The Draft Environmental Impact Statement is expected in September 2003 and the Final Environmental Impact Statement is expected February 2004.

ADDRESSES: Send written comments to Chips Ahoy Project, Attn: David DelSordo, Priest Lake Ranger Station, 32203 Highway 57, Priest River, ID 83856.

FOR FURTHER INFORMATION CONTACT: David DelSordo, Project Leader, Priest Lake Ranger Station, 32203 Highway 57, Priest River, ID 83856, by calling 208–443–6809, or *ddelsordo@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The project area is located within Bonner County, Idaho, and Pend Oreille County, Washington. The project area is located approximately twenty miles north of the community of Priest River, Idaho. A past bark beetle outbreak, in combination with root diseases, other insects and diseases, and winter storm damage has left many of these stands in poor condition and with hazardous fuel loads. This Notice Of Intent reflects changes in the Purpose of the Action based on comments received over the last six months.

Purpose for Action

The purpose for this action is to improve the health, resilience, diversity, and productivity of terrestrial ecosystems by advancing species composition, forest structures, and patterns toward desired conditions; reduce fire risk in these ecosystems; and increase the amount of wet forest communities that are dominated by western white pine and western larch trees. Another purpose for the project is to help restore aquatic resources to a more healthy condition.

Proposed Action

The proposed action is separated into three categories, vegetative treatments, fuel treatments, and road treatments. The proposal is to treat forest vegetation over approximately 2,000 acres within the project area. Different types of treatments would be used depending upon the existing condition of the forest stands. These treatments include regeneration treatments on approximately half of the acreage and commercial thinning on the remaining acreage. After the tree cutting operations are complete, most of the vegetative treatment areas would be underburned to reduce the fuels, prepare the sites for reforestation, and to allow wildland fire to resume a more natural role. In order to access some of the proposed vegetative treatment areas, approximately 3.5 miles of temporary road would be constructed. These temporary roads would be recontoured following their use. Resource protection measures will be included to protect snags, soils, heritage resources, water quality, wildlife, and other resources. The arrangement and management of classified and unclassified roads and trails in the area may be changed to improve watershed quality, protect other resources, and enhance recreation opportunities. Approximately 8 miles of road are planned to be decommissioned. Construction of an alternate snowmobile use route is proposed to mitigate for planned road decommissioning.

Responsible Official

Ranotta K. McNair, Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Ceour d'Alene, ID 83815

Nature of Decision To Be Made

The Forest Supervisor of the Idaho Panhandle National Forests will decide whether or not to implement this project, and if so, in what manner.

Scoping Process

The agency invites written comments and suggestions on the scope of the analysis. In addition to this notice, a revised proposed action letter will be sent to interested government officials, agencies, groups, and individuals on the Chips Ahoy mailing list. Please contact the Priest Lake Ranger Station at 208–443–2512 if you are interested in being added to this mailing list. No public meetings are planned at this time.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Specific written comments on the proposed action will be most helpful.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Final Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Final Environmental Impact Statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and address of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21.)

Dated: June 2, 2003.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–14269 Filed 6–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Second Creek Watershed, Adams County, MS

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Second Creek Watershed, Adams County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project.

Second Creek Watershed, Adams County, Mississippi

Notice of a Finding of No Significant Impact

The project concerns a watershed plan to provide supplemental flood protection and reduce threat to loss of life from sudden dam failure to the residents of the Second Creek Watershed and others. The planned works of improvement consists of rehabilitating floodwater retarding structure (FWRS) No. 10B and No. 12. The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 15, 2003.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 03–14387 Filed 6–5–03; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 6, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 13, December 27, 2002, January 31, and April 4, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 58013, 79044, 68 FR 4985 and 16467) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–

2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: 2 in 1 Scrubber Squeegee M.R. 1036.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Amazing Micro Mop, M.R. 1049.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Services

Service Type/Location: Janitorial/Custodial, Austin Straubel International Airport, ATCT and Base Building, Green Bay, Wisconsin.
NPA: Brown County ARC, Inc., Green Bay, Wisconsin.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Custodial, Department of Veterans Affairs, Community Based Outpatient Clinic, Muskegon, Michigan.
NPA: Goodwill Industries of West Michigan, Inc., Muskegon, Michigan.
Contract Activity: Department of Veterans Affairs, Battle Creek, Michigan.
Service Type/Location: Janitorial/Custodial, Naval Reserve Center, La Crosse, Wisconsin.
NPA: Riverfront Activity Center, Inc., La Crosse, Wisconsin.
Contract Activity: Naval Facilities Engineering Command, Crane, Indiana.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Arlington Heights, Arlington Heights, Illinois.
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–14339 Filed 6–5–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 6, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Markers, Dry Erase, Chisel Tip, Set of 8, 7520–00–NIB–0661.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Custodial Service, Army Corps of Engineers, Jadwin Building, Galveston, Texas.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas.
Contract Activity: U.S. Army Corps of Engineers, Galveston, Texas.
Service Type/Location: Janitorial/Custodial, The Dalles Dam, The Dalles, Oregon.
NPA: Hood River Sheltered Workshop, Inc., Hood River, Oregon.
Contract Activity: Army Corps of Engineers, Portland, Oregon.
Service Type/Location: Janitorial/Grounds and Related Services, Robert F. Peckham Federal Building/U.S. Courthouse, San Jose, California.
NPA: Hope Rehabilitation Services, Santa Clara, California.
Contract Activity: GSA, Public Buildings Service (9PMFC), San Francisco, California.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–14340 Filed 6–5–03; 8:45 am]
BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Subcommittee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Arizona Advisory Subcommittee will convene at 12 p.m. (PDT) and adjourn at 1 p.m., Tuesday, June 10, 2003. The purpose of the conference call is to discuss border violence and the four state project.

This conference call is available to the public through the following call-in number: 1–800–659–8296, access code number 17229298. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Monday, June 9, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 2003.
Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 03–14247 Filed 6–5–03; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Connecticut Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 11:30 p.m. on Thursday, June 19, 2003. The purpose of the conference call is to plan for a community forum in Bridgeport, fall 2003.

This conference call is available to the public through the following call-in number: 1–800–659–8296, Chairperson Ki-Taek Chun. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Ki-Taek Chun, Director of the Eastern Regional Office, (202) 376–7533 (TDD (202) 376–8116), by 4 p.m. on Wednesday, June 18, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 2003.
Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 03–14248 Filed 6–5–03; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Texas Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 4 p.m. (CDT) on Friday, June 13, 2003. The purpose of the conference call is to plan future projects.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code: 17153228. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, (213) 894–3437 (TDD (213) 894–3435), by 3 p.m. on Thursday, June 10, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 19, 2003.
Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 03–14249 Filed 6–5–03; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Washington State Advisory Committee will convene at 10 a.m. (PDT) and adjourn at 11:30 a.m., Wednesday, June 11, 2003. The purpose of the conference call is to plan future SAC activities.

This conference call is available to the public through the following call-in number: 1–800–659–8297, access code number 17026193. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, June 10, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 30, 2003.
Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 03–14246 Filed 6–5–03; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Advance Monthly Retail Trade and Food Services Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 5, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Scott Scheleur, U. S. Census Bureau, Room 2626–FOB 3, Washington, DC 20233–6500, (301) 763–7128.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Advance Monthly Retail Sales Survey (MARTS) provides an early indication of monthly retail sales at the United States level. MARTS also provides estimates of monthly sales of food service establishments and drinking places. The Bureau of Economic Analysis (BEA) uses the data as critical inputs to the calculation of Gross Domestic Product (GDP). Policymakers such as the Federal Reserve Board need to have the most timely estimates in order to anticipate economic trends and act accordingly. The Council of Economic Advisors (CEA) and other government agencies and businesses use the data to formulate economic policy and make decisions. These estimates have a high BEA priority because of their timeliness. There would be approximately a one month delay in the availability of these data if this survey were not conducted. Data are collected monthly from small-size, medium-size, and large-size businesses which are selected using a stratified random sampling procedure. The MARTS sample is re-selected periodically, generally at approximately two-year intervals. Small-size and medium-size retailers are requested to participate for those two years, after which they are replaced with new panel respondents. Smaller firms have less of a chance for selection due to our sampling procedure. Firms canvassed in this survey are not required to maintain additional records and carefully prepared estimates are acceptable if book figures are not available. There is no change in response burden.

II. Method of Collection

We will collect this information by mail, FAX, and telephone follow-up.

III. Data

OMB Number: 0607–0104.
Form Number: SM–44(00)A, SM–44(00)AE, SM–44(00)AS, and SM–72(00)A.
Type of Review: Regular Submission.
Affected Public: Retail Businesses.
Estimated Number of Respondents: 4,500.
Estimated time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 4,500.
Estimated Total Annual Cost: The cost to the respondent is estimated to be $98,190 based on the median hourly salary of $21.82 for accountants and auditors. (U. S. Department of Labor—Bureau of Labor Statistics—Occupational Employment Statistics 2001, where $21.82 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors) *http://www.bls.gov/oes/2001/oes_13Bu.htm*.
Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 1, 2003.

Madeleine Clayton,

Office of the Chief Information Officer.

[FR Doc. 03–14229 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336 or Monica Gallardo at (202) 482–3147, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 27, 2002, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2001, through June 30, 2002 (67 FR 55000). On September 25, 2002, the Department published a correction to the initiation (67 FR 60210). On March 27, 2003 the Department partially extended the preliminary results (68 FR 14941). The preliminary results are currently due no later than June 6, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the partially extended time limit for the reasons stated in our memorandum from Gary Taverman, Director, Office 5, to Holly Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement II, dated May 29, 2003, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Therefore, the Department is further extending the time limit for completion of the preliminary results until no later than June 20, 2003. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 30, 2003.

Holly Kuga,

Acting Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 03–14345 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Circular Welded Non-Alloy Steel Pipe From Korea: Notice of Extension of Time Limit for 2001–2002 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the current review of the antidumping duty order on certain circular welded non-alloy steel pipe from Korea. The period of review is November 1, 2001 through October 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1279 or (202) 482–4194, respectively.

Background

On December 26, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Korea, covering the period November 1, 2001, through October 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* (67 FR 78772). The preliminary results for this review are currently due no later than August 2, 2003.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are currently analyzing sales and cost information provided by the three respondents in this review and are awaiting supplemental information. In addition, we plan to verify the sales and cost information provided by the respondents in accordance with 19 CFR 351.307 (b)(1)(v). Accordingly, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, August 2, 2003). Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to not later than December 1, 2003, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 3, 2003.

Jeffery May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 03–14347 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Malleable Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Anya Naschak at (202) 482–6375, Ann Barnett-Dahl at (202) 482–3833, or Helen Kramer at (202) 482–0405; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination:

We preliminarily determine that malleable iron pipe fittings (MPF) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on November 19, 2002, based on a petition filed by Ward Manufacturing and Anvil International (collectively, petitioners). *See Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 67 FR 70579–81 (November 25, 2002) (*Initiation Notice*). In a letter dated January 2, 2003, the Department set aside a period for all interested parties to raise issues regarding product coverage. We received a request from Beijing Sai Lin Ke Hardware Co., Ltd (SLK) and LDR Industries, Inc. (LDR) (collectively SLK/LDR), for a scope exclusion. Petitioners had no objection to this request. *See* Memo to the File from Anya Naschak, dated April 1, 2003. No other comments were received. Since the initiation of the investigation, the following events have occurred.

On December 11, 2002, the Department requested information from the U.S. Embassy in the PRC to identify producers/exporters of the subject merchandise and received a response in December 2002. On December 23, 2002,

the United States International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of MPF from the PRC. *See Malleable Iron Pipe Fittings from the People's Republic of China*, International Trade Commission, Investigation No. 731-TA-1021 (Preliminary), USITC Publication 3568 (ITC Preliminary Determination).

On December 16, 2002, the Department issued a letter requesting information on the quantity and value of shipments of subject merchandise to the United States during the period of investigation (POI) to the Chinese Ministry of Foreign Trade & Economic Cooperation with a letter requesting that it forward the questionnaire to all Chinese exporters of MPF who had shipments during the POI. We also sent courtesy copies of the quantity and value questionnaire to the following possible producers/exporters of subject merchandise identified in the petition and on the basis of U.S. Bureau of Customs and Border Protection (BCBP) information: Jinan Meide Casting Co., Ltd. (JMC), SLK, Langfang Pannext Pipe Fitting Co., Ltd. (LPFC), Simmons International, Ltd. (Simmons), Shantou ZhongXing Industry Co., Ltd. (formerly Shantou Zhongxing Economic & Trading Co., Ltd.) (Shantou), Shanghai Dongsheng Electric Import & Export Co., Ltd. (SDE), Brantingham Manufacturing (Brantingham), Shandong Maxwill Import and Export (Shandong), Chen Tai International Trading Co., Ltd. (CTIT), and Unique Industries (UI). On December 24, 2002, Chengde Malleable Iron General Factory (Chengde) requested to be considered a voluntary respondent in this investigation.

On December 27 and 30, 2002, the following Chinese producers/exporters of MPF submitted information on the quantity and value of their shipments of subject merchandise to the United States during the POI: JMC, SLK, Pannext Fittings Corporation (PFC) and LPFC (collectively, Pannext), and Simmons. On January 3, 2003, Chengde also submitted quantity and value information.

On January 8, 2003, we selected JMC, SLK, and Pannext as the mandatory respondents (see "Selection of Respondents" below). The Department issued its non-market economy (NME) antidumping questionnaire to JMC, SLK, and Pannext. In NME cases, Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise sold in or to the United States. Section E requests information on further manufacturing.

On January 27 and 29, 2003, Myland Industrial Co., Ltd. (Myland), and SCE Co., Ltd. (SCE), respectively requested to be considered voluntary respondents in this investigation. We received complete Section A responses from JMC, SLK, and Pannext (collectively, respondents) on January 30, 2003. We received a complete Section A response from Chengde on February 7, 2003, and from SCE on February 21, 2003. The Department received comments from petitioners on respondents' Section A questionnaire responses on February 7, 2003. On February 13, 2003, the Department issued supplemental Section A questionnaires to JMC, SLK, and Pannext. We received complete supplemental responses from JMC on February 24, 2003, from SLK on February 25, 2003, and from Pannext on March 3, 2003.

SCE and Chengde submitted their complete Sections C and D responses on February 21 and 24, 2003, respectively. JMC submitted its complete Sections C and D responses on February 24, 2003. Pannext submitted a complete Section C response on February 26, 2003, and a complete Section D response on March 3, 2003. SLK submitted its complete Sections C and D responses on March 4, 2003. Petitioners filed comments on JMC's submissions on March 5, 2003.

On March 18 and 19, 2003, the Department sent out supplemental Section C and D questionnaires to SLK, JMC, and Pannext. JMC and SLK submitted their complete supplemental responses on April 2, 2003. Pannext submitted its complete supplemental response on April 11, 2003. SLK submitted an additional supplemental response on April 14, 2003. Petitioners submitted comments on JMC's submissions on April 9, 2003. The Department sent an additional supplemental questionnaire to Pannext on April 23, 2003, and to JMC on April 25, 2003. On April 28, 2003, the Department received Pannext's complete additional supplemental response. On May 2, 2003, the Department received JMC's complete additional supplemental response. On May 7, 2003, the Department sent a letter to Pannext, JMC, and SLK, requesting that they revise certain of their data and resubmit these data electronically. The Department received a response on May 9, 2003, and May 12, 2003 from JMC, SLK, and Pannext.

On February 20, 2003, Myland filed its Section A response in a format that was inconsistent with the Department's regulation. On March 3, 2003, the Department returned Myland's Section A questionnaire response, and explained the filing requirements in detail. The Department granted Myland the opportunity to re-file its response in the proper format and extended Myland's Section A filing deadline to March 7, 2003. Myland submitted a revised Section A response on March 19, 2003. In addition, Myland submitted its Section C response on March 24, 2003, and its Section D response on March 26, 2003, which were originally due on February 28, 2003. The Department rejected Myland's Sections A, C, and D responses in accordance with 19 C.F.R. 351.302(d). Additionally, the Department informed Myland on April 14, 2003 that because Myland had not complied with the requests for information by the Department in a timely manner, they could not be considered a voluntary respondent. *See* 19 C.F.R. 351.204(d)(2); *see also* Letter from Abdelali Elouaradia to Myland Industrial Co., Ltd., dated April 14, 2003 (April 14th Letter). On April 18, 2003, Myland submitted a letter requesting to be allowed to resubmit its questionnaire responses. On May 6, 2003, the Department informed Myland that it would be unable to consider Myland's information for the reasons expressed in its April 14th Letter.

On January 29, 2003, the Department requested publicly available information for valuing the factors of production and comments on surrogate country selection. On February 28, 2003, Pannext submitted information concerning surrogate value of zinc to be used for valuing the factors of production. On March 26, 2003, SLK submitted information concerning the surrogate values of steel scrap and electricity for use in valuing the factors of production. On May 5, 2003, petitioners submitted information concerning surrogate values of steel scrap and financial ratios for use in valuing the factors of production.

On February 28, 2003, petitioners' submission alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the investigation of MPF from the PRC. The Department preliminarily determined that critical circumstances exist for JMC and SCE and for the PRC-wide entity, but not for Pannext, SLK, Myland, or Chengde. *See Notice of Preliminary Determination of Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 19779 (April 22, 2003)

On March 21, 2003, pursuant to section 733(c)(1)(B) of the Act, the Department postponed the preliminary determination of this investigation until May 28, 2003. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 13896 (March 21, 2003).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 C.F.R. 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On May 2, 2003, JMC requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Pannext and SLK submitted requests for a postponement of the Department's final determination until 135 days after the publication of the preliminary determination on May 7, 2003, and May 6, 2003, respectively. JMC also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. *See* JMC's letter to the Department, dated May 2, 2003. Accordingly, because we have made an affirmative preliminary determination, the requesting parties account for a significant proportion of exports of the subject merchandise, and no compelling reasons exist to deny the request, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination, and are extending the provisional measures accordingly, in accordance with section 735(a)(2) of the Act and section 351.210(e) of the Department's Regulations.

Period of Investigation

The POI is April 1, 2002, through September 30, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, October 2003). See 19 C.F.R. 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS).

Excluded from the scope of this investigation are metal compression couplings, which is imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. HTSUS subheadings are provided for convenience and BCBP purposes. The written description of the scope of this proceeding is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable to examine the over 100 potential producers and/or exporters from the PRC. Instead, we found that, given our resources, we would be able to investigate three Chinese producers/exporters. The three selected mandatory respondents, JMC, SLK, and Pannext, were selected because they were the three largest exporters and because they accounted for over 60 percent of exports of the subject merchandise from the PRC during the POI, as determined by BCBP data and provided by the producers/exporters at the time we made our respondent selection. *See* Memorandum from Richard Weible to Joseph A. Spetrini Re: Selection of Respondents, January 8, 2003.

Non-Market Economy Country Status

The Department has treated the PRC as an NME country in all past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From the People's Republic of China*, 66 FR 67197, 67198–99 (December 28, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value Certain: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 20090, 20091 (April 24, 2002). A designation as an NME remains in effect until it is revoked by the Department (*see* Section 771(18)(C) of the Act). The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue treating the PRC as an NME country.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production (FOP). Section 773(c)(4) provides that when valuing FOP, the Department shall utilize FOP from a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Furthermore, no interested party has requested that the MPF industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the MPF industry in the PRC as a market-oriented industry in this investigation.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's

policy to assign all exporters of merchandise subject to investigation in an NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The five companies that have submitted Section A responses have provided the requested company-specific separate rates information and have stated that, for each company, there is no element of government ownership or control. All five companies have requested a separate company-specific rate.[1]

JMC reported that it is a Sino-U.S. equity joint venture between Jinan Malleable Iron Corporation and South Hudson Inc., established under Chinese law as a limited liability corporation. JMC is privately owned by individual shareholders and controlled by a board of directors. JMC states that it does not have any relationship with the central, provincial, or local governments in the PRC. JMC further states that there are no government controls on the export activities of JMC.

SLK reported that it is wholly-owned by LDR, a U.S. company, and controlled by its managers and owners. SLK stated that they have no relationship with any other producers or exporters of subject merchandise, and that there are no government controls on the export activities of SLK. SLK further states that they it is not owned or controlled by a provincial or local government. Because SLK is wholly foreign-owned, a separate rate analysis is not necessary.

Pannext reported that it is a subsidiary of Pantex Computer Inc. (PCI), a company incorporated in Texas, United States and is controlled by its two-person board of directors, one of whom is the owner of PCI, and the other is the general manager of Pannext. Pannext stated that all exports of the subject merchandise were produced by Pannext. Pannext claimed that Pannext and its affiliates have no corporate relationship with any level of the PRC government. Because Pannext is wholly foreign-owned, a separate rate analysis is not necessary.

Chengde reported that it is an employee-owned enterprise. Chengde further states that Chengde is under the direct control of its general manager who makes all business decisions, and that Chengde is independent of any national, provincial, or local government, including ministries or offices of those governments with respect to exports of the subject merchandise to the United States.

SCE reported that SCE operates in a market economy and operates beyond the jurisdiction of the NME government of the PRC. SCE states that it has no relationship with national, provincial and local governments, and that there are no controls on the export activities of SCE.

Based on these claims, we considered whether each respondent is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See id.*

1. Absence of *De Jure* Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. JMC, SLK, Pannext, SCE, and Chengde have placed on the record a number of documents to demonstrate absence of *de jure control*, including the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China." In addition, in previous cases, the Department has analyzed the "Company Law of the People's Republic of China" and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995). We have no information in this proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for JMC, SLK, Pannext, SCE, and Chengde.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control that would preclude the Department from assigning separate rates.

All respondents asserted the following: (1) they establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, using profits according to their business needs. Additionally, none of the respondents' questionnaire responses suggest pricing is coordinated among exporters. Furthermore, our analysis of the respondents' questionnaire responses reveals no other information indicating government control. Based on the information provided, we preliminary determine that there is an absence of *de facto* governmental control of the respondents' export functions. Consequently, we preliminarily determine that JMC, SLK, Pannext, Chengde, and SCE have met the criteria for the application of a separate rate.

[1] As noted above, Myland is not eligible for a separate rate because the Department has rejected its Section A response in accordance with 19 C.F.R. 351.302(d)

The People's Republic of China-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely Section A responses from JMC, SLK, Pannext, Chengde, and SCE.[2] Our review of U.S. import statistics from the PRC, however, reveals that JMC, SLK, Pannext, Chengde, and SCE did not account for all imports of subject merchandise into the United States from the PRC, even after adjusting for the merchandise of Chinese origin Myland said it had imported into the United States. For this reason, we preliminarily determine that some PRC exporters of MPF failed to respond to our questionnaire. Consequently, we are applying a single antidumping rate the PRC-wide rate to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000) (*Synthetic Indigo*). The PRC-wide rate applies to all entries of subject merchandise except for entries from JMC, SLK, Pannext, Chengde, and SCE.

Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act permits the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

PRC-Wide Rate

In the case of the single PRC enterprise, as explained above, some exporters of the single enterprise failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total adverse facts available for the PRC-wide rate because certain entities did not respond. Also, because some exporters of the single enterprise failed to respond to the Department's requests for information, the Department has found that the single enterprise failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870 and 19 C.F.R. 351.308(d). "Corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate the recalculated dumping margin from the petition (*see* below). In the petition, the petitioners based export price (EP) on Chinese price quotes publicly available in the United States. *See* http://www.smithcooper.com/products.htm#Malleable. For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and representative capital costs), on the quantities of inputs used by the petitioners.

With regard to the EP calculation in the petition, the information relied upon in this case was based on the publicly available Chinese price quotes. Therefore, we find that the U.S. price from the petition margin is sufficiently corroborated. To corroborate the petitioners' NV calculations, we

[2] As previously stated, for the preliminary determination we have found that Myland did not respond to the Department's questionnaire in a timely manner.

compared the petitioners' factor consumption data to that data on the record of this investigation. As discussed in a separate memorandum to the file, we found that the factors consumption data in the petition were reasonable and of probative value. *See* Memorandum to the File Regarding Total Facts Available Corroboration Memorandum for the PRC-Wide Rate, dated May 28, 2003. The values for the factors of production in the petition were based on publicly available information for comparable inputs. Therefore, we find that these Indian surrogate values are sufficiently corroborated.

As a result of this calculation, the PRC-wide rate, for the preliminary determination, is 146.41 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to the PRC in terms of economic development. *See* Memorandum from Jeffrey May to Abdelali Elouaradia: Antidumping Duty Investigation on Certain Malleable Iron Pipe Fittings from the People's Republic of China, dated January 13, 2003. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise.

We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. *See* Surrogate Country Selection Memorandum to The File from Anya Naschak, Case Analyst, dated May 28, 2003, (Surrogate Country Memorandum). We have obtained and relied upon publicly available information wherever possible. *See* Factors of Production Valuation Memorandum for the Preliminary Determination to The File from Case Analysts, dated May 28, 2003 (Factor Valuation Memorandum).

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Fair Value Comparison

To determine whether sales of MPF to the United States by JMC, SLK, and Pannext were made at less than fair value, we compared EP or constructed export price (CEP), as appropriate, and NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, for respondent JMC we used EP because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated. As explained below, for respondents SLK and Pannext, we used CEP. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to the NVs.

We calculated EP based on prices to unaffiliated purchasers in the United States. For JMC we made deductions, where appropriate, for foreign inland freight, brokerage and handling, international freight, marine insurance, and other sales specific adjustments. *See* Proprietary Memorandum from Ann Barnett-Dahl to Abdelali Elouaradia: Preliminary Determination Analysis Memorandum for Jinan Meide Casting Co., Ltd., dated May 28, 2003 (JMC Analysis Memo). Because marine insurance was provided by an NME company, we based it on a surrogate rate from a publicly available price list for India. *See* Factor Valuation Memorandum.

SLK classified all of its sales of the subject merchandise in the United States as CEP sales in its questionnaire response. SLK made all of its U.S. sales of the subject merchandise to the first unaffiliated U.S. customer prior to importation by LDR, its U.S. affiliated reseller. We examined the facts surrounding the U.S. sales process.

LDR handled the sales of the subject merchandise in the United States during the POI. LDR conducted all sales negotiations without SLK's participation, received purchase orders from U.S. customers and sent order confirmations to these customers. LDR also issued all invoices and received payment from its U.S. customers. *See* Section A Questionnaire Response (January 29, 2003), and Section A Supplemental Questionnaire Response (February 25, 2003). Because LDR made all sales in the United States, the Department preliminarily determines that SLK's U.S. sales were made "in the United States" within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions.

We calculated weighted-average CEPs for SLK's U.S. sales made in the United States through its U.S. affiliate. We based CEP on the reported gross unit prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts, rebates, marine insurance, international freight, U.S. duties, and for foreign inland freight from the plant to the port of exportation in accordance with section 772(c)(2)(A) of the Act. To calculate inland freight, we multiplied the reported distance from the plant to the port of exit by a surrogate truck freight rate from India. In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses (*i.e.*, advertising and imputed credit expenses, and indirect selling expenses and inventory carrying costs) that were associated with LDR's economic activities occurring in the United States. *See* Proprietary Memorandum from Helen Kramer to Abdelali Elouaradia: Preliminary Determination Analysis Memorandum for Beijing Sai Lin Ke Hardware Co., Ltd. and LDR Industries, dated May 28, 2003 (SLK Analysis Memo).

In its questionnaire response Pannext classified all of its sales of the subject merchandise in the United States as CEP sales. All of Pannext's U.S. sales of the subject merchandise to the first unaffiliated U.S. customer during the POI were made prior to importation through PFC, a U.S.-based affiliated reseller. We examined the facts surrounding the U.S. sales process.

The sale of subject merchandise by Pannext in the United States during the POI was handled by PFC. PFC received purchase orders from, and sent order confirmations to, U.S. customers. PFC also issued all invoices and received payment from Pannext's customers. *See* Section A Questionnaire Response (January 29, 2003), and Section A Supplemental Questionnaire Response (March 3, 2003).

Because the contracts on which Pannext's U.S. sales were based were between PFC and its unaffiliated U.S. customers, and PFC invoiced and received payment from the unaffiliated U.S. customers, the Department preliminarily determines that Pannext's U.S. sales were made "in the United States" within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions. This is consistent with *AK Steel Corp. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated weighted-average CEPs for Pannext's U.S. sales made in the United States through its U.S. affiliate. We based CEP on the reported gross unit prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts, marine insurance, international freight, U.S. duties, and for foreign inland freight from the plant to the port of exportation in accordance with section 772(c)(2)(A) of the Act. Because marine insurance was provided by an NME company, we based it on a publicly available price list for India. *See* Factor Valuation Memorandum. To calculate inland freight, we multiplied the reported distance from the plant to the port of exit by a surrogate rail rate from India. In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses (*i.e.*, credit and indirect selling expenses) that were associated with Pannext's economic activities occurring in the United States. *See* Proprietary Memorandum from Anya Naschak to Abdelali Elouaradia: Preliminary Determination Analysis Memorandum for Langfang Pannext Pipe Fitting Co., Ltd. and Pannext Fittings Corporation, dated May 28, 2003 (Pannext Analysis Memo).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by respondents, for materials, energy, labor, by-products, and packing. *See* section 773(c)(3) of the Act.

The statute provides that in NME cases, the Department "shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise." *See* section 773(c)(1) of the Act. However, in the instant investigation, JMC, Pannext, and SLK have submitted information on the record that they do not keep records of the inputs of recycled scrap used in the manufacture of subject merchandise, which would be necessary to determine the quantity of recycled scrap used in producing one kilogram of subject merchandise as a factor of production. Further, respondents note that they do not record in the normal course of business the quantities of inputs required to produce each model of subject merchandise. Respondents note that they have reported their factors of production excluding the inputs of recycled scrap. Respondents have explained that their production line is a closed loop system, where in the ordinary course of business all scrap produced is simultaneously reintroduced into the production process. Therefore, it is the respondents' position that the Department should not include in its calculation a factor of production for recycled scrap because the offset would nullify any additional input quantity.

In an effort to determine the quantity of these inputs, the Department provided respondents with an opportunity to report recycled scrap as an input. First, the Department requested that all respondents adjust their reported factors of production by the control number (CONNUM)-specific yield loss ratios. Respondents have acted to the best of their ability to comply with this request. In their supplemental submissions, the respondents adjusted their factors of production to account for these yield loss ratios, and reported estimated yield loss ratios on a CONNUM-specific basis. However, respondents noted that they are only able to report estimated data, because these ratios are not inclusive of material lost due to spillage, slag, or evaporation in the melting process, and are based on a small number of tests, rather than on actual CONNUM-specific data.

Second, the Department requested, at least twice, that each respondent separately report the quantity of recycled scrap reintroduced into the production process in order to account for the material lost in the production process. *See e.g.*, the Department's NME Questionnaire, dated January 8, 2003, at D-1, D-6, JMC Supplemental C and D Questionnaire, dated March 19, 2003, at page 7, Pannext Supplemental Section C and D Questionnaire, dated March 19, 2003 at pages 6–7, Pannext Second Supplemental C and D Questionnaire, dated April 23, 2003, at page 4, SLK Supplemental Section C and D Questionnaire, dated March 18, 2003, at page 6, and Memorandum from Ann Barnett-Dahl to the File, dated May 19, 2003. Respondents explained that they do not keep records on reintroduced scrap, and are therefore unable to provide the Department with the quantity of these inputs. *See e.g.*, JMC's Section D Questionnaire response, dated February 24, 2003, at pages 23 25, JMC's Section D Supplemental response, dated April 2, 2003, at pages 18–19, Pannext's Section D Supplemental response, dated April 11, 2003, at pages 16–17, Pannext's Section D Second Supplemental response, dated April 28, 2003, at pages 4–5, SLK's Section D Supplemental response, dated April 14, 2003, at pages 5–6.

However, it is the Department's practice to require the reporting of all inputs in the production process in the calculation of constructed value. When a party is unable to provide the Department with the requested information, section782(c) of the Act requires a party to promptly notify the Department as to why it cannot comply with the Department's questionnaire. Section782(c) also requires parties to suggest alternative forms in which they are able to comply with the request. *See China Steel Corporation and Yieh Loong v United States*, Court No. 01–01040, Slip Op. 03–52 at 31–32 (May 14, 2003). In this investigation, the Department promptly requested that each respondent separately report the quantities of reintroduced scrap. Respondents have stated they are unable to provide the Department with the requested information, but they have not proyided the Department with any alternate means of accounting for the unreported recycled scrap inputs. In lieu of an alternative provided by respondents, the Department must resort to partial facts available in the calculation of dumping margins in this case to account for the unreported input values.

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Specifically, section 776(a)(2)(B) of the Act permits the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. The purpose of applying an adverse inference is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

In the instant investigation, the Department is not relying on adverse facts available, as respondents have supplied the Department with CONNUM-specific yield losses as requested. However, the information currently on record does not satisfy the statute with respect to the unreported inputs in the calculation of normal value. The respondents have said that they are unable to provide the Department with this information, and have not proposed an alternative methodology through which the Department could comply with its statutory obligation to value all inputs. Therefore, for this preliminary determination, the Department must rely on partial facts available for the value of recycled scrap. In its calculation of constructed value for this preliminary determination, the Department is therefore relying on information provided by the petitioners in its calculation of the unreported inputs. In their May 15, 2003, submission to the Department, petitioners provided worksheets demonstrating the unreported factors of production for metallic inputs using petitioners', JMC's, and Pannext's data. *See* Letter from Petitioners to the Department dated May 15, 2003 (Petitioners' May 15th Letter). Petitioners calculated an adjustment factor for the unreported metallic inputs based on the total quantity of inputs of purchased scrap and recycled scrap from the Petition, adjusting for respondent's reported yield losses and by-product adjustments for one type of subject merchandise. The Department does not have sufficient information to recalculate these input adjustments for the unreported metallic inputs on a CONNUM-specific basis. Therefore, for this preliminary determination, the Department is using an average of the adjustment ratios for JMC and Pannext as calculated in Petitioners' May 15th Letter at Exhibit 4, and increasing JMC, Pannext, and SLK's reported values for purchased steel scrap by this average, 56.83%.

Additionally, in certain instances JMC and Pannext have reported their factors of production for purchased metallic inputs as less than one kilogram of input to make one kilogram of output. It is the Department's position that it is unreasonable that JMC and Pannext have documented an output weight greater than the input weight. As neutral facts available, for JMC and Pannext, when the reported metallic input to produce one kilogram of output was less than one kilogram, we have used the POI-wide average quantity for steel scrap input as reported in their response. *See e.g.*, Pannext's Section D Questionnaire Response, dated March 3, 2003, at Exhibit 7, and JMC's Section D Questionnaire Response, dated February 24, 2003, at Exhibit D-8-A. For a further analysis of the company-specific calculations, please see JMC Analysis Memo, Pannext Analysis Memo, and SLK Analysis Memo.

We valued the above input factors of production using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

In accordance with 19 C.F.R. 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See also Lasko Metal Products v. United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994) (*Lasko*). However, though respondents JMC and Pannext reported that one of their material inputs used in the manufacture of certain types of subject merchandise were sourced from market economies and paid for in market economy currency, Pannext and JMC purchased this input from market economies that the Department considers to be potentially aberrational. The Department has determined that South Korea, Thailand, and Indonesia maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). Therefore, the Department has not used use the values of inputs from these countries from to calculate the surrogate values. *See* "Factor Valuation" section below.

Pannext reported a "self-produced" factor for water among its factors of production for inputs. We preliminarily determine to value water through use of surrogate valuation, rather than based on surrogate valuation of the factors going into the production of those inputs.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production (FOP) reported by respondents for the POI. For JMC the Department has applied, as neutral facts available, an average of the FOP values reported by Pannext and SLK for the unreported input of resin coated sand used in the production of subject merchandise. A complete analysis of this issue is available in the JMC Analysis Memo. In the case of one respondent, a trading company, SLK, one of its suppliers failed to report a factor of production for resin coated sand. Therefore, for SLK the Department has applied, as neutral facts available, an average of the FOP values reported by Pannext and the values reported by the remaining four suppliers of SLK for resin coated sand. For SLK, the Department has also applied, as neutral facts available, and average of the FOP values reported by Pannext and JMC for the unreported inputs of limestone used in the production of subject merchandise. A complete analysis of this issue is available in the SLK Analysis Memo.

To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneousness of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents, *see* Factor Valuation Memorandum.

We added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic producer to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). For those Indian rupee values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

We valued raw material inputs using the weighted-average unit import values derived from the *Monthly Statistics of the Foreign Trade of India: Volume II*, July 2002 (*Indian Import Statistics*) for the time period corresponding to the POI and, where viable contemporaneous data was not available, we have used *Monthly Statistics of the Foreign Trade of India: Volume II*, December 2001 (*2001 Import Statistics*), as used in *Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 68 FR 7765, 7767 (February 18, 2003) (*Non-Malleable Final*), inflated to 2002 levels (*see* Factor Valuation Memorandum). For the raw material input of one input used in the production of certain types of subject merchandise purchased by Pannext and JMC from a market economy supplier, for the reasons stated above in the "Normal Value" section, the Department is valuing these inputs using *Indian Import Statistics*.

We valued electricity using the year 2002 Electricity Prices for Industry rate as reported by the International Energy Agency (IEA) in *Key World Energy Statistics from the IEA*. The source is the same as in *Non-Malleable Final*, but it is more contemporaneous.

We valued labor using the latest regression-based wage rate for the PRC found on Import Administration's Web page (http://ia.ita.doc.gov/wages/) as described in 19 C.F.R. 351.408(c)(3).

To value foreign inland truck freight costs, we relied upon per kilometer prices from *The Financial Express*, June 17, July 14, Sept. 1, and Oct. 6, 2002 (http://www.financialexpress.com). For JMC and Pannext we valued marine insurance based on publicly available price quotes from a marine insurance provider at http://www.rjgconsultants.com/insurance.html, and we used the actual costs of those services provided to the respondents by market economy suppliers. For JMC we valued brokerage and handling based on a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002), and accompanying Factor Valuation Memorandum.

Because the Department did not find industry-specific data to calculate selling, general and administrative (SG&A) expenses, factory overhead, and profit, we used the "Finance of Large Public Limited Companies, 2000–01," a sample of 964 large public limited companies in India that were reported in the April 2002 Reserve Bank of India Bulletin, as previously used in the *Non-Malleable Final*.

For a complete analysis of surrogate values used in the preliminary determination, see the Factor Valuation Memorandum.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Rate for Cooperative Producers/Exporters That Were Not Selected

For those PRC producers/exporters who responded to our separate rates questionnaire but were not selected as mandatory respondents (*i.e.*, Chengde and SCE), we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected as mandatory respondents. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

Suspension of Liquidation

In accordance with section 733(d)(2)(A) of the Act, we are directing the BCBP to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption as follows: for Pannext, SLK, Myland or Chengde, we will instruct BCBP to suspend liquidation on or after the date of publication of this notice in the **Federal Register**; for JMC, SCE and companies subject to the PRC-wide rate, we will instruct BCBP to suspend liquidation on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, due to the Preliminary Determination of Critical Circumstances. *See Notice of Preliminary Determination of Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 19779 (April 22, 2003). We will instruct the BCBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
Jinan Meide Casting Co., Ltd	13.80
Beijing Sai Lin Ke Hardware Co., Ltd	144.43
Langfang Pannext Pipe Fitting Co., Ltd	4.96
Chengde Malleable Iron General Factory	52.50
SCE Co., Ltd	52.50
PRC-Wide Rate	146.41

The PRC-wide rate applies to all entries of the subject merchandise except for entries from JMC, SLK, Pannext, Chengde, and SCE.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or

threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than ten days after the date of issuance of the verification reports, and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the time limit for filing the case brief. *See* 19 C.F.R. 351.309(c)(1)(i); 19 C.F.R. 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held two days after the receipt of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. *See* 19 C.F.R. 351.310(d)(1). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 C.F.R. 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 C.F.R. 351.310(c).

The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 28, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14343 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of North Carolina, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–018. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599–7295. *Instrument:* Electron Microscope, Model Tecnai G² 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 23979, May 6, 2003. *Order Date:* May 7, 2002.

Docket Number: 03–020. *Applicant:* Wayne State University, Detroit, MI 48202. *Instrument:* Electron Microscope, Model JEM–2010 FasTEM. Manufacturer: JEOL Ltd., Japan. *Intended Use:* See notice at 68 FR 23979, May 6, 2003. *Order Date:* December 5, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14342 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Redetermination Pursuant to NAFTA Panel Remand: Pure Magnesium and Alloy Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Redetermination Pursuant to NAFTA Panel Remand: Pure Magnesium and Alloy Magnesium From Canada.

SUMMARY: The Department of Commerce ("Commerce") has prepared these results of redetermination pursuant to the decision of the Binational NAFTA Panel ("Panel") in *Alloy Magnesium and Pure Magnesium from Canada*, USA–CDA–00–1904–07 (October 15, 2002) ("*Panel Decision*"). These results pertain to the Department's determination in *Alloy Magnesium and Pure Magnesium from Canada: Final Results of Full Sunset Reviews*, 65 FR 41444 (July 5, 2000) ("*Final Results*") that the revocation of the countervailing duty order on pure magnesium and alloy magnesium would be likely to lead to the continuation or recurrence of a countervailable subsidy. The Panel remanded this sunset review to Commerce with instructions to amend its determination in this case by removing the reporting of an all others subsidy rate. The Panel affirmed Commerce's final remand determination on January 21, 2003. Accordingly, Commerce hereby amends the sunset review in this case by removing the reporting of an all others subsidy rate.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Joanna Schlesinger or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4968 or (202) 482–3330.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 CFR part 351 (2002) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's *Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset* Policy Bulletin").

Background

The Gouvernement du Quebec ("GOQ") and Magnesium Corporation of America ("Magcorp") challenged certain findings made by Commerce in its *Final Results* before the Panel. On March 27, 2002, based on its findings pursuant to the GOQ and Magcorp's challenge, the Panel upheld Commerce's determination with respect to certain issues. However, the Panel remanded to Commerce this sunset review with instructions to reconsider: (i) The determination to utilize the results of the sixth review as the subsidy rate to be reported to the ITC; (ii) the basis for the all others rate; and (iii) the reasons for the failure to investigate subsidies alleged to have been received by Magnola Metallurgy, Inc. ("Magnola"). Panel Determination, USA–CDA–00–1904–07 at 31 (Mar. 27, 2002) ("*Panel Determination*"). The Panel further instructed Commerce to file its further remand determination within 45 days of the date of the order. On June 10, 2002, Commerce issued the draft remand results to the Gouvernement du Quebec ("GOQ"), Norsk Hydro Canada, Inc. ("NHCI"), and domestic interested parties.

Commerce issued the Final Results of Determination Pursuant to NAFTA Panel Remand of the Sunset Review of the Countervailing Orders on Pure and Alloy Magnesium from Canada ("Remand Determination") on June 25, 2002. On July 15, 2002, the GOQ filed the Rule 73(2)(b) Challenge of the Determination on Remand by the Gouvernement du Quebec ("Rule 73(2)(b) Challenge"). The GOQ's Rule 73(2)(b) Challenge contends that Commerce improperly concluded that it was "required" to report an all others rate and that the rate selected was improper. U.S. Magnesium LLC (formerly Magcorp) [1] also filed a Rule 73(2)(b) Challenge, contesting Commerce's refusal to investigate alleged subsidies to Magnola. Commerce responded to the Rule 73(2)(b) Challenges filed by the GOQ and U.S. Magnesium on August 5, 2002.

The Panel concluded that Commerce's remand determination with respect to Magnola is supported by substantial evidence and is in accordance with law. However, the Panel remanded the matter to Commerce with instructions to amend its determination by removing the reporting of an all others subsidy rate. The Panel further instructed Commerce to file its further remand determination within 45 days of the date of the order.

Final Results of Review

While we disagree with the Panel's finding with respect to the all others rate, consistent with the Panel's instructions we hereby amend our final determination by removing the reporting of an all others subsidy rate in this case. We determine that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the following percentage weighted-average margins:

Manufacturer/producers/exporter	Weighted-Average margin (percent)
Norsk Hydro Canada Inc. ("Norsk").	1.84

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14346 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] U.S. Magnesium purchased all of the assets of Magcorp on June 24, 2002, pursuant to an auction approved by U.S. Bankruptcy Judge Robert E. Gerber of the Southern District of New York. *See* Motion for Substitution of Party, filed by U.S. Magnesium on July 15, 2002.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Certain Softwood Lumber Products From Canada: Notice of Extension of Time Limit for the Preliminary Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds or Gayle Longest, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–6071 or 482–3338, respectively.

SUPPLEMENTARY INFORMATION: On December 31, 2002, the Department of Commerce (the Department) initiated a new shipper review relating to the countervailing duty order on certain softwood lumber products from Canada, covering the period January 1, 2002 through December 31, 2002. *See Certain Softwood Lumber From Canada: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 22, 2002, Through October 31, 2002; Notice of Initiation of Countervailing Duty New Shipper Review for the Period January 1, 2002, Through December 31, 2002; and Rescission of Countervailing Duty Expedited Review*, January 8, 2003 (68 FR 1030). The respondent in this new shipper review is Scierie Lapointe & Roy Ltee (Lapointe & Roy). The current deadline for the preliminary results of this review is June 30, 2003. Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 180 days after the date on which the new shipper review was initiated. However, when the Department determines a case is extraordinarily complicated such that it cannot complete the review within this time period, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the time limit for the preliminary determination from 180 days to a maximum of 300 days.

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department has determined that this case is extraordinarily complicated given the number of programs and the complexity of the calculations used to derive the benefit from these programs. *See* Decision Memorandum from Melissa G. Skinner,

Director, Office of AD/CVD Enforcement VI, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Thus, in accordance with the statutory and regulatory authority cited above, the Department is extending the deadline for issuing the preliminary results of this new shipper review by 120 days to no later than October 27, 2003. We plan to issue the final results within 90 days after the date the preliminary results are issued.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: May 28, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 03–14344 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021127290–3138–03; I.D. 033103C]

Financial Assistance for Research and Development Projects in the Gulf of Mexico and Off the U.S. South Atlantic Coastal States; Marine Fisheries Initiative (MARFIN); Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this notice to correct an action entitled "Notice of Solicitation for Applications" to clarify the Eligibility Information to include "U.S. citizens".

DATES: We must receive your application by close of business 5 p.m. eastern daylight time on June 27, 2003. Applications received after that time will not be considered for funding. The earliest start date of awards is about 200 days after the date of publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

ADDRESSES: You can obtain an application package from, and send your completed applications(s) to: National Marine Fisheries Service, State/Federal Liaison office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. You may also obtain the application package from the MARFIN Home Page at: http://caldera.sero.nmfs.gov/grants/grants.htm

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office at 727–570–5324.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) published a notice soliciting applications for financial assistance in the **Federal Register** of May 13, 2003 (68 FR 25578), entitled "Notice of Solicitation for Applications." "U.S. citizens" were inadvertently omitted as eligible applicants and this document makes them eligible.

Correction

"1. Eligible applicants include U.S. citizens, institutions of higher education, hospitals, other nonprofits, commercial organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments and international organizations are excluded for purpose of this solicitation since the objective of the MARFIN program is to optimize research and development benefits from U.S. marine fishery resources."

You should consult the May 13, 2003, notice for all of the other requirements for submitting an application.

Dated: June 2, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–14309 Filed 6–5–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition Under the African Growth and Opportunity Act (AGOA)

June 3, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a determination that certain fabrics, for use in men's and boys' shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

SUMMARY: On June 2, 2003, the Chairman of CITA received a petition from Ryberg and Smith, L.L.P. on behalf of their clients, Consolidated Fabrics Ltd., Socota Textile Mills Ltd., New Island Clothing Ltd., Aquarelle Clothing Ltd., and Jaysix USA Inc., alleging that certain fabrics, listed below, used in the production of certain men's and boys' shirts, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that men's and boys' shirts of such fabrics be eligible for preferential treatment under the AGOA. CITA hereby solicits public comments on this request, in particular with regard to whether such shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 23, 2003, to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA, Section 1 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests. (66 FR 13502).

On June 2, 2003, the Chairman of CITA received a petition from Ryberg and Smith, L.L.P. on behalf of their clients, Consolidated Fabrics Ltd., Socota Textile Mills Ltd., New Island Clothing Ltd., Aquarelle Clothing Ltd., and Jaysix USA Inc., alleging that certain fabrics, listed above, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA for certain men's and boys' shirts that are both cut and sewn in one or more AGOA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than June 23, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Fabrics named in the request:

(a) Fabrics of subheadings 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51, 5208.52 or 5208.59, of average yarn number exceeding 135 metric;

(b) Fabrics of subheadings 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;

(c) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;

(d) Fabrics of subheadings 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and fillings picks per square centimeter, of average yarn number exceeding 135 metric;

(e) Fabrics of subheadings 5407.81, 5407.82 or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment, of average yarn number exceeding 135 metric;

(f) Fabrics of subheadings 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric, or exceeding 135 metric if the fabric is of oxford construction (a modified basket weave with a large filling yarn having no twist woven under and over two single, twisted warp yarns);

(g) Fabrics of subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 135 or greater metric;

(h) Fabrics of subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 135 or greater metric, and characterized by a check effect produced by the variation in color of the yarns in the warp and filling; or

(i) Fabrics of subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number greater than 65 metric.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–14395 Filed 6–4–03; 11:46 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of March 24, 2003, (68 FR 14202), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Omnidirectional Citizens Band Base Station (16 CFR part 1204). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information, without change, for three years from the date of approval.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury which may result if an antenna contacts overhead power lines while being erected or removed from its site. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to test antennas for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that antennas subject to the standard comply with its requirements. This information would also enable the Commission to obtain corrective actions if omnidirectional citizens band base station antennas failed to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 16 CFR part 1204.

Type of Request: Extension of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of omnidirectional citizens band base station antennas.

Estimated number of respondents: 5.

Estimated number of hours per respondent: 220 per year.

Estimated number of hours for all respondents: 1,100 per year.

Estimated cost of collection for all respondents: $46,552 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 7, 2003 to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671, e-mail: *lglatz@cpsc.gov*.

Dated: May 30, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–14228 Filed 6–5–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–562–004]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Compliance Filing

May 30, 2003.

Take notice that on May 27, 2003, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing in Appendix 1 attached to the filing, the information and explanations requested by the Commission in its order issued May 5, 2003 in Docket No. RP02–562–002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14237 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–342–003]

MIGC, Inc.; Notice of Compliance Filing

May 30, 2003.

Take notice that on May 23, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2003:

First Revised Sheet No. 30.
Sub First Revised Sheet No. 31.
Substitute First Revised Sheet No. 32.
Third Revised Sheet No. 33.
Original Sheet No. 33A.
Original Sheet No. 52B.
Fourth Revised Sheet No. 60.
Sub Original Sheet No. 60A.
Third Revised Sheet No. 61.
Fifth Revised Sheet No. 65.
Second Revised Sheet No. 66A.
Third Revised Sheet No. 69.
Substitute Third Revised Sheet No. 70.
Original Sheet No. 70A.
Second Revised Sheet No. 82.
Original Sheet No. 82A.
Fourth Revised Sheet No. 85.
First Revised Sheet No. 118.
First Revised Sheet No. 119.

MIGC asserts that the purpose of this filing is to comply with the Commission's order issued May 9, 2003, in Docket Nos. RP00–342–001 and RP00–342–002, to file actual tariff sheets reflecting certain revisions to its August 10, 2001 and September 12, 2001 filings in compliance with Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14236 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–483–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 30, 2003.

Take notice that on May 27, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective June 27, 2003.

First Revised Sheet No. 125.
First Revised Sheet No. 126.
First Revised Sheet No. 127.
First Revised Sheet No. 128.
Original Sheet No. 129.
Sheet Nos. 130 through 199.
Eighth Revised Sheet No. 363.
Eighth Revised Sheet No. 365.

Northwest states that the purpose of this filing is to revise Northwest's park and loan service under Rate Schedule PAL by adding a park point and loan point adjacent to the Jackson Prairie storage facility in Lewis County, Washington.

Northwest states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14243 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–390–001]

Overthrust Pipeline Company; Notice of Tariff Filing

May 30, 2003.

Take notice that on May 23, 2003, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective July 1, 2003:

Substitute Original Sheet No. 53A.
Substitute Original Sheet No. 53B.

Overthrust states that this filing proposes to amend Overthrust's May 1, 2003, tariff filing that was filed in compliance with the Commission's Order No. 587–R in Docket No. RM96–1–024, dated March 12, 2003, which incorporated the most recent Version 1.6 standards promulgated by the North American Energy Standards Board (NAESB).

Overthrust states that it was discovered that a portion of NAESB Standard 5.3.45, that was intended to be included verbatim, was inadvertently omitted from the May 1, 2003, filing. Therefore, Overthrust seeks to incorporate the omitted portion of NAESB Standard 5.3.45.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14239 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–482–000]

Panhandle Eastern Pipe Line Company and Panhandle Eastern Pipe Line Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 30, 2003.

Take notice that on May 23, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to reflect a change in corporate name and corporate form.

Panhandle states that the revised tariff sheets reflect a name change that is planned to occur on June 23, 2003. Panhandle states that on June 23, 2003, it plans to convert from a corporation to a limited liability company and change its corporate name to Panhandle Eastern Pipe Line Company, LLC.

Panhandle states that a copy of this filing has been mailed to all affected customers and interested state commissions, and that copies of the revised tariff sheets will be provided upon request.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14242 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP03–391–001; Notice of Tariff Filing

Questar Southern Trails Pipeline Company

May 30, 2003.

Take notice that on May 23, 2003, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, Substitute Original Sheet No. 64B, to be effective July 1, 2003.

Southern Trails states that this filing proposes to amend Southern Trail's May 1, 2003 tariff filing that was filed in compliance with the Commission's Order No. 587–R in Docket No. RM96–1–024, dated March 12, 2003, which incorporated the most recent Version 1.6 standards promulgated by the North American Energy Standards Board (NAESB). Southern Trails states that it was discovered that a portion of NAESB Standard 5.3.45, that was intended to be included verbatim, was inadvertently omitted from the May 1 filing. Therefore, Southern Trails seeks to incorporate the omitted portion of NAESB Standard 5.3.45.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14240 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–481–000]

Transwestern Pipeline Company; Notice of Filing

May 30, 2003.

Take notice that on May 23, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing a copy of an Operator Balancing Agreement between Transwestern and Unocal Keystone Gas Storage, LLC.

Transwestern states that Transwestern and Unocal Keystone Gas Storage, LLC have entered into an Operator Balancing Agreement that contains several provisions that are supplemental to the form of operator balancing agreement (OBA) set forth in Transwestern's tariff. In accordance with Section 15.5 of the General Terms and Conditions of Transwestern's tariff, Transwestern must file with the Commission any supplemental provisions contained in an OBA entered into by Transwestern that are not reflected in the form of OBA set forth in the tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14241 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–369–001]

USG Pipeline Company; Notice of Errata Filing

May 30, 2003.

Take notice that on May 27, 2003, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Substitute Second Revised Sheet No. 59, with an effective date of July 1, 2003.

USGPC states that the purpose of this filing is to correct an error on a tariff sheet submitted on May 1, 2003 to comply with the Commission's Order No. 587–R issued March 12, 2003, in Docket No. RM96–1–024.

USGPC states that complete copies of this filing are being provided to its sole customer, United States Gypsum Company, which receives service as certificated under part 157 of the Commission's regulations, and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14238 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–128–000, et al.]

D.E. Shaw Plasma Power, L.L.C., et al.; Electric Rate and Corporate Filings

May 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. D.E. Shaw Plasma Power, L.L.C.

[Docket No. EL03–128–000]

Take notice that on May 28, 2003, D. E. Shaw Plasma Power, L.L.C. (the Petitioner) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order Disclaiming Jurisdiction; and Request for Expedition. The Petitioner is asking the Commission for an order declaring that: (1) D.E. Shaw & Co., L.P. (DESCO LP) will not be deemed a public utility under Section 201" of the Federal Power Act (FPA), 16 U.S.C. 824(e); (2) the license agreement between DESCO LP and D.E. Shaw & Co. Energy, L.L.C. (DESCO Energy) will not be considered a jurisdictional facility under the FPA; (3) the advisory services that DESCO Energy proposes to provide to DESCO LP will not be considered activities subject to the Commission's FPA jurisdiction; and (4) the Commission's disclaimers of jurisdiction in Paragraphs 15, 19, 20, and 23 of D.E. Shaw Plasma Power, L.L.C., 102 FERC § 61,275 dated March 7, 2003 with respect to the interests, persons, and entities referenced therein apply to the new circumstances described in the petition.

Comment Date: June 20, 2003.

2. West Georgia Generating Company, LLC

[Docket No. ER99–2186–002]

Take notice that on May 28, 2003, West Georgia Generating Company, LLC (West Georgia) tendered for filing a triennial market-power analysis in compliance with the order granting it authority to make sales at market-based rates.

Comment Date: June 18, 2003.

3. Consumers Energy Company

[Docket No. ER01–318–006]

Take notice that on May 28, 2003, Consumers Energy Company (Consumers) tendered for filing Second Sub Original Sheet No. 136 of its First Revised FERC Electric Tariff No. 6 in compliance with the May 12, 2003 Order issued in this proceeding. Consumers states that The sheet being filed is to become effective November 1, 2000.

Consumers states that copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: June 18, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–13–004]

Take notice that on May 12, 2003, the New York Independent System Operator, Inc., (NYISO) tendered for filing a compliance filing in accordance with the Commission's April 11, 2003 Order, in Docket Nos. ER03–13–001 and 002. The NYISO has requested an effective date of May 12, 2003.

NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Services Tariff and upon the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: June 13, 2003.

5. San Diego Gas & Electric Company

[Docket No. ER03–548–002]

Take notice that on May 28, 2003, San Diego Gas & Electric Company (SDG&E), pursuant to FERC's Order issued May 8, 2003 in Docket Nos. ER03–548–000 and 001, tendered for filing its First Revised Service Agreement Nos. 9 and 11 to its FERC Electric Tariff, First Revised Volume No. 6. SDG&E states that these agreements were accepted for filing on May 8, 2003, conditioned upon SDG&E's filing of designations for both interconnection facilities agreements in compliance with Order No. 614 and section 35.9(a) of the Commission's Regulations.

SDG&E states that copies of the filing have been served on CalPeak Power and on the California Public Utilities Commission.

Comment Date: June 18, 2003.

6. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and NRG Power Marketing Inc.

[Docket No. ER03–563–006]

Take notice that on May 28, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC (collectively Applicants) and NRG Power Marketing Inc., tendered for filing in compliance with the Commission's Order issued April 25, 2003, the revised Cost of Service Agreements among each of the Applicants, NRG Power Marketing Inc., as agent for each Applicant, and ISO New England Inc.

Applicants state that they have provided copies of this filing to ISO–NE, the affected state regulatory authorities, counsel to the NEPOOL Participants Committee, and the NEPOOL Participants identified in their filing.

Comment Date: June 18, 2003.

7. ISO New England Inc.

[Docket No. ER03–854–001]

Take notice that on May 28, 2003, ISO New England Inc. (the ISO) tendered an Errata Filing to correct a tariff sheet contained in the May 15, 2003, filing made in Docket No. ER03–854–000. The ISO states that copies of the Errata Filing have been served upon the parties in the above-captioned proceeding.

Comment Date: June 18, 2003.

8. D.E. Shaw Plasma Trading, L.L.C.

[Docket No. ER03–879–000]

Take notice that on May 28, 2003, D. E. Shaw Plasma Trading, L.L.C. tendered for filing an application for authorization to sell energy, capacity, and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: June 18, 2003.

9. D.E. Shaw & Co. Energy, L.L.C.

[Docket No. ER03–880–000]

Take notice that on May 28, 2003, D. E. Shaw & Co. Energy, L.L.C. tendered for filing an application for authorization to sell energy, capacity, and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: June 18, 2003.

10. D.E. Shaw Plasma Power, L.L.C.

[Docket No. ER03–882–000]

Take notice that on May 28, 2003, D. E. Shaw Plasma Power, L.L.C., tendered for filing an application for authorization to sell energy, capacity, and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: June 18, 2003.

11. Ameren Services Company

[Docket No. ER03–883–000]

Take notice that on May 28, 2003, Ameren Services Company (ASC) tendered for filing a Transmission System Interconnection Agreement and Parallel Operating Agreement between ASC and Bio-Energy Partners. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Bio-Energy Partners pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: June 18, 2003.

12. Nordic Marketing of Ohio, L.L.C.

[Docket No. ER03–885–000]

Take notice that on May 28, 2003, Nordic Marketing of Ohio, L.L.C. petitioned the Commission to: (1) Accept for filing its Rate Schedule FERC No. 1, which will permit it to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; (2) waive 60 days' notice and allow that rate schedule to become effective 60 days after filing or the date the Commission issues an order accepting the rate schedule, whichever occurs first; and (3) grant such other waivers and blanket authorizations as have been granted to other power marketers.

Comment Date: June 18, 2003.

13. Entergy Services, Inc.

[Docket No. ER03–886–000]

Take notice that on May 28, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing the Thirty-second Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Entergy Arkansas, Inc. and Arkansas Electric Cooperative Corporation, dated March 1, 2003. Entergy Services, Inc., states that the Thirty-second Amendment modifies Exhibit A to Appendix A of Rate Schedule No. 82.

Comment Date: June 18, 2003.

14. Nordic Marketing of Pennsylvania, L.L.C.

[Docket No. ER03–887–000]

Take notice that on May 28, 2003, Nordic Marketing of Pennsylvania, L.L.C. petitioned the Commission to: (1) Accept for filing its Rate Schedule FERC No. 1, which will permit it to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; (2) waive 60 days' notice and allow that rate schedule to become effective 60 days after filing or the date the Commission issues an order accepting the rate schedule, whichever occurs first, and (3) grant such other waivers and blanket authorizations as have been granted to other power marketers.

Comment Date: June 18, 2003.

15. Nordic Marketing of Illinois, L.L.C.

[Docket No. ER03–888–000]

Take notice that on May 28, 2003, Nordic Marketing of Illinois, L.L.C. petitioned the Commission to: (1) Accept for filing its Rate Schedule FERC No. 1, which will permit it to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; (2) waive 60 days' notice and allow that rate schedule to become effective 60 days after filing or the date the Commission issues an order accepting the rate schedule, whichever occurs first, and (3) grant such other waivers and blanket authorizations as have been granted to other power marketers.

Comment Date: June 18, 2003.

16. Consumers Energy Company

[Docket No. ES02–36–003]

Take notice that on May 22, 2003, Consumers Energy Company (Consumers) submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. This amendment seeks authorization to issue up to an additional: (1) $750 million (for a total of $1.75 billion) of long-term securities for general corporate purposes, (2) $1 billion (for a total of $1.5 billion) of long-term securities for refinancing or refunding of existing long-term securities, and (3) $1.45 billion (for a total of $2.65 billion) of long-term first mortgage bonds to be issued as security for other long-term securities.

Consumers also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18.CFR 34.2.

Comment Date: June 20, 2003.

17. Old Dominion Electric Cooperative

[Docket No. ES03–39–000]

Take notice that on May 22, 2003, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to guarantee obligations in an amount not to exceed $150 million at any one time.

Old Dominion also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: June 13, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14332 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–69–000, et al.]

Gilroy Energy Center, LLC, et al.; Electric Rate and Corporate Filings

May 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Gilroy Energy Center, LLC

[Docket No. EG03–69–000]

Take notice that on May 23, 2003, Gilroy Energy Center, LLC (Gilroy) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Gilroy, a Delaware limited liability company, proposes to acquire, own and operate 405 MW of electric generating facilities and sell the output of such facilities at wholesale. Gilroy further states that copies of the application were served upon the U.S. Securities and Exchange Commission and California Public Utilities Commission.

Comment Date: June 18, 2003.

2. Creed Energy Center, LLC

[Docket No. EG03–70–000]

Take notice that on May 23, 2003, Creed Energy Center, LLC (Creed) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Creed, a Delaware limited liability company, proposes to acquire, own and operate certain generating equipment associated with a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility located in Solano County, California, and sell the output at wholesale. Creed further states that copies of the application were served upon the U.S. Securities and Exchange Commission and California Public Utilities Commission.

Comment Date: June 18, 2003.

3. Goose Haven Energy Center, LLC

[Docket No. EG03–71–000]

Take notice that on May 23, 2003, Goose Haven Energy Center, LLC (Goose Haven) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Goose Haven, a Delaware limited liability company, proposes to acquire, own and operate certain generating equipment associated with a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility located in Solano County, California, and sell the output at wholesale. Goose Haven further states that copies of the application were served upon the U.S. Securities and Exchange Commission and California Public Utilities Commission.

Comment Date: June 18, 2003.

4. Carolina Power & Light Company

[Docket No. ER03–540–006]

Take notice that on May 23, 2003, Carolina Power & Light Company and Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission a revision of the compliance filings submitted on May 15 and 20, 2003 in Docket Nos. ER03–540–003 and 004. The revised compliance filing implements modifications to the credit security provisions of their Open Access Transmission Tariffs, to become effective May 14, 2003, in compliance with the Commission's May 9, 2003 Order Accepting in part and Rejecting in part Tariff Sheets as Modified (103 FERC § 61,159).

Carolina Power & Light Company states that this filing was served upon the parties to this proceeding, the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: June 13, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–869–000]

Take notice that on May 23, 2003, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Letter Agreement which establishes a new Operating Protocol among Michigan Electric Transmission Company, LLC, Kinder Morgan Michigan, LLC and the Midwest ISO.

Midwest ISO states that a copy of this filing was sent to Michigan Electric Transmission Company, LLC and Kinder Morgan Michigan, LLC.

Comment Date: June 13, 2003.

6. Bangor Hydro-Electric Company

[Docket No. ER03–870–000]

Take notice that on May 23, 2003, Bangor Hydro-Electric Company (BHE) tendered for filing Notices of Cancellation of its FERC Electric Tariff Original Volume No. 5 (Open and Maintenance Agreement between Great Northern Paper, Inc., Great Lakes Power, Inc. (GLPI) and BHE (O&M Agreement)) effective May 16, 2003. BHE states that they also filed a Termination Agreement between GLPI and BHE addressing the applicability of the indemnification provisions of the O&M Agreement to acts occurring prior to May 16, 2003 as well as final payments due under the O&M Agreement.

BHE states that copies of the filing were served upon the parties to the Operation and Maintenance Agreement, the Maine Public Utilities Commission, and Maine Public Advocate.

Comment Date: June 13, 2003.

7. Bangor Hydro-Electric Company

[Docket No. ER03–871–000]

Take notice that on May 23, 2003, Bangor Hydro-Electric Company (BHE) filed a Construction Agreement between BHE and Brascan Energy Marketing, Inc. (BEMI) for the BHE/Great Northern Paper Company—Millinocket 115kV Interface Project, an Interconnection Agreement between BHE and Great Lakes Hydro American L.L.C. (GLHA), an Interconnection Agreement between BHE and Katahdin Paper Company, Inc., and an Undivided Ownership, Operation, and Maintenance Agreement between BHE and GLHA (collectively, the Agreements) BHE requests an effective date of May 16, 2003 for the Agreements.

Comment Date: June 13, 2003.

8. Southern Company Services, Inc.

[Docket No. ER03–872–000]

Take notice that on May 23, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission the Interconnection Agreement between GPC and Southern Power Company dated as of May 23, 2003 for the Franklin CC Unit 3. SCS states that the Interconnection Agreement sets forth the terms and conditions for the interconnection of the Franklin CC Unit 3 to the GPC electric system.

Comment Date: June 13, 2003.

9. New York Independent System Operator, Inc.

[Docket No. ER03–873–000]

Take notice that on May 23, 2003, the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff. NYISO states that the proposed revisions are intended to remove the requirement that the NYISO determine whether or not the Long Island reserves constraint specifically caused a unit to be committed. The NYISO has requested that the Commission make the filing effective on September 30, 2001.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: June 13, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14232 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–72–000, et al.]

Whiting Clean Energy, Inc., et al.; Electric Rate and Corporate Filings

May 29, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Whiting Clean Energy, Inc.

[Docket No. EG03–72–000]

Take notice that on May 21, 2003, Whiting Leasing LLC (WL), 801 East 86th Avenue, Merrillville, Indiana 46410, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

WL states that it is an Indiana Corporation that will own and lease a gas-fired combined cycle cogeneration facility rated at approximately 525 MW capacity and that the facility will be used for the generation of electricity exclusively for sale at wholesale. WL further states that copies of this application have been served upon the Indiana Utility Regulatory Commission and the Securities and Exchange Commission.

Comment Date: June 11, 2003.

2. Phibro Inc.

[Docket No. ER95–430–024]

Take notice that on May 27, 2003, Phibro Inc., tendered for filing an updated market power analysis in compliance with the Commission's orders authorizing Phibro Inc., to engage in wholesale sales of electric power at market-based rates.

Comment Date: June 17, 2003.

3. Entergy Services, Inc.

[Docket No. ER02–1783–001]

Take notice that on May 27, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a compliance refund report in accordance with the Commission's letter order in Docket No. ER02–1783–000 issued April 11, 2003.

Comment Date: June 17, 2003.

4. Southern California Edison Company

[Docket No. ER03–142–004]

Take notice that on May 27, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets for its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Second Revised Volume No. 6, and for its Existing Transmission Contracts with the city of Colton, California. SCE states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order On Compliance and Rehearing dated May 12, 2003,103 FERC ¶ 61,166.

SCE states that copies of this filing were served upon the Service List compiled by the Secretary in this docket.

Comment Date: June 17, 2003.

5. San Diego Gas & Electric Company

[Docket No. ER03–217–003]

Take notice that on May 27, 2003, San Diego Gas & Electric Company (SDG&E) pursuant to FERC's Order issued January 24, 2003, 102 FERC ¶ 61,063, tendered for filing Service Agreements Nos. 17 and 18 to its FERC Electric Tariff, First Revised Volume No. 6. SDG&E states that these agreements were accepted for filing on January 24, 2003, conditioned upon SDG&E's filing of designations for both interconnection agreements in compliance with Order No. 614 and Section 35.9(a) of the Commission's Regulations.

SDG&E states that copies of the filing have been served on Termoelectrica de Mexicali S. de R.L. de C.V., Termoelectrica U.S., LLC, and on the California Public Utilities Commission.

Comment Date: June 17, 2003.

6. Virginia Electric and Power Company

[Docket No. ER03–519–001]

Take notice that on May 27, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing an amendment to its February 11, 2003 filing of the revised Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Old Dominion Electric Cooperative, Inc. (ODEC) to interconnect ODEC's Marsh Run CT Project with Dominion Virginia Power's transmission system. Dominion Virginia Power states the amendment is in response to the Commission's April 11, 2003 letter requesting additional information regarding the Interconnection Agreement.

Dominion Virginia Power states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: June 17, 2003.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–787–001]

Take notice that on May 27, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, an executed Interconnection and Operating Agreement among Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy and Flying Cloud Power Partners, LLC.

Midwest ISO states that a copy of this filing was sent to Interstate Power and Light Company and Flying Cloud Power Partners, LLC.

Comment Date: June 17, 2003.

8. Lamar Power Partners, LP

[Docket No. ER03–874–000]

Take notice that on May 27, 2003, Lamar Power Partners, LP tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15 in order to reflect the cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER00–1844–000.

Comment Date: June 17, 2003

9. California Independent System Operator Corporation

[Docket No. ER03–875–000]

Take notice that on May 27, 2003, the California Independent System Operator Corporation (CAISO) submitted an amendment to the CAISO Tariff (Amendment No. 52). CAISO states that Amendment No. 52 eliminates the requirement that System Resources submitting Energy bids into the CAISO Real Time Markets limit such bids to $0/MWh. The CAISO proposes that System Resources be permitted to submit bids above $0/MWh in the CAISO Real Time Markets.

CAISO states that it has served copies of Amendment No. 52 upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and upon all parties with effective Scheduling Coordinator Service Agreements under the CAISO Tariff. In addition, the ISO states that it is posting Amendment No. 52 on the CAISO Home Page.

Comment Date: June 17, 2003.

10. Illumina Energy Solutions, Inc.

[Docket No. ER03–876–000]

Take notice that on May 27, 2003, Illumina Energy Solutions, Inc., (Illumina) petitioned the Commission for acceptance of Illumina Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: June 17, 2003.

11. Southern California Edison Company

[Docket No. ER03–877–000]

Take notice that on May 27, 2003, Southern California Edison Company (SCE) tendered for filing a Facilities Agreement under SCE's Transmission Owner Tariff (Tariff) between SCE and Southern California Public Power Authority (SCPPA).

SCE states that the Facilities Agreement specifies the terms and conditions pursuant to which SCE will engineer, design, construct, install and own the Reliability Upgrades to SCE's electrical system as a result of SCPPA's intent to construct and interconnect the Magnolia Power Project to the City of Burbank's Olive Substation and transmit a maximum of 200 MW of generation through the Los Angeles Department of Water and Power's electrical system.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and SCPPA.

Comment Date: June 17, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. ER03–878–000]

Take notice that on May 27, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a construction service agreement among PJM, Waymart Wind Farm L.P., and PPL Electric Utilities Corporation. PJM requests a waiver of the Commission's 60-day notice requirement to permit the requested May 12, 2003 effective date for the agreement.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: June 17, 2003.

13. Dominion Energy Marketing, Inc.

[Docket No. ER03–881–000]

Take notice that on May 27, 2003, Dominion Energy Marketing, Inc. (DEMI) tendered for filing with the Federal Energy Regulatory Commission (Commission) its request to amend the Western Systems Power Pool (WSPP) Agreement to include DEMI as a participant. DEMI requests that the Commission allow the amendment to the WSPP Agreement to become effective on May 27, 2003.

DEMI states that a copy of this filling has been served upon the WSPP Executive Committee Chair, WSPP Operating Committee Chair, WSPP General Counsel, and Arizona Public Service Company.

Comment Date: June 17, 2003.

14. Valero Refining Company, California

[Docket No. ER03–884–000]

Take notice that on May 27, 2003, Valero Refining Company—California, tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission and approved by letter order issued April 23, 2002.

Comment Date: June 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14233 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 30, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance

of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited		
1. Project No. 2342–000	5–22–03	Keith Bonney.
Exempt		
1. CP03–75–000	5–30–03	Joanne Wachholder.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14235 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2181–014 and 2697–014]

Northern States Power Company; Notice of Site Visit

May 30, 2003.

a. *Date and Time of Site Visit:* June 18, 2003, 1 p.m. to 5 p.m., and June 19, 2003, 8:30 a.m. to 12 p.m.

b. *Place:* We will meet at the Menomonie Project powerhouse (300 2nd Street NW., Menomonie, WI) at 1 p.m. on June 18, 2003. On June 19, 2003, we will meet at the Cedar Falls Project powerhouse (N7075 540th Street, Menomonie, WI) at 8:30 a.m.

Applicant Contact: Lloyd Everhart, Xcel Energy, (715)839–2692.

c. *FERC Contact:* John Ramer, (202)502–8969; john.ramer@ferc.gov.

d. *Purpose of the Site Visit:* Applications for new hydropower licenses for the Menomonie and Cedar Falls Projects have been filed with the Federal Energy Regulatory Commission (FERC), and the FERC staff is presently reviewing these applications. part of staff's review process is to assess the proposed projects' potential effects on environmental resources and to make recommendations to protect or enhance those resources, if needed. Staff needs complete and adequate information before they can complete their review of these applications. Therefore, the FERC staff intends to visit the Menomonie and Cedar Falls Hydropower Projects, FERC Nos. P–2181 and P–2697, respectively, to familiarize themselves with the project facilities and operations, and any resources that could be affected by licensing these projects.

e. *Proposed Schedule and Location:* We will meet at the Menomonie Project powerhouse at 1 p.m. on June 18, 2003, and first tour the powerhouse and dam facilities. We will then tour the project impoundment and stop at recreational facilities and other points of interest, completing the Menomonie Project tour by 5 p.m. On June 19, 2003, we will meet at the Cedar Falls Project powerhouse at 8:30 a.m., and first tour the powerhouse and dam facilities. This will be followed by a tour of the reservoir and points of interest around the reservoir, which will conclude by 12 p.m.

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to accompany FERC staff on this site visit. If you want to participate and need further information regarding schedule, location, or agenda, please contact: John Ramer at (202)502–8969, Peter Foote at (716)568–0425, or the applicant contact listed above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14234 Filed 6–5–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0070, FRL–7509–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; The SunWise School Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): The SunWise School Program, Global Programs Division, EPA ICR No. 1904.01, expiration date: 11/30/03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the continuing information collection as described below.

DATES: Comments must be submitted on or before August 5, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kristin Kenausis, Office of Atmospheric Programs, Global Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6205J), Washington, DC 20460, (202) 564–2289, *kenausis.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0070, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for Air and Radiation Docket is (202) 1744. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by email to a-and-r-*Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are elementary and middle school students, parents, and teachers (SIC Div. I: Group 8211).

Title: SunWise School Program; (OMB Control Number 2060–0439; EPA ICR No. 1904.01, expiring on 11/30/03).

Abstract: The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; (2) Parent survey to compare findings with those of their children as well as to draw comparisons with the benchmarks established in other national surveys; and (3) Teacher questionnaire for measuring their receptivity to the educational component of the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average .5 hours per response.

Number to be surveyed annually (A)	Total hours burden (B)	Rate per hour ($) (C)	Total cost (D=B*C) (D)
3,000 Students	3,000	0	0
1,000 Teachers	500	$36.88	$18,440.00
1,000 Parents	250	20.29	5,072.50
Total (annual)	3,750		23,512.50
ICR Total (3 years)	11,250		70,537.50

The contractor (Boston University Medical Center) will assist EPA in data collection and analysis. EPA has contracted for a total of 400 professional hours. At an average rate of $100 per hour, the total cost for the contractor is $40,000 annually. Agency burden to manage this contract is estimated at 4 hours/month or 48 hours annually. The cost of this labor will be calculated based on a GS–12, Step 5 pay level ($44.75/hour using the salary associated with this grade and step, multiplied by a benefits factor of 1.6 [16]). Total hours (48) multiplied by $44.75 per hour amounts to a total agency labor cost of $2,196/per annum.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 28, 2003.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 03–14323 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6540–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5073 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements

Filed May 26, 2003 Through May 30, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030251, Final EIS, NPS, MT, Glacier National Park—Going-to-Sun Road Rehabilitation Plan to Protect and Preserve a National Historic Landmark, Waterton-Glacier International Peace Park, The World's First International Peace Park, A World Heritage Site, MT, Wait Period Ends: June 30, 2003, Contact: Mary Riddle (406) 888–7898. The above NPS EIS should have appeared in the 5/30/2003 **Federal Register.** The 30-day Wait Period is Calculated from 5/30/2003.

EIS No. 030252, Final EIS, AFS, IL, Natural Area Trails Project; Construction, Reconstruction, Maintenance and Designation of Trails for Hikers and Equestrian Use, Approval of Site-Specific Mitigation and/or Monitoring Standards, Shawnee National Forest, Jackson, Pope, Johnson, Union, Hardin and Saline Counties, IL, Wait Period Ends: July 7, 2003, Contact: Richard Johnson (618) 253–7114.

EIS No. 030253, Draft EIS, FHW, IL, U.S. Route 20 (FAP 301) Project, Construction from Illinois Route 84 North of Galena to Bolton Road Northwest of Freeport, NPDES Permit and U.S. Army COE Section 404 Permit, Jo Daviess and Stephenson Counties, IL Comment Period Ends: July 21, 2003, Contact: Norman R. Stoner (217) 492–4640.

EIS No. 030254, Draft Supplement, DOE, TN, GA, TX, SC, MO, Programmatic EIS—Stockpile and Management for a Modern Pit Facility (MPF) Construction and Operation, Site Location: Savannah River Site, SC; Los Alamos Site, NM; Nevada Test Site; Carlsbad Site, NM; and Pantex Site, TX and Plutonium Pit Manufacturing Capabilities Upgrading at Los Alamos National Laboratory (LANL), NM, Contact: James Rose (202) 586–5484. This document is available on the Internet at: *http://www.mpfeis.com.*

EIS No. 030255, Final EIS, MMS, AL, MS, TX, FL, LA, Eastern Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 189 (proposed for 2003) and 197 (proposed for 2005) Leasing Program 2002–2007, Eastern Planning Area, Counties and Parishes of TX, LA, MS, AL and FL, Wait Period Ends: July 7, 2003, Contact: Dr. Kay Marano Briggs (703) 787–1646.

EIS No. 030256, Final EIS, AFS, OR, Rimrock Ecosystem Restoration Project, To Promote Healthy and Sustainable Watershed Conditions, Implementation, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR, Wait Period Ends: July 7, 2003, Contact: Dave Kendrick (541) 676–9187. This document is available on the Internet at: *http://www.fs.fed.us/r6/uma/nepa/readroom.htm.*

EIS No. 030257, Draft EIS, AFS, MT, Logan Creek Ecosystem Restoration Project, To Reduce Hazardous Fuel across the Landscape, Restore or Maintain Vegetation Management, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT, Comment Period Ends: July 21, 2003, Contact: Bryan Donner (406) 863–5408.

Amended Notices

EIS No. 030216, Draft EIS, FHW, OH, OH–161/37 Improvement, from OH–161(New Albany Bypass) to west of OH–161/37 Interchange with OH–16, Funding, Franklin and Licking Counties, OH, Comment Period Ends: July 18, 2003, Contact: Roger Ryder (614) 469–6896. Revision of FR notice published on 05/16/2003: Change in Contact Person Name and Telephone Number.

EIS No. 030238, Draft EIS, DOE, OR, Northeast Oregon Hatchery Program, Grande Ronde—Imnaha Spring Chinook Hatchery Modification and Modernization of Two Existing Hatchery Facilities and Construction of Three New Auxiliary Hatchery Facilities, Wallowa County, OR, Comment Period Ends: July 7, 2003, Contact: Mickey Carter (503) 230–5885. Revision of FR Notice Published on 5/23/2003: Correction of Lead Agency from DOA to DOE.

EIS No. 030247, Draft EIS, CGD, LA, Port Pelican Deepwater Port Construction and Operation, License Approval, Vermillion Lease Block 140 on the Continental Shelf in the Gulf of Mexico southwest of Freshwater City, LA, Comment Period Ends: July 15, 2003, Contact: Mark Prescott (202) 267–0225. Revision of FR notice published on 5/30/2003: Correction of Title Block 40 Should be Block 140.

Dated: June 3, 2003.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–14331 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–5]

Office of Environmental Justice; Environmental Justice Collaborative Problem-Solving Grant Program Request for Applications (May 30, 2003–September 30, 2003)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit applications from eligible community-based organizations in order for the U.S. Environmental Protection Agency (EPA) to provide financial assistance to those organizations through the new Environmental Justice Collaborative Problem-Solving Grant Program described in this notice. Community-based organizations who are eligible to receive financial assistance must be non-government, nonprofit organizations currently exempt from taxation under section 501 (c) (3) of the Internal Revenue Code or exempt under applicable state law, and working on or planning to work on projects to address local environmental and/or public health concerns in their communities. All awards will be made in the form of a Federal grant in the amount of $100,000.00 to be used over a three-year period.

This Request for Applications Includes the Following

I. Scope and Purpose of the Request for Applications
II. Commonly Asked Questions About Environmental Justice
III. Description of the Environmental Justice Collaborative Problem-Solving Model
IV. Evaluation Criteria (Performance Measures) for Collaborative Problem-Solving Grant Program
V. Environmental Justice Collaborative Problem-Solving Grant Application Instructions
VI. Selection Process and Program Schedule
VII. Reporting Requirements/Special Conditions

Translations Available

A Spanish translation of this material is available at 1–800–952–6215. It can also be downloaded from: *http://www.epa.gov/compliance/recent/ej.html.*

I. Scope and Purpose of Request for Applications

The purpose of this notice is to solicit applications from eligible community-based organizations in order for the U.S. Environmental Protection Agency to provide financial assistance to those organizations through the new Environmental Justice Collaborative Problem-Solving Grant Program described in this notice. Community-based organizations who are eligible to receive financial assistance must be non-government, nonprofit organizations currently exempt from taxation under section 501 (c) (3) of the Internal Revenue Code or exempt under applicable state law, and working oh or planning to work on projects to address local environmental and/or public health concerns in their communities. All awards will be made in the form of a Federal grant to 15 community-based organizations in the amount of $100,000.00 to be used over a three-year period.

Identification Number: CFDA 66.306.

Date of Notification: May 30, 2003.

Submission Due Date: September 30, 2003.

EPA's Office of Environmental Justice (OEJ), in coordination with the Federal Interagency Working Group on Environmental Justice (IWG), has developed an Environmental Justice Collaborative Problem-Solving Model. (See section III of this RFA for a complete description of this model.) The purpose of the Environmental Justice Collaborative Problem-Solving (CPS) Grant Program is for EPA to provide financial assistance to community-based organizations to utilize this model to address one or more environmental and/or public health issues in their communities. An underlying purpose of the Environmental Justice CPS Grant Program is to replicate lessons learned so that the Environmental Justice Collaborative Problem-Solving Model can be utilized by other, similarly situated communities seeking to address local environmental and/or public health issues.

This Request for Applications (RFA) outlines the purpose, goals, and general procedures and guidelines for applying for the Environmental Justice CPS Grants, for Fiscal Year (FY) 2003. OEJ's Environmental Justice CPS Grants seek to accomplish a strategically defined set of objectives that address one or more local environmental and/or public health issues by focusing on two key areas (*e.g.*, capacity-building of the community residents, and forming collaborative partnerships). Application instructions are provided in section V of this RFA.

Number of Grants Proposed: Fifteen (15) Environmental Justice CPS grants will be awarded for fiscal year (FY) 2003.

Applications must be date stamped by courier service or postmarked by U.S. Postal Service by 12 p.m. Eastern Time, September 30, 2003. Use the appropriate address below, depending on your method of delivery.

VIA U.S. Postal Service

U.S. Environmental Protection Agency, Office of Environmental Justice (MC 2201A), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Attention: Linda K. Smith, Project Officer, *Phone:* (202) 564–2602.

VIA Federal Express, Airborne, United Parcel Service, or Other Courier Service

U.S. Environmental Protection Agency, Office of Environmental Justice, Ariel Rios Building South, Room 2232, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Attention: Linda K. Smith, Project Officer, *Phone:* (202) 564–2602.

Applications Sent by Fax or E-mail Will Not Be Accepted

II. Commonly Asked Questions About Environmental Justice

How Does EPA Define Environmental Justice?

EPA defines "environmental justice" as the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no one group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. Meaningful involvement means that: (1) Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

What Is the EPA's Commitment to Environmental Justice?

EPA Administrator Christine Todd Whitman reaffirmed the Agency's commitment to environmental justice as the "goal to be achieved for all communities and persons across this Nation * * * when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn and work:" In her August 9, 2001, memorandum, the Administrator directed EPA's senior managers and staff to integrate environmental justice into all EPA policies, programs, and activities. Consequently, in FY 2003, each Regional and Headquarters Office developed Environmental Justice Action Plans to transform the Administrator's words into action, with strategic goals and measurable results. Each Regional and Headquarters Office began implementing these action plans which are available at: *http://epa.gov/compliance/environmentaljustice.* Inherently strategic in nature and deemed as "works in progress," these action plans represent the commitments of each office over the next 1–5 years.

Consistent with this commitment, EPA, through OEJ, will provide financial assistance to those community-based organizations who wish to engage in capacity-building initiatives, and also utilize constructive engagement and collaborative problem-solving to seek viable solutions for their community's environmental and/or public health issues. Moreover, OEJ staff members will provide hands-on technical assistance to those grantee community-based organizations throughout the duration of the grant.

What Does the OEJ Mean by Capacity-Building?

Capacity-building refers to the mechanisms a community uses which

provide the residents with the information, skills, and tools to more effectively achieve their goals. These mechanisms may lead to better documentation and assessment of an environmental and/or public health problem. Documentation and assessment mechanisms range from neighborhood surveys to the use of mapping tools through the EPA's geographic information systems. A particularly helpful tool in this regard would be the Environmental Justice Mapper which is available at: *http://www.epa.gov/compliance/whereyoulive.html*. Other capacity-building mechanisms may involve increasing the community's ability to understand the permitting process and to use legal tools to participate in the environmental decisionmaking process, such as those described in the Environmental Law Institute's "A Citizen's Guide to Using Environmental Laws to Secure Environmental Justice." This publication is available at: *http://www.epa.gov/compliance/resources/publications/ej/citizen_guide_ej.pdf*.

A third type of capacity-building mechanism may involve enhancing the community's understanding and appreciation of the partnership development process, consensus building, and the use of alternative dispute resolution to address local environmental and/or public health concerns.

What Does the OEJ Mean by Constructive Engagement and Collaborative Problem-Solving?

Constructive engagement and collaborative problem-solving are essential approaches to address local environmental and/or public health concerns. A key starting point is the community's involvement in clearly formulating and articulating a goal to be accomplished (*e.g.*, establishment of a health clinic or medical screening program; or replacement of diesel buses with clean fuel buses). Constructive engagement means outreach and education to affected community residents and other stakeholders. Collaborative problem-solving requires an understanding of the need to seek other partners such as industry; federal, state and local governments; academia; and environmental organizations to address the community's environmental and/or public health concerns. It involves developing strategic partnerships, by including all organizations which can play a role in addressing the problems. Collaborative problem-solving involves a well-designed and strategic plan to sustain the partnership and to work towards addressing the local environmental and/or public health issues.

III. Description of the Environmental Justice Collaborative Problem-Solving Model

The elements of the Environmental Justice Collaborative Problem-Solving Model are discussed in detail in below. A sample of a project where the elements of the Model have been used is also provided below. The elements of the Environmental Justice Collaborative Problem-Solving Model are discussed in detail below. A sample of a project where the elements of the Model have been used is also included below. More examples of how the Model has been applied can be found on the Internet, the "Federal Interagency Working Group on Environmental Justice Status Report, (February 2002). (*http://epa.gov/compliance/resources/publications/ej/iwg-status-02042002.pdf*), an evaluation report for six of the 2002 demonstration projects *http://www.epa.gov/evaluate/ej.htm* and, the recent 2003 List of Revitalization Projects *http://epa.gov/compliance/resources/publications/ej/iwg-2003.pdf*.

1. Issue Identification, Community Vision, and Strategic Goal Setting

Long-standing concerns in the affected community tend to surface from the efforts of one individual or a small group of individuals who are particularly active in the community. These concerns can include "substantive issues" such as high asthma rates, children suffering from high levels of lead poisoning, undesirable land uses, the close proximity of residences to pollution-generating facilities, the lack of parks and recreational areas, or the lack of access to health care or medical monitoring. These concerns also can include "process issues" such as the need to strengthen public participation, identifying leaders or leadership development, improved education of stakeholders, and trust among stakeholder groups to work together. Collaborative problem-solving stresses moving beyond merely identifying the issues to formulating viable strategies to address and resolve them. Involving the broader community in a planning process usually leads to greater clarity in the goals set, common understanding and trust, and the ability to act collectively. Strategic goals should not only address the problem but also lead to greater community capacity, viable partnerships, and leveraging of resources-institutional, technical, and financial. A key step in the goal-setting process is determining whether or not the conditions are ripe for a collaborative problem-solving process. The following list provides several important steps a community-based organization can take to identify an issue, articulate a community vision, and set strategic goals:

- Building upon existing leadership and expertise in the affected community;
- Conducting local education and outreach efforts, fact-finding and assessments;
- Involving affected community residents early in identifying concerns and crystallizing issues;
- Identifying early on potential partners from all stakeholder groups;
- Building upon a strong understanding of community history and practices;
- Building upon a clearly articulated community vision of its goals; and,
- Employing tools for involving the affected community residents in planning project activities.

2. Community Capacity Building

Capacity building refers to mechanisms which provide the community-based organizations with information, skills, and tools to more effectively achieve the community's goals. These mechanisms may involve better documentation and assessment of a problem, use of consensus building, and alternative dispute resolution. Capacity building efforts should focus on residents of the affected community as well as other stakeholders. Leadership skills in areas such as strategic thinking, management processes, and effective communications are very critical. The ability to build trust and build partnerships across stakeholder groups is one such leadership skill. Therefore, particular attention should be paid to nurturing the leadership skills of key individuals in a project. Capacity building and leadership development can be accomplished through a range of activities, from attendance at meetings, workshops, and training sessions to participation in mentoring opportunities. Several key steps toward community capacity building and to acquiring successful leadership skills could include:

- Building upon existing organizational capacity in the affected community;
- Identifying specific capacity building mechanisms which are tailored to community needs and project goals;
- Fostering capacity through training, mentoring, technical assistance, or resource support;
- Ensuring capacity building for those community representatives directly involved in the collaborative problem-solving processes; and
- Developing processes that help ensure capacity building and leadership development of community residents in the future.

3. Consensus Building and Dispute Resolution

Collaborative problem-solving encourages all parties to seek to find common ground and derive "mutual gains" from participating in a consensus building process. More often than not, this will lead to greater capacity to address the community's concerns and the eventual resolution of issues. Moreover, consensus building efforts often result in greater understanding and trust among different stakeholders that will lead to a greater capacity to address other issues. There also will be cases in which crystallized disputes require the use of a facilitator or mediator to help resolve such disputes. There exists a wide array of approaches within the area of dispute resolution—ranging from unassisted negotiation to arbitration—that communities can employ to best suit their needs. Several key steps a community can employ to achieve consensus building and successful dispute resolution are:

- Designing processes, both formal and informal, to help ensure fair treatment and meaningful participation of all collaborative problem-solving stakeholders;
- Instituting processes which promote the development of a common vision, and goals among all partners;
- Identifying, nurturing and promoting collaborations with win/win scenarios and the "mutual gains" approach;
- Promoting the use of facilitation or mediation to ensure understanding of the consensus building process; and
- Ensuring that existing or potential conflicts are resolved, where necessary, through the use of alternative dispute resolution techniques.

4. Multi-Stakeholder Partnerships, and Resource Mobilization

Building a successful partnership requires vision, clear problem identification, organizational capacity and commitment, individual leadership, use of technical resources, and, in some cases, use of a facilitator. This is an evolving process that grows with existing capacity on the part of the affected community as well as other stakeholder groups. Different stakeholder groups will require different assistance to ensure their effective participation. For example, community groups may need support in accessing government resources while industry may need education on how to work effectively and proactively with communities. Well-structured partnerships assemble the needed capacity to resolve issues. They are important vehicles for creating a broad-based framework that mobilizes the resources necessary—human, institutional, technical, legal, and financial—to address a problem. In this way, they are a critical part of a capacity building strategy. Several ways to achieve well structured multi-stakeholder collaborative partnerships include:

- Establishing dialogues which lead to possible partnerships with all relevant stakeholders/parties, which invariably include the community, business, and government;
- Ensuring clarity of goals, objectives, and common vision among all members of the partnership;
- Developing a clear, workable organizational structure and workplan to address communications and coordination needs of the collaborative partnership;
- Identifying and recruiting partners to address the resource needs of a project (*e.g.*, human, institutional, technical, legal, and financial);
- Strengthening partnerships as new issues and relationships are understood; and
- Establishing processes that allow for the inclusion of new partners as they emerge.

5. Supportive and Facilitative Role of Government

Environmental and public health government agencies can play an important role in addressing a community's concerns because the agencies are invested with the statutory authority to address those issues. They make decisions of a regulatory nature, provide technical assistance and resources, and can help ensure that all relevant stakeholders come to the table. It is important that community organizations seeking to resolve a problem formulate a clear strategy to engage government agencies at the local, state, tribal, and/or Federal levels. Securing support from environmental and public health government regulatory agencies can be accomplished by:

- Securing commitments from multiple agencies, whether Federal, state, local, or tribal government agencies, as appropriate;
- Seeking to ensure interagency and intergovernmental cooperation and coordination to address complex environmental and/or public health, housing, transportation, economic development, community revitalization, *etc.*; and
- Accessing and securing support for a specific community need that coincides with a current activity being conducted by an environmental and/or public health government agency.

6. Management and Implementation

Realizing a vision to address identified issues requires attention to three major areas: (1) Action plans; (2) management; and (3) partnership design. Plans to address these areas should be formulated and executed in ways that build upon the unique assets and challenges of specific communities and stakeholder partners. Action plans should include clear objectives, timelines, and delegation of responsibilities. Management plans should ensure proper communications, coordination, and utilization of resources. Well-formulated partnership designs should address the convening processes, the role of lead organizations, planning for regular meetings, and understanding ways to increase the capacity of partner organizations. As a result, all partners must articulate and follow through on commitments for the project to: (1) Address the identified issues thoroughly; (2) strengthen and maintain partnerships; and (3) realize the shared goals. Several ways that could accomplish a successful management plan include:

- Ensuring tangible outcomes and improvements in community conditions;
- Developing strategies tailored to the community's assets and deficits;
- Designing projects to meet the strength of partnerships, resources and the capacity of the partners;
- Producing clearly defined, well-formulated action plans;
- Identifying and building upon small successes achieved along the way;
- Ensuring clear commitments on the part of all partners; and
- Clustering and ordering tasks to promote the efficient use of time and resources.

7. Framework, Lessons Learned, and Replication of Best Practices

Key to deepening and sustaining the work is the ability to sum up progress in quantitative, qualitative, institutional, and social terms, and to incorporate lessons learned into a continuous process. Formulating a plan for evaluating one's work is an important element of success. Not only will it help the project implementation plan stay on

course, but such a plan will also allow for greater clarity of lessons learned. Lessons learned need to be shared not only with the affected community residents, but also with other communities and stakeholders so that best practices can be replicated broadly. Several key steps that should be included in developing an evaluation framework for lessons learned can consist of:

- Clearly defining measures of success of project objectives, process, outputs, institutional effects, and quality-of-life results;
- Understanding and evaluating, from different stakeholder perspectives, indicators used to measure success;
- Developing a "template" for successful collaborative models, based on experience in a specific community;
- Developing mechanisms to integrate the lessons into future efforts as new issues and challenges are identified; and
- Sharing, publishing, and disseminating experiences and lessons learned.

Example of a Project Where the Environmental Justice Collaborative Problem-Solving Model Is Used

An example of a community-based organization that has successfully utilized elements of the Environmental Justice Collaborative Problem-Solving Model is outlined below. CPS Project X, located in Any Town, USA, is a proactive community-based organization of 1,400 members who have taken the lead in establishing collaborative partnerships to address local environmental and/or public health issues through environmental cleanup and community revitalization initiatives. A synopsis of the CPS Project X Partnership as it relates to the Environmental Justice Collaborative Problem-Solving Model follows:

1. *Issue Identification/Vision:* A community survey confirmed concerns about public health problems associated with two abandoned toxic waste sites. The community developed a vision of environmental cleanup and community revitalization. Their goals included cleanup and redevelopment plans involving improved housing, and the need for a technology and job-training center, greenway development, and a health clinic.

2. *Community Capacity Building:* Proactive, committed, and strategic leadership provided by a champion resulted in the formation of CPS Project X, a community-based organization, and the development of the broad-based CPS Project X Partnership. Among other things, the CPS Project X Partnership educated the community on the fundamentals of brownfields redevelopment and sustainable development.

3. *Consensus Building and Dispute Resolution:* Partners have been and continue to be committed to a consensus building process that rests upon a common vision among its partners. All major stakeholders have participated in the development of a common vision for the project.

4. *Multi-Stakeholder Collaborative Partnerships:* The CPS Project X Partnership established a steering committee co-chaired by CPS Project X, the City of Any Town, and the County of All Towns, and EPA. Other partners included: local banks; State Department of Health and Environmental Control; State Economic Development Administration; the University of State; and several elected officials. These partners have brought significant resources—human, technical, and institutional—to help realize the community's goals.

5. *Supportive and Facilitative Role of Government:* Several Federal agencies have provided resources and technical assistance, including EPA; the Departments of Transportation, Housing and Urban Development, and Energy; the National Institute for Environmental Health Sciences, and the Agency for Toxic Substances and Disease Registry. Federal funding for this effort has exceeded $1.5 million.

6. *Management and Implementation:* A well-formulated partnership design, which included specific subcommittees geared to address the project goals, and a set of clear objectives have resulted in a viable workplan. Assistance in organizational management issues is being provided by an expert in nonprofit organizations. Ongoing coordination is being provided by a partnership consisting primarily of the steering committee co-chairs.

7. *Evaluation Framework/Lessons Learned:* While the CPS Project X Partnership has not developed an overall evaluation framework, some measures of success are built into discreet project components such as the Health Care Clinic Workplan, Brownfields Assessment Workplan, and the Dump Superfund Initiative Workplan. A case study of this project has been completed by EPA: another is being planned by a non-government organization.

More examples of how the Model has been applied can be found in two EPA documents, the "Federal Interagency Working Group on Environmental Justice Status Report, (February 2002). (*http://epa.gov/compliance/resources/publications/ej/iwg-status-02042002.pdf*) and the recent 2003 List of Revitalization Projects *http://epa.gov/compliance/resources/publications/ej/iwg-2003.pdf.*

IV. Evaluation Criteria (Performance Measures) for the Collaborative Problem-Solving Grant Program

As required by 40 CFR 30.63, anticipated accomplishments must be stated. The following criteria will be used to determine the effectiveness of the Environmental Justice CPS Grant Program in meeting its anticipated objective. The overarching goal of the Environmental Justice CPS Grant Program is to build the capacity of the communities to address strategically defined local environmental and/or public health issues in a collaborative problem-solving partnership, and to create positive public health and/or environmental improvements in each of the affected communities selected for this program.

The Environmental Justice CPS Grant Program is intended to seek:

1. Improvements in the capacity of affected communities to think strategically and to work with other stakeholders; and

2. Improvements in the environmental conditions in the communities that are perceived to have an impact on the health of the residents of these affected communities.

The following criteria will be used by EPA to measure the success of the overall Environmental Justice CPS Grant Program. These criteria are for the evaluation of the grant program *as a whole.* However, each grantee must include evaluation criteria for its project at the time the application is submitted. All grant applications must reflect the following four key elements:

1. Proper documentation and assessment of the local environmental and/or public health problem.

2. Development of the appropriate partnerships, including all organizations which can play a role in addressing the problem(s).

3. Formulation of a well-designed strategic plan to sustain the partnerships and to ensure resolution of the issue(s).

4. Development of mechanisms to share lessons learned from the process.

EPA will use several measures to evaluate the success of the Environmental Justice CPS Grant Program, including, but not limited to:

- Operation and maintenance of effective collaborative partnerships are sustained throughout the period of the grant and afterwards.
- More effective oversight of the grant program by EPA is achieved with OEJ staff members and regional staff more involved in the grants.
- Significant reduction in public health and environmental risks in affected communities is achieved.
- Significant improvement in the quality of life issues for the affected communities is achieved.
- Facilitation and/or mediation services are effectively utilized to help resolve local environmental and/or public health issues in affected communities.
- Community capacity is significantly improved for program participants.
- Outcomes or lessons learned in affected communities are transferred to other similarly situated communities.

V. Environmental Justice Collaborative Problem-Solving Grant Application Instructions

A. Who May Submit Applications and May Applicants Submit More Than One?

Any affected community-based organization with nonprofit status either demonstrated through designation by the Internal Revenue Service as a section 501(c)(3) organization or incorporated as a nonprofit under applicable state law may submit an application during the period of this solicitation. Applicants must be nonprofit, non-governmental organizations to receive these Federal funds. Universities are not eligible to apply for this grant program. Please also refer to Appendix E for Guidance on Lobbying Restrictions.

The Environmental Justice CPS Grant Program is a competitive process. EPA will consider only one application per community-based organization for any given project.

The community-based organization who applies for an Environmental Justice CPS Grant must submit one original, signed by a person authorized to receive funds for the organization, and two copies of the application (double-sided copies encouraged). Applications must be reproducible (for example, stapled once in the upper left hand corner, on white paper, and with page numbers).

B. What Activities Under the Environmental Justice CPS Grants Are Eligible for Funding?

The Environmental Justice CPS Grant Program is designed for multi-media environmental issues and/or public health concerns. For this reason, each project must include activities which are authorized by two or more of the following federal environmental statutes.

(1) *Clean Water Act, section 104(b)(3):* Conduct and promote the coordination of research, investigations, experiments, training, demonstration projects, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

(2) *Safe Drinking Water Act, section 1442(c)(3)(A):* Develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

(3) *Solid Waste Disposal Act, section 8001(a):* Conduct and promote the coordination of research, investigations, experiments, training, demonstration projects, surveys, public education programs, and studies relating to solid waste (*e.g.,* health and welfare effects of exposure to materials present in solid waste and methods to eliminate such effects).

(4) *Clean Air Act, section 103(b)(3):* Conduct research, investigations, experiments, demonstration projects, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

(5) *Toxic Substances Control Act, section 10(a):* Conduct research, development, monitoring, public education, training, demonstration projects, and studies on toxic substances.

(6) *Federal Insecticide, Fungicide, and Rodenticide Act, section 20(a):* Conduct research, development, monitoring, public education, training, demonstration projects, and studies on pesticides.

(7) *Marine Protection, Research, and Sanctuaries Act, section 203:* Conduct research, investigations, experiments, training, demonstration projects, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

Please Note: Applications for proposed projects that are inconsistent with the above stated EPA statutory authorities or goals of the program are ineligible for funding and will not be evaluated and ranked.

C. Have You Received Any Other Grants or Cooperative Agreements From EPA in the Last 3 Years?

Please list the grant or cooperative agreement number, title of the project, and amount of funding provided by EPA.

Please Note: Do not use the same project description for this application that was used for any prior award. To do so will disqualify your application.

D. How Much Money May Be Requested, and Are Matching Funds Required?

Costs will be determined in accordance with OMB Circular No. A–122 for nonprofit organizations. The ceiling in federal funds for individual grants is $100,000. Funds can be dispersed as needed or up to 80% of the grant award can be obtained. The remaining 20% of the grant award will be available upon the successful completion of the grant and the acceptance by EPA of the final report as detailed in the grant. Applicants are *not* required to provide matching funds.

E. Are There Any Restrictions on the Use of the Federal Funds?

Yes. EPA grant funds can only be used for the purposes set forth in the grant agreement, and must be consistent with the statutory authority for the award. Grant funds from this program cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, the grantee may not use these federal assistance funds to sue the federal government or any other government entity. Refer to 40 CFR 30.27, entitled "Allowable Cost." The scope of Environmental Justice CPS grants may not include construction, promotional items (*e.g.,* T-shirts, buttons, hats, and furniture purchases).

F. Who Should You Call if You Have Questions About the Environmental Justice CPS Grants?

For questions concerning CPS grants, you may contact the Environmental Justice Coordinator in your region. Because this is a competitive grant program, any questions concerning the application and review process must be submitted via e-mail or fax in order to ensure fairness to all possible applicants. You can contact the Project Officer by calling direct to (202) 564–2602 or to the Toll-free number 1–800–962–6215. All questions must be sent via e-mail to *smith.linda@epa.gov* or by fax to (202) 501–1162. They will be posted on the Web site and sent via the EJ–EPA list serv.

G. What Must the Environmental Justice CPS Grant Contain?

Proposals from community-based organizations must have the following (Forms Can be Downloaded from *http://www.epa.gov/ogd/AppKit/application.htm*):

1. *Form SF 424—Application for Federal Assistance.* The official form is required for all federal grants. It requests basic information about the grantee and the proposed project.

2. *Other Forms Required.*

Budget Form SF 424A. Provides information on your budget. Budget figures/projections should support your workplan narrative.

Separate Detailed Budget. The detailed budget should include the specific components of the general categories you listed on the SF 424A (*e.g.*, personnel costs, fringe benefits, specific travel, equipment, supplies, and contractor costs, broken down by project phases).

SF 424B. Assurances—Non-Construction Programs.

Preaward Compliance Review Report.

Certification Regarding Lobbying.

Quality Assurance Statement (if a research project).

3. *A Project Workplan Narrative of the Proposal not to exceed 15 Typewritten Pages.* A workplan narrative describes the applicant's proposed project. The typed pages of the workplan must be in 12 point font, on letter-size paper (8½ x 11 inches), single-spaced, single-sided, and have 1″ margins. The project workplan narrative is one of the most important components of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. The workplan narrative must include all of the information described in Item G below.

4. *Letter(s) of Commitment.* Your application must include letters of commitment from the other stakeholder partners/organizations identified in your application.

5. *Documentation of Nonprofit Status.* Any affected community-based organization with nonprofit status either demonstrated through designation by the Internal Revenue Service as a section 501(c)(3) organization or incorporated as a nonprofit under applicable state law may submit an application during the period of this solicitation. Applicants must be nonprofit, non-governmental organizations to receive these Federal funds. Universities are not eligible to apply for this grant program. The application must include documentation as evidence of the organization's current nonprofit status.

6. *Resumes of the Key Personnel.* The application must include resumes of the Principal Investigator or Project Manager, and two other key personnel who will be significantly involved in the project.

7. *Evaluation Criteria for How To Determine the Success of The Project (Performance Measures).*

8. *The answer to the question concerning past awards in Section V–C.*

Note: Applications that do not include *ALL* the information listed above will not be considered.

Please mark any information in the proposal that you consider confidential. EPA will follow the procedures at 40 CFR part 2 if information marked confidential is requested from the Agency under the Freedom of Information Act.

H. How Will the Applications Be Evaluated?

The applications will be evaluated by an EPA Review Panel and selected according to the following criteria. The corresponding points next to each criterion are the weights EPA will use to evaluate the applications. Please note that certain sections are given greater weight than others. Your application will be ranked based on the following evaluation criteria:

1. Clear and Concise Description of the Project (35 points)

The project workplan narrative is one of the most important components of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. The workplan narrative must provide the following information:

a. Describe your community-based organization and its qualifications to undertake this collaborative problem-solving project. In addition, describe your qualifications as the Principal Investigator/Project Manager to undertake this project. Include whether or not your organization has received any grant/cooperative agreement from EPA in the last 3 years as described in Item V–C. above. (5)

b. Describe the community being served (*e.g.*, demographics, geographic location, community history and assets, issues of concern). Provide a discussion of the environmental and/or public health issues your project seeks to address. (5)

c. Describe the strategic goals your project seeks to accomplish. (5)

1. Describe the process your organization and your collaborating partners used to formulate these goals (*e.g.*, needs assessment, planning charettes).

2. Describe how you intend to build consensus among your partners around these goals.

3. Describe how achievement of those goals will address the issues of concern and improve the environment and/or public health of your community.

d. Describe the specific steps you have and/or will undertake to engage in constructive engagement among collaborative partners, and to establish and manage a formal collaborative problem-solving partnership, including but not limited to the following: (5)

1. Strategies used;

2. Partnership structure (*e.g.*, committee, work group, etc.);

3. Key obstacles to overcome;

4. Communications and coordination mechanisms and procedures;

5. Use of consensus building and dispute resolution techniques;

6. Decision-making process; and

7. Use of formal agreements.

e. Describe the organizations which are members of the formal collaboration, including qualifications of each organization other than the applicant; the roles of each organization; the commitments made by each organization; and the ways by which each organization will implement their commitments. (5)

f. Provide an implementation plan. Describe in chronological order the activities you and your partners will undertake to carry this project. Use of a timeline is encouraged. (5)

1. Describe your intended activities to build the capacity of your community-based organization, the impacted community, and other stakeholder partners to achieve the goals of your project. Describe how such capacity building activities will enhance the ability of partners to:

- address the strategically-defined issues; and
- undertake the collaborative problem-solving partnership.

I.

2. Provide the steps you intend to take to achieve the project's objectives and desired results. Include an analysis of the obstacles, gaps, and/or conflicts that your project will face, and discuss how your implementation strategies are designed to overcome them.

g. Describe how the project will develop and incorporate an evaluation strategy, establish and track milestones and performance measures (activities, outputs, and outcomes), and share lessons learned. Areas for evaluation may include, but are not limited to, the following: (5)

1. Improvements in the capacity of the community-based organization to form partnerships;

2. Improvements in the ability of the community-based organization to build and sustain a strong working relationship with the partners in order to resolve problems in a collaborative manner; and

3. Improvements in the environmental and/or public health conditions in the community.

2. Adherence to the Environmental Justice Collaborative Problem-Solving Model Described in Appendix D (25 points)

The following seven elements have been identified as key factors to the success of an Environmental Justice Collaborative Problem-Solving Model:

1. Issue Identification, Community Vision, and Strategic Goal Setting;

2. Community Capacity Building;

3. Consensus Building and Dispute Resolution;

4. Multi-Stakeholder Partnerships and Resource Mobilization;

5. Supportive and Facilitative Role of Government;

6. Management and Implementation; and

7. Evaluation, Lessons Learned, and Replication of Best Practices.

a. Please describe how your project utilizes the elements of a collaborative problem solving model, and how each contribute to the overall success of the project.

b. Describe how the project, either through its implementation or results, will contribute to further development of the Environmental Justice Problem-Solving Model.

3. A detailed budget which shows how the funds will be specifically used in terms of personnel, fringe benefits, travel, equipment, supplies, contractor costs, and other costs. Funds cannot be used for construction, lobbying, or litigation against the government. The budget must list proposed milestones with deadlines, and estimated costs and completion dates. (10 points)

4. An appendix which describes the qualifications of the Principal Investigator or Project Manager and explains why he/she is qualified to undertake this project. (10 points)

5. A Memorandum of Agreement signed by each representative of the collaborative partnership which identifies the roles and responsibilities of each partner. Each partner is valued at 2 points with a maximum possible total of 10. (10 points)

Please Note: A letter of support from an individual or entity does not qualify as a reflection of an agreement to participate in a collaborative partnership.

6. A set of evaluation criteria which reflect how the success of the project will be measured. These should include qualitative and quantitative measures. (10)

I. When and Where Must Applications Be Submitted?

The applicant must submit one signed original application with required attachments and two copies.

Applications must be postmarked by U.S. Postal Service or date stamped by courier service by 12 p.m. Eastern Time, September 30, 2003. Use the appropriate address below, depending on your method of delivery.

Applications Sent by FAX or E-Mail Will Not Be Accepted

VIA U.S. Postal Service

U.S. Environmental Protection Agency, Office of Environmental Justice (MC 2201A), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001,

Attention: Linda K. Smith, Project Officer, Phone: (202) 564–2602.

VIA Federal Express, Airborne, United Parcel Service, or Other Courier Service

U.S. Environmental Protection Agency, Office of Environmental Justice, Ariel Rios Building South, Room 2232, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Attention: Linda K. Smith, Project Officer, *Phone:* (202) 564–2602.

Applications Sent by Fax or E-Mail Will Not Be Accepted

VI. Selection Process and Program Schedule

A. How Will Applications Be Reviewed?

A panel of EPA employees will review, evaluate, and rank the applications of potential grant recipients. Applications will be screened to ensure that they meet all eligible activities and requirements described in sections IV and V above.

B. How Will the Final Selections Be Made?

After the individual projects are reviewed and ranked, OEJ will compare the best applications and make final selections. Additional factors that OEJ will take into account include geographic and socioeconomic balance, the diverse nature of the projects, the projected use of the funds, and projects whose environment and/or public health benefits can be sustained after the grant is completed. The OEJ Director will make the final grant selections.

Please note that this is a very competitive grants program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, a listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available on the Internet at *http://www.epa.gov/compliance/recent/ej.html.*

C. How Will Applicants Be Notified?

After all applications are received, OEJ will mail acknowledgments to the applicants. Once applications have been recommended for funding, OEJ will notify the finalists. OEJ will notify those applicants in writing whose projects are not selected for funding.

D. What Is the Expected Timeframe for Reviewing and Awarding the Environmental Justice CPS Grants?

May 30, 2003—FY 2003 OEJ Collaborative Problem-Solving Grant Program Application Guidance is available and published in the **Federal Register** and on the Internet.

June 1, 2003 to September 30, 2003—Eligible grant recipients develop, complete and submit their applications.

September 30, 2003—Applications must be date stamped by courier service or postmarked by U.S. Postal Service by 12 p.m. Eastern Time, September 30, 2003.

October 1, 2003–November 3, 2003—EPA reviews and evaluates applications.

November 22, 2003–December 22, 2003—Applicants will be contacted if their application is being considered for funding.

January 1, 2004—The OEJ Director will make final recommendations for award.

January 31, 2004—OEJ will release the national announcement of the 2003 recipients.

VII. Reporting Requirements/Special Conditions

Activities must be complete and funds spent within the timeframe specified in the three-year grant award. Project start dates will depend on the grant award date. OEJ anticipates grant awards by January 1, 2004. Substantial communication between EPA and the grantee will include:

A. *Quarterly Reports*—The grant recipient's Project Manager will be required to submit quarterly reports to update OEJ on the project's progress. The reports should include, but not be limited to, information identified under the elements of the Environmental Justice Collaborative Problem-Solving Model that pertain to:

1. Specific grant activities accomplished, such as establishing an effective, collaborative partnership between the grant recipient and other stakeholders;

2. Operating and maintaining an effective collaborative partnership and problem-solving mechanism;

3. Noteworthy community capacity-building activities that took place;

4. Identifying activities that resulted in the improvement of the community's environmental and/or public health concerns;.

5. Stating how funding resources were committed; and.

6. Identifying any issues/problems encountered and the methods for resolution.

B. *Monthly Conference Calls*—Moreover, the grantee will confer on a monthly basis with the OEJ staff person identified as the technical contact. A template will be furnished on those items to be discussed. In general, every call and report will follow the evaluation criteria described in section IV.

C. *Development of Performance Measures for Grant*—As a condition to receiving Environmental Justice CPS grants, grantees are required to develop measurable outcomes to be achieved through the activities for which these grant funds were awarded. The performance measures (evaluation criteria) should focus on solid, qualitative activities related to the grantee's activities, outputs, and outcomes. These performance measures will help gather insights concerning successful implementation strategies and generate lessons learned that may be applicable to future projects under this grant program.

The success of this grant program will be entirely dependent on the work of the grantees. Therefore, EPA and the grantee will examine whether, as a result of the grantee's activities and outputs, there has been:

- Better overall environmental and/or public health protection for community residents;
- Significant improvement in the quality-of-life of community residents;
- Significant increase in the community's capacity as it relates to understanding the environmental and/or public health issues affecting the community; a better understanding of the permitting processes; a better understanding of the use of environmental laws and their implementing regulations to address environmental justice concerns; and a better understanding of alternative dispute resolution and negotiation techniques;
- Effective use of the collaborative problem-solving processes;
- Transferability of the lessons learned to other communities similarly situated; and,
- Effective community revitalization.

D. *Final Report Requirement*—All grant recipients must submit a Final Technical Report for EPA approval within ninety (90) days of the end of the project period. A draft of this report should be submitted within 60 days of the end of the project period. A Financial Status Report is also required and is described in the award agreement document. The EPA will collect, review, and disseminate those final reports which can serve as models for future projects.

E. *Change in Project Requiring Project Officer Approval*—The grant recipient is responsible for the successful completion of the project. However, any change in the Project Manager or Principal Investigator is subject to approval by the EPA Project Officer. You must immediately submit the reason for the change and the qualifications of the new Project Manager or Principal Investigator to the Project Officer in writing. This can be sent by e-mail to *smith.linda@epa.gov* or by fax to (202) 501–1162.

For further information about this Environmental Justice CPS grant program, please visit the EPA's Web site at: *http://www.epa.gov/compliance/environmentaljustice/grants/index.html* or call our hotline at 1–800–962–6215 (available in Spanish).

Dated: May 30, 2003.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 03–14324 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0164; FRL–7306–5]

Bacillus Thuringiensis VIP3A Insect Control Protein; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0164, must be received on or before July 7, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: cole.leonard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0164. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0164. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0164. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0164.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0164. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Syngenta Seeds, Inc. petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Inc.

PP 3G6547

EPA has received a pesticide petition (PP 3G6547) from Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the pesticide *Bacillus thuringiensis* VIP3A insect control protein, as expressed in event COT102, and the genetic material necessary for its production in or on cotton.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Inc., and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Syngenta has developed a new cotton line that expresses an insect control protein designated VIP3A. It has been genetically incorporated into a cotton plant product identified as *Bacillus thuringiensis* (*Bt*) VIP3A insect control protein as expressed in event COT102. VIP3A is one of a novel class of recently discovered insecticidal proteins that occur naturally in *Bacillus thuringiensis*. The VIPs (vegetative insecticidal proteins) are produced during vegetative bacterial growth.

Other than its demonstrated insecticidal activity, VIP3A is not known to have any other biological or catalytic function. Although, VIP3A protein shares no homology with known Cry proteins, extensive testing has established that VIP3A is similarly very specific in its activity, and has demonstrated toxicity only to the larvae of certain lepidopteran species, including key pests of cotton. Further, because VIP3A appears to target a different receptor than Cry proteins in sensitive species, it represents a potentially useful tool in the prevention or management of pest resistance to Cry proteins.

Upon commercial introduction, the use of transgenic VIP3A cotton plants is expected to offer an important new option in lepidopteran pest control and integrated pest management programs. Moreover, VIP3A cotton will be an attractive, biologically based alternative to the use of foliar insecticides. The use of VIP3A cotton plants is expected to offer substantial environmental and worker safety benefits associated with the reduced need for broad-spectrum insecticides. Additionally, benefits to cotton growers will likely include greater profitability, convenience and predictability in producing a high-yielding cotton crop.

VIP3A-expressing cotton plants derived from transformation event COT102 have been field tested under U. S. Department of Agriculture (USDA) notifications and in compliance with the guidelines for USDA-regulated plantings in 2000, 2001, and 2002. The overall results of those trials have indicated that cotton plants derived from event COT102 have significant and specific insecticidal activity against several lepidopteran pests including, but not limited to, *Helicoverpa zea* (cotton bollworm), *Heliothis virescens* (tobacco budworm), and *Pectinophora gossypiella* (pink bollworm)

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Cotton, Gossypium hirsutum*, has been genetically modified to be resistant to selected *lepidopteran* insect pests. Insect protection was accomplished by the insertion of the VIP3A(a) gene, which was cloned from *Bacillus thuringiensis* strain AB88. The identity of the active pesticidal ingredient in cotton plants derived from transformation event COT102 includes the protein VIP3A and the genetic material necessary for its production in cotton. Research has demonstrated the specific insecticidal properties of VIP3A to certain *lepidopteran* insects in cotton as well as its lack of effects on nontarget organisms such as mammals, birds, fish, and beneficial insects.

2. *Magnitude of residue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of VIP3A protein measured in various plant parts including seeds of VIP3A cotton, as measured by enzyme linked immunosorbent assay (ELISA). Additionally, the petitioner has provided data on the quantity or presence of VIP3A protein in processed cottonseed products.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the VIP3A protein in cottonseed by ELISA analysis.

C. Mammalian Toxicological Profile

The VIP3A(a) gene expressed in event COT102 cotton is very similar (ca. 99% homology) to VIP3A or VIP3A–like genes that appear to occur commonly in *Bt* strains from a variety of sources. In addition, it has been determined that the VIP3A protein demonstrates insect specific toxicity and must be ingested to be active. Once in the insect gut, the VIP3A protein binds to specific receptors (different from those bound by Cry1A proteins), inserts into the membrane and forms ion-specific pores. These events disrupt the digestive processes and cause death of the insect. The lack of mammalian toxicity has been confirmed in numerous safety studies conducted in laboratory animals, which are traditional experimental surrogates for humans. These studies, summarized herein, demonstrate the lack of toxicity of the VIP3A protein following high-dose acute oral exposures to mice, rapid degradation of VIP3A upon exposure to simulated gastric fluid, and the lack of amino acid sequence similarity of the VIP3A protein to proteins known to be mammalian toxins or human allergens. It can be concluded from these studies that the VIP3A protein will be non-toxic to humans.

When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Ref. 1). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Studies conducted to assess the mammalian safety of VIP3A protein have demonstrated no toxicity. Four acute oral toxicity studies in mice have been completed. Three of the VIP3A test substances used were produced via microbial expression systems and one prepared by extracting protein from leaves of VIP3A event Pacha-derived corn plants. The four test substances contained VIP3A protein that differed from the VIP3A protein expressed in event COT102 by zero to two amino acids. At maximum dosage the microbially expressed test substance was administered at a level of 5,000 milligrams/kilogram (mg/kg) with an estimated acute lethal dose (LD_{50}) by gavage determined to be >3,675 mg VIP3A/kg mg/kg/bwt/wt. Because toxicity was not observed at this dose, it can be concluded that the LD_{50} for pure VIP3A protein is >3,675 mg/kg body weight. The VIP3A protein in both the microbial and plant derived test substance was determined to be substantially equivalent to VIP3A produced in event COT102 derived cotton plants, as measured by biological activity, protein size, immunreactivity, mass spectral analysis of amino acid sequence, and apparent lack of post-translational modifications.

The amino acid sequence of VIP3A is not homologous to that of any known or putative allergens described in public data bases. The VIP3A protein is not derived from a known source of allergens and does not display characteristics commonly associated with allergens, including glycosylation or stability to heat and food processing. Additionally, VIP3A is susceptible to gastric digestion by pepsin and did not provoke an allergic response in an experimental atopic dog model of human food allergy.

VIP3A protein appears to be present in multiple commercial formulations of *Bacillus thuringiensis* microbial insecticides at concentrations estimated to be ca. 0.4 32 parts per million (ppm). This conclusion is based on the presence of proteins of the appropriate molecular weight and immunoreactivity (by SDS-PAGE and western blot), and quantitation by ELISA. Therefore, it is conceivable that small quantities of VIP3A protein are present in the food supply because VIP3A or a very similar protein, based on size and immunoreactivity appears to be present in currently registered insecticide products used on food crops, including fresh market produce. These commercial *Bacillus thuringiensis* products are all exempt from food and feed tolerances.

D. Aggregate Exposure

1. Dietary exposure—i. *Food.* Food products derived from cotton (refined cottonseed oil and cellulose linters fiber) are highly processed and are essentially devoid of any proteins. Moreover, no VIP3A protein was detected in refined cottonseed oil or cotton fiber produced from event COT102-derived VIP3A cotton plants. Therefore, no human dietary exposure to VIP3A protein is expected to occur via VIP3A cotton. Even if dietary exposure to VIP3A protein were to occur, data derived from bioinformatic analyses as well as direct *in vitro* and *in vivo* testing collectively indicate that the VIP3A protein is unlikely to have allergenic potential. The amino acid sequence of VIP3A is not homologous to that of any known or putative allergens described in public data bases. The VIP3A protein is not derived from a known source of allergens and does not display characteristics commonly associated with allergens, including glycosylation or stability to heat and food processing. Additionally, VIP3A is susceptible to gastric digestion by pepsin and did not provoke an allergic response in an experimental atopic dog model of human food allergy.

ii. *Drinking water.* No exposure to VIP3A and the genetic material necessary for its production in cotton via drinking water is expected. The proteins are incorporated into the plant and will not be available. However, if exposure were to occur by this route, no risk would be expected because the VIP3A protein is not toxic to mammals.

2. *Non-dietary exposure.* Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure via dermal or inhalation routes is unlikely because the plant-incorporated protectant is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the VIP3A protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity to the VIP3A protein, it is reasonable to conclude that there are no cumulative effects for this plant-incorporated protectant.

F. Safety Determination

1. *U.S. population.* The lack of mammalian toxicity at high levels of exposure to the VIP3A protein

demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated via consumption of processed food products produced from VIP3A cotton. Moreover, little to no human dietary exposure to VIP3A protein is expected to occur via VIP3A cotton. Due to the lack of toxicity of the VIP3A protein and its very low potential for allergenicity, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children.* The plant-incorporated protectant active ingredient, *Bacillus thuringiensis* VIP3A insect control protein and the genetic material necessary for its production in cotton, demonstrates no mammalian toxicity. Thus, there are no threshold effects of concern and, consequently, there is no need to apply an additional margin of safety.

G. Effects on the Immune and Endocrine Systems

The safety data submitted show no adverse effects in mammals, even at very high dose levels, and support the prediction that the VIP3A protein would be non-toxic to humans. Therefore, no effects on the immune or endocrine systems are predicted. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 1). Further, the VIP3A protein is derived from a source that is not known to exert an influence on the endocrine system.

H. Existing Tolerances

There are no existing tolerances for the *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production. Other *Bacillus thuringiensis* based pesticide products are exempt from tolerances.

I. International Tolerances

There are no existing international tolerances or exemptions from tolerance for the *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production.

J. Reference

1. Sjoblad, R. D., J. T. McClintock and R. Engler, (1992) Toxicological Consideration for Protein Components of Biological Pesticide Products. *Regulatory toxicol Pharmacol* 15: 3-9

[FR Doc. 03-14199 Filed 6-5-03; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OA-2003-0005; FRL-7508-7]

Public Involvement Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of New Public Involvement Policy.

SUMMARY: The EPA is issuing its new Public Involvement Policy. The purpose of today's Notice is to advise the public and present the Policy. The new Policy provides guidance to EPA staff on effective and reasonable means to involve the public in EPA's regulatory and program implementation decisions. The core of the Policy is the recommended seven basic steps for effective public involvement, which the Agency should consider when making major decisions on rules, policies and program implementation activities. The Policy is directed internally, but EPA's partners in states, tribes or local governments may also find it to be a useful tool for them.

FOR FURTHER INFORMATION CONTACT: Patricia Bonner, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; 202-566-2204; *bonner.patricia@epa.gov.* For printed copies, telephone 202-566-2216.

SUPPLEMENTARY INFORMATION: How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OA-2003-0005. The official public docket consists of the complete Public Involvement Policy with its appendices and addenda, public comments on the 1981 and draft 2000 Policy, the Agency's Response to Comments and the Framework for Implementing EPA's Public Involvement Policy. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/ or use http://www.epa.gov/publicinvolvement to access the Policy and all its attachments. Electronic versions of items in the public docket are available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET). You may use EDOCKET at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket and documents that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number. You may still access any of the publicly available docket materials through the EPA Docket Center.

Background

On January 19, 1981, the Environmental Protection Agency (EPA) published its first Agency-wide Public Participation Policy (46 FR 5736, Jan. 19, 1981). In November 1999, the EPA requested public comment on whether and how to change that Policy, and subsequently began a process to revise the policy and create a plan to implement it across the Agency. In December 2000, EPA released a draft revised Public Involvement Policy for public comment (65 FR 82335, Dec. 28, 2000). The comment period closed on July 31, 2001, following a two-week internet-based dialogue on "Public Involvement in EPA Decisions," which included 1,144 participants from all 50 states.

Overview of EPA's New Public Involvement Policy

The Policy's core elements are the following seven basic steps for effective public involvement:

1. Plan and budget for public involvement activities.
2. Identify the interested and affected public.
3. Consider providing technical or financial assistance to the public to facilitate involvement.
4. Provide information and outreach to the public.
5. Conduct public consultation and involvement activities.
6. Review and use input, and provide feedback to the public.
7. Evaluate public involvement activities.

This Policy is meant to encourage development of new tools for public involvement and should not limit the degree or types of public involvement already in use at EPA. Agency guidance, which EPA is issuing simultaneously with this Policy, provides specific recommendations for accomplishing each of these seven steps, while also acknowledging the need for EPA officials to use discretion when planning and implementing public involvement activities.

The Policy reflects changes over the past 22 years such as:

- New and expanded public participation techniques.
- New options for public involvement through the Internet.
- EPA's emphasis on assuring compliance.
- Increased use of partnerships and technical assistance.
- Increased public access to information.
- Increased capacity of States, Tribes and local governments to carry out delegated programs.

The Policy also reflects EPA's experience with public involvement from the national to the local level, and incorporates many ideas provided to EPA through public comments on the draft Policy. Today's Notice is limited to this brief introduction and the core policy statement. Concurrent with this Notice, EPA is also issuing the following supporting documents to facilitate and promote support the Policy's implementation:

Appendix 1—"Guidance for Implementing Public Involvement at EPA" [*http://www.epa.gov/publicinvolvement/policy2003/guidance.pdf.*]

Appendix 2—Definitions that are integral to this Policy.

Appendix 3—Examples of EPA's Public Involvement Regulations.

Appendix 4—Federal Advisory Committees.

Addendum 1—Selected tools the Agency has developed since 1981 to assist EPA staff and regulatory partners in conducting public involvement and consultation.

Addendum 2—Summary of comments and EPA's responses.

Two additional documents may be of interest. The Agency's complete "Response to Comments on EPA's Draft 2000 Public Involvement Policy" is available at http://www.epa.gov/publicinvolvement/responsetocomments.pdf and the "Framework for Implementing EPA's Public Involvement Policy" is available at *http://www.epa.gov/publicinvolvement/framework.pdf.* (All documents referenced in the Policy are also available upon request to Public Involvement Staff, USEPA/OPEI/OEPI/PPCD Mail Code 1807T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.)

The goal of this Policy is to improve the effectiveness of EPA's public involvement activities, ensure well-informed decisions, and encourage innovative methods for involving the public. As EPA implements the Policy, the Agency plans to share its experiences with states, tribes, local governments and other partners and interested parties.

Dated: May 29, 2003.

Christine Todd Whitman,

Administrator.

EPA's Public Involvement Policy (Final May 2003)

Introduction

EPA's mission is to protect human health and the environment. To achieve that mission, EPA needs to continue to integrate, in a meaningful way, the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process. Public involvement also promotes democracy and civic engagement, and builds public trust in government.

EPA has long been committed to public involvement. The fundamental premise of this Policy is that EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. They also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision-making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and informs its final decisions. At the same time, EPA should not accept any recommendation or proposal without careful, critical examination.

This Policy supplements, but does not amend, existing EPA regulations that prescribe specific public participation requirements applicable to EPA's activities under specific statutes, such as those found at 40 CFR part 25 "Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act." (See 40 CFR part 25, which can be found at *http://www.epa.gov/publicinvolvement/pdf/part25.pdf.*) The public participation requirements contained in such regulations specify the minimum required level of public participation. (A partial listing of existing public participation regulatory requirements is contained in Appendix 3.) Whenever feasible, Agency officials should strive to provide increased opportunities for public involvement above and beyond the minimum regulatory requirements.

What Is Public Involvement?

The term "public involvement" is used in this Policy to encompass the full range of actions and processes that EPA uses to engage the public in the Agency's work, and means that the Agency considers public concerns, values, and preferences when making decisions. The term "the public" is used in the Policy in the broadest sense to include anyone, including both individuals and organizations, who may have an interest in an Agency decision. (See Appendix 2 for a detailed definition of "public" and other important terms.)

What Are the Purposes, Goals and Objectives of This Policy?

The purposes of this Policy are to:

- Improve the acceptability, efficiency, feasibility and durability of the Agency's decisions.
- Reaffirm EPA's commitment to early and meaningful public involvement.
- Ensure that EPA makes its decisions considering the interests and concerns of affected people and entities.
- Promote the use of a wide variety of techniques to create early and, when appropriate, continuing opportunities for public involvement in Agency decisions.
- Establish clear and effective guidance for conducting public involvement activities.

Effective public involvement will make it easier for the public to contribute to the Agency's decisions, build public trust, and make it more likely that those who are most concerned with and affected by Agency decisions will accept and implement them. This policy supports EPA in meeting statutory and regulatory requirements regarding public participation, particularly in environmental permitting programs and enforcement activities.

EPA goals for public involvement processes are to:

- Foster a spirit of mutual trust, confidence, and openness between the Agency and the public.
- Ensure that the public has timely, accessible and accurate information about EPA programs in a variety of formats so that people can better understand the implications of potential alternative courses of action.
- Consult with interested or affected segments of the public and take public viewpoints into consideration when making decisions.
- Learn from individuals and organizations representing various public sectors and the information they are uniquely able to provide (community values, concerns, practices, local norms, and relevant history, such as locations of past contaminant sources, potential impacts on small businesses or other sectors, industry conducted study results, etc.)
- Solicit assistance from the public in understanding potential consequences of technical issues, identifying alternatives for study, and selecting among the alternatives considered.
- Keep the public informed about significant issues and changes in proposed programs or projects.
- Foster, to the extent possible, equal and open access to the regulatory process for all interested and affected parties.
- Understand the goals and concerns of the public, and respond to them.
- Anticipate conflict and encourage early discussions of differences among affected parties.

- Promote the public's involvement in the Agency's mission of protecting human health and the environment.
- Explain to the public how its input affected the Agency's decision.

To achieve these purposes and goals, while recognizing resource constraints, Agency officials should strive to provide for, encourage, and assist public involvement in the following ways:

- Involve the public early and often throughout the decision-making process.
- Identify, communicate with and listen to affected sectors of the public (Agency officials should plan and conduct public involvement activities that provide equal opportunity for individuals and groups to be heard. Where appropriate, Agency officials should give extra encouragement and consider providing assistance to sectors, such as minority and low-income populations, small businesses, and local governments, to ensure they have full opportunity to be heard and, where possible, access to technical or financial resources to support their participation.)
- Involve members of the public in developing options and alternatives when possible and, before making decisions, seek the public's opinion on options or alternatives.
- Use public input to develop options that facilitate resolution of differing points of view.
- Make every effort to tailor public involvement programs to the complexity and potential for controversy of the issue, the segments of the public affected, the time frame for decision making and the desired outcome.
- Develop and work in partnerships with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement.

When Does This Policy Apply?

This Policy applies to all EPA programs and activities. In programs or activities where the public is already meaningfully involved, EPA can use this Policy to enhance that public involvement. Where the existing level of public involvement needs to improve, this Policy provides suggestions for how to move forward. Finally, this Policy can serve as a model for building public involvement into new programs as they are developed.

The activities where conducting meaningful public involvement should particularly be considered include:

- EPA rulemaking, when the regulations are expected to be classified as Significant Actions (under the terms of Executive Order 12866).
- EPA issuance or significant modification of permits, licenses or renewals.
- Selection of plans for cleanup, remediation or restoration of hazardous waste sites or Brownfields properties.
- EPA's decision on whether to authorize, delegate or approve states or local governments to administer EPA programs consistent with the relevant regulatory requirements for each program (Note: Tribes seeking approval to administer environmental programs under EPA statutes generally also seek "treatment in a similar manner as a state (TAS)" status from EPA. Appropriate opportunities for public participation are contained in the relevant statutory and regulatory provisions establishing a TAS process. Consult with the Office of Regional Counsel or the Office of General Counsel, and/or the American Indian Environmental Office for assistance.)
- All other policy decisions that the Administrator, Deputy Administrator or appropriate Assistant, Regional or Associate Administrator determine warrant public participation in view of EPA's commitment to involve the public in important decisions.
- The development of significant information products (as the Office of Environmental Information has defined them in Appendix 2: Definitions).
- For activities not listed here, EPA staff may use this Policy in whole or in part to strengthen decision making.

In planning and conducting public involvement activities, Agency officials should rely on the sound use of discretion. The Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA or any other agency. Resource constraints, the need for timely action and other considerations may affect the appropriate nature and extent of public involvement. For example, a compelling need for immediate action may make it appropriate to limit public involvement. In particular, the desire to reach agreement among all parties, while valuable, should not prevent the Agency from carrying out its responsibility to make decisions or take actions to preserve and protect the environment and public health.

Nevertheless, the Agency should approach all decision making with a bias in favor of significant and meaningful public involvement. Experience throughout government has shown that a lack of adequate participation or of effective means for participation can result in decisions that do not appropriately consider the interests or needs of those that will be most affected by them. Furthermore, early involvement can ultimately reduce delay, by avoiding time-consuming review, public debate or litigation. Finally, decisions based on meaningful public involvement are likely to be better in substance and stand the test of time, avoiding the need to reopen controversial issues.

Does This Policy Affect Authorized, Approved or Delegated Programs?

EPA developed this Policy for EPA staff use, but it also may be useful to States, Tribes and local governments that implement federally delegated, authorized or approved programs. EPA encourages these entities to adopt similar public involvement policies if they have not already done so. EPA intends to discuss the effectiveness of their public involvement activities during periodic meetings with States, Tribes and local governments, and will obtain their input about ways to improve EPA's activities. EPA will not use whether a State, Tribe or local government has adopted EPA's Public Involvement Policy as a criterion for the authorization, approval or delegation of programs or the award of grants. In general, recipients may use grants for continuing environmental programs and Performance Partnership Grants to fund public involvement activities to the extent that costs are allowable under OMB Circular A–87 and applicable EPA regulations. (Note: Some statutory or regulatory provisions require compliance with certain public participation requirements before EPA may approve a grant. *See* 40 CFR 25.11 and 25.12.) The grant applicant may comply with such requirements without adopting EPA's Policy.

What Are the Roles of States, Tribes and Local Governments?

State agencies, Tribes and some local governments have unique roles regarding EPA's programs and decisions:

1. State agencies, Tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely-related programs. In both cases they work closely with EPA as regulatory partners, and EPA will consult them as appropriate when implementing this Policy. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.

2. State agencies, Tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders, and would benefit from the application of the Policy like other regulated parties.

3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, Tribes, and regional and local governments often play an active role in making recommendations on policies, rules, plans and recommendations under development, and providing input on EPA's decisions.

The role of Tribes is unique in another way. Each federally-recognized Tribal government is a sovereign entity that has an individual government-to-government relationship with the federal government. EPA should coordinate and consult meaningfully with Tribes to the greatest extent practicable for agency actions that may affect the tribes. This Policy complements EPA's efforts to consult with Tribes. See Executive Order 13175, Consultation and Coordination With Indian Tribal Governments November 6, 2000.

Consultation should be a meaningful and timely two-way exchange with Tribal officials that provides for the open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision making, and respect of Tribal self-government and sovereignty. The Agency should allow comment from Tribes early in the planning process and prior to making a decision. However, consultation does not imply that the Tribes or any other non-EPA entities that are consulted can stop an Agency action by withholding consent.

How Does the Policy Relate to Environmental Justice?

This Policy complements and is consistent with EPA's environmental justice efforts. "Environmental Justice" is the fair treatment of people of all races, cultures, and incomes, including minority and/or low-income communities and Tribes, with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision-making processes of the government. Environmental justice is achieved when everyone, regardless of race, culture or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn and work. This includes ensuring greater public participation in the Agency's development and implementation of its regulations and policies. (Memorandum from EPA Administrator Christine Todd Whitman, dated August 9, 2001, "EPA's Commitment to Environmental Justice.") (*See also*, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.) Thus, ensuring meaningful public involvement advances the goals of environmental justice.

EPA's Seven Basic Steps for Effective Public Involvement

The EPA should ensure that it conducts meaningful public involvement activities and implements all public involvement provisions required by statute.

There are seven basic steps to consider when planning for public involvement. Agency officials should exercise judgment and carefully consider the particular circumstances of each situation in determining how to carry out those steps. Agency staff and managers should strive to provide the most meaningful public involvement opportunities appropriate to each situation. Agency officials should consider the issues, locations, potential environmental and human health consequences of the activities, potential for controversy, specific needs of the public and the Agency, and other circumstances when designing public involvement processes. For instance, enhanced opportunities for public involvement should be created for those situations in which there is the potential for greater environmental or human health consequences or controversy. It is important to note that the Agency needs to set priorities for its use of resources, and that budgetary constraints may affect the implementation of any of these elements.

The seven basic steps for effective public involvement in any decision or activity are:

1. Plan and budget for public involvement activities.
2. Identify the interested and affected public.
3. Consider providing technical or financial assistance to the public to facilitate involvement.
4. Provide information and outreach to the public.
5. Conduct public consultation and involvement activities.
6. Review and use input and provide feedback to the public.
7. Evaluate public involvement activities.

The recommended goals, actions and methods for each of these steps are described in Appendix 1, Guidance for Implementing Public Involvement at EPA, at *http://www.epa.gov/publicinvolvement/policy2003/guidance.pdf.*

Who Is Responsible for Managing the Application of This Policy?

Under the overall direction of the Administrator, and consistent with this policy, Assistant, Regional and Associate Administrators are responsible for ensuring that their managers and staff encourage and facilitate public involvement in programs and activities. Public involvement should be an integral part of any Agency program. Moreover, the Agency should strive to achieve public involvement that is commensurate with the potential impact of the activity. The Assistant, Regional or Associate Administrators should make certain that concerns about the adequacy of public involvement are heard and, where necessary, acted upon as resources allow. Managers should encourage and facilitate the proper training, support and counseling of staff, and, recognizing overall budgetary constraints, should plan for and provide adequate funding for training or other needs in their specific budgets. (*See* more detailed responsibilities section in Appendix 1 at *http://www.epa.gov/publicinvolvement/policy2003/guidance.pdf.*)

[FR Doc. 03–14325 Filed 6–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 28, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1007.

Title: Streamlining and Other Revisions of Part 25 of the Commission's Rules.

Form No.: FCC Form 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 150 respondents; 971 responses.

Estimated Time Per Response: 10 hours (5 hours for outside legal assistance).

Frequency of Response: On occasion, annual, and other reporting requirements, third party disclosure requirement.

Total Annual Burden: 9,686 hours.

Total Annual Cost: $95,194,000.

Needs and Uses: On May 19, 2003, the Commission released a First Report and Order (R&O) in IB Docket Nos. 02–34 and 02–54, FCC 03–102. The Report and Order adopts two different licensing frameworks for non-geostationary orbit (NGSO)-like systems and geostationary orbit (GSO)-like systems. The R&O requires that new licensees execute a bond in the amount of $7.5 million for NGSO licensees and $5 million for GSO licensees and submit the bond to the Commission within 30 days of license grant. The bond would discourage speculative applications without deterring legitimate satellite operators. The bond only applies to *new* satellite licensees only, not replacement satellites. The Report and Order results

in faster provision of satellite services to the public, thus enabling the U.S. satellite industry to maintain its leadership rule in the world market. This collection of information is used by the Commission in carryout out its duties as required by the Communications Act and the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14289 Filed 6–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:35 a.m. on Tuesday, June 3, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and enforcement activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by John M. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than May 29, 2003, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: June 3, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–14485 Filed 6–4–03; 3:36 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

* * * * *

Previously Announced Date & Time: Tuesday, June 3, 2003, 10 a.m., meeting closed to the public. This meeting was cancelled.

Previously Announced Date & Time: Thursday, June 5, 2003, 10 a.m. meeting open to the public. This meeting was cancelled.

Previously Announced Date & Time: Friday, June 6, 2003, 10 a.m. public hearing on public financing of presidential candidates and nominating conventions. The starting time has been changed to 9 a.m.

* * * * *

Date & Time: Tuesday, June 10, 2003, at 10 a.m.

Place: 999 E street, NW., Washington, DC.

Status: This meeting will be closed to the public.

Items To Be Discussed: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

Date & Time: Wednesday, June 11, 2003, at 10 a.m.

Place: 999 E Steet, NW., Washington, DC (ninth floor).

Status: This hearing will be open to the public.

Matter Before the Commission: Enforcement policies and procedures.

Date & Time: Thursday, June 12, 2003 at 10 a.m.

Place: 999 E Street, NW., Washington, DC (ninth floor).

Status: This meeting will be open to the public.

Items To Be Discussed: Correction and Approval of Minutes.

Draft Advisory Opinion 2003–05: National Association of Home Builders of the United States (NAHB) by counsel, E. Mark Braden and William H. Schweitzer.

Draft Advisory Opinion 2003–10—Rory Reid and the Nevada State Democratic Party by counsel, Marc E. Elias.

Draft Advisory Opinion 2003–13—American Academy of Ophthalmologists, Inc. by Steven L. Miller, Director, OPHTHPAC.

Routine Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–14365 Filed 6–03–03; 4:23 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 20, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Mary Jane Lindholm, Clarkfield, Minnesota; to retain control of Clarkfield Holding Company, Clarkfield, Minnesota, and thereby indirectly retain control of Farmers and Merchants State Bank of Clarkfield, Clarkfield, Minnesota.

Board of Governors of the Federal Reserve System, June 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14252 Filed 6–5–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[2003–N01]

Integrated Acquisition Environment Pilot; Posting Awarded Contracts on the Worldwide Web

AGENCY: The Integrated Acquisition Environment (IAE) Program Office, GSA.

ACTION: Notice and request for comments.

SUMMARY: The Integrated Acquisition Environment (IAE) program office, which is responsible for improving Federal acquisition processes through reliance on a technology-based integrated infrastructure, is initiating a pilot to begin making Federal contracts available to the general public on the worldwide web (web). This pilot effort is intended to increase transparency in agency acquisition activities and further the Administration's global vision of a citizen-centric E-Government. The IAE program office seeks public comment to help in identifying priorities for the pilot's implementation.

DATES: Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before August 5, 2003.

ADDRESSES: Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*Notice.2003–N01@gsa.gov.*

Please submit comments only and cite Notice 2003–N01 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Sorrenti, Project Manager, Integrated Acquisition E-Gov Initiative, by phone at (703) 872–8610 or by e-mail at *teresa.sorrenti@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) and the IAE program office seek to promote greater transparency in Government contracting through the effective use of technology. Transparency fosters public confidence in the Government's procurement processes and the critical missions they support.

The Government has taken, and continues to take, important steps to leverage Federal information technology investments and increase transparency in ways that help Federal buyers to achieve better results. For example:

- FedBizOpps (*http://www.fedbizopps.gov*) enables vendors and other interested members of the public to easily acclimate themselves with the planned procurements of departments and agencies across the executive branch. This gateway hosts a wide variety of business documents, such as notices, solicitations, and other related acquisition information, that vendors need to bid on and negotiate contracts with agencies. The transparency FedBizOpps provides helps to reduce vendor transaction costs. This, in turn, generates competition to lower cost and improve quality in purchases for taxpayers.
- The interagency contract directory (*http://www.contractdirectory.gov*), which will be rolled out later this year, will provide general information to agencies and the public about awarded contracts that are available to satisfy the needs of other Federal agencies. Information in the directory will be made available in a standardized format to facilitate market research and help agency managers rationalize contracting efforts.
- The Federal Procurement Data System—Next Generation (FPDS–NG) will entirely transform how information about acquisition activities is captured. As this new management information system is phased in over the next two years, agencies and the public will enjoy faster and wider access to transactional information as well as real-time web-based reporting.

Several public interest groups have requested that agencies make contracts available online. These groups believe this type of transparency will facilitate constructive dialogue to promote model contracting, improve weak practices, and reduce repetitive requests under the Freedom of Information Act (FOIA) for contracts that are of particular interest to the public. While a limited amount of information about awarded contracts is available today through FPDS and FedBizOpps, Federal contracts are not routinely posted on the web.

In light of the public interest in having contracts posted and the benefits derived through improved transparency in acquisition generally, the IAE program office is initiating a project to pilot the online posting of Federal contracts. The IAE program office intends to scope the pilot in a manner that is both (1) responsive to the interests of our taxpayers, and (2) reasonable in light of potential costs and burden associated with this effort and the capabilities of technology currently employed by the Government. This scope may be modified based on the success of initial pilot efforts and future enhancements to the Government's technology infrastructure. It may also be re-scoped to include grants. Irrespective of how the pilot is structured, any proprietary information contained in a contract covered by the pilot would be redacted before posting.

The program office welcomes the public's comments in helping to identify priorities for implementing the pilot. Comments are especially welcome on the following issues:

1. *Scope and availability.* What parameters (factors) should guide the initial shape of the pilot (*e.g.*, size or type of contract; amount of competition sought; product or service purchased; awards related to specific Federal programs)? How long should contracts remain available after they have been posted?

2. *Guidance.* What, if any, type of guidance may be beneficial to ensure posting is consistent with applicable laws and regulations (*e.g.*, is there a need for guidance to address the redaction of proprietary information, the identification of contracts whose disclosure would compromise the national security, or the application of FOIA generally)?

Dated: June 3, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 03–14341 Filed 6–5–03; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Family Planning Male Reproductive Health Research Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs published a notice in the **Federal Register** of April 14, 2003 announcing the availability of funds for family planning male reproductive health research grants. A correction Notice was published on May 23, 2003. There was an error in this Notice. This Notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Susan B. Moskosky, 301–594–4008.

Correction

In the **Federal Register** of May 23, 2003, in FR Doc. 03–12983, on page 28228, in the first column, second paragraph under the heading "Correction" correct the second sentence which reads "Awards will range from $100,000 to $250,000 per year, inclusive of direct costs" to read:

"Awards will range from $100,000 to $250,000 per year, inclusive of indirect costs."

Dated: May 30, 2003.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 03–14245 Filed 6–5–03; 8:45 am]

BILLING CODE 4150–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03077]

Community-Based Interventions To Reduce Motor Vehicle-Related Injuries; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for cooperative agreements for Community-Based Interventions to Reduce Motor Vehicle-Related Injuries was published in the **Federal Register** on May 19, 2003, Vol. 68, No. 69, pages 27078–27082. The notice is amended as follows:

On page 27078, Column 3, Section "D. Funding," insert second paragraph "Recipient Financial Participation: Matching funds are not required for this program."

On page 27082, Column 2, Section "J. Where to Obtain Additional Information," under contact information for Tim Groza, MPA, Project Officer, replace "770–4676" with "770–488–4676".

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14270 Filed 6–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03030]

Controlling Asthma in American Cities Project Phase II-Intervention Implementation; Notice of Availability of Funds

Application Deadline: July 7, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317 of the Public Health Service Act, (42 U.S.C. 241 and 247b), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for the Controlling Asthma in American Cities Project (CAACP). This program addresses the "Healthy People 2010" focus area of Respiratory Diseases.

The purpose of the program is to build on the planning phase of CAACP (including the experience and skills gained from the pilot testing of intervention approaches) to improve overall asthma management and decrease asthma-related morbidity among children (0–18 years) in a previously defined urban population with a large and unmet asthma control need.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health: Reduce the burden of asthma.

C. Eligible Applicants

Assistance will only be provided to currently funded recipients from CDC Program Announcement Number 01117, Controlling Asthma in American Cities Project, Phase I Planning. Refer to Attachment II for a list of currently funded recipients. All attachments referenced in this announcement are posted with the announcement on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding," then "Grants and Cooperative Agreements."

Program Announcement Number 01117 was for the two-year planning phase of this project, while this announcement is competitive among planning phase awardees for implementation of intervention activities. Program Announcement Number 01117 stated: "Depending on the availability of funds, a new competitive announcement, limited to Phase I awardees, may be announced in the future that will implement the intervention activities." No other applications are solicited.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $4 million is available in FY 2003 to fund approximately five to seven awards. It is expected that the average award will be $700,000, ranging from $500,000 to $800,000. It is expected that the awards will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Funding preferences may include: (1) Geographic distribution; (2) minority populations with disproportionate asthma burden; and (3) a balance of proposed intervention strategies.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Describe and implement the community asthma action plan developed during the planning period. The plan should be detailed and include time-phased intervention objectives that are tied to the asthma objectives in Healthy People 2010. The plan should be feasible from a programmatic implementation perspective and from a cost perspective. The plan should address sustainability issues (*i.e.*, the institutionalization of intervention activities), as well as encourage community capacity building and empowerment.

b. Conduct a comprehensive evaluation of the entire project using CDC's framework for program evaluation as a guide. As part of this, recipients will monitor and evaluate progress in implementing the community-based asthma action plan and measure the long-term population-based impact of the project on the health of the communities of focus.

c. Continue collaboration with broad community representation and support in implementing, modifying, evaluating, and ultimately sustaining the project.

d. Serve as a resource for other asthma control projects.

e. Document and disseminate experiences in working as a collaborative/coalition and in implementing the project interventions.

f. Formally summarize project activities, progress in reaching project objectives, and general insights/lessons every six months to local partners and to CDC.

g. Work with CDC or its contractors to package and disseminate effective interventions developed and/or tested as part of CAACP.

h. Participate annually in a CDC-organized meeting of CAACP grantees and key stakeholders.

2. CDC Activities

a. Provide technical assistance in the development of intervention strategies, communication and policy issues, and the interpretation of the scientific literature related to asthma management and control.

b. Provide liaison among grantees and identify potential sources of information and assistance.

c. Coordinate activities among sites, when appropriate.

d. Provide leadership in development of a comprehensive evaluation plan of CAACP as a whole and provide technical assistance to all grantee sites regarding appropriate evaluation strategies and specific evaluation tools.

e. Convene meetings among grantees, collaborators, and key stakeholders to discuss findings and improve outcomes.

f. Assist with the interpretation and dissemination of interim and final project findings and lessons. This may include coordinating one or more publishable reports related to project activities/findings.

g. If applicable, assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. If applicable, the CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this Content section to develop the application content. Additional guidance/clarification is provided in Attachment III. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

1. *Table of Contents:* A table of contents that provides page numbers for each of the following sections should be included.

2. *Project Narrative:* The narrative must contain the following sections:

a. Overview of the assets, attributes, and deficiencies of the communities of focus (*i.e.*, describing the public health and community environment in which CAACP is working, including a description of any community assessments or asset mapping done in the past three years).

b. Summary of asthma-related activities and issues unique to your communities of focus that directly or indirectly impact CAACP planning and implementation activities (*i.e.*, a description of asthma-specific activities not directly funded by CAACP that have occurred or are ongoing in the communities of focus).

c. Description of project organization, staffing, active collaboration, and community support.

d. Summary of the activities of the two-year planning period.

e. Description and justification of the community-based, intervention-phase asthma action plan to be implemented over the next five years.

f. Description of the comprehensive evaluation plan including a summary of the baseline data already collected during the planning phase.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, July 7, 2003.

Submit the application to: Technical Information Management–PA#03030, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

A peer review group appointed by CDC may conduct site visits or reverse site visits, as a part of their review of the applications and, if conducted, will use the results of these visits as well as application content addressing the following criteria:

1. The Community-focused. Intervention-phase Asthma Action Plan (40 percent).

The aim of this plan should be to reduce the burden of asthma among children ranging from newborn to 18 years of age, throughout the pre-selected communities of focus. The plan will be evaluated on the following criteria.

a. The detail to which the plan is described.

b. The likely effectiveness of the individual intervention strategies as well as the plan as a whole. This includes the estimated efficacy of each intervention (how much it will reduce asthma morbidity and/or improve quality of life), the likely reach of each intervention (percentage of the community under 18 years of age likely to be engaged/impacted by the intervention), and the potential synergy created by the intertwining of interventions. While all are essential, the project is especially interested in determining the combined effectiveness

of interventions that together have a high degree of community reach and participation.

c. The feasibility of the plan from a program implementation perspective, and from a cost/economic perspective. Included in this should be an estimate of how long it will take to fully implement the plan, with the idea that the quicker the intervention can be implemented effectively and efficiently, the better.

d. The degree to which pilot testing, previous community experience, and/or the science of effective asthma interventions were used/are being used to create the plan and its details.

e. The degree to which the plan reflects and builds on a mature and comprehensive understanding of the assets, attributes, and deficiencies of the communities of focus including non-CAACP asthma activities completed or ongoing in these communities.

f. The degree of community participation in the plan. The following questions should be addressed: Is there documentation of community participation in the development of the plan? Does the plan encourage community capacity building and empowerment? Do community partners play a large role in the implementation period and does this empower or build capacity within the community?

g. Approach to sustainability issues. This includes a discussion of what needs to happen to make the intervention strategies sustainable after project funding is finished, how likely it is that this will occur, and what project staff and partners are doing or planning to do to make this happen.

h. The value of the community asthma action plan and the individual intervention strategies from a broader scientific and community public health perspective. In other words, are the strategies innovative and ambitious enough to stretch our understanding of asthma control and community health?

i. Ability to replicate the community asthma action plan in other cities or expand into new neighborhoods within the same city. This includes the degree to which the individual intervention strategies will likely be attractive to other communities (*i.e.*, cost-feasible, resource-feasible, and reproducible).

2. Project organization, staffing, active collaboration and community support (30 percent). Projects will be judged on the following:

a. The diversity of individuals and organizations involved in the project.

b. The competence and community leadership potential of those actively engaged and participating in the project.

c. The depth of expertise (both formal expertise and significant past hands-on experience) in all areas critical to the project's success.

d. The overall competence, leadership, and vision of the principal investigator(s) and project coordinator(s). This is based, in part, on their individual skills/experience with a community-based team approach to decision-making and problem solving.

e. The ability of project staff and collaborators to communicate openly and easily, to understand each other's roles, and to make optimal project-related decisions. This will be based, in part, on the project's organizational structure and decision-making procedures developed and practiced over the two-year planning period.

f. The commitment of the collaborating individuals and especially, organizations. This includes the degree to which project collaborators have taken ownership or plan to take ownership of the project.

g. The effort made by project staff and collaborators to involve grassroots community members and/or representatives in a meaningful way.

h. The project's effectiveness in creating community awareness and interest in asthma and the project, in particular.

i. The prospect of sustaining the collaborative partnership beyond the project period and even beyond childhood asthma as the public health focus. This includes an assessment of how the project interacts with other existing community projects and coalitions in the region.

3. Evaluation Plan (20 percent).

Projects will be judged on the following:

a. Outcome-based Evaluation Strategies. The overall evaluation plan should be designed to measure the impact of the project's activities and interventions as a whole on the targeted communities' population of children and/or teens with asthma. Evaluation strategies aimed at measuring the impact of a single, specific intervention are important but remain secondary to measuring the project's overall population-based impact. Evaluation strategies that incorporate some or all of the following outcome measures (but not necessarily limited to the following) are suggested:

(1) Hospitalization data (ideally starting a minimum of three years prior to the onset of intervention activities to allow for trend analyses, and with comparable data from outside the communities of focus for comparison).

(2) Emergency care data (as above if possible).

(3) School absenteeism (all causes in those identified as having asthma or asthma-specific absenteeism).

(4) Quality of life and/or asthma symptom surveys (if a non-biased sample can be identified and obtained).

(5) Asthma medications (*i.e.*, the ratio of rescue to controller medication prescriptions filled).

(6) Asthma care visits (*i.e.*, ratio of scheduled to unscheduled visits, or number of asthma maintenance visits per year).

(7) Changes in community empowerment and/or active participation in community health (as measured by a validated instrument in a non-biased sample of the community).

b. Comprehensive Evaluation Plan: Applicants will be judged on how well they have articulated an evaluation plan that complements the outcome-based measures described above (section H2a) and is likely to be useful in understanding and/or measuring the following: (1) The dynamics of the collaborative process, including decision making; (2) the general effectiveness of the collaborative in helping to create, implement, and sustain community interventions; (3) the relationship between the project/collaborative and the community it seeks to serve; (4) the reach of project activities in the communities of focus; (5) the effectiveness of specific intervention components; (6) the cost and resource feasibility of specific intervention components; and (7) the impacts of the project and/or collaborative on the community outside of its specific impacts on asthma.

The evaluation plan will be additionally judged on the degree to which: (1) The project's stakeholders have been identified; (2) their perspectives and evaluation needs are reflected in the plan; and (3) the evaluation plan is cost and resource feasible.

c. Baseline comprehensive evaluation data collected, organized, and/or analyzed during the two-year planning phase with an emphasis on the following: (1) The proportion of baseline data needed for the proposed comprehensive evaluation already collected and analyzed; (2) the likelihood that the baseline data not yet collected will be collected and analyzed in the near future; (3) the quality of the data and the data analysis reports already collected and/or analyzed; and (4) the adequacy of the collected or soon-to-be collected data as a baseline for the proposed comprehensive evaluation.

d. Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? These include:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for the study participants includes the process of establishing partnerships with community(s) and recognition of mutual benefits.

4. Use of the Planning Period (10 percent).

The project will be judged on how well it made use of the two-year planning period (accountability). The following planning period activities should be considered in this overall evaluation of the activities undertaken to date. (*Of note:* Planning phase activities specifically related to the organization of the collaborative aspects of the project will not be included in this section. These activities will instead be incorporated into the score for section 2. "Project organization, staffing, active collaboration, and community support" above).

a. The development of a well-articulated, plausible vision for the project that meets the needs of stakeholders and collaborators.

b. The degree to which planning phase goals and objectives were clearly defined, improved upon (as needed), and achieved.

c. The degree to which piloting of project ideas took place and were well focused and well designed.

d. The degree to which the project staff and partners learned from these piloting experiences (*i.e.*, were they evaluated in a way meaningful to the project).

e. The quality and usefulness of project-related materials (educational materials, training manuals, resource banks, clinical referral lists, *etc.*) created, identified, and/or organized during the planning period.

f. The degree to which the staff/collaborators acquired clearly defined skills (*i.e.*, via training) that helped or will help in the creation and/or implementation of intervention strategies.

g. The degree to which baseline assessments (*i.e.*, community health assessments, asset mapping, focus groups, key informant interviews, survey data, utilization data, etc.) and/or process evaluation (of the planning period) were effectively utilized by project staff, partners, and other community stakeholders.

h. The degree to which the planning period was useful in developing a more accurate and richer understanding of the assets, attributes, and deficiencies of the communities of focus as well as the asthma-related activities/issues in these communities (outside of CAACP).

5. Budget (not scored)

The extent to which the budget is clearly detailed, justified, and appropriate for the activities proposed.

The applicant should include costs for one person to travel to Atlanta, GA to attend the sixth National Environmental Health Conference, December 3–5, 2003. Review the CDC/NCEH Web site for additional information concerning this conference: *http://www.cdc.gov/nceh/default.htm.*

6. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as the non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

Office of Management and Budget Clearance

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146, *Telephone:* (770) 488–2700.

For business management and budget assistance, contact: Mildred Garner, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, *Telephone:* (770) 488–2745, *e-mail address: Mgarner@cdc.gov.*

For program technical assistance, contact: Michael Friedman, M.D., Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS E–17, Atlanta, GA 30333, *Telephone Number:* (404) 498–1028, *e-mail address: mff7@cdc.gov.*

Dated: June 2, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14271 Filed 6–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Intervention Research Grants To Promote the Health of People With Disabilities, Program Announcement #03029

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Intervention Research Grants to Promote the Health of People with Disabilities, Program Announcement #03029.

Times and Dates: 9 a.m.–9:50 a.m., June 29, 2003. (Open). 9:50 a.m.–5:15 p.m., June 29,2003. (Closed). 8:30 a.m.–3 p.m., June 30, 2003. (Closed).

Place: Atlanta Airport Marriott, 4711 Best Friend Road, College Park, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #03029.

Contact Person for More Information: Hani Atrash, M.D., Associate Director for Program Development, National Center on Birth Defects and Developmental Disabilities, CDC, 4770 Buford Highway, MS–F34, Atlanta, GA 30341, Telephone (770) 488–7150.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 27, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–14272 Filed 6–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 7118–7123, dated February 12, 2003) is amended to reorganize the National Center for Health Statistics.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Division of Environmental Health Laboratory Sciences and insert the following:

Division of Laboratory Sciences (HCN8). (1) Develops and maintains a national laboratory response capability for applying state-of-the-art biomonitoring technology to improve the detection, prevention, and public health management of chemical terrorism emergencies and emergencies resulting from human exposure to toxic chemicals; (2) develops and applies biomonitoring methods for environmental chemicals that identify chemicals to which people are exposed and measures individual exposure levels; (3) applies biomonitoring measurements to determine the exposure of the general U.S. population to selected environmental chemicals, to assess the exposure of special population groups that are known or suspected to be at high-risk of excessive exposure, and study to the relationship between level of exposure and adverse health effects; (4) provides technical assistance, technology transfer, reference laboratory measurements, laboratory standardization programs, and external quality assurance to State and local public health laboratories and health officials; Federal agencies; international organizations; academic, international, and private laboratories; and professional organizations to improve laboratory science and laboratory capacity in the fields of environmental health and selected chronic diseases; (5) develops and validates advanced laboratory technology to assess nutritional and genetic risk factors for environmental disease and selected chronic diseases; and (6) collaborates with other CDC organizations; Federal, State, and local agencies; and private and professional organizations to investigate new or emerging health problems known to potentially related to exposure to environmental chemicals.

Clinical Chemistry Branch (HCN85). (1) Provides statistical consultation in areas of research, study design, analysis, reporting, and quality control development for laboratory investigations and environmental health studies to NCEH staff, other Federal agencies, State and local public health departments, and other national and international organizations; (2) provides system analysis, computer programming and interfacing, technical support, and application of computerization and other advanced technology to the resolution of laboratory problems and data analysis, management, reporting, and presentation; (3) maintains reference methods for epidemiologic studies and clinical trials which provide the basis for public health strategies to reduce morbidity and mortality due to cardiovascular disease. In this capacity, serves as the WHO Collaborating Center for Reference and Research in Blood Lipids; (4) develops, evaluates, and standardizes analytical methods for the measurement of biochemical markers for assessing disease status and risk for selected chronic diseases; (5) designs and implements collaborative programs with appropriate agencies or professional groups to effect technology transfer, improvement of proficiency and quality, and the standardization of analytical performance among health laboratories involved in clinical and epidemiologic investigations; (6) provides technical assistance and guidance to governmental agencies, professional societies, and the general clinical laboratory community on pre-analytical issues, measurement problems, study design, and reference and quality control material preparation, storage, and handling; and (7) develops, prepares, and distributes purified and biological reference materials used for standardization programs, quality control assessment, and calibration of analytical methods in research.

Emergency Response and Air Toxicants Branch (HCN88). (1) Develops and maintains analytical methods to measure, in human specimens, toxic substances that are known or potential agents for use in chemical terrorism; (2) applies these measurements in response to chemical terrorism emergencies and, as part of a coordinated Federal response, deploys a rapid response laboratory team to assist in obtaining human specimens for analysis; (3) transfers technology, provides training, and provides technical assistance for measurement of chemical agents in human specimens to a network of laboratories that provide additional capacity for responding to chemical terrorism; (4) provides review and expert consultation to Federal, state, local and international governments and health organizations on assessing and interpreting biomonitoring measurements of chemical agents likely to be used in terrorism; (5) for toxic substances of public health concern but unlikely to be involved in chemical terrorism, transfers biomonitoring technology, provides biomonitoring training, and provides technical assistance in biomonitoring to state laboratories, including methods for analyzing both inorganic and organic toxic substances in human specimens; (6) develops and maintains analytical methods to measure organic toxic substances that contaminate air (air toxicants) in human specimens and applies these analytical methods to assess human exposures to these chemicals for many purposes, including surveillance of levels in the population, epidemiological studies, and emergency response investigations; and (7) develops and maintains analytical methods to assess human exposure to tobacco smoke and its chemical constituents and applies these methods to epidemiologic studies of tobacco smoke exposure and related disease.

Inorganic Toxicants and Nutrition Branch (HCN84). (1) Develops and maintains analytical methods to measure trace-essential and toxic elements in human specimens; (2) applies these analytical methods to assess human exposures to these chemicals for many purposes, including surveillance of levels in the population, epidemiological studies, and emergency response investigations; (3) provides training, guidance, and assistance to State and local governments, and domestic and international laboratories in the development, maintenance and technology transfer of analytical capability for measurement of trace-essential and toxic elements in specimens from humans, animals, and the environment; (4) develops and maintains analytical capability and expertise in the measurement and interpretation of physiologic levels of micronutrients such as the vitamins, essential elements, and other dietary substances or their metabolites (as biomarkers); (5) provides technical assistance to national, state, international and local investigations, surveys, and clinical studies of the nutritional status, prevalence, risk factors, and treatment of chronic diseases; and (6) develops, maintains, and distributes, as appropriate, standards, reference materials, protocols, and standardization programs to assist state, international and other laboratories in the transfer of laboratory technology and in establishing and maintaining quality control and calibration of analytical methods for essential and toxic elements, nutrients, and markers of physiologic damage.

Molecular Biology Branch (HCN87). (1) Collaborates in the development and implementation of large, population-based, genetic repositories comprising specimens from nationally representative samples of healthy people, patients, unaffected family members, or unrelated control subjects; (2) develops and evaluates laboratory methods in genetics and develops, evaluates, and standardizes auto-antibody measurements; (3) uses population-based and disease-based repositories to study genetic risk factors for disease and gene-environment interactions; (4) provides advice and technical assistance to state and local health departments, other Federal agencies, national and international organizations, and academic centers on laboratory measurements in genetics; and (5) develops, maintains, and distributes appropriate standards, reference materials, and protocols for diabetes auto-antibody measurement.

Newborn Screening Branch (HCN82). (1) Provides technical consultation and assistance concerning quality assurance and procedural issues to State Public Health laboratories, international laboratories, and manufacturers of diagnostic products involved in performing newborn screening tests; (2) develops and maintains analytical methods to measure substances in dried-blood spots (DBSs), and produces certified DBS quality control and reference materials for newborn screening tests; (3) maintains a DBS proficiency testing program for newborn screening programs worldwide for inborn errors of metabolism, hemoglobinopathies, and other newborn disorders; (4) provides technical and administrative support to public health laboratory projects for early detection of autoimmune, immuno-proliferative, and immuno-deficiency diseases; and (5) evaluates and refines emerging laboratory methods for micro- and nano-detection to public health applications and population-based screening for these immune disorders.

Organic Analytical Toxicology Branch (HCN86). (1) Develops and maintains analytical methods to measure selected synthetic and naturally occurring organic chemicals, their metabolites, and reaction products (adducts) in human specimens; (2) applies these analytical methods to assess human exposures to these chemicals for many purposes, including surveillance of levels in the population, epidemiological studies, and emergency response investigations; (3) aids in transferring these methods within Division laboratories and to state, local and other public health laboratories; (4) develops and prepares various matrix-based quality control materials for use in such analyses; and (5) provides review, expert consultation, and original scientific publications/information to Federal, state, local, and international governments and health organizations on topics related to human exposure assessment, organic analytical methodology, high technology analytical instrumentation, preparation and analysis of biological specimens, quality control procedures, laboratory safety, and medical interpretation of laboratory findings.

Dated: May 15, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–14223 Filed 6–5–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Board of Scientific Advisors, June 26, 2003, 8 a.m. to June 27, 2003, 6 p.m., National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892 which was published in the **Federal Register** on May 21, 2003, 68 FR 27837.

This meeting is amended to change the closing time on 06/27/03 to 1 p.m. The meeting is open to the public.

Dated: May 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14261 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of of Committee: Board of Scientific Counselors, National Cancer Institute Subcommittee 2—Basic Sciences.

Date: July 14–15, 2003.

Time: 7 p.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Florence E. Farber, PhD, Health Scientific Administrator, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, (301)–496–7628, *ff6p@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14262 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: August 8, 2003.

Time: 7:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD, Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14265 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Family Management of Childhood Diabetes—Data Coordinating Centers.

Date: June 26, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14264 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Somatic Treatment.

Date: June 19, 2003.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Eating Disorders.

Date: July 8, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Statistics SEP.

Date: July 31, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: May 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14266 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Grant Application Reviews.

Date: June 16, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, Willco Bldg., Room 409, 6000 Executive Blvd., Rockville, MD, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14267 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee.

Date: June 25–26, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14268 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee (RAC).

Date: June 18, 2003.

Open: 8:30 a.m. to 5 p.m.

Agenda: In addition to protocol review and Data Management, the NIH RAC will: Review presentations from the 2003 annual meeting of the American Society of Gene Therapy relevant to retroviral vectors; discuss the Recommendations of the United Kingdom Gene Therapy Advisory Committee and Committee of Safety of Medicine on Retroviruses; discuss future presentations to the RAC on retrovtral gene transfer; and discuss an in-depth assessment regarding containment level requirements for Modified Vaccinia Ankara Pox viral vectors.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Name of Committee: Recombinant DNA Advisory Committee (RAC).

Date: June 19, 2003.

Open: 8:30 a.m. to 12 p.m.

Agenda: A presentation on preliminary results of an NIH-funded research project on informed consent and review and discuss the RAC Informed Consent Working Group draft guidance document.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact: Stephen Rose, PhD, Executive Secretary, Recombinant DNA Advisory Committee, Office of Biotechnology Activities, Rockledge 1, Room 750, Bethesda, MD 20892, (301) 396–9839.

Information is also available on the Institute's/Center's Home page: *www4.od.nih.gov/oba*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the pubic interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual programs listed in the Catalog of Federal Domestic Assistance are affected (Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14263 Filed 6–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Cooperative Agreement for National Consumer and Consumer Supporter Self-Help Technical Assistance Centers.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.fedgrants.gov.*

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, Cooperative Agreement for National Consumer and Consumer Supporter Self-Help Technical Assistance Centers, Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Cooperative Agreement for National Consumer and Consumer Supporter Self-Help Technical Assistance Centers-Short Title: Self-Help Technical Assistance Centers.

Funding Opportunity Number: SM 03–008.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 520A of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Instrument: CA.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is accepting applications for Fiscal Year (FY) 2003 cooperative agreements to support five National Consumer and Consumer Supporter Self-Help Technical Assistance (TA) Centers. The purpose of these technical assistance centers is to assist with the improvement of State and local level mental health service systems by providing consumers, as well as supporters, service providers, and the general public, with necessary skills to foster self-help/self-management approaches.

Eligible Applicants: In accordance with Congressional authorization, applications may be submitted by public or private domestic, nonprofit entities, including faith-based organizations, which meet the criteria of consumer or consumer supporter organizations as defined in the announcement. Applicant organizations must have been in operation for a minimum of one year, and key personnel supporting the grant must have been employed by the organization for at least one year.

Due Date for Applications: August 7, 2003.

Estimated Funding Available/Number of Awards: It is expected that approximately $1,865,000 will be available for 5 awards in FY 2003 for three national consumer self-help technical assistance centers and two national consumer-supporter self-help technical assistance centers. An additional $122,000 will be competitively awarded to one of the three successful national consumer self-help technical assistance centers to facilitate the Alternatives Conference. Awards may be requested for a period of 1 year. Each applicant may apply for up to $373,000 for direct and indirect costs. Applications with proposed budgets that exceed $373,000 will be returned without review.

Is Cost Sharing Required: No.

Period of Support: 1 year.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from the SAMHSA/CMHS National Mental Health Information Center at 800–789–2647. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on 'Grant Opportunities').

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Risa S. Fox, M.S., Public Health Advisor, SAMHSA/CMHS, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857; (301) 443–3653; E-mail: *rfox@samhsa.gov.*

Dated: June 3, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–14349 Filed 6–5–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–30]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Construction Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0027) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Construction Report.

OMB Approval Number: 2577–0027.

Form Numbers: HUD–5378.

Description of the Need for the Information and Its Proposed Use: PHAs are responsible for contract administration during project development and for the hiring of architects or other persons licensed under the State law to assist and to advise them. Contract administration includes the submission of necessary information to the PHA by that advisor to monitor the status of construction.

Respondents: State, Local or Tribal Government, business or other for-profit.

Frequency of Submission: Semi-monthly.

Reporting Burden: Number of Respondents 158, Annual Responses 24 × Hours per Response 0.25 = Burden Hours 948.

Total Estimated Burden Hours: 948.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14224 Filed 6–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–31]

Notice of Submission of Proposed Information Collection to OMB: Family Self-Sufficiency Program (FSS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0178) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also Lists the Following Information:

Title of Proposal: Family Self-Sufficiency Program (FSS).

OMB Approval Number: 2577–0178.

Form Numbers: HUD–52650, HUD–52652.

Description of the Need for the Information and its Proposed Use: The Family Self-Sufficiency Program, which was established in the National Affordable Housing Act of 1990, promotes the development of local strategies that coordinate the use of public housing assistance and assistance under the Section 8 rental certificate and voucher programs (now known as the Housing Choice Voucher Program) with public and private resources to enable eligible families to achieve economic independence and self-sufficiency. Housing agencies enter into a Contract of Participation with each eligible family that opts to participate in the program; consult with local officials to develop an Action Plan; and report annually to HUD on implementation of the FSS program. Housing agencies submit an initial program plan and report annually on progress to HUD.

Respondents: Individuals or households, public housing agencies, State or local government.

Frequency of Submission: Annually, On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	750	45,800		0.8		36,500

Total Estimated Burden Hours: 36,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 31, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14225 Filed 6–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–23]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, address to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Ms. Teresa Sheinberg, U.S. Coast Guard, Room 6109, 2100 Second St., SW., Washington, DC 20593–0001; (202) 267–6142; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, Washington, DC 20585; (202) 586–4548; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 28, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 6/6/03

Suitable/Available Properties

Buildings (by State)

California

Calexico Border Patrol Station
813 Andrade Ave.
Calexico Co: CA 92231–
Landholding Agency: GSA
Property Number: 54200320012
Status: Excess
Comment: 5600 sq. ft. main bldg., and 6845 sq. ft. parking/garage structure, need repairs
GSA Number: 9–J–CA–1539

Bell Federal Service Center
5600 Rickenbacker Road
Bell Co: Los Angeles CA 90201–
Landholding Agency: GSA
Property Number: 54200320009
Status: Excess
Comment: Correction/Republished: 9 bldgs., various sq. ft., need repair, portion occupied, restricted access, presence of asbestos/lead paint/PCBs, most recent use—warehouse/office
GSA Number: 9–G–CA–1575

Unsuitable Properties

Buildings (by State)

California

Bldg. 141MG
Naval Recreation Center
Naval Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200320054
Status: Excess
Reason: Extensive deterioration

Florida

8 Bldgs.
Naval Air Station
Milton Co: FL 32570–6001
Location: 1440, 1440A, 1437, 1444, 1444A, 1444G, 2927, 2886
Landholding Agency: Navy
Property Number: 77200320055
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Hawaii

Change Room
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320059
Status: Excess
Reasons: Not accessible by road; Within 2000 ft. of flammable or explosive material

Electric Generator Bldg.
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320060
Status: Excess
Reasons: Not accessible by road; Within 2000 ft. of flammable or explosive material

Compressor Shed
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320061
Status: Excess
Reasons: Not accessible by road; Within 2000 ft. of flammable or explosive material

System Shed
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320062
Status: Excess
Reasons: Not accessible by road; Within 2000 ft. of flammable or explosive material

Idaho

Bldg. TAN 616
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200320007
Status: Excess
Reason: contamination

Illinois

Bldgs. T60, 61, 86, 87
Fermi National Accelerator Laboratory
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200329009
Status: Excess
Reason: Extensive deterioration

Maryland

Bldg. 503A
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200320056
Status: Excess
Reason: Extensive deterioration

Texas

6 Bldgs.
Pantex Paint
Amarillo Co: Carson TX 79120–
Location: 12–008, 12–R–008, 12–059, 12–059E, 12–059V, 12–R–059
Landholding Agency: Energy
Property Number: 41200320009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 12–017E, 12–019E
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Virginia

Bldg. NH–42
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200320057
Status: Excess
Reason: Extensive deterioration

Bldgs. SP–271, SP–376
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200320058
Status: Excess
Reason: Extensive deterioration

Bldg. CG–02
CAMSLANT
Pungo Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200320001
Status: Underutilized
Reason: Secured Area

Bldg. CG–05
CAMSLANT
Virginia Beach Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200320002
Status: Underutilized
Reason: Secured Area

[FR Doc. 03–13934 Filed 6–5–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: This notice is a solicitation on behalf of the Secretary of the Interior for nominations to fill three vacancies on the Native American Graves Protection and Repatriation Review Committee.

DATES: Postmark or hand-delivery deadline: August 5, 2003.

ADDRESSES: 1. Via U.S. Mail: Address nominations to Mr. John Robbins, Designated Federal Official, NAGPRA Review Committee, National Park Service, 1849 C Street NW (2253), Washington, DC 20240. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to U.S. Government offices, a copy of each mailed nomination should also be faxed to (202) 371-5197.

2. Via commercial delivery: Address nominations to Mr. John Robbins, Designated Federal Official, NAGPRA Review Committee, National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005.

3. Via hand delivery: Address nominations to Mr. John Robbins, Designated Federal Official, NAGPRA Review Committee, National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Martha Graham, National NAGPRA, 1849 C Street NW (2253), Washington, DC 20240, telephone (202) 354-2202, e-mail martha_graham@nps.gov.

SUPPLEMENTARY INFORMATION:

General Information

1. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq.

2. The Review Committee is responsible for—

a. monitoring the NAGPRA inventory and identification process;

b. reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

c. facilitating the resolution of disputes;

d. compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

e. consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;

f. consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

g. making recommendations regarding future care of repatriated cultural items.

3. Seven members comprise the Review Committee. All members are appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee.

a. Three members are appointed from nominations by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders to represent the interests of Indian tribes, Native Hawaiian organizations, and traditional Native American religions. At least two of these members shall be traditional Native American religious leaders.

b. Three members are appointed from nominations submitted by national museum organizations and scientific organizations to represent the interests of such organizations.

c. One member is appointed from a list of persons proposed by all of the other members to represent the interests of the general public.

4. Appointment terms: Per the Review Committee's current charter, new members are appointed for 4-year terms and incumbent members may be reappointed for 2-year terms.

5. The Review Committee's work is completed during public meetings. The Review Committee normally meets two times per year, and each meeting is normally 2½ days. The next Review Committee meeting is tentatively scheduled in Albuquerque, NM, in November 2003.

6. Compensation: Review Committee members are compensated for their participation in Review Committee meetings.

7. Reimbursement: Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings.

8. Additional information regarding the Review Committee, including the Review Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA program Website, www.cr.nps.gov/nagpra (click "Review Committee" in the menu on the left).

Solicitation of Nominations: The Secretary of the Interior is soliciting nominations to fill three Review Committee vacancies, as follows -

1. One vacancy will be filled by a traditional Native American religious leader nominated by Indian tribes, Native Hawaiian organizations, and/or traditional Native American religious leaders.

2. Two vacancies will be filled by persons nominated by national museum organizations and scientific organizations.

Required Nomination Information: Nominations must include the following information; nominations that do not include all of the following information will be considered nonresponsive to this solicitation.

1. Nominations by tribes, or by national museum or scientific organizations: Nominations must be submitted on official tribal or organization letterhead with the original signature of the nominator, and the nominator's daytime telephone number. Nominators must be the Indian tribe official or organization leader authorized by their tribe(s) or organization(s) to submit nominations in response to this solicitation, and the nomination must include a statement that the nominator is so authorized.

2. Nominations by traditional Native American religious leaders: Nominations must include a statement that the nominator is a traditional Native American religious leader and the nominator's daytime telephone number.

3. Information about nominees: All nominations must include the following information—

a. Nominee's name, address, and daytime telephone number (required), and e-mail address (optional).

b. Nominee's resume or brief biography. The resume or biography should emphasize the nominee's NAGPRA experience.

c. Nominations of traditional Native American religious leaders must include a statement by the nominator that the nominee is a traditional Native American religious leader.

Definitions of Some Terms Used in this Notice

1. Indian tribe: Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (25 U.S.C. 3001 (7))

2. Native Hawaiian organization: Any organization that—

a. serves and represents the interests of Native Hawaiians,—

b. has as a primary and stated purpose the provision of services to Native Hawaiians, and

c. has expertise in Native Hawaiian affairs, and

d. shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O'Hawai'i Nei. (25 U.S.C. 3001 (11))

3. Indian tribe official: The principal leader of an Indian tribe or Native Hawaiian organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to NAGPRA. (43 CFR 10.2 (b)(4))

4. Traditional Native American religious leader: A person who is recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe's or organization's cultural, ceremonial, or religious practices. (43 CFR 10.2 (d)(3))

Dated: May 6, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–14313 Filed 6–5–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability; Draft Environmental Impact Statement for a Proposed Land Exchange Between the National Park Service and the Eastern Band of Cherokee Indians at Great Smoky Mountains National Park and the Blue Ridge Parkway

AGENCY: National Park Service (NPS).
ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by Director's Order 12, the National Park Service (NPS) announces the availability of a draft environmental impact statement (DEIS) for a proposed land exchange between the NPS and the Eastern Band of Cherokee Indians (EBCI). The Department of the Interior waived the NPS policy regarding the selection of a DEIS preferred alternative. This notice also announces the locations of public hearings for the purpose of receiving comments on the draft document.

The DEIS analyzes two action alternatives and one no-action alternative for determining the feasibility of the proposed land exchange. The two action alternatives incorporate various management prescriptions to ensure resource protection and quality visitor experience conditions. The no-action alternative would continue current management practices and policies into the future.

Under the 168-acre exchange alternative, the Ravensford site (166 acres located within Great Smokey Mountains National Park and the two acres located within the Blue Ridge Parkway) would be exchanged for the 218-acre Waterrock Knob site. The Ravensford site would become part of the Qualla Boundary and the Waterrock Knob site would become part of the Blue Ridge Parkway. The EBCI would construct a three-school complex on the Ravensford site and would retain restricted use of the entire site. Restricted use would be in the form of deed restrictions on future development and a Government to Government Conservation/Education Agreement on future conservation/educational measures for archaeological, cultural, and natural resources material.

Travel to the Big Cove Community would no longer be jurisdictionally separated from the remainder of the Qualla Boundary. This alternative would place no restriction on the use of the Waterrock Knob site by the Blue Ridge Parkway; however, with the exception of possible future development of nature trails, the site would be expected to remain in its natural state.

Under the 143-acre exchange alternative, the Ravensford site would be exchanged for the 218-acre Waterrock Knob site. This alternative would be similar to the 168-acre exchange, except 25 acres would remain within Great Smoky Mountains National Park at the Ravensford site in order to ensure that certain cultural and natural resources remain under the control of the NPS. Areas of the site not included in the proposed exchange under this alternative are open field areas to the northwest of the Big Cove Road bridge, the floodplain forest located adjacent to the Oconaluftee River, and nearly all of the wetland area located east of Big Cove Road. The open field area contains important cultural resources, while the floodplain forest and wetland are considered important natural areas. The remaining acreage of the Ravensford site would be transferred to the EBCI for development of the three-school campus. This alternative would also reconnect the EBCI jurisdictional authority along the Big Cove Road with the remaining Qualla Boundary. With respect to the Waterrock Knob site, this alternative would be identical to the 168-acre alternative.

DATES: The DEIS will be available for public review from June 13, 2003, through August 15, 2003. Public meetings will be held on July 8, 9, and 10, 2003. Representatives of the NPS will be available at the public hearings to receive comments, concerns, and other input from the public related to the DEIS. Specific information about public meetings follows:

Dates	Times	Locations
July 8	6–10 PM	2431 Center Drive, Hollingworth Auditorium, Knoxville, TN 37996.
July 9	6–10 PM	Milepost 382 Hemphill Road, Blue Ridge Parkway Folk Art Center, Asheville, NC 28803.
July 10	6–10 PM	Cherokee Elementary School, Cherokee, NC.

ADDRESSES: Comments on the DEIS may be submitted by mail to John Yancy, Associate Regional Director, Natural Resources Stewardship & Science, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, GA 30303. Comments may also be submitted via toll free phone: (888) 820–3644; toll free fax: (888) 820–3643; or via email at *NPSlandexchange@saic.com*. A very limited number of printed copies of the DEIS are available upon request from the above address. A copy can also be requested on CD. The complete text and an executive summary of the DEIS is available for review or download on the Internet at *http://www.npslandexchange.com/*.

Copies of the DEIS will also be available for review at the following locations:

Anna Porter Public Library, 207 Cherokee Orchard Road, Gatlinburg, TN 37738

Blue Ridge Parkway Headquarters, 199 Hemphill Knob Road, Asheville, NC 28803
John C. Hodges Library, Government Documents, University of Tennessee, 1015 Volunteer Blvd., Knoxville, TN 37996
Great Smoky Mountains National Park, Oconaluftee Visitor Center, 1194 Newfound Gap Highway, Cherokee, NC 28719
Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738
Great Smoky Mountains National Park, Sugarlands Visitor Center, 107 Park Headquarters Road, Gatlinburg, TN 37738
Qualla Boundary Public Library, 810 Ocquoni Road, Room 151, Cherokee, NC 28719
Ramsey Library, CPO# 1500, University of North Carolina—Asheville, NC 28804.

SUPPLEMENTARY INFORMATION: The proposed action involves the exchange of land known as the Ravensford site that is located on the North Carolina side of the Great Smoky Mountains National Park and Blue Ridge Parkway for land of equal or greater monetary value that would be consolidated within a unit of the National Park Service in North Carolina as allowed under the Land and Water Conservation Act. Congress authorized the NPS to consider the feasibility of a land between the Great Smoky Mountains National Park and Blue Ridge Parkway and the Eastern Band of the Cherokee Indians. The tribal purpose for securing this land is for new schools construction. The exchange would also reestablish the territorial jurisdiction along Big Cove Road to the Qualla Boundary (also known as the EBCI Reservation).

Under the proposed action, land that is currently part of an area between the Great Smoky Mountains National Park and Blue Ridge Parkway known as the Ravensford site would be exchanged for a 218-acre site adjacent to the Blue Ridge Parkway known as the Waterrock Knob site. In addition to the no-action alternative, two exchange alternatives were developed and are analyzed in the DEIS. Environmental impacts were analyzed in this DEIS for the following resources areas: Land use, infrastructure, air quality and noise, visual resources, geology and soils, water resources, ecological resources, cultural resources, socioeconomic, waste management, and environmental justice. Direct, indirect, and cumulative impacts along with associated mitigation measures to reduce the potential for impacts were evaluated and are described for each resource area.

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for this environmental impact statement is William W. Schenk, Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: May 6, 2003.

William W. Schenk,

Regional Director, Southeast Region.

[FR Doc. 03–14316 Filed 6–5–03; 8:45 am]

BILLING CODE 4310–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final General Management Plan and Final Environmental Impact Statement for Wilson's Creek National Battlefield, MO

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of the final general management plan and environmental impact (GMP/EIS) for Wilson's Creek National Battlefield, Missouri (WICR). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

DATES: The required no-action period on this final GMP/EIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the final GMP/EIS in the **Federal Register**.

ADDRESSES: Copies of the Final GMP/EIS are available from the Acting Superintendent, Wilson's Creek National Battlefield, 6424 West Farm Road 182, Republic, Missouri 65738–9514. The phone number is 417–732–2662 and the fax number is 417–732–1167.

SUPPLEMENTARY INFORMATION: The purpose of the general management plan is to set forth the basic management philosophy for WICR and to provide the strategies for addressing issues and achieving identified management objectives. The final GMP/EIS describes and analyzes the environmental impacts of two action alternatives. A no action alternative is also evaluated. The draft GMP/EIS for WICR was released to the public on June 21, 2002. The public comment period ended August 20, 2002.

Although 84 reviewers submitted written comments on the draft GMP/EIS, no substantive comments were received. Of those responding, 43, or slightly over 50 percent, expressed a preference for a particular alternative. Of that number, 36 reviewers, or nearly 90 percent, expressed their support for alternative B, Wilson's Creek Battlefield Commemoration, the preferred alternative. Many of the remaining reviewers expressed support for enhancement of the battlefield landscape, and the expanded commemoration and interpretation of the Battle of Wilson's Creek. However, many also expressed concern that future park management would eliminate or severely limit recreational opportunities. Recreational use will continue to be allowed but will be managed so as not to conflict with the core mission of the park or the primary visitor experience.

The responsible official is Mr. Ernest Quintana, Acting Midwest Regional Director, NPS.

Dated: April 18, 2003.

Ernest Quintana,

Acting Regional Director, Midwest Region.

[FR Doc. 03–14314 Filed 6–5–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Saturday, September 6, 2003, at 9 a.m.

ADDRESS: Foster Armstrong House, Montague NJ 07827.

The agenda will include reports from Citizen Advisory Commission members including setting dates and times for future meetings, and other topics as deemed necessary by the members. Acting Superintendent Doyle Nelson will give a report on various park issues, including an update on the park's historic leasing program. The agenda is set up to invite the public to bring issues of interest before the Commission. These issues typically include treatment of historic buildings within the recreation area, monitoring of waste water facilities outside the recreation area but empyting into the Delaware River, and wildlife management issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: April 9, 2003.

Doyle Nelson,

Acting Superintendent.

[FR Doc. 03–14315 Filed 6–5–03; 8:45 am]

BILLING CODE 4310–MY–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 17, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 23, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ILLINOIS

Pike County

Shastid, John, House, 326 East Jefferson, Pittsfield, 03000579.

MARYLAND

Baltimore Independent City

Baltimore City College, 3320 The Alameda, Baltimore (Independent City), 03000573.

MASSACHUSETTS

Norfolk County

Blue Hills Parkway, (Metropolitan Park System of Greater Boston MPS) Blue Hills Parkway, Boston, 03000574.
Quincy Shore Drive, (Metropolitan Park System of Greater Boston MPS) Quincy Shore Drive, Quincy, 03000575.

MINNESOTA

Meeker County

Pipe Lake Fort, Address Restricted, Cosmos, 03000576.

NEW YORK

New York County

69th Street Transfer Bridge, Hudson River W of the West Side Highway bet. W 66th and 70th Sts., New York, 03000577.

WISCONSIN

Dane County

American Tobacco Company Warehouses Complex, 651 W. Doty St., Madison, 03000580.

Winnebago County

Riverside Cemetery, 1901 Algoma Blvd., Oshkosh, 03000578.

WYOMING

Park County

UXU Ranch, (Dude Ranches along the Yellowstone Highway in the Shoshone National Forest) 1710 N. Fork Highway, Shoshone National Forest, Wapiti, 03000581.

[FR Doc. 03–14317 Filed 6–5–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 10, 2003.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 23, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Juneau Borough—Census Area

Point Retreat Light Station, (Light Stations of the United States MPS), on Mansfield Peninsula at N. end of Admiralty Island near Jct. of Lynn Canal and Stephens Passage, Juneau, 03000529.

ARIZONA

Maricopa County

Robson Historic District, Roughly bounded by Country Club Dr., Robson and 2nd Sts., Mesa, 03000530.
West Second Street Historic District (Boundary Revision), Roughly bounded by Robson St., University Dr. and MacDonald St., Mesa, 03000531.

ARKANSAS

Garland County

Pleasant Street Historic District, Roughly bounded by Malvern Av., Pleasant, Church, Gulpha, Garden, Grove and Kirk Sts., Hot Springs, 03000532.

CALIFORNIA

Riverside County

Galleano Winery, 4231 Wineville Rd., Mira Loma, 03000533.

GEORGIA

Coweta County

Powell Chapel School, 620 Old Atlanta Hwy., Newnan, 03000535.

Fulton County

Berkeley Park Historic District, Roughly bounded by Bellemeade Rd., Northside Dr., Atlanta Waterworks and Howell Mill Rd., Atlanta, 03000536.

Habersham County

Pyle—Davis House, 202 Massachusetts Blvd., Demorest, 03000537.

ILLINOIS

Cook County

Produce Terminal Cold Storage Company Building, 1550 South Blue Island Av., Chicago, 03000538.

INDIANA

Carroll County

Carrollton Bridge, Carrollton Rd. across Wabash R., Delphi, 03000539.

Cinton County

Christian Ridge Historic District, roughly bounded by Prairie Cr., Young & E. Washington Sts., & Harvard Terr., Frankfort, 03000540.

Jackson County

Southern Indiana Railroad Freighthouse, 105 N. Broadway, Seymour, 03000541.

Marion County

Nicholson—Rand House, 5010 W. Southport Rd., Indianapolis, 03000542.

Montgomery County

Crawfordsville High School, (Indiana's Public Common and High Schools MPS) 201 E. Jefferson St., Crawfordsville, 03000543.

Newton County

Scott—Lucas House, 514 S. Main St., Morocco, 03000544.

Posey County

Mount Vernon Downtown Historic District, Roughly bounded by Ohio R., 6th & Walnut Sts. & College Av., Mount Vernon, 03000545.

Pulaski County

Pulaski County Bridge No.31, CR 1175 W, Medaryville, 03000546.

Scott County

Scottsburg Courthouse Square Historic District, Roughly bounded by 1st., Kerton, Railroad & Wardell Sts., Scottsburg, 03000547

Tippecanoe County

Big Four Depot, 200 N. 2nd St. Lafayette, 03000548.

MASSACHUSETTS

Worcester County

Central Street Historic District, Roughly bounded by Central, Quaker, West, Chesley, Bow, Prospect & Fletcher Sts., Millville, 03000550.

East Main—Cherry Street Historic District (Boundary Increase), Park Street, Spencer, 03000551.

Mendon Center Historic District, Roughly bounded by Main, Hastings, Maple, North, Washington & George Sts., Mendon, 03000552.

MISSISSIPPI

Amite County

Bethany Presbyterian Church, Jct. MS 48 & Perry Rd., Centreville, 03000553.

De Soto County

Robertson—Yates House, 5000 Robertson Gin Rd., Hernando, 03090554.

N. MARIANA ISLANDS

Saipan Municipality

Hachiman Jinja, Lot nos. H 300–11 & H 300–4, Kannat Taddong Papago, 03000549.

OHIO

Lucas County

Toledo Traction Company Power Station, 300 Water St., Toledo, 03000555.

SOUTH DAKOTA

Moody County

Egan Park, (Federal Relief Construction in South Dakota MPS) 2nd St., Egan, 03000556.

TEXAS

El Paso County

House at 912 Magoffin Avenue, 912 Magoffin Ave, El Paso, 03000557.

Johnson County

Joiner—Long House, 604 Prairie Av., Cleburne, 03000558.

Smith County

Azalea Residential Historic District, (Tyler, Texas MPS) Roughly bounded by S. Robinson Av., Sunnybrook Dr., Fair Ln., Old Bullard Rd., College Av., W. 4th St., Highland Av., Tyler, 03000559.

Travis County

Deep Eddy Bathing Beach, 301 Quarry St., Austin, 03000560.

VIRGINIA

Arlington County

Ashton Heights Historic District, Roughly bounded by Wilson Bvd., N. Irving St., Arlington Bvd., N. Oxford St., N. Piedmont & N. Oakland Sts., Arlington, 03000561.

Chesapeake Independent City

Centreville—Fentress Historic District, roughly bounded by Fentress Rd., Centerville Tnpk., Blue Ridge Rd., Whittamore Rd., Chesapeake, 03000562.

Oaklette Historic District, roughly bounded by Indian River Rd., Oaklette, Webster, St. Lawrence, & Seneca Sts., Chesapeake, 03000563.

Sunray Agricultural Historic District, Roughly bounded by Great Dismal Swamp & I 64, Chesapeake, 03000564.

Floyd County

Phlegar Farm, Off VA 615, Floyd, 03000565.

Frederick County

Middletown Historic District, bounded by Main St., Church St., Senseney Av., 1st, 4th, 6th & 3rd Sts., Middletown, 03000566.

Nelson County

Lovingston High School, 8445 Thomas Nelson Hwy., Lovingston, 03000567.

Newport News Independent City

Lee's Mill Earthworks, 280 Rivers Ridge Cir., Newport News, 03000568.

Northampton County

Cape Charles Light Station, (Light Stations of the United States MPS) Smith Island, Kiptopke, 03000569.

Prince George County

Prince Georges County Courthouse Historic District, 6400 Courthouse Rd., Prince George, 03000570.

Suffolk Independent City

Bay Point Farm, 1400 Sleepy Hole Rd., Suffolk, 03000571.

York County

Sessions—Pope—Sheild House, 600 Main St., Yorktown, 03000572.

To assist with the preservation of this resource, the comment period has been reduced to three (3) days:

DISTRICT OF COLUMBIA

District of Columbia

Olympia Apartments (Apartment Buildings in Washington, DC, MPS) 1368 Euclid St., NW., Washington, 03000534.

[FR Doc. 03–14318 Filed 6–5–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[ATF Notice No. 1; ATF O 1120.2; Docket No. 2003–39]

Delegation Order—Authority To Make Determinations on Notices of Clearances, Letters of Clearance, Letters of Denial, and Appeals of Letters of Denial Under 18 U.S.C. 843(h)

To: All ATF Offices

1. *Purpose.* This order delegates certain authorities of the Director to subordinate Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) officials to make determinations on Notices of Clearance, Letters of Clearance, Letters of Denial, and Appeals of Letters of Denial under 18 U.S.C. 843(h) for responsible persons and employee possessors listed on explosives licenses and permits.

2. *Delegation.* Under the authority vested in the Director, ATF, by Department of Justice Final Rule (AG Order No. 2650–2003) as published in the **Federal Register** on January 31, 2003, and by title 28 CFR 0.130 through 0.131, the Chief of the National Explosives Licensing Center is to make determinations relating to Notices of Clearance and Letters of Clearance, and the Chief of the Brady Operations Branch is to make determinations relating to letters of denial and appeals of letters of denial.

3. *Questions.* Questions regarding this order should be addressed to the Firearms, Explosives and Arson Services Division at (202) 927–8300.

Signed: May 5, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–14338 Filed 6–5–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[SGA 03–13]

Customized Employment Grants Initiative

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of availability of funds; solicitation for grant applications (SGA 03–13).

This notice contains all of the necessary information and forms needed to apply for grant funding. (SGA 03–13)

SUMMARY: The U.S. Department of Labor (DOL or the Department), Office of Disability Employment Policy (ODEP) announces the availability of $2.5 million to award up to five competitive grants ranging from approximately $500,000 to $750,000 for strategic planning and implementation activities designed to improve the employment and career advancement of people with disabilities through enhanced availability and provision of customized employment services through the One-Stop delivery system established under the Workforce Investment Act of 1998 (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*).

The purpose of this Customized Employment Grant Initiative, begun by ODEP in FY'01 and continued in FY'02, is to provide funds to selected Local Workforce Investment Boards (Local Boards), or, if appropriate, the WIA grant recipient or fiscal agent for the local area on behalf of the Local Board. The Local Board will be the lead entity in a consortium/partnership of public and private entities, to build the capacity in local One-Stop Centers to provide customized employment services to those persons with disabilities who may not now be regularly targeted for services by the One-Stop Center system. Grants funded under this program will also provide a vehicle for Local Boards to systemically review their policies and practices in terms of service to persons with disabilities, and to incorporate new and innovative practices, as appropriate.

Grants are for a one-year period and may be renewed for a period of up to four additional years at varying funding levels depending upon the availability of funds and the efficacy of the project activities. *See also* Parts IV, IX.

The applicants scoring the highest when evaluated pursuant to the criteria set forth in Part VII, in conjunction with considerations by the Grant Officer delineated in Part IX of this Solicitation for Grant Application will be awarded Customized Employment Grants.

Eligibility: Eligible applicants for these grants are Local Workforce Investment Boards (Local Boards) or if appropriate, the Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) grant recipient or fiscal agent for the local area on behalf of the local board under the Workforce Investment Act. The Local Board may enter into numerous partnerships with other public and private entities, consistent with the proposed activities of the grant.

DATES: Applications will be accepted commencing on June 6, 2003. The closing date for receipt of applications under this announcement is July 21, 2003. Applications must be received by 4:45 p.m. (ET) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–13, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact ODEP via the Federal Relay Service, (800) 877–8339. This announcement will also be published on the Internet on ODEP's online Home Page at: *http://www2.dol.gov/odep*. Award notifications will also be published on the ODEP homepage.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it (a) is determined that its late receipt was caused by DOL error; (b) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

3. *Hand-delivered proposals.* It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:45 p.m., ET, at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Part II. Authority

Omnibus Appropriations Resolution, 2003, Public Law 1087; Consolidated Appropriations Act, 2001, Public Law 106–554, 29 U.S.C. 557b.

Part III. Background

The President's New Freedom Initiative is designed to increase the number of people with disabilities who enter, reenter, and remain in the workforce. It is dedicated to increasing investment in and access to assistive technologies, a quality education, and increasing the integration of Americans with disabilities into the workforce and community life. The WIA provides the infrastructure for streamlining services

and securing employment through the One-Stop delivery system.

WIA provides a system in which multiple programs and agencies (including state Vocational Rehabilitation agencies) to: (a) Form partnerships in this effort; (b) share expertise and coordinate resources; and (c) provide services to assist people in gaining and retaining employment. The One-Stop Career Centers that comprise this system are in a position to expand employment opportunities for people with disabilities, thus ensuring that the intent of the New Freedom Initiative is accomplished.

Under WIA, collaboration with multiple required partners [1] is intended to create a coordinated and streamlined system for the customer seeking employment. It is essential to involve additional state or local programs as partners with the One-Stop Center to enable people with disabilities to have increased employment opportunities and choice in employment. These additional programs include, but are not limited to, state programs for Mental Retardation and Developmental Disabilities, Medicaid, Mental Health and Transportation; State Councils for Developmental Disabilities; state assistive technology programs, Small Business Development Centers and secondary education programs. While not required partners under WIA, these programs have expertise and/or resources that can contribute to expanding employment and business opportunities for people with disabilities.

In addition, community colleges, University Centers for Excellence in Developmental Disabilities, business incubators, lending institutions, foundations, faith-based and community organizations, and other state or local programs may also be critical partners. These agencies and programs may not be informed about the potential for coordinating resources and expertise with Local Workforce Investment Boards and One-Stop Centers to increase employment, choice and wages for people with disabilities.

In addition, One-Stop Centers may elect to become employment networks under the Social Security Administration's (SSA) Ticket-to-Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 1320b–19 *et seq.*) (TTW), thus making it more likely that they will require expertise in customized employment strategies to successfully facilitate employment for people with disabilities who are recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The TTW is providing increased employment opportunities for people with disabilities who receive SSI and/or SSDI benefits by addressing some of the major barriers encountered by these individuals as they attempt to gain or regain employment. Approximately eight million people with disabilities receive SSI and/or SSDI benefits. According to the U.S. General Accounting Office, less than one percent of these individuals leave the rolls each year as a result of paid employment. About one-third of those who do leave the SSI and/or SSDI roles typically return within three years.

The TTW program provides a variety of work incentives, including greater choices of needed employment services, the continuation of Medicare eligibility for SSDI recipients and, at the state's option, health coverage under the Medicaid program to certain workers with disabilities, either by permitting them to purchase Medicaid coverage or by extending Medicaid eligibility to them without charge. As a result, there is unprecedented opportunity for these individuals to enter, or return to the workforce.

Therefore, increasing numbers of individuals with disabilities will be approaching their local One-Stop Centers for assistance.

Many strategies exist for securing integrated, competitive employment for people with disabilities, including people who previously might have been considered "nonfeasible" for employment, and people who have been segregated in institutions, nursing homes, and day activity programs.

Many exemplary practices and promising strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-determination for people with disabilities. These include a variety of approaches such as:

- Supported employment;
- Supported entrepreneurship;
- Individualized job development;
- Job carving and restructuring;
- Use of personal agents (including individuals with disabilities and family members);
- Development of micro-boards, micro-enterprises, cooperatives and small businesses; and
- Use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination.

These and other innovations hold the promise of dramatically increasing both employment and wages for people with disabilities, in part by increasing their choices for integrated, competitive employment, business ownership, micro-enterprise development, entrepreneurship, and other employment options that were previously seldom available.

An important focus of these innovations has been on providing non-stereotypical jobs that provide increased earnings, benefits, and career advancement potential for people with significant disabilities. There is a substantial need for a sustained and coordinated initiative to build professional competency within One-Stop Centers and their partners, including service providers and employers, about the use of such customized employment strategies.

Additionally there is a need to:

(1) Effectively expand the availability of personal agents, job development expertise, and other strategies for achieving customized employment for people with disabilities;

(2) Increase the number of eligible training providers who register with the local One-Stop Career Center with expertise in providing customized employment assistance, including faith-based and community organizations that have expertise in supporting families and individuals;

(3) Provide information, technical assistance, training and strategic planning that focuses on integrating customized employment strategies into the workforce investment system;

(4) Develop ongoing linkages with employers, professional and business service organizations and trade associations and market to employers the abilities of people with disabilities to work in a variety of jobs;

(5) Coordinate all necessary employment and related supports from WIA partners and other essential programs that are not required partners under WIA; and,

(6) Research and demonstrate alternative methods of determining effective performance by the workforce investment system in terms of service to people with disabilities.

[1] Some of the required partners are adult education and literacy activities under Title II of WIA; post-secondary vocational education activities under the Carl Perkins Act (20 U.S.C. 2301 *et seq.*); vocational rehabilitation programs authorized under Title V of the Workforce Investment Act; welfare-to-work programs; veterans employment and training activities, community services block grant employment and training activities; U.S. Department of Housing and Urban Development employment and training activities; and activities authorized under Title V of the Older Americans Act (WIA sec. 121(b), 29 U.S.C.A. 2841(b), 20 CFR 662.200).

This SGA is designed to award strategic planning and implementation grants for customized employment to develop and/or expand the capacity of local workforce systems to provide meaningful and effective opportunity through One-Stops for all persons with disabilities. This SGA will lead to the development of comprehensive models of direct service delivery in the context of a One-Stop setting for individuals with disabilities with the greatest barriers to employment, many of whom have never been employed, have been limited to subsidized employment, are underemployed, or may be considered by some as unable to be employed. The Customized Employment grants will involve cutting edge approaches such as use of customized employment strategies and active involvement of essential programs of both mandated and non-mandated partners of the workforce system.

The result of these efforts will be an increase in employment, choice, and wages for people with disabilities through the use of customized employment, and the systemic evaluation and modification, as appropriate, of policies and practices to ensure that customized employment strategies for people with disabilities are systemically included in the services available through the One-Stop Centers.

The U.S. Department of Labor also offers Work Incentive Grants through its Employment and Training Administration. The Work Incentive Grants are designed to enhance service delivery throughout the National One-Stop delivery system for people with disabilities. The Work Incentive Grants are complementary yet distinct from the Customized Employment demonstration grants offered in this SGA. The Work Incentive Grants support systemic change through capacity building of the One-Stop infrastructure, whereas these Customized Employment Grants will serve as models of comprehensive service delivery that extend beyond WIA programs and provide services for individuals with disabilities who are the most disenfranchised under current service delivery systems.

Part IV. Funding Availability and Period of Performance

ODEP anticipates awarding approximately up to five competitive grants ranging from $500,000 to $750,000, to develop demonstration programs to support the development and coordination of customized community employment opportunities in non-stereotypical jobs for people with disabilities. This grant initiative is founded in the belief that in order to fully participate in community life, individuals with disabilities must have the opportunity for employment.

These demonstration grants will be awarded for one year, with four additional option years possible, depending upon the availability of funds and the efficacy of grant activities, established by independent reviews conducted by ODEP or its designees. It is envisioned that if funding continues for the full five years, the funding for years four and five will be at successively lower rates with funding during year four at 80 percent of the third year funds, and funding during year five at 60 percent of the third year funds. Grantees are expected to use this grant to leverage and develop other public and private resources to ensure sustainability, and the extent to which the application demonstrates such sustainability is an important rating criterion for this competition.

Funds shall not be used for modifying buildings or equipment for physical accessibility, although the strategic planning should address how resources will be leveraged for such purposes from other sources, as appropriate.

Part V. Eligible Applicants and Required Partnerships

Eligible applicants: Eligible applicants for these grants are restricted to Local Workforce Investment Boards (Local Boards) or, if appropriate, the WIA grant recipient or fiscal agent for the local area on behalf of the Local Board as established under WIA. The Local Board may coordinate numerous partnerships with other public and private entities, consistent with proposed activities of the grant and applicable administrative requirements. Local Boards are encouraged to form partnerships with other state and local entities and public and private non-profit organizations, including faith-based and community organizations.

Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council, are also eligible to receive these grants. Grants to Indian and Native American tribal grantees must recognize principles of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act, allowing for the government-to-government relationship between the Federal and Tribal Governments. Such an application could involve coordination of services and enhancement to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities that may cut across multiple States and/or workforce investment areas.

Required partnerships: The purpose of this initiative is to maximize the capacity of, and outcomes from, One-Stop Centers and their partners to effectively serve people with disabilities through customized employment strategies, and to integrate those strategies into the policy and practice of the One-Stop and its partners in order to increase employment, choice and wages for people with disabilities. These efforts must include the involvement of many key partners, especially those with direct involvement in their area's One-Stop Career Centers.

For purposes of this solicitation, the target groups are people with disabilities who are either unemployed or under-employed and are:

(1) Receiving Supplementary Security Income (SSI) and/or Social Security Disability Insurance (SSDI); or

(2) Participating in day programs (such as day habilitation, day activity or day health programs) or participating in facility-based or community employment and earning less than minimum wage; or

(3) Participating in segregated employment and choosing to move to integrated, competitive employment; or

(4) Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the Supreme Court decision in Olmstead v. L.C. by Zimring, 527 U.S. 581(1999); or

(5) Transitioning from, or preparing to transition from, secondary school under a transition plan under part B of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 *et seq.*), and who, without access to customized employment strategies, would likely be referred to one of the environments identified in (2), (3) or (4) above, but who prefer integrated, competitive employment or self-employment.

In addition, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and certain of their spouses in all Department of Labor-funded job training programs. Please note that, to obtain priority of service, a veteran must meet that program's eligibility requirements. Comprehensive policy guidance is being developed and will be issued in the near future.

As Local Boards, through their local One-Stop Center are required to coordinate and to form partnerships with other state and local entities and public and private non-profit

organizations, grant applications must include proposed methods for coordinating efforts with a wide variety of state agencies or entities.

Some of the agencies and organizations that should be considered for inclusion are:

- State programs for Vocational Rehabilitation;
- Mental Health, Medicaid, Mental Retardation/Developmental Disabilities,
- Housing and/or Transportation;
- State Councils on Developmental Disabilities;
- Protection and Advocacy Programs;
- University Centers for Excellence in Developmental Disabilities;
- Institutions of higher education;
- Centers for Independent Living (CIL);
- Disability advocacy and provider organizations;
- Organizations of parents;
- Federally-funded disability grant entities;
- Small Business Development Centers;
- Cooperatives and micro-enterprises;
- Lending and financial institutions;
- Training programs;
- Media and marketing agencies;
- Employers;
- Foundations;
- Grass roots, industry, and faith-based and community organizations;
- As well as other organizations or programs that provide or support services and/or advocacy for people with disabilities.

Letters of support and commitment from these programs may be included in the Appendix of the proposal.

Part VI. Format Requirements for Grant Application

General requirements: Applicants must submit one (1) paper copy with an original signature and two (2) additional paper copies of their signed proposal. To aid with the review of applications, DOL also encourages Applicants to submit an electronic copy of their proposal on a disc or CD using Microsoft Word. Applicants who do not provide an electronic copy will not be penalized. The Application Narrative must be double-spaced with standard one-inch margins (top, bottom, and sides) on 8½ x 11 papers, and be presented on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard one-inch margins (top, bottom, and sides) throughout. A font size of at least twelve (12) pitch is required throughout. Applications that fail to meet these requirements will be considered non-responsive.

The three required sections of the application are:

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Attachments, not to exceed seventy-five (75) pages)

Mandatory requirements for each section are provided as follows in this application package. Applications that fail to meet the stated mandatory requirements of each section will be considered non-responsive.

Mandatory application requirements:

Section I. Project Financial Plan (Budget) [The Project Financial Plan will not count against the application page limits.] Section I of the application must include the following three required parts:

(1) Completed "SF 424—Application for Federal Assistance" (See Appendix A of this SGA for required form)

(2) Completed "SF–424A—Budget Information Form" by line item for all costs required to implement the project design effectively. (See Appendix B of this SGA for required forms.)

(3) Budget Narrative and Justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

The application must include one SF–424 with the original signatures of the legal entity applying for grant funding and 2 additional copies. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, section 18 (29 U.S.C. 1611), an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, or loan. [See 2 U.S.C. 1611; 26 U.S.C. 501(c)(4).] For item 10 of the SF–424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.720.

The Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with grant funds. Grantees must support the travel and associated costs with sending at least one representative to the annual ODEP Policy Conference for Grantees, to be held in Washington, DC at a time and place to be determined. Grantees must comply with the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97, and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as OMB Circular A–110), codified at 29 CFR part 95 and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

Grantees may use funds in a flexible manner, as determined appropriate by input from stakeholders and identified needs, so long as requirements for outcome and evaluation data and other requirements of Federal statutes, regulations, administrative requirements, and OMB circulars and the requirements delineated in this SGA are met.

In addition, the budget must include on a separate page a detailed cost analysis of each line item: Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

- Section II. Executive Summary—Project Synopsis [The Executive Summary is limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout]. Each application shall include a project synopsis that identifies the following:
  - The applicant;
  - The amount of funds requested;
  - The planned period of performance;
  - The list of partners, as appropriate;
  - An overview of how the applicant will identify the population to be served (including the estimated number and types of disability), the environments such individuals are currently experiencing (such as institutions, nursing homes, segregated day programs, etc.), and methods that will be used to promote community employment, including customized employment strategies listed in this SGA; and
  - An overview of the plan for sustainability once Federal funding ceases.
- Section III. Project Narrative [The Project Narrative plus attachments are limited to no more than seventy-five (75), 8½ x 11 pages, double-spaced with standard one-inch margins (top, bottom, and sides), and must be presented on single-sided, numbered pages]. (Note: The Financial Plan, the Executive Summary, and the Appendices are not included in the seventy-five (75) page limit). The requirements for the project narrative are described below under Part VII—Statement of Work.

All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

Part VII. Government Requirements/ Statement of Work (Project Narrative)

The purpose of this initiative is to maximize the capacity of, and outcomes from, One-Stop Centers and their partners to effectively serve people with disabilities through customized employment strategies, and to integrate those strategies into the policy and practice of the One-Stop and its partners in order to increase employment, choice and wages for people with disabilities. These efforts must include the involvement of many key partners, including those with direct involvement in their area's One-Stop Career Centers, as described in Section V above.

For purposes of this solicitation, ODEP has specifically targeted the development and provision of customized employment to those people with disabilities identified in Part V.

ODEP expects that once capacity for using customized employment strategies is developed or enhanced, the One-Stop Centers and their partners will expand use of these strategies to other groups of people with (and without) disabilities.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include approaches such as supported employment; supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination. These and other job development or restructuring strategies result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

Each applicant for these grants shall describe its plan for expanding capacity for, and provision of, customized employment opportunities to the target groups as defined in Part V above. Upon the commencement of a grant, grantees must begin a strategic planning and implementation process that will address multiple components of needed change. Planning, implementation and ongoing evaluation for continuous improvements are expected to be implemented from year one in recognition that dynamic planning will occur and evolve over time. By the end of year five, it is expected that a more long-term strategic plan will be in place for expanding the availability of customized employment, and for systemically revising policies and practices consistent with this goal.

The Project Narrative, or Section III of the grant application, should provide complete information on how the applicant will address the following DOL priorities for fiscal year 2003:

(1) Increase the availability of skill training, employment opportunities and career advancement for persons with disabilities; and

(2) Develop comprehensive One-Stop Centers, which are welcoming and are valued providers of choice by customers with disabilities seeking workforce assistance by assuring the availability of staff trained on disability issues, personalized employment counseling, knowledgeable support that addresses employment barriers and work incentives and the availability of accommodations and technologies for diverse disability needs.

Proposals will be rated based upon the quality of the applicant's response in addressing the four criteria described below in terms of a comprehensive strategic approach that addresses ODEP's priorities noted above. The four criteria (Statement of Need/National Significance, Comprehensive Service Strategy, Sustainability, and Management Plan and Outcomes) MUST be addressed and the applicant's goals, accomplishments or status with regard to each item provided.

ODEP, however, does not expect the applicant to fully incorporate every item listed as part of their strategy and proposal design. ODEP recognizes that the needs and requirements of each state and community may be different, and therefore, some of the options identified may be more relevant than others in a particular state or community.

2. Statement of Need /Significance of the Project (15 points)

The purpose of the Statement of Need is to establish the overall status of disability issues relevant to the targeted population in the applicant's state; to identify strengths and deficiencies to be addressed by the applicant's proposal; to identify the overall scope of the proposal's objectives and design; to present the applicant's need for the grant resources; to demonstrate significance of the proposed project; and to demonstrate the development or demonstration of promising new strategies, practices, or innovations. This criteria will be rated upon the applicant's needs identified and proposed approaches to addressing the needs in the context of the Department's priorities.

The narrative in this section should include information that demonstrates:

(1) The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for local workforce boards and other required and potential partners to use customized employment strategies to increase employment, choice and wages, and influence systems change in the local workforce system.

(2) The extent to which the applicant has an understanding of the issues the state and proposed geographic area are currently facing in their overall Customized Employment implementation efforts;

(3) The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

(4) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

(5) The extent to which the promising practices of the proposed project are to be disseminated in ways that will enable others to use the information or strategies;

(6) The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for

implementation in a variety of settings; and

(7) The importance or magnitude of the outcomes, which are likely to be attained by the proposed project.

In evaluating the quality of the proposal narrative, ODEP will consider needs identified and the applicant's proposed approaches to addressing the needs in the context of ODEP's priorities.

2. Comprehensive Service Strategy (30 points)

The purpose of the Comprehensive Service Strategy criteria is to identify the approach proposed by the applicant to implement the Customized Employment grant. The strategy should implement the purpose and objectives of this SGA to enhance the capacity of the workforce investment system to increase employment, choice and wages for persons with disabilities through the use of customized employment strategies and to ensure that such strategies are systemically included in the policy and practice of the One-Stop Center(s).

Proposed Project Design and Its Evaluation—the application must address the proposed design for the Customized Employment grant including its response to the requirements outlined in Part V (Eligible Applicants and Required Partnerships) of this Solicitation.

The Project Design must:

(1) Develop strategic planning and implementation activities across the One-Stop required partner programs as identified in the WIA (such as Vocational Rehabilitation and others as appropriate) as well as other essential programs (such as Medicaid, Medicare, Mental Health, Transportation, Small Business Development Centers, State Councils on Developmental Disabilities, community colleges, benefits counseling and assistance programs, lending and financial institutions), whose expertise, services, and funds could contribute to employment services and supports needed by people with disabilities in order to secure customized employment. Planning activities must include a review of policy and practice as it relates to people with disabilities to provide customized employment for persons with disabilities. Such capacity includes enhancing collaboration between required WIA partners and building new collaborative initiatives with other essential programs;

(2) Develop local and statewide policy initiatives to ensure that customized employment and multiple innovative strategies and promising practices become part of the menu of services available to people with disabilities, including investigating alternative methods for performance accountability that consider the characteristics of the population;

(3) Develop employment opportunities in a variety of jobs, industries and at a variety of levels, including self-employment and entrepreneurship, based on the strengths, needs and desires of the individual with a disability as well as creating and cultivating demand for these opportunities by forging and developing relationships with employers. The design must organize services and supports in ways that provide informed choice and promote self-determination and provide services, including follow-up services to ensure job retention and career development;

(4) Develop and document the capacity of the One-Stop system to increase the wages of people with disabilities who are currently working at less than minimum wage through the use of customized employment strategies;

(5) Develop an increased understanding by One-Stop Centers' staff about health care, work incentives, benefits planning, "tickets" and other provisions under TTW; and document increased use of these programs by the One-Stop Center and its partner programs to secure customized employment for recipients of SSI and SSDI who are entering the workforce or returning to work. This may include registering as an Employment Network under TTW;

(6) Document the increasing use of resources from a number of system partners and other essential programs, including providing individual budgets and other forms of self-directed accounts (*e.g.*, individual training accounts or contractual services; tickets; vouchers; and other sources of individualized funding or personal funding accounts) for persons with disabilities to obtain customized employment;

(7) Develop, leverage and document linkages with other state and local initiatives that provide services and supports for people with disabilities (including, but not limited to, state systems change efforts which promote systems improvement and comprehensive coordination; initiatives involving health care; benefits planning and assistance; housing; transportation; education; supported employment; small business development; technology-related assistance; initiatives of private foundations; and faith-based and community organization programs and others, as appropriate);

(8) Establish connections to and collaborate with other entities, including employers, persons with disabilities, their parents and other family members, community rehabilitation agencies, lending and financial institutions, foundations, faith-based and community organizations, institutions of higher education, small business development centers and others, as appropriate, to further customized employment opportunities for persons with disabilities in local communities. These partners may become a subgroup or an advisory group of the Local Board. They may be specifically charged with coordinating funding, resources and expertise to increase customized employment for people with disabilities in the community and may involve grant design and implementation;

(9) Educate relevant stakeholders, including state and local policymakers and systems personnel, about needed changes in policy and practice in order to increase customized employment and wages for people with disabilities;

(10) Include education activities to enable customized employment and personalized supports to become available and used in local communities, including (as appropriate) activities necessary to secure adoption of the Medicaid buy-in by the state;

(11) Market and develop ongoing linkages with employers, and their professional, business and service organizations and trade associations, as appropriate;

(12) Expand the use of customized employment strategies over time to:

a. All groups of persons with disabilities targeted under this solicitation; and

b. Other groups of individuals with disabilities (such as individuals who are receiving TANF benefits) following completion of the grant;

(13) Track and respond to customer service and satisfaction for both persons with disabilities and employers; and

(14) Identify and purse other activities appropriate to achieving the goals of these grants.

Activities may include the following:

Necessary staffing across agencies to implement grantee activities and otherwise demonstrate effective partnerships and interactions necessary to effectively leverage resources and expertise from partnering systems and programs;

(1) Outreach to relevant stakeholders;

(2) Demonstration activities which provide methods to increase the employment, choice, and wages of people with disabilities that are designed for systemic inclusion (including but not limited to demonstrating the use of individual training accounts or contractual services, tickets, and self-directed individual budgeting initiatives; economic stimulus activities including low-interest loans for person-centered micro-boards focused on increasing economic prosperity for specific individuals with disabilities; entrepreneurial employment initiatives that are consumer-owned or operated; demonstrations of innovation and cutting-edge strategies providing personal control, choice and customized assistance resulting in employment, including business ownership, micro-enterprise development or development of cooperatives for persons with disabilities; accessing Individual Development Accounts and financial literacy training; and other supports needed by specific individuals with disabilities to increase choice and wages in employment);

(3) Collaboration with the education system, parents, families and faith-based and community organizations to ensure transition of young people with disabilities from school to customized employment or training, and documentation of the outcomes of such efforts;

(4) Training and education activities (including training regarding Medicaid buy-in provisions and other policies with implications for increasing employment through state activities) designed to further the goal of increasing customized employment for persons with disabilities. These training activities include the education of One-Stop and partner personnel; educating state systems personnel and policymakers; developing and disseminating educational information and materials; and otherwise promoting policy and practice to increase the wide spread community-based use of customized employment strategies and personalized supports;

(5) Researching and demonstrating alternative methods of measuring WIA performance outcomes that consider the various characteristics of people with disabilities and developing demonstrations of performance measures that document new methods for measuring program effectiveness; and coordinating the availability of and access to assistive technology;

(6) Educating the media and the general public about successful strategies for and the benefits of securing employment for people with disabilities. This will assist in obtaining long-term support for continuation of grantee activities following completion of funding;

(7) Increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment (including demonstrating effectiveness of paying family members or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services);

(8) Assisting community providers of segregated employment services to develop integrated, competitive options for individuals with disabilities, including implementation of conversion and other organizational change initiatives conducted with segregated provider programs that wish to change their services to integrated employment; and

(9) Other activities necessary to address needs and achieve goals identified through strategic planning and implementation, including collection of necessary data and evaluation.

In evaluating the quality of the proposed project design, ODEP's consideration will be guided by the following factors:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs and the quality of the applicant's plans for recruiting and retaining the target population;

(c) The extent to which the design of the proposed project provides procedures and approaches for collaboration and coordination with key agencies and organizations and identification of critical roles;

(d) The extent to which the design of the proposed project provides clear understanding of and experience with utilization of customized employment strategies for increasing employment, choice and earnings of individuals with significant disabilities;

(e) The extent to which the proposed project will be coordinated, including demonstrated support and commitment from key organizations, employers, and agencies, including faith-based and community organizations;

(f) The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities;

(g) The extent to which the design of the project will facilitate an increase in the number of faith-based and community organizations that register as eligible training providers with their local One-Stop Center.

(h) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(i) The extent to which the management plans for project implementation is likely to achieve the objectives of the proposed project on time and within budget; and

(j) The extent to which the proposed project design features innovative strategies to implement customized employment and choice.

3. Sustainability (25 points)

The purpose of the sustainability criteria is to identify strategies for ensuring that activities funded under the grant will continue once Federal funding ceases. Resources and partnerships are an integral element of the project. Sustainability objectives must be built into the project design and ongoing project operation.

In addition, the applicant should detail how federal, state, and local public sector commitments contribute to the sustainability of this project following completion of the grant. Examples of such commitments could include: Commitment from state vocational rehabilitation, one-stop center, state developmental disability, state Medicaid, or state general revenue funding to support expanded customized employment services for individuals securing employment through the agency; status as Employment Network under TTW providing customized employment services to eligible ticket-holders; private sector funding through foundations, financial or lending agencies, or other relevant collaborative arrangements for continuing provision and/or expansion of customized employment services in the community.

To illustrate sustainability planning, the applicant must:

(1) Identify resources and partnerships that are an integral element of the project. Projects funded under this SGA will be judged on their ability to leverage a combination of federal, state, and local public sector resources, as well as local non-profit sector resources for purposes of sustainability. Accordingly, in this section the applicant should enumerate these resources, describe any specific existing contractual commitments, and provide concrete evidence of sustainability;

(2) Identify activities and in-kind elements of sustained support. ODEP considers detailed commitments for

specific new activities as more important than promises of in-kind supports in showing sustained support for the project. Grants recently received from another agency can be discussed in the proposal, but the applicant should be precise about which activities preceded this grant and which will occur because of the grant; and

(3) Detail how federal, state, and local public sector commitments contribute to the sustainability of this project following completion of the grant. Examples of such commitments could include: Commitment from state vocational rehabilitation, one-stop center, state developmental disability, state Medicaid, or state general revenue funding to support expanded customized employment services for individuals securing employment through the agency; status as Employment Network under the Ticket to Work and Work Incentive Improvement Act providing customized employment services to eligible ticket-holders; private sector funding through foundations, financial or lending agencies, or other relevant collaborative arrangements for continuing provision or expansion of customized employment services in the community.

In evaluating the quality of the plan for sustainability, ODEP considers the following factors to be of particular importance:

(a) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the grant period, and the quality of the applicant's plans for implementing the project's activities in years four and five when Federal funding will be reduced.

(b) The likelihood of the applicant successfully securing state ownership and participation in these projects when the grant funds cease.

(c) The extent to which partnerships with outside entities (including public and private disability and faith-based and community organizations) and funding from additional federal, state, and local resources will be effectively leveraged and utilized in continuing the Customized Employment activities after the expiration of this grant.

Letters of Commitment: Applicants can include letters of support if they provide specific commitments. Such letters can increase an applicant's score by showing that the commitments in the text of the proposal are serious. Form letters will not be considered. *See also* Part V.

4. Management and Outcomes (30 points)

The purpose of the Management and Outcomes criteria is to determine whether the applicant has developed an adequate management plan to effectively carry out the objectives and scope of the proposed project on time and within budget, to describe the predicted outcomes resulting from activities funded under this SGA, and to identify the "methods of evaluation" that will be used by the grantee to determine success.

Applicants should provide a detailed management plan, which identifies the critical activities, time frames, milestones for accomplishing grant activities and responsibilities for effectively implementing the project, including the evaluation process for assuring successful implementation of grant objectives. Funds must be used in a flexible manner, as determined appropriate by input from stakeholders and identified needs.

In addition, applicants should outline the strategy for documenting and reporting the activities undertaken during the life of the grant for ODEP's future use in working with other grantees and constituencies.

Staff Capacity—The applicant must identify how it will ensure that trained staff are available to provide grant related services who have adequate knowledge of diverse disabilities, knowledge of diverse customized employment strategies, and employment-related experience for the target population. Resumes must be included in the Appendices.

The application must:

(1) Describe the proposed staffing of the project. Identify how it will ensure that trained staff with adequate knowledge of diverse disabilities, knowledge of diverse customized employment strategies, and employment-related experience for the target population will be available to provide grant-related services.

(2) Summarize the qualifications, including relevant education, training and experience of key project personnel, as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Attach copies of resumes in the Appendices.

(3) Describe the applicant's experience in serving people with disabilities and providing customized employment services.

(4) Describe the extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

In evaluating the management and outcomes criteria, the ODEP considers the following factors to be of particular importance:

(a) The extent to which the proposed budget and narrative justifications are adequate to support the proposed project;

(b) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project;

(c) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(d) The extent to which the evaluation will provide information to other programs about effective strategies suitable for replication or testing in other settings;

(e) The extent to which the methods of evaluation include the objective use of performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

(f) The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of customers, both people with disabilities and employers;

(g) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project;

(h) The extent to which the key personnel are appropriate and adequate to meet the objectives of the proposed projects;

(i) The extent to which the budget is adequate to support and sustain the proposed project activities over the projected five-year period.

(j) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

Part VIII. Monitoring and Reporting

Monitoring: ODEP is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the terms of the grant award document. Applicants should assume that ODEP staff, or their designees, will conduct on-site project reviews periodically. Reviews will focus on timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditures of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, project management and administration of project activities. Customized Employment Grants may be subject to other additional reviews at the discretion of the ODEP.

Reporting: Grantees will be required to submit quarterly financial and narrative progress reports. In addition, all grantees will be expected to provide information on individuals with disabilities securing employment through use of customized strategies (including information on types of jobs, wages, and benefits secured by specific individuals with disabilities) and other areas addressed through the linkages and networks facilitated by project activities.

Grantees will be required to submit periodic financial and participation reports. Specifically the following reports will be required:

A. *Quarterly reports:* The quarterly report is estimated to take ten hours to complete. The form for the Quarterly Report will be provided by ODEP. ODEP will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

B. *Standard Form 269;* Financial Status Report Form (FSR) will be completed on a quarterly basis, using the on-line electronic reporting system.

C. *Final Project Report:* including an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the DOL. A draft of the final report is due to ODEP 45 days before the termination of the grant. The final report is due to the DOL 60 days following the termination of the grant.

All grantees must agree to cooperate with an independent evaluation to be conducted by ODEP. ODEP will arrange for and conduct this independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of ODEP. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation. The ODEP's evaluation of the Customized Employment Grants includes a process evaluation that includes extensive information pertaining to achievements under the grant, summary information, number of people with disabilities receiving services, number of people employed through then One-Stop system and other sources.

Grantees must also agree to work with ODEP in its various national technical assistance collaboratives efforts in order to freely share with others what is learned about delivering customized employment services to the target population. Grantees must agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL and other relevant Federal agencies, as appropriate. In addition, ODEP has established performance goals that are consistent with the Department (GPRA) goals as noted in the introduction of Part VII—Government Requirements/ Statement of Work. Customized Employment grantees will be expected to achieve these performance goals. Finally, Grantees must agree to actively utilize the programs sponsored by the ODEP, including the Job Accommodation Network, (*http://:www.jan.wvu.edu*), and the Employer Assistance Referral Network (*http://www.earnworks.com*).

Part IX. Review Process and Evaluation Criteria

All applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed in this SGA. The panel results are advisory in nature and not binding on the Grant Officer. ODEP may elect to award grants with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering such factors as:

- Panel findings;
- Geographic distribution of the competitive applications and based on location of the existing Customized Employment Grants (Anchorage, AK; Montgomery, AL; NAPA and San Diego, CA; Marietta, GA; Indianapolis, IN; Malden, MA; Bucksport, ME; Detroit, MI; Blaine, MN; Hempstead, NY; Knoxville, TN; El Paso, TX; Fairfax, VA; and Kennewick, WA;);
- Assuring a variety of program designs; and
- Availability of funds

Part X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grants awarded under this SGA shall be subject to the following as applicable:

- 29 CFR part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR part 96—Audit Requirements for Grants, Contracts, and Other Agreements.
- 29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

- State and Local Government—OMB Circular A–87
- Nonprofit Organizations—OMB Circular A–122
- Profit-Making Commercial Firms—48 CFR part 31

Profit will not be considered an allowable cost in any case.

C. Grant Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)
- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et. seq.)
- 29 CFR part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC this 3rd day of June, 2003

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

Appendix D. Survey on Ensuring Equal Opportunity

BILLING CODE 4510-CX-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐–☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ 0 .00	☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Appendix A

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs — **SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
	(1)	$	$	$	$ 0.00
a. Personnel	$			0.00	0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*				0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*		$	$	$ 0.00	$ 0.00
7. Program Income		$	$	$	$ 0.00

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

Appendix B

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable **Authorized for Local Reproduction** **Standard Form 424B (Rev. 7-97) Prescribed by OMB Circular A-102**

Appendix C

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

Survey on Ensuring Equal Opportunity

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c) (3) statuses is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1225–0083. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–14350 Filed 6–5–03; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[SGA 03–09]

High School/High Tech State Development and Implementation Grants

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of availability of funds; solicitation for grant applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding. (SGA 03–09).

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of $1.8 million to award up to eight competitive grants in the amount of approximately $225,000 to assist states in implementing the High School/High Tech (HS/HT) program on a statewide basis.

This grant initiative involves one competitive Solicitation for Grant Application (SGA) that will be used to award both HS/HT Implementation Grants and HS/HT Development Grants:

(1) *HS/HT State Implementation Grants:* Successful state applicants will demonstrate that all partners relevant to successful implementation of the HS/HT program in the state are in place (*e.g.*, education, Workforce Investment Act, Development Disability Councils, etc.); and that the state has the capacity to implement the HS/HT design features discussed below throughout the state. In addition, successful applicants will be able to demonstrate a strong plan for sustainability of the HS/HT program when federal funding ceases. The Implementation Grants will be awarded for a one-year period of performance and funded at a level of $225,000. These grants may be renewed up to four times for an additional year of funding with the fourth and fifth years at reduced funding levels of 80% and 60% of third year funding levels, respectively, depending upon project performance and funding availability. See also Parts IV, IX.

(2) *HS/HT State Development Grants:* These grants will be targeted to state applicants able to demonstrate their capacity to implement and sustain the HS/HT program as described above in relation to the Implementation Grants within a short time period if provided with appropriate technical assistance. The Development Grants will be awarded for a one-year period of performance and funded at $225,000, after which time grantees will be eligible to apply for Implementation Grant funding. Development Grants will not be renewable.

The purpose of these grants is to assist states, working in partnership with the State Workforce Investment Board, in implementing a statewide HS/HT program, in integrating the HS/HT program into youth services funded under the Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 et seq.), and in ensuring sustainability of the HS/HT program through state-level management and coordination. HS/HT is a career development program designed to provide high school aged youth with disabilities with an opportunity to explore careers or gain further education that may lead to technology-related careers. These programs, which have generally been locally directed and supported, serve both in-school and out-of-school youth with disabilities in a year round program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and summer internships.

The application and evaluation/selection criteria for both types of grants are the same. The first applicants selected when evaluated pursuant to the criteria set forth in Parts VII and IX of this SGA will be awarded High School/High Tech Implementation Grants. The next three applicants selected will receive HS/HT Development Grants. Revised scope of work and budget documents will be required from all Development Grantees within forty-five (45) days of the award to reflect the one-year period of performance.

Eligibility: Eligible applicants for these grants include State Workforce Investment Boards; State Departments of Education; State Departments of Labor; State Developmental Disability Councils; State Departments of Vocational Rehabilitation; or State Committees affiliated with the National Governors' Committees for People with Disabilities, and other similar state agencies. "State" in this context includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Consortia of state agencies and not-for-profit organizations (including community and faith-based organizations, independent living centers, etc.) and local HS/HT sites are also eligible applicants. Prior recipients of state-level HS/HT grant funding are ineligible to receive additional funding under this solicitation.

DATES: Applications will be accepted commencing on June 6, 2003. The closing date for receipt of applications under this announcement is July 21, 2003. Applications must be received by 4:45 p.m. (ET) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–09, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the DOL via the Federal Relay Service, (800) 877–8339. This announcement will also be published on the Internet on ODEP's online Home Page at: *http://www2.dol.gov/odep*. Award notifications will also be published on the ODEP Homepage.

Solicitation Information Conference Call: A Solicitation Information Conference Call will be held at 2 p.m., Monday, June 19, 2003. The purpose of this conference call is to provide interested parties an overview of this grant program and an opportunity to ask questions concerning this solicitation. Transcripts of the conference will be made available on request in accessible formats. Individuals who wish to participate in this conference call must register by contacting ODEP at (202) 693–7880, no later than 4:45 p.m. ET on Tuesday, June 16, 2003. Please ask to register for the HS/HT SGA Conference Call. Registrations should be made as soon as possible. At the time of registration, call-in information will be provided.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it (a) is determined that its late receipt was caused by DOL error; (b) was sent by

U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

3. *Hand-Delivered Proposals.* It is preferred that applications be mailed at least five days prior to the closing date. *To be considered for funding, hand-*delivered applications must be received by 4:45 p.m., ET, at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Part II. Authority

Omnibus Appropriations Resolution, 2003, Pub. L. 108–7; Consolidated Appropriations Act, 2001, Pub. L. 106–554, 29 U.S.C. 557b.

Part III. Background

HS/HT is a career development program for high school aged youth that started almost two decades ago in Los Angeles, California, to address concerns that not enough students, especially those with disabilities, were being prepared for careers in technology-focused industries. The Atlantic Richfield Company, with support from the Los Angeles Unified School District, designed America's first technology-focused transition program for young people with disabilities.

Shortly thereafter, in 1986, the President's Committee on Employment of People with Disabilities (PCEPD), whose mission was to facilitate the communication, coordination, and promotion of public and private efforts that enhance the employment of people with disabilities, adopted the program. Building upon the strength of the public/private partnership that began in Los Angeles, program leaders developed relationships with large and small businesses, education and non-profit organizations, and government agencies. These relationships helped HS/HT grow and expand across the country.

The newly created Office of Disability Employment Policy at the United States Department of Labor assumed the role as the Federal agency responsible for continuing this program. In 2001, ODEP entered into a cooperative agreement with the National Collaborative on Workforce and Disability for Youth (NCWD/Youth) to provide technical assistance and support to HS/HT sites nationwide. During 2002, ODEP and NCWD/Youth undertook a substantial refinement of the HS/HT program standards to promote the expansion of this career development program.

HS/HT is a network of state and locally operated programs designed to provide young people with all types of disabilities the opportunity to explore jobs or gain further education leading to technology-related careers. HS/HT is a community-based partnership with 70-*plus programs currently operating* across the country. The programs operate year-round in a variety of settings—schools, community organizations, businesses, and other locations. Current HS/HT operators include non-profits (Goodwill, Centers for Independent Living, United Cerebral Palsy Affiliates, etc.), community colleges, universities and school districts. Its stakeholders include employers, educators, consumers, family members, workforce system agencies, and rehabilitation professionals.

The HS/HT program offers proven techniques for developing improved employment outcomes for young people with disabilities. The HS/HT program is premised on four design features, supported by experience and research, as to what youth with disabilities need to succeed in adulthood. These four design areas include preparatory experiences, connecting activities, work-based experiences, and leadership development. *See* the HS/HT Program Manual at *http://www.ncwd-youth.info/resources&Publications/hshtmanual.html* for further information. Graduates of HS/HT programs that employ these design features have demonstrated at least double the post-secondary educational achievements of similarly situated students with disabilities who do not have this opportunity. At some HS/HT sites, as many as 70 percent of HS/HT graduates move on to post-secondary education. HS/HT clearly enhances expectations, educational achievements, and eventual employment outcomes for a population who, without this intervention, may be far more likely to move onto the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) rolls than to find competitive employment in technology related occupations.

Funding for HS/HT sites has traditionally been managed locally. In the past several years, however, ODEP has sought to move the leadership and funding towards a state-level model through its grant activities. In 2001, ODEP funded start-up HS/HT sites that began connecting HS/HT and WIA-assisted youth programs at the community level. In 2002, ODEP expanded upon that effort by funding grants to assist states in developing statewide HS/HT infrastructure and operations and further integrating HS/HT programs into the youth services provided under the One-Stop System.

The 2003 HS/HT grants are the next step in this process and focus on both state-level implementation and long-term sustainability. HS/HT sites have traditionally worked with community systems to coordinate the delivery of educational and transitional services to youth with disabilities. The HS/HT Implementation and Development Grants to be awarded as a result of the current SGA are intended to:

(1) Assist states in implementing a statewide HS/HT network working in partnership with the State Workforce Investment Board;

(2) Integrate the HS/HT program into WIA-assisted youth services; and

(3) Ensure sustainability of the HS/HT program through state-level management and coordination.

(4) Bringing HS/HT to the state-level will to help ensure that resources within a state are maximized and coordinated for the benefit of all HS/HT sites in that state. HS/HT state directors will work with key stakeholders (workforce investment systems, colleges, developmental disability councils, governors' committees on the employment of people with disabilities, employers, educators, rehabilitation professionals, consumers, and parents) to institutionalize the program within the state. By linking HS/HT, WIA and additional resources at the state-level, students with disabilities will have an increased opportunity to participate in meaningful school-to-career initiatives.

Part IV. Funding Availability and Period of Performance

ODEP anticipates awarding approximately eight grants under this solicitation to be funded at a level of approximately $225,000. The HS/HT Implementation awards will be for a one-year period of performance and may be renewed annually up to four additional years for a total of five years, depending upon the availability of funds and the efficacy of the grant activities as established by independent reviews conducted by the DOL or its designee. Proposals must include budgetary information for a five-year period. It is envisioned that if funding is continued for the full five years, the funding for years four and five will be at successively lower rates, with funding during year four at 80 percent of the third year funds, and funding for year five at 60 percent of the third year funds. The HS/HT Development Grants will be for a one-year period of performance and will not be renewed.

Up to five Implementation Grants and up to three Development Grants will be awarded. It is expected that the funds used for this grant program will support the costs associated with the development, implementation, and evaluation of state-level HS/HT programs. The funds may be used to conduct a variety of activities to support and sustain state-level HS/HT operations such as staff training, strategic planning, partnership building, assessment, curriculum/materials development, career development, student-focused planning, program alignment, etc. Grant funds may be used to fund the creation of new HS/HT sites as well as to support existing sites as part of the implementation of an overall statewide HS/HT system.

Part V. Eligible Applicants and Required Partnerships

Eligible Applicants: Eligible applicants include State Workforce Investment Boards; State Departments of Education; State Departments of Labor; State Developmental Disability Councils; State Departments of Vocational Rehabilitation; or State Committees affiliated with the National Governors' Committees for People with Disabilities, and other similar state agencies. "State" in this context includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Consortia of state agencies and not-for-profit organizations (including community and faith-based organizations, independent living centers, etc.) and local HS/HT sites are also eligible applicants. Prior recipients of state-level HS/HT grant funding are ineligible to receive additional funding under this solicitation.

Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council, are also eligible to receive these grants. Grants to Indian and Native American tribal grantees must recognize principles of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act, allowing for the government-to-government relationship between the Federal and Tribal Governments.

Required Partnerships: In addition to the State Workforce Investment Board, which is a mandatory partner in these grant activities, each grantee must, at a minimum, demonstrate the involvement of members of three of the other above-mentioned state-level groups in strategic planning and implementation activities. Tribal entities also must involve, at a minimum, members of three of the other groups mentioned above in strategic planning and implementation activities with the State Workforce Investment Board constituting a mandatory partner.

Part VI. Format Requirements for Grant Application

General Requirements: Applicants must submit one (1) paper copy with an original signature and two (2) additional paper copies of the signed proposal. To aid with the review of applications, DOL also encourages Applicants to submit an electronic copy of their proposal on a disc or CD using Microsoft Word. Applicants who do not provide an electronic copy will not be penalized. The Application Narrative must be double-spaced with standard margins on 8½ x 11 papers, and be presented on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout. A font size of at least twelve (12) pitch is required throughout. Applications that fail to meet these requirements will be considered non-responsive.

The three required sections of the application are:

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Attachments, not to exceed 40 pages)

Mandatory requirements for each section are provided as follows in this application package. Applications that fail to meet the stated mandatory requirements of each section will be considered non-responsive.

Mandatory Application Requirements

• *Section I. Project Financial Plan (Budget)* (The Project Financial Plan will not count against the application page limits.) Section I of the application must include the following three required parts:

(1) Completed "SF 424—Application for Federal Assistance" (See Appendix A of this SGA for required form.)

(2) Completed "SF 424A—Budget Information Form" by line item for all costs required to implement the project design effectively. (See Appendix B of this SGA for required forms.)

(3) Budget Narrative and Justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

The application must include one SF–424 with the original signatures of the legal entity applying for grant funding and 2 additional copies. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, section 18 (29 U.S.C. 1611), an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, or loan. (See 2 U.S.C. 1611; 26 U.S.C. 501(c)(4).) For item 10 of the SF–424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.720.

The Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with grant funds. Grantees must support the travel and associated costs with sending at least one representative to the annual ODEP Policy Conference for Grantees, to be held in Washington, DC at a time and place to be determined. Grantees must comply with the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97, and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations (also known as OMB Circular A–110), codified at 29 CFR part 95 and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF 424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

• *Section II. Executive Summary—Project Synopsis* (The Executive Summary is limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout). Each application shall include a project synopsis that identifies the following:

(1) The name of the applicant;

(2) The type of organization the applicant represents, the additional consortium partners and the type of organization they represent;

(3) The amount of funds requested;

(4) The planned period of performance;

(5) The extent to which Vocational Rehabilitation and the WIA-assisted Youth Service System will be integrated or coordinated with the HS/HT system;

(6) An overview of how the applicant will capitalize on and coordinate with existing HS/HT sites, if applicable;

(7) An overview of the applicant's plan for expanding HS/HT statewide; and

(8) An overview of the applicant's plan for sustaining the HS/HT program once Federal funding ceases.

• *Section III. Project Narrative* (The Project Narrative plus attachments are limited to no more than forty (40) 8½ x 11 pages, double-spaced with standard one-inch margins (top, bottom, and sides), and be presented on single-sided, numbered pages). **Note:** The Financial Plan, the Executive Summary, and the Appendices are not included in the forty (40)—page limit]. The substantive requirements for the project narrative are described below under Part VII—Statement of Work.

All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

Part VII. Government Requirements/ Statement of Work (Project Narrative)

The Project Narrative, or Section III of the grant application, should provide complete information on how the applicant will address the following DOL strategic goal priorities to ensure a Prepared Workforce:

(1) Increasing the availability of skills training, employment opportunities, and career advancement for persons with disabilities.

(2) Increasing the number of youth making a successful transition to work or who enter further training or educational programs.

Proposals will be rated based upon the quality of the applicant's response in addressing the four criteria described below in terms of a comprehensive strategic approach that incorporates the Department's priorities noted above. The four criteria (Statement of Need, Comprehensive Service Strategy, Sustainability, and Monitoring and Reporting) must be addressed and the applicant's accomplishments or status with regard to each item provided.

The DOL, however, does not expect the applicant to incorporate every item listed as part of their strategy and proposal design. The DOL recognizes that the needs and requirements of each state may be different, and therefore, some of the options identified may be more relevant than others in a particular state.

1. Statement of Need (15 points)

The purpose of the Statement of Need criteria is to: Establish the overall status of disability issues relating to youth in the applicant's state; to identify strengths and deficiencies to be addressed by the applicant's proposal; to identify the overall scope of proposal objectives and design; and, to present the applicant's need for HS/HT grant resources. This criterion will be rated based upon the applicant's identified needs and proposed approach to addressing these needs in the context of the DOL's priorities.

For proposals targeted to a specific Indian community or covering multiple Tribal entities that may cut across multiple States and/or local areas, describe the overall approach of the project, and identify the inadequacies and deficiencies of the service delivery to the applicable community, and how the project expects to address these.

The narrative in this section should:

(1) Describe the potential contribution of the proposed project to increasing the quality of transition services available in the state;

(2) Describe the overall status and actions taken to-date within the State relating to implementation of the HS/HT program and the level of commitment of any existing HS/HT program to working with the applicant;

(3) Describe the extent to which the proposed project involves the development or demonstration of promising new strategies;

(4) Describe the number of young people with disabilities expected to be served in the proposed HS/HT program within the State and the importance or magnitude of the results that are likely to be attained by the proposed project;

(5) Identify the percentage of young people with disabilities in the State including the percentage of people who are beneficiaries of Social Security Disability Insurance (SSDI) and/or Social Security Income Program (SSI);

(6) Identify the most recent state graduation rates for young people with disabilities in the State, as well as the overall graduation rate;

(7) Describe any significant deficiencies in the State or local workforce investment system that present barriers to employment for young people with disabilities and explain what will be accomplished under this grant to address them;

(8) Describe how the applicant will increase services, skill training, employment outcomes, educational and job retention, and career advancement for young people with disabilities and how the ODEP priorities identified above will be achieved; and

(9) Identify additional State and/or local funds and resources that will be leveraged to support the overall objectives of the grant.

In evaluating the quality of the proposal narrative, ODEP will consider the applicant's needs identified and proposed approaches to addressing the needs in the context of ODEP's priorities.

2. Comprehensive Service Strategy (30 points)

The purpose of the Comprehensive Service Strategy criteria is to identify the approach proposed by the grantee to implement the HS/HT program on a statewide basis. In general, this requires extensive linkages and on-site knowledge of applicable resources that address multiple disability issues and barriers to education and employment that are commonly experienced by young persons with disabilities. Specifically, applicants must address staff capacity as well as their proposed design elements.

A. *Staff Capacity*—The applicant must identify how it will ensure that trained staff with comprehensive knowledge of diverse disabilities will be available to provide grant related services. Accordingly, the application should:

(1) Describe the specific experience of the applicant(s) in serving young people with disabilities, in providing technology-related training, in addressing specific barriers to employment, in achieving expected outcomes in the delivery of such services/programs, and in implementing and administering project plans similar to that in the proposed grant project;

(2) Document that the State Director has the comprehensive knowledge and experience to expand HS/HT at a state-level. A resume or position description of the state director must be included in the Appendices to the application;

(3) List and describe key positions required to carry out the project as proposed, the key personnel proposed to fill the positions, and a detailed description of the kind of work these individuals will perform within the project; and

(4) Provide evidence of the staff's skill, knowledge and experience in carrying out these types of activities, and describe their relevant training. Resumes must be included in the Appendices to the application.

B. *Proposed Design*—The application must address the proposed design for a state-based HS/HT infrastructure. The application must also identify the plan for developing and locating HS/HT program sites and the basis for that distribution plan [*i.e.* as linked with Local Workforce Investment Boards, etc.]. Finally, the application must address incorporation of the HS/HT Manual and its four design features, and should:

(1) Describe the roles of the partners set forth in the Sustainability Section of Part VII within the state's HS/HT operations. Explain how the partners will integrate and leverage resources to advance the HS/HT model;

(2) Identify the locations of HS/HT program sites based on the number and distribution of students with disabilities in the state;

(3) Describe the strategy that will be used to integrate and maintain existing HS/HT sites in the state, and to develop and increase the number of HS/HT sites in the state;

(4) Explain how technology will be used in carrying out grant activities;

(5) Identify and explain the benefits or results expected from the grant activities proposed;

(6) Discuss how the applicant will establish leadership from, or a working relationship with, a State Workforce Investment Board, the State Department of Labor, State Department of Education, State Vocational Rehabilitation, a WIA youth-related entity, and other community partners (*e.g.*, area disability organizations, state committees on employment of people with disabilities, faith-based and community organizations, Centers for Independent Living, interested employers) in the establishment and operation of a state-level HS/HT program. The State Workforce Investment Board is a mandatory partner for this grant. At least three categories of the above listed organizations must also be represented in and be a part of the state-level leadership team;

(7) Describe the strategy for gaining the support of people with disabilities and their families;

(8) Describe the outreach and marketing strategy to the disability community and organizations that represent or work with people with disabilities;

(9) Describe specific approaches for developing relationships with disability organizations representing youth with disabilities such as Centers for Independent Living, the state's Youth Leadership Forum, and state members of the National Youth Leadership Network;

(10) Describe specific approaches for developing relationships with and the support of area employers that establish employment opportunities for individuals with disabilities, including any commitments by employers to hire these individuals;

(11) Describe linkages with Business Leadership Networks (BLNs) (that have been established in approximately 30 states) if applicable; and

(12) Describe linkages with state/local public agencies such as Special Education; Vocational Rehabilitation; State Councils for Independent Living; local Centers for Independent Living (CILs); state mental health agencies, state mental retardation and Developmental Disability Councils; Temporary Assistance for Needy Families (TANF) agencies; and private, non-profit organizations such as disability advocacy and provider organizations, as well as federally-funded disability grant recipients, including community and faith-based organizations.

In evaluating the quality of the proposed project design, ODEP will also consider the following factors:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs and the quality of the applicant's plans for recruiting and retaining the target population;

(c) The extent to which the design of the proposed project provides procedures and approaches for collaboration and coordination with key agencies and organizations and identification of critical roles;

(d) The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities;

(e) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project; and

(f) The extent to which the management plan for project implementation is likely to achieve the objectives of the proposed project on time and within budget.

3. Sustainability (30 points)

The purpose of the sustainability criteria is to identify strategies for ensuring that activities funded under the grant will continue once Federal funding ceases. Resources and partnerships are an integral element of the project, as they support and strengthen the quality of the technical skills training provided and contribute materially toward sustainability. Sustainability must be an objective built into the project design, the strategic planning and ongoing operation of the project. Projects funded under this SGA must leverage a combination of federal, state, and local public sector resources, as well as private and local non-profit sector resources for purposes of sustainability.

In evaluating the quality of the plan for sustainability, ODEP considers the following factors to be of particular importance:

(a) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

(b) The likelihood of the applicant successfully securing state ownership and participation in these projects when these grant funds cease (a letter from the Governor must be included or, if this is not feasible, a letter from the head of an appropriate state agency may be substituted); and

(c) The extent to which partnerships with outside entities (including public and private disability and community

and faith-based organizations) and funding from additional Federal, State, and/or local resources will be effectively leveraged and utilized in continuing HS/HT activities after the expiration of the grant.

Accordingly, in the Sustainability section, the applicant should enumerate resources, describe any specific existing contractual commitments, and provide concrete evidence of sustainability beyond the duration of this grant.

Grantees are expected to use this grant as seed money to develop other public and private resources to ensure sustainability of grant activities following completion of the funding period. Grant monies may be used to fund the creation of new HS/HT sites as well as to support existing sites as part of the development of an overall statewide HS/HT system.

ODEP considers detailed commitments for specific new activities to be more important than promises of in-kind supports in demonstrating sustained support for the project. Grants recently received from another agency can be discussed in the proposal, but the applicant should be precise in delineating which activities precede this grant and which will occur because of this grant. In addition, the applicant should detail how public sector commitments can contribute to the sustainability of this project following completion of the grant. Examples of the types of public and private sector commitments envisioned include the following:

- The school system commits to offering credit for HS/HT training activities;
- The school system commits to incorporating HS/HT into their Individual Education Plans;
- The vocational rehabilitation office commits to funding assistive technology and transportation services for students enrolled in the program;
- A community college commits to providing technology training for HS/HT students;
- State-level elected officials commit to work towards state codification of HS/HT;
- An employer commits to providing technology-based summer internships;
- State and Local Workforce Investment Boards commit to paying internship costs;
- A university commits to providing scholarships for HS/HT students.
- A Developmental Disability Council commits to funding a new HS/HT site; and
- An independent living center commits a staff person to work full time on HS/HT.

Letters of Commitment. Applicants may include letters of support if they provide specific commitments regarding the application to this solicitation. Such letters can increase an applicant's score by showing that the commitments in the text of the proposal are grounded with actual commitments. Form letters will be considered non-responsive. Applicants are encouraged to have letters of support from all existing HS/HT programs in their states.

Letter from the Governor. A letter from the Governor or functionally equivalent entity reflecting support of state-level implementation of the HS/HT program will be viewed favorably. If a letter from the Governor is not feasible, the application must include a letter from the head of an appropriate state agency.

4. Management and Outcomes (25 points)

The purpose of the Management and Outcomes criteria is to determine whether the applicant has developed an adequate management plan to effectively carry out the objectives and scope of the proposed project on time and within budget, to describe the predicted outcomes resulting from activities funded under this SGA, and to identify the methods of evaluation that will be used by the grantee to determine success.

Applicants must provide a detailed management plan that identifies the critical activities; time frames and responsibilities for effectively implementing the project, including the evaluation process, for assuring successful implementation of grant objectives. A description of the plan to report the demographic characteristics of students, types of programming activities and program outcomes (post-secondary education and employment) of youth with disabilities served through the HS/HT program in the applicant's state; and to compare their performances with students with and without disabilities not enrolled in the program should also be provided.

In addition, applicants should outline the strategy for documenting and reporting the activities undertaken during the life of the grant for ODEP's future use in working with other grantees and constituencies.

In evaluating the management and outcomes criteria, ODEP also considers the following factors to be of particular importance:

(a) The extent to which the goals, objectives, and outcomes to be achieved are clearly specified and measurable;

(b) The extent to which the design of the proposed project features innovative methods for developing new sites and/or strengthening existing sites;

(c) The extent to which the proposal incorporates the strategic plan in Part VII, Statement of Work;

(d) The extent to which the proposed budget and narrative justification are adequate to support the proposed project;

(e) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project;

(f) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

(g) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(h) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

(i) The extent to which the evaluation will provide information to other programs about effective strategies suitable for replication or testing in other settings;

(j) The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of people with disabilities;

(k) The extent to which the management plan for project implementation is likely to achieve the objectives of the proposed project on time and within budget;

(l) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

(m) The extent to which the time commitments of the state director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Part VIII. Monitoring and Reporting

Monitoring: ODEP is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the terms of the grant award document. Applicants should assume that ODEP staff, or their designees will conduct on-site project reviews periodically. Reviews will focus on timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives. HS/HT Implementation and Development Grants may be subject to other additional reviews at the discretion of ODEP.

Reporting: Grantees will be required to submit quarterly financial and narrative progress reports under the HS/HT Grant program as prescribed by OMB Circular A–102 and A–110, as codified by 29 CFR parts 97 and 95 respectively.

(1) A Quarterly Report will be required within thirty (30) days of the end of each quarter beginning ninety days from the award of the grant and is estimated to take five hours to prepare on average. The form for the Quarterly Report will be provided by ODEP. ODEP will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

(2) Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269—Financial Status Report (FSR).

(3) A Final Project Report, including an assessment of project performance and outcomes achieved will be required and is estimated to take twenty hours to complete. This report will be submitted in hard copy and on electronic disk using a format and following instructions that will be provided by ODEP. A draft of the final report is due to the ODEP thirty (30) days before the termination of the grant. The final report is due to ODEP sixty (60) days following the termination of the grant.

ODEP's evaluation of the HS/HT program encompasses a process evaluation that includes extensive information pertaining to achievements under the grant (*e.g.*, training provided to staff, coordination with disability entities, etc.), as well as summary information pertaining to HS/HT implementation and the numbers of people with disabilities registered, receiving services, and employed through the One-Stop system, among other areas.

ODEP may arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant post secondary and employment data, and to provide access to personnel, as specified by the evaluator(s), under the direction of ODEP. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

Grantees must also agree to work with ODEP in its various technical assistance efforts in order to freely share with others what is learned. Grantees must agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL and other relevant Federal agencies, as appropriate. Finally, Grantees must agree to actively utilize the programs sponsored by the ODEP, including the Job Accommodation Network, (*http://www.jan.wvu.edu)*, and the Employer Assistance Referral Network (*http://www.earnworks.com).*

The DOL has established priorities for FY 2003 as noted in the introduction of Part VII—Government Requirements/Statement of Work. HS/HT Grantees will be expected to support these priorities.

Part IX. Review Process and Evaluation Criteria

All applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed in this SGA. The panel results are advisory in nature and not binding on the Grant Officer. The DOL may elect to award grants either with or without discussion with the applicant. In situations without discussions, an award will be based on the applicant's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

Panel findings; Geographic distribution of the competitive applications and the currently existing state grants (Connecticut, Georgia); and Availability of funds.

X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following as applicable:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96— Audit Requirements for Grants, Contracts, and Other Agreements.
- 29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

- State and Local Government—OMB Circular A–87.
- Nonprofit Organizations—OMB Circular A–122.
- Profit-Making Commercial Firms—48 CFR part 31.

Profit will not be considered an allowable cost in any case.

C. Grant Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794).
- 29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*).
- 29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938).

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC, this 3rd day of June, 2003.

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

Appendix D. Survey on Ensuring Equal Opportunity

BILLING CODE 4510-CX-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other*(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Appendix A

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00		0.00	
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

Appendix B

Appendix B

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL (*sum of lines 8-11*)	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$ 0.00	$	$	$
14. Non-Federal	0.00	0.00			
15. TOTAL (*sum of lines 13 and 14*)	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (*sum of lines 16-19*)	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

Authorized for Local Reproduction Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable **Authorized for Local Reproduction** **Standard Form 424B (Rev. 7-97) Prescribed by OMB Circular A-102**

Appendix C

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

Survey on Ensuring Equal Opportunity

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c) (3) statuses is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1225-0083. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–14351 Filed 6–5–03; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,899A]

E.J. Footwear LLC, Franklin, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on July 15, 2002, applicable to workers of E.J. Footwear LLC located in Franklin, Tennessee. The notice was published in the **Federal Register** on July 24, 2002 (67 FR 48485).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings on review show that workers of the subject firm were previously certified eligible to apply for TAA under petition TA–W–38,042 which expired on November 2, 2002. The amended certification for TA–W–40,899A established an impact date of October 24, 2000. In order to avoid an overlap in worker group coverage, this certification is being amended to establish a new impacted date of November 3, 2002.

The amended notice applicable to TA–W–40,899A is hereby issued as follows:

All workers of E.J. Footwear LLC, Franklin, Tennessee, who became totally or partially separated from employment on or after November 3, 2002, through April 3, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–14292 Filed 6–5–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of administrative and survey data on the Growing America Through Entrepreneurship project. A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 5, 2003.

ADDRESSES: Jonathan Simonetta, U.S. Department of Labor, Employment and Training Administration/Office of Policy Development, Evaluation and Research, Rm. N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–3911 (this is not a toll-free number); *jsimonetta@doleta.gov;* Fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Many individuals have the motivation and skills to develop small businesses but lack business expertise and/or access to financing. Recognizing this untapped potential, ETA is teaming with the Small Business Administration (SBA) to create a demonstration program designed to assist individuals interested in self-employment to develop their businesses—Project GATE (Growing America Through Entrepreneurship). In helping people develop businesses, Project GATE will promote both workforce and economic development. The effectiveness of the program will be evaluated.

Entrepreneurial services provided by Project GATE will include an assessment, a structured training course, and technical assistance provided by a trained counselor. As part of the technical assistance, counselors will assist individuals in need of financing to apply for loans from SBA's Microloan program and other funding sources. DOL's One-Stop Centers will conduct Project GATE orientations where interested individuals will be informed bout the services available at the One-Stop Center, the benefits and challenges of self-employment and the services offered through Project GATE. Small Business Development Center (SBDC) counselors will conduct individuals assessments and identify the most appropriate training course for each Project GATE participant. Existing entrepreneurial training providers in the community will provide training and technical assistance.

DOL's One-Stop Centers will play a central role in recruiting for the project. Interested individuals will be able to register for an orientation to Project GATE at One-Stop Centers as well as via telephone, mail, or a Website. The orientations will also be held at the One-Stop Centers.

Eligibility for Project GATE will be broad—it is designed to serve almost anyone interested in starting a business. Special attention will be paid, however, to recruiting immigrant populations.

Project GATE will be evaluated using an experimental design. Individuals who submit an application for Project GATE in each site and who meet minimal eligibility criteria will be randomly assigned to either a program group or a control group. Members of the program group will be eligible to receive Project GATE services, while members of the control group will not be eligible to receive Project GATE services, although they will not be prohibited form receiving self-employment services from other services.

GATE will be implemented in seven sites—three urban and four rural sites. The three urban sites are in Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Minneapolis-St. Paul, Minnesota. The rural sites are one in Minnesota centered around Duluth, and three in Maine centered around Portland, Bangor, and Lewiston.

The evaluation will address three key questions:

1. *Is Project GATE Viable?* What are the challenges in implementing the program? Does an interagency model for the program work? Who participates in GATE? Is the outreach effective in reaching immigrants? How does the implementation of the program vary across sites?

2. *Does the Program Work?* Does the program increase self-employment, increase employment and earnings, and reduce the receipt of unemployment insurance and public assistance? Does the program promote employment and

other economic development? Is it effective in both rural and urban areas? Does the effectiveness of the program vary by population subgroup?

3. *Is the Program Cost-Effective?* Do the benefits of the program exceed its costs? Addressing these questions will involve conducting process, impact and benefit-cost analyses. The process evaluation will be based on information collected during three rounds of visits to each site, during which detailed information will be collected on the implementation of the program from interviews with program staff, observations of services, and focus groups with program participants. Data will also be collected using a Participant Tracking System developed specifically for the study. The impact evaluation will involve comparing outcomes of members of the program group with outcomes of members of the control group. Data on these outcomes will be collected from Unemployment Insurance (UI) benefit records and quarterly wage records, and two follow-up surveys that will occur approximately 6 months and 18 months after random assignment. The benefit-cost analysis will involve placing a dollar value on all impacts of the program and comparing them with the dollar value of the costs.

II. Review Focus

DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of ETA, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The data for the impact analysis will come from UI benefits and wage records in the three states, a computer-based Participant Tracking System developed for the demonstration and used in the seven sites, and follow-up surveys conducted twice with the expected sample of 4,000 individuals who will apply for Project GATE.

The follow-up surveys, which are the subject of this notice, will be conducted by telephone approximately 6 and 18 months following the GATE application. These voluntary surveys will collect data unavailable from administrative records. The first survey is designed to collect detailed information about sample members' participation and experiences in receiving self-employment services, their experiences starting a business, their experiences in jobs working for someone else, their receipt of public assistance, and some background data on their socio-economic and demographic characteristics. The second survey is designed to collect their experiences in self-employment and developing small businesses, their experiences in jobs working for someone else, and their income and receipt of public assistance.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Partnership for Self-Sufficiency: Growing America Through Entrepreneurship.

Agency Number: 1205–ONEW.

Affected Public: Individuals.

Activity	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
GATE follow-up survey	3,200	Two times	6,400	40 minutes	2,134 (annual).
Totals					4,268 (total).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information request; they will also become a matter of public record.

Dated: May 30, 2003.

Maria K. Flynn,

Acting Administrator.

[FR Doc. 03–14291 Filed 6–5–03; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Health Insurance Claim Form (OWCP–1500). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 5, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, *et seq.*), the Black Lung Benefits Act (BLBA) (30 U.S.C. 901 *et seq.*) and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP pay for medical treatment of beneficiaries; BLBA also requires that OWCP pay for medical examinations and related diagnostic services to determine eligibility for benefits under that statute. The OWCP–1500 is a form used by bill payment staff to process requests for payment for medical services provided by medical professionals other than hospitals, pharmacies, and certain other providers. This information collection is currently approved for use through November 30, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment for certain covered medical services to injured employees who are covered under FECA, BLBA and EEOICPA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Health Insurance Claim Form.

OMB Number: 1215–0055.

Agency Number: OWCP–1500.

Affected Public: Individual or households; business or other for-profit; not-for-profit institutions.

Total Respondents: 533,427.

Total Responses: 2,133,708.

Time per Response: 7 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 248,812.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 2, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–14290 Filed 6–5–03; 8:45 am]

BILLING CODE 4510-CH-P

DEPAPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have bee made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are the parentheses following the decisions being modified.

Volume I

None.

Volume II

None.

Volume III

None.

Volume IV

None.

Volume V

None.

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 28th day of May 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–13986 Filed 6–5–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122, Approval No. 0122, EA–01–164]

J.L. Shepherd & Associates, San Fernando, California; Confirmatory Order Relaxing Order (Effective Immediately)

I

J.L. Shepherd & Associates (JLS&A) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, Subpart H. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. Based on JLS&A's failure to comply with 10 CFR part 71, QA Program Approval No. 0122 was withdrawn by the immediately effective NRC Order, dated July 3, 2001, (66 FR 36603, July 12, 2001).

II

The NRC issued the July 3, 2001, Order (July 2001 Order) because the NRC lacked confidence that JLS&A would implement the QA Program approved by the NRC (71–0122, Revision No. 5) in accordance with 10 CFR part 71, Subpart H, in a manner that would assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC Certificate of Compliance (CoC) and with 10 CFR part 71.

Subsequent to the July 2001 Order, JLS&A requested interim relief on several occasions, from the July 2001 Order, based on JLS&A's proposed Near-Term Corrective Action Plan (NTCAP), to allow shipments in U. S. Department of Transportation (DOT) specification packaging designated as 20WC. Based on a showing of good cause, the NRC issued Confirmatory Orders, dated September 19, 2001 (66 FR 49708, September 28, 2001), December 13, 2001 (66 FR 67556, December 31, 2001), March 29, 2002 (67 FR 16457, April 5, 2002), April 26, 2002 (67 FR 22462, May 3, 2002), and June 6, 2002 (67 FR 41531, June 18, 2002), which relaxed the July 2001 Order. Each of the foregoing Confirmatory Orders allowed shipments to JLS&A customers in 20WC packages in accordance with JLS&A's NTCAP, provided JLS&A satisfactorily completed certain commitments, including the use of an Independent Auditor. The commitments ensured that JLS&A staff was properly trained and that the packaging used was in conformance with the regulations. The June 6, 2002, Confirmatory Order allowed JLS&A to make shipments through May 31, 2003.

III

By letter dated February 7, 2003, JLS&A requested rescission of the July 2001 Order for the following reasons:

- JLS&A has developed implementing procedures for its conditional QA Program Approval No. 0122, Revision No. 7.
- JLS&A completed comprehensive training of all its staff (and all but one of its contractors) on the new implementing procedures between November and December 2002. JLS&A committed that prior to permitting the remaining contractor to engage in any activity for which an NRC-approved QA program is required, all prescribed training will be conducted.
- J.L. Shepherd and the Independent Auditor provided certification under oath and affirmation that the procedures and training had been completed as stated above.
- JLS&A has successfully implemented the interim procedures contained in the Near-Term Corrective Action Program over one year of shipping operations using DOT specification packaging, as attested to in the series of monthly and quarterly reports of the Independent Auditor.
- JLS&A has reorganized and streamlined its operations and staffing, aligning its business functions with the requirements of 10 CFR part 71, Subpart H, to include designation of positions directly related to QA activities and record keeping. The reorganization included requirements for the qualifications of the QA manager and for his/her separation from operational responsibility.
- JLS&A has a compelling business need for rescission of the Order and for restoration of its ability to design, manufacture and ship devices larger than those that can be shipped in DOT specification packaging. JLS&A work involving these larger devices had accounted for about 20 percent of its annual revenues.
- The Order has imposed a continuing and increasing economic penalty on JLS&A.
- JLS&A states it is the only economical shipper for devices of its own design, and for various other manufacturers' devices, all of which contain large quantities of Type B radioactive materials and require shipment in NRC-approved packages. JLS&A restrictions from making these shipments has meant that these devices have not been able to be relocated, decommissioned, or re-sourced.
- JLS&A committed to NRC that JLS&A will not make further international Type B shipments requiring NRC-approved packages until it is able to ensure that its Type B package designs are in compliance with all NRC requirements, including changes made in response to the International Atomic Energy Agency's International Transportation Standard TS–R–1.
- JLS&A committed to meeting obligations imposed by the part 71 rulemaking which, if approved, will require JLS&A to re-evaluate existing designs and to submit applications containing revised bases for their approval.
- JLS&A has at all times attempted to cooperate fully with the NRC staff in the enforcement action and investigation associated with the July 2001 Order. JLS&A has taken to heart the Commission's criticism of its QA program and has, in many ways, fundamentally redesigned its QA program to respond to the criticisms of the NRC staff and the Independent Auditor.

The NRC staff reviewed JLS&A's request and JLS&A's safety performance under the above-mentioned relaxation Orders during an April 22–24, 2003, inspection to determine whether to grant the request with assurances that public health and safety are maintained. As a result of the April 2003 inspection, the NRC identified one violation for a failure to follow procedures, concerns with the use of non-approved forms to document quality inspection activities, a weakness in maintaining proper configuration control of QA program documentation, and that specific training on the QA program had not been performed. While these findings were not as extensive as the events leading to the July 2001 Order, they are cause for concern. However, based on JLS&A's development of the new QA program and the progress shown, JLS&A has demonstrated good cause to relax certain provisions of the July 2001 Order.

On May 29, 2003, JLS&A consented to issuance of this Order granting interim relief from the July 2001 Order subject to the commitments as set forth in Section IV below, and agreed that this Order is to be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments will provide assurance that sufficient resources will be applied to the QA program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that JLS&A's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be confirmed by this Order. Based on the above and JLS&A's consent, this Order is effective immediately upon issuance.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR parts 71 and 110, it is hereby ordered, effective immediately, that the July 2001 Order is relaxed to grant JLS&A interim relief, to effect shipments in accordance with 10 CFR 71.7, 71.12, 71.13, 71.14 or 71.16 and revision 7 TO QA program approval No. 0122, through June 1, 2005, provided:

1. JLS&A fully implements and complies with Revision No. 7 of the conditionally approved QA Program Approval No. 0122;

2. JLS&A fully train JLS&A's staff, contractors, and sub-contractors, in Revision No. 7 of the conditionally approved QA program plan and implementing procedures, prior to any shipments or design, procurement, fabrication, assembly, testing, modification, maintenance, repair or use of packaging covered by Revision No. 7;

3. JLS&A uses an Independent Auditor, approved by the Commission, to ensure that Revision No. 7 of conditionally approved QA program plan is fully and completely implemented. Additionally, the Independent Auditor shall conduct monthly QA program audits and provide NRC with a report by the 20th of each month. These monthly audits shall continue for a period of seven (7) months from the date of this Order. After the seven (7) month period, audits shall be performed on a quarterly basis, with a report provided to the NRC by the 20th of the month following each quarter. The Independent Auditor shall verify the compliance of the conduct of shipping operations with Revision No. 7 of the conditionally approved QA program plan and implementing procedures;

4. JLS&A shall stop all shipping operations if the audit conducted by the Independent Auditor identifies safety concerns associated with the JLS&A conduct of shipping operations. In such an event, JLS&A shall inform the NRC of the audit findings and JLS&A proposed corrective actions within 3 business days of the identification of the audit findings to JLS&A by the Independent Auditor. JLS&A shall suspend all shipping operations until the safety concerns are corrected and the Independent Auditor has found the corrective action acceptable. The Independent Auditor shall inform NRC of the audit findings, JLS&A corrective actions, and the results of the Independent Auditor's review of the corrective actions in its audits; and

5. During the two-year interim relief period, the NRC will conduct an inspection of JLS&A operations and implementation of the JLS&A QA program, Revision No. 7. Implementation of QA Program Approval No. 0122, Revision No. 7, without restrictions, may be permitted after NRC has verified JLS&A performance through an NRC inspection program in which no violations or only minor non-conformances are identified.

The Director, Office of Enforcement, or the Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Order upon demonstration of good cause by JLS&A.

V

In accordance with 10 CFR 2.202, any person, other than JLS&A, adversely affected by this Order may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to JLS&A. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be

transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If such person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 30th day of May, 2003.

For the Nuclear Regulatory Commission.

James G. Luehman,

Deputy Director, Office of Enforcement.

[FR Doc. 03–14280 Filed 6–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Issues Related to the Construction Inspection Program for Reactors

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding a workshop on issues related to the construction inspection program for reactors built under the provisions of Part 52. The public workshop is scheduled to discuss the scope and the types of inspections which are planned during the new reactor construction project.

FOR FURTHER INFORMATION, CONTACT: Mr. James A. Isom, Inspection Program Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Isom may be reached at (301) 415–109 or by e-mail at *jai@nrc.gov*.

DATES: The workshop will be held on August 27, 2003, from 8:30 a.m. to 4:30 p.m. Submit comments on the draft construction inspection program framework document by September 15, 2003. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: The workshop will be held at the U.S. Nuclear Regulatory Commission in the Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The draft construction inspection program framework document is available for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Document Access and Management System (ADAMS), (ADAMS # ML031400849). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by e-mail to *pdr@nrc.gov*.

Written comments on the draft guidance should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at *nrcrep@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

SUPPLEMENTARY INFORMATION: The NRC has developed a draft construction inspection program framework document. The document describes the proposed inspections which will be conducted for reactors built under the 10 CFR part 52 process. The framework document details the proposed audits and inspections conducted by the NRC during the Early Site Permit (ESP) and Combined License (COL) phases. The document also discusses how the NRC staff will verify satisfactory completion of the inspections, tests, analyses, and acceptance criteria (ITAAC) and review operational programs.

In the "Draft 10 CFR Construction Inspection Program Framework Document," the NRC staff set forth the basis for the construction inspection program for reactors built under 10 CFR part 52. The document was issued on May 30, 2003 and the public workshop is scheduled for August 27, 2003 to discuss the scope and the types of inspections which are planned during the new reactor construction project. Additionally, comments received from various stakeholders will be discussed. The following topics will be discussed:

- The scope and types of NRC inspections and when they will occur for the different phases of construction of a nuclear plant constructed under 10 CFR part 52.
- How the NRC staff plans to inspect and verify licensee's completion of inspections, tests, analyses and acceptance criteria (ITAAC).
- How the NRC staff plans to inspect the operational programs which do not have ITAAC associated with them.
- How the NRC staff plans to conduct engineering design verifications and first-of-a-kind engineering inspections.

Dated at Rockville, Maryland, this 30th day of May 2003.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–14278 Filed 6–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1121, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1121, "Guidelines for Categorizing Structures, Systems, and Components in Nuclear Power Plants According to their Safety Significance," is being developed to describe a process that is acceptable to the NRC staff for the development and assessment of evaluation models that may be used to comply with the NRC's regulations with respect to the categorization of structures, systems, and components (SSCs) that are considered in risk-informing special treatment requirements. This guide conforms to a proposed amendment to 10 CFR 50.69 that was published in the **Federal Register** (68 FR 26511) on May 16, 2003.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

You may submit comments by any one of the following methods. Please include the following number (RIN3150–AG42) in the subject line of your comments. Comments on the draft guide in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*, for information about Draft Regulatory Guide DG–112, contact Mr. David Diec (301) 414–2834; e-mail *dtd@nrc.gov*.

Hand delivered comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1966).

Fax Comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Although a deadline is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; e-mail *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 22nd day of May 2003.

For the Nuclear Regulatory Commission.

Mark Flynn,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 03–14279 Filed 6–5–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register notice on this information collection request on March 27, 2003, in 68 FR 15008, at which time a 60-calendar day comment period was announced. This comment period ended May 29, 2003. No comments were received in response to this notice.

This information collection submission had been forwarded to OMB for review through an emergency extension on April 8, 2003. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is expiring.

Title: Self-Monitoring Questionnaire for Insurance and Finance Projects.

Form Number: OPIC–162.

Frequency of Use: Annually for duration of project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3 hours per project.

Number of Responses: 325 per year.

Federal Cost: $19,500 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: June 2, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–14288 Filed 6–5–03; 8:45 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

January 2003 Pay Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The President adjusted the rates of basic pay and locality payments for certain categories of Federal employees effective in January 2003. This notice documents those pay adjustments for the public record.

FOR FURTHER INFORMATION CONTACT: Carey Johnston, (202) 606–2858, FAX (202) 606–0824, or email to *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2002, the President signed Executive Order 13282 (68 FR 1133, January 8, 2003), which implemented the January 2003 across-the-board increase of 3.1 percent in the rates of basic pay for the statutory pay systems. On March 21, 2003, the President signed Executive Order 13291 (68 FR 14525, March 25, 2003), which amended Executive Order 13282 to provide a locality pay increase costing approximately 1 percent of payroll retroactive to the first day of the first pay period beginning on or after January 1, 2003. The President made these adjustments consistent with Public Law 108–7, February 20, 2003, which authorized an overall average pay increase of 4.1 percent for General Schedule (GS) employees.

Schedule 1 of Executive Order 13282 provides the rates for the 2003 General Schedule and reflects a 3.1 percent across-the-board increase. Executive Order 13291 provides the percentage amounts of the 2003 locality payments. (*See* section 5 of Executive Order 13282 and Schedule 9 of Executive Order 13291.)

The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13282 that the Office of Personnel Management (OPM) publish appropriate notice of the 2003 locality payments in the **Federal Register**.

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the 48 contiguous States and the District of Columbia. In 2003, locality payments ranging from 9.62 percent to 21.08 percent apply to GS employees in 32 locality pay areas. These 2003 locality pay percentages, which replaced the locality pay percentages that were applicable in 2002, became effective on the first day of the first applicable pay period beginning on or after January 1, 2003. An employee's locality-adjusted annual rate of pay is computed by increasing his or her scheduled annual rate of basic pay (as defined in 5 U.S.C. 5302(8) and 5 CFR 531.602) by the applicable locality pay percentage. (*See* 5 CFR 531.604 and 531.605.)

Executive Order 13282 establishes the new Executive Schedule, which incorporates the 3.1 percent increase (rounded to the nearest $100) required under 5 U.S.C. 5318. The Executive order also reflects a decision by the President to increase the rates of basic pay for members of the Senior Executive Service (SES) by 3.1 percent (rounded to the nearest $100). The maximum rate of basic pay for SES members is limited by law to the rate for level IV of the Executive Schedule, which is now $134,000. (*See* 5 U.S.C. 5382.)

The Executive order adjusted the rates of basic pay for administrative law judges (ALJs) by 3.1 percent (rounded to the nearest $100). The maximum rate of basic pay for ALJs is also limited by law to the rate for level IV of the Executive Schedule, which is now $134,000. (*See* 5 U.S.C. 5372.)

The rates of basic pay for Board of Contract Appeals (BCA) members are calculated as a percentage of the rate for level IV of the Executive Schedule. (*See* 5 U.S.C. 5372a.) Therefore, BCA rates of basic pay were increased by approximately 3.1 percent. Also, the maximum rate of basic pay for senior-level (SL) and scientific or professional (ST) positions was increased by approximately 3.1 percent (to $134,000) because it is tied to the rate for level IV of the Executive Schedule. The minimum rate of basic pay for SL/ST positions is equal to 120 percent of the minimum rate of basic pay for GS–15 and thus was increased by 3.1 percent (to $102,168). (*See* 5 U.S.C. 5376.)

On December 5, 2002, the President's Pay Agent extended the 2003 locality-based comparability payments to the same Governmentwide and single-agency categories of non-GS employees that received the 2002 locality payments. The Governmentwide categories include members of the SES, employees in SL/ST positions, ALJs, and BCA members. The maximum locality rate of pay for these employees is the rate for level III of the Executive Schedule ($142,500 in 2003). By law, Executive Schedule officials are not authorized to receive locality pay. (*See* 5 U.S.C. 5304(h)(1)(iii).)

OPM published "Salary Tables for 2003," (OPM Doc. 124–48–6) in May 2003. This publication provides complete salary tables incorporating the 2003 pay adjustments, information on general pay administration matters, locality pay area definitions, Internal Revenue Service withholding tables, and other related information. The rates of pay shown in this publication are the official rates of pay for affected employees and are hereby incorporated as part of this notice. You may purchase copies of "Salary Tables for 2003" from the Government Printing Office (GPO) by calling (202) 512–1800 (outside the DC area: 1–866–512–1800) or FAX (202) 512–2250. You may order copies directly from GPO on the Internet at *http://bookstore.gpo.gov.*

In addition, you can find pay tables on OPM's Internet Web site at *http://www.opm.gov/oca/payrates/index.asp.*

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–14244 Filed 6–5–03; 8:45 am]

BILLING CODE 6325–39–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed routine uses.

SUMMARY: The purpose of this document is to give notice of three proposed new routine uses (in different systems of records) and a revision of another routine use in two systems of records.

DATES: The proposed and amended routine uses shall become effective as proposed without further notice in 40 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4548.

SUPPLEMENTARY INFORMATION: The RRB proposes three new routine uses, one for its System of Records, RRB–5, Master File of Railroad Employees' Creditable Compensation, one for its System of Records, RRB–20, Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE) and one for its System of Records RRB–22, Railroad Retirement Survivor and Pensioner Benefit System.

The first proposed routine use ("r") in RRB–5 would permit the RRB to furnish to AMTRAK an employee's service history information (such as whether the employee had service before a certain date and whether the employee had at least a given number of years of service) when such information would be needed for AMTRAK to make a determination whether to award a travel pass to either the employee or the employee's widow.

The second proposed routine use ("w") in RRB–20 would permit the RRB to furnish to a legitimate health care provider whether a qualified railroad retirement beneficiary is enrolled in Medicare part A or part B, and if so, the effective date(s) of such enrollment when such information is needed to verify Medicare enrollment.

The third proposed routine use ("qq") in RRB–22 would permit the RRB to furnish to AMTRAK an employee's date last worked, annuity filing date, annuity beginning date, and month and year of death when such information would be needed for AMTRAK to make a determination whether to award a travel pass to either the employee or the employee's widow.

The RRB also proposes to amend an existing routine use found in two of its systems of records. The amendment would permit the disclosure of the gender of the subject individual to Members of Congress when they request the name and address in order to communicate with their constituents on matters affecting the railroad retirement or railroad unemployment and sickness programs. The current routine in the two systems of records ("q" in RRB–5 and "ff" in RRB–22) permits disclosure of the subject individual's name and address. The subject's gender is needed to select the correct salutation (Mr. and Ms.) in addressing letters when only the first initial of the first name is given or when the gender cannot be ascertained from the first name (*e.g.*, Lee).

On May 28, 2003, the Railroad Retirement Board filed a new/altered system report for this system with the House Committee on Government Operations, the Senate Committee on Governmental Affairs, and the Office of Management and Budget. This was done to comply with section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix I.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–5

SYSTEM NAME:

Master File of Railroad Employees' Creditable Compensation.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraph "q" is revised to read as follows:

q. The name, address and gender of a railroad worker may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the worker about legislation which affects the railroad retirement or railroad unemployment and sickness insurance program.

* * * * *

Paragraph "r" is added to read as follows:

r. The service history of an employee (such as whether the employee had service before a certain date and whether the employee had at least a given number of years of service) may be disclosed to AMTRAK when such information would be needed by AMTRAK to make a determination whether to award a travel pass to either the employee or the employee's widow.

* * * * *

RRB–20

SYSTEN NAME:

Health Insurance and Supplemental Medical Insurance Enrollment and Premium Payment System (Medicare)

* * * * *

Paragraph "w" is added to read as follows:

w. Whether a qualified railroad retirement beneficiary is enrolled in Medicare part A or part B, and if so, the effective date(s) of such enrollment may be disclosed to a legitimate health care provider, in response to its request, when such information is needed to verify Medicare enrollment.

* * * * *

RRB–22

SYSTEM NAME:

Railroad Retirement, Survivor, and pensioner Benefit System.

* * * * *

Paragraph "ff" is revised to read as follows:

ff. The name, address, and gender of an annuitant may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the annuitant about legislation which affects the railroad retirement system.

* * * * *

Paragraph "qq" is added to read as follows:

qq. An employee's date last worked, annuity filing date, annuity beginning date, and the month and year of death may be furnished to AMTRAK when such information is needed by AMTRAK to make a determination whether to award a travel pass to either the employee's widow.

[FR Doc. 03–14254 Filed 6–5–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12b–1; SEC File No. 270–188; OMB Control No. 3235–0212.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB"), a request for extension of the previously approved collection of information discussed below.

Rule 12b–1 permits a registered open-end investment company ("mutual fund") to distribute its own shares and pay the expenses of distribution out of the mutual fund's assets provided, among other things, that the mutual fund adopts a written plan ("rule 12b–1 plan") and has in writing any agreements relating to the implementation of the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review

quarterly reports of amounts spent under the rule 12b–1 plan; and (iii) the board consider continuation of the rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

Based on information filed with the Commission by funds, Commission staff estimates that there are 6,217 mutual fund portfolios with rule 12b–1 plans. As discussed above, rule 12b–1 requires the board of each fund with a rule 12b–1 plan to (i) review quarterly reports of amounts spent under the plan and (ii) annually consider the plan's continuation (which generally is combined with the fourth quarterly review). This results in a total number of annual responses per fund of four and an estimated total number of industry responses of 24,868 (6,217 fund portfolios×4 annual responses per fund=24,868 responses).

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 6,217 mutual fund portfolios that currently have a rule 12b–1 plan, the average annual burden of complying with the rule is 100 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. Commission staff therefore estimates that the total burden of the rule's paperwork requirements for all funds is 621,700 hours (6,217 fund portfolios×100 hours per fund=621,700 hours). The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

If a currently operating fund seeks to (i) adopt a new rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b–1 plan, rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Commission staff estimates that three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. Commission staff further estimates that the cost of each fund's proxy is $15,000. Thus the total annualized cost burden of rule 12b–1 to the fund industry is $45,000 (3 funds requiring a proxy x $15,000 per proxy).

The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. The Commission is seeking OMB approval because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct written comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14293 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 17f–2 SEC File No. 270–233
OMB Control No. 3235–0223.
Form N–17f–2 SEC File No. 270–317
OMB Control No. 3235–0360.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–2 is entitled: "Custody of Investments by Registered Management Investment Company." Rule 17f–2 establishes safeguards for arrangements in which a registered management investment company ("fund") is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets at least three times a year, and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission's examination staff. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropriation of fund assets and to detect any irregularities.

The Commission staff estimates that approximately 135 funds rely upon rule 17f–2.[1] The Commission staff estimates that each fund offers an average of 3.7 separate series or portfolios subject to rule 17f–2. Each fund makes an average of 97.4 responses each year under the rule, including 1 response (requiring .2 burden hours) per fund to draft director resolutions, 89 responses per fund to prepare notations of transactions[2] (requiring one hour each), and 7.4 responses[3] per fund for fund personnel to assist the independent public accountants when they perform unscheduled verifications (requiring 10 burden hours each). Thus, the total hour burden per fund is estimated to 163.2 hours[4] Commission staff estimates that each fund therefore spends approximately .2 burden hours of professional time at $60 per hour annually in drafting resolutions by directors (.2 × $60 = $12), 89 hours[5] of professional time at $60 per hour annually in preparing transaction notations (89 × $60 = $5,340), and 74 hours[6] of clerical time at $16 per hour annually in assisting independent public accounts perform unscheduled verifications of assets (74 × $16 = $1,184).[7] The total annual burden of rule 17f–2's paperwork requirements thus is estimated to be approximately 22,032 hours[8] at an annual cost of $882,360.[9]

Form N–17f–2 is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N–17f–2 is the cover sheet for the accountant examination certificates filed under rule 17f–2 of the Investment Company Act of 1940 by registered management investment companies ("funds") maintaining custody of securities or other investments. Form N–17f–2 facilitates the filing of the accountant's examination certificates. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper SEC file number and the correct name of a fund.

Under rule 17f–2, each fund is required to file Form N–17f–2 at least three times a year with the Commission. Commission staff estimates that it takes approximately 1 hour per response to prepare and file a Form N–17f–2 with the Commission. Thus, the total annual burden of Form N–17f–2's paperwork requirement is estimated to be approximately 405 burden hours.[10] The entire hour burden will be borne by clerical staff at $16 per hour, for a total cost of approximately $6,480 (405 burden hours × $16 = $6,480). The increase in burden hours from 92 to 405 is attributable to updated estimates of the burden hours that reflect additional time spent by professionals and clerical staff in their compliance efforts.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collection of information requirements of the rule is mandatory for those funds that maintain custody of their own assets. The information provided to the Commission by the fund's independent public accountants about each verification of the fund's assets will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct written comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 30, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14294 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The Commission's records indicate that approximately 135 funds filed Form N–17f–2 with the Commission during calendar year 2002.

[2] This number results from 24 responses per portfolio multiplied by 3.7 portfolios in the average fund (24 × 3.7 = 88.8).

[3] This number results from 2 unscheduled verifications per portfolio multiplied by 3.7 portfolios in the average fund (2 × 3.7 = 7.4 responses per fund).

[4] (1 response × .2 burden hours) + (89 responses × 1 burden hour) + (7.4 responses × 10 burden hours) = 163.2 burden hours.

[5] 89 transaction notations per fund × 1 hour = 89 hours.

[6] 7.4 verifications per fund × 10 hours = 74 hours.

[7] Each of these hour burden estimates is based upon conversations with attorneys and accountants familiar with the information collection requirements of the rule. Commission staff relied upon the Securities Industry Association, Report on Management and Professional Earnings in the Securities Industry (2002) to determine the hourly wage rates used in the calculation of this estimate. Professional time is based on the estimated average wage for associate and general counsel in the securities industry.

[8] 163.2 hours per fund × 135 funds = 22,032 total annual burden.

[9] ($12 (for drafting resolutions) + $5,340 (for transaction notations) + $1,184 (for unscheduled verifications)) × 135 funds = $882,360. The annual burden for rule 17f–2 does not include time spent preparing Form N–17f–2. The burden for Form N–17f–2 is included in a separate collection of information.

[10] The Commission staff estimates that there are 135 funds that file Form N–17f–2 each year. Each fund is required to make three responses per year, and each response requires 1 hour to prepare. The hour burden is calculated as follows: 135 (respondents) × 3 (responses per fund per year) × 1 (hours per response) = 405 hours.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 32781, June 2, 2003.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, June 3, 2003 at 2 p.m.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Tuesday, June 3, 2003 at 2 p.m. has been changed to Tuesday, June 3, 2003 at 1 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: June 3, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–14366 Filed 6–3–03; 4:50 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47954; File No. SR–NASD–2003–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Issuance of Market Participant Identifiers

May 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule would enable members that are registered as market makers or electronic communications networks ("ECNs") to request and receive a second market participant identifier ("MMID") with which to enter a second Attributable Quote/Order in the Nasdaq Quotation Montage or to enter non-attributable orders into SIZE in SuperMontage. The rule change would be established as a two-month pilot program currently scheduled to begin on July 1, 2003. Nasdaq will issue a Head Trader Alert publicly announcing the precise start and end dates of the pilot. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4613.Character of Quotations

(a) [Two-Sided] Quotation[s]
Requirements and Obligations

(1) *Two-Sided Quote Obligation.* For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) No Change.

(B) No Change.

(2) For a two-month pilot period, market makers and ECNs may request the use of a second MMID. A market maker may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its first MMID in any security shall not be permitted to use the second MMID for any purpose in that security.

(3) Members that are permitted the use of second MMIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) The continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' second MMIDs; and (b) the second MMID may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.

(b)–(e) No Change.

* * * * *

IM–4613–1—Procedures For Allocation of Second Displayable MMIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of a second MMID to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying a second MMID in an orderly, predictable, and fair manner on a stock-by-stock basis.

Nasdaq will automatically designate a market maker's first MMID as a "Primary MMID" and its second MMID as a "Secondary MMID." Market makers are required to use their Primary MMID in accordance with the requirements of NASD Rule 4613(a)(1) above, as well as all existing requirements for the use of MMIDs in Nasdaq systems. Market makers' use of Secondary MMIDs are subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3) above, including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5) will not apply to the secondary MMID. Nasdaq will automatically designate each ECN's MMIDs as Primary and Secondary. Each ECN MMID will be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members may also use a Secondary MMID to enter non-attributable orders into SIZE.

Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Secondary MMIDs to display quotations in Nasdaq systems. If it is determined that a Secondary MMID is being used improperly, Nasdaq will withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN no longer fulfills the conditions appurtenant to its Primary MMID (e.g., by being placed into an unexcused withdrawal), it may not use the Secondary MMID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying a second MMID is that each market maker or ECN should be permitted to register to display a single quotation in a security under its Primary MMID before any is permitted to register to display a second quotation under a Secondary MMID. Each market maker or ECN may register its Primary MMID to display a quotation in a security, on a first-come-first-served basis. After each market maker or ECN has been permitted to register its Primary MMID to display quotations in a stock, Nasdaq will then register Secondary MMIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within five MMIDs of its maximum in a particular security, Nasdaq will temporarily cease registering additional Secondary MMIDs in that security and reserve those five remaining MMIDs for members that may register their Primary MMID in that stock in the future. If Nasdaq allocates those reserved MMIDs to members requesting Primary MMIDs and then receives additional requests for Primary MMIDs, it will use the procedure described below to reallocate Secondary MMIDs to members requesting Primary MMIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq will rank each of the market participants that has two MMIDs in the stock according to their monthly volume of trading, based on the lower volume of that participant's two MMIDs. Nasdaq will withdraw the second MMID display privilege of the lowest volume participant in that ranking and assign that privilege to the first member that requested the ability to display a second quotation. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Secondary MMIDs. The low-ranking member(s) will lose the ability to display a second quotation in that security for that month, but will still be permitted to use the second MMID to enter non-attributable orders into SIZE for that security or any other, and to display a second quote in any stocks in which it is properly registered to do so, subject to the conditions described in the rule and this interpretive material.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

An NASD member that registers as a market maker or ECN is permitted to enter one two-sided quotation per security in the Nasdaq Quotation Montage, and is assigned a unique market participant identifier ("MMID") with which to enter such quotations. The NASD 4600 Rule Series governs the character of such quotations and the rights and obligations of members that display quotations in the Nasdaq Quotation Montage via their MMIDs. The NASD Rule 4700 Series sets forth the rights and obligations of members that participate in the Nasdaq National Market Execution System ("SuperMontage"), including the entry of quotes and orders and the display of quotations. Numerous other NASD and Commission rules govern the conduct of members in their use of MMIDs to enter and execute orders and display quotes, including, for example, NASD IM–2110–2 (the "Manning Interpretation"), NASD Rule 6950 (the "Order Audit Trail System"), and NASD Rule 2320 (the "Best Execution" rule).

Nasdaq proposes to amend NASD Rule 4613(a) to permit market makers and ECNs to request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage. A market maker would be entitled to request the use of a second MMID for displaying Attributable Quotes/Orders in any security in which it is registered and meets the obligations set forth in NASD Rule 4613(a)(1), including the maintenance of a continuous two-sided quotation. An ECN would be entitled to request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623.

Members that are permitted the use of second MMIDs for displaying Attributable Quotes/Orders would be subject to the same rules applicable to the members' first quotation. In other words, market makers that display a second Attributable Quote/Order would be required to comply with all rules applicable to market makers that display a single Attributable Quote/Order, and ECNs would be required to comply with all rules applicable to EGNs in their display of Attributable Quotes/Orders. There would be only two exceptions to that general principle. First, the continuous two-sided quote requirement and excused withdrawal procedures, as well as the procedures described in NASD Rule 4710(b)(2)(B) and (b)(5) would not apply to market makers' use of second MMIDs. Second, a market maker would be permitted to use only one MMID, its Primary MMID, to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619. In all other respects, members would have the same rights and obligations in using a second MMID to enter quotes and orders and to display quotations as they do today.

Nasdaq believes that the ability to enter quotes and orders and to display quotations under a second MMID would benefit the Nasdaq market by enabling members to contribute more liquidity to the market, add to the transparency of trading interest, and better serve the needs of investors.[3] Members would use the second MMID to route orders and quotes to SuperMontage from different units within their firms, including market making, arbitrage, retail, and institutional trading desks, among others. Within the same firm, these desks serve a variety of functions and investors, often with different needs and goals that are accomplished by differing trading strategies or practices. Members that, in the past, have specialized in a particular investor type or trading practice have expanded and integrated their operations. Nasdaq believes that these members require the ability to participate in Nasdaq trading in new ways.

At the same time, Nasdaq believes that it is essential for it to maintain its regulation of trading on Nasdaq and the same high level of compliance with NASD and Commission rules that it believes it has achieved to date. Except as noted in the proposed rule, members that use a second MMID would be required to comply with all NASD and Commission rules applicable to their current use of a single MMID. Members would be prohibited from using a second MMID to accomplish indirectly what they are prohibited from doing directly through a single MMID. For example, members would not be permitted to use a second MMID to avoid their Manning obligations under IM–2110–2, best execution obligations under NASD Rule 2320, or their obligations under the Commission Order Handling Rules. Members would be required to continue to comply with the firm quote rule, the OATS rules, and the Commission order routing and execution quality disclosure rules. In addition, Rule 4613(a) specifically prohibits firms from displaying a second Attributable Quote/Order to engage in passive market making or to enter stabilizing bids because this could violate NASD Rules 4614 and 4619 and Commission Regulation M. To the extent that the allocation of second MMIDs were to create regulatory confusion or ambiguity, every inference would be drawn against the use of a second MMID in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market.

Nasdaq represents that it has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of a second MMID to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying a second MMID in an orderly, predictable, and fair manner on a stock-by-stock basis.

Nasdaq would automatically designate a market maker's first MMID as a Primary MMID and its second MMID as a Secondary MMID. Market makers would be required to use their Primary MMID in accordance with the requirements of NASD Rule 4613(a)(1), as well as all existing requirements for the use of MMIDs in Nasdaq systems. Market makers' use of Secondary MMID's would be subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3), including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5)

[3] Nasdaq will assess no fees for the issuance or use of a second MMID, other than the SEC-approved transaction fees set forth in NASD Rule 7010.

would not apply to the Secondary MMID. Nasdaq would automatically designate each ECN's MMIDs as Primary and Secondary. Each ECN MMID would be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members would also be permitted to use a Secondary MMID to enter non-attributable orders into SIZE.

Nasdaq represents that it, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Secondary MMIDs to display quotations in Nasdaq systems. If it were to be determined that a Secondary MMID was being used improperly, Nasdaq would withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN were no longer to fulfill the conditions appurtenant to its Primary MMID (*e.g.*, by being placed into an unexcused withdrawal), it would not be permitted to use the Secondary MMID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying a second MMID is that each market maker or ECN should be permitted to register to display a single quotation in a security under its Primary MMID before any is permitted to register to display a second quotation under a Secondary MMID. Each market maker or ECN would register its Primary MMID to display a quotation in a security on a first-come-first-served basis. After each market maker or ECN has been permitted to register its Primary MMID to display quotations in a stock, Nasdaq would then register Secondary MMIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq were to come within five MMIDs of its maximum in a particular security, Nasdaq would temporarily cease registering additional Secondary MMIDs in that security and reserve those five remaining MMIDs for members that may register their Primary MMID in that stock in the future. If Nasdaq were to allocate those reserved MMIDs to members requesting Primary MMIDs and were then to receive additional requests for Primary MMIDs, it would use the procedure described below to reallocate Secondary MMIDs to members requesting Primary MMIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq would rank each of the market participants that has two MMIDs in the stock according to their monthly volume of trading, based on the lower volume of that participant's two MMIDs. Nasdaq would withdraw the second MMID display privilege of the lowest volume participant in that ranking and assign that privilege to the first member that requested the ability to display a second quotation. Nasdaq would repeat this process as many times as needed to accommodate all pending requests for Primary and Secondary MMIDs. The low-ranking member(s) would lose the ability to display a second quotation in that security for that month, but would still be permitted to use the second MMID to enter non-attributable orders into SIZE for that security or any other, and to display a second quote in any stocks in which it is properly registered to do so, subject to the conditions described in the rule and this interpretive material.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that a registered national securities association's rules must be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements because it will facilitate transactions in securities, remove impediments to a free and open market, and protect investors by improving the transparency and efficiency of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[4] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by Nasdaq as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,[7] and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–87 and should be submitted by June 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14257 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(6).

[7] Nasdaq withdrew its request that the Commission waive the 30-day operative delay in view of the fact that the 30-day operative delay will have expired prior to the scheduled start date of the pilot program, July 1, 2003. Telephone conversation between Jeffrey S. Davis, Associate General Counsel Nasdaq, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (May 30, 2003).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47946; File No. SR–NASD–2002–148]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., to Eliminate the Regulatory Fee and Institute a Transaction-Based Trading Activity Fee

May 30, 2003.

I. Introduction

On October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the NASD's Regulatory Fee and institute a new, transaction-based Trading Activity Fee ("TAF"). The NASD amended the proposed rule change on November 5, 2002,[3] and November 8, 2002.[4] The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on November 19, 2002.[5] The Commission received 23 comments[6] on the proposal.[7] On March 18, 2003, the NASD responded to the comments, and amended the proposed rule change again.[8] On April 14, 2003, the NASD extended the pilot program through June 1, 2003.[9] On May 19, 2003, the NASD amended the proposed rule change a fourth time.[10] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See November 4, 2002 letter from Barbara Z. Sweeney, Senior Vice President ("SVP") and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[4] See November 7, 2002 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, SEC, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1 and the original proposed rule change.

[5] See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69784.

[6] There are 15 comment letters submitted for the instant proposed rule change. However, the Commission also is considering comment letters submitted for SR–NASD–2002–98, SR–NASD–2002–147, SR–NASD–2003–26 and SR–NASD–2003–73. See footnotes 7 and 9, *infra*.

[7] The NASD eliminated the Regulatory Fee and instituted the TAF when it filed SR–NASD–2002–98. See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002). The proposal was effective upon filing with the Commission, pursuant to section 19(b)(3)(A)(ii) of the Act, and Rule 19b–4(f)(2) thereunder. 15 U.S.C. 78s(b)(3)(A)(ii), 17 CFR 240.19b–4(f)(2). The Commission received 10 comments on SR–NASD–2002–98. See September 17, 2002 letter from Lanny A. Schwartz, Philadelphia Stock Exchange, Inc. ("Phlx"), to Jonathan G. Katz, Secretary, SEC ("Phlx Letter"); September 18, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, The Chicago Board Options Exchange, Inc. ("CBOE"), to Jonathan G. Katz, Secretary, SEC ("CBOE Letter #1"); September 20, 2002 letter submitted jointly by The American Stock Exchange LLC ("Amex"), CBOE, the International Securities Exchange, Inc. ("ISE"), The Options Clearing Corporation ("OCC"), The Pacific Exchange, Inc. ("PCX"), and the Phlx, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #1") (OCC Joint Letter #1 was later withdrawn.); September 23, 2002 letter from Susan Milligan, First Vice President and Special Counsel, OCC, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #2") (withdraws OCC Joint Letter #1 and substitutes a new letter that is identical to OCC Joint Letter #1 except for the removal of the Amex as a signatory to the letter); September 27, 2002 letter from Jeffrey T. Brown, Senior Vice President ("SVP"), Secretary and General Counsel ("GC"), The Cincinnati Stock Exchange, Inc. ("CSE"), to Jonathan G. Katz, Secretary, SEC ("CSE Letter #1"); September 26, 2002 letter from Stuart J. Kaswell, Senior Vice President ("SVP") and GC, The Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC ("SIA Letter #1"); October 21, 2002 letter from Margaret Wiermanski, Chief Compliance Officer, TD Securities, to Jonathan G. Katz, Secretary, SEC ("TD Securities Letter"); March 13, 2003 letter from John Boese, VP, Legal and compliance, The Boston Stock Exchange ("BSE"), to Jonathan G. Katz, Secretary, SEC ("BSE Letter"); March 27, 2003 letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, SEC ("CBOE Letter #3"); May 15, 2003 letter from Margaret Wiermanski, VP-Compliance, TD Options, LLC, to Jonathan G. Katz, Secretary, SEC ("TD Options Letter").

The NASD also filed SR–NASD–2002–147, which transformed the TAF into a pilot program, scheduled to terminate on December 31, 2002. See Securities Exchange Act Release No. 46818 (November 12, 2002), 67 FR 69782 (November 19, 2002). The Commission received eight comments on SR–NASD–2002–147, which were submitted as joint letters for SR–NASD–2002–147 and SR–NASD–2002–148. Letters for SR–NASD–2002–147 are not listed separately in this order, because they are fully documented in the list of comment letters for SR–NASD–2002–148.

Subsequently, the NASD filed the instant proposed rule change (SR–NASD–2002–148), which contained substantially the same proposed rule language as was contained in SR–NASD–2002–98, but was submitted pursuant to Section 19(b)(2) of the Act to allow for an additional notice and comment period per the commenters' requests. See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002). The Commission received 15 comments on SR–NASD–2002–148. See December 6, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, SEC ("CBOE Letter #2"); December 6, 2002 letter from William C. McGowan, Managing Director, TD Professional Execution, Inc., to Jonathan G. Katz, Secretary, SEC ("TD ProEx Letter"); December 10, 2002 letter from Eric Noll, Susquehanna International Group, LLP, to Jonathan G. Katz, Secretary, SEC ("Susquehanna Letter"); December 10, 2002 letter from Jeffrey T. Brown, SVP, Secretary and GC, CSE, to Jonathan G. Katz, Secretary, SEC ("CSE Letter #2"); December 9, 2002 letter from Barry S. Augenbraun, SVP and Corporate Secretary, Raymond James Financial, Inc., to Jonathan G. Katz, Secretary, SEC ("Raymond James Letter"); December 9, 2002 letter from Stuart J. Kaswell, SVP and GC, SIA, to Jonathan G. Katz, Secretary, SEC ("SIA Letter #2"); January 23, 2003 letter from Mary McDermott-Holland, Vice Chairman, Chair, Trading Issues Committee, to Jonathan G. Katz, Secretary, SEC ("STA Letter"); December 11, 2002 letter from Darla C. Stuckey, Corporate Secretary, The New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, SEC ("NYSE Letter #1"); December 5, 2002 letter, submitted jointly by CBOE, OCC, ISE, PCX, and Phlx, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #3"); BSE Letter; CBOE Letter #3; March 24, 2003 letter submitted jointly by CBOE, OCC, ISE, PCX, and Phlx, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #4"); TD Options Letter; April 10, 2003 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC ("NYSE Letter #2"); May 27, 2003 letter from Gabriel A. Duran, Chief Compliance Officer, GVR Company, LLC, to Jonathan G. Katz, Secretary, SEC ("GVRC Letter").

The NASD extended the pilot in SR–NASD–2002–182, through March 1, 2003. The Commission received no comments on SR–NASD–2002–182. The NASD extended the pilot through April 1, 2003 in SR–NASD–2003–26. See Securities Exchange Act Release No. 47436 (March 4, 2003), 68 FR 11422 (March 10, 2003). The Commission received two comments on SR–NASD–2003–26. NYSE Letter #2; GVRC Letter.

[8] See March 18, 2003 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, SEC, ("NASD Response Letter" or "Amendment No. 3"). In Amendment No. 3, the NASD (1) responded to the comments; (2) incorporated the interpretations contained in *Notices to Members 02–36* and *02–75* in the proposed rule language. See *also*, March 28, 2003 letter from Kathleen A. O'Mara, Associate General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, and Joseph Morra, Special Counsel, Division of Market Regulation, SEC (via email) ("NASD Response Letter #2").

[9] See Securities Exchange Act Release No. 47685 (April 16, 2003), 68 FR 20198 (April 24, 2003) (SR–NASD–2003–73). The Commission received two comments on the proposed rule change. See May 13, 2003 letter from Robert Bellick, Christopher Gust, Wolverine Trading, LLC, to Jonathan G. Katz, Secretary, SEC ("Wolverine Letter"); GVRC Letter.

[10] See May 19, 2003 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 4"). In Amendment No. 4, the NASD proposes to exempt from the TAF listed

Continued

approves the proposed rule change as modified by Amendment Nos. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment Nos. 3 and 4, and grants accelerated approval of Amendment Nos. 3 and 4.

II. Summary of Comments

The Commission received a total of 23 comment letters on the NASD's proposal to eliminate the Regulatory Fee and institute the TAF,[11] all of which objected to the proposal, either for substantive or procedural reasons.[12] The following summary of comments provides an overview of the commenters' concerns.

- *The NASD Should Not Charge Its Members for Services Related to Transactions on Other Markets, Where the NASD Does Not Provide the Relevant Service*

A number of commenters stated it is improper for the NASD to collect a fee from its members relating to transactions on other markets, because in that case, other markets, not the NASD, provide the relevant services.[13] For example, one commenter objected to the NASD's proposal to apply the TAF to transactions for options market makers who are non-NASD members who effect a transaction on an away exchange, emphasizing that the NASD and the options exchanges share options sales practice responsibilities, and that the NASD's responsibilities "are likely to decrease, not increase in the near future."[14] Expanding on that theme, another commenter suggested that the NASD provide more specific information about the costs to be borne by the NASD, and the relationship of those costs to the fees the NASD intends to charge, as well as the precise regulatory services the NASD performs and the NASD's authority to impose fees "for services not unique to it."[15]

- *The TAF Proposal Is Anti-Competitive Because It Indirectly Subsidizes Nasdaq by Effectively Reducing the Cost of Regulatory Services the NASD Provides to Nasdaq*

Some commenters objected to the proposed rule change on the basis that, by charging NASD members for securities transactions regardless of where a trade is executed, the NASD is providing an indirect subsidization to Nasdaq by reducing the cost to Nasdaq of regulatory services that the NASD provides to Nasdaq.[16] They claimed that the TAF proposal is the NASD's and Nasdaq's attempt to ensure that the revenue stream generated by trading in Nasdaq securities remains available, asserting that the NASD is subjecting transactions on competing markets to the TAF in an effort to subsidize Nasdaq's regulatory burden.[17]

- *Applying the TAF to Listed Options Transactions That Are Cleared by NASD Members Is Inappropriate*

Several commenters said that applying the TAF to listed options transactions that are cleared by NASD members is inappropriate because the NASD's regulatory responsibility for the listed options market is minimal.[18] Making a similar point, but from the opposite perspective, a number of commenters said the TAF is inequitable because the NASD will not apply the TAF to many over-the-counter instruments, such as debt and variable annuities, where the NASD has primary regulatory responsibility.[19]

- *The TAF Proposal Sets a Dangerous Precedent; a Single Transaction Could Incur Multiple Charges, Regardless of Regulatory Responsibilities or Nexus of Business Interest*

Some commenters expressed concern about the precedent the TAF proposal would set, where other self-regulatory organizations ("SROs") might impose fees on transactions executed on markets for which the SRO performs no regulatory tasks, or for which the SRO has no business interest.[20] However, one commenter acknowledged, "assessing a fee on trading activity occurring in other markets may be justified given the NASD's responsibility for *member* regulation * * *" (Emphasis in original).[21] The commenter suggested that this concept is unprecedented, and that the impact should be examined carefully, given the concern that other self-regulatory organizations may impose similar fees, resulting in firms possibly paying considerably more than what is fair for regulation.[22]

- *The Interpretations in Notices to Members 02–75 and 02–63 Should Be Included in the Proposed Rule Language*

Notice to Members 02–75 states the TAF is not imposed on transactions for non-member broker-dealers who clear through an NASD member, unless the NASD clearing member firm also acts as executing broker in the transaction. Also, *Notice to Members 02–63* states that transactions effected on a national securities exchange by a dually registered specialist or floor based market maker will not be subject to the TAF. Several commenters suggested that this language be included in the proposed rule language, to ensure that the language is not removed from the rule without the filing of a proposed rule change.[23]

- *The NASD Could Raise the Fee at Any Time*

Some commenters expressed concern that the NASD could raise the fee at any time, within its own discretion without notice and comment and Commission approval.[24]

- *The Proposed Rule Language is Vague and Discretionary*

One commenter stated that the proposed rule language was ambiguous, and that such vagueness would allow the NASD to "arbitrarily apply the fees to certain members while exempting others."[25] The same commenter said that the proposed rule language that allows the NASD to exempt other securities and transactions as it deems appropriate would provide the NASD with discretion to create exemptions without having to present the exemptions to the Commission for approval.[26]

III. The NASD's Response to Comments

The NASD responded to the comments,[27] discussing its rationale for the structure of its TAF proposal, and modifying the proposal to accommodate some of the commenters' concerns. The NASD's responses to the more significant issues are addressed below.

The NASD clarified that the TAF is to be used only to fund its member regulatory activities in a variety of areas such as "sales practices, routine examinations, financial and operational reviews, new member applications, enforcement * * *" wherever such member activity occurs.[28] Although the NASD will regulate activities of its members in all securities, including Nasdaq securities, the NASD states that revenues from the TAF will not fund regulatory activities of the Nasdaq stock market, and also states that Nasdaq will not receive any subsidy based on the TAF.[29]

Regarding suggestions that the TAF proposal is unfair or inequitable, the NASD stated that it chose to model the TAF after the SEC's Section 31 fee to simplify its framework for recouping its regulatory costs, and, in part, to minimize the programming impact on firms.[30] Debt, mutual funds, and variable annuities were excluded from the TAF, in keeping with this model, and the NASD set its Personnel Assessment and Gross Income Assessment rates at a level designed to ensure that regulatory expense levels for such products were funded fairly and adequately.[31] The NASD asserted that listed options are properly assessed under the TAF, since the NASD maintains regulatory responsibility for its members for options, and the "NASD continues to assume the largest share of options self-regulatory allocation through the Options Self-Regulatory Council."[32] Furthermore, the NASD stated that its current costs for options regulation exceed the revenue the NASD anticipates receiving from this portion of the TAF.[33]

In response to the commenters' concern that the TAF proposal does not contain the exemptions to the TAF provided in *Notices to Members 02–63* and *02–75*, the NASD amended the proposed rule change to accommodate the commenters' request.[34]

With regard to comments that suggest that the NASD has not established a clear nexus between the TAF and the corresponding NASD regulatory responsibilities, the NASD maintained that its mandate is broad, and that its regulatory obligations "exist separate and apart from any market-specific rules and obligations."[35] Additionally, the NASD filed Amendment No. 4, which creates an exemption from the TAF for listed options transactions for members for which the NASD is not the designated options examining authority.

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[36] and, in particular, the requirements of section 15A(b)(5) of the Act.[37] Section 15A(b)(5) requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission finds that the elimination of the Regulatory Fee, and the implementation of the TAF, as described in the instant proposed rule change, is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members.

The Commission recognizes the difficulties inherent in restructuring the NASD's regulatory fees, and believes that the NASD has done so in a manner that is fair and reasonable. The Commission believes that the NASD's proposed TAF, in conjunction with the Gross Income Assessment, is reasonably tailored to apportion fees based on the regulatory services the NASD provides.

With respect to the commenters' assertion that the NASD should not charge its members with respect to transactions on other markets, a conclusive factor in the Commission's approval of the rule is the NASD's broad responsibilities with respect to its members' activities, irrespective of where securities transactions take place. As a national securities association, the NASD has the responsibility to oversee its members' finances and conduct toward their customers, except in limited circumstances where this responsibility is allocated to another SRO. The NASD's responsibility exists even if the conduct involves a transaction executed on a market not directly regulated by the NASD. With respect to its members doing business with the public, the NASD incurs costs to regulate its members through financial responsibility reviews, examinations, and other compliance monitoring.

The NASD's proposal uses volume of transactions as a means of allocating regulatory costs to its members, in addition to gross income and personnel fees. Assessing fees in relation to transactions correlates to heightened NASD responsibilities regarding firms that engage in the trading. In most cases,

---

options transactions for members for which the NASD is not the designated options examining authority. The NASD proposes to make this amendment effective on January 1, 2004.

[11] *See* footnotes 6, 7 and 9, *supra*.

[12] Some commenters expressed their disapproval that the NASD filed the initial TAF proposal for immediate effectiveness. *See, e.g.*, Raymond James Letter. The Commission notes, however, that the point is moot, since the NASD subsequently filed SR–NASD–2002–147 and SR–NASD–2002–148, thereby allowing for full notice and comment on the proposal. Additionally, some commenters objected to the TAF being effective upon filing with the Commission because they believe the lack of notice and comment was unreasonable, and that it imposed hardship on member firms that were required to make extensive programming changes with insufficient notice. SIA Letter #1; Raymond James Letter at 1–2; SIA Letter #2 at 2, 5, 7.

[13] Phlx Letter at 1; CSE Letter #1 at 4–5 ("To go outside its own jurisdiction to recoup regulatory expenses without justification inappropriately places the burden for the operation and regulation of the [NASD] on other exchanges."); TD Securities Letter (TD Securities Letter concurs completely with CSE Letter #1); SIA Letter #1 at 3; CBOE Letter #2 at 2; Susquehanna Letter at 1–3; CSE Letter #2 at 1–2; STA Letter at 2; NYSE Letter #1 at 2 ("* * * NASD is not empowered to act as the primary regulator across markets and over activities unique to other SROs. Consequently, no basis exists for it to impose such fees.")

[14] CBOE Letter #2 at 2.

[15] NYSE Letter #1 at 2.

[16] Phlx Letter at 2; CSE Letter #1 at 8–9; CSE Letter #2 at 3.

[17] *See, e.g.*, CSE Letter #1 at 3–4; NYSE Letter #1 at 1 ("* * * NASD plans to capture new revenue sources so as to supplant and supplement fees lost when Nasdaq securities began to trade on markets other than the Nasdaq. Thus, the NASD proposes to impose regulation-related costs to fill a shortfall caused by competitively induced market share loss. This approach clearly is anti-competitive."); BSE Letter at 2 ("* * * they are attempting to regain market share through anti-competitive rules * * *").

[18] CBOE Letter #1 at 1–2; CBOE Letter #2 at 2; TD ProEx Letter at 1; Susquehanna Letter at 2; STA Letter at 2; BSE Letter at 4.

[19] CBOE Letter #1 at 2; OCC Joint Letter #2 at 1–2; CBOE Letter #2 at 2; TD ProEx Letter at 1; STA Letter at 3; OCC Joint Letter #3 at 3–4.

[20] *See, e.g.*, CBOE Letter #1 at 2; OCC Joint Letter #2 at 2 ("NASD should not be permitted to generate revenue and raise the costs of trading on the options exchanges without a showing that the amount of the TAF is limited to the recovery of its costs in connection with regulating listed options."); CBOE Letter #2 at 3; TD ProEx Letter at 2–3; STA Letter at 2; OCC Joint Letter #3 at 4; BSE Letter at 2, 4.

[21] SIA Letter #2 at 6.

[22] *Id.* ("Given this significant expansion of the scope of the fee, and the possible precedential effect it may have in the industry, we believe that the NASD should be required to provide in more detail a fair and reasonable basis for expanding the scope of the TAF to cover transactions executed in any market.")

[23] CBOE Letter #2 at 2 and Susquehanna Letter at 2 (regarding Notice to Members 02–75); TD ProEx Letter at 3 (regarding *Notice to Members 02–63*); OCC Joint Letter #3 at 6 (regarding both *Notices to Members*).

[24] CBOE Letter #2 at 3 ("Even though the current level of the TAF options fee is relatively small, the NASD could raise the fee at any time. Once the NASD establishes the precedent that it can tax options trades, there will be little check on its ability to raise the fee substantially."); Susquehanna Letter at 3.

[25] CSE Letter #2 at 3.

[26] *Id.*

[27] *See* footnote 8, *supra*.

[28] NASD Response Letter #1 at 3–4.

[29] *Id.* at 4.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 5.

[33] *Id.*

[34] In response to some commenters' assertion that the NASD should codify the exemption discussed in *Notice to Members 02–75* for non-member broker-dealers that clear through an NASD member broker-dealer, unless the NASD member executes the transaction, the NASD stated that the NASD does not assess a fee on a non-NASD member for its role in effecting a transaction, regardless of where the transaction is cleared; however, if an NASD member clearing firm acts as executing broker for a non-NASD member broker-dealer correspondent, the NASD will assess a fee to the NASD clearing member. The NASD does not believe this qualifies as an exemption to the TAF, and therefore, does not think it should be included in the rule.

[35] *Id.* at 5–6.

[36] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] 15 U.S.C.78o–3(b)(5).

the NASD has direct responsibility to oversee the firm's dealing with the public in effecting the transactions; the NASD may also have responsibility to oversee the impact of the trading on the firm's financial condition. In most cases, where responsibility for certain member activities has been allocated to other SROs, the NASD retains responsibility for other member functions. Thus, while trading activity is not wholly correlated to the full range of NASD responsibility for members in all instances, the Commission believes that they are closely enough connected to satisfy the statutory standard. To more narrowly tailor the transaction fees to regulatory duties, the NASD filed Amendment No. 4 to create an exemption from the TAF for listed options transactions of members for which the NASD is not the designated options examining authority. The Commission is granting accelerated approval of Amendment Nos. 3 and 4 to ensure that these changes are made simultaneously with the approval of the TAF proposal.[38] The Commission is satisfied that the NASD has made a good faith effort to exclude those types of transactions where there does not exist a substantial nexus to the NASD's regulatory responsibilities.

The Commission does not believe that approval of the NASD's TAF proposal opens the door to the imposition of fees on transactions executed on markets for which an SRO either has little or no nexus to regulatory tasks performed by the SRO or for which the SRO has no business interest. In setting their fees, the SROs must meet the statutory standard established in sections 6(b)(5)[39] and 15A(b)(5) of the Act.[40] Most SROs do not have the broad aegis of the NASD regarding members' customer business, and so will not have a regulatory nexus to support a transaction fee applicable to other markets.

The NASD currently excludes debt, mutual funds, and variable annuities from the scope of the TAF, because of difficulties of measurement. The Commission urges the NASD to consider ways to take into account activity in all the areas the NASD must oversee, to better allocate regulatory costs to these activities.[41]

Similarly, the Commission does not share the commenters' concern that the NASD could raise the TAF at any time. The NASD must file any proposed changes to the TAF with the Commission, and the NASD has agreed to file all future changes to the TAF for full notice and comment pursuant to section 19(b)(2) of the Act.[42] Therefore, if the NASD wishes to modify the TAF in the future, the NASD must file a proposed rule change pursuant to section 19(b)(2) of the Act,[43] for notice, public comment, and approval by the Commission.

In response to the commenters' concerns that the interpretations contained in *Notice to Members 02–63* and *Notice to Members 02–75* could be revoked or modified at any time, the NASD filed Amendment No. 3 to include the relevant language in the proposed rule language.

The Commission finds good cause for approving proposed Amendment Nos. 3 and 4 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The NASD filed Amendment Nos. 3 and 4 in response to comments it received after publication of the notice of filing of the proposed rule change, to address certain commenters' concerns. Because Amendment Nos. 3 and 4 are responsive to commenters' concerns, the Commission finds good cause for accelerating approval of the proposed rule change, as modified by Amendment Nos. 3 and 4.

The Commission expects that the NASD will continue to monitor the manner in which the TAF is implemented, and will take whatever steps are necessary to ensure that the fees remain consistent with the mandate established in section 15A(b)(5) of the Act,[44] so that the TAF remains equitable, as well as consistent with the NASD's expressed goal.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4, including whether Amendment Nos. 3 and 4 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment Nos. 3 and 4 that are filed with the Commission, and all written communications relating to Amendment Nos. 3 and 4 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR–NASD–2002–148 and should be submitted by June 27, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[45] that the proposed rule change (SR–NASD–2002–148), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved, and that Amendment Nos. 3 and 4 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14258 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

[38] The Commission notes that an SRO may not grant exemptions to its rules unless the SRO has Commission-approved rules that gives it the authority to do so. Furthermore, where such authority exists, an SRO must file a proposed rule change to grant an exemption, unless the circumstances for the exemption are truly unique. The NASD stated the exemption created by Amendment No. 4 will be implemented on January 1, 2004.

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78o–3(b)(5). In reviewing other similar fee proposals, the Commission will, as it has done here, examine the proposals to ensure that the costs borne by firms are commensurate with the functions performed.

[41] Although the NASD did not delineate its responsibility for regulating trading in the over-the-counter market in unlisted securities, the Commission believes that the NASD indeed shoulders such a responsibility, and that it should devote an appropriate portion of the TAF to expanding and enhancing its examination and surveillance programs in that particular area. In this connection, the Commission notes that it approved recently an NASD proposal that will give the NASD access to real-time quotation activity in such securities. *See* Securities Exchange Act Release No. 47587 (March 27, 2003), 68 FR 16328 (April 3, 2003) (SR–NASD–2000–42)(approval order). The Commission expects the NASD to devote appropriate resources to take advantage of this expanded information.

[42] 15 U.S.C. 78s(b)(2). *See* NASD Response Letter #2.

[43] 15 U.S.C. 78s(b)(2).

[44] 15 U.S.C. 78o–3(b)(5).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47949; File No. SR–NASD–2001–75]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 To Make Permanent a Pilot Amendment to NASD Rule 4120 Relating to Nasdaq's Authority To Initiate and Continue Trading Halts

May 30, 2003.

I. Introduction

On October 18, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent a pilot amendment to NASD Rule 4120 relating to Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system. On January 28, 2002, Nasdaq amended the proposal.[3] The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on February 5, 2002.[4]

The Commission received one comment letter on the proposed rule change.[5] On April 14, 2003, Nasdaq again amended the proposed rule change.[6] This order approves the proposed rule change as modified by Amendment No. 1, and, simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No 2.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and the comment letters, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[7] and, in particular, the requirements of Section 15A of the Act,[8] which requires, among other things, that a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.

The Commission believes that, in circumstances where the misuse or malfunction of electronic systems that trade Nasdaq-listed securities may impact the price and volume of transactions in such securities, Nasdaq should have the authority to halt trading in an affected security until the problem can be addressed. Such a decision to halt trading requires Nasdaq to make a determination that the action is necessary for the protection of investors and the public interest pursuant to NASD Rule 4120. Nasdaq has stated "the rule would not be invoked merely because a system malfunction rendered a particular venue for transactions in a security temporarily unavailable, nor would it be applied in other circumstances where the system problems of an individual firm or market center did not give rise to extraordinary market activity."[9] Instead, Nasdaq states the rule is intended to address circumstances where there is "a market-wide regulatory concern that system misuse or malfunction is likely to harm investors by leading them to enter into transactions whose terms are materially influenced by the misuse or malfunction."[10] Nasdaq also states that it will terminate trading halts initiated under the rule "as soon as Nasdaq can conclude that the system misuse or malfunction will no longer have a material effect on the market for the security that is the subject of the halt or that system misuse or malfunction is not the cause of an instance of extraordinary market activity."[11] The Commission believes that the proposed rule change is consistent with the Act, and believes that the proposed rule may assist Nasdaq in exercising its responsibility to maintain fair and orderly markets.

The Commission notes that Nasdaq, in Amendment No. 2, indicates that it believes that trading halts instituted by Nasdaq under the proposed rule would constitute "regulatory" trading halts under the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Reporting Plan"). Under the Reporting

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 25, 2002 letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposal.

[4] *See* Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351.

[5] *See* October 2, 2002 letter from Richard T. Chase, Executive Vice President, Member Firm Regulation, The American Stock Exchange LLC ("Amex"), to Jonathan G. Katz, Secretary, SEC ("Amex Letter"). In its comment letter, the Amex expressed its support of Nasdaq's efforts to protect investors and the public interest through the use of trading halts. The Amex further stated that Nasdaq should clarify that Nasdaq's "authority to determine what is and what is not extraordinary market activity is limited to transactions within its jurisdiction and does not extend to transactions within the jurisdiction of other self-regulatory organizations." Amex Letter at 2. The Amex expressed no objection to Nasdaq's proposal if it is applied to situations that involve a Nasdaq system or the system of a broker-dealer or electronic communications network that is a Nasdaq member firm and over which Nasdaq has regulatory authority. *Id.* Nasdaq opposed the proposed rule change to the extent that Nasdaq wants to regulate the systems of UTP exchanges over which Nasdaq has no regulatory authority. *Id.* The Amex further stated that any authority for additional regulation of activity in Nasdaq securities having an inter-market impact should be exercised pursuant to the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis. *Id.*

The Commission notes that Instinet Corporation ("Instinet") filed a comment letter in response to SR–NASD–2001–37, the proposed rule change that established the pilot amendment to NASD Rule 4120. *See* July 27, 2001 letter from Jon Kroeper, First Vice President—Regulatory Policy/Strategy, Instinet, to Jonathan G. Katz, Secretary, Commission. Instinet stated that the proposed rule change (1) failed to properly define "extraordinary market activity;" (2) lacked objective standards for Nasdaq to make a determination to initiate and terminate trading halts; and (3) should be amended to allow NASD Regulation, Inc. to initiate and terminate trading halts based on extraordinary market activity instead of Nasdaq. Because Instinet's comment letter essentially addresses the same issues in the instant filing, the Commission has considered Instinet's letter in approving the instant proposed rule change.

[6] *See* April 11, 2003 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC, and attachments ("Amendment No. 2"). In Amendment No. 2, Nasdaq proposes changes to clarify the effect of a trading halt under the rule on exchanges trading Nasdaq securities on an unlisted trading privileges basis, as well as the NASD's Alternative Display Facility. Nasdaq filed Amendment No. 2 in response to concerns the Amex raised, and discussed the proposed rule change with members of the UTP Operating Committee on October 23, 2002. *See* Amendment No. 2 at 4. At that time, Nasdaq asked that members of the UTP Operating Committee inform Nasdaq of objections either to the permanent adoption of the proposed rule as amended, or to the conclusion that a trading halt initiated pursuant to the proposed rule would constitute a regulatory halt under the UTP Plan. At the time Nasdaq filed Amendment No. 2, Nasdaq had received no objections.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] Amendment No. 2 at 2–3.

[10] *Id.* at 3.

[11] *Id.*

Plan, regulatory trading halts instituted by Nasdaq would be honored by exchanges trading Nasdaq securities on an unlisted trading privileges basis ("UTP Exchanges") and the NASD's Alternative Display Facility ("ADF") participating in the Reporting Plan (collectively, "Plan Participants"). The Commission understands that Nasdaq and the other Plan Participants are still discussing this issue. The Commission believes that an agreement would need to be reached among the Plan Participants on this subject before trading halts instituted by Nasdaq under the proposed rule would be considered "regulatory" trading halts under the Reporting Plan. Thus, approval of the proposed rule change, as amended, does not resolve the issue of whether a trading halt instituted by Nasdaq under the proposed rule constitutes a "regulatory" trading halt under the Reporting Plan.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Nasdaq filed Amendment No. 2 to further clarify the manner in which Nasdaq envisions implementing the proposed rule change. The Commission believes the substance of Amendment No. 2 does not warrant republication of the proposed rule change as amended. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 2.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–75 and should be submitted by June 27, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [12], that the proposed rule change (SR–NASD–2001–75), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14295 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47958; File No. SR–Phlx–2002–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Imposition of a 500 Contract Cap on Payment for Order Flow Fees

May 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. The Phlx submitted Amendment No. 1 to the proposed rule change on May 29, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its options payment for order flow program by imposing a 500 contract cap per individual cleared side of a transaction. Specifically, the applicable payment for order flow fee would not apply to any contracts over 500, per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one Registered Options Trader ("ROT"), the applicable payment for order flow fee would be applied to, and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is divided equally among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis.[3] The Phlx is proposing to implement the 500 contract cap for trades settling on or after June 2, 2003.[4]

The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently filed a rule change with the Commission to reinstate its payment for order flow program.[5] Under the program, Phlx ROTs are assessed a payment for order flow fee, per contract, per options issue, as set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule, subject to certain exceptions.[6]

1. Purpose

The purpose of the proposed rule change is to establish a 500 contract cap, which the Phlx believes is reasonable and equitable because capping each trade with a 500 contract cap should provide sufficient payment for order flow funds for the specialists while lessening the economic burden on ROTs.[7] In the Phlx's view, the imposition of a cap should provide increased liquidity and encourage competition in markets where ROTs may otherwise not be able to compete. Moreover, the Phlx believes that the absence of a cap would cause ROTs to incur expenses that may impair their ability to participate in a larger share of the market.

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act [8] and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act.[9] The Phlx believes that the proposed rule change would serve as an equitable allocation of reasonable fees among Phlx members because the 500 contract cap per individual cleared side of a transaction imposed in connection with the payment for order flow fee should lessen the economic burden on ROTs. Moreover, the Phlx believes that the 500 contract cap should attract more order flow to the Phlx, which should result in increased liquidity, tighter markets, and more competition among exchange members, thereby promoting just and equitable principles of trade, removing impediments to and perfect the mechanism of a free and open market, and protecting investors and the public interest consistent with section 6(b)(5) of the Act.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx did not solicit or receive written comments concerning the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–87 and should be submitted by June 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14255 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47953; File No. SR–Phlx–2003–16]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval of Amendment No. 3 Thereto, by the Philadelphia Stock Exchange, Inc., Relating to a Pilot Program for Options Intermarket Linkage Fees

May 30, 2003.

On March 18, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot.[3] On March 21, 2003, Phlx submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1, was originally published for comment in the **Federal Register** on April 2, 2003.[5] On April 23, 2003, Phlx filed Amendment No. 2 to the proposed rule change.[6] On April 23, 2003, Phlx filed a supplementary letter to Amendment No. 2.[7] Amendment No. 2 was published for comment in the

---

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Currently, specialists may request reimbursement for payment for order flow funds in connection with any transactions to which they were not a party, based on the percentage of ROT monthly volume to total specialist and ROT monthly volume. The 500 contract cap would be imposed in connection with calculating the amount of the payment for order flow fee, and not for determining the percentage of ROT monthly volume to total specialist and ROT monthly volume.

[4] The proposed rule change specifies that the Phlx's fee schedule, entitled "Exchange's ROT Equity Option Payment for Order Flow Charges," are subject to a 500 contract cap, by individual cleared side of a transaction. The Phlx's original rule change proposal included a fee schedule that was current as of December 2002 but has been superseded by more recent schedules. The Phlx submitted Amendment No. 1 to the proposed rule change to indicate the current fee schedule and to propose that the cap be implemented for trades settling on or after June 2, 2003. *See* letter from Cindy Hoekstra, Counsel, Philadelphia Stock Exchange, to Patrick Joyce, Senior Counsel, Commission, dated May 29, 2003.

[5] *See* Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75). The rule change proposal, which originally included the 500-contract cap that is the subject of the current proposal, became effective immediately upon filing with the Commission in November 2002. In December 2002, the Phlx amended the filing to remove the 500-contract cap. Accordingly, the 500 contract cap was in effect for only those trades executed on or after November 18 that settled through December 31, 2002.

[6] The payment for order flow fee does not apply to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. Also, the payment for order flow fee does not apply to index or foreign currency options.

[7] According to the Phlx, the imposition of a monetary cap has been implemented by other exchanges in connection with payment for order flow programs. *See, e.g.*, Securities Exchange Act Release Nos. 45240 (January 7, 2002), 67 FR 1531 (January 11, 2002) (SR–PCX–2001–53) (implementing a ceiling on marketing charges of $200 per trade); 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (SR–ISE–2002–26) (lowering the cap on each payment for order flow fund from $650,000 to $550,000).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 17, 2003 ("Original Filing").

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 1").

[5] *See* Securities Exchange Act Release No. 47561 (March 21, 2003), 68 FR 15250.

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003 ("Amendment No. 2").

[7] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003.

Federal Register on May 5, 2003.[8] The Commission received one comment on the proposal.[9]

On May 30, 2003, Phlx submitted Amendment No. 3 to the proposed rule change.[10] Amendment No. 3 replaces Amendments No. 1 and 2 in their entirety.[11] This order approves the proposed rule change, and grants accelerated approval to Amendment No. 3. The Commission also solicits comment from interested persons on Amendment No. 3.

Pursuant to the Original Filing, Phlx proposed to charge Exchange members for orders for the principal account of market makers sent to the Exchange through the Linkage from the floor of another exchange ("P Orders") $.35 per contract executed. In the Original Filing, Phlx stated that its proposed linkage fees were consistent with other fees charged by the Exchange for non-Linkage orders. In Amendment No. 2, Phlx explained that it had amended its fee schedule on April 11, 2003 to modify the fees applicable to broker/dealers for non-AUTO-X trades.[12] Previously, such fee was $.35 per contract. Now, the fee ranges from $.35 per contract to $.20 per contract, depending on the number of contracts.[13] In Amendment No. 2, Phlx clarified that due to this recent change, the proposed Linkage fee for P Orders would no longer be consistent with other fees charged by the Exchange for non-Linkage orders.

In the ISE Comment Letter, ISE argued that by charging more for Linkage access than for access through regular order-routing systems, the Phlx would be imposing inappropriate barriers to members of other exchanges.[14] ISE also explained that the general consensus and understanding of the parties to the plan implementing the Linkage was that Linkage fees would be no greater than fees charged to professional traders outside of Linkage and that the other four exchanges have proposed, and the Commission has approved, such limited fees for the other options exchanges.[15] ISE further argued, "Phlx is the only exchange proposing to discourage use of the Linkage through its fee schedule. This will require members on the other exchanges to pay a premium for access to the efficiencies of Linkage," and would "result in "unfair discrimination" on broker-dealer access."

In Amendment No. 3, Phlx proposes to amend its fee schedule to provide that P Orders would be subject to the same fees as non-Linkage non-AUTO–X broker-dealer orders. Therefore, the proposed fee for P Orders ranges from $.35 per contract to $.20 per contract, depending on the number of contracts.[16] Phlx proposes that the fees applicable to P Orders would be implemented as a pilot, expiring on January 31, 2004.

The Commission finds that the proposed rule change, as amended by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[17] and, in particular, the requirements of Section 6 of the Act.[18] The Commission finds that the proposed rule change, as amended by Amendment No. 3, is consistent with Section 6(b)(4) of the Act,[19] which requires that the rules of an exchange provide equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes the pilot will give the Exchange and the Commission the opportunity to evaluate whether these fees are appropriate.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[20] to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the issues addressed in the comment letter received in response to Amendment No. 2 related to Phlx's proposal to charge higher fees for Linkage orders than for non-Linkage orders. In Amendment No. 3, Phlx revises its proposal to provide for fees for Linkage orders that would be consistent with fees for non-Linkage orders. Accordingly, the Commission believes good cause exists, pursuant to Sections 6(b)(5) and 19(b) of the Act[21] to accelerate approval of Amendment No. 3 to the proposed rule change.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–16 and should be submitted by June 27, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Phlx–2003–16), as amended, is approved on a pilot basis until January 31, 2004, and Amendment No. 3 is also approved on an accelerated basis until January 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14256 Filed 6–5–03; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Securities Exchange Act Release No. 47750 (April 28, 2003), 68 FR 23789.

[9] *See* letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, to Jonathan G. Katz, Secretary, Commission, dated May 27, 2003 ("ISE Comment Letter").

[10] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated May 29, 2003.

[11] Telephone call between Richard S. Rudolph, Director and Counsel, Phlx, and Jennifer Lewis, Special Counsel, Division, Commission, on May 30, 2003.

[12] *See* Securities Exchange Act Release No. 47715 (April 23, 2003), 68 FR 22446 (April 28, 2003).

[13] The fee is $.35 per contract for up to 2,000 contracts, $.25 per contract for between 2,001 and 3,000 contracts; and $.20 per contract above 3,001 contracts (with the first 3,000 contracts charged $.25 per contract).

[14] *See* ISE Comment Letter, *supra* note 9.

[15] *See* Securities Exchange Act Release Nos. 47719 (April 23, 2003), 68 FR 22764 (April 29, 2003) (File No. SR–ISE–2003–11); 47822 (May 9, 2003), 68 FR 27115 (May 19, 2003) (File No. SR–Amex–2003–14); 47761 (April 29, 2003), 68 FR 24042 (May 6, 2003) (File No. SR–CBOE–2003–11); and 47786 (May 2, 2003), 68 FR 24779 (May 8, 2003) (File No. SR–PCX–2003–08).

[16] *See supra*, note 13.

[17] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 5, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Stephen Kucharski, Financial Assistance Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Stephen Kucharski, Financial Assistance Specialist, 202–205–7551 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "SBAExpress Data Collection; Eligibility Information Required for SBAExpress Submission, SBAExpress Loan Number Request (Parts A & B), PLP/SBAExpress Servicing Checklist, SBA Express & Community Express Borrower Information Form, SBA Express Authorization and Supplementary Loan Guarantee Agreement."

Form Nos.: 1918, 1919, 1920, 2091, 2092, 2232.

Description of Respondents: Participating Lending Institutions with an active lending agreement.

Annual Responses: 20,000.

Annual Burden: 20,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–14298 Filed 6–5–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 5, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jill Baker, Director of Research, National Women's Business Council, Small Business Administration, 409 3rd Street, SW., 2nd Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jill Baker, Director of Research, 202–205–6826 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Alternate Sources of Capital for Women Business Owners."

Form No.: N/A.

Description of Respondents: Women who have completed loan applications with Count Me In, an on-line micro-lender.

Annual Responses: 500.

Annual Burden: 79.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–14299 Filed 6–5–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 4350]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Jurisdiction and Judgments; Notice of Meeting

There will be a public meeting of the Study Group on International Jurisdiction and Judgments of the Secretary of State's Advisory Committee on Private International Law, on Monday June 16, from 9 a.m. to 12:30 p.m. at 1300 I Street, NW., Suite 400 West, Washington DC. Registration will be from 9 to 9:30 a.m., with the business meeting beginning promptly at 9:30 a.m.

The Hague Conference on Private International Law has prepared a new draft of a convention on jurisdiction and the enforcement of judgments that would apply only to cases in which business and commercial parties have chosen a forum in their contract. The draft convention would provide for the enforceability of such choice of court agreements and the enforceability of judgments resulting from courts designated in such agreements.

The Department of State has been asked to inform the Hague Conference by early July whether the United States would support convening international negotiations on the basis of the new draft business-business choice of court convention. It would mean putting aside the more wide-ranging draft convention on jurisdiction and the enforcement of judgments that has been the subject of negotiations at the Hague Conference for more than a decade.

The purpose of the meeting is to hear the views of the private sector on the draft choice of court convention and the possibility of initiating a new round of negotiations on the basis of this text. A copy of the new draft and other documents relevant to the project may be found on the Web site of the Hague Conference (*www.hcch.net*), or may be requested from Cherise Reid, Office of the Legal Adviser, telephone 202–776–8420, e-mail *reidcherised@ms.state.gov*.

The Advisory Committee meeting is open to the public up to the capacity of the meeting room. Interested persons are invited to attend and to express their views. Persons who wish to have their views considered may also submit written comments. Written comments should be submitted by e-mail to Jeffrey Kovar at *kovarj@ms.state.gov*. All comments received will be made available to the public by request to Mr. Kovar via e-mail or by telephone (202–776–8342).

Persons interested in attending the meeting should inform Aaliya K. Bokhari. Interested persons should provide name, affiliation, postal and e-mail addresses, and telephone/telefax numbers to Ms. Bokhari by phone (202–515–2431), fax (202–289–7983) or e-mail (*aaliya.k.bokhari@verizon.com*), no later than 3 p.m. on Friday June 13. Persons desiring to participate by teleconference should so inform Ms. Bokhari, who will provide call-in information.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, U.S. Department of State.

[FR Doc. 03–14308 Filed 6–5–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–02–11658]

Application of Línea Aérea Puertorriqueña, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–5–37) Docket OST–02–11658.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should

not issue an order finding Línea Aérea Puertorriqueña, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than June 13, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–02–11658 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2341.

Dated: May 30, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–14165 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 1, 2003 (68 FR 15790).

DATES: Comments must be submitted on or before July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 1, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 68 FR 15790. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Signal System Requirements.

OMB Control Number: 2130–0006.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.14; FRA F 6180.47.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications For Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules,Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system to function or indicate as required by part 236 of this title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, section 233.9 sets forth the specific requirements for the "Signal System Five Year Report." It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. Title 49, part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines "material modifications" and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements under 49 CFR part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the item limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236.110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under sections 236.102–109; sections 236.377 to 236.387; sections 236.576, 236.577; and sections 236.586–236.589. Section 236.110 further provides that the test results must be recorded on preprinted or computerized forms provided by the carrier and that the forms show the name of the railroad; place and date of the test conducted; equipment tested; tests results; repairs; and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official having the proper authority. Results of tests made in compliance with section 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, section 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official having the proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official, who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Annual Estimated Burden Hours: 480,301 hours.

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Title 49, part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words "Dedicated Service" must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. *See* 49 CFR 215.5(c)(2), 215.5(d).

Annual Estimated Burden Hours: 4 hours.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Title 49, section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Annual Estimated Burden Hours: 120,267 hours.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Annual Estimated Burden Hours: 6,750 hours.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Title 49, section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

Annual Estimated Burden Hours: 15,000 hours.

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Annual Estimated Burden Hours: 3,520 hours.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing

unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Annual Estimated Burden Hours: 5 hours.

Title: Grade Crossing Signal System Safety.

OMB Control Number: 2130–0534.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutic s to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Annual Estimated Burden Hours: 4,151 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 3, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–14319 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Fund's reporting requirement for an annual report from awardees of the Fund's Community Development Financial Institutions (CDFI) Program.

DATES: Written comments should be received on or before August 5, 2003, to be assured of consideration.

ADDRESSES: Direct all comments to Owen Jones, Deputy Director for Management/CFO, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, facsimile number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: A draft of the information collection for the annual report may be obtained from the Fund's Web site at *http://www.cdfifund.go*. Requests for additional information should be directed to Owen Jones, Deputy Director for Management/CFO, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Fund—Annual Report.

OMB Number: 1559–0006.

Abstract: The purpose of the Fund's CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified CDFIs. Through the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments, and deposits to competitively selected CDFIs and entities proposing to become CDFIs. The Fund provides such assistance to CDFIs to enhance their capacity to address the community development and capital access needs of their particular target markets, including Native American, Alaska Native, and Native Hawaiian communities.

All CDFI Program awardees are required to submit an annual report to the Fund. The annual report consists of narrative and quantitative information both at the institution and transaction levels. The annual report is used to assess the awardee's: (1) Activities in support of its Comprehensive Business Plan; (2) use of the Fund's financial and technical assistance; (3) financial condition; and (4) overall compliance with the terms and conditions of the Assistance Agreement executed by the Fund and the awardee.

Current Action: N/A.

Type of review: Renewal.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 600.

Estimated Annual Time Per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 4,800 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4707, 4710, 4714, 4717; 31 U.S.C. 321; and 12 CFR part 1805.

Dated: June 2, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–14296 Filed 6–5–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0209."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0209" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement (Student Services), VA Form 22–8692b.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Eligible veterans, Selected Reservists, and survivors or dependents complete VA Form 22–8691 to apply for work-study benefits.

b. VA Form 22–8692 is used by claimants to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by the claimant to extend his or her contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

The information collected is use to determine the applicant's eligibility to work-study allowance and the amount payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 19, 2003, at pages 13365–13366.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,566.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8691—6,625 hours.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—1,333 hours.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—275 hours.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—1,333 hours

Estimated Average Burden Per Respondent:

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8691—15 minutes.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—5 minutes.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—3 minutes.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 64,000.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961—26,500.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—16,000.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—5,500.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—16,000.

Dated: May 27, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–14284 Filed 6–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Match Program.

SUMMARY: Pursuant to 5 U.S.C. section 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program

with the Internal Review Service (IRS). Data from the proposed match will be utilized to verify the unearned income (*i.e.* interest, dividends, etc.) of nonservice-connected veterans, and zero percent noncompensable service-connected veterans, whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

EFFECTIVE DATE: This match will start no sooner than 30 days after publication in the **Federal Register**, unless comments dictate otherwise.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Watkins, Assistant Director, Income Verification Division, Health Eligibility Center, (404) 235–1340.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 Public Law (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify matching findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. VHA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of VHA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Approved: May 29, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–14283 Filed 6–5–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
June 6, 2003

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

Assigned Protection Factors; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H049C]

RIN 1218–AA05

Assigned Protection Factors

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; request for comments and scheduling of informal public hearings.

SUMMARY: OSHA is proposing to revise its existing Respiratory Protection Standard to add definitions and specific requirements for assigned protection factors (APFs) and maximum use concentrations (MUCs). The proposed revisions also would supersede the respirator selection provisions of existing substance-specific standards with these new APFs (except the APFs for the 1,3-Butadiene Standard).

The Agency developed the proposed APFs after thoroughly reviewing the available literature, including chamber simulation studies and workplace protection factor studies. The proposed APFs would provide employers with critical information to use when selecting respirators for employees exposed to atmospheric contaminants found in general industry, construction, shipyard, longshoring, and marine terminal workplaces. Proper respirator selection using APFs is an important component of an effective respirator protection program. Accordingly, OSHA has made a preliminary conclusion that the proposed APFs are necessary to protect employees who use respirators against atmospheric contaminants.

DATES: *Written comments.* The Agency invites interested parties to submit written comments regarding the proposed rule, including comments to the information-collection determination under the Supplementary Information section of this **Federal Register** notice, by mail, facsimile, or electronically. You must send all comments, whether submitted by mail, facsimile, or electronically through OSHA's Web site, by September 4, 2003.

Informal public hearings. The Agency plans to hold an informal public hearing in Washington, DC in late summer or early fall of 2003. OSHA expects the DC hearing to last from 9:30 a.m. to 5:30 p.m. on the first day, and from 8:30 a.m. to 5:30 p.m. on subsequent days; however, the exact daily schedule is at the discretion of the presiding administrative law judge. If an additional hearing is held, the Agency will announce the date, time, and location of this hearing later in the subsequent **Federal Register** notice.

Notice of intention to appear to provide testimony at the informal public hearing. Interested parties who intend to present testimony at the informal public hearing in Washington, DC, must notify OSHA of their intention to do so no later than September 4, 2003.

Hearing testimony and documentary evidence. Interested parties who will be requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the hearing, must provide the Agency with copies of their full testimony and all documentary evidence they plan to present by September 4, 2003.

ADDRESSES: *Written comments.* You may submit three copies of written comments to the Docket Office, Docket No. H049C, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office, telephone number (202) 693–1648. You do not have to send OSHA a hard copy of your faxed comments. You may submit comments electronically through OSHA's Home page at *http://ecomments.osha.gov/*. If you would like to submit additional studies or journal articles, you must submit three copies of them to the OSHA Docket Office at the address above. These materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

Informal public hearings. The informal public hearing to be held in Washington, DC will be located in the Auditorium on the plaza level of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC.

Notice of intention to appear to provide testimony at the informal public hearing. Notices of intention to appear at the informal public hearing should be submitted in triplicate to the Docket Office, Docket No. H049C, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Notices may also be faxed to the Docket Office at (202) 693–1648 or submitted electronically at *http://ecomments.osha.gov*. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Hearing testimony and documentary evidence. Interested parties who will be requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the informal public hearing must mail three copies of the testimony and the documentary evidence to the Docket Office, Docket No. H049C, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210. Additional information for submitting testimony and evidence is found under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Mr. John E. Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2289 or fax (202) 693–1678. For hearing information contact Ms. Veneta Chatmon, OSHA Office of Information, Docket No. H–49C, Room N–3649, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (telephone (202) 693–1999). For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3103, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (telephone (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Home page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

OMB Review Under the Paperwork Reduction Act

After a thorough analysis of the proposed provisions, OSHA believes that these provisions would not add to the existing collection-of-information (*i.e.*, paperwork) requirements regarding respirator selection. OSHA determined that its existing Respiratory Protection Standard at 29 CFR 1910.134 has two provisions that involve APFs and also impose paperwork requirements on employers. These provisions require employers to: Include respirator selection in their written respiratory protection program (29 CFR 1910.134(c)(1)(i)); and inform employees regarding proper respirator selection (29 CFR 1910.(k)(ii)). The information on respirator selection addressed by these two provisions must include a brief discussion of the purpose of APFs, and how to use them in selecting a respirator that affords an employee protection from airborne contaminants. The burden imposed by this requirement remains the same whether employers currently use the APFs published in the 1987 NIOSH RDL or the ANSI Z88.2–1992 Respiratory Protection Standard, or implement the APFs proposed in this rulemaking. Therefore, the proposed use of APFs in the context of these two existing respirator-selection provisions does not require an additional paperwork-burden determination because OSHA already accounted for this burden under its existing Respiratory Protection Standard (*see* 63 FR 1152–1154; OMB Control Number 1218–0099).

Both OSHA's existing Respiratory Protection Standard and the proposed APF provisions require employers to use APFs as part of the respirator-selection process. This process includes obtaining information about the workplace exposure level to an airborne contaminant, identifying the exposure limit (*e.g.*, permissible exposure limit) for the contaminant, using this information to calculate the required level of protection (*i.e.*, the APF), and referring to an APF table to determine which respirator to select. Admittedly, this process involves the collection and use of information, but it does not require employers to inform others, either orally or in writing, about the process they use to select respirators for individual employees, or the outcomes of this process; by not requiring employers to communicate this information to others, OSHA removed this process from the ambit of the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). In the alternative, even if PRA–95 applies, the proposal involves the same information-collection and -use requirements with regard to APFs as the existing standard (*see* paragraphs (d)(1) and (d)(3)(i) of 29 CFR 1910.134, and the rationale for the existing APF requirements in the preamble to the final Respiratory Protection Standard, 63 FR 1163 and 1203–1204); accordingly, the paperwork burden imposed by the proposal would be equivalent to the burden already imposed under the existing standard.

Interested parties who want to comment on OSHA's determination that the proposed provisions contain no additional paperwork burden compared to the existing paperwork requirements must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency also encourages commenters to submit their comments on this paperwork determination to OSHA along with their other comments.

Federalism

The Agency reviewed the proposed APF provisions according to the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43225, August 10, 1999). This Executive Order requires that federal agencies, to the extent possible, refrain from limiting state policy options, consult with states before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order allows federal agencies to preempt state law only with the expressed consent of Congress; in such cases, federal agencies must limit preemption of state law to the extent possible.

Under section 18 of the Occupational Safety and Health Act (the "Act" or "OSH Act"), Congress expressly provides OSHA with authority to preempt state occupational safety and health standards to the extent that the Agency promulgates a federal standard under section 6 of the Act. Accordingly, section 18 of the Act authorizes the Agency to preempt state promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the state has an OSHA-approved occupational safety and health plan (*i.e.*, is a state-plan state) [*see Gade v. National Solid Wastes Management Association*, 112 S. Ct. 2374 (1992)]. Therefore, with respect to states that do not have OSHA-approved plans, the Agency concludes that this proposal conforms to the preemption provisions of the Act. Additionally, section 18 of the Act prohibits states without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation.

OSHA asserts that it has authority under Executive Order 13132 to propose APF requirements because the problems addressed by these requirements are national in scope. As noted in section VI ("Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis") of this preamble, hundreds of thousands of employers must select appropriate respirators for millions of employees. These employees are exposed to many different types and levels of airborne contaminants found in general industry, construction, shipyard, longshoring, and marine terminal workplaces. Accordingly, the proposed requirements would provide employers in every state with critical information to use when selecting respirators to protect their employees from the risks of exposure to airborne contaminants. However, while OSHA drafted the proposed APF and MUC requirements to protect employees in every state, section 18(c)(2) of the Act permits state-plan states to develop their own requirements to deal with any special workplace problems or conditions, provided these requirements are at least as effective as the final requirements that result from this proposal.

State Plans

The 26 states and territories with their own OSHA-approved occupational safety and health plans must adopt comparable provisions within six months after the Agency publishes the final APF and MUC requirements. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey and New York have OSHA approved State Plans that apply to state and local government employees only. Until a state-plan state promulgates its own comparable provisions, Federal OSHA will provide the state with interim enforcement assistance, as appropriate.

Unfunded Mandates

The Agency reviewed the proposed APF and MUC provisions according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed in section VI ("Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis") of this preamble, OSHA estimates that compliance with this proposal would require private-sector employers to expend about $4.5 million each year. However, while this proposal establishes a federal mandate in the private sector, it is not a significant regulatory action within the meaning of section 202 of the UMRA (2 U.S.C. 1532).

OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA-approved state occupational safety and health plan. Consequently, the proposed provisions do not meet the definition of a "Federal intergovernmental mandate" [*see* section 421(5) of the UMRA (2 U.S.C. 658(5)]. Therefore, based on a review of the rulemaking record to date, the Agency believes that few, if any, of the affected employers are state, local, and tribal governments. Therefore, the

proposed APF requirements do not impose unfunded mandates on state, local, and tribal governments.

Protecting Children From Environmental Health and Safety Risks

Executive Order 13045 requires that Federal agencies submitting covered regulatory actions to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866 must provide OIRA with (1) an evaluation of the environmental health or safety effects that the planned regulation may have on children, and (2) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. Executive Order 13045 defines "covered regulatory actions" as rules that may (1) be economically significant under Executive Order 12866 (*i.e.*, a rulemaking that has an annual affect on the economy of $100 million or more, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities), and (2) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children. In this context, the term "environmental health risks and safety risks" means risks to health or safety that are attributable to products or substances that children are likely to come in contact with or ingest (*e.g.*, through air, food, water, soil, product use).

The proposed provisions are not economically significant under Executive Order 12866 (*see* section VI ("Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis") of this preamble). In addition, after reviewing the proposed APF provisions, OSHA has determined that these provisions do not impose environmental health or safety risks to children as set forth in Executive Order 13045. The proposed provisions would require employers to use APFs in selecting proper respirators for employee use, with the objective of limiting employee exposures to airborne contaminants. To the best of OSHA's knowledge, no employees under 18 years of age work under conditions that require respirator use. However, if such conditions exist, children who use respirators selected according to these proposed provisions would receive adequate protection from the airborne contaminants. In this regard, the Agency is requesting public comment on whether employees under the age of 18 years use respirators, and, if they do, the extent to which the respirators provide them with adequate protection. Based on this discussion, OSHA believes that the APF and MUC requirements proposed in this rulemaking do not constitute a covered regulatory action as defined by Executive Order 13045.

Applicability of Existing Consensus Standards

Section 6(b)(8) of the OSH Act requires OSHA to explain "why a rule promulgated by the Secretary differs substantially from an existing national consensus standard," by publishing "a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard." [*see* 29 U.S.C. 655(b)(8)]. Accordingly, the Agency compared the proposed APF requirements with the APF provisions of ANSI Z88.2–1992 ("Respiratory Protection"). This consensus standard, published by the American National Standards Institute in 1992, is the only publicly available consensus standard that includes APFs. In most instances, the APFs being proposed by the Agency are identical to ANSI's APFs, however, some differences exist. Where OSHA has proposed an APF that differs from ANSI's, the Summary and Explanation provides the basis for that decision.

Environmental Impact Assessment

The Agency reviewed the proposed provisions according to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). OSHA estimates that this proposed rule would have a direct impact on a relatively small number of respirator users and, in so doing , merely alter the type of respirator they are using. The Agency does not anticipate that this will significantly alter solid waste patterns, water quality, or ambient air quality. As a result of this review, OSHA concludes that the proposed provisions would have no significant environmental impact.

I. General

Table of Contents

The following Table of Contents identifies the major preamble sections of this proposal and the order in which they are presented:

Introductory Material
- Notice and Comment
- Dates for Hearings

Supplementary Information
- OMB Review Under the Paperwork Reduction Act
- Federalism
- State Plans
- Unfunded Mandates
- Protecting Children from Environmental Health and Safety Risks
- Applicability of Existing Consensus Standards
- Environmental Impact Assessment

I. General
- Table of contents
- Glossary

II. Pertinent Legal Authority

III. Events Leading to the Proposed Standard
- A. Regulatory History
- B. Need for Assigned Protection Factors
- C. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health (ACCSH)

IV. Methodology for Developing Assigned Protection Factors
- A. Dr. Nicas' Proposal and Response from Commenters
- B. Analyses of WPF Studies
- C. Analyses of SWPF Studies
- D. OSHA's Overall Summary Conclusions
- E. Summaries of Studies

V. Health Effects

VI. Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Screening Analysis

VII. Summary and Explanation of the Proposed Standard
- A. Revisions to the Respiratory Protection Standard
- B. Superseding the Respirator Selection Provisions of Substance-Specific Standards in Parts 1910, 1915, and 1926

VIII. Issues

IX. Public Participation—Comments and Hearings

X. Proposed Amendments to Standards

Glossary

This glossary specifies the terms represented by acronyms, and provides definitions of other terms, used frequently in this proposal. This glossary does not change the legal requirements as proposed in this notice of proposed rulemaking, nor is it intended to propose new regulatory requirements or definitions. It is presented simply to assist the reader.

A. Acronyms

ACGIH: American Conference of Governmental Industrial Hygienists.
AIHA: American Industrial Hygiene Association.
ANSI: American National Standards Institute.
APF: Assigned Protection Factor (*see* definition in proposed regulatory text).
DOP: Dioctylphthalate (an aerosolized agent used for quantitative fit testing).
DFM: Dust/Fume/Mist filter.
EPF: Effective Protection Factor (*see* definition below under "Protection factor study").
HEPA: High efficiency particulate air [filter] (*see* definition below).
IDLH: Immediately dangerous to life or health (*see* definition below).

LANL: Los Alamos National Laboratory.
LLNL: Lawrence Livermore National Laboratory.
MSHA: Mine Safety and Health Administration.
MUC: Maximum Use Concentration (*see* definition in proposed regulatory text).
NIOSH: National Institute for Occupational Safety and Health.
NRC: Nuclear Regulatory Commission.
OSHA: Occupational Health and Safety Administration.
PAPR: Powered air-purifying respirator (*see* definition below).
PEL: Permissible Exposure Limit (an occupational exposure level specified by OSHA).
PPF: Program Protection Factor (*see* definition below under "Protection factor study").
QLFT: Qualitative fit test (*see* definition below).
QNFT: Quantitative fit test (*see* definition below).
RDL: Respirator Decision Logic (respirator selection guidance developed by NIOSH that contains a set of respirator protection factors).
REL: Recommended Exposure Limit (an occupational exposure level recommended by NIOSH).
SAR: Supplied-air respirator (*see* definition below).
SCBA: Self-contained breathing apparatus (*see* definition below).
WPF: Workplace Protection Factor (*see* definition below under "Protection factor study").
TLV: Threshold Limit Value (an occupational exposure level recommended by ACGIH).
SWPF: Simulated Workplace Protection Factor (*see* definition below under "Protection factor study").

B. Definitions

Terms followed by an asterisk (*) refer to definitions that can be found in paragraph (b) ("Definitions") of OSHA's Respiratory Protection Standard (29 CFR 1910.134).

Air-purifying respirator:* A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

Atmosphere-supplying respirator:* A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes SARs and SCBA units.

Canister or cartridge:* A container with a filter, sorbent, or catalyst, or combination of these items, which removes specific contaminants from the air passed through the container.

Continuous flow respirator: An atmosphere-supplying respirator that provides a continuous flow of breathable air to the respirator facepiece.

Demand respirator:* An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

Filter or air-purifying element:* A component used in respirators to remove solid or liquid aerosols from the inspired air.

Filtering facepiece (or dust mask):* A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

Fit factor:* A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

Fit test:* The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

Helmet:* A rigid respiratory inlet covering that also provides head protection against impact and penetration.

High-efficiency particulate air filter:* A filter that is at least 99.97% efficient in removing monodisperse particles of 0.3 micrometers in diameter. The equivalent NIOSH 42 CFR 84 particulate filters are the N100, R100, and P100 filters.

Hood:* A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

Immediately dangerous to life or health:* An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

Loose-fitting facepiece:* A respiratory inlet covering that is designed to form a partial seal with the face.

Negative pressure respirator (tight-fitting):* A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

Positive pressure respirator:* A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

Powered air-purifying respirator:* An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

Pressure demand respirator:* A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

Protection factor study: A study that determines the protection provided by a respirator during use. This determination is generally accomplished by measuring the ratio of the concentration of an agent (*e.g.*, hazardous substance) outside the respirator (Co) to the agent's concentration inside the respirator (Ci) (*i.e.*, Co/Ci). Therefore, as the ratio between Co and Ci increases, the protection factor increases, indicating an increase in the level of protection provided to employees by the respirator. Four types of protection factor studies are:

Effective Protection Factor (EPF) study—a study, conducted in the workplace, that measures the protection provided by a properly selected, fit-tested, and functioning respirator when used intermittently for only some fraction of the total workplace exposure time (*i.e.*, sampling is conducted during periods when respirators are worn and not worn). EPFs are not directly comparable to WPF values because the determinations include both the time spent in contaminated atmospheres with and without respiratory protection; therefore, EPFs tend to understate the protection that would be obtained if the respirator were being worn at all times.

Program Protection Factor (PPF) study—a study that estimates the protection provided by a respirator within a specific respirator program. Like the EPF, it is focused not only on the respirator's performance, but also the effectiveness of the complete respirator program. PPFs are affected by all factors of the program, including respirator selection and maintenance, user training and motivation, work activities, and program administration.

Workplace Protection Factor (WPF) study—a study, conducted under actual conditions of use in the workplace, that measures the protection provided by a properly selected, fit-tested, and functioning respirator, when the respirator is correctly worn and used as part of a comprehensive respirator program. Measurements of Co and Ci are obtained only while the respirator is being worn during performance of normal work tasks (*i.e.*, samples are not collected when the respirator is not being worn). As the degree of protection afforded by the respirator increases, the WPF increases.

Simulated Workplace Protection Factor (SWPF) study—a study, conducted in a controlled laboratory setting and in which Co and Ci

sampling is performed while the subject performs a series of set exercises. The laboratory setting is used to control many of the variables found in workplace studies, while the exercises simulate the work activities of respirator users. This type of study is designed to determine the optimum performance of respirators by reducing the impact of sources of variability through maintenance of tightly controlled study conditions.

Qualitative fit test:* A pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

Quantitative fit test:* An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

Self-contained breathing apparatus:* An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

Supplied-air respirator (or airline) respirator:* An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

Tight-fitting facepiece:* A respiratory inlet covering that forms a complete seal with the face.

II. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* (the "OSHA Act" or "Act") is to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." [29 U.S.C. 651(b)]. To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards [*see* 29 U.S.C. 654(b) (requiring employers to comply with OSHA standards), 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of the Act's enactment), and 29 U.S.C. 655(b) (authorizing promulgation of standards pursuant to notice and comment)].

A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." [29 U.S.C. 652(8)]. A standard is reasonably necessary or appropriate within the meaning of section 652(8) of the Act when it substantially reduces or eliminates significant risk, and is technologically and economically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action, and supported by substantial evidence; it must also effectuate the Act's purposes better than any national consensus standard it supersedes [*see International Union, UAW* v. *OSHA* (*LOTO II*), 37 F.3d 665 (DC Cir. 1994; and 58 FR 16612–16616 (March 30, 1993)].

OSHA has discussed the nature of adverse health effects caused by exposure to airborne chemical hazards many times in previous rulemaking activities [*see*, for example, the preambles to any of OSHA's substance-specific standards codified in 29 CFR 1910.1001 to 1910.1052]. As discussed in the Significance of Risk section of the Respiratory Protection Standard, the health risk presented to workers can be represented by the risk that a respirator will not be properly selected or used, which increases the possibility that the user will be overexposed to a harmful air contaminant. The risks that are addressed by the Respiratory Protection Standard are not characterized as illness-specific risks but, instead, relate to a more general probability that when a respirator provides insufficient protection, the wearer may be exposed to a level of air contaminant that is associated with material impairment of the worker's health.

The Agency believes that a standard is technologically feasible when the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed [*see American Textile Mfrs. Institute* v. *OSHA* (*Cotton Dust*), 452 U.S. 490, 513 (1981); *American Iron and Steel Institute* v. *OSHA* (*Lead II*), 939 F.2d 975, 980 (DC Cir. 1991)]. A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening the industry's long-term profitability or competitive structure [*see Cotton Dust*, 452 U.S. at 530 n. 55; *Lead II*, 939 F.2d at 980], and a standard is cost effective when the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection [*see Cotton Dust*, 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA* (*LOTO III*), 37 F.3d 665, 668 (DC Cir. 1994)].

All standards must be highly protective [see 58 FR 16612, 16614–15 (March 30, 1993); *LOTO III*, 37 F.3d at 669]. Accordingly, section 8(g)(2) of the Act authorizes OSHA "to prescribe such rules and regulations as [it] may deem necessary to carry out its responsibilities under the Act" [*see* 29 U.S.C. 657(g)(2)]. However, health standards must also meet the "feasibility mandate" of section 6(b)(5) of the OSH Act, 29 U.S.C. 655(b)(5). Section 6(b)(5) of the Act requires OSHA to select "the most protective standard consistent with feasibility" needed to reduce significant risk when regulating health hazards [*see Cotton Dust*, 452 U.S. at 509]. Section 6(b)(5) also directs OSHA to base health standards on "the best available evidence," including research, demonstrations, and experiments [*see* 29 U.S.C. 655(b)(5)]. In this regard, OSHA must consider "in addition to the attainment of the highest degree of health and safety protection * * * the latest scientific data * * * feasibility and experience gained under this and other health and safety laws." (Id.). Furthermore, section 6(b)(5) of the Act specifies that standards must "be expressed in terms of objective criteria and of the performance desired" [*see* 29 U.S.C. 655(b)(7)].

The proposed APF and MUC provisions are integral components of an effective respiratory protection program. Respiratory protection is a supplemental method used by employers to protect employees against airborne contaminants in workplaces where feasible engineering controls and work practices are not available, have not yet been implemented, or are not in themselves sufficient to protect employee health. Employers also use respiratory protection under emergency conditions involving the accidental release of airborne contaminants. The proposed amendments to OSHA's Respiratory Protection Standard, and the Agency's substance-specific standards, would provide employers with critical information to use when selecting respirators for employees exposed to airborne contaminants found in general industry, construction, shipyard, longshoring, and marine terminal workplaces. Since it is generally recognized that different types of respiratory protective equipment provide different degrees of protection against hazardous exposures, proper respirator selection is of critical importance. The proposed APF and MUC provisions provide additional guidance on the point at which an increase in the level of respiratory protection is necessary. The APF and MUC provisions will greatly enhance an employer's ability to select a respirator that will adequately protect employees. OSHA believes that in the absence of these proposed provisions, employers will be less certain about which respirators to select for adequate employee protection.

The Agency also developed the proposed provisions to be feasible and cost effective, and is specifying them in terms of objective criteria and the level of performance desired. In this regard, section VI ("Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis") of this preamble provides the benefits and costs of this proposal, and describes several other alternatives as required by section 205 of the UMRA (2 U.S.C. 1535). Based on this information, OSHA preliminarily concludes that the proposed APF and MUC provisions constitute the most cost-effective alternative for meeting its statutory objective of reducing risk of adverse health effects to the extent feasible.

III. Events Leading to the Proposed Standard

A. Regulatory History

Congress created the Occupational Safety and Health Administration (OSHA) in 1970, and gave it the responsibility for promulgating standards to protect the health and safety of American workers. As directed by the OSH Act, the Agency adopted existing Federal standards and national consensus standards developed by various organizations such as the American Conference of Governmental Industrial Hygienists (ACGIH), the National Fire Protection Association (NFPA), and the American National Standards Institute (ANSI). The ANSI standard Z88.2–1969, "Practices for Respiratory Protection," was the basis of the first six sections (permissible practice, minimal respirator program, selection of respirators, air quality, use, maintenance and care) of OSHA's Respiratory Protection Standard (29 CFR 1910.134) adopted in 1971. The seventh section was a direct, complete incorporation of ANSI Standard K13.1–1969, "Identification of Gas Mask Canisters."

The Agency promulgated an initial Respiratory Protection Standard for the construction industry (29 CFR 1926.103) in April 1971. On February 9, 1979, OSHA formally applied 29 CFR 1910.134 to the construction industry (44 FR 8577). Agencies that preceded OSHA developed the original maritime respiratory protection standards in the 1960s (*e.g.*, section 41 of the Longshore and Harbor Worker Compensation Act). The section designations adopted by OSHA for these standards, and their original promulgation dates, are: Shipyards—29 CFR 1915.82, February 20, 1960 (25 FR 1543); Marine Terminals—29 CFR 1917.82, March 27, 1964 (29 FR 4052); and Longshoring—29 CFR 1918.102, February 20, 1960 (25 FR 1565). OSHA incorporated 29 CFR 1910.134 by reference into its Marine Terminal standards (Part 1917) on July 5, 1983 (48 FR 30909). The Agency updated and strengthened its Longshoring and Marine Terminal standards in 1996 and 2000, and these standards now incorporate 29 CFR 1910.134 by reference.

Under the Respiratory Protection Standard that OSHA initially adopted, employers needed to follow the guidance of the Z88.2–1969 ANSI standard to ensure proper selection of respirators. Subsequently, OSHA published an Advance Notice of Proposed Rulemaking ("ANPR") to revise the Respiratory Protection Standard on May 14, 1982 (47 FR 20803). Part of the impetus for this notice was the Agency's inclusion of new respirator requirements in the comprehensive substance-specific standards promulgated under Section (6)(b) of the OSH Act, *e.g.*, fit testing protocols, respirator selection tables, use of PAPRs, changing filter elements whenever an employee detected an increase in breathing resistance, and requirements referring employees with breathing difficulties to a physician trained in pulmonary medicine, either at fit testing or during routine respirator use [*see, e.g,* 29 CFR 1910.1025 (OSHA's Lead Standard)]. The respirator provisions in these substance-specific standards took into account advances in respirator technology and changes in related guidance documents that were state-of-the-art when OSHA published these substance specific standards and, in particular, recognized that effective respirator use depends on a comprehensive respiratory protection program that includes use of APFs.

OSHA's 1982 ANPR sought information on the effectiveness of its current Respiratory Protection Standard, the need to revise this standard, and suggestions on the nature of the revisions. The 1982 ANPR referenced the ANSI Z88.2–1980 standard on respiratory protection with its table of protection factors, the 1976 report by Dr. Ed Hyatt from the LASL titled "Respiratory Protection Factors" (Ex. 2), and the RDL developed jointly by OSHA and NIOSH, as revised in 1978 (Ex. 9, Docket No. H049). Questions #2, #3, and #4 in the 1982 ANPR asked for comments on how OSHA should use protection factors. The Agency received responses from 81 interested parties. The commenters generally supported revising OSHA's Respiratory Protection Standard, and provided recommendations regarding approaches for including a table of protection factors (Ex. 15).

On September 17, 1985, OSHA announced the availability of a preliminary draft of the proposed Respiratory Protection Standard. This preproposal draft standard included the public comments received in response to 1982 ANPR, and OSHA's own analysis of revisions needed in the Respiratory Protection Standard to account for state-of-the-art respiratory protection. The Agency received 56 responses from interested parties (Ex. 36) which OSHA carefully reviewed in developing the proposal.

On November 15, 1994, OSHA published the proposed rule to revise 29 CFR 1910.134, and provided public notice of an informal public hearing on the proposal (59 FR 58884). The Agency convened the informal public hearing on June 6, 1995. On June 15, 1995, as part of the public hearing, OSHA held a one-day panel discussion by respirator experts of APFs. Areas discussed included difficulties in measuring performance of respiratory protection in WPF and SWPF studies, statistical uncertainties regarding the distribution of data from these studies, and the problems associated with setting APFs for all respirators that protect all potential respirator users across a wide variety of workplaces and exposure conditions.

OSHA reopened the rulemaking record for the revised Respiratory Protection Standard on November 7, 1995 (60 FR 56127), requesting comments on a study performed for OSHA by Dr. Mark Nicas titled "The Analysis of Workplace Protection Factor Data and Derivation of Assigned Protection Factors' (Ex. 1–156). That study, which the Agency placed in the rulemaking docket on September 20, 1995, addressed the use of statistical modeling for determining respirator APFs. OSHA received 12 comments on the Nicas report. This report, and the comments received in response to it, convinced OSHA that more information would be necessary before it could resolve the complex issues regarding how to establish APFs, including what methodology to use in analyzing existing protection factor studies (*see* Section IV below for a more detailed explanation of the Nicas report and the comments made on it).

OSHA published the final, revised Respiratory Protection Standard, 29 CFR 1910.134, on January 8, 1998 (63 FR 1152). The standard contains worksite-specific requirements for program administration, procedures for respirator selection, employee training, fit testing, medical evaluation, respirator

use, and other provisions. However, OSHA reserved the sections of the final standard related to APFs and maximum use concentration (MUC) pending further rulemaking (see 63 FR 1182 and 1203). The Agency stated that, until a future rulemaking on APFs is completed:

> [Employers must] take the best available information into account in selecting respirators. As it did under the previous [Respiratory Protection] standard, OSHA itself will continue to refer to the [APFs in the 1987 NIOSH RDL] in cases where it has not made a different determination in a substance specific standard. (*see* 63 FR 1163)

The Agency subsequently established a separate docket (*i.e.*, H049C) for the APF rulemaking. This docket includes copies of material related to APFs that it previously placed in the docket (H049) for the revised Respiratory Protection Standard. The APF rulemaking docket also contains other APF-related materials, studies, and data that OSHA obtained after it promulgated the final Respiratory Protection Standard in 1998.

History of Assigned Protection Factors

In 1965, the Bureau of Mines published "Respirator Approval Schedule 21B," which contained the term "protection factor" as part of its approval process for half-mask respirators (for protection up to 10 times the TLV) and full facepiece respirators (for protection up to 100 times the TLV). The Bureau of Mines based these protection factors on quantitative fit tests, using dioctyl pthalate (DOP), that were conducted on six male test subjects performing simulated work exercises.

The Atomic Energy Commission (AEC) published proposed protection factors for respirators in 1967, but later withdrew them because quantitative fit testing studies were available for some, but not all, types of respirators. To address this shortcoming, the AEC subsequently sponsored respirator studies at LASL, starting in 1969.

ANSI standard Z88.2–1969, which OSHA adopted by reference in 1971, did not contain APFs for respirator selection. Nevertheless, this ANSI standard recommended that "due consideration be given to potential inward leakage in selecting devices," and contained a list of the various respirators grouped according to the quantity of leakage into the facepiece expected during routine use.

In 1972, NIOSH and the Bureau of Mines published new approval schedules for respiratory protection under 30 CFR Part 11. However, these new approval schedules did not include fit testing provisions as part of the respirator certification process.

NIOSH sponsored additional respirator studies at LASL, beginning in 1971, that used quantitative test systems to measure the overall performance of respirators. Dr. Edwin C. Hyatt of LASL included a table of protection factors for, single-use dust respirators; quarter-mask, half-mask, and full facepiece air-purifying respirators; and SCBAs in a 1976 report titled "Respirator Protection Factors" (Ex. 2). The protection factors were based on data from DOP and sodium chloride quantitative fit test studies performed on these respirators at LASL between 1970 and 1973. The table also contained recommended protection factors for respirators that had no performance test data. Dr. Hyatt based these recommended protection factors on the judgment and experience of LASL researchers, as well as extrapolations from available facepiece leakage data for similar respirators. For example, he assumed that performance data for SCBAs operated in the pressure demand mode could be used to represent other (non-tested) respirators that maintain positive pressure in the facepiece, hood, helmet, or suit during inhalation. In addition, he recommended in his report that NIOSH continue testing the performance of respirators that lacked adequate fit test data. Relative to this, staff members at LASL (from 1974 to 1978) used a representative 35-person test panel to conduct quantitative fit tests on all air-purifying particulate respirators approved by the Bureau of Mines and NIOSH.

In August 1975, the Joint NIOSH-OSHA Standards Completion Program published the RDL (Ex. 25–4, Appendix F, Docket No. H049). The RDL contained a table of protection factors that were based on quantitative fit testing performed at LASL and elsewhere, as well as the expert judgment of the RDL authors. The 1978 NIOSH update of the RDL contained the following protection factors:

5 for single-use respirators;

10 for half-mask respirators with DFM or HEPA filters;

50 for full facepiece air-purifying respirators with HEPA filters or chemical cartridges;

1,000 for PAPRs with HEPA filters;

1,000 for half-mask SARs operated in the pressure demand mode;

2,000 for full facepiece SARs operated in the pressure demand mode; and

10,000 for full facepiece SCBAs operated in the pressure demand mode.

ANSI's respiratory protection Subcommittee decided to revise Z88.2–1969 in the late 1970s. During its deliberations, the Subcommittee conducted an extensive discussion regarding the role of respirator protection factors in an effective respiratory protection program. As a result, the Subcommittee decided to add an APF table to the revised standard. In May 1980, ANSI published the revision as Z88.2–1980 (Ex. 10, Docket No. H049) and it contained the first ANSI Z88.2 respiratory protection factor table. The ANSI Subcommittee based the table on Hyatt's protection factors, which it updated using results from fit testing studies performed at LANL and elsewhere since 1973. For example, the protection factor for full facepiece air-purifying particulate respirators was 100 when qualitatively fit tested, or 1,000 when equipped with high efficiency filters and quantitatively fit tested. The table consistently gave higher protection factors to tight-fitting facepiece respirators when employers performed quantitative fit testing rather than qualitative fit testing. The ANSI Subcommittee concluded that PAPRs (with any respiratory inlet covering), atmosphere-supplied respirators (in continuous flow or pressure demand mode), and pressure demand SCBAs required no fit testing because they operated in a positive pressure mode. Accordingly, it gave these respirators high protection factors, limited only by IDLH values. The Subcommittee assigned protection factors of 10,000 and over to respirators used in IDLH atmospheres.

In response to a complaint to NIOSH that the PAPRs used in a plant did not appear to provide the expected protection factor of 1,000, Myers and Peach of NIOSH conducted a WPF study during silica bagging operations. Myers and Peach tested half-mask and full facepiece PAPRs and found protection factors that ranged from 16 to 215. They published the results of the study in 1983 (Ex. 1–64–46). The results of this study led NIOSH and other researchers, as well as respirator manufacturers, to perform additional WPF studies on PAPRs and other respirators.

NIOSH revised its RDL in 1987 (Ex. 1–54–437Q). While the revision retained many of the provisions of the 1978 RDL, it recognized the problems involved in developing APFs. The 1987 RDL also revised the APFs for some respirators, based on NIOSH's WPF studies. For example, the APFs were lowered for the following respirator classes: PAPRs with a loose-fitting hood or helmet to 25; PAPRs with a tight-fitting facepiece and a HEPA filter to 50; supplied-air continuous flow hoods or helmets to 25; and supplied-air continuous flow tight-fitting facepiece respirators to 50.

NIOSH stated that it may revise the 1987 RDL if warranted by subsequent WPF studies.

In August 1992, ANSI again revised its Z88.2 Respiratory Protection Standard (Ex. 1–50). The ANSI Z88.2–1992 standard contained a revised APF table, based on the Z88.2 Subcommittee's review of the available protection factor studies. In a report describing the revised standard (Ex. 1–64–423), Nelson, Wilmes, and daRoza described the rationale used by the ANSI Subcommittee in setting APFs:

> If WPF studies were available, they formed the basis for the [APF] number assigned. If no such studies were available, then laboratory studies, design analogies, and other information was used to decide what value to place in the table. In all cases where the assigned protection factor changed when compared to the 1980 standard, the assigned number is lower in the 1992 standard.

In addition, the 1992 ANSI Z88.2 standard abandoned the 1980 standard's practice of giving increased protection factors to some respirators if quantitative-fit testing was performed.

Tom Nelson, the co-chair of the ANSI Z88.2–1992 Subcommittee, published a second report, entitled "The Assigned Protection Factor According to ANSI" (Ex. 135), four years after the Z88.2 Subcommittee completed the revised 1992 standard. In the report, he reviewed the reasoning used by the ANSI Subcommittee in setting the 1992 ANSI APFs. He noted that the Z88.2 Subcommittee gave an APF of 10 to all half-mask air-purifying respirators, including quarter-mask, elastomeric, and disposable respirators. The Subcommittee also recommended that full facepiece air-purifying respirators retain an APF of 100 (from the 1980 ANSI standard) because no new data were available to justify another value. The Z88.2 Subcommittee also reviewed the 1987 NIOSH RDL values, particularly the RDL's reduction of loose-fitting facepiece and PAPRs with helmets or hoods to an APF of 25 based on their performance in WPF studies. For half-mask PAPRs, the ANSI Subcommittee set an APF of 50 based on a WPF study by Lenhart (Ex. 1–64–42). The ANSI Subcommittee had no WPF data available for full facepiece PAPRs, so it decided to select an APF of 1,000 to be consistent with the APF for PAPRs with helmets or hoods. The Subcommittee, in turn, based its APF of 1,000 for PAPRs with helmets or hoods on design analogies (*i.e.*, same facepiece designs, operation at the same airflow rates) between these respirators and airline respirators. Nelson noted that a subsequent WPF report by Keys (Ex. 1–64–40) on PAPRs with helmets or hoods was consistent with an APF of 1,000. According to Nelson, the Subcommittee used WPF studies by Myers (Ex. 1–64–48), Gosselink (Ex. 1–64–23), Myers (Ex. 1–64–47), and Que Hee and Lawrence (Ex. 1–64–60) to set an APF of 25 for PAPRs with loose-fitting facepieces. Nelson stated that two WPF studies, conducted by Gaboury and Burd (Ex. 1–64–24) and Stokes (Ex. 1–64–66) subsequent to publication of ANSI Z88.2–1992, supported the APF of 25 selected by the Subcommittee for PAPRs with loose-fitting facepieces.

Tom Nelson stated in his report that the ANSI Subcommittee had no new information on atmosphere-supplying respirators. Therefore, the APFs for these respirators were based on analogies with other similarly designed respirators (Ex. 135). The ANSI Subcommittee based the APF of 50 for half-mask continuous flow atmosphere-supplying respirators, and the APF of 25 for loose-fitting facepiece continuous flow atmosphere-supplying respirators, on the similarities between these respirators and PAPRs with the same airflow rates. Nelson noted that the ANSI Subcommittee set the APF of 1,000 for full facepiece continuous flow atmosphere-supplying respirators to be consistent with the APF for SARs with helmets or hoods found in two earlier studies—a WPF study by Johnson (Ex. 1–64–36) and a SWPF study by Skaggs (Ex. 1–3803). The Subcommittee used the analogy between PAPRs and continuous flow supplied-air respirators to select the APF of 50 for half-mask pressure demand SARs and 1,000 for full facepiece pressure demand SARs. Nelson stated: "The committee believed that setting a higher APF because of the pressure demand feature was not warranted, but rather that the total airflow was critical."

Nelson noted in the report that the Subcommittee selected no APF for SCBAs. In explaining the committee's decision, he stated that "the performance of this type of respirator may not be as good as previously measured in quantitative fit test chambers." Nelson also observed that the ANSI 88.2–1992 standard justified this approach in a footnote to the APF table. The footnote states:

> A limited number of recent simulated workplace studies concluded that all users may not achieve protection factors of 10,000. Based on [these] limited data, a definitive assigned protection factor could not be listed for positive pressure SCBAs. For emergency planning purposes where hazardous concentrations can be estimated, an assigned protection factor of no higher than 10,000 should be used.

A new ANSI Z88.2 Subcommittee currently is reviewing the ANSI Z88.2–1992 standard, in accordance with ANSI policy specifying that each standard receive a periodic review. This review likely will result in revisions to the Z88.2 APF table based on WPF and SWPF respirator performance studies conducted since publication of the current standard in 1992.

B. Need for APFs

The proposed APF definition and regulatory text are important additions to, and an integral part of, OSHA's Respiratory Protection Standard because employers need this information to select appropriate respirators for employee use when engineering and work-practice controls are insufficient to maintain hazardous substances at safe levels in the workplace. Employers need the consistent and valid information contained in the proposed APF provisions to select respirators for employee protection, based on the type of hazardous substance and the level of employee exposure to that substance.

As noted in Table I of the proposed regulatory text, the proposed APFs differ for each class of respirator. In this regard, the proposed APF for a class of respirators specifies the workplace level of protection that class of respirator should provide under an effective respiratory protection program. Therefore, when the concentration of a hazardous substance in the workplace is less than 10 times the PEL, the employer must select a respirator from a respirator class with an APF of at least 10 for use by employees exposed to that substance. However, when the concentration of the hazardous substance is greater than 10 times the PEL, the employer must select a respirator that has an APF greater than 10 for this purpose. In addition, employers would derive MUCs from the APFs proposed for the different respirator classes. These MUCs determine the maximum atmospheric concentration of toxic gasses and vapors at which respirators equipped with cartridges and canisters can be used to protect employees.

In summary, when used in conjunction with the existing provisions of the Respiratory Protection Standard, especially the respirator selection requirements specified in paragraph (d), the proposed APF definition and regulatory text would provide employers with the information they need to select the appropriate respirators for reducing employee exposures to hazardous substances to safe levels. Accordingly, integrating the proposed APF provisions into the Respiratory Protection Standard will

ensure that employees receive the optimum level of protection afforded by that standard.

C. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health (ACCSH)

The proposed provisions would replace the existing respirator-selection requirements specified by the Respiratory Protection Standard for the construction industry (29 CFR 1926.103). Accordingly, OSHA's regulation governing the Advisory Committee on Construction Safety and Health (ACCSH) at 29 CFR 1912.3 requires OSHA to consult with the ACCSH whenever the Agency proposes a rulemaking that involves the occupational safety and health of construction employees. On December 5, 2002, OSHA briefed the ACCSH membership on the proposed provisions and responded to their questions. On March 27, 2003, the APF proposal was distributed to the ACCSH membership for their review prior to their next regular meeting on May 22, 2003. OSHA staff discussed the APF proposal and answered questions from the ACCSH members during their meeting on May 22, 2003. The ACCSH then recommended that OSHA proceed with publishing the proposal.

IV. Methodology for Developing Assigned Protection Factors

This section contains an overview of the analyses performed for OSHA and summaries of the studies used in these analyses. OSHA entered the complete analyses and studies into Docket H049C as Exhibits 3, 4, and 5 and Exhibit 1–156 (Dr. Nicas' report). Studies and information supporting the APF for each class of respirator are discussed in Section VII of this document. The analyses discussed below assisted OSHA in determining its proposed approach to deriving APFs. Commenters expressed appreciation for the approach suggested by Dr. Nicas, but nearly all did not support implementation of his methods. However, his recommendations provided guidance to the Agency regarding the types of studies and data needed for determining APFs. Dr. Brown's complex statistical analyses demonstrated the widespread variability inherent in current workplace protection factor studies. However, he found in his final analysis that the performance of filtering facepiece and elastomeric half-mask respirators could not be differentiated, thereby supporting grouping of these two types of respirator under one APF.

A. Dr. Nicas' Proposal and Response From Commenters

During the June 1995 APF hearings, OSHA devoted a full day to a panel discussion on the uncertainties associated with sample statistics and their use for deriving APFs. Based on this discussion, OSHA contracted with Dr. Mark Nicas to develop a statistical method for deriving APFs. Nicas used two approaches to account for within-wearer and between-wearer variabilities. For penetration data collected from a specific cohort of respirator wearers, he used a one-factor lognormal analysis of variance. He used a two-factor lognormal analysis of variance to perform a meta-analysis of the data from studies of different cohorts of respirator wearers. Using these approaches, Nicas proposed assigning two different protection factors; he recommended one for chronic toxicants (*i.e.*, substances regulated by an 8-hour PEL), and the other for acute toxicants (*i.e.*, substances regulated by a STEL). Nicas also made recommendations regarding sampling data management and inclusion of studies in statistical analyses of respirator performance.

OSHA reopened the rulemaking record on November 7, 1995 (60 FR 56127) to request comment on Dr. Nicas' report titled "The Analysis of Workplace Protection Factor Data and Derivation of Assigned Protection Factors" (Ex. 1–156). OSHA received 12 comments on the report. While some commenters expressed general support for Nicas' approach (*e.g.*, Ex. 1–182–4, American College of Occupational and Environmental Medicine), others had serious reservations about establishing APFs using this approach. The issues raised by these commenters are described below.

1. Lack of Valid and Reliable WPF Data

Two commenters stated that the available WPF data were of insufficient quality to permit a sophisticated statistical analysis. The 3M Company (3M) commended OSHA for "attempting to use science to evaluate workplace studies for determining Assigned Protection Factors," but stated that insufficient valid data were available for such an evaluation, and that the data that were available were too variable (Ex. 1–182–5). In addition, Organization Resource Counselors, Inc. (ORC) stated: "The use of existing, often flawed, workplace protection factor studies, is not a solution to the problem. * * * A reliance on sophisticated statistics in an attempt to compensate for a lack of reliable scientific data on respirator performance is both bad science and bad policy" (Ex. 1–182–10).

2. Inappropriate Use of ANOVA Model

Three commenters believed that using Nicas' lognormal ANOVA model to analyze existing data was inappropriate (Exs. 1–174, 1–182–5, 1–182–1). Two of these commenters advocated using a simple analysis of the aggregate data instead (Exs. 1–174, 1–182–5). Thomas Nelson (Ex. 1–174) and 3M (1–182–5) expressed concern that the ANOVA model focuses primarily on within-wearer and between-wearer variability, while ignoring the potential variability contributed by other sources such as work site, respirator model, filter, and contaminant. Nelson stated: "A simple analysis of the entire data (*i.e.*, geometric mean, estimates of percentiles and confidence intervals) includes these and other possible sources of variation and the within-person variability in the model." Two other commenters, Drs. Rappaport and Kupper [contractors for the Industrial Safety Equipment Association (ISEA)] believed that using an ANOVA model provided some benefits; however, they had concerns regarding the assumption of log-normality of penetration values, the lack of validation of the model, and errors that appeared in some of the equations. Therefore, they regarded "implementation of Dr. Nicas' ideas as being problematic at this time," and encouraged the industry to develop improved methods and data for deriving APFs (Ex. 1–182–1).

3. ANOVA Model Fails To Account for Differences Between WPF Studies

Five commenters stated that the proposed analysis fails to account for important differences between studies that could affect WPF values. Thomas Nelson and 3M believed that the ANOVA model does not account for other sources of variability (Exs 1–174, 1–182–5). NIOSH stated that Nicas' report did not address the effect of the test subjects' work rates and other activities on a respirator's performance (Ex. 1–182–3), and did not account for employee training and program surveillance (Ex. 1–182–9). The Chemical Manufacturers Association (CMA) also commented on factors not considered in the Nicas report, "including differences in training, experience, work site, work rate and sample collection" (Ex. 1–182–7). ORC noted: " The results of a WPF study are based on at least the following components: quality of the respirator chosen; quality of the training program; quality of the fit testing and selection program; nature of the work and ability to challenge the fit of a respirator (sedentary versus high exercise work)" (Ex. 1–182–10).

4. Using a Conservative Criterion for Setting APFs

Five commenters stated that Nicas' criterion for setting APF values was overly conservative. The Dow Chemical Company (Dow) stated that the Nicas approach "would result in protection factors which are very conservative" (Ex. 1–182–2), while 3M believed that OSHA's use of Nicas's recommendation would result in a major change in the pattern of respirator use (Ex. 1–182–5). NIOSH commented that the approach may result in very low APF estimates because of high WPF variability, and that while the approach would derive more conservative (*i.e.*, more protective) APFs, its use for "WPF studies with small sample sizes * * * could result in APF estimates less than or equal to 1.0 (APF values less than 1.0 are meaningless)" (Ex. 1–182–3). Drs. Rappaport and Kupper stated that only weak precedence existed for Nicas' use of 95th percentiles to define APFs; and suggested that other percentiles (*e.g.*, the 90th percentile) would be more practical to implement (ISEA, Ex. 1–182–1). Finally, CMA believed that the proposed criterion rated "all respirators on the lowest protection achieved by the lowest performing person" (Ex. 1–182–7).

5. APFs Based on a Contaminant's Toxicity (Acute Versus Chronic Toxicants)

Dr. Nicas proposed that two APFs be assigned to a respirator, depending on its use against either a chronic toxicant or an acute toxicant. Four commenters remarked on the feasibility and effects of this approach. NIOSH commented that "defining acceptable protection against short-term exposures is very complex * * *." (Ex. 1–182–3). 3M commented that dual APFs would be confusing to the user community and workers, and would make program management difficult (Ex. 1–182–5). CMA provided similar comments, and noted that many materials have both chronic and acute effects (Ex. 1–182–7). ORC believed that:

> * * * different APFs for different contaminants or types of exposure is not appropriate. Occupational exposure standards should have adequate safety factors which are based on the health outcome (*e.g.*, irritation, systemic toxicity, carcinogenicity) of exposure. (Ex. 1–182–10)

While Drs. Rappaport and Kupper stated that Nicas' argument about respiratory protection for substances with chronic effects was logical, they regarded the question of how to deal with acutely toxic substances as unresolved (Ex. 1–182–1).

6. Distribution of Contaminant Concentrations

Two participants believed that it was necessary to incorporate information on the variability of ambient exposure concentrations, as well as the maximum anticipated concentration, when discussing respirator selection. CMA stated that since an employee's exposures will vary from day to day, employers should select respirators with maximum use limits well above the mean exposure levels to ensure "that there is less than 5% probability of exposures above the maximum use limit of the respirator" (Ex. 1–182–7). In a related comment, ORC stated that many industrial applications typically have exposures only 2–3 times the acceptable exposure limit; therefore, "selecting a respirator with an APF of 10 may mean there is only a remote chance of overexposure to a contaminant due to fit/wear variability" (Ex. 1–182–10).

7. Other Concerns With Nicas' Method

The commenters raised several other issues with Dr. Nicas' methodology. For example, 3M (Ex. 1–182–5) and CMA (Ex. 1–182–7) believed that the relationship between outside concentration and WPF (*i.e.*, WPF increases with increasing Co) was poorly understood; therefore, a sophisticated analysis of the data is questionable. Other commenters noted errors in the equations of the proposed model (*e.g.*, Ex. 1–182–1) and with the distribution of the respirator penetration values (Ex. 1–182–1).

8. Miscellaneous Comments (*e.g.*, ANSI APFs)

In addition to responding to the Nicas report, a number of commenters supported using the APFs recommended in the ANSI Z88.2–1992 respiratory protection standard (Exs. 1–182–1, 1–182–2, 1–182–5, 1–182–7, 1–182–10). These commenters stated that the members of the ANSI Z88.2 committee were "respected industrial hygiene and respirator experts" (Ex. 1–182–5), that the ANSI Z88.2–1992 APFs were "the appropriate values" (Ex. 1–182–7), and that the ANSI APFs "have been through the ANSI peer review process" (Ex. 1–182–5). In advocating use of the ANSI APFs, none of the commenters described the process by which the ANSI Z88.2 committee derived its APFs, or identified the studies and other information on which that committee relied. Furthermore, several commenters (Exs. 1–182–7, 1–182–5, 1–182–10, 1–182–6, 1–182–8) noted that the ANSI Z88.2–1992 standard does not explicitly account for several factors in assigning APF values to different respirator classes, or the use of a respirator in different situations, which they indicated were necessary considerations. Moreover, some commenters (Exs. 1–182–11,1–182–12) recommended APFs that differ from those published by the ANSI Z88.2 Committee. Other commenters believed that it was OSHA's responsibility to show that the commonly used ANSI Z88.2 1992 APFs were erroneous (Ex. 1–182–2), and that the Agency should not use SWPF studies to derive APFs (Ex. 1–182–5). Several participants at the hearing for the final Respiratory Protection Standard stated that OSHA should issue a second NPRM to address the development of APFs (Exs. 1–182–1, 1–182–5, 1–182–10).

After carefully considering Dr. Nicas' model and the comments received in response to his report of the model, the Agency concluded that other possible approaches to deriving APFs should be investigated, Accordingly, the Agency identified and collected available data for this purpose. Of particular interest were data that OSHA could use to discriminate between the performance of different respirator classes. The Agency gathered information from both published and non-published papers and reports, and included WPF, SWPF, PPF, and EPF studies; Health Hazard Evaluations conducted by NIOSH; respirator performance data from manufacturers, such as SWPF data submitted to OSHA by Bullard (Ex. 3–8); and other material related to assessing respirator performance. This information is in Docket H049 as Exhibits 2, 3, and 4.

To assist in evaluating the data, OSHA employed Dr. Kenneth Brown (a statistician) and several respirator authorities: Mr. Harry Ettinger, Dr. Gerry Wood of LANL, and Drs. James Johnson, Kenneth Foote, and Arthur Bierman of LLNL. After the Agency reviewed all of the studies and information, it decided to attempt to analyze only WPF and SWPF studies since they address respirator performance exclusively. OSHA discusses the work and findings of these individuals below.

B. Analyses of WPF Studies

OSHA contracted with Dr. Brown to investigate possible approaches, other than those approaches proposed by Nicas, to evaluate respirator performance data from WPF studies. The following discussion is a general description of the analyses performed by Brown, as well as his overall

conclusions. For a detailed explanation of the methodology and rationale used in the analyses, refer to Brown's reports in the docket (Exs. 5–1, 5–2).

OSHA reviewed the available WPF studies for possible inclusion in Brown's analyses. Early in this review process, the Agency decided to exclude WPF studies with a gas or vapor workplace challenge agent because: The preponderance of studies were conducted in workplaces with particulate challenges; gas/vapor studies did not provide any further insight or clarification regarding sources of variability in WPF studies (most likely, gas/vapor studies add variability to the data such as the effects of humidity on sampling media collection and desorption efficiencies); and pulmonary elimination differs between gases/vapors and particulates. Therefore, OSHA decided to analyze only WPF studies using particulate challenge agents. The Agency evaluated those studies initially selected for further analysis for compliance with the requirements of OSHA's Respiratory Protection Standard (29 CFR 1910.134), as well as completeness of the data. The Agency compiled a list of review items to use in evaluating each study (Ex. 5–5).

OSHA then divided the remaining studies into two categories: Half-mask negative-pressure air-purifying respirators (APRs) and atmosphere-supplying respirators (PAPRs and SARs). This procedure resulted in 22 APR studies and 16 PAPR/SAR studies for analysis. OSHA placed a list of these studies, and their respective respirators, in the docket (Ex. 7–4). Brown subsequently identified 14 APR studies and 13 PAPR/SAR studies for further analysis (see Exs. 5–1 and 5–2 for more information on the evaluation criteria).

Brown's analyses divided the respirators used in these studies into separate respirator classes. The analyses divided APRs into 5 classes, listed below in Table 1. As this table shows, Brown's analyses separated filtering facepieces into four classes based on the characteristics listed under the Description column heading, with the fifth class comprised of elastomeric facepiece APRs.

TABLE 1.—HALF-MASK APR CLASSES

Class	Type	Description			
		Adjustable head straps	Exhalation valve	Double shell construction	Foam ring liner
1	Filtering facepiece				
2	Filtering facepiece	X		X	
3	Filtering facepiece	X	X	X	
4	Filtering facepiece	X	X	X	X
5	Elastomeric facepiece.				

In addition, Brown's analyses divided PAPRs into five classes and SARs into two classes, as shown in Table 2.

TABLE 2.—PAPR AND SAR CLASSES

Class	Type	Description
1	PAPR	Loose-fitting facepiece.
2	PAPR	Loose-fitting facepiece with hood and/or helmet.
3	PAPR	Hood and/or helmets—not loose-fitting.
4	PAPR	Tight-fitting half-mask facepiece.
5	PAPR	Tight-fitting full facepiece.
6	SAR	Loose-fitting.
7	SAR	Hood or helmet.

Later in the analyses, Brown further divided these classes according to class of respirator, study, and challenge agent (CLSA). This division resulted in 26 CLSAs for the APRs and 14 CLSAs for the PAPRs/SARs.

The data from the WPF studies consisted of simultaneous measurements of the challenge agent concentration inside the respirator facepiece (*i.e.*, concentration inside or Ci) and outside the respirator facepiece (*i.e.*, concentration outside or Co) in the ambient workplace atmosphere. Corresponding Co and Ci measurements can be used to calculate the workplace protection factor (WPF = Co/Ci) or penetration of the contaminant into the respirator (PEN = Ci/Co = 1/WPF). The APR studies had a total of 917 data pairs, while the PAPR/SAR studies provided 443 data pairs.

1. Half-Mask APRs

In the first phase of his analysis, Brown statistically analyzed the data for half-mask negative pressure APRs, both filtering facepiece and elastomeric APRs, using the following three approaches: (1) Pooled the data within classes, corrected the data for the positive relationship found between WPF values and increasing Co, and compared the differences in WPF statistics between classes; (2) conducted an intra-study analysis of the performance of two different classes of respirator used against the same contaminant under similar workplace conditions; and (3) divided the data into class-study-agent combinations, and evaluated WPF as a function of Co. The following sections discuss these approaches in detail.

Approach 1. Brown's initial approach was to determine if he could pool the data within each respirator class and estimate the fifth percentile WPF for that respirator class; he then tested for differences in WPFs between the respirator classes. He divided and analyzed the data by study, treating the data from each study as a homogeneous sample arising from the same parent distribution. Then he examined the data in each study for a Co effect, and constructed a scatterplot of ln(WPF) versus ln(Co) for each respirator class. In doing so, he treated extreme or poorly fitting data as outliers and removed them from the analysis. He subsequently derived a linear regression of ln(WPF) on ln(Co) for each study, and extrapolated from the observed range to the entire range of Co values in all of the data. The positive slopes, which he found for most classes, showed that ln(WPF) increased as ln(Co) increased. In addition, the regression lines were well mixed, indicating that studies within the same respirator class varied more than anticipated. This result indicated that variability occurring within respirator classes could obscure differences between respirator classes.

These studies collected data over different ranges of Co. Therefore, to compare the WPFs observed in the studies, Brown corrected the WPF values for all studies, using a common Co adjustment factor. He pooled the adjusted WPFs by class, and then plotted the cumulative distributions to determine if he could identify differences between respirator classes, despite intra- and inter-study differences. Finding no differences between respirator classes using the Co adjustment factor, he concluded that:

> Observed 5th percentiles for WPFs, and their lower confidence intervals when adjusted for the Co effect, showed no clear evidence that any class was preferable to another. In particular, there was no indication that Class 5 (elastomerics) performed better than four disposable classes. (Ex. 5–1, p. 8)

The results of these analyses prompted a more detailed examination of the data. To control for study-related and agent-related factors that may contribute to variability, Brown performed an intra-study analysis on two different respirator classes used against the same workplace challenge agent under similar workplace conditions (Approach 2).

Approach 2. The second approach attempted to determine respirator performance after controlling for study-to-study and agent-to-agent sources of variability. Among the half-mask APRs, the chance of detecting performance differences appeared to be greatest for comparisons between elastomeric and filtering facepiece respirators. In implementing this approach, Brown assumed that controlling for study and agent sources of variability would result in WPF differences attributable, in large part, to variability in respirator performance.

Four of the studies compared the performance of elastomeric and filtering facepiece respirators against the same challenge agent in the same workplace. After reviewing these studies, a study by Meyers and Zhuang (Ex. 1–64–51) was selected for further analysis because it was recent, followed a protocol patterned after other published WPF study protocols, and was well documented. Brown's statistical analyses of this study (see Ex. 5–1, Appendix C) indicated large sources of variability within the study, making comparison of the two respirator classes difficult and tenuous. Based on plots of the data and the occurrence of several outliers, it appeared that even data on the same agent, obtained under similar workplace conditions, may not have come from the same parent distribution. In addition, the variability of WPFs within the study (regardless of adjustment for the Co effect) was large. Therefore, the results of this second approach led Brown to state that, at least in this analysis, "workplace studies may have too much intra-study variability for reasonably valid/accurate/reliable assessments and comparisons of respirator effectiveness." (Ex. 5–1, p. C–17)

Approach 3. Brown began the third statistical approach by dividing the data into units smaller than respirator class, *i.e.*, units based on class of respirator, study, and workplace challenge agent (class-study-agent or CLSA). This procedure resulted in 42 CLSA combinations. After removing deficient data (*e.g.*, no data on Co), he narrowed the data set to 26 combinations. Again, he tested the data for each CLSA to determine if WPF increases with Co and, if so, whether the effect held for all respirator classes. Data analyses of the 26 CLSAs indicated that WPF increased with Co; Brown then derived a common estimate (across all CLSAs) of the Co effect. He subsequently estimated the means for the CLSAs within each class of respirator, both with and without adjustment for Co effect. Brown compared the means of these CLSAs within and between respirator classes. For each respirator class, he grouped the CLSAs that had no significant difference between their means into common subclasses, and plotted both the adjusted and non-adjusted means [*i.e.*, mean of ln(PEN)] of the subclasses, as well as their associated confidence intervals. The results of the comparisons showed that: the estimated means of CLSAs vary so much within a class that the mean of one CLSA is likely to be a poor predictor of the mean of another CLSA within the same class; and it was not visually apparent from the plots that one class of respirator performed better than another class. In general, the comparison indicated that study outcomes, even within the same class of respirator, are highly heterogeneous.

Final analysis. Since the three approaches discussed above could not distinguish between respirator effectiveness within or across classes, the data were viewed, as a whole, from the relationship of Ci and Co. Brown pooled the data for all 26 CLSAs and derived several functional relationships from the pooled data. This approach showed that the majority of the observed data pairs achieved a WPF of 10. (See Ex. 5–1 for more details.)

After performing the above analyses, Brown made a number of observations and conclusions. He noted that the range of WPF values within a CLSA was typically wide, and that the observations were highly variable. In addition, he believed that variability in WPF studies can affect the accuracy, validity, and reliability of study results, as well as the ability to compare study results. Brown noted several possible sources of variability in WPF studies, including: (1) Study characteristics related to study design, execution, sample analysis, and data management and reporting; (2) measurements of Ci at different outside concentrations (Co effect), taken in conjunction with other poorly described factors (*e.g.*, particle size, temperature, humidity) that may affect the relationship of Ci and Co; (3) characteristics of the ambient agent itself (*e.g.*, possible effects of the agent occurring in a mixture with other agents); and (4) variations in data among studies related to using different study procedures (*e.g.*, repeated measurements on the same worker in some studies versus single measurements on each worker in other studies, random versus non-random selection of study participants). He also commented that the analyses assumed that the data were representative of workplace conditions; however, the data may not represent either current or future workplaces in which employees use respirators. Finally, Brown observed that studies with high Ci values, relative to Co, may have influenced his findings. He believed that these studies should be closely reviewed because some study weakness, unrelated to respirator performance, could be the reason for the high Ci values.

Brown also made some general observations about WPF studies. First, he believed that the role of WPF studies in assessing and comparing respirator effectiveness, and influencing APFs, should be reevaluated. He believed that a more refined instrument that is amenable to experimental design and control, such as chamber studies, is better suited for providing information during determination of assigned protection factors. Brown noted that the use of high concentrations of a challenge agent in chamber studies may minimize the uncertainty of extrapolating test results obtained at low outside concentrations to levels well above the observed range. Therefore, WPF studies would serve as a counterpart to chamber studies, *i.e.*, WPF studies would provide data on the respirator during actual use in the workplace, and identify workplace conditions in which a respirator may perform poorly. To improve comparability of results, he advocated using uniform procedures to: select the challenge agent; collect samples; record the data; and measure and interpret Ci and Co (Ex. 5–1, pp. 42–44).

Overall, the analyses led Brown to several conclusions. First, workplace studies have limitations for comparing respirator performance because of uncontrolled sources of variability. Support for this conclusion comes from the wide confidence intervals for the means of the CLSAs, and the wide range of those confidence intervals within the same respirator class. Second, Brown believed that the WPF has limits as a

measure of respirator effectiveness because, in general, it tends to increase as Co increases. This relationship complicates comparisons of WPF values measured at different Co levels. Third, he found no clear evidence that one class of respirator is better than any other class, particularly between elastomeric half-mask and filtering facepiece respirators. In addition, the differing results between CLSAs within the same class of respirators indicated that the outcome of one CLSA may be a poor predictor for another CLSA in the same class.

2. PAPRs and SARs

Dr. Brown analyzed 13 studies to evaluate and compare the effectiveness of PAPRs and SARs. Ten of the studies were conducted with PAPRs, and three with SARs. Brown's analyses divided these "high-performance" respirators into seven classes (*i.e.*, five types of PAPR and two types of SAR) based on their design features (*see* Table 2), with subsequent separation of these respirator classes into 14 CLSAs.

Brown used the CLSAs to determine whether any differences in respirator effectiveness existed among the respirator classes. He analyzed the data for trends of WPFs, either upward or downward, as Co increases, and for homogeneity. Brown plotted all of the data, fitted lines to these plots, made comparisons of study results within each respirator class, and developed functions from the fitted lines. (For additional details on these statistical analyses and the data plots, *see* Ex. 5–2.)

On reviewing the data plots, Brown concluded that the data were consistent with a linear relationship between ln(Ci) and ln(Co). Also, the presence of outliers and/or an imbalanced distribution of the observations influenced the results. He recommended further investigation of the outliers, particularly those with unusually high Ci values, to determine if they resulted from characteristics of the respirator or other variables. He also recommended studying the imbalanced distributions to determine if they represented individual study biases caused, for example, by collecting data at different work sites or on different work shifts. Finally, Brown noted that the robust least trimmed squares line may be useful for estimating the relationship between ln(Ci) and ln(Co).

Fifth percentiles are commonly used as a benchmark for respirator performance. Brown's analyses showed that fifth percentile estimates differed considerably within respirator classes that contained more than one CLSA. The range of the fifth percentile estimates was 28–389 for the five CLSAs in Class 2, 17–107 for the two CLSAs in Class 4, 29–1779 for two CLSAs in Class 5, and 74–188 for the two CLSAs in Class 7. The fifth percentile estimates in Classes 3 and 6 were large, while the fifth percentile estimates were small in Classes 1, 4, and 7. Brown believed that, while some of these differences may be attributed to a real difference in respirator performance between classes, the sample sizes were too small and/or the sampling variability too large to obtain reliable estimates at low percentile levels. He noted that the fifth percentile estimates were variable, and were not predictable from one CLSA to another CLSA within the same respirator class. Thus, he concluded that the fifth percentile estimates of WPFs have limited utility for setting assigned protection factors. Table 3 lists the descriptive statistics for WPFs, for each class-study-agent combination.

TABLE 3.—DESCRIPTIVE STATISTICS FOR WPF, BY CLASS, STUDY AGENT

	CL1.26.Cd	CL2.22.Pb	CL2.23.Pb	CL2.24.Si	CL2.3.BAP.	CL2.5.Asb	CL3.27.EBZ
Curve Label	1	2a	2b	2c	2d	No curves	3
Median	2,972.97	127.88	155.29	3,553.72	1,788.32	156.00	11,935.87
Range	25,186.05	1,040.75	6,131.76	95,518.07	8,203.89	537.00	4,746,673.83
Minimum	53.70	22.58	28.24	36.31	371.49	66.00	1,152.26
Maximum	25,239.75	1,063.33	6,160.00	95,554.38	8,575.38	603.00	4,747,826.09
No. Observations (N)	33	46	43	59	20	7	58
5th Percentile	280.25	27.82	35.03	92.07	388.70	70.50	1,797.79
10th Percentile	581.87	53.04	43.08	267.60	407.51	75.00	2,365.29
Reject Lognormality?	No	No	No	No	No	No	Yes
Geometric Mean	2,523.49	126.85	184.69	2,765.75	1,408.10	151.95	15,623.81
Geometric Stan. Dev	3.56	2.28	3.21	6.33	2.50	2.54	5.56
	CL4.21.Si	CL4.6.Pb	CL5.18.Pb	CL5.21.Si	CL6.19.Si	CL7.25.Sr	CL7.28.Si
Curve Label	4a	4b	5	No curves	6	7a	7b
Median	48.67	438.60	7,948.14	85.44	9,178.81	3,827.16	2,480.55
Range	176.27	2,310.33	73,081.90	189.92	34,735.48	87,137.82	33,384.67
Minimum	16.40	23.00	579.04	24.75	668.34	41.67	43.33
Maximum	192.67	2,333.33	73,660.94	214.67	35,403.82	87,179.49	33,428.00
No. Observations (N)	7	25	53	4	15	21	52
5th Percentile	17.20	107.06	1,779.12	29.10	1,407.60	74.07	188.14
10th Percentile	18.00	160.95	2,300.18	33.50	2,229.66	79.37	383.47
Reject Lognormality?	No	No	No	N too small	No	No	No
Geometric Mean	49.20	400.34	8,319.09	76.10	7,389.62	2,315.04	2,066.00
Geometric Stan. Dev	23.60	2.81	3.03	25.60	2.92	9.99	4.02

The objective of the review of these 13 WPF studies was to see what can be learned about the performance of each respirator class, and its relative effectiveness, based on the data for Co and Ci. He also attempted to determine how Ci changes as Co changes, and what factors affected this relationship.

Brown found too much unexplained variability between study outcomes, even within the same respirator class and within similar ranges of Co, to make valid and reliable comparisons. He noted that study outcomes for the same class of respirator may differ significantly, which raised concerns about interpreting the outcome for a class from a single study. More specifically, he questioned whether the results from one study would be similar to another study. He concluded that it is not possible to know to what extent the outcome of a study is attributable to characteristics of the respirator used.

Brown believed that the variability identified in this analysis was probably due to uncontrolled parameters in the workplace test situations, such as aerosol particle size distributions and densities, and work activities. Based on the data from these studies, he found that WPF tends to increase as Co increases (equivalently, penetration, or PEN., tends to decrease). He believed that the probability of a Co dependence for WPFs seemed to be established by his analyses.

C. Analyses of SWPF Studies

1. Bullard Models 77 and 88, Clemco Apollo Models 20 and 60, and 3M Whitecap II

In the mid-1980s, SWPF studies provided OSHA with information on the effects of temperature, relative humidity, airflow, and facial hair on respirator performance (LANL, 1988; Ex. 1–64–101, LLNL, 1986; Ex. 1–64–94). More recent SWPF studies provided additional information on the performance of the following abrasive blasting respirators: the Bullard Models 77 and 88 (Ex. 3–8–3), the Clemco Apollo Models 20 and 60 (Ex. 3–7–3), and the 3M Whitecap II (Ex. 3–9–2).

OSHA contracted with Mr. Harry Ettinger to review and comment on the study principles and protocols described in the five reports (Bullard, Clemco, 3M Whitecap, the LLNL study, and the LANL study). His report (Ex. 3–3) contained the following observations and conclusions.

Mr. Ettinger noted that while the reports do not satisfy the typical criteria for defining peer-reviewed publications, this was not a serious problem because the studies were conducted in national laboratories by knowledgeable and experienced investigators. Furthermore, the review procedures generally used by these national laboratories most likely provide a sufficient peer-review process. He noted that none of the reports provided sufficient detail to permit a statistical re-analysis of the data by OSHA. In addition, he observed that the studies of the Bullard, Clemco, and 3M respirators reported considerably higher fit factors than the 1986 and 1988 national laboratory studies. However, he believed that it was not appropriate to compare the results of recent studies with the older studies, but he noted that older respirators may not perform as well as newer designs.

Mr. Ettinger also noted that the tests of the Bullard, Clemco, and 3M respirators satisfied the established criteria of fit factors that exhibited only brief negative pressure spikes. He believed these results indicated that if these devices are used and maintained properly, they appear to have fit factors of at least 20,000. He believed that, using a safety factor of 20, a protection factor of 1,000 is attainable, assuming that the testing protocol is adequate.

Ettinger stated that he could not define clearly a relationship between the older and more recent study results. For example, he suggested that the additional exercises in the more recent study (ORC, 2001; Ex. 3–4–2) did not adequately represent normal or extreme work situations. Ettinger cautioned against assuming that all blasting helmets would achieve the high fit factors measured in the recent studies because performance is device specific, and indicated that older respirator designs may need to be reevaluated. Furthermore, he believed that quality control, human factors, minimum flow rate, and the sturdiness of respirator construction are important variables that should be evaluated in the testing protocol.

2. NIOSH N95 Study

In 1999, NIOSH conducted a chamber study of 21 N95 respirators (20 filtering facepiece, and 1 elastomeric, respirators) and statistically analyzed the respirators' performance (Ex. 4–14). At the request of OSHA, Drs. Johnson, Foote, and Bierman of LLNL undertook a review of this study to assist the Agency in evaluating APFs of half-mask respirators (Ex. 3–2). OSHA provided the raw data files from the study to LLNL for independent evaluation.

The NIOSH investigators used ambient (*i.e.*, room) aerosol as the challenge agent, and a PortaCount to measure respirator penetration. Use of ambient aerosol does not require aerosol generation equipment, thereby circumventing use of a possibly hazardous chemical. However, if this technique generates a low ambient particle concentration it is difficult to detect the reduced number of particles that penetrate the respirator; this effect results in an artificially low protection factor. In addition, an ambient aerosol that is varying in concentration during testing can cause error in the penetration measurements. Study participants can also produce aerosols ranging from 0.1 to 3 particles/cc through their breathing (*i.e.*, "breathing" background). Whenever the amount of challenge agent that penetrates the respirator is low (*i.e.*, on the order of particles/cc or less), the PortaCount cannot distinguish between particles in the breathing background and the challenge aerosol penetrating the respirator. The LLNL researchers believed that the breathing background can limit fit factor measurements to 1,000 and less when the challenge concentration is below 2,000 particles/cc (Ex. 4–15). They concluded that challenge aerosol concentrations can be better controlled in chamber studies than under this protocol.

When calculating faceseal leakage, the NIOSH authors assumed that all study participants have the same constant volumetric flow rate through the respirator. Using a filtration model developed by Rubow (Ex. 3–7–3), the LLNL reviewers determined media penetration that was approximately 5% less than the media penetration calculated by the NIOSH authors using the constant flow rate assumption. Since the method used by the NIOSH authors results in only a 5% error, and gives a conservative estimate of the filter penetration, the LLNL reviewers believed that the constant flow rate assumption is reasonable. The LLNL reviewers also discussed other considerations, including fluctuations in peak flows under various exercise conditions, and the correction factor for filter media penetration used by the NIOSH authors.

Investigating the possible effect of breathing background on the PortaCount fit factor measurement, the LLNL reviewers applied an estimated worst-case scenario to the data. The scenario consisted of the following two assumptions: (1) A challenge aerosol concentration of 3,000 particles/cc, and (2) a breathing background of 5 particles/cc. Applying these assumptions to the NIOSH data, the LLNL reviewers recalculated total penetrations, and adjusted the results for breathing background. They found that, when compared to the NIOSH results, 14 of the 21 respirators had more tests passing the 0.01 penetration criteria than before. The LLNL reviewers also calculated the 50th and 95th percentiles for the penetration data, both with and without applying the breathing background assumption. In view of their results, they believed that the original NIOSH analysis and findings result in a conservative estimate of the respirators' performance.

The LLNL reviewers also used the NIOSH raw data to reproduce values, geometric standard deviations, and the 95th percentile for total penetration, filter penetration, and face seal leakage. They then compared these results to total penetration and face seal leakage penetrations summarized in the NIOSH study (Exs. 4–1, Table 2; 4–14, Table I).

The few discrepancies were small, and could be attributed, for example, to rounding off values. The 95th percentiles in the NIOSH study were based on a formula using the geometric mean and geometric standard deviation, and assumed that the distribution was log normal. For comparison, the reviewers calculated the 50th and 95th percentiles based on the raw data alone (*i.e.*, assuming no distribution). Using this approach, the LLNL reviewers noted that, for many respirator models, the 50th percentile differed markedly from the geometric mean. They also saw differences between the 95th percentile calculated using a log normal distribution and the corresponding percentile determined directly from the data. LLNL reviewers stated that the NIOSH study demonstrated the advantages of SWPF studies for half-mask respirators. Their results confirm the quality of this important SWPF study of filtering facepiece and elastomeric half-mask respirators.

3. ORC Study of PAPRs and SARs

In 1997, ORC and a group of its member companies sponsored a study of 11 powered air-purifying and supplied-air respirators (PAPRs and SARs) to evaluate the protection that these respirators afforded to workers in the pharmaceutical industry. The study, "Simulated Workplace Protection Factor Study of Powered Air Purifying and Supplied Air Respirators' (Ex. 3–4–1) was completed in 1998 by researchers at LLNL. OSHA requested Dr. Gerry Wood of LANL to evaluate ORC's LLNL study. He evaluated the study using the data received from ORC, as well as information on the study published in the American Industrial Hygiene Association Journal (Exs. 3–1, 3–4–2).

The raw data files from the study consisted of instantaneous (0.1 second) photometer aerosol measurements obtained before, during, and after 12 exercise periods (including four periods of normal breathing) performed by each study participant. The instantaneous penetration results for the 144 tests were plotted against time. Wood examined patterns of aerosol penetration into the respirator that occurred throughout testing, noting that certain exercises often exhibited penetration spikes. He found that running in place produced the most penetration spikes. However, he also noted other respirator/subject combinations result in spikes. Wood indicated that such non-random distributions of readings was not surprising, as different movements during an exercise should affect instantaneous penetrations differently.

Wood calculated 95% confidence limits for the average and maximum penetration values during each exercise. In doing so, he assumed that pre-test and post-test background, and chamber aerosol measurements were distributed normally, since no movement variables were present. He then calculated aerosol penetration. Wood found that the photometer reading averages and standard deviations that he analyzed for all 144 data sets were in agreement with the LLNL figures, and that rounding off figures accounted for any minor differences in average penetrations that he calculated.

In summary, Dr. Wood believed that the quality of the data, experimental protocol, measurements and data, and calculations applied to the data in the ORC–LLNL study were excellent. He agreed with the authors' conclusions that SWPF studies are useful for comparing respirators, and that the study protocol was reproducible.

D. OSHA's Overall Summary Conclusions

Prior to this current rulemaking, OSHA explored several procedures to evaluate and compare respirator performance across models, studies, agents, and testing protocols. The Agency thoroughly reviewed the available data on respirator performance to determine the current concepts, and possible methodologies, for deriving APFs. To evaluate the data, OSHA had to make several decisions.

For example, while OSHA was aware that particle size can affect concentration values, the Agency was unable to quantify this factor based on available information. Consequently, OSHA did not attempt to adjust for differences in particle size in the analyses. Furthermore, the Agency had to decide how to address sampling results that were below the limit of detection (LOD). Accordingly, whenever sampling results were below the limit of detection, OSHA set the Ci at a percentage of the LOD reported in the study. When the study reported extremely low Ci results as a percentage of the LOD, the Agency used the values provided by the authors.

OSHA was concerned that the analyses be those best able to account for parameter uncertainty, and be a measure of respirator effectiveness that is valid over a plausible range of concentrations for each of the agents against which the respirator is to be used. As discussed above, the Agency contracted with Drs. Nicas and Brown to independently evaluate the raw WPF data. As a result of these analyses, OSHA preliminarily agrees with Drs. Rappaport and Kupper, who indicated that, while some modeling may be useful, concerns remain regarding the lack of model validation (Ex. 1–182–1). Furthermore, OSHA finds merit in Thomas Nelson's comment that a simple analysis of the entire data may sufficiently cover the relevant sources of variation in these data (Ex. 1–174). Databases of the information used by the Agency in its analyses have been placed in the docket for review by interested parties (Exs. 5–3, 5–4, 5–5).

The Agency also recognizes that WPF and SWPF studies have their strengths and weaknesses. SWPF studies can control for a number of variables, thus providing less variable results across respirators classes than WPF studies. Also, SWPF studies can test respirators safely at the limits of their effectiveness. However, WPF studies evaluate respirators during use in the workplace. Therefore, the Agency believes that WPF or SWPF studies provide complementary information.

OSHA developed the proposed APFs using a multi-faceted approach. The Agency reviewed the various analyses of respirator authorities, available WPF and SWPF studies, and other APF literature. For example, OSHA reviewed Brown's analyses and noted no difference in performance between filtering facepiece and elastomeric half-mask APRs, and that few data pairs from the combined data sets analysis failed to achieve a WPF of 10. In addition, the data from WPF and SWPF studies, as well as a qualitative review of the available APF literature, supported an APF of 10 for all half-mask APRs. Therefore, OSHA is proposing an APF of 10 for half-mask APRs. The Agency used a similar approach in developing the remaining proposed APFs.

In conclusion, the APFs proposed by OSHA in this rulemaking represent the Agency's evaluation of all the available data and research literature; *i.e.*, a composite evaluation of all the relevant quantitative and qualitative information. The Agency seeks comment on this approach, as well as the proposed APFs developed using this approach.

E. Summaries of Studies

Researchers often determine the protection afforded by a respirator by conducting Workplace Protection Factor (WPF) studies and Simulated Workplace Protection Factor (SWPF) studies. A WPF study measures the effectiveness of respirators under workplace conditions. Workers participating in a WPF study wear respirators while performing their usual job tasks. The WPF is a measure of the reduction in exposure achieved while using respiratory protection and

is the ratio of the concentration of the contaminant found in the workplace air to the concentration found inside the respirator facepiece. Similarly, a SWPF study measures the ratio of a contaminant's concentration both outside and inside the facepiece. However, researchers obtain these measurements in test chambers, which allows them to control some important variables (*e.g.*, outside concentration of the challenge agent). Rather than performing the actual job tasks found in a particular work setting, the study participants perform a series of exercises in the test chamber that simulate the actions of workers in general.

In developing the proposed APFs listed in Table 1 of the proposed amendments to the standards (Section XII). OSHA reviewed data from properly conducted WPF studies and SWPF studies. In addition, the Agency reviewed published APF tables. These data formed the basis for OSHA's proposed APFs. OSHA also reviewed other types of studies, such as Effective Protection Factors (EPF) and Program Protection Factor (PPF) studies, along with respirator performance studies that lacked raw data. A review of those studies can be found in the Docket (Exs. 3–10, 3–11). However, EPF and PPF studies account for aspects of respirator use other than effectiveness of the respirator while it is being worn, while studies that lack raw data give little information for in-depth statistical analysis. Therefore, OSHA relied on WPF and SWPF studies, since they attempt to account for actual use conditions and focus on the performance characteristics of the respirator only.

1. WPF Studies—Filtering Facepiece and Elastomeric Half-Mask Respirators

Study 1B. C.E. Coulton, H.E. Mullins, and J.O. Bidwell gave a presentation at the May 1994 American Industrial Hygiene Conference and Exposition (AIHCE) on worker protection afforded by the same respirator in two different environments and against two different contaminants (Ex. 1–64–13). At the first site, the authors determined exposure to cadmium dust for 18 workers in a plastic colorant manufacturing facility. They determined exposure to lead fume for 18 workers during ship breaking and recycling at the second site. At the colorant facility, cadmium-containing pigments were weighed, mixed with plastic resin, and fed into extruders for production of concentrated colorant. Samples were obtained from workers in the weighing, mixing, and extruding areas. Workers at the ship breaking facility used torches to cut an aircraft carrier into large sections that were then cut into smaller pieces on shore. Burners and firemen, on the ship and on shore, were sampled for lead. Work rate at the colorant facility was judged to be low, while the work rate of the ship breaking workers was assessed as being moderate. The respirator used in the study was a 3M 6000 series elastomeric half-mask equipped with either 3M 2040 or 3M 2047 HEPA filters (the 2047 HEPA filter has some activated charcoal for removal of nuisance levels of organic vapors). Employees normally wore the study respirator and were provided with training in its proper donning, fitting, and operation. In addition, the employees had to pass a saccharin qualitative fit test prior to study participation; they also had to be clean-shaven. The study was explained to the participants and they were observed on a one-on-one basis throughout the sampling periods.

The inside-the-facepiece sampling train consisted of a 25 mm three-piece cassette with a 0.8 micron pore size mixed cellulose ester filter. Respirators were probed with a Liu probe inserted opposite the mouth and projecting one cm into the facepiece. The sampling cassette was attached directly to the probe, and a cassette heater was utilized to prevent condensation of moisture from exhaled breath. Outside-the-facepiece samples used a 25 mm three-piece cassette with a 0.8 micron pore size mixed cellulose ester filter. The outside sample cassette was also connected to a Liu probe, and this combination was attached in the worker's breathing zone. Inside samples and outside samples were collected at a flow rate of 2 Lpm. Respirators were donned and doffed, and sampling trains started and stopped, in a clean area. Field blanks were used for contamination evaluation. Particle size distribution was ascertained with a six-stage single-jet cascade impactor that sampled all day at 1 Lpm.

Samples were analyzed by inductively coupled plasma (ICP) spectroscopy. For both cadmium and lead, the authors presented the range of outside concentrations, inside concentrations, and the associated geometric means and standard deviations. Three sets of WPFs were determined for cadmium and lead, based on three different methods for reporting inside samples that were below the limit of detection (LOD) (*i.e.*, calculating WPF using 70% of the LOD; calculating WPF using the LOD; or eliminating these samples from the WPF calculation database). No field blank adjustments were made (*i.e.*, no cadmium or lead detected), and no mention is made of adjusting the data for pulmonary retention of particles. In addition, samples were invalidated as a result of equipment and procedural problems, and if the outside filter weights were less than 100 times the limit of detection (or 101 times the field blank value). The authors reported a mean WPF of 353, with a fifth percentile of 34, for the cadmium samples, and a mean WPF of 135, with a fifth percentile of 15, for the lead fume samples. The authors noted a sizable difference in WPFs for cadmium and lead (using the same respirator), and discussed a number of possible reasons for the difference (*e.g.*, differences in particle size, work environment, work rate). The authors concluded that the ANSI Z88.2–1992 recommended APF of 10 for half-facepieces was appropriate.

Study 1C. In a poster presentation at the 1992 AIHCE, C.E. Coulton and H.E. Mullins provided results of a study of several contaminants (Ex. 1–146). Exposure to iron (Fe), manganese (Mn), titanium(Ti), and zinc (Zn) were determined for shipyard workers involved with welding and grinding. The respirators studied were 3M 9920 and 3M 9925 dust/fume/mist disposable respirators.

At the Agency's request, 3M provided the raw data from the study, but the information provided had no discussion of sampling or analytical methodologies. However, in a brief abstract, the authors mention using blank samples and observing participants during sampling (in the context of discarding particular sample sets). Outside- and inside-the-facepiece concentrations, and associated WPFs, were provided for the four analytes: Fe (31 data sets), Mn (32 data sets), Ti (28 data sets), and Zn (32 data sets). Calculated WPFs ranged as follows: 24 to 1010 for Fe, 10.21 to 715 for Mn, 50.38 to 2545 for Ti, and 27.41 to 854.89 for Zn. Tom Nelson (Ex. 135) calculated a geometric mean (GM) of 147, a geometric standard deviation (GSD) of 2.5, and a best estimate fifth percentile of 33 for the 32 sample sets he used in evaluating this study. The information he provided contained no additional discussion of the results or study conclusions.

Study 1D. Workplace performance of an elastomeric half-mask against exposure to lead was reported in 1984 by S.W. Dixon and T.J. Nelson for 11 workers in an unidentified work environment (Ex. 1–64–19). The participants' work rate was judged to be moderate to heavy. Workers viewed a training program and selected from three mask sizes of a Survivair 2000 elastomeric half-mask respirator,

equipped with organic vapor/high-efficiency particulate filters. Participants were qualitatively fit tested with isoamyl acetate. Prior to participation, employees were quantitatively fit tested with a Dynatec/Frontier FE250A portable unit while wearing the Survivair with high-efficiency filters and performing six ANSI-recommended exercises. In addition, paired (before and after) quantitative fit tests were performed for about half of the WPF determinations to ascertain if quantitative fit tests can predict WPFs. Participants were instructed not to break the faceseal during sampling, and were observed throughout the sampling period.

Samples were collected on 25 mm 0.8 micron pore size polycarbonate filters, for 30 to 120 minutes (a complete job cycle) at a flow rate of 2 Lpm. Sampling trains were calibrated before and after each day's sampling, and respirators were disassembled, cleaned, and reassembled at the end of each day. The authors do not provide a more detailed discussion of the inside or outside sampling trains (*e.g.*, type of respirator probe, placement of outside sampling apparatus). Particle size analysis was performed using light microscopy and scanning electron microscopy.

Proton induced x-ray emission analysis (PIXEA) was used to analyze the samples. This method's limit of detection was 2 nanograms per sample. The authors provide an approximate particle aerodynamic diameter based on the particle size analyses. Inside-the-facepiece results were corrected for losses caused by the sample probe but were not corrected for lung deposition (which the authors believed caused only a small bias). Thirty-seven WPFs were determined; however, the individual data sets (*i.e.*, inside concentration, outside concentration, and associated WPF) were not provided. During the study, some participants were observed to break the faceseal to talk. The authors provide an overall range of WPFs achieved, GM, and GSD, for undisturbed facepiece samples and pooled disturbed and undisturbed facepiece samples. The authors reported a GM WPF of 3,400, and a best estimate of the fifth percentile of 390 when the facepiece was not disturbed, and a GM WPF of 2,400, and a best estimate of the fifth percentile of 160 when the facepiece was disturbed. The authors also found no correlation (at the 5% level) between WPF and outside concentration, or the relationship between WPF and quantitative fit factors for predicting workplace protection. The authors also estimated the program protection factor based on historical measures of air lead concentrations versus blood lead levels (a table and graph of this data was provided). They concluded that the half-mask respirator they tested provided WPFs that exceeded an APF of 10, and provided program protection factors (PPFs) that exceeded 10.

Study 2. Workplace protection against exposure to asbestos fibers (chrysotile and amosite) was reported at the 1985 AIHCE by T.J. Nelson and S.W. Dixon for 17 workers who removed asbestos-containing materials at two sites (Ex. 1–64–54). Six of these workers were removing asbestos fireproofing from a ceiling at the first site, while eleven workers at the second site were removing asbestos-containing pipe insulation. The participants' work rate was judged to be moderate, site temperatures ranged from 65–85 degrees Fahrenheit, and humidity was very high.

The following six brands of half-mask respirators were studied: 3M 8710 disposable dust/mist respirator; 3M 9910-disposable dust/mist respirator; American Optical R1050 disposable dust/mist respirator; Survivair 2000 elastomeric respirator with high-efficiency filters or DFM filters; MSA Comfo II elastomeric respirator with high-efficiency filters or DFM filters; and a North 7000 elastomeric respirator with high-efficiency filters. Participants were trained in respirator use by the investigators and were qualitatively fit tested using the saccharin fit test. Supplemental data indicate that participants wore one or more respirator brands. No mention is made of respirator donning and doffing procedures, or starting sampling trains in a clean area; however, the sampling procedures state pumps were stopped and cassettes removed in a dust-free area. Participants were observed by the researchers throughout the sampling period.

The inside-the-facepiece sampling train was a 25 mm closed-face three-piece cassette with a ½-inch extender, containing a 0.8 micron pore size mixed cellulose ester filter. The cassette was attached directly to a tapered probe inserted into the respirator midway between the nose and mouth. In-mask samples were collected at a flow rate of 2.0 Lpm. The outside-the-facepiece sampling cassettes and probes were identical to the inside-the-facepiece sampling train and were fastened to the lapel of the subject. Outside samples were gathered at 0.5 to 1.0 Lpm. Sampling times ranged from 30 to 120 minutes, and the pumps were calibrated before and after each sampling period. The authors investigated uniform deposition of asbestos fibers across the filters; they noticed a slight trend for heavier deposition at the filter center using both methods. They also computed the precision of sample gathering using open- versus closed-face cassettes and found no difference between the methods.

Asbestos analysis was based on NIOSH method P&CAM 239 and NIOSH method 7400 (*i.e.*, the filter mounting and "A" counting rules). To increase analytical sensitivity, the methodology was modified by counting fibers in a minimum of 500 fields per inside-the-facepiece filter when less than 100 fibers were counted. The actual number of fibers counted in each sample was used to compute the airborne concentration. In addition, one microscopist performed all fiber counting. The distributions of fiber length and diameter were determined by transmission electron microscopy using lapel sample filters. The GM and GSD values for the fiber length, fiber diameter, and equivalent aerodynamic diameter at each worksite and the combined data from both sites were reported, but the values for fiber density and the length-diameter correlation coefficient were not provided. A total of 84 pairs of inside and outside fiber concentrations, and corresponding WPFs, were provided by participant, respirator brand, and sampling period in supplemental data tables. However, the authors considered seven WPF values measured for the American Optical respirator as suspect because the inside-the-facepiece filter samples contained glass fibers, originating from the respirator's filter matrix. These glass fibers have the same appearance as asbestos fibers under light microscopy. The authors did not adjust measured values for field blank values (*i.e.*, blanks were below the limit of quantification) or fiber retention in the respiratory tract (*i.e.*, the authors believed that pulmonary fiber retention resulted in only a slight change in concentration inside the facepiece).

The 3M 8710 results showed a GM WPF of 310, a GSD of 5.3, and a best estimate of the fifth percentile of 20. The 3M 9910 had a GM WPF of 580, a GSD of 4.2, and a best estimate of the fifth percentile of 55. The AO R1050 had a GM WPF of 52, a GSD of 4.2, and a best estimate of the fifth percentile of 5. The Survivair 2000 or MSA Comfo II equipped with DFM filters had a GM WPF of 240, a GSD of 6.3, and a best estimate of the fifth percentile of 12. With high-efficiency filters, the GM WPF was 94, the GSD was 3, and the best estimate of the fifth percentile was 16. For the North 7700 equipped with high-efficiency filters, the GM WPF was 250, the GSD was 6.9, and the best estimate of the fifth percentile was 11.

Since the WPFs for respirators equipped with DFM and high-efficiency filters were similar, and were well below the protection expected if filter efficiency alone was the determining performance factor, the authors concluded that "* * * filter efficiency was not as significant a factor in determining the relative workplace performance against asbestos as the face fit". The authors also noted comparable performance between disposable and elastomeric respirators. With regard to this, the authors noted that perspiration and wetting solutions led to the elastomeric facepieces slipping on the participants' faces, something that was not noted with the fibrous disposable respirators. The authors postulate that the effect of this slippage could be a reason why the two types of respirators had similar performance.

Study 3. In 1993, A. Gaboury and D.H. Burd performed a WPF study by measuring exposure to benzo(a)pyrene [B(a)P] on particles among 22 workers in a primary aluminum smelter (Ex. 1–64–24). The participants were rack raisers, stud pullers, and rod raisers on anode crews. The following three brands of elastomeric half-mask respirator devices were studied: Willson, Survivair, and American Optical. (**Note:** Respirator model numbers were not provided) The respirators were equipped with combination organic vapor/acid gas cartridges and DFM pre-filters, with the exception that dust/mist pre-filters were used on the American Optical respirator. The study also examined the performance of a powered air-purifying respirator (PAPR), but only the negative-pressure, air-purifying half-mask respirator data are presented here (the PAPR results are discussed below). The participants had used respirators for several years, had been previously trained in the use of the particular respirator under study, and had used it for more than six months. All participants in half-mask respirators were clean-shaven and were quantitatively fit tested using the TSI Portacount. The minimum acceptable fit factor was 100. Industrial hygiene technologists assisted participants with donning and doffing respirators, cleaned and maintained the respirators at the end of each work cycle, and observed participants on a one-*-one basis throughout the sampling period. Participants were directed not to tamper with the respirator or sampling equipment. Due to the high heat in the work area, the employer required that employees rest in a cool environment for one-half hour during each hour.

The inside-the-facepiece sampling train consisted of a closed-face three-piece cassette with a 25 mm organic binder free glass fiber filter, backed with a cellulose ester pad. The sampling cassettes were connected to a tapered Liu probe inserted into the respirator between the nose and mouth. The outside-the-facepiece sampling train was identical to the inside-the-facepiece sampling train; however, no mention is made of connecting the cassette to a Liu probe. All filters were pre-calcined at 400 degrees Centigrade for 24 hours. Both inside and outside samples were collected at a flow rate of 2 Lpm for approximately 300 minutes, or one-half of the 10-hour work shift. Respirators and sampling trains were worn and operated until the employee entered the rest area; they were donned and started prior to leaving the rest area for the next work cycle. Sampling cassettes were plugged when not in use and the respirators were cleaned after each work cycle. Field blanks were used to identify possible contamination due to handling. Sampling train airflow rates were checked at the beginning, middle (*i.e.*, after lunch), and end of the work day; on changing the cassettes; and when a problem was suspected. Sampling occurred over a five-day period. Only stud pullers and rod raisers used the elastomeric half-mask respirators.

B(a)P analysis followed the Alcan Method #1223–84. The ambient B(a)P particle size distribution was determined by collecting four samples, as close as possible to the workers, using an 8-stage Anderson cascade impactor (Model 296). Impactor samples were collected for two to five hours at a flow rate of 2 Lpm. The average percent of B(a)P mass (across four samples) per impactor stage (defined by an aerodynamic diameter cut point, in micrometers) was reported. About 93% of the B(a)P mass was associated with particles having diameters of less than 9.8 micrometers. A total of 18 pairs of inside and outside sample concentrations, with associated WPFs, were provided by brand of respirator and job category, but were not linked to specific participants. Overall GM, GSD, and 95% confidence interval on the mean were also provided for the inside and outside concentrations and WPF, along with an overall fifth percentile WPF. The authors stated that some employees participated more than once during the study. No mention is made of adjusting inside-the-facepiece concentrations for particle retention in the respiratory tract. The half-masks had WPF ranging from 13 to 410, with a GM of 47. The two-sided 95% confidence intervals were 30 and 74 for the dual cartridge respirators. The fifth percentile was 9. The authors found no significant relationship between B(a)P concentrations inside and outside the facepiece. Also, while the data were limited, the authors believed no correlation existed between WPF and quantitative fit factor. The authors concluded that the fifth percentile for the half-masks they tested were in agreement with the APF of 10 recommended by the NIOSH RDL.

Study 6. S.W. Lenhart and D.L. Campbell reported in 1984 on a WPF study in which they measured protection against exposure to particulate lead (Pb) for 25 primary lead smelter workers; seven of whom worked in the sinter plant and eighteen of whom were in the blast furnace area (Ex. 1–64–42). The predominant aerosol forms of lead were dust in the sinter plant and fume in the blast furnace. In both areas, lead comprised about 50% of the total aerosol particulate with composition of the remaining 50% being unknown. All participants wore an MSA elastomeric half-mask with high-efficiency filters. (**Note:** No respirator model number was provided) The study also examined the performance of an MSA PAPR, but only data for the negative-pressure, air-purifying half-mask respirator are presented here (the PAPR results are discussed below). The employees routinely used respirators; however, no mention is made of them with respirator training. Participants were quantitatively fit tested using an unspecified method, and had to achieve the employer's required fit factor of 250. Workers were instructed not to remove or manipulate the respirator during sampling, and were observed by the researchers throughout the sampling period.

The inside-the-facepiece sampler consisted of a closed-face 37 mm cassette containing an AA filter and AP10 support pad. This cassette was connected to a tapered Liu probe that was inserted into the respirator between the nose and upper lip. In-mask samples were collected at 2 Lpm. The outside-the-facepiece sampling train was a closed-face 37 mm cassette containing an AA filter and AP 10 support pad; no tapered Liu probe was used. The outside sample cassette was attached to the worker's lapel. Outside samples were gathered at 2 Lpm. The authors collected samples for as much of each 8-hr work shift as possible. Respirators and sampling trains were donned and doffed, and samplers were started and stopped, in a lead-free area. Respirator facepieces were wiped clean inside

prior to donning after each break and cleaned and sanitized after each shift. One WPF was measured for each employee. The ambient particle size distribution was determined using 19 Marple cascade impactor samples (11 in the sinter plant; 8 in the blast furnace area).

Lead analysis was by flame atomic absorption spectroscopy according to NIOSH Method S–341. Inside-the-facepiece samples that contained less than l0ug of lead were reanalyzed by graphite furnace atomic absorption (limit of detection = 0.2 µg). The ranges for the mass median aerodynamic diameters (in micrometers) and for the GSD values were reported. A total of 25 pairs of inside and outside half-mask values, and the corresponding WPFs, were provided by employee, job title, and job location. An overall GM and GSD of the WPFs, and various percentile WPFs, were provided. When samples contained lead below the level of detection, the authors reported concentration values "* * * determined from the least amount of lead detectable by the analytical method and the sampled volume of air."

In-mask values were not adjusted for particle retention in the respiratory tract (the authors imply retention probably had a non-significant effect on results, but could result in overestimated WPFs). No mention is made of the investigators using field blanks. They reported that approximately 98% of the WPFs would be expected to be at or above 10, 90% above 30, and 75% would be expected to be above 100. They concluded that an APF of 10 was appropriate for the half-mask negative pressure air-purifying respirator evaluated in this study. The authors also discussed two proportional methods of defining an APF.

Study 7. W.R. Meyers and Z. Zhuang conducted a 3-part workplace protection factor study in three different work environments. In addition to presenting the study findings, the authors also discuss their rationale for selecting exposure agents, study facilities, and workers; study procedures followed at the sites; and analytical methods. W.R. Meyers and Z. Zhuang in January, 1993 (Ex. 1–64–51) and W.R. Meyers, Z. Zhuang, and T.J. Nelson in 1996 (Ex. 3–12) reported on the first part of the study in which the authors determined protection against exposure to particulate lead (Pb), zinc (Zn), and total airborne mass (TAM) for 25 workers, on day and evening shifts, in three brass foundries (3, 9, and 13 participants, respectively). (**Note:** The reports mention 26 participants, but data were presented for only 25 participants.) Four brands of half-mask devices were studied: 3M 9920 disposable DFM respirator; American Optical 5-Star elastomeric respirator with DFM filters (R56A); MSA Comfo II elastomeric respirator with DFM filters (Type S); and Scott Model 65 elastomeric respirator with DFM filters (642–F).

Participants were selected from volunteers who normally wore respirators, were clean-shaven, and passed a fit test. Their work rate was subjectively determined by observing their work activities. Respirators were worn for the usual period. For the elastomeric half-mask respirators, the participants were quantitatively fit tested using a TSI Portacount; a fit factor of 100 or more constituted a pass. Disposable respirators were fit tested using the saccharin qualitative fit test. The investigators trained the participants in the proper donning and adjustment of the respirators, and instructed them not to remove or lift the respirator from their face in the work area. Readjustment of the respirator had to be accomplished by sliding the facepiece on their face. Workers were observed throughout the sampling period. Each participant wore two or more respirator brands, and one WPF was measured per employee for each brand worn.

The inside-the-facepiece sampling train was a 25 mm closed-face cassette attached directly to a flared mouth probe, inserted into the respirator opposite the mouth. The cassette contained a 0.5 micron pore size polyethylene filter and polypropylene backup pad. A 4.5 mm ring under the filter restricted airflow to an 18 mm circle in the center of the filter to keep deposition in an area that could be entirely covered by the proton beam used for sample analysis. A heating bonnet was slid over the outside of the cassette to minimize condensation of moisture from exhaled breath. Sampled air was then drawn through a moisture trap using a personal sampling pump operating at 2 Lpm. The outside-the-facepiece sampling train was a 10 mm nylon cyclone attached to 25 mm closed-face cassette (the cassette was not connected to a flared mouth probe). The cassette contained a 0.5 micron pore size polyethylene filter and polypropylene backup pad. A 4.5 mm ring under the filter restricted airflow to an 18 mm circle in the center of the filter. This sampling train was attached in the lapel area and samples were collected at a flow rate of 1.7 Lpm.

Two separate samples were gathered during the shift, one during the first half and another during the second half. Individual WPFs were based on monitoring times of approximately one to four hours. Respirators were donned and doffed, and sampling trains were started and stopped, in a clean area. Elastomeric facepieces were cleaned and inspected at the end of each shift, but were not wiped out during the shift unless such wiping was a standard practice before the study (the authors noted that most of the time workers did not wipe out facepieces). Air-purifying filters (cartridges) and disposable respirators were changed at the end of each shift unless the employer's policy dictated more frequent changing. In addition, the mouth of the in-mask probe was plugged whenever the respirator was not being worn. Working (field) blanks and manufacturer's (media) blanks were used to determine possible contamination of filters due to handling or manufacturing. The investigators also washed the interior of the sampling cassettes to ascertain retention of sample particles on the cassette wall. The ambient particle size distribution was determined by PIXE 8-stage cascade impactor samples at several work locations in each foundry. These area samples were collected at roughly mid-chest to shoulder level of workers for approximately 1 hour, to prevent impactor overloading.

All samples were analyzed by proton induced X-ray emission analysis (PIXEA). The mass distribution of Pb, Zn, and TAM by particle aerodynamic diameter was graphically presented for all cascade impactor samples. Across the three foundries, 66 pairs of inside-the-facepiece and outside-the-facepiece concentrations, and the corresponding WPFs, were provided by job task, employee, brand of respirator, and analyte (Pb, Zn, and TAM). The authors did not adjust measured values for particle retention on sampling cassette walls since these losses appeared to be random, independent of collected mass, and of a negligible amount. No mention is made of correcting measured in-mask values for pulmonary particle retention. A foundry-specific average of the field blank loadings was used as a correction factor for estimating background and handling contamination for each foundry. Outside-the-facepiece samples were collected as respirable particulate, thereby providing respirable mass levels, while in-mask samples were collected as total particulate mass. The authors initially assumed that particles larger than 10 microns did not penetrate respirator faceseals; however, this was found to be incorrect after analyzing in-mask particle size. Therefore, to avoid comparison of dissimilar measurements, the investigators used particle size data obtained by ambient sampling to convert the respirable mass levels to total mass levels (using Chimera/TSI Disfit software). The reported levels represent these total mass values, and form the basis of the reported WPF values. The authors also provide data and discussion on a number of sampling analyses, including GM concentration of analyte by job task, GM concentration of analyte for in-mask and ambient concentrations, particle size distribution by job category, GM WPF estimates by job category, GM WPF by respirator type, within shift sampling variation, and variation between foundries. For the pooled data from the three foundries, the 3M 9920 filtering facepiece had a 50% WPF of 108, a GSD of 5.2, and a fifth percentile estimate of 7. The AO half-mask had a 50% WPF estimate of 98, a geometric standard deviation (GSD) of 5.8, and a fifth percentile WPF of 5. The MSA Comfo II half-mask had a 50% WPF of 163, a GSD of 3.1, and a fifth percentile WPF of 26. The Scott half-mask had a 50% WPF of 94, a GSD of 4.8, and a fifth percentile WPF of 7. For all respirators a 50% WPF of 114, a GSD of 4.6, and a fifth percentile estimate of 9 was reported. The authors concluded that "* * * dust-fume-mist (DFM) half-facepiece respirators, when conscientiously used, worn, and maintained, provided effective worker protection."

Study 8. W.R. Meyers and Z. Zhuang in January, 1993 (Ex. 1–64–51) and W.R. Myers, Z. Zhuang, and T.J. Nelson in 1996 (Ex. 3–12) reported on the second part of the three-part study, which evaluated protection against exposure to particulate iron (Fe) for 16 workers in the sinter plant and basic oxygen process (BOP) facility of a steel manufacturing plant. In addition, exposure to particulate calcium (Ca) in the BOP facility was determined for one worker. The five brands of half-mask respirators studied were: 3M 8710 disposable dust/mist respirator; Gerson 1710 disposable dust/mist respirator; American Optical 5-Star elastomeric respirator with dust/mist filters (R30); MSA Comfo II elastomeric respirator with dust/mist filters (Type F); and Scott, Model 65 elastomeric respirator with dust/mist filters (642–D).

In general, each participant wore two or more brands, and one WPF was measured per employee per brand worn. One employee had one WPF determined for only one respirator brand. For the elastomeric half-mask respirators, the participants were quantitatively fit tested. A fit factor of 100 or more constituted a pass. Disposable respirators were fit tested using the saccharin qualitative fit test. The overall study and sampling protocols were discussed by the authors in the foundry portion of the investigation (*see* Study 7 discussion above). While not specifically discussed, it is assumed that the same sampling parameters used in the foundry study were in place during this particular study, unless the authors stated otherwise. These assumptions include: composition of the sampling trains was unchanged; individual WPFs were based on monitoring times of one to four hours; elastomeric facepieces were cleaned and inspected at the end of each shift but the insides were not wiped during the shift such wiping was the employer's standard practice before the study; air-purifying filter cartridges and disposable respirators were changed at the end of each shift unless the employer's policy dictated more frequent changing; and the in-mask probe mouth was plugged whenever the respirator was not being worn. In addition, it is assumed that the participants were clean shaven, normally used respirators, were trained in the proper donning and adjustment of the respirators, were instructed not to remove or lift the respirator from their face in the work area, and were observed throughout the sampling period.

The inside-the-facepiece sampling train was a closed-face 25 mm cassette containing a 0.5 micron pore size polyethylene filter and polypropylene backup pad. A reducing ring under the filter restricted airflow to an 18 mm circle in the center of the filter to aid in PIXE analysis. A heating bonnet was slid over the outside of the cassette to minimize condensation of moisture from exhaled breath. This cassette was attached directly to a flared mouth probe, inserted into the respirator opposite the mouth. Sampled air was drawn through a moisture trap using a personal sampling pump operating at 1.5 Lpm. The outside-the-facepiece sampling train was a closed-face 25 mm cassette containing a 0.5 micron pore size polyethylene filter and polypropylene backup pad. A reducing ring under the filter restricted airflow to an 18 mm circle in the center of the filter. The cassette was not connected to a flared mouth probe. This sampling train was attached in the lapel area and samples were collected at a flow rate of 1.5 Lpm. (Note: Unlike the foundry portion of the study, outside samples were collected as total mass rather than respirable mass samples.) Sampling pump flows were calibrated before and after each sampling period and pumps were monitored at approximately 15–20 minute intervals. Respirators were donned and doffed, and sampling trains were started and stopped, in a clean area. New cassettes were used for each sampling period. Working (*i.e.*, field) blanks and manufacturer's (media) blanks were used to determine possible contamination of filters due to handling or manufacturing. The investigators also washed the interior of the sampling cassettes to determine retention of sample particles on the cassette wall. The ambient particle size distribution was determined by PIXE cascade impactor samples. Personal impactor samples, rather than area samples, were collected at the steel mill sites (*see* foundry sampling procedures discussed above in Study 7).

Analysis for Fe and Ca on inside-the-facepiece filters was by proton induced X-ray emission analysis (PIXEA). Due to filter overloading, analysis for Fe and Ca on outside-the-facepiece filters was by atomic absorption spectroscopy. The mass distribution of Fe by particle aerodynamic diameter was tabulated for all cascade impactor samples. A total of 54 individual pairs of inside- and outside-the-facepiece concentrations, and the corresponding WPFs, were provided by shift and date, job category, employee, and brand of respirator. For 16 workers, the WPFs reported were based on the Fe data, while Ca data were used to calculate the WPF for one worker (flux unloader) in the BOP facility. Based on analytical information, the authors did not adjust measured values for particle retention on the walls of the sampling cassette. No mention is made of adjusting inside-the-facepiece values for particle retention in the respiratory tract. The average field blank mass loading was used as a correction factor for estimating background contamination. The 3M 8710 had a reported GM WPF of 377, a GSD of 3.7, and a fifth percentile WPF of 44. The Gerson 1710 had a reported GM WPF of 123, a GSD of 2.7, and a fifth percentile WPF of 24. The American Optical elastomeric half-mask had a reported GM WPF of 280, a GSD of 2.7, and a fifth percentile WPF of 56. The MSA Comfo II had a reported GM WPF of 427, a GSD of 4.3, and a fifth percentile WPF of 39. The Scott elastomeric half-mask had a reported GM WPF of 252, a GSD of 2.9, and a fifth percentile WPF of 45. The authors concluded that "The 5th percentiles for the WPF distributions for each respirator or pooled data were greater than 20."

The authors also provided data and discussion on a number of sampling analyses, including GM concentration of analyte and GM WPF by job task, GM concentration of Fe inside the facepiece

and ambient and GM WPF by respirator brand, and particle size distribution by job category. The authors stated that "* * * half-facepiece respirators (maximum use concentration 10 times the PEL) were a suitable selection for the tasks included in this study."

Study 9. In January 1993, W.R. Meyers and Z. Zhuang reported on the third part of their investigation, in which they determined protection against exposure to particulate titanium (Ti), chromium (Cr), strontium (Sr) and total ambient mass (TAM) for 22 workers who spray painted aircraft on day, evening, and night shifts (Ex. 1–64–52). The three brands of half-mask elastomeric respirators studied were the: American Optical 5-Star, MSA Comfo II, and Scott Model 65. All respirators were equipped with combination high-efficiency filter/organic vapor cartridges.

Twelve participants each wore two brands of respirator with a WPF determined for each brand worn; nine participants wore one brand of respirator and had one WPF determined; and one employee had one WPF determined for one respirator brand and two WPFs determined for another brand. The participants were quantitatively fit tested and a fit factor of 100 or more constituted a pass. The overall study and sampling protocol was discussed by the authors in the foundry portion of the studies, summarized in Study 7 above (Ex. 1–64–51). While not specifically discussed, it is assumed that the same sampling parameters were in place during this particular study as in the foundry study, unless the authors stated otherwise. These assumptions include: composition of the sampling trains was unchanged; individual WPFs were based on monitoring times of one to four hours; elastomeric facepieces were cleaned and inspected at the end of each shift but were not the inside was not wiped during the shift, unless such wiping was the employer's standard practice before the study; filters and disposable respirators were changed at the end of each shift unless the employer's policy dictated more frequent changing; and the mouth of the in-mask probe was plugged whenever the respirator was not being worn. In addition, it is assumed that the participants were clean-shaven, normally used respirators, were trained in the proper donning and adjustment of the respirators, were instructed not to remove or lift the respirator from their face in the work area, and were observed by the researchers throughout the sampling period.

The inside-the-facepiece sampling train was a closed-face 25 mm cassette containing a 0.5 micron pore size polyethylene filter and polypropylene backup pad. A reducing ring under the filter restricted airflow to an 18 mm circle in the center of the filter to aid in sample analysis. A heating bonnet was slid over the outside of the cassette to minimize condensation of moisture from exhaled breath. This cassette was attached directly to a flared mouth probe, inserted into the respirator opposite the mouth. Sampled air was then drawn through a moisture trap using a personal sampling pump operating at approximately 2 Lpm. The outside-the-facepiece sampling train was a closed-face 25 mm cassette containing a 0.5 micron pore size polyethylene filter and polypropylene backup pad. A reducing ring under the filter restricted airflow to an 18 mm circle in the center of the filter. The cassette was not connected to a flared mouth probe. This sampling train was attached in the lapel area, and samples were collected at a flow rate of 1 Lpm. (**Note:** Unlike the foundry portion of the study, outside samples were collected as total mass rather than respirable mass samples.) Sampling pump flows were calibrated before and after each sampling period and pumps were monitored at approximately 15–20 minute intervals. Respirators were donned and doffed, and sampling trains were started and stopped, in a clean area. New cassettes were used for each sampling period. Working (*i.e.*, field) blanks and manufacturer's (media) blanks were used to determine possible contamination of filters due to handling or manufacturing. The investigators did not wash the interior of the sampling cassettes to determine retention of particles on the cassette wall, since a simple alcohol wash would not have removed dried paint spray. Ambient particle size distributions were not characterized.

Analysis of all filters was by proton induced X-ray emission analysis (PIXEA). The average field blank mass loading was used as a correction factor for estimating background contamination. The authors did not mention adjusting inside-the-facepiece measured values for particle retention in the respiratory tract. A total of 36 individual pairs of inside-the-facepiece and outside-the-facepiece concentrations of each analyte (total airborne mass, titanium, chromium, strontium) were provided by shift and date, painting location on the plane (*i.e.*, top, side, or underside of the aircraft), employee, brand of respirator, and paint type (*i.e.*, top coat, primer). A total of 36 WPFs were reported by shift, task location on the plane, employee, and respirator brand; of the original 38 data sets, two sets were eliminated as outliers. For primer spraying, the reported WPFs were based on Cr data, while WPFs for spraying topcoat were based on Ti data. WPFs were not calculated for total airborne mass. The authors also provided data and discussion on a number of sampling analyses, including GM concentration of analyte (TAM, Ti, Cr) for both in-mask and ambient measurements by task location on the plane; GM WPF as a function of painting location on plane and paint type, and respirator brand; and GM WPF by respirator brand. The fifth percentile estimates for all WPF data were reported to be much greater than 10. The authors concluded that these half-facepiece elastomeric respirators, when properly worn and used in conjunction with existing controls provided effective worker protection.

Study 13. G. Wallis, R. Menke, and C. Chelton reported in 1993 on a WPF study in which they evaluated exposure to manganese dioxide dust for an unknown number of participants in several alkaline battery manufacturing plants (number of plants not provided) (Ex. 1–64–70). All participants wore the disposable 3M 8710 dust/mist respirator and performed their normal work activities. The participants were not trained by the investigators, but had been previously trained and routinely used respirators. It was not stated whether the participants had ever been fit tested for the 3M 8710 respirators. Prior to sampling, the participants washed their faces and were taken to a clean area, where the study was explained. The participants were observed throughout the sampling period.

The inside-the-facepiece sampling train was a closed-face 37 mm cassette containing a 0.8 micron pore size mixed cellulose ester filter. The cassette was connected to a tapered Liu probe (made of nylon) which was inserted into the respirator midway between the nose and mouth. The outside-the-facepiece sampling train was a closed-face 37 mm cassette containing a 0.8 micron pore size mixed cellulose ester filter. The outside sampling cassette was attached to the employee's lapel. No mention is made of connection of the outside cassette to a tapered Liu probe. Inside- and outside-the-facepiece samples were collected at an airflow rate of 1.5 Lpm for 30 to 40 minutes. The authors chose a short sampling interval to prevent resistance across the inside-the-facepiece sampling filter due to a buildup of moisture from exhaled breath. Sampling pump flows were calibrated before, and rechecked after, each sampling period. Respirators were donned and doffed, and the sampling trains started (and assumed stopped), in the clean area. Field blanks were used to identify possible contamination of filters due to handling. The number of sample pairs collected per subject was not specified. The ambient manganese particle size distribution was determined by 6-stage Marple Cascade impactor equipped with an inlet cowl to prevent debris from entering the impactor. Samples were collected for several hours at a flow rate of 2 Lpm, and flows were calibrated before and after each sampling interval. Four samples were gathered: One in the powder drop area (Plant A) and three at the bag slitting operations (one in Plant A. two in Plant B).

Samples were analyzed for Mn by atomic absorption (AA) spectroscopy according to NIOSH Method 7300. The mass distribution of Mn by particle aerodynamic diameter was tabulated for all cascade impactor samples. Less than 30% of the mass was associated with respirable particles. A total of 70 individual pairs of inside-the-facepiece and outside-the-facepiece concentrations, and the corresponding WPFs, were provided by job activity (but not by employee or plant). No mention is made of adjusting measured values for particle retention in the respiratory tract or results of field blank analysis. A GM of 50 and a GSD of 3.5 was reported for all the WPF values measured. A calculated fifth percentile protection factor of 7.5 was also reported. The authors reported that their data indicated a systematic dependence of WPF on the concentration outside the respirator. In their discussion of this observation, the investigators refer to three possible causes presented by authors of other studies: Program protection factors tend to be low in low exposure settings since the workers, aware of the low exposure, exercise less care; low outside concentrations result in inside-the-facepiece concentrations so small that reliable quantification is difficult; and filter efficiency increases with loading, and low concentrations do not adequately load the filter. The authors discuss these causes relative to their study results, and postulate that another cause may be particle size selectivity (*i.e.*, smaller particles have a higher probability of entering the respirator). They conclude that it is important to characterize respirator performance in the environment where the respirator will be used.

Study 14. At the 1990 AIHCE, C.E. Colton, A.R. Johnston, H.E. Mullins, C.R. Rhoe, and W.R. Meyers presented a WPF study in which they measured protection against exposure to aluminum dust for five participants working as carbon changers in an aluminum smelter (Ex. 1–64–15). All participants wore the disposable 3M 9906 dust/mist respirator. The investigators trained the participants in donning the respirator and the participants were qualitatively fit tested, although the fit test method was not described. The total number of samples collected per employee was not specified, although it is stated that the five employees were sampled daily for five days. Participants were observed throughout the sampling period.

The inside-the-facepiece sampling train was a closed-face 25 mm cassette containing a 0.8 micron pore size polycarbonate filter. The cassette was connected to a tapered Liu probe, inserted into the facepiece in an unspecified location. In-mask samples were collected at an airflow rate of 2.0 Lpm. The outside-the-facepiece sampling train was a closed-face 25 mm cassette containing a 0.8 micron pore size polycarbonate filter. Outside samples were gathered as respirable dust samples with the cassette being connected downstream from a cyclone apparatus. Sampling airflow rate was 1.7 Lpm. Sampler airflow rates were calibrated before and after each sample period. No mention is made of donning and doffing procedures. Field blanks were used to identify possible filter contamination caused by handling. The ambient aluminum particle size distribution was determined through 12 area samples (unspecified locations) collected by Marple personal cascade impactors. In addition, particulates that passed a cyclone selector were sized by optical microscopy.

Aluminum was determined by proton induced x-ray emission analysis (PIXEA). The mass distribution of aluminum by particle diameter and percent penetration to the collector was graphically presented. Final calculations used only those outside filter weights that were greater that 11 times the detection limit. A total of 24 time-weighted-average (TWA) inside-the-facepiece and outside-the-facepiece concentrations, with corresponding TWA WPFs, are provided in supplemental data (Ex. 1–146). The sample pairs are not linked to specific participants. No mention is made of adjusting sample results for particle retention in the respiratory tract. The mean blank value was zero, so no adjustment to measured values was made. The authors reported a GM of 27, a GSD of 1.5, and a fifth percentile of 13 for the 23 sample sets used. The report concluded that the respirator provided reliable WPFs of 10. Cumulative probability of achieving a particular WPF, and the effect of filter weight on WPF, were also graphically presented. The authors stated that the WPFs represented conservative estimates of protection since outside concentrations were measured as respirable dust. In the summary of this study (Ex. 1–146), submitted to OSHA along with the raw sampling data, the authors recommended that the study not be used to assess the ultimate APF for this class of respirator since they felt that the real WPF of the respirator was significantly underestimated.

Study 15. C.E. Colton, H.E. Mullins, and C.R. Rhoe presented a WPF study at the 1990 AIHCE in which they determined exposure to particulate Pb and Zn for 17 participants working in core making, mold making, pouring, and cleaning areas of a brass foundry (Ex. 1–64–16). All participants wore the disposable 3M 9970 high-efficiency respirator. The investigators trained the participants in the proper donning and fitting of the respirator, and participants were fit tested using the saccharin qualitative fit test method described in Appendix D of OSHA's Lead Standard (29 CFR 1910.1025). Sampling took place over five days.

The inside-the-facepiece sampling train was a 25 mm three-piece cassette containing a 0.8 micron pore size polycarbonate filter (open- versus closed-face was not specified). The cassette was directly connected to a tapered nylon Liu probe, inserted into the facepiece midway between the nose and mouth. The inside-the-facepiece samples were collected at a flow rate of 2.0 Lpm. The outside-the-facepiece sampling train was a 25 mm three-piece cassette containing a 0.8 micron pore size polycarbonate filter. Outside samples were gathered as respirable dust samples, with the cassette being connected downstream from a 10 mm nylon cyclone. Samples were collected at a flow rate of 1.7 Lpm, and sampling pumps were calibrated before and after each sample. The authors do not mention using of field or manufacturer's blanks, respirator donning and doffing procedures, or methods of starting and stopping sampling trains in a clean area. The ambient Pb and Zn particle size distributions were determined by an unspecified number of Marple personal cascade impactor (Model 2401) samples.

Pb and Zn were determined by proton-induced x-ray emission analysis (PIXEA). The particle size data were not presented; however, the report stated that the Pb and Zn aerosols were present as both dust and fume. The range of

outside-the-facepiece and inside-the-facepiece concentrations for Pb and Zn were provided. For the purpose of WPF calculation, inside-the-facepiece samples with non-detected concentrations were treated as containing analyte at the detection limit (This situation only arose with lead, not zinc). For the 62 sample sets taken for lead, the GM WPF was 415, the GSD was 4.4, and the fifth percentile WPF was 36. For zinc, the GM WPF was 681, the GSD was 5.6, and the fifth percentile WPF was 40. The authors believe they handled their results conservatively since outside concentrations were collected as respirable particulate, rather than total mass, and inside-the-facepiece samples with non-detected concentrations were given values of the analytical detection limit when calculating WPF. In the study summary, the authors concluded that when the respirator is properly selected, fit tested, and used, their results supported its use for concentrations up to 10 times the PEL.

Study 16. A.R. Johnston and H.E. Mullins reported at the 1987 AIHCE on a WPF study in which they measured exposure to particulate aluminum (Al), titanium (Ti) and silicon (Si) for three participants working in the polishing and grinding area of an aircraft components manufacturing facility (Exs. 1–64–34, 1–146, 1–133). Although WPFs were also measured for two other participants, one in the blasting area and one in the coating area, no data were presented for these employees. All participants wore the disposable 3M 8715 dust/mist respirator. Prior to testing, the investigators trained the participants in the proper fitting of the respirator, fit tested the employees using the OSHA Lead Standard's saccharin qualitative fit test method, and explained the study to them. Participants had previously worn respirators, but on an "as needed" or elective basis only. Employees were observed one-on-one throughout the sampling period. The number of WPFs measured per subject was not specified, although it appears that about six WPFs were measured per subject.

The inside-the-facepiece sampling train was a closed 25 mm three-piece cassette containing a polycarbonate filter. The cassette was connected to a tapered nylon Liu probe that was inserted into the facepiece at an unspecified location. Inside-the-facepiece samples were collected at a flow rate between 1.5 and 2 Lpm. The outside-the-facepiece sampling train was a closed 25 mm three-piece cassette containing a polycarbonate filter. The cassette was connected downstream from a tapered Liu probe. Outside samples were collected at a flow rate between 1.5 and 2 Lpm. Sampling times ranged from 35 to 235 minutes. Sampling pumps were calibrated three times a day—at the beginning of the shift, lunch, and the end of the shift. Sampling equipment was removed for breaks, which occurred multiple times in some instances. While no mention is made of using a clean area to don and doff respirators, and start and stop sampling trains, the authors noted that cassettes had to be removed in the work area. Field blanks were used to identify possible filter contamination due to handling. The ambient particle size distribution was not characterized.

Samples were analyzed by proton induced x-ray emission analysis (PIXEA). Sample results were adjusted for field blank values, but no mention was made of adjustments for particle retention in the respiratory tract. The authors rejected sample sets in which: the outside filter weight was less than 11 times the mean blank value; the inside filter weight was non-detectable, or less than the mean field blank value; or the measured WPF was determined to be an outlier (*i.e.*, too far above or below the geometric mean WPF using 5% confidence intervals). A total of 38 sample sets were accepted for Al (10), Ti (14), and Si (14). Pairs of inside-the-facepiece and outside-the-facepiece concentrations, and the corresponding WPFs, are provided in supplemental data (Exs. 1–146, 1–133), but were not linked to specific participants. Also, a table of GM WPF, GSD, and fifth percentile WPF, by analyte, was presented. The authors calculated WPF values for the 10 sample sets of Al, reporting a GM of 145, a GSD of 2.3, and a fifth percentile of 32. For the 14 sample sets measured for Ti, the GM was 59, the GSD was 1.7, and the fifth percentile was 24. For Si, using 14 sample sets, the GM was 172, the GSD was 3.1, and the fifth percentile was 24. The authors concluded that their study supports using this respirator for concentrations up to 10 times the PEL. In addition, the authors noted a positive correlation between filter weight and WPF. Two explanations put forth for this effect were that respirators work better with higher dust loadings, and that WPF measurements are more accurate at higher dust loadings. The authors favored the latter explanation, and believed that to assess true respirator performance capabilities, testing should be conducted at or near the respirator's APF, or a filter weight versus protection factor curve should be defined for predicting performance at higher concentrations. In a summary of this study submitted to OSHA (Ex. 1–146) the authors stated that:

> * * * the mass outside the respirator was very low. For this reason, the ability of the respirator to provide protection was not challenged. Therefore, this study should not be used for direct comparison to others in assigning protection factors as they are artificially low.

The authors also discussed sampling and analytical considerations for WPF studies, such as calibration reliability, sample cassette integrity, analytical sensitivity, and sample handling procedures.

2. WPF Study—Full Facepiece APR

Study 2A. C.E. Colton, A.R. Johnston, H.E. Mullins and C.R. Rhoe of the 3M Occupational Health and Environmental Safety Division in May,1989 gave a presentation at the AIHCE on their WPF study (Ex.1–64–14) performed with full facepiece air-purifying respirators worn in a secondary lead smelter. Air sampling for lead was conducted over 5 days in four areas of the plant; the blast furnace, reverberatory furnace, casting, and warehouse areas.

The respirator evaluated was the 3M 7800 Easi-Air full facepiece respirator used with 3M 7255 high efficiency filters. The respirator was equipped with a nosecup inside the facepiece. The sampling probe was inserted into the respirator in place of the speaking diaphragm to assure a gas tight seal and consistent probe location close to the breathing zone of the wearer. The respirators were equipped with sampling probes using a design by Dr. Ben Liu to minimize particle entry losses. Both the inside and outside sampling trains used the Liu designed probe for consistency.

Thirteen workers who normally wore full facepiece respirators in the plant qualified to participate in the study. They were trained in proper respirator use, the procedures to be followed for the study, and how to don and fit the 3M respirator. Quantitative fit testing was performed using the Portacount QNFT instrument and fit test operators followed the OSHA Lead standard exercise protocol for fit testing. The workers were fit tested wearing their normally required personal protective equipment (PPE), and care was taken to assure that this additional PPE did not interfere with facepiece fit. The criterion the authors used for passing the QNFT was a minimum fit factor of 500; 10 times the assigned protection factor of 50 given in the lead standard for a full facepiece negative pressure respirator. The 13 qualified workers were measured for face length and width, and all the workers except 1 were in Grids 1–4 of the Los Alamos Test Panel. The one remaining worker's his face was wider than those accommodated by the Los Alamos Test Panel.

Samples were analyzed by proton induced x-ray emission analysis (PIXEA) for lead. The authors reported that for PIXEA the sensitivity is good, typically 10 nanograms per sample. Area samples for particle size analysis were also collected, using Marple cascade impactors, in the reverberatory furnace, casting, and warehouse areas. Three particle size ranges were found; less than 1 µm (15% of the total aerosol), between 1 to 10 µm (20% of the total aerosol), and greater than 10 µm (65% of the total aerosol). The particle size distribution showed that both lead dust and lead fume were present.

The authors had pre-established that if the outside filter weights were less than 51 times the field blank value, the sample set would be rejected. The authors stated, "You need at least this much differential between inside and outside samples if you want to prove or disprove that a respirator provides a PF of 50." None of the workplace samples were rejected for being less than 51x the field blank value. However, several sample sets were rejected for other reasons such as the inside sample coming loose from the probe, sample pump failure, *etc.* Field blanks were used, and were handled the same as other samples. Detectable amounts of lead were found on the field blanks. The mean value of the field blanks was used to correct the sample values by subtracting the mean field blank value from the inside and outside sample weights. WPFs were calculated by dividing the outside concentration (C_o) by its corresponding inside concentration (C_i), and checked for outliers. The authors reported that for the 20 samples collected the geometric mean WPF was 3929 and the GSD was 9.6, and the 5th percentile WPF estimate was 95. The outside concentrations ranged from 150 to 8380 µg/m³, and the inside concentrations ranged from 0.03 µg/m³ to 3.0 µg/m³. Sampling periods ranged from 30 minutes to 3 hours. The workers were under constant observation to ensure proper respirator use and wear and to ensure sample validity.

The authors looked at subsets of the data using multiples of the field blank mean values ranging from 1,000 times the field blank to 25,000 times the field blank value. The authors found a strong correlation between filter weight and workplace protection factor when they looked at the log of the mean filter weight and the log of the mean WPF. The authors stated that the data appeared to be close to the plateau region. The authors also stated that the quantitative fit factors measured during worker fit testing did not correlate with the WPFs measured in this study.

The authors concluded that " * * * the results of this study indicate that this full facepiece respirator with high efficiency filters reliably provides workplace protection factors in excess of 50 against lead dust and fume aerosol." The authors stated that they would expect 95% of the workplace protection factors to be above 95. They also stated that "The ANSI Z88.2 proposed Standard for Practices for Respiratory Protection has assigned a protection factor of 100 to this type respirator. These data support that recommendation."

3. WPF Studies—Powered Air-Purifying and Supplied-Air Respirators Half-Mask PAPRs

Study 21. In 1983, W.R. Meyers and M.J. Peach of NIOSH reported half and full facepiece PAPR performance measurements for four workers during bagging of micro-crystalline silica (Si) in a silica processing plant (Ex. 1–64–46). The study examined several aspects of the respirator's performance. Prior to the workplace evaluation, dioctyl phthalate (DOP) was used to determine filter efficiency. A 4-hour Si dust chamber study was performed by mounting the PAPR on an anthropomorphic head, simulating worker breathing, and gathering inside- and outside-the-facepiece silica samples. Workers were provided with an unspecified brand of PAPR, with either a tight-fitting half-mask or full facepiece, and equipped with high-efficiency filters. Both styles of facepiece were made of natural rubber and had two exhalation valves. The sealing edge of the facepiece was either an internal roll (half-mask) or a flat edge with an inner flap (full facepiece). The filters were located downstream of the respirator's blower unit.

The PAPRs used in the study were identical to those already being used by the employees; the authors did not mention training the participants in proper use of the respirator. Respirators were placed on and removed from the participants by the investigators, as needed (*e.g.*, start of shift, lunch break, personal breaks, end of shift). Donning and doffing the respirator, and sampling train starting and stopping, occurred in a clean area. Samplers were started after the PAPR was donned and turned on, and were stopped before the PAPR was turned off for doffing. Facepiece interiors were examined for dust contamination after each removal (gross contamination was not observed), and the facepieces were cleaned by the investigators after each shift. In addition, each PAPR's volumetric air output (with the facepiece removed) was measured with a dry gas meter. Filters and batteries were changed according to the manufacturer's instructions. While no mention is made of fit testing the participants, the investigators instructed them not to manipulate, lift, or remove the facepiece during sampling. Participants were observed 100% of the time during donning and doffing, and about 80% of the time at their workstations. The authors used field blanks to assess contamination caused by handling.

The sampling train for the inside-the-facepiece samples consisted of a 37 mm two-piece cassette containing a 5 micron pore size FWS–B polyvinyl chloride filter. The cassette was attached directly to a modified Luer adaptor sampling probe, inserted into the facepiece between the nose and upper lip of the employee. The flow rate of the pump was 1.5 Lpm. The outside-the-facepiece samples were collected with a 37 mm two-piece cassette and a 5 micron pore size FWS–B polyvinyl chloride filter. The sampling airflow rate was 1.5 Lpm, and the cassette was attached to the subject's lapel. Outside samples were collected as total dust since previous sampling revealed 70% or more of the dust particles to be 10 microns or less in size (*i.e.*, respirable). Sample times ranged from 84 to 320 minutes, with cassettes being changed during the employees' lunch break. Overall PAPR performance (leakage) was determined by replacing the facepiece of two respirators with an air-filtering head containing a pre-weighed 76 mm glass fiber filter. The respirators were mounted in a free-standing stationary position, and run for 6–7 hours (with a battery change at 4 hours). The air output was measured, the filter weighed, and the ambient Si concentration estimated. Area samples were collected to determine particle size. An Anderson impactor was placed 4–8 feet from the participants and collected samples for about 3 hours at a flow rate of 1 cfm.

Samples were analyzed for free Si according to NIOSH P&CAM 259 (*i.e.*, gravimetric weight and x-ray powder diffraction for Si). Results were corrected for the average blank filter weight gain, but not for pulmonary retention (which the authors believed was negligible). Ten individual inside- and outside-the-facepiece concentrations, with associated WPFs, are tabulated by sample period, worker,

type of facepiece, and sample time. The study reported that the half-mask PAPR did not provide the protection factor of 1,000 previously expected; instead, the protection factors ranging from 16 to 193. The authors also provided results for DOP filter penetration, aerodynamic mass median particle size and GSD, x-ray powder diffraction tests, and free-standing PAPR leakage measurements. The researchers discussed several parameters that could have affected results, including poor respirator use practices of the participants (which the authors believed they controlled and maintained at a minimal level); inside-the-facepiece sampling flow rate (which the authors believed was not a major source of error); and inherent PAPR leakage (however, the free standing PAPR results indicated minimal leakage). Also discussed as reasons for the low protection factors were possible leakage of Si past the blower housing grommet when employees bumped the PAPR during work (the effect of this was unknown) and leakage from inadequate facepiece fit (which the authors considered could be significant at moderate to heavy work rates).

Study 6. S.W. Lenhart and D.L. Campbell of NIOSH reported in 1984 on a WPF study in which they measured protection against exposure to particulate lead (Pb) for 25 primary lead smelter workers; 7 of the employees worked in the sinter plant, and 18 worked in the blast furnace area (Ex. 1–64–42). The predominant aerosol forms of Pb were dust in the sinter plant and fume in the blast furnace. In both areas, Pb comprised about 50% of the total aerosol particulate, with composition of the remaining 50% of particulates being unknown. All participants wore an MSA half-mask PAPR with high-efficiency filters (the authors provided no respirator model number in the report). The study also examined the performance of an MSA negative-pressure air-purifying respirator, which is discussed above in the half-mask air-purifying respirator study summaries. The participants routinely used respirators, but the investigators do not mention respirator training for the employees. The participants were not normally fit tested with the half-mask PAPR facepiece; however, for this study, they had to achieve a fit factor of at least 250 while wearing a negative pressure air-purifying respirator with the same half facepiece as the PAPR. Employees were instructed not to remove or manipulate the respirator during sampling, and were observed throughout the sampling period.

The inside-the-facepiece sampler consisted of a closed-face 37 mm cassette containing an AA filter and AP10 support pad. This cassette was connected to a tapered Liu probe that was inserted into the respirator between the nose and upper lip. In-mask samples were collected at 2 Lpm. The outside-the-facepiece sampling train was a closed-face 37 mm cassette containing an AA filter and AP 10 support pad (with no tapered Liu probe used). The outside sample cassette was attached to the worker's lapel. Outside samples were gathered at 2 Lpm. Samples were collected for "as much of the 8-hr work shift as possible." Respirators and sampling trains were donned and doffed, and started and stopped, in a lead-free area. The inside of the respirator facepieces were wiped clean prior to donning after each break, and were cleaned and sanitized after each shift. The PAPR batteries were replaced after four hours of use (*i.e.*, according to manufacturer's instructions). Battery voltage was checked, and airflow rates were verified to exceed 15 Lpm before use. One WPF was measured for each participant. The ambient particle size distribution was determined by 19 Marple cascade impactor samples (11 in the sinter plant; 8 in the blast furnace area).

Analysis of Pb was by flame atomic absorption spectroscopy according to NIOSH Method S–341. Inside-the-facepiece samples that contained less than 10 µg of lead were reanalyzed by graphite furnace atomic absorption (limit of detection = 0.2 µg). The report provided ranges of the mass median aerodynamic diameters (in micrometers), as well as the GSD values. The authors provided a total of 25 pairs of inside- and outside-the-facepiece concentrations, and the corresponding WPFs, by employee, job title, and job location, as well as the overall GM and GSD of the PAPR WPFs and several percentile values. For samples containing Pb below the level of detection, the authors determined concentration values "* * * from the least amount of lead detectable by the analytical method and the sampled volume of air." In-mask measured values were not adjusted for particle retention in the respiratory tract (the authors imply that retention had a non-significant effect on the results, but could cause WPF to be overestimated). No mention is made of using field blanks. Two approaches to defining an assigned protection factor (APF) were also discussed. These approaches are: Defining the APF in terms of a specific proportion of WPFs expected to exceed the APF, and defining the APF "in terms of a one-sided lower tolerance limit above which we may predict with a specific confidence level that 95% of the workplace protection factors lie."

The WPF for the PAPR had a GM of 380 and a GSD of 2.6, and the individual WPFs ranged from 23 to 1,600. Approximately 98% of the WPFs for the half-mask PAPR were above 50, 90% above 110, 75% above 200, 40% above 500, and only 25% above 1,000. The authors concluded that an APF of 50 was appropriate for the PAPR they tested, and that an APF of 500 was inappropriately high for the half-mask PAPR. A protection factor not in excess of 50 was recommended for half-mask PAPRs. The authors noted that the WPFs may be too high because the workers did not routinely undergo a quantitative fit test screen with negative pressure respirators before receiving their PAPR.

4. WPF Studies—Full Facepiece PAPRs

Study 21. W.R. Myers and M.J. Peach of NIOSH reported in 1983 on the performance of an unspecified brand of PAPR equipped with a tight-fitting elastomeric full facepiece and HEPA filters; four employees used the respirator in a silica bagging operation (A detailed description of the work setting, sampling methodology, and study protocol for this study is presented in the discussion of Study 21 in the section on half-mask PAPRs above) (Ex. 1–64–46). The full facepiece PAPR had a sealing edge consisting of a flat edge with an inner flap. The participants routinely used this PAPR and, therefore, the investigators did not train them in its use. Fit testing was not performed.

The investigators calculated WPFs for only three of the four employees because the sample for the fourth employee had an inside-the-facepiece concentration less than the limit of detection, making it unsuitable for WPF determination. The samples were evaluated for crystalline Si by x-ray diffraction. The full facepiece WPFs ranged from 25 to 215, which are low for a PAPR. In this regard, the authors reported that the employees routinely bumped and rubbed the belt-mounted motor blower housing and filter assembly during the bagging operation. They believed such action may have caused movement between the neck of the filter and the blower housing grommet; thereby resulting in the seal failing and allowing unfiltered air to bypass the filter. They reported some evidence to support this conclusion, but could not determine the contribution of this problem to the overall leakage into the facepiece. Although the blowers were checked to ensure each PAPR delivered a minimum 115 Lpm (4 cfm) airflow to the facepiece, the authors concluded that "* * * migration of contaminant into the facepiece of the PAPR system could be a significant source of leakage when the respirator is exposed to the wide ranging conditions that exist in the work environment." While the WPFs measured in this study were well below the level expected of a PAPR, the authors stated that these results "* * * represent a more accurate measure of the level of worker protection that can be expected from this type of PAPR system."

Study 18. At the 1990 AIHCE, C.E. Colton and H.E. Mullins presented a WPF study in which they assessed protection against exposure to lead fume and dust for 20 employees working in the blast furnace, reverberatory furnace, casting, and baghouse areas of a secondary lead smelter (Ex. 1–64–12). The employees were provided with a 3M Whitecap PAPR with a high-efficiency filter (TC–21C–456). The investigators trained the employees in the proper donning, fitting, and operation of the respirators. Using a TSI Portacount, the investigators conducted fit testing while the participants performed the exercise sequence contained in Appendix D of OSHA's Lead Standard; the required fit factor was 500. Participants were observed continuously throughout the sampling.

The inside-the-facepiece sampling train consisted of a 25 mm three-piece cassette containing a 0.8 micron pore size polycarbonate filter. The authors mounted the sampling cassette directly to an ABS Liu probe and inserted the probe into the facepiece in place of the speaking diaphragm. The outside-the-facepiece sampling train was a 25 mm three-piece cassette containing a 0.8 micron pore size polycarbonate filter. The authors did not mention attaching the outside cassette to a probe or the location of the sampling cassette on the employee. Airflow rates of the sampling pumps were calibrated in-line before and after each sampling interval, but no sampling airflow rate was provided. Sampling was conducted for as much of the 8-hour shift as possible, with sampling intervals ranging from 1 to 4 hours. Field blanks were used, and area samples for particle size analysis were gathered with a Marple personal cascade impactor (Model 2401).

Sample and field blank analyses were performed using proton induced x-ray emission (PIXE) analysis. Particle size analysis by inductively-coupled plasma—mass spectrometry indicated particles in the dust and fume range. While the range of inside- and outside-the-facepiece concentrations were presented, individual inside and outside concentrations or results by employee or job classification were not provided. Similarly, the report presented an overall GM WPF, GSD, and fifth percentile WPF, but not individual WPFs. Of the 55 sample measurements, 34 of the inside-the-facepiece results were below the analytical limit of detection. In these instances, the authors used a conservative WPF calculation by setting the values at the limit of detection. No lead was detectable on the field blanks so no adjustments were made to sample weights. The authors do not mention adjusting inside-the-facepiece values for pulmonary particle retention. Final calculations used only those sample pairs with outside sample weights greater than 1,000 times the detection limit. The authors believed this procedure was necessary to determine that the respirator was capable of providing a protection factor of 1,000. The authors also analyzed the data for outliers (at the 99% confidence level). The overall data analysis resulted in a GM WPF of 8,843, a GSD 3.2, and a fifth percentile WPF of 1,335. The authors concluded that the data supported ANSI's proposed APF of 1,000 for full facepiece PAPRs. They also recommended that fit testing be performed on all tight-fitting respirators.

5. WPF Study—Helmet/Hood PAPRs

Study 27. At the 1990 AIHCE, D.R. Keys, H.P. Guy, and M. Axon reported on a 3-month WPF study in which they evaluated exposure to estradiol benzoate (a steroid) for an unspecified number of workers in a pharmaceutical facility (Ex. 64–40). They included three loose-fitting hood/helmet type PAPRs in the study: Racal Breathe Easy 10, Bullard Quantum, and 3M Whitecap II. All three PAPRs had double-bibbed capes, were equipped with HEPA filters, and did not have lift-up visors. A Tyvek hood was part of the Racal and Bullard PAPRs while the 3M had a hard helmet. PAPRs were previously used at the facility, so workers were already properly trained in their use and were familiar with wearing them. The investigators observed the participants continuously, one-on-one, during sampling. While the authors used field blanks, they did not mention determining particle size or using a clean area for donning and doffing or for starting and stopping the sampling train.

The inside- and outside-the-facepiece sampling trains consisted of a 37 mm two-piece cassette with a glass fiber filter, attached to a nylon Liu probe. Location of the inside-the-facepiece probe was not specified. Samples were gathered for ½–3 hours at a flow rate of 2.5–3.5 Lpm. Pumps were calibrated in-line before and after each sampling period.

The authors used radioimmunoassay (RIA), a very sensitive analytical technique, to analyze inside-the-facepiece samples, and HPLC to analyze outside samples; they rejected inside samples with weights below the limit of quantification. Also, the investigators rinsed the outside sample probes with methanol and analyzed the rinsate by HPLC to determine sample loss due to probe use. The authors did not provide any further analytical information.

Sixty valid sample sets were obtained from the study. Results were not adjusted for blank value (*i.e.*, all blank values were below 1 nanogram per filter) or probe loss (*i.e.*, the GM of 1% was not statistically significant). Individual inside and outside concentrations or WPFs were not reported. Instead, the authors presented the range of inside- and outside-the-facepiece concentrations. They determined an overall fifth percentile WPF for each respirator, along with the number of samples, the minimum and maximum WPF achieved, a GM WPF, and the GSD. In addition, the authors determined the percentage of WPFs that fell in selected ranges (*e.g.*, <1,000, 1,000–10,000) for each PAPR, and they briefly discussed the correlation between WPF and outside concentration (*i.e.*, they found WPF to be independent of outside filter loading in this study). The Racal Breathe Easy 10, with 29 sample pairs, had a GM WPF of 11,137, a GSD of 3.9, and a fifth percentile WPF of 1,197. The Bullard Quantum, with 9 sample pairs, had a GM WPF of 9,574, a GSD of 3.1, and a fifth percentile WPF of 1,470. The 3M Whitecap II helmet, with 22 sample pairs, had a GM WPF of 42,260, a GSD of 9.8, and a fifth percentile WPF of 997. The authors stated that they obtained WPFs above 10,000 for the three PAPRs at least 44% of the time, and that the three respirators provided WPFs above 1,000 throughout the study. The authors concluded that the results of their study agreed with the then-proposed ANSI Z88.2–1992 APF of 1,000 for PAPRs with hoods or helmets.

6. WPF Studies—Loose-Fitting Helmet/Hood PAPRs & Loose-Fitting Facepiece PAPRs

Study 23. W.R. Meyers, M.J. Peach, K. Cutright, and W. Iskander reported in 1984 on a study in which they examined lead (Pb) exposure of 12 workers in a secondary lead smelter (Ex. 1–64–47). The job classifications studied were furnace operator, helper,

and pig caster. They selected two employees from each classification on two shifts. The PAPRs used in the study were the 3M W–344 and the Racal AH3; each employee wore both respirators twice. Pre-shift quantitative fit testing was performed each day. The investigators trained the participants, but did not describe the training; they monitored the employees continuously during sampling.

The authors referred to a companion paper for a description of the sampling protocol used in this study; therefore, they provided no information is provided on sampling or analytical methodologies in this report. Eight impactor samples were collected at each work activity to determine particle size distribution. Samples were collected for the full shift, but the investigators did not provide specific sampling times. The authors also provided the range of inside-the-facepiece concentrations, with associated GM and GSD, for both brands of respirator; they measured these concentrations with the PAPRs placed on manikins which were located at the worksites where employees in the three job classifications worked.

For each respirator, the study provided 24 individual inside- and outside-the-facepiece (front and rear) concentrations, along with associated WPFs and each employee's fit factor. It also provided the overall GM, GSD, and 95% confidence level on the mean for the inside-the-facepiece concentrations, WPFs, and fit factors. The authors tabulated the data by day, shift and work activity. For both respirators, two samples were discarded due to sampling pump failure, giving 22 usable measurements for each respirator. The WPFs measured on the Racal AH3 ranged from 42 to 2,323, with a GM of 205 and a GSD of 2.83. The 3M W–344 had WPFs that ranged from 28 to 5,500, with a GM of 165 and a GSD of 3.57. The two-sided 95% confidence limits around the mean of the WPFs were 128 and 325 for the Racal AH3, and 94 and 292 for the 3M W–344. The authors provided a detailed discussion of their statistical analyses of the data; they also discussed several potential sources of variation in the workplace performance of PAPRs, including: a possible relationship between fit factor and WPF; a possible relationship between fit factor and inside-the-facepiece concentration; day of the week; shift; leakage into the facepiece due to ambient air currents; and worker activity. The only sources found to be potentially significant were leakage into the facepiece due to ambient air currents and worker activity. The authors stated that "* * * using the pooled 3M and Racal WPF data and a probability of 0.95 the assigned protection factor calculated by this method for these PAPRs would be 26." They recommended a reduction in the RDL's APF of 1,000 for loose-fitting PAPRs with helmets and HEPA filters.

Study 5. W.H. Albrecht, G.R. Carter, D.W. Gosselink, H.E. Mullins, and D.P. Wilmes reported at the 1986 AIHCE on a study they conducted that evaluated protection against exposure to asbestos fibers for 12 workers who manufactured asbestos-containing brake shoes for trucks (Ex. 1–64–23). The employees performed six operations at the facility: mixing brake shoe components, weighing mixed formulation, pre-forming molding press charges, molding the shoe, grinding the brake shoe surface, and drilling shoe mounting holes. The investigators sampled at each operation. The PAPR studied was the 3M Airhat with high-efficiency (HEPA) filters. The participants and supervisory staff were shown an audio slide presentation explaining how to fit respirators and the procedures for saccharin fit testing; they then received the saccharin qualitative fit test (since the authors do not specifically mention fit testing the PAPR, it is assumed that only the half-mask respirators studied were fit tested). Fit testing was not conducted prior to each study test. The PAPR was fitted and worn according to the manufacturer's instructions. Each employee was observed on a one-on-one basis during testing to assure that they properly donned and used the respirator and that sampling train integrity was maintained.

The inside-the-facepiece sampling train was a closed-face filter cassette connected to a tapered Liu probe, inserted into the respirator between the nose and mouth. The outside-the-facepiece sampling train was a closed-face filter cassette connected to a Liu probe attached in the employee's lapel area; the authors do not mention cassette size. Samples were collected for 30 minutes, but other sampling times were occasionally used; sampling pump flow rates were 2 Lpm (inside-the-facepiece) and 0.5 Lpm (outside-the-facepiece). The report does not mention modifying the inside-the-facepiece probe location (midway between the nose and mouth) or the sampling flow rate for the PAPR versus that used for the half-mask respirators studied.

Sampling trains were calibrated before the shift, at lunch, and at the end of the shift; average airflow rate was used to calculate sampled air volume. The investigators did not mention determining the PAPR's airflow rate.

Asbestos analysis was based on NIOSH method 7400, with 500 fields counted per inside sample filter and 100 fields counted per outside sample filter. The distributions of fiber length and fiber diameter were not characterized. The authors stated that blanks were submitted for fiber counting; however, no further mention is made of the blank results or how they were addressed. None of the PAPR samples were comparison counted by Phase Contrast Microscopy (PCM) and Scanning Electron Microscopy (SCM). A total of seven PAPR WPFs were reported (5 employees). Individual pairs of inside and outside concentration values were not provided. Individual WPFs were reported for each of the seven sampling intervals, but were not linked to specific participants or jobs. The authors provided an overall GM, GSD, and fifth percentile for the Airhat PAPR; a range of asbestos concentrations and the associated GM and GSD were also reported by job. An inside-the-facepiece fiber count of 1,000 was used in calculating the WPF when the sampling result was at or below the limit of detection (*i.e.*, 1,000 fibers per filter). The investigators did not mention adjusting inside-the-facepiece values for fiber retention in the respiratory tract. In addition, the authors determined that sampling results were not affected, at the 95% confidence level, by sampling flow rate or open-versus closed-face sampling cassette. The mean breathing zone concentration of asbestos for the Airhat PAPR was 4.14 fibers/cc, with a mean breathing zone concentration range of 1.23 to 8.05 fibers/cc. The authors reported a GM WPF for the PAPR of 199, with a GSD of 2.36 and a fifth percentile of 42. Five employees tested the PAPR, resulting in a total of nine sample sets, including two unusable sets of data. The authors noted that respirators that had the highest GM and fifth percentile WPFs (*i.e.*, the 3M Airhat and 3M 9920 DFM respirators) were also tested at higher breathing zone fiber concentrations. They believed that this factor probably led to these respirators' increased performance measurements.

Study 22. In 1986, W.R. Meyers, M.J. Peach, K. Cutright, and W. Iskander reported on a study in which they evaluated exposure to lead (Pb) dust and mist for 12 workers on two lead acid plate production lines of a battery manufacturer (Ex. 1–64–48). They sampled the pasting operator and two slitter operators on each line for two different shifts. The respirators studied were the Racal Airstream AH5 and the 3M W–3316, equipped with a helmet, visor enclosure, and dust/mist filters. Participants were clean-shaven, and each employee wore both types of respirator twice. The AH5 provided a seal between the employee's face and the face shield by using two flexible face seals; air was exhausted at the chin. The size of the faceseal (*i.e.*, large or small) was selected based on the appearance of best fit and wearer comfort. The 3M's soft flexible face seal gave a loose-fitting seal between the face and face shield, with air exhausted at the temples. Prior to field testing, randomly-selected filters underwent silica dust penetration testing. The investigators put on and removed the respirators from the employees in a clean area, except when the employees took personal breaks (in which case, the employees donned and doffed the respirator in the work area). Employees were not fit tested, but were instructed in the proper use of the PAPR and directed not to remove the helmet, lift the face shield, or tamper with the sampling equipment without notifying the investigators. The investigators continuously monitored donning and doffing and work activities. Respirator helmets and visors were cleaned between each use, and volumetric air output was periodically checked (usually at the beginning of the shift, lunch, and shift's end). The authors replaced the batteries according to manufacturer's instructions, and when low airflow occurred. They also installed new filters at the beginning of each shift. The investigators started the sampling pumps after the employees donned the respirators and the PAPR blower was functioning; they stopped the pumps before turning off the PAPR blower.

Sampling trains were identical and consisted of a closed-face 37 mm two-piece cassette, containing a 0.45 micron pore size cellulose ester filter and back-up pad. Inside-the-facepiece sample cassettes were attached directly to a modified Luer adapter sampling probe, inserted through the face shield about one to two inches in front of the employee's mouth. Outside-the-facepiece sample cassettes were located at the front lower right side of the facepiece, away from the PAPR's exhaust airflow; they located a second cassette located the employee near the PAPR's filter, to determine the filter's contaminant challenge. All samples were collected as total dust at a flow rate of approximately 2 Lpm over the full shift (The report did not provide actual sample times). Sampling pumps were calibrated in the laboratory, and the flow rates confirmed at the worksite. Performance of the PAPR filtration system was checked by placing operating respirators on manikins (without simulated breathing), located about 4 feet from the subjects. Two filter blanks were used for each shift. Particle size distribution was determined through using a Marple cascade impactor operating at a flow rate of 3 Lpm.

Inside-the-facepiece samples were analyzed by graphite furnace using a modified NIOSH P&CAM 214 method, with perchloric acid in the wet ashing step. Outside-the-facepiece samples were analyzed by atomic absorption spectroscopy (NIOSH Method S–341 with the perchloric acid wet ashing step modification). Forty-seven individual inside- and outside-the-facepiece (*i.e.*, front and rear) time-weighted-average (TWA) measurements, with associated TWA WPFs, were provided (AH5 = 24; W–316 = 23). These results were tabulated by day, shift, and work activity. Overall GM and GSD were also given for the concentration measurements and WPFs. All blanks were below the analytical limit of detection; the authors did not mention adjustments for pulmonary retention. Particle size (large) and stationary manikin filter efficiency (98%–99.9%) were briefly discussed. The WPFs for the Racal AH 5 ranged from 23 to 1,063, with a GM of 120 and a GSD of 2.64. The WPFs for the 3M W–316 ranged from 31 to 392, with a GM of 135 and a GSD of 1.89. Since the authors found no statistical difference between the performance of the respirators, they pooled the data for both respirators; they then graphically plotted the percent of WPFs less than specific values. The pooled data for the two PAPRs resulted in a distribution with a GM of 127 and a GSD of 2.28. The authors stated that, at a 0.95 probability level, this class of PAPRs would receive an assigned protection factor of 25. The authors also stated that the results "* * * strongly suggest that the respirator user community not view current generation powered air-purifying respirators equipped with helmets as positive pressure respiratory devices."

Study 3. A. Gaboury and D.H. Burd (Ex. 1–64–24) and A. Gaboury, D.H. Burd, and R.S. Friar (Ex. 1–64–348) reported in 1993 on the WPF study they performed in a primary aluminum smelter. Exposure to benzo(a)pyrene {B(a)P] on particles was measured for 22 employees who worked as rack raisers, stud pullers, and rod raisers on anode crews. The employees used a Racal Breathe-Easy 1 (BE1/AP3), a loose-fitting helmeted PAPR. The PAPR came equipped with one-piece non-woven flame-retardant face seals, visor locking clips, and combination organic vapor and HEPA filters. (The authors also tested the performance of several negative-pressure, air-purifying half-mask respirators; see Study 7 above). The employees previously received training on this PAPR, and used it for more than six months prior to the study. Forty percent of the employees had beards (*i.e.*, more than two weeks growth), but the investigators did not find a significant difference between bearded and non-bearded participants. No fit testing was performed on the employees, but previous quantitative fit testing showed fit factors "greater than 1000 in all cases." Industrial hygiene technologists assisted participants with donning and doffing respirators, cleaned and maintained the respirators at the end of each work cycle, and observed participants on a one-to-one basis throughout the sampling period. The investigators directed the employees not to tamper with the respirator or sampling equipment. Due to high heat levels in the work area, the employer required employees to rest in a cool environment for one-half hour during each work hour.

The inside-the-facepiece sampling train consisted of a closed-face three-piece cassette with a 25 mm organic-binder-free glass fiber filter, backed with a cellulose ester pad. Inside sampling cassettes were connected to a tapered Liu probe, which was inserted through the PAPR's visor and into the employee's breathing zone. The outside-the-facepiece sampling train was identical to the above; however, the investigators did not mention connecting the cassette to a Liu probe. The outside cassette was mounted on a bracket at the top of the visor. All filters were pre-calcined at 400 degrees Centigrade for 24 hours. Both inside and outside samples were collected at a flow rate of 2 Lpm for approximately 300 minutes, or one-half of the 10-hour work shift. Respirators and sampling trains were worn and operated until the employee entered the rest area; they donned and turned on the respirators prior to leaving the rest area for the next work cycle. The authors plugged the sampling cassettes when not in use, and cleaned the respirators after each work cycle. Field blanks were used to identify contamination due to handling. Sampling train airflow rates were checked at the beginning, middle (*i.e.*, after lunch), and end of the work day; upon changing cassettes; and when a problem was suspected. PAPR turbo-unit flow rate was checked every two hours to assure flow was greater than six cubic feet per minute (cfm). Sampling occurred over a five-day period.

B(a)P analysis followed Alcan Method #1223–84. The ambient B(a)P particle size distribution was determined by collecting four samples, as close as possible to the workers, using an 8-stage Anderson cascade impactor (Model 296). Impactor samples were collected for two to five hours at a flow rate of 2 Lpm. The average percent of B(a)P mass (across four samples) per impactor stage (defined by an aerodynamic diameter cut point, in micrometers) was reported. About 93% of the B(a)P mass was associated with particles having diameters of ≤9.8 micrometers. A total of 20 pairs of inside and outside sample concentrations, with associated WPFs, were provided by job category (but not for individual employees), and whether the employee had a beard. An overall GM, GSD, and 95% confidence interval on the mean were also provided for the inside and outside concentrations and WPFs, along with an overall fifth percentile WPF. The authors stated that some employees participated more than once during the study. They did not mention adjusting inside-the-facepiece values for particle retention in the respiratory tract. The authors found no significant relationship between B(a)P concentrations inside and outside of the facepiece, but they did find a correlation between WPF and outside B(a)P concentrations. The authors stated that, while the data were limited, they recommended testing PAPRs at relatively high concentrations to obtain an accurate measure of their performance. The inside B(a)P concentration ranged from 0.006 to 0.072 $\mu g/m^3$, with a GM of 0.012 $\mu g/m^3$. The outside B(a)P concentration ranged from 246 to 111.48 $\mu g/m^3$ with a GM of 16.73 $\mu g/m^3$. WPFs ranged from 371 to 8658, with a GM of 1,414. The two-sided 95% confidence interval limits around the overall GM WPF were 918 and 2,173; the fifth percentile was 275. The authors cautioned that these results WPFs achieved under conditions of good worker compliance and tight administrative control; however, without these conditions, WPFs may be less because: close surveillance of workers is not usually performed; cleaning during rest periods is not done prior to returning to the workplace; visor locking clips are not routinely used; and no respirator is used 100% of the time while in the workplace.

Study 26. At the 2001 AIHCE, D.V. Collia, *et al.* presented a study on the workplace performance of a PAPR against exposure to cadmium (Cd) for seven workers, over three days, in a nickel-cadmium battery manufacturing facility (Ex. 3–5). The respirator studied was the 3M Breathe-Easy 12 (BE–12), a loose-fitting facepiece PAPR equipped with high-efficiency filters; the employees were using this PAPR prior to the study. During a preliminary visit, the investigators discussed the study with the union, management and workers. The authors also evaluated the worksite and took area samples to identify areas with the highest exposures. Prior to sampling, they informed the employees about their role in the study, as well as the study's purpose and procedures. The investigators continuously observed the employees during sampling, and used field blanks to identify contamination from handling. The study contained no additional information on sampling protocols (*e.g.*, donning and doffing procedures).

Inside-the-facepiece samples were gathered using 25 mm three-piece cassettes containing an unspecified membrane filter and a porous plastic back-up pad. A nylon Liu probe was used, and the samplers were positioned directly across from the midline between the employee's nose and mouth. Outside-the-facepiece samples used 25 mm three-piece cassettes containing an unspecified membrane filter, backed with a cellulose pad. Outside samples were positioned close to the employee's breathing zone (the investigators provided no further details). All samples were collected at 2 Lpm for approximately one and one-half hours (range: 67–156 minutes).

Inside-the-facepiece samples and blanks were analyzed by flame atomic absorption spectroscopy and heated graphite furnace atomizer (AAS–HGA). Analysis of outside-the-facepiece samples was by AAS. The analytical methodology used OSHA's method for Cd in workplace atmospheres (OSHA ID–189). The authors provided the mean mass for inside and outside blanks, but made no mention of data adjustments for blanks or pulmonary retention. They also reported minimum and maximum concentrations of inside- and outside-the-facepiece samples for each employee. Supplemental data contained 41 individual measurements of inside and outside concentrations, tabulated by employee, job area, sample period and set, sample time, pump flow rate, and sampled air volume.

WPFs were calculated for 33 of the sample sets (8 of the 41 inside-the-facepiece samples had no detectable Cd). The calculated GM WPFs ranged from 1,460 to 9,440. The fifth percentile WPF was calculated in three different ways: the traditional approach yielded a fifth percentile WPF of 315; an analysis of variance (ANOVA) model, yielded a fifth percentile of 280; and the Monte Carlo simulation model approach resulted in a fifth percentile of 220 when the non-detected inside values had a value of 0.002, a fifth percentile of 303 with the non-detected values excluded, and a fifth percentile of 103 with Employee C excluded. The authors concluded that the BE–12 PAPR provided a level of protection consistent with an APF of 25.

Study 24. D.W. Stokes, A.R. Johnston, and H.E. Mullins determined exposure to silica (Si) dust for five workers in a roofing granule production plant (Ex. 1–64–66). The participants were involved in cleanup of silica dust byproduct by sweeping, brushing walls, and shoveling. The respirator studied was the 3M Airhat, a loose-fitting PAPR with helmet, equipped with dust/mist or high-efficiency filters, and worn with and without a Tyvek shroud. The investigators assisted the participants were assisted with donning the sampling equipment; however, they did not mention training the employees. They observed the employees during sampling, and used field blanks to determine the effects of handling on sample contamination. They did not mention determining the particle size of the contaminant.

Inside-the-facepiece samples were collected through a Liu probe inserted into the faceshield (they did not provide the probe's specific location). A 25 mm cassette containing a 0.8 micron pore size polycarbonate filter was used, and sampling airflow rate was 1.5 Lpm. Outside-the-facepiece samples were gathered as both total and respirable dust. Respirable dust samples were collected at 1.8 Lpm using a 37 mm 0.8 micron pore size polycarbonate filter placed in a cyclone that attached to the employee's lapel. Total dust samples also used a 37 mm 0.8 micron pore size polycarbonate filter. Sampling airflow rate was 2 Lpm, with the sampling cassette attached to the employee's lapel. The investigators calibrated the sampling pumps each day, and checked proper airflow rate three times throughout the day. They collected samples over a four-day period, with sampling times ranging from 30 minutes to 1 hour. At the beginning and end of each sample, the authors confirmed that each PAPR's airflow rate was in excess of 6 cfm.

The authors used proton induced x-ray emission (PIXE) to analyze the samples. They adjusted the inside- and outside-the-facepiece concentrations by subtracting the mean blank value, but did not mention adjustments for pulmonary retention of particles. They also did not provide individual inside- and outside-the-facepiece concentrations and WPFs. They presented results in two tables showing respirable dust samples with values 25 times the mean blank level, and total dust samples with values 100 times the mean blank level. The investigators provided tables reporting sample size and overall GM, GSD, and fifth percentile WPF by type of filter (*i.e.*, dust/mist, HEPA) and the presence or absence of a shroud (*i.e.*, dust/mist with shroud, dust/mist without shroud). Using the respirable dust samples that were 25 times the mean blank value, the authors combined the sampling results of the PAPR with dust/mist filters (*i.e.*, with and without a shroud) and found an overall GM WPF of 2,480 and a fifth percentile of 95. The combined respirable dust results of the HEPA-filtered PAPR gave an overall GM WPF of 5,730 and a fifth percentile of 762.

Atmosphere-Supplying (Supplied-Air) Respirators

Atmosphere-supplying respirators, also referred to as supplied-air respirators (SARs) or airline respirators, operate in one of three modes: Demand, continuous flow, and pressure demand. Demand and pressure demand respirators can be equipped with half or full facepieces. Continuous flow respirators can also be equipped with a helmet, hood, or loose-fitting facepiece.

7. WPF Studies—Loose-Fitting Atmosphere-Supplying Respirators With Hood or Helmet

Study 28. A.R. Johnston, *et al.* in 1987 conducted a WPF study evaluating exposure to silica (Si) among four shipyard workers who wore a 3M Whitecap II loose-fitting, continuous flow SAR with hood/helmet while sandblasting paint from the flat top of a barge (Ex. 1–64–36). The respirator was comprised of a W–8100 abrasive blasting helmet, a W–5114 breathing tube, a W–2862 air / temperature control valve, 50 feet of W–9435 air hose, and a W–8054 extended length shroud. To permit evaluation of the respirator at its low and high range of airflow rates, air pressure was maintained at 60 or 80 psi, resulting in an in-helmet airflow rate of either 6.4 or 14.4 cfm. The investigators informed the employees of the purpose and protocols of the study, and instructed them in the proper donning and use of the respirator. They also directed the employees not to adjust or remove the respirator after sampling began. Sampling trains were connected and disconnected in a clean area when possible. Sampling pumps were started after confirming proper operation and donning of the respirator, as well as airflow rate into the helmet. Pumps were stopped before the helmet was disconnected from the air supply and removed. The authors maintained continuous one-on-one observation of the employees during sampling, and used several field blanks during each day of sampling.

The authors collected inside-the facepiece samples on 25 mm cassettes containing 0.8 micron pore size polycarbonate membrane filters. They attached the cassettes directly to a Liu probe inserted through the center of the faceshield, about midway between the nose and mouth; the probe extended about 3 mm into the helmet. The flowrate for the inside samples was approximately 2 Lpm. The authors collected outside-the-facepiece samples as both total and respirable dust, using a 37 mm cassette with a 0.8 micron pore size polycarbonate membrane filter. They used a Bendix or SKC cyclone, operating at 1.7 Lpm airflow rate, to gather the respirable dust samples and obtained total dust samples at flow rates ranging between 0.5 and 2 Lpm. Both outside-the-facepiece sample cassettes were located on the employee's lapel. The investigators calibrated the sampling pumps at least three times a day, and sampling periods ranged from 10 to 60 minutes to prevent filter overloading.

The authors analyzed all samples using PIXE. They found Si on all 18 blanks. Of 68 initial sample sets, they discarded 16 (11 due to test malfunctions and 5 due to outside loadings less than 10 times the mean blank level and inside loadings at or below the blank level). They corrected the remaining 52 sample sets for blank value, and then tabulated by inside and outside filter weights, inside and outside sample volume, and associated WPFs. Since nearly all of the dust was of respirable size, the authors did not report results for the total dust samples. Comparing the sampling results with the mean blank levels, the investigators stated that the analytical confidence limits of the data were poor, with only 11 samples being better than plus or minus 25%. The authors considered samples with inside concentrations greater than 1,000 times the mean field blank to be an accurate indicator of the respirator's performance capability; seventeen sample sets met this criteria, but they removed two samples WPF calculation database as outliers. For the remaining 15 samples, the GM WPF was 4,076, the GSD was 2.3, and the fifth percentile WPF was 1,038.

The authors concluded that WPFs generated from sample sets with light outside dust loadings significantly underestimated respirator performance; higher outside sample loadings appeared to be less influenced by non-respirator variables. The investigators judged WPF estimates derived from data subsets with higher outside filter loadings as providing a better indication of respirator performance capability. The authors also discussed an apparent correlation between WPFs and outside filter loadings (*i.e.*, a higher loading equaled higher a WPF until reaching a plateau about 600 times the mean blank value); however, the correlation between WPFs and outside concentrations was not statistically significant. In addition, the effect of higher versus lower helmet airflow rate on sample results and WPFs was not significant. They also discussed the daily and overall WPFs achieved when using time-weighted-averages for the calculations. They concluded that their data supported the ANSI Z88.2 proposed APF of 1,000 for loose-fitting SARs with hoods or helmets.

Study 20. At the 1989 AIHCE, A.R. Johnston, C.E. Colton, D.W. Stokes, H.E. Mullins, and C.R. Rhoe presented a WPF study on a 3M W–8000 Whitecap II SAR with a helmet, and equipped with a breathing tube (W–5114), a compressed air hose (W–9435), and either a vortex cooling assembly (W–2862) or air regulating valve (W–2907) (Ex. 1–64–37). They evaluated exposure to iron (Fe) dust and silicon (Si) dust for six workers involved in grinding iron parts at a foundry. Air supply pressure was 60 psi with the vortex cooler or 25 psi with the regulating valve, thereby maintaining a helmet airflow rate of 6.7 cfm throughout the test. They did not mention employee selection procedures, previous use of respiratory protection, provision of training, or respirator donning and doffing procedures. They verified air supply pressure; valve settings; and integrity of the respirator, connections, and sampling train before starting the sampling pumps. They stopped the samplers before disconnecting the respirator from the air supply; they then took the participants to a clean area to remove the sampling cassette. The investigators observed the employees on a one-on-one basis during sampling, and used field blanks to evaluate possible contamination due to sample handling.

The inside-the-facepiece sampling train consisted of a 25 mm cassette containing a 0.8 micron pore size polycarbonate filter. The authors attached the cassette to a Liu probe installed into the faceshield approximately midway between the nose and mouth; it extended a few millimeters into the helmet. They

collected inside-the-facepiece samples at an airflow rate of 2 Lpm. The outside-the-facepiece sampling train also used 25 mm cassettes containing 0.8 micron pore size polycarbonate filters. The investigators collected outside samples as respirable dust using a MSA or Bendix cyclone operating at an airflow rate of 1.7 Lpm; however, they did not mention the location of the outside sample cassette. They collected area samples for particle size analysis using cellulose acetate filters and a personal sampling pump operating at 2 Lpm. They calibrated the sampling pumps at least three times a day, but did not mention specific calibration times.

The authors analyzed the samples for Fe and Si using proton induced x-ray emission (PIXE) analysis. Having detected Fe and Si on the field blanks, they used the mean blank value to correct inside- and outside-the-facepiece sample weights. They used optical microscopy to determine mean particle size range from 6 area samples. The investigators presented no data for individual inside- and outside-the-facepiece concentrations, and associated WPFs; however, they did provide the range of outside sampling measurements, and the overall average outside concentration, for both analytes. While they presented the range of inside-the-facepiece concentrations, they did not report the average inside concentrations. Outside samples averaged 1,500 μg/m^3 for iron dust, and ranged from less than 100 to 2,800 μg/m^3. Outside samples for silicon averaged about 1,000 μg/m^3, with a range from less than 100 to 1,500 μg/m^3. Inside concentrations were at or near the detection limits for both elements. For the 39 samples with values greater than 25 times the field blank, the authors reported a GM WPF of 273, a GSD of 5.7, and a fifth percentile of 39. For samples with outside filter weights greater than 750 times the field blank, they reported a GM WPF of 1,012, a GSD of 2.6, and a fifth percentile of 199. The investigators found a significant correlation between mean filter weights and WPFs; this correlation did not plateau at higher filter loadings. The authors stated that their measurements never reached a level at which the protection factors were independent of the outside filter weight. They concluded that the relatively low sample loadings resulted in WPFs that significantly underestimated the respirator's performance. They stated that, in the case of SARs, the researchers:

* * * should attempt to target outside loadings of at least 1000 times the anticipated analytical detection limit. If we do not, the data we get is likely to reflect limitations of our sampling and analysis procedures, rather than the respirators we are testing.

Study 19. At the 1993 AIHCE, C.E. Colton, H.E. Mullins, and J.O. Bidwell of 3M presented a WPF study on the 3M Snapcap W–3256 airline respirator (TC 19C–70) with a loose-fitting hood, fitted with a W–3258 hard hat, W–5114 breathing tube, W–2862 vortex tube air regulating valve, and 50–100 feet of W–9435 compressed-air hose (Ex. 1–64–17). They measured exposure to silica (Si) for four workers involved in furnace teardown at a foundry. The respirators were operated at an air pressure of 75 psi, with the participants were permitted to regulate the airflow rate to a comfortable level. The authors later determined that this level was 8–9 cfm. The job task consisted of using pneumatic chippers to remove the furnace wall and bottom. Pieces of wall and bottom either fell into or were shoveled into a barrel for removal. The employees then vacuumed of the furnace bottom. The job consumed most of the eight-hour shift. Since the furnace was warm and the work was physical, the employees worked in pairs for about one hour before switching with other employees; therefore, sampling times varied over the two separate days of the study. Participants normally wore air-line respirators. The investigators informed them of the study's purpose, procedures, and their role, and provided them with instruction on the proper donning, fitting, and operation of the respirator; however, the authors did not mention fit testing the participants. The investigators observed the employees on a one-on-one basis during sampling. The employees donned and doffed the respirators and sampling trains in a clean area, and the investigators checked the integrity of the respirator and sampling train before the respirator was connected to the air supply. The authors started the sampling pump after connecting the respirator to the air line, and stopped the pump before disconnecting the respirator from the air supply. They used field blanks to evaluate the possibility of contamination from handling the samples.

Inside- and outside-the-facepiece samples were collected in 25 mm three-piece cassettes containing 0.8 micron pore size polycarbonate filters and porous plastic back-up pads. Inside-the-facepiece cassettes were attached to the inside of the hood, directly across from the employee's mouth, with the cassette pointed toward the employee. A nylon Liu probe was attached to the inside cassette, and a sample line ran through the elasticized inner shroud and out to the sampling pump; the inside sampling flow rate was 2 Lpm. Outside-the-facepiece samples were collected as respirable dust through use of a 10 mm nylon cyclone; the outside sampling flow rate was 1.7 Lpm. The authors do not mention the location of the outside sampling cassettes, or what method they used to conduct particle size sampling.

The investigators used PIXE to analyze collected samples for Si; however, overloading of many of the outside-the-facepiece samples prevented PIXE analysis, requiring analysis of these samples by Inductively Coupled Plasma (ICP) spectroscopy. The authors made no field blank adjustments to the measured sample weights (*i.e.*, Si was not detected on the field blanks). The investigators intended to invalidate sample pairs with an outside filter weight less than 1,001 times the field blank value, or limit of detection if the field blank value was zero; all outside sample weights were more that 10,000 times the detection limit. In addition, they rejected sample pairs with inside sample weights that were less than the mean blank value. They did not mention correcting inside-the-facepiece values for pulmonary retention of particles, or how they managed sample results that were below the analytical detection limit. Particle size analysis showed the contaminant to be "a dust with over 50 percent of the mass greater than 10 μm." The authors established a correlation between the PIXE and ICP analytical methods by analyzing 37 samples using both methods. They developed a linear regression equation that permitted PIXE equivalents to be predicted from the ICP results. They reviewed the WPF results using: The ICP results for the outside concentrations, and PIXE results for the inside concentrations; and the regression to predict PIXE equivalents for the outside concentrations, and PIXE results for the inside concentrations.

The authors calculated WPFs and checked the resulting values for outliers at the 99% confidence level. They did not provide individual inside- and outside-the-facepiece concentrations, but instead reported an overall range of inside and outside concentrations, along with the ranges' associated GM and GSD. In addition, the authors did not provide individual WPF values, but presented calculated WPFs as an overall fifth percentile WPF, GM, and GSD for each of the 2 days, based on both methods discussed above (*i.e.*, ICP and PIXE equivalent). They found that the two methods gave similar results. Using the equivalent PIXE values (*i.e.*, calculated from ICP values), and the PIXE in-facepiece values, the GM WPF was 10,344, the GSD was 2.5, and the fifth percentile WPF was 2290. The authors stated that the loose-fitting hood performed differently than a loose-fitting PAPR, and this difference should be reflected in the APF assigned. In addition, they briefly discussed a comparison of the study results with the results of several other PAPR and air-line respirator studies.

Study 25. In 2001, T.J. Nelson, T.H. Wheeler, and T.S. Mustard published a WPF study of a supplied-air hood (Ex. 3–6). They measured exposure to strontium (Sr) for 19 painters and helpers involved in sanding and painting operations on several types of aircraft. They judged the work rate to be light to moderate. Prior to sampling, they informed the employees about the study, and instructed them to remain connected to the air supply during calibration and sampling. The participants used a 3M H–422 series supplied-air hood, equipped with an outer bib with an inner shroud and hard hat, H–420 hood, W–3258 hard hat, W–2878 suspension, 50 feet of W–9435 hose, and either the W–2862 vortex cooling assembly or the W–2863 vortex heating assembly. The investigators regulated the supply air pressure to between 60 and 80 psi. Employees donned the hoods in the work area, but investigators did not attach the sampling cassettes until after the employees connected the hood to the air supply and airflow began. They used field blanks to identify possible contamination due to handling, storage or shipment. In addition, they used manufacturer's blanks to detect contamination from manufacture of the filter, and a system blank to determine if contamination was present in the air supply.

The investigators collected inside- and outside-the-facepiece samples using 37 mm or 25 mm three-piece cassettes containing mixed cellulose ester filters. The first 19 samples (*i.e.*, collected during sanding) utilized 37 mm cassettes/filters, but half of the outside samples had no detectable Sr. To increase analytical sensitivity, they collected the remaining 18 samples with 25 mm cassettes and filters. Once the employee was connected to the air supply, they attached a sampling cassette inside the hood at a point midway between the nose and mouth, and to the side of the face. They then uncapped the cassette and connected a Liu probe to the cassette inlet. The authors placed the outside cassette in the lapel area and pointed it forward and down. They started the sampling pumps simultaneously, and performed in-line calibration. They collected samples at an airflow rate of 2 Lpm, for a period consisting of 2 hours for sanding and 90 minutes for painting. At the end of sampling period, they in-line calibrated the pumps, stopped the pumps, capped and removed the cassettes, and the employees disconnected and doffed the hood. They collected the system blank by mounting a cassette in an operating hood that was located away from the work area, and sampled air from inside the hood at 2 Lpm for 2 hours The authors did not mention making a particle size determination.

The investigators analyzed the outside-the-facepiece samples and one of the manufacturer's blanks using NIOSH Method 7300. They used PIXE analysis for the inside-the-facepiece samples, field blanks, system blank, and the other manufacturer's blank. They tabulated the sampling results by date, activity, employee, sample time, inside and outside sampled volumes, inside and outside concentrations, and WPF. The authors reported thirty-one individual inside- and outside-the-facepiece concentrations. However, the results of the outside samples obtained during sanding operations were only 30 times greater than the inside sample values. Therefore, the authors did not consider the data from the sanding operations to be a very useful indicator of respirator performance, and they did not calculate WPFs for the initial 19 sanding samples. Of the remaining 18 painting samples, they calculated WPFs for only 15 samples, after discarding 3 samples due to sampling errors. The Sr levels measured outside of the respirator ranged from 340 to 24,529 μg/m^3, but the investigators found no detectable amounts of Sr on any inside-the-facepiece sample. Therefore, the authors could not directly determine WPFs for the respirator. However, they estimated WPFs by substituting the limit of detection for the inside concentration values. This procedure resulted in estimated WPFs that ranged from more than 920 to 52,000. The authors concluded that their study was "* * * consistent with other simulated and WPF studies in that the ANSI Z88.2 WPF of 1000 is supported."

8. SWPF Studies—Type CE Abrasive Blasting Respirators

Bullard: 1995 LLNL Evaluation. During the development of the Interim Final Standard for Lead (Pb) in Construction (1926.25; 1996) and the Final Respiratory Protection Standard (63 FR 1152; 1998), the E.D. Bullard Company (Bullard) expressed concern about the APF of 25 for Type CE respirators. The concern was that the interim final lead rule, as issued, went far beyond the HUD guidelines by assigning a different and lower protection factor to Type CE respirators than the HUD guidelines, which incorporated the general industry standard at 29 CFR § 1910.1025. Bullard maintained that its Model 77 and 88 respirators provide much greater protection, and sought to have the APF for these models elevated to 1,000 in the Lead in Construction Standard. OSHA agreed to provide Bullard with the relief sought only if it contracted with an acceptable third party to design, monitor, and interpret the results of a simulated workplace study of these models under an appropriate and acceptable test protocol. As a condition for granting that relief, the study had to demonstrate that the abrasive blasting respirators achieved, at a minimum, a protection factor rating of at least 20,000 and maintained positive pressure throughout the testing.

Bullard contracted with Lawrence Livermore National Laboratory (LLNL) which designed, conducted, and interpreted the results of the SWPF study, based on a protocol that was acceptable to OSHA. The LLNL informal report resulting from the testing indicated (based on computerized data backed up by strip chart recordings) that the two Bullard abrasive blast respirators achieved a minimum protection factor of 40,000 and maintained positive pressure throughout the testing.

Therefore, the SWPF study conducted by LLNL demonstrated that, if used properly, the Bullard respirators were acceptable for lead exposures that are less than or equal to 1,000 times the PEL (50,000 μg/m^3). In an August 30, 1995 memo to its Regional Administrators, OSHA recognized that the SWPF study results indicated that an APF greater than 25 was appropriate for the Bullard Model 77 and Model 88 respirators, and the Agency granted these models an interim APF of 1,000 when used for lead in construction (Ex. 3–8–4; memo to RAs dated 8/30/95). However, the memo also noted that the Agency was aware of other data and at least one field study showing that in the workplace these respirators may provide considerably less protection when used in ways that do not conform to the manufacturer's specifications (*e.g.*, the air supply hose is too long; the hose diameter is incorrect; the manufacturer's specified air pressure is not maintained) or that do not comply with the requirements of paragraphs (b), (d), (e) and (f) of 1910.134 (*e.g.*, the respirator is not inspected frequently enough for

possible deterioration). The memo further stated that respirators will provide less protection than they are capable of, when used improperly (*e.g.*, donning and doffing the respirators while still in containment; disconnecting the air hose prior to leaving the exposure area). In addition, these respirators are used in extreme conditions during construction activities (*e.g.*, substantial and, sometimes rapid, deterioration caused by high-speed "bounceback" of the abrasive blasting material; very high levels of exposure). The impact of "bounceback" on the integrity of the respirator was not evaluated in the LLNL SWPF study since the study challenge agent was a liquid, not a particulate (which is typically the type of contaminant found in workplaces). Also, because these respirators may, at times, be used near the limits of their protective capability, workers wearing these respirators in abrasive blasting operations could receive acute exposures if the respirators do not perform properly. Therefore, performance consonant with the elevated APF can only be assured when the respirators are properly used.

As a result of the above, OSHA adopted a modified enforcement policy for these two respirators. This policy was limited to the Lead in Construction Standard (29 CFR 1926.62) and applied only to the Bullard Models 77 and 88. Also, the interim APF of 1,000 was pending until a final APF for this class of respirators could be determined through this rulemaking. Since OSHA believes that proper use of these respirators is imperative, the policy made it clear that the Agency would be very strict in assuring that these respirators are used in accordance with the manufacturer's specifications and the requirements of 1926.62.

Clemco Apollo Models 20 and 60 and 3M Whitecap II. With the assistance of the Industrial Safety Equipment Association (ISEA), other respirator manufacturers of Type-CE, continuous-flow, abrasive blasting respirators covered by the Lead in Construction Standard were contacted. By participating in a similar study, these manufacturers were provided with an equal opportunity to obtain the same relief afforded to Bullard. The Clemco Apollo Models 20 and 60 and the 3M Whitecap II were tested under conditions similar to the Bullard Model 77and 88 study. Based on the results of the studies, OSHA granted the respirators the interim APF of 1,000, and developed the same enforcement policy for Clemco (Ex. 3–7–4; memo to Regional Administrators dated 03/31/97) and 3M (Ex. 3–9–3; memo to Regional Administrators dated 12/08/98). Again, the interim APF was contingent on the final APF for these respirators being determined through this rulemaking.

9. SWPF Studies—N95 Air-Purifying Respirators

NIOSH N95 Chamber Studies. In 1999, NIOSH conducted a chamber study of N95 respirators and statistically analyzed the respirators' performance (Ex. 4–14). The study involved twenty-five subjects meeting the criteria of the LANL respirator panel. Twenty-one respirators were tested and included twenty filtering-facepiece and one elastomeric half-mask. Each test involved a sequence of six sedentary-type exercises: Normal breathing, deep breathing, moving the head side to side, moving the head up and down, reading the rainbow passage out loud, and normal breathing. Each exercise took about 80 seconds. For all tests, the subjects donned the respirator and conducted a user seal check in accordance with the manufacturer's instructions. After each test, the test operator returned the respirator to its original pre-test configuration (*e.g.*, strap was loosened). The investigators used a PortaCount Plus, a condensation nucleus type of particle detector, to determine the protection factor by measuring both the challenge aerosol (*i.e.*, ambient aerosol) and the aerosol penetrating the respirator.

The total penetration of an aerosol into a respirator includes the penetration through the filter media in addition to that resulting from face seal leakage. To determine face seal leakage, the study authors subtracted estimated filter media penetration from the total observed penetration. Filter media penetration was ascertained by separate testing performed on the filter media after human subject testing. Testing was conducted at an airflow rate of 31.4 Lpm, as determined from a volume-weighted average cycle having a peak flow rate of 40 Lpm. The same penetration for a given media was subtracted from the total penetration for all subjects using a respirator with that media. Calculating face seal leakage in this manner assumes all subjects have the same constant, volumetric flow rate through the respirator. The authors also summarized total penetration and face seal leakage penetrations. The 95th percentiles presented by NIOSH were based on a formula using the geometric mean and geometric standard deviation, and assumes the distribution to be log normal.

LLNL Study of Four N95 Filtering Facepiece Respirators. At OSHA's request, researchers at LLNL conducted chamber testing on four of the same commercial N95 filtering facepiece half-mask respirators used in the NIOSH study (Ex. 4–14). The four N95 filtering facepieces selected by OSHA for study were: 3M Model 8210, 3M Model 8511, Wilson Model 9501, and MSA Affinity Ultra (formerly Uvex/Pro Tech Model 4010). Six subjects (three male, three female) with six different face dimensions (according to lip length) used each filtering facepiece. These subjects represented six different boxes on the Los Alamos National Laboratory half-mask test panel (Boxes 4, 5, 7, 8, 9, and 10). Subjects used the manufacturer's instructions prior to donning the respirator. Each subject tested each respirator 4 times, for a total of 16 tests per subject and 96 tests overall. The investigators probed the respirators in the area of the nose, using the TSI fit-test probe kit, and measured penetration values with a TSI PortaCount Model 8020. They used ambient room aerosol as the challenge atmosphere and monitored it continuously during testing with a second PortaCount. They used room aerosol at concentrations greater that 2,000 particles/cc. Subjects removed the filtering facepiece at the conclusion of each test and, after approximately 2 minutes, redonned the same unit. The test operator restored the respirator to pre-test configuration (*e.g.*, straps were loosened) after each donning. Each test consisted of nine exercises: normal breathing, deep breathing, side-to-side head movement, up and down head movement, reading the rainbow passage, normal breathing, scooping rocks between buckets, stacking 30-pound concrete blocks and normal breathing. Subjects performed each exercise for 80 seconds, with a 20-second instrument purge cycle and 60 seconds of data collection per exercise.

For each model of respirator, the investigators used the size that showed the least penetration when the subject performed a 60-second reading of the rainbow passage. This was a change from using the penetration measured during normal breathing (as done in the original NIOSH tests), and was chosen because reading is frequently found to be an exercise that permits high penetration. A 60-second normal breathing fit test was performed in addition to the reading fit test. Multiple fit tests (both reading and normal breathing) were performed, if necessary, to select a model size. Once fitted, each

subject completed four full nine-exercise tests.

The NIOSH penetration results without fit-testing were compared to the LLNL test results. In general, the investigators found good agreement between the two studies, with the range of penetrations being similar in both studies. However, two differences were noted. For one model, (referred to by the researchers as Model D), the OSHA/LLNL study result indicated slightly more penetration than was observed in the NIOSH study. While the minimum penetration for Model D was 2 in both studies, the maximum penetration was 460 in the OSHA/LLNL study compared to 370 in the NIOSH study. However, both studies showed this respirator to be in the low performance range of penetrations. The researchers believed that this could be attributed to a poor-fitting individual that participated in the larger NIOSH study, but whose fit factor attributes were not represented by any participants in the smaller OSHA/LLNL study. They also noted that the design features of Model D, such as its folded shape and the plastic nose clip, may explain this respirator's poor performance. Furthermore, while this respirator was available in three sizes, it was very difficult to determine which size provided the best fit for several of the subjects.

The LLNL penetration result for another respirator, referred to by the researchers as Model A, was slightly better than the NIOSH result for the same respirator. The LLNL researchers believed that the lower penetration they measured for Model A was possibly due to the difference in model size/fit selection criteria between the NIOSH tests and the LLNL tests (discussed above). Again, they felt that another possible reason could have been a poor-fitting individual in the larger NIOSH study that was not represented by the smaller OSHA/LLNL study.

The LLNL researchers further investigated the apparent difference between the LLNL and NIOSH results for Model A. They found that eliminating subjects with poorly-fitting respirators significantly affects results. For example, a subject was started in the LLNL/OSHA test but was not tested because the investigators were unable to maintain a proper fit on the individual when using Model A (*i.e.*, it fell completely off the nose of the subject upon donning). If tested, this subject or another less obvious subject who experienced poor fit, could have skewed the results of the LLNL/OSHA N95 evaluation significantly. The LLNL researchers believed that this latter analysis illustrates the potential influence of a single outlier on the overall results of a study. The advantages of controlled SWPF testing are apparent in this example.

10. SWPF Studies—PAPRs and SARs

ORC Study on Respirators Used in the Pharmaceutical Industry. Before the publication of the final respiratory protection standard, Organization Resources Counselors, Inc. (ORC) raised an issue that had been the subject of discussions between ORC and OSHA for several years. In 1997, ORC and a group of its member companies sponsored a study of certain models of powered air-purifying and supplied-air respirators to evaluate the ability of these respirators to protect workers from exposures in the pharmaceutical industries. The study, "Simulated Workplace Protection Factor Study of Powered Air Purifying and Supplied Air Respirators," (Ex. 3–4–1) was completed in 1998, and the initial results, along with detailed experimental data, were presented to OSHA.

The experimental protocol used in the study was developed by the Organization Resources Counselors' respirator task force, LLNL investigators, participating respirator manufacturers, and representatives from NIOSH and OSHA. The study included a simulated workplace exercise protocol consisting of 12 exercises: normal breathing, twisting the head from side-to-side, moving the head up and down, touching toes, raising arms above the head, twisting at the waist, running in place, normal breathing, hand scooping of pebbles, normal breathing, building a concrete block wall, and normal breathing. Two exercises, hand scooping of pebbles and building a concrete block wall, were included to simulate tasks in the pharmaceutical industry. Seventeen subjects participated in the evaluation of five powered air-purifying respirators (PAPRs) and six supplied-air respirators (SARs). Twelve tests were conducted for each respirator, with the study being performed in the LLNL respirator test facility.

Input from OSHA resulted in two modifications to the protocol. It was decided that at least one of the three units for each respirator model tested would be purchased from the open market with the others being supplied directly from the manufacturer. A second change resulted from the Agency's interest in evaluating intra-personal variability in the performance of respirators. This was accomplished by testing one PAPR model and one SAR model during six wearings by a single individual. No significant difference in respirator performance was noted as a result of these modifications, and the overall results are presented below.

The results of the ORC study indicated that although simulated workplace protection factors (SWPFs) greater than one million were recorded during some of these tests, a reporting limit of 250,000 was established as the highest value in which reliable facepiece leakage could be detected (limit of quantification). The median SWPFs for all respirators, except one SAR, were at or above the reporting limit of 250,000. Lower fifth percentiles were above 100,000, with the exception of the one SAR. APFs were established for each of the 11 respirators by dividing the lower 5th percentile by a safety factor of 25. APFs ranged from 6,000–10,000 for PAPRs (including one loose-fitting PAPR), and 3,000–10,000 for SARs, with the exception of one device. This SAR had lower 5th percentile of less than 20 and an APF of 1. Results are presented in the table below.

TABLE 4.—SUMMARY OF SIMULATED WORKPLACE PROTECTION FACTOR RESULTS

Device	Range of SWPFs	Median SWPF	5th percentile SWPF
PAPR 1	140,000–>250,000	>250,000	>250,000
PAPR 2	11,000–>250,000	>250,000	170,000–210,000
PAPR 3	11,000–>250,000	>250,000	>250,000
PAPR 4	94,000–>250,000	>250,000	246,000–>250,000
PAPR 5	240–>250,000	>250,000	150,000–230,000
SAR 1	68,000–>250,000	>250,000	>250,000
SAR 2	13,000–>250,000	>250,000	170,000–220,000
SAR 3	9,700–>250,000	>250,000	86,000–114,000
SAR 4	5,500–>250,000	>250,000	150,000–240,000
SAR 5	5–>250,000	GM=1217	13–18

TABLE 4.—SUMMARY OF SIMULATED WORKPLACE PROTECTION FACTOR RESULTS—Continued

Device	Range of SWPFs	Median SWPF	5th percentile SWPF
SAR 6	160,000–>250,000	>250,000	>250,000

List of Respirators

Powered Air-Purifying Respirators With Hoods/Helmets

(PAPR1) 3M Whitecap helmet with chinstrap with GVP blower (hard plastic helmet with bib).
(PAPR 2) 3M Snapcap hood with chinstrap with GVP–100 blower (Tyvek hood with bib).
(PAPR 3) Racal BE–5 (clear PVC hood with bib).
(PAPR 4) Racal BE–10 (Polycoated Tyvek hood with bib and head suspension).

Loose-Fitting Powered Air-Purifying Respirator

(PAPR 5) Racal BE–12 (Polycoated Tyvek loose-fitting facepiece).

Supplied-Air Respirators

(SAR 1) 3M Whitecap helmet with chinstrap (hard plastic helmet with bib).
(SAR 2) 3M Snapcap hood with chinstrap (Tyvek hood with bib).
(SAR 3) MSA VERSA-Hood with #5–613–1 direct hose connection for 3/8" hose system (Tyvek hood).
(SAR 4) North Model 85302 TB (Tyvek hood with ratchet head suspension and bib).
(SAR 5) North Model 85302 T (Tyvek hood with ratchet head suspension).
(SAR 6) Bullard CC2OTIC with 2ORT suspension and 2ONC chinstrap (Tyvek hood with bib).

Note: All PAPRs tested with high-efficiency filters.

The study report was finalized in 1999, and ORC requested that OSHA consider assigning an interim final APF of 1,000 to the study's high-performing respirator models, with provisions for an APF as high as 5,000 based on programmatic and environmental factors (Ex. 3–4–3, 1999 communication with OSHA). ORC also recommended that, because the current NIOSH respirator certification procedures are not capable of distinguishing between high-performing PAPRs and SARs (and that some respirators may not provide adequate protection), the study methodology should be the basis for determining APFs for all respiratory protective equipment regulated by OSHA.

In 2000, ORC renewed its requests. They pointed out that the study demonstrated that the PAPRs tested, including the loose-fitting facepiece PAPRs, were capable of achieving protection factors of 6,000 to 10,000 (rather than the APF of 25 assigned by NIOSH and adopted by OSHA), and that the tested SARs achieved protection factors of 3,000 to 10,000. However, one tested SAR model did not provide a protection factor of 25, demonstrating to the Agency the importance of testing specific equipment being considered for an increased APF to assure the expected protection.

ORC asserted that new APFs for the models tested in the study were warranted. They believed that the study results justified a re-evaluation of the methods for assessing the ability of PAPRs and SARs to provide protection against airborne particulates, and asked OSHA to issue a directive or similar document assigning an interim APF of 1,000 for the SARs and PAPRs that tested successfully in the study. ORC believed that SWPF testing of PAPRs and SARs was beneficial, and strongly supported use of a collaborative approach as was pursued in developing the study.

OSHA permitted use of an interim APF of 1,000 for 9 of the 11 respirators tested and developed an enforcement policy similar to that followed for the Bullard, Clemco, and 3M respirators (Ex. 3–4–4; 2002 memo to RAs). Again, the interim APFs are subject to a final APF determination resulting from this rulemaking. OSHA requests comments on all aspects of this study.

LLNL/OSHA PAPR Study. OSHA requested that LLNL conduct two additional PAPR studies using the protocol of the 1995–96 ORC study. The raw data from the two evaluations were then compared with the ORC SWPF study data.

A modified SWPF protocol was used to test two additional PAPRs, an MSA OptimAir and a Neoterik, selected by OSHA. The testing employed the same exercise protocol as the ORC study; however, only three test subjects participated in the evaluation. The three test subjects each performed four separate donnings of each respirator model. The 50th and 95th percentiles of the penetration and protection factors for the two respirators are shown in Table 5.

TABLE 5

Respirator model	Penetration		Protection factor	
	50th percentile	95th percentile	50th percentile	95th percentile
MSA OptimAir	1.67×10^{-6}(a)	4.08×10^{-5}	250,000(a)	24,510
Neoterik	2.74×10^{-5}	1.43×10^{-3}	36,563	698

For the Neoterik, SWPFs of 100 and somewhat less were observed for the running in place and the moving bricks (building a concrete block wall) exercises. The Neoterik demonstrated SWPFs near 1,000 and somewhat less for the twisting head side to side, moving the head up and down, and touching toes exercises. For the MSA OptimAir, SWPFs approaching 100 for the running in place exercise were observed, while all of the other exercises resulted in SWPFs of 10,000 or greater. Penetration levels by type of exercise were compared between the OSHA PAPR analyses and the ORC results. In general, the comparison indicated that the same exercises triggered increased penetration values. That is, sources of penetration were "running-in-place" (for both respirators) and "moving bricks" (for the Neoterik PAPR).

V. Health Effects

In a number of previous rulemakings, OSHA discussed the serious health effects caused by exposure to airborne chemical hazards (*see, e.g.*, Appendix A of the Hazard Communication Standard at 29 CFR 1910.1200, and the preambles to any of the Agency's substance-specific standards codified at 29 CFR 1910.1001 to 1910.1052). When OSHA promulgates a new or revised PEL for a chemical air contaminant, (*e.g.*, Arsenic, 29 CFR 1910.1018; Asbestos, 29 CFR 1910.1001; Benzene, 29 CFR 1910.1028; Lead, 29 CFR 1910.1025; Ethylene Oxide, 29 CFR 1910.1047), it determines at what level of exposure to the contaminant employees develop serious health effects (*e.g.*, exposure to the contaminant is life-threatening, causes permanent damage, or significantly impairs employees' ability to perform their jobs safely).

As discussed in Section VI, "Summary of the Final Economic Analysis," of the final Respiratory Protection Standard (63 FR 1171), OSHA estimated that improvements and clarifications made to the previous Respiratory Protection Standard would prevent, each year, between 843 and 9,282 (best estimate, 4,046) work-related injuries and illnesses, and between 351 and 1,626 (best estimate, 932) work-related deaths from cancer and chronic diseases such as cardiovascular disease. To support this estimate, OSHA used its Integrated Management Information System database to identify several substances that had a wide range of adverse effects, as well as documented workplace exposures that exceeded the PELs for these substances. The health effects associated with exposure to these substances include:

- Sudden death or asphyxiation (*e.g.*, from exposure to carbon monoxide, carbon dioxide);
- Loss of lung function (*e.g.*, from exposure to wood dust, welding fumes, manganese fumes, copper fumes, cobalt metal fumes, silica);
- Central nervous system disturbances (*e.g.*, from exposure to carbon monoxide, trichloroethylene);
- Cancer (*e.g.*, from exposure to chromic acid, wood dust, silica); and
- Cardiovascular problems (*e.g.*, from exposure to carbon monoxide).

Furthermore, most of the airborne contaminants measured as part of the workplace protection factor studies considered during development of this proposal cause serious health effects. For example, acute lung, skin, and eye irritation occur as a result of occupational exposures to styrene, lead, strontium, benzo(a)pyrene, and silica. Longer-term exposures to other substances sampled in these studies cause bone and blood effects (lead particulates), neurological effects (mercury fumes), chronic lung damage (cotton dust), and cancer (asbestos fibers and chromium particulates).

The risk that an employee will experience an adverse health outcome while exposed to a hazardous airborne substance is a function of the toxicity or hazardous characteristics of the substance, the concentrations of the substance in the air, the duration of exposure, the physiology of the employee, and workplace conditions. These factors combined assist in determination of the type of respirator selected to reduce an employee's exposure below the PEL for the hazardous substance. Under many workplace-exposure conditions, prevention of serious health effects depends substantially on the protection afforded to employees by a respirator.

Employers need the APFs provided in this proposal to select appropriate respirators for employee use when engineering and work-practice controls are insufficient to maintain hazardous substances at safe levels in the workplace. In this regard, the proposed APFs will permit employers to select respirators for employee protection based on the type of hazardous substance and the level of employee exposure to that substance, among other factors. OSHA strongly believes that proper respirator selection using the proposed APFs will protect employees from overexposure to hazardous substances, thus preventing the serious health effects that result from such overexposure.

While APFs are an important factor in respirator selection, employers must consider other factors as well. In this regard, simply applying an APF to the level of an airborne contaminant in a workplace will not ensure that employees receive adequate protection. Throughout the preamble of the final Respiratory Protection Standard, OSHA demonstrated that adequate fit testing, proper respirator use, employee training, and thorough inspection and maintenance of respirators are some of the other factors essential to an effective respiratory protection program. The Agency believes that failure to comply with any of these program requirements substantially increases the chance that the respirator selected by the employer will not protect employees against hazardous air contaminants because of respirator malfunction, excessive leakage, improper use, or some combination of these problems. Therefore, employers should expect respirators to provide effective employee protection against the serious health effects of hazardous airborne substances only when they use the respirators in the context of a comprehensive respiratory protection program. If respirators are to provide employees with at least the minimum level of exposure protection listed in the proposed APF table, employers must comply with the other respiratory protection requirements specified under OSHA's Respiratory Protection Standard at 29 CFR 1910.134.

In this rulemaking, OSHA also is proposing to supersede the existing APF requirements in its substance-specific standards. By superceding these requirements, the Agency expects that the benefits estimated for the proposed APFs under the Respiratory Protection Standard would be available to employers who must select respirators for employee use under the substance-specific standards. In addition, OSHA would be harmonizing the APF requirements in the substance-specific standards with the APF requirements proposed for its Respiratory Protection Standard. The Agency believes that harmonization would reduce confusion among the regulated community and aid in uniform application of APFs, while maintaining employee protection at levels at least as protective as the existing APF requirements.

VI. Summary of the Preliminary Economic and Regulatory Flexibility Screening Analysis

A. Introduction

OSHA's Preliminary Economic and Regulatory Flexibility Screening Analysis (PERFSA) addresses issues related to the costs, benefits, technological and economic feasibility, and economic impacts (including small business impacts) of the Agency's proposed Assigned Protection Factors (APF) rule. The Agency preliminarily determined that this rule is not an economically significant rule under Executive Order 12866. The economic analysis meets the requirements of both Executive Order 12866 and the Regulatory Flexibility Act (RFA; as amended in 1996). The PERFSA presents OSHA's full economic analysis and methodology. The Agency entered the complete PERFSA into the docket as Exhibit 6–1. The remainder of this section summarizes the results of that analysis.

The purpose of this PERFSA is to:

- Identify the establishments and industries potentially affected by the rule;
- Evaluate the costs employers would incur to meet the requirements of proposed APF rule;
- Estimate the benefits of the rule;
- Assess the economic feasibility of the rule for affected industries; and
- Determine the impacts of the rule on small entities and the need for a Regulatory Flexibility Analysis.

B. The Rule and Affected Respirator Users

OSHA's proposed APF rule would amend 29 CFR 1910.134(d)(3)(i)(A) of the Respiratory Protection Standard by specifying a set of APFs for each class of respirators. These APFs specify the highest multiple of a contaminant's permissible exposure limit (PEL) at which an employee can use a respirator safely. The proposed APFs would apply to respirator use for protection against overexposure to any substance regulated under 29 CFR 1910.1000. In addition, OSHA rules for specific substances under subpart Z (regulated under the authority of section 6(b)(5) of the OSH Act of 1970, 29 U.S.C. 655) specify APFs for respirators used for protection against these chemicals (hereafter referred to as section 6(b)(5) substances). The proposed rule would supercede most of these protection factors, and harmonize APFs for these substances with those for general respirator use.

OSHA based estimates of the number of employees using respirators and the corresponding number of respirator-using establishments on the recent NIOSH–BLS survey of respirator use and practices [1] (Ex. 6–3). The NIOSH–BLS survey provides up-to-date use estimates by two-digit industry sector and respirator type for establishments in which employees used respirators during the previous 12 months.[2] As shown in Table VI–1, an estimated 291,085 establishments reported respirator use in industries covered by OSHA's proposed regulation. Most of these establishments (208,528 or 71.6 percent) reported use of filtering facepieces. Substantial percentages of establishments also reported the use of half-mask and full facepiece nonpowered air-purifying respirators (49.0 and 21.4 percent, respectively). A smaller number of establishments reported use of powered air-purifying respirators (PAPRs) and supplied-air respirators (SARs). Fifteen percent of establishments with respirators (43,154) reported using PAPRs and 19 percent (56,022) reported using SARs. Table VI–2 presents estimates of the number of respirator users by two-digit industry sector. An estimated 2.3 million employees used filtering facepiece respirators in the last 12 months, while 1.5 million used half masks, and 0.7 million used full facepiece nonpowered air-purifying respirators. Fewer employees reported using PAPRs (0.3 million) and SARs (0.4 million). The industry-specific estimates show substantial respirator use in several industries, including the construction sector, several manufacturing industries (SICs 28, 33, 34, and 37), and Health services (SIC 80).

BILLING CODE 4510–26–P

[1] Preliminary results from the 2001 NIOSH–BLS "Survey of Respirator Use and Practices", in press. NIOSH commissioned the survey to be conducted by BLS, who also tabulated the data after completing the survey.

[2] The survey was conducted between August 2001 and January 2002. It asked: "During the past 12 months, how many of your current employees used respirators at your establishment?" It excluded voluntary use of respirators from detailed followup respirator use questions (Ex. 6–3).

Table VI-1

Estimated Number of Establishments With Respirator Users, by Type

SIC	Title	All Respirator Types	Nonpowered Air-Purifying				Supplied-Air	
			Filtering Facepiece	Half-mask	Full-face	PAPR	Total	SCBA
07	Agricultural services	7,566	6,466	1,142	33 *	105 *	240 *	164 *
08	Forestry	261	261	208	1 *	4 *	8 *	6 *
09	Fishing, hunting, and trapping	0	0	0	0	0	0	0
13	Oil and gas extraction	1,097	490	1,097	499	220	412	250
15	General building contractors	19,071	15,069	6,729	1,859	1,520	1,213	674
16	Heavy construction, except building	4,718	3,816	2,432	915	757	1,213	355
17	Special trade contractors	40,823	31,380	17,025	10,161	7,136	8,198	2,693
20	Food and kindred products	3,608	1,926	1,433	1,901	428	1,010	720
21	Tobacco products	30	17	13 *	0	20	20	20
22	Textile mill products	720	627	272	201	139	9	0
23	Apparel and other textile products	1,111	943 *	925	14 *	0	0	0
24	Lumber and wood products	1,995	1,326	1,273	353	197	168	106
25	Furniture and fixtures	2,053	1,745	1,469	317	80	83	28
26	Paper and allied products	649	448	329	293	122	193	153
27	Printing and publishing	124	105 *	45	2 *	0	3	0
28	Chemicals and allied products	5,052	3,047	2,896	2,698	910	2,077	1,632
29	Petroleum and coal products	432	64	189	200	99	249	151
30	Rubber and misc. plastics products	3,140	2,094	1,707	1,117	695	938	121
31	Leather and leather products	14 *	12 *	6 *	0	0	340	0
32	Stone, clay, and glass products	3,109	2,089	1,765	495	589	530	119
33	Primary metal industries	1,974	1,533	861	385	491	550	183
34	Fabricated metal products	7,374	4,601	4,988	1,103	1,510	2,456	361
35	Industrial machinery and equipment	7,458	4,425	4,151	1,700	1,093	2,131	441
36	Electronic and other electric equipment	2,731	1,676	1,412	656	341	525	252
37	Transportation equipment	3,788	1,957	2,158	1,656	738	1,225	337
38	Instruments and related products	1,282	711	1,033	736	468	568	155
39	Miscellaneous manufacturing industries	3,140	2,389	2,295	1,442	1,276	439	133
40	Railroad transportation	846	417	803	380	375	503	134
41	Local and interurban passenger transit	809	405	522	87 *	73	86	86
42	Trucking and warehousing	4,090	3,240	793	850	463	751	617
43	United States Postal Service	1,012 **	801 **	196 **	210 **	115 **	186 **	153 **
44	Water transportation	50 *	7 *	50 *	5 *	14 *	55	0
45	Transportation by air	48 *	7 *	48 *	5 *	13	10 *	0
46	Pipelines, except natural gas	252	35 *	180	74	69 *	96 *	91
47	Transportation services	8 *	1 *	7 *	0	2	7	0
48	Communications	100 *	14 *	99 *	11 *	27	18 *	0
49	Electric, gas, and sanitary services	5,085	1,856	2,975	1,486	821	2,737 *	1,956
50	Wholesale trade–durable goods	18,854	10,795	9,641	3,259	2,776	2,926	1,278
51	Wholesale trade–nondurable goods	8,573	4,660	3,619	4,303	2,192	3,045	2,533
52	Building materials and garden supplies	2,386	2,386	1,433	688 *	496	89	66
53	General merchandise stores	687 *	211 *	471 *	190 *	143 *	19 *	19 *
54	Food stores	2,394 *	736 *	1,642 *	662 *	498	67 *	67 *
55	Automotive dealers and service stations	10,243	7,139	6,127	2,271	2,403	3,211 *	1,848 *
56	Apparel and accessory stores	308 *	95 *	211 *	85 *	64	1,442	9
57	Furniture and homefurnishings stores	2,769	2,586	1,710	799 *	576 *	77 *	77 *
58	Eating and drinking places	0	0	0	0	0	0	0
59	Miscellaneous retail	978	679	700 *	282 *	203	27	27
60	Depository institutions	1,372 *	1,349 *	36 *	59 *	6 *	0	0
61	Nondepository institutions	299 *	294 *	8 *	13 *	1	0	0
62	Security and commodity brokers	278 *	274 *	7 *	12 *	1	0	0
63	Insurance carriers	442 *	435 *	62	19 *	2	0	0
64	Insurance agents, brokers, and services	744 *	732 *	19 *	32 *	3	0	0
65	Real estate	1,541	1,031	1,115	67 *	7	0	0
67	Holding and other investment offices	157 *	155 *	4 *	7 *	0	0	0
70	Hotels and other lodging places	1,326	1,326	621	531	7 *	0	0
72	Personal services	9,743	4,779	9,115	1,192	52 *	0	0
73	Business services	13,517	11,574	4,952	4,578	72 *	925	925
75	Auto repair, services, and parking	32,113	26,523	19,568	5,793	5,655	8,778 *	3,263 *
76	Miscellaneous repair services	3,375	3,375	1,199 *	313 *	18 *	4,259	0

Table VI-1

Estimated Number of Establishments With Respirator Users, by Type

SIC	Title	All Respirator Types	Nonpowered Air-Purifying				Supplied-Air	
			Filtering Facepiece	Half-mask	Full-face	PAPR	Total	SCBA
78	Motion pictures	17 *	8 *	6 *	2 *	0	2	0
79	Amusement and recreation services	1,612	1,348	1,184	150 *	9 *	0	0
80	Health services	16,486	14,625	1,991	1,307	879	303	260
81	Legal services	61 *	29 *	22 *	6 *	0	3	0
82	Educational services	564	267 *	431	52 *	3 *	0	0
83	Social services	6,668	5,812	2,217 *	579 *	36 *	0	0
84	Museums, botanical, zoological gardens	235	112 *	235	22 *	1 *	16	16
86	Membership organizations	533	252 *	383	49 *	3 *	0	0
87	Engineering and management services	10,292	4,004	7,297	1,800	5,117	254	254
89	Services, n.e.c.	6 *	3 *	2 *	0	0	3	0
	State and local governments	6,893 ***	4,936 ***	3,392 ***	1,479 **	1,023 **	1,327 **	530 **
	Totals	291,085	208,528	142,947	62,448	43,154	56,022	22,461

Source: Preliminary results from the 2001 NIOSH/BLS Survey of Respirator Use and Practices, in press. Benchmarked to 1997 establishment counts from U.S. Bureau of the Census, Statistics of U.S. Businesses, 1997.
* Suppressed industry-level estimates extrapolated from sector totals.
** Estimated based on respirator use patterns in SIC 42.
*** Estimated based on private-sector respirator use patterns.

Table VI-2

Estimated Number of Respirator Users, by Type

SIC	Title	Nonpowered Air-Purifying				Supplied-Air	
		Filtering Facepiece	Half-mask	Full-face	PAPR	Total	SCBA
07	Agricultural services	52,919	6,030 *	1,713 *	139 *	942 *	567 *
08	Forestry	765 *	208 *	23 *	3 *	32 *	20 *
09	Fishing, hunting, and trapping	0	0	0	0	0	0
13	Oil and gas extraction	12,086 *	14,108	1,587 *	6,242	3,071	2,405
15	General building contractors	77,827	36,770	7,752	2,750	6,047	4,744
16	Heavy construction, except building	31,518	30,503	8,747	4,929	8,652	1,933
17	Special trade contractors	259,240	247,483	156,559	49,285	81,803	17,005
20	Food and kindred products	31,317	15,454	13,559	2,465	9,693	7,093
21	Tobacco products	4,232 *	390 *	0	173	412	412
22	Textile mill products	31,996 *	3,198	3,510	3,243	41	0
23	Apparel and other textile products	3,326 *	2,444	213 *	0	0	0
24	Lumber and wood products	17,615 *	8,855	2,869	3,083	1,761	1,096
25	Furniture and fixtures	15,196	7,544	1,916 *	843	530	180
26	Paper and allied products	13,435	16,139	6,313	1,808	6,724	6,222
27	Printing and publishing	1,060 *	341 *	57 *	0	0	0
28	Chemicals and allied products	62,742	88,807	71,534	14,156	46,708	28,306
29	Petroleum and coal products	3,021 *	20,737	20,737	3,448	19,007	12,675
30	Rubber and misc. plastics products	20,523	15,285	5,902	1,729	5,803	1,383
31	Leather and leather products	101 *	8 *	0	0	0	0
32	Stone, clay, and glass products	34,520 *	17,862	5,433	2,595	2,025	705
33	Primary metal industries	42,014	50,150	8,770	6,316	12,168	5,827
34	Fabricated metal products	41,546	38,192	6,824	6,135	11,960	2,335
35	Industrial machinery and equipment	29,381	23,080	9,998	4,313	9,605	2,448
36	Electronic and other electric equipment	20,550	28,259	10,688	2,339	11,422	7,882
37	Transportation equipment	42,965	86,796	18,958	6,520	16,930	3,493
38	Instruments and related products	11,414	13,602	9,192	1,342	4,470	1,296
39	Miscellaneous manufacturing industries	18,431	15,452	2,401	6,554	2,337	555
40	Railroad transportation	9,190	128,159	4,124	1,267	1,215	0
41	Local and interurban passenger transit	5,589 *	2,536	203 *	467	587 *	419 *
42	Trucking and warehousing	26,422 *	9,486 *	7,702	4,299	4,879	2,446
43	United States Postal Service	6,536 **	2,347 **	1,905 **	1,064 **	1,207 **	605 **
44	Water transportation	973 *	20,591 *	143 *	20,591	64 *	0
45	Transportation by air	3,443 *	3,443 *	3,443 *	13	11,282	0
46	Pipelines, except natural gas	40 *	471 *	237 *	160	295	215
47	Transportation services	25 *	214 *	0	2	8 *	0
48	Communications	336 *	2,844 *	49 *	27	18 *	0
49	Electric, gas, and sanitary services	22,784	62,648	35,279	7,147	27,403	13,905
50	Wholesale trade–durable goods	35,783	22,876	16,548 *	4,734	6,936	5,072
51	Wholesale trade–nondurable goods	75,813 *	50,120	13,576	16,524	19,157	4,244
52	Building materials and garden supplies	34,024 *	8,296 *	4,061 *	496	89 *	66 *
53	General merchandise stores	1,008 *	1,008 *	190 *	1,008	19 *	19 *
54	Food stores	2,786 *	2,110 *	802 *	498	921	921
55	Automotive dealers and service stations	66,440	52,361	22,888	16,426	19,415	7,139
56	Apparel and accessory stores	867 *	345 *	85 *	64	1,442 *	9 *
57	Furniture and homefurnishings stores	4,556 *	2,723 *	799 *	1,494	77 *	77 *
58	Eating and drinking places	0	0	0	0	0	0
59	Miscellaneous retail	7,034 *	1,577 *	767 *	203	27 *	27 *
60	Depository institutions	1,933 *	1,790 *	59 *	57	0	0
61	Nondepository institutions	294 *	238 *	13 *	1	0	0
62	Security and commodity brokers	274 *	222 *	12 *	1	0	0
63	Insurance carriers	1,055 *	761 *	19 *	2	0	0
64	Insurance agents, brokers, and services	732 *	593 *	32 *	3	0	0

Table VI-2

Estimated Number of Respirator Users, by Type

SIC	Title	Nonpowered Air-Purifying				Supplied-Air	
		Filtering Facepiece	Half-mask	Full-face	PAPR	Total	SCBA
65	Real estate	5,760 *	10,161	218 *	7	0	0
67	Holding and other investment offices	595 *	165 *	7 *	0	0	0
70	Hotels and other lodging places	72,978 *	4,959	16,012 *	21 *	0	0
72	Personal services	10,771 *	19,239 *	12,074 *	188 *	0	0
73	Business services	78,724	45,461 *	24,576 *	261 *	30,116	29,997
75	Auto repair, services, and parking	115,969	56,952	15,320	12,868	23,583	6,787
76	Miscellaneous repair services	26,018	15,868 *	6,066 *	72 *	4,730	0
78	Motion pictures	859 *	650 *	243 *	0	0	0
79	Amusement and recreation services	14,915	7,217	3,650 *	26 *	0	0
80	Health services	637,932	123,157	64,125	69,893	4,230	3,829
81	Legal services	3,145 *	2,379 *	890 *	0 *	0	0
82	Educational services	29,197 *	2,891	8,259 *	226	0	0
83	Social services	7,868 *	5,128 *	1,813 *	129 *	0	0
84	Museums, botanical, zoological gardens	2,212 *	2,652 *	586 *	4 *	625	624
86	Membership organizations	1,035 *	1,276 *	326 *	9 *	0	0
87	Engineering and management services	69,687 *	42,515 *	19,530 *	6,350	3,354	3,354
89	Services, n.e.c.	715 *	928 *	0	0	0	0
	State and local governments	53,692 ***	35,756 ***	15,683 **	7,173 **	10,742 **	4,491 **
	Totals	2,319,745	1,542,809	677,569	304,186	434,565	192,824

Source: Preliminary results from the 2001 NIOSH/BLS Survey of Respirator Use and Practices, in press. Benchmarked to 1997 establishment counts from U.S. Bureau of the Census, Statistics of U.S. Businesses, 1997.
* Suppressed industry-level estimates extrapolated from sector totals.
** Estimated based on respirator use patterns in SIC 42.
*** Estimated based on private-sector respirator use patterns.

The proposed standard would have different impacts on employers using respirators to comply with OSHA substance-specific standards than for employers using respirators for other purposes. Therefore, OSHA used findings from the NIOSH–BLS survey of establishments that reported respirator use, by general respirator class, for protection against specific substances (*see* Table VI–3). OSHA applied these numbers to all respirator users and establishments within the industries that make up each sector to derive substance-specific estimates of respirator use. For those section 6(b)(5) substances not reported by NIOSH, OSHA used expert judgments of a consultant with experience in the respirator industry to estimate the percentage of establishments and employees that use respirators for protection against these chemicals (Ex. 6–2) (*see* Table VI–3).

Table VI-3A

Establishments Using Respirators to Protect Against Selected Substances

Sector/Respirator Class	Establishments with Respirators [a,b]	Arsenic		Asbestos		Cadmium		Lead		Cotton Dust [a]		Coke Oven Emissions	
Air-Purifying Respirators													
Agriculture	13,200	1,200	9.1%	1,200	9.1%	1,200	9.1%	1,100	8.3%	2,500	18.9%	1,000	7.6%
Mining	3,500	200	5.7%	400	11.4%	200	5.7%	300	8.6%	100	2.9%	100	2.9%
Construction	60,000	2,900	4.8%	6,000	10.0%	2,600	4.3%	7,900	13.2%	800	1.3%	900	1.5%
Manufacturing	46,200	2,500	5.4%	4,000	8.7%	2,700	5.8%	5,500	11.9%	1,400	3.0%	2,000	4.3%
Transportation and utilities	9,700	900	9.3%	2,200	22.7%	600	6.2%	1,400	14.4%	200	2.1%	200	2.1%
Wholesale trade	28,000	800	2.9%	2,600	9.3%	1,800	6.4%	3,700	13.2%	1,100	3.9%	700	2.5%
Retail trade	16,100	100	0.6%	300	1.9%	200	1.2%	600	3.7%	100	0.6%	0	0.0%
Finance, insurance, and real estate	4,200	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Services	86,600	1,600	1.8%	8,700	10.0%	1,500	1.7%	10,800	12.5%	1,000	1.2%	800	0.9%
Total	267,500	10,200	3.8%	25,400	9.5%	10,800	4.0%	31,300	11.7%	7,200	2.7%	5,700	2.1%
Supplied-Air Respirators													
Agriculture	500	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.05%	0	0.0%
Mining	600	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.00%	0	0.0%
Construction	10,500	1,700	16.2%	1,000	9.5%	1,600	15.2%	2,400	22.9%	0	0.00%	0	0.0%
Manufacturing	12,700	400	3.1%	600	4.7%	600	4.7%	1,100	8.7%	3	0.02%	200	1.6%
Transportation and utilities	3,800	100	2.6%	1,000	26.3%	100	2.6%	300	7.9%	1	0.02%	0	0.0%
Wholesale trade	6,800	0	0.0%	0	0.0%	0	0.0%	700	10.3%	1	0.01%	0	0.0%
Retail trade	2,900	0	0.0%	0	0.0%	0	0.0%	200	6.9%	0	0.00%	0	0.0%
Finance, insurance, and real estate	0	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Services	9,500	0	0.0%	0	0.0%	0	0.0%	400	4.2%	0	0.00%	0	0.0%
Total	47,300	2,200	4.7%	2,600	5.5%	2,300	4.9%	5,100	10.8%	6	NA	200	0.4%

Source: The 2001 NIOSH/BLS Survey of Respirator Use and Practices. "Respirator Use and Practice," Bureau of Labor Statistics Press Release, March 20, 2002.
[a] Estimates for supplied-air respirators provided by ERG consultant Jeffrey Stull of International Personal Protection, Inc.
[b] Establishment estimates as reported by NIOSH. These may differ from establishment estimates shown in Table VI-1 that have been benchmarked to the to 1997 establishment counts from U.S. Bureau of the Census, Statistics of U.S. Businesses, 1997.

Table VI-3B

Establishments Using Respirators to Protect Against Selected Substances

Sector/Respirator Class	Establishments with Respirators [a,b]	Acrylonitrile		Formaldehyde		DBCP		Ethylene oxide		Vinyl chloride		Butadiene	
Air-Purifying Respirators													
Agriculture	13,200	0	0.00%	66	0.50%	1	0.01%	0	0.00%	0	0.00%	0	0.00%
Mining	3,500	0	0.00%	4	0.10%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Construction	60,000	0	0.00%	480	0.80%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Manufacturing	46,200	92	0.20%	554	1.20%	5	0.01%	231	0.50%	462	1.00%	370	0.80%
Transportation and utilities	9,700	5	0.05%	1	0.01%	0	0.00%	1	0.01%	1	0.01%	0	0.00%
Wholesale trade	28,000	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Retail trade	16,100	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Finance, insurance, and real estate	4,200	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Services	86,600	0	0.00%	0	0.00%	0	0.00%	43	0.05%	0	0.00%	0	0.00%
Total	267,500	97	0.04%	1,105	0.4%	6	0.00%	275	0.1%	463	0.17%	370	0.14%
Supplied-Air Respirators													
Agriculture	500	0	0.00%	0	0.00%	0	0.01%	0	0.01%	0	0.00%	0	0.00%
Mining	600	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Construction	10,500	0	0.00%	5	0.05%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Manufacturing	12,700	64	0.50%	102	0.80%	1	0.01%	114	0.90%	152	1.20%	76	0.60%
Transportation and utilities	3,800	1	0.02%	1	0.02%	0	0.00%	1	0.02%	1	0.03%	0	0.01%
Wholesale trade	6,800	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Retail trade	2,900	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Finance, insurance, and real estate	0	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Services	9,500	0	0.00%	0	0.00%	0	0.00%	1	0.01%	0	0.00%	0	0.00%
Total	47,300	64	0.14%	108	0.2%	1	0.0%	116	0.2%	NA	NA	77	0.16%

Source: Estimates provided by ERG consultant Jeffery Stull of International Personal Protection, Inc.
[a] The 2001 NIOSH/BLS Survey of Respirator Use and Practices, "Respirator Use and Practice," Bureau of Labor Statistics Press Release, March 20, 2002.
[b] Establishment estimates as reported by NIOSH. These may differ from establishment estimates shown in Table VI-1 that have been benchmarked to the to 1997 establishment counts from U.S. Bureau of the Census, Statistics of U.S. Businesses, 1997.

BILLING CODE 4510-26-C

C. Compliance Costs

The proposal does not raise issues of technological feasibility because it requires only that employers use respirators already on the market. However, costs of the proposed APFs result from requiring some users to switch to more protective respirators than they currently use. When the proposed APF is lower than the baseline (current) APF, respirator users must upgrade to a more protective model. Both the 1992 ANSI Z88.2 Respiratory Protection Standard and the 1987 NIOSH RDL specify APFs for certain classes of respirators. The Agency assumed that employers currently use the ANSI or NIOSH APFs, or the APFs in the OSHA substance-specific standards, as applicable, to select respirators. While the Agency currently refers to the NIOSH RDL as its primary reference for APFs, in the absence of an applicable OSHA standard, this analysis assumes that, in most cases, adhering to the existing ANSI APFs fulfills employers' legal obligation for proper respirator selection under the existing Respiratory Protection Standard. However, in the case of full facepiece negative pressure respirators, the Agency has established that an APF of 50, as opposed to ANSI's APF of 100, is currently acceptable. In this regard, all but one of the substance-specific standards with APFs for full facepiece negative pressure respirators set an APF of 50. In addition, the existing respirator rule and its supporting preamble require that quantitative fit testing of full facepiece negative pressure respirators must achieve a fit factor of 500 when employees use them in atmospheres in excess of 10 times the PEL; this requirement assumes a safety factor of 10. Therefore, based on a fit factor of 500, such respirators would be safe to wear in atmospheres up to 50 times the PEL, consistent with similar requirements regarding respirator use found in existing standards for section 6(b)(5) chemicals.

For each respirator type, OSHA compared the proposed and current APF requirements, including existing APFs for section 6(b)(5) substances, and identified an incrementally more protective respirator model. To be adequate, the more protective respirator must have a proposed APF greater than the current APF.

1. Number of Users Required To Upgrade Respirator Models

For a given respirator type, the number of users required to shift to a more protective respirator depends on two factors: The total number of users of that type, and the percentage of those users for whom the ambient exposure level is greater than the proposed APF. While survey data are available to estimate the number of users, virtually no information is available in the literature that provides a basis for estimating the percentage of users required to upgrade respirators. The percentage of workers switching respirators would depend on the profile or frequency distribution of users' exposure to contaminants relative to the PEL. For example, the Agency proposed to lower the APF for full facepiece respirators used to protect against cotton dust from 100 to 50; accordingly, when workers have ambient exposures that are greater than 50 times the PEL, employers must upgrade the respirator from a full facepiece negative pressure respirator to a more protective respirator (*e.g.*, a PAPR).

Because of the absence of data on this issue, OSHA made several assumptions regarding the requirement to upgrade respirators. First, OSHA assumed that employers use respirators only when their employees have exposures above the PEL. Second, OSHA assumed employers use the most inexpensive respirator permitted. These assumptions most likely overestimate the cost of compliance because many employers require their employees to use respirators when OSHA does not require such use, or they require respirators with higher APFs than OSHA currently requires. As a result, this analysis assumes shifts in respirators that employers may have implemented already.

The Agency estimated distributions of exposures above the PELs based on reports from its Integrated Management Information System describing workplace monitoring of section 6(b)(5) toxic substances performed during OSHA health inspections. Of the 9,095 samples reported above the PELs, 68.0 percent reported exposures between 1 and 5 times the PEL, 13.1 percent found exposures between 5 and 10 times the PEL, and 9.5 percent documented exposures between 10 and 25 times the PEL. Exposures for the remaining 9.4 percent of the samples were greater than 25 times the PEL. Based on these data, OSHA modeled the current exposure distribution for each respirator type.

2. Incremental Costs of Upgrading Respirator Models

OSHA also analyzed the costs of upgrading from the current respirator to a more protective alternative. In doing so, OSHA estimated the annualized unit costs for each respirator type, including equipment and accessory costs, and the costs for training and fit testing. OSHA then calculated the incremental cost for each combination of upgrades from an existing model to a more protective one, taking into account the effect of replacement before the end of the respirator's useful life. These annualized costs range from $49.98 (for upgrading from a supplied-air, demand mode, full facepiece respirator to a supplied-air, continuous flow, half-mask respirator) to $963.73 (for upgrading from a nonpowered, air-purifying full facepiece respirator to a full facepiece PAPR).

In certain instances, workers who use respirators under the substance-specific standards may have to upgrade to a SAR with an auxiliary escape SCBA. Several substance-specific standards currently specify SARs for exposures that exceed 1,000, times the PEL.[3] OSHA believes that workers are unlikely to regularly use respirators at such extreme exposure levels, *i.e.*, they are most likely to use them only in exceptional, possibly emergency-related situations. Furthermore, exposures at levels more than 1,000 times the PEL would generally be at or above levels deemed immediately dangerous to life or health (IDLH), so employers already are required by the Respiratory Protection Standard to provide each worker with a respirator that has SCBA capability. For these reasons, this PERFSA estimated no impacts for these situations.[4]

3. Aggregate Compliance Costs

For each respirator type affected by the proposed regulation, OSHA combined the incremental costs of upgrading to a more protective respirator, the estimated share of users forecast to upgrade, and the number of users involved to estimate the compliance costs associated with each respirator type. Table VI–4 shows estimated compliance costs for OSHA's proposed APF rule of $4.6 million. The proposed rule would require 1,918 users of nonpowered air-purifying respirators to upgrade to some respirator more expensive than they are now using at a cost of $1.8 million. The Agency estimates that 22,848 PAPR users would upgrade their respirators at a cost of $2.3 million. A relatively small number of SAR users (5,110) would upgrade to more expensive respirators at a cost of

[3] These standards regulate cotton dust, coke oven emissions, acrylonitrile, arsenic, DBCP, ethylene oxide, and lead.

[4] Paragraph (d)(2) of the Respiratory Protection Standard requires employers to provide either a pressure demand SCBA or a pressure demand SAR with auxiliary SCBA to any employee who works in IDLH atmospheres.

$0.4 million. Industry-specific compliance costs vary according to the number of respirator users and the proportion of these users affected by the proposed rule. Industries with relatively large compliance costs include SIC 17, Special trade contractors ($0.8 million), and SIC 80, Health services ($0.8 million). Potentially offsetting these costs are a limited number of cases where employers would be allowed to shift to a less expensive respirator.

As discussed previously, however, the Agency believes the actual costs of the proposal almost certainly are overestimated. The cost analysis assumes all respirator wearers have levels of exposures that require the particular respirator they are using. Under this assumption, OSHA estimates over 15,000 employees would be allowed to safely shift to a less expensive respirator, which could lead to cost savings for the employer. Such potential cost savings are not accounted for in this cost analysis.

In many cases, however, employers use respirators when respirators are not required by OSHA, or use respirators more protective than required by OSHA. As a result, OSHA's cost analysis overestimates the number of employees who are affected by the standard, and therefore overestimates costs associated with the standard.

BILLING CODE 4510-26-P

Table VI-4

Summary of Costs by Respirator Class

SIC	Industry	Nonpowered Air-Purifying Respirators			Powered Air-Purifying Respirators			Supplied-Air Respirators			Total Cost
		Users [a]	No. Upgrading	Cost	Users [a]	No. Upgrading	Cost	Users [a,b]	No. Upgrading	Cost	
07	Agricultural services	60,662	46	$43,030	139	7	$657	467	2	$61	$43,768
08	Forestry	996	0	$0	3	0	$0	16	0	$0	$0
09	Fishing, hunting, and trapping	0	0	$0	0	0	$0	0	0	$0	$0
13	Oil and gas extraction	27,781	6	$6,016	6,848	415	$50,887	666	12	$1,399	$58,302
15	General building contractors	122,350	15	$13,713	4,355	288	$30,519	5,846	80	$9,067	$53,300
16	Heavy construction, except building	70,798	17	$15,472	7,342	380	$38,428	6,719	90	$9,445	$63,344
17	Special trade contractors	663,282	296	$276,842	102,625	3,933	$428,165	86,591	1,007	$87,432	$792,539
20	Food and kindred products	60,330	58	$54,509	4,105	107	$12,643	2,600	60	$6,620	$73,772
21	Tobacco products	4,021	0	$0	271	0	$0	121	3	$125	$125
22	Textile mill products	38,704	15	$14,112	5,071	36	$4,153	164	4	$190	$18,455
23	Apparel and other textile products	5,984	0	$0	0	0	$0	0	0	$0	$0
24	Lumber and wood products	29,339	12	$11,535	3,178	102	$12,283	782	11	$535	$24,353
25	Furniture and fixtures	24,657	8	$7,703	844	15	$1,847	521	5	$387	$9,937
26	Paper and allied products	35,888	27	$25,382	2,086	73	$7,507	2,862	57	$2,853	$35,742
27	Printing and publishing	1,458	0	$0	0	0	$0	3	0	$0	$0
28	Chemicals and allied products	223,083	307	$287,588	18,791	238	$25,243	27,066	443	$22,139	$334,970
29	Petroleum and coal products	44,494	89	$83,367	5,207	35	$4,099	6,333	147	$8,052	$95,518
30	Rubber and misc. plastics products	41,711	25	$23,728	4,437	43	$5,152	6,253	84	$8,583	$37,463
31	Leather and leather products	108	0	$0	0	0	$0	340	11	$1,651	$1,651
32	Stone, clay, and glass products	57,815	23	$21,844	4,123	131	$13,891	1,848	5	$248	$35,783
33	Primary metal industries	100,933	38	$35,257	7,163	270	$27,951	7,061	80	$6,326	$69,534
34	Fabricated metal products	86,562	29	$27,435	8,885	152	$15,766	12,536	93	$8,955	$52,156
35	Industrial machinery and equipment	62,459	43	$40,196	5,501	38	$4,362	8,549	51	$4,156	$48,714
36	Electronic and other electric equipment	59,497	46	$42,968	2,967	99	$11,927	5,419	100	$6,441	$61,337
37	Transportation equipment	148,719	81	$78,217	9,511	125	$14,084	18,614	241	$24,306	$114,600
38	Instruments and related products	34,208	39	$36,953	2,412	17	$2,073	4,737	50	$3,320	$42,345
39	Miscellaneous manufacturing industries	36,285	10	$9,653	10,640	539	$64,860	2,191	22	$1,915	$76,427
40	Railroad transportation	141,472	12	$11,280	1,267	52	$5,395	1,215	27	$2,722	$19,397
41	Local and interurban passenger transit	8,327	0	$0	1,086	86	$8,330	168	2	$124	$8,453
42	Trucking and warehousing	43,611	22	$21,069	6,492	326	$39,424	5,832	104	$9,349	$69,843
43	United States Postal Service	10,789	6	$5,212	1,606	80	$9,677	1,443	25	$2,204	$17,093
44	Water transportation	21,707	0	$0	21,490	2,368	$280,046	64	1	$197	$290,243
45	Transportation by air	10,328	10	$9,417	17	0	$0	12,008	225	$11,267	$20,684
46	Pipelines, except natural gas	747	0	$0	237	3	$312	80	1	$58	$369
47	Transportation services	240	0	$0	2	0	$0	8	0	$0	$0
48	Communications	3,229	0	$0	37	0	$0	18	0	$0	$0
49	Electric, gas, and sanitary services	120,711	103	$98,504	7,545	65	$7,532	14,630	249	$15,425	$119,461
50	Wholesale trade--durable goods	75,206	92	$86,246	5,430	52	$8,040	5,217	107	$8,545	$100,831
51	Wholesale trade--nondurable goods	139,508	76	$70,757	16,524	1,788	$164,785	15,428	38	$4,140	$239,682
52	Building materials and garden supplies	46,342	4	$3,347	652	19	$1,842	89	3	$494	$5,683
53	General merchandise stores	2,206	0	$0	1,111	32	$2,935	0	0	$0	$2,935
54	Food stores	5,698	0	$0	854	19	$1,848	0	0	$0	$1,848
55	Automotive dealers and service stations	141,690	20	$18,860	21,635	177	$19,674	17,645	435	$21,720	$60,454

Table VI-4

Summary of Costs by Respirator Class

SIC	Industry	Nonpowered Air-Purifying Respirators			Powered Air-Purifying Respirators			Supplied-Air Respirators			Total Cost
		Users [a]	No. Upgrading	Cost	Users [a]	No. Upgrading	Cost	Users [a,b]	No. Upgrading	Cost	
56	Apparel and accessory stores	1,297	0	$0	110	1	$105	1,442	56	$8,561	$8,667
57	Furniture and homefurnishings stores	8,078	0	$0	2,989	71	$7,253	0	0	$0	$7,253
58	Eating and drinking places	0	0	$0	0	0	$0	0	0	$0	$0
59	Miscellaneous retail	9,376	0	$0	349	7	$699	0	0	$0	$699
60	Depository institutions	3,782	0	$0	57	0	$0	0	0	$0	$0
61	Nondepository institutions	545	0	$0	1	0	$0	0	0	$0	$0
62	Security and commodity brokers	506	0	$0	2	0	$0	0	0	$0	$0
63	Insurance carriers	1,835	0	$0	3	0	$0	0	0	$0	$0
64	Insurance agents, brokers, and service	1,357	0	$0	7	0	$0	0	0	$0	$0
65	Real estate	16,139	0	$0	0	0	$0	0	0	$0	$0
67	Holding and other investment offices	766	0	$0	0	0	$0	0	0	$0	$0
70	Hotels and other lodging places	93,949	26	$24,531	21	0	$0	0	0	$0	$24,531
72	Personal services	42,084	20	$18,497	188	0	$0	0	0	$0	$18,497
73	Business services	148,761	40	$37,651	261	0	$0	119	3	$132	$37,783
75	Auto repair, services, and parking	188,241	25	$23,471	28,435	1,308	$141,436	27,832	815	$91,407	$256,314
76	Miscellaneous repair services	47,952	10	$9,293	464	0	$0	4,730	179	$25,988	$35,281
78	Motion pictures	1,752	0	$0	0	0	$0	2	0	$0	$0
79	Amusement and recreation services	25,782	6	$5,592	26	0	$0	0	0	$0	$5,592
80	Health services	825,213	105	$98,238	78,349	6,094	$740,937	1,355	14	$691	$839,865
81	Legal services	6,414	1	$1,363	0	0	$0	3	0	$0	$1,363
82	Educational services	40,347	14	$12,652	226	0	$0	0	0	$0	$12,652
83	Social services	14,809	3	$2,778	129	0	$0	0	0	$0	$2,778
84	Museums, botanical, zoological gardens	5,450	0	$0	4	0	$0	2	0	$0	$0
86	Membership organizations	2,838	0	$0	9	0	$0	0	0	$0	$0
87	Engineering and management services	131,731	32	$29,919	12,065	734	$67,171	1,114	28	$1,399	$98,488
89	Services, n.e.c.	1,643	0	$0	0	0	$0	3	0	$0	$0
	State and local governments	105,131	60	$56,002	10,094	525	$53,472	7,598	133	10,662	$120,137
	Totals	4,540,123	1,916	$1,798,299	436,496	22,848	$2,345,407	325,898	5,110	$429,315	$4,571,022

Source: OSHA estimates based on preliminary results from the 2001 NIOSH/BLS Survey of Respirator Use and Practices, in press.
[a] Includes users who use more than one type of respirator. For this reason, some respirator users may be double counted, and the totals may exceed the number of users for the respirator class.
[b] Excludes employees exclusively using SCBAs.

BILLING CODE 4510-26-C

D. Benefits

The benefits that would accrue to respirator users and their employers take several forms. The proposed standard would benefit workers by reducing their exposures to respiratory hazards. Improved respirator selection would augment previous improvements to the Respiratory Protection Standard, such as better fit-test procedures and improved training, contributing substantially to greater worker protection. Estimates of benefits are difficult to calculate because of uncertainties regarding the existing state of employer respirator-selection practices and the number of covered work-related illnesses. At the time of the 1998 revisions to the Respiratory Protection Standard, the Agency estimated that the standard would avert between 843 and 9,282 work-related injuries and illnesses annually, with a best estimate (expected value) of 4,046 averted illnesses and injuries annually (63 FR 1173). In addition, OSHA estimated that the standard would prevent between 351 and 1,626 deaths annually from cancer and many other chronic diseases, including cardiovascular disease, with a best estimate (expected value) of 932 averted deaths from these causes. The APFs proposed in this rulemaking help ensure these benefits are achieved, as well as provide an additional degree of protection. The proposed APFs would reduce employee exposures to several section 6(b)(5) chemicals covered by standards with outdated APF criteria, thereby reducing exposures to chemicals such as asbestos, lead, cotton dust, and arsenic.[5] While the Agency did not quantify these benefits, it estimates that 29,655 employees would have a higher degree of respiratory protection under the proposed APF standard. Of these employees, an estimated 8,384 have exposure to lead, 7,287 to asbestos, and 3,747 to cotton dust, all substances with substantial health risks.

In addition to health benefits, OSHA believes other benefits would result from the harmonization of APF specifications, thereby making compliance with the respirator rule easier for employers. Employers also would benefit from greater administrative ease in proper respirator selection. Employers would no longer have to consult several sources and several OSHA standards to determine the best choice of respirator, but could make their choices based on a single, easily found regulation. Some employers who now hire consultants to aid in choosing the proper respirator should be able to make this choice on their own with the aid of the proposed rule. In addition to having only one set of numbers (*i.e.*, APFs) to assist them with respirator selection for nearly all substances, some employers may be able to streamline their respirator stock by using one respirator class to meet their respirator needs instead of several respirator classes. The increased ease of compliance would also yield additional health benefits to employees using respirators.

The proposed APFs would clarify when employers can safely place employees in respirators that impose less stress on the cardiovascular system (*e.g.*, filtering facepiece respirators). Many of these alternative respirators may have the additional benefit of being less expensive to purchase and operate. As previously discussed, OSHA estimates that over 15,000 employees currently use respirators that would fall in this group (*i.e.*, shift to a less expensive respirator).

E. Economic Feasibility

OSHA is required to set standards that are feasible. To demonstrate that a standard is feasible, the courts have held that OSHA must "construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry" (*United Steelworkers of America, AFL–CIO–CLC* v. *Marshall* (the "Lead" decision), 647 F2d 1189 (DC Cir. 1980)).

OSHA conducted its analysis of economic feasibility on an establishment basis. Accordingly, for each affected industry, the Agency compared estimates of per-establishment annualized compliance costs with per-establishment estimates of revenues and per-establishment estimates of profits. It used two worst-case assumptions regarding the ability of employers to pass the costs of compliance through to their customers: The no-cost-pass-through assumption, and the full-cost-pass-through assumption. Based on the results of these comparisons, which define the universe of potential impacts of the proposed APFs, OSHA then assessed the proposal's economic feasibility for all affected establishments, *i.e.*, those covered by the proposal.

The Agency assumed that establishments falling within the scope of the proposal would have the same average sales and profits as other establishments in their industries. OSHA believes this assumption is reasonable because no evidence is available showing that the financial characteristics of those firms with employees who use respirators are different from firms that do not use respirators. Absent such evidence, OSHA relied on the best available financial data (those from the Bureau of the Census (Ex. 6–4) and Robert Morris Associates (Ex. 6–5)), used a commonly accepted methodology to calculate industry averages, and based its analysis of the significance of the projected economic impacts and the feasibility of compliance on these data.

The analysis of the potential impacts of the proposed APF standard on before-tax profits and sales shown in Table VI–5 is a "screening analysis," so called because it simply measures costs as a percentage of pre-tax profits and sales under the worst-case assumptions discussed above, but does not predict impacts on these before-tax profits or sales. OSHA used the screening analysis to determine whether the compliance costs potentially associated with the proposed standard could lead to significant impacts on all affected establishments. The actual impact of the proposal on the profit and sales of establishments in a specific industry would depend on the price elasticity of demand for the products or services of these establishments.

[5] In the 1998 rulemaking revising the Respiratory Protection Standard, the Final Economic Analysis noted that the standard would not directly affect the benefits for the estimated 5% of employees who use respirators under OSHA's substance-specific health standards (except to the extent that uniformity of provisions improve compliance). Therefore, the Agency likely over-estimated the benefits of that rulemaking since the standard did not affect directly the type of respirator used by those employees (63 FR 1173). Conversely, this proposed rulemaking directly addresses the APF provisions of the substance-specific standards; therefore, this proposal would affect directly the respirators used by employees covered by these standards.

Table VI–5 shows the economic impacts of these costs. For each industry, OSHA constructed the average compliance cost per affected establishment and compared it to average revenues and average profits.[6] These costs are quite small, *i.e.*, less than 0.005 percent of revenues; the one major exception is SIC 44 (Water transportation), for which OSHA estimated the costs impacts to be 0.16 percent of revenues. When the Agency compared average compliance costs with profits, the costs also are small, *i.e.*, less than 0.17 percent; again, the major exception was SIC 44, which had an estimated impact of 2.12 percent of profits.[7] Based on the data for establishments in all industries shown in Table VI–5, OSHA concludes that the APF proposal is economically feasible for the affected establishments.

BILLING CODE 4510–26–P

[6] OSHA defines "affected establishment" as any facility that uses respirators, as represented in the NIOSH–BLS survey data.

[7] For some industries, such as SIC 44, data from the NIOSH–BLS survey were suppressed due to low response rates. In these cases, the Agency, for the purposes of assessing economic feasibility, imputed broader sector-level data from the survey to form an estimate of respirator use. This procedure may result in overestimating the impact of the proposal in some industries. See the full PEA (Ex. 6–1) for further details.

Table VI-5

Costs as a Percentage of Affected Establishment Revenues and Profits
(Based on Average Compliance Costs)

SIC	Industry	Revenues ($1,000)	Establishments	Average Revenues ($1,000)	Profit Rate	Average Profits	Affected Establishments	Average Compliance Costs to Affected Establishments	Compliance Costs as a % of Revenues	Compliance Costs as a % of Profits
07	Agricultural services	$46,787,618	111,841	$418.4	6.02%	$25,183	7,566	$5.78	0.00%	0.02%
08	Forestry	$2,533,391	2,689	$942.1	10.30%	$97,040	261	$0.00	0.00%	0.00%
09	Fishing, hunting, and trapping	$2,066,630	2,443	$845.9	5.80%	$49,099	0	NA	NA	NA
13	Oil and gas extraction	$118,956,993	17,957	$6,624.5	8.65%	$573,023	1,097	$53.14	0.00%	0.01%
15	General building contractors	$354,383,931	197,940	$1,790.4	4.00%	$71,614	19,071	$2.79	0.00%	0.00%
16	Heavy construction, except building	$129,200,925	37,918	$3,407.4	4.00%	$136,295	4,718	$13.43	0.00%	0.01%
17	Special trade contractors	$351,559,520	433,522	$810.9	4.00%	$32,438	40,823	$18.41	0.00%	0.06%
20	Food and kindred products	$488,381,169	22,317	$21,883.8	3.46%	$757,938	3,608	$20.45	0.00%	0.00%
21	Tobacco products	$36,626,849	165	$197,983.0	4.02%	$7,953,335	30	$4.18	0.00%	0.00%
22	Textile mill products	$81,180,135	6,464	$12,558.8	2.77%	$347,644	720	$25.63	0.00%	0.01%
23	Apparel and other textile products	$81,000,847	24,460	$3,311.6	2.56%	$84,716	1,111	$0.00	0.00%	0.00%
24	Lumber and wood products	$111,381,076	37,716	$2,953.2	3.90%	$115,143	1,995	$12.21	0.00%	0.01%
25	Furniture and fixtures	$61,269,677	12,386	$4,945.9	3.51%	$173,603	2,053	$4.84	0.00%	0.00%
26	Paper and allied products	$163,517,039	6,863	$23,825.9	4.50%	$1,072,385	649	$55.10	0.00%	0.01%
27	Printing and publishing	$209,740,895	63,986	$3,277.9	3.80%	$124,545	124	$0.00	0.00%	0.00%
28	Chemicals and allied products	$406,616,253	13,691	$29,699.5	4.49%	$1,332,353	5,052	$66.30	0.00%	0.01%
29	Petroleum and coal products	$178,393,963	2,459	$72,547.4	2.99%	$2,168,714	432	$221.09	0.00%	0.01%
30	Rubber and misc. plastics products	$160,224,448	17,343	$9,238.6	4.02%	$371,834	3,140	$11.93	0.00%	0.00%
31	Leather and leather products	$10,125,106	1,922	$5,268.0	2.20%	$115,725	14	$119.63	0.00%	0.10%
32	Stone, clay, and glass products	$87,857,611	17,167	$5,117.8	4.93%	$252,139	3,109	$11.51	0.00%	0.00%
33	Primary metal industries	$189,955,505	6,992	$27,124.6	4.52%	$1,225,408	1,974	$35.23	0.00%	0.00%
34	Fabricated metal products	$231,787,815	39,399	$5,883.1	4.55%	$267,453	7,374	$7.07	0.00%	0.00%
35	Industrial machinery and equipment	$410,878,326	57,563	$7,137.9	4.05%	$288,782	7,458	$6.53	0.00%	0.00%
36	Electronic and other electric equipment	$349,240,947	18,619	$18,757.2	5.59%	$1,048,780	2,731	$22.46	0.00%	0.00%
37	Transportation equipment	$522,250,746	13,210	$39,534.5	3.74%	$1,479,823	3,788	$30.26	0.00%	0.00%
38	Instruments and related products	$158,693,978	12,385	$12,813.4	5.06%	$648,479	1,282	$33.03	0.00%	0.01%
39	Miscellaneous manufacturing industries	$52,171,899	18,711	$2,788.3	3.80%	$106,073	3,140	$24.34	0.00%	0.02%
40	Railroad transportation	$36,900,000	4,802	$7,684.3	11.08%	$851,036	846	$24.34	0.00%	0.00%
41	Local and interurban passenger transit	$18,741,822	20,067	$934.0	4.51%	$42,101	809	$10.45	0.00%	0.02%
42	Trucking and warehousing	$197,132,916	135,674	$1,450.9	3.91%	$56,783	4,080	$17.08	0.00%	0.03%
43	United States Postal Service	$56,600,000	33,613	$1,683.9	NA	NA	1,012	$0.00	0.00%	NA
44	Water transportation	$34,059,390	9,392	$3,628.4	7.48%	$271,426	50	$5,755.39	0.16%	2.12%
45	Transportation by air	$175,932,797	13,694	$12,847.4	3.62%	$465,132	48	$427.74	0.00%	0.09%
46	Pipelines, except natural gas	$7,830,792	971	$8,064.7	6.55%	$528,055	252	$1.47	0.00%	0.00%
47	Transportation services	$39,490,484	52,884	$746.7	3.39%	$25,322	8	$0.00	0.00%	0.00%
48	Communications	$343,904,510	46,030	$7,471.3	5.58%	$416,933	100	$0.00	0.00%	0.00%
49	Electric, gas, and sanitary services	$446,859,099	22,716	$19,671.6	10.37%	$2,040,874	5,085	$23.49	0.00%	0.00%
50	Wholesale trade--durable goods	$2,290,609,328	341,942	$6,698.8	2.54%	$170,449	18,854	$5.35	0.00%	0.00%
51	Wholesale trade--nondurable goods	$1,931,943,629	189,025	$10,220.6	4.46%	$456,162	8,573	$27.96	0.00%	0.01%
52	Building materials and garden supplies	$152,492,069	70,064	$2,178.5	2.37%	$51,621	2,386	$2.38	0.00%	0.00%
53	General merchandise stores	$334,801,710	36,481	$9,177.4	2.70%	$248,028	687	$4.27	0.00%	0.00%
54	Food stores	$424,619,077	179,120	$2,370.6	1.41%	$33,443	2,394	$0.77	0.00%	0.00%
55	Automotive dealers and service stations	$787,955,460	202,525	$3,890.7	1.45%	$56,246	10,243	$5.90	0.00%	0.01%
56	Apparel and accessory stores	$117,638,184	126,656	$930.4	1.85%	$17,181	306	$28.16	0.00%	0.16%

Table VI-5

Costs as a Percentage of Affected Establishment Revenues and Profits
(Based on Average Compliance Costs)

SIC	Industry	Revenues ($1,000)	Establishments	Average Revenues ($1,000)	Profit Rate	Average Profits	Affected Establishments	Average Compliance Costs to Affected Establishments	Compliance Costs as a % of Revenues	Compliance Costs as a % of Profits
57	Furniture and homefurnishings stores	$138,532,297	117,939	$1,174.6	2.28%	$26,812	2,769	$2.62	0.00%	0.01%
58	Eating and drinking places	$249,718,654	484,719	$515.2	3.00%	$15,447	0	NA	NA	NA
59	Miscellaneous retail	$372,192,817	374,786	$993.1	2.49%	$24,711	978	$0.71	0.00%	0.00%
60	Depository institutions	$626,235,388	115,268	$5,432.9	10.80%	$586,749	1,372	$0.00	0.00%	0.00%
61	Nondepository institutions	$208,902,233	53,365	$3,914.6	15.05%	$589,102	299	$0.00	0.00%	0.00%
62	Security and commodity brokers	$267,894,402	50,032	$5,354.5	13.32%	$712,970	278	$0.00	0.00%	0.00%
63	Insurance carriers	$977,328,464	41,776	$23,394.5	6.82%	$1,596,288	442	$0.00	0.00%	0.00%
64	Insurance agents, brokers, and service	$76,085,799	132,265	$575.3	6.83%	$39,261	744	$0.00	0.00%	0.00%
65	Real estate	$191,986,451	257,248	$746.3	13.31%	$99,329	1,541	$0.00	0.00%	0.00%
67	Holding and other investment offices	$119,637,007	28,175	$4,246.2	24.01%	$1,019,487	157	$0.00	0.00%	0.00%
70	Hotels and other lodging places	$103,075,607	59,897	$1,720.9	6.96%	$119,782	1,326	$18.50	0.00%	0.02%
72	Personal services	$53,965,771	208,546	$258.8	5.86%	$15,151	9,743	$1.90	0.00%	0.01%
73	Business services	$538,701,000	410,246	$1,313.1	4.79%	$62,857	13,517	$2.60	0.00%	0.00%
75	Auto repair, services, and parking	$102,979,805	194,877	$526.4	4.39%	$23,214	32,113	$7.98	0.00%	0.03%
76	Miscellaneous repair services	$39,030,526	68,439	$570.3	5.44%	$31,000	3,375	$10.45	0.00%	0.03%
78	Motion pictures	$72,351,766	46,844	$1,544.5	5.14%	$79,355	17	$0.00	0.00%	0.00%
79	Amusement and recreation services	$94,616,288	99,642	$951.6	4.28%	$40,728	1,612	$3.47	0.00%	0.01%
80	Health services	$624,840,187	505,876	$1,630.5	6.17%	$100,610	16,486	$50.94	0.00%	0.05%
81	Legal services	$124,335,948	170,271	$730.2	17.50%	$127,789	61	$22.44	0.00%	0.02%
82	Educational services	$136,669,596	50,146	$2,725.4	8.14%	$221,895	564	$22.44	0.00%	0.01%
83	Social services	$95,229,314	165,519	$575.3	4.44%	$25,535	6,668	$0.42	0.00%	0.00%
84	Museums, botanical, zoological gardens	$6,636,189	5,466	$1,214.1	21.45%	$260,421	235	$0.00	0.00%	0.00%
86	Membership organizations	$111,881,925	249,022	$449.3	7.21%	$32,400	533	$0.00	0.00%	0.00%
87	Engineering and management services	$332,197,903	301,160	$1,103.1	6.39%	$70,494	10,292	$9.57	0.00%	0.01%
89	Services, n.e.c.	$20,335,429	17,650	$1,152.1	6.80%	$78,346	6	$0.00	0.00%	0.00%
	State and local governments	$763,300,000	167,788	$4,549.2	NA	NA	6,893	$17.43	0.00%	NA
	Totals	$19,043,065,527	7,060,972	$2,696.9	4.87%	$131,423	291,085	$15.70	0.00%	0.01%

Source: OSHA Office of Regulatory Analysis. See full PEA (Ex. 6-1).

F. Economic Impacts to Small Entities

OSHA also estimated the economic impacts of the proposed rule on affected entities with fewer than 20 employees, and for affected small entities as defined by the Small Business Administration (SBA). Table VI–6 shows the estimated economic impacts for small entities with fewer than 20 employees: Average compliance costs by industry are less than 0.005 percent of average revenues, and less than 0.19 percent of profits, in all industries. Table VI–7 presents the economic impacts for small entities as a whole, as defined by SBA. For these firms, average compliance costs are less than 0.005 percent of average revenues and less than 0.03 percent of average profits. Thus, the Agency projects no significant impacts from the proposed rule on small entities.

When costs exceed one percent of revenues or five percent of profits, OSHA considers the impact on small entities significant for the purposes of complying with the RFA. For all classes of affected small entities, the Agency found that the costs were less than one percent of revenues and five percent of profits. Therefore, OSHA certifies that this proposed regulation would not have a significant impact on a substantial number of small entities.

Table VI-6

Costs as a Percentage of Revenues and Profits for Affected Small Entities with Fewer than 20 Employees (Based on Average Compliance Costs)

SIC	Industry	Revenues ($1,000)	Entities	Average Revenues ($1,000)	Profit Rate	Average Profits	Affected Entities		Average Compliance Costs to Affected Entities	Compliance Costs as a % of Revenues	Compliance Costs as a % of Profits
07	Agricultural services	$28,456,904	104,822	$271.5	6.02%	$16,339	6,514	6.2%	$0.09	0.00%	0.00%
08	Forestry	$1,005,916	2,225	$452.1	10.30%	$46,566	212	9.5%	$0.00	0.00%	0.00%
09	Fishing, hunting, and trapping	$934,691	2,327	$401.7	5.80%	$23,313	0	0.0%	NA	NA	NA
13	Oil and gas extraction	$9,568,821	13,330	$717.8	8.65%	$62,093	622	4.7%	$0.94	0.00%	0.00%
15	General building contractors	$140,742,413	185,770	$757.6	4.00%	$30,305	17,656	9.5%	$1.06	0.00%	0.00%
16	Heavy construction, except building	$25,680,517	29,075	$883.3	4.00%	$35,330	2,526	8.7%	$0.20	0.00%	0.00%
17	Special trade contractors	$156,222,049	395,090	$395.4	4.00%	$15,816	35,004	8.9%	$4.09	0.00%	0.03%
20	Food and kindred products	$13,034,058	10,852	$1,201.1	3.46%	$41,599	504	4.6%	$8.59	0.00%	0.02%
21	Tobacco products	$36,982	58	$637.6	4.02%	$25,614	6	10.6%	$0.00	0.00%	0.00%
22	Textile mill products	$2,804,537	3,026	$926.6	2.77%	$25,655	96	3.2%	$0.00	0.00%	0.00%
23	Apparel and other textile products	$7,444,651	16,162	$460.6	2.56%	$11,784	258	1.6%	$0.00	0.00%	0.00%
24	Lumber and wood products	$15,544,934	29,353	$529.6	3.90%	$20,648	430	1.5%	$2.22	0.00%	0.01%
25	Furniture and fixtures	$4,131,575	8,093	$510.5	3.51%	$17,919	401	5.0%	$2.45	0.00%	0.01%
26	Paper and allied products	$2,406,977	1,922	$1,252.3	4.50%	$56,366	43	2.2%	$0.00	0.00%	0.00%
27	Printing and publishing	$22,196,893	47,557	$466.7	3.80%	$17,734	26	0.1%	$0.00	0.00%	0.00%
28	Chemicals and allied products	$8,762,403	5,616	$1,560.3	4.49%	$69,995	1,610	28.7%	$6.89	0.00%	0.01%
29	Petroleum and coal products	$2,213,850	650	$3,405.9	2.99%	$101,816	92	14.2%	$10.74	0.00%	0.01%
30	Rubber and misc. plastics products	$7,183,667	7,483	$960.0	4.02%	$38,638	382	5.1%	$6.79	0.00%	0.02%
31	Leather and leather products	$570,806	1,223	$466.7	2.20%	$10,253	2	0.2%	$0.00	0.00%	0.00%
32	Stone, clay, and glass products	$6,351,359	8,423	$754.0	4.93%	$37,150	538	6.4%	$0.00	0.00%	0.00%
33	Primary metal industries	$2,848,236	2,530	$1,125.8	4.52%	$50,860	273	10.8%	$0.00	0.00%	0.00%
34	Fabricated metal products	$17,077,020	22,251	$767.5	4.55%	$34,890	3,378	15.2%	$0.95	0.00%	0.00%
35	Industrial machinery and equipment	$24,064,335	39,977	$602.0	4.05%	$24,354	4,188	10.5%	$1.41	0.00%	0.01%
36	Electronic and other electric equipment	$8,356,375	9,070	$921.3	5.59%	$51,514	1,134	12.5%	$1.52	0.00%	0.00%
37	Transportation equipment	$5,835,684	7,727	$755.2	3.74%	$28,269	2,022	26.2%	$3.55	0.00%	0.01%
38	Instruments and related products	$5,684,460	7,207	$788.7	5.06%	$39,918	616	8.6%	$3.63	0.00%	0.01%
39	Miscellaneous manufacturing industries	$6,908,160	14,575	$474.0	3.80%	$18,031	1,973	13.5%	$2.80	0.00%	0.02%
40	Railroad transportation	NA	NA	NA	NA	NA	NA	NA	ERR	NA	NA
41	Local and interurban passenger transit	$3,052,031	13,557	$225.1	4.51%	$10,148	576	4.2%	$0.49	0.00%	0.00%
42	Trucking and warehousing	$42,301,497	104,401	$405.2	3.91%	$15,858	3,298	3.2%	$1.72	0.00%	0.01%
44	Water transportation	$4,501,041	7,061	$637.5	7.48%	$47,711	40	0.6%	$4.00	0.00%	0.01%
45	Transportation by air	$3,397,447	5,352	$634.8	3.62%	$22,982	21	0.4%	$0.00	0.00%	0.00%
46	Pipelines, except natural gas	$64,316	21	$3,062.7	6.55%	$200,536	4	17.2%	$16.05	0.00%	0.01%
47	Transportation services	$12,815,924	38,195	$335.5	3.39%	$11,376	6	0.0%	$0.00	0.00%	0.00%
48	Communications	$9,283,329	14,256	$651.2	5.58%	$36,330	26	0.2%	$0.00	0.00%	0.00%
49	Electric, gas, and sanitary services	$10,824,146	8,938	$1,211.0	10.37%	$125,641	1,335	14.9%	$3.53	0.00%	0.00%
50	Wholesale trade--durable goods	$467,174,837	228,351	$2,045.9	2.54%	$52,056	8,636	3.8%	$0.94	0.00%	0.00%
51	Wholesale trade--nondurable goods	$321,562,895	126,151	$2,549.0	4.46%	$113,768	3,944	3.1%	$2.56	0.00%	0.00%
52	Building materials and garden supplies	$37,776,200	46,450	$813.3	2.37%	$19,289	1,511	3.3%	$0.00	0.00%	0.00%
53	General merchandise stores	$3,346,901	8,796	$380.5	2.70%	$10,283	50	0.6%	$0.00	0.00%	0.00%
54	Food stores	$57,468,235	111,162	$517.0	1.41%	$7,293	439	0.4%	$0.00	0.00%	0.00%
55	Automotive dealers and service stations	$149,337,410	116,015	$1,287.2	1.45%	$18,609	5,083	4.4%	$0.84	0.00%	0.00%
56	Apparel and accessory stores	$18,706,435	50,308	$371.8	1.85%	$6,867	36	0.1%	$0.00	0.00%	0.00%
57	Furniture and homefurnishings stores	$45,392,796	78,842	$575.7	2.28%	$13,142	1,660	2.1%	$0.00	0.00%	0.00%

Table VI-6

Costs as a Percentage of Revenues and Profits for Affected Small Entities with Fewer than 20 Employees (Based on Average Compliance Costs)

SIC	Industry	Revenues ($1,000)	Entities	Average Revenues ($1,000)	Profit Rate	Average Profits	Affected Entities		Average Compliance Costs to Affected Entities	Compliance Costs as a % of Revenues	Compliance Costs as a % of Profits
58	Eating and drinking places	$61,841,796	293,318	$210.8	3.00%	$6,322	0	0.0%	NA	NA	NA
59	Miscellaneous retail	$119,265,615	258,538	$461.3	2.49%	$11,479	448	0.2%	$0.00	0.00%	0.00%
60	Depository institutions	$15,538,559	14,378	$1,080.7	10.80%	$116,718	163	1.1%	$0.00	0.00%	0.00%
61	Nondepository institutions	$13,454,697	21,262	$632.8	15.05%	$95,230	103	0.5%	$0.00	0.00%	0.00%
62	Security and commodity brokers	$19,644,662	27,262	$720.6	13.32%	$95,949	140	0.5%	$0.00	0.00%	0.00%
63	Insurance carriers	$9,416,333	5,668	$1,661.3	6.82%	$113,357	63	1.1%	$0.00	0.00%	0.00%
64	Insurance agents, brokers, and service	$33,660,359	116,075	$290.0	6.83%	$19,792	543	0.5%	$0.00	0.00%	0.00%
65	Real estate	$108,609,341	221,549	$490.2	13.31%	$65,246	1,047	0.5%	$0.00	0.00%	0.00%
67	Holding and other investment offices	$35,174,755	21,022	$1,673.2	24.01%	$401,733	102	0.5%	$0.00	0.00%	0.00%
70	Hotels and other lodging places	$12,241,793	40,186	$304.6	6.98%	$21,204	783	1.9%	$0.76	0.00%	0.00%
72	Personal services	$27,470,741	168,826	$162.7	5.86%	$9,527	7,156	4.2%	$0.23	0.00%	0.00%
73	Business services	$108,448,938	307,737	$352.4	4.79%	$16,869	7,651	2.5%	$0.74	0.00%	0.00%
75	Auto repair, services, and parking	$52,027,411	160,544	$324.1	4.39%	$14,236	22,900	14.3%	$1.01	0.00%	0.01%
76	Miscellaneous repair services	$18,035,716	60,601	$297.6	5.44%	$16,178	2,626	4.3%	$7.32	0.00%	0.05%
78	Motion pictures	$13,026,870	29,959	$434.8	5.14%	$22,341	8	0.0%	$0.00	0.00%	0.00%
79	Amusement and recreation services	$26,704,545	79,317	$336.7	4.28%	$14,410	1,159	1.5%	$0.00	0.00%	0.00%
80	Health services	$167,087,490	385,533	$433.4	6.17%	$26,742	11,346	2.9%	$0.22	0.00%	0.00%
81	Legal services	$54,265,197	156,877	$345.9	17.50%	$60,534	41	0.0%	$0.00	0.00%	0.00%
82	Educational services	$8,902,333	30,770	$289.3	8.14%	$23,555	367	1.2%	$0.00	0.00%	0.00%
83	Social services	$22,228,579	99,911	$222.5	4.44%	$9,874	3,696	3.7%	$0.13	0.00%	0.00%
84	Museums, botanical, zoological gardens	$1,283,445	4,300	$298.5	21.45%	$64,023	164	3.8%	$0.00	0.00%	0.00%
86	Membership organizations	$43,669,772	222,292	$196.5	7.21%	$14,167	396	0.2%	$0.00	0.00%	0.00%
87	Engineering and management services	$90,405,763	254,295	$355.5	6.39%	$22,720	6,189	2.4%	$0.18	0.00%	0.00%
89	Services, n.e.c.	$5,728,501	15,743	$363.9	6.80%	$24,744	3	0.0%	$0.00	0.00%	0.00%
	Totals	$2,781,206,926	4,930,213	$564.1	5.00%	$28,183	174,264	3.5%	$1.71	0.00%	0.01%

Source: OSHA Office of Regulatory Analysis. See full PEA (Ex. 6-1).

Table VI-7

Costs as a Percentage of Revenues and Profits for all Affected Small Entities*
(Based on Average Compliance Costs)

SIC	Industry	Revenues ($1,000)	SBA Entities	Average Revenues ($1,000)	Profit Rate	Average Profits	Affected Entities		Average Compliance Costs to Affected Entities	Compliance Costs as a % of Revenues	Compliance Costs as a % of Profits
07	Agricultural services	$36,501,047	109,663	$351.1	6.02%	$21,130	6,718	6.1%	$0.14	0.00%	0.00%
08	Forestry	$1,496,747	2,400	$623.6	10.30%	$64,235	233	9.7%	$0.00	0.00%	0.00%
09	Fishing, hunting, and trapping	NA	NA	NA	5.80%	NA	NA	NA	NA	NA	NA
13	Oil and gas extraction	$29,931,841	14,787	$2,024.2	8.65%	$175,093	890	6.0%	$22.40	0.00%	0.01%
15	General building contractors	$234,203,450	195,315	$1,199.1	4.00%	$47,964	17,540	9.0%	$1.12	0.00%	0.00%
16	Heavy construction, except building	$68,664,092	35,618	$1,927.8	4.00%	$77,112	3,314	9.3%	$3.53	0.00%	0.00%
17	Special trade contractors	$270,401,924	426,477	$634.0	4.00%	$25,361	34,756	8.1%	$15.67	0.00%	0.06%
20	Food and kindred products	$104,629,113	15,992	$6,542.6	3.46%	$226,600	1,781	11.1%	$10.88	0.00%	0.00%
21	Tobacco products	$1,255,255	91	$13,794.0	4.02%	$554,130	10	11.1%	$0.00	0.00%	0.00%
22	Textile mill products	$20,377,246	4,845	$4,205.8	2.77%	$116,423	458	9.4%	$3.49	0.00%	0.00%
23	Apparel and other textile products	$38,507,048	22,383	$1,720.4	2.56%	$44,010	841	3.8%	$0.00	0.00%	0.00%
24	Lumber and wood products	$58,343,756	35,076	$1,663.4	3.90%	$64,854	1,278	3.6%	$2.23	0.00%	0.00%
25	Furniture and fixtures	$26,295,821	11,217	$2,344.3	3.51%	$82,285	1,540	13.7%	$2.05	0.00%	0.00%
26	Paper and allied products	$31,334,277	4,057	$7,723.5	4.50%	$347,629	249	6.1%	$12.01	0.00%	0.00%
27	Printing and publishing	$85,620,541	57,018	$1,501.6	3.80%	$57,055	91	0.2%	$0.00	0.00%	0.00%
28	Chemicals and allied products	$59,010,014	8,227	$7,172.7	4.49%	$321,776	1,955	23.8%	$84.99	0.00%	0.03%
29	Petroleum and coal products	$13,950,653	1,047	$13,324.4	2.99%	$398,317	116	11.3%	$120.02	0.00%	0.03%
30	Rubber and misc. plastics products	$58,709,872	13,043	$4,501.3	4.02%	$181,167	1,627	12.5%	$6.74	0.00%	0.00%
31	Leather and leather products	$4,003,751	1,675	$2,390.3	2.20%	$52,509	184	11.0%	$4.92	0.00%	0.01%
32	Stone, clay, and glass products	$34,254,470	11,791	$2,905.1	4.93%	$143,127	1,383	11.6%	$20.47	0.00%	0.01%
33	Primary metal industries	$36,511,582	4,806	$7,597.1	4.52%	$343,213	1,023	21.3%	$26.50	0.00%	0.01%
34	Fabricated metal products	$113,752,781	34,250	$3,321.2	4.55%	$150,988	4,015	11.7%	$3.72	0.00%	0.00%
35	Industrial machinery and equipment	$127,178,710	52,548	$2,420.2	4.05%	$97,917	4,176	7.9%	$3.78	0.00%	0.00%
36	Electronic and other electric equipment	$69,499,940	14,355	$4,841.5	5.59%	$270,705	1,292	9.0%	$7.11	0.00%	0.00%
37	Transportation equipment	$41,544,504	10,653	$3,899.8	3.74%	$145,974	1,984	18.6%	$12.89	0.00%	0.01%
38	Instruments and related products	$33,908,725	10,190	$3,327.6	5.06%	$168,410	787	7.7%	$10.59	0.00%	0.01%
39	Miscellaneous manufacturing industries	$30,627,905	17,837	$1,717.1	3.80%	$65,322	2,267	12.7%	$13.48	0.00%	0.02%
40	Railroad transportation	$2,897,433	541	$5,355.7	12.89%	$690,234	95	17.6%	$71.75	0.00%	0.01%
41	Local and interurban passenger transit	$7,690,615	16,537	$465.1	4.51%	$20,964	540	3.3%	$1.62	0.00%	0.01%
42	Trucking and warehousing	$79,888,400	114,623	$697.0	3.91%	$27,278	3,166	2.8%	$3.08	0.00%	0.01%
44	Water transportation	$14,075,608	8,051	$1,748.3	7.48%	$130,855	46	0.6%	$4.33	0.00%	0.00%
45	Transportation by air	$15,156,218	6,386	$2,373.4	3.62%	$85,925	22	0.3%	$0.00	0.00%	0.00%
46	Pipelines, except natural gas	$986,979	39	$25,307.2	6.55%	$1,657,050	5	13.9%	$10.64	0.00%	0.00%
47	Transportation services	$19,513,397	40,529	$481.5	3.39%	$16,327	6	0.0%	$0.00	0.00%	0.00%
48	Communications	$41,125,079	17,482	$2,352.4	5.56%	$131,244	28	0.2%	$0.00	0.00%	0.00%
49	Electric, gas, and sanitary services	$10,824,146	8,938	$1,211.0	10.37%	$125,641	1,323	14.8%	$3.03	0.00%	0.00%
50	Wholesale trade--durable goods	$837,107,306	258,492	$3,238.4	2.54%	$82,401	9,740	3.8%	$9.88	0.00%	0.01%
51	Wholesale trade--nondurable goods	$637,454,650	143,751	$4,434.4	4.46%	$197,917	4,455	3.1%	$53.66	0.00%	0.03%
52	Building materials and garden supplies	$37,776,200	46,450	$813.3	2.37%	$19,289	1,368	2.9%	$0.00	0.00%	0.00%
53	General merchandise stores	$3,346,901	8,796	$380.5	2.70%	$10,283	85	1.0%	$0.00	0.00%	0.00%
54	Food stores	$101,566,550	123,572	$821.9	1.41%	$11,595	852	0.7%	$0.00	0.00%	0.00%
55	Automotive dealers and service stations	$149,337,410	116,015	$1,287.2	1.45%	$18,609	5,043	4.3%	$0.93	0.00%	0.00%
56	Apparel and accessory stores	$18,706,435	50,308	$371.8	1.85%	$6,867	63	0.1%	$0.00	0.00%	0.00%
57	Furniture and homefurnishings stores	$45,392,798	78,842	$575.7	2.28%	$13,142	1,494	1.9%	$0.00	0.00%	0.00%

Table VI-7

Costs as a Percentage of Revenues and Profits for all Affected Small Entities*
(Based on Average Compliance Costs)

SIC	Industry	Revenues ($1,000)	SBA Entities	Average Revenues ($1,000)	Profit Rate	Average Profits	Affected Entities		Average Compliance Costs to Affected Entities	Compliance Costs as a % of Revenues	Compliance Costs as a % of Profits
58	Eating and drinking places	$128,561,814	355,297	$361.8	3.00%	$10,850	0	0.0%	NA	NA	NA
59	Miscellaneous retail	$119,265,615	258,536	$461.3	2.49%	$11,479	488	0.2%	$0.00	0.00%	0.00%
60	Depository institutions	$15,538,559	14,378	$1,080.7	10.80%	$116,718	186	1.3%	$0.00	0.00%	0.00%
61	Nondepository institutions	$13,454,697	21,262	$632.8	15.05%	$95,230	117	0.6%	$0.00	0.00%	0.00%
62	Security and commodity brokers	$19,644,662	27,262	$720.6	13.32%	$95,949	157	0.6%	$0.00	0.00%	0.00%
63	Insurance carriers	$5,850,805	4,967	$1,177.9	6.82%	$80,375	73	1.5%	$0.00	0.00%	0.00%
64	Insurance agents, brokers, and service	$47,083,678	119,907	$392.7	6.83%	$26,800	616	0.5%	$0.00	0.00%	0.00%
65	Real estate	$142,479,284	230,304	$618.7	13.31%	$82,340	1,139	0.5%	$0.00	0.00%	0.00%
67	Holding and other investment offices	$35,174,755	21,022	$1,673.2	24.01%	$401,733	116	0.6%	$0.00	0.00%	0.00%
70	Hotels and other lodging places	$24,876,889	47,698	$521.5	6.96%	$36,302	1,070	2.2%	$1.00	0.00%	0.00%
72	Personal services	$36,957,629	176,477	$209.4	5.86%	$12,262	7,222	4.1%	$0.35	0.00%	0.00%
73	Business services	$188,081,601	337,126	$557.8	4.79%	$26,703	9,637	2.9%	$0.98	0.00%	0.00%
75	Auto repair, services, and parking	$66,003,052	167,057	$395.1	4.39%	$17,356	22,771	13.6%	$1.16	0.00%	0.01%
76	Miscellaneous repair services	$25,861,556	63,328	$408.4	5.44%	$22,198	2,756	4.4%	$7.17	0.00%	0.03%
78	Motion pictures	$13,026,870	29,959	$434.8	5.14%	$22,341	9	0.0%	$0.00	0.00%	0.00%
79	Amusement and recreation services	$47,922,810	90,742	$528.1	4.28%	$22,604	1,231	1.4%	$0.00	0.00%	0.00%
80	Health services	$243,370,668	413,561	$588.5	6.17%	$36,312	11,837	2.9%	$0.21	0.00%	0.00%
81	Legal services	$54,265,197	156,877	$345.9	17.50%	$60,534	47	0.0%	$0.00	0.00%	0.00%
82	Educational selvices	$25,677,552	40,592	$632.6	8.14%	$51,502	398	1.0%	$0.00	0.00%	0.00%
83	Social services	$50,553,841	117,544	$430.1	4.44%	$19,088	3,980	3.4%	$0.22	0.00%	0.00%
84	Museums, botanical, zoological gardens	$2,926,264	4,912	$596.1	21.45%	$127,873	186	3.8%	$0.00	0.00%	0.00%
86	Membership organizations	$78,452,141	242,081	$324.1	7.21%	$23,371	429	0.2%	$0.00	0.00%	0.00%
87	Engineering and management services	$151,671,072	271,169	$559.3	6.39%	$35,745	8,091	3.0%	$3.20	0.00%	0.01%
89	Services, n.e.c.	$8,169,059	16,395	$498.3	6.80%	$33,882	4	0.0%	$0.00	0.00%	0.00%
	State and local governments	$101,000,000	17,289	$5,841.9	NA	NA	509	2.9%	$24.07	0.00%	NA
	Totals	$5,200,213,260	5,383,166	$966.0	4.68%	$45,203	191,389	3.6%	$7.53	0.00%	0.02%

* "Small entity" as defined by the Small Business Administration (Ex. 6-6).
Source: OSHA Office of Regulatory Analysis. See full PEA (Ex. 6-1).

BILLING CODE 4510–26–C

VII. Summary and Explanation of the Proposed Standard

This section of the preamble provides a summary and explanation of each proposed revision to OSHA's Respiratory Protection Standard involving assigned protection factors.

A. Revisions to the Respiratory Protection Standard

This section addresses the revisions proposed for paragraphs (b), (d)(3)(i)(A), (d)(3)(i)(B), and (n) of OSHA's exiting Respiratory Protection Standard at 29 CFR 1910.134).

Paragraph (b)—Definitions

Revisions to this paragraph would add two important definitions"—assigned protection factor" and "maximum use concentration"—to OSHA's Respiratory Protection Standard. The following sections explain these proposed definitions in detail.

1. Assigned Protection Factor

As part of its 1994 proposed rulemaking for the Respiratory Protection Standard, OSHA proposed a definition for assigned protection factors (APFs) that read as follows: "[T]he number assigned by NIOSH [the National Institute for Occupational Safety and Health] to indicate the capability of a respirator to afford a certain degree of protection in terms of fit and filter/cartridge penetration" (59 FR 58938). OSHA proposed this definition on the assumption that NIOSH would develop APFs for the various respirator classes, building on the APFs in the 1987 NIOSH Respirator Decision Logic (RDL) (59 FR 58901–58903). However, NIOSH subsequently decided not to publish a list of APFs as part of its 42 CFR part 84 Respirator Certification Standards (60 FR 30338), and reserved APFs for a future NIOSH rulemaking.

During his opening statement on June 15, 1995 at an OSHA-sponsored expert-panel discussion on APFs, Dr. Adam Finkel, then Director of the Agency's Directorate of Health Standards Programs, noted that OSHA would explore developing its own list of APFs (H–049, Ex. 707–X). The Agency then announced in the preamble to the final Respiratory Protection Standard (63 FR 1182) that it would propose an APF table "based on a thorough review and analysis of all relevant evidence" in a subsequent rulemaking. In the final Respiratory Protection Standard, OSHA reserved a table for APFs, a paragraph [(d)(3)(i)(A)] for APF requirements, and a definition of APF under paragraph (b).

In its 1987 RDL, NIOSH defined APF as "[t]he minimum anticipated protection provided by a properly functioning respirator or class of respirators to a given percentage of properly fitted and trained users" (Ex. 1–54–437Q). The American National Standards Institute (ANSI) developed a definition for APF in its Z88.2–1992 Respiratory Protection Standard that reads, "The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or class of respirators to properly fitted and trained users' (Ex. 1–50). The ANSI Z88.2 Subcommittee that developed the 1992 standard used the NIOSH definition of APF as a template for its APF definition; however, the Z88.2 Subcommittee revised the phrase "minimum anticipated protection" in the NIOSH definition to "expected workplace level of respiratory protection." It also dropped the NIOSH phrase "to a given percentage" from its definition.

The phrase "a given percentage" implies that some respirator users will not achieve the full APF under workplace conditions. The "given percentage" usually is about five percent, which is a percentage derived from statistical analyses of workplace protection factor (WPF) studies. In this regard, five percent represents the fifth percentile of the geometric distribution of protection factors for individual participants in a WPF study. Each participant's protection factor is the concentration of challenge agent outside the respirator (C_o) divided by the concentration of that agent inside the participant's respirator (C_i), or C_o/C_i); therefore, the fifth percentile is the threshold for specifying the APF for the respirator tested under those workplace conditions. Using the fifth percentile means that about five percent of the employees who use the respirator under these workplace conditions may not achieve the level of protection assigned to the respirator (or class of respirators). Most WPF studies adopt the fifth-percentile threshold as the conventional standard, recognizing that about five percent of respirator users will not attain the APF determined for the respirator or class of respirators even when they receive proper fit testing and use the respirator correctly as part of a comprehensive respiratory protection program. However, ANSI dropped the phrase "to a given percentage" to reduce confusion (*i.e.*, the phrase did not specify a percentage), and to emphasize the level of protection needed by the vast majority of employees who use respirators in the workplace.

The Agency's review of the available data on respirator performance, as well as findings from the personal protective equipment surveys (Exs. 6–1, 6–2), indicate that the existing definitions of APF are confusing to the respirator-using public. Accordingly, OSHA believes that the proposed definition would reduce confusion among employers and employees regarding APFs, thereby assisting employers in providing their employees with effective respirator protection consistent with its Respiratory Protection Standard.

The Agency revised the terms in the ANSI APF definition to improve clarity. OSHA's proposed definition for APF reads as follows;

Assigned protection factor (*APF*) means the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by 29 CFR 1910.134.

The revisions made to the ANSI APF definition in developing this proposed APF definition include adding the phrase "when the employer implements a continuing, effective respiratory protection program as specified by 29 CFR 1910.134." The Agency added this phrase to emphasize the requirement that employers must select a respirator in the context of a comprehensive respiratory protection program. Accordingly, the APFs in Table I of this proposal do not apply when any of the program elements required by OSHA's Respiratory Protection Standard are absent from an employer's respirator program, including fit testing, maintenance, selection, use, training, and other specified elements. This wording is necessary because the level of employee protection afforded by the proposed APFs depends on the other elements of a comprehensive respiratory protection program being in place continuously, and operating effectively. Employers and employees cannot expect to achieve an APF reliably unless employers ensure that their employees use respirators in accordance with a continuing, effective respiratory protection program.

The proposed APF definition is an important addition to the Respiratory Protection Standard because it informs employers how the APF constrains respirator use. The APF can only be achieved by a respirator or class of respirators that are functioning properly in accordance with paragraphs (b) and (j) of the Respiratory Protection Standard. This means that the respirator must be capable of performing its function of reducing employee exposures to airborne contaminants by being in correct working order. Accordingly, employers must maintain the respirator properly, with no defects such as cracked or distorted facepiece seals, missing exhalation valves, broken straps, or any other defect that would cause leakage into the respirator or prevent proper operation. For air-purifying respirators, the filters must be appropriate for the airborne contaminant, and provide an adequate service life.

Employers must properly fit and train employees for respirator use, which addresses the requirements in paragraphs (f) and (k) of the Respiratory Protection Standard. Therefore, employers must fit employees with the size and model of respirator they will be using in the workplace. They must then wear that same size and model of respirator in the workplace, and follow the training they receive for performing respirator seal checks, inspections for correct respirator operation, and proper donning and wearing the respirator.

2. Maximum Use Concentration

Employers use MUCs to select appropriate respirators, especially for use against organic vapors and gases since the MUC specifies the maximum atmospheric concentration of a hazardous substance against which a specific respirator or class of respirators with a known APF can protect employees who use these respirators. MUCs are a function of the assigned protection factor (APF) determined for a respirator (or class of respirators) and the exposure limit of the hazardous substance.

Ed Hyatt in the 1976 LASL report on Respiratory Protection Factors (Ex. 2) recounted the early history of maximum use concentration (MUC), starting with the MUC recommendations of the joint American Industrial Hygiene Association and American Conference of Governmental Industrial Hygienists committee in 1961. This committee recommended that, for highly toxic compounds, full facepiece respirators with high-efficiency filters should use a maximum limit of 100 x the threshold limit value (TLV). In 1961, in the United Kingdom, Hyatt noted that Letts recommended that half-mask dust respirators provided effective protection against airborne contaminants no greater than 10 x the TLV.

In 1974, NIOSH and OSHA started the Standards Completion Program to develop standards for substances with existing permissible exposure limits (PELs). This process resulted in the development of NIOSH Criteria Documents, each of which provided technical information and recommendations for specific airborne contaminants. These documents also recommended MUCs for different types of respirators; NIOSH obtained the information for these MUCs from various sources, including NIOSH Current Intelligence Bulletins and recognized industrial hygiene references. NIOSH later published this information in its Pocket Guide to Chemical Hazards. Other source documents for MUC definitions and regulations include the 1987 NIOSH RDL, and the ANSI Z88.2–1980 and ANSI Z88.2–1992 respiratory protection standards.

OSHA's 1994 proposed Respiratory Protection Standard contained the following definition for MUC:

Maximum use concentration (*MUC*) means the maximum concentration of an air contaminant in which a particular respirator can be used, based on the respirator's assigned protection factor. The MUC cannot exceed the use limitations specified on the NIOSH approval label for the cartridge, canister, or filter. The MUC can be determined by multiplying the assigned protection factor for the respirator by the permissible exposure limit for the air contaminant for which the respirator will be used.

Several commenters to the 1994 proposal recommended alternatives to this definition. Reynolds Metal Company recommended defining MUC as "the maximum concentration of an air contaminant in which a particular respirator can be used, based on the respirator's assigned protection factor" (Ex. 1–54–222). The American Petroleum Institute (API) noted NIOSH developed the term "MUC," and that, to avoid confusion, OSHA should not use the term (Ex. 1–54–330). API proposed using the term "assigned use concentration" to replace "MUC"; API defined "assigned use concentration" as "the maximum concentration of an air contaminant in which a particular respirator can be used, based on the respirator's assigned protection factor" (Ex. 1–54–330). However, when the Agency published the final Respiratory Protection Standard in 1998, it reserved the definition of MUC in paragraph (b) and MUC requirements in paragraph (d)(3)(i)(B) for future rulemaking.

Employers use MUCs to select appropriate respirators, especially for use against organic vapors and gases. In this regard, the MUC specifies the maximum concentration of a toxic vapor or gas at which a respirator will provide protection to an employee who uses the respirator. Accordingly, in this proposed rulemaking, OSHA defines MUC as follows:

Maximum use concentration (*MUC*) means the maximum atmospheric concentration of a hazardous substance from which an employee can be expected to be protected when wearing a respirator, and is determined by the assigned protection factor of the respirator or class of respirators and the exposure limit of the hazardous substance. The MUC usually can be determined mathematically by multiplying the assigned protection factor specified for a respirator by the permissible exposure limit, short-term exposure limit, ceiling limit, peak limit, or any other exposure limit used for the hazardous substance.

Under this proposed definition, MUC represents the maximum atmospheric concentration of a hazardous substance against which a specific respirator or class of respirators with a known APF can protect employees who use these respirators. Accordingly, MUCs are a function of the assigned protection factor (APF) determined for a respirator (or class of respirators) and the exposure limit of the hazardous substance.

The last sentence in the proposed definition describes this function in terms of a mathematical calculation, *i.e.*, that employers can "usually" determine the MUC by multiplying the APF for the respirator by the exposure limit used for the hazardous substance.[8] The term "usually" in this sentence is consistent with paragraph (d)(3)(i)(B)(*2*), which is part of the proposed MUC requirements (see section below titled "Regulatory Text for Maximum Use Concentrations.") This proposed paragraph reads, "Employers must comply with the respirator manufacturer's MUC for a hazardous substance when the manufacturer's MUC is lower than the calculated MUC specified by this standard." Therefore, while employers would use the proposed calculation to determine most MUCs, they would have to use MUCs determined by respirator manufacturers when these MUCs are lower than the MUCs determined using the proposed calculation. As noted below in the explanation of proposed paragraph (d)(3)(i)(B)(*2*), OSHA believes that this requirement would provide employees with a necessary added measure of protection from hazardous substances in the workplace.

Importantly, the last part of the proposed definition specifies exposure limits as "permissible exposure limit (PEL), short-term exposure limit (STEL),

[8] For example, when the hazardous substance is nitrobenzene (with a PEL of 1 ppm), and the respirator used by employees has an APF of 10, then the calculated MUC is 10 ppm (*i.e.*, 1ppm x 10).

ceiling limit (CL), peak limit, or any other exposure limit used for the hazardous substance." The exposure limits are consistent with the terms used in the Z tables in 29 CFR 1910.1000 and the substance-specific standards in 29 CFR parts 1910, 1915, and 1926.

The phrase "any other exposure limit used for the hazardous substance" refers to exposure limits other than the exposure limits specified in the OSHA Z tables or in its substance-specific standards; employers use the other exposure limits to provide additional protection to employees or to comply with OSHA's general-duty clause (Section 5(a)(1) of the OSH Act; 29 U.S.C. 654 where OSHA has no standard). Employers may adopt such exposure limits from existing consensus standards (*e.g.*, the ACGIH TLVs), or develop them specifically for the unique hazardous substances found in their workplaces.

Paragraph (d)(3)(i)(A)—APF Provisions

1. Introduction

As early as 1976, respirator scientists were classifying respirators into distinct groups based on the level of protection they provided. These early respirator classes are similar to the classes now in use, as well as the classes developed by OSHA for this proposal. In the following parts of this section, the Agency describes the historical development of APFs for specific classes of respirators, and then explains OSHA's proposed APF for each of these respirator classes.

In addition to basing the APFs proposed in this rulemaking on the studies and previous APF standards described in this section, the Agency contracted with Dr. Kenneth Brown to conduct statistical analyses of the original data reported in most of the WPF studies reported below. Dr. Brown's quantitative analyses justify combining data for filtering facepiece and elastomeric half-mask respirators in determining an APF for these two respirator classes, and using a qualitative analysis of the data for identifying APFs separately for powered air-purifying respirators, supplied-air respirators, and self-contained breathing apparatuses. (Note that insufficient WPF data were available for Brown to include full facepiece air-purifying respirators in his analyses.) OSHA discusses the procedures and results of these statistical analyses in section IV of this preamble. The Agency believes that the APFs developed through the procedures discussed below are consistent with the results of the analyses performed by Dr. Brown.

2. Half-Mask Air-Purifying Respirators

Historical development of APFs for half-mask air-purifying respirators. In 1976, Ed Hyatt of LANL tested eight commercially available Bureau of Mines (the Federal agency then designated to approve respirators) half-mask respirators (Ex. 2). Based on quantitative fit testing results obtained from a respirator test panel,[9] Hyatt assigned six of these respirators an APF of 10; the remaining two respirators performed less effectively than the other six, thereby achieving an APF of less than 10. Hyatt did not use data from the two poor performing respirators to set the APF of 10 for the class because, as he stated in his report, "For practical purposes, the remaining two models are not available."

In 1980, the ANSI Z88.2 Respiratory Protection Standard (*i.e.*, "the 1980 ANSI standard;" Ex. 10, Docket H049) required fit testing to identify grossly misfitting half-mask respirators. That standard assigned an APF of 10 to half-mask air-purifying respirators when employers performed qualitative fit testing, and an APF as high as 100 when they performed quantitative fit testing (Ex. 10, Table 5, p. 21, Docket H049). ANSI based the latter APF on the results of studies that quantitatively fit tested a panel of respirator users, much as Hyatt did in 1976 (Ex. 2).

NIOSH developed its RDL in 1987 (Ex. 1–54–437Q), which assigned an APF of 5 to single-use and quarter mask air-purifying respirators, and an APF of 10 to half-mask respirators, including disposable half-mask respirators. In developing these APFs, NIOSH used results from quantitative fit-test studies performed on its own respirator test panel, several LANL quantitative fit-test studies (including Hyatt's 1976 study), and several WPF studies that it conducted in the early 1980s (Exs. 1–64–42, 1–64–47).

The 1992 Z88.2 ANSI Respiratory Protection Standard (*i.e.*, "the 1992 ANSI standard"; Ex. 1–50) retained an APF of 10 for half-mask air-purifying respirators, including quarter masks, disposable half-masks, and half-masks with elastomeric facepieces. In determining these APFs, a committee of respirator experts convened by ANSI reviewed and discussed available APF studies, and then arrived at a final decision using a consensus process.

The following table summarizes the previous APFs assigned to half-mask air-purifying respirators, beginning with Hyatt's studies at LLNL in 1976 through the 1992 ANSI standard.

Half-mask air-purifying respirators	APFs			
	LANL (1976)	1980 ANSI standard	NIOSH RDL (1987)	1992 ANSI standard
Single use (no longer available)[1]	5		5	
Filtering facepiece			10 (disposable)	10
Half-mask (elastomenc)	10	10 (with QLFT) 100 max. (with QNFT).	10	10

[1] Filtering facepieces replaced single-use respirators.

OSHA's proposed APFs for half-mask air-purifying respirators. Respirator manufacturers construct elastomeric half-masks using malleable compounds (*e.g.*, silicon, natural or synthetic rubber) that readily conform to the respirator user's face, thereby effectively sealing the inside of the mask against penetration by airborne hazardous substances. Filtering facepieces also are available in a variety of designs and materials that affect their fit to a user's face. For example, the design of the "fold flat" filtering facepiece allows employees to fold them for easy carrying and storage; when employees need this respirator for protection, they unfold the mask and place the fabric filter over their mouth and nose and then position the attached elastic headbands or straps around their head.

Half-mask respirators, including the subclasses of elastomeric and filtering facepiece respirators, vary widely in design and construction; these characteristics could result in different fitting characteristics which, in turn, can affect the level of employee protection afforded by the respirators. In this regard, an important question is whether available WPF and SWPF studies demonstrate sufficient variability in protection between and among filtering facepiece and elastomeric respirators to warrant different APF levels.

OSHA reviewed available WPF and SWPF studies that determined APFs for separate models of half-mask respirators based on each respirator's performance. These studies usually determine a protection factor for each respirator user (*e.g.*, an employee in a WPF study, or a member of a panel of respirator users in a SWPF study) who participates in the study, with each of these values expressed as the concentration of challenge agent outside the respirator (C_o) divided by the concentration of that agent inside the respirator (C_i), *i.e.*, C_o/C_i. After collecting these values, a statistical analysis determines the geometric distribution of the values; the overall APF for the respirator is the estimated value that lies at the fifth percentile of the geometric distribution. Listed in the table below are the WPF studies on filtering facepiece and elastomeric respirators reviewed by the Agency.

WPF studies for filtering facepieces (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Cohen (Ex. 1–64–11):				
Prototype Mercury (disposable respirator)	26	28		5
Albrecht *et al.* (Ex. 1–64–23):				
3M 8710	13	81	1.99	25
3M 9910	13	107	2.50	20
3M 9920	10	223	2.38	45
Nelson and Dixon (Ex 1–64–54):				
3M 8710	18	310	5.3	20
3M 9910	14	580	4.2	55
AO R1050	7	52	4.2	5
Reed *et al.* (Ex. 1–64–61):				
3M 9910	19	18	3.1	3
Johnston and Mullins (Ex. 1–64–34):				
3M 8715 (with aluminum particulate)	10	145	2.3	32
3M 8715 (with titanium particulate)	14	59	1.7	24
3M 8715 (with silicon particulate)	14	172	3.1	24
Colton *et al.* (Ex. 1–64–15):				
3M 9906	23	27	1.5	13
Colton *et al.* (Ex. 1–64–16):				
3M 9970 (with lead particulate)	62	415	4.4	36
3M 9970 (with zinc particulate)	62	681	5.6	40
Myers and Zhuang (Ex. 1–64–51) (conducted in a brass foundry):				
3M 9920 (with zinc particulate)	20	108	5.2	7
Myers and Zhuang (Ex. 3–14) (conducted in a steel mill):				
3M 8710 (with iron particulate)	10	377	3.7	44
Gerson 1710 (with iron particulate)	11	123	2.7	24
Colton and Mullins (Ex. 1–146):				
3M 9920 and 3M 9925	32	147	2.5	33
Wallis *et al.* (Ex. 1–64–70):				
3M 8710	70	50	3.5	7.5
Lenhart and Decker (Ex. 1–64–56):				
3M 9920	5			12
3M 9970 (two separate studies)	2			86 and 98
Gaboury and Burd (Ex. 1–64–24):				
AO, Willson, Survivair	18	47	2.5	9
Gavin *et al.* (Ex. 1–64–22):				
North 7709 (with OV cartridge)	63	75	3.1	11.7
Weber and Mullins (Ex. 3–15):				
3M 5000 (with OV cartridge)	46	39.7	2.14	11
Myers and Zhuang (Ex. 1–64–51) (conducted in a brass foundry):				
AO 5-Star (with DFM filter)	5	98	5.8	5
MSA Combo II (with DFM filter)	9	163	3.1	26
Scott 65 (with DFM filter)	5	94	4.8	7
Myers and Zhuang (Ex. 3–14) (conducted in a steel mill):				
AO 5-Star (with DM filter)	11	280	2.7	56
MSA Combo II (with DM filter)	8	427	4.3	39
Scott 65 (with DM filter)	11	252	2.9	45
Myers and Zhuang (Ex. 1–64–52) (conducted in a paint-spraying facility):				
AO 5-Star (with HEPA or OV filter)	38	2,211		171
MSA Combo II (with HEPA or OV filter)	38	4,580		437
Scott 65 (with HEPA or OV filter)	38	6,630		1,121
Lenhart and Campbell (Ex. 1–64–42):				
MSA Combo (with HEPA filter)	25	180	4.1	18
Albrecht *et al.* (Ex. 1–64–23):				
3M Easi-Air 7000 (with HEPA filter)	8	56	1.35	31
3M Easi-Air 7000 (with DM filter)	6	68	1.66	28
Dixon and Nelson (Ex. 1–64–54):				
Survivair 2000 and MSA Combo II (with DFM filter)	17	240	6.3	12

[9] LANL developed a respirator test panel consisting of 25 men and women selected to have face sizes representing about 95% of the U.S. working population (Ex. 7, docket H049).

WPF studies for filtering facepieces (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Survivair 2000 and MSA Combo II (with HEPA filter)	14	94	3.0	16
North 7700 (with HEPA filter)	14	250	6.9	11
Dixon and Nelson (Ex. 1–64–19):				
Survivair 2000 (with HEPA or OV filter)	37	3,400	3.8	390
Colton *et al.* (Ex. 1–64–13):				
3M 6000 (with HEPA filter and cadmium particulate)	25	333	4.18	32
3M 6000 (with HEPA filter and lead fume)	31	129	3.15	19
Colton and Bidwell (Ex. 4–10–4):				
3M 7000 (with 7255 HEPA mechanical filter)	21	1,006	4.65	80
3M 7000 (with 2040 HEPA electrostatic filter)	22	562	3.5	71

OSHA found only one SWPF study on half-mask air-purifying respirators. In 1987, Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3) of LANL performed a SWPF study that included laboratory testing of the MSA Comfo II half-mask air-purifying elastomeric respirator. The geometric mean fit factors they measured during simulated work exercises ranged from 800 to 5,700 for this half-mask. These results appear to complement the WPF results discussed in the following paragraph.

The summary statistics for WPF studies of filtering facepieces and elastomeric half-masks presented in the previous tables show little difference between these two major subclasses of half-mask respirators. Most importantly, the estimated protection factors for these two subclasses evidence considerable overlap. In addition, both tables show that many respirators in each class received estimated protection factors above 10, while a few respirators performed below that level. Accordingly, the WPF studies overall support assigning an APF of 10 for this respirator class (*i.e.*, half-masks), which consists of quarter masks, filtering facepieces, and elastomeric half-mask respirators. OSHA could find no studies on the performance of quarter masks, but just as in the 1992 ANSI standard (Ex. 1–50) has included quarter masks with half-masks.

The statistical analyses of these studies performed by Dr. Kenneth Brown (see section IV above) corroborate these conclusions. These analyses could not differentiate between filtering facepieces and elastomeric half-masks, which justifies combining the study data for these two subclasses into a single class for a subsequent APF determination. This determination showed that nearly 96% of the WPF data in these combined studies were at or above an APF of 10.

3. Full Facepiece Air-Purifying Respirators

Historical development of APFs for full facepiece air-purifying respirators. In 1976, Ed Hyatt of LANL developed an APF table that included this respirator class (Ex. 2). In this report, Hyatt used the results from quantitative fit testing to assess six models of full facepiece negative pressure air-purifying respirators equipped with HEPA filters. Five of these respirators achieved a protection factor of at least 100 for 95% of the respirator users; the sixth respirator attained this level of protection for 70% of the users. Based on the results for the sixth respirator, Hyatt recommended an APF of 50 for the respirator class as a whole.

The 1980 ANSI standard listed an APF of 100 for full facepiece air-purifying respirators with DFM filters. ANSI increased the APF for this respirator class from 50 to 100 because the poorly performing respirator in Hyatt's study was no longer in production. Using the 1976 LANL quantitative fit-testing results, the 1980 ANSI standard increased this APF to a maximum of 1,000 when the respirator used HEPA filters and the respirator users received quantitative fit testing.

Based on Hyatt's 1976 data, the 1987 NIOSH RDL recommended that this respirator class receive an APF of 50 when equipped with a HEPA filter, and an APF of 10 when using DFM filters. NIOSH developed the lower APF of 10 for respirators equipped with DFM filters after it tested the efficiency of these filters. In the absence of workplace protection factor studies of full facepiece respirators, NIOSH based these APFs on results from earlier quantitative fit testing performed by LANL on panels of respirator users.

The 1992 ANSI standard retained the 1980 ANSI standard's APF of 100 for full facepiece air-purifying respirators, but required that respirator users perform fit testing and achieve a minimum fit factor of 1,000 prior to using the respirators; in this regard, quantitative fit testing was necessary because no qualitative fit test could achieve a fit factor of 1,000. The ANSI standard kept this APF because the ANSI committee found that no new WPF or SWPF studies had been performed for this respirator class since it last issued APFs in 1980.

The following table summarizes the previous APFs assigned to full facepiece air-purifying respirators, beginning with Hyatt's studies at LLNL in 1976 through the 1992 ANSI standard.

Full facepiece air-purifying respirators	APFs			
	LANL (1976)	1980 ANSI standard	NIOSH RDL (1987)	1992 ANSI standard
All respirators in the class	50 (with HEPA filter)	10 (with QLFT) 100 max. (with QNFT)	10 (with DFM filter) 50 (with HEPA filter).	100

OSHA's proposed APFs for full facepiece air-purifying respirators. Although the 1992 ANSI standard assigned an APF of 100 to full facepiece air-purifying respirators, OSHA believes that studies completed after 1992 indicate that an APF of 100 is too high. Colton, Johnston, Mullins, and Rhoe (Ex. 1–64–14) assessed the protection afforded to 13 employees over a four day period by the 3M 7800 full facepiece air-purifying respirator equipped with a HEPA filter. In this WPF study, the employees performed their regular tasks in the blast furnace, reverberatory furnace, and casting and warehouse areas of a lead smelter while the authors sampled lead dust and fumes inside and outside the respirator. The authors found a fifth percentile protection factor of 95 for the combined samples, but concluded that the respirator provided reliable protection at protection factors in excess of 50.

Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3) completed the only SWPF study on a full facepiece air-purifying respirator at LANL; this study measured the protection afforded by the MSA Ultra Twin with a HEPA filter. Ten members of the respirator test panel used the respirator under varying temperature and humidity conditions in a test chamber while performing simulated work tasks. The authors reported fit factors with geometric means ranging from 1,000 to 5,300 for this respirator. However, 23 of the 60 measurements reported were less than 1,000, 7 were less than 100, and 3 of these measurements were less than 50.

After carefully reviewing these studies, OSHA is proposing an APF of 50 for full facepiece air-purifying respirators. The proposed APF agrees with the conclusion of Colton, Johnston, Mullins, and Rhoe (Ex. 1–64–14) that this class of respirators provides reliable protection at an APF of 50. Additionally, the geometric mean simulated work fit factors reported by Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3) were low for a SWPF study, and a few of the individual measurements were below an APF of 50; in the workplace, the fifth percentile APF for this respirator may fall well below 100. Therefore, in view of the paucity of data reported for this class of respirators, and the constraints imposed by the available studies, the Agency is proposing a conservative APF that it believes would afford employees an adequate and consistent level of respirator protection in the workplace.

Importantly, an APF of 50 corresponds with the APF assigned to full facepiece air-purifying respirators by OSHA in its substance specific standards, and by NIOSH in its 1987 RDL. In determining that an APF of 50 was appropriate for protecting employees against the contaminants identified in its substance specific standards, the Agency reviewed the existing scientific and technical information, and carefully considered comments in the records. OSHA believes that the information now available does not justify revising the previous APF determined for its substance specific standards. To ensure that the final APF for this class of respirators provides employees with appropriate protection, the Agency requests that commenters submit to the record any additional WPF and SWPF studies that may be available on full facepiece air-purifying respirators.

4. Powered Air-Purifying Respirators (PAPRs)

Historical development of APFs for PAPRs. In 1976, Ed Hyatt of LANL gave PAPRs equipped with high efficiency filters, regardless of facepiece type, a protection factor of 1,000. In doing so, Hyatt assumed, based on quantitative fit tests, that both tight-fitting and loose-fitting facepiece PAPRs would always maintain a positive pressure inside the facepiece.

The committee responsible for drafting the 1980 ANSI standard assigned an APF of 3,000 to PAPRs equipped with high efficiency filters. When the respirators used DFM filters, they received an APF of 100. The ANSI committee did not require fit testing for PAPRs because it assumed, as did Hyatt, that these respirators would maintain positive pressure during use.

The 1987 NIOSH RDL assigned an APF of 25 to half-mask PAPRs after NIOSH reviewed the results of two WPF studies that it conducted on these respirators (Ex. 1–64–42 and 1–64–46). The RDL also gave loose-fitting PAPRs with hoods or helmet an APF of 25 based on data from two studies performed by Myers, Peach, Cutright, and Iskander (Exs. 1–64–47 and 1–64–48). However, the RDL recommended an APF of 50 for other PAPRs equipped with a tight-fitting facepiece or a hood or helmet, as well as high efficiency filters or gas-vapor cartridges used in combination with high efficiency filters.

The committee developing the 1992 ANSI standard updated the APFs specified in the 1980 ANSI standard. Accordingly, the committee recommended an APF of 50 for tight-fitting half-mask PAPRs based on the same WPF studies used by NIOSH in developing the 1987 RDL. Tight-fitting full facepiece PAPRs received an APF of 100 when equipped with dust filters (based on performance limitations of the filters), and an APF of 1,000 when used with HEPA filters. While the ANSI committee retained an APF of 25 for loose-fitting facepiece PAPRs, including loose-fitting hoods and helmets, it treated tight-fitting PAPRs with hoods or helmets much as it did tight-fitting full facepiece PAPRs (*i.e.*, by assigning them an APF of 100 when used with a dust filter, and an APF of 1,000 when equipped with a HEPA filter).

The following table summarizes the previous APFs assigned to PAPRs, beginning with Hyatt's studies at LANL in 1976 through the 1992 ANSI standard.

Powered air-purifying respirators (PAPRs)	APFs			
	LANL (1976)	1980 ANSI standard	NIOSH RDL (1987)	1992 ANSI standard
Half-mask	1,000	100 (with DFM filter), 3,000 max. (with HEPA filters).	50 (with HEPA filter)	50.
Full facepiece	1,000	100 (with DFM filter), 3,000 max. (with HEPA filters).	50 (with HEPA filter)	100 (with dust filter), 1,000 (with HEPA filter).
Hoods or helmets	1,000	100 (with DFM filter), 3,000 max. (with HEPA filters).	50 (with HEPA filter)	100 (with dust filter), 1,000 (with HEPA filter).
Loose-fitting facepiece	1,000	100 (with DFM filter), 3,000 max. (with HEPA filters).	25 (with any filter)	25.

OSHA's proposed APFs for half-mask PAPRs. In 1983, Meyers and Peach performed a WPF study on tight-fitting half-mask and full facepiece PAPRs in a silica-bagging operation (Ex. 1–64–46). The geometric mean protection factors for each of the seven employees who used the half-mask PAPRs ranged from 19 to 193, with a geometric mean protection factor of 54 for the entire sample. The authors attributed the poor performance of the half-mask PAPRs to leakage around the filter assembly connection where it attached to the PAPR blower housing, as well as to inadequate facepiece fit.

Lenhart and Campbell of NIOSH in 1984 conducted another WPF study of tight-fitting half-mask PAPRs used by employees in the sinter plant and furnace areas of a primary lead smelter

(Ex. 1–64–42). For the entire sample, the authors reported a geometric mean protection factor of 380 and a fifth-percentile protection factor of 58.

Two SWPF studies also evaluated tight-fitting half-mask PAPRs. Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3) used fit testing to assess the performance of the respirators in a test chamber under variable temperature and humidity conditions. They found that the geometric mean protection factor for the entire sample ranged from 14,200 to 20,000. In the second SWPF study, da Roza, Cadena-Fix, and Kramer tested a panel of respirator users who exercised on a treadmill at different work rates (Ex. 1–64–94). The geometric mean protection factor for the entire sample (*i.e.*, combining respirator performance at all work rates) was 5,000.

The following table provides a summary of the WPF and SWPF studies for tight-fitting half-mask PAPRs.

WPF studies for half-mask PAPRs (by name of authors and type/model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Lenhart and Campbell (Ex. 1–64–42), MSA	25	380	2.6	58
Myers and Peach (Ex. 1–64–46), PAPR (manufacturer and model not specified)	10	54	2.44	.....

SWPF studies for half-mask PAPRs (by name of authors and type/model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile SWPF
Skaggs *et al.* (Ex. 1–38–3), MSA with Comfo II facepiece	60	14,200–20,000	.....	.....
da Roza *et al.* (Ex. 1–64–94), MSA with Comfo facepiece	[1]6	[2]5,000	.....	.....

[1] The six respirator users of the test panel exercised on a treadmill.
[2] The geometric mean is for all exercise rates combined.

In arriving at a proposed APF of 50 for tight-fitting half-mask PAPRs, OSHA relied to a large extent on the WPF study conducted by Lenhart and Campbell. This study was well controlled and collected data under actual workplace conditions; these conditions ensure that the results are reliable and represent the protection employees likely would receive under conditions of normal respirator use. The Agency did not consider the Meyers and Peach WPF study for this purpose because of problems involving filter assembly leakage and poor facepiece fit reported by the authors; consequently, the abnormally high levels of silica measured inside the mask would most likely underestimate the true protection afforded by the respirator. The two SWPF studies reported much higher geometric mean protection factors than did the WPF study performed by Lenhart and Campbell. However, OSHA believes that the higher protection factors reported for these SWPF studies are consistent with the proposed APF of 50 based on data obtained for this respirator class in the Lenhart and Campbell WPF study because SWPF studies typically report significantly higher protection factors than WPF studies of the same respirator. In addition, the proposed APF duplicates the APFs assigned to tight-fitting half-mask respirators by the 1987 NIOSH RDL and the 1992 ANSI standard, both of which based their APF determinations on data reported in the existing scientific literature, as well as the opinions of well known experts on respiratory protection.

OSHA's proposed APFs for full facepiece PAPRs and PAPRs with hoods or helmets. Two WPF studies determined protection factors for tight-fitting full facepiece PAPRs. Myers and Peach conducted the first of these studies in 1983 (Ex. 1–64–46); OSHA described this study in its earlier discussion of tight-fitting half-mask PAPRs. As noted in this discussion, the Agency did not use the results of this study because of problems involving filter assembly leakage and poor facepiece fit reported by the authors. The second WPF study, by Colton and Mullins, reported a geometric mean protection factor of 4,226, and a fifth percentile protection factor of 728 for employees in a secondary lead smelter (Ex. 1–64–12). Thirty-four samples in this study had no detectable lead inside the respirators; therefore, the authors used the limit of detection for lead as a proxy for the concentration of lead inside the facepiece. When the authors corrected their data analysis by including these samples, the geometric mean protection factor increased to 8,843, and the fifth percentile protection factor rose to 1,335. No SWPF studies on full facepiece PAPRs were available.

One WPF study and one SWPF study are available for tight-fitting PAPRs with hoods or helmets. In the WPF study, Keys, Guy, and Axon, determined the protection afforded to employees in a pharmaceutical manufacturing plant by three different respirators in this class (Ex. 1–64–40). The fifth percentile protection factors for these respirators were 997, 1,197, and 1,470. Johnson, Biermann, and Foote of LLNL and Cohen, Hecker, and Mattheis of the Organization Resources Counselors (ORC) performed the single SWPF study (referred to here as "the ORC-LLNL SWPF Study") in which they collected 576 test samples from four different PAPRs with hoods or helmets, and equipped with bibs (Ex. 3–4–2). The lowest protection factor among the 576 test samples was 11,000; overall, the 576 test samples had a fifth percentile protection factor greater than 250,000.

The following tables summarize the WPF studies for tight-fitting full facepiece PAPRs, and the WPF and SWPF studies involving PAPRs with hoods or helmets.

WPF studies for full facepiece PAPRs (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Colton and Mullins (Ex. 1–64–12) 3M W–3205 Whitecap (with 3M 7800 full facepiece and HEPA filter):				
Study 1[1]	20	4,226	2.9	728
Study 2	55	8,843	3.2	1,335
Myers and Peach (Ex. 1–64–46) Full facepiece PAPR (manufacturer and model not specified)	10	54	2.44	.....

[1] Study 1 consisted of 20 samples with C_i values over the detection limit, while Study 2 consisted of 34 samples that had C_i values below the detection limit; for analytic purposes, the investigators assigned these 34 samples a C_i value equal to the detection limit.

WPF studies for PAPRs with hoods or helmets (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Keys *et al.* (Ex. 1–64–40):				
Racal Breathe Easy 10 (hood, double bib, HEPA filter)	29	11,137	3.9	1,197
Bullard Quantum (hood, double bib, HEPA filter)	9	9,574	3.1	1,470
3M Whitecap II (helmet, double bib, HEPA filter)	22	42,260	9.8	997

SWPF studies for PAPRs with hoods or helmets (by name of authors and model of respirator tested)	Range of SWPFs	Geometric median SWPF	5th percentile SWPF
ORC–LLNL SWPF Study (Ex. 3–4):			
3M Whitecap (helmet with bib and HEPA filter)	140,000–>250,000	>250,000	>250,000
3M Snapcap (Tyvek hood with bib and HEPA filter)	11,000–>250,000	>250,000	>170,000–210,000
Racal BE–5 Clear PVC (hood with bib and HEPA filter)	11,000–>250,000	>250,000	>250,000
Racal BE–10 (Tyvek hood with bib and HEPA filter)	94,000–>250,000	>250,000	246,000–>250,000

OSHA is proposing an APF of 1,000 for full facepiece PAPRs and PAPRs with hoods or helmets. With regard to full facepiece PAPRs, the corrected fifth percentile protection factor of 1,335 reported by Colton and Mullins in their WPF study fully supports the proposed APF. The WPF study of PAPRs with hoods or helmets by Keys, Guy, and Axon justifies the proposed APF of 1,000 for this respirator class. These authors reported that the average fifth percentile protection factor for the three respirators tested in their study was well over 1,000. Moreover, the ORC–LLNL SWPF Study (Ex. 3–4), in which this class of respirators received extremely high fifth percentile protection factors, lends substantial validation to OSHA's proposed APF. In addition, the proposed APFs for full facepiece PAPRs and PAPRs with hoods or helmets corresponds with the APFs assigned to these respirator classes in the 1992 ANSI standard; ANSI made these APF determinations only after a careful review and discussion of the available research by a panel of respirator experts. While the proposed APF for these respirators is much higher than the APF recommended in the 1987 NIOSH RDL, the Agency believes that the WPF and SWPF studies conducted on these respirators since publication of the RDL justify the proposed increase.

Footnote 4 of the proposed APF table states that "* * * only helmet/hood respirators that ensure the maintenance of a positive pressure inside the facepiece during use, consistent with performance at a level of protection of 1000 or greater, receive an APF of 1,000." The footnote continues, "All other helmet/hood respirators are treated as loose-fitting facepiece respirators and receive an APF of 25." OSHA is proposing that respirators from this class be able to demonstrate that they maintain a positive pressure inside the facepiece during use and achieve a level of protection of 1000 or greater. Available WPF and SWPF studies have found that some of these respirators were shown to only achieve protection factors well below 1,000 (Exs. 3–4, 3–5). In all likelihood, the burden of conducting any testing would fall on respirator manufacturers, but the employer would be responsible for selecting a properly tested respirator, thereby assuring employees that they will receive adequate protection against toxic hazards.

OSHA's proposed APFs for loose-fitting PAPRs. A number of WPF and SWPF studies are available for loose-fitting facepiece PAPRs. An important purpose of these studies was to determine if APFs differed between loose-fitting facepiece PAPRs and PAPRs with tight-fitting hoods or helmets. The NIOSH WPF study by Myers, Peach, Cutright, and Iskander (Ex. 1–64–47) was the first to report that loose-fitting facepiece PAPRs did not perform at an APF of 1,000, the value determined by Ed Hyatt in 1976 after quantitatively fit testing a panel of respirator users. A follow-up study by Myers, Peach, Cutright, and Iskander (Ex. 1–64–48) reported a fifth percentile protection factor of 25 for this respirator class.

A WPF study conducted later by Albrecht, Gosselink, Wilmes, and Mullins (Ex. 1–64–23) reported a fifth percentile protection factor of 42 for the 3M Airhat, a loose-fitting facepiece PAPR with a helmet. Stokes, Johnston, and Mullins (Ex. 1–64–66) performed a WPF study in a roofing granule production plant using the 3M Airhat; they found a fifth percentile protection factor of 95. However, when employees used the respirator with a Tyvek shroud, the fifth percentile protection factor increased to 1,615. Gaboury and Burd (Ex. 1–64–24) reported a fifth percentile protection factor of 275 in a WPF study in which employees in an aluminum smelter wore a Racal Breathe Easy loose-fitting facepiece PAPR with a helmet. Collia, Colton, and Bidwell (Ex. 3–5) found a fifth percentile protection factor of 315 in a WPF study performed on the 3M Breathe Easy 12 PAPR with a loose-fitting head cover.

OSHA evaluated three SWPF studies addressing the performance of loose-fitting facepiece PAPRs with hoods or helmets. Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3) reported geometric mean protection factors ranging from 1,900 to 5,600 for the 3M Airhat, and from 1,200 to 3,500 for the Racal AH3 PAPR with a loose-fitting helmet. A study by da Roza, Cadena-Fix, and Kramer (Ex. 1–64–94) found geometric mean protection factors ranging from 10 to 10,000, and from 100 to 20,000, for the two loose-fitting facepiece PAPRs with helmets they tested.

Johnson, Biermann, and Foote of LLNL and Cohen, Hecker, and Mattheis of ORC (Ex. 3–4) assessed the performance of one loose-fitting facepiece PAPR with a Tyvek head cover as part of the ORC–LLNL SWPF Study; the results of this study reported three APFs below 10,000, with the lowest value being 240. The fifth percentile protection factor for this respirator ranged from 150,000 to 230,000.

The following tables summarize the WPF and SWPF studies for loose-fitting facepiece PAPRs with hoods or helmets.

WPF studies for loose-fitting facepiece PAPRs with hoods or helmets (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Myers *et al.*(Ex. 1–64–47):				
3M W–344 (helmet with HEPA filter)	23	165	3.57	26
Racal AH 3 (helmet with HEPA filter)	23	205	2.83	26
Albrecht *et al.* (Ex. 1-64–23) 3M Airhat (helmet with HEPA filter)	7	199	2.36	42
Myers *et al.* (Ex. 1–64-48):				
3M W–316 (helmet with DM filter)	22	135	1.89	25
Racal AH 5 (helmet with DM filter)	24	120	2.64	25
Gaboury and Burd (Ex. 1–64–24) Racal Breathe Easy I (helmet with HEPA or OV filter)	20	1,414	2.51	275
Collia *et al.* (Ex. 3–5) 3M Breathe Easy 12 (Tyvek head cover with HEPA filter)	41	2,523		315
Stokes *et al.* (Ex. 1-64–66):				
3M Airhat (helmet) with:				
HEPA filter (total)[1]	12	5,370	3.0	762
DM filter (without shroud)	27	877	5.2	53
DM filter (with shroud)	18	11,792	3.1	1,615
DM filter (total)	45	2,480	7.0	95

[1] The total consists of the shroud and no-shroud samples combined.

SWPF studies for loose-fitting facepiece PAPRs with hoods or helmets (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric median	5th percentile SWPF
Skaggs *et al.* (Ex. 1–38–3):				
3M Airhat W–344 (helmet)	60	1,900–5,600		
Racal AH3 Airstream (helmet)	60	1,200–3,500		
da Roza *et al.* (Ex. 1–64–94):				
3M Airhat W–344 (helmet)	[1]6	10–10,000		
Racal Breathe-Easy 1 (helmet)	6	100–20,000		
ORC–LLNL SWPF Study (Ex. 3–4):				
Racal BE–12 (Tyvek head cover)	144	240–250,000	250,000	150,000–230,000

[1] Used same panel of six respirator users for both respirators; panel exercised on treadmill at 80% cardiac capacity.

OSHA is proposing an APF of 25 for loose-fitting PAPRs with hoods or helmets, which is consistent with both WPF studies conducted by Myers, Peach, Outright, and Iskander (Ex. 1–64–47 and 1–64–48), as well as the APFs for this respirator class established by the 1987 NIOSH RDL and by the 1992 ANSI standard. The extreme variability of the fifth percentile protection factors in the WPF studies warrants a conservative approach in proposing an APF for this respirator class. In this regard, seven of the 11 WPF studies found fifth percentile protection factors of less than 100, and five of these APFs were below 50. The Agency believes that a proposed APF of 25 would provide employees who use these respirators with an adequate safety margin in view of the unreliability of the protection factors found for this respirator class.

The geometric means reported by Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3) were low for a SWPF study, as were a number of the geometric means determined by de Rosa, Cadena-Fix, and Kramer (Ex. 1–64–94) in their SWPF assessments. In the workplace, these low geometric mean SWPFs likely would translate into fifth percentile WPFs of less than 50. Therefore, the limited and highly variable data in the SWPF studies support OSHA's conclusion that a conservative APF of 25 would afford employees an adequate and consistent level of respirator protection in the workplace.

5. Supplied-Air Respirators (SARs)

Historical development of APFs for SARs. SARs operate in one of three modes—demand, continuous flow, or pressure demand. Demand or pressure demand respirators have either a tight-fitting half-mask or a tight-fitting full facepiece, while continuous flow respirators have either a tight-fitting, or a loose-fitting, hood or helmet, or a tight-fitting half-mask or full facepiece.

In 1976, Ed Hyatt of LANL published the initial protection factors for SARs (Ex. 2). In making these determinations, Hyatt gave an APF of 10 to half-mask SARs operated in the demand mode, while full facepiece SARs received an APF of 50 in the demand mode. These APFs are the same APFs that Hyatt assigned to negative pressure half-masks, and full facepiece, air-purifying respirators. Hyatt based the APF of 10 for half-mask SARs operating in the demand mode on LANL studies performed in 1971 and 1972 on a respirator test panel wearing eight half-mask air-purifying respirators equipped with HEPA filter. In determining an APF of 50 for full facepieces, Hyatt relied on LANL studies in which a respirator test panel consisting of 31 firemen wore full facepiece SCBAs operating in the demand mode.

Hyatt regarded SARs that operate in a positive pressure mode to be more protective than SARs used in a negative pressure mode; therefore, he assigned half-mask and full facepiece SARs that function in the continuous flow, pressure demand, or other positive pressure modes APFs of 1,000 and 2,000, respectively; the half-mask respirators received a lower APF than the full facepiece respirators because

Hyatt considered a half-mask to be less stable on the face than a full facepiece. SARs with hoods or helmets operated in continuous flow mode received an APF of 2,000, consistent with the APF Hyatt gave to full facepiece SARs operating in the continuous flow or pressure demand mode.

The 1980 ANSI standard differentiated APFs for some SARs depending on the type of fit testing performed. Accordingly, half-mask and full facepiece SARs used in the demand mode received APFs of 10 and 100, respectively, when qualitatively fit tested. When tested quantitatively, the APFs for these respirators were the protection factors achieved during fit testing, with the APF limited to the sub-IDLH value[10] of the hazardous substance in the workplace.

Half-mask or full facepiece SARs that functioned in continuous flow or pressure demand modes required no fit testing because of their positive pressure operation; consequently, these respirators received an APF limited only to the sub-IDLH value of the hazardous substance in the workplace when used without an auxiliary air supply or escape bottle (*i.e.*, the "escape configuration"). When equipped in an escape configuration, these respirators had a maximum APF of 10,000. Continuous flow or pressure demand SARs with hoods or helmets also received a maximum APF of 10,000 when not used in an escape configuration; however, when operated in a escape configuration, the maximum APF for these respirators was of 10,000+ (*i.e.*, employees could use them to escape from IDLH atmospheres).

The 1987 NIOSH RDL recommended APFs of 10, 50, and 1,000, respectively, for half-mask SARs when operated in demand, continuous flow, and positive pressure (including pressure demand) modes. All SARs with hoods or helmets received an APF of 25 when used in the continuous-flow mode. The RDL assigned full facepiece SARs an APF of 50 when they functioned in the demand or continuous flow mode, an APF of 2,000 when operated in the pressure demand or other positive pressure mode, and a maximum APF of 10,000 when used in the pressure demand mode with an auxiliary SCBA.

The 1992 ANSI standard did not set different APFs for the same class of respirator based on the type of fit testing conducted because WPF studies performed after publication of the 1980 ANSI standard did not support this practice. After comparing the operational characteristics of half-mask and full facepiece SARs to half-mask and full facepiece air-purifying respirators, the 1992 ANSI standard gave APFs of 10 and 100, respectively, to half-mask and full facepiece SARs when operated in the demand mode. Pressure demand and continuous flow half-mask SARs received an APF of 50, consistent with their operational similarities with half-mask PAPRs. Full facepiece continuous flow SARs received an APF of 1,000, determined from their operational analogy to SARs having tight-fitting hoods or helmets. Based on their operational similarities to loose-fitting continuous flow PAPRs, the committee drafting the 1992 ANSI standard gave loose-fitting facepiece SARs operated in the continuous flow mode an APF of 25.

The following table summarizes the APFs given to the various classes of SARs (*i.e.*, half-mask, full facepiece, tight-fitting with hoods or helmets, and loose-fitting facepiece), beginning with Hyatt's studies at LLNL in 1976 through the 1992 ANSI standard.

SARs	APFs			
	LANL (1976)	1980 ANSI standard	NIOSH RDL (1987)	1992 ANSI standard
Half-mask	10 (demand)	10 (demand; with QLFT).	10 (demand)	10 (demand).
	1,000 (continuous flow)	Same as QNFT factor (demand; sub-IDLH value max.).	50 (continuous flow)	50 (continuous flow).
	1,000 (pressure demand)	Sub-IDLH (continuous flow or pressure demand; no escape configuration). 10,000 max. (with escape configuration).	1,000 (pressure demand)	50 (pressure demand).
Full facepiece	50 (demand)	100 (demand; with QLFT).	50 (demand)	100 (demand).
	2,000 (continuous flow)	Same as QNFT factor (demand; sub-IDLH value max.).	50 (continuous flow)	1,000 (continuous flow).
	2,000 (pressure demand)	Sub-IDLH (continuous flow or pressure demand; no escape configuration). 10,000 max. (with escape configuration).	2,000 (pressure demand)	1,000 (pressure demand).
Hood or helmet	2,000 (continuous flow)	Sub-IDLH (continuous flow or pressure demand; no escape configuration). 10,000 max. (with escape configuration).	25 (continuous flow)	1,000 (continuous flow).
Loose-fitting facepiece			25 (continuous flow)	25 (continuous flow).

[10] The concentration of the hazardous substance just below its IDLH value.

OSHA's proposed APFs for half-mask SARs. No WPF studies were available for half-mask SARs. Therefore, OSHA is proposing an APF of 10 for this respirator class when used in the demand mode based on their analogous operational performance with negative pressure half-mask air-purifying respirators tested during WPF and SWPF studies. In addition, the Agency proposes to give half-mask SARs that function in the continuous flow or pressure demand modes an APF of 50, consistent with the performance of half-mask PAPRs in WPF and SWPF studies (and operated at the same airflow rates). Additional support for the proposed APFs comes from the 1992 ANSI standard, which assigned an APF of 10 to half-mask airline SARs operated in the demand mode, and an APF of 50 when operated in the continuous flow or pressure demand mode. The 1987 NIOSH RDL also gave half-mask demand SARs an APF of 10, but recommended an APF of 1,000 for these respirators when functioning in the pressure demand or other positive pressure modes.

Regarding the recommended APF of 1,000, OSHA preliminarily finds that these respirators warrant the more conservative APF of 50 because of the possibility that negative pressure could develop inside the mask during tasks that stress the facepiece seal; moreover, in the absence of WPF and SWPF data for these respirators, the Agency believes that a conservative approach to setting this APF is appropriate.

OSHA's proposed APFs for full facepiece SARs. No WPF or SWPF studies were available involving tight-fitting full facepiece SARs operated in the demand mode. Therefore, in the absence any such data, the Agency is assigning this respirator class an APF of 50 based on the analogous operational characteristics between these respirators and negative pressure air-purifying respirators when operated in the demand mode under WPF conditions. The proposed APF is the same as the APF recommended for this respirator class by the 1987 NIOSH RDL, and similar to the APF (*i.e.*, 100) given to these respirators by the 1992 ANSI standard. In choosing an APF of 50 instead of 100 for this class of respirators, the Agency believes that the paucity of WPF and SWPF studies warrants taking a conservative approach in this determination.

While no WPF studies for full facepiece SARs operated in the pressure demand or other positive pressure modes were available, there was one SWPF study of this respirator class by Skaggs, Loibl, Carter, and Hyatt (Ex. 1–38–3). The study, performed at LANL, evaluated the respirators under different temperature and humidity conditions; the results of the study showed that these respirators had geometric mean protection factors ranging from 8,500 to 20,000. Therefore, the Agency is proposing an APF of 1,000 for full facepiece SARs used in the pressure demand or other positive pressure modes based on their performance in this study (*i.e.*, that the likelihood is high that the geometric mean SWPFs would translate to fifth percentile WPF of 1,000. Further justification for the proposed APF comes from the similarity in operational characteristics (including the same minimum airflow rates) between these respirators and tight-fitting full facepiece continuous flow PAPRs, which are receiving a proposed APF of 1,000 in this rulemaking. (See the discussion of these PAPRs above).

The proposed APF of 1,000 for full facepiece SARs operated in the pressure demand or other positive pressure modes also is consistent with the APFs of 1,000 assigned by the 1992 ANSI standard to these respirators when used in the continuous flow or pressure demand modes, and the APF of 2,000 recommended by the 1987 NIOSH RDL for pressure demand respirators in this class. Although the RDL gave an APF of 50 to these respirators in a continuous flow mode, the Agency believes that the SWPF study, as well as the WPF studies performed on analogous tight-fitting full facepiece continuous flow PAPRs, justify the proposed APF.

OSHA's proposed APF for SARs with hoods or helmets. The Agency found a number of WPF studies on these respirators, including one by Johnston, Stokes, Mullins, and Rhoe (Ex. 1–64–36).

These authors performed a WPF study on the 3M Whitecap continuous flow abrasive blasting helmet (equipped with an extended length shroud) used by four shipyard employees while sandblasting a barge. After performing several data analyses, the authors concluded that outside-the-respirator samples with filter loadings at least 1,000 times greater than the mean blank value were most representative of the respirator's performance. Therefore, OSHA is using only statistics based on these samples for its APF determinations; these statistics indicate that the estimated fifth percentile protection factor is 1,038 for these samples.

Johnston, Stokes, Mullins, and Rhoe (Ex. 1–64–37) conducted a second WPF study on the 3M Whitecap II general purpose SAR with a helmet. In this study, the authors sampled six employees while they performed grinding operations in a foundry. The authors stated that "because of the relatively low sample loadings, the WPF numbers obtained significantly underestimate the performance capability of the respirator." Therefore, OSHA did not use the WPFs from this study in developing the proposed APF for this respirator class.

Colton, Mullins, and Bidwell (Ex. 1–64–17) published a WPF study on foundry employees who used the 3M Snapcap continuous flow SAR with an abrasive blasting hood while exposed to silica during tear-down operations. The authors reported a fifth percentile protection factor over 1,000, which they noted was consistent with the APF of 1,000 assigned to these respirators by the 1992 ANSI standard.

In another WPF study, Nelson, Wheeler, and Mustard (Ex. 3–6) sampled aircraft assembly employees involved in sanding and primer spraying operations while using the 3M H–422 continuous flow SAR hood with both an outer and inner shroud. The authors reported that 14 of the 31 samples taken during primer spraying operations showed measurable concentrations of strontium (Sr) outside the facepiece (C_o), but none of the samples showed any measurable concentration of Sr inside the facepiece (C_i). Based on these C_o data, and using the lowest detectable limit for C_i, the authors concluded that "the WPFs were greater than 1,200 for all samples with a mass of Sr on the C_o samples 1,000 times the detection limit for the C_i samples." They stated further that their study supports the APF of 1,000 given to these respirators by the 1992 ANSI standard.

In a WPF study conducted at Avondale shipyard, Kiefer, Trout, and Wallace (Ex. 2–1) sampled the total particulate exposures (*i.e.*, small and large particle fractions combined) of employees involved in abrasive blasting operations while using the Bullard Type 88 CE (continuous flow) SAR abrasive blasting hood. The authors reported WPFs ranging from 2,817 to 10,000.

OSHA identified four SWPF studies of this respirator class, all performed by LLNL or LANL for manufacturers of continuous flow SARs with abrasive blasting hoods or helmets. The geometric mean protection factors found for these respirators were 40,000 for the Bullard Model 77 and 88 Type CE (continuous flow) SARs with an abrasive blasting hood (Ex. 1–157), and 100,000 for the Clemco Apollo 20 and 60 Type CE (continuous flow) SARs with an abrasive blasting hood (Ex. 3–7–3) and the 3M Whitecap Model W–8100 Type CE (continuous flow) SAR with abrasive blasting helmet (Ex. 3–9–2). Based on the results of these studies, OSHA granted these respirators an interim APF of 1,000 (Exs. 3–7–4, 3–8–4, 3–9–3).

In the latest SWPF study, Johnson, Biermann, and Foote of LLNL and Cohen, Hecker, and Mattheis of ORC (Ex. 3–4) tested six models of continuous flow SARs with hoods or helmets as part of the ORC–LLNL SWPF Study. Five of these respirators had fifth percentile SWPFs ranging from 86,000 to over 250,000. However, the fifth percentile SWPFs for the sixth respirator (the North Model 85302 T) ranged from 13 to 18. The authors attributed the poor performance of this respirator to the absence of a "tuck-in" bib. When the manufacturer corrected this design problem by adding a tuck-in bib, the resulting model (designated the North Model 85302 TB) performed as well as most of the other respirators tested in the study.

The following tables summarize the WPF and SWPF studies for tight-fitting SARs with hoods or helmets.

WPF studies for SARS with hoods or helmets (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Johnston *et al.* (Ex. 1–64–36) 3M W–8100 Whitecap II (abrasive blasting helmet with extended-length shroud)	15	4,076	2.3	1,038
Johnston *et al.* (Ex. 1–64–37):				
3M W–8000 Whitecap II (helmet)				
Study 1 (using >750 x field blank with iron dust samples)	8	1,012	2.6	199
Study 2 (using >30 x field blank with silicon dust samples)	8	1,417	3.0	224
Colton *et al.* (Ex. 1–64–17), 3M Snapcap W–3256 (abrasive blasting hood)	14	10,344	2.5	2,290
Nelson *et al.* (Ex. 3–6), 3M H–422 (hood)	31	.....	.....	>1,000
Kiefer *et al.* (Ex. 2–1), Bullard 88 Type Type CE (abrasive blasting hood)	11	.....	.....	>1,000

SWPF studies for SARs with hoods or helmets (by name of authors and model of respirator tested)	Range of SWPFs	Geometric mean/ median SWPF	5th percentile SWPF
Bullard-LLNL (Ex. 1–157)[1], Bullard 77 and 88 Type CE (abrasive blasting helmet)	.....	>40,000 (mean)	.....
Clemco-LANL (Ex. 3–7–3)[2], Apollo 20 and 60 Type CE (abrasive blasting hood)	.....	>100,000 (mean)	.....
3M–LANL (Ex. 3–9–2)[3], 3M Whitecap Model W–8100 Type CE (abrasive blasting helmet)	.....	>100,000 (mean)	.....
ORC–LLNL SWPF Study (Ex. 3–4–2):			
3M Whitecap SAR (helmet with bib and chinstrap)	68,000–>250,000	>250,000 (median)	>250,000
3M Snapcap (Tyvek hood with bib and chinstrap)	13,000–>250,000	>250,000 (median)	170,000–250,000
MSA Versa-hood (Tyvek hood)	9,700–>250,000	>250,000 (median)	86,000–114,000
North Model 85302 TB (Tyvek hood with bib)	55,000–>250,000	>250,000 (median)	150,000–240,000
North Model 85302 T (Tyvek hood, no bib)	5–>250,000	1,217 (mean)	13–18
Bullard CC20TIC (Tyvek hood and bib and chinstrap)	160,000–>250,000	>250,000 (median)	>250,000

[1] Collected 288 samples (a panel of 4 respirator users × 12 exercises × 6 helmets).
[2] Collected 264 samples (a panel of 4 respirator users × 11 exercises × 6 helmets).
[3] Collected 132 samples (a panel of 4 respirator users × 11 exercises × 3 helmets).

The Agency is proposing an APF of 1,000 for continuous flow SARs with hoods or helmets based on their performance in the WPF and SWPF studies. In each of the WPF studies [except the second WPF study by Johnston, Colton, Stokes, Mullins and Rhoe (Ex. 1–64–37)], these respirators attained a fifth percentile protection factor over 1,000. In addition, the large geometric mean protection factors found for these respirators provide substantial evidence for this proposed APF.

The Agency qualified the proposed APF in footnote 4 of its proposed APF table. This footnote states that * * * only helmet/hood respirators that ensure the maintenance of a positive pressure inside the facepiece during use, consistent with performance at a level of protection of 1000 or greater, receive an APF of 1000." and that "[a]ll other helmet/hood respirators are treated as loose-fitting facepiece respirators and receive an APF of 25."

Under this proposed requirement, an employer must select for employee use only continuous flow SARs with hoods or helmets that attained a protection factor of at least 1,000. While better performance has been associated with certain designs (*e.g.*, double bibs, neck seals or dams, blouses, higher airflows), the presence of such design considerations are no guarantee of superior performance. In order to receive an APF of 1,000, it is contingent upon the respirator manufacturer to be able to demonstrate that their particular respirator meets the criteria specified in Table I of the proposed standard. This level of performance can best be demonstrated by performing a WPF or SWPF study. OSHA is proposing this requirement because previous WPF and SWPF testing conducted on these respirators shows that they do not always result in the requisite protection factor (Exs. 3–4, 3–5).

Accordingly, researchers have recommended that such testing be performed to ensure that employees use only respirators from this class that provide them with the specified level of protection during exposure to hazardous substances. In this regard, while the respirator manufacturer most likely would perform the required testing, it would be incumbent on the employer to ensure that the respirators they selected for employee use received this testing.

While the 1987 NIOSH RDL recommended an APF of 25 for continuous flow SARs with hoods or helmets, this recommendation is the result of combining these respirators into a single class with loose-fitting facepiece SARs, and giving the entire class the low APF (*i.e.*, 25) assigned originally to loose-fitting facepiece respirators. However, the 1992 ANSI standard established a separate class for continuous flow SARs with hoods or helmets based on analogous operating

characteristics between these respirators and airline respirators at the same flow rates, with the new class having an APF of 1,000 (loose-fitting facepiece SARs continued to receive an APF of 25). Accordingly, OSHA is proposing in this rulemaking to follow the procedure adopted by the 1992 ANSI standard and divide the two respirator types into separate classes, based principally on the WPF and SWPF performance of the continuous flow SARs with hoods or helmets.

OSHA's proposed APF for loose-fitting facepiece SARs. No WPF or SWPF studies involving this respirator class were available. Therefore, using analogous operational characteristics between these respirators and loose-fitting facepiece PAPRs, OSHA is proposing to assign loose-fitting facepiece SARs an APF of 25. In this regard, loose-fitting facepiece SARs, when evaluated under the NIOSH respirator-certification standards (42 CFR part 84), had the same minimum airflow rates found for loose-fitting facepiece PAPRs. Additional support for the proposed APF comes from the 1987 NIOSH RDL and the 1992 ANSI standard, both of which gave this respirator class an APF of 25.

6. Self-Contained Breathing Apparatuses (SCBAs)

Historical development of APFs for SCBAs. As he did with full facepiece SARs used in the demand mode, Hyatt in 1976 assigned a protection factor of 50 to a full facepiece SCBA operated in this mode. Based on results from a panel of 31 respirator users tested at LANL, he gave full facepiece SCBAs used in the pressure demand mode an APF of 10,000+ (Ex. 2). The 1980 ANSI standard listed half-mask and full facepiece SCBAs operated in the demand mode as having APFs of 10 and 100, respectively, when qualitatively fit tested; when quantitatively fit tested, the APFs for half-mask or full facepiece SCBAs functioning in the demand mode were the protection factors obtained during fit testing, with this APF limited to the sub-IDLH value. Full facepiece SCBAs used in the pressure demand mode received an APF of 10,000+. The 1987 NIOSH RDL recommended that half-mask and full facepiece SCBAs operated in the demand mode receive APFs of 10 and 50, respectively, and that the APF for full facepiece SCBAs operated in the pressure demand or other positive pressure mode be 10,000.

The committee responsible for the 1992 ANSI standard could not reach a consensus on an APF for full facepiece pressure demand SCBAs. As noted in footnote 4 of the APF table in this ANSI standard, available WPF and SWPF studies reported that, in some individual cases, the respirators did not achieve an APF of 10,000 (Ex. 1–50). Nevertheless, the committee found that a maximum APF of 10,000 was appropriate when employers used the respirators for emergency planning purposes and could estimate levels of hazardous substances in the workplace.

Two newly developed respirators equipped with hoods, Draeger's Air Boss Guardian and Survivair's Puma, have operational characteristics similar to SCBAs. The facepiece of the Draeger respirator consists of a hood with an inner nose cup and a seal at the neck; an air cylinder supplies air to the facepiece. NIOSH reviewed this respirator in accordance with its certification requirements specified at 42 CFR part 84, and in January 2001 certified the respirator as a tight-fitting full facepiece demand SCBA, with the cylinder having a 30-minute service life; NIOSH also approved the respirator for use in entering and escaping from hazardous atmospheres. In a May 16, 2001 letter to OSHA's Directorate of Compliance Programs (Ex. 7–1), Mr. Richard Metzler of NIOSH justified the classification of the Draeger respirator as an SCBA on the basis that the neck seal, which is integral to the facepiece, forms a gas-tight or dust-tight fit with the face, consistent with the definition of a tight-fitting facepiece specified by 42 CFR 84.2(k). This letter also noted that the fit testing procedures used for full facepiece demand SCBAs apply to the Draeger SCBA, and that, as a full facepiece demand SCBA, NIOSH recommended that the respirator receive an APF of 50 in accordance with its 1987 RDL.

NIOSH subsequently reviewed the Survivair Puma respirator, which has a tight-fitting hood supplied by an air cylinder; and certified the respirator as a pressure demand SCBA with a tight-fitting facepiece. As part of the certification process, NIOSH specified that fit testing required of SCBAs would apply to this respirator. However, Steve Weinstein of Survivair (Ex. 7–2) stated that the hood totally encapsulates the respirator user's hair, making quantitative fit testing (*e.g.*, with a Portacount) impossible; in such cases, the fit testing instrumentation treats dander and other material shed by the hair as particulates from outside the respirator, causing the fit factor to be artificially low. However, qualitative fit testing with the hood is possible because Survivair provides an adapter and P100 filters for this purpose; such fit testing meets the fit-testing requirements for tight-fitting SCBAs specified in paragraph (f)(8) of OSHA's Respiratory Protection Standard.

The table below provides a summary of APFs given to the half-mask and full facepiece SCBAs from Hyatt's 1976 studies at LLNL to the 1992 ANSI standard.

SCBAs	APFs			
	LANL (1976)	1980 ANSI standard	NIOSH RDL (1987)	1992 ANSI standard
Tight-fitting half-mask	10 (demand)	10 (demand; with QLFT) Same as QNFT factor (demand; sub-IDLH value max.).	10 (demand).	
Tight-fitting full facepiece.	50 (demand)	100 (demand; with QLFT) Same as QNFT factor (demand; sub-IDLH value max.).	50 (demand).	
Tight-fitting full facepiece.	10,000 (pressure demand)	10,000+ (pressure demand).	10,000 (pressure demand)	10,000 max. (emergency planning purposes only).

OSHA's proposed APFs for SCBAs. No WPF or SWPF studies for tight-fitting half-mask SCBAs and tight-fitting full facepiece SCBAs operated in the demand mode were available. In the only WPF study conducted on full facepiece positive pressure SCBAs, Campbell, Noonan, Merinar, and Stobbe of NIOSH assessed the performance of two different models of full facepiece pressure demand SCBAs that met the NFPA 1981 airflow requirements for respirators used by firefighters (Ex. 1–64–7). While the authors could not determine WPFs for these respirators because contaminant levels measured inside the facepiece were too low, pressure measurements taken inside the facepiece proved more useful. These measurements showed that four of the 57 firefighters experienced one or more negative-pressure incursions inside the facepiece while performing firefighting tasks. After analyzing the data for these firefighters using two different methods, the authors estimated that the overall protection factor exceeded 10,000.

In the first of two SWPF studies performed on full facepiece SCBAs used in the pressure demand mode, McGee and Oestenstad (Ex. 1–64–86) determined the protection afforded to members of a respirator test panel consisting of 23 men wearing the Biopack 60 closed circuit SCBA (Ex. 1–64–86). Three members of the panel had protection factors of 4,889, 7,038, and 18,900, with the remaining members having protection factors over 20,000. In the second study, Johnson, da Roza, and McCormack of LLNL (Ex. 1–64–98) tested the Survivair Mark 2 SCBA that met NFPA 1981 airflow requirements; during testing, a panel of 27 respirator users exercised on a treadmill at 80% of their cardiac reserve capacity. Although the authors found negative-pressure incursions inside the facepiece at high work rates, they concluded that the respirator "provided [a minimum] average fit factor of 10,000 [for any single subject], with no single subject having a fit factor less than 5,000 at a high work rate."

The tables below summarize the results of the WPF and SWPF studies performed on full facepiece pressure demand SCBAs.

WPF studies for tight-fitting full facepiece pressure demand SCBAs (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
Campbell et al. (Ex. 1–64–7), Unspecified model (with NFPA-compliant airflow)	57			10,000 (estimated)

SWPF studies for tight-fitting full facepiece pressure demand SCBAs (by name of authors and model of respirator tested)	Sample size	Geometric mean	Geometric standard deviation	5th percentile WPF
McGee and Oestenstad (Ex. 1–64–86), Biopack 60 (closed circuit)	23	20,000		
Johnson et al. (Ex. 1–64–98), Survivair Mark 2 (with NFPA-compliant airflow)	27	29,000	1.63	

OSHA is proposing APFs of 10 and 50, respectively, for tight-fitting half-mask SCBAs and tight-fitting full facepiece SCBAs operated in the demand mode. In the absence of any WPF and SWPF studies on these respirators, the Agency derived the proposed APFs based on analogous operational characteristics between these respirators and half-mask facepiece and full facepiece air-purifying respirators for which WPF and SWPF studies (described previously) are available. In addition, the proposed APFs are consistent with the APFs recommended by the 1987 NIOSH RDL for these respirators. (Note that the 192 ANSI standard did not assign APFs for these respirator classes.)

For tight-fitting full facepiece SCBAs used in the pressure demand or other positive pressure modes, OSHA is proposing an APF of 10,000, which is consistent with the 1987 NIOSH RDL and the 1992 ANSI standard. Empirical support for the proposed APF comes from the WPF study conducted by Campbell, Noonan, Merinar, and Stobbe (Ex. 1–64–7). This study showed that individual protection factors for these respirators, when operating at NFPA-compliant airflows, far exceed 10,000; however, four respirator users experienced momentary negative-pressure spikes inside the facepiece, indicating possible leakage of ambient contamination into the facepiece, and the breathing zone of the user, under some workplace conditions.

The two SWPF studies also provide support for the proposed APF, although several individual protection factors fell below 10,000 in the two studies, and the Johnson, da Roza, and McCormack study (Ex. 1–64–98) found negative-pressure incursions inside the facepiece during high exercise rates. Since the WPF and SWPF studies indicate that these respirators fail to provide the designated level of protection under some conditions, OSHA states in footnote 5 of its proposed APF table that "[w]hen employers can estimate hazardous concentrations for emergency planning purposes, they must use a maximum assigned protection factor no higher than 10,000." Therefore, this proposed provision limits use of tight-fitting full facepiece positive pressure SCBAs to conditions for which an emergency-response plan exists and the employer can estimate the concentration of the hazardous substance in those conditions; in addition, the employer must restrict respirator use to conditions in which the required level of employee protection is at or below an APF of 10,000.

In proposing to limit use of tight-fitting full facepiece positive pressure SCBAs to planned emergency conditions only, OSHA acknowledges that while these respirators are among the most protective respirators available, the existing WPF and SWPF data demonstrate that they do not consistently provide employees with a protection level of 10,000 under some exposure conditions. Therefore, the Agency is proposing that employers not use these respirators routinely for protecting employees against workplace exposures requiring an APF above 1,000, but instead limit their use to non-routine (*i.e.*, emergency) conditions that require high levels of respirator protection. In this regard, the Agency believes that few, if any, routine exposure conditions in the workplace require protection above an APF of 1,000; consequently, the proposed restriction would have minimal effect on routine respirator use.[11]

[11] In preparing the risk analysis for the final Respiratory Protection Standard, OSHA reviewed data in its Integrated Management Information System for the years 1992 to 1996 to determine overexposure rates to the hazardous substances listed in Table Z ("Limits for air contaminants") of

Continued

To use full facepiece positive pressure SCBAs under emergency exposure conditions, the proposal specifies that employers must develop an emergency plan (which several substance specific standards already require), and provide an estimate of the concentration levels likely to result under the emergency conditions. Emergency plans would limit employee exposure to the hazardous conditions by informing them in advance of the specific tasks they are to perform, while estimating concentration levels of the hazardous substance would increase the likelihood that their exposures to the substance will remain within the APF assigned to the respirator. In addition, OSHA's proposal to limit use of these respirators to emergency conditions is similar to the restriction placed on them in footnote 4 of the APF table published in the 1992 ANSI standard; this restriction reads, in part:

> [A] definitive assigned protection factor could not be listed for positive-pressure SCBAs. For emergency planning purposes where hazardous concentrations can be estimated, an assigned protection factor of no higher than 10,000 should be used. (Ex. 1–50)

For the class of respirators designated as pressure demand SCBAs with tight-fitting hoods or helmets, including the Survivair Puma, OSHA is proposing an APF of 10,000 maximum. The basis for this proposed APF are the analogous operational characteristics between these respirators and tight-fitting full facepiece pressure demand SCBAs. Accordingly, the Agency proposes to limit use of demand SCBAs with tight-fitting hoods or helmets to emergency planning purposes, similar to the restriction it is placing on tight-fitting full facepiece pressure demand SCBAs.

Paragraph (d)(3)(i)(B)—MUC Provisions

These proposed requirements consist of four separate paragraphs [(d)(3)(i)(B)(*1*) through (d)(3)(i)(B)(*4*)]. Paragraph (d)(3)(i)(B)(*1*), which proposes requirements on the use and application of MUCs, reads, "The employer must select a respirator for employee use that maintains the employee's exposure to the hazardous substance, when measured outside the respirator, at or below the MUC." This proposed paragraph requires employers to select respirators for employee protection that are appropriate to the ambient levels of the hazardous substance found in the workplace, *i.e.*, that the ambient level of the hazardous substance must never exceed the conditions specified by the MUC, which is the exposure limit specified for the hazardous substance multiplied by the respirator's APF. Accordingly, the proposed requirement ensures that employers maintain employees' direct exposure to hazardous substances (*i.e.*, inside the respirator) within levels specified by OSHA's Z tables and substance-specific standards, and where OSHA has no standards, within consensus standards levels. Therefore, this provision would not only provide employee protection consistent with prevailing industrial-hygiene practice, but with existing regulatory and statutory requirements as well.

The single note in the proposed MUC provisions follows paragraph (d)(3)(i)(B)(*1*). This note reads that "MUCs are effective only when the employer has a continuing, effective respiratory protection program as specified by 29 CFR 1910.134, including training, fit testing, maintenance and use requirements." This provision implies that MUCs are dependent on the APFs of the respirators selected by employers to protect employees against airborne contaminants. In this regard, the Agency determined the APF for a respirator or class of respirators based on studies that assessed the respirator under conditions that met or exceeded the program requirements of its Respiratory Protection Standard at 29 CFR 1910.134. These studies ensured that the study participants who used the respirators received thorough respirator training and fit testing, and used the respirators correctly; also, employers (or research staff in the case of SWPF studies) maintained the respirators in proper operating condition. Consequently, the APF used in calculating a MUC is valid for this purpose only if employers implement a continuing, effective, and comprehensive respiratory-protection program as required by OSHA's Respiratory Protection Standard. When employers do not meet the conditions specified in this note, they may not use the respirator's APF in determining the MUC.

The next MUC provision, proposed paragraph (d)(3)(i)(B)(*2*), states that "[e]mployers must comply with the respirator manufacturer's MUC for a hazardous substance when the manufacturer's MUC is lower than the calculated MUC specified by this standard." While OSHA believes that a MUC calculated according to the proposed MUC definition normally would provide adequate employee protection, it defers to respirator manufacturers when they recommend a lower MUC for their respirators under specific hazardous-substance conditions. Respirator manufacturers warrant such deference because they are most familiar with the functional limitations of their respirators when exposed to airborne concentrations of hazardous substances. Also, manufacturer's may base their recommended MUCs on unpublished WPF or SWPF studies; such studies, when conducted properly, would increase the validity of their recommendations. As with a MUC determined using OSHA's proposed calculation method, the Agency believes that the protection afforded to employees by a respirator manufacturer's MUC depends on the employer's full compliance with the comprehensive respiratory-protection program specified by OSHA's Respiratory Protection Standard.

The Agency would not defer to respirator manufacturers who recommend higher MUCs than an employer would obtain using the proposed calculation method because such results would not be consistent with the maximum ambient level of a hazardous substance in which employees can use the respirators, *i.e.*, the maximum ambient level of a hazardous substance would exceed the level determined from the known exposure limit for the hazardous substance and the protection of the APFs determined by this proposed rulemaking. Under these conditions, the respirator manufacturer would be basing the recommendation on an invalid application of the known exposure limit or the APF (or both); therefore, such an invalid application would cause employers to select respirators that are incapable of protecting employees from the ambient level of a hazardous substance, resulting in serious health impairments to their employees.

Paragraph (d)(3)(i)(B)(*3*) of the proposed MUC provisions states, "Employers must not apply MUCs to conditions that are immediately dangerous to life or health (IDLH); instead, they must use respirators listed for IDLH conditions in paragraph (d)(2) of this standard." Accordingly, employers could not use the proposed MUC calculation method (or a respirator manufacturer's MUC) to select a respirator for employees who are entering an IDLH atmosphere. OSHA found support for these proposed requirements in comments cited in the preamble to the final Respiratory Protection Standard. These comments noted that employers should not use MUCs to select respirators for employees exposed to IDLH atmospheres (Ex. 1–54–381), or stated that employees should not use air-purifying respirators, including powered air-purifying respirators, while exposed to IDLH or oxygen-deficient atmospheres (Ex. 1–54–38); these commenters believed that the MUCs (and the APFs on which they are based) would not protect employees under these extremely hazardous exposure conditions.

For employees exposed to IDLH conditions, employers must select a respirator according to the requirements specified by paragraph (d)(2) of OSHA's Respiratory Protection Standard. Paragraph (d)(2) requires employers to select a full facepiece, pressure demand SCBA certified by NIOSH to have a service life of at least 30 minutes, or a combination full facepiece, pressure demand, supplied-air respirator with an auxiliary self-contained air supply, for IDLH exposures. In the preamble to the final Respiratory Protection Standard, the Agency justified selecting these respirators as follows:

> In [IDLH] atmospheres there is no tolerance for respirator failure. This record supported OSHA's preamble statement that IDLH atmospheres "require the most protective types of respirators for workers.

(59 FR 58896.) Commenters and respirator authorities, including NIOSH, ANSI, and both labor and management, agree that, for IDLH atmospheres, the most highly protective respirators, with escape capability, should be required (63 FR 1201).

The last proposed MUC provision, paragraph (d)(3)(i)(B)(*4*), requires that "[w]hen the calculated MUC exceeds another limiting factor such as the IDLH level for a hazardous substance, the lower explosive limit (LEL), or the performance limits of the cartridge or canister, then employers must set the maximum MUC at that lower limit." As with manufacturers' MUCs, these limiting factors would take precedence over the calculated MUC when they result in lower employee exposures to the hazardous substances than the calculated MUC; consequently, employees would receive increased protection against these hazardous substances.

This proposed paragraph cites several performance limits (*i.e.*, the IDLH or LEL for a hazardous substance, or the service life of a cartridge or canister) as examples of limiting factors. In this regard, OSHA is including these limiting factors as examples only; other limiting factors specified in a variety of OSHA standards, or used by employers to meet their obligation to provide a safe and healthful workplace, also would be applicable to this proposed requirement. In addition, commenters cited in the preamble to the final Respiratory Protection Standard believed that employers should not rely on MUCs determined using the proposed calculation method to estimate the service life of cartridges and canisters (Exs. 1–54–153, 1–54–165A, 1–54–222, 1–54–381).

B. Superseding the Respirator-Selection Provisions of Substance-Specific Standards in Parts 1910, 1915, and 1926

1. Introduction

The substance-specific standards in 29 CFR parts 1910, 1915, and 1926 specify numerous requirements for regulating employee exposure to toxic substances, including APFs for respirator selection. Under this proposed rulemaking, OSHA would revise the provisions in its substance-specific standards that regulate APFs (except the APF requirements for the 1,3-Butadiene Standard at 29 CFR 1910.1051). These proposed revisions would remove the APF tables from these standards, as well as any references to these tables, and would replace them with a reference to the APF and MUC provisions specified in proposed paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of the Respiratory Protection Standard at 29 CFR 1910.134. The Agency believes that the proposed revisions would simplify compliance for employers by removing many inconsistencies in APF requirements across its substance-specific standards; therefore, the proposed revisions would enhance consolidation and uniformity of these requirements. Accordingly, the purpose of revising the APF provisions of OSHA's substance-specific standards is to conform these standards, to the extent possible, to each other and to general APF and MUC requirements specified by 29 CFR 1910.134.

The proposed revisions would improve the substance-specific standards because the Agency developed these proposed APF requirements after careful review and analysis of the available scientific data and the most recent consensus standards (*i.e.*, the APF provisions in the NIOSH RDL and the ANSI Z88.2–1992 respiratory protection standard). In this regard, the Agency preliminarily finds that the proposed APFs are a significant improvement over the existing NIOSH and ANSI APFs because it developed them based on the latest WPF and SWPF studies, and used advanced statistical methods to identify common and unique variance among respirator classes. Therefore, the proposed APFs represent the best data and analytic techniques available, thereby lending a high degree of reliability and validity to the results. Accordingly, the proposed APFs will provide employers with confidence that their employees will receive the level of protection from airborne contaminants signified by these APFs. In addition, applying the proposed APFs to the substance-specific standards is consistent with OSHA's goal of bringing uniformity to its respiratory-protection requirements. Moreover, protection for workers is increased since the proposed APFs will provide equivalent or increased protection compared to the ANSI Z88.2–1992 standard, and incorporates the use of APFs into the employer's respiratory protection program. The Agency believes that superseding the APF requirements of its existing substance-specific standards would result in regulatory consistency, which would improve employer compliance with these provisions, reduce the compliance burden on the regulated community, and, consequently, further enhance the protection afforded to employees who use respirators.

In the final rulemaking for its Respiratory Protection Standard, OSHA noted that the revised standard was to "serve as a 'building block' standard with respect to future standards that may contain respiratory protection requirements." (*See* 63 FR 1265, 1998.) In this regard, the Agency believes that, to the extent possible, future substance-specific standards should refer to provisions of the final Respiratory Protection Standard instead of containing their own respirator requirements, including the generic APF and MUC provisions specified in this proposed rulemaking. However, on occasion a substance-specific standard may have respirator-selection requirements that supplement or supplant the generic APF and MUC provisions (*e.g.*, organic-vapor cartridge and canister procedures, prohibiting use of filtering facepieces or half-mask respirators) that are necessary for ensuring adequate employee protection against the toxic substance regulated by the standard. Accordingly, the Agency is retaining a number of existing respirator-selection provisions that are unique to the substance-specific standards; the following paragraphs describe these provisions, and provide OSHA's rationale for retaining them.

---

29 CFR 1910.1000. The Agency found that less than 0.01% of the exposures to these substances exceeded an APF of 1,000.

2. Retaining the Respirator-Selection Provisions of the 1,3-Butadiene Standard

As noted earlier in this section, OSHA is not proposing to revise the respirator-selection provisions of the 1,3-Butadiene Standard ("BD Standard"). Therefore, the APFs located in Table 1 ("Minimum Requirements for Respiratory Protection for Airborne BD") of the BD Standard would remain as currently published in paragraph (h)(3) ("Respirator selection") of 29 CFR 1910.1051.

The BD Standard requires that employers use respirators during work operations when engineering and work-practice controls "are not yet sufficient to reduce employee [BD] exposures to or below the [permissible exposure limits]" [*see* 29 CFR 1910.1051(h)(1)(iii)]. Employers must select these respirators based on the APFs listed in Table 1 of the BD Standard; in addition, they must equip air-purifying respirators with organic-vapor cartridges or canisters.

OSHA adopted the APFs in Table 1 from the Respirator Decision Logic developed by the National Institute for Occupational Safety and Health (NIOSH), even though a negotiated agreement between manufacturers who use BD and the unions representing their employees recommended the more permissive ANSI Z88–1992 APFs.

In the preamble to the final BD Standard, the Agency noted that its "decision to rely on the more protective NIOSH APFs is based on evidence showing that organic-vapor cartridges and canisters have limited capacity for adsorbing BD and may have too short a service life when used in environments containing greater than 50 ppm BD." (*See* 61 FR 56816.) While developing the final BD Standard, OSHA reviewed the breakthrough test data that were available for organic-vapor cartridges and canisters challenged against BD (and summarized in Table X–1 of the preamble to the final BD Standard; see 61 FR 56817). Based on this review, the Agency concluded:

> Allowing for a reasonable margin of protection, and given that test data were available only for a few makes of cartridges and canisters, OSHA believes that air-purifying devices should not be used for protection against BD present in concentrations greater than 50 ppm, or 50 times the 1 ppm PEL. Thus, OSHA finds that the ANSI APFs of 100 for full facepiece, air-purifying respirators and 1,000 for PAPRs equipped with tight-fitting facepieces are inappropriate for selecting respirators for BD.

In summary, test data cited by the Agency in the final BD Standard demonstrate short breakthrough times for BD concentrations above 50 ppm. Accordingly, these short breakthrough times justified limiting to 50 ppm the upper limit at which employees can use air-purifying respirators for protection against BD exposures. From the Agency's analysis of these data, OSHA also developed change schedules for cartridges and canisters that are unique for BD exposures (*see* Table 1 of the BD Standard). Additionally, these conclusions still are likely to be valid because OSHA reviewed the test data only six years ago (*i.e.*, 1996). Therefore, the Agency is proposing to retain the conservative NIOSH APFs as necessary to protect employees from BD exposures. Nevertheless, OSHA is asking employers and employees who are subject to the provisions of the existing BD Standard to provide additional information that supports retaining the existing APFs or adopting the generic APFs specified under this proposed rulemaking (See Section VII , Issues, of this preamble).

3. Retaining the Respirator-Selection Provisions in Other Substance-Specific Standards

While OSHA is proposing to retain the existing BD Standard in its entirety, it also is proposing to retain a number of respirator-selection provisions in other substance-specific standards as well. The respirator-selection requirements proposed for retention often provide protection against a hazardous characteristic or condition that is unique to the regulated substance. Additionally, OSHA believes that retaining these requirements in their present form (except for plain-language revisions, as appropriate) would not increase existing employer burden because they already must comply with these requirements; consequently, retaining these provisions will maintain the level of respirator protection currently afforded to employees. The following sections describe the most important provisions that the Agency is proposing to retain.[12]

- Lines 13–17 [13] and 21–21 under "Required apparatus" in the undesignated table of 29 CFR 1910.1017 (Vinyl Chloride (VC) Standard); and footnote 1 to Table 1 of 29 CFR 1910.1028 (Benzene Standard). These provisions specify a minimum service life for cartridges and canisters used to protect employees during exposure to these substances. In the VC Standard, employers must provide organic-vapor cartridges or canisters with a service life of at least one hour at VC concentrations up to 10 ppm when using chemical-cartridge respirators. These cartridges and canisters must have a service life of at least four hours at VC concentrations up to 25 ppm when using a canister with a powered air-purifying respirator that has a hood, helmet, half-mask, or full facepiece; the four-hour service-life requirement also applies when an employee uses a gas mask, but in this case, the employee must use a front-or back-mounted canister. According to the Benzene Standard, employers must ensure that canisters used with non-powered air-purifying respirators have a minimum service life of four hours when tested at 150 ppm benzene at a flow rate of 64 liters per minute (Lpm), a temperature of 25° C, and a relative humidity of 85%; testing for canisters used with tight-fitting and loose-fitting powered air-purifying respirators must be at flow rates of 115 Lpm and 170 Lpm, respectively.

  The Agency believes that these minimum service-life specifications ensure that employers use the designated respirators at appropriate concentration levels of the regulated substances. Accordingly, OSHA is proposing to retain these specifications to provide employees with a minimum level of cartridge and canister endurance when they use the designated respirators at these concentrations. While retaining these specifications may limit employers' flexibility in adopting change schedules, the Agency considers this limitation warranted in view of the properties of the substance that require greater protection or a higher level of protection for employees. Moreover, retaining these specifications adds no regulatory burden on employers because they must use the specifications under the existing standards.

- Paragraphs (h)(3)(ii), and lines 6, 7, 10, and 11 under "Required respirator" in Table II of 29 CFR 1910.1018 (Inorganic Arsenic Standard); lines 1–4 under "Respirator type" in Table 1 of 29 CFR 1910.1028 (Benzene Standard); line 1 under "Minimum required respirator" in Table 1 of 29 CFR 1910.1047 (Ethylene Oxide Standard); lines 1–4 under "Minimum respirator required" in Table 1 of 29 CFR 1910.1048 (Formaldehyde Standard); and lines 1–3 and 8, and footnote 2, under "Respirator type" in Table 1 of 29 CFR 1910.1050 and 1926.60 (Methylenedianiline (MDA) Standards).

  These paragraphs identify the types of cartridges and canisters employers must select under specific respirator-use conditions. The Inorganic Arsenic Standard requires employers to provide employees with: Air-purifying respirators that have a combination high-efficiency particulate air (HEPA) filter with an appropriate gas-sorbent cartridge or canister when their exposure exceeds the permissible exposure level for inorganic arsenic, and their exposure also exceeds the relevant limit for other gases; front- or back-mounted gas masks equipped with HEPA filters and acid-gas canisters or any full facepiece supplied-air respirators when the inorganic arsenic concentration is at or below 500 $\mu g/m^3$; and half-mask air-purifying respirators equipped with HEPA filters and acid-gas cartridges when the inorganic arsenic concentration is at or below 100 $\mu g/m^3$. The Benzene Standard specifies that employers must use an organic-vapor cartridge or canister with air-purifying respirators, and a chin-style canister with full facepiece gas masks. The Ethylene Oxide Standard states that employers are to equip air-purifying, full facepiece respirators with front- or back-mounted canisters approved for protection against ethylene oxide, while the same respirators under the Formaldehyde Standard must use a cartridge or canister approved for protection against formaldehyde. The MDA Standard requires that employers provide air-purifying respirators with a combination HEPA filter and organic-vapor cartridge or canister when MDA is in liquid form or is part of a heated process.

- Line 1 under "Required respirator" in Table 1 of 29 CFR 1910.1001, 1915.1001, and 1926.1101(Asbestos Standards); line 6 under "Required respirator" in Table I of 29 CFR 1910.1029 (Coke Oven Emissions Standard); and line 2 under "Required respirator" in Table I of 29 CFR 1910.1043 (Cotton Dust Standard).

  These provisions prohibit the use of disposable respirators (single-use respirators in the Coke Oven Emissions Standard) to protect employees against these toxic substances; the Cotton Dust Standard prohibits their use at exposures greater than five times the permissible exposure level (PEL). However, the Agency does not define the terms "disposable respirator" or "single-use respirator" in any of its standards, including its Respiratory Protection Standard at 29 CFR 1910.134; therefore, to update these requirements, the Agency is proposing to replace these terms with "filtering facepiece," which it defines in paragraph (b) of 29 CFR 1910.134. OSHA believes this revision will not only make these provisions consistent with its new Respiratory Protection Standard, but will prevent employers from using respirators not designed with the high-efficiency particulate filters necessary to capture respirable asbestos fibers (*see* 51 FR 22718) and coke oven emissions (*see* 41 FR 46773–46774), and, in the case of cotton dust, to provide protection at exposure levels higher than five times the PEL (*see* 50 FR 51153–51154).

- Paragraphs (h)(2)(iv) of 29 CFR 1915.1001 and (h)(3)(iii) of 29 CFR 1926.1101 (Asbestos Standards) also prohibit employers from selecting disposable respirators for employees who conduct specific types of Class II and III asbestos work. Consistent with the explanation and rationale provided in the previous section, OSHA is proposing to revise the term "disposable respirator" to "filtering facepiece" in these standards. The Agency also is proposing to revise these paragraphs, as well as paragraph (h)(2)(v) of 29 CFR 1915.1001 and (h)(3)(iv) of 29 CFR 1926.1101 (which address respirator selection for conducting Class I asbestos work in regulated areas), into plain language to clarify the multifaceted requirements specified by these paragraphs. By improving employer understanding of the respirator-selection requirements, OSHA believes that the revisions proposed for these paragraphs would enhance employee protection without increasing employers' regulatory burden.

- Lines 2, 3, and 4 under "Required respirator" in Table 1 of 29 CFR 1910.1001, 1915.1001, and 1926.1101(Asbestos Standards); lines 5–6, 8, and 11 under "Required respirator" in Table I , and lines 6 and 10 under "Required respirator" in Table II, of 29 CFR 1910.1018 (Inorganic Arsenic Standard); lines 1, 2, and 3 under "Required respirator" in Table II of 29 CFR 1910.1025 (Lead Standard); lines 1, 3, 5, 6, and 10 under "Required respirator type" in Table 2 of 29 CFR 1910.1027 (Cadmium Standard); lines 1, 3, 4, and 5 under "Required respirator" in Table I of 29 CFR 1910.1043 (Cotton Dust Standard); lines 1, 2, 3, and 8 under "Respirator type" in Table 1 of 29 CFR 1910.1050 and 1926.60 (Methylenedianiline Standard); lines 1, 3–4, 7, and 8 under "Required respirator" in Table 1 of 29 CFR 1926.62 (Lead Standard); and lines 1, 3, 6, 8, and 11 under "Required respirator type" in Table 1 of 29 CFR 1926.1127 (Cadmium Standard).

  Under these provisions, employers must equip air-purifying (including powered air-purifying) respirators with high-efficiency particulate air (HEPA) filters, high-efficiency and high-efficiency particulate filters (defined as a filter that is at least 99.97% efficient against mono-dispersed particles of 0.3 micrometers in diameter or larger), and particulate filters (for the Cotton Dust Standard only). While OSHA is proposing to retain these provisions, it is also proposing to replace the terms "high-efficiency filters" and "high-efficiency particulate filters" with the term "HEPA filters." These three terms have the same meaning, so use of the term "HEPA" would impose no additional burden on employers, nor would it diminish employee protection. The Agency believes that the usual and customary practice among employers in the cotton-dust industry is to use HEPA filters with air-purifying respirators; therefore, employers should experience no additional burden, and employee protection should remain at current levels, as a result of this revision. In addition, the proposed revision would make the filter requirements of the Cotton Dust Standard consistent with other OSHA substance-specific standards and with its Respiratory Protection Standard, thereby reducing any confusion that may exist among the regulated community regarding the appropriate filter to use with air-purifying respirators.

- Footnote 2 to Table II of 29 CFR 1910.1018 (Inorganic Arsenic Standard). This provision prohibits the use of half-mask respirators for protection against arsenic trichloride because it is rapidly absorbed through the skin. OSHA is retaining this provision to protect employees from the cumulative toxic effects that result from skin absorption.

- Footnote 2 to Table II of 29 CFR 1910.1025, and footnote 2 to Table 1 of 29 CFR 1926.62 (Lead Standard). These footnotes specify that employers must provide employees with full facepiece respirators when employees experience eye or skin irritation that results from exposure to lead aerosols at use concentrations. These provisions prevent serious eye and skin injuries among employees.

- Footnote b to Table 2 of 29 CFR 1910.1027 and footnote b to Table 1 of

[12] Most of the provisions described in these sections are in, or are footnotes to, the respirator-selection tables proposed for removal from the substance-specific standards. These sections also describe several other respirator-selection provisions that are not part of these tables, but which OSHA is retaining and which may be of interest to the regulated community. If this proposal does not specifically identify or describe a respirator-selection provision for removal or revision, then OSHA is retaining that provision in its existing form. The Agency believes that retaining these provisions does not increase the regulatory burden of employers because they must currently comply with them.

[13] Only lines with written text were counted in determining the number of lines; blank lines that occurred before a written line were ignored for counting purposes.

29 CFR 1926.1127 (Cadmium Standard). These provisions require a full facepiece respirator when an employee experiences eye irritation, thereby reducing the risk of eye injury among employees.

• Table 1 of 29 CFR 1910.1047 (Ethylene Oxide (EtO) Standard). This table lists only full facepiece respirators, or respirators with hoods or helmets, implying that employers must not select half-mask respirators for protection against EtO. The preamble to the final EtO Standard states:

> The record reflects that high exposures to EtO have been shown to cause eye irritation and that such effects may occur at exposures that may be reached for short periods. Therefore, OSHA has chosen to retain the requirement for full-facepiece respirators in the final rule. (49 FR 25781)

Accordingly, in this proposal the Agency is making explicit the prohibition against the use of half-mask respirators to ensure that employers select only those respirators (*i.e.*, full facepiece respirators, and respirators with hoods or helmets) that OSHA found, in the earlier rulemaking, will provide the requisite level of protection to their employees.

• Footnote 2 to Table 1 of 29 CFR 1910.1048 (Formaldehyde Standard). This provision requires that employers who select half-mask respirators instead of full facepiece respirators for formaldehyde exposures up to 7.5 ppm provide effective gas-proof goggles for employees to use in combination with the half-mask respirators.

• Table 2 of 29 CFR 1910.1052 (Methylene Chloride (MC) Standard). This table lists only full facepiece respirators, or respirators with hoods or helmets, thereby indicating that employers are not to select half-mask respirators for protection against MC. In the preamble to the final MC Standard, the Agency states:

> OSHA has determined that this standard is necessary because exposure to MC places employees at significant risk of developing exposure-related adverse health effects. These effects include * * * skin and eye irritation. (62 FR 1572)

Later in the preamble, the Agency states that "employers are required to provide employees who are at risk of skin and/or eye contact with MC with appropriate protective clothing and eye protection." (*See* 62 FR 1589.)

The risk of MC-related skin and eye irritation and the need for proper skin and eye protection convinced OSHA to limit respirator selection to full facepiece respirators and respirators with hoods and helmets in the final MC Standard to ensure that employees' facial skin and eyes are protected during MC exposure. Here the Agency is directly prohibiting the selection of half-masks, and explicitly limiting respirator selection to respirators (*i.e.*, full facepiece respirators, and respirators with hoods or helmets) that would provide the appropriate level of protection to employees.

• Lines 10 and 11 under "Respirator type" in Table 1 of 29 CFR 1910.1028 (Benzene Standard); lines 6–11 under "Respirator type" in Table 1 of 29 CFR 1910.1044 (1,2-dibromo-3-chloropropane Standard); lines 16 and 17 under "Respirator type" in Table I of 29 CFR 1910.1045 (Acrylonitrile Standard); line12 under "Minimum required respirator" in Table 1 of 29 CFR 1910.1047 (Ethylene Oxide Standard); lines 11–13 under "Minimum respirator required" in Table 1 of 29 CFR 1910.1048 (Formaldehyde Standard); lines 8–10 under "Respirator type" in Table 1 of 29 CFR 1910.1050 and 1926.60 (Methylenedianiline Standards); lines 13 and 14 under "Minimum respirator required" in Table 2 of 29 CFR 1910.1052 (Methylene Chloride Standard).

These provisions specify which respirators employers are to use under emergency-escape conditions. With regard to respirators used for escape, OSHA adopts the same position it did in the final rulemaking for the Respiratory Protection Standard. In the final rulemaking for this standard, the Agency noted the variety of escape respirators permitted under its substance-specific standards, and found that these standards addressed hazards associated with many different substances and escape situations. In support of this conclusion, the Agency cited the following examples:

> [U]nder current 29 CFR 1910.1050, the standard covering exposure to methylenedianiline (MDA), escape respirators may be any full facepiece air-purifying respirator equipped with HEPA cartridges, or any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood; for formaldehyde exposure, escape respirators may be a full facepiece with chin style, front, or back-mounted industrial canister approved against formaldehyde (29 CFR 1910.1048).

(63 FR 1202.) As noted earlier in this section, the adverse physical effects of specific substances (*e.g.*, skin and eye irritation) often limit respirator selection; these limitations would apply as well to the selection of escape respirators. Accordingly, OSHA is retaining the requirements for escape respirators identified in the existing substance-specific standards because previous rulemakings identified these respirators based on the unique characteristics of the regulated substances, as well as the conditions under which employees must use escape respirators.

As is required currently, respirators covered by these emergency-escape provisions must meet the requirements of paragraph (d)(2)(ii) of OSHA's Respiratory Protection Standard, which specifies that these respirators must be NIOSH-certified for escape from the atmosphere in which employees will use them. In addition, employees are to use these respirators only for escaping from, not entering, IDLH atmospheres. For entering such atmospheres, paragraph (d)(2)(i) of the Respiratory Protection Standard requires that employees use only full facepiece, pressure demand SCBAs certified by NIOSH for a minimum service life of 30 minutes, or full facepiece, pressure demand SARs with an auxiliary self-contained air supply.

• Paragraphs (g)(2)(ii) of 29 CFR 1910.1001, (h)(2)(iii)(A) of 29 CFR 1915.1001, and (h)(3)(ii) of 29 CFR 1926.1101 (Asbestos Standards); (f)(3)(ii) of 29 CFR 1910.1025 (Lead Standard); (f)(3)(ii) of 29 CFR 1910.1043 (Cotton Dust Standard); and (g)(3)(iii) of 29 CFR 1910.1048 (Formaldehyde Standard).

These paragraphs require employers to upgrade a negative pressure respirator, or a non-powered air-purifying respirator in the case of the Cotton Dust Standard, to a tight-fitting powered air-purifying respirator (PAPR) when the employee chooses to use a tight-fitting PAPR; for the Formaldehyde Standard, this requirement applies when the employee has difficulty using a negative pressure respirator and the tight-fitting PAPR provides the employee with adequate protection against the airborne contaminant. OSHA is proposing to retain these requirements because tight-fitting PAPRs increase the protection provided to employees when the respirator-selection provisions identify a low-end respirator (*i.e.*, a negative pressure respirator or a non-powered air-purifying respirator) for use.

• Paragraph (h)(2)(iii)(B) of 29 CFR 1915.1001 (Asbestos Standard). The Agency also is proposing to retain this paragraph in the Asbestos Standard for Shipyards, which specifies that employers must inform employees that they (the employees) may require employers to provide them with a tight-fitting PAPR instead of a negative pressure respirator. This requirement provides an extra margin of protection to employees by ensuring that employers take positive action to inform them of their option to upgrade to a more protective respirator than the one that they would normally receive for use when exposed to asbestos.

• While the paragraphs described in the previous section require employers to upgrade employee respirators, every substance-specific standard has a provision, usually as a footnote to its APF table, that gives employers discretion to select respirators that provide employees with more protection from atmospheric contaminants than the required respirator. Under this proposal, the Agency would consolidate this discretionary alternative into a generic provision in proposed paragraph (d)(3)(i)(A) of the Respiratory Protection Standard (*i.e.*, "[employees must * * * select a respirator that meets or *exceeds* the required level of employee protection" [emphasis added]). The Agency concludes that relocating this provision in proposed paragraph (d)(3)(i)(A) of the Respiratory Protection Standard will highlight this alternative to employers, and will encourage more of them to select more protective respirators for their employees than is now the case.

4. Substantive Revisions to the Respirator-Selection Requirements in Substance-Specific Standards

OSHA is proposing to revise respirator-selection requirements in several substance-specific standards that regulate employee exposure to organic-vapor substances. The following sections describe these proposed revisions.

• Paragraphs (g)(2) of 29 CFR 1910.1017 (Vinyl Chloride Standard), (g)(2)(i) of 29 CFR 1910.1028 (Benzene Standard), (h)(2)(i) of 29 CFR 1910.1045 (Acrylonitrile Standard), and (g)(2)(i) of 29 CFR 1910.1048 (Formaldehyde Standard). These paragraphs exempt employers from paragraphs (d)(3)(iii)(B)(1) and (B)(2) of OSHA's Respiratory Protection Standard; the exempted paragraphs consist of respirator-selection provisions that protect employees against gases and vapors. Because OSHA would be removing the existing change schedules from these substance-specific standards under this proposed rulemaking, it becomes necessary to identify requirements that it believes would provide employees with at least the same level of protection as the existing provisions. These requirements are paragraphs (d)(3)(iii)(B)(1) and (B)(2) of its Respiratory Protection Standard; by removing the current exemptions, employers would apply paragraphs (d)(3)(iii)(B)(1) and (B)(2) of the Respiratory Protection Standard to select respirators that protect employees against the gases and vapors regulated by these substance-specific standards. In addition, this revision would provide employers with increased flexibility in selecting respirators without adding to their compliance burden (*i.e.*, their existing respirator-selection procedures would be acceptable under this revision). (Note that the exemption would still remain for the 1,3-Butadiene Standard because, as noted above, the Agency is retaining the existing respirator-selection provisions of that standard.)

• Paragraph (g)(2)(ii) of 29 CFR 1910.1048 (Formaldehyde Standard). This paragraph specifies a change schedule for chemical cartridges and canisters used for formaldehyde exposures that do not have an end-of-service life indicator (ESLI) approved by NIOSH. OSHA is proposing that employers select respirators according to paragraphs (d)(3)(iii)(B)(1) and (B)(2) of its Respiratory Protection Standard instead of these requirements.

The paragraphs proposed for removal require employers who use a change schedule to select a cartridge or canister that has a NIOSH-approved ESLI, or to use a change schedule for which they must provide "objective information or data that will ensure that canisters and cartridges are changed before the end of their service life" (*see* paragraph (d)(3) of OSHA's Respiratory Protection Standard). When they choose the latter option, this revision would limit the change schedule to one work shift because of possible vapor migration in the cartridges and canisters during storage. The Agency believes that this revision would: Provide employers with flexibility to use other change schedules when a NIOSH-approved ESLI is not available; not increase the regulatory burden of employers because the existing change schedule would remain valid; and ensure that employees receive at least the same level of protection as they receive with the existing change schedule, because employers must use a change schedule that they can demonstrate is safe for this purpose.

5. Use of Plain Language for Proposed Revisions

Whenever possible, OSHA is using plain language in revising the regulatory text of the substance-specific standards identified in this proposal. The Agency believes that this approach improves the comprehensibility and uniformity of the proposed revisions. OSHA believes that these improvements would enhance employer compliance with the provisions, thereby increasing the level of protection afforded to employees.

6. Summary of Superseding Actions

The following table summarizes OSHA's proposed revisions to existing substance-specific standards. This table lists only those provisions for which the Agency is proposing substantive revisions (*e.g.*, proposing to replace existing requirements with new requirements); it does not list provisions that OSHA is proposing to retain in their present form (although the Agency is rewriting them in plain language).

SUMMARY OF SUPERSEDING ACTIONS FOR SPECIFIC STANDARDS

Existing section (29 CFR 1910)	Proposed action (29 CFR 1910)
1001(g)(2)(ii)	Revise.
1001(g)(3)	Remove Table 1 and revise.
1001(l)(3)(ii)	Redesignate Table 2 as Table 1.
1017(g)(3)(i)	Remove table and revise.
1017(g)(3)(iii)	Remove.
1018 Tables I and II	Remove.
1018(h)(3)(i)	Revise.
1018(h)(3)(ii)	Remove.
1018(h)(3)(iii)	1018(h)(3)(ii).
1025(f)(2)(ii)	Remove Table II.
1025(f)(3)(i)	Revise.
1027(g)(3)(i)	Remove Table 2 and revise.
1028(g)(3)(ii)	Remove Table 1.
1028(g)(2)(i)	Revise.
1028(g)(3)(i)	Revise.
1029(g)(3)	Remove Table I and revise.
1043(f)(3)(i)	Remove Table I and revise.
1043(f)(3)(ii)	Revise.
1044(h)(3)	Remove Table I and revise.
1045(h)(2)(i)	Revise.
1045(h)(3)	Remove Table I and revise.
1047(g)(3)	Remove Table I and revise.
1048(g)(2)	Revise.
1048(g)(3)	Remove Table 1 and revise.
1050(h)(3)(i)	Remove Table 1 and revise.
1052(g)(3)	Remove Table 2 and revise.

Existing section (29 CFR 1915)	Proposed action (29 CFR 1915)
1001(h)(2)(i) through (h)(2)(v).	Remove Table 1 and revise.

Existing section (29 CFR 1926)	Proposed action (29 CFR 1926)
60(i)(3)(i)	Remove Table 1 and revise.
62(f)(3)(i)	Remove Table 1 and revise.
1101(h)(3)(i) through (h)(3)(iv)	Remove Table 1 and revise.
1127(g)(3)(i)	Remove Table 1 and revise.

Section XII ("Proposed Amendments to Standards") of this notice provides the full regulatory text of the proposed revisions to OSHA's existing substance-specific standards dealing with respirator selection. This section describes both substantive revisions proposed for the existing respirator-selection requirements, as well as respirator-selection requirements retained in their current form but rewritten in plain language.

VIII. Issues

OSHA requests the public to comment on, and to provide additional information regarding, any of the issues listed below. Please provide a detailed explanation of each response you make.

Developing and Updating APFs

1. Is the method used by OSHA in developing the proposed APFs appropriate? OSHA used a multi-faceted approach incorporating both analyses of data collected in WPF and SWPF studies, as well as OSHA's review of all relevant materials. OSHA requests comment on the usefulness of this approach to data collection.

2. Are there any additional studies that may be useful in determining APFs, that have not already been identified by OSHA in Section IV of this proposal? Please provide these to the Agency.

3. Are statistical analyses, treatments, or approaches, other than those described in Section IV of the proposal, available for differentiating between or comparing the highly variable respirator-performance data?

4. OSHA is aware of discussions within the respirator community indicating some sentiment for setting APFs for filtering facepiece respirators at 5, and for setting an APF of 10 for other half-mask air-purifying respirators. Based upon OSHA's reviews, OSHA cannot differentiate between the performance of the two types of respirator, and OSHA finds compelling evidence from the large number of observed data points (N = 917 Co/Ci pairs) to support proposing an APF of 10 for both of these classes of respirators. Is there evidence that a different APF should be provided for these respirator classes?

5. While there are no WPF or SWPF studies for quarter-mask respirators, the 1976 LANL Respiratory Protection Factor by Hyatt found protection factors ranging from 5 to 10. Should OSHA continue to include quarter-masks in the half-mask class, or separate them into a class of their own with and APF of 5?

6. OSHA is proposing a method by which to separate loose-fitting facepiece supplied-air and PAPR hood/helmet respirators from the better-performing hood/helmet respirators. Respirator performance studies have shown that some PAPR and continuous-flow supplied-air respirators provide greater protection than others of the same class. The 1987 NIOSH Respirator Decision Logic gives an APF of 25 for all of these respirators while ANSI's 1992 respirator standard gives an APF of 25 to loose-fitting facepiece models and an APF of 1000 to hood/helmet models. OSHA is proposing an APF of 25 except for those models that ensure the maintenance of a positive pressure inside the facepiece during use, consistent with a protection factor of 1000 or greater, in which case those models would receive an APF of 1000. Is this the appropriate method by which to distinguish high-performing hood/helmet respirators from others?

7. The assigned protection factor for a full facepiece respirator in Table 1 of the proposed standard does not currently take into account the type of particulate filter that is used. An N95 particulate filter could potentially, under a worst case scenario, have up to 5% leakage through the filter. This would decrease the APF for a full facepiece respirator to a maximum of 20 when N95 filters are used. Should OSHA take into account the limitations of the filter and assign an APF of 20 for full facepiece respirators when N95 filters are used?

8. Other Federal Agencies, such as the Nuclear Regulatory Commission (NRC), have set no APF for filtering facepiece air-purifying respirators (APRs) for use in their particular work environments. In some cases, such APRs are not allowed to be used at all. In other settings, *e.g.*, the healthcare industry, some employers rely very heavily upon such APRs to protect their employees who work with patients who have infectious airborne illnesses. How should OSHA incorporate such information, if at all, into an APF requirement for all industries under OSHA's jurisdiction?

9. Proper facepiece fit is important in achieving the proposed APF for tight-fitting respirators. Accordingly, the Agency would appreciate receiving information on current testing and procedures used by respirator manufacturers to ensure that the facepieces they make will fit respirator users properly.

10. When a limiting factor such as IDLH, LEL, or the performance limit specified for a cartridge and canister by the manufacturers are less than the calculated MUC, proposed paragraph (d)(3)(i)(B)(*4*) requires employers to set the MUC at the lower limit. Accordingly, OSHA is seeking comment on the following questions:

a. What other limiting factors should OSHA include as examples in this proposed paragraph?

b. Should the Agency specify the LEL or 10% of the LEL as the limiting factor?

11. Some hazardous substances found in the workplace do not have an OSHA PEL. However, a number these substances may have an exposure limit designated by sources other than OSHA (*e.g.*, recommended by the chemical manufacturer, ACGIH, NIOSH, EPA). Accordingly, the Agency is asking for comment on the following issues involving MUCs:

a. Should OSHA expand the definition and application of MUC to hazardous substances that it does not regulate?

b. Should the Agency require employers to determine MUCs for substances that have no OSHA PEL (*i.e.*, substances not regulated specifically by OSHA), and to base respirator selection on such a determination?

c. For hazardous substances that OSHA does regulate, should it require employers to comply with the MUC values developed by NIOSH when these values are lower than the calculated MUC values (*i.e.*, MUC = APF × PEL)?

12. A prevailing view is that exposure to multiple contaminants in the workplace affect the performance of respirator filters and cartridges differently than exposure to single contaminants. To assist it in developing MUCs for single and multiple contaminants, OSHA is asking the public to address the following issues:

a. What information and data are available that either support or do not support this view?

b. Should MUCs for contaminant mixtures differ from MUCs for single mixtures?

13. Section VII proposes to revise most of the respirator-selection requirements in OSHA's substance-specific standards. Accordingly, the Agency is asking for comment on the following questions:

a. This proposal excludes the respirator-selection provisions of the 1,3-Butadiene Standard from any revision. Is this exclusion warranted?

b. Special or unique respirator-selection requirements in the substance-specific standards (*e.g.*, requirements for emergency-escape, HEPA filters, upgrading respirators at the employee's request, eye protection) remain largely intact. Should the Agency standardize these provisions across all of its substance-specific standards, and, if so, what requirements should it standardize.

14. The Agency has developed its Preliminary Economic Analysis (PEA) based on survey data indicating what types of respirators employees are using currently. The Agency does not, however, have data on the exposure levels as a multiple of the PEL that respirator users are currently exposed to. For the purposes of this analysis, the Agency has used its internal Integrated Management and Information System (IMIS) data to estimate the distribution of exposures as a multiple of the PEL. The Agency also assumes that employers are currently using the respirator with the lowest possible costs that can still satisfy existing guidance on APFs, allowing employees to be exposed up to the full limit of a currently assigned APF for that class of respirator. OSHA seeks comment on whether other data sources or methodologies for making this projection exist.

a. Is it common for employers to put employees in respirators at the highest exposure levels permitted by the APF range?

b. Are there particular types of respirators that frequently do not fit this pattern (*i.e.*, are selected for reasons other than having a high APF or due to a medical reason for a particular employee)?

c. How do employers approach the issue of uncertainty in possible exposure levels when integrating APFs into their respirator selection?

d. To what extent will having a single OSHA APF table result in less confusion than the existing multiplicity of APF tables?

e. Do OSHA's cost estimates of using different types of respirators adequately represent all of the costs associated with each type of respirator use?

f. Are their any alternative approaches consistent with the OSH Act that could reduce the burden of this standard on small entities?

IX. Public Participation—Comments and Hearings

OSHA encourages members of the public to participate in this rulemaking by submitting comments on the proposal, and by providing oral testimony and documentary evidence at the informal public hearing that the Agency will convene after the comment period ends. In this regard, the Agency invites interested parties having knowledge of, or experience with, APFs and MUCs to participate in this process, and welcomes any pertinent data and cost information that will provide it with the best available evidence on which to develop the final regulatory requirements.

This section describes the procedures the public must use to submit their comments to the docket in a timely manner, and to schedule an opportunity to deliver oral testimony and provide documentary evidence at the informal public hearings. Comments, notices of intention to appear, hearing testimony, and documentary evidence will be available for inspection and copying at the OSHA Docket Office. You also should read the sections above titled **DATES** and **ADDRESSES** for additional information on submitting comments, documents, and requests to the Agency for consideration in this rulemaking.

Written Comments. OSHA invites interested parties to submit written data, views, and arguments concerning this proposal. In particular, OSHA would encourage interested parties to comment on the issues raised in section VIII ("Issues") of the preamble. When submitting comments, parties must follow the procedures specified above in the sections titled **DATES** and **ADDRESSES**. The comments must clearly identify the provision of the proposal you are addressing, the position taken with respect to each issue, and the basis for that position. Comments, along with supporting data and references, received by the end of the specified comment period will become part of the proceedings record, and will be available for public inspection and copying at the OSHA Docket Office.

Informal Public Hearings. Pursuant to section 6(b)(3) of the Act, members of the public will have an opportunity at an informal public hearing to provide oral testimony concerning the issues raised in this proposal. The hearings will commence at 9:30 a.m. on the first day. At that time, the presiding administrative law judge (ALJ) will resolve any procedural matters relating to the proceeding. The hearings will reconvene on subsequent days at 8:30 a.m.

The legislative history of section 6 of the OSH Act, as well as OSHA's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of such hearings is an ALJ, and questioning by interested parties is allowed on crucial issues, the proceeding is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. In addition, the hearing is an informal administrative proceeding, rather than adjudicative one in which the technical rules of evidence would apply, because its primary purpose is to gather and clarify information. The regulations that govern public hearings, and the pre-hearing guidelines issued for this hearing, will ensure participants fairness and due process, and also will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedure, and participation generally will favor development of the record.

Conduct of the hearing will conform to the provisions of 29 CFR part 1911, "Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards." The regulation at 29 CFR 1911.4 "Additional or Alternative Procedural Requirements," specifies that the Assistant Secretary may, on reasonable notice, issue alternative procedures to expedite proceedings or for other good cause. Although the ALJs who preside over these hearings make no decision or recommendation on the merits of OSHA's proposal, they do have the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner.

To ensure that interested parties receive a full and fair informal hearing as specified by 29 CFR part 1911, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questioning. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA, while during the second part of this period, they may submit briefs, arguments, and summations.

Notice of Intention To Appear To Provide Testimony at the Informal

Public Hearings. Interested parties who intend to provide oral testimony at the informal public hearings must file a notice of intention to appear by using the procedures specified above in the sections titled **DATES** and **ADDRESSES.** This notice must provide the: Name, address, and telephone number of each individual who will provide testimony, and their preferred hearing location; capacity (*e.g.*, name of the establishment/organization the individual is representing; the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; specific issues each individual will address, including a brief statement of the position that the individual will take with respect to each of these issues; and any documentary evidence the individual will present, including a brief summary of the evidence.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a proper notice of intention to appear may ask questions and participate fully in the proceedings. While a party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, this determination is at the discretion of the presiding ALJ.

Hearing Testimony and Documentary Evidence. Any party requesting more than 10 minutes to testify at the informal public hearing, or who intends to submit documentary evidence at the hearing, must provide the complete text of the testimony and the documentary evidence as specified above in the sections titled **DATES** and **ADDRESSES.** The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, prior to the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questioning at a later time.

Certification of the Record and Final Determination After the Informal Public Hearing. Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed APF provisions in light of all the evidence received as part of the record, and then will issue the final APF provisions based on the entire record.

List of Subjects in 29 CFR Parts 1910, 1915, and 1926

Assigned protection factors, Hazardous substances, Health, Occupational safety and health, Respirators, Respirator selection.

Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice. The Agency issues the proposed sections under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); section 41, the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR Part 1911.

Signed at Washington, DC, on May 28, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

X. Proposed Amendments to Standards

OSHA proposes to amend 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—[AMENDED]

Subpart I—[Amended]

1. The authority citation for subpart I of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (62 FR 50017).

Sections 1910.132, 1910.134, and 1910.138 or 29 CFR also issued under 29 CFR part 1911.

Sections 1910.133, 1910.135, and 1910.136 of 29 CFR also issued under 29 CFR part 1911 and 5 U.S.C. 553.

2. Section 1910.134 is amended as follows:

a. The text of the definitions for "Assigned protection factor (APF)" and "Maximum use concentration (MUC)" is added to paragraph (b);

b. The text of paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) is added; and

c. Paragraph (n) is revised.

The added and revised text read as follows:

§ 1910.134 Respiratory protection.

* * * * *

(b) * * *

Assigned protection factor (APF) means the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by 29 CFR 1910.134.

* * * * *

Maximum use concentration (MUC) means the maximum atmospheric concentration of a hazardous substance from which an employee can be expected to be protected when wearing a respirator, and is determined by the assigned protection factor of the respirator or class of respirators and the exposure limit of the hazardous substance. The MUC usually can be determined mathematically by multiplying the assigned protection factor specified for a respirator by the permissible exposure limit, short term exposure limit, ceiling limit, peak limit, or any other exposure limit used for the hazardous substance.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(A) *Assigned Protection Factors (APFs).* Employers must use the assigned protection factors listed in Table I to select a respirator that meets or exceeds the required level of employee protection. When using a combination respirator (*e.g.*, airline respirators with an air-purifying filter), employers must ensure that the assigned protection factor is appropriate to the mode of operation in which the respirator is being used.

Note to paragraph (d)(3)(i)(A): The assigned protection factors listed in Table I are effective only when the employer has a continuing, effective respiratory protection program as specified by 29 CFR 1910.134, including training, fit testing, maintenance and use requirements. These assigned protection factors do not apply to respirators used solely for escape.

TABLE I.—ASSIGNED PROTECTION FACTORS

Type of respirator [1] [2]	Half mask	Full facepiece	Helmet/hood	Loose-fitting facepiece
1. Air-Purifying Respirator	[3] 10	50	.....	.....
2. Powered Air-Purifying Respirator (PAPR)	50	1000	[4] 1000	25
3. Supplied-Air Respirator (SAR) or Airline Respirator:				
• Demand mode	10	50	.....	.....
• Continuous-flow mode	50	1,000	[4] 1,000	25
• Pressure-demand or other positive-pressure mode	50	1,000	.....	.....
4. Self-Contained Breathing Apparatus (SCBA):				
• Demand mode	10	50	50	.....
• Pressure-demand or other positive-pressure mode (*e.g.*, open/closed circuit)	.....	10,000 [5] (maximum)	10,000 [5] (maximum)	.....

Notes:

[1] Employers may select respirators assigned for use in higher workplace concentrations of a hazardous substance for use at lower concentrations of that substance or when required respirator use is independent of concentration.

[2] The assigned protection factors in Table I only apply when the employer implements a continuing, effective respirator program as specified by OSHA's Respiratory Protection Standard at 29 CFR 1910.134, including training, fit testing, maintenance and use requirements.

[3] This APF category includes quarter masks, filtering facepieces, and half-masks.

[4] Previous studies involving Workplace Protection Factor (WPF) and Simulated Workplace Protection Factor (SWPF) testing on helmet/hood respirators show that some of these respirators do not provide a level of protection consistent with an APF of 1000. Therefore, only helmet/hood respirators that ensure the maintenance of a positive pressure inside the facepiece during use, consistent with performance at a level of protection of 1000 or greater, receive an APF of 1000. All other helmet/hood respirators are treated as loose-fitting facepiece respirators and receive an APF of 25.

[5] Although positive pressure SCBAs appear to provide the highest level of respiratory protection, a SWPF study of SCBA users concluded that all users may not achieve protection factors of 10,000 at high work rates. When employers can estimate hazardous concentrations for planning purposes, they must use a maximum assigned protection factor no higher than 10,000.

(B) *Maximum Use Concentration (MUC).* (*1*) The employer must select a respirator for employee use that maintains the employee's exposure to the hazardous substance, when measured outside the respirator, at or below the MUC.

Note to paragraph (d)(3)(i)(B)(1): MUCs are effective only when the employer has a continuing, effective respiratory protection program as specified by 29 CFR 1910.134, including training, fit testing, maintenance and use requirements.

(*2*) Employers must comply with the respirator manufacturer's MUC for a hazardous substance when the manufacturer's MUC is lower than the calculated MUC specified by this standard.

(*3*) Employers must not apply MUCs to conditions that are immediately dangerous to life or health (IDLH); instead, they must use respirators listed for IDLH conditions in paragraph (d)(2) of this standard.

(*4*) When the calculated MUC exceeds another limiting factor such as the IDLH level for a hazardous substance, the lower explosive limit (LEL), or the performance limits of the cartridge or canister, then employers must set the maximum MUC at that lower limit.

* * * * *

(n) *Effective date.* Paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section become effective September 4, 2003.

* * * * *

Subpart Z—[Amended]

3. The general authority citation for subpart Z of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (62 FR 50017); and 29 CFR Part 1911.

* * * * *

4. Section 1910.1001 is amended by:

a. Removing Table 1 in paragraph (g)(3);

b. Redesignating Table 2 in paragraph (l)(3)(ii) as Table 1;

c. Removing the reference to "Table 2" in paragraph (l)(3)(ii) and adding "Table 1" in its place; and

d. Revising paragraphs (g)(2)(ii) and (g)(3).

The revisions read as follows:

§ 1910.1001 Asbestos.

* * * * *

(g) * * *

(2) * * *

(ii) Employers must provide an employee with tight-fitting, powered air-purifying respirator (PAPR) instead of a negative-pressure respirator selected according to paragraph (g)(3) of this standard when the employee chooses to use a PAPR and it provides adequate protection to the employee.

* * * * *

(3) *Respirator selection.* Employers must:

(i) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use filtering-facepiece respirators for protection against asbestos fibers.

(ii) Provide HEPA filters for air-purifying respirators.

* * * * *

5. In § 1910.1017, remove the table in paragraph (g)(3)(i), remove paragraph (g)(3)(iii), and revise paragraph (g)(3)(i) to read as follows:

§ 1910.1017 Vinyl chloride.

* * * * *

(g) * * *

(3) * * * (i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide an organic-vapor cartridge that has a service life of at least one hour when using a chemical-cartridge respirator at vinyl chloride concentrations up to 10 ppm.

(C) Select a canister that has a service life of at least four hours when using a powered air-purifying respirator having a hood, helmet, or full or half facepiece, or a gas mask with a front- or back-mounted canister, at vinyl chloride concentrations up to 25 ppm.

* * * * *

6. In § 1910.1018, remove Tables I and II and paragraph (h)(3)(ii), redesignate paragraph (h)(3)(iii) as paragraph

(h)(3)(ii), and revise paragraph (h)(3)(i) to read as follows:

§ 1910.1018 Inorganic arsenic.

* * * * *

(h) * * *

(3) * * *(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Ensure that employees do not use half-mask respirators for protection against arsenic trichloride because it is absorbed rapidly through the skin.

(C) Provide HEPA filters for air-purifying respirators.

(D) Select for employee use:

(*1*) Air-purifying respirators that have a combination HEPA filter with an appropriate gas-sorbent cartridge or canister when the employee's exposure exceeds the permissible exposure level for inorganic arsenic and the relevant limit for other gases.

(*2*) Front- or back-mounted gas masks equipped with HEPA filters and acid-gas canisters or any full-facepiece supplied-air respirators when the inorganic arsenic concentration is at or below 500 μg/m^3; and half-mask air-purifying respirators equipped with HEPA filters and acid-gas cartridges when the inorganic arsenic concentration is at or below 100 μg/m^3.

* * * * *

7. In § 1910.1025, remove Table II in paragraph (f)(2)(ii) and revise paragraphs (f)(3)(i) and (f)(3)(ii) to read as follows:

§ 1910.1025 Lead.

* * * * *

(f) * * *

(3) * * *(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide employees with full-facepiece respirators instead of half-mask respirators for protection against lead aerosols that cause eye or skin irritation at the use concentrations.

(C) Provide HEPA filters for air-purifying respirators.

(ii) Employers must provide employees with a powered air-purifying respirator (PAPR) instead of a negative-pressure respirator selected according to paragraph (f)(3)(i) of this standard when an employee chooses to use a PAPR and it provides adequate protection to the employee as specified by paragraph (f)(3)(i) of this standard.

* * * * *

8. In § 1910.1027, remove Table 2 in paragraph (g)(3)(i) and revise paragraph (g)(3)(i) to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(g) * * *

(3) * * *(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide employees with full-facepiece respirators when they experience eye irritation.

(C) Provide HEPA filters for air-purifying respirators.

* * * * *

9. In § 1910.1028, remove Table 1 in paragraph (g)(3)(ii) and revise paragraphs (g)(2)(i) and (g)(3)(i) to read as follows:

§ 1910.1028 Benzene.

* * * * *

(g) * * *

(2) * * *

(i) Employers must implement a respiratory protection program in accordance with 29 CFR 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m).

* * * * *

(3) * * *

(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide employees with any organic-vapor gas mask or any self-contained breathing apparatus with a full facepiece to use for escape.

(C) Use an organic-vapor cartridge or canister air-purifying respirators, and a chin-style canister with full-facepiece gas masks.

(D) Ensure that canisters used with nonpowered air-purifying respirators have a minimum service life of four hours when tested at 150 ppm benzene at a flow rate of 64 liters per minute (LPM), a temperature of 25° C, and a relative humidity of 85%; for canisters used with tight-fitting or loose-fitting, powered air-purifying respirators, the flow rates for testing must be 115 LPM and 170 LPM, respectively.

* * * * *

10. In § 1910.1029, remove Table I in paragraph (g)(3) and revise paragraph (g)(3) to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(g) * * *

(3) *Respirator selection.* Employers must select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use filtering facepieces for protection against coke oven emissions.

* * * * *

11. In § 1910.1043, remove Table I in paragraph (f)(3)(i) and revise paragraphs (f)(3)(i) and (f)(3)(ii) to read as follows:

§ 1910.1043 Cotton dust.

* * * * *

(f) * * *

(3) * * *

(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use filtering facepieces for protection against cotton dust concentrations greater than five times (5 X) the PEL.

(B) Provide HEPA filters for air-purifying respirators used at cotton dust concentrations greater than ten times (10 X) the PEL.

(ii) Employers must provide an employee with a powered air-purifying respirator (PAPR) instead of a nonpowered air-purifying respirator selected according to paragraph (f)(3)(i) of this standard when the employee chooses to use a PAPR and it provides adequate protection to the employee as specified by paragraph (f)(3)(i) of this standard.

* * * * *

12. In § 1910.1044, remove Table 1 in paragraph (h)(3) and revise paragraph (h)(3) to read as follows:

§ 1910.1044 1,2-Dibromo-3-chloropropane.

* * * * *

(h) * * *

(3) *Respirator selection.* Employers must:

(i) Select, and provide to employees, the appropriate atmosphere-supplying respirator specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(ii) Provide employees with one of the following respirator options to use for entry into, or escape from, unknown DBCP concentrations:

(A) A combination respirator that includes a supplied-air respirator with a full facepiece operated in a pressure-demand or other positive-pressure or continuous-flow mode, as well as an auxiliary self-contained breathing apparatus (SCBA) operated in a pressure-demand or positive-pressure mode.

(B) An SCBA with a full facepiece operated in a pressure-demand or other positive-pressure mode.

* * * * *

13. In § 1910.1045, remove Table I in paragraph (h)(3) and revise paragraphs (h)(2)(i) and (h)(3) to read as follows:

§ 1910.1045 Acrylonitrile.

* * * * *

(h) * * *

(2) * * *

(i) Employers must implement a respiratory protection program in accordance with 29 CFR 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m).

* * * * *

(3) *Respirator selection.* Employers must:

(i) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(ii) For escape, provide employees with any organic-vapor respirator or any self-contained breathing apparatus permitted for use under paragraph (h)(3)(i) of this standard.

* * * * *

14. In § 1910.1047, remove Table 1 in paragraph (g)(3) and revise paragraph (g)(3) to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(g) * * *

(3) *Respirator selection.* Employers must:

(i) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use half-masks of any type because EtO may cause eye irritation or injury.

(ii) Equip each air-purifying, full facepiece respirator with a front- or back-mounted canister approved for protection against ethylene oxide.

(iii) For escape, provide employees with any respirator permitted for use under paragraph (g)(3)(i) of this standard.

* * * * *

15. In § 1910.1048, remove Table 1 in paragraph (g)(3)(i) and revise paragraphs (g)(2) and (g)(3) to read as follows:

§ 1910.1048 Formaldehyde.

* * * * *

(g) * * *

(2) *Respirator programs.* (i) Employers must implement a respiratory protection program in accordance with 29 CFR 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m).

(ii) If employees use air-purifying respirators with chemical cartridges or canisters that do not contain end-of-service-life indicators approved by the National Institute for Occupational Safety and Health, employers must replace these cartridges or canisters as specified by paragraphs (d)(3)(iii)(B)(1) and (B)(2) of 29 CFR 1910.134, or at the end of the workshift, whichever condition occurs first.

(3) *Respirator selection.* (i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Equip each air-purifying, full facepiece respirator with a canister or cartridge approved for protection against formaldehyde.

(C) For escape, provide employees with one of the following respirator options: A self-contained breathing apparatus operated in the demand or pressure-demand mode; or a full facepiece respirator having a chin-style, or a front- or back-mounted industrial-size, canister or cartridge approved for protection against formaldehyde.

(ii) Employers may substitute an air-purifying, half-mask respirator for an air-purifying, full facepiece respirator if they equip the half-mask respirator with a cartridge approved for protection against formaldehyde and provide the affected employee with effective gas-proof goggles.

(iii) Employers must provide employees who have difficulty using negative-pressure respirators with powered air-purifying respirators permitted for use under paragraph (g)(3)(i)(A) of this standard and that provide adequate protection against their formaldehyde exposures.

* * * * *

16. In § 1910.1050, remove Table 1 in paragraph (h)(3)(i) and revise paragraph (h)(3)(i) to read as follows:

§ 1910.1050 Methylenedianiline.

* * * * *

(h) * * *

(3) * * *

(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide HEPA filters for air-purifying respirators.

(C) For escape, provide employees with one of the following respirator options: Any self-contained breathing apparatus with a full facepiece or hood operated in the positive-pressure or continuous-flow mode; or a full-facepiece, air-purifying respirator.

(D) Provide a combination HEPA filter and organic-vapor canister or cartridge with air-purifying respirators when MDA is in liquid form or part of a process requiring heat.

* * * * *

17. In § 1910.1052, remove Table 2 in paragraph (g)(3) and revise paragraph (g)(3) to read as follows:

§ 1910.1052 Methylene chloride.

* * * * *

(g) * * *

(3) *Respirator selection.* Employers must:

(i) Select, and provide to employees, the appropriate atmosphere-supplying respirator specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use half-masks of any type because MC may cause eye irritation or damage.

(ii) For emergency escape, provide employees with one of the following respirator options: A self-contained breathing apparatus operated in the continuous-flow or pressure-demand; or a gas mask with an organic-vapor canister.

* * * * *

PART 1915—[AMENDED]

18. The authority citation for part 1915 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (20 U.S.C. 653, 655, and 687); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (62 FR 50017).

Sections 1915.120 and 1915.152 also issued under 29 CFR 1911.

Subpart Z—[Amended]

19. In § 1915.1001, remove Table 1 in paragraph (h)(2)(iii) and revise paragraph (h)(2) to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(h) * * *

(2) *Respirator selection.* (i) Employers must select, and provide to employees at no cost, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use filtering-facepiece respirators for use against asbestos fibers.

(ii) Employers are to provide HEPA filters for air-purifying respirators.

(iii) Employers must:

(A) Inform employees that they may require the employer to provide a tight-fitting, powered air-purifying respirator (PAPR) permitted for use under paragraph (h)(2)(i) of this standard instead of a negative-pressure respirator.

(B) Provide employees with a tight-fitting PAPR instead of a negative-pressure respirator when the employees choose to use a tight-fitting PAPR and it provides them with the required protection against asbestos.

(iv) Employers must provide employees with an air-purifying, half-

mask respirator, other than a filtering-facepiece respirator, whenever the employees perform:

(A) Class II or Class III asbestos work for which no negative-exposure assessment is available.

(B) Class III asbestos work involving disturbance of TSI or surfacing ACM or PACM.

(v) Employers must provide employees with:

(A) A tight-fitting, powered air-purifying respirator or a full-facepiece, supplied-air respirator operated in the pressure-demand mode and equipped with either HEPA egress cartridges or an auxiliary positive-pressure, self-contained breathing apparatus (SCBA) whenever the employees are in a regulated area performing Class I asbestos work for which a negative-exposure assessment is not available and the exposure assessment indicates that the exposure level will be at or below 1 f/cc as an 8-hour time-weighted average (TWA).

(B) A full-facepiece, supplied-air respirator operated in the pressure-demand mode and equipped with an auxiliary positive-pressure SCBA whenever the employees are in a regulated area performing Class I asbestos work for which a negative-exposure assessment is not available and the exposure assessment indicates that the exposure level will be above 1 f/cc as an 8-hour TWA.

* * * * *

PART 1926—[AMENDED]

Subpart D—[Amended]

20. The authority citation for subpart D of part 1926 is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (62 FR 50017); and 29 CFR part 11.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.62 also issued under section 1031 of the Housing and Community Development Act of 1992 (42 U.S.C. 4853).

Section 1926.65 of 29 CFR also issued under section 126 of the Superfund Amendments and Reauthorization Act of 1986, as amended (29 U.S.C. 655 note), and 5 U.S.C. 553.

21. In § 1926.60, remove Table 1 and revise paragraph (i)(3)(i) to read as follows:

§ 1926.60 Methylenedianiline.

* * * * *

(i) * * *

(3) * * *

(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide HEPA filters for air-purifying respirators.

(C) For escape, provide employees with one of the following respirator options: Any self-contained breathing apparatus with a full facepiece or hood operated in the positive-pressure or continuous-flow mode; or a full-facepiece, air-purifying respirator.

(D) Provide a combination HEPA filter and organic-vapor canister or cartridge with air-purifying respirators when MDA is in liquid form or part of a process requiring heat.

* * * * *

22. In § 1926.62, remove Table 1 in paragraph (f)(3) and revise paragraph (f)(3)(i) to read as follows:

§ 1926.62 Lead.

* * * * *

(f) * * *

(3) * * *

(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide employees with a full-facepiece respirator instead of a half-mask respirator for protection against lead aerosols that cause eye or skin irritation at the use concentrations.

(C) Provide HEPA filters for air-purifying respirators.

* * * * *

Subpart Z—[Amended]

23. The authority citation for subpart Z of part 1926 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (62 FR 50017); and 29 CFR part 11.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

24. In § 1926.1101, remove Table 1 in paragraph (h)(3)(i) and revise paragraph (h)(3) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(h) * * *

(3) *Respirator selection.* (i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134; however, employers must not select or use filtering-facepiece respirators for use against asbestos fibers.

(B) Provide HEPA filters for air-purifying respirators.

(ii) Employers must provide an employee with tight-fitting, powered air-purifying respirator (PAPR) instead of a negative-pressure respirator selected according to paragraph (h)(3)(i)(A) of this standard when the employee chooses to use a PAPR and it provides adequate protection to the employee.

(iii) Employers must provide employees with an air-purifying, half-mask respirator, other than a filtering-facepiece respirator, whenever the employees perform:

(A) Class II or Class III asbestos work for which no negative-exposure assessment is available.

(B) Class III asbestos work involving disturbance of TSI or surfacing ACM or PACM.

(iv) Employers must provide employees with:

(A) A tight-fitting, powered air-purifying respirator or a full-facepiece, supplied-air respirator operated in the pressure-demand mode and equipped with either HEPA egress cartridges or an auxiliary positive-pressure, self-contained breathing apparatus (SCBA) whenever the employees are in a regulated area performing Class I asbestos work for which a negative-exposure assessment is not available and the exposure assessment indicates that the exposure level will be at or below 1 f/cc as an 8-hour time-weighted average (TWA).

(B) A full-facepiece, supplied-air respirator operated in the pressure-demand mode and equipped with an auxiliary positive-pressure SCBA whenever the employees are in a regulated area performing Class I asbestos work for which a negative-exposure assessment is not available and the exposure assessment indicates that the exposure level will be above 1 f/cc as an 8-hour TWA.

* * * * *

25. In § 1926.1127, remove Table 1 in paragraph (g)(3)(i) and revise paragraph (g)(3)(i) to read as follows:

§ 1926.1127 Cadmium.

* * * * *

(g) * * *

(3) * * *

(i) Employers must:

(A) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134.

(B) Provide employees with full-facepiece respirators when they experience eye irritation.

(C) Provide HEPA filters for air-purifying respirators.

* * * * *

[FR Doc. 03–13749 Filed 6–5–03; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Friday,
June 6, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates and Policy Changes; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1472–F]

RIN 0938–AL92

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates and Policy Changes

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes the annual update of the payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). It also changes the annual period for which the rates are effective. The rates will be effective from July 1 to June 30 instead of from October 1 through September 30, establishing a "long-term care hospital rate year" (LTCH PPS rate year). We also change the publication schedule for these updates to allow for an effective date of July 1. The payment amounts and factors used to determine the updated Federal rates that are described in this final rule have been determined based on this revised LTCH PPS rate year. The annual update of the long-term care diagnosis-related groups (LTC–DRG) classifications and relative weights remains linked to the annual adjustments of the acute care hospital inpatient diagnosis-related group system, and will continue to be effective each October 1.

The outlier threshold for July 1, 2003, through June 30, 2004, is also derived from the LTCH PPS rate year calculations.

In addition, we are making an adjustment to the short-stay outlier policy for certain LTCHs and a policy change eliminating bed-number restrictions for pre-1997 LTCHs that have established satellite facilities and elect to be paid 100 percent of the Federal rate or when the LTCH is fully phased-in to 100 percent of the Federal prospective rate after the transition period.

EFFECTIVE DATE: The provisions of this final rule are effective June 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786–4487 (General information);

Judy Richter, (410) 786–2590 (General information, transition payments, payment adjustments, and onsite discharges and readmissions, interrupted stays and short-stay outliers);

Michele Hudson, (410) 786–5490 (Calculation of the payment rates, relative weights and case-mix index, market basket update, and payment adjustments);

Ann Fagan, (410) 786–5662 (Patient classification system);

Miechal Lefkowitz, (410) 786–5316 (High-cost outliers and budget neutrality);

Linda McKenna, (410) 786–4537 (Payment adjustments, interrupted stay, and transition period);

Kathryn McCann, (410) 786–7623 (Medigap);

Robert Nakielny, (410) 786–4466 (Medicaid).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*.

To assist readers in referencing sections contained in this preamble, we are providing the following table of contents.

Table of Contents

I. Background
- A. Legislative and Regulatory Authority
- B. Criteria for Classification as a LTCH
- C. Transition Period for Implementation of the LTCH PPS
- D. Limitation on Charges to Beneficiaries
- E. System Implementation for the LTCH PPS

II. Publication of Proposed Rulemaking
III. Summary of the Major Contents of This Final Rule
- A. Change in the Annual Update
- B. Update Changes

IV. Changes in the Annual Update of the LTCH PPS
V. Changes in Long-Term Care Diagnosis-Related Group (LTC–DRG) Classifications and Relative Weights
- A. Background
- B. Patient Classifications into DRGs
- C. Organization of DRGs
- D. Update of LTC–DRGs
- E. ICD–9-CM Coding System
  1. Uniform Hospital Discharge Data Set (UHDDS) Definitions
  2. Maintenance of the ICD–9–CM Coding System
  3. Coding Rules and Use of ICD–9–CM Codes in LTCHs
- F. Changes to the Method for Updating the LTC–DRG Relative Weights

VI. Policy Change Relating to Payments to LTCHs That Are Satellite Facilities
VII. Changes to the LTCH PPS Rates for the 2004 LTCH PPS rate year
- A. Overview of the Development of the Payment Rates
- B. Update to the Standard Federal Rate for the 2004 LTCH PPS rate year
  1. Standard Federal Rate Update
  a. Description of the Market Basket for the 2004 LTCH PPS rate year
  b. LTCH Market Basket Increase for the 2004 LTCH PPS rate year
  2. Standard Federal Rate for the 2004 LTCH PPS rate year
- C. Calculation of LTCH Prospective Payments for the 2004 LTCH PPS rate year
  1. Adjustment for Area Wage Levels
  2. Adjustment for Cost-Of-Living in Alaska and Hawaii
  3. Adjustment for High-Cost Outliers
  4. Adjustment for Special Cases a. General
  b. Short-Stay Outlier Cases
  c. Interrupted Stay
  d. Onsite Discharges and Readmittances
  e. Treatment of Swing Beds Under the Interrupted Stay and Onsite Discharge and Readmittance Policies
  5. Other Payment Adjustments
  6. Budget Neutrality Offset to Account for the Transition Methodology

VIII. Computing the Adjusted Federal Prospective Payments
IX. Transition Period
X. Payments to New LTCHs
XI. Method of Payment
XII. Monitoring
XIII. Collection of Information Requirements
XIV. Regulatory Impact Analysis
- A. Introduction
- 1. Executive Order 12866
- 2. Regulatory Flexibility Act (RFA)
- 3. Impact on Rural Hospitals
- 4. Unfunded Mandates
- 5. Federalism
- B. Anticipated Effects
- 1. Budgetary Impact
- 2. Impact on Providers
- 3. Calculation of Prospective Payments
- 4. Results
- 5. Effect on the Medicare Program
- 6. Effect on Medicare Beneficiaries
- C. Executive Order 12866

Regulations Text
Addendum–Tables

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554
CMS Centers for Medicare & Medicaid Services
DRGs Diagnosis-related groups
FY Federal fiscal year
HCRIS Hospital Cost Report Information System
HHA Home health agency
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191
IPPS Acute Care Hospital Inpatient Prospective Payment System
IRF Inpatient rehabilitation facility
LTC–DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare provider analysis and review file
OSCAR Online Survey Certification and Reporting (System)
PPS Prospective Payment System
QIO Quality Improvement Organization (formerly Peer Review organization (PRO))
SNF Skilled nursing facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248

I. Background

A. Legislative and Regulatory Authority

The Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L.106–554) provide for payment for both the operating and capital-related costs of hospital inpatient stays in long-term care hospitals (LTCHs) under Medicare part A based on prospectively set rates. The Medicare prospective payment system for LTCHs applies to hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act), effective for cost reporting periods beginning on or after October 1, 2002.

Section 1886(d)(1)(B)(iv)(I) of the Act defines a LTCH as "a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days." Section 1886(d)(1)(B)(iv)(II) of the Act also provides an alternative definition of LTCHs: Specifically, a hospital that first received payment under section 1886(d) of the Act in 1986 and has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Section 123 of Public Law 106–113 requires the prospective payment system for LTCHs to be a per discharge system with a diagnosis-related group (DRG) based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality.

Section 307(b)(1) of Public Law 106–554, among other things, mandates that the Secretary shall examine and may provide for adjustments to payments under the LTCH PPS, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In a **Federal Register** document issued on August 30, 2002 (67 FR 55954), we implemented the LTCH PPS authorized under Public Law 106–113 and Public Law 106–554. This system uses information from LTCH patient records to classify patients into distinct long-term care diagnosis-related groups (LTC–DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each LTC–DRG and provisions are made for appropriate payment adjustments. Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**.

The LTCH PPS replaced the reasonable cost-based payment system under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, for payments for inpatient services provided by a LTCH with a cost reporting period beginning on or after October 1, 2002. (The regulations implementing the TEFRA (reasonable cost-based) payment provisions are located at 42 CFR part 413.) With the implementation of the prospective payment system for inpatient acute care hospitals authorized by the Social Security Amendments of 1983 (Public Law 98–21), which added section 1886(d) to the Act, certain hospitals, including LTCHs, were excluded from the PPS for acute care hospitals and were paid their reasonable costs for inpatient services subject to a per discharge limitation or target amount under the TEFRA system. For each cost reporting period, a hospital-specific ceiling on payments was determined by multiplying the hospital's updated target amount by the number of total current year Medicare discharges. The August 30, 2002, final rule further details payment policy under the TEFRA system (67 FR 55954).

In the August 30, 2002, final rule, we presented an in-depth discussion of the LTCH PPS, including the patient classification system, relative weights, payment rates, additional payments, and the budget neutrality requirements mandated by section 123 of Public Law 106–113. The same final rule, that established regulations for the LTCH PPS under 42 CFR part 412, subpart O, also contained provisions related to covered inpatient services, limitation on charges to beneficiaries, medical review requirements, furnishing of inpatient hospital services directly or under arrangement, and reporting and recordkeeping requirements.

We refer readers to the August 30, 2002, final rule (67 FR 55954)for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS.

B. Criteria for Classification as a LTCH

LTCHs must have a provider agreement with Medicare and (1) must have an average Medicare inpatient length of stay of greater than 25 days, or (2), for a hospital that was first excluded from the PPS in 1986, must have an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days and demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principle diagnosis that reflects a finding of neoplastic disease. Subject to the provisions of § 412.23(e)(3), for the first type of LTCHs as noted above, the average Medicare inpatient length of stay is determined based on all covered and noncovered days of stay of Medicare patients as calculated by dividing the total number of covered and noncovered days of stay of Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period. Fiscal intermediaries verify that LTCHs meet the average length of stay requirements. We note that the inpatient days of a patient who is admitted to a LTCH without any remaining Medicare days of coverage, regardless of the fact that the patient is a Medicare beneficiary, will not be included in the above calculation. Because Medicare would not be paying for any of the patient's treatment, data on the patient's stay would not be included in our systems. In order for noncovered days of a LTCH

hospitalization to be included, a patient must have at least one remaining benefit day as described in § 409.61.

The fiscal intermediary's determination of whether or not a hospital qualifies as an LTCH is based on the hospital's discharge data from its most recent cost reporting period and is effective at the start of the hospital's next cost reporting period, as set forth under § 412.22(d). If a hospital does not meet the length of stay requirement, the hospital may provide the intermediary with data indicating a change in the hospital's average length of stay by the same method for the immediately preceding 6-month period (§ 412.23(e)(3)(ii)). (For procedural efficiency and in order to comply with the timing requirement of § 412.22(d), we have a longstanding policy of allowing hospitals to submit data for a period greater than 5-months for this purpose.) Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iii).

LTCHs that exist as hospitals-within-hospitals or satellite facilities must also meet the criteria set forth in § 412.22(e) or § 412.22(h), respectively, to be excluded from the IPPS and paid under the LTCH PPS.

The following hospitals are paid under special payment provisions, as described in § 412.22(c) and, therefore, are not subject to the LTCH PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR Part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)) (statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

C. Transition Period for Implementation of the LTCH PPS

In the August 30, 2002, final rule, we provided for a 5-year transition period from cost-based reimbursement to fully Federal prospective payment for LTCHs (67 FR 56038). During the 5-year period, two payment percentages are to be used to determine a LTCH's total payment under the PPS. The blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment Federal rate percentage	Cost-based reimbursement rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

D. Limitation on Charges to Beneficiaries

In the August 30, 2002, final rule, we presented an in-depth discussion of beneficiary liability under the LTCH prospective payment system (67 FR 55974–55975). Under § 412.507, as consistent with other established hospital prospective payment systems, a LTCH may not bill a Medicare beneficiary for more than the deductible and coinsurance amounts as specified under §§ 409.82, 409.83, and 409.87 and for items and services as specified under § 489.30(a), if the Medicare payment to the LTCH is the full LTC–DRG payment amount. However, if the Medicare payment was for a short-stay outlier case (§ 412.529) that was less than the full LTC–DRG payment amount, the LTCH could also charge the beneficiary for services for which the costs of those services or the days those services were provided were not a basis for calculating the Medicare short-stay outlier payment (§ 412.507).

Since the origin of the Medicare system, the intent of our regulations has been to set limits on beneficiary liability and to clearly establish the circumstances under which the beneficiary would be required to assume responsibility for payment; that is, upon exhausting benefits described in 42 CFR part 409, subpart F. The discussion in the August 30, 2002, final rule was not meant to establish rates or payments for, or define, Medicare-eligible expenses. While we regulate beneficiary liability for coinsurance and deductibles for hospital stays that are covered by Medicare, payments from Medigap insurers to providers for inpatient hospital coverage after Medicare benefits are exhausted are not regulated by us. Furthermore, regulations beginning at § 403.200 and the 1991 National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplemental Insurance, which was incorporated by reference into section 1882 of the Act, govern the relationship between Medigap insurers and beneficiaries.

E. System Implementation for the LTCH PPS

When we established the regulations to implement the LTCH PPS on August 30, 2002 (67 FR 55954), effective for cost reporting periods that began on or after October 1, 2002, we did not have computer system changes in place that were necessary to accommodate claims processing and payment under the system. However, after January 1, 2003, we made the necessary system changes. Accordingly, after January 1, 2003, the fiscal intermediary has been required to reconcile the payment amounts that had been made to LTCHs for all covered inpatient hospital services furnished to Medicare beneficiaries from cost reporting periods that began on or after October 1, 2002, through January 1, 2003, with the amounts that were payable under the LTCH PPS methodology. Because the LTCH PPS was effective at the start of the LTCH's first cost reporting period that began on or after October 1, 2002, only those LTCHs with cost reporting periods that started October 1, 2002, through January 1, 2003, will experience the payment reconciliation necessitated by this 3-month period prior to systems implementation. The claims submission procedure of using ICD–9–CM codes has not changed following the systems implementation of the LTCH PPS.

We also want to note that as of October 16, 2002, a LTCH that was required to comply with the Administrative Simplification Standards under the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191) and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105) is obligated to comply with the standards for submitting claim forms to the

LTCH's Medicare fiscal intermediary (45 CFR 162.1002 and 45 CFR 162.1102). Beginning October 16, 2003, LTCHs that obtained an extension and that are required to comply with the HIPPA Administrative Simplification Standards must start submitting electronic claims in compliance with the HIPPA regulations cited above, among others.

II. Publication of Proposed Rulemaking

On March 7, 2003, we published a proposed rule in the **Federal Register** (67 FR 11234) that set forth the proposed annual update of the payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). In that rule, we proposed to change the annual period during which the updated payment rates for the LTCH PPS would be effective from October 1 through September 30 to a LTCH PPS rate year from July 1 through June 30. We also proposed to change the publication schedule for these updates to allow for an effective date of July 1. The proposed payment amounts and factors used to determine the proposed updated Federal rates that were described in the March 7, 2003, proposed rule were determined based on the proposed revised update LTCH PPS rate year. However, the annual update of the long-term care diagnosis-related groups (LTC–DRG) classifications and relative weights remain linked to the annual adjustments of the acute care hospital inpatient diagnosis-related group system, effective each October 1. In the March 7, 2003, proposed rule, we also proposed the outlier threshold for July 1, 2003, through June 30, 2004, that was derived from the proposed LTCH PPS rate year calculations. We also proposed a change for outlier payments under the LTCH PPS. In addition, we proposed a policy change eliminating bed-number restrictions for pre-1997 LTCHs that have established satellite facilities and that elect to be paid 100 percent of the Federal rate or when the LTCH is fully phased-in to 100 percent of the Federal prospective rate after the transition period.

We received a total of 32 timely items of correspondence containing multiple comments on the proposed rule. The major issues addressed by the commenters included: The establishment of the LTCH PPS rate year and its relation to the update of the Federal rates; the LTC–DRGs and the wage index; satellite policy and budget neutrality calculations; high-cost and short-stay outliers; market basket and labor share; disproportionate share (DSH) and Graduate Medical Education (GME) policies.

Summaries of the public comments received and our responses to those comments are described below under the appropriate subject heading.

III. Summary of the Major Contents of This Final Rule

In this final rule, we set forth the annual update to the payment rates for the Medicare LTCH PPS and make other policy changes. The following is a summary of the major areas that we are addressing in this final rule:

A. Change in the Annual Update

We are changing the annual update to the Federal payment rate under the LTCH PPS from the Federal fiscal year (October 1 through September 30) to a "LTCH PPS rate year" of July 1 through June 30, beginning July 1, 2003, as discussed in section IV. of this preamble. (In this final rule, we define the LTCH PPS rate year as the period from July 1 to June 30 for updates to the LTCH PPS.) As noted below, we will now publish information on the annual update in the **Federal Register** on or before May 1 prior to the start of each long-term care hospital prospective payment system rate year that begins July 1, unless for good cause it is published after May 1, but before June 1. We have already noted that the annual update of the LTC–DRGs will be published in the proposed and final rules for the IPPS. We also recognize that it may be necessary to address issues affecting LTCHs at a time that does not conform to the schedule above. In such a situation, we would use another **Federal Register** document (that is, the acute care hospital inpatient prospective payment system (IPPS) proposed rule or final rule) as the vehicle to present that issue.

B. Update Changes

- In section IV. of this preamble, the annual update of the LTC–DRG classifications and relative weights remain linked to the annual adjustments of the acute care hospital inpatient DRG system, which are based on the annual revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes, effective each October 1.
- In section VI. of this preamble, we discuss a policy change on how Medicare payment under the LTCH PPS will be made to certain LTCHs that have satellite facilities.
- In sections VII. through XI. of this preamble, we discuss our determination of the LTCH PPS rates that are applicable to the LTCH PPS rate year of July 1, 2003, through June 30, 2004, including revisions to the wage index, the excluded hospital with capital market basket that will be applied to the current standard Federal rate to determine the prospective payment rates, the applicable adjustments to payments, the outlier threshold, the short-stay outlier policy for certain LTCHs, the transition period, and the budget neutrality factor.
- In section XII. of this preamble, we discuss our continuing monitoring efforts to evaluate the LTCH PPS.
- In section XIV. of this preamble, we set forth an analysis of the impact of the changes in this final rule on Medicare expenditures and on Medicare-participating LTCHs and Medicare beneficiaries.

IV. Changes in the Annual Update of the LTCH PPS

In existing regulations at § 412.535 that were issued in the August 30, 2002, final rule, we specify a schedule for publishing information on the LTCH PPS on or before August 1, which coincided with the statutorily mandated publication schedule for the IPPS. In the March 7, 2003, proposed rule, we proposed to revise § 412.535 to provide generally for a change in the annual rate update for the LTCH PPS, starting on July 1.

Section 1886(e)(5)(A) of the Act requires that, for the IPPS, the proposed rule be published in the **Federal Register** "not later than the April 1 before each fiscal year; and the final rule, not later than the August 1 before such fiscal year." The statute imposes no such publication schedule for the LTCH PPS. In the August 30, 2002, final rule, we stated that we were considering changing the publication schedule of the LTCH PPS annual rulemaking cycle in order to avoid concurrent publication of annual rules for these two systems for purposes of administrative feasibility and efficiency (67 FR 55977). In considering a change in the publication schedule of the LTCH PPS final rule, we contemplated a change in the effective date for updating the Federal rates for the LTCH PPS. Therefore, in the March 7, 2003, proposed rule, we proposed changing the effective date of the annual update for the LTCH PPS from October 1 to July 1 of each year in order to facilitate a timely publication of these two significant payment updates (IPPS and LTCH PPS). Thus, the annual update of the LTCH PPS Federal rates would no longer be linked to the start of the Federal fiscal year, as is the update of the IPPS. We had proposed that this change would necessitate publication of the final rule for the

LTCH PPS by no later than June 1 of each year (proposed revised § 412.535).

In the March 7, 2003, proposed rule, we also proposed to amend § 412.503 to include a definition of "LTCH PPS rate year". A "LTCH PPS rate year" would mean the 12-month period of July 1 through June 30. In the proposed rule, we stated that we would use this period for those calculations related to updating the Federal rate for payments under the LTCH PPS. We also stated that the determination of the proposed fixed-loss threshold for outlier payment calculations, under § 412.525(a), would also be calculated based on the LTCH PPS rate year. (Section VII.C. of this final rule includes a more detailed discussion of our outlier policy.)

Proposing a change for the annual Federal rate update period for the LTCH PPS also necessitated a proposed recalculation of the excluded hospital market basket with capital estimate for the proposed forthcoming payment year, July 1, 2003, through June 30, 2004. In the August 30, 2002, final rule, we established a Federal rate of $34,956 that was computed based on the excluded hospital with capital market basket calculated for the 12-month Federal fiscal year of October 1, 2002, through September 30, 2003. As already noted, we proposed to change the Federal rate update for the LTCH PPS from the Federal fiscal year to a 12-month LTCH PPS rate year of July 1 through June 30, and the proposed rates in the March 7, 2003, proposed rule were based on this period. Because the Federal rate of $34,956 was originally computed based on a 12-month year, but in actuality will only be used for 9 months, if the proposed change in the LTCH PPS rate update year was finalized, we proposed, in the March 7, 2003, proposed rule, to make a budget neutral adjustment to the market basket update taking this 3-month differential into account in setting the Federal rate for July 1, 2003, through June 30, 2004. In addition, we proposed that the change in the 2004 LTCH PPS rate year would be budget neutral. In section VII.B.1 of this final rule, we describe this adjustment in greater detail.

In the March 7, 2003, proposed rule, we proposed to update the LTCH PPS wage index that adjusts for differences in area wages under § 412.525(c) using the FY 1999 IPPS wage data because these are the best available wage data (as discussed in section VII.C. of this preamble).

We also stated that we were proposing to recalculate the budget neutrality offset to account for the effect of the transition period and the policy allowing LTCHs to elect 100 percent Federal rate payments rather than the transition blend.

We also proposed an updated fixed-loss amount for determining outlier payments based on the updated proposed Federal rate (as discussed in section VII. of this preamble).

In section IV.C. of the March 7, 2003, proposed rule, we stated that we did not propose an update to the LTC–DRG classifications or relative weights at this time. Currently, the LTC–DRG patient classifications used by the LTCH PPS for FY 2003 are based directly on the same version of DRGs used by the IPPS, that is, GROUPER 20.0. Therefore, we did not propose any change to the timing of the annual update of the LTC–DRG classifications and relative weights. They will remain linked to the annual adjustments of the acute care hospital inpatient DRG system, which are based on the annual revisions to the ICD–9–CM codes, effective each October 1. Table 3 of the Addendum to the August 30, 2002, final rule (67 FR 56076–56084), which were reprinted as Table 3 of the Addendum to the March 7, 2003, proposed rule, contains the LTC–DRG classifications and relative weights that we proposed to continue to apply to discharges occurring during the period of July 1, 2003, through September 30, 2003. As an aid in calculating payment under the short-stay outlier policy, under § 412.529, we also are including, in column 3 of Table 3, the proposed five-sixths average length of stay that will be applied to each LTC–DRG in determining whether the LTCH stay is a short-stay outlier. The average length of stay for each DRG based on the FY 2001 MedPAR data, which were used for the FY 2003 LTCH PPS final rule, are still the best available complete LTCH discharge data available at this time.

The revised LTC–DRG classifications and relative weights for discharges occurring from October 1, 2003, through September 30, 2004, for payments under the LTCH PPS during that period would continue to be updated on a Federal fiscal year cycle as is the case for the acute care hospital inpatient DRG system. The FY 2004 DRGs and relative weights for the IPPS had not yet been proposed by the time the March 7, 2003, proposed rule was published and we were unable to propose updated LTC–DRGs and relative weights (which would be based on the proposed updated acute care hospital inpatient DRGs). Thus, we proposed that the LTC-DRG classifications and relative weights would be presented for public comment in the proposed rule for the IPPS and finalized in the IPPS final rule, with an effective date of October 1, 2003.

The proposed change in the LTCH PPS rate year for the LTCH PPS from October 1 through September 30 to July 1 through June 30 means that, although the Federal rate calculations in the August 30, 2002, final rule were based on a 12-month year, only 9 months will elapse before the July 1, 2003, update. In the March 7, 2003, proposed rule, we proposed to make a prospective adjustment to the market basket update to take into account this 3-month differential in setting the rates for July 1, 2003, through June 30, 2004.

Specifically, we explained that the proposed updates for the proposed 2004 LTCH PPS rate year would be affected as follows:

- The proposed update to the standard Federal rate calculated in accordance with § 412.523(c)(3) would be adjusted to account for updating the standard Federal rate on July 1, 2003, instead of October 1, 2003.
- The fixed-loss amount for determining high-cost outlier payments under § 412.525(a) would also be updated based on the Federal rate effective for July 1, 2003, through June 30, 2004.

In section VI.B.1 of the March 7, 2003, proposed rule, we discussed the proposed computational adjustments resulting from our proposed establishment of a LTCH PPS rate year beginning July 1, 2003, through June 30, 2004.

In the March 7, 2003, proposed rule, we stated that several provisions of the LTCH PPS would not be affected by the change in the annual rate update year for the LTCH PPS from October 1 to July 1 because these policies are not based on any of the Federal rate calculations for the LTCH PPS. Specifically, the following provisions would not be affected:

- The transition blends provided for under § 412.533(a) will not be affected because they are linked to the start of each LTCH's cost reporting period, rather than to the start of the Federal fiscal year. (LTCHs being paid under the transition blend methodology will receive those blends for the entire 5-year transition period, unless they elect payments based on 100 percent of the Federal rate.) For instance, for cost reporting periods that began on or after October 1, 2002, and before October 1, 2003, the total payment for a LTCH is 80 percent of the amount that will be calculated under the reasonable cost-based payment system for that specific LTCH and 20 percent of the Federal prospective payment amount. For cost reporting periods beginning on or after October 1, 2003, and before October 1, 2004, the total payment for a LTCH is 60 percent of the amount that will be calculated under the reasonable cost-based payment system for that specific LTCH and 40 percent of the Federal prospective payment amount.
- The 5-year phase-in of the adjustment for differences in area wage levels under § 412.525(c) will not be affected because they are linked to the start of each LTCH's cost reporting period, rather than to the start of the Federal fiscal year. For cost reporting periods that began on or after October 1, 2002, and before September 30, 2003, the applicable LTCH PPS wage index is one-fifth of the full LTCH wage index value, and for cost reporting periods beginning on or after October 1, 2003, and before September 30, 2004, the applicable LTCH PPS wage index is two-fifths of the full LTCH wage index value.
- The LTC–DRGs and their relative weights and the GROUPER will not be affected since they will continue to be updated effective October 1 through September 30 each year based on the changes to the DRGs published in the IPPS final rule.

We received eight comments regarding our proposal to change the effective date of the annual update for the LTCH PPS from October 1 to July 1 of each year.

Comment: Two commenters supported the establishment of the LTCH PPS rate year, but suggested that publishing the final rule each year by May 1, rather than by June 1 would allow LTCHs additional time for adjustments to their payment systems.

Response: We thank the commenters for endorsing the establishment of the revised LTCH PPS rate year. In changing the effective date of the LTCH PPS rate year update and the resulting publication dates of the proposed and final regulations for the system, we stated that this shift in the schedule would promote "administrative feasibility and efficiency," by avoiding concurrent rulemaking and publishing with the IPPS final rule. As we have already noted, section 1886(e)(5)(A) of the Act requires that, for the IPPS, the proposed rule be published in the **Federal Register** "not later than the April 1 before each fiscal year; and the final rule, not later than the August 1 before such fiscal year," but no similar requirement is imposed on the LTCH PPS.

Publishing a final rule annually by May 1 in order to allow 60-days between publication and effective date of the LTCH PPS rate update does not invalidate our stated objectives. Therefore, we will revise the regulations to require publication of the final LTCH rule by May 1 of each year unless for "good cause" we are unable to publish by that date, but before June 1. (We note that "good cause" used in this context is not coextensive and is broader than the "good cause" standard used in the Administrative Procedures Act (A.P.A.) at 5 U.S.C. section 553(d)(3).)

Comment: Several commenters took issue with the proposed change in the effective date of the annual update for the LTCH PPS from October 1 to July 1 of each year while still retaining the October 1 effective date for updating LTC–DRG classifications and weights. They believe that this policy change will be burdensome to LTCHs, requiring two separate updates during one cost reporting period as well as increased systems costs. These commenters urged us to remain with the existing update and publication schedule and some suggested deferring the change until full implementation of the LTCH PPS in FY 2006. One commenter raised the issue that this "fragmentary" implementation of individual updates will increase potential payment calculation errors for LTCHs. Another commenter urged us to pay LTCHs as a "pass through" for any expenses that they incur in complying with the new regulations, should they be made final.

One commenter stated that administrative feasibility and efficiency at CMS did not justify burdening LTCHs in this manner. One of the commenters asserted that the costs for updating LTCH billing systems to accommodate this change in the LTCH PPS rate year will have a considerable impact on LTCHs as Small Businesses and, therefore, should have been reviewed under the A.P.A and the Regulatory Flexibility Act (RFA).

Response: In response to these commenters, we first want to establish the fact that we have no requirement that LTCHs maintain payment systems or coding software in order to be paid under the LTCH PPS. We understand that it is common for many hospitals, consultants, and industry associations to do so, but we believe that some of the commenters who oppose the proposed change in the LTCH PPS rate year for the LTCH PPS to July 1 through June 30 while retaining October 1 through September 30 for the LTC–DRG update are oversimplifying what presently exists from a systems standpoint. Currently, all providers with cost reporting periods beginning in any month other than October already are subject to two separate updates. In addition, rate changes may occur during the fiscal year because of Congressional action for services rendered "on or after" the date that the rate change was effective. Additionally, ongoing audit and review procedures, provider-generated appeals procedures, and either administrative or judicial decisions also can produce hospital-level rate changes not associated with the start of a Federal fiscal year.

As noted above, we do not require providers to process claims or to determine LTC–DRG assignments, but should a LTCH or any other group choose to duplicate the PRICER software that is required for fiscal intermediaries, or the GROUPER software that we use, it is an individual business determination.

We primarily want to remind the commenters that the determination of Medicare payments based on submitted claims is solely a responsibility of each fiscal intermediary. Since payments to LTCHs will be based on claims processing done by fiscal intermediaries, we do not understand one commenter's assertion that we should not implement this policy because one of the payment consequences in establishing the LTCH PPS rate year will be to cause potential calculation errors by LTCHs.

Nowhere in our regulations are LTCHs required to maintain the systems capability to calculate payments. Therefore, although individual LTCHs and other groups may elect, for their own purposes, to purchase software packages in order to duplicate work done by our contractors, we do not agree that those costs should be paid as a pass-through by us. Moreover, we continue to believe that since the start of cost reporting periods for many LTCHs, as well as acute care hospitals, have not generally coincided with the October starting date of the Federal fiscal year, those hospitals that choose to have their own payment software are very familiar with the virtually seamless routine of inputting new numbers to their existing systems when a final rule is published. We do not believe that this policy will be unduly burdensome to such LTCHs. We also point out to the commenters that with publication of the proposed rule on March 7, 2003, we have complied with the A.P.A. As to the RFA, as stated in the proposed rule (68 FR 11259), this rule would not have a significant impact on small entities (this includes small businesses).

In response to the two comments suggesting that we delay implementation of this policy until full phase-in of the LTCH PPS in FY 2006, based on our evaluation of the above comments, we do not believe that such a decision is warranted.

Comment: One commenter suggested that if we found it necessary to

reschedule the effective date and publication cycle of one of the post-acute care prospective payment systems, we should do so for Home Health Agency (HHA) or Skilled Nursing Facilities (SNF) which are not DRG-based, and, therefore, not linked to the October 1 update.

Response: As we have noted elsewhere in this final rule, there is no statutory authority requiring the update of the LTCH PPS to coincide with the October 1 start of the Federal fiscal year. On the contrary, annual updates linked to the October 1 start of the Federal fiscal year are required for both the SNF PPS, under section 1888(e)(4)(H) of the Act (implemented in § 413.345), and the HHA PPS, under section 1895(b)(3)(B) (implemented in § 484.225). Therefore, although we do not have the authority to shift the annual update for the SNF PPS or the HHA PPS, we believe that such a policy is appropriate under section 123 of Public Law 106–113 and section 307(b) of Public Law 106–554, which conferred broad authority on the Secretary in designing and implementing a PPS for LTCHs.

Comment: One commenter noted that "the use of two GROUPERs will not in and of itself create any hardship on LTCHs [which] will be able to adapt to this process. Most hospitals today do not have fiscal years that coincide with the federal (sic) fiscal year and must adapt to the use of two GROUPERs during their cost reporting year." This commenter did express concern, however, about the additional rate changes caused by the cost report reconciliation if the proposed outlier policy was finalized. The commenter suggested that we require fiscal intermediaries to update cost to charge ratios either at July 1 or October 1 in order to limit the number of changes during a 12-month period of time.

Response: We agree with the commenter's assessment of most LTCHs' (and acute care hospital's) ability to adapt to the use of two GROUPERs during one cost reporting period. Regarding rate changes brought about by changes in our outlier policy, as noted elsewhere in this final rule, all discussions of the outlier policy are presented in the IPPS high-cost outlier final rule.

In this final rule, we amend § 412.535 to indicate that information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates under the LTCH PPS will be published in the **Federal Register** on or before May 1 prior to the beginning of each LTCH PPS rate year beginning July 1, unless for good cause we are unable to make the May 1 publication date, but before June 1. We proposed that information on the DRG classification system and associated weighting factors, with the DRGs from which the LTC–DRGs are derived, would be published in the proposed IPPS rule and, ultimately, the final rule for the IPPS (the final IPPS rule is published on or before August 1 of each Federal fiscal year). Section XIV. of this final rule contains an impact analysis that reflects the impact of these changes.

V. Changes in Long-Term Care Diagnosis-Related Group (LTC–DRG) Classifications and Relative Weights

A. Background

Section 123 of Public Law 106–113 specifically requires that the PPS for LTCHs be a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 307(b)(1) of Public Law 106–554 modified the requirements of section 123 of Public Law 106–113 by specifically requiring that the Secretary examine "the feasibility and the impact of basing payment under such a system [the LTCH PPS] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data."

In accordance with section 307(b)(1) of Public Law 106–554 and § 412.515 of our existing regulations, the LTCH PPS uses information from LTCH patient records to classify patient cases into distinct long-term care diagnosis-related groups (LTC–DRGs) based on clinical characteristics and expected resource needs. The LTC–DRGs used as the patient classification component of the LTCH PPS correspond to the DRGs in the IPPS. We apply weights to the existing hospital inpatient DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs.

In a departure from the IPPS, we use low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), we group low volume DRGs into 5 quintiles based on average charge per discharge. (A listing of the composition of low volume quintiles appears in the August 30, 2002, final rule at 67 FR 55986.) We also take into account adjustments to payments for cases in which the stay at the LTCH is five-sixths of the geometric average length of stay and classify these cases as short-stay outlier cases. (A detailed discussion of the application of the Lewin Group model that was used to develop the LTC–DRGs appears in the August 30, 2002, final rule at 67 FR 55978.)

B. Patient Classifications Into DRGs

Generally, under the LTCH PPS, Medicare payment is made at a predetermined specific rate for each discharge; that payment varies by the LTC–DRG to which a beneficiary's stay is assigned. Cases are classified into LTC–DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.
(6) Discharge status of the patient.

Upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the ICD–9–CM. As of October 16, 2002, a LTCH that was required to comply with the HIPAA Administrative Simplification Standards and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105) is obligated to comply with the standards at 45 CFR 162.1002 and 45 CFR 162.1102. Completed claim forms are to be submitted to the LTCH's Medicare fiscal intermediary.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, the following type of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare. (For example, organ transplant in a nonapproved transplant center.)
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, the claim will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, code 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE, each claim will be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the same GROUPER used by the IPPS. The GROUPER software was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare fiscal intermediary will determine the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments. As provided for under the IPPS, we provide an opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary and to submit additional information within a specified timeframe (§ 412.513(c)).

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update. DRG weights are based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals.

C. Organization of DRGs

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. The GROUPER does not recognize all ICD–9–CM procedure codes as procedures that affect DRG assignment, that is, procedures which are not surgical (for example, EKG), or minor surgical procedures (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, sex, discharge status, and presence or absence of complications or comorbidities (CC). We note that CCs are defined by certain secondary diagnoses not related to, or not inherently a part of, the disease process identified by the principal diagnosis. (For example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a CC when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to preexisting conscious level.) In addition, we note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

In its June 2000 Report to Congress, MedPAC recommended that the Secretary "* * * improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis-related group refinements that more fully capture differences in severity of illness among patients." (Recommendation 3A, p. 63) We have determined it is not practical at this time to develop a refinement to inpatient hospital DRGs based on severity due to time and resource requirements. However, this does not preclude us from development of a severity-adjusted DRG refinement in the future. That is, a refinement to the list of comorbidities and complications could be incorporated into the existing DRG structure. It is also possible a more comprehensive severity adjusted structure may be created if a new code set is adopted. That is, if ICD–9–CM is replaced by ICD–10–CM (for diagnostic coding) and ICD–10–PCS (for procedure coding) or by other code sets, a severity concept may be built into the resulting DRG assignments. Of course any change to the code set would be adopted through the process established in the HIPAA Administrative Simplification provisions.

D. Update of LTC–DRGs

For FY 2003, the LTC–DRG patient classification system was based on LTCH data from the FY 2001 MedPAR file, which contained hospital bills received through March 31, 2001, for hospital discharges occurring in FY 2001. The patient classification system consisted of 510 DRGs that formed the basis of the FY 2003 LTCH PPS GROUPER. The 510 LTC–DRGs included two "error DRGs". As in the IPPS, we included two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are DRG 469 (Principal Diagnosis Invalid as a Discharge Diagnosis) and DRG 470 (Ungroupable). (*See* the August 1, 2001, Medicare Program final rule, Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education; Fiscal Year 2002 Rates (66 FR 40062).) The other 508 LTC–DRGs are the same DRGs used in the IPPS GROUPER for FY 2003 (Version 20.0).

In the health care industry, annual changes to the ICD–9–CM codes are effective for discharges occurring on or after October 1 each year. Thus, the manual and electronic versions of the GROUPER software, which are based on the ICD–9–CM codes, are also revised annually and effective for discharges occurring on or after October 1 each year. As discussed earlier, the patient classification system for the LTCH PPS (LTC–DRGs) is based on the IPPS patient classification system (CMS–DRGs), which is updated annually and effective for discharges occurring on or after October 1 through September 30 each year. The updated DRGs and GROUPER software are based on the latest revision to the ICD–9–CM codes, which are published annually in the IPPS proposed rule and final rule. The new or revised ICD–9–CM codes are not used by the industry for either the IPPS or the LTCH PPS until the beginning of the next Federal fiscal year (effective for discharges occurring on or after October 1 through September 30). (The use of the ICD–9–CM codes in this manner is consistent with current usage and the HIPAA regulations.) October 1 is also when the changes to the CMS–DRGs and the next version of the GROUPER software becomes effective.

As indicated previously in the March 7, 2003, proposed rule, we proposed to make the annual update to the LTCH PPS effective from July 1 through June 30 each year. As a result of this change, we proposed that the LTCH PPS would

use two GROUPERS during the course of a 12-month period: One GROUPER for 3 months (from July 1 through September 30); and an updated GROUPER for 9 months (from October 1 through June 30). The need to use two GROUPERs is based upon the October 1 effective date of the updated ICD–9–CM coding system. As previously discussed, new ICD–9–CM codes may result in changes to the structure of the DRGs. In order for the industry to be on the same schedule (for both the IPPS and the LTCH PPS) for the use of the most current ICD–9–CM codes, it was necessary for us to propose to apply two GROUPER programs to the LTCH PPS. Although we did not believe that this would have any adverse effect on LTCHs, we were interested in receiving comments on this issue. LTCHs would continue to code diagnosis and procedures using the most current version of the ICD–9–CM coding system.

Currently, for Federal FY 2003, we are using Version 20.0 of the GROUPER software for both the IPPS and the LTCH PPS. For discharges beginning on October 1, 2003 (Federal FY 2004), in the March 7, 2003, LTCH PPS proposed rule, we proposed to use Version 21.0 of the GROUPER software for both the IPPS and the LTCH PPS. Thus, changes to the CMS–DRGs (the DRGs on which the LTC–DRGs are based), and their relative weights, as well as the LTC–DRGs and their relative weights that will be effective for October 1, 2003, through September 30, 2004, are presented in the IPPS FY 2004 proposed rule that was published on May 19, 2003, in the **Federal Register** (68 FR 27154). Accordingly, we will notify LTCHs of any revised LTC–DRG relative weights based on the final DRGs and Version 21.0 GROUPER for the IPPS that would be effective October 1, 2003.

Comment: Two commenters suggested that we synchronize the LTCH rate year (that is, July 1 through June 30) with the update of the LTC DRGs which occurs on October 1 by delaying the October 1 update until the following July 1. As an alternative, one commenter suggested that the LTCHs could continue to use the LTC–DRG weights determined the previous October 1 until the start of the next LTCH rate year (July 1, 2004), and conduct a readjustment for the LTCH PPS on July 1 of the following year.

Response: With regard to the commenters' suggestion to continue to use the current ICD–9–CM and DRG Grouper Version 20 until June 30, 2004, delaying the update until the following year, we believe that this suggestion is not feasible. This would require coders to use two different ICD–9–CM versions, one for IPPS use (Version 21 will be implemented October 1, 2003) and another for LTCH PPS. Moreover, the HIPPA (45 CFR part 162) requires that the ICD–9–CM be the standard medical code set and each code set is valid within the dates specified by the organization (Department of Health and Human Services) responsible for maintaining that code set. The use of other than the current code set (most recent update to the ICD–9–CM will be effective October 1, 2003) would be in direct violation of the current HIPPA requirements.

In this final rule, while we are adopting the proposed use of two GROUPER software programs over the course of the LTCH rate year, one GROUPER for 3 months (from July 1 through September 30); and an updated GROUPER for 9 months (from October 1 through June 30), the existing GROUPER and the updated GROUPER will be in effect for 12 months. These two GROUPER programs will be the same programs in use for the IPPS.

E. ICD–9–CM Coding System

1. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular LTC–DRG will help determine the amount that will be paid for the case, it is important that the coding is accurate. Classifications and terminology used in the LTCH PPS are consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics ("Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980") and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We wish to point out that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPPA Administrative Simplification Act of 1996 (45 CFR part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. In addition, the following definitions (as described in the 1984 Revision of the UHDDS, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS–DRGs:

- Diagnoses include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.
- All procedures performed will be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

We provide LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

2. Maintenance of the ICD–9–CM Coding System

The ICD–9–CM Coordination and Maintenance (C&M) Committee is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, that is charged with maintaining and updating the ICD–9–CM system. The C&M Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The C&M Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The C&M Committee encourages participation by health-related organizations in the above process and holds public meetings for discussion of educational issues and proposed coding changes twice a year at the CMS Central Office located in Baltimore, Maryland. The agenda and dates of the meetings can be accessed on the CMS Web site at: *http://www.cms.gov/paymentsystems/icd9*.

All changes to the ICD–9–CM coding system affecting DRG assignment are addressed annually in the IPPS proposed and final rules. Because the DRG-based patient classification system for the LTCH PPS is based on the IPPS DRGs, these changes will also affect the LTCH PPS LTC–DRG patient classification system.

As discussed above, the ICD–9–CM coding changes that have been adopted by the C&M Committee become effective at the beginning of each Federal fiscal year, October 1. Regardless of the change to the annual update of the LTCH PPS year to July 1, coders will use the most current updated ICD–9–CM coding book from October 1 through September 30 of each year. This means that coders and LTCHs that use the updated ICD–9–CM coding system will be on the same schedule (effective October 1) as the rest of the health care industry. The newest version of ICD–9–CM is not available for use until October 1, which would be 4 months after the date that we will publish the LTCH annual payment rate update final rule. The new codes on which the LTC–DRGs are based will go into effect and be available for use for discharges occurring on or after October 1 through September 30 of each year. This annual schedule of the revision to the ICD–9–CM coding system and the change of the ICD–9–CM coding books or electronic coding programs has been in effect since the adoption of Revision 9 of the ICD in 1979.

Of particular note to LTCHs will be the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D) located in the annual proposed and final rules for the IPPS. Claims with invalid codes will not be processed by the Medicare claims processing system.

3. Coding Rules and Use of ICD–9–CM Codes in LTCHs

We emphasize the need for proper coding by LTCHs. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration. We continue to urge LTCHs to focus on improved coding practices. Because of concerns raised by LTCHs concerning correct coding, we have asked the American Hospital Association (AHA) to provide additional clarification or instruction on proper coding in the LTCH setting. The AHA will provide this instruction via their established process of addressing questions through their publication "Coding Clinic for ICD–9–CM". Written questions or requests for clarification may be addressed to the Central Office on ICD–9–CM, American Hospital Association, One North Franklin, Chicago, IL 60606. A form for the question(s) is available to be downloaded and mailed on AHA's Web site at: *www.ahacentraloffice.org*. In addition, current coding guidelines are available at the National Center for Health Statistics (NCHS) Web site: *www.cdc.gov/nchs.icd9.htm*.

In conjunction with the cooperating parties (AHA, AHIMA, and NCHS), we have reviewed actual medical records and are concerned about the quality of the documentation under the LTCH PPS, as was the case at the beginning of the IPPS. We fully believe that, with experience, the quality of the documentation and coding will improve, just as it did for the IPPS. As noted above, the cooperating parties have plans to assist their members with improvement in documentation and coding issues for the LTCHs through specific questions and coding guidelines. The importance of good documentation is emphasized in the revised ICD–9–CM Official Guidelines for Coding and Reporting (October 1, 2002): "A joint effort between the attending physician and coder is essential to achieve complete and accurate documentation, code assignment, and reporting of diagnoses and procedures. The importance of consistent, complete documentation in the medical record cannot be overemphasized. Without such documentation, the application of all coding guidelines is a difficult, if not impossible, task. (Coding Clinic for ICD–9–CM, Fourth Quarter 2002, page 115).

To improve medical record documentation, LTCHs should be aware that if the patient is being admitted for continuation of treatment of an acute or chronic condition, guidelines at section I.B.10 of the Coding Clinic for ICD–9–CM, Fourth Quarter 2002 (page 129) are applicable concerning selection of principal diagnosis. To clarify coding advice issued in the August 30, 2002 final rule (67 FR 55979–55981), we would like to point out that, at Guideline I.B.12, Late Effects, a late effect is considered to be the residual effect (condition produced) after the acute phase of an illness or injury has terminated (Coding Clinic for ICD–9–CM, Fourth Quarter 2002, page 129). We have received a question regarding whether a LTCH should report the ICD–9–CM code(s) for an unresolved acute condition instead of the code(s) for late effect of rehabilitation. Depending on the documentation in the medical record, either code could be appropriate in a LTCH. Since implementation of the LTCH PPS, our Medicare fiscal intermediaries have been conducting training and providing assistance to LTCHs in correct coding. We have also issued manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries. We will continue to conduct such training and provide guidance on an as-needed basis. We also refer readers to the detailed discussion on correct coding practices in the August 30, 2002, final rule (67 FR 55979–55981).

Comment: Two commenters expressed their support for our adherence to the official ICD–9–CM coding guidelines.

Response: We appreciate the commenters support and anticipate working closely with both the AHA and the AHIMA to increase awareness of proper documentation and correct coding in the LTCH setting.

F. Changes to the Method for Updating the LTC–DRG Relative Weights

As discussed in the March 7, 2003, proposed rule, under the LTCH PPS, each LTCH will receive a payment that represents an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for those Medicare patients whose care is more costly. Therefore, in accordance with § 412.523(c), we adjust the standard Federal PPS rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

Under this payment system, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (§ 412.515). To ensure that Medicare patients who are classified to each LTC–DRG have access to an appropriate level of services and to encourage efficiency, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

As we discussed in the August 30, 2002, final rule (67 FR 55984–55995), the LTC–DRG relative weights effective under the LTCH PPS for Federal FY 2003 were calculated using the March 2002 update of FY 2001 MedPAR data and Version 20.0 of the CMS GROUPER software. We use total days and total

charges in the calculation of the LTC–DRG relative weights.

By nature, LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value method to calculate relative weights. We believe this method removes this hospital-specific source of bias in measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. (*See* the August 30, 2002, final rule (67 FR 55985) for further information of the hospital-specific relative value methodology.)

In order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we grouped those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. For FY 2003 based on the FY 2001 MedPAR data, we identified 161 LTC–DRGs that contained between 1 and 24 cases. This list of low volume LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 32 LTC–DRGs (161/5 = 32 with 1 LTC–DRG as a remainder). Each of the low volume LTC–DRGs grouped to a specific quintile received the same relative weight and average length of stay using the formula applied to the regular LTC–DRGs (25 or more cases), as described below. (*See* the August 30, 2002, final rule (67 FR 55985–55988) for further explanation of the development and composition of each of the five low volume quintiles for FY 2003.)

After grouping the cases in the appropriate LTC–DRG, we calculate the relative weights by first removing statistical outliers and cases with a length of stay of 7 days or less. Next, we adjust the number of cases in each LTC–DRG for the effect of short-stay outlier cases under § 412.529. The short-stay adjusted discharges and corresponding charges were used to calculate "relative adjusted weights" in each LTC–DRG using the hospital-specific relative value method described above. (*See* the August 30, 2002, final rule (67 FR 55989–55995) for further details on the steps for calculating the LTC–DRG relative weights.)

We also adjust the LTC–DRG relative weights to account for nonmonotonically increasing relative weights. That is, we make an adjustment if cases classified to the LTC–DRG "with comorbidities (CCs)" of a "with CC"/"without CC" pair had a lower average charge than the corresponding LTC–DRG "without CCs" by assigning the same weight to both LTC–DRGs in the "with CC"/"without CC" pair. (*See* August 30, 2002, 67 FR 55990–55991). In addition, of the 510 LTC–DRGs in the LTCH PPS for FY 2003, based on the FY 2001 MedPAR data, we identified 159 LTC–DRGs for which there were no LTCH cases in the database. That is, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2001 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of LTC–DRGs, we were unable to determine weights for these 159 LTC–DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2003, we assigned relative weights to each of the 159 "no volume" LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 351 (510 − 159 = 351) LTC–DRGs for which we were able to determine relative weights, based on the FY 2001 claims data. (A list of the no volume LTC–DRGs and further explanation of their relative weight assignment can be found in the August 30, 2002, final rule (67 FR 55991–55994).)

Furthermore, we establish LTC–DRG relative weights of 0.0000 for heart, kidney, liver, lung, pancreas, and simultaneous pancreas/kidney transplants (LTC–DRGs 103, 302, 480, 495, 512 and 513, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare and presently no LTCH has been so certified. If in the future, however, a LTCH applies for certification as a Medicare-approved transplant center, we believe that the application and approval procedure would allow sufficient time for us to propose appropriate weights for the LTC–DRGs effected. At the present time, though, we only include these six transplant LTC–DRGs in the GROUPER program for administrative purposes because since the LTCH PPS uses the same GROUPER program for LTCHs as is used under the IPPS, removing these DRGs would be administratively burdensome.

As we stated in the March 7, 2003, proposed rule, we proposed that we would continue to use the same LTC–DRGs and relative weights until October 1, 2003. Accordingly, Table 3 in the Addendum to the March 7, 2003, proposed rule lists the LTC–DRGs and their respective relative weights and arithmetic mean length of stay that we proposed would continue to be used for the period of July 1, 2003, through September 30, 2003. (This table is the same as Table 3 of the Addendum to the August 30, 2002, final rule (67 FR 56076–56084), except that it includes the proposed five-sixth of the average length of stay for short-stay outliers under § 412.529.) As we noted in section IV.D. of the March 7, 2003, proposed rule, we proposed that the final DRGs and GROUPER for FY 2004 that will be used for the IPPS and the LTCH PPS, effective October 1, 2003, would be presented in the IPPS FY 2004 final rule published no later than August 1, 2003, in the **Federal Register**.

Accordingly, we will notify LTCHs of the revised LTC–DRG relative weights for use in determining payments for discharges occurring between October 1, 2003, and September 30, 2004, based on the final DRGs and Version 21.0 GROUPER published in the IPPS rule on or before August 1, 2003.

VI. Policy Change Related to Payments to LTCHs That Are Satellite Facilities

Provisions of the Proposed Rule

In proposing the LTCH PPS (March 7, 2002, 67 FR 13416), we stated that we were considering proposing the elimination of the bed limit in § 412.22(h)(2)(i) for pre-1997 excluded hospitals once the prospective payment system was fully phased-in and all payments were based on 100 percent of the Federal prospective payment rates. This statement generated a number of comments and in the August 30, 2002, final rule (67 FR 56012), we stated our agreement with commenters who urged us to adopt a policy eliminating the bed-number restrictions for pre-1997 LTCHs with satellite facilities, as soon as a LTCH is paid based on 100 percent of the Federal prospective rate. However, we also noted that we would address a change in the policy concerning bed limits in the next update of the LTCH PPS. Therefore, in the March 7, 2003, proposed rule (68 FR 11243–11244), we proposed to eliminate the application of the bed-number restrictions set forth in § 412.22(h)(2)(i) for LTCHs established prior to 1997 with satellite facilities, effective at the start of the first cost reporting year that a LTCH is paid under the 100 percent fully Federal prospective payment system. This will be either when a LTCH elects to be paid based on 100 percent of the Federal prospective rate or when the LTCH is fully transitioned to 100 percent of the Federal prospective rate, whichever comes first.

Section 1886(b)(3) of the Act, as amended by section 4414 of Public Law 105–33, required existing LTCHs to be subject to caps on their target amounts for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. For purposes of calculating these caps, the statute required the Secretary to "estimate the 75th percentile of the target amounts for such hospitals within [each] class for cost reporting periods ending during fiscal year 1996." Section 1886(b)(3)(H) of the Act, as amended by section 121 of Public Law 106–113, directed the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric and rehabilitation hospitals and units and LTCHs effective for cost reporting periods beginning on or after October 1, 1999 through September 30, 2002. In addition, payment limits were established for new excluded hospitals or units (excluding children's hospitals) effective October 1, 1997. For new excluded hospitals (that is, post-1997 LTCHs), section 1886(b)(7) of the Act, as added by section 4416 of Public Law 105–33, specified that the payment amount for the facility's first two 12-month cost reporting periods, for which the hospital has a settled cost report, must not exceed 110 percent of the national median of target amounts of similarly classified hospitals for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the first cost reporting period in which the hospital receives payment, as adjusted by section 1886(b)(7)(C) of the Act. The result of sections 4414 and 4416 of Public Law 105–33 was a distinction between the LTCHs established prior to, and those established after 1997, with lower payment caps for the post-1997 LTCHs.

In the July 30, 1999, IPPS final rule (64 FR 41532–41533), we promulgated regulations at § 412.22(h)(2)(i) to discourage pre-1997 excluded hospitals, which had the higher caps on target amounts as discussed above (under § 413.40(c)(4)(iii)), from creating satellites rather than establishing new hospitals, in order to avoid the payment impact of the lower caps that apply to new hospitals (under § 413.40(f)(2)(ii)). In the July 30, 1999, IPPS final rule (64 FR 41490), we required that where a pre-1997 excluded hospital, such as a LTCH, established a satellite facility and, in doing so, its total beds, in both the parent hospital (or unit) and the satellite facility, exceeded the number of State-licensed and Medicare-certified beds in the parent hospital on the last day of its last cost reporting period beginning before October 1, 1997, the excluded hospital would be paid under the inpatient DRG system, instead of receiving payment as an excluded hospital under the reasonable cost-based payment system. Although the excluded hospital could "transfer" beds from the parent facility to the satellite, it could not increase its total bed capacity (at the parent and satellite(s)) beyond the level the hospital had in the most recent cost reporting period beginning before October 1, 1997, and still be paid as a hospital excluded from the IPPS. However, no such limitation was imposed on a LTCH established after October 1, 1997. Since this type of hospital would have already been subject to the lower payment limit of 110 percent of the national median of target amounts for similarly classified hospitals under § 413.40(f)(2)(ii), it would not benefit by establishing a satellite facility instead of a separate free-standing hospital, as would a pre-1997 LTCH.

The rationale for applying the bed-limit provision only on pre-1997 hospitals was the potential for gaming by those hospitals, by creating a satellite facility with a higher TEFRA target cap where, in reality, the satellite facility should have been a separately certified excluded facility, which would have been subject to the lower cap on payments to new (post-1997) facilities paid under the TEFRA system. Once the LTCH is paid based on 100 percent of the Federal prospective rate, however, the LTCH will no longer be subject to TEFRA caps and LTCH prospective payments will be the same regardless of when the LTCH was established. Therefore, consistent with the March 7, 2003, proposed rule, we are eliminating the bed-limit provision once a LTCH is paid based on 100 percent of the LTCH Federal PPS rate. Finally, under this policy, the bed limitation on "existing" LTCHs will, however, continue to apply to those LTCHs while they are paid based on the transition blend, and, therefore, continue to receive a percentage of their payments based on the reasonable cost-based payment rules, until these hospitals are paid based on 100 percent of the Federal prospective payment rate.

Comment: Several commenters expressed their strong support for our proposal to eliminate the bed number limitation for pre-1997 LTCHs with satellite facilities for those LTCHs receiving 100 percent of the Federal rate. One commenter recommended that the bed number limitation should also be eliminated for the IRFs since they are now receiving payment at 100 percent of the Federal rate.

Response: We appreciate the strong endorsement in response to this proposed change. Regarding the commenter who recommended eliminating the bed size limitation for IRFs, we would suggest that the commenter look to the IRF proposed rule that was published on May 16, 2003 (68 FR 26785).

Accordingly, in this final rule, we are adopting the proposal to eliminate the bed size limitation for pre-1997 LTCHs with satellite facilities once the LTCH is paid at 100 percent of the Federal rate. We note that in the preamble to the March 7, 2003, proposed rule, we stated the two circumstances under which a LTCH would be paid based on 100 percent of the Federal rate, which are for the start of the first cost reporting period that a LTCH elects fully Federal payment, as set forth in § 412.533(c) or when the LTCH PPS is fully phased-in after the transition period. We inadvertently omitted the second circumstance in the proposed regulation text at § 412.22(h)(6), therefore, we are revising that section to reflect this policy.

VII. Changes to the LTCH PPS Rates for the 2004 LTCH PPS Rate Year

A. Overview of the Development of the Payment Rates

The LTCH PPS was effective for a LTCH's first cost reporting period beginning on or after October 1, 2002. Effective with that cost reporting period, LTCHs are paid, during a 5-year transition period, on the basis of an increasing proportion of the LTCH PPS Federal rate and a decreasing proportion of a hospital's payment under reasonable cost-based payment system, unless the hospital makes a one-time election to receive payment based on 100 percent of the Federal rate (*see* § 412.533). New LTCHs (as defined at § 412.23(e)(4)) are paid based on 100 percent of the Federal rate, with no phase-in transition payments.

The basic methodology for determining LTCH PPS Federal prospective payment rates is set forth in the regulations at §§ 412.515 through 412.532. Below we discuss the proposed factors used to update the LTCH PPS standard Federal rate for the proposed 2004 LTCH PPS rate year published in

the March 7, 2003, proposed rule. We also discuss the factors used to establish the final update to the LTCH PPS standard Federal rate for the 2004 LTCH PPS rate year in this final rule, which will be effective for LTCHs paid under the LTCH PPS for discharges occurring on or after July 1, 2003, through June 30, 2004. In the final rule published on August 30, 2002 (67 FR 56029–56031), for cost reporting periods beginning on or after October 1, 2002 (FY 2003), we computed the LTCH PPS standard Federal payment rate by updating the best available (FY 1998 or FY 1999) Medicare inpatient operating and capital costs per case data, using the excluded hospital market basket.

Section 123(a)(1) of Public Law 106–113 requires that the PPS developed for LTCHs be budget neutral. Therefore, in calculating the standard Federal rate for FY 2003 under § 412.523(d)(2), we set total estimated PPS payments equal to estimated payments that would have been made under the reasonable cost-based payment methodology had the PPS for LTCHs not been implemented. Section 307(a) of Public Law 106–554 specified that the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of Public Law 106–554 shall not be taken into account in the development and implementation of the LTCH PPS. In addition, the statute as amended by section 122 of Public Law 106–113 provides for enhanced bonus payments for LTCHs for two years, FY 2001 and FY 2002. Furthermore, as specified at § 412.523(d)(1), the standard Federal rate is reduced by an adjustment factor to account for the estimated proportion of outlier payments under the LTCH PPS to total LTCH PPS payments (8 percent). For further details on the development of the FY 2003 standard Federal rate, *see* the August 30, 2002, final rule (67 FR 56027–56037). Under the existing regulations at § 412.523(c)(3)(ii) for fiscal years after FY 2003, we update the standard Federal rate annually to adjust for the most recent estimate of the projected increases in prices for LTCH inpatient hospital services.

B. Update to the Standard Federal Rate for the 2004 LTCH PPS Rate Year

In the August 30, 2002, final rule (67 FR 56033), we established a LTCH PPS standard Federal rate of $34,956.15 for FY 2003. As discussed in the March 7, 2003, proposed rule (68 FR 11248), based on the most recent estimate of the excluded hospital with capital market basket, adjusted to account for the change in the rate year update cycle for the LTCH PPS rates, we proposed that the LTCH PPS standard Federal rate, effective from July 1, 2003, through June 30, 2004, would be $35,726.64. Based on updated data, including the most recent estimate of the excluded hospital with capital market basket adjusted to account for the change in the rate year update cycle for the LTCH PPS rates, and the policies described in this final rule, the LTCH PPS standard Federal rate, effective from July 1, 2003, through June 30, 2004, is $35,726.18 (as discussed below).

In the discussion that follows, we explain how we developed the update to the final standard Federal rate for the 2004 LTCH PPS rate year in this final rule. The final standard Federal rate for the 2004 LTCH PPS rate year is calculated based on the final update factor of 1.0220. Thus, we estimate that the final standard Federal rate for the 2004 LTCH PPS rate year will increase 2.2 percent compared to the FY 2003 standard Federal rate.

1. Standard Federal Rate Update

In the August 30, 2002, final rule, we established at § 412.523 that, for years after FY 2003, the annual update to the LTCH PPS standard Federal rate will be equal to the percentage change in the excluded hospital with capital market basket (described in further detail below). As we discussed in the August 30, 2002, final rule (67 FR 56087), in the future we may propose to develop a framework to update payments to LTCHs that would account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. As we stated in the March 7, 2003, proposed rule (68 FR 11244), because the LTCH PPS has only recently been implemented (for cost reporting periods beginning on or after October 1, 2002), we have not yet collected sufficient data to allow for the analysis and development of an update framework under the LTCH PPS. Therefore, in that same proposed rule, we did not propose an update framework for the 2004 LTCH PPS rate year. However, we noted that a conceptual basis for the proposal of developing an update framework in the future can be found in Appendix B of the August 30, 2002, final rule (67 FR 56086–56090).

a. Description of the Market Basket for LTCHs for the 2004 LTCH PPS Rate Year

A market basket has historically been used in the Medicare program to account for price increases of the services furnished by providers. The market basket used for the LTCH PPS includes both operating and capital-related costs of LTCHs because the LTCH PPS uses a single payment rate for both operating and capital-related costs. The development of the LTCH PPS standard Federal rate is discussed in further detail in the August 30, 2002 final rule (67 FR 56027–56037).

Under the reasonable cost-based payment system, the excluded hospital market basket was used to update the hospital-specific limits on payment for operating costs of LTCHs. The excluded hospital market basket is based on operating costs from FY 1992 cost report data and includes data from Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCHs' costs are included in the excluded hospital market basket, this market basket index, in part, also reflects the costs of LTCHs. However, in order to capture the total costs (operating and capital-related) of LTCHs, we added a capital component to the excluded hospital market basket for use under the LTCH PPS. We refer to this index as the excluded hospital with capital market basket.

As we discussed in both the August 30, 2002, final rule (67 FR 56016 and 56086–56086) and the March 7, 2003, proposed rule (68 FR 11245–11247), beginning with the implementation of the LTCH PPS in FY 2003, the excluded hospital with capital market basket based on FY 1992 Medicare cost report data has been used for updating payments to LTCHs. The FY 1992-based market basket reflected the distribution of costs in FY 1992 for Medicare-participating freestanding rehabilitation, long-term care, psychiatric, cancer, and children's hospitals. This information was derived from the FY 1992 Medicare cost reports. A full discussion of the methodology and data sources used to construct the FY 1992-based excluded hospital with capital market basket is included in Appendix A of the August 30, 2001, final rule (67 FR 56085–56086). In the March 7, 2003, proposed rule, we proposed to revise and rebase the excluded hospital with capital market basket, using more recent data, that is, using FY 1997 base year data beginning with the proposed 2004 LTCH PPS rate year.

As we stated in the March 7, 2003, proposed rule (68 FR 11245–11247), we believe it was appropriate to propose to revise and rebase the LTCH PPS market basket based on the most recent complete data available (FY 1997) because these data would more accurately reflect LTCHs' current costs. Furthermore, we noted that this proposed revising and rebasing of the LTCH PPS market basket from an FY 1992 base year to a FY 1997 base year would be consistent with the rebasing of both the hospital inpatient market basket used under the IPPS and the excluded hospital market basket used to update the target amounts under the reasonable cost-based payment system for FY 2003, as discussed in the August 1, 2002, IPPS final rule (67 FR 50032–50047). We received no comments on the proposed revising and rebasing of the LTCH PPS market basket. Therefore, in this final rule, we are adopting the FY 1997-based excluded hospital with capital market basket as the LTCH PPS market basket beginning with the 2004 LTCH PPS rate year. Below we are providing a discussion of the development of the FY 1997-based excluded hospital with capital market basket, as we presented in the March 7, 2003, proposed rule (68 FR 11245–11247).

The operating portion of the FY 1997-based excluded hospital with capital market basket that we are using under the LTCH PPS beginning with the 2004 LTCH PPS rate year is derived from the FY 1997-based excluded hospital market basket used under the reasonable cost-based payment system. The methodology we used to develop the operating portion of the market basket under the LTCH PPS is the same methodology used to revise and rebase the excluded hospital market basket used under the reasonable cost-based payment system, which is described in greater detail in the August 1, 2002, IPPS final rule (67 FR 50042–50044). In brief, the operating cost category weights in the FY 1997-based excluded market basket add up to 100.0. These weights were determined based on FY 1997 Medicare cost report data, the 1997 Business Expenditure Survey, and the 1997 Annual Input-Output data from the Bureau of the Census. In determining the FY 1997-based market basket, as we discussed in the March 7, 2003, proposed rule (68 FR 11245–11247), we also revised the market basket by making the same two methodological revisions that we established when we revised and rebased the hospital inpatient market basket and the excluded hospital market basket in the August 1, 2002, IPPS final rule—(1) Changing the wage and benefit price proxies to use the Employment Cost Index (ECI) wage and benefit data for hospital workers; and (2) adding a cost category for blood and blood products.

When we add the weight for capital costs to the excluded hospital market basket, the sum of the operating and capital weights must still equal 100.0. Based on data from FY 1997 Medicare cost reports for excluded hospitals, the capital cost weight is 8.968 percent. Because capital costs account for 8.968 percent of total costs for excluded hospitals in FY 1997, operating costs must, therefore, account for 91.032 percent (100 percent minus 8.968 percent). Each operating cost category weight in the FY 1997-based excluded hospital market basket from the August 1, 2002, IPPS final rule (67 FR 50442–50444) was multiplied by 0.91032 to determine its weight in the FY 1997-based excluded hospital with capital market basket.

As we discussed in the March 7, 2003, proposed rule (68 FR 11245–11247), the aggregate capital component of the FY 1997-based excluded hospital market basket (8.968 percent) was determined from the same set of Medicare cost reports used to derive the operating component. The detailed capital cost categories of depreciation, interest, and other capital expenses were also determined using those Medicare cost reports. We needed to determine two sets of weights for the capital portion of the proposed revised and rebased market basket. The first set of weights identifies the proportion of capital expenditures attributable to each capital cost category; the second set represents relative vintage weights for depreciation and interest. The vintage weights identify the proportion of capital expenditures that is attributable to each year over the useful life of capital assets within a cost category (*see* 67 FR 50046–50047, August 1, 2002, for a discussion of how vintage weights are determined).

The cost categories, price proxies, and base-year FY 1992 and FY 1997 weights for the excluded hospital with capital market basket used under the LTCH PPS beginning with the 2004 LTCH PPS rate year are presented below in Table I. The vintage weights for the FY 1997-based excluded hospital with capital market basket are presented below in Table II.

TABLE I.— EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992-BASED AND FY 1997-BASED) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%) Base-Year FY 1992[1,2]	Weights (%) Base-Year FY 1997[1,2]
Total		100.000	100.000
Compensation		57.935	57.579
Wages and Salaries	ECI—Wages and Salaries, Civilian Hospital Workers	47.417	47.335
Employee Benefits	ECI—Benefits, Civilian Hospital Workers to Capture Total Costs.	10.519	10.244
Professional fees	ECI—Compensation: Professional & Technical	1.908	4.423
Utilities		1.524	1.180
Electricity	PPI—Commercial Electric Power	0.916	0.726
Fuel Oil, Coal, etc	PPI—Commercial Natural Gas	0.365	0.248
Water and Sewerage	CPI–U—Water & Sewerage Maintenance	0.243	0.206
Professional Liability	CMS—Professional Liability Insurance Premiums Index	0.983	0.733
All Other Products and		28.571	27.117
All Other Products		22.027	17.914
Pharmaceuticals	PPI—Ethical (Prescription) Drugs	2.791	6.318
Food: Direct Purchase	PPI—Processed Foods and Feeds	2.155	1.122
Food: Contract	CPI–U—Food Away from Home	0.998	1.043
Chemicals	PPI—Industrial Chemicals	3.413	2.133
Blood and Blood	PPI—Blood and Blood Derivatives, Human Use		0.748
Medical Instruments	PPI—Medical Instruments & Equipment	2.868	1.795
Photographic Supplies	PPI—Photographic Supplies	0.364	0.167
Rubber and Plastics	PPI—Rubber & Plastic Products	4.423	1.366
Paper Products	PPI—Converted Paper and Paperboard Products	1.984	1.110
Apparel	PPI—Apparel	0.809	0.478
Machinery and	PPI—Machinery & Equipment	0.193	0.852

TABLE I.— EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992-BASED AND FY 1997-BASED) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/wage variable	Weights (%) Base-Year FY 1992[1,2]	Weights (%) Base-Year FY 1997[1,2]
Miscellaneous	PPI—Finished Goods Less Food and Energy	2.029	0.783
All Other Services		6.544	9.203
Telephone	CPI–U—Telephone Services	0.574	0.348
Postage	CPI–U—Postage	0.268	0.702
All Other: Labor	ECI—Compensation for Private Service Occupations	4.945	4.453
All Other: Non-Labor	CPI–U—All Items	0.757	3.700
Capital-Related Costs		9.080	8.968
Depreciation		5.611	5.586
Building & Fixed	Boeckh-Institutional Construct. Index—Vintage Weighted (23)	3.570	3.503
Movable Equipment	PPI—Machinery & Equipment—Vintage Weighted (11 Years)	2.041	2.083
Interest Costs		3.212	2.682
Government/Nonprofit	Yield on Domestic Municipal Bonds (Bond Buyer 20 Bonds)—Vintage Weighted (23 years).	2.730	2.280
For-profit	Yield on Moody's Aaa Bonds—Vintage Weighted (23 Years)	0.482	0.402
Other Capital-Related Costs	CPI–U—Residential Rent	0.257	0.699

[1] The operating cost category weights in the excluded hospital market basket described in the August 1, 2002 IPPS final rule (67 FR 50042–50044) add to 100.0. When we add an additional set of cost category weights (total capital weight = 8.968 percent) to this original group, the sum of the weights in the new index must still add to 100.0. Capital costs account for 8.968 percent of the market basket; operating costs account for 91.032 percent. Each weight in the FY 1997-based excluded hospital market basket from the August 1, 2002 IPPS final rule (67 FR 50042–50044) was multiplied by 0.91032 to determine its weight in the FY 1997-based excluded hospital with capital market basket.

[2] Weights may not sum to 100.0 due to rounding.

TABLE II.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1997) VINTAGE WEIGHTS

Year (from farthest to most recent)*	Building and fixed equipment (23-year weights)*	Movable equipment (11-year weights)*	Interest: capital-related (23-year weights)*
1	0.018	0.063	0.007
2	0.021	0.068	0.009
3	0.023	0.074	0.011
4	0.025	0.080	0.012
5	0.026	0.085	0.014
6	0.028	0.091	0.016
7	0.030	0.096	0.019
8	0.032	0.101	0.022
9	0.035	0.108	0.026
10	0.039	0.114	0.030
11	0.042	0.119	0.035
12	0.044		0.039
13	0.047		0.045
14	0.049		0.049
15	0.051		0.053
16	0.053		0.059
17	0.057		0.065
18	0.060		0.072
19	0.062		0.077
20	0.063		0.081
21	0.065		0.085
22	0.064		0.087
23	0.065		0.090
Total	1.0000	1.0000	1.0000

*Weights may not sum to 1.000 due to rounding.

Table III. compares the FY 1992-based excluded hospital with capital market basket to the FY 1997-based excluded hospital with capital market basket. As shown in the table and as we discussed in the March 7, 2003, proposed rule (68 FR 11247), the revised and rebased market basket grows slightly faster over the FY 1999–2001 period than the FY 1992-based market basket. The major reason for this was the switching of the wage and benefit proxy to the ECI for hospital workers from the previous occupational blend. This revision had a similar impact on the IPPS and excluded market baskets, as described in the August 1, 2002, IPPS final rule (67 FR 50043–50047).

TABLE III.—PERCENT CHANGES IN THE FY 1992-BASED AND FY 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKETS, FYS 1999–2004

Fiscal year (FY)	Percentage change	
	FY 1992-based excluded hospital market basket	Rebased FY 1997-based excluded market basket
1999	2.3	2.7
2000	3.4	3.1
2001	3.9	4.0
2002	2.7	3.6
Average historical	3.1	3.4
2003	3.1	3.7
2004	2.9	3.3
Average forecast	3.0	3.5

In the August 30, 2002, LTCH PPS final rule (67 FR 56016 and 56085–56086), we discussed why we believe the excluded hospital with capital market basket provides a reasonable measure of the price changes facing LTCHs. However, as we discussed in the March 7, 2003, proposed rule (68 FR 11247), we have been researching the feasibility of developing a market basket specific to LTCH services. This research has included analyzing data sources for cost category weights, specifically the Medicare cost reports, and investigating other data sources on cost, expenditure, and price information specific to LTCHs. Based on this research, we did not propose to develop a market basket specific to LTCH services.

As we stated in the March 7, 2003, proposed rule (68 FR 11247), our analysis of the Medicare cost reports indicates that the distribution of costs among major cost report categories (wages, pharmaceuticals, capital) for LTCHs is not substantially different from the 1997-based excluded hospital with capital market basket. Data on other major cost categories (benefits, blood, contract labor) that we would like to analyze were excluded by many LTCHs in their Medicare cost reports. An analysis based on only the data available to us for these cost categories presented a potential problem since no other major cost category weight would be based on LTCH data.

Furthermore, as we discussed in the March 7, 2003, proposed rule (68 FR 11247), we conducted a sensitivity analysis of annual percent changes in the market basket when the weights for wages, pharmaceuticals, and capital in LTCHs were substituted into the excluded hospital with capital market basket. Other cost categories were recalibrated using ratios available from the IPPS market basket. On average between FY 1995 and FY 2002, the excluded hospital with capital market basket shows increases at nearly the same average annual rate (2.9 percent) as the market basket with LTCH weights for wages, pharmaceuticals, and capital (2.8 percent). This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment is warranted under the IPPS update framework.

We believe that an excluded hospital with capital market basket adequately reflects the price changes facing LTCHs. In the March 7, 2003, proposed rule, we stated that we would continue to solicit comments about issues particular to LTCHs that should be considered in relation to the FY 1997-based excluded hospital with capital market basket and to encourage suggestions for additional data sources that may be available.

As we noted above, we received no comments on the proposed revising and rebasing of the LTCH PPS market basket. Accordingly, in this final rule, we are adopting the FY 1997-based excluded hospital with capital market basket as the LTCH PPS market basket for application beginning with the 2004 LTCH PPS rate year.

b. LTCH Market Basket Increase for the 2004 LTCH Rate Year

As we discussed in the March 7, 2003, proposed rule (68 FR 11247), for LTCHs paid under the LTCH PPS, we proposed that the 2004 rate year update would apply to discharges occurring from July 1, 2003, through June 30, 2004. Because we are changing the timeframe of the LTCH PPS standard Federal rate annual update, as we discuss in section IV. of this preamble, we needed to calculate an update factor that will reflect this change in the update cycle. Presently, the current rate cycle is October 1, 2002, through September 30, 2003. This means that the FY 2003 standard Federal rate ($34,956.15; *see* the August 30, 2002, final rule (67 FR 56033)) was determined based on the market basket increase through September 30, 2003. As we explained in the March 7, 2003, proposed rule (68 FR 11247), since we proposed to change the rate update cycle and, therefore, update the standard Federal rate 3 months early (that is, July 1, 2003, instead of October 1, 2003), we needed to propose an adjustment to the projected full (12-month) market basket increase to eliminate the projected increase for the 3-month overlapping period (July 1, 2003, through September 30, 2003).

Thus, we need to account for the fact that the FY 2003 standard Federal rate of $34,956.15 already includes an update for the 3-month period from July 1, 2003, through September 30, 2003. In the absence of this proposed change, as we discussed in the March 7, 2003, proposed rule (68 FR 11247–11248), the update for FY 2004 would have been calculated using the estimated increase between FY 2003 and FY 2004. For the proposed update for the proposed 2004 LTCH PPS rate year, we calculated the estimated increase between FY 2003 and the proposed 2004 LTCH PPS rate year. As we discussed in that same proposed rule, based on the fourth quarter 2002 forecast of the proposed revised and rebased FY 1997-based excluded hospital with capital market basket, we determined that the projected market basket increase for the 3-month period of July 1, 2003, through September 30, 2003, would be 0.8 percentage points. The projected market basket increase for this 3-month period (0.8 percent) was already included in the FY 2003 standard Federal rate and, therefore, needed to be deducted from the projected market basket increase for the 12-month period of July 1, 2003, through June 30, 2004 (3.3 percent), in order to account for the proposed change in the update cycle. Therefore,

in the March 7, 2003, proposed rule (68 FR 11248), based on Global Insights' (formerly DRI–WEFA) fourth quarter 2002 forecast of the proposed revised and rebased FY 1997-based excluded hospital with capital market basket we proposed an update of 2.5 percent for the 2004 LTCH PPS rate year.

We received no comments on our proposed methodology for calculating the market basket increase for the 2004 LTCH PPS rate year. Therefore, consistent with our historical practice of estimating market basket increases, based on Global Insights' (formerly DRI–WEFA) first quarter 2003 forecast of the revised and rebased FY 1997-based excluded hospital with capital market basket, in this final rule using the methodology described above, we determined an update of 2.5 percent (as shown in Table IV. below) for the 2004 LTCH PPS rate year.

TABLE IV.—CALCULATION OF MARKET BASKET INCREASE FOR THE 2004 LTCH PROSPECTIVE PAYMENT SYSTEM RATE YEAR

	Percent
Full 12-month market basket with capital increase	3.3
Adjustment for the change in the update cycle *	−0.8
2004 rate year market basket increase **	2.5

* Projected market basket increase for the 3-month period of July 1, 2003, through September 30, 2003, already included in the FY 2003 standard Federal rate.

** Projected market basket increase for the 12-month period of July 1, 2003, through June 30, 2004, from FY 2003.

In addition, as we discussed in the March 7, 2003, proposed rule (68 FR 11248), based on the best available data for 194 LTCHs, we estimated that LTCH prospective payment system payments would be approximately $1.960 billion for the proposed 2004 LTCH PPS rate year. Furthermore, as we discussed in the August 30, 2002, final rule (67 FR 56027), we proposed that the proposed change to the annual update of the FY 2003 factors and rates from a rate year beginning October 1, 2003, to a rate year beginning July 1, 2003, would maintain budget neutrality. In that same final rule, we explained that, as required by statute, total estimated LTCH PPS payments in FY 2003 will equal estimated payments that would have been made under the reasonable cost-based principles if the LTCH PPS were not implemented. Therefore, in order to maintain budget neutrality for the proposed change in the rate update cycle, in the March 7, 2003, proposed rule (68 FR 11248), under proposed § 412.523(c)(3)(ii), we proposed to adjust the standard Federal rate by a factor of 0.997 (($1.960 billion − $5.66 million)/$1.960 billion) or −0.003 to account for the resulting additional cost of $5.66 million to the FY 2003 Federal budget that we estimated based on the most recent data for the 3-month period from July 1, 2003, through September 30, 2003. Also, in that same proposed rule, we proposed to revise this adjustment factor in this final rule based on the best available data.

In this final rule, based on the best available data for 194 LTCHs, we estimated that LTCH prospective payment system payments would be approximately $1.960 billion for the 2004 LTCH PPS rate year. As we proposed in the March 7, 2003, proposed rule (68 FR 11248), the proposed change to the annual update of the FY 2003 factors and rates from a rate year beginning October 1, 2003, to a rate year beginning July 1, 2003, would be budget neutral because, as we noted above, total estimated LTCH PPS payments in FY 2003 must equal estimated payments that would have been made under the reasonable cost-based principles, if the LTCH PPS were not implemented. Therefore, in order to maintain budget neutrality for the change in the rate update cycle, in this final rule based on updated data and the final policies discussed in this final rule, under § 412.523(c)(3)(ii), we have adjusted the 2004 LTCH PPS rate year standard Federal rate by a factor of 0.997 (($1.960 billion − $5.68 million)/$1.960 billion) or −0.003 to account for the resulting additional cost of $5.68 million to the FY 2003 Federal budget that we estimated based on the most recent data for the 3-month period from July 1, 2003, through September 30, 2003, for 194 LTCHs.

In the March 7, 2003, proposed rule (68 FR 11248), we proposed to update the current standard Federal rate ($34,956.15) established in the August 30, 2002, final rule (67 FR 56033) by 2.2 percent (2.5 percent minus 0.3 percent) for discharges paid under the LTCH PPS that occur on or after July 1, 2003, through June 30, 2004. The proposed update represented the most recent estimate of the increase in the excluded hospital with capital market basket for the proposed 2004 LTCH PPS rate year, adjusted by the above described factor to transition to the proposed change in the rate update cycle to July 1, and is based on the best available data for 194 LTCHs.

Comment: One commenter stated that the proposed 2.2 percent increase in the LTCH PPS standard Federal rate from $34.956.15 to $35,726.64 does not reflect the inflation of input hospital costs.

Response: As noted above, the proposed update of 2.2 percent was based on the most recent estimate of the increase in the proposed excluded hospital with capital market basket for the proposed 2004 LTCH PPS rate year, adjusted as explained above to transition to the proposed change in the rate update cycle to July 1. The proposed update and adjustment were based on the best available data for 194 LTCHs contained in our database. The most recent estimate of the increase in the excluded hospital with capital market basket for the 2004 LTCH PPS rate year was determined in a manner that is consistent with our historical practice of estimating market basket increases for other Medicare prospective payment systems (inpatient acute care hospitals, IRFs, SNFs, and HHAs), that is, using Global Insights' (formerly DRI-WEFA) most recent forecast of the applicable PPS market basket. Furthermore, we believe it is appropriate to adjust the most recent estimate of the 12-month increase in the LTCH PPS market basket for July 1, 2003, through June 30, 2004, because as we explained above, the FY 2003 standard Federal rate ($34,956.15) already includes inflation for the 3-month period from July 1, 2003, through September 30, 2003. Thus, the projected market basket increase for this 3-month period needs to be deducted from the projected market basket increase for the 12-month period of July 1, 2003, through June 30, 2004.

In addition, as we explained above, it is necessary that the market basket increase be further adjusted so that the proposed change in updating the FY 2003 rate 3 months early (July 1, 2003, instead of October 1, 2003) be budget neutral, as mandated by section 123 of Public Law 106–113 (that is, total estimated LTCH PPS payments in FY 2003 will equal estimated payments that would have been made under the reasonable cost-based principles if the LTCH PPS were not implemented). Therefore, we believe that the proposed methodology for determining the proposed 2.2 percent update for the 2004 LTCH PPS rate year is appropriate.

Comment: A few commenters stated that the proposed 2004 LTCH PPS rate year standardized amount of $35,726.64 is based on the identification of costs related to short-stay outlier cases which have been derived from cost-to-charge ratios that do not account for the proposed change to the short-stay outlier policy under proposed § 412.529. Specifically, in the March 7, 2003, proposed rule (68 FR 11253), we proposed that fiscal intermediaries would use either the most recently settled cost report or most recent tentative settled cost report, whichever is later, in determining a LTCH's cost-to-charge ratio used in determining short-stay outlier payments. We also proposed, in that same proposed rule, that the applicable statewide average cost-to-charge ratio would only be applied when a LTCH's cost-to-charge ratio exceeds the ceiling (but not when a LTCH's cost-to-charge ratio falls below the floor). The commenters express concern that the proposed change to the short-stay outlier policy is not reflected in the proposed 2004 LTCH PPS rate year standard Federal rate and, therefore, CMS fails to maintain budget neutrality.

In addition, one of the commenters noted that the cost-to-charge ratio data posted on the web for the 2004 rate year proposed rule (published on March 7, 2003, in the **Federal Register**) differed for many LTCHs from the cost-to-charge ratio data posted on the web for the FY 2003 final rule (published August 30, 2002, in the **Federal Register**). The commenter believes that the observed change in the LTCHs' cost-to-charge ratios is due to the proposed change to allow fiscal intermediaries to use either the most recently settled cost report or most recent tentative settled cost report, whichever is later, in computing a LTCH's cost-to-charge ratio used to determine both short-stay outlier and high-cost outlier payments.

Response: The commenters have raised concerns that we have not taken into account the proposed changes to the policies for determining short-stay and high-cost outlier payments in calculating the proposed update to the standard Federal rate for the proposed 2004 LTCH PPS rate year. As we discuss in greater detail below in section VII.B.3. of this preamble, at this time, the finalized changes to the proposed high-cost outlier and short-stay outlier policies presented in the March 7, 2003, proposed rule (68 FR 11250–11253) are not yet effective. Accordingly, in establishing the final update factor for the 2004 LTCH PPS rate year in this final rule, we used the high-cost outlier and short-stay outlier policies established in the August 30, 2002, final rule (67 FR 55995–56000 and 56022–56027).

Nevertheless, based on the comments, there appears to be a misconception among the commenters regarding the methodology for updating the LTCH PPS standard Federal rate. While we are not finalizing the proposed changes to the outlier policies in this final rule, we believe that it is important to clarify the methodology used in the March 7, 2003, proposed rule to determine the proposed update factor for the proposed 2004 LTCH PPS rate year.

In the August 30, 2002, final rule, we established at § 412.523(c)(3)(ii) that for fiscal years after FY 2003, we update the standard Federal rate annually to adjust for the most recent estimate of the projected increases in prices for LTCH inpatient hospital services. That is, for years after FY 2003, the annual update to the LTCH PPS standard Federal rate will be equal to the percentage change in the excluded hospital with capital market basket.

In determining the proposed update for the proposed 2004 LTCH PPS rate year, we adjusted the projected proposed LTCH market basket increase in order to maintain budget neutrality (in addition to an adjustment to account for the transition to the proposed change in the LTCH PPS rate year) by accounting for the estimated increase in payments during the remainder of FY 2003 (July 1, 2003, through September 30, 2003) that would result from updating the factors and rates 3 months early (July 1, 2003, instead of October 1, 2003). This budget neutrality adjustment to the proposed rate update included the effect of the proposed increase in the LTCH PPS standard Federal rate, the effect of proposed change in the wage index values, and the effect of the proposed change in the short-stay outlier policy and high-cost outlier policy (specifically the elimination of assigning the statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor).

As we discussed in the March 7, 2003, proposed rule (68 FR 11251), in calculating short-stay outlier and high-cost outlier payments we currently use cost-to-charge ratios based on the latest available cost report data from HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000. In some cases the latest available cost report data from HCRIS is from settled cost reports; however, in other instances, the latest available cost report data from HCRIS is from "as submitted" cost reports. Since the universe of LTCHs is relatively small and the substantial increase in the number of LTCHs is fairly recent, due to the lag time in the cost report settlement and the availability of cost report data in HCRIS, we used cost-to-charge ratios based on as submitted cost report data if settled cost report data were not available. Since, as we noted above, the data used to compute LTCH cost-to-charge ratios was generated prior to the implementation of the LTCH PPS (when the use of charges was not as germane), we believe that the difference between a LTCH's cost-to-charge ratio computed from the latest settled cost report and a LTCH's cost-to-charge ratio computed from the latest tentative settled cost report is immaterial for most LTCHs, and, therefore, would not have a significant impact on payment estimates.

The commenter is mistaken as to the reason behind the change in the cost-to-charge ratio data posted on the web from the FY 2003 final rule (published August 30, 2002, in the **Federal Register**) to the 2004 LTCH PPS rate year proposed rule (published on March 7, 2003, in the **Federal Register**). As discussed above, this change in LTCHs' cost-to-charge ratios is not a result of applying the proposed change to allow fiscal intermediaries to use either the most recently settled cost report or most recent tentative settled cost report, whichever is later, in determining a LTCH's cost-to-charge ratio. We note instead that the change in the LTCH cost-to-charge ratios observed by the commenter is a result of using more updated data between the development of the August 30, 2002, final rule and the March 7, 2003, proposed rule. For example, LTCHs that previously only had FY 1998 data available for the FY 2003 final rule may now have FY 1999 or FY 2000 data available. Similarly, LTCHs that previously only had as submitted cost report data available for the FY 2003 final rule may now have settled cost report data available. Therefore, we do not believe that a change in our methodology for updating the standard Federal rate for the 2004 LTCH PPS rate year is warranted.

In this final rule, we updated the current standard Federal rate ($34,956.15) established in the August 30, 2002, final rule (67 FR 56033) by 2.2 percent (2.5 percent minus 0.3 percent) for discharges paid under the LTCH PPS that occur on or after July 1, 2003, through June 30, 2004. This update represents the most recent estimate of the increase in the excluded hospital with capital market basket for the 2004 LTCH PPS rate year, adjusted to account for the change in the rate update cycle to July 1, and is based on the best available data for 194 LTCHs.

2. Standard Federal Rate for the 2004 LTCH PPS Rate Year

In the August 30, 2002, LTCH PPS final rule (67 FR 56033), we established a standard Federal rate of $34,956.15 based on the best available data and policies established in that final rule. In the March 7, 2003, proposed rule (68 FR 11248), for the proposed 2004 LTCH

PPS rate year, we proposed a standard Federal rate of $35,726.64. Since the proposed standard Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, and high-cost outlier payments, we did not propose any additional adjustments in the proposed standard Federal rate for these factors.

In this final rule, we are establishing a standard Federal rate of $35,726.18 for the 2004 LTCH PPS rate year. Since the 2004 LTCH PPS rate year standard Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, and high-cost outlier payments, we did not make any additional adjustments in the standard Federal rate for these factors.

C. Calculation of LTCH Prospective Payments for the 2004 LTCH PPS Rate Year

The basic methodology for determining prospective payment rates for LTCH inpatient operating and capital-related costs is set forth in § 412.515 through § 412.532. In accordance with § 412.515, we assign appropriate weighting factors to each LTC–DRG to reflect the estimated relative cost of hospital resources used for discharges within that group as compared to discharges classified within other groups. The amount of the prospective payment is based on the standard Federal rate, established under § 412.523, and adjusted for the LTC–DRG relative weights, differences in area wage levels, cost-of-living in Alaska and Hawaii, high-cost outliers, and other special payment provisions (short-stay outliers under § 412.529 and interrupted stays under § 412.531). In accordance with § 412.533, during the 5-year transition period, payment is based on the applicable transition blend percentage of the adjusted Federal rate and the reasonable cost-based payment rate unless the LTCH makes a one-time election to receive payment based on 100 percent of the Federal rate. A LTCH defined as "new" under § 412.23(e)(4) is paid based on 100 percent of the Federal rate with no blended transition payments (§ 412.533(d)). As discussed in the August 30, 2002, final rule and in accordance with § 412.533(a), the applicable transition blends are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Reasonable cost-based payment rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

Accordingly, for cost reporting periods that begin during FY 2003 (that is, on or after October 1, 2002, and before September 30, 2003), blended payments under the transition methodology are based on 80 percent of the LTCH's reasonable cost-based payment rate and 20 percent of the adjusted Federal rate. For cost reporting periods that begin during FY 2004 (that is, on or after October 1, 2003, and before September 30, 2004), blended payments under the transition methodology will be based on 60 percent of the LTCH's reasonable cost-based principles rate and 40 percent of the adjusted Federal rate.

1. Adjustment for Area Wage Levels

Under the authority of section 307(b) of Public Law 106–554, we established an adjustment to account for differences in LTCH area wage levels under § 412.525(c) using the labor-related share estimated by the excluded hospital market basket with capital and wage indices that were computed using wage data from inpatient acute care hospitals without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act. Furthermore, as we discussed in the August 30, 2002, final rule (67 FR 56015–56019), we established a 5-year transition to the full wage adjustment. For cost reporting periods beginning on or after October 1, 2002, and before September 30, 2003 (FY 2003), the applicable LTCH wage index value is one-fifth of the full FY 2002 acute care hospital inpatient wage index data, without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act.

In that same final rule (67 FR 56018), we stated that we would continue to reevaluate LTCH data as they become available and would propose to adjust the phase-in if subsequent data support a change. As we stated in the March 7, 2003, proposed rule (68 FR 11249), because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of the appropriateness of adjusting the phase-in. However, we reviewed the most recent data available and did not find any evidence to support a change in the 5-year phase-in of the wage index. Therefore, in the March 7, 2003, proposed rule, we did not propose to adjust the phase-in of the wage index adjustment at this time.

Comment: One commenter requested that we reconsider accelerating the phase-in of the wage index adjustment.

Response: As we stated above, because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of the appropriateness of adjusting the phase-in. For this final rule, we reviewed the most recent data available again and still did not find any evidence to support a change in the 5-year phase-in of the wage index. Therefore, in this final rule, we are not revising the phase-in of the wage index adjustment.

In addition, as we discussed in the March 7, 2003, proposed rule (68 FR 11249), the 5-year phase-in of the wage index would not be affected by the proposed establishment of a LTCH PPS rate year of July 1 to June 30. Instead, the 5-year phase-in of the wage index established in the August 30, 2002 final rule (67 FR 56018) will continue to follow the Federal fiscal year. That is, for cost reporting periods beginning on or after October 1, 2003, and before September 30, 2004 (FY 2004; the second year of the phase-in), the applicable LTCH wage index will be two-fifths of the applicable LTCH PPS index values discussed below. However, as we stated in that same proposed rule, we will reevaluate LTCH data as they become available and propose to adjust the phase-in if subsequent data support a change.

As we noted above, we have not found any evidence to support a change in the 5-year phase-in of the wage index adjustment at this time. Therefore, we are not adopting the commenter's recommendation and we are not revising the phase-in to the wage index adjustment in this final rule.

Section 412.525(c) provides that the adjustment to account for differences in area wage levels is made by multiplying the labor-related portion of the Federal rate by the appropriate wage index value for the area in which the LTCH is physically located. In the August 30, 2002, final rule (67 FR 56018), based on the best available data at that time, we stated that the wage index adjustment is based on the FY 2002 inpatient acute care hospital wage index data without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act. In the March 7, 2003, proposed rule, for the 2004 LTCH PPS rate year, we proposed that the wage index adjustment provided for under § 412.525(c) be based on the most recent available acute care hospital inpatient wage data, that is, the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act. As we noted above, we proposed that the 5-year phase-in of the wage index adjustment would not be affected by the proposed change in the LTCH PPS rate update cycle and will continue to be based on the Federal fiscal year. However, we proposed to update the data used to compute the annual wage index values on the 2004 LTCH PPS rate year cycle (July through June).

Comment: A few commenters stated that our proposal to update the data used to compute wage index values according to the LTCH PPS rate year (July 1st) would cause LTCHs whose cost reporting periods do not align with the LTCH rate year to have to make two wage index changes per year during the 5-year phase-in of the wage index adjustment. In addition to increasing provider burden, the commenters stated that two wage index changes per year would also introduce the potential for payment calculation errors. Thus, the commenters recommend that we align the phase-in of the wage index adjustment and the update of the data used to compute the wage index values to coincide with the LTCH PPS rate year.

Response: Adopting the recommendation of the commenters to align the phase-in of the wage index adjustment with the LTCH PPS rate year (July 1st) would advance the 5-year phase-in of the wage index adjustment. For instance, if the phase-in of the wage index adjustment were to change for all LTCHs on July 1st (rather than, as required under current language, for cost-reporting periods beginning on or after October 1st each year during the 5-year phase-in period), LTCH's with an April 1st cost reporting period would receive payments based on ⅕th of the wage index value for only 3 months (April 1, 2003, through June 30, 2003) before changing to ⅖th of the wage index on July 1, 2003. As we discussed in the August 30, 2002, final rule (67 FR 56018), based on the latest available LTCH data, we did not find any statistical evidence that showed a significant relationship between LTCHs' costs and their geographic location, therefore, we believed that it was appropriate to transition to a full wage index adjustment over a 5-year period.

As we discussed in the March 7, 2003, proposed rule and as we noted above, because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of the appropriateness of adjusting the phase-in. However, for this final rule we again reviewed the most recent data available and we still did not find any evidence to support a change in the 5-year phase-in of the wage index. Therefore, as stated above, we are not revising the phase-in of the wage index adjustment.

Moreover, we believe it is inappropriate to accelerate the phase-in of the wage index adjustment by adopting the commenters' recommendation to align the phase-in of the wage index adjustment with the LTCH PPS rate year. As we noted above, in accordance with § 412.525(c), the labor-related portion of the Federal rate is adjusted by the applicable wage index value. Because the proposed labor-related share (72.612 percent) is lower then the existing labor-related share (72.885 percent) established in the August 30, 2002, final rule, LTCHs with a wage index of less than 1.0 would be disadvantaged by the acceleration of the phase-in of the wage index adjustment that would result if we were to align the phase-in of the wage index adjustment with the LTCH PPS rate year.

In addition, we do not believe that the application of two wage index changes per year during the 5-year phase-in of the wage index adjustment, for those LTCHs whose cost reporting periods do not align with the LTCH rate year, would result in an additional burden or in payment errors to LTCHs. We do not believe LTCHs would be additionally burdened because they are not required to provide any additional information due to the change in the wage index adjustment during their cost reporting period. Also, we do not believe payment errors will occur because both the wage index data and the phase-in of the wage index adjustment are automatically performed in the PRICER software used by fiscal intermediaries to price each LTCH claim based on the date of service.

Therefore, we are not adopting the commenters' suggestion to align the phase-in of the wage index adjustment and the update of the data used to compute the wage index values to coincide with the LTCH PPS rate year. The phase-in of the wage index adjustment will continue to remain linked to each LTCH's cost reporting period beginning on or after October 1st each year during the 5-year phase-in period and the update of the data used to compute the wage index values will correspond with the LTCH PPS rate year (that is, effective beginning on July 1st each year).

For example, for a LTCH with a cost reporting period from January 1, 2003, through December 31, 2003, the LTCH will be paid using one-fifth of the wage index value for its entire cost reporting period. For the first 6 months of that period (January 1, 2003, through June 30, 2003), the one-fifth wage index value will be based on the same data used to compute the FY 2002 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act as established in the August 30, 2002, final rule (67 FR 56018) and shown in Tables 1 and 2 of the Addendum to that same final rule (67 FR 56057–56075). Under the policy we are establishing in this final rule to update the data used to compute the LTCH PPS wage index values for July 1, 2003, through June 30, 2004, for the next 6 months (July 1, 2003, through December 31, 2003) that LTCH will still be paid using one-fifth of the wage index value, but the wage index value will now be computed using the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act (as shown in Tables 1 and 2 of the Addendum to this final rule). In this example, for that LTCH's subsequent cost reporting period from January 1, 2004, through December 31, 2004, that LTCH will be paid using the two-fifth wage index value. For the first 6 months of that period (January 1, 2004, through June 30, 2004), the two-fifths wage index value will be based on the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections

1886(d)(8) and (d)(10) of the Act, as shown in Tables 1 and 2 of the Addendum to this final rule.

In the August 30, 2002, final rule (67 FR 56018), for FY 2003 we used the same data used to compute the FY 2002 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act. The same data is also used in the IRF PPS and the SNF PPS. As we discussed in the August 30, 2002, final rule (67 FR 56019), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report and we would need to establish instructions for the collection of such LTCH data in order to establish a geographic reclassification adjustment under the LTCH PPS, the wage adjustment established under the LTCH PPS is based on a LTCH's actual location without regard to the urban or rural designation of any related or affiliated provider. In this final rule, we are establishing that for the 2004 LTCH PPS rate year, the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act will be used to determine the applicable wage index values under the LTCH PPS, because it is the most recent available complete data. This is the same wage data that were used to compute the FY 2003 wage indices currently used under the IPPS. The final LTCH wage index values for July 1, 2003, through June 30, 2004, are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum to this final rule.

As noted above, for cost reporting periods beginning on or after October 1, 2002, and before September 30, 2003 (FY 2003), the labor portion of the standard Federal rate is adjusted by one-fifth of the applicable wage index value (that is, for LTCH PPS discharges on or after July 1, 2003, through June 30, 2004, one-fifth of the full FY 2003 acute care hospital inpatient wage index data, without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act). For cost reporting periods beginning on or after October 1, 2003, and before October 1, 2004 (FY 2004), the LTCH wage index is two-fifths of the applicable wage index value. Therefore, for LTCHs with cost reporting periods beginning on or after October 1, 2003, through September 30, 2004, for discharges occurring on or after July 1, 2003, through June 30, 2004, the labor portion of the standard Federal rate is adjusted by two-fifths of the full FY 2003 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act.

In conjunction with our proposal to revise and rebase the excluded hospital with capital market basket from an FY 1992 to an FY 1997 base year (as discussed above in section VII.B.1.a. of this preamble), in the March 7, 2003, proposed rule (68 FR 11249–11250), we also proposed to use a labor-related share that is determined based on the FY 1997-based excluded hospital with capital market basket. In the August 30, 2002, final rule (67 FR 56016), we established a labor-related share of 72.885 percent based on the relative importance of the labor-related share of operating and capital costs of the excluded hospital with capital market basket with an FY 1992 base-year. In the March 7, 2003, proposed rule, we proposed a labor-related share of 72.612 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all other labor-intensive services) and capital costs in the proposed FY 1997 rebased excluded hospital with capital market basket. (For further details on the development of the proposed labor share of 72.612 percent, refer to the March 7, 2003, proposed rule (68 FR 11249–11250).)

Comment: Two commenters noted that the proposed revising and rebasing of the LTCH PPS market basket coincided with the revisions made to the IPPS market basket for FY 2003 where FY 1992 data was replaced with FY 1997 data and other proxies used to measure changes in costs were replaced (*see* the August 1, 2002, IPPS final rule; 67 FR 50041–50042). While we received no comments on the effect of the proposed revising and rebasing of the LTCH PPS market basket on the LTCH PPS update factor, the commenters noted that the proposed change under the LTCH PPS, resulted in a decrease to the labor share from 72.885 percent to 72.612 percent, while under the IPPS, the use of this new data resulted in an increase in the labor share. However, under the IPPS, CMS decided not to use the updated data pending further analysis. Thus, the commenters believe that a change in the labor share under the LTCH PPS should be delayed, pending the results of the analysis being performed under the IPPS.

Response: The methodology used to determine the labor-related share presented in the March 7, 2003, proposed rule is consistent with our historical methodology of determining the labor-related share in the past for the IPPS market basket and the excluded hospital market basket, which is the summation of cost categories from the market basket deemed to vary with the local labor market. The concerns expressed by the commenters regarding the proposed revising of the LTCH PPS labor-related share are the same concerns expressed by commenters in the August 1, 2002, IPPS final rule (67 FR 50041–50042) when we proposed to revise the IPPS market basket and the excluded hospital market basket. In response to those comments in that same IPPS final rule, we stated that we are in the process of conducting further analysis to determine the most appropriate methodology for determining the labor-related share.

In the May 19, 2003, IPPS proposed rule (68 FR 27226), we explain that we have not yet completed our research into the appropriateness of this measure. In that same IPPS proposed rule, we discuss two ways that we are currently reviewing for establishing the labor-related share—(1) updating the regression analysis that was done when the IPPS was originally developed and (2) reevaluating the methodology we currently use for determining the labor-related share using the hospital market basket. While each of these alternatives have strengths and weaknesses, it is not clear at this point that any one alternative is superior to the current methodology. Thus, we want to continue researching these alternatives, in part, because changing from the current labor share methodology would impact the labor-related shares for other Medicare prospective payment systems, since they use a similar methodology.

Therefore, we agree with the commenter that it would be inappropriate to change the LTCH PPS labor share until the results of this research and analysis are complete. Accordingly, we are adopting the commenters' recommendation and the labor share for the 2004 LTCH PPS rate year will remain 72.885 percent.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Under § 412.525(b), we make a cost-of-living adjustment (COLA) for LTCHs located in Alaska and Hawaii to account for the higher costs incurred in those States. In the March 7, 2003, proposed rule (68 FR 11250), for the proposed 2004 LTCH PPS rate year, we proposed to make a COLA to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in Table V. below. These factors are obtained from the U.S. Office of Personnel Management (OPM). In addition, in that same proposed rule we stated that if OPM releases revised COLA factors before May 1, 2003, we proposed to use them for the development of payments and publish them in this final rule.

The OPM has not released revised COLA factors for Alaska and Hawaii since the publication of the March 7, 2003, proposed rule. We received no comments on the proposed COLA factors for Alaska and Hawaii for the 2004 LTCH PPS rate year. Therefore, under § 412.525(b), we are finalizing the COLA factors for Alaska and Hawaii shown below in Table V. for the 2004 LTCH PPS rate year.

TABLE V.—COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE 2004 LTCH PPS RATE YEAR

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

3. Adjustment for High-Cost Outliers

Under § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We set the outlier threshold before the beginning of the applicable rate year so that total outlier payments are projected to equal 8 percent of total payments under the LTCH PPS.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.525(a), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount).

We determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the LTCH will receive any additional payments. We calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy. The fixed loss amount would result in estimated total outlier payments being projected to be equal to 8 percent of projected total LTCH PPS payments.

Outlier payments under the LTCH PPS are determined consistent with the IPPS outlier policy. Currently, under the IPPS, a floor and a ceiling are applied to an acute care hospital's cost-to-charge ratio and if the acute care hospital's cost-to-charge ratio is either below the floor or above the ceiling, the applicable statewide average cost-to-charge ratio is assigned to the acute care hospital. Similarly, if a LTCH's cost-to-charge ratio is below the floor or above the ceiling, currently the applicable statewide average cost-to-charge ratio is assigned to the LTCH. In addition, for LTCHs for which we are unable to compute a cost-to-charge ratio, we also assign the applicable statewide average. Currently, MedPAR claims data and cost-to-charge ratios based on the latest available cost report data from HCRIS and corresponding MedPAR claims data are used to establish a fixed-loss threshold amount under the LTCH PPS.

For FY 2003, based on FY 2001 MedPAR claims data and cost-to-charge ratios based on the latest available data from HCRIS and corresponding MedPAR claims data from FYs 1998 and 1999, we established a fixed-loss amount of $24,450. In the March 7, 2003, proposed rule (68 FR 11251), for the proposed 2004 LTCH PPS rate year, we proposed to continue to use the March 2002 update of the FY 2001 MedPAR claims data to determine a fixed-loss threshold that would result in outlier payments projected to be equal to 8 percent of total payments, based on the policies described in that proposed rule, because these data are the best data available. We would calculate cost-to-charge ratios for determining the proposed fixed-loss amount based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000.

In the March 7, 2003, proposed rule (68 FR 11251), consistent with the proposed outlier policy changes for acute care hospitals under the IPPS discussed in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10424), we proposed to no longer assign the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor. We proposed this policy change because, as is the case for acute care hospitals, we believe LTCHs could arbitrarily increase their charges in order to maximize outlier payments. Even though this arbitrary increase in charges should result in a lower cost-to-charge ratio in the future (due to the lag time in cost report settlement), currently when a LTCH's actual cost-to-charge ratio falls below the floor, the LTCH's cost-to-charge ratio would be raised to the applicable statewide average. This application of the statewide average would result in inappropriately higher outlier payments. Accordingly, we proposed to apply the LTCH's actual cost-to-charge ratio to determine the cost of the case, even where the LTCH's actual cost-to-charge ratio falls below the floor.

Also, in the March 7, 2003, proposed rule (68 FR 11251), consistent with the proposed policy change for acute care hospitals under the IPPS, we proposed under § 412.525(a)(4), by cross-referencing proposed § 412.84(i), to continue to apply the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio exceeds the ceiling by adopting the proposed policy at proposed § 412.84(i)(1)(ii). As we stated in that same proposed rule, cost-to-charge ratios above this range are probably due to faulty data reporting or entry, and, therefore, should not be used to identify and make payments for outlier cases because such data are clearly errors and should not be relied upon. In addition, we also proposed to make a similar change to the short-stay outlier policy at § 412.529. Since cost-to-charge ratios are also used in determining short-stay outlier payments, the rationale for that proposed change mirrors that for high-cost outliers.

Therefore, in the March 7, 2003, proposed rule (68 FR 11251), consistent with the proposed changes to the IPPS outlier policy, in determining the proposed fixed-loss amount for the proposed 2004 LTCH PPS rate year, we proposed to use only the current combined operating and capital cost-to-charge ratio ceiling under the IPPS of 1.421 (as explained in the IPPS final rule (67 FR 50125, August 1, 2002)). We believe that using the current combined

IPPS operating and capital cost-to-charge ratio ceiling for LTCHs is appropriate since, as we explained in the August 30, 2002, final rule (67 FR 55960), LTCHs are certified as acute care hospitals that meet the criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program, and in general, hospitals are paid as a LTCH only because their Medicare average length of stay is greater than 25 days in accordance with § 412.23(e). In the March 7, 2003, proposed rule (68 FR 11251), we also explained that prior to qualifying as a LTCH under § 412.23(e)(2)(i), the hospitals generally are paid as acute care hospitals under the IPPS during the period in which they demonstrate that they have an average length of stay of greater than 25 days. Accordingly, if a LTCH's cost-to-charge ratio is above this ceiling, we proposed to assign the applicable IPPS statewide average cost-to-charge ratio. We also proposed to assign the applicable statewide average for LTCHs for which we are unable to compute a cost-to-charge ratio, such as for new LTCHs. Therefore, based on the proposed methodology and data described above, in the March 7, 2003, proposed rule (68 FR 11251), for the proposed 2004 LTCH PPS rate year, we proposed a fixed-loss amount of $19,978. Thus, we proposed to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC–DRG and the proposed fixed-loss amount of $19,978).

We received numerous comments on the proposed changes to the LTCH PPS high-cost outlier policy under proposed § 412.525(a) (and short-stay outlier policy under § 412.529(c)). Because many features of the proposed LTCH PPS high-cost outlier policy are based upon the proposed policy changes to the IPPS high-cost outlier policy, we believe it is appropriate to finalize the proposed changes to the LTCH PPS high-cost outlier policy together with the final policy decisions on the IPPS high-cost outlier policy. Because the existing LTCH PPS outlier policy and proposed outlier policy changes are modeled after the IPPS outlier policy, we include the summary of public comments submitted on behalf of LTCHs, which in many cases mirror the comments we received on the proposed changes to the IPPS outlier policy, and the responses to those comments in the IPPS high-cost outlier final rule. Please refer to that final rule for a full discussion of the comments and responses, as well as any other final policy decisions concerning LTCH PPS high-cost outlier policy under § 412.525(a) (and the short-stay outlier policy under § 412.529(c)).

Therefore, in this final rule in calculating the final fixed-loss amount for the 2004 LTCH PPS rate year since the finalized changes to the high-cost outlier policy (and short-stay outlier policy) are not yet effective, we applied the existing outlier policy; that is, we assigned the statewide average to LTCHs whose cost-to-charge ratios fell below the floor or exceeded the ceiling. Accordingly, we used the current IPPS combined operating and capital cost-to-charge ratio floor of 0.206 and cost-to-charge ratio ceiling of 1.421 (as explained in the IPPS final rule (67 FR 50125, August 1, 2002)). We believe that using the current combined IPPS operating and capital cost-to-charge ratio floor and ceiling for LTCHs is appropriate for the same reasons we stated above regarding the use of the current combined operating and capital cost-to-charge ratio ceiling under the IPPS.

In this final rule, for the 2004 LTCH PPS rate year, we continue to use the March 2002 update of the FY 2001 MedPAR claims data to establish a fixed-loss threshold that would result in outlier payments projected to be equal to 8 percent of total payments, based on the policies described in this final rule, because these data are the best LTCH data available. We also computed cost-to-charge ratios for establishing the fixed-loss amount for the 2004 LTCH PPS rate year based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000. As we explained above, the applicable IPPS statewide average cost-to-charge ratios were applied when a LTCH's cost-to-charge ratio exceeded the ceiling (1.421) or fell below the floor (0.206). Also, we assigned the applicable statewide average to LTCHs for which we were unable to compute a cost-to-charge ratio. (Currently, the applicable IPPS statewide averages can be found in Tables 8A and 8B of the August 1, 2002, IPPS final rule (67 FR 50263).)

Accordingly, based on updated data and the final rates and policies established in this final rule (including the existing cost-to-charge ratio policy described above), we are establishing a fixed-loss amount of $19,590 for the FY 2004 LTCH PPS rate year. Thus, we will pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC–DRG and the fixed-loss amount of $19,590).

As we discussed in the March 7, 2003, proposed rule (68 FR 11251–11252), the IPPS standard Federal rate and relative weights are updated simultaneously, effective October 1 of each year, when the new GROUPER with the final DRGs and the new relative weights are implemented for that fiscal year. The LTCH PPS utilizes the same DRGs and Medicare GROUPER program as the IPPS. The GROUPER in effect on July 1, 2003, will be version 20.0. Although we proposed to update the LTCH PPS standard Federal rate on July 1, 2003, version 21.0 of the GROUPER will not be available at the time this final rule is published. Therefore, as we explained in the March 7, 2003, proposed rule (68 FR 11242), we are not proposing an update to the LTC–DRG weights for the period of July 1, 2003, through September 30, 2003, and the LTCH PPS will continue to use version 20.0 of the GROUPER and the LTC–DRG relative weights published in Table 3 of the Addendum to the August 30, 2002, final rule (reprinted in Table 3 of the Addendum to the March 7, 2003, proposed rule) for the period from July 1, 2003, through September 30, 2003.

The calculation of the fixed-loss amount is dependent in part on the LTC–DRG relative weights because the fixed-loss amount is set so that estimated total outlier payments are estimated to be equal to 8 percent of total LTCH PPS payments. We proposed to calculate a fixed-loss amount that would result in total estimated outlier payments being equal to 8 percent of total LTCH PPS payments for the proposed 2004 LTCH PPS rate year, using the LTC–DRG relative weights based on the version 20.0 GROUPER. We proposed to use the version 20.0 GROUPER in determining the fixed-loss amount for the period of July 1, 2003, through June 30, 2004, as it contains the best available data at the time the fixed-loss amount is determined.

As we discuss below, we did not propose to change the fixed-loss amount to account for changes in the version 21.0 GROUPER, because we believe implementing two fixed-loss amounts during the proposed LTCH PPS rate year may be administratively burdensome. Implementing a single fixed-loss amount which would be in effect for a full 12 months (July through June) would be consistent with other components of the LTCH PPS, such as the standard Federal rate and the wage index, both of which would be in effect for a full 12-month period (July through June). Similarly, the relative weights and the GROUPER program are in effect for 12 months (October through September). However, because the update to the ICD–9–CM codes is effective at the beginning of the Federal fiscal year, as described in section IV.E.2. of the March 7, 2003, proposed rule (68 FR 11241), we explained in that same proposed rule (68 FR 11252) that we would continue to update the LTCH PPS GROUPER and the relative weights on October 1.

In addition, in the March 7, 2003, proposed rule (68 FR 11252), we also stated that we do not anticipate that the fixed-loss amount calculated using the relative weights based on the version 20.0 GROUPER would be significantly different from a fixed-loss amount calculated using the relative weights based on the version 21.0 GROUPER. We believe this based on the fact that the LTCH PPS outlier policy, one component of which is a fixed-loss amount, is modeled after the IPPS outlier policy. The annual reclassification and recalibration of DRGs under the IPPS generally does not result in a significant impact on the IPPS fixed-loss amount (although this impact would vary from year to year depending on the actual DRG changes). Therefore, we proposed to calculate a single fixed-loss amount for each LTCH PPS rate year based on the version of the GROUPER that is in effect as of July 1 of that year.

Since the proposed effective date of the updated LTCH PPS standard Federal rate would be July 1, while the updated GROUPER would not be effective until October 1, we stated in the March 7, 2003, proposed rule (68 FR 12252) that we did consider an alternative proposal that would establish two separate fixed-loss amounts during the proposed LTCH PPS rate year—one for July through September based on the current GROUPER and another for October through June based on the updated GROUPER. As we explained in that same proposed rule, we decided not to propose this alternative because, as we discussed above, calculating and implementing two fixed-loss amounts in one proposed LTCH PPS rate year is administratively burdensome.

We received no comments on our proposal to calculate a single fixed-loss amount for each LTCH PPS rate year based on the version of the GROUPER that is in effect as of July 1 of that year. Therefore, for the 2004 LTCH PPS rate year, we are establishing a single fixed-loss amount based on the version 20.0 of the GROUPER, which is in effect at the start of the 2004 LTCH PPS rate year (July 1, 2003). As we stated above, the fixed-loss amount for the 2004 LTCH PPS rate year is $19,590. As we stated in the August 30, 2002, final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529 and discussed in section VII.B.4.b. of this preamble) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for a short-stay outlier in the 2004 LTCH PPS rate year, the high-cost outlier payment will be 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the final fixed-loss amount of $19,590 and the amount paid under the short-stay outlier policy).

Under existing regulations at § 412.525(a), we specify that no retroactive adjustment will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. This policy is consistent with the existing outlier payment policy for acute care hospitals under the IPPS. However, we note that in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10424), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because, as we discussed in that notice, we became aware that payment vulnerabilities exist in the current IPPS outlier policy.

Because the LTCH PPS high-cost outlier and short-stay policies are modeled after the outlier policy in the IPPS, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10429), we proposed in the March 7, 2003, proposed rule (68 FR 11252) under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(m), that for LTCHs any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio for the period during which the discharge occurs. As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change. In addition, in that same proposed rule (68 FR 11252), we proposed to make a similar change to the short-stay outlier policy at proposed § 412.529(c)(4)(ii).

We also stated in the March 7, 2003, proposed rule (68 FR 11252), that because we currently use cost-to-charge ratios based on the latest settled cost report, any dramatic increases in charges during the payment year are not reflected in the cost-to-charge ratios when making outlier payments. Consistent with the proposed policy change for acute care hospitals under the IPPS at proposed § 412.84(i) discussed in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10424–10426), because a LTCH has the ability to increase its outlier payments through a dramatic increase in charges and because of the lag time in the data used to calculate cost-to-charge ratios, in the March 7, 2003, proposed rule (68 FR 11252), we proposed that fiscal intermediaries would use more recent data when determining a LTCH's cost-to-charge ratio. Therefore, by cross-referencing proposed § 412.84(i) under proposed § 412.525(a)(4)(ii) in the March 7, 2003, proposed rule (68 FR 11252), we proposed that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later. In addition, in that same proposed rule, we proposed to make a similar change to the short-stay outlier policy at proposed § 412.529(c)(4)(ii).

As we noted above, we received numerous comments on the proposed reconciliation of outlier payments at cost report settlement and the proposed policy to allow fiscal intermediaries to use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later, in computing LTCH's cost-to-charge ratios for determining high-cost outlier payments under proposed § 412.525(a) (and short-stay outlier payments under proposed § 412.529(c)). As we also noted previously, because many features of the proposed LTCH PPS high-cost outlier policy are based upon the proposed policy changes to the IPPS high-cost outlier policy, we believe it is appropriate to finalize the proposed changes to the LTCH PPS high-cost outlier together with the final policy decisions on the IPPS outlier policy. Because, however, the LTCH PPS outlier policy and proposed outlier policy changes are modeled after the IPPS outlier policy, we include the summary of public comments submitted on behalf of LTCHs, which in many cases mirror the comments we received on the proposed IPPS outlier policy, and the responses to those comments in the IPPS high-cost outlier final rule. Please

refer to that final rule for a full discussion of the comments and responses, as well as any other final policy decisions concerning LTCH PPS high-cost outlier policy under § 412.525(a) (and the short-stay outlier policy under § 412.529(c)).

In conclusion, the summary of public comments on the proposed changes presented in the March 7, 2003, proposed rule regarding the high-cost outlier policy under proposed § 412.525(a) (and the short-stay outlier policy under proposed § 412.529(c)), and the responses to those comments are presented in the IPPS high-cost outlier final rule. Therefore, in this final rule, based on the data and existing methodology described above, we are establishing a fixed-loss amount of $19,590 for the FY 2004 LTCH PPS rate year. Accordingly, we will pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC–DRG and the fixed-loss amount of $19,590).

4. Adjustments for Special Cases

a. General

As discussed in the August 30, 2002, final rule (67 FR 55995), under section 123 of Public Law 106–113, the Secretary generally has broad authority in developing the PPS for LTCHs, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by maintaining an average length of stay of greater than 25 days. However, LTCHs may have cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG. As we explained in the August 30, 2002, final rule (67 FR 55995), such cases would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. While we did not propose any changes to the payment policy for special cases at this time, below we discuss the payment methodology for these special cases as implemented in the August 30, 2002, final rule (67 FR 55955–56010).

b. Short-Stay Outlier Cases

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments, because these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly "overpaid" for the resources they have actually expended.

Under § 412.529, we adjust the per discharge payment to the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment, for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG.

As we discussed in the March 7, 2003, proposed rule (68 FR 12252), in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10424), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because, as we discussed in that March 7, 2003, proposed rule, we became aware that payment vulnerabilities exist in the current IPPS outlier policy. As we also explained in that March 7, 2003, proposed rule, because the LTCH PPS high-cost outlier and short-stay outlier policies are modeled after the outlier policy in the IPPS, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) and (m) in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10429), and as we proposed above for high-cost outlier payments at § 412.525(a)(4)(ii), we proposed under § 412.529(c) that short-stay outlier payments would be subject to the proposed provisions in the regulations at proposed § 412.84(i) and (m). Therefore, consistent with the proposed changes to the high-cost outlier policy discussed in the March 7, 2003, proposed rule (68 FR 11251), we proposed, by cross-referencing proposed § 412.84(i), that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later, in determining a LTCH's cost-to-charge ratio.

In the March 7, 2003, proposed rule (68 FR 11253), we also proposed, by cross-referencing proposed § 412.84(i), that the applicable statewide average cost-to-charge ratio would only be applied when a LTCH's cost-to-charge ratio exceeds the ceiling. Thus, the applicable statewide average cost-to-charge ratio would not be applied if a LTCH's cost-to-charge ratio falls below the floor. Finally, in that same proposed rule, by cross-referencing proposed § 412.84(m), we proposed that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs. We also noted that, as is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change.

As we discussed above in section VII.B.3 of this preamble, we received numerous comments on the proposed changes to the short-stay outlier policy under proposed § 412.529(c) (and the high-cost outlier policy under proposed § 412.525(a)). Because many features of the proposed LTCH PPS outlier policies are based upon the proposed policy changes to the IPPS high-cost outlier policy, we believe it is appropriate to finalize the proposed changes to the LTCH PPS short-stay outlier policy (and high-cost outlier policy) together with the final policy decisions on the IPPS high-cost outlier policy. Because the LTCH PPS outlier policy and proposed outlier policy changes are modeled after the IPPS outlier policy, we include the summary of public comments submitted on behalf of LTCHs, which in many cases mirror the comments we received on the proposed IPPS outlier policy, and the responses to those comments in the IPPS high-cost outlier final rule. Please refer to that final rule for a full discussion of the comments and responses, as well as any other final policy decisions concerning LTCH PPS (the short-stay outlier policy under § 412.529(c) and the high cost outlier policy under § 412.525(a)). Therefore, in this final rule, we are not making the changes to the short-stay outlier policy at § 412.529 based on the changes proposed in the March 7, 2003, proposed rule (68 FR 11252).

As noted above, we will be responding to all comments on the proposed outlier policies for the LTCH PPS and presenting any changes in

existing policy in the IPPS high-cost outlier final rule. We believe that it is appropriate, however, to respond to three commenters that submitted comments regarding the impact of our short-stay outlier policy on certain hospitals which qualify as LTCHs under section 1886(d)(1)(B)(iv)(II) of the Act ("subclause (II)" LTCHs) as added by section 4417(b) of Public Law 105–33, and implemented in § 412.23(e)(2)(ii).

Comment: Three commenters, two hospital associations and the other, a hospital that qualifies as a LTCH under section 1886(d)(1)(B)(iv)(II) of the Act, expressed great concern that since becoming subject to the LTCH PPS, the LTCH is experiencing considerable financial losses which it anticipates will continue to increase during the 5-year transition period. The commenters assert that these mounting losses will substantially threaten the LTCH's ability to continue to offer services in accordance with its unique mission of primarily treating cancer patients. The commenters identify our payment policy for short-stay outliers as creating the most damaging shortfall, given this "subclause (II)" LTCH's case mix. In order to ameliorate this situation, all three commenters suggest that we exempt "subclause (II)" LTCHs, from the short-stay outlier policy and establish a hospital-specific standard Federal rate to reflect this change, which would also result in a lower average payment amount for all of those LTCHs' cases and a higher high-cost outlier threshold. We were urged, by one of the commenters to make these suggested policy modifications retroactive to the start of the hospital's first cost reporting period under the LTCH PPS and also to suspend the timing requirements of § 412.533(c), which would allow this LTCH to elect fully prospective payments as of that date. A suggestion from one of the hospital associations also advanced the possibility that the necessity for any adjustment to the short-stay outlier policy would end with the completion of the 5-year transition because with implementation of the full wage index adjustment and no budget neutrality adjustment (to account for the costs incurred by the Medicare program during the transition), Medicare payments for the "subclause (II)" LTCH would be more in line with the costs of delivering care.

Response: By enacting section 4417(b) of Public Law 105–33, and adding the provision at section 1886(d)(1)(B)(iv)(II) of the Act, the Congress provided an exception to the general definition of LTCH as set forth in section 1886(d)(1)(B)(iv)(I) of the Act ("subclause (I)" LTCHs), intending, we believe, to recognize the existence and importance of a distinct category of LTCHs that might not otherwise warrant exclusion from the IPPS under subclause (I), but which, nonetheless, fulfills a unique and vital role in serving a particular subset of Medicare patients. Under this provision, which we implemented at § 412.23(e)(2)(ii), to qualify as a LTCH, a hospital must have first been excluded as a LTCH in 1986, have an average inpatient length of stay of greater than 20 days, and demonstrate that 80 percent of its annual Medicare inpatient discharges in the 12-month reporting period ending in Federal fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease (62 FR 46016 and 46026, August 29, 1997). Moreover, we believe the Congress assumed "subclause (II)" LTCHs would continue to serve this population after FY 1997. Acknowledging the distinction between hospitals qualifying as LTCHs under section 1886(d)(1)(B)(iv)(I) of the Act, and those qualifying under section 1886(d)(1)(B)(iv)(II) of the Act when we developed the LTCH PPS, we revised the greater than 25 day average length of stay criteria to include only Medicare patients for these "subclause (I)" LTCHs. However, for LTCHs described in section 1886(d)(1)(B)(iv)(II) of the Act, no change was made to the methodology for calculating the LTCH's average length of stay, since "we have no reason to believe that the change in methodology for determining the average inpatient length of stay would better identify the hospitals that the Congress intended to exclude under subclause (II)" (67 FR 55974, August 30, 2002). Consistent with existing policies that differentiate "subclause (II)" LTCHs from other LTCHs, we agree with the commenters that it is appropriate for us to consider whether or not a policy that applies to LTCHs designated under subclause I, can reasonably and equitably be applied to "subclause (II)" LTCHs without some measure of adjustment. We also believe that the specificity of section 4417(b) of Public Law 105–33, which states that 80 percent or more of the annual Medicare inpatient discharges, in such a "subclause (II)" LTCH, in the 12-month reporting period ending in Federal fiscal year 1997 would have had a principal diagnosis that reflects a finding of neoplastic disease, indicates to us that the Congress determined that hospitals fitting this description fulfilled a unique and vital service for certain Medicare beneficiaries. Furthermore, we believe the Congress assumed that not only would a "subclause (II)" LTCH have at least 80 percent of its Medicare inpatient discharges with a diagnosis of neoplastic disease in FY 1997, but this type of LTCH would continue to serve this patient case-mix in years subsequent to FY 1997.

The theoretical foundations of a DRG-based PPS are that while the costs of one case may exceed its payment, the opposite is also likely to happen, and that where some types of cases are always very expensive for a hospital to treat, others are, in general, not costly. It is assumed that hospitals under a DRG-based system, therefore, can typically exercise some influence over their case-mix and their services in order to achieve fiscal stability. This is not generally the case for "subclause (II)" LTCHs because they continue to primarily treat patients with neoplastic diseases (97.4 percent of patients at a "subclause (II)" LTCH had primary diagnosis of neoplastic disease, according to data from FY 2001 MedPAR files.). According to our claims data for January 1, 2001, through December 31, 2001, at a "subclause (II)" LTCH, more than 93 percent of its Medicare patients expired, over half of the patients at this hospital would qualify as short-stay outliers (97 percent of those short-stay outliers expired), and 30 percent of its patient days were for high-cost outlier patients with an average length of stay of 109 days.

We have analyzed our data as well as information supplied by the commenters in order to better understand the financial impact on a "subclause (II)" LTCH of the payment policies established for LTCHs that will be in place during the 5-year transition to the full LTCH PPS. In identifying this category of LTCHs, Congress required that "in the 12-month cost reporting period ending in fiscal year 1997" the Medicare patient population would be comprised of at least 80 percent with "* * * a principal diagnosis that reflects a finding of neoplastic disease." As noted above, our data indicates that the treatment of neoplastic diseases continues to be the mission of a "subclause (II)" LTCH. Accordingly we believe that the patient census at a "subclause (II)" LTCH will, by its very nature, be comprised of unusually high percentages of both short-stay cases as well as high-cost outliers. Data projections further reveal that the significant losses that are being incurred will gradually decline throughout the 5-year transition, as the percentage of payments based on the Federal rate increase and the effect of the wage index adjustment is fully transitioned. Our analyses lead us to believe that until the

full wage index is phased-in in 2006 and the transition period budget neutrality adjustments cease, the survival of such a "subclause (II)" LTCH is in serious jeopardy.

By establishing "subclause (II)" LTCHs, the Congress provided an exception to the general definition of LTCH under subclause (I), and, therein, we believe, endorsed the unique mission of a particular type of hospital. We do not believe that the Congress intended for policies that equitably apply to LTCHs described under subclause (I) to potentially undermine the viability of a LTCH described under subclause (II).

In the August 30, 2003, final rule (67 FR 55954), we stated that we believed that in establishing the short-stay outlier policy under the LTCH PPS, we were recognizing that LTCHs, as a provider category under Medicare, should not be admitting patients whose stay were considerably less than the average length of stay at a LTCH and who could otherwise receive care at an acute care hospital subject to the IPPS. Data from the FY 1999 MedPAR files revealed that 52 percent of cases being treated at LTCHs were for stays of less than two-thirds of the average length of stay for the LTC–DRG and 20 percent had a length of stay of even less than 8 days (67 FR 55970, August 30, 2002). We noted, however, that short-stay outliers could also result from a legitimate admission to a LTCH when a change in the patient's condition dictated that another treatment or care setting would be more clinically appropriate or if the patient expired early in the LTCH stay. In these situations, the patient would still not have received the full course of treatment at the LTCH and paying a full LTC–DRG would result in significant overpayment. Therefore, we created the short-stay outlier category as a feature of the LTCH PPS, so that Medicare would be rendering fair, but not excessive payment for patients who could have received treatment at an acute care hospital as well as for patients who, for valid clinical reasons, did not stay long enough at a LTCH to receive the course of treatment for which the full LTC–DRG payments were calibrated. We further believed that implementing the short-stay policy could encourage LTCHs to adopt admission policies that, for the most part, would work to limit the number of short-stay patients since there would be no inappropriate financial incentive for admitting such cases.

As we evaluate the short-stay outlier policy with regard to "subclause (II)" LTCHs, we believe that a LTCH in this category may not be able to readily address the length of stay of patients and the costs it incurs for those patients as would LTCHs described under subclause (I) because a "subclause (II)" LTCH continues to primarily serve patients with neoplastic diseases. In fact, as previously noted, FY 2001 MedPAR data demonstrate that 97.4 percent of the patients at a "subclause (II)" LTCH have a primary diagnosis of neoplastic disease. Accordingly, we believe that it is necessary to adjust the short-stay policy for "subclause (II)" LTCHs during the 5-year transition period, so that a LTCH of this type can continue to serve its community, as we believe was assumed by the Congress when it established this category of LTCHs.

All three commenters suggested that we abrogate the entire short-stay outlier policy for "subclause (II)" LTCHs, which would result in a revised hospital-specific standard Federal rate and high-cost outlier threshold. We do not believe that such a radical departure from the general LTCH PPS policies is either necessary or appropriate to address the problems that we have noted.

In the August 30, 2002, final rule (67 FR 55995–56000), we describe the simulations that resulted in our short-stay outlier policy of the lesser of 120 percent of the cost, 120 percent of the per diem amount of the LTC–DRG, or the full LTC–DRG. Since these simulations were established by analyzing costs and payments of a LTCH with a greater than 25 day average length of stay, we are instead providing an adjustment to the short-stay outlier payment policy for a "subclause (II)" LTCH, which is held to a greater than 20 day average length of stay criterion and not to the greater than 25 day average length of stay criterion which applies to "subclause (I)" LTCHs. Furthermore, this adjustment to the short-stay payment policy will be in place during "subclause (II)" LTCHs" 5-year transition to full LTCH PPS in the form of percentages, corresponding to the 120 percent for "subclause (I)" LTCHs, and it will be "phased out" gradually as the percentage of payments under the LTCH PPS are increased, the full wage index adjustment is phased-in, and the budget neutrality adjustment is decreased. The adjustment, described below, was derived based on payment simulations using the same methodology on "subclause (II)" LTCH data that we used in arriving at the 120 percent for "subclause (I)" LTCHs. (67 FR 55995–56000, August 30, 2002)

We are establishing this formula with the expectation that an adjustment to the short-stay payments during the transition will result in reducing the difference between payments and costs for a "subclause (II)" LTCH for the period of July 1, 2003, through the end of the transition period, when the LTCH PPS will be fully phased-in. Therefore, for example, a "subclause (II)" LTCH, which became subject to the LTCH PPS for their first cost reporting period which began on January 1, 2003 (and did not elect payment based on 100% of the Federal rate), 80 percent of Medicare payments would still be based on what would have been paid under the TEFRA system and only 20 percent would be based on the Federal rate (and subject to payments under the short-stay outlier policy established in the August 30, 2002, final rule). Effective for discharges from a "subclause (II)" LTCH occurring on or after July 1, 2003, and based on the payment simulations described above, we have revised the short-stay outlier percentage to 195 percent during the first year of the hospital's 5-year transition. For the second cost reporting period, the short-stay outlier percentage will be 193 percent; for the third cost reporting period, the percentage will be 165 percent; for the fourth cost reporting period, the percentage will be 136 percent; and for the final cost reporting period of the 5-year transition, the short-stay outlier percentage for "subclause (II)" LTCHs, will be 120 percent, that is, the same as it is for all other LTCHs under the LTCH PPS. We have set forth this policy by redesignating the existing paragraph (c)(4) as (c)(5) and adding a new paragraph (c)(4) to § 412.529.

We also expect that during this 5-year period, "subclause (II)" LTCHs will make every attempt to adopt the type of efficiency enhancing policies that generally result from the implementation of prospective payment systems in other health care settings.

We consider the above adjustment to be a reasonable, equitable and sufficient response to the particular situation of a "subclause (II)" LTCH under the LTCH PPS and, therefore, we will not address at any length the other two suggestions regarding retroactive adjustments to the start of a LTCH's first cost reporting period under the LTCH PPS and the disregarding of timing requirements established in § 412.533(c) for election not to be paid under the transition period methodology. In this final rule, therefore, we are making a temporary adjustment to payments under the short-stay outlier policy for LTCHs designated under section 1886(d)(1)(B)(iv)(II) of the Act and § 412.23(e)(2)(ii) that will end upon full implementation of the LTCH PPS, at the beginning of their fifth cost reporting period in the 5-year transition period.

c. Interrupted Stay

In § 412.531(a), we define an "interruption of a stay" as a stay at a LTCH during which a Medicare inpatient is admitted upon discharge from the LTCH to an acute care hospital, an IRF, or a SNF for treatment or services that are not available in the LTCH and returns to the same LTCH within applicable fixed day periods. For a discharge to an acute care hospital, the applicable fixed-day period is 9 days. For a discharge to an IRF, the applicable fixed-day period is 27 days. For a discharge to a SNF, the applicable fixed-day period is 45 days. The counting of the days begins on the day of discharge from the LTCH and ends on the 9th, 27th, or 45th day for an acute care hospital, an IRF, or a SNF, respectively. (We refer readers to section VII.C.4.e. of this preamble for a discussion of application of this interrupted stay policy to Medicare-participating providers with approved swing beds.)

If the patient's length of stay away from the LTCH does not exceed the fixed-day thresholds, the return to the LTCH is considered part of the first admission and only a single LTCH PPS payment will be made. (From the standpoint of implementing this policy, in the event that a Medicare inpatient is discharged from a LTCH and is readmitted and the stay qualifies as an interrupted stay, the provider should cancel the claim generated by the original stay in the LTCH and submit one claim for the entire stay. For further details, see Program Memorandum Transmittal A–02–093, September 2002.) On the other hand, if the patient stay exceeds the total fixed-day threshold outside of the LTCH at another facility before being readmitted, two separate LTC–DRG payments will be made, one based on the principal diagnosis for the first admittance and the other based on the principal diagnosis for the second admittance. Moreover, if the principal diagnoses are the same for both admissions, the hospital could receive two similar payments. (See section VII.C.4.e. of this final rule for application of the interrupted stay policy to transfers to swing bed hospitals.)

d. Onsite Discharges and Readmittances

Under § 412.532, generally, if a LTCH readmits more than 5 percent of its Medicare patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital, only one LTC–DRG payment will be made to the LTCH for discharges and readmittances during the LTCH's cost reporting period. Therefore, payment for the entire stay will be paid either as one full LTC–DRG payment or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we apply one threshold for discharges and readmittances with a co-located acute care hospital. There is also a separate 5-percent threshold for all discharges and readmittances with co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital, an IRF, or a SNF, the interrupted stay policy at § 412.531 applies until the 5-percent threshold is reached. However, once the applicable threshold is reached, all such discharges and readmittances to the applicable site(s) for that cost reporting period are paid as one discharge. This means that even if a discharged LTCH Medicare patient was readmitted to the LTCH following a stay in an acute care hospital of greater than 9 days, if the facilities share a common location and the 5-percent threshold were exceeded, the subsequent discharge from the LTCH will not represent a separate hospitalization for payment purposes. Only one LTC–DRG payment will be made for all such discharges during a cost reporting period to the acute care hospital, regardless of the length of stay at the acute care hospital, that are followed by readmittances to the onsite LTCH.

Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit, with readmittances to the LTCH, the subsequent LTCH discharge for patients from any of those sites for the entire cost reporting period will not be treated as a separate discharge for Medicare payment purposes. (As under the interrupted stay policy, payment to an acute care hospital under the IPPS, to an IRF under the IRF PPS, and to a SNF under the SNF PPS, will not be affected. Payments to the psychiatric facility also will not be affected.)

e. Treatment of Swing Beds Under the Interrupted Stay and Onsite Discharge and Readmittance Policies

A swing-bed hospital is defined at § 413.114(b) as a hospital or critical access hospital (CAH) participating in Medicare that has an approval from CMS to provide post-hospital SNF care as defined in § 409.20 and meets the requirements specified in § 482.66 or § 485.645. Swing beds are otherwise licensed hospital beds that may, under certain circumstances, be used temporarily as SNF beds. Under § 413.114(a)(2), post-hospital SNF care furnished in general routine inpatient beds in rural hospitals (other than CAHs) is paid in accordance with the provisions of the SNF PPS for services furnished for cost reporting periods beginning on or after July 1, 2002. Since it is possible for a Medicare beneficiary to be discharged from a LTCH for post-hospital SNF care that is being provided by another hospital-level Medicare provider with swing beds, such a discharge would be considered the same as if it were to an individual SNF. We interpret the extension of the SNF PPS to swing beds to require that all payment policy determinations regarding patient movement between LTCHs and SNFs, including the onsite policy described above, also apply to swing beds.

In the March 7, 2003, proposed rule (68 FR 11254), we stated that we want to emphasize that our inclusion of swing beds in payment policy determinations for all patient movement between LTCHs and SNFs (*see* section VII.C.4.c. of this preamble) would mean that a readmission to a LTCH from post-hospital SNF care being provided in a swing bed that is located either in the LTCH itself or in another onsite Medicare provider would have the same policy consequences as would a readmission to the LTCH from an onsite SNF. We received no comments on this clarification.

5. Other Payment Adjustments

As indicated earlier, we had broad authority under section 123 of Public Law 106–113, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs. Thus, in the August 30, 2002, final rule (67 FR 56014–56027), we discussed our extensive data analysis and rationale for not implementing an adjustment for geographic reclassification, rural location, treating a disproportionate share of low-income patients (DSH), or indirect medical education (IME) costs. In that same final rule, we stated that we would collect data and reevaluate the appropriateness of these adjustments in the future once more LTCH data become available after the LTCH PPS is implemented. As we stated in the March 7, 2003, proposed rule (68 FR 11254), because the LTCH PPS was only recently implemented, sufficient new data have not yet been generated that would enable us to conduct a comprehensive reevaluation of these payment adjustments. Therefore, in that same proposed rule, we did not propose an adjustment for geographic reclassification, rural location, DSH, or IME at this time. Additionally, we stated

that we would continue to collect and interpret new data as they become available in the future to determine if these data support proposing any additional payment adjustments.

Comment: Two commenters objected to our proposal not to include an adjustment to account for a hospital's treatment of a disproportionate share of low-income patients (a DSH adjustment) or an adjustment to account for indirect teaching costs (an IME adjustment). One commenter stated that given that LTCHs are a heterogeneous group of facilities with widely varying costs and patient populations, it is particularly important to provide adjustments to compensate for the differences where possible. The other commenter stated that the LTCH regression analysis was among a diverse set of facilities, thus weakening CMS' conclusions not to include adjustments for DSH and IME. Accordingly, both commenters urged for the inclusion of a DSH adjustment and an IME adjustment in the LTCH PPS.

Response: As we discussed in the August 30, 2002, final rule (67 FR 56020–56022), we examined the appropriateness of an adjustment for LTCHs serving a disproportionate share of low-income patients. In that same final rule, we explained that in examining the most recent LTCH data available to us, we determined that a DSH adjustment consistent with the DSH adjustment under the IPPS for acute care hospitals (set forth at section 1886(d)(5)(F) of the Act) would reduce the ability of the LTCH PPS to predict cost per case while lowering the base payment rate. We also evaluated alternative methods to provide some type of DSH adjustment. Specifically, using regression analysis that took into account both the Medicaid patients receiving SSI and the percentage of Medicaid patients not entitled to Medicare, we found no significant empirical relationship between these variables and LTCHs' costs. Therefore, we did not establish a DSH adjustment under the LTCH PPS.

Also, in the August 30, 2002, final rule (67 FR 56022), we explained that based on a double log regression, we found that the indirect teaching cost variable was negative and not significant. In addition, we looked at different specifications for the teaching variable, including resident-to-bed ratio and resident-to-average daily census, to measure teaching intensity. In all of our payment regressions it was determined that the teaching variable was not significant; that is, no empirical evidence exists to show that LTCHs' cost per case would vary with teaching costs.

In the March 7, 2003, proposed rule (68 FR 11254), we explained that because the LTCH PPS was only recently implemented, sufficient new data have not yet been generated that would enable us to conduct a comprehensive reevaluation of these payment adjustments. Therefore, since we still do not have empirical evidence to support a DSH adjustment or an IME adjustment, we continue to believe that it would be inappropriate to establish such adjustments at this time. Accordingly, in this final rule, we are not adopting the commenters' suggestion to include a DSH adjustment and an IME adjustment in the LTCH PPS. As we stated in the March 7, 2003, proposed rule (68 FR 11254), we will continue to collect and interpret new data as they become available in the future to determine if these data support proposing any additional payment adjustments.

6. Budget Neutrality Offset To Account for the Transition Methodology

In the August 30, 2002, final rule (67 FR 56038) under § 412.533, we implemented a 5-year transition period from reasonable cost-based payment to prospective payment, during which a LTCH will be paid an increasing percentage of the LTCH PPS rate and a decreasing percentage of its payments under the reasonable cost-based principles for each discharge. Furthermore, we allow a LTCH to elect to be paid based on 100 percent of the standard Federal rate in lieu of the blend methodology.

As we discussed in further detail in the August 30, 2002, final rule (67 FR 56032–56037), the standard Federal rate was determined as if all LTCHs will be paid based on 100 percent of the standard Federal rate. As stated earlier, we provide for a 5-year transition period methodology that allows LTCHs to receive payments based partially on reasonable cost-based principles. In order to maintain budget neutrality as required by section 123(a)(1) of the Public Law 106–113 and § 412.523(d)(2) during the 5-year transition period, we reduce all LTCH Medicare payments (whether a LTCH elects payment based on 100 percent of the Federal rate or whether a LTCH is being paid under the transition blend methodology). Specifically, we reduce all LTCH Medicare payments during the 5-year transition by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH PPS had not been implemented, to the projected total Medicare program PPS payments (that is, payments made under the transition methodology and the option to elect payment based on 100 percent of the Federal rate).

For FY 2003, based on a comparison of the estimated FY 2003 payments to each LTCH based on 100 percent of the standard Federal rate and the transition blend methodology, we projected that approximately 49 percent of LTCHs would elect to be paid based on 100 percent of the standard Federal rate rather than receive payment based on the transition blend methodology. This projection was based on our estimate that those 49 percent of LTCHs would receive higher payments based on 100 percent of the standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we projected that the remaining 51 percent of LTCHs would choose to be paid based on the transition blend methodology (80 percent of reasonable cost-based payments and 20 percent of payments based on the Federal rate) in FY 2003, because those payments would be higher than if they were paid based on 100 percent of the standard Federal rate.

In the August 30, 2002, final rule (67 FR 56034), we projected that the full effect of the 5-year transition period and the election option would result in a cost to the Medicare program of $240 million as follows: For FY 2003, $50 million; for FY 2004, $80 million; for FY 2005, $60 million; for FY 2006, $40 million; for FY 2007, $10 million. Thus, in order to maintain budget neutrality, we applied a 6.6 percent reduction (0.934) to all LTCHs' payments in FY 2003 to account for the estimated cost of $50 million for FY 2003. Furthermore, in order to maintain budget neutrality, we indicated that, in the future, we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated payments for the respective fiscal year. Based on the data available at that time, in the August 30, 2002, final rule (67 FR 56037) we estimated the following budget neutrality offsets to LTCH payments during the remainder of the transition period: 5.0 percent (0.950) in FY 2004; 3.4 percent (0.966) in FY 2005; and 1.7 percent (0.983) in FY 2006. We also stated that no budget neutrality offset is necessary in the 5th year of the transition period (FY 2007) because under the transition methodology at § 412.533, all LTCHs will be paid based on 100 percent of the standard Federal rate and zero percent of the reasonable cost-based principles.

As stated in the March 7, 2003, proposed rule (68 FR 11254–11256), for the proposed 2004 LTCH PPS rate year, based on the best available data and the policies presented in that proposed rule, we projected that approximately 49 percent of LTCHs would be paid based on 100 percent of the proposed standard Federal rate rather than receive payment under the transition blend methodology. Using the same methodology in the August 30, 2002, final rule (67 FR 56034) described above, this projection, which uses updated data and inflation factors, is based on our estimate that these LTCHs would receive higher payments based on 100 percent of the proposed standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we project that the remaining 51 percent of LTCHs would choose to be paid based on the transition blend methodology (80 percent of reasonable cost-based payments and 20 percent of Federal rate payments for cost reporting periods that begin during FY 2003; and 60 percent of reasonable cost-based payments and 40 percent of Federal rate payments for cost reporting periods that begin during FY 2004 (in accordance with § 412.533(a))) because they would receive higher payments than if they were paid based on 100 percent of the proposed standard Federal rate.

In the March 7, 2003, proposed rule (68 FR 11255), based on the best available data and the proposed policy revisions described in that proposed rule, we projected that the full effect of the remaining 4 years of the transition period (including the election option) would result in a cost to the Medicare program of $300 million as follows: $120 million in the 2004 LTCH PPS rate year; $90 million in the 2005 LTCH PPS rate year; $60 million in the 2006 LTCH PPS rate year; and $30 million in the 2007 LTCH PPS rate year. Therefore, we proposed a 5.7 percent reduction (0.943) to all LTCHs' payments for discharges occurring on or after July 1, 2003, and through June 30, 2004, to account for the estimated cost of the $120 million for the proposed 2004 LTCH PPS rate year.

As we stated above, in order to maintain budget neutrality, we indicated that we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated costs for the respective fiscal year. In the March 7, 2003, proposed rule (68 FR 11255), based on the best available data at that time, we proposed the following budget neutrality offsets to LTCH payments during the transition period: 4.4 percent (0.956) in proposed 2005 LTCH PPS rate year; 2.9 percent (0.971) in proposed 2006 LTCH PPS rate year; and 1.2 percent (0.988) in proposed 2007 LTCH PPS rate year.

Comment: One commenter recommended that the budget neutrality offsets to LTCH payments during the transition period be updated periodically and adjusted to reflect any change in the percentage of LTCHs electing to receive payments during the transition period based on 100 percent of the Federal rate as provided for under § 412.533(c).

Response: As we stated in the March 7, 2003, proposed rule, the proposed budget neutrality offsets to LTCH payments during the transition period are determined using the best available data. Moreover, as we stated above, we proposed to revise the estimated budget neutrality offsets to LTCH payments during the transition period for future years annually along with the update to the Federal rate based on updated data. Therefore, in determining the budget neutrality offsets to LTCH payments during the transition period in future rate years, we will use the latest data available, including data on actual elections made by LTCHs to receive payments during the transition period based on 100 percent of the Federal rate as provided for under § 412.533(c). To update the budget neutrality offsets to LTCH payments during the transition period more often than in conjunction with the annual rate update would be an administrative burden to LTCHs and us.

Comment: A few commenters requested clarification on how we derived the estimate that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the proposed 2004 LTCH PPS rate year. Additionally, the commenters requested an explanation of how the estimate that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the 2004 LTCH PPS rate year can be determined from the proposed rule data posted on the CMS Web site. Some commenters also requested that the data files posted on the CMS Web site be consistent in the future, that is, provide the same information and title headings. One commenter, requested that the data files posted on the CMS Web site contain an indicator of which LTCHs have elected to receive payments based on 100 percent of the standard Federal rate as provided for under § 412.533(c).

Response: As we discussed above, the proposed estimate that 49 percent of LTCHs would elect payment based on 100 percent of the standard Federal rate in the proposed 2004 LTCH PPS rate year was based on our estimate that those 49 percent of LTCHs (96 out of 194) would receive higher payments based on 100 percent of the proposed standard Federal rate compared to the payments they would receive under the transition blend methodology. As we also noted above, this projection was based on the best available data and the policies presented in that proposed rule. Accordingly, in the March 7, 2003, proposed rule, when we simulated payments for each LTCH under the LTCH PPS for the proposed 2004 LTCH PPS rate year based on 100 percent of the proposed standard Federal rate, we incorporated the proposed policy changes, including the proposed standard Federal rate of $35,726.64, the proposed fixed loss amount of $19,978, the proposed labor-share of 72.612 percent, the proposed update of the wage index data, and the proposed elimination of the assignment of the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio fell below the floor. In estimating the payments that LTCHs would receive under the transition blend methodology, we projected the payments that each LTCH would receive during the proposed 2004 LTCH PPS rate year, if the LTCH PPS were not implemented. That is, we estimated payments based on reasonable cost-based principles in accordance with the methodology set forth in § 1886(b) of the Act.

Based on the LTCH's cost reporting period, we applied the applicable transition blend percentages for each LTCH during the proposed 2004 LTCH PPS rate year. For example, as we noted in the March 7, 2003, proposed rule (68 FR 11261), based on the transition blend percentages set forth in § 412.533(a), some providers may experience a change in the transition blend percentage during the proposed 2004 LTCH PPS rate year, such that a LTCH with an October 1, 2002, cost reporting period would have 3 months (July 1, 2003, through September 30, 2003) under the 80/20 transition blend (that is, 80 percent of payments based on reasonable cost-based principles and 20 percent based on the Federal rate) and 9 months (October 1, 2003, through June 30, 2004) of payment under the 60/40 transition blend (60 percent of payments based on reasonable cost-based principles and 40 based on the Federal rate).

If a LTCH's estimated LTCH PPS payments for the proposed 2004 LTCH PPS rate year were greater than its estimated payments under the transition period methodology for the proposed 2004 LTCH PPS rate year, then we assumed that the LTCH would elect payment based on 100 percent of the standard Federal rate for the proposed

2004 LTCH PPS rate year. Conversely, if a LTCH's estimated payments under the transition period methodology for the proposed 2004 LTCH PPS rate year were greater than its estimated LTCH PPS payments for the proposed 2004 LTCH PPS rate year, then we assumed that the LTCH would receive payment based on the transition blend methodology set forth in § 412.533(a) for the proposed 2004 LTCH PPS rate year. However, regardless of the comparison of a LTCH's estimated LTCH PPS payments and estimated payments under the transition period methodology for the proposed 2004 LTCH PPS rate year, we also took into account whether we had previously projected that a LTCH would elect payment based on 100 percent of the standard Federal rate in the August 30, 2002, final rule. Specifically, because LTCHs subject to the LTCH PPS with cost reporting periods that began prior to start of the proposed 2004 LTCH PPS rate year (July 1, 2003) would have already notified their fiscal intermediary of their election to receive payment based on 100 percent of the Federal rate in accordance with § 412.533(c)(2), and once a LTCH makes this election it cannot revert to the transition blend (§ 412.533(a)), in our proposed rule projection, we took into account our previous projection from the August 30, 2003, final rule.

Based on the clarification of how we derived the estimate that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the 2004 LTCH PPS rate year provided above, the March 7, 2003, proposed rule data posted on our website could be combined with the August 30, 2002, final rule data also posted on our website to derive the estimate that that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the proposed 2004 LTCH PPS rate year. Specifically, the variables "Total TEFRA Payments for Impact" and "Total PPS Payments" in the August 30, 2002, final rule data file posted on our website and the variables "Estimated Total TEFRA Payment" and "Estimated Total PPS Payments (DRG + High-Cost Outlier)" in the March 7, 2003, proposed rule data file posted on our website can be used to derive the estimate that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the 2004 LTCH PPS rate year.

In the future, we will make every attempt possible to provide the same information and title headings in the data file posted on our Web site. However, changes may be necessary in the future to reflect current policy and to more accurately reflect the data used. For example, the August 30, 2002, final rule data files posted on our website contained the variable "Total TEFRA Payment for Budget Neutrality." As described in the corresponding file layout also posted on our Web site, in accordance with section 307 of Public Law 106–554, this variable used to determine the budget neutral standard Federal rate does not contain the increases to LTCHs' payments provided for under section 122 of Public Law 106–113 and section 307 of Public Law 106–554. However, that variable is no longer necessary since we are not required to determine the LTCH PPS Federal rate based on payments made under the reasonable cost-based methodology once the LTCH PPS is implemented (that is, for years beyond FY 2003). Since this variable was not required to determine the proposed rate and factors discussed in the March 7, 2003, proposed rule, there is no corresponding variable in the data files posted on our Web site. Additionally, as data on which LTCHs have elected to receive payments based on 100 percent of the standard Federal rate as provided for under § 412.533(c) become available in the future, we will incorporate that data in the LTCH PPS data files posted on the CMS' Web site.

Comment: One commenter requested clarification on why the proposed budget neutrality offsets for the transition period were increased for "fiscal years" 2004 through 2007, despite the fact the assumptions appear the same. The commenter recommends that the budget neutrality offsets for the transition period remain unchanged from those published in the August 30, 2002, final rule.

Response: Although the budget neutrality offsets presented in the August 30, 2002, final rule were applicable on a fiscal year basis, this is no longer true for the proposed budget neutrality offsets included in the March 7, 2003, proposed rule. The proposed budget neutrality offsets for the transition period were estimated to apply for the proposed LTCH PPS rate years 2004 through 2007, not "fiscal years" 2004 through 2007 as the commenter stated. The change in the period of time for which the proposed budget neutrality offsets for the transition period would be applicable is the primary reason why we determined the proposed budget neutrality offset for the transition period to be 5.7 percent for the proposed 2004 LTCH PPS rate year, beginning July 1, 2003, as compared to the previous estimate of 5.0 percent for FY 2004, beginning October 1, 2003 (presented in the August 30, 2002, final rule). Therefore, the change in the budget neutrality offsets for the transition period is primarily due to moving from the Federal FY (October 1st) rate cycle to the LTCH PPS rate year (July 1st) rate cycle. As we stated in the August 30, 2002, final rule, future budget neutrality offsets for the transition period in the proposed rule will be based on the best available data. Accordingly, in determining the proposed budget neutrality offsets for the transition period, we also took into account updated data.

Therefore, we believe that the proposed budget neutrality offset for the transition period for the proposed 2004 LTCH PPS rate year is appropriate based on the data available at that time, and we are not adopting the commenter's recommendation that the budget neutrality offsets for the transition period remain unchanged from those published in the August 30, 2002, final rule. Instead, in this final rule, we are revising the budget neutrality offsets for the transition period for the 2004 LTCH PPS rate year based on the same methodology established in the August 30, 2002, final rule, while using the best available data, and applying the offset to the 2004 LTCH PPS rate year.

In this final rule, for the 2004 LTCH PPS rate year, based on the best available data and the policies established in this final rule, we project that approximately 49 percent of LTCHs will be paid based on 100 percent of the proposed standard Federal rate rather than receive payment under the transition blend methodology. Using the same methodology described in the August 30, 2002, final rule (67 FR 56034), this projection, which uses updated data and inflation factors, is based on our estimate that either—(1) a LTCH has already elected payment based on 100 percent of the Federal rate prior to July 1, 2003, or (2) a LTCH will receive higher payments based on 100 percent of the 2004 LTCH PPS rate year standard Federal rate compared to the payments it would receive under the transition blend methodology. Similarly, we project that the remaining 51 percent of LTCHs will choose to be paid based on the transition blend methodology (80 percent of reasonable cost-based payments and 20 percent of the Federal rate for cost reporting periods beginning during FY 2003 and 60 percent of reasonable cost-based payments and 40 percent of the Federal rate for cost reporting periods beginning during FY 2004 in accordance with § 412.533(a)) because they will receive higher payments than if they were paid based on 100 percent of the 2004 LTCH PPS rate year standard Federal rate. We note that, as discussed in the March 7, 2003, proposed rule (68 FR 11256–11257), we did not propose to change the 5-year transition period set forth in § 412.533(a) in conjunction with the proposed change in the proposed 2004 LTCH PPS rate year update. Therefore, the applicable transition blend percentage will apply for a LTCH's entire cost reporting period beginning on or after October 1 (unless the LTCH elects payment based on 100 percent of the Federal rate).

In this final rule, based on the best available data and the final policy revisions described above, we projected that the full effect of the remaining 4 years of the transition period (including the election option) will result in a cost to the Medicare program of $310 million as follows:

LTCH PPS rate year	Estimated cost (in millions)
2004	$120
2005	100
2006	60
2007	30

Therefore, using the methodology established in the August 30, 2002, final rule (67 FR 56034) based on updated data and the final policies and rates established in this final rule, we are establishing a 6.0 percent reduction (0.940) to all LTCHs' payments for discharges subject to the LTCH PPS occurring on or after July 1, 2003, and through June 30, 2004, to account for the estimated cost of the election of the $120 million for the proposed 2004 LTCH PPS rate year. This offset has increased slightly over the estimate in the proposed rule (5.7 percent) primarily due to slightly higher projections of reasonable cost-based payment based on the latest available data. In addition, as we stated in the March 7, 2003, proposed rule (68 FR 12255), we emphasize that the budget neutrality offset to account for the transition methodology is calculated based on and effective for payments made for discharges occurring during the 2004 LTCH PPS rate year of July 1, 2003, through June 30, 2004, not the Federal FY 2004 of October 1, 2003, through September 30, 2004.

As we discussed in the August 30, 2002, final rule (67 FR 56036), consistent with the statutory requirement for budget neutrality in section 123(a)(1) of Public Law 106–113, we intended for estimated aggregate payments under the LTCH PPS to equal the estimated aggregate payments that would be made if the LTCH PPS was not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations use the best available data at that time and necessarily reflect assumptions. As the LTCH PPS progresses, we are monitoring payment data and will evaluate the ultimate accuracy of the assumptions used in the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS) described in the August 30, 2002, final rule (67 FR 56027–56037). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations were based.

Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provides broad authority to the Secretary in developing the LTCH PPS, including the authority for appropriate adjustments. Under this broad authority, as implemented in the regulations at § 412.523(d)(3), we have provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years.

In the August 30, 2002, final rule (67 FR 56037), we estimated that total Medicare program payments for LTCH services over 5 years would be $1.59 billion for FY 2003; $1.69 billion for FY 2004; $1.79 billion for FY 2005; $1.90 billion for FY 2006; and $2.00 billion for FY 2007. In the March 7, 2003, proposed rule (68 FR 12255), based on the best available data, we estimated that total Medicare program payments for LTCH services for the proposed LTCH PPS rate years of 2004 through 2008 would be:

LTCH PPS rate year	Estimated payments ($ in billion)
2004	$2.17
2005	2.29
2006	2.42
2007	2.56
2008	2.71

At this time, based on the most recent and best available data, these estimates of Medicare program payments for LTCH services for the LTCH PPS rate years of 2004 through 2008 remain unchanged from those estimates presented in the proposed rule. Therefore, in this final rule, we continue to estimate that Medicare program payments for LTCH services for the LTCH PPS rate years of 2004 through 2008 will be approximately $12.2 billion as shown above.

In accordance with the methodology established in the August 30, 2002, final rule (67 FR 56037), these estimates are based on the projection that 49 percent of LTCHs will elect to be paid based on 100 percent of the 2004 LTCH PPS rate year standard Federal rate rather than the transition blend, and an update of our estimate of 2004 LTCH PPS rate year payments to LTCHs using our Office of the Actuary's most recent estimate (based on updated data) of the excluded hospital with capital market basket of 2.5 percent for the 2004 LTCH PPS rate year (adjusted to account for the proposed change in the rate update cycle discussed in section VII.B.1.b. of this preamble), 3.2 percent for the 2005 LTCH PPS rate year, 3.1 percent for the 2006 and 2007 LTCH PPS rate years, and 3.0 percent for the 2008 LTCH PPS rate year. We also took into account our Office of the Actuary's projection that there would be an increase in Medicare beneficiary enrollment of 1.3 percent in the 2004 LTCH PPS rate year, 1.6 percent in the 2005 LTCH PPS rate year, 1.9 percent in the 2006 LTCH PPS rate year, 2.0 percent in the 2007 LTCH PPS rate year, and 2.1 percent in the 2008 LTCH PPS rate year.

Because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, in the March 7, 2003, proposed rule (68 FR 11256), we did not propose an adjustment for budget neutrality under § 412.523(d)(3) at this time. However, we stated that we will continue to collect and interpret new data as the data become available in the future to determine if such an adjustment should be proposed.

Comment: A few commenters expressed concern that the retroactive one-time budget neutrality adjustment at § 412.523(d)(3) would wrongly penalize LTCHs for a CMS calculation error, thereby, weakening the intent and value of the PPS design. The commenters believe that the proposed rule lacks detail about the methodology CMS will use to implement this adjustment and requests that CMS publish the data and methodology used to assess compliance with the budget neutrality mandate under section 123 of Public Law 106–113 established in regulations at § 412.523(d)(3). In addition, one commenter states that if the Congress intended CMS to "reduce" future payments based on a one-time budget neutrality adjustment, the Congress would have specified this

intent more clearly in the statutory or report language.

Response: As we discussed in greater detail in the August 30, 2002, final rule, section 123(a)(1) of Public Law 106–113 requires the Secretary to develop a DRG-based PPS for LTCHs and "shall maintain budget neutrality." As we stated in that same final rule (67 FR 56036), in implementing the LTCH PPS in FY 2003 we intended for estimated aggregate payments under the LTCH PPS to equal the estimated aggregate payments that would have been made if the LTCH PPS had not been implemented. Moreover, section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide broad authority to the Secretary in developing the LTCH PPS, including the authority for appropriate adjustments. Under this broad authority, as implemented in the regulations at § 412.523(d)(3), we have provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years. This adjustment would not be "retroactive" as stated by the commenters; therefore, we do not believe that the one-time budget neutrality adjustment at § 412.523(d)(3) would wrongly penalize LTCHs for any calculation errors. Instead, as noted above, this adjustment is necessary so that any errors in the original budget neutrality calculations would not be perpetuated in the LTCH PPS rates for future years.

Furthermore, as we stated in the August 30, 2002, final rule (67 FR 56036–56037), if a one-time budget neutrality adjustment were proposed in the future under § 412.523(d)(3), the standard Federal rate may either increase or decrease depending on the difference between actual payments and estimated payments under the LTCH PPS.

As we also stated in the August 30, 2002, final rule (67 FR 56036–56037), when estimating payments for the purposes of the budget neutrality calculations in implementing the LTCH PPS for FY 2003, we used the best available data and any assumptions. As we explained in that same final rule, the actual data and the assumptions include inflation factors, intensity of services provided, and behavioral responses to the implementation of the LTCH PPS. To the extent that these data or assumptions significantly differ from actual experience, actual payments under the LTCH PPS may be higher *or* lower than the estimates on which the budget neutrality calculations were based, and a one-time prospective budget neutrality adjustment may be necessary to prevent perpetuating any errors in the budget neutrality calculations in future years. If in the future (but prior to October 1, 2006) after monitoring LTCH PPS payment data we believe that the assumptions used to determine the budget neutrality calculations differ significantly from actual experience, we would first propose an appropriate adjustment and publish the details of our findings in a future **Federal Register** document. At that time, we would also discuss the data and methodology used to determine the proposed one-time budget neutrality offset provided for under § 412.523(d)(3).

As we stated in the March 7, 2003, proposed rule, because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, in the March 7, 2003, proposed rule (68 FR 11256), we did not propose a one-time prospective adjustment for budget neutrality under § 412.523(d)(3) at that time. However, we will continue to collect and interpret new data as the data becomes available in the future to determine if such an adjustment should be proposed. Therefore, at this time we are not making a one-time prospective adjustment for budget neutrality as provided for under § 412.523(d)(3).

VIII. Computing the Adjusted Federal Prospective Payments

In accordance with § 412.525 and as discussed in section VII. of this final rule, the standard Federal rate is adjusted to account for differences in area wages by multiplying the labor-related share of the standard Federal rate by the appropriate LTCH PPS wage index. The standard Federal rate is also adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the standard Federal rate by the appropriate adjustment factor shown in Table V in section VII.C.2. of this preamble. In the March 7, 2003, proposed rule (68 FR 11248), we proposed a standard Federal rate of $35,726.64 for the proposed 2004 LTCH PPS rate year. In this final rule, based on the best available data and the finalized policies present in this final rule, we are establishing a standard Federal rate of $35,892.41 for the 2004 LTCH PPS rate year. We illustrate the methodology used to adjust the Federal prospective payments in the following example:

During the 2004 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago, Illinois (MSA 1600) with a two-fifths wage index value of 1.0418 (see Table 1 in the Addendum to this final rule). The Medicare patient is classified into LTC–DRG 4 (Spinal Procedures), which has a relative weight of 1.2493 (see Table 3 of the Addendum to this final rule). To calculate the LTCH's total adjusted Federal prospective payment for this Medicare patient, we compute the wage-adjusted Federal prospective payment amount by multiplying the unadjusted standard Federal rate ($35,892.41) by the labor-related share (72.885 percent) and the wage index (1.0418). This wage-adjusted amount is then added to the nonlabor-related portion of the unadjusted standard Federal rate (27.115 percent) to determine the adjusted Federal rate, which is then multiplied by the LTC–DRG relative weight (1.2493) to calculate the total adjusted Federal prospective payment for the 2004 LTCH PPS rate year ($45,992.49). In addition, as discussed in section VII.C.6. of this preamble, for the 2004 LTCH PPS rate year, we are reducing the LTCH PPS payment by 6.0 percent for the budget neutrality offset to account for the costs of the transition methodology. The following illustrates the components of the calculations in this example:

Unadjusted Standard Federal Prospective Payment Rate		$35,726.18
Labor-Related Share		0.72885
Labor-Related Portion of the Federal Rate	=	$26,039.03
⅔th Wage Index (MSA 1600)		1.0418
Wage-Adjusted Labor Share	=	$27,127.46
Nonlabor-Related Portion of the Federal Rate (adjusted for COLA if applicable)	+	$9,687.15
Adjusted Federal Rate	=	$36,814.61
LTC–DRG 4 Relative Weight	×	1.2493
Total Adjusted Federal Prospective Payment (Before the Budget Neutrality Offset)	=	$45,992.49
Budget Neutrality Offset	×	0.940
Total Federal Prospective Payment (With the Budget Neutrality Offset)	=	$43,232.94

IX. Transition Period

To provide a stable fiscal base for LTCHs, under § 412.533, we implemented a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system, payment is not based on the experience of an individual hospital. As discussed in the August 30, 2002, final rule (67 FR 56038), we believe that a 5-year phase-in will provide LTCHs time to adjust their operations and capital financing to the new LTCH PPS, which is based on prospectively determined Federal payment rates. Furthermore, we believe that the 5-year phase-in of the LTCH PPS allows LTCH personnel to develop proficiency with the LTC–DRG coding system, resulting in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates.

In accordance with § 412.533, the transition period for all hospitals subject to the LTCH PPS begins with the hospital's first cost reporting period beginning on or after October 1, 2002, and extends through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, a LTCH's total payment under the LTCH PPS is based on two payment percentages—one based on reasonable cost-based (TEFRA) payments and the other based on the standard Federal prospective payment rate. The percentage of payment based on the LTCH PPS Federal rate increases by 20 percentage points each year, while the reasonable cost-based payment rate percentage decreases by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs will be determined entirely under the Federal PPS methodology. The blend percentages as set forth in § 412.533(a) are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Reasonable cost principles rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

For a cost reporting period that began on or after October 1, 2002, and before October 1, 2003 (FY 2003), the total payment for a LTCH is 80 percent of the amount calculated under reasonable cost principles for that specific LTCH and 20 percent of the Federal prospective payment amount. For cost reporting periods beginning on or after October 1, 2003, and before October 1, 2004 (Federal FY 2004), the total payment for a LTCH will be 60 percent of the amount calculated under reasonable cost principles for that specific LTCH and 40 percent of the Federal prospective payment amount. As we noted in the March 7, 2003, proposed rule (68 FR 11257), the change in the effective date of the annual LTCH PPS rate update discussed in section IV. of this preamble has no effect on the LTCH PPS transition period as set forth in § 412.533(a). That is, LTCHs paid under the transition blend under § 412.533(a), will receive those blend percentages for the entire 5-year transition period (unless they elect payments based on 100 percent of the Federal rate). Furthermore, LTCHs paid under the transition blend will receive the appropriate blend percentages of the Federal and reasonable cost-based rate for their entire cost reporting period as prescribed in § 412.533(a)(1) through (a)(5). For example, a LTCH with a cost reporting period beginning on July 1, 2003 (which is the LTCH's first cost reporting period since the implementation of the LTCH PPS), will receive payments based on 80 percent of the reasonable cost-based rate and 20 percent of the Federal rate for its discharges occurring on or after July 1, 2003, through June 30, 2004 (if the LTCH does not elect payment based on 100 percent of the Federal rate).

The reasonable cost-based rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the PPS were not implemented. As we discussed in the August 30, 2002, final rule (67 FR 56040), Medicare fiscal intermediaries will continue to compute the LTCH reasonable cost-based payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act. We note that several reasonable cost-based payment provisions that were previously in effect are no longer effective, starting with cost reporting periods beginning in FY 2003. For instance, the caps on the target amounts for "existing" LTCHs provided for under section 4414 of the BBA (see § 413.40(c)(4)(iii)) for FYs 1998 through 2002 are no longer applicable for cost reporting periods beginning in FY 2003. Thus, a LTCH's target amount for FYs 2003 and beyond will be determined by updating its prior year's target amount (which for FY 2003 was subject to the FY 2002 cap). In addition, the 15-percent reduction to payments to LTCHs for capital-related costs provided for under section 4412 of Public Law 105–33 (§ 413.40(j)) is only applicable for portions of cost reporting periods occurring in FYs 1998 through FY 2002. This reduction is no longer applicable for cost reporting periods beginning in FY 2003. Therefore, the TEFRA portion of a LTCH's payment for capital-related costs during the LTCH PPS transition period is based on 100 percent of its Medicare allowable capital costs.

As we discussed in the August 30, 2002, final rule (67 FR 56038), in implementing the PPS for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, under § 412.533(c), we allow a LTCH, which is subject to a blended rate, to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from reasonable cost-based payments to prospective payments. Once a LTCH elects to be paid based on 100 percent of the Federal rate, it will not be able to revert to the transition blend. For cost reporting periods beginning on or after December 1, 2002, and for the remainder of the 5-year transition period, a LTCH must notify its fiscal intermediary in writing of its election on or before the 30th day prior to the start of the LTCH's next cost reporting period. For example, a LTCH with a cost report period that begins on May 1, 2004, must notify its fiscal intermediary in writing of an election before April 1, 2004.

Under § 412.533(c)(2)(i), the notification by the LTCH to make the election must be made in writing to the Medicare fiscal intermediary. Under § 412.533(c)(2)(ii) and (iii), the intermediary must receive the request on or before the specified date (that is, on or before the 30th day before the applicable cost reporting period begins for cost reporting periods beginning on or after December 1, 2002, through September 30, 2006), regardless of any postmarks or anticipated delivery dates.

Notifications received, postmarked, or delivered by other means after the specified date will not be accepted. If the specified date falls on a day that the postal service or other delivery sources are not open for business, the LTCH will be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's notification is not received timely, payment will be based on the transition period blend percentages.

X. Payments to New LTCHs

Under § 412.23(e)(4), for purposes of Medicare payment under the LTCH PPS, we define a new LTCH as a provider of inpatient hospital services that otherwise meets the qualifying criteria for LTCHs, set forth in § 412.23(e)(1)

and (e)(2) and, under present or previous ownership (or both), and its first cost reporting period as a LTCH begins on or after October 1, 2002. We also specify in § 412.500 that the LTCH PPS is applicable to hospitals with a cost reporting period beginning on or after October 1, 2002.

As we discussed in the August 30, 2002, final rule (67 FR 56040), this definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, added by section 4416 of Public Law 105–33. As stated in § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the payment amount for a "new" (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (*see* 62 FR 46019, August 29, 1997). Under the LTCH PPS, those "new" LTCHs that meet the definition of "new" under § 413.40(f)(2)(ii) and that have their first cost reporting period as a LTCH beginning prior to October 1, 2002, will be paid under the transition methodology described in § 412.533.

As noted above and in accordance with § 412.533(d), new LTCHs will not participate in the 5-year transition from reasonable cost-based reimbursement to prospective payment. The transition period is intended to provide existing LTCHs time to adjust to payment under the new system. Since these new LTCHs with cost reporting periods beginning on or after October 1, 2002, would not have received payment under reasonable cost-based reimbursement for the delivery of LTCH services prior to the effective date of the LTCH PPS, we do not believe that those new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as will LTCHs that have been paid under reasonable cost-based.

For example, a "new" LTCH (post-FY 1998) that first began receiving payment as a LTCH on October 1, 2001, will be subject to the 110 percent of the median target amount payment limit for LTCHs (in accordance with § 413.40(f)(2)(ii)) for both its FY 2002 (October 1, 2001, through September 30, 2002) and FY 2003 (October 1, 2002, through September 30, 2003) cost reporting periods. Assuming the hospital has not elected to be paid 100 percent of the Federal rate for its cost reporting period beginning on October 1, 2002 (the first cost reporting period when the LTCH will be subject to the PPS), the hospital will be paid under the transition methodology whereby the LTCH's reasonable cost-based portion of its payment for operating costs (80 percent) is limited by the 110 percent of the median target amount payment limit for LTCHs under § 413.40(f)(2)(ii). For its cost reporting period beginning on October 1, 2003 (which is the hospital's third cost reporting period), under the transition methodology, that LTCH's reasonable cost-based portion of its payment for operating costs (60 percent) will be limited to its target amount as determined under § 413.40(c)(4)(v). Furthermore, if a hospital is designated as a LTCH on September 1, 2002, it will not be considered a new LTCH under § 412.23(e)(4), even if it had not discharged any patients or received any payments as of the implementation date of the LTCH PPS on October 1, 2002, because its first cost reporting period did not begin on or after October 1, 2002. Thus, it will be paid according to § 413.40(f)(2)(ii) from September 1, 2002, through August 30, 2003. This LTCH will not be subject to payments under the LTCH PPS until the start of its next cost reporting period on September 1, 2003. At the beginning of its second cost reporting period as a LTCH (that is, September 1, 2003), this LTCH will be subject to the transition period methodology in § 412.533(a)(1), because this provision applies to cost reporting periods beginning on or after October 1, 2002, and before October 1, 2003. Under the blended payments of the transition period in § 412.533(a)(1), 80 percent of payments for operating costs would be paid under the reasonable cost principles, as described in § 413.40(f)(2)(ii). (This hospital could also elect to be paid 100 percent of the Federal rate for its cost reporting period beginning September 1, 2003.)

XI. Method of Payment

Under § 412.513, a Medicare LTCH patient is classified into a LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG is used to determine the Federal prospective payment that the LTCH will receive for the Medicare-covered part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill. The discharge bill also provides data to allow for reclassifying the stay from payment at the full LTC–DRG rate to payment for a case as a short-stay outlier (under § 412.529) or as an interrupted stay (under § 412.531), or to determine if the case will qualify for a high-cost outlier payment (under § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, length of stay or interrupted stay status) are recorded by the LTCH on the Medicare patient's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a QIO, which are costs paid outside the LTCH PPS.

As under the previous reasonable cost-based payment system, under § 412.541(b) a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h) and may be eligible to receive accelerated payments as described in § 413.64(g).

For those LTCHs that are paid during the 5-year transition based on the blended transition methodology in § 412.533(a) for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, the PIP amount is based on the transition blend. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount is based on the estimated prospective payment for the year rather than on the estimated reasonable cost-based reimbursement. We exclude high-cost outlier payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, part A costs that are not paid for under the LTCH PPS, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a QIO, are subject to the interim payment provisions (§ 412.541(c)).

Under § 412.541(d), LTCHs with unusually long lengths of stay and that are not receiving payment under the PIP method may bill on an interim basis (60 days after an admission and at intervals of at least 60 days after the date of the first interim bill) and should include any high-cost outlier payment determined as of the last day for which the services have been billed.

XII. Monitoring

In the August 30, 2002, final rule (67 FR 56014), we discussed our intent to develop a monitoring system that will assist us in evaluating the LTCH PPS. Specifically, we discussed the monitoring of the various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based prospective payment system. We also stated our intent to collect and interpret data on changes in average lengths of stay under the LTCH PPS for specific LTC–DRGs and the impact of these changes on the Medicare program. We stated that if our data indicate that changes might be warranted, we may revisit these issues and consider proposing revisions to these policies in the future. To this end, we have designed systems features utilizing MedPAR data that will enable CMS and the fiscal intermediary to track beneficiary movement to and from a LTCH and to and from another Medicare provider. The Medicare Payment Advisory Commission (MedPac) has endorsed this monitoring activity and is pursuing an independent research initiative that will evaluate all aspects of LTCHs, including the accuracy of data reporting, provision of equivalent services by other providers, growth in the number of LTCHs, and clinical outcomes.

Also, in the August 30, 2002, final rule (67 FR 56014), we explained that, given that the only unique requirement that distinguishes a LTCH from other inpatient acute care hospitals is an average length of stay of greater than 25 days, we continue to be concerned about the extent to which LTCH services and patients differ from those services and patients treated in other Medicare covered settings (for example, SNFs and IRFs) and how the LTCH PPS will affect the access, quality, and costs across the health care continuum. Thus, we will monitor trends in the supply and utilization of LTCHs and Medicare's costs in LTCHs relative to other Medicare providers. For example, we may conduct medical record reviews of Medicare patients to monitor changes in service use (for example, ventilator use) over a LTCH episode of care and to assess patterns in the average length of stay at the facility level. We will consider future changes to LTCH coverage and payment policy based upon the results of such analyses.

XIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XIV. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We have determined that this final rule will not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of $100 million in any one year. As we discuss in further detail below, and in section VII.B.1.b. of this preamble, the change to the LTCH PPS rate update cycle will be budget neutral. Therefore, we estimate that there will be no budgetary impact for the Medicare program as a result of the change to the LTCH PPS rate update cycle. Based on the best available data for 194 LTCHs, we estimate that the 2.2 percent increase in the standard Federal rate for the 2004 LTCH PPS rate year will result in an increase in payments of $32.4 million and there are no significant redistributive effects among any groups of hospitals. (Section VII.C.6. of this preamble includes an estimate of Medicare program payments for LTCH services.)

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $26 million or less in any 1 year. For purposes of the RFA, all hospitals are considered small entities according to the Small Business Administration's latest size standards with total revenues of $26 million or less in any 1 year (for further information, *see* 65 FR 69432, November 17, 2000). Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity. We certify that this final rule will not have a significant impact on a substantial number of small entities, in accordance with RFA.

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For a final rule, this analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this final rule will not have a substantial impact on the seven rural hospitals for which data were available that have fewer than 100 beds and that are located in rural areas.

4. Unfunded Mandates

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This final rule will not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of $110 million or more in any one year.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule under the criteria set forth in Executive Order 13132 and have determined that, based on the 9 State and local LTCHs in our database, this final rule will not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law.

B. Anticipated Effects

We discuss the impact of this final rule below in terms of its fiscal impact on the Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) requires us to set the payment rates contained in this final rule such that total payments under the LTCH PPS are projected to equal the amount that would have been paid if this PPS had not been implemented. However, as discussed in greater detail in the August 30, 2002, final rule (67 FR 56033–56036), the FY 2003 standard Federal rate ($34,956.15) was calculated as though all LTCHs will be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section VII.C.6 of this final rule, we are applying a budget neutrality offset to payments to account for the monetary effect of the 5-year transition period and the policy to permit LTCHs to elect to be paid based on 100 percent of the standard Federal rate rather than a blend of Federal prospective payments and reasonable cost-based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated reasonable cost-based payments that would have been made if the LTCH PPS had not been implemented, to the projected total Medicare program payments that will be made under the transition methodology and the option to elect payment based on 100 percent of the Federal prospective payment rate.

Our Office of the Actuary computed an update factor to update LTCH PPS payments from the current rate period (Federal FY 2003) to the new 2004 LTCH PPS rate year (July 1, 2003, through June 30, 2004). The 2004 LTCH PPS rate year overlaps the current rate period by 3 months (July 1, 2003, through September 30, 2003). The market basket increase for Federal FY 2003 is currently estimated at 3.7 percent and the most recent estimate of the LTCH PPS market basket increase for the 2004 LTCH PPS rate year is estimated at 2.5 percent (as discussed in section VII.B.1.b of this preamble). Therefore, over the period from FY 2002 through the 2004 LTCH PPS rate year (June 30, 2004), the cumulative increase would be 6.0 percent (1.037 * 1.025 = 1.063). This cumulative increase matches (within rounding) the cumulative increase calculated by using the index level in the new effective period and the index level in FY 2002, such that having two separate updates result in the same cumulative update as if we had used a single update for the entire 21-month period (October 1, 2002, through June 30, 2004). Thus, the change to the 2004 LTCH PPS rate update cycle will not result in a higher or lower update than would have been the case (except due to rounding) if no change had been made to the LTCH PPS update cycle. In addition, as discussed in section VII.B.1.b. of the preamble of this final rule, we apply a budget neutrality adjustment of 0.997 in determining the standard Federal rate to account for the estimated $5.68 million budgetary impact for the Medicare program in FY 2003 as a result of the change to the 2004 LTCH PPS rate year cycle.

2. Impact on Providers

The basic methodology for determining a LTCH PPS payment is set forth in the regulations at § 412.515 through § 412.525. In addition to the basic LTC–DRG payment (standard Federal rate × LTC–DRG relative weight), we make adjustments for differences in area wage levels, cost-of-living adjustment for Alaska and Hawaii, and short-stay outliers. In addition, LTCHs may also receive high-cost outlier payments for those cases that qualify under the threshold established each rate year. Section 412.533 provides for a 5-year transition to fully prospective payments from payment based on reasonable cost-based principles. During the 5-year transition period, payments to LTCHs are based on an increasing percentage of the LTCH PPS Federal rate and a decreasing percentage of payment based on reasonable cost-based principles. Section 412.533(c) provides for a one-time opportunity for LTCHs to elect payments based on 100 percent of the LTCH PPS Federal rate.

In order to understand the impact of the changes to the LTCH PPS discussed in this final rule on different categories of LTCHs for the 2004 LTCH PPS rate year, it is necessary to estimate payments per discharge under the current (Federal FY 2003) LTCH PPS rates and factors (*see* the August 30, 2002, final rule) and payments per discharge that will be made under the LTCH PPS rates and factors for the 2004 LTCH PPS rate year (July 1, 2003, through June 30, 2004). We also evaluated the percent change in payments per discharge of estimated FY 2003 prospective payments to estimated 2004 LTCH PPS rate year payments for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and FYs 1998 through 2000 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the "unknown" category. Hospital groups include:

—Location: Large Urban/Other Urban/ Rural
—Participation Date
—Ownership Control
—Census Region
—Bed Size

To estimate the impacts among the various categories of providers during the transition period, it is imperative that reasonable cost-based principle payments and prospective payments contain similar inputs. More specifically, in the impact analysis showing the impact reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based principle payments and the option to elect payment based on 100 percent of the Federal rate (Table VII below), we estimated payments only for those providers for whom we are able to calculate payments based on reasonable cost-based principles. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount to estimate payment under the current reasonable cost-based principles.

Using LTCH cases from the FY 2001 MedPAR file and cost data from FYs 1996 through 2000 in HCRIS to estimate payments under the current reasonable cost-based principles, we have both case-mix and cost data for 194 LTCHs. Thus, for the impact analyses reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based principle payments and the option to elect payment based on 100 percent of the Federal rate (*see* Table VI below), we used data from 194 LTCHs. While currently there are approximately 280 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges from the MedPAR data for the 194 LTCHs in our database provide sufficient representation in the LTC–DRGs containing discharges for patients that received respiratory and ventilator-dependent care. However, using cases from the FY 2001 MedPAR file, we had case-mix data for 250 LTCHs. Cost data to determine current payments under reasonable cost-based principle payments are not needed to simulate payments based on 100 percent of the Federal rate. Therefore, for the impact analyses reflecting fully phased-in prospective payments (*see* Table VII below), we used data from 250 LTCHs.

These impacts reflect the estimated "losses" or "gains" among the various classifications of providers for the 12-month period from October 1, 2002, through September 30, 2003 (Federal FY 2003), compared to the 12-month period from July 1, 2003, through June 30, 2004 (2004 LTCH PPS rate year). Prospective payments for the 2004 LTCH rate year were based on the standard Federal rate of $35,726.18 and the hospital's estimated case-mix based on FY 2001 claims data. Prospective payments for Federal FY 2003 were based on the standard Federal rate of $34,956.15 and the same FY 2001 claims data.

3. Calculation of Prospective Payments

To estimate payments under the LTCH PPS, we simulated payments on a case-by-case basis by applying the payment policy for short-stay outliers (as described in section VII.C.4.b of this final rule) and the adjustments for area wage differences (as described in section VII.C.1 of this final rule) and for the cost-of-living for Alaska and Hawaii (as described in section VII.C.2 of this final rule). Additional payments would also be made for high-cost outlier cases (as described in section VII.C.3 of this final rule). As noted in section VII.C.5 of this final rule, we are not making adjustments for rural location, geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients.

We adjusted for area wage differences for estimated FY 2003 payments by using the applicable LTCH PPS wage index (one-fifth of the full FY 2002 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and 1886(d)(10) of the Act (*see* August 30, 2002, 67 FR 56057–56075). For the estimated 2004 LTCH PPS rate year payments, we used a weighted average of a LTCH's applicable wage index during the period from July 1, 2003, through June 30, 2004, since some providers may experience a change in the wage index phase-in percentage during the period from July 1, 2003, through June 30, 2004. For cost reporting periods beginning on or after October 1, 2002, and before September 30, 2003, the labor portion of the Federal rate is adjusted by one-fifth of the applicable LTCH PPS wage index. For cost reporting periods beginning on or after October 1, 2003, and before September 30, 2004, the labor portion of the Federal rate is adjusted by two-fifths of the applicable LTCH PPS wage index. The applicable LTCH PPS wage index values are computed using the same data to compute the acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and 1886(d)(10) of the Act (as discussed in section VII.C.1. of this final rule). Therefore, a provider with a cost reporting period beginning October 1, 2003, will have 3 months of payments under the one-fifth wage index value and 9 months of payment under the two-fifths wage index value. For this provider, we computed a blended wage index of 25 percent (3 months/12 months) of the one-fifth wage index value and 75 percent (9 months/12 months) of the two-fifths wage index value.

We also calculated payments using the applicable transition blend percentages. For FY 2003, the applicable transition blend percentage is 80 percent of payment based on reasonable cost-based principles and 20 percent of payment under the LTCH PPS. For the 2004 LTCH PPS rate year based on the transition blend percentages set forth in § 412.533(a), some providers may experience a change in the transition blend percentage during the period from July 1, 2003, through June 30, 2004. For example during the 12-month period from July 1, 2003, through June 30, 2004, a provider with a cost reporting period beginning on October 1, 2002 (which is paid under the 80/20 transition blend (80 percent of payments based on reasonable cost-based principles and 20 percent of payments under the LTCH PPS), beginning October 1, 2002) will have 3 months (July 1, 2003, through September 30, 2003) under the 80/20 blend and 9 months (October 1, 2003, through June 30, 2004) of payment under the 60/40-transition blend (60 percent of payments based on reasonable cost-based principles and 40 percent of payments under the LTCH PPS). (The 60 percent/ 40 percent blend would continue until the provider's cost report period beginning on October 1, 2004.) In estimating blended transition payments, we estimated payments based on reasonable cost-based principles in accordance with the methodology in section 1886(b) of the Act. We compared the estimated blended transition payment to the LTCH's estimated payment if it would elect payment based on 100 percent of the Federal rate. If we estimated that a LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the transition methodology and to receive immediate prospective payments.

Then we applied the 6.6 percent reduction to payment to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments established in the August 30, 2002, final rule (67 FR 56034) to each LTCH's estimated payments under the LTCH PPS for FY 2003. Similarly, we applied the 6.0 percent reduction to payment to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments (see section VII.C.6 of this final rule) to each LTCH's estimated payments under the LTCH PPS for the 2004 LTCH PPS rate year. The impact based on our projection of whether a LTCH will be paid based on the transition blend methodology or will elect payment based on 100 percent of the Federal rate is shown below in Table VI.

In Table VII below, we also show the impact if the LTCH PPS were fully implemented; that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH PPS for Federal FY 2003 and the 2004 LTCH PPS rate year. Accordingly, the 6.0 percent reduction to account for the 5-year transition methodology on LTCHs' Medicare program payments for the 2004 LTCH PPS rate year and the 6.6 percent reduction to account for the 5-year transition methodology on LTCHs' Medicare program payments established for FY 2003 were not applied to LTCHs' estimated payments under the PPS.

Tables VI and VII below illustrate the aggregate impact of the payment system among various classifications of LTCHs.

- The first column, LTCH Classification, identifies the type of LTCH.
- The second column lists the number of LTCHs of each classification type.
- The third column identifies the number of long-term care cases.
- The fourth column shows the estimated payment per discharge for FY 2003.
- The fifth column shows the estimated payment per discharge for the 2004 LTCH PPS rate year.

• The sixth column shows the percent change of FY 2003 compared to the 2004 LTCH PPS rate year.

TABLE VI.—PROJECTED IMPACT REFLECTING APPLICABLE TRANSITION BLEND PERCENTAGES OF PROSPECTIVE PAYMENTS AND REASONABLE COST-BASED (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE [1]

[FY 2003 payments compared to 2004 LTCH prospective payment system rate year]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average federal FY 2003 payment per case [2]	Average 2004 LTCH prospective payment system rate year payment per case [3]	Percent change
All Providers	194	71,861	26,751	27,202	1.7
By Location:					
Rural	7	2,153	20,381	20,807	2.1
Urban	187	69,708	26,947	27,400	1.7
Large	113	47,743	27,232	27,695	1.7
Other	74	21,965	26,329	26,757	1.6
By Participation Date:					
After October 1993	129	42,973	27,983	28,452	1.7
Before October 1983	16	7,846	20,204	20,262	0.3
October 1983–September 1993	48	20,810	26,531	27,063	2.0
Unknown	1	232	39,515	42,895	8.6
By Ownership Control:					
Voluntary	48	17,741	24,561	25,032	1.9
Proprietary	136	51,655	27,562	27,980	1.5
Government	10	2,465	25,513	26,531	4.0
By Census Region:					
New England	14	9,499	20,371	20,286	-0.4
Middle Atlantic	9	3,282	28,390	28,069	-1.1
South Atlantic	20	6,573	30,805	31,580	2.5
East North Central	33	9,061	28,862	29,454	2.1
East South Central	10	2,863	26,516	26,163	-1.3
West North Central	11	2,906	26,278	26,940	2.5
West South Central	71	30,262	25,842	26,464	2.4
Mountain	15	2,495	28,049	28,611	2.0
Pacific	11	4,920	34,011	34,566	1.6
By Bed Size:					
Beds: 0–24	17	2,456	28,815	29,591	2.7
Beds: 25–49	88	21,734	28,129	28,507	1.3
Beds: 50–74	24	8,214	28,780	28,592	-0.7
Beds: 75–124	34	16,310	26,821	27,673	3.2
Beds: 125–199	21	13,838	24,430	24,558	0.5
Beds: 200+	9	9,228	24,671	25,559	3.6
Unknown	1	81	7,668	7,937	3.5

[1] These calculations take into account that some providers may experience a change in the blend percentage changes during the July 1, 2003, through June 30, 2004, rate year. For example, during the 12-month period of July 1, 2003, through June 30, 2004, a provider with a cost reporting period beginning October 1 would have 3 months (July 1, 2003, through September 30, 2003) of payments under the 80/20 blend and 9 months (October 1, 2003, through June 30, 2004) of payment under the 60/40 blend.
[2] Average payment per case for the 12-month period of October 1, 2002, through September 30, 2003.
[3] Average payment per case for the 12-month period of July 1, 2003, through June 30, 2004.

TABLE VII.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROSPECTIVE PAYMENTS

[FY 2003 payments compared to 2004 LTCH prospective payment system rate year payments]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average Federal FY 2003 payment per case [1]	Average 2004 LTCH prospective payment system rate year payment per case [2]	Percent change
All Providers	250	82,625	26,357	26,951	2.2
By Location:					
Rural	16	4,674	20,851	21,013	0.8
Urban	234	77,951	26,687	27,307	2.3
Large	135	52,256	27,027	27,651	2.3
Other	99	25,695	25,996	26,607	2.3
By Participation Date:					
After October 1993	182	53,246	27,178	27,740	2.1

TABLE VII.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROSPECTIVE PAYMENTS—Continued

[FY 2003 payments compared to 2004 LTCH prospective payment system rate year payments]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average Federal FY 2003 payment per case [1]	Average 2004 LTCH prospective payment system rate year payment per case [2]	Percent change
Before October 1983	17	7,897	20,826	20,881	0.3
October 1983—September 1993	49	21,257	26,230	27,138	3.5
Unknown	2	743	25,318	26,537	4.8
By Ownership Control:					
Voluntary	55	19,853	24,314	24,833	2.1
Proprietary	148	54,269	27,490	28,052	2.0
Government	47	8,503	23,893	24,864	4.1
By Census Region:					
New England	16	9,609	21,094	21,009	-0.4
Middle Atlantic	15	4,162	28,982	28,607	-1.3
South Atlantic	23	7,051	30,441	31,289	2.8
East North Central	48	12,145	28,356	29,074	2.5
East South Central	14	3,722	28,561	28,496	-0.2
West North Central	16	3,769	26,347	27,245	3.4
West South Central	87	33,971	24,560	25,384	3.4
Mountain	19	2,993	26,529	27,567	3.9
Pacific	12	5,203	33,836	34,323	1.4
By Bed Size:					
Beds: 0–24	21	3,073	27,130	28,221	4.0
Beds: 25–49	98	24,386	27,954	28,222	1.0
Beds: 50–74	27	9,310	27,556	27,610	0.2
Beds: 75–124	35	16,432	26,222	27,475	4.8
Beds: 125–199	21	13,838	24,945	25,148	0.8
Beds: 200+	11	9,518	25,041	26,054	4.0
Unknown	37	6,068	23,354	24,284	4.0

[1] Average payment per case for the 12-month period of October 1, 2002, through September 30, 2003.
[2] Average payment per case for the 12-month period of July 1, 2003, through June 30, 2004.

4. Results

We have prepared the following summary of the impact (as shown in Table VI) of the LTCH PPS set forth in this proposed rule.

a. Location. The majority of LTCHs are in urban areas. Approximately 3 percent of the LTCHs are identified as being located in a rural area, and approximately 3 percent of all LTCH cases are treated in these rural hospitals. Impact analysis in Table VI shows that the percent change in estimated payments per discharge for FY 2003 compared to the 2004 LTCH PPS rate year for rural LTCHs will be 2.1 percent, and will be 1.7 percent for urban LTCHs. Large urban LTCHs are projected to experience a 1.7 percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year, while other urban LTCHs projected to experience a 1.6 percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year. (*See* Table VI.)

b. Participation Date. LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) after October 1993. We did not have sufficient OSCAR data on 1 LTCH, which we labeled as an "Unknown" category. The majority, approximately 60 percent, of the LTCH cases are in hospitals that began participating after October 1993 and are projected to experience a 1.7 percent increase in payments per discharge from FY 2003 compared to the 2004 LTCH PPS rate year. Approximately 11 percent of the cases are in LTCHs that began participating in Medicare before October 1983 and are projected to experience a 0.3 percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year. LTCHs that began participating between October 1983 and September 1993 are projected to experience a 2.0 percent increase in payments per discharge from FY 2003 compared to the 2004 LTCH PPS rate year. (*See* Table VI.)

c. Ownership Control. LTCHs are grouped into three categories based on ownership control type—(1) Voluntary; (2) proprietary; and (3) government.

Approximately 5 percent of LTCHs are government run and we expect that they will "gain" the most from the changes based on our projection that they will experience a 4.0 percent increase in payments per discharge from FY 2003 compared to the 2004 LTCH PPS rate year. Voluntary and proprietary LTCHs are projected to experience a 1.9 percent and 1.5 percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year, respectively. (*See* Table VI.)

d. Census Region. LTCHs located in most regions are expected to experience an increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year. Specifically, of the nine census regions, we expect that LTCHs in the South Atlantic and West North Central regions will experience the largest percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year (2.5 percent). We expect LTCHs in the Pacific region will experience the smallest percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year (1.6 percent). (*See* Table VI.)

e. Bed Size. LTCHs were grouped into six categories based on bed size—0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds. We did not have sufficient OSCAR data on

1 LTCH, which we labeled as an "Unknown" category.

The percent increase in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year are projected to increase for all bed size categories. Most LTCHs were in bed size categories where the percent increase in payments per discharge from FY 2003 compared to the 2004 LTCH PPS rate year is estimated to be greater than 1.0 percent. Other than the LTCH whose bed size is unknown, LTCHs with 200 or more beds have the highest estimated percent change in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year (3.6 percent), while LTCHs with 125–199 beds have the lowest projected increase in the percent change in payments per discharge percent from FY 2003 compared to the 2004 LTCH PPS rate year (0.5 percent). (*See* Table VI.)

5. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years will be as follows:

LTCH PPS rate year	Estimated payments ($ in billions)
2004	$2.17
2005	2.29
2006	2.42
2007	2.56
2008	2.71

These estimates are based on the current estimate of increase in the excluded hospital market with capital basket of 2.5 percent for 2004 LTCH PPS rate year (adjusted to account for the change in the rate update cycle discussed in section VII.B.1.b of the preamble of this final rule), 3.2 percent for the 2005 LTCH PPS rate year, 3.1 percent for the 2006 and 2007 LTCH PPS rate years, and 3.0 percent for the 2008 LTCH PPS rate year. We currently estimate that there will be an increase in Medicare beneficiary enrollment of 1.3 percent in 2004 LTCH PPS rate year, 1.6 percent in 2005 LTCH PPS rate year, 1.9 percent in 2006 LTCH PPS rate year, 2.0 percent in 2007 LTCH PPS rate year, 2.1 percent in 2008 LTCH PPS rate year, and an estimated increase in the total number of LTCHs.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH PPS in FY 2003 to equal the estimated aggregate payments that will be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. As we collect data from LTCHs, we will monitor payments and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (that is, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent the assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based.

Section 123 of BBRA and section 307 of BIPA provide the Secretary with extremely broad authority in developing the LTCH PPS, including the authority for appropriate adjustments. In accordance with this broad authority, we may discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH PPS rates to maintain budget neutrality so that the effect of the difference between actual payments and estimated payments for the first year of LTCH PPS is not perpetuated in the PPS rates for future years. Because the LTCH PPS was only implemented for cost reporting periods beginning on or after October 1, 2002, we do not yet have sufficient data to determine whether such an adjustment is warranted.

6. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals will receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services will enhance the efficiency of the Medicare program.

C. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ In accordance with the discussion in this preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 412, as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 412.22 is amended by revising paragraph (h)(2) introductory text and adding a new paragraph (h)(6) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) *Satellite facilities.* * * *

(2) Except as provided in paragraphs (h)(3) and (h)(6) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the prospective payment systems for any period:

* * * * *

(6) The provisions of paragraph (h)(2)(i) of this section do not apply to any long-term care hospital that is subject to the long-term care hospital prospective payment system under Subpart O of this part, effective for cost reporting periods occurring on or after October 1, 2002, and that elects to be paid based on 100 percent of the Federal prospective payment rate as specified in § 412.533(c), beginning with the first cost reporting period following that election, or when the LTCH is fully transitioned to 100 percent of the Federal prospective rate, or to a new long-term care hospital, as defined in § 412.23(e)(4).

■ 3. Section 412.503 is amended by adding a definition of "long-term care hospital prospective payment system rate year" in alphabetical order to read as follows:

§ 412.503 Definitions.

* * * * *

Long-term care hospital prospective payment system rate year means the 12-month period of July 1 through June 30.

* * * * *

■ 4. Section 412.523 is amended by revising paragraphs (c)(3) and (d)(3) to read as follows:

§ 412.523 Methodology for calculating the Federal prospective payment rates.

* * * * *

(c) * * *

(3) *Computation of the standard Federal rate.* The standard Federal rate is computed as follows:

(i) *For FY 2003.* Based on the updated costs per discharge and estimated payments for FY 2003 determined in paragraph (c)(2) of this section, CMS computes a standard Federal rate for FY 2003 that reflects, as appropriate, the adjustments described in paragraph (d) of this section. The FY 2003 standard Federal rate is effective for discharges occurring in cost reporting periods beginning on or after October 1, 2002 through June 30, 2003.

(ii) *For long-term care hospital prospective payment system rate years beginning July 1, 2003 and after.* The standard Federal rate for long-term care hospital prospective payment system rate years beginning July 1, 2003 and after will be the standard Federal rate for the previous long-term care hospital prospective payment system rate year, updated by the increase factor described in paragraph (a)(2) of this section, and adjusted, as appropriate, as described in paragraph (d) of this section. For the rate year from July 1, 2003 through June 30, 2004, the updated and adjusted standard Federal rate will be offset by a budget neutrality factor to account for updating the FY 2003 standard Federal rate on July 1 rather than October 1.

* * * * *

(d) * * *

(3) *One-time prospective adjustment.* The Secretary will review payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the long-term care hospital prospective payment system is not perpetuated in the prospective payment rates for future years.

* * * * *

■ 5. Section 412.525 is amended by revising paragraph (a) to read as follows:

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.*

(1) CMS provides for an additional payment to a long-term care hospital if its estimated costs for a patient exceed the adjusted LTC–DRG payment plus a fixed-loss amount. For each long-term care hospital rate year, CMS determines a fixed-loss amount that is the maximum loss that a hospital can incur under the prospective payment system for a case with unusually high costs.

(2) The fixed-loss amount is determined for the long-term care hospital rate year using the LTC–DRG relative weights that are in effect on July 1 of the rate year.

(3) The additional payment equals 80 percent of the difference between the estimated cost of the patient care (determined by multiplying the hospital-specific cost-to-charge ratios by the Medicare allowable covered charge) and the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment and the fixed-loss amount.

(4) No retroactive adjustments will be made to outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio of the case.

* * * * *

■ 6. Section 412.529 is amended by:

■ A. Revising paragraph (c)(1) introductory text.

■ B. Redesignating paragraph (c)(4) as paragraph (c)(5) and removing the term "LTCH's" and adding the term "long-term care hospital's" in its place.

■ C. Adding a new paragraph (c)(4).

§ 412.529 Special payment provision for short-stay outliers.

* * * * *

(c) *Method for determining the payment amount.*

(1) Subject to the provisions of paragraph (c)(4) of this section, the adjusted payment amount for a short-stay outlier is the least of the following amounts:

* * * * *

(4) Effective for discharges occurring on or after July 1, 2003, for long-term care hospitals described under § 412.23(e)(2)(ii), the adjusted payment amount for a short-stay outlier is determined under the formula set forth in paragraph (c)(1) of this section with the following substitution of the percentages specified for the LTG-DRG specific per diem amount and the cost of the case under paragraphs (c)(1)(i) and (c)(1)(ii) of this section:

(i) For the 1st year of the transition period, as specified at § 412.533(a)(1), the percentage is 195 percent.

(ii) For the 2nd year of the transition period, as specified at § 412.533(a)(2), the percentage is 193 percent;

(iii) For the 3rd year of the transition period, as specified at § 412.533(a)(3), the percentage is 165 percent;

(iv) For the 4th year of the transition period, as specified at § 412.533(a)(4), the percentage is 136 percent;

(v) For the 5th year of the transition period and after, as specified at § 412.533(a)(5), the percentage is 120 percent.

* * * * *

■ 7. Section 412.535 is revised to read as follows:

§ 412.535 Publication of the Federal prospective payment rates.

CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each annual update in the **Federal Register**.

(a) Information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of each long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(b) Information on the LTC–DRG classification and associated weighting factors is published on or before August 1 prior to the beginning of each Federal fiscal year.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: May 28, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: May 28, 2003.

Tommy G. Thompson,

Secretary.

Addendum

This addendum contains the tables referred to throughout the preamble to this final rule. The tables presented below are as follows:

Table 1.—Long-Term Care Hospital Wage Index for Urban Areas for Discharges Occurring from July 1, 2003, through June 30, 2004.

Table 2.—Long-Term Care Hospital Wage Index for Rural Areas for Discharges Occurring from July 1, 2003, through June 30, 2004.

Table 3.—LTC–DRG Relative Weights, Geometric Mean Length of Stay, and Short-Stay Five-Sixths Average Length of Stay for the Period of July 1, 2003, through September 30, 2003.

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/3th Wage Index [2]	2/3th Wage Index [3]
0040	Abilene, TX	0.7792	0.9558	0.9117
	Taylor, TX			
0060	Aguadilla, PR	0.4587	0.8917	0.7835
	Aguada, PR			
	Aguadilla, PR			
	Moca, PR			
0080	Akron, OH	0.9600	0.9920	0.9840
	Portage, OH			
	Summit, OH			
0120	Albany, GA	1.0594	1.0119	1.0238
	Dougherty, GA			
	Lee, GA			
0160	Albany-Schenectady-Troy, NY	0.8384	0.9677	0.9354
	Albany, NY			
	Montgomery, NY			
	Rensselaer, NY			
	Saratoga, NY			
	Schenectady, NY			
	Schoharie, NY			
0200	Albuquerque, NM	0.9315	0.9863	0.9726
	Bernalillo, NM			
	Sandoval, NM			
	Valencia, NM			
0220	Alexandria, LA	0.7859	0.9572	0.9144
	Rapides, LA			
0240	Allentown-Bethlehem-Easton, PA	0.9735	0.9947	0.9894
	Carbon, PA			
	Lehigh, PA			
	Northampton, PA			
0280	Altoona, PA	0.9225	0.9845	0.9690
	Blair, PA			
0320	Amarillo, TX	0.9034	0.9807	0.9614
	Potter, TX			
	Randall, TX			
0380	Anchorage, AK	1.2358	1.0472	1.0943
	Anchorage, AK			
0440	Ann Arbor, MI	1.1103	1.0221	1.0441
	Lenawee, MI			
	Livingston, MI			
	Washtenaw, MI			
0450	Anniston, AL	0.8044	0.9609	0.9218
	Calhoun, AL			
0460	Appleton-Oshkosh-Neenah, WI	0.8997	0.9799	0.9599
	Calumet, WI			
	Outagamie, WI			
	Winnebago, WI			
0470	Arecibo, PR	0.4337	0.8867	0.7735
	Arecibo, PR			
	Camuy, PR			
	Hatillo, PR			
0480	Asheville, NC	0.9876	0.9975	0.9950
	Buncombe, NC			
	Madison, NC			
0500	Athens, GA	1.0211	1.0042	1.0084
	Clarke, GA			
	Madison, GA			
	Oconee, GA			
0520	Atlanta, GA	0.9991	0.9998	0.9996
	Barrow, GA			
	Bartow, GA			
	Carroll, GA			
	Cherokee, GA			
	Clayton, GA			
	Cobb, GA			
	Coweta, GA			
	DeKalb, GA			
	Douglas, GA			
	Fayette, GA			
	Forsyth, GA			
	Fulton, GA			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/3th Wage Index [2]	2/3th Wage Index [3]
	Gwinnett, GA			
	Henry, GA			
	Newton, GA			
	Paulding, GA			
	Pickens, GA			
	Rockdale, GA			
	Spalding, GA			
	Walton, GA			
0560	Atlantic-Cape May, NJ	1.1017	1.0203	1.0407
	Atlantic, NJ			
	Cape May, NJ			
0580	Auburn-Opelika, AL	0.8325	0.9665	0.9330
	Lee, AL			
0600	Augusta-Aiken, GA-SC	1.0264	1.0053	1.0106
	Columbia, GA			
	McDuffie, GA			
	Richmond, GA			
	Aiken, SC			
	Edgefield, SC			
0640	Austin-San Marcos, TX	0.9637	0.9927	0.9855
	Bastrop, TX			
	Caldwell, TX			
	Hays, TX			
	Travis, TX			
	Williamson, TX			
0680	Bakersfield, CA	0.9877	0.9975	0.9951
	Kern, CA			
0720	Baltimore, MD	0.9929	0.9986	0.9972
	Anne Arundel, MD			
	Baltimore, MD			
	Baltimore City, MD			
	Carroll, MD			
	Harford, MD			
	Howard, MD			
	Queen Anne's, MD			
0733	Bangor, ME	0.9664	0.9933	0.9866
	Penobscot, ME			
0743	Barnstable-Yarmouth, MA	1.3202	1.0640	1.1281
	Barnstable, MA			
0760	Baton Rouge, LA	0.8294	0.9659	0.9318
	Ascension, LA			
	East Baton Rouge, LA			
	Livingston, LA			
	West Baton Rouge, LA			
0840	Beaumont-Port Arthur, TX	0.8324	0.9665	0.9330
	Hardin, TX			
	Jefferson, TX			
	Orange, TX			
0860	Bellingham, WA	1.2282	1.0456	1.0913
	Whatcom, WA			
0870	Benton Harbor, MI	0.8965	0.9793	0.9586
	Berrien, MI			
0875	Bergen-Passaic, NJ	1.2150	1.0430	1.0860
	Bergen, NJ			
	Passaic, NJ			
0880	Billings, MT	0.9022	0.9804	0.9609
	Yellowstone, MT			
0920	Biloxi-Gulfport-Pascagoula, MS	0.8757	0.9751	0.9503
	Hancock, MS			
	Harrison, MS			
	Jackson, MS			
0960	Binghamton, NY	0.8341	0.9668	0.9336
	Broome, NY			
	Tioga, NY			
1000	Birmingham, AL	0.9222	0.9844	0.9689
	Blount, AL			
	Jefferson, AL			
	St. Clair, AL			
	Shelby, AL			
1010	Bismarck, ND	0.7972	0.9594	0.9189

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Burleigh, ND			
	Morton, ND			
1020	Bloomington, IN	0.8907	0.9781	0.9563
	Monroe, IN			
1040	Bloomington-Normal, IL	0.9109	0.9822	0.9644
	McLean, IL			
1080	Boise City, ID	0.9310	0.9862	0.9724
	Ada, ID			
	Canyon, ID			
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1229	1.0246	1.0492
	Bristol, MA			
	Essex, MA			
	Middlesex, MA			
	Norfolk, MA			
	Plymouth, MA			
	Suffolk, MA			
	Worcester, MA			
	Hillsborough, NH			
	Merrimack, NH			
	Rockingham, NH			
	Strafford, NH			
1125	Boulder-Longmont, CO	0.9689	0.9938	0.9876
	Boulder, CO			
1145	Brazoria, TX	0.8535	0.9707	0.9414
	Brazoria, TX			
1150	Bremerton, WA	1.0944	1.0189	1.0378
	Kitsap, WA			
1240	Brownsville-Harlingen-San Benito, TX	0.8880	0.9776	0.9552
	Cameron, TX			
1260	Bryan-College Station, TX	0.8821	0.9764	0.9528
	Brazos, TX			
1280	Buffalo-Niagara Falls, NY	0.9365	0.9873	0.9746
	Erie, NY			
	Niagara, NY			
1303	Burlington, VT	1.0052	1.0010	1.0021
	Chittenden, VT			
	Franklin, VT			
	Grand Isle, VT			
1310	Caguas, PR	0.4371	0.8874	0.7748
	Caguas, PR			
	Cayey, PR			
	Cidra, PR			
	Gurabo, PR			
	San Lorenzo, PR			
1320	Canton-Massillon, OH	0.8932	0.9786	0.9573
	Carroll, OH			
	Stark, OH			
1350	Casper, WY	0.9690	0.9938	0.9876
	Natrona, WY			
1360	Cedar Rapids, IA	0.9056	0.9811	0.9622
	Linn, IA			
1400	Champaign-Urbana, IL	1.0635	1.0127	1.0254
	Champaign, IL			
1440	Charleston-North Charleston, SC	0.9235	0.9847	0.9694
	Berkeley, SC			
	Charleston, SC			
	Dorchester, SC			
1480	Charleston, WV	0.8898	0.9780	0.9559
	Kanawha, WV			
	Putnam, WV			
1520	Charlotte-Gastonia-Rock Hill, NC-SC	0.9875	0.9975	0.9950
	Cabarrus, NC			
	Gaston, NC			
	Lincoln, NC			
	Mecklenburg, NC			
	Rowan, NC			
	Stanly, NC			
	Union, NC			
	York, SC			
1540	Charlottesville, VA	1.0438	1.0088	1.0175

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Albemarle, VA			
	Charlottesville City, VA			
	Fluvanna, VA			
	Greene, VA			
1560	Chattanooga, TN-GA	0.8976	0.9795	0.9590
	Catoosa, GA			
	Dade, GA			
	Walker, GA			
	Hamilton, TN			
	Marion, TN			
1580	Cheyenne, WY	0.8628	0.9726	0.9451
	Laramie, WY			
1600	Chicago, IL	1.1044	1.0209	1.0418
	Cook, IL			
	DeKalb, IL			
	DuPage, IL			
	Grundy, IL			
	Kane, IL			
	Kendall, IL			
	Lake, IL			
	McHenry, IL			
	Will, IL			
1620	Chico-Paradise, CA	0.9745	0.9949	0.9898
	Butte, CA			
1640	Cincinnati, OH-KY-IN	0.9381	0.9876	0.9752
	Dearborn, IN			
	Ohio, IN			
	Boone, KY			
	Campbell, KY			
	Gallatin, KY			
	Grant, KY			
	Kenton, KY			
	Pendleton, KY			
	Brown, OH			
	Clermont, OH			
	Hamilton, OH			
	Warren, OH			
1660	Clarksville-Hopkinsville, TN-KY	0.8406	0.9681	0.9362
	Christian, KY			
	Montgomery, TN			
1680	Cleveland-Lorain-Elyria, OH	0.9670	0.9934	0.9868
	Ashtabula, OH			
	Cuyahoga, OH			
	Geauga, OH			
	Lake, OH			
	Lorain, OH			
	Medina, OH			
1720	Colorado Springs, CO	0.9916	0.9983	0.9966
	El Paso, CO			
1740	Columbia, MO	0.8496	0.9699	0.9398
	Boone, MO			
1760	Columbia, SC	0.9307	0.9861	0.9723
	Lexington, SC			
	Richland, SC			
1800	Columbus, GA-ALRussell, AL	0.8374	0.9675	0.9350
	Chattahoochee, GA			
	Harris, GA			
	Muscogee, GA			
1840	Columbus, OH	0.9751	0.9950	0.9900
	Delaware, OH			
	Fairfield, OH			
	Franklin, OH			
	Licking, OH			
	Madison, OH			
	Pickaway, OH			
1880	Corpus Christi, TX	0.8729	0.9746	0.9492
	Nueces, TX			
	San Patricio, TX			
1890	Corvallis, OR	1.1453	1.0291	1.0581
	Benton, OR			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
1900	Cumberland, MD-WV (WV Hospital)	0.7847	0.9569	0.9139
	Allegany, MD			
	Mineral, WV			
1920	Dallas, TX	0.9998	1.0000	0.9999
	Collin, TX			
	Dallas, TX			
	Denton, TX			
	Ellis, TX			
	Henderson, TX			
	Hunt, TX			
	Kaufman, TX			
	Rockwall, TX			
1950	Danville, VA	0.8859	0.9772	0.9544
	Danville City, VA			
	Pittsylvania, VA			
1960	Davenport-Moline-Rock Island, IA-IL	0.8835	0.9767	0.9534
	Scott, IA			
	Henry, IL			
	Rock Island, IL			
2000	Dayton-Springfield, OH	0.9282	0.9856	0.9713
	Clark, OH			
	Greene, OH			
	Miami, OH			
	Montgomery, OH			
2020	Daytona Beach, FL	0.9071	0.9814	0.9628
	Flagler, FL			
	Volusia, FL			
2030	Decatur, AL	0.8973	0.9795	0.9589
	Lawrence, AL			
	Morgan, AL			
2040	Decatur, IL	0.8055	0.9611	0.9222
	Macon, IL			
2080	Denver, CO	1.0601	1.0120	1.0240
	Adams, CO			
	Arapahoe, CO			
	Denver, CO			
	Douglas, CO			
	Jefferson, CO			
2120	Des Moines, IA	0.8791	0.9758	0.9516
	Dallas, IA			
	Polk, IA			
	Warren, IA			
2160	Detroit, MI	1.0448	1.0090	1.0179
	Lapeer, MI			
	Macomb, MI			
	Monroe, MI			
	Oakland, MI			
	St. Clair, MI			
	Wayne, MI			
2180	Dothan, AL	0.8137	0.9627	0.9255
	Dale, AL			
	Houston, AL			
2190	Dover, DE	0.9356	0.9871	0.9742
	Kent, DE			
2200	Dubuque, IA	0.8795	0.9759	0.9518
	Dubuque, IA			
2240	Duluth-Superior, MN-WI	1.0368	1.0074	1.0147
	St. Louis, MN			
	Douglas, WI			
2281	Dutchess County, NY	1.0684	1.0137	1.0274
	Dutchess, NY			
2290	Eau Claire, WI	0.8952	0.9790	0.9581
	Chippewa, WI			
	Eau Claire, WI			
2320	El Paso, TX	0.9265	0.9853	0.9706
	El Paso, TX			
2330	Elkhart-Goshen, IN	0.9722	0.9944	0.9889
	Elkhart, IN			
2335	Elmira, NY	0.8416	0.9683	0.9366
	Chemung, NY			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
2340	Enid, OK	0.8376	0.9675	0.9350
	Garfield, OK			
2360	Erie, PA	0.8925	0.9785	0.9570
	Erie, PA			
2400	Eugene-Springfield, OR	1.0944	1.0189	1.0378
	Lane, OR			
2440	Evansville-Henderson, IN-KY (IN Hospitals)	0.8177	0.9635	0.9271
	Posey, IN			
	Vanderburgh, IN			
	Warrick, IN			
	Henderson, KY			
2520	Fargo-Moorhead, ND-MN	0.9684	0.9937	0.9874
	Clay, MN			
	Cass, ND			
2560	Fayetteville, NC	0.8889	0.9778	0.9556
	Cumberland, NC			
2580	Fayetteville-Springdale-Rogers, AR	0.8100	0.9620	0.9240
	Benton, AR			
	Washington, AR			
2620	Flagstaff, AZ-UT	1.0682	1.0136	1.0273
	Coconino, AZ			
	Kane, UT			
2640	Flint, MI	1.1135	1.0227	1.0454
	Genesee, MI			
2650	Florence, AL	0.7792	0.9558	0.9117
	Colbert, AL			
	Lauderdale, AL			
2655	Florence, SC	0.8780	0.9756	0.9512
	Florence, SC			
2670	Fort Collins-Loveland, CO	1.0066	1.0013	1.0026
	Larimer, CO			
2680	Ft. Lauderdale, FL	1.0297	1.0059	1.0119
	Broward, FL			
2700	Fort Myers-Cape Coral, FL	0.9680	0.9936	0.9872
	Lee, FL			
2710	Fort Pierce-Port St. Lucie, FL	0.9823	0.9965	0.9929
	Martin, FL			
	St. Lucie, FL			
2720	Fort Smith, AR-OK	0.7895	0.9579	0.9158
	Crawford, AR			
	Sebastian, AR			
	Sequoyah, OK			
2750	Fort Walton Beach, FL	0.9693	0.9939	0.9877
	Okaloosa, FL			
2760	Fort Wayne, IN	0.9457	0.9891	0.9783
	Adams, IN			
	Allen, IN			
	De Kalb, IN			
	Huntington, IN			
	Wells, IN			
	Whitley, IN			
2800	Forth Worth-Arlington, TX	0.9446	0.9889	0.9778
	Hood, TX			
	Johnson, TX			
	Parker, TX			
	Tarrant, TX			
2840	Fresno, CA	1.0169	1.0034	1.0068
	Fresno, CA			
	Madera, CA			
2880	Gadsden, AL	0.8505	0.9701	0.9402
	Etowah, AL			
2900	Gainesville, FL	0.9871	0.9974	0.9948
	Alachua, FL			
2920	Galveston-Texas City, TX	0.9465	0.9893	0.9786
	Galveston, TX			
2960	Gary, IN	0.9584	0.9917	0.9834
	Lake, IN			
	Porter, IN			
2975	Glens Falls, NY	0.8281	0.9656	0.9312
	Warren, NY			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Washington, NY			
2980	Goldsboro, NC	0.8892	0.9778	0.9557
	Wayne, NC			
2985	Grand Forks, ND-MN	0.8897	0.9779	0.9559
	Polk, MN			
	Grand Forks, ND			
2995	Grand Junction, CO	0.9456	0.9891	0.9782
	Mesa, CO			
3000	Grand Rapids-Muskegon-Holland, MI	0.9525	0.9905	0.9810
	Allegan, MI			
	Kent, MI			
	Muskegon, MI			
	Ottawa, MI			
3040	Great Falls, MT	0.8950	0.9790	0.9580
	Cascade, MT			
3060	Greeley, CO	0.9237	0.9847	0.9695
	Weld, CO			
3080	Green Bay, WI	0.9502	0.9900	0.9801
	Brown, WI			
3120	Greensboro-Winston-Salem-High Point, NC	0.9282	0.9856	0.9713
	Alamance, NC			
	Davidson, NC			
	Davie, NC			
	Forsyth, NCGuilford, NC			
	Randolph, NC			
	Stokes, NC			
	Yadkin, NC			
3150	Greenville, NC	0.9100	0.9820	0.9640
	Pitt, NC			
3160	Greenville-Spartanburg-Anderson, SC	0.9122	0.9824	0.9649
	Anderson, SC			
	Cherokee, SC			
	Greenville, SC			
	Pickens, SC			
	Spartanburg, SC			
3180	Hagerstown, MD	0.9268	0.9854	0.9707
	Washington, MD			
3200	Hamilton-Middletown, OH	0.9418	0.9884	0.9767
	Butler, OH			
3240	Harrisburg-Lebanon-Carlisle, PA	0.9223	0.9845	0.9689
	Cumberland, PA			
	Dauphin, PA			
	Lebanon, PA			
	Perry, PA			
3283	Hartford, CT	1.1549	1.0310	1.0620
	Hartford, CT			
	Litchfield, CT			
	Middlesex, CT			
	Tolland, CT			
3285	Hattiesburg, MS	0.7659	0.9532	0.9064
	Forrest, MS			
	Lamar, MS			
3290	Hickory-Morganton-Lenoir, NC	0.9028	0.9806	0.9611
	Alexander, NC			
	Burke, NC			
	Caldwell, NC			
	Catawba, NC			
3320	Honolulu, HI	1.1457	1.0291	1.0583
	Honolulu, HI			
3350	Houma, LA	0.8317	0.9663	0.9327
	Lafourche, LA			
	Terrebonne, LA			
3360	Houston, TX	0.9892	0.9978	0.9957
	Chambers, TX			
	Fort Bend, TX			
	Harris, TX			
	Liberty, TX			
	Montgomery, TX			
	Waller, TX			
3400	Huntington-Ashland, WV-KY-OH	0.9636	0.9927	0.9854

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Boyd, KY			
	Carter, KY			
	Greenup, KY			
	Lawrence, OH			
	Cabell, WV			
	Wayne, WV			
3440	Huntsville, AL	0.8903	0.9781	0.9561
	Limestone, AL			
	Madison, AL			
3480	Indianapolis, IN	0.9717	0.9943	0.9887
	Boone, IN			
	Hamilton, IN			
	Hancock, IN			
	Hendricks, IN			
	Johnson, IN			
	Madison, IN			
	Marion, IN			
	Morgan, IN			
	Shelby, IN			
3500	Iowa City, IA	0.9587	0.9917	0.9835
	Johnson, IA			
3520	Jackson, MI	0.9532	0.9906	0.9813
	Jackson, MI			
3560	Jackson, MS	0.8607	0.9721	0.9443
	Hinds, MS			
	Madison, MS			
	Rankin, MS			
3580	Jackson, TN	0.9275	0.9855	0.9710
	Madison, TN			
	Chester, TN			
3600	Jacksonville, FL	0.9381	0.9876	0.9752
	Clay, FL			
	Duval, FL			
	Nassau, FL			
	St. Johns, FL			
3605	Jacksonville, NC	0.8239	0.9648	0.9296
	Onslow, NC			
3610	Jamestown, NY	0.7976	0.9595	0.9190
	Chautauqua, NY			
3620	Janesville-Beloit, WI	0.9849	0.9970	0.9940
	Rock, WI			
3640	Jersey City, NJ	1.1190	1.0238	1.0476
	Hudson, NJ			
3660	Johnson City-Kingsport-Bristol, TN-VA	0.8268	0.9654	0.9307
	Carter, TN			
	Hawkins, TN			
	Sullivan, TN			
	Unicoi, TN			
	Washington, TN			
	Bristol City, VA			
	Scott, VA			
	Washington, VA			
3680	Johnstown, PA	0.8329	0.9666	0.9332
	Cambria, PA			
	Somerset, PA			
3700	Jonesboro, AR	0.7749	0.9550	0.9100
	Craighead, AR			
3710	Joplin, MO	0.8613	0.9723	0.9445
	Jasper, MO			
	Newton, MO			
3720	Kalamazoo-Battlecreek, MI	1.0595	1.0119	1.0238
	Calhoun, MI			
	Kalamazoo, MI			
	Van Buren, MI			
3740	Kankakee, IL	1.0790	1.0158	1.0316
	Kankakee, IL			
3760	Kansas City, KS-MO	0.9736	0.9947	0.9894
	Johnson, KS			
	Leavenworth, KS			
	Miami, KS			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/3th Wage Index [2]	2/3th Wage Index [3]
	Wyandotte, KS			
	Cass, MO			
	Clay, MO			
	Clinton, MO			
	Jackson, MO			
	Lafayette, MO			
	Platte, MO			
	Ray, MO			
3800	Kenosha, WI	0.9686	0.9937	0.9874
	Kenosha, WI			
3810	Killeen-Temple, TX	1.0399	1.0080	1.0160
	Bell, TX			
	Coryell, TX			
3840	Knoxville, TN	0.8970	0.9794	0.9588
	Anderson, TN			
	Blount, TN			
	Knox, TN			
	Loudon, TN			
	Sevier, TN			
	Union, TN			
3850	Kokomo, IN	0.8971	0.9794	0.9588
	Howard, IN			
	Tipton, IN			
3870	La Crosse, WI-MN	0.9400	0.9880	0.9760
	Houston, MN			
	La Crosse, WI			
3880	Lafayette, LA	0.8452	0.9690	0.9381
	Acadia, LA			
	Lafayette, LA			
	St. Landry, LA			
	St. Martin, LA			
3920	Lafayette, IN	0.9278	0.9856	0.9711
	Clinton, IN			
	Tippecanoe, IN			
3960	Lake Charles, LA	0.7965	0.9593	0.9186
	Calcasieu, LA			
3980	Lakeland-Winter Haven, FL	0.9357	0.9871	0.9743
	Polk, FL			
4000	Lancaster, PA	0.9078	0.9816	0.9631
	Lancaster, PA			
4040	Lansing-East Lansing, MI	0.9726	0.9945	0.9890
	Clinton, MI			
	Eaton, MI			
	Ingham, MI			
4080	Laredo, TX	0.8472	0.9694	0.9389
	Webb, TX			
4100	Las Cruces, NM	0.8745	0.9749	0.9498
	Dona Ana, NM			
4120	Las Vegas, NV-AZ	1.1521	1.0304	1.0608
	Mohave, AZ			
	Clark, NV			
	Nye, NV			
4150	Lawrence, KS	0.8323	0.9665	0.9329
	Douglas, KS			
4200	Lawton, OK	0.8315	0.9663	0.9326
	Comanche, OK			
4243	Lewiston-Auburn, ME	0.9179	0.9836	0.9672
	Androscoggin, ME			
4280	Lexington, KY	0.8581	0.9716	0.9432
	Bourbon, KY			
	Clark, KY			
	Fayette, KY			
	Jessamine, KY			
	Madison, KY			
	Scott, KY			
	Woodford, KY			
4320	Lima, OH	0.9483	0.9897	0.9793
	Allen, OH			
	Auglaize, OH			
4360	Lincoln, NE	0.9892	0.9978	0.9957

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/3th Wage Index [2]	2/3th Wage Index [3]
	Lancaster, NE			
4400	Little Rock-North Little Rock, AR	0.9097	0.9819	0.9639
	Faulkner, AR			
	Lonoke, AR			
	Pulaski, AR			
	Saline, AR			
4420	Longview-Marshall, TX	0.8629	0.9726	0.9452
	Gregg, TX			
	Harrison, TX			
	Upshur, TX			
4480	Los Angeles-Long Beach, CA	1.2001	1.0400	1.0800
	Los Angeles, CA			
4520	Louisville, KY-IN	0.9276	0.9855	0.9710
	Clark, IN			
	Floyd, IN			
	Harrison, IN			
	Scott, IN			
	Bullitt, KY			
	Jefferson, KY			
	Oldham, KY			
4600	Lubbock, TX	0.9646	0.9929	0.9858
	Lubbock, TX			
4640	Lynchburg, VA	0.9219	0.9844	0.9688
	Amherst, VA			
	Bedford, VA			
	Bedford City, VA			
	Campbell, VA			
	Lynchburg City, VA			
4680	Macon, GA	0.9204	0.9841	0.9682
	Bibb, GA			
	Houston, GA			
	Jones, GA			
	Peach, GA			
	Twiggs, GA			
4720	Madison, WI	1.0467	1.0093	1.0187
	Dane, WI			
4800	Mansfield, OH	0.8900	0.9780	0.9560
	Crawford, OH			
	Richland, OH			
4840	Mayaguez, PR	0.4914	0.8983	0.7966
	Anasco, PR			
	Cabo Rojo, PR			
	Hormigueros, PR			
	Mayaguez, PR			
	Sabana Grande, PR			
	San German, PR			
4880	McAllen-Edinburg-Mission, TX	0.8428	0.9686	0.9371
	Hidalgo, TX			
4890	Medford-Ashland, OR	1.0498	1.0100	1.0199
	Jackson, OR			
4900	Melbourne-Titusville-Palm Bay, FL	1.0253	1.0051	1.0101
	Brevard, FI			
4920	Memphis, TN-AR-MS	0.8920	0.9784	0.9568
	Crittenden, AR			
	DeSoto, MS			
	Fayette, TN			
	Shelby, TN			
	Tipton, TN			
4940	Merced, CA	0.9742	0.9948	0.9897
	Merced, CA			
5000	Miami, FL	0.9802	0.9960	0.9921
	Dade, FL			
5015	Middlesex-Somerset-Hunterdon, NJ	1.1213	1.0243	1.0485
	Hunterdon, NJ			
	Middlesex, NJ			
	Somerset, NJ			
5080	Milwaukee-Waukesha, WI	0.9893	0.9979	0.9957
	Milwaukee, WI			
	Ozaukee, WI			
	Washington, WI			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Waukesha, WI			
5120	Minneapolis-St. Paul, MN-WI	1.0903	1.0181	1.0361
	Anoka, MN			
	Carver, MN			
	Chisago, MN			
	Dakota, MN			
	Hennepin, MN			
	Isanti, MN			
	Ramsey, MN			
	Scott, MN			
	Sherburne, MN			
	Washington, MN			
	Wright, MN			
	Pierce, WI			
	St. Croix, WI			
5140	Missoula, MT	0.9157	0.9831	0.9663
	Missoula, MT			
5160	Mobile, AL	0.8108	0.9622	0.9243
	Baldwin, AL			
	Mobile, AL			
5170	Modesto, CA	1.0498	1.0100	1.0199
	Stanislaus, CA			
5190	Monmouth-Ocean, NJ	1.0674	1.0135	1.0270
	Monmouth, NJ			
	Ocean, NJ			
5200	Monroe, LA	0.8137	0.9627	0.9255
	Ouachita, LA			
5240	Montgomery, AL	0.7734	0.9547	0.9094
	Autauga, AL			
	Elmore, AL			
	Montgomery, AL			
5280	Muncie, IN	0.9284	0.9857	0.9714
	Delaware, IN			
5330	Myrtle Beach, SC	0.8976	0.9795	0.9590
	Horry, SC			
5345	Naples, FL	0.9754	0.9951	0.9902
	Collier, FL			
5360	Nashville, TN	0.9578	0.9916	0.9831
	Cheatham, TN			
	Davidson, TN			
	Dickson, TN			
	Robertson, TN			
	Rutherford TN			
	Sumner, TN			
	Williamson, TN			
	Wilson, TN			
5380	Nassau-Suffolk, NY	1.3357	1.0671	1.1343
	Nassau, NY			
	Suffolk, NY			
5483	New Haven-Bridgeport-Stamford-Waterbury-	1.2408	1.0482	1.0963
	Danbury, CT			
	Fairfield, CT			
	New Haven, CT			
5523	New London-Norwich, CT	1.1767	1.0353	1.0707
	New London, CT			
5560	New Orleans, LA	0.9046	0.9809	0.9618
	Jefferson, LA			
	Orleans, LA			
	Plaquemines, LA			
	St. Bernard, LA			
	St. Charles, LA			
	St. James, LA			
	St. John The Baptist, LA			
	St. Tammany, LA			
5600	New York, NY	1.4414	1.0883	1.1766
	Bronx, NY			
	Kings, NY			
	New York, NY			
	Putnam, NY			
	Queens, NY			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Richmond, NY			
	Rockland, NY			
	Westchester, NY			
5640	Newark, NJ	1.1381	1.0276	1.0552
	Essex, NJ			
	Morris, NJ			
	Sussex, NJ			
	Union, NJ			
	Warren, NJ			
5660	Newburgh, NY-PA	1.1387	1.0277	1.0555
	Orange, NY			
	Pike, PA			
5720	Norfolk-Virginia Beach-Newport News, VA-NC	0.8574	0.9715	0.9430
	Currituck, NC			
	Chesapeake City, VA			
	Gloucester, VA			
	Hampton City, VA			
	Isle of Wight, VA			
	James City, VA			
	Mathews, VA			
	Newport News City, VA			
	Norfolk City, VA			
	Poquoson City, VA			
	Portsmouth City, VA			
	Suffolk City, VA			
	Virginia Beach City VA			
	Williamsburg City, VA			
	York, VA			
5775	Oakland, CA	1.5072	1.1014	1.2029
	Alameda, CA			
	Contra Costa, CA			
5790	Ocala, FL	0.9402	0.9880	0.9761
	Marion, FL			
5800	Odessa-Midland, TX	0.9397	0.9879	0.9759
	Ector, TX			
	Midland, TX			
5880	Oklahoma City, OK	0.8900	0.9780	0.9560
	Canadian, OK			
	Cleveland, OK			
	Logan, OK			
	McClain, OK			
	Oklahoma, OK			
	Pottawatomie, OK			
5910	Olympia, WA	1.0960	1.0192	1.0384
	Thurston, WA			
5920	Omaha, NE-IA	0.9978	0.9996	0.9991
	Pottawattamie, IA			
	Cass, NE			
	Douglas, NE			
	Sarpy, NE			
	Washington, NE			
5945	Orange County, CA	1.1474	1.0295	1.0590
	Orange, CA			
5960	Orlando, FL	0.9640	0.9928	0.9856
	Lake, FL			
	Orange, FL			
	Osceola, FL			
	Seminole, FL			
5990	Owensboro, KY	0.8344	0.9669	0.9338
	Daviess, KY			
6015	Panama City, FL	0.8865	0.9773	0.9546
	Bay, FL			
6020	Parkersburg-Marietta, WV-OH	0.8127	0.9625	0.9251
	Washington, OH			
	Wood, WV			
6080	Pensacola, FL	0.8610	0.9722	0.9444
	Escambia, FL			
	Santa Rosa, FL			
6120	Peoria-Pekin, IL	0.8739	0.9748	0.9496
	Peoria, IL			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Tazewell, IL			
	Woodford, IL			
6160	Philadelphia, PA-NJ	1.0713	1.0143	1.0285
	Burlington, NJ			
	Camden, NJ			
	Gloucester, NJ			
	Salem, NJ			
	Bucks, PA			
	Chester, PA			
	Delaware, PA			
	Montgomery, PA			
	Philadelphia, PA			
6200	Phoenix-Mesa, AZ	0.9820	0.9964	0.9928
	Maricopa, AZ			
	Pinal, AZ			
6240	Pine Bluff, AR	0.7962	0.9592	0.9185
	Jefferson, AR			
6280	Pittsburgh, PA	0.9365	0.9873	0.9746
	Allegheny, PA			
	Beaver, PA			
	Butler, PA			
	Fayette, PA			
	Washington, PA			
	Westmoreland, PA			
6323	Pittsfield, MA	1.0235	1.0047	1.0094
	Berkshire, MA			
6340	Pocatello, ID	0.9372	0.9874	0.9749
	Bannock, ID			
6360	Ponce, PR	0.5169	0.9034	0.8068
	Guayanilla, PR			
	Juana Diaz, PR			
	Penuelas, PR			
	Ponce, PR			
	Villalba, PR			
	Yauco, PR			
6403	Portland, ME	0.9794	0.9959	0.9918
	Cumberland, ME			
	Sagadahoc, ME			
	York, ME			
6440	Portland-Vancouver, OR-WA	1.0667	1.0133	1.0267
	Clackamas, OR			
	Columbia, OR			
	Multnomah, OR			
	Washington, OR			
	Yamhill, OR			
	Clark, WA			
6483	Providence-Warwick-Pawtucket, RI	1.0854	1.0171	1.0342
	Bristol, RI			
	Kent, RI			
	Newport, RI			
	Providence, RI			
	Washington, RI			
6520	Provo-Orem, UT	0.9984	0.9997	0.9994
	Utah, UT			
6560	Pueblo, CO	0.8820	0.9764	0.9528
	Pueblo, CO			
6580	Punta Gorda, FL	0.9218	0.9844	0.9687
	Charlotte, FL			
6600	Racine, WI	0.9334	0.9867	0.9734
	Racine, WI			
6640	Raleigh-Durham-Chapel Hill, NC	0.9990	0.9998	0.9996
	Chatham, NC			
	Durham, NC			
	Franklin, NC			
	Johnston, NC			
	Orange, NC			
	Wake, NC			
6660	Rapid City, SD	0.8846	0.9769	0.9538
	Pennington, SD			
6680	Reading, PA	0.9295	0.9859	0.9718

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Berks, PA			
6690	Redding, CA	1.1135	1.0227	1.0454
	Shasta, CA			
6720	Reno, NV	1.0648	1.0130	1.0259
	Washoe, NV			
6740	Richland-Kennewick-Pasco, WA	1.1491	1.0298	1.0596
	Benton, WA			
	Franklin, WA			
6760	Richmond-Petersburg, VA	0.9477	0.9895	0.9791
	Charles City County, VA			
	Chesterfield, VA			
	Colonial Heights City, VA			
	Dinwiddie, VA			
	Goochland, VA			
	Hanover, VA			
	Henrico, VA			
	Hopewell City, VA			
	New Kent, VA			
	Petersburg City, VA			
	Powhatan, VA			
	Prince George, VA			
	Richmond City, VA			
6780	Riverside-San Bernardino, CA	1.1365	1.0273	1.0546
	Riverside, CA			
	San Bernardino, CA			
6800	Roanoke, VA	0.8614	0.9723	0.9446
	Botetourt, VA			
	Roanoke, VA			
	Roanoke City, VA			
	Salem City, VA			
6820	Rochester, MN	1.2139	1.0428	1.0856
	Olmsted, MN			
6840	Rochester, NY	0.9194	0.9839	0.9678
	Genesee, NY			
	Livingston, NY			
	Monroe, NY			
	Ontario, NY			
	Orleans, NY			
	Wayne, NY			
6880	Rockford, IL	0.9625	0.9925	0.9850
	Boone, IL			
	Ogle, IL			
	Winnebago, IL			
6895	Rocky Mount, NC	0.9228	0.9846	0.9691
	Edgecombe, NC			
	Nash, NC			
6920	Sacramento, CA	1.1500	1.0300	1.0600
	El Dorado, CA			
	Placer, CA			
	Sacramento, CA			
6960	Saginaw-Bay City-Midland, MI	0.9650	0.9930	0.9860
	Bay, MI			
	Midland, MI			
	Saginaw, MI			
6980	St. Cloud, MN	0.9700	0.9940	0.9880
	Benton, MN			
	Stearns, MN			
7000	St. Joseph, MO	0.9544	0.9909	0.9818
	Andrew, MO			
	Buchanan, MO			
7040	St. Louis, MO-IL	0.8855	0.9771	0.9542
	Clinton, IL			
	Jersey, IL			
	Madison, IL			
	Monroe, IL			
	St. Clair, IL			
	Franklin, MO			
	Jefferson, MO			
	Lincoln, MO			
	St. Charles, MO			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	St. Louis, MO			
	St. Louis City, MO			
	Warren, MO			
7080	Salem, OR	1.0500	1.0100	1.0200
	Marion, OR			
	Polk, OR			
7120	Salinas, CA	1.4623	1.0925	1.1849
	Monterey, CA			
7160	Salt Lake City-Ogden, UT	0.9945	0.9989	0.9978
	Davis, UT			
	Salt Lake, UT			
	Weber, UT			
7200	San Angelo, TX	0.8374	0.9675	0.9350
	Tom Green, TX			
7240	San Antonio, TX	0.8753	0.9751	0.9501
	Bexar, TX			
	Comal, TX			
	Guadalupe, TX			
	Wilson, TX			
7320	San Diego, CA	1.1131	1.0226	1.0452
	San Diego, CA			
7360	San Francisco, CA	1.4142	1.0828	1.1657
	Marin, CA			
	San Francisco, CA			
	San Mateo, CA			
7400	San Jose, CA	1.4145	1.0829	1.1658
	Santa Clara, CA			
7440	San Juan-Bayamon, PR	0.4741	0.8948	0.7896
	Aguas Buenas, PR			
	Barceloneta, PR			
	Bayamon, PR			
	Canovanas, PR			
	Carolina, PR			
	Catano, PR			
	Ceiba, PR			
	Comerio, PR			
	Corozal, PR			
	Dorado, PR			
	Fajardo, PR			
	Florida, PR			
	Guaynabo, PR			
	Humacao, PR			
	Juncos, PR			
	Los Piedras, PR			
	Loiza, PR			
	Luguillo, PR			
	Manati, PR			
	Morovis, PR			
	Naguabo, PR			
	Naranjito, PR			
	Rio Grande, PR			
	San Juan, PR			
	Toa Alta, PR			
	Toa Baja, PR			
	Trujillo Alto, PR			
	Vega Alta, PR			
	Vega Baja, PR			
	Yabucoa, PR			
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1271	1.0254	1.0508
	San Luis Obispo, CA			
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.0481	1.0096	1.0192
	Santa Barbara, CA			
7485	Santa Cruz-Watsonville, CA	1.3646	1.0729	1.1458
	Santa Cruz, CA			
7490	Santa Fe, NM	1.0712	1.0142	1.0285
	Los Alamos, NM			
	Santa Fe, NM			
7500	Santa Rosa, CA	1.3046	1.0609	1.1218
	Sonoma, CA			
7510	Sarasota-Bradenton, FL	0.9425	0.9885	0.9770

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
	Manatee, FL			
	Sarasota, FL			
7520	Savannah, GA	0.9376	0.9875	0.9750
	Bryan, GA			
	Chatham, GA			
	Effingham, GA			
7560	Scranton--Wilkes-Barre--Hazleton, PA	0.8599	0.9720	0.9440
	Columbia, PA			
	Lackawanna, PA			
	Luzerne, PA			
	Wyoming, PA			
7600	Seattle-Bellevue-Everett, WA	1.1474	1.0295	1.0590
	Island, WA			
	King, WA			
	Snohomish, WA			
7610	Sharon, PA	0.7869	0.9574	0.9148
	Mercer, PA			
7620	Sheboygan, WI	0.8697	0.9739	0.9479
	Sheboygan, WI			
7640	Sherman-Denison, TX	0.9255	0.9851	0.9702
	Grayson, TX			
7680	Shreveport-Bossier City, LA	0.8987	0.9797	0.9595
	Bossier, LA			
	Caddo, LA			
	Webster, LA			
7720	Sioux City, IA-NE	0.9046	0.9809	0.9618
	Woodbury, IA			
	Dakota, NE			
7760	Sioux Falls, SD	0.9257	0.9851	0.9703
	Lincoln, SD			
	Minnehaha, SD			
7800	South Bend, IN	0.9802	0.9960	0.9921
	St. Joseph, IN			
7840	Spokane, WA	1.0852	1.0170	1.0341
	Spokane, WA			
7880	Springfield, IL	0.8659	0.9732	0.9464
	Menard, IL			
	Sangamon, IL			
7920	Springfield, MO	0.8424	0.9685	0.9370
	Christian, MO			
	Greene, MO			
	Webster, MO			
8003	Springfield, MA	1.0927	1.0185	1.0371
	Hampden, MA			
	Hampshire, MA			
8050	State College, PA	0.8941	0.9788	0.9576
	Centre, PA			
8080	Steubenville-Weirton, OH-WV (WV Hospitals)	0.8804	0.9761	0.9522
	Jefferson, OH			
	Brooke, WV			
	Hancock, WV			
8120	Stockton-Lodi, CA	1.0506	1.0101	1.0202
	San Joaquin, CA			
8140	Sumter, SC	0.8273	0.9655	0.9309
	Sumter, SC			
8160	Syracuse, NY	0.9714	0.9943	0.9886
	Cayuga, NY			
	Madison, NY			
	Onondaga, NY			
	Oswego, NY			
8200	Tacoma, WA	1.0940	1.0188	1.0376
	Pierce, WA			
8240	Tallahassee, FL	0.8504	0.9701	0.9402
	Gadsden, FL			
	Leon, FL			
8280	Tampa-St. Petersburg-Clearwater, FL	0.9065	0.9813	0.9626
	Hernando, FL			
	Hillsborough, FL			
	Pasco, FL			
	Pinellas, FL			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
8320	Terre Haute, IN	0.8599	0.9720	0.9440
	Clay, IN			
	Vermillion, IN			
	Vigo, IN			
8360	Texarkana,AR-Texarkana, TX	0.8088	0.9618	0.9235
	Miller, AR			
	Bowie, TX			
8400	Toledo, OH	0.9810	0.9962	0.9924
	Fulton, OH			
	Lucas, OH			
	Wood, OH			
8440	Topeka, KS	0.9199	0.9840	0.9680
	Shawnee, KS			
8480	Trenton, NJ	1.0432	1.0086	1.0173
	Mercer, NJ			
8520	Tucson, AZ	0.8911	0.9782	0.9564
	Pima, AZ			
8560	Tulsa, OK	0.8332	0.9666	0.9333
	Creek, OK			
	Osage, OK			
	Rogers, OK			
	Tulsa, OK			
	Wagoner, OK			
8600	Tuscaloosa, AL	0.8130	0.9626	0.9252
	Tuscaloosa, AL			
8640	Tyler, TX	0.9521	0.9904	0.9808
	Smith, TX			
8680	Utica-Rome, NY	0.8465	0.9693	0.9386
	Herkimer, NY			
	Oneida, NY			
8720	Vallejo-Fairfield-Napa, CA	1.3354	1.0671	1.1342
	Napa, CA			
	Solano, CA			
8735	Ventura, CA	1.1096	1.0219	1.0438
	Ventura, CA			
8750	Victoria, TX	0.8756	0.9751	0.9502
	Victoria, TX			
8760	Vineland-Millville-Bridgeton, NJ	1.0031	1.0006	1.0012
	Cumberland, NJ			
8780	Visalia-Tulare-Porterville, CA	0.9418	0.9884	0.9767
	Tulare, CA			
	Tulare, CA			
8800	Waco, TX	0.8073	0.9615	0.9229
	McLennan, TX			
8840	Washington, DC-MD-VA-WV	1.0851	1.0170	1.0340
	District of Columbia, DC			
	Calvert, MD			
	Charles, MD			
	Frederick, MD			
	Montgomery, MD			
	Prince Georges, MD			
	Alexandria City, VA			
	Arlington, VA			
	Clarke, VA			
	Culpeper, VA			
	Fairfax, VA			
	Fairfax City, VA			
	Falls Church City, VA			
	Fauquier, VA			
	Fredericksburg City, VA			
	King George, VA			
	Loudoun, VA			
	Manassas City, VA			
	Manassas Park City, VA			
	Prince William, VA			
	Spotsylvania, VA			
	Stafford, VA			
	Warren, VA			
	Berkeley, WV			
	Jefferson, WV			

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban Area (Constituent Counties)	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
8920	Waterloo-Cedar Falls, IA	0.8069	0.9614	0.9228
	Black Hawk, IA			
8940	Wausau, WI	0.9782	0.9956	0.9913
	Marathon, WI			
8960	West Palm Beach-Boca Raton, FL	0.9939	0.9988	0.9976
	Palm Beach, FL			
9000	Wheeling, WV-OH	0.7670	0.9534	0.9068
	Belmont, OH			
	Marshall, WV			
	Ohio, WV			
9040	Wichita, KS	0.9520	0.9904	0.9808
	Butler, KS			
	Harvey, KS			
	Sedgwick, KS			
9080	Wichita Falls, TX	0.8498	0.9700	0.9399
	Archer, TX			
	Wichita, TX			
9140	Williamsport, PA	0.8544	0.9709	0.9418
	Lycoming, PA			
9160	Wilmington-Newark, DE-MD	1.1173	1.0235	1.0469
	New Castle, DE			
	Cecil, MD			
9200	Wilmington, NC	0.9640	0.9928	0.9856
	New Hanover, NC			
	Brunswick, NC			
9260	Yakima, WA	1.0569	1.0114	1.0228
	Yakima, WA			
9270	Yolo, CA	0.9434	0.9887	0.9774
	Yolo, CA			
9280	York, PA	0.9026	0.9805	0.9610
	York, PA			
9320	Youngstown-Warren, OH	0.9358	0.9872	0.9743
	Columbiana, OH			
	Mahoning, OH			
	Trumbull, OH			
9340	Yuba City, CA	1.0276	1.0055	1.0110
	Sutter, CA			
	Yuba, CA			
9360	Yuma, AZ	0.8589	0.9718	0.9436
	Yuma, AZ			

[1] Prereclassification wage index from Federal FY 2003 based on fiscal year 1999 audited acute care hospital inpatient wage data that excludes wages for services provided by teaching physicians, interns and residents, and nonphysician anesthetists under Part B of the Medicare program.

[2] One-fifth of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2002 through September 30, 2003 (Federal FY 2203). For example, for a LTCH's cost reporting period begins during Federal in FY 2003 and located in Chicago, Illinois (MSA 1600), the 1/5th of the wage index value is computed as (1.1044 + 4)/5 = 1.0209. For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this final rule.

[3] Two-fifths of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2003 (Federal FY 2004). For example, for a LTCH's cost reporting period begins during Federal in FY 2004 and located in Chicago, Illinois (MSA 1600), the 2/5th of the wage index value is computed as ((2*1.1044) + 3))/5 = 1.0418. For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this final rule.

TABLE 2.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004

Nonurban Area	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
Alabama	7660	9532	9064
Alaska	2293	0459	0917
Arizona	8493	9699	9397
Arkansas	7666	9533	9066
California	9899	9980	9960
Colorado	9015	9803	9606
Connecticut	2394	0479	0958
Delaware	9128	9826	9651
Florida	8827	9765	9531
Georgia	8230	9646	9292
Hawaii	0255	0051	0102
Idaho	8747	9749	9499
Illinois	8204	9641	9282

TABLE 2.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

Nonurban Area	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
Indiana	8755	9751	9502
Iowa	8315	9663	9326
Kansas	7900	9580	9160
Kentucky	8079	9616	9232
Louisiana	7580	9516	9032
Maine	8874	9775	9550
Maryland	8946	9789	9578
Massachusetts	1288	0258	0515
Michigan	9009	9802	9604
Minnesota	9151	9830	9660
Mississippi	7680	9536	9072
Missouri	7881	9576	9152
Montana	8481	9696	9392
Nebraska	8204	9641	9282
Nevada	9577	9915	9831
New Hampshire	9839	9968	9936
New Jersey [4]			
New Mexico	8872	9774	9549
New York	8542	9708	9417
North Carolina	8669	9734	9468
North Dakota	7788	9558	9115
Ohio	8613	9723	9445
Oklahoma	7590	9518	9036
Oregon	0259	0052	0104
Pennsylvania	8462	9692	9385
Puerto Rico	4356	8871	7742
Rhode Island [4]			
South Carolina	8607	9721	9443
South Dakota	7815	9563	9126
Tennessee	7877	9575	9151
Texas	7821	9564	9128
Utah	9312	9862	9725
Vermont	9345	9869	9738
Virginia	8504	9701	9402
Washington	0179	0036	0072
West Virginia	7975	9595	9190
Wisconsin	9162	9832	9665
Wyoming	9007	9801	9603

[1] Pre-reclassification wage index from Federal FY 2003 based on fiscal year 1999 audited acute care hospital inpatient wage data that exclude wages for services provided by teaching physicians, residents, and nonphysician anesthetists under Part B of the Medicare program.

[2] One-fifth of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2002 through September 30, 2003 (Federal FY 2203). For example, for a LTCH's cost reporting period begins during Federal in FY 2003 and located in rural Illinois, the 1/5th of the wage index value is computed as (0.8204 + 4)/5 = 0.9641. For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this final rule.

[3] Two-fifths of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2003 (Federal FY 2004). For example, for a LTCH's cost reporting period begins during Federal in FY 2004 and located in rural Illinois, the 2/5th of the wage index value is computed as ((2*0.8204) + 3))/5 = 0.9282. For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this final rule.

[4] All counties within the State are classified as urban.

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Average Length of Stay
1	CRANIOTOMY AGE >17 W CC [5]	1.8783	46.3	38.5
2	CRANIOTOMY AGE > 17 W/O CC [5]	1.8783	46.3	38.5
3	CRANIOTOMY AGE 0-17 *	1.8783	46.3	38.5
4	SPINAL PROCEDURES [4]	1.2493	31.3	26.0
5	EXTRACRANIAL VASCULAR PROCEDURES [4]	1.2493	31.3	26.0
6	CARPAL TUNNEL RELEASE *	0.4055	16.8	14.0
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.7829	43.8	36.5
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC [4]	1.2493	31.3	26.0
9	SPINAL DISORDERS & INJURIES	1.4118	34.6	28.8
10	NERVOUS SYSTEM NEOPLASMS W CC [7]	0.8537	24.5	20.4
11	NERVOUS SYSTEM NEOPLASMS W/O CC [7]	0.8537	24.5	20.4

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Average Length of Stay
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.7773	27.1	22.5
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7207	25.6	21.3
14	INTERCRANIAL HEMORRHAGE & STROKE W INFARCT	0.8816	26.6	22.1
15	NONSPECIFIC CVA & PRECEREBRAL OCCULUSION W/O INFARCT	0.9053	29.4	24.5
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.8864	27.0	22.5
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC [2]	0.6655	21.9	18.2
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.7770	24.9	20.7
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.5486	22.0	18.3
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.2331	29.3	24.4
21	VIRAL MENINGITIS [1]	0.4055	16.8	14.0
22	HYPERTENSIVE ENCEPHALOPATHY [2]	0.6655	21.9	18.2
23	NONTRAUMATIC STUPOR & COMA	0.9623	27.2	22.6
24	SEIZURE & HEADACHE AGE >17 W CC	0.8831	24.8	20.6
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.4830	20.4	17.0
26	SEIZURE & HEADACHE AGE 0-17 *	0.4055	16.8	14.0
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.1126	31.6	26.3
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.1507	29.0	24.1
29	TRAUMATIC STUPOR & COMA, COMA >1 HR AGE >17 W/O CC	0.9268	27.2	22.6
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17 *	0.8284	23.3	19.4
31	CONCUSSION AGE >17 W CC [2]	0.6655	21.9	18.2
32	CONCUSSION AGE >17 W/O CC *	0.4055	16.8	14.0
33	CONCUSSION AGE 0-17 *	0.4055	16.8	14.0
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.8385	25.1	20.9
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6561	25.3	21.0
36	RETINAL PROCEDURES *	0.4055	16.8	14.0
37	ORBITAL PROCEDURES *	0.4055	16.8	14.0
38	PRIMARY IRIS PROCEDURES *	0.4055	16.8	14.0
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY *	0.4055	16.8	14.0
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17 *	0.4055	16.8	14.0
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17 *	0.4055	16.8	14.0
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS *	0.4055	16.8	14.0
43	HYPHEMA [3]	0.8284	23.3	19.4
44	ACUTE MAJOR EYE INFECTIONS [2]	0.6655	21.9	18.2
45	NEUROLOGICAL EYE DISORDERS [1]	0.4055	16.8	14.0
46	OTHER DISORDERS OF THE EYE AGE >17 W CC [2]	0.6655	21.9	18.2
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC [1]	0.4055	16.8	14.0
48	OTHER DISORDERS OF THE EYE AGE 0-17 *	0.4055	16.8	14.0
49	MAJOR HEAD & NECK PROCEDURES *	1.8783	46.3	38.5
50	SIALOADENECTOMY *	0.6655	21.9	18.2
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY *	0.6655	21.9	18.2
52	CLEFT LIP & PALATE REPAIR *	0.6655	21.9	18.2
53	SINUS & MASTOID PROCEDURES AGE >17 *	0.6655	21.9	18.2
54	SINUS & MASTOID PROCEDURES AGE 0-17 *	0.6655	21.9	18.2
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES [2]	0.6655	21.9	18.2
56	RHINOPLASTY *	0.6655	21.9	18.2
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17 *	0.6655	21.9	18.2
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17 *	0.6655	21.9	18.2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17 *	0.6655	21.9	18.2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17 *	0.6655	21.9	18.2
61	MYRINGOTOMY W TUBE INSERTION AGE >17 [5]	1.8783	46.3	38.5
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17 *	0.6655	21.9	18.2
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES [5]	1.8783	46.3	38.5
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0447	25.5	21.2
65	DYSEQUILIBRIUM	0.5056	19.8	16.5
66	EPISTAXIS [1]	0.4055	16.8	14.0
67	EPIGLOTTITIS [1]	0.4055	16.8	14.0
68	OTITIS MEDIA & URI AGE >17 W CC [3]	0.8284	23.3	19.4
69	OTITIS MEDIA & URI AGE >17 W/O CC [3]	0.8284	23.3	19.4
70	OTITIS MEDIA & URI AGE 0-17 *	0.4055	16.8	14.0
71	LARYNGOTRACHEITIS *	0.4055	16.8	14.0
72	NASAL TRAUMA & DEFORMITY [1]	0.4055	16.8	14.0
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.8097	23.7	19.7
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17 *	0.4055	16.8	14.0
75	MAJOR CHEST PROCEDURES [5]	1.8783	46.3	38.5
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7674	50.6	42.1
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC [5]	1.8783	46.3	38.5
78	PULMONARY EMBOLISM	0.6348	20.5	17.0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Aver-age Length of Stay
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	0.8916	22.2	18.5
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.7947	22.8	19.0
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17*	0.4055	16.8	14.0
82	RESPIRATORY NEOPLASMS	0.7976	20.9	17.4
83	MAJOR CHEST TRAUMA W CC	0.7384	24.8	20.6
84	MAJOR CHEST TRAUMA W/O CC[1]	0.4055	16.8	14.0
85	PLEURAL EFFUSION W CC	0.8207	23.6	19.6
86	PLEURAL EFFUSION W/O CC	0.6194	21.1	17.5
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.6597	32.3	26.9
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.7532	20.9	17.4
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.8533	23.6	19.6
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7921	23.0	19.1
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17*	0.8284	23.3	19.4
92	INTERSTITIAL LUNG DISEASE W CC	0.7251	19.1	15.9
93	INTERSTITIAL LUNG DISEASE W/O CC	0.5573	18.5	15.4
94	PNEUMOTHORAX W CC	0.7885	22.7	18.9
95	PNEUMOTHORAX W/O CC[1]	0.4055	16.8	14.0
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8173	24.2	20.1
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5940	17.9	14.9
98	BRONCHITIS & ASTHMA AGE 0-17*	0.4055	16.8	14.0
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.1164	27.3	22.7
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0015	25.4	21.1
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.9763	23.4	19.5
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.9313	24.5	20.4
103	HEART TRANSPLANT[6]	0.0000	0.0	0.0
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH*	1.8783	46.3	38.5
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH*	1.8783	46.3	38.5
106	CORONARY BYPASS W PTCA*	1.8783	46.3	38.5
107	CORONARY BYPASS W CARDIAC CATH*	1.8783	46.3	38.5
108	OTHER CARDIOTHORACIC PROCEDURES[2]	0.6655	21.9	18.2
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH*	1.8783	46.3	38.5
110	MAJOR CARDIOVASCULAR PROCEDURES W CC[5]	1.8783	46.3	38.5
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC[5]	1.8783	46.3	38.5
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.4103	36.9	30.7
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.3377	40.2	33.5
115	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P[5]	1.8783	46.3	38.5
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT[3]	0.8284	23.3	19.4
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT*	0.4055	16.8	14.0
118	CARDIAC PACEMAKER DEVICE REPLACEMENT[1]	0.4055	16.8	14.0
119	VEIN LIGATION & STRIPPING*	0.6655	21.9	18.2
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.4091	36.4	30.3
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.7167	21.6	18.0
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.5144	19.0	15.8
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.9412	20.9	17.4
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG[3]	0.8284	23.3	19.4
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG[5]	1.8783	46.3	38.5
126	ACUTE & SUBACUTE ENDOCARDITIS	0.7689	24.8	20.6
127	HEART FAILURE & SHOCK	0.7616	22.4	18.6
128	DEEP VEIN THROMBOPHLEBITIS	0.6042	20.8	17.3
129	CARDIAC ARREST, UNEXPLAINED	1.0534	20.9	17.4
130	PERIPHERAL VASCULAR DISORDERS W CC	0.7914	24.8	20.6
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7081	23.7	19.7
132	ATHEROSCLEROSIS W CC	0.8183	21.8	18.1
133	ATHEROSCLEROSIS W/O CC	0.5484	18.5	15.4
134	HYPERTENSION	0.6985	24.0	20.0
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.7331	20.3	16.9
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7075	21.0	17.5
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17*	0.6655	21.9	18.2
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7187	23.4	19.5
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6482	20.4	17.0
140	ANGINA PECTORIS	0.7690	20.1	16.7
141	SYNCOPE & COLLAPSE W CC	0.6252	23.2	19.3
142	SYNCOPE & COLLAPSE W/O CC	0.5452	21.5	17.9
143	CHEST PAIN	0.7316	22.7	18.9
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.7870	21.9	18.2
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7637	25.0	20.8
146	RECTAL RESECTION W CC[4]	1.2493	31.3	26.0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Aver-age Length of Stay
147	RECTAL RESECTION W/O CC*	1.2493	31.3	26.0
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	2.8488	47.6	39.6
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC[2]	0.6655	21.9	18.2
150	PERITONEAL ADHESIOLYSIS W CC[1]	0.4055	16.8	14.0
151	PERITONEAL ADHESIOLYSIS W/O CC*	0.4055	16.8	14.0
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC[4]	1.2493	31.3	26.0
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC*	0.8284	23.3	19.4
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC[4]	1.2493	31.3	26.0
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC*	0.8284	23.3	19.4
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17*	0.8284	23.3	19.4
157	ANAL & STOMAL PROCEDURES W CC[1]	0.4055	16.8	14.0
158	ANAL & STOMAL PROCEDURES W/O CC*	0.4055	16.8	14.0
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC[4]	1.2493	31.3	26.0
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC*	0.6655	21.9	18.2
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC*	0.6655	21.9	18.2
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC*	0.6655	21.9	18.2
163	HERNIA PROCEDURES AGE 0-17*	0.6655	21.9	18.2
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC*	0.8284	23.3	19.4
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC*	0.8284	23.3	19.4
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC*	0.6655	21.9	18.2
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC*	0.6655	21.9	18.2
168	MOUTH PROCEDURES W CC[3]	0.8284	23.3	19.4
169	MOUTH PROCEDURES W/O CC*	0.6655	21.9	18.2
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.5543	35.0	29.1
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC[3]	0.8284	23.3	19.4
172	DIGESTIVE MALIGNANCY W CC	0.8553	24.2	20.1
173	DIGESTIVE MALIGNANCY W/O CC	0.5513	18.9	15.7
174	G.I. HEMORRHAGE W CC	0.8741	23.6	19.6
175	G.I. HEMORRHAGE W/O CC	0.8359	25.6	21.3
176	COMPLICATED PEPTIC ULCER	0.7661	24.4	20.3
177	UNCOMPLICATED PEPTIC ULCER W CC[3]	0.8284	23.3	19.4
178	UNCOMPLICATED PEPTIC ULCER W/O CC[2]	0.6655	21.9	18.2
179	INFLAMMATORY BOWEL DISEASE	1.0975	23.4	19.5
180	G.I. OBSTRUCTION W CC	0.8457	22.8	19.0
181	G.I. OBSTRUCTION W/O CC	0.5638	19.5	16.2
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.8829	25.9	21.5
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.6913	21.5	17.9
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17*	0.6655	21.9	18.2
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17[3]	0.8284	23.3	19.4
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17*	0.8284	23.3	19.4
187	DENTAL EXTRACTIONS & RESTORATIONS*	0.8284	23.3	19.4
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0490	24.2	20.1
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5852	17.4	14.5
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17*	0.6655	21.9	18.2
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC[5]	1.8783	46.3	38.5
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC*	1.2493	31.3	26.0
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC[4]	1.2493	31.3	26.0
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC*	0.8284	23.3	19.4
195	CHOLECYSTECTOMY W C.D.E. W CC*	0.8284	23.3	19.4
196	CHOLECYSTECTOMY W C.D.E. W/O CC*	0.8284	23.3	19.4
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC[5]	1.8783	46.3	38.5
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC[5]	1.8783	46.3	38.5
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY[3]	0.8284	23.3	19.4
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY[4]	1.2493	31.3	26.0
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES[5]	1.8783	46.3	38.5
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.5736	18.4	15.3
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.5897	18.2	15.1
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	0.9444	22.1	18.4
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.6825	21.5	17.9
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC[2]	0.6655	21.9	18.2
207	DISORDERS OF THE BILIARY TRACT W CC	0.6979	21.5	17.9
208	DISORDERS OF THE BILIARY TRACT W/O CC[1]	0.4055	16.8	14.0
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY[5]	1.8783	46.3	38.5
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC[4]	1.2493	31.3	26.0
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC*	0.8284	23.3	19.4
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17*	0.8284	23.3	19.4
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.2591	33.0	27.5

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Average Length of Stay
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE[4]	1.2493	31.3	26.0
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	1.3602	38.8	32.3
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC[3]	0.8284	23.3	19.4
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC*	0.8284	23.3	19.4
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17*	0.8284	23.3	19.4
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC[4]	1.2493	31.3	26.0
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC[1]	0.4055	16.8	14.0
225	FOOT PROCEDURES[4]	1.2493	31.3	26.0
226	SOFT TISSUE PROCEDURES W CC[4]	1.2493	31.3	26.0
227	SOFT TISSUE PROCEDURES W/O CC[3]	0.8284	23.3	19.4
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC*	0.6655	21.9	18.2
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC[2]	0.6655	21.9	18.2
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR[1]	0.4055	16.8	14.0
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR[5]	1.8783	46.3	38.5
232	ARTHROSCOPY*	0.4055	16.8	14.0
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC[4]	1.2493	31.3	26.0
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC[1]	0.4055	16.8	14.0
235	FRACTURES OF FEMUR	0.7540	28.5	23.7
236	FRACTURES OF HIP & PELVIS	0.7381	27.2	22.6
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH[2]	0.6655	21.9	18.2
238	OSTEOMYELITIS	0.8275	27.5	22.9
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	0.6689	21.9	18.2
240	CONNECTIVE TISSUE DISORDERS W CC	0.9260	26.0	21.6
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.5805	22.7	18.9
242	SEPTIC ARTHRITIS	0.7725	26.3	21.9
243	MEDICAL BACK PROBLEMS	0.6596	23.4	19.5
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5756	20.6	17.1
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4426	17.5	14.5
246	NON-SPECIFIC ARTHROPATHIES	0.6053	21.4	17.8
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5590	20.4	17.0
248	TENDONITIS, MYOSITIS & BURSITIS	0.7288	23.9	19.9
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8005	27.1	22.5
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8373	31.8	26.5
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6904	26.0	21.6
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17*	0.4055	16.8	14.0
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.8054	28.0	23.3
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.6999	26.4	22.0
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17*	0.4055	16.8	14.0
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.8002	25.1	20.9
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC[2]	0.6655	21.9	18.2
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC*	0.6655	21.9	18.2
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC*	0.6655	21.9	18.2
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC*	0.6655	21.9	18.2
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION*	0.4055	16.8	14.0
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY[1]	0.4055	16.8	14.0
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.5388	45.0	37.5
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.1645	38.8	32.3
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.6569	45.6	38.0
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC[3]	0.8284	23.3	19.4
267	PERIANAL & PILONIDAL PROCEDURES*	0.4055	16.8	14.0
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES[4]	1.2493	31.3	26.0
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.3915	41.7	34.7
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.3879	41.6	34.6
271	SKIN ULCERS	0.9714	31.1	25.9
272	MAJOR SKIN DISORDERS W CC	0.6846	21.0	17.5
273	MAJOR SKIN DISORDERS W/O CC[2]	0.6655	21.9	18.2
274	MALIGNANT BREAST DISORDERS W CC[7]	0.7872	22.0	18.3
275	MALIGNANT BREAST DISORDERS W/O CC[7]	0.7872	22.0	18.3
276	NON-MALIGANT BREAST DISORDERS[2]	0.6655	21.9	18.2
277	CELLULITIS AGE >17 W CC	0.7704	24.4	20.3
278	CELLULITIS AGE >17 W/O CC	0.6353	22.4	18.6
279	CELLULITIS AGE 0-17*	0.6655	21.9	18.2
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	1.0097	30.9	25.7
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7363	27.4	22.8
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17*	0.6655	21.9	18.2
283	MINOR SKIN DISORDERS W CC	0.8574	24.8	20.6
284	MINOR SKIN DISORDERS W/O CC[1]	0.4055	16.8	14.0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Average Length of Stay
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	1.3692	31.7	26.4
286	ADRENAL & PITUITARY PROCEDURES*	1.2493	31.3	26.0
287	SKIN GRAFTS &/WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.3195	39.6	33.0
288	O.R. PROCEDURES FOR OBESITY[5]	1.8783	46.3	38.5
289	PARATHYROID PROCEDURES*	0.4055	16.8	14.0
290	THYROID PROCEDURES[1]	0.4055	16.8	14.0
291	THYROGLOSSAL PROCEDURES*	0.4055	16.8	14.0
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC[4]	1.2493	31.3	26.0
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC*	0.6655	21.9	18.2
294	DIABETES AGE >35	0.7678	25.1	20.9
295	DIABETES AGE 0-35[3]	0.8284	23.3	19.4
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.7710	24.3	20.2
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6321	21.1	17.5
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17*	0.6655	21.9	18.2
299	INBORN ERRORS OF METABOLISM[3]	0.8284	23.3	19.4
300	ENDOCRINE DISORDERS W CC	0.8670	23.3	19.4
301	ENDOCRINE DISORDERS W/O CC[1]	0.4055	16.8	14.0
302	KIDNEY TRANSPLANT[6]	0.0000	0.0	0.0
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM[5]	1.8783	46.3	38.5
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC[4]	1.2493	31.3	26.0
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC[2]	0.6655	21.9	18.2
306	PROSTATECTOMY W CC[3]	0.8284	23.3	19.4
307	PROSTATECTOMY W/O CC[1]	0.4055	16.8	14.0
308	MINOR BLADDER PROCEDURES W CC[3]	0.8284	23.3	19.414.0
309	MINOR BLADDER PROCEDURES W/O CC*	0.4055	16.8	26.0
310	TRANSURETHRAL PROCEDURES W CC[4]	1.2493	31.3	14.0
311	TRANSURETHRAL PROCEDURES W/O CC[1]	0.4055	16.8	38.5
312	URETHRAL PROCEDURES, AGE >17 W CC[5]	1.8783	46.3	14.0
313	URETHRAL PROCEDURES, AGE >17 W/O CC*	0.4055	16.8	14.0
314	URETHRAL PROCEDURES, AGE 0-17*	0.4055	16.8	14.0
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.5800	39.5	32.9
316	RENAL FAILURE	0.9308	24.1	20.0
317	ADMIT FOR RENAL DIALYSIS[4]	1.2493	31.3	26.0
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	0.8075	21.5	17.9
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC[2]	0.6655	21.9	18.2
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7424	23.9	19.9
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6123	20.4	17.0
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17*	0.6655	21.9	18.2
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY[2]	0.6655	21.9	18.2
324	URINARY STONES W/O CC[2]	0.6655	21.9	18.2
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.8123	26.7	22.2
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC[2]	0.6655	21.9	18.2
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17*	0.4055	16.8	14.0
328	URETHRAL STRICTURE AGE >17 W CC*	0.6655	21.9	18.2
329	URETHRAL STRICTURE AGE >17 W/O CC[1]	0.4055	16.8	14.0
330	URETHRAL STRICTURE AGE 0-17*	0.4055	16.8	14.0
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9267	24.6	20.5
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6393	20.9	17.4
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17*	0.4055	16.8	14.0
334	MAJOR MALE PELVIC PROCEDURES W CC*	1.2493	31.3	26.0
335	MAJOR MALE PELVIC PROCEDURES W/O CC*	0.8284	23.3	19.4
336	TRANSURETHRAL PROSTATECTOMY W CC[3]	0.8284	23.3	19.4
337	TRANSURETHRAL PROSTATECTOMY W/O CC*	0.6655	21.9	18.2
338	TESTES PROCEDURES, FOR MALIGNANCY*	0.6655	21.9	18.2
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17[1]	0.4055	16.8	14.0
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17*	0.4055	16.8	14.0
341	PENIS PROCEDURES[2]	0.6655	21.9	18.2
342	CIRCUMCISION AGE >17[4]	1.2493	31.3	26.0
343	CIRCUMCISION AGE 0-17	0.4055	16.8	14.0
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY[4]	1.2493	31.3	26.0
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY[3]	0.8284	23.3	19.4
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.7070	21.6	18.0
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC[2]	0.6655	21.9	18.2
348	BENIGN PROSTATIC HYPERTROPHY W CC[1]	0.4055	16.8	14.0
349	BENIGN PROSTATIC HYPERTROPHY W/O CC*	0.4055	16.8	14.0
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6058	19.9	16.5
351	STERILIZATION, MALE*	0.4055	16.8	14.0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Aver-age Length of Stay
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES[3]	0.8284	23.3	19.4
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY*	1.8783	46.3	38.5
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC*	1.2493	31.3	26.0
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC*	1.2493	31.3	26.0
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES*	1.2493	31.3	26.0
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY*	1.2493	31.3	26.0
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC[5]	1.8783	46.3	38.5
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC[1]	0.4055	16.8	14.0
360	VAGINA, CERVIX & VULVA PROCEDURES[1]	0.4055	16.8	14.0
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION*	0.6655	21.9	18.2
362	ENDOSCOPIC TUBAL INTERRUPTION*	0.6655	21.9	18.2
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY*	0.8284	23.3	19.4
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY*	0.6655	21.9	18.2
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES[5]	1.8783	46.3	38.5
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9654	23.9	19.9
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC[3]	0.8284	23.3	19.4
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM[4]	1.2493	31.3	26.0
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS[2]	0.6655	21.9	18.2
370	CESAREAN SECTION W CC*	0.8284	23.3	19.4
371	CESAREAN SECTION W/O CC*	0.6655	21.9	18.2
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES*	0.6655	21.9	18.2
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES*	0.4055	16.8	14.0
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C*	0.4055	16.8	14.0
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C*	0.4055	16.8	14.0
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE*	0.4055	16.8	14.0
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE*	0.4055	16.8	14.0
378	ECTOPIC PREGNANCY*	0.6655	21.9	18.2
379	THREATENED ABORTION*	0.4055	16.8	14.0
380	ABORTION W/O D&C*	0.4055	16.8	14.0
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY*	0.4055	16.8	14.0
382	FALSE LABOR*	0.4055	16.8	14.0
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS*	0.4055	16.8	14.0
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS*	0.4055	16.8	14.0
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY*	0.4055	16.8	14.0
386	EXTREME IMMATURITY*	0.6655	21.9	18.2
387	PREMATURITY W MAJOR PROBLEMS*	0.6655	21.9	18.2
388	PREMATURITY W/O MAJOR PROBLEMS*	0.4055	16.8	14.0
389	FULL TERM NEONATE W MAJOR PROBLEMS[4]	1.2493	31.3	26.0
390	NEONATE W OTHER SIGNIFICANT PROBLEMS*	0.6655	21.9	18.2
391	NORMAL NEWBORN*	0.4055	16.8	14.0
392	SPLENECTOMY AGE >17*	0.8284	23.3	19.4
393	SPLENECTOMY AGE 0-17*	0.6655	21.9	18.2
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS[5]	1.8783	46.3	38.5
395	RED BLOOD CELL DISORDERS AGE >17	0.8584	25.1	20.9
396	RED BLOOD CELL DISORDERS AGE 0-17*	0.4055	16.8	14.0
397	COAGULATION DISORDERS	0.7567	19.4	16.1
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.9008	23.4	19.5
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC)[1]	0.4055	16.8	14.0
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE[3]	0.8284	23.3	19.4
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC[4]	1.2493	31.3	26.0
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC*	0.8284	23.3	19.4
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.9651	23.9	19.9
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8980	19.1	15.9
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17*	0.6655	21.9	18.2
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC[5]	1.8783	46.3	38.5
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC*	0.8284	23.3	19.4
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC[4]	1.2493	31.3	26.0
409	RADIOTHERAPY	0.5220	19.5	16.2
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS[1]	0.4055	16.8	14.0
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY*	0.4055	16.8	14.0
412	HISTORY OF MALIGNANCY W ENDOSCOPY*	0.4055	16.8	14.0
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC[7]	0.9061	23.7	19.7
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC[7]	0.9061	23.7	19.7
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.4933	38.7	32.2
416	SEPTICEMIA AGE >17	0.9612	25.9	21.5
417	SEPTICEMIA AGE 0-17*	0.8284	23.3	19.4
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.8771	25.8	21.5

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Aver-age Length of Stay
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.5948	20.5	17.0
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC[1]	0.4055	16.8	14.0
421	VIRAL ILLNESS AGE >17[4]	1.2493	31.3	26.0
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17*	0.4055	16.8	14.0
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	0.8701	24.7	20.5
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS[5]	1.8783	46.3	38.5
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.6177	26.0	21.6
426	DEPRESSIVE NEUROSES	0.5739	26.9	22.4
427	NEUROSES EXCEPT DEPRESSIVE[2]	0.6655	21.9	18.2
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL[4]	1.2493	31.3	26.0
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.5466	25.0	20.8
430	PSYCHOSES	0.4479	22.9	19.0
431	CHILDHOOD MENTAL DISORDERS	0.4345	22.7	18.9
432	OTHER MENTAL DISORDER DIAGNOSES[2]	0.6655	21.9	18.2
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2489	13.1	10.9
439	SKIN GRAFTS FOR INJURIES	1.3200	42.5	35.4
440	WOUND DEBRIDEMENTS FOR INJURIES	1.3567	40.1	33.4
441	HAND PROCEDURES FOR INJURIES*	0.6655	21.9	18.2
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.6442	39.7	33.0
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC[2]	0.6655	21.9	18.2
444	TRAUMATIC INJURY AGE >17 W CC	0.9614	30.7	25.5
445	TRAUMATIC INJURY AGE >17 W/O CC	0.8448	27.3	22.7
446	TRAUMATIC INJURY AGE 0-17*	0.8284	23.3	19.4
447	ALLERGIC REACTIONS AGE >17[2]	0.6655	21.9	18.2
448	ALLERGIC REACTIONS AGE 0-17*	0.4055	16.8	14.0
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC[3]	0.8284	23.3	19.4
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC[2]	0.6655	21.9	18.2
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17*	0.4055	16.8	14.0
452	COMPLICATIONS OF TREATMENT W CC	0.9596	25.5	21.2
453	COMPLICATIONS OF TREATMENT W/O CC	0.6666	23.1	19.2
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC[3]	0.8284	23.3	19.4
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC[1]	0.4055	16.8	14.0
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.3383	38.0	31.6
462	REHABILITATION	0.6469	23.5	19.5
463	SIGNS & SYMPTOMS W CC	0.7618	26.8	22.3
464	SIGNS & SYMPTOMS W/O CC	0.6234	24.3	20.2
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS[3]	0.8284	23.3	19.4
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.8119	23.9	19.9
467	OTHER FACTORS INFLUENCING HEALTH STATUS[2]	0.6655	21.9	18.2
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2177	45.5	37.9
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS[6]	0.0000	0.0	0.0
470	UNGROUPABLE[6]	0.0000	0.0	0.0
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY*	1.8783	46.3	38.5
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.8047	17.1	14.2
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.0906	35.5	29.5
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS[5]	1.8783	46.3	38.5
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.6791	39.7	33.0
478	OTHER VASCULAR PROCEDURES W CC	1.6244	37.8	31.5
479	OTHER VASCULAR PROCEDURES W/O CC[2]	0.6655	21.9	18.2
480	LIVER TRANSPLANT[6]	0.0000	0.0	0.0
481	BONE MARROW TRANSPLANT*	1.8783	46.3	38.5
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES*	0.6655	21.9	18.2
483	TRACH W MECH VENT 96+ HRS OR PDX EXCEPT FACE,MOUTH & NECK DIAG	3.2319	4.6	45.5
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA*	1.8783	46.3	38.5
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR*	1.8783	46.3	38.5
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA[3]	0.8284	23.3	19.4
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.0885	29.5	24.5
488	HIV W EXTENSIVE O.R. PROCEDURE[5]	1.8783	46.3	38.5
489	HIV W MAJOR RELATED CONDITION	0.8846	22.9	19.0
490	HIV W OR W/O OTHER RELATED CONDITION	0.6952	20.4	17.0
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY*	1.8783	46.3	38.5
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS[3]	0.8284	23.3	19.4
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC[3]	0.8284	23.3	19.4
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC[1]	0.4055	16.8	14.0
495	LUNG TRANSPLANT[6]	0.0000	0.0	0.0
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION*	1.2493	31.3	26.0
497	SPINAL FUSION W CC[5]	1.8783	46.3	38.5

TABLE 3.—LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC–DRG	Description	Relative Weight	Geo-metric Mean Length of Stay	Short-Stays of 5/6th Average Length of Stay
498	SPINAL FUSION W/O CC[3]	0.8284	23.3	19.4
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC[5]	1.8783	46.3	38.5
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC*	0.8284	23.3	19.4
501	KNEE PROCEDURES W PDX OF INFECTION W CC[5]	1.8783	46.3	38.5
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC*	0.8284	23.3	19.4
503	KNEE PROCEDURES W/O PDX OF INFECTION[5]	1.8783	46.3	38.5
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT*	1.8783	46.3	38.5
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT[4]	1.2493	31.3	26.0
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA[5]	1.8783	46.3	38.5
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA*	0.8284	23.3	19.4
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA[3]	0.8284	23.3	19.4
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA[3]	0.8284	23.3	19.4
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.0734	32.2	26.8
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA[3]	0.8284	23.3	19.4
512	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT[6]	0.0000	0.0	0.0
513	PANCREAS TRANSPLANT[6]	0.0000	0.0	0.0
514	CARDIAC DEFIBRILATOR IMPLANT W CARDIAC CATH*	0.8284	23.3	19.4
515	CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH[4]	1.2493	31.3	26.0
516	PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI*	0.8284	23.3	19.4
517	PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI[5]	1.8783	46.3	38.5
518	PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI[4]	1.2493	31.3	26.0
519	CERVICAL SPINAL FUSION W CC[3]	0.8284	23.3	19.4
520	CERVICAL SPINAL FUSION W/O CC[2]	0.6655	21.9	18.2
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.3755	18.6	15.5
522	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC[1]	0.4055	16.8	14.0
523	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O CC	0.3860	21.2	17.6
524	TRANSIENT ISCHEMIA	0.6250	23.1	19.2
525	HEART ASSIST SYSTEM IMPLANT*	1.8783	46.3	38.5
526	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI*	0.8284	23.3	19.4
527	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI*	0.8284	23.3	19.4

* Relative weights for these LTC–DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2001 MedPAR.
[1] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 1.
[2] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 2.
[3] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 3.
[4] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 4.
[5] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 5.
[6] Relative weights for these LTC–DRGs were assigned a value of 0.0.
[7] Relative weights for these LTC–DRGs were determined after adjusting to account for nonmonotonically (see step 5 above).

[FR Doc. 03–14078 Filed 5–30–03; 3:28 pm]
BILLING CODE 4120–01–P

Federal Register

Friday,
June 6, 2003

Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 744 and 772

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 594

Imposition and Expansion of Controls on Designated Terrorists; Global Terrorism Sanctions Regulation; Final Rules

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 772

[Docket No. 020912210–2210–01]

RIN 0694–AC60

Imposition and Expansion of Controls on Designated Terrorists

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by imposing a license requirement on the export and reexport of any item subject to the EAR by a U.S. person or non-U.S. person to persons designated in or pursuant to Executive Order 13224 of September 23, 2001. In response to grave acts of terrorism and threats of terrorism, Executive Order 13224 blocks the property and interests in property of persons listed in an Annex to the order and persons designated by the Secretary of State or the Secretary of the Treasury pursuant to criteria set forth in the order. Executive Order 13224 also prohibits U.S. persons from engaging in any transactions with such blocked persons. The Department of the Treasury's Office of Foreign Assets Control (OFAC) announces the names of persons designated pursuant to Executive Order 13224 in the **Federal Register** and includes such persons in a listing of persons subject to various sanctions programs administered by OFAC. The Department of State also announces the names of foreign persons designated pursuant to Executive Order 13224 in the **Federal Register**. All persons designated in or pursuant to Executive Order 13224 are identified by the bracketed initials [SDGT] in the Department of Treasury listing and are also known as Specially Designated Global Terrorists (SDGTs). This rule also amends the EAR by expanding reexport controls on Specially Designated Terrorists (SDTs) and Foreign Terrorist Organizations (FTOs). OFAC also includes SDTs and FTOs in the Department of Treasury listing and identifies them by the bracketed initials [SDT] and [FTO], respectively.

DATES: This rule is effective June 6, 2003.

Comment Dates: Comments on this rule must be received on or before July 21, 2003.

ADDRESSES: Written comments on this rule should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to E-mail address *squarter@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Department of Commerce. Telephone: (202) 482–0171, E-mail *jroberts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Imposition of Controls on Specially Designated Global Terrorists (SDGTs)

President Bush issued Executive Order 13224 (E.O. 13224) (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) on September 23, 2001, in response to grave acts of terrorism and threats of terrorism. On September 28, 2001, the United Nations Security Council (UNSC) adopted Resolution 1373, requiring all member states, among other things, to refrain from providing any form of support to persons involved in terrorist acts and to prohibit their nationals from making economic resources available to persons who commit, attempt to commit, facilitate or participate in the commission of terrorist acts. In addition, on January 28, 2002, the UNSC adopted Resolution 1390, which requires all member states to freeze funds and other financial assets or economic resources of Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to UNSC Resolutions 1267 (October 15, 1999) and 1333 (December 19, 2000). UNSC Resolution 1455 (January 17, 2003) continued and improved the measures provided in UNSC Resolution 1390. The Bureau of Industry and Security (BIS) is taking action consistent with E.O. 13224 and UNSC Resolutions 1267, 1390, 1452 (December 20, 2002), and 1455, as well as 1373, by imposing a license requirement on all exports and reexports to persons designated in or pursuant to E.O. 13224. Persons designated pursuant to criteria set forth in E.O. 13224 by the Secretary of State or the Secretary of the Treasury are announced in the **Federal Register** and listed in Appendix A to 31 CFR chapter V, which lists persons subject to various sanctions programs administered by OFAC ("Blocked Persons list"). Persons designated in or pursuant to E.O. 13224 are identified in Appendix A by the bracketed initials [SDGT] and are also known as Specially Designated Global Terrorists (SDGTs). Provisions that implement BIS controls on SDGTs are included in new section 744.12 of the EAR.

Expansion of Reexport Controls on SDTs and FTOs

Specially Designated Terrorists (SDTs) are designated in or pursuant to Executive Order 12947 issued on January 23, 1995 (Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process), as amended by Executive Order 13099 of August 20, 1998. Foreign Terrorist Organizations (FTOs) are designated pursuant to the 1996 Anti-Terrorism and Effective Death Penalty Act (Pub. L. 104–132). SDTs and FTOs are included on the Blocked Persons list maintained by OFAC in Appendix A to 31 CFR chapter V and identified by the bracketed initials [SDT] and [FTO], respectively.

On January 8, 1999, BIS issued a rule imposing foreign policy controls on exports and certain reexports of items subject to the EAR to individuals and groups designated as SDTs and groups designated as FTOs. The January 1999 rule imposed a license requirement on the following exports and reexports to a designated SDT or FTO:

(1) The export from the United States of any item subject to the EAR;

(2) The export or reexport by a U.S. person, wherever located, of any item subject to the EAR; and

(3) The export from abroad or reexport by a non-U.S. person of any item subject to the EAR on the Commerce Control List.

The January 1999 rule did not impose a license requirement on the export from abroad or reexport by a non-U.S. person of EAR99 items. The action BIS is now taking, effective June 6, 2003, expands current controls by requiring a license for the export from abroad or reexport to a designated SDT or FTO by a non-U.S. person of any item subject to the EAR, whether such item is on the Commerce Control List or is classified as EAR99. Provisions that expand BIS controls on SDTs and FTOs are found in revised sections 744.13 and 744.14 of the EAR, respectively.

Note that certain persons designated in or pursuant to E.O. 13224 also have been designated as SDTs or FTOs or both, and are appropriately identified by more than one of the bracketed acronyms in Appendix A to 31 CFR chapter V. As such, section 744.1 is also revised to add a new subsection (a)(2), which provides that when controls set forth under more than one section of part 744 apply to a person, the license requirements for such a person will be determined based on the requirements of all applicable sections, and license applications will be reviewed under all applicable licensing policies. For example, if an entity on the Entity List in Supplement No. 4 to part 744 is also designated in or pursuant to E.O. 13224, the provisions set forth in Supplement No. 4 to part 744 as well as the provisions set forth in section 744.12 will apply, and the denial policy for the export or reexport of all items subject to the EAR will be the operative policy. Also note that paragraph 744.1(a) is updated to reflect the controls in sections 744.9–744.16.

Allocation of Agency Licensing Responsibility To Avoid Dual Licensing Requirements

Exports by U.S. Persons

OFAC requires a license for all exports from the United States and all exports and reexports by a U.S. person to any SDT or SDGT. To avoid duplication, if OFAC authorizes a transaction involving an export from the United States or an export or reexport by a U.S. person of an item subject to the EAR to a designated SDT or SDGT, no separate authorization from BIS is necessary, even if the SDT or SDGT is also an FTO. However, authorization from BIS is required for an export from the United States or an export from abroad or reexport of an item subject to the EAR by a U.S. person to an FTO that is not also an SDT or SDGT.

Exports From Abroad and Reexports by Non-U.S. Persons

Authorization from BIS is required for exports from abroad and reexports by non-U.S. persons of items subject to the EAR to SDGTs, SDTs, or FTOs.

Licensing Policy

License applications for exports or reexports to SDGTs, SDTs, or FTOs are subject to a policy of denial.

OFAC announces in the **Federal Register** and incorporates into the Blocked Persons list on an on-going basis the frequent changes or additions to the three lists of persons subject to sanctions who are identified by the bracketed initials [SDGT], [SDT] or [FTO] in Appendix A to 31 CFR chapter V. To obtain additional information regarding the Blocked Persons list maintained by OFAC, contact OFAC at telephone number 202/622–2520. Additional information also may be found at OFAC's Web site at *www.treas.gov/ofac*.

A foreign policy report on the new and expanded controls imposed by this rule on designated terrorist entities and individuals was submitted to the Congress on March 18, 2003.

Rulemaking Requirements

1. This interim rule has been determined not to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information approved by the OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes per electronic submission and 45 minutes for a manual submission. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with federalism implications as this term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under title 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations.

Accordingly, the Department of Commerce (the Department) encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 21, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–0637, for assistance.

List of Subjects

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports, Foreign trade.

■ Accordingly, parts 744 and 772 of the Export Administrations Regulations (15 CFR parts 730–799) are amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994

Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 2. Section 744.1 is amended by revising paragraph (a) to read as follows:

§ 744.1 General Provisions.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Five (End-use/End-users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, 744.4 and 744.5 prohibit exports and reexports of items subject to the EAR to defined nuclear, missile, chemical and biological activities and nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses regardless of whether that support involves the export or reexport of items subject to the EAR. Sections 744.7 and 744.8 prohibit exports and reexports of certain items for certain aircraft and vessels. Section 744.9 prohibits U.S. persons from providing technical assistance to certain foreign persons seeking to develop or manufacture certain encryption commodities or software. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in Supplement No. 4 of this part. Sections 744.12, 744.13 and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.15 describes restrictions on exports and reexports to persons named in general orders. Section 744.16 prohibits exports and reexports by U.S. persons of items subject to the EAR to persons designated pursuant to Executive Order 13088, as amended by Executive Order 13192, including Slobodan Milosevic, his close associates, and persons determined to be under open indictment by the International Criminal Tribunal for the former Yugoslavia. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(2) If controls set forth under more than one section of part 744 apply to a person, the license requirements for such a person will be determined based on the requirements of all applicable sections of part 744, and license applications will be reviewed under all applicable licensing policies.

* * * * *

■ 3. Section 744.12 is added to read as follows:

§ 744.12 Restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 (Specially Designated Global Terrorist) (SDGT).

BIS maintains restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism). These persons include individuals and entities listed in the Annex to Executive Order 13224, as well as persons subsequently designated by the Secretary of State or Secretary of the Treasury pursuant to criteria set forth in the Order. Pursuant to Executive Order 13224, the Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains 31 CFR part 594, the Global Terrorism Sanctions Regulations. OFAC announces the names of persons designated pursuant to Executive Order 13224 in the **Federal Register** and includes such persons in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. The Department of State also announces the names of foreign persons designated pursuant to Executive Order 13224 in the **Federal Register**. All persons designated in or pursuant to Executive Order 13224 are identified in Appendix A to 31 CFR Chapter V by the bracketed initials [SDGT] and are also known as Specially Designated Global Terrorists (SDGTs).

(a) *License requirement(s).* (1) A license requirement applies to the export or reexport to an SDGT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDGT of an item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224. Therefore, if OFAC authorizes an export from the United States or an export or reexport by a U.S. person to an SDGT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDGT of any item subject to the EAR that is not subject to OFAC's Global Terrorism Sanctions Regulations in 31 CFR part 594.

(4) Non-U.S. persons must seek authorization from BIS for any export from abroad or reexport to an SDGT of any item subject to the EAR.

(5) Any export or reexport to an SDGT of any item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDGT of any item subject to the EAR that is not subject to regulation by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDGT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorization are available for any export or reexport to an SDGT of any item subject to the EAR.

(c) *Licensing policy.* Applications for licenses for the export or reexport to an SDGT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

Note to § 744.12: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

■ 4. Section 744.13 is revised to read as follows:

§ 744.13 Restrictions on exports and reexports to persons designated pursuant to Executive Order 12947 (Specially Designated Terrorist) (SDT).

Consistent with the purpose of Executive Order 12947 of January 23, 1995, BIS maintains restrictions on exports and reexports to Specially Designated Terrorists (SDTs). Executive Order 12947 prohibits transactions by U.S. persons with terrorists who threaten to disrupt the Middle East peace process. Pursuant to the Executive Order, the Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains 31 CFR part 595, the Terrorism Sanctions Regulations. In Appendix A to 31 CFR Chapter V, pursuant to 31 CFR part 595, these Specially Designated Terrorists are identified by the bracketed suffix initials [SDT]. The requirements set forth below further the objectives of Executive Order 12947.

(a) *License requirement(s).* (1) A license requirement applies to the export or reexport to an SDT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDT of an item subject both to the EAR and to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595. Therefore, if OFAC authorizes an export or reexport of an item by a U.S. person to a SDT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDT of an item subject to the EAR but not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an SDT of any item subject to the EAR.

(5) Any export or reexport to an SDT by a U.S. person of any item subject both to the EAR and OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDT of any item subject to the EAR that is not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorization are available for export or reexport to an SDT of any item subject to the EAR.

(c) *Licensing policy.* Applications for licenses for the export or reexport to an SDT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

Note to § 744.13: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

■ 5. Section 744.14 is revised to read as follows:

§ 744.14 Restrictions on exports and reexports to designated Foreign Terrorist Organizations (FTOs).

Consistent with the objectives of section 219 of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1189), and section 303 of the Antiterrorism and Effective Death Penalty Act 1996, as amended (Anti-Terrorism Act) (18 U.S.C. 2339B) (Public Law 104–132. 110 Stat. 1214–1319), BIS maintains restrictions on exports and reexports to organizations designated as Foreign Terrorist Organizations (FTOs) pursuant to section 219 of the INA. The Department of the Treasury, Office of Foreign Assets Control, maintains 31 CFR part 597, the Foreign Terrorist Organizations Sanctions Regulations, requiring U.S. financial institutions to block all financial transactions involving assets of designated FTOs within the possession or control of such U.S. financial institutions. Section 303 of the Anti-Terrorism Act prohibits persons within the United States or subject to U.S. jurisdiction from knowingly providing material support or resources to a designated FTO and makes violations punishable by criminal penalties under title 18, United States Code. These designated FTOs are listed in Appendix A to 31 CFR Chapter V and identified by the bracketed initials [FTO]. A designation of a foreign organization determined to meet the criteria of section 219 of the INA takes effect upon publication in the **Federal Register** by the Secretary of State, or the Secretary's designee.

(a) *License requirement(s).* (1) A license requirement applies to the export or reexport to an FTO of any item subject to the EAR.

(2) U.S. persons must seek authorization from BIS for the export or reexport to an FTO of any item subject to the EAR.

(3) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an FTO of any item subject to the EAR.

(4) Any export or reexport to an FTO by any person of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(5) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorization for items described by paragraph (a) of this section are available for exports or reexports to FTOs.

(c) *Licensing policy.* Applications for exports and reexports to FTOs of all items identified by paragraph (a) of this section will generally be denied, to the extent they constitute material support or resources, as defined in 18 U.S.C. 2339A(b).

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(e) *FTOs also designated as SDTs or SDGTs.* In cases in which an FTO is also an SDT, as described in § 744.13, or an SDGT, as described in § 744.12, the license requirements and licensing policy set forth in § 744.13 or § 744.12 will apply.

Note to § 744.14: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

PART 772—[AMENDED]

■ 6. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 7. Section 772.1 is amended by revising the definition of "U.S. Person" to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations.

* * * * *

U.S. Person. (a) For purposes of §§ 744.6, 744.10, 744.11, 744.12, 744.13 and 744.14 of the EAR, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(b) *See also* § 740.9 and parts 746 and 760 of the EAR for definitions of "U.S. person" that are specific to those parts.

* * * * *

Dated: May 28, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–14253 Filed 6–3–03; 8:50 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Global Terrorism Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is adding new part 594 to chapter V of 31 CFR to carry out the purposes of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism."

DATES: *Effective Date:* June 6, 2003.

Comments: Written comments must be received no later than August 5, 2003.

ADDRESSES: Comments may be sent either via regular mail to the attention of Chief, Policy Planning and Program Management Division, rm. 2176, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW., Annex—2d Floor, Washington, DC 20220, or via OFAC's Web site (*http://www.treas.gov/ofac*).

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622–2480, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (home page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet home page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA") and the United Nations Participation Act (22 U.S.C. 287c), issued Executive Order 13224 (66 FR 49079, September 25, 2001), effective at 12:01 a.m. eastern daylight time on September 24, 2001. In the order, the President found that "grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001 * * * and the continuing and immediate threat of further attacks on United States nationals or the United States" constituted an unusual and extraordinary threat to the national security, foreign policy and economy of the United States, and declared a national emergency with respect to that threat. The order was amended by Executive Order 13268 (67 FR 44751, July 3, 2001) and Executive Order 13284 (68 FR 4075, January 28, 2003).

These regulations are promulgated to implement Executive Order 13224. They are in addition to and do not take the place of other parts of 31 CFR chapter V relating to terrorism, including, but not limited to, the Terrorism Sanctions Regulations (part 595), implementing Executive Order 12947, "Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process" (60 FR 5079, January 25, 1995); the Terrorism List Government Sanctions Regulations (part 596), implementing section 321 of the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2332d); and the Foreign Terrorist Organizations Sanctions Regulations (part 597), implementing sections 302 and 303 of the Antiterrorism and Effective Death Penalty Act of 1996 (8 U.S.C. 1189, 18 U.S.C. 2339B). (Detailed information regarding each of those other parts is available on OFAC's Web site (*http://www.treas.gov/ofac*).) Certain persons designated pursuant to the regulations now being promulgated may also be designated pursuant to those other parts, and transactions related to those persons are subject to the requirements of those parts and other sanctions under U.S. law. These new regulations also do not in any way modify the criminal prohibition, set forth at 18 U.S.C. 2339B, against providing material support or resources to foreign terrorist organizations designated pursuant to section 219 of the Immigration and Nationality Act, as amended.

Specifically, these regulations are promulgated in furtherance of the sanctions set forth in Executive Order 13224. Section 1 of the order blocks, with certain exceptions, all property and interests in property of foreign persons listed in an Annex to the order and persons designated by the Secretary of State or the Secretary of the Treasury pursuant to criteria set forth in the order. Section 2 of the order prohibits any transaction or dealing by a United States person or within the United States in property or interests in property blocked pursuant to the order, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of a person designated in or pursuant to the order. Section 2 of the order also prohibits any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the order, as well as any conspiracy formed to violate such prohibitions. Section 7 of the order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. Acting under authority delegated by the Secretary of the Treasury, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") is promulgating these Global Terrorism Sanctions Regulations, 31 CFR part 594 (the "Regulations").

Subpart B of the Regulations sets forth the prohibitions contained in sections 1 and 2 of the order. See §§ 594.201, 594.204, and 594.205. Persons identified in the Annex to the order or designated by or under the authority of the Secretary of State or the Secretary of the Treasury pursuant to the order are referred to throughout the Regulations as "persons whose property or interests in property are blocked pursuant to § 594.201(a)." Their names are or will be published on OFAC's website, announced in the **Federal Register** and incorporated on an ongoing basis into appendix A to 31 CFR chapter V, which lists persons subject to various sanctions programs administered by OFAC.

Sections 594.202 and 594.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and the requirement to hold blocked property in interest-bearing blocked accounts. Section 594.206 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds. The section further provides that blocked property may, in the discretion of the Director of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C of the Regulations defines key terms used throughout the Regulations, and subpart D sets forth interpretive sections regarding the general prohibitions contained in subpart B. Certain transactions otherwise prohibited under the Regulations but found to be consistent with U.S. policy are authorized by one of the general licenses contained in subpart E or may be authorized by a specific license issued pursuant to the procedures described in subpart D of part 501 of 31 CFR chapter V.

Subpart F of the Regulations refers to subpart C of part 501 for applicable recordkeeping and reporting requirements. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty.

Subpart H of the Regulations refers to subpart D of part 501 for applicable provisions relating to administrative procedures. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Request for Comments; Procedural Requirements

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the Regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the Regulations.

The period for submission of comments will close August 5, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such submission to the originator without considering them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these Regulations will be a matter of public record. Copies of the public record concerning these Regulations will be made available not sooner than September 4, 2003, and will be obtainable from OFAC's Web site (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Blocking of assets, Penalties, Reporting and recordkeeping requirements, Specially designated global terrorist, Terrorism, Transfer of assets.

■ 1. For the reasons set forth in the preamble, part 594 is added to 31 CFR chapter V to read as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
594.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

594.201 Prohibited transactions involving blocked property.
594.202 Effect of transfers violating the provisions of this part.
594.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
594.204 Prohibited transaction or dealing in property; contributions of funds, goods, or services.
594.205 Evasions; attempts; conspiracies.
594.206 Expenses of maintaining blocked property; liquidation of blocked property.

Subpart C—General Definitions

594.301 Blocked account; blocked property.
594.302 Effective date.
594.303 Entity.
594.304 Foreign person.
594.305 Information or informational materials.
594.306 Interest.
594.307 Licenses; general and specific.
594.308 Person.
594.309 Property; property interest.
594.310 Specially designated global terrorist; SDGT.
594.311 Terrorism.
594.312 Transfer.
594.313 United States.
594.314 U.S. financial institution.
594.315 United States person; U.S. person.

Subpart D—Interpretations

594.401 Reference to amended sections.
594.402 Effect of amendment.
594.403 Setoffs prohibited.
594.404 Termination and acquisition of an interest in blocked property.
594.405 Transactions incidental to a licensed transaction.
594.406 Provision of services.
594.407 Offshore transactions.
594.408 Payments from blocked accounts to satisfy obligations prohibited.
594.409 Charitable contributions.
594.410 Credit extended and cards issued by U.S. financial institutions.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

594.501 General and specific licensing procedures.
594.502 Effect of license or authorization.
594.503 Exclusion from licenses and other authorizations.
594.504 Payments and transfers to blocked accounts in U.S. financial institutions.
594.505 Entries in certain accounts for normal service charges authorized.
594.506 Provision of certain legal services authorized.

594.507 Authorization of emergency medical services.
594.508 Transactions related to telecommunications authorized.
594.509 Transactions related to mail authorized.

Subpart F—Reports

594.601 Records and reports.

Subpart G—Penalties

594.701 Penalties.
594.702 Prepenalty notice.
594.703 Response to prepenalty notice; informal settlement.
594.704 Penalty imposition or withdrawal.
594.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

594.801 Procedures.
594.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

594.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13224, 66 FR 49079, September 25, 2001; E.O. 13268, 67 FR 44751, July 3, 2002, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, January 28, 2003.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 594.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 594.201 Prohibited transactions involving blocked property.

(a) Except as authorized by statutes, regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Foreign persons listed in the Annex to Executive Order 13224 of September 23, 2001, as may be amended;

(2) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(3) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section; or

(4) Except as provided in section 5 of Executive Order 13224, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General:

(i) To assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of:

(A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section; or

(ii) To be otherwise associated with any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section.

Note 1 to paragraph (a). Section 5 of Executive Order 13224, as amended, provides that, with respect to those persons designated pursuant to paragraph (a)(4) of this section, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under the International Emergency Economic Powers Act and the United Nations Participation Act if the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

Note 2 to paragraph (a). The names of persons whose property or interests in property are blocked pursuant to § 594.201(a) are published on OFAC's website, announced in the **Federal Register** and incorporated on an ongoing basis with the identifier [SDGT] in appendix A to 31 CFR chapter V.

Note 3 to paragraph (a). Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation pursuant to § 594.201(a)(2), (a)(3), or (a)(4) or who wish to assert that the circumstances resulting in designation no longer apply. Similarly, when a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds to have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to § 594.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

Note 1 to § 594.201. Section 106 of the USA PATRIOT Act of 2001 (Pub. L. 107–56, Oct. 26, 2001) amended section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) to authorize explicitly the blocking of property and interests in property of a person or entity during the pendency of an investigation. The name of any person or entity whose property or interests in property are blocked pursuant to this authority appears on the Office of Foreign Assets Control's (OFAC) blocked persons list with the descriptor "[BPI–PA]." The scope of the property or interests in property blocked during the pendency of an investigation may be more limited than the scope of the blocking set forth in § 594.201(a). Inquiries regarding the scope of any such blocking should be directed to OFAC's Compliance Division at 202/622–2490.

Note 2 to § 594.201. The prohibitions set forth in this part are separate from and in addition to other parts of 31 CFR chapter V, including but not limited to the Terrorism Sanctions Regulations (part 595), the Terrorism List Government Sanctions Regulations (part 596), and the Foreign Terrorist Organizations Sanctions Regulations (part 597). The prohibitions set forth in this part also are separate and apart from the criminal prohibition, set forth at 18 U.S.C. 2339B, against providing material support or resources to foreign terrorist organizations designated pursuant to section 219 of the Immigration and Nationality Act, as amended.

§ 594.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 594.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 594.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d). The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of a person whose property or interests in property are blocked pursuant to § 594.201(a).

§ 594.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 594.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 594.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 594.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 594.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property or interests in property are blocked pursuant to § 594.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 594.204 Prohibited transaction or dealing in property; contributions of funds, goods, or services.

Except as otherwise authorized, no U.S. person may engage in any transaction or dealing in property or interests in property of persons whose property or interests in property are blocked pursuant to § 594.201(a), including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of persons whose property or interests in property are blocked pursuant to § 594.201(a).

§ 594.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 594.206 Expenses of maintaining blocked property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 594.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 594.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C—General Definitions

§ 594.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 594.201 held in the name of a person whose property or interests in property are blocked pursuant to § 594.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 594.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property or interests in property are blocked pursuant to § 594.201(a)(1), 12:01 a.m. eastern daylight time, September 24, 2001;

(b) With respect to a person whose property or interests in property are blocked pursuant to § 594.201(a)(2), (a)(3), or (a)(4), the earlier of the date on which is received actual or constructive notice of such person's designation by the Secretary of State or the Secretary of the Treasury.

§ 594.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group, or subgroup.

§ 594.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 594.305 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

Note to paragraph (a). To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter became, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 594.306 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g.*, "an interest in property") means an interest of any nature whatsoever, direct or indirect.

§ 594.307 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 594.307. *See* § 501.801 of this chapter on licensing procedures.

§ 594.308 Person.

The term *person* means an individual or entity.

§ 594.309 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 594.310 Specially designated global terrorist; SDGT.

The term *specially designated global terrorist* or *SDGT* means any foreign person or person listed in the Annex or designated pursuant to Executive Order 13224 of September 23, 2001.

§ 594.311 Terrorism.

The term *terrorism* means an activity that:

(a) Involves a violent act or an act dangerous to human life, property, or infrastructure; and

(b) Appears to be intended:

(1) To intimidate or coerce a civilian population;

(2) To influence the policy of a government by intimidation or coercion; or

(3) To affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

§ 594.312 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 594.313 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 594.314 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 594.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 594.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 594.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 594.403 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under §§ 594.201 and 594.204 if effected after the effective date.

§ 594.404 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 594.201(a), unless there exists in the property another interest that is blocked pursuant to § 594.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or interests in property are blocked pursuant to § 594.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 594.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 594.201(a); or

(b) An incidental transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 594.406 Provision of services.

(a) Except as provided in § 594.207, the prohibitions on transactions or dealings involving blocked property contained in §§ 594.201 and 594.204

apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a); or

(2) With respect to property interests subject to §§ 594.201 and 594.204.

(b) Example: U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, educational, or other services to a person whose property or interests in property are blocked pursuant to § 594.201(a).

Note to § 594.406. *See* §§ 594.506 and 594.507, respectively, on licensing policy with regard to the provision of certain legal or medical services.

§ 594.407 Offshore transactions.

The prohibitions in §§ 594.201 and 594.204 on transactions or dealings involving blocked property apply to transactions or dealings by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person whose property or interests in property are blocked pursuant to § 594.201(a) or in which the U.S. person knows, or has reason to know, a person whose property or interests in property are blocked pursuant to § 594.201(a) has or has had an interest since the effective date.

§ 594.408 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to §§ 594.201 and 594.204, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized pursuant to this part.

§ 594.409 Charitable contributions.

Unless otherwise specifically authorized by the Office of Foreign Assets Control by or pursuant to this part, no charitable contribution or donation of funds, goods, services, or technology, including those to relieve human suffering, such as food, clothing, or medicine, may be made to or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a). For purposes of this part, a contribution or donation is made to or for the benefit of a person whose property or interests in property are blocked pursuant to § 594.201(a) if made to or in the name of such a person; if made to or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade or to avoid the bar on the provision of contributions or donations to such a person.

§ 594.410 Credit extended and cards issued by U.S. financial institutions.

The prohibitions in §§ 594.201 and 594.204 on engaging in transactions or dealings in property subject to those sections prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property or interests in property are blocked pursuant to § 594.201(a).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 594.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 594.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 594.503 Exclusion from licenses and other authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 594.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property or interests in property are blocked pursuant to § 594.201(a) has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

Note to § 594.504. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 594.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 594.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 594.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to § 594.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 594.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 594.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 594.202(e).

§ 594.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to § 594.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 594.508 Transactions related to telecommunications authorized.

All transactions ordinarily incident to the receipt or transmission of telecommunications involving persons whose property or interests in property are blocked pursuant to § 594.201(a) are authorized, provided that any payment owed to any such person is paid into a blocked account in a U.S. financial institution. This section does not authorize the provision, sale, or lease to persons whose property or interests in property are blocked pursuant to § 594.201(a) of telecommunications equipment or technology; nor does it authorize the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity).

§ 594.509 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between a U.S. person and a person whose property or interests in property are blocked pursuant to § 594.201(a) are authorized, provided the mail is limited to personal communications not involving a transfer of anything of value and not exceeding 12 ounces in weight.

Subpart F—Reports

§ 594.601 Records and reports.

For provisions relating to required records and reports, *see* part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 594.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the "Act") (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than $50,000, and if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 594.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to

this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 594.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 594.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 594.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in a federal district court.

§ 594.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 594.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), *see* part 501, subpart D, of this chapter.

§ 594.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13224 of September 23, 2001 (66 FR 49079, September 25, 2001), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 594.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: May 13, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 22, 2003.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03–14251 Filed 6–3–03; 8:50 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
June 6, 2003

Part V

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 430

Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 430

[Docket No. 97–013F]

RIN 0583–AC46

Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to require that official establishments that produce certain ready-to-eat (RTE) meat and poultry products prevent product adulteration by the pathogenic environmental contaminant *Listeria monocytogenes*. In particular, under these regulations, establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of *L. monocytogenes* will be required to have, in their hazard analysis and critical control point (HACCP) plans, or in their sanitation standard operating procedures or other prerequisite programs, controls that prevent product adulteration by *L. monocytogenes*. The establishments must share with FSIS data and information relevant to their controls for *L. monocytogenes*. The establishments also must furnish FSIS with information on the production volume of products affected by the regulations. The establishments may make claims on the labels of their RTE products regarding the processes they use to eliminate or reduce *L. monocytogenes* or suppress or limit its growth in the products.

DATES: This interim final rule is effective on October 6, 2003.

Comments on the information presented under "Paperwork Reduction Act" must be received by August 5, 2003.

Recognizing, however, that some approaches to *L. monocytogenes* control set out in this interim final rule are novel, FSIS will accept comments on the rule until December 8, 2004, for the purpose of reviewing and evaluating the effectiveness of these approaches.

ADDRESSES: One original and two copies of each comment should be sent to FSIS Docket #97–013F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments will be available for public inspection in the Docket Clerk's Office between 8:30 and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Acting Assistant Deputy Administrator, Policy Analysis and Formulation, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 205–0495. Copies of references cited in this document are available in the FSIS Docket Clerk's Office, Room 102, Cotton Annex, 300 12th Street, SW., Washington DC 20250–3700. The Office is open 8:30 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Listeria monocytogenes
III. Events leading up to the proposed rule
Outbreaks and recalls 1999 reassessment notice
FSIS action plan
FDA/FSIS draft risk ranking
IV. Proposed rule provisions on L. monocytogenes
Compliance guidance
Opportunity for public comment
Public meetings on Listeria
V. FSIS risk assessment of L. monocytogenes in RTE meat and poultry products
VI. Comments on the proposal and FSIS response
VII. The Interim Final Rule: Control of L. monocytogenes
Alternative 1
Alternative 2
Alternative 3
Estimates of annual production volume
Labeling incentive
New and existing regulatory requirements
VIII. Implementation
Implementation strategy
New directive for FSIS inspection program employees
IX. Consumer outreach effort
X. Executive Order 12866 and Effect on Small Entities
Summary of final regulatory impact analysis
XI. Paperwork Reduction Act and Government Paperwork Elimination Act
XII. Executive Order 12988
XIII. Additional public notification
XIV. Final Regulations
Appendix A

I. Background

The Food Safety and Inspection Service (FSIS) administers the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) to ensure that meat, poultry, and egg products prepared for distribution in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The FMIA and PPIA prohibit anyone from selling, transporting, offering for sale or transportation, or receiving for transportation in commerce, any adulterated or misbranded meat or poultry product (21 U.S.C. 610, 458).

Under the Acts, a meat or poultry product is adulterated if, among other circumstances, it bears or contains any poisonous or deleterious substance that may render it injurious to health (21 U.S.C. 601(m)(1), 453(g)(1)); if it is for any reason unsound, unhealthful, unwholesome, or unfit for human food (21 U.S.C. 601(m)(3), 453(g)(3); or if it has been prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health (21 U.S.C. 601(m)(4), 453(g)(4). Such a product is misbranded if, among other circumstances, it fails to bear directly or on its container the official inspection legend (*e.g.*, for meat products, "U.S. Inspected and Passed" plus the official establishment number) prescribed in the regulations (21 U.S.C. 601(n)(12), 453(h)(12)). The Acts require FSIS to carry out an inspection of meat, meat food products, and poultry products to ensure that the products are not adulterated (21 U.S.C. 606, 455), and if the products are found upon inspection to be not adulterated, they must bear directly or on their containers the official inspection legend (21 U.S.C. 606, 607, 457).

The Acts give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the Acts (21 U.S.C. 621, 463). The Acts require FSIS to prescribe rules and regulations governing the sanitary conditions under which the establishments that produce these products are to be operated (21 U.S.C. 608, 456).

On February 27, 2001, FSIS proposed (66 FR 12589) to establish several new requirements for the processing of ready-to-eat (RTE) and other meat and poultry products. The Agency proposed food safety performance standards for all RTE and all partially heat-treated meat and poultry products. The proposed performance standards set both levels of pathogen reduction and limits on pathogen growth that official meat and poultry establishments must achieve in order to produce products that are not adulterated. FSIS also proposed to allow the use of customized, plant-specific processing procedures and to eliminate its regulations that require that both RTE and not-ready-to eat pork and products containing pork be treated to destroy trichina (*Trichinella spiralis*).

Finally, FSIS proposed environmental testing requirements intended to verify measures to reduce the incidence of *L. monocytogenes* in RTE meat and poultry products. Specifically, FSIS proposed to require establishments that produce RTE meat and poultry products to test food contact surfaces for *Listeria* species to verify that establishments were controlling the presence of *L. monocytogenes* within their processing environments. Under the proposal, establishments that developed and implemented HACCP controls for *L. monocytogenes* would be exempt from these testing requirements because the HACCP regulations require on-going monitoring and verification to demonstrate that the food safety system is working.

In this interim final rule, FSIS is amending its regulations only in regard to the control of *L. monocytogenes* in RTE products. FSIS plans to address the other proposed provisions in future **Federal Register** publications. In view of recent outbreaks of foodborne listeriosis, as well as recent recalls of meat and poultry products adulterated by *L. monocytogenes*, the Agency has decided to adopt these regulations before completing action on the other provisions of the proposal.

II. Listeria monocytogenes

L. monocytogenes is a pathogenic bacterium found in the environment (*e.g.*, in soil, water, and vegetation and on the surfaces of equipment, floors, and walls) and is often carried by healthy animals (including humans). *L. monocytogenes* is spread very easily by direct food contact with a contaminated surface, and it can survive and grow in a refrigerated, packaged RTE product.

L. monocytogenes grows under low-oxygen conditions and at low refrigeration temperatures and survives for long periods of time in the environment, on foods, in processing plants, and in household refrigerators. Although frequently present in raw foods of both plant and animal origin, it also can be present in cooked foods because of post-processing contamination. Consumption of food contaminated with *L. monocytogenes* can cause listeriosis. Listeriosis is a potentially fatal disease in newborns, the elderly, and persons with weakened immune systems, such as those with chronic disease or human immunodeficiency virus (HIV) infection or those taking chemotherapy for cancer. Listeriosis is also a major concern in pregnant women. Even though symptoms may be relatively mild in the mother, the illness can be transmitted to the fetus, causing illness or fetal death.

Each year, according to the Centers for Disease Control and Prevention (CDC), *L. monocytogenes* causes an estimated 2,493 cases of listeriosis. Of these, 2,298 persons are hospitalized, and 499 persons die. The case-fatality rate is high across the whole population—20 deaths per 100 cases of illness. Epidemiologic surveillance data show that the case-fatality rate varies by age, with a higher case-fatality rate among newborns and the elderly.[1]

L. monocytogenes is one of several foodborne pathogens that have been a special focus of public health strategies, such as Healthy People 2010. Organized by the Department of Health and Human Services (HHS), Healthy People 2010 is a comprehensive, nationwide health promotion and disease prevention agenda for increasing the quality and years of healthy life. The food safety objectives of Healthy People 2010 include infection reduction targets for pathogens of concern. The 2010 target for *L. monocytogenes* is to reduce by 50 percent the rate of illnesses below the 2001 level of 0.5 cases per 100,000 population.

A number of factors can cause or contribute to *L. monocytogenes* contamination of RTE meat and poultry products in a meat or poultry processing establishment. First, if the pathogen is already present in product ingredients, a processing error, such as incorrect formulation or inadequate processing time or temperature, can result in the production of products containing live organisms. Second, a product that has undergone a successful lethality treatment can be contaminated by biofilms on food-contact surfaces of equipment used for processing, handling, or packaging the product. The product can also be exposed to environmental contamination or cross-contamination in the post-lethality processing environment. One cause of cross-contamination can be plant construction in the post-lethality area of the establishment, unless precautions are taken to protect the products during the period of construction. Serious outbreaks of listeriosis have occurred because of the failure to take such precautions during facilities construction or remodeling.

Additional causes of contamination or cross contamination can be poor facilities design or plant equipment layout. Cross-contamination can occur if the flow paths of raw product and finished products cross or if vehicle or personnel traffic from outside the plant or from a raw-product area of the plant enters an area where exposed finished products are handled. Contamination or cross-contamination also can occur if processing equipment has not been designed for easy cleaning, or if equipment or facilities have hard-to-reach niches that can harbor *L. monocytogenes* or other pathogens.

[1] Mead, P. S., L. Slutsker, V. Dietz, L. F. McCraig, S. Bresee, C. Shapiro, P. M. Griffin, and R. V. Tauxe. 1999. Food-related illness and death in the United States. *Emerging Infectious Diseases* 5:607–625.

III. Events Leading Up to the Proposed Rule

Outbreaks and Recalls

During the 1980's, *L. monocytogenes* began to emerge as a problem in processed meat and poultry products. FSIS and FDA worked with processing plants to improve their procedures and emphasized a "zero tolerance"—no detectable levels of viable pathogens—for the organism in RTE products. Between 1989 and 1993, the rate of illness from *L. monocytogenes* declined 44 percent.

In the fall of 1998, State health departments and the CDC investigated an outbreak of foodborne illness in which hotdogs and, possibly deli (luncheon) meats, were implicated. CDC and FSIS investigators isolated the outbreak strain, a strain of *L. monocytogenes*, from an opened and previously unopened package of hotdogs manufactured by a single plant. CDC eventually reported 101 illnesses, 15 adult deaths, and 6 stillbirths or miscarriages associated with the outbreak.

Another outbreak of listeriosis occurred between May and December 2000 and was spread over 10 States. CDC linked a strain of *L. monocytogenes* to 29 illnesses—8 perinatal and 21 non-perinatal—resulting in 4 deaths and 3 in miscarriages or stillbirths. Subtyping by pulsed-field gel electrophoresis (PFGE) showed the *L. monocytogenes* strains to be indistinguishable from one another.

The outbreak was linked to eating turkey deli meat. Thirteen stores and delicatessens where patients reported purchasing turkey meat obtained their turkey meat from at least 27 federally inspected establishments. Two establishments were linked to 10 of 11 patients. FSIS traced the implicated turkey meat to a Texas poultry processor.

1999 Reassessment Notice

In 1999, with the emergence of an especially virulent strain of *L. monocytogenes*, the Agency concluded that many establishments should reassess their HACCP plans. FSIS published in the **Federal Register** a Notice (64 FR 28351; May 26, 1999) advising manufacturers of RTE meat and poultry products of the need to reassess their HACCP plans to ensure that the plans were, in fact, adequately

addressing *L. monocytogenes*. If the reassessment revealed that *L. monocytogenes* was a hazard reasonably likely to occur in an establishment's production process, the establishment would have to address the hazard in its HACCP plan.

The same month, FDA and FSIS announced plans to conduct a quantitative microbial risk assessment to determine the extent of consumer exposure to foodborne *L. monocytogenes* in RTE foods (64 FR 24661; May 7, 1999).

FSIS Action Plan

A May 5, 2000, Presidential directive on *L. monocytogenes* in RTE foods revised the Healthy People 2010 target date for reducing illnesses caused by the pathogen up to 2005 and set other objectives. HHS and USDA responded to this directive with an eight-point action plan providing for consumer, health-care provider, and industry education; redirection of enforcement strategies, including increased microbial sampling; enhanced disease surveillance; coordinated research activities; and proposing new regulations. For its part, FSIS announced its intention to publish a proposed rule that would, among other things, require establishments to conduct environmental testing for *Listeria* species in order to verify the effectiveness of their sanitation standard operating procedures (Sanitation SOPs).

FDA/FSIS Draft Risk Ranking

FDA and FSIS made public a preliminary draft of a risk ranking in January 2001 (66 FR 5515; January 19, 2001). The risk ranking (*see http://www.foodsafety.gov/dms/lmrisk.html*) estimated the relative risks of serious illness and death from listeriosis that may be associated with consumption of different types of RTE foods. The risk ranking did not cover listerial gastroenteritis, a less serious infection with mild flu-like symptoms. The risk ranking (1) estimated the potential level of exposure of three age-based U.S. population groups to *L. monocytogenes* contaminated foods in 20 food categories and (2) related this exposure to public health consequences. The food categories studied included foods with a history of *L. monocytogenes* contamination. The models used in the risk ranking provided a means of predicting the likelihood that severe illness or death will result from consuming foods contaminated with this pathogen. Estimates were made of the relative risks posed by the food categories, but the risk ranking did not predict the precise public health consequences attributable to any particular contaminated food.

The foods considered in this risk ranking were RTE foods that are generally eaten without being cooked (*e.g.*, cheese) or are typically reheated (*e.g.*, frankfurters) before consumption. The main categories considered were seafood, produce, dairy, meat, and combination foods. The population groups evaluated were: (1) perinatal, including fetuses and neonates from 16 weeks after fertilization to 30 days postpartum. These are pregnancy-associated cases where exposure occurs most often *in utero* as a result of foodborne *L. monocytogenes* infections of the mothers during pregnancy and may result in spontaneous abortions, stillbirths, and neonatal infections; (2) elderly, that is, individuals who are 60 or more years of age; and (3) the intermediate-age group, including the remaining population, both healthy individuals (with very low risk of severe illness or death from *L. monocytogenes*) and certain susceptible population groups.

The population groups included individuals with increased susceptibility to listeriosis, such as acquired immune deficiency syndrome (AIDS) patients or individuals taking drugs that suppress the immune systems (*e.g.*, cancer or transplant drugs). Individuals within these susceptible population groups account for most of the cases of listeriosis within the intermediate-age group. The risk ranking focused on the overall burden of listeriosis on public health and includes the occurrence of both sporadic illnesses (*i.e.*, illnesses not associated with a documented outbreak) and outbreak illnesses.

The results of the risk ranking indicated that certain RTE meat and poultry products presented a relatively moderate to high risk for listeriosis. These included pâtés and meat spreads, deli meats, hotdogs, and deli salads containing meat or poultry products. Further, there was a significant opportunity for recontamination of RTE meat and poultry products in the processing establishment.

IV. Proposed Rule Provisions on *L. monocytogenes*

The Agency concluded that many establishments were not effectively implementing HACCP plans and Sanitation SOPs to prevent *L. monocytogenes* from contaminating the RTE product in the post-lethality processing environment. The Agency therefore resolved to proceed to rulemaking to correct the problem. In February 2001, FSIS issued a proposed rule that would require that establishments that produce post-lethality exposed RTE meat or poultry products conduct testing of food contact surfaces for *Listeria* species in areas of the establishments into which the products are routed after undergoing lethality treatment and before final product packaging. All establishments would be required to do this unless they had incorporated one or more controls validated to prevent, reduce to an acceptable level, or eliminate the *L. monocytogenes* from their products into their HACCP systems.

The proposed testing was intended to verify that the establishment's Sanitation SOP was preventing direct product contamination by *L. monocytogenes* after the products had undergone a lethality treatment. FSIS recognized that there is a significant risk for RTE meat and poultry products to become re-contaminated by *L. monocytogenes* if they came into contact with the pathogen, and that testing was necessary to verify that the procedures conducted under the Sanitation SOP had killed or eliminated the pathogen.

Under the proposal, if an establishment found that a food contact surface had tested positive for *Listeria* species, the establishment would have to take the corrective action necessary to properly clean the surfaces and to prevent product that may have become contaminated through contact with the surface from entering commerce.

Under the proposal, an establishment that had identified *L. monocytogenes* as a hazard reasonably likely to occur in its HACCP plan, and that had established CCPs for *L. monocytogenes*, was exempt from the proposed mandatory testing frequency requirement because HACCP regulations already require monitoring and verification, including testing frequency, as validated in the HACCP plan. An establishment that did not explicitly identify *L. monocytogenes* as a hazard reasonably likely to occur, but whose HACCP controls for biological hazards effectively prevented, eliminated, or reduced product contamination by the pathogen, would have had to make only minor amendments in its HACCP plan and supporting documentation to reflect that *L. monocytogenes* had been identified as a hazard addressed by the HACCP plan. In any case, if HACCP controls were implemented, the establishment would have to develop and validate the monitoring and verification procedures used to document the on-going effectiveness of the system. FSIS did not specify minimum monitoring and verification requirements for these processors.

The Agency has made it clear that, in its view, contamination with *L. monocytogenes* is a hazard reasonably likely to occur in all RTE meat and poultry products that are exposed to the processing environment post-lethality. Significant concerns about such contamination underlay the Agency's May 26, 1999, **Federal Register** Notice advising manufacturers of RTE meat and poultry products of the need to reassess their HACCP plans to determine whether the plans were appropriately addressing *L. monocytogenes*. In the proposal, however, the Agency acknowledged that, even though *L. monocytogenes* was a significant concern in RTE products, it may not be necessary to address this pathogen in the HACCP plan itself. FSIS acknowledged that this pathogen may be present but not necessarily likely to occur because the establishment had measures in place, such as Sanitation SOPs, that effectively prevented contamination by the pathogen in the food processing environment. An establishment might have incorporated the controls in its Sanitation SOP and thereby prevented the pathogen from posing a contamination hazard in the processing environment.

Consequently, to verify that such plants were effectively preventing environmental contamination, FSIS proposed to require that establishments without HACCP controls for *L. monocytogenes* test food contact surfaces for *Listeria* species at a frequency that was based on the relative size of the establishments. FSIS proposed that large establishments subject to the requirement conduct at least four such tests per line per month; small establishments at least two per line per month; and very small establishments at least once per line per month. A large establishment was one employing more than 500 employees; a small establishment from 10 to 499 employees; and a very small establishment one employing fewer than 10 employees and grossing less than $2.5 million in sales. These are the same size criteria the Agency had used in its 1996 final rule on HACCP systems (61 FR 38806).

The Agency solicited information on the proposed rule, including the efficacy of the testing frequencies, their potential cost to industry, the relationship between *Listeria* species on food contact surfaces and *L. monocytogenes* in product, and the various factors that might be important in devising effective testing protocols.

FSIS also proposed that establishments take certain actions after obtaining a positive food contact surface test result for *Listeria* species. An establishment with such a result would have to take the corrective action defined in its Sanitation SOP. The establishment would have to have in place procedures to determine which lots of product might be affected; to hold, sample, and test that product; and to dispose of affected product appropriately. FSIS acknowledged that some establishments would have to modify their Sanitation SOP corrective actions to include such elements.

FSIS requested comment on whether *Listeria*-positive test results on different food contact surfaces (such as surfaces that had been treated with a bactericide versus those that had not) should be treated differently; whether the Agency should establish more specific requirements on product sampling following a *Listeria*-positive test on a food contact surface; and whether an establishment should have to determine whether a *Listeria*-positive sample is *L. monocytogenes* before having to initiate product testing.

FSIS stated in the preamble of the proposal that if a sampled lot is found to be positive for *L. monocytogenes*, and the product from the lot is already in commerce, the Agency would request that the product be recalled. Further, the Agency stated, if product is found to be positive for *L. monocytogenes*, the establishment that produced it would likely have to establish controls for the pathogen within its HACCP plan.

FSIS noted that the two provisions addressing *Listeria* contamination contained in the proposed rule, HACCP and Sanitation SOPs, required specific daily action to ensure that product is not adulterated. FSIS stated that, as of the time of the proposal, it did not consider programs outside of Sanitation SOPs and HACCP to be sufficient to prevent the hazards associated with post-lethality contamination with *Listeria* in the manufacture of RTE products. For one thing, the Agency noted, documentation of corrective and preventive actions taken in such programs, known as GMPs (good manufacturing practices) or prerequisite programs, generally was not being provided to the Agency.

Compliance guidance: In the proposal, FSIS made a commitment to provide compliance guidance to establishments on testing frequencies and methodologies and appropriate corrective actions to take following positive tests on samples from food contact surfaces. FSIS also said it would publish guidance on available interventions (techniques for killing *L. monocytogenes*) establishments can implement as CCP's. FSIS made the draft compliance guidance available on its Web site after publication of the proposal.

Opportunity for Public Comment

FSIS provided a 90-day comment period. On April 13, 2001, FSIS published a **Federal Register** notice (66 FR 19102) extending the comment period an additional 30 days, through June 28, 2001, to provide opportunity for the public to comment on issues raised at a technical conference and public meetings that the Agency held May 8–10, 2001, on the proposed regulations. After the extended comment period expired, the Agency announced, in a July 3, 2001, **Federal Register** notice (66 FR 35112), that at the request of a consortium of trade associations, the Agency was reopening the comment period for an additional 30 days, until September 10, 2001. The consortium had said that it needed the additional time to review the large amount of scientific and economic data presented at the May 8–10 meetings, FSIS's draft compliance guidelines, and the draft FDA/FSIS risk ranking on the relationship between foodborne *L. monocytogenes* in RTE foods and human health.

Public Meetings on Listeria

During the development both of the proposal and this interim final rule, FSIS held a series of meetings with constituents and with technical and scientific experts on the problem of *L. monocytogenes* and how to control it. Some meetings were prompted by large-scale product recalls due to contamination with the pathogen or actual outbreaks of listeriosis.

In February 1999, following the late-1998 listeriosis outbreak and a recall of hotdogs and deli meats that had been contaminated with *L. monocytogenes*, FSIS held a public meeting on the food safety issues related to *L. monocytogenes* in meat and poultry products. At the meeting, industry and government procedures were discussed, including sampling programs for RTE products and the best ways to educate "at risk" populations about *Listeria*.

On May 15, 2000, FSIS held a public meeting to discuss current Agency initiatives to prevent human illness from *L. monocytogenes* in RTE meat and poultry products; the use of *Listeria* species as an indicator organism for *L. monocytogenes*; and the efficacy of environmental testing for *Listeria* species.

On May 8, 2001, FSIS held a public meeting to discuss scientific research and new technologies for detecting and controlling *L. monocytogenes* in RTE

meat and poultry products. At this meeting, FSIS requested data relevant to the proposed regulation regarding frequencies of testing for environmental *Listeria* species and the correlation of potential product contamination with production volume.

On November 18, 2002, FSIS held a public meeting to provide a forum for experts from government, academia, industry, and elsewhere to discuss current research and information related to improving the safety of RTE products. The topics discussed included the role of environmental and product testing, decontamination strategies, and consumer behaviors related to RTE foods. At the meeting, FSIS released a new draft directive (Directive 10,240.3, discussed below) on FSIS microbiological testing of RTE products for a number of organisms, including *L. monocytogenes*.

An additional public meeting was held February 26, 2003, to discuss an FSIS draft risk assessment which had been conducted to determine the likelihood that *L. monocytogenes* may contaminate RTE meat and poultry products during production and packaging processes. The Agency's draft risk assessment was released February 14, 2003, and was posted on the FSIS Web site (at *http://www.fsis.usda.gov/OPHS/lmrisk/DraftLm22603.pdf*). Copies also were made available in the FSIS Docket Room. Public and peer reviewer comments on the risk assessment and the Agency's response to the comments also can be viewed in the Docket Room and on the Web site.

V. FSIS Risk Assessment of *L. monocytogenes* in RTE Meat and Poultry Products

The FSIS risk assessment and the FDA/FSIS risk ranking on *L. monocytogenes* in RTE foods sold at retail provided a framework for evaluation of, and data on, risk mitigation strategies, including in-plant measures, to inform the Agency in this rulemaking as it considered the need to address potential contamination of RTE products by the pathogen.

FSIS initiated its *Listeria* risk assessment in February 2002 in response to public comments on the proposed rule that suggested the need for a stronger scientific basis for provisions requiring the testing of food contact surfaces for *Listeria* species. The risk assessment was developed: (1) To provide insight into the relationship between *Listeria* species on food contact surfaces and *L. monocytogenes* in RTE meat and poultry products exposed to the environment after the lethality treatment (post-lethality exposure); and (2) to evaluate the effectiveness of food contact surface testing and sanitation regimes, pre- and post-packaging interventions, growth inhibitors, and combinations of these interventions to mitigate contamination of RTE meat and poultry products that are post-lethality exposed, and to reduce the subsequent risk of illness or death from *L. monocytogenes*.

FSIS risk managers asked that the FSIS risk assessors evaluate the effect of various food contact surface testing and sanitation regimes in reducing *L. monocytogenes* contamination of products and the effect of other pre- or post-packaging antimicrobial interventions and of growth inhibitors in reducing such contamination. The risk managers also sought guidance from the risk assessors on testing and sanitation of food contact surfaces for *Listeria* species.

Given the available data and the fact that deli meats comprised about 80 percent of the listeriosis cases associated with ready-to-eat product, the FSIS risk assessment addressed only deli products. In order to evaluate the specific FSIS risk management questions, the risk assessment assumed that all *L. monocytogenes* on RTE product comes from the food contact surfaces and not from inadequate lethality treatment.

Using available data, the FSIS risk assessors developed a dynamic in-plant Monte Carlo simulation model (referred to as the in-plant model) quantitatively characterizing the relationship between *Listeria* species in the in-plant environment and *L. monocytogenes* in a production lot of RTE product at retail.

The outputs of the in-plant model (*e.g.*, concentration of *L. monocytogenes* on deli meats at retail) were used as inputs into the two major components of the FDA/FSIS risk ranking model discussed earlier: the exposure assessment and the associated dose-response relationship for deli meats.

In the FDA/FSIS risk ranking, the retail-to-table exposure assessment for deli meats and the associated dose-response relationship were developed to identify which RTE foods pose the greatest risk for causing listeriosis. Two components of the FDA/FSIS risk ranking model, the exposure assessment for deli meats and the dose-response relationship, were later updated with data and information provided during the public comment period on the draft FDA/FSIS risk ranking. The updated exposure assessment is used to track the level of *L. monocytogenes* in deli meat from retail to table and, using the updated dose-response relationship for *L. monocytogenes*, provides estimates of the subsequent risk of illness or death from consuming deli meats.

The outputs of the FSIS risk assessment model were calibrated to the *L. monocytogenes* concentration in deli meats at retail in the updated FDA/FSIS exposure assessment. That is, the FSIS output data were statistically compared with standard data on *L. monocytogenes* from a reputable third-party to determine whether the output data deviated from the standard data. Calibration of risk assessment models is intended to ensure the accuracy of risk estimates.

By modeling changes in in-plant practices, such as the frequency of testing and sanitation of food contact surfaces, the FSIS risk assessment model provides insight into the effects of these practices on the annual risk of illness or death from *L. monocytogenes* in RTE meat and poultry products. The risk assessment model was designed to provide numerous outputs that depended on the selection of in-plant practices, such as "test and hold," responding after an initial positive food contact surface sample, or alternatively, after consecutive positive samples, and that were based on various plant characteristics (*e.g.*, plant size or production volume).

The most significant findings of the risk assessment model are: (1) The proposed minimal frequency of testing and sanitation of food contact surfaces (66 FR 12589, February 27, 2001) results in a small reduction in the levels of *L. monocytogenes* on deli meats at retail; and (2) combinations of interventions (*e.g.*, sanitation/testing of food contact surfaces, pre- and post-packaging lethality interventions, and growth inhibitors) appear to be much more effective than any single intervention in mitigating the potential contamination of finished RTE products with *L. monocytogenes* and reducing the subsequent risk of illness or death.

Specific model outputs relating to *L. monocytogenes* concentrations in deli products at retail and the resulting public health impacts of various interventions were developed and were presented at a public meeting on February 26, 2003. FSIS accepted comments on its draft risk assessment at the public meeting and afterward, until March 14, 2003 (68 FR 6109; February 6, 2003). The comments received have been included in the record of this rulemaking proceeding. An analysis of comments and responses is available in the FSIS Docket Clerk's Office and on the FSIS Web site at: *http://www.fsis.usda.gov*.

VI. Comments on the Proposal and FSIS Response

On the proposed requirements for controlling *Listeria* in RTE products in the February 27, 2001, **Federal Register** document, FSIS received 28 comments. Comment summaries, grouped by topic, and Agency responses follow.

Support for the Proposal

Comment: Three comments supported the proposed rule and favored even more stringent requirements. They said that manufacturers of RTE products should be required to implement programs for detecting and eliminating *L. monocytogenes* harborages and should perform tests for *L. monocytogenes* and *Listeria* species. All establishments that produce such products should have control programs that include environmental testing. The Agency should require establishments that have CCPs for *L. monocytogenes* to conduct testing. Also, the proposed required sampling frequencies should be increased and the intervals between tests specified. FSIS should mandate specific testing frequencies for product testing to be conducted following an environmental test that is positive for *Listeria*. Two of the commenters suggested that *Listeria* species is an appropriate indicator for *L. monocytogenes*.

The commenters said that FSIS should require even more intensive environmental and product testing than that proposed. Final product testing as well as environmental testing should be required; eventually, continuous product testing should be performed. One commenter opposed the notion of adopting food irradiation as a solution for potential contamination of RTE products.

One commenter said that the Agency should require establishments to test a statistically significant amount of RTE product for *L. monocytogenes*. The establishments also should conduct environmental testing for the organism. If the products are produced by an establishment that does not conduct RTE product testing as part of its HACCP plan, the products should carry warning labels.

Commenters said that FSIS should maintain its "zero tolerance" for *L. monocytogenes* in RTE products rather than setting a minimum colony-forming-unit (CFU) level for the organism in the products, as some have suggested.

A commenter said that official establishments should identify sources of *L. monocytogenes* in their Sanitation SOP.

Response: FSIS agrees with comments that supported establishment use of effective process controls combined with environmental testing to verify the effectiveness of sanitation programs. The Agency also agrees with the comment that establishments should address sources of *L. monocytogenes* either in their HACCP plans or in their Sanitation SOPs or other appropriate procedures. This interim final rule provides a framework within which establishments must meet this objective and provides flexibility for doing so.

FSIS does not agree that it is necessary to mandate *Listeria* testing for establishments that have a CCP for *L. monocytogenes*. Such establishments are already required to validate and verify the CCP's, and microbiological testing is an important means of validation and verification.

FSIS also believes that, if it mandated a high frequency of environmental or product testing, the Agency would be foreclosing unnecessarily the use of effective control programs or strategies adopted by establishments that might require testing at frequencies different from those mandated. In this interim final rule, FSIS is not adopting the proposed frequency requirements. Instead, the Agency is requiring establishments to adopt one of several alternatives that are appropriate for their products and process controls that are effective in addressing *L. monocytogenes*.

On the question of a "zero tolerance" for *L. monocytogenes* and particularly with respect to RTE products that support growth of the pathogen, FSIS currently regards any amount of the organism as a product adulterant. As stated above, because the product is RTE, it is likely to be consumed without any effort to kill the pathogen, and the presence of the pathogen may render the product injurious to health (21 U.S.C. 601(m)(1), 453(g)(1)) and would cause the product to be unhealthful.

General Comments on the Proposal and Its Scientific Basis

Comment: A number of commenters said that the proposed testing requirements are arbitrary, unsupported by the FDA/FSIS risk ranking, and generally unscientific (*i.e.*, they were not based on the relative risk posed by establishments, products, or processes).

Response: FSIS agrees, in principle, that mandating a testing frequency is not well founded. In this interim final rule, FSIS is not adopting the proposed provisions for testing food contact surfaces at specified frequencies. Under the interim final rule, establishments will have to implement effective controls for *L. monocytogenes*. The interim final rule is based on the Agency's conclusion that establishments that process post-lethality exposed RTE products must address *L. monocytogenes* in their food safety systems. Those establishments that rely only on sanitation procedures to control the pathogen should carry out more intensive verification procedures, such as food contact surface testing, to ensure that the procedures are effective, and that products are not contaminated, than establishments that controls the pathogen through their HACCP plans.

Severity of Effects

Comment: In framing the rule, FSIS should consider the relative risk of illness posed by RTE products and the severity of effects.

Response: FSIS has taken into account the relative risk of illness and death posed by the processes and products addressed by this interim final rule as reported in the FDA/FSIS risk ranking of RTE foods sold at retail and the FSIS risk assessment.

Success of Industry Efforts

Comment: The industry has been successful in lowering the incidence of foodborne listeriosis. The industry's efforts will help the country achieve the Department of Health and Human Service's "Healthy People 2010" goals for lowering the incidence of listeriosis in the population within the timeframe established in the May 5, 2000, Presidential directive. Thus, the Agency's proposal to require environmental testing is unjustified, especially in view of the fact that HACCP was intended to obviate the need for this type of prescriptive requirement.

Response: Although it is early to determine whether the "Healthy People 2010" goals for reducing listeriosis (to 0.25 cases per 100,000 population) will be achieved, recent data from CDC indicate that from 1996 to 2002 there was a 38-percent decline in the number of cases per 100,000 population (to .27 overall). Nonetheless, meat and poultry products have been implicated in a substantial proportion (nearly half) of listeriosis cases. FSIS believes that the meat and poultry industry, together with other segments of the food industry, is capable of contributing significantly to the achievement of the Nation's goals for *Listeria* control, particularly by focusing on higher-risk meat and poultry products and on mandatory control procedures—the approach taken in this interim final rule. This interim final rule does not, however, mandate specific testing frequencies.

Effectiveness of Industry Controls

Comment: Some commenters stated that the current HACCP and Sanitation SOP requirements are adequate for ensuring control of *Listeria*. Therefore, the need for regulatory change in this area is questionable.

Response: It is true that validated HACCP plans and effective Sanitation SOPs should be sufficient to address the *Listeria* hazard. The continuing occurrence of product contamination and of significant outbreaks of illness in which meat and poultry products are implicated, however, suggest that establishments have not appropriately addressed the hazard in their HACCP plans, and that the effectiveness of establishment Sanitation SOPs used to control *L. monocytogenes* contamination is not being ensured. The Agency has therefore concluded that it is necessary to require establishments to take specific steps to control the *Listeria* hazard.

Ubiquity of L. monocytogenes and Difficulty of Controlling It

Comment: Several commenters stated that it is important to recognize how ubiquitous *L. monocytogenes* is in the environment and that elimination of *L. monocytogenes* from all food is probably impossible. Thus, the commenters believe, it is not appropriate to require product testing on the basis of a single positive test for *Listeria* spp. on a food contact surface. Some commenters said that environmental testing results should not lead to enforcement actions.

Response: While FSIS does not think that the ubiquity of an organism in the environment argues against regulations requiring control of the organism, the Agency agrees that a more flexible approach to *L. monocytogenes* control than that taken in the proposal is warranted and desirable. FSIS is not adopting the proposed requirement to test product after the first positive test on a food contact surface. Although a positive test for *Listeria* species on a food contact surface does not necessarily mean that product is adulterated, or that enforcement action should be taken, such a finding does suggest the need for corrective action. FSIS inspection program personnel are instructed to verify that the establishment takes the corrective actions it has developed, whether as part of a HACCP plan or of a Sanitation SOP or other prerequisite program.

On the other hand, FSIS regards a positive test for *L. monocytogenes* on a food contact surface as evidencing an insanitary condition that may render product injurious to health. RTE product that comes into contact with the sampled surface at the time it was contaminated with the pathogen and is not subject to any further lethality treatment is adulterated, and FSIS inspection program personnel will take the appropriate action in response to such a finding as set out in Agency directives.

Incentives and Disincentives

Comment: The proposed testing requirements are a disincentive to control *L. monocytogenes* and may actually increase risk of foodborne listeriosis. Establishments might test for the organism at a lower rate than they currently do lest positive tests lead to unwarranted enforcement actions by FSIS. Many small and very small establishments have already implemented *L. monocytogenes* control measures (GMPs, Sanitation SOPs, and testing) in excess of the proposed requirements.

Response: FSIS agrees that mandating testing at a fixed frequency might discourage some establishments that are making strong efforts at *Listeria* control that include regular testing. This recognition factored into the Agency's decision not to adopt the proposed testing frequencies in this interim final rule.

Comment: FSIS should provide incentives for finding harborages, taking corrective actions, and preventing the recurrence of contamination.

Response: FSIS agrees with the comment. When the interim final rule becomes effective, FSIS verification testing will be more intensive in establishments where controls are less rigorous. (*See* discussion of new Directive 10,240.4 below.) Whether FSIS takes an enforcement action will depend on whether establishments are correcting insanitary conditions that may result in product adulteration.

FSIS believes that this interim final rule gives establishments the flexibility to adopt innovative and effective *Listeria* control methods. Moreover, the interim final rule includes a provision enabling establishments to declare on their product labels their use of *Listeria* control measures, provided that the establishments can validate the declarations.

HACCP, Sanitation SOPs, Prerequisite Programs, Directives or Performance Standards

Listeria Controls in HACCP Plans

Comment: Some commenters favored using equipment design, GMPs, and facilities management techniques to control *L. monocytogenes*. They stated that FSIS should recognize that enhanced and focused sanitation and employee behavior programs can be effective preventive and corrective actions. These commenters argued that contamination occurring in a post-lethality processing area is a sanitation, and not a HACCP, issue.

Others argued, to the contrary, that *L. monocytogenes* should be controlled by CCPs in an establishment's HACCP plan.

Response: FSIS is persuaded that *L. monocytogenes* contamination is being prevented in many establishments by Sanitation SOPs and other prerequisite programs. Where these programs are effective, an establishment may conclude in its hazard analysis that *L. monocytogenes* is not a hazard reasonably likely to occur. Of course, in the Agency's view, it is also appropriate to address this hazard in a HACCP plan. Thus, the Agency is allowing establishments the latitude to include *L. monocytogenes* control measures in HACCP plans or to address potential contamination by this pathogen in Sanitation SOPs or other prerequisite programs. It is important to note that if an establishment is applying a post-lethality treatment to an RTE product, the establishment must have concluded that *L. monocytogenes* is a hazard reasonably likely to occur in the product. For this reason, the establishment must include that treatment as a CCP in its HACCP plan.

Comment: Since no technology exists to completely eliminate *L. monocytogenes* from products, a CCP for controlling *L. monocytogenes* is infeasible. Establishments should focus their resources on sanitation and plant improvement projects rather than on HACCP CCPs. Allowing plants to develop CCPs instead of testing, they said, would result in decreased consumer protection.

Response: FSIS disagrees. A CCP in a HACCP plan is a point, step, or procedure in a food process where the occurrence of an identified hazard can be prevented, eliminated, or reduced to an acceptable level. Various methods are available to prevent, eliminate, or reduce *L. monocytogenes* in the RTE products that are subject to this interim final rule and their effectiveness can be validated. For example, a post-lethality heat treatment of a packaged product can eliminate the pathogen. Thus, establishments that use post-lethality treatments for this purpose should include the treatments in their HACCP plans. But establishments may use other methods, including the addition of antimicrobial agents, that have the effect of limiting or suppressing growth of *L. monocytogenes* in the products. These methods need not be in the establishments' HACCP plans, so long as the plant is regularly ensuring that these methods are working effectively and is making its records that relate to these methods available to FSIS inspection personnel.

Use of Process Controls and Technologies to Control Listeria

Comment: FSIS should encourage establishments to adopt effective process controls, such as food irradiation and high-pressure processing, rather than imposing testing requirements. Relying solely on Sanitation SOPs or GMPs would fail to control *L. monocytogenes*. Further, products that are subject to an in-package lethality treatment before being shipped should be exempt from both environmental and product testing requirements.

Response: FSIS has designed the interim final rule to be sufficiently flexible that establishments will be able to implement a variety of technologies to address *L. monocytogenes*. Of course, before establishments can take advantage of food irradiation for the types of products covered by this interim final rule, FDA approval will be necessary.

FSIS agrees that effective process controls will yield more beneficial results than testing requirements of the kind proposed and that establishments may use various methods to prevent or control *L. monocytogenes* contamination. Therefore, FSIS is not adopting the proposed testing frequency requirements. The Agency is permitting establishments that produce RTE products to implement the type of HACCP or sanitation program that is most appropriate for their production situation and is not imposing uniform testing requirements of the kind proposed. FSIS recognizes that different validation or verification testing regimes are appropriate for different types of products or process control programs, and that a combination of interventions, including post-lethality treatments, sanitation and testing, processing, and the use of growth inhibitors, appears to be most effective in controlling *L. monocytogenes*.

Resource Allocation to Testing or Process Controls

Comment: FSIS has not shown how the proposed, prescriptive, environmental testing will reduce the incidence of *L. monocytogenes* in RTE products. If plants devote resources to environmental testing rather than to effective sanitation activities, consumer protection would decrease. Also, FSIS should let establishments use prerequisite programs instead of CCPs in the HACCP plan to control *L. monocytogenes*.

Response: FSIS acknowledges that testing by itself is insufficient to control *L. monocytogenes* but needs to be a part of a sanitation control program. FSIS regards testing as an essential means of verifying the effectiveness of sanitation procedures to control *L. monocytogenes*, whether the procedures are incorporated in a HACCP plan, a Sanitation SOP, or another prerequisite program. Devoting resources to a testing program developed for this purpose actually supports the control measures.

The proposed *Listeria* testing requirements, which would have mandated specific testing frequencies, were intended for Sanitation SOP verification. Although this interim final rule does not adopt the proposed testing frequency requirements, establishments that do not apply post-lethality treatments to their post-lethality exposed RTE products will have to include at least some food-contact surface testing in their sanitation programs. Such testing is intended to ensure that their measures for controlling, or preventing contamination by, *L. monocytogenes*, whether in HACCP plans or in Sanitation SOPs or other prerequisite programs, are effective.

Comment: FSIS should set a performance standard for *L. monocytogenes* as it has for other pathogens of concern. The Agency should also give establishments the flexibility to meet the standard. Thus, the Agency should consider the problem of pathogen growth after processing and give plants maximum flexibility in testing for *L. monocytogenes*.

Response: FSIS considered the option of adopting a process performance standard for controlling *L. monocytogenes* but determined that there was insufficient scientific information on which to base such a standard. Nonetheless, the Agency has given the establishments flexibility in deciding how to address this pathogen.

FSIS Directive on Microbial Sampling Procedures for RTE Products

Comment: Some commenters said that the Agency should continue to have its personnel use FSIS Directive 10,240.2, which sets out the procedures to be followed when Agency personnel conduct microbiological sampling in establishments that produce RTE products, rather than issuing new regulations. They said that FSIS could revise the Directive and conduct some food contact surface testing, either in all establishments that produce RTE products or just in establishments that do not conduct their own sampling.

Response: FSIS disagrees with the assertion that a regulation is not necessary to ensure effective control of *L. monocytogenes* in RTE products. As noted, with respect to the risk ranking, there is a significant opportunity for recontamination of RTE products in establishments. Many establishments are not implementing HACCP, Sanitation SOPs, or prerequisite programs in a manner that is effective in eliminating *L. monocytogenes* in RTE products. It should also be noted that FSIS replaced its Directive 10,240.2 in December 2002 with a new directive (10,240.3) with updated inspection verification activities. This new directive will be further revised to reflect the requirements of this interim final rule.

Inspection and Enforcement

Comments: FSIS inspectors should be trained to understand *Listeria* testing and the evaluation of the testing results because the considerations involved are complex. FSIS should make compliance guidance materials available for industry review before final regulations take effect.

Response: FSIS will be training its field inspection personnel to ensure that the interim final rule is properly implemented. FSIS's Food Safety Regulatory Essentials training, which addresses RTE products, is being given to all consumer safety inspectors. Regarding guidance materials, FSIS will provide comprehensive guidance to facilitate implementation of this interim final rule by all affected establishments. FSIS will make this guidance material available on its Web site well before this interim final rule takes effect.

Correlation Between Testing and Establishment Size and Production Volume

Comments: There is no evidence that the testing frequencies proposed, which are based on establishment size, will lead to reductions in the rate of listeriosis.

Also, requiring a large establishment to test more frequently than a small one because that establishment manufactured more product is not supportable. The Agency's preliminary economic impact analysis indicated that a small establishment could produce more product than a large establishment because factors other than employees were involved.

Response: FSIS agrees that there is no necessary correspondence between

establishment size and the rate of listeriosis or the degree of risk posed by the products the establishment manufactures. This is one reason why the Agency is not adopting the food contact-surface testing frequencies it proposed. Instead, the Agency is allowing establishments flexibility in designing measures to address *L. monocytogenes*, including appropriate testing and hold-and-test strategies for their products.

FSIS also understands that production volume does not necessarily correspond to establishment size. The Agency has concluded that having better and more comprehensive information about the production volume of RTE products will help it to more efficiently target its resources in verifying establishment *L. monocytogenes* controls.

Hold and Test

Comments: Some commenters stated that requirements for establishments to hold and test product after initial positive tests from environmental sampling would be complicated and likely to result in errors. Such regulation would therefore prove ineffective.

Other commenters insisted that, after an environmental positive, it would be appropriate for an establishment to follow hold-and-test procedures. They said that establishments should regard positive tests for *Listeria* from a non-food contact surface as indicating a sanitation or *Listeria* control problem and that if the positive test were from a food contact surface, all product from the shift represented by the sample should be held and tested before release.

Response: FSIS proposed requirements for food contact-surface testing rather than tests from the general plant environment. In this interim final rule, with the exception of one provision, FSIS is allowing the industry flexibility in designing procedures to be carried out following positive tests for an indicator organism, such as *Listeria* species. However, if a product has been in contact with a food contact surface that has tested positive for *L. monocytogenes*, it is considered adulterated and must be withheld from commerce. FSIS believes that this flexibility should result in the adoption of hold-and-test procedures that are not needlessly complicated and do not result in errors.

Costs and Benefits

Comments: Some commenters stated that the proposed regulations that require establishments to hold and test product after positive environmental test results would impose significant costs that would be especially burdensome to small businesses. Further, it was asserted that establishments unable to hold product because of customer demand or lack of storage facilities would run the risk of incurring the costs associated with increased product recalls.

Commenters argued that FSIS provided little justification for its *Listeria* testing policies in its proposal. They stated that it is difficult to estimate the number of listeriosis cases that might arise from contamination of meat and poultry products and discrepancies in the Agency's proposal illustrated this fact. For example, there is a significant data gap in the relationship between a product contact surface that tests positive for *Listeria*-like, *Listeria* species, and *L. monocytogenes* and whether the product will be positive and the risk to consumers. Commenters suggested that FSIS estimate the reductions in foodborne illness that would result from the regulation and provide further analysis or quantification of costs and benefits.

Response: FSIS agrees that the proposed testing frequency requirements would not be without cost and is interested in ensuring the accuracy of its estimates. To this end, the Agency has accepted data that were submitted by several commenters on this matter and has used the data in preparing the final regulatory impact analysis.

FSIS agrees that the costs associated with product recalls may far exceed those associated with hold-and-test procedures.

On the effect of *Listeria* control regulations on small businesses, FSIS agrees that a relatively large proportion of small establishments will be affected by this interim final rule. FSIS has prepared compliance guidance for such establishments, including guidance specifically intended to assist them in HACCP plan validation with respect to *L. monocytogenes* control, and is making this guidance available with this interim final rule in the FSIS Docket Room and on the Agency's Web site. Also, FSIS will mail the guidance material to all RTE operations before the effective date of this interim final rule.

FSIS agrees with the comments on the difficulties involved in determining the relationship between listeriosis cases and meat and poultry product contamination and with the suggestion that FSIS estimate the reductions in foodborne illness that could result from the regulation. FSIS initiated a risk assessment of in-plant processing of RTE products to determine the relationship between various food contact surface testing and sanitation regimes and other pre- and post-packaging interventions in mitigating contamination of RTE products with *L. monocytogenes* and in reducing the subsequent risk of illness or death and has further analyzed the costs and benefits. FSIS considered the results of the risk assessment in developing this interim final rule. In the final regulatory impact analysis, the Agency analyzes the effect of the interim final rule in terms of the reduction of illness and death from listeriosis.

Definition of RTE and Relative Risk of Different RTE Products

Comments: Commenters expressed concern about the terminology that the Agency used in its proposal. These concerns were related to the scope and effects of the regulation. The commenters said that FSIS should more clearly define RTE products. Some of them stated that frozen products ought not to be considered RTE for the purposes of the rule. To include such products in the RTE category, they argued, would be contrary to previous FSIS policy (Agency directives), the FDA's model food code, and the FDA/FSIS risk ranking model for *Listeria* in RTE foods. The commenters argued that another category of products, dried meat and fermented products, also should not be considered RTE for the purposes of the rule, for their water activity (a_w) puts them at low risk as a medium for growth of *L. monocytogenes*.

The commenters suggested that instead FSIS should define RTE products as "refrigerated foods of extended shelf life (>10 days) that can support the growth of *L. monocytogenes* and that will be consumed without further listericidal treatment." The commenters added that FSIS should base *L. monocytogenes* control requirements on risks posed by specific types of products.

Response: The Agency has revised the definition of RTE to be consistent with the definition of RTE used in the 2001 Food Code. FSIS does not believe that frozen foods, as a broad category, can be excluded from the definition of RTE for this rule. Rather, the Agency will continue to follow its existing practice of determining whether foods should be considered RTE because of the manner of processing and the handling instructions provided to consumers. Some instructions direct that the product must receive further preparation for safety purposes.

Several labeling features or statements are used exclusively on RTE products or non-RTE products, but not on both. RTE products often include phrases indicating that they do not require further preparation for safety, *i.e.*, "fully cooked," "Ready-to-eat," and "Heat and Serve." Features that are used exclusively on non-RTE products to inform consumers that the products must be cooked to be safe for consumption include the Safe Handling Instructions, which indicate that the meat or poultry portion have not received an adequate lethality treatment and such phrases as, "Raw," "Uncooked," "Not Ready-to-Eat," and "Ready-to-Cook."

Cooking instructions alone, however, are not a reliable labeling feature for consumers to determine whether a product requires cooking for safety. Phrases such as "Cook and Serve," "See cooking instructions," and "Cook thoroughly" have been used interchangeably on both RTE and NRTE meat and poultry products.

FSIS will continue to consider frozen foods that provide clear instructions to consumers about safe handling and cooking requirements as not-RTE and therefore not subject to this regulation. Frozen products that do not meet these requirements will be considered RTE.

The Agency does not agree that either frozen foods or dried meat and fermented products should be excluded from the definition just because they pose a low risk for *L. monocytogenes*. In both cases, the products are lower in risk because they have undergone a process that is either lethal to or suppresses or limits the growth of pathogens, including *L. monocytogenes*. For this reason, FSIS believes that establishments producing these products should also be required to incorporate in their operations measures addressing *L. monocytogenes* to ensure that the products can be consumed safely without further preparation.

Tolerance for L. monocytogenes and Food Safety Objectives (FSO's)

Comments: Some commenters recommended that FSIS establish a tolerance for *L. monocytogenes* in certain products that do not support growth of the organism. The commenters suggested that a FSO would be consistent with the concepts favored by the Codex Alimentarius Commission and the standards applied by some of this Nation's trading partners. A more rigorous standard could be applied to product that is intended for vulnerable populations.

Response: Establishing a tolerance for *L. monocytogenes* is outside the scope of this rulemaking. The Agency is not in a position to set a regulatory tolerance for *L. monocytogenes* in RTE products, for a number of reasons, including the fact that the Agency is unable routinely to identify the end users of the products.

Absent a conclusive demonstration to the contrary, the Agency must regard any amount of *L. monocytogenes* in a RTE product as an adulterant under the FMIA or PPIA (21 U.S.C. 601(m), 453(g)).

Labeling and Consumer Education

Comments: Some commenters said that development of meaningful "use-by" dating that reflects the safety of the product is a practical impossibility. They said that "use-by" dates would only be effective for products that are "refrigerated foods of extended shelf life (>10 days) that can support the growth of *L. monocytogenes* and that will be consumed without further listericidal treatment."

Other commenters maintained that FSIS should require RTE products to have a uniform expiration dating system to identify product that should be frozen or not consumed after a specified number of days. Some commenters said that RTE products should carry warning labels if they are produced by a plant that does not conduct product testing for *L. monocytogenes* as a feature of its HACCP system. Also, they said, because of the possibility that RTE products might be contaminated with *L. monocytogenes*, the products should carry safe-handling labels until testing is required.

Response: FSIS proposed some revisions to the special-handling label requirements that are not addressed in this interim final rule. The Agency did not propose use-by labeling but requested comment on the feasibility of requiring such labeling, including the most effective way to implement it, the assumptions retailers and consumers should be expected to make in using it, scientific and economic data on the shelf-life and safety of RTE meat and poultry products, the kinds of post-lethality interventions that should be expected for products bearing use-by labeling, and the content of the labeling (66 FR 12635). FSIS notes that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) is currently addressing safety-based use-by dates. FSIS will consider the NACMCF findings and other information of the kind requested in the proposal before any further rulemaking on the issue.

VII. The Interim Final Rule: Control of *L. monocytogenes*

FSIS has considered the information presented in comments on the proposal, public meetings, the FDA/FSIS risk ranking, and the FSIS risk assessment. Given the pathogenicity of *L. monocytogenes*, the opportunity for it to contaminate RTE product in the post-lethality environment, and the significant consequences that this contamination can have, FSIS is amending its regulations. The Agency is adding provisions that require establishments that produce post-lethality exposed RTE product to include in their HACCP plans or in their Sanitation SOPs or other prerequisite programs measures that prevent product adulteration by *L. monocytogenes*.

FSIS is adding several definitions (9 CFR 430.1) to the regulations. FSIS is defining "deli product" and "hotdog product," which are a particular focus of the regulations because of the risks they pose. The Agency is also adding several definitions relating to conditions affecting RTE products after the products have undergone a process that destroys *L. monocytogenes* (9 CFR 430.1).

The first definition in 9 CFR 430.1 is for "antimicrobial agent," which FSIS is defining to mean a substance in or added to an RTE product that has the effect of reducing or eliminating a microorganism or of suppressing or limiting its growth throughout the shelf life of the product. In the context of this regulation, an antimicrobial agent may be added to a post-lethality exposed product (also defined) after its initial lethality treatment. An antimicrobial agent, such as acid from fermentation, may also be an inherent component of the product or a result of its formulation. In any case, the effect of the use of the antimicrobial agent is to limit or suppress growth of *L. monocytogenes*.

"Antimicrobial process" is defined to mean an operation, such as freezing, that is applied to an RTE product and that has the effect of suppressing or limiting the growth of a microorganism. In the context of this regulation, the process is typically applied to a post-lethality exposed product after its initial lethality treatment, and the effect of the process in limiting or suppressing growth of *L. monocytogenes* continues throughout the shelf life of the product. If a product were frozen, the effect of freezing the product could only continue throughout the shelf life of the product if the product were maintained continuously in a frozen state.

The Agency is defining "post-lethality exposed product" as RTE product that comes into direct contact with a food contact surface after undergoing a lethality treatment that is a usual and necessary step in the production of the product, *e.g.*, the cooking step for a hotdog or other cooked sausage. A

definition of "lethality treatment" is provided. The "post-lethality processing environment" is defined as the area of an establishment into which product is routed after undergoing a lethality treatment.

"Post-lethality treatment" is defined as a lethality treatment applied to a product after post-lethality exposure. A post-lethality treatment might be an additional heat step or other pasteurization process, such as high-pressure processing. A "post-lethality treatment" to reduce or eliminate *L. monocytogenes* is to be distinguished from the use of an antimicrobial agent or process that suppresses or limits the growth of the pathogen. Antimicrobial agents include lactic acid in certain types of sausage products or ingredients of growth-limiting packaging (*e.g.*, cellulose containing an antimicrobial substance). An example of a growth suppressing or limiting process is freezing.

FSIS is defining "prerequisite program" as a procedure or set of procedures designed to provide the basic environmental or operating conditions necessary for the production of safe, wholesome food. The definition is adapted from "Hazard Analysis and Critical Control Point Principles and Application Guidelines," which was adopted August 14, 1997, by the National Advisory Committee on Microbiological Criteria for Foods and has wide currency in the food industry. Prerequisite programs are a part of the decision-making documentation that is associated with the hazard identification and selection of CCPs in a HACCP plan. An establishment is required by 9 CFR 417.5 to maintain such documentation because the existence of an effective Sanitation SOP or other prerequisite program affects the outcome of an establishment's hazard analysis.

The definition of a "prerequisite program" is being provided, and the use of such a program in the new regulations is being permitted, in response to industry comments on the proposal emphasizing the importance of prerequisite programs in preventing *L. monocytogenes* contamination. One commenter stated that post-processing contamination by *L. monocytogenes* is best controlled through prerequisite programs.

Finally, FSIS is adopting the definition of a "ready-to-eat" product that, although similar to the one proposed, conforms with the 2001 Model Food Code. Thus, an RTE meat or poultry product is one that is "in a form that is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes."

In a new section on control of *L. monocytogenes* in post-lethality exposed RTE products, 9 CFR 430.4, FSIS first states its basic finding that *L. monocytogenes* is a hazard in such products, and that establishments must control this hazard through their HACCP plans or prevent it in the processing environment through Sanitation SOPs or other prerequisite programs. FSIS is making this finding, as it states in 9 CFR 430.4(a), based on the fact that RTE products that have been subjected to a lethality treatment but then exposed to the environment may be recontaminated with *L. monocytogenes*.

An establishment may determine that recontamination is not reasonably likely to occur in its post-lethality exposed RTE products because it has an effective Sanitation SOP or some other prerequisite program that effectively prevents *L. monocytogenes* contamination. If an establishment makes this determination, under 9 CFR 417.5(a)(2), the regulation requiring establishments to keep documentation supporting the selection of CCPs or critical limits, the basis for this determination must be documented and made available to the Agency. FSIS is aware that, in their hazard analyses, establishments have been taking their Sanitation SOPs and other prerequisite programs into consideration. Thus, an establishment that produces RTE products may not identify *L. monocytogenes* as such a hazard to be addressed in its HACCP plan, it must nonetheless effectively address this pathogen in its food safety system.

The Agency is requiring, in 9 CFR 430.4(b), that an establishment that produces post-lethality exposed RTE product must meet the specific requirements of one of three alternative programs for addressing *L. monocytogenes*. In the view of FSIS, any situation involving establishment measures to address post-lethality contamination of RTE products by *L. monocytogenes* is covered by one of the alternatives. Under this interim final rule, the first alternative relies largely on control though HACCP and an antimicrobial agent or process that suppresses or limits the growth of the pathogen. Each successive alternative places a greater reliance on the rigor of sanitation procedures, including verification testing, than on post-lethality treatments, to control *L. monocytogenes*. Consequently, the frequency and intensity of FSIS verification is likely to be greater for Alternatives 2 and 3, as more reliance is placed on sanitation.

Alternative 1. In the first alternative, an establishment controls *L. monocytogenes* by using a post-lethality treatment of the product *and* an antimicrobial agent or process that suppresses or limits the growth of the pathogen. As mentioned previously, the use of the post-lethality treatment to reduce or eliminate *L. monocytogenes* reflects a determination that the pathogen may be present in the product—in other words, that it is a hazard reasonably likely to occur. Therefore, the establishment must include the post-lethality treatment in its HACCP plan. The point in the process at which the treatment is applied is, by definition, a "critical control point" under 9 CFR 417.1 in that it is a step in a process at which control is applied to prevent, eliminate, or reduce to acceptable levels a food safety hazard, *L. monocytogenes*. The post-lethality treatment incorporated in the HACCP plan must be validated in accordance with 9 CFR 417.4 as being effective in reducing or eliminating *L. monocytogenes*.

The use of an antimicrobial agent or growth suppressing or limiting process may not in practice have the *L. monocytogenes* reduction effect of a post-lethality treatment, but still be an effective measure because it inhibits growth of the pathogen, thus, limiting the possibility that any *L. monocytogenes* that survives the post-lethality treatment will grow out and presents a food safety hazard. In Alternative 1, FSIS is giving the establishment the choice of including the antimicrobial agent or process in its Sanitation SOP or other prerequisite program or as a CCP in its HACCP plan.

FSIS recognizes that an establishment electing to adopt Alternative 1 may employ an antimicrobial agent or process as part of its initial lethality treatment and that the agent or process may have a continuing bactericidal effect on *L. monocytogenes* that persists even through post-lethality exposure and distribution. In such a case, the antimicrobial agent or process could serve as both a post-lethality treatment and growth inhibitor. Thus, neither an additional post-lethality treatment nor an additional antimicrobial agent or process is necessary to qualify for Alternative 1. The establishment would need to have documentation on file to demonstrate that the conditions of Alternative 1 are being met through the application of the initial antimicrobial agent or process.

As with the post-lethality treatment, if the antimicrobial agent or process is included as a CCP in the HACCP plan, it must be validated as effective in suppressing or limiting growth of the pathogen. The establishment must also verify the effectiveness of the control measures in accordance with 9 CFR 417.4. If the agent or process is included in the establishment's sanitation program, it must be in compliance with the general sanitation regulations and the Sanitation SOP requirements in 9 CFR part 416. The control measures, if included in the HACCP plan, must be validated as effective. The establishment's regular monitoring of its operation must be verified. Sanitation procedures must be in compliance with the general sanitation regulations and the Sanitation SOP requirements, as applicable.

In addition, the establishment is required to make the results of its verification measures, under whichever program—HACCP, Sanitation SOP, or other prerequisite program—available upon request to FSIS inspection personnel.

FSIS has concluded, and this conclusion is informed by the FSIS risk assessment, that Alternative 1, which involves a combination of interventions that includes a post-lethality treatment and the application of an antimicrobial agent or process, is likely to be among the most effective means of reducing the risk of *L. monocytogenes* contamination and hence of listeriosis mortality among vulnerable populations.

Alternative 2. An establishment may choose to address *L. monocytogenes* by using a post-lethality treatment *or* an antimicrobial agent or process that suppresses or limits the growth of the pathogen. As with Alternative 1, the post-lethality treatment, if used, must be included as a CCP in the establishment's HACCP plan. The application of the antimicrobial agent or the growth suppressing or limiting process must be included in the establishment's HACCP plan or in its Sanitation SOP or other prerequisite program. Whichever program includes the application of the antimicrobial agent or the growth suppressing or limiting process, the establishment must have documentation to demonstrate that the antimicrobial agent or process, as used, is effective in suppressing or limiting the growth of *L. monocytogenes*.

In addition, FSIS is providing that if the establishment chooses Alternative 2 and chooses to use only a post-lethality treatment of product, it would likely be subject to more frequent verification testing than if it chose Alternative 1. FSIS has concluded that multiple steps are more likely to reduce the risk of *L. monocytogenes* contamination of RTE products and subsequent adverse public health effects. Without an antimicrobial to suppress or limit the growth of *L. monocytogenes* that may survive the post-lethality treatment, it becomes more important to verify the effectiveness of that treatment.

The establishment may choose not to rely on a post-lethality treatment to reduce or eliminate *L. monocytogenes*, but to use only an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes*. If so, it becomes extremely important to minimize any possibility of post-lethality contamination. The establishment's sanitation program must, therefore, provide for the testing of food contact surfaces in the post-lethality processing environment to ensure that the establishment's sanitation program is effective in keeping those surfaces sanitary and free of *L. monocytogenes* or of indicator organisms that would reflect the presence of *L. monocytogenes*. The program must delineate the frequency with which testing will be done, state the size and location of the sample sites (so that the area represented by a sample can be known), and provide an explanation of why the testing frequency is sufficient to ensure that effective control of *L. monocytogenes* or the indicator organism is being maintained. The program also must identify the conditions under which the establishment will implement hold-and-test procedures after a positive test for *L. monocytogenes* or indicator organisms.

As under the Alternative 1, the establishment must make the verification results of the effectiveness of its controls from its HACCP, Sanitation SOP, or other prerequisite program available upon request to FSIS inspection personnel.

For Alternative 2, if the measures for addressing *L. monocytogenes* are in a prerequisite program other than a Sanitation SOP, the establishment must ensure that the program is effective and does not cause the hazard analysis or the HACCP plan to be inadequate. The establishment's documentation of its program and of its results and its implementation of the program must be sufficient to support a finding, during validation or reassessment, under 9 CFR 417.4, that the HACCP plan is adequate and that the HACCP plan in operation is not inadequate within the meaning of 9 CFR 417.

Alternative 3. An establishment that processes RTE products may control *L. monocytogenes* in the post-lethality processing environment through sanitation procedures only. If incorporated in the HACCP plan, the sanitation procedures followed in this alternative must be validated and verified in accordance with 9 CFR 417.4. Also, sanitation in the post-lethality processing area must be maintained in accordance with 9 CFR 416.

As in Alternative 2, FSIS is requiring that the sanitation procedures in the post-lethality processing environment include testing of food contact surfaces to ensure that the surfaces are sanitary and free of *L. monocytogenes* or an indicator organism. The procedures must delineate the frequency of testing; state the size and location of sample sites; and provide an explanation of why the testing is sufficient to ensure that the establishment's sanitation procedures are effectively keeping *L. monocytogenes* or indicator organisms from contaminating product. The establishment must identify in its procedures the conditions under which it will implement hold-and-test procedures to ensure that *L. monocytogenes* or indicator organisms are not contaminating product.

Establishments that adopt Alternative 3 will need to address in their decisionmaking documents why the sanitation procedures they employ, the frequency of testing they carry out, and the circumstances in which they test the product and hold it pending receipt of test results are appropriate and adequate to prevent the contamination of their product by *L. monocytogenes* and to ensure that contamination is discovered if it has occurred.

Because establishments using Alternative 3 are relying only on sanitation procedures and because verification activities are so important to ensuring the on-going effectiveness of such measures, FSIS has concluded that establishments electing to adopt Alternative 3 are likely to be subject to a higher frequency of testing by FSIS than establishments using Alternative 1 or 2. As is the case with establishments adopting the other alternatives, an establishment that has adopted Alternative 3 must make the verification results obtained from its own food contact surface testing available on request to FSIS inspection personnel.

Under Alternative 3, more stringent requirements apply to an establishment that processes deli meats or hotdogs. These products were shown in the FDA/FSIS risk ranking to pose a relatively high risk of listeriosis, in terms of cases per annum. Thus, in order to provide the assurance that comes from increased verification, FSIS expects the frequency of its own testing, as well as the establishment's testing, to be higher

than that for other products produced under the Alternative 3 approach.

Under Alternative 3, for establishments producing deli meats and hotdogs, FSIS is requiring specific procedures for holding and testing product to minimize the risk of contaminated product entering commerce. These procedures are to be followed if an establishment has had a positive test for an indicator organism, such as *Listeria* species, on a food contact surface in the post-lethality processing environment.

After the establishment takes corrective action to clean the food contact surface, the establishment must verify that the corrective action has been effective through follow-up testing in the post-lethality processing area. This testing is to include targeting the specific site on the food contact surface area that was the most likely source of contamination by the organism and must include such additional tests of the surrounding food contact surface area as are necessary to ensure the effectiveness of the corrective action. (If the initial positive test was for *L. monocytogenes*, the product is considered adulterated and must be withheld from commerce even before the results of further testing are available.)

If, during this follow-up testing, the establishment obtains a second positive test result for the indicator organism on a sample from the previously tested area, the establishment must hold lots of product produced between the second positive test result and completion of the corrective action until samples from the food contact surfaces in the same area test negative for *L. monocytogenes* or the indicator organism. The establishment may sample and test the held product, using a sampling method that will provide a level of statistical confidence that is sufficient to establish that the product is not adulterated with *L. monocytogenes*, and it can release the product into commerce if the results are negative.

For Alternative 3, if the measures for addressing *L. monocytogenes* are in a prerequisite program other than a Sanitation SOP, the establishment must ensure that the program is effective and does not cause the hazard analysis or the HACCP plan to be inadequate. The establishment's documentation of its program and of its results and its implementation of the program must be sufficient to support a finding, during validation or reassessment, under 9 CFR 417.4, that the HACCP plan is adequate and that the HACCP plan in operation is not inadequate within the meaning of 9 CFR 417 part 1.

Estimates of annual production volume. As previously stated in this document, some commenters observed that a large establishment may not necessarily produce more RTE product than a small establishment. FSIS agrees and regards production volume as a more important risk factor than establishment size. FSIS intends to target its inspection resources on the higher volume operations. To do this effectively, FSIS will need data on the annual production volume of post-lethality exposed RTE products produced, by product, and by *L. monocytogenes* control alternative (1, 2, or 3), and other related information (such as the establishment's own testing procedures). The affected establishments will have to provide FSIS with this information at least annually. The Agency expects to have an electronic form available for this purpose (9 CFR 430.4(f)).

Labeling Incentive

Finally, FSIS is allowing establishments that use post-lethality treatments or antimicrobial agents or processes that are effective in destroying *L. monocytogenes* or in limiting its growth to declare this fact on the labels of their products. The purpose of the labeling is to inform consumers about measures that have been taken to ensure the safety of the products and thus to enable the consumers to select such products in preference to others. This provision is entirely voluntary, but FSIS believes that labeling claims about treatments that eliminate, suppress, or limit the growth of *L. monocytogenes* can be of value to consumers, especially those in groups most vulnerable to foodborne infection.

For example, products with antimicrobial agents can be viewed as containing substances that reduce the presence of pathogens or the likelihood of foodborne illness, provided that the products are appropriately handled throughout the distribution chain and prepared safely by the consumer. Thus, a label statement should identify the presence of ingredients and their purpose of use but not claim that the product is somehow "safer than" other untreated products.

Examples of statements that can be made are: "Sprayed with a solution of sodium lactate to prevent the growth of *L. monocytogenes*" or "Contains sodium diacetate and sodium lactate to prevent the growth of *Listeria monocytogenes*."

New and Existing Regulatory Requirements

The regulations promulgated in this interim final rule include new requirements and reiterate for clarity certain existing regulations. The definitions in § 430.1 are new, as are the provisions in § 430.4 specifying the three permissible alternatives for addressing *L. monocytogenes*. Similarly, the provisions in this interim final rule requiring that measures included in the establishment's Sanitation SOP or other prerequisite program are new. The provision requiring that RTE establishments report at least annually the volume of production by type of RTE product and by alternative for controlling or addressing *L. monocytogenes* is new. Also new are the sanitation procedure requirements that include hold-and-test provisions.

Although the use by industry and the Agency's acceptance of prerequisite programs is not new, the provisions on prerequisite programs in this interim final rule constitute explicit recognition, for the first time in the codified regulations, of such programs. The requirement that documentation of prerequisite programs and the results of such programs be available to the Agency also makes explicit an implied requirement in the HACCP regulations.

Also, the requirement that a post-lethality treatment be included in an establishment's HACCP plan is made explicit for the first time in this interim final rule. The requirement to maintain documentation on Sanitation SOPs or other prerequisite programs that are used to support a decision not to identify *L. monocytogenes* as a hazard reasonably likely to occur that must be controlled makes explicit a requirement in the HACCP regulations (9 CFR 417.5). The provision for validation of controls included in a HACCP plan just reiterates existing requirements of 9 CFR 417.4. Similarly, the requirement that Sanitation SOPs be evaluated routinely to ensure their effectiveness reiterates the requirements in 9 CFR 416.14.

The requirement to verify, that is, to evaluate routinely and maintain, the effectiveness of the Sanitation SOP, is already a regulation (at 9 CFR 416.14). Also, the requirement to follow existing sanitation requirements in the post-lethality processing environment simply reiterates the general sanitation regulations (9 CFR 416) that are applicable everywhere in an official establishment.

Finally, the provision for RTE product labeling that declares the fact of an *L. monocytogenes* control treatment or ingredient is new, but permissive. RTE product labeling may, under current regulations, bear such statements if the statements are valid.

VIII. Implementation

Implementation Strategy

FSIS has designed this interim final rule to recognize that there are alternative, effective ways to ensure that post-lethality exposed RTE products do not become contaminated with *L. monocytogenes*. While each approach can be effective in preventing such contamination, Alternatives 1 and 2 present a greater opportunity for mitigating the risk of RTE product contamination than does Alternative 3 because under Alternatives 1 and 2, products are formulated or processed in a manner either to eliminate *L. monocytogenes* or to limit its growth, should it be present.

Hence, in implementing this interim final rule, FSIS plans to conduct verification activities, including testing, that focus most intensively on Alternative 3 establishments and, within that group, on establishments that produce deli meats and hotdogs to verify that the total food safety system under which these products are produced is working properly.

FSIS is aware that the regulated industry is using antimicrobial agents at levels that provide some limitation of growth, that some establishments use these agents at levels that allow no more than 2-$\log_{10}$ growth throughout the shelf-life of the product, and that other establishments are using the agents at levels that more severely limit growth. FSIS believes that the majority of products formulated with the higher levels of antimicrobial agents are cured products because they better tolerate the agents, and the products do not have unacceptable organoleptic qualities. For this reason, the FSIS verification testing program for Alternative 2 will cover establishments that produce products formulated with antimicrobial agents but will focus on establishments using lower levels of antimicrobial agents because there is some potential for pathogen growth in the products. However, FSIS does not intend to conduct its verification testing at such establishments at a rate that is any higher than that for establishments in Alternative 3 and certainly not at a rate as high as that for establishments using Alternative 3 and producing deli meats or hotdogs.

FSIS intends to collect information about the RTE products produced by establishments using Alternatives 1 through 3. The information will include estimates of production volume for post-lethality exposed products, so that the Agency can develop annual sampling frequencies for the establishments and the products. FSIS will make the sampling frequency information available to the establishments so that they will have some indication of how the risk of *L. monocytogenes* contamination is tied to FSIS verification testing.

FSIS is continuing to model scenarios in its risk assessment model and will use this information in determining where to direct its verification testing resources to ensure that such products are not adulterated. In the meantime, FSIS will continue to use currently available production volume figures in directing these resources.

The Agency expects to weight its sample scheduling process so that a large-volume establishment will be targeted more frequently than an establishment with a lower volume of production. Because, under this interim final rule, all establishments must have written programs that address *Listeria* and share their testing results with FSIS, FSIS believes that there will be no need to phase in the implementation of the interim final rule for establishments of different sizes or of different production volume capacity. The effective date will be October 6, 2003, for all establishments. During the 120 days before the interim final rule becomes effective, FSIS will issue a new directive (Directive 10,240.4, discussed below). The Agency is now making available new compliance guidelines that will contain information about the effects of sanitation and testing, as well as the effectiveness of various levels of antimicrobials.

New Directive for FSIS Inspection Program Employees

Through a new directive replacing FSIS Directive 10,240.3 that issued in December 2002, FSIS will conduct a risk-based verification testing program to assess the effectiveness of RTE operations in controlling *L. monocytogenes*. FSIS will identify the general features of the design of its verification testing program. Each fiscal year, FSIS identifies the general number of samples that it expects to collect throughout the year associated with RTE products. In order to implement this interim final rule, FSIS expects to apportion the types of products sampled with an emphasis on deli meats and hotdogs produced under Alternative 3. All RTE products are subject to being tested.

Until FSIS has actual production volume and associated data obtained through the reports required by 9 CFR 430.4(f), FSIS likely will continue sampling in the same manner currently employed by the Agency. FSIS intends to build in the production volume feature, as soon as possible, in order to ensure that larger volume production is verified more frequently than smaller volume production. In addition, FSIS will continue to assess information about sanitation non-compliances and other plant performance indicators when determining which operations should be tested, but with an emphasis on products that allow for growth of *L. monocytogenes*.

As FSIS obtains information on the effectiveness of establishment process controls for *L. monocytogenes*, the Agency should be able to reduce the intensiveness of verification testing at establishments with more effective controls.

Generally, FSIS expects to collect for *L. monocytogenes* testing just one sample unit of RTE product from a production lot at an establishment selected for sampling. FSIS is considering taking more than one product sample from an establishment that produces product without post-lethality treatments or growth inhibitors, particularly deli meat and hotdog operations. Finally, FSIS expects to collect food contact surface samples and environmental samples mainly from operations that have a history of problems associated with the proper control for *L. monocytogenes*, or that produce RTE products, particularly deli meats and hotdogs, that allow for the growth of *L. monocytogenes*.

IX. Consumer Outreach Effort

Food safety education is one risk management strategy FSIS uses to reduce the incidence of illness associated with *L. monocytogenes* in RTE meat and poultry products. Safe handling, storage and preparation of RTE meat and poultry products can help reduce the risk of illness, particularly for those populations most at risk of contracting listeriosis: pregnant women, newborns, older adults, people with weakened immune systems caused by cancer treatment, AIDS, diabetes, kidney disease, and organ transplants. FSIS reaches these audiences through printed materials, the FSIS Web site, electronic communication, the media, and other information multipliers, in collaboration with other Federal agencies, educators, and healthcare professionals, and through the USDA Meat and Poultry Hotline.

For example, FSIS has worked with the Association of Women's Health, Obstetric and Neonatal Nurses, the International Food Information Council Foundation, FDA, and CDC to produce a patient education sheet, "Listeriosis and Pregnancy: What is Your Risk?" targeted to both pregnant women and

their healthcare providers. The Spanish version will be printed in spring 2003. In addition, FSIS is completing a low literacy flyer aimed at pregnant women entitled, "Protect Your Baby and Yourself from Listeriosis" with input from WIC nutritionists, public health nurses, and extension food safety specialists. To reach other vulnerable groups, discussions are underway with transplant organizations, community health clinics, geriatric organizations, dialysis centers, and AIDS/HIV care organizations to determine how best to reach these individuals. Through the newly launched Food Safety Education Mobile, informational materials will be distributed as the vehicle travels throughout the country.

In addition to providing education on safe food handling, FSIS will provide information to consumers regarding new labels that processors may voluntarily use under this regulation to inform consumers of interventions used to reduce contamination.

X. Executive Order 12866 and Effect on Small Entities

This interim final rule has been reviewed by the Office of Management and Budget under E.O. 12866 and has been determined to be economically significant. FSIS is amending the Federal meat and poultry inspection regulations by adding requirements for establishments that produce certain RTE meat and poultry products to take measures to prevent product adulteration by the pathogen *L. monocytogenes*. Establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments must include in their HACCP plans or their Sanitation SOPs or other prerequisite programs measures designed to prevent product adulteration by *L. monocytogenes*. The establishments also must share with FSIS all data relevant to the validation, operation, and verification of their controls for *L. monocytogenes*.

This action is compelled by outbreaks of foodborne illness in which RTE meat and poultry products contaminated with *L. monocytogenes* were implicated, coupled with information on the pathogenicity of the organism and the findings of the risk assessment and risk ranking conducted by FDA and FSIS. Although FSIS now routinely conducts food contact surface and environmental sampling in select establishments that produce such products, and performs product testing in nearly all RTE establishments for the presence of this pathogen before the products are distributed, until now there have been no specific regulatory requirements for controlling the pathogen. Appendix A, published at the end of this interim final rule in this issue of the **Federal Register**, contains the final regulatory analysis required by E.O. 12866 and the Regulatory Flexibility Act (at 5 U.S.C. 604), including a discussion of the need for the regulations, regulatory alternatives considered by FSIS, and a cost-benefit analysis. This interim final rule provides affected small and very small establishments with the flexibility to minimize the costs associated with this rule by implementing Sanitation SOPs or other prerequisite programs. FSIS is providing compliance guidance for these establishments in accordance with the Small Business Regulatory Enforcement Fairness Act. In addition, in verifying compliance with this interim final rule, the Agency plans to conduct testing at modulated frequencies, taking into account all relevant factors, including the alternative employed to address *L. monocytogenes*, production volume by type of RTE product produced, and the establishment's compliance history.

Summary of Final Regulatory Impact Analysis (FRIA)

Benefits

FSIS has estimated the benefits of this interim final rule in terms of averted deaths and illnesses resulting from actions taken by establishments that produce RTE meat and poultry products so far with respect to only one product group: Deli meats. FSIS has concentrated on this product group for several reasons: The FDA/FSIS risk ranking identified deli meats as posing the most overall risk to public health. The FSIS in-plant risk assessment tied risk mitigation actions to possible reductions in deaths and illnesses from listeriosis when the FSIS risk assessment model was calibrated with the FDA/FSIS risk ranking model, and when containment strategies for *Listeria* contamination of RTE meat and poultry products were simulated. The FSIS risk assessment model has been presented to the public, along with estimates of reduced listeriosis mortality resulting from actions taken by establishments that prepare or process the products.

The FRIA relies on results from the FSIS in-plant risk assessment model and considers the adoption by large, small, and very small deli-meat producing establishments of stratagems of varying rigor for controlling *L. monocytogenes*. The analysis shows that adoption of *L. monocytogenes* mitigation measures induced by this interim final rule results in a total median reduction of deaths from listeriosis of 27.3; with 8.9 deaths averted at the 5th percentile and 31.2 at the 95th percentile. These gains are attributable to an expected shift—discussed in detail in Appendix A—of establishments from sanitation-only to "Alternative 1" and "Alternative 2" methods of addressing *L. monocytogenes*. The corresponding reductions in illnesses are 136.7 at the median, with 44.6 at the 5th percentile, and 156.0 at the 95th percentile.

Using a method used by USDA's Economic Research Service (ERS) for estimating the human health benefits of reduced listeriosis, the benefits of the reduction in illness-related losses due to the interim final rule are estimated to be $3.7 million at the median ((.05 x 136.7 x $10,300) + (.95 x 136.7 x $28,300)) and $1.3 million at the 5th and $4.4 million at the 95th percentile.

ERS estimated the value of statistical life at $4.8 million[7] as a proxy for the cost of one fatality. Based on this estimate, the annual human health benefits from implementation of the interim final rule are $134.9 million at the median (the $3.7 million above plus 27.3 × $4.8 million) and $44.0 million at the 5th percentile and $154.0 million at the 95th percentile.

Given the limitations in data and the fact that the risk assessment addresses only deli meats, FSIS believes that this estimate may be overstated by at least 50 percent. If so, the adjusted annual net benefits then become $50.8 million at the median, $5.4 million at the 5th percentile, and $60.4 million at the 95th percentile. FSIS performed a sensitivity analysis on the benefits estimates. Given the cost estimates, the total benefits of this rule would have to be 85 percent lower than estimated for the net benefits to lower to zero.

Cost Impacts

FSIS estimated the cost impacts of this interim final rule on all affected establishments. The FRIA adds several cost impacts in addition to those considered in the preliminary regulatory impact analysis (PRIA). The PRIA identified major cost impacts from mandatory food contact surface testing, HACCP plan modification, and production adjustments. In addition to these and in response to comments, the FRIA considers the costs, both fixed and recurring, associated with the installation by establishments of post-lethality treatments; the costs, both fixed and recurring, associated with product formulation or process changes to include antimicrobial agents or processes that limit the growth of *L. monocytogenes*; and the costs to establishments required to hold and test products pending confirmation of positive food contact-surface tests for *Listeria* species.

FSIS estimates that the interim final rule will have combined one-time and recurring costs to large establishments totaling about $15.9 million, to small establishments about $55.3 million, and to very small establishments about $1.7 million. FSIS assumes a 10-year useful life for the changes (*e.g.*, post-lethality treatment validation, installation, antimicrobial agent or process alteration, and production adjustments) for which establishments incur one-time costs and, using a 7-percent discount rate, the Agency annualizes these one-time costs over the useful life of the changes. Adding these to the annual recurring costs, FSIS obtains annualized industry-wide costs of the interim final rule to large establishments of about $3.6 million, to small establishments about $12.5 million, and to very small establishments about $613,000.

The grand total of industry-wide annualized costs is $16.6 million. With the 50 percent downward adjustment discussed above, net benefits of $50.8 million at the median and ranging from $5.4 million at the 5th percentile to $60.4 million at the 95th percentile are to be derived from the interim final rule.

Paperwork Reduction Act

FSIS has reviewed the paperwork and recordkeeping requirements in this interim final rule in accordance with the Paperwork Reduction Act and has determined that the paperwork requirements respecting the regulations that may cause establishments to evaluate and revise their Sanitations SOPS, HACCP plans, and prerequisite programs have already been accounted for in the Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) Systems information collection approved by the Office of Management and Budget (OMB). The OMB approval number for the Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) Systems information collection is 0583–0103.

The requirement that may cause establishments to test for *L. monocytogenes*, to document their testing protocols and their hold-and-test procedures, and the requirement for establishments that produce RTE products to provide FSIS with production volume information by product type and *L. monocytogenes* control alternative are new information collections.

Title: Listeria.

Type of Collection: New.

The paperwork and recordkeeping requirements in this interim final rule are awaiting approval by the Office of Management and Budget.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this interim final rule in accordance with the Paperwork Reduction Act. Under this interim final rule, FSIS is requiring an information collection activity. FSIS is requiring that establishments that produce ready to eat product annually report the estimated production volume by product type and *Listeria* control alternative employed. FSIS is also publishing requirements for RTE establishments to conduct, and plans to ask them to report on, food-contact surface sampling. In addition, FSIS is establishing requirements that may cause some RTE establishments to hold and test product for *L. monocytogenes* and other indicator organisms.

Estimate of Burden: FSIS estimates that the time to collect and report the required information on the estimated volume of RTE product by product type and *Listeria* control method is one hour. The Agency estimates that it will take establishments 50 minutes to collect the information necessary to make the required estimates and 10 minutes to report the information by form.

FSIS estimates that it will take 25 hours to develop a microbiological sampling and testing plan to support the efficacy of the sanitation controls, including the development of test-and-hold procedures. The Agency estimates that it will take two hours to revise microbiological sampling and testing plans. And FSIS estimates that it will take an average of 30 minutes to conduct a food contact surface test and an average of 30 minutes to collect information on product samples for test and hold procedures.

Respondents: Meat and poultry product establishments that produce Ready to Eat product.

Estimated Number of Respondents: 4,975.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 154,243 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th Street, SW., Washington DC 20250.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to achieving the goals of the GPEA, which requires Government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum possible extent. FSIS is making available to establishments affected by this interim final rule an electronic form by which they may provide the required production volume information. The form will be accessible on a special page on the FSIS Web site at *http://www.fsis.usda.gov*; log-on and authentication instructions will be provided. Each establishment's submission will be treated as confidential. Provision of this electronic form is expected to enable the Agency more efficiently to gather, and affected establishments to report, the needed information.

This electronic data collection is intended to meet Goal 4 of the e-Government strategy in the President's Management Agenda. The electronic filing option is provided to reduce data collection time and information processing and handling for the regulated industry and FSIS.

This electronic data collection is intended to be consistent with Goal 2 (enhancing collaboration with public and private sector organizations to develop and deliver USDA's mission) and Objective 2.4 of the Department's e-Government Strategic Plan in that it reduces time necessary for information collection and processing for both regulated establishments and FSIS. A further, related initiative, providing for use of electronic signatures and authentication, will be consistent with the Department-wide strategies and

policies to develop and implement e-signature and e-Authentication policies.

1. The interim final rule on *L. monocytogenes* control in ready-to-eat meat and poultry products contains a requirement for official establishments that prepare post-lethality exposed ready-to-eat meat and poultry products to provide FSIS at least annually with data on the volume of production of products they prepare in processes that are covered by the interim final rule. FSIS is developing a form by which to collect the data. The form will be made available to establishments in both paper and electronic formats. The electronic form will be available for use by affected establishments at all times after the rule becomes effective.

2. FSIS can use its existing information technology resources in the electronic data collection. That is, the Agency plans to use its existing database applications and server storage to house the data collection form and associated databases. FSIS estimates that no more than $1,000 in materials and 0.25 FTE annually at the level of a GS–13 or equivalent staff officer grade in FSIS'S Data Analysis Systems and Support Staff, Office of Policy and Program Development, will be required to administer the data collection.

FSIS is developing a centralized system known as the FSIS Automated Corporate Technology Suite (FACTS) for which approximately $15 million has been earmarked. The system will provide, among other things, facilities for accessing Agency electronic forms and for processing the data collected through such forms. The new production volume form can be integrated with FACTS.

3. FSIS plans to use e-signature and e-Authentication methods that are consistent with Department e-Authentication policy.

4. Regarding information security, FSIS plans to provide ordinary levels of protection for the production volume information obtained. Establishment-linked information will be treated as confidential and stored in password-protected databases and electronic systems to which only authorized personnel have access. Information in paper format will be stored under lock and key in file boxes or cabinets to which only authorized personnel have access. FSIS does not envision a need for sophisticated security or encryption systems to protect this information.

5. For the purpose of this information collection, FSIS does not foresee a need for telecommunications systems additional to those already operated by the Agency.

6. The interim final rule does not specifically address recordkeeping by establishments but only data reporting. The data collected will be stored in a protected database managed by FSIS.

XII. E. O. 12988 Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jursidicitons are preempted by the FMIA and the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States. This proposed rule is not intended to have retroactive effect.

Administrative proceedings will not be required before parties may file suit in court challenging this interim final rule. However, the administrative procedures specified in 9 CFR 306.6 and 381.35 must be exhausted before any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

XIII. Additional Public Notification

Public awareness of all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this interim final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

The Constituent Update provides information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. These include industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. The Constituent Update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov/OA/update/update.htm*.

The FSIS Constituent Update is issued via the USDA-FSISConstituentsListserv to over 400 organizations and individuals on a weekly basis. FSIS also issues other communications on the Listserv, including news releases, recall notices, and Constituent Alerts on important issues. Persons interested in subscribing to the Listserv can do so by completing a form at *http://www.fsis.usda.gov/OA/update/subscribe.asp*.

XIV. Final Regulations

List of Subjects in 9 CFR Part 430

Food labeling, Meat inspection, Poultry and poultry products inspection.

■ Accordingly, title 9, chapter III, of the Code of Federal Regulations is amended as follows:

■ 1. A new part 430 is added to read as follows:

PART 430—REQUIREMENTS FOR SPECIFIC CLASSES OF PRODUCT

Sec.

430.1 Definitions.
430.4 Control of Listeria monocytogenes in post-lethality exposed ready-to-eat products.

Authority: 7 U.S.C. 450; 7 U.S.C. 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 430.1 Definitions.

Antimicrobial agent. A substance in or added to an RTE product that has the effect of reducing or eliminating a microorganism, including a pathogen such as *L. monocytogenes*, or that has the effect of suppressing or limiting growth of *L. monocytogenes* in the product throughout the shelf life of the product. Examples of antimicrobial agents added to RTE products are potassium lactate and sodium diacetate.

Antimicrobial process. An operation, such as freezing, applied to an RTE product that has the effect of suppressing or limiting the growth of a microorganism, such as *L. monocytogenes*, in the product throughout the shelf life of the product.

Deli product. A ready-to-eat meat or poultry product that typically is sliced, either in an official establishment or after distribution from an official establishment, and typically is assembled in a sandwich for consumption.

Hotdog product. A ready-to-eat meat or poultry frank, frankfurter, or wiener, such as a product defined in 9 CFR 319.180 and 319.181.

Lethality treatment. A process, including the application of an antimicrobial agent, that eliminates or reduces the number of pathogenic microorganisms on or in a product to make the product safe for human consumption. Examples of lethality treatments are cooking or the application of an antimicrobial agent or process that eliminates or reduces pathogenic microorganisms.

Post-lethality exposed product. Ready-to-eat product that comes into direct contact with a food contact surface after the lethality treatment in a post-lethality processing environment.

Post-lethality processing environment. The area of an establishment into which product is routed after having been subjected to an initial lethality treatment. The product may be exposed to the environment in this area as a result of slicing, peeling, re-bagging, cooling semi-permeable encased product with a brine solution, or other procedures.

Post-lethality treatment. A lethality treatment that is applied or is effective after post-lethality exposure. It is applied to the final product or sealed package of product in order to reduce or eliminate the level of pathogens resulting from contamination from post-lethality exposure.

Prerequisite program. A procedure or set of procedures that is designed to provide basic environmental or operating conditions necessary for the production of safe, wholesome food. It is called "prerequisite" because it is considered by scientific experts to be prerequisite to a HACCP plan.

Ready-to-eat (RTE) product. A meat or poultry product that is in a form that is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes. RTE product is not required to bear a safe-handling instruction (as required for non-RTE products by 9 CFR 317.2(l) and 381.125(b)) or other labeling that directs that the product must be cooked or otherwise treated for safety, and can include frozen meat and poultry products.

§ 430.4 Control of Listeria monocytogenes in post-lethality exposed ready-to-eat products.

(a) *Listeria monocytogenes* can contaminate RTE products that are exposed to the environment after they have undergone a lethality treatment. *L. monocytogenes* is a hazard that an establishment producing post-lethality exposed RTE products must control through its HACCP plan or prevent in the processing environment through a Sanitation SOP or other prerequisite program. RTE product is adulterated if it contains *L. monocytogenes* or if it comes into direct contact with a food contact surface which is contaminated with *L. monocytogenes*.

(b) In order to maintain the sanitary conditions necessary to meet this requirement, an establishment producing post-lethality exposed RTE product must comply with the requirements included in one of the three following alternatives:

(1) *Alternative 1.* Use of a post-lethality treatment (which may be an antimicrobial agent) that reduces or eliminates microorganisms on the product *and* an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes*. If an establishment chooses this alternative:

(i) The post-lethality treatment must be included in the establishment's HACCP plan. The antimicrobial agent or process used to suppress or limit the growth of the pathogen must be included in either the establishment's HACCP plan or its Sanitation SOP or other prerequisite program.

(ii) The establishment must validate the effectiveness of the post-lethality treatment incorporated in its HACCP plan in accordance with § 417.4. The establishment must document, either in its HACCP plan or in its Sanitation SOP or other prerequisite program, that the antimicrobial agent or process, as used, is effective in suppressing or limiting growth of *L. monocytogenes*.

(2) *Alternative 2.* Use of either a post-lethality treatment (which may be an antimicrobial agent) that reduces or eliminates microorganisms on the product *or* an antimicrobial agent or process that suppresses or limits growth of *L. monocytogenes*. If an establishment chooses this alternative:

(i) The post-lethality treatment must be included in the establishment's HACCP plan. The antimicrobial agent or process used to suppress or limit growth of the pathogen must be included in either the establishment's HACCP plan or its Sanitation SOP or other prerequisite program.

(ii) The establishment must validate the effectiveness of a post-lethality treatment incorporated in its HACCP plan in accordance with § 417.4. The establishment must document in its HACCP plan or in its Sanitation SOP or other prerequisite program that the antimicrobial agent or process, as used, is effective in suppressing or limiting growth of *L. monocytogenes*.

(iii) If an establishment chooses this alternative and chooses to use only an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes*, its sanitation program must:

(A) Provide for testing of food contact surfaces in the post-lethality processing environment to ensure that the surfaces are sanitary and free of *L. monocytogenes* or of an indicator organism;

(B) Identify the conditions under which the establishment will implement hold-and-test procedures following a positive test of a food-contact surface for *L. monocytogenes* or an indicator organism;

(C) State the frequency with which testing will be done;

(D) Identify the size and location of the sites that will be sampled; and

(E) Include an explanation of why the testing frequency is sufficient to ensure that effective control of *L. monocytogenes* or of indicator organisms is maintained.

(iv) An establishment that chooses this alternative and uses a post-lethality treatment of product will likely be subject to more frequent verification testing by FSIS than if it had chosen Alternative 1. An establishment that chooses this alternative and uses an antimicrobial agent or process that suppresses or limits the growth of *L. monocytogenes* will likely be subject to more frequent FSIS verification testing than if it uses a post-lethality treatment.

(3) *Alternative 3.* Use of sanitation measures only.

(i) If an establishment chooses this alternative, its sanitation program must:

(A) Provide for testing of food contact surfaces in the post-lethality processing environment to ensure that the surfaces are sanitary and free of *L. monocytogenes* or of an indicator organism;

(B) Identify the conditions under which the establishment will implement hold-and-test procedures following a positive test of a food-contact surface for *L. monocytogenes* or an indicator organism;

(C) State the frequency with which testing will be done;

(D) Identify the size and location of the sites that will be sampled; and

(E) Include an explanation of why the testing frequency is sufficient to ensure that effective control of *L. monocytogenes* or of indicator organisms is maintained.

(ii) An establishment producing a deli product or a hotdog product, in addition to meeting the requirements of paragraph (b)(3)(i) of this section, must meet the following requirements:

(A) The establishment must verify that the corrective actions that it takes with respect to sanitation after an initial positive test for *L. monocytogenes* or an

indicator organism on a food contact surface in the post-lethality processing environment are effective by conducting follow-up testing that includes a targeted test of the specific site on the food contact surface area that is the most likely source of contamination by the organism and such additional tests in the surrounding food contact surface area as are necessary to ensure the effectiveness of the corrective actions.

(B) During this follow-up testing, if the establishment obtains a second positive test for *L. monocytogenes* or an indicator organism, the establishment must hold lots of product that may have become contaminated by contact with the food contact surface until the establishment corrects the problem indicated by the test result.

(C) Further, in order to be able to release into commerce the lots of product that may have become contaminated with *L. monocytogenes*, the establishment must sample and test the lots for *L. monocytogenes* or an indicator organism using a sampling method and frequency that will provide a level of statistical confidence that ensures that each lot is not adulterated with *L. monocytogenes*. The establishment must document the results of this testing. Alternatively, the establishment may rework the held product using a process that is destructive of *L. monocytogenes* or the indicator organism.

(iii) An establishment that chooses Alternative 3 is likely to be subject to more frequent verification testing by FSIS than an establishment that has chosen Alternative 1 or 2. An establishment that chooses Alternative 3 and that produces deli meat or hotdog products is likely to be subject to more frequent verification testing than one that does not produce such products.

(c) For all three alternatives in paragraph (b):

(1) Establishments may use verification testing that includes tests for *L. monocytogenes* or an indicator organism, such as *Listeria* species, to verify the effectiveness of their sanitation procedures in the post-lethality processing environment.

(2) Sanitation measures for controlling *L. monocytogenes* and procedures for antimicrobial agents or processes that suppress or limit the growth of the pathogen may be incorporated either in the establishment's HACCP plan or in its Sanitation SOP or other prerequisite program. When these control procedures are incorporated into the Sanitation SOP or prerequisite program, and not as a CCP in the HACCP plan, the establishment must have documentation that supports the decision in its hazard analysis that *L. monocytogenes* is not a hazard that is reasonably likely to occur.

(3) The establishment must maintain sanitation in the post-lethality processing environment in accordance with part 416.

(4) If *L. monocytogenes* control measures are included in the HACCP plan, the establishment must validate and verify the effectiveness of measures for controlling *L. monocytogenes* included in its HACCP plan in accordance with § 417.4.

(5) If *L. monocytogenes* control measures are included in the Sanitation SOP, the effectiveness of the measures must be evaluated in accordance with § 416.14.

(6) If the measures for addressing *L. monocytogenes* are addressed in a prerequisite program other than the Sanitation SOP, the establishment must include the program and the results produced by the program in the documentation that the establishment is required to maintain under 9 CFR 417.5.

(7) The establishment must make the verification results that demonstrate the effectiveness of the measures it employs, whether under its HACCP plan or its Sanitation SOP or other prerequisite program, available upon request to FSIS inspection personnel.

(d) An establishment that produces post-lethality exposed RTE product shall provide FSIS, at least annually, or more often, as determined by the Administrator, with estimates of annual production volume and related information for the types of meat and poultry products processed under each of the alternatives in paragraph (b) of this section.

(e) An establishment that controls *L. monocytogenes* by using a post-lethality treatment or an antimicrobial agent or process that eliminates or reduces, or suppresses or limits the growth of the organism may declare this fact on the product label provided that the establishment has validated the claim.

Done in Washington, DC: June 2, 2003.

Garry L. McKee,

Administrator.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

Final Regulatory Impact Analysis

FSIS is amending its regulations to require that official establishments that produce certain ready-to-eat (RTE) meat and poultry products (MPPs) take measures to prevent product adulteration by *L. monocytogenes (Lm)*. These amended regulations primarily affect establishments that produce RTE MPPs that are exposed to the environment following lethality treatment and that support the growth of *Lm*.

The final rule takes into account the differences in the risk of *Lm* contamination by type of RTE MPP product and by the manner in which the pathogen is controlled in the production process. It takes into account these differences by identifying four alternative *Lm* control approaches applying to RTE MPPs that are exposed to the plant environment after undergoing a process that is lethal to the pathogen. Each alternative involves a different level of pathogen control and to each there corresponds a preferred level of monitoring and verification, based on science and the nature of the product.

Need for the Rule

This action is compelled by recent outbreaks of food borne illness related to the consumption of adulterated RTE meat and poultry products, coupled with information on the pathogenicity of the organism and the findings of the risk assessment and risk ranking conducted by FDA and FSIS. *Lm* contamination is often a result of post processing contamination or growth of the organism after it leaves the Federal establishment. FSIS concluded before beginning this rulemaking that many establishments were not effectively implementing HACCP plans and Sanitation SOPs to prevent *L. monocytogenes* from contaminating the RTE product in the post-lethality processing environment.

Given the pathogenicity of *L. monocytogenes*, the opportunity for it to contaminate RTE product in the post-lethality environment, and the significant consequences that this contamination can have, FSIS is amending its regulations. The Agency is adding provisions that require establishments that produce post-lethality exposed RTE product to include in their HACCP plans or in their Sanitation SOPs or other prerequisite programs measures that prevent product adulteration by *L. monocytogenes*.

Market Failure. This final rule addresses a market failure. Market failures occur when resources are misallocated or allocated inefficiently. Markets fail, in the current case, because processors may not always be provided with sufficient incentives to allocate the additional resources and efforts needed to provide effective prevention methods for pathogen contamination in their products. These incentives are lacking because consumers cannot identify (and reward) those firms that produce RTE MPPs and are implementing the desired food safety safeguards. Therefore, consumers are unable to distinguish these products from those produced by lower cost firms that are applying less effective pathogen prevention methods. The lack of information on the safety of the products produced by the establishments in this latter group is a major concern of this rule. The recent FSIS risk assessment clearly indicates that products from establishments that are not taking these precautions can lead to illness or death.

The provisions of this final rule are designed to provide establishments a choice of selected, proven technologies to minimize the presence of *Listeria* in their processing environment. The use of these technologies and documentation of records on the environment of these establishments, brought about by this final rule, will provide the kind of information, and needed food safety assurance, that is lacking for consumers.

Rationale for the Approach Taken

The economic rationale for the requirements of the final rule is that it recognizes that a combination of interventions have been shown to be more effective that a single intervention and builds this into the framework of regulation. Second, the requirements recognize that the level of risk varies by product and how it is produced. Third, the requirements provide incentives for the establishment to adopt sanitation and testing practices that are most suitable for its products and processes. And lastly, these incentives for establishments have been shown to be preferable over mandatory requirements.

The FDA/FSIS risk ranking [1] found that RTE MPPs posed a moderate to high human health risk, particularly among vulnerable populations. These products include deli meats, hotdogs, meat spreads, pâté, and deli salads that include RTE meat or poultry products as components. The risk ranking indicates that among the RTE MPPs, deli meats pose an especially high risk.

The *FSIS Risk Assessment for L. monocytogenes in Ready-to-Eat Deli Meats* [2] (FSIS *Lm* risk assessment) estimated the reduction in fatalities among vulnerable populations from consuming contaminated deli meats that might be achieved through in-plant sanitation with verification testing regimes of increasing intensity. These results were compared with estimates for similar fatality reductions that might be achieved by applying post-lethality treatments or growth inhibiting additives or processes. Based on the finding of the FSIS *Lm* risk assessment, the Agency concluded that a combination of interventions, including sanitation coupled with verification testing, and the use of growth inhibitors, appears to be more effective in controlling *Lm* than a single intervention in these operations.

FSIS considered the findings of the FDA/FSIS risk ranking and the Agency's *Lm* risk assessment and the public comments that had been submitted on the Agency's proposed rule regarding control of *Lm* in RTE products. Many of the comments expressed opposition to proposed mandatory testing frequencies—either the frequencies themselves or the fact that they would be mandated. Instead of mandatory testing requirements, the Agency is requiring that establishments incorporate appropriate verification methods into their HACCP plan, Sanitation SOP, or prerequisite program. This approach provides establishments with incentives to test for *Lm* and the flexibility to implement control measures that are appropriate for the types of products produced and processing methods at the establishment.

The final rule sets out four alternative *Lm* control approaches. For the purposes of this analysis, FSIS has grouped the affected establishments according to their use of these *Lm* control approaches.

Changes Between the Proposed and the Final Rule

FSIS considered four regulatory options for this final rule that had been generated from comments on the proposed rule. The options were: (1) No action; (2) a sanitation performance standard for reduction of *Lm* in RTE MPPs; (3) mandatory testing frequencies for *Listeria* species on food contact surfaces different from the frequencies proposed; and (4) a warning label to inform consumers in vulnerable groups of the potential for *Lm* contamination.

FSIS determined that: (1) Comments supported a final rule; (2) scientific support for a sanitation performance standard was lacking; (3) mandatory testing frequencies were objectionable for reasons given in the comments; (4) a warning label would be inappropriate because, under the law, all RTE meat and poultry products must be not adulterated and thus safe for all consumers.

FSIS adopted a modification of the third option. It will require establishments to describe their testing programs in their HACCP plans or in their Sanitation SOPs or other prerequisite programs, as appropriate for products and processing technologies. It will also require establishments to set the frequency of their verification tests for *Lm* on food contact surfaces, but will not mandate a specific frequency. The *Lm* control alternative influences the frequency of verification testing at an establishment. Verification testing is expected to be most frequent for establishments that produce post-lethality exposed deli meats and hotdogs and rely exclusively on sanitation and verification testing to control *Lm*.

The final rule identifies four *Lm* control alternatives that are typical of industry practices. The purpose of these control alternatives is to link the usage of HACCP or sanitation procedures with the risk of *Lm* contamination based on the FDA/FSIS risk ranking and the FSIS *Lm* risk assessment. The control approaches are: (1) A HACCP-based post-lethality treatment plus *Lm* growth limiting measures; (2) a HACCP-based post-lethality treatment or *Lm* growth limiting measures; (3) solely sanitation and verification control measures in its post-lethality treatment and no *Lm* growth inhibiting measures—and producing a class of post-lethality exposed product that is not a deli product or a hotdog product; and (4) solely sanitation and verification control measures in its post-lethality treatment and no *Lm* growth inhibiting measures—and producing a class of post-lethality exposed product that is a deli product or a hotdog product. For the purposes of this analysis, FSIS has grouped all establishments producing RTE MPPs that are exposed post-lethality according to their current and expected use of these *Lm* control approaches and this analysis will refer to these establishment groups as establishment group (EG) 1 through 4.

The proposed rule would have required RTE MPP establishments to control *Lm* either in their HACCP plans or their Sanitation SOPs. The final rule requires establishments to include post-lethality treatments in their HACCP plans and allows them to have other types of *Lm* contamination controls in their HACCP plans or in their Sanitation SOPs or other prerequisite programs. This modification of the proposal is based on the finding that the establishment's use of a post-lethality treatment represents a determination by the establishment that *Lm* is a hazard reasonably likely to occur.

The prerequisite program provisions in the final rule respond to comments that the Agency should provide establishments with greater flexibility in implementing *Lm* contamination controls. In particular, RTE MPP establishments usually do not control post-processing contamination through HACCP alone, but through a variety of prerequisite programs.

In response to public comments, the final rule also does not mandate food contact surface (FCS) testing frequencies. Instead, the final rule sets out specific requirements, for Alternatives 2 and 3 for sanitation procedures that are included in HACCP plans, or in Sanitation SOPs or other prerequisite programs. Establishments are allowed to choose their own testing methods and frequencies for verifying the effectiveness of their procedures.

The sanitation procedure requirements for Alternative 3 establishments that process hotdog and deli meat products and control for *Lm* using sanitation procedures only, include hold-and-test provisions. These procedures are invoked when follow-up testing to verify corrective actions in response to *Listeria*-positive FCS test results. A second positive FCS test for *L. monocytogenes* or an indicator organism entails withholding from commerce product that was in contact with the contaminated surface. Shipments can resume when subsequent tests in the same area of the plant are negative. The product can be tested under a sampling plan that provides sufficient confidence to enable the product to be released into commerce. The requirements for Alternative 3 establishments that process deli meats and hotdogs represent a modification of the hold-and-test procedures that the proposal would have required (proposed § 430.4(b)) but imposes this requirement only on establishments producing hotdog and deli-meat type products. This particular change from the proposal is responsive to comments opposing mandatory testing frequencies and the proposed hold-and-test requirements, which would have applied to all RTE MPPs. The requirements for Alternative 3 establishments that process deli meats and hotdogs are also responsive to the FDA/FSIS risk ranking which identified hot dog and deli-meat products as posing a moderate to high risk for listeriosis on a per annum basis (as opposed to a per serving basis), and the FSIS *Lm* risk assessment which evaluated the risk-reduction effectiveness of various

[1] FDA, FSIS, CDC. "Draft Assessment of the Relative Risk to public Health from Foodborne Listeria monocytogenes Among Selected Categories of Ready-to-Eat Foods". The document is available at *www.foodsafety.gov*.

[2] USDA, FSIS. "Draft Risk Assessment for Listeria Monocytogenes in Ready-to-eat Deli Meat Products". FSIS. March 2003. The risk assessment is available at *www.fsis.usda.gov*.

combinations of in-plant interventions, including FCS testing, with and without test and hold actions.

The final rule also differs from the proposal by requiring RTE MPP establishments to furnish FSIS with at-least-annual estimates of production volume by type of RTE MPP and by alternative *Lm* control program used. This change responds to comments on the proposed rule indicating opposition to the use of establishment size criteria in determining verification testing intensity and to information provided in the public comments indicating that there may not be a connection between establishment size and volume of production. These comments noted that production volume is dependent on factors other than establishment size, such as technology.

Finally, the rule allows labels on RTE MPPs to show that the products were processed in a manner to eliminate, reduce, or limit the growth of *Lm*, provided that the claim is validated. This provision is not a regulatory requirement in that it does not mandate such labeling, but is intended to encourage the industry to implement effective *Lm* controls and to provide useful information to consumers, especially vulnerable subpopulations.

Coverage

FSIS found that that the final rule will affect 2,930 federally inspected RTE MPP establishments and about 2,046 State-inspected establishments. About 144 of these establishments are considered large, 1,276 small and 3,556 very small, using the size criteria adopted by FSIS in implementing the HACCP regulations. FSIS was able to determine that the baseline numbers of federally and State-inspected establishments in the respective *Lm* control groups 1 through 4 are, respectively: 49; 2,297; 1,864; and 766. These numbers are expected to change as a result of this rule.

FSIS was further able to determine that, because of the intensity of verification testing that sanitation-and-testing establishments would have to implement to ensure that product contaminated with *Lm* is not shipped, a certain percentage of establishments in this group are likely to decide to put their *Lm* controls in their HACCP plans or to adopt *Lm* growth suppressing or limiting methods. They would decide, therefore, to "move or migrate" into the grouping of establishments that take either the first or the second *Lm* control approach. The number of establishments in establishment groups 1 through 4 is expected to be 95, 2,363, 1,864, and 654, respectively, after the final rule goes into effect. The expected movement among establishment groups is discussed in detail in a later section.

The numbers of establishments in each of these *Lm* control groupings will determine the allocation of FSIS inspection resources for *Lm* control verification. FSIS will verify that establishments that produce RTE products are carrying out *Lm* control procedures in their post-lethality processing areas as described in their HACCP plans or their Sanitation SOPs or other prerequisite programs, and that they are complying with the requirements of this final rule. In addition to verifying establishment *Lm* controls, the Agency will verify that any label claims regarding *Lm* control have been validated. The frequency of FSIS verification testing of establishment *Lm* controls is expected to be higher for each successive *Lm* control alternative. In other words, the frequency will be lowest for establishments that use control Alternative 1 and highest for establishments that use control alternative 3 and that produce deli meats and hotdogs.

Establishment Groups

Grouping by Control Method. For the purposes of this analysis, four establishment groups can be identified in the final rule. The four groups are composed respectively of the establishments choosing *L. monocytogenes* control Alternatives 1 through 3, and the deli meat- and hotdog-producing establishments choosing Alternative 3 (9 CFR 430.4(b)(1), (b)(2), (b)(3)(i) and (b)(3)(ii)):

Establishment Group One (9 CFR 430.4(b)(1)): Establishments apply a post-lethality (PL) treatment to their products or process and use a *Lm* growth inhibiting agent or process. Products produced by establishments in EG 1 are expected to present the least risk of possible *Lm* contamination of products because they use a combination of intervention measures. EG 1's HACCP, Sanitation SOP or other prerequisite program controls and FSIS's "normal" verification procedures are expected to provide information that is adequate to assure the establishment and FSIS inspection personnel that an adulterated product is not being produced.

Establishment Group Two (9 CFR 430.4(b)(2)): Establishments apply either a post-lethality treatment to their products or use a *Lm* growth inhibiting agent or process. Because establishments in EG 2 apply a PL treatment to their products or use a growth inhibiting agent or process, but not both, this group's products present a somewhat higher level of risk. They still would be considered "safe" with a high degree of certainty, but this final rule will provide additional assurance that the products are not adulterated by requiring EG 2 establishments to test food contact surfaces (FCSs) and make the test results available to FSIS.

Establishment Group Three (9 CFR 430.4(b)(3)(i)): Establishments use neither a PL treatment nor a growth inhibiting agent or process, but has Sanitation standard operating procedures (Sanitation SOP) or other prerequisite programs and produce a class of post-lethality exposed product that is not a deli product or a hotdog product.

Establishment Group Four (9 CFR 430.4(b)(3)(ii)): Establishments use neither PL treatments nor *Lm* growth inhibiting agents or processes in their RTE MPP production, but have Sanitation SOP or other prerequisite programs and produce a class of post-lethality exposed product that is a deli product or a hotdog product. Establishments in EG 4 produce RTE MPPs that have been identified in recent risk assessments as posing significant risk of *Lm* contamination in their post-processing environment and significantly contribute to illnesses and deaths. The *Lm* control measures for establishments in EG 4 are similar to those of EG 3, but FSIS feels that specific holding action requirements are justified to ensure that no adulterated product enters commerce when a second consecutive positive FCS test in the post-lethality processing environment of a EG 4 is found. A guide to the final rule requirements by establishment group is given in Table 1.

BILLING CODE 3410-DM-P

Table 1. Summary of final rule requirements by establishment group.

Item	Establishment Group			
	1	2	3	4
(1) Inclusion of a PL treatment to their product or process as a CCP in the establishment's HACCP plan.	R	R	NR	NR
(2) Validation of (1) as being effective in eliminating L. monocytogenes.	R	R	NR	NR
(3) Verification of (1) to be effective in accordance with 417.4 on a continuous basis and provision of them to FSIS.	R	R OR	NR	NR
(4) Apply a bacteriostatic agent or process that eliminates L. monocytogenes growth in the product.	R	R	NR	NR
(5) Validation of (4) as being effective in eliminating L. monocytogenes.	R	R	NR	NR
(6) Verification of (4) to be effective in accordance with 417.4 on a continuous basis and provision of them to FSIS.	R	R	NR	NR
(7) FCS testing with a frequency determined by the establishment to be effective.	NR	R	R	R
(8) Provision of FCS testing results to FSIS.	NR	R	R	R
(9) Establishment's sanitation plan explains how FCS is kept sanitary and free of L. monocytogenes.	NR	R	R	R
(10) Specific requirements on holding of each lot of product associated with two consecutive FCS positives, until two consecutive FCS negatives.	NR	NR	NR	R
NR = Not required; R = Required.				

BILLING CODE 3410-DM-C

Analysis of Costs

Number of Establishments. The preliminary regulatory impact analysis relied on the 1997 Census of Manufacturers for an initial count of RTE MPP establishment numbers. 1,630 establishments were identified as producing a RTE MPP. The estimated number of establishments affected by the proposed rule was expected to be fewer than the actual number total for many reasons, but chiefly because the Census classifies businesses according to their principal activity. In some cases, the production of RTE MPP might be a secondary activity. This undercounting was a major deficiency in the preliminary regulatory impact analysis (PRIA). FSIS has corrected this problem and is estimating the impacts of the final rule considering both federally and State-inspected establishments producing RTE MPPs.

Basing the analysis on a more realistic estimate of the number and types of establishments affected by the rule provides a better estimate of industry impacts. However, using this approach, the product-specific information, such as the value of production, that was available through Census data, cannot be used. Also, certain assumptions must be made in manipulating the data for both federally and State-inspected establishments to avoid double counting and to estimate HACCP process categories for RTE MPPs at State-inspected establishments.

FSIS used the 2001 Performance-Based Inspection System (PBIS) databases to identify Federal-inspected establishments that have at least one HACCP process category code (actually, the pertinent procedure code from FSIS's inspection system procedure guide) associated with a RTE MPP. The 2001 PBIS database showed that there were 2,930 federally inspected establishments with 3,556 HACCP process category codes associated with RTE MPPs. Establishments were grouped into HACCP establishment size categories by cross tabulating this data with the 2001 Enhanced Facilities Database (EFD). (HACCP establishment size categories have been defined since the publication of the PR/HACCP rule (61 FR 38806; July 25, 1996) as large: more than 500 employees; small: between 499 and 10 employees; and very small: Fewer than 10 employees or less than $2.5 million in annual sales.) To obtain the number of unique establishments in each HACCP process category code, the number of HACCP plans for each HACCP process code was divided by the average number of HACCP plans per establishment in each size category (bottom of Table 2).

The EFD identified 2,046 State-inspected RTE MPP establishments comprised of 1,992 very small establishments and 54 small establishments. To obtain an estimate of the product types produced at State-inspected plants, the total number of State-inspected establishments was distributed across the four HACCP process category codes in the same proportion that was found in federally inspected establishments (Table 3).

BILLING CODE 3410-DM-P

Table 2. Federally inspected RTE MPP establishments by HACCP process category code, 2002.

Item	HACCP Establishment Size Category			Total
	L	S	VS	
03E- Not heat-treated, shelf-stable	5	68	88	161
03F- Heat-treated, self-stable	41	238	405	684
03G-Fully cooked, not shelf-stable	122	1,079	1,319	2,520
03I-Product w/ secondary inhibitors	9	68	72	149
Total HACCP plans	177	1,453	1,884	3,514
Total Unique Federally inspected Establishments	144	1,222	1,564	2,930
HACCP plans/establishment	1.23	1.19	1.20	1.20

"Adjusted" number of federally-inspected establishments by HACCP Process Category Code (Number of HACCP Process Category Codes by Size Category divided by HACCP plans/establishment)

Item	L	S	VS	Total
03E- Not heat-treated, shelf-stable	4	57	73	134
03F- Heat-treated, self-stable	33	200	336	570
03G-Fully cooked, not shelf-stable	99	907	1,095	2,101
03I-Product w/ secondary inhibitors	7	57	60	124
Total Federal-inspected RTE MPP establishments	144	1,222	1,564	2,930

Table 3. State-inspected RTE MPP establishments by HACCP process category code, 2002.

Item	Distribution of federally-inspected establishments			
HACCP Process Category Code	HACCP Establishment Size Category			Total
	L	S	VS	
	Percent			
O3E- Not heat-treated, shelf-stable	2.8	4.7	4.7	4.6
O3F- Heat-treated, self-stable	23.2	16.4	21.5	19.5
O3G-Fully cooked, not shelf-stable	68.9	74.3	70.0	71.7
O3I-Product w/ secondary inhibitors	5.1	4.7	3.8	4.2
Total Federal-inspected RTE MPP establishments	100	100	100	100
Item	"Adjusted" number of State-inspected establishments			
O3E- Not heat-treated, shelf-stable	0	3	93	96
O3F- Heat-treated, self-stable	0	9	428	437
O3G-Fully cooked, not shelf-stable	0	40	1,395	1,435
O3I-Product w/ secondary inhibitors	0	3	76	79
Total State-inspected RTE MMP establishments	0	54	1,992	2,046

Table 4. Total number of RTE MPP Federally and State-inspected establishments by HACCP process category code, 2002.

Item	HACCP Establishment Size Category			Total
HACCP Process Category Codes	L	S	VS	
O3E- Not heat-treated, shelf-stable	4	60	166	230
O3F- Heat-treated, self-stable	33	209	764	1,007
O3G-Fully cooked, not shelf-stable	99	948	2,490	3,536
O3I-Product w/ secondary inhibitors	7	60	136	203
Total RTE MPP establishments	144	1,276	3,556	4,976

BILLING CODE 3410-DM-C

The total number of establishments producing RTE MPP products is estimated to be 4,976: 59 percent federally inspected and 41 percent State-inspected. Of the total, 4.6 percent are associated with the O3E HACCP code; 20.2 percent with the O3F code; 71.1 percent with the O3G code; and, 4.1 percent with the O3I code (Table 4). Further analysis of HACCP size categories shows that 71.5 percent of all RTE MPP establishments are very small; 25.6 percent are small; and, 2.9 percent are large.

Product groups. The PRIA classified RTE MPP establishments by the expected range of potential cost impact on those establishments: Those likely to incur the greatest costs, moderate costs, minor costs, and no likely costs (Table 3 in **Federal Register**, Vol. 66, No. 39). This grouping was based on the likely impact from both the proposed testing programs as well as the proposed changes in lethality and stabilization performance standards. The final rule concerns only that section of the proposed rule dealing strictly with FSIS's desire to increase safeguards with respect to possible *Lm* contamination. Because of this and also because products and production processes vary across the same product classification, it is not feasible to disaggregate in the fashion of the PRIA. However, it appears that the largest impact will be on establishments producing cooked RTE MPP products—those products associated with HACCP process code O3G. There is little likelihood that there will be any cost impact on RTE MPP establishments producing products in the O3E, O3F and O3I HACCP process codes, except for costs attributable to a possible increase in FCS testing mandated by the rule. These costs are expected to be minor because many of the establishments in the HACCP process category codes already apply an agent or process that inhibits *Lm* growth so many of these establishments "qualify" to be classified in EG 2.

Establishments associated with the O3G HACCP process category code produce cooked RTE MPPs which may or may not be able to apply post-lethality treatment to products, apply antimicrobial agents, or include procedures in either Sanitation SOPs or prerequisite programs. In some cases, FCS testing and disclosure of those results to FSIS may result in minor cost increases similar to those for 03E, 03F, and 03I HACCP process category codes. For other products in the 03G HACCP process code, they could be produced under any of the four alternative post-lethality *Lm* control regimes identified in this final rule. In those cases, the costs could be significantly higher. Accordingly, the cost impact discussion is presented by each establishment group, type of products produced, and their associated establishment numbers and size distribution.

Impacts according to establishment group. The Agency anticipates that the measures taken by establishments will differ by establishment group. The following describes the major types of responses expected to be taken in response to the final rule for those establishments switching establishment groups and/or validating current *Lm* controls.

EG 1 EG 2 Impacts

(1) *Incorporation of post-lethality treatments and/or their validation for FSIS:* Many establishments are currently using post-lethality measures to address possible *Lm* contamination. These actions may have been taken in response to client requirements, the recent FSIS *Lm* intensified verification program, or in anticipation of further FSIS action. The costs of these actions taken by establishments are not attributed to the final rule. However, measures taken to satisfy this requirement or to validate these measures to FSIS are attributed to the final rule. These measures include: Post-lethality heating (may not be feasible for many products, especially those with a high fat content); high-pressure systems, which may be limited to a few specialty items and usually have a low throughput; and irradiation, which is not permitted to be applied to RTE MPPs at present. FSIS expects establishments using post-lethality treatments to verify that their treatments are effective and also to monitor FCSs to assure that the treatment is effective. This level of verification FCS testing for establishments in EG 1 is expected to be about twice yearly.

(2) *Use of agent in product formulation or change in processes to inhibit* Lm *growth in product:* FSIS has recently permitted the use of certain food additives that inhibit *Lm* growth (65 FR 17128, March 31, 2000). These additives include lactate and diacetates that have been applied increasingly to cooked and cured RTE MPPs such as hotdogs. The cost to establishments of taking measures involving the use of these additives is not attributable to the final rule. The Agency estimates that up to 70 percent of all hotdog manufacturers have recently changed their product formulations to incorporate one of the recently permitted food additives. Changes in a process that would help inhibit the *Lm* growth in the product include: lowering the pH or water activity levels and refrigerating or freezing the product following processing. Growth inhibiting processes uses antimicrobial agents to control growth in post-lethality exposed products such as many hotdogs and certain other kinds of sausages. Verification FCS testing for establishments in EG 2 would be expected at least once per quarter. This level of testing would be expected whether the establishment administered a PL treatment or applied a *Lm* growth inhibiting agent or included a process in either a Sanitation SOP or prerequisite program.

EG 3 and EG 4 Impacts

(1) *FCS testing frequencies:* For the purpose of this analysis, the minimum level of FCS testing expected for establishments in EG 3 is at least once per month: once a month for high, once a month for small, and once a month for very small establishments. Also, the minimal level of FCS testing for EG 4 is: at least weekly for high-volume establishments, semi-monthly for small volume establishments, and monthly for very small (or low volume) establishments (4–2–1). These testing frequencies are illustrative in that the actual testing frequencies incorporated into final compliance guidelines may differ.

A potential unintended impact of the rule for establishments in EG 4 might be the incentive to reduce their current level of FCS testing if results are to be shared with FSIS. An establishment in this group may conduct fewer tests if results could lead to costly hold-and-test actions. This potential unintended impact was not be quantified in this analysis.

EG 4 Impacts

(1) *Hold and Test:* EG 4 establishments may be unable to (1) apply a post-lethality treatment or (2) apply an agent or include a process in either the Sanitation SOP or prerequisite program for a variety of reasons. Product from these establishments can be held on the basis of FCS testing results shared with the Agency. Multiple episodes of holding product may be incurred in the case of two consecutive positive FCS test results.

Baseline

Establishment Types. The compliance cost impacts of the rule differ significantly among establishment groups and by HACCP size category. The current distribution of establishments by group and size serves as the baseline for determining the distribution of compliance cost and also the starting point for the expected establishment shifts among establishment groups discussed below.

Table 4 indicates that 1,440 establishments produced RTE MPPs in the O3E, O3F, and O3I HACCP process category codes. For purposes of this analysis, these establishments are distributed 90 percent in EG 2 and 10 percent in EG 3. The high proportion in EG 2 is a result of the use of growth inhibitors in most of these products which include cured and salted products. These products have not been associated with listeriosis outbreaks.

The remaining 3,536 establishments in O3G produce cooked RTE MPPs that may be produced by any of the four Lm control methods. These establishments were partitioned into the four establishment groups as follows:

(1) From a December 2002 FSIS hotdog and deli meat survey, we know that there are 1,712 operations producing hotdogs and/or deli meats. Given that 38 percent of these operations produce both hotdogs and deli meats, the actual number of unique establishments involved is 1,061 ((1 − .38) × 1,712).

(2) The number of establishments producing cooked products other than hotdogs and/or deli meats was estimated by subtracting the number of single establishments producing hotdogs and/or deli meats from the total number of establishments producing cooked products (3,536 − 1,061 = 2,475).

(3) FSIS inspection program personnel were contacted to estimate the proportion of establishments producing hotdog/deli meat and other cooked products in each of the establishment groups. These estimates, provided in Tables 5 and 6, were used to partition the establishments producing hotdog and deli meats and the other cooked RTE MPPs by establishment group (Table 7).

BILLING CODE 3410-DM-P

Table 5. Percentage of hotdog and deli meat establishments by establishment group, 2002			
Item	HACCP Establishment Size Category		
Establishment group	L	S	VS
1	0.15	0.05	0.03
2	0.65	0.30	0.12
3	0.00	0.00	0.00
4	0.20	0.65	0.85
Source: FSIS Hotdog and deli meat industry survey, December 2002.			

Table 6. Percentage of remaining establishments in 03G Code by establishment group, 2002			
Item	HACCP Establishment Size Category		
Establishment group	L	S	VS
1	0.00	0.00	0.00
2	0.75	0.50	0.25
3	0.25	0.50	0.75
4	0.00	0.00	0.00
Source: FSIS inspection program personnel, January 2003.			

Table 7. Total number of RTE MPP Federally and State-inspected establishments by establishment group, 2002.				
Item	HACCP Establishment Size Category			
Establishment Group	L	S	VS	Total
1	9	24	16	49
2	108	675	1514	2297
3	13	269	1581	1864
4	13	308	445	766
Total RTE MPP establishments	143	1276	3556	4976

BILLING CODE 3410-DM-C

Health Consequences. The baseline for comparing human health benefits associated with the rule is established by the "Draft FSIS Risk Assessment for *Listeria Monocytogenes* in Ready-to-eat Deli Meat Products"[3] (*Lm* Risk Assessment). The *Lm* Risk Assessment concludes that 320 deaths are attributable to RTE deli meats. It is not possible at this time to identify the number or deaths attributable to RTE MPPs, which in addition to deli meats includes hotdogs, fermented sausages, and related products.

The FDA/FSIS risk ranking model[4] estimates that there are about 340 billion servings of all RTE products consumed per year. RTE MPPs are contained within the following classes: reheated franks, non-reheated franks, deli meats, fermented sausages, pâté, and deli-salads. These classes comprise about 43 billions servings. The deli meat class is responsible for 49 percent of the 43 billion servings of RTE MPP. The two hotdog classes are together responsible for 15 percent of the servings of RTE MPP. Based on these estimates, there could be as many 375 annual fatalities associated with RTE MPPs.

The *Lm* Risk Assessment, because of its focus on deli meats, is only able to estimate the human health benefits associated with the rule as it affects this category of products. For purposes of establishing a baseline for potential human health benefits, deli meats are divided into two categories: Products sliced and packaged at the establishment; and retail sliced product. Pre-packed products are post-lethality exposed and the focus of the regulation. Retail-sliced products are not post-lethality exposed until prepared for use or sale at a retail location. The human health exposure to each type of product is a function of its share of total RTE deli meats consumed and the level of contamination in each type of product. Actions by FSIS can reduce the exposure to some, but not all RTE deli meat.

The Economic Research Service estimates that pre-packaged product accounts for 46 percent ($11.6 billion) of total sales of RTE deli meats ($25.2 billion) and retail sliced product the remaining 54 percent ($13.6 billion).[5] Volume of product in the categories would provide a more suitable basis for establishing a baseline level.

There is considerable uncertainty about the level of contamination in each type of product when purchased. A recent study by Gombas, Chen, Clavero, and Scott[6] finds that there is a 0.4 percent prevalence rate for *Lm* in pre-packaged product and a 2.7 percent prevalence rate for *Lm* in retail sliced product at the retail level. If 0.4 percent of pre-packaged product was found to be contaminated at the processing plant, it follows that 0.4 percent of the 2.7 percent prevalence rate at retail might be due to contamination at the processing site. That means that the prevalence of product solely contaminated during retail slicing is 2.3 percent (the observed 2.7 percent minus the 0.4 percent that was contaminated at the processor site). Using this information and the relative market share weights for pre-packaged and retail sliced deli meats from ERS provides a weighted average exposure rate for deli meats: .004(0.46) + 0.004(0.54) + .027 (.54) = .0164 or, .004 + .01242 = .01642

The pre-packaged product share of the weighted average exposure rate is 24.4 percent (.004/.01642 = 0.2436) and the retail sliced product share is the remaining 75.6 percent. Therefore, the human health baseline risk which the FSIS can affect at federally inspected establishments is a potential maximum 78 deaths (24.4 × 320).

The Agency has several concerns about this approach to establish a baseline level of human health risk. The prevalence levels estimated by Gombas, *et al.* and based on National Food Processing Association (NFPA) Survey data, taken at retail establishments, are significantly lower than those found by FSIS and reported in the *Lm* Risk Assessment Model. Levine, *et al.*[7] reported 1999 prevalence levels of *Lm* at 2.71 percent for cooked, roast, and corned beef and 4.58 percent in sliced ham and other pork luncheon meats. All samples were collected at production facilities, not at retail. The prevalence levels from the NFPA and FSIS studies are not entirely comparable, but they do seem to be inconsistent, even after taking into account basic limitations in the data used in both studies. The NFPA survey data describe the difference in prevalence between produot contaminated at processing and product contaminated at retail. It is important to recognize that some of the product found contaminated at retail was contaminated at the processor but was only detected at retail. It is difficult to reconcile FSIS product sampling which finds 2.7–4.6 percent of RTE meats positive for *Lm*, with the finding based on the NFPA survey data that only 0.4 percent of packaged RTE meats are positive at retail outlets. Some net growth, not dying off, of *Lm* within contaminated packages between processor and retail is expected. The Agency concludes that there is much uncertainty about the true proportion of products contaminated at the processor and at the retail facility and among products affected by the rule and not affected by the rule.

All things considered, the Agency concludes that it is appropriate to make at least a 50-percent reduction in the potential deaths and illnesses averted due to *Lm* control measures taken by RTE MPP establishments as a result of this rule (versus the 24.4 percent based on the estimate presented). This percentage takes into account the study by Gombas, *et al.*, and discussions with FSIS industry experts, risk assessors, and microbiologists. Consequently, the maximum potential reduction in fatalities achieved through Agency measures for RTE deli meat products is 180 (320 ×.5). This level would be somewhat higher if hotdogs, fermented sausage, and related products were included in the *Lm* Risk Assessment.

Expected Movement Among Establishment Groups

There are six major industry cost impacts that are expected with the final rule. Most of these impacts arise because some establishments are expected to shift into establishment groups that entail different technologies than they currently employ. These shifts are attributed to compliance with requirements of the rule. Costs are estimated on the basis of such shifts among the establishment groups. The movements among establishment groups are based on the experience and judgment of FSIS personnel which were pooled together to produce certain guidelines to estimate the expected movement of establishments across establishment groups, depending on their establishment size. For large establishments, it is expected that, based on this collective judgment, 20 percent of the establishments in EG 2 (that were already applying a PL treatment and referred to as EG 2A) would move into EG 1 (Table 8). These seven establishments already had the necessary equipment for these treatments, but simply had not validated their use. Therefore, only very little additional cost was involved for these establishments to move into EG 1 (along with the adoption of applying a *Lm* inhibiting agent or process). A 10-percent shift in establishments in EG 2B and EG 4 is expected because these establishments have not incurred the high initial costs of the post lethality equipment, resulting in a shift of seven establishments from EG 2B and two from EG 4. No establishment shifts in EG 3 are anticipated. In total, the application of these guidelines produced an increase of 16 establishments in EG 1 (Table 9).

BILLING CODE 3410-DM-P

[3] USDA, FSIS. "Draft Risk Assessment for Listeria Monocytogenes in Ready-to-eat Deli Meat Products". FSIS. March 2003. The risk assessment is available at *www.fsis.usda.gov*.

[4] FDA, FSIS, CDC. "Draft Assessment of the Relative Risk to Public Health from Foodborne Listeria Monocytogenes Among Selected Categories of Ready-to-Eat Foods". The document is available at *www.foodsafety.gov*.

[5] The estimate is based on information from the A.C. Nielson Co. 2001 Consumer Expenditures Study as reported in *Progressive Grocer*, September, 2002. The data sources are: supermarket checkout scanner data from a representative sample of 10,000 U.S. supermarkets, a representative consumer panel consisting of 55,000 households, and *Progressive Grocer* estimates.

[6] "Survey of Listeria monocytogenes in Ready-to-Eat Foods", *Journal of Food Protection* 66 (H): 559–569.

[7] Levine P, Rose B, Green S, Ransom G, and Hill W (2001). Pathogen testing of ready-to-eat meat and poultry products collected at federally-inspected establishments in the United States, 1990 to 1999. Journal of Food Protection 64(8):188–1193.

Table 8. Rules employed in estimating large establishment shifts across establishment groups.

	Went to:				Came from:		
Estab. Group	1	2A	2B	4	2A	2B	4
1	NA	--------	----------	--------	20% of 34	10% of 74	10% of 13
2A /1	2A-1 above.	NA	----------	--------	----------	----------	----------
2B /1	2B-1 above.	--------	NA	--------	----------	----------	25% of 13
3	----------	--------	----------	--------	----------	----------	----------
4	4-1 above.	--------	4-2B above.	NA	----------	----------	----------

/1 2A refers to those establishments applying only a PL treatment; 2B refers to those establishments applying only a Lm inhibiting agent or process to their product or process.

Table 9. Absolute levels and changes in large establishments across establishment groups.

Item	Start and End Levels			Went to:					Came from:			
Estab. Group	Old	New	Change	1	2A	2B	4	Total	2A	2B	4	Total
1	9	25	16	0	0	0	0	0	7	7	2	16
2A /1	34	27	-7	-7	0	0	0	-7	0	0	0	0
2B /1	74	70	-4	-7	0	0	0	-7	0	0	3	3
3	14	14	0	0	0	0	0	0	0	0	0	0
4	13	8	-5	-2	0	-3	0	-5	0	0	0	0
All Estab.	144	144	0	-16	0	-3	0	-19	7	7	5	19

/1 2A refers to those establishments applying only a PL treatment; 2B refers to those establishments applying only a Lm inhibiting agent or process to their product or process.

BILLING CODE 3410-DM-C

For small establishments, the combination of the high cost of technologies involved in EG 1 and/or EG 2 plus their limited volume of production is expected to lower their propensity for establishments to shift to another establishment group. Also, characteristics of their products and their production are expected to limit establishment shifts. Because of these constraints, it is expected that only 31 establishments (or 10 percent of the small establishments in EG 4) are likely to migrate to EG 1 as a result of the final rule (Table 10). Recall that all such movement involves the purchase and use of new technology. For most of these establishments, the option of adding a *Lm* inhibiting agent or process is probably a more attractive, least-cost option. As a result, 25 percent of the existing number of small establishments in EG 4 (or 77 establishments) is expected to shift into EG 2. No small establishments in EG 3 are expected to shift establishment groups. In total, 108 small establishments are expected to shift from EG 4 into either EG 1 or EG 2 (Table 11).

BILLING CODE 3410-DM-P

Table 10. Rules employed in estimating small establishment shifts across establishment groups.							
	Went to:				Came from:		
Estab. Group	1	2A	2B	4	2A	2B	4
1	NA	--------	----------	--------	----------	----------	10% of 308
2A /1	----------	NA	----------	--------	----------	----------	----------
2B /1	----------	--------	NA	--------	----------	----------	25% of 308
3	----------	--------	----------	--------	----------	----------	----------
4	4-1 above.	--------	4-2B above.	NA	----------	----------	----------
/1 2A refers to those establishments applying only a PL treatment; 2B refers to those establishments applying only a Lm inhibiting agent or process to their product or process.							

Table 11. Absolute levels and changes in small establishments across establishment groups.												
Item	Start and End Levels			Went to:					Came from:			
Estab. Group	Old	New	Change	1	2A	2B	4	Total	2A	2B	4	Total
1	24	55	31	0	0	0	0	0	0	0	31	31
2A /1	114	114	0	0	0	0	0	0	0	0	0	0
2B /1	561	638	77	0	0	0	0	0	0	0	77	77
3	269	269	0	0	0	0	0	0	0	0	0	0
4	308	200	-108	-31	0	-77	0	-108	0	0	0	0
All Estab.	1276	1276	0	-31	0	-77	0	-108	7	7	108	108
/1 2A refers to those establishments applying only a PL treatment; 2B refers to those establishments applying only a Lm inhibiting agent or process to their product or process.												

BILLING CODE 3410-DM-C

For very small establishments, the combination of high costs associated with technologies necessary to "qualify" for EG 1 or EG 3 and the nature of their product or production is expected to make it highly unlikely that any establishment will move into a different establishment group as a result of this final rule. The total expected establishment movements expected as a result of this final rule are given in the table below (Table 12).

Table 12. Changes in all establishments across establishment groups.				
Item	Establishment Size			
Establishment Group	Large	Small	Very Small	Total
1	16	31	0	+47
2A /1	-7	0	0	-7
2B /1	-4	77	0	+73
3	0	0	0	0
4	-5	-108	0	-113
All Establishments	0	0	0	0
/1 2A refers to those establishments applying only a PL treatment; 2B refers to those establishments applying only a Lm inhibiting agent or process to their product or process.				

Cost to validate a post-lethality treatment for establishments in EG 1 and EG 2. It is expected that 43 HACCP plans of 35 establishments (of the original 49 establishments in EG 1) will need to be validated (Table 13). This represents only about 15 percent of all the HACCP plan validations that will occur as a result of the final rule. This number of HACCP plan validations is based on a 50-percent validation rate currently being attained by large establishments, 30-percent rate by small, and a 10-percent rate by very small establishments. These rates are based on information that FSIS obtained from industry sources and in its public meetings related to the proposed rule and Lm risk assessment. Given the high relative numbers of small and very small establishments whose HACCP plans require validation, the total number of establishments affected is 35.

The major impact of the need for HACCP plan validation occurs in establishments already in EG 2 that have an unvalidated PL treatment (60 percent of all expected validation expenses incurred by establishments that already apply a PL treatment). To calculate this impact, establishments in EG 2 are grouped by the same validation rate used for EG 1 establishments above. To the extent that PL treatments are validated by the manufacturer, validation costs would be lower.

Some validation costs are incurred by establishments in EG 2 that are expected to move into EG 1 (20 percent of the large establishments that currently have a PL treatment and 10 percent of those that do not have a PL treatment in EG 2) and some establishments in EG 4 that are expected to move into EG 1 (10 percent of the large and small establishments currently in EG 4).

Table 13. Costs for validation of PL treatments as CCPs in HACCP plans				
Item	HACCP Establishment Size Category			
	L	S	VS	Total
	$thousand			
Cost per Plan	20	10	5	
Existing EG 1 HACCP plans				
Number of plans	6	20	17	43
Number of establishments	5	17	14	35
	$thousand			
Cost	$116.6	197.4	85.2	399.2
Establishments in EG 2 moving to EG 1 incurred by establishments that already apply a PL treatment				
Number of plans	13	0	0	13
Number of establishments	10	0	0	10
	$thousand			
Cost	266.5	0	0	266.5
Establishments in EG 4 moving to EG 1				
Number of plans	2	37	0	39
Number of establishments	1	31	0	32
	$thousand			
Cost	31.1	366.6	0	397.7
Cost for existing EG 2 HACCP plans				
Number of plans	17	95	60	171
Number of establishments	14	80	50	143
	$thousand			
Cost	334.9	946.2	300.5	1,581.5
Total Number of HACCP Plan Validations and Cost				
Number of plans	37	151	77	266
Number of establishments	30	127	64	222
	$thousand			
Total Cost, EG 1 and EG 2	749.1	1,510.1	385.7	2,644.8

BILLING CODE 3410-DM-C

Cost to install a post-lethality (PL) treatment. Establishments in EG 1 and about half in EG 2 already have a PL treatment by virtue of being classified in that establishment group. Establishments in EG 4 and those in EG 2 that use an agent or have a process to control *Lm* do not necessarily have a PL treatment. Seven large establishments are expected to move from EG 2 to EG 1 and 1 large establishment moving from EG 4 will need to install PL treatments. 31 small establishments are expected to move from EG 4 to EG 1 and will make similar adjustments.

The Agency received comments to the proposed rule indicated that such investments, like high pressure processing units, cost up to $1.0 million to $1.5 million per unit. FSIS is using $1.5 million and $1.25 million as the expected capital costs of such equipment for large and small establishments, respectively. FSIS received comments regarding per-pound operating expenses for various post-pasteurization processes, but was unable to use this information because of the lack of data on average production per establishment. FSIS assumes annual operating expenses are 10 percent of the initial capital cost.

The changes in the industry (movement among establishment groups) reflected by the installation of post-lethality treatments are given in Table 14.

BILLING CODE 3410-DM-P

Table 14. Costs for post-lethality treatments, equipment and annual operating.				
Item	HACCP Establishment Size Category			
	L	S	VS	Total
	$thousand			
PL Equipment Cost per Establishment	1,500.0	1,250.0	NA	NA
Establishments moving from EG 2 to EG 1				
Number of establishments	7	0	0	7
	$thousand			
Equipment cost	11,149.4	0	0	11,149.4
Establishments moving from EG 4 to EG 1				
Number of establishments	1	31	0	32
	$thousand			
Equipment cost	1,897.2	38,536.9	0	40,434.1
Total establishment movements to EG 1				
Number of establishments	8	31	0	39
	$thousand			
Total equipment costs	13,046.6	38,536.9	0	51,583.5
Annual operating costs	1,304.7	3,853.7	0	5,158.4
Total first year costs	14,351.3	42,390.6	0	56,741.9

BILLING CODE 3410-DM-C

Cost to add agent or alter process to inhibit Listeria growth in the final product. One of the major impacts of the rule is that it encourages establishments in EG 4 to move into EG 2 by adding an agent or altering their production processes to inhibit *Lm* growth in the product. Adding such treatments would eliminate the need for more frequent verification testing. It is expected that 25 percent of the large and small establishments in EG 4 will move to EG 2 by doing so—3 large and 77 small establishments. The costs associated with this impact are subject to several factors. They include each establishment's unique situation with respect to product type, facility size, and equipment. Assuming that the cost to add agents or alter a process includes a one-time cost of installing equipment to add agents or alter production processes of $150,000 for a large, $125,000 for a small, and $100,000 for a very small establishment, the initial treatment cost totals $10.1 million. Using an operating cost of 10 percent of the initial cost produces a corresponding annual outlay of about $1 million (Table 15).

Table 15. Costs for Lm growth inhibiting treatments or processes, initial and annual operating.				
Item	HACCP Establishment Size Category			
	L	S	VS	Total
	$thousand			
Initial cost per establishment	150.0	125.0	100.0	
	Number of Establishments			
Establishments in EG 4 moving to EG 2	3	77	0	80
	$thousand			
Initial cost	474.3	9,634.2	0	10,108.5
Annual operating costs	47.4	963.4	0	1,010.9
Total costs	521.7	10,597.6	0	11,119.4

Cost of FCS testing for Listeria species. As with the third impact discussed above, the testing provisions of the rule encourage establishments to move from EG 4 into EG 1 and EG 2 (Table 16). These establishments are expected to be mostly small establishments attempting to avoid frequent FCS verification testing requirements for EG 4 establishments and the potential exposure to holding product upon two consecutive positive FCS verification test results. Almost half of the large establishments that were previously in EG 4 are expected to migrate either to EG 1 or to EG 2.

The costs of testing for the remaining 2,518 establishments in EG 3 and EG 4 are based on several assumptions. They include: the actual level of FCS verification testing being conducted at the present time, the percentage of establishments conducting this level of verification testing, the number of production lines by establishment size, and the costs of testing. The assumptions used in this analysis are supported by observations by FSIS inspection personnel and by various recent surveys conducted by FSIS and the industry. For example, in the recent FSIS hotdog and deli-meat survey, about 20 percent of large, 26 percent of small, and about 5 percent of very small establishments stated that they conducted FCS verification testing for *Listeria* spp. The *Lm* growth inhibiting processes and ingredients used in producing these products probably lowers the level of verification testing being conducted by establishments producing other RTE MPPs. Therefore, FSIS believes that the actual proportion of establishments in EG 3 and EG 4 that conduct FCS tests is probably double the proportions reported in the recent hotdog and deli-meat survey for the small and very small establishments. That is, FSIS assumes that the current FCS verification testing levels for large, small, and very small RTE MPP producing establishments are 100 percent, 50 percent, and 10 percent, respectively (*See* middle rows in Table 17).

BILLING CODE 3410-DM-P

Table 16. Number of Federally and State-inspected RTE MPP establishments by establishment group resulting from FCS testing provisions. (Numbers in parenthesis are baseline numbers from Table 7).

Item	HACCP Establishment Size Category			
Establishment Group	L	S	VS	Total
1	25 (9)	55 (24)	16 (16)	95 (49)
2	97 (108)	752 (675)	1514 (1514)	2363 (2297)
3	13 (13)	269 (269)	1581 (1581)	1864 (1864)
4	8 (13)	200 308)	445 (445)	654 (766)
Total establishments	143	1276	3556	4976

Table 17. Assumptions concerning FCS testing in EG3 and EG4

Item	HACCP Establishment Size Category			
Assumption	L	S	VS	Total
Assumed lines/establishment	6	4	2	
Observed average testing frequencies for those that conduct FCS testing (number of times per month)				
EG 3	1	1	1	
EG 4	4	2	1	
Proportion of establishments conducting FCS testing at above frequencies				
EG 3	1.00	0.50	0.10	
EG 4	0.90	0.50	0.10	
Number of tests not conducted by establishments not testing at the above frequencies				
EG 3	0	539	2846	3385
EG 4	20	802	802	1623
Total	20	1341	3647	5007
Cost of testing shortfall by EG 3 and EG 4 at above frequencies, ($35/test):	$thousand			
EG 3	0.0	18.9	99.6	118.5
EG 4	0.7	28.1	28.1	56.8
Total cost for increased FCS testing	0.7	47.0	127.7	175.3

BILLING CODE 3410-DM-C

Cost of Production Adjustments. As was discussed in the PRIA, it is expected that a series of *Lm* contamination events may occur in some establishments. The PRIA expected that most—about 85 percent—of the establishments that obtain one positive FCS test result could remedy the cause of the *Lm* contamination at no additional cost through more stringent sanitation and handling techniques. The remaining 15 percent of establishments are expected to encounter a greater degree of difficulty. Some of these establishments (as discussed in the PRIA) will probably encounter *Lm* contamination problems that could be remedied at a cost of $2,000 per line (these establishments consist of 7 percent of the establishments experiencing at least one positive FCS verification test result); another 7 percent are expected to encounter more serious contamination problems that would need to be remedied by actions costing up to about 1/10 of one percent of gross sales; and a final group made up of 1 percent of the establishments that discover that they have a chronic *Lm* contamination problem and have to cease their RTE MPP production altogether. No comments were received that would either support or refute this scenario or the set of assumptions needed in describing it. Some commented at the May 2001 public meeting that inclusion of these possible eventualities would help complete the analysis. These results are expected to only apply to establishments in EG 4 who face the highest level of FCS verification testing. The underlying assumptions and resultant cost implications are given in Table 18.

Some explanation of the cost estimates of this impact is needed. First, the calculations for cost estimates for minor remedies are the same as in the PRIA. That is, the number of firms in each establishment group is faced with a $2000 per line cost times the number of lines in the establishment for production adjustments. Second, the cost estimates for major repairs are slightly different from those in the PRIA. In the PRIA, the value of shipments for the 1,479 establishments was available and estimated by Census at $25.2 billion for 1999. In the PRIA, this value of shipments was distributed across the 133 large establishments, 840 small ones and 506 very small ones using an average distribution for value of shipments by those size categories of 80-percent (for large), 15-percent (for small), and 5-percent for very small). This average distribution was derived from averages across broad categories of agricultural commodities. A much different distribution of value of production was found in the Fall 2002 FSIS survey of hotdog and deli meat establishments. It found a value of production distribution of 48-percent (large), 48-percent (small), and 4-percent (very small). The final regulatory impact analysis uses a distribution of 65, 35, and 5 in conjunction with the original $25.2 billion for total value of shipments. This calculation produced average per establishment value of shipment estimates of $123 million for large establishments, $9 million for small establishments, and $2 million for very small establishments. This estimate is important because it serves as the basis for calculating the costs to remedy the major cases of *Lm* contamination. As in the PRIA it is expected that a small number of establishments whose contamination problems will be perceived to be prohibitively costly to "fix" and/or not feasible to undertake without complete modernization or renovation. Without making these needed capital improvements, their only option is to either partially or entirely cease RTE MPP production. FSIS expects that up to two small and four very small establishments may be in this situation.

BILLING CODE 3410-DM-P

Table 18. Assumptions about production adjustments to eliminate L. monocytogenes contamination and associated costs				
Item	HACCP Establishment Size Category			
	L	S	VS	Total
Lines per establishment	6	4	2	NA
Proportion of establishments with no major L. monocytogenes contamination problems by establishment group:				
EG 3	0.95	0.95	0.9	NA
EG 4	0.85	0.85	0.85	NA
Number of establishments				
EG 3	1	13	158	172
EG 4	1	30	67	98
Total	2	44	225	270
Number of establishments incurring a $2,000 per line costs				
EG 3	0	0	158	158
EG 4	1	14	31	46
Total	1	14	189	204
Number of establishments incurring a major L. monocytogenes contamination problem				
EG 3	0	0	0	0
EG 4	1	14	31	46
Total	1	14	31	46
Number of establishments incurring a severe L. monocytogenes contamination problem				
EG 3	0	0	0	0
EG 4	0	2	4	6
Total	0	2	4	6
Production adjustment Costs	$thousand			
EG 3	0	0	632.4	632.4
EG 4	77.9	238.7	202.4	519.0
Costs of production adjustments	77.9	238.7	834.8	1,151.4

BILLING CODE 3410-DM-C

Costs related to possible hold-and-test actions. Hold-and-test actions are expected to be taken by establishments in EG 4 and to a lesser extent in EG 3. For purposes of this analysis, 50 percent of the EG 3 and 95 percent of the EG 4 establishments that are expected to have some problems with *Lm* contamination are also expected to be faced with one or more hold and test events *annually. This calculation suggested that* seven small and 79 very small establishments in EG 3 and one large establishment and 29 small and 63 very small establishments in EG 4 are expected to take one or more hold-and-test actions over a typical year. In addition to the number of establishments affected, there are five other factors that affect this cost impact. These are: (1) The amount of production likely affected (based on the number of lines times number of shifts and production per shift estimates); (2) the pounds per pallet that will need to be handled and placed into storage; (3) the average number of days that the product will be held in storage; (4) the number of times per year that a hold-and-test action occurs; and, (5) the cost per day per pallet in handling and storage. Also, the amount of existing available storage will influence any expected burden placed on establishments. The recent FSIS hotdog and deli-meat survey found that up to 40 percent of establishments have sufficient storage to hold product, but *for only one to two days of production. Even* though this finding only reflects the capacity of hotdog and deli-meat establishments, FSIS does not anticipate any serious problems with establishments finding available storage for holding product under possible increased hold-and-test situations on their premises or at other locations. FSIS bases its estimate for expected industry-wide costs of hold-and-test on parameters stated in Table 19. These costs are intended to include the transportation, handling and storage costs associated with product that has been tested and may or may not prove to be contaminated with *Lm*. For example, the $119,500 cost calculation for hold and test expected to be incurred by very small establishments was made by multiplying the expected number of affected establishments (79) times the number of expected hold and test occurrences per year (3) times the daily cost of holding (5 days times 5.6 pallets times $18 per pallet per day). Similar calculations were made for other affected establishments in the other *HACCP establishment size categories and* establishment groups. FSIS does not consider that the costs associated with the handling and eventual disposition of contaminated product, including its possible destruction, should be attributed to this final rule. It is believed that this product would have or should have been discovered and appropriately disposed of under current good manufacturing practices had they been followed by the establishment. Also to the extent that some of these products are normally refrigerated, these holding cost estimates would over-estimate the impact on the industry.

Table 19. Cost of hold-and-test actions				
Item	HACCP Establishment Size Category			
Assumption	L	S	VS	Total
	Pounds			
Production affected	228,000	28,400	5,600	
	Number of:			
Pallets (1000 lbs. per pallet)	228	28	6	
Average days in storage	5	5	5	
Hold and test frequencies				
EG 3	3	3	3	
EG 4	6	6	6	
	Dollars			
Handling and storage cost per day ($/pallet)	18	18	18	
Handling and storage costs				
	$thousands			
EG 3	20.7	51.7	119.5	191.9
EG 4	144.2	437.9	191.9	774.1
Cost of hold and test	164.9	489.6	311.4	966.0

Analysis of Alternatives

For purposes of the analysis, the expected frequency of FCS verification testing for *Listeria* spp. for establishments in EG 2 is once per line per quarter; for EG 3, at least once per line per month; and for EG 4, once per line per month for very small establishments; semi-monthly for small producing establishments and weekly for high volume producing establishments (4–2–1). These testing frequencies are to be considered minimum expected levels for the purposes of estimating costs and benefits. Conditions may warrant a higher frequency of FCS verification testing to assure FSIS that establishments' sanitation or prerequisite plans are adequately addressing the risk of possible contamination in its products. As an additional precaution, FSIS is requiring that after a second positive *Listeria* spp. FCS test result in an EG 4 establishment, hold and test actions are taken until such time that FSIS is assured that this action is no longer needed.

The FSIS *Lm* Risk Assessment found an increase in median lives saved as FCS verification testing frequencies increase relative to the baseline. The minimum FCS verification testing frequency for EG 4 (4–2–1) results in 25 deaths averted if there is 100 percent adoption of this testing frequency by all establishments producing deli meats.

An alternative FCS verification testing frequency could be 40–20–10 for EG 4. In this case, the reduction in human health risk increases to 89 deaths averted, given 100 percent adoption. At an extremely high level of testing, such as 60–60–60 (for either FCS verification testing for *Listeria* spp. or product testing for *Lm*), 153 deaths are averted given 100 percent adoption. Also, at these high levels of FCS verification testing, hold and test protocols were shown to reduce the level of *Lm* contamination at retail.

Extremely high FCS verification testing levels may not be required to assure adequate sanitation. Nor are they necessarily effective from an economic perspective. Costly hold and test actions increase with FCS verification testing frequency. As such costs increase, establishments producing RTE MPPs, especially small and very small establishments, may eliminate product lines or cease production entirely. FSIS recognizes, however, that FCS verification testing frequencies higher than 4–2–1 may be appropriate for establishments with a history of poor sanitation controls or evidence of producing adulterated product.

Another concern about high FCS verification testing frequencies is the likelihood that many establishments that produce RTE MPPs using traditional methods will no longer produce such products. To the extent that this reduces the amount of adulterated product, this rule and its emphasis on FCS verification testing is appropriate. It may be inappropriate for any product that FCS testing for *Listeria* species is not a reliable indicator for *Lm* product contamination. FSIS believes that its establishment categorization in this final rule will place only those products in EG 4 where intense sanitation and verification testing is most appropriate. However, extremely high verification testing frequencies in most cases may be unnecessary and burdensome.

The risk assessment clearly shows that a combination of post-lethality treatment or *Lm* growth inhibition along with sanitation and FCS verification testing and other measures is more effective than a "sanitation coupled with FCS verification testing only" strategy. This result also reinforces the observed industry practice of maintaining a series of adequate precautions throughout slaughter and processing, and of not exclusively relying on verification of sanitation through FCS testing alone to assure that products are not adulterated. FCS verification testing of sanitation procedures for *Listeria* species can compliment these other measures, *e.g.* post processing pasteurization, the addition of *Lm* growth inhibiting packaging. To the extent that establishments take a series of steps to address their possible *Lm* contamination, the need for higher FCS verification testing frequencies, and its impact of inspection personnel to review these data, is reduced.

Summary of Direct Industry Costs

The PRIA identified three major possible industry-wide impacts from mandatory FCS verification testing: HACCP plan modification costs ($1.28 million); direct testing costs ($1.75 million); and, production adjustments ($2.5 million). The total first-year cost of these impacts was $5.53 million—$3.8 million in one-time outlays and $1.75 million in recurring annual costs associated with testing.

The Final Regulatory Impact Analysis (FRIA) reflects many comments received in the public comment period. In addition to the impacts identified in the PRIA, the FRIA estimates (1) the cost of PL treatments (initial and annual operating); (2) the cost of using an agent or process to inhibit *Lm* growth (initial and annual operating); and, (3) the costs of holding product while awaiting confirmation of FCS verification testing.

The validation of PL treatments and related HACCP plan modifications results in a one-time cost of $2.6 million. The estimated cost in the FRIA is higher than that in the PRIA due to an increase in the number of establishments affected. The FRIA estimate may be conservative as it does not take into account the use of validation studies conducted by PL equipment manufacturers. Direct testing costs are substantially lower than estimated in the PRIA ($175,260 versus $1.75 million) because the expected movement of establishments out of EG 4 and into the other establishment groups where higher FCS verification testing is not expected. Production adjustments are estimated at $1.15 million in one-time costs in the FRIA compared to $2.5 million in the PRIA. The difference is due mainly to fewer expected cases where establishments are not able to overcome their *Lm* contamination problem. More establishments adopt PL treatments and move into EG 1 or EG 2. The total of the two, one-time cost components (production adjustments and use of PL treatments) is the same as that estimated in the PRIA ($3.8 million as opposed to $3.75 million estimated in the PRIA). Verification testing costs, as noted above, are substantially lower than that estimated in the PRIA.

The additional costs associated with the installation of PL treatments and/or altering their production to incorporate an agent or process to inhibit *Lm* growth introduces potentially large cost outlays, especially for the initial, one-time investments in plant and equipment (Table 20). The initial industry-wide, one-time cost outlays for equipment associated with production adjustments and PL treatments are expected to be as high as $51.6 and $10.1 million, respectively. The annual operating (recurring) costs of $5.2 and $1 million, respectively, make first-year costs for these two technologies, $56.7 and $11.1 million, respectively.

Table 20. Total Expected Industry-wide Costs

Item	HACCP Establishment Size Category			Total
	L	S	VS	
	$thousand			
PL validation	749.1	1,510.1	385.7	2,644.8
PL Equipment & operations	14,351.3	42,390.6	0	56,741.
Growth inhibiting agent or process	521.7	10,597.6	0	11,119.4
FCS testing	.7	46.9	127.7	175.3
Production adjustments	77.9	238.7	834.8	1,151.4
Product handling and storage	165.0	489.6	311.4	966.0
Total Costs	15,865.7	55,273.5	1,659.5	72,798.7

Converting initial costs into an annual equivalent cost of capital recovery provides a more accurate measure of economic impacts.[8] Using a 7-percent discount rate over ten years results in annualized cost of $9.3 million for PL validation, installation, agent and/or process alteration cost, and production adjustments. The annual operating (recurring) costs are estimated at $7.3 million. Combining these two estimates produces a total annual cost of the final rule of $16.6 million (bottom of Table 21).

Table 21. Total Annualized Industry-wide Cost Impact, by establishment size.

Item	HACCP Establishment Size Category			
	L	S	VS	Total
	$thousand			
Initial	14,347.9	49,919.9	1,220.5	65,488.2
Recurring	1,517.8	5,353.5	439.1	7,310.4
Total	15,865.6	55,273.5	1,659.5	72,798.6
	22%	76%	2%	100%
Annualized Cost	10 year, 7-percent			
Initial	2,042.8	7,107.5	173.8	9,324.0
Recurring	1,517.8	5,353.6	439.1	7,310.4
Total	3,560.6	12,461.1	612.8	16,634.5
	21%	75%	4%	100%

Possible Indirect and Unintended Cost Impacts

The focus of the cost discussion thus far was mainly on industry-wide direct compliance costs: These costs, on an annual basis, were estimated at $16.6 million, roughly one-half of one percent of the total annual value of industry sales ($16.6 million divided by $25.2 billion). In addition, some discussion was made of the possible impacts that the final rule may have on lowering product quality, reducing current FCS testing frequencies in some establishments, and forcing some establishments to exit the industry. However, these impacts were not quantified. Two other possible indirect cost impacts are on consumers and other sectors of the economy.

No market product quantity and price data are available to calculate the possible consumer price implications brought about by the higher compliance costs identified in this analysis. This information, plus an estimation of any reduction in market supplies, could be used to calculate the social costs of shifts in supply and demand in a consumer- and producer-surplus framework. Also, a complicating factor in estimating possible market supply reductions is to what extent imported product could be substituted for any U.S. RTE MPP production cutback. Without such information, one can only say that higher industry compliance

[8] Lynn E. Bussey, *The Economic Analysis of Industrial Projects*, Engelwood Cliffs, New Jersey, 1978.

costs and lower market supplies would be expected to raise consumer prices to some extent. From the information provided in this analysis (the expected small cost impacts relative to total value of production and the likely small quantity cut-backs), it is expected that these impacts would be minimal.

A related issue is the possible impact on other sectors of the economy. Census data show that swine, beef, dairy, and poultry industries supply significant amounts of raw product to the RTE MPP industry. Because, however, the quantity effect is expected to be minimal, these upstream suppliers of raw material are not expected to be significantly affected by the final rule.

Analysis of Benefits

The analysis of benefits resulting from the final rule examines the reduction in human health risk (deaths and illnesses caused by listeriosis) from actions taken as a result of this final rule by RTE MPP establishments in only one product group: deli meats (primarily sliced luncheon meats). This analysis of benefits thus differs from that in the PRIA which examined the reduction in human health risk from all RTE MPPs.

FSIS is focusing on deli products for several reasons. First, the FDA–FSIS risk assessment identified this product group as having the highest risk of all food classes and the cause of a large share of listeriosis deaths and illnesses. Second, the FSIS *Lm* Risk Assessment, when calibrated to a revised version of FDA–FSIS risk assessment, tied risk mitigation actions at deli-meat producing establishments to potentially lower rates of listeriosis death and illnesses. FSIS plans to modify the model to capture the dynamics of *Lm* contamination and containment in other RTE MPP products, such as hotdogs, along with the impact of production volume. Third, the FSIS *Lm* Risk Assessment, having been presented to the public for comment, has been revised to the extent possible at this time.

The analysis of benefits uses the FSIS *Lm* Risk Assessment to evaluate the human health risk reduction effects of sanitation coupled with FCS verification testing, the use of growth inhibiting packaging (GIP); and the use of PL treatments. The likely reduction in listeriosis deaths from a 100-percent adoption of these practices and treatments by the industry is given in Table 22. FSIS is reporting three values for the possible benefits derived from this rule: The median, the 5th percentile, and the 95th percentile for each scenario (baseline, sanitation/FCS verification testing, *Lm* growth-inhibiting packaging (GIP) and post-lethality processing (PP) + GIP). This range of values represents the uncertainty in the true number of averted number of deaths per year. The reported results imply 90 percent certainty that the true value lies between the 5th and 95th percentiles. Each uncertainty distribution is the result of three hundred computer simulations, each simulation consisting of 100,000 iterations, of the FDA–FSIS risk ranking model. The risk characterization portion of that model comprises 4,000 combinations of the exposure distributions for the 23 different food groups in the FDA–FSIS risk ranking model. The median reports the mid-point value of deaths averted from these multiple computer simulations for each scenario. The median is reported because it is the preferred measure of central tendency in the FDA–FSIS risk ranking. Furthermore, the distribution of results suggests that the mean, as an alternative measure of central tendency, is less informative about the shape of the distribution because of the influence of outliers in its calculation. Illnesses are estimated using the standard .20 case-fatality rate commonly reported in the literature.

Table 22. Incremental Reductions in Deaths Due to Various Interventions (assuming 100% industry-wide adoption)

	Averted Deaths			Averted Illnesses		
Scenario	Median	5%	95%	Median	5%	95%
FCS testing /1	25 (24)	8 (8)	25 (24)	125 (120)	42 (40)	125 (120)
GIP	141 (135)	48 (45)	165 (158)	707 (675)	240 (225)	823 (790)
PP & GIP	238 (227)	77 (72)	272 (261)	1188 (1135)	384 (360)	1360 (1305)

/1 FCS testing at a 4-2-1 rate.
/2 Numbers in parentheses exclude reductions in neonate deaths.

The greatest reduction in listeriosis deaths and illnesses would occur if all establishments used both PP and GIP. However, 100 percent adoption is not possible for a variety of reasons, including technical—not all products are amenable to the use of PL or GIP—and economic—the costs are prohibitive in relation to the value of the product.

The analysis of costs described movements among establishment groups that are likely to occur as a result of the final rule. These movements are the basis for estimating the human health benefits of the final rule. Establishment group net movements are placed on a percentage basis of establishments in each size class (Table 23). The absolute changes in establishment numbers are converted into percentage increases by dividing the number establishments estimated to adopt one or more measures by the total number of establishments in that size class. For example, 2 of the 42 large establishments producing deli meats (4.8 percent) are estimated to adopt PL and GIP measures. Next, the percentage change in establishments is weighted by the relative volume of deli meats produced by that size class. The two large establishments are estimated to account for 2.3 percent of deli-meat production (4.8 times 0.48). The summation of these weighted percentages produces the percentage increase in that technology which is adopted as a result of the final rule. Thus, deli-meat producing establishments adopting PL and GIP represent a 5.4-percent increase in the amount of deli-meat production that is produced using this technology. Likewise, the percent increase in the amount of production using GIP and FCS sanitation/verification testing is 8.9 and 13.3 percent, respectively.

Table 23. Number of establishments adopting various interventions

	HACCP Establishment Size Category			Average
Item	L	S	VS	
Product Volume Weights	0.48	0.48	0.04	
Deli-meat producing stab.	42	311	340	
Mitigation Measure	Number of Establishments			
Establishments adopting PL and GIP	2	20	0	
	Percent			
Establishments	4.8	6.4	0.0	
Product	2.3	3.1	0.0	5.4
Mitigation Measure	Number of Establishments			
Establishments adopting GIP	1	50	0	
	Percent			
Establishments	2.4	16.1	0.0	
Product	1.2	7.7	0.0	8.9
Mitigation Measure	Number of Establishments			
Establishments adopting FCS Testing at a 4-2-1 rate	0	66	260	
	Percent			
Establishments	0.0	21.2	76.5	
Product	0.0	10.2	3.1	13.3

The results in Tables 22 and 23 are used to estimate the possible reduction in listeriosis deaths that may be attributed to actions taken be deli-meat producing establishments as a result of the final rule (Table 24).

This analysis excludes neonate deaths estimated by the FSIS risk assessment because of concerns about using the standard values for a statistical life, which are derived from adult lives. Of course, it is obvious that averting such neonate losses is a potentially significant benefit. However, excluding these losses does not substantially affect the conclusions of this analysis.

Calculations combining information from Tables 22 and 23 are fairly straightforward: for example, the 13.3 percent increase in adoption rates of sanitation coupled with FCS verification testing translates into 3.1 fewer listeriosis deaths at the median (0.133 from Table 23 times 24 from Table 22); 1.0 fewer at the 5th percentile (0.133 × 8.0); and, 3.1 fewer at the 95th percentile (0.133 × 24). Similar calculations for the other two mitigation measures result in a total reduction of 27.3 at the median; 8.9 at the 5th percentile; and, 31.2 at the 95th percentile. The corresponding reductions in illnesses are 136.7 at the median, 44.6 at the 5th percentile, and 156.0 at the 95th percentile, respectively.

Table 24. Reduction in listeriosis deaths due to various interventions

	Averted Deaths		
Interventions	Median	5th percentile	95th percentile
FCS Testing (4-2-1)	3.1	1.0	3.2
GIP	12.0	4.0	14.0
PL & GIP	12.2	3.9	14.0
Total Reduction	27.3	8.9	31.2

The Economic Research Service of USDA presented a method for estimating the human health benefits of reduced listeriosis at a public meeting on the proposed rule held in May 2001. To estimate the benefits, it was assumed that 5 percent of the cases were moderate, and that moderate cases resulted in hospital costs of $10,300 per case. The remaining 95 percent of the illness were severe, resulting in hospital costs of $28,300 per case.[9] Using these assumptions and excluding the loss in productivity of those affected and any pain and suffering, the benefits of the reduction in illness-related losses due to the final rule are estimated to be $3.7 million at the median (0.05 × 136.7 × $10,300) + (0.95 × 136.7 × $28,300)) and $1.2 million at the 5th and $4.3 million at the 95th percentile.

ERS estimated the value of statistical life at $4.8 million[7] as a proxy for the cost of one fatality. Based on this estimate, the annual human health benefits from the implementation of the final rule are $134.9 million at the median (the $3.7 million above plus 27.3 × $4.8 million) and $44.0 million at the 5th percentile and $154.0 million at the 95th percentile.

Given the limitations in data and the output of the risk assessment dealing only with deli meats and as per the discussion found earlier concerning the estimates of health consequences, FSIS believes that this estimate may be overstated by as much as 50 percent. If so, the adjusted annual net benefits then become $50.8 million, $5.4 million and $60.4 million at the median, 5th and 95th percentile levels, respectively (Table 25). It appears that a downward adjustment in total benefits of 85 percent would be necessary to lower net benefits to near zero.

Table 25. Summary of Annual Total and Net Benefits

Item	No adjustment	Benefits reduced 50 percent	Benefits at Breakeven (15%)
	$million		
Total Benefits			
Median	134.9	67.5	20.2
5th percentile	44.0	22.0	6.6
95th percentile	154.0	77.0	23.1
Net Benefits			
Median	118.3	50.8	3.6
5th percentile	27.4	5.4	-10.0
95th percentile	137.4	60.4	6.5
Net benefits hold industry-wide compliance cost of this regulation constant at $16.6 million.			

Compliance With Regulatory Flexibility Act of 1996

The Administrator has determined that for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–612), this rule will have a significant economic impact on a substantial number of small entities. As discussed above, FSIS estimates that the *Lm* sanitation coupled with FCS verification testing provisions of this final rule may result in annual costs to small and very small producers of post-lethality exposed RTE MPPs of $12.5 and $0.6 million, respectively. These establishments incur about 79 percent of the total industry-wide costs of compliance with the sanitation coupled with FCS verification testing provisions of this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) requires, among other things, that for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency must publish one or more guides to assist small entities in complying with the rule, and must designate such publications as "small entity compliance guides". The guides must explain the actions a small entity is required to take to comply with a rule or group of rules. FSIS is developing guidance to assist small and very small establishments in fulfilling their responsibilities under the final rule. The guides will include instructions on how establishments that produce post-lethality exposed RTE MPPs can conduct sanitation coupled with FCS and product verification testing. Establishments that wish to use the guides may incorporate their features into their HACCP plans, Sanitation SOPs or other prerequisite programs. Because FSIS is basing its guidance on existing research and industry practices that are known to be effective, the Agency also will consider the processing instructions to be already validated. That is, an establishment may follow the guidance without contracting for or conducting additional validation of the content of the materials.

FSIS is examining other options to minimize the potential negative economic effects of these proposed regulations on small businesses, including encouraging research that would facilitate validation of pathogen lethality in many products, especially those produced by traditional methods by small and very small establishments.

Types of Entities and Production Affected by the Final Regulations. The preliminary RIA found that small and very small establishments made up about 91 percent of the number of establishments in the U.S. RTE MPP industry and were expected to incur up to 69 percent of the cost of complying with the requirements of the proposed rule. The FRIA finds that small and very small establishments make up about 97 percent of the number of establishments in the industry and are expected to incur nearly 80 percent of total cost impact on the industry. As was also stated in the FRIA, the final rule only involves that part of the original proposal dealing with FCS verification testing for *Lm* or indicator organism and also uses a more accurate baseline for the number of establishments affected by the final rule.

An important note to consider throughout this analysis is that much of the projected impacts originate from expected movements of establishments from one establishment group to another. As was stated in the preliminary RIA, "mandatory *Listeria* testing is the most difficult provision in the proposed rule to analyze because of the uncertainty of current practices and how establishments will react to the proposed rule. Major uncertainties include: the degree to which firms will switch to a *Listeria*-related CCP in their HACCP plan, the degree to which firms will be able to resolve their *Listeria*-related problems if they present themselves, and the degree to which they must increase their testing." This problem is further compounded in this analysis because the final rule is not limited to whether establishments either elect to incorporate a *Lm*-related CCP in their HACCP plan or face mandatory testing. In this analysis, it is possible for establishments to address possible *Lm* contamination in their operations through a variety of methods.

A large share of the cost impact is on small establishments, which are expected to absorb nearly 75 percent of the total industry-wide cost impact (Tables 26 and 27). These establishments have the same incentives to move to new post-pasteurization technologies as do very small establishments, but their production volumes more easily justify the associated high capital and recurring expenditures. Very small establishments will likely have to increase sanitation coupled with FCS verification testing to comply with this final rule. Large establishments are likely to complete the process of adopting new technologies. The expected impacts on large, small, and very small establishments are discussed below.

Large Establishments

As discussed in the "Baseline" section of this analysis, most (131 out of 144 large establishments) already fall into either establishment group 1, 2 or 3. This number is expected to increase by 5 establishments as a result of the final rule, leaving only 8 establishments in the establishment group 4: those establishments required to conduct more intense sanitation coupled with FCS *L. spp.* verification testing than establishments producing product in the other establishment groups. Many of these firms already employ post-pasteurization technologies, but need them validated to comply with the final rule. In fact, six of the existing establishments in EG 1 and four of the establishments from EG 2 already employ the technology, but simply have not validated their processes. It is expected that total validation costs will run about $749,000 in first-year costs for these establishments.

The remaining establishments are likely to have high enough product volume levels to justify the acquisition of new post-pasteurization technologies and/or to alter product formulations and packaging. The remaining eight establishments (seven of the 10 establishments from EG 2 (or 10 percent of the establishments in EG 2 that do not apply a post-pasteurization step)); and one from EG 4 (or 10 percent of the establishments in EG 4) all are expected to need post-pasteurization equipment and have their processes validated. The resulting large initial cost outlays plus the estimated recurring annual operating costs are expected to total $14.3 million in first-year costs. This cost represents about 90 percent of all the costs that are expected to be incurred by large establishments as a result of this final rule. The remaining costs are incurred by those establishments electing to add an inhibiting agent or process in their production or to a lesser degree, as a result of sanitation coupled with FCS verification testing and possible subsequent actions related to hold and test and finding remedies to possible persistent *Lm* contamination problems.

Small Establishments

It is estimated that there are 1,276 small establishments producing RTE MPPs. FSIS estimates that 108 small establishments will migrate to other establishment categories as a result of the final rule. This is a costly undertaking, especially for those establishments that elect to migrate into EG 1. Due to the high cost of both technologies (post-lethality processing and adding an agent or process to the product) and because their products must conform to both process adjustments, it is expected that only 31 establishments (or 10 percent of the small establishments that were formally in EG 4) migrate to EG 1 as a result of the final rule. All movement involves the purchase and use of new technology which is expected to cost these establishments over $42 million. About twice the number of establishments that is expected to migrate to EG 1 is expected to migrate to EG 2. This move is less costly and it is expected that more RTE MPPs lead themselves to the addition of an inhibiting agent or process. These 77 establishments are expected to incur $10.6 million in first-year, total direct and recurring costs. All of the 108 establishments are expected to migrate from EG 4.

Very Small Establishments

It is estimated that there are 3,556 very small establishments producing RTE MPPs. The preliminary RIA had an estimate of only 524 establishments, acknowledging that that estimate severely underestimated the true number of very small establishments. Due to the combination of high costs and technical difficulties faced by very small establishments, FSIS projects that no very small establishments will shift into a different establishment group. Consequently, FSIS does not expect that very small establishments will incur any costs associated with the adoption of post lethality treatment methods or by incorporating an inhibiting agent or process in their production. Instead, most of the entire cost impact of this final rule on very small establishments is expected to originate from sanitation coupled with FCS verification testing and the possible production adjustments and additional handling and storage associated with increased testing and the higher likelihood of incurring *Listeria* species positive FCS test results. A small amount of costs are expected to be incurred by those very small establishments that currently employ un-validated post-lethality processing technologies.

Summary

Small establishments make up 26 percent of the establishments, yet are expected to incur up to 75 percent of the aggregate cost burden. Much of these expected costs are in large capital expenditures in post lethality processing equipment and in changing their production process to incorporate *Lm* growth inhibiting agents or processes. This cost impact would be reduced to the extent that these cost estimates over-estimate the actual costs of acquiring these technologies or over-estimate the establishment movements. It is unlikely that actual cost impacts would exceed those estimated in this analysis. Very small establishments make up 71 percent of the number of establishments in the industry and yet are expected to incur only 4 percent of the total costs of this final rule. This estimate may under-estimate their exposure to cost increases related to FCS testing. Thus, it is unlikely that actual cost impacts would be lower than those estimated in this analysis. The estimates for large establishments are highly contingent on their movement into EG1 and EG2. To the degree that actual movements into these establishment groups occur, the estimates in this analysis should reflect these expected cost outlays.

BILLING CODE 3410–DM–P

[9] Stephen Crutchfield, "The Benefits of Reducing Listeria in Ready to Eat Products." 2001. Presented at public meeting, "Performance Standards for the Production of processed Meat and Poultry Products." May 9–10, 2001. FSIS–USDA Washington, D.C. Roberts, Tanya, and Robert Pinner. Economic Impact of Disease Caused by Listeria monocytogenes." In Miller, AJ, Smith JL, and Somkuti GA, (Eds.) *Foodborne Listeriosis*. Amsterdam, the Netherlands: Elsevier Science Publishing Co., 1990, pp. 137–144.

Table 26. Potential First-Year Total Direct and Recurring Cost Impacts Across HACCP Establishment Size Categories.

Cost Component	HACCP Establishment Size Category			
	L	S	VS	Total 2/
	$thousand			
PL Validation	749.0	1,510.1	385.7	2,644.8
PL Installation	14,351.3	42,390.6	0	56,741.9
Growth Inhibitor	521.7	10,597.6	0	11,119.3
FCS testing	0	46.8	127.5	175.3
Production Adjustments	77.9	238.7	834.8	1,151.4
Handling & Storage	165.0	489.6	311.4	966.0
Total Costs Above	15,865.6	55,273.5	1,659.5	72,798.6
Total Costs broken into one-time, initial year costs and recurring costs.				
One-time, initial year	14,347.9	49,919.9	1,220.4	65,488.2
Recurring	1,517.8	5,353.6	439.0	7,310.4

Table 27. Estimated Total Cost Impact of Final Rule, Annualized.

Annualized Cost	10 year, 7-percent			
	HACCP Establishment Size Category			
	L	S	VS	Total
	$thousand			
One-time costs	2,042.8	7,107.5	173.8	9,324.0
Recurring	1,517.8	5,353.6	439.1	7,310.4
Total	3,560.6	12,461.1	612.8	16,634.5
	Percent			
Total Costs	21	75	4	100
	Percent			
Establishments	3	26	71	100

[FR Doc. 03–14173 Filed 6–5–03; 8:45 am]
BILLING CODE 3410–DM–P

Federal Register

Friday,
June 6, 2003

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2003–15279; Notice No. 03–09]

RIN 2120–AH42

Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend two technical items to harmonize them with international standards and provide uniform noise certification standards for airplanes certificated in the United States and Joint Aviation Authorities (JAA) countries. This will help to simplify airworthiness approvals for import and export purposes. The revisions to these two items would apply only to a small number of older-technology airplanes.

DATES: Send your comments by July 7, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15279 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard. You may also send comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments on these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the address in this section. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mehmet Marsan, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7703; facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested individuals to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain why you want to make any recommended change, and include supporting data. We ask that you send us two copies of your written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm*; or

(3) Accessing the Federal Register's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, or notice number of this rulemaking.

Background

Under 49 U.S.C. 44715, the Administrator of the FAA is directed to prescribe "standards to measure aircraft noise and sonic boom; * * * and regulations to control and abate aircraft noise and sonic boom." Title 14, part 36 of the Code of Federal Regulations (CFR) contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. The standards and requirements that apply to propeller-driven small airplanes and propeller-driven commuter category airplanes are found in § 36.501 and Appendix G to part 36. Appendix G addresses takeoff noise requirements for propeller-driven small airplanes and propeller-driven commuter category airplane certification tests conducted on or after December 22, 1988. The FAA added this appendix to part 36 in 1988 to require takeoff noise tests, instead of the level flyover test formerly required under Appendix F, for airplanes that had certification tests completed before December 22, 1988. Appendix F is no longer used.

On October 13, 1999, the FAA published a final rule (64 FR 55598) amending the noise certification standards for propeller-driven small airplanes. The rule, which harmonized the U.S. noise certification regulations and the European Joint Aviation Requirements for propeller-driven small airplanes, is based on the joint effort of the FAA, the JAA, and the Aviation Rulemaking Advisory Committee. However, two technical items, which appear in Appendix G to part 36, were left unharmonized with Annex 16, Volume 1, Chapter 10 of the International Civil Aviation Organization (ICAO) because we were not aware of the possible effect on exported older airplanes. These older airplanes predated current noise certification requirements or have already been noise certificated. On rare occasions, these airplanes may be required to perform a new noise test if they undergo a modification that could increase their noise level.

The two unharmonized technical items were filed with the ICAO. The ICAO includes these items in the national variances list for Annex 16, Volume I. These differences could result in foreign regulators conducting additional reviews, which the FAA and U.S. manufacturers must support, of any U.S.-made, propeller-driven small airplane noise certifications when the airplanes are exported. In practice, the existence of these differences means that all aircraft must undergo additional review by a foreign authority since it is not clear which airplanes encompass the differences in their noise certifications. This proposed rule would harmonize the two technical items to eliminate the differences and the need for the additional reviews.

The two unharmonized items, which are the subject of this proposed rule, are as follows:

(1) The use of "maximum continuous power" during the second segment of the noise certification test flight path is allowed under current section G36.111. However, the "power" definition in Annex 16, Chapter 10, section 10.5.2 for the second segment is defined as "maximum power". Since the "maximum continuous power" is typically lower than the maximum or takeoff power described in ICAO, the two items are not considered harmonized.

(2) For fixed pitch type propellers, current section G36.201 specifies a simplified data correction procedure if the engine test power is within 5 percent of the reference power. The ICAO Annex 16, Volume 1, Chapter 10 does not have a corresponding simplified data correction procedure.

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. We propose to revise the two unharmonized technical items in Appendix G to part 36 to make them the same as ICAO Annex 16, Volume I, Chapter 10, regarding propeller-driven small airplane noise certification regulation. The proposed revisions better represent the intent of the original noise certification standards, which was to certify propeller-driven small airplanes at takeoff power. This proposed rule would complete harmonization between current Appendix G to part 36 of 14 CFR and Annex 16.

Section-by-Section Analysis

Appendix G To Part 36—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven, Commuter Category Airplane Certification Tests on or After December 22, 1988

Section G36.111 Flight Procedures

Current section G36.111 allows the use of maximum continuous power during the second segment of the flight path. However, the power definition in Annex 16, Chapter 10, section 10.5.2 for the second segment is defined as maximum or takeoff power. The maximum continuous power described in Appendix G is typically lower than the takeoff power and is applicable only to older engines. This proposed rule specifies that takeoff power must be used in the second segment of the flight profile and describes a method to perform the test if the test airplane is equipped with an engine that can operate at takeoff power for only a short time.

The FAA conducted an informal survey to determine whether any recent noise certification tests have been conducted on airplanes equipped with time-limited engines. The FAA found no noise measurements of airplanes with old-technology engines that may be affected by this proposal. If testing were required for an airplane, which was previously noise certificated at maximum continuous power, rather than at takeoff power as proposed in this NPRM, the noise levels could be slightly higher or lower, depending on the height gained over the microphone by operating at the higher engine power. The amount of height gained is a function of the performance of the particular airplane. The noise increase caused by the engine at takeoff power will be canceled or reduced by the height gained over the microphone since the sound propagation distance from the airplane to the microphone increases as the airplane flies higher. Hence, the sound reaches the microphone at a lower level.

Section G36.201 Corrections to Test Results

This section prescribes that corrections made to test results must account for the effects of differences between the conditions referenced in the prescribed procedures in Appendix G and the actual test conditions.

Under current section G36.201(c)(1), helical tip Mach number and power corrections must be made if (1) the propeller is a variable pitch type, or (2) the propeller is a fixed pitch type and the actual power is not within 5 percent of the reference power. The 1999 rule change includes an additional helical tip Mach number correction exception for all types of propellers by stating that a correction is not necessary if the helical tip Mach number meets criteria listed in current section G36.201(c)(2). This proposal (1) removes the exception provided for fixed pitch propellers if the test power is within 5 percent of the reference power and (2) requires helical tip Mach number and power corrections for all types of propellers, depending on which criteria of current section G36.201(c)(2) are being used.

Fixed pitch propellers rotate at less than their maximum speed during takeoff because the pitch angle cannot be adjusted to match the loading on the propeller blade. As the propeller slows down, the dominant noise generation shifts from the propeller to the engine exhaust. The lack of a correction exception for slower rotating propellers is provided not just as a simplification to the procedure, but to avoid correcting the engine noise using the propeller speed. Current section G36.201(c)(2) provides either no correction exception or a small correction for slow rotating propellers, if the test power is not within 5 percent of the reference power. These requirements coincide with the exception in section G36.201(c)(1)(ii) proposed to be removed in this NPRM. Accordingly, the proposed change is not expected to affect test results.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency must propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, make them the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

However, for regulations with an expected minimal impact, the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it are included in proposed regulation.

This proposed rule would revise two technical items, which are the only remaining unharmonized items between part 36 Appendix G and the ICAO Annex 16, Volume I, Chapter 10,

regarding the noise certification of small propeller-driven airplanes. The FAA has determined that the expected cost impact would be minimal because these two items affect only airplanes with older technology engines, that are not required to undergo new noise certification or are already noise certificated. On rare occasions, these airplanes may be required to perform a new noise test if they go through a modification that may increase their noise level. As a result, the FAA does not foresee any circumstances in which these older airplanes would need to re-certify for noise.

The two unharmonized technical items were filed with the ICAO. The ICAO includes these items in the national variances list for Annex 16, Volume I. These differences could result in foreign regulators conducting additional reviews, which the FAA and U.S. manufacturers must support, of any U.S.-made, propeller-driven small airplane noise certifications when the airplanes are exported. In practice, only a small number of the exported airplanes might encompass the two unharmonized items in their noise certifications.

The FAA has determined that this proposed rule would increase the harmonization of the U.S. Federal regulations with the ICAO Standards and Recommended Practices and would impose, at most, negligible costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis".

Because of the minimal cost impact of this proposed rule, the FAA has determined that it would, at most, impose negligible costs on small aircraft manufacturers. Therefore, the FAA certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This proposed rule is a direct action to respond to these statutory requirements.

In addition, the FAA has determined that this proposed rule would generate cost savings for foreign regulators in the form of reductions in their administrative expenses. Their administrative expenses may be reduced because a review of the U.S. propeller-driven small airplane noise certifications for exported airplanes will no longer be necessary.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action".

This NPRM does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial, direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 36

Aircraft, Noise control.

The Proposed Amendments

In consideration of the foregoing the Federal Aviation Administration proposes to amend Chapter I of Title 14 Code of Federal Regulations as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.* 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715, sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

2. Revise section G36.111(c)(2)(iv) of Appendix G to read as follows:

Appendix G to Part 36—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven, Commuter Category Airplane Certification Tests on or After December 22, 1988

Sec. G36.111 Flight Procedures.

* * * * *

(c) * * *

(2) * * *

(iv) For airplanes equipped with fixed pitch propellers, takeoff power must be maintained throughout the second segment. For airplanes equipped with variable pitch or constant speed propellers, takeoff power and rpm must be maintained throughout the second segment. If airworthiness limitations do not allow the application of takeoff power and rpm up to the reference point, then takeoff power and rpm must be maintained for as long as is permitted by such limitations; thereafter, maximum continuous power and rpm must be maintained. Maximum time allowed at takeoff power under the airworthiness standards must be used in the second segment. The reference height must be calculated assuming climb gradients appropriate to each power setting used.

3. In G36.201 of Appendix G, revise paragraph (c) as follows:

Sec. G36.201 Corrections to Test Results

* * * * *

(c) No corrections for helical tip Mach number variation need to be made if the propeller helical tip Mach number is:

(1) At or below 0.70 and the test helical tip Mach Number is within 0.014 of the reference helical tip Mach number.

(2) Above 0.70 and at or below 0.80 and the test helical tip Mach number is within 0.007 of the reference helical tip Mach number.

(3) Above 0.80 and the test helical tip Mach number is within 0.005 of the reference helical tip Mach number. For mechanical tachometers, if the helical tip Mach number is above 0.8 and the test helical tip Mach number is within 0.008 of the reference helical tip Mach number.

* * * * *

Issued in Washington, DC on June 2, 2003.

Carl E. Burleson,

Director, Office of Environment and Energy.

[FR Doc. 03–14310 Filed 6–5–03; 8:45 am]

BILLING CODE 4910–13–P

Reader Aids

Federal Register

Vol. 68, No. 109

Friday, June 6, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339

4 CFR

81 33831

7 CFR

800 32623
1400 33341

Proposed Rules:
810 33408
3560 32872

9 CFR

430 34208

Proposed Rules:
93 33028

10 CFR

72 33611
73 33611
765 32955

12 CFR

615 ..... 33347, 33617
703 32958
742 32958
1700 32627

13 CFR

121 33348

Proposed Rules:
121 33412

14 CFR

25 ..... 33834, 33836
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854
71 ..... 32633, 33231, 33360, 3361, 33579, 33623
97 32633

Proposed Rules:
25 33659
36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885
71 ..... 33426, 33427

15 CFR

744 34192
772 34192

17 CFR

30 33623
40 33623

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

21 CFR

201 32979
310 33362
347 33362
349 32981
352 33362
510 33381
522 33856
524 33381
878 32983
888 32635

Proposed Rules:
201 33429
343 33429

25 CFR

170 33625

26 CFR

1 33381
301 33857

Proposed Rules:
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698

28 CFR

5 33629
802 32985

29 CFR

1910 32637

Proposed Rules:
1910 ..... 33887, 34036
1915 34036
1926 34036

30 CFR

Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196

33 CFR

100.....32639, 32641
117.....32643
165.....32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402

Proposed Rules:

165.....33894, 33896

36 CFR

215.....33582
242.....33402
1253.....33404

38 CFR

Proposed Rules:

20.....33040

39 CFR

111.....33858

40 CFR

51.....33764
52.....32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875
180.....33876
261.....32645

Proposed Rules:

Ch. I.....33898
51.....32802
52.....33041, 33042, 33043, 33665, 33898, 33899
82.....33284
146.....33902
194.....33429

42 CFR

412.....34122

Proposed Rules:

412.....33579
413.....33579

43 CFR

4.....33794
3800.....32656
4100.....33794
5000.....33794

44 CFR

64.....32657
65.....32659, 32660
67.....32664, 32669

Proposed Rules:

67.....32699, 32717

46 CFR

221.....33405

47 CFR

2.....32676, 33020, 33640
25.....33640
73.....32676, 33654
74.....32676
80.....32676
87.....32676
90.....32676
95.....32676
97.....32676, 33020

Proposed Rules:

2.....33043, 33666
15.....32720
25.....33666
64.....32720
73.....33431, 33668, 33669

48 CFR

2.....33231
32.....33231
52.....33231
252.....33026

Proposed Rules:

15.....33330
31.....33326
52.....33326
206.....33057

49 CFR

107.....32679
171.....32679
173.....32679
177.....32679
180.....32679
567.....33655
571.....33655
574.....33655
575.....33655
597.....33655

50 CFR

100.....33402
648.....33882
660.....32680

Proposed Rules:

16.....33431
17.....33058, 33234
402.....33806
648.....33432
660.....33670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 6, 2003

COMMERCE DEPARTMENT
Industry and Security Bureau
Designated terrorists; control imposition and expansion; published 6-6-03

COMMERCE DEPARTMENT
National Institute of Standards and Technology
National Construction Safety Team Act; implementation; published 5-7-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
California; published 5-7-03
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; published 4-7-03
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pesticide tolerance processing fees; annual adjustment; published 5-7-03
Thymol and eucalyptus oil; published 6-6-03

GENERAL ACCOUNTING OFFICE
Public availability of General Accounting Office records; published 6-6-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Acepromazine maleate injection; published 6-6-03
Human drugs:
Ingrown toenail relief products (OTC); published 5-7-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 5-2-03

TREASURY DEPARTMENT
Foreign Assets Control Office
Global terrorism; sanctions regulations; published 6-6-03

TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:
Agriculture Department; return information disclosure; published 6-6-03

RULES GOING INTO EFFECT JUNE 7, 2003

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Lake Michigan—
Chicago, IL; safety zone; published 5-20-03
Willamette River, Portland, OR; safety zone; published 5-6-03
Regattas and marine parades:
Harvard-Yale Regatta; published 5-14-03

RULES GOING INTO EFFECT JUNE 8, 2003

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
Chesapeake Bay Bridges Swim Races; published 5-20-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-9-03; published 4-9-03 [FR 03-08650]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Onions (sweet) grown in—
Washington and Oregon; comments due by 6-9-03; published 4-9-03 [FR 03-08648]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
Medical records maintenance; comments due by 6-10-03; published 4-11-03 [FR 03-08928]
Viruses, serums, toxins, etc.:
Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc.; comments due by 6-9-03; published 4-9-03 [FR 03-08599]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 6-10-03; published 5-23-03 [FR 03-13013]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-13-03; published 5-16-03 [FR 03-12315]

DEFENSE DEPARTMENT
Acquisition regulations:
Tangible item marking and valuing; contractor possession of government property; comments due by 6-9-03; published 5-12-03 [FR 03-11726]

ENERGY DEPARTMENT
Polygraph Examination Regulations; counterintelligence polygraph program; comments due by 6-13-03; published 4-14-03 [FR 03-09009]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11910]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11911]
Air pollution; standards of performance for new stationary sources:
Stationary gas turbines; comments due by 6-13-03; published 5-28-03 [FR 03-13416]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans

for designated facilities and pollutants:
Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11751]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11752]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11749]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11750]
Hazardous wastes:
Identification and listing—
Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions); comments due by 6-9-03; published 4-8-03 [FR 03-08154]
Solid wastes:
Project XL (eXcellence and Leadership) program; site-specific projects—
Anne Arundel County Millersville Landfill, Severn, MD; comments due by 6-12-03; published 5-13-03 [FR 03-11909]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Current good manufacturing practice—
Dietary supplements and dietary supplement ingredients; comments due by 6-11-03; published 3-13-03 [FR 03-05401]
Human drugs and biological products:
Bar code label requirements; comments due by 6-12-03; published 3-14-03 [FR 03-05205]

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Communicable diseases control—
Quarantine of persons believed to be infected with communicable diseases; comments due by 6-9-03; published 4-10-03 [FR 03-08736]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations and ports and waterways safety:
Lake Michigan—
Chicago, IL; safety zone; comments due by 6-10-03; published 5-20-03 [FR 03-12494]
Boating safety:
Regulatory review; impact on small entities; comments due by 6-12-03; published 2-12-03 [FR 03-03461]
Drawbridge operations:
Florida; comments due by 6-9-03; published 4-10-03 [FR 03-08690]
Ports and waterways safety:
Chesapeake Bay, MD; Cove Point Liquefied Natural Gas Terminal; safety and security zone; comments due by 6-12-03; published 5-15-03 [FR 03-12050]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area; comments due by 6-12-03; published 5-13-03 [FR 03-11811]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 6-8-03; published 4-4-03 [FR 03-08175]

LABOR DEPARTMENT
Employment and Training Administration
Senior Community Service Employment Program; comments due by 6-12-03; published 4-28-03 [FR 03-09579]

PERSONNEL MANAGEMENT OFFICE
Group life insurance; Federal employees:
Premium rates and age bands; comments due by 6-9-03; published 4-9-03 [FR 03-08610]

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned:
General policy statements; comments due by 6-9-03; published 5-9-03 [FR 03-11634]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd.; comments due by 6-9-03; published 4-29-03 [FR 03-10516]
Boeing; comments due by 6-9-03; published 4-24-03 [FR 03-10117]
EXTRA Flugzeugbau GmbH; comments due by 6-9-03; published 5-2-03 [FR 03-10846]
Lockheed; comments due by 6-13-03; published 4-29-03 [FR 03-10513]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class D and Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11030]
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11034]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11031]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11029]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-10-03; published 5-19-03 [FR 03-12378]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Cargo tank motor vehicles transporting flammable liquids; external product piping; safety requirements; comments due by 6-10-03; published 2-10-03 [FR 03-03262]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Stern anchors and navigation underway; comments due by 6-12-03; published 5-13-03 [FR 03-11895]

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology; comments due by 6-9-03; published 4-9-03 [FR 03-08645]

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
Electronic filings by national banks; comments due by 6-13-03; published 4-14-03 [FR 03-08995]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Stock dispositions; suspension of losses; comments due by 6-12-03; published 3-14-03 [FR 03-06118]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering program for persons involved in real estate closings and settlements; comments due by 6-9-03; published 4-10-03 [FR 03-08688]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also

available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
                                  DEC97 R 1
APR SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
                                  DEC97 R 1
AFRDO SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register,** *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

Charge your order. It's Easy! MasterCard VISA
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

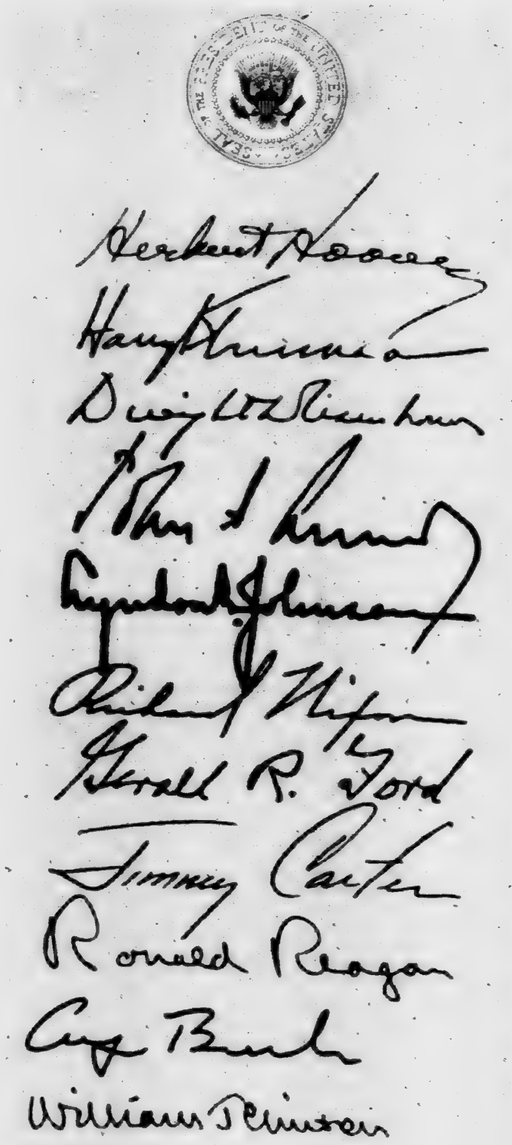
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00
1993
(Book II) $51.00
1994
(Book I) $56.00
1994
(Book II) $52.00
1995
(Book I) $60.00
1995
(Book II) $65.00
1996
(Book I) $66.00
1996
(Book II) $72.00
1997
(Book I) $69.00
1997
(Book II) $78.00
1998
(Book I) $74.00
1998
(Book II) $75.00
1999
(Book I) $71.00
1999
(Book II) $75.00
2000–2001
(Book I) $68.50
2000–2001
(Book II) $63.00
2000–2001
(Book III) $75.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

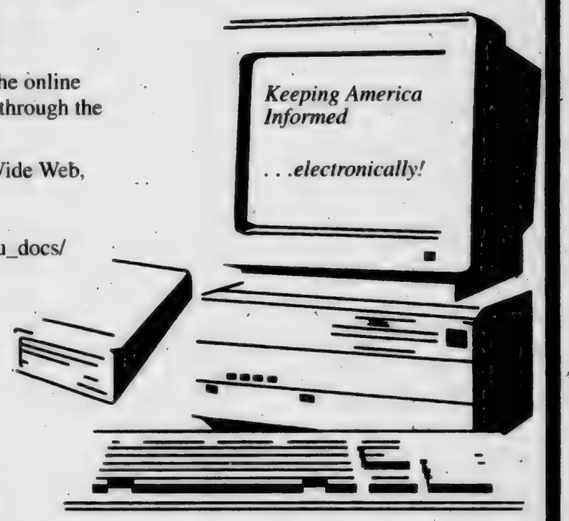
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

VOL
68
ISS
1
0
9
JE
6
003
MI



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.

Federal Register

6–9–03 Monday
Vol. 68 No. 110 June 9, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

6–9–03 Monday
Vol. 68 No. 110 June 9, 2003

Pages 34261–34516

Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 110
Monday, June 9, 2003

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Anniston, AL; polychlorinated biphenyls exposure and adverse health effects; correction, 34391

Agricultural Research Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34371–34373

Agriculture Department
See Agricultural Research Service
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service
See Forest Service
See National Agricultural Statistics Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34419

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34390–34391
Grants and cooperative agreements; availability, etc.:
Anniston, AL; polychlorinated biphenyls exposure and adverse health effects; correction, 34391
Human immunodeficiency virus (HIV)—
Evaluation of web-based risk behavior surveillance among men who have sex with men, 34391–34394

Centers for Medicare & Medicaid Services
RULES
Medicare and medicaid:
Acute care hospital inpatient and long-term care hospital prospective payment systems, 34493–34515
PROPOSED RULES
Medicare:
Hospital inpatient prospective payment systems and 2004 FY rates
Correction, 34492
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 34394

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34394–34395

Coast Guard
RULES
Drawbridge operations:
Alabama, 34302–34303
Ports and waterways safety:
Ohio River—
Marietta, OH; safety zone, 34305–34307
Portsmouth, OH; safety zone, 34307–34309
Safety and security zones, etc; list of temporary rules, 34303–34305
PROPOSED RULES
Ports and waterways safety:
Hampton Roads, VA; regulated navigation area; withdrawn, 34370
NOTICES
Committees; establishment, renewal, termination, etc.:
National Boating Safety Advisory Council, 34409–34410

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34481–34482

Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34420–34421

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34386–34387

Energy Department
NOTICES
Meetings:
International Energy Agency, 34387–34388

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California, 34332–34334
Hazardous waste program authorizations:
Nebraska, 34334–34336

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 34388

Federal Aviation Administration
PROPOSED RULES
Class E airspace, 34340–34341
NOTICES
Passenger facility charges; applications, etc.:
Rapid City Regional Airport, SD, 34466–34467
Reports and guidance documents; availability, etc.:
Honeywell Primus Epic Systems; certificate guidance; policy statement, 34467

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
Fixed satellite services and terrestrial systems; Ku-Band frequencies sharing, 34336–34339

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Small grains, wheat, Khorasan, and buckwheat, 34261–34272

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Alabama, 34410
Kansas, 34410
Mississippi, 34410–34411
Missouri, 34411–34412
Oklahoma, 34412
Tennessee, 34412

Federal Maritime Commission
NOTICES
Controlled carriers:
Foreign carriers in U.S.-foreign trades; list, 34388–34389

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Exemption applications—
Younger Commercial Driver Pilot Training Program; petition denied, 34467–34470

Federal Railroad Administration
NOTICES
Hazardous materials transportation:
Explosives transportation by rail, 34470–34477

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 34389
Formations, acquisitions, and mergers, 34389–34390

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Fort Dodge Animal Health; Division of Wyeth Holdings Corp., 34293
Food for human consumption:
Beverages—
Bottled water; allowable level of uranium, 34272–34273
Human drugs:
Antiperspirant drug products (OTC); final mongraph, 34273–34293
NOTICES
Meetings:
Blood Products Advisory Committee, 34395–34396

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
Retail store operations, exemption; dollar limitations adjustment, 34373–34374

Forest Service
RULES
State and private forestry assistance:
Forest Land Enhancement Program, 34309–34319
NOTICES
Forest Service Manual:
Forest Land Enhancement Program; administration guidance for Forest Service employees, 34374
Meetings:
Resource Advisory Committees—
Glenn/Colusa County, 34375
Lassen County, 34374
Madera County, 34374–34375

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration

Housing and Urban Development Department
PROPOSED RULES
Native American housing activities:
Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; meeting, 34344

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34413

Indian Health Service
NOTICES
Grant and cooperative agreement awards:
Indian Health Scholarship Program; recipients list, 34396–34405

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Serfilco, Ltd., 34376–34377

Interior Department
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
RULES
Income taxes:
Basis adjustments among partnership assets; allocation, 34293–34299
PROPOSED RULES
Income taxes, etc:
Statutory stock options, 34344–34370
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34482–34485

Meetings:
Taxpayer Advocacy Panels, 34485–34486

International Trade Administration
NOTICES
Antidumping:
Hot-rolled carbon steel flat products from—
South Africa, 34377–34378
Polyester staple fiber from—
Korea, 34378–34383
Stainless steel bar from—
India, 34383

International Trade Commission
NOTICES
Meetings; Sunshine Act, 34419

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 34371

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Prisons Bureau

Land Management Bureau
NOTICES
Oil and gas leases:
Louisiana, 34413
Opening of public lands:
Nevada, 34413–34414
Public land orders:
Arizona, 34414
Realty actions; sales, leases, etc.:
California, 34414–34415
Nevada, 34415–34417
Resource management plans, etc.:
Arkansas River Travel Management Plan, CO; off-highway vehicle travel and other related road and trail issues, 34417–34418
Redding Resource Management Plan, CA; travel routes designation, 34418–34419

National Agricultural Statistics Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34375–34376

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 34477–34478

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34405–34406
Meetings:
National Institute of Mental Health, 34406
Scientific Review Center, 34406–34408

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Louisiana Regional Restoration Planning Program; draft programmatic environmental impact statement; public meeting, 34383–34385
Mid-Atlantic Fishery Management Council, 34385–34386
New England Fishery Management Council, 34386

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 34421
Meetings:
Small Business Industrial Innovation Advisory Committee, 34421–34422

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Kaiser Aluminum & Chemical Corp., 34422–34425
Meetings:
Nuclear Waste Advisory Committee, 34425
Applications, hearings, determinations, etc.:
Detroit Edison Co., 34422

Office of United States Trade Representative
See Trade Representative, Office of United States

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Aliens; release gratuities, transportation, and clothing, 34299–34301
Release transportation regulations; clarification, 34301–34302

Public Debt Bureau
NOTICES
Privacy Act:
Systems of records, 34486–34489

Railroad Retirement Board
PROPOSED RULES
Railroad Retirement Act:
Disability earnings determinations, 34341–34344

Research and Special Programs Administration
NOTICES
Hazardous materials transportation:
Explosives transportation by rail, 34470–34477

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 34440–34441
Chicago Board Options Exchange, Inc., 34441–34448
Chicago Stock Exchange, Inc., 34448–34449
Municipal Securities Rulemaking Board, 34450–34452
National Association of Securities Dealers, Inc., 34452–34453
New York Stock Exchange, Inc., 34453–34458
Philadelphia Stock Exchange, Inc., 34458–34460
Applications, hearings, determinations, etc.:
Public utility holding company filings, 34425–34440

Small Business Administration
NOTICES
Disaster loan areas:
Alabama, 34460–34461
Missouri, 34461
Oklahoma, 34461
Tennessee, 34461
Grants and cooperative agreements; availability, etc.:
Management and Technical Assistance Program, 34461–34462

Statistical Reporting Service
See National Agricultural Statistics Service

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34408–34409

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Canadian National Railway Co., 34479
CSX Transportation, Inc., 34479

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Harmonized Tariff Schedule; technical corrections, 34462–34466

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Hazardous materials transportation:
Explosives transportation by rail, 34470–34477

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Public Debt Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34479–34481

Veterans Affairs Department
RULES
Grants:
Homeless Providers Grant and Per Diem Program Correction, 34332
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty; additional opportunity to participate and other miscellaneous issues, 34326–34332
Montgomery GI Bill-Active Duty and Survivors' and Dependents' Educational Assistance programs; rates payable increase, 34319–34326
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program, 34489–34491

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 34493–34515

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
457.....34261

14 CFR
Proposed Rules:
71.....34340

20 CFR
Proposed Rules:
220.....34341

21 CFR
165.....34272
310.....34273
350.....34273
369.....34273
510.....34293

24 CFR
Proposed Rules:
1000.....34344

26 CFR
1.....34293
602.....34293
Proposed Rules:
1.....34344
14a.....34344

28 CFR
571 (2 documents).....34299, 34301

33 CFR
117 (2 documents).....34302, 34303
165 (3 documents).....34303, 34305, 34307
Proposed Rules:
165.....34370

36 CFR
230.....34309

38 CFR
21 (2 documents).....34319, 34326
61.....34332

40 CFR
62.....34332
271 (2 documents).....34334

42 CFR
412.....34494
Proposed Rules:
412.....34492
413.....34492

47 CFR
2.....34336
25.....34336
74.....34336
78.....34336

Rules and Regulations

Federal Register
Vol. 68, No. 110
Monday, June 9, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB63

Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Crop Insurance Winter Coverage Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement. The intended effects of this action are to add provisions for the insurance of Khorasan and buckwheat, include additional insurance benefits, clarify existing policy provisions to better meet the needs of the insured, improve actuarial soundness, and restrict the effect of the current Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement to the 2003 and prior crop years.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the effect of proposed changes on crop insurance payments is expected to be small. The greatest impacts are expected from: (1) Increasing the amount of replant payments for wheat and providing replant payments for crops that have not had them in the past; and (2) changes to the winter coverage endorsement.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On April 20, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 21144–21151 to revise 7 CFR 457.101 Small Grains Crop Insurance and section 457.102 Wheat Crop Insurance Winter Coverage Endorsement. Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of 82 comments were received from reinsured companies, and grower and trade associations. The comments received and responses are as follows:

Comment. Two reinsured companies stated these revised provisions are being proposed for the 2002 crop year rather than the 2001 crop year as referenced in

the proposed rule. It is also understood some provisions of the Agricultural Risk Protection Act of 2000 (ARPA) will impact the proposed policy, and these legislated items are not reflected in the proposed rule.

Response. The new provisions will be effective beginning with the 2004 crop year, provided this final rule is made effective prior to the applicable contract change date. The provisions of ARPA affect most crops. Therefore, most policy provisions affected by ARPA are contained in the Basic Provisions of the Common Crop Insurance Policy (§ 457.8). However, ARPA provisions regarding insurance for more than one crop grown on the same acreage in the same crop year do require clarification as they pertain to the winter coverage endorsement. Accordingly, section 10 has been added to the Wheat Winter Coverage Endorsement.

Comment. Two reinsured companies were concerned the definition of "Prevented planting" seems to be in conflict with section 7(a)(2)(iii), which allows a winter wheat insured to elect to destroy all winter wheat acreage damaged to the extent that replanting is necessary and receive 15 percent of the winter wheat guarantee, rather than replanting to spring wheat. The commenters contend that the grower who was originally prevented from planting winter wheat should be allowed the same option, such as 15 percent of the winter wheat guarantee. The commenters ask that if the insured elects to destroy the acreage in return for 15 percent of the winter wheat guarantee, whether that acreage can be planted to spring wheat and insured. Two reinsured companies recommended that section 9(f) be removed from these provisions because it provides a disincentive to add optional coverage provided by the winter coverage endorsement. They state that if the producer wants the type of coverage offered by the endorsement, they should purchase such coverage. They also state that the proposed coverage gives the producer an incentive to "buy down." The companies argue that this provision also adds unnecessary complexity, increases company expense and in some cases will result in an unhappy insured if the payment is nil or negligible. They state that the insured should be required to replant as specified in the current provisions and, if they do not replant, no premium is owed and no loss is payable. A grower association was also concerned with section 9(f) because full premium would be charged for only 15 percent coverage. Another reinsured company stated they had received different degrees of opposition to the proposed provisions in this section. The company stated that in the past this acreage would be deleted from the acreage report and no premium would be due. They further stated this concept would detract from sales of Options A or B, at least in South Dakota, and they were not sure there is an advantage in the proposed change.

Response. The proposed provisions were not in conflict. To qualify for a prevented planting payment, planting must be prevented until the spring final planting date. Similarly, the "15 percent benefit" in section 9(f) for winter wheat would not be provided if the insured planted spring wheat following a failed winter wheat crop. When acreage is replanted to spring wheat, a replant payment may be provided and insurance would continue based on the guarantee, premium, and price election applicable to the winter type. Although the proposed provisions are not in conflict, FCIC does agree that the proposed provisions would have: (1) Provided a disincentive to purchase full protection of winter wheat offered under the Wheat or Barley Winter Coverage Endorsement; (2) provided only a small benefit in exchange for full premium; and (3) increased program complexity. Therefore, the proposed provisions in section 9(f) have not been included in this final rule.

Comment. A growers association and four producers recommended hull-less barley be insurable under the Small Grains Crop Provisions. A growers association also questioned if hull-less oats were included or excluded from coverage.

Response. FCIC agrees that hull-less barley should be insurable. The Federal Grain Inspection Service (FGIS) has issued a directive providing instructions for determining quality factors for hull-less barley. This provides the means to adjust production to count when there is a loss due to low quality. FCIC and insurance providers have also received requests to insure hull-less oats, and a FGIS directive similar to that prepared for hull-less barley has been completed for hull-less oats. Therefore, the definition of "small grains" and section 11(d)(2) has been revised to include provisions for both hull-less barley and hull-less oats.

Comment. A reinsured company recommended that since the issue of grazing has been a hot topic in the past year, the definition of "harvest" be changed to include producers who harvest their small grain by grazing the acreage.

Response. In some areas it is common to allow animals to graze wheat acreage in the fall through the early spring and then to remove the animals to allow the wheat to mature and produce a grain crop. In these cases, it would be confusing to include "grazing" in the definition of "harvest" since the actual grain harvest would occur much later than the time the acreage was grazed. However, FCIC agrees wheat that is grazed instead of being harvested for grain should be considered "harvested" for the purpose of determining insurable acreage under the provisions of section 9(a)(1) of the Basic Provisions. That provision will be amended accordingly.

Comment. A reinsured company accepts the addition of Khorasan (a variety of wheat) and buckwheat to these provisions as long as FCIC provides detailed, well researched handbook procedures for adjusting these crops. Also, appraisal procedures must be accurate and based on university tested methods.

Response. FCIC will not issue actuarial materials for Khorasan or buckwheat unless appropriate loss adjustment procedures can be issued in a timely manner. Insurance programs for these crops will become available only after county actuarial materials are released.

Comment. A reinsured company asked if buckwheat would be considered a pilot crop program. The commenter also asked what studies have been undertaken (including draft loss procedures) that are generally done for a new (pilot) crop.

Response. The insurance program for buckwheat is not considered to be a pilot program since the regulatory process is being used to implement it. A report on the feasibility of insuring buckwheat was completed by the Economic Research Service (ERS). The report provides significant detail regarding uses, varieties, supply, demand, prices, environmental requirements, cultural practices, risks, etc. Loss procedures have not yet been developed. As stated above, insurance will not be made available for buckwheat until the loss procedure has been developed and provided to the reinsured companies. However, the feasibility report suggests procedures used for buckwheat will be very similar to those currently in use for other small grains.

Comment. A reinsured company is concerned with including "buckwheat" in the Small Grains provisions. The term "small grains" usually refers to annual cool season grass species grown for grain that is milled into flour, used for cattle feed or used for production of malt. Flax has been included in this group even though it is a broadleaf crop because it is similar to the other small grains that are grown. Generally, buckwheat does not follow the same growth habit or management system as other small grains. Buckwheat is a warm season broadleaf crop with recommended planting dates of late May and June. Buckwheat is very frost sensitive in all stages of development. Fertilization of buckwheat is basically the same as for other small grains except the level of nitrogen is usually kept low because of crop lodging. Buckwheat is indeterminate in flowering habit; it will start flowering approximately four to five weeks after emergence and continue until frost. Buckwheat is so sensitive to many stress factors it is hard to predict a yield. Currently there are no herbicides approved for buckwheat production. Buckwheat is sensitive to herbicide residues from dinitroanalines (trifluralin, ethafluralin), atrazine, and sulfonylureas (Glean, Ally). The major use of buckwheat is for making flour for soba noodles or as a pancake mix.

Response. The determination of which policy to add a crop to is based on which policy contains the terms that best cover the risk. Buckwheat is being added to the Small Grains policy because most provisions applicable to wheat, barley and other small grains can also be applied to buckwheat. Buckwheat is also generally produced by growers who already have a Small Grains Crop Insurance Policy in force. Therefore, it will be possible to use one policy document for these growers instead of two. Combining the crops into one policy document when possible reduces paperwork, administrative costs, etc. The difference in the growth and management systems will be reflected in the good farming practices for the crop and, therefore, covered under the policy.

Comment. The president of Kamut International, Ltd., requested references to "Kamut" be replaced with the name "Khorasan," which is the common name for Triticum Turanicum. "Kamut" is not a variety of wheat but rather a registered trademark owned by Kamut International, Ltd. Also, plant classification specialists have recently shown that Khorasan should be classified as T. Turanicum rather than T. polonicum.

Response. FCIC agrees with the suggestions and has revised the provisions accordingly.

Comment. A grower association was concerned with the language in the definition of "Prevented planting." The definition does not allow a prevented planting payment for winter wheat if a producer is able to plant spring wheat. Given the yield superiority of winter vs. spring varieties, this provision adversely affects producers who are prevented from planting winter wheat. A possible solution to the problem would be to insure spring wheat and winter wheat separately.

Response. The Wheat Winter Coverage Endorsement does provide separate insurance for spring wheat when it is planted to replace damaged winter wheat and separate insurance units are allowed for initially planted spring and winter wheat in certain counties. In the future it may be possible to add provisions to the endorsement to provide separate prevented planting coverage for winter wheat. However, a change like this, which would impact a large number of producers and acreage, cannot be made without being published in a proposed rule for public comment.

Comment. A reinsured company recommended changing the definition of "Local market price" to the Commodity Credit Corporation (CCC) price established by the Farm Service Agency (FSA) county office, and removing the reference to "local market price" for a loss standard.

Response. FCIC believes the comment recommends changing quality adjustment procedures by using the "posted county price" that is available in FSA county offices rather than the "local market price." The posted county price has been used in the past. However, damaged grain can have reductions in value in the local market greater than the posted county price. This resulted in zero production to count even though the production still had value and was sold. FCIC stopped using the posted county price because of this program vulnerability. FCIC has not discovered a means to eliminate this program vulnerability if it again uses the posted county price. Therefore, no change has been made.

Comment. Two reinsured companies asked if premium rates will be adjusted to address the increased risk by allowing separate optional units for durum and club wheat.

Response. FCIC will review the adequacy of premium rates for all changes made by this rule, including optional units for durum and club wheat and ensure that all risks are covered by the premium.

Comment. A grower association commented that while durum wheat coverage is available as an optional unit, there are no specific provisions for durum wheat. The market price for durum is different than the predominant white wheat market, and the same terms for durum wheat in other areas of the country should be available for the northwest. The association recommends these provisions should allow a specific durum price election, coverage level, and national availability in counties where durum is produced or is being introduced. Furthermore, separate price elections and coverage levels should be established for hard red spring wheat, hard white wheat, and club wheat.

Response. Language has been added to the Small Grains Crop Provisions to provide for separate units and price elections for durum and club wheat if these wheat types and prices are designated in Special Provisions. Expansion of the durum type and establishing separate price elections and coverage levels for certain types of wheat will be considered by FCIC in the future based on availability of data, program interest, and underwriting issues. FCIC lacks the information at this time so no change can be made in this rule. FCIC has added language to clarify that fall planted durum wheat may be a separate unit from spring planted durum wheat and that fall planted club wheat may be a separate unit from spring planted club wheat provided the Special Provisions specify both fall and spring types of the applicable wheat type.

Comment. A reinsured company recommended allowing optional units for durum wheat when it is listed as a separate insurable type. This would simplify administration of the actual production history (APH), since durum wheat producers raise, store, and market durum wheat separate from spring wheat.

Response. The proposed rule and this final rule allow optional units for durum wheat when it is designated as a separate type in the Special Provisions. Therefore, no change needs to be made.

Comment. A reinsured company agreed optional units for durum and club wheat will be an improvement but that quality factors for durum (milling) should be addressed.

Response. FCIC understands certain quality requirements for durum wheat are not covered by the current Small Grains Crop Insurance Policy. A method of providing insurance coverage for these quality requirements has not yet been developed. Section 508(m) of the Federal Crop Insurance Act requires FCIC to contract with a qualified person to review quality loss adjustment procedures to determine if they accurately reflect local quality discounts. FCIC has executed the contract and after the results have been analyzed, FCIC will determine if coverage for these quality requirements is feasible. If feasible, FCIC will review

the policy at that time. However, no change will be made in this rule.

Comment. FCIC requires all wheat in a given county to be insured under the contract. A grower association advises as a result of this requirement many producers do not purchase wheat insurance. The association recommends allowing selection of different coverage levels and price elections by FSA farm serial number, by irrigated and non-irrigated practice, and by type and class of wheat. Other grower associations recommended allowing different price election percentages or coverage levels for summer-fallow, continuous cropping, and direct seeded acreage.

Response. These recommendations would constitute significant changes to the proposed rule and would be a departure from insurance provisions used in other crop insurance policies. Therefore, the suggested changes cannot be made in this rule. Additionally, sufficient data has not been established or provided to effectively support separate insurance coverage by FSA farm serial number, practice, or wheat type or class. However, these changes would appear to add significant program vulnerabilities due to shifting of production and other manipulation of yields.

Comment. A reinsured company asked whether durum wheat, which has a separate type code and price election in the county actuarial documents, can be insured as regular spring wheat or must it be separately insured at the higher durum price. The commenter also asks if everything is reported as spring wheat and it is discovered at loss time that some of the wheat is durum, whether the policy has to be revised to reflect the higher durum price and if liability would be increased at that point in time. The commenter also asked about being able to duplicate the APH records for durum wheat at that time. The commenter suggested that section 3(a) be clarified to address how these situations are to be handled.

Response. The provision has been revised to clarify that if a durum wheat price election is provided, it must be used to insure durum wheat. When a durum wheat type is misreported as spring wheat, the provisions contained in section 6 of the Basic Provisions regarding misreporting will apply. The APH for durum wheat must be based on production records for durum wheat or a T-Yield for durum wheat.

Comment. A reinsured company is concerned with the language in section 3(b) which allows the insured to change coverage levels or price elections by the spring sales closing date "only if they do not have any fall-planted acreage of the insured crop." The company asked whether this applies if there is any fall-planted acreage, or only if there is insured fall-planted acreage (for example, the insured has some fall-planted acreage but it is an uninsured practice/type or not intended for harvest as grain.)

Response. The provision is intended to prevent changes in coverage levels or price elections in the spring only if there is insured fall planted acreage. Section 3(b) has been clarified accordingly.

Comment. A growers association was concerned with the insurability of acreage on which Conservation Reserve Program (CRP) contracts are expiring. In some cases, only a summer fallow practice is insurable and the acreage cannot be insured the first year unless the producer takes an early out with a reduction in the final payment from CRP, or summer fallows the ground the first year out of CRP. The growers association requests FCIC and FSA work together to resolve this dilemma so producers in these counties can have insurance. This could be accomplished by permitting producers in these counties to obtain an early release from the CRP contract in order to meet the criteria to classify this ground as summer fallow.

Response. FCIC cannot comment on possible CRP program changes since FSA administers that program and would be required to make any modifications or exceptions to it. However, FCIC is willing to work with interested parties to help coordinate program benefits. Although a premium rate is not published for continuous cropped acreage in some counties, insurance may still be obtained for the practice if the producer requests a written agreement through the producer's insurance provider. If approved, the written agreement would provide a premium rate for continuous cropped acreage.

Comment. A growers association recommended FSA and FCIC allow the regional office the ability to change final planting dates when agronomic conditions are such that many farmers cannot complete planting by the final planting date of the policy.

Response. The final planting date is a part of the crop insurance contract and changing the final planting date after the contract change date would violate the terms of the crop insurance policy and the agreement FCIC has with insurance providers. Regional Offices can recommend changes to final planting dates if program integrity would not be adversely impacted but must do so prior to the applicable contract change date for it to be considered for that crop year. A late planting period is provided for most crops so producers who plant late may still have insurance coverage.

Comment. A grower association stated that wheat producers insured under the multiple peril crop insurance policy (MPCI), the Income Protection (IP) policy or the Crop Revenue Coverage (CRC) policy have a final planting date of December 31 to February 15, which is seldom applicable and diminishes the value of the replant provision of the policy. The association recommends all final planting dates be established on a county-by-county basis at the earliest practical date for the Pacific Northwest.

Response. The replant provision referred to in the comment has recently been amended in the Income Protection policy provisions to address this concern. The provisions in section 9(a)(5) also address this issue by providing that damage must occur after the fall final planting date for acreage covered under the winter coverage endorsement (the "earlier" or first fall final planting date in counties with two fall final planting dates). Changes made to the MPCI Small Grains Crop Insurance Policy will also be made to the CRC wheat policy.

Comment. A growers association recommended RMA provide winter damage protection for fall planted barley. Having no winter coverage and the mandatory replant provisions are a disincentive to plant winter barley.

Response. RMA agrees that winter coverage for barley should be provided and has modified the winter coverage endorsement to include barley. This optional coverage will be available only if the county actuarial table provides an additional premium rate factor for it.

Comment. Two reinsured companies recommended changing the section reference in section 7(a)(2)(iii) from 9(e) to 9(f).

Response. As stated above, section 9(f), and the reference to it, has been removed in this final rule.

Comment. A grower association is concerned with section 7(a)(2)(iii) which requires producers to replant fall-planted barley or wheat that is damaged prior to the spring final planting date with a winter type of the crop if practical: Mandatory replanting requirements reduce flexibility for producers who may want to destroy the crop and replant a spring type of the crop. This section also provides that damaged wheat acreage can be put to another use and an indemnity will be paid, but does not describe what alternative uses are permitted.

Response. Producers are free to plant a spring type of the crop after the fall type has failed if they choose. The requirement to replant the fall type if practical only applies if the producer wants to maintain the fall planted crop production guarantee. So, if it is not practical to replant to a fall type and the producer replants a spring type, insurance will remain in force based on the production guarantee for the fall type. If a producer does not replant a fall type when it is practical to do so and plants a spring type on the acreage, insurance will still be provided based on a spring type production guarantee. Section 7(a)(2)(iii) has been clarified to distinguish when the producer will have insurance based on spring or fall types in replant situations. Since section 9(f) has been removed from this rule for the reasons stated above, the provisions regarding a benefit when damaged acreage is put to another use have also been removed in this final rule.

Comment. Two reinsured companies recommended that section 7(a)(2)(v) be clarified to indicate that fall barley or fall wheat that has an adequate stand in the spring will be insurable as spring barley or spring wheat.

Response. FCIC agrees and has revised the provisions accordingly.

Comment. A growers association recommended allowing the winter wheat guarantee to apply to initially planted spring wheat when cropland has been summer fallowed for one year and agronomic conditions are such that the winter wheat crop cannot be seeded.

Response. Current provisions do not allow the winter wheat guarantee to apply on acreage that is initially planted to spring wheat under any circumstance. This is because there are different yields and premiums associated with spring and winter wheat. To allow spring planted wheat to be insured as fall planted wheat would adversely affect program integrity. Allowing spring planted wheat to be insured as fall planted wheat when it has been replanted after a failed winter wheat crop is permitted because insurance has already attached to the winter wheat crop and replanting to the spring crop is a means to mitigate the damages associated with the failed winter wheat crop. Therefore, no change has been made.

Comment. A reinsured company recommended Virginia be included with the states that have a July 31 end of insurance date. The commenter stated that FCIC should consider using the same date for states such as Oklahoma, Missouri and Kansas. Another reinsured company recommended that the end of insurance date for small grains in Kansas should be reviewed because October 15 is not an appropriate date for the end of insurance since harvest is generally completed by August 1.

Response. Since a proposal to change the end of the insurance period for Virginia was not included in the proposed rule, and the public was not given the opportunity to comment, the recommended change cannot be adopted in this final rule.

Comment. Two reinsured companies are concerned that replant payments for barley, oats, flax and buckwheat will add additional loss adjustment expenses for reinsured companies. Another reinsured company commented that allowing companies to pay the amount of replant payment specified in the policy without requiring calculation of actual expenses will save time in working replant claims and will be more suitable for self-certification procedures. Another reinsured company commented that allowing replant payments for all small grains will provide consistency in the Small Grains provisions, should not have a large impact on the loss payments and will benefit producers who need to replant. An insurance association also supported the proposed change.

Response. FCIC agrees reinsured companies may incur some additional expenses. However, FCIC has taken steps to reduce loss adjustment expenses for small grains by no longer requiring insurance providers to calculate the actual cost of replanting. This means that there is not expected to be any significant net increase in costs to the reinsured companies. Therefore, no change has been made.

Comment. A reinsured company asked whether or not fall planted wheat accepted for insurance in a county with only a spring planted practice would qualify for a replant payment.

Response. Fall planted wheat in a county with only a spring final planting date would not qualify for a replant payment. Section 9(a)(4) states that "the acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date."

Comment. A reinsured company recommended increasing the policy replant payment limits to four bushels for wheat since three bushels or $9.45 hardly covers labor costs. The company also advised that the five bushel replant payment limit on oats does not seem worthwhile for the producer.

Response. Provisions in both the proposed and final rules use four bushels when calculating the amount of a replant payment for wheat. Replant payments are not intended to cover all the costs associated with replanting. They are intended to defray a portion of the costs and are set at a level which will provide assistance but not significantly increase the premium. Therefore, no changes have been made.

Comment. Two reinsured companies were concerned with the provisions in section 9(a)(6) which allow a replanting payment when less seed is replanted than the original planting, as long as the resulting stand will produce the guarantee. The companies asked if this will require additional inspections and more expense to the company. A growers association also did not agree with the revision to allow a replanting payment when the amount of seed used is less than the amount normally used for the initial seeding.

Response. The replanted crop must be seeded at a rate sufficient to produce the approved APH yield not just the guarantee. Therefore, for crops that have totally failed, the amount of seed that was originally planted to produce the APH yield must be used. It is only when some of the crop still exists that reduced seeding rates can be used. Providing replant payments under these circumstances will provide a greater incentive to improve poor crop stands, thereby improving production levels and reducing claims. There are also agronomic benefits associated with improving a crop stand in this manner. Plants with established root systems are allowed to remain in place and can provide protection to newly seeded plants. Insurance providers may have to perform additional inspections and may incur some additional expenses. However, the benefits associated with reduced claims should outweigh the costs. Therefore, no change has been made.

Comment. Two reinsured companies asked whether a specific number of bushels is used to determine the maximum replant payment for rye and Khorasan or will 20 percent of the guarantee be used.

Response. Insurance for rye is available only in counties with "fall only" final planting dates. Therefore, in accordance with section 9(b), replant payments are not available for rye. As stated in section 1, Khorasan is considered to be a spring wheat for the purposes of this policy. Therefore, the replant payment is based on four bushels—the amount applicable to all types of wheat.

Comment. Two reinsured companies recommended allowing disinterested grain handling facilities to determine test weight and moisture of the grain.

Response. The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) specifies qualifications for persons allowed to determine grain

quality for crop insurance purposes. Section 11(d)(3) of the Crop Provisions has been amended in accordance with the provisions of the 2002 Farm Bill. Therefore, no change has been made.

Comment. Two reinsured companies recommended, for quality adjustment purposes, that the test weight for oats be changed to 32 pounds per bushel in the Special Provisions to be more in line with current market requirements.

Response. Section 508(m) of the Act requires FCIC to contract with a qualified person to review quality loss adjustment procedures to determine if such procedures accurately reflect local quality discounts. Based on recommendations, FCIC may revise quality adjustment provisions for oats and other grain crops. Until recommendations are analyzed, FCIC does not have sufficient information to make the requested change. Therefore, no change has been made.

Comment. A grower group commented RMA is proposing changes to the Settlement of Claim section to allow adjustment for excess moisture before any adjustment for quality deficiencies. They asked if production would also be adjusted in the case of a drought.

Response. The provisions of section 11(d) apply when any insured production is damaged due to any insured cause of loss, including drought. The proposed changes just set the order in which such adjustment will occur, with moisture adjustment, if applicable, occurring before any other adjustments.

Comment. Two reinsured companies do not agree with the quality adjustment procedures which allow a local elevator to determine the salvage price for low quality grain. This process will result in indemnity differences for similar grain from area to area and may increase loss adjustment expenses as adjusters canvas local elevators for the highest salvage bid price.

Response. FCIC has not found reliable data on which discount factors for extremely low quality grain can be based. Therefore, quality adjustment methods based on the value of the damaged grain will continue to be used when grain is of such low quality that discount factors for it are not contained in the Special Provisions. No changes have been made.

Comment. A grower association asked whether the definition of "heat damaged kernels" is the same as used by the Grain Inspection, Packer and Stockyards Administration (GIPSA), for consistency and lack of confusion, or whether RMA has a different definition. The provisions in section 11(d)(2)(i)(A–E) specify that "heat damaged kernels" will not be considered to be damaged.

Response. The definition of "heat damage" is the same as that used in the Official United States Standards for Grain. Section 11(d)(2)(i) has been clarified to reflect this.

Comment. A grower association recommended that FCIC continue to review quality loss adjustment factors for barley. Market losses from weather-related quality degradation generally far exceed those permitted under current quality loss adjustment provisions.

Response. As stated above, FCIC has contracted to conduct a review of the quality loss adjustment procedures. Once the review is completed and fully analyzed, FCIC will make appropriate changes to the quality loss adjustment factors.

Comment. A reinsured company asked if the provisions in section 11(d)(2)(iii) mean that the test weight for durum wheat will start at 54.0 pounds when the test weight normally starts at 50.9 pounds for durum wheat?

Response. Under the existing quality provisions, durum wheat quality adjustment for test weight begins when the test weight falls below 54.0 pounds. Therefore, this rule is not a change from the previous provisions. The language in this rule simply provides that the same quality adjustment threshold applies to Khorasan. Provisions have been added to clarify that quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat. The same clarification has been made for hull-less barley and hull-less oats.

Comment. A reinsured company recommended that quality adjustment factors for durum wheat (milling) should be addressed. Low quality on durum has a more adverse effect on marketing than on regular wheat.

Response. FCIC understands discounts for low quality durum wheat are significant. As stated above, FCIC has contracted for a review of the quality loss adjustment procedures. Once the review and FCIC's analysis is completed, FCIC will revise that procedure as appropriate. However, no change is being made to this rule.

Comment. A reinsured company asked if the proposed provisions in section 11(d)(4) replace all of the current provisions in section 11(d)(4)(i)–(iii) or just the sentence in (4).

Response. The proposed revision will replace sections 11(d)(4)(i), (ii) and (iii).

Comment. A reinsured company agreed late planting provisions should apply to winter wheat. However, the company is concerned with how the time period for late planting will be determined and what the reduction percentage will be. The company recommends the reduction be not less than the prevented planting reduction percentage. In addition, two companies stated that in previous policies, winter wheat in counties with only a fall final planting date did not have a late planting period or replanting payments as the final planting dates were so late. The companies asked whether under the current proposed changes, the final planting dates will be revised to earlier dates and what will be the length of the late planting period for winter wheat.

Response. The late planting period reduction is already provided in section 16 of the Basic Provisions of the Common Crop Insurance Policy. This rule simply makes it applicable to certain winter wheat. The length of the late planting period or the final planting date for certain winter wheat will be adjusted in the Special Provisions where necessary, Therefore, no change has been made.

Comment. A grower's association recommended prevented planting payments be based on winter wheat guarantees when producers are prevented from planting in the fall and also cannot plant in the spring.

Response. Since a proposal to change the basis of prevented planting payments was not included in the proposed rule, and the public was not given the opportunity to comment, the recommended change cannot be adopted in this final rule.

Comment. Two reinsured companies asked if companies would have an opportunity to review and comment on any significant changes to the Special Provisions.

Response. FCIC does not anticipate significant changes to the Special Provisions as a result of this rule. Special provisions vary from county to county due to differing rotation requirements, planting dates, etc. This results in large numbers of documents being generated each year, sometimes within short time frames. Due to these time restrictions and the large number of documents involved, it is not practical to provide a comment period for the Special Provisions.

Comment. A growers association recommended products that represent significant product revisions should be in place and available to agents and growers 90 days prior to sales closing dates. The sales closing date for fall planted wheat in the Pacific Northwest is September 30. Program prices are futures based and are not established until mid-September leaving farmers with little time to evaluate policy options. For this reason, two grower associations recommended a later sales closing date than September 30 be established for winter wheat in the Pacific Northwest. Seeding starts in September and ends in October. One association recommended an October 31 sales closing date but would accept an October 15 sales closing date. Another recommended the sales closing date be changed to 30 days after price release or October 31.

Response. All policy changes must be made by the contract change date, which is at least 90 days prior to the sales closing date. All price elections are also released prior to the sales closing date. Moving the sales closing date 30 days later, when planting is almost complete, would result in adverse selection as producers would have additional knowledge of growing conditions at that point. Therefore, no change has been made.

Comment. A growers association recommended making the increased premium subsidy permanent after the 2000 crop year.

Response. Section 508(e) of the Act provides for increased subsidies that are applicable each year unless Congress acts to reduce them. Therefore, no change has been made.

Comment. A growers association recommended keeping Option A and Option B at the current percentages rather than the proposed percentages. A reinsured company also disagreed with the changes to Option A and Option B as these changes will not be popular with the insureds. The company does not know of any change to Option A that would make insureds select this option. It states that reducing the coverage for Option B is a mistake since companies, Congress and special interest groups have worked hard to improve coverage for farmers, not decrease coverage. The company also stated that, in the past, Option B with the MPCI policy has worked well for insureds and the insureds believe they have a positive coverage. Another reinsured company supported the change of Option B coverage from 100 percent to 70 percent because it believed the coverage provided by the option was too lucrative and that it was abused. This company also stated that by reducing Option B and increasing Option A the coverage becomes similar and that it might reduce confusion by offering a single option.

Response. FCIC agrees it is confusing to have two options and that option A has not been popular with producers. Therefore Option A has been removed from the final rule. FCIC also agrees with the comments that recommend retaining 100 percent coverage under Option B (now the only option) and has revised the proposed provisions accordingly. One hundred percent coverage is being retained to keep a more meaningful level of coverage in place, particularly when the indemnity for the first crop, winter wheat, may be reduced if a second crop is planted.

Comment. Two reinsured companies recommended that the coverage under Option A and B be provided when 20 percent of the insured planted acreage in the unit is damaged rather than the current requirement of 20 acres or 20 percent of the acreage in the unit. They state that this change will be consistent with language in the replanting payment section of the Basic Provisions.

Response. FCIC agrees that the replant provision in the Basic Provisions of the Common Crop Insurance Policy refers to at least the lesser of 20 acres or 20 percent of the insured planted acreage in the unit. The provision has been revised to be consistent with this requirement.

Comment. Two reinsured companies recommended the sentence "You may use such acreage for any purpose, including planting and separately insuring any other crop." in both Option A and B, be clarified. If an insured plants back to barley, and barley was not on the policy, and it is past the sales closing date, it could not be insured. Likewise if barley was on the policy already, such acreage would have to be insured per the terms of the policy.

Response. FCIC agrees and has clarified the language accordingly.

Comment. A grower association commented that under the proposed winter coverage endorsement all winter wheat acreage must be insured, which reduces flexibility of producers who may wish to have the endorsement for one tract of land but not for another. The association recommended additional endorsements be made available at the option of the producer for additional premium.

Response. This change would allow insureds to select insurance on acreage with a higher likelihood of loss. This adverse selection could reduce program integrity and adversely impact premium rates for all producers. Therefore, no change has been made.

Comment. A grower association recommended since Option A provides for a coverage increase and an increase in premium, then with coverage being reduced under Option B, the premium should also be reduced.

Response. The coverage level under Option B (now the only option) has not changed. However, FCIC does review all premium rates periodically, and may revise those applicable to the winter coverage endorsement based on those reviews. Option A of the endorsement has been removed for the reasons stated above.

Comment. A reinsured company recommended making the Wheat Crop Insurance Winter Coverage Endorsement a part of the Small Grains Crop Provisions to be elected on the application or policy change form as with other crop options or endorsements.

Response. The Wheat Crop Insurance Winter Coverage Endorsement is used only in counties for which the Special Provisions designate both fall and spring final planting dates. Making the Wheat Crop Insurance Winter Coverage Endorsement a part of the Small Grains Crop Provisions would increase the amount of paper sent to all producers who have the Small Grains Crop Provisions and might result in confusion for those in counties in which the endorsement is not available. Therefore, no change has been made.

Comment. A reinsured company asked that if an insured has selected Option B and elects to destroy the winter wheat and then replant to spring wheat, whether will it be mandatory for the insured to insure the spring wheat. Another reinsured company agrees with the change that requires spring wheat to be insured after winter wheat has been destroyed rather than having an option to do so.

Response. The proposed provisions did require the spring wheat to be insured. However, due to the provisions of the Act that reduce indemnities for a first crop when a second crop is planted and has a loss on the same acreage in the same crop year, FCIC has elected to return to previous provisions that allowed producers to elect whether or not they wanted insurance for the spring wheat. Section 11(c) has been amended accordingly.

In addition to the changes described above, FCIC has made the following changes:

1. Revised the definition of "local market price" to specify quality levels for Khorasan, hull-less barley, hull-less oats and buckwheat, and to specify the applicable subclasses for durum and hard red spring wheat.

2. Changed the cancellation date for wheat from October 31 to September 30 in Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California. This change makes program dates consistent between these Northern California counties and Oregon, which has similar agronomic conditions.

3. Changed the October 31 cancellation date and November 30 termination date for barley to March 15 in Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California. This change makes program dates consistent between these Northern California counties and Oregon, which has similar agronomic conditions.

4. Revised section 11(d)(2)(ii) to base the level at which buckwheat production can be quality adjusted on a certain grade rather than specific quality factors. This change is made to allow quality adjustment at levels appropriate for the crop type (large or small seed) and to avoid the need for revision if grading standards should change.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay implementation of improved insurance benefits until the 2005 crop year. The public interest is served by improving the insurance product as follows: (1) Providing insurance for producers of hull-less barley, hull-less oats, and Khorasan. Insurance coverage for these crop types is not available under the current Small Grains Crop Provisions; (2) increasing insurance flexibility by providing for separate insurance units for durum and club wheat; (3) moving the contract change date earlier to provide a greater amount of time between the contract change date and the sales closing date to allow producers more time to make insurance decisions; (4) changing program dates to provide coverage for winter wheat in certain counties where coverage for winter wheat is not currently provided; (5) adding replanting payment benefits for barley, oats and flax and increasing the replanting payment amount for wheat. Replanting payments help defray costs incurred by producers who have to replant their crops under the terms of these provisions; (6) allowing winter protection for fall planted barley which is not provided for under current provisions; and (7) improving clarity of the insurance policy.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the 2005 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

List of Subjects in 7 CFR Part 457

Barley, Buckwheat, Crop insurance, Flax, Oats, Rye, Wheat.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2004 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

■ 2. Amend the crop insurance provisions in § 457.101 as follows:

■ a. Revise the introductory text;

■ b. Amend section 1 of the crop provisions by adding a definition for "Khorasan" and revising the definitions of "local market price," "prevented planting" and "small grains;"

■ c. Revise section 2;

■ d. Revise section 3;

■ e. Revise section 4;

■ f. Revise section 5;

■ g. Delete the period before the parenthetical phrase in section 6(b)(1);

■ h. Revise section 6(c);

■ i. Revise section 6(b)(2) and add section 6(d);

■ j. Revise the introductory text of section 7;

■ k. Revise sections 7(a)(1) introductory text, 7(a)(2)(iii), 7(a)(2)(v) and 7(b)(4);

■ l. Revise section 9;

■ m. Revise sections 11(b), 11(c)(1)(iv) and 11(d); and

■ n. Revise section 12, all to read as follows:

§ 457.101 Small Grains Crop Insurance.

The small grains crop insurance provisions for the 2004 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Khorasan. The common name for a variety of wheat (*Triticum turanicum*) that is marketed under trademarks such as Kamut. Khorasan is considered to be spring wheat for the purposes of this policy.

* * * * *

Local market price. The cash grain price per bushel for the applicable quality level indicated below and offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the applicable quality level indicated below. Factors not associated with the specified quality levels; including but not limited to protein, oil or moisture content, or milling quality will not be considered.

(1) U.S. No. 2 for Wheat (subclass hard amber durum for durum wheat and subclass northern spring for hard red spring wheat), except Khorasan; barley (including hull-less barley); oats (including hull-less oats); rye; and flax.

(2) The quality factor levels required for durum wheat to grade U.S. No. 2 for Khorasan.

(3) No. 2 grade buckwheat determined in accordance with the applicable state grading standards.

* * * * *

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the applicable late planting period following the latest final planting date. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

* * * * *

Small grains. Wheat, including only common wheat (*Triticum aestivum*), club wheat (*T. compactum*), durum wheat (*T. durum*) and Khorasan (*T. turanicum*); barley (*Hordeum vulgare*), including hull-less barley and excluding black barley; oats (*Avena sativa*, and *A. byzantina*), and hull-less oats (*A. Nuda*); rye (*Secale cereale*); flax (*Linum usitatissimum*); and buckwheat (*Fagopyrum esculentum*).

* * * * *

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat, only initially planted spring wheat, only initially planted club wheat or only initially planted durum wheat. Separate optional units for initially planted winter wheat and initially planted spring wheat may be established only in counties having both winter and spring type final planting dates as designated in the Special Provisions. A separate optional unit for club wheat may be established only in counties for which the Special Provisions designate club wheat as a wheat type (separate optional units may be established for initially planted winter club and initially planted spring club wheat if the Special Provisions specify both as wheat types). A separate optional unit for durum wheat may be established only in counties for which the Special Provisions designate durum wheat as a separate wheat type (separate optional units may be established for initially planted winter durum wheat and initially planted spring durum wheat if the Special Provisions specify both as wheat types).

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for each crop in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case each type must be insured using the price election for the respective type. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) In addition to the requirements of section 3 of the Basic Provisions, in counties with both fall and spring sales closing dates for the insured crop, you may only change your coverage level or price election until the spring sales closing date if you do not have any insured fall planted acreage of the insured crop. If you have any insured fall planted acreage of the insured crop, you may not change your coverage level or price election after the fall sales closing date.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque Counties, Iowa; and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Nevada; and Utah.	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner; McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.
Barley:		
All New Mexico counties except Taos; Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	September 30	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas Counties, Colorado, and all Colorado counties south and east thereof; Connecticut; Kansas; Massachusetts; New York; and Rhode Island.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Clark, Humboldt, Nye and Pershing Counties, Nevada; and Box Elder, Millard and Utah Counties, Utah.	October 31	November 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas, and all Colorado counties south and east thereof; all Nevada counties except Clark, Humboldt, Nye and Pershing; Taos County, New Mexico; all Utah counties except Box Elder, Millard and Utah; and all other states except Arizona, and (except) Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	March 15	March 15.
Oats:		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity.	October 31	October 31.
Del Norte, Humbolt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland, and all Virginia counties east thereof; and all other states except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	March 15	March 15.
Rye:		

Crop, state and county	Cancellation date	Termination date
All states	September 30	September 30.
Flax:		
All states	March 15	March 15.
Buckwheat:		
All states	March 15	March 15.

6. Insured Crop

* * * * *

(b) * * *

(2) May report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage except as set forth herein. If the Special Provisions allow a reduced premium amount for acreage intentionally destroyed prior to harvest, you may qualify for such reduction only if you notify us in writing on or before the date designated in the Special Provisions of the intended destruction, and do not claim an indemnity on the acreage. No premium reduction will be allowed if the required notice is not given or if you claim an indemnity for the acreage. Upon receiving timely notice, insurance coverage on the acreage you do not intend to harvest will cease and we will revise your acreage report to indicate the applicable reduction in premium. If you do not destroy the crop as intended, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions.

(c) In counties for which the actuarial table provides premium rates for the Wheat or Barley Winter Coverage Endorsement (7 CFR 457.102), additional coverage is available for wheat or barley damaged between the time coverage begins and the spring final planting date. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

(d) In counties for which the actuarial table provides premium rates for malting barley coverage, an endorsement is available (7 CFR 457.118) that provides additional insurance protection for malting barley. This endorsement provides coverage for producers who grow malting barley under contract and for those who do not have a contract. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Basic Provisions (§ 457.8), and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (§ 457.102) if you have elected such endorsement, the insurance period is as follows:

(a) * * *

(1) For oats, rye, flax and buckwheat, the following limitations apply:

* * * * *

(2) * * *

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, any winter barley or winter wheat that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of wheat or barley but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force. Any winter barley or winter wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium and price election applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type. If you have elected coverage under a barley or wheat winter coverage endorsement (if available in the county), insurance will be in accordance with the option.

* * * * *

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or fall planted wheat is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium and price election. Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date. Any acreage of such fall planted barley or fall planted wheat that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant. If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) * * *

(4) The following applicable date of the calendar year in which the crop is normally harvested:

(i) September 25 following planting in Alaska;

(ii) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(iii) October 31 in all other states; or

* * * * *

9. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these crop provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 9(a)(1)) and in any winter coverage endorsement for which you are eligible and which you have elected;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) Damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated (If the Special Provisions provide more than one fall final planting date, the fall final planting date applicable to policies with the Wheat or Barley Winter Coverage Endorsement will be used for this purpose, regardless of whether or not the endorsement is actually in effect.); and

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (including rye) in any county for which the Special Provisions contain only a fall final planting date (including final planting dates in December, January and February).

(c) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or the number of bushels for the applicable crop specified below, multiplied by your price election and your share:

(1) 2 bushels for flax or buckwheat;

(2) 4 bushels for wheat; or

(3) 5 bushels for barley or oats.

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using the price election and production guarantee for the crop type that is replanted and insured. For example, if damaged spring wheat is replanted to durum wheat, the price election applicable to durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type guarantee and price election; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

* * * * *

11. Settlement of Claim

* * * * *

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable (see sections 11(c), (d), and (e)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

(c) * * *

(1) * * *

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

* * * * *

(d) Mature wheat, barley, oat, rye, and buckwheat production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only. If a moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of:

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 percent for rye and buckwheat.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain including the definition of terms used in section 11(d), result in:

(A) Wheat, except Khorasan, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; total damaged kernels (heat-damaged kernels will not be considered to be damaged); shrunken or broken kernels; defects (foreign material and heat damage will not be considered to be defects); a musty, sour, or commercially objectionable foreign odor (except smut odor); or grading garlicky, light smutty, smutty or ergoty;

(B) Barley, except hull-less barley, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; percentage of sound barley (heat-damaged kernels will be considered to be sound barley); damaged kernels (heat-damaged kernels will not be considered to be damaged); thin barley; black barley; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading blighted, smutty, garlicky or ergoty;

(C) Oats, except hull-less oats, not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight; percentage of sound oats (heat-damaged kernels will be considered to be sound oats); a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading smutty, thin, garlicky or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight; percent damaged kernels (heat-damaged kernels will not be considered to be damaged); thin rye; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading light smutty, smutty, light garlicky, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to test weight; damaged kernels (heat-damaged kernels will not be considered to be damaged); or a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor);

(ii) Deficiencies in the quality of buckwheat, determined in accordance with applicable state grading standards, result in it not meeting No. 3 grade requirements due to test weight; a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or grading garlicky, smutty or ergoty if such grades are provided for by the applicable state grading standards;

(iii) Quality factors for Khorasan fall below the levels contained in the Official United States Standards for Grain that cause durum wheat to grade less than U.S. No. 4. For example, if durum wheat grades less than U.S. No. 4 when its test weight falls below 54.0 pounds per bushel, Khorasan would be eligible for quality adjustment if its test weight falls below 54.0 pounds per bushel. The same quality factors considered for quality adjustment of durum wheat will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of Khorasan seed. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat;

(iv) Quality factors for hull-less barley fall below the levels contained in the Official United States Standards for Grain that cause barley to grade less than U.S. No. 4. For example, if barley grades less than U.S. No. 4 when its test weight falls below 40.0 pounds per bushel, hull-less barley would be eligible for quality adjustment if its test weight falls below 40.0 pounds per bushel. The same quality factors considered for quality adjustment of barley will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less barley. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less barley at the same levels applicable to barley;

(v) Quality factors for hull-less oats fall below the levels contained in the Official United States Standards for Grain that cause oats to grade less than U.S. No. 4. For example, if oats grade less than U.S. No. 4 when its test weight falls below 27.0 pounds per bushel, hull-less oats would be eligible for quality adjustment if the test weight falls below 27.0 pounds per bushel. The same quality factors considered for quality adjustment of oats will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less oats. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less oats at the same levels applicable to oats; or

(vi) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us;

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjustor), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Small grain production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

* * * * *

12. Late Planting

A late planting period is applicable to small grains, except to any barley or wheat acreage covered under the terms of the Wheat or Barley Winter Coverage Endorsement. Barley or wheat covered under the terms of the Winter Coverage Endorsement must be planted on or prior to the applicable final planting date specified in the Special Provisions. In counties having one fall final planting date for acreage covered under the Wheat or Barley Winter Coverage Endorsement and another fall final planting date for acreage not covered under the endorsement, the fall late planting period will begin after the final planting date for acreage not covered under the endorsement.

* * * * *

■ 3. Amend the crop insurance endorsement contained in § 457.102 as follows:

■ a. Revise the section title; and

■ b. Revise the endorsement, all to read as follows:

§ 457.102 Wheat or barley winter coverage endorsement.

United States Department of Agriculture

Federal Crop Insurance Corporation

Wheat or Barley Winter Coverage Endorsement

(This is a continuous endorsement)

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of the Small Grains Crop Provisions subject to the terms and conditions described herein.

2. This endorsement is available only in counties for which the Special Provisions for the insured crop designate both a fall final planting date and a spring final planting date, and for which the actuarial documents provide a premium rate for this coverage.

3. You must have a Small Grains Crop Insurance Policy in force and elect to insure barley or wheat under that policy.

4. You must select this coverage, by crop, on your application for insurance. Failure to do so means you have rejected this coverage for both wheat and barley and this endorsement is void.

5. In addition to the requirements of section 34(b) of the Basic Provisions and section 2 of the Small Grains Crop Provisions, optional units may be established for barley if each optional unit contains only initially planted winter barley or only initially planted spring barley.

6. If you elect this endorsement for winter barley, the contract change, cancellation, and termination dates applicable to wheat in the county will be applicable to all your spring and winter barley.

7. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

8. The provisions of section 14 of the Basic Provisions are amended to require that all notices of damage be provided to us by the spring final planting date designated in the Special Provisions.

9. All eligible acreage of each crop covered under this endorsement must be insured.

10. The amount of any indemnity paid under the terms of this endorsement will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

11. Whenever any winter wheat or barley is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement.

(b) Replant the acreage to an appropriate variety of the insured crop, if it is practical, and receive a replanting payment in accordance with the terms of section 9 (Replanting Payments) of the Small Grains Crop Insurance Provisions. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement, and the production guarantee for winter wheat or barley will remain in effect.

(c) Destroy the remaining crop on such acreage. By doing so, you agree to accept an appraised amount of production determined in accordance with section 11(c)(1) of the Small Grains Crop Insurance Provisions to count against the unit production guarantee. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 11 (Settlement of Claim) of the Small Grains Crop Insurance Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available. If you elect to plant and elect to insure a spring type of the same crop (you must elect whether or not you want insurance on the spring type of the same crop at the time we release the winter type acreage), you must pay additional premium for the insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to a spring type of the insured crop, and you must:

(1) Plant the spring type in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining acreage of the winter type; and

(2) Store or market the production in a manner which permits us to verify the amount of spring type production separately from any winter type production. In the event you are unable to provide records of production that are acceptable to us, the spring type acreage will be considered to be a part of the original winter type unit.

Signed in Washington, DC, on June 3, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–14413 Filed 6–4–03; 2:15 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N–0068]

Beverages: Bottled Water; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 8, 2003, for the direct final rule that appeared in the **Federal Register** of March 3, 2003 (68 FR 9873). The direct final rule amends the bottled water quality standards regulations by establishing an allowable level for uranium. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1640.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 2003 (68 FR 9873), FDA published a direct final rule that amends the bottled water quality standards regulations (21 CFR part 165) by establishing an allowable level for uranium. Interested persons were given until May 2, 2003, to comment on the direct final rule. FDA stated that the effective date of the direct final rule would be December 8, 2003, and, if the agency received no significant adverse comments, it would publish a notice of confirmation of the effective date no later than June 11, 2003. FDA received no significant adverse comments within the comment period. Therefore, FDA is confirming that the effective date of the direct final rule is December 8, 2003. As noted in the direct final rule, FDA is publishing this confirmation document 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their bottled water products into compliance with the quality standard imposed by the new rule.

Dated: June 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14477 Filed 6–6–03; 8:45 am]

BILLING CODE 4164–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 350, and 369

[Docket No. 78N–0064]

RIN 0910–AA01

Antiperspirant Drug Products For Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) antiperspirant drug products are generally recognized as safe and effective and not misbranded as part of FDA's ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on its proposed regulation, issued as a tentative final monograph (TFM), and all new data and information on antiperspirant drug products that have come to the agency's attention.

DATES: *Effective Date*: This rule is effective December 9, 2004.

Compliance Dates: The compliance date for products with annual sales less than $25,000 is June 9, 2005. The compliance date for all other products is December 9, 2004.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The Agency's Conclusions on the Comments
A. General Comments on OTC Antiperspirant Drug Products
B. General Comments on Labeling of OTC Antiperspirant Drug Products
C. Comments on Category III Effectiveness Testing
D. Comments on Testing Guidelines
E. Comments on Antiperspirant Active Ingredients
F. Comments on the Safety of Aluminum Ingredients
III. Agency Changes
IV. Summary of Changes From the Proposed Rule
V. The Agency's Final Conclusions
VI. Analysis of Impacts
VII. Paperwork Reduction Act of 1995
VIII. Environmental Impact
IX. Federalism
X. Section 369.20 Revision
XI. References
Monograph (Part 350)

I. Background

In the **Federal Register** of October 10, 1978 (43 FR 46694), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC antiperspirant drug products, together with the recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products (the Panel), which evaluated the data on these products. The agency's proposed regulation (TFM) for OTC antiperspirant drug products was published in the **Federal Register** of August 20, 1982 (47 FR 36492).

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency issued a final rule establishing that certain active ingredients in OTC drug products are not generally recognized as safe and effective and are misbranded. These ingredients included seven antiperspirant ingredients, which are included in § 310.545(a)(4) (21 CFR 310.545(a)(4)). In this rulemaking, the agency is adding one additional ingredient to this section. (See section III.1 of this document.)

In the **Federal Register** of March 23, 1993 (58 FR 15452), the agency requested public comment on two citizen petitions, and a response to one of the petitions, related to the safety of aluminum compounds in OTC antiperspirant drug products. This final monograph completes the TFM and provides the substantive response to the citizen petitions.

Twenty-four months after the date of publication in the **Federal Register**, for products with annual sales less than $25,000, and 18 months after the date of publication in the **Federal Register**, for all other products, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application (NDA) or abbreviated new drug application. Further, any OTC drug product subject to this final monograph that is repackaged or relabeled after the compliance dates of the final rule must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

In response to the TFM on OTC antiperspirant drug products and the request for comment on the citizen petitions, the agency received 20 comments. One manufacturer requested an oral hearing before the Commissioner of Food and Drugs on six different issues. Copies of the information considered by the Panel, the comments, and the hearing request are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. "OTC Volumes" cited in this document refer to information on public display.

The agency received some "feedback" communications under the OTC drug review procedures (see the **Federal Registers** of September 29, 1981 (46 FR 47740) and April 1, 1983 (48 FR 14050)). The agency has included these communications in the administrative record and addressed them in this document.

The safety issues raised by the citizen petitions are discussed in section II.F of this document. The agency believes it has adequately responded to the six issues related to the hearing request; therefore, a hearing is not necessary.

II. The Agency's Conclusions on the Comments

A. General Comments on OTC Antiperspirant Drug Products

(Comment 1) One comment requested that FDA reconsider its position that OTC drug monographs are substantive, as opposed to interpretive, regulations.

The agency addressed this issue and reaffirms its conclusions as stated in

paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products (May 11, 1972, 37 FR 9464 at 9471 to 9472) and in paragraph 1 of the preamble to the TFM in the present proceeding (47 FR 36492 at 36493).

(Comment 2) Three comments disagreed with the agency's proposed definition of an antiperspirant: "A drug product that, when applied topically to the underarm, will reduce the production of perspiration (sweat) at that site," (47 FR 36492 at 36503). One comment contended it was unduly restrictive and unnecessary to limit use only in the underarm area because it is not the only area of the body upon which these products could potentially be applied. The comment asked the agency to modify the definition to parallel the pharmacologic activity of the active ingredients and suggested: "A drug product that, when applied topically, will reduce the production of perspiration (sweat) at that site."

A second comment stated that the definition limiting use to the underarm only would adversely affect its products labeled for use on the hands and for use with orthotic and prosthetic appliances (to keep appliance-skin contact areas dry). Noting that the agency and the Panel recognized the similarities and differences between axillary and foot perspiration, a third comment stated that ingredients effective in the underarm area are probably effective to control foot perspiration.

The agency agrees with the first comment that it is not necessary to specify the area of use on the body in the definition of an antiperspirant because that information is included in the product's labeling. Accordingly, the agency is deleting the phrase "to the underarm" from the definition of an antiperspirant in § 350.3 (21 CFR 350.3) of this final monograph to read: "*Antiperspirant.* A drug product applied topically that reduces the production of perspiration (sweat) at that site." The use of an antiperspirant on other areas of the body, as mentioned by the second and third comments, is discussed in section II.A, comment no. 4 and section II.C, comment 14 of this document.

(Comment 3) One comment stated that the TFM for OTC antiperspirant drug products was substantively and procedurally defective because it failed to address adequately the Panel's Category III recommendations concerning "enhanced duration of effect" and "problem perspiration" and failed to state what testing was required to substantiate these claims. The comment requested that FDA issue a new or amended TFM to address these issues.

The agency has determined that there is no need to withdraw, amend, or initiate a new TFM. Since the Panel's report was published in 1978, the procedural regulations for the OTC drug review were revised to comply with the Court ruling in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The revised regulations (46 FR 47730, September 29, 1981) provide that TFMs and final monographs will no longer contain recommended testing guidelines. The agency is not required by statute or regulation to include testing guidelines as part of OTC panel reports or TFMs. The agency stated in proposed § 350.60 of the TFM (47 FR 36492 at 36504) and states in § 350.60 of this final monograph (21 CFR 350.60) that "To assure the effectiveness of an antiperspirant, the Food and Drug Administration is providing guidelines that manufacturers may (emphasis added) use in testing for effectiveness."

The "enhanced duration of effect" and the "problem perspiration" issues are discussed in section II.C, comments 10 and 12 of this document. Extended duration of effect claims have been placed in Category I based on data submitted by other comments (see also comment 12). The agency has determined that claims for problem perspiration are outside the scope of this monograph because no data were submitted to support such claims (see also comment 10).

(Comment 4) One comment contended that the proposed monograph would have a disastrous economic effect on its company, which markets an antiperspirant product first formulated in 1902 and labeled for excessive perspiration, including keeping the hands free of perspiration (labeled for use on the hands for tennis, racquetball, bowling, football, and other sporting uses), and marketed for prosthesis and orthotic use (for amputees to keep their appliance contact areas dry).

To qualify for exemption from the "new drug" definition under the 1938 grandfather clause of the act, the drug product must have been subject to the Food and Drug Act of 1906, prior to June 25, 1938, and at such time its labeling must have contained the same representations concerning the conditions of its use (21 U.S.C. 321(p)(1)). Under the 1962 grandfather clause of the act, a drug product which on October 9, 1962 was: (1) Commercially used or sold in the United States; (2) not a "new drug" as defined in the 1938 act; and (3) not covered by an effective NDA under the 1938 act, would not be subject to the added requirement of effectiveness "when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day." (Public Law 87–781, section 107(c)(4), 76 Stat. 788, note following 21 U.S.C. 321).

The person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption. See *United States* v. *An Article of Drug* * * * "*Bentex Ulcerine*," 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973). Furthermore, the grandfather clause will be strictly construed against one who invokes it. See *id.*; *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966). A change in composition or labeling precludes the applicability of the grandfather exemption. See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 663 (1973).

Although the comment stated that its drug products have been marketed since 1902 with hand perspiration labeling claims, no evidence was submitted to show that the labeling and composition of the products have remained unchanged since either 1938 or 1962, so that they qualify as grandfathered products. The agency requested product labeling from these years on several occasions (Refs. 1, 2, and 3), but none was ever provided. Without such evidence, the products do not qualify for either grandfather exemption. The burden of proof with respect to the grandfather exemption is not on FDA, but on the person seeking the exemption. See *An Article of Drug* * * * "*Bentex Ulcerine*," *supra*.

The 1938 and 1962 grandfather clauses apply only to the new drug provisions of the act (see 21 CFR 314.200(e)) and not to the adulteration and misbranding provisions. The OTC drug review was designed to implement both the misbranding and the new drug provisions of the act. (See § 330.10 (21 CFR 330.10), 37 FR 9464 at 9466.) The grandfather clauses do not preclude the agency from reviewing any currently marketed OTC drug product, regardless of whether it has grandfather protection from the new drug provisions, in order to ensure that it is not misbranded.

Although the comment claimed this final rule would have a disastrous economic effect on its company if antiperspirants can be labeled only for underarm use, it provided no documentation about this impact. The agency notes that while the company's products would need to be relabeled to bear different indications, as long as the monograph conditions are met, the products could remain in the marketplace after relabeling occurred. The economic impact of this final rule is discussed in section VI of this document.

B. General Comments on Labeling of OTC Antiperspirant Drug Products

(Comment 5) Several comments contended that FDA should not incorporate the "exclusivity policy" in the final monograph by prescribing specific labeling terminology to the exclusion of other truthful nonmisleading language.

After these comments were submitted, in the **Federal Register**s of May 1, 1986 (51 FR 16258) and March 17, 1999 (64 FR 13254), the agency published final rules changing its labeling policy for stating the indications for use of OTC drug products. Under § 330.1(c)(2) (21 CFR 330.1(c)(2)), the agency provides options for labeling OTC drug products. The final monograph in this document is subject to the labeling provisions in § 330.1(c)(2). In addition, the monograph labeling follows the format and content requirements of § 201.66 (21 CFR 201.66).

(Comment 6) One comment objected to limiting the terms proposed in § 350.50(b)(1), (b)(2), and (b)(3) to "reduces," "decreases," "diminishes," and "lessens." The comment stated that "lower" and "mitigate" are synonyms for "reduce" and other words and phrases state, truthfully and accurately, the effect of antiperspirants.

Several comments disagreed with the agency that words such as "stop," "check," "halt," "end," "eliminate," and "protect" should not be used in the labeling of antiperspirant drug products, even if preceded by the word "helps," because these words imply the ability to stop underarm perspiration totally and would therefore mislead the consumer about the effectiveness of antiperspirant drug products. The comments mentioned the minority Panel position that "The Panel did not see scientific data to indicate that a consumer can differentiate between such words as 'halts,' 'checks,' 'stops,' and 'ends,' as disallowable words versus 'diminishes' and 'reduces' as allowable words," (43 FR 46694 at 46725). One comment agreed with the minority because a review of the entire record of this proceeding found no studies or data to support a decision to disallow "protects," "halts," "checks," and "stops." Another comment requested a hearing on this issue.

One comment disagreed with the Panel's Category II status for the following labeling claims (43 FR 46694 at 46724): "Dry," "dry formula," "super dry," "helps stop wetness," "completely guards your family," "helps stop embarrassing perspiration wetness," "complete protection," "really helps keep you dry," and "gentle enough for sensitive areas of the body." The comment asked the agency to allow these claims in the final monograph.

The agency has re-evaluated these claims in light of the comments' arguments and its current policy to provide consumer friendly OTC drug product labeling. The agency is deleting one previously proposed word ("diminishes") and adding some more consumer-friendly words ("sweat" and "sweating") to antiperspirant product labeling.

The agency proposed the word "diminishes" in § 350.50(b) as one of the optional terms that could be used as the first word of the indications statement. While the word "diminish" means to "reduce," the agency does not consider it as consumer-friendly as the other optional words "reduces," "decreases," or "lessens." Therefore, the agency is not including "diminishes" in § 350.50(b) of this final monograph as an FDA-approved term. The agency rejected the words "mitigate" and "lower" in the TFM (comment 14, 47 FR 36492 at 36496 to 36497). The agency's position has not changed. While the terms "mitigate," "lower," and "diminishes" are not in the monograph and the agency does not favor their use, manufacturers may use these terms, or other words or phrases that truthfully and accurately express a similar meaning, under the flexible labeling policy in § 330.1(c)(2).

The agency is not changing its position on the use of the word "helps" in conjunction with the words "stop," "halt," "check," "end," and "eliminate." In the TFM (comment 14), the agency stated that these words imply the ability to stop underarm perspiration totally and would therefore mislead consumers about antiperspirant effectiveness. Although neither the Panel nor the agency had any consumer comprehension studies to support a decision to disallow this information, the comments also did not provide any data to support these terms. The agency would consider these terms if data are provided to show that consumers would not be misled about the effect of antiperspirant drug products. The agency is not including "helps protect" before "underarm dampness," "underarm perspiration," or "underarm wetness," because the language is not clear and could confuse consumers.

The agency is not including any "dry" or similar claims ("dry," "dry formula," "super dry," "really helps keep you dry") in this final monograph because no criteria have been established to define "dry." Thus, what may be "dry" for one manufacturer's product may not be "dry" for another manufacturer's product. The agency would consider including "dry" claims in the monograph if appropriate criteria for such claims are developed.

The agency is not including claims such as "complete protection" or "completely guards your family" in the monograph because there is no evidence that antiperspirant drug products provide "complete" protection. The agency is not including the claim "gentle enough for sensitive areas of the body" because the words "sensitive areas" may imply that the product can be used on other body areas in addition to the underarm. The agency is not including the claim "helps stop embarrassing perspiration wetness" because what is "embarrassing" or "problem" perspiration for one individual may not be "embarrassing" or a "problem" for others. (See section II.C, comment 10 of this document.)

The agency is not including both "perspiration" and "wetness" in the same claim because it considers the duplicative wording unnecessary. The currently allowed claims are "* * * underarm wetness" or "* * * underarm perspiration." The agency would have no objection to "* * * underarm perspiration wetness," but such would have to be done under the flexible labeling provisions of § 330.1(c)(2). The agency is adding the words "sweat" and "sweating" in § 350.50(b) as other ways to describe "wetness" and "perspiration," because consumers regularly use these terms to describe perspiration. Based on the previous discussion, the agency concludes that a hearing is not warranted on these issues.

(Comment 7) Three comments requested that OTC antiperspirant drug products be exempted from the keep out of reach of children and accidental ingestion warnings in § 330.1(g) because these products are not toxic by oral ingestion. One comment noted only one reported ingestion in 30 years of marketing antiperspirant products. Another comment stated that aerosols, in particular, should be exempt from the ingestion warning due to the characteristics of the delivery system and the warnings already required for aerosols pressurized by gaseous propellants under § 369.21 (21 CFR 369.21).

Although the comments did not submit any data to show that antiperspirant drug products are safe if ingested, the agency believes these products should not be toxic by oral

ingestion for most individuals. However, individuals with renal dysfunction or immature renal function (i.e., infants) are at a higher risk from any exposure to aluminum. Further, ingestion of the various inactive ingredients present in these products may make young children ill or cause other undesirable consequences. Without adequate proof of safety if accidental ingestion were to occur, the agency has no basis to exempt OTC antiperspirant drug products from the accidental ingestion warning.

Although aerosol antiperspirant drug products are unlikely to be accidentally ingested by most consumers, the agency notes that the product containers are similar to those used for some food products. Spraying an aerosol into the mouth and ingesting it could be more hazardous than ingesting other dosage forms of the product because of the aerosol propellants. The warnings required under § 369.21, for those drugs in dispensers pressurized by gaseous propellants, are not related to ingestion, but state the following: "Avoid spraying in the eyes. Do not puncture or incinerate. Do not store at temperatures above 120 °F. Keep out of reach of children." The agency does not consider these warnings a basis to exempt aerosol antiperspirants from the accidental ingestion warning required by § 330.1(g) for topical drug products. The last statement of the warning required by § 369.21 and the first warning required by § 330.1(g) (i.e., "Keep out of reach of children.") are identical as of March 17, 1999 (64 FR 13254 at 13294). Section 350.50(c)(4)(ii)) of the final monograph requires aerosol antiperspirant drug products to bear the language in § 369.21. These products do not have to repeat the first general warning required by § 330.1(g) but need to have the accidental ingestion warning required by § 330.1(g).

(Comment 8) Two comments objected to the proposed warning in § 350.50(c) for aerosol antiperspirants, which states: "Avoid excessive inhalation." The comments argued that the warning duplicates and gives less information than the current warning required for aerosol drug products under § 369.21.

Section 369.21 requires the following warning statement for a drug packaged in a self-pressurized container in which the propellant consists in whole or in part of a halocarbon or hydrocarbon: "Use only as directed. Intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal." The agency does not consider this warning (which addresses deliberate misuse) as being the same as a general statement warning people to avoid excessive inhalation. There are many people who would not deliberately misuse the product who should be alerted to keep away from their face and mouth and to avoid excessive inhalation. The warning appears in the final monograph in more consumer friendly language and in the new labeling format as follows: "When using this product [bullet] keep away from face and mouth to avoid breathing it." (See § 201.66(b)(4) for description of a "bullet.")

C. Comments on Category III Effectiveness Testing

(Comment 9) Several comments objected to user perception testing to substantiate Category III effectiveness claims. (See comment 24, 47 FR 36492 at 36499.) The comments contended that the user perception test is not reliably indicative of product effectiveness and offers at best a crude index of activity that is difficult to employ for precise qualitative and quantitative evaluations. The comments considered objective gravimetric sweat collection procedures more reliable than user perception testing to assess antiperspirant activity levels and requested that user perception testing be deleted. Three comments submitted data on user perception testing of Category III claims, including extra effective, 24-hour duration, emotional sweating, and foot perspiration (see section II.C, comments 11 through 14 of this document).

The agency has determined that user-perception test data support emotional sweating, 24-hour protection, and extra effective claims. Accordingly, the agency concludes that there are sufficient data on user perception tests (including both user and independent observer perception tests) for use of antiperspirants for the underarm. No further user perception tests are necessary if an underarm antiperspirant shows at least 20 percent sweat reduction by gravimetric tests for emotional sweating and 24-hour protection claims or 30 percent sweat reduction for extra effective claims. Adequate user perception tests have not been conducted for parts of the body other than the underarms, such as the hands or feet. The agency will still require user perception and other effectiveness data to support use of antiperspirants on the hands and feet (see section II.A, comment 4 and section II.C, comment 14 of this document).

(Comment 10) Several comments objected to the Category III status of the claims "problem perspiration" and "especially troublesome perspiration." One comment contended these claims are not inherently misleading or untruthful and many people who do not perspire heavily may, at times, consider themselves to have "problem" or "troublesome" perspiration.

Other comments objected to the agency's definition of problem perspiration as affecting the upper 5 percent of perspirerers, contending that a more realistic approach would be to let consumers define the meaning of these words by running efficacy studies on people who identify themselves as having problem or especially troublesome perspiration. One comment objected to the economic consequences of testing the top 5 percent of the population to establish a "problem perspiration" claim, because this could raise the price for one efficacy evaluation from the current $5,000 to $10,000 up to $200,000. The comment requested a hearing on this issue if FDA did not revise its approach.

No data were submitted to the agency to show that any OTC antiperspirant drug product is effective in reducing "problem" or "especially troublesome" perspiration. The agency is not aware of any products that currently qualify as effective for those conditions. If products are found to be effective in the future, the agency will include a definition and labeling for "problem" or "especially troublesome" perspiration in the monograph. The agency proposed in the tentative final monograph that a 30 percent reduction in sweat production in the upper 5 percent of perspirerers is necessary for a "problem perspiration claim" (47 FR 36492 at 36500). As discussed in section II.C, comment 9 of this document, gravimetric testing is sufficient to prove these claims. The agency would find acceptable an antiperspirant effectiveness study on a population of individuals who perceive themselves to have "problem perspiration," as one comment suggested. Based on changes in the testing to support these claims, the agency concludes that a hearing is not needed.

(Comment 11) Several comments objected to the agency's proposed Category II classification of the claims "extra strength," "extra effective," or any other comparative effectiveness claims (see comment 19, 47 FR 36492 at 36498). The comments argued that if manufacturers can demonstrate by appropriate testing and methods of statistical analysis that one product is more effective than another, they should be permitted to so inform consumers. The comments noted that the agency had approved an NDA for an acetaminophen "extra strength" product and allowed sunscreen products to label their degree of effectiveness. One comment requested a hearing on this subject.

To prove the validity of comparative claims, two comments submitted both gravimetric and perceptual data (Refs. 4 and 5). Another comment submitted gravimetric data only (Refs. 6 and 7) and stated that one study showed that a 10 percent difference in antiperspirant effectiveness can be measured with currently marketed antiperspirant products. This comment stated that adequate data (Ref. 8) had been submitted to the Panel (43 FR 46694 at 46715) to show that as differences in antiperspirant performance levels increase, larger numbers of consumers perceive the difference. These data included a chart plotting differences in sweat reduction against the percentage of subjects who noted variations in axillary wetness. The chart shows that at 20 percent sweat reduction, approximately 45 to 50 percent of the subjects noticed a difference; at 35 percent sweat reduction, approximately 60 percent noticed a difference; and at 50 percent sweat reduction, approximately 75 percent noticed a difference. The comment contended that this study confirmed the Panel's determination that the user can perceive a shift of at least 10 percent in antiperspirant effectiveness and that a product providing a 30 percent or greater sweat reduction is perceived as more effective than a standard antiperspirant. The comments requested monograph status for "extra strength" and "extra effective" claims, as qualified by gravimetric studies.

The agency has determined that some of the studies (Ref. 4) meet the Panel's "guidelines for user perception test to be done for claims of 'extra-effective' to be classified as Category I" (43 FR 46694 at 46730). In these studies, two solid stick antiperspirant products (containing either 10 percent or 25 percent aluminum chlorohydrate) were compared by both a gravimetric and a user perception test. In the gravimetric test, 91 female subjects used the 10-percent product, and 88 used the 25-percent product. A 17-day conditioning period with no antiperspirant use was followed by four daily applications of one of the products to a randomly selected axilla (armpit or underarm). The opposite axilla received no treatment and served as the control. Baseline sweat production was determined the first day of the test. On days two and three, the antiperspirant was applied and 1 hour later a sweat production sample was collected. On day five, 24 hours after the fourth application, a sweat production sample was collected. Both the 10- and 25-percent products were more effective than the no treatment control for all time periods according to the statistical methods (Wilcoxon signed rank test) in the agency's guidelines for effectiveness testing of OTC antiperspirant drug products (Ref. 9). Evaluation of the Z values for the two 1-hour test days and the 24-hour test day showed that both products were statistically (Wilcoxon test) at least 20 percent better than the control axilla for all time periods ($p < 0.001$ for all three cases). Thus, both products met the requirements for standard effectiveness, i.e., a minimum of 20-percent reduction in underarm perspiration. Applying the same statistical methods to a 30-percent reduction in underarm perspiration on the last 24-hour data showed that the 25-percent product was more effective than no treatment ($p < 0.001$) and, thus, met one of the extra effective criteria.

The same study design was used in the user perception test except that the subjects applied the 10-percent product under one axilla and the 25-percent product under the other axilla. On day five, 24 hours after the fourth application, the 100 female subjects were asked "Under which arm do you feel drier?" All subjects had a preference: 33 favored the 10-percent product and 67 favored the 25-percent product. A statistically significant number of the subjects were able to perceive that the 25-percent product was more effective than the 10-percent product ($p = 0.0005$ one-sided). This result exceeded the Panel's requirement that 58 out of 100 subjects have a preference for the test antiperspirant (43 FR 46694 at 46731). Thus, these studies showed that the 25-percent aluminum chlorohydrate met the Panel's criteria (gravimetric measurements and user perception) for an extra effective claim.

The agency has determined that the studies indicate that gravimetric testing shows an adequate difference between a standard antiperspirant (with a 20-percent reduction in sweat) and an antiperspirant with at least a 30-percent reduction in sweat, as required by the Panel, to support an "extra effective" claim. The agency stated in the tentative final monograph (47 FR 36492 at 36499) that once the level of activity that is perceivable by users has been established using the Panel's recommended guidelines, it will not be necessary to perform user perception testing on individual products. Accordingly, the agency concludes that no further user perception testing is necessary for an "extra effective" claim, which is being included in the monograph for those antiperspirant products that reduce underarm perspiration by 30 percent or more using the guidelines for effectiveness testing of antiperspirant drug products referred to in § 350.60.

The Panel placed "extra-strength" claims in Category II because it concluded that "the presence of more active ingredient in an antiperspirant product cannot be used as a basis for a claim of added effectiveness because additional amounts of antiperspirant active ingredient do not necessarily result in improved product effectiveness" (43 FR 46694 at 46724). The Panel also stated that "the term 'extra-strength' normally refers to increased concentration of the active ingredient which would normally mean added effectiveness." Several comments agreed that more active ingredient may not yield more effectiveness. Thus, a product containing 20 percent of an active ingredient (compared to 15 percent) that did not provide 30 percent or more sweat reduction could not claim "extra strength" or "extra effective."

The agency does not believe that for antiperspirants the claim "extra strength" is as informative to consumers as the claim "extra effective." The agency considers "extra effective" to be the key information that consumers want to know to select an appropriate antiperspirant product. The agency is including this new labeling claim in § 350.50(b)(4) of this final monograph. Based on this discussion, the agency concludes that a hearing is not needed on this subject.

(Comment 12) Several comments objected to the Panel's Category III classification of claims for enhanced duration of effect, such as "24-hour protection," "one spray keeps you comfortably dry all day," "prolonged protection," etc. (43 FR 46694 at 46728). One comment stated that if an antiperspirant product can be shown to provide the required 20-percent reduction in perspiration under hotroom conditions for 24, 48, etc. hours after application, then duration claims have been substantiated.

Three manufacturers submitted gravimetric studies (Refs. 4, 7, 10, and 11) that used a hotroom to induce sweating and measured sweat collected in cotton pads twice over a 24-hour period. The tested ingredients showed a 20-percent or more reduction in sweat production for both collection times, which the comments contended satisfied enhanced duration claims such as "24 hour protection" and "all day protection." One comment added that its data (Ref. 11) support a variety of product forms (cream, roll-on, solid

stick) and, thus, the enhanced duration effect is not limited to product form.

The agency has determined that the data support a claim of enhanced duration for 24 hours according to the Panel's criteria. The protocols in seven of the studies (Refs. 7 and 10) varied only slightly from the Panel's recommended protocol. Subjects in one study abstained from antiperspirant use for 2 weeks prior to the study. Subjects in the other six studies stopped using antiperspirants 4 weeks prior to the studies. The subjects were pretreated with an antiperspirant for the 5 days prior to beginning sweat collection procedures. Sweat was collected 4 and 24 hours following the last antiperspirant application. Five studies included untreated axilla controls, and two studies included placebo controls. One product was tested in two different studies (one with a placebo and one without), and the results were virtually identical. The tests supported enhanced duration efficacy of 20 percent sweat reduction over the 24-hour period for aluminum zirconium tetrachloride (15.5 percent roll-on and 18.2 percent stick), zirconium tetrachloride (20 percent roll-on), aluminum chlorohydrate (6.8 percent aerosol), and aluminum chloride (20 percent solution).

Other data (Ref. 4) also supported enhanced duration of effectiveness for antiperspirant solid sticks containing 10 and 25 percent aluminum chlorohydrate. Subjects, who abstained from antiperspirant use for 17 days prior to the study, were pretreated with an antiperspirant for the 3 days prior to sweat collection, 1 and 24 hours after the last antiperspirant application. Standard hotroom and sweat collection procedures were used. Over the 24-hour period, both 10 percent and 25 percent aluminum chlorohydrate sticks reduced sweat production in the treated axilla by 20 percent compared to the untreated axilla. The 25-percent aluminum chlorohydrate product also showed a 30-percent reduction in sweat production.

Six other studies (Ref. 11) support enhanced duration claims. Most products showed a 20-percent reduction in sweat production compared to an untreated axilla for both the 4- and 24-hour evaluation periods, with several products showing a 30-percent sweat reduction. However, the studies did not identify the antiperspirant active ingredients.

The agency is including the following enhanced duration claims in § 350.50(b)(3) of this final monograph: "all day protection," "lasts all day," "lasts 24 hours," or "24 hour protection." In order to make such a claim, an antiperspirant product must reduce sweat production by at least 20 percent over a 24-hour period after application using the guidelines for effectiveness testing referred to in § 350.60. Antiperspirant products that meet the extra effective criteria (see section II.C, comment 11 of this document) over a 24-hour period can be labeled with both extra effective and enhanced duration claims (e.g., "24 hour extra effective protection," "all day extra effective protection," "extra effective protection lasts all day," etc.). Claims of enhanced duration for more than 24 hours are nonmonograph because the agency has not received any data to demonstrate antiperspirant effectiveness for more than 24 hours according to the Panel's criteria.

(Comment 13) Several comments objected to the Panel's Category III classification of claims for control of emotional sweating, e.g., induced by tension or stress (43 FR 46694 at 46728). The comments contended that a product's antiperspirant activity is the same whether the sweat is due to thermal conditions or emotional factors. Some comments disagreed with the need for additional testing, especially consumer perception testing, to establish these claims. One comment requested a hearing.

One comment submitted clinical data (Refs. 7 and 12) which it contended showed: (1) There is a valid scientific protocol that combines a gravimetric sweat test with a word-quiz stress test to measure reduction in emotionally-induced sweat; (2) an antiperspirant is not washed from the axillae during controlled emotional stressing, and excessive sweat does not diminish antiperspirant effectiveness; (3) an antiperspirant effective in reducing thermally-induced sweat is effective in reducing emotionally-induced sweat also; and (4) an antiperspirant that reduces emotionally-induced sweat by 20 percent or more meets the standard for antiperspirant effectiveness for which user perception and benefit has already been accepted and, thus, there is no need for additional user perception testing. The studies included aerosol, roll-on, and stick products containing aluminum chlorohydrate or aluminum zirconium tetrachlorohydrate, the major antiperspirant active ingredients.

The agency has determined that gravimetric sweat tests combined with mental stress tests support an emotionally-induced sweating claim. The data included 12 studies with the same design of 5 days each on panels of approximately 25 female subjects: Pretest-abstention from all antiperspirants for at least 4 weeks prior to the study; day one—pretreatment control sweat collection under no stress; day two—pretreatment control sweat collection under emotional stressing; days two through five—apply test product; and days four and five—posttreatment sweat collection under emotional stressing. Subjects applied the antiperspirant test formulation to one axilla and used either a comparative formulation, a control placebo formulation, or no treatment on the opposite axilla. A control emotional challenge test, which lasted for about 60 minutes, was done on day two and an emotional challenge test was done on days four and five of the study.

Emotional sweating was induced by having subjects do a word definition test conducted by a moderator experienced at insuring optimum stress. The subjects received monetary rewards for a correct definition, but forfeited some of their rewards for incorrect or untimely definitions. Subjects had a 5-second time limit to begin a response and a 15-second maximum time to give the actual word definition. After 60 minutes, sweat was measured gravimetrically from the preweighed absorbent pads. Standard sweat collection and statistical evaluation procedures were used. The median sweat output for the 12 studies was 1,257 milligrams (mg) for the pretreatment control under emotional stressing compared to 415 mg for the pretreatment control under no stress. This word definition test effectively elicited a sweat response.

In the 12 studies using the word definition test, there was at least a 20-percent reduction of sweat production. The top 10 percent of heavy sweaters from each study (25 subjects) having the highest sweating rates on the untreated axilla had a 36.8 percent average sweat reduction compared to 38.2 percent reduction in the remaining 90 percent of each population (196 subjects), showing no significant difference in effectiveness in the two groups. Majors and Wild (Ref. 13) obtained similar results when comparing individual percent reduction in thermal sweating in the antiperspirant-treated axilla to rate of sweating from the untreated axilla in 89 subjects. They found that heavy sweating did not affect the rate of reduction.

The products tested under the emotional sweat protocol were also evaluated under a standard thermal sweat protocol at 100 °F with 30 percent relative humidity. The average percent sweat reduction for aerosols was 37.0 percent for emotional sweating and 34.0 percent for thermal sweating, for sticks it was 46.0 percent for emotional sweating and 41.4 percent for thermal sweating, and for roll-ons it was 51.3 percent for emotional sweating and 53.3 percent for thermal sweating. These data show that the same products have similar average percent sweat reduction for both emotional and thermal sweating.

The agency concludes that gravimetric sweat tests combined with mental stress tests are sufficient to show effectiveness for control of emotionally-induced sweating; the data show antiperspirant drug products that are effective for thermal sweating are also effective for emotional sweating. The agency has determined that no additional testing (e.g., user perception tests) is required for an emotionally-induced sweating claim for products containing monograph ingredients that meet the guidelines for effectiveness testing of antiperspirant drug products referred to in § 350.60.

The agency is including the following emotionally-induced sweating claim in § 350.50(b)(2) of this final monograph: "also [select one of the following: 'decreases,' 'lessens,' or 'reduces'] underarm [select one of the following: 'dampness,' 'perspiration,' 'sweat,' 'sweating,' or 'wetness'] due to stress". Based on the previous discussion, the agency concludes that a hearing is not needed on this subject.

(Comment 14) One comment requested monograph status for 25 percent aluminum chlorohydrate to control foot perspiration based on gravimetric and perceptual data from four randomized, double-blind, bilateral, paired-comparison trials, each having 12 female subjects (Ref. 14). Treatment was randomly assigned; aluminum chlorohydrate was used on one foot and placebo on the other foot. A 25 percent aluminum chlorohydrate solution in 50 percent ethanol:50 percent water and a placebo control consisting of 50 percent ethanol:50 percent water were used in the first study. The same solutions in aerosol form were used in the other three studies. The procedure in the agency's "Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products" (Ref. 9) was modified for foot testing: (1) A 3-day pre-treatment period during which subjects were not to use any foot care products, with each subject receiving four daily product applications prior to final hotroom posttreatment testing collection; (2) sweat collection media were cotton socks rather than absorbent pads; (3) a required 5-minute period of mild exercise (walking around the hotroom at the beginning of each collection period); and (4) a modified method to calculate effectiveness due to the erratic rate of sweat collections for both treated and control feet.

The comment stated that the calculation technique included in the agency's guidelines could not be used for the following several reasons: (1) The increased number and higher concentration of sweat glands in the foot area, (2) the occlusive nature of the foot area, and (3) the erratic rate of sweat collections for both treated and control feet. The comment contended that by considering the baseline, the posttreatment sweat collections, and the preferential subject perception data, statistically significant differences could be shown between sweat collection values for the treated foot compared to baseline values.

The comment stated that based on at least a 5-percent difference between the measured sweat output of each foot, sweat reduction was achieved for the treated foot in 25 of 48 subjects (52 percent) compared to only 10 of 48 subjects (21 percent) for the control foot. The comment added that, based on the user perception questionnaire, 75 percent of the subjects (29 out of 39 subjects who were able to discriminate) were able to perceive after the hotroom exposure that the treated foot was drier compared to only 21 percent of the subjects (10 out of 48) who perceived the control foot to be drier.

A second comment submitted a proposed clinical protocol (Ref. 15), but never submitted any clinical data.

The agency has found the data are insufficient to support a foot antiperspirant claim. In axillary sweating tests submitted to the Panel, the range of effectiveness (average percent sweat reduction) of antiperspirants was 20 to 40 percent in most tests, with aerosols having a reduction range of 20 to 33 percent (43 FR 46694 at 46713). In the comment's studies on aluminum chlorohydrate for foot antiperspirancy (Ref. 14), the average percent sweat reduction was below 10 percent, which is considerably below the 20 percent minimum level of sweat reduction recommended by the Panel for efficacy testing of OTC antiperspirant drug products on the foot (43 FR 46728). In addition, the agency has a number of concerns about the comment's data treatment methods: (1) The particular sweat collections selected for analysis were not chosen consistently across studies but were based on arbitrarily chosen final sweat measurements that varied with the different studies, (2) the choice of a 5-percent difference between the measured sweat output of each foot as "clinically significant" seems arbitrary and was not prespecified in the protocol, (3) the efficacy criterion used (greater than 15 percent reduction from baseline) was apparently defined after the data were collected and the results are therefore potentially biased, and (4) comparison with baseline is not an adequate basis upon which to conclude product efficacy because it ignores placebo and time effects that are accounted for in between product comparisons. The agency's analysis of "across study" data (using the average of the two sweat collections on day four, or average of the four collections on day four and five as the baseline, and the average of the two final collections as a measure of the final sweat product) did not show a statistically significant mean (or mean percent) sweat reduction from baseline in treated or control feet.

The agency does not agree with the comment's evaluation of its user perception data, but considers the product as ineffective both in subjects who preferred placebo and in subjects with no preference. It appears that the comment chose to ignore tied preferences. However, when subjects with no preference were included in the analysis, 22 out of 48 subjects (45.8 percent) and 29 out of 48 subjects (60.4 percent) preferred the treated foot, before entering and after leaving the hotroom, respectively. Both proportions are not significantly different from 1/2 (two-tailed, $p = 0.28$ and 0.15, respectively). Furthermore, the subjects apparently could not perceive which foot, treated or untreated, was drier. More subjects failed to choose the drier foot, than chose it correctly, both at baseline and posttreatment. Thus, the wetness perception study failed to show that subjects are able to tell marginal differences in sweating of the feet.

The agency has concluded that no statistically significant treatment effect was found in sweat reduction or in subject's perception of sweat (Ref. 16). Thus, 25 percent aluminum chlorohydrate has not been shown to be an effective foot antiperspirant. The agency provided the second comment suggestions on its protocol; a revised protocol was acceptable (Ref. 17), but no test data were ever submitted. The agency is not including foot antiperspirancy claims in the final monograph.

D. Comments on Testing Guidelines

(Comment 15) Several comments requested that the background section of the effectiveness testing guidelines include the following: "FDA recognizes that alternative methodologies may be appropriate to qualify an antiperspirant drug product as effective. These

guidelines do not preclude the use of alternative methodologies that provide scientifically valid results."

The agency is adding this statement (but changing the words "alternative methodologies" to "alternate methods") and adding "subject to FDA approval" to provide for alternate methods and statistical evaluations of effectiveness test data.

(Comment 16) Several comments requested that the relative humidity of 35 to 40 percent in the effectiveness testing guidelines be lowered to 30 percent, the hotroom condition widely used by industry. One comment submitted the results of effectiveness studies (Refs. 7, 10, and 18) that used a hotroom operated at 30 + 3 percent relative humidity. The comment stated that 30 percent relative humidity accurately measures antiperspirant effectiveness without causing excessive discomfort to test subjects. Two other comments submitted effectiveness test data where the relative humidity in the hotroom was "about 35 percent" (Refs. 19 and 20) or "35 percent ± 5 percent" (Ref. 21).

Based on these data, the agency is revising the relative humidity range for hotroom conditions in the antiperspirant effectiveness testing guidelines from 35 to 40 percent to a range of 30 to 40 percent. Seven studies (Ref. 10) that showed an enhanced duration of effectiveness of 20 percent sweat reduction over a 24-hour period for several antiperspirant products (see also section II.C, comment 12 of this document) used a protocol (Ref. 18) in which the subjects were placed in a controlled environment with the temperature held at 100 ± 2 °F and the relative humidity held at 30 ± 3 percent. Because the subjects were able to generate at least 150 mg of sweat per axilla per 20 minute period, the agency considers the results of the gravimetric tests valid. In other studies (Refs. 20 and 21), sweating was induced by having the subjects sit in a hotroom maintained at a temperature of 100 ± 2 °F and at a relative humidity of about 35 percent or 35 ± 5 percent. These studies support claims of extra effectiveness and enhanced duration (24–hour claims). See section II.C, comments 11 and 12 of this document. To assure that test subjects sweat adequately during the hotroom test, the agency is adding the following baseline perspiration rate condition: "*Baseline perspiration rate.* Test subjects must produce at least 100 milligrams of sweat from the untreated or placebo control axilla in a 20-minute collection in the controlled environment."

(Comment 17) Two comments requested revision of the part of the antiperspirant effectiveness testing guidelines that involves application of a control formulation to the alternate axilla during testing. Noting that the guidelines state that the control formulation is to be "devoid of any antiperspirant activity * * * determined in a test compared to no treatment," a comment contended that it should be appropriate to compare antiperspirant activity directly against an untreated axilla and, thereby, reduce the time, complexity, and cost of the testing, especially the cost of developing a control formulation "devoid" of antiperspirant activity. The comment requested that the testing guidelines be revised to provide for the application of a control formulation or no treatment to the other axilla of each test subject. The other comment submitted data from two studies (Refs. 22 and 23) where one antiperspirant formulation was tested against both a placebo control and an untreated axilla control with virtually identical results; therefore, a placebo control was unnecessary to evaluate product effectiveness.

The data (Refs. 22 and 23) involved an aerosol spray containing 6.8 percent aluminum chlorohydrate tested by two gravimetric sweat tests under hotroom conditions to substantiate the claim that the product provides "all day wetness protection." Both studies had the same design: Day one—pretreatment control collection; days two, three, and four—application of antiperspirant; and days four and five—posttreatment sweat collection 4 and 24 hours after application. The data were evaluated using one of the statistical methods recommended in the antiperspirant testing guidelines. In one study (Ref. 22), the product was tested against a placebo aerosol in 44 subjects. The placebo was identical to the test formulation and supposedly devoid of antiperspirant activity; the formula difference was adjusted with aerosol propellant. The results were statistically significant and showed that the aluminum chlorohydrate aerosol effectively reduced sweat production by at least 20 percent more than the placebo aerosol at 4 and 24 hours after application. However, the placebo showed some antiperspirant activity. In the second study (Ref. 23), the same product was tested against an untreated axilla control in 49 subjects with statistically significant results. The aluminum chlorohydrate aerosol effectively reduced sweat production by at least 20 percent more on the treated axilla than the untreated control axilla at 4 and 24 hours after application.

The agency is unable to conclude from these data that an untreated comparator is equivalent to use of a placebo. The observed effect of a treatment (e.g., antiperspirant) may represent the sum of the pharmacological effects of the test drug and other effects associated with the intervention effort, which may include psychological effects and the effects of the excipients used in a product formulation. Although studies have been conducted in the past using no treatment for one axilla, the use of a placebo control for that axilla allows for assessment of the net treatment effects of the test article. Therefore, the agency is retaining the requirement for a placebo/vehicle control in the antiperspirant effectiveness testing guidelines.

The proposed guidelines stated that the control formulation is as similar as possible to the test formulation and devoid of any antiperspirant activity. As the placebo used in one study (Ref. 22) was not completely devoid of antiperspirant activity, the agency is revising the guidelines to state:

Hotroom procedure. (1) For gravimetric and user perception testing, treatments consist of the application of the test formulation to one axilla and the application of a placebo control formulation to the other axilla of each test subject. Except for the active ingredient, the placebo control formulation should be as similar as possible to the test formulation.

The agency concludes that this revised testing procedure will reduce the time, complexity, and cost of testing because it eliminates the cost of developing a control formulation "devoid" of antiperspirant activity.

E. Comments on Antiperspirant Active Ingredients

(Comment 18) Several comments noted a discrepancy in a heading in an active ingredient table in the Panel's report (43 FR 46694 at 46697), where "Metal:Halide" is used, and in proposed § 350.10 (47 FR 36492 at 36504), where "Al:Cl" is used. Two comments suggested that "Al:Cl" in the table heading and in § 350.10 should be changed to "Metal:Cl," because the ratio range in the table is for the ratio of the "Cl" to either aluminum ("Al") or aluminum plus zirconium ("Al+Zr").

The agency notes that the ratio range designated as "A1:Cl" in the TFM should have been "Metal:Halide," as it was in the Panel's report. The agency is not including the ratio range table in § 350.10 of this final monograph because this information is now included in the U.S. Pharmacopeia-National Formulary (USP–NF) monographs for each active ingredient included in § 350.10, where applicable. The agency is changing the introductory text of § 350.10 to state: "Where applicable, the ingredient must meet the aluminum to chloride, aluminum to zirconium, and aluminum plus zirconium to chloride atomic ratios described in the United States Pharmacopeia-National Formulary."

(Comment 19) Two comments agreed with the agency that buffer components present in the compound, such as glycine or glycol, should be omitted when calculating the maximum allowable concentration of active ingredients in an antiperspirant product (47 FR 36492 at 36495). One comment noted a potential source of confusion because the active ingredients table in proposed § 350.10 included the buffer names along with the active ingredient names. To minimize confusion and to be consistent with the agency's policy regarding buffers, the comment requested the agency to remove the buffer names from the "active ingredient" column in § 350.10. The comment proposed a number of changes in the active ingredient section.

When the Panel first discussed terminology for aluminum chloride and aluminum chlorohydrate antiperspirant active ingredients, the buffer additives were not included (Ref. 24). Subsequently, the Cosmetic, Toiletry, and Fragrance Association (CTFA) Antiperspirant Task Force developed definitions for aluminum chlorohydrex complexes with propylene glycol or polyethylene glycol, and for aluminum zirconium chlorohydrex complexes with glycine (Ref. 25). The Panel adopted these definitions, including those for ingredients with buffered additives, in its report (43 FR 46694 at 46696 and 46697), and the agency proposed this nomenclature in the TFM (47 FR 36492). Since the comment was submitted, the USP–NF developed names for these antiperspirant active ingredients that include the names of the buffers, where applicable, and active ingredient names in this final monograph include the buffer, where applicable.

The agency considers calculation of the concentration of an antiperspirant ingredient present in a product based on the amount of anhydrous ingredient to be appropriate. Buffered antiperspirant ingredients contain the same active chemical moiety as the corresponding nonbuffered ingredients, and the antiperspirant activity of both ingredients is similar.

(Comment 20) One comment requested the agency allow concentrations of antiperspirant active ingredients above those proposed in the monograph as long as the amount of ingredient applied to the skin is not greater than the amount judged safe by the Panel. The comment noted that, in the TFM (comment no. 12, 47 FR 36492 at 36495 to 36496), the agency had disagreed with earlier comments on this issue and stated that "the comments included no new data to show that a higher concentration of antiperspirant active ingredient marketed in a particular container would deliver no more than the amount of active ingredient judged safe by the Panel."

The comment submitted new data from eight usage studies (Ref. 26) to support a higher (up to 35 percent) active ingredient concentration for powder roll-on antiperspirant drug products. Fifty male and female subjects, between the ages of 18 and 55, participated in each study. Subjects were given a preweighed product and instructed to use only that product, to keep a record of how many times they used it, and not to allow anyone else in the household to use the product. An average of 43 subjects completed the 1-week studies and returned their product to the laboratory where it was reweighed.

The amount of product applied with each use was calculated. The four powder roll-ons, which contained 33 percent aluminum zirconium tetrachlorohydrate, were found to deliver between 23 and 44 mg of antiperspirant ingredient per axilla per use. The other product forms (solid stick, cream, or liquid roll-on), containing 18 to 19 percent of either aluminum chlorohydrate or aluminum zirconium tetrachlorohydrate, were found to deliver between 54 and 98 mg of antiperspirant ingredient per axilla per use. The comment contended these data show that higher concentrations of active antiperspirant ingredients, as used in powder roll-on systems, deposit no more and, in fact, deposit less active ingredient than is deposited in a liquid roll-on, solid stick, or cream product containing proposed monograph concentrations of active ingredients. Thus, the comment argued that concentrations up to 35 percent of Category I active ingredients should be allowed in powder roll-on antiperspirants.

This issue was specifically brought before the Panel, which did not agree to change the maximum concentration (Ref. 27). The Panel noted that aluminum antiperspirants can be irritating, expressed concern that a small amount of a concentrated formulation may be more irritating than a large amount of a more dilute formulation, and concluded that antiperspirant products with a higher concentration would need an NDA with additional safety studies. The agency notes that increasing the concentration of aluminum antiperspirant ingredients increases the acidity of the material and irritation of the skin (Refs. 28, 29, and 30). The agency concludes that safety data are needed to show that powder roll-on dosage forms containing up to 35 percent aluminum chlorhydrates or aluminum zirconium chlorhydrates are not irritating.

Since the TFM was published, several citizen petitions have raised concerns about the amount of aluminum absorbed from topical antiperspirant drug products. (See section II.F, comment 23 of this document.) The agency has no data showing that products containing up to 35 percent aluminum chlorhydrates or aluminum zirconium chlorhydrates increase aluminum absorption and is not revising the monograph to provide for powder roll-on dosage forms containing up to 35 percent antiperspirant active ingredient, without additional safety data being provided.

(Comment 21) One comment requested monograph status for aluminum sesquichlorohydrate prepared by neutralizing aluminum chloride with magnesium hydroxide even though the aluminum to chloride (Al:Cl) ratio of the ingredient prepared in this manner does not fall within the range specified for aluminum sesquichlorohydrate in the TFM. The comment stated that during the course of the rulemaking all aluminum chlorhydrates placed in Category I were prepared by conventional techniques: Either by neutralization of aluminum chloride with aluminum monochlorohydrate or by a controlled reaction of aluminum metal with hydrochloric acid. Thus, the comment argued that it was both appropriate and convenient to characterize the various aluminum chlorhydrates in terms of their Al:Cl ratios.

The comment stated that its data showed that the reaction of aluminum chloride with magnesium hydroxide yields aluminum sesquichlorohydrate equivalent to that listed in the TFM and the neutralizer magnesium hydroxide does not contribute either aluminum or chloride ions to the neutralization process; thus, the Al:Cl ratio of aluminum sesquichlorohydrate prepared this way will always remain 0.33, the same as aluminum chloride alone. The comment was concerned because this Al:Cl ratio of 0.33 does not fall within the ratio range of 1.9 down

to but not including 1.25:1 proposed for aluminum sesquichlorohydrate in the tentative final monograph (47 FR 36492 at 36504). The comment contended that if the final product is regarded as a mixture of aluminum sesquichlorohydrate and magnesium chloride, and if the amount of chloride that serves as counter ions for the magnesium ions were subtracted from the total chloride, then the Al:Cl ratio of the aluminum sesquichlorohydrate component of the mixture would have the Al:Cl ratio specified in the TFM. The comment submitted data (Ref. 31) using gel permeation chromatography and elemental analysis of the eluates (the substance separated out by washing) to show that aluminum sesquichlorohydrate prepared by this neutralization method is chromatographically indistinguishable from that prepared by conventional methods. The comment suggested designating the ingredient prepared by the neutralization method as "aluminum sesquichlorohydrate MAG."

The agency does not find these analytical data sufficient to support the comment's claim that the ingredient prepared by this neutralization method is chemically equivalent in composition to aluminum sesquichlorohydrate. The chromatographic indistinguishability from aluminum sesquichlorohydrate prepared by conventional methods only demonstrates that the chromatographic method in this study is insufficient to support the claim. This result perhaps is to be expected because the gel permeation chromatographic method used in this study is based primarily on a size exclusion principle; however, the agency doubts that any chromatographic method will provide such support.

USP 23–NF 18 Fifth Supplement (Ref. 32) added a monograph for aluminum sesquichlorohydrate and described it as consisting of complex basic aluminum chloride that is polymeric and loosely hydrated and encompasses a range of aluminum-to-chloride atomic ratios between 1.26:1 and 1.90:1. Its chemical formula is stated as: $Al_x(OH)_{3x-y}Cl_y \cdot nH_2O$.

According to the method described in the comment, when aluminum sesquichlorohydrate is prepared by the reaction of aluminum chloride with magnesium hydroxide, the product must be a mixture of aluminum sesquichlorohydrate and magnesium chloride. The agency does not consider it suitable from a technical point of view to simply designate this material as aluminum sesquichlorohydrate. Information provided by the comment shows that the alternate process material is not "equivalent in composition" because the aluminum to chloride ratio of 0.33 is outside the specified range for aluminum sesquichlorohydrate and because the material contains measurable amounts of magnesium. Also, as discussed in section II.E, comment 18 of this document, because the atomic ratio range should be metal to halide, magnesium should be counted as a metal in the atomic ratio range of the comment's material. Using the name aluminum sesquichlorohydrate for an ingredient prepared by neutralization of aluminum chloride with magnesium hydroxide would be misleading because this would imply that the drug is the same identifiable ingredient as aluminum sesquichlorohydrate prepared by neutralization of aluminum chloride with aluminum chlorohydrate. The agency believes the material described in the comment should be classified as a new ingredient, perhaps an aluminum magnesium chlorohydrate, rather than aluminum sesquichlorohydrate.

The agency concludes that additional information on the chemical characterization of the proposed material, particularly its ionic structure, is needed to permit a more scientific review. The submitted information does not provide a technical basis for allowing the substitution of aluminum sesquichlorohydrate manufactured by neutralization with magnesium chloride for that neutralized with aluminum monochlorohydrate. The USP–NF monograph (Ref. 32) does not contain information to characterize or identify an aluminum sesquichlorohydrate containing magnesium (e.g., no identification or content test, and no assay involving magnesium calculations).

Further, the agency notes that no clinical efficacy data were provided to show that the material proposed in the comment would be equally effective as aluminum sesquichlorohydrate prepared in the conventional manner. Even minor variations in formulation, such as the addition of emollients or buffers, can alter the effectiveness of an antiperspirant ingredient. (See comment no. 8 in the TFM (47 FR 36492 at 36494).) The new mixture may be just as effective. However, whether such a finding would apply to equal amounts, or whether an equivalent effect could be achieved with a greater or lesser amount of aluminum sesquichlorohydrate prepared with magnesium hydroxide, should be determined by effectiveness testing that follows the guidelines referred to in § 350.60 of the final monograph. The agency needs appropriate effectiveness data and an appropriate USP–NF monograph amendment (see 21 CFR 330.14(i)) before the ingredient prepared by the new method can be generally recognized as safe and effective and included in the final monograph.

(Comment 22) One comment objected to the agency's rejection of its earlier request (discussed in comment no. 9 of the TFM, 47 FR 36492 at 36495) that combinations of two or more Category I antiperspirant ingredients should be Category I. The comment stated that the combination policy in § 330.10(a)(4)(iv) allows combinations of two or more safe and effective active ingredients; thus, the Panel should be reversed.

In the TFM (47 FR 36495), the agency concurred with the Panel (43 FR 46694 at 46718) that both combinations of antiperspirant active ingredients and combinations of antiperspirant active ingredients with other types of active ingredients (except for a deferred antiperspirant/antifungal combination) are Category II because of no information on the existence of any such combinations or any data to support their safe and effective use.

The agency classified antiperspirant/antifungal combination drug products in Category III in the TFM for OTC antifungal drug products (December 12, 1989, 54 FR 51136 at 51148 and 51149). No additional data were submitted to support this combination, and in the final monograph for OTC antifungal drug products (September 23, 1993, 58 FR 49890 at 49891), the agency classified all antifungal combination drug products as nonmonograph.

The comment did not provide any supporting data or specific examples of Category I antiperspirant ingredients that would be suitable for use in combination with other antiperspirant or nonantiperspirant Category I ingredients. Thus, the combination policy does not apply. These combinations remain nonmonograph. However, new clinical data may be submitted to support safety and effectiveness.

F. Comments on the Safety of Aluminum Ingredients

(Comment 23) The information and arguments presented by the citizen petitions that questioned the safety of aluminum-containing ingredients in OTC antiperspirant drug products and the comment that disagreed with one of the citizen petitions were discussed in detail in the **Federal Register** of March 23, 1993 (58 FR 15452 at 15453 and 15454). One petition was concerned that aluminum can be absorbed and get into the blood and that some of the aluminum in the blood enters the brain, where it remains and accumulates. The petition cited a study by Perl and Good (Ref. 33) that suggested that inhaled aluminum compounds could have a direct nasal-olfactory pathway to the brain. The other petition contended that two inhalation studies (Refs. 34 and 35) provided by industry showed aluminum absorption in the peribronchial lymph nodes, brain, and adrenal glands of the animals after 12 and 24 months. Both petitions expressed concern about the potential neurotoxicity of aluminum upon chronic use, especially a possible link to Alzheimer's disease.

The comment that disagreed with one petition contended that the majority of the petitioner's references described findings from in vitro studies that did not consider the blood-brain barrier, which is the brain's main defense against potentially toxic substances such as aluminum. The comment contended that extraordinarily high concentrations of aluminum were used in these studies, and that aluminum from antiperspirants would never reach a biologically significant level to be of concern. The comment stated that the majority of researchers investigating the etiology of Alzheimer's disease would consider current evidence insufficient to link aluminum to Alzheimer's disease. The comment concluded that current scientific information does not support the need to reclassify the safety of aluminum-containing antiperspirants.

The agency does not find the current evidence sufficient to conclude that aluminum from antiperspirant use results in Alzheimer's disease. Both petitions mention the widely quoted study by Perl and Good (Ref. 33) as showing that inhaled aluminum compounds may get directly into the brain by a nasal-olfactory pathway. The agency does not consider this animal study (published as a one-page Letter to the Editor in *Lancet*) as adequate to establish a direct nasal-olfactory pathway for aluminum. This study was only a small pilot animal study, about which the agency has a number of concerns.

First, the method of introducing the aluminum to these animals was not physiologically relevant. Two strips of Gelfoam (absorbable gelatin sponge, USP) saturated with high concentrations of aluminum salts (15 percent aluminum lactate or 5 percent aluminum chloride) were inserted into rabbits' left nasal recess through a hole drilled into the frontal bone. While the authors attempted to demonstrate the accessibility of aluminum from the nasal recess to the brain, the agency questions whether the normal use of antiperspirant aerosols would ever produce a high aluminum concentration in this relatively distant anatomic site. Second, the size of this study was very small (only three rabbits in each group). The agency is concerned that any error in this complicated surgical procedure to introduce the aluminum salts or in preparing the specimens for analysis could have caused a major difference in the final results. Third, the results were not consistent. Of the three animals exposed to aluminum lactate, besides the involvement of the left olfactory bulb and the cerebral cortex, only one rabbit had a lesion in the hippocampus while the other two rabbits had granulomas found in the pyriform cortex. In the group exposed to aluminum chloride, only one rabbit had a granuloma in the olfactory bulb while the other two rabbits were free of lesions. The distribution of lesions in this study was fairly random. If a nasal-olfactory pathway exists for neuronal aluminum transport, the agency believes that the distribution of these lesions should follow a more persistent anatomical pattern. In addition, the authors were unable to explain why two of the six rabbits were free of lesions. Finally, although some of the rabbits had granulomas, these lesions did not resemble the plaques or neurofibrillary tangles found in Alzheimer's disease, and none of the rabbits had any symptomatic neurologic deficit. While this study implied that access to the brain via the nasal recess may be possible under nonphysiological conditions, a direct nasal-olfactory pathway and any relationship to Alzheimer's disease cannot be established. Several other studies, which were not done with aluminum, are of no value in establishing a direct nasal-central nervous system pathway for aluminum antiperspirants.

Aluminum lactate, one aluminum salt used in this study (Ref. 33), is not included in this final monograph. Sodium aluminum lactate has been used as a buffer for aluminum sulfate in a nonaerosol dosage form, but that product is nonmonograph.

In one of the inhalation studies (Ref. 34), the life-span of the male hamsters exposed to the aluminum chlorhydrate aerosol was shorter (583 days) than that of the controls (661 days). The female hamsters exposed to aluminum chlorhydrate had a slightly longer life-span (489 days) than the controls (481 days). Male hamsters exposed to aluminum chlorhydrate coated with a high concentration of isopropyl myristate, an emollient frequently used to increase the retention on the skin of the aluminum salts used in antiperspirant products, had a life-span (646 days) comparable to the controls (661 days). Overall, these numbers do not follow a consistent pattern and could be affected by other experimental conditions.

The same petition criticized the other inhalation study (Ref. 35), contending that the results showed that the animals had suffered significant weight loss and increased terminal brain-to-body weight ratios, results it considered consistent with clinical aluminum toxicity, and that the increase in brain weight was possibly due to cerebral edema. The petition claimed that because aluminum was found to be deposited in the animals' brains, peribronchial lymph nodes, and adrenal glands, this proved that systemic absorption of aluminum had occurred and that aluminum had been transported to the brain. Other comments disagreed with the petition's argument that the rats in this study were found to have detectable aluminum levels in their brains after 12 months, contending that this finding may only be artificial considering the analytical methods used. The comments added that if aluminum did accumulate in the rats' brains, those rats should have had symptoms of neurotoxicity, which they did not have. The comments concluded that the artificial finding should be ignored.

The agency does not concur with the petition's extrapolations. The weight loss occurred only in rats and not in guinea pigs that were similarly treated. The increase in terminal brain-to-body weight ratio occurred only in the female rats at 12 months in the low- and high-dose groups. The female rats in the middle-dose group and all the males were not affected. At 24 months, this same ratio was found to increase only in the high-dose groups of both sexes; however, the increase in the female high-dose group was not statistically significant. The agency notes that all of these findings did not follow any predictable pattern or a pattern that would be expected from a dose-related or cumulative toxin exposure.

The pattern of deposition was not consistent. In the guinea pigs, aluminum was found in the peribronchial lymph nodes, but not in the adrenal glands and brains (as occurred in the rats). The agency finds it possible that aluminum absorption and deposition may be animal dependent. If this were the case, then even if the rat data were evidence of a problem, the same situation may not apply to humans. The agency is not aware of other investigators having similar results.

The petitions and the comment had different views on a study by Rollin,

Theodorou, and Kilroe-Smith (Ref. 36) in which rabbits were exposed to aluminum oxide dust for 8 hours a day, 5 days a week, for 5 months. The authors of the study found that the brains of these rabbits had a significant increase in aluminum at the end of the study. The first petition contended that this study showed that the inhalation of aluminum antiperspirants poses a special risk because this route of delivery bypasses the blood-brain barrier. The comment calculated that this study would be equivalent to a person using spray antiperspirants for approximately 10 seconds daily for 789 years to experience the same toxicity. The second petition contended that this 10-seconds-exposure assumption was incorrect because the aluminum particles in an antiperspirant aerosol remain suspended in the air for a long period of time, and the exposure will be more than the comment calculated.

The agency finds this study has a number of limitations: (1) The extraordinary high concentrations of aluminum oxide exposure in the animals, (2) the small sample size (eight animals in each group), and (3) an overlap in the standard deviations of the results obtained decreases the power and generalizability of the study. While the study shows an accumulation of aluminum in the rabbits' body tissues under certain exposure conditions, the agency does not consider the study as providing evidence of a direct nasal-olfactory pathway or that normal use of aluminum-containing antiperspirants would provide comparable results. Further, the second petition's position includes a number of assumptions, which might not occur: (1) That the place where the product is used is a confined, poor-ventilated airspace, and (2) that the user remains in the vicinity of the dispersed aerosol for a period of time during which significant inhalation would occur.

One petition claimed that an epidemiology study by Graves et al. (Ref. 37) has shown that Alzheimer's disease was associated with the use of aluminum antiperspirants and that a high incidence of amyotrophic lateral sclerosis (ALS) and Parkinson's disease in Chamorro natives of Guam, as reported by Garruto (Ref. 38), may be related to high environmental aluminum. The agency has looked closely at the Graves et al. study (Ref. 37) because it explored the association between exposure to aluminum through the lifetime use of antiperspirants and antacids and Alzheimer's disease. This was a case-control study of 130 matched pairs, where the controls were friends or nonblood relatives of the case. Subjects (cases and controls) were matched by age, sex, and the relationship between the case/control and his or her surrogate (spouse or child).

The authors mentioned that, in general, antiperspirants contain aluminum and deodorants do not, except for some deodorants marketed for women. The authors reported that there was no association between the use of "any" antiperspirant/deodorant and Alzheimer's disease. However, when the data were stratified by aluminum-containing antiperspirants the overall odds ratio showed a modest increase in risk and a statistically significant trend emerged between increasing lifetime use of aluminum-containing antiperspirants and the estimated relative risk of Alzheimer's disease.

The authors commented that, to their knowledge, this was the first epidemiological study of this association between antiperspirants and Alzheimer's disease, and there were several methodologic limitations that made interpretation of their results difficult. First, there were missing data because the case surrogate and the control surrogate could only recall all variables (frequency and duration of use, and product brand name) in about one-half of the matched pairs. Second, there might have been some misclassification because the analyses were based on the most common brand provided, while some subjects may have used multiple brands. Third, the authors considered the validity of the data, resulting from difficulty in learning the subjects' exposure using telephone interview methods, to be a critical limitation. Despite these limitations, the authors considered an association between aluminum-containing antiperspirants and Alzheimer's disease as biologically plausible, but concluded that their findings are provocative and, due to methodologic problems, should be considered preliminary.

Garruto (Ref. 38) described efforts to establish models of chronic motor neuron degeneration in a long-term effort to understand the cellular and molecular mechanisms of aluminum neurotoxicity. He studied foci of dementia (ALS and Parkinson's disease) in western Pacific populations. He mentioned experimental models in rabbits and cell culture as demonstrating that chronic, rather than acute, toxicity is the cause of human neurodegenerative disorders with a long latency and slow progression. However, Garruto stated that he and his colleagues had been most deficient in the design and implementation of good epidemiological studies, particularly of Alzheimer's disease and the epidemiology of aluminum intoxication per se, and described what he felt was needed for future well-designed studies.

The petitions/comment also discussed environmental exposure to aluminum, percutaneous absorption after topical use, inhaled absorption after aerosol use, aluminum neurotoxicity (and a possible relationship to Alzheimer's disease), and possible mechanisms of action. Numerous references were provided. The agency has reviewed these references and other literature published on aluminum since the petitions were submitted. Many early references were simply hypotheses and different theories that have not been adequately substantiated in humans or any animal models. A number of studies were pilot projects in a few animals, and the agency is unable to draw any definite conclusions based on the small sample sizes.

The agency notes Priest's (Ref. 39) statement that most investigators now agree that aluminum is unlikely to be implicated in causing Alzheimer's disease, whereas Rowan (Ref. 40) contended it would be considerably more correct to state that the issue is controversial. More recently, Savory et al. (Ref. 41) stated that the question whether aluminum presents a health hazard to humans as a contributing factor to Alzheimer's disease is still subject to debate.

The agency finds the literature shows the issue of aluminum toxicity and Alzheimer's disease remains controversial and is not resolved. Scott et al. (Ref. 42) reported that aluminum has been detected in Alzheimer neurofibrillary tangles, but the significance of its presence is unknown. Kasa, Szerdahelyi, and Wisniewski (Ref. 43) reported that histochemical staining showed that aluminum was present in brain samples from Alzheimer's disease victims, but the structural localization indicated that it is not primarily involved in the etiology of the disease. Candy et al. (Ref. 44) reported that data from post mortem brain examinations of patients with chronic renal failure who did not have dialysis encephalopathy suggest that it is unlikely that aluminum plays any major role in neurofibrillary tangle formation and that its role in senile plaque formation is likely to be only part of a complex cascade of changes. Savory et al. (Ref. 41) stated that the lack of agreement on the question whether the brain content of aluminum is increased in Alzheimer's disease attests to the complexity of the issue.

Savory et al. (Ref. 41) indicated that most of the data linking aluminum exposure to Alzheimer's disease have been derived from several epidemiological studies of aluminum in drinking water, which represents only a small percentage of the total exposure. They concluded that quantification of the risk of Alzheimer's disease from other sources of aluminum (such as food additives, cosmetics, deodorants, antiperspirants, pharmaceuticals, and respiratory dusts) is needed before the total risk from all environmental sources of aluminum can be fully evaluated.

Despite Graves et al.'s acknowledgment of the limitations of their study (Ref. 37), other authors, e.g., Anane et al. (Ref. 45), report that Graves et al. found an increased risk of Alzheimer's disease with lifetime use of aluminum-containing antiperspirants after an epidemiological study. Anane et al. applied low aqueous concentrations (0.025 to 0.1 micrograms (µg)/square centimeter) of aluminum chloride ($AlCl_3.6H_2O$) to healthy shaved Swiss mouse skin for 130 days. They reported that this led to a significant increase in urine, serum, and whole brain aluminum, especially in the hippocampus area, compared to control animals. They mentioned that this percutaneous uptake and accumulation of aluminum in the brain was greater than that caused by dietary exposure to 2.3 µg per day in feed and water.

Anane et al. conducted in vitro and in vivo mouse skin studies and showed for the first time that aluminum is absorbed through mouse skin and this contributes to a greater body burden than does oral uptake. They also mentioned that several antiperspirant preparations containing $AlCl_3.6H_2O$ are applied to sensitive regions of the skin, which may increase penetration and could be an important source of body aluminum burden. Anane et al. recommended that an epidemiological study be conducted to ascertain whether use of $AlCl_3.6H_2O$-containing antiperspirants correlates with neurodegenerative disease, because such cannot be excluded based on the results of their study.

Forbes and Agwani (Ref. 46) stated that there is uncertainty about how aluminum-containing substances enter the body, but current information suggests that the skin and/or the lung are important. They mentioned that Priest (Ref. 39) noted that at least some antiperspirant sprays contain aluminum compounds of a particle size of about 1 micrometer (micron) (µ), which is ideally sized for deposition in the deep lung, and that such deposition may also be relevant for skin.

Salib and Hillier (Ref. 47) examined clinically diagnosed Alzheimer's disease patients and controls (other dementias and nondementias) and collected information to examine the association between Alzheimer's disease and aluminum occupation. They reported that manual work, such as welding, expected to be in direct contact with aluminum dust and fumes does not appear to be significantly associated with the risk of Alzheimer's disease. The authors concluded that no significant association was shown between developing Alzheimer's disease later in life and previous occupational history for all of the occupations in the study. This included both manual workers, who would be expected to have had a higher exposure opportunity to aluminum dust and fumes, and other workers at an aluminum factory. The authors concluded that neither Alzheimer's disease nor dementia in general were shown to be associated with previous aluminum occupation.

Salib and Hillier (Ref. 47), in 1996, repeated Doll's (Ref. 48) conclusions from 1993 that it is generally accepted that the delayed effects of chronic aluminum exposure have not been adequately assessed in man. Factors that govern the bioavailability, neurotoxicity, and the effect of chronic low dose exposure to aluminum compounds remain unclear. Flaten et al. (Ref. 49) stated that the lack of a readily available radioactive isotope of aluminum has been a major obstacle toward elucidating the mechanisms of absorption, distribution, and excretion of the metal.

Both Doll (Ref. 48) and Salib and Hillier (Ref. 47) stated that the possibility of a causal link between aluminum and Alzheimer's disease must be kept open until uncertainty about neuropathological evidence is resolved and the prognosis of humans exposed to aluminum by inhalation is known. Flaten et al. (Ref. 49) stated that multidisciplinary collaborative research efforts, involving scientists from many different specialities, are needed, with emphasis placed on: (1) Increasing knowledge of the chemistry of aluminum in biologic systems and determining the cellular and molecular mechanisms of aluminum toxicity, and (2) variations in neuropathology from long-term, low-level exposure to aluminum.

In summary, the literature shows that at high doses and long-term industrial exposures, aluminum can be associated with recognizable, specific neurologic effects. However, to date, the agency considers the evidence insufficient to link aluminum to Alzheimer's disease, Parkinson's disease, or ALS. Although aluminum uptake and transport by a "nasal-olfactory pathway" has been suggested in a nonphysiologic study in an animal model (Ref. 36), the agency is not aware of any evidence in humans that supports an olfactory-neuronal transport of aluminum to the brain.

One petition suggested that the agency require that 90 percent of the particles of an aerosol aluminum antiperspirant be greater than 50 µ (currently the requirement is between 10 and 50 µ) to reduce exposure to the upper respiratory tract. The agency notes that both Priest (Ref. 39) and Forbes and Agwani (Ref. 46) discussed a particle size of 1 µ for deposition in the deep lung. Based on current knowledge (no proof in humans of an olfactory neuronal transport of aluminum to the brain) and the lack of information on a minimum particle size to affect the respiratory tract, the agency finds no basis to impose a greater than 50µ requirement at this time. Flaten et al. (Ref. 49) stated that the possible human toxicity of aluminum has been a matter of controversy for well over 100 years. Despite many investigators looking at this issue, the agency does not find data from topical and inhalation chronic exposure animal and human studies submitted to date sufficient to change the monograph status of aluminum containing antiperspirants. The agency will continue to monitor the scientific literature on aluminum and, if new information appears, will reassess the status of aluminum-containing antiperspirants at such time.

The agency acknowledges that small amounts of aluminum can be absorbed from the gastrointestinal tract and through the skin. Assuming a person has normal renal function, accumulation of aluminum resulting from usual exposures to antiperspirant drug products (application to the underarms once or twice daily) and subsequent absorption is considered minimal. However, people with renal dysfunction have an impairment in normal renal excretion of aluminum.

Flaten et al. (Ref. 49) noted that the first human conditions generally accepted to be causally related to aluminum exposure did not occur until the 1970's, shortly after the introduction of routine dialysis therapy in persons with chronic renal failure. Dialysis encephalopathy was perhaps the first disease recognized in this population (1972, 1976). Later, fracturing osteomalacia (1977, 1978) and a microcytic hypochromic anemia (1980) were related to aluminum exposure in dialysis patients. Flaten et al. indicated that aluminum can cause encephalopathy, bone disease, and anemia in dialysis patients resulting

from the introduction of aluminum directly into the blood stream via high-aluminum dialysate or the consumption of large oral doses of aluminum-containing phosphate binders. Reduced urine production (the major route for aluminum excretion) contributes to this problem. The authors noted that, in the early 1980's, reports began to appear describing aluminum neurotoxicity and osteotoxicity in children with renal failure who were not on dialysis treatment.

The agency is concerned that people with renal dysfunction may not be aware that the daily use of antiperspirant drug products containing aluminum may put them at a higher risk because of exposure to aluminum in the product. The agency considers it prudent to alert these people to consult a doctor before using or continuing to use these products on a regular basis and is including a warning in the final monograph: "Ask a doctor before use if you have kidney disease."

Flaten et al. (Ref. 49) mentioned several reports of aluminum accumulation and toxicity in individuals without chronic renal failure, especially preterm infants (primarily fed intravenously), and stated that preterm infants are at risk for aluminum loading because of their immature kidney function. Term infants with normal renal function may also be at risk because of their rapidly growing and immature brain and skeleton, and an immature blood-brain barrier. Until they are 1 to 2 years old, infants have lower glomerular filtration rates than adults, which affects their kidney function. The agency is concerned that young children and children with immature renal function are at a higher risk resulting from any exposure to aluminum. Accordingly, the agency is requiring both general warnings in § 330.1(g) on all aluminum-containing antiperspirant drug products to inform parents and others to keep these products away from children, and to seek professional assistance if accidental ingestion occurs. (See also section II.B, comment 7 of this document.)

(Comment 24) One comment submitted a research paper (Ref. 50) containing the author's theories concerning how antiperspirants and aluminum in these products may be associated with breast cancer: The secretions of the apocrine sweat glands contain androgens, which are blocked by the antiperspirant and thus caused to spread internally. These androgens may be converted in the surrounding adipose tissues to estrogens, and excess estrogens have been associated with an increase in breast cancer. Alternatively, these excess androgens may interfere with the normal functioning of the hypothalamic-pituitary axis, thereby causing an imbalance of estrogen in the body. About 50 percent of breast cancers occur in the upper outer quadrant of the breast, and axillary sweat glands are anatomically very close to this site. A protein marker called GCDFP–15 (Gross Cystic Disease Fluid Protein), which is normally found only in the sweat glands, was found in the fluids of many breast cysts. The author postulated that the blocked axillary sweat glands would cause GCDFP–15 and other markers to migrate to the breast due to its proximity and gravity, and because the fetal precursors for apocrine sweat glands and mammary glands are the same, these migrated protein markers may stimulate the breast and play a role in the carcinogenic process.

The author also postulated that aluminum may play a role in the development of breast cancer because calcification of breast tissues (commonly seen in breast cancer) may be caused by a local electrolyte imbalance induced by the absorbed aluminum. The author noted that breast cancer in Japan was more than five times lower than in the United States and postulated this has occurred because Japanese women, especially the older population, do not use antiperspirants. The author noted that the breast cancer rate is currently on the rise in Japan, especially among young premenopausal women, and postulated that this is occurring because the young Japanese generation has adopted the western habit of using antiperspirants.

The agency finds these theories lack sufficient evidence. The agency notes that the amount of androgens produced by the sweat glands is relatively insignificant compared to normal physiologic amounts produced by the adrenals and the gonads. The agency is not aware of any studies that have shown an "internal spread" of androgens or that establish that GCDFP–15 or other protein markers are carcinogenic in humans.

The agency considers the author's views about a local electrolyte imbalance by absorbed aluminum causing breast tissue calcification inconsistent with knowledge about the calcification process. In addition, there are many benign calcifications. Finally, many proposals (e.g., diet, lifestyle changes) have been made as to why there is an increased incidence of breast cancer among Japanese women. However, there is no evidence to associate this increase with an increased use of antiperspirants. Thus, the agency concludes that there is insufficient evidence to support these theories.

(Comment 25) The agency previously assessed the carcinogenic potential of aerosolized aluminum chlorhydrate antiperspirants in comment 22 of the TFM (47 FR 36492 at 36498 and 36499). Primary lung tumors, granulomatous lesions, and macrophagic activity were evaluated in animal studies. No increase in lung tumors was seen in the low- and mid-dose rats given doses at least 100 times greater than the expected human exposure via aerosolized antiperspirants. Normal macrophage response and pulmonary fibrosis were observed at higher doses with chronic exposure. No increase in tumors was noted in guinea pigs or hamsters at any dose levels in the studies. While the agency removed aerosol antiperspirant products containing zirconium from the market because of granuloma formation (August 16, 1977, 42 FR 41374), the agency is not aware of data that indicate aluminum antiperspirants cause foreign body granulomas or pulmonary tumors.

III. Agency Changes

1. It has been agency policy since April 3, 1989 (54 FR 13480 at 13486), that before any ingredient is included in a final OTC drug monograph, it must have a compendial (USP–NF) monograph. Compendial monographs include an ingredient's official name, chemical formula, and analytical chemical tests to confirm the quality and purity of the ingredient. These monographs establish public standards for the strength, quality, purity, and packaging of ingredients and drug products available in the United States. Eighteen of the 19 antiperspirant active ingredients that the agency proposed in § 350.10 of the antiperspirant TFM (47 FR 36492 at 36504) currently have compendial monographs. Nine of the official compendial names are the same as those proposed in § 350.10, while 10 of the names have changed slightly. (See Table 1 of this document for the previous and current ingredient names.)

TABLE 1.—ANTIPERSPIRANT ACTIVE INGREDIENTS

Name in Tentative Final Monograph	Current Name
Aluminum chloride	Same
Aluminum chlorohydrate	Same
Aluminum chlorohydrex polyethylene glycol complex	Aluminum chlorohydrex polyethylene glycol
Aluminum chlorohydrex propylene glycol complex.	Aluminum chlorohydrex propylene glycol
Aluminum dichlorohydrate	Same
Aluminum dichlorohydrex polyethylene glycol complex	Aluminum dichlorohydrex polyethylene glycol
Aluminum dichlorohydrex propylene glycol complex.	Aluminum dichlorohydrex propylene glycol
Aluminum sesquichlorohydrate	Same
Aluminum sesquichlorohydrex polyethylene glycol complex	Aluminum sesquichloro-hydrex polyethylene glycol
Aluminum sesquichlorohydrex propylene glycol complex	Aluminum sesquichloro-hydrex propylene glycol
Aluminum sulfate buffered[1]	Same
Aluminum zirconium octachlorohydrate	Same
Aluminum zirconium octachlorohydrex glycine complex	Aluminum zirconium octachlorohydrex gly
Aluminum zirconium pentachlorohydrate	Same
Aluminum zirconium pentachlorohydrex glycine complex	Aluminum zirconium pentachlorohydrex gly
Aluminum zirconium tetrachlorohydrate	Same
Aluminum zirconium tetrachlorohydrex glycine complex	Aluminum zirconium tetrachlorohydrex gly
Aluminum zirconium trichlorohydrate	Same
Aluminum zirconium trichlorohydrex glycine complex	Aluminum zirconium trichlorohydrex gly

[1] Aluminum sulfate buffered with sodium aluminum lactate.

The agency is including in § 350.10 of this final monograph those antiperspirant active ingredients that currently have a compendial monograph. Only one active ingredient, aluminum sulfate buffered, does not have a current or proposed compendial monograph. While aluminum sulfate does have a compendial monograph, the buffer component, sodium aluminum lactate, does not. This buffer ingredient must also have a compendial monograph or there must be a compendial monograph for aluminum sulfate buffered in order for aluminum sulfate buffered to be included in the antiperspirant final monograph. At the present time, this ingredient is being included in § 310.545(a)(4)(ii) as a nonmonograph ingredient because the agency is not aware of any pending compendial monograph being developed. Should a compendial monograph eventually be developed, the agency will move this ingredient from § 310.545(a)(4)(ii) to § 350.10.

2. The agency is revising the format for active ingredients in § 350.10 for consistency with recent monographs: The proposed chart format is now a paragraph format listing ingredients in alphabetical order. The amount of active ingredient is stated as "up to ____ percent" instead of as ____ percent or less concentration." The information about calculating the concentration on an anhydrous basis is moved to the preamble of § 350.10. The preamble statement about aluminum to chloride and/or aluminum to zirconium ratios is revised to state: "Where applicable, the ingredient must meet the aluminum to chloride, aluminum to zirconium, and aluminum plus zirconium to chloride atomic ratios described in the United States Pharmacopeia-National Formulary." The proposed ratio range table is not included in the final monograph because this information is now included in the USP–NF monographs for each active ingredient in § 350.10, where applicable.

3. The agency is expanding the indications proposed in § 350.50(b) of the TFM to provide additional uses based on new effectiveness data. The agency is also revising the uses format to make it more concise.

Because the indications proposed in § 350.50(b)(1), (b)(2), and (b)(3) of the TFM are very similar, the agency is combining them as a single indication with choices under § 350.50(b)(1): [Select one of the following: "decreases," "lessens," or "reduces"] "underarm" [select one of the following: "dampness," "perspiration," "sweat," "sweating," or "wetness"]. (See section II.B, comment 6 of this document.) The agency is adding a new additional indication in § 350.50(b)(2): "also [select one of the following: 'decreases,' 'lessens,' or 'reduces'] underarm [select one of the following: 'dampness,' 'perspiration,' 'sweat,' 'sweating,' or 'wetness'] due to stress". (See section II.B, comment 6 and section II.C, comment 13 of this document.) The agency is adding a new additional indication in § 350.50(b)(3): Select one of the following: ["all day protection," "lasts all day," "lasts 24 hours," or "24 hour protection"]. (See section II.C, comment 12 of this document.) The agency is adding a new additional

indication in § 350.50(b)(4) that states "extra effective". This claim applies to products that demonstrate 30 percent or more sweat reduction using the guidelines for effectiveness testing of antiperspirant drug products referred to in § 350.60. (See section II.C, comment 11 of this document.) The agency is adding a new additional indication in § 350.50(b)(5) for products that demonstrate extra effectiveness sustained over a 24-hour period: These products may state the claims in §§ 350.50(b)(3) and (b)(4) either individually or combined, e.g., "24 hour extra effective protection," "all day extra effective protection," "extra effective protection lasts 24 hours," or "extra effective protection lasts all day". (See section II.C, comment 12 of this document.)

4. The agency is revising the "Do not apply * * *" warning in proposed § 350.50(c)(1) to the new labeling format. The warning now reads: "Do not use on broken skin" and "Stop use if rash or irritation occurs".

5. The agency is including a warning to alert people with renal dysfunction to consult a doctor before using antiperspirants containing aluminum. The warning appears in the new labeling format and states: "Ask a doctor before use if you have kidney disease". (See section II.F, comment 23 of this document.)

6. The agency has revised the August 1982 Guidelines for Effectiveness Testing. The revised guidelines (dated as of the date of publication of this document) state that "FDA recognizes that alternate methods may be appropriate to qualify an antiperspirant drug product as effective. These guidelines do not preclude the use of alternate methods that provide scientifically valid results, subject to FDA approval." (See section II.D, comment 15 of this document.)

The agency has revised parts of the test procedures section of the guidelines to delete the requirement that the control formulation be devoid of "any" antiperspirant activity. Therefore, the control formulation no longer needs to be compared to no treatment. (See section II.D, comment 17 of this document.) The agency has changed the permitted relative humidity of the hotroom conditions from 35 to 40 percent to a range of 30 to 40 percent. (See section II.D, comment 16 of this document.) The agency has added a requirement for "baseline perspiration rate" to assure that test subjects sweat adequately during a hotroom test: "Test subjects must produce at least 100 milligrams of sweat from the placebo control axilla in a 20-minute collection in the controlled environment." (See comment 16 also.)

Because the final monograph contains 24-hour duration effectiveness claims, the agency has revised section 4(a)(4) of the guidelines to state: "For claims of enhanced duration of effect, the test should be conducted at least two times during the period of the claim, such as 1 hour and 24 hours after the last daily treatment for 24 hour claims." (See section II.C, comment 12 of this document.) Because the final monograph contains "extra-effective" claims shown by standard gravimetric testing to have a 30-percent or more reduction in sweat, the agency has revised the guidelines to include a section on data treatment to demonstrate, with high probability, at least 50 percent of the target population will obtain a sweat reduction of at least 30 percent. (See section II.C, comment 11 of this document.)

The revised "Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products" are now dated as of the date of publication of this final rule and are on file in the Dockets Management Branch (address above) and on FDA's Web site at http://www.fda.gov/cder/otc/index.htm. Persons wishing to obtain a copy of the guidelines should submit a Freedom of Information (FOI) request in writing to FDA's FOI Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857. The agency has revised § 350.60 to include this information about the guidelines.

IV. Summary of Changes from the Proposed Rule

1. The agency is modifying the definition of an antiperspirant that was proposed in § 350.3 of the TFM to delete the phrase "to the underarm." (See section II.B, comment 2 of this document.)

2. The agency is revising the format for listing active ingredients in § 350.10. (See section III.2. of this document.)

3. The agency is expanding the indications for OTC antiperspirant drug products based on new data that support these additional uses (see section III.3. of this document) and is expanding the "Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products" to address some of these additional uses (see section III.6. of this document).

V. The Agency's Final Conclusions

The agency is issuing a final monograph establishing conditions under which OTC antiperspirant drug products are generally recognized as safe and effective and not misbranded; 18 ingredients listed in § 350.10 are a monograph condition. In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule included the antiperspirant ingredients aluminum bromohydrate, aluminum chloride (alcoholic solutions), aluminum chloride (aqueous solution) (aerosol only), aluminum sulfate, aluminum sulfate buffered (aerosol only), potassium alum, and sodium aluminum chlorohydroxy lactate in § 310.545(a)(4), and was effective on May 7, 1991. In this final rule, the agency is redesignating the text of paragraph (a)(4) as paragraph (a)(4)(i), adding new paragraph (a)(4)(i) heading, and adding new paragraph (a)(4)(ii) to contain aluminum sulfate buffered with sodium aluminum lactate. Any drug product labeled, represented, or promoted for use as an OTC antiperspirant drug that contains any of the ingredients listed in § 310.545(a)(4)(i) or (a)(4)(ii) or that is not in conformance with the monograph (21 CFR part 350) may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352). Such a drug product can not be marketed for OTC antiperspirant use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. An appropriate citizen petition to amend the monograph may also be submitted in accord with 21 CFR 10.30 and § 330.10(a)(12)(i). Any OTC antiperspirant drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule for § 310.545(a)(4)(i) or after the compliance dates of this final rule that is not in compliance with the regulations is subject to regulatory action.

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue

to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the act. This judgment balances the benefits of these drug products against their potential risks (see § 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see "Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, Final Rule" (67 FR 72555, December 6, 2002).

VI. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the TFM for OTC antiperspirant drug products (47 FR 36492 at 36503). The one comment received is addressed in section II.A, comment 4 of this final rule and further addressed later in this section.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The proposed rule that has led to the development of this final rule was published on August 20, 1982, before the Unfunded Mandates Reform Act of 1995 was enacted. This final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. Additionally, the final rule is not a significant regulatory action as defined by the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule will not result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. While the exact number of affected small entities is difficult to determine at any given time, the agency received only one comment from a small entity, which is discussed later in this section. This discussion explains the agency's determination that this final rule will not have a significant economic impact on a substantial number of small entities.

The purpose of this final rule is to establish conditions under which OTC antiperspirant drug products are generally recognized as safe and effective and not misbranded. This includes establishing the allowable monograph ingredients and labeling. Eighteen of the 19 active ingredients under review are included in the final monograph. The remaining ingredient could have been included had a USP–NF monograph been developed for this ingredient. If a USP–NF monograph is developed before the effective date of this final monograph, products containing this ingredient could continue to be marketed without reformulation. Without a USP–NF monograph for the ingredient, product reformulations to include a monograph antiperspirant active ingredient or discontinuation of the products will need to occur. The agency believes that this one antiperspirant active ingredient is currently in only a few products. Based on the large number of antiperspirant drug products in the OTC marketplace and the vast array of products that one known affected company currently markets, the agency considers the required reformulation or discontinuation of a few products not to be overly burdensome or substantial. The one known affected company markets at least 30 products not affected by this final rule. Only one of its products includes the active ingredient excluded under the final rule. Any company using this active ingredient has the option to: (1) Reformulate using any of the 18 active ingredients included in this final rule, (2) reformulate without this active ingredient and market the product as a deodorant, or (3) discontinue the product.

This final rule establishes the monograph labeling for OTC antiperspirant drug products and will require relabeling of all products covered by the monograph. The agency's Drug Listing System identifies approximately 200 manufacturers and 700 marketers of 1,300 OTC antiperspirant drug products containing the 19 ingredients covered by this final rule. It is likely that there are additional products that are not currently included in the agency's system. While it is difficult to determine an exact number, the agency estimates that about 1,500 OTC antiperspirant drug products will need to be relabeled based on this final rule.

The agency has been informed that relabeling costs of the type required by a final monograph generally average about $3,000 to $5,000 per stock keeping unit (SKU) (individual products, packages, and sizes). However, some of the relabeling that occurs as a result of this specific final monograph will be due to additional indications that the agency has included in the final monograph and that manufacturers will wish to add to their labeling. Assuming that there are about 1,300 to 1,500 affected OTC SKUs in the marketplace, total one-time costs of relabeling would be $3.9 million ($3,000 per SKU x 1,300 SKUs) to $7.5 million ($5,000 per SKU x 1,500 SKUs). The agency believes that actual costs will be lower for several reasons. First, many of the label changes will be made by private label manufacturers that tend to use relatively simple and less expensive labeling. Second, the agency has finalized a revised labeling format for OTC drug products in § 201.66. The agency is allowing manufacturers to incorporate the labeling changes required by this final rule along with the new general OTC drug labeling format. Thus, the relabeling costs resulting from two different but related final rules will be individually reduced by implementing both required changes at the same time.

Some relabeling costs will be further reduced because the agency is allowing up to 18 months (24 months for products with annual sales less than $25,000) for these revisions so they may be done in the normal course of business. Thus, manufacturers who

wish to add additional indications included in this final monograph can do so at their next regular printing of product labeling. Among the steps the agency is taking to minimize the impact on small entities are: (1) To provide enough time to enable entities to use up existing labeling stock, and (2) to allow the labeling changes required by this final monograph to be done concurrently with the changes required by the new OTC drug labeling format. The agency believes that these actions provide small entities substantial flexibility and reductions in cost.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, a longer time period would unnecessarily delay the benefit of new labeling and a few revised formulations. Conversely, a shorter time period was also considered but rejected because it would be inflexible and more costly for the affected companies. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities. However, a longer (24-month) compliance date is being provided for products with annual sales less than $25,000.

One small manufacturer has indicated that it will suffer economic consequences because it will no longer be able to make claims for use of its antiperspirant products on the hands, and for prosthesis and orthotic use. However, the manufacturer did not provide sufficient data to show that its products were safe and effective for these uses and did not provide documentation to show the economic impact of this final rule on its sales. The agency notes that the company could: (1) Relabel its products to contain only the monograph indications and then remain in the marketplace, or (2) discontinue its products. While revising the product labeling may have an economic impact on a company, it will be able to continue to market its products and can use the expanded indications provided by the final monograph to try to enhance product sales.

The final rule would not require any new reporting and recordkeeping activities, and no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with the final rule.

For the reasons in this section and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VIII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Section 369.20 Revision

Section 369.20 (21 CFR 369.20) contains a recommended warning and caution statement for OTC antiperspirant drug products under the heading "ANTIPERSPIRANTS:" "Do not apply to broken skin. If a rash develops, discontinue use." This statement is very similar to, but not quite as extensive as, the warnings required by the final monograph: "Do not use on broken skin" and "Stop use if rash or irritation occurs". The agency is removing the entry for "ANTIPERSPIRANTS" under § 369.20 because it is superseded by §§ 350.50(c)(1) and (c)(2).

XI. References

The following references are on display in the Dockets Management Branch (see section I of this document) under Docket No. 78N–0064 unless otherwise stated and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of telephone conversation between R. Bolger, C. Holland, and K. Holland, Perspi-Cura Co., and V. Miguele, FDA, in OTC vol. 1400FR, dated November 20, 1995.

2. Memorandum of fax from V. Miguele, FDA, to R. Bolger and C. Holland, Perspi-Cura Co., in OTC Vol. 1400FR, dated February 8, 1996.

3. Memorandum of telephone message from R. Bolger, Perspi-Cura Co., to V. Miguele, FDA, in OTC Vol. 1400FR, dated March 25, 1996.

4. Studies 83–0768–70 and 83–0769–70 in Comment RPT.

5. Studies S–1367, S–1617, and ST–2280/2376) in Comment No. C00039.

6. "Antiperspirant Efficacy Study of AP10016 (Currently Marketed Roll-on Antiperspirant With Aluminum Zirconium Tetrachlorohydrate) Against AP10021 (Currently Marketed Roll-on Antiperspirant With Aluminum Chlorohydrate)," Exhibit 24 in Comment No. C00040.

7. Comment No. LET006.

8. Majors, P. A., and F. B. Carabello, "Presentation to the OTC Panel for Antiperspirants of the Hill Top Research Method of Antiperspirant Evaluations and General Discussion of Results Obtained," in OTC Vol. 140065, August 1975.

9. FDA, "Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products," in OTC Vol. 140065, August 1982.

10. Exhibits 1 through 7 in Comment No. C00040.

11. "Claim for 'Twenty Four Hour Protection' etc., Antiperspirant Tests," studies S–825, S–1434, S–1473, S–1518, S–1546, and S–1604, in Comment No. C00039.

12. Exhibits 9 through 20 and 22, in Comment No. C00040.

13. Majors, P. A., and J. E. Wild, "The Evaluation of Antiperspirant Efficacy—Influence of Certain Variables," *Journal of the Society of Cosmetic Chemists*, 25:139–152, 1974.

14. "New Data on Pedal Antiperspirant Activity," studies in Comment C00041.

15. *Pedal Antiperspirant Efficacy Evaluation*, protocol in Comments PR1 and PR2.

16. Letter from W. E. Gilbertson, FDA, to K. R. Johannes, Scholl, Inc., coded LET11.

17. Letters from W. E. Gilbertson, FDA, to R. C. Stites, Numark Laboratories, Inc., coded LET12 and LET13.

18. "Protocol for the Clinical Evaluation of Antiperspirant Efficacy Against Thermally Induced Sweating," exhibit 21, in Comment No. C00040.

19. Study 83–0769–70 in Comment No. RPT.

20. "Claim for 'Twenty Four Hour Protection' etc., Antiperspirant Tests," studies No. S–825, S–1367, S–1434, S–1473, S–1518, and S–1546, in Comment No. C00039.

21. Studies ST–2280/2376 in Comment No. C00039.

22. "Twenty-Four Hour Enhanced Duration AP Efficacy Evaluation Under Thermal Stress of: A = AP10001 (Currently Marketed Aerosol Antiperspirant With aluminum chlorohydrate) Against B = AP10008, Placebo Aerosol Antiperspirant," Exhibit 6, in Comment No. C00040.

23. "AP Efficacy 24 Hour Absolute Sweat Reduction Study of: AP10001 (Marketed Aerosol Antiperspirant With Aluminum Chlorohydrate)," Exhibit 5, in Comment No. C00040.

24. Summary Minutes of the 18th Meeting of the Advisory Review Panel on OTC Antiperspirant Drug Products, in OTC Vol. 1400FR, February 26 and 27, 1976.

25. OTC Vol. 140059.

26. Comment No. C00039.

27. Transcript of the 27th Meeting of the Advisory Review Panel on OTC Antiperspirant Drug Products, pp. 75–85, included in OTC Vol. 1400FM, January 26, 1978.

28. Lansdown, A. B. G., "Production of Epidermal Damage in Mammalian Skins by Some Simple Aluminum Compounds," *British Journal of Dermatology*, 89:67–76, 1973.

29. Govett, T., and M. G. DeNavarre, "Aluminum Chlorohydrate, New Antiperspirant Ingredient," *The American Perfumer and Essential Oil Review*, 49:365–368, 1947.

30. "Zirconyl Hy+droxy Chloride Antiperspirant Combinations," Patent No. 2,854,382, U.S. Patent Office, included in Appendix B in OTC Vol. 140037, September 30, 1958.

31. "Characterization of Category I Aluminum Chlorhydrates and Comparison to an Aluminum Chlorhydrate Prepared With an Alternate Neutralization Agent," report in Comment No. C00038.

32. Fifth Supplement, USP 23–NF 18, U.S. Pharmacopeial Convention, Inc., Rockville, MD, p. 3363, 1996.

33. Perl, D. P., and P. F. Good, "Uptake of Aluminum into Central Nervous System Along Nasal-Olfactory Pathways," *Lancet*, 1:1028, May 2, 1987.

34. Inhalation Toxicology Research Institute, Lovelace Biomedical and Environmental Research Institute, "Inhalation Toxicology Studies of Aerosolized Products, Final Report," in Comment SUP.

35. Becton, Dickinson Research Center, "Final Report on Aluminum Chlorhydrate Study," in Comment SUP.

36. Rollin, H. B., P. Theodorou, and T. A. Kilroe-Smith, "Deposition of Aluminum in Tissues of Rabbits Exposed to Inhalation of Low Concentrations of A1203 Dust," *British Journal of Industrial Medicine*, 48:389–391, 1991.

37. Graves, A. B. et al., "The Association Between Aluminum-Containing Products and Alzheimer's Disease," *Journal of Clinical Epidemiology*, 43:35–44, 1990.

38. Garruto, R. M., "Pacific Paradigms of Environmentally Induce Neurological Disorders: Clinical, Epidemiological and Molecular Perspectives," *Neurotoxicology*, 12:347–377, 1991.

39. Priest, N. D., Satellite Symposium on 'Alzheimer's Disease and Dietary Aluminum', "The Bioavailability and Metabolism of Aluminum Compounds in Man," *Proceedings of the Nutrition Society*, 52:231–240, 1993.

40. Rowan, M. J., "Recent Research on the Causes of Alzheimer's Disease," *Proceedings of the Nutrition Society*, 52:255–262, 1993.

41. Savory, J. et al., "Can the Controversy of the Role of Aluminum in Alzheimer's Disease be Resolved? What are the Suggested Approaches to This Controversy and Methodological Issues to be Considered?," *Journal of Toxicology and Environmental Health*, 48:615–635, 1996.

42. Scott, C. W. et al., "Aggregation of Tau Protein by Aluminum," *Brain Research*, 628:77–84, 1993.

43. Kasa, P., P. Szerdahelyi, and H. M. Wisniewski, "Lack of Topographical Relationship Between Sites of Aluminum Deposition and Senile Plaques in the Alzheimer's Disease Brain," *Acta Neuropathologica*, 90:526–531, 1995.

44. Candy, J. M. et al., "Aluminum Accumulation in Relation to Senile Plaque and Neurofibrillary Tangle Formation in the Brains of Patients With Renal Failure," *Journal of the Neurological Sciences*, 107:210–218, 1992.

45. Anane, R. et al., "Bioaccumulation of Water Soluble Aluminum Chloride in the Hippocampus After Transdermal Uptake in Mice," *Archives of Toxicology*, 69:568–571, 1995.

46. Forbes, W. F., and N. Agwani, "A Suggested Mechanism for Aluminum Biotoxicity," *Journal of Theoretical Biology*, 171:207–214, 1994.

47. Salib, E., and V. Hillier, "A Case-Control Study of Alzheimer's Disease and Aluminum Occupation," *British Journal of Psychiatry*, 168:244–249, 1996.

48. Doll, R., "Review: Alzheimer's Disease and Environmental Aluminum," *Age and Ageing*, 22:138–153, 1993.

49. Flaten, T. P. et al., "Status and Future Concerns of Clinical and Environmental Aluminum Toxicology," *Journal of Toxicology and Environmental Health*, 48:527–541, 1996.

50. Comments No. C46, RPT2, and RPT3.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 350

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by redesignating the text of paragraph (a)(4) as paragraph (a)(4)(i), by adding new paragraph (a)(4)(i) heading and paragraphs (a)(4)(ii) and (d)(34), and by revising paragraph (d)(1) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(4) * * *

(i) *Ingredients—Approved as of May 7, 1991.* * * *

(ii) *Approved as of December 9, 2004; June 9, 2005, for products with annual sales less than $25,000.*

Aluminum sulfate buffered with sodium aluminum lactate

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4)(i), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), (a)(16) through (a)(18)(i)(A), (a)(18)(ii) (except as covered by paragraph (d)(22) of this section), (a)(18)(iii), (a)(18)(iv), (a)(18)(v)(A), and (a)(18)(vi)(A) of this section.

* * * * *

(34) December 9, 2004, for products subject to paragraph (a)(4)(ii) of this section. June 9, 2005, for products with annual sales less than $25,000.

* * * * *

■ 3. Part 350 is added to read as follows:

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.

350.1 Scope.

350.3 Definition.

Subpart B—Active Ingredients

350.10 Antiperspirant active ingredients.

Subpart C—Labeling

350.50 Labeling of antiperspirant drug products.

Subpart D—Guidelines for Effectiveness Testing

350.60 Guidelines for effectiveness testing of antiperspirant drug products.

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

§ 350.1 Scope.

(a) An over-the-counter antiperspirant drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 350.3 Definition.

As used in this part:

Antiperspirant. A drug product applied topically that reduces the production of perspiration (sweat) at that site.

Subpart B—Active Ingredients

§ 350.10 Antiperspirant active ingredients.

The active ingredient of the product consists of any of the following within the established concentration and dosage formulation. Where applicable, the ingredient must meet the aluminum to chloride, aluminum to zirconium, and aluminum plus zirconium to chloride atomic ratios described in the U.S. Pharmacopeia-National Formulary. The concentration of ingredients in paragraphs (b) through (j) of this section is calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound, in an aerosol or nonaerosol dosage form. The concentration of ingredients in paragraphs (k) through (r) of this section is calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound, in a nonaerosol dosage form. The labeled declaration of the percentage of the active ingredient should exclude any water, buffer components, or propellant.

(a) Aluminum chloride up to 15 percent, calculated on the hexahydrate form, in an aqueous solution nonaerosol dosage form.

(b) Aluminum chlorohydrate up to 25 percent.

(c) Aluminum chlorohydrex polyethylene glycol up to 25 percent.

(d) Aluminum chlorohydrex propylene glycol up to 25 percent.

(e) Aluminum dichlorohydrate up to 25 percent.

(f) Aluminum dichlorohydrex polyethylene glycol up to 25 percent.

(g) Aluminum dichlorohydrex propylene glycol up to 25 percent.

(h) Aluminum sesquichlorohydrate up to 25 percent.

(i) Aluminum sesquichlorohydrex polyethylene glycol up to 25 percent.

(j) Aluminum sesquichlorohydrex propylene glycol up to 25 percent.

(k) Aluminum zirconium octachlorohydrate up to 20 percent.

(l) Aluminum zirconium octachlorohydrex gly up to 20 percent.

(m) Aluminum zirconium pentachlorohydrate up to 20 percent.

(n) Aluminum zirconium pentachlorohydrex gly up to 20 percent.

(o) Aluminum zirconium tetrachlorohydrate up to 20 percent.

(p) Aluminum zirconium tetrachlorohydrex gly up to 20 percent.

(q) Aluminum zirconium trichlorohydrate up to 20 percent.

(r) Aluminum zirconium trichlorohydrex gly up to 20 percent.

Subpart C—Labeling

§ 350.50 Labeling of antiperspirant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antiperspirant."

(b) *Indications.* The labeling of the product states, under the heading "Uses," the phrase listed in paragraph (b)(1) of this section and may contain any additional phrases listed in paragraphs (b)(2) through (b)(5) of this section, as appropriate. Other truthful and nonmisleading statements, describing only the uses that have been established and listed in paragraphs (b)(1) through (b)(5) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) For any product, the labeling states [select one of the following: "decreases," "lessens," or "reduces"] "underarm" [select one of the following: "dampness," "perspiration," "sweat," "sweating," or "wetness"].

(2) The labeling may state "also [select one of the following: 'decreases,' 'lessens,' or 'reduces'] underarm [select one of the following: 'dampness,' 'perspiration,' 'sweat,' 'sweating,' or 'wetness'] due to stress".

(3) For products that demonstrate standard effectiveness (20 percent sweat reduction) over a 24-hour period, the labeling may state [select one of the following: "all day protection," "lasts all day," "lasts 24 hours," or "24 hour protection"].

(4) For products that demonstrate extra effectiveness (30 percent sweat reduction), the labeling may state "extra effective".

(5) Products that demonstrate extra effectiveness (30 percent sweat reduction) sustained over a 24-hour period may state the claims in paragraphs (b)(3) and (b)(4) of this section either individually or combined, e.g., "24 hour extra effective protection", "all day extra effective protection," "extra effective protection lasts 24 hours," or "extra effective protection lasts all day".

(c) *Warnings.* The labeling of the product contains the following statements under the heading "Warnings":

(1) "Do not use on broken skin".

(2) "Stop use if rash or irritation occurs".

(3) "Ask a doctor before use if you have kidney disease".

(4) *For products in an aerosolized dosage form.* (i) "When using this product [bullet][1] keep away from face and mouth to avoid breathing it".

(ii) The warning required by § 369.21 of this chapter for drugs in dispensers pressurized by gaseous propellants.

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": "apply to underarms only".

Subpart D—Guidelines for Effectiveness Testing

§ 350.60 Guidelines for effectiveness testing of antiperspirant drug products.

An antiperspirant in finished dosage form may vary in degree of effectiveness because of minor variations in formulation. To assure the effectiveness of an antiperspirant, the Food and Drug Administration is providing guidelines that manufacturers may use in testing for effectiveness. These guidelines are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These guidelines are available on the FDA's Web site at http://www.fda.gov/cder/otc/index.htm or on request for a nominal charge by submitting a Freedom of Information (FOI) request in writing to FDA's FOI Staff (HFI–35), 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857.

[1] See § 201.66(b)(4) of this chapter for definition of bullet.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

■ 4. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.20 [Amended]

■ 5. Section 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entry for "ANTIPERSPIRANTS."

Dated: May 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14140 Filed 6–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Fort Dodge Animal Health, Division of American Cyanamid Co., to Fort Dodge Animal Health, Division of Wyeth Holdings Corp. The regulations are also being revised to correct the address for Fort Dodge Animal Health, Division of Wyeth.

DATES: This rule is effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; 301–827–6967; e-mail: *dnewkirk@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501, has informed FDA of a change of name to Fort Dodge Animal Health, Division of Wyeth Holdings Corp. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

In addition, when the name of Fort Dodge Animal Health, Division of American Home Products Corp. was changed to Fort Dodge Animal Health, Division of Wyeth (67 FR 67520, November 6, 2002), an inaccurate correction to the address was made. At this time, it is being changed to the original and correct address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended.

a. In the table in paragraph (c)(1), in the entry for "Fort Dodge Animal Health, Division of Wyeth" and in the table in paragraph (c)(2), in the entry for "000856" by removing "500" and by adding in its place "800".

b. In the table in paragraph (c)(1), in the entry for "Fort Dodge Animal Health, Division of American Cyanamid Co." and in the table in paragraph (c)(2), in the entry for "053501" by removing "American Cyanamid Co." and by adding in its place "Wyeth Holdings Corp.".

Dated: May 19, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14303 Filed 6–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9059]

RIN 1545–AX18

Coordination of Sections 755 and 1060; Allocation of Basis Adjustments Among Partnership Assets and Application of the Residual Method to Certain Partnership Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document finalizes regulations relating to the allocation of basis adjustments among partnership assets under section 755. The regulations are necessary to implement section 1060, which applies the residual method to certain partnership transactions.

DATES: These regulations are effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Craig Gerson, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 755 of the Internal Revenue Code (Code). On April 5, 2000, a notice of proposed rulemaking (REG–107872–99, 2000–1 C.B. 911) under section 755 was published in the **Federal Register** (65 FR 17829). Only one commentator submitted written comments in response to the notice of proposed rulemaking, and no public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Contents

1. Summary

Section 743(b) provides for an optional adjustment to the basis of partnership property following certain transfers of partnership interests. The amount of the basis adjustment is the difference between the transferee's basis in the partnership interest and the transferee's share of the partnership's basis in the partnership's assets. Once the amount of the basis adjustment is determined, it is allocated among the partnership's individual assets pursuant to section 755.

On December 14, 1999, final regulations (TD 8847; 1999–2 C.B. 701) were published in the **Federal Register** under section 755 (64 FR 69903). Under these regulations, basis adjustments under section 743(b) are allocated among a partnership's assets as follows. First, the adjustment is allocated between the two classes of property described in section 755(b). These classes of property consist of capital assets and section 1231(b) property (capital gain property), and any other property of the partnership (ordinary income property). The amount of a basis adjustment under section 743(b) that is allocated to the class of ordinary income property is equal to the total amount of income, gain, or loss that would be allocated to the transferee from the sale of all ordinary income property. The amount of the basis adjustment under section 743(b) that is allocated to capital gain property is the total amount of the basis adjustment under section 743(b) less the amount of the basis adjustment allocated to ordinary income property. The basis adjustment is then allocated to individual assets within each class.

The final regulations issued on December 14, 1999, worked in conjunction with § 1.755–2T. In the case of a basis adjustment under section 743(b) or section 732(d), the fair market values of all assets other than goodwill or going concern value were determined on the basis of all the facts and circumstances, and the fair market value of goodwill and going concern value was determined using the residual method. As described more fully in the notice of proposed rulemaking, § 1.755–2T was published prior to the enactment of section 1060(d), which (as amended in 1993) requires the residual method to be applied for purposes of determining the values of section 197 intangibles for purposes of applying section 755. These final regulations implement section 1060(d) and replace § 1.755–2T.

These final regulations differ from § 1.755–2T by using the residual method to value all section 197 intangibles (not just goodwill and going concern value). In addition, these final regulations also apply to basis adjustments under section 734(b) and contain special rules for certain substituted basis transactions. Finally, for convenience, the provisions of the regulations have been relocated to the beginning of § 1.755–1.

Under these final regulations, a partnership is required to assign values to its assets as follows. First, the partnership must determine the values of each of its assets other than section 197 intangibles under all the facts and circumstances, taking into account section 7701(g) (treating the fair market value of a property as not less than the amount of any nonrecourse indebtedness to which the property is subject). The partnership then must determine the gross value of all partnership assets (partnership gross value). Last, the partnership is required to use the residual method to assign values to the partnership's section 197 intangibles. For purposes of these regulations, the term *section 197 intangibles* includes all section 197 intangibles (as defined in section 197), as well as any goodwill or going concern value that would not qualify as a section 197 intangible under section 197.

If the aggregate value of partnership property other than section 197 intangibles is equal to or greater than partnership gross value, then all section 197 intangibles are deemed to have a value of zero. In all other cases, the aggregate value of the partnership's section 197 intangibles (the residual section 197 intangibles value) is deemed to equal the excess of partnership gross value over the aggregate value of partnership property other than section 197 intangibles. The residual section 197 intangibles value must be allocated, first, among section 197 intangibles other than goodwill and going concern value. Any remaining value is assigned to goodwill and going concern value.

The proposed regulations used the residual method to assign values to all partnership assets, rather than limiting the scope of the residual method to section 197 intangibles. Treasury and the IRS have concluded that these rules were unduly complex, especially when they applied to partnerships whose partnership agreements contained special allocations of partnership income or loss. Accordingly, the final regulations utilize the residual method only to value section 197 intangibles.

2. Transactions Subject to the Regulations

Because the proposed regulations used the residual method to value all partnership assets (and not just section 197 intangibles), it was desirable for all partnerships to value their assets using the same method. Accordingly, under the authority of sections 1060(d) and 755, the proposed regulations applied to all partnerships, whether or not their assets constituted a trade or business. In contrast, the final regulations apply the residual method only for the purpose of valuing section 197 intangibles, which are usually held by partnerships whose assets constitute a trade or business. Thus, the final regulations apply the residual method only to partnerships whose assets constitute a trade or business (as described in § 1.1060–1(b)(2)).

The proposed regulations specifically applied to basis adjustments under section 732(d). Some references to section 732(d) have been removed in the final regulations to enhance readability. Nevertheless, the final regulations continue to apply to basis adjustments under section 732(d).

3. Methods for Determining Partnership Gross Value

If a partnership interest is transferred in a taxable transaction, the transferee's basis in its partnership interest provides a frame of reference for determining partnership gross value. In these transactions, both the proposed and the final regulations generally provide that partnership gross value is the amount that, if assigned to all partnership property, would result in a liquidating distribution to the transferee partner equal to that partner's basis (reduced by the amount, if any, of such basis that is attributable to partnership liabilities) in the transferred partnership interest immediately following the relevant transfer.

In certain circumstances involving basis adjustments under section 743(b), such as where income or loss with respect to particular section 197 intangibles is allocated differently among partners, partnership gross value may vary depending on the fair market values of particular section 197 intangibles held by the partnership. In these situations, the final regulations require the partnership to use a reasonable method, consistent with the purposes of the final regulations, to determine partnership gross value.

In the preamble to the proposed regulations, the IRS and the Treasury Department requested comments regarding how the residual method applies in the context of a basis adjustment that results from an exchange of a partnership interest in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest (a transferred basis exchange). Determining partnership gross value in such an exchange is problematic, because the transferee's basis in the partnership interest does not necessarily have any connection to the fair market values of partnership assets. No comments were received regarding the specific method to be adopted by the final regulations.

The IRS and the Treasury Department also requested comments regarding how the residual method applies in the context of basis adjustments under section 734(b). One commentator suggested that the final regulations should require one method for valuing partnership assets in the case of a *pro rata* distribution, and another method for valuing partnership assets in the case of a *non-pro rata* distribution. The IRS and the Treasury Department believe that this approach would be unnecessarily complex.

The final regulations adopt a single method for determining partnership gross value that applies to all section 734(b) basis adjustments and to section 743(b) basis adjustments resulting from transferred basis exchanges. In these circumstances, partnership gross value is the value of the entire partnership as a going concern, increased by the amount of partnership liabilities. In the case of a basis adjustment under section 734(b), the value of the entire partnership as a going concern is determined immediately after the distribution causing the adjustment.

A commentator has suggested that the same method for determining partnership gross value should apply to exchanged basis transactions, such as the distribution of a partnership interest by a partnership. The final regulations adopt this comment by replacing all references to transferred basis exchanges with references to substituted basis transactions. Conforming adjustments are also made to the special rules contained in § 1.755–1(b)(5) for allocating basis adjustments under section 743(b) among a partnership's assets in these exchanges.

4. Transferors of Partnership Interests

In the preamble to the proposed regulations, comments were requested as to whether the residual method should be used to determine the fair market values of partnership assets for purposes of applying section 1(h)(6)(B) (collectibles gain or loss), section 1(h)(7) (section 1250 capital gain), and section 751(a) (ordinary income) to the sale or other disposition of a partnership interest. No comments were received on this issue. Treasury and the IRS have determined that the potential benefits of a rule allowing transferors to use the residual method do not justify the increased complexity that the rule would have created.

5. Other Changes

The final regulations add two clarifying rules for allocating basis adjustments under section 743(b) among a partnership's assets in the case of a transaction that is not a substituted basis transaction. The first rule provides that assets with respect to which the transferee partner has no interest in income, gain, losses, or deductions are not taken into account in allocating basis adjustments to capital assets. The second rule provides that in no event may the amount of any decrease in basis allocated to an item of capital gain property exceed the partnership's adjusted basis in that item. If the amount of a decrease in basis otherwise allocable to a particular capital asset exceeds the partnership's adjusted basis in that asset, the transferee's negative basis adjustment in that asset is limited to the partnership's adjusted basis in that asset, and the excess must be applied to reduce the remaining basis, if any, of other capital gain assets pro rata in proportion to the partnership's adjusted bases in such assets.

Effective Date

These regulations apply to transfers of partnership interests and distributions of property from partnerships that occur on or after June 9, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Craig Gerson of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.755–2 also issued under 26 U.S.C. 755 and 26 U.S.C. 1060. * * *

■ **Par. 2.** Section 1.755–1 is amended as follows:

■ 1. Paragraph (a) is revised.

■ 2.–3. A paragraph heading is added for paragraph (b)(1)(i).

■ 4. The first two sentences of paragraph (b)(1)(i) are revised.

■ 5. Paragraph (b)(3)(iii) is redesignated as paragraph (b)(3)(iv).

■ 6. New paragraph (b)(3)(iii) is added.

■ 7. In paragraph (b)(4)(ii), the *Example* is revised.

■ 8. The paragraph heading for paragraph (b)(5) is revised.

■ 9. Paragraph (b)(5)(i) is revised.

■ 10. In paragraph (b)(5)(iv) *Example 1*, the last sentence is amended by removing the language "transferred basis exchange" and adding "substituted basis transaction" in its place.

■ 11. In paragraph (b)(5)(iv) *Example 2*, paragraph (iii), the third sentence is amended by adding the language "this" before the language "paragraph (b)(5)".

■ 12. In paragraph (c)(5) *Example* (i) introductory text is revised.

■ 13. Paragraph (d) is revised.

■ 14. Paragraph (e) is added.

■ The revisions and additions read as follows:

§ 1.755–1 Rules for allocation of basis.

(a) *In general*—(1) *Scope.* This section provides rules for allocating basis adjustments under sections 743(b) and 734(b) among partnership property. If there is a basis adjustment to which this section applies, the basis adjustment is allocated among the partnership's assets as follows. First, the partnership must determine the value of each of its assets under paragraphs (a)(2) through (5) of this section. Second, the basis adjustment is allocated between the two classes of property described in section 755(b). These classes of property consist of capital assets and section 1231(b) property (capital gain property), and any other property of the partnership (ordinary income property). For purposes of this section, properties and potential gain treated as unrealized receivables under section 751(c) and the regulations thereunder shall be treated as separate assets that are ordinary income property. Third, the portion of the basis adjustment allocated to each class is allocated among the items within the class. Basis adjustments under section 743(b) are allocated

among partnership assets under paragraph (b) of this section. Basis adjustments under section 734(b) are allocated among partnership assets under paragraph (c) of this section.

(2) *Coordination of sections 755 and 1060.* If there is a basis adjustment to which this section applies, and the assets of the partnership constitute a trade or business (as described in § 1.1060–1(b)(2)), then the partnership is required to use the residual method to assign values to the partnership's section 197 intangibles. To do so, the partnership must, first, determine the value of partnership assets other than section 197 intangibles under paragraph (a)(3) of this section. The partnership then must determine partnership gross value under paragraph (a)(4) of this section. Last, the partnership must assign values to the partnership's section 197 intangibles under paragraph (a)(5) of this section. For purposes of this section, the term *section 197 intangibles* includes all section 197 intangibles (as defined in section 197), as well as any goodwill or going concern value that would not qualify as a section 197 intangible under section 197.

(3) *Values of properties other than section 197 intangibles.* For purposes of this section, the fair market value of each item of partnership property other than section 197 intangibles shall be determined on the basis of all the facts and circumstances, taking into account section 7701(g).

(4) *Partnership gross value*—(i) *Basis adjustments under section 743(b)*—(A) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, in the case of a basis adjustment under section 743(b), partnership gross value generally is equal to the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner equal to the transferee's basis in the transferred partnership interest immediately following the relevant transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities).

(B) *Special situations.* In certain circumstances, such as where income or loss with respect to particular section 197 intangibles are allocated differently among partners, partnership gross value may vary depending on the values of particular section 197 intangibles held by the partnership. In these special situations, the partnership must assign value, first, among section 197 intangibles (other than goodwill and going concern value) in a reasonable manner that is consistent with the ordering rule in paragraph (a)(5) of this section and would cause the appropriate liquidating distribution under paragraph (a)(4)(i)(A) of this section. If the actual fair market values, determined on the basis of all the facts and circumstances, of all section 197 intangibles (other than goodwill and going concern value) is not sufficient to cause the appropriate liquidating distribution, then the fair market value of goodwill and going concern value shall be presumed to equal an amount that if assigned to goodwill and going concern value would cause the appropriate liquidating distribution.

(C) *Income in respect of a decedent.* Solely for the purpose of determining partnership gross value under this paragraph (a)(4)(i), where a partnership interest is transferred as a result of the death of a partner, the transferee's basis in its partnership interest is determined without regard to section 1014(c), and is deemed to be adjusted for that portion of the interest, if any, that is attributable to items representing income in respect of a decedent under section 691.

(ii) *Basis adjustments under section 743(b) resulting from substituted basis transactions.* This paragraph (a)(4)(ii) applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in the interest or to the basis of other property held at any time by the transferee (substituted basis transactions). In the case of a substituted basis transaction, partnership gross value equals the value of the entire partnership as a going concern, increased by the amount of partnership liabilities at the time of the exchange giving rise to the basis adjustment.

(iii) *Basis adjustments under section 734(b).* In the case of a basis adjustment under section 734(b), partnership gross value equals the value of the entire partnership as a going concern immediately following the distribution causing the adjustment, increased by the amount of partnership liabilities immediately following the distribution.

(5) *Determining the values of section 197 intangibles*—(i) *Two classes.* If the aggregate value of partnership property other than section 197 intangibles (as determined in paragraph (a)(3) of this section) is equal to or greater than partnership gross value (as determined in paragraph (a)(4) of this section), then all section 197 intangibles are deemed to have a value of zero for purposes of this section. In all other cases, the aggregate value of the partnership's section 197 intangibles (the residual section 197 intangibles value) is deemed to equal the excess of partnership gross value over the aggregate value of partnership property other than section 197 intangibles. The residual section 197 intangibles value must be allocated between two asset classes in the following order—

(A) Among section 197 intangibles other than goodwill and going concern value; and

(B) To goodwill and going concern value.

(ii) *Values assigned to section 197 intangibles other than goodwill and going concern value.* The fair market value assigned to a section 197 intangible (other than goodwill and going concern value) shall not exceed the actual fair market value (determined on the basis of all the facts and circumstances) of that asset on the date of the relevant transfer. If the residual section 197 intangibles value is less than the sum of the actual fair market values (determined on the basis of all the facts and circumstances) of all section 197 intangibles (other than goodwill and going concern value) held by the partnership, then the residual section 197 intangibles value must be allocated among the individual section 197 intangibles (other than goodwill and going concern value) as follows. The residual section 197 intangibles value is assigned first to any section 197 intangibles (other than goodwill and going concern value) having potential gain that would be treated as unrealized receivables under the flush language of section 751(c) (flush language receivables) to the extent of the basis of those section 197 intangibles and the amount of income arising from the flush language receivables that the partnership would recognize if the section 197 intangibles were sold for their actual fair market values (determined based on all the facts and circumstances) (collectively, the flush language receivables value). If the value assigned to section 197 intangibles (other than goodwill and going concern value) is less than the flush language receivables value, then the assigned value is allocated among the properties giving rise to the flush language receivables in proportion to the flush language receivables value in those properties. Any remaining residual section 197 intangibles value is allocated among the remaining portions of the section 197 intangibles (other than goodwill and going concern value) in proportion to the actual fair market values of such portions (determined based on all the facts and circumstances).

(iii) *Value assigned to goodwill and going concern value.* The fair market value of goodwill and going concern value is the amount, if any, by which the residual section 197 intangibles value exceeds the aggregate value of the partnership's section 197 intangibles (other than goodwill and going concern value).

(6) *Examples.* The provisions of paragraphs (a)(2) through (5) are illustrated by the following examples, which assume that the partnerships have an election in effect under section 754 at the time of the transfer and that the assets of each partnership constitute a trade or business (as described in § 1.1060–1(b)(2)). Except as provided, no partnership asset (other than inventory) is property described in section 751(a), and partnership liabilities are secured by all partnership assets. The examples are as follows:

Example 1. (i) A is the sole general partner in PRS, a limited partnership having three equal partners. PRS has goodwill and going concern value, two section 197 intangibles other than goodwill and going concern value (Intangible 1 and Intangible 2), and two other assets with fair market values (determined using all the facts and circumstances) as follows: inventory worth $1,000,000 and a building (a capital asset) worth $2,000,000. The fair market value of each of Intangible 1 and Intangible 2 is $50,000. PRS has one liability of $1,000,000, for which A bears the entire risk of loss under section 752 and the regulations thereunder. D purchases A's partnership interest for $650,000, resulting in a basis adjustment under section 743(b). After the purchase, D bears the entire risk of loss for PRS's liability under section 752 and the regulations thereunder. Therefore, D's basis in its interest in PRS is $1,650,000.

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $650,000 ($1,650,000—$1,000,000). Under paragraph (a)(4)(i) of this section, partnership gross value is $2,950,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $650,000).

(iii) Under paragraph (a)(3) of this section, the inventory has a fair market value of $1,000,000, and the building has a fair market value of $2,000,000. Thus, the aggregate value of partnership property other than section 197 intangibles, $3,000,000, is equal to or greater than partnership gross value, $2,950,000. Accordingly, under paragraphs (a)(3) and (5) of this section, the value assigned to each of the partnership's assets is as follows: inventory, $1,000,000; building, $2,000,000; Intangibles 1 and 2, $0; and goodwill and going concern value, $0. D's section 743(b) adjustment must be allocated under paragraph (b) of this section using these assigned fair market values.

Example 2. (i) Assume the same facts as in *Example 1*, except that the fair market values of Intangible 1 and Intangible 2 are each $300,000, and that D purchases A's interest in PRS for $1,000,000. After the purchase, D's basis in its interest in PRS is $2,000,000.

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $1,000,000 ($2,000,000—$1,000,000). Under paragraph (a)(4)(i) of this section, partnership gross value is $4,000,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $1,000,000).

(iii) Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $1,000,000 (the excess of partnership gross value, $4,000,000, over the aggregate value of assets other than section 197 intangibles, $3,000,000 (the sum of the value of the inventory, $1,000,000, and the value of the building, $2,000,000)). The partnership must determine the values of section 197 assets by allocating the residual section 197 intangibles value among the partnership's assets. The residual section 197 intangibles value is assigned first to section 197 intangibles other than goodwill and going concern value, and then to goodwill and going concern value. Thus, $300,000 is assigned to each of Intangible 1 and Intangible 2, and $400,000 is assigned to goodwill and going concern value (the amount by which the residual section 197 intangibles value, $1,000,000, exceeds the fair market value of section 197 intangibles other than goodwill and going concern value, $600,000). D's section 743(b) adjustment must be allocated under paragraph (b) of this section using these assigned fair market values.

Example 3. (i) Assume the same facts as in *Example 1*, except that the fair market values of Intangible 1 and Intangible 2 are each $300,000, and that D purchases A's interest in PRS for $750,000. After the purchase, D's basis in its interest in PRS is $1,750,000. Also assume that Intangible 1 was originally purchased for $300,000, and that its adjusted basis has been decreased to $50,000 as a result of amortization. Assume that, if PRS were to sell Intangible 1 for $300,000, it would recognize $250,000 of gain that would be treated as an unrealized receivable under the flush language in section 751(c).

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $750,000 ($1,750,000—$1,000,000). Under paragraph (a)(4)(i) of this section, partnership gross value is $3,250,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $750,000).

(iii) Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $250,000 (the amount by which partnership gross value, $3,250,000, exceeds the aggregate value of partnership property other than section 197 intangibles, $3,000,000). Intangible 1 has potential gain that would be treated as unrealized receivables under the flush language of section 751(c). The flush language receivables value in Intangible 1 is $300,000 (the sum of PRS's basis in Intangible 1, $50,000, and the amount of ordinary income, $250,000, that the partnership would recognize if Intangible 1 were sold for its actual fair market value). Because the residual section 197 intangibles value, $250,000, is less than the flush language receivables value of Intangible 1, Intangible 1 is assigned a value of $250,000, and Intangible 2 and goodwill and going concern value are assigned a value of zero. D's section 743(b) adjustment must be allocated under paragraph (b) of this section using these assigned fair market values.

Example 4. Assume the same facts as in *Example 1*, except that the fair market values of Intangible 1 and Intangible 2 are each $300,000, and that A does not sell its interest in PRS. Instead, A contributes its interest in PRS to E, a newly formed corporation wholly-owned by A, in a transaction described in section 351. Assume that the contribution results in a basis adjustment under section 743(b) (other than zero). PRS determines that its value as a going concern immediately following the contribution is $3,000,000. Under paragraph (a)(4)(ii) of this section, partnership gross value is $4,000,000 (the value of PRS as a going concern, $3,000,000, increased by the partnership's liability, $1,000,000, immediately after the contribution). Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $1,000,000 (the amount by which partnership gross value, $4,000,000, exceeds the aggregate value of partnership property other than section 197 intangibles, $3,000,000). Of the residual section 197 intangibles value, $300,000 is assigned to each of Intangible 1 and Intangible 2, and $400,000 is assigned to goodwill and going concern value (the amount by which the residual section 197 intangibles value, $1,000,000, exceeds the fair market value of section 197 intangibles other than goodwill and going concern value, $600,000). E's section 743(b) adjustment must be allocated under paragraph (b)(5) of this section using these assigned fair market values.

Example 5. G is the sole general partner in PRS, a limited partnership having three equal partners (G, H, and I). PRS has goodwill and going concern value, two section 197 intangibles other than goodwill and going concern value (Intangible 1 and Intangible 2), and two capital assets with fair market values (determined using all the facts and circumstances) as follows: Vacant land worth $1,000,000, and a building worth $2,000,000. The fair market value of each of Intangible 1 and Intangible 2 is $300,000. PRS has one liability of $1,000,000, for which G bears the entire risk of loss under section 752 and the regulations thereunder. PRS distributes the land to H in liquidation of H's interest in PRS. Immediately prior to the distribution, PRS's basis in the land is $800,000, and H's basis in its interest in PRS is $750,000. The distribution causes the partnership to increase the basis of its remaining property by $50,000 under section 734(b)(1)(B). PRS determines that its value as a going concern immediately following the distribution is $2,000,000. Under paragraph (a)(4)(iii) of this section, partnership gross value is $3,000,000 (the value of PRS as a going concern, $2,000,000, increased by the partnership's liability, $1,000,000, immediately after the distribution). Under paragraph (a)(5) of this section, the residual section 197 intangibles value of PRS's section 197 intangibles is $1,000,000 (the amount by which partnership gross value, $3,000,000, exceeds the aggregate value of partnership property other than section 197 intangibles, $2,000,000). Of the residual section 197 intangibles value,

$300,000 is assigned to each of Intangible 1 and Intangible 2, and $400,000 is assigned to goodwill and going concern value (the amount by which the residual section 197 intangibles value, $1,000,000, exceeds the fair market value of section 197 intangibles other than goodwill and going concern value, $600,000). PRS's section 734(b) adjustment must be allocated under paragraph (c) of this section using these assigned fair market values.

(b) *Adjustments under section 743(b)*—(1) *Generally*—(i) *Application.* For basis adjustments under section 743(b) resulting from substituted basis transactions, paragraph (b)(5) of this section shall apply. For basis adjustments under section 743(b) resulting from all other transfers, paragraphs (b)(2) through (4) of this section shall apply. * * *

* * * * *

(3) * * *

(iii) *Special rules*—(A) *Assets in which partner has no interest.* An asset with respect to which the transferee partner has no interest in income, gain, losses, or deductions shall not be taken into account in applying paragraph (b)(3)(ii)(B) of this section.

(B) *Limitation in decrease of basis.* In no event may the amount of any decrease in basis allocated to an item of capital gain property under paragraph (b)(3)(ii)(B) of this section exceed the partnership's adjusted basis in that item (or in the case of property subject to the remedial allocation method, the transferee's share of any remedial loss under § 1.704–3(d) from the hypothetical transaction). In the event that a decrease in basis allocated under paragraph (b)(3)(ii)(B) of this section to an item of capital gain property would otherwise exceed the partnership's adjusted basis in that item, the excess must be applied to reduce the remaining basis, if any, of other capital gain assets pro rata in proportion to the bases of such assets (as adjusted under this paragraph (b)(3)).

* * * * *

(4) * * *

(ii) * * *

Example. (i) A and B are equal partners in personal service partnership PRS. In 2004, as a result of B's death, B's partnership interest is transferred to T when PRS's balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows (based on all the facts and circumstances):

ASSETS

	Adjusted basis	Fair market value
Section 197 Intangible	$2,000	$5,000
Unrealized Receivables	0	15,000
Total	$2,000	$20,000

Liabilities and Capital

	Adjusted per books	Fair market value
Capital:		
A	1,000	10,000
B	1,000	10,000
Total	$2,000	$20,000

(ii) None of the assets owned by PRS is section 704(c) property, and the section 197 intangible is not amortizable. The fair market value of T's partnership interest on the applicable date of valuation set forth in section 1014 is $10,000. Of this amount, $2,500 is attributable to T's 50% share of the partnership's section 197 intangible, and $7,500 is attributable to T's 50% share of the partnership's unrealized receivables. The partnership's unrealized receivables represent income in respect of a decedent. Accordingly, under section 1014(c), T's basis in its partnership interest is not adjusted for that portion of the interest which is attributable to the unrealized receivables. Therefore, T's basis in its partnership interest is $2,500.

(iii) Under paragraph (a)(4)(i)(C) of this section, solely for purposes of determining partnership gross value, T's basis in its partnership interest is deemed to be $10,000. Under paragraph (a)(4)(i) of this section, partnership gross value is $20,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to T equal to $10,000).

(iv) Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $5,000 (the excess of partnership gross value, $20,000, over the aggregate value of assets other than section 197 intangibles, $15,000). The residual section 197 intangibles value is assigned first to section 197 intangibles other than goodwill and going concern value, and then to goodwill and going concern value. Thus, $5,000 is assigned to the section 197 intangible, and $0 is assigned to goodwill and going concern value. T's section 743(b) adjustment must be allocated using these assigned fair market values.

(v) At the time of the transfer, B's share of the partnership's basis in partnership assets is $1,000. Accordingly, T receives a $1,500 basis adjustment under section 743(b). Under this paragraph (b)(4), the entire basis adjustment is allocated to the partnership's section 197 intangible.

(5) *Substituted basis transactions*—(i) *In general.* This paragraph (b)(5) applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in that interest. For exchanges on or after June 9, 2003, this paragraph (b)(5) also applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined by reference to other property held at any time by the transferee. For example, this paragraph (b)(5) applies if a partnership interest is contributed to a corporation in a transaction to which section 351 applies, if a partnership interest is contributed to a partnership in a transaction to which section 721(a) applies, or if a partnership interest is distributed by a partnership in a transaction to which section 731(a) applies.

* * * * *

(c) * * *

(5) * * *

Example. (i) A, B, and C form equal partnership PRS. A contributes $50,000 and Asset 1, nondepreciable capital gain property with a fair market value of $50,000 and an adjusted tax basis of $25,000. B and C each contributes $100,000. PRS uses the cash to purchase Assets 2, 3, 4, 5, and 6. Assets 2 and 3 are nondepreciable capital assets, and Assets 4, 5, and 6 are inventory that has not appreciated substantially in value within the meaning of section 751(b)(3). Assets 4, 5, and 6 are the only assets held by the partnership that are subject to section 751. The partnership has an election in effect under section 754. After seven years, the adjusted basis and fair market value of PRS's assets are as follows:

* * * * *

(d) *Required statements.* See § 1.743–1(k)(2) for provisions requiring the transferee of a partnership interest to provide information to the partnership relating to the transfer of an interest in the partnership. *See* § 1.743–1(k)(1) for a provision requiring the partnership to attach a statement to the partnership return showing the computation of a basis adjustment under section 743(b) and the partnership properties to which the adjustment is allocated under section 755. *See* § 1.732–1(d)(3) for a provision requiring a transferee partner to attach a statement to its return showing the computation of a basis adjustment under section 732(d) and the partnership properties to which the adjustment is allocated under section 755. *See* § 1.732–1(d)(5) for a provision requiring the partnership to provide information to a transferee partner reporting a basis adjustment under section 732(d).

(e) *Effective Date*—(1) *Generally.* Except as provided in paragraphs (b)(5) and (e)(2) of this section, this section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after December 15, 1999.

(2) *Special rules.* Paragraphs (a) and (b)(3)(iii) of this section apply to transfers of partnership interests and distributions of property from a partnership that occur on or after June 9, 2003.

§ 1.755–2T [Removed]

■ **Par. 3.** Section 1.755–2T is removed.

■ **Par. 4.** In § 1.1060–1, paragraph (e)(2) is revised to read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

* * * * *

(e) * * *

(2) *Transfers of interests in partnerships.* For reporting requirements relating to the transfer of a partnership interest, *see* § 1.755–1(d).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

■ **Par. 6.** In § 602.101, paragraph (b), the entry for "1.755–2T" is removed.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: May 22, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–14204 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1097–F]

RIN 1120–AA93

Release Gratuities, Transportation, and Clothing; Aliens

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing to limit the release gratuity available to aliens. Only aliens released to immigration authorities for release or transfer to a community corrections center are eligible for a gratuity of up to $10. Aliens released for deportation, exclusion, or removal, or aliens detained or serving 60 days or less in a contract facility will not receive any release gratuity. We intend this rule to reduce costs by providing the gratuity only to those aliens whom the Bureau determines to be in need.

DATES: This rule is effective on July 9, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202)307–2105.

SUPPLEMENTARY INFORMATION: The Bureau published a proposed rule amending its regulations on release gratuities, transportation, and clothing (28 CFR 571, subpart C) on October 4, 1999 (64 FR 53872). The previous regulations on this subject were published in the **Federal Register** on May 21, 1991 (56 FR 23480) and were amended on September 10, 1996 (61 FR 47795).

Change to the Previous Rule

Previous provisions on release gratuities in section 571.21(e) specified that with the exception of aliens serving 60 days or less in contract facilities, each alien released to immigration authorities is to have $10 cash.

Under this final rule, aliens released for the purpose of deportation, exclusion, or removal will not receive a $10 gratuity. Because these inmates are to become the responsibility of the Bureau of Citizenship and Immigration Services (BCIS), it is not appropriate for the Bureau to provide a $10 gratuity.

We estimate that approximately 8.5% of the total inmate population of the Federal Bureau of Prisons will be affected by this rule.

Public Comment and Bureau Response

We received five comments on the proposed rule. One commenter supported the rule, indicating that it would reduce cost to the Bureau.

Two commenters expressed concern that when aliens are released to the Immigration and Naturalization Service (INS, now the Bureau of Citizenship and Immigration Services [BCIS]), they may not necessarily be released for the purposes of exclusion, deportation or removal, and therefore still need a $10 gratuity. One commenter was concerned that aliens may be "wrongly classified" by the Bureau as being excludable, deportable, or removable, a decision which, the commenter said, cannot be made without "a hearing before an Immigration judge."

The Bureau's policies regarding release of aliens to the INS (BCIS) for exclusion, deportation, or removal can be found in the Bureau's Program Statement on the Institution Hearing Program (PS 5111.01), accessible on the internet at *www.bop.gov* or through the Freedom of Information Act process. This describes the process for identifying aliens for release to the INS (BCIS) for purposes of exclusion, deportation or removal. The Bureau, INS (BCIS) and the Executive Office for Immigration Review (EOIR) jointly developed the Institution Hearing Program (IHP) to ensure that deportation proceedings begin as quickly as possible after an alien inmate's conviction and finish before the alien inmate's release date.

IHP hearing sites are specific institutions where alien inmates

participate in immigration hearings conducted by the INS (BCIS) and EOIR. After INS (BCIS) and EOIR make a decision to exclude, deport or remove an alien, the alien is transferred to an IHP release site close to deportation locations, where alien inmates remain until their sentences expire. The INS (BCIS) and EOIR, not the Bureau, make the decision regarding an alien's status. Therefore, there is no way that the Bureau can "wrongly classify" an alien, as the commenter feared.

One commenter cited the preamble to the original rule, published in 1979 (44 FR 38236), which stated that the purpose of the gratuity is to ensure that the alien has money to care for him-/herself in the community until he/she receives an income. The commenter suggested that eliminating this gratuity would be contrary to the purpose of providing the funds—for transportation and communicating with family or legal counsel.

Since aliens who had received the $10 gratuity were not released to the community, but instead to INS (BCIS), they would have no need of support pending their ability to earn an income. Instead, they are released into the custody of INS (BCIS), who is responsible for transporting them, and they can access INS (BCIS) provisions for communicating with family members and legal counsel.

One commenter expressed concern that this rule would not actually reduce cost to the Bureau. According to our recent statistics, in December of 1999, we released approximately 958 INS (BCIS) detainees. Therefore, extrapolating this statistic, we estimate that approximately 11,500 aliens receive this gratuity annually. Therefore, this rule would save the Bureau approximately $115,000 every year. We consider this a significant cost savings for the Bureau.

Finally, we received a letter which we construed to be a comment on the proposed rule, as it raised the subject of release gratuities. However, we found that the commenter, an inmate, did not address the issues raised by the proposed rule, but instead questioned the Bureau's application of 18 U.S.C. 4281, instead of 18 U.S.C. 3624(d), to his situation. Although this comment is not relevant to this final rule, we will briefly address it here.

18 U.S.C. 4281, which was repealed in 1984 (*see* Pub.L. 98–473, Title II, § 218(a)(7), October 12, 1984, 98 Stat. 2027), allowed only a $100 gratuity to prisoners upon release. Its replacement, 18 U.S.C. 3624(d), allows "an amount of money, not more than $500" in the Director's discretion. The inmate commented that, on his release, he should receive the $500 described in the latter statute instead of the $100 described in the former statute.

Section 235 of Public Law 98–473 stated that 18 U.S.C. 3624 and other provisions created by that Public Law would "take effect on the first day of the first calendar month beginning 36 months after the date of enactment [October 12, 1984] and [would] apply only to offenses committed after the taking effect of this chapter." The effective date of 18 U.S.C. 3624 is, therefore, November 1, 1987. Because this commenter's offense occurred before November 1, 1987, 18 U.S.C. 3624(d) does not entitle him to a $500 gratuity upon release.

We publish the proposed rule, without change, as a final rule. You may send further comments on this rule by writing to the address noted above. Although we will not formally respond to further comments by publication in the **Federal Register**, we will consider them.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. Revise the authority citation for 28 CFR part 571 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10.

■ 2. In § 571.21, revise paragraph (e) to read as follows:

§ 571.21 Procedures.

* * * * *

(e) Staff will ensure that each alien released to immigration authorities for the purpose of release or transfer to a community corrections center has $10 cash. This provision does not apply to aliens being released for the purpose of deportation, exclusion, or removal, or to aliens detained or serving 60 days or less in contract facilities.

[FR Doc. 03–14379 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1108–I]

RIN 1120–AB21

Clarifying of Release Gratuities—Release Transportation Regulations to More Closely Conform to Statutory Provisions

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: This document makes a minor clarifying change to the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing. The amendment will clarify that the Bureau is authorized, upon an inmate's release, to provide transportation to an inmate's place of conviction or his/her legal residence only within the United States, under 18 U.S.C. 3624(d)(3). We intend this clarification to remove the misunderstanding that the Bureau is authorized to provide transportation outside the United States.

DATES: This rule is effective on June 9, 2003. Please send comments on this rulemaking by August 8, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202)307–2105.

SUPPLEMENTARY INFORMATION:

What Change Are We Making?

28 CFR 571.22, the current rule on release gratuities, states in paragraph (c) that "[t]ransportation will be provided to an inmate's place of conviction, his legal residence within the United States, or to other such place as authorized and approved."

However, 18 U.S.C. 3624(d)(3) allows only for "transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director."

This clarification will revise the rule only to the extent that our rule appears to conflict with the Bureau's statutory authority, and to correct any misunderstanding that we may transport inmates outside the United States upon their release.

The new rule text of 28 CFR 571.22(c) correctly states that "[t]ransportation will be provided to an inmate's place of conviction or legal residence within the United States or its territories."

Why Are We Making This Change as an Interim Final Rule?

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor clarification of currently existing Bureau policy. We are modifying our rule to directly mirror the language of the statute authorizing us to transport inmates, upon their release, only to areas within the United States.

Because this change is interpretive in nature, reflects current Bureau policy, and is a minor clarification of current agency procedure and practice, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

The Bureau notes that it published a notice of proposed rulemaking to amend its regulations on release gratuities with respect to deportable aliens (28 CFR 571, subpart C) on October 4, 1999 (64 FR 53872) (BOP 1097).

Although this interim rule (BOP 1108I) amends regulations in the same part of the Code of Federal Regulations as were proposed to be amended by BOP 1097, it makes no changes to what was proposed by BOP 1097.

Where to Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Harley G. Lappin,
Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

■ 2. In § 571.22, revise paragraph (c) to read as follows:

§ 571.22 Release clothing and transportation.

* * * * *

(c) Transportation will be provided to an inmate's place of conviction or to his/her legal residence within the United States or its territories.

[FR Doc. 03–14380 Filed 6–6–03; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–018]

RIN 1625–AA09

Drawbridge Operation Regulation; Alabama River at Coy, AL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the railroad swing bridge across the Alabama River at Coy, Wilcox County, Alabama. The change will reduce the advance notification requirement for opening the bridge from 48 hours to 24 hours.

DATES: This rule is effective June 9, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public comment is not necessary since the proposed change reduces the burden to the public and is being made at the request of the drawbridge owner, the only party that could reasonably object to the change.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons stated in the preceding paragraph.

Background and Purpose

The Alabama & Gulf Coast Railway, the owners of the bridge, have requested a modification in the drawbridge operation of the swing bridge across the Alabama River, mile 105.3, at Coy. Presently, the draw of the bridge opens on signal if at least 48-hours notice is given in accordance with 33 CFR 117.101(a). The owner of the bridge has requested a change to allow for the bridge to be opened on signal if at least 24 hours notice is given to lessen the burden on the mariner while still allowing the owner to make reasonable preparations to open the bridge.

The regulation at 33 CFR 117.101(a) currently refers to the bridge as the "Burlington Northern Santa Fe railroad bridge." Due to a change in ownership, the bridge is now called the "Alabama & Gulf Coast Railway Drawbridge." This final rule reflects that name change.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

This rule improves service to waterways users and will not have a negative impact on them.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no negative impact on any small entities because the modification to the regulation improves service to the waterway users.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only affects the timing of the advance notice required for operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.101(a) is revised to read as follows:

§ 117.101 Alabama River.

(a) The Alabama & Gulf Coast Railway Drawbridge, mile 105.3, at Coy, shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: May 29, 2003.

R.F. Duncan,
Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–14430 Filed 6–6–03; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 117 and 165

[USCG–2003–15330]

Safety Zones, Security Zones and Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between January 1, 2003 and March 31, 2003, that were not published in the **Federal Register**. This quarterly notice lists temporary drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between January 1, 2003 and March 31, 2003.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–15330 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, telephone (202) 267–2830. If you have questions on viewing, or on submitting material to the docket, contact Dorothy

Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from January 1, 2003, through March 31, 2003, unless otherwise indicated.

Dated: June 3, 2003.

S.B. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—1ST QUARTER 2003

COTP docket	Location	Type	Effective date
CHARLESTON 03–025	COOPER RIVER, SOUTH CAROLINA	SECURITY ZONE	02/14/2003
CORPUS CHRISTIE 03–001	CORPUS CHRISTIE SHIP CHANNEL, CORPUS CHRISTIE.	SAFETY ZONE	02/14/2003
HOUSTON-GALVESTON 03–001	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	01/12/2003
HOUSTON-GALVESTON 03–002	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	01/13/2003
JACKSONVILLE 03–019	MATANZAS RIVER, ST. AUGUSTINE, FL	SAFETY ZONE	02/21/2003
JACKSONVILLE 03–027	JACKSONVILLE, FL	SECURITY ZONE	02/13/2003
JACKSONVILLE 03–029	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	02/14/2003
JACKSONVILLE 03–030	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	02/17/2003
JACKSONVILLE 03–034	COCOA VILLAGE MARDI GRAS, COCOA, FL	SAFETY ZONE	02/22/2003
JACKSONVILLE 03–040	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	02/23/2003
MIAMI 03–009	BISCAYNE BAY, MIAMI BEACH, FL	SAFETY ZONE	02/03/2003
MIAMI 03–010	BISCAYNE BAY, MIAMI BEACH, FL	SAFETY ZONE	02/05/2003
MIAMI 03–013	LAKE OKEECHOBEE, FL	SAFETY ZONE	02/08/2003
MIAMI 03–020	BUENA VISTA, FL	SAFETY ZONE	02/01/2003
MIAMI 03–023	PORT OF MIAMI, MIAMI, FL	SECURITY ZONE	01/30/2003
MIAMI 03–028	MIAMI BEACH WINTER SPRINTS, MIAMI BEACH, FL.	SAFETY ZONE	03/02/2003
MIAMI 03–033	WEST PALM BEACH, FL	SAFETY ZONE	02/22/2003
MOBILE 03–001	PORT OF MOBILE, MOBILE, AL	SECURITY ZONE	01/07/2003
MOBILE 03–003	PORT OF MOBILE, MOBILE, AL	SECURITY ZONE	01/17/2003
MOBILE 03–004	NICEVILLE, FLORIDA	SAFETY ZONE	02/04/2003
MOBILE 03–005	GULFPORT SHIP CHANNEL, GULFPORT, MS	SAFETY ZONE	02/18/2003
MOBILE 03–006	PACAUGOULA, MS	SAFETY ZONE	03/21/2003
MORGAN CITY 03–002	EUGENE ISLAND SEA BUOY TO M. 199.8	SECURITY ZONE	01/20/2003
NEW ORLEANS 03–001	LWR MISSISSIPPI RIVER, M. 94 TO 96	SAFETY ZONE	01/01/2003
NEW ORLEANS 03–002	LAKE PONTCHARTRAIN, KENNER, LA	SAFETY ZONE	01/01/2003
NEW ORLEANS 03–003	LAKE PONTCHARTRAIN, METAIRIE, LA	SAFETY ZONE	01/01/2003
NEW ORLEANS 03–004	INTRACOASTAL WATERWAY, M. 20 TO 15	SAFETY ZONE	01/31/2003
NEW ORLEANS 03–005	LWR MISSISSIPPI RIVER, M. 93 TO 96	SAFETY ZONE	03/03/2003
NEW ORLEANS 03–006	LOWER MISSISSIPPI, RIVER	SECURITY ZONE	03/20/2003
PADUCAH 03–001	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	01/08/2003
PADUCAH 03–002	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	01/28/2003
PADUCAH 03–005	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	03/19/2003
PADUCAH 03–006	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	03/28/2003
PHILADELPHIA 03–001	DELAWARE BAY AND RIVER	SECURITY ZONE	01/03/2003
PHILADELPHIA 03–002	DELAWARE RIVER, PHILADELPHIA, PA	SECURITY ZONE	01/03/2003
PHILADELPHIA 03–006	SUSQUEHANNA RIVER, YORK, COUNTY, PA	SECURITY ZONE	02/04/2003
PHILADELPHIA 03–008	TACONY PALMYRA BRIDGE, DELAWARE RIVER.	SAFETY ZONE	02/10/2003
PHILADELPHIA 03–009	ICE CONDITIONS, CHESAPEAKE & DELAWARE CANAL.	SAFETY ZONE	01/31/2003
PHILADELPHIA 03–010	CHESAPEAKE & DELAWARE CANAL	SAFETY ZONE	02/04/2003

COTP QUARTERLY REPORT—1ST QUARTER 2003—Continued

COTP docket	Location	Type	Effective date
PHILADELPHIA 03–011	DELAWARE RIVER, SALEM RIVER	SAFETY ZONE	02/10/2003
PHILADELPHIA 03–012	CAPE MAY HARBOR/INLET	SAFETY ZONE	02/10/2003
PHILADELPHIA 03–013	DELAWARE RIVER, PHILADELPHIA, PA	SECURITY ZONE	03/31/2003
PITTSBURGH 02–019	OHIO RIVER, M. 119 TO 119.8	SECURITY ZONE	03/15/2003
PITTSBURGH 03–001	ALLEGHENY RIVER, M. 0.3 TO 0.7	SAFETY ZONE	01/21/2003
PORT ARTHUR 03–001	SABINE-NECHES CANAL, PORT ARTHUR, TX	SAFETY ZONE	03/02/2003
SAN DIEGO 03–001	SAN DIEGO BAY, CA	SAFETY ZONE	01/25/2003
SAN FRANCISCO BAY 03–001	OAKLAND ESTUARY, CALIFORNIA	SAFETY ZONE	01/25/2003
SAN JUAN 03–026	PONCE, PUERTO RICO	SECURITY ZONE	02/11/2003
SAN JUAN 03–052	SAN JUAN, PUERTO RICO	SECURITY ZONE	03/26/2003
SAVANNAH 03–021	SAVANNAH RIVER, SAVANNAH, GA	SECURITY ZONE	01/24/2003
SAVANNAH 03–042	SAVANNAH RIVER, SAVANNAH, GA	SAFETY ZONE	02/27/2003
SAVANNAH 03–050	SAVANNAH RIVER, SAVANNAH, GA	SECURITY ZONE	03/25/2003
TAMPA 03–043	PORT OF TAMPA, TAMPA FLORIDA	SECURITY ZONE	03/09/2003
05–03–002	PORT OF HAMPTON ROADS, VIRGINIA	SECURITY ZONE	01/13/2003
05–03–004	BOGUE SOUND, MOREHEAD CITY, NC	SECURITY ZONE	01/19/2003
05–03–005	CAPE FEAR RIVER, WILMINGTON, NC	SECURITY ZONE	01/20/2003
05–03–006	CAPE FEAR RIVER, BRUNSWICK COUNTY, NC	SECURITY ZONE	01/21/2003
05–03–009	ELIZABETH RIVER, VA	SECURITY ZONE	01/29/2003
05–03–011	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/02/2003
05–03–014	HAMPTON ROADS, JAMES RIVER, VA	SAFETY ZONE	02/01/2003
05–03–015	CHESAPEAKE AND DELAWARE CANAL, MARYLAND.	SAFETY ZONE	01/31/2003
05–03–020	CHESAPEAKE AND DELAWARE CANAL, MARYLAND.	SAFETY ZONE	02/04/2003
05–03–021	ELIZABETH RIVER, PORT OF HAMPTONS ROADS, VA.	SECURITY ZONE	02/06/2003
05–03–024	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/15/2003
05–03–025	PORT OF HAMPTON ROADS, VIRGINIA	SECURITY ZONE	02/15/2003
05–03–026	HAMPTON ROADS, JAMES RIVER, VA	SECURITY ZONE	02/17/2003
05–03–027	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/21/2003
05–03–028	ELIZABETH RIVER, PORT OF HAMPTON ROADS, VA.	SECURITY ZONE	02/23/2003
05–03–033	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	03/12/2003
07–02–151	MIAMI RIVER, MIAMI–DADE COUNTY	DRAWBRIDGE OPERATION	02/02/2003
09–03–200	CHICAGO RIVER, CHICAGO, IL	SECURITY ZONE	01/07/2003
09–03–201	PORT CHICAGO ZONE, LAKE MICHIGAN	SECURITY ZONE	01/07/2003
13–03–006	PUGET SOUND, WA	SECURITY ZONE	02/23/2003

[FR Doc. 03–14429 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Huntington–03–001]

RIN 1625–AA00

Safety Zone; Ohio River Miles 171.5 to 172.5, Marietta, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 171.5 and ending at mile 172.5, extending the entire width of the river. This safety zone is needed to provide for the safety of participating vessels and mariners during the Marietta River Roar, tunnel boat races. All vessels and persons are prohibited from transiting within this safety zone, except for participating vessels and mariners, unless authorized by the Captain of the Port Huntington or a designated representative.

DATES: This rule is effective from 10 a.m. on July 4 until 7 p.m. on July 5, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Huntington-03–001) and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Ave., Huntington, WV, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for not making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date would be contrary to public interest since immediate action is needed to provide for the safety of participating vessels and mariners.

Background and Purpose

The Captain of the Port Huntington is establishing a safety zone from miles 171.5 to 172.5 on the Ohio River extending the entire width of the river. This safety zone is necessary to ensure the safety of participating vessels and mariners during the Marietta River Roar tunnel boat races. Participating vessels are vessels registered with event officials to race or work in the Marietta

River Roar, and include race boats, rescue boats, tow boats and picket boats associated with the race. With the exception of participating vessels of the Marietta River Roar, all other vessels and persons are prohibited from transiting within this safety zone between 10 a.m. and 7 p.m. each day unless authorized by the Captain of the Port Huntington or a designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit portions of the Ohio River from miles 171.5 to 172.5, from 10 a.m. on July 4 until 7 p.m. on July 5, 2003, and will only be enforced from 10 a.m. to 7 p.m. each day. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will be enforced for only a short period of time, and there will be breaks provided every three hours during the races. During those breaks the waterway will be cleared and traffic will be allowed to pass through the zone. Notification of the safety zone and the break periods will be made to the marine community by broadcast notice to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact PO William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 10 a.m. on July 4, 2003 until 7 p.m. on July 5, 2003 add a new temporary § 165.T08–050 to read as follows:

§ 165.T08–050 Safety Zone; Ohio River Miles 171.5 to 172.5 Marietta, OH.

(a) *Definition. Participating Vessels* are vessels registered with event officials to race or work in the Marietta River Roar, and include race boats, rescue boats, tow boats and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: the waters of the Ohio River from miles 171.5 to 172.5, extending the entire width of the river.

(c) *Periods of enforcement.* This section will be enforced from 10 a.m. to 7 p.m. on July 4 and July 5, 2003. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or a designated representative.

(2) Participating vessels are authorized entry within the zone.

(3) Persons or vessels other than participating vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or a designated representative. They may be contacted via VHF–FM Channel 13 or 16 or by telephone at (304) 529–5524.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 14, 2003.

S.M. Wischmann,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Huntington.

[FR Doc. 03–14431 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Huntington–03–002]

RIN 1625–AA00

Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 355.5 and ending at mile 356.5, extending the entire width of the river. This safety zone is needed to provide for the safety of participating vessels and mariners during the Portsmouth Power Boat Races. All vessels and persons, except for participating vessels, are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative.

DATES: This rule is effective from 10 a.m. on July 19 until 7 p.m. on July 20, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (COTP Huntington–03–002) and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Ave., Huntington, WV, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to provide for the safety of participating vessels and mariners.

Background and Purpose

The Captain of the Port Huntington is establishing a safety zone from miles 355.5 to 356.5 on the Ohio River, extending the entire width of the river. This safety zone is necessary to ensure the safety of participating vessels and mariners during the Portsmouth Power Boat Races. Participating vessels are vessels registered with event officials to race or work in the Portsmouth Power Boat Races, and include race boats, rescue boats, tow boats and picket boats associated with the race. With the exception of participating vessels of the Portsmouth Power Boat Races, all other vessels are prohibited from transiting within this safety zone between 10 a.m. and 7 p.m. each day unless authorized by the Captain of the Port Huntington or a designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit portions of the Ohio River from miles 355.5 to 356.5, from 10 a.m. on July 19 until 7 p.m. on July 20, 2003, and will only be enforced from 10 a.m. to 7 p.m. each day. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will be enforced for only a short period of time, and there will be breaks provided every three hours during the races. During those breaks the waterway will be cleared and traffic will be allowed to pass through the zone. Notification of the safety zone and the break periods will be made to the marine community by broadcast notice to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact PO William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6; 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 10 a.m. on July 19, 2003 through 7 p.m. on July 20, 2003 add a new temporary § 165.T08–051 to read as follows:

§ 165.T08–051 Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, OH.

(a) *Definition. Participating Vessels* are vessels registered with event officials to race or work in the Portsmouth Power Boat Races, and include race boats, rescue boats, tow boats and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: The waters of the Ohio River from miles 355.5 to 356.5, extending the entire width of the river.

(c) *Periods of enforcement.* This section will be enforced from 10 a.m. to 7 p.m. on July 19 and July 20, 2003. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or a designated representative.

(2) Participating vessels are authorized entry within the zone.

(3) Persons or vessels other than participating vessels and mariners requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington or a designated representative. They may be contacted via VHF–FM Channel 13 or 16 or by telephone at (304) 529–5524.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 14, 2003.

S.M. Wischmann,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Huntington.

[FR Doc. 03–14432 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

36 CFR Part 230, Subpart C

RIN 0596–AB95

Forest Land Enhancement Program

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department is adopting an interim final rule to establish a new subpart C in part 230 of Title 36 Code of the Federal Regulations that sets forth procedures for administration of the new Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). The intended effect of this interim final rule is to encourage the long-term sustainability of nonindustrial private forest (NIPF) lands in the United States by assisting landowners, through State foresters, in more actively managing their forest lands and related resources through the use of State, Federal, and private sector resource management expertise, financial assistance, and educational programs. Public comment is invited and will be considered in the development of the final rule. The Forest Service specifically invites public comment on the process for distributing FLEP funds, including the national allocation factors.

DATES: This interim final rule is effective June 9, 2003. Comments must be received by August 8, 2003.

ADDRESSES: Send written comments to Hal E. Brockman, USDA Forest Service, Cooperative Forestry, Mail Stop Code 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123; via electronic mail to *hbrockman@fs.fed.us;* or via facsimile to FLEP Rule Comments at (202) 205–1271. The agency cannot confirm receipt of comments. A toll free number is available, 1–866–585–8540, for callers to record voice mail messages (up to 3 minutes long) with their comments on the interim final rule. This toll free number will be active 24 hours a day during the comment period. Public comments submitted by voice mail will be transcribed for the public record.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim final rule during regular business hours at the office of the Cooperative Forestry Staff, 4th Floor SE., Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–1389 to facilitate entry into the building.

A copy of the Farm Security and Rural Investment Act of 2002, secs. 8001 and 8002, which established the Forest Land Enhancement Program, and other information on this program can be found at *http://www.fs.fed.us/spf/coop/flep.htm.*

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Forest Service, Cooperative Forestry, (202) 205–1694.

SUPPLEMENTARY INFORMATION:

Background

Through the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), which amended the Cooperative Forestry Assistance Act (16 U.S.C. 2101, *et seq.*), Congress established the Forest Land Enhancement Program (hereafter, FLEP). In establishing this program, Congress recognized the public benefits of sustainable forest management to enhance the productivity of timber, fish and wildlife habitat, soil and water quality, wetlands, recreational resources, and aesthetic values; and the need to establish a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land. To accomplish this purpose, Congress has authorized the use of $100 million dollars of Commodity Credit Corporation funds to implement FLEP through September 30, 2007. These FLEP funds are available for use by all 50 United States, Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa.

The Stewardship Incentive Program (SIP), managed by the USDA Forest Service (Forest Service), and the Forestry Incentives Program (FIP), managed by the Natural Resource Conservation Service, were repealed in the 2002 Farm Bill. SIP was initiated in the 1990 Farm Bill and allowed for cost-sharing a wide range of multiple resource management practices. FIP was initiated in 1975 and allowed for cost-sharing timber stand improvement, site preparation for natural regeneration and tree planting practices. The regulation for SIP at 36 CFR part 230, subpart A, will be removed at a later date but is currently needed for administration of SIP until the remaining funds have been expended.

FLEP will continue with the work that has been completed by SIP and FIP and include the options of providing technical and educational assistance. FLEP encompasses all of the cost-share practices authorized under both SIP and FIP. Since 1975, through FIP there has been almost 4 million acres of trees planted, about 1.5 million acres of improving a stand of forest trees, and about 51,000 acres of site preparation for natural regeneration. Since 1990, through SIP there has been almost 4.5 million acres of a variety of practices completed by more than 45,000 participants. These practices include cost-share for the development of forest stewardship plans on more than 2 million acres for almost 11,000 participants. The primary practices undertaken with SIP funds other than plan development, in order of acres completed are: Forest improvement; reforestation and afforestation; wildlife habitat enhancement; soil and water protection and improvement; agroforestry establishment, maintenance or renovation; riparian and wetland

protection and improvement; forest recreation enhancement; and fisheries habitat enhancement.

FLEP is intended to promote sustainable forest management on nonindustrial private forest land and to complement other sustainable forestry programs in the States. FLEP establishes or supplements existing nonindustrial private forest land programs to provide technical, educational, and financial assistance to landowners. The implementation of this new program demonstrates the commitment of the Secretary of Agriculture to sustainable forest management.

FLEP will be administered by the Chief of the Forest Service through the Responsible Officials, in partnership with State forestry agencies. The State Foresters will develop and carry out FLEP in collaboration with their State Forest Stewardship Coordinating Committees, based on the authorizing legislation, this interim final rule, and the State's priority plan.

For reasons of simplicity and efficiency, the distribution of funds from the Chief is based on factors and criteria applied to three geographic areas of the United States: Northeast, South, and West. The Northeast distribution area includes the Forest Service State and Private Forestry Northeastern Area, which comprises the 20 States in Region 9. The Southern distribution area includes the 13 States in Forest Service Region 8, and the International Institute for Tropical Forestry in Puerto Rico, and the U.S. Virgin Islands. The Western distribution area includes the 17 States in Forest Service Regions 1, 2, 3, 4, 5, 6, and 10; and the Territories of Guam, CNMI, and American Samoa. In accordance with section 230.32 of this interim final rule, the Responsible Officials in the three geographic fund distribution areas will use the criteria set out in the Forest Service Directives Manual Chapter 3310 to make the final allocation to each State. The State will be responsible for reimbursing individuals and third parties. A general description of the criteria is provided in the section-by-section explanation for section 230.32.

The Forest Service has received input from several Federal and State agencies, numerous conservation organizations, institutions of higher learning, and individuals relative to the development of program policy, activities, elements, and procedures for FLEP. These include Forest Service field units, the Cooperative State Research Education and Extension Service, the Farm Service Agency, and the Natural Resources Conservation Service within the U.S. Department of Agriculture; State forestry agencies; the International Association of Fish and Wildlife agencies; Indian Tribes; and others.

Section-by-Section Explanation of the Interim Final Rule at 36 CFR Part 230, Subpart C (New)

Section 230.30—Purpose and scope. Paragraphs (a) and (b) of this section discuss the purpose and scope of FLEP which is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land. Paragraph (b) explains that the components of FLEP complement existing Federal or State programs, along with programs offered by institutions of higher learning.

Paragraph (c) explains that participation in FLEP is voluntary. However, in order to participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

Section 230.31—Definitions. This section sets out definitions for the following terms as they are used in FLEP: Capital investment or improvement, Catastrophic natural event, Chief, Committee, Concurrence, Cost-Share, Financial assistance, Fiscal year, Landowner, Management plan, Nonindustrial private forest land, Practice, Practice plan, Responsible Official, Service representative, State, State Forester, and State priority plan. The following definitions have not been used in previous programs: Capital investment or improvement, Catastrophic natural event, Concurrence, Cost-share, Financial assistance, Management plan, Practice plan, Responsible Official, Service representative and State priority plan. These definitions are a result of some of the differences between FLEP and previous program.

Section 230.32—National program administration. This section outlines how FLEP is administered at the National level and how FLEP funds will be distributed from the National level to the State level. The Chief will implement FLEP in partnership with State forestry agencies and in consultation with a wide range of Federal, State, and local natural resource agencies, and institutions of higher learning and with a broad range of private sector interests. The Chief, working with the State Foresters, will develop and oversee FLEP policy and monitor implementation over the life of the program.

The Chief will distribute the funds to each of the three geographic funding areas. This shall be based on the national allocation factors, which are set out in the Forest Service Manual Chapter 3310. A notice of issuance of an interim directive has been published elsewhere in this part of today's **Federal Register.** Forest Service Directives are available electronically at *http://www.fs.fed.us/im/directives.* The Responsible Official determines the allocation amount for each State.

Allocation factors to the three geographic areas are determined in consultation with the State Foresters who serve on the Forest Resource Management Committee. The Forest Resource Management Committee is a standing committee of the National Association of State Foresters, comprised of nine State Foresters, three from each of the three geographic funding areas. Current criteria used at the National level for determining funds distribution to the three geographic areas for FY 2003 are:

(1) Acres of NIPF lands,

(2) Number of NIPF landowners that own 1 acre or more,

(3) 10% of the acres of highly erodable lands,

(4) Number of owners of those highly erodable lands, and

(5) Acres of land with a growing capacity greater than 20 cubic feet per year.

The data for these factors are currently available for all States. The Forest Service is gathering data on factors that relate to the priorities for NIPF lands to use in the allocation of funds to the three geographic regions in FY 2004. The additional factors planned for FY 2004 are: areas at risk from forest health concerns for insect and disease; areas at risk from wildfire; loss and fragmentation of the forest land base; and miles of impaired streams, rivers and coastal shoreline along with acres of impaired lake, estuary and wetland areas.

The Responsible Officials in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the: National priorities, National allocation factors, regional and State-wide priorities, ability of the State to deliver FLEP as shown in past progress reporting for other Cooperative Forestry programs, and agency direction in the Forest Service Manual Chapter 3310. The national priorities will change with changes in public demand for the uses of forestlands and with the increase in scientific knowledge. As these national priorities change, the Forest Service Manual Chapter 3310 will be changed. For substantive changes, a notice may be published in the **Federal Register.** Changes in the national priorities will also be available on the Forest Service Web site provided in the **ADDRESSES** section of this preamble.

Section 230.33—Responsible Official program administration. This section outlines how FLEP is administered at the Forest Service Responsible Official level.

Section 230.34—State program administration. This section outlines how FLEP is administered at the State level.

Section 230.35—FLEP elements. There are three major elements of FLEP: education, technical assistance, and financial assistance. States may use a portion of the funds received through FLEP for administrative costs. There are no limits on what portion of FLEP funds may be used for administration. States are not required to participate in all elements of FLEP.

Section 230.36—State priority plan—purpose and scope. State priority plans are a new requirement for FLEP. States should use all existing data and plans, such as the State Forest Stewardship plan, to help create this plan. There are no transitional issues expected from the development of the State priority plan.

Section 230.37—State priority plan—educational assistance. This section addresses the educational assistance component of FLEP in a State priority plan.

Section 230.38—State priority plan—technical assistance. This section addresses the technical assistance component of FLEP in a State priority plan. If a State determines that all or some of its funds will be used for technical assistance, the State priority plan must describe who will provide the assistance, outreach efforts directed at specific groups or categories of landowners, expected long- and short-term outcomes, and method(s) for documenting accomplishments.

Section 230.39—State priority plan—financial assistance. This section addresses the administration of FLEP cost-share financial assistance in the State priority plan.

Section 230.40—Eligible practices for cost-share assistance. Paragraphs (a)(1) through (11) of this section authorize 11 activities and practices for which cost-share funds may be made available to landowners, including: management plan development; afforestation and reforestation; forest stand improvement; agroforestry implementation; water quality improvement and watershed protection; fish and wildlife habitat improvement; forest health and protection; invasive species control; wildfire and catastrophic risk reduction; wildfire and catastrophic event rehabilitation; and special practices (establishment, maintenance, and restoration practices addressing other conservation concerns as proposed by the State Forester and the committee and must have concurrence by the Responsible Official). States may develop policy handbooks to provide further direction regarding these practices and to provide specifications for practice implementation. A practice may consist of one or more components.

Section 230.41—Eligibility requirements for cost-share assistance. All owners of nonindustrial private forest land as defined in section 230.31 of this subpart are eligible to apply directly to the State for cost-share assistance. FLEP funds may be used for the treatment of up to 1,000 acres annually per landowner, and up to 5,000 acres with a waiver by the State Forester and concurrence by the Responsible Official. Although the average size of forest holdings differs considerably among the geographic regions for the country, the majority of nonindustrial private forest landowners own less that 100 acres. The maximum acreage limitation of 1,000 acres therefore adequately allows for broad program participation. The State Forester and Responsible Official will base the approval of treatment of between 1,000 and 5,000 acres on the assessment of significant public benefit. States can use their FLEP funds for treatment of more than 1,000 acres, up to 5,000 acres. The agreement for all FLEP activities is between the State and the landowner.

To be eligible for FLEP, landowners must meet the minimum acreage requirement determined by the State and set out in the State priority plan, which may not exceed 25 acres. The 25-acre maximum limitation ensures that landowners of small properties will be eligible for participation in FLEP. Management plan requirements must be explained in the State priority plan, including minimum requirements. These minimum requirements should include elements such as a map of the property, soils information, and analysis of the current situation of the land and its resources and recommendations for future activities. States will have to determine if existing landowner management plans such as Tree Farm management plans, Forest Stewardship plans, or similar plans meet their current minimum criteria for a management plan.

Section 230.42—Cost-share assistance application and payment procedures. This section describes the cost-share assistance and payment procedures for FLEP. Some of the key points about this process are as follows. Cost-share funds must be available before landowners may make an application for payment. The approval of an application constitutes an agreement between the landowner and the State. The landowner is obligated to complete the practice(s) on a reimbursable basis. When the service representative verifies that the practice has been completed, the landowner shall be reimbursed for the agreed to cost-share amount. Every cost-share practice must have a practice plan approved by the service representative. The requirements of the practice plan may be contained in the management plan and serve as the basis for determining acceptable performance.

Landowners shall be notified in writing upon approval of a FLEP application. The landowner is responsible for obtaining all authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

Practices must be completed within 24 months of approval. If a longer period of time is needed, the State Forester may grant an extension, not to exceed 12 months, if this is specified in the State priority plan. The cost-share payment shall be calculated and disbursed to the landowner upon certification of the practice. Landowners must provide access for practice inspection to the service representative.

The maximum aggregate amount of cost-share payment under FLEP shall not exceed $100,000 through 2007, with the exception of Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee and the Responsible Official, determines their limit.

Cost-share payments may not exceed 75 percent of the total cost incurred by the participating landowner. Landowners may utilize non-federal programs or any donated assistance to supplement FLEP funds but the total of all funds shall not exceed 100 percent of the cost of implementing the practice. If the practice results in the immediate sale of forest products, the Federal share of the total cost shall be reduced by the gross revenue.

States may use the cost-share rates as a means to define priorities practices or priority areas. State priorities for cost share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310. The State Forester may develop other priorities in consultation

with the State Forest Stewardship Coordinating Committee.

When a practice fails to meet the minimum specifications due to factors beyond the landowner's control, the State Forester may approve cost-share payments under the following conditions. (1) The landowner repeats the application or establishes additional eligible practices. (2) The landowner establishes a reasonable effort to meet the minimum requirements and the practice as performed adequately meets the objectives of the practice plan. In the case of death or incompetence of any landowner, the State Forester shall approve cost-share payment to the successor in title or other persons or entities in control of the property, if they agree to maintain the practice for the duration of the required maintenance period.

Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on behalf of the State. Claims of agencies of the United States Government are the only ones allowed against any payments to any landowner.

A landowner must have a management plan prior to receiving approval to implement any FLEP practice, except for management plan development. A service representative must approve the plan.

Section 230.43—Cost-share assistance—prohibited practices. This section identifies the cost-share activities that are prohibited in FLEP. These activities include items such as costs incurred before an application is approved and repeated practices. The State Forester has the authority to pre-approve costs incurred prior to an approved application. The State priority plan can describe materials and items that may be purchased before an application is approved. Repeating practices implemented with other Federal, State, or local government programs are prohibited, except where such practices are repeated due to failure of a prior practice without fault of the landowner. Recurring practices as noted in this subpart may be repeated.

Practices that are prohibited include capital investments or capital improvements that are not related to a FLEP practice, such as purchase of land or any interest in land, or any interest in an endowment as provided in 230.32. Also prohibited is the development of or improvement to landowner nursery operations, development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance, or any practice that is not related to the long-term sustainability of nonindustrial private forest lands or agroforestry practices.

Section 230.44—Cost-share assistance—reporting requirement. There are 11 categories for reporting FLEP cost-share practices. They will be reported annually through the Forest Service automated data system. Most categories will be reported in acres treated. FLEP1 will include number of plans developed as well as acres planned. States will only report those categories for which they provide cost-share. Each State shall report these practices to the Responsible Official who will collect a report for their States and provide this information to the Forest Service Washington Office Cooperative Forestry Staff.

Section 230.45—Recapture of cost-share assistance. This section authorizes the recapture of payments to landowners under a range of circumstances including: the use of this program to procure unjust benefits; the action or failure to take action by the landowner or successor that results in the deliberate destruction or impairment of a practice; or the landowners sale, conveyance, or other loss of control of land before the required practice maintenance period has ended and the new landowner does not agree to maintain the practice for the duration of the practice maintenance period.

Section 230.46—Information collection requirements. This section provides the Office of Management and Budget control number assigned to the information collection requirements governing the preparation of a State priority plan, a management plan, practice plan, reporting requirements, and the application requirements of this subpart, as required by the Paperwork Reduction Act of 1995. Notice of this new information collection was published in the **Federal Register** with a request for comment on September 20, 2002 (67 FR 59246). No comments were received. This has been assigned Office of Management and Budget (OMB) control number 0596–0168.

Good Cause Statement

By adoption of this interim final rule, FLEP will be implemented in accordance with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). This interim final rule ensures consistent and proper use of funds by the agency as well as the State forestry agencies and associated third parties. This rule is being published as an interim final rule to allow for prompt implementation of FLEP. Agency directives providing further guidance on administration of FLEP are issued in Forest Service Directive Manual Chapter 3310. The 2002 Farm Bill repealed the two existing programs, Stewardship Incentive Program (SIP) and Forestry Incentive Program (FIP), which provided assistance to nonindustrial forest land owners. Administration of SIP and FIP will continue on a limited basis only until remaining funds from these programs have been expended. Prompt implementation of FLEP is important to ensure there is no gap in financial assistance to qualified landowners due to the repeal of SIP and FIP. The comments received on this interim final rule during the 60-day comment period following publication in the **Federal Register**, along with experience from the first year of FLEP implementation, will be used to develop a final rule. This interim final rule has also received review by a wide variety of partners and interested parties.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. An analysis has been conducted addressing the costs and benefits associated with promulgating this interim final rule to implement the FLEP authorized by 16 U. S. C. 2101 *et seq.*, as amended (Pub. L. 107–171).

The Forestry Incentives Program (FIP) and the Stewardship Incentives Program (SIP) were both repealed in the 2002 Farm Bill. These programs assisted private forest landowners in managing forestland for multiple benefits. In FY 2002, these two programs were allocated $10 million. Between 1996 and 2002, FIP funding averaged $6.3 million. SIP was allocated $4.5 million in 1997 and 1998, and no Federal funds in 1999, 2000, and 2001. FLEP is authorized to receive up to $100 million through FY 2007.

The primary economic effects of the interim final regulations are an increase in forest health and sustainability due to better management practices on NIPF land, as well as non-monetized benefits such as improved water quality, wildlife habitat, fishing opportunities, carbon sequestration, and enhanced recreation. The costs of the interim final regulation to the Federal treasury will be $100 million over 5 years, as specified in the legislation, or, more than $87 million when discounted at 7% discount rate. The discounted increase in Federal expenditures is estimated at $43 million. The States will administer the program using a portion of these funds. Costs to individual landowners are voluntary, and consist of at least 25% of the portion of the funds spent on cost sharing. In this analysis, we estimate these costs will increase $6.4 million above the baseline.

Benefits of the interim final regulation above the baseline include cost sharing to improve forest management on more than 382,000 acres. Technical assistance on sustainable forest practices will be provided to more than 2.9 million acres of forestland to improve landowner awareness and understanding of sustainable forestry principles and practices. Qualitative benefits include additional carbon sequestration, improved wildlife habitat, improved soil and water quality, and sustainable forest conditions.

It has been determined that FLEP will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. A maximum total of $100 million will be provided to State Forestry agencies between 2003 and 2007, as directed in the Farm Security and Rural Investment Act of 2002, (Pub. L. 107–171; 16 U.S.C. 2101 *et seq.*). These funds will be used to pay for the technical, education, and financial assistance to nonindustrial private forest landowners to improve the sustainability of these lands and the forest resources. FLEP will complement other Federal, State, and local programs that provide assistance to landowners by making greater resources available to participants.

Finally, as a new program, FLEP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. The program is completely voluntary for each State and is voluntary for any landowner. Those States that choose to implement FLEP must follow requirements in this interim final rule, as would landowners participating in the program.

The Office of Management and Budget (OMB) has designated this interim final rule as significant due to the potential that it may raise novel legal or policy issues. Therefore, this interim final rule is subject to OMB review under Executive Order 12866.

Controlling Paperwork Burdens to the Public

The Office of Management and Budget has reviewed the final information collection package for this rulemaking according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. The information requirements in this rule have been assigned OMB control number 0596–0168 for use through May 31, 2006. The requirements governing the preparation of a State priority plan, management plan, practice plan, the reporting requirements, and the application requirements of this subpart constitute the minimum information requirements needed to administer FLEP.

Government Paper Work Elimination Act Compliance

The Forest Service is committed to compliance with the Government Paper Work Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis has been completed and reviewed by USDA. The analysis is available for viewing on the Forest Service FLEP Web site: *http://www.fs.fed.us/spf/coop/flep.htm.*

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this interim final rule. Nevertheless, in the event that such a conflict was to be identified, the interim final rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this interim final rule; and (2) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Energy Effects

This interim final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this interim final rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this interim final rule guides the development of practices to be applied on nonindustrial private forest lands including practices for energy conservation.

Environmental Impact

This interim final rule deals with the implementation of the FLEP, and as such, has no direct effect on Forest Service decisions for land management activities. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This interim final rule is limited to establishment of an administrative program within the Forest Service to assist nonindustrial private landowners in the management and conservation of timber and non-timber resources. This interim final rule and the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), which authorizes FLEP, do not permit any takings of private property or provide any funds for such purpose.

Consultation and Coordination With Indian Tribal Governments

This interim final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required. However, a draft of the interim final rule was shared with tribes to collect their input for the development of this interim final rule.

Federalism

The Department has considered this interim final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Department has made a preliminary assessment that the interim final rule conforms with the federalism principles set out in these Executive Orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the National government and the States, or on the

distribution of power and responsibilities among the various levels of government. Moreover, there is no requirement on States to match funds in order to participate in FLEP. Based on comments received on this interim final rule, the Department will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 through 1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Proper Consideration of Small Entities

This interim final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial assessment on small entities' flexibility has been prepared as part of the cost-benefit analysis and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This interim final rule imposes no additional requirements on the affected public. The principal small businesses expected to be impacted are consultant foresters who may assist State forestry agencies in different phases of FLEP delivery, including technical, educational, and cost-share elements for which they will be fully compensated. The minimum requirements on small entities imposed by this interim final rule are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

List of Subjects in 36 CFR Part 230

Forest and forest products, Grant programs-natural resources, Intergovernmental relations, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, part 230 of Title 36 of the Code of Federal Regulations is amended by adding a new subpart C as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

■ 1. The authority citation is revised to read as follows:

Authority: 16 U.S.C. 2101 *et seq.*

■ 2. Amend Part 230 by adding a new subpart C to read as follows:

Subpart C—Forest Land Enhancement Program

Sec.

230.30 Purpose and scope.
230.31 Definitions.
230.32 National program administration.
230.33 Responsible official program administration.
230.34 State program administration.
230.35 FLEP elements.
230.36 State priority plan—purpose and scope.
230.37 State priority plan—educational assistance component.
230.38 State priority plan—technical assistance.
230.39 State priority plan—financial assistance component.
230.40 Eligible practices for cost-share assistance.
230.41 Eligibility requirements for cost-share assistance.
230.42 Cost-share assistance—application and payment procedures.
230.43 Cost-share assistance—prohibited practices.
230.44 Cost-share assistance—reporting requirement.
230.45 Recapture of cost-share assistance.
230.46 Information collection requirements.

§ 230.30 Purpose and scope.

(a) The regulations in this subpart govern the operation of the Forest Land Enhancement Program (hereafter, FLEP) as provided in Section 4 of the Cooperative Forestry Assistance Act (16 U.S.C. 2101 *et seq.*), as amended by title VIII of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The purpose of FLEP is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land.

(b) The educational assistance, resource management expertise, and financial assistance provided under FLEP shall complement any existing Federal or State programs or programs offered through institutions of higher learning providing assistance to nonindustrial private forest landowners. FLEP promotes improved coordination and cooperation among Federal, State, and local programs regarding the establishment, maintenance, enhancement, and restoration of nonindustrial private forestlands.

(c) Participation in FLEP is voluntary on the part of both the State and the nonindustrial forest landowner. To participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

§ 230.31 Definitions.

The terms used in this subpart are defined as follows:

Capital investment or improvement. Durable equipment or assets capable of being amortized or depreciated over a period of 3 or more years, not including activities or practices carried out as part of the Forest Land Enhancement Program (FLEP) cost-share element.

Catastrophic natural event. Destructive natural event, which includes, but is not limited to, wildfires, insect infestations, disease outbreaks, droughts, floods, windstorms, freezing, ice storms, hail, sleet, mudslides, landslides, earthquakes, avalanches, tornadoes, volcanoes, hurricanes, or tsunamis.

Chief. The Chief of the Forest Service, United States Department of Agriculture.

Committee. The State Forest Stewardship Coordinating Committee.

Concurrence. Review, verification, and confirmation by the Responsible Official that the State priority plan contains all of the key elements required by law and the rules of this subpart.

Cost-share. A program payment, on a reimbursable basis, at a maximum of 75 percent of the cost incurred by a landowner for implementation of a State-approved activity or practice authorized under FLEP.

Financial assistance. Funds disbursed as an award by the Federal Government to an eligible party from the FLEP annual apportionment, in the form of money, including grants, agreements, contracts, and other arrangements.

Fiscal year. The accounting period, used by the United States Government, from October 1 through September 30.

Landowner. An individual, group, association, corporation, Indian Tribe, or other legal private entity owning nonindustrial private forest land or a person who receives concurrence from the landowner for practice implementation and who holds a lease on the land for a minimum of 10 years. Corporations whose stocks are publicly traded or owners principally engaged in the primary processing of raw wood products are excluded.

Management plan. A written plan prepared by a service representative and approved by a State Forester.

Nonindustrial private forest land. Rural lands with existing tree cover, or which are suitable for growing trees, that are owned by any landowner as defined in this section.

Practice. A prescribed, natural resource management activity that is consistent with a practice plan and implemented through FLEP to enhance the multiple resource values and benefits and that results in improved conditions on nonindustrial private forest land. A practice may consist of multiple components.

Practice plan. A plan prepared by a service representative and approved by the State Forester that documents the specific practices that are to occur as a result of a landowner application for cost-share. A practice plan may be a stand-alone document or it may be a part of a management plan.

Responsible official. USDA Forest Service Regional Forester, Area Director, or Institute Director charged with the administration of FLEP.

Service representative. Any person who is recognized by a State Forester as having the knowledge and skills to develop management plans, understanding of the economic and environmental interrelationships of forestry and/or agroforestry resources, and the ability to identify appropriate activities to manage, protect, or enhance such resources. The State Forester designates service representatives as the line officers to perform specified FLEP elements.

State. Includes each of the States in the United States, and the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Forester. The director or other head of a State forestry agency or equivalent State official.

State priority plan. The document required from a State to participate in FLEP. A State Forester jointly prepares this plan with the State Forest Stewardship Coordinating Committee to facilitate long-term sustainability of nonindustrial private forest lands within the State.

§ 230.32 National program administration.

(a) The Chief shall develop and implement FLEP in partnership with State forestry agencies and in consultation with other Federal, State, and local natural resource management agencies, institutions of higher learning, and a broad range of private sector interests.

(b) In collaboration with State Foresters, the Chief of the Forest Service and Responsible Officials shall oversee developing and implementing FLEP policy and procedure, including the monitoring of program results over the life of FLEP to ensure that environmental, economic, and social values and public benefits are derived from the program.

(c) The Chief shall annually distribute such funds as may be available for FLEP to the Responsible Official(s) for each of the three geographic funding areas based on the criteria set out in the Forest Service Manual Chapter 3310.

(d) In developing allocation factors for making FLEP distributions under this subpart,

(1) The Chief shall consult with the State Foresters through their Forest Resource Management Committee, a standing committee of the National Association of State Foresters, or its successor.

(2) Allocation factors shall be based on National data sources that address the current status of forest lands of each State or Territory participating in FLEP. Data must be measurable, inclusive of all States, objective, and reliable. The data will address those factors described in the Cooperative Forestry Assistance Act (16 U.S.C. 2103(i), Distribution of Cost-Share Funds).

(e) National priorities for FLEP shall reflect the Department and Forest Service priorities for nonindustrial private forest land as provided in the Forest Service Manual Chapter 3310.

(f) The Responsible Official(s) in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the following:

(1) National priorities;

(2) National allocation factors;

(3) Regional and State-wide priorities;

(4) Ability of the State to deliver FLEP; and

(5) Direction in the Forest Service Manual Chapter 3310.

(g) FLEP financial assistance may be disbursed to a third party that will assist in program delivery. The Forest Service may disburse funds directly to a third party, which may include, but is not limited to, Federal, State, or local agencies, and landowner, nonprofit, or private organizations, with written approval by the State Forester.

(h) Except as provided at § 230.34(d), no financial assistance shall be provided by the Forest Service to a State Forester or any third party, until the Responsible Official has concurred with the State's priority plan.

(i) The Chief has final authority to resolve all issues that may arise in the administration of FLEP.

(j) The Forest Service shall provide National and regional administrative and financial support and oversight through distribution of available FLEP funds to State Foresters and through monitoring, review, and evaluation of FLEP activities and accomplishments.

(k) FLEP funds may not be used by States for capital investments or capital improvements unless specifically authorized in a funding document and must be limited to $5,000. The limitation on capital improvements excludes practices and activities cost-shared with landowners through FLEP.

(l) Funds may not be authorized in the financial assistance document or used for the purchase of land, any interest in land, or any interest in an endowment.

(m) By September 30, 2006, the Chief must submit a cumulative report to the Secretary of Agriculture summarizing all the activities and practices funded under FLEP as of that date.

§ 230.33 Responsible Official program administration.

(a) The Responsible Official shall review and provide concurrence with State priority plans, including any revisions of such plans.

(b) The Responsible Official shall provide oversight for all aspects of FLEP, including program reviews and shall ensure that the Forest Service is represented on each State Forest Stewardship Coordinating Committee.

(c) The Responsible Official shall disburse funds to the State Forester or their designated third parties in a timely manner.

(d) The Responsible Official shall determine the final funds distribution to States.

(e) The funds will be distributed to individual States based on criteria in § 230.32 (f).

(f) Policy in the Forest Service Manual Chapter 3310 will provide additional direction for funding distribution.

(g) The Responsible Official must submit an annual report to the Chief summarizing all activities and practices funded through FLEP for the previous fiscal year.

(h) By September 1, 2006, the Responsible Official must submit a cumulative report to the Chief summarizing all activities and practices funded through FLEP as of June 1, 2006, along with copies of the reports submitted from the participating States.

§ 230.34 State program administration.

(a) In States electing to participate in FLEP, the State Forester and the State Forest Stewardship Coordinating Committee, established pursuant to section 19(b) of the Cooperative Forestry

Assistance Act, as amended (16 U.S.C. 2101, *et seq.*), shall jointly develop a State priority plan. The plan must be submitted to the appropriate Responsible Official for review and concurrence.

(b) The State Forester shall develop, implement and administer FLEP consistent with the State priority plan. The State Forester must ensure that all activities are carried out properly and that all cost-shared practices meet the appropriate standards and specifications.

(c) No match of funds is required from the State for participation in FLEP.

(d) In order to facilitate development of FLEP any State may request up to $50,000 of the first-year allocation in advance of Forest Service concurrence with a State priority plan.

(e) Each State participating in FLEP shall submit an annual report to the respective Responsible Official, reporting all activities and practices funded through FLEP for the previous fiscal year. The report shall contain data on accomplishments by educational assistance, technical assistance, and cost-share assistance based on State objectives and measurable outcomes included in State priority plans.

(f) By July 15, 2006, the State Forester of each State participating in FLEP must submit to the respective Responsible Official a summary report of all State activities and practices funded through FLEP as of June 1, 2006.

§ 230.35 FLEP elements.

(a) States may use FLEP funds to assist landowners in managing their nonindustrial private forest lands and related resources through the following elements:

(1) Development and implementation of educational programs;

(2) Resource management expertise and technical assistance; and

(3) Financial assistance through cost-share programs.

(b) All participating States may use a portion of allocated funds for FLEP administration costs.

(c) States do not have to participate in all FLEP elements.

§ 230.36 State priority plan—purpose and scope.

(a) The State priority plan shall be used to guide FLEP implementation in each participating State through fiscal year 2007 and can be revised as needed.

(b) The State priority plan must describe the various roles and responsibilities of the State Forester, State Forest Stewardship Coordinating Committee, and other agencies and organizations in FLEP planning, delivery, and accountability to the program objectives.

(c) The State priority plan must contain the following:

(1) Data from standard forest inventory and analysis reports on the forest resources found within the State;

(2) A description of concerns, issues, problems and threats related to resource management for all nonindustrial private forest and agroforestry resources;

(3) Identification of the desired objectives and environmental, economic, and social values and public benefits to be derived from FLEP;

(4) An explanation of how FLEP funds are to be used to complement efforts of sustainable forestry management already in place within the State;

(5) A rationale for, and a proposed distribution of, funds for the FLEP elements listed at section 230.35 that the State plans to implement; and

(6) A description of the public participation process used in the development of the plan, including outreach efforts to landowners with limited resources.

(d) If an existing State Forest Stewardship plan, as described at section 19(b)(3) of the Cooperative Forestry Assistance Act (16 U.S.C. 2101, *et seq.*), adequately addresses some or all of the required information, it may be incorporated into the State priority plan by reference.

(e) The State priority plan must also outline the State FLEP priorities, policies, and procedures that will be implemented to encourage landowners to practice sustainable management and to actively conserve and enhance their forest resources.

(f) Each FLEP element described in the State priority plan must clearly state objectives and measurable outcomes to be achieved.

(g) All activities performed using FLEP funds must be consistent with the purpose of the program.

§ 230.37 State priority plan—educational assistance.

(a) Educational assistance includes development and delivery of:

(1) Activities;
(2) Events;
(3) Programs;
(4) Curriculum;
(5) Written materials;
(6) Workshops;
(7) Training sessions;
(8) Web site construction and maintenance; or

(9) Similar activities designed to bring landowners to an informed decision point and accelerate adoption of sustainable forest practices in a State.

(b) If a State determines that all or some of its funds will be used for education, the State priority plan must describe the types of activities that will be covered, participating entities, expected outcomes, and method(s) that will be used for documenting and evaluating accomplishments.

§ 230.38 State priority plan—technical assistance.

(a) Technical assistance includes, but is not limited to:

(1) Agreements with other agencies, institutions of higher education, natural resource consultants, or private organizations to augment or complement existing services of a State Forestry agency;

(2) Grants, agreements, contracts or other arrangements to provide services to landowners not offered by a State;

(3) Support of existing technical assistance delivery by State forestry agencies or development of such technical assistance;

(4) The development or application of new tools or technology for servicing landowners; or

(5) Similar undertakings.

(b) If a State determines that all or some of its funds will be used for technical assistance, the State priority plan shall describe:

(1) Who will provide the assistance;

(2) Outreach efforts directed at specific groups or categories of landowners;

(3) Expected long- and short-term outcomes; and

(4) Method(s) for documenting accomplishments.

§ 230.39 State priority plan—financial assistance.

(a) Cost-share financial assistance includes a wide range of activities and practices developed by a State Forester, in cooperation with the State Forest Stewardship Coordinating Committee.

(b) A State does not have to adopt a separate FLEP cost-share program if a State cost-share program already exists that meets the objectives of FLEP. However, FLEP funds must be accounted for in accordance with Federal financial accounting standards. If an existing cost-share program is used, a copy of the guidelines for that program must be referenced and attached to the State priority plan.

(c) If a State determines that all or some of its funds will be placed into a cost-share program, the State priority plan must identify and describe how the cost-share funds will be made available to landowners participating in FLEP and expected outcomes and method(s) for documenting and evaluating accomplishments.

(d) The cost-share section of the State priority plan must include all of the following information:

(1) Describe any land ownership or annual acreage eligibility limitation under FLEP that is more restrictive than that established by the authorizing statute;

(2) Describe any limitations for cost-share of management plans;

(3) Define what constitutes a management plan if a State chooses to adopt more restrictive requirements than those established in this subpart; and

(4) Identify aggregate payment limitations to any one landowner receiving cost-share funds through FLEP.

(e) The State priority plan must also describe how funds identified for cost-share with landowners will be distributed and how cost-share rates are determined and established for each practice.

(f) The State priority plan must describe the application and payment process for landowners interested in participating in and receiving cost-share through FLEP (§ 230.42).

(g) The State priority plan must also address the following steps related to financial assistance:

(1) Application procedure;
(2) Approval process;
(3) Performance period;
(4) Cancellation of approvals;
(5) Certification of performance;
(6) Payment;
(7) Maintenance and compliance;
(8) Procedure for recapture of funds for non-compliance; and
(9) Appeals procedures.

§ 230.40 Eligible practices for cost-share assistance.

(a) The State priority plan must document and describe which of the following eleven categories will be made available to landowners for cost-share funding:

(1) *Management Plan Development*—Development or revision of a management plan that must meet the minimum standards of a Forest Stewardship Plan (16 U.S.C. 2103a(f)(i)). The plan applies to those portions of the landowner's property on which any practice or activity funded under FLEP shall be carried out, as well as any property of the owner that may be affected by the activity or practice. Management plans are not subject to any acreage limits, and therefore cost-sharing such a plan under FLEP is exempt from the 1,000-acre (or 5,000-acre) limit unless restricted as described in the State priority plan.

(2) *Afforestation and Reforestation*—Site preparation, planting, seeding, or other practices to encourage natural regeneration or to ensure forest establishment and carbon sequestration.

(3) *Forest Stand Improvement*—Practices to enhance growth and quality of wood fiber, special forest products, and carbon sequestration.

(4) *Agroforestry Implementation*—Establishment, maintenance, and renovation of windbreaks, riparian forest buffers, silvopasture, alley cropping, or other agroforestry practices, including purposes for energy conservation and carbon sequestration in conjunction with agriculture, forest, and other land uses.

(5) *Water Quality Improvement and Watershed Protection*—Establishment, maintenance, renovation, and restoration practices, including any necessary design and engineering to improve and protect water quality, riparian areas, and forest wetlands and watersheds.

(6) *Fish and Wildlife Habitat Improvement*—Establishment, maintenance, and restoration practices to create, protect, or improve fish and wildlife habitat, including any necessary design and engineering.

(7) *Forest Health and Protection*—Establishment of practices primarily to detect, monitor, assess, protect, improve, or restore forest health, including detection and control of insects, diseases, and animal damage to established stands.

(8) *Invasive Species Control*—Establishment, maintenance and restoration practices primarily to detect, monitor, eradicate, or control the spread of invasive species.

(9) *Wildfire and Catastrophic Risk Reduction*—Establishment of practices primarily to reduce the risk from wildfire and other catastrophic natural events.

(10) *Wildfire and Catastrophic Event Rehabilitation*—Establishment of practices primarily to restore and rehabilitate forests following wildfire and other catastrophic natural events.

(11) *Special Practices*—Establishment, maintenance, and restoration practices addressing other conservation concerns on nonindustrial private forest lands as proposed by the State Forester and the Committee, which must have concurrence by the responsible official.

(b) A practice may consist of one or more components.

§ 230.41 Eligibility requirements for cost-share assistance.

(a) All landowners of nonindustrial private forest land as defined in §230.31 of this subpart, including those who engage in primary processing of raw wood products on a part-time or intermittent basis and who otherwise meet the requirements of this section, are eligible to apply for and receive assistance under FLEP without regard to race, color, religion, national origin, age, sex, disability, political affiliation, sexual orientation, or marital or family status.

(b) A landowner is eligible to receive funds under the cost-share element of FLEP for treatment of not more than a total of 1,000 acres of land annually, except where a State Forester, with the concurrence of a responsible official, determines that significant public benefits would accrue from approval of a landowner's treating up to 5,000 acres annually. In making a determination of significant public benefits, the State Forester and the responsible official shall consider, at a minimum, whether landowners who treat more than 1,000 acres annually can achieve cost-effective resource management objectives without unduly excluding FLEP participation of other eligible landowners.

(c) In order to meet the following minimum requirements to be eligible to receive cost-share through FLEP for all practices except development of a management plan, a landowner must:

(1) Own the minimum acreage as established in the State priority plan; however, in no case shall the minimum acreage requirement be higher than 25 acres;

(2) Agree to conduct land treatment(s) according to the landowner's practice plan and to maintain FLEP practices for a minimum of 10 years, unless the State Forester specifies a shorter duration. The 10-year lifespan does not apply to recurring practices such as prescribed burning, light disking in openings, herbicide application, and other practices that are identified as needed in the management plan and practice plan; and

(3) Have a management plan submitted to the State Forester in which the lands are located that meets any requirements established by the State in its priority plan. Existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can be amended to meet this requirement.

(d) A leaseholder who has a long-term lease on the land to be treated through FLEP must provide a copy of the lease to the State Forester in order to be eligible to receive cost-share assistance.

§ 230.42 Cost-share assistance application and payment procedures.

(a) Landowner applications for cost-share payments shall not be approved

unless cost-share funds are available. The obligation of funds upon approval of an application constitutes an agreement by the State and the landowner to cost-share a completed practice on a reimbursable basis when the service representative verifies that the practice has been implemented.

(b) Upon receiving an application for an eligible FLEP practice and making a determination that funds are available, a service representative shall prepare a practice plan that identifies the needed practices, specifications, and performance period for the implementation of the practice(s) to achieve the objectives of the landowner. The requirements of a practice plan may be contained in a management plan. The practice plan is the basis for determining acceptable performance upon completion of the practice.

(c) Upon approval of a FLEP application, the State Forester shall notify the landowner in writing. Such notice shall state that the landowner can begin implementing the approved practice(s) and that funds have been obligated for reimbursement of a specified amount of the total cost. Practice costs incurred before approval are not eligible unless authorized by the State Forester. The notice shall also state that payment shall be made upon the service representative's verification that the practice has been implemented in accordance with the specifications of the practice plan and activities described in the management plan.

(d) Any landowner who carries out practices under FLEP shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

(e) To be eligible for cost-share reimbursement payment, a landowner must complete each practice within the performance period specified in the State priority plan, not to exceed 24 months. However, if practice(s) are not completed within the performance period specified, due to conditions beyond the landowner's control, the State Forester may grant an extension for a time period specified in the State priority plan, not to exceed 12 months.

(f) Upon certification by the service representative that a practice has been completed in accordance with the practice plan, the cost-share payment shall be calculated and disbursed to the landowner. Landowners must provide to service representatives the right of access to the landowner's property to inspect practices for the duration of the maintenance period for the practices.

(g) The maximum aggregate amount of cost-share payment under FLEP to any one landowner shall not exceed $100,000 through 2007, with the following exception for Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee and the Responsible Official, shall establish the maximum aggregate payment to any one Alaska Indian Tribe, however, the 1,000- and 5,000-acre limits shall apply.

(h) The State priority plan shall set the levels of cost-share assistance to be paid to landowners, not to exceed 75 percent of the total costs incurred by a participating landowner. Non-Federal program funds and other donated assistance may be used to supplement cost-share through FLEP; however, the total of all funds and assistance shall not exceed 100 percent of the total cost of practice implementation, and the Federal share of the total cost shall be reduced by any gross revenue from any material sold as a result of the cost-share practice.

(i) States may use the cost-share rate to define priority practices and priority areas by reserving the maximum rate of 75 percent of the total costs for the practices and areas having the highest priority.

(j) State priorities for cost-share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310.

(k) Other priorities may be developed by the State Forester in consultation with the State Forest Stewardship Coordinating Committee.

(l) A landowner may receive partial payment, if allowed in the State priority plan, for completed components on the condition that the landowner agrees to complete the remaining components of the practice within the performance period specified in the practice plan.

(m) Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner's control, the State Forester may approve cost-share payments under one of the following conditions:

(1) The landowner repeats application of practices previously implemented or establishes additional eligible practices under such terms and conditions as the service representative may require, in which case the State Forester may approve cost-share payments for additional or repeated practices to the extent such measures are needed to meet the objectives of the management plan; or

(2) The landowner establishes, to the satisfaction of the service representative that:

(i) A reasonable effort was made to meet the minimum requirements; and

(ii) The practice, as performed, adequately meets the objectives of the practice plan.

(n) In case of death or incompetence of any landowner, the State Forester shall approve cost-share payments to the successor in title or other persons or entities in control of the landowner property if they agree to maintain the practices for the duration of the required maintenance period.

(o) Any landowner who may be entitled to a cost-share payment under this subpart may assign the right thereto, in whole or in part, under the following terms:

(1) Payments may be assigned only for performance of a FLEP practice;

(2) A payment that is made to a landowner may not be assigned to pay or secure any preexisting debt; and

(3) Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on their behalf, if payment is made to an assignor rather than to an assignee or if payment is made to only one of several assignees.

(p) No financial assistance or portion thereof due and owing to any landowner shall be subject to any claim arising under State or other law by any creditor, except for claims of agencies of the United States Government.

(q) Prior to receiving approval to implement any FLEP practice identified in the State priority plan, except for management plan development, eligible landowners shall have an approved practice plan providing appropriate technical standards concerning the performance of the requested practice(s). A service representative shall approve the plan. In reviewing and approving plans, to the extent deemed applicable by the service representative, existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can be amended to meet, the practice plan requirements under FLEP.

§ 230.43 Cost-share assistance—prohibited practices.

(a) Cost-share payments for the following are prohibited:

(1) Costs incurred before an application for cost-share is approved in writing, except:

(i) As pre-approved by the State Forester, or

(ii) The materials and items that may be purchased before approval of the practice as described in the State priority plan;

(2) Repeated practices on the same site within the required maintenance period which have been implemented under any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner or recurring practices as noted in this subpart;

(3) Capital investments or capital improvements not related to FLEP practices, purchase of land or any interest in land, or any interest in an endowment as provided in section 230.32(k) and (l);

(4) Practices associated with the development of or improvement to landowner nursery operations;

(5) Practices associated with the development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance; or

(6) Any practice that is not related to the long-term sustainability of nonindustrial private forest lands or agroforestry activities.

§ 230.44 Cost-share assistance—reporting requirement.

(a) FLEP cost-share accomplishments should be reported using the following standard categories of practices:

(1) FLEP1—Management Plan Development;

(2) FLEP2—Afforestation and Reforestation;

(3) FLEP3—Forest Stand Improvement;

(4) FLEP4—Agroforestry Implementation;

(5) FLEP5—Water Quality Improvement and Watershed Protection;

(6) FLEP6—Fish and Wildlife Habitat Improvement;

(7) FLEP7—Forest Health and Protection;

(8) FLEP8—Invasive Species Control;

(9) FLEP9—Fire and Catastrophic Risk Reduction;

(10) FLEP10—Fire and Catastrophic Event Rehabilitation; and

(11) FLEP11—Special Practices.

(b) All reporting must include activities and accomplishments for each category of FLEP practices.

§ 230.45 Recapture of cost-share assistance.

(a) Payments made to landowners may be recaptured under one or more of the following circumstances:

(1) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from FLEP. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of FLEP. Financial assistance payments shall be withheld or a refund of all or part of any FLEP payments otherwise due or paid to that person shall be secured.

(2) If any landowner or successor takes any action or fails to take action, which results in the destruction or impairment of a prescribed practice for the duration of the practice. Cost-share payments shall be withheld or a recapture of all or part of any FLEP payments otherwise due or paid shall be secured, based on the extent and effect of destruction and impairment.

(3) If a landowner sells, conveys, or otherwise loses control of the land, except when determined by a State Forester to have been beyond the landowner's control, upon which there is a continuing obligation to maintain a practice, and the new landowner does not agree to assume the responsibility for maintaining the practice. In such cases the landowner who was originally obligated to maintain the practice shall be liable to reimburse the State(s) for all cost-share on such practices.

(b) Nothing in this section requiring the withholding or refunding of financial assistance payments shall preclude any penalty or liability otherwise imposed by law.

(c) Any landowner, successor, or assignee who is dissatisfied with any determination made under FLEP may request reconsideration by the State Forester and, if the matter is not resolved, by the Responsible Official. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for the request. All decisions on reconsideration must be issued in writing.

§ 230.46 Information collection requirements.

The requirements governing the preparation of a State priority plan, management plan, and practice plan, the reporting requirements, and the application requirements of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1995 and have been assigned Office of Management and Budget (OMB) control number 0596–0168.

Dated: May 30, 2003.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 03–14259 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL17

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing rates of educational assistance payable under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance programs to reflect increases required by statutory provisions. These include increases that were effective October 1, 2001, and January 1, 2002, in both programs. For the Montgomery GI Bill—Active Duty program, these also include increases for the fiscal years beginning October 1, 2002, and October 1, 2003, under statutory provisions setting rates that for those two years are not to be adjusted by the Consumer Price Index-W.

DATES: *Effective Date:* This final rule is effective June 9, 2003.

Applicability Dates: The changes in rates are applied to conform to the respective statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Cossette, Education Advisor, Education Service, Veterans Benefit Administration, (202) 273–7294.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015 (as in effect on October 1, 2001) for Fiscal Year 2002, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty (MGIB) payable to students pursuing a program of education full time were increased effective October 1, 2001, by 3.4%, which is the percentage by which the total of the monthly Consumer Price Index-W (CPI–W) for July 1, 2000, through June 30, 2001, exceeds the total of the monthly CPI–W for July 1, 1999, through June 30, 2000.

In addition, the Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107–103) increased the monthly rate of MGIB benefits in three steps. The effective date of step one is January 1, 2002. Step two is effective October 1, 2002, for Fiscal Year 2003 and step three is effective October 1, 2003, for Fiscal Year 2004. During Fiscal Years 2003 and 2004, the MGIB rates are not

adjusted by the CPI–W, since this statute removes the authority to adjust by the CPI–W for those two years. CPI–W adjustments will resume October 1, 2004, with the beginning of Fiscal Year 2005. We are changing the regulations governing rates payable under the MGIB to reflect the increase effective October 1, 2001, attributable to the CPI–W and the step increases provided for in Pub. L. 107–103.

It should be noted that these MGIB increases do not affect all educational assistance payable under the MGIB. The increases don't apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called "kickers"). They don't apply to amounts payable for dependents. Veterans who previously had eligibility under the Veterans' Educational Assistance program (Vietnam Era GI Bill) receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased.

38 U.S.C. 3015(a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter time or less have had their payments limited to 25% or less of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

In addition, 38 U.S.C. 3032(c) requires that monthly rates payable to veterans in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, we are changing those regulations to reflect increases effective October 1, 2001, January 1, 2002, October 1, 2002, and October 1, 2003, in accordance with the increase attributable to the CPI–W and the applicable provisions of Pub. L. 107–103.

By statute, the monthly rates of basic educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of educational assistance payable under the DEA program for Fiscal Year 2002 (October 1, 2001, through September 30, 2002) are changed to show a 3.4% increase in these rates. The 3.4% increase is based on the percentage by which the total of the monthly CPI–W for July 1, 2000, through June 30, 2001, exceeds the total of the monthly CPI–W for July 1, 1999, through June 30, 2000.

Pub. L. 107–103 further increased the DEA program rates for the months during Fiscal Year 2002 that follow December 2001. That Act provides that beginning on January 1, 2002, the rates of basic educational assistance under the DEA program must be increased beyond the increase that went into effect on October 1, 2001. Changes are made to the regulations governing rates payable under the DEA program to reflect both rate increases.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in the rates are applied in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because the agency is not required to publish a notice of proposed rulemaking for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local or tribal governments.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed Forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 7, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out above, 38 CFR part 21 (subparts C and K) is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

■ 1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

■ 2. In § 21.3045, paragraph (h) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(h) *Entitlement charge for correspondence courses.* The charge against entitlement of a spouse or surviving spouse for pursuit of a course exclusively by correspondence will be 1 month for each of the following amounts paid as an educational assistance allowance:

(1) $588 paid after October 31, 2000, and before October 1, 2001;

(2) $608 paid after September 30, 2001, and before January 1, 2002; and

(3) $670 paid after December 31, 2001.

(Authority: 38 U.S.C. 3534(b), 3564, 3686(a))

* * * * *

■ 3. Section 21.3131 is amended by:

■ a. Revising paragraph (a)

■ b. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively.

■ c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates for pursuit of education or training that occurs after September 30, 2001, and before January 1, 2002:

Type of course	Monthly rate
Institutional:	
Full time	$608.00
¾ time	456.00
½ time	304.00
Less than ½ but more than ¼ time [1]	304.00
¼ time or less [1]	152.00
Cooperative training (other than farm cooperative) (Full time only).	
Apprenticeship or on-the-job (full time only) [2]:	608.00
First six months	443.00
Second six months	331.00
Third six months	219.00
Fourth six months and thereafter	111.00
Farm cooperative:	
Full time	491.00
¾ time	368.00
½ time	246.00
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly [3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $304.00 or $152.00, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(b) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates for pursuit of education or training that occurs after December 31, 2001, and before October 1, 2002:

Type of course	Monthly rate
Institutional:	
Full time	$670.00
¾ time	503.00
½ time	335.00
Less than ½ but more than ¼ time [1]	335.00
¼ time or less [1]	167.50
Cooperative training (other than farm cooperative) (Full time only).	
Apprenticeship or on-the-job (full time only) [2]:	488.00
First six months	365.00
Second six months	242.00
Third six months	122.00
Fourth six months and thereafter	
Farm cooperative:	
Full time	541.00
¾ time	406.00
½ time	271.00
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly [3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $335.00 or $167.50, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

* * * * *

■ 4. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) *Duration of special restorative training.* VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of—

(1) $190.00 a month for the period beginning October 1, 2001, and ending December 31, 2001;

(2) $210.00 a month for months after December 31, 2001.

(Authority: 38 U.S.C. 3541(b), 3542)

* * * * *

■ 5. Section 21.3333 is amended by:

■ a. Revising paragraph (a).

■ b. In paragraph (b)(1), removing "Effective November 1, 2000"; removing "$19.60" and adding, in its place, "$20.28"; and removing "$588" and adding, in its place, "$608.00 for the period October 1, 2001, through December 31, 2001, and for each $22.33 that the special training allowance exceeds the basic monthly rate of $670.00 for months beginning January 1, 2002".

The revision reads as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rates, except as provided in paragraph (c) of this section.

(1) For special restorative training that occurs after September 30, 2001, and before January 1, 2002.

Course	Monthly rate	Accelerated charges
Special restorative training	$608.00	If costs for tuition and fees average in excess of $190.00 per month, rate may be increased by such amount in excess of $190.00.

(Authority: 38 U.S.C. 3542)

(2) For special restorative training that occurs after December 31, 2002:

Course	Monthly rate	Accelerated charges
Special restorative training	$670.00	If costs for tuition and fees average in excess of $210.00 per month, rate may be increased by such amount in excess of $210.00.

(Authority: 38 U.S.C. 3542)

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 6. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

■ 7. Section 21.7136 is amended by:

■ a. Revising paragraphs (b) and (c)(1) through (c)(5).

■ b. Adding paragraphs (c)(6) through (c)(9).

The revisions and additions read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2001, and before January 1, 2002, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$672.00
¾ time	504.00
½ time	336.00
Less than ½ time but more than ¼ time	336.00
¼ time	168.00

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after December 31, 2001, and before October 1, 2002, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$800.00
¾ time	600.00
½ time	400.00
Less than ½ but more than ¼ time	400.00
¼ time or less	200.00

(Authority: 38 U.S.C. 3015)

(3) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2002, and before October 1, 2003, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$900.00
¾ time	675.00
½ time	450.00
Less than ½ but more than ¼ time	450.00
¼ time or less	225.00

(Authority: 38 U.S.C. 3015)

(4) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2003, and before October 1, 2004, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$985.00
¾ time	738.75
½ time	492.50
Less than ½ but more than ¼ time	492.50
¼ time or less	246.25

(Authority: 38 U.S.C. 3015)

(5) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$504.00
Second six months of training	369.60
Remaining pursuit of training	235.20

(Authority: 38 U.S.C. 3015, 3032(c))

(6) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$600.00
Second six months of training	440.00
Remaining pursuit of training	280.00

(Authority: 38 U.S.C. 3015, 3032(c))

(7) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$675.00
Second six months of training	495.00
Remaining pursuit of training	315.00

(Authority: 38 U.S.C. 3015, 3032(c))

(8) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$738.75
Second six months of training	541.75
Remaining pursuit of training	344.75

(Authority: 38 U.S.C. 3015, 3032(c))

(9) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $672.00 for training that occurs after September 30, 2001, and before January 1, 2002;

(ii) $800.00 for training that occurs after December 31, 2001, and before October 1, 2002;

(iii) $900.00 for training that occurs after September 30, 2002, and before October 1, 2003; and

(iv) $985.00 for training that occurs after September 30, 2003, and before October 1, 2004.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training	Monthly rate
Full time	$546.00
¾ time	409.50
½ time	273.00
Less than ½ but more than ¼ time	273.00
¼ time or less	136.50

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training	Monthly rate
Full time	$650.00
¾ time	487.50
½ time	325.00
Less than ½ but more than ¼ time	325.00
¼ time or less	162.50

(Authority: 38 U.S.C. 3015)

(3) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate
Full time	$732.00
¾ time	549.00
½ time	366.00
Less than ½ but more than ¼ time	366.00
¼ time or less	183.00

(Authority: 38 U.S.C. 3015)

(4) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate
Full time	$800.00
¾ time	600.00
½ time	400.00
Less than ½ but more than ¼ time	400.00
¼ time or less	200.00

(Authority: 38 U.S.C. 3015)

(5) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$409.50
Second six months of training	300.30
Remaining pursuit of training	191.10

(Authority: 38 U.S.C. 3015, 3032(c))

(6) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$487.50
Second six months of training	357.50
Remaining pursuit of training	227.50

(Authority: 38 U.S.C. 3015, 3032(c))

(7) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$549.00
Second six months of training	402.00
Remaining pursuit of training	256.20

(Authority: 38 U.S.C. 3015, 3032(c))

(8) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$600.00
Second six months of training	440.00
Remaining pursuit of training	280.00

(Authority: 38 U.S.C. 3015, 3032(c))

(9) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $546.00 for training that occurs after September 30, 2001, and before January 1, 2002;

(ii) $650.00 for training that occurs after December 31, 2001, and before October 1, 2002;

(iii) $732.00 for training that occurs after September 30, 2002, and before October 1, 2003; and

(iv) $800.00 for training that occurs after September 30, 2003, and before October 1, 2004.

(Authority: 38 U.S.C. 3015)

* * * * *

■ 8. In § 21.7137, the section heading and paragraphs (a) and (c)(2) are revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$860.00	$896.00	$927.00	$16.00
¾ time	645.50	672.00	695.50	12.00
½ time	430.00	448.00	463.50	8.50
Less than ½ but more than ¼ time	430.00	430.00	430.00	0
¼ time or less	215.00	215.00	215.00	0

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$988.00	$1024.00	$1055.00	$16.00
¾ time	741.50	768.00	791.50	12.00
½ time	494.00	512.00	527.50	8.50
Less than ½ but more than ¼ time	494.00	494.00	494.00	0
¼ time or less	247.00	247.00	247.00	0

(Authority: 38 U.S.C. 3015)

(3) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1088.00	$1124.00	$1155.00	$16.00
¾ time	816.50	843.00	866.50	12.00
½ time	544.00	562.00	577.50	8.50
Less than ½ but more than ¼ time	544.00	544.00	544.00	0
¼ time or less	272.00	272.00	272.00	0

(Authority: 38 U.S.C. 3015)

(4) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1173.00	$1209.00	$1240.00	$16.00
¾ time	880.25	906.75	930.25	12.00
½ time	586.50	604.50	620.00	8.50
Less than ½ but more than ¼ time	586.50	586.50	586.50	0
¼ time or less	293.25	293.25	293.25	0

(Authority: 38 U.S.C. 3015)

(5) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$606.75	$619.13	$630.00	$5.25
2nd six months of pursuit of program	425.98	435.33	443.03	3.85
3rd six months of pursuit of program	259.00	265.13	269.85	2.45
Remaining pursuit of program	247.10	252.88	258.13	2.45

(Authority: 38 U.S.C. 3015)

(6) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$702.75	$715.13	$726.00	$5.25
2nd six months of pursuit of program	496.38	505.73	513.43	3.85
3rd six months of pursuit of program	303.80	309.93	314.65	2.45
Remaining pursuit of program	291.90	297.68	302.93	2.45

(Authority: 38 U.S.C. 3015)

(7) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$777.75	$790.13	$801.00	$5.25
2nd six months of pursuit of program	551.38	560.73	568.43	3.85
3rd six months of pursuit of program	338.80	344.93	349.65	2.45
Remaining pursuit of program	326.90	332.68	337.93	2.45

(Authority: 38 U.S.C. 3015)

(8) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$841.50	$853.88	$864.75	$5.25
2nd six months of pursuit of program	598.13	607.48	615.18	3.85
3rd six months of pursuit of program	368.55	374.68	379.40	2.45
Remaining pursuit of program	356.65	362.43	367.68	2.45

(Authority: 38 U.S.C. 3015)

(9) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 1, 2001–Dec. 31, 2001	$860.00	$896.00	$927.00	$16.00
Jan. 1, 2002–Sept. 30, 2002	968.00	1024.00	1055.00	16.00
Oct. 1, 2002–Sept. 30, 2003	1088.00	1124.00	1155.00	16.00
Oct. 1, 2003–Sept. 30, 2004	1173.00	1209.00	1240.00	16.00

(Authority: 38 U.S.C. 3015)

* * * * *

(c) * * *

(2)(i) The following monthly rates for training that occurs after September 30, 2001, and before January 1, 2002—

(A) $860.00 for full-time training;

(B) $645.50 for three-quarter-time training;

(C) $430.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $215.00 for one-quarter-time training.

(Authority: 38 U.S.C. 3015)

(ii) The following monthly rates for training that occurs after December 30, 2001, and before October 1, 2002—

(A) $988.00 for full-time training;

(B) $741.50 for three-quarter-time training;

(C) $494.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $247.00 for one-quarter-time training.

(iii) The following monthly rates for training that occurs after September 30, 2002, and before October 1, 2003—

(A) $1088.00 for full-time training;

(B) $816.50 for three-quarter-time training;

(C) $544.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $272.00 for one-quarter-time training.

(iv) The following monthly rates for training that occurs after September 30, 2003, and before October 1, 2004—

(A) $1173.00 for full-time training;

(B) $880.25 for three-quarter-time training;

(C) $586.50 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $293.25 for one-quarter-time training.

(Authority: 38 U.S.C. 3015)

* * * * *

[FR Doc. 03–14282 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK81

Veterans Education: Additional Opportunity To Participate in the Montgomery GI Bill and Other Miscellaneous Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the education programs the Department of Veterans Affairs (VA) administers in order to implement some provisions of the Veterans Benefits and Health Care Improvement Act of 2000 and the Veterans' Survivor Benefits Improvements Act of 2001. More specifically, it implements provisions that changed an eligibility criterion concerning the time for obtaining a high school diploma; repealed the requirement that eligibility for the Montgomery GI Bill—Active Duty be based on the initial obligated period of active duty; provided an additional opportunity for participants in the Post-Vietnam Era Veterans' Educational Assistance Program to participate in the Montgomery GI Bill—Active Duty instead; provided an opportunity for servicemembers to increase their monthly rate of benefits by contributing additional monies while on active duty; and revised the requirements that must be met before a veteran or eligible person can be paid during the break between terms. In addition, this document makes nonsubstantive changes in VA education regulations for purposes of clarity and to remove obsolete provisions.

DATES: *Effective Date:* This final rule is effective June 9, 2003.

Applicability Date. The substantive changes made by this final rule are applied retroactively to November 1, 2000, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 273–7187.

SUPPLEMENTARY INFORMATION: This document amends the regulations in 38 CFR Part 21 governing various aspects of the education programs the Department of Veterans Affairs (VA) administers in order to implement some provisions of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419) and the Veterans' Survivor Benefits Improvements Act of 2001 (Pub. L. 107–14) that affect those programs. This document includes changes affecting the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selective Reserve, Survivors' and Dependents' Educational Assistance, and the Post-Vietnam Era Veterans' Educational Assistance Program.

One of the criteria an individual has to meet in order to establish eligibility for the Montgomery GI Bill—Active Duty (MGIB) is receiving a high school diploma or its equivalent. Before the enactment of Public Law 106–419 on November 1, 2000, the time limit for earning that diploma (or its equivalent) varied according to the various ways for servicemembers to establish MGIB eligibility. Some had to earn the diploma before completion of their first obligated period of active duty. Others had to earn it before their release from active duty. Public Law 106–419 provided instead for all individuals the requirement that they must earn a high school diploma (or its equivalent) before applying to VA for educational assistance. For individuals who are enabled by that change to establish eligibility but who on October 31, 2000, would have been unable to establish eligibility due to the time limits for obtaining a high school diploma (or its equivalent), Public Law 106–419 created a new ten-year period starting November 1, 2000, for commencing use of benefits. We are amending various paragraphs to make them conform to these statutory provisions. Our amendments reflect our interpretation that under the statute a veteran who unsuccessfully applies for educational assistance before meeting this requirement would be able to meet this requirement by applying again after obtaining a high school diploma or its equivalent.

Since the inception of the MGIB, servicemembers have had to serve all or a major part of their initial obligated period of active duty in order to establish eligibility for the MGIB. Thus, an individual who failed to meet the length of service requirements for the initial period and subsequently re-enlisted could serve many years in the Armed Forces and have no education benefits. Public Law 106–419 and Public Law 107–14 contain provisions that allow an individual to meet the length of service requirements for eligibility by using any period of active duty of sufficient length. For individuals who are enabled by that change to establish eligibility but who on October 31, 2000, would have been unable to establish eligibility based on their initial obligated period of service, Public Law 106–419 created a new ten-year period starting November 1, 2000, for commencing use of benefits. We are amending various paragraphs to make them conform to these statutory provisions.

Public Law 106–419 also gave some present and former participants in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) the opportunity to establish eligibility for MGIB. Under that statute, these individuals must have elected MGIB before November 1, 2001, and must contribute $2,700 within the 18-month period beginning on the date the individual made the election. We are amending the rules for establishing MGIB eligibility to conform to these provisions of law.

MGIB, Montgomery GI Bill—Selective Reserve (MGIB—SR), Survivors' and Dependents' Educational Assistance (DEA), and VEAP benefits may be paid to individuals during some intervals between terms. The requirements for deciding whether an individual qualifies for such an interval payment are found in statute. Public Law 106–419 revised those requirements to state that payments may be made for intervals between terms when those intervals are no longer than eight weeks and the terms before and after the interval are not shorter than the interval. We are amending the provisions of 38 CFR 21.4138(f) to make them conform to the statute.

Moreover, VA has long had rules governing payment for short terms that occur during intervals. The rules were designed to insure that veterans were not discouraged by the interval pay provisions from enrolling in those terms. In our view, it was not Congress' intent that the new interval payment provisions discourage attendance during short terms. We are amending accordingly the regulations in § 21.4138(f) governing payment for these short terms and the intervals that precede and follow them.

This document's changes in provisions in § 21.4138(f) concerning payment for intervals and for short terms that occur during intervals are applicable to MGIB, DEA, VEAP, and MGIB—SR benefits under applicability provisions in current regulations for each program, respectively. (The amended provisions in § 21.4138(f) apply to MGIB benefits under § 21.7140(c), to DEA benefits under § 21.3133(a), to VEAP benefits under § 21.5130(c), and to MGIB—SR benefits under § 21.7640(b)(1).)

Public Law 106–419 (as amended by Public Law 107–14) contains provisions that allow some servicemembers who are eligible for the MGIB to increase their monthly rate of educational assistance by contributing $600 while on active duty. The statute prescribes that for every $20 contributed, the monthly rate payable to a full-time student will increase by $5. However, the statute does not state what the increase payable to a part-time student

will be. Instead, it requires VA to prescribe regulations detailing an appropriate reduced amount to be paid to these students.

Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time institutional rate. In the absence of a convincing reason to do otherwise, VA has decided to follow this long-standing policy in establishing rates for individuals who increase their monthly rates by contributing additional amounts. Accordingly, changes are made consistent with the authority and formula described in this and the preceding paragraph.

In addition, 38 U.S.C. 3032(c) requires that monthly rates payable to veterans *in apprenticeship or other on-the-job* training must be set at a given percentage of the full-time rate. Hence, we are amending the regulations to reflect the additional amounts payable for these increased contributions according to the percentages described in 38 U.S.C. 3032(c).

We are also making nonsubstantive changes for the purpose of clarity and to remove provisions that are obsolete because they concern provisions in the regulations that no longer exist.

Administrative Procedure Act

Changes made by this final rule merely reflect revised statutory requirements or VA's interpretation of statutory provisions, or are nonsubstantive. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because the agency is not required to publish a notice of proposed rulemaking for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for programs affected by this final rule are 64.117, 64.120, and 64.124. This document also affects the Montgomery GI Bill—Selective Reserve program, for which there is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 18, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out above, 38 CFR part 21 (subparts D and K) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D, continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

■ 2. Section 21.4138 is amended by:
■ a. In paragraph (f) introductory text, removing "(4)" and adding, in its place, "(3)".
■ b. In paragraph (f)(2) introductory text, removing "subdivision" and adding, in its place, "paragraph and paragraph (f)(3) of this section".
■ c. Revising paragraphs (f)(2)(iii) and (f)(2)(iv).
■ d. Removing paragraph (f)(3).
■ e. Redesignating paragraph (f)(4) as new paragraph (f)(3).

The revisions read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(f) * * *

(2) * * *

(iii) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters as defined in § 21.4200(b);

(B) A semester or quarter and a term that is at least as long as the interval;

(C) A semester or quarter and a summer term that is at least as long as the interval;

(D) Consecutive terms (other than semesters or quarters as defined in § 21.4200(b)) provided that both terms are at least as long as the interval; or

(E) A term and a summer term provided that both the term and the summer term are at least as long as the interval.

(iv) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 30 days and which occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3680)

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 3. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

■ 4. Section 21.7020 is amended by:
■ a. In paragraphs (b)(6)(iii) introductory text and (b)(6)(iv) introductory text, removing "his or her initial" and adding, in its place, "an".

■ b. In paragraph (b)(6)(iv) introductory text, removing "the initial" and adding, in its place, "the earlier".
■ c. In paragraph (b)(6)(vi), removing "initial" both places that it appears and adding, in its place, "earlier".
■ 5. Section 21.7042 is amended by:
■ a. Revising the introductory text.
■ b. Revising paragraph (a)(2), paragraph (a)(3) introductory text, and the authority citation following paragraph (a)(3).
■ c. In paragraph (a)(5)(ii), removing "(July 1, 1985)".
■ d. In paragraphs (a)(5)(iv)(A) and (a)(5)(iv)(B), removing "if his or her initial" and adding, in its place, "of an"; and by removing "is" and adding, in its place, "that is".
■ e. Revising the authority citation following paragraph (a)(5).
■ f. Removing paragraph (a)(6).
■ g. Redesignating paragraph (a)(7) as new paragraph (a)(6).
■ h. Revising paragraph (b)(2) introductory text.
■ i. In paragraphs (b)(6)(ii) and (b)(7)(i)(B), removing "(July 1, 1985)".
■ j. In paragraph (b)(7)(ii)(B), removing "(Oct. 1, 1987)".
■ k. Removing paragraph (b)(11).
■ l. *In paragraph (c)(4),* removing "completing the service he or she was obligated to serve on December 1, 1988" and adding, in its place, "applying for educational assistance".
■ m. In paragraph (d)(1), removing "initial".

The revisions read as follows:

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044, or § 21.7045 in order to be eligible for basic educational assistance. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018(b), 3018A)

(a) * * *

(2) Except as provided in paragraph (a)(5) of this section, the individual must—

(i) If his or her obligated period of active duty is three years or more, serve at least three years of continuous active duty in the Armed Forces; or

(ii) If his or her obligated period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) The individual, before applying for educational assistance, must either—

* * * * *

(Authority: 38 U.S.C. 3011, 3016)

* * * * *

(5) * * *

(Authority: 38 U.S.C. 3011)

* * * * *

(b) * * *

■ (2) The individual, before applying for educational assistance, must either—

* * * * *

■ 6. Section 21.7044 is amended by:
■ a. Revising the introductory text, and paragraphs (a)(3) and (b)(3).
■ b. Removing paragraph (b)(13).

The revisions read as follows:

§ 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

Certain individuals with 38 U.S.C. chapter 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. chapter 30. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for periods of time specified in § 3.15.

(a) * * *

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

* * * * *

(b) * * *

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

* * * * *

■ 7. Section 21.7045 is amended by:
■ a. In the introductory text, removing "(d)" and adding, in its place, "(d) or (e)".
■ b. Adding paragraph (e).

The addition reads as follows:

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

* * * * *

(e) *Alternate eligibility requirements for former participants in the Post-Vietnam Era Veterans' Educational Assistance Program.* (1) *Definition.* For the purpose of this paragraph a *participant* is a veteran or servicemember who:

(i) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, contributed to the fund described in § 21.5021(f), and either—

(A) Is making contributions by monthly payroll deduction to that fund;

(B) Has some or all of the contributions remaining in that fund;

(C) Has disenrolled, and received a refund of contributions; or

(D) Has used all of his or her entitlement to benefits under the Post-Vietnam Era Veterans' Educational Assistance Program; or

(ii) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, and has had the Secretary of Defense make contributions to the fund described in § 21.5021(f) for him or her.

(2) *Making an election.* To receive educational assistance under authority of this paragraph, a veteran or servicemember must:

(i) Have elected before November 1, 2001, to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program;

(ii) Have been a participant in the Post-Vietnam Era Veterans' Educational Assistance Program on or before October 9, 1996;

(iii) Have served continuously on active duty since October 9, 1996, through at least April 1, 2000;

(iv) Receive an honorable discharge when discharged or released from the period of active duty during which the servicemember made the election described in paragraph (e)(3) of this section.

(3) *Election.* The election to receive educational assistance payable under 38

U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before November 1, 2001, pursuant to procedures provided by the Secretary of the military department concerned.

(4) *$2,700 collection.* (i) An individual who has made the election described in paragraph (e)(3) of this section must have his or her basic pay reduced by $2,700 in a manner prescribed by the Secretary of the military department concerned. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, the Secretary of the military department concerned will collect from the individual an amount equal to the difference between $2,700 and the amount that the individual's basic pay has been reduced. The individual may choose how the $2,700 is to be collected. The Secretary of the military department concerned, according to the choice the individual makes, will collect this amount—

(A) From the individual; or

(B) By reducing the individual's retired or retainer pay.

(ii) The individual must pay $2,700 to the Secretary of the military department concerned, as provided for by that Secretary, during an 18-month period beginning on the date the individual made the election described in paragraph (e)(3) of this section.

(iii) Educational assistance under authority of paragraph (e) of this section to an individual who was discharged or released from active duty before the Secretary of the military department concerned had collected the full $2,700 described in paragraph (e)(4) of this section is not payable until that Secretary either—

(A) Collects in full the $2,700; or

(B) Has made the first reduction in retired or retainer pay for the purpose of the $2,700 payment described in paragraph (e)(4) of this section. Thus, a veteran who is making the $2,700 payment through having retired or retainer pay reduced may be eligible before the Secretary of the military department concerned collects the full $2,700.

(5) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C(e))

■ 8. Section 21.7050 is amended by:

■ a. In paragraph (a)(1), removing "(c) or (d)" and adding, in its place, "(c), (d), and (e)".

■ b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

■ c. Adding new paragraph (e).

The addition reads as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(e) *Some veterans have a later ending date.* (1) The ending date of the eligibility period of a veteran described in paragraph (e)(2) of this section is the later of:

(i) November 1, 2010; or

(ii) 10 years after the date of the veteran's last discharge from a period of active duty of 90 days or more.

(2) The ending date of a veteran's eligibility period will be the date described in paragraph (e)(1) of this section if the veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (e)(2)(i) through (e)(2)(iv) of this section and the veteran is enabled to establish eligibility by the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(i) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance;

(ii) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(iii) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance;

(iv) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility for educational assistance, the veteran must before January 1, 1990, meet the requirements for a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3031 note; secs. 102(e), 103(e), Pub. L. 106–419, 114 Stat. 1825; 1826–27)

* * * * *

■ 9. Section 21.7072 is amended by:

■ a. In paragraph (a), removing "(c) and (d)" and adding, in its place, "(c), and (d) of this section".

■ b. In paragraph (b)(1) introductory text, removing "initial" and adding, in its place, "qualifying".

■ c. Revising paragraphs (b)(1)(ii) and (c)(1).

The revisions read as follows:

§ 21.7072 Entitlement to basic educational assistance.

* * * * *

(b) * * *

(1) * * *

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985 (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her qualifying obligated period of active duty is less than 3 years), and

* * * * *

(c) *Entitlement based on service in the Selected Reserve.* (1) Except as provided in § 21.7073, when the provisions of paragraph (c) of this section are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. chapter 34, is part of the individual's qualifying obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985 (other than a month in which the individual serves on active duty). Except as provided in § 21.7073, VA will apply the provisions of paragraph (c) of this section when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in § 21.7042(b) and § 21.7044(b).

(Authority: 38 U.S.C. 3013(b))

* * * * *

■ 10. Section 21.7131 is amended by:

■ a. Revising paragraph (a)(1)(iii).

■ b. Adding paragraphs (a)(1)(iv) and (a)(1)(v).

■ c. Revising the authority citation for paragraph (a).

■ d. In paragraph (b)(2), removing "Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when" and adding, in its place, "When" and removing "enrolled" and adding, in its place, "enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section".

■ e. Adding paragraphs (j), (o), and (p).

The revisions and additions read as follows:

§ 21.7131 Commencing dates.

* * * * *

(a) * * *

(1) * * *

(iii) The effective date of the approval of the course;

(iv) One year before the date VA receives approval notice for the course; or

(v) November 1, 2000, if paragraph (p) of this section applies to the individual.

* * * * *

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672)

* * * * *

(j) *Increase due a servicemember due to monetary contributions.* (1) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the term, quarter, or semester following the term, quarter, or semester in which the servicemember made the contribution(s).

(2) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution not operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the enrollment period following the enrollment period in which the servicemember made the contribution.

(Authority: 38 U.S.C. 3011(e), 3012(f))

* * * * *

(o) *Eligibility established under § 21.7045(e).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(e). The commencing date of an award of educational assistance for such a veteran or servicemember is the later of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (k) of this section; or

(2) The date on which—

(i) The servicemember's basic pay is reduced by $2,700;

(ii) The Secretary of the military department concerned collected the difference between $2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the veteran's election under § 21.7045(e), provided that this collection was accomplished through a method other than reducing the veteran's retired or retainer pay; or

(iii) The Secretary of the military department concerned first reduced the veteran's retired or retainer pay in order to collect the difference between $2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the election under § 21.7045(e).

(Authority: 38 U.S.C. 3018C(e))

(p) *Eligibility established due to changes to §§ 21.7042 and 21.7044.* The commencing date of educational assistance will be no earlier than November 1, 2000, if a veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (p)(1) through (p)(4) of this section and the veteran is enabled to establish eligibility due to the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(1) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance.

(Authority: Sec. 102(e), Pub. L. 106–419, 114 Stat. 1825)

(2) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(3) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance.

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(4) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility, the veteran must before January 1, 1990, meet the requirements for a secondary school diploma (or equivalency certificate).

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

■ 11. Section 21.7136 is amended by:

■ a. In paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii) introductory text, and (a)(2)(iii)(B) introductory text, and in the heading for paragraph (c), removing "initial" and adding, in its place, "qualifying".

■ b. In paragraph (e), removing "(g)" and adding, in its place, "(g) or (h)".

■ c. In paragraph (f) introductory text, removing "§ 21.7045(b)(1)(ii) or (c)(1)(ii)" and adding, in its place, "§ 21.7045(b)(1)(ii), (c)(1)(ii), or (e)(2)".

■ d. Adding paragraph (h).

The addition reads as follows.

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(h) *Increase in monthly rates due to contributions.* Effective May 1, 2001, a servicemember who establishes eligibility under § 21.7042(a), (b), or (c) may contribute up to $600 to the Secretary of the military department concerned in multiples of $20.

(1) VA will increase the monthly rate provided in paragraph (b)(2) or (c)(2) of this section by:

(i) $5 for every $20 an individual pursuing a program of education full time has contributed;

(ii) $3.75 for every $20 an individual pursuing a program of education three-quarter time has contributed;

(iii) $2.50 for every $20 an individual pursuing a program of education half time or less than one-half time but more than one-quarter time has contributed; and

(iv) $1.25 for every $20 an individual pursuing a program of education one-quarter time has contributed.

(2) If a veteran is pursuing an apprenticeship or other on-job training—

(i) During the first six months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraph (b)(4) or (c)(4) of this section by $3.75 for every $20 the individual has contributed;

(ii) During the second six months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraph (b)(4) or (c)(4) of this section by $2.75 for every $20 the veteran has contributed; and

(iii) During the remaining months of the veteran's pursuit of training, VA will increase the monthly rate proved in paragraph (b)(4) or (c)(4) of this section by $1.75 for every $20 the veteran has contributed.

(3) VA will increase the monthly rate provided in paragraph (b)(5)(iii) or (c)(5)(iii) of this section by $5 for every $20 the veteran has contributed.

(Authority: 38 U.S.C. 3015(g))

[FR Doc. 03–14281 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AL30

VA Homeless Providers Grant and Per Diem Program; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule; correction.

SUMMARY: In a document published in the **Federal Register** on March 19, 2003 (68 FR 13590), we amended the regulations concerning the VA Homeless Providers Grant and Per Diem Program primarily to implement the provisions of the Homeless Veterans Comprehensive Assistance Act of 2001. The document contains typographical errors in § 61.33 "Payment of per diem." This document corrects those typographical errors.

DATES: *Effective Date:* This correction is effective March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: In rule FR Doc. 03–6329, published on March 19, 2003 (68 FR 13590), make the following corrections:

§ 61.33 [Corrected]

■ On page 13600, in the first column, in paragraph (d)(2), "(f)(1)(i)" is corrected to read "(d)(1)(i)" and "(f)(1)(ii)" is corrected to read "(d)(1)(ii)".

Approved: June 3, 2003.

Robert C. McFetridge,

Director, Regulations Management.

[FR Doc. 03–14416 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CA216–0400; FRL–7510–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Large Municipal Waste Combustors; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of the California State Plan for implementing the emissions guidelines applicable to existing large municipal waste combustor units. This approval was proposed in the **Federal Register** on March 11, 2003. The plan was submitted by the California Air Resources Board for the State of California to satisfy requirements of sections 111(d) and 129 of the Clean Air Act. The submitted plan applies to large municipal waste combustor units located in the San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District.

EFFECTIVE DATE: This rule is effective on July 9, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted State Plan at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On March 11, 2003 (68 FR 11484), EPA proposed to approve the California State Plan for implementing the emissions guidelines applicable to existing large municipal waste combustor (MWC) units. We proposed to approve this State Plan because we determined that it complied with the relevant Clean Air Act (CAA) requirements. Our proposed action contains more information on the State Plan and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were received that change our assessment that the submitted State Plan complies with the relevant requirements regarding approval of CAA section 111(d)/129 State plans. Therefore, EPA is fully approving the State of California section 111(d)/129 plan for the control of emissions from existing large MWC units. Upon approval, the requirements of the State Plan become federally enforceable.

As discussed in the proposed action and the technical support document, the underlying conditions in the Emission Guidelines (40 CFR part 60, subpart Cb) and the Federal Plan (40 CFR part 62, subpart FFF) will continue to apply in the case of waivers. EPA cannot delegate to districts the ability to approve waivers of load and temperature limits that are not in accordance with the purposes specified in 60.53b (b) and (c). Waivers of operator training course requirements must be approved by EPA. Additionally, approval of the State Plan will not extend the compliance dates contained in the Federal Plan for the Stanislaus facility. Annual performance tests should be conducted at the Stanislaus facility in accordance with 60.58b. As provided by 40 CFR 60.28 (c), any revisions to the California State Plan will not be considered part of the applicable plan until submitted by CARB in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: May 20, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

■ 2. Section 62.1100 is amended by adding paragraphs (b)(6) and (c)(6) to read as follows:

§ 62.1100 Identification of plan.

* * * * *

(b) * * *

(6) State of California's Section 129/111(d) Plan for Existing Large Municipal Waste Combustors, submitted by the

California Air Resources Board on September 23, 1998, with supplemental materials submitted on May 2, 2002.

(c) * * *

(6) Existing large municipal waste combustors.

* * * * * *

■ 3. Subpart F is amended by adding an undesignated center heading and § 62.1130 to read as follows:

Emissions From Large Existing Municipal Waste Combustion Units

§ 62.1130 Identification of sources.

The plan applies to existing large municipal waste combustors that were constructed on or before September 20, 1994, as described in 40 CFR part 60, subpart Cb.

* * * * * *

[FR Doc. 03–14460 Filed 6–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7509–9]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of immediate final rule.

SUMMARY: EPA is withdrawing the immediate final rule for Nebraska: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, which authorized changes to Nebraska's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA stated in the immediate final rule that if EPA received written comments that oppose this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA did receive comments that oppose this authorization, EPA is withdrawing the immediate final rule. EPA will address these comments in a subsequent final action based on the proposed rule also published on April 10, 2003, at 68 FR 17576.

DATES: As of June 9, 2003, EPA withdraws the immediate final rule published on April 10, 2003, at 68 FR 17553.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, KS 66101, phone number: (913) 551–7877 or *haugen.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received written comments that oppose this authorization, EPA is withdrawing the immediate final rule for Nebraska: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, at 68 FR 17553, which authorized changes to Nebraska's hazardous waste rules. EPA stated in the immediate final rule that if EPA received written comments that oppose this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA received comments that oppose this action, today EPA is withdrawing the immediate final rule. EPA will address the comments received during the comment period in a subsequent final action based on the proposed rule also published on April 10, 2003. EPA will not provide for additional public comment during the final action.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14458 Filed 6–6–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7510–1]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and response to comments.

SUMMARY: Nebraska applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes satisfy all requirements needed to qualify for Final authorization. Thus, with respect to these revisions, EPA is granting Final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments (HSWA) of 1984.

DATES: Final authorization for the revisions to Nebraska's hazardous waste management program will become effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, phone number: (913) 551–7877 or *haugen.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nebraska initially received Final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on October 4, 1985, effective December 3, 1988 (53 FR 38950), June 25, 1996, effective August 26, 1996 (61 FR 32699), and June 4, 2002, effective April 22, 2002 (67 FR 38418).

On July 23, 2002, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. On April 10, 2003, EPA published both an Immediate Final Rule (68 FR 17553) granting Nebraska Final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a Final authorization (68 FR 17576). EPA announced in both documents that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day public comment period. The public comment period ended on May 12, 2003. EPA received written comments from one commenter during the public comment period. Today's action responds to the comments EPA received and publishes EPA's Final determination granting Nebraska Final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Nebraska for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenter are summarized and responded to as follows.

B. What Were the Comments and Responses to EPA's Proposal?

The commenter argued that Region VII's process for authorizing revisions to Nebraska's program should require a public hearing, which, the commenter believed, is required by 40 CFR 271.20. EPA disagrees. 40 CFR 271.21 applies only to initial program authorization, and not, as in the instant matter, to program revisions. For this program revision, EPA has proceeded in accordance with 40 CFR 271.21, pursuant to which public hearings are not required. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 **Federal Register**, EPA stated: "As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing." (51 FR 07541).

Consequently, EPA Region VII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. EPA Region VII also believes that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

The commenter expressed a concern about Nebraska's adoption of the provisions of 40 CFR part 266, subpart C. EPA understands this comment to state concerns about the provisions of the Nebraska regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, "hazardous wastes," like lime-based slag, to be used as a "fertilizer." This comment addresses an issue which is not part of the referenced revision application. Specifically, with regard to the provisions of 40 CFR part 266, subpart C, in the context of fertilizer applications, these provisions in Nebraska's program were authorized by EPA as part of Nebraska's first program revision, which took effect on December 3, 1989—over thirteen years ago. Nebraska's current revision application, for which EPA recently published its tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment EPA has received on "use constituting disposal" is not part of Nebraska's most recent program revision application, EPA believes the public comments on "use constituting disposal" are not within the scope of this Agency action. The commenter expressed further concern regarding "EPA's failure to require the Nebraska Attorney General to review Nebraska's statutes based on rule-by-rule authority as required under 40 CFR 271.7." The commenter asserts that "checklists do not provide for as comprehensive a review." EPA uses checklists to review State rules in detail. 40 CFR 271.7 requires the State Attorney General to submit a statement that the laws of the State provide adequate authority to carry out the program described under 40 CFR 271.6. This statement should include citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority. The State of Nebraska has done this. 40 CFR 271.7 further requires that the State statutes and regulations cited by the State Attorney General shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. Nebraska's Attorney General has submitted a statement which satisfies this requirement.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Nebraska has responsibility for carrying out the aspects of the RCRA program described in its approved program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Nebraska, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Nebraska's RCRA program revisions, please refer to the preambles of EPA's April 10, 2003, Proposed and Immediate Final Rules at 68 FR 17576 and 68 FR 17553, respectively.

D. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective August 8, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-Reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14459 Filed 6–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 74 and 78

[ET Docket No. 98–206; FCC 03–25]

Fixed Satellite and Terrestrial Systems in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses the Petitions for Reconsideration from Skybridge L.L.C. ("Skybridge"); and Hughes Communications, Inc., Hughes Communications Galaxy, Inc. and Hughes Network Systems, a division of Hughes Electronics Corporation ("Hughes") filed in response to the *First Report and Order and Further Notice of Proposed Rule Making* ("First R&O"). The proceeding addresses a request by Skybridge to allow non-geostationary orbit ("NGSO") fixed satellite services ("FSS") to share various frequencies in the Ku-Band with existing geostationary orbit ("GSO") satellite services and terrestrial services. Our action herein addresses aspects of the Skybridge Reconsideration Petition relating to NGSO FSS sharing with terrestrial services and Federal Government operations, as well as the Hughes Reconsideration Petition relating to our radio frequency ("RF") safety rules requiring warning labels and recommending professional installation for NGSO FSS subscriber antennas.

DATES: Effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT: James Miller, Office of Engineering and Technology, (202) 418–7351, or Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order*, ET Docket No. 98–206, FCC 03–25, adopted February 3, 2003, and released February 11, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Second Memorandum Opinion and Order

1. In the *Second Memorandum Opinion and Order*, the Commission granted Skybridge's request and amended our rules to allow, under certain conditions, NGSO FSS Earth-to-space ("uplink") operations in the 13.15–13.2125 GHz portion of the 12.75–13.25 GHz band. In making the change the Commission concludes that NGSO FSS can implement measures to protect incumbent broadcast auxiliary service ("BAS") and cable television relay service ("CARS") mobile pickup operations from harmful interference.

2. The Commission grants Skybridge's request and states that power flux density ("PFD") limits for NGSO FSS in the 10.7–11.7 GHz band are sufficient to protect services in the band without the need for individual coordination. This ensures incumbent services are protected against harmful interference without creating an unnecessary burden on NGSO FSS licensees.

3. The Commission granted Skybridge's request and amended the rules to clarify the definition of NGSO FSS earth station gateways to limit use only for NGSO FSS backbone support.

4. The Commission granted Skybridge's request and adopted the Telecommunications Union's ("ITU") effective isotropically radiated power ("EIRP") limit on federal radiolocation operations in the 13.75–14.0 GHz band, and permits NGSO FSS operations to claim protection from these radiolocation operations.

5. The Commission denied Skybridge's request, maintains the EIRP density limit to protect against interference to the National Aeronautics and Space Administration ("NASA") tracking data and relay satellite system ("TDRSS") operations across the 10 megahertz of the 13.77–13.78 GHz band, and denies the request to restrict this protection to only 6 megahertz.

6. The Commission denied Skybridge's request to require NGSO FSS licensees and radio astronomy service ("RAS") entities to use the protection levels and calculation methods in the ITU's Article 29. The Commission maintained the requirement in footnote US355 that NGSO FSS licensees in the 10.7–11.7 GHz band coordinate with RAS entities to reach "mutually acceptable agreements." This flexible approach will allow the use of Article 29 procedures or any other procedure deemed appropriate by the interested parties.

7. The Commission denied Hughes's Petition to revisit language in the *First Report and Order*, 16 FCC Rcd 4096, December 8, 2000, 66 FR 7607, January 24, 2001, recommending professional installation of two-way NGSO FSS antennas. The Commission continues to find that the language is neither overly broad nor unnecessary, and is harmonious with the language of other NGSO FSS decisions.

Final Regulatory Flexibility Analysis

8. The Regulatory Flexibility Act (RFA)[1] requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

9. The Commission has adopted technical rules to facilitate spectrum sharing between new NGSO FSS systems in the Ku band and existing services in this spectrum. Wherein we grant in part Skybridge's requests for reconsideration, we modify these rules to further these goals. We acknowledge that as the radio spectrum is increasingly used, it becomes more difficult to accommodate all requests for access to the radio spectrum, however, this action applies existing frequency coordination procedures to NGSO FSS systems sharing spectrum with fixed services. However, frequency coordination should ensure that new operations of either service will protect existing operations and have access to spectrum if it is technically possible.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

10. In considering the Skybridge's request for NGSO FSS access to the 13.15–13.2125 GHz band, the Commission considered the impact on terrestrial operations granting such a request might have. Further, the Commission adopted rules that carefully weigh the complexity of sharing with mobile BAS/CARS operations could impose against the need for minimal measures to accommodate sharing in bands increasingly congested by co-primary satellite and terrestrial use.

11. Regarding sharing between NGSO FSS systems and broadcast auxiliary ("BAS") operations, the *Report and Order* stated that the Commission will adopt some form of geographic protection areas for terrestrial operations in those bands used by NGSO FSS gateway earth stations. These protection areas will be further defined in a future proceeding, but are intended to facilitate the growth of terrestrial operations, while not unnecessarily hindering the deployment of NGSO FSS systems. Further, to ensure BAS operations in all areas can continue to operate unencumbered by new NGSO FSS systems, this *Second Memorandum Opinion and Order* reinforces efforts to minimize impacts on BAS/CARS entities by retaining the four channels at 13.15–13.2125 GHz for exclusive co-primary BAS/CARS use in 50 km areas around major TV markets and by requiring NGSO FSS operations observe power limits to ensure continued operations outside those select areas.

List of Subjects

47 CFR Part 2

Radio, Television.

47 CFR Part 25

Satellites.

47 CFR Part 74

Television.

47 CFR Part 78

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, 74, and 78 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.106, the Table of Frequency Allocations as follows:

■ a. In the list of Non-Government (NG) footnotes, footnote NG53 is revised.

■ b. In the list of United States (US) footnotes, footnote US356 is revised.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

United States (US) Footnotes

* * * * *

US356 In the band 13.75–14 GHz, an earth station in the fixed-satellite service shall have a minimum antenna diameter of 4.5 m and the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW. In addition the e.i.r.p., averaged over one second, radiated by a station in the radiolocation service shall not exceed 59 dBW. Receiving space stations in the fixed-satellite service shall not claim protection from radiolocation transmitting stations operating in accordance with the United States Table of Frequency Allocations. ITU Radio Regulation No. 5.43A does not apply.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG53 The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as

amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.201 is amended by revising the introductory text and paragraph 2 of the definition for *NGSO FSS gateway earth station* to read as follows:

§ 25.201 Definitions.

* * * * *

NGSO FSS gateway earth station. A gateway earth station is an earth station complex consisting of multiple interconnecting earth station antennas supporting the communication routing and switching functions of a non-geostationary satellite orbit fixed-satellite service (NGSO FSS) system as a whole. A gateway earth station in the NGSO FSS:

* * * * *

(2) Shall not be for the exclusive use of any customer.

* * * * *

■ 5. Section 25.202 is amended by revising the table and footnotes in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

Space-to-earth (GHz)	Earth-to-space (GHz)
3.7–4.2 [1]	5.925–6.425 [1]
10.7–10.95 [1, 12]	12.75–13.25 [1, 12, 14]
10.95–11.2 [1, 2, 12]	13.75–14 [4, 12]
11.2–11.45 [1, 12]	14–14.2 [5]
11.45–11.7 [1, 2, 12]	14.2–14.5
11.7–12.2 [3]	17.3–17.8 [9]
12.2–12.7 [13]	27.5–29.5 [1]
18.3–18.58 [1, 10]	29.5–30
18.58–18.8 [6, 10, 11]	48.2–50.2
18.8–19.3 [7, 10]	
19.3–19.7 [8, 10]	
19.7–20.2 [10]	
37.6–38.6	
40–41	

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; *i.e.*, other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared co-equally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunication services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared co-equally with existing terrestrial radiocommunication systems.

[8] The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

[9] The use of the band 17.3–17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government fixed-satellite service.

[11] The band 18.6–18.8 GHz is shared co-equally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

[13] Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

[14] Use of this band by NGSO FSS gateway earth station uplink operations is subject to the provisions of § 2.106 NG53.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

■ 6. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 7. Section 74.602 is amended by revising footnote 2 following the table in paragraph (a) introductory text to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

[2] The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

■ 8. The authority for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 9. Sections 78.18 is amended by revising paragraphs (l) and (m) to read as follows:

§ 78.18 Frequency assignments.

* * * * *

(l) The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

(m) CARS stations may be authorized for use of the band from 13.20 to 13.25 GHz on a secondary basis to Television Broadcast Auxiliary Stations. CARS stations are also secondary to NGSO FSS gateway earth station uplink operations. Any CARS application seeking authorization for use of the 13.20 to 13.25 GHz band must demonstrate that the applicant has exhausted all spectrum available to it in the 12.70 to 13.20 GHz band. Applications for use of this band must specify whether the channels are 6 MHz, 12.5 MHz, or 25 MHz wide and give the upper and lower boundaries and the polarization for each channel.

[FR Doc. 03–14396 Filed 6–6–03; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 110
Monday, June 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14848; Airspace Docket No. 03–AWP–5]

Proposed Establishment of Class E Airspace; Susanville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Susanville CA. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Susanville Municipal Airport has made this proposal necessary. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Susanville Municipal Airport.

DATES: Comments must be received on or before July 24, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14848/ Airspace Docket No. 03–AWP–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation (NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14848/Airspace Docket No. 03–AWP–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Susanville, CA. The establishment of an RNAV (GPS) RWY 29 SIAP and an RNAV (GPS)–A SIAP at Susanville Municipal Airport has made this proposal necessary. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing these two new procedures. The intended effect of this proposal is to provide adequate controlled airspace for instrument operations at Susanville Municipal Airport. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and Effective, September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * *

AWP CA E5 Susanville, CA [New]

Susanville Municipal Airport, CA
(Lat. 40°22′33″ N, long. 120°34′21″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Susanville Municipal Airport and within 2 miles each side of the 134° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10.3 miles southeast of the Susanville Municipal Airport and within 2 miles each side of the 339° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10 miles northwest of the Susanville Municipal Airport.

* * * * * *

Issued in Los Angeles, California, on April 29, 2003.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–14427 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB50

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its regulations to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index and to increase from $200 to $530 the minimum amount of monthly earnings to count during a trial work period and then index that amount to the Social Security national average wage index.

DATES: In order for us to consider your comments on these specific proposals, the Board must receive them by August 8, 2003.

ADDRESSES: Submit comments in writing to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act provides for disability annuities for employees, widow(er)s, and children of deceased railroad employees who are unable to engage in any regular employment because of a physical or mental impairment. Regular employment is defined by reference to the definition of substantial gainful activity under the Social Security Act. Sections 220.141 and 220.142 of the Board's regulations reflect this definition and define "substantial gainful activity" (SGA) as work activity that involves doing significant physical or mental activities for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not profit is realized. Section 220.143 sets forth earnings levels at which the Board considers a person to be engaged in SGA regardless of the severity of his or her impairment. The amount of average monthly earnings that ordinarily demonstrates SGA was increased effective July 1, 1999, when the Board raised from $500 to $700 the average monthly earnings guidelines used to determine whether work done by a person is substantial gainful activity.

The Board proposes to issue regulations that would increase certain thresholds for disabled workers. Under the proposal, the average monthly earnings guideline, which is used to determine whether work done by disabled workers (other than those who are blind) is substantial gainful activity, would be increased to $740.00 for calendar year 2001 and would thereafter be automatically adjusted each year based on increases in the Social Security national average wage index. *See* 42 U.S.C. 409(k)(1). The amount that is used to determine if a disabled individual has performed "services" during a trial work period also would be subject to an automatic annual adjustment. These changes would conform to changes in the regulations of the Social Security Administration that became final effective January 29, 2001 (65 FR 82905, December 29, 2000).

In order to be eligible for disability benefits, an applicant must not be performing substantial gainful activity. A beneficiary's ongoing eligibility for disability benefits is also subject to this rule. Therefore, the Board has established both upper and lower thresholds as guidelines for determining, respectively, what is prima facie evidence of engaging in SGA and what is prima facie evidence of not engaging in SGA. Except for those who work in sheltered workshops, disabled workers with earnings between the two thresholds are subject to further examination. Currently, the upper and lower thresholds are $700 and $300, respectively. For those working in sheltered workshops, earnings below the upper threshold are prima facie evidence that the worker is not performing SGA.

Under the Board's proposal, beginning January 1, 2002, the upper threshold would be adjusted annually, based on the Social Security national wage index, to conform to the SGA level determined by the Social Security Administration (SSA) and published in the **Federal Register** each October as part of SSA's notice that includes new adjustments. Under this proposal, the SGA amount would never be lower than the previous year's amount. However, there may be years in which there is no increase.

As part of this proposal, the Board also plans to eliminate the lower SGA threshold so that earnings below the upper threshold would be prima facie evidence that a disabled worker is not engaging in SGA, regardless of whether the worker is working in competitive employment or in a sheltered workshop.

The Board also proposes to increase the monthly amount that a disabled worker may earn within a trial work period without jeopardizing the amount of time remaining in the trial work period. Currently, a disabled worker may test his or her ability to work and still be considered disabled by working during a trial work period. A disabled beneficiary will continue to be considered disabled until the beneficiary performs "service" in at least nine months within a rolling 60-month period. Since 1990, the Board has considered any month in which at least more than $200 is earned to be a month of service.

Under the proposed rule, the threshold amount would be increased to $530 for 2001, and then would be adjusted annually thereafter based on the Social Security national average wage index to conform to the amount

determined by the Social Security Administration and published in the **Federal Register** every October. The Board notes that while the SGA amount has increased since 1990, during the same period, the trial work period services amount has remained unchanged. As with the change proposed for the SGA threshold amount, the trial work period amount would never be lower than the previous year's amount.

Proposed Regulations—Background

The Board proposes to revise §§ 220.143(b)(2) and (b)(4) to adjust annually the earnings guidelines that we use to determine whether a non-blind employee is engaged in substantial gainful activity. Beginning January 2001, the average monthly earnings considered to be substantial gainful activity will be increased from $700 to $740. Beginning January 2002, the guideline would be the higher of the previous year's amount or an increased amount as computed and published by the Social Security Administration based on the Social Security national average wage index.

The Board also proposes to amend §§ 220.143(b)(2) and (b)(4) to clarify that this guideline applies to earnings from sheltered work. This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in § 220.144 of this part.

The Board proposes to revise §§ 220.143(b)(3) and (b)(6) to provide, beginning January 2002, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the "primary substantial gainful activity amount" set forth in § 220.143(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. The Board also proposes to make conforming changes to § 220.143(b)(4).

The Board proposes to revise § 220.170 to increase from $200 to $530 the minimum amount of monthly earnings that we consider shows that a person is performing or has performed "services" for counting trial work period months, effective January 1, 2001. We also propose to adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 1, 2002.

Collection of Information Requirements

The amendments to this part do not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The amendments made by this proposed rule are not significant. The amendments to §§ 220.143 and 220.170 will index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and increases from $200 to 530% the minimum amount of monthly earnings to count during a trial work period, and then index that amount to the Social Security national average wage index.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been found not to be a significant amendment by the Office of Management and Budget.

List of Subjects in 20 CFR Part 220

Railroad Retirement.

For the reasons stated in the preamble, the Railroad Retirement Board proposes to amend part 220 of chapter II of title 20 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

Subpart L—Substantial Gainful Activity

2. Section 220.143 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

§ 220.143 Evaluation guides for an employed claimant.

* * * * *

(b)* * * (1) * * *

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant show that the claimant engaged in substantial gainful activity if:

(i) *Before January 1, 2002,* the earnings averaged more than the amount(s) in Table 1 of this section for the time(s) in which the claimant worked.

(ii) *Beginning January 1, 2002,* the earnings are more than an amount determined for each calendar year to be the larger of:

(A) The amount for the previous year, or

(B) The amount established by the Social Security Administration to constitute substantial gainful activity for such year.

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED

For months:	Monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED—Continued

For months:	Monthly earnings averaged more than:
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700
In Calendar year 2001	740

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* Beginning January 1, 2001, if the claimant's earnings are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which the claimant works, the Board will generally consider that the earnings from the claimant's work as an employee will show the claimant has not engaged in substantial gainful activity. Before January 1, 2001, if the claimant's earnings were less than the amount(s) in Table 2 of this section for the year(s) in which the claimant worked, the Board will generally consider that the earnings from the claimant's work as an employee will show that the claimant has not engaged in substantial gainful activity.

TABLE 2.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY NOT PERFORMED

For months:	Monthly earnings averaged less than:
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989	190
In calendar years 1990–2000	300

(4) *Before January 1, 2002, if the claimant worked in a sheltered workshop.* Before January 1, 2002, if the claimant worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the Board will ordinarily consider that the claimant's earnings from this work show that the claimant has engaged in substantial gainful activity if the claimant's earnings averaged more than the amounts in Table 1 of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in paragraph (b)(2) of this section will ordinarily show that the claimant has not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When the claimant's earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in paragraph (b)(2), the Board will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that the claimant may have engaged in substantial gainful activity.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that the claimant engaged in substantial gainful activity.*

(i) Before January 1, 2002, if the claimant's average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings (*see* paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although the Board may apply it to some people who work in sheltered workshops or comparable facilities (*see* paragraph (b)(4) of this section).

(ii) Beginning January 1, 2002, if the claimant's average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, the Board will generally not consider other information in addition to the claimant's earnings unless there is evidence indicating that the claimant may be engaging in substantial gainful activity or that the claimant is in a position to defer or suppress his or her earnings.

(iii) Examples of other information the Board may consider include, whether—

(A) The claimant's work is comparable to that of unimpaired people in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) The claimant's work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

3. Section 220.170 is amended by revising paragraph (b) to read as follows:

§ 220.170 The trial work period.

* * * * *

(b) *What the Board means by services.* When used in this section, services means any activity, even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work to be services when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(1) *If the claimant is an employee.* The Board will consider the claimant's work as an employee to be services if:

(i) *Before January 1, 2002,* the claimant's earnings in a month were more than the amount(s) indicated in Table 1 of this section for the year(s) in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant's earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

(2) *If the claimant is self-employed.* The Board will consider the claimant's activities as a self-employed person to be services if:

(i) *Before January 1, 2002,* the claimant's net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which the claimant worked, or the hours the claimant worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant worked more than 40 hours a month in the business, or the claimant's net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine

whether a person has performed services for counting trial work period months.

TABLE 1.—FOR NON-SELF EMPLOYED

For months:	You earn more than:
In calendar years before 1979	$50
In calendar years 1979–1989	75
In calendar years 1990–2001	200
In calendar year 2001	530

TABLE 2.—FOR THE SELF-EMPLOYED

For months:	Your net earnings are more than:	Or you work in the business more than (hours):
In calendar years before 1979	$50	15
In calendar years 1979–1989	75	15
In calendar years 1990–2000	200	40
In calendar year 2001	530	40

* * * * *

Dated: May 30, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–14273 Filed 6–6–03; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–08]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of negotiated rulemaking committee meeting.

SUMMARY: This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Tuesday, June 17, 2003, Wednesday, June 18, 2003, and Thursday, June 19, 2003. On June 17, 2003, the meeting will begin at approximately 9 a.m. and end at approximately 6 p.m. On June 18, 2003, the meeting will begin at approximately 8 a.m. and end at approximately 6 p.m. On June 19, 2003, the meeting will begin at approximately 8 a.m. and end at approximately 3 p.m. The committee workgroups may, at their discretion, schedule evening sessions on these days.

ADDRESSES: The meeting will take place at the Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, Washington 98121; telephone 1–800–624–0670 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000 containing the IHBG program regulations.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes work group sessions and the discussion of work group progress reports by the full committee. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: June 3, 2003.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 03–14401 Filed 6–6–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 14a

[REG–122917–02]

RIN 1545–BA75

Statutory Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; withdrawal of previous rulemaking; and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to statutory options. These proposed regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of incentive stock options and the exercise of options granted pursuant to an employee stock purchase plan (statutory options). These proposed regulations provide guidance to assist these taxpayers in complying with the law in addition to clarifying rules regarding statutory options. This document also withdraws a previous notice of proposed rulemaking.

DATES: Written and electronically submitted comments and requests to speak, with outlines of topics to be discussed at the public hearing scheduled for September 2, 2003, must be received by August 12, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–122917–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–122917–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Erinn Madden at (202) 622–6030 (not a toll-free number). To be placed on the attendance list for the hearing, please contact Guy Traynor at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by August 8, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 1.6039–1. Section 6039 of the Code requires all corporations that transfer stock to any person pursuant to the exercise of a statutory option to furnish that person with a written statement describing the transfer. Additionally, the corporation may be required to furnish the person a second written statement when the stock originally transferred pursuant to the exercise of the statutory option is subsequently disposed of by the person. The information on the statements required to be provided by the corporation will be used by recipients to complete their income tax returns in the year of the disposition of the statutory option stock. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 16,650 hours.

Estimated average annual burden hours per respondent: 20 minutes.

Estimated number of respondents: 50,000.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under sections 421, 422, and, 424 of the Internal Revenue Code (Code). Changes to the applicable tax law concerning section 421 were made by sections 11801 and 11821 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–508 (104 Stat. 1388). Changes to the applicable tax law concerning section 424 were made by section 1003 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647 (102 Stat. 3581), sections 11801 and 11821 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–508 (104 Stat. 1388), which included re-designating section 425 as section 424 of the Code, and section 1702(h) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755). Changes concerning section 422 were made by section 251 of the Economic Recovery Tax Act of 1981 (95 Stat. 172), which added section 422A to the Code. Related changes to section 422A were made by section 102(j) of the Technical Corrections Act of 1982, Public Law 97–448, section 321(a) of Tax Reform Act of 1986 (96 Stat. 2365), Public Law 99–514 (100 Stat. 2807), section 1003(d) of TAMRA, and sections 11801 and 11821 of OBRA 89, which included re-designating section 422A as section 422 of the Code.

Regulations under section 421 governing the requirements for restricted stock options and qualified stock options, as well as options granted under an employee stock purchase plan, were published in the **Federal Register** on December 9, 1957 (TD 6276), November 26, 1960 (TD 6500), January 18, 1961 (TD 6527), January 20, 1961 (TD 6540), December 12, 1963 (TD 6696), June 23, 1966 (TD 6887), July 24, 1978 (TD 7554), and November 3, 1980 (TD 7728). Temporary regulations under section 422A providing guidance and transitional rules related to incentive stock options were published in the **Federal Register** on December 17, 1981 (TD 7799) and September 18, 1992 (TD 8435). Final regulations under section 422 related to stockholder approval were published in the **Federal Register** on December 1, 1988 (TD 8235) and November 29, 1991 (TD 8374). Regulations under section 425 were published in the **Federal Register** on June 23, 1966 (TD 6887).

Proposed changes to the final regulations under sections 421, 424, and 6039 and proposed regulations under section 422A were previously published in the **Federal Register** at 49 FR 4504 on February 7, 1984 (the 1984 proposed regulations). With the exception of certain stockholder approval rules that were published in the **Federal Register** on June 23, 1966 (TD 6887) and amended by TD 7728 on October 31, 1980, the 1984 proposed regulations provided a comprehensive set of rules under section 422 of the Code. The 1984 proposed regulations are withdrawn.

In general, the income tax treatment of the grant of an option to purchase stock in connection with the performance of services and of the transfer of stock pursuant to the exercise of such option is determined under section 83 of the Code and the regulations thereunder. However, section 421 of the Code provides special rules for determining the income tax treatment of the transfer of shares of

stock pursuant to the exercise of an option if the requirements of section 422(a) or 423(a), as applicable, are met. Section 422 applies to incentive stock options, and section 423 applies to options granted under an employee stock purchase plan (collectively, statutory options).

Under section 421, if a share of stock is transferred to an individual pursuant to the exercise of a statutory option, there is no income at the time of exercise of the option with respect to such transfer, and no deduction under section 162 is allowed to the employer corporation with respect to such transfer. However, pursuant to section 56(b)(3), section 421 does not apply with respect to the exercise of an incentive stock option for purposes of the individual alternative minimum tax.

Section 422(a) of the Code provides that section 421 applies to the transfer of stock to an individual pursuant to the exercise of an incentive stock option if (i) no disposition of the share is made within 2 years from the date of grant of the option or within 1 year from the date of transfer of the share, and (ii) at all times during the period beginning on the date of grant and ending on the day 3 months before the exercise of the option, the individual is an employee of either the corporation granting the option or a parent or subsidiary of such corporation, or a corporation (or a parent or subsidiary of such corporation) issuing or assuming a stock option in a transaction to which section 424(a) applies. Section 422(b) provides several requirements that must be met for an option to qualify as an incentive stock option. Section 422(c) provides special rules applicable to incentive stock options, and section 422(d) provides a $100,000 limitation with respect to incentive stock options.

Section 424 of the Code provides special rules applicable to statutory options, including rules concerning the modification of statutory options and the substitution or assumption of an option by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation. Section 424 also contains definitions of certain terms, including *disposition, parent corporation, and subsidiary corporation.* Finally, section 424 provides special rules related to attribution of stock ownership and the effect of stockholder approval on the date of grant of a statutory option.

Explanation of Provisions

Overview

These proposed regulations would provide a set of comprehensive rules governing incentive stock options. These proposed regulations incorporate many of the rules contained in the 1984 proposed regulations, although these proposed regulations are re-numbered and re-organized. These proposed regulations would also make changes to the final regulations under sections 421 and 424 to provide additional guidance, as discussed below, in certain areas, to reflect the new organizational structure of the statutory option rules (including the re-designation of § 1.425–1 as § 1.424–1), and to remove obsolete rules and cross-references.

Section 421: General Rules

The proposed regulations under section 421 would remove obsolete provisions and update the cross-references to reflect amendments to the applicable statutes and re-organization of the regulations. These proposed regulations also incorporate many provisions of the 1984 proposed regulations. There are two sections of these proposed regulations under section 421: § 1.421–1, which would provide rules concerning the meaning and use of terms, and § 1.421–2, which would provide general rules regarding the application of section 421.

The terms defined in § 1.421–1 of these proposed regulations are the same as those previously defined in § 1.421–7, but these proposed regulations make changes to the definitions of certain terms. For example, § 1.421–1(a) of these proposed regulations expands the definition of *option* to include warrants.

These proposed regulations would provide that an option must be evidenced in paper or in an electronic form. Under either form, however, the option must be enforceable under applicable law. Similarly, these proposed regulations provide that the plan pursuant to which incentive stock options are granted must be in paper or electronic form, provided that the paper or electronic form establishes an enforceable plan.

In addition, as with any taxpayer record, the form used for the option or plan, whether paper or electronic, must be one that provides adequate substantiation of the applicability of section 421. Thus, for example, the form must be one that provides adequate substantiation of the applicable requirements, such as the date on which the option is granted, the number of shares subject to the option, and the option price. In addition, the taxpayer must retain records relating to the option that are sufficient to comply with section 6001 and the regulations thereunder. If these records are kept electronically, the records must meet the requirements of Rev. Proc. 97–22 (1997–1 C.B. 652), or subsequent guidance, and if the records are kept in an ADP system, the records must meet the requirements of Rev. Proc. 98–25 (1998–11 I.R.B. 7), or subsequent guidance.

The definition of *statutory option* in § 1.421–1(b) of these proposed regulations is revised to provide that a statutory option may include an option transferred to a trust if, under section 671 and applicable state law, the individual to whom the option was granted remains the beneficial owner. In contrast, these proposed regulations provide that a transfer of a statutory option incident to divorce will result in the option failing to qualify as a statutory option as of the date of transfer.

Section 1.421–1(i) of these proposed regulations defines *corporation* to have the same meaning prescribed by section 7701(a)(3) and § 301.7701–2(b). Thus, for example, a *corporation* includes an S Corporation, a foreign corporation, and a limited liability corporation that is treated as a corporation for all Federal tax purposes. In addition, section 1.421–1(d) of these proposed regulations provides that *stock* includes ownership interests other than capital stock. Thus, under these proposed regulations, it would be permissible for any entity that is classified as a corporation for federal tax purposes pursuant to the provisions of § 301.7701–2(b) to grant statutory stock options with respect to ownership interests in that entity.

Section 1.421–2 of these proposed regulations incorporates both the provisions of § 1.421–8 and many of the related provisions of the 1984 proposed regulations. These proposed regulations also provide further revisions, including specifying that the deduction in connection with a disqualifying disposition is allowed only if otherwise allowable under sections 83(h) and 162 and if the reporting requirements under § 1.83–6(a) are met.

Section 422: Incentive Stock Options

The proposed regulations under section 422 would provide a new set of comprehensive rules, with the exception of the rules regarding stockholder approval described in § 1.422–5 of the final regulations (re-numbered as § 1.422–3 by these proposed regulations). There are four sections under these proposed regulations: § 1.422–1, general rules; § 1.422–2, definition of incentive stock option; § 1.422–4, the $100,000 limitation; and § 1.422–5, permissible provisions.

1. Special Rules Regarding Disqualifying Dispositions

The 1984 proposed regulations provided rules concerning the consequences of disqualifying dispositions. The general disqualifying disposition rules for incentive stock options are provided in §§ 1.421–2(b)(1) and 1.422–1(b)(1) of these proposed regulations. In addition, § 1.422–1(b)(2) of these proposed regulations clarifies the operation of the special rules applicable to a disqualifying disposition of an incentive stock option under section 422(c)(2) (section 422A(c)(2), prior to amendment by OBRA 89).

The general rules concerning disqualifying dispositions are described in § 1.421–2(b) of these proposed regulations. Under these rules, if there is a disqualifying disposition of a share of stock, the special tax treatment provided by section 421 and § 1.421–2(a) does not apply to the transfer of the share. Instead, the exercise of the option is treated as the exercise of a nonstatutory option under § 1.83–7. Thus, in the taxable year in which the disqualifying disposition occurs, the individual must recognize compensation income equal to the fair market value of the stock on the date the stock is transferred less the exercise price (determined without reduction for any brokerage fees or other costs paid in connection with the disposition). A deduction attributable to the transfer of the share of stock pursuant to the exercise of the option is allowable for the taxable year in which such disqualifying disposition occurs, to the employer corporation, its parent or subsidiary corporation, or a corporation substituting or assuming an option in a transaction to which § 1.424–1(a) applies, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met.

Section 422(c)(2), however, provides a special rule that is applicable if an individual makes a disqualifying disposition of stock acquired through the exercise of an incentive stock option and if the disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized by the individual. Under this special rule, the amount includible in gross income on the disqualifying disposition, and the amount deductible, as compensation attributable to the exercise of the option, shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of the share. Under section 422(c)(2), this special rule is not applicable if the disposition is a sale or exchange with respect to which a loss (if sustained) would not be recognized by the individual. Section 1.422A–1(b)(2) of the 1984 proposed regulations described these special rules concerning the disqualifying disposition of an incentive stock option and this description is incorporated into § 1.422–1(b)(2) of these proposed regulations.

For example, if the disposition is a sale described in section 1091 (relating to a loss from wash sales of stock or securities), a gift, or a sale described in section 267(a)(1) (relating to sales between related parties), any loss sustained would not be recognized. Because a loss in any of these transactions would not be recognized, under § 1.422–1(b)(2)(ii) of these proposed regulations, the special rule provided in § 1.422–1(b)(2)(i) of these proposed regulations does not apply. Instead, the general rules for disqualifying dispositions described in § 1.421–2(b) of these proposed regulations apply.

For example, assume E, an employee of Corporation X, is granted an incentive stock option to acquire X stock. The option price on the date of grant is $100 (the fair market value of X stock on the date of grant). E exercises the option and is transferred X stock when the fair market value of the stock is $200. E later sells the stock for $150 to M before the applicable holding periods expire. Because the sale is a disqualifying disposition that meets the requirements of § 1.422–1(b)(2)(i) of these proposed regulations, in the taxable year of the disqualifying disposition, E is only required to include $50 (the excess of the amount realized on the sale, $150, over the adjusted basis of the share, $100) in gross income as compensation attributable to the exercise of the option. For its taxable year in which the disqualifying disposition occurs, X is allowed a compensation deduction of $50 attributable to E's exercise of the option, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met.

In this example, however, if 10 days after the sale to M, E purchases substantially identical stock, under section 1091, a loss would not be recognized on the sale to M. Thus, under § 1.422–1(b)(2)(ii) of these proposed regulations, the special rule in § 1.422–1(b)(2)(i) does not apply. Instead of including $50 in gross income in the taxable year of the disqualifying disposition, E must include $100 (the difference between the fair market value of X stock on the date of transfer, $200, and the exercise price, $100) in gross income as compensation attributable to the exercise of the option. In the taxable year in which the disqualifying disposition occurs, X is allowed a compensation deduction of $100 attributable to E's exercise of the option if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met.

Since the 1984 proposed regulations were issued, there have been no changes in section 422(c)(2) (other than the redesignation of section 422A(c)(2) as 422(c)(2) by OBRA 89), and these proposed regulations do not make any substantive changes to the 1984 proposed regulations.

2. Stockholder Approval of Incentive Stock Option Plan

Among other requirements, to qualify as an incentive stock option, the option must be granted pursuant to a plan which is approved by the stockholders of the granting corporation within 12 months before or after the date the plan is adopted. *See* section 422(b). These proposed regulations would provide the same basic requirements for stockholder approval as those included in the 1984 proposed regulations.

These proposed regulations, however, would provide additional guidance concerning the circumstances in which stockholder approval is required. As under the 1984 proposed regulations, stockholder approval is required if there is a change in the aggregate number of shares or in the employees (or class or classes of employees) eligible to be granted options under the plan. In addition, while the standard for determining when stockholder approval is required is the same as under the 1984 proposed regulations, these proposed regulations clarify these requirements and provide a more complete list of situations that require new stockholder approval of the plan by specifically including a change in the shares with respect to which options are issued or a change in the granting corporation. Thus, for example, assume that S, a subsidiary of P, adopts an incentive stock option plan under which incentive stock options for S stock will be granted to S employees, and the plan is approved by the stockholders of S (in this case, P) within the applicable 24-month period. If S later amends the plan to provide for the grant of incentive stock options to acquire P stock (rather than S stock), S must obtain approval from the stockholders of S within 12 months before or after the date of the amendment to the plan because the amendment of the plan to allow the grant of options for P stock is considered the adoption of a new plan.

These proposed regulations also would provide additional guidance

regarding the application of the stockholder approval requirements in the context of the substitution or assumption of an option by reason of a corporate transaction. For a discussion of these rules, see the "Substitution, assumption, and modification of options" portion of the preamble.

3. $100,000 Limitation

Section 422(d)(1) provides that to the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to section 422(d)) are exercisable for the first time by any individual during the calendar year (under all of plans of the employer corporation and any related corporation) exceeds $100,000, such options are not treated as incentive stock options. Under section 422(d)(2), options are taken into account in the order in which they are granted. Section 422(d)(3) provides that the fair market value of stock is determined at the time the option is granted.

The 1984 proposed regulations provided no rules concerning the operation of the $100,000 limitation because these provisions were enacted in 1986. However, Notice 87–49 (1987–2 C.B. 355) provides general guidance about the operation of the $100,000 limitation, including examples illustrating the application of this limitation.

Section 1.422–4 of these proposed regulations provides guidance on the operation of the $100,000 limitation that incorporates and expands on the guidance provided in Notice 87–49. Section 1.422–4(a)(1) of these proposed regulations provides that an option that otherwise qualifies as an incentive stock option nevertheless fails to be an incentive stock option to the extent the $100,000 limitation is exceeded.

To determine whether the $100,000 limitation has been exceeded, the rules provided in § 1.422–4(b) of these proposed regulations would apply. Under these proposed regulations, an option that does not qualify as an incentive stock option when granted (including an option which contains terms providing that it will not be treated as an incentive stock option) is disregarded. Additionally, the fair market value of stock is determined on the date of grant of the option. Except as described in the following paragraph, options are taken into account in the order in which they are granted.

An option is considered to be first exercisable during a calendar year if the option will first become exercisable at any time during the year, assuming that any condition on the optionee's ability to exercise the option related to the performance of services is satisfied. If an optionee is able to exercise the option in a year only if an acceleration provision is satisfied, then the option is exercisable in that year only if the acceleration provision is triggered prior to the end of that year. After an acceleration provision is triggered, for purposes of applying the $100,000 limitation, the options subject to such provision and all other options first exercisable during a calendar year are then taken into account in the order in which granted. However, because an acceleration provision is not taken into account prior to its triggering, an incentive stock option that becomes exercisable for the first time during a calendar year by operation of such a provision does not affect the application of the $100,000 limitation with respect to an option (or portion thereof) exercised prior to such acceleration. An acceleration provision includes, for example, a provision that accelerates the exercisability of an option on a change in ownership or control or a provision that conditions exercisability on the attainment of a performance goal. *See* § 1.422–4(d), *Example 4* of these proposed regulations.

For example, assume that in 2006, E, an employee of Y Corporation, is granted Option 1 for stock of Y with a fair market value on the date of grant of $75,000. Option 1 is first exercisable in 2008, except that the option provides that it will become immediately exercisable in the event of a change in control. In 2007, E is granted Option 2 for stock of Y with a fair market value on the date of grant of $50,000. Option 2 is immediately exercisable, and E exercises Option 2. A change in control of Y occurs in 2007, after E has exercised Option 2, and Option 1 becomes immediately exercisable. Notwithstanding the fact that Option 1 was granted prior to Option 2, because the acceleration clause is not taken into account until it is triggered and because E exercised Option 2 prior to the change in control, Option 2 is an incentive stock option in its entirety. Option 1 is bifurcated into an incentive stock option to acquire stock with a fair market value of $50,000 on the date of grant and a nonstatutory option to acquire stock with a fair market value of $25,000 on the date of grant.

If the change in control instead occurred prior to E's exercise of Option 2, then Option 1, which was granted first, is treated as an incentive stock option in its entirety, and Option 2 is bifurcated into an incentive stock option to acquire stock with a fair market value of $25,000 on the date of grant and a nonstatutory option to acquire stock with a fair market value of $25,000 on the date of grant.

These proposed regulations also would provide that an option is disregarded for purposes of the $100,000 limitation if, prior to the calendar year during which it would have otherwise become exercisable for the first time, the option is modified and thereafter ceases to be an incentive stock option, is transferred in violation of the nontransferability requirements, or is canceled. In all other situations, a modified, transferred, or canceled option (or portion thereof) is treated as outstanding until the end of the calendar year during which it would othetwise have become exercisable for the first time.

Finally, under these proposed regulations, a disqualifying disposition has no effect on the determination of whether an option exceeds the $100,000 limitation. Thus, for example, assume Corporation X grants E, an employee of X, Option 1 to acquire X stock with a fair market value on the date of grant of $75,000. Option 1 is exercisable on January 1, 2005. On January 5, 2005, E exercises the option and sells the stock in a disqualifying disposition. On January 15, 2005, X grants E Option 2 to acquire X stock with a fair market value on the date of grant of $50,000. Option 2 is immediately exercisable. Under § 1.422–4(b)(6) of the proposed regulations, the disqualifying disposition of Option 1 has no effect on the application of the $100,000 limitation. Thus, Option 2 is bifurcated into an incentive stock option to acquire stock with a fair market value of $25,000 on the date of grant and a nonstatutory option to acquire stock with a fair market value of $25,000 on the date of grant.

4. Permissible Provisions

These proposed regulations also provide guidance on additional provisions that may be included in an incentive stock option. Because these provisions are not part of the requirements for an incentive stock option, they are addressed separately in § 1.422–5 of these proposed regulations (many of these rules were previously in § 1.422A–2(i) of the 1984 proposed regulations). Section 1.422–5 of these proposed regulations addresses provisions permitting cashless exercise, providing the right to receive additional compensation, and providing alternative rights. In each case, these proposed regulations essentially retain the rules described in the 1984 proposed regulations.

Section 424: Definitions and Special Rules

These proposed regulations re-designate the regulations under section 425 as regulations under section 424 and update the regulations. For example, these proposed regulations amend the definition of *disposition* to exclude a transfer of a share of stock acquired pursuant to the exercise of a statutory option if the transfer is described in section 1041(a) (concerning transfers between spouses or former spouses incident to divorce).

Substitution, Assumption, and Modification of Options

Section 424(h)(1) provides that if the terms of an option are modified, extended, or renewed, such modification, renewal, or extension is treated as the grant of a new option. Under section 424(h)(3), the term *modification* (with certain exceptions) means any change in the terms of an option which gives the optionee additional benefits under the option. One exception to this definition is that a change in the terms of an option attributable to a substitution or an assumption that meets the requirements of section 424(a) is not a modification of an option.

These proposed regulations would provide that an *eligible corporation* (as defined in § 1.424–1(a)(2) of these proposed regulations) may by reason of a *corporate transaction* (as defined in § 1.424–1(a)(3) of these proposed regulations) substitute a new statutory option (new option) for an outstanding statutory option (old option) or assume an old option without the substitution or assumption being considered a modification of the old option under section 424(h).

An *eligible corporation* is defined as a corporation that is the employer of an optionee or a related corporation of such corporation. The determination of whether a corporation is the employer of the optionee or a related corporation of such corporation is based upon the circumstances existing immediately after the corporate transaction.

Under the proposed regulations, a *corporate transaction* is (i) a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation; (ii) a distribution (excluding ordinary dividends), or change in the terms or number of outstanding shares of such corporation, such as a stock split or stock dividend (a change in capital structure); (iii) a change in the name of a corporation whose stock is purchasable under the old option; and (iv) such other corporate events as may be prescribed by the Commissioner in published guidance.

The definitions of *eligible corporation* and *corporate transaction* would be expanded under these proposed regulations. Specifically, these proposed regulations permit corporations with outstanding options to substitute or assume an option under § 1.424–1(a) if there is a corporate transaction. Additionally, the definition of *corporate transaction* includes events, such as a stock dividend or stock split, that were previously addressed in § 1.425–1(e) of the final regulations, and is otherwise expanded so that events or transactions with similar consequences are treated the same. Because of these changes, the rules in § 1.425–1(e)(5)(ii) of the current regulations would be removed.

These proposed regulations also would eliminate the requirement contained in § 1.425–1(a)(1)(ii) of the final regulations that the corporate transaction result in a significant number of employees being transferred to a new employer or discharged or in the creation or severance of a parent-subsidiary relationship. However, § 1.424–1(a)(4) of these proposed regulations would continue to impose, and provide additional guidance concerning, the requirement that the substitution or assumption be "by reason of" the corporate transaction.

Under these proposed regulations, a change in an option or issuance of a new option is considered to be by reason of a corporate transaction unless the relevant facts and circumstances demonstrate that such change or issuance is made for reasons unrelated to such corporate transaction. For example, a change in an option or issuance of a new option is considered to be made for reasons unrelated to such a corporate transaction if there is an unreasonable delay between the corporate transaction and such change in the option or issuance of a new option or if the corporate transaction serves no substantial corporate business purpose independent of the change in options. A change in an option or issuance of a new option is not by reason of a distribution or change in the terms or number of outstanding shares unless the option as changed, or the new option, is issued on the stock of the same corporation, or if such class of stock is eliminated by the change in capital structure, on other stock of the same corporation. For purposes of a change in name of the corporation, the issuance of a new option is by reason of the change in name of the corporation only if the option issued is on stock of the successor corporation.

These proposed regulations do not otherwise revise the requirements that must be met for a change in an option to qualify as a substitution or an assumption. For example, no changes are proposed with respect to the requirements that no additional benefits be granted to the optionee in connection with a substitution or assumption or that certain spread and ratio tests must be met.

These proposed regulations also continue to impose the requirement contained in the final regulations that the new or assumed option must otherwise qualify as a statutory option. *See* § 1.424–1(a)(5)(vi) of these proposed regulations. Thus, except as necessary to comply with the specific requirements regarding substitution or assumption, such as the restrictions on ratio and spread, the option must comply with the requirements of § 1.422–2 of these proposed regulations or 1.423–2, as applicable. Accordingly, for example, the new option must be granted, or the old option must be assumed, under a plan approved by the stockholders of the corporation substituting or assuming the option.

The proposed regulations do not impose any additional stockholder approval requirement, however, merely because there is a corporate transaction. In Rev. Rul. 71–474 (1971–2 C.B. 215) involving qualified stock options,[1] the IRS held that qualified stock options assumed by a corporation in a merger with the granting corporation retained their status as qualified stock options without approval of the assuming corporation's stockholders. In the ruling, the IRS indicated that approval of the persons who owned stock of the granting corporation at the time the plan was approved was sufficient to satisfy the stockholder approval requirements. Similarly, the 1984 proposed regulations provided that the stockholders of the granting corporation must approve the plan within 12 months before or after its adoption without additional requirements.

Section 1.422–2(b)(2) of these proposed regulations would provide that the plan must be approved during the applicable 24-month period by the stockholders of the corporation granting the incentive stock option. There is no requirement that additional stockholder approval be obtained because of post-approval changes in the stockholders. For example, assume S, a subsidiary of

[1] Qualified stock options are no longer permitted under section 422, but the stockholder approval provisions applicable to a plan under which qualified stock options were granted were the same as those that apply to a plan uder which incentive stock options are granted.

P, adopts a plan under which incentive stock options for S stock will be granted to S employees. Under the proposed regulations, the stockholders of S must approve the plan within 12 months before or after the adoption of the plan. If P later completely disposes of its interest in S, outstanding S options and new grants of S options under the plan are treated as options granted under a plan that meets the stockholder approval requirement of § 1.422–2(b)(2) of these proposed regulations without regard to whether S seeks approval of the plan from the stockholders of S after the spin-off. Assuming all other applicable requirements are met, the outstanding S options and new options granted by S pursuant to the plan with respect to S stock will be treated as incentive stock options.

These proposed regulations also would provide additional guidance with respect to when a change to an option constitutes a modification. Under these proposed regulations, as under the 1984 proposed regulations, both a provision under an option that provides that the optionee may receive an additional benefit at the future discretion of the granting corporation and the exercise of that discretion are considered modifications of the option. However, under these proposed regulations, it is not a modification for the granting corporation to exercise discretion related to the payment of a bonus at the time of the exercise of the option, the availability of a loan at exercise, or the right to tender previously-owned stock for the stock purchasable under the option. A change to an option adding such discretion, however, would be a modification.

In addition, these proposed regulations address more clearly changes related to an option, including changes not only to the option or the option plan, but also changes to any other related agreements. In the case of a change to the stock on which the option is granted that affects the value of the stock, there would be a modification unless a new option is substituted for the old option by reason of the change in the terms of the stock in accordance with the requirements of § 1.424–1(a) of these proposed regulations.

Section 6039

These proposed regulations also would provide guidance on the statements required under section 6039 of the Code. Under these proposed regulations, § 1.6039–1 of the final regulations would be deleted, and § 1.6039–2 would be re-designated as § 1.6039–1. These proposed regulations take the same approach toward providing notice as that taken in the 1984 proposed regulations.

Section 1.6039–1(f) of these proposed regulations states that the matter of furnishing statements in electronic form is reserved. Temporary and proposed regulations have been issued under sections 6041 and 6051 (relating to voluntary electronic furnishing of payee statements on Form W–2) and section 6050S (relating to voluntary electronic furnishing of statements to individuals for whom Forms 1098–T, "Tuition Payments Statement," and 1098–E, "Student Loan Interest Statement" are filed). See 66 FR 10191 and 10247 (Feb. 14, 2001). The preamble to those temporary and proposed regulations requested comments regarding, among other things, the extent to which the proposed method of electronic filing is appropriate for information statements required under other sections of the Code. In addition, section 401 of the Job Creation and Worker Assistance Act of 2002 authorized all statements required by sections 6041 through 6050T of the Code to be furnished electronically under certain conditions. The issue of electronic statements in general is under review, and comments are requested.

Proposed Effective Date

The regulations under sections 421, 422, and 424 are proposed to apply as of the date that is 180 days after publication of final regulations in the **Federal Register** and apply to any statutory option that is granted on or after that date. The regulations under section 6039 are proposed to apply to transfers on or after the date that is 180 days after publication of final regulations in the **Federal Register** of stock acquired pursuant to a statutory option. The 1984 proposed regulations are withdrawn. Taxpayers may rely on these proposed regulations for the treatment of any statutory option granted after June 9, 2003.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 1.6039–1 of these proposed regulations provides for the collection of information. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the provision of employee statements provided under these proposed regulations will impose a minimal paperwork burden on most small entities (see the discussion under the heading "Paperwork Reduction Act" earlier in this preamble). Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking is being submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 2, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must come to the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Erinn Madden, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1 and 14a

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 14a are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§§ 1.421–1 through 1.421–6 [Removed]

Par. 2. Sections 1.421–1 through 1.421–6 are removed.

Par. 3. Section 1.421–7 is re-designated as § 1.421–1 and is amended as follows:

1. In paragraph (a)(1), first sentence, the language "sections 421 through 425" is removed and "§§ 1.421–1 through 1.424–1" is added in its place.

2. In paragraph (a)(1), first sentence, the language "includes" is removed, and "means" is added in its place.

3. In paragraph (a)(1), removing the second sentence.

4. Removing the last sentence of paragraph (a)(1) and adding two sentences in its place.

5. Revising paragraph (a)(3).

6. Revising paragraphs (b)(1) and (b)(2).

7. In paragraph (b)(3)(i), third sentence, removing the language "1.425–1" and inserting "1.424–1" in its place.

8. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–1(b)(3)(ii), *Example 1*, first, second, third and fourth sentences	S–1	X
1.421–1(b)(3)(ii), *Example 1*, second sentence	1964	2004
1.421–1(b)(3)(ii), *Example 1*, third and fourth sentences	1965	2005
1.421–1(b)(3)(ii), *Example 2*, first and second sentences	1964	2004
1.421–1(b)(3)(ii), *Example 2*, first, third, and fourth sentences	S–1	X
1.421–1(b)(3)(ii), *Example 2*, third and fourth sentences	1965	2005

9. Revising the last sentence of paragraph (b)(3)(ii), *Example 1*.

10. Removing the last sentence of paragraph (b)(3)(ii), *Example 2* and adding two sentences in its place.

11. Removing the first sentence of paragraph (c)(1) and adding two new sentences in its place.

12. In paragraph (c)(2), second sentence, the language "425" is removed and "424" is added in its place.

13. In paragraph (c)(3), second and last sentences, the language "1964" is removed and "2004" is added in its place.

14. In paragraph (c)(3), second sentence, the language "1965" is removed and "2005" is added in its place.

15. Revising paragraphs (d) and (e).

16. In paragraph (f), in the first sentence, the language "sections 421 through 425" is removed and "this section and §§ 1.421–2 through 1.424–1" is added in its place.

17. Revising the last sentence of paragraph (f).

18. In paragraph (g), first sentence, the language "sections 421 through 425" is removed and "this section and §§ 1.421–2 through 1.424–1" is added in its place.

19. Adding a new third sentence to paragraph (g).

20. Revising the first, second, and third sentences of paragraph (h)(1).

21. Revising paragraph (h)(2).

22. In paragraph (h)(3), first sentence, the language "425" is removed and "424" is added in its place.

23. In paragraph (h)(3), last sentence, the language "or assuming" is removed and "the option or substituting or assuming the option" is added in its place.

24. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–1(h)(4), *Example 1*, first sentence.	1964	2004.
1.421–1(h)(4), *Example 1*, second and last sentences.	1965	2005.
1.421–1(h)(4), *Example 2*, first sentence.	425	424.
1.421–1(h)(4), *Example 2*, first sentence.	issuing	substituting.
1.424–1(h)(4), *Example 2*, last sentence.	1965	2005.
1.421–1(h)(4), *Example 2*, last sentence.	for A is then employed by a corporation which issued an option under section 425(a).	to the transfer of the M stock because, at all times during the period beginning with the date of grant of the X option and ending with the date of exercise of the M option, A was an employee of the corporation granting the option or substituting or assuming the option under § 1.424–1(a).
1.421–1(h)(4), *Example 3*, second sentence.	1964	2004.
1.421–1(h)(4), *Example 3*, third, fourth, and fifth sentences.	1965	2005.
1.421–1(h)(4), *Example 4*, first sentence.	425(a)	424(a).
1.421–1(h)(4), *Example 5*, first sentence.	qualified stock	statutory.
1.421–1(h)(4), *Example 6*, first sentence.	an employment contract with M which provides that upon the termination of any military duty E may be required to serve, E will be entitled to reemployment with M or a parent or subsidiary of M.	a right to reemployment with M or a related corporation on the termination of any military duty E may be required to serve.
1.421–1(h)(4), *Example 6*, third sentence.	of M	of M or a related corporation.

Newly designated section	Remove	Add
1.421–1(h)(4), *Example 6*, last sentence.	can apply	applies.
1.421–1(h)(4), *Example 7*, first and last sentences.	a qualified stock	an incentive.
1.421–1(h)(4), *Example 7*, first sentence.	parent or subsidiary	related corporation.
1.421–1(h)(4), *Example 7*, last sentence.	its parent and subsidiary corporation	related corporations.
1.421–1(h)(4), *Example 7*, last sentence.	terminated	deemed terminated.

25. Revising paragraph (i).

26. Adding paragraph (j).

The additions and revisions read as follows:

§ 1.421–1 Meaning and use of certain terms.

(a) * * * (1) * * * While no particular form of words is necessary, the option must express, among other things, an offer to sell at the option price, the maximum number of shares purchasable under the option, and the period of time during which the offer remains open. The term option includes a warrant that meets the requirements of this paragraph (a)(1).

* * * * *

(3) An option must be in writing (in paper or electronic form), provided that such writing is adequate to establish an option right or privilege that is enforceable under applicable law.

(b) *Statutory options.* (1) The term *statutory option*, for purposes of this section and §§ 1.421–2 through 1.424–1, means an *incentive stock option*, as defined in § 1.422–2(a), or an option granted under an *employee stock purchase plan*, as defined in § 1.423–2.

(2) An option qualifies as a statutory option only if the option is not transferable (other than by will or by the laws of descent and distribution) by the individual to whom the option was granted, and is exercisable, during the lifetime of such individual, only by such individual. See §§ 1.422–2(a)(2)(v) and 1.423–2(j). Accordingly, an option which is transferable or transferred by the individual to whom the option is granted during such individual's lifetime, or is exercisable during such individual's lifetime by another person, is not a statutory option. However, if the option or the plan under which the option was granted contains a provision permitting the individual to designate the person who may exercise the option after such individual's death, neither such provision, nor a designation pursuant to such provision, disqualifies the option as a statutory option. A pledge of the stock purchasable under an option as security for a loan that is used to pay the option price does not cause the option to violate the nontransferability requirements of this paragraph (b). Also, the transfer of an option to a trust does not disqualify the option as a statutory option if, under section 671 and applicable State law, the individual is considered the sole beneficial owner of the option while it is held in the trust. If an option is transferred incident to divorce (within the meaning of section 1041) or pursuant to a qualified domestic relations order (within the meaning of section 414(p)), the option does not qualify as a statutory option as of the day of such transfer. For the treatment of nonstatutory options, *see* § 1.83–7.

(3)(ii) * * * * *

Example 1. * * * Because X was a subsidiary of P on the date of the grant of the statutory option, the option does not fail to be a statutory option even though X ceases to be a subsidiary of P.

Example 2. * * * Because X was not a subsidiary of P on the date of the grant of the option, the option is not a statutory option even though S later becomes a subsidiary of P. See §§ 1.422–2(a)(2) and 1.423–2(b).

(c) *Time and date of granting option.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the language "the date of the granting of the option" and "the time such option is granted," and similar phrases refer to the date or time when the granting corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a statutory option. A corporate action constituting an offer of stock for sale is not considered complete until the date on which the maximum number of shares that can be purchased under the option and the minimum option price are fixed or determinable.

* * * * * * *

(d) *Stock and voting stock.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the term *stock* means capital stock of any class, including voting or nonvoting common or preferred stock. Except as otherwise provided, the term includes both treasury stock and stock of original issue. Special classes of stock authorized to be issued to and held by employees are within the scope of the term *stock* as used in such sections, provided such stock otherwise possesses the rights and characteristics of capital stock.

(2) For purposes of determining what constitutes voting stock in ascertaining whether a plan has been approved by stockholders under § 1.422–2(b) or 1.423–2(c) or whether the limitations pertaining to voting power contained in sections §§ 1.422–2(f) and 1.423–2(d) have been met, stock which does not have voting rights until the happening of an event, such as the default in the payment of dividends on preferred stock, is not voting stock until the happening of the specified event. Generally, stock which does not possess a general voting power, and may vote only on particular questions, is not voting stock. However, if such stock is entitled to vote on whether a stock option plan may be adopted, it is voting stock.

(3) In general, for purposes of this section and §§ 1.421–2 through 1.424–1, ownership interests other than capital stock are considered stock.

(e) *Option price.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the term *option price, price paid under the option*, or *exercise price* means the consideration in cash or property which, pursuant to the terms of the option, is the price at which the stock subject to the option is purchased. The term *option price* does not include any amounts paid as interest under a deferred payment arrangement or treated as interest.

(2) Any reasonable valuation method may be used to determine whether, at the time the option is granted, the option price satisfies the pricing requirements of sections 422(b)(4), 422(c)(5), 422(c)(7), and 423(b)(6) with respect to the stock subject to the option. Such methods include, for example, the valuation method described in § 20.2031–2 of this chapter (Estate Tax Regulations).

(f) *Exercise.* * * * An agreement or undertaking by the employee to make payments under a stock purchase plan does not constitute the exercise of an option to the extent the payments made remain subject to withdrawal by or refund to the employee.

(g) *Transfer.* * * * A transfer does not fail to occur merely because, under the terms of the arrangement, the individual may not dispose of the share for a specified period of time or the share is subject to a right of first refusal at the share's fair market value at the time of sale.

(h) *Employment relationship.* (1) An option is a statutory option only if, at the time the option is granted, the optionee is an employee of the corporation granting the option, or a related corporation of such corporation. If the option has been assumed or a new option has been substituted in its place under § 1.424–1(a), the optionee must, at the time of such substitution or assumption, be an employee of the corporation so substituting or assuming the option, or a related corporation of such corporation. The determination of whether the optionee is an employee at the time the option is granted (or at the time of the substitution or assumption under § 1.424–1(a)) is made in accordance with section 3401(c) and the regulations thereunder. * * *

(2) In addition, § 1.421–2(a) is applicable to the transfer of a share pursuant to the exercise of the statutory option only if the optionee is, at all times during the period beginning with the date of the granting of such option and ending on the day 3 months before the date of such exercise, an employee of either the corporation granting such option, a related corporation of such corporation, or a corporation (or a related corporation of such corporation) substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies. For purposes of the preceding sentence, the employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence (such as temporary employment by the Government) if the period of such leave does not exceed 90 days, or if longer, so long as the individual's right to reemployment with the corporation granting the option (or a related corporation of such corporation) or a corporation (or a related corporation of such corporation) substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies, is guaranteed either by statute or by contract. If the period of leave exceeds 90 days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship is deemed to terminate on the 91st day of such leave. Thus, if the option is not exercised before such deemed termination of employment, § 1.421–2(a) applies to the transfer of a share pursuant to an exercise of the option only if the exercise occurs within 3 months from the date the employment relationship is deemed terminated.

* * * * *

(i) *Additional definitions.* (1) *Corporation.* For purposes of this section and §§ 1.421–2 through 1.424–1, the term *corporation* has the meaning prescribed by section 7701(a)(3) and § 301.7701–2(b) of this chapter. For example, a *corporation* for purposes of the preceding sentence includes an S corporation (as defined in section 1361), a foreign corporation (as defined in section 7701(a)(5)), and a limited liability company that is treated as a corporation for all Federal tax purposes.

(2) *Parent corporation and subsidiary corporation.* For the definition of the terms *parent corporation* (and *parent*) and *subsidiary corporation* (and *subsidiary*), for purposes of this section and §§ 1.421–2 through 1.424–1, see § 1.424–1(f)(i) and (ii), respectively. *Related corporation* as used in this section and in §§ 1.421–2 through 1.424–1 means either a parent corporation or subsidiary corporation.

(j) *Effective date.* This section applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

Par. 4. Section 1.421–8 is redesignated as 1.421–2 and is amended by:

1. Revising paragraphs (a)(1), (b), and (c)(1).

2. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–2(c)(2), second sentence.	or 424(c)(1)	.....
Add 1.421–2(c)(2), third sentence.	or 424(c)(1)	.....
1.421–2(c)(3)(i), first, second, and third sentences.	422(c)(1), 423(c), or 424(c)(1).	423(c)
1.421–2(c)(3)(ii), *Example*, first sentence.	1964	2004
1.421–2(c)(3)(ii), *Example*, third, fifth, and sixth sentences.	1966	2006

3. In paragraph (c)(2), first sentence, add the phrase "for purposes of section 423(c)" at the end of the first sentence.

4. Removing paragraph (c)(4)(i) and redesignating paragraphs (c)(4)(ii) through (c)(4)(iv) as paragraphs (c)(4)(i) through (c)(4)(iii), respectively.

5. In newly designated paragraph (c)(4)(i)(*a*), first sentence, removing the phrase "In the case of an employee dying after December 31, 1956" and adding "In the case of the death of an optionee" in its place.

6. Removing *Example (1)* in newly designated paragraph (c)(4)(iii) and redesignating *Examples (2)* through (5) as *Examples (1)* through (4), respectively.

7. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–2(c)(4)(i)(*a*), last sentence	422(c)(1), 423(c), or 424(c)(1)	423(c).
1.421–2(c)(4)(i)(*b*), first, second, and last sentences.	422(c)(1), 423(c), or 424(c)(1)	423(c).
1.421–2(c)(4)(i)(*c*), first sentence	422(c)(1), 423(c), or 424(c)(1)	423(c).
1.421–2(c)(4)(iii), *Example 1*, first sentence.	1964	2005.
1.421–2(c)(4)(iii), *Example 1*, eighth sentence.	subdivision (ii)(*b*) of this subparagraph	paragraph (c)(4)(i)(*b*) of this section.
1.421–2(c)(4)(iii), *Example 1*, third and fifth sentences.	1966	2006.
1.421–2(c)(4)(iii), *Example 1*, ninth sentence.	subdivision (ii)(*c*) of this subparagraph	paragraph (c)(4)(i)(*c*) of this section.

Newly designated section	Remove	Add
1.421–2(c)(4)(iii), *Example 2*, second and fifth sentences.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 2*, fifth sentence.	subdivision (ii)(*b*) of this subparagraph	paragraph (c)(4)(i)(*b*) of this section.
1.421–2(c)(4)(iii), *Example 2*, first sentence.	*example (2)*	*Example 1.*
1.421–2(c)(4)(iii), *Example 3*, first sentence.	*example (2)*	*Example 1.*
1.421–2(c)(4)(iii), *Example 3*, second and fourth sentences.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 3*, fourth sentence.	subdivision (ii)(*c*) of this subparagraph	paragraph (c)(4)(i)(*c*) of this section
1.421–2(c)(4)(iii), *Example 4*, first sentence.	*example (2)*	*Example 1.*
1.421–2(c)(4)(iii), *Example 4*, first sentence.	1966	2006.
1.421–2(c)(4)(iii), *Example 4*, first and second sentences.	1967	2007.
1.421–2(c)(4)(iii), *Example 4*, third and fifth sentences.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 4*, sixth sentence.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 4*, fifth and sixth sentences.	subdivision (ii)(*b*) of this subparagraph	paragraph (c)(4)(i)(*b*) of this section.
1.421–2(c)(4)(iii), *Example 4*, sixth sentence.	subdivision (ii)(*c*) of this subparagraph	paragraph (c)(4)(i)(*c*) of this section.

8. Revising paragraph (d).
9. Adding paragraph (f).

The revisions read as follows:

§ 1.421–2 General rules.

(a) *Effect of qualifying transfer.* (1) If a share of stock is transferred to an individual pursuant to the individual's exercise of a statutory option, and if the requirements of § 1.422–1(a) (relating to incentive stock options) or § 1.423–1(a) (relating to employee stock purchase plans) whichever is applicable, are met, then—

(i) No income results at the time of the transfer of such share to the individual upon the exercise of the option with respect to such share (in addition, no income results upon grant of the option, *see* § 1.83–7);

(ii) No deduction under section 162 or the regulations thereunder (relating to trade or business expenses) is allowable at any time with respect to the share so transferred; and

(iii) No amount other than the price paid under the option is considered as received by the employer corporation, a related corporation of such corporation, or a corporation substituting or assuming a stock option in a transaction to which § 1.424–1(a) (relating to corporate reorganizations, liquidations, etc.) applies, for the share so transferred.

* * * * *

(b) *Effect of disqualifying disposition.* (1)(i) The disposition (as defined in § 1.424–1(c)) of a share of stock acquired by the exercise of a statutory option before the expiration of the applicable holding periods as determined under § 1.422–1(a) or 1.423–1(a) is a disqualifying disposition and makes paragraph (a) of this section inapplicable to the transfer of such share. *See* § 1.83–7 for the treatment of nonstatutory options. The income attributable to such transfer (determined without reduction for any brokerage fees or other costs paid in connection with the disposition) is treated by the individual as compensation income received in the taxable year in which such disqualifying disposition occurs. Similarly, if otherwise allowable under sections 83(h) and 162, a deduction attributable to such transfer is allowable for the taxable year in which such disqualifying disposition occurs to the employer corporation, or a related corporation of such corporation, or a corporation substituting or assuming an option in a transaction to which § 1.424–1(a) applies. Additionally, an amount is allowed as a deduction only if the requirements of § 1.83–6(a) are satisfied. No amount is treated as income, and no amount is allowed as a deduction, for any taxable year other than the taxable year in which the disqualifying disposition occurs. If the amount realized on the disposition exceeds (or is less than) the sum of the amount paid for the share and the amount of compensation income recognized as a result of such disposition, the extent to which the difference is treated as gain (or loss) is determined under the rules of section 302 or 1001, as applicable.

(ii) The following examples illustrate the principles of this paragraph (b):

Example 1. On June 1, 2006, X Corporation grants an incentive stock option to A, an employee of X, entitling A to purchase 100 shares of X stock at $10 per share. On August 1, 2006, A exercises the option when the fair market value of X stock is $20 per share, and 100 shares of X stock are transferred to A on that date. On December 15, 2007, A sells the stock. Because A disposed of the stock before June 2, 2008, A did not satisfy the holding period requirements of § 1.422–1(a). Under paragraph (b)(1)(i) of this section, A made a disqualifying disposition of the stock. Thus, paragraph (a) of this section is inapplicable to the transfer of the shares, and A must include the compensation income attributable to the transfer of the shares in gross income. The amount of compensation income A must include in income under § 1.83–7 in the year of the disqualifying disposition is $1,000 (($20, the fair market value of X stock on transfer less $10, the exercise price per share) times 100 shares)). If otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X is allowed a deduction of $1,000 for its taxable year in which the disqualifying disposition occurs.

Example 2. Y Corporation grants an incentive stock option for 100 shares of its stock to E, an employee of Y. The option has an exercise price of $10 per share. E exercises the option and is transferred the shares when the fair market value of a share of Y stock is $30. Before the applicable holding periods expire, Y redeems the shares for $70 per share. Because the holding period requirements of § 1.422–1(a) are not met, the redemption of the shares is a disqualifying disposition of the shares. Under paragraph (b)(1)(i) of this section, A made a disqualifying disposition of the stock. Thus, paragraph (a) of this section is inapplicable to the transfer of the shares, and E must include the compensation income attributable to the transfer of the shares in gross income. Under § 1.83–7, the amount of compensation income attributable to E's purchase of the share that E must include in gross income in the year of the disqualifying disposition is $2,000 ($3,000, the fair market value of Y stock on transfer, less $1,000, the exercise price paid by E). The character of the additional gain that is includible in E's income as a result of the redemption is determined under the rules of section 302. If otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, Y is allowed a deduction for the taxable year in which the disqualifying disposition occurs for the compensation income of $2,000. Y is not allowed a deduction for the additional gain includible in E's income as a result of the redemption.

(2) If an optionee transfers stock acquired through the optionee's exercise of a statutory option prior to the expiration of the applicable holding periods, paragraph (a) of this section continues to apply to the transfer of the stock pursuant to the exercise of the option if such transfer is not a disposition of the stock as defined in § 1.424–1(c) (for example, a transfer from a decedent to the decedent's estate or a transfer by bequest or inheritance). Similarly, a subsequent transfer by the executor, administrator, heir, or legatee is not a disqualifying disposition by the decedent. If a statutory option is exercised by the estate of the optionee or by a person who acquired the option by bequest or inheritance or by reason of the death of such optionee, *see* paragraph (c) of this section. If a statutory option is exercised by the individual to whom the option was granted and the individual dies before the expiration of the holding periods, *see* paragraph (d) of this section.

(3) For special rules relating to the disqualifying disposition of a share of stock acquired by exercise of an incentive stock option, *see* §§ 1.422–5(b)(2) and 1.424–1(c)(3).

(c) *Exercise by estate.* (1) If a statutory option is exercised by the estate of the individual to whom the option was granted (or by any person who acquired such option by bequest or inheritance or by reason of the death of such individual), paragraph (a) of this section applies to the transfer of stock pursuant to such exercise in the same manner as if the option had been exercised by the deceased optionee. Consequently, neither the estate nor such person is required to include any amount in gross income as a result of a transfer of stock pursuant to the exercise of the option. Paragraph (a) of this section applies even if the executor, administrator, or such person disposes of the stock so acquired before the expiration of the applicable holding periods as determined under § 1.422–1(a) or 1.423–1(a). This special rule does not affect the applicability of section 423(c), relating to the estate's or other qualifying person's recognition of compensation income, or section 1222, relating to what constitutes a short-term and long-term capital gain or loss. Paragraph (a) of this section also applies even if the executor, administrator, or such person does not exercise the option within three months after the death of the individual or is not employed as described in § 1.421–1(h), either when the option is exercised or at any time. However, paragraph (a) of this section does not apply to a transfer of shares pursuant to an exercise of the option by the estate or by such person unless the individual met the employment requirements described in § 1.421–1(h) either at the time of the individual's death or within three months before such time (or, if applicable, within the period described in § 1.422–1(a)(3)). Additionally, paragraph (a) of this section does not apply if the option is exercised by a person other than the executor or administrator, or other than a person who acquired the option by bequest or inheritance or by reason of the death of such deceased individual. For example, if the option is sold by the estate, paragraph (a) of this section does not apply to the transfer of stock pursuant to an exercise of the option by the buyer, but if the option is distributed by the administrator to an heir as part of the estate, paragraph (a) of this section applies to the transfer of stock pursuant to an exercise of the option by such heir.

* * * * *

(d) *Option exercised by the individual to whom the option was granted if the individual dies before expiration of the applicable holding periods.* If a statutory option is exercised by the individual to whom the option was granted and such individual dies before the expiration of the applicable holding periods as determined under § 1.422–1(a) or 1.423–1(a), paragraph (a) of this section does not become inapplicable if the executor or administrator of the estate of such individual, or any person who acquired such stock by bequest or inheritance or by reason of the death of such individual, disposes of such stock before the expiration of such applicable holding periods. This rule does not affect the applicability of section 423(c), relating to the individual's recognition of compensation income, or section 1222, relating to what constitutes a short-term and long-term capital gain or loss.

* * * * *

(f) *Effective date.* This section is applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

Par. 5. Section 1.422–1 is added to read as follows:

§ 1.422–1 Incentive stock options; general rules.

(a) *Applicability of section 421(a).* (1)(i) Section 1.421–2(a) applies to the transfer of a share of stock to an individual pursuant to the individual's exercise of an incentive stock option if the following conditions are satisfied—

(A) The individual makes no disposition of such share before the later of the expiration of the 2-year period from the date of grant of the option pursuant to which such share was transferred, or the expiration of the 1-year period from the date of transfer of such share to the individual; and

(B) At all times during the period beginning on the date of grant of the option and ending on the day 3 months before the date of exercise, the individual was an employee of either the corporation granting the option, a related corporation of such corporation, or a corporation (or a related corporation of such corporation) substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies.

(ii) For rules relating to the disposition of shares of stock acquired pursuant to the exercise of a statutory option, *see* § 1.424–1(c). For rules relating to the requisite employment relationship, *see* § 1.421–1(h).

(2)(i) The holding period requirement of section 422(a)(1), described in paragraph (a)(1)(i)(A) of this section, does not apply to the transfers of shares by an insolvent individual described in this paragraph (a)(2). If an insolvent individual holds a share of stock acquired pursuant to the individual's exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under the Bankruptcy Act or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of the individual's creditors in such proceeding is a disposition of such share for purposes of this paragraph (a). For purposes of this paragraph (a)(2), an individual is insolvent only if the individual's

liabilities exceed the individual's assets or the individual is unable to satisfy the individual's liabilities as they become due. *See* section 422(c)(3).

(ii) A transfer by the trustee or other fiduciary that is not treated as a disposition for purposes of this paragraph (a) may be a sale or exchange for purposes of recognizing capital gain or loss with respect to the share transferred. For example, if the trustee transfers the share to a creditor in an insolvency proceeding, capital gain or loss must be recognized by the insolvent individual to the extent of the difference between the amount realized from such transfer and the adjusted basis of such share.

(iii) If any transfer by the trustee or other fiduciary (other than a transfer back to the insolvent individual) is not for the exclusive benefit of the creditors in an insolvency proceeding, then whether such transfer is a disposition of the share by the individual for purposes of this paragraph (a) is determined under § 1.424–1(c). Similarly, if the trustee or other fiduciary transfers the share back to the insolvent individual, any subsequent transfer of the share by such individual which is not made in respect of the insolvency proceeding may be a disposition of the share for purposes of this paragraph (a).

(3) If the employee exercising an option ceased employment because of permanent and total disability, within the meaning of section 22(e)(3), 1 year is used instead of 3 months in the employment period requirement of paragraph (a)(1)(i)(B) of this section.

(b) *Failure to satisfy holding period requirements—(1) General rule.* For general rules concerning a disqualifying disposition of a share of stock acquired pursuant to the exercise of an incentive stock option, *see* § 1.421–2(b)(1).

(2)(i) *Special rule.* If an individual makes a disqualifying disposition of a share of stock acquired by the exercise of an incentive stock option, and if such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to the individual, then, under this paragraph (b)(2)(i), the amount includible in the gross income of such individual, and deductible from the income of the employer corporation (or a related corporation of such corporation, or of a corporation substituting or assuming the option in a transaction to which § 1.424–1(a) applies) as compensation attributable to the exercise of such option, shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share. Subject to the special rule provided by this paragraph (b)(2)(i), the amount of compensation attributable to the exercise of the option is determined under § 1.83–7; *see* § 1.421–2(b)(1)(i).

(ii) *Limitation to special rule.* The special rule described in paragraph (b)(2)(i) of this section does not apply if the disposition is a sale or exchange with respect to which a loss (if sustained) would not be recognized to the individual. Thus, for example, if a disqualifying disposition is a sale described in section 1091 (relating to loss from wash sales of stock or securities), a gift (or any other transaction which is not at arm's length), or a sale described in section 267(a)(1) (relating to sales between related persons), the special rule described in paragraph (b)(2)(i) of this section does not apply because a loss sustained in any such transaction would not be recognized.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. On June 1, 2006, X Corporation grants an incentive stock option to A, an employee of X Corporation, entitling A to purchase one share of X Corporation stock. On August 1, 2006, A exercises the option and the share of X Corporation stock is transferred to A on that date. The option price is $100 (the fair market value of a share of X Corporation stock on June 1, 2006) and the fair market value of a share of X Corporation stock on August 1, 2006 (the date of transfer) is $200. The share transferred to A is transferable and not subject to a substantial risk of forfeiture. A makes a disqualifying disposition by selling the share on June 1, 2007, for $250. Under § 1.83–7(a) (relating to options to which section 421 does not apply), the amount of compensation attributable to A's exercise is $100 (the difference between the fair market value of the share at the date of transfer, $200, and the amount paid for the share, $100). Because the amount realized ($250) is greater than the value of the share at transfer ($200), paragraph (b)(2)(i) of this section does not apply and thus does not affect the amount includible as compensation in A's gross income and deductible by X. A must include in gross income for the taxable year in which the sale occurred $100 as compensation and $50 as capital gain ($250, the amount realized from the sale, less A's basis of $200 (the $100 paid for the share plus the $100 increase in basis resulting from the inclusion of that amount in A's gross income as compensation attributable to the exercise of the option)). For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $100 for compensation attributable to A's exercise of the incentive stock option.

Example 2. Assume the same facts as in *Example 1*, except that the share of X Corporation stock transferred to A is subject to a substantial risk of forfeiture and not transferable for a period of six months after such transfer. Assume further that the fair market value of X Corporation stock is $225 on February 1, 2005, the date on which the six-month restriction lapses. Under section 83(a) and § 1.83–7(a), the amount of compensation attributable to A's exercise of the option and disqualifying disposition of the share is $125 (the difference between the fair market value of the share on the date that the restriction lapsed, $225, and the amount paid for the share, $100). A must include $125 of compensation income and $25 of capital gain in gross income for the taxable year in which the disposition occurs ($250, the amount realized from the sale, less A's basis of $225 (the $100 paid for the share plus the $125 increase in basis resulting from the inclusion of that amount of compensation in A's gross income)). For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $125 for the compensation attributable to A's exercise of the option.

Example 3. (i) Assume the same facts as in *Example 1*, except that A sells the share for $150 to M.

(ii) If the sale to M is a disposition that meets the requirements of paragraph (b)(2)(i) of this section, instead of $100 which otherwise would have been includible as compensation under § 1.83–7, under paragraph (b)(2)(i) of this section, A must include only $50 (the excess of the amount realized on such sale, $150, over the adjusted basis of the share, $100) in gross income as compensation attributable to the exercise of the incentive stock option. Because A's basis for the share is $150 (the $100 which A paid for the share, plus the $50 increase in basis resulting from the inclusion of that amount in A's gross income as compensation attributable to the exercise of the option), A realizes no capital gain or loss as a result of the sale. For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $50 for the compensation attributable to A's exercise of the option.

(iii) Assume the same facts as in paragraph (i) of this *Example 3*, except that 10 days after the sale to M, A purchases substantially identical stock. Because under section 1091(a) a loss (if it were sustained on the sale) would not be recognized on the sale, under paragraph (b)(2)(ii) of this section, the special rule described in paragraph (b)(2)(i) of this section does not apply. Under § 1.83–7, A must include $100 (the difference between the fair market value of the share on the date of transfer, $200, and the amount paid for the share, $100) in gross income as compensation attributable to the exercise of the option for the taxable year in which the disqualifying disposition occurred. A recognizes no capital gain or loss on the transaction. For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a $100 deduction for compensation attributable to A's exercise of the option.

(iv) Assume the same facts as in paragraph (ii) of this *Example 3*, except that A sells the share for $50. Under paragraph (b)(2)(i) of this section, A is not required to include any amount in gross income as compensation attributable to the exercise of the option. A is allowed a capital loss of $50 (the difference between the amount realized on the sale, $50, and the adjusted basis of the share, $100). X Corporation is not allowed any deduction attributable to A's exercise of the option and disqualifying disposition of the share.

(c) *Failure to satisfy employment requirement.* Section 1.421–2(a) does not apply to the transfer of a share of stock pursuant to the exercise of an incentive stock option if the employment requirement, as determined under paragraph (a)(1)(i)(B) of this section, is not met at the time of the exercise of such option. Consequently, the effects of such a transfer are determined under the rules of § 1.83–7. For rules relating to the employment relationship, *see* § 1.421–1(h).

Par. 6. Section 1.422–2 is added to read as follows:

§ 1.422–2 Incentive stock options defined.

(a) *Incentive stock option defined—(1) In general.* The term *incentive stock option* means an option that meets the requirements of paragraph (a)(2) of this section on the date of grant. An incentive stock option is also subject to the $100,000 limitation described in § 1.422–4. An incentive stock option may contain a number of permissible provisions that do not affect the status of the option as an incentive stock option. See § 1.422–5 for rules relating to permissible provisions of an incentive stock option.

(2) *Option requirements.* To qualify as an incentive stock option under this section, an option must be granted to an individual in connection with the individual's employment by the corporation granting such option (or by a related corporation), and granted only for stock of any of such corporations. In addition, the option must meet all of the following requirements—

(i) It must be granted pursuant to a plan that meets the requirements described in paragraph (b) of this section;

(ii) It must be granted within 10 years from the date of the adoption of the plan or the date such plan is approved by the stockholders, whichever is earlier (see paragraph (c) of this section);

(iii) It must not be exercisable after the expiration of 10 years from the date of grant (see paragraph (d) of this section);

(iv) It must provide that the option price per share is not less than the fair market value of the share on the date of grant (see paragraph (e) of this section);

(v) By its terms, it must not be transferrable by the individual to whom the option is granted other than by will or the laws of descent and distribution, and must be exercisable, during such individual's lifetime, only by such individual (see §§ 1.421–1(b)(2) and 1.421–2(c)); and

(vi) Except as provided in paragraph (f) of this section, it must be granted to an individual who, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the corporation employing such individual or of any related corporation of such corporation.

(3) *Amendment of option terms.* Except as otherwise provided in § 1.424–1, the amendment of the terms of an incentive stock option may cause it to cease to be an option described in this section. If the terms of an option that has lost its status as an incentive stock option are subsequently changed with the intent to re-qualify the option as an incentive stock option, such change results in the grant of a new option on the date of the change. *See* § 1.424–1(e).

(4) *Terms provide option not an incentive stock option.* If the terms of an option, when granted, provide that it will not be treated as an incentive stock option, such option is not treated as an incentive stock option.

(b) *Option plan—(1) In general.* An incentive stock option must be granted pursuant to a plan that meets the requirements of this paragraph (b). The authority to grant other stock options or other stock-based awards pursuant to the plan, where the exercise of such other options or awards does not affect the exercise of incentive stock options granted pursuant to the plan, does not disqualify such incentive stock options. The plan must be in writing or electronic form, provided that such writing or electronic form is adequate to establish the terms of the plan. *See* § 1.422–5 for rules relating to permissible provisions of an incentive stock option.

(2) *Stockholder approval.* (i) The plan required by this paragraph (b) must be approved by the stockholders of the corporation granting the incentive stock option within 12 months before or after the date such plan is adopted. Ordinarily, a plan is adopted when it is approved by the granting corporation's board of directors, and the date of the board's action is the reference point for determining whether stockholder approval occurs within the applicable 24-month period. However, if the board's action is subject to a condition (such as stockholder approval) or the happening of a particular event, the plan is adopted on the date the condition is met or the event occurs, unless the board's resolution fixes the date of approval as the date of the board's action.

(ii) For purposes of paragraph (b)(2)(i) of this section, the stockholder approval must comply with the rules described in § 1.422–3.

(iii) The provisions relating to the maximum aggregate number of shares to be issued under the plan (described in paragraph (b)(3) of this section) and the employees (or class or classes of employees) eligible to receive options under the plan (described in paragraph (b)(4) of this section) are the only provisions of a stock option plan that must be approved by stockholders for purposes of section 422(b)(1). Any increase in the maximum aggregate number of shares that may be issued under the plan (other than an increase merely reflecting a change in the number of outstanding shares, such as a stock dividend or stock split), or change in the designation of the employees (or class or classes of employees) eligible to receive options under the plan is considered the adoption of a new plan requiring stockholder approval within the prescribed 24-month period. In addition, a change in the granting corporation or the stock available for purchase or award under the plan is considered the adoption of a new plan requiring new stockholder approval within the prescribed 24-month period. Any other changes in the terms of an incentive stock option plan are not considered the adoption of a new plan and, thus, do not require stockholder approval.

(3) *Maximum aggregate number of shares.* (i) The plan required by this paragraph (b) must designate the maximum aggregate number of shares that may be issued under the plan through incentive stock options, nonstatutory options, and all other stock-based awards to be granted thereunder. If nonstatutory options or other stock-based awards may be granted, the plan may separately designate terms for each type of option and other stock-based award and designate the maximum number of shares that may be issued under such option or other stock-based award. Unless otherwise specified, all terms of the plan apply to all options and other stock-based awards that may be granted under the plan.

(ii) A plan that merely provides that the number of shares that may be issued under options and other stock-based

awards granted under such plan may not exceed a stated percentage of the shares outstanding at the time of each offering or grant under such plan does not satisfy the requirement that the plan state the maximum aggregate number of shares that may be issued under the plan. However, the maximum aggregate number of shares that may be issued under the plan may be stated in terms of a percentage of the authorized, issued or outstanding shares at the date of the adoption of the plan. The plan may specify that the maximum aggregate number of shares available for grants under the plan may increase annually by a specified percentage of the authorized, issued or outstanding shares at the date of the adoption of the plan. A plan which provides that the maximum aggregate number of shares that may be issued under the plan may change based on any other specified circumstances satisfies the requirements of this paragraph (b)(3) only if the stockholders approve an immediately determinable maximum aggregate number of shares that may be issued under the plan in any event.

(iii) It is permissible for the plan to provide that shares purchasable under the plan may be supplied to the plan through acquisitions of stock on the open market, that shares purchased under the plan and forfeited back to the plan are available for re-issuance under the plan, or that shares surrendered in payment of the exercise price of an option are available for re-issuance under the plan.

(iv) If there is more than one plan under which incentive stock options may be granted and stockholders of the granting corporation merely approve a maximum aggregate number of shares that are available for issuance under such plans, the stockholder approval requirements described in paragraph (b)(2) of this section are not satisfied. A separate maximum aggregate number of shares must be approved for each plan.

(4) *Designation of employees.* The plan described in this paragraph (b), as adopted and approved, must indicate the employees (or class or classes of employees) eligible to receive the options or other stock-based awards to be granted under the plan. This requirement is satisfied by a general designation of the classes of employees eligible to receive options or other stock-based awards under the plan. Designations such as "key employees of the grantor corporation"; "all salaried employees of the grantor corporation and its subsidiaries, including subsidiaries which become such after adoption of the plan;" or "all employees of the corporation" meet this requirement. This requirement is considered satisfied even though the board of directors, another group, or an individual is given the authority to select the particular employees who are to receive options or other stock-based awards from a described class and to determine the number of shares to be optioned or granted to each such employee. If individuals other than employees may be granted options or other stock-based awards under the plan, the plan must separately designate the employees or classes of employees eligible to receive incentive stock options.

(5) *Conflicting option terms.* An option on stock available for purchase or grant under the plan is treated as having been granted pursuant to a plan even if the terms of the option conflict with the terms of the plan, unless such option is granted to an employee who is ineligible to receive options under the plan, options have been granted on stock in excess of the aggregate number of shares which may be issued under the plan, or the option provides otherwise.

(6) The following examples illustrate the principles of this paragraph (b):

Example 1. Stockholder approval. (i) S Corporation is a subsidiary of P Corporation, a publicly traded corporation. On January 1, 2006, S adopts a plan under which incentive stock options for S stock are granted to S employees.

(ii) To meet the requirements of paragraph (b)(2) of this section, the plan must be approved by the stockholders of S (in this case, P) within 12 months before or after January 1, 2004.

(iii) Assume the same facts as in paragraph (i) of this *Example 1.* Assume further that the plan was approved by the stockholders of S (in this case, P) on March 1, 2006. On January 1, 2008, S changes the plan to provide that incentive stock options for P stock will be granted to S employees under the plan. Because there is a change in the stock available for grant under the plan, the change is considered the adoption of a new plan that must be approved by the stockholders within 12 months before or after January 1, 2008.

Example 2. Stockholder approval. (i) Assume the same facts as in paragraph (i) of *Example 1,* except that on March 15, 2007, P completely disposes of its interest in S. Thereafter, S continues to grant options for S stock to S employees under the plan.

(ii) The new S options are granted under a plan that meets the stockholder approval requirements of paragraph (b)(2) of this section without regard to whether S seeks approval of the plan from the stockholders of S after P disposes of its interest in S.

(iii) Assume the same facts as in paragraph (i) of this *Example 2,* except that under the plan as adopted on January 1, 2006, only options for P stock are granted to S employees. Assume further that after P disposes of its interest in S, S changes the plan to provide for the grant of options for S stock to S employees. Because there is a change in the stock available for purchase or grant under the plan, under paragraph (b)(2)(iii) of this section, the stockholders of S must approve the plan within 12 months before or after the change to the plan to meet the stockholder approval requirements of paragraph (b) of this section.

Example 3. Maximum aggregate number of shares. X Corporation maintains a plan under which statutory options and nonstatutory options may be granted. The plan designates the number of shares that may be used for incentive stock options. Because the maximum aggregate number of shares that will be used for both statutory and nonstatutory options is not designated in the plan, the requirements of paragraph (b)(3) of this section are not satisfied.

Example 4. Maximum aggregate number of shares. Y Corporation adopts an incentive stock option plan on November 1, 2006. On that date there are two million outstanding shares of Y Corporation stock. The plan provides that the maximum aggregate number of shares that may be issued under the plan may not exceed 15% of the outstanding number of shares of Y Corporation on November 1, 2006. Because the maximum aggregate number of shares under the plan is designated in the plan, the requirements of paragraph (b)(3) of this section are met.

Example 5. Maximum aggregate number of shares. (i) B Corporation adopts an incentive stock option plan on March 15, 2005. The plan provides that the maximum aggregate number of shares available under the plan is 50,000, increased on each anniversary date of the adoption of the plan by 5 percent of the then-outstanding shares.

(ii) Because the maximum aggregate number of shares is not designated under the plan, the requirements of paragraph (b)(3) of this section are not met.

(iii) Assume the same facts as in paragraph (i) of this *Example 5,* except that the plan provides that the maximum aggregate number of shares available under the plan is the lesser of (a) 50,000 shares increased each anniversary date of the adoption of the plan by 5 percent of the then-outstanding shares or (b) 200,000 shares. Because the maximum aggregate number of shares under the plan is designated as the lesser of one of two numbers, one of which provides an immediately determinable maximum aggregate number of shares that may be issued under the plan in any event, the requirements of paragraph (b)(3) of this section are met.

(c) *Duration of option grants under the plan.* An incentive stock option must be granted within 10 years from the date that the plan under which it is granted is adopted or the date such plan is approved by the stockholders, whichever is earlier. To grant incentive stock options after the expiration of the 10-year period, a new plan must be adopted and approved.

(d) *Period for exercising options.* An incentive stock option, by its terms, must not be exercisable after the expiration of 10 years from the date such option is granted, or 5 years from the date such option is granted to an employee described in paragraph (f) of this section. An option that does not contain such a provision when granted is not an incentive stock option.

(e) *Option price.* (1) Except as provided by paragraph (e)(2) of this section, the option price of an incentive stock option must not be less than the fair market value of the stock subject to the option at the time the option is granted. The option price may be determined in any reasonable manner, including the valuation methods permitted under § 20.2031–2 of this chapter (Estate Tax Regulations), so long as the minimum price possible under the terms of the option is not less than the fair market value of the stock on the date of grant. For general rules relating to the option price, see § 1.421–1(e). For rules relating to the determination of when an option is granted, see § 1.421–1(c).

(2)(i) If a share of stock is transferred to an individual pursuant to the exercise of an option which fails to qualify as an incentive stock option merely because there was a failure of an attempt, made in good faith, to meet the option price requirements of paragraph (e)(1) of this section, the requirements of such paragraph are considered to have been met. Whether there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the relevant facts and circumstances.

(ii) For publicly held stock that is actively traded on an established market at the time the option is granted, determining the fair market value of such stock by the appropriate method described in § 20.2031–2 of this chapter (Estate Tax Regulations) establishes that a good-faith attempt to meet the option price requirements of this paragraph (e) was made.

(iii) For non-publicly traded stock, if it is demonstrated, for example, that the fair market value of the stock at the date of grant was based upon an average of the fair market values as of such date set forth in the opinions of completely independent and well-qualified experts, such a demonstration generally establishes that there was a good-faith attempt to meet the option price requirements of this paragraph (e). If the stock is non-publicly traded, the optionee's status as a majority or minority stockholder may be taken into consideration.

(iv) Regardless of whether the stock offered under an option is publicly traded, a good-faith attempt to meet the option price requirements of this paragraph (e) is not demonstrated unless the fair market value of the stock on the date of grant is determined with regard to *nonlapse restrictions* (as defined in § 1.83–3(h)) and without regard to *lapse restrictions* (as defined in § 1.83–3(i)).

(v) Amounts treated as interest and amounts paid as interest under a deferred payment arrangement are not includible as part of the option price. See § 1.421–1(e)(1). An attempt to set the option price at not less than fair market value is not regarded as made in good faith where an adjustment of the option price to reflect amounts treated as interest results in the option price being lower than the fair market value on which the option price was based.

(3) Notwithstanding that the option price requirements of paragraphs (e)(1) and (2) of this section are satisfied by an option granted to an employee whose stock ownership exceeds the limitation provided by paragraph (f) of this section, such option is not an incentive stock option when granted unless it also complies with paragraph (f) of this section. If the option, when granted, does not comply with the requirements described in paragraph (f) of this section, such option can never become an incentive stock option, even if the employee's stock ownership does not exceed the limitation of paragraph (f) of this section when such option is exercised.

(f) *Options granted to certain stockholders.* (1) If, immediately before an option is granted, an individual owns (or is treated as owning) stock possessing more than 10 percent of the total combined voting power of all classes of stock of the corporation employing the optionee or of any related corporation of such corporation, then an option granted to such individual cannot qualify as an incentive stock option unless the option price is at least 110 percent of the stock's fair market value on the date of grant and such option by its terms is not exercisable after the expiration of 5 years from the date of grant. For purposes of determining the minimum option price for purposes of this paragraph (f), the rules described in paragraph (e)(2) of this section, relating to the good-faith determination of the option price, do not apply.

(2) For purposes of determining the stock ownership of the optionee, the stock attribution rules of § 1.424–1(d) apply. Stock that the optionee may purchase under outstanding options is not treated as stock owned by the individual. The determination of the percentage of the total combined voting power of all classes of stock of the employer corporation (or of its related corporations) that is owned by the optionee is made with respect to each such corporation in the related group by comparing the voting power of the shares owned (or treated as owned) by the optionee to the aggregate voting power of all shares of each such corporation actually issued and outstanding immediately before the grant of the option to the optionee. The aggregate voting power of all shares actually issued and outstanding immediately before the grant of the option does not include the voting power of treasury shares or shares authorized for issue under outstanding options held by the individual or any other person.

(3) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) E, an employee of M Corporation, owns 15,000 shares of M Corporation common stock, which is the only class of stock outstanding. M has 100,000 shares of its common stock outstanding. On January 1, 2005, when the fair market value of M stock is $100, E is granted an option with an option price of $100 and an exercise period of 10 years from the date of grant.

(ii) Because E owns stock possessing more than 10 percent of the total combined voting power of all classes of M Corporation stock, M cannot grant an incentive stock option to E unless the option is granted at an option price of at least 110 percent of the fair market value of the stock subject to the option and the option, by its terms, expires no later than 5 years from its date of grant. The option granted to E fails to meet the option-price and term requirements described in paragraph (f)(1) of this section and, thus, the option is not an incentive stock option.

(iii) Assume the same facts as in paragraph (i) of this *Example 1,* except that E's father and brother each owned 7,500 shares of M Corporation stock, and E owned no M stock in E's own name. Because under the attribution rules of § 1.424–1(d), E is treated as owning stock held by E's parents and siblings, M cannot grant an incentive stock option to E unless the option price is at least 110 percent of the fair market value of the stock subject to the option, and the option, by its terms, expires no later than 5 years from the date of grant.

Example 2. Assume the same facts as in paragraph (i) of this *Example 1.* Assume further that M is a subsidiary of P Corporation. Regardless of whether E owns any P stock and the number of P shares outstanding, if P Corporation grants an option to E which purports to be an incentive stock option, but which fails to meet the 110-percent-option-price and 5-year-term requirements, the option is not an incentive stock option because E owns more than 10 percent of the total combined voting power of all classes of stock of a related corporation of P Corporation (*i.e.,* M Corporation). An individual who owns (or is treated as owning) stock in excess of the ownership

specified in paragraph (f)(1) of this section, in any corporation in a group of corporations consisting of the employer corporation and its related corporations, cannot be granted an incentive stock option by any corporation in the group unless such option meets the 110-percent-option-price and 5-year-term requirements of paragraph (f)(1) of this section.

Example 3. (i) F is an employee of R Corporation. R has only one class of stock, of which 100,000 shares are issued and outstanding. F owns no stock in R Corporation or any related corporation of R Corporation. On January 1, 2005, R grants a 10-year incentive stock option to F to purchase 50,000 shares of R stock at $3 per share, the fair market value of R stock on the date of grant of the option. On April 1, 2005, F exercises half of the January option and receives 25,000 shares of R stock that previously were not outstanding. On July 1, 2005, R grants a second 50,000 share option to F which purports to be an incentive stock option. The terms of the July option are identical to the terms of the January option, except that the option price is $3.25 per share, which is the fair market value of R stock on the date of grant of the July option.

(ii) Because F did not own more than 10% of the total combined voting power of all classes of stock of R Corporation or any related corporation on the date of the grant of the January option and the pricing requirements of paragraph (e) of this section are satisfied on the date of grant of such option, the unexercised portion of the January option remains an incentive stock option regardless of the changes in F's percentage of stock ownership in R after the date of grant. However, the July option is not an incentive stock option because, on the date that it was granted, F owned 20 percent (25,000 shares owned by F divided by 125,000 shares of R stock issued and outstanding) of the total combined voting power of all classes of R Corporation stock and, thus the pricing requirements of paragraph (f)(1) of this section were not met.

(iii) Assume the same facts as in paragraph (i) of this *Example 3* except that the partial exercise of the January incentive stock option on April 1, 2003, is for only 10,000 shares. Under these circumstances, the July option is an incentive stock option, because, on the date of grant of the July option, F does not own more than 10 percent of the total combined voting power (10,000 shares owned by F divided by 110,000 shares of R issued and outstanding) of all classes of R Corporation stock.

§ 1.422–4 [Removed]

Par. 7. Section 1.422–4 is removed.

§ 1.422–5 [Redesignated]

Par. 8. Section 1.422–5 is redesignated as § 1.422–3.

Par. 9. New § 1.422–4 is added to read as follows:

§ 1.422–4 $100,000 limitation for incentive stock options.

(a) *$100,000 per year limitation*—(1) *General rule.* An option that otherwise qualifies as an incentive stock option nevertheless fails to be an incentive stock option to the extent that the $100,000 limitation described in paragraph (a)(2) of this section is exceeded.

(2) *$100,000 per year limitation.* To the extent that the aggregate fair market value of stock with respect to which an incentive stock option (determined without regard to this section) is exercisable for the first time by any individual during any calendar year (under all plans of the employer corporation and related corporations) exceeds $100,000, such option is treated as a nonstatutory option. See § 1.83–7 for rules applicable to nonstatutory options.

(b) *Application.* To determine whether the limitation described in paragraph (a)(2) of this section has been exceeded, the following rules apply.

(1) An option that does not meet the requirements of § 1.422–2 when granted (including an option which, when granted, contains terms providing that it will not be treated as incentive stock option) is disregarded. See § 1.422–2(a)(4).

(2) The fair market value of stock is determined as of the date of grant of the option for such stock.

(3) Except as otherwise provided in paragraph (b)(4) of this section, options are taken into account in the order in which they are granted.

(4) For purposes of this section, an option is considered to be first exercisable during a calendar year if the option will become exercisable at any time during the year assuming that any condition on the optionee's ability to exercise the option related to the performance of services is satisfied. If the optionee's ability to exercise the option in the year is subject to an acceleration provision, then the option is considered first exercisable in the calendar year in which the acceleration provision is triggered. After an acceleration provision is triggered, the options subject to such provision are then taken into account in accordance with paragraph (b)(3) of this section for purposes of applying the limitation described in paragraph (a)(2) of this section to all options first exercisable during a calendar year. However, because an acceleration provision is not taken into account prior to its triggering, an incentive stock option that becomes exercisable for the first time during a calendar year by operation of such a provision does not affect the application of the $100,000 limitation with respect to any option (or portion thereof) exercised prior to such acceleration. For purposes of this paragraph (b)(4), an acceleration provision includes, for example, a provision that accelerates the exercisability of an option on a change in ownership or control or a provision that conditions exercisability on the attainment of a performance goal. *See* paragraph (d), *Example 4* of this section.

(5)(i) An option (or portion thereof) is disregarded if, prior to the calendar year during which it would otherwise have become exercisable for the first time, the option (or portion thereof) is modified and thereafter ceases to be an incentive stock option described in § 1.422–2, is canceled, or is transferred in violation of § 1.421–1(b)(2).

(ii) If an option (or portion thereof) is modified, canceled, or transferred at any other time, such option (or portion thereof) is treated as outstanding according to its original terms until the end of the calendar year during which it would otherwise have become exercisable for the first time.

(6) A disqualifying disposition has no effect on the determination of whether an option exceeds the $100,000 limitation.

(c) *Bifurcation of options.* The application of the rules described in paragraph (b) of this section may result in an option being treated, in part, as an incentive stock option and, in part, as a nonstatutory option. In such a case, a corporation can issue a separate certificate for incentive option stock and designate such stock as incentive stock option stock in the corporation's transfer records. In the absence of such a designation, a pro rata portion of each share of stock purchased under the option is treated as incentive stock option stock and nonstatutory option stock. See § 1.83–7 for the treatment of nonstatutory options.

(d) *Examples.* The following examples illustrate the principles of this section. In each of the following examples E is an employee of X Corporation. The examples are as follows:

Example 1. General rule. Effective January 1, 2004, X Corporation adopts a plan under which incentive stock options may be granted to its employees. On January 1, 2004, and each succeeding January 1 through January 1, 2013, E is granted immediately exercisable options for X Corporation stock with a fair market value of $100,000 determined on the date of grant. The options qualify as incentive stock options (determined without regard to this section). On January 1, 2014, E exercises all of the options. Because the $100,000 limitation has not been exceeded during any calendar year, all of the options are treated as incentive stock options.

Example 2. Order of grant. X Corporation is a parent corporation of Y Corporation, which is a parent corporation of Z Corporation. Each corporation has adopted its own separate plan, under which an employee of any member of the corporate group may be granted options for stock of any member of the group. On January 1, 2004, X Corporation grants E an incentive stock option (determined without regard to this section) for stock of Y Corporation with a fair market value of $100,000 on the date of grant. On December 31, 2004, Y Corporation grants E an incentive stock option (determined without regard to this section) for stock of Z Corporation with a fair market value of $75,000 as of the date of grant. Both of the options are immediately exercisable. For purposes of this section, options are taken into account in the order in which granted using the fair market value of stock as of the date on the option is granted. During calendar year 2004, the aggregate fair market value of stock with respect to which E's options are exercisable for the first time exceeds $100,000. Therefore, the option for Y Corporation stock is treated as an incentive stock option, and the option for Z Corporation stock is treated as a nonstatutory option.

Example 3. Acceleration provision. (i) In 2004, X Corporation grants E three incentive stock options (determined without regard to this section) to acquire stock with an aggregate fair market value of $150,000 on the date of grant. The dates of grant, the fair market value of the stock (as of the applicable date of grant) with respect to which the options are exercisable, and the years in which the options are first exercisable (without regard to acceleration provisions) are as follows:

	Date of grant	Fair market value of stock	First exercisable
Option 1	April 1, 2004	$60,000	2004
Option 2	May 1, 2004	50,000	2006
Option 3	June 1, 2004	40,000	2004

(ii) In July of 2004, a change in control of X Corporation occurs, and, under the terms of its option plan, all outstanding options become immediately exercisable. Under the rules of this section, Option 1 is treated as an incentive stock option in its entirety; Option 2 exceeds the $100,000 aggregate fair market value limitation for calendar year 2004 by $10,000 (Option 1's $60,000 + Option 2's $50,000 = $110,000) and is, therefore, bifurcated into an incentive stock option for stock with a fair market value of $40,000 as of the date of grant and a nonstatutory option for stock with a fair market value of $10,000 as of the date of grant. Option 3 is treated as a nonstatutory option in its entirety.

Example 4. Exercise of option and acceleration provision. (i) In 2004, X Corporation grants E three incentive stock options (determined without regard to this section) to acquire stock with an aggregate fair market value of $120,000 on the date of grant. The dates of grant, the fair market value of the stock (as of the applicable date of grant) with respect to which the options are exercisable, and the years in which the options are first exercisable (without regard to acceleration provisions) are as follows:

	Date of grant	Fair market value of stock	First exercisable
Option 1	April 1, 2004	$60,000	2005
Option 2	May 1, 2004	40,000	2006
Option 3	June 1, 2004	20,000	2005

(ii) On June 1, 2005, E exercises Option 3. At the time of exercise of Option 3, the fair market value of X stock (at the time of grant) with respect to which options held by E are first exercisable in 2005 does not exceed $100,000. On September 1, 2005, a change of control of X Corporation occurs, and, under the terms of its option plan, Option 2 becomes immediately exercisable. Under the rules of this section, because E's exercise of Option 3 occurs before the change of control and the effects of an acceleration provision are not taken into account until it is triggered, Option 3 is treated as an incentive stock option in its entirety. Option 1 is treated as an incentive stock option in its entirety. Option 2 is bifurcated into an incentive stock option for stock with a fair market value of $20,000 on the date of grant and a nonstatutory option for stock with a fair market value of $20,000 on the date of grant because it exceeds the $100,000 limitation for 2003 by $20,000 (Option 1 for $60,000 + Option 3 for $20,000 + Option 2 for $40,000 = $120,000).

(iii) Assume the same facts as in paragraph (ii) of this *Example 4*, except that the change of control occurs on May 1, 2005. Because options are taken into account in the order in which they are granted, Option 1 and Option 2 are treated as incentive stock options in their entirety. Because the exercise of Option 3 (on June 1, 2005) takes place after the acceleration provision is triggered, Option 3 is treated as a nonstatutory option in its entirety.

Example 5. Cancellation of option. (i) In 2004, X Corporation grants E three incentive stock options (determined without regard to this section) to acquire stock with an aggregate fair market value of $140,000 as of the date of grant. The dates of grant, the fair market value of the stock (as of the applicable date of grant) with respect to which the options are exercisable, and the years in which the options are first exercisable (without regard to acceleration provisions) are as follows:

	Date of grant	Fair market value of stock	First exercisable
Option 1	April 1, 2004	$60,000	2005
Option 2	May 1, 2004	40,000	2005
Option 3	June 1, 2004	40,000	2005

(ii) On December 31, 2004, Option 2 is canceled. Because Option 2 is canceled before the calendar year during which it would have become exercisable for the first time, it is disregarded. As a result, Option 1 and Option 3 are treated as incentive stock options in their entirety.

(iii) Assume the same facts as in paragraph (ii) of this *Example 5*, except that Option 2 is canceled on January 1, 2005. Because Option 2 is not canceled prior to the calendar year during which it would have become exercisable for the first time (2005), it is treated as an outstanding option for purposes of determining whether the $100,000 requirement for 2005 has been exceeded. Because options are taken into account in the order in which granted, Option 1 is treated as an incentive stock option in its entirety. Because Option 3 exceeds the $100,000 limitation by $40,000 (Option 1 for $60,000 + Option 2 for $40,000 + Option 3 for

$40,000 = $140,000), it is treated as a nonstatutory options in its entirety.

(iv) Assume the same facts as in paragraph (i) of this *Example 5*, except that on January 1, 2005, E exercises Option 2 and immediately sells the stock in a disqualifying disposition. A disqualifying disposition has no effect on the determination of whether the underlying option is considered outstanding during the calendar year during which it is first exercisable. Because options are taken into account in the order in which granted, Option 1 is treated as an incentive stock option in its entirety. Because Option 3 exceeds the $100,000 limitation by $40,000 (Option 1 for $60,000 + Option 2 for $40,000 + Option 3 for $40,000 = $140,000), it is treated as a nonstatutory option in its entirety.

Example 6. Designation of stock. On January 1, 2004, X grants E an immediately exercisable incentive stock option (determined without regard to this section) to acquire X stock with a fair market value of $150,000 on that date. Under the rules of this section, the option is bifurcated and treated as an incentive stock option for X stock with a fair market value of $100,000 and a nonstatutory option for X stock with a fair market value of $50,000. In these circumstances, X may designate the stock that is treated as stock acquired pursuant to the exercise of an incentive stock option by issuing a separate certificate (or certificates) for $100,000 of stock and identifying such certificates as Incentive Stock Option Stock in its transfer records. In the absence of such a designation, two-thirds ($100,000 / $150,000) of each share of stock is treated as acquired pursuant to the exercise of an incentive stock option and one-third ($50,000 / $150,000) as stock acquired pursuant to the exercise of a nonstatutory option.

Par. 10. Section 1.422–5 is added to read as follows:

§ 1.422–5 Permissible provisions.

(a) *General rule.* An option that otherwise qualifies as an incentive stock option does not fail to be an incentive stock option merely because such option contains one or more of the provisions described in paragraphs (b), (c), and (d) of this section.

(b) *Cashless exercise.* (1) An option does not fail to be an incentive stock option merely because the optionee may exercise the option with previously acquired stock of the corporation that granted the option or stock of the corporation whose stock is being offered for purchase under the option. For special rules relating to the use of statutory option stock to pay the option price of an incentive stock option, see § 1.424–1(c)(3).

(2) All shares acquired through the exercise of an incentive stock option are individually subject to the holding period requirements described in § 1.422–1(a) and the disqualifying disposition rules of § 1.422–1(b), regardless of whether the option is exercised with previously acquired stock of the corporation that granted the option or stock of the corporation whose stock is being offered for purchase under the option. If an incentive stock option is exercised with such shares, and the exercise results in the basis allocation described in paragraph (b)(3) of this section, the optionee's disqualifying disposition of any of the stock acquired through such exercise is treated as a disqualifying disposition of the shares with the lowest basis.

(3) If the exercise of an incentive stock option with previously acquired shares is comprised in part of an exchange to which section 1036 (and so much of section 1031 as relates to section 1036) applies, then:

(i) The optionee's basis in the incentive stock option shares received in the section 1036 exchange is the same as the optionee's basis in the shares surrendered in the exchange, increased, if applicable, by any amount included in gross income as compensation pursuant to sections 421 through 424 or section 83. Except for purposes of § 1.422–1(a), the holding period of the shares is determined under section 1223. For purposes of § 1.422–1 and sections 421(b) and 83 and the regulations thereunder, the amount paid for the shares purchased under the option is the fair market value of the shares surrendered on the date of the exchange.

(ii) The optionee's basis in the incentive stock option shares not received pursuant to the section 1036 exchange is zero. For all purposes, the holding period of such shares begins as of the date that such shares are transferred to the optionee. For purposes of § 1.422–1(b) and sections 421(b) and 83 and the regulations thereunder, the amount paid for the shares is considered to be zero.

(c) *Additional compensation.* An option does not fail to be an incentive stock option merely because the optionee has the right to receive additional compensation, in cash or property, when the option is exercised, provided such additional compensation is includible in income under section 61 or section 83. The amount of such additional compensation may be determined in any manner, including by reference to the fair market value of the stock at the time of exercise or to the option price.

(d) *Option subject to a condition.* (1) An option does not fail to be an incentive stock option merely because the option is subject to a condition, or grants a right, that is not inconsistent with the requirements of §§ 1.422–2 and 1.422–4.

(2) An option that includes an alternative right is not an incentive stock option if the requirements of § 1.422–2 are effectively avoided by the exercise of the alternative right. For example, an alternative right extending the option term beyond ten years, setting an option price below fair market value, or permitting transferability prevents an option from qualifying as an incentive stock option. If either of two options can be exercised, but not both, each such option is a disqualifying alternative right with respect to the other, even though one or both options would individually satisfy the requirements of §§ 1.422–2, 1.422–4, and this section.

(3) An alternative right to receive a taxable payment of cash and/or property in exchange for the cancellation or surrender of the option does not disqualify the option as an incentive stock option if the right is exercisable only when the then fair market value of the stock exceeds the exercise price of the option and the option is otherwise exercisable, the right is transferable only when the option is otherwise transferable, and the exercise of the right has the same economic and tax consequences as the exercise of the option followed by an immediate sale of the stock. For this purpose, the exercise of the alternative right does not have the same economic and tax consequences if the payment exceeds the difference between the then fair market value of the stock and the exercise price of the option.

(e) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. On June 1, 2004, X Corporation grants an incentive stock option to A, an employee of X Corporation, entitling A to purchase 100 shares of X Corporation common stock at $10 per share. The option provides that A may exercise the option with previously acquired shares of X Corporation common stock. X Corporation has only one class of common stock outstanding. Under the rules of section 83, the shares transferable to A through the exercise of the option are transferable and not subject to a substantial risk of forfeiture. On June 1, 2005, when the fair market value of an X Corporation share is $25, A uses 40 shares of X Corporation common stock, which A had purchased on the open market on June 1, 2002, for $5 per share, to pay the full option price. After exercising the option, A owns 100 shares of incentive stock option stock. Under section 1036 (and so much of section 1031 as relates to section 1036), 40 of the shares have a $200 aggregate carryover basis (the $5 purchase price x 40 shares) and a three-year holding period for purposes of determining capital gain, and 60 of the shares have a zero basis and a holding period beginning on June 1, 2005, for purposes of determining capital gain. All 100 shares have a holding period beginning on June 1, 2005, for purposes of determining whether the holding period requirements of § 1.422–1(a) are met.

Example 2. Assume the same facts as in *Example 1*. Assume further that, on September 1, 2005, A sells 75 of the shares that A acquired through exercise of the incentive stock option for $30 per share. Because the holding period requirements were not satisfied, A made a disqualifying disposition of the 75 shares on September 1, 2005. Under the rules of paragraph (b)(3) of this section, A has sold all 60 of the non-section-1036 shares and 15 of the 40 section-1036 shares. Therefore, under paragraph (b)(3) of this section and section 83(a), the amount of compensation attributable to A's exercise of the option and subsequent disqualifying disposition of 75 shares is $1,500 (the difference between the fair market value of the stock on the date of transfer, $1,875 (75 shares at $25 per share), and the amount paid for the stock, $375 (60 shares at $0 per share plus 15 shares at $25 per share)). In addition, A must recognize a capital gain of $675. Accordingly, A must include in gross income for the taxable year in which the sale occurs $1,500 as compensation and $675 as capital gain. For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under section 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $1,500 for the compensation paid to A.

Example 3. Assume the same facts as in *Example 2*, except that, instead of selling the 75 shares of incentive stock option stock on September 1, 2005, A uses those shares to exercise a second incentive stock option. The second option was granted to A by X Corporation on January 1, 2005, entitling A to purchase 100 shares of X Corporation common stock at $22.50 per share. As in *Example 2*, A has made a disqualifying disposition of the 75 shares of stock pursuant to § 1.424–1(c). Under paragraph (b)(1) of this section, A has disposed of all 60 of the non-section-1036 shares and 15 of the 40 section-1036 shares. Therefore, pursuant to paragraph (b)(3) of this section and section 83(a), the amount of compensation attributable to A's exercise of the first option and subsequent disqualifying disposition of 75 shares is $1,500 (the difference between the fair market value of the stock on the date of transfer, $1,875 (75 shares at $25 per share), and the amount paid for the stock, $375 (60 shares at $0 per share plus 15 shares at $25 per share)). Unlike *Example 2*, A does not recognize any capital gain as a result of exercising the second option because, for all purposes other than the determination of whether the exercise is a disposition pursuant to section 424(c), the exercise is considered an exchange to which section 1036 applies. Accordingly, A must include in gross income for the taxable year in which the disqualifying disposition occurs $1,500 as compensation. For its taxable year in which the disqualifying disposition occurs, if otherwise alllowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $1,500 for the compensation paid to A. After exercising the second option, A owns a total of 125 shares of incentive stock option stock. Under section 1036 (and so much of section 1031 as relates to section 1036), the 100 "new" shares of incentive stock option stock have the following bases and holding periods: 15 shares have a $75 carryover basis and a three-year-and-three-month holding period for purposes of determining capital gain, 60 shares have a $1,500 basis resulting from the inclusion of that amount in income as compensation and a three-month holding period for purposes of determining capital gain, and 25 shares have a zero basis and a holding period beginning on September 1, 2005, for purposes of determining capital gain. All 100 shares have a holding period beginning on September 1, 2005, for purposes of determining whether the holding period requirements of § 1.422–1(a) are met.

Example 4. Assume the same facts as in *Example 2*, except that, instead of selling the 75 shares of incentive stock option stock on September 1, 2005, A uses those shares to exercise a nonstatutory option. The nonstatutory option was granted to A by X Corporation on January 1, 2005, entitling A to purchase 100 shares of X Corporation common stock at $22.50 per share. Unlike *Example 3*, A has not made a disqualifying disposition of the 75 shares of stock. After exercising the nonstatutory option, A owns a total of 100 shares of incentive stock option stock and 25 shares of nonstatutory stock option stock. Under section 1036 (and so much of section 1031 as relates to section 1036), the 75 new shares of incentive stock option stock have the same basis and holding period as the 75 old shares used to exercise the nonstatutory option. The additional 25 shares of stock received upon exercise of the nonstatutory option are taxed under the rules of section 83(a). Accordingly, A must include in gross income for the taxable year in which the transfer of such shares occurs $750 (25 shares at $30 per share) as compensation. A's basis in such shares is the same as the amount included in gross income. For its taxable year in which the transfer occurs, X Corporation is allowed a deduction of $750 for the compensation paid to A to the extent allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are satisfied.

Example 5. Assume the same facts in *Example 1*, except that the shares transferred pursuant to the exercise of the incentive stock option are subject to a substantial risk of forfeiture and not transferable (substantially nonvested) for a period of six months after such transfer. Assume further that the shares that A uses to exercise the incentive stock option are similarly restricted. Such shares were transferred to A on January 1, 2005, through A's exercise of a nonstatutory stock option which was granted to A on January 1, 2004. A paid $5 per share for the stock when its fair market value was $22.50 per share. A did not file a section 83(b) election to include the $700 spread (the difference between the option price and the fair market value of the stock on date of exercise of the nonstatutory option) in gross income as compensation. After exercising the incentive stock option with the 40 substantially-nonvested shares, A owns 100 shares of substantially-nonvested incentive stock option stock. Section 1036 (and so much of section 1031 as relates to section 1036) applies to the 40 shares exchanged in exercise of the incentive stock option. However, pursuant to section 83(g), the stock received in such exchange, because it is incentive stock option stock, is not subject to restrictions and conditions substantially similar to those to which the stock given in such exchange was subject. For purposes of section 83(a) and § 1.83–1(b)(1), therefore, A has disposed of the 40 shares of substantially-nonvested stock on June 1, 2005, and must include in gross income as compensation $800 (the difference between the amount realized upon such disposition, $1,000, and the amount paid for the stock, $200). Accordingly, 40 shares of the incentive stock option stock have a $1,000 basis (the $200 original basis plus the $800 included in income as compensation) and 60 shares of the incentive stock option stock have a zero basis. For its taxable year in which the disposition of the substantially-nonvested stock occurs, X Corporation is allowed a deduction of $800 for the compensation paid to A, provided that the requirements of § 1.83–6 are satisfied.

(f) *Effective date.* This section applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

§ 1.423–1 [Amended]

Par. 11. Section 1.423–1 is amended as follows:

1. In paragraph (a)(2), the language "425(a)" is removed and "424(a)" is added in its place.

2. In paragraph (b), first sentence, the language "§ 1.421–7" is removed and "§ 1.421–1" is added in its place.

3. In paragraph (b), second sentence, the language "§ 1.421–8" is removed and "§ 1.421–2" is added in its place.

4. In paragraph (b), last sentence, the language "425(c)" is removed and "424(c)" is added in its place.

5. In paragraph (b), last sentence, the language "§ 1.425–1" is removed and "§ 1.424–1" is added in its place.

§ 1.423–2 [Amended]

Par. 12. Section 1.423–2 is amended by:

1. In paragraph (b), last sentence, the language "§ 1.421–7" is removed and "§ 1.421–1" is added in its place.

2. In paragraph (d)(1), second sentence, the language "425(d)" is removed and "424(d)" is added in its place.

3. In paragraph (d)(3), *Example 1*, fourth sentence, the language "425(d)" is removed and "424(d)" is added in its place.

4. In paragraph (e)(2), the language "§ 1.421–7" is removed and "§ 1.421–1" is added in its place.

5. In paragraph (g)(1) concluding text, first sentence, the language "§ 1.421–7" is removed and "§ 1.421–1" is added in its place.

6. In paragraph (g)(1) concluding text, second sentence, the language "§ 1.421–7" is removed and "§ 1.421–1" is added in its place.

7. In paragraph (j), second sentence, the language "§ 1.421–7" is removed and "§ 1.421–1" is added in its place.

8. In paragraph (j), last sentence, the language "425" is removed and "424" is added in its place.

9. In paragraph (k)(2), second sentence, the language "§ 1.421–8" is removed and "§ 1.421–2" is added in its place.

§ 1.425–1 [Redesignated]

Par. 13. Section 1.425–1 is redesignated as § 1.424–1 and is amended by:

1. Revising paragraphs (a)(1) through (a)(6).

2. Redesignating paragraph (a)(7) as paragraph (a)(9).

3. Adding paragraph (a)(7).

4. Revising paragraph (a)(8).

5. Adding paragraph (a)(10).

6. In paragraph (b)(1), first, second, and last sentences, the language "425" is removed wherever it appears and "424" is added in their places.

7. In paragraph (c)(1), first sentence, the language "425" is removed and "424" is added in its place.

8. In paragraph (c)(1), first sentence, the language "*disposition*" is removed and "*disposition of stock*" is added in its place.

9. Adding paragraph (c)(1)(iv).

10. Redesignating paragraph (c)(3) as (c)(4).

11. Adding new paragraph (c)(3).

12. Adding newly designated paragraph (c)(4), *Examples 7* through *9*.

13. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.424–1(c)(4), *Example 1*, first sentence.	1964	2004.
1.424–1(c)(4), *Example 1*, first sentence.	qualified stock option	statutory option.
1.424–1(c)(4), *Example 1*, second and fourth sentences.	1965	2005.
1.424–1(c)(4), *Example 1*, third sentence.	1968	2006.
1.424–1(c)(4), *Example 2*, first sentence.	1968	2006.
1.424–1(c)(4), *Example 2*, last sentence.	long-term	
1.424–1(c)(4), *Example 3*, first sentence.	1968	2006.
1.424–1(c)(4), *Example 4*, first sentence.	1968, two years and 11 months after the transfer of shares to him.	2006.
1.424–1(c)(4), *Example 4*, last sentence.	three years from the date	two years from the date the options were granted and within one year of the date that.
1.424–1(c)(4), *Example 5*, first sentence.	1965	2005.
1.424–1(c)(4), *Example 5*, first sentence.	qualified stock option	statutory option.
1.424–1(c)(4), *Example 6*, first sentence, wherever it appears.	1965	2005.
1.424–1(c)(4), *Example 6*, third sentence.	three years	2 years.
1.424–1(c)(4), *Example 6*, third sentence.	income	compensation income.
1.424–1(c)(4), *Example 6*, third sentence.	a qualified stock option	the option.
1.424–1(c)(4), *Example 6*, last sentence.	paragraph (b)(2) of § 1.421–8	§ 1.421–2(b)(2).

14. Revising paragraph (d).

15. Revising paragraphs (e)(1) and (e)(2).

16. In paragraph (e)(3), first sentence, remove the phrase "Except as otherwise provided in subparagraph (4)" and add "If section 423(c) applies to an option then,".

17. In paragraph (e)(3), first sentence, remove the language ", and 424(b)(1)."

18. Removing paragraph (e)(4).

19. Redesignating paragraph (e)(5) as paragraph (e)(4).

20. Revising newly designated paragraph (e)(4).

21. Redesignating paragraph (e)(6) as paragraph (e)(5) and removing the second and third sentences.

22. Adding and reserving a new paragraph (e)(6).

23. In list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.424–1(e)(7) *Example 1*, first sentence.	1964	2004.
1.424–1(e)(7) *Example 1*, first sentence.	1966	2006.

Newly designated section	Remove	Add
1.424–1(e)(7) *Example 1*, third, fourth, fifth, sixth and last sentences.	1965	2005.
1.424–1(e)(7) *Example 1*, fifth sentence.	425(h)	424(h).
1.424–1(e)(7) *Example 1*, last sentence.	The exercise of such	Because the requirements of § 1.424–1(e)(3) and § 1.423–2(g) have not been met, the exercise of such.
1.424–1(e)(7) *Example 2*, first, second, and fifth sentences.	1964	2004.
1.424–1(e)(7) *Example 2*, first, third, fourth, and fifth sentences, wherever it appears.	1965	2005.
1.424–1(e)(7) *Example 2*, first and third sentences.	1966	2006.
1.424–1(e)(7) *Example 2*, fifth sentence.	425(h)	424(h).
1.424–1(e)(7) *Example 2*, last sentence.	The exercise of such	Because the requirements of § 1.424–1(e)(3) and § 1.423–2(g) have not been met, the exercise of such.
1.424–1(e)(7) *Example 3*, first, second, and last sentences.	1965	2005.

24. In paragraph (e)(7), remove *Example 4*.

25. Adding paragraphs (f) and (g).

The additions and revisions are as follows:

§ 1.424–1 Definitions and special rules applicable to statutory options.

(a) *Substitutions and assumptions of options*—(1) *In general.* (i) This paragraph (a) provides rules under which an *eligible corporation* (as defined in paragraph (a)(2) of this section) may, by reason of a *corporate transaction* (as defined in paragraph (a)(3) of this section), substitute a new statutory option (new option) for an outstanding statutory option (old option) or assume an old option without such substitution or assumption being considered a modification of the old option. For the definition of *modification*, see paragraph (e) of this section.

(ii) For purposes of §§ 1.421–1 through 1.424–1, the phrase "substituting or assuming a stock option in a transaction to which section 424 applies," "substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies," and similar phrases means a substitution of a new option for an old option or an assumption of an old option that meets the requirements of this paragraph (a). For a substitution or assumption to qualify under this paragraph (a), the substitution or assumption must meet all of the requirements described in paragraphs (a)(4) and (a)(5) of this section.

(2) *Eligible corporation.* For purposes of this paragraph (a), the term *eligible corporation* means a corporation that is the employer of the optionee or a related corporation of such corporation. For purposes of this paragraph (a), the determination of whether a corporation is the employer of the optionee or a related corporation of such corporation is based upon all of the relevant facts and circumstances existing immediately after the corporate transaction.

(3) *Corporate transaction.* For purposes of this paragraph (a), the term *corporate transaction* includes—

(i) A corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation;

(ii) A distribution (excluding ordinary dividends) or change in the terms or number of outstanding shares of such corporation (*e.g.*, a stock split or stock dividend);

(iii) A change in the name of the corporation whose stock is purchasable under the old option; and

(iv) Such other corporate events prescribed by the Commissioner in published guidance.

(4) *By reason of.* (i) For a change in an option or issuance of a new option to qualify as a substitution or assumption under this paragraph (a), the change must be made by an *eligible corporation* (as defined in paragraph (a)(2) of this section) and occur by reason of a *corporate transaction* (as defined in paragraph (a)(3) of this section).

(ii) Generally, a change in an option or issuance of a new option is considered to be by reason of a corporate transaction, unless the relevant facts and circumstances demonstrate that such change or issuance is made for reasons unrelated to such corporate transaction. For example, a change in an option or issuance of a new option will be considered to be made for reasons unrelated to a corporate transaction if there is an unreasonable delay between the corporate transaction and such change in the option or issuance of a new option, or if the corporate transaction serves no substantial corporate business purpose independent of the change in options. Similarly, a change in the number or price of shares purchasable under an option merely to reflect market fluctuations in the price of the stock purchasable under an option is not by reason of a corporate transaction.

(iii) A change in an option or issuance of a new option is by reason of a distribution or change in the terms or number of the outstanding shares of a corporation (as described in paragraph (a)(3)(ii) of this section) only if the option as changed or the new option issued is an option on the same stock as under the old option (or if such class of stock is eliminated in the change in capital structure, on other stock of the same corporation).

(iv) A change in an option or issuance of a new option is by reason of a change in the name of a corporation (as defined in paragraph (a)(3)(iii) of this section) only if the option as changed or the new option issued is an option on stock of the successor corporation.

(5) *Other requirements.* For a change in an option or issuance of a new option to qualify as a substitution or assumption under this paragraph (a), all of the requirements described in this paragraph (a)(5) must be met.

(i) In the case of an issuance of a new option (or a portion thereof) in exchange for an old option (or portion thereof), the optionee's rights under the old option (or portion thereof) must be

canceled, and the optionee must lose all rights under the old option (or portion thereof). There cannot be a substitution of a new option for an old option within the meaning of this paragraph (a) if the optionee may exercise both the old option and the new option. It is not necessary to have a complete substitution of a new option for the old option. However, any portion of such option which is not substituted or assumed in a transaction to which this paragraph (a) applies is an outstanding option to purchase stock or, to the extent paragraph (e) of this section applies, a modified option.

(ii) The excess of the aggregate fair market value of the shares subject to the new or assumed option immediately after the change in the option or issuance of a new option over the aggregate option price of such shares must not exceed the excess of the aggregate fair market value of all shares subject to the old option (or portion thereof) immediately before the change in the option or issuance of a new option over the aggregate option price of such shares.

(iii) On a share by share comparison, the ratio of the option price to the fair market value of the shares subject to the option immediately after the change in the option or issuance of a new option must not be more favorable to the optionee than the ratio of the option price to the fair market value of the stock subject to the old option (or portion thereof) immediately before the change in the option or issuance of a new option. The number of shares subject to the new or assumed option may be adjusted to compensate for any change in the aggregate spread between the aggregate option price and the aggregate fair market value of the shares subject to the option immediately after the change in the option or issuance of the new option as compared to the aggregate spread between the option price and the aggregate fair market value of the shares subject to the option immediately before the change in the option or issuance of the new option.

(iv) The new or assumed option must contain all terms of the old option, except to the extent such terms are rendered inoperative by reason of the corporate transaction.

(v) The new option or assumed option must not give the optionee additional benefits that the optionee did not have under the old option.

(vi) The new or assumed option must otherwise comply with the requirements of § 1.422–2 or § 1.423–2. Thus, for example, the old option must be assumed or the new option must be issued under a plan approved by the stockholders of the corporation changing the option or issuing the new option as described in § 1.422–2(b)(2) or § 1.423–2(c), as applicable.

(6) *Obligation to substitute or assume not necessary.* For a change in the option or issuance of a new option to meet the requirements of this paragraph (a), it is not necessary to show that the corporation changing an option or issuing a new option is under any obligation to do so. In fact, this paragraph (a) may apply even when the option that is being replaced or assumed expressly provides that it will terminate upon the occurrence of certain corporate transactions. However, this paragraph (a) cannot be applied to revive a statutory option which, for reasons not related to the corporate transaction, expires before it can properly be replaced or assumed under this paragraph (a).

(7) *Issuance of stock without meeting the requirements of this paragraph (a).* A change in the terms of an option resulting in a modification of such option occurs if an optionee's new employer (or a related corporation of the new employer) issues its stock (or stock of a related corporation) upon exercise of such option without satisfying all of the requirements described in paragraphs (a)(4) and (5) of this section.

(8) *Date of grant.* For purposes of applying the rules of this paragraph (a), a substitution or assumption is considered to occur on the date that the optionee would, but for this paragraph (a), be considered to have been granted the option that the eligible corporation is substituting or assuming. A substitution or an assumption that occurs by reason of a corporate transaction may occur before or after the corporate transaction.

* * * * *

(10) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. Eligible corporation. X Corporation acquires a new subsidiary, Y Corporation, and transfers some of its employees to Y. Y Corporation wishes to grant to its new employees and to the employees of X Corporation new options for Y shares in exchange for old options for X shares that were previously granted by X Corporation. Because Y Corporation is an employer with respect to its own employees and a related corporation of X Corporation, Y Corporation is an eligible corporation under paragraph (a)(2) of this section with respect to both the employees of X and Y Corporations.

Example 2. Corporate transaction. (i) On January 1, 2004, Z Corporation grants E, an employee of Z, an option to acquire 100 shares of Z stock. At the time of grant, the fair market value of Z stock is $200 per share. E's option price is $200 per share. On July 1, 2005, when the fair market value of Z stock is $400, Z declares a stock dividend that causes the fair market value of Z stock to decrease to $200 per share. On the same day, Z grants to E a new option to acquire 200 shares of Z stock in exchange for E's old option. The new option has an exercise price of $100 per share.

(ii) A stock dividend is a corporate transaction under paragraph (a)(3)(ii) of this section. Generally, the issuance of a new option is considered to be by reason of a corporate transaction. None of the facts in this *Example 2* indicate that the new option is not issued by reason of the stock dividend. In addition, the new option is issued on the same stock as the old option. Thus, the substitution occurs by reason of the corporate transaction. Assuming the other requirements of this section are met, the issuance of the new option is a substitution that meets the requirements of this paragraph (a) and is not a modification of the option.

(iii) Assume the same facts as in paragraph (i) of this *Example 2*. Assume further that on December 1, 2005, Z declares an ordinary cash dividend. On the same day, Z grants E a new option to acquire Z stock in substitution for E's old option. Under paragraph (a)(3)(ii) of this section, an ordinary cash dividend is not a corporate transaction. Thus, the exchange of the new option for the old option does not meet the requirements of this paragraph (a) and is a modification of the option.

Example 3. Corporate transaction. On March 15, 2004, A Corporation grants E, an employee of A, an option to acquire 100 shares of A stock at $50 per share, the fair market value of A stock on the date of grant. On May 2, 2005, A Corporation transfers several employees, including E, to B Corporation, a related corporation. B Corporation arranges to purchase some assets from A on the same day as E's transfer to B. Such purchase is without a substantial business purpose independent of making the exchange of E's old options for the new options appear to be by reason of a corporate transaction. The following day, B Corporation grants to E, one of its new employees, an option to acquire shares of B stock in exchange for the old option held by E to acquire A stock. Under paragraph (a)(3)(i) of this section, the purchase of assets is a corporate transaction. Generally, the substitution of an option is considered to occur by reason of a corporate transaction. However, in this case, the relevant facts and circumstances demonstrate that the issuance of the new option in exchange for the old option occurred by reason of the change in E's employer rather than a corporate transaction and that the sale of assets is without a substantial corporate business purpose independent of the change in the options. Thus, the exchange of the new option for the old option is not by reason of a corporate transaction that meets the requirements of this paragraph (a) and is a modification of the old option.

Example 4. Additional benefit. On June 1, 2004, P Corporation acquires 100 percent of the shares of S Corporation and issues a new option to purchase P shares in exchange for an old option to purchase S shares that is held by E, an employee of S. On the date of the exchange, E's old option is exercisable for 3 more years, and, after the exchange, E's new option is exercisable for 5 years. Because the new option is exercisable for an additional period of time beyond the time allowed under the old option, the effect of the exchange of the new option for the old option is to give E an additional benefit that E did not enjoy under the old option. Thus, the requirements of paragraph (a)(5) of this section are not met, and this paragraph (a) does not apply to the exchange of the new option for the old option. Therefore, the exchange is a modification of the old options.

Example 5. Spread and ratio tests. E is an employee of S Corporation. E holds an old option that was granted to E by S to purchase 60 shares of S at $12 per share. On June 1, 2005, S Corporation is merged into P Corporation, and on such date P issues a new option to purchase P shares in exchange for E's old option to purchase S shares. Immediately before the exchange, the fair market value of an S share is $32; immediately after the exchange, the fair market value of a P share is $24. The new option entitles E to buy P shares at $9 per share. Because, on a share-by-share comparison, the ratio of the new option price ($9 per share) to the fair market value of a P share immediately after the exchange ($24 per share) is not more favorable to E than the ratio of the old option price ($12 per share) to the fair market value of an S share immediately before the exchange ($32 per share) (9/24 = 12/32), the requirements of paragraph (a)(5)(iii) of this section are met. The number of shares subject to E's option to purchase P stock is set at 80. Because the excess of the aggregate fair market value over the aggregate option price of the shares subject to E's new option to purchase P stock, $1,200 (80 × $24 minus 80 × $9), is not greater than the excess of the aggregate fair market value over the aggregate option price of the shares subject to E's old option to purchase S stock, $1,200 (60 × $32 minus 60 × $12), the requirements of paragraph (a)(5)(ii) of this section are met.

Example 6. Ratio test and partial substitution. Assume the same facts as in Example 5, except that the fair market value of an S share immediately before the exchange of the new option for the old option is $8, that the option price is $10 per share, and that the fair market value of a P share immediately after the exchange is $12. P sets the new option price at $15 per share. Because, on a share-by-share comparison, the ratio of the new option price ($15 per share) to the fair market value of a P share immediately after the exchange ($12) is not more favorable to E than the ratio of the old option price ($10 per share) to the fair market value of an S share immediately before the substitution ($8 per share) (15/12 = 10/8), the requirements of paragraph (a)(5)(iii) of this section are met. Assume further that the number of shares subject to E's P option is set at 20, as compared to 60 shares under E's old option to buy S stock. Immediately after the exchange, 2 shares of P are worth $24, which is what 3 shares of S were worth immediately before the exchange (2 × $12 = 3 × $8). Thus, to achieve a complete substitution of a new option for E's old option, E would need to receive a new option to purchase 40 shares of P (*i.e.*, 2 shares of P for each 3 shares of S that E could have purchased under the old option (2/3 = 40/60)). Because E's new option is for only 20 shares of P, P has replaced only ½ of E's old option, and the other ½ is still outstanding.

Example 7. Partial substitution. X Corporation forms a new corporation, Y Corporation, by a transfer of certain assets and, in a spin-off, distributes the shares of Y Corporation to the stockholders of X Corporation. E, an employee of X Corporation, is thereafter an employee of Y. Y wishes to substitute a new option to purchase some of its stock for E's old option to purchase 100 shares of X. E's old option to purchase shares of X, at $50 a share, was granted when the fair market value of an X share was $50, and an X share was worth $100 just before the distribution of the Y shares to X's stockholders. Immediately after the spin-off, which is also the time of the substitution, each share of X and each share of Y is worth $50. Based on these facts, a new option to purchase 200 shares of Y at an option price of $25 per share could be granted to E in complete substitution of E's old option. It would also be permissible to grant E a new option to purchase 100 shares of Y, at an option price of $25 per share, in substitution for E's right to purchase 50 of the shares under the old option.

Example 8. Stockholder approval requirements. (i) X Corporation, a publicly traded corporation, adopts an incentive stock option plan that meets the requirements of § 1.422–2. Under the plan, options to acquire X stock are granted to X employees. X Corporation is acquired by Y Corporation and becomes a subsidiary corporation of Y Corporation. Y Corporation maintains an incentive stock option plan that meets the requirements of § 1.422–2. Under the plan, options for Y stock may be granted to employees of Y or its related corporations. After the acquisition, X employees remain employees of X. In connection with the acquisition, Y Corporation substitutes new options for Y stock for old options for X stock that were previously granted to the employees of X. As a result of this substitution, on exercise of the new options, X employees receive Y Corporation stock.

(ii) Because Y Corporation has a plan that meets the requirements of § 1.422–2 in existence on the date it acquires X, the new options for Y stock are granted under a plan approved by the stockholders of Y. The stockholders of Y do not need to approve the X plan. If the other requirements of paragraphs (a)(4) and (5) of this section are met, the issuance of new options for Y stock in exchange for the old options for X stock meets the requirements of this paragraph (a) and is not a modification of the old options.

(iii) Assume the same facts as in paragraph (i) of this *Example 8*, except that Y Corporation does not maintain an incentive stock option plan on the date of the acquisition of X. The Y options will only be incentive stock options if they are granted under a plan that meets the requirements of § 1.422–2(b). Therefore, Y must adopt a plan that provides for the grant of incentive stock options, and the plan must be approved by the stockholders of Y in accordance with § 1.422–2(b). If the stockholders of Y approve the incentive stock option plan within 12 months before or after the date of the adoption of a plan by Y and the other requirements of § 1.422–2 and the requirements of this paragraph (a) are met, the issuance of the new options for Y stock in exchange for the old options for X stock meets the requirements of this paragraph (a) and is not treated as a modification of the old options for X stock. The result is the same if Y Corporation assumes the old options instead of issuing new options.

(iv) Assume the same facts as in paragraph (i) of this *Example 8*, except that there is no exchange of options. Instead, as part of the acquisition, X amends its plan to allow future grants under the plan to be grants to acquire Y stock. Because the amendment of the plan to allow options on a different stock is considered the adoption of the new plan, the stockholders of X must approve the plan within 12 months before or after the date of the amendment of the plan. If the stockholders of X timely approve the plan, the future grants to acquire Y stock will be incentive stock options (assuming the other requirements of § 1.422–2 have been met).

Example 9. Modification. X Corporation merges into Y Corporation. Y Corporation retains employees of X who hold old options to acquire X Corporation stock. When the former employees of X exercise the old options, Y Corporation issues Y stock to the former employees of X. Under paragraph (a)(7) of this section, because Y issues its stock on exercise of the old options for X stock, there is a change in the terms of the old options for X stock. Thus, the issuance of Y stock on exercise of the old options is a modification of the old options.

* * * * *

(c) * * * (1) * * *

(iv) A transfer between spouses or incident to divorce (described in section 1041(a)). The special tax treatment of § 1.421–2(a) with respect to the transferred stock applies to the transferee. However, see § 1.421–1(b)(2) for the treatment of the transfer of a statutory option incident to divorce.

* * * * *

(3) If an optionee exercises an incentive stock option with statutory option stock and the applicable holding period requirements (under § 1.422–1(a) or 1.423–1(a)) with respect to such statutory option stock are not met before such transfer, then sections 354, 355, 356, or 1036 (or so much of 1031 as relates to 1036) do not apply to determine whether there is a disposition of those shares. Therefore, there is a disposition of the statutory option stock, and the special tax treatment of § 1.421–2(a) does not apply to such stock.

(4) * * *

Example 7. On January 1, 2004, X Corporation grants to E, an employee of X

Corporation, an incentive stock option to purchase 100 shares of X Corporation stock at $100 per share (the fair market value of an X Corporation share on that date). On January 1, 2005, when the fair market value of a share of X Corporation stock is $200, E exercises half of the option, pays X Corporation $5,000 in cash, and is transferred 50 shares of X Corporation stock with an aggregate fair market value of $10,000. E makes no disposition of the shares before January 2, 2006. Under § 1.421–2(a), no income is recognized by E on the transfer of shares pursuant to the exercise of the incentive stock option, and X Corporation is not entitled to any deduction at any time with respect to its transfer of the shares to E. E's basis in the shares is $5,000.

Example 8. Assume the same facts as in *Example 7*, except that on December 1, 2005, one year and 11 months after the grant of the option and 11 months after the transfer of the 50 shares to E, E uses 25 of those shares, with a fair market value of $5,000, to pay for the remaining 50 shares purchasable under the option. On that day, X Corporation transfers 50 of its shares, with an aggregate fair market value of $10,000, to E. Because E disposed of the 25 shares before the expiration of the applicable holding periods, § 1.421–2(a) does not apply to the January 1, 2005, transfer of the 25 shares used by E to exercise the remainder of the option. As a result of the disqualifying disposition of the 25 shares, E recognizes compensation income under the rules of § 1.421–2(b).

Example 9. On January 1, 2005, X Corporation grants an incentive stock option to E, an employee of X Corporation. The exercise price of the option is $10 per share. On June 1, 2005, when the fair market value of an X Corporation share is $20, E exercises the option and purchases 5 shares with an aggregate fair market value of $100. On January 1, 2006, when the fair market value of an X Corporation share is $50, X Corporation is acquired by Y Corporation in a section 368(a)(1)(A) reorganization. As part of the acquisition, all X Corporation shares are converted into Y Corporation shares. After the conversion, if an optionee holds a fractional share of X Corporation stock, Y Corporation will purchase the fractional share for cash equal to its fair market value. After applying the conversion formula to the shares held by E, E has 10 Y Corporation shares and one-half of a share of X Corporation stock. Y Corporation purchases E's one-half share for $25, the fair market value of one-half of an X Corporation share on the conversion date. Because E sells the one-half share prior to expiration of the holding periods described in § 1.422–1(a), the sale is a disqualifying disposition of the one-half share. Thus, in 2006, E must recognize compensation income of $5 (one-half of the fair market value of an X Corporation share on the date of exercise of the option, or $10, less one-half of the exercise price per share, or $5). For purposes of computing any additional gain, E's basis in the one-half share increases to $10 (reflecting the $5 included in income as compensation). E recognizes an additional gain of $15 ($25, the fair market value of the one-half share, less $10, the basis in such share). The extent to which the additional $15 of gain is treated as a redemption of X Corporation stock is determined under section 302.

(d) *Attribution of stock ownership.* To determine the amount of stock owned by an individual for purposes of applying the percentage limitations relating to certain stockholders described in §§ 1.422–2(f) and 1.423–2(d), shares of the employer corporation or of a related corporation that are owned (directly or indirectly) by or for the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, are considered to be owned by the individual. Also, for such purposes, if a domestic or foreign corporation, partnership, estate, or trust owns (directly or indirectly) shares of the employer corporation or of a related corporation, the shares are considered to be owned proportionately by or for the stockholders, partners, or beneficiaries of the corporation, partnership, estate, or trust. The extent to which stock held by the optionee as a trustee of a voting trust is considered owned by the optionee is determined under all of the facts and circumstances.

(e) *Modification, extension, or renewal of option.* (1) This paragraph (e) provides rules for determining whether a share of stock transferred to an individual upon the individual's exercise of an option after the terms of the option have been changed is transferred pursuant to the exercise of a statutory option.

(2) Any modification, extension, or renewal of the terms of an option to purchase shares is considered the granting of a new option. The new option may or may not be a statutory option. To determine the date of grant of the new option for purposes of section 422 or 423, *see* § 1.421–1(c).

* * * * *

(4)(i) For purposes of §§ 1.421–1 through 1.424–1 the term *modification* means any change in the terms of the option (or change in the terms of the plan pursuant to which the option was granted or in the terms of any other agreement governing the arrangement) that gives the optionee additional benefits under the option regardless of whether the optionee in fact benefits from the change in terms. In contrast, for example, a change in the terms of the option shortening the period during which the option is exercisable is not a modification. However, a change providing an extension of the period during which an option may be exercised (such as after termination of employment) or a change providing an alternative to the exercise of the option (such as a stock appreciation right) is a modification regardless of whether the optionee in fact benefits from such extension or alternative right. Similarly, a change providing an additional benefit upon exercise of the option (such as the payment of a cash bonus) or a change providing more favorable terms for payment for the stock purchased under the option (such as the right to tender previously acquired stock) is a modification.

(ii) If an option is not immediately exercisable in full, a change in the terms of the option to accelerate the time at which the option (or any portion thereof) may be exercised is not a modification for purposes of this section. Additionally, no modification occurs if a provision accelerating the time when an option may first be exercised is removed prior to the year in which it would otherwise be triggered. For example, if an acceleration provision is timely removed to avoid exceeding the $100,000 limitation described in § 1.422–4, a modification of the option does not occur.

(iii) A change to an option which provides, either by its terms or in substance, that the optionee may receive an additional benefit under the option at the future discretion of the grantor, is a modification at the time that the option is changed to provide such discretion. In addition, the exercise of discretion to provide an additional benefit is a modification of the option. However, it is not a modification for the grantor to exercise discretion reserved under an option with respect to the payment of a cash bonus at the time of exercise, the availability of a loan at exercise, or the right to tender previously acquired stock for the stock purchasable under the option. An option is not modified merely because an optionee is offered a change in the terms of an option if the change to the option is not made.

(iv) A change in the terms of the stock purchasable under the option that affects the value of the stock is a modification of such option, except to the extent that a new option is substituted for such option by reason of the change in the terms of the stock in accordance with paragraph (a) of this section.

(v) If an option is amended solely to increase the number of shares subject to the option, the increase is not considered a modification of the option but is treated as the grant of a new option for the additional shares.

(vi) Any change in the terms of an option made in an attempt to qualify the option as a statutory option grants additional benefits to the optionee and is, therefore, a modification.

(vii) An extension of an option refers to the granting by the corporation to the optionee of an additional period of time within which to exercise the option beyond the time originally prescribed. A renewal of an option is the granting by the corporation of the same rights or privileges contained in the original option on the same terms and conditions. The rules of this paragraph apply as well to successive modifications, extensions, and renewals.

* * * * *

(6) [Reserved.]

* * * * *

(f) *Definitions.* The following definitions apply for purposes of §§ 1.421–1 through 1.424–1:

(1) *Parent corporation.* The term *parent corporation*, or *parent*, means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(2) *Subsidiary corporation.* The term *subsidiary corporation*, or *subsidiary*, means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) *Effective date.* This section applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

§ 1.6039–1 [Removed]

Par. 14. Section 1.6039–1 is removed.

§ 1.6039–2 [Redesignated]

Par. 15. Section 1.6039–2 is redesignated as 1.6039–1 and revised to read as follows:

§ 1.6039–1 Statements to persons with respect to whom information is furnished.

(a) *Requirement of statement with respect to incentive stock options under section 6039(a)(1).* Every corporation which transfers stock to any person pursuant to such person's exercise of an incentive stock option described in section 422(b) must furnish to such transferee, for each calendar year in which such a transfer occurs, a written statement with respect to the transfer or transfers made during such year. This statement must include the following information—

(1) The name, address, and employer identification number of the corporation transferring the stock;

(2) The name, address, and identifying number of the person to whom the share or shares of stock were transferred;

(3) The name and address of the corporation the stock of which is the subject of the option (if other than the corporation transferring the stock);

(4) The date the option was granted;

(5) The date the shares were transferred to the person exercising the option;

(6) The fair market value of the stock at the time the option was exercised;

(7) The number of shares of stock transferred pursuant to the option;

(8) The type of option under which the transferred shares were acquired; and

(9) The total cost of all the shares.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which records, or has by its agent recorded, a transfer of the title to stock acquired by the transferor pursuant to the transferor's exercise on or after January 1, 1964, of an option granted under an employee stock purchase plan which meets the requirements of section 423(b), and with respect to which the special rule of section 423(c) applied, must furnish to such transferor, for each calendar year in which such a recorded transfer of title to such stock occurs, a written statement with respect to the transfer or transfers containing the information required by paragraph (b)(2) of this section.

(2) The statement required by paragraph (b)(1) of this section must contain the following information—

(i) The name and address of the corporation whose stock is being transferred;

(ii) The name, address and identifying number of the transferor;

(iii) The date such stock was transferred to the transferor;

(iv) The number of shares to which title is being transferred; and

(v) The type of option under which the transferred shares were acquired.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent*, as used in this section means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(4) A statement is required by reason of a transfer described in section 6039(a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner), the corporation is only required to furnish a written statement to the owner relating to the transfer of record title to the broker or financial institution. Similarly, a written statement is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by the entirety, the written statement required by this paragraph shall be furnished (at such time and in such manner as is provided by this section) with respect to the first transfer of the title to such stock by the optionee.

(5) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for furnishing statements—*(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* For good cause shown upon written application of the corporation required to furnish statements under this section, the Director, Martinsburg Computing Center, may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must contain a full recital of the reasons for requesting an extension to aid the Director in determining the period of the extension, if any, which will be granted and must be sent to the Martinsburg Computing Center (Attn:

Extension of Time Coordinator). Such a request in the form of a letter to the Martinsburg Computing Center signed by the applicant (or its agent) will suffice as an application. The application must be filed on or before the date prescribed in paragraph (c)(1) of this section for furnishing the statements required by this section, and must contain the employer identification number of the corporation required to furnish statements under this section.

(3) *Last day for furnishing statement.* For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Statements furnished by mail.* For purposes of this section, a statement is considered to be furnished to a person if it is mailed to such person's last known address.

(e) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

(f) *Electronic furnishing of statements.* [Reserved]

(g) *Effective date.* This section applies as of the date that is 180 days after publication of final regulations in the **Federal Register** to transfers of stock acquired pursuant to a statutory option on or after that date. Taxpayers can rely on these regulations with respect to the transfer of stock acquired pursuant to a statutory option on or after June 9, 2003.

PART 14e—TEMPORARY INCOME TAX REGULATIONS RELATING TO INCENTIVE STOCK OPTIONS

PART 14e—[REMOVED]

Par. 16. Part 14a is removed.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–13581 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–02–099]

RIN 1625–AA11 (Formerly RIN 2115–AE84)

Regulated Navigation Area in Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing a duplicate notice of proposed rulemaking concerning revisions to the regulated navigation area in Hampton Roads, Virginia. This duplicate notice of proposed rulemaking was inadvertently published after the initial publication of a substantially similar notice of proposed rulemaking. The initial notice of proposed rulemaking will remain unchanged.

DATES: The May 22, 2003, notice of proposed rulemaking "Regulated Navigation Area in Hampton Roads, VA" (68 FR 27948) is withdrawn on June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lewis Fisher, Jr., Marine Safety Division, Fifth Coast Guard District, (757) 398–6387, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2003, we published a notice of proposed rulemaking entitled "Regulated Navigation Area in Hampton Roads, VA" in the **Federal Register** (68 FR 22648). The rulemaking concerned proposed revisions to the regulated navigation area in Hampton Roads, Virginia, designed to impose vessel reporting requirements and speed limit restrictions in certain areas of the port. On May 22, 2003, we published a substantially similar notice of proposed rulemaking entitled "Regulated Navigation Area in Hampton Roads, VA" in the **Federal Register** (68 FR 27948). The Coast Guard is withdrawing only the May 22, 2003, notice of rulemaking.

Withdrawal

Though the April 29, 2003, notice of proposed rulemaking (68 FR 22648) and the May 22, 2003, notice of proposed rulemaking (68 FR 27948) are not identical, the provisions are substantially similar. In order to alleviate public confusion and facilitate the development of a final rule, the Coast Guard is withdrawing the May 22, 2003, notice of proposed rulemaking "Regulated Navigation Area in Hampton Roads, VA" (68 FR 27948). The April 29, 2003, notice of proposed rulemaking "Regulated Navigation Area in Hampton Roads, VA" (68 FR 22648) will remain unchanged by this action and is anticipated to be the basis of a final rule.

Dated: June 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–14433 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 68, No. 110
Monday, June 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on June 30 and July 1, 2003.

DATES: Monday, June 30, 2003, from 9 a.m. to 5 p.m., and Tuesday, July 1, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1858.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Monday, June 30, 2003, from 9 a.m. to 5 p.m., and Tuesday, July 1, 2003, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2003 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2003 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2003 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on July 1 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 20, 2003, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: May 30, 2003.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 03–14463 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek OMB Approval To Collect Information: Forms Pertaining to the Peer Review of ARS Research Projects

AGENCY: Agricultural Research Service (ARS), USDA.

ACTION: Notice and request for comments.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 and OMB implementing regulations. The Department is soliciting public comments on the subject proposal.

DATES: Written comments on this notice must be received by August 13, 2003.

ADDRESSES: Interested persons are invited to submit comments or request additional information regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Marcia Moore, Peer Review Program Coordinator; Office of Scientific Quality Review; Agricultural Research Agency, USDA; 5601 Sunnyside Avenue, Mailstop 5142; Beltsville, Maryland; 20705.

FOR FURTHER INFORMATION CONTACT: Marcia Moore, Agricultural Research Service Peer Review Program Coordinator, 301–504–3282.

SUPPLEMENTARY INFORMATION: The Office of Scientific Quality Review will seek approval from OMB to update six existing forms that will allow the ARS to efficiently manage data associated with the peer review of agricultural research. All forms are transferred and received in an electronic storage format that does not include on-line access.

Abstract: The Office of Scientific Quality Review was established in September of 1999 as a result of the Agricultural Research, Extension, and Education Reform Act 1998 ("The Act")(Pub. L. 105–185). The Act included mandates to perform scientific peer reviews of all research activities conducted by the USDA. The Office manages the ARS peer review system by centrally planning peer panel reviews for ARS research projects on a five-year

cycle. Each set of reviews is assigned a chairperson to govern the review process. The majority of the peer reviewers are non-ARS scientists. Peer review panels are convened to provide in-depth discussion and review of the research project plans. Each panel reviewer receives information on 1–25 ARS research projects.

A total of about 220 research projects are reviewed annually by an estimated 100 reviewers; whereby approximately 200 are reviewed by panel and approximately 20 are reviewed by an ad hoc process. The organization and management of this peer review system, particularly panel reviews, is highly dependent on the use of forms.

The Office of Scientific Quality Review will seek OMB approval of the following forms:

1. Confidentiality Agreement Form—USDA uses this form to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement is signed prior to the reviewer's involvement in the peer review process. This form requires an original signature.

2. Panelist Informational Form—USDA uses this form to gather up-to-date background information about the reviewer. Reviewers often include sensitive information on this form. This form requires an original signature.

3. Peer Review of a ARS Research Project Form (Peer Review Form)—USDA uses this form to guide the reviewer's comments on the subject project. The form contains the reviewing criteria and space for the reviewer's narrative comments and evaluation.

4. Recommendations for ARS Research Project Form—(Recommendations Form, formerly known as "Critique Form") USDA uses this form to guide the panel's evaluation and critique of the review process. The form contains recommendations for the subject research project.

5. Panel Expense Report Form (Expense Report)—USDA uses this form to document a panel reviewer's expense incurred traveling to and attending a peer review meeting. The Expense Report includes lodging, meals, and transportation expenses. When completed, the form contains sensitive information.

Panel Invoice Form (Invoice)—USDA uses this form to document the transfer of a stipend to a peer reviewer. Reviewers receive stipends as compensation for serving as peer review panelists. This form requires an original signature.

(1) USDA's collection of information on the Confidentiality Agreement Form is needed to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement would be signed prior to the reviewer's involvement in the peer review process.

(2) USDA's collection of information on the Panelist Informational Form is needed to gather up-to-date background information about the reviewer. It contains sensitive information.

(3) USDA's collection of information on the Peer Review Form is needed to guide the reviewer's comments on the subject project. It contains the reviewing criteria and space to insert comments.

(4) USDA's collection of information on the Recommendations Form is needed to guide the panel's critique of the review process. It contains recommendations for the subject research project.

(5) USDA's collection of information on the Expense Report Form is needed to document a panel reviewer's expenses incurred by attending a peer review meeting. The Expense Report includes lodging, meals, and transportation expenses. It includes sensitive information.

(6) USDA's collection of information on the Invoice is needed to document the transfer of a stipend to the peer reviewer. The stipend is given to reviewers as appreciation for their time spent on the panel review process.

Estimate of Burden: The burden associated with this approval process is the minimum required to achieve program objectives. The information collection frequency is the minimum consistent with program objectives. The following estimates of time required to complete the forms are based on OSQR's experience in working with reviewers and accepting their input into our procedures.

1. Confidentiality Agreement Form: This form takes 10–15 minutes to complete. It only requires a signature and date, but the reviewer must read the terms of the agreement.

2. Panelist Informational Form: This form takes 20–30 minutes to complete. It resembles a typical application for personal information, many reviewers provide the same data to become grant reviewers.

3. Peer Review of an ARS Research Project Form (Peer Review Form): This form takes 4–6 hours to complete. Because this is a review, the page length significantly varies. Reviewers are free to write as much as they wish.

4. Recommendations for ARS Research Project Form (Recommendations Form, formerly known as "Critique Form"): This form takes 1 hour to complete. Because this is a review, the page length significantly varies. Reviewers are free to write as much as they wish.

5. Panel Expense Report Form (Expense Report): This form takes 10–15 minutes to complete.

6. Panel Invoice Form (Invoice): This form takes 5–10 minutes to complete. This form has the reviewer's personal info pre-filled and the reviewer only verifies it's accuracy and signs.

Respondents and Estimated Number of Respondents: Scientific experts, currently working in the same discipline as the research projects under review, are selected to review research projects. These experts are notable peers within and external to the ARS. Annually, about 100 peer reviewers complete these forms. However, ad hoc reviewers are not paid a stipend, and they do not travel to meet with other reviewers; and thus will not complete Expense Report and Invoice Forms. These ad hoc reviewers, retained for special situations, will make up about a quarter of all the reviewers retained annually.

Frequency of Response:

Form	Number of respondents	Annual frequency
Confidentiality Agreement	100	1 per respondent.
Peer Review Forms (Required for all reviewers and they have 1–4 review assignments on average).	100	–4 per respondent (Total of 400).
Expense Report, Invoice, & Panelist Information Forms	75	1 per respondent for each form (Total of 225).
Recommendations Form (Required on panel reviews, whereby comments from the peer review form are combined into one file).	75	–2.5 per respondent (Total of 200).

Estimated Total Annual Burden on Respondents:

Form (Time required to complete)	Number completed annually	Total burden
Confidentiality Agreement (12 min.)	100	1200 min.
Peer Review Forms (–5 hrs)	400	2000 hrs.
Panelist Information Forms (25 min.)	225	5625 min.
Recommendations Form (1 hr)	200	200 hrs.
Invoice (7 min.)	225	1575 min.
Expense Report (12 min.)	225	2700 min.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chap. 35.

Comments: The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of ARS functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the estimated burden from proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 27, 2003.

Dr. Caird Rexroad,

Acting Associate Administrator, Agricultural Research Service, USDA.

[FR Doc. 03–14363 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–013N]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Adjusted Dollar Limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the dollar limitations on sales of meat and meat food products and poultry products to hotels, restaurants, and similar institutions that do not disqualify a store for exemption from Federal inspection requirements. By reason of FSIS' regulations, for calendar year 2003 the dollar limitation for meat and meat food products is remaining at $47,000 and for poultry products at $41,600. FSIS is retaining the dollar limitations from calendar year 2002 based on the small price changes for these products evidenced by the Consumer Price Index (CPI).

EFFECTIVE DATE: This notice is effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lynn Dickey, Ph.D., Director, Regulations and Directives Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700; telephone (202) 720–5627, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry and the preparation or processing of products thereof do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service to consumers at such establishments (21 U.S.C. 454(c)(2)and 661(c)(2)). In Title 9 of the Code of Federal Regulations §§ 303.1(d) and 381.10(d), respectively, FSIS regulations address the conditions under which requirements for inspection do not apply to retail operations.

Under these regulations, sales to hotels, restaurants, and similar institutions disqualify a store for exemption if they exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the CPI, published by the Bureau of Labor Statistics, indicates an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (*See* paragraphs (d)(2)(iii)(*b*) and (d)(2)(iii) of §§ 303.1 and 381.10.)

The CPI for 2002 reveals an average annual price increase for meat and meat food products of 0.2 percent and an annual average price decrease for poultry products of 0.7 percent. The price increase for meat and meat food products is $94 and the price decrease for poultry products is $291. Because the price of meat and meat food products and the price of poultry products have not changed by more than $500, in accordance with §§ 303.1 (d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, FSIS has retained the dollar limitation on sales to hotels, restaurants, and similar institutions at $47,000 for meat and meat food products and at $41,600 for poultry products for calendar year 2003.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the Internet at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied

health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on: June 4, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–14417 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB95

Forest Land Enhancement Program

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of interim directive; request for comment.

SUMMARY: In conjunction with an interim final rule published elsewhere in the same separate part of today's **Federal Register**, the Forest Service is issuing an interim directive to provide guidance to Forest Service employees for managing the Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). This interim directive is issued to the Forest Service Manual (FSM) Title 3300, Forestry Incentives, Chapter 3310, Cost-Sharing as ID 3310–2003–1. Comments received in response to this notice will be considered in development of the final directive.

DATES: This interim directive (ID 3310–2003–1) is effective on June 9, 2003. Comments must be received in writing by August 8, 2003.

ADDRESSES: Send written comments to Hal E. Brockman, Forest Service, Cooperative Forestry Staff, Mail Stop 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123; via electronic mail to *hbrockman@fs.fed.us*; or via facsimile to FLEP ID Comments at (202) 205–1271. The agency cannot confirm receipt of comments. A toll free number is available, 1–866–585–8540, for callers to record voice mail messages (up to 3 minutes long) with their comments on the interim directive. This toll free number will be active 24 hours a day during the comment period. Public comments submitted by voice mail will be transcribed for the public record. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim directive during regular business hours at the office of the Cooperative Forestry Staff, 4th Floor SE., Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–1389 to facilitate entry into the building.

A copy of the Farm Security and Rural Investment Act of 2002, sections 8001 and 8002 (Pub. L. 107–171), and other information on this program can be found on the World Wide Web/Internet at *http://www.fs.fed.us/spf/coop/flep.htm*. A copy of the interim directive (ID 3310–2003–1) is available electronically at *http://www.fs.fed.us/im/directives.htm*.

FOR FURTHER INFORMATION CONTACT: Hal E. Brockman, Cooperative Forestry Staff, (202) 205–1694.

SUPPLEMENTARY INFORMATION: The Department is adopting an interim final rule to establish a new subpart C in part 230 of Title 36 of the Code of Federal Regulations (CFR) that sets forth requirements for the management and operation of the new Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). The notice setting out this interim final rule and requesting comment can be found elsewhere in this part of today's **Federal Register**. The FLEP interim final rule is intended to improve the long-term sustainability of nonindustrial private forest lands in the United States by assisting landowners, through State Foresters, in more actively managing their forest lands and related resources through the use of State, Federal, and private sector resource management expertise, financial assistance, and educational programs. In conjunction with this interim final rule, the agency is issuing an interim directive to Forest Service Manual Chapter 3310 (ID 3310–2003–1) to provide additional guidance to Forest Service employees in the administration of the FLEP. This interim directive is available electronically on the World Wide Web/Internet at the Web site address provided in the **ADDRESSES** section of this notice. Comments received on the interim directive will be used in the development of the final directive.

Dated: April 11, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–14334 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, Forest Service USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, June 12, 2003, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting June 12, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, RAC members/subcommittee reports, merchantable materials projects, quorum and or proxy votes, establishment of a monitoring form, and a date for a field trip to one of the projects. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 03–14382 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resources Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, June 16, 2003. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA. The purpose of the meeting is: Take a short field trip for an on-site look at the goat brushing project, review any new RAC proposals, review progress of FY 2002 accounting, update on new Forest Service Region 5 RAC Web site, finalize Madera County RAC mission and clarify voting procedures.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, June 16, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643, (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Take a short field trip for an on-site look at the goat brushing project, (2) review any new RAC proposals, (3) review progress of FY 2002 accounting, (4) update on new Forest Service Region 5 RAC Web site, (5) finalize Madera County RAC mission, and (6) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 23, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–14383 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introduction, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Project Proposals/Possible Action, (6) Update on Approved Projects, (7) Status of Members, (8) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on June 30, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 26, 2003 will have the opportunity to address the Committee at those sessions.

Dated: June 3, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–14389 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request extension of a currently approved information collection, the Honey Survey.

DATES: Comments on this notice must be received by August 13, 2003 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Honey Survey.

OMB Control Number: 0535–0153.

Expiration Date of Approval: September 30, 2003.

Type of Request: Intent to extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Honey Survey collects information on the number of colonies, honey production, stocks, and prices. The survey provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. State universities and agriculture departments also use data from this survey. The Honey Survey has approval from OMB for a three year period. NASS intends to request that the survey be approved for another three years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden on Respondents: 1,170 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 12, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–14364 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Serfilco, Ltd.

In the Matter of: Serfilco, Ltd., 1777 Shermer Road, Northbrook, IL 60062–5360, Respondent; Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), having notified Serfilco, Ltd., 1777 Shermer Road, Northbrook, Illinois 60062–5360, ("Serfilco") of its intention to initiate an administrative proceeding against Serfilco, pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) ("Act"),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("Regulations"),[2] based on allegations that Serfilco committed one violation each of Section 787A.3 and 787A.4 of the former Regulations, and four violations of Section 764.2(a) of Regulations by selling commodities to companies in the United States to be exported to Bahrain and Saudi Arabia, and negotiating the sale of commodities to be exported to the United Arab Emirates and Saudi Arabia, contrary to the terms of the June 10, 1996 Order denying all of Serfilco's export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen; and

BIS and Serfilco having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is Therefore Ordered:

First, that a civil penalty of $65,000 is assessed against Serfilco, of which $32,500 shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of the remaining $32,500 shall be made within six months from the date of the entry of the Order. Payments shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Serfilco shall be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of three years from the date of this Order, Serfilco, its successors or assigns, and when acting for or on behalf of Serfilco, its officers, representatives, agents or employees ("denied person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, that is subject to the Regulations, or in any other activity subject to the Regulations related to export to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Serfilco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 13th day of March 2003.

Lisa A. Prager,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03–14377 Filed 6–6–03; 8:45 am]

BILLING CODE 3510–DT–P

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 CFR parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 CFR parts 768–799 (1997). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-791–809]

Notice of Extension of Time Limit for Preliminary Results of Administrative Antidumping Review: Certain Hot-Rolled Carbon Steel Flat Products from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa in response to requests by petitioners Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation, and Nucor Corporation. The review covers shipments of this merchandise to the United States for the period May 3, 2001 through August 31, 2002, by Iscor Ltd. and Saldanha Steel Ltd. (together, Iscor/Saldanha[1]), and Highveld Steel & Vanadium Corp. Ltd. (Highveld). For the reasons discussed below, we are extending the preliminary results of this administrative review by 30 days, to no later than July 2, 2003.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Scot Fullerton at (202) 482–0197 or (202) 482–1386, respectively; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2001, the Department of Commerce published in the **Federal Register** the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa (66 FR 48242). On September 30, 2002, in accordance with Section 751(a) of the Tariff Act of 1930, as amended (the Act) and section 19 CFR 351.213(b) of the regulations, petitioners Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation requested a review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa. On September 30, 2002, petitioner Nucor Corporation also requested a review of this antidumping duty order. On October 24, 2002, we published a notice of "Initiation of Antidumping Review." *See* 67 FR 65336. On December 30, 2002, Iscor/Saldanha informed the Department it was unable to respond to the Department's questionnaire. On January 21, 2003, Highveld informed the Department that it was withdrawing its participation in the administrative review.

On February 19, 2003, petitioners Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation submitted factual information and arguments for determining a new total facts available margin for respondents. On March 26, 2003, Highveld submitted comments contesting petitioners' methodology for updating Highveld's facts available margin. On May 20, 2003, Iscor/Saldanha also submitted comments contesting petitioners' methodology for updating the facts available margin.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the last day of the anniversary month of the order for which the administrative review was requested. Because of the complexity and timing of certain issues in this case, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. The Department requires additional time to evaluate information submitted by petitioners regarding the determination of facts available.

Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limits for the preliminary results by 30 days, to no later than July 2, 2003.

[1] In the final results of the antidumping duty investigation, the Department determined that Iscor and Saldanha were affiliated, and should be treated as a single entity for purposes of the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 48242 (Sept. 19, 2001) (LTFV investigation). This was based on information on the public record of the contemporaneous countervailing duty investigation of hot-rolled products from South Africa that 1) Iscor is a 50 percent shareholder in Saldanha, and is in a position to exercise control of Saldanha's assets, and 2) both companies produce the subject merchandise. In this review, the Department requested that, if the circumstances had not changed, the two parties file a combined response. The notice of appearance was filed for Iscor, including its subsidiary Saldanha.

Dated: June 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–14443 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from Korea; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2001–2002 administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2001, through April 30, 2002. This review covers imports of certain polyester staple fiber from two producers/exporters.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

DATES: EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1174.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce ("the Department") published an antidumping duty order on certain polyester staple fiber ("PSF") from Korea. (*See* 65 FR 33807). On May 6, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of this order. (See 67 FR 30356). On May 30, 2002, Daeyang Industrial Co., Ltd. ("Daeyang"), Sunglim Co., Ltd. ("Sunglim"), Huvis Corporation ("Huvis"), and Estal Industry Co., Ltd. ("Estal") requested administrative reviews. On May 31, 2002, Sam Young Synthetics Co., Ltd. ("Sam Young"), Mijung Ind. Co., Ltd. ("Mijung"), Keon Baek Co., Ltd. ("Keon Baek"), and East Young Co., Ltd. ("East Young") made similar requests for administrative reviews. Also, on May 31, 2002, Stein Fibers, Ltd. ("Stein Fibers"), an interested party in this review, requested an administrative review of imports of the subject merchandise produced by Sam Young, Mijung, Keon Baek, East Young, Huvis, Daeyang, and Estal. On June 25, 2002, the Department published a notice initiating the review for the period May 1, 2001, through April 30, 2002. (*See* 67 FR 42753).

On July 10, 2002, we issued antidumping questionnaires in this review. On August 2, 2002, Sunglim withdrew its request for review. On August 16, 2002, Sam Young, Mijung, Keon Baek, Estal, and Daeyang withdrew their requests for review. Also, on August 16, 2002, Stein Fibers withdrew its request for administrative reviews of the shipments of Sam Young, Mijung, Keon Baek, Daeyang, and Estal. *See "Partial Rescission"* section, below.

We received responses from East Young and Huvis on September 5, 2002. As a result of certain below cost sales being disregarded in the previous administrative review, on October 17, 2002, we instructed Huvis to respond to the cost questionnaire. On November 14, 2002, we received Huvis' response to the cost questionnaire.

On September 30, 2002, in accordance with 19 CFR 351.301(d)(2)(ii), Arteva Specialties S.a.r.l., d/b/a KoSa and Wellman, Inc. ("the petitioners"), alleged that East Young had made sales to the United Kingdom, East Young's reported third-country market, at prices below the cost of production ("COP") during the POR. On October 2, 2002, East Young submitted an objection to the petitioners' September 30, 2002, COP allegation on the basis that it was untimely filed, inasmuch as the deadline for alleging that East Young made sales in its third-country market at prices below the COP was September 26, 2002. However, we accepted the petitioners' allegation of sales below COP and proceeded to examine the sufficiency of the allegation because it was not submitted so late that the Department would be unnecessarily delayed in reviewing the substance of the allegation nor would it cause other interested parties difficulties in representing their interests. *See* Memorandum from Team to Susan Kuhbach, *"Petitioners' Allegation of Sales Below Cost of Production,"* dated October 21, 2002, which is on file in the Central Records Unit ("CRU") in room B-099 of the main Department building.

On October 29, 2002, East Young submitted further objections to the timeliness and merits of the petitioners' cost allegation. On November 4, 2002, the petitioners rebutted East Young's October 29, 2002, submission. On November 6, 2002, East Young rebutted the petitioners' November 4, 2002, submission. On December 6, 2002, we found that the petitioners' allegation did not provide a reasonable basis to initiate a COP investigation on East Young's U.K. sales because the below-cost sales were not representative of the broader range of foreign models that may be used to determine normal value ("NV") for comparison to U.S. sales. See Memorandum from Team to John Brinkmann, *"Petitioners' Allegation of Sales Below the Cost of Production for East Young Co., Ltd.,"* dated December 6, 2002, which is on file in the CRU.

In its section B Questionnaire response, East Young reported the United Kingdom as its comparison market. In their September 30, 2002, cost allegation and in an October 28, 2002, letter, the petitioners alleged that the United Kingdom was not an appropriate third-country market for calculating East Young's NV because of the existence of a dumping finding on PSF from Korea in the European Union. On November 4, 2002, East Young submitted an objection to the petitioners' October 28, 2002, submission, stating that the United Kingdom is its most representative comparison market. In the Memorandum to Susan Kuhbach, *"Selection of Comparison Market for East Young,"* dated November 20, 2002 (*"East Young Comparison Market Memorandum"*), which is on file in the CRU, we recognized that the European Union has made a finding of dumping concerning PSF from Korea that includes PSF currently subject to an order in the United States and which applies to East Young's merchandise. As a result, we indicated that reliance on East Young's sales to the United Kingdom may not be appropriate for purposes of calculating NV in this review. While we did not immediately dismiss East Young's sales to the United Kingdom, we instructed East Young to submit a revised section B response that includes sales both to the United Kingdom and to its next largest third-country market for which no finding of dumping exists and which meets the criteria of section 773(a)(1)(B)(ii) of the Tariff Act of 1930, as amended ("the Act"). *See East Young Comparison Market Memo; see also* "Selection of Comparison Market" section, below.

In November and December 2002 and February 2003, we issued supplemental questionnaires to East Young and Huvis. We received responses to these supplemental questionnaires in December 2002 and January and February 2003.

On January 9, 2003, in accordance with section 751(a)(3)(A) of the Act, we published a notice extending the time limit for the completion of the preliminary results in this case by 120 days (*i.e.*, until no later than June 2, 2003). (*See* 68 FR 1177).

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber ("PSF"). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Partial Rescission

As noted above, Sunglim, Sam Young, Mijung, Keon Baek, Estal, and Daeyang withdrew their requests for review, and Stein Fibers withdrew its request for review of Sam Young, Mijung, Keon Baek, Daeyang, and Estal. Because these withdrawals were timely filed and no other party requested a review of these companies, pursuant to 19 CFR 351.213(d)(1) we are rescinding this review with respect to these companies. We will instruct the U.S. Bureau of Customs and Border Protection ("BCBP") to liquidate any entries from these companies during the period of review and to assess antidumping duties at the rate that was applied at the time of entry.

Verification

As provided in section 782(i) of the Act, in March and May 2003, we verified information provided by East Young and Huvis using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information. The Department reported its findings from the sales verifications on May 12, 2003. *See* Memorandum to the File, *"Verification of the Sales Response of East Young Co., Ltd.,"* dated May 12, 2003 (*"East Young Verification Report"*), and Memorandum to the File, *"Verification of the Sales Response of Huvis Corporation,"* dated May 12, 2003 (*"Huvis Sales Verification Report"*), which are on file in the CRU. Due to the timing of the cost verification of Huvis, the Department will report its findings from the cost verification after the preliminary results.

Fair Value Comparisons

To determine whether sales of PSF by the respondents to the United States were made at less than NV, we compared, as appropriate, export price ("EP"), to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, *see* the "Normal Value" section, below.)

We compared U.S. sales to sales made in the appropriate comparison market within the contemporaneous window period, which extends from three months prior to the POR until two months after the POR. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market to compare to U.S. sales, we compared U.S. sales to constructed value ("CV"). In making product comparisons, consistent with our final determination in the original investigation, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: (1) composition; (2) type; (3) grade; (4) cross section; (5) finish; and (6) denier (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880, 16881 (March 30, 2000)).

Date of Sale

In its original questionnaire responses, East Young reported comparison market and U.S. sales using invoice date as the date of sale. Based on the description of the sales process provided by East Young, we note that, in the company's normal commercial practice, the sales invoice is normally issued after the date of shipment. Because the date of shipment almost always precedes the reported date of sale, we preliminarily find that the date of shipment better reflects the date on which East Young established the material terms of sale, in accordance with 19 CFR 351.401(i). Accordingly, we have relied on the date of shipment as the date of sale.

Export Price

For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the FOB, C&F, CIF, EDDP (ex-dock duty paid), or CFR packed price to

unaffiliated purchasers in the United States. We made deductions, where appropriate, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to port of exportation, foreign brokerage and handling, wharfage, container tax, bill of lading charge, terminal handling charge, international freight, marine insurance, and U.S. customs duty.

We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. East Young and Huvis claim to have received duty drawback under the two systems in place in Korea: either the individual-rate system or the fixed-rate system (*i.e.*, the simplified fixed drawback system). In prior investigations and administrative reviews, the Department has examined the individual-rate system and found that the government controls in place enable the Department to examine the criteria under this system for receiving a duty drawback adjustment (*i.e.*, that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). *See Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 62 FR 55574, 55577 (October 27, 1997). Huvis provided documentation demonstrating that it received duty drawback under the individual-rate system. We examined this documentation and confirmed that Huvis met the Department's two-prong test for receiving a duty drawback adjustment. Accordingly, we are allowing the full duty drawback adjustment on all of Huvis' U.S. sales.

For all sales by East Young, duty drawback was received under the fixed-rate system. The Department has found that the Korean fixed-rate duty drawback system does not sufficiently link import duties paid to rebates received upon export. Therefore, the fixed-rate system does not, in and of itself, meet the Department's criteria, *i.e.*, that the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and that there were sufficient imports to account for the rebates received. *See id.* In this case, East Young was unable to demonstrate successfully that duty drawback which it received under the fixed-rate system met the Department's criteria for a duty drawback adjustment. *See East Young Verification Report* at 22. Accordingly, for purposes of these preliminary results, we are not granting East Young duty drawback adjustments claimed under the fixed-rate system.

Finally, we made the following company-specific changes to EP. For East Young, we reclassified certain expenses reported by the respondent as direct selling expenses (*i.e.*, wharfage, container tax, bill of lading charge, terminal handling charge) as movement expenses. Also, based on our findings at verification, we recalculated East Young's reported packing costs and corrected the reporting of the U.S. matching control numbers to include a missing characteristic. For further detail on these changes, *see* Memorandum to the File, "*Preliminary Results Calculation Memorandum for East Young Co., Ltd.*," dated June 2, 2003 ("East Young Calculation Memorandum"), which is on file in the CRU.

For Huvis, based on our verification findings, we revised the reporting of product finish and corrected the matching control numbers for certain product types. In addition, we revised foreign brokerage and handling expense, credit expense, and bank fees for certain observations. For further detail on these changes, *see* Memorandum to the File, "*Preliminary Results Calculation Memorandum for Huvis Corporation*," dated June 2, 2003 ("Huvis Calculation Memorandum"), which is on file in the CRU.

Normal Value

A. *Selection of Comparison Market*

In order to determine whether there was a sufficient volume of sales of certain PSF in the home market to serve as a viable basis for calculating NV, we compared each respondent's home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. In the case of Huvis, because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provided a viable basis for calculating NV. Therefore, for Huvis, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade.

East Young reported that its home market sales of PSF during the POR were less than five percent of its sales to the United States. Therefore, East Young did not have a viable home market for purposes of calculating NV. As noted above in the "Background" section, East Young reported that the United Kingdom was its largest third-country market and, consequently, submitted its sales to the United Kingdom for purposes of calculating NV. Pursuant to section 773(a)(1)(B)(ii) of the Act, sales to a particular third-country market may be utilized if (I) the prices in such market are representative; (II) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (III) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. Based on our review of these criteria, the Department found that East Young had more than one potential comparison market that satisfied these criteria. *See East Young Comparison Market Memo.*

In accordance with 19 CFR 351.404(e), in selecting a third-country market where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act, the Department will generally select the third country based on the following criteria: (1) the foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries; (2) the volume of sales to a particular third country is larger than the volume of sales to other third countries; and (3) such other factors as the Department considers appropriate. Regarding the third criterion, the Department has never formally specified "such other factors" that the Department considers appropriate and, therefore, the Department's determination of whether other factors exist is made on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27358 (May 19, 1997).

We believe that the existence of a dumping finding in a third-country market which includes the merchandise and the company that is being investigated or reviewed by the Department is a relevant factor in determining whether to use such market as a basis for determining NV. Such a scenario signifies a clear reason to believe or suspect that a NV calculated using sales in such market would potentially be understated, thereby undermining the validity and accuracy of our dumping calculations. *See also Alloy Piping Products, Inc. v. United States*, 201 F. Supp.2d 1267, 1277 (CIT 2002) (noting that "the goal of accuracy cannot be achieved if Commerce relies upon dumped third country prices to calculate NV"). Accordingly, because the European Union has made a finding of dumping concerning PSF from Korea which includes the PSF currently subject to an order in the United States and to which East Young is subject, we are rejecting the use of the United Kingdom as a third-country comparison market for purposes of determining NV. Instead, for purposes of determining NV, we are relying on East Young's sales to its next largest third-country market for which no finding of dumping exists and which meets the criteria of section 773(a)(1)(B)(ii) of the Act, *i.e.*, Morocco.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[1] including selling functions,[2] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3]), we consider the starting prices before any adjustments. *See Micron Technology, Inc. v. United States, et. al.*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported that it made direct sales to distributors and end users in both the home market and in the United States, and also to the United States through a trading company. East Young made direct sales to an end user in the comparison market and to distributors and end users in the United States. Each respondent has reported a single channel of distribution and a single level of trade in each market, and has not requested a level of trade adjustment. We examined the information reported by each respondent regarding its marketing process for making the reported comparison market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets. Based on our analyses, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market for both respondents. Thus, it was unnecessary to make a LOT adjustment for East Young or Huvis in comparing EP and comparison market prices.

C. *Sales to Affiliated Customers*

Huvis made sales in the home market to an affiliated customer. To test whether these sales were made at arm's length, we compared the starting prices of sales to the affiliated customer to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to the affiliated customer was on average 99.5 percent or more of the price to Huvis' unaffiliated customers, we determined that the sales made to the affiliated customer were at arm's length and included those sales in our calculation of NV pursuant to 19 CFR 351.403(c).[4] Where prices to Huvis' affiliated customer were, on average, less than 99.5 percent of the prices to unaffiliated customers, we determined that these sales were not at arm's length and excluded them from our analysis.

D. *Cost of Production Analysis*

As discussed in the "Background" section above, there were reasonable grounds to believe or suspect that Huvis made sales of the subject merchandise in its comparison market at prices below the COP in accordance with section 773(b) of the Act.

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of Huvis' costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative ("SG&A") expenses, including interest expenses, and the costs of all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted by Huvis in its cost questionnaire responses, except for the following adjustments. First, we adjusted Huvis' reported cost of manufacturing to account for purchases of terephthalic acid and ethylene glycol from affiliated parties at non-arm's length prices. *See* Memorandum from Robert Greger to Neal Halper, Director, Office of Accounting, "*Cost Adjustments*," dated June 2, 2003 ("*Huvis Cost Memorandum*"), which is on file in the CRU. Second, we adjusted Huvis' submitted G&A expenses to exclude foreign exchange gains and losses, revenue from the sale of test materials, revenue on further processing and revenue on the sale of raw materials. *See Huvis Cost Memorandum.* Third, we adjusted Huvis' submitted financial expense ratio to include the total net foreign exchange gains and losses from the financial statements. *See Huvis Cost Memorandum.*

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative ("G&A") expenses, and profit for CV, where possible.

[4] We note that the Department recently adopted a new arm's length test whereby sales to affiliates will be determined to be at arm's length if the prices are, on average, within a range of 98 percent to 102 percent of prices to unaffiliated customers. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). The Department's new arm's length test is only applicable to investigations and reviews initiated on or after November 23, 2002, which is subsequent to the initiation of this review.

2. Test of Comparison Market Prices

For Huvis, on a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. On a product-specific basis, we compared the COP, consisting of the cost of manufacturing, G&A and interest expenses, to the comparison market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard comparison market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

Pursuant to section 773(b)(1), where less than 20 percent of Huvis' sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Huvis' sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Huvis' comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

E. *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on the price to unaffiliated customers. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, for the following movement expenses: inland freight from the plant to the port of exportation, inland freight from the plant to the customer, foreign brokerage and handling, wharfage, container tax, bill of lading charge, terminal handling charge, and international freight. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on comparison market sales (credit expenses, bank charges, less charges, and letter of credit charges) and adding U.S. direct selling expenses (credit expenses, bank charges, and less charges). For East Young, we did not increase NV for duty drawback because, as stated in the "Export Price" section, East Young was unable to demonstrate successfully that duty drawback which it received under the fixed-rate system met the Department's criteria for a duty drawback adjustment.

Finally, we made the following company-specific changes to NV. For East Young, we reclassified certain expenses reported by the respondent as direct selling expenses (*i.e.*, wharfage, container tax, bill of lading charge, terminal handling charge) as movement expenses. Also, based on our findings at verification, we recalculated East Young's reported packing costs. *See East Young Calculation Memorandum.*

For Huvis, based on our findings at verification, we revised the reporting of product finish and recalculated the matching control numbers for certain product types. We also recalculated credit expenses by revising the short-term interest rate and correcting the credit periods for certain customers who purchase PSF on open payment terms. Finally, based on our verification findings, we made several revisions to the respondent's reported inland freight expenses. *See Huvis Calculation Memorandum.*

F. *Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for East Young, when sales of comparison products could not be found because there were no sales of a comparable product, we based NV on CV.

In accordance with sections 773(e)(1), (e)(2)(A), and (e)(3) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the merchandise, plus amounts for selling expenses, G&A (including interest), profit and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by East Young in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For a discussion of the calculation of G&A and interest expense ratios for East Young, *see East Young Calculation Memorandum.*

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we made circumstance-of-sale adjustments.

Preliminary Results of the Review

We determine that the following dumping margins exist for the period May 1, 2001, through April 30, 2002:

Exporter/manufacturer	Weighted-average margin percentage
East Young Co., Ltd. ..	4.07
Huvis Corporation	0.22*(de minimis)*

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will instruct the BCBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered quantity of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered quantity of the sales to that importer.

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of certain polyester staple fiber from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 11.35 percent, the "all others" rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14444 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–810]

Stainless Steel Bar from India; Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2001, through January 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

DATES: EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; at telephone (202) 482–1503.

Background

On March 7, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2001 through January 31, 2002 (68 FR 11058). The final results for the antidumping duty administrative review of stainless steel bar from India are currently due no later than July 7, 2003.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), requires the Department of Commerce ("the Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department recently conducted sales verifications of each of the respondents involved in this administrative review and is currently conducting the cost of production verifications. In order to allow sufficient time for the parties to analyze the verification results and to submit written arguments and for the Department, in turn, to analyze those arguments, we find that it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, July 7, 2003). Therefore, the Department is extending the time limit for completion of the final results to no later than August 4, 2003, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 3, 2003.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 03–14442 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting for the Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings for the Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement (DPEIS)

SUMMARY: Pursuant to 15 CFR 990.23 & 990.56, notice is hereby given that two public meetings will be held to provide an opportunity for public comment and input on the "Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003." Notice of the availability of this DPEIS was published in the **Federal Register** on May 9, 2003 and the comment period ends on July 9, 2003. This document was prepared by the state and Federal natural resource trustee agencies (National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior; Louisiana Oil Spill Coordinator's Office; Louisiana Department of Environmental Quality; Louisiana Department of Natural Resources; and Louisiana Department of Wildlife and Fisheries) to address natural resource damages in the State of Louisiana caused by discharges of oil, which are actionable under the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.* Pursuant to OPA, the above natural resource trustee agencies may claim damages from responsible parties to restore, rehabilitate, replace or acquire the equivalent of natural resources and services injured by oil spill incidents. The purpose of the Louisiana Regional Restoration Planning Program is to develop an institutional framework and procedures that will enable the trustees to select and implement projects that restore for losses of natural resources and services from unauthorized discharges of oil in a consistent and predictable manner. As part of the implementation of the Louisiana Regional Restoration Planning Program, nine Regional Restoration Plans will be developed. Each Regional Restoration Plan will identify existing, planned, or proposed projects that may provide appropriate restoration alternatives for natural resources injured by oil spill incidents and thereby enhance resolution of claims for natural resource damages caused by oil spill incidents in a more expeditious and cost-effective manner.

Dates/Location: Two public meetings to receive public comments on the "Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003" will be held on Monday, June 23, 2003. The daytime meeting is scheduled at 2 PM and the evening meeting is scheduled at 6:30 PM.

Both meetings will be held at the following location: Conservation and Mineral Board Resources Hearing Room, 1st floor—LaBelle Room, Department of Natural Resources, LaSalle Office Building, 617 N. 3rd Street, Baton Rouge, LA 70802.

ADDRESSES: Requests for copies of the "Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003" should be sent to William Conner, Chief , NOAA/Damage Assessment Center, 1305 East-West Highway, SSMC #4, 10th floor, Silver Spring, MD, 20910, at (301) 713–3038 ext. 190 or *William.Conner@noaa.gov*. Written comments on the program should be sent to NOAA to the person listed above or faxed to: (301) 713–4387. A copy of comments should also be sent to: NEPA Coordinator, NOAA/SP, Room 6121, 14th and Constitution, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: For further information, contact William Conner at (301) 713–3038 ext. 190, or at *William.Conner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Traditionally, Louisiana's economy has been based on the state's vast natural resources. Both renewable (hunting, fishing, forest products) and nonrenewable (cultural, oil, natural gas) resources are important, and the industries associated with each have coexisted for years. Although Louisiana's oil and gas industry tries to avoid adverse impacts on renewable natural resources, injuries do occur as a result of oil spill incidents. The cumulative impact of these incidents on fish, wildlife and the environment can be significant and adversely affect the industries and communities depending on natural resources for commerce and recreation.

Federal and state natural resource trustees are developing the first statewide comprehensive Regional Restoration Planning Program to assist the natural resource trustees in carrying out their responsibilities to restore the natural resources that have been injured by oil spill incidents. The goal of this planning effort is to establish a statewide program that will: expedite and reduce the cost of the Natural Resource Damage Assessment (NRDA) process; increase predictability by describing in detail the NRDA process; and increase restoration of lost natural resources and services by expediting resolution of claims.

The state and federal trustees have identified: the Louisiana Regional Restoration Planning Program structure; the decision-making process; the criteria that will be used to select the restoration project(s) that restore the natural resources injured by an incident; and several innovative settlement approaches that can expedite the NRDA process. The state is divided into nine regions. For each region, a regional plan will be developed that identifies: resources which could potentially be injured by incidents; appropriate restoration types to restore those resources; and available restoration projects for each of the restoration types.

The Louisiana Regional Restoration Planning Program will benefit the public, industry, and natural resource trustees by:

- Providing greater opportunities to restore injuries to trust resources caused by oil spill incidents;
- Potentially reducing the cost and time required for restoration planning and implementation;
- Pooling individual case recoveries to provide for implementation of larger, more ecologically significant restoration projects;
- Providing for more consistency and predictability through detailing the NRDA process, thereby reducing uncertainty to the public and industry;
- Improving coordination between restoration activities under the NRDA mandates and other restoration efforts in the State;
- Enhancing trustee capability to restore resources/services injured by oil incidents for which there is no viable RP;
- Maximizing opportunities for partnering among RPs, trustees, and other public and private restoration efforts; and
- Increasing opportunity for public participation in the NRDA process through pre-incident planning.

The National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Louisiana Oil Spill Coordinator's Office (LOSCO); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF) are natural resource trustees designated pursuant to 33 U.S.C. 2706(c), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605. Pursuant to La. Rev. Stat. 30:2460, the State of Louisiana Oil Spill Contingency Plan (September 1995) describes the state trust resources to include the following: Vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. DOI has been designated as trustee for the natural resources that it manages or controls. Examples of those resources are described in the National Contingency Plan, 40 CFR 300.600(b)(2) and (3), include the following and their supporting ecosystems: Migratory birds, anadromous fish, endangered species and marine mammals, federally owned minerals, certain federally managed water resources, and natural resources located on, over, or under land administered by DOI. NOAA's trust resources include, but are not limited to: Commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Pursuant to 15 CFR 990.56, the natural resource trustees are authorized to develop regional restoration plans as part of OPA's mandate for the trustees to restore, rehabilitate, replace, or acquire the equivalent of natural resources and services injured by oil spill incidents and to compensate for interim losses of such resources and services.

In compliance with 15 CFR 990.45, the trustees have opened an Administrative Record (Record). The Record is maintained in the NOAA Damage Assessment Center, SSMC #4, 1305 East-West Highway, Silver Spring, Maryland, 20910–3281, and duplicate copies of the Record will be maintained in Baton Rouge at the Louisiana Oil Spill Coordinator's Office, Suite 405, 150 Third Street, Baton Rouge, LA, 70801.

The Record includes documents that the trustees relied upon during the development of the Louisiana Regional Restoration Planning Program and the DPEIS. Pursuant to 15 CFR 990.23 & 990.56, the trustees sought public involvement in developing the Louisiana Regional Restoration Planning Program and Regional Restoration Plans through public review and comment of the documents contained in the Record as well as through publication of a "Public Review Document of the Louisiana Regional Restoration Planning Program". Further opportunity for public review will become available when the Louisiana Regional Restoration Planning Program/Final Environmental Impact Statement is prepared. The Record and the above documents are also available at the following Web site: *http://www.darp.noaa.gov/*.

Dated: June 3, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–14400 Filed 6–6–03; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060203D]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Squid, Mackerel, and Butterfish Committee, Surfclam and Ocean Quahog Committee with Industry Advisors, and Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, June 24, through Thursday, June 26, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA, telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, June 24, the Squid, Mackerel, and Butterfish Committee will meet from 10 a.m. until 1 p.m. The Surfclam and Ocean Quahog Committee with Industry Advisors will meet from 2 pm to 5 p.m. On Wednesday, June 25, Council will meet from 9 a.m. until 4 p.m. The Executive Committee will meet from 4 p.m. to 5 p.m. On Thursday, June 26, Council will meet from 9 a.m. until 1 p.m.

Agenda items for the Council's committees and the Council itself are: The Squid, Mackerel, and Butterfish Committee will discuss timing of Amendment 9, Amendment 10, and Framework 4; review Monitoring Committee's recommendations for 2004 quotas and management measures; and, develop the Committee's recommendations for 2004 quotas and management measures. The Surfclam and Ocean Quahog Committee, with Industry Advisors, will review staff recommendations for 2004 quotas and management measures; develop 2004 quota specification recommendations, and discuss Eastern Shore Seafood's request to begin Amendment 14. The Executive Committee will review and discuss outcomes from the Council Chairmen's meeting, and initiatives included in the Fisheries Quota Act of 2003 (Senate Bill 1106). The Council will review and adopt Framework 3 (authorizing quota rollover from Winter I to Winter II, and changing the start date for the summer period from May 1 to April 15), Framework 4 (authorizing transfer of scup at sea) or some combination of these two Frameworks to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); approve public hearing document for Amendment 9 to the Atlantic Mackerel, Squid and Butterfish FMP, review Committee's recommendations for 2004 quotas and management measures, and develop and recommend 2004 quota specifications and management measures for Atlantic mackerel, squids, and butterfish; review Committee's recommendations for 2004 quotas and management measures, and develop and approve 2004 quota specifications and management measures for surfclams and ocean quahogs; review, discuss and adopt management measures to be included in Amendment 2 to the Monkfish FMP; receive and discuss organizational and committee reports including: Executive Committee actions; Highly Migratory Species (HMS) issues; Research Set-Aside issues; Protected Resources issue and actions; New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, South Atlantic Council's report. They will act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 2, 2003.
Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03–14476 Filed 6–6–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060203C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Science Advisory Committee (SSAC) in June, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, June 23, 2003 at 10:00 a.m.

ADDRESSES: The meeting will be held at the Sheraton Four Points Hotel, One Mack Road, Woburn, MA 01801; telephone: (781) 935–8160.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The SSAC will meet to review and comment on the methods proposed for analyzing social and economic impacts of management measures of Monkfish Amendment 2. The Council's Monkfish Plan Development Team will consider the SSAC's guidance in developing the analysis of management alternatives.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 2, 2003.
Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03–14475 Filed 6–6–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2003..

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 2003.
Angela C. Arrington,
Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: NCES Quick Response Information System.
Frequency: One-time.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 10,518.
Burden Hours: 7,889.
Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. The two survey systems are intended to be low burden, quick turnaround methods of information collection on education issues for which there is a policy need and no current relevant data. Surveys that have been conducted in these systems include surveys of telecommunications in schools, distance education and remedial activities in postsecondary institutions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2286. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14375 Filed 6–6–03; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 2003.
Angela C. Arrington,
Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Clearance of Data Collection Instruments for the Evaluation of the Teaching American History Program.
Frequency: On Occasion.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 2,998.
Burden Hours: 2,491.
Abstract: The evaluation of the Teaching American History Grants Program (TAH program) is the first national study of federal support for teacher training in traditional American history. The study will gather data from the directors of projects supported by TAH grants, and from teachers who have participated in activities supported by TAH grants. The purpose of the evaluation is to inform future reauthorizations of the TAH program and to inform other Federal programs focusing on teacher training in specific areas.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2288. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14376 Filed 6–6–03; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board to the International Energy Agency (IEA) will meet on June 17, 2003, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 17, 2003, beginning at 8:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on June 17, beginning at 9:30 a.m., including a preparatory encounter among company representatives from approximately 8:30 a.m. to 9 a.m.

The agenda for the preparatory encounter among company representatives is a review of the SEQ's meeting agenda. The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 107th Meeting
3. Program of Work 2003–2004
   —Review of EPPD Activities, 2003–2004
   —First Steps towards Emergency Response Exercise 3
4. Update on Compliance with International Energy Program Stockholding Commitments
5. The Current Oil Market Situation

6. Report on the Meeting of the Governing Board at the Ministerial Level
7. Review of Recent Political Events and their Impact on Oil Supply
—Review of IEA emergency responses
—Iraq
8. Report on Current Activities of the IAB
9. Other Policy and Legislative Developments in Member Countries
10. Activities with Non-Member Countries and International Organizations
—Workshop on ASEAN Oil Security and Emergency Preparedness, Fall, 2003
—Update on Stockholding Conference, Berlin, Sept. 19, 2003
—Joint Oil Data Initiative (JODI), Cairo, Fall, 2003
—Stockbuilding Workshop in India, late Fall, 2003
—Update on China's Stockbuilding
—Comparison of IEA and European Union Stockholding Obligations
11. Other Emergency Response Activities
—Results of Questionnaire on Minimum Operating Requirements
12. Emergency Response Reviews of IEA Member and Candidate Countries
—Revised Schedule of Emergency Response Reviews for 2003–2004
13. Other Documents for Information
—Emergency Reserve Situation of IEA Member Countries on April 1, 2003
—Emergency Reserve Situation of IEA Candidate Countries on April 1, 2003
—Monthly Oil Statistics: March 2003
—Base Period Final Consumption (BPFC): 2Q2002–1Q2003
—Quarterly Oil Forecast: Second Quarter 2003
—Panel of Arbitrators: Curriculum Vitae of J. Pešek
—Update of Emergency Contacts List
14. Other Business
—Dates of Next Meetings:
—November 18–20, 2003
—March 16–18, 2004

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel; representatives of members of the SEQ; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 3, 2003.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 03–14418 Filed 6–6–03; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 12, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

May 8, 2003 (open and closed).

B. Reports

- Corporate Approvals;
- FCS Building Association Quarterly Report;
- Allowance for Loan Loss Update;
- Financial Institution Rating System (FIRS)—Capital Discussion.

Closed Session *

New Business

- OSMO Quarterly Report.

*Session closed-exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: June 4, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–14543 Filed 6–5–03; 11:13 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Controlled Carriers Under the Shipping Act of 1984

June 3, 2003.

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.*, ocean common carriers operating in U.S.-foreign trades that are owned or controlled by foreign governments. Such carriers are subject to special regulatory oversight by the Commission under the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is publishing an updated list of controlled carriers. Section 3(8) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. section 1702(3), defines a "controlled carrier" as:

> An ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any carrier if—
>
> (A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or
>
> (B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

As required by the Shipping Act, controlled carriers are subject to special oversight by the Commission. Section 9(a) of the Shipping Act, 46 U.S.C. app. section 1708(a), states, in part:

> No controlled carrier subject to this section may maintain rates or charges in its tariffs or service contracts, or charge or assess rates, that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, prohibit the publication or use of any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable.

Congress enacted these protections to ensure that controlled carriers, whose marketplace decision making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or -controlled ships or shipowners; rather, it is only a list of ocean common carriers (as defined in section 3(16) of the Shipping Act) that are owned or controlled by governments. Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

Nine previously classified controlled carriers have been declassified since the list was last issued on September 21, 2000 (65 FR 58086) (Sept. 27, 2000) for various reasons. Some have ceased operating as ocean common carriers in the U.S. trades, others have gone out of existence altogether. There is one new addition to the list.

Black Sea Shipping Company (Ukraine), Polish Ocean Lines (Poland), POL-America, Inc. (Poland) and International Transport Enterprise Co. (GETDD) Ltd. (People's Republic of China) are being removed from the list, as they no longer operate vessels nor conduct any other business in the U.S. foreign trades. Tientsin Marine Shipping Company (People's Republic of China), Pakistan National Shipping Corporation (Pakistan) and Egyptian Navigation Company (d/b/a Egyptian National Line) (Egypt) are being removed from the list, as they no longer operate vessels in the U.S. foreign trades, although they do appear to continue to operate as non-vessel-operating common carriers ("NVOCCs") in the U.S. foreign trades.

China National Foreign Trade Transportation (Group) Corp. (d/b/a Sinotrans) (People's Republic of China) is also being removed from the list as this entity no longer does business in the U.S.-foreign trades, and accordingly, all tariffs in U.S.-foreign trades have been cancelled effective February 28, 2003.

Finally, although never appearing on a list published in the **Federal Register**, Shanghai Hai Hua Shipping Co., Ltd. (d/b/a HASCO) had been classified by the Commission as a controlled carrier on January 7, 2002. The Commission is now removing this classification, as HASCO operates no vessels in the U.S. foreign trades.

The single new addition to the list is Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703). Sinolines informed the Commission of its controlled carrier status by letter to the Commission's Secretary on June 26, 2002, as required by 46 CFR 565.4.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of the General Counsel. The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers are set forth below:

(1) Ceylon Shipping Corporation (RPI No. 016589)—Sri Lanka
(2) COSCO Container Lines Company, Limited (RPI No. 015614)—People's Republic of China
(3) China Shipping Container Lines Co., Ltd. (RPI No. 016435)—People's Republic of China
(4) Compagnie Nationale Algerienne de Navigation (RPI No. 000787)—Algeria
(5) Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703)—People's Republic of China
(6) Shipping Corporation of India Ltd., The (RPI No. 001141)—India

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14394 Filed 6–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. 2003 Voting Trust Agreement, and its trustees, Forest Levan Kelly, Oliver Tracy Kelly, and Albert Charles Kelly, all of Bristow, Oklahoma, William Royce Kelly, Tulsa, Oklahoma, and Allison Asbury Kelly, Okemah, Oklahoma; to acquire voting shares of Spirit Bankcorp, Inc., Bristow, Oklahoma, and thereby indirectly acquire voting shares of Spiritbank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, June 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14374 Filed 6–6–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. F.N.B. Corporation, Naples, Florida; to acquire up to 20 percent of the voting shares of Sun Bancorp, Inc., and thereby indirectly acquire voting shares of Sun Bank, both of Lewisburg, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. America Bancshares, Inc., Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Sun Country Bank, Victorville, California.

Board of Governors of the Federal Reserve System, June 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14373 Filed 6–6–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–49–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Reducing the Risk of Zoonotic Disease Transmission at Petting Zoos and Fairs: A Survey of Current Practices—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention. The purpose of this project is reduce transmission of zoonotic disease to those persons who interact with farm animals in a number of different settings. Though most of these interactions probably do not result in human illness, several recent outbreaks have highlighted the potential danger of infectious disease transmission in venues where the public comes into contact with animals and their environment. A large outbreak of *E. coli* O157:H7 infections among visitors to a petting zoo in Pennsylvania in 2000 prompted CDC to develop recommendations to address this issue. Several large outbreaks of *E. coli* O157:H7 have also occurred at county fairs from persons being exposed to animals and their environment. No state or federal laws exist that deal specifically with public health issues relating to interactions between the public and farm animals.

The proposed study consists of a self-administered, written questionnaire mailed to petting zoos and fairs (state, regional, and county). The survey asks individuals to describe their zoo or fair's current practices regarding human interaction with animals, food and beverage consumption in relation to animal interaction areas, and handwashing facilities. The list of zoos comes from facilities licensed by the U.S. Department of Agriculture to show animals for commercial purposes. The list of fairs comes from the International Association of Fairs and Expositions, a private trade organization that volunteered to participate with CDC in having its members complete this survey. Study objectives are to describe current practices and to determine how CDC, other federal agencies, and non-governmental organizations can best educate zoos and fairs about safe animal-human interaction. There is no cost to respondents.

Survey	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)
Written Questionnaire	1,400	1	10/60

Dated: June 2, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14384 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–73]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The NEISS Special Studies on Motor Vehicle Safety B—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Motor vehicle injuries are the leading cause of death in the U.S. for people aged 1–34. In 2000, more than 40,000 people died as a result of motor vehicle-related injuries. In addition, motor vehicle injuries account for millions of emergency department visits annually, with many victims suffering permanent disabilities. Our goal at the National Center for Injury Prevention and Control is to reduce these deaths and disabilities. A recent priority-setting process revealed several gaps in our knowledge of motor vehicle safety that could be filled with enhancements to the NEISS All-Injury Program data collection system.

Scientific knowledge is being advanced through an expansion of the National Electronic Injury Surveillance System All Injury Program (NEISS–AIP), a collaborative effort by the National Center for Injury Prevention and Control (NCIPC) and the U.S. Consumer Product Safety Commission (CPSC). The NEISS–AIP collects data about all types and external causes of non-fatal injuries and poisonings treated in U.S. hospital emergency departments (EDs). Currently, NEISS–AIP collects information only on the most severe injury. CDC proposes to expand NEISS–AIP by inserting a special screen study for one year, which will be triggered by coding motor vehicle as the cause of the injury. This special screen will permit us to collect all injury diagnoses and body parts affected (up to five), as well as restraint use and blood alcohol concentration for all motor vehicle occupants, when this information is included in the medical chart. The second study will identify, within that population, child occupants aged 0–12 years. A telephone follow-back survey of parents and caregivers will then be conducted to collect information about their child's seating position, restraint type, and vehicle and crash characteristics. This project will provide vital information about the type and number of injuries incurred in order to improve upon existing interventions or develop new interventions. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Total burden hours
500	1	15/60	125

Dated: June 2, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14385 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03087]

Polychlorinated Biphenyls Exposure and Adverse Health Effects in Anniston, Alabama; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2003 funds for a cooperative agreement program to support public health conferences was published in the **Federal Register** dated May 29, 2003, Volume 68, Number 103, pages 32050–32053. The notice is amended as follows:

Page 32050, first column, directly following the program announcement title, remove Application Deadline: June 30, 2003, and replace with Application Deadline: July 15, 2003.

Page 32052, second column, under the heading of Submission Date, Time, and Address, remove the sentence "The application must be received by 4 p.m. eastern time June 30, 2003", and replace with the sentence "The application must be received by 4 p.m. eastern time July 15, 2003."

Dated: June 3, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14387 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03095]

Evaluation of Web-Based HIV Risk Behavior Surveillance Among Men Who Have Sex With Men; Notice of Availability of Funds

Application Deadline: July 9, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317K(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b (k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for evaluating web-based risk behavior surveillance among men who have sex with men (MSM). This program addresses the "Healthy People 2010" focus area of HIV.

The purpose of the program is to: (1) Field test Internet-based behavioral surveillance as an alternate venue for the national behavioral surveillance system; (2) identify the proportion of men who have sex with men (MSM) who are internet users and who do not attend venues where MSM are more commonly known to attend (MSM-identified venues); and (3) examine the comparability of behavioral risks between MSM recruited through Internet-based versus more traditional venue-based sampling methods.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV/STB/TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Background

A national behavioral surveillance system for MSM is expected to begin in 20 United States cities in 2003 using a venue-based, time-space sampling method. While several studies suggest that venue-based sampling is representative of most MSM, an increasing proportion of MSM may be using the Internet to meet sex partners and may not be available for sampling through a more traditional venue-based approach. Previous reports have identified high Internet usage (50 to 75 percent) and seeking of sex partners through the Internet (35 to 67 percent) among MSM. An outbreak of syphilis was also identified among an Internet-originated network of MSM denoting that men who meet partners through the Internet are at risk of acquiring sexually transmitted diseases. (For additional information please see Klausner JD, *et al.* "Tracing a syphilis outbreak through cyberspace" JAMA 2000; 284(4): 447–9.) Other studies have shown that an

Internet-based approach to collecting behavioral risk data are comparable to more conventional methods such as mail, telephone and in-person surveys, and may be superior in sampling MSM that are hard to reach at traditional MSM venues. Methodologies have also been developed to address confidentiality and duplication of data.

C. Eligible Applicants

Applications may be submitted by sites that are currently funded by CDC to conduct behavioral surveillance under Program Announcement 00005, entitled, "HIV/AIDS Surveillance Cooperative Agreements," and other specified sites that are eligible to apply for funding in 2003.

These other sites are the state or local health departments whose jurisdictions include the top 15 Metropolitan Statistical Areas (MSA's) by number of people living with AIDS at the end of 1999 as reported in "HIV/AIDS Surveillance Supplemental Report," (2000; 7(No.1: 10–11).

These sites are the directly funded city health departments of:

New York City, NY; Los Angeles, CA; San Francisco, CA; Chicago, IL; Houston, TX; Philadelphia, PA.

These sites are the state health departments containing the following MSA's:

Washington, DC; Miami, FL and Ft Lauderdale, FL; Atlanta, GA; Boston, MA; Baltimore, MD; San Juan, PR; Newark, NJ; Dallas, TX.

An additional five areas are also eligible to apply in 2003: these are State health departments containing the following MSAs:

Detroit, MI; New Haven, CT; New Orleans, LA; San Diego, CA; Seattle, WA.

One of the purposes of this program is to compare the web-based behavioral surveillance project with the new national behavioral surveillance initiative. This requires that project activities be conducted in the same project areas previously funded for comparability of data.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $500,000 is available in FY 2003, to fund approximately four awards. It is expected that the average award will be $125,000, ranging from $125,000 to $250,000. It is expected that the awards will begin on or about August 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant state or local health department funds available for HIV Prevention and Surveillance. Funds may not be used to provide direct medical care or prevention case management.

Funding Preference

Funding preferences may be given to achieve geographic distribution.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Collaborate with CDC and other funded sites to develop a protocol for an Internet-based behavioral surveillance project.

b. Participate in required planning meetings with other funded sites and CDC.

c. Conduct formative research to determine sites (chat rooms, Web sites, etc.) in which recruitment of study participants will occur.

d. Collaborate with CDC and other funded sites to develop and test an Internet-based behavioral risk factor survey.

e. Collaborate with CDC and other funded sites to identify or develop a local project Web site where the survey instrument will reside.

f. In accordance with a study protocol, administer the survey to a minimum of 500 MSM sampled through time-space or probability sampling methods, including significant representation of persons of color.

g. Collaborate with CDC and other funded sites to develop and implement a local public information campaign.

h. Maintain a secure environment to protect the security and confidentiality of data obtained in this activity.

i. Report project data to CDC in a timely manner according to established protocols for data collection, quality assurance, storage and transfer.

j. Disseminate findings for use in state/local prevention and treatment services planning and evaluation.

2. CDC Activities

a. Develop and test an Internet-based survey instrument.

b. Create and maintain a project database and data management system, including systems to address data security and duplication of participants.

c. Provide technical assistance and expertise for Web site selection and development.

d. Provide technical support on all web-based technologies, software and data base issues.

e. Facilitate the development of site-specific operational plans.

f. Provide technical assistance to support implementation of agreed upon methods to accomplish project objectives.

g. Participate in the analysis and dissemination of data. Conduct and/or coordinate analyses of the multi-site data and distribute information to support national HIV prevention and surveillance efforts.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Include evidence of your ability to target racial/ethnic minority populations and enroll samples of racial/ethnic minority MSM through the Internet.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The program plan should address activities to be conducted over the entire three-year project period. The budget must cover the first one-year budget period.

In addition, CDC is particularly interested in promoting improved understanding of behavioral risk factors in communities of color. Therefore, all applicants are encouraged to include a plan that directly addresses how racial/ethnic minorities will be reached through this project.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time July 9, 2003. Submit the application to:

Technical Information Management-PA# 03095, CDC Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. The quality of the applicant's plan to develop, implement and administer the project operations and the degree to which the objectives and time schedules are reasonable, time-phased, address activities to be conducted over the entire three-year project period, and are appropriate for accomplishing project goals. The extent to which the applicant provides evidence of their ability to implement the proposed methodology. The quality of the applicants plan to address Recipient Activities outlined in the "Program Requirements" section of this announcement.

The degree to which the applicant has met the CDC policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes, racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (45 points.)

2. The degree to which the qualifications, duties, responsibilities, and time allocation of proposed staff (including potential contractors), are justified and appropriate to accomplish study objectives. The degree to which the proposed staff will be able to provide appropriate scientific oversight, as well as programmatic and administrative support for the proposed activities. The extent to which collaborating entities (*e.g.*, community groups, community gatekeepers, CBOs, behavioral scientists) are appropriate (*i.e.*, meet specific needs), sufficient, promote project objectives, and document their ability in letters of support. (30 points.)

3. The degree to which the applicant provides evidence of their understanding of the project and objectives. (25 points.)

4. The extent to which the budget, which should cover the first one-year budget period, is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored.)

5. Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–22 Research Integrity

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Brenda Hayes, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2741. E-mail address: *bkh4@cdc.gov*.

For program technical assistance, contact: Ken Bell, Public Health Advisor, Behavioral and Clinical Surveillance Branch, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road Mailstop E46, Atlanta, GA 30333. Telephone: 404–639–2970. E-mail address: *kbell@cdc.gov*.

Dated: June 3, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14386 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10086]

Emergency Clearance; Notice of Funding Availability and Public Information Collection Requirements Submitted to the Office of Management and Budget; Correction

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Friday, May 30, 2003, 68 FR 32520, FR Doc. 03–13582, make the following corrections:

1. On page 32521, column 2, paragraph 1, line 2, the date, "July 21, 2003", should read "June 27, 2003."

2. On page 32521, column 2, paragraph 1, line 7, and paragraph 4, last line, the date, "July 16, 2003", should read "June 13, 2003."

Dated: June 2, 2003.

Julie Brown,

Acting Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–14378 Filed 6–6–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Examining Services and Best Practices of Intermediary Organizations and the Faith- and Community-Based Organizations They Serve.

OMB No.: New Collection.

Description: Currently, the Administration for Children and Families, Department of Health and Human Services, is conducting the project "Examining Services and Best Practices of Intermediary Organizations and the Faith- and Community-Based Organizations They Serve." The purpose of the project is to examine (1) the role of intermediary organizations in assisting faith- and community-based organizations in building their capacity to serve needy individuals and families; (2) innovative and best practices among intermediary organizations; (3) promising practices among faith- and community-based organizations; (4) methods to evaluate the services of both types of organizations; and (5) methods to assess and benchmark performance among faith- and community-based groups. Priority will be given to programs that focus on the following areas; homelessness, hunger, at-risk children, transition from welfare to work, and intensive rehabilitation. The project involves the conduct of case studies of up to 10 intermediary organizations and approximately three to four faith-based and community-based organizations that receive assistance or services from each of the intermediaries. Information collection will be through informal discussions and observations on-site at the organizations, using uniform protocols.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intermediary Staff Interview Guide	40	2	2.5	200
Intermediary Staff Interview Guide	80	2	1.5	240
Estimated Total Annual Hours				400

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov*.

Dated: June 3, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14473 Filed 6–6–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged nonfederal home energy resources for low income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services (HHS) for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87.

The LIHEAP Leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and, the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged nonfederal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a 3-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660
Estimated Total Annual Burden Hours				2,660

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 3, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14474 Filed 6–6–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 19, 2003, from 8 a.m. to 4:30 p.m. and on June 20, 2003, from 8:30 a.m. to 3 p.m.

Location: Hilton Gaithersburg, Grand Ballrooms A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 19, 2003, the committee will hear updates on the following tentative topics: Medical Device User Fee and Modernization Act, secure e-mail and electronic submissions, white particulate matter in blood bags, safety reporting requirements for human drug and biological products, and bovine spongiform encephalopathy in Canada. The committee will further hear informational presentations on severe acute respiratory syndrome and West

Nile virus. On June 20, 2003, the committee will hear presentations, discuss, and provide recommendations on the topic of recovered plasma. In the afternoon, the committee will hear an informational presentation on the current thinking and indications for use on vaccinia immune globulin intravenous. The background material for this meeting will be posted 1 working day before the meeting under "Blood Products Advisory Committee" on the Dockets Management Branch Web site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 13, 2003. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:30 a.m. and 2:30 p.m. and 3:30 p.m. on June 19, 2003, and between approximately 9:30 a.m. and 10:30 a.m. and 2 p.m. and 2:30 p.m. on June 20, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood at 301–827–3514 or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting.

Persons attending FDA advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA regrets that it was unable to publish this notice 15 days prior to the Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–14450 Filed 6–4–03; 4:10 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under the authority of sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713.

The following is a list of Indian Health Scholarship Recipients funded under sections 103 and 104 for Fiscal year 2002:

Abeita, Steven John, University of New Mexico—Albuquerque, Pueblo of Isleta, NM
Acothley, Regina, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah.
Adakai, Tamelyn Blythe, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Adams Moses, Cynthia Regina, Tulsa Junior College, Muskogee (Creek) Nation, Oklahoma
Adams, Andrea L., University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Aitson, Joseph James, Cameron University, Kiowa Indian Tribe of Oklahoma
Albers, Travia Alan, University of Maryland, Turtle Mountain Band of Chippewa Indians of North Dakota
Alcorn, Winter Dawn, Rogers State College, Cherokee Nation, Oklahoma
Alden Littlelight, Roanne Gail, Pacific University College, Crow Tribe of Montana
Alden-Diaz, Lorrie Elison, Salt Lake Community College, Crow Tribe of Montana
Alexander, Lise Kalliah, University of Washington School of Medicine, Confederated Tribes of the Grand Ronde Community of Oregon
Allery, Lonnie William, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Allick, Shannon Lynn, Minot State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Allison, Carol Ann, Montana State University—Northern, Turtle Mountain Band of Chippewa Indians of North Dakota
Allison, Roselinda, University of Phoenix, Navajo Tribe of Arizona, New Mexico, & Utah
Allison-Quick, Eunice Mary, University of Oregon, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
American Horse, Candace, Montana State University—Billings, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT
Anagal, Laura Ann, Northland Pioneer College, Navajo Tribe of Arizona, New Mexico, & Utah
Anagick, Laverne Kathryn, University of Alaska School of Nursing, Native Village of Unalaklett
Anderson, Destiny Dawn, University of North Dakota, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Anderson, Ella Mae, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Anderson, Sandra Dee, Arizona State University, Navajo Tribe or Arizona, New Mexico, & Utah
Andis, Letetia Lynn, Bacone College, Cherokee Nation, Oklahoma
Armijo, Heather Denise, New Mexico State University, pueblo of Jemez, NM
Arnold, Carly Ellen, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Arnold, Delphine, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Arredondo, LaDonna Leann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Ashley, Jeannette, New Mexico State University—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Ashmore, Audra Wabaunsee, University of Oklahoma, Seneca—Cayuga of Oklahoma
Atene, Kathleen Cheryl, Northern Arizona University, Navajo Tribe of Arizona, New Mexico & Utah
Azure, Alissa Joy, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Babcock, Amy Roxanne, Tulsa City Area Voc Tech School, Cherokee Nation, Oklahoma
Baca, Vonda Jean, Albuquerque Tech—Voc Institute, Pueblo of Jemez, NM
Baca, Wilma Joyce, Albuquerque Tech—Voc Institute, Pueblo of Jemez, NM
Bacoch, Michaele, University of the Pacific School of Pharmacy, Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, CA
Bain, Edlin David, University of New Mexico College of Pharmacy, Navajo Tribe of Arizone, New Mexico, & Utah
Barbone, Michelle Dawn, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Barnes, Kellie Elizabeth, University of Oklahoma, Chickasaw Nation, Oklahoma
Barnett, Stephanie Deann, University of Tulsa, Cherokee Nation, Oklahoma
Barry, Christina Jean, University of South Alabama, Central Council of the Tlingit & Haida Indian Tribes
Barse, Allison Joy, Kansas Newman College, Kickapoo Tribe of Oklahoma

Bartlett, Lyndell Joy, Montana State University—Bozeman, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Bates, Vanesscia, Washington University, Navajo Tribe of Arizona, New Mexico, & Utah
Battese, Kelly Joseph, University of Kansas School of Pharmacy, Miami Tribe of Oklahoma
Bearmedicine, Jennifer Lynn, Salish—Kooteenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Becenti, Shawnadine Karen, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, and Utah
Becenti, Thelissa Leann, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Beetso, Allyson Nicole, Phoenix College, Navajo Tribe of Arizona, New Mexico, & Utah
Beetso, Juanita, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Carlyle-Wilmer, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Dawn Dora, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Beegay, Grace Delcinia, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Lisa Danelle, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Lorena Rose, La Sierra University, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Michelle, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Paula Moiselle, Weber State University, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Pierrette Rose, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Sheena Maria, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Tamana Dollicia, University of the Pacific, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Velma Mae, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begaye, Julianna, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Behymer, Virginia May, University of Alaska—Anchorage, Aleut, AK
Belcourt, Jaimie Ruth, Montana State University School of Nursing, Three Affiliated Tribes of the Fort Berthol Reservation, ND
Benally, Jolene, Arizona Western College, Navajo Tribe of Arizona, New Mexico, & Utah
Benally, Yolanda Jean, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Benally-Thompson, Bret R., University of Minnesota—Duluth, Minnesota Chippewa Tribe (White Earth Band)
Berg, Emily Wauneka, Fort Lewis College, Navajo Tribe of Arizona, New Mexico, & Utah
Berger, Jeffrey Michael N., Fort Peck Community College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Berryman, Mykala Sara, University of Oklahoma—Norman, Choctaw Nation of Oklahoma
Bessette, Megan Holly, Whitman College, White Mountain Apache Tribe of the Fort Apache Reservation, AZ, Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), OK
Beyale, Shannon Marie, University of Oklahoma—Norman, Choctaw Nation of Oklahoma
Big Man, Luzenia Yellowmule, University of New Mexico—Albuquerque, Crow Tribe of Montana
Bigback, Jennifer Lee, Ohio State University College of Medicine, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT
Bighorse, Amanda Nicole, Northeastern State University, Cherokee Nation, Oklahoma
Bill, Miranda Lee, Cal State University Chico, Cortina Indian Rancheria of Wintun Indians of California
Billy, Larissia Jenny, University of Nevada—Reno, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Bingham, Zachary Scott, University of New Mexico—Albuquerque, Cherokee Nation, Oklahoma
Bishop, Jennifer Lynn, University of Tulsa, Seneca—Cayuga Tribe of Oklahoma
Blackwater, Temerra, The University of Utah, Navajo Tribe of Arizona, New Mexico, & Utah
Blackwater, Vera, New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Blevins, Reigna Kay, North Dakota State University, Choctaw Nation of Oklahoma
Blindman, Charlene Sue, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Blue Arm, Noelle E., University of North Dakota, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Blue, Sheanoa Lynn, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Boling, Adella Krista Marie, Pacific University College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Booth, Loretta Marie, Pacific University College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Bowers, Joel N., Paris Junior College, Choctaw Nation of Oklahoma
Bowles, Charles Justin, Oklahoma State University, Citizen Potawatomi of Oklahoma
Boyd, Cassandra Iva, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Boyd, Evelyn Marie, Presentation College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Bradley, Stephanie, East Carolina University School of Medicine, Eastern Band of Cherokee Indians of North Carolina
Brady, Meagan Leigh, University of Oklahoma, Comanche of Oklahoma
Branham, Jamie Kathleen, University of Iowa Dental School, Cherokee Nation, Oklahoma
Brantingham, Michael James, Pacific Union College, Eskimo
Bressman, Rebecca Rae, Portland Community College, Citizen Potawatomi Nation, Oklahoma
Brewster, Sarah Kate, Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Briggs, Misty Elaine, Northeastern State University, Cherokee Nation, Oklahoma
Brinson, Timothy James, East Central University, Citizen Potawatomi Nation, Oklahoma
Brooks, Lisa Michelle, University of Maryland, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Brooks-Dugger, Shelly Beth, Southwest Texas State University, Cherokee Nation, Oklahoma
Brorby, Misty Dawn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Brown, Amanda Susan, Montana State University—Billings, Assiniboine, & Sioux Tribes of the Fort Peck Indian Reservation, MT
Brown, Christina Ann, University of California—San Diego, Paiute—Shoshone Indians of the Bishop Community of the Bishop Colony, CA
Brown, Laverne, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Brown, Tamara Danielle, University of Washington, Walker River Paiute Tribe of the Walker River Reservation, Nevada
Bryant, Idella Marie, Midwestern University, Navajo Tribe of Arizona, New Mexico, & Utah
Bryant, Joseph Preston, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Buckner, Jennifer Lynn, University of New Mexico—Albuquerque, Cheyenne—Arapaho Tribes of Oklahoma
Buenting, Lisa Lynette, Lowa Linda University, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, CA
Bull, Lois Ann, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Bunting, Tischa Lee, Butler County Community College, Cherokee Nation, Oklahoma Burbank, Lenora Michele, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Burk, Kristi Carroll, Fort Lewis College, Alaska Native Burkhart, Lisa Marie Foster, University of Colorado—Colorado Springs, Navajo Tribe of Arizona, New Mexico, & Utah
Burnside, Clint Ed, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Burris, Brandon Christopher, University of Texas—Austin, Caddo Indian Tribe of Oklahoma
Burr-Selle, Kandi Kay, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Busch, Richard Eugene, University of Alaska—Fairbanks, Alaska Native Butte,

Jennifer Lynn, Glendale Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Butterfly, Glenn Curtis, Pima Medical Institute, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Calf Looking, John Fitzgerald, University of Washington-Medex Northwest Program, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Calf Robe, Douglas Wayne, University of Washington Medex Northwest Program, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Callan, Cheryl Janine, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Calvin, Shawn Allen, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Campbell, Jamie Renae, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Carey, Amanda Kay, Northeastern State University, Cherokee Nation, Oklahoma
Carlson, Ingrid Marie, University of Washington Medex Northwest Program, Qagan Tayagungin Tribe of Sand Point Village
Carter, Jason Daniel, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Carter, Nani Danielle, Unversity of Oklahoma Health Science, Cherokee Nation, Oklahoma
Cary, Brenda Lee, University of Minnesota—Twin Cities Medical School, Oneida Tribe of Indians of Wisconsin
Cassutt, Robyn-Amonda, Dakota Wesleyan, Central Council of the Tlingit & Haida Indian Tribes
Castillo, Genevieve, TVI Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Cavanaugh, Casey Lynne, Idaho State University, Paiute—Shoshone Tribes of the Duck Valley Reservation, NV
Caylor, Ruby Leona, Dakato Wesleyan University, Yankton Sioux Tribe of South Dakota
Champ, Jonalena, University of Houston, Crow Tribe of Montana
Chapman, Christy Shannon, University of New Mexico, Zuni Tribe of the Zuni Reservation, NM
Charette, Nicole Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Charles, Tracey Roseann, University of Tennessee—Memphis, Choctaw Nation of Oklahoma
Chavez, Leann Ahkeebah, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Chee, Lorinda, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Chee, Rochanda G., University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Chelberg, Robert Paul, University of Massachusetts, Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Childress, Michelle Josett, University of Central Oklahoma, Seminole Nation of Oklahoma
Chimoni, Reinette J., University of New Mexico—Gallup, Zuni Tribe of the Zuni Reservation, NM
Clancy, Vanessa Mae, Montana State University—Northern, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Clark, Jayne, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Clark, Kari Rose, Mesa Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Clark, Patricia Jane, North Dakota State University, Minnesota Chippewa Tribe (White Earth Band)
Clarke, Alberta D., University of Phoenix, Navajo Tribe of Arizona, New Mexico, & Utah
Clarkson, Rachel Beth, University of Central Oklahoma, Cherokee Nation, Oklahoma
Clauschee, Reginald, Pima Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Clauschee, Susan Francine, Pima Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Clemens, Danielle Nicole, University of New Mexico—Albuquerque, Pueblo of Acoma, NM
Cochran, Arlene Ann, Montana State University—Northern, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Cochran, Suzanne, Montana State University—Northern, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Colbert, Alexandria Naomii, University of Oklahoma—Norman, Chickasaw Nation of Oklahoma
Coleman, Kristi Lynn, Southwestern Oklahoma State, Choctaw Nation of Oklahoma
Cooeyate, Erin Quin, University of New Mexico—Gallup, Zuni Tribe of the Zuni Reservation, NM
Cook, Elizabeth Jane, Southeastern Oklahoma State University, Choctaw Nation of Oklahoma
Cook, Michael Gerald, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Cooper, April Deann, University of Central Arkansas, Cherokee Nation, Oklahoma
Corson, Hillary Lena, Montana State University—Bozeman, Crow Tribe of Montana
Couch, Ashley, Ariel, Connors, State College, Cherokee Nation, Oklahoma
Coulter, Daniel Lee, Creighton University of School of Medicine, Citizen Potawatomi Nation, Oklahoma
Cox, Gretchen Dove, Fresno City College, Picayune Rancheria of Chukchansi Indians of California
Cree, Sharon, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Cremer, Paul Clay, Princeton University, Choctaw Nation of Oklahoma
Cribbs, Carolyn Suze, Sonoma State University Dept of Nursing, Cherokee Nation, Oklahoma
Croff, Heather Marie, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Croley, Amanda Jo, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Cross, Bryan Von, University of Oklahoma, Cherokee Nation, Oklahoma
Crow Ghost, Richard Joseph, Bismark State College, Standing Rock Sioux North & South Dakota
Crumley, Jennifer June, Northeastern State University, Choctaw Nation Oklahoma
Cruz, Christina, University of New Mexico, Pueblo of San Juan, NM
Cruz, Leeann Katri, New Mexico State University, Pueblo of Acoma, NM
Cullen Carroll, Shanna Marie, Alliant International University, Osage Tribe, Oklahoma
Cunningham—Hartwig, Roxie, Kim, University of Washington School of Medicine, Nez Perce of Idaho
Dailey, Samuel, University of Alabama—Birmingham, Navajo tribe of Arizona, New Mexico, & Utah
Davis, Allison Kay, University of North Dakota, Crow Creek Sioux Tribe of the Crow Creek Reservation, SD
Davis, Alona, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Amber Lynn, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Davis, Heather Rae, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Jason Russell, Lane Community College, Chickasaw Nation, Oklahoma
Davis, Marcia D., Seminole State College, Choctaw Nation of Oklahoma
Dawes, Kari Elaine, University of Iowa, Cherokee Nation, Oklahoma
Day, Autumn Ann, Cornell University, Minnesota Chippewa Tribe, MN (Leech Lake Band)
Decker, Amber Victoria, Rocky Mountain College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Dees, Marijane Megan, Oklahoma Baptist University, Choctaw Nation of Oklahoma
Dele, Lessina, Midwestern University, Navajo Tribe of Arizona, Mew Mexico, & Utah
Delmar, Marjorie, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Demientieff, Manon Kristine, California State University, Nenana Native Association
Deroche, Elisabeth Louise, Central Washington University, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Desautel, Alice Junee Lu, Wenatchee Valley College North, Confederated Tribes of the Colville Reservation, WA
Dixon, Damon Brian, University of North Dakota, Hopi Tribe of AZ
Dixon, Malia K., New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Dodson, Trudy Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Dominguez, Deborah M., Albuquerque Technical Vocation, Navajo Tribe of Arizona, New Mexico, & Utah
Dominguez, Lorrie Ann, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah

Draper, Melanie Brooke, University of Alaska School of Nursing, Cherokee Nation, Oklahoma
Dugan, Carysa Malaret, Arizona School of Health Sciences, Nez Perce of Idaho
Duncan, Roberta Marie, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Dunlap, Erin Lee, University of Oklahoma, Cherokee Nation, Oklahoma
Dunn, Akilah Talibah, Seminole State College, Chickasaw Nation of Oklahoma
Earley, Mary Margaret, University of Tulsa, Cherokee Nation, Oklahoma
Eddy, Julia L., Graceland University, Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona & California
Eddy, Patricia Ann, Northland Pioneer College, Navajo Tribe of Arizona, New Mexico, & Utah
Eder, Shirley—Anne, Northern Montana College, Assiniboine & Sioux Tribe of the Fort Peck Indian Reservation, MT
Edwards, Kerry Rachelle, University of Oklahoma, Cherokee Nation, Oklahoma
Edwards, Ralph Casey, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Elkhair-Brown, Michelle Lianne, Johnson County Community College, Muskogee (Creek) Nation, Oklahoma
Ellis, Scott Anthony, Oklahoma City University, Cherokee Nation, Oklahoma
Elmore, Amber Dawn, Northeastern State University, Chickasaw Nation of Oklahoma
Emerson, Janice Odette, Univerity of Oklahoma Health Sciences Center, Kiowa Indian Tribe of Oklahoma
Endischee, Flonda, University of the Pacific School of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Epaloose, Cassie, PIMA Community College, Zuni Tribe of the Zuni Reservation, NM
Eriacho, Margaret Alisha, University of New Mexico—Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Etsitty, Marlene J., San Juan College, Navajo Tribe of Arizona, New Mexico, & Utah
Eubanks, Andrea Jill, Connors State College, Cherokee Nation, Oklahoma
Eversole, Maryn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Feather, Sharon Ann, Cankdeska Cikana Community College, Devils Lake Sioux
Fence, Heather Katherine, Angelo State University, Cherokee Nation, Oklahoma
Ferris-Lane, Dana Faye, College of the Redwoods, Hoopa Valley Tribe, CA
Fetzer, John Ward, North Dakota State University, Minnesota Chippewa Tribe (White Earth Band)
Finkbonner, Miriam Ann, Whatcom Community College, Lummi Tribe of the Lummi Reservation, WA
Fisher, Joe Keith, University of New Mexico, Choctaw Nation of Oklahoma
Fishinghawk, Bobbi Genevieve, University of Kansas School of Medicine, Cherokee Nation, Oklahoma
Fishinghawk, Lance Franklin, Northeastern State University, Cherokee Nation, Oklahoma
Foote, Brittnee Irene, Bismarck State College, Turtle Mountain Band of Chippewa Indians of North Dakota
Foster, Melvin Dale, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Fragua, Kari Lynn, University of New Mexico—Albuquerque, Pueblo of Jemez, NM
Francis, Kaydee Ann, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Francis, Michelle J., Northland Pioneer College, Confederated Tribes of the Colville Reservation, WA
Francis, Molly Marie, Creighton University, Confederated Tribes of the Colville Reservation, WA
Francisco, Nalda Yazzie, New Mexco State University, Navajo Tribe of Arizona, New Mexico, & Utah
Franklin, Richard Arnold, Northeastern State University, Cherokee Nation, Oklahoma
Frankovic, Adam Matthew, Central Washington University, Cherokee Nation, Oklahoma
Fredy, Jefferson, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Freeland-Sam, Veronica Marie, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
French, Zachary Ashton, University of Oklahoma, Cherokee Nation, Oklahoma
Friede, Priscilla Jenee, Montana State University, Chippewa Cree Indians of the Rocky Boy's Reservation, MT
Frizzell, Felicia Yelena, Stanford University, Mescalero Apache Tribe of the Mescalero Reservation, NM
Gaddy, Jasmine Reanna, Temple University School of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Gamble-Sampson, Wanda, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Gardner, Angela Danita, Rogers State College, Cherokee Nation, Oklahoma
Garner, LaQuita Jo, Great Plains Technology, Mississippi Band of Choctaw Indians, MS
Garness, Mary, University of Wisconsin—Superior, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Gatewood, Vangie Mae, University of Wisconsin, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Gerry, Jon Michael, Stanford University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Gerry, Ryan Richard, Harvard Medical School, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Giles, Erin Ayn, Southern College of Optometry, Cherokee Nation, Oklahoma
Gilham, Maureen Eloise, Carroll College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Gillies, Kenneth Jay, North Dakota State University, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Gilmore, Jennifer Jane, Dixie State College of Utah, Navajo Tribe of Arizona, New Mexico, & Utah
Girty, Logan Ellis, University of Oklahoma, Caddo Indian Tribe of Oklahoma
Glasses, Devin Garrick, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Glock-James, Jacquelyn, Southwest Missouri State University, Choctaw Nation of Oklahoma
Gloshay, Jr., Eddie, University of Arizona, White Mountain Apache Tribe of the Fort Apache Reservation, AZ
Gobert, Rachel Rose, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Gonzales, Nicolle Lenn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Goodman, Gayla Beth, University of Maryland School of Medicine, Kickapoo Tribe of Oklahoma
Gorman, Duane Thomas, Weber State University, Navajo Tribe of Arizona, New Mexico, & Utah
Gorman, Emmeline Paula, Mesa Community, Navajo Tribe of Arizona, New Mexico, & Utah
Goulet, Jessica Louie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Granger Nez, Sharon, Coconino County Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Gray, Cori Ann, University of Oklahoma Health Sciences Center, Osage Tribe, Oklahoma
Greenwood, Tami Lynette, East Central University, Choctaw Nation of Oklahoma
Griffith, Kimberly Dawn, Grand Canyon University, Tohono O'odham Nation of Arizona
Groten, Eric Dartanium, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Guin, Heather Elaine, University of Tulsa, Muskogee (Creek) Nation, Oklahoma
Guy, Melissa, University of Colorado Health Science Center, Navajo Tribe of Arizona, New Mexico, & Utah
Haddox, Natalie Rose, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Hagerty, Kori Lynn, University of New Mexico—Albuquerque, Blackfeet Tribe of the Blackfeet Indian Reservation of MT Tribe of the Blackfeet Tribe of the Blackfeet Indian Reservation of MT Indian Reservation of MT
Hall, Sheila Marie, Loyola Marymount University, Minnesota Chippewa Tribe (White Earth Band)
Hamby, Kenneth Jerome, Kirksville College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Hammons, Tracie Janene, Connors State College, Cherokee Nation, Oklahoma
Harjo, Rebecca Ruth, University of Southern California School of Social Work, Muskogee (Creek) Nation, Oklahoma
Harker, Erica Michelle, University of New Mexico, Zuni Tribe of the Zuni Reservation, NM
Harrington, Latoya Ann, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Harris, Elizabeth Kate, Oklahoma State University College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Harris, Lynn Marie, North Carolina State University, Lumbee
Harrison, Gilbert, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah

Harrison, Lisa Lizette, University of Wisconsin, Ho-Chunk Nation of Wisconsin
Hassen, Kathleen Lois, Kalamazoo Valley Community College, Sault St. Marie Tribe of Chippewa Indians of Michigan
Hastie, Carrie Suzette, Purdue University, Orutsararmuit Native Village
Hawkins, Amy Delah, Tulane University Health Sciences Center, Muskogee (Creek) Nation, Oklahoma
Hawley, Edward Carl, Montana State University, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Hazeldine, Becky Ann, Northland Community College, Minnesota Chippewa Tribe, MN (Leech Lake Band)
Headdress, Gale Crystal, Northern Montana, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Healing Ground, Dulcie Nicole, University of Minnesota, Turtle Mountain Band of Chippewa Indians of North Dakota
Henderson, Michelle Lynn, University of Texas, Navajo Tribe of Arizona, New Mexico, & Utah
Henio, Regina, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Henson, Mike Allen, University of Oklahoma Health Service, Comanche of Oklahoma
Henson-Meigs, Amy Jo, University of Tulsa, Cherokee Nation, Oklahoma
Herder, Katrina Joy, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Hernandez, Evelyn Leone, Walla Walla College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Hick, Carrie, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Hicklin, Cheryl, Winston-Salem State University, Seneca Nation of New York
Hicks, Ashley Marion, University of Alaska Anchorage, Mentasta Traditional Council
Hollow, Collette Caroline, Heritage College, Confederated Tribes of the Colville Reservation, WA
Hoover, Jamie Ellen, Arizona School of Health Sciences, Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Hopkins, Delbert Samuel, University of North Dakota, Sisseton—Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Horan, Therese Marie, Seattle University, Central Council of the Tlingit & Haida Indian Tribes
Houston, Lindsay Nicole, Bacone College, Cherokee Nation, Oklahoma
Howell, Jesse Ray, University of Central Oklahoma, Choctaw Nation of Oklahoma
Howeya, Lori Leon, University of New Mexico, Pueblo of Acoma, NM
Howling Wolf, William L., University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Hubbell, Nichöll Kristen, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Hubbell, Rochelle Lynne, University of Arizona, San Carlos Apache Tribe of the San Carlos Reservation, AZ
Huber, Donna Marie, University of Phoenix, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Hulsey, Heidi Lynne, Portland Community College, Lummi Tribe of the Lummi Reservation, Washington
Humphreys, Christina Lilly, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Hunt, Matthew Hensdale, North Carolina State University, Lumbee
Hunter, Misty Rae, Oglala Lakota College, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Hyatt, Jacqueline Rooke, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Hyden, Andreana Dee, Grand Canyon College, Navajo Tribe of Arizona, New Mexico, & Utah
Interpreter, Christina Lynn, Northern Arizona University, Hopi Tribe of AZ
Jackson, Candy Lou, Idaho State University, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Jackson, Melissa Sue, Northeastern Oklahoma A&M College, Eastern Shawnee Tribe of Oklahoma
James, Darrel Deon, Mountain View College, Choctaw Nation of Oklahoma
James, Jessica Natasha, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
James, Rachel, Albuquerque Technical Vocation, Navajo Tribe of Arizona, New Mexico, & Utah
James, Wendi Lee Ann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Janis, Fawn Renee, Ogalala Lakota College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Jarvis, Pamela, College St. Scholastica, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Jefferson, Deloris Ann, Murray State College, Chickasaw Nation of Oklahoma
Jefferson, Natalie Ruth, University of Kansas School of Social Welfare, Choctaw Nation of Oklahoma
Jensen, Janelle Blake, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Joe, Felma Marie, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Joe, John, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Johnson, Beverly Mae, University of Washington; Emmonak Village
Johnson, Elizabeth Jane, Central Oregon Community College, Confederated Tribes of the Warm Springs Reservation of Oregon
Johnson, Gini Azure, University of New Mexico, Assiniboine & Sioux Tribe of the Fort Peck Indian Reservation, MT
Johnson, Joyce-Melvina, Northeastern State University, Cherokee Nation, Oklahoma
Johnson, Kimberlee Jo, East Central University, Chickasaw Nation of Oklahoma
Johnson, Roxanne Marie, Univeristy of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Johnson, Sausha Rae, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Johnson, Tara Lee, Northern Arizona Univerisy, Navajo Tribe of Arizona, New Mexico, & Utah
Johnson, Yolanda, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Joice, Kara Lynn, University of Kansas, Cherokee Nation, Oklahoma
Joice, Kelly A., University of Oklahoma, Cherokee Nation, Oklahoma
Jones, Christopher Lee, University of North Dakota, Cherokee Nation, Oklahoma
Jones, Generosa Diane, Drake University College of Pharmacy, Choctaw Nation of Oklahoma
Jones, Julia M., Northern Arizona University, Navajo Tribe of Arizona, New Meixo, & Utah
Jordan, Jesse Melinda, University of Alaska Anchorage, Village of Kalskag
Joseph, Ruth, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Julian, Serena Yazzie, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Jumbo, Ronald Dean, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Juneau, Rose Ann, Salish-Kootenai Community College, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Kanuho, Daryl, Mesa Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Kardonsky, Kimberly Jay, Medical College of Wisconsin, Jamestown S'Klallam Tribe of Washington
Keel, Andrea Lynn, University of Oklahoma, Chickasaw Nation of Oklahoma
Kelley, Lynette Rae, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Kelley, Ralph Zane, University Health Sciences College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Kelley, Valerie, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Kelliher, Allison Miranda, University of Washington School of Medicine, Nome Eskimo Community
Kenneth, Lena Mae, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Keplin, Angela Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Ketcher, Jeremy Wayne, Connors State College, Cherokee Nation, Oklahoma
Kewenvoyouma, Vachel Rebecca, Yavapai College, Navajo Tribe of Arizona, New Mexico, & Utah
Kickingbird, Lauren Marie, University of Central Oklahoma, Kickapoo Tribe of Indians of the Kickapoo Reservation of Kansas
Kinlecheenie, Orlinda Lou, Northland Pioneer College, Navajo Tribe of Arizona, New Mexico, & Utah
Kinney, Sahar Amelia, Tufts University, Turtle Mountain Band of Chippewa Indians of North Dakota
Kirk, John Vincent, Oklahoma State University College of Osteopathic Medicine, Cherokee Nation, Oklahoma

Kramer, Erin Lea, University of Oklahoma, Cherokee Nation, Oklahoma
LaFromboise, Dawn Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
LaFromboise, Sandy Marie, Minot State University, Tuttle Mountain Band of Chippewa Indians of North Dakota
Lambert, Marshelle Annette, Walla Walla College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Landers, Joseph Henry, East Central University, Muskogee (Creek) Nation, Oklahoma
Lang, Sharon W., Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Lansing, Letitia Bianca, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Large, Stephanie Ashley, University of Oklahoma School of Social Work, Muskogee (Creek) Nation, Oklahoma
Lashley, Nathan James, Finch University of Health Services, Cherokee Nation, Oklahoma
Laurence, Kami Lynn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Laurence, Stacie, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Lawrence, Gary Lynn, Northeastern State University, Choctaw Nation of Oklahoma
Lay, Pamela Christine, University of Phoenix, Muskogee (Creek) Nation, Oklahoma
Leader Charge, Lila Rose, Ogalala Lakota College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Lee, Calbert Aaron, University of New Mexico—Albuquerque, Navajo Tribe of AZ NM & UT
Lee, Colleen Linda, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Lee, Lori C., Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Leekity, Marilyn Kelley, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Leemhuis, Stephanie Brook, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Legarde, Victoria Leann, Gonzaga University, Arapahoe Tribe of the Wind River Reservation, WY
Lemas, Dominick Joseph, University of Vermont, Citizen Potawatomi Nation, Oklahoma
Leslie, Lerae J., Glendale Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Lessert, Amanda Kaye, Creighton University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Lewis, Erik Clay, Salish—Kootenai Community College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Limphy, Cheyenne Rose, Montana State University School of Nursing, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT
Lincoln, Kelly Michelle, Boston College, Navajo Tribe of Arizona, New Mexico, & Utah
Littlefield, Teeoti Nicole, Seminole Junior College, Chickasaw Nation of Oklahoma
Lomay, Vicky Tsinnijinnie, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Long, Christina Marie, University of South Dakota, Lower Brule Sioux Tribe of the Lower Brule Reservation, SD
Longhorn, Kaselyn Diane, East Central University, Absentee—Shawnee Tribe of Indians of Oklahoma
Longie, Michelle Renee, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Looney, Joshua Carson, University of Oklahoma, Cherokee Nation, Oklahoma
Lopez, Candace Erin, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Lopez, Matthew Adam, Kansas State University, Walker River Paiute Tribe of the Walker River Reservation
Lowery, Brad Elliot, North Carolina State University, Lumbee
Loy, Arlene, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Lynch, Candace Andrea, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Makai, Myra Demetria, University of New Mexico, Gila River Indian Community of the Gila River Indian Reservation, AZ
Malaterre, Jessica Kim, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Maloney, Violet Spring, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Mandan, Samona Fern, University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Marshall, Kristian Evan, Northeastern State University, Cherokee Nation, Oklahoma
Martin B, Carmelita A., University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Martin-Feliz, Candelaria Cynthia, University of North Dakota, Navajo Tribe of Arizona, New Mexico, & Utah
Martinez, Kimberly Ann, Northeastern Oklahoma A&M College, Eastern Shawnee of Oklahoma
Martinez, Leah M., University of New Mexico, Pueblo of Acoma, NM
Martinez, Marie Jeannette, Weber State University, Navajo Tribe of Arizona, New Mexico, & Utah
Marvin, Misty Dawn, Oklahoma State University, Cherokee Nation, Oklahoma
Mason, Laquita Joy, University of Montana State School of Pharmacy, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Mathis, Trina C., University of Phoenix, Navajo Tribe of Arizona, New Mexico, & Utah
Matt, Georgia Lee, University of Utah, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Maxon, Jeff Allen, North Dakota State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
May, Katie Lynn, University of Oklahoma, Cherokee Nation, Oklahoma
McArthur, Anna K., North Dakota State University, Minnesota Chippewa Tribe, MN (White Earth Band)
McCabe, Devon Aurora, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
McCorkle, Cody W., University of Arkansas, Citizen Potawatomi Nation, Oklahoma
McCuistion, Robin Edward, Western Washington University, Aleut, AK
McGeshick, Cole David, Montana State University, Sokoagon Chippewa Community, WI
McGhee, Julie Lynette, University of Oklahoma Health Sciences Center, Poarch Band of Creek Indians of Alabama
McGilbary, Kristie Rae, Seminole State College, Kiowa Indian Tribe of Oklahoma
McGlothin, Travis Michael, Harvard Medical School, Pueblo of Laguna, NM
McKerry, Jason Amel, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
McLain, Stefanie Jeanne, Oklahoma State University, Cherokee Nation, Oklahoma
McLaughlin, Audrey Jane, Pierce Community College, Yurok Tribe of the Yurok Reservation, California
McNeal, Rebecca Lynne, Oklahoma University Health Science, Choctaw Nation of Oklahoma
Meeks, Alicia Ann, East Central Oklahoma State University, Chickasaw Nation of Oklahoma
Meets, Bridget Mae, University of Montana, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Mellon, Travis James, University of the Health Sciences College, Pueblo of Zia, NM
Menka, Nazune Meega, Arizona State University, Native Village of Koyuk
Merritt, Sarah Elisabeth, East Central Oklahoma State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Miles, Mary Kristen, Northern Oklahoma College, Osage Tribe, Oklahoma
Miller, Amanda Stephanie, Northeastern State University, Cherokee Nation, Oklahoma
Miller, Carl Eugene, Northeastern State University, Muskogee (Creek) Nation, Oklahoma
Miller, Jacklyn Jean, University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Miller, Priscilla Jean, University of Alaska, Agdaagux Tribe of King Cove
Mittelstedt, Richard L., Idaho State University, Shoeshone—Bannock Tribes of the Fort Hall Reservation of Idaho
Momberg, Christina Ann, Salish—Kootenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Monette, Eugene Louis, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Montano, Alicia Dawn, University of Arizona—Tucson, Navajo Tribe of Arizona, New Mexico, & Utah
Moore, Jennifer Marie, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Morgan, Norena, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Morris, Elizabeth Lynette, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma

Morris, Jeffrey Scott, University of Minnesota, Quechan Tribe of Fort Yuma Indian Reservation, California and Arizona
Morris, Winifred, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Morrison, Clint Justin, University of Oklahoma, Chocktaw Nation of Oklahoma
Morrison, Gerlinde Maria, University of Montana, Crow Tribe of Montana
Mousseau, Francine Louise, University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Murphy, Tamelot Lynne, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Murray, Carl Arthur, Oklahoma State University, Choctaw Nation of Oklahoma
Murray, Kerry William, University of Colorado, Shoshone Tribe of the Wind River Reservation, Wyoming
Muskett, Eunice Annazbah, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Myron, Micah Aaron, Walla Walla College, Hopi Tribe of Arizona
Naasz, Katrina Hillary, University of Colorado, Navajo Tribe of Arizona, New Mexico, & Utah
Nadeau, Shawn Rochelle, Viterbo College, Turtle Mountain Band of Chippewa Indians of North Dakota
Nahno-Kerchee, Walter Jay, Oklahoma University Health Science College, Comanche Nation, Oklahoma
Namingha, Emery, University of New Mexico, Zuni Tribe of the Zuni Reservation, NM
Nelson, Shannon Lynn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Nephew-Kennedy, Lesley Ellen, SUNY at Buffalo School of Social Work, Seneca Nation of New York
Nez, Eldonna Ida, University of Alaska, Navajo Tribe of Arizona, New Mexico, & Utah
Nez, Lula, New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Nicks, Deanna Marie, Pima Medical Institute—Mesa, Hopi Tribe of Arizona
Nidiffer-Shelor, Amber Lynn, University of Oklahoma, Cherokee Nation, Oklahoma
Nilchee, Gregory Hashke Yitahoogal, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Nimsey, Dallas Micah, Southwestern Oklahoma State University, Kiowa Indian Tribe of Oklahoma
Nioce, Paul Anthony, Washburn University, Citizen Potawatomi Nation, Oklahoma
Noisy Hawk, Lyle James, Harvard University School of Education, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
North, Elizabeth Marie, Eastern Oregon University, Confederated Tribes of the Siletz Reservation, OR
Odaye, Deena May, Grand Canyon College, Reno—Sparks Indian Colony, NV
Okleasik, Sara A., Pacific University, Nome Eskimo Community
Old Elk, Georgianna WW, American University, Assiniboine & Sioux Tribes of the Fort Peck Reservation, MT
Olic, Latona Michelle, University of Wyoming School of Pharmacy, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Oliver, Jody Ann, Boise State University, Shoshone—Bannock Tribes of the Fort Hall Reservation of Idaho
O'Neal, Jamie Diane, Northern State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Oosahwe, Christen Brook, Northeastern State University, Cherokee Nation, Oklahoma
Osborn, Kasie D., Carl Albert State College, Cherokee Nation, Oklahoma
Owens, Johnie Louis, Kirksville College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Oxford, Dustin Joseph, Northeastern State University, Cherokee Nation, Oklahoma
Padilla, Tessia Marie, Albuquerque Technical Vocation, Pueblo of San Felipe, NM
Paniagua, Calvin Frederick, Arizona School of Health Sciences, Little Traverse Bay Bands of Odawa Indians, Michigan
Pappan, Cynthia Rae, Creighton University School of Pharmacy, Turtle Mountain Band of Chippewa Indians of North Dakota
Parker, Mahate Ann, East Central University, Comanche of Oklahoma
Parker, Rahnia Jean, University of Alaska System, Native Village of Kipnuk
Paul, Kimberly Lynn, Blackfeet Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Pecoss, Susanna Elizabeth, University of New Mexico, Pueblo of Cochití, NM
Peltier, Crystal Gayle, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Pepper, Traci Danielle, Tricounty Community College, Eastern Band of Cherokee Indians, North Carolina
Peratrovich, Valene Maria, Oregon State University, Alaska Native
Perdue, Mark Wayne, University of Oklahoma, Cherokee Nation, Oklahoma
Pereira, Christina Charlene Bell, University of Arizona, Tohono O'odham Nation of Arizona
Pete, Lyle Henry, Mesa Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Peterman, Sawyer, Dine College, Navajo Tribe of Arizona, New Mexico, & Utah
Peterson-Lewis, Annie May, University of Alaska, Aleut, AK
Pfilger, Natasha Renee, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Phillips, Cara Leigh, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Phillips, Crystal Lea, University of Oklahoma, Cherokee Nation, Oklahoma
Platta, Veralyn, New Mexico State University, Mescalero Apache Tribe of the Mescalero Reservation, NM
Pleasants, Tina Marie, Washington State University, Central Council of the Tlingit & Haida Indian Tribes
Pletnikoff, Elise Marie, Carroll College, Shoonaq Tribe of Kodiak, Alaska Native
Poe, Jill R., Northeastern State University, Osage Tribe, Oklahoma
Poolaw, Audrey Winnie, Southwestern Oklahoma State University, Comanche Nation, OK
Price, Aaron Joseph, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Puhuyaoma, Tammy Kaee, Coconino County Community College, Hopi Tribe of Arizona
Randy-Veinote, Ruth W., University of the Pacific, Comanche Nation, OK
Rainwater, Chelsea Lurie, College of Charleston, Pee Dee Indian Association
Rand, Kevin Bruce, University of Wisconsin, Minnesota Chippewa Tribe, MN (White Earth Band)
Rasor, Joseph James, Midwestern University, Navajo Tribe of Arizona, New Mexico, & Utah
Razote, Antoinette Jo, Central Washington University, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Red Elk, Lindsey Beth, Arizona State University, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Redsteer, Sandra Jeanette, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Renfrow, Miranda Kirstin, Northeastern State University, Choctaw Nation of Oklahoma
Reynolds, Joel Wayne, University of South Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Rice, Lily A., Mankato State College, Prairie Band Potawatomi Nation, KS
Richan, Eilene Faye, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Richards, Spencer L., Black Hills State University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Riding In, Debra Sue, Oregon State University School of Pharmacy, Confederated Tribes of the Siletz Reservation, OR
Riffe, Evelyn Laura, Oregon State University, Hooper Bay
Riley, Gail Arlene, Albuquerque Tech-Voc Institute, Pueblo of Nambe, NM
Riley, Rebecca C., University of New Mexico, Pueblo of Acoma, NM
Ringer Knudson, Nicolette Jean, University of Minnesota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Robideau, Eileen Catherine, University of Alaska, Nenana Native Association
Robinson, Charlene, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Robison-Rivera, Kristie Marie, Southwestern Oklahoma State University, Apache Tribe of Oklahoma
Rogers, Brandon Scott, Northeastern University, Cherokee Nation, Oklahoma
Roselius, Kassi, Southern Nazarene University, Citizen Potawatomi Nation, Oklahoma
Rouillard, Allison Marie, University of North Dakota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Rouse, Brant Philip, University of Oklahoma, Cherokee Nation, Oklahoma
Ruleford, Miranda Louisa, University of Tula, Cherokee Nation, Oklahoma
Sahmaunt, Marcia Ann, University of Oklahoma, Kiowa Indian Tribe of Oklahoma
Salois-Albert, Shaundra Marie, Salish Kootenai College, Confederated Salish & Kootenia Tribes of the Flathead Reservation, MT

Sanders, Chatherine Blythe, University of North Carolina, Eastern Band of Cherokee Indians of North Carolina
Sanders, Michael Shawn, University of Oklahoma, Cherokee Nation, Oklahoma
Sanderson, Kendra Marie, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Sando, Alberta Aleta, University New Mexico, Pueblo of Jemez, NM
Sando, Larnell Marie, New Mexico State University, Pueblo of Jemez, NM
Sandoval, Racheal Michele, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Sawney, Laura Renee, Northeastern State University, Cherokee Nation, Oklahoma
Scabbyrobe, Earl-Dean, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Scalpcane-Moore, Lavonne Jean, Salish-Kootenia Community College, Northern Cheynne Tribe of the Northern Cheyenne Indian Reservation MT
Schmidt, Erin Michelle, Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Schmitt, Joel Gavin, Boise State University, Jamestown Klallam Tribe of Washington
Scott, Jessica Robin, University of Washington, Central Council of the Tlingit & Haida Indian Tribes
Scott, Steven Ray, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Seyler, Debra Jean, Northland Pioneer College, Confederated Salish & Kootenai Tribes of the Flathead Reservation MT
Shangin, Nicole Danielle, Seattle Pacific University, Ivanoff Bay Village
Shea, Tamara Renee, University of Alaska System, Athabascan Alaska Native
Shelly, Amanda Elaine, Bacone College, Cherokee Nation, Oklahoma
Shepard, Christopher Allan Joseph, Pomona College, Santee Sioux Tribe of the Santee Reservation of Nebraska
Shinn-Jones, Darcy Marie, Northeastern State University, Cherokee Nation, Oklahoma
Shipton, Virginia Helen, University of Alaska, Native Village of St. Michael
Show, Michelle, University of Washington, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Shutiva, Derek J., Newman University, Pueblo of Acoma, NM
Silvers, Kristin Gail, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Simmons, Jeremiah David, Stanford University, Yankton Sioux Tribe of South Dakota
Simonson, Germaine, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Sirany, Anne-Marie Elizabeth, Boston University, Minnesota Chippewa Tribe, MN (White Earth Band)
Sirmans, Jayna Deneice, University of Houston College of Optometry, Choctaw Nation of Oklahoma
Skaggs, Amanda Marie, Northeastern State University, Cherokee Nation, Oklahoma
Slyker, Amanda Colleen, Macalester College Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Slyker, J. Nikolas, University of Montana, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Smart, Ned R., New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Smith, Angele Marie, Lewis and Clark State College, Shoshone-Pauite Tribes of the Duck Valley Reservation, NV
Smith, Dallas Rockford, Grand Canyon College, Navajo Tribe of Arizona, New Mexico, & Utah
Smith, Eliza-Mae C., Bacone College, United Keetoowah Band of Cherokee Indians in Oklahoma
Smith, Jaaniece Rene, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Smith, Patricia K., Fort Peck Community College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Smith, Phyllis Marie, Montana State University, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Smith, Seneca Martin, University of Oklahoma Health Science, Muskogee (Creek) Nation, Oklahoma
Smith, Stephaine, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Spears, Raina Ann, Oklahoma State University, Choctaw Nation of Oklahoma
Spencer, Anne P., University of New Medico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Spoon, Shawna Francene, University of Oklahoma, Sac & Fox Nation, Oklahoma
Spotted Horse, Patricia Jean, American University, Standing Rock Sioux Tribe of N. & S. Dakota
St. Claire, Billie Jo, North Dakota University, Turtle Mountain Band of Chippewa Indians of North Dakota
St. Claire, Rhea Neachet, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Stachura, Christopher Jose, University of Kansas, Menominee Indian Tribe of Wisconsin
Starr, Daniel Curtis, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Stewart, Rodney Shane, Rogers State College, Cherokee Nation, Oklahoma
Still, Melissa Brook, University of Central Arkansas, Cherokee Nation, Oklahoma
Stone, Meghan Brooke, University of Central Arkansas, Cherokee Nation, Oklahoma
Stout, Lana Dawn, Oklahoma State University, Cherokee Nation, Oklahoma
Stoope, Rebekah Sue, University of Central Oklahoma, Choctaw Nation of Oklahoma
Succo, Delores Ann, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Sun Rhodes, Neil Altair, Oregon Health Sciences University, Arapahoe Tribe of the Wind River Reservation, Wyoming
Sweeney, Michael Aaron, Brigham Young University, Choctaw Nation of Oklahoma
Tapahe, Sharon Jean, Brigham Young University, Navajo Tribe of Arizona, New Mexico, & Utah
Tapp, Jamie Lynn, Oklahoma City University, Chickasaw Nation of Oklahoma
Tawyesva, Yoland Lei, Northland Pioneer College, Hopi Tribe of Arizona
Taylor, Alexandra Ana, University of Alaska School of Nursing, Native Village of Shishmaref
Teasyatwho, Arlene Jean, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Teller, Pamela, Arizona State University, Narragansett Indian Tribe of Rhode Island
Teller, Terry Lee, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico & Utah
Ten Fingers, Javan Anthony, John F. Kennedy University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Tenequer, Valerie Leigh, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Tenorio, Rachell Marie, University of New Mexico, Pueblo of Santo Domingo, NM
Thomas, Curtiss—Lee, Northwest Technical College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thomas, Jacob Frederick, Concordia College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thompson, Benjamin Campbell, Northeastern State University, Cherokee Nation, Oklahoma
Thompson, Jennifer Lynn, Western Carolina University, Eastern Band of Cherokee Indians of North Carolina
Thompson, Lorinda, Northland Pioneer College, White Mountain Apache Tribe of the Fort Apache Reservation, AZ
Thompson, Paula Gail, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Thompson, Stacey Marie, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Thompson, Toshina Krystal, Fort Lewis College, Navajo Tribe of Arizona, New Mexico, & Utah
Tiger, Brandy Susan, Arizona School of Health Sciences, Muskogee (Creek) Nation, Oklahoma
Tillman, Amy Beth, University of Central Oklahoma, Choctaw Nation of Oklahoma
Toadlena, Evelyn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Todicheeney, Sharon Ann, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Tom, Ardith Renee, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Tom, Jennifer Michell, Hunter College, Choctaw Nation of Oklahoma
Toppah, Teresa Ann, Tarrant County College, Kiowa Indian Tribe of Oklahoma
Torralba, Vernon Charles, College of St. Scholastica, Crow Tribe of Montana
Torres, Michelle Lynn, Heritage College, Chippewa—Creek Indians of the Rocky Boy's Reservation, MT
Townsend, Travis J., University of New Mexico, Pueblo of Acoma, NM
Toya, Alleyne U., TVI Community College, Pueblo of Laguna, NM
Tracy, Cassandra Glenbah, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah

Trimm, Amber—Ladawn, East Central University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Trombley, Diana Lynn, Salish Kootenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Trujillo, Jesse Juan, University of Washington, Pueblo of San Juan, NM
Tsethlikai, Tami—Denice, University of New Mexico—Albuquerque, Zuni Tribe of the Zuni Reservaiton, NM
Tsingine, Georgia Lynn, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Tso, Joann Carla, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Tso, Vera Jane, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Tso-Garcia, Jennifer Lynn, University of Washington, Navajo Tribe of Arizona, New Mexico, & Utah
Tsosie, Roberta Ann, Long Technical College, Navajo Tribe of Arizona, New Mexico, & Utah
Tunnell, Kimberly Renee, Oklahoma State University, Kiowa Indian Tribe of Oklahoma
Tupponce, Thomas Edward, Old Dominion University, Upper Mattaponi Indian Tribe
Turney, Jarett Brandon, Marquette University Dental School, Cherokee Nation, Oklahoma
Tveit, Adrienne Hilda, Washington State University, Central Council of the Tlingit & Haida Indian Tribes
Uhl, Sarah Elizabeth, Baylor University, Cherokee Nation, Oklahoma
Underwood, Eugenia Raeann, East Central Oklahoma State University, Mississippi Band of Choctaw Indians, MS
Uttchin, Venus, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Valdo, Gerald David, Colorado State University, Pueblo of Acoma, NM, NM
Van Winkle, Tom R., Trinity Christian College, Navajo Tribe of Arizona, New Mexico, & Utah
Vance, Ronda Lynn, University of North Dakota, Muskogee (Creek) Nation, Oklahoma
Vargas, Raquel Ann, University of Texas Medical Branch—Galveston, Choctaw Nation of Oklahoma
Varnell, Cassidy Gertrude, Connors State College, Cherokee Nation, Oklahoma
Velasquez, Mary Christina, New Mexico Highlands University, Southern Ute Tribe
Vlasoff, Martha Jay, University of Alaska—Anchorage, Native Village of Eyak (Cordova)
Wagner, John William, Montana State University—Bozeman, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Walker, Erin Frances, University of Wisconsin, Little Traverse Bay Bands of Odawa Indiana, MI
Walker, Jonathan Bayless, Oklahoma Christian College, Choctaw Nation of Oklahoma
Walker, Marshall Austin, University of Oklahoma—Norman, Cherokee Nation, Oklahoma
Walker, Stacee Lynn, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Wallace, Kacey Leann, Oklahoma State University College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Walton, Amber Nicole, Washington University, Navajo Tribe of Arizona, New Mexico, & Utah
Wanna, Nicholas Lee, Northwestern Health Services, Sisseton—Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Waquie, Monica Janet, New Mexico Highlands University, Pueblo of Jemez, NM
Ward, Micah N., Oklahoma City Community College, Citizen Potawatomi Nation, OK
Ward, Rolanda Reason, University of Alaska Anchorage, Egegik Village
Wartz, Kaye Ellen, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Wasin Zi, Fawn Catherine, University of Maryland, Standing Rock Sioux Tribe of North and South Dakota
Watford, Velma Jean, Pima Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Watson, Matthew Mendioro, Columbia University College of Physicians & Surgeons, Ottawa Tribe of Oklahoma
Watts, Candace Summerz, Sweet Briar College, Navajo Tribe of Arizona, New Mexico, & Utah
West, Jonathan Lee, Northeastern State University, Cherokee Nation, Oklahoma
White, Erin Janet, University of North Carolina—Chapel Hill, Lumbee
White, Karen Ann, Apollo College, Navajo Tribe of Arizona, New Mexico, & Utah
Whiteface, Angel Rose, Oglala Lakota College, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Whitechair, Robbie Gayle, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Whitechair, Rosalita Marie, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Whitehorse, Veronica Ann, San Diego State University, Navajo Tribe of Arizona, New Mexico, & Utah
Widmyer, Janet May, University of Alaska, Ketchikan Indian Corp
Wilbourn, Crystal Lea, Belmont University, Cherokee Nation, Oklahoma
Wiley, Matthew Hallett, East Central University, Muskogee (Creek) Nation, Oklahoma
Wilkerson, Thaddus Donavan, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Willcuts, Peggy Sue, South Dakota State University, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Willeto, Virginia, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Williams Burns, Amanda Kay, Southwestern Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Williams, Rhonda Lynette, University of New Mexico—Albuquerue, Navajo Tribe of Arizona, New Mexico, & Utah
Williams, Scott Bradley, Northeastern State University, Cherokee Nation, Oklahoma
Willman, Peggy Ann, University of Alaska, Native Village of Ambler
Wilson, Chase Te, Southeastern Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Wilson, Dena Lynn, University of Washington School of Medicine, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Wilson, Ellen Lucille, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Wilson, Kelli Rae Lee, University of New Mexico—Albuquerque, Seminole Nation of Oklahoma
Wilson, Sunni Elaine, Northeastern State University, United Keetoowan Band of Cherokee Indians in Oklahoma
Windam, Tera Beth, Northeastern State University, Cherokee Nation, Oklahoma
Windship, Venita Lynn, Eastern Oklahoma State College, Choctaw Nation of Oklahoma
Wiseman, Toni Jeanne, Oklahoma City University, Muskogee (Creek) Nation, Oklahoma
Wood, Chad Nathaniel, University of Utah College of Medicine, Cherokee Nation, Oklahoma
Woodard, Amanda-Lea, University of Oklahoma—Norman, Cherokee Nation, Oklahoma
Woodard, David Rush, University of Missouri, Osage Tribe, OK
Woodruff, Patience M., University of North Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Woods, Lacy Ann, East Central University, Chickasaw Nation of Oklahoma
Worker-Geiger, Shanna Renee, Grand Canyon University, Navajo Tribe of Arizona, New Mexico, & Utah
Wright, Theodore Charles, University of Alaska, Central Council of the Tlingit & Haida Indian Tribes
Yandell, Seth David, University of Texas Medical Branch—Galveston, Choctaw Nation of Oklahoma
Yarbrough, Latasha Renee, Rose State College, Cheyenne-Arapaho Tribes of Oklahoma
Yazzie, Abiegail B., New Mexico Highlands University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Carmelita Jean, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Charisse Lindsey, Arizona State University,, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Kathleen Elaine, Indiana University East, Narragansett Indian Tribe of Rhode Island
Yazzie, Maria, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Nazhone Paul, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Olivia, North Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Sharon, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Shelia Rae, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Shihomi Rae, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Timothy, Midwestern University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie-Francisco, Myra Lynn, Phoenix College, Navajo Tribe of Arizona, New Mexico, & Utah
Yellowhair, Jeannine Ann, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Young, Naomi Jean, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Young, Sawar Chalutch, University of Washington, Yurok Tribe of the Yurok Reservation, California
Young Wallace, Liana J., University of Alaska Southeast, Central Council of the Tlingit & Haida Indian Tribes
Yuselew, Aaron, Pima Medical Institute—Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Zachery, Kathryn Sue, University of Oklahoma—Norman, Muskogee (Creek) Nation, Oklahoma
Zahne, Janis Ivy, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Zospah, Raelene Dee, Montana State University, Navajo Tribe of Arizona, New Mexico, & Utah
Zuni, Angelica Celeste, Fort Lewis College, Pueblo of Isleta, NM
Zwaryck, Shelby Leona, University of Montana School of Pharmacy, Chippewa-Cree Indians of the Rocky Boys Reservation, MT
Zwaryck, Tonk Marie, Salish Kootenai College, Chippewa-Cree Indians of the Rocky Boys Reservation, MT

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, Telephone: (301) 443–6197, Fax: (301) 443–6048.

Dated: June 2, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 03–14393 Filed 6–6–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NCI Cancer Information Service Demographic/Customer Service Data Collection

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The National Cancer Institute Cancer Information Service Demographic Customer Service Data Collection. *Type of Information Collection Request:* Revision with change of a currently approved collection. (OMB No. 0925–0208, expiring 10–31–2003) *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on cancer, clinical trials, and tobacco cessation. Characterizing users and how they found out about the CIS is essential to customer service, program planning and promotion. This effort involves a brief survey of users of the 1–800–4–CANCER toll-free service and LiveHelp, a web-based chat service. The telephone survey contains seven questions—3 customer service and 4 demographic—asked of a subset of callers (cancer patients, their family or friends, and the general public) at the end of usual service for an annual total of approximately 286,000 callers. One hundred percent of these callers will be asked the three customer service questions for an annual total of approximately 286,000 callers; 25% of callers will be asked the four demographic questions for an annual total of approximately 71,500 callers. If the call is the result of a special promotion, 50% of callers will be surveyed for demographics. Special promotions account for an estimated 30% of calls for an annual total of approximately 42,900 callers. The combined annual total is 400,400 callers. The LiveHelp web survey involves asking the same seven questions to 50% of the same subset of users for an annual total of approximately 5,500 users. The combined total to be surveyed each year is 405,900 users of the telephone and LiveHelp services for a total of 1,951 annual burden hours. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Individuals or Households				
Telephone:				
—3 questions (100%)	286,000	1	0.00328	937
—4 questions (25%)	71,500	1	0.0083	594
—4 questions (50%)/special promotions	42,900	1	0.0083	356
Subtotal	400,400			1,888
LiveHelp:				
—7 questions (50%)	5,500	1	0.0116	64
Subtotal	5,500			64
Annualized Totals	405,900			1,952

The annualized cost to respondents is estimated at: $31,904. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Madeline LaPorta, Deputy Director, Office of Cancer Information Service, National Cancer Institute, 6116 Executive Boulevard, MSC 8322, Bethesda, Maryland 20892–8322, telephone (301) 594–8025, fax (301) 402–0555.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of the publication.

Dated: June 2, 2003.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–14419 Filed 6–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research on the Mental Health of Minority Populations.

Date: June 25, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14420 Filed 6–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel T35 short Term Training Applications.

Date: June 13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sandy Warren, DmD, MpH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov.*

This notice is being published less that 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 GMA1 01Q: Dermatology and Rheumatology: Quorum.

Date: June 16–17, 2003.

Time: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less that 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Detection by Lymphocyte Metabolite Activity.

Date: June 17, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less that 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: June 19–20, 2003.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Innate Immunity/Host Defense.

Date: June 20, 2003.

Time: 7:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221 *laingc@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing Epidemiology and Methods 5.

Date: June 20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Ann Hardy, DRpH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Radiation Biology and Medical Physics.

Date: June 20, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–2681, *mayyasis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–L (30) Review of Four s10 Proposals.

Date: June 20, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Collaborative Projects.

Date: June 20, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, (301) 435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel Biophysical Study of a Ribozyme.

Date: June 20, 2003.

Time: 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SRB 50R: Bioengineering Research Partnerships: PAR03–032.

Date: June 22, 2003.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DsC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business Innovation Research Grants.

Date: June 22–23, 2003.

Time: 7 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillon, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Diagnostic and Treatment.

Date: June 23–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Leda Maria Cummings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *cumminle@csr.nih.gov.*

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group Orthopedics and Musculoskeletal Study Section.

Date: June 23–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group Cardiovascular and Renal Study Section.

Date: June 23–25, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Reproductive Biology Study Section.

Date: June 23–24, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Biochemical Endocrinology Study Section.

Date: June 23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Molecular, Cellular and Developmental Neurosciences 3.

Date: June 23–24, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group Biobehavioral and Behavioral Processes 4, Cognition and Perception.

Date: June 23–24, 2003.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Metallobiochemistry Study Section.

Date: June 23–24, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1723, *nelsonja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict Special Emphasis Panel on Visual Attention.

Date: June 23, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm: 3184 MSC: 7848, Bethesda, MD 20892, (301) 402–4454, *champoum@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Bridges Student Association.

Date: June 23, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Department of Health and Human Services, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CPA 04M: Prostate Pathology.

Date: June 23, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Bioengineering Research Grant Review.

Date: June 23, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship Study Section ZRG1 F02A (20)L.

Date: June 24, 2003.

Time: 7:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG 1 NMS: Nutritional and Metabolic Sciences.

Date: June 24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Harry Brodie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6158, MSC 7892, Bethesda, MD 20892, (301) 402–6297

Name of Committee: Center for Scientific Review Special Emphasis Panel Genetic and Physical Analysis of Recombination Repair.

Date: June 24, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

Name of Committee: Center for Scientific Review Special Emphasis Panel Chemistry/Biophysics SBIR/STTR Panel.

Date: June 25, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Experimental Therapeutics Subcommittee 2.

Date: June 25–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Microbial Physiology and Genetics Subcommittee 1.

Date: June 25–26, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514. *westnea@cst.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Social Sciences, Nursing, Epidemiology and Methods 1.

Date: June 25–27, 2003.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Terrace Hotel, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EdD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 PC (00) S Lipoprotein Metabolism.

Date: June 25, 2003.

Time: 7 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14421 Filed 6–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Safe Schools/Healthy Students Sustainability Study—New—This study, a project of SAMHSA's Center for Mental Health Services (CMHS), involves a survey of project directors or other designated staff associated with the Safe Schools/Healthy Students (SS/HS) Initiative. The SS/HS Initiative is a collaborative effort between the U.S. Departments of Education, Health and Human Services, and Justice. Under this initiative, local education agencies (LEAs) were awarded grants in partnership with their local mental health agency and their local juvenile justice agency. Between September 1999 and September 2002, 143 communities received three-year awards under the SS/HS Initiative.

As this Initiative was designed to facilitate sustainable change within communities, CMHS would like to determine the extent to which systems-level changes, programs, and services initiated as part of SS/HS continue when the grant ends. A web-based survey of project directors will be conducted annually for three years. Respondents will be project directors or other designated staff responsible for continuing programs and services following the SS/HS grant.

This information will be used by CMHS to improve the grant making process and the provision of technical assistance. The following table describes the response burden associated with this data collection.

Year	Number of respondents	Responses per respondent	Hours per response	Total burden hours
One	77	1	.5	39
Two	97	1	.5	49
Three	143	1	.5	72
Total	317			160
3-yr. Annual Average	106			53

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 2, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–14388 Filed 6–6–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15189]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Application forms should reach us on or before September 9, 2003.

ADDRESSES: You may request an application form by writing to Commandant, Office of Boating Safety (G–OPB–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–1077; or by faxing 202–267–4285. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey N. Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC members are drawn equally from the following three sectors of the boating community: State officials responsible for State boating safety programs, recreational boat and associated equipment manufacturers, and national recreational boating organizations and the general public. Members are appointed by the Secretary of the Department of Homeland Security.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications received in response to this notice for the following eight positions that expire or become vacant in December 2003: Two representatives of State officials responsible for State boating safety programs, two representatives of recreational boat and associated equipment manufacturers, and four representatives of national recreational boating organizations and the general public. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Prior applicants should submit an updated application to ensure consideration for the vacancies announced in this notice. Each member serves for a term of up to 3 years. Some members may serve consecutive terms.

In support of the policy of the U. S. Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: June 2, 2003.

Jeffrey J. Hathaway,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 03–14436 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1466–DR]

Alabama; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–1466–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14410 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Allen County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment, Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14404 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1459–DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1459–DR), dated April 24, 2003, and related determinations.

EFFECTIVE DATES: May 29, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 24, 2003:

Leake County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14403 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1470–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1470–DR), dated May 23, 2003, and related determinations.

EFFECTIVE DATE: May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe storms, tornadoes and high winds on May 5–8, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos M. Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Calhoun, Clay, Chickasaw, Itawamba, Lee, Lowndes, Monroe, Pontotoc and Webster Counties for Individual Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14411 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Crawford, Maries, and Oregon Counties for Public Assistance.

Bollinger, Franklin, Knox, Miller, Osage, Pulaski, and Washington Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14405 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14406 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1465–DR]

Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1465–DR), dated May 10, 2003, and related determinations.

EFFECTIVE DATE: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14409 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1464-DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 2003:

Anderson, Knox, and Loudon Counties for Individual Assistance.

Cumberland and Roane Counties for Individual Assistance (already designated for Public Assistance.)

Bedford County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14408 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1464–DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14407 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 23, Payment for Appointment Counsel in Involuntary Child Custody Proceedings in State Courts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Payment for Appointment Counsel in Involuntary Child Custody Proceedings in State Courts, is cleared under OMB Control Number 1076–0111. Interested parties are invited to comment on this collection.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Written comments should be sent directly to Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, Division of Human Services, 1951 Constitution Avenue, NW., (MS–320–SIB), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 513–7621, Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a State court may send written notice to the Bureau of Indian Affairs (Bureau) when appointment of counsel is not authorized by State law. The cognizant Bureau Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please note, any comments, names and addresses concerning this submission will be available for public review during regular business hours (8 a.m. to 4:30 p.m). If you wish your name and address withheld you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

III. Data

Title of the Information Collection: Payment for Appointment Counsel in Involuntary Indian Child Custody Proceedings in State Courts.

Nature of Action: Renewal of 1076–0111.

Summary of Collection of Information: The collection of information will ensure that the provisions of Public Law 95–608 are met.

Affected Entities: State Courts and Individual Indian pursuant to 25 CFR 23.13 in order to obtain a benefit.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

Dated: June 2, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–14402 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–03–1310–MSES 46350]

Proposed Reinstatement of Terminated Oil and Gas Lease, Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease, MSES 46350, Jefferson Davis County, Mississippi, was timely filed and accompanied by all required rentals and royalties. No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rental and royalties at rates of $10 per acre and 12⅔ percent. Payment of $500 in administrative fees and a $158 publication fee has been made.

FOR FURTHER INFORMATION CONTACT: Gina Goodwin, Land Law Examiner, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153 at (703) 440–1534.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is proposing to reinstate the lease effective the date of termination, January 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)).

Dated: April 24, 2003.

Walter Rewinski,

Acting Associate State Director.

[FR Doc. 03–14454 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EQ; N–2769]

Termination of Airport Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination.

SUMMARY: This action terminates Airport Lease N–2769 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

DATES: The effective date is July 9, 2003.

ADDRESSES: Address all written comments concerning this notice to: Jeffrey A. Weeks, AFM Nonrenewable Resources, Bureau of Land Management, HC 33 Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Technical Information: Doris Metcalf, Lead Realty Specialist, at 775–289–1852 or e-mail *Doris_Metcalf@nv.blm.gov* or Cynthia Longinetti, Resource Assistant, at 775–289–1809 or e-mail *Cynthia_Longinetti@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: Under the authority delegated by Appendix 5 of

Bureau of Land Management Manual Supplement 1203, dated November 25, 1998, Private Airport Lease N–2769, located on the following lands, is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 5 N., R. 67 E., Section 33, S½N½, Section 34, SWNE, S½NW.

Containing 280 acres in Lincoln County, Nevada.

The classification under the Act of May 24, 1928, segregated the public land from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws. Airport Lease N–2769 is no longer required and has been closed in accordance with BLM and FAA requirements. The land is now open under the public land laws, including the mining and mineral leasing laws.

Dated: April 28, 2003.

Gene A. Kolkman,

Field Manager.

[FR Doc. 03–14451 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–1430–ET; AZA–13014]

Public Land Order No. 7570; Partial Revocation of Secretarial Order Dated July 2, 1902, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order dated July 2, 1902, insofar as it affects approximately 159 acres of land withdrawn for the Bureau of Reclamation's Salt River Project. This order makes the land available for conveyance under the Recreation and Public Purposes Act.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 21605 North 7th Ave., Phoenix, AZ 85027, 623–580–5570.

SUPPLEMENTARY INFORMATION: The land is no longer needed for reclamation purposes and the Bureau of Reclamation concurs with the partial revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated July 2, 1902, which withdrew land for the Bureau of Reclamation's Salt River Project, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

T. 1 N., R. 2 E.,

Sec. 30, lot 3, NE¼SW¼, and N½SE¼.

The area described contains approximately 159 acres in Maricopa County.

2. The land described in Paragraph 1 is hereby made available for conveyance under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 (1994).

Dated: May 21, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 03–14455 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–5700–EU; CACA–43472]

Notice of Realty Action: Non-Competitive Sale of Public Lands, El Dorado County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The public lands identified below have been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713, and 90 Stat. 2757–58, 43 U.S.C. 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), at not less than appraised market value. The market value opinion of the approved appraisal is $25,000. The potential buyer of the parcel Joseph F. Parisi will make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface.

Mount Diablo Meridian

T. 9 N., R. 12 E.,

Sec. 21, W½NW¼NW¼NE¼, S½NW¼NW¼SE¼NE¼, SW¼NW¼SE¼NE¾.

Containing 4.06 acres more or less.

The purpose of the proposed sale is to dispose of a parcel of public land that is difficult and uneconomic to manage as part of the public lands of the United States. It is also proposed for sale in order to resolve a trespass of Joseph F. Parisi. The proposed sale is consistent with the Folsom Field Office Sierra Planning Area Management Framework Plan (July 1988), and the public interest will be served by offering the parcel for sale. The parcel will be offered for non-competitive sale to Joseph F. Parisi, the adjacent landowner.

Pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), the proceeds from the sale will be deposited into a Federal Land Disposal Account and used to acquire non-federal land within the State of California. The money will be used to purchase lands for the BLM, National Park Service, Forest Service, or Fish and Wildlife Service.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will reserve the following: By Executive Order for Power Site Reserve 416, subject to Section 24 of the Federal Power Act on July 24, 1997. Reservation for ditches and canals.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments pertaining to this action. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land sale, including relevant planning and environmental documentation, may be obtained from the Folsom Field Office at the above address. Telephone calls may be directed to Jodi Swaggerty at (916) 985–4474.

SUPPLEMENTARY INFORMATION: Objections to the sale will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first. Pursuant to the application

to convey the mineral estate, the mineral interests of the United States are segregated by this notice from appropriation under the public land laws, including the mining laws for a period of two years from the date of filing the application.

Dated: January 17, 2003.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 03–14447 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–76239, N–76847, and N–76858]

Notice of Realty Action (NORA) of the Segregation and Competitive Sale of Public Lands in White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action (NORA) of the segregation and competitive sale of public lands in White Pine County, Nevada.

SUMMARY: The public lands listed below in White Pine County, Nevada have been examined and found suitable for disposal, at not less than fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713, and 1719). Upon publication of this notice in the **Federal Register**, the public lands listed below will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws.

DATES: Interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources, on or before July 24, 2003.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, will be available at the Ely Field Office of the Bureau of Land Management, 702 North Industrial Way, Ely, Nevada 89301–9408 or by contacting Brenda Linnell, Realty Specialist, at the above address or by telephone (775) 289–1808.

Competitive Land Sale and Segregation: The following described parcels of land, situated in White Pine County are being offered as a competitive sale on August 19, 2003.

Mount Diablo Meridian, Nevada

Parcel 1, casefile N–76239 located at:

T. 14 N., R. 64 E.,

Section 32, NW¼, W½W½NE¼,

Containing 200.00 acres more or less.

Parcel 2, casefile N–76847 located at:

T. 17 N., R. 55 E.,

Section 6, W½SW¼SE¼NW¼, a portion of lot 5 generally described as the E½SE¼SW¼NW¼ (pending redesignation by supplemental plat as lot 13, Section 6),

Containing 10.00 acres more or less.

Parcel 3, casefile N–76858 located at:

T. 10 N., R. 62 E.,

Section 5, SW¼NE¼, SE¼NW¼,

Containing 80.00 acres more or less.

These lands are not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject lands will be sold for at least fair market value (FMV) as determined by appraisal. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests.

Each parcel will be offered by sealed bid and at oral auction. All sealed bids must be received at the BLM Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301–9408, or hand delivered at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada no later than 4:15 PM, PDT, August 15, 2003. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel. Each sealed bid shall be accompanied by a bid deposit of not less than 20 percent of the amount bid and full payment of the $50.00 non-refundable filing mineral fee in the form of cash, certified check, postal money order, bank draft, cashiers check, or personal check made payable to "USDI, Bureau of Land Management.

The highest qualified sealed bid for each parcel will become the starting bid for the oral bidding. If no bids are received, oral bidding will begin at the appraised FMV. All parcels will be offered by oral auction at 10 AM, PDT, August 19, 2003, at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada. Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

The highest qualifying bid for each parcel, whether sealed or oral, will be declared the high bid. The high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashier's check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. If not paid by close of the auction, funds must be delivered no later than 4:15 PM, PDT, the day of the sale to the BLM Ely Field Office. Should the highest bidder default, the next highest bidder will be declared the high bidder.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the high bidder and cause the bid deposit to be forfeited to the BLM. If the highest qualified bid is rejected or the bidder released from it, the authorized officer will determine if the parcel shall be reoffered to the next highest bidder.

If the lands are not sold, they may remain available for sale on a continuing basis until sold. Sealed bids will be accepted on every Wednesday (by 4 pm PDT) of each month commencing the first week of September 2003 till the parcel is sold or by January 23, 2004, at no less than the fair market value. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and clearly marked "SEALED BID: NV–430–1430–EU September 2003, for Parcel # as appropriate. Bid amounts must be stated in the bid and signed. All bids shall be accompanied by a bid deposit of 20 percent of the amount bid and full payment of the $50.00 non-refundable filing mineral fee in the form of cash, certified check, postal money order, bank draft, cashiers check, or personal check made payable to "USDI, Bureau of Land Management. The remainder of the full bid price must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the apparent

bidder and cause the bid deposit to be forfeited to the BLM.

Federal law requires that bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing and potential uses for nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas mineral deposits, and geothermal steam and associated geothermal resources in the land subject to this conveyance, including, without limitation, the disposition of these substances under the mineral leasing laws and Geothermal Steam Act, would be reserved to the United States. Its permittees, licensees and lessees, have the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes necessary access and exit rights and the right to conduct all necessary and incidental activities including, without limitation, all drilling, underground, storage and transportation facilities deemed reasonably necessary.

3. All land parcels are subject to all valid and existing rights. Encumbrances of records are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

4. The parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or leasees, or any third party, arising out of, or in connection with, the patentee's use, occupancy, or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or leasees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state laws. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. Any comments received during the process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to the Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from the public release will be honored to the extent permissible by law.

Dated: April 23, 2003.

Jeffrey A. Weeks,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 03–14449 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–76188]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purposes lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). The Crossing, a nonprofit Christian church proposes to use the land for development of a church campus consisting of a sanctuary, chapel, community hall, offices, bookstore and classrooms.

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 9, NW¼SE¼SE¼, E½SW¼SE¼SE¼.
Consisting of 15 acres.

The land is not required for any federal purpose. Lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. All valid and existing rights.

2. Those rights for utility purposes (flood control purposes) which have been granted to Clark County, Nevada, by right-of-way N–59041 pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for public roads which have been granted to Clark County by right-of-way grant N–63015 pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 or by calling (702) 515–5129.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed classification for lease/conveyance of the lands to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the proposed facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision or any other factor not related to the suitability of the land for the proposed church facilities. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this Realty action. In the absence of any adverse comments, the classification of the land described in the Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Jacqueline Gratton,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. 03–14452 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–PA]

Notice of Intent To Prepare the Arkansas River Travel Management Plan and Amend the Royal Gorge Resource Management Plan

AGENCY: Bureau of Land Management; Royal Gorge Field Office; Interior.

ACTION: Notice of Intent to prepare the Arkansas River Travel Management Plan and to consider amending the Royal Gorge Resource Management Plan (RMP).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to initiate a comprehensive planning effort to address Off-Highway Vehicle (OHV) travel and other related road and trail issues for a portion of the Royal Gorge Field Office. The plan, entitled the Arkansas River Travel Management Plan (TMP), will focus specifically on those BLM Public Lands that lie between Canon City and Salida, Colorado, and involves approximately 210,000 acres of Public Lands located in central and western Fremont County and northern Custer County, CO. The TMP will amend the Royal Gorge RMP. The TMP and plan amendment implement decisions made in the Royal Gorge RMP to limit OHV use to designated roads and trails, and to develop local travel management plans with public participation. The amendment process will be used to establish a system of designated roads and trails that meets the needs of the public and protects the cultural and natural resources of the Public Lands. The amendment and associated EA will be prepared pursuant to the BLM planning regulations in 43 CFR part 1600. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria. The EA will analyze and compare the impacts of any changes in OHV designation and management with the continuation of current management, and other alternatives that may be identified. The TMP is being prepared through coordination with other federal, state

and local agencies, and affected public land users.

DATES: This notice initiates the public scoping process. Comments on issues and concerns can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RMP amendment/EA. All public meetings will be announced through the local news media, newsletters, and the BLM Web site at: *http://www.co.blm.gov/ccdo/canon.htm*, at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held during the plan scoping period. Early participation is encouraged and will help determine the future travel management of the public lands involved in this amendment. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment upon the publication of the BLM draft RMP amendment, EA, and an unsigned Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to Bureau of Land Management, Royal Gorge Field Office, ATTN: Arkansas River TMP, 3170 East Main Street, Canon City, CO 81212; FAX 719–269–8599. Documents pertinent to this proposal may be examined at the Royal Gorge Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Royal Gorge Field Office during regular business hours (8 am to 4:30 pm), Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Dave Walker, Team Leader, at the Royal Gorge Field Office address listed above or by calling (719) 269–8545, or e-mail at *David_Walker@blm.gov*.

SUPPLEMENTARY INFORMATION: The use of roads and trails for motorized and non-motorized recreation activities is an important use of BLM Public Lands. In response to recommendations made by the Front Range Resource Advisory Council, the BLM proposes developing a travel management plan and establishing OHV travel designations to restrict motorized travel to designated roads and trails. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The preliminary issues include: Impacts to public land users and adjacent private landowners; impacts to wildlife habitat; and impacts to water quality, vegetation, including riparian and wetland areas, and soils. These issues, along with others that may be identified through public participation, will be considered in the planning process. After gathering public comments on what issues the plan amendment should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan amendment. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, forestry, outdoor recreation, law enforcement, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, vegetation, and fire.

Notification will be made to the Governor of Colorado, the Fremont and Custer County Commissioners, adjacent landowners, and potentially affected members of the public.

Roy L. Masinton,

Field Manager.

[FR Doc. 03–14448 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–03–1610–JP–064B]

Notice of Intent To Designate Routes of Travel and Amend the Redding Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to designate routes of travel and amend the Redding Resource Management Plan (RMP).

DATES: Scoping comments will be accepted in person, by mail and email until July 9, 2003. Comment periods and planning meetings will be publicized in Shasta and Trinity counties through local news media.

ADDRESSES: Comments should be sent to Charles M. Schultz, Field Manager, Bureau of Land Management, Redding Field Office, 355 Hemsted Dr., Redding, CA 96002.

FOR FURTHER INFORMATION CONTACT: Andy Isola, Outdoor Recreation Planner, at the above address, telephone number (530) 224–2126, or e-mail: *aisola@ca.blm.gov*.

SUMMARY: The Bureau of Land Management proposes to amend the Redding Resource Management Plan pursuant to the Code of Federal Regulations (CFR) at 43 CFR 1610.2(c). The proposed amendment would establish or revise designations of ways, routes, and trails for off-highway vehicles in accordance with 43 CFR part 8342. The proposals will include public lands in the Interlakes Special Recreation Management Area, a complex of routes west of French Gulch Road and east of County Line Road North, the Sacramento River Bend Area of Critical Environmental Concern (ACEC), and other areas that may be identified in the planning process.

SUPPLEMENTARY INFORMATION: Input from previous public meetings and written comments from previous public discussions will be used to define issues. Preliminary issues identified include: Off-highway vehicle recreation use; adequate vehicle access for other casual uses, and visitor safety. All vehicular travel on public lands in the planning area will be restricted to the designated routes.

Planning criteria will honor valid existing rights. The amendment will be consistent with officially approved resource related plans, policies and programs of other Federal agencies, State and local governments, and Indian Tribes, so long as the guidance and plans are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands. The plan will comply with trail designation regulations (43 CFR part 8340). The planning process shall include an environmental assessment with a biological evaluation prepared in compliance with the National Environmental Policy Act of 1969 (NEPA), the President's Council of Environmental Quality (CEQ) regulations (40 CFR part 1500), and BLM planning regulations (40 CFR part 1600). The Bureau will rely largely on existing route inventory data, information obtained from coordination with other federal, state, and local agencies, and public comments.

Comments, including names and addresses of respondents, will be available for public review at the Redding Field Office during normal working hours (7:45 AM to 4:30 PM, except holidays), and may be published as part of the EA or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: March 7, 2003.

Charles M. Schultz,

Field Manager.

[FR Doc. 03–14446 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–017]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: June 16, 2003, at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 731–TA–1034–1035 (Preliminary) (Certain Color Television Receivers from China and Malaysia)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on June 16, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 23, 2003.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14619 Filed 6–5–03; 3:07 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day notice of information collection under review: new collection Advanced Explosives Destruction Techniques (AEDT) training course follow-up evaluation form

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joanne Bailey, Learning Systems Management Division, 800 K Street NW., Suite 600, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, Local, or Tribal Government. Other: None. The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4-Level Model is used to evaluate ATF training programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 354 respondents will complete a 12 minute survey.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 71 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 3, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–14381 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: renewal of an existing collection report of mail order transactions.

SUMMARY:

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Renewal of an existing collection.

(2) *Title of the Form/Collection:* Report of Mail Order Transactions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Comprehensive Methamphetamine Control Act of 1996 (Public Law 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are forty (40) total respondents for this information collection. Thirty-seven (37) respond on paper, taking 1 hour for each response to do so. Three respondents submit electronically, taking 15 minutes to do so. Respondents are required by law to respond monthly.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This collection requires a total of 453 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 3, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–14352 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: renewal of an existing collection; annual reporting requirement for manufacturers of listed chemicals.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Renewal of an existing collection.

(2) *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Business or other for-profit. Other: None. This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents respond annually to this information collection, with each response estimated to take four hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This information collection is estimated to take 400 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 3, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–14353 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978.

NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 9, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant—*

Peter Doran, Earth and Environmental Sciences (MC 186), University of Illinois at Chicago, Chicago, IL 60607.

Activity for Which Permit Is Requested

Take and Import Into the United States. Last season, as part of the McMurdo Dry Valley Long Term Ecological Research project, the applicant collected sediment cores from the lakes in the Taylor Valley to determine the paleoenvironment and legacy in the current ecosystem. Data from the lake water suggest that while most of the lakes have retained their ice covers for thousands of years, the East Lobe of Lake Bonney may have only formed a perennial ice cover in the 200 years. All the Taylor Valley lakes have dead seal and penguin remains on their ice surfaces. They remain on the surface because they are too big for the sun to melt them significantly into the ice. Therefore, establishing the time since these animals died will determine the minimum age of the lake ice covers. The applicant proposes to collect samples (1–5 gm) of bone or soft tissue from the most decayed penguin and seal carcasses on the lake surfaces. These samples will be returned to the United States for further study. It has been established that a carbon reservoir correction of ~ 1200 years should yield reasonable radiocarbon ages for these animals.

Location

Lake Bonney, Taylor Valley.

Dates

November 1, 2003 to December 31, 2003

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–14422 Filed 6–6–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR)—(61).

Date and Time: June 17–18, 2003, 8 a.m.–5 p.m.

Type of Meeting: Open.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Kesh Narayanan, Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation (703) 292–7076, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda: June 17, 2003, Room 1235.

8:30 am—Welcome.
8:35 am—Introductions.
9:15 am—Break.
9:30 am—SBIR/STTR Program Overview.
12 noon—Lunch.
1 pm—Special Topics.
3 pm—Break.
3:15 pm—Open Discussion.
5 pm—Adjourn.

Agenda: June 18, 2003, Room 1235.

8:15 am—Open Discussion.
10 am—Break.
10:15 am—Discussion and Preparation of Committee Report.
12 noon—Lunch.
1 pm—Discussion and Preparation of Committee Report.

3 pm—Feedback from the Committee.
5 pm—Adjourn.

Dated: June 3, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–14362 Filed 6–6–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Co., Fermi 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Detroit Edison Company (the licensee) to withdraw its May 23, 2003, application for an amendment to Facility Operating License No. NPF–43 issued to the licensee for operation of the Fermi 2, located in Monroe County. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on June 25, 2002 (67 FR 42819).

The purpose of the licensee's amendment request was to modify the Fermi 2 Technical Specifications by revising the requirements for system operability during movement of recently irradiated fuel assemblies in the secondary containment.

Subsequently, the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 23, 2002, and (2) the staff's letters dated May 14, 2003, and June 3, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of June 2003.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–14398 Filed 6–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2377]

Environmental Assessment and Finding of No Significant Impact Related to the Approval of the Decommissioning Plan for Kaiser Aluminum & Chemical Corporation, Tulsa Facility, Tulsa, OK

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the Decommissioning Plan (DP) for Kaiser Aluminum & Chemical Corporation (Kaiser), Tulsa Facility, Tulsa, Oklahoma (Ref. 1), and DP Addendum (Ref. 2) submitted to NRC on May 25, 2001, and May 9, 2002, respectively. Kaiser is obligated to remediate the Tulsa, Oklahoma facility to meet the release criteria established in 10 CFR part 20, subpart E. Kaiser has proposed a decommissioning approach that will achieve unrestricted release of the site.

II. Environmental Assessment

Introduction

On March 7, 1958, the Atomic Energy Commission (AEC) issued Source Material License No. C–4012 to Standard Magnesium Corporation (Standard Magnesium), a Division of Kaiser Chemical Company, for possession of magnesium-thorium alloy. Standard Magnesium purchased magnesium-thorium scrap metal for reclaiming purposes. The end product from Standard Magnesium's manufacturing process was magnesium anodes used for cathodic protection on items such as tanks and pipelines. NRC License No. STB–472 superceded License No. C–4012 on November 22, 1961. On June 5, 1968, License No. STB–472 was amended to include the possession of uranium, so that Standard Magnesium could process magnesium slag containing uranium. It does not appear that uranium was ever received or processed on site. On March 16, 1971, License No. STB–472 was terminated at the licensee's request.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted, by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with a potential for meaningful residual contamination, based on information in the license documentation. ORNL identified the Kaiser site as having the potential for residual contamination. On November 17, 1993, an NRC inspector surveyed the Kaiser facility to assess the potential for residual contamination at the site. The inspector found contamination on the surface, indicating that waste magnesium-thorium slag was improperly disposed of in the past. Off-site residual thorium contamination was first identified during a subsequent NRC inspection conducted on June 29, 1994. The off-site thorium contamination is due to slag dumping in areas to the east and south of the current Kaiser property boundary, on property which belonged to Standard Magnesium during licensed operations. NRC notified Kaiser on August 19, 1994, that the site had been added to the Site Decommissioning Management Plan (SDMP). Kaiser has agreed to conduct remediation activities in accordance with current regulations and release limits, even though it is not currently a licensee.

A detailed discussion of the contamination present at the site is presented in Chapter 4 of the DP, and Chapter 4 of the DP Addendum.

Purpose and Need for Proposed Action

The Kaiser property contains thorium contaminated dross/soil. This property was owned and operated by Kaiser's predecessor, Standard Magnesium. Standard Magnesium extracted magnesium from magnesium thorium alloys. The thorium-bearing slag was disposed of on-site and onto, what is now, land adjacent to the Kaiser property. Kaiser has completed remediation of the adjacent property and is now proposing plans to remediate its property.

Extensive site characterization studies conducted by Kaiser (Ref. 3 and Ref. 4), indicate that Th-228, Th-230 and Th-232 are present in dross/soil on the Kaiser property. In 1995, an investigation was performed to characterize soils and sludges in the Retention and Reserve Pond areas containing thorium with respect to criteria used by the NRC for release of sites for unrestricted use, as set forth in the NRC Branch Technical Position, Disposal or On-Site Storage of Residual Thorium or Uranium Wastes From Past Operations (Ref. 5). From the characterization data, affected material volumes were estimated by performing kriging calculations. The estimate from the kriging calculations yielded a total volume of 113,504 cubic meters (m^3) [4,007,909 cubic feet (ft^3)] of material with Th-232 + Th-228 concentrations greater than 370 milli Becquerels per gram (mBq/g) (10 picocuries per gram (pCi/g)), and a volume of 143,288 m^3 (5,059,614 ft^3) of material with concentrations greater than 222 mBq/g (6 pCi/g). With the addition of stockpiled soils, (8071 m^3 (285,000 ft^3) of material moved on-site during the Adjacent Land Area Remediation project), the kriging estimate for the total volume of affected soil in the Retention Pond and Reserve Pond areas is 151,370 m^3 (5,345,000 ft^3). The thorium concentration for on-site material ranges from approximately 74 mBq/g to 15.4 Bq/g (2 pCi/g to 416 pCi/g) for Th-232 + Th-228.

In the DP, Kaiser identified the potential for radioactive material under concrete paved surfaces and building floor areas in the operations area. Subsequently, Kaiser submitted a report on additional site characterization activities conducted to identify radioactive material located beneath structures in the operations area (Ref. 4). Kaiser has determined that modifications of on-site buildings/structures during operations resulted in surface and subsurface soil contamination beneath concrete paved surfaces and building floor areas in the operations area. Residual radioactive material exists in the following areas: (1) Beneath a significant portion of the Flux Building structure; (2) beneath the northern portion of the concrete pad which was once used as a slag storage area; (3) beneath the north portion of the Crusher Building structure and the paved area north/northeast of the Crusher Building; (4) beneath the concrete paving area located west of the Maintenance Building; and (5) beneath a portion of the concrete area inside of the Warehouse Building. Kaiser estimates that approximately 1699 m^3 (60,000 ft^3) of material will be excavated during decommissioning activities in the former operational area.

The purpose of the proposed action is to reduce residual radioactivity at the Kaiser facility to a level that permits release of the property for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed action for decommissioning that ensures protection of the public health and safety of the environment.

The Proposed Action

Kaiser is proposing to remediate its facility to meet the unrestricted release criteria of 10 CFR Part 20, Subpart E, by identifying, excavating, and disposing material with Th-232 concentrations greater than 1151 mBq/g (31.1 pCi/g). Specifically, Kaiser proposes to conduct excavation activities in four phases:

Phase 1—remove material stockpiled from the adjacent land remediation. Materials from the existing stockpile will be transported to a new storage area and sorted. Materials above 1151 mBq/g (31.1 pCi/g) will be shipped to a disposal site licensed to receive the material.

Phase 2—excavate material from the former operational area and transport to the pond parcel. Material with Th-232 concentrations greater than 1151 mBq/g (31.1 pCi/g) will be segregated and shipped to a disposal site licensed to receive the material. Material below criteria will be placed in the pond parcel as backfill.

Phase 3—excavate and transport material from the reserve pond area to the stockpile area for processing. Material above 1151 mBq/g (31.1pCi/g) will be shipped to a disposal site licensed to receive the material. Below-criteria material will be returned to the excavation.

Phase 4—excavate material from the retention pond area and former spillway. Material will be transported to the stockpile area and processed/disposed as in previous phases. It is estimated that approximately 170,592 m^3 (6,028,000 ft^3) of material will be excavated during decommissioning activities. Of this volume, 33,984 m^3 (1,200,000 ft^3) will have Th-232 concentration greater than 1151 mBq/g (31.1 pCi/g), and will require off-site disposal.

A detailed discussion of the proposed decommissioning activities at the site is presented in Chapter 8 of the DP, and Chapter 8 of the DP Addendum.

Alternatives to the Proposed Action

The proposed remediation approach allows Kaiser to meet NRC's requirements for unrestricted release of the site, uses proven technology, and is protective of human health and the environment. However, there are two alternatives to the proposed action of excavating and disposing of above-criteria material at a licensed disposal facility; (1) To take no action, and (2) to excavate contaminated material such that the site would be suitable for restricted release. The no-action alternative is not acceptable because soil contains thorium at levels which would cause a dose exceeding NRC's limits presented in 10 CFR 20.1402 (25 mrem/yr (25mSv/yr) plus ALARA). Kaiser does not consider the restricted release alternative to be advantageous at this time for environmental, technical and economic reasons. Therefore, these alternatives are not considered further in this EA.

The Affected Environment and Environmental Impacts

The Kaiser facility is located at 7311 East 41st Street in Tulsa, Oklahoma. It is situated in Tulsa County, Oklahoma, about 5 miles southeast of the downtown center of the City of Tulsa. The site initially occupied approximately 23 acres of land on both sides of 41st Street. The remediation area is bounded by the south fence line, the freshwater pond embankment on the west, Fulton Creek ditch on the north, the east fence line, and the northern and western edges of the flux building and paved area. The areas to be remediated include a portion of the 4-acre operational area south of the railroad, and a large portion of the 14-acre pond parcel located north of the railroad. The pond parcel is divided into three parts—the unaffected freshwater pond to the west (approximately 4 acres), the affected retention pond/reserve pond area to the east (approximately 9 acres), and the area containing the flux building and paved area (approximately 1 acre).

Remediation of the Kaiser property could result in both radiological and non-radiological environmental impacts. Radiological environmental impacts that could result from the remediation of the facility include exposure, inhalation, and ingestion hazards to workers and the public. These hazards could occur during excavation, transport, or backfilling of the contaminated soil.

Potential radiological impacts during excavation and backfilling include: (1) Exposure; (2) inhalation and ingestion to workers; and (3) inhalation and ingestion to the public. Kaiser has committed to perform work activities in accordance with the Health & Safety Plan (HSP) (Chapter 10 of the DP), and the Environmental Health and Safety Plan (EHSP) (Appendix E of the DP).

Worker doses due to direct exposure to the contaminated soil are expected to be small. Site characterization revealed that 95 percent of the material contains less than 1850 Bq/kg (50 pCi/g) thorium. Since worker exposure time will be short, and thorium concentrations are relatively low, Kaiser estimates that doses due to direct contact with soil will be less than 1 millisievert per year (mSv/yr) [100 millirem per year (mrem/yr)].

Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels.

Kaiser has determined that in order to reach 10 percent of the derived air concentration (DAC) limit, the soil must exceed 7.4 Bq/g (200 pCi/g) Th-232 + Th-228. Based on characterization information, Kaiser has a good database to identify where soil exceeds 7.4 Bq/g (200 pCi/g) Th-232 + Th-228. If the Th-232 + Th-228 is less than 7.4 Bq/g (200 pCi/g) soil, Kaiser will perform occasional air sampling near the dust source. If the soil exceeds 7.4 Bq/g (200 pCi/g) Th-232 + Th-228 where airborne dust from nearby soil might reach 0.1 DAC, Kaiser will perform continuous, stationary air sampling near the dust source while workers are present.

Air sampling will also be conducted at work area boundaries to evaluate off-site releases. Action will be taken if radioactivity levels exceed 50 percent of the regulatory limit at the work area boundary.

Kaiser's DP includes controls for keeping radiation exposures to workers, and the public, "as low as is reasonably achievable" (ALARA). These controls include implementing: (1) The HSP and EHSP; (2) radiation worker training; (3) a respiratory protection program; (4) safety work permit procedures; and (5) radioactive material storage and handling procedures. In addition, Kaiser presented an ALARA analysis (Chapter 7 of the DP) which compared dose and cost of the planned action with the cost benefits of incremental soil removal to further reduce the dose. The analysis demonstrates that removal of additional soil/dross is not cost beneficial.

The potential for radiological impacts during transportation is limited. Spillage during transportation is the only credible scenario for workers receiving a potential dose. Since any spills could be immediately recovered, doses due to direct exposure will be minimal. The potential exists for contaminated material to become airborne during loading, unloading, or as a result of accidental spills. In the DP, Kaiser commits to using a controlled material handling/processing/storage area to package waste for disposal. Packaging will include Department of Transportation and disposal facility approved containers. After packaging, waste will be transferred to a secured on-site storage area or loaded directly for shipping. Potential radiological impacts to workers and the public due to airborne material will be controlled as described above.

Potential radiological impacts resulting from the stockpiling of the contaminated soil on Kaiser property include doses to the public from airborne material and precipitation runoff. In the DP, Kaiser commits to minimize the spread of contamination by lining the stockpile area with a high density polyethylene liner, or equivalent. In addition, berms or ditches will be constructed at the stockpile perimeter to control precipitation falling on the stockpile. Kaiser has committed to minimize storm water contact with stockpiled soil. Contact may be minimized by: (1) Diverting water around remediation and stockpile areas; (2) covering stockpiles; or (3) performing work during dry season.

The potential for groundwater contamination at the site is minimal. Site characterization sampling at the site indicates that the vertical migration of the thorium is limited. Sampling revealed that thorium concentrations dropped quickly in undisturbed soil.

Potential non-radiological impacts include; increased traffic from transportation of waste, esthetic degradation, and economic impacts. Waste will be transported by either rail or truck. Kaiser estimates that approximately 33,984 m^3 (1,200,000 ft^3) of material will be generated for off-site disposal. This volume of material will require less than 1000 rail cars, which will be spread over a three year time period. Therefore, the impact from transportation should be insignificant.

The Kaiser facility is located in an area which is completely developed with no pre-settlement vegetation existing. Land use within a one mile radius from the site is a mixture of commercial, industrial, and residential. Commercial or industrial properties in the area include Union Pacific Railroad (right-of-way), Specific Systems, Beejay Inc., Smalley Equipment, and Red Man. Kaiser has committed to restore the site following remediation. Restoration will include; placement of vegetative cover, seeding and mulching, permanent surface water controls, and permanent erosion and sedimentation controls. U.S. Fish and Wildlife Service has determined that the proposed action will not have an adverse impact on threatened and endangered species. The Oklahoma Historical Society informed Kaiser that there are no historic properties affected by the project. The Oklahoma Archeological Survey has stated that no archeological sites are listed as occurring within the project area and no archeological materials are likely to be encountered. Further, the Creek Nation of Oklahoma informed Kaiser, that there are no religious or sacred sites within the project area that will be affected by the undertaking of this project. Therefore, the esthetic impact from decommissioning activities should be insignificant.

The residential population within a 3 km (1.9 miles) radius of the site is approximately 24,000. Additionally, in 1990, there were approximately 3500 business entities with in the same area. The facility lies within two separate zones; the Industrial Moderate District and Industrial Light District. Zoning within the vicinity of the facility is not expected to change. According to Chapter 15.0 of the DP, less than 15 workers will be required to perform decommissioning activities. Due to the small number of workers required for decommissioning, and the short duration of the project, this effort should have minimal socioeconomic impact on the community.

Air quality and noise impacts will result from excavation and transport of waste. Kaiser will use appropriate dust control measures during excavation. These activities will be sporadic in nature and relatively short in duration; and, therefore, will have minimal impact on the surrounding community and environment.

NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted

NRC staff provided a draft of the EA to Oklahoma Department of Environmental Quality (ODEQ) for review. By facsimile dated May 30, 2003, ODEQ informed NRC that it had no comments on the draft EA.

NRC contacted the U.S. Fish and Wildlife Service to ensure that the proposed action will not have an adverse impact on threatened and endangered species. Mr. Ken Frazier informed the NRC on April 16, 2003, that the proposed action will have no impact on threatened and endangered species.

Prior to approval of the Kaiser Phase 1 DP, NRC contacted the Oklahoma Historical Society to determine if the proposed action would have any adverse impacts on sacred or historical properties near the Kaiser site. The Oklahoma Historical Society informed Kaiser, by letter dated August 31, 1999, that there are no historic properties affected by the project.

The Oklahoma Archeological Survey informed NRC, by letter dated August 6, 1999, that no archeological sites are listed as occurring within the project area and no archeological materials are likely to be encountered.

The Creek Nation of Oklahoma informed Kaiser, by letter dated August 5, 1999, that there are no religious or sacred sites within the project area that will be affected by the undertaking of this project.

Conclusions

Kaiser has committed to perform remediation activities in accordance with an acceptable DP. NRC staff believes the DP provides adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents, ALARA.

NRC staff also believes that the remediation alternative proposed by Kaiser minimizes the potential dose to members of the public, and other environmental impacts. Potential doses to members of the public will be minimized by removing contaminated soil from Kaiser property and making the site suitable for unrestricted release. The proposed remediation alternative also minimizes the potential environmental impacts. Kaiser will excavate and dispose of soil with Th-232 concentrations greater than 1151 mBq/g (31.1 pCi/g), thereby removing a significant source of contamination from the local environment. Therefore, the potential environmental impact from the proposed action is insignificant.

List of Preparers

John Buckley, Project Manager, Division of Waste Management
J.C. Dehmel, Health Physicist, Division of Waste Management
Adrienne Lester, Environmental Scientist, Division of Waste Management

References

1. Kaiser Aluminum and Chemical Corporation, "Decommissioning Plan," June 2001.
2. Kaiser Aluminum and Chemical Corporation, "Decommissioning Plan Addendum," May 2002.
3. Advanced Recovery Systems/Nuclear Fuel Services, Inc., Kaiser Aluminum Specialty Products, "Field Characterization Report," April 18, 1995.
4. Kaiser Aluminum and Chemical Corporation, "Additional Site Characterization Activities," November 2001.
5. NRC, Branch Technical Position, "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations," 1981.

III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared this EA related to the approval of Kaiser's DP. On the basis of this EA, NRC staff has concluded that there are no significant environmental impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

The licensee's request for the proposed action and other related documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents, along with most others referenced in the EA, are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html*.

Any questions with respect to this action should be referred to John Buckley, Decommissioning Branch, Mailstop T–7F19, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 30th day of May, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–14397 Filed 6–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Meeting

The ACNW will hold a Planning and Procedures meeting on June 24, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 24, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 2, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–14399 Filed 6–6–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27683]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 2, 2003.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2003 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the

matter. After June 27, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp. et al. (70–10122)

FirstEnergy Corp. ("FirstEnergy"), a registered holding company, its utility subsidiaries: Ohio Edison Company ("Ohio Edison"), American Transmission Systems, Incorporated ("ATSI"), The Cleveland Electric Illuminating Company ("Cleveland Electric"), The Toledo Edison Company ("Toledo Edison"), Pennsylvania Power Company ("Penn Power"), Northeast Ohio Natural Gas Corp. ("NONGC"), Jersey Central Power & Light Company ("JCP&L"), Pennsylvania Electric Company ("Penelec"), Metropolitan Edison Company ("Met-Ed"), York Haven Power Company ("York Haven"), and Waverly Electric Power & Light Company ("Waverly Electric"), and their respective subsidiaries; and FirstEnergy's nonutility subsidiaries: FE Acquisition Corp. ("FE Acquisition"), FirstEnergy Properties, Inc. ("FE Properties"), FirstEnergy Facilities Services Group, LLC ("FEFSG"), FE Holdings, LLC ("FE Holdings"), FELHC, Inc. ("FELHC"), FirstEnergy Securities Transfer Company ("FirstEnergy Transfer"), FirstEnergy Nuclear Operating Company ("FENOC"), FirstEnergy Solutions Corp. ("FirstEnergy Solutions"), FirstEnergy Generation Corp. ("GenCo"), FirstEnergy Ventures Corp. ("FirstEnergy Ventures"), MARBEL Energy Corporation ("MARBEL"), Centerior Indemnity Trust ("CIT"), Centerior Service Company ("Centerior Service"), FirstEnergy Service Company ("ServeCo"), GPU Capital, Inc. ("GPU Capital"), GPU Electric, Inc. ("GPU Electric"), GPU Diversified Holdings, LLC ("GPUDH"), GPU EnerTech Holdings, Inc. ("GPU EnerTech"), GPU Power, Inc. ("GPU Power"), GPU Advanced Resources, Inc. ("GPUAR"), GPU Telcom Services, Inc. ("GPU Telcom"), GPU Nuclear, Inc. ("GPU Nuclear"), and MYR Group, Inc. ("MYR"), and their respective subsidiaries; all based at 76 South Main Street, Akron, Ohio, 44308; (collectively, "Applicants"), have filed an application-declaration, as amended ("Application"), under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 26(c), 42, 43, 45, 46, 53, 54, and 80–92 under the Act.

Applicants request authority to engage in various financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued in this proceeding and ending December 31, 2005 ("Authorization Period").

I. Introduction

FirstEnergy is authorized under its Amended Articles of Incorporation to issue 375,000,000 shares of common stock, par value $.10 per share ("Common Stock"), of which 297,636,276 shares were issued and outstanding as of March 24, 2003. FirstEnergy is also authorized under its Amended Articles of Incorporation to issue 5,000,000 shares of preferred stock, par value $100 per share ("Preferred Stock"), of which none are currently issued and outstanding. In addition, at December 31, 2002, FirstEnergy had outstanding $4,300,000,000 principal amount of senior unsecured notes having various maturity dates through 2032, and $395 million of unsecured borrowings under a $500 million revolving credit facility that expires in November 2004.

FirstEnergy's senior unsecured debt is currently rated BBB-by Standard & Poor's Inc. ("S&P") and Baa2 by Moody's Investor Service ("Moody's"). For the twelve months ended December 31, 2002, FirstEnergy had total operating revenues of $12,151,997,000, of which $9,165,805,000 (75.4%) were derived from electric utility operations and $2,986,192,000 (24.6%) from unregulated businesses. At December 31, 2002, FirstEnergy had total consolidated assets of $33,580,773,000, including net utility plant of $11,820,797,000.

FirstEnergy's electric and gas utility subsidiaries are referred to collectively as the "Utility Subsidiaries." Ohio Edison, Cleveland Electric, Toledo Edison, JCP&L, Penelec, Penn Power and Met-Ed are sometimes referred to in the Application as the "Primary Utility Subsidiaries." As used in this Application, the term "Nonutility Subsidiaries" includes the nonutility subsidiaries named above and their respective subsidiaries, as well as any other nonutility company later acquired or formed, directly or indirectly, by FirstEnergy under rule 58 or pursuant to an order of the Commission (including the order approving this Application). The Utility Subsidiaries and Nonutility Subsidiaries are referred to collectively as the "Subsidiaries." FirstEnergy and the Subsidiaries are referred to collectively as the "Applicants."

II. Current and Requested Financing Authority

By order dated October 29, 2001, in File No. 70–9793 (Holding Co. Act Release No. 27459), as supplemented by supplemental orders dated November 8, 2001 (Holding Co. Act Release No. 27463) and December 23, 2002 (Holding Co. Act Release No. 27628) (as so supplemented, the "Merger Order"), the Commission authorized the merger between FirstEnergy Corp. ("FirstEnergy"), and GPU, Inc. ("GPU"). The merger became effective on November 7, 2001, with FirstEnergy as the surviving entity, and FirstEnergy registered under the Act as a holding company on the same day. The Merger Order also authorized FirstEnergy and its subsidiaries to engage in a program of external financing, intrasystem financing, and other related transactions for the period through and including June 30, 2003.

In the Merger Order, the Commission authorized, through June 30, 2003, among other things:

(i) FirstEnergy to issue and sell common stock, preferred securities, long-term debt, short-term debt and other securities;

(ii) FirstEnergy to issue one purchase right (a "Right") together with each share of common stock issued in accordance with FirstEnergy's existing Rights Agreement ("Rights Agreement");

(iii) FirstEnergy to issue shares of common stock under its dividend reinvestment and stock-based management incentive and employee benefit plans ("Stock Plans");

(iv) FirstEnergy to enter into and perform interest rate hedging transactions ("Hedge Instruments") to manage volatility of interest rates associated with its outstanding indebtedness and with respect to anticipated debt offerings ("Anticipatory Hedges") (collectively, "Hedging Transactions");

(v) ATSI and NONGC to issue and sell additional debt or preferred securities on the same terms and conditions as FirstEnergy;

(vi) the Utility Subsidiaries to enter into Hedge Instruments and Anticipatory Hedges subject to the same limitations as FirstEnergy;

(vii) FirstEnergy to issue guarantees and provide other forms of credit support with respect to obligations of its Subsidiaries ("FirstEnergy Guarantees") and Nonutility Subsidiaries ("Nonutility Subsidiary Guarantees");

(viii) FirstEnergy to establish and fund a money pool ("Utility Money Pool") for the Utility Subsidiaries and the Utility Subsidiaries to make borrowings and extend credit to each other through the Utility Money Pool;

(ix) FirstEnergy to establish and fund a separate money pool ("Nonutility Money Pool") for the benefit of the Nonutility Subsidiaries;

(x) FirstEnergy and the Nonutility Subsidiaries to make loans to less than wholly-owned Nonutility Subsidiaries;

(xi) Applicants to acquire, directly or indirectly, the equity securities of one or more entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of authorized and exempt activities of the Applicants and to provide guarantees and enter into expense agreements with respect to the securities or other obligations of Financing Subsidiaries;

(xii) Applicants to organize and acquire the securities of one or more first-tier subsidiary companies ("Nonutility Holding Companies") to act as holding companies for nonutility investments and to engage in internal reorganization transactions involving transfers of nonutility assets and Nonutility Subsidiaries to Nonutility Holding Companies;

(xiii) Applicants to change the capitalization of FirstEnergy's 50% or more owned Subsidiaries;

(xiv) FirstEnergy and certain of the Utility Subsidiaries to declare and pay dividends out of capital and unearned surplus and the Nonutility Subsidiaries to declare and pay dividends out of capital and unearned surplus;

(xv) Applicants to acquire, directly or indirectly, the securities of one or more companies ("Intermediate Subsidiaries") to acquire, hold and/or finance the acquisition of securities of or other interests in one or more exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), "exempt telecommunications companies" ("ETCs"), energy-related companies under rule 58 ("Rule 58 Subsidiaries"), and other Nonutility Subsidiaries, and such Intermediate Subsidiaries are authorized to engage in preliminary development activities and administrative activities;

(xvi) Certain Nonutility Subsidiaries (referred to as "Energy Related Companies") to engage in energy management and consulting activities anywhere outside the United States and energy marketing and related activities in Canada and Mexico;

(xvii) FE ServCo, GPU ServCo and the Nonutility Subsidiaries to sell goods and services to associate companies at market prices in certain specified circumstances; and

(xviii) FEFSG to provide maintenance and repair services to FirstEnergy's pre-merger Utility Subsidiaries (*i.e.*, Ohio Edison, Toledo Edison, Cleveland Electric, Penn Power, NONGC and ATSI) at market prices (the "At-Market Service Arrangements").

In addition, by orders dated May 21, 2001 (Holding Co. Act Release No. 27401), May 2, 2001 (Holding Co. Act Release No. 27391), December 15, 2000 (Holding Co. Act Release No. 27302), June 22, 1999 (Holding Co. Act Release No. 26544), December 22, 1997 (Holding Co. Act Release No. 26801) and July 17, 1996 (Holding Co. Act Release No. 26544) in File No. 70–7926 (collectively, the "Prior GPU Order"), JCP&L, Met-Ed and Penelec are currently authorized to issue and sell from time to time through December 31, 2003, commercial paper and other forms of short-term indebtedness having maturities of not more than nine months, and to provide security for such indebtedness.

Applicants state that the authority sought in the Application will supersede and replace the current authorization of the Applicants under the Merger Order and Prior GPU Order to engage in the financing activities and related transaction described above.

IV. Financing Conditions

Applicants' effective cost of money on new long-term debt securities having maturities of one year or more up to fifty years ("Long-term Debt") of any series will not exceed at the time of issuance the greater of: (1) 500 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term approximately equal to the term of such series of Long-term Debt or; (2) a gross spread over a U.S. Treasury Security that is consistent with similar securities of comparable credit quality and maturities issued by other companies. Applicants' dividend or distribution rate on any series of Preferred Stock and other forms of preferred securities (including trust preferred securities) (collectively, "Preferred Securities") will not exceed at the time of issuance the greater of: (1) 500 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term equal to the term of such series of Preferred Securities or; (2) a rate that is consistent with similar securities of comparable credit quality and maturities (or perpetual preferred stock) issued by other companies. The effective cost of money on commercial paper, promissory notes and other forms of short-term indebtedness having maturities of less than one year ("Short-term Debt") will not exceed the greater of: (1) 500 basis points over the comparable term London Interbank Offered Rate ("LIBOR"); or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. All debt issued by FirstEnergy will be unsecured. Debt issued by any Utility Subsidiary in accordance with the authorization sought in this Application may be secured or unsecured. The maturity of any series of Long-term Debt will not exceed 50 years. All series of Preferred Securities (other than Preferred Stock, which may be perpetual) will be redeemed no later than 50 years after their issuance. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security under the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including financing, in part, of the capital expenditures of FirstEnergy and its Subsidiaries, financing of working capital requirements of FirstEnergy and its Subsidiaries, the acquisition, retirement or redemption under rule 42 of securities previously issued by FirstEnergy or its Subsidiaries, and other lawful purposes, including direct or indirect investments in EWGs, FUCOs, ETCs, Rule 58 Subsidiaries, Energy Related Companies or other businesses approved by the Commission.

In addition, financings by each Applicant will be subject to the following conditions: (1) FirstEnergy will maintain common equity as a percentage of consolidated capitalization (as reflected on the balance sheets contained in its most recent Form 10-K or Form 10-Q filed with the Commission pursuant to the Securities Exchange Act of 1934 ("1934 Act"), and including short-term debt and current maturities of long-term debt) at 30% or higher at all times during the Authorization Period; (2) each Primary Utility Subsidiary will maintain common equity as a percentage of consolidated capitalization (determined in the same manner specified above) at 30% or higher during the Authorization Period.

The consequence of failing to maintain common equity of at least 30% of consolidated capitalization when required is that FirstEnergy and its Subsidiaries (or if such failure were only by a Primary Utility Subsidiary, such company) would not be authorized to issue securities in a transaction subject to Commission approval except for securities which would result in an increase in such common equity percentage. FirstEnergy requests that the Commission reserve jurisdiction over the issuance of securities in those circumstances where FirstEnergy or a

Primary Utility Subsidiary does not comply with the 30% common equity criteria, pending completion of the record upon filing of a post-effective amendment.

Applicants further represent that, except for securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than Common Stock, may be issued in reliance upon the authorization granted by the Commission pursuant to this Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of the top level registered holding company that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act. Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

III. FirstEnergy External Financing

FirstEnergy requests authority to increase its capitalization by issuing and selling from time to time during the Authorization Period, directly or indirectly through one or more Financing Subsidiaries: (1) Additional Common Stock and/or options, warrants, equity-linked securities or stock purchase contracts convertible into or exercisable for Common Stock, (2) Preferred Stock (3) Long-term Debt, and (4) Short-term Debt in an aggregate amount not to exceed $4.5 billion (excluding securities issued for purposes of refunding or replacing other outstanding securities where FirstEnergy's capitalization is not increased as a result) ("External Financing Limit"), provided that the aggregate amount of Short-term Debt at any time outstanding shall not exceed $1.5 billion. All securities issued by FirstEnergy in accordance with the authorization requested herein, including, without limitation, securities issued for the purpose of refunding or retiring outstanding securities, will comply with the applicable financing parameters set forth above. In addition, FirstEnergy seeks the flexibility to enter into certain hedging transactions to manage interest rate risk associated with indebtedness.

A. Common Stock

FirstEnergy proposes to issue and sell Common Stock or options, warrants, equity-linked securities or other stock purchase rights exercisable for Common Stock. Common Stock financings may be effected in accord with underwriting agreements of a type generally standard in the industry. Public distributions may be made through private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such Common Stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

FirstEnergy may sell Common Stock covered by this Application in any one of the following ways: (1) Through underwriters or dealers; (2) through agents; (3) directly to a limited number of purchasers or a single purchaser; or (4) directly to employees (or to trusts established for their benefit), shareholders and others through Stock Plans.

Under rule 58 and sections 32, 33 and 34 of the Act, FirstEnergy is or will be authorized to acquire securities of companies engaged in functionally related businesses, Rule 58 Subsidiaries, EWGs, FUCOs, ETCs and, to the extent approved in this proceeding, Energy Related Companies. In connection with any of these transactions, FirstEnergy may conclude that it would be advantageous for tax or other reasons to issue shares of Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock as consideration for the equity securities or assets of other companies to be acquired, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act or the rules under the Act.

Under the Merger Order, the Commission authorized FirstEnergy to implement the terms of a Rights Agreement, dated as of November 18, 1997, between FirstEnergy and The Bank of New York, as rights agent ("Rights Agreement"). Under the Rights Agreement, FirstEnergy assigned one Right for each outstanding share of Common Stock. The Rights expire on November 28, 2007. Each Right entitles the registered holder of the associated share of Common Stock to purchase from FirstEnergy one share of Common Stock at a price of $70 per share (the "Purchase Price") when the Rights become exercisable, subject to adjustment following certain specified takeover events such that a holder of a Right (other than any "Acquiring Persons," as defined in the Rights Agreement) would have the right to receive, upon exercise thereof, shares of Common Stock having a current value equal to double the Purchase Price. FirstEnergy requests a continuation through the Authorization Period of its authority under the Merger Order to implement the Rights Agreement. Any shares of Common Stock issued upon exercise of the Rights will not be counted against the External Financing Limit.

B. Preferred Securities

Applicants request authorization during the Authorization Period to issue Preferred Stock or other types of Preferred Securities (including, without limitation, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more special-purpose Financing Subsidiaries organized by FirstEnergy. Preferred Stock or other types of Preferred Securities may be issued in one or more series with such rights, preferences and priorities as may be designated in the instrument creating each such series, as determined by FirstEnergy's Board of Directors. Dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of FirstEnergy Common Stock or indebtedness. Preferred Securities may be sold directly through underwriters or dealers in connection with an acquisition.

C. Long-Term Debt

Applicants request authority to issue Long-term Debt directly by FirstEnergy or indirectly through one or more Financing Subsidiaries organized by FirstEnergy in the form of bonds, notes, medium-term notes or debentures under one or more indentures (each, the "FirstEnergy Indenture") or long-term indebtedness under agreements with banks or other institutional lenders. Each series of Long-term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as FirstEnergy may determine at the time of issuance. Any Long-term Debt (a) may be convertible into any other securities of FirstEnergy, (b) will have maturities ranging from one to 50 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon under a remarketing arrangement, (f) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (g) may be called from existing investors by a third party and (h) may be entitled to the benefit of affirmative or negative financial or other covenants.

D. Short-Term Debt

FirstEnergy seeks authority to issue additional Short-term Debt in the form of commercial paper, promissory notes and/or other forms of short-term indebtedness in an aggregate principal amount at any time outstanding not to exceed $1.5 billion.

FirstEnergy proposes to establish from time to time new committed bank lines of credit, provided that only the principal amount of any borrowings outstanding under these new committed bank lines of credit will be counted against the proposed Short-term Debt limit. Credit lines may be set up for use by FirstEnergy for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. FirstEnergy will borrow and repay under these lines of credit, from time to time, as it is deemed appropriate or necessary. All borrowings under these credit lines will mature in less than one year. FirstEnergy may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

FirstEnergy may also sell commercial paper in established domestic or European commercial paper markets, from time to time, and this commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from FirstEnergy will reoffer such paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

E. Hedging Transactions

1. Interest Rate Hedges

FirstEnergy requests a continuation of its authority to enter into and perform Hedge Instruments in order to reduce or manage the volatility of interest rates on its or its Subsidiaries' outstanding indebtedness, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedge Instruments may also include issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or Agency (*e.g.*, FNMA) obligations or LIBOR-based swap instruments. The transactions would be for fixed periods and stated notional amounts. FirstEnergy would employ Hedge Instruments as a means of prudently managing the risk associated with any of its or its Subsidiaries' outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. In no case will the notional principal amount of any interest rate swap exceed the greater of the value of the underlying debt instrument or the present market value of the underlying debt instrument and related interest rate exposure. Each Hedge Instrument will be entered into for a fixed or determinable period. Thus, FirstEnergy will not engage in speculative transactions. FirstEnergy will only enter into agreements with counterparties ("Approved Counterparties") whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to "BBB," or an equivalent rating.

2. Anticipatory Hedges

In addition, FirstEnergy requests authorization to enter into and perform Anticipatory Hedges with respect to its or its Subsidiaries' anticipated debt offerings, subject to certain limitations and restrictions. These Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded Hedge Instruments (a "Forward Sale"), (2) the purchase of put options on Hedge Instruments (a "Put Options Purchase"), (3) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a "Zero Cost Collar"), (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. FirstEnergy or the appropriate Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. FirstEnergy or the appropriate Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

FirstEnergy will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities") and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or such other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). The Hedge Instruments and Anticipatory Hedges approved hereunder will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date such Hedge Instruments or Anticipatory Hedges are entered into. FirstEnergy also requests authority to enter into Hedge Instruments and Anticipatory Hedges which do not qualify for hedge accounting treatment by the FASB, and requests that the Commission reserve jurisdiction on this request until the record is complete.

V. Utility Subsidiary Financing

JCP&L, Penn Power, Penelec, Met-Ed, ATSI and NONGC will rely on rule 52 for all securities issuances except for the issuance of short-term debt securities, which is exempt from approval in the applicable states and therefore is subject to Commission approval under the Act. As previously indicated, JCP&L, Penelec and Met-Ed are currently authorized under the Prior GPU Order to issue and sell short-term indebtedness from time to time through December 31, 2003.[1] In this proceeding, JCP&L, Penelec and Met-Ed are requesting authority to increase and extend their current authorization to issue short-term debt securities through the Authorization Period.

Specifically, JCP&L, Penn Power, Met-Ed, Penelec, ATSI and NONGC propose to issue and sell Short-term Debt in the form of commercial paper, promissory notes and/or other forms of short-term indebtedness in an aggregate principal amount at any time outstanding not to exceed (i) in the case of JCP&L and Penn Power, the limitation on short-term indebtedness contained in their respective charters ($428 million and $50 million, respectively, as of December 31, 2002), (ii) $250 million in the case of each of Penelec and Met-Ed, (iii) $500 million in the case of ATSI, and (iv) $20 million in the case of NONGC. Commercial paper may be sold to dealers in established domestic or European commercial paper markets from time to time in the manner described above. In addition, JCP&L, Penn Power, Penelec, Met-Ed, ATSI and NONGC may establish and renew from time to time committed bank lines of credit, and engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as they deem appropriate in light of their needs and market conditions at the time of borrowing. All Short-term Debt issued by JCP&L, Penn Power, Penelec, Met-Ed, ATSI and NONGC will comply with the parameters for Short-term Debt set forth above.

To the extent not exempt under rule 52, the Utility Subsidiaries request authority to enter into and perform Hedge Instruments and Anticipatory Hedges subject to the limitations and requirements applicable to FirstEnergy described above.

[1] York Haven and Waverly Electric will continue to obtain financing through intercompany borrowings from their parent corporations or otherwise through the Utility Money Pool and likely will not engage in third-party financing.

VI. Guarantees and Intrasystem Money Pools

A. Guarantees

FirstEnergy requests a continuation of its current authorization to provide FirstEnergy Guarantees with respect to the obligations of its Subsidiaries as may be appropriate or necessary to enable the Subsidiaries to carry on in the ordinary course of their respective businesses, including guarantees of non-affiliated third-party obligations in the ordinary course of FirstEnergy's business, in an aggregate amount that together with Nonutility Subsidiary Guarantees, shall not exceed $4.0 billion ("Guarantee Limit") outstanding at any one time, including obligations exempt under rule 45 and guarantees and other forms of credit support provided by FirstEnergy or any Nonutility Subsidiary that are outstanding on the effective date of the order issued in this proceeding. FirstEnergy requests that the Commission reserve jurisdiction over the issuance of guarantees for the benefit of non-affiliated third parties.

In addition to guarantees that may be provided by FirstEnergy, the Nonutility Subsidiaries request authority during the Authorization Period to provide to other Nonutility Subsidiaries guarantees and other forms of credit support ("Nonutility Subsidiary Guarantees"). The Nonutility Subsidiary Guarantees, together with FirstEnergy Guarantees, will not exceed the Guarantee Limit outstanding at any one time. The Nonutility Subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above. Any guarantees or other credit support arrangements outstanding at the end of the Authorization Period will remain in place and expire or terminate in accordance with their terms.

B. Money Pools

FirstEnergy and the Utility Subsidiaries request authorization to continue to maintain and fund the Utility Money Pool, and the Utility Subsidiaries, to the extent not exempt by rule 52, also request authorization to make unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. No loans through the Utility Money Pool may be made to, and no borrowings through the Utility Money Pool may be made by, FirstEnergy.

In addition, FirstEnergy and the remaining Subsidiaries, all of which are Nonutility Subsidiaries, request authorization to continue to maintain and fund the Nonutility Money Pool. Borrowings and extensions of credit under the Nonutility Money Pool by the Nonutility Subsidiaries are exempt from the prior approval requirements of the Act under rules 45(b) and 52. To the extent not exempt under rules 45(b) and 52, FirstEnergy is requesting authorization to contribute surplus funds and to lend and extend credit to (i) the Utility Subsidiaries through the Utility Money Pool and (ii) the Nonutility Subsidiaries through the Nonutility Money Pool.

Under the Utility Money Pool agreement, short-term funds are available from the following sources for short-term loans to the Utility Subsidiaries from time to time: (1) surplus funds in the treasuries of Utility Money Pool participants other than FirstEnergy; (2) surplus funds in the treasury of FirstEnergy (funds in clauses (1) and (2) being referred to as "Internal Funds"); and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by FirstEnergy or the Utility Subsidiaries for loan to the Utility Money Pool (such funds being referred to as "External Funds"). Utility Money Pool participants that borrow would borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.*, if there are External Funds as well as Internal Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool. ATSI, NONGC, Waverly Electric and York Haven each requests authorization to borrow up to $50 million at any time outstanding under the Utility Money Pool.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by Utility Subsidiaries for all loans of such Internal Funds will be the greater of the 30-day LIBOR rate as quoted in *The Wall Street Journal* or the money market rate that a lending participant could have obtained if it placed its excess cash in such an investment.

If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of such External Funds would be equal to the lending company's cost for such External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for such External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such "blended" funds would be a composite rate equal to the weighted average of (a) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined pursuant to the second-preceding paragraph above) and (b) the cost of all such External Funds (as determined pursuant to the immediately preceding paragraph above). In circumstances where Internal Funds and External Funds are available for loans through the Utility Money Pool, loans may be made exclusively from Internal Funds or External Funds, rather than from a "blend" of such funds, to the extent it is expected that such loans would result in a lower cost of borrowings.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A–1" or "P–1" or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) such other investments as are permitted by section 9(c) of the Act and rule 40 under the Act.

The Nonutility Money Pool is operated on the same terms and conditions as the Utility Money Pool, except that FirstEnergy funds made available to the two money pools are made available to the Utility Money Pool first and thereafter to the Nonutility Money Pool. Under the Nonutility Money Pool agreement, no loans may be made to, and no borrowings may be made by, FirstEnergy. All contributions to, and borrowings from, the Nonutility Money Pool are exempt pursuant to the terms of rule 52 under the Act.

Under the Merger Order, all existing Nonutility Subsidiaries of FirstEnergy and GPU at the time of the merger were authorized to participate in the Nonutility Money Pool.

VII. Other Borrowings

In the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly owned by FirstEnergy, directly or indirectly, authority is requested under the Act for FirstEnergy or a Nonutility Subsidiary, as the case may be, to make such loans to such Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a less than wholly-owned Nonutility Subsidiary, such company will not sell any services to any associate Nonutility Subsidiary unless such purchasing company falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost" as described in the Application.

VIII. Other Transactions

A. Financing Subsidiaries

FirstEnergy and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries. Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of FirstEnergy and the Subsidiaries through the issuance of Long-term Debt or Preferred Securities, to third parties and the transfer of the proceeds of such financings to FirstEnergy or these Subsidiaries.

FirstEnergy and, to the extent not exempt under rule 52, Subsidiaries also request authorization to issue their subordinated unsecured notes ("Subordinated Notes") to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary in respect of which the Subordinated Note is issued.

FirstEnergy or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of any such Financing Subsidiaries. Subsidiaries may also provide guarantees and enter into support or expense agreements, if required, on behalf of Financing Subsidiaries. The guarantees of securities issued by Financing Subsidiaries shall not be counted against the Guarantee Limit. The amount of securities issued by any Financing Subsidiary to third parties in accordance with the authorization requested in this Application will be included in the overall external financing limitation, if any, authorized for the immediate parent company of such Financing Subsidiary. However, the amount of Subordinated Notes issued by a parent company to its Financing Subsidiary will not be counted against such external financing limitation. Securities issued by any Financing Subsidiary to third parties shall be exempt under rule 52 (and therefore reportable on Form U–6B–2) only if such securities, if issued directly by the parent company of the Financing Subsidiary, would be exempt under rule 52.

B. Nonutility Subsidiary Reorganizations

FirstEnergy requests authority, to the extent needed, to sell or otherwise transfer (i) nonutility businesses, (ii) the securities of current Subsidiaries engaged in some or all of these nonutility businesses or (iii) investments which do not involve a Subsidiary (*i.e.*, less than 10% voting interest) to a Nonutility Holding Company or a Subsidiary of Nonutility Holding Company, and, to the extent approval is required, such Nonutility Holding Company or any such Subsidiary of a Nonutility Holding Company requests authority to acquire the assets of such businesses, securities or other investment interests. Alternatively, transfers of such securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of such securities or assets to the receiving entity.[2]

Following its direct or indirect acquisition of the securities of new Nonutility Subsidiaries, FirstEnergy may determine to transfer such

[2] The transactions proposed will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any corporate reorganization involving the Utility Subsidiaries. The approval sought also does not extend to the acquisitions of any new businesses or activities.

securities or the assets of such Nonutility Subsidiaries and/or Nonutility Subsidiaries existing as of the date of the Merger, to other direct or indirect Nonutility Subsidiaries or to liquidate or merge Nonutility Subsidiaries. FirstEnergy requests authority to engage in these transactions, to the extent that they are not exempt under the Act, through the Authorization Period.

C. Changes in Capital Stock of Majority Owned Subsidiaries

Applicants state that proposed sales of capital securities (*i.e.*, common stock or Preferred Stock) may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Therefore, Applicants request authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by FirstEnergy or other intermediate parent company; provided that the consents of all other shareholders have been obtained for the proposed change. This request for authorization is limited to FirstEnergy's 50% or more owned Subsidiaries and will not affect the aggregate limits or other conditions contained in this Application. A Subsidiary would be able to change the par value, or change between par value and no-par stock, or change the form of such equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. FirstEnergy will be subject to all applicable laws regarding the fiduciary duty of fairness of a majority shareholder to minority shareholders in any such 50% or more owned Subsidiary and will undertake to ensure that any change implemented under this paragraph is consistent with such legal requirements.

D. Payment of Dividends

FirstEnergy also proposes, on behalf of every direct or indirect Nonutility Subsidiary, that such companies be permitted to pay dividends with respect to the securities of such companies and/or acquire, retire or redeem any securities of such companies that are held by an associate company or affiliate, from time to time, through the Authorization Period, out of capital or unearned surplus, to the extent permitted under applicable corporate law. Without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend and/or acquire, retire or redeem any security of such company held by any associate company or affiliate out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries.

E. EWGs and FUCOs

Under the Merger Order, FirstEnergy was authorized to utilize the proceeds of authorized financing to increase its "aggregate investment" in EWGs and FUCOs to $5 billion, which includes FirstEnergy's and GPU's investments in EWGs and FUCOs at the time of the merger ("Current Investment") and amounts relating to certain facilities owned by Ohio Edison, Cleveland Electric, Toledo Edison, and Penn Power that may be transferred to EWGs ("GenCo Investments"). FirstEnergy committed that, during the authorization period under the Merger Order, new investments in EWGs and FUCOs would not exceed $1.5 billion and requested the Commission to reserve jurisdiction over an "aggregate investment" in EWGs and FUCOs, other than Current Investment and GenCo Investments, in an amount over $1.5 billion ("Other Investments"). FirstEnergy is requesting a continuation, without change, of these limitations through the Authorization Period as applied to utilization of proceeds of financing authorized in this proceeding. FirstEnergy requests that the Commission continue to reserve jurisdiction over Other Investments that exceed such $1.5 billion amount.

F. Stock and Incentive Plans

FirstEnergy proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method which complies with applicable law and Commission interpretations then in effect for the purpose of reissuance up to 30 million additional shares of Common Stock under the FirstEnergy Stock Investment Plan and other existing dividend reinvestment and stock-based management incentive and employee benefit plans ("Stock Plans") described in the Application. Any newly issued shares of Common Stock will be counted against the External Financing Limit; shares of Common Stock purchased in the open market or otherwise acquired for the purpose of reissuance under Stock Plans will not be counted against the External Financing Limit.

G. Tax Allocation Agreement

In the Merger Order, the Commission reserved jurisdiction over, among other things, a proposed tax allocation agreement ("Tax Allocation Agreement") that will allocate consolidated tax liability among FirstEnergy and its Subsidiaries.

FirstEnergy financed the cash portion of the consideration paid in connection with the merger with GPU, approximately $2.2 billion, with borrowings under a credit agreement with a group of banks (the "Bank Bridge Loan"). Amounts outstanding under the Bank Bridge Loan were to be repaid by October 1, 2002 and carried an initial interest rate of LIBOR plus 1.25% per annum. Additional funds from the Bank Bridge Loan were used to repay approximately $1.5 billion of the short-term indebtedness of GPU and its subsidiaries outstanding immediately prior to the consummation of the Merger and to repay approximately $300 million of FirstEnergy's short-term indebtedness. Subsequently, on November 15, 2001, FirstEnergy issued $4 billion aggregate principal amount of unsecured notes ("Notes") having maturities of 2006 through 2031, the proceeds of which were used to repay in full the amounts outstanding under the Bank Bridge Loan.

As used in the Application, the term "Acquisition Debt" includes that portion of the proceeds of the Notes used to repay the portions of the Bank Bridge Loan related to the $2.2 billion merger-related cash consideration and the $1.5 billion GPU-related short-term indebtedness. The term also includes indebtedness that may be incurred by FirstEnergy during the Authorization Period for the purposes of refinancing any of the foregoing indebtedness.

Applicants request that the Commission authorize FirstEnergy and its Subsidiaries to enter into and allocate consolidated income taxes in accordance with the Tax Allocation Agreement. Under the proposed Tax Allocation Agreement, the consolidated tax would be allocated among the members of the group in proportion to the separate return tax liability of each member, provided that the tax apportioned to any subsidiary company of FirstEnergy will not exceed the "separate return tax" liability of such subsidiary. The Tax Allocation Agreement further provides that FirstEnergy will retain the benefit (in the form of the reduction in consolidated tax) that is attributable to the interest expense on the Acquisition Debt, rather than reallocate that tax savings to its subsidiary companies.

H. Investments in Nonutility Subsidiaries

First Energy seeks approvals to engage in certain activities described below relating to EWGs, FUCOs, ETCs (collectively, "Exempt Subsidiaries"), Rule 58 Subsidiaries and Energy Related Companies and make additional investments in other Nonutility Subsidiaries approved by the Commission (collectively, "Non-Exempt Subsidiaries"). Applicants state that to the extent any of these activities described in this Application constitute the providing of goods, services or construction from one associate company to another in the FirstEnergy system which would be subject to section 13 of the Act, these goods, services or construction will be provided at-cost as defined in rules 90 and 91 unless an exemption from the at cost requirement is available under rule 90(d) or otherwise approved in the Commission's order in this proceeding.

In the future, FirstEnergy proposes to make additional investments in Energy Related Companies (which, but for non-U.S. activities, would be Rule 58 Subsidiaries) in the form of purchases of common stock and other securities, capital contributions, loans or open account advances, guarantees, or any combination of the foregoing. It is also contemplated that Energy Related Companies may issue securities from time to time under the exemption provided in rule 52 to investors other than FirstEnergy for the purpose of financing their operations. Direct or indirect investments by FirstEnergy in Energy Related Companies would be subject to the limitations applicable to investments in Rule 58 Subsidiaries. However, to the extent approved by the Commission, Energy Related Companies will not be subject to the "U.S. only" restriction of rule 58.

In connection with existing and future nonutility businesses, FirstEnergy will engage directly or through Subsidiaries in preliminary development activities ("Development Activities") and administrative and management activities ("Administrative Activities") associated with such investments. Development Activities will be limited to: due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. FirstEnergy proposes to expend directly or through Nonutility Subsidiaries up to $300 million in the aggregate outstanding at any time during the Authorization Period on all such Development Activities. Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage Development Activities and investments in Subsidiaries.

FirstEnergy proposes to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities (collectively, "Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more Exempt Subsidiaries, Rule 58 Subsidiaries, Energy Related Companies or other Non-Exempt Subsidiaries, provided that Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. To the extent such transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, FirstEnergy requests authority for Intermediate Subsidiaries to engage in the activities described above. To the extent that FirstEnergy provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO, a Rule 58 Subsidiary or an Energy Related Company, the amount of such funds will be included in FirstEnergy's "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

I. Sale of Certain Goods and Services Outside the United States

FirstEnergy requests that the Commission authorize the Energy Related Companies to engage in sales of certain goods and services outside the United States. Specifically, Applicants request that the Commission: (i) Approve the sale of energy management services and consulting services anywhere outside the United States, (ii) approve the sale of energy marketing in Canada and Mexico and retain jurisdiction with respect to energy marketing elsewhere outside the United States, and (iii) retain jurisdiction over the sale of infrastructure services anywhere outside the United States. The descriptions of these activities and the terms of the requests for reservation of jurisdiction are the same as in the Merger Order.

In addition, FirstEnergy requests authority to provide through Subsidiaries other energy-related goods and services. These include incidental goods and services closely related to the consumption of energy and the maintenance of energy consuming property by customers. The need for these goods and services would arise as a result of, or evolve out of, the goods and services described above and do not differ materially from those goods and services. The proposed incidental goods and services would not involve the manufacture of energy consuming equipment but could be related to, among other things, the maintenance, financing, sale or installation of such equipment.

IX. Service Company Approvals

A. Transactions Involving Certain Categories of Nonutility Companies

The Applicants request authorization for FE ServCo, GPUS and the Nonutility Subsidiaries to enter into agreements to provide construction, goods or services to certain associate companies at fair market prices determined without regard to cost and therefore requests an exemption (to the extent that rule 90(d) of the Act does not apply) under section 13(b) from the cost standards of rules 90 and 91.

FirstEnergy requests relief, if the client company is: (1) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; (2) an EWG that sells electricity at market-based rates which have been approved by FERC or an appropriate state public utility commission, provided that the purchaser of the EWG's electricity is not an affiliated public utility or an affiliate that re-sells such power to an affiliated public utility; (3) a QF that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, or

to an electric utility company other than an affiliated electric utility at the purchaser's "avoided cost" determined under PURPA; (4) an EWG or a QF that sells electricity at rates based upon its costs of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an affiliated public utility; or (5) a Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially owned, provided that the ultimate purchaser of goods or services is not a Utility Subsidiary, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Companies described in (1) through (4) above or (c) does not derive, directly or indirectly, any part of its income from sources within the United States and is not a public-utility company operating within the United States.

B. Continuation of Interim Exemption

Under the Merger Order, FEFSG is authorized to provide maintenance and repair services to FirstEnergy's pre-merger Utility Subsidiaries (namely, Ohio Edison, Toledo Edison, Cleveland Electric, Penn Power, NONGC and ATSI) under certain At-Market Service Arrangements. The Merger Order granted an interim exemption under section 13(b) of the Act permitting FEFSG to provide such services at market rates determined without regard to cost. This interim exemption will expire on June 30, 2003. Applicants note that several of the longer-term At-Market Service Arrangements are still in place. FEFSG therefore requests that the Commission extend such interim exemption from June 30, 2003 to December 31, 2003, and reserve jurisdiction over any further extension after December 31, 2003.

CenterPoint Energy, Inc., et al. (70–10128)

CenterPoint Energy, Inc. ("CenterPoint"), a registered holding company and its three public-utility subsidiary companies Texas Genco, LP, ("Texas Genco"), CenterPoint Energy Houston Electric, LLC ("T&D Utility") and CenterPoint Energy Resources Corp. ("GasCo"), CenterPoint's intermediate holding companies, Utility Holding, LLC, 200 West Ninth Street Plaza, Suite 411, Wilmington, Delaware 19801, Texas Genco Holdings, Inc., Texas Genco GP, LLC and CenterPoint's nonutility subsidiary companies: CenterPoint Energy Funding Company, CenterPoint Energy Transition Bond Company, LLC, Houston Industries FinanceCo GP, LLC, Houston Industries FinanceCo LP, Reliant Energy FinanceCo II GP, LLC, Reliant Energy FinanceCo II LP, Reliant Energy FinanceCo III GP, LLC, Reliant Energy FinanceCo III LP, Reliant Energy FinanceCo IV GP, LLC, Reliant Energy FinanceCo IV LP, CenterPoint Energy Investment Management, Inc., CenterPoint Energy Management Services, Inc., CenterPoint Energy District Cooling, LLC, CenterPoint Energy Thermal Systems (Delaware), Inc., CenterPoint Energy District Cooling, L.P., CenterPoint Energy Power Systems, Inc., CenterPoint Energy Products, Inc., CenterPoint Energy Properties, Inc., CenterPoint Energy Tegco, Inc., HL&P Capital Trust I, HL&P Capital Trust II, HL&P Receivables, Inc., Houston Industries Energy (UK), Inc., NorAm Energy Corp., REI Trust, Reliant Energy Water, Inc., Texas Genco LP, LLC, Utility Rail Services, Inc., UFI Services, Inc., ALG Gas Supply Company, Allied Materials Corporation, Arkansas Louisiana Finance Corporation, Arkla Industries Inc., Arkla Products Company, Blue Jay Gas Company, CenterPoint Energy Alternative Fuels, Inc., CenterPoint Energy Consumer Group, Inc., CenterPoint Energy Field Services, Inc., CenterPoint Energy Field Services Holdings, Inc., CenterPoint Energy Gas Processing, Inc., CenterPoint Energy Gas Marketing Company, CenterPoint Energy Gas Receivables, LLC, CenterPoint Energy Gas Resources Corp., CenterPoint Energy Gas Transmission Company, CenterPoint Energy Hub Services, Inc., CenterPoint Energy—Illinois Gas Transmission Company, CenterPoint Energy Intrastate Holdings, LLC, Pine Pipeline Acquisition Company, LLC, CenterPoint Energy Marketing, Inc., CenterPoint Energy Retail Interests, Inc., CenterPoint Energy—Mississippi River Transmission Corporation, CenterPoint Energy MRT Holdings, Inc., CenterPoint Energy MRT Services Company, CenterPoint Energy Pipeline Services, Inc., CenterPoint Energy OQ, LLC, OQ Partners, a general partnership, CenterPoint Energy Trading and Transportation Group, Inc., Entex Gas Marketing Company, Entex NGV, Inc., Entex Oil & Gas Company, Industrial Gas Supply Corporation, Intex, Inc., Louisiana Unit Gas Transmission Company, Minnesota Intrastate Pipeline Company, National Furnace Company, NorAm Financing, NorAm Utility Services, Inc., Reliant Energy Funds Management, Inc., Unit Gas Transmission Company, United Gas, Inc., CenterPoint Energy International, Inc., CenterPoint Energy International Holdings, LLC, Reliant Energy El Salvador, S.A. de C.V., CenterPoint Energy International II, Inc., HIE Ford Heights, Inc., HIE Fulton, Inc., Reliant Energy India, Inc., Reliant Energy Rain, Inc., Rain Calcining Limited, CenterPoint Energy International Services, Inc., CenterPoint Energy Light, Inc., HI Energy Holdings I B.V., Reliant Energy Brasil, Ltda., Reliant Energy Brazil Ltd., HIE Brasil Rio Sul Ltda., Reliant Energy International Brasil Ltda., Reliant Energy Brazil Tiete Ltd., Reliant Energy Colombia Ltda., Reliant Energy Outsource Ltd., Venus Generation El Salvador Worldwide Electric Holdings B.V., c/o CenterPoint Energy, Inc., 1111 Louisiana, Houston, TX 77002 (together, "Applicants"), have filed an amended and restated application-declaration under sections 6(a), 7, 9(a), 10, 12 and 13 and rules 42, 43, 44, 45, 46, 52, 53, 54, 58, 62, 90 and 91 of the Act ("Application").[3]

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, and other related proposals, as more fully described below, commencing on the effective date of an order issued under this filing and ending June 30, 2005 ("Authorization Period").

I. Background

By order dated July 5, 2002 (Holding Co. Act Release No. 27548) (the "July Order"), the Commission authorized the formation of CenterPoint as a new registered holding company and the distribution ("Distribution") to shareholders of the remaining stock of Reliant Resources, Inc. ("Reliant Resources"). The Distribution, which was made on September 30, 2002, completed the separation from CenterPoint of the merchant power generation and energy trading and marketing business of Reliant Resources.

While the Distribution was necessary and appropriate both from a business perspective and in view of the policies and provisions of the Act, it did have the effect of significantly reducing CenterPoint's common equity in the short term. As the Commission has noted, however, CenterPoint's capital

[3] Texas Genco, LP, T&D Utility and GasCo shall collectively be referred to as the "Utility Subsidiaries." Utility Holding, LLC, Texas Genco Holdings, Inc. and Texas Genco GP, LLC, shall collectively be referred to as the "Intermediate Holding Companies." All of CenterPoint's direct and indirect subsidiaries, other than the Utility Subsidiaries and the Intermediate Holding Companies, are referred to as the "Nonutility Subsidiaries." The Utility Subsidiaries, Nonutility Subsidiaries and Intermediate Holding Companies are collectively referred to as the "Subsidiaries."

structure will be improved significantly with the sale of Texas Genco, LP and the securitization of any stranded investment in 2004 and 2005, as contemplated by Texas law. Pending the issuance of the securitization bonds, the CenterPoint system's financing transactions will be largely limited to refinancing, replacing or extending the term of existing obligations.

II. Financing Parameters

Financing by each Applicant will be subject to the following limitations ("Financing Parameters").

A. Interest Rates

The effective cost of money on any long-term debt financings will not exceed the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the subject debt, or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, of reasonably comparable credit quality, as determined by competitive capital markets.

The effective cost of money on any short-term debt financings will not exceed the greater of (i) 700 basis points over the comparable-term London Interbank Offered Rate ("LIBOR") rates, or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies of reasonably comparable credit quality as determined by the competitive capital markets.

The dividend rate on any series of preferred stock or preferred securities will not exceed the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the series of preferred stock or preferred or equity-linked securities or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, of reasonably comparable credit quality, as determined by competitive capital markets.

B. Maturity

The maturity of long-term debt will not exceed 50 years. All series of preferred stock, preferred securities and equity-linked securities (other than preferred stock, which may be perpetual) will be required to be redeemed no later than 50 years after the issuance thereof.

C. Issuance Expenses

The underwriting fees, commissions or other similar renumeration paid in connection with the non-competitive issue, sale or distribution of a security will not exceed 7% of the principal or total amount of the securities being issued;[4]

D. Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including: (i) the financing, in part, of the capital expenditures of the CenterPoint system; (ii) the financing of working capital requirements of the CenterPoint system; (iii) the refinancing or acquisition, retirement or redemption under rule 42 of securities previously issued by CenterPoint or its Subsidiaries or as otherwise authorized by the Commission; (iv) direct or indirect investment in companies authorized under the Act; (v) to meet unexpected contingencies, payment and timing differences, and cash requirements, and (vi) other lawful purposes.

E. Common Equity Ratio

At all times during the Authorization Period, each Utility Subsidiary will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt) as reflected in the most recent 10–K or 10–Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein.[5]

F. Investment Grade Ratings

Apart from securities issued for the purpose of funding money pool operations, no guarantees or other securities (other than common stock) may be issued in reliance on the authority requested herein unless: (i) the security to be issued, if rated, is rated investment grade by at least one nationally recognized statistical rating organization as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the 1934 Act ("NRSRO"); (ii) all outstanding rated securities of the issuer are rated investment grade by at least one NRSRO; and (iii) all outstanding rated securities of the top-level registered holding company are rated investment grade by at least one NRSRO. The Applicants ask the Commission to reserve jurisdiction over the issuance of securities subject to the Investment Grade Ratings criteria where one or more of the Investment Grade Ratings criteria are not met.

[4] Issuance Expenses will not count toward the effective cost of money discussed above.

[5] Upon the issuance of the securitization bonds described below, the T&D Utility may have common equity capitalization of less than 20% if the securitization debt is included. The Applicants request the Commission take into account the unique nature of securitization debt when it passes upon the request to form and capitalize special-purpose subsidiaries to issue securitization debt.

III. Proposed Financing Program

A. CenterPoint External Financing

CenterPoint requests authority to issue and sell securities, including common stock, preferred stock and preferred and equity-linked securities (either directly or through a subsidiary), long-term and short-term debt securities and convertible securities and derivative instruments with respect to any of these securities.[6] CenterPoint also requests authorization to enter into obligations with respect to tax-exempt debt issued on behalf of CenterPoint by governmental authorities. These obligations may relate to the refunding of outstanding tax-exempt debt or to the remarketing of tax-exempt debt. CenterPoint seeks authorization to enter into lease arrangements, and certain hedging transactions in connection with issuances of taxable or tax-exempt securities.

CenterPoint requests authority to sell securities covered by this Application in any one of the following ways: (i) through underwriters; (ii) to initial purchasers in transactions in reliance on Rule 144A under the Securities Act of 1933 or dealers; (iii) through agents; (iv) directly to a limited number of purchasers or a single purchaser; (v) in exchange for already outstanding securities; or (vi) directly to employees (or to trusts established for their benefit), shareholders and others. If underwriters are used in the sale of the securities, such securities may be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by CenterPoint) or directly by one or more underwriters acting alone. The securities may be sold directly by CenterPoint or through agents designated by CenterPoint from time to time. If common stock is being sold in an underwritten offering, CenterPoint may grant the underwriters a "green shoe" option permitting the

[6] Any convertible or equity-linked securities would be convertible into or linked to only securities that CenterPoint and its Subsidiaries are otherwise authorized to issue pursuant to rule or Commission order.

purchase from CenterPoint at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

1. Common Stock

CenterPoint requests authority to issue 200 million additional shares of common stock (including "Rights")[7] and to issue warrants, options and other rights to acquire an equivalent number of shares of common stock. In addition, CenterPoint proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, shares of CenterPoint common stock for allocation under incentive compensation plans and other equity compensation and employee benefit plans, and for the Investor's Choice Plan.[8] These transactions would comply with applicable law and Commission interpretations then in effect. Any newly issued shares of common stock, including shares of common stock issued upon the conversion or exercise of warrants, convertible debt or other equity-linked securities, will be counted toward the overall limit on common stock; shares of common stock purchased in the open market or otherwise acquired for the purpose of reissuance under Stock Based Plans will also be counted toward this limit.

2. Preferred Stock and Preferred and Equity-Linked Securities

CenterPoint requests Commission authority during the Authorization Period to issue preferred stock and to issue directly or indirectly through one or more financing subsidiaries ("Financing Subsidiaries") preferred stock, preferred securities (including trust preferred securities), and equity-linked securities (including, specifically, preferred securities that are convertible, either mandatorily or at the option of the holder, into common stock or forward purchase contracts for common stock).

CenterPoint requests authority to issue preferred stock and preferred and equity-linked securities in a net incremental amount of $250 million such that the total outstanding amount of CenterPoint preferred stock and preferred and equity-linked securities will not exceed $975 million at any one time outstanding during the Authorization Period.

Preferred stock and equity-linked securities may be sold directly or indirectly to or through underwriters, initial purchasers or dealers or pursuant to a method of distribution similar to those described for common stock above.

3. Long-Term Debt

CenterPoint requests authority to issue or sell external debt securities in a net incremental amount of $500 million (including long-term and short-term debt securities) (the "CenterPoint Additional Debt Limit") such that the total amount of CenterPoint debt securities will not exceed $5.847 billion at any one time outstanding during the Authorization Period ("CenterPoint Aggregate Debt Limit"). Long-term debt securities may be comprised of bonds, notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly and convertible debt. Long-term debt issued under the requested authority will be unsecured. Specific terms of any borrowings will be determined by CenterPoint at the time of issuance and will comply in all regards with the parameters on financing authorization set forth above.

4. Short-Term Debt

CenterPoint seeks authority to issue short-term debt subject to the CenterPoint Additional Debt Limit to provide financing for general corporate purposes, working capital requirements and temporary financing of Subsidiary capital expenditures. Short-term debt issued by CenterPoint will be unsecured.

Types of short-term debt securities may include borrowings under one or more revolving credit facilities or bank loans, commercial paper, short-term notes, bid notes, institutional borrowings and privately placed notes. Specific terms of any short-term borrowings will be determined by CenterPoint at the time of issuance and will comply in all regards with the parameters for financing authorization set forth above. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under generally accepted accounting principles ("GAAP").

CenterPoint may sell commercial paper or privately placed notes ("commercial paper") from time to time, in established domestic or European commercial paper markets. Commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company.

CenterPoint may, without counting against the limit on parent financing set forth above, maintain back-up lines of credit in connection with one or more commercial paper programs in an aggregate amount not to exceed the amount of authorized commercial paper.

CenterPoint may sell short-term notes through one or more private placements or public offerings primarily to traditional money market investors. CenterPoint may enter into individual agreements with one or more commercial banks that may or may not be lenders under CenterPoint credit facilities. These agreements would permit CenterPoint to negotiate with one or more banks on any given day for such lender, or any affiliate or subsidiary of such lender, to purchase promissory notes directly from CenterPoint.

5. Financing Risk Management Devices

CenterPoint requests authority to enter into hedging arrangements intended to reduce or manage the volatility of financial or other business risks to which CenterPoint is subject. These arrangements may include, but are not limited to, interest rate swaps, caps, floors, collars, forward agreements, issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index) or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency (*e.g.* Fannie Mae) obligations or LIBOR based swap instruments (collectively referred to as "Hedging Instruments"). The transactions would be for fixed periods and stated notional amounts, as are generally accepted as prudent in the capital markets. In no case will the notional principal amount of any interest rate hedge exceed that of the underlying debt instrument. CenterPoint will not engage in speculative transactions as that term is described in Statement of Financial Accounting Standard 133, as amended ("SFAS 133"). Transaction fees, commissions and other amounts payable to brokers in connection with an interest rate hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

CenterPoint may employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed-rate debt; (ii) converting fixed-rate debt to variable rate debt; (iii) limiting the impact of changes in interest rates resulting from variable rate debt; and (iv) managing other risks that may attend outstanding securities. Transactions will be entered into for a fixed or determinable period. CenterPoint will only enter into agreements with counterparties having a senior debt rating at the time the transaction is executed of at least BBB-, or its equivalent, as published by a NRSRO ("Approved Counterparties").

In addition, CenterPoint requests authorization to enter into hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to the limitations and restrictions expressed below. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the risk associated with any issuance of securities through appropriate means, including (i) a forward sale of exchange-traded Hedging Instruments (a "Forward Sale"); (ii) the purchase of put options on Hedging Instruments (a "Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a "Zero Cost Collar"); (iv) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges; and (v) other financial derivatives or other products including Treasury rate locks, swaps, forward starting swaps, and options on the foregoing. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade ("CBOT"), the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. CenterPoint or its applicable Subsidiary will determine the structure of each Anticipatory Hedge transaction at the time of execution. CenterPoint or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

Each Hedging Instrument and Anticipatory Hedge will be treated for accounting purposes as provided for under GAAP. CenterPoint and its Subsidiaries will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivatives Instruments and Hedging Activities") and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

B. Subsidiary Financing

To the extent not otherwise exempted,[9] the Utility Subsidiaries and the Intermediate Holding Companies request authority to issue and sell securities, including common equity, preferred shares and preferred securities (including trust preferred securities) (either directly or through a subsidiary), long-term and short-term debt securities, including convertible debt and derivative instruments with respect to any of the foregoing on the same terms and conditions as discussed above for CenterPoint, except that Utility Subsidiary and Intermediate Holding Company debt may be secured or unsecured.[10]

Texas Genco Holdings, Inc. and Texas Genco, LP (together, the "Texas Genco Entities") request authority to issue or sell external debt in an aggregate amount of $250 million at any one time outstanding during the Authorization Period.

CenterPoint Energy Houston Electric, LLC (the "T&D Utility") requests authority to issue and sell external debt securities in a net incremental amount of $500 million such that the amount of T&D Utility external debt will not exceed $3.603 billion at any one time outstanding during the Authorization Period. The T&D Utility requests authority to issue or sell preferred stock and preferred securities (including trust preferred securities) in an amount not to exceed $250 million at any one time outstanding during the Authorization Period.

CenterPoint Energy Resources Corp. ("GasCo") requests authority to issue or sell external debt in a net incremental amount of $500 million such that the amount of external GasCo debt will not exceed $3.187 billion at any one time outstanding during the Authorization Period. GasCo requests authority to issue or sell preferred stock and preferred securities (including trust preferred securities) in an amount not to exceed $250 million during the Authorization Period such that the amount of preferred stock and preferred securities (including trust preferred securities) will not exceed $250.4 million at any one time outstanding during the Authorization Period.

The Utility Subsidiaries and Intermediate Holding Companies also request authorization to enter into obligations with respect to new tax-exempt debt issued on behalf of a Utility Subsidiary or an Intermediate Holding Company by governmental authorities as well as obligations entered into in connection with the refunding of outstanding tax-exempt debt assumed by CenterPoint in connection with the August 31, 2002 restructuring by which CenterPoint and Utility Holding, LLC became holding companies for the Utility Subsidiaries.

The Utility Subsidiaries also request authority to enter into hedging transactions to manage their risk in connection with the issuance of securities subject to the limitations and requirements applicable to CenterPoint, provided, that the Intermediate Holding Companies will not enter into such hedging transactions.

C. Guarantees and Intra-System Advances

1. Guarantees

CenterPoint requests authorization during the Authorization Period to enter into guarantees to third parties, obtain letters of credit, enter into support or expense agreements or liquidity support agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries, including performance guarantees, as may be appropriate to carry on in the ordinary course of CenterPoint or its Subsidiaries' duly-authorized utility and related businesses, and the Subsidiaries request authority to provide to their respective Subsidiaries guarantees and other forms of credit support in an aggregate amount not to

[7] Each share of common stock includes one right ("Right") to purchase from CenterPoint a unit consisting of one one-thousandth of a share of CenterPoint Series A Preferred Stock at a purchase price of $42.50 per unit, subject to adjustment. The Rights are issued pursuant to the Rights Agreement dated as of January 1, 2002 between CenterPoint and JPMorgan Chase Bank (the "Rights Agreement").

[8] These plans include the CenterPoint Energy, Inc. Investor's Choice Plan; existing stock-related employee plans: CenterPoint Energy, Inc. Savings Plan, CenterPoint Energy, Inc. Long-Term Incentive Compensation Plan, CenterPoint Energy, Inc. 1994 Long-Term Incentive Compensation Plan, Long-Term Incentive Plan of CenterPoint Energy, Inc., CenterPoint Energy, Inc. Business Unit Performance Share Plan, CenterPoint Energy, Inc. and Subsidiaries Common Stock Participation Plan for Designated New Employees and Non-Officer Employees, and the CenterPoint Energy, Inc. Stock Plan for Outside Directors (collectively, the "Stock Based Plans"). The requested authority relating to benefit and compensation plans is intended to apply to these plans, as they may be amended or supplemented from time to time, and similar plans or arrangements that may be adopted in the future without any additional prior Commission order.

[9] The Nonutility Subsidiaries will rely on rules 45 and 52 under the Act for financings described in this section.

[10] To the extent that GasCo issues secured debt, such debt will be secured by a pledge of the stock of its nonutility subsidiary companies.

exceed $4 billion outstanding at any one time. Excluded from the CenterPoint Guarantee Limit are obligations exempt under rule 45 under the Act. Any guarantees shall also be subject to the limitations of rules 53 and 58, as applicable.

The guarantor may charge each Subsidiary a fee for any guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

Certain of the guarantees referred to above may be in support of obligations that are not capable of exact quantification. In these cases, CenterPoint will determine the exposure under the guarantee by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, these estimates will be made in accordance with GAAP and sound financial practices. Such estimation will be re-evaluated periodically.

2. Money Pool

CenterPoint and certain of its Subsidiaries (together, the "Parties") request authorization to continue to conduct the Money Pool as approved in the July Order, and the Subsidiaries, to the extent not exempted by rule 52 under the Act, also request authorization to make, from time to time, unsecured short-term borrowings from the Money Pool and to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool.[11]

CenterPoint requests authorization to contribute surplus funds and to lend and extend credit to the Utility Subsidiaries through the Money Pool. CenterPoint will not be a borrower from the Money Pool.

[11] The Parties to the Money Pool will be CenterPoint, Texas Genco Holdings, Inc., Texas Genco GP, LLC, the Utility Subsidiaries, Houston Industries FinanceCo GP, LLC, Houston Industries FinanceCo LP, Reliant Energy FinanceCo II GP, LLC, Reliant Energy FinanceCo II LP, CenterPoint Energy Properties, Inc., CenterPoint Energy International, Inc., CenterPoint Energy Products, Inc., CenterPoint Energy Management Services, Inc. and CenterPoint Energy Funding Company. CenterPoint Energy International, Inc. and CenterPoint Energy Funding Company are entities through which CenterPoint funded or acquired foreign utility companies within the meaning of section 33 of the Act and so, these companies will be investors in but not borrowers from the Money Pool. No exempt wholesale generator or foreign utility company will be a borrower from the Money Pool.

Under the terms of the Money Pool, each Party determines each day the amount of funds each desires to contribute to the Money Pool, and contributes such funds to the Money Pool. The determination of whether a Party has funds to contribute (either from surplus funds or from external borrowings) and the determination whether a Party shall lend such funds to the Money Pool is made by such Party's treasurer, or by a designee thereof, in such Party's sole discretion. Each Party may withdraw any of its funds at any time upon notice to CenterPoint as administrative agent of the Money Pool.

Short-term funds will be available from the following sources: (1) surplus funds in the treasuries of the Parties, and (2) proceeds from external borrowings, including bank loans, the sale of notes and/or the sale of commercial paper by the Parties, in each case to the extent permitted by applicable laws and regulatory orders.

Each borrowing Party will borrow pro rata from each fund source in the same proportion that the amount of funds provided from that fund source bears to the total amount then loaned through the Money Pool. On a day when more than one source of funds is invested in the Money Pool with different rates of interest used to fund loans through the Money Pool, each borrower will borrow pro rata from each such funding source from the Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of funds invested into the Money Pool. If there are insufficient funds to meet all borrowing requests, the needs of the Utility Subsidiaries will be met before loans are made to any Nonutility Subsidiaries.

The determination of whether a Party has funds to lend to the Money Pool will be made by its Treasurer, or by a designee thereof. CenterPoint, as administrator of the Money Pool, will provide each Party with a report for each business day that includes, among other things, cash activity for the day and the balance of loans outstanding. All borrowings from the Money Pool shall be authorized by the borrowing Party's treasurer, or by a designee thereof. No Party shall be required to effect a borrowing through the Money Pool if such Party determines that it can (and is authorized to) effect such borrowing more advantageously directly from banks or through the sale of its own notes or commercial paper.

Funds which are loaned by Parties and are not utilized to satisfy borrowing needs of other Parties will be invested by CenterPoint on behalf of the lending Parties in one or more short term instruments, including (i) interest-bearing deposits with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies; (iii) commercial paper rated not less than A–1 by Standard & Poor's and P–1 by Moody's Investors Services, Inc.; (iv) money market funds; (v) bank certificates of deposit; (vi) Eurodollar funds; (vii) repurchase agreements collateralized by securities issued or guaranteed by the U.S. government; and (viii) such other investments as are permitted by section 9(c) of the Act and rule 40.

The interest rate applicable on any day to then outstanding loans through the Money Pool, whether or not evidenced by a promissory demand note, will be the composite weighted average daily effective cost incurred by CenterPoint for external borrowings outstanding on that date. The daily effective cost shall be inclusive of interest rate swaps related to such external funds. If there are no external borrowings outstanding on that date, then the rate will be the certificate of deposit yield equivalent of the 30-day Federal Reserve "AA" Non-Financial Commercial Paper Composite Rate or if no composite is established for that day, then the applicable rate will be the composite for the next preceding day for which a composite is established. If the composite shall cease to exist, then the rate will be the composite which then most closely resembles the Composite and/or most closely mirrors the pricing CenterPoint would expect if it had external borrowings.

Interest income related to external investments will be calculated daily and allocated back to lending Parties on the basis of their relative contribution to the Money Pool on that date.

Each Party receiving a loan from the Money Pool shall repay the principal amount of such loan, together with all interest accrued, on demand by the administrator and in any event not later than the expiration date of the Commission authorization for the operation of the Money Pool. All loans made through the Money Pool may be prepaid by the borrower without premium or penalty.

Borrowings by the Utility Subsidiaries from the Money Pool shall not exceed the following amounts at any one time outstanding during the Authorization Period: Texas Genco LP—$600 million; T&D Utility—$600 million; GasCo—$600 million.

3. Other Intra-System Financing

The Subsidiaries may also finance their capital needs through borrowings

from CenterPoint, directly or indirectly through one or more Intermediate Holding Companies. Any financings by Utility Subsidiaries pursuant to this request would be counted toward the Money Pool limits above.

Each of the Intermediate Holding Companies requests authority to issue and sell securities to its respective parent companies and to acquire securities from its subsidiary companies on the same terms and conditions as specified above.

D. Changes in Capital Stock of Majority Owned Nonutility Subsidiaries

Applicants request authority to change the terms of any 50% or more owned Nonutility Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by CenterPoint or other intermediate parent company, provided that no such action would be taken without the consents necessary under applicable law.

E. Payment of Dividends Out of Capital or Unearned Surplus

Each of the Nonutility Subsidiaries requests authority to declare and pay dividends out of capital or unearned surplus to the extent permitted by state law.

CenterPoint also requests authority to declare and pay dividends out of capital or unearned surplus in an amount up to $500 million through the Authorization Period. Such authority is required because of the accounting consequences of the Distribution. Accordingly, CenterPoint requests the Commission to reserve jurisdiction over this request. As of December 31, 2002, CenterPoint had negative retained earnings of approximately $1.1 billion. It is CenterPoint's intention to declare and pay dividends out of current earnings.

F. Financing Subsidiaries

CenterPoint and its Subsidiaries proposes to organize and acquire, directly or indirectly, the common stock or other equity interests of one or more financing subsidiaries (collectively, the "Financing Subsidiary") for the purpose of effecting various financing transactions from time to time through the Authorization Period.[12] Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purposes described in this Application. The amount of securities issued by the Financing Subsidiaries to third parties will count toward the respective financing limits of its immediate parent. Authorization is requested for the issuance of such securities by the Financing Subsidiaries and for the transfer of proceeds from such issuance to the respective parent companies.

CenterPoint and, to the extent such issuances are not exempt under rule 52, the Subsidiaries also request authorization to issue their subordinated unsecured notes ("Subordinated Notes") to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary, in respect of which the Subordinated Note is issued. CenterPoint or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of such Financing Subsidiaries.

Any security issued to third parties under the requested authority will be appropriately disclosed in the system's financial statements. Applicants anticipate that the Financing Subsidiaries will be wholly-owned indirect subsidiaries of CenterPoint. No Financing Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act, without first obtaining any necessary approval.

The business of the Financing Subsidiary will be limited to effecting financing transactions that have been otherwise authorized for CenterPoint and its Subsidiaries. In connection with these transactions, CenterPoint or the Subsidiaries may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary.

Any Financing Subsidiary shall be organized only if, in management's opinion, the creation and utilization of the Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital for CenterPoint or its Subsidiaries.

Each of CenterPoint and the Subsidiaries also requests authorization to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the entity. Any amounts issued by the Financing Subsidiaries to third parties will be included in the additional external financing limitation for the immediate parent of the financing entity. However, the underlying intra-system mirror debt and parent guarantee will not be included. Applicants also seek authority for the Financing Subsidiaries to transfer the proceeds of any financing to their respective parent companies.

[12] This request is in addition to the request for authority in connection with the securitization of stranded costs *infra*. Applicants are requesting the Commission to reserve jurisdiction over that request, pending completion of the record.

IV. Retention and Reorganization of Nonutility Interests

A. Retention of Nonutility Interests

In the July Order, the Commission reserved jurisdiction over the retention of CenterPoint Energy Investment Management, Inc., MRT Services Company and CenterPoint Energy Trading and Transportation Group, Inc. Applicants request that the Commission authorize the retention of these nonutility interests except with respect to the canal currently owned by MRT Services Company.

CenterPoint Energy Investment Management, Inc., a Delaware corporation that is a wholly-owned subsidiary of CenterPoint, holds shares of stock of AOL Time Warner that were received in connection with the 1995 sale of certain cable television businesses.

MRT Services Company provides marketing services in connection with CenterPoint's gas pipeline subsidiaries. It also is the lessor of real estate associated with telecommunications towers that are used to provide services to CenterPoint system. CenterPoint asks the Commission to grant it three years to divest the canal. CenterPoint further requests that any order of the Commission that requires CenterPoint to divest the canal pursuant to section 11(b)(1) of the Act make the necessary findings to enable CenterPoint to obtain the tax treatment provided by Section 1081 of the Internal Revenue Code, as amended, in connection with the ordered disposition.

CenterPoint Energy Trading and Transportation Group, Inc. provides administrative payroll services to associated pipeline companies at cost determined in accordance with rules 90 and 91. Applicants state that the subsidiary is not engaged in other businesses.

B. Authority to Restructure Nonutility Interests

CenterPoint proposes to restructure its nonutility interests from time to time as may be necessary or appropriate. CenterPoint will engage, directly or indirectly, only in businesses that are duly authorized, whether by order, rule or statute.

V. Disposition of the Texas Genco Entities

CenterPoint intends to qualify Texas Genco, LP as an exempt wholesale generator ("EWG") as expeditiously as possible. In the event that EWG status is not obtained in a timely fashion, CenterPoint seeks authority under section 12(d) to sell the stock and/or assets of the Texas Genco Entities to Reliant Resources.

As of December 31, 2002, Texas Genco, LP owned and operated 11 power generating stations (60 generating units) and had a 30.8% interest in the South Texas Project Electric Generating Station ("South Texas Project"), for a total net generating capacity of 14,175 MW. The South Texas Project is a nuclear generating station with two 1,250 MW nuclear generating units.

Texas Genco, LP sells electric generation capacity, energy and ancillary services in the Electric Reliability Council of Texas, Inc. ("ERCOT") market, which is the largest power market in the State of Texas. Since January 1, 2002, Texas Genco, LP's generation business has been operated as an independent power producer, with output sold at market prices to a variety of purchasers. As authorized by this Commission under the July Order, on January 6, 2003, CenterPoint distributed to its shareholders approximately 19% of the common stock of Texas Genco Holdings, Inc.

Reliant Resources has an option that may be exercised between January 10, 2004 and January 24, 2004 to purchase all of the shares of Texas Genco Holdings, Inc. common stock then owned by CenterPoint. The exercise price under the option would equal:

- The average daily closing price per share of Texas Genco Holdings, Inc. common stock on the New York Stock Exchange for the 30 consecutive trading days with the highest average closing price for any 30-day trading period during the 120 trading days immediately preceding January 10, 2004, multiplied by the number of shares of Texas Genco Holdings, Inc. common stock then owned by CenterPoint, plus
- A control premium, up to a maximum of 10%, to the extent a control premium is included in the valuation determination made by the Texas Commission relating to the market value of Texas Genco Holdings, Inc.'s common stock equity.

The exercise price formula is based upon the generation asset valuation methodology in the Texas electric restructuring law that CenterPoint will use to calculate the market value of Texas Genco Holdings, Inc. The exercise price is also subject to adjustment based on the difference between the per share dividends Texas Genco Holdings, Inc. paid to CenterPoint during the period from the distribution date through the option closing date and Texas Genco Holdings, Inc.'s actual per share earnings during that period. To the extent Texas Genco Holdings, Inc.'s per share dividends are less than its actual per share earnings during that period, the per share option price would be increased. To the extent its per share dividends exceed its actual per share earnings, the per share option price would be reduced.

Reliant Resources has agreed that if it exercises its option, Reliant Resources would purchase from CenterPoint all notes and other payables owed by Texas Genco Holdings, Inc. to CenterPoint as of the option closing date, at their principal amount plus accrued interest. Similarly, if there are notes or payables owed to Texas Genco Holdings, Inc. by CenterPoint as of the option closing date, Reliant Resources would assume those obligations in exchange for a payment from CenterPoint of an amount equal to the principal plus accrued interest.

If Reliant Resources does not exercise the option, CenterPoint currently plans to sell or otherwise monetize its interest in the Texas Genco Entities.[13]

VI. Securitization of Stranded Costs

The Texas electric restructuring law provides for the use of special purpose entities to issue securitization bonds for the economic value of generation-related regulatory assets and stranded costs. These bonds would be amortized through non-bypassable charges to the T&D Utility's customers that are authorized by the Texas Commission. Any stranded costs not recovered through the securitization bonds would be recovered through a non-bypassable charge assessed to customers taking delivery service from the T&D Utility.

CenterPoint seeks authority to form and capitalize one or more special-purpose subsidiaries of the T&D Utility to issue in an amount of up to $6 billion, as determined by the Texas Commission, in securitization bonds in 2004 or 2005 to monetize and recover the balance of stranded costs relating to previously owned electric generation assets and other qualified costs as determined in a 2004 true-up proceeding, and, as may be required, for such subsidiaries to transfer the proceeds to the T&D Utility, Utility Holding, LLC and CenterPoint. The issuance will be done pursuant to a financing order issued by the Texas Commission. As with the debt of its existing transition bond company, the holders of the securitization bonds would not have recourse to any assets or revenues of CenterPoint or its subsidiary companies (other than those of the special purpose transition bond company), nor would the system's creditors have recourse to any assets or revenues of the entity issuing the securitization bonds (again other than those of the special purpose transition bond company). All or a portion of the proceeds from the issuance of bonds will be used to repay debt of CenterPoint and its subsidiary companies. Any issuance would be subject to the financing parameters described above. CenterPoint requests that the Commission reserve jurisdiction over this request, pending completion of the record.

VII. Other Authority

In the July Order, the Commission authorized CenterPoint to provide a variety of services to its Subsidiaries in areas such as accounting, rates and regulation, internal auditing, strategic planning, external relations, legal services, risk management, marketing, financial services and information systems and technology. CenterPoint states that it intends to form a service company and is in the process of preparing the request for authorization. In the interim, CenterPoint seeks continuing authority to provide jurisdictional services and goods to its Subsidiaries through December 31, 2003. CenterPoint states that charges for all services will be on an at-cost basis, as determined under rules 90 and 91 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14367 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[13] CenterPoint will seek such additional authority as may be required in this regard.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47960; File No. SR–Amex–2003–17]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to "Market at 4 p.m." Orders for ETFs

June 2, 2003.

On March 17, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to institute "Market at 4 p.m." ("MCC") Orders for Exchange Traded Funds ("ETFs"). On April 17, 2003 the Amex amended the proposal.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on May 1, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[7] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Commission believes that the procedures proposed for executing MCC Orders are similar to those currently existing for "Market at the Close" ("MOC") Orders for all Amex-listed stocks. The Commission also notes that the MOC Order procedures for Amex-listed stocks have been approved on a permanent basis since 1992.[8] The Commission also believes that the procedures for executing MCC Orders may potentially provide customers with additional flexibility in order execution by permitting transactions in ETFs near the close of the day at a price that is closely related to the closing price of the underlying components for those ETFs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2003–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14371 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice-President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, the Amex replaced in its entirety the original proposed rule change.

[4] *See* Securities Exchange Act Release No. 47725 (April 23, 2003), 68 FR 23337.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 31610 (December 16, 1992), 57 FR 61131 (December 23, 1992) (SR–Amex–92–34) (permanently approving procedures to execute MOC orders on every trading day).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47959; File No. SR–CBOE–2002–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 5 and 6 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of the CBOE Hybrid System

May 30, 2003.

I. Introduction

On January 18, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement the CBOE Hybrid System. The CBOE filed Amendments No. 1, 2, 3, and 4 to the proposed rule change on April 2, 2002, May 17, 2002, January 16, 2003, and April 7, 2003, respectively.[3] The proposed rule change and Amendments No. 1, 2, 3, and 4 were published for comment in the **Federal Register** on April 22, 2003.[4] The Commission received two comment letters on the proposal.[5] The Exchange filed Amendments No. 5 and 6 to the proposal on May 16, 2003[6] and May 30, 2003,[7] respectively. The CBOE also submitted a letter responding to the ISE Letter on May 16, 2003.[8] This order approves the proposed rule change and Amendments No. 1, 2, 3, and 4; grants accelerated approval to Amendments No. 5 and 6 to the proposed rule change; and solicits comments from interested persons on Amendments No. 5 and 6.

II. Description of the Proposal

The Exchange proposes to implement the CBOE Hybrid System ("Hybrid" or

[3] Amendment No. 4 supersedes the original filing and Amendments No. 1, 2, and 3 in their entirety.

[4] Securities Exchange Act Release No. 47676 (April 14, 2003), 68 FR 19865.

[5] Letters from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange ("ISE"), to Jonathan G. Katz, Secretary, Commission, dated May 13, 2003 ("ISE Letter"); and Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Exchange, Inc. ("PCX"), to Jonathan G. Katz, Secretary, Commission, dated May 21, 2003 ("PCX Letter").

[6] Letter from Steve Youhn, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 15, 2003 ("Amendment No. 5"). Amendment No. 5 revises proposed CBOE Rule 6.13(b)(iii) to clarify that if a marketable balance remains after a split price execution, it would be booked automatically only if the order is eligible for book entry. Otherwise, the balance would route either to PAR or BART, or, at the order entry firms' discretion, to the order entry firm's booth printer. Amendment No. 5 also revises proposed CBOE Rule 7.4(a) to require electronic submission of orders or quotes for entry into the electronic book, and to require such orders and quotes to comply with format requirements prescribed by the Exchange. Finally, Amendment No. 5 moves the sentence, "Orders not eligible for automatic execution instead will route to PAR, BART, or, at the order entry firm's discretion, to the order entry firm's booth printer" from proposed CBOE Rule 6.13(b)(i)(B)(ii) to proposed CBOE 6.13(b)(i)(B), and renumbers subsection (B) as subsection (C).

[7] Letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated May 30, 2003 ("Amendment No. 6"). First, Amendment No. 6 amends proposed CBOE Rule 6.45A(a)(i) to clarify that only in-crowd DPMs can be considered to be "market participants." Second, Amendment No. 6 amends proposed CBOE Rule 6.45A(c), regarding interaction of market participant's quotes and/or orders with orders in electronic book, to clarify that a trade occurs when a market participant's quote or order interacts with the order in the book; and that the CBOE would disseminate a last sale report at this point and decrement the disseminated quote to reflect the execution. Third, Amendment No. 6 describes in greater detail the ability of market makers to submit two-sided and one-sided quotes (referred to as orders). Fourth, Amendment No. 6 clarifies that the FPC generally has the discretion to determine whether to route orders through PAR or BART, and clarifies how the FPC would use that discretion. Fifth, Amendment No. 6 clarifies the routing process for orders that would be eligible for automatic execution when the CBOE is not at the NBBO. Sixth, Amendment No. 6 amends proposed CBOE Rule 6.45A(c) to clarify that customer orders would be the only type of order represented by floor brokers that would be eligible to participate in the N-second group.

[8] Letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated May 15, 2003 ("CBOE Response Letter").

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

"Hybrid System"), an options trading platform that would combine the features of electronic and open outcry, auction market principles, while, at the same time, providing market makers the ability to electronically stream their own quotes. Today, CBOE's disseminated quote represents, for the most part, only the DPM's automatically generated quotations. Market makers are able to affect changes to that quote only in open outcry (or by putting up manual quotes). Hybrid would offer in-crowd market makers and in-crowd DPMs [9] the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.[10] In addition, in-crowd floor brokers would be permitted to enter orders on behalf of their customers for display in the CBOE's best bid or offer ("BBO"). Market makers would have the ability to stream quotes that reflect their individual trading interest.

Incoming electronic orders from public customers and non-market maker broker-dealers that automatically execute against market participants' quotes would be allocated to the best quoters pursuant to a new trading algorithm. This "Ultimate Matching Algorithm" ("UMA" or the "allocation algorithm") retains public customer priority and rewards market participants for quoting at the best price and for providing liquidity at the best price.

Hybrid also retains features of a floor-based, open outcry exchange. Order entry firms would continue to have the option of sending floor brokers into a trading crowd to request markets on behalf of their customers. Trading crowds, as is the case today, would continue to have the opportunity to offer price improvement to orders that are exposed to the open outcry, auction market environment.

Under Hybrid, non-market maker broker-dealers would have the same access to the automatic execution feature of Hybrid as public customers.[11] In this regard, non-market maker broker-dealers orders would be permitted to automatically execute against quotes and resting limit orders on the book, whether those orders are public customer orders or broker-dealer orders. Additionally, at the discretion of the Floor Procedure Committee ("FPC"), broker-dealer orders would be eligible for placement into the electronic book, where they may be executed electronically.[12]

To implement Hybrid, the Exchange proposes to adopt several new rules (most notably, CBOE Rules 6.13 and 6.45A) and to amend several existing rules. New CBOE Rule 6.13 would replace the Exchange's RAES Rule 6.8 for those classes in which Hybrid is operational and would govern the automatic execution of incoming electronic orders. Proposed CBOE Rule 6.45A would be the new priority and allocation rule and would codify UMA. A more complete description of the proposal is provided in Section IV, below.

This proposal would apply only to equity options. The Exchange proposes a rollout schedule to begin trading of equity option classes on Hybrid by May 30, 2003. New equity option classes would continue to be rolled out gradually as the Exchange and its membership become more familiar with the operation of the system. The determination of which classes to roll out, and when to roll them out, would be made by the Equity FPC. The Exchange plans to expand the rollout to the Top 200 classes by January 2004 and, by the fourth quarter of 2004, to expand the rollout to the 500 most active equity options. The Exchange intends to implement Hybrid floor-wide in all classes by the fourth quarter of 2006.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 5 and 6 to the proposed rule change, including whether Amendments No. 5 and 6 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, would be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing would also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–05 and should be submitted by June 30, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[13] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [14] in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

A. Automatic Executions

CBOE Hybrid would permit the automatic execution of incoming electronic customer and non-market maker broker-dealer orders in classes designated for trading on Hybrid. Pursuant to proposed CBOE Rule 6.13(b)(i)(C), two categories of orders would be eligible, for the same number of contracts, for automatic execution: orders from non-broker-dealer public customers and orders from non-market maker broker-dealers. The appropriate FPC would be permitted to determine that orders from market makers and specialists would also be eligible for automatic execution.[15] Orders not eligible for automatic execution instead would route to PAR, BART, or, at the order entry firm's discretion, to the order entry firm's booth printer.[16]

[9] *See* Amendment No. 6, *supra* note 7.

[10] In-crowd floor brokers may represent *orders* on behalf of members, broker-dealers, public customers, and the firm's proprietary account. Pursuant to CBOE Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction would be one to buy or sell. Unlike market makers and the DPM, floor brokers may not stream quotes.

[11] *See* proposed CBOE Rule 6.13(b)(i)(B)(1).

[12] *See* proposed CBOE Rule 7.4(a).

[13] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] CBOE market makers who are physically present in the trading crowd would be permitted to submit one-sided quotes (also referred to as an order) or two-sided quotes. See Amendment No. 6, supra note 7.

[16] BART is the Booth Automated Routing Terminal that enables firms to maintain orders in electronic format. Orders routed to the firm's booth, as opposed to BART, would print at the booth and must be handled by the firm manually. As is the case today, the FPC would have the discretion, on a class by class basis, to route orders to PAR or BART. If market maker orders are not eligible for automatic execution, they would all route to PAR or they would all route to BART. The FPC could not determine to route, for example, orders for CBOE market makers that are not in the crowd to PAR, and competing market maker orders to BART. The CBOE represents that routing decisions would be changed infrequently. See Amendment No. 6, *supra* note 7.

[17] *See* Amendment No. 5, *supra* note 6.

[18] In these instances, the order would route to PAR, unless the order entry firm decides that these orders should route to BART, because routing to PAR would allow the DPM either to send an order through the options intermarket linkage or to execute the order at the better price. *See* Amendment No. 6, *supra* note 7.

In addition, the appropriate FPC would determine, on a class-by-class basis, the maximum size of orders entitled to receive automatic execution through Hybrid. If the appropriate FPC determines to allow market makers and specialists to access the automatic execution feature of Hybrid, proposed CBOE Rule 6.13(b)(i)(C) would permit the FPC to establish the maximum order size eligibility for such orders at a level lower than the maximum order size eligibility for non-broker-dealer public customers and non-market-maker broker-dealers.

Under proposed CBOE Rule 6.13(b)(iii), eligible orders for a size greater than the disseminated size would be automatically executed up to the disseminated size. The balance of the order, if marketable, would be executed automatically at the revised disseminated price up to the revised disseminated size. If not marketable, the balance of the order would book electronically, if the order were eligible for book entry. Otherwise, the balance would route either to PAR or BART, or, at the order entry firms' discretion, to the order entry firm's booth printer.[17]

Pursuant to proposed CBOE Rule 6.13(b)(iv), when the CBOE quotation is inferior to the NBBO, eligible orders would not automatically execute and instead, would route to the DPM's PAR terminal or, at the order entry firm's discretion, to BART, for non-automated handling.[18] Eligible orders received while the CBOE market is locked would be eligible for automatic execution on CBOE at the disseminated quote, provided that CBOE's disseminated quote is not inferior to the NBBO, in which case the order would route to the DPM's PAR terminal or, at the order entry firm's discretion, to BART, for non-automated handling.

In its comment letter, the ISE questions why "an FPC would establish a size limit for orders eligible for automatic execution under proposed Rule 6.13 when the size of market maker quotes is displayed and firm for certain incoming orders."[19] The ISE's comment suggested that, in its view, the requirements of the Quote Rule [20] and an exchange's automatic execution system parameters must necessarily be the same. The Quote Rule, however, does not require an automatic execution. For this reason, the Commission has previously approved exchange rules that establish automatic execution sizes that are different from the sizes for which responsible brokers or dealers are obligated under the Quote Rule.[21]

The ISE also argues that the size restrictions on orders eligible for automatic execution, together with "the requirement that broker-dealer orders and/or competing market maker orders must be represented in the trading crowd * * * raise best execution concerns not only for the orders represented in the trading crowd, but also for incoming electronic orders and orders on the electronic limit order book that may receive automatic executions at inferior prices."[22] In response to this comment, CBOE notes that proposed CBOE Rule 6.13(b)(iv) expressly prohibits the automatic execution of orders at prices inferior to the NBBO and that orders do not lose this protection merely because they are executed manually instead of electronically.[23] The CBOE also notes that orders executed in open outcry actually have the potential opportunity to be executed at better prices than they would receive if executed electronically.[24] The Commission believes that the proposed rules are consistent with the Act. Brokers continue to have best execution obligations to their customers and must consider all facts and circumstances in determining where to route customers' orders.

Finally, CBOE notes that the ISE is incorrect in its statement that orders for competing market makers that are not eligible for automatic execution must be routed to a floor broker in the firm's booth.[25] Pursuant to Proposed CBOE Rule 6.13(b)(i)(B), absent specific instructions by the order entry firm to the contrary, orders that are not eligible for automatic execution may route only to PAR or BART.

B. Priority and Allocation

1. Allocation of Incoming Electronic Orders

Under proposed CBOE Rule 6.45A, incoming electronic orders would be allocated to a market participant who is quoting or representing an order at the CBOE BBO using UMA for up to the size of its quote.[26] Public customer orders in the electronic book and at the BBO would always have priority. Multiple public customer orders in the electronic book at the same price would be ranked based on time priority.[27]

A market participant quoting alone at the BBO would have priority and would be entitled to receive incoming electronic order(s) up to the size of its quote. When more than one market participant is quoting at the BBO, inbound electronic orders would be allocated pursuant to UMA. UMA allocates orders based on two separate components: parity (*i.e.*, multiple participants quoting at the best price) and depth of liquidity (*i.e.*, relative size of each market participant's quote).[28] Component A of the UMA is the parity component, which would treat as equal all market participants quoting at the relevant best bid or best offer. Accordingly, the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the best price. Component B of the UMA is the size pro-rata component designed to reward and incent market participants to quote with size. The percentage used

[19] *See* ISE Letter, *supra* note.

[20] 11Ac1–1 under the Act ("Quote Rule"), 17 CFR 240.11Ac1–1.

[21] *See, e.g.*, CBOE Rule 6.8(c)(v), which states that "[t]he appropriate FPC shall determine the size of orders eligible for entry into RAES." *See also* PCX Rule 6.76, which states that "[t]he maximum size of an inbound order that may be eligible for execution on PCX Plus . . . will initially be established by the LMM in the issue, subject to the approval of the Options Floor Trading Committee. Any request by the LMM for changes to the Maximum Order Size . . . must be approved by two Floor Officials, whose approval must be further ratified by the Options Floor Trading Committee."

[22] *See* ISE Letter, *supra* note 6.

[23] *See* CBOE Response Letter, *supra* note .

[24] *Id.*

[25] *Id.*

[26] If, pursuant to CBOE Rule 7.4(a), the appropriate FPC determines to allow broker-dealer orders to be placed in the electronic book, then, for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price would be deemed one "market participant," regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a "market participant" would be distributed among each broker-dealer order comprising the "market participant" based on UMA. *See* proposed CBOE Rule 6.45A(a)(i)(A)(2).

[27] If a public customer order in the electronic book matches, or is matched by, a market participant's quote, the public customer order would have priority and, the balance of the electronic order, if any, would be allocated based on UMA.

[28] UMA operates electronically and, as such, only market participants that are represented in the disseminated quote would participate in the allocation of incoming electronic orders. Multiple incoming orders would execute in accordance with CBOE Rule 8.51, Firm Disseminated Market Quotes.

for Component B is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote. The final relative weighting of Components A and B would be determined by the appropriate FPC,[29] but initially, would be equal. The assigned weightings of Components A and B would be multiplied by the percentages derived for Components A and B, respectively, and then would be multiplied by the size of the incoming order.

In its comment letter, the ISE argues that the proposal "will allow an FPC to change the allocation algorithm in many different ways * * *" and that "[s]uch a broad range of allocation possibilities cannot be equally fair and equally provide the best incentives for competition."[30] In response to ISE's comment, the CBOE represents that changes to these weightings would be made very infrequently and would apply floorwide in all classes within that FPC's jurisdiction.[31] The CBOE further notes that the proposal requires that changes to these weightings must be announced to Exchange members in advance of implementation. Thus, the CBOE concludes that there is no possibility of "gaming" the formulas to disproportionately benefit certain trading crowds.

As stated above, the proposed allocation algorithm consists of the weighting of two components: the parity component, which treats as equal all market participants quoting at the relevant best bid or best offer, and the size pro-rata component, which provides greater allocations to market participants with larger quotes. The Commission must consider whether each component and all possible combinations of each component are consistent with the Act. The Commission has previously approved allocation algorithms that provide an equal allocation to participants quoting at the best price, as well as algorithms that provide for size pro rata allocations.[32] The Commission also believes that any combination of these two algorithms would be consistent with the Act. In addition, the Commission believes that the proposed Hybrid System, including the proposed allocation algorithm, should substantially enhance incentives to quote competitively by providing market participants with the ability to independently submit their quotes and then rewarding market participants that quote at the best price with an allocation of the resulting trade.[33]

Finally, although it is not unlawful for a market maker to take the prices offered by its competitors into account when setting its own prices, or to follow or copy prices of its competitors, such a decision must be a unilateral business judgment not intended to harass or punish a competitor for improving prices or otherwise acting competitively and not the result of collusive agreement. Accordingly, the Commission expects that the CBOE will surveil its market to ensure that market makers are not coordinating quotes in the Hybrid System or engaging in other anticompetitive conduct.

2. Allocation of Orders Represented in the Trading Crowd by Floor Brokers

Orders represented in the trading crowd would first be executed against public customer orders in the electronic book. Multiple public customer orders in the electronic book at the same price would be ranked based on time priority.[34]

After public customer orders on the book at the best price are exhausted, the method for allocating the remainder of orders that are represented in the trading crowd by floor brokers would depend upon whether there were any book market participants ("BMP")[35] quoting at the prevailing price. If there were no BMP present at the prevailing price, open outcry orders would be allocated pursuant to existing CBOE Rule 6.45(a) and (b). If there were a BMP quoting at the prevailing price, open outcry orders would be allocated as follows: If two or more bids (offers) represent the best price, priority would continue to be afforded in the sequence in which the bids (offers) were made, subject to the restriction that the first market participant to verbally respond would be entitled to 70% of the order. The second market participant to verbally respond (if ascertainable) would be entitled to 70% of the remainder of the order (*i.e.*, 70% of 30%). The balance of the order would be apportioned equally among the remaining market participants verbally bidding (offering) at the same price and the BMP. The portion allocated to the BMP would be distributed among each book market participant pursuant to the UMA.

If, at any point, the sequence in which market participants verbally respond is not ascertainable, any remaining balance of an incoming order would be apportioned equally among the remaining market participants bidding (offering) at the same price and, if applicable, the BMP. If a market participant declines to accept any portion of the available contracts, any remaining contracts would be apportioned equally among the other participants who bid (offered) at the best price (including the book market participant, if applicable) at the time the market was established, until all contracts have been apportioned.

The Commission believes that the proposed rules governing allocation of orders represented in the trading crowd are consistent with the Act.

3. Interaction of Market Participant's Quotes/Orders with Orders in the Book

Under proposed CBOE Rule 6.45A(c), market participants would be permitted to submit orders or quotes electronically to trade with orders in the electronic book. However, for purposes of proposed CBOE Rule 6.45A(c), a floor broker market participant would be permitted only to represent as agent customer orders.[36] When a market participant's quote or order interacts with the order in the book, a trade occurs, and CBOE would disseminate a last sale report, and the size of the order would be decremented to reflect the execution.[37] If only one market participant submits an electronic order or quote to trade with an order in the electronic book, that market participant would be entitled to receive an allocation of that order in the electronic book up to the size of the market participant's quote or order. If, however, more than one market participant submits a quote or order to trade with the book within a period of time not to exceed 5-seconds[38] of the first market

[29] *See* CBOE Response Letter, supra note 8 .

[30] *See* ISE Letter, *supra* note 5.

[31] *See* CBOE Response Letter, *supra* note 8.

[32] *See* PCX Rule 6.75(c); CBOE Rule 6.45(a)(ii)(2); and PCX Rule 6.76(a)(4).

[33] The Exchange has submitted the proposed rule change pursuant to subparagraph IV.B.h.(i)(aa) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which required the CBOE (as well as other floor-based option market exchanges) to adopt new, or amend existing rules to substantially enhance incentives to quote competitively and substantially reduce disincentives to act competitively.

[34] *See* proposed CBOE Rule 6.45A(b)(i)(A).

[35] If, pursuant to CBOE Rule 7.4(a), the appropriate FPC determines to allow broker-dealer orders to be placed in the electronic book, then, for purposes of proposed CBOE Rule 6.45A(b), the cumulative number of broker-dealer orders in the electronic book at the best price would be deemed one BMP, regardless of the number of broker-dealer orders in the book.

[36] *See* Amendment No. 6, *supra* note 7.

[37] *Id.*

[38] This N-second period is configurable by the appropriate FPC but would never exceed 5-seconds. Any reduction of this N-second period (or subsequent increase) would be announced to the membership in advance of implementation via

participant to submit an order ("N-second group"), each member of the N-second group would be entitled to share in the trade with the electronic book pursuant to the allocation algorithm described below.[39]

Component A of the proposed allocation algorithm is an equal percentage based on the number of market participants in the N-second group. Component B of the proposed allocation algorithm is that percentage that the order or quote of each market participant in the N-second group represents relative to the total number of contracts of such orders or quotes. The final relative weighting of Components A and B would be determined by the appropriate FPC,[40] but initially, would be equal. The assigned weightings of Components A and B would be multiplied by the percentages derived for Components A and B, respectively, and then would be multiplied by the size of the incoming order.

If a DPM were eligible for an allocation by virtue of being a member of the N-second group, the DPM would be entitled to receive an allocation equal to the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder), discussed below. The DPM's entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

In its comment letter, ISE raises several concerns about the proposed N-second period.[41] First, ISE questions whether a marketable public customer order that is received during the N-second period would receive an automatic execution against orders in the limit order book during the N-second period. The ISE also questions whether, if the incoming order trades against orders in the limit order book and the best price moves, the interest in the N-second group would be automatically cancelled.[42]

The Commission believes that ISE's questions are answered by CBOE's amendment clarifying when a trade occurs in the context of an N-second group transaction.[43] Specifically, as amended, proposed CBOE Rule 6.45A(c) indicates that a trade would occur when a market participant's quote or order interacts with the order in the book. At this point, CBOE would disseminate a trade report and decrement its disseminated quote to reflect the execution. The N-second group is relevant only to determining the appropriate allocation of the trade among market participants. According to the CBOE, the N-second period prevents millisecond priority by giving a form of parity to market participant orders submitted at virtually the same time. Moreover, because the N-second group is relevant only to the allocation of the trade, members of the N-second group would not have an opportunity to cancel trades.[44]

In addition, ISE questions how a participant in the N-second group representing a customer order would be treated.[45] CBOE's amendment also clarifies that if a floor broker agent submits a customer order to buy (sell) the book, and that order is first in time (*i.e.*, ahead of all other market participants), it would have priority.[46] CBOE's amendment further clarifies that a floor broker submitting a customer order after a market participant would become part of the N-second group.[47] Floor broker handheld quoting/order entry terminals provide floor brokers with the ability to designate orders as customer orders.[48]

Finally, the ISE questions the discretion given the FPC with respect to the length of the N-second interval. The Commission notes that the FPC may only shorten the length of this interval and, as represented by CBOE, any changes to the N-second interval would be announced to the membership in advance of implementation and would apply uniformly across all classes under the FPC's jurisdiction.

Accordingly, the Commission believes that this proposed algorithm is consistent with the Act and should ensure that additional market participants have an opportunity to interact with orders resting on the Exchange's electronic book.

4. Quotes Interacting with Quotes

Because Hybrid allows the simultaneous entry of quotes by multiple market makers, there may be instances where quotes become locked. If an in-crowd market maker's (including the DPM) disseminated quote were to interact with the disseminated quote(s) of another in-crowd market maker (including the DPM), resulting in the dissemination of a "locked" quote, the following would occur:

(A) The Exchange would disseminate the locked market and both quotes would be deemed "firm" disseminated market quotes.

(B) The market makers whose quotes are locked would receive a quote update notification advising that their quotes are locked.

(C) A "counting period" would begin during which market makers whose quotes are locked may eliminate the locked market.[49] Provided, however, that in accordance with subparagraph (A) above, a market maker would be obligated to execute customer and broker-dealer orders eligible for automatic execution pursuant to proposed CBOE Rule 6.13 at his disseminated quote in accordance with CBOE Rule 8.51. During the "counting period," market makers would continue to be obligated for one contract in open outcry to other market makers, in accordance with CBOE Rules 8.51 and 6.48. If, at the end of the counting

Regulatory Circular. Furthermore, this time-period would apply uniformly among all classes under the FPC's jurisdiction. *See* CBOE Response Letter, *supra* note 8.

[39] *See* Amendment No. 6, *supra* note . The trade occurs when the first market participant's quote or order interacts with the order in the book, not at the expiration of the N-second period.

[40] As stated above, CBOE represents that these weightings would be changed very infrequently. *See* CBOE Response Letter, *supra* note 8.

[41] *See ISE* Letter, *supra* note 5.

[42] *Id.*

[43] *See* Amendment No. 6, *supra* note 7.

[44] *See* CBOE Response Letter, *supra* note 8.

[45] *Id.*

[46] *See* Amendment No. 6, *supra* note 7.

[47] *Id.* The Hybrid System, at least temporarily, would not recognize in-crowd orders from floor broker handheld devices for purposes of allowing these orders to participate in the N-second group. To address this systems limitation, the Exchange proposes to designate in each trading crowd "Temporary Order Access Terminals" ("T–OATs") that would allow floor brokers to enter customer orders that would be eligible to participate in the N-second group. The CBOE represents that these terminals would provide to floor brokers the same functionality in terms of order entry that in-crowd market makers currently have. The CBOE also represents that these T–OATs would be reserved exclusively for the use of floor brokers holding customer orders and would be conveniently located in the trading pit such that they are readily available and easily accessible. The CBOE commits to place at least one T–OAT in each trading pit in which Hybrid is operational and further commits to provide as many T–OATs as are necessary to accommodate demand. The CBOE will provide these T–OATs for floor brokers' use until the above-mentioned Hybrid System limitation is resolved in such a manner that floor brokers have direct order entry access via floor broker workstations. The Exchange will continue to provide T–OATs until either November 28, 2003 or until the Hybrid System is capable of accepting orders from floor broker workstations, whichever occurs first. *See* proposed CBOE Rule 6.45A(c)(iv).

[48] *Id.*

[49] For the first 60 days after a class begins trading on the Hybrid System, the length of the "counting period" for that particular class would not exceed ten seconds. For the next 60 days thereafter (*i.e.*, days 61–120) the length of the "counting period" would not exceed seven seconds in that class. Commencing on the 121st day after a class begins trading on the Hybrid System, the length of the "counting period" would not exceed four seconds in that class. Beginning April 1, 2004, all classes trading on Hybrid would be subject to a counting period not to exceed four seconds. The appropriate FPC may shorten the duration of the "counting period."

period, the quotes remain locked, the locked quotes would automatically execute against each other in accordance with the allocation algorithm described above in proposed CBOE Rule 6.45A(a).

The Hybrid System would not disseminate an internally crossed market (*i.e.*, the CBOE bid is higher than the CBOE offer). If a market maker were to submit an incoming quote that would cross an existing quote, the Exchange would automatically alter the incoming quote such that it locks the existing quote, at which point the locked quotes would be treated in accordance with the procedures described above. The Exchange would notify the second market maker that its quote has been changed.[50] The Commission believes that the proposed provisions are consistent with the Quote Rule. Market makers would continue to be required to honor their quotes and, thus, would be obligated to execute incoming orders pursuant to proposed CBOE Rule 6.13. The Commission notes that the market makers whose quotes are locked would continue to be obligated under the Quote Rule for at least one contract to each other during the counting period. At the end of the counting period, assuming neither market maker has changed its quotes, the market makers' quotes would execute against each other in all series.

PCX argues[51] that these proposed rules are inconsistent with the Options Intermarket Linkage Plan ("Linkage Plan").[52] The Commission notes that the Linkage Plan's admonition to avoid the dissemination of locked and crossed markets[53] would apply to CBOE Hybrid. The Commission believes that the proposed "counting period" provides a reasonable method for market makers that lock or cross a market to unlock or uncross the market, as required by the Linkage Plan.[54] Importantly, during the "counting period," the market makers whose quotes are locked would remain obligated to execute customer and broker-dealer orders eligible for automatic execution at the locked price.[55]

PCX also argues that the proposal would "exacerbate the occurrence of * * * non-disclosed crossed markets to the detriment of public investors."[56] The Linkage Plan requires the CBOE and the other options exchanges to avoid the *dissemination* of locked or crossed markets. If a market maker were to submit an incoming quote that would cross an existing quote, the Exchange proposed to automatically alter the incoming quote such that it locks the existing quote, thus avoiding the dissemination of a crossed market. The Commission believes the proposed rules regarding crossed markets provide a reasonable method of avoiding the dissemination of inverted markets.

5. DPM's Participation Entitlement

Under proposed CBOE Rule 6.45(a)(i)(C), if a DPM is eligible for an allocation pursuant to the operation of the UMA described above, the appropriate FPC would determine whether a DPM's allocation would be:[57]

(A) the greater of the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder)[58] or the amount it would otherwise receive pursuant to the operation of the proposed allocation algorithm described above; or

(B) the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).[59]

In either case, the DPM's entitlement cannot exceed the size of the DPM's quote.

ISE expressed its concern that "the ability to * * * decide between alternative DPM entitlement formulas might be used to protect the DPM or maximize its participation based upon the level of competition it faces."[60] In response, the CBOE states that the Hybrid filing does not propose to change the level of the participation right guaranteed to DPMs and that changes to the DPM participation right are governed by CBOE Rule 8.87 and are subject to Board review. The Commission also notes that any changes to the DPM's participation rights must be filed with the Commission as a proposed rule change pursuant to Section 19(b) of the Act.

In addition, CBOE notes that the decision by the FPC regarding the allocation a DPM would receive under proposed CBOE Rule 6.45A(i)(C) would be in effect floorwide in all classes under the FPC's jurisdiction and would be announced to the membership in advance of implementation. CBOE believes this would preclude switching between the two allocation alternatives on a class basis based upon the level of competition faced by a DPM.

The Commission recognizes that a large guaranteed participation right would erode the incentive of other market makers to make competitive markets. Thus, the Commission must weigh whether a proposed participation right adequately balances the aim of rewarding the specialist or lead market maker with the aim of leaving a sizeable enough portion of the incoming order for the other market makers quoting at the same price.[61] The Commission has previously taken the position that a trade participation right that does not exceed 40%, including any guaranteed percentage of the trade to be accorded to any other trade participant, is not inconsistent with the Act.[62] The

[50] During the lock period, if the first quote is cancelled or changed, the second quote would be restored to its original value. For example, assume MM A quotes 1.00–1.20 (which is the CBOE's disseminated quote) and MM B submits a 1.25–1.40 quote. Because MM B's quote would invert MM A's disseminated quote, MM B's quote would be changed to 1.20–1.40 and the disseminated quote would be 1.20–1.20. If during the lock period, MM A cancels its quote, MM B's quote (which is currently 1.20–1.40) would revert to 1.25–1.40.

[51] *See* PCX Letter, supra note 5.

[52] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Linkage Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc.); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (order approving the PCX as participant in Options Intermarket Linkage Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Philadelphia Stock Exchange, Inc. as participant in the Linkage Plan).

[53] *See* Section [illegible](C) of the Linkage Plan.

[54] *Id.*

[55] *See* proposed CBOE Rule 6.45A(d).

[56] *See* PCX Letter, *supra* note 5.

[57] *See* proposed CBOE Rule 6.45A(a)(i)(C). Each pronouncement regarding which allocation alternative to be used would be made via Regulatory Circular.

[58] CBOE Rule 8.87 states that "[s]ubject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs." Any changes to this formula are required to be filed as a proposed rule change pursuant to Section 19(b) of the Act. Currently, a DPM's participation entitlement is 40% when there are two market makers at parity with the DPM and 30% when there are three or more market makers at parity with the DPM. *See* Securities Exchange Act Release No. 43750 (December 20, 2000), 65 FR 82420 (December 28, 2000) (SR–CBOE–00–52).

[59] Due to a systems limitation, the Exchange initially would use method two and set the DPM's allocation at the amount it would be entitled to pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).

[60] *See* ISE Letter, *supra* note 5.

[61] *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778, 48787–90 (August 9, 2000) ("Phlx 80/20 Proposal") (Commission requested comment on whether the proposal by the Phlx to establish an 80% specialist guarantee would be consistent with the Act).

[62] *See, e.g.*, Securities Exchange Act Release No. 45936 (May 15, 2002), 67 FR 36279, 36280 (May 23, 2002) (SR–CBOE–2002–10) (approving participation entitlements that range from 34 percent to 40 percent for the DPM providing the primary quote feed, depending on the total number of appointed market makers in the option); Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683, 35685–66 (June 5, 2000) (SR–CBOE–99–10) (approving DPM guarantee for crossed orders that, when combined with the percentage crossed by the floor broker, cannot exceed 40% of the original order (after relevant public customer orders have been satisfied)); and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11398 (March 2, 2000) (approving International Securities Exchange's application for registration as a national securities exchange, which contains a 40% participation right for facilitating EAMs); *See also* Phlx 80/20 Proposal, *supra* note 61.

Commission notes that under the proposed rules, the most to which the DPM would be entitled would be either the guarantee, which is capped at 40%, or the amount to which it would be entitled pursuant to the proposed allocation algorithm, discussed above. This approach is consistent with rules previously approved by the Commission.[63]

C. Orders on the Book

The Exchange proposes to amend CBOE Rule 7.4(a) to expand the types of orders eligible for entry into the electronic book.[64] Market participants would be permitted to place orders in the book (in those classes in which Hybrid is operational.) Proposed paragraph (a)(1) to CBOE Rule 7.4 would enable the FPC to allow all broker-dealer orders to be book eligible or, to allow orders from those broker-dealers that are not market makers or specialists to enter the book. This proposed rule also would require members submitting orders or quotes for entry into the electronic book to do so electronically and require them to comply with such format requirements as may be prescribed by the Exchange.[65]

ISE contends that the proposal allows "an FPC to distinguish between broker-dealer orders and competing market maker orders on a class basis, and to decide whether one or both categories of orders may be permitted on the book and/or be eligible for automatic execution."[66] In its response, CBOE states that the Hybrid proposal does not discriminate against competing market maker orders because they are treated the same way that orders for CBOE market makers who are not physically present in the trading crowd are treated.[67] In this regard, a CBOE market maker that is not physically present in the trading crowd would be eligible to receive automatic executions in that class only if all other market makers (including competing market makers) were also eligible.[68]

However, a market maker who is physically present in the trading crowd would be permitted to submit one-sided quotes (also referred to as an order) or two-sided quotes.[69] These one and two-sided quotes would be treated in the same manner by the Hybrid System.[70] Such quotes would route directly to the CBOEdirect platform; would have the same participation entitlements in UMA; would be eligible to participate in the N-second group as described in proposed CBOE Rule 6.45A(c); and would be subject to proposed CBOE Rule 6.45A(d) if they locked the quote of another market maker.[71] Furthermore, an in-crowd market maker would be required to be firm pursuant to the Quote Rule for a one-sided quote to the same extent he or she would be for a two-sided quote.[72]

The Commission believes that the proposal does not unfairly discriminate against competing market makers and may enhance access to the book.

D. Firm Quotations

The Exchange proposes to amend CBOE Rule 8.51(a)(1) to clarify that in Hybrid classes, the market participant who submits a quote that is disseminated would be the responsible broker or dealer for that quote for purposes of the Exchange's rule and the Quote Rule. Proposed subparagraph (c)(1)(a)(i) to CBOE Rule 8.51 states that the firm quote requirement for customer orders would be the size disseminated to vendors. In subparagraph (a)(ii), the Exchange proposes to clarify that the firm quote requirement for broker-dealer orders would be the lesser of the size it disseminates to vendors or periodically publishes in a different manner. This proposed rule is almost identical to the CBOE's current rule, except that it provides flexibility to allow the Exchange to disseminate its broker-dealer firm quote size (rather than to periodically publish it).

In addition, CBOE proposes a change to Interpretation .10 to CBOE Rule 8.51 to clarify the timing of when an order has been presented to a responsible broker or dealer. Currently, because the trading crowd as a whole is the responsible broker or dealer, an order is considered to be presented to the responsible broker or dealer at the time it is received on a PAR station. This interpretation would remain the same for non-Hybrid classes. For Hybrid classes, an order received on a PAR station is presented to a responsible broker or dealer that is not the DPM when the order is announced to the trading crowd.[73] However, an order is considered presented to the DPM at the time of receipt of the order on PAR. Thus when an order is received on PAR when the disseminated quote represents the DPM and other market makers, there would be two separate times when the order has been presented for Quote Rule purposes: the order would be presented to the DPM at the time the order is received on PAR, while the order would be presented to another responsible broker or dealer when the order is announced to the crowd.

ISE argues that "the proposal changes the point at which firm quote obligations attached to orders represented by floor brokers to the time they are presented to the crowd so there is greater potential for the quote to have changed from the time the order was received at the CBOE to the time it is walked into the crowd." The Quote Rule, among other things, requires a responsible broker or dealer to execute orders presented to it by another broker-dealer, at a price at least as favorable as the responsible broker or dealer's published bid or offer. The Commission believes that CBOE's proposed rule amendment is consistent with the Quote Rule because a responsible broker or dealer in the trading crowd would not be "presented" with an order until it is announced to the crowd.

The Commission, nonetheless, has concerns about the potential for responsible brokers or dealers to improperly avoid their Quote Rule obligations. The Commission expects the CBOE to surveil not only for violations of the Quote Rule by the DPM and/or other responsible brokers or dealers, but also, for the DPM's handling

[63] *See* Supplementary Material .01(b) to ISE Rule 713, which states that "[i]f the Primary Market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Non-Customer Order or market maker quotation at the best price, forty percent (40%) if there are two (2) other Non-Customer Orders and/or market maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Non-Customer Orders and/or market maker quotes at the best price." *See also* PCX Rule 6.76(a)(2)(C)(iii), which states that the "LMM will be allocated a number of contracts equal to the greater of their guaranteed participation or their 'size pro rata' allocation * * *."

[64] Currently, only public customer orders are eligible for entry in the book.

[65] *See* Amendment No. 5, *supra* note 6.

[66] *See* ISE Letter, *supra* note 5.

[67] *See* CBOE Response Letter, *supra* note 8.

[68] *Id.*

[69] *See* Amendment No. 6, *supra* note 7.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] In Amendment No. 4, the Exchange noted that market makers in the crowd have no control over PAR and no access to PAR and would be unaware that an order resides on PAR until that order is announced to them. Currently, even though a market maker may be unaware of the receipt of an order on PAR, because the disseminated quote represents the entire trading crowd, the entire crowd is deemed to receive the order upon receipt of the order on PAR. In Hybrid, each market maker has its own quote. *See* Amendment No. 4, *supra* note 3.

of orders received by it for presentation to responsible brokers or dealers. The Commission intends to monitor closely the CBOE's efforts in this regard.

E. Obligations of Market Makers

CBOE Rule 8.7 governs market maker obligations. Market makers on the CBOE Hybrid System would continue to be subject to the obligations imposed by this rule, as amended. The proposed change to Section (b)(ii) of CBOE Rule 8.7 clarifies that market makers would be obligated to honor their quotes for up to their disseminated size, in accordance with the Quote Rule. In addition, market makers would be deemed the "responsible broker or dealer" for quotes they cause to be disseminated.

Under Hybrid, market makers would be able to quote verbally in open outcry in response to a request for a market, or to quote electronically (or submit orders electronically) by use of an exchange-approved quoting device. CBOE Rule 8.7 also would clarify that market makers must be physically present in the trading crowd to quote and submit orders. Market maker quotes would be required to be for ten contracts or more. This size obligation would apply only to a market maker's initial undecremented quote.

In addition, the Exchange proposes new paragraph (d) to CBOE Rule 8.7, which would establish additional obligations for market makers trading Hybrid classes.[74] Specifically, if a market maker on the CBOE Hybrid System transacts more than 20% of its contract volume electronically in an appointed Hybrid class during any calendar quarter, the market maker would be required to maintain continuous, two-sided quotes for at least ten contracts in a designated percentage of series within the class, depending on the percentage of the market maker's contract volume transacted electronically.[75] The following schedule would apply:

% of Overall Class Volume Transacted on CBOE During the Previous Quarter that was Transacted Electronically	Electronic Quoting % Requirement (Percentage of series)
50 or Below	20
51–75	40
Above 75	60

Such market makers also would be required to provide a two-sided market for a minimum of ten contracts in response to any request for quote by a floor broker or DPM representing an order as agent. Finally, such market makers would be required to comply with the quote-width requirements contained in CBOE Rule 8.7(b)(iv).

Market makers that transact 20% or less of their contract volume electronically would be required to provide a two-sided market for a minimum of ten contracts in response to any request for quote by a floor broker or DPM representing an order as agent. Such verbal quotes would be required to comply with the quote-width requirements in CBOE Rule 8.7(b)(iv). These market markers' electronic quotes, however, would not be required to comply with the quote-width requirements of CBOE Rule 8.7(b)(iv). Although these market makers would not be obligated to quote electronically in any designated percentage of series within that class, any volume transacted electronically by such market maker would not count towards their in-person requirement in CBOE Rule 8.7.03(B).[76]

Market makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.[77] The Commission believes that a market maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. In this regard, by excluding electronic transactions from satisfying a market maker's in-person requirements where the market maker transacts only 20% or less of its contract volume electronically and is not required to continuously quote or comply with quote-width requirements, the Commission believes that CBOE's rules impose such affirmative obligations on CBOE Hybrid market makers.

V. Accelerated Approval of Amendments No. 5 and 6

The Commission finds good cause for approving Amendments No. 5 and 6 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[78] Amendments No. 5 and 6 merely make clarifications to the proposed rule text in response to comments made in the ISE Letter and by Commission staff. Therefore, the Commission believes that accelerated approval of Amendments No. 5 and 6 is appropriate.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[79]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[80] that the proposed rule change (SR–CBOE–2002–05) and Amendments No. 1, 2, 3, and 4 are approved, and that Amendments No. 5 and 6 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[81]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14368 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

74, 75 The proposed obligations in paragraph (d) would be applicable on a per class basis and would apply only to market makers trading on the CBOE Hybrid System and only in those Hybrid classes.

76 All market makers electronically quoting in a Hybrid classs would be required to post an initial undecremented bid or offer of at least ten contracts.

77 *See* 12 CFR 221.5(c)(6).

78 15 U.S.C. 78s(b)(2).

79 15 U.S.C. 78f(b)(5).

80 15 U.S.C. 78s(b)(2).

81 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47951; File No. SR–CHX–2003–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend a Pilot Rule Interpretation Relating To Trading of Nasdaq/NM Securities in Subpenny Increments

May 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b–4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through December 1, 2003, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on May 31, 2003. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. The text of the proposal is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")[5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot has been extended six times and is now due to expire on May 31, 2003.[6] The CHX now proposes to extend the pilot through December 1, 2003. The CHX proposes no other changes to the pilot, other than extending it through December 1, 2003.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] In particular, the CHX believes the proposal is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2003–13 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14372 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

---

5 *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001)(SR–CHX–2001–07).

6 *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending the pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending the pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); and 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003).

7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(5).

9 15 U.S.C. 78s(b)(3)(A).

10 17 CFR 240.19b–4(f)(6).

11 For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

12 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47969; File No. SR–MSRB–2003–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Require Dealers To Establish Anti-Money Laundering Compliance Programs

June 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR–MSRB–2003–04) (the "proposed rule change") described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed a proposed rule change, Rule G–41, on anti-money laundering compliance. As further discussed below, section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act")[3] required financial institutions, including broker/dealers, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act ("BSA"),[4] and the regulations promulgated thereunder, by April 24, 2002. The MSRB has proposed new Rule G–41 to ensure that all brokers, dealers and municipal securities dealers ("dealers")[5] that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities ("sole municipal dealers"), are aware of, and in compliance with, anti-money laundering program requirements. Thus, proposed Rule G–41 requires that all dealers establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator governing the establishment and maintenance of anti-money laundering programs. The adoption of MSRB Rule G–41 will provide clarity to dealers and examiners concerning the rules and regulations that dealers who effect transactions in municipal securities must comply with concerning the development of anti-money laundering compliance programs, it will not impose any new or different obligations upon such dealers. Below is the full text of the proposed rule change.

Rule G–41: Anti-Money Laundering Compliance Program

No broker, dealer or municipal securities dealer shall be qualified for purposes of Rule G–2 unless such broker, dealer or municipal securities dealer has met the anti-money laundering compliance program rules set forth by either the registered securities association of which the dealer is a member (e.g., NASD Rule 3011), or the rules set forth by the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer (e.g., 12 CFR 21.21 (OCC); 12 CFR 208.63 (FRB); 12 CFR 326.8 (FDIC); and 12 CFR 563.177 (OTS)), to the same extent as if such rules were applicable to such broker, dealer or municipal securities dealer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to ensure that all dealers establish minimum standards for the anti-money laundering compliance programs that dealers are required to develop and implement under section 352 of the USA PATRIOT Act. The USA PATRIOT Act, which was signed into law by President Bush on October 26, 2001, is designed to deter and punish terrorists in the United States and abroad and to enhance law enforcement investigating tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws.

Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("AML Act"), imposes certain obligations on dealers through new anti-money laundering provisions and amendments to the BSA. Section 352 of the AML Act requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer with responsibility for a firm's anti-money laundering program; (iii) an ongoing employee training program; and (iv) an independent audit function to test the effectiveness of the anti-money laundering compliance program. Section 352 of the AML Act also required dealers to develop and implement a written anti-money laundering compliance program by April 24, 2002.[6]

Pursuant to pre-existing bank regulations, bank municipal securities dealers already were required to have anti-money laundering programs in place.[7] Because the bank regulations contain the same elements that are required by section 352, BSA regulation 31 CFR 103.120(b) provides that a financial institution that is subject to regulation by a Federal functional regulator[8] (including bank municipal securities dealers) will be deemed in compliance with the requirements of section 352 if it complies with the regulations of its regulator governing the establishment and maintenance of anti-money laundering programs.[9] The adoption of MSRB Rule G–41, on anti-money laundering compliance programs, will not impose any new or different obligations upon bank dealers; it will articulate that a bank municipal securities dealer has to comply with the regulations of its banking regulator in connection with anti-money laundering compliance programs in order to be qualified under MSRB Rule G–2, on standards of professional qualification. Examination of these financial institutions by their Federal functional regulators will continue to ensure compliance with those regulations.

For securities dealers that were not previously subject to AML compliance programs, the Department of Treasury and the Financial Crimes Enforcement Network ("FinCEN") believed that it was appropriate to implement section 352 through industry self-regulatory organizations ("SROs").[10] After passage of the USA PATRIOT Act, the SEC met with representatives from the NASD and the New York Stock Exchange("NYSE") to coordinate the filing of a rule proposal to prescribe the minimum standards required for each securities firm's anti-money laundering compliance program. The rules that were ultimately enacted became effective by April 24, 2002, the statutory deadline.[11] BSA regulation 31 CFR 103.120(c) provides that a financial institution regulated by an SRO shall be deemed to satisfy the requirements of section 352 if the financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its SRO governing such programs.[12]

NASD Rule 3011, which incorporates the requirements of section 352, is designed to allow dealers to be in compliance with section 352 by virtue of being in compliance with the rules of the dealers' SRO, the NASD. NASD also has provided significant guidance to assist its member firms in developing anti-money laundering compliance programs that fit their business model and needs.[13] However, in the case of municipal securities dealers who are members of both the NASD and MSRB, the rules that govern the dealers' conduct in connection with municipal securities activities are the rules of the MSRB, not the NASD. Therefore, for securities dealers that only conduct municipal securities transactions with the public, there currently is no SRO rule that provides guidance concerning the development and implementation of an anti-money laundering compliance program.[14] For this reason, the MSRB adopted MSRB Rule G–41, on anti-money laundering compliance programs, to ensure that all dealers, including sole municipal securities dealers, know where to look for guidance concerning the development and implementation of anti-money laundering compliance programs.

The provisions of the USA PATRIOT Act are provisions of federal law and consequently all MSRB members should already be in compliance with section 352 of the AML Act. The MSRB is proposing new Rule G–41 to ensure that all brokers, dealers and municipal securities dealers who effect transactions in municipal securities, especially sole municipal securities dealers, are aware of their obligations under section 352 and know where to look for guidance concerning appropriate anti-money laundering programs. Moreover, the adoption of MSRB Rule G–41 will facilitate compliance with and enforcement of anti-money laundering compliance program rules by identifying for both bank and NASD examiners the rules and regulations that each dealer must comply with. By adopting a new rule that requires all dealers that effect transactions in municipal securities to establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator, the MSRB provides clarity to dealers and examiners about dealers' anti-money laundering program obligations and avoids promulgating duplicative or inconsistent anti-money laundering program regulation.

(2) Basis

The Board proposed the rule change pursuant to section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Act in that it will facilitate dealer compliance with anti-money laundering compliance program regulation. These programs are designed to help identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[4] 31 U.S.C. 5311, *et seq.*

[5] The term "dealer" is used herein as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Act. The use of the term does not imply that the entity is necessarily taking a principal position in a municipal security.

[6] *See* 31 U.S.C. § 5318(h) (amended by section 352 of the AML Act).

[7] *See* 12 CFR 21.21; 12 CFR 208.63; 12 CFR 326.8; and 12 CFR 563.177.

[8] These are defined in reference to section 509 of the Gramm-Leach-Bliley Act (Public Law 106–102) to include the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency ("OCC"), the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), the National Credit Union Administration ("NCUA"), and SEC, and, pursuant to section 321(c) of the Act, the Commodity Futures Trading Commission ("CFTC").

[9] *See* 31 CFR 103.120(b).

[10] *See* FinCen; Anti-Money Laundering Programs for Financial Institutions (Interim Final Rules announcement) 31 CFR part 103 (April 23, 2002), 67 FR 21110 (April 29, 2002).

[11] *See* Release No. 34–45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (SR–NASD–2002–24 and SR–NYSE–2002–10) (approval order); Release No. 34–46258 (July 25, 2002), 67 FR 49714 (July 31, 2002) (SR–Amex–2002–52) (approval order).

[12] *See* 31 CFR 103.120(c).

[13] *See http://www.nasdr.com/money.asp* (NASD Regulation Web Page provides information about anti-money laundering rules, regulations, and compliance).

[14] The MSRB believes that, nonetheless, sole municipal securities dealers are currently complying with NASD Rule 3011.

Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2003–04 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14423 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47964; File No. SR–NASD–2003–89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

June 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through December 1, 2003, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on May 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on May 31, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until December 1, 2003. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if, consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–89 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14424 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47961; File No. SR–NYSE–2002–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Addition of Interpretive Material to Several Exchange Rules

June 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On March 11, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 21, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, as amended, consists of the addition of long-standing interpretive material to several NYSE rules.

The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.[5]

Rule 72 Priority and Precedence of Bids and Offers

I. Bids.—Where bids are made at the same price, the priority and precedence shall be determined as follows:

Priority of First Bid

(a) Except as provided in paragraph (b) below, when a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence on the next sale at that price, up to the number of shares of stock or principal amount of bonds specified in the bid, irrespective of the number of shares of stock or principal amount of bonds specified in such bid.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] See Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. See Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] See SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3 (b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] See letter from Darla C. Stuckey, Corporate Secretary, NYSE to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange corrected a typographical omission to the version of NYSE Rule 72(b) provided in Amendment No. 1. The Exchange also amended NYSE Rule 75 in order to reflect that Senior Floor Officials and Executive Floor Officials would be permitted to sit on panels to resolve disputes among members under certain circumstances. In addition, the Exchange amended NYSE Rule 91.10 to clarify that a member may reject a trade as soon as practicable under the prevailing circumstances after receiving an execution report that the member acted as principal. The Exchange also amended NYSE Rule 91.10 to clarify that disputes between members as to whether there was sufficient time to reject a trade would be resolved under NYSE Rule 75. In addition, NYSE Rule 91.50 was amended to make clear that a Floor Official's review of a pattern of a member's rejections does not compromise the unconditional right of the specialist to reject any trade where the specialist trades as principal.

[5] The rule text provided herein includes corrections of typographical errors from the rule text that the NYSE submitted in Amendment No. 2 of the proposed rule change. Telephone conversation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 22, 2003.

Priority of Agency Cross Transactions

(b) When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 25,000 shares or more and are for the accounts of persons who are not members or member organizations, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. *Following a transaction at the improved price, the member with the agency cross transaction shall follow the crossing procedures of Rule 76 and complete the balance of the cross.* No member may break up the proposed cross transaction, in whole or in part, at the cross price. No specialist may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this paragraph. A transaction effected at the cross price in reliance on this paragraph shall be printed as "stopped stock".

When a member effects a transaction under the provisions of this paragraph, the member shall, as soon as practicable after the trade is completed, complete such documentation of the trade as the Exchange may from time to time require.

* * * * *

III. Sale "Clears the Floor"

Following a sale, all bids and offers previously entered are deemed to be re-entered and are on parity with each other. For example, assume that the market in XYZ is 0.20 bid for 5000 shares, with 5000 shares offered at 0.25. On the bid side of the market, Broker A is bidding for 1000 shares and has priority. Brokers B, C, D, and E are each bidding for 1000 shares, with B being ahead of C, C being ahead of D, and D being ahead of E. On the offer side of the market, Broker F is offering 1000 shares and has priority. Brokers G, H, I, and J are each offering 1000 shares, with G being ahead of H, H being ahead of I, and I being ahead of J. Broker K enters the Crowd and sells 1000 shares to Broker A's bid of 0.20. The market then becomes 0.20 bid for 4000 shares, with 5000 offered at 0.25. Brokers B, C, D, and E are now on parity on the bid side of the market, and Brokers F, G, H, I, and J are now on parity on the offer side of the market.

* * * * *

Rule 75 Disputes as to Bids and Offers

Disputes arising on bids or offers, if not settled by agreement between the members interested, shall be settled by a Floor Official. In rendering a decision as to disputes regarding the amount traded, the Floor Official shall give primary weight to statements by any member who was not a party to the transaction and shall also take into account the size of orders held by parties to the disputed transaction, and such other facts as he deems relevant. *If both parties to a dispute agree, and the dispute involves either a monetary difference of $10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, whose decision shall be binding on the parties. As an alternative to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, members may also proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange's Constitution and Rules.*

* * * * *

Rule 91 Taking or Supplying Securities Named in Order

* * * * *

• • • Supplementary Material

.10 Confirmation of transactions.—When a member or member organization is notified to send a [representative] *member* to a *specialist's* post for the purpose of confirming a transaction with another member who has elected to take or supply for his own account the securities named in an order entrusted to him, the member or member organization so notified or a member representing the notified party must respond [promptly] *as soon as practicable under the prevailing circumstances following notification to the member or member organization of the report of execution of the transaction.* The transaction must then be either confirmed or rejected with a member and not with a clerk. [The representative] *Transactions which are not then confirmed in accordance with the procedures above are deemed to have been accepted. If the specialist took or supplied the securities, the member so notified* must initial the memorandum record of the specialist which shows the details of the trade and return it to the specialist. The specialist must keep such memoranda records for a period of three years.

Any disagreement as to whether a member or member organization has taken timely action pursuant to this paragraph shall be resolved in accordance with the principles of Rule 75.

.20 Principal transactions against orders in specialists' possession.—A specialist occasionally may effect a transaction as principal against an order which had been entered for an account carried by the specialist's organization or serviced by someone at his organization. In such cases, [it is desirable that] all specialists *must* follow a uniform procedure. The customer for whom the order had been entered [should] *must* be contacted promptly. The fact that the stock has been taken or supplied as principal against his order [should] *must* be explained to him so that he may then accept or reject the transaction.

* * * * *

.50 Rejection of specialist's principal transactions—If there is a continued pattern of rejections of a specialist's principal transactions, a Floor Official may be called upon and require the broker to review his or her actions. It should be noted, however, that if a customer gives instructions to his or her broker to reject trades with the specialist's name on the other side, this would be a conditional order and should not be entrusted to the specialist for execution.

The foregoing does not compromise the unconditional right of a broker to reject any trade where the specialist trades as principal. In addition, no disciplinary process would be triggered against the broker for exercising his right to reject the trade.

Rule 95 Discretionary Transactions

(a) No member while on the Floor shall execute or cause to be executed on the Exchange, or through ITS or any other Application of the System, any transaction for the purchase or sale of any stock with respect to which transaction such member is vested with discretion as to (1) the choice of security to be bought or sold, (2) the total amount of any security to be bought or sold, or (3) whether any such transaction shall be one of purchase or sale. *The member must receive all material terms of an order, as referenced in (1), (2), and (3), from the member's customer off the Floor, and may not simply rely on a general understanding of the customer's intentions and thereby create an order or a material term of an order on the Floor. For example, a member who has purchased stock pursuant to a customer's off-Floor order may not simply rely on an understanding of the customer's strategy to sell the stock if it becomes profitable to do so, but must first obtain a new order to sell entered by the customer from off the Floor. See also Rule 90 and the supplementary material thereto.*

* * * * *

Rule 115A Orders at Opening or in Unusual Situations

* * * * *

• • • Supplementary Material

.20 Arranging an opening or price.—

* * * * *

"Pair-offs."—A specialist who, as provided in (1) above, holds a market order of another member or gives up his own name instead of holding the order, may, in arranging the opening, "pair-off" such an order against any order held by the specialist or by another member.

The member who leaves such an order with the specialist should, as promptly as possible after the opening of the stock, return to the Post. The specialist must retain the order slip and must advise the member as to the broker and the name given up on the opposite side of the transaction. The member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side.

Failure to comply with the time periods specified in the paragraph "Responsibility for Losses" below shall relieve the specialist from responsibility for any loss that may result.

In the event that the specialist has given up his own name instead of holding a member's order, and, based upon such order, the specialist has effected a "pair-off" against an order of another member, the specialist should notify the member to whom he originally gave his own name of the broker and the name given up on the opposite side of the transaction. Such member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side. If the specialist has effected the "pair-off" against an order which he handled as a broker, he should send a give-up notice to the member to whom he originally gave his own name.

"Stopping."—When a specialist has been unable to "pair-off" a market order which has been left with him, as provided in (1) above, he may, after opening of the Exchange but before the opening of the stock, "stop" at the offer price any such market order to buy, or at the bid price any such market order to sell. In such cases, the specialist should notify the broker who left the order with him that the order is "stopped" and inform him of the price at which it is "stopped." In the event that the specialist is unable to execute the order at a better price, he should send for the broker who left such order with him, and allow the broker to consummate the transaction.

Establishing a fair price.—A specialist or other member who holds orders in order to assist in establishing a fair price, as provided in (2) above, should, after the establishment of such price, send for the members whose orders were held for that purpose. Such members should proceed as promptly as possible to confirm the transactions with the brokers on the opposite side.

Responsibility for losses.—A specialist or other member who makes an error in arranging an opening or establishing a fair price shall not be responsible for any loss involved if the member whose order has been held or represented neglects to endeavor to confirm the transaction.

In the event that a member endeavors to confirm a transaction resulting from an order left with the specialist as provided in (1) above, but is unable to do so because of an error made by the specialist in arranging an opening, the specialist shall be responsible for any loss which may be involved, except when:

(1) The broker who left such order fails to return to the Post within 30 minutes after the opening sale; or

(2) The broker who left such order returns to the Post within 30 minutes after the opening sale, but neglects to endeavor to confirm the transaction with the broker on the opposite side within 30 minutes after returning to the Post.

* * * * *

Rule 116 "Stop" Constitutes Guarantee

An agreement by a member to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him of the securities at that price or its equivalent.

If an order is executed at a less favorable price than that agreed upon, the member who agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

• • • Supplementary Material

.10 Reporting "stops".—Members and member organizations should report to their customers that securities have been stopped with another member only if the stop is unconditional and the other member had definitely agreed thereto.

.20 "Stopping" stock.—The privilege of stopping stock, other than rights, shall not be granted or accepted by a [member] *Floor broker* [in cases where the spread in the quotation is only the minimum variation of trading in the particular stock], except that, *in a minimum variation market*, a [member] *Floor broker* who holds simultaneously an order to buy at the market and an order to sell the same stock at the market may stop such purchase and selling orders against each other and pair them off at prices and in amounts corresponding to those of the subsequent sales in the stock as they occur in the market. This exception will also apply when two [members] Floor brokers, one holding an order to buy at the market and the other holding an order to sell the same stock at the market, arrive in the Crowd at the same time.

For the purpose of the exceptions provided herein, a limited order to buy which is possible of execution at the prevailing offer price or a limited order to sell which is possible of execution at the prevailing bid price may be regarded as a market order.

.30 Restrictions on "stopping" stock.—No specialist may stop stock against the book or for his own account at a price at which he holds an order capable of execution at this price except that he may stop stock:

(1) in connection with an opening or reopening;

(2) when there is a broker in the Crowd representing another order at the stop price; or

(3) when a member acting on behalf of either a public customer's account or an account in which such member or another member has an interest makes an unsolicited request that a specialist grant him a stop if:

(a) (i) the spread in the quotation is not less than twice the minimum variation of trading in the stock; or, (ii) where the spread in the quotation is the minimum variation of trading in the stock[,] *and an imbalance in the quotation suggests the likelihood of price improvement for the stopped order,* the size of any order as to which a stop is granted does not exceed 2,000 shares, and the aggregate number of shares as to which stops are in effect does not exceed 5,000 shares, unless a

Floor Official has approved, as appropriate under prevailing market conditions, the granting of a stop for an order or orders of a larger specified size, or the granting of stops as to a larger specified aggregate number of shares as to which stops may be in effect;

(b) after the granting of the stop the spread between the bid and offer is reduced, in any case where, prior to the granting of the stop, the spread in the quotations was not less than twice the minimum variation of trading in the stock;

(c) the specialist does not reduce the size of the market following the stop; and

(d) on the election of the stop the order or orders on the specialist's book entitled to priority will be executed against the stopped stock.

.40 "Stopping" stock on market-at-the-close orders.—Notwithstanding any provisions of this Rule or of any other Exchange Rule to the contrary, a member shall execute market-at-the-close orders in a stock as provided below, where the member is holding simultaneously both buy and sell market-at-the-close orders.

(A) Where there is an imbalance between the buy and sell market-at-the-close orders, the member shall, at the close of trading on the Exchange in that stock on that day, execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale described above. The "pair off" transaction shall be reported to the consolidated last sale reporting system as "stopped stock".

(B) Where the aggregate size of the buy market-at-the-close orders equals the aggregate size of the sell market-at-the-close orders, the buy orders and sell orders shall be stopped against each other and paired-off at the price of the last sale of the Exchange just prior to the close of trading in that stock on that day. The transaction shall be reported to the consolidated last sale reporting system as "stopped stock". *See Rule 123C for discussion of procedures applicable to market-at-the-close and limit-at-the close orders.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add explanatory or clarifying material to several NYSE rules. The proposed rule change, as amended, does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange.[6]

NYSE Rule 72. The Exchange is proposing to add a sentence to NYSE Rule 72(b) making it clear that a broker must "recross" a proposed clean agency cross pursuant to Exchange auction procedures following a transaction which provides price improvement to one side of the cross. The Exchange represents that this is consistent with NYSE auction procedures that require exposure of bids and offers by brokers effecting a cross before a transaction may be completed.

The Exchange is also proposing to specify in the Rule its long standing interpretation of its auction rules that a transaction "clears the Floor," meaning bids and offers not satisfied in the transaction are deemed to be simultaneously re-entered and on parity with each other. This is a fundamental concept that has long been deemed essential to the efficient functioning of the auction market.

NYSE Rule 75. The Exchange is proposing to codify formally in NYSE Rule 75 its long-standing practice that Floor disputes involving $10,000 or more, or questioned trades, can be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof if the parties to the dispute so agree.[7] The decision of the panel is then binding on the parties. This practice, which is essentially a form of expedited arbitration, has proven to be a very efficient means of ensuring timely resolution of Floor disputes.

As an alternative to a panel of three Floor Governors, Executive Floor Officials, and/or Senior Floor Officials (as stated above), members may also proceed to resolve a dispute through long-standing arbitration procedures established under the NYSE's Constitution and Rules.

NYSE Rule 91. The Exchange is proposing to clarify NYSE Rule 91.10 to make clear in the Rule that only a member may confirm a transaction in the situations covered by the Rule. The Exchange is also proposing to add a sentence to the Rule to clarify that transactions which are not confirmed are deemed to have been accepted. The NYSE represents that both of these changes described above reflect consistent Exchange interpretations of NYSE Rule 91.10.

In addition, the Exchange is proposing to replace the term "promptly" with the phrase "as soon as practicable under the prevailing circumstances." Specifically, the Exchange proposes to amend NYSE Rule 91.10 to provide that a member receiving a report of execution of a transaction where another member[8] acted as principal triggers the member's unconditional right to reject the trade as soon as practicable, given the prevailing circumstances. In addition, the Exchange is amending NYSE Rule 91.10 to clarify that disputes as to whether there was sufficient time to reject the trade would be resolved under NYSE Rule 75, either through a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, or through arbitration procedures established under the Exchange's Constitution and Rules.[9]

The Exchange represents that the proposed changes, deeming transactions which are not confirmed or rejected as accepted and replacing "promptly" with "as soon as practicable under the prevailing circumstances," aim to maintain a degree of flexibility in the Rule to accommodate various situations occurring during the trading day. Given today's enormous volume of trading on the Floor (over 1 billion shares daily), the NYSE believes that it is not practical to impose an affirmative obligation on members to confirm each and every transaction where another member acted as principal, nor does the Exchange believe that it is practical for members to have to obtain the confirmations. Thus, if no action is taken by a member to confirm a transaction, the transaction would be deemed confirmed under the proposed Rule.[10]

In NYSE Rule 91.20, the Exchange is proposing to replace the term "should" with "must," to reflect the mandatory nature of the procedures outlined.

NYSE Rule 91.50 is proposed to be added to explain the rejection of specialist's principal transactions. The proposed language states that if there is a continued pattern of rejections of a specialist's principal transactions, a Floor Official may be called upon to require the broker to review his actions. However, if a customer gives instructions to his broker to reject trades with the specialist's name on the other side, this would be a conditional order and should not be entrusted to the specialist for execution.

The Exchange states that a Floor Official's reviewing a pattern of rejections of a specialist's principal transactions and requiring a broker to review his or her actions do not compromise the unconditional right of a broker to reject any trade where the specialist trades as principal. If a customer gives a continued pattern of rejection instructions to a Floor broker to reject any trade where the specialist acted as principal, a Floor Official would be able to review the appropriateness of the continued pattern of rejections by the broker, to make sure he is representing his customer as fiduciary and not giving the specialist, in effect, a kind of conditional order that is not recognized under Exchange rules. If a continued pattern of rejections does occur because the customer will not accept executions with the specialist as contra party, the Floor broker should represent the order himself or herself to ensure appropriate representation of the order in accordance with the broker's fiduciary responsibility to the customer. Because the right to reject a trade pursuant to NYSE Rule 91 is unconditional, no disciplinary process would be triggered by the broker exercising his or her right to reject a trade.[11]

NYSE Rule 95. Under NYSE Rule 95, an Exchange Floor broker cannot effect a transaction if that broker has discretion regarding the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction shall be a purchase or a sale. The Exchange is proposing to add material to NYSE Rule 95(a) making clear that members may not create an order or a material term of an order, but must receive an order from off the Floor, regardless of how familiar they are with a customer's strategy. This is a long-standing interpretation of NYSE Rule 95 and the Exchange believes is reasonably and fairly implied by the text of the existing Rule.

NYSE Rule 115A. NYSE Rule 115A, among other matters, provides procedures for members to confirm transactions on openings. The Rule provides in one place that members should confirm transactions as promptly as possible, and in another place states that a specialist shall not be responsible for losses if the broker does not return to the specialist's post within 30 minutes after the opening sale. The Exchange is proposing to add to the Rule a cross reference to make clear that while a broker should confirm a transaction as promptly as possible, the specialist is not responsible for losses thirty minutes after the opening. This is a simple cross-referencing point that the Exchange believes is reasonably and fairly implied by the text of the current Rule.

NYSE Rule 116. The Exchange is proposing three changes to NYSE Rule 116. Exchange Rule 116.20 would be revised to directly state a prohibition against a Floor broker "stopping" stock. This is not a new prohibition, as section 11(a) of the Act[12] and NYSE rules regulating on-Floor trading would have the effect of prohibiting a broker from effecting an on-Floor proprietary trade to execute the order at the "stop" price if other market interest traded with the bid or offer against which the broker's order was stopped and the broker was thus obligated to effect a proprietary trade to fulfill the "stop." The Exchange has consistently interpreted NYSE Rule 116.20 in this manner.

The Exchange is also proposing to amend NYSE Rule 116.30(3)(a) to make clear in the Rule that a specialist should "stop" an order in a minimum variation market only when there is an imbalance in the quotation suggesting the likelihood of price improvement for the "stopped" order. This proposed rule change to NYSE Rule 116.30(3)(a) has been the Exchange's consistent interpretive position. In addition, the Exchange is proposing to add to NYSE Rule 116.40 a cross reference to new NYSE Rule 123C,[13] which codifies in detail the Exchange's policies regarding execution of market-on-close and limit-on-close orders.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and further the objectives of Section 6(b)(5),[15] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

---

[6] *See In the Matter of New York Stock Exchange, Inc.*, 70 S.E.C. Docket 106, Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3–9925.

[7] *See* Amendment No. 2. According to the NYSE, Executive Floor Officials and Senior Floor Officials perform many of the same functions performed by Floor Governors. Executive Floor Officials are former Floor Governors and are empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor. Floor officials entering their fifth or sixth year of service as a Floor Official are eligible for appointment as Senior Floor Officials. They are also empowered with the authority of a Floor Governor. *See* Securities Exchange Act Release No. 44673 (August 9, 2001), 66 FR 43279 (August 17, 2001) (SR–NYSE–2001–16).

[8] The Exchange clarified that NYSE Rule 91.10, except the provision dealing with the memorandum record of the specialist, applies to transactions when any member elects to take or supply for his own account the securities named in an order entrusted to him. Telephone conservation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 28, 2003.

[9] *See* Amendment No. 2.

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78k(a).

[13] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–32 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14369 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47955; File No. SR–Phlx–2003–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. for a Six-Month Extension of its Pilot Systems Change to its Automatic Execution Feature (AUTO–X)

May 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Item I below, which was prepared by the Phlx. On May 5, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, on an accelerated basis, as amended, for an additional six-month period, to expire on November 30, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a system change to the Exchange's Automated Options Market ("AUTOM") System,[5] whereby AUTO-X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given option meets the specified disengagement size for the option (the "pilot"). As explained further below, the Exchange also proposes to amend the pilot by replacing the phrase "AUTO–X guarantee" with the phrase "specified disengagement size."[6] The text of the proposed rule change, as amended, is as follows:

Proposed new language is *italicized*; proposed deletions are in [brackets].

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080

(a)–(b) No change.

(c) (i)–(iii) No change.

(iv) (A)–(H) No change.

(I) When the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until [May] *November* 30, 200[2]*3*) exceeds the [AUTO–X guarantee] *specified disengagement size*, a 30 second period ensues during which subsequent orders are handled manually.

(v) No change.

(d)—(j) No change.

* * * Commentary:

.01—.05 No change.

.06 RESERVED

.07 The specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option. The specified disengagement size for each option shall be posted on the Exchange's Web site.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

---

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, PHLX, to Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission, dated May 2, 2003. ("Amendment No. 1"). In Amendment No. 1 the Exchange, among other things, clarifies that it proposes to replace the phrase "AUTO–X guarantee" with the phrase "specified disengagement size." The Exchange also represents that, if the quotation in the option series that exhausts the specified disengagement size is revised (either by Auto-Quote or manually by the specialist) prior to the expiration of the 30-second period during which AUTO–X is disengaged, AUTO–X will be re-engaged for that option upon such revision. If the quotation in such an option series is not revised during the 30 second period during which AUTO–X is disengaged, the responsible broker or dealer is firm for the disseminated price, up to the disseminated size, pursuant to Exchange Rule 1082. In such a circumstance, AUTO–X is reengaged automatically after 30 seconds. The Exchange currently engages in surveillance for occurrences in which responsible brokers or dealers do not comply with the Firm Quotation requirements of Exchange Rule 1082, including during the 30-second AUTO–X disengagement period that is the subject of this proposed rule change.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, PHLX, to Marc McKayle, Special Counsel, Division, Commission, dated May 29, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange adds Commentary .07 to Phlx Rule 1080 to clarify that "[t]he specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option." Further, Commentary .07 states that "[t]he specified disengagement size for each option shall be posted on the Exchange's web site."

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] *See* Amendment No. 1, note 3 *supra*.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot for an additional six-month period. The pilot was originally approved on a six-month basis for a limited number of eligible options[7] and extended for an additional six-month period.[8] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[9] In December 2001, the pilot was extended again for an additional six-month period;[10] and extended again in May 2002.[11] The current pilot was extended in November 2002, and is scheduled to expire on May 31, 2003.[12]

The pilot currently includes the following features:

- Once an automatic execution occurs via AUTO–X in an option, the system begins a "counting" program, which counts the number of contracts executed automatically for that option up to a certain size,[13] which causes AUTO–X to become disengaged for that option.
- When the number of contracts executed automatically for that option exhausts the maximum guaranteed AUTO–X size for the specific option within a 15 second time frame, the system ceases to automatically execute for that option, and drops all AUTO–X eligible orders in that option for manual handling by the specialist for a period of 30 seconds in order to enable the specialist to refresh quotes in that option.
- Upon the expiration of 30 seconds, automatic executions resume, the "counting" program is set to zero and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.
- Again, when the number of contracts automatically exceeds the specified disengagement size within a 15 second time frame, the system drops all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of 30 seconds. The system then continues to reset the "counting" program and drop to manual, etc.

Since the most recent extension of the pilot, the Exchange has undertaken to provide automatic executions for eligible inbound orders (for the account(s) of both customers and broker-dealers) at the Exchange's disseminated price, up to the disseminated size, subject to a maximum guaranteed AUTO–X size of 250 contracts.[14] Thus, the current AUTO–X guarantee for eligible orders on the Exchange is the disseminated size for the given series, instead of a pre-determined "maximum guaranteed AUTO–X size" for the given option. The "maximum guaranteed AUTO–X size" is no longer the appropriate term, because the Exchange's current guaranteed AUTO–X size for eligible orders is equal to the disseminated size, which may be for a different number of contracts each time the quote in a given series is revised; there is no longer a pre-determined "maximum guaranteed AUTO–X size" (other than the Exchange's maximum allowable AUTO–X size of 250 contracts for all options other than options on the Nasdaq-100 Index Tracking Stock ("QQQ"℠),[15] which have a maximum guaranteed AUTO–X size of 2,000 contracts in the first two near term expiration months, and 1,000 contracts for all other expiration months).[16]

Accordingly, the Exchange has filed this proposed rule change to accommodate intervening changes in the function of AUTO–X; the pilot has not been changed, only the terminology used to describe the number of contracts executed within 15 seconds that would result in the temporary disengagement of AUTO–X.

In order to account for the recent changes to the AUTO–X function (*i.e.*, automatic executions up to the Exchange's disseminated size, rather than up to a pre-set maximum guaranteed size determined by the specialist), the instant pilot renewal includes the term "specified disengagement size."[17] The specified disengagement size shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option.[18]

One significant purpose of the pilot is to enable the Exchange to continue to move towards the dissemination of options quotations with actual size.[19] As discussed above, the "counting" feature of the pilot functions to disengage AUTO–X for a period of 30 seconds in

---

[7] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96).

[8] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56

[9] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[10] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[11] *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR–Phlx–2002–22).

[12] *See* Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR–Phlx–2002–59) ("Previous Pilot Extension").

[13] Currently, the rule refers to this size as the "AUTO–X guarantee." Under this proposal, the size would be referred to as the "specified disengagement size." In November 2002, the Commission approved amendments to Exchange Rule 1080(c) to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum AUTO–X eligible size range, on an issue-by-issue basis. *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39). That proposal provided that the maximum guaranteed AUTO–X size may be for a different number of contracts for customer orders than for broker-dealer orders. The previous pilot extension set forth that when the maximum guaranteed AUTO–X size in an option is for a different number of contracts for customer orders than for broker-dealer orders, AUTO–X would be disengaged when the larger of the two maximum guaranteed AUTO–X sizes for the particular option is exhausted.

[14] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[15] The Nasdaq-100®, Nasdaq–100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq–100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index" is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq–100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[16] *See* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (SR–Phlx–2002–47).

[17] *See* Amendment No. 2, note 4 *supra*.

[18] *Id.*

[19] In August 2002, the Commission approved amendments to the Exchange's definition of "disseminated size" to mean, with respect to the disseminated price for any quoted options series: (a) respecting options subject to the Auto-Quote technology operating as of May, 2002 ("current Auto-Quote") and scheduled to be phased-out by September 2002, the AUTO–X guarantee for the quoted option, except that the disseminated size of limit orders on the book shall be ten (10) contracts; or (b) respecting options subject to the Auto-Quote technology implemented after the effective date of this provision ("new Auto-Quote") and options subject to a proprietary quoting system provided for in Rule 1080.02 ("Specialized Quote Feed"), at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. *See* Securities Exchange Act Release No. 463425 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15) (Order approving amendments to Exchange Rule 1082(a)(ii) and Option Floor Procedure Advice F–7). The "current Auto-Quote" described in that Order has been phased out as of the time of the instant proposal. The "new Auto-Quote" is currently fully deployed. The Exchange recently filed a proposed rule change amending the rule to (i) reflect the full deployment of the "new Auto-Quote" and (ii) to add the specialist's size to the sum of the size of limit orders at the disseminated price to the Exchange's definition of "disseminated size" in Exchange Rule 1082. *See* SR–Phlx–2003–23. The Exchange expects to continue to amend its definition of "disseminated size" to reflect actual size as supporting systems become available.

a given option once the number of contracts automatically executed exhausts the specified disengagement size for that option within a 15-second time frame.

The Exchange believes that this has enabled specialists in such options to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

Finally, the Exchange represents that,[20] if the quotation in the option series that exhausts the specified disengagement size is revised (either by Auto-Quote or manually by the specialist) prior to the expiration of the 30-second period during which AUTO–X is disengaged, AUTO–X will automatically re-engage for that option upon such revision. If the quotation in such an option series is not revised during the 30 second period during which AUTO–X is disengaged, the responsible broker or dealer is firm for the disseminated price, up to the disseminated size, pursuant to Exchange Rule 1082. In such a circumstance, AUTO–X is reengaged automatically after 30 seconds. The Exchange currently engages in surveillance for occurrences in which responsible brokers or dealers do not comply with the Firm Quotation requirements of Exchange Rule 1082, including during the 30-second AUTO–X disengagement period that is the subject of this proposed rule change.[21]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling the Exchange to prepare for the dissemination of option quotes with actual size, and by enabling Exchange specialists.

[20] *See* Amendment No. 1, note 3 *supra*.

[21] The Commission notes that the Exchange has represented that it will issue a circular to its members, member organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO–X system will not be available for customer orders. Telephone conversation between Richard S. Rudolph, Counsel, Phlx and Marc McKayle, Special Counsel, Division, Commission, on May 13, 2003.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–29 and should be submitted by June 30, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[25]

[24] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

The Commission believes that the extension of the pilot should assist specialists in maintaining fair and orderly markets during periods of peak market activity. In this regard, the Commission notes that since the previous extension of the pilot, in response to Commission concerns, the Exchange has automated the re-engaging of AUTO–X for a particular option issue prior to thirty seconds, if the specialist has revised the quote before that time period. The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to continue its efforts to deploy its new Auto-Quote system to prepare for the dissemination of quotes with actual size.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[26] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that, according to the Phlx, no complaints from customers, floor traders, or member firms have been received during the entire period of the pilot program. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Phlx–2003–29), as amended, is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on November 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14370 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78s(b)(2).

[27] *Id.*

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3500]

State of Alabama; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 5, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 11, 2003, and for economic injury the deadline is February 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14441 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 4, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14391 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3499]

State of Oklahoma; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 8, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 9, 2003, and for economic injury the deadline is February 10, 2004.

hereby amended to establish the incidence period for this disaster as beginning on May 5, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 11, 2003, and for economic injury the deadline is February 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14441 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 4, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14391 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee; Amendment #4

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 4, 2003, and continuing through May 30, 2003. This declaration is also amended to include Anderson, Cumberland, Knox, Loudon and Roane Counties in the State of Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing through May 30, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Campbell, Grainger, Jefferson, Sevier and Union in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14392 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Inviting Application for Funding Under the 7(j) Management and Technical Assistance Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of invitation for proposals for 7(j) management and technical assistance awards in FY 2003.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. MTA–03–01, to solicit proposals from public or private organizations, to provide business development assistance and training for nationwide 7(j) eligible client executives. The authorizing legislation for this training is section 7(j) of the Small Business Act, U.S.C. 636(j). SBA will select successful proposals using a competitive process.

Awardees will have responsibility for project oversight, design, marketing, management, execution, monitoring and reporting for the training program. Proposals are being solicited from organizations that have experience in Executive Education or similar Programs and have successfully provided executive level training to small business entrepreneurs on at least 3 occasions during the past five (5) years. Colleges and universities that respond to this solicitation, must have American Assembly for Collegiate Schools of Business (AACSB) accreditation or be a member of the American Indian Higher Education consortium (AIHEC). The applicant must have the qualified faculty, support staff, training and technical materials, equipment and facilities, or access to facilities, as well as an internal financial management system, to provide Executive Education Program (EEP) training services to 7(j) eligible client executives in a classroom environment.

The EEP proposal should present training that will develop and improve the management and business decision skills of the 7(j) eligible clients. The enhancement of these skills should ensure the continued viability and growth of the small business owners in the 21st century. The EEP training curriculum must include the following three core subject matters for small business owners: strategic planning, financial analysis and, e-commerce. Additional subject matters should include some of the following: internal management systems, business alliances, government contracting, information technology, market research, financial reporting, product lines, quality assurance services, human resources, insurance, taxation, legal issues, investments, international business opportunities and etc.

SBA plans to award approximately $700,000.00, subject to the availability of funds, under this notice. This amount would fund several awards which would provide EEP training to approximately 175 7(j) eligible executives. SBA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in

response to this notice. Awards will have a project period of three (3) years–an initial 12-month budget period with up to two (2) options years. Award amounts may vary, depending on the number of 7(j) eligible clients that an applicant is able to train (and performance for option years). However, no single awardee may receive more than $400,000.00 in a single fiscal year. All proposals must provide training sessions for at least 30 eligible executives per class.

The selection criteria to be used for this competition will be provided in the application package.

DATES: The closing date for applications will be July 9, 2003.

ADDRESSEES: To obtain a copy of the complete application package call Adrienne Dinkins at (202) 205–7140, or go to SBA's Web site at *http://www.sba.gov.*

FOR APPLICATIONS AND FURTHER INFORMATION: Questions concerning the technical aspects of this notice should be directed to Jacqueline Fleming at (202) 205–6177. Questions about budget or funding matters should be directed to Adrienne Dinkins at (202) 205–7140.

Program Authority: 15 U.S.C. 636(j).

Luz Hopewell,

Associate Administrator, Business Development.

[FR Doc. 03–14390 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative ("USTR") in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTS") as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: Slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., e.s.t., on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, August 30, 2002, and March 31, 2003, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221, 67 FR 56182, and 68 FR 15494.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, 2002, November 14, 2002, February 11, 2003 and March 31, 2003, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182, 67 FR 69065, 68 FR 6982, 68 FR 15494 respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions, chemical composition, or mechanical characteristics of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

Peter F. Allgeier,

Deputy United States Trade Representative.

BILLING CODE 3190–01–P

ANNEX

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled "Heading/ Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively. The corrections to the text of individual subdivisions of U.S. note 11 to such subchapter III set forth herein, and to their associated subheadings, shall be effective with respect to covered goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST on the date that each such subdivision of U.S. note 11 to subchapter III became effective, or in the case of corrections to text previously modified the effective date of such previous modification to such subdivision as appropriate.

Section I. Effective March 31, 2003, the notice published at 68 FR 15494-15544 is modified by deleting part 1(C) of section I from the annex.

Section II. Unless otherwise specified in a subdivision herein, the following modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on or after the effective date of the inclusion in, or of the previous correction of, the individual HTS provision or text being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) the phrase ", as in effect on March 20, 2002" is inserted after the second occurrence of "inclusive" in subdivision (a)(i);

(B) in subdivision (b)(xx)(C), "maximum" is inserted after "sulfur 0.025";

(C) in subdivision (c)(cii)(A)(II), "9.5249 mm (plus 0, minus 0.22097 mm) or" is inserted before "12.7 mm";

(D) in subdivision (c)(xxvii), "1670 +/- 100 N/mm^2 (42 to 46 HRC)" is deleted and "1670 +/- 100 N/mm^2" is inserted in lieu thereof; "maximum 0.8 on 3 m" is deleted and "maximum 0.8 mm on 3 m" is inserted in lieu thereof; "sulfur" is deleted and "sulfur not over" is inserted in lieu thereof;

(E) in subdivision (c)(cli), "300 t" is deleted and "500 t" is inserted in lieu thereof;

(F) subdivision (c)(ccxiv) is deleted;

(G) in subdivision (c)(ccxxvi), "RMS6 or better" is deleted and "RMS7 or less" is inserted in lieu thereof;

(H) in subdivision (c)(ccxxxi), "whether or not" is inserted before "in coils";

(I) in subdivision (c)(ccxli), the first occurrence of "yield strength 590 N/mm^2 or more but not over 730 N/mm^2; and elongation 13 percent or more but not over 20 percent;" is deleted;

(J) in subdivision (c)(cclvi), "6.2 mm +/- 0.2mm" is deleted and "46.2 mm +/- 0.2 mm" is inserted in lieu thereof;

(K) in subdivision (c)(cclxxxii), "91.3" is deleted and "9 to 13" is inserted in lieu thereof;

(L) in subdivision (c)(cclxxxvi), the text beginning with "chemical composition" and ending with "titanium 0.05 to 0.07" is deleted and "chemical composition (percent by weight): carbon 0.020 to 0.070, silicon 0.0025 to 0.0500, manganese 0.20 to 0.45, phosphorous 0.0015 to 0.0400, sulfur 0.002 to 0.050 and titanium 0.05 to 0.07" is inserted in lieu thereof;

(M) in subdivision (c)(ccxcvi), "not to exceed" is inserted after "thickness tolerances" and before "0.05 mm";

(N) in subdivision (c)(cccxxii), "nickel not over 0.020" is deleted and "nickel not over 0.20" is inserted in lieu thereof;

(O) in subdivision (c)(cccxxxi), "steel grade ASTM A752"is deleted and "steel grade ASTM A572" is inserted in lieu thereof;

(P) in subdivision (c)(cccxxxviii) "sulfur 0.20 to 0.35" is deleted and "sulfur 0.020 to 0.035" is inserted in lieu thereof; "aluminum 0.20 to 0.50" is deleted and "aluminum 0.020 to 0.050" is inserted in lieu thereof; "American Standards for Testing Materials method A112 (ASTM A112)" is deleted and "American Standards for Testing Materials method E112 (ASTM E112)" is inserted in lieu thereof;

(Q) subdivision (c)(cccxlvii) is deleted;

(R) in subdivision (c)(ccclvi) "manganese 0.050 to 0.085" is deleted and "manganese 0.50 to 0.85" is inserted in lieu thereof;

(S) in subdivision (c)(cccxcviii), "in a black cold-finished condition" is deleted and "in a black or cold finished condition" is inserted in lieu thereof;

(T) in subdivision (c)(cccxcix), "to allow passage of gas through the steel" is deleted and "which allows passage of gas through the entire surface of the steel" is inserted in lieu thereof; ", all of which are compressed in a cold isostatic press, sintered in a vacuum atmosphere, and then held in nitrogen gas or ammonia gas at a temperature of 900 to 1050°C to impart porous quality over the entire surface" is deleted; "kilocalories m^{-2} h^{-1} °C^{-1}" is deleted and "kilocalories per square meter per hour per degree Celsius" is inserted in lieu thereof; and "12 x 10^{-6} to 12.5 x 10^{-6} °C^{-1}" is deleted and "12 x 10^{-6} per degree Celsius to 12.5 x 10^{-6} per degree Celsius" is inserted in lieu thereof;

(U) in subdivision (c)(cdv), "ASTM A120 (E-H)" is deleted and "ASTM A53" is inserted in lieu thereof; "2,962 mm to 3,063 mm in length" is deleted and "6,071 mm to 6,135 mm in length" is inserted in lieu thereof; "AISI C1012" is deleted; "carbon 0.25, manganese 0.99; phosphorus 0.035, sulfur 0.035" is deleted and "carbon not over 0.25, manganese not over 0.95; phosphorus not over 0.05, sulfur not over 0.045" is inserted in lieu thereof; "zinc coating 0.50 to 0.99 and aluminum 0.01 to 0.10;" is deleted;

(V) in subdivision (c)(cdvii), "welded single wall" is deleted and "brazed double wall" is inserted in lieu thereof;

(W) in subdivision (c)(cdxxiv), "1,000 t" is deleted and "500 t" is inserted in lieu thereof;

(X) in subdivision (c)(cdxxv), "guaranteed to a flatness tolerance of 3 mm per mm or better" is deleted and "guaranteed to a flatness tolerance of 3 mm per meter or better;" is inserted in lieu thereof;

(Y) in subdivision (c)(cdxxvi), "flatness less than or equal to 3 mm per mm;" is deleted and "flatness less than or equal to 3 mm per m;" is inserted in lieu thereof;

(Z) In subdivision (c)(ccxv)(ii), "minimum yield point" is deleted and "maximum yield point" is inserted in lieu thereof;

(AA) in subdivision (c)(cciv), "C2" is deleted and "C22" is inserted in lieu thereof;

(BB) in subdivision (c)(clvii), "45 HRB" is deleted and "40 to 50 HRB" is inserted in lieu thereof;

(CC) in subdivision (c)(clvii)(A), "0.533 mm," is inserted after "0.483 mm,"

(DD) in subdivision (c)(clvii)(B), "1.02 mm," is inserted after "0.762 mm,"

(EE) in subdivision (c)(ccxcvii), "450 MPa" is deleted and "350 MPa" is inserted in lieu

thereof;

2. The following subheadings of such subchapter III are each modified as follows:

(A) in subheading 9903.77.86 "(including goods of this subheading and of subheading 9903.82.18)" is inserted after "quantity";

(B) in subheading 9903.78.30, "1,000 t" is deleted and "500 t" is inserted in lieu thereof;

(C) subheading 9903.80.81 is deleted;

(D) subheading 9903.81.13 is deleted;

(E) in subheading 9903.81.03, ", and entered in an aggregate quantity during a time period specified in such note not to exceed 835 t" should be inserted after "subchapter";

3. The following new subheadings are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the new material being inserted in the columns entitled "Heading/Subheading", "Article Description", "Rate of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively:

	[Goods...]			
"9903.78.33	Enumerated in U.S. note 11(b)(xvii) to this subchapter ..... No change	No change	No change	
9903.82.18	Enumerated in U.S. note 11(c)(cxciii) to this subchapter and entered in an aggregate quantity (including goods of this subheading and of subheading 9903.77.86) not to exceed 500 t during a time period specified in such note	No change	No change	No change"

CONFORMING CHANGES:

Subheading 9903.72.57 is modified by deleting "9903.78.32" and by inserting in lieu thereof "9903.78.33";

Subheading 9903.74.01 is modified by deleting "9903.82.17" and by inserting in lieu thereof "9903.82.18";

[FR Doc. 03–14478 Filed 6–6–03; 8:45 am]

BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–03–C–00–RAP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rapid City Regional Airport, Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rapid City Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 9, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ken Simmons, Assistant Director of the City of Rapid City—Rapid City Regional Airport at the following address: 300 Sixth Street, Rapid City, South Dakota 57701.

Air carries and foreign air carriers may submit copies of written comments previously provided to the City of Rapid City under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Schauer, Program Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504, (701) 323–7380. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at the Rapid City Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On May 22, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Rapid City was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no late than August 21, 2003.

The following is brief overview of the application.

Proposed charge effective date: August 1, 2003.

Proposed charge expiration date: July 31, 2006.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $1,591,925.

Brief description of proposed project: General Aviation Ramp Rehabilitation, Runway Safety Area (RSA) Preliminary Design, Wildlife Assessment, Cargo/Carrier Ramp Expansion, Terminal Apron Lighting, Runway 14/32 RSA Correction Projects, Airport Layout Plan Update, Terminal Building Master Plan, Taxiway A Realignment Feasibility Study, Aircraft Rescue and Fire Fighting Station Sprinkler, Continuous Friction Measuring Equipment, Replace Terminal Revolving Doors, Pavement Surface Condition Sensor, Terminal Roof Rehabilitation, Security System Upgrade, Runway 5/23 Rehabilitation, Taxiway B Rehabilitation, Passenger Loading Bridge, Covered Passenger Walkway to Terminal, Terminal Building Heating Ventilation Air conditioning and Sidewalk Rehabilitation, Covered Boarding Walkway.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at he FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rapid City.

Issued in Des Plaines, Illinois on June 2, 2003.

Robert A. Huber,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–14428 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–113–016]

Guidance for the Certification of Honeywell Primus Epic® Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that clarifies current FAA policy with respect to certification of Honeywell Primus Epic® Systems.

DATES: This final policy was issued by the Transport Airplane Directorate on May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2796; fax (425) 227–1320; e-mail: *connie.beane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on August 30, 2002 (67 FR 55913). One (1) commenter responded to the request for comments.

Background

In the past several years, new aircraft designs have introduced new technologies. These technologies are being combined and used in novel ways and may represent significant challenges with respect to the acceptability of the flightcrew interfaces and aircraft airworthiness.

Honeywell Primus Epic® Systems are an avionics suite consisting of single or multiple racks/cabinets with circuit cards or modules that plug into the cabinets. Each rack/cabinet is configurable in that the number of modules can vary in each cabinet; the functions loaded into the cards can vary considerably, and there can be multiple racks/cabinets per aircraft. The functionality of the system is determined by the software loaded into the circuit cards. All the software on these circuit cards can be field-loaded, that is, loaded into the Honeywell Primus Epic® modules without removing the equipment from the aircraft.

The final policy establishes guidance for the certification of Honeywell Primus Epic® Systems.

The final policy, as well as the disposition of public comments received, is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on May 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14426 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8410]

Younger Commercial Driver Pilot Training Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial of petition to initiate a pilot program.

SUMMARY: The FMCSA denies the petition of the Truckload Carriers Association (TCA) asking the agency to conduct a pilot program that would enable certain drivers between the ages of 18 and 21 (younger drivers) to operate commercial motor vehicles (CMVs) in interstate commerce. The pilot program proposed by TCA would screen

candidate drivers, train them extensively at approved truck-driving schools, and provide an apprenticeship with an approved motor carrier until age 21. The FMCSA is denying the petition because the agency does not have sufficient information at this time to make a determination that the safety measures in the pilot program are designed to achieve a level of safety equivalent to, or greater than, the level of safety provided by complying with the minimum 21-year age requirement to operate a CMV.

DATES: The denial of this petition is effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, (202) 366–4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all notices and comments submitted to the Docket Clerk concerning this subject by using the universal resource locator (URL): *http://dms.dot.gov.* The FMCSA docket number is FMCSA–2000–8410. It is available 24 hours a day, year round. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users can reach the Office of the Federal Register's home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web site at *http://www.access.gpo.gov/nara.*

Background

A pilot program is a study in which a person or class of persons subject to the Federal Motor Carrier Safety Regulations (FMCSRs) may receive temporary relief from one or more of the regulations. A person, or class of persons, that intend to engage in a regulated activity may also receive temporary relief during the activity. The FMCSA's regulations governing pilot programs are set forth in title 49, Code of Federal Regulations (CFR) part 381, subpart D. During the program, participants are given an exemption from one or more of the following parts of title 49: 382, 383, 391, 392, 393, 395, 396 (except § 396.25, Qualifications of Brake Inspectors), and 399.

Pilot programs can be initiated by the agency in several ways. The FMCSA may initiate a pilot program when it determines that there may be an effective alternative to one or more of the FMCSRs, but is lacking sufficient research data or information to support a change in its rules. Or, an individual or class of persons may submit a written petition asking the agency to initiate the pilot program. (49 CFR 381.405)

A pilot program must include a program plan outlining oversight procedures designed to protect the health and safety of study participants and the general public. The plan must explain how the agency will ensure that participants comply with the terms and conditions of the pilot. In addition, the number of the participants in the pilot program must be large enough to ensure statistically valid findings. When the FMCSA has determined that the program plan is sound, there is one additional requirement that must be satisfied before the agency can grant an exemption from the FMCSRs and initiate a pilot program. The agency must ensure that the safety measures in the pilot program are "designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by compliance with the regulations." 49 CFR 381.505(a).

TCA Petition

On October 2, 2000, the TCA petitioned the FMCSA to allow the association to conduct a pilot program that would permit drivers between the ages of 18 and 21 to operate CMVs in interstate commerce. FMCSA regulations require drivers of CMVs to be at least 21 years of age (49 CFR 391.11(b)(1)). The petitioner asked the FMCSA to grant an exemption from the minimum 21-year age requirement for drivers admitted to the three-year pilot program. No driver under the age of 18 would be eligible to participate in the pilot. A copy of the TCA petition is located in the FMCSA docket (Docket No. FMCSA–2000–8410; *see* "Electronic Access" above).

The goal of the TCA pilot program is to explore a performance-based alternative to the blanket prohibition against the operation of CMVs in interstate commerce by drivers under the age of 21. The TCA petition states, "the right student with the right training, and working for the right employer [could] * * * be a safe driver" (TCA Petition, page 9). In addition, the petitioner feels that lowering of the 21-year minimum age of drivers would address the shortage of drivers in the trucking industry, and allow the industry to appeal more readily to individuals as they leave high school and select a career.

The petition calls for careful screening of candidate drivers. Applicants would be required to be between 18 and 21 years of age, have at least a year of prior driving experience, and be able to demonstrate an exemplary driving record. A qualified third party expert would determine that the applicant-driver possesses the attitude and aptitude for successfully operating a CMV. Applicants would also have to convince a motor carrier to "sponsor" their participation in the pilot; a written contract of employment between the applicant and a sponsoring motor carrier for the full term of the pilot would be required. The sponsoring motor carrier would also have to obtain liability insurance on the pilot driver. Once selected, pilot drivers would be granted an exemption from the current FMCSA rule requiring drivers to be at least 21 years of age to operate a CMV in interstate commerce. The pilot drivers would be required to undertake 22 weeks of classroom and hands-on driving instruction at a certified truck-driving school. An 8-week "finishing program" and an additional 18 weeks of "team driving" with an experienced licensed driver would follow this. This would be followed by full-time employment as an interstate CMV driver, but in a structured environment provided by the sponsoring motor carrier in accordance with the terms of the pilot. In addition, the sponsoring motor carrier would provide a current licensed driver to serve as mentor to the pilot driver and to be responsible for closely monitoring the safety performance of the pilot driver. Also, the CMV operated by the pilot driver would be equipped with a governor to limit the speed of the vehicle. These conditions would apply until the pilot driver turned 21 years of age.

On February 20, 2001, the FMCSA published a notice advising the public of the TCA petition and requesting public comment on it (66 FR 10935). This notice was titled, "Younger Commercial Driver Pilot Training Program." The notice included six "Questions for Comment" designed to elicit input from the public to assist the agency in deciding whether to initiate the proposed pilot program for younger drivers of CMVs.

Discussion of Comments

The agency received 1,634 comments in response to the proposal. Over 90 percent of the commenters were opposed to the pilot program. The following table provides a summary of the docket comments categorized by the type of commenter.

SUMMARY OF THE COMMENTS

Total Comments	1,634
In Support—	85
Opposition—	1,511
No Strong Preference—	38
Comments from Individual Truck Drivers	314
In Support—	29
Opposition—	275
No Strong Preference—	10
Comments from Individuals Other Than Truck Drivers	1233
In Support—	28
Opposition—	1,188
No Strong Preference—	17
Comments from Motor Carriers	21
In Support—	3
Opposition—	18
No Srong Preference—	0
Comments from Motor Carrier Associations	10
In Support—	6
Opposition—	2
No Strong Preference—	2
Comments from Insurance Companies	3
In Support—	1
Opposition—	2
No Strong Preference—	0
Comments from Insurance Associations	3
In Support—	0
Opposition—	3
No Strong Preference—	0
Comments from State Agencies	19
In Support—	7
Opposition—	7
No Strong Preference—	5
Comments from Driving Schools	4
In Support—	3
Opposition—	1
No Strong Preference—	0
Comments from Other Organizations	27
In Support—	8
Opposition—	15
No Strong Preference—	4

The most common reason given by those opposed to the younger commercial driver pilot training program was that younger drivers do not have the level of maturity or the driving experience necessary to operate a commercial motor vehicle in interstate commerce. Many of the commenters believed that individuals between the ages of 18 and 21, as a group, exercise poor judgment too frequently. To a lesser degree, those opposed to the pilot commented that the modern CMV was too complex for an individual under the age of 21 to operate. Several commenters referred to the difficulty employers of pilot drivers could expect in locating insurance companies willing to underwrite the liability insurance for these young CMV drivers.

Most of the commenters (whether in favor or in opposition to the proposal) did not offer data in support of their position. Frequently, commenters' positions or arguments were based on media coverage (radio, television, or magazine) of the younger commercial driver pilot training program proposal, and did not discuss any specific terms of the pilot outlined in the agency's notice of February 20, 2001. Comments, such as, "I saw this program described on the news last night," or "I read about this pilot program in a " [trade] magazine," were common. Many commenters did not discuss specific aspects of the TCA proposal designed to minimize the risks of the pilot program, such as, the screening of applicant-drivers, the extensive training, and the oversight and mentoring of pilot drivers by sponsoring motor carriers. Very few commenters answered any of the six questions that the agency posed in the notice. Many commenters simply stated their belief that it was unsafe to permit any individual under the age of 21 to operate a CMV under any conditions.

The comments that were supported by data came from a variety of sources, including insurance associations, safety organizations, trucking associations, trucking companies, truck driving schools, and State agencies concerned with highway safety. Most of the insurance industry organizations that responded to the notice were opposed to the pilot. Opposition in this group centered upon studies indicating that drivers under age 25 have a markedly higher crash risk than older drivers, and upon the contention that "driver training" has been shown to have little effect in reducing the crash risk. The Insurance Institute for Highway Safety stated, "[t]here is much research and it unequivocally shows that young truck drivers have markedly higher crash risks than older truck drivers."

Three safety advocacy organizations commented, and all believed that the pilot program was not designed to ensure that the requisite level of safety would be maintained if younger drivers were permitted to operate CMVs in interstate commerce. The Advocates for Highway and Automobile Safety commented:

> [The proposed program] defies prevailing research findings of long standing. No studies assessing the value of young [CMV] driver training programs has demonstrated a sustained beneficial effect in the area of crash or accident rates among young drivers. In fact, the opposite can be demonstrated—higher crash and accident rates among trained youth, who may become overconfident and more likely to take risks.

Most of the national trade or trucking associations that commented were in favor of conducting a pilot program. They believed that the level of safety required by statute for the pilot program could be maintained, and that the pilot would help with the shortage of truck drivers in the industry. The American Trucking Associations (ATA) noted that the pilot program provided preparation and training that far exceeded that which beginning CMV drivers receive today. The ATA believes that the pilot "should enhance the * * * end product, a qualified driver." The joint statement of the American Automobile Association, the American Association of Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance, and the National Association of Governor's Highway Safety Representatives advised caution, but stated that "the high crash rates of younger [CMV] drivers can be overcome by effective training, real-world driving experience, and mentoring."

Most of the State trucking associations that commented were also in favor of conducting a pilot program. These commenters emphasized the fact that 48 States currently allow drivers under the age of 21 to operate CMVs in intrastate commerce, and many of these allow individuals as young as 18 years of age to operate commercial motor vehicles. Several of the State trucking associations indicated that the State accident history of CMV operators under age 21 was no worse than that of older operators of CMVs.

Motor carriers who commented favorably concerning the younger driver pilot program had a favorable experience in hiring younger drivers for intrastate operations, and they were confident that the pilot safeguards were adequate to ensure highway safety. Most of the motor carriers opposed to the pilot believed that it is too risky to permit individuals under the age of 21 to operate CMVs in interstate commerce because they lack the maturity necessary to safely operate CMVs.

Among the comments received from educational institutions engaged in training truck drivers, three commenters supported the concept of a pilot program as proposed by TCA, and one opposed the program. The Commercial Vehicle Training Association, a trade group whose membership includes 34 training schools for commercial motor vehicle drivers, favored adoption of the pilot, indicating that it thought that "the standards for selection, training, and driver finishing were much more stringent than those currently in place in the industry."

Most of the State agencies that responded indicated that their States allow individuals under the age of 21 to operate CMVs in intrastate commerce.

Six (6) States discussed their safety experience with intrastate CMV drivers under the age of 21. The data was conflicting: Agencies from the States of Montana, Illinois, Vermont, and Virginia indicated that their statistics show that CMV drivers under age 21 pose no greater crash risk than other age groups; agencies from the States of California and Iowa stated that their statistics show that CMV drivers under age 21 have a higher crash rate than that of older truck drivers.

FMCSA Response

The FMCSA believes that the commenters have presented compelling arguments both in support of, and in opposition to, the TCA petition to initiate a pilot program. However, for reasons set forth below, the agency believes there is insufficient information at this time to make a preliminary determination as to whether the terms and conditions of the pilot program that TCA requested would achieve a level of safety equivalent to, or greater than, that provided by the current prohibition against drivers under the age of 21.

The agency does not believe that all drivers between the ages of 18 and 21 should be viewed as a safety risk while at the controls of a CMV, regardless of the requirements that would be imposed upon them. However, there is little information currently available to support the contention that young CMV drivers selected through a rigorous screening process, and groomed through an intensive training and mentoring program, would have safety performance records comparable to CMV drivers 21 years of age or older. The comments to the docket provide a clear indication to the agency that the potential safety impacts of a pilot program cannot be determined with any degree of certainty at this time. Therefore, we believe that it would be inappropriate to pursue a pilot program until there is additional information and data on which to base a preliminary determination about the potential safety impacts of allowing younger drivers to operate in interstate commerce.

While commenters offered ample evidence that individuals aged 18 to 21, as a group, are more prone to risk-taking behavior, we do not believe that this information, in and of itself, suggests that this universe of drivers are all unfit to operate a CMV in interstate commerce. Highway safety statistics concerning the over-representation of younger drivers in accidents of all types of motor vehicles provides a vivid, but indiscriminate, picture of safety problems with these drivers. This information represents the cumulative safety performance record of all young adults operating all types of motor vehicles on the Nation's highways, most of whom may never have expressed an interest in becoming a professional CMV driver. We do not believe, however, that such information should be considered as the determining factor in deciding whether young adults committed to exploring a career driving commercial motor vehicles could do so safely.

With regard to the terms and conditions spelled out in TCA's proposal, the FMCSA believes that a program comprised of screening, training, and mentoring is likely to bring about a higher level of safety performance for a given group of drivers than they would otherwise have experienced. Yet, because of the limited information and data about young CMV drivers (between the ages of 18 and 21), the agency is unable to conclude that the baseline safety performance of these younger drivers is sufficiently close to that of older drivers of CMVs, such that screening, training, and mentoring would improve their performance and enable them to achieve safety performance levels equivalent to or greater than older drivers. Denial of the TCA petition should not be construed as a rejection of the argument that screening, training, and mentoring could improve the safety performance of younger CMV drivers. But, the TCA petition, as submitted, does not demonstrate that a pilot program for younger CMV drivers is warranted at this time.

FMCSA's Decision

For the reasons given above, the FMCSA is denying the petition of the Truckload Carriers Association to establish a pilot program for CMV *drivers between the ages of 18 and 21*. We believe that proper screening, training, and mentoring are likely to improve the safety performance of any given group of drivers. However, based on the information provided by the petitioner and commenters, the agency is unable to determine that the safety measures in this proposed pilot project are designed to achieve a level of safety equivalent to, or greater than, the level obtained by complying with the safety regulations.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: June 4, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–14445 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Federal Railroad Administration

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. RSPA–2003–14982, Notice No. 03–7]

Hazardous Materials: Transportation of Explosives by Rail

AGENCY: Research and Special Programs Administration and Federal Railroad Administration, Department of Transportation; and Transportation Security Administration, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration, the Federal Railroad Administration, and the Transportation Security Administration are publishing this document to describe the application of Federal laws to the transportation of explosives by rail. In particular, this document explains that, in light of the extensive regulation of the rail transportation of hazardous materials, including explosives, by the Department of Transportation, the protections inherent in railroad operations against improper use of those materials by railroad employees, and the security safeguards taken by the railroads, the transportation of explosives via rail by certain persons described under the Safe Explosives Act does not pose a sufficient security risk warranting further regulation at this time. Based on the determinations made by the Transportation Security Administration and the Department of Transportation that are detailed in this document, certain federal criminal provisions described below do not apply to persons while they are engaged in the commercial transportation of explosives by rail.

DATES: Effective Date: June 4, 2003.

ADDRESSES: You may review the public docket containing this document in person at the Department of Transportation Dockets Management System office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Management System office is on the plaza level of the NASSIF Building at the Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Machado, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 366–4440; facsimile (202) 366–7041; e-mail *Nancy.Machado@rspa.dot.gov*. David Kasminoff, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC, 20590–0001; telephone: (202) 493–6043; *David.Kasminoff@fra.dot.gov*. Christine Beyer, Office of Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (571) 227–2657; e-mail *Christine.Beyer@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*;

(3) Visiting the RSPA web page at *http:// hazmat.dot.gov;* or

(4) Visiting the TSA Laws and Policy web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this document.

Abbreviations and Terms Used in This Document

ATF—Bureau of Alcohol, Tobacco, Firearms, and Explosives
ATSA—Aviation and Transportation Security Act
CHRC—Criminal History Records Check
DHS—Department of Homeland Security
DOJ—Department of Justice
DOT—Department of Transportation
FAA—Federal Aviation Administration
Federal hazmat law—Federal Hazardous Materials Transportation Law (48 U.S.C. 5101 *et seq.*)
FMCSA—Federal Motor Carrier Safety Administration
FRA—Federal Railroad Administration
GAO—General Accounting Office
Hazmat—Hazardous materials
HMR—Hazardous Material Regulations (49 CFR Parts 171–180)
RSPA—Research and Special Programs Administration
SEA—The Safe Explosives Act
TSA—Transportation Security Administration
USCG—U.S. Coast Guard

I. Background

The Research and Special Programs Administration (RSPA) and the Federal Railroad Administration (FRA), agencies within the Department of Transportation (DOT), and the Transportation Security Administration (TSA), an agency within the Department of Homeland Security (DHS), have determined that in light of the extensive regulation of the rail transportation of hazardous materials, including explosives, by DOT, the protections inherent in railroad operations against improper use of those materials by railroad employees, and the security safeguards taken by the railroads, the transportation of explosives by rail by persons described under section 842(i) does not present a sufficient security risk warranting further regulation at this time. In view of the foregoing conclusion, no additional security regulations addressing this aspect of the transportation of explosives are immediately necessary. Accordingly, under 18 U.S.C. 845(a)(1), discussed in greater detail below, persons engaged in the commercial transportation of explosives by rail are excepted from the application of 18 U.S.C. 842(i).

As a threshold matter, it is important to discuss the role that Federal agencies play in the transportation of explosives by rail. In accordance with Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), RSPA regulates the safe and secure transportation of hazardous materials (hazmat), including explosives, in all modes of transportation. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) include packaging, identification, handling, and security requirements. Modal administrations within DOT—the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and FRA—enforce these regulations in their respective areas of authority. FRA pursues its enforcement responsibilities with a particular emphasis on the transportation or shipment of hazardous materials by rail, including the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of containers that are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad. In addition, FRA issues and enforces a variety of rail safety regulations that address track and roadbed conditions; signal systems; locomotive, freight car and passenger equipment safety; emergency preparedness; hours of service of railroad employees; operating practices and procedures; qualification standards for certain employees; and alcohol and drug testing of railroad employees in safety-sensitive service.

TSA was created following the terrorist attacks of September 11, 2001, as an agency within DOT. TSA was transferred to the DHS on March 1, 2003, and has statutory authority to set standards for security and make determinations regarding the adequacy of security in all modes of transportation. DOT agencies consult with TSA on transportation security matters. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is an agency within the Department of Justice (DOJ), and has statutory authority to address, among other things, the manufacture, purchase, possession and use of explosives.

Representatives of RSPA, FRA, TSA, and DOJ consulted extensively with each other to ensure that this document accurately reflects the security considerations relevant to those persons responsible for transportation of explosives in commerce by rail.

II. Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.[1] Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully "ship or transport any explosive in or affecting interstate or foreign commerce" or "receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce." Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal

[1] Pub. L. 107–296, November 25, 2002, 116 Stat. 2280

prosecution.[2] These incidents are investigated by ATF and referred, as appropriate, to the United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety." DOJ has interpreted this provision to exempt persons from application of § 842(i) when (1) DOT has actually regulated a relevant aspect of the transportation of explosives, and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of § 845(a)(1), if it is determined that persons engaged in certain aspects of the transportation of explosives do not pose a security threat and do not warrant regulation, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.

As discussed in greater detail throughout this document, this notice addresses all of the categories of individuals who are prohibited from transporting explosives in commerce via railroad under § 842(i), as amended by the SEA, and thus 18 U.S.C. 845(a)(1) excepts those categories of individuals from prosecution under § 842(i) for activities occurring during and incident to the transportation of explosives by rail in commerce.

III. Hazardous Material Regulations

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes. These materials are transported in quantities ranging from several ounces to many thousands of gallons. DOT estimates that one and one-half billion tons of hazmat are transported each year. The majority of hazardous materials move by truck (56%), while rail shipments account for only six percent of the tonnage. The vast majority of hazardous materials shipments arrive safely at their destinations. Most incidents that do occur involve small releases of material and present no serious threat to life or property.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Under the HMR, which are based on the internationally recognized United Nations system for classification, identification, and ranking of hazardous materials, hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I, to a low hazard, Packing Group III, material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, all hazardous materials are divided into nine general classes according to their physical, chemical, and nuclear properties as follows:

Class 1—Explosives
Class 2—Compressed, flammable, nonflammable, and poison gases
Class 3—Flammable liquids
Class 4—Flammable solids
Class 5—Oxidizers and organic peroxides
Class 6—Toxic and infectious materials
Class 7—Radioactive materials
Class 8—Corrosive materials
Class 9—Miscellaneous dangerous substances and articles

Within Classes 1, 2, 4, 5, and 6, there are more specifically defined divisions, and within Class 1 there are Compatibility Group subdivisions as well. The hazard classes and divisions are not mutually exclusive. Certain hazardous materials have multiple dangerous properties, each of which must be addressed according to its relative potential to do harm. In these cases, the UN system and the HMR allow identification and communication of both the primary and subsidiary threats.

DOT's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The HMR are designed to achieve two goals: (1) To ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, and (2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR include design, performance, and inspection standards for packaging, which also include operational requirements applicable to each mode of transportation.

With particular regard to explosives, subpart C of 49 CFR part 173 sets forth substantial and comprehensive requirements concerning the definition, classification, and packaging of explosives. Other rules cover the required marking labeling, and placarding of explosives shipments. *See* §§ 172.320, 411, and 522–525. The HMR also contain specific operational requirements for handling explosives, including requirements that specifically address rail operations (subpart E of 49 CFR part 174) and the disposition of explosive shipments at their rail destinations. See 49 CFR 174.16(b)(1).

In the wake of the terrorist attacks of September 11, 2001, and subsequent threats related to biological and other hazardous materials, DOT undertook a broad review of government and industry hazardous materials transportation safety and security programs. As part of this review, DOT established the Hazardous Materials Direct Action Group (Hazmat DAG). The Hazmat DAG met with representatives of the hazardous materials industry, emergency response community, and state governments to discuss transportation security issues and continuing terrorist threats. In addition, DOT created a DOT Intermodal Hazardous Materials Transportation Security Task Force, which considered attack or sabotage vulnerabilities, existing security measures, and potential ways to reduce vulnerabilities. The Task Force included representatives from FRA, FMCSA, FAA, U.S. Coast Guard (USCG), and Office of the Secretary.

Based in part on discussions in the Hazmat DAG and on the results of the Task Force review, on February 14, 2002, RSPA published an advisory notice to inform shippers and carriers of voluntary measures that can enhance the security of hazardous materials shipments during transportation (67 FR 6963). The notice addressed personnel, facility, and en route security issues and included contact points for obtaining additional, more detailed information. Among other recommendations, the security advisory notice advised employers to be aware of the possibility that someone they employ may pose a potential security risk. RSPA recommended that employers consider establishing a process to verify the information provided by applicants on application forms or resumes, including checking with former and current employers and personal references provided by job applicants.

On March 25, 2003, RSPA published a final rule under Docket No. RSPA–02–12064 (HM–232), herein referred to as HM–232 (68 FR 14510). The final rule requires persons who offer certain hazardous materials for transportation in commerce and persons who transport certain hazardous materials in commerce to develop and implement security plans.

In developing the HM–232 final rule, RSPA assessed the security risks associated with the transportation of different classes and quantities of hazardous materials. RSPA concluded that the most significant security risks involve the transportation of certain radioactive materials; certain explosives; materials that are poisonous by inhalation, certain infectious and toxic substances; and bulk shipments of materials such as flammable and compressed gases, flammable liquids, flammable solids, and corrosives. Based on this security risk assessment, the HM–232 final rule requires persons who offer for transportation or transport the following hazardous materials to develop and implement security plans: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR Part 73; and (6) a shipment that requires placarding. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. In effect, then, the HM–232 final rule applies the security plan requirement to a shipper or carrier of a hazardous material in an amount that requires placarding and to select agents. Using the placarding thresholds to trigger enhanced security requirements covers the materials that present the most significant security threats in transportation and provides a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. It also provides consistency for the regulated community, thereby minimizing confusion and facilitating compliance.

The HM–232 final rule also includes new security awareness training requirements for all hazardous materials employees. This training must include an awareness of the security risks associated with hazmat transportation, measures designed to enhance transportation security, and a component covering how to recognize and respond to possible security threats. With regard to personnel security, the final rule requires that each security plan include measures to confirm information provided by job applicants for positions that involve access to, and handling of, hazmat.

On May 5, 2003, RSPA published an interim final rule (IFR) to further enhance the hazardous materials transportation security (68 FR 23832). The IFR described the current system of regulations applicable to the transportation of hazardous materials in commerce, and reviewed DOT activities to enhance the security of hazardous materials shipments. In addition, the rule summarized the requirements of the USA PATRIOT Act and regulations adopted by TSA and the FMCSA to implement the background check provisions of the Act, and described actions taken by FAA, TSA, and the U.S. Coast Guard to address security issues associated with the transportation of hazardous materials by air and vessel. The IFR also incorporated into the HMR a requirement that shippers and transporters of hazardous materials comply with applicable Federal security regulations and revised the procedures for applying for an exemption from the HMR to require applicants to certify compliance with applicable Federal transportation security laws and regulations. Finally, DOT, in consultation with TSA, determined that, based on the analyses and regulatory programs described in the IFR, the provisions of 18 U.S.C. 842(i) do not apply to the commercial transportation of explosives by motor carrier, aircraft, or vessel.

IV. Transportation Security Administration

In the wake of the terrorist attacks of September 11, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), which established the TSA.[3] TSA was created as an agency within DOT, operating under the direction of the Under Secretary of Transportation for Security. TSA became an agency of the DHS in March 2003, by operation of the Homeland Security Act of 2002. (Pub. L. 107–296.) At this point the Under Secretary became the Administrator. The Secretary of DHS has delegated back to the Administrator of TSA all of his authority in ATSA that was vested with the Secretary by operation of law under the Homeland Security Act. TSA continues to possess the statutory authority that ATSA established, which grants the Administrator authority for security in all modes of transportation.[4]

As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats.[5] In addition, TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities.[6]

TSA has exercised this authority extensively in the aviation and commercial trucking industries. For instance, TSA regulations require a fingerprint-based criminal history records check (CHRC) on individuals with access to secured areas of airports and aircraft. *See* 49 CFR parts 1542 and 1544. In addition, TSA recently issued an interim final rule that requires commercial drivers to successfully complete a fingerprint-based CHRC in

[2] The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to $250,000.

[3] Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

[4] 49 U.S.C. 114(d).

[5] 49 U.S.C. 114(f)(1)–(5), (h)(1)–(4).

[6] 49 U.S.C. 114(f)(1) and (5).

order to renew or obtain authority to transport hazardous materials. See 49 CFR part 1572. If an individual has a criminal conviction for certain disqualifying offenses within prescribed time periods, he or she is not granted access to the secured area or granted authority to transport hazmat in commerce.

TSA is authorized to complete background checks on individuals in all modes of transportation and to issue identification media that capture the results of the background check. TSA is currently evaluating the need for and nature of background checks on transportation workers, in addition to those in the aviation and trucking industries, who are in a position to cause or control serious security-related events. TSA is taking a risk-based approach to security regulations so that the government and private sector can prioritize resources based on threat information, vulnerability assessments, and criticality determinations. TSA is engaged in such an analysis concerning background checks for transportation workers in the maritime and rail industries. TSA continues to evaluate the need for additional regulations concerning this population and potential threats, and may issue additional security requirements concerning railroad employees engaged in the transportation of hazmat. A comprehensive, risk-based approach will facilitate the development of standards that are narrowly tailored to suit the industry and the threat. TSA evaluated the measures currently required under DOT hazmat and rail regulations, the nature of rail operations, and the security enhancements completed by the railroads, and has determined that, for the present, they adequately address the security concerns of which it is aware.

V. Transportation by Rail

FRA administers the Federal railroad safety laws (49 U.S.C. chapters 201–213), which encompass all areas of railroad safety (*see* 49 U.S.C. 20103), including security. The terrorist attacks of September 11 and subsequent indications of possible terrorist threats specifically directed at the railroad industry indicate the need to assess the security of hazmat shipments, including individuals in a position to have access to sensitive information regarding, or the ability to control the movement of, explosives and other hazmat. FRA has worked closely with TSA, the railroad industry, and RSPA on rail security issues since September 2001.

The nation's railroads have taken several voluntary steps to enhance security since September 11, 2001. The Association of American Railroads (AAR) established a security task force immediately after the attacks. The task force created action teams to assess vulnerabilities in several critical areas: physical assets, information technology, chemicals and hazardous materials, defense shipments, train operations, and passenger security. AAR worked with chemical industry associations and security consultants to assess terrorism risks in these areas. This risk analysis provided the basis for the industry's security management plan, which was presented to DOT and TSA.

The security management plan, which is currently being implemented, includes a uniform system for communicating threat levels throughout the industry, progressively rigorous countermeasures to be taken depending upon the threat level, and a round-the-clock operations center linking railroad control centers with law enforcement agencies. Among the activities the industry is taking to implement the plan are increasing the awareness of employees about potential security threats, limiting publication of information about sensitive shipments, periodically testing security systems, using railroad police and private security guards to monitor critical infrastructure locations, restricting access to railroad facilities, using video surveillance of hazardous materials shipments in certain areas, conducting security evaluations of specific facilities, and the temporary rerouting or suspension of certain hazmat shipments in the event of a credible terrorist threat. These security enhancements undertaken by the major railroads have helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession.

On May 23, 2003, the General Accounting Office (GAO) issued a report titled "Rail Safety and Security—Some Actions Already Taken to Enhance Rail Security, but Risk-Based Plan Needed" (GAO–03–435). GAO found that, since September 11, 2001, the rail and chemical industries have taken steps to improve the security of rail shipments of hazardous materials. The report describes the rail industry's development and implementation of its security plan and actions taken thus far by DOT and TSA to address rail security issues. The report does not address the security issues related to railroad employees that are the subject of this notice, nor does it include any reason to question the determinations in this notice concerning the current need for further regulation to address the risk posed by the transportation of explosives by rail by persons described under section 842(i).

GAO recommends that DOT and DHS work together to develop a risk-based plan specifically to address rail security, including timeframes for actions. As noted elsewhere in this notice, DOT and TSA are in the process of evaluating the need for additional Federal regulations to address rail transportation security. We agree that a comprehensive, risk-based approach will facilitate the development of standards that are narrowly tailored to suit the industry and the threat. Recently adopted regulations, such as the HM–232 and USA PATRIOT Act final rules, as well as initiatives currently in progress, incorporate a risk management approach to security regulation.

1. Process for Handling Hazardous Materials Via Rail

A discussion of the process by which explosives and other hazmat are transported by rail is necessary to analyze security risks and appropriate countermeasures. More than 75 percent of hazardous materials moving by railroad moves in bulk, most commonly in a tank car or covered hopper car. Hazardous materials moving by rail are loaded into a tank car, hopper car, boxcar, trailer, or intermodal container by the shipper (or the shipper's agent). The product is then delivered to the railroad for movement to its destination. Railroad employees do not load hazardous materials into rail cars or containers or unload them at their destination.

To arrange for the transportation of a hazardous materials package, a shipper will contact a railroad freight agent. At this time, the shipping description information—the contents and format of which is prescribed by the HMR—is passed along to the carrier, along with emergency response information, origin pickup point, destination, and the car reporting mark and number. The freight agent, or a shipping clerk, enters this information into the carrier's records, and orders are generated for pickup by either a switch or a road crew, depending on the origin location and its proximity to a terminal. The shipping information may be transmitted orally, but the regulations require a document from the shipper, sent either in hard copy or electronically. The shipper must certify that the materials to be shipped have been classified, packaged, and labeled appropriately and are in proper condition for transportation according to the applicable DOT standards.

The shipper must label non-bulk packages to properly disclose their contents, and must placard hazmat shipments in accordance with the regulations. Shippers often apply security seals to both bulk and non-bulk containers. Security seals impede access to dangerous commodities and also provide evidence of tampering, if it occurs.

Once the hazardous materials shipment has been accepted for transportation by the railroad, the paperwork that describes the product must accompany the shipment. The HMR require the train crew to have a copy of this paperwork in the complete train consist, which must accurately list the placement of each hazmat shipment in the train. Once the product is delivered to its destination, the paperwork is transferred to the receiving party.

2. Unique Characteristics of Transporting Hazardous Materials Via Rail

There are many factors unique to the rail industry that minimize the degree to which an individual may affect the movement of hazardous materials, including explosives. Railroad employees have a very limited opportunity to gain access to or divert hazardous materials shipments they are transporting. Railroad operating employees do not load or unload hazmat from rail cars, and are not expected to enter the cars or handle their contents in any way. Furthermore, train crews that move these shipments are not issued the tools necessary to remove or break the seals of the hazardous material containers. Gaining access to the hazmat in closed containers, if possible at all, would likely attract the attention of other employees. The HMR prescribe requirements for the packaging of all placarded hazmat, including the type of package, the degree to which all closures must be secured prior to transport, and maintenance and testing requirements to ensure that valves and other closures are in good working condition.

Unlike a truck or aircraft, a train operates on a closed system. It is confined to the tracks it is on, and any deviation from its assigned route is either altogether impossible or difficult to accomplish without being detected quickly by railroad employees or officials. Train crews are expected to move their train along a pre-designated route and communicate with the railroad if any delays occur along the route. A train containing hazardous materials is monitored by a train dispatcher who oversees the movement, and in heavily trafficked areas, controls the movement by a system of signals or mechanical and electronic control devices. Further, on large portions of major railroads, each car moving in a train is monitored by trackside sensors that report its location back to a centralized facility or broadcast its location over the railroad radio network every time it contacts one of a variety of equipment scanners.

Although railroads transport a large volume of hazardous materials, the number of annual explosives shipments via rail is very low. According to the AAR, there are approximately 27 million carloads of freight shipped by rail annually. Of these, 1.7 million are hazmat shipments and approximately 1,200 shipments contain explosives. Of the railroads TSA has surveyed, nearly all stated that explosives shipments are not a coveted product. There simply is not enough of it in the rail transportation network to produce good profit margins.

It is also important to note that, of the 660 small railroads operating in the United States, fewer than 10 are known to ship explosive material by rail at any given time. The incidence of explosives shipments on small railroads is nearly nonexistent.

The major railroads (or Class I railroads) handle 94 percent of the nation's rail freight traffic and employ approximately 90 percent of employees in the rail industry. Each of the Class I railroads employs a police force to guard rail yards and equipment to prevent unauthorized access to facilities, equipment, product, and paperwork. There are approximately 1,300 rail police in service today. The railroads conduct fingerprint-based CHRC on these individuals to ensure that persons with criminal or otherwise problematic backgrounds are not hired as part of the police force. Under 49 U.S.C. 28101, these employees are fully authorized to enforce laws of all states in which the railroad operates. *See also* 49 CFR part 207.

Furthermore, railroad police agents can be linked through extensive radio networks to virtually all railroad employees within their territorial jurisdiction, including train crews, train dispatchers, and railroad workers who maintain the tracks, signals and rolling stock. The railroad police can communicate directly with most railroad employees and can monitor the radio communications between many of the employees. Therefore, railroad employees operate in a setting where the employer is not dependent on state or local law enforcement to detect criminal activity; rather, it employs its own law enforcement officers, with specialized knowledge of railroad operations, to ensure the security of those operations.

The Class I railroads require employees to complete an extensive application prior to employment, which includes criminal, employment, educational, and credit history; citizenship status; and military service and type of discharge. The application also provides that candidates will be disqualified or terminated if any of the information provided on the application is false.

As part of the application process, the Class I railroads conduct background checks on all new hires, although this does not include a fingerprint-based CHRC. The Class I railroads ask applicants to disclose any past criminal history. In addition, the major railroads complete a public records search for statewide criminal and outstanding debt information. Using records linked to the applicant's social security number, the major railroads also check the applicant's employment, credit, and address history. This is a significant evaluation, because it typically confirms a candidate's identity. Experienced investigators place great weight on these records to catch individuals who have adopted false identification, who often move beneath the criminal history radar screen. A number of terrorists involved in previous terrorist attacks would have successfully completed a fingerprint-based CHRC, but may have raised concerns as a result of the social security check.

The employment application also requires information concerning previous military service and citizenship status. If a candidate has served in the armed forces, the railroad requests a copy of the individual's discharge papers. An individual with a dishonorable discharge is not disqualified automatically, but the dishonorable discharge may become grounds for disqualification. The railroad considers the totality of the circumstances, such as the facts that gave rise to the discharge, any rehabilitation that is evident, and the results of the other background checks. Similarly, the railroads do not prohibit hiring aliens, but will not hire an alien unless the proper immigration forms and approvals have been obtained. Any person who has renounced his or her U.S. citizenship would be required to state that he/she is not a U.S. citizen on the application. In a general survey of the Class I railroads, the percentage of non-Canadian aliens working in the railroad industry is extremely small. Citizens of Canada, who typically work

for the Canadian railroads, are discussed in greater detail below.

The railroad employees responsible for actually transporting hazardous materials, *i.e.*, the train crew members, are subject to a variety of requirements that address their fitness for duty, general health, and knowledge of appropriate operating practices. Locomotive engineers are certified pursuant to a comprehensive regulatory regime (49 CFR part 240) that includes safety testing, visual and hearing acuity tests, and alcohol and drug testing (49 CFR part 219). A locomotive engineer's certification may be revoked for failure to follow critical operating rules or for violation of rules concerning alcohol and drug use. *See* 49 CFR 240.117 and 307. In addition, engineers undergo knowledge and operational testing and training periodically that may reveal any severe mental disorder that might jeopardize the person's ability to perform safely. Railroad operating employees almost always work in close proximity to other crew members, so their actions are constantly observed. Abnormal behavior would likely be noticed and reported by fellow employees to management or an employee assistance program. Serious injury can result very quickly while working on or near railroad equipment; consequently, rail employees are typically not tolerant of abnormal or irresponsible behavior in the workplace.

Aside from the locomotive engineer, the other train crew members are conductors and brakemen. FRA's regulations require that, like engineers, these employees are trained and tested on the railroad's operating rules. *See* 49 CFR part 217. These employees are also subject to the alcohol and drug testing regulations, and may be removed from service for violating operating rules or alcohol and drug prohibitions.

We recognize that the background checks conducted by the railroad industry are not as comprehensive as fingerprint-based background checks. However, because of the conditions under which explosives are transported by rail and the difficulty that a potential criminal or terrorist would have in gaining access to or controlling an explosives shipment and the other Federal and industry measures currently in effect, we do not believe that additional regulations concerning railroad employees are warranted at this time. TSA continues to assess the need for more detailed background check requirements in the rail industry and may determine that such standards are necessary in the future.

Because Canadian railroads transport hazardous materials into the United States, locomotive engineers working for these railroads are often citizens of Canada rather than the United States. TSA recently published a rule that requires Canadian train crews entering this country to be vetted by Transport Canada, the agency in the Canadian government that oversees transportation. (68 FR 6083; Feb. 6, 2003.) A Canadian citizen entering the U.S. via rail with explosives shipments on board is not granted access unless Transport Canada certifies that the individual has completed a background investigation. TSA is in the process of amending this rule to extend its application to Canadians who transport explosives within the United States as well. TSA has met with representatives of Canada on several occasions to discuss these procedures, and will conduct similar discussions with Mexico.

FRA has been granted broad authority over railroad safety, including security, which includes authority to address particular safety or security problems through extraordinary remedies. Under 49 U.S.C. 20104, FRA may issue an Emergency Order imposing requirements to abate an emergency situation involving a hazard of death or personal injury. These orders are issued without notice or prior hearing, and can be directed to corporations or individuals. Using such an order, FRA can impose whatever conditions are necessary to address the emergency, up to and including requiring the cessation of operations on a particular line or removing persons from safety-sensitive service. In addition, FRA has statutory authority to disqualify individuals from safety-sensitive service when it is shown that an individual is not fit for service due to his or her violation of one or more safety laws. 49 U.S.C. 20111(c).

VI. Determination Under 18 U.S.C. 845(a)(1)

As noted above, 18 U.S.C. 845(a)(1) provides an exception to the prohibited persons provisions in 18 U.S.C. 842(i) for "any aspect of the transportation of explosive materials via railroad, water, highway, or air, which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety." Under this exception, if DOT regulations address the transportation security issues associated with persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce. In addition, if it is determined by TSA and DOT jointly that certain aspects of the transportation of explosives do not pose a sufficient security risk and therefore do not warrant regulation, the exception contained in 18 U.S.C. 845(a)(1) also applies, and persons engaged in such transportation would not be subject to criminal prosecution under section 842(i).

DOT is authorized by Federal hazmat law to designate material, including an explosive, as hazardous when transported in commerce in a particular amount and form that may pose an unreasonable risk to health, safety, or security. DOT regulations applicable to the transportation of explosives by all modes include the classification, packaging, hazard communication, and operational requirements described elsewhere in this document. Further, the HMR include specific requirements for security plans and training adopted in the HM–232 final rule.

As discussed in detail above, DOT and TSA assessed the security risks associated with the transportation in commerce of explosives as defined in 18 U.S.C. 841(c)–(f). Based on this assessment, we concluded that the most significant security risks are associated with the transportation of explosives shipments in quantities that require placarding under the HMR. Thus, the HM–232 final rule requires persons who offer or transport shipments of explosives in all modes of transportation that must be placarded under the HMR to develop and implement security plans. There are additional requirements for placarded shipments in transportation, which minimize the risks associated with their transportation. Shipping papers, packaging, car placement, the integrity of seals and closures, hazmat employee training, and maintenance are all areas that must be handled in accordance with prescribed standards.

Non-placarded shipments of explosives are not subject to these requirements. In rulemakings published on May 5, 2003, DOT and TSA determined that non-placarded shipments do not present a sufficient security risk in transportation, at this time, to warrant application of the TSA background check requirements to persons who transport those shipments in commerce or to persons who possess those shipments incidental to transportation in commerce, including persons subject to 18 U.S.C. 842(i). *See* 68 FR 23832 and 68 FR 23852. DOT and TSA continue to assess the security risks posed by the transportation of non-placarded shipments of explosives in commerce and will take appropriate regulatory action, after public notice and comment, to address those risks.

Nevertheless, non-placarded shipments of explosives continue to be subject to general HMR requirements governing packaging and hazard communication. These risk-based safety requirements also enhance overall transportation security. For example, for high hazard shipments, such as Class 1 materials, the stringent packaging required by the HMR to enhance the safety of the shipment in transportation makes it difficult for someone to tamper with the shipment for a criminal or terrorist purpose. Similarly, shipping documents help shippers, carriers, and consignees account for specific shipments and identify discrepancies or missing packages. In addition, under the HM–232 final rule, hazardous materials employers must ensure that all hazardous materials employees receive security awareness training. Such training must include an awareness of the security risks associated with hazardous materials transportation and a component covering how to recognize and respond to possible security threats.

A joint decision by DOT and TSA as to whether a particular hazardous material, including an explosive, presents a sufficient security risk when transported in commerce to warrant background check or other security requirements is determinative. As noted above, DOT and TSA previously determined that the transportation of non-placarded shipments by persons described under section 842(i) does not present a sufficient security risk to warrant further regulation at this time. That determination also applies to the transportation in commerce of non-placarded explosives via rail.

For the transportation of explosives by rail in amounts that require placarding, RSPA and FRA regulations, the protections inherent in railroad operations against improper use of explosives by railroad employees, and security safeguards imposed by the railroads themselves adequately address, at the current time, security risks associated with rail employees who are involved in such transportation. DOT regulations ensure that explosives shipments are properly loaded, labeled, and documented, and that the shipments are very difficult to tamper with. In addition, the HM–232 final rule requires persons who transport certain hazardous materials to develop and implement security plans. Thus, railroads that carry hazardous materials, including explosives, in amounts that require placarding must have a security plan that conforms to HM–232 requirements. The plan must include an assessment of possible transportation security risks for covered shipments and appropriate measures to address the risks. Specific measures put into place under the plan must address personnel security. To the extent that a railroad identifies security vulnerabilities related to its personnel, its security plan must address those vulnerabilities. Further, major railroads have their own authorized law enforcement officers, and the nature of railroad operations makes it difficult for an employee to have any realistic opportunity to gain access to, improperly use, or redirect the movement of the shipments. Major railroads screen potential employees in a way that is designed to reveal those who are under indictment or have been convicted of serious felonies, are fugitives from justice, are in the country illegally, have renounced their citizenship, or have been dishonorably discharged from the armed forces. Serious felonies involve those offenses that generally pose a substantial threat to public safety and security.

Periodic operational testing and the nature of railroad work create an environment in which mental disorders that give rise to safety or security concerns are likely to be noticed and addressed. FRA's alcohol and drug regulations effectively prevent substance abusers from serving in security-sensitive positions. Recent security enhancements undertaken by the major railroads have also helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession. Small railroads rarely handle any explosives shipments, and many of the safeguards against misuse of those materials that exist on larger railroads are also present on small ones.

For all of these reasons, DOT and TSA have determined that the transportation of explosives via rail by persons described under section 842(i) does not pose a sufficient security risk warranting further regulation at this time. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to persons while they are engaged in the transportation of explosives in commerce via rail.

It is important to note that this determination may be reassessed as DOT and TSA continue to identify and address security risks associated with the transportation of explosives. For example, in a rulemaking to be developed under Docket HM–232A, RSPA is evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks in transportation. Likewise, TSA is considering transportation worker identification rules that would likely include certain railroad workers and entail background checks. Because of the potential impact of such enhanced security requirements on the economic viability of the hazardous materials transportation industry, any additional security requirements will be developed through normal notice and comment procedures, unless security threats justify expedited or emergency rulemaking.

Issued in Washington, DC, and Arlington, Virginia, on June 4, 2003.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

Allan Rutter,

Administrator, Federal Railroad Administration.

James M. Loy,

Administrator, Transportation Security Administration.

[FR Doc. 03–14489 Filed 6–5–03; 10:39 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15353]

Notice of Receipt of Petition for Decision That Nonconforming 2002 BMW Z8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 BMW Z8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 BMW Z8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 9, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2002 BMW Z8 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2002 BMW Z8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 BMW Z8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2002 BMW Z8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 BMW Z8 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 2002 BMW Z8 passenger car models comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) replacement of the speedometer and tachometer with U.S.-model components; (b) reprogramming the dash to add all required warning and theft protection functions.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model rear sidemarker lights.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* reprogramming the vehicle to actuate the ignition key and safety belt warning systems.

Standard No. 118 *Power Window Systems:* reprogramming the vehicle so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) reprogramming the dash to add the required seat belt warning functions; (b) replacement of the passenger's seat belt with a U.S.-model component. The petitioner states that the vehicle is equipped with a U.S.-model driver's seat belt and with U.S.-model air bags, control units, and related interior parts.

The petitioner states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 4, 2003.

Kathleen DeMeter,

Acting Associate Administrator for Enforcement.

[FR Doc. 03–14437 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–279 (Sub–No. 5X)]

Canadian National Railway Co.—Discontinuance of Trackage Rights Exemption—In Erie County, NY

The Canadian National Railway Company (CN) has filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 5.3-mile portion of trackage owned by New York Central Lines, LLC (NYC) and operated by CSX Transportation, Inc., in Buffalo, Erie County, NY. The line is described as the following segments: (a) NYC's Chicago Line between CP–2 and CP–5 (milepost 5.4+/−), near the south end of NYC's Seneca Yard; (b) NYC's Compromise Branch between CP–437 and CP–2; and (c) NYC's Bailey Avenue Branch between CP–T and CP–437. The line traverses United States Postal Service Zip Codes 14206, 14207, 14210, 14211, 14212, 14214, 14216, 14218, and 14220.

CN has certified that: (1) No local traffic has been handled to or from any customer for at least 2 years; (2) any overhead traffic routed over the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 9, 2003, unless stayed pending reconsideration. Petitions to stay [1] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by June 19, 2003. Petitions to reopen must be filed by June 30, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CN's representative: Michael J. Barron, Jr., Canadian National, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 30, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14202 Filed 6–6–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c), and 1105.8(b), respectively.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 637X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—In Grant County, WV

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 5.3-mile line of railroad, extending between milepost BAH 63.7 at Sincel and the end of the track at milepost BAH 69.0 near Henry, in Grant County, WV. The line traverses United States Postal Service Zip Code 26720.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 10, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by June 20, 2003. Petitions to reopen must be filed by June 30, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14203 Filed 6–6–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Because this is a discontinuance of service proceeding and not an abandonment, there is no need to provide an opportunity for trail use/rail banking or public use condition requests. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c)(6) and 1105.8. Nevertheless, CSXT filed environmental and historic reports with its notice.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 29, 2003.

The Department of the Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 9, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0025.
Form Number: IRS Form 851.
Type of Review: Extension.
Title: Affiliations Schedule.
Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/ Recordkeepers: 4,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr., 28 min.
Learning about the law or the form—1 hr., 12 min.
Preparing and sending the form to the IRS—1 hr., 25 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 56,400 hours.

OMB Number: 1545–0239.
Form Number: IRS Form 5754.
Type of Review: Extension.
Title: Statement by Person(s) Receiving Gambling Winnings.
Description: Section 3402(q)(6) of the Internal Revenue Code (IRC) requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. We use the information on Form W–2G to ensure that recipients are properly reporting their income.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 306,000.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 61,200 hours.

OMB Number: 1545–1021.
Form Number: IRS Form 8594.
Type of Review: Extension.
Title: Asset Acquisition Statement.
Description: Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr.
Learning about the law or the form—2 hr., 34 min.
Preparing and sending the form to the IRS—2 hr., 52 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 329,200 hours.

OMB Number: 1545–1060.
Form Number: IRS Form 8288–B.
Type of Review: Revision.
Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Description: Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by section 1445.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 5,079.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 4 min.
Learning about the law or the form—2 hr., 7 min.
Preparing the form—1 hr., 7 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 28,798 hours.

OMB Number: 1545–1825.
Form Number: IRS Form 13388.
Type of Review: Extension.
Title: Improving the Accuracy of EITC Prepared Returns.
Description: This postcard will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The postcard provides these professionals an opportunity to acquire additional information about the Earned Income Tax Credit (EITC). It is part of a brochure to encourage 100% filing of EITC returns.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 150 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–14359 Filed 6–6–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 28, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 9, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1545.
Regulation Project Number: REG–107644–97 Final.
Type of Review: Extension.
Title: Permitted Elimination of Pre-retirement Optional Forms of Benefit.
Description: The regulation permits an amendment to a qualified plan that eliminates certain pre-retirement optional forms of benefit.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 135,000.
Estimated Burden Hours Per Recordkeeper: 22 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 92 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,
Treasury, PRA Clearance Officer.
[FR Doc. 03–14360 Filed 6–6–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Leasing—12 CFR part 23."

DATES: You should submit written comments by August 8, 2003.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0206, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Leasing—12 CFR part 23.
OMB Number: 1557–0206.
Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 23 are as follows:

12 CFR 23.4(c)—Reporting requirement: National banks must liquidate or re-lease personal property that is no longer subject to lease (off-lease property) within five years from the lease expiration. A bank wishing to extend that five-year holding period for up to an additional five years must obtain OCC approval. To ensure that a bank is not holding property for speculative reasons, the OCC requires the bank to provide a clearly convincing demonstration as to why an additional holding period is necessary. This requirement confers a benefit on national banks and may result in cost savings. This requirement provides flexibility for a bank when it faces unusual and unforeseen conditions under which it would be imprudent to dispose of the off-lease property.

12 CFR 23.4(c)—Recordkeeping requirement: A bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease.

12 CFR 23.5—Recordkeeping requirement: If a national bank enters into both CEBA leases (a personal property lease authorized under 12 U.S.C. 24(Tenth)) and section 24(Seventh) leases (a personal property lease authorized under 12 U.S.C. 24(Seventh)), the bank's records must distinguish between the two types of leases. This information is required to evidence compliance with the statutory limitation on the aggregate amount a national bank may invest in leases pursuant to 12 U.S.C. 24 (Tenth).

Type of Review: Extension of a currently approved collection.
Affected Public: Businesses or other for-profit.
Estimated Number of Respondents: 580.
Estimated Total Annual Responses: 625.
Estimated Total Annual Burden: 1,610 hours.
Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2003.

Mark J. Tenhundfeld,
Assistant Director, Legislative and Regulatory Activities Division.
[FR Doc. 03–14356 Filed 6–6–03; 8:45 am]
BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information

collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Investment Securities (12 CFR part 1)."

DATES: You should submit written comments by August 8, 2003.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0205, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities (12 CFR part 1).

OMB Number: 1557–0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–14357 Filed 6–6–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040NR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040NR, U.S. Nonresident Alien Income Tax Return.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Nonresident Alien Income Tax Return.

OMB Number: 1545–0089.

Form Number: 1040NR.

Abstract: Form 1040NR is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 309,170.

Estimated Time Per Respondent: 15 hours, 28 minutes.

Estimated Total Annual Burden Hours: 4,784,780.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14464 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120, Schedule D, Schedule H, Schedule N, and Schedule PH

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120, U.S. Corporation Income Tax Return, Schedule D, Capital Gains and Losses, Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC), Schedule N, Foreign Operations of U.S. Corporations, and Schedule PH, U.S. Personal Holding Company (PHC) Tax.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 1120, U.S. Corporation Income Tax Return, Schedule D, Capital Gains and Losses, Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC), Schedule N, Foreign Operations of U.S. Corporations, and Schedule PH, U.S. Personal Holding Company (PHC) Tax.

OMB Number: 1545–0123.

Form Number: 1120, Schedule D, Schedule H, Schedule N, and Schedule PH.

Abstract: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of Internal Revenue Code section 280H. Schedule N (Form 1120) is used by corporations that have assets or business operation in a foreign country or a U.S. possession to provide international tax and passthrough entity information. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,990,783.

Estimated Time Per Respondent: 184 hours, 41 minutes.

Estimated Total Annual Burden Hours: 367,686,291.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14465 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251985–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251985–96 (TD 8786), Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936 (§ 1.863–3).

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936.

OMB Number: 1545–1556.

Regulation Project-Number: REG–251985–96.

Abstract: Section 1.863–3(f)(6) of this regulation requires taxpayers to attach a statement to their tax return furnishing certain information regarding the methodology used to determine the source of their income from cross-border sales of inventory, and the amount of income allocated or apportioned to U.S. or foreign sources in these sales. The information is used by the IRS to establish whether the taxpayer determined the source of its income in accordance with Code section 863.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14466 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120S, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

OMB Number: 1545–0130.

Form Number: Form 1120S, Schedule D, and Schedule K–1.

Abstract: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule D is used to report gain or loss from sales or exchanges of capital assets and the computation of tax on certain capital gains imposed by Internal Revenue Code section 1374. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,880,000.

Estimated Time Per Respondent: 257 hours, 36 minutes.

Estimated Total Annual Burden Hours: 484,305,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14467 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–W, Estimated Tax for Corporations.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax for Corporations.

OMB Number: 1545–0975.

Form Number: 1120–W.

Abstract: Under section 6655 of the Internal Revenue Code, a corporation with an income tax liability of $500 or more must make four required installments of estimated tax during the tax year or be subject to a penalty for failure to pay estimated income tax. Form 1120–W is used by corporations to compute their estimated income tax and the amount of each required installment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 10 hrs., 21 min.

Estimated Total Annual Burden Hours: 9,315,955.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14468 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, July 15, 2003, at 1:30 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, July 15, 2003, from 1:30 to 3 p.m. eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to

the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14469 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, July 14, 2003, at 3 p.m., central daylight time.

FOR FURTHER INFORMATION CONTACT: Sandy McQuin at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, July 14, 2003, from 3 p.m. to 4 p.m. central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Sandy McQuin at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14470 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, July 2, 2003, from 11 a.m. to noon central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14471 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, July 10, 2003, at 2 p.m., Central daylight time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, July 10, 2003, from 2 p.m. to 3 p.m. Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14472 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of the Public Debt, Treasury

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of the Public Debt (Public Debt) gives notice of a proposed system of records.

DATES: Comments must be received no later than July 9, 2003. The proposed system of records will be effective July 21, 2003 unless Public Debt receives comments which would result in a contrary determination.

ADDRESSES: Send any comments to the Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, Room 1428, Main Treasury Building, Washington, DC 20220. Before visiting the library, you must call 202–622–0990 for an appointment. Also, you can download comments at the following World Wide Web address: *"http://www.publicdebt.treas.gov"*

FOR FURTHER INFORMATION CONTACT: For information about Public Debt's anti-money laundering and fraud suppression program, contact the Fraud Inquiry Line at 304–480–8555. The phone line is administered by the Office of the Chief Counsel, Bureau of the Public Debt. For information about this document, contact the Office of the Chief Counsel, Bureau of the Public Debt, at 304–480–8692.

SUPPLEMENTARY INFORMATION: The mission of Public Debt is to borrow the money needed to operate the Federal Government and to account for the resulting debt. Public Debt is establishing the U.S. Treasury Securities Fraud Information System to: (1) Identify and monitor fraudulent and suspicious activity related to Treasury securities and other U.S. obligations; (2) ensure that Public Debt provides a timely and appropriate notification of a possible violation of law to law enforcement and regulatory agencies; (3) protect the Government and individuals from fraud and loss; (4) prevent the misuse of Treasury names and symbols on fraudulent instruments, and (5) compile summary reports, that conform with the spirit of the USA Patriot Act's anti-terrorism financing provisions and the Bank Secrecy Act's anti-money laundering provisions and submit the reports to the Financial Crimes Enforcement Network (FinCEN).

Public Debt has received widespread inquiries from entities and individuals who have been approached by parties in connection with offers of participation in various questionable securities practices and illegal financial instruments, some of which falsely use the Treasury name or symbol. Under 31 U.S.C. 321(a)(5), the Secretary of the Treasury has the general authority to "prescribe regulations that the Secretary considers best calculated to promote the public convenience and security, and to protect the Government and individuals from fraud and loss, that apply to anyone who may: (A) receive for the Government, Treasury notes, United States notes, or other Government securities; or (B) be engaged or employed in preparing and issuing those notes or securities." In addition, under 31 U.S.C. 333(a), no person may use the Department of the Treasury names, symbols, etc. "in a manner which could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, or authorized by, or associated with, the Department of the Treasury or any entity * * * (of the Department) * * * or any officer or employee thereof." See also, 31 CFR part 27, "Civil Penalty Assessment for Misuse of Department of the Treasury Names, Symbols, Etc." Likewise, an "obligation or security of the United States" may not be photographed or reproduced, 31 CFR 103.52(a).

To ensure that the Treasury name and its products are protected from fraudulent transactions, Public Debt proposes to maintain records on entities and individuals who are potentially involved in questionable or illegal transactions and practices relating to Treasury securities and other U.S. obligations. These records might, but do not necessarily have to, include allegations of administrative, civil or criminal misconduct, from any source.

Public Debt sells Treasury bills, notes, and bonds as well as U.S. Savings Bonds to investors. In addition to maintaining records on questionable securities practices and illegal financial instruments, Public Debt proposes to maintain records on suspicious activities involving these legitimate Treasury products. Suspicious activity may be any information that Public Debt determines to have a high degree of usefulness in criminal, tax, and, regulatory investigations, or other proceedings, including credit card loss prevention programs.

In particular, Public Debt intends to establish due diligence policies, procedures, and controls that aid in the detection and reporting of any attempt at money laundering involving Treasury securities. Treasury, as an issuer of government securities and a provider of related investment services, is not addressed in the anti-terrorism and anti-money laundering provisions of the USA Patriot Act, the Bank Secrecy Act, or FinCEN's implementing regulations, 31 CFR part 103. Nevertheless, consistent with the purposes of these Acts, Public Debt will take anti-terrorism and anti-money laundering measures, maintain records, and report certain suspicious transactions to appropriate authorities, including FinCEN.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, Public Debt is proposing to establish the following new system of records: Treasury/BPD.009–U.S. Treasury Securities Fraud Information System.

To assist Public Debt in its regulatory and oversight functions, this system will track complaints and inquiries concerning fraudulent or suspicious transactions related to Treasury securities and other U.S. obligations.

Public Debt proposes to exempt records maintained in the system from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2). A proposed rule to exempt this system from certain provisions of the Privacy Act will be published separately in the **Federal Register**.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed Public Debt system of records, U.S. Treasury Securities Fraud Information System, Treasury/BPD.009, is published in its entirety below.

Dated: June 3, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/BPD.009

SYSTEM NAME:

U.S. Treasury Securities Fraud Information System—Treasury/BPD.

SYSTEM LOCATION:

The system of records is located at the Bureau of the Public Debt in Parkersburg, WV and Washington DC as well as the Federal Reserve Banks of Boston, Buffalo, Chicago, Dallas, Kansas City, Philadelphia, Pittsburgh, Richmond, and Minneapolis. This system also covers Public Debt records that are maintained by contractor(s) under agreement. The system manager(s) maintain(s) the system location of these records. The address(es) of the contractor(s) may be obtained from the system manager(s) below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under investigation or who make inquiries or report fraudulent

or suspicious activities related to Treasury securities and other U.S. obligations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected/used by this system are necessary to ensure the accurate identification of individuals who report or make fraudulent transactions involving Treasury securities and other U.S. obligations. The types of personal information potentially could include the following:

(1) Personal identifiers (name, including previous name used, and aliases; Social Security number; Tax Identification Number; physical and electronic addresses; telephone, fax, and pager numbers), and;

(2) Authentication aids (personal identification number, password, account number, credit card number, shared-secret identifier, digitized signature, or other unique identifier).

Supporting records may contain correspondence between Public Debt and the entity or individual submitting a complaint or inquiry, correspondence between Public Debt and the Department of Treasury, or correspondence between Public Debt and law enforcement, regulatory bodies, or other third parties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321(a)(5), 31 U.S.C. 333, 31 U.S.C. 3101, *et seq.* 31 U.S.C. 5318, and 5 U.S.C. 301.

PURPOSE(S):

Records in this system are used to: (1) Identify and monitor fraudulent and suspicious activity related to Treasury securities and other U.S. obligations; (2) ensure that Public Debt provides a timely and appropriate notification of a possible violation of law to law enforcement and regulatory agencies; (3) protect the Government and individuals from fraud and loss; (4) prevent the misuse of Treasury names and symbols on fraudulent instruments; and, (5) compile summary reports, that conform with the spirit of the USA Patriot Act's anti-terrorism financing provisions and the Bank Secrecy Act's anti-money laundering provisions, and submit the reports to the Financial Crimes Enforcement Network (FinCEN).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(4) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Agents or contractors who have been engaged to assist Public Debt in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(6) The Department of Justice when seeking legal advice or when (a) the Department of the Treasury or (b) Public Debt, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, multiple client-server platforms that are backed-up to magnetic tape or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by (name, alias name, Social Security number, Tax Identification Number, account number, or other unique identifier).

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

(2) Assistant Commissioner, Office of Investor Services, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

(3) Assistant Commissioner, Office of Securities Operations, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

(4) Chief Counsel, Office of Chief Counsel, Parkersburg Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

NOTIFICATION PROCEDURE:

This system of records is exempt from the Privacy Act provision on notification procedures. (*See* "Exemptions Claimed for the System," below.) An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer. *See* 31 CFR part 1, Subpart C, appendix I.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

This system of records is exempt from the Privacy Act provision on record access procedures. (*See* "Notification Procedure" above.)

CONTESTING RECORD PROCEDURES:

This system of records is exempt from the Privacy Act provision on contesting record procedures. (*See* "Notification Procedure" above.)

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (*See* "Exemptions Claimed for the System," below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

[FR Doc. 03–14361 Filed 6–6–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Capital Grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, funding priorities, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. Eastern Time on Friday, July 18, 2003. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the Interim Final Rule published in the **Federal Register** on March 19, 2003 §§ 61.0–61.82.

Submission of Application: An original completed and collated grant application (plus three copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, Florida 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, Florida 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of capital funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible entities to: (1) Expand existing projects; or (2) develop new programs or new components of existing projects. Funding applied for under the capital grant component may be used for: (1) Remodeling or alteration of existing buildings; (2) acquisition of buildings, acquisition and rehabilitation of buildings; (3) new construction; and (4) acquisition of vans for outreach to and/or transportation for homeless veterans (see Interim Final Rule, Published in the **Federal Register**, March 19, 2003, §§ 61.0 through 61.82). Public Law 107–95, § 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. §§ 2011, 2012, 2061, and 2064 authorizes this program. The program has been extended through fiscal year 2005. For eligibility criteria please refer to Interim Final Rule published in the **Federal Register** on March 19, 2003, §§ 61.10 and 61.12.

Capital grant applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons. A proposal for an existing project that seeks to shift its focus by changing the population being served or the precise mix of services being offered is not eligible for consideration. No more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

VA is pleased to issue this Notice of Fund Availability (NOFA) for the Homeless Providers Grant and Per Diem Program. The Department expects to award approximately $8 million under the capital grant component.

Funding available under this NOFA is being offered to help offset the capital expenses of existing State and local governments, Indian Tribal governments, faith-based, and community-based organizations that are capable of creating and providing supported housing and/or supportive service center services for homeless veterans. The District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, may be considered eligible entities under the definition of "State" in the Interim Final Rule, § 61.1 Definitions.

Per diem for these programs is requested in the grant application and paid at the time of grant project completion. It should be noted that VA per diem payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care, which is currently $26.95. Awardees will be required to support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Interested organizations should know that the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with both mental illness and substance abuse disorders. In addition, many homeless veterans have serious medical problems. Collaboration with VA medical centers, VA community-based outpatient clinics or other health care providers is an important aspect of assuring that homeless veterans have access to appropriate health care services.

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to verify the completion of the capital grant as well as monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. VA is also implementing new procedures to further this effort. Applicants should be aware of the following:

All awardees that are conditionally selected in response to *this NOFA* must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection prior to awardees being able to submit request for payment to ensure this requirement is met.

Upon capital grant completion each program seeking per diem will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program.

Monitoring will include at least an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). It is the intention of VA to develop specific performance targets with respect to housing for homeless veterans. NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

VA encourages all eligible and interested entities to review this NOFA and consider applying for funds to provide service for homeless veterans.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, § 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. §§ 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the interim final rule codified at 38 CFR part 61.0. The interim final rule was published in the **Federal Register** on March 19, 2003, the regulations can be found in their entirety in 38 CFR, §§ 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $8 million is available for the capital grant component. Per diem payments to capital grant recipients are subject to the recipients maintaining the program for which the grant was awarded, the availability of funds and reauthorization of the program past September 30, 2005.

Funding Priorities: VA establishes the following three funding priorities in order to: (1) Implement the provisions of Public Law 107–95 regarding geographical dispersion and non-duplication of service. In this round of capital grant funding, VA expects to award funding to create 800 community-based supported housing beds.

The Urban Institute's analysis of data collected through the 1996 Survey of Homeless Providers and Clients indicates that 21 percent of the homeless population is found in rural and suburban locations. Over the last eight rounds of grants, VA awarded approximately $ 63 million to help establish 271 projects for homeless veterans. Additionally, VA has provided operational funds in the form of per diem for 1,378 beds. *Funding priority 1.* Seven states have no grant or per diem funded programs for homeless veterans. These states are Alaska, Idaho, Kansas, Montana, North Dakota, New Hampshire, and Wyoming. Eligible entities whose projects are located in these states will be considered in the first funding priority. Based on the amount of funding available approximately $1.4 million is available for funding priority 1. Of those eligible entities in the first funding priority, that are legally fundable, the highest scoring applicants from each state will be funded first, followed by the second highest scoring applicants from each state, until enough projects totaling approximately $1.4 million are identified for funding. Applicants not funded in this priority will be placed in the third funding priority.

Funding priority 2. Also, only three grant and per diem-funded programs are affiliated with Indian Tribal Governments. Eligible Indian Tribal Governments will be considered in the second funding priority. Based on the amount of funding available approximately $1.4 million is available for funding priority 2. Of those Indian Tribal Governments in the second funding priority, that are legally fundable, the highest scoring applicants will be funded first, until enough projects totaling approximately $1.4 million are identified for funding. Applicants not funded in this priority will be placed in the third funding priority.

Funding priority 3. Finally, VA is encouraging interested, state and local governments, faith-based, and community-based organizations to apply for funding under this NOFA. Based on the amount of funding available approximately $6.2 million is available for funding priority 3. Eligible entities that are state and local governments, faith-based, and community-based organizations, along with those applicants not selected in the first or second priority will be considered in the third funding priority. Of those eligible entities that are legally fundable, the highest-ranked applications for which funding is available, will be conditionally selected for eligibility to receive a capital grant in accordance with their ranked order until enough projects totaling approximately $6.2 million are identified for funding or until funding is expended.

Methodology: VA will review all capital grants applicants in response to this notice of funding availability as follows: VA will group the applicants into the funding priorities categories. Applicants will then be ranked within their respective funding category based on score and any ranking criteria set forth in that funding category only if the applicant scores at least 600 cumulative points from paragraphs (b) (c) (d) (e) and (i) of the interim final rule published in the **Federal Register**, March 19, 2003, §§ 61.13.

The highest-ranked application for which funding is available, within the highest funding category, will be conditionally selected in accordance with their ranked order until VA reaches the projected bed totals for each category. If funds are still available after selection of those applications in the highest priority group, VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in the interim final rule § 61.14.

Application Requirements: The specific grant application requirements will be specified in the application package. Applicants should be careful to complete the proper application package. Submission of the incorrect application package will result in the application being rejected at threshold. The packages include all required forms and certifications. Selections will be made based on criteria described in the application, Interim Final Rule, and NOFA. Applicants who are conditionally selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: June 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–14598 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 68, No. 110
Monday, June 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1470–P]

RIN 0938–AL89

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

Correction

In the issue of Wednesday, June 4, 2003, on page 33579, in the second column, in the correction of rule document 03–11966, in the third line, "July 15, 2003" should read "July 8, 2003".

[FR Doc. C3–11966 Filed 6–6–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 9, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Change in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment Systems; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1243–F]

RIN 0938–AM41

Medicare Program; Changes in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment Systems

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: In this final rule, we are revising the methodology for determining payments for extraordinarily high-cost cases (cost outliers) made to Medicare-participating hospitals under the acute care hospital inpatient prospective payment system (IPPS).

Under the existing outlier methodology, the cost-to-charge ratios from hospitals' latest settled cost reports are used in determining a fixed-loss amount cost outlier threshold. We have become aware that, in some cases, hospitals' recent rate-of-charge increases greatly exceed their rate-of-cost increases. Because there is a time lag between the cost-to-charge ratios from the latest settled cost report and current charges, this disparity in the rate-of-increases for charges and costs results in cost-to-charge ratios that are too high, which in turn results in an overestimation of hospitals' current costs per case. Therefore, we are revising our outlier payment methodology to ensure that outlier payments are made only for truly expensive cases.

We also are revising the methodology used to determine payment for high-cost outlier and short-stay outlier cases that are made to Medicare-participating long-term care hospitals (LTCHs) under the long-term care hospital prospective payment system (LTCH PPS). The policies for determining outlier payment under the LTCH PPS are modeled after the outlier payment policies under the IPPS.

EFFECTIVE DATE: The provisions of this final rule are effective on August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548 (IPPS Outlier Policy) Miechal Lefkowitz, (410) 786–5316 (LTCH PPS Outlier Policy)

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders; Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Description of the Acute Care Hospital Inpatient Prospective Payment System (IPPS)

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. This payment system is referred to as the acute care hospital inpatient prospective payment system (IPPS). Under the IPPS, each case is categorized into a diagnosis-related group (DRG). Each DRG has a payment weight assigned to it, based on the average resources used to treat Medicare patients in that DRG.

The IPPS base payment rate (also referred to as the average standardized amount) is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located, and if the hospital is located in Alaska or Hawaii, the nonlabor-related share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If a hospital treats a high percentage of low-income patients, it receives a percentage add-on payment applied to the DRG-adjusted base payment rate. This add-on payment, known as the disproportionate share hospital (DSH) adjustment, provides for a percentage increase in Medicare payments to hospitals that qualify under either of two statutory formulas that are designed to identify hospitals that serve a disproportionate share of low-income patients. For qualifying hospitals, the amount of the DSH adjustment may vary based on the outcome of the statutory calculation.

Also, if a hospital is an approved teaching hospital it receives a percentage add-on payment for each case paid under the IPPS. This add-on payment, known as the indirect medical education (IME) adjustment, varies depending on the ratio of residents-to-beds for operating costs and according to the ratio of residents-to-average daily census for capital costs under the IPPS.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. In order to qualify, a new technology must demonstrate that it is a substantial clinical improvement over technologies otherwise available, and that, absent an add-on payment, it would be inadequately paid under the regular DRG payment.

For particular cases that are unusually costly, known as outlier cases (discussed below), the IPPS payment is increased. This additional payment is designed to protect a Medicare-participating hospital from large financial losses due to unusually expensive cases. Any outlier payment due to the hospital is added to the DRG-adjusted base payment rate, plus any DSH, IME, and new technology add-on adjustments.

The regulations governing payments for operating costs under the IPPS are located in 42 CFR Part 412. The specific regulations governing payments for outlier cases are located at 42 CFR 412.80 through 412.86.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." The basic methodology for determining capital prospective payments is set forth in our regulations at §§ 412.308 and 412.312. Under the capital prospective payment system, payments are adjusted by the same DRG for the case as they are under the operating IPPS. Similar adjustments are also made for IME and DSH as under the operating IPPS. Hospitals also may receive a capital outlier payment for those cases that qualify.

B. Payment for Outlier Cases

1. General

Section 1886(d)(5)(A) of the Act provides for Medicare payments to Medicare-participating hospitals in addition to the basic prospective payments for cases incurring extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed-loss cost threshold amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for outliers).

Hospital-specific cost-to-charge ratios are applied to the covered charges for a case to determine whether the costs of the case exceed the fixed-loss outlier threshold. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold. For Federal fiscal year (FY) 2003, the existing fixed-loss outlier threshold is $33,560.

The actual determination of whether a case qualifies for outlier payments takes into account both operating and capital costs and DRG payments. That is, the combined operating and capital costs of a case must exceed the fixed-loss outlier threshold to qualify for an outlier payment. The operating and capital costs are computed separately by multiplying the total covered charges by the operating and capital cost-to-charge ratios. The estimated operating and capital costs are compared with the fixed-loss threshold after dividing that threshold into an operating portion and a capital portion (by first summing the operating and capital ratios and then determining the proportion of that total comprised by the operating and capital ratios and applying these percentages to the fixed-loss threshold). The thresholds are also adjusted by the area wage index (and capital geographic adjustment factor) before being compared to the operating and capital costs of the case. Finally, the outlier payment is based on a marginal cost factor equal to 80 percent of the combined operating and capital costs in excess of the fixed-loss threshold (90 percent for burn DRGs).

The following example simulates the IPPS outlier payment for a case at a generic hospital that receives IME and DSH payments in San Francisco, California (a large urban area). In the example, the patient was discharged after October 1, 2002, and the hospital incurred Medicare-covered charges of $150,000. The DRG assigned to the case was DRG 286 (Adrenal and Pituitary Procedures), which has a FY 2003 relative weight of 2.0937. There is no new technology add-on payment for the case.

Step 1: Determine the Federal operating and capital payment with IME and DSH adjustment based on the following values:

OPERATING PORTION

National Large Urban Standardized Amounts:	
Labor-Related	$3,022.60
Nonlabor-Related	$1,228.60
San Francisco MSA Wage Index	1.4142
IME Operating Adjustment Factor	0.0744
DSH Operating Adjustment Factor	0.1413
DRG 286 Relative Weight	2.0937
Labor-Related Portion	0.711
Nonlabor-Related Portion	0.289

Federal Payment for Operating Costs = DRG Relative Weight × [(Labor-Related Large Urban Standardized Amount × San Francisco MSA Wage Index) + Nonlabor-Related National Large Urban Standardized Amount] × (1 + IME + DSH): 2.0937 × [($3,022.60 × 1.4142) + $1,228.60] × (1 + 0.0744 + 0.1413) = $14,007.26

CAPITAL PORTION

Federal Capital Rate	$407.01
Large Urban Add-On	1.03
San Francisco MSA Geographic Adjustment Factor	1.2679
IME Capital Adjustment Factor	0.0243
DSH Capital Adjustment Factor	0.0631

Federal Payment for Capital Costs = DRG Relative Weight × Federal Capital Rate × Large Urban Add-On × Geographic Adjustment Factor × (1 + IME + DSH): 2.0937 × $407.01 × 1.03 × 1.2679 × (1 + 0.0243 + 0.0631) = $1,210.12

Step 2: Determine operating and capital costs from billed charges by applying the respective cost-to-charge ratios.

Billed Charges	$150,000
Operating Cost-to-Charge Ratio	0.50
Operating Costs = (Billed Charges × Operating Cost-to-Charge Ratio) ($150,000 × .50)	$75,000
Capital Cost-to-Charge Ratio	0.06
Capital Costs = (Billed Charges × Capital Cost-to-Charge Ratio) ($150,000 × .06)	$9,000

Step 3: Determine outlier threshold.

Fixed Loss Threshold	$33,560
Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio: (Operating Cost-to-Charge Ratio) / (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) (.50)/(.50 + .06)	0.8929

Operating Outlier Threshold = {[Fixed Loss Threshold × ((Labor-Related portion × San Francisco MSA Wage Index) + Nonlabor-Related portion)] × Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio}.+ Federal Payment with IME and DSH: {$33,560 × [(0.711×1.4142) + 0.289] × 0.8929} + $14,007.26=$52,797.78

Capital Cost-to-Charge-Ratio to Total Cost-to-Charge Ratio = [(Capital Cost-to-Charge Ratio)/(Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio)]: {(.06)/(.50+.06)} = 0.1071

Capital Outlier Threshold = (Fixed Loss Threshold × Geographic Adjustment Factor × Large Urban Add-On × Capital CCR to Total CCR) + Federal Payment with IME and DSH: ($33,560×1.2679×1.03×0.1071) + $1,210.12=$5,904.02

Step 4: Determine outlier payment.

Marginal Cost Factor = 0.80

Outlier Payment = (Costs—Outlier Threshold) × Marginal Cost Factor

Operating Outlier Payment = ($75,000 − $52,797.78) × 0.80=$17,761.78

Capital Outlier Payment = ($9,000 − $5,904.02) × 0.80=$2,476.78

2. Cost-to-Charge Ratios

Under our existing regulation at § 412.84(h), the operating cost-to-charge ratio and, effective with cost reporting periods beginning on or after October 1, 1991, the capital cost-to-charge ratio used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report.

In the September 30, 1988 final rule with comment period published in the **Federal Register** (53 FR 38503), we initiated the use of hospital-specific cost-to-charge ratios to determine hospitals' costs for assessing whether a case qualified for payment as a cost outlier. Prior to that change, we determined the cost of discharges based on a nationwide cost-to-charge ratio of 60 percent. We indicated at the time that the use of hospital-specific cost-to-charge ratios is essential to ensure that outlier payments are made only for cases that have extraordinarily high costs, and not merely high charges.

Currently, cost-to-charge ratios are determined using the most recent settled cost report for each hospital. At

the end of the cost reporting period, Medicare charges from all claims are accumulated through the Provider Statistical and Reimbursement Report (PS&R). The PS&R contains data such as the number of discharges and the actual charges from each hospital. The hospital also submits a cost report to its fiscal intermediary, which is used to determine total allowable inpatient Medicare costs. Once all these data are available, the fiscal intermediary then determines the cost-to-charge ratio for the hospital by using charges from the PS&R and costs from the cost report.

The Congress intended that outlier payments would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under our existing outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted.

Recent analysis indicates that some hospitals have taken advantage of two vulnerabilities in our methodology to maximize their outlier payments. One vulnerability is the time lag between the current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. The second vulnerability, in some cases, is that hospitals may increase their charges so far above costs that their cost-to-charge ratios fall below 3 standard deviations from the geometric mean of cost-to-charge ratios and a higher statewide average cost-to-charge ratio is applied. In a March 5, 2003 IPPS proposed rule (68 FR 10420) and a March 7, 2003 LTCH PPS proposed rule (68 FR 11234) that are discussed in sections II., III., IV., V., and VI., and section VII., respectively, of this final rule, we proposed to implement new regulations to correct these vulnerabilities and to ensure outlier payments are paid only for truly high-cost cases.

Because the fixed-loss threshold is determined based on hospitals' historical charge data, hospitals that have been inappropriately maximizing their outlier payments have caused the threshold to increase dramatically for FY 2003, and even more dramatically for the proposed IPPS FY 2004 outlier threshold of $50,645 (68 FR 27235, May 19, 2003). As illustrated by the table below, the IPPS cost outlier threshold increased by 80 percent from $9,700 in FY 1997 to $17,550 in FY 2001. In addition, the cost outlier threshold increased by 91 percent from $17,550 in FY 2001 to $33,560 in FY 2003. The proposed FY 2004 threshold would be a 51-percent increase over the FY 2003 threshold. The table also demonstrates, for FYs 2000 and 2001, the level at which the threshold would have to have been set in order to result in outlier payments equal to 5.1 percent of total DRG payments (absent further behavioral responses by hospitals).[1] We are required by section 1886(d)(2)(E) of the Act to apply an offset to the average standardized amounts equal to the projected outlier payments as a percentage of total DRG payments. We have historically projected outlier payments to be 5.1 percent of total DRG payments.

Fiscal year	Outlier percentage	Payments in excess of target of 5.1 percent[1] (in billions of dollars)	Outlier threshold	Threshold that would have paid out 5.1 percent
1997	5.5	$0.3	$9,700	.....
1998	6.5	1.0	11,050	.....
1999	7.6	1.8	11,100	.....
2000	7.6	1.8	14,050	21,825
2001	7.7	1.9	17,550	26,200
2002	7.9	2.5	21,025	(2)
2003	6.1	(2)	33,560	.....

[1] All payments are estimated and reflect operating payments only (not capital payments).
[2] Not available.

II. Issuance of Proposed Rules

On March 5, 2003, we published in the **Federal Register** (68 FR 10420) a proposed rule that would change the methodology for establishing how extraordinarily high-cost cases (cost-outliers) qualify for an outlier payment. On March 7, 2003, as part of the proposed rule published in the **Federal Register** (68 FR 11234) to update the payment rates and policies under the LTCH PPS, we included a proposal to apply a similar change in the methodology for establishing outlier payments for LTCHs. We proposed these changes in the payment methodology for both systems in order to correct situations in which rapid increases in charges by certain hospitals have resulted in their cost-to-charge ratios being set too high. Use of these cost-to-charge ratios has resulted in excessive outlier payments to these hospitals.

We received approximately 582 timely pieces of correspondence on the provisions of the March 5, 2003 IPPS outlier proposed rule. We received approximately 22 timely pieces of correspondence on the provisions of the March 7, 2003 LTCH PPS proposed rule that related to payment for outlier cases. In this section of this final rule, we discuss comments we received that are not related to the specific changes we proposed, but are instead more general comments related to outlier payment policies. We also discuss in this section the general issue of allowing a transition period for the changes we are implementing.

Comments directly related to specific proposals to revise the IPPS outlier payment policy and our responses to those comments are addressed in sections III., IV., V., and VI. of this final rule. Comments directly related to the specific proposed LTCH PPS outlier payment policy changes and our responses to those comments are addressed in section VII. of this final rule.

We received a number of comments that, while directly or indirectly related to outlier policy, were unrelated to the policies discussed in the proposed rule. We have not responded to comments that are unrelated to the changes that were proposed in the March 5, 2003 proposed rule and that are implemented in this final rule. We also received many detailed comments pertaining to specific implementation issues associated with these changes. We also are not addressing them in this final rule, but intend to issue implementation instructions separately and will respond to these comments at that time.

Comment: One commenter suggested that we reinstitute day outliers as an alternative to the current case methodology for outlier payments. The commenter reasoned that day outliers would more fairly and equitably pay hospitals for treating high-cost cases and would allow for payment of an outlier based on the length of stay of a particular Medicare beneficiary.

Response: Section 1886(d)(5)(A)(i) of the Act eliminates day outlier payments for discharges occurring on or after October 1, 1997. This provision was enacted in recognition of the fact that the high costs of a case are a preferable indicator of whether a case merits additional payments as an outlier than a long length stay. Furthermore, although we recognize that the issues with our current methodology for making outlier payments that are discussed in this final rule indicate the need for changes to that methodology, we believe that, after implementation of these changes, it will still be preferable to continue to use high costs to identify outlier cases.

Comment: Several commenters argued that, in the past, CMS has provided a transition period for the introduction of the capital PPS and for the removal of graduate medical education salaries from the calculation of the IPPS wage index. Therefore, the commenters recommended that a similar transition period be applied for any changes to outliers as well.

MedPAC recommended no transition period because, in recent years, some hospitals have received extra payments as a result of substantial outlier revenues. MedPAC further noted that this issue has been prominent in the news media for many months and hospitals have had sufficient opportunity to anticipate the end of these revenues and plan accordingly.

Another commenter also suggested that a transition period was unnecessary and recommended an immediate implementation date because most of the proposed changes will benefit those hospitals that did not try to game the system. In addition, the commenter believed that the proposed changes are designed to correct program abuses and any transition period would serve no legitimate public purpose and would only delay the phaseout of an otherwise overstated threshold.

Some commenters asked that CMS implement the proposals beginning on or after October 1, 2003, in order to allow fiscal intermediaries and hospitals adequate time to update their processing systems. The commenters added that if the proposals are implemented effective October 1, 2003, no disruption would be made mid-year to the cost report; that is, only entire cost reports would be reconciled once the cost report is final settled.

Response: As discussed above, the current outlier payment methodology includes two distinct vulnerabilities that some hospitals have exploited to dramatically increase their outlier payments over a brief period of time by raising their charges in excess of increases in their costs. As these increases in outlier payments to those hospitals are reflected in the data used to calculate the outlier thresholds, they force the outlier threshold to rise so that the projected outlier payout is equal to the outlier offset to the standardized amounts. The result is that hospitals that do not aggressively increase their charges do not receive outlier payments or receive reduced outlier payments for truly costly cases.

An extended transition period would allow the effects of this inappropriate redistribution of outlier payments to continue into the future. We believe it is essential to eliminate those effects as soon as possible in order to ensure that outlier payments are made only for truly high-cost cases. Although, for reasons discussed below, we are delaying implementation of some aspects of the changes we are making until October 1, 2003, we are not transitioning any of these changes beyond that date.

III. Updating Cost-to-Charge Ratios for IPPS Hospitals

A. Background and Provisions of the May 5, 2003 Proposed Rule

Currently, we use the most recent settled cost report when determining cost-to-charge ratios for IPPS hospitals. Generally, the covered charges on bills submitted for payment during FY 2003 are converted to costs by applying a cost-to-charge ratio from cost reports that began in FY 2000 or, in some cases, FY 1999 or even earlier. These covered charges reflect all of a hospital's charge increases to date, in particular those that have occurred since FY 2000 and are not reflected in the FY 2000 cost-to-charge ratios. If a hospital's rate-of-charge increases since FY 2000 exceeds the rate of the hospital's cost increases during that time, the hospital's cost-to-charge ratio based on its FY 2000 cost report will be too high, and applying it to current charges will overestimate the hospital's costs per case during FY 2003. Overestimating costs may result in some cases receiving outlier payments when these cases, in actuality, are not high-cost cases.

Because a hospital has the ability to increase its outlier payments during the time lag between the current charges and the cost-to-charge ratio from the settled cost report, through dramatic charge increases, in the March 5, 2003 IPPS outlier payment proposed rule, we proposed new regulations at § 412.84(i)(1) that would allow fiscal intermediaries to use more up-to-date data when determining the cost-to-charge ratio for each hospital. As mentioned above, currently, fiscal intermediaries use the hospital's most recent settled cost report. We proposed to revise our regulations to specify that fiscal intermediaries will use either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the later cost reporting period.

Hospitals must submit their cost reports within 5 months after the end of their fiscal year. CMS makes a decision to accept a cost report within 30 days. Once the cost report is accepted, CMS makes a tentative settlement of the cost report within 60 days. The tentative settlement is a cursory review of the filed cost report to determine the amount of payment to be paid to the hospital if an amount is due on the as-filed cost report. After the cost report is tentatively settled, it can take 12 to 24 months, depending on the type of review or audit, before the cost report is final-settled. Thus, using cost-to-charge ratios from tentative settled cost reports, as we proposed in the March 5, 2003 proposed rule, reduces the time lag for updating cost-to-charge ratios by a year or more.

However, even the later ratios calculated from the tentative settled cost reports would overestimate costs for hospitals that have continued to increase charges much faster than costs during the time between the tentative settled cost report period and the time when the claim is processed. That is, even though we proposed to reduce the lag in time by revising the regulations to use the latest tentative settled cost report rather than the latest settled cost report, if the cost report is from a later cost reporting period, there would still be a lag of 1 to 2 years during which a hospital's charges may still increase faster than costs. Therefore, we proposed to add a new provision to the regulations that, in the event more

[1] We estimate the FY 2003 percent of outlier payments compared to total DRG payments is 6.1 percent. Although in the May 19, 2003 FY 2004 IPPS proposed rule, we estimated this percentage to be 5.5 percent, we have now determined that this percentage was underestimated.

recent charge data indicate that a hospital's charges have been increasing at an excessive rate (relative to the rate-of-increase among other hospitals), CMS would have the authority to direct the fiscal intermediary to change the hospital's operating and capital cost-to-charge ratios to reflect the high charge increases evidenced by the later data. In addition, we proposed to allow a hospital to contact its fiscal intermediary to request that its cost-to-charge ratios, otherwise applicable, be changed if the hospital presents substantial evidence that the ratios are inaccurate. Any such requests would have to be approved by the CMS Regional Office with jurisdiction over that fiscal intermediary.

B. Summary of Public Comments and Departmental Responses

Comment: Several commenters were troubled by our proposal that CMS would have the authority to direct fiscal intermediaries to change a hospital's cost-to-charge ratio based on excessive charges, and the proposal that would allow a hospital to contact its fiscal intermediary to request its cost-to-charge ratio be changed if the hospital presents substantial evidence to support its request. Specifically, the commenters requested that CMS establish clear guidelines for both processes and define what constitutes "excessive charges" and "substantial evidence."

One commenter noted that some hospital cost reports from 1997 have still not been settled. The commenter asked that there be a graduated update of the cost-to-charge ratio data, updating the data by no more than 2 years in any payment period. For example, the commenter stated, a hospital currently paid using 1997 data would be updated to 1999 in the first payment period under the new methodology and to 2001 in the second period.

Response: Although we understand the commenters' desire that thresholds and parameters established in advance be used to determine when CMS will direct the fiscal intermediaries to apply a cost-to-charge ratio different than one calculated using the latest tentative settled cost report or the latest settled cost report, whichever is from the latest period, we also believe it is important for CMS to have the flexibility to respond appropriately in the future if unforeseen evidence of similar manipulation of outlier payments comes to light. We believe that establishing fixed thresholds in the regulations or in preamble language could limit our ability to respond quickly to stop such abuse. In addition, we believe that predetermined and public thresholds can serve as benchmarks for those hospitals intending to inappropriately maximize outlier payments in the future and would allow hospitals to operate just below the threshold to avoid detection.

With regard to the standards we would apply to determine whether we would direct the fiscal intermediaries to apply a different cost-to-charge ratio (for example, "excessive charges"), we would compare hospitals' rate-of-increase in charges to the rate-of-increase among other hospitals. Hospitals with increases in charges that are far above the national average rate-of-increase, for example, would be likely to have an alternative ratio assigned. These hospitals would then have the opportunity to request that an alternative ratio be assigned by presenting substantial evidence in support of their request. Such evidence, for example, would be documentation that the hospitals' costs had increased, leading to the increase in charges. At this time, we are still developing the specific procedures involved and plan to issue further guidance through program memoranda.

However, we recognize that, for some hospitals, updating to the cost-to-charge ratio calculated using the latest tentative settled cost reports may represent a substantial leap forward in the data and a potentially large decrease in their cost-to-charge ratios. Although we believe it is appropriate that all hospitals' charges are adjusted by the most accurate cost-to-charge ratio when estimating costs, we recognize the potential negative impact that may occur for some hospitals solely due to the delay in settling their cost reports. Therefore, in this final rule, we are not mandating use of the latest settled or tentatively settled cost report for discharges occurring prior to October 1, 2003. This delay in the effective date from that proposed in the proposed rule should ease the burden of the change in cost-to-charge ratios for most hospitals.

Although we are implementing the change to require the use of the latest of the settled or tentative settled cost report to compute the cost-to-charge ratio for discharges occurring on or after October 1, 2003, we believe that it is necessary to implement the other proposed provision authorizing CMS to specify an alternative cost-to-charge ratio for some hospitals, to be effective for discharges occurring on or after August 8, 2003. Such an alternative would reflect available data, such as the most recent rate-of-increase in charges, to approximate the most accurate cost-to-charge ratio (which may include data in the latest tentatively settled cost report or other data that may be available).

Although this provision will be effective for all hospitals 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. In addition, given the effective date of this final rule, most of the changes in this regulation will apply only for approximately the last 2 months of FY 2003. We are aware that hospitals have projected their outlier payments for the current fiscal year based on the policies in effect as of October 1, 2002, and any change in the middle of the fiscal year could disrupt their budgets. As a result, we intend to limit the impact of this provision during FY 2003 to ensure that the limited resources of fiscal intermediaries are focused upon updating the cost-to-charge ratios for those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios and to maintain the overall predictability of FY 2003 payments for most hospitals. Accordingly, we intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of FY 2003. The criteria for FY 2004 will target a somewhat broader group of hospitals, but will still be limited to those hospitals that have benefited the most from the time lag in updating cost-to-charge ratios, and the majority of hospitals will not be affected.

Comment: Some commenters suggested a transition period for implementing the adoption of the latest tentative settled cost-to-charge ratios and gave a detailed recommendation of how the transition period would be implemented. The commenters recommended two different methods for how a transition period could be implemented:

One recommendation was that FY 2002 would be considered the base year amount. The commenter explained that, beginning with the effective date of the final rule, hospitals would receive a blended cost-to-charge ratio of its base year amount and the cost-to-charge ratio from the most recent tentative cost report. In the first year, hospitals' cost-to-charge ratios would consist of 66.7 percent from a base year and 33.3 percent from the most recent tentative settled cost report. In the second year the cost-to-charge ratio would consist of 33.3 percent from the base year and 66.7 percent from the most recent tentative settled cost report. In the third year, this gradual decrease from the base year could continue or CMS could cease from blending the cost-to-charge ratio.

The second recommendation was a 3-year transition period using blended cost-to-charge ratios as follows: The first year would be 75 percent of the old cost-to-charge ratio and 25 percent of the new. The second year would be 50 percent of the old cost-to-charge ratio and 50 percent of the new cost-to-charge ratio. The third year would be 25 percent of the old cost-to-charge ratio and 75 percent of the new cost-to-charge ratio. During the transition period, CMS would monitor outlier payments to ensure they remain in statutory limits. Only those hospitals that have not been identified by CMS as having excessive outlier payments would qualify for the transition period.

Response: As noted previously, we believe it is essential to eliminate the effects of the inappropriate redistribution of outlier payments as soon as possible; that is, by not allowing hospitals that have benefited from the time lag resulting from the use of the latest settled cost-to-charge ratios to continue to do so. We do not believe any transition period would be appropriate, as it would continue to lead to lower outlier payments to those hospitals that have already been harmed by the inappropriate redistribution of outliers described above. Therefore, although in this final rule we are delaying the effective date of this provision until discharges occurring on or after October 1, 2003, so that most hospitals that had relied on outlier payments based on existing policy may continue to do so for the remainder of the Federal fiscal year, we are not adopting the commenters' suggestions to further delay the effective date by allowing for a blended cost-to-charge ratio.

Comment: Several other commenters offered different recommendations on how CMS should administer updating of a hospital's cost-to-charge ratio. One commenter recommended that hospitals be notified in advance of any change to their cost-to-charge ratio and be given the opportunity to appeal the fiscal intermediary's decision of any change to their cost-to-charge ratio. Another commenter suggested that parameters be set, such as those in Program Memorandums A–02–122 (released December 3, 2002) and A–02–126 (released December 20, 2002), to determine when a cost-to-charge ratio should be updated. One commenter proposed that CMS use an expedited process when a hospital is requesting that its cost-to-charge ratio be decreased and not require the use of "substantial evidence" for a reduction. For increases in cost-to-charge ratios, the commenter suggested that CMS might want to reserve final approval and substantial evidence standards. Other commenters suggested that hospitals be provided with an expedited appeals process to resolve quickly any disputes with the fiscal intermediaries over the accuracy of their cost-to-charge ratios. Some commenters supported using a hospital's tentative settled cost report to update cost-to-charge ratios but believed that fiscal intermediaries should have discretion to change a hospital's cost-to-charge ratio.

Response: As we proposed, in this final rule we are implementing a new regulation that specifies that CMS may direct the fiscal intermediary to change a hospital's operating and capital cost-to-charge ratios to reflect the high-charge increases evidenced by the later data. Fiscal intermediaries will not have their own discretion to update a hospital's cost-to-charge ratio. Only CMS will have the authority to direct the fiscal intermediary that an update is necessary in the event more recent charge data indicates that a hospital's charges have been increasing at an excessive rate (relative to the rate-of-increase among other hospitals).

C. Provisions of the Final Rule Relating to Updating Cost-to-Charge Ratios

We are establishing a new § 412.84(i)(1), which specifies that, for discharges occurring on or after 60 calendar days after the date of publication of this final rule, in the event more recent charge data indicate that a hospital's charges have been increasing at an excessive rate (relative to the rate-of-increase among other hospitals), CMS may direct the fiscal intermediary to change the hospital's operating and capital cost-to-charge ratios to reflect the high-charge increases evidenced by the later data. A hospital may also request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Before the change can go into effect, the CMS Regional Office must approve the request.

We also are establishing § 412.84(i)(2), which provides that, for discharges occurring on or after October 1, 2003, the operating and capital cost-to-charge ratios applied at the time a claim is processed are based on either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the latest cost reporting period.

IV. Statewide Average Cost-to-Charge Ratios

A. Background and Provisions of the March 5, 2003 Proposed Rule

As hospitals raise their charges faster than their costs increase, over time their cost-to-charge ratios will decline. If hospitals continue to increase charges at a faster rate than their costs increase over a long period of time, or if they increase charges at extreme rates, their cost-to-charge ratios may fall below the range considered reasonable under the regulations (0.194 for operating cost-to-charge ratios and 0.012 for capital cost-to-charge ratios in FY 2003 (67 FR 50125)), and, under current regulations at § 412.84(h), their fiscal intermediaries will assign a statewide average cost-to-charge ratio. These statewide averages are generally considerably higher than the threshold. Therefore, under existing regulations, these hospitals benefit from an artificially high ratio being applied to their already high charges. Furthermore, hospitals can continue to increase charges faster than costs, without any further downward adjustment to their cost-to-charge ratios.

For example, in a 3-year span, one hospital was found to have an increase in charges of 60 percent from FY 1999 to FY 2000, 35 percent from FY 2000 to FY 2001, and 13 percent from FY 2001 to FY 2002. This hospital's actual operating cost-to-charge ratio for FY 2003 was 0.093. Because this number is below the threshold of 0.194, the fiscal intermediary assigned this hospital the statewide average cost-to-charge ratio of 0.328 (from Table 8A of the August 1, 2002 IPPS final rule (67 FR 50263)). In this case, the assignment of the statewide average cost-to-charge ratio to this hospital increased the hospital's estimated costs per case far above the estimate using the actual ratio, leading to substantially higher outlier payments to the hospital as a result of this policy.

In December 2002, we issued Program Memorandum A–02–122, which requested fiscal intermediaries to identify all hospitals receiving the statewide average operating or capital cost-to-charge ratio because their cost-to-charge ratios fell below the floor of reasonable parameters. We received a list of 43 hospitals that were assigned the statewide average operating cost-to-charge ratio and 14 hospitals that were receiving the statewide average capital cost-to-charge ratio. Three hospitals were found on both lists. Prior to application of the statewide average cost-to-charge ratios, the average actual operating cost-to-charge ratio for the 43 hospitals was 0.164, and the average actual capital cost-to-charge ratio for the

14 listed hospitals was 0.008. In contrast, the statewide average operating cost-to-charge ratio for the 43 hospitals was 0.3425 and the statewide average capital cost-to-charge ratio for the 14 hospitals was 0.035.

Because of hospitals' ability to increase their charges to lower their cost-to-charge ratios in order to be assigned the statewide average, in the March 5, 2003 proposed rule, we proposed to remove the requirement in our existing regulations that specified that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. We proposed that hospitals would receive their actual cost-to-charge ratios, no matter how low their ratios fall.

We proposed that statewide average cost-to-charge ratios would still apply in those instances in which a hospital's operating or capital cost-to-charge ratio exceeds the upper threshold. We indicated that cost-to-charge ratios above this range are probably due to faulty data reporting or entry and should not be used to identify and pay for outliers. In addition, we proposed that hospitals that have not yet filed their first Medicare cost reports with their fiscal intermediaries would still receive the statewide average cost-to-charge ratios.

B. Summary of Public Comments and Departmental Responses

Comment: Many commenters supported the proposal to remove the existing requirement that specified that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. However, they argued that the requirement to use the statewide average ratio for those hospitals that are above 3 standard deviations from the geometric mean should also be removed. The commenters reasoned that the policy should be consistent for the floor and the ceiling. As an alternative to using the statewide average (instead of ratios above the ceiling), some commenters suggested that we reduce the parameter of 3 standard deviations above the mean to a lower standard. Another commenter stated that CMS was acting in bad faith by eliminating the statewide average for the floor but not the ceiling.

Response: The changes we are making in this final rule are in response to a specific problem associated with hospitals intentionally taking advantage of our policy to assign the statewide cost-to-charge ratios when a hospital's own ratio fell below the floor. There is no similar incentive for hospitals to increase their ratios to the ceiling. Also, we believe it is unlikely a hospital would maintain a cost-to-charge ratio as high as 3 standard deviations of the geometric mean over a period of years. Therefore, we continue to believe the statewide average should be assigned for those hospitals with ratios above the ceiling.

Comment: One commenter argued that a transition period would be necessary because this change would have an immediate impact on affected hospitals' credit stability and patient service levels in certain regions. Another commenter suggested a transition period for those hospitals that did not engage in aggressive pricesetting. The commenter suggested a gradual phaseout of the statewide average. On the other hand, many commenters also supported the immediate elimination of the statewide average from the floor.

Response: We believe that, for hospitals receiving the statewide average cost-to-charge ratio because their actual ratio fell below 3 standard deviations below the geometric mean, their actual ratio is a more accurate reflection of the relationship between their costs and charges. Although it may not have been a specific objective of each hospital currently in this situation to increase charges until its ratio fell below the floor, we are not persuaded there is any justification to continue making outlier payments to these hospitals on the basis of a cost-to-charge ratio that clearly results in excessive outlier payments. Therefore, we are adopting as final the proposed change that eliminates the use of the statewide average for hospitals below 3 standard deviations from the geometric mean effective for discharges occurring on or after 60 calendar days after the date of publication of this final rule.

C. Provisions of the Final Rule Relating to Statewide Average Cost-to-Charge Ratios

We are implementing new regulations at §§ 412.84(h) and (i)(1) that are effective 60 calendar days after the date of publication of this final rule, that remove the existing requirement that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. Hospitals will receive their actual cost-to-charge ratios, no matter how low their ratios fall.

The statewide average cost-to-charge ratios will still apply in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside of reasonable parameters (that is, exceed the upper threshold). In addition, hospitals that have not yet filed their first Medicare cost reports with their fiscal intermediaries would still receive the statewide average cost-to-charge ratios. CMS will continue to set forth the reasonable parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published in the **Federal Register** in accordance with § 412.8(b).

V. Reconciling Outlier Payments Through Settled Cost Reports

A. Background and Provisions of the March 5, 2003 Proposed Rule

Under the IPPS, hospitals submit a bill for each Medicare patient stay for which they expect a payment from Medicare. The bill includes information needed to: (1) Classify the case to a DRG; (2) determine whether the case was a transfer; (3) identify whether a new technology eligible for add-on payments was involved; and (4) calculate the costs of a case to determine whether it is eligible for an outlier payment or a new technology add-on payment. This latter calculation is based on the covered charges reported on the bill, which, as discussed above, are also used to estimate the covered costs of the case by applying the cost-to-charge ratio.

The information from the bill is processed through the fiscal intermediary's claims processing system to determine the payment amount for each case. Unless a hospital qualifies for periodic interim payments under § 412.116(b), or other interim payments, payment is made on the basis of the actual amount determined for each bill processed. For hospitals that qualify for periodic interim payments, the fiscal intermediary estimates a hospital's IPPS payments and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. However, outlier payments are not made on an interim basis, but are made on a claim-by-claim basis (even for hospitals that qualify for interim payments under § 412.116(b)), and generally represent final payment (§ 412.116(e)). This policy is in contrast to payments under the IME adjustment and the DSH adjustment, both of which are routinely adjusted when hospitals' cost reports are settled to reflect updated data such as the number of residents or patient days during the actual cost reporting period.

However, as stated earlier in this preamble, we are increasingly aware that some hospitals have taken advantage of the existing outlier policy by increasing their charges at extremely high rates, knowing that there would be a time lag before their cost-to-charge ratios would be adjusted to reflect the higher charges. The steps we proposed in the March 5, 2003 proposed rule, and are implementing here, to direct fiscal intermediaries to update cost-to-charge ratios using the most recent tentative settled cost reports (and in some cases, even later data) and using actual rather than statewide average ratios for hospitals that have cost-to-charge ratios higher than 3.0 standard deviations below the geometric mean cost-to-charge ratio, would greatly reduce the opportunity for hospitals to manipulate the system to maximize outlier payments. However, these steps would not completely eliminate all such opportunity. A hospital would still be able to dramatically increase its charges by far above the rate-of-increase in costs during any given year. This possibility is of great concern, given the recent findings that some hospitals have been able to receive large outlier payments by doing just that.

Therefore, we proposed to add a provision to our regulations to provide that outlier payments would become subject to reconciliation when hospitals' cost reports are settled. Under this policy, payments would be processed throughout the year using operating and capital cost-to-charge ratios based on the best information available at that time. We proposed that when the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries would be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

This process would require some degree of recalculating outlier payments for individual claims. It is not possible to distinguish, on an aggregate basis, how much a hospital's outlier payments would change due to a change in its cost-to-charge ratios. This is because, in the event of a decline in a ratio, some cases may no longer qualify for any outlier payments while other cases may qualify for lower outlier payments. Therefore, the only way to determine accurately the net effect of a decrease in cost-to-charge ratios on a hospital's total outlier payments is to assess the impact on a claim-by-claim basis. We indicated in the proposed rule that we were still assessing the procedural modifications that would be necessary to implement this change.

Because, under our proposal, outlier payments would be based on the relationship between the hospital's costs and charges at the time a discharge occurred, the proposed methodology would ensure that when final outlier payments are made, they would reflect an accurate assessment of the actual costs the hospital incurred. Nevertheless, a final vulnerability remains. Even though the final payment would reflect a hospital's true cost experience, there would still be the opportunity for a hospital to manipulate its outlier payments by dramatically increasing charges during the year in which the discharge occurs. In this situation, the hospital would receive excessive outlier payments, which, although the hospital would incur an overpayment and have to refund the money when the cost report is settled, would allow the hospital to obtain excess payments from the Medicare Trust Fund on a short-term basis.

Under section 1886(d)(5)(A)(iii) of the Act, the amount of any outlier payment should "approximate the marginal cost of care" in excess of the DRG payment and the fixed-loss threshold. Accordingly, because a hospital would have had access to any excess outlier payments until they are repaid to the Trust Fund (or, in the case of an underpayment, would not have had access to the appropriate amount during the same period), it may be necessary to adjust the amount of the final outlier payment to reflect the time value of the funds for that time period. Therefore, we proposed to add § 412.84(m) to provide that when the cost report is settled, outlier payments would be subject to an adjustment to account for the value of the money during the time period it was inappropriately held by the hospital. This adjustment would also apply in cases where outlier payments were underpaid to the hospital. In those cases, the adjustment would result in additional payments to hospitals. Any adjustment would be based upon a widely available index to be established in advance by the Secretary, and would be applied from the midpoint of the cost reporting period to the date of reconciliation (or when additional payments are issued, in the case of underpayments). This adjustment to reflect the time value of a hospital's outlier payments would ensure that the outlier payment received by the hospital at the time its cost report is settled appropriately reflects the hospital's approximate marginal costs, in excess of the DRG payment and fixed-loss threshold, of providing the care.

This proposed adjustment was also intended to account for the unique susceptibility of outlier payments to manipulation. Hospitals set their own level of charges and are able to change their charges, without review by their fiscal intermediaries. As outlined above, changes in charges directly affect the level of outlier payments. This lack of fiscal intermediary review of a factor affecting a hospital's payments is in contrast to other IPPS adjustments, such as the IME adjustment or the DSH adjustment, where the fiscal intermediary must agree to a change to the determining factor (the resident-to-bed ratio or the share of low-income patients, respectively).

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less then 5 percent nor more than 6 percent of the total estimated operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Despite the fact that each individual hospital's outlier payments may be subject to adjustment when the cost report is settled, we continue to believe that the fixed-loss outlier threshold (discussed in section VI. of this final rule) should be based on projected payments using the latest available historical data without retroactive adjustments, either midyear or at the end of the year, to ensure that actual outlier payments are equal to 5.1 percent of total DRG payments. That is, our proposed change was intended only to allow for use of the actual cost-to-charge ratio from the cost reporting period that corresponds to the discharges for which the outlier payments are made to adjust outlier payments to reflect the hospital's true costs of providing care. This adjustment would be made irrespective of whether the nationwide percentage of outlier payments relative to total operating DRG payments is equal to the outlier offset that is applied to the average standardized amounts (generally, 5.1 percent).

Outlier payments are intended to recognize the fact that hospitals occasionally treat cases that are extraordinarily costly and otherwise not adequately compensated under an average-based payment system. However, we can only estimate actual costs based on the charges for a case because charges are the only data available that indicate the resource usage for an individual case. Therefore, our ability to identify true outlier cases is dependent on the accuracy of the cost-to-charge ratios. To the extent some hospitals may be motivated to maximize outlier payments by taking advantage of the lag in updating the cost-to-charge

ratios, the payment system remains vulnerable to overpayments to individual hospitals. Therefore, we believe the only way to eliminate the potential for such overpayments is to provide a mechanism for final settlement of outlier payments using actual cost-to-charge ratios from final settled cost reports.

However, the fixed-loss outlier threshold is an important aspect of the prospective nature of the IPPS. The outlier payment policy is designed to alleviate any financial disincentive hospitals may have against providing any medically necessary care their patients may require, even those patients who become very sick and require extraordinary resources. The preestablished threshold allows hospitals to approximate their Medicare payment for an individual patient while that patient is still in the hospital. Even though we proposed to make outlier payments susceptible to a reconciliation based on the hospital's actual cost-to-charge ratios during the contemporaneous cost reporting period, the hospital should still be in a position to make this approximation. Hospitals have immediate access to the information needed to determine what their cost-to-charge ratio will be when their cost reports are settled. Even if the final cost-to-charge ratio is likely to be different from the ratio used initially to process and pay the claim, as noted above, hospitals not only have the information available to estimate their cost-to-charge ratios, but also have the ability to control them, through the structure and levels of their charges.

If we were to make retroactive adjustments to outlier payments to ensure total payments are 5.1 percent of DRG payments (by retroactively adjusting outlier payments), we would be removing this important aspect of the prospective nature of the IPPS. Because such an across-the-board adjustment would either lead to more or less outlier payments for all hospitals, hospitals would no longer be able to reliably approximate their payment for a patient while the patient is still hospitalized. We believe it would be neither necessary nor appropriate to make such an aggregate retroactive adjustment.

Furthermore, we believe it is consistent with the intent of the language at section 1886(d)(5)(A)(iv) of the Act not to do so. This section calls for the Secretary to ensure that outlier payments are equal to or greater than 5 percent and less than or equal to 6 percent of projected or estimated (not actual) DRG payments. We believe this language reflects the intent of Congress regarding the prospectivity of the IPPS. However, we do not believe it prevents settling outlier payments based on hospitals' actual cost-to-charge ratios during the period when the discharge occurs.

B. Summary of Public Comments and Departmental Responses

Comment: Many commenters argued that it is inappropriate to reconcile outlier payments through settled cost reports because IPPS payments are prospective and any type of reconciliation would make outlier payments retrospective.

In addition, some commenters claimed that cost report reconciliation for outliers is inconsistent with the government's position in prior litigation involving the Medicare outlier payment methodology. The commenters cited *County of Los Angeles* v. *Shalala*, 192 F.3d 1005 (D.C. Cir. 1999), and stated that in this case the Secretary succeeded in arguing to the United States Court of Appeals for the District of Columbia that the Act does not require retroactive adjustments to outlier payments in order to ensure that the actual amount of outlier reimbursement furnished to hospitals is between 5 and 6 percent of the total payments made under IPPS, notwithstanding the language in section 1886(d)(5)(A)(iii) of the Act (42 U.S.C. 1395ww(d)(5)(A)(iii)) mandating that outlier payments may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates. The commenters further asserted that any reconciliation of outlier payments would be inconsistent with the government's policy of refusing to make retroactive adjustments to outlier payments when estimates and projections prove inaccurate.

Response: As an initial matter, our position in the court cases is more accurately presented as stating that the language of the statute does not clearly mandate that the actual amount of outlier payments must be between 5 and 6 percent of total payments and that our policy of not making retroactive adjustments to ensure that actual payments fall between that range is consistent with the intent of Congress. However, the commenter is correct that we have scrupulously guarded the prospective nature of the IPPS over the years. The IPPS has continued and served as a model for prospective payment systems for other provider types under Medicare because it is fair and predictable. We believe any change to the system, especially one as significant as making outlier payments subject to retroactive adjustments, must be evaluated in terms of its impact on those key characteristics of the IPPS.

As noted above and in the proposed rule, in light of the gross abuses of the current methodology by some hospitals and the negative impact such overpayments ultimately have on other hospitals due to their effect on the threshold, we believe the option of reconciling outlier payments based on the settled cost report for hospitals that have been initially paid using a significantly inaccurate cost-to-charge ratio compared to the actual ratio from the cost reporting period is now appropriate. In our view, reconciling outlier payments because they were originally paid on the basis of a significantly inaccurate cost-to-charge ratio is similar to recovering outlier payments when adjustments are made to covered charges for any services that are not found to be medically necessary or appropriate Medicare services upon medical or other review. This review is explicitly provided for at § 412.84(d). This provision was established when the IPPS was first implemented for FY 1984 (48 FR 39785).

The court cases referenced by the commenters all addressed the issue of whether outlier payments must be retroactively adjusted when the level of the threshold determined in advance of the fiscal year to which it applies ultimately results in actual outlier payments that are a smaller percentage of total DRG payments than was originally projected. We believe that an important goal of a PPS is predictability. Therefore, we believe that the fixed-loss outlier threshold should be projected based on the best available historical data and should not be adjusted retroactively. A retroactive change to the fixed-loss outlier threshold would affect all hospitals subject to the IPPS, thereby undercutting the predictability of the system as a whole.

However, if we deem it necessary as a result of a hospital-specific data variance to reconcile outlier payments of an individual hospital, such action on our part would not affect the predictability of the entire system. Rather, because each hospital is on notice as to our revised methodology for determining cost-to-charge ratios and that outlier payments are subject to possible reconciliation, and because each hospital has the necessary data regarding its own costs and charges to predict its actual cost-to-charge ratio, we are able to maintain the predictability of the system as a whole. Further, because reconciliation of outlier payments will affect only certain hospitals, the administrative burden of implementing such a policy is minimized.

Accordingly, we continue to believe that the fixed-loss outlier threshold should be based on projected payments using the latest available historical data without retroactive adjustments. This was our position in the court cases cited by the commenter, and it has been our consistent and often stated position, including above in this final rule and the March 5, 2003 proposed rule.

Comment: Some commenters suggested that we clarify how reconciliation will be implemented and only reconcile outlier payments to those providers whose cost-to-charge ratios increased or decreased outside of certain parameters. The commenters suggested that we reconcile outlier payments only for those hospitals that would otherwise receive substantial outlier overpayments or underpayments (for example, where the cost-to-charge ratio increased or decreased by 15 percent). Limiting any reconciliation to those hospitals would have the desired impact of focusing the attention of CMS on those hospitals that deserve additional scrutiny without placing such a burden on all hospitals. Another commenter believed the savings of reconciliation would be offset by the additional workload for fiscal intermediaries and hospitals.

One commenter suggested that we eliminate the proposal of reconciliation and use a quarterly or semiannual review similar to periodic interim payment reviews. The commenter explained that these reviews would be performed by a joint effort of the provider and the fiscal intermediary, resulting in interim cost-to-charge ratio adjustments throughout the fiscal year (with no lump-sum adjustment or individual claims adjustment), based on cost and charge data available from hospital records.

Response: In the proposed rule, we proposed to establish the authority for CMS to reconcile outlier payments, but we did not propose to require that all hospitals' outlier payments be reconciled. We acknowledge the commenters' concerns about the administrative costs associated with reprocessing and reconciling all inpatient claims and the desirability of limiting which hospitals' outlier payments will be reconciled. Therefore, we agree that any reconciliation of outlier payments should be done on a limited basis.

Moreover, although this provision is effective 60 days after the date of publication of this final rule, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. In addition, most of the changes in this regulation will apply for approximately the last 2 months of FY 2003. We intend to limit the impact of this provision during FY 2003 to ensure that the limited resources of fiscal intermediaries are focused upon those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios and to maintain the overall predictability of FY 2003 payments for most hospitals. Accordingly, we intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of FY 2003.

In the same program instruction, we will issue thresholds for fiscal intermediaries to reconcile outlier payments for other hospitals during FY 2003.

For cost reporting periods beginning during FY 2004, we are considering instructing fiscal intermediaries to conduct reconciliation for hospitals whose actual cost-to-charge ratios are found to be plus or minus 10 percentage points from the cost-to-charge ratio used during that time period to make outlier payments, and that have total FY 2004 outlier payments that exceed $500,000. We believe these thresholds would appropriately capture those hospitals whose outlier payments will be substantially inaccurate when using the ratio from the contemporaneous cost reporting period. Hospitals exceeding these thresholds during their applicable cost reporting periods would become subject to reconciliation of their outlier payments. These thresholds would be reevaluated annually and, if necessary, modified each year. However, fiscal intermediaries would also have the administrative discretion to reconcile additional hospitals' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

We continue to believe that cost report reconciliation is the most appropriate way to ensure that outlier payments are made only for truly costly cases. We believe the type of ongoing reviews suggested by the commenter referenced above would be an inefficient approach to addressing this problem, because it would require extensive ongoing reviews of every hospital's cost and charge data. However, we believe the problems leading to this final rule actually occur among a limited number of hospitals.

Comment: Some commenters believed that reconciliation is unnecessary because the proposed changes that would eliminate the use of statewide averages and mandate use of the most recent tentative cost report would suffice to keep hospitals from gaming outliers. Therefore, they believed CMS should abandon its proposal to reconcile outlier payments.

Response: The steps we are taking in this final rule to direct fiscal intermediaries to update cost-to-charge ratios using the most recent tentative settled cost reports and using actual cost-to-charge ratios rather than statewide average ratios will greatly reduce the opportunity for hospitals to manipulate the system to maximize outlier payments. However, these steps will not completely eliminate all such opportunity. A hospital would still be able to dramatically increase its charges far above its rate-of-increase in costs during any given year in order to obtain excessive outlier payments. Therefore, we believe reconciliation is necessary to ensure that outlier payments are appropriately paid in the future.

Comment: One commenter suggested the use of a rolling 3-year average instead of reconciliation. The commenter explained that if a hospital is found to have a cost-to-charge ratio that significantly decreased over a short period of time, the cost-to-charge ratio that would be used to pay outliers would be projected by applying the 3-year average rate of change in cost-to-charge ratios over a rolling 3-year period. Cost reports used from that 3-year period would include the most recent audited or tentatively settled cost report for each year. The commenter provided an example where the cost-to-charge ratio from the most recent tentatively settled cost report is trended down to reflect the fact that over a longer period of time, charge increases have exceeded cost increases. This rolling 3-year average would be applied to hospitals that trigger this mechanism for a period of several years, until the period where the charge increases that gave rise to the use of the projection has worked its way through the method.

Response: The changes in this final rule are designed to take away any incentive for hospitals to seek outlier payments that are excessive. We believe the method recommended by the commenter still leaves the potential to game the system. For example, a hospital with a high cost-to-charge ratio can lower its charges substantially in any given year and receive extra outlier payments until the 3-year average is applied. Also, even after the 3-year moving average is applied, the hospital can continue to raise its charges in any given year and continue to receive outlier payments that do not reflect its

actual cost-to-charge ratio. At the end of the fiscal year, the hospital would receive a new cost-to-charge ratio based on its 3-year rolling average when in reality its actual cost-to-charge ratio is much lower. A hospital could continue to stay ahead of the system every year and receive outlier payments that do not reflect its actual cost-to-charge ratio. This is the exact behavior we are trying to prevent and, therefore, we believe we need to implement the process of reconciliation to dissuade hospitals from gaming the system.

Comment: Other commenters believed reconciliation would lead to further unpredictability and volatility in the Medicare payment system and would have implications for cost report simplification. Another commenter expressed similar concerns that some hospitals' cost reports may not be settled for longer than 2 to 3 years and would be subject to large overpayments that would then be subject to an adjustment for the time value of money. Similarly, a hospital's cost report can be reopened at a later date even after final settlement, which would cause further uncertainty if reconciliation had been conducted in the past.

Response: We plan to issue further guidance through program memoranda detailing the specific operational aspects of reconciling outlier payments on the cost report. At this time, we are still developing the specific procedures involved, including the exact timing of any reconciliation in terms of the cost reporting settlement process and the appeals process.

Comment: Several commenters argued that it would be inappropriate, illogical, and inconsistent with current policies to single-out outliers for adjustments to account for the time value of money. The commenters pointed out that other IPPS payment adjustments, such as IME and DSH, are subject to reconciliation but hospitals are not charged for the time value of money when those overpayments or underpayments are reconciled. However, another commenter agreed that outlier payments are substantially different from IME and DSH payments and the premise for adjusting for the time value of money with respect to outlier payments (when it is limited to situations where the cost-to-charge ratio is substantially inaccurate, and does not involve policy disputes) is not applicable to other adjustments such as IME and DSH.

Response: As we noted above and in the proposed rule, outlier payments are uniquely susceptible to manipulation because hospitals set their own level of charges and are able to change their charges without notification to, or review by, their fiscal intermediary. Such changes by a hospital directly affect its level of outlier payments, unlike IME or DSH where the fiscal intermediary must agree to a change to the underlying data. Therefore, even though the money may be recouped if the outlier payments are reconciled, the hospital would essentially be able to unilaterally increase its charges and acquire an interest-free loan in the meantime. For that reason, we believe it is appropriate to apply an adjustment for the time value of overpayments or underpayments identified at cost report reconciliation. Because the other changes we are making in this final rule will largely ensure the payments hospitals receive for outlier cases are accurate, we do not anticipate it will be necessary to apply this adjustment broadly. Therefore, the actual total impact of this adjustment should be relatively small.

Comment: One commenter argued that there is no statutory authorization for this adjustment. The commenter referenced section 1815(d) of the Act (42 U.S.C. 1395g(d)), which provides that interest is charged when a final determination is made and payment is not made within 30 days of the date of the determination. The commenter concluded there is no authority to impose interest in any fashion except in a manner consistent with this statutory authorization, and, thus, the proposed time value adjustment should be withdrawn.

Response: The reference cited by the commenter authorizes Medicare to charge and pay interest when an overpayment or underpayment is made. However, the referenced statutory authority is not the basis for the proposal to adjust outlier payments for the time value of money when reconciliation is made. Rather, this adjustment is consistent with the statutory requirement at section 1886(d)(5)(A)(iii) that outlier payments approximate the marginal cost of care beyond the threshold. That is, because hospitals are uniquely able to manipulate outlier payments by increasing charges, it is necessary to establish a mechanism whereby an adjustment can be made to ensure payments appropriately reflect the true marginal costs of care for outlier cases. As a result, the outlier adjustment can be distinguished from other IPPS payment adjustments where interest is applied, such as IME or DSH, because changes to these adjustments are subject to review by the fiscal intermediary before additional payments are made.

C. Provisions of the Final Rule Relating to Reconciliation of Outlier Payments Through Settled Cost Reports

We are adding § 412.84(i)(3) to provide that, effective 60 calendar days after the date of publication of this final rule, outlier payments will become subject to adjustment when hospitals' cost reports coinciding with the discharge are settled.

Payments will be processed throughout the year using the appropriate historical operating and capital cost-to-charge ratios, consistent with the regulations. When the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries will be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled. We intend to issue program instructions to the fiscal intermediaries that will provide specific criteria for identifying those hospitals subject to reconciliation for the remainder of FY 2003 and for FY 2004. These criteria for FY 2003 will allow the fiscal intermediaries to focus their limited resources on only those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios. The criteria for FY 2004 will target a somewhat broader group of hospitals, but will still be limited to those hospitals that have benefited the most from the time lag in updating cost-to-charge ratios, and the majority of hospitals will not be affected. Also, fiscal intermediaries will have the administrative discretion to reconcile additional hospitals' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

In addition, effective for discharges occurring on or after 60 calendar days after the date of publication of this final rule, for those hospitals for which reconciliation is necessary, outlier payments will be adjusted to account for the time value of any underpayments or overpayments (§ 412.84(m)).

VI. Fixed-Loss Outlier Threshold for IPPS Hospitals

A. Background and Provisions of the March 5, 2003 Proposed Rule

As noted above, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total estimated operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

In the August 1, 2002, IPPS final rule, we established the FY 2003 outlier fixed-loss threshold at $33,560 (67 FR 50122). This was a nearly 60-percent increase over the FY 2002 threshold of $21,025. The primary reason for this dramatic increase was a change in our methodology to use the rate of increase in charges rather than the rate-of-increase in costs to determine the threshold. That is, because we use FY 2001 cases to project the threshold for FY 2003, it is necessary to inflate the charges on the FY 2001 bills to approximate the charges on a similar claim for FY 2003. Prior to the calculation of the FY 2003 outlier threshold, we used the rate-of-cost increase from the most recent cost reports available to inflate actual charges on the prior year's bills to estimate what the charges would be in the upcoming year.

Our analysis indicated hospitals' charges were increasing at a much faster rate than costs. Therefore, in the August 1, 2002, IPPS final rule, we changed our methodology to inflate charges (67 FR 50122). Rather than using the observed rate-of-increase in costs from the cost reports, we inflated the FY 2001 charges by a 2-year average annual rate of change in actual charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, to estimate what the charges would be in FY 2003 for a similar claim.

The provisions of this final rule make several changes to better target outlier payments to the most costly cases. As a result, outlier payments to the hospitals that have been most aggressively increasing their charges to maximize outlier payments will be dramatically reduced. However, we are concerned that unrestrained charge increases have continued to occur during FY 2003 prior to the implementation of these final changes, and will likely result in outlier payments in excess of the 5.1 percent offset established by the August 1, 2002, IPPS final rule. (We now estimate FY 2003 outlier payments are equal to 6.1 percent of total DRG payments.) For example, hospitals intending to maximize outlier payments during FY 2003 could continue to do so by increasing charges enough to outpace the increase in the threshold. In fact, given the public attention on this behavior over the past few months and the potential for other hospitals to begin to aggressively increase their charges, and consequently their outlier payments, it is possible this type of aggressive gaming of the outlier policy has become more widespread in recent months.

Because of the extreme uncertainty regarding the effects of aggressive hospital charging practices on FY 2003 outlier payments to date, we did not propose any change to the FY 2003 fixed-loss threshold ($33,560) in the March 5, 2003, proposed rule. However, we noted that data for the first quarter of FY 2003 inpatient claims would be available soon and these data would allow us to evaluate whether outlier payments to date appear to be approximately 5.1 percent of total DRG payments. We solicited comments and data from hospitals with respect to the recent trends in hospital charges and the implications for outlier payments if the fixed-loss threshold were to remain at $33,560. We indicated in the March 5, 2003, proposed rule that, based upon that analysis and the comments we received in response to the proposed rule, we would adjust the threshold accordingly in the final rule.

B. Summary of Public Comments and Departmental Responses

Comment: Many commenters recommended that we lower the outlier threshold to ensure that hospitals have access to these special payments to cover extremely high-cost Medicare patients. In addition, they argued that because the threshold was raised from $21,025 in FY 2002 to $33,650 in FY 2003 based on policies in place at the beginning of the year, the threshold should now be lowered to reflect these mid-year changes.

Some commenters suggested that if a new threshold cannot be calculated by the publication date of the final rule, we should apply the FY 2002 threshold until a new threshold could be calculated. They argued that use of this threshold would enable all legitimate claims to qualify for cost outlier status.

MedPAC noted that failing to adjust the threshold would continue to deny additional payments to hospitals that have extraordinarily costly cases, thwarting the legislative purpose of the policy. One commenter suggested we lower the threshold close to the FY 2002 amount because it was not the intent of the Congress to have such a high outlier threshold for those hospitals that did not try to manipulate the outlier system and have sustained high losses for true outlier cases.

One commenter argued that last year, for purposes of setting a FY 2003 outlier threshold, CMS inflated charges using a 2-year average annual rate of change in charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, because CMS analysis demonstrated that charges have been growing at a much faster rate than recent estimates of cost growth. The commenter argued that, based on the new proposals in the proposed rule, this methodology was now unnecessary because the assumption of a lag in cost reports no longer applies.

One commenter recommended that we lower the threshold to the FY 2002 amount and implement this threshold retroactively to October 1, 2002. The commenter explained that many hospitals did not game the system and have had their outlier payments reduced over the years because the threshold has increased dramatically over the last 3 years due to a limited number of hospitals who gamed the system.

Response: We reestimated the fixed-loss threshold reflecting the changes implemented in this final rule that will be in effect during a portion of FY 2003. To do that reestimation, we inflated charges from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file by the 2-year average annual rate of change in charges per case to predict charges for FY 2004. We believe the use of charge inflation is more appropriate than our previous methodology of cost inflation because charges are increasing at a much faster rate than costs. Therefore, we disagree that we should return to using the previous methodology based on cost inflation. Originally, when the FY 2003 threshold of $33,560 was set, we used FY 2001 MedPAR records. Because more recent data are now available, we believe it would be appropriate to use FY 2002 data to reestimate the FY 2003 threshold, taking into account the changes implemented by this final rule.

As noted previously, we continued to pay substantially more than was projected for outlier payments in FY 2002. Our most recent estimate is that we paid approximately 7.9 percent of total DRG payments in outliers, well in excess of our original projection of 5.1 percent, and higher than the percentage of total DRG payments for outliers in FY 2001. That percentage was 7.7. Therefore, using FY 2002 cases to estimate the outlier threshold for FY 2003 would result in a threshold of $42,300. However, after accounting for the changes implemented in this final rule, we estimate the threshold would be only slightly higher than the current threshold (by approximately $600).

We believe it is appropriate not to change the FY 2003 outlier threshold at this time. Although our current empirical estimate of the threshold indicates it could be slightly higher, there are other considerations that lead us to conclude the threshold should remain at $33,560. Increasing the threshold would result in lower outlier payments for all hospitals, not just those that have been aggressively maximizing their outlier payments. Changing the threshold for the remaining few months of the fiscal year could disrupt hospitals' budgeting plans and would be contrary to the overall prospectivity of the IPPS. We do believe that we have the authority to revise the threshold, given the extraordinary circumstances that have occurred (in particular, the manipulation of the policy by some hospitals). However, in light of the relatively small difference between the current threshold and our revised estimate, and the limited amount of time remaining in the fiscal year, we have concluded it is more appropriate to maintain the threshold at $33,560.

We note that, in the May 19, 2003, IPPS proposed rule for FY 2004, we proposed an outlier threshold of $50,645 for FY 2004 (68 FR 27235). Because that proposed rule was published prior to the publication of this final rule, the FY 2004 outlier threshold was calculated without accounting for the changes implemented in this final rule. The changes implemented here will be reflected in the calculation of the final FY 2004 outlier threshold.

C. Provisions of the Final Rule Relating to the Fixed-Loss Outlier Threshold

We are maintaining the fixed-loss outlier threshold at $33,560 for the remainder of FY 2003. We also are maintaining the marginal cost factor, the percentage of costs above the threshold that is paid for outlier cases, at 80 percent.

VII. Adjustment for High-Cost Outliers and Short-Stay Outliers Under the LTCH PPS

A. Background

Under the LTCH PPS, as implemented in the regulations at § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. In the LTCH PPS final rule for the 2004 LTCH PPS rate year, we intend to summarize the proposals relating to outlier payments under the LTCH PPS that were made in the March 7, 2003, LTCH PPS proposed rule (68 FR 11250), and will explain that we have responded to comments submitted on behalf of LTCHs and finalized the LTCH PPS outlier policy in this final outlier rule. We believe it is appropriate to finalize the changes to the IPPS outlier policies and the LTCH PPS outlier policy at the same time because the LTCH PPS outlier policy is modeled after the IPPS outlier policy. Accordingly, following is a summary of the LTCH PPS outlier policy as proposed in the March 7, 2003, proposed rule and our responses to the public comments we received on that proposed rule.

Under the regulations at § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We include a provision for outlier payments under the LTCH PPS and set the outlier threshold before the beginning of the applicable rate update year so that total outlier payments are projected to equal 8 percent of total payments under the LTCH PPS.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.525(a), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount).

We determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the hospital will receive any additional payments. We calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy. The fixed-loss amount results in estimated total outlier payments projected to be equal to 8 percent of projected total LTCH PPS payments.

Outlier payments under the LTCH PPS are determined consistent with the IPPS outlier policy. Currently, under the IPPS, a floor and a ceiling are applied to an acute care hospital's cost-to-charge ratio and if the acute care hospital's cost-to-charge ratio is either below the floor or above the ceiling, the applicable statewide average cost-to-charge ratio is assigned to the acute care hospital. Similarly, if a LTCH's cost-to-charge ratio is below the floor or above the ceiling, currently the applicable statewide average cost-to-charge ratio is assigned to the hospital. In addition, for LTCHs for which we are unable to compute a cost-to-charge ratio, we also assign the applicable statewide average. Currently, MedPAR claims data and cost-to-charge ratios based on the latest available cost report data from the Hospital Cost Report Information System (HCRIS) and corresponding MedPAR claims data are used to establish a fixed-loss threshold amount under the LTCH PPS.

B. Establishment of the Fixed-Loss Amount for Outlier Payments Under the LTCH PPS

For FY 2003, based on FY 2001 MedPAR claims data and cost-to-charge ratios based on the latest available data from HCRIS and corresponding MedPAR claims data from FYs 1998 and 1999, we established a fixed-loss amount of $24,450. In the March 7, 2003, proposed rule, for the 2004 LTCH PPS rate year, we proposed to continue to use the March 2002 update of the FY 2001 MedPAR claims data to determine a fixed-loss threshold that would result in outlier payments projected to be equal to 8 percent of total payments, based on the policies described in that proposed rule, because these data were the best data available. We calculated cost-to-charge ratios for determining the March 7, 2003, proposed fixed-loss amount based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000.

Consistent with the proposed outlier policy changes for acute care hospitals under the IPPS discussed in the March 5, 2003, proposed rule (68 FR 10420), in the March 7, 2003, LTCH PPS proposed rule, we proposed to no longer assign the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor. We proposed this policy change because, as is the case for acute care hospitals, we believe LTCHs could arbitrarily increase their charges in order to maximize

outlier payments. Even though this arbitrary increase in charges should result in a lower cost-to-charge ratio in the future (due to the lag time in cost report settlement), currently when a LTCH's actual cost-to-charge ratio falls below the floor, the LTCH's cost-to-charge ratio would be raised to the applicable statewide average. This application of the statewide average would result in inappropriately higher outlier payments. Accordingly, we proposed to apply the LTCH's actual cost-to-charge ratio to determine the cost of the case, even where the LTCH's actual cost-to-charge ratio falls below the floor. No longer applying the applicable statewide average cost-to-charge ratio when a LTCH's actual cost-to-charge ratio falls below the floor would result in a lower future cost-to-charge ratio. Applying this lower cost-to-charge ratio to charges in the future to determine the cost of the case would result in more appropriate outlier payments. Therefore, consistent with the proposed policy change for acute care hospitals under the IPPS, we proposed that LTCHs would receive their actual cost-to-charge ratios no matter how low their ratios fall. Also, consistent with the proposed policy change for acute care hospitals under the IPPS, we proposed under § 412.525(a)(4), by cross-referencing proposed § 412.84(i), to continue to apply the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio exceeds the ceiling by proposing to adopt the proposed policy at proposed § 412.84(i)(1)(ii). Cost-to-charge ratios above this range are probably due to faulty data reporting or entry, and, therefore, should not be used to identify and make payments for outlier cases because such data are clearly errors and should not be relied upon.

In addition, we proposed to make a similar change to § 412.529(c), by cross-referencing proposed § 412.84(i), for determining short-stay outlier payments to indicate that the applicable statewide average cost-to-charge ratio would be applied when a LTCH's cost-to-charge ratio exceeds the ceiling, but not when a LTCH's cost-to-charge ratio falls below the floor. Since cost-to-charge ratios are also used in determining short-stay outlier payments, the rationale for the proposed change mirrored that for high-cost outliers.

Therefore, consistent with IPPS outlier policy, in determining the proposed fixed-loss amount for the 2004 LTCH PPS rate year in the March 7, 2003, LTCH PPS proposed rule, we proposed to use only the current combined operating and capital cost-to-charge ratio ceiling under the IPPS of 1.421 (as explained in the IPPS final rule (67 FR 50125, August 1, 2002)). We believe that using the current combined IPPS operating and capital cost-to-charge ratio ceiling for LTCHs is appropriate since, as we explained in the August 30, 2002, LTCH PPS final rule (67 FR 55960), LTCHs are certified as acute care hospitals that meet the criteria set forth in section 1861(e) of the Act in order to participate in the Medicare program. As we also discussed in the August 30, 2002, LTCH PPS final rule (67 FR 55956), in general, hospitals are paid as a LTCH only because their average length of stay is greater than 25 days in accordance with § 412.23(e). Furthermore, prior to qualifying as a LTCH under § 412.23(e)(2)(i), the hospitals generally are paid as acute care hospitals under the IPPS during the period in which they demonstrate that they have an average length of stay of greater than 25 days. Accordingly, if a LTCH's cost-to-charge ratio is above this ceiling, we proposed to assign the applicable IPPS statewide average cost-to-charge ratio. (Currently, the applicable IPPS statewide averages can be found in Tables 8A and 8B of the August 1, 2002, IPPS final rule (67 FR 50263).) We also would assign the applicable statewide average for LTCHs for which we are unable to compute a cost-to-charge ratio. Accordingly, in the March 7, 2003, LTCH PPS proposed rule, for the proposed 2004 LTCH PPS rate year, we proposed a fixed-loss amount of $19,978. Thus, we proposed to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC–DRG and the proposed fixed-loss amount of $19,978).

C. Reconciliation of Outlier Payments Upon Cost Report Settlement

Under existing regulations at § 412.525(a), we specify that no retroactive adjustment will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. This policy is consistent with the existing outlier payment policy for short-term acute care hospitals under the IPPS. However, as discussed earlier, in the March 5, 2003 IPPS proposed rule (68 FR 10420), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because the LTCH PPS high-cost outlier and short-stay policies are modeled after the IPPS outlier policy, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision.

As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 5, 2003, proposed rule, we proposed in the March 7, 2003, LTCH PPS proposed rule under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(m), that, for LTCHs, any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the actual cost-to-charge ratio and the estimated cost-to-charge ratio for the period during which the discharge occurs. As was the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we indicated that we were still assessing the procedural changes that would be necessary to implement this change for LTCHs under the LTCH PPS. In addition, we proposed to make a similar change in § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(m), to indicate that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs.

In addition, because we currently use cost-to-charge ratios based on the latest settled cost report, again consistent with the policy for acute care hospitals under the IPPS, any dramatic increases in charges by LTCHs during the payment year are not reflected in the cost-to-charge ratios when making outlier payments under the LTCH PPS. Consistent with the proposed policy change for acute care hospitals under the IPPS at proposed § 412.84(i) discussed in the March 5, 2003 IPPS proposed rule, because a LTCH has the ability to increase its outlier payments through a dramatic increase in charges and because of the lag time in the data used to calculate cost-to-charge ratios, in the March 7, 2003 LTCH PPS proposed rule, we proposed that fiscal intermediaries would use more recent data when determining a LTCH's cost-to-charge ratio. Therefore, under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(i), we proposed that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later. In addition, we proposed to make a similar change to the short-stay outlier policy at § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(i), to indicate that subject to the proposed provisions in the regulations at § 412.84(i), fiscal

intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later.

In the March 7, 2003, LTCH PPS proposed rule, when we calculated the proposed fixed-loss amount of $19,978 for the proposed 2004 LTCH PPS rate year, we did not assign the applicable statewide average cost-to-charge ratio when a LTCH's actual cost-to-charge ratio fell below the floor, consistent with the proposed IPPS outlier policy. However, because many features of the LTCH PPS are dependent upon IPPS outlier policies, we did not believe it was appropriate to finalize the proposed changes to the LTCH PPS outlier policy in the LTCH PPS final rule. Therefore, in calculating the final fixed-loss amount, we intend to apply the existing outlier policy (that is, not the policies proposed in the March 7, 2003, LTCH PPS proposed rule), using the statewide average for LTCHs whose cost-to-charge ratios fall below the floor. In addition, after analyzing the data that we would use to calculate the fixed-loss amount, we would only apply the statewide average to one LTCH that would have a cost-to-charge ratio that falls below the floor. Based on this analysis, we have concluded that it will not be necessary to recalculate a new fixed-loss amount once this outlier rule becomes effective because the difference between a fixed-loss amount based on the elimination of the floor and a fixed-loss amount based on the statewide average would be negligible. Thus, the fixed-loss amount published in the LTCH PPS final rule will not be affected by changes in the outlier policy.

D. Application of Outlier Policy to Short-Stay Outlier Cases

Under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the LTCH PPS outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for a short-stay outlier case, the high-cost outlier payment is based on 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the fixed-loss amount and the amount paid under the short-stay outlier policy).

E. Summary of Public Comments on the LTCH PPS Outlier Policy in the March 7, 2003, Proposed Rule and Departmental Responses

Of the approximately 30 pieces of correspondence we received on the March 7, 2003, LTCH PPS proposed rule, 22 pieces contained public comments on the proposed LTCH PPS high-cost and short-stay outlier policies that were included in the proposed rule. A summary of those comments and our departmental responses follow.

Comment: Many commenters supported our proposal to use the most recent tentatively settled Medicare cost report to determine the cost-to-charge ratios to be used for outlier payments under the LTCH PPS, since this policy would provide the most current data reviewed by the fiscal intermediaries for purposes of the outlier payment. A number of commenters also agreed with the proposal to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio, stating that this proposal would remove incentives to rapidly increase charges relative to costs.

Response: We agree with the commenters and we are adopting the proposal to use the most recent tentatively settled Medicare cost report to determine the cost-to-charge ratios and the proposal to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio. However, we want to take the opportunity in this final rule to clarify some points about the application of these policies.

The IPPS outlier policy in this final rule, which requires applying a hospital's actual cost-to-charge ratio to determine the cost of a case, even where the hospital's actual cost-to-charge ratio falls below the floor, will become effective 60 calendar days after the date of publication of this final rule. This policy will similarly become effective for LTCHs 60 calendar days after the date of publication of this final rule. For purposes of making actual outlier payments for discharges between July 1, 2003, and the effective date of this outlier rule (60 calendar days after the date of publication), LTCHs' cost-to-charge ratios that are below the floor will be replaced by the statewide average as under existing policy, while any outlier payments made on or after the effective date of this outlier rule will be determined under the new policy using the LTCHs' actual cost-to-charge ratio, even if that cost-to-charge ratio is below the floor.

Following is an example of how the policy eliminating the floor cost-to-charge ratio will apply beginning July 1, 2003:

As of July 1, 2003, Hospital A has a cost-to-charge ratio of 0.250, which is above the current cost-to-charge ratio floor of 0.206. Therefore, for purposes of determining outlier payment in the 2004 LTCH PPS rate year (July 1, 2003, to June 30, 2004), Hospital A would continue to use its cost-to-charge ratio of 0.250 (unless the fiscal intermediary changes Hospital A's cost-to-charge ratio due to tentative settlement of a cost report) and use the fixed-loss amount to be published in the LTCH PPS final rule for the 2004 LTCH PPS rate year.

Hospital B has a cost-to-charge ratio of 0.200, which is below the cost-to-charge ratio floor of 0.206. For purposes of determining outlier payments from July 1, 2003, until the effective date of this final rule (60 calendar days after the date of publication), Hospital B continues to use the statewide average cost-to-charge ratio. However, beginning with the effective date of the final rule, Hospital B uses its actual cost-to-charge ratio of 0.200 (unless the fiscal intermediary changes Hospital B's cost-to-charge ratio due to tentative settlement of a cost report), and continues to use the fixed-loss amount to be published in the LTCH PPS final rule.

Comment: Numerous other commenters representing LTCHs disagreed with our proposed policy that, for LTCHs, any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the actual cost-to-charge ratio and the estimated cost-to-charge ratio for the period during which the discharge occurs. One commenter stated that the proposal would create accounting difficulties for hospitals and fiscal intermediaries, and suggested that if CMS is concerned about "gaming" related to outlier payments, then, as an alternative, the fiscal intermediaries could monitor charges per diem using PS&R data, or a quarterly reporting mechanism can be established similar to the HCFA–91. Other commenters wrote that constant updates to the cost-to-charge ratios for outlier payments would be a costly and burdensome process for LTCHs and fiscal intermediaries to administer. The commenters recommended that CMS maintain its current policy of using the most recent final cost report for cost-to-charge ratios with no changes until the following fiscal year.

Another commenter stated that requiring the fiscal intermediary to notify providers every time a change is made to the cost-to-charge ratio in the fiscal intermediary's system will cause the provider to make multiple unnecessary adjustments to properly account for the difference in payment for high-cost outliers and short-stay outlier cases. The commenter proposed that the fiscal intermediary should be required to send the provider notification each time the cost-to-charge ratio will be changed in its system.

Response: As explained in response to comments on the IPPS outlier proposed rule, although the provision concerning reconciliation is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. Accordingly, we intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

Notably, however, for LTCHs, particularly because the universe of LTCHs is relatively small, we do not believe it will be overly burdensome for the fiscal intermediaries to rerun a LTCH's claims to determine the accurate outlier payment amount. We also do not believe that the reconciliation of outlier payments for LTCHs will be overly burdensome because LTCHs are on notice of the revised methodology.

We also are not adopting the commenter's recommendation to establish a system for monitoring PS&R data or for quarterly reporting. While those procedures might aid in detecting aberrant charge increases, we believe that the reconciliation process is preferable because it allows for outlier payments to be ultimately determined based on actual cost-to-charge ratios, rather than on estimates. Finally, we agree with the commenter that the fiscal intermediaries should notify the hospitals whenever a change is made to the cost-to-charge ratio. We plan to provide more details on this procedure in program instructions to be issued after the publication of this final rule.

Comment: Several commenters questioned whether CMS has the authority to retroactively adjust outlier payments, stating that it is "completely contrary to the entire concept of a prospective payment system," and would generate budgeting uncertainty and administrative burden for hospitals and CMS.

One commenter claimed that the Secretary of the Department of Health and Human Services has argued in court that the Medicare statute does not allow retroactive adjustments to outlier payments. (See *County of Los Angeles* v. *Shalala*, 192 F.3d 1005 (D.C. Cir. 1999).)

Another commenter argued that since the LTCH PPS is uniquely different from the IPPS in that a much greater percentage of overall payment under the LTCH PPS is dependent upon cost-to-charge ratios (high-cost outliers and short-stay outliers combined), subjecting such a large portion of payments to a cost-based settlement approach defeats the purpose and benefits of a PPS. Specifically, the commenter noted that since the cost-to-charge ratio is used to determine payment for both high-cost outliers and for short-stay outliers, which combined, can represent a significant percentage of all discharges from a LTCH, both the classification of a case as a short-stay or high-cost outlier and the resulting payment amount would have to be reassessed and possible retroactive adjustments would have to be made following an audit of more recent cost report data. Therefore, the commenter believed that a policy that allows for retroactive adjustments to prior payment amounts introduces a large amount of uncertainty and complexity that the PPS was intended to eliminate.

Response: As an initial matter, our position in the court cases is more accurately presented as stating that the language of the statute does not clearly mandate that the actual amount of outlier payments must be between 5 and 6 percent of total outlier payments under the IPPS, and that our policy of not making retroactive adjustments to ensure that actual payments fall between that range is consistent with the intent of Congress. However, the commenters are correct in pointing out that a basic premise of a PPS is predictability of payment, the prospectivity of the system is undermined when it is manipulated and abused in order to maximize reimbursement. Under the IPPS, in light of the gross abuses of the current methodology by some hospitals, and the negative impact such overpayments ultimately have on other hospitals due to their impact on the fixed-loss amount, we believe the option of reconciling outlier payments based on the settled cost report for hospitals that have been initially paid using a significantly inaccurate cost-to-charge ratio compared to the actual ratio from the cost reporting period is now appropriate. We believe that at this time it is appropriate to adopt this policy for the LTCH PPS because it will contribute to the overall accuracy and fairness of the fixed-loss amount under the prospective payment system.

As we stated above, in our view, reconciling outlier payments because they were originally paid on the basis of a significantly inaccurate cost-to-charge ratio is similar to recovering outlier payments when adjustments are made to covered charges for any services that are not found to be medically necessary or appropriate under Medicare upon medical or other review. This review is explicitly provided for under the IPPS policy at § 412.84(d). This provision was established when the IPPS was first implemented for FY 1984 (48 FR 39785).

The court cases referenced by the commenters all addressed the issue of whether outlier payments must be retroactively adjusted when the level of the fixed-loss amount under the IPPS determined in advance of the fiscal year to which it applies ultimately results in actual IPPS outlier payments that are a smaller percentage of total IPPS DRG payments than was originally projected. We believe that an important goal of a PPS is predictability. Therefore, we believe that the fixed-loss outlier threshold, whether under the IPPS or the LTCH PPS, should be projected based on the best available historical data and should not be adjusted retroactively. We believe that a retroactive change to the fixed-loss outlier threshold would affect all hospitals subject to a PPS, thereby undercutting the predictability of the system as a whole. However, if we deem it necessary as a result of a hospital-specific data variance to reconcile outlier payments of an individual hospital, such action on our part would not affect predictability of the entire system. Rather, because each hospital is on notice as to our revised methodology for determining cost-to-charge ratios and that outlier payments are subject to possible reconciliation, we are able to maintain the predictability of the system as a whole. Further, because reconciliation of outlier payments will affect only certain hospitals, the administrative burden of implementing such a policy is minimized. Accordingly, we continue to believe that the fixed-loss amount should be based on projected payments using the latest available historical data without retroactive adjustments. This was our position in the court cases cited by the commenter, and it has been our consistent and often stated position, including earlier in this final rule and in the March 5, 2003, IPPS outlier proposed rule.

Comment: One commenter recommended that subregulatory

guidelines for the review of outlier payments be established, specifying what changes to the cost-to-charge ratios would trigger a review and what entity is responsible for determining whether a review is necessary. The commenter added that CMS should ensure that outlier thresholds are estimated to reflect 8 percent of total payments. Another commenter stated that the proposed reconciliation to cost-to-charge ratios should be limited only to those hospitals that meet certain criteria, such as hospitals that cross a defined threshold of charge increases combined with a high level of outlier payments compared to the norm. The commenter requested that the final rule include specific criteria to be used for the determination of hospitals that will be subject to such an adjustment.

Response: As we stated earlier in this final rule, we intend to issue a program instruction to the fiscal intermediaries in the near future that will provide specific criteria to be used in the reconciliation of outlier payments for the remainder of the LTCH PPS rate year.

For cost reporting periods beginning on or after October 1, 2003, we are considering instructing fiscal intermediaries to conduct reconciliation for those LTCHs whose actual cost-to-charge ratios are found to be plus or minus 10 percentage points from the cost-to-charge ratio used during that time period to make outlier payments, and that have total FY 2004 outlier payments (high-cost and short stay outlier payments combined) that exceed $500,000. We believe these thresholds would appropriately capture those LTCHs whose outlier payments will be substantially inaccurate when using the ratio from the contemporaneous cost reporting period compared to the ratio from the latest cost reporting period. LTCHs exceeding these thresholds during their applicable cost reporting periods would become subject to reconciliation of their outlier payments. These thresholds would be reevaluated annually and, if necessary, modified each year. However, fiscal intermediaries would also have the administrative discretion to reconcile additional LTCHs' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

In addition, we will continue to ensure that outlier payments are projected to be equal to 8 percent of total LTCH PPS payments by using the best and most recent available data in computing the fixed-loss amount.

Comment: One commenter strongly supported and recommended approval of the proposals to use the most recent settled or tentatively settled cost report or other latest available data from the provider or the fiscal intermediary, and the reconciliation for outlier payments upon cost report settlement. The commenter was in favor of these proposals because the commenter believed that they correct the "inappropriately harmful impact" that the current rules have on those hospitals that hold charge increases to a level lower than their cost increases. The commenter recommended that these proposed policies should be applied retroactively to the beginning of the LTCH PPS. However, the commenter did not agree that an adjustment for the time value of overpayments or underpayments should be applied to outlier payments received in a cost reporting period, since the issue has already been addressed in the regulations at 42 CFR 405.378, and no other aspect of a final settlement reflects payment of interest.

Another commenter asserted that interest should not be assessed after the cost report is settled and before the provider has a chance to review and appeal potentially erroneous claims. Instead, the commenter recommended that CMS should allow a 180-day appeal period to give providers an opportunity to review the settlement and file appeals without interest.

Response: As we stated earlier, we are adopting as final the proposals to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio, the use of the cost-to-charge ratio from a tentatively settled cost report or alternative best available data, and finalizing the reconciliation policy for outlier payments upon cost report settlement. We understand the commenters' concerns and acknowledge that a change in policy is needed, but under our rulemaking authority, there is a serious question as to whether we could apply these policies retroactively. Therefore, consistent with the rationale explained under the IPPS section of this final rule, the effective date of the policies concerning elimination of the floor, and using alternative data from the fiscal intermediary or the provider, is for discharges occurring on or after August 8, 2003. The use of the later of either the most recent tentatively settled cost report or the most recent settled cost report is effective for discharges occurring on or after October 1, 2003. The effective date of reconciliation of outlier payments is for discharges occurring on or after August 8, 2003.

As noted previously, although the provision concerning reconciliation is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. We intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

We are implementing these effective dates under §§ 412.84(i) and (m), as referenced under the LTCH PPS outlier regulations at §§ 412.525(a)(4) and 412.529(c)(5).

In regard to the commenter's objection to the policy concerning the time value of money, outlier payments are uniquely susceptible to manipulation because hospitals set their own level of charges without review by the fiscal intermediary. Therefore, despite the recovery of the overpayment by CMS, a hospital would essentially benefit from an interest-free loan simply by increasing its charges in the interim. In order to ensure that hospitals are reimbursed fairly for extremely costly cases, it is necessary to establish a mechanism whereby an adjustment can be made to help guarantee that payments appropriately reflect the marginal costs of care for outlier cases. Under the LTCH PPS, it is also important to ensure that hospitals are paid correctly for short-stay outlier cases. We believe an adjustment for the time value of money is the appropriate mechanism to use to ensure equity and accuracy of payments.

Comment: Several commenters noted the potential implications a retroactive adjustment to high-cost outlier payments may have on a beneficiary's use of lifetime reserve days. Medicare beneficiaries in a LTCH are much more likely to exceed their 90 days of available inpatient care during a LTCH stay than during a short-term acute hospital stay. A Medicare beneficiary's lifetime reserve days (days 91 through 150) are not used as long as coinsurance days are available or as long as a stay is covered under the LTC–DRG. However, as soon as a day of care moves the beneficiary into the high-cost outlier category, this day and subsequent days are counted against the beneficiary's lifetime reserve days, and the stay is paid by Medicare as a high-cost outlier, with beneficiary coinsurance equal to half of the inpatient deductible amount. The commenters stated that the proposed policy would result in retroactive adjustments to the day on which a patient's stay moves into the high cost category, thereby retroactively adjusting the lifetime reserve days available to a beneficiary.

One commenter stated that coverage based on a changing cost-to-charge ratio would not be a sound policy, and CMS should consider changing the high-cost outlier threshold determination to a per diem methodology to ensure that all beneficiaries receive the same number of benefit days and coverage.

The commenters also pointed out that, for similar reasons, a policy that would retroactively reconcile outlier payments will create an unworkable system for the administration of Medicare supplemental (Medigap and Medicaid) payments, since such a policy anticipates that the Medigap and Medicaid programs will make retroactive adjustments to beneficiary benefits and payments. The commenters recommended that CMS consider severing the link between the count of Part A benefit days and cost outlier status and, instead, count beneficiary Part A days on a per diem basis so that the Part A benefit is not dependent upon changes to the cost-to-charge ratio and high-cost outlier status.

Response: We have reviewed all the comments concerning the effect of the policy for reconciling outlier payments on a beneficiary's lifetime reserve days and eligibility for coverage under the Medigap and Medicaid programs. We believe that the commenters have raised a number of valid concerns. While we are adopting as final the policy to reconcile outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs, we believe that, because the outlier policy changes are intended to address accuracy of outlier payments rather than coverage or eligibility, any changes to a LTCH's outlier payments made as a result of reconciliation should not retroactively affect a beneficiary's lifetime reserve days or coverage status under Medigap or Medicaid. Specifically, no retroactive adjustments will be made to determine the day on which a beneficiary's stay moves to high-cost outlier status, and, therefore, no retroactive adjustments will be made to lifetime reserve days used or available. The reconciliation of outlier payments to the LTCH by the fiscal intermediary will simply be a redetermination of outlier payment upon cost report settlement. Similarly, no retroactive adjustments are required to be made to beneficiary benefits and payments under Medigap and Medicaid.

Accordingly, we do not believe it is necessary to adopt the policy suggested by the commenters under which beneficiary Part A days would be counted on a per diem basis, since the receipt of Part A benefits will not be dependent upon changes to the cost-to-charge ratio and outlier status.

Comment: Commenters wrote that since the LTCH PPS is new and CMS and the LTCH industry have almost no experience with the LTCH PPS and outlier payments, CMS has no policy reason for changing the LTCH PPS outlier policy at this time. The commenters stated that additional time and experience under the new system are needed before CMS has the information necessary to appropriately address potential problems.

Response: We disagree with the commenters' assertion that because the LTCH PPS is still in its nascent stages, the challenges that have surfaced under the IPPS may not yet necessarily apply to the LTCH PPS. However, we believe those same challenges may arise in the LTCH PPS context because many of this system's features are modeled after the IPPS. We believe that being proactive in ensuring the accuracy of outlier payments by making additional payments only for truly high-cost cases is a matter of sound public policy. It is also our responsibility to ensure the integrity of the Medicare Trust Fund, which we believe this policy accomplishes. We note that we will continue to monitor all aspects of the LTCH PPS, and may propose to make other adjustments in the future if warranted.

Comment: One commenter asked that CMS clarify the effective date of the proposed cost-to-charge ratio policies. The commenter stated that if the effective date is for discharges occurring on or after July 1, 2003, then, for LTCHs with a fiscal year end date of June 30, the implementation process would be eased for the fiscal intermediaries and LTCHs. However, for those LTCHs that do not have a fiscal year end date of June 30, the commenter asserted that the task of accounting for the proposed cost-to-charge ratio regulations would be administratively burdensome for the fiscal intermediaries and LTCHs. Therefore, the commenter requested that the effective date for the proposed outlier regulations should be for cost reporting periods beginning on or after July 1, 2003.

Response: We do not believe that the implementation of the outlier policies will be overly burdensome to LTCHs. As we noted previously, although this provision is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. We intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

Also, as we stated in responses to comments above, the outlier policy on applying a LTCH's actual cost-to-charge ratio to determine the cost of a case, even where the LTCH's actual cost-to-charge ratio falls below the floor, will become effective for discharges occurring on or after August 8, 2003. For purposes of making outlier payments between July 1, 2003, and August 8, 2003, cost-to-charge ratios that fall below the floor will be replaced by the statewide average, while any outlier payments made on or after August 8, 2003, will be determined using the actual cost-to-charge ratio, even if that cost-to-charge ratio falls below the floor.

The policies at § 412.84(i)(1), (3), and (4) and § 412.84(m), as referenced under the LTCH PPS outlier regulations at § 412.525(a)(4) and § 412.529(c)(5) concerning use of alternative ratios and the elimination of the floor on cost-to-charge ratios are effective for discharges occurring on or after August 8, 2003. The effective date of the policy concerning use of the most recent tentatively settled cost report or the most recent settled cost report at § 412.84(i)(2) is for discharges occurring on or after October 1, 2003. The effective date of the policy regarding reconciliation of outlier payments is for discharges occurring on or after August 8, 2003.

For example, regardless of the fiscal year begin date, between July 1, 2003, and August 8, 2003, if a hospital's cost-to-charge ratio is below the floor, the hospital would continue to use the statewide average cost-to-charge ratio as under existing policy. However, beginning with discharges occurring on or after August 8, 2003, the hospital would use its actual cost-to-charge ratio, even if it were below the floor, and not the statewide average cost-to-charge ratio. Similarly, effective August 8, 2003, under § 412.84(i)(1), CMS may use an alternative cost-to-charge ratio, or a hospital may request that the fiscal intermediary use a different cost-to-charge ratio based on substantial evidence presented by the hospital. Then, regardless of a hospital's fiscal year begin date, effective for discharges occurring on or after October 1, 2003, a hospital's cost-to-charge ratio will be based on the data available from the most recently tentatively settled or final

settled cost report, whichever is later. Finally, once a hospital submits to the fiscal intermediary its cost report for the period ending on or after August 8, 2003, the fiscal intermediary would use the program instructions we intend to issue in the near future that will provide specific criteria for implementing this provision on reconciliation.

Comment: A commenter who wrote on behalf of LTCHs that have a fiscal year end date of December 31, asked the following questions related to the proposed cost-to-charge ratio policy: (1) Will the cost-to-charge ratio for outlier payments be derived from the prior year's (December 31, 2002) cost report or from the fiscal year ending December 31, 2001, cost report, since the fiscal year ending December 31, 2002, cost report is not due to the Medicare fiscal intermediary until May 31, 2003? (2) Will the cost-to-charge ratio change when the fiscal year ending December 31, 2003, cost report is filed on May 31, 2004? (3) Will the cost-to-charge ratio for fiscal year ending December 31, 2003, outlier payments change when the cost report is tentatively settled and finalized in 2004 or 2005? (4) Will the cost-to-charge ratios for fiscal year ending December 31, 2003, change when appeals are settled in 2006 or 2007? (5) Will each Medicare claim applicable to outlier payments be reprocessed when the cost-to-charge ratio changes?

Response: It appears that the commenter is essentially asking how cost report settlement will affect changes to a hospital's cost-to-charge ratio. As explained above, each hospital's cost-to-charge ratio may change effective for discharges occurring on or after August 8, 2003, in instances where the cost-to-charge ratio is below the floor, or CMS believes an alternative cost-to-charge ratio should be used. A hospital's cost-to-charge ratio also may change effective for discharges occurring on or after October 1, 2003, based on the most recent tentatively settled cost report, or the final settled cost report, whichever is later.

In response to the commenter's third question, the reconciliation policy is effective for discharges occurring on or after 60 calendar days after the publication of this final rule. As we stated above, we intend to issue a program instruction to fiscal intermediaries in the near future that will provide specific criteria for determining how the reconciliation of outlier payments will be implemented. However, we note, as with other cost report settlement issues, the hospital may appeal the Notice of Program Reimbursement for the December 31, 2004, cost report and the cost-to-charge ratio, and, therefore, outlier payments may change depending on the outcome of the appeal.

Finally, in response to the commenter's fifth question, not all claims may be reprocessed when the cost-to-charge ratio changes upon reconciliation. Again, as explained previously, we intend to issue a program instruction to fiscal intermediaries that will provide specific criteria for determining how the reconciliation of outlier payments will be implemented.

Comment: One commenter supported the proposal to use more recent cost-to-charge ratios to calculate outlier payments and eliminate the use of the statewide average cost-to-charge ratio floor, but expressed concern that an abrupt change to cost-to-charge ratios would create significant and unanticipated reductions in outlier payments and urged CMS to implement a transition period for all hospitals that would be adversely affected by the proposed policy changes.

Response: We have received many comments stating that a transition period is necessary, mostly in relation to the proposed policy for IPPS outlier payments. In the context of LTCHs, we do not believe that this policy will result in significant reductions in historic outlier payments, because the LTCH PPS is a new system, there were no outlier payments under the previous reasonable cost-based payment methodology, and LTCHs only recently had the opportunity to choose whether they wish to be reimbursed on a blend of LTCH PPS and reasonable cost-based payments over a 5-year period, or on 100 percent of the Federal rate. Therefore, we do not believe that the proposed changes to the outlier policy will place any LTCHs at risk for a substantial loss of reimbursement. In addition, as stated above, we believe that the proposed policy changes will ensure that the fixed-loss amount is established at a reasonable level and that each hospital will be reimbursed for high-cost and short-stay outlier cases in an accurate and equitable manner. Thus, we believe that it is in the best interest of CMS and the hospital community as a whole to forego a transition period and implement the proposed changes to the outlier policy as soon as possible.

E. Provisions of the Final Rule

Consistent with the final IPPS outlier policy in this final rule, we are revising §§ 412.525(a)(4) and 412.529(c)(5) to specify that, for discharges from LTCHs under the LTCH PPS occurring on or after October 1, 2002, and before August 8, 2003, no reconciliations will be made to high-cost outlier payments or to short-stay outlier payments, respectively, upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio of the case. We are specifying in §§ 412.525(a)(4)(iii) and 412.529(c)(5)(iii) that for discharges from LTCHs under the LTCH PPS occurring on or after October 1, 2003, high-cost outlier payments and short-stay outlier payments, respectively, are subject to the provisions of § 412.84(i)(2) (which are applicable to IPPS hospitals).

G. Short-Stay Outlier Cases

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

As we discussed in the August 30, 2002, LTCH PPS final rule (67 FR 55970), generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments, because these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly "overpaid" for the resources they have actually expended.

Under § 412.529, we adjust the per discharge payment for a short-stay outlier patient to the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment, for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG.

As we discussed in section VI.C.3. of the March 7, 2003, proposed rule, in the March 5, 2003, proposed rule (68 FR 10420), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because the LTCH PPS high-cost outlier and short-stay outlier payments are also based on cost-to-charge ratios as under the IPPS, we believe they are susceptible to the same payment vulnerabilities as the IPPS and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) and (m) in the March 5, 2003, proposed rule (68 FR 10429) and as we proposed for LTCHs above for high-cost outlier payments at § 412.525(a)(4)(ii), we proposed under § 412.529 that short-stay outlier payments would be subject to the proposed provisions in the regulations at § 412.84(i) and (m). Therefore, consistent with the proposed changes to the high-cost outlier policy discussed in section VI.C.3. of the March 7, 2003, proposed rule, we proposed, by cross-referencing § 412.84(i), that fiscal intermediaries would use either the most recent settled cost report or the most recent tentatively settled cost report, whichever is later, in estimating a LTCH's cost-to-charge ratio. We also proposed, by cross-referencing § 412.84(i), that the applicable statewide average cost-to-charge ratio would only be applied when a LTCH's cost-to-charge ratio exceeds the ceiling. Finally, we proposed, by cross-referencing § 412.84(m), that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs. We further noted that as was the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we were still assessing the procedural changes that would be necessary to implement this change.

We received numerous comments on the proposed changes to the outlier policy as it relates to short-stay outliers. We have summarized and responded to these comments in the previous section related to outlier payments under the LTCH PPS. Therefore, as discussed above, under § 412.529, short-stay outlier payments are subject to the provisions of §§ 412.84(i)(1), (3), and (4) and § 412.84(m) for discharges occurring on or after August 8, 2003, and subject to the provisions of § 412.84(i)(2) for discharges occurring on or after October 1, 2003.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the March 5, 2003, proposed rule, we solicited comment on the recordkeeping requirements referenced in the proposed amendments to § 412.84. Under the proposed amendments to § 412.84(h), a hospital may request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. The burden imposed by this section is the time it takes to write the request. We estimated that 120 hospitals would make this request per year and that it would take each one 8 hours for a total annual burden of 960 hours.

We did not receive any comments on this information collection requirement and are making no revisions to it. We will submit this information collection requirement to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act. The requirement will not go into effect until we receive OMB approval.

If you comment on this information collection and recordkeeping requirement, please mail, e-mail or fax copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Julie Brown, CMS–1243–F, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Brenda Aguilar, CMS Desk Officer, *baguilar@omb.eop.gov*. Fax: (202) 395–6974.

IX. Impact Analysis

A. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this final rule is a major rule as defined in 5 U.S.C. 804(2). We estimate the total impact of the policies implemented in this final rule will be to reduce outlier payments for the remainder of FY 2003 by $150 million. Therefore, we have prepared the quantitative analysis under this impact analysis section at IX.G. of this preamble.

C. Regulatory Flexibility Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either based on their nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. As stated above, we have prepared the quantitative analysis under this impact analysis section at IX.G. of this preamble.

D. Effects on Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical

Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the IPPS, we classify these hospitals as urban hospitals.

It is clear that the changes we are making in this final rule will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and that the effects on some hospitals might be significant. Therefore, the discussion of the quantitative analysis under section IX.G. of this preamble, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule or a final rule, which has been preceded by a proposed rule, that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not result in any unfunded mandates for State, local, or tribal governments or the private sector, as defined by section 202.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule and a subsequent final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule in light of Executive Order 13132 and have determined that it does not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

G. Quantitative Analysis

As described above, the changes we are making in this final rule will better target outlier payments to the most costly cases. First, we are providing that fiscal intermediaries will no longer assign the statewide average cost-to-charge ratio in place of the actual cost-to-charge ratio when the hospital's actual ratio is more than 3 standard deviations below the geometric mean cost-to-charge ratio. Second, we are implementing the use of the most recent tentatively settled Medicare cost report to determine a hospital's cost-to-charge ratio. Third, outlier payments may be subject to reconciliation when the cost report corresponding with the outlier cases is settled, using the actual cost-to-charge ratio calculated from the final settled cost report rather than the cost-to-charge ratio from the latest tentative settled cost report at the time the claim is processed.

We anticipate these changes will lower payments to hospitals that have been aggressively gaming the existing outlier payment methodology by manipulating their charges toward those hospitals with truly high-cost cases (by lowering the thresholds). For some hospitals, the effects of the reduced payments may be quite dramatic. For those hospitals, the impact of this final rule will be to significantly decrease their outlier payments. It is difficult to quantify precisely the impact on these hospitals of this change because we will not know the final applicable cost-to-charge ratios until the cost reports are settled. However, assuming that once concurrent cost-to-charge ratios are used for these hospitals, their outlier payments as a percent of their total DRG payments are similar to past levels, we estimate a reduction of $50 million in outlier payments to these hospitals for the 2 months remaining in FY 2003.

For the 43 hospitals currently receiving outlier payments on the basis of a statewide average cost-to-charge ratio because their actual ratios are below the lower threshold, their outlier payments will begin to decline effective for discharges occurring on or after 60 days following the date of publication of this final rule. However, it is difficult to quantify the impacts upon these hospitals because we do not have data available to assess whether they have increased their charges in order to offset any anticipated reduction in their outlier payments. However, assuming no behavioral responses on the part of hospitals, we estimate that, for the approximately 2 months remaining in FY 2003 after this change goes into effect, payments to these hospitals will decline by $95 million.

For most hospitals, this final rule will not have an impact on their FY 2003 outlier payments. This is because the fixed-loss threshold is remaining at $33,560, and for the changes effective during FY 2003, we will instruct the fiscal intermediaries to focus their limited resources only on those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios. Also, we will not require the use of more recent cost-to-charge ratios until FY 2004.

We have examined the potential impact of the changes in the methodology for determining cost-to-charge ratios for purposes of payment of high-cost outliers and short-stay outliers under the LTCH PPS. Because the LTCH PPS is a new system that has only been in effect since October 1, 2002, and the vulnerabilities that have surfaced under the IPPS do not yet necessarily apply to LTCHs, we do not believe these policies will have a significant financial impact on LTCHs in FY 2003.

H. Alternatives Considered

For purposes of this analysis, we considered several alternatives to the changes we are finalizing in this rule as discussed above. One alternative would be to not make any changes to the current outlier policy. However, we believe that in light of the evidence that hospitals have been manipulating our current outlier policy, it is important to change the current policy as it existed prior to this final rule, to ensure these payments go to truly expensive cases. Therefore, we do not believe retaining that current policy is a viable option.

We also considered establishing a policy that hospitals' cost-to-charge ratios would be based on their rates-of-increase in charges as an alternative to reconciling outlier payments on the cost reports. However, we believe this approach would be extremely complex. In addition, this approach would require us to make assumptions about the relationship between costs and charges that may not apply in particular circumstances. Therefore, this alternative would be likely to lead to inequitable treatment of some hospitals.

We considered eliminating the application of statewide average cost-to-charge ratios altogether. However, it is necessary to have some ratio to assign to new hospitals that have not yet filed their first cost report. Also, we believe it remains appropriate to assign the statewide average cost-to-charge ratio in cases where a hospital's cost-to-charge ratio exceeds 3 standard deviations from the geometric mean.

I. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble of this final rule, the Centers for Medicare & Medicaid Services amends 42 CFR part 412 as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 412.84 is amended by—
■ A. Revising paragraph (h).
■ B. Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l), respectively.
■ C. Adding a new paragraph (i).
■ D. In redesignated paragraph (k), removing the phrase "paragraph (k) of this section" and adding in its place "paragraph (l) of this section."
■ E. In redesignated paragraph (l), removing the phrase "paragraph (j) of this section" and adding in its place "paragraph (k) of this section."
■ F. Adding a new paragraph (m).
■ The additions and revisions read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(h) For discharges occurring before October 1, 2003, the operating and capital cost-to-charge ratios used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. For discharges occurring before August 8, 2003, statewide cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. CMS sets forth the reasonable parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published in the **Federal Register** in accordance with § 412.8(b).

(i)(1) For discharges occurring on or after August 8, 2003, CMS may specify an alternative to the ratios otherwise applicable under paragraphs (h) or (i)(2) of this section. A hospital may also request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Such a request must be approved by the CMS Regional Office.

(2) For discharges occurring on or after October 1, 2003, the operating and capital cost-to-charge ratios applied at the time a claim is processed are based on either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the latest cost reporting period.

(3) For discharges occurring on or after August 8, 2003, the fiscal intermediary may use a statewide average cost-to-charge ratio if it is unable to determine an accurate operating or capital cost-to-charge ratio for a hospital in one of the following circumstances:

(i) New hospitals that have not yet submitted their first Medicare cost report. (For this purpose, a new hospital is defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18 of this chapter.)

(ii) Hospitals whose operating or capital cost-to-charge ratio is in excess of 3 standard deviations above the corresponding national geometric mean. This mean is recalculated annually by CMS and published in the annual notice of prospective payment rates issued in accordance with § 412.8(b).

(iii) Other hospitals for whom the fiscal intermediary obtains accurate data with which to calculate either an operating or capital cost-to-charge ratio (or both) are not available.

(4) For discharges occurring on or after August 8, 2003, any reconciliation of outlier payments will be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

* * * * *

(m) Effective for discharges occurring on or after August 8, 2003, at the time of any reconciliation under paragraph (h)(3) of this section, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. Any adjustment will be based upon a widely available index to be established in advance by the Secretary, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

§ 412.116 [Amended]

■ 3. In § 412.116(e), the second sentence is removed.

■ 4. Section 412.525 is amended by revising paragraph (a)(4) to read as follows:

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.*

* * *

(4)(i) For discharges occurring on or after October 1, 2002 and before August 8, 2003, no reconciliations will be made to outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio of the case.

(ii) For discharges occurring on or after August 8, 2003, high-cost outlier payments are subject to the provisions of §§ 412.84(i)(1), (i)(3), and (i)(4) and (m) for adjustments of cost-to-charge ratios.

(iii) For discharges occurring on or after October 1, 2003, high-cost outlier payments are subject to the provisions of § 412.84(i)(2) for adjustments to cost-to-charge ratios.

* * * * *

■ 5. Section 412.529 is amended by revising paragraph (c)(5) to read as follows:

§ 412.529 Special payment provision for short-stay outliers.

* * * * *

(c) * * *

(5)(i) For discharges occurring on or after October 1, 2002 and before August 8, 2003, no reconciliations will be made to short-stay outlier payments upon cost report settlement to account for differences between cost-to-charge ratio and the actual cost-to-charge ratio of the case.

(ii) For discharges occurring on or after August 8, 2003, short-stay outlier payments are subject to the provisions of §§ 412.84(i)(1), (i)(3), and (i)(4) and (m) for adjustments of cost-to-charge ratios.

(iii) For discharges occurring on or after October 1, 2003, short-stay outlier payments are subject to the provisions of § 412.84(i)(2) for adjustments to cost-to-charge ratios.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance.)

Dated: May 30, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–14492 Filed 6–5–03; 3:27 pm]

BILLING CODE 4120–01–P

Reader Aids

Federal Register

Vol. 68, No. 110

Monday, June 9, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B.....33883

3 CFR

Proclamations:
7683.....33339

4 CFR

81.....33831

7 CFR

457.....34261
800.....32623
1400.....33341

Proposed Rules:
810.....33408
3560.....32872

9 CFR

430.....34208

Proposed Rules:
93.....33028

10 CFR

72.....33611
73.....33611
765.....32955

12 CFR

615.....33347, 33617
703.....32958
742.....32958
1700.....32627

13 CFR

121.....33348

Proposed Rules:
121.....33412

14 CFR

25.....33834, 33836
39.....32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854
71.....32633, 33231, 33360, 3361, 33579, 33623
97.....32633

Proposed Rules:
25.....33659
36.....34256
39.....32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885
71.....33426, 33427, 34340

15 CFR

744.....34192
772.....34192

17 CFR

30.....33623
40.....33623

19 CFR

201.....32081
204.....32081
206.....32081
207.....32081
210.....32081
212.....32081

20 CFR

Proposed Rules:
220.....34341

21 CFR

165.....34272
201.....32979
310.....33362, 34273
347.....33362
349.....32981
350.....34273
352.....33362
369.....34273
510.....33381, 34293
522.....33856
524.....33381
878.....32983
888.....32635

Proposed Rules:
201.....33429
343.....33429

24 CFR

Proposed Rules:
1000.....34344

25 CFR

170.....33625

26 CFR

1.....33381, 34293
301.....33857
602.....34293

Proposed Rules:
1.....34344
14a.....34344
157.....32698
301.....33887
602.....32698

27 CFR

Proposed Rules:
7.....32698
25.....32698

28 CFR

5.....33629
571.....34299, 34301
802.....32985

29 CFR

1910.....32637

Proposed Rules:
1910.....33887, 34036
1915.....34036
1926.....34036

30 CFR

Proposed Rules:
906.....33032
934.....33035
938.....33037

31 CFR

1.....32638
210.....33826
594.....34196

33 CFR

100.....32639, 32641
117.....32643, 34302, 34303
165.....32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307

Proposed Rules:
165.....33894, 33896, 34370

36 CFR

215.....33582
230.....34309
242.....33402
1253.....33404

38 CFR

21.....34319, 34326
61.....34332

Proposed Rules:
20.....33040

39 CFR

111.....33858

40 CFR

51.....33764
52.....32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875
62.....34332
180.....33876
261.....32645
271.....34334

Proposed Rules:
Ch. I.....33898
51.....32802
52.....33041, 33042, 33043, 33665, 33898, 33899
82.....33284
146.....33902
194.....33429

42 CFR

412.....34122, 34494

Proposed Rules:
412.....33579, 34492
413.....33579, 34492

43 CFR

4.....33794
3800.....32656
4100.....33794
5000.....33794

44 CFR

64.....32657
65.....32659, 32660
67.....32664, 32669

Proposed Rules:
67.....32699, 32717

46 CFR

221.....33405

47 CFR

2.....32676, 33020, 33640, 34336
25.....33640, 34336
73.....32676, 33654
74.....32676, 34336
78.....34336
80.....32676
87.....32676
90.....32676
95.....32676
97.....32676, 33020

Proposed Rules:
2.....33043, 33666
15.....32720
25.....33666
64.....32720
73.....33431, 33668, 33669

48 CFR

2.....33231
32.....33231
52.....33231
252.....33026

Proposed Rules:
15.....33330
31.....33326
52.....33326
206.....33057

49 CFR

107.....32679
171.....32679
173.....32679
177.....32679
180.....32679
567.....33655
571.....33655
574.....33655
575.....33655
597.....33655

50 CFR

100.....33402
648.....33882
660.....32680

Proposed Rules:
16.....33431
17.....33058, 33234
402.....33806
648.....33432
660.....33670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 9, 2003

AGRICULTURE DEPARTMENT
Forest Service
State and private forestry assistance:
Forest Land Enhancement Program; published 6-9-03

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
Rice inspection services; published 5-9-03

COMMODITY FUTURES TRADING COMMISSION
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Futures commission merchants and introducing brokers; customer identification programs; published 5-9-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States;
Illinois; published 5-9-03
Massachusetts; published 4-8-03
Wisconsin; published 4-10-03
Hazardous waste program authorizations:
Nebraska; published 4-10-03
Oklahoma; published 4-9-03
Utah; published 4-10-03
Superfund program:
Small Business Liability Relief and Brownsfields Revitalization Act; innocent landowners; standards and practices for all appropriate inquiry; published 5-9-03

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Texas; published 5-6-03
Television stations; table of assignments:
Virgin Islands; published 5-6-03

FEDERAL DEPOSIT INSURANCE CORPORATION
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs; published 5-9-03

FEDERAL RESERVE SYSTEM
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs; published 5-9-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Fort Dodge Animal Health; Division of Wyeth Holdings Corp.; published 6-9-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Alabama; published 6-9-03

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Release transportation regulations; clarification; published 6-9-03

LABOR DEPARTMENT
Employee Benefits Security Administration
Employee Retirement Income Security Act:
Section 3(40) collective bargaining agreements—
Plans established or maintained; published 4-9-03
Plans established or maintained; administrative hearing procedures; published 4-9-03

NATIONAL CREDIT UNION ADMINISTRATION
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs; published 5-9-03

NUCLEAR REGULATORY COMMISSION
Radiation protection standards:
Radiation exposure reports; personal information labeling; published 3-25-03

SECURITIES AND EXCHANGE COMMISSION
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Broker-dealers; customer identification programs; published 5-9-03
Mutual funds; customer identification programs; published 5-9-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 5-23-03

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Indian reservation roads bridge program; published 5-8-03
Railroad-highway projects; published 5-8-03

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
DOT specification cylinders; maintenance, requalification, repair, and use requirements; published 5-8-03

TREASURY DEPARTMENT
Comptroller of the Currency
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs; published 5-9-03

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Basis adjustments among partnership assets; allocation; published 6-9-03

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs; published 5-9-03
Broker-dealers; customer identification programs; published 5-9-03
Futures commission merchants and introducing brokers; customer identification programs; published 5-9-03
Mutual funds; customer identification programs; published 5-9-03

TREASURY DEPARTMENT
Thrift Supervision Office
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs; published 5-9-03

VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty and Survivors' and Dependents' Educational Assistance programs; rates payable increase; published 6-9-03
Montgomery GI Bill-Active Duty; additional opportunity to participate and other miscellaneous issues; published 6-9-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-20-03; published 4-21-03 [FR 03-09672]
Potatoes (Irish) grown in—
Colorado; comments due by 6-16-03; published 5-30-03 [FR 03-13519]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Portland International Airport, OR; livestock exportation port designation; comments due by 6-18-03; published 5-19-03 [FR 03-12389]
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Texas and New Mexico; comments due by 6-16-03; published 4-16-03 [FR 03-09322]
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 6-18-03; published 5-19-03 [FR 03-12390]
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Multi-serve, meal-type meat and poultry products; nutrient content claims; comments due by 6-16-03; published 4-16-03 [FR 03-09258]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; comments due by 6-16-03; published 4-17-03 [FR 03-09490]
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 6-19-03; published 5-20-03 [FR 03-12648]
South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; correction; comments due by 6-16-03; published 5-5-03 [FR 03-10802]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-17-03; published 6-2-03 [FR 03-13704]
DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
National Defense Authorization Act for 2002 FY; implementation; medical benefits, etc.; comments due by 6-16-03; published 4-16-03 [FR 03-09153]
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12025]
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12474]
Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12178]
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12027]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Allethrin, etc.; nomenclature changes; comments due by 6-17-03; published 4-18-03 [FR 03-09484]
Propylene oxide, etc.; nomenclature changes; comments due by 6-16-03; published 4-17-03 [FR 03-09483]
FARM CREDIT ADMINISTRATION
Farm credit system:
Financing eligibility and scope, loan policies and operations, and general provisions—
Credit and related services; miscellaneous amendments; comments due by 6-20-03; published 5-21-03 [FR 03-12631]
FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Bank director eligibility, appointment, elections; comments due by 6-17-03; published 3-19-03 [FR 03-06595]
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General and plastic surgery devices—
Silicone sheeting; classification; comments due by 6-18-03; published 3-20-03 [FR 03-06646]
Reports and guidance documents; availability, etc.:
Developing Medical Imaging Drug and Biological Products; comments due by 6-18-03; published 5-19-03 [FR 03-12370]
HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; comments due by 6-16-03; published 4-17-03 [FR 03-09497]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Valdez and Valdez Narrows, AK; security zone; comments due by 6-15-03; published 5-16-03 [FR 03-12183]
Tampa Bay, FL; security zones; comments due by 6-17-03; published 4-18-03 [FR 03-09650]
Regattas and marine parades, and drawbridge operations:
Toledo Tall Ships Parade, OH; comments due by 6-15-03; published 5-20-03 [FR 03-12492]
HOMELAND SECURITY DEPARTMENT
Critical Infrastructure Information; handling procedures; comments due by 6-16-03; published 4-15-03 [FR 03-09126]
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Emergency operations; comments due by 6-16-03; published 4-16-03 [FR 03-09310]
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Sound recordings and ephemeral recordings; digital performance right; comments due by 6-19-03; published 5-20-03 [FR 03-12349]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Public use; threats added as prohibited behavior; comments due by 6-17-03; published 4-18-03 [FR 03-09585]
Correction; comments due by 6-17-03; published 5-2-03 [FR 03-10808]
SECURITIES AND EXCHANGE COMMISSION
Securities:
Nasdaq-listed securities; uniform trading rules; petition; comments due by 6-19-03; published 5-20-03 [FR 03-12604]
SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Mental disorders; medical evaluation criteria; comments due by 6-16-03; published 3-17-03 [FR 03-06278]
STATE DEPARTMENT
Claims and stolen property:
Stolen property under treaty with Mexico; CFR part removed; comments due by 6-16-03; published 5-16-03 [FR 03-12294]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 6-16-03; published 4-16-03 [FR 03-09011]
Boeing; comments due by 6-16-03; published 5-1-03 [FR 03-10728]
Dassault; comments due by 6-19-03; published 5-20-03 [FR 03-12110]
Learjet; comments due by 6-20-03; published 4-21-03 [FR 03-09430]
McDonnell Douglas; comments due by 6-16-03; published 4-15-03 [FR 03-08892]
Raytheon; comments due by 6-20-03; published 5-5-03 [FR 03-10726]
Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 6-16-03; published 4-15-03 [FR 03-09017]
Class E airspace; comments due by 6-16-03; published 4-21-03 [FR 03-09729]
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Future air bags designed to create less risk of serious injuries for small women and young children, etc.; requirements phase-in; comments due by 6-19-03; published 5-5-03 [FR 03-10945]
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (2001 CY); comments due by 6-16-03; published 4-15-03 [FR 03-09186]
TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Securities; reporting and disclosure requirements; comments due by 6-20-03; published 5-21-03 [FR 03-12259]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–050–00015–6)	23.00	Jan. 1, 2003
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–050–00018–1)	29.00	[4] Jan. 1, 2003
1940–1949	(869–050–00019–9)	47.00	Jan. 1, 2003
1950–1999	(869–050–00020–2)	45.00	Jan. 1, 2003
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
1–199	(869–050–00023–7)	58.00	Jan. 1, 2003
200–End	(869–050–00024–5)	56.00	Jan. 1, 2003
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–050–00027–0)	44.00	Jan. 1, 2003
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Jan. 1, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
*300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
*50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–050–00096–2)	12.00	[5]Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43–end	(869–048–00099–2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[6]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[6]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.

Federal Register

6–10–03 Tuesday
Vol. 68 No. 111 June 10, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6–10–03
Vol. 68 No. 111

Tuesday
June 10, 2003

Pages 34517–34774

Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806

General online information 202–512–1530; 1–888–293–6498

Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 111
Tuesday, June 10, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Housing Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34643–34644

Animal and Plant Health Inspection Service
RULES
Plant related quarantine; foreign:
Ya pears from Hebei Province, China; Oriental fruit fly cold treatment requirement removed, 34517–34519

Antitrust Division
NOTICES
National cooperative research notifications:
Die Products Consortium, 34644
J Consortium, Inc., 34644
Portland Cement Association, 34644–34645

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare and medicaid:
Skilled nursing facilities prospective payment system and consolidated billing, 34767–34773

Children and Families Administration
See Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Adoption Opportunities Demonstration Projects et al., 34609–34614

Coast Guard
RULES
Drawbridge operations:
Florida, 34535
Ports and waterways safety:
Detroit River, MI; safety zone, 34537–34539
Grosse Point Shores, MI; safety zone, 34535–34537
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 34626–34627

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs and Border Protection Bureau
NOTICES
Commercial laboratory accrediations:
BSI Inspector American Corp., 34627

Employee Benefits Security Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Deutsche Bank AG, 34646–34651

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34651–34652

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
American Electric Power Service Corp., 34591–34592

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 34543–34545
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 34560
NOTICES
Air pollution control:
State operating permits programs—
Louisiana, 34605
Inventions, Government-owned; availability for licensing, 34605–34606

Export-Import Bank
NOTICES
Meetings:
Sub-Saharan Africa Advisory Committee, 34606

Federal Aviation Administration
RULES
IFR altitudes, 34522–34526
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 34557–34560
NOTICES
Reports and guidance documents; availability, etc.:
Ultraband compatibility testing, 34695

Federal Communications Commission
RULES
Common carrier services:
Commercial mobile radio services—
Facilitate provision of fixed and mobile broadband access, education, and other advanced services in 2150-2162 and 2500-2690 MHz bands, 34547
Local number portability; implementation—
Declatory ruling peition, 34547–34548
PROPOSED RULES
Common carrier services:
Commercial mobile radio services—
Facilitate provision of fixed and mobile broadband access, education, and other advanced services in 2150-2162 and 2500-2690 MHz bands, 34560–34568

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34606–34607

Federal Emergency Management Agency
RULES
Disaster assistance:
Public Assistance Program and Community Disaster Loan Program, 34545–34547
NOTICES
Meetings:
Federal Radiological Preparedness Coordinating Committee, 34627

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
ITC Holdings Corp., et al., 34601–34602
Environmental statements; notice of intent:
Natural Gas Pipeline Company of America, 34602–34604
Hydroelectric applications, 34604–34605
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 34592
Columbia Gas Transmission Corp., 34592–34593
Columbia Gulf Transmission Co., 34593
Distrigas of Massachusetts LLC, 34594
Eastern Shore Natural Gas Co., 34595
Enbridge Pipelines (KPC), 34595
Equitrans, L.P., 34595–34596
Global Common Greenport, LLCs, 34596
Gulf South Pipeline Company, LP, 34596–34597
Honeoye Storage Corp., 34597
Iroquois Gas Transmission System, L.P., 34597
MidAmerican Energy Co., 34598
National Fuel Gas Supply Corp., 34598
PG&E Gas Transmission, Northwest Corp., 34598–34599
PPL Montana, LLC et al., 34599
San Diego Gas & Electric Co., 34599
Total Peaking Services, L.L.C., 34599–34600
Transcontinental Gas Pipe Line Corp., 34600
Vector Pipeline L.P., 34600–34601
Williston Basin Interstate Pipeline Co., 34601

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Pitkin, Eagle, and Garfield Counties, CO, 34695

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34607–34608
Banks and bank holding companies:
Change in bank control, 34608
Formations, acquisitions, and mergers, 34608–34609
Permissible nonbanking activities, 34609

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Pitkin, Eagle, and Garfield Counties, CO, 34695

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Blackburn's sphinx moth, 34709–34766
PROPOSED RULES
Endangered and threatened species:
Missouri bladderpod, 34569–34576
NOTICES
Endangered and threatened species:
Findings on petitions, etc.—
Western gray squirrel; Washington population, 34628–34640
Environmental statements; notice of intent:
King County, WA; Habitat Conservation Plan, 34584–34586
Meetings:
Hanford Reach National Monument Federal Planning Advisory Committee, 34640

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Fenbendazole, 34534–34535
Pyrantel pamoate paste, 34533
Sponsor name and address changes—
Cross Vetpharm Group Ltd., 34533–34534
NOTICES
Meetings:
Notification Process for Food Contact Substances; workshop, 34614–34615

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34577–34578

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Siskiyou County, 34579

Grain Inspection, Packers and Stockyards Administration
RULES
Grain weighing equipment and related handling sysytems; Official Performance and procedural requiremnts, 34519–34522

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See Refugee Resettlement Office
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Graduate Geropsychology Education Program, 34615–34616

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34627–34628

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34640–34641

Indian Health Service
NOTICES
Rosebud Sioux Tribe, Rosebud Indian Reservation, NE and SD, Contract Health Service Delivery Area boundary redesignation, 34616–34617

Industry and Security Bureau
RULES
Export administration regulations:
Commerce Control List—
Chemical and biological weapons controls; cross flow filtration equipment; Australia Group understandings implementation, 34526–34533

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34697

International Trade Administration
NOTICES
Antidumping:
4,4'-Diamino-2,2-stilbenedisulfonic acid and stilbenic fluorescent whitening agents from—
Various countries., 34579–34582
Countervailing duties:
4,4'-Diamino-2,2'-stilbenedisulfonic acid and stilbenic flurorescent whitening agents from—
India, 34582–34584

International Trade Commission
NOTICES
Import investigations:
Lawn and garden steel fence posts from—
China, 34641–34642
Wax and wax/resin thermal transfer ribbons from—
Various countries, 34642–34643

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Antitrust Division
See Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34643

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34645

Labor Department
See Employee Benefits Security Administration
See Employment Standards Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34645–34646

Land Management Bureau
NOTICES
Alaska Native claims selection:
Old Harbor Native Corp., 34641

Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34652–34653

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34653–34654
Agency records schedules; availability, 34654–34655

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 34655–34656

National Labor Relations Board
NOTICES
Privacy Act:
Systems of records, 34656–34659

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Yellowfin sole, 34550–34551
NOTICES
Environmental statements; notice of intent:
King County, WA; Habitat Conservation Plan, 34584–34586
Grants and cooperative agreements; availability, etc.:
Chesapeake Bay; submerged aquatic vegetation culture and large scale restoration activities, 34586–34590
Permits
Marine mammals, 34590–34591

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Physical Anthropology and Archaeology Date Sharing Advisory Committee, 34659

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 34659–34660
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 34660–34678

Postal Rate Commission
NOTICES
Domestic rates, fees, and mail classifications:
Bulk parcel return services; 2-year experimental testing, 34678–34680

Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Refugee family enrichment projects discretionary funds, 34617–34626

Research and Special Programs Administration
NOTICES
Meetings:
Safe Transportation of Radioactive Material, 34695–34696

Rural Housing Service
PROPOSED RULES
Program regulations:
Guaranteed Rural Rental Housing Program, 34552–34557

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 34687–34688
Chicago Stock Exchange, Inc., 34688–34689
National Association of Securities Dealers, Inc., 34689–34691
New York Stock Exchange, Inc., 34691–34692
Philadelphia Stock Exchange, Inc., 34692–34693
Applications, hearings, determinations, etc.:
AB Funds Trust, et al., 34680–34685
Public utility holding company filings, 34685–34687

Small Business Administration
NOTICES
Disaster loan areas:
Illinois, 34693
Kansas, 34693

Special Counsel Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34693–34694

State Department
NOTICES
Art objects; importation for exhibition:
Marc Chagall, 34694–34695

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 34626

Surface Transportation Board
NOTICES
Railroad services abandonment:
Chelsea Property Owners, 34696–34697

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Research and Special Programs Administration
See Surface Transportation Board
RULES
Organization, functions, and authority delegations:
Transportation Security Adminstration and United States Coast Guard; removal of references, 34548–34550
NOTICES
Aviation proceedings:
Agreements filed, etc., 34695

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Veterans Education and Benefits Expansion Act of 2001; compensation and pension provisions, 34539–34543
NOTICES
Reports and guidance documents; availability, etc.:
Title VI Civil Rights Act of 1964 and implementing regulations; meaningful access to Federally assisted programs and activities for LEP persons, 34698–34708

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 34709–34766

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 34767–34773

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
319.....34517
802.....34519
Proposed Rules:
3565.....34552

14 CFR
95.....34522
Proposed Rules:
39.....34557

15 CFR
742.....34526
745.....34526
774.....34526

21 CFR
520.....34533
522.....34533
558.....34534

33 CFR
117.....34535
165 (2 documents).....34535, 34537

38 CFR
3.....34539
13.....34539

40 CFR
52.....34543
Proposed Rules:
52.....34560

42 CFR
Proposed Rules:
413.....34768

44 CFR
206.....34545

47 CFR
21.....34547
52.....34547
Proposed Rules:
1.....34560
21.....34560
74.....34560
101.....34560

49 CFR
1.....34548

50 CFR
17.....34710
679.....34550
Proposed Rules:
17.....34569

Rules and Regulations

Federal Register
Vol. 68, No. 111
Tuesday, June 10, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–084–2]

Removal of Cold Treatment Requirement for Ya Pears Imported From Hebei Province in China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. The cold treatment requirement had been imposed to ensure that Ya pears did not introduce the Oriental fruit fly into the United States. The People's Republic of China has submitted data indicating that no Oriental fruit flies have been found in Hebei Province since the beginning of 1997 and has requested that we remove the cold treatment requirement. This action will remove a restriction that no longer appears necessary.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

On December 20, 2002, we published in the **Federal Register** (67 FR 77940–77942, Docket No. 02–084–1) a proposal to amend the regulations in § 319.56–2ee by removing the requirement that Ya pears imported from Hebei Province in the People's Republic of China be cold treated for Oriental fruit fly. We proposed to remove this requirement because fruit fly trapping data submitted in March 2000 by the People's Republic of China showed no occurrence of Oriental fruit fly in Hebei Province for 1997 through 1999. Further data have continued to indicate that Oriental fruit fly is not present in Hebei Province. In addition, the cool climate of Hebei Province, which is comparable to that of Pennsylvania in the United States, does not favor the development of Oriental fruit fly. We proposed to leave the other safeguards required by § 319.56–2ee for Ya pears from Hebei Province in place, as they help to prevent against the introduction of other plant pests.

We solicited comments concerning our proposal for 60 days ending February 18, 2003. We received four comments by that date. They were from a private citizen, an industry advocacy group, and representatives of State and foreign governments. The issues raised by the commenters are discussed below.

One commenter opposed the proposed rule on the grounds that it would increase the risk of a fruit fly outbreak in the United States, with potentially devastating effects for U.S. agriculture.

When the Animal and Plant Health Inspection Service (APHIS) originally allowed the importation of Ya pears from China, we required that the pears be cold treated because we had no information indicating that Oriental fruit fly was not present in Hebei and Shandong Provinces. As stated above, we now have data submitted by the People's Republic of China that indicates that Oriental fruit fly is not present in Hebei Province; in addition, climatic conditions there do not favor its establishment. (**Note:** In the proposed rule and in the regulations in § 319.56–2ee, we incorrectly refer to Shandong Province as "Shadong Province." This rule corrects that error in the regulations, and we refer to the province by its correct name throughout this document.)

In order to require cold treatment for Ya pears imported into the United States from Hebei Province, we would have to have scientific evidence indicating that Oriental fruit fly is present in Hebei Province and that importing Ya pears from Hebei Province would pose a risk of introducing Oriental fruit fly into the United States. The available scientific evidence, to the contrary, indicates that the cold treatment requirement for Ya pears imported from the Hebei Province in China is no longer necessary. We cannot require treatment based on a purely theoretical risk of pest introduction. Therefore, we are removing the requirement that Ya pears imported into the United States from Hebei Province be cold treated, and we are making no changes in response to this comment.

One commenter supported the proposed rule on the condition that the People's Republic of China maintain an Oriental fruit fly detection program in Hebei Province and submit annual reports to APHIS affirming that fruit fly continues not to be present in Hebei Province. Furthermore, this commenter asserted, if Oriental fruit fly is ever detected in Hebei Province, APHIS should immediately reinstate the cold treatment requirement.

The People's Republic of China will continue trapping and surveying for Oriental fruit fly and for other fruit flies and quarantine pests in Hebei Province after this final rule becomes effective. We will not, however, require that China submit the trapping and surveying data to us. Climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province, and we have no reason to suspect that Oriental fruit fly will become established there. Nevertheless, if trapping data were to indicate in the future that a quarantine pest such as Oriental fruit fly is present in Hebei Province, the national plant protection organization of China would notify APHIS immediately, fulfilling its obligation to do so under trade agreements for agricultural products. Thus, any requirement that the People's Republic of China continue submitting trapping data would, in practice, only mandate repeated submissions of negative data. Since we already have data sufficient to prove that Oriental fruit fly does not exist in Hebei Province, we do not believe further submissions of negative data are necessary.

In the event that Oriental fruit fly is detected in Hebei Province after this final rule becomes effective, we would take any and all appropriate actions to ensure that this plant pest is not introduced into the United States. Such actions may include, but may not be limited to, the reinstatement of the cold treatment requirement for Ya pears imported from Hebei Province.

One commenter questioned the reliability of the fruit fly trapping data submitted to us by the People's Republic of China. We have examined the data and believe it to be accurate. In the proposed rule, we invited persons interested in reviewing the data to contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We received no comments asserting that any specific aspects of the data appeared unreliable. We are making no changes in response to this comment.

One commenter argued that the recent rise in the quantity of imports of Ya pears from China and the decrease in the price of the imports, as described in the economic analysis in the proposed rule, showed that the cold treatment requirement was not significantly hampering the ability of Chinese producers to export Ya pears to the United States. The commenter also took issue with the statement in the economic analysis that Ya pears are not a substitute for domestically produced pears, on the grounds that all produce items compete for a share of the food dollar of U.S. consumers. This commenter stated that until restrictions on the export of U.S. pears to China are lifted by the Government of the People's Republic of China, APHIS restrictions on the importation of pears from China should remain in place. Another commenter opposed removing the cold treatment requirement on the grounds that the cost of complying with the cold treatment requirement was not particularly onerous.

Cold treatment was required for Ya pears from Hebei Province in China because we had no information indicating that Oriental fruit fly was not present in Hebei Province. Data made available by the People's Republic of China indicate that the Oriental fruit fly is not present in Hebei Province; therefore, this requirement appears to be unnecessary. The purpose of treating imported fruits and vegetables is to mitigate pest risk, not to impose economic barriers on the importation of fruits and vegetables; APHIS has no authority to regulate based on purely economic considerations. We are making no changes in response to these comments.

One commenter supported the proposed rule but argued that we should additionally remove the cold treatment requirement from Ya pears imported from Shandong Province in China. We will consider removing this requirement if the People's Republic of China provides APHIS with data similar to the data submitted for Hebei Province indicating that Oriental fruit fly is not present in Shandong Province. In addition, removing the cold treatment requirement from Ya pears imported from Shandong Province is beyond the scope of the present rulemaking. We are making no changes in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to remove a cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China that is no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. This action is based on data from the national plant protection organization of the People's Republic of China indicating that Oriental fruit fly does not occur in Hebei Province and the fact that climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province.

The rapid growth in Ya pear imports by the United States from China is evident in table 1. Imports increased from about 329,000 kilograms in 1998 to over 6.57 million kilograms in 2001. The estimated cost savings discussed in this analysis are based on the import quantity and value for 2001.

TABLE 1.—YA VARIETY PEAR IMPORTS FROM CHINA

	Quantity (kilograms)	Value (millions of dollars)	Price (dollars per kilogram)
1998	328,818	$0.328	$1.00
1999	2,097,863	2.011	0.96
2000	5,264,099	3.746	0.71
2001	6,573,113	3.559	0.54

Source: World Trade Atlas, based on data from the U.S. Bureau of the Census. Harmonized Tariff Schedule code 080820.

We expect that removing the cold treatment requirement for Ya pears imported from Hebei Province will reduce shipping costs. The magnitude of the reduction will depend on transport costs with and without the cold treatment requirement. While refrigeration costs will still be borne by importers in the absence of the cold treatment requirement, the costs required to maintain, monitor, and report cold treatment temperatures during transport will all be saved.

The cold treatment schedule for Ya pears from China, as specified in the Plant Protection and Quarantine Treatment Manual, is T107–F. The number of days required for cold treatment en route under the schedule—10 to 14 days, depending on the treatment temperature—is less than the number of days it takes to ship Ya pears to the United States from China. No reduction in shipping time, and thus no associated cost savings, is expected to result from the removal of the cold treatment requirement.

A recent analysis of cold treatment requirements for the Mediterranean fruit fly at U.S. ports, used here as a proxy for cold treatment costs en route, indicated a cost of 50 cents per day per pallet.[1] Most of this expense is the cost of refrigeration. Under this rule, Ya pears from Hebei Province will still be refrigerated while en route to the United States, although not to cold treatment specifications. For this analysis, it is assumed that the savings from not having to meet cold treatment requirements would be 25 cents per day per pallet. This amount probably exceeds the actual savings that will be realized, providing an upper-bound approximation of potential effects.

Assuming that boxing and pallet loading capacities are similar to those of domestic pears, a box of Ya pears would contain about 20 kilograms and a pallet would contain 49 boxes.[2] Assuming further a 14-day cold treatment period, the longest specified in the cold treatment regimen, the cost of cold treatment will be about 36 cents per 100 kilograms, or 0.36 cents per kilogram.[3] As shown in table 1, the average price of Ya pears has steadily fallen since imports began in 1998. Even so, estimated savings from not having to meet cold treatment requirements represent less than 1 percent of the 2001 price of 54 cents per kilogram. In addition, pears from Shandong Province will be unaffected by the proposed change, further dampening the total cost effect in the United States.

Ya pears are not produced in the United States, and Ya pears are not a substitute for domestically produced pears. Thus, this rule is not expected to affect the U.S. domestic pear industry.

Economic Effects on Small Entities

Under the criteria established by the Small Business Administration, fruit importers (North American Industry Classification System code 422480, "Fresh Fruit and Vegetable Wholesalers") must have 100 or fewer employees to be considered small entities. At least some U.S. importers of Ya pears from Hebei Province in China may be small entities, but the expected economic effect of no longer needing to meet cold treatment requirements is minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[1] Analysis for APHIS Docket 02–071–1, published in the **Federal Register** on October 15, 2002 (67 FR 63529–63536).

[2] The packing measure used for pears is four-fifths of a bushel, which corresponds to about 42 to 45 pounds. (Kevin Moffett, Pear Bureau, personal communication).

[3] (Twenty-five cents per day per pallet) × (14 days per treatment) = $3.50 per pallet per treatment. (Twenty kilograms per box) × (49 boxes per pallet) = 980 kilograms per pallet. ($3.50) / (980 kilograms) = $0.00357/kg.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–2ee is amended as follows:

■ a. In paragraph (a)(1), by removing the word "Shadong" and adding the word "Shandong" in its place.

■ b. By revising paragraphs (b) and (c) to read as set forth below.

§ 319.56–2ee Administrative instructions: Conditions governing the entry of Ya variety pears from China.

* * * * *

(b) *Treatment.* Pears from Shandong Province must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of this section have been met.

Done in Washington, DC, this 5th day of June, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14551 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 802

Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: In accordance with a periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the United States Grain Standards Act, as amended, entitled Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. FGIS is incorporating by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 2002 edition (Handbook 44 issued November 2001) and continues to adopt all of the requirements of NIST Handbook 105–1, "Specifications and Tolerances for Reference Standard Weights and Measures," 1990 revision (Handbook 105–1). Currently, the 1994 Edition of Handbook 44 and the 1990 edition of Handbook 105–1 are incorporated into Part 802 by reference.

DATES: This rule is effective September 8, 2003 without further action, unless adverse comments or written notice of intent to submit adverse comments are received by July 10, 2003. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 8, 2003.

ADDRESSES: Please send any adverse comments or written notice of intent to submit adverse comments to H. Tess Butler, GIPSA, USDA, 1400

Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. Comments may also be sent by e-mail to: *comments.gipsa@usda.gov*. All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his e-mail address: *david.m.orr@usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. GIPSA has determined that most users of the official weighing service and those entities that perform these services do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates approximately 9,500 off-farm storage facilities and 57 export elevators in the United States could receive official weighing services by GIPSA, delegated States, or designated agencies. GIPSA also estimates this rule affects 18 scale manufacturing and 39 scale service companies who provide weighing equipment and service to these elevators and storage facilities. Twelve GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 7 delegated States, and 11 designated agencies provide official weighing service. Under provisions of the Act, it is not mandatory for non-export grain to be officially weighed except for waterborne carriers into export port locations. Further, most users of the official weighing services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this rule only updates regulatory requirements and makes GIPSA weighing guidelines more like State weights and measures organizations' laws and regulations who automatically adopt Handbook 44 on a yearly basis. Updating these requirements will help manufacturers of weighing equipment and grain elevators avoid making, installing, and maintaining equipment to meet two sets of design and performance requirements for commercial and official weighing to meet old specifications and new. No additional cost or burden is expected to result from this action.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 802 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems (7 CFR 802.0–802.1), sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services. This review of the regulations includes a determination of continued need for and consequences of the regulations. An objective of the review is to ensure that the regulations are consistent with FGIS policy and authority and are up-to-date. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, therefore, will incorporate the 2002 edition of Handbook 44 by reference into Part 802 of the regulations, in order to update the regulations, and continues to adopt all of the requirements of NIST Handbook 105–1 "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," 1990 edition.

Effective August 18, 1995, FGIS incorporated by reference into Part 802 of the regulations most provisions in NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1994 edition (Handbook 44) (60 FR 31907). Those provisions in Handbook 44 that obviously did not pertain to FGIS services were not incorporated by reference. The provisions that were not incorporated are listed in section 802.0(b) of the regulations.

We are publishing this rule without a prior proposal because we regularly update this portion of the regulations and view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 90 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 90 days following its publication.

Direct Final Action

In 1995, FGIS incorporated by reference the 1994 edition of Handbook 44. FGIS will continue to adopt this edition by reference in section 802.0(a) of the regulations.

The 1994 edition of Handbook 44 has been changed annually by NIST as new items are adopted, deleted, or revised by the National Conference on Weights and Measures. Many of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44 and Handbook 105–1. FGIS will revise section 802.0(a) by incorporating by reference the 2002 edition of Handbook 44 including the following sections:

Section 1.10	General Code
Section 2.20	Scales
Section 2.22	Automatic Bulk Weighing Systems
Section 2.23	Weights

The following table lists those relevant codes and paragraphs, but not definitions, in which amendments and editorial changes were made in 1994 through 2001 by the 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, and 86th National Conference on Weights and Measures (NCWM) as they appeared in the 1995 through 2002 editions of Handbook 44. The column headed "Action" indicates changes noted as "added", "amended", "deleted", "renumbered", or provides an explanation.

Code	Paragraph	Action
1994 Amendments		
General	G–UR.4.6	Added.
Scales	S.2.5.1	Changed Electronic in title and lead sentence to Digital Indicating to be consistent with other references in code.
1995 Amendments		
General	G–S.6.	Amended.
Scales	S.1.7.	Amended.
Scales	S.2.5.1.	Amended.
Scales	S.5.3.	Amended.
Scales	UR.1. Footnote	Added.
Scales	UR.1.5.	Added.
Scales	Table 7a	Amended.
Scales	S.5.1., S.5.2., S.5.3.	Added paragraph titles.
Scales	Table S.6.3.b.—Note 9	Added missing third line.
1996 Amendments		
Scales	UR.3.2.1., Table UR.3.2.1.	Added.
Scales	S.5.4.	Amended.
Scales	UR.4.3.	Amended.
1997 Amendments		
Scales	Table 3	Amended.
Scales	N.1.3.4. a. & b.	Amended.
Scales	T.N.9.	Amended.
Automatic Bulk Weighing Systems	S.3.3(b)	Added.
Scales	T.N.8.1.2. & Table	Added title of Table T.N.8.1.2. and added reference in paragraph for clarity.
Scales	T.N.9.	Revised Footnote.
1998 Amendments		
Scales	S.2.1.6.	Amended.
Scales	N.1.2.1.	Amended.
Scales	N.1.2.2.	Amended.
Scales	Table 1.1.1., Footnote 3	Added Footnote.
1999 Amendments		
General	G–S.1.	Amended.
Scales	S.1.2.2.1.	Amended.
Scales	S.1.2.2.2.	Amended.
Scales	Table 3	Amended Footnote #1.
Scales	Table S.6.3.a.	Amended.
Scales	Table S.6.3.b.	Amended Note #7.
Scales	Table S.3.6.a. and b.	Added Note 20 & 21.
Scales	S.6.1.	Amended.
Scales	S.6.1.	Amended.
Scales	N.1.3.6.1.	Amended.
Scales	T.N.3.8.	Amended.
Scales	UR.1.3.	Amended.
Scales	S.1.2.2.1., UR.1.3.1., and UR.3.10	Added.
Scales	Table UR.3.2.1.	Amended.
2000 Amendments		
General	G–S.1.	Added new (c). Relettered d, e, and f.
Scales	S.1.4.3.(a)	Amended.
Scales	N.1.3.4.	Amended.
Scales	Tables S.6.3.(a) and (b) Note 1	Amended.

Code	Paragraph	Action
Scales	UR.3.9.	Amended.
2001 Amendments		
General	G–S.1.1.	Added.
	G.S.1.(g)	
	G.S.1.(c)	
Scales	Table S.6.3.a.	Amended Column Headings.
	Table S.6.3.a.	Added footnote 1.
	S.6.4.	Amended.
	N.1.3.4.(a)	Amended.
Automatic Bulk Weighing Systems	U.R.1.1.	Removed "and enforceable" for consistency with other nonretroactive statements.

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference, Reporting and recordkeeping requirements.

■ For reasons set out in the preamble, accordingly, 7 CFR part 802 is amended as follows:

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

■ 1. The authority citation for part 802 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

■ 2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services, official inspection services, and commercial services under the Act. All scales used for official grain weight and inspection certification services provided by FGIS shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 2002 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NIST Handbook 105–1 (1990 Edition), "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," (Handbook 105–1). These requirements are confirmed to be met by having National Type Evaluation Program or Federal Grain Inspection Service type approval. Scales used for commercial purposes will be required to meet only the applicable requirements of the 2002 edition of the NIST Handbook 44. Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b) of this section, the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They can be downloaded without charge at *http://ts.nist.gov/ts/htdocs/230/235owmhome.htm*. They are also available for inspection at the Office of the Federal Register, 800 North Capital, Street, NW., Suite 700, Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales (2.20)

S.1.8. Computing Scales
S.1.8.2. Money-Value Computation
S.1.8.3. Customer's Indications
S.1.8.4. Recorded Representations, Point of Sale
S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
S.3.3. Scoop Counterbalance
N.1.3.2. Dairy-Product Test Scales
N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
N.1.8. Material Tests
N.3.1.2. Interim Approval
N.3.1.3. Enforcement Action For Inaccuracy
N.4. Coupled-in-Motion Railroad Weighing Systems
N.6. Nominal Capacity of Prescription Scales
T.1.2. Postal and Parcel Post Scales
T.2.3. Prescription Scales
T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product-Test Scales (all sections)
T.N.3.9. Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
UR.1.4. Grain Test Scales: Value of Scale Divisions
UR.3.1. Recommended Minimum Load
UR.3.1.1. Minimum Load, Grain Dockage

Automatic Bulk Weighing Systems (2.22)

N.1.3. Decreasing-Load Test

Dated: June 4, 2003.

JoAnn Waterfield,

Acting Administrator.

[FR Doc. 03–14553 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30371; Amdt. No. 442]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace Navigation (air).

Issued in Washington, DC on June 5, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 10, 2003.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 442, Effective date, July 10, 2003]

From	To	MEA	MAA
§ 95.5000 High Altitude RNAV Routes			
§ 95.5001 RNAV Route No. Q1 is added to read			
ELMAA, WA FIX #GNSS REQUIRED #DME/DME RNAV NA	POINT REYES, CA VORTAC	#18000	45000
§ 95.5003 RNAV Route No. Q3 is added to read			
FEPOT, WA WP #GNSS REQUIRED #DME/DME RNAV NA	POINT REYES, CA VORTAC	#18000	45000
§ 95.5005 RNAV Route No. Q5 is added to read			
HAROB, WA WP #GNSS REQUIRED #DME/DME RNAV NA	STIKM CA WP	#18000	45000
§ 95.5007 RNAV Route No. Q7 is added to read			
JINMO, WA WP #GNSS REQUIRED #DME/DME RNAV NA	AVENAL, CA VORTAC	#18000	45000
§ 95.5009 RNAV Route No. Q9 is added to read			
SUMMA, WA FIX #GNSS REQUIRED #DME/DME RNAV NA	DERBB, CA FIX	#18000	45000
§ 95.5011 RNAV Route No. Q11 is added to read			
PAAGE, WA WP	LOS ANGELES, CA VORTAC	#18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued
[Amendment 442, Effective date, July 10, 2003]

From	To	MEA	MAA
#GNSS REQUIRED #DME/DME RNAV NA			
§ 95.5013 RNAV Route No. Q13 is added to read			
PAWLI, OR WP	LIDAT, NV FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA			
§ 95.5501 RNAV Route No. Q501 is added to read			
SOBME, SD WP	GOPHER, MN VORTAC	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA			
GOPHER, MN VORTAC	VIXIS, CANADA FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			
§ 95.5502 RNAV Route No. Q502 is added to read			
SOBME, SD WP	GOPHER, MN VORTAC	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA			
GOPHER, MN VORTAC	KENPA, CANADA FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			
§ 95.5504 RNAV Route No. Q504 is added to read			
HEMDI, SD WP	NOTAP, CANADA WP	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			
§ 95.5505 RNAV Route No. Q505 is added to read			
HEMDI, SD WP	OMAGA, CANADA FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			

From	To	MEA
§ 95.6001 Victor Routes—U.S. § 95.6003 VOR Federal Airway 3 Is Amended To Read in Part		
Brunswick, GA VORTAC	*Broun, GA FIX	**3,000
*11,000—MRA **2,200—MOCA		
Broun, GA FIX	*Harps, GA FIX	**3,000
*3,800—MRA **2,200—MOCA		
Harps, GA FIX	Keler, GA FIX	*3,000
*2,200—MOCA		
Keler, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
§ 95.6033 VOR Federal Airway 33 is Amended To Read in Part		
Bradford, PA VOR/DME	Vairs, NY FIX	*10,000
*4800—MOCA		
Vairs, NY FIX	Buffalo, NY VOR/DME	*5,000
*4000—MOCA		
§ 95.6037 VOR Federal Airway 37 is Amended To Read in Part		
Brunswick, GA VORTAC	*Broun, GA FIX	**3,000
*11,000—MRA **2,200—MOCA		
Broun, GA FIX	*Harps, GA FIX	**3,000

From	To	MEA
*3,800—MRA **2,200—MOCA		
Harps, GA FIX	Keler, GA FIX	*3,000
*2,200—MOCA		
Keler, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
Savannah, GA VORTAC	Allendale, SC VOR	*4,000
*1,500—MOCA		
§ 95.6154 VOR Federal Airway 154 is Amended To Read in Part		
Ocone, GA FIX	Savannah, GA VORTAC	*3,000
*1,800—MOCA		
§ 95.6185 VOR Federal Airway 185 is Amended To Read in Part		
Savannah, GA VORTAC	*Spong, GA FIX	**3,000
*5,000—MRA **2,200—MOCA		
Spong, GA FIX	Colliers, SC VORTAC	*3,000
*2,200—MOCA		
§ 95.6298 VOR Federal Airway 298 is Amended To Read in Part		
Chang, WY FIX	Gillette, WY VOR/DME	7,200
§ 95.6437 VOR Federal Airway 437 is Amended To Read in Part		
Ormond Beach, FL VORTAC	*Jetso, FL FIX	**3,000
*3,500—MRA **1,300—MOCA		
Jetso, FL FIX	Hotar, FL FIX	*5,000
*1,200—MOCA		
Hotar, FL FIX	Stary, GA FIX	*8,000
*1,200—MOCA		
Stary, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
§ 95.6441 VOR Federal Airway 441 is Amended To Read in Part		
Stary, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
§ 95.6578 VOR Federal Airway 578 is Amended To Read in Part		
Alma, GA VORTAC	Savannah, GA VORTAC	*6,000
*2,600—MOCA		

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7002 Jet Route No. 2 Is Amended To Read in Part			
Lake Charles, LA VORTAC	Baton Rouge, LA VORTAC	18,000	45,000
Baton Rouge, LA VORTAC	Semmes, LA VORTAC	18,000	45,000
§ 95.7138 Jet Route No. 138 Is Amended To Read in Part			
Lake Charles, LA VORTAC	Baton Rouge, LA VORTAC	18,000	45,000
Baton Rouge, LA VORTAC	Semmes, LA VORTAC	18,000	45,000
§ 95.7590 Jet Route No. 590 Is Amended To Read in Part			
Lake Charles, LA VORTAC	Baton Rouge, LA VORTAC	18,000	45,000
Baton Rouge, LA VORTAC	Greene County, MS VORTAC	18,000	45,000

Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Is Amended To Delete Changeover Point V–437			
Ormond Beach FL, VORTAC	Savannah, GA VORTAC	80	Ormond Beach.

[FR Doc. 03–14586 Filed 6–9–03; 8:45 am]
BILLING CODE 4510–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 745, and 774

[Docket No. 030523133–3133–01]

RIN 0694–AC70

Implementation of the Understandings Reached at the June 2002 Australia Group (AG) Plenary Meeting and the AG Intersessional Decision on Cross Flow Filtration Equipment—Chemical and Biological Weapons Controls in the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to describe the understandings reached at the June 2002 plenary meeting of the Australia Group (AG) and to amend the Export Administration Regulations (EAR), as needed, to implement these AG understandings. This final rule amends the licensing policy provisions in the EAR that apply to exports and reexports of items on the AG control list by clarifying several factors that are among those used to evaluate license applications for these AG-listed items and by identifying additional factors not previously listed in the EAR. In addition, this rule clarifies the circumstances under which BIS would deny license applications to export or reexport these AG-listed items. All of these changes are intended to ensure that the EAR provisions that apply to AG-listed items are consistent with the "Guidelines for Transfers of Sensitive Chemical or Biological Items," which were adopted at the June 2002 AG plenary meeting.

This rule also implements understandings reached at the June 2002 plenary meeting concerning AG controls on fermenters and toxins. The control threshold for AG-listed fermenters described on the Commerce Control List (CCL) is lowered from a capacity of 100 liters or greater to a capacity of 20 liters or greater. In addition, this rule adds eight new toxins to the list of AG-listed human and zoonotic pathogens and toxins described on the CCL.

In addition to the AG plenary meeting changes described above, this rule implements an AG intersessional decision concerning cross (tangential) flow filtration equipment.

The rule makes corrections in four CCL entries that contain AG-listed items. One entry, containing AG-listed genetic elements and genetically modified organisms, is amended to correct errors in the use of the terms "organism" and "microorganism." Another entry, containing AG-listed chemical manufacturing facilities and equipment, is amended to clarify the scope of that entry's controls on certain valves containing nickel and nickel alloys and on agitators for use in reaction vessels or reactors. Two other CCL entries are amended to clarify the license requirements that apply to technology for the "development" or "production" of AG-listed valves containing nickel and nickel alloys. In addition, the rule amends the AG-based licensing provisions in the EAR to identify certain CCL entries that were inadvertently omitted when BIS amended these provisions on previous occasions.

Finally, this rule updates the list of countries that are currently States Parties to the Chemical Weapons Convention (CWC) by adding six countries that recently became States Parties: Andorra, Guatemala, Palau, Saint Vincent and the Grenadines, Samoa, and Thailand.

DATES: This rule is effective June 10, 2003.

ADDRESSES: Written comments should be sent to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–7900.

SUPPLEMENTARY INFORMATION:

Background

A. Revisions to the EAR Based on the June 2002 Plenary Meeting of the Australia Group

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 3–6, 2002. The Australia Group is a multilateral forum, consisting of 33 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

This rule implements two understandings reached at the June 2002 plenary meeting concerning AG controls on fermenters and toxins. The control threshold for AG-listed fermenters, described in ECCN 2B352.b on the Commerce Control List (CCL), is lowered from a capacity (*i.e.*, volume) of 100 liters or greater to a capacity of 20 liters or greater. In addition, this rule adds the following eight toxins to the list of AG-listed toxins described in ECCN 1C351.d on the CCL: (1) abrin, (2) cholera toxin, (3) diacetoxyscirpenol toxin, (4) T–2 toxin, (5) HT–2 toxin, (6) modeccin toxin, (7) volkensin toxin, and (8) viscum album lectin 1 (viscumin). These AG-listed toxins, along with all other items controlled by ECCN 1C351, require a license for export or reexport to all destinations, worldwide.

This rule makes conforming changes to the List of Items Controlled in ECCN 1C991 by revising ECCN 1C991.d to include medical products containing any of the eight toxins that were added to ECCN 1C351.d by this rule. In addition, this rule revises the Related Definitions paragraph in the List of Items Controlled by ECCN 1C991 by adding the AG definition of "vaccine," which was adopted at the June 2002 AG plenary meeting. For the purpose of ECCN 1C991, "vaccine" is defined as a medicinal (or veterinary) product in a pharmaceutical formulation, approved by the U.S. Food and Drug Administration or the U.S. Department of Agriculture to be marketed as a medical (or veterinary) product or for use in clinical trials, that is intended to stimulate a protective immunological response in humans or animals in order to prevent disease in those to whom or to which it is administered. ECCN 1C991.a is revised to conform with the AG definition of "vaccine" by clarifying the control language to indicate that 1C991.a controls vaccines against items controlled by ECCN 1C351, 1C352, 1C353, or 1C354.

This final rule also amends the EAR to ensure that the licensing policy provisions in the EAR that apply to AG-listed items are consistent with the "Guidelines for Transfers of Sensitive Chemical or Biological Items," which were adopted by the AG at the June 2002 plenary meeting. Specifically, this rule amends section 742.2(b)(2) of the EAR by clarifying several factors that are among those used to evaluate license applications to export or reexport these AG-listed items and by identifying additional factors not previously listed in the EAR. The additional licensing factors that are now identified in the EAR include: (1) The reliability of the parties to the transaction (including previous licensing history, information on any clandestine or illegal procurement activities, and the end-user's ability to securely handle and store the items to be exported); (2) relevant information about proliferation and terrorism activities (including those involving any parties to the transaction); (3) the risk of diversion of the items; and (4) the applicability of other multilateral export control or nonproliferation agreements (*e.g.*, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction.

In addition, this rule clarifies the circumstances under which BIS would deny license applications to export or reexport AG-listed chemical and biological items. Specifically, this rule amends section 742.2(b)(1) of the EAR to show that where an export is intended to be used in a chemical weapons or biological weapons program, or for chemical or biological weapons terrorism purposes, it is deemed to make a material contribution to the design, development production, stockpiling, or use of chemical or biological weapons. Note that certain AG-listed chemicals also are controlled for Chemical Weapons Convention (CW) reasons and, therefore, are subject to the licensing requirements and policies described in section 742.18 of the EAR, as well as those in section 742.2 of the EAR.

B. Additional Understandings Reached at the June 2002 Plenary Meeting of the Australia Group That Conform With Existing Provisions in the EAR

Certain understandings reached at the June 2002 plenary meeting of the Australia Group (AG) do not require any regulatory action by the BIS, because they are adequately addressed by existing provisions in the EAR. These understandings are important because they represent a significant step by AG participating countries to further harmonize controls on AG-listed items and related technology.

Participating countries in the AG reached an understanding, at the June 2002 plenary meeting, to control transfers of technology for the "development" or "production" of AG-listed dual-use biological equipment. Since this technology currently is controlled by the EAR under ECCNs 2E001 and 2E002, this rule makes no changes in existing EAR controls on such technology.

The AG participating countries also agreed, for the first time, to establish AG controls on the intangible transfer of information and knowledge that could be used for chemical or biological weapons purposes. The transfer of such information and knowledge currently is defined in the EAR as "technical assistance," which may take such forms as instruction, skills, training, working knowledge, and consulting services and may involve the transfer of "technical data" ("technical assistance" is described in the note that follows the definition of "technology" in section 772.1 of the EAR). Since the EAR currently define "technology" (*e.g.*, technology for AG-listed items) to include "technical data" or "technical assistance," this rule makes no changes in existing EAR controls that apply to the provision of "technical assistance."

Finally, the AG participating countries agreed to expand the license requirement for exports of AG-listed biological agents to apply to all destinations, with an exception for intra-European Union (EU) trade. In accordance with section 742.2(a)(1) of the EAR, these AG-listed biological agents currently are controlled under ECCNs 1C351, 1C352, 1C353, and 1C354 on the CCL and require a license, for CB (chemical/biological) reasons, to all of the destinations indicated under CB Column 1 in the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR), *i.e.*, all destinations, worldwide. Since the EAR currently have a worldwide licensing requirement for these biological agents, this rule makes no changes in the existing EAR licensing provisions for these agents. In addition, please note that the EAR continue to require a license for reexports of U.S.-origin AG-listed biological agents to all destinations, including reexports among EU member countries.

C. Revisions to the EAR Based on an Intersessional Decision by the Australia Group

BIS is amending the EAR to implement an intersessional decision by the AG that was made prior to the June 2002 plenary meeting. Specifically, this rule revises AG controls on cross (tangential) flow filtration equipment by amending ECCN 2B352.d to lower the control threshold for such equipment from a total filtration area equal to or greater than 5 square meters (5 m^2) to a total filtration area equal to or greater than 1 square meter (1 m^2). In addition, this rule revises 2B352.d to indicate that the ECCN controls not only cross (tangential) flow filtration equipment capable of in-situ sterilization, but also such equipment capable of being disinfected in-situ. A technical note is added to 2B352.d to define the terms "sterilized" and "disinfected" and to demonstrate how the processes of "disinfection" and "sterilization" are distinct from the process of "sanitization." This rule also adds a *nota bene* (*i.e.*, N.B.) to 2B352.d that excludes reverse osmosis equipment, as specified by the manufacturer, from control under this ECCN.

In addition, this rule amends 2B352.d to control cross (tangential) flow filtration components that: (1) have a filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each component and (2) are designed for use with the cross (tangential) flow filtration equipment described in 2B352.d.

D. Corrections to ECCN 1C353 (Genetic Elements and Genetically Modified Organisms) and ECCN 2B350 (Chemical Manufacturing Facilities and Equipment).

This rule amends the heading and the List of Items Controlled in ECCN 1C353 to correct errors in the use of the terms "organism" and "microorganism." The revisions to this ECCN that were made in a final rule published by BIS on May 31, 2002 (67 FR 37977) incorrectly used the term "organisms" in 1C353.a.1 and .b.1 when referring to "microorganisms" controlled by 1C351.a. to .c. In addition, that rule did not revise the heading of the ECCN to include the term genetically modified "organisms." This rule corrects these errors.

In addition, this rule amends the heading in ECCN 2B350 to indicate that this entry does not control valves described in ECCN 2A292. BIS published a rule, on August 29, 2002 (67 FR 55594), that revised the heading of ECCN 2B350 to exclude valves controlled by ECCN 2A226; however, an exclusion for valves controlled by ECCN 2A292 was unintentionally omitted. This rule corrects that omission. Valves controlled by ECCN 2A226 or ECCN 2A292, which also meet or exceed the technical parameters described in ECCN 2B350.g, continue to be subject to CB controls (as well as NP and AT controls) even though they are not controlled under ECCN 2B350.

This rule also amends the List of Items Controlled in ECCN 2B350 to clarify that 2B350.b controls only those agitators that are for use in reaction vessels or reactors described in 2B350.a.

E. Corrections to § 742.2 (Proliferation of Chemical and Biological Weapons) and ECCNs 2E001 and 2E002

This rule revises § 742.2(a)(3) of the EAR, which identifies ECCNs

containing items that require a license to Country Group D:3 destinations for CB reasons, to include a reference to medical products controlled by ECCN 1C991.d. A reference to these medical products was inadvertently omitted in previous rulemakings. ECCN 1C991.d controls medical products containing biological toxins controlled by ECCN 1C351.d.2 through .d.19, except biological toxins controlled for CW reasons under 1C351.d.5 or .d.6.

This rule also revises § 742.2(a)(3) of the EAR and ECCNs 2E001 and 2E002 to clarify the control status of technology for valves described in ECCN 2A226 or 2A292 that also possess the characteristics of valves described in ECCN 2B350.g. The control status of the valves, themselves, was first clarified in a final rule published by BIS on August 29, 2002 (67 FR 55594) and is further clarified in this rule (*see* the changes to the heading of ECCN 2B350, as described in part D, Background, in the **SUPPLEMENTARY INFORMATION** section of this rule). First, this rule revises § 742.2(a)(3) to clarify that "development" and "production" technology for valves controlled by ECCN 2A226 or 2A292 for CB reasons (*i.e.*, valves in 2A226 or 2A292 that also possess the characteristics of valves described in ECCN 2B350.g) is controlled under ECCNs 2E001 ("development" technology) and 2E002 ("production" technology) and requires a license to Country Group D:3 destinations for CB reasons—note that this technology also requires a license to certain destinations for NP and AT reasons. *Second*, this rule revises § 742.2(a)(3) to indicate that "use" technology for valves controlled by ECCN 2A226 or 2A292 for CB reasons is controlled under ECCNs 2E201 and 2E290, respectively, and requires a license to Country Group D:3 destinations for CB reasons—note that this technology also requires a license to certain destinations for NP and AT reasons. *Third*, this rule revises the License Requirements sections of ECCNs 2E001 and 2E002 on the CCL to indicate that CB controls apply to technology in these ECCNs for the "development" or "production," respectively, of valves controlled for CB reasons under ECCN 2A226 or 2A292.

F. Clarifications to ECCNs 1C351 and 1C991

This rule revises the heading of ECCN 1C351 to clarify that this entry controls certain zoonotic pathogens and toxins that are the causative organisms for a number of zoonoses (*i.e.*, diseases of animals that may be transmitted to humans under natural conditions). In addition, this rule revises ECCN 1C991.d to clarify that it does not control medical products containing botulinum toxins described in ECCN 1C351.d.1. Medical products containing 1C351.d.1 toxins are controlled by 1C991.c for anti-terrorism (AT) reasons only, while the medical products in 1C991.d are controlled for both CB and AT reasons.

G. Changes to the EAR Based on the Addition of New States Parties to the Chemical Weapons Convention (CWC)

This rule revises Supplement No. 2 to part 745 of the EAR (titled "States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction") by adding the names of six countries that have recently become States Parties to the CWC (*i.e.*, Andorra, Guatemala, Palau, Saint Vincent and the Grenadines, Samoa, and Thailand).

Savings Clause

Shipments of items removed from license exception eligibility or NLR authorization as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on June 10, 2003, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or NLR authorization provisions so long as they have been exported from the United States before July 10, 2003. Any such items not actually exported before midnight, on July 10, 2003, require a license in accordance with this regulation.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule contains collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694–0088 and 0694–0117.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 742, 745, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 2. Section 742.2 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

(a) * * *

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR) for the following:

(i) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, and valves controlled by ECCN 2A226 or ECCN 2A292 having the characteristics of those described in 2B350.g, which can be used in the production of chemical weapons precursors or chemical warfare agents;

(ii) Equipment and materials identified in ECCN 2B352, which can be used in the production of biological agents;

(iii) Medical products identified in ECCN 1C991.d;

(iv) Technology identified in ECCN 2E001, 2E002, or 2E301 for:

(A) The development, production, or use of items controlled by ECCN 2B350, 2B351, or 2B352; or

(B) The development or production of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in ECCN 2B350.g; and

(v) Technology identified in ECCN 2E201 or 2E290 for the use of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in 2B350.g.

* * * * *

(b) *Licensing policy.* (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling or use of chemical of biological weapons. When an export or reexport is deemed to make such a material contribution, the license will be denied. When an export or reexport is intended to be used in a chemical weapons or biological weapons program, or for chemical or biological weapons terrorism purposes, it is deemed to make a material contribution. The factors listed in paragraph (b)(2) of this section are among those that will be considered to determine what action should be taken on license applications for these items.

(2) The following factors are among those that will be considered to determine what action should be taken on license applications for the items described in paragraph (a) of this section:

(i) The specific nature of the end-use, including the appropriateness of the stated end-use;

(ii) The significance of the export and reexport in terms of its potential contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country, including the importing country's chemical and biological capabilities and objectives;

(iv) The risk that the items will be diverted for use in a chemical weapons or biological weapons program, or for chemical weapons or biological weapons terrorism purposes;

(v) The reliability of the parties to the transaction, including whether:

(A) An export or reexport license application involving any such parties has previously been denied;

(B) Any such parties have been engaged in clandestine or illegal procurement activities;

(C) The end-user is capable of securely handling and storing the items to be exported or reexported;

(vi) Relevant information about proliferation and terrorism activities, including activities involving the design, development, production, stockpiling, or use of chemical or biological weapons by any parties to the transaction;

(vii) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case, including any relevant assurances provided by the importing country or the end-user;

(viii) The applicability of other multilateral export control or nonproliferation agreements (*e.g.*, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction; and

(ix) The existence of a pre-existing contract.

(3) BIS will review license applications in accordance with the licensing policy described in paragraph (b)(1) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply; *and*

(ii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

* * * * *

PART 745—[AMENDED]

■ 4. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

■ 5. Supplement No. 2 to part 745 is amended by revising the undesignated center heading "List of States Parties as of May 1, 2002" to read "List of States Parties as of April 1, 2003" and by adding, in alphabetical order, the countries "Andorra", "Guatemala", "Palau", "Saint Vincent and the Grenadines", "Samoa" and "Thailand".

PART 774—[AMENDED]

■ 6. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1C351 is amended by revising the heading of the ECCN and the List of Items Controlled to read as follows:

1C351 Human and zoonotic pathogens and "toxins", as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Value.

Related Controls: Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (*see* § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. *see* § 745.1 of the EAR for notification procedures. *see* 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and "immunotoxins" are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded

from the scope of this entry. Vaccines, "immunotoxins", certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991. For the purposes of this entry, only saxitoxin is controlled under paragraph d.6; other members of the paralytic shellfish poison family (*e.g.* neosaxitoxin) are classified as EAR99.

Related Definitions: 1. For the purposes of this entry "immunotoxin" is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. 2. For the purposes of this entry "subunit" is defined as a portion of the "toxin".

Items:

a. Viruses, as follows:
  a.1. Chikungunya virus;
  a.2. Congo-Crimean haemorrhagic fever virus;
  a.3. Dengue fever virus;
  a.4. Eastern equine encephalitis virus;
  a.5. Ebola virus;
  a.6. Hantaan virus;
  a.7. Japanese encephalitis virus;
  a.8. Junin virus;
  a.9. Lassa fever virus
  a.10. Lymphocytic choriomeningitis virus;
  a.11. Machupo virus;
  a.12. Marburg virus;
  a.13. Monkey pox virus;
  a.14. Rift Valley fever virus;
  a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
  a.16. Variola virus;
  a.17. Venezuelan equine encephalitis virus;
  a.18. Western equine encephalitis virus;
  a.19. White pox; or
  a.20. Yellow fever virus.
b. Rickettsiae, as follows:
  b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
  b.2. Coxiella burnetii;
  b.3. Rickettsia prowasecki; or
  b.4. Rickettsia rickettsii.
c. Bacteria, as follows:
  c.1. Bacillus anthracis;
  c.2. Brucella abortus;
  c.3. Brucella melitensis;
  c.4. Brucella suis;
  c.5. Burkholderia mallei (Pseudomonas mallei);
  c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
  c.7. Chlamydia psittaci;
  c.8. Clostridium botulinum;
  c.9. Francisella tularensis;
  c.10. Salmonella typhi;
  c.11. Shigella dysenteriae;
  c.12. Vibrio cholerae; or
  c.13. Yersinia pestis.
d. "Toxins", as follows, and "subunits" thereof:
  d.1. Botulinum toxins;
  d.2. Clostridium perfringens toxins;
  d.3. Conotoxin;
  d.4. Microcystin (Cyanginosin);
  d.5. Ricin;
  d.6. Saxitoxin;
  d.7. Shiga toxin;
  d.8. Staphylococcus aureus toxins;
  d.9. Tetrodotoxin;
  d.10. Verotoxin;
  d.11. Aflatoxins;
  d.12. Abrin;
  d.13. Cholera toxin;
  d.14. Diacetoxyscirpenol toxin;
  d.15. T–2 toxin;
  d.16. HT–2 toxin;
  d.17. Modeccin toxin;
  d.18. Volkensin toxin; or
  d.19. Viscum Album Lectin 1 (Viscumin).

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1C353 is amended by revising the ECCN heading and the List of Items Controlled to read as follows:

1C353 Genetic elements and genetically modified organisms, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.

Related Definitions: N/A.

Items:

a. Genetic elements, as follows:
  a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a. to .c, 1C352, or 1C354;
  a.2. Genetic elements that contain nucleic acid sequences coding for any of the "toxins" controlled by 1C351.d or "subunits of toxins" thereof.

Technical Note: Genetic elements include, *inter alia*, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.

b. Genetically modified organisms, as follows:
  b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a. to .c, 1C352, or 1C354;
  b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the "toxins" controlled by 1C351.d or "subunits of toxins" thereof.

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1C991 is amended by revising the List of Items Controlled to read as follows:

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: Medical products containing ricin or saxitoxin, as follows, are controlled for CW reasons under ECCN 1C351:
  (1) Ricinus Communis Agglutinin$_{II}$ (RCA_{II}), also known as ricin D, or Ricinus Communis Lectin$_{III}$ (RCL_{III});
  (2) Ricinus Communis Lectin$_{IV}$ (RCL_{IV}), also known as ricin E; or
  (3) Saxitoxin identified by C.A.S. #35523–89–8.

Related Definitions: For the purpose of this entry, "*immunotoxin*" is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry, "*medical products*" are: (1) pharmaceutical formulations designed for human administration in the treatment of medical conditions, (2) prepackaged for distribution as medical products, and (3) approved by the U.S. Food and Drug Administration to be marketed as medical products. For the purpose of this entry, "*diagnostic and food testing kits*" are specifically developed, packaged and marketed for diagnostic or public health purposes. Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351. For the purpose of this entry, "*vaccine*" is defined as a medicinal (or veterinary) product in a pharmaceutical formulation, approved by the U.S. Food and Drug Administration or the U.S. Department of Agriculture to be marketed as a medical (or veterinary) product or for use in clinical trials, that is intended to stimulate a protective immunological response in humans or animals in order to prevent disease in those to whom or to which it is administered.

Items:

a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353, or 1C354;

b. Immunotoxins containing items controlled by 1C351.d;

c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.1;

d. Medical products containing items controlled by ECCN 1C351.d, except botulinum toxins controlled by ECCN 1C351.d.1 and items controlled for CW reasons under 1C351.d.5 or .d.6; *and*

e. Diagnostic and food testing kits containing items controlled by ECCN 1C351.d, except items controlled for CW reasons under ECCN 1C351.d.5 or .d.6.

10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the ECCN heading and the List of Items Controlled to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: The controls in this entry do not apply to equipment that is: (a) Specially designed for use in civil applications (*e.g.*, food processing, pulp and paper processing, or water purification); AND (b) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

Related Definitions: For purposes of this entry the term "chemical warfare agents" are those agents subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (*See* 22 CFR part 121)

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m^3 (100 liters) and less than 20 m^3 (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  a.1. Alloys with more than 25% nickel and 20% chromium by weight;
  a.2. Fluoropolymers;
  a.3. Glass (including vitrified or enameled coating or glass lining);
  a.4. Nickel or alloys with more than 40% nickel by weight;
  a.5. Tantalum or tantalum alloys;
  a.6. Titanium or titanium alloys; *or*
  a.7. Zirconium or zirconium alloys.
b. Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  b.1. Alloys with more than 25% nickel and 20% chromium by weight;
  b.2. Fluoropolymers;
  b.3. Glass (including vitrified or enameled coatings or glass lining);
  b.4. Nickel or alloys with more than 40% nickel by weight;
  b.5. Tantalum or tantalum alloys;
  b.6. Titanium or titanium alloys; *or*
  b.7. Zirconium or zirconium alloys.
c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m3 (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  c.1. Alloys with more than 25% nickel and 20% chromium by weight;
  c.2. Fluoropolymers;
  c.3. Glass (including vitrified or enameled coatings or glass lining);
  c.4. Nickel or alloys with more than 40% nickel by weight;
  c.5. Tantalum or tantalum alloys;
  c.6. Titanium or titanium alloys; *or*
  c.7. Zirconium or zirconium alloys.
d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m^2, but greater than 0.15 m^2, and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
  d.1. Alloys with more than 25% nickel and 20% chromium by weight;
  d.2. Fluoropolymers;
  d.3. Glass (including vitrified or enameled coatings or glass lining);
  d.4. Graphite or carbon-graphite;
  d.5. Nickel or alloys with more than 40% nickel by weight;
  d.6. Silicon carbide;
  d.7. Tantalum or tantalum alloys;
  d.8. Titanium or titanium alloys;
  d.9. Titanium carbide; *or*
  d.10. Zirconium or zirconium alloys.
e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
  e.1. Alloys with more than 25% nickel and 20% chromium by weight;
  e.2. Fluoropolymers;
  e.3. Glass (including vitrified or enameled coatings or glass lining);
  e.4. Graphite or carbon-graphite;
  e.5. Nickel or alloys with more than 40% nickel by weight;
  e.6. Tantalum or tantalum alloys;
  e.7. Titanium or titanium alloys; *or*
  e.8. Zirconium or zirconium alloys.
f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
  f.1. Alloys with more than 25% nickel and 20% chromium by weight; *or*
  f.2. Nickel or alloys with more than 40% nickel by weight.
g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  g.1. Nickel or alloys with more than 40% nickel by weight;
  g.2. Alloys with more than 25% nickel and 20% chromium by weight;
  g.3. Fluoropolymers;
  g.4. Glass or glass lined (including vitrified or enameled coatings);
  g.5. Tantalum or tantalum alloys;
  g.6. Titanium or titanium alloys; *or*
  g.7. Zirconium or zirconium alloys.
h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  h.1. Alloys with more than 25% nickel and 20% chromium by weight;
  h.2. Fluoropolymers;
  h.3. Glass (including vitrified or enameled coatings or glass lining);
  h.4. Graphite or carbon-graphite;
  h.5. Nickel or alloys with more than 40% nickel by weight;
  h.6. Tantalum or tantalum alloys;
  h.7. Titanium or titanium alloys; *or*
  h.8. Zirconium or zirconium alloys.
i. Multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps, with manufacturer's specified maximum flow-rate greater than 0.6 m^3/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m^3/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), and casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

i.1. Alloys with more than 25% nickel and 20% chromium by weight;
i.2. Ceramics;
i.3. Ferrosilicon;
i.4. Fluoropolymers;
i.5. Glass (including vitrified or enameled coatings or glass lining);
i.6. Graphite or carbon-graphite;
i.7. Nickel or alloys with more than 40% nickel by weight;
i.8. Tantalum or tantalum alloys;
i.9. Titanium or titanium alloys, *or*
i.10. Zirconium or zirconium alloys.

j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000° C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:
j.1. Alloys with more than 25% nickel and 20% chromium by weight;
j.2. Ceramics; *or*
j.3. Nickel or alloys with more than 40% nickel by weight.

Technical Note: Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising the List of Items Controlled to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number
Related Controls: N/A
Related Definitions: For purposes of this entry, isolators include flexible isolators, dry boxes, anaerobic chambers and glove boxes.
Items:
a. Complete containment facilities at P3 or P4 containment level.

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 20 liters.

Technical Note: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:
c.1. One or more sealing joints within the steam containment area;
c.2. A flow rate greater than 100 liters per hour;
c.3. Components of polished stainless steel or titanium; *and*
c.4. Capable of in-situ steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and accessories, as follows:
d.1. Cross (tangential) flow filtration equipment capable of separation of pathogenic microorganisms, viruses, toxins or cell cultures, without the propagation of aerosols, having all of the following characteristics:
d.1.a. A total filtration area equal to or greater than 1 square meter (1 m^2); *and*
d.1.b. Capable of being sterilized or disinfected in-situ.

N.B.: 2B352.d.1 does not control reverse osmosis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration components (*e.g.*, modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each component and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

Technical Note: In this ECCN, "sterilized" denotes the elimination of all viable microbes from the equipment through the use of either physical (*e.g.*, steam) or chemical agents. "Disinfected" denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect. "Disinfection" and "sterilization" are distinct from "sanitization", the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.

f. Protective and containment equipment, as follows:
f.1. Protective full or half suits, or hoods dependant upon a tethered external air supply and operating under positive pressure;

Technical Note: This entry does not control suits designed to be worn with self-contained breathing apparatus.

f.2. Class III biological safety cabinets or isolators with similar performance standards, *e.g.*, flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow).

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m^3 or greater.

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is amended by revising the License Requirements section to read as follows:

2E001 "Technology according to the General Technology Note for the "development" of equipment or "software" controlled by 2A (except 2A991, 2A993, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997 or 2B998), or 2D (except 2D991, 2D992, or 2D994).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002.	NS Column 1
MT applies to "technology" for items controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, 2D001 or 2D101 for MT reasons.	MT Column 1
NP applies to "technology" for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D001, 2D002, 2D101, 2D201 or 2D202 for NP reasons.	NP Column 1
NP applies to "technology" for items controlled by 2A290 to 2A293, 2B290, or 2D290 for NP reasons.	NP Column 2
CB applies to "technology" for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 3

Control(s)	Country chart
AT applies to entire entry	AT Column 1

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E002 is amended by revising the License Requirements section to read as follows:

2E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 2A, (except 2A991, 2A993, or 2A994) or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for equipment controlled by 2A001, 2B001 to 2B009.	NS Column 1
MT applies to "technology" for equipment controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116 or 2B117 for MT reasons.	MT Column 1
NP applies to "technology" for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232 for NP reasons.	NP Column 1
NP applies to "technology" for equipment controlled by 2A290 to 2A293, 2B290 for NP reasons.	NP Column 2
CB applies to "technology" for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 3
AT applies to entire entry	AT Column 1

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

Dated: May 29, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–14602 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group, Ltd. The ANADA provides for the oral use of pyrantel pamoate paste for the removal and control of certain internal parasites in horses and ponies.

DATES: This rule is effective June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200–350 that provides for the use of EXODUS (pyrantel pamoate) Paste for the removal and control of certain internal parasites in horses and ponies. Cross Vetpharm Group Ltd.'s EXODUS Paste is approved as a generic copy of Pfizer, Inc.'s STRONGID (pyrantel pamoate) Paste approved under NADA 129–831. The ANADA is approved as of March 25, 2003, and the regulations are amended in 21 CFR 520.2044 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.2044 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 520.2044 Pyrantel pamoate paste.

(a) * * *

(3) Each mL contains 171 mg pyrantel base (as pyrantel pamoate).

(b) * * *

(3) No. 061623 for use of product described in paragraph (a)(3) of this section.

* * * * *

Dated: May 27, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–14546 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two approved new

animal drug applications (NADAs) from Anthony Products Co. to Cross Vetpharm Group Ltd.

DATES: This rule is effective June 10, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, has informed FDA that it has transferred ownership of, and all rights and interest in, the following two approved NADAs to Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland:

NADA Number	Trade Name
065–505	MICROCILLIN Injectable Suspension
065–506	COMBICILLIN Injectable Suspension

Accordingly, the agency is amending the regulations in 21 CFR 522.1696a and 522.1696b to reflect the transfer of ownership.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1696a [Amended]

■ 2. Section 522.1696a *Penicillin G benzathine and penicillin G procaine sterile suspension* is amended in paragraph (b)(1) by removing "000864, 010515, and 049185" and by adding in its place "010515, 049185, and 061623"; and in paragraph (b)(3) by removing "000864, 010515, and 059130" and by adding in its place "010515, 059130, and 061623".

§ 522.1696b [Amended]

■ 3. Section 522.1696b *Penicillin G procaine aqueous suspension* is amended in paragraph (b)(2) by removing "000864 and 055529" and by adding in its place "055529 and 061623"; in paragraph (d)(2)(i)(A) by removing "000864, 010515, 053501, and 059130" and by adding in its place "010515, 053501, 059130, and 061623"; and in paragraph (d)(2)(iii)(A) by removing "000864, 010515, 053501, and 059130" and by adding in its place "010515, 053501, and 059130".

Dated: May 19, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14547 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for use of an approved fenbendazole Type A medicated article to make Type B and Type C medicated feeds used for the control of gastrointestinal worms in horses.

DATES: This rule is effective June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to NADA 131–675 that provides for the use of SAFE-GUARD (fenbendazole) 20% Type A medicated article to make Type B and Type C medicated horse feeds. The medicated feeds are used for the control of large strongyles (*Strongylus edentatus, S. equinus, S. vulgaris, Triodontophorus* spp.), small strongyles (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp.), pinworms (*Oxyuris equi*), and ascarids (*Parascaris equorum*) in horses. The NADA is approved as of March 14, 2003 , and the regulations are amended in 21 CFR 558.258 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning March 14, 2003.

The agency has determined under § 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.258 is amended by redesignating paragraph (e)(4) as paragraph (e)(5) and by adding new paragraph (e)(4) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(e) * * *

(4) *Horses.*

Amount fenbendazole in grams per ton	Indications for use	Limitations	Sponsor
(i) 4,540	5 mg/kg body weight (2.27 mg/lb) for the control of large strongyles (*Strongylus edentatus, S. equinus, S. vulgaris, Triodontophorus* spp.), small strongyles (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp.), and pinworms (*Oxyuris equi*); 10 mg/kg body weight (4.54 mg/lb) for the control of ascarids (*Parascaris equorum*).	Feed at the rate of 0. 1lb of feed per 100 lb of body weight to provide 2.27 mg fenbendazole/lb of body weight in a 1-day treatment or 0.2 lb of feed per 100 lb of body weight to provide 4.54 mg fenbendazole/lb of body weight in a 1-day treatment. All horses must be eating normally to ensure that each animal consumes an adequate amount of the medicated feed. Regular deworming at intervals of 6 to 8 weeks may be required due to the possibility of reinfection. Do not use in horses intended for food.	057926
(ii) [Reserved]			

* * * * *

Dated: May 27, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–14545 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–087]

Drawbridge Operation Regulations; NE. 8th Street (George Bush Boulevard) Bridge, Atlantic Intracoastal Waterway, Mile 1038.7, Delray Beach, Palm Beach County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the NE. 8th Street (George Bush Boulevard) bridge at Delray Beach across the Atlantic Intracoastal Waterway, mile 1038.7 in Delray Beach, Palm Beach County, Florida. Under this deviation, the bridge need only open a single-leaf of the bridge and shall provide double-leaf openings with two-hours advance notice to the bridge tender. This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge.

DATES: This deviation is effective from 7 a.m. on June 16, 2003, until 6 p.m. on August 16, 2003.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–03–087] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations of the NE. 8th Street bridge, mile 1038.7 at Delray Beach require the bridge to open on signal; except that, from November 1 to May 31, from 11 a.m. to 6 p.m., on Saturdays, Sundays and Federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour. On May 7, 2003, Palm Beach County, the bridge owner, requested a deviation from the current regulations to allow the bridge to only open a single-leaf of the bridge. Double-leaf openings are available with two-hours advance notice to the bridge tender. The other leaf of the bridge will remain in the upright, open to navigation position. This schedule will be in effect from 7 a.m. on June 16, 2003, to 6 p.m. on July 3, 2003, and from 7 a.m. on July 8, 2003, to 6 p.m. on August 16, 2003. During all other times, the bridge will open according to the published schedule in 33 CFR 117.261(z). This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge structure.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261(z). Under this deviation, the NE. 8th Street (George Bush Boulevard) bridge need only open a single-leaf of the bridge from 7 a.m. on June 16, 2003, to 6 p.m. on July 3, 2003, and from 7 a.m. on July 8, 2003, to 6 p.m. on August 16, 2003. During this time the bridge shall provide double-leaf openings with two-hours advance notice to the bridge tender.

Dated: May 29, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–14590 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–217]

RIN 1625–AA00

Safety Zone; Grosse Point Shores, Lake St. Clair, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Celebrate America fireworks display on June 14, 2003. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake St. Clair.

DATES: This temporary final rule is effective from 8 p.m. until 11 p.m. on June 14, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–217] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207, between 8 a.m. and 4 p.m.,

Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207. The telephone number is (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing safety zones to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°26′4″ N, 082°52′1″ W (approximately 500′ off shore of 930 Lake Shore Drive, Grosse Point Shores, MI). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 8 p.m. until 11 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, we will issue maritime advisories widely available to users of Lake St. Clair by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES.**) Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1 of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–217 is added to read as follows:

§ 165.T09–217 Safety Zone; Lake St. Clair, Grosse Pointe Shores, MI.

(a) *Location.* The safety zone will encompass all waters of Lake St. Clair surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42° 26′4″ N, 082° 52′1″ W (approximately 500′ off shore of 930 Lake Shore Drive, Grosse Point Shores, MI). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 8 p.m. (local time) until 11 p.m. (local time) on June 14, 2003. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: May 27, 2003.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–14435 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR PART 165

CGD09–03–216

RIN 1625–AA00

Safety Zone; Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the International Freedom Festival Fireworks display on June 25, 2003. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Detroit River.

DATES: This temporary final rule is effective from 5 p.m. until 12 a.m. on June 25, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–216] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass the portion of the Detroit River bounded on the South by the International Boundary, on the West by 83°03′30″ W, on the North by the City of Detroit shoreline and on the East by 083°01′ W. These geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 5 p.m. until 12 midnight on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1 of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–216 is added to read as follows:

§ 165.T09–216 Safety Zone; Detroit River, Detroit, MI.

(a) *Location.* The waters of the Detroit River bounded on the South by the International Boundary, on the West by 83°03′30″ W, on the North by the City of Detroit Shoreline and on the East by 083° 01′ W (NAD 83).

(b) *Effective time and date.* This section is effective from 5 p.m. until 12 a.m. on June 25, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: May 27, 2003.

P. G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–14434 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 13

RIN 2900–AL29

Compensation and Pension Provisions of the Veterans Education and Benefits Expansion Act of 2001

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations and its Veterans Benefit Administration fiduciary activities regulations to reflect statutory provisions of the Veterans Education and Benefits Expansion Act of 2001. These changes address the presumption of service connection for respiratory cancers based on herbicide exposure in Vietnam; benefits for Gulf War veterans' chronic disabilities; repeal of the limitation of benefits for incompetent institutionalized veterans; non-service-connected pension eligibility; the limitation on pension for certain recipients of Medicaid-covered nursing home care; the prohibition on certain benefits to fugitive felons; and the limitation on the payment of compensation for veterans remaining incarcerated since October 7, 1980. This document also makes nonsubstantive changes for purposes of clarity and miscellaneous technical amendments in those regulations.

DATES: *Effective Date:* June 10, 2003.

Applicability Dates: In accordance with statutory provisions, the following amendments in this final rule will be applied retroactively:

The amendments to 38 CFR 3.3 are applicable September 17, 2001. The amendment to 38 CFR 3.307(a)(6)(ii) is applicable January 1, 2002. The amendment to 38 CFR 3.307(a)(6)(iii) is applicable December 27, 2001. The amendments to 38 CFR 3.317 are applicable March 1, 2002. The amendments to 38 CFR 3.353, 3.400(e), 3.452, 3.454, 3.501, 3.551, 3.552, 3.557 through 3.559, 3.666, 3.801, 3.852, 3.853, 3.1007, 13.70, 13.71, 13.74 through 13.77, 13.107, 13.108, and 13.109 are applicable December 27, 2001. The amendment to 38 CFR 3.665(a) is applicable December 27, 2001. The amendment to 38 CFR 3.665(c) is applicable April 1, 2002. The removal of the authority citation following 38 CFR 3.665(m) and the addition of 38 CFR 3.665(n) are applicable December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: On December 27, 2001, the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103 (the Act), was enacted. Several provisions of the Act directly affect the payment of VA compensation or pension benefits. These provisions concern presumptions based on herbicide exposure in Vietnam, Gulf War veterans' chronic disabilities, the repeal of the limitation of benefits for incompetent institutionalized veterans, non-service-connected pension eligibility, the extension of the limitation on pension for certain recipients of Medicaid-covered nursing home care, the prohibition on certain benefits to fugitive felons and their dependents, and a limitation on the payment of compensation for certain veterans remaining incarcerated since October 7, 1980.

Section 201 of the Act amended 38 U.S.C. 1116(a)(2)(F) to eliminate the requirement that respiratory cancer (cancers of the lung, bronchus, larynx, trachea) become manifest within 30 years of the veteran's departure from Vietnam to qualify for the presumption of service connection based on exposure to herbicides such as Agent Orange. Section 201 also expanded the presumption of exposure to herbicides to include all Vietnam veterans, not just those who have a disease on the presumptive list in 38 U.S.C. 1116(a)(2) and 38 CFR 3.309(e). In this document we are amending 38 CFR 3.307 to reflect these changes. In addition, section 201 added Type 2 diabetes to the presumptive list in 38 U.S.C. 1116(a)(2). This disease had previously been added to VA's list in 38 CFR 3.309(e).

Section 202(a) of the Act amended 38 U.S.C. 1117 to expand the definition of "qualifying chronic disability" (for service connection) to include not only a disability resulting from an undiagnosed illness as stated in prior law, but also any diagnosed illness that the Secretary determines in regulations warrants a presumption of service-connection under 38 U.S.C. 1117(d). We

are amending § 3.317 to reflect that change.

Section 202(a) also expanded the definition of "qualifying chronic disability" to include a "medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms." We believe this provision may be difficult for VA adjudicators to understand and apply consistently due to the highly technical medical aspects of the task of determining whether an illness meets the criteria of "medically unexplained chronic multisymptom illness * * * that is defined by a cluster of signs or symptoms." Therefore this rulemaking clarifies this category of illnesses by defining the term "medically unexplained chronic multisymptom illness" in new § 3.317(a)(2)(ii) to mean "a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities." We also state: "Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained."

This definition is based on the Joint Explanatory Statement for H.R. 1291, the Veterans Education and Benefits Expansion Act of 2001, December 13, 2001, 147 CR 13235 at 13238, which said "it is the intent of the Committees to ensure eligibility for chronically disabled Gulf War veterans not withstanding [sic] a diagnostic label by a clinician in the absence of conclusive pathophysiology or etiology." The Joint Explanatory Statement also stated, "The compromise agreement's definition [of medically unexplained chronic multisymptom illness * * * that is defined by a cluster of signs or symptoms] encompasses a variety of unexplained clinical conditions, characterized by overlapping symptoms and signs, that share features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities." *Id.* The Joint Explanatory Statement also said, "The Committees do not intent [sic] this definition to assert that the cited syndromes can be clinically or scientifically linked to Gulf War service based on current evidence, nor do they intend to include chronic multisymptom illnesses of partially understood etiology and pathophysiology such as diabetes or multiple sclerosis." *Id.* We are incorporating this guidance into our regulatory criteria for what constitutes such an illness.

The Joint Explanatory Statement also said, "By listing the first three diagnoses as examples, it is the Committees' intend [sic] to give guidance to the Secretary rather than limit eligibility for compensation based upon other similarly described conditions that may be defined or redefined in the future." *Id.* We believe that Congress intended that the Secretary have the authority to decide which illnesses satisfy the criteria and to add to this list as he or she becomes aware of them (through advances in medical or other scientific knowledge). As yet, VA has not identified any illness other than the three identified in section 202(a) as a "medically unexplained chronic multisymptom illness," and we therefore specify in new § 3.317(a)(2)(i)(B)(*1*) through (*3*) only chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome as currently meeting this definition. We also provide in new § 3.317(a)(2)(i)(B)(*4*) that the list may be expanded in the future when the Secretary determines that other illnesses meet the criteria for a "medically unexplained chronic multisymptom illness."

In addition, section 202(b) changed the phrase "Neurological signs or symptoms" to "Neurological signs and symptoms," and we are amending 38 CFR 3.317 accordingly.

Section 204 of the Act amended 38 U.S.C. 5503 to eliminate the withholding of benefits for incompetent, institutionalized veterans without dependents. This document therefore removes the VA regulations on this type of withholding (38 CFR 3.557, 3.559, 13.74 through 13.77, and 13.108), and amends § 3.558, to reflect this change. This document amends § 3.852 to remove the references to institutional awards made under 38 U.S.C. 5503(b). (This document also clarifies that the authority for VA to pay benefits to an institution housing an incompetent veteran is 38 U.S.C. 5502.)

In addition, this document generally removes the references to §§ 3.557, 3.559, and 13.108 that are found in title 38. Specifically, this document removes the references to 38 CFR 3.557 contained in 38 CFR 3.353, 3.400, 3.452, 3.454, 3.501, 3.551, 3.552, 3.801, and 3.853. (We are also changing the heading of § 3.452 to more clearly explain the purpose of that regulation.)

We have retained, however, the references to § 3.557 in §§ 3.558, 3.1003, and 3.1007. Although Public Law 107–103 repealed former 38 U.S.C. 5503(b), the new statute does not require distribution of funds that were properly withheld by VA while former 38 U.S.C. 5503(b) remained in effect, until such time as the veteran regains competency. Also, VA is not obligated under Public Law 107–103 to distribute funds properly withheld under former section 5503(b) to a veteran's survivors in the event that the veteran dies without regaining competency.

This document removes the reference to 38 CFR 3.559 contained in 38 CFR 3.551. This document removes the references to 38 CFR 13.108 contained in 38 CFR 13.70 and 13.71.

We are removing 38 CFR 13.109 because the provisions of that section only pertain to former section 5503(b) and/or former 38 U.S.C. 5505. Section 5505 expired September 30, 1992 (38 U.S.C. 5505(c)), and was later repealed by the Veterans' Benefits Improvements Act of 1994, Public Law 103–446, section 1201(g)(4)(A), 108 Stat. 4645, 4687.

Section 206 of the Act amended 38 U.S.C. 1502(a) to authorize VA to consider a veteran to be permanently and totally disabled for the purposes of non-service-connected disability pension if the veteran is: a patient in a nursing home for long-term care due to disability, or determined to be disabled for purposes of Social Security Administration benefits. This document amends 38 CFR 3.3 to reflect these changes, as well as to reflect expressly the other bases already contained in section 1502(a) for considering persons to be totally and permanently disabled.

Section 207 of the Act added a new 38 U.S.C. 1513, under which a veteran who is age 65 or over and meets the military service and income/net worth requirements for non-service-connected pension is eligible for pension without regard to whether the veteran is permanently and totally disabled. This document amends 38 CFR 3.3 to reflect that change.

Section 504 of the Act amended 38 U.S.C. 5503 to extend the $90 limitation on pension for certain recipients of Medicaid-covered nursing home care to September 30, 2011. This document amends 38 CFR 3.551 to reflect this change.

Section 505 of the Act added a new 38 U.S.C. 5313B to prohibit the payment of benefits to a veteran while he or she is a fugitive felon or to a veteran's dependent while the veteran or the dependent is a fugitive felon. This amendment includes definitions of the terms "fugitive felon" and "felony." The amendment's prohibition applies to compensation, dependency and indemnity compensation, pension, medical care, life insurance, vocational rehabilitation, and education benefits. This document amends 38 CFR 3.665 and 38 CFR 3.666 to reflect this change, including by changing the heading of each of those sections. We are changing the heading of § 3.665 from "Penal institutions—compensation" to "Incarcerated beneficiaries and fugitive felons—compensation," which we believe more clearly identifies the content of that section. For the same reason, we are changing the heading of § 3.666 from "Penal institutions—pension" to "Incarcerated beneficiaries and fugitive felons—pension."

Section 506 of the Act amended 38 U.S.C. 5313 to extend its current limitations on payment of compensation benefits to incarcerated veterans to also apply to any veteran who is entitled to compensation and who on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date; and remains so incarcerated for conviction of that felony as of December 27, 2001, the date of enactment of the Act. This document amends 38 CFR 3.665 to reflect this change. We are also removing the phrase ", or prior to October 7, 1980," from 38 CFR 3.341(b) (referring to veterans rated as unemployable prior to October 7, 1980) since it is now obsolete.

Administrative Procedure Act

Changes made by this final rule merely reflect statutory provisions, are nonsubstantive changes made for purposes of clarity, or are nonsubstantive technical changes. Accordingly, there is a basis for dispensing with the prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule does not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers for this rule are 64.104, 64.105, 64.109, and 64.110.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 13

Surety bonds, Trusts and trustees, and Veterans.

Approved: March 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 3 and 13 are amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.3 is amended by:
■ A. Removing the authority citation following paragraph (a)(3)(v), redesignating paragraphs (a)(3)(v) and (a)(3)(vi) as new paragraphs (a)(3)(vi)(B) introductory text and (a)(3)(v), respectively.
■ B. Adding new paragraphs (a)(3)(vi)(A) and (a)(3)(vi)(B)(*1*) through (*4*).
■ C. In newly redesignated paragraph (a)(3)(v), removing "§ 3.23." and adding, in its place, "§ 3.23; and".
■ D. In newly redesignated paragraph (a)(3)(vi)(B) introductory text, removing "misconduct; and" and adding, in its place, "misconduct. For purposes of this paragraph, a veteran is considered permanently and totally disabled if the veteran is any of the following:".

The additions read as follows:

§ 3.3 Pension.

* * * * *

(a) * * *

(3) * * *

(vi)(A) Is age 65 or older; or

(B) * * *

(*1*) A patient in a nursing home for long-term care because of disability; or

(*2*) Disabled, as determined by the Commissioner of Social Security for purposes of any benefits administered by the Commissioner; or

(*3*) Unemployable as a result of disability reasonably certain to continue throughout the life of the person; or

(*4*) Suffering from:

(*i*) Any disability which is sufficient to render it impossible for the average person to follow a substantially gainful occupation, but only if it is reasonably certain that such disability will continue throughout the life of the person; or

(*ii*) Any disease or disorder determined by VA to be of such a nature or extent as to justify a determination that persons suffering from that disease or disorder are permanently and totally disabled.

(Authority: 38 U.S.C. 1502(a), 1513, 1521, 1522)

* * * * *

§ 3.307 [Amended]

■ 3. Section 3.307 is amended by:
■ A. In paragraph (a)(6)(ii), removing ", and respiratory cancers within 30 years,".
■ B. In paragraph (a)(6)(iii), removing "and has a disease listed at § 3.309(e)" and adding, in its place, a comma.

■ 4. Section 3.317 is amended by:
■ A. In paragraph (a)(1) introductory text, removing "shall" and adding, in its place, "will", and removing "chronic disability resulting from an illness or combination of illnesses manifested by one or more signs or symptoms such as those listed in paragraph (b) of this section" and adding, in its place, "a qualifying chronic disability".
■ B. Redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(3) through (a)(6), respectively.
■ C. Adding a new paragraph (a)(2).
■ D. In paragraph (b) introductory text, removing "undiagnosed illness" and adding, in its place, "undiagnosed illness or medically unexplained chronic multisymptom illness".
■ E. In paragraph (b)(6), removing "or" and adding, in its place, "and".

■ F. In paragraph (d)(1), removing "Persian Gulf veteran'." and adding, in its place, "*Persian Gulf veteran*".

The addition reads as follows:

§ 3.317 Compensation for disabilities occurring in Persian Gulf War veterans.

(a) * * *

(2)(i) For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) The following medically unexplained chronic multisymptom illnesses that are defined by a cluster of signs or symptoms:

(*1*) Chronic fatigue syndrome;

(*2*) Fibromyalgia;

(*3*) Irritable bowel syndrome; or

(*4*) Any other illness that the Secretary determines meets the criteria in paragraph (a)(2)(ii) of this section for a medically unexplained chronic multisymptom illness; or

(C) Any diagnosed illness that the Secretary determines in regulations prescribed under 38 U.S.C. 1117(d) warrants a presumption of service-connection.

(ii) For purposes of this section, the term *medically unexplained chronic multisymptom illness* means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.

* * * * *

§ 3.341 [Amended]

■ 8. Section 3.341 is amended by:

■ A. In paragraph (b), removing ", or prior to October 7, 1980," and removing "required the" and adding, in its place, "required, the".

■ B. In paragraph (c), removing "Division" and adding, in its place, "Service".

§ 3.353 [Amended]

■ 9. Section 3.353(b)(1) is amended by removing "the discontinuance and payment of amounts withheld because of an estate that equals or exceeds the amount specified in § 3.557(b)(4),".

■ 10. Section 3.400 is amended by revising the headings of paragraphs (b)(1) and (e) to read as follows:

§ 3.400 General.

* * * * *

(b) * * *

(1) *Disability pension (§ 3.3).*

* * * * *

(e) *Apportionment (§§ 3.450 through 3.461, 3.551).*

* * * * *

■ 11. Section 3.452 is amended by:

■ A. Revising the section heading.

■ B. In paragraph (c)(1), removing "(c)(3)" and adding, in its place, "(c)(2)".

■ C. Removing paragraph (c)(2).

■ D. Redesignating paragraph (c)(3) as new paragraph (c)(2).

■ E. Revising the authority citation at the end of new paragraph (c)(2).

■ F. In the Cross References, removing "Incompetents; estate equals or exceeds statutory limit and institutionalized. *See* § 3.557."

The revisions read as follows:

§ 3.452 Situations when benefits may be apportioned.

* * * * *

(Authority: 38 U.S.C. 501(a); 5307; 5503(a)).

* * * * *

§ 3.454 [Amended]

■ 12. Section 3.454 is amended by removing paragraphs (c) and (d) and their authority citations, respectively.

§ 3.501 [Amended]

■ 13. Section 3.501 is amended by removing paragraph (i)(7).

■ 14. Section 3.551 is amended by:

■ A. In paragraph (a) introductory text, removing "and for discontinuance of awards for incompetent veterans in § 3.557" and removing "3.559" and adding, in its place, "3.556".

■ B. In paragraph (i), removing "September 30, 2008," and adding, in its place, "September 30, 2011,".

■ C. In the Cross References, removing "Incompetents; hospitalized. See § 3.557."

■ D. Adding authority citations at the end of paragraphs (a) and (b).

The additions read as follows:

§ 3.551 Reduction because of hospitalization.

(a) * * *

(Authority: 38 U.S.C. 5503(a))

(b) * * *

(Authority: 38 U.S.C. 5503(a))

* * * * *

§ 3.552 [Amended]

■ 15. Section 3.552(a)(2) is amended by removing "and § 3.557".

§ 3.557 [Removed and Reserved]

■ 16. Section 3.557 is removed and reserved.

§ 3.558 [Amended]

■ 17. Section 3.558 is amended by

■ A. Removing paragraph (a).

■ B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

■ C. In newly redesignated paragraph (b), removing "§ 3.557(b)" both times it appears and adding, in its place, "former § 3.557(b) (as in effect prior to December 27, 2001)".

§ 3.559 [Removed and Reserved]

■ 18. Section 3.559 is removed and reserved.

■ 19. Section 3.665 is amended by:

■ A. Revising the section heading.

■ B. In paragraph (a), in the first sentence, removing "shall not" and adding, in its place, "will not"; in the second sentence, removing "A" and adding, in its place, "VA will inform a" and removing "shall be informed"; in the third sentence, removing "addition," and adding, in its place, "addition, VA will also notify", removing "shall also be notified", and removing "the Department of Veterans Affairs" and adding, in its place, "VA"; and at the end of the paragraph, adding a sentence.

■ C. Adding paragraph (c)(3).

■ D. Removing the authority citation following paragraph (m).

■ E. Adding paragraph (n).

The revision and additions read as follows:

§ 3.665 Incarcerated beneficiaries and fugitive felons—compensation.

(a) * * * However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (n) of this section.

* * * * *

(c) * * *

(3) A veteran who, on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date, and who remains so incarcerated for a conviction of that felony as of December 27, 2001.

* * * * *

(n) *Fugitive felons.*

(1) Compensation is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Compensation or DIC is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (n) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (n) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran.

(Authority: 38 U.S.C. 501(a), 5313, 5313B; Sec. 506, Pub. L. 107–103, 115 Stat. 996–997)

■ 20. Section 3.666 is amended by:

■ A. Revising the section heading.

■ B. In the introductory text, removing "Where" and adding, in its place, "If"; removing "Payments" and adding, in its place, "However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (e) of this section. Payments", and removing "received in" and adding, in its place, "received by".

■ C. Adding paragraph (e).

The revision and additions read as follows:

§ 3.666 Incarcerated beneficiaries and fugitive felons—pension.

* * * * *

(e) *Fugitive felons.*

(1) Pension is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Pension or death pension is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (e) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (e) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran.

(Authority: 38 U.S.C. 501(a), 5313, 5313B)

■ 21. Section 3.801 is amended by:

■ A. In paragraph (e), removing "§§ 3.551 and 3.557" and adding, in its place, "§ 3.551".

■ B. Adding an authority citation at the end of the section.

The addition reads as follows:

§ 3.801 Special acts.

* * * * *

(Authority: 38 U.S.C. 501(a), 5503)

■ 22. Section 3.852 is amended by:

■ A. In paragraph (a)(2), removing the semicolon and adding, in its place, a period.

■ B. Removing paragraph (a)(3).

■ C. Revising the authority citation at the end of paragraph (a).

■ D. Removing paragraph (d), and redesignating paragraph (e) as paragraph (d).

The revision reads as follows:

§ 3.852 Institutional awards.

(a) * * *

(Authority: 38 U.S.C. 501(a); 5307; 5502)

* * * * *

§ 3.853 [Amended]

■ 23. Section 3.853 is amended by removing paragraph (d).

■ 24. Section 3.1007 is amended by:

■ A. Removing "under § 3.557(b)" and adding, in its place, "under former § 3.557(b) (as applicable prior to December 27, 2001)".

■ B. Removing "the amount specified in § 3.557(b)(4)" and adding, in its place, "the statutory maximum".

■ C. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.1007 Hospitalized incompetent veterans.

* * * * *

(Authority: 38 U.S.C. 5503)

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

■ 25. The authority citation for part 13 continues to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

■ 26. Section 13.70 is amended by:

■ A. Redesignating paragraph (a)(1) as paragraph (a) and removing paragraph (a)(2).

■ B. Adding an authority citation at the end of the section.

The addition reads as follows:

§ 13.70 Apportionment of benefits to dependents.

* * * * *

(Authority: 38 U.S.C. 501, 512, 5502, 5503)

■ 27. Section 13.71 is amended by:

■ A. Removing paragraph (a) heading and paragraph (b).

■ B. Redesignating paragraphs (a)(1) through (a)(1)(iii) as paragraphs (a) through (a)(3), respectively.

■ C. Redesignating paragraphs (a)(2) through (a)(2)(iii) as paragraphs (b) through (b)(3), respectively; and redesignating paragraph (a)(3) as paragraph (c).

■ D. In newly redesignated paragraph (a) introductory text and paragraph (c), removing "(a)(2)" and adding, in its place, "(b)".

■ E. In newly redesignated paragraph (b)(3), removing "shall determine" and adding, in its place, "determines".

■ F. In newly redesignated paragraph (c), removing "may" and adding, in its place, "will".

■ G. Revising the authority citation.

The revision reads as follows:

§ 13.71 Payment of cost of veteran's maintenance in institution.

* * * * *

(Authority: 38 U.S.C. 501, 512, 5502, 5503)

§§ 13.74 through 13.77 [Removed and Reserved]

■ 28. Sections 13.74 through 13.77 are removed and reserved.

■ 29. Section 13.107 is amended by revising the authority citation to read as follows:

§ 13.107 Accounts of chief officers of public or private institutions.

* * * * *

(Authority: 38 U.S.C. 5502)

§§ 13.108 and 13.109 [Removed and Reserved]

■ 30. Sections 13.108 and 13.109 are removed and reserved.

[FR Doc. 03–14415 Filed 6–9–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 179–1179a; FRL–7510–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the state of Kansas. The purpose of this revision is to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated

into the SIP to assure that local-specific air quality issues were addressed with Federally-enforceable provisions. Due to the continued evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of air quality standards for Wyandotte County.

DATES: This direct final rule will be effective August 11, 2003, unless EPA receives adverse comments by July 10, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at *hamilton.heather@epa.gov*.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

This action approves the deletion of the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated into the SIP on April 3, 1981, and codified in 40 CFR 52.870(c). Due to the continuing evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of the air quality.

The Wyandotte County Air Pollution Control Regulations 2A–1 through 2A–32 have been cross-reviewed with the Kansas Air Quality Regulations and the Kansas Statutes. All of the former Wyandotte County Air Pollution Control regulations have an equivalent state rule or statute with the exception of four regulations. The content of these four regulations, 2A–2 "Purpose," 2A–3 "Definitions" (definition of "Vehicle" to include "railroad engines"), 2A–23 "Restriction of Emissions of Odors," and 2A–32 "Conflict of Ordinances, Effect of Partial Invalidity," do not directly affect air quality standards.

The Kansas Department of Health and Environment approved the recommendation to remove these rules on January 14, 2003. The rules will be deleted with this direct final action.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is approving the revision to the Kansas SIP to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. On January 14, 2003, the state of Kansas submitted a request for EPA to remove Wyandotte County Air Pollution Control regulations which are no longer necessary to assure continued maintenance of the air quality standards for the area. The Wyandotte County regulations that affect air quality have been replicated in the Kansas Air Quality Regulations or Kansas Statutes.

We are processing this action as a direct final action because it removes duplicative regulations from the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 30, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Part 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

■ 2. Section 52.870 is amended by:

■ a. Revising paragraph (b)(3); and

■ b. In the table for paragraph (c) by removing the heading "Wyandotte County" and all entries for 2A–1 through 2A–32.

The revision reads as follows:

§ 52.870 Identification of Plan.

* * * * *

(b) * * *

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

* * * * *

[FR Doc. 03–14456 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

RIN 1660–AA15

Disaster Assistance; Public Assistance Program and Community Disaster Loan Program Statutory Changes

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Adoption of interim final rule as final.

SUMMARY: This final rule adopts the interim final rule, published in the **Federal Register** on May 4, 2001, to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans.

DATES: The Interim Final Rule published on May 4, 2001 at 66 FR

22443 became effective on October 30, 2000.

FOR FURTHER INFORMATION CONTACT: James Walke, FEMA, 500 C Street, SW., Washington, DC 20472, (facsimile) (202) 646–3304, or e-mail *james.walke@dhs.gov*.

SUPPLEMENTARY INFORMATION: On May 4, 2001, FEMA published in the **Federal Register** an interim final rule to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans (66 FR 22443, May 4, 2001). The closing date for the submission of comments was July 3, 2001.

Comments on the Interim Final Rule

By the close of the comment period, FEMA received one comment on the interim final rule from an emergency management association. The major concern expressed by the membership of the association was the reduction from 90% to 75% of the Federal share for alternate projects. The association recognized that this reduction is a statutory change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172 and therefore beyond the scope of FEMA's rulemaking authority.

Adoption as Final Rule

Accordingly, the interim final rule to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans which was published at 66 FR 22443 on May 4, 2001, is adopted as a final rule without change.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this final rule is to amend our Stafford Act rules to incorporate part of the changes mandated by the Disaster Mitigation Act of 2000 for the Public Assistance Program and for Community Disaster Loans. Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion. The changes reflected in this rule are exempt from NEPA because they reflect administrative changes to the programs that have no potential to affect the environment. We would perform an environmental review under 44 CFR part 10, Environmental Considerations, on each proposed project that we would fund and implement under the authorities covered in this rule.

Paperwork Reduction Act

This rule is not subject to the provisions of the Paperwork Reduction Act. It does not require any new information collections and therefore would not revise the number and types of responses, frequency, and burden hours.

Regulatory Planning and Review

We have prepared and reviewed this final rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule implements certain mandatory provisions of the Disaster Mitigation Act of 2000 that relate to the Public Assistance Program and the Community Disaster Loan Program. The authorities mandated would not of themselves have an annual effect on the economy of $100 million or more. We anticipate that the impacts of the alternate projects provision will be neutral, expecting that the savings from reducing the Federal share of the Federal estimate from 90 percent to 75 percent will be offset by fewer applications for assistance under this authority. We do not anticipate any change in costs by adding irrigation facilities to the definition of eligible private nonprofit facilities inasmuch as the rule reflects the statute and codifies our current policy and practices. Most of the private nonprofit organizations that will have to apply for SBA disaster loans before being eligible to apply for FEMA disaster assistance have damages well below the SBA loan limit of $1,500,000. We do not expect this provision will have an impact of $100,000,000 or more per year. Finally, we do not anticipate that savings from amendments to the Community Disaster Loan provision will exceed $100,000,000 over a several-year period—our experience is that disaster loan forgiveness rates are between 60 and 70 percent. Over the last 25 years, the annual amount of money forgiven has been an average of $2.7 million. We know of no conditions that would qualify the rule as a significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under Executive Order 13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule would define and establish the conditions and criteria under which FEMA would grant public assistance and make community disaster loans. The rule would in no way that we foresee affect the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

The interim final rule published on May 4, 2001 at 66 FR 22443 is adopted as final without change.

Dated: June 2, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14487 Filed 6–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[WT Docket No. 03–66; RM–10586; WT Docket No. 03–67; MM Docket No. 97–217; WT Docket No. 02–68; RM–9718; FCC 03–56]

Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: This document suspends construction deadlines for Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) authorization holders until the completion of a companion rulemaking proceeding. The MO&O also temporarily suspends acceptance of applications for new ITFS licenses and applications to amend or modify either ITFS or MDS stations in the 2500–2690 MHz band, subject to certain exceptions. The purpose of the MO&O is to ensure that the Federal Communications Commission (FCC) neither requires nor allows significant investments in new or modified facilities that would be inconsistent with new rules proposed in the companion NPRM.

DATES: Effective June 10, 2003, § 21.930 is suspended indefinitely.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek or Charles Oliver at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau or via the Internet to *nzaczek@fcc.gov or coliver@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Memorandum Opinion and Order, FCC 03–56, adopted on March 13, 2003, and released on April 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

■ 1. In this *Memorandum Opinion and Order*, the FCC:

- Temporarily suspends, until the completion of this rulemaking proceeding, acceptance of applications for new ITFS licenses and applications to amend or modify either ITFS or MDS stations in the 2500–2690 MHz band, subject to certain exceptions; and
- Suspends the current construction deadline for MDS and ITFS authorization holders until the completion of this rulemaking proceeding.

Ordering Clauses

2. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this Memorandum Opinion and Order is hereby *adopted*,

3. The five-year build-out requirement in § 21.930 of the FCC's rules, 47 CFR 21.930, *is suspended* until further notice.

4. The build-out requirements for site-based ITFS and MDS licensees and permittees that have not expired as of the release date of this *Memorandum Opinion and Order are suspended* until further notice.

5. Applications for new ITFS licenses, major modifications of MDS stations, or changes to ITFS stations other than minor modifications, applications for license assignments or transfers of control *will not be accepted* until further notice.

6. Mutually exclusive ITFS applications for acceptance of settlement agreements filed after the release date of this *Memorandum Opinion and Order will not be accepted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission suspends 47 CFR 21.930 indefinitely.

§ 21.930 [Suspended]

Section 21.930 is suspended indefinitely.

[FR Doc. 03–14221 Filed 6–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; DA 03–1753]

Petition for Declaratory Ruling on Local Number Portability Implementation Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for declaratory ruling from the Cellular Telecommunications & Internet Association (CTIA) asking the Commission to clarify carrier obligations with respect to a number of local number portability (LNP) implementation issues.

DATES: Comments are due on or before June 13, 2003, and reply comments are due on or before June 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. On May 13, 2003, the Cellular Telecommunications & Internet Association filed a Petition for Declaratory Ruling (Petition), asking the Commission to clarify carrier obligations (as found at 47 CFR 52.23—52.33) with respect to a number of local number portability implementation issues. CTIA contends that, although many of the issues associated with the implementation of LNP have been resolved by consensus in industry fora, including the North American Numbering Council (NANC), there are a number of outstanding issues that cannot be resolved without specific direction from the Commission.

2. We seek comment on the issues raised in the Petition. Interested parties may file comments on or before June 13, 2003. Reply comments are due June 24, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments and reply comments should be filed in the docket number, CC Docket No. 95–116.

3. This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's Rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

5. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail to *qualexint@aol.com*.

6. The full text of the Petition and responsive comments will be available electronically on the Commission's ECFS under CC Docket No. 95–116. In addition, copies of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov*. This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro*. For further information concerning this proceeding, contact Jennifer Salhus, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice) or (202) 418–1169 (TTY), or Pam Slipakoff, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–1500 (voice), or (202) 418–0484 (TTY).

Federal Communications Commission.

D'Wana Terry,

Acting Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 03–14740 Filed 6–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA34

Removal of References to the Transportation Security Administration and the United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating the regulatory language to reflect the departures of the Transportation Security Administration and the United States Coast Guard to the new Department of Homeland Security, and to change the name of the Urban Mass Transportation Administration (UMTA) to the Federal Transit Administration (FTA).

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Thibodeau, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh St., SW., Room 10424, Washington, DC 20590, (202) 366–4723.

SUPPLEMENTARY INFORMATION: This final rule deletes references to the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) in 49 CFR part 1 that concern delegations, organization, and duties within the Department of Transportation. It also deletes responsibilities and duties to TSA and USCG. These two agencies transferred with other agencies to form the new Department of Homeland Security, and are no longer part of the Department of Transportation. Additionally, this rule is changing the name of the Urban Mass Transit Administration (UMTA) to the Federal Transit Administration (FTA) to properly reflect the agency's name.

This final rule does not impose substantive requirements. It simply updates the CFR to reflect the departures of TSA and USCG from the Department of Transportation. The final rule is technical in nature and relates only to Departmental management, organization, procedure, and practice. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). These changes will not have substantive impact. The Department does not expect to receive substantive comments on the rule. Therefore, the Department finds that there is good cause under 5 U.S.C. 553 (d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This statute is not applicable because there was no issuance of a notice of proposed rulemaking (NPRM); however, I hereby certify this final rule, which amends the CFR to reflect the departure of TSA and USCG from the Department of Transportation to the new Department of Homeland Security, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act of 1995

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

G. Environmental Impact

Because this rule concerns the updating of CFR provisions to reflect the departure of TSA and USCG from the Department of Transportation, this final rule is not a major OST action requiring the preparation of an environmental impact statement or environmental assessment.

List of Subjects in 49 CFR Part 1

Authority delegations, Organization and functions.

■ For the reasons set out in the preamble, the Department of Transportation amends 49 CFR part 1 as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

■ 1. Revise the authority citation for part 1 to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064.

■ 2. In § 1.2 remove paragraphs (a) and (l), redesignate existing paragraphs (b) through (k) as (a) through (j), and revise new paragraph (e) to read as follows:

§ 1.2 Definitions.

* * * * *

(e) The Federal Transit Administrator.

* * * * *

■ 3. In § 1.3 remove paragraphs (b)(1) and (b)(12), redesignate existing paragraphs (b)(2) through (11) as (b)(1) through (10), and revise new paragraph (b)(5) to read as follows:

§ 1.3 Organization of the Department.

* * * * *

(b) * * *

(5) The Federal Transit Administration, headed by the Administrator.

* * * * *

■ 4. In § 1.4 remove paragraphs (b) and (n), redesignate existing paragraphs (c) through (m) as (b) through (l), and revise new paragraph (f) introductory text to read as follows:

§ 1.4 General responsibilities.

* * * * *

(f) The Federal Transit Administration. Is responsible for:

* * * * *

■ 5. In § 1.22 revise paragraph (d) to read as follows:

§ 1.22 Structure.

* * * * *

(d) *Office of the General Counsel.* This Office is composed of the Offices of Environmental, Civil Rights, and General Law; International Law; Litigation; Legislation; Regulation and Enforcement; and Aviation Enforcement and Proceedings.

* * * * *

■ 6. Amend § 1.23 by revising paragraph (c) to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary and the Office of the Secretary; final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; advice and assistance with respect to uniform time matters; ensures uniform departmental implementation of the Freedom of Information Act (5 U.S.C. 552); responds to requests for records of the Office of the Secretary including the Office of the Inspector General, under that statute; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Department legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department.

■ 6a. Amend § 1.44 by revising paragraph (e)(8) to read as follows, remove paragraph (m), and redesignate existing paragraphs (n) through (r) as (m) through (q):

§ 1.44 Reservation of authority.

* * * * *

(e) * * *

(8) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system.

* * * * *

■ 7. In § 1.45, remove paragraph (c)(1)(i), redesignate existing paragraphs (c)(1)(ii) through (ix) as (c)(1)(i) through (viii), and revise new paragraph (c)(1)(iv) to read as follows;

§ 1.45 Delegations to all Administrators.

* * * * *

(c) * * *

(1) * * *

(iv) Federal Transit Administration;

* * * * *

■ 7a. Remove and reserve § 1.46.

■ 8. In § 1.48 revise paragraph (c)(19)(i) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(c) * * *

(19) * * *

(i) Except sections 165 and 531 as they relate to matters within the primary responsibility of the Federal Transit Administrator; 105(f), 413; 414(b)(1) and (2); 421, 426, and title III; and

* * * * *

■ 9. In § 1.51 revise the title and introductory text to read as follows:

§ 1.51 Delegations to Federal Transit Administrator.

The Federal Transit Administrator is delegated authority to exercise the functions vested in the Secretary by:

* * * * *

■ 10. In § 1.57 remove paragraphs (e) and (f) and redesignate existing paragraphs (g) through (s) as (e) through (q).

■ 10a. Amend § 1.59 by revising paragraph (b)(8) to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

* * * * *

(b) * * *

(8) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System.

* * * * *

■ 11. In § 1.65 remove paragraph (b)(2) and redesignate existing paragraphs (b)(3) and (4) as (b)(2) and (3); and remove paragrpah (c)(2) and redesignate existing paragraphs (c)(3) and (4) as (c)(2) and (3).

■ 12. In § 1.66 revise paragraph (aa)(1) to read as follows, remove paragraphs (bb) and (cc) and redesignate existing paragraphs (dd) through (ff) as (bb) through (dd).

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(aa) * * *

(1) The authority to process applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(bb)).

* * * * *

■ 13. In § 1.70 remove paragraph (k) and redesignate paragraphs (l) through (v) as (k) through (u).

■ 14. In Appendix A to Part 1 remove "2. Chief Counsel, U.S. Coast Guard.", redesignate "3. Chief Counsels" as 2., and amend the third paragraph of newly designated 2. (b) to read as follows:

Appendix A to Part 1—Delegations and Redelegations by Secretarial Officers

* * * * *

2. Chief Counsels. The General Counsel has delegated to the Chief Counsels the authority delegated to the General Counsel by authority delegated to the General Counsel by Amendment 1–41 to part 1 of title 49, Code of Federal Regulations, 35 FR 17653, November 17, 1970, as follows:

* * * * *

The Chief Counsels of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Federal Transit Administration, the St. Lawrence Seaway Development Corporation, Maritime Administration, and Research and Special Programs Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase of condemnation by the United States for the use of their respective organizations. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegation of this authority may only be made by the Chief Counsels to attorneys within their respective organizations.

* * * * *

Issued in Washington, DC on this 28th day of May, 2003.

Norman Mineta,

Secretary of Transportation.

[FR Doc. 03–14438 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 060303F]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 6, 2003, through 1200 hrs, A.l.t., June 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the third seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing for species in the yellowfin sole fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the third seasonal apportionment of the halibut bycatch allowance specified, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 4, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14579 Filed 6–5–03; 2:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 111
Tuesday, June 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AC28

Guaranteed Rural Rental Housing Program; Secondary Mortgage Market Participation

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS) proposes to amend its regulations for the Guaranteed Rural Rental Housing Program (GRRHP). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities for low or moderate income families in rural areas. RHS administers the GRRHP under the authority of the Housing Act of 1949. The GRRHP regulations are being amended to allow RHS, in the case of a default, to buy back guaranteed loans from investors. Another change includes lowering the minimum level of rehabilitation work when guaranteed loans are used for acquisition and rehabilitation. These regulatory changes are made to increase participation by the secondary mortgage market in the GRRHP.

DATES: Written or E-mail comments must be received on or before August 11, 2003.

ADDRESSES: Written comments may be submitted, in duplicate, to Tracy Givelekian, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. Comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov* and must contain the words "Secondary Mortgage" in the subject. All written comments will be available for public inspection at 300 7th Street SW., Washington, DC 20024, during normal working hours.

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575–0174, in accordance with the Paperwork Reduction Act of 1995. There will be a slight increase in the collection requirements from those approved by OMB. Those increased requirements will be addressed when the rule change is published as a final rule.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.438, Section 538 Rural Rental Housing Guaranteed Loans.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

The Guaranteed Rural Rental Housing Program (GRRHP) is a relatively new program that is administered by the Rural Housing Service (RHS). The GRRHP was operated as a pilot program in 1996 and 1997, and has been a permanent program since 1998. The program has been designed to increase the availability of affordable multifamily housing in rural America through partnerships between the Agency and lending sources, as well as with state and local housing finance agencies and bond issuers. During the early stages of the program, barriers were identified that have limited the success of the program. One of the primary barriers has been the inability of lenders to close loans due to a lack of participation by the secondary mortgage market. As a result of this poor performance, we consulted industry and governmental experts in the loan guarantee field at a December 2000 stakeholders' meeting. Our main goal was to learn what we could do to close more loans. The regulatory changes herein are the result of meetings with industry stakeholders, including input from banks, housing finance agencies, and secondary market sectors. The meetings were held to identify program stumbling blocks and brainstorm solutions. The purpose of the following changes is to make the program more industry friendly while not jeopardizing the best interests of the Government.

Allow for a timely payment to investors. In other Rural Development guaranteed programs, the security holder may demand that either the lender or the Government buy out the guaranteed portion of the loan from the holder if payments are delinquent by at least 60 days, or if the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of its receipt. While the holder is effectively taken out prior to liquidation of the loan, the lender must continue to meet all of its obligations to the Government under the Lender's Agreement and Loan Note Guarantee. This provision is important to investors because they do not want to wait for the lender to liquidate the collateral to be reimbursed for their investment, enabling them to put their money to better use elsewhere. By this rule change, the Agency is also adding a definition of the term "Holder."

Define conditions of the guarantee. A common concern found among lenders reviewing the GRRHP were the policies on termination or reduction of the guarantee due to a performance failure of the lender. It was the consensus that these policies needed to be more clearly delineated. In addition, it is important for the regulation to make clear that the investor will be held harmless unless they are complicit with the lender in cases involving fraud, abuse, negligence or misrepresentation of fact. This issue has been addressed in the revision of § 3565.52.

Allow the accrual of interest for 90 days after loan default. When the lender is liquidating a guaranteed loan and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate. Upon payment under the current policy, interest accrual terminates on the defaulted loan if an estimated payment of loss is made. This revision changes this policy to allow interest to accrue for 90 days after the date the decision is made to liquidate the loan in default. This interest accrual policy is consistent with other Agency loan guarantee programs. Based on the weight of the factors used to calculate the program's subsidy rate, the impact of this interest accrual policy would be negligible.

Lower per unit threshold for acquisition with rehabilitation from $15,000 per unit to $6,500 per unit. The purpose of lowering the per unit rehabilitation threshold affords new opportunities to preserve affordable housing in a rural community.

Eliminate the timeframe for liquidation, which is currently at 9 months. Eliminating the liquidation timeframe affords the lender the opportunity to sell the property for the highest and best price in accordance with market conditions.

List of Subjects in 7 CFR Part 3565

Banks, Conflict of interests, Credit, Environmental impact statements, Fair housing, Hearing and appeal procedures, Low and moderate income housing, Mortgages, Real property acquisition.

Therefore, chapter XXXV, title 7, Code of Federal Regulations is proposed to be amended to read as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

2. Section 3565.3 is amended by adding, in alphabetical order, a definition of "Holder."

§ 3565.3 Definitions.

* * * * *

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

* * * * *

Subpart B— Guarantee Requirements

3. Section 3565.52 is revised to read as follows:

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A Guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the Guarantee, or which a lender participates in or condones. The Guarantee will be unenforceable by the lender to the extent any loss is occasioned by fraud, misrepresentation or abuse, violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of proceeds by the lender for purposes other than those authorized by the Agency and permissible under this regulation. Negligent servicing or origination is a failure to perform those services, which a reasonably prudent lender would perform in servicing or originating its own portfolio, and includes not only the failure to act, but also the failure to act in a timely manner. These acts constitute grounds for the cancellation of the guarantee or refusal to make full payment under the guarantee. If in the judgment of the Agency these acts or omissions can reasonably be expected to have a material adverse effect on the credit

quality of the Guaranteed Loan or the physical condition of the property securing the Guaranteed Loan, the Agency may cancel or modify a guarantee to the extent of the potential loss. The Agency shall give notice to the lender of the acts or omissions that it considers to constitute such grounds and give the lender a reasonable opportunity to cure the acts or omissions. Other violations or performance deficiencies of the lender may themselves be a basis to bar the lender from receiving further Loan Note Guarantees, but will not constitute grounds for cancellation or reduction of the guarantee or refusal to make a claim payment. When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the holder.* The holder shall not be liable for the actions of the lender including negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the holder has knowledge of such actions when it becomes the holder or condones or participates in such actions.

(c) *Guarantee percentage and payment.* Both permanent loans and combination construction and permanent loans are eligible for a guaranty subject to the following limitations:

(1) *Permanent loans.* A minimum level of acceptable occupancy as determined by the lender with Agency concurrence must be attained prior to the expiration of Form 3565–2 Conditional Commitment, including any extensions thereto, and the issuance of a loan guarantee for the permanent loan. The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and accrued interest 90 days from the date the decision is made to liquidate the loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee.

(2) *Combination construction and permanent loans.* For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period (which cannot exceed 24 months). The guarantee of construction loan advances will convert to a permanent loan guarantee once the required level of occupancy has been reached. The maximum guarantee of construction advances related to a combination construction and permanent loan will not at any time exceed the lesser of 90 percent of the amount of principal advanced for eligible construction expenses or 90 percent of the original principal amount of the combination loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. In addition, the lender shall require the borrower or the contractor to provide credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

(i) Surety bonding or performance and payment bonding (the preferred credit enhancement);

(ii) An irrevocable letter of credit acceptable to the Agency; and

(iii) A pledge by the lender of acceptable collateral.

(3) *Maximum loss payment.* The maximum loss payment to a lender or holder is as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(ii) To the lender, the lesser of:

(A) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

Subpart C—Lender Requirements

4. Section 3565.102 is amended by revising paragraph (b) to read as follows:

§ 3565.102 Lender eligibility.

* * * * *

(b) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multifamily housing loans that are to be sold to or securitized by such corporations;

* * * * *

Subpart E—Loan Requirements

5. Section 3565.212 is amended by removing the word "; and" from paragraph (c) and adding a period and by removing paragraph (d).

Subpart F—Property Requirements

6. Section 3565.252 is revised to read as follows:

§ 3565.252 Housing types.

The property may include new construction or rehabilitated existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least 15 percent of the total estimated replacement cost of the project or $6,500 per dwelling unit, whichever is greater. The portion of guarantee funds available for projects involving acquisition and rehabilitation may be limited in the annual Notice of Fund Availability.

Subpart I—Servicing Requirements

7. Section 3565.403 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and by adding a new paragraph (a) to read as follows:

§ 3565.403 Special servicing.

* * * * *

(a) *Repurchase from holder.* For securitized loans, the holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

* * * * *

8. Section 3565.405 is added to read as follows:

§ 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lenders receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Repurchase by Agency.*

(1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. This demand notice is in addition to the copy of the written demand on the lender. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the assignment guarantee agreement, on a form approved by the Agency, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

Subpart J—Assignment, Conveyance, and Claims

9. Section 3565.452 is amended by revising paragraph (a) to read as follows:

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. If the loan has not already been repurchased when a decision to liquidate is made, provisions will be made for repurchase in accordance with § 3565.405.

* * * * *

10. Section 3565.453 is revised to read as follows:

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender in writing whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and

reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

11. Section 3565.457 is revised to read as follows:

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in the 538 statute 42 U.S.C. 1490, i(3) Assignment by Secretary, the Agency will pay the lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(i) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for amounts due and owing on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance of the property; and

(iv) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(j) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

Dated: March 18, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–14480 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F Airplanes; and Model MD–10–10F and –30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and certain Model MD–10–10F and –30F airplanes. This proposal would require inspections for cracking and corrosion of the bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, and follow-on and corrective actions. This action is necessary to prevent failure of the bolt and bushing that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–164–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–164–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating failure of the bolts and bushings that attach the hinge fittings to the inboard and outboard flaps on certain McDonnell Douglas Model DC–10 airplanes. In two cases, the failure was in the radius area of the bolt head; in one case, the failure was in the threaded portion of the bolt; in another case, both the head and threaded end had failed. Additional failures occurred in the lubrication hole in the middle of the shank. The cause of these failures has been attributed to hydrogen embrittlement. Subsequent to installation of new hinge bolts with improved corrosion protection, the corrosion and failures continued to occur.

In addition, multiple reports have been received from operators of corrosion on the bolt and bushing. Investigation revealed that a lack of lubrication caused the initiation of corrosion, and the corrosion led to the stress corrosion failure of the bolt and bushing. The bolt and bushing provide a fail-safe mechanism at the flap hinge pivot point. Such conditions, if not corrected, could result in failure of the bolts and bushings that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin DC10–57A148, Revision 01, dated August 13, 2002, which describes procedures for magnetic particle and visual inspections for cracking and corrosion of the outboard pivot bolt assemblies and bushings on the hinge fittings of the inboard flaps of the left and right wings. The service bulletin also describes procedures for follow-on actions and repair of any discrepancy found, as follows:

- *Condition 1—No cracking or corrosion found:* Option 1—Reinstall each existing bushing, replace each existing pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricate the assembly. Option 2—Reinstall each existing bushing and pivot bolt assembly, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 2—Corrosion on bolt and/or bushing:* Option 1—Replace each affected bushing with a new equivalent part, replace each affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricate the assembly. Option 2—Repair the existing bushing and pivot bolt assembly and reinstall them, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 3—Cracks in bolt and/or bushing:* Option 1—Replace each affected bushing with a new equivalent part, replace each affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricate the assembly. Option 2—Replace each affected bushing and pivot bolt assembly with new equivalent parts, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.

We also have reviewed and approved Boeing Alert Service Bulletin DC10–57A117, Revision 01, dated July 23, 2002, which describes procedures for magnetic particle and visual inspections for cracking and corrosion of the pivot bolt assemblies on the hinge fitting of the outboard flaps of the left and right wings. The service bulletin also describes procedures for follow-on actions and repair of any discrepancy found, as follows:

- *Condition 1—No cracking or corrosion found:* Option 1—Replace each existing pivot bolt assembly with a new assembly made from multi-phase material, and lubricate the assembly. Option 2—Reinstall each pivot bolt assembly, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 2—Corrosion on bolt:* Option 1—Replace each affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricate the assembly. Option 2—Repair the existing pivot bolt assembly and reinstall, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 3—Cracks in bolt:* Option 1—Replace each affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricate the assembly. Option 2—Replace each affected pivot bolt assembly with a new equivalent part, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

Cost Impact

There are approximately 402 airplanes of the affected design in the worldwide fleet. The FAA estimates that 297 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed initial inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $17,820, or $60 per airplane.

It would take approximately 2 work hours per flap, to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,982 for the outboard flap, and $2,825 for the inboard flap. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $1,795,959, or $6,047 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–164–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bolts and bushings that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane, accomplish the following:

Initial General Visual and Magnetic Particle Inspections

(a) Within 6 months after the effective date of this AD: Do initial general visual and magnetic particle inspections for cracking and corrosion of the pivot bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, per Boeing Alert Service Bulletin DC10–57A148, Revision 01, dated August 13, 2002; and Boeing Alert Service Bulletin DC10–57A117, Revision 01, dated July 23, 2002; as applicable. Before further flight, do the applicable follow-on and corrective actions required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-on and Corrective Actions

(1) If no cracking or corrosion is found: Before further flight, do the actions specified in either (a)(1)(i) or (a)(1)(ii) of this AD per Condition 1 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 1 per the applicable service bulletin. The actions include (for the inboard flaps) reinstalling each existing bushing, replacing each existing pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating the assembly; (for the outboard flaps) replacing each existing pivot bolt assembly with a new assembly made from multi-phase material, and lubricating the assembly.

(ii) Do the actions specified in Option 2 of Condition 1 per the applicable service bulletin. The actions include (for the inboard flaps) reinstalling the existing bushing and pivot bolt assembly, lubricating the assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) repairing and reinstalling the pivot bolt assembly, lubricating the assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified. Accomplishment of paragraph (a)(1)(i) terminates the requirements of this paragraph.

(2) If corrosion is found: Before further flight, do the actions specified in either (a)(2)(i) or (a)(2)(ii) of this AD per Condition 2 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 2 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing with a new equivalent part, replacing the affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating each assembly; (for the outboard flaps) replacing the affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricating each assembly.

(ii) Do the actions specified in Option 2 of Condition 2 per the applicable service bulletin. The actions include (for the inboard flaps) repairing and re-installing the existing bushing and affected pivot bolt assembly, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) repairing and installing the existing pivot bolt assembly, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking, at the intervals specified. Do the inspections until paragraph (a)(2)(i) of this AD has been done.

(3) If cracking is found: Before further flight, do the actions specified in either paragraph (a)(3)(i) or (a)(3)(ii) of this AD per Condition 3 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 3 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing with a new equivalent part, replacing the affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating each assembly; (for the outboard flaps) replacing the affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricating each assembly.

(ii) Do the actions specified in Option 2 of Condition 3 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing and pivot bolt assembly with new equivalent parts, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) replacing the affected pivot bolt assembly with a new equivalent part, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified. Do the inspections until paragraph (a)(3)(i) of this AD has been done.

Credit for Actions Done per Previous Issue of Service Bulletins

(b) Accomplishment of the specified actions before the effective date of this AD per Boeing Alert Service Bulletin DC10–57A148, dated June 14, 2002; or Boeing Alert Service Bulletin DC10–57A117, dated February 11, 1991; is considered acceptable

for compliance with the applicable requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14525 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 179–1179; FRL–7510–3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the State of Kansas. The purpose of this revision is to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated into the SIP to assure that local-specific air quality issues were addressed with Federally-enforceable provisions. Due to the continued evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of air quality standards in Wyandotte County.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by July 10, 2003.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at *hamilton.heather@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 30, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14457 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21,74 and 101

[WT Docket No. 03–66; RM–10586; WT Docket No. 03–67; MM Docket No. 97–217; WT Docket No. 02–68; RM–9718; FCC 03–56]

Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this document the Federal Communications Commission (FCC) proposes rules that would require Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) operators to limit the strength of some or all of the radio signals they transmit to levels that would make it possible for operators in adjacent service areas to provide two-way, low-power cellular services. The new rules would also expand ITFS eligibility criteria to include commercial as well as non-profit educational entities and perhaps merge ITFS with MDS, but they would maintain the amount of educational content provided on those channels at levels comparable to those attained under existing requirements. The purpose of the proposals is to facilitate provision of high-speed wireless Internet access services and mobile radio services in a band that has traditionally been used primarily for high-powered, one-way television.

DATES: Comments are due on or before September 8, 2003 and reply comments are due on or before October 23, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek or Charles Oliver at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau or via the Internet to *nzaczek@fcc.gov* or *coliver@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Purposed Rulemaking, FCC 03–56, adopted on March 13, 2003, and released on April 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. By this *Notice of Proposed Rulemaking (NPRM)*, the FCC initiates a comprehensive examination of the FCC's rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services) in the 2500–2690 MHz band. By this action, the FCC seeks to promote competition, innovation and investment in wireless broadband services, and to promote educational services. Additionally, the FCC also seeks to foster the development of innovative service offerings to consumers as well as educational, medical and other institutions, simplify the licensing process and delete obsolete and unnecessary regulatory burdens. The FCC believes that it is appropriate and prudent to take this action at this time because the Services and the potential uses for the spectrum allotted to them have evolved significantly since the inception of the Services. Those uses present a significant opportunity to provide alternatives for the provision of broadband services to consumers in urban, suburban and rural areas and to improve opportunities for distance learning and telemedicine services. In addition, this proceeding has been prompted, in part, by the request of a group of representatives of licensees in the Services—namely, the Wireless Communications Association International (WCA), the National ITFS Association (NIA) and the Catholic Television Network (CTN) (collectively, the Coalition)—that the FCC substantially change the rules governing the Services. The FCC's proposals are intended to foster the provision of innovative and traditional service offerings to consumers as well as educational, medical and other institutions, to simplify the licensing process, and to remove obsolete rules and unnecessary regulatory burdens.

2. The rule changes proposed in this *NPRM* would facilitate the provision of high-speed data and voice services accessible to mobile as well as fixed users on channels that today are used primarily for one-way video operations to fixed locations. These changes would ultimately affect between 142 and 190 MHz of spectrum, depending upon which of the alternative sets of rules proposed in this NPRM are adopted. The FCC emphasizes, however, that it does not intend to evict any incumbent licensees from the affected band if they have been in compliance with the FCC's rules and continue to comply with the FCC's rules when the FCC modifies or augments them nor does it intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, the FCC anticipates that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.

3. The following is a summary of the FCC's major proposals and determinations. In the *NPRM*, the FCC:

- Seek comment on whether and how to reconfigure the 2500–2690 MHz band;
- Seek comment on the best means of ensuring the efficient utilization of unassigned ITFS spectrum, including geographic area licensing and unlicensed operation;
- Propose to convert site-by-site licenses of MDS and ITFS incumbents to geographic service areas;
- Seek comment on how best to promote increased access to and efficient utilization of ITFS spectrum;
- Propose technical rules to increase licensee flexibility and protect incumbent operations in the 2500–2690 MHz band;
- Propose technical and service rules for mobile operations;
- Propose to simplify and streamline the licensing process for the Services;
- Propose application filing and processing procedures to facilitate implementation of the Services into the Universal Licensing System (ULS) administered by the Wireless Telecommunications Bureau; and
- Propose to consolidate all service-specific rules for the Services under parts 27 and 101 but seek comment on alternatives.

I. Procedural Matters

A. Ex Parte *Rules—Permit-But-Disclose*

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the FCC's rules.

B. Comment Period and Procedures

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the FCC's rules, interested parties may file comments on this NPRM on or before September 8, 2003, and reply comments on or before October 23, 2003. Comments and reply comments should be filed in WT Docket No. 03–66, and may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each FCC Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the FCC's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following FCC staff: (1) Nancy Zaczek, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 3–C124, Washington, DC 20554; and (2) Gary Michaels and Andrea Kelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893.

9. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the FCC's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

10. As required by the Regulatory Flexibility Act of 1980 (RFA), the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the

possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The analysis is found in Appendix A. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *NPRM*, and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

II. Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the FCC has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The FCC will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

12. In this *NPRM* the FCC proposes a number of changes and ask for comments concerning the rules governing the 2500–2690 MHz band, for the Multipoint Distribution Service (MDS), the Multichannel Multipoint Distribution Service (MMDS), and the Instructional Television Fixed Service (ITFS). The FCC's proposals include:

- Proposing technical rules to increase licensee flexibility;
- Seeking comment on revising the band plan;
- Proposing service rules for mobile operation;
- Proposing to encourage entrepreneurial efforts to develop new technologies and services by opening ITFS spectrum to a wide range of applicants;
- Proposing to simplify and streamline the licensing process;
- Proposing application filing and processing to facilitate electronic filing in ULS;
- Proposing to consolidate these services under Part 101;
- Tentatively concluding that MDS and ITFS licensees should receive a six-month transition period after application processing in ULS begins before requiring mandatory electronic filing in ULS;
- Suspending the acceptance and processing of applications in this band, with certain exceptions, until the completion of this rulemaking proceeding;
- Suspending the current August 16, 2003 construction deadline for BTA authorization holders; and
- Proposing to assign ITFS licenses through competitive bidding.

13. The FCC believes that its proposals will encourage the enhancement of existing services using this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services. The FCC also believes that its proposals will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than the government, to determine how this band will best be used.

Legal Basis

14. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms, "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The definition of "small governmental jurisdiction" is one with a population of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on how many of these entities have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the FCC estimates that 96 percent, or about 81,600, are small entities that may be affected by the FCC's rules.

16. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. In this section, the FCC further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the FCC publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the FCC discusses the total estimated numbers of small businesses that might be affected by its actions.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the FCC established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the FCC estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the FCC tentatively concludes that at least 1,932 licensees are small businesses.

18. In connection with the 1996 MDS auction, the FCC defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The FCC established this small business definition in the context of this particular service and with the approval of SBA. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. At this time, the FCC estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the FCC finds that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the FCC's rules. Some of those 440 small business licensees may be affected by the proposals in this *NPRM*.

19. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services that includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, the FCC finds that there are approximately 892 small MDS providers as defined by the SBA and the FCC's auction rules, and some of these providers may take advantage of the FCC's amended rules to provide two-way MDS.

20. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. ITFS is a non-profit non-broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, the FCC does not collect, nor is the FCC aware of other collections of, annual revenue data for ITFS licensees. Thus, the FCC finds that up to 1932 of these educational institutions are small entities that may take advantage of the FCC's amended rules to provide additional flexibility to ITFS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. As noted previously, applicants for MDS or ITFS licenses would be required to apply through the Universal Licensing System using FCC Form 601, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC Form 601 for those individual stations that (1) require submission of an Environmental Assessment of the facilities under § 1.1307 of the FCC's rules; (2) require international coordination of the application; or (3) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). While these requirements are new with respect to potential licensees in the ITFS and MDS bands, the FCC has applied these requirements to licensees in other bands. Moreover, the FCC is also proposing to eliminate many burdensome filing requirements that have previously been applied to MDS and ITFS.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."

23. In this *NPRM*, the FCC seeks comment on a number of proposals and alternatives regarding the use of the 2500–2690 MHz band. This *NPRM* seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. The FCC considers various proposals and alternatives partly because the FCC seeks to minimize, to the extent possible, the economic impact on small businesses.

24. The FCC has reduced the burdens wherever possible. To minimize any further negative impact, however, the FCC proposes certain exclusive incentives for small entities that will redound to their benefit. The FCC proposes the use of bidding credits for small entities that participate in auctions of licenses that are conducted pursuant to the rules proposed in this *NPRM*. The FCC proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, a "very small business" as an entity with average gross revenues for the preceding three years not exceeding $15 million, and an "entrepreneur" as an entity with average annual gross revenues for the preceding three years not exceeding $3 million. The FCC proposes that entities qualifying as small businesses will receive a 15% bidding credit, that entities qualifying as very small businesses will receive a 25% bidding credit, and that entities qualifying as entrepreneurs will receive a 35% bidding credit. Qualifying small businesses, very small businesses, and entrepreneurs can reduce their winning bids by the amount of their bidding credits. The FCC believes that these bidding credits will help small entities

compete in the FCC's auctions and acquire licenses. The FCC seeks comment on its proposed small business definitions and bidding credits, including information on factors that may affect the capital requirements of the type of services a licensee may seek to provide.

25. The regulatory burdens contained in the *NPRM*, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The FCC will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The FCC seeks comment on significant alternatives commenters believe the FCC should adopt.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

26. None.

III. Ordering Clauses

27. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this Notice of Proposed Rulemaking is hereby *adopted*.

It is further ordered that the FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedures, and Reporting and recordkeeping requirements.

47 CFR Parts 74 and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 21, 74 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.933 is amended by adding paragraphs (c)(8) and (9) to read as follows:

§ 1.933 Public notices.

* * * * *

(c) * * *

(8) Multipoint Distribution Service.

(9) Instructional Television Fixed Service.

* * * * *

3. Section 1.1102 is amended by revising entry 20 to the table to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

* * * * *

Action	FCC Form No.	Fee amount	Payment type code	Address
20. Multipoint Distribution Service (including Multi-channel MDS)				
a. Conditional License	304 & 159 or 331 & 159.	$220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
b. Major Modification of Conditional Licenses or License Authorization.	304 & 159 or 331 &159.	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358994, Pittsburgh, PA 15251–5155.
c. Certification of Completion of Construction.	304–A & 159	645.00	CPM*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
d. License Renewal	405 & 159	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
e. Assignment or Transfer:				
(i) First Station on Application	702 & 159 or 704 & 159.	80.00	CCM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Each Additional Station	702 & 159 or 704 & 159.	50.00	CAM	
f. Extension of Construction Authorization	701 & 159	185.00	CHM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization.	Corres & 159	100.00	CEM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
h. Signal Booster.				
(i) Application	304 & 159, 331 & 159.	75.00	CSB	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Certification of Completion of Construction (Electronic Filing Only).	304A & 159	80.00	CCB	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.

Action	FCC Form No.	Fee amount	Payment type code	Address

PART 21 [REMOVED]

4. Part 21 is removed.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

5. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

6. Section 74.1 is amended by revising paragraph (b) to read as follows:

§ 74.1 Scope.

* * * * *

(b) Rules in part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental Broadcast Stations, subpart A; Remote Pickup Broadcast Stations, subpart D; Aural Broadcast STL and Intercity Relay Stations, subpart E; TV Auxiliary Broadcast Stations, subpart F; Low Power TV, TV Translator and TV Booster Stations, subpart G; Low Power Auxiliary Stations, subpart H; FM Broadcast Translator Stations and FM Broadcast Booster Stations, subpart L.

Subpart I [Removed and Reserved]

7. Subpart I of part 74 is removed and reserved.

PART 101—FIXED MICROWAVE SERVICES

8. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154 and 303, unless otherwise noted.

9. Section 101.3 is amended by adding the following definitions in alphabetical order to read as follows:

§ 101.3 Definitions.

* * * * *

Instructional Television Fixed Service. A fixed or mobile service intended primarily for video, data, or voice transmissions of instructional, cultural, and other types of educational material to one or more receiving locations.

* * * * *

Multipoint Distribution Service. A domestic public radio service rendered on microwave frequencies from one or more stations transmitting to multiple receiving facilities.

* * * * *

10. Section 101.101 is amended by revising the following entries to the table to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service: Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)	Notes
2450–2500	LTTS	OFS	TV BAS	ISM	F/M/TF
2500–2650	ITFS MDS	ITFS MDS			
2650–2690	ITFS MDS	OFS MDS/ITFS			

* * * * *

ITFS: Instructional Television Fixed Service—(part 101, subpart P)

* * * * *

MDS: Multipoint Distribution Service—(part 101, subpart Q)

* * * * *

11. Add subpart Q to part 101 to read as follows:

Subpart Q—Instructional Television Fixed Service

Sec.

101.1501 Purpose and permissible service.
101.1502 BTA license authorization.
101.1503 Service areas.
101.1504 Conversion of incumbent ITFS stations to geographic area licensing.
101.1505 Performance requirements.
101.1506 Partitioning and disaggregation.
101.1508 Unattended operation.
101.1509 License term.

§ 101.1501 Purpose and permissible service.

(a)(1) Instructional television fixed stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students. Authorized instructional television fixed station channels must be used to further the educational mission of accredited schools offering formal educational courses to enrolled students.

(2) In furtherance of the educational mission of accredited schools, instructional television fixed station channels may be used for:

(i) In-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors;

(ii) Transmission of material directly related to the administrative activities of the licensee, such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics, and other similar uses; and

(iii) Response channels transmitting information associated with formal educational courses offered to enrolled

students, including uses described in paragraphs (a)(2)(i) and (ii) of this section, from ITFS response stations to response station hubs.

(b) Stations may be licensed in this service as originating or relay stations to interconnect instructional television fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the instructional television fixed system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this chapter, or to deliver instructional and cultural material to any CATV system serving a receiving site or sites which would be eligible for direct reception of ITFS signals under the provisions of paragraph (a) of this section.

(c) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(1) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee.

(2) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

§ 101.1502 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

§ 101.1503 Service areas.

Most ITFS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional ITFS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

§ 101.1504 Conversion of incumbent ITFS stations to geographic area licensing.

(a) Any ITFS station licensed by the Commission prior to date to be decided as well as assignments and transfers approved by the Commission and consummated as of [date to be decided] shall be considered incumbent and grandfathered (may continue to operate under their licensed parameters).

(b) As of [date to be decided], all incumbent ITFS licenses shall be converted to a blanket license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the signal level [specific level to be decided] does not increase outside their pre-existing protected service area. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

Incumbent operators and geographic area licensees may negotiate alternative criteria.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

§ 101.1505 Performance requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63.

(b) All ITFS BTA licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which it holds a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

(1) A description of the ITFS licensee's current service in terms of geographic coverage;

(2) Copies of all orders or other adjudications that the licensee has violated the Communications Act or the Commission's rules or policies;

(3) A description of the ITFS band licensee's current service in terms of population served, as well as any additional service provided during the license term;

(4) A description of the ITFS licensee's investments in its system(s) (type of facilities constructed and their operational status is required); and

(b) Any ITFS licensees adjudged not to be providing substantial service will not have their licenses renewed.

§ 101.1506 Partitioning and disaggregation.

(a) *Eligibility* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of license. Geographic area licensees may participate in aggregation, disaggregation, and partitioning within the bands licensed on a geographic area basis.

(2) Eligible ITFS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. Eligible ITFS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(b) *Technical standards* (1) There is no limitation on the amount of spectrum that an ITFS licensee may aggregate.

(2) Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(3) In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83).

(4) Combined partitioning and disaggregation. The Commission will consider requests from geographic area licensees for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Construction requirements.*—(1) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and Disaggregate would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1506 for the geographic service area. If parties choose this option and either party fails to demonstrate substantial service, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregate would be responsible for meeting the requirements in § 101.1505 for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(2) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently provide substantial service for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1505, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 101.1505 for the entire market. If the partitionor fails to meet the requirement in § 101.1505, however, only its license would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must certify in the appropriate portion of the application which construction option is selected.

(4) Responsible parties must submit supporting documents as required by § 101.1505.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(e) *Remote Control Operation.* Licensed ITFS stations may be operated by remote control without further authority.

§ 101.1508 Unattended operation.

Unattended operation of licensed ITFS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§ 101.1509 License term.

(a) Incumbent ITFS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) A BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the ITFS auction.

12. Add subpart R to part 101 to read as follows:

Subpart R—Multipoint Distribution Service

Sec.

101.1601 Purpose and permissible service.
101.1602 BTA license authorization.
101.1603 Service areas.
101.1604 Conversion of incumbent MDS stations to geographic area licensing.
101.1605 Performance requirements.
101.1606 Partitioning and disaggregation.
101.1607 Remote control operations.
101.1608 Unattended operation.
101.1609 License term.

§ 101.1601 Purpose and permissible service.

Multipoint Distribution Service stations may provide any fixed or mobile services for which its frequency bands are allocated, subject to the technical and other rules contained in this part and subpart.

§ 101.1602 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

§ 101.1603 Service areas.

Most MDS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional MDS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

§ 101.1604 Conversion of incumbent MDS stations to geographic area licensing.

(a) Any MDS station licensed by the Commission prior to [date to be decided] as well as assignments and transfers approved by the Commission and consummated as of [date to be decided] shall be considered incumbent and grandfathered (may continue to

operate under their licensed parameters).

(b) As of [date to be decided], all incumbent MDS licenses shall be converted to a blanket license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the signal level [specific level to be decided] does not increase outside their pre-existing protected service area. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

§ 101.1605 Performance requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63.

(b) All MDS BTA licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which it holds a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

(1) A description of the MDS licensee's current service in terms of geographic coverage;

(2) Copies of all orders or other adjudications that the licensee has violated the Communications Act or the Commission's rules or policies;

(3) A description of the MDS licensee's current service in terms of population served, as well as any additional service provided during the license term;

(4) A description of the MDS licensee's investments in its system(s) (type of facilities constructed and their operational status is required);

(5) Any MDS licensees adjudged not to be providing substantial service will not have their licenses renewed.

§ 101.1606 Partitioning and disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of license. Geographic area licensees may participate in aggregation, disaggregation, and partitioning within the bands licensed on a geographic area basis.

(2) Eligible MDS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. Eligible MDS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(b) *Technical standards.* (1) There is no limitation on the amount of spectrum that an MDS licensee may aggregate.

(2) Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(3) In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83).

(4) Combined partitioning and disaggregation. The Commission will consider requests from geographic area licensees for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Construction requirements.* (1) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregate would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1605 for the geographic service area. If parties choose this option and either party fails to demonstrate substantial service, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregate would be responsible for meeting the requirements in § 101.1605 for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(2) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently provide substantial service for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1605, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 101.1605 for the entire market. If the partitionor fails to meet the requirement in § 101.1605, however, only its license would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must certify in the appropriate portion of the application which construction option is selected.

(4) Responsible parties must submit supporting documents as required by § 101.1505.

(d) License term. The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

§ 101.1607 Remote control operation.

MDS stations may be operated by remote control without further authority.

§ 101.1608 Unattended operation.

Unattended operation of licensed MDS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§ 101.1609 License term.

(a) Incumbent MDS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) A BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the MDS auction.

[FR Doc. 03–14222 Filed 6–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH59

Endangered and Threatened Wildlife and Plants; Reclassification of *Lesquerella filiformis* (Missouri Bladderpod) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify *Lesquerella filiformis* (Missouri bladderpod) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). We are proposing this reclassification because the endangered designation no longer correctly reflects the current status of this plant based on the plant's significant progress toward recovery, and in response to a petition from the Missouri Department of Conservation (MDC) to reclassify this species. Since the time of listing, the number of known populations of the plant has substantially increased and the threats to some of the larger populations have decreased because of land acquisition, landowner contact programs, and beneficial management initiatives. This proposal, if made final, would extend the Federal protection and recovery provisions for threatened plants provided by the Act to the Missouri bladderpod.

DATES: Comments from all interested parties must be received by August 11, 2003 so they can be considered in our final decision. Public hearing requests must be received by July 25, 2003.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Field Supervisor, U.S. Fish and Wildlife Service, 608 E. Cherry Street, Room 200, Columbia, MO 65201–7712. Comments may also be submitted by electronic mail to *bladderpod@fws.gov* or by facsimile to 573/876–1914. The subject line should be "Bladderpod Comments." Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address following the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Paul McKenzie, Ph.D., Columbia Field Office (*see* **ADDRESSES** section) (telephone: 573/876–1911, ext. 107; facsimile: 573/876–1914). Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800/877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Lesquerella filiformis (Missouri bladderpod) is an annual plant with erect, hairy stems approximately 20 centimeters (cm) (8 inches (in)) in height that branch from the plant's base. Basal leaves are hairy on both surfaces, 1.0–2.25 cm (0.4–0.9 in) long, 0.3–1.0 cm (0.1–0.4 in) wide, broadly rounded, and tapering to a narrow petiole. Stem leaves are densely hairy with stellate hairs on both surfaces, 1.0–3.2 cm (0.4–1.3 in) long and 1.6–16 millimeters (mm) (0.06–0.6 in) wide, and have a silvery appearance. Bright yellow flowers with 4 petals occur at the top of the stems in late April or early May (Morgan 1980). Missouri bladderpod is restricted to shallow soils of limestone glades in southwestern Missouri (Hickey 1988; Thomas 1996) and northwestern Arkansas and, occasionally, dolomite glades in north-central Arkansas (John Logan, Missouri Department of Natural Resources (MDNR), pers. comm. 2000).

Lesquerella filiformis Rollins, a member of the mustard family (Brassicaceae), was first collected in 1887 in southwestern Missouri. Payson (1921), however, misapplied the name *Lesquerella angustifolia* (Nutt.) S. Wats. to these early collections. Rollins (1956) formally described *Lesquerella filiformis* as a distinct species, and its taxonomic validity was further supported in a subsequent monograph on the genus *Lesquerella* in North America by Rollins and Shaw (1973).

Historically, Missouri bladderpod was believed to be a State endemic plant known solely from a few sites in two counties in southwestern Missouri (Morgan 1980; U.S. Fish and Wildlife Service 1988). In 1980, a total of 550 individual plants were estimated at 4 sites, and at the time of listing as endangered in 1987, an estimated 5,000 plants were determined to occur at 9 sites (Morgan 1980; 52 FR 679, January 8, 1987). At the time of the completion of the Missouri Bladderpod Recovery Plan in 1988, the species was known from 11 sites in Christian, Dade, and Greene Counties, MO (U.S. Fish and Wildlife Service 1988). During that same year, the Service funded a four-county survey for the species in Missouri, and an additional 45 sites were located (Hickey 1988). A followup survey in 1989 yielded an additional 13 sites (Thurman and Hickey 1989). Further botanical explorations led to the discovery of 16 additional sites, including locations in an additional county in Missouri (Lawrence County) and one site each in Izard and Washington Counties, AR (Theo Witsell, Arkansas Natural Heritage Commission, *in litt.* 2002). In the spring of 1997, MDC botanist Bill Summers (while working on the Flora of Missouri project) discovered the species at a limestone/dolomite quarry in Izard County, northcentral Arkansas (Theo Witsell *in litt.* 2002). Subsequent investigations following this find led to documentation of an additional site in Washington County, northwestern Arkansas, discovered in 1992 (Theo Witsell *in litt.* 2002). In the spring of 1998, surveys were expanded in Arkansas, and, although no new sites were discovered in the State, a more extensive population of Missouri bladderpod was found at the Izard County site than had been originally discovered in 1997 (John Logan, Arkansas Natural Heritage Commission, pers. comm. 1998). The population at the Washington County site had not been observed since 1992 until it was rediscovered on May 1, 2002, when approximately 500 flowering and fruiting plants were discovered on a small glade opening at the original 1992 site (Theo Witsell, *in litt.* 2002). Currently, Missouri bladderpod is known to occur at a total of 61 sites in 4 counties in Missouri and 2 sites in 2 counties in Arkansas.

Population levels of Missouri bladderpod fluctuate widely as is typical of winter annuals, depending on edaphic (soil components) and climatic conditions, and factors such as seed crop from the preceding season, seed survival in the seed bank, recruitment from the seed bank, and the survival of growing plants (Thomas 1998). Annual monitoring data have been collected for a minimum of 11 consecutive years at two Missouri sites, and irregular monitoring has occurred at numerous other sites. Thomas (1998) and Boetsch (*in litt.* 2002) reported changes in population status of *Lesquerella filiformis* between 1988 and 2001 on National Park Service (NPS) property at Bloody Hill Glade, Wilson's Creek National Battlefield, and observed that the population ranged between 0 and 303,446 plants, with an average annual population of 63,170 plants (Table 1). The MDC monitored 21 permanent plots within one population at the Rocky Barrens Conservation Area between 1992 and 2001 and noted that the number of individual plants varied between 2 and 3,584 (Tim Smith, MDC, *in litt.* 2002, Table 1). Monitoring of a population at Cave Springs Outcrop Glade in Dade County in 1980, 1984,

1988, 1990, and 1993 yielded 500, 545, 50, 0, and 0 plants, respectively (MDC 2002a). To date, the maximum population estimate at the Izard County, AR, site has been "tens of thousands of plants," in 1997, while in 1999 only a few plants were found at the same site (Theo Witsell, *in litt.* 2002). Irregular monitoring (a minimum of 4 years of data between 1993 and 1999) at seven Nature Conservancy registry sites yielded similar fluctuations in population numbers as described elsewhere, with estimates ranging from 0 to 47 plants at the smallest population and 3 to 3,448 plants at the largest (Susanne Greenlee, TNC, *in litt.* 1999, MDC 2002a).

TABLE 1.—ANNUAL POPULATION ESTIMATES OF MISSOURI BLADDERPOD ON BLOODY HILL GLADE (WILSON'S CREEK NATIONAL BATTLEFIELD) AND IN 21 PLOTS AT ROCKY BARRENS CONSERVATION AREA, GREENE COUNTY, MO, 1988–2001

[From Thomas 1998; Tim Smith, *in litt.* 2002; John Boetsch, *in litt.* 2002]

Year	Estimated population size (number of plants)	
	Bloody Hill Glade	Rocky Barrens Conservation Area (21 plots)
1988	58,351	—
1989	31,911	—
1990	10,154	—
1991	303,446	—
1992	24,611	110
1993	0	1,211
1994	0	200
1995	18,514	2,295
1996	88,166	224
1997	33,873	3,584
1998	30,475	1,283
1999	66,650	320
2000	72,623	143
2001	145,604	2
Average	63,170	[1]937

[1] Average within 21 permanent plots—total population size at this site is much larger.

An examination of the status of most extant sites following the procedures established by Hickey (1988) was conducted in the spring of 2000. Hickey visited 52 extant sites between April and May and noted that: (1) Populations of the species were found in the same terrace or rock shelf as they were in 1988–1990, and (2) some sites exhibited lower numbers than in 1988–1990, apparently attributable to the drought conditions, increase in cedar density or encroachment of other woody vegetation, or competition from exotic species of brome grasses (*Bromus spp.*). Increases in population density at some locations apparently resulted from tree removal and maintained grazing (Hickey 2000). Continued long-term monitoring of some larger sites in Missouri and the site in Izard County, AR, is also planned.

In years when germination, overwinter survival, seedling establishment, and plant growth are ideal, *Lesquerella filiformis* populations can be so large as to make rangewide population estimates extremely difficult. Despite the difficulty, estimates made by Hickey (1988) at 55 sites in Missouri yielded approximately 400,000 plants. Had rangewide estimates been taken in 1991 when 303,446 plants were estimated at Bloody Hill Glade, Wilson's Creek National Battlefield (Table 1, Thomas 1998), the population that year likely would have exceeded 500,000 plants. However, given the extreme annual fluctuations in population size, only long-term monitoring efforts patterned similarly to the protocol developed for the Wilson's Creek National Battlefield (Kelrick 2001a, 2001b) can accurately reflect the true population status and trend of this species and effectively evaluate the efficacy of management regimes on bladderpod habitat (Thomas 1998).

The current 63 extant sites have the following Natural Community rankings by The Nature Conservancy (TNC): (1) 11 (10 in Missouri and 1 in Arkansas) are graded A (*i.e.*, are relatively stable and undisturbed natural communities with a high diversity of conservative species); (2) 18 (all in Missouri) are graded B (*i.e.*, late successional or lightly disturbed communities, or recently lightly disturbed or moderately disturbed in the past but now recovered, and the biological diversity has not been greatly reduced); (3) 1 in Arkansas is graded AB (*i.e.*, intermediate between A and B); (4) 17 in Missouri are graded C (*i.e.*, midsuccessional, moderately to heavily disturbed communities, or moderate recent disturbance or heavy past disturbance with decreased recent disturbance); and (5) 16 in Missouri are graded D (*i.e.*, early successional or severely disturbed communities where the structure and composition of the community has been severely altered with few characteristic native species present) (MDC 2002a, Theo Witsell, *in litt.* 2002).

Threats identified by the Service at the time of listing (52 FR 679, January 8, 1987) were: (1) Vulnerability of small populations to overcollecting and human disturbance, (2) lack of research on proper management techniques necessary to maintain and promote populations of the species, (3) potential impacts of annual maintenance activities to populations located on highway rights-of-way, (4) seed destruction by insects and fungal infections, and (5) inadequate protection or management on public and private property necessary for the species' continued existence. Subsequently, the Service (1988) documented the presence of exotic plant species, such as *Bromus tectorum* (a cheat grass), in bladderpod habitat as a significant threat, and this was further supported by observations by Hickey (1988, 2000) and Thomas (1996, 1998). Additionally, Hickey (1988, 2000) and Thomas (1996) identified development, especially land-use changes resulting from urban expansion, as a major threat to the species; and Hickey (1988) noted an increase in grazing pressure at some of the sites discovered during a four-county survey.

Although no specific reclassification (endangered to threatened) criteria were provided in the Recovery Plan, the following recovery (delisting) criteria were given: 30 self-sustaining populations, 15 of which are in secure ownership, must be at least one-half acre in size each and show self-sustaining populations for at least 7 years (U.S. Fish and Wildlife Service 1988). We indicated that these recovery goals could be accomplished through the following actions: (1) An inventory of suitable habitat for new populations, (2) the protection and management of existing populations, (3) the continued monitoring of populations and initiation of research on the species, (4) the development and initiation of management programs on protected sites, (5) the establishment of new populations on public land, and (6) the development of public awareness and support to further the conservation of the species.

Although some information gaps concerning the life history requirements of *Lesquerella filiformis* remain, research conducted since the species was listed in 1987 has significantly improved our understanding of the ecological needs of this species. Dr. Michael Kelrick (Truman State University, MO) has conducted and supervised graduate student work on demographics, seed bank ecology, matrix population dynamics used in the development of a population model and protocol for long-term monitoring, analyses of the effectiveness of various management prescriptions utilized to restore and enhance bladderpod habitat, reproductive success, fecundity, and factors influencing germination, seedling establishment and vegetative growth, metapopulation dynamics, and genetic diversity within and between populations (*e.g.*, Harms 1992; Graham 1994). Lisa Potter Thomas of the NPS at Wilson's Creek National Battlefield has also conducted extensive research on the species involving life history ecology (*e.g.*, factors influencing survivorship, plant vigor, and reproduction); the potential impacts of human foot trampling on the species; techniques useful in controlling exotic plants in bladderpod habitat; an examination of microhabitat parameters; and demographic studies that centered on germination, density of flowering stems, survivorship, and fecundity (Thomas and Jackson 1990; Thomas and Willson 1992; Thomas 1996, 1998).

Other recommended research and recovery activities include: (1) Investigating the pollination ecology of the species; (2) revising the Recovery Plan objective established in 1988 to reflect the current knowledge of the species; (3) securing funding to provide necessary information essential to complete recovery and to facilitate the removal of the species from the list of federally protected species; (4) evaluating the efficacy of different management techniques; and (5) assuring that threats such as urban development and competition from exotic plants, both of which result from rapid population growth and urbanization, do not increase (The Nature Conservancy 2002; Hickey 1988; U.S. Fish and Wildlife Service 1988; Thomas and Jackson 1990; Thomas 1996).

Previous Federal Actions

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report, within 1 year after passage of the Act, on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the Service published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of his intention thereby to review the status of the plant taxa named within. *Lesquerella filiformis* was named in the Smithsonian report as endangered and was included in the Service's 1975 notice of review. A subsequent notice of review published in the December 15, 1980, **Federal Register** (45 FR 82480) included *L. filiformis* as a Category 1 species, indicating that we believed there was sufficient biological information to support a proposal to list the species as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions, including the report of the Smithsonian Institution, still pending as of October 13, 1982, be treated as received on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other higher priority activities involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983; October 12, 1984; and again on October 11, 1985, the Service made the finding that listing of *Lesquerella filiformis* was warranted but precluded by other pending listing activities. The proposed rule to list *L. filiformis* as endangered was published on April 7, 1986 (51 FR 11874), and the final rule was published on January 8, 1987 (52 FR 679). The Recovery Plan was approved on April 7, 1988 (U.S. Fish and Wildlife Service 1988).

In letters dated January 26 and February 17, 1998, the Service received a petition from the MDC to reclassify *Lesquerella filiformis* from endangered to threatened. On March 18, 1998, we responded and indicated that, based on our Listing Priority Guidance issued on October 23, 1997, we could not address the petition until we completed other higher priority listing actions. The Act requires us to make certain findings on petitions to add species to the List of Endangered and Threatened Plants, remove species from the List, or change their designation on the List. This proposed rule constitutes both our 90-day finding that the petitioned action may be warranted and our 12-month finding that the action is warranted.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for determining whether to add, reclassify, or remove a species from the List of Endangered and Threatened Plants using five factors described in section 4(a)(1). These factors and their application to *Lesquerella filiformis* Rollins (Missouri bladderpod) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

At the time of listing, *Lesquerella filiformis* was known to occur at only nine locations in Dade, Greene, and Christian Counties, MO. As described in the BACKGROUND section, surveys and research since that time have documented 63 extant sites. Currently, this species is known to occur at a total of 61 sites in 4 counties in Missouri and 2 sites in 2 counties in Arkansas. Of these, 30 have a TNC Nature Community Rank of A, B, or AB.

Taking into consideration annual fluctuations in population, the estimated total number of plants known in Missouri has increased from approximately 550 plants in 1980 (Morgan 1980) to a potential maximum of 400,000–500,000 plants when climatic and edaphic conditions are ideal for germination, overwinter survival, seedling establishment, growth, and seed production. Additionally, a maximum of "tens of thousands" of plants have been reported at the Izard County, AR, site (Theo Witsell, *in litt.* 2002). Given that the 2 sites in Arkansas are separated by approximately 150 miles and are about 85–100 miles from the nearest location in southwestern Missouri, the possibility exists that additional populations of *Lesquerella filiformis* are yet to be discovered in southern Missouri and northern Arkansas, especially because the Izard County, AR, site is partially dolomitic, a geological feature previously not targeted for surveys in Missouri.

In addition, the threat of habitat loss has been reduced by the acquisition and management of occupied sites by public land management agencies and TNC (Table 2). The MDC and TNC successfully protected one of the largest known sites, Rocky Barrens in Greene County, MO, by purchasing a total of 281 acres of occupied habitat between 1988 and 1993. Another five sites in Missouri are under public ownership or a long-term conservation agreement, including approximately 29 acres at the Wilson's Creek National Battlefield in Christian and Greene Counties; 3 acres at the Nathan Boone State Historic Site in Greene County; and approximately 40 acres at the Bois D'Arc Conservation Area in Greene County, an MDC property. Additionally, TNC has secured a 100-year lease to manage 47 acres of bladderpod habitat at South Greenfield Glade in Dade County, MO (Beth Churchwell, TNC, pers. comm. 2000).

TABLE 2.—BENEFICIAL ACTIVITIES TO ENHANCE MISSOURI BLADDERPOD SITES UNDER PUBLIC OWNERSHIP OR A LONG-TERM EASEMENT AGREEMENT

Site	Managing agency	Acreage	Management activities	Other conservation activities
Wilson's Creek National Battlefield.	National Park Service.	4 sites, ~29 acres.	Control of woody vegetation, exotic grasses, and sericea lespedeza using a variety of methods, including prescribed burning, mechanical removal, and reducing foot traffic impacts.	Ongoing monitoring and demographics; life history and micro-habitat studies; public outreach and education.
Rocky Barrens Conservation Area.	Missouri Department of Conservation.	191 acres	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring; public outreach and education; support of various research projects.
Rocky Barrens	The Nature Conservancy.	90 acres	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring; public outreach and education; support of various research projects.
Bois D'Arc Conservation Area.	Missouri Department of Conservation.	40 acres	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring; public outreach and education.
Nathan Boone State Historic Site.	Missouri Department of Natural Resources.	3 acres	Control of woody vegetation and exotic grasses using prescribed burning; fencing to eliminate cattle from occupied habitat.	Ongoing monitoring; planned development of interpretative program.
South Greenfield	The Nature Conservancy.	47 acres	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring and floristic inventories of associated species.

The MDNR, MDC, TNC, and Wilson's Creek National Battlefield have undertaken various management activities to further the conservation of the species (Table 2). Management techniques that have been effective in enhancing bladderpod habitat include prescribed burning, chainsawing, and bulldozing to control the encroachment of woody vegetation such as red cedar (*Juniperus virginiana*) and exotic plants such as annual brome grasses (*Bromus* spp.) and sericea lespedeza (*Lespedeza cuneata*), rerouting hiking trails to reduce potential impact from foot traffic, and installing fencing to exclude cattle from occupied habitat (Table 2).

In particular, prescribed burning is a highly beneficial technique to improve bladderpod habitat. In 1988, an estimated 1,500 plants were counted at Rocky Barrens Conservation Area (Hickey 1988), and 2,000 plants were determined to occur on the same site in 1992 (MDC 2002a). In August 1993, MDC conducted a controlled burn on the area (Figg and Priddy 1994), and over 50,000 plants were estimated in May 1994 (MDC 2002a). The species responded similarly at the same site in the spring of 1997 and 1998, following controlled burns in August 1996 (Figg and Davit 1997) and 1997. MDC botanist Tim Smith estimated that the population at the site in May 1998 contained "tens of thousands" of plants (MDC 2002a).

Additional protection and management of bladderpod habitat has occurred through TNC's Registry Program. Between 1986 and 1996, nine sites in Christian, Dade, and Greene Counties were added to the organization's Registry Program. Under this program, private landowners have an agreement with TNC to protect Missouri bladderpod sites to the best of their ability and to notify TNC regarding any new threats to the species or its habitat or if the landowner plans to sell the property. Additionally, TNC personnel assist private landowners by providing management suggestions, including the development of site-specific plans, and by notifying them of various landowner incentive programs that promote Best Management Practices. Best Management Practices developed by MDC (2000) include surveys for bladderpod and bladderpod habitat, controlling the encroachment of eastern red cedars and exotic species onto glade habitat through mechanical cutting and prescribed fire, avoiding the use of nonspecific herbicides between October and July in occupied bladderpod habitat, and avoiding heavy grazing or grazing during flowering and fruiting periods (March-July) (Susanne Greenlee, TNC, pers. comm. 1998).

In 1998, the Service provided funding to TNC to enhance 90 acres of degraded bladderpod habitat on Rocky Barrens Conservation Area in Greene County. Missouri bladderpod habitat was improved by prescribed fire and cutting of invasive eastern red cedar trees. Although a thorough estimate of Missouri bladderpod plants has not yet been possible on the managed area since these restoration efforts were conducted in 1998, flowering plants were observed at the location in 1999 (Doug Ladd, TNC, pers. comm. 2000).

Potential impacts to populations of *Lesquerella filiformis* on rights-of-way maintained by the Missouri Department of Transportation (MODOT) was another threat identified at the time of listing (52 FR 679, January 8, 1987) and also when the Recovery Plan was completed for the species (U.S. Fish and Wildlife Service 1988). Education programs within the MODOT have significantly reduced the potential impact of mowing or chemical treatment of highway rights-of-way. Maintenance supervisors who work within the range of Missouri bladderpod in Missouri have been alerted to the location of extant populations and have been trained in the identification and habitat needs of the species. Consequently, most maintenance activities that may impact the species are avoided. In situations where potential impacts are unavoidable, MODOT, as a designated representative for the Federal Highway Administration, initiates consultation with the Service and further discusses such activities with the MDC to minimize these impacts (Gene Gardner, MODOT, pers. comm. 2000).

The expansion of the exotic brome grasses *Bromus tectorum* L. and *B. sterilis* L. has been identified by some as a potential threat to the Missouri bladderpod (The Nature Conservancy 2002; Hickey 1988; U.S. Fish and Wildlife Service 1988; Thomas and Jackson 1990; Thomas 1996; Hickey 2000). Thomas and Jackson (1990), however, indicated that exotic species of *Bromus* spp. can be controlled with a combination of management techniques. While such management is undoubtedly labor-intensive, and continued monitoring of this threat is warranted, there is no solid evidence to date that these exotic grasses have eliminated populations of *Lesquerella filiformis*, especially in areas that are regularly managed by techniques such as prescribed fire. Nonetheless, further research on the potential adverse impacts of brome grasses to Missouri bladderpod is clearly warranted.

The glade and other rocky habitats where *Lesquerella filiformis* is found were probably maintained historically by fires. The cessation or significant reduction in the number of fires occurring on glades in the last few centuries has enabled woody vegetation, such as red cedar, to encroach onto bladderpod habitat. The encroachment of such woody vegetation onto glades occupied by *Lesquerella filiformis* has been frequently listed as a threat to this species' continued existence (Hickey 1988; Thomas and Jackson 1990; Thomas 1996; The Nature Conservancy 2002). Recent research by MDC and TNC at the Rocky Barrens Conservation Area and Preserve in Greene County, MO, has provided strong evidence that this species responds well on glades that have been cleared of woody vegetation by the combination of cedar tree removal and the use of controlled fires (Figg and Davit 1997). Prescribed burns have been conducted on six sites under public ownership with positive results (Table 2). This management tool may be used at additional bladderpod sites.

Grazing and haying are potential threats to Missouri bladderpod populations under private ownership (U.S. Fish and Wildlife Service 1988). Overgrazing may impact small populations of the plant, but minor grazing actually enhances these populations (MDC 1997). Presently, there are no known incidents where haying has been a threat to existing Missouri bladderpod populations.

The poor, rocky, thin soils over bedrock make bladderpod habitat nonconducive to increases in agricultural development within the species' range in Missouri. Hickey (2000) reported that one population was destroyed by construction of a putting green on a golf course and another was destroyed as a result of residential construction. Thus, as discussed by Hickey (1988, 2000) and Thomas (1996), the species' habitat is threatened most by urban/suburban expansion and development.

The Service, TNC, and all public land management agencies with extant sites on lands under their jurisdiction have been actively involved in various aspects of public outreach and education associated with Missouri bladderpod. These include developing landowner contact programs, producing educational brochures, and holding identification and ecology workshops on the species. In 1995, MDC published a new brochure for the Rocky Barrens Conservation Area that highlighted Missouri bladderpod. In the same year, MDC conducted an identification workshop for employees of the National Resources Conservation Service (NRCS) and the Williams Pipeline Company in Springfield, MO. This workshop was extremely productive as it led to the discovery of a previously unknown site of Missouri bladderpods along a powerline right-of-way in Greene County. In February 1997, MDC published an Endangered Species Guide Sheet for Missouri bladderpod and distributed it to private individuals and public agency employees through MDC, TNC, NRCS, and the University of Missouri Extension Service. The brochure provided information on identification, life history requirements, habitat, distribution, causes of historic decline, current threats to the species, and management guidelines that would contribute to bladderpod recovery.

Public outreach materials developed for Missouri bladderpod include a Best Management Practice Guide Sheet distributed by MDC (2000) that outlines suggested management practices for projects that could potentially impact the species identified by MDC during environmental reviews. A public information endangered species card was published by the Conservation Commission of the State of Missouri (1999). The species was also highlighted in two separate issues of MDC's *Missouri Conservationist* (June 1995 and February 1999) involving endangered species.

In 1992, MDC and the Service cooperated in a landowner contact program involving 25 private landowners with extant populations of *Lesquerella filiformis* in an approximately 5-square-mile area in Greene County, MO. The purpose of the program was to educate the landowners on the habitat needs of Missouri bladderpod and to suggest compatible land management techniques that would benefit the species. Over 80 percent of the people contacted responded favorably to the protection and management of the bladderpod and its habitat (Amy Salveter, U.S. Fish and Wildlife Service, pers. comm. 2000).

Although great progress has been made toward the recovery of *Lesquerella filiformis*, the species is still threatened by urban/suburban expansion and development and encroachment of invasive woody plants and exotic pasture grasses. The recent discoveries in northeastern Arkansas indicate that additional surveys in southern Missouri and northern Arkansas are warranted. Additionally, population estimates at all extant sites in Missouri in one year have not been undertaken since observations made by Hickey (1988). Extended demographic analyses conducted by Thomas (1996), Kelrick (2001a, 2001b), and Smith (*in litt.* 2002) strongly suggest that a well-established long-term monitoring program is necessary to accurately detect population trends.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

At the time of listing, overcollecting by botanists and flower garden enthusiasts was considered a threat to the species' continued existence. Although Steyermark (1963) indicated that Missouri bladderpod is a desirable addition to rock gardens, and the Service postulated that the species may be vulnerable to overcollection at the time of listing (52 FR 679, January 8, 1987), there is no evidence to date that such activities have taken place. Additionally, given the large number of currently known extant sites (61 in Missouri and 2 in Arkansas), adverse impacts from overcollecting by wildflower enthusiasts or botanical collectors is extremely unlikely, even during years when the number of flowering individuals is low. Overutilization is no longer believed to pose a distinct threat to this species.

C. Disease or Predation

Morgan (1983) studied one population of *Lesquerella filiformis* at Wilson's Creek National Battlefield in Greene County, MO, and determined that insect predation and fungal infection damaged seed set. Although there may be a concern for such impacts during low population levels, it is likely that Missouri bladderpod has adapted to such natural influences and the species is probably well buffered against these natural occurrences at more robust population levels. To date, there is no evidence that these agents are exotic to the species' habitat, or that naturally occurring incidents of disease or predation have contributed to a recent decline in any of the known extant populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The MDC recently adopted the conservation status ranking system developed by NatureServe, TNC, and the Natural Heritage Network for global (G ranks) and State (S ranks) rankings for all State- and federally-listed species in Missouri (Missouri Natural Heritage Program 2001). *Lesquerella filiformis* is officially listed in Missouri as rare and uncommon, with a ranking of S3 (rare and uncommon in the State; 21 to 100 occurrences), and G2 (imperiled globally because of extreme rarity or because of some factor(s) making it especially vulnerable to extinction; typically 5 or fewer occurrences or very few remaining individuals or acres). This species is also listed in the Wildlife Code of Missouri (MDC 2002b). Species listed in the Wildlife Code of Missouri under 3CSR10–4.111 are protected by State Endangered Species Law 252.240. Missouri regulations prohibit the exportation, transportation, or sale of plants on the State or Federal lists. A small percentage of Missouri's populations of Missouri bladderpod occur on lands either administered by MDC, MDNR, NPS, or TNC. These agencies prohibit the removal of this plant from their properties without a collector's permit.

Currently, *Lesquerella filiformis* is State-listed in Arkansas as S1 (critically imperiled in the State because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation from the State; typically 5 or fewer occurrences or very few remaining individuals; Theo Witsell, *in litt.* 2002) but receives no additional protection other than those specified under the Act (John Logan, pers. comm. 1998).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Various human disturbances were considered as threats to the species at the time *Lesquerella filiformis* was listed in 1987 (52 FR 679, January 8, 1987). Thomas and Willson (1992) examined the potential impact of trampling on a population at Wilson's Creek National Battlefield and noted that the species' survival decreased by 42 percent when subjected to the highest level of trampling intensity. Although the number of populations of *L. filiformis* on public areas that receive high levels of trampling are few in number, precautions will need to be taken in the future to protect Missouri bladderpod habitat at such locations. Other studies and observations, however, suggest that this species actually benefits from low to moderate levels of human-induced disturbance that reduce woody encroachment and stimulate seed bank germination through soil disturbance (MDC 1997; Jerry Conley, MDC, *in litt.* 1998). Excessive disturbance from trampling, overgrazing by livestock, and significant alterations of glade habitat through the use of ground-moving equipment could become increased threats to the species in the future and should be closely monitored.

Summary of Status

Under the Act, an endangered species is defined as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given that (1) *Lesquerella filiformis* now occurs at 61 sites in Missouri and 2 sites in Arkansas (an increase of 54 sites since listing); (2) 6 sites in Missouri are under public ownership or under a long-term conservation agreement and are managed to benefit the species; (3) 9 additional sites in Missouri receive some degree of protection as part of TNC's Registry Program; (4) the species responds well to the proper management of its habitat, especially cedar tree removal and controlled burning; (5) minor levels of disturbance may actually benefit rather than hinder the species; and (6) significant knowledge has been gained regarding the life history requirements and population dynamics of the species, we no longer believe that this species meets the definition of an endangered species.

Although there has been a considerable increase in the number of known populations, an expansion of the known range of the species, and a sizeable increase in the number of known individual plants, the Missouri bladderpod has not recovered to the point that it can be removed (delisted) from the Federal List of Endangered and Threatened Plants. These numerical increases are encouraging, and they provide evidence suggesting the species has exceeded the first delisting criterion, which requires 30 self-sustaining populations. However, the delisting criteria also require that 15 of the populations must be in secure ownership, be at least one-half acre in size, and show self-sustaining populations for at least 7 years. At this time, fewer than 10 populations can be considered to be in secure ownership, and only 3 of these populations have been monitored for at least 7 years. Although acreage of these secured populations is large, because of the year-to-year population fluctuations demonstrated by this species, at this time we can document that only one of these three populations is viable and self-sustaining for at least 7 years. Therefore, we believe delisting this species would be premature.

Consequently, on the basis of our review of the best available scientific and commercial data, we propose to reclassify the Missouri bladderpod from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Lesquerella filiformis*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up; or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of violating State criminal trespass law. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purpose of the Act. We anticipate that few trade permits would ever be sought or issued for *Lesquerella filiformis* because the plant is not in cultivation or common in the wild.

This rule proposes to change the status of *Lesquerella filiformis* at 50 CFR 17.12 from endangered to threatened. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Collection, damage, or destruction of threatened plants on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. Section 7 of the Act would still continue to protect this species from Federal actions that would jeopardize its continued existence. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by application of section 9 to this listing.

Finalization of this rule will not be an irreversible action on the part of the Service. Reclassifying *Lesquerella filiformis* to endangered may be considered if changes occur in management, habitat, or other factors that negatively alter the species' status or increase threats to its survival.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Columbia Field Office (*see* the **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and issuance of permits under the Act may be addressed to the U.S. Fish and Wildlife Service, BHW Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (phone 612/713–5350, facsimile 612/713–5292).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish for us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety (*see* **ADDRESSES** section). Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject range and their possible impacts on the species.

In promulgating a final regulation on this species, we will take into consideration the comments and additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

Public Hearing

The Act provides for a public hearing on this proposal, if requested. Requests must be filed by the date specified in the **DATES** section above. Such requests must be made in writing and addressed to the Field Supervisor (*see* **ADDRESSES** section).

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed reclassification of *Lesquerella filiformis*.

Required Determinations

Executive Order 12866

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this proposal easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also send the comments by e-mail to *Exsec@ios.doi.gov*.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. For additional information concerning permit and associated requirements for threatened species, *see* 50 CFR 17.72.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as

amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Service's Columbia, MO, Field Office (*see* **ADDRESSES** section).

Author

The primary author of this proposed rule is Paul M. McKenzie, Ph.D. (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by revising the entry for "*Lesquerella filiformis*" under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Lesquerella filiformis	Missouri bladderpod	U.S.A. (AR, MO)	Brassicaceae	T	253,__	NA	NA

Dated: April 16, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–14355 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 111

Tuesday, June 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Pilot-Testing of WIC Staffing Administrative Data Collection Process

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other interested parties to comment on a proposed pilot test of a potential new administrative data collection system for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The proposed pilot-testing described in this notice is part of FNS' larger effort to address the long term staffing challenges confronting the WIC Program's ability to provide quality nutrition services. This effort by FNS is in response to a General Accounting Office (GAO) recommendation that resulted in part from the concerns expressed by WIC state and local agencies and other program stakeholders that Nutrition Services and Administration (NSA) funding has not kept pace with the challenges and costs of program operations and administration.

DATES: To be assured of consideration, comments must be received on or before August 11, 2003.

ADDRESSES: Comments may be sent to Ed Herzog, Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Mr. Herzog at 703–305–2576. The Internet address is: *edward.herzog@fns.usda.gov*.

We are soliciting comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1006.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

All submitted comments should refer to the title of this proposal.

FOR FURTHER INFORMATION CONTACT: Edward Herzog at 703–305–2137.

SUPPLEMENTARY INFORMATION:

Title: Pilot-testing of WIC Staffing Administrative Data Collection Process.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) directed GAO to assess various aspects of NSA funding of the WIC program. The request was motivated by the concerns of WIC state and local agencies and other program stakeholders that the NSA funding had not kept pace with the challenges and costs of program operations and administration.

In December 2001, GAO released their fifth and final report on this subject, Food Assistance: WIC Faces Challenges in Providing Nutrition Services (GAO–02–142). One of the key challenges noted in the report concerned the recruitment and retention of skilled staff.

In the report, GAO confirmed a widely recognized concern in the WIC community that many local WIC agencies are reporting a shortfall in the number of professional staff available to the Program and difficulty acquiring professional staff members. For example, the 1998 WIC Participant and Program Characteristics report found that 30 percent of local WIC agencies serving over 40 percent of WIC participants reported having too few professional staff members. About half of the agencies reported having difficulty recruiting and hiring staff. GAO estimated that in Federal Fiscal Year 1998, between 5 to 15 percent of local WIC agencies did not have a nutritionist or dietitian on staff. The GAO report cites one WIC Director who suggested that the problem might worsen because WIC's workforce is aging and large numbers of WIC professionals are expected to retire in the next few years.

The WIC Program community, at the national and state level, and the professional nutrition community have also registered concern about the staffing issues currently facing the WIC program and interest in identifying staffing characteristics in greater detail. The National WIC Association (NWA) local agency section has also identified a need to better understand the issues affecting local agency staffing, and has identified a number of items of interest to the WIC community.

As noted by GAO and by FNS, a key obstacle in formulating strategies to address staffing needs in the WIC Program is the lack of data regarding issues such as staffing patterns, vacancies, turnover, and salaries at the local level. Without such data, identifying the exact nature of the staffing problems is difficult, and developing strategies to address these issues is an even greater challenge. Moreover, the lack of data can by itself be a contributing factor to the problems in recruiting and maintaining skilled staff. Until there is data documenting agencies' inability to meet demand, it is difficult to develop the infrastructure necessary to produce more professional staff and provide a greater level of support for them.

In order to address the lack of WIC staffing data, GAO recommended that FNS work with the Economic Research Service and the National Association of WIC Directors (now NWA) to conduct an assessment of the staffing needs of

state and local agencies. FNS has determined that additional data collection is required to adequately respond to the GAO recommendation and to the staffing concerns currently facing the WIC program. FNS is interested in eventually developing a data collection system that all WIC local agencies would respond to on a periodic basis. Before proceeding with such a data collection system, however, FNS needs to better understand the burden associated with such a system. As a first step, FNS is planning to pilot-test a paper and an electronic version of the data collection system with volunteer local WIC agencies.

Methods: As a first step towards developing a draft data collection instrument, FNS, in consultation with the National WIC Association (NWA), established an eleven member advisory board consisting of local and state WIC agency representatives and a representative from the academic nutrition community. FNS thus assured that expert opinion and dialogue with the WIC stakeholder community was utilized in the process of developing the instrument. The diverse membership of the advisory board includes administrators and nutritionists from large and small geographic states and one Native American agency, representing all seven FNS regions.

FNS believes that the use of an electronic data collection instrument would help minimize the burden of the data collection process. However, according to NWA, only half of their member agencies currently have internet access. For this reason, FNS will pilot both an electronic and a paper version of the data collection instrument in order to test the effectiveness of both systems.

The draft data collection instrument was designed to collect information on the following areas:

1. Number and type of staff;
2. Functional responsibilities, by category of staff;
3. Salary and benefit levels by category of staff;
4. Factors affecting recruitment and retention of staff;
5. Changes in staffing levels over time;
6. Local agency characteristics.

FNS plans for pilot testing to be performed in selected local WIC agencies. The selected local WIC agencies are to be identified in consultation with the advisory board. Participation in the pilot-test will be voluntary; no local agency will be required to participate.

The pilot-test of the data collection system will serve three purposes. It will allow FNS to: (1) Make further refinements to the data collection instrument; (2) better understand the burden on local agencies to report staffing data; and (3) decide whether to go forward with a national periodic administrative data collection of staffing data from all local WIC agencies.

A copy of the proposed data collection instrument (paper version) can be obtained from the contact person identified at the beginning of this notice. The electronic version will not be available for review but will have the same questions, in the same order, as the paper version.

Estimate of Burden: The estimate of the reporting burden is based on the assumption that the information being requested should be available somewhere within each local agency; however, it may require some effort to collect and compile the information for the pilot-test. Furthermore, while there is a relatively fixed amount of time needed to fill out the pilot-test data collection instrument, agencies with more employees will likely need more time to collect and compile the requested information.

Respondents: Local WIC Agencies.

Estimated Number of Respondents: The pilot test will be conducted in one hundred local agencies, fifty of which will test the paper data collection instrument and fifty of which will test the electronic instrument. In addition, one day follow-up visits will be conducted at twelve of the original one hundred agencies for the purpose of verifying the accuracy of their responses and further understanding the process necessary to collect and compile the information.

Number of Responses per Respondent: Each local agency in the pilot test will complete the data collection instrument once. Each agency will also complete a second, shorter survey indicating how difficult the information was to collect, how much time it took to complete the data collection instrument, and which questions were particularly difficult to respond to. The twelve agencies selected for the follow-up will have one visit from a project team member.

Estimated Time per Response: The estimated time required for local agencies to compile and report the information will likely vary based on the size of the agency, as measured by the number of employees. Nationally, the size of local agencies ranges from one or two employees to the largest agency which employees approximately 350 staff. The agencies in the pilot will represent this diversity of size to the extent that appropriate volunteers can be identified. Estimates were developed for various ranges of agency size. These are:

(a) 1–20 employees: 30 minutes to read and understand the instructions, 120 minutes to collect the information, 40 minutes to complete the data collection instrument, and 30 minutes to complete the second survey for a total of 220 minutes.

(b) 21–100 employees: 30 minutes to read and understand the instructions, 240 minutes to collect the information, 40 minutes to complete the data collection instrument, and 30 minutes to complete the second survey for a total of 340 minutes.

(c) Over 100 employees: 30 minutes to read and understand the instructions, 360 minutes to collect the information, 40 minutes to complete the data collection instrument, and 30 minutes to complete the second survey for a total of 460 minutes.

All agencies, follow-up visits: Approximately six hours, regardless of agency size, for the follow-up visit and interviews.

There is no source of information regarding the number of employees in each of the local agencies across the country. However, from the oversite and monitoring of states and their local agencies over several years, FNS believes that the majority of local agencies probably fall within the middle size group. Accordingly, the pilot will include approximately twenty-five agencies from the first and third size groups and fifty agencies from the middle size groups for both versions of the pilot (paper and electronic). A slightly larger number of volunteer agencies will initially be identified to allow for a non-response rate and still have the desired number of responses.

Estimated Total Burden on Respondents in the Pilot: The total burden is calculated as follows:

25 local agencies × 220 minutes = 5,500 minutes or 91.7 hours.

50 local agencies × 340 minutes = 17,000 minutes or 283.3 hours.

25 local agencies × 460 minutes = 11,500 minutes or 191.7 hours.

12 local agencies × 6 hours = 72 hours.

Total respondent time: 638.7 hours.

Dated: June 2, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–14540 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, June 16, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

DATES: The meeting will be held June 16, 2003, from 4 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 3, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–14520 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–885, A-533–834, A-428–838]

Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations:

The Petitions

On May 14, 2003, the Department received petitions filed in proper form by Ciba Specialty Chemicals Corporation (Ciba or petitioner). The Department received supplemental information to the petitions from Ciba on May 27, 2003 and May 30, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of 4,4'-Diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA) from Germany, India, and the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Germany, India, and the PRC are materially injuring, or are threatening to materially injure an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate, *See infra*, "Determination of Industry Support for the Petitions."

Period of Investigation

The anticipated period of investigation (POI) for Germany and India is April 1, 2002, through March 31, 2003; and October 1, 2002, through March 31, 2003 for the PRC.

Scope of Investigations

These investigations cover 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper, and detergent. These investigations cover all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we sought additional information from the petitioner concerning the scope of the investigations. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.[1]

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a

[1] *See* Memorandum to the File Re: Change to Scope Description (June 3, 2003).

domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the "Scope of Investigations" section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. *See* Office of AD Enforcement, Initiation Checklist: 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA) from Germany, India, and the People's Republic of China (June 3, 2003) (the Initiation Checklist) at attachment II (on file in the Central Records Unit, Room B-099 of the Department of Commerce).

On May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition. However, neither party provided sufficient evidence that would call into question the sufficiency of the petitioner's industry support. *See* Initiation Checklist at attachment II for further details. Therefore, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA; thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 732(c)(4)(A)(ii) of the act are also met. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the "Injury Allegation" section in the Initiation Checklist.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of India were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act (URAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." SAA, H.R. Doc. No. 103–316 at 833 (1994). Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that before initiating such an investigation the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. We have analyzed the country-specific allegation as described below for India. Based on our analysis, we found reasonable grounds to believe or suspect that sales of DAS and SFWA in India were made at prices below cost. *See* the "Normal Value" section for India, below.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices, and constructed value (CV) are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Germany

Export Price

The petitioner based export price (EP) on average unit values of DAS imports from Germany during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000. *See* Initiation Checklist for further information.

Normal Value

With respect to normal value (NV), the petitioner calculated COM based on the production costs of a German DAS manufacturer, Ciba Spezialitatenschemie Grenzach GmbH, that is affiliated with the petitioner, because home market prices and information related to third country sales were unavailable during the fiscal year 2002. To calculate selling, general and administrative expenses (SG&A) and profit, the petitioner relied on amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG, a German producer of DAS. We relied on the cost data contained in the petition except in the following instances.

1. We recalculated the selling, general and administrative (SG&A) expenses amount per pound of DAS exclusive of movement and import duty expenses. First, we calculated the SG&A rate based on the amounts reported in the unconsolidated financial statements for the 2002 fiscal year of Bayer AG. Second, we applied this SG&A rate to the reported cost of manufacture (COM). Finally, we deducted the amounts contained in the petition for shipping cost from German port to U.S. port, and U.S. import duty from the calculated SG&A amount per pound of DAS because the selling amount contained in the unconsolidated financial statements may include the movement and duty expenses.

2. We recalculated the financial expense amount per pound of DAS. We calculated the financial expense rate based on the amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG. and applied this financial expense rate to the reported COM.

3. We calculated the profit amount per pound of DAS. We calculated the profit rate as a percentage of cost of goods sold and SG&A amounts reported in the unconsolidated financial statements for the 2002 fiscal year of Bayer AG because these unconsolidated financial statements did not itemize the financial expenses, but included them in the basket of non-operating expenses. Therefore, we applied this profit rate to the reported COM and the SG&A expense amount inclusive of shipping cost from German port to U.S. port, and U.S. import duty.

4. We recalculated the CV by adding the reported COM to the calculated SG&A, financial expense, and profit amounts as discussed above.

The estimated dumping margins for subject merchandise from Germany, based on a comparison between the U.S. prices and adjusted CV is 194.9 percent.

India

Export Price

The petitioner based EP on average unit values of DAS imports from India during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000.

Normal Value

With respect to NV, the petitioner provided a home market price for DAS using a price quote obtained from its joint venture in India. This price was quoted in U.S. dollars, FOB Hyderabad.

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of DAS in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, financial expenses, and packing expenses.

The petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce DAS in the United States and in India using publicly available data. For one particular raw material, oleum, we noted that the cost was based on amounts purchased from two countries. In order to be conservative in using this estimated cost, we recalculated the oleum costs based on the lower per-unit purchase price. In addition, we also corrected a mathematical error for the cost of another raw material element.

To calculate overhead and SG&A expenses, the petitioner relied upon amounts reported in the 2001–2002 financial statements of an Indian chemical producer. The petitioner did not include packing costs in the CV calculation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in India on CV. The petitioner calculated CV using the same COM, overhead, and SG&A, and profit expense figures used to compute the Indian home market costs. Consistent with 773(e)(2) of the Act, the petitioner included in CV an amount for profit.

The estimated dumping margin for subject merchandise from India, based on a comparison of EP and home market price, is 35.7 percent. The estimated dumping margin for India based on a comparison between EP and CV is 139.61 percent.

PRC

Export Price

The petitioner based EP on average unit values of DAS imports from the PRC during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000.

Normal Value

With respect to NV, the petitioner provided CV based on Indian surrogate values and the petitioner's own experience producing DAS (its factors of production), adjusted for any known differences between the petitioner's production process and the Chinese DAS production process. Where the petitioner was unable to obtain Indian surrogate values for material inputs, it used a value of zero for such inputs. We also adjusted the value of high pressure steam to zero due to the lack of an appropriate Indian surrogate value. Indian values were converted to U.S. dollars using the exchange rates from the Department's website. Where surrogate values were not contemporaneous with the POI, the petitioner adjusted such values using wholesale price indices from India. For SG&A expenses and profit, the petitioner relied upon amounts reported in the 2001 financial reports of Atul Ltd. (India) and Daurala Organics (India). The petitioner claims that said companies have similar costs to those of a producer of the subject merchandise because said companies produce chemicals similar to the subject merchandise.

The estimated dumping margin for the PRC, based on a comparison of EP and CV, is 156.69 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of DAS and SFWA from Germany, India, and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from Germany, India, and the PRC of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

[2] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp. 639, 642-44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380-81 (July 16, 1991).

Initiation of Antidumping Investigations

Based upon our examination of the petitions covering DAS and SFWA, we have found that they meet the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of DAS and SFWA from Germany, India and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Germany, India, and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than June 30, 2003, whether there is a reasonable indication that imports of DAS and SFWA from Germany, India, and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to thatcountry; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 3, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14592 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–835]

Notice of Initiation of Countervailing Duty Investigation: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein at (202) 482–1391, or Sean Carey (202) 482–3964; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Petition

On May 14, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Ciba Specialty Chemicals Corp. (Ciba) (petitioner). *See 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from the PRC, India, and Germany (Petition).* The Department received information supplementing the petition, on May 27 and May 29, 2003. *See Response to the Department's Supplemental Questions Regarding the Countervailing Duty Investigations of Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from the PRC, India, and Germany* (May 27, 2003) (*CVD Supplemental*) and, *Response to Department's Supplemental Questions Regarding the Scope, Standing and Injury Portions of the Petition Regarding Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from India* (May 29, 2003) (*Scope, Standing and Injury Supplemental*).

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of DAS and SFWA in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers, 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper and detergent. This investigation covers all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we sought additional information from the petitioner concerning the scope of the investigation. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.[1]

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

[1] *See* Memorandum to the File Re: Change to Scope Description (June 3, 2003).

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India (≥GOI") regarding this petition on May 29, 2003. *See Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and DAS Applicators commonly identified as Stilbenic Fluorescent Whitening Agents (SFWA) from India*, dated May 30, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 702(c)(4)(A). Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the *Scope of Investigations* section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the Scope of the Investigation section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Countervailing Duty Investigation Initiation Checklist: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents (DAS and SFWA) from India*, (June 3, 2003) (*CVD Initiation Checklist*), on file in the Central Records Unit, room B-099 of the main Department of Commerce building.

For each country, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA. Thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 702(c)(4)(A)(ii) of the act are also met. Although, on May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition, they did not provide evidence that would call into question the sufficiency of Ciba's industry support. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist* at Attachment II for further details.

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that; (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPB)/ Post-Export Credits
2. Pre-Shipment and Post-Shipment Export Financing
3. Export Promotion Capital Goods Scheme (EPCGS)
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Exemption of Export Credit from Interest Taxes
6. Export Processing Zones/ Export-Oriented Units Programs
7. Market Development Assistance (MDA)
8. Special Imprest Licenses

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in

India. The full discussion of our bases for not initiating on these programs is set forth in the *CVD Initiation Checklist*:

1. Import Mechanisms (Sale of Import Licenses)
2. Duty Drawback on Excise Taxes

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of subsidized imports from India of the subject merchandise. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See CVD Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on DAS and SFWA, and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of DAS and SFWA from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than June 28, 2003, whether there is a reasonable indication that imports of subject merchandise from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 3, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14591 Filed 6–9–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 050103A]

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement Related to the King County, WA, Habitat Conservation Plan

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and in accordance with the Washington State Environmental Policy Act, this notice advises the public that the USFWS and NMFS (collectively, the Services) intend to gather information necessary to prepare an Environmental Impact Statement (EIS). The EIS is for the potential approval of a Habitat Conservation Plan (HCP) and issuance of two incidental take permits (from NMFS and from the USFWS) to take seven endangered and threatened species and 22 unlisted species in accordance with the Endangered Species Act, as amended (ESA). The permit applicant is King County, WA, Department of Natural Resources and Parks, Wastewater Treatment Division (King County). The application is related to construction, operation, and maintenance activities associated with a regional wastewater conveyance and treatment system in western King, Snohomish, and Pierce Counties, WA (permit activities).

The Services provide this notice to: (1) advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the scope of issues to include in the EIS.

DATES: Written comments are encouraged, and should be received on or before August 11, 2003. The Services will jointly hold public scoping meetings on the following dates:

Date	Time	Location
June 17, 2003 ..	3 - 6 p.m.	King Street Center, 201 S. Jackson Street, 8th Floor Conference Center, Seattle, WA
June 24, 2003 ..	6 - 8 p.m.	Kohlwes Education Center, 300 SW 7th Street, Renton, WA
June 26, 2003 ..	6 - 8 p.m.	Northshore Utility District, 6830 NE 185th Street, Kenmore, WA

ADDRESSES: Address comments and requests for information related to preparation of the EIS, or requests to be added to the mailing list for this project, to Jon Avery, USFWS, 510 Desmond Drive S.E., Suite 102, Lacey, WA 98503–1273; facsimile 360–753–9518; or to Phyllis Meyers, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–6349.

FOR FURTHER INFORMATION CONTACT: Jon Avery, USFWS, 360–753–5824; or Phyllis Meyers, NMFS, 206–526–4506.

SUPPLEMENTARY INFORMATION:

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) permit applications anticipated from the King County Wastewater Treatment Division. Therefore, the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (19)). Harm is defined by the USFWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA contains provisions for the issuance of incidental take permits to non-Federal landowners for the take of endangered and threatened species, provided that all permit issuance criteria are met, including the requirement that the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, an HCP containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the HCP will be provided.

King County needs permits because some its activities have the potential to take listed species. Therefore, King County intends to request permits from NMFS and FWS for Chinook salmon (*Oncorhynchus tshawytscha*), bull trout (*Salvelinus confluentus*), and five other listed species (see table below). King County also plans to seek coverage for approximately 22 currently unlisted fish and wildlife species including Dolly Varden (*Salvelinus malma*), proposed for listing under the ESA's similarity of appearance provisions, and the Western yellow-billed cuckoo (*Coccyzus americanus*), a candidate for listing under the ESA under specific provisions of the proposed incidental take permits, should these species be listed in the future.

FEDERALLY LISTED SPECIES PROPOSED FOR COVERAGE

Common Name	Scientific Name	Status	Responsible Agency
Chinook salmon	*Oncorhynchus tshawytscha*	Threatened	NMFS
Bull trout	*Salvelinus confluentus*	Threatened	USFWS
Leatherback sea turtle	*Dermochelys coriacea*	Endangered	USFWS/NMFS
Marbled murrelet	*Brachyramphus marmoratus*	Threatened	USFWS
Bald eagle	*Haliaeetus leucocephalus*	Threatened	USFWS
Steller's sea lion	*Eumetopias jubatus*	Endangered	NMFS
Humpback whale	*Megaptera novaeangliae*	Endangered	NMFS

King County owns and operates a regional wastewater conveyance and treatment system that serves 1.3 million people in the greater Seattle area. The system receives wastewater from a 420–square-mile area in King County and parts of Snohomish and Pierce Counties. Using an extensive network of pipes and pumps, King County currently conveys wastewater collected from local sewer districts to one of two regional treatment plants, where it undergoes both primary and secondary treatment before it is discharged into Puget Sound through outfalls located offshore of West Point and Duwamish Head.

In response to projected population growth within the Puget Sound region, King County has developed the Regional Wastewater Services Plan (RWSP), which enumerates the new and expanded facilities that King County will need throughout its three-county service area to meet increased demand for its wastewater conveyance and treatment services over the next 40 years. The RWSP is the subject of a Washington State Environmental Policy Act document entitled "Final Environmental Impact Statement for the Regional Wastewater Services Plan, April 1998," prepared by the Wastewater Treatment Division of the King County Department of Natural Resources. Construction, operation, and maintenance activities associated with some new or expanded facilities called for in the RWSP, as well as those same activities associated with some existing King County facilities, have the potential to impact species subject to protection under Section 9 of the ESA.

King County has initiated discussions with the Services regarding the possibility of receiving permits that would cover take of listed species incidental to the following otherwise lawful activities:

(1) King County's existing and proposed secondary treated effluent discharges permitted under the National Pollutant Discharge Elimination System;

(2) Construction, operation, and maintenance activities associated with King County's existing and proposed effluent discharge outfalls;

(3) Construction, operation, and maintenance activities associated with King County's existing and proposed wastewater treatment facilities;

(4) Construction, operation, and maintenance activities associated with King County's existing and proposed conveyance facilities;

(5)King County habitat restoration projects, water quality improvement projects, water quality and fish habitat monitoring programs, and adaptive management activities intended to avoid, minimize, and mitigate the impacts of King County activities (1)- (4) on the proposed covered species, to the maximum extent practicable.

The King County Wastewater Treatment Division is currently considering the following types of conservation measures for the proposed Habitat Conservation Plan:

(a) A program of land conservation for the preservation, enhancement, or creation of suitable habitats for species addressed in the HCP to mitigate impacts associated with proposed construction activities;

(b) Development of new construction best management practices to avoid or minimize construction impacts on species addressed in the HCP;

(c) Commitment to continuing certain wastewater source control activities that are currently voluntary, targeted at reducing potential environmental risks by removing wastes before they are discharged into the sewer system;

(d) Implementation of an adaptive management program with ongoing monitoring and adjustment of covered activities.

Under NEPA, a reasonable range of alternatives to a proposed project must be developed and considered in the Services' environmental review. At a minimum, the alternatives developed must include: (1) A No Action alternative, and (2) the Proposed Action, with thorough descriptions of its management features and anticipated resource conservation benefits and potential impacts. For the present environmental review, the Services

intend to review the HCP and to prepare an EIS. The environmental review will analyze King County's proposed HCP, a "No Action" alternative reflecting the baseline conditions in King, Pierce, and Snohomish Counties under current wastewater treatment practices, as well as a full range of reasonable alternatives and the associated impacts of each. The Services are currently in the process of developing alternatives for analysis. Additional project alternatives may be developed based on input received from this and future scoping notices during development of the EIS.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. The Services request that comments be as specific as possible. In particular, we request information regarding: the direct, indirect, and cumulative impacts that implementation of the proposed HCP could have on endangered and threatened and other covered species and their communities and habitats; other possible alternatives; potential adaptive management and/or monitoring provisions; funding issues; baseline environmental conditions in King, Pierce, and Snohomish Counties; other plans or projects that might be relevant to this proposed project; and minimization and mitigation efforts.

In addition to considering potential impacts on listed and other covered species and their habitats, the EIS could include information on potential impacts resulting from alternatives on other components of the human environment. These other components could include air quality, water quality and quantity, geology and soils, cultural resources, social resources, economic resources, and environmental justice.

Comments or questions concerning this proposed action and the environmental review should be directed to the U.S. Fish and Wildlife Service or NMFS at the address or telephone numbers provided above. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 USC 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: May 5, 2003.

David Wesley,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: June 4, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14580 Filed 6–9–03; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–22

DEPARTMENT OF COMMERECE

National Oceanic and Atmospheric Administration

[Docket No. 030528135–3135–01; I.D. 050103F]

Financial Assistance for Submerged Aquatic Vegetation (SAV) Culture and Large Scale Restoration Activities in Chesapeake Bay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this notice is to invite the public to submit proposals for available funding toward research and development projects that address various aspects of Chesapeake Bay Submerged Aquatic Vegetation (SAV) culture and large scale restoration projects. Funds are available to State, local and Indian tribal governments, institutions of higher education, other non-profit organizations and commercial organizations. This notice describes the conditions under which project proposals will be accepted and criteria under which proposals will be evaluated for funding consideration. Depending upon the level of Federal involvement in individual projects, selected recipients will enter into either a cooperative agreement or a grant.

DATES: Applications must be received by 5 p.m. eastern daylight savings time on July 10, 2003. Applications received after that time will not be considered for funding.

Statements of Intent (*see* **SUPPLEMENTARY INFORMATION**) should be submitted by June 30, 2003.

ADDRESSES: You can obtain an application package from, and send completed proposals to: Peter Bergstrom, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the NOAA Chesapeake Bay Office Home Page *http://noaa.chesapeakebay.net/*. Applications will not be accepted electronically nor by facsimile machine submission. The statement of intent (*see* **SUPPLEMENTARY INFORMATION**) should be sent to Peter Bergstrom (*peter.bergstrom@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Peter Bergstrom, NOAA Chesapeake Bay Office, telephone: (410) 267–5660, or e-mail: *peter.bergstrom@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A statement of intent to submit a full proposal is requested although not required and will assist the NOAA Chesapeake Bay Office in setting up technical reviewers. It is requested that this statement provide a project title, associated investigators and approximate budget.

A. Authority

The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries, resources thereof, and for fisheries habitat restoration.

B. Catalog of Federal Domestic Assistance (CFDA)

The projects to be funded are in support of the Chesapeake Bay Studies Program (CFDA 11.457).

C. Program Description

The Chesapeake Bay Studies Submerged Aquatic Vegetation Program is a new program initiated this year in response to language in the House Report (H.R. Rep. No. 108–10, at 712 (2003)). The main purpose of the program is to enhance and increase this important fisheries habitat in Chesapeake Bay and its tidal tributaries. Funding will be directed to complement existing and future efforts in this area by Federal, State, and local agencies, and community watershed associations.

Principle investigators will be expected to prepare for and attend one or two workshops with other NCBO supported researchers to encourage interdisciplinary dialogue and collaboration, and presentation of results of supported work.

II. Areas of Interest

Proposals should exhibit familiarity with related work that is completed or ongoing. When appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or individuals are encouraged. Proposals must address one of the areas of interest listed here. If the proposal addresses more than one area of interest, it should list first on the application the area of interest that most closely reflects the objective of the proposal. Proposals should follow and refer to the guidance in the Chesapeake Bay Program's "Strategy to Accelerate the Protection and Restoration of Submerged Aquatic Vegetation in the Chesapeake Bay" which is available at: *http://www.chesapeakebay.net/* or via Peter Bergstrom (*see* **ADDRESSES**).

All proposals should address the manner in which the applicant will obtain the necessary permits (if applicable) for collecting plant materials from tidal waters and bottom disturbance or putting structures in tidal waters. For collecting permit requirements in Maryland, see: *http://mddnr.chesapeakebay.net/savrrc/index.html*. For permit information for Virginia tidal waters, see: *http://www.mrc.state.va.us/page3.htm*.

These areas of interest are not listed in any particular order of importance: *A. Enhance supply of SAV propagules for restoration, especially seeds.* Propagate seeds, rooted cuttings, and/or whole plants of SAV species native to Chesapeake Bay to use in restoration projects. Priority will be given to proposals to produce seeds of species that are known to grow well from seed, especially eelgrass (*Zostera marina*) and wild celery (*Vallisneria americana*). Proposals for other propagation techniques that will minimize the ongoing need to harvest plant materials from the field are also encouraged. Source materials should come from the Chesapeake Bay watershed if possible, and the applicant must have all required collecting permits before collecting any source material from tidal waters. If a proposal is solely for propagation, the application should list organizations that are interested in using the plant materials they produce in restoration projects in Chesapeake Bay. If the propagules produced will be sold, the applicant must explain in his or her proposal how this income will be used to promote program objectives.

B. Applied research to increase the success of planting SAV directly from seeds. Investigate factors directly related to improving the large-scale cultivation and planting of SAV from seeds in Chesapeake Bay. These factors may include the following: optimal conditions for seed production and maturation, seed viability and germination; seed harvest and storage methods; natural modes of seed transport and fates of seeds that disperse naturally; distribution and viability of seed banks; and other factors. Collecting information useful to the direct planting of seeds of wild celery and/or redhead grass (*Potamogeton perfoliatus*) is encouraged. Proposals that would increase our knowledge of the seed ecology of eelgrass are also encouraged.

C. Large-scale SAV planting in 2003 and/or 2004. Conduct large-scale SAV restoration, including one or more projects that can be done in fall 2003 and/or in 2004. Proposed projects may be expansions of projects already planned, especially if done in 2003. Projects should use native species that have grown well when planted in past Chesapeake Bay projects and sites that have been assessed and shown to have a good chance of SAV survival and include regular evaluation of success for at least 2 years from date of planting. Projects that involve harvesting whole plants from donor beds and transplanting them are discouraged.

D. Site assessments needed to choose SAV planting sites for 2005. Conduct site assessments in 2003 and 2004 of potential sites for large-scale planting projects to be done in 2005 or later. Sites that are assessed should be pre-screened for good SAV growth potential using a GIS targeting tool that uses existing monitoring data. Site assessments may include measuring light availability (water clarity), salinity, temperature, bottom substrate characteristics, water depth, waves and currents, and epiphyte occurrence; mapping current and historical SAV presence by species; conducting small test plantings or other bioassays; and measuring other pertinent water chemistry and environmental parameters.

III. Funding

A. Funding Availability

This solicitation announces that approximately $425,000 will be made available through the NCBO for SAV culture and large scale restoration projects in FY 2003. This document describes how interested persons can apply for funding and how funding decisions will be made.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

B. Award Limits

There are no specified award limits for proposals submitted under this solicitation.

C. Funding Instrument

Whether the funding instrument is a grant or a cooperative agreement will be determined by the degree of NOAA's involvement in the project. A cooperative agreement will be used if NOAA shares responsibility for management, control, direction, or performance of the project with the recipient. Specific terms regarding substantial involvement will be contained in special award conditions.

D. Cost-sharing Requirements

The NOAA strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

IV. Instructions for Application

A. Eligible Applicants

Eligible applicants include state, local and Indian tribal governments, institutions of higher education, other non-profit organizations and commercial organizations.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. The NOAA

encourages proposals involving any of the above institutions.

B. Project Award Period

Under this solicitation, NCBO will fund SAV related projects as 12-month cooperative agreements or grants. Proposals may be submitted for up to a 2-year project period. However, funds will be made available for only a 12-month award period, and any continuation of the award period will be subject to an approved scope of work, satisfactory progress, a panel review, and available funding to continue the award. No assurances for a funding continuation exists; funding will be at the complete discretion of NOAA.

All proposals must include a full description of the activities and budget for the first year as described in this announcement, a summary description of the proposed work for each subsequent year, and an estimated budget by line item (without supporting budget detail pages) for review and analysis. If selected for funding, the applicant will be required to submit a full proposal for the second year by the deadline announced in the following year's competitive cycle. Proposals will be evaluated through a review panel process, but will not be subject to competition with new proposals. Projects should not be scheduled to begin before September 1, 2003.

C. Format and Requirements

Proposals must be complete and must follow the format described in this notice. Potential recipients may submit separate proposals for each area of interest. Applicants should not assume prior knowledge on the part of the NOAA as to the relative merits of the project described in the application.

1. *Proposal format.* Applicants are required to submit one signed original and two copies of the full proposal (submission of five additional hard copies is encouraged to expedite the review process, but it is not required). Proposals must be written in at least a 10-point font, double-spaced, unbound, and one-sided. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 15-page limitation. Appendices may be included but must not exceed a total of 10 pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded. Proposals must include the following information:

a. *Project summary (1-page limit).* It is recommended that each proposal contain a summary of no more than one page that provides the following:

(1) Organization title.

(2) Address, telephone number, and email address of applicant.

(3) Area of interest for which you are applying (see section II).

(4) Project title.

(5) Project duration (1-year project period, starting on the first of the month and ending on the last day of the month).

(6) Principal Investigator(s) (PI).

(7) Project objectives.

(8) Summary of work to be performed.

(9) Total Federal funds requested.

(10) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are cash or in-kind.

(11) Total project cost.

b. *Project description (15-page limit).* Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or in progress under Federal Assistance. Each project must be described as follows:

(1) *Identification of problem(s):* Describe the specific problem or area of interest to be addressed (see section II, above).

(2) *Project objectives:* Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the "what and when," but should avoid the "how and why"; and attainable within the time, money, and human resources available. Projects should be accomplishment oriented and identify specific performance measures.

(3) *Project narrative:* The project narrative is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project or job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. The project narrative must include a milestone table that summarizes the procedures/objectives that are to be attained in each project month covered. Table format should follow sequential month rather than calendar month (*i.e.*, Project period Month 1, Month 2 * * * versus October, November * * *).

(4) *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Need for Government financial assistance:* Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are already in place or have been sought for the project.

(6) *Federal, state and local government activities:* List any program (Federal, State, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the State/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and this plan or activity.

(7) *Project management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(8) *Results from prior NOAA Chesapeake Bay Office support:* If any PI or co-PI identified on the project has received support from the NCBO in the past 5 years, information on the prior award(s) is required. The following information should be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, or a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award (applicable reprints are requested for documentation);

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(9) *Monitoring of project performance:* Identify who will participate in monitoring the project.

(10) *Project impacts:* Describe how these products or services will be made available to the fisheries and management communities.

(11) *Education and outreach:* Describe how this project would provide a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

(12) *Evaluation of project:* Provide an evaluation of project accomplishments and progress toward the project objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility or to quantify the results of the project in promoting increased production, product quality and safety, plant survival, or other measurable factors.

c. *Total project costs and budget narrative.* Total project costs are the amount of funds required, contributions and donations included, to accomplish what is proposed in the Project Description.

Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. The budget detail and narrative submitted with the application should match the dollar amounts on all required forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness.

2. *Funding restrictions.* Please note the following:

a. The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government, see Administrative Requirements, section VI, C.

b. Funds for salaries and fringe benefits may be required only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. NOAA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that their proposals are competitive.

3. *Supporting documentation.* Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented should be clearly referenced in the project description.

D. Federal forms

Applicants may obtain required Federal forms from the NOAA Chesapeake Bay Office Web site (*see* **ADDRESSES**) or from the NOAA Grants Web site: *http://www.rdc.noaa.gov/~grants/index.html.*

1. *Cover sheet.* All applicants must use Office of Management and Budget (OMB) Standard Form 424 (revised 7/97) as the cover sheet for each project.

2. *Budget form.* All applicants must use a Standard Budget Form (SF–424A) required for all Federal grants.

3. *Form CD–511.* All applicants must submit a CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying".

4. *SF–424B.* All applicants must submit a SF–424B, "Assurances of Non-Construction Programs".

5. *CD–346 "Applicant for Funding Assistance."* Required for the following individuals—Sole Proprietorship, Partnerships, Corporations, Joint Venture, Non-profit Organizations.

E. Evaluation Criteria

1. *Project Design/Conceptual Approach.* Projects will be evaluated on your conceptual approach and how you have integrated this into the project design. (25 points)

2. *Project evaluation.* Projects will be evaluated based on your explanation of how you will ensure that you are meeting the goals and objectives of your project, as required in Section IV.C.1.b.12, so that results may be reported in performance reports. (10 points)

3. *Project Management.* Projects will be evaluated based on the management, experience and qualifications of personnel with respect to the applicants being capable of conducting the scope and scale of the proposed work (*i.e.*, education, experience, training, facility, and administrative resources/capabilities). (5 points)

4. *Justification and allocation of the proposed budget.* Proposals will be evaluated on the reasonableness, allowability, and allocability of the proposed budget, as set forth in Section IV.C.1.c. (10 points)

V. Selection Procedures

A. Initial Evaluation of the Applications

NCBO will review all applications to assure that they meet all the requirements of this announcement, including eligibility and relevance to the NCBO. Proposals that do not support the areas of interest of the Chesapeake Bay, as defined in section II of this document above, will not be considered for funding.

B. Technical Review

Applications meeting the requirements of this solicitation will undergo an external technical review. This review will normally involve individuals in the field of SAV and habitat restoration from both NOAA and non-NOAA organizations. Proposals will be scored based on the evaluation criteria as defined in section IV. D. of this document. Reviewers will be asked to review independently and to provide a score and comments on each proposal. All comments submitted to NCBO will be taken into consideration in the evaluation of projects. No consensus advice will be given by the technical reviewers.

C. Funding Decision

Scores for each proposal will then be averaged and the proposals will be ranked numerically for funding based upon the technical review scores. After the proposals have been ranked, the Chief of the NOAA Chesapeake Bay Office, in consultation with Program staff, will determine which projects will be recommended for funding.

Although numerical ranking will be the primary method used for deciding which of the proposals will be selected for funding, it will not be the sole selection factor. Duplication with other projects, geographic diversity, program goals, inter-jurisdictional and inter-institutional collaboration and duplication, and the nature and the amount of any cost share contribution may also be considered in making the final selections. A written justification will be prepared for any recommendation for funding that falls outside the ranking order. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and the Program staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document

signed by an authorized NOAA official has been received.

Unsuccessful applications will be kept on file in the Program office for a period of at least 12 months, then destroyed.

VI. Administrative Requirements

A. Pre-Award Notification Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

C. Allowable Costs

Funds awarded cannot necessarily pay all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the Office of Management and Budget Circulars A–122, "Cost Principles for Nonprofit Organizations"; A–21, "Cost Principles for Education Institutions"; and A–87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable." Funds cannot be used for construction activities beyond minor facility upgrades, *e.g.*, adding tanks or plumbing.

Classification

This action has been determined to be "not significant" for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Under 5 U.S.C. 553(a)(2), prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits and contracts. Because notice and an opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* are inapplicable.

Under section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

Dated: June 4, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–14577 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060303C]

Marine Mammals; File No. 981–1707

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit and availability of environmental assessment.

SUMMARY: Notice is hereby given that Dr. Peter L. Tyack, Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts, 02543, has been issued a permit to take various cetacean species for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard, Tammy Adams, or Steve Leathery, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 23, 2003, notice was published in the **Federal Register** (68 FR 19974) that a request for a scientific research permit to take cetacean species, including endangered whales, had been submitted by the above-named individual and that a draft environmental assessment had been prepared on the proposed research. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). The environmental assessment has been finalized and is available for review.

The permit authorizes takes of various cetacean species, including endangered whales, in the North Atlantic, including the Gulf of Mexico, and Mediterranean Sea. The research is divided into three projects which use as their principle sampling technique the short-term tagging (via suction cup mounted instruments) of marine mammals with an advanced digital sound recording tag (DTAG) that can record the acoustic stimuli an animal hears, while also measuring the animal's vocal, behavioral, and physiological responses to sound. Takes include harassment during close approaches for behavior observation and photo-identification, attachment of tags, focal follows (i.e., following a tagged whale to observe its behavior), and controlled exposure to playbacks of a whale-finding sonar, airgun sounds, and/or sperm whale (*Physeter macrocephalus*) social vocalizations (codas). When the DTAGs are retrieved after release, small fragments of sloughed skin are often found in the suction cup. These tissue samples will be exported from field sites and imported for genetic analyses.

Project 1 will involve applying DTAGs to a variety of whale and dolphin species to study the baseline behavior of animals tagged throughout the North Atlantic. There are three main goals of Project 1: (1) to obtain continuous sampling of marine mammal vocal and motor behavior, (2) to determine correction factors that can be applied to visual sighting data to better estimate population and stock abundance, and (3) to serve as a control group for Projects 2 and 3, described below.

For Project 2, tagged whales and dolphins in the Mediterranean Sea will be used as test subjects in controlled tests of a whale-finding sonar developed by a North Atlantic Treaty Organization (NATO) undersea research lab in Italy. Maximum received level will be 160 dB re 1 µPa rms. Playbacks of sperm whale codas will be used as a control stimulus. The goal of Project 2 is to validate the effectiveness of a whale-finding sonar, to calibrate measurements of the target strength of marine mammals as a function of aspect, and to assess the received levels at which animals that can hear the sonar may start to show changes in behavior.

For Project 3 the responses of tagged sperm whales to short impulses from airgun arrays at received levels no higher than 180 dB re 1 µPa rms will be studied in the Gulf of Mexico. Playbacks of sperm whale codas will be used as a control stimulus. These studies will involve visual observations of surfacing sperm whales, passive acoustic tracking of diving sperm whales, and tagging sperm whales with DTAGs. The primary research objective of the Project 3 airgun playbacks is to determine what characteristics of exposure to specific sounds evoke behavioral responses in marine mammals.

The purpose of the research, as stated in the application, is to study the biology, foraging ecology, communication, and behavior of cetacean species, with a focus on their responses to anthropogenic sounds in the marine environment. The permit will be valid for a period of five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 4, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14578 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

[Docket No. EA–236–A]

Application To Export Electric Energy; American Electric Power Service Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: American Electric Power Service Corporation (AEPSC), on behalf of its public utility operating companies, has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 25, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 5, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from AEPSC, on behalf of its public utility operating companies, to transmit electric energy from the United States to Mexico. Notice of the export application was placed in the **Federal Register** on April 18, 2001, and an order authorizing exports to Mexico was issued on June 15, 2001. That order will expire on June 15, 2003.

On May 21, 2003, AEPSC applied for an extension of its authorization. This application was again filed by AEPSC on behalf of its public utility affiliates, namely: Appalachian Power Company; AEP Texas Central Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Ohio Power Company; Public Service Company of Oklahoma; Southwestern Electric Power Company; and AEP Texas North Company (collectively, the "AEP Operating Companies" or the "Applicants"). AEPSC is incorporated under the laws of the State of New York and has its principal place of business in Columbus, Ohio. The electric energy which the applicants propose to export to Mexico would be either from surplus generation of the AEP Operating Companies or from purchases made on the wholesale market.

The applicants propose to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. The construction of each of the international transmission facilities to be utilized by the applicants, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEPSC application to export electric energy to Mexico should be clearly marked with Docket EA–236–A. Additional copies are to be filed directly with F. Mitchell Dutton, Esq., American Electric Power Service Corporation, 1 Riverside Plaza, 15th Floor, Columbus, Ohio 43215–2373 and John R. Lilyestrom, Esq., Hogan & Hartson, LLP, 555 13th Street, NW., Washington, DC 20004.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on June 5, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–14606 Filed 6–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–332–005]

ANR Pipeline Company; Notice of Compliance Filing

June 2, 2003.

Take notice that on May 28, 2003, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets in Appendix A to the filing, with an effective date of July 1, 2003.

ANR states that these tariff sheets are being filed in compliance with Article 5 of the Stipulation and Agreement submitted in the above-referenced docket on July 10, 2001 (the Settlement), and the Commission's April 9 Order issued in the above-referenced docket. ANR Pipeline Company, 101 FERC § 61,022 (2003).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14501 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–319–001]

ANR Pipeline Company; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 29, 2003, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Fifth Revised Sheet No. 161A.02, with an effective date of May 1, 2003.

ANR states that the tariff sheet is being filed in compliance with the Commission's April 29, 2003, order accepting ANR's proposal, subject to the conditions in the order, to clarify ANR's right to allow contractual Rights of First Refusal pursuant to section 22.2 of the General Terms and Conditions of ANR's Tariff when contracts might otherwise not be eligible for such rights.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14504 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–491–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Columbia Gas Transmission Corporation (Columbia) as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 2003:

Fifth Revised Sheet No. 101
Fifth Revised Sheet No. 108
Fourth Revised Sheet No. 117
Fourth Revised Sheet No. 133
Sixth Revised Sheet No. 171
Eleventh Revised Sheet No. 262
Fourth Revised Sheet No. 466
First Revised Sheet No. 467
Original Sheet No. 468
Fifth Revised Sheet No. 501
Second Revised Sheet No. 502A
Fifth Revised Sheet No. 503
Fourth Revised Sheet No. 511

Columbia states that it is making this filing to add a new General Terms and Conditions (GTC) section to its Tariff, and to make conforming revisions to related Tariff provisions. In particular, Columbia is proposing to include in new section 42 of the GTC of its Tariff a provision that will permit Columbia and eligible shippers to mutually agree to include in their service agreements regulatory unbundling contract demand reduction rights under specified circumstances.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14504 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–493–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 2003:

Eighth Revised Sheet No. 280
Original Sheet No. 280A
Third Revised Sheet No. 485
Fourth Revised Sheet No. 501
Original Sheet No. 501A
First Revised Sheet No. 502A
Fourth Revised Sheet 503
Original Sheet No. 503A
First Revised Sheet No. 505A
Third Revised Sheet No. 511

Columbia states that it is submitting this filing to include in its Tariff new provisions permitting Columbia to agree with its shippers, on a not unduly discriminatory basis, to a contractual right of first refusal (ROFR), equivalent to the ROFR right set forth from time to time in section 4 of the General Terms and Conditions of its Tariff, for service agreements that have a term of 12 or more consecutive months of service but bear a rate that is either discounted or negotiated.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Dated: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14512 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–492–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No.1, the following revised tariff sheets, a proposed effective date of July 1, 2003:

Fifth Revised Sheet No. 55A
Sixth Revised Sheet No. 63A
Second Revised Sheet No. 88
Seventh Revised Sheet No. 125
Third Revised Sheet No. 272
Original Sheet No. 273
Fifth Revised Sheet No. 318

Columbia Gulf states that it is making this filing to add a new General Terms and Conditions (GTC) section to its Tariff, and to make conforming revisions to related Tariff provisions. In particular, Columbia Gulf states that it is proposing to include in new Section 34 of the GTC of its Tariff a provision that will permit Columbia Gulf and eligible shippers to mutually agree to include in their service agreements regulatory unbundling contract demand reduction rights under specified circumstances.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14513 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–305–000]

Distrigas of Massachusetts LLC; Notice of Application

June 2, 2003.

Take notice that on May 22, 2003, Distrigas of Massachusetts LLC (DOMAC), One Liberty Square, 10th Floor, Boston, Massachusetts 02109, filed in Docket No. CP03–305–000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's regulations for authorization to construct, install, operate, and maintain facilities (DOMAC Connection) at DOMAC's liquefied natural gas (LNG) plant in Everett, Massachusetts in order to connect to and deliver regasified LNG into the system of Algonquin Gas Transmission Company (Algonquin), as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

DOMAC states that its application is related to Algonquin's pending HubLine Phase II (or Everett Extension) proceeding, filed on February 5, 2003, in Docket No. CP01–5–003. DOMAC explains that, in the HubLine Phase II proceeding, Algonquin proposes to construct the Everett Extension, in part, to provide 50,000 Dth/d of firm transportation service for DOMAC, and that the DOMAC Connection facilities are necessary to allow such regasified LNG to be delivered into Algonquin's Everett Extension. DOMAC states that the DOMAC Connection represents a new avenue for the delivery of regasified LNG to the New England gas market, while mitigating take-away constraints on its regasified LNG.

Specifically, DOMAC proposes to construct a new 300-foot send-out line, odorant system, and metering system, and to reconfigure existing vaporization equipment to allow higher pressure deliveries into Algonquin's Everett Extension. The proposed facilities will be built entirely on the LNG plant's existing property, and will cost approximately $2.4 million.

DOMAC requests that the Commission issue a final certificate by December 1, 2003, in order to allow DOMAC time to meet its contractual obligation to complete the project by June 1, 2005.

Any questions regarding this application should be directed to Mr. Robert A. Nailling, Vice President and General Counsel, Distrigas of Massachusetts LLC, One Liberty Square, 10th Floor, Boston, Massachusetts 02109, or call (617)526–8300 or FAX (617)526–8356.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14494 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–494–000]

Eastern Shore Natural Gas Company; Notice of Fuel Adjustment

June 3, 2003.

Take notice that on May 30, 2003, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that Section 31, "Fuel Retention Adjustment", specifies that with no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage (FRP) for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations ("GRO") which consists of (a) gas used for compressor fuel and (b) gas otherwise used, lost or unaccounted for, in its operations. Eastern Shore states that its FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .64 %, an increase of .34 % from the current FRP in effect.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14515 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–202–001]

Enbridge Pipelines (KPC); Notice of Compliance Filing

June 3, 2003.

Take notice that on May 29, 2003, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be made effective January 1, 2003, subject to the extension granted by Commission order dated November 12, 2002, and the May 6, 2003, notice in FERC Docket Nos. RP02–488–002 and RP00–318–003:

First Revised Sheet No. 101
First Revised Sheet No. 102
Substitute Original Sheet No. 103
Substitute Original Sheet No. 104
Substitute Fourth Revised Sheet No.
Substitute First Revised Sheet No. 132

KPC states that the purpose of this filing is to comply with the Commission's order issued April 30, 2003, which required KPC to delete certain language from section 8.1(d) of the General Terms and Conditions (GT&C) and to also clarify certain language in sections 8.1(d) and 11.2. KPC states that the instant filing complies with the Commission's Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14503 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–487–000]

Equitrans, L.P.; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on the filing, to become effective on July 1, 2003.

Equitrans states that the purpose of this tariff filing is to comply with Commission Order No. 587-R , issued March 12, 2003, which required interstate natural gas pipelines to incorporate into their tariffs Version 1.6 of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board and the WGQ standards governing partial day recalls.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14508 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–833–000]

Global Common Greenport, LLC; Notice of Issuance of Order

June 3, 2003.

Global Common Greenport, LLC (GCG) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. GCG also requested waiver of various Commission regulations. In particular, GCG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by GCG.

On May 23, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GCG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 23, 2003.

Absent a request to be heard in opposition by the deadline above, GCG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GCG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GCG's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14498 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–47–001]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2003.

Substitute First Revised Sheet No. 902
Substitute Original Sheet No. 903
Sheet Nos. 904—999
Substitute Third Revised Sheet No. 1709
Second Sub. Second Rev. Sheet No. 1710
First Revised Sheet No. 1711
Sheet Nos. 1712—1799

Gulf South states that this filing establishes a minimum volume threshold for the connection of new receipt and delivery points and requires certain gas quality control equipment be installed at certain receipt points. Gulf South states that this filing is submitted in compliance with the Commission's Order dated May 1, 2003, in Docket No. RP03–47–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14505 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–490–000]

Gulf South Pipeline Company, LP; Notice of Cash-In/Cash-Out Report

June 3, 2003.

Take notice that on May 30, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program for an annual period beginning April 1, 2002, and ending March 31, 2003.

Gulf South states that this filing reflects its annual report of the activities attributable to the operation of its cash-in/cash out program. Gulf South states that the report shows a negative cumulative position that will continue to be carried forward and applied to the next cash-in/cash-out reporting period as provided in Gulf South's tariff, section 20.1(E)(i) of the General Terms and Conditions.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14511 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–485–000]

Honeoye Storage Corporation; Notice of Compliance Filing

June 2, 2003.

Take notice that on May 28, 2003, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, the revised tariff sheets listed on Appendix A to the filing, to be effective April 1, 2003.

Honeoye states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's Order 587–R issued on March 12, 2003, which established certain business practices for interstate natural gas pipelines.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14506 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–411–009 and RP03–326–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Fifth Revised Sheet No. 38, Proposed Effective Date November 1, 2002
Seventh Revised Sheet No. 57A, Proposed Effective Date May 15, 2003

Iroquois states that the instant tariff filing corrects inadvertent omissions of language from the above noted tariff sheets currently on file with the Commission and corrects the pagination of one of those tariff sheets. Iroquois' states that these omissions were discovered as part of an on-going internal review of Iroquois' FERC Gas Tariff. Iroquois also states that the proposed corrections are necessary to provide Iroquois' shippers with uniform tariff provisions and to avoid confusion.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14502 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–130–000]

MidAmerican Energy Company, Complainant, v. Mid-Continent Area Power Pool, Respondent; Notice of Complaint

June 2, 2003.

Take notice that on May 30, 2003, MidAmerican Energy Company (MidAmerican) filed with the Federal Energy Regulatory Commission (Commission) a Complaint against the Mid-Continent Area Power Pool (MAPP) pursuant to section 206 of the Federal Power Act and rule 206 of the Commission's rules of practice and procedure, 18 CFR 385.206. According to the Complaint, MAPP is implementing a business practice that is inconsistent with its tariff and the Commission's pro forma tariff.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14496 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–496–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 3, 2003.

Take notice that on May 30, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Fifth Revised Sheet No. 9, to become effective June 1, 2003.

National states that the filing is made pursuant to a settlement approved by Commission Letter Order issued on February 16, 1996, in the proceedings in Docket Nos. RP94–367–000, *et al.* National explains that the settlement was revised in a subsequent Letter Order issued by the Commission on February 7, 2001.

National states that under Article II, section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National states that it is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. National asserts that the recalculation produced an IG rate of $1.21 per dth. National states that in addition, Article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14517 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP99–518–044]

Federal Energy Regulatory Commission

June 2, 2003.

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

Take notice that on May 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Thirteenth Revised Sheet No. 15, with an effective date of May 29, 2003.

GTN states that this filing is being filed to reflect the implementation of one new negotiated rate agreement on GTN's system in accordance with the Commission's October 28, 1999, order in Docket No. RP99–518, (PG&E Gas Transmission, Northwest Corporation, 89 FERC ¶ 61,114 (1999).

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14519 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5–063]

PPL Montana, LLC and Confederated Salish and Kootenai Tribes of the Flathead Nation; Notice of Effective Date of Withdrawal of Petition for Declaratory Order

June 2, 2003.

On June 19, 2001, PPL Montana, LLC (PPL Montana) filed a petition for declaratory order to clarify its obligations as co-licensee of the Kerr Project No. 5, located on the Flathead River in Lake and Flathead Counties, Montana, and partially on lands within the Flathead Indian Reservation. On April 17, 2003, PPL Montana filed a notice of withdrawal of its petition.

No motion to the notice of withdrawal was filed, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to rule 216 of the Commission's rules of practice and procedure,[1] the withdrawal became effective on May 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14500 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.216(b) (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–131–000]

San Diego Gas & Electric Company Complainant, v. California Independent System Operator Corporation Respondent; Notice of Complaint

June 3, 2003.

Take notice that on June 2, 2003, San Diego Gas & Electric (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint against the California Independent System Operator Corporation (ISO). The Complaint alleges that the ISO has improperly levied certain grid management charges on SDG&E, in violation of the ISO's filed rate.

SDG&E states that a copy of this filing was served upon the California Independent System Operator Corporation.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14497 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–495–000]

Total Peaking Services, L.L.C.; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Total Peaking Services, L.L.C. (TPS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing with an effective date of July 1, 2003.

TPS states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's orders in Docket No. RM96–1 incorporating the business practice standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) through Version 1.6, together with the WGQ-recommended standards R02002 and R02002–2 governing partial day recalls and to change the name of the contact individual. In addition, TPS requests an extension of time for implementing certain standards and related electronic Data Sets until 180 days after a person first requests use thereof.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14516 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–486–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 3, 2003.

Take notice that on May 29, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 292, Eighth Revised Sheet No. 296, and Ninth Revised Sheet No. 303. The proposed effective date of the tariff sheets is May 1, 2003.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of section 19.1(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 tariff. Transco states that specifically, such tariff sheets have been revised to reflect the increase in capacity associated with the May 1, 2003, in-service date of Phase 1 of the Momentum Expansion Project.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14507 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–016]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 3, 2003.

Take notice that on May 29, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of the executed service agreement amendment that contains a negotiated delivery point facilities surcharge (facilities surcharge) under Transco's Rate Schedule FT for the costs of the Westmore Road Meter Stations, a delivery point to Washington Gas Light Company (WGL). The effective date of this facilities surcharge is June 1, 2003, which is the anticipated in-service date of the Westmore Road Meter Stations.

Transco states that Transco and WGL are parties to a service agreement, dated January 1, 1996, under Transco's Rate Schedule FT for firm transportation service on Transco's pipeline system. Transco further states that it has agreed to construct the Westmore Road Meter Stations, a new delivery point to WGL located on Transco's main line in Montgomery County, Maryland. Transco asserts that pursuant to section 20.7 of the General Terms and Conditions of Transco's FERC Gas Tariff, Transco and WGL have executed an amendment to the service agreement to add Exhibit C thereto to include a facilities surcharge for the Westmore Road Meter Stations in addition to the applicable rates and charges for WGL's firm transportation service under Rate Schedule FT.

Transco states that the effective date of this facilities surcharge is June 1, 2003, which is the anticipated in-service date of the Westmore Road Meter Stations.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14518 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–489–000]

Vector Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Vector Pipeline L.P. tendered for filing to become part of its FERC Gas Tariff, Volume No. 1, the tariff sheets listed on Appendices A–D to the filing, to be effective July 1, 2003. In addition, Vector is proposing to add two new firm transportation services to its tariff.

Vector states that the purpose of this filing is to fulfill its obligation under Ordering Paragraph (I) of the certificate order issued May 27, 1999, in Docket Nos. CP98–131–000, *et al.* Ordering Paragraph (I) required Vector to make a Natural Gas Act (NGA) section 4 rate filing within three years from its in-service date either justifying the existing rates or proposing alternative rates.

Vector's in-service date was December 1, 2000. Vector states that its filing satisfies that requirement.

Vector is requesting an increase in the recourse rates for service under Rate Schedules FT–1, IT–1, and PALS, based on a cost of service of $134,911,668. Vector states that the presently pending rate for Rate Schedule TTS service in Docket No. RP02–479–002 and the existing rate for Rate Schedule MBA service are unchanged by this filing. Vector also is proposing recourse rates for two new firm transportation services, limited firm in Rate Schedule FT–L and hourly firm in Rate Schedule FT–H.

In addition to the rate change, Vector states that it is submitting various revised tariff sheets for the purpose of correcting and cleaning-up minor errors, making editorial corrections, clarifying certain tariff provisions, and deleting a section of the General Terms and Conditions (section 39) which is no longer applicable. Vector states that it also is electing to modify the terms of its Management of Balancing Agreement service to accommodate the requests of customers for a more broad-based service that could be used by customers who take interruptible service in addition to those who use firm transportation service.

Vector states that copies of its filing have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14510 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–488–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 3, 2003.

Take notice that on May 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2003:

Eighth Revised Sheet No. 203
Fifth Revised Sheet No. 236
Sixth Revised Sheet No. 376
Fourth Revised Sheet No. 503
Fifth Revised Sheet No. 508
Fourth Revised Sheet No. 509
Tenth Revised Sheet No. 510
Fourth Revised Sheet No. 553
Fifth Revised Sheet No. 556
Fourth Revised Sheet No. 559
Tenth Revised Sheet No. 560

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff to reflect a change in the Company's current procedures for identifying, adding and/or deleting alternate points and/or pooling points to a shipper's firm transportation contract(s).

Williston Basin states that copies of the filing are being served upon those listed on the mailing list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary

[FR Doc. 03–14509 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–94–000, et al.] ITC Holdings Corp., et al.; Electric Rate and Corporate Filings

June 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. ITC Holdings Corp., International Transmission Holdings Limited Partnership International Transmission Company

[Docket No. EC03–94–000]

Take notice that on May 27, 2003, ITC Holdings Corp., International Transmission Holdings Limited Partnership and International Transmission Company submitted an application pursuant to section 203 of the Federal Power Act seeking all authorizations and approvals necessary for the indirect disposition of jurisdictional facilities that may result from a change in upstream ownership interests, as more fully described in the application.

Comment Date: June 17, 2003.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF03–5031–000]

Take notice that on May 16, 2003, the Secretary of the Department of Energy by Rate Order No. WAPA–102, did confirm and approve on an interim basis, to be effective on October 1, 2003, the Western Area Power Administration

(Western) Rate Schedules P–SED–F6 and P–SED–FPG for firm power service and firm peaking power through September 30, 2003.

The rates in Rate Schedules P–SED–F6 and P–SED–FPG will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of these rates on a final basis, ending September 30, 2003.

Comment Date: June 23, 2003.

3. United States Department of Energy—Western Area Power Administration

[Docket No. EF03–5181–000]

Take notice that on May 16, 2003, the Secretary of the Department of Energy by Rate Order No. WAPA–103, did confirm and approve on an interim basis, to be effective on October 1, 2003, the Western Area Power Administration's (Western) Rate Schedule L–F4 for firm electric service through September 30, 2003.

The rate in Rate Schedule L–F4 will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of this rate on a final basis, ending September 30, 2003.

Comment Date: June 23, 2003.

4. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Southern California Edison Company

[Docket No. ER03–889–000]

Take notice that on May 29, 2003, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company tendered for filing an Interconnection and Operating Agreement necessary to interconnect the Rudd Transmission Line to the ANPP High Voltage Switchyard between the Rudd Line Participants and the ANPP Switchyard Participants.

Comment Date: June 19, 2003.

5. Innovative Technical Services, L.L.C.

[Docket No. ER03–890–000]

Take notice that on May 29, 2003, Innovative Technical Services, L.L.C. (InTech-LLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter requesting the Commission to amend the Western Systems Power Pool (WSPP) Agreement to include InTech-LLC as a participant. InTech-LLC respectfully requests that the Commission allow the amendment to the WSPP Agreement to become effective on May 29, 2003.

InTech-LLC states that a copy of this filing has been served upon the WSPP Executive Committee Chair, WSPP Operating Committee Chair, WSPP General Counsel, and Arizona Public Service Company.

Comment Date: June 19, 2003.

6. Gulf States Energy Investments L.P.

[Docket No. ER03–891–000]

Take notice that on May 29, 2003, Gulf States Energy Investments L.P. (Gulf States Energy Investments L.P.) petitioned the Commission for acceptance of its Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Gulf States Energy Investments L.P. states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Gulf States Energy Investments L.P. states that it is not in the business of generating or transmitting electric power. Gulf States Energy Investments L.P. asserts that it is a Texas Limited Partnership with its principal place of business and office in Dallas, Texas. Gulf States Energy Investments L.P. further states that it is involved in consulting of electricity and marketing of wholesale power. Gulf States Energy Investments L.P. explains that it is not associated with any utilities, investor owned or otherwise and is privately owned by Gulf States Energy, Inc., which is the General Partner, and several individuals from Fort Worth Texas, which act as the Limited Partners.

Comment Date: June 19, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14495 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–131–000]

Natural Gas Pipeline Company of America; Notice of Intent to Prepare an Environmental Assessment for the Proposed North Lansing Storage Field Abandonment and Request for Comments on Environmental Issues

June 3, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed North Lansing Storage Field Abandonment Project proposed by Natural Gas Pipeline Company of America (Natural) in Harrison County, Texas.[1] The facilities to be abandoned include an inactive injection/withdrawal well, about 2,380 feet of 8-inch-diameter lateral pipeline, and the associated 6-inch meter facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

The proposed abandonment is responsive to a Commission Order issued December 24, 2002, in FERC Docket No. CP02–391–000, involving the expansion of Natural's North Lansing storage field. An environmental condition of the Order required Natural to identify any currently unused aboveground facilities and pipelines on the property of S.J. Keasler, a landowner on the North Lansing storage field, and provide a timetable for filing an abandonment application with the Commission for removal of these facilities.

Natural identified an injection/withdrawal well, lateral pipeline and meter facility, all located on S.J. Keasler's property. The facilities were constructed under the FERC Docket No. CP89–2081–000 to increase withdrawal capabilities at the North Lansing storage field. Natural states that the injection/withdrawal well was plugged in 1997 after a leak was detected in the production tubing and has since been inactive. The surface wellhead equipment was subsequently removed. The associated meter facilities and lateral pipeline have been inactive since the well was plugged and are not located in an area of the storage field conducive for future connections to other possible wells. Due to the potential for corrosion from condensate and water to occur and cause future problems at the North Lansing storage field, Natural proposes to abandon the injection/withdrawal well and lateral pipeline in place and remove the meter facilities.

Natural seeks authority to:

- Abandon in place the injection/withdrawal well (ODA3-W, Emma Keasler #103);
- Cut, fill, cap, and abandon in place approximately 2,380 feet of 8-inch-diameter lateral pipeline (G–7 lateral); and
- Abandon by removal all aboveground portions of the 6-inch meter facility; and the belowground portions to three feet below grade.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Abandonment of the proposed facilities would require disturbance of about 0.01 acre of land. Natural proposes that following abandonment, it would continue the existing easement agreement and retain ownership of the abandoned lateral pipeline. The 0.01 acre of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed abandonment.

- Fisheries and wetlands;
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section, beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered or threatened species may occur in the proposed project area.
- In comments submitted under Docket No. CP02–391–000, S.J. Keasler, an affected landowner, expressed desires to have Natural remove all aboveground facilities and the pipeline associated with the inactive injection/withdrawal well (ODA3-W, Emma Keasler #103). However, Natural proposes to abandon the well and lateral pipeline in place.
- An unnamed intermittent tributary of the Moccasin Creek is crossed by the G–7 lateral pipeline. If the G–7 lateral pipeline were removed, the tributary would be subject to disturbance.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative means of abandonment), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–131–000.
- Mail your comments so that they will be received in Washington, DC on or before July 3, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or

[1] Natural's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you might want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified right-of-way grantors. By this notice we are also asking governmental agencies to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*)using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnLineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to*http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–14493 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Recreation Plan Amendment and Soliciting Motions to Intervene, Protests, and Comments

June 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Recreation plan amendment.

b. *Project No.:* P–2149–102 and 103.

c. *Date filed:* December 30, 2002, and February 19, 2003, respectively.

d. *Applicant:* Public Utility District No. 1 of Douglas County.

e. *Name and Location of Project:* The project is located on the Columbia River, in Douglas, Chelan, and Okanogan Counties, Washington. This amendment will affect project lands contained within the previously proposed Chief Joseph State Park area.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Gordon Brett, Property Supervisor, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* June 30, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Amendment:* Licensee has submitted its recreation action plan 2002 update. Licensee has been contributing monies to a fund for the development of a park on land owned by the State and known as Chief Joseph State Park. Licensee indicates that because it has been determined that the development of the State park is not feasible at its present location, licensee proposes to purchase from the State the land that would have been developed as Chief Joseph State Park and also provide to the state the money that has been paid into a fund so that the State can purchase land elsewhere on the project. Licensee subsequently filed a Memorandum of Understanding (MOU) covering the sale of the State Park to the licensee.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802.

l. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

m. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

n. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14499 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–2]

Clean Air Act Operating Permit Program; Petition for Objection to the Operating Permit for Georgia Pacific Corporation, Port Hudson Operations in East Baton Rouge Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to State operating permit.

SUMMARY: This notice announces that the EPA Administrator has partially granted and partially denied the petition to object to a State operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for the Port Hudson Operations of Georgia Pacific Corporation in East Baton Rouge, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this response to the extent the petition has been denied, in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or electronic mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Louisiana Environmental Action Network and Ms. Juanita Stewart ("Petitioners") submitted a petition requesting that the Administrator object to the title V operating permit issued to Georgia Pacific Corporation by the LDEQ, for the Port Hudson plant operations. The petition requests the Administrator object to the Georgia Pacific permit based on the following broad assertions:

1. Invalid emission reductions were used to avoid Nonattainment New Source Review (NNSR) for emissions increases from projects occurring from 1986 through 1992.

2. Invalid emission reductions were used to avoid NNSR and Prevention of Significant Deterioration (PSD) requirements for emissions increases associated with a new towel machine project.

3. Specific conditions in the new towel machine permit should require Georgia-Pacific to undergo additional PSD review if emissions exceed certain limits.

4. No Emission Reduction Credits (ERC) are available because the Louisiana ERC bank is mismanaged and fails to require that credits be "surplus" when used.

5. ERCs were not identified specifically enough to inform the public.

6. The Title V permit incorporates an emission limit from an invalid State permit.

7. The Title V permit fails to provide for sufficient monitoring of particulate emissions from some units.

8. The LDEQ failed to provide an adequate statement of basis in the Title V permit.

On May 9, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons for EPA's conclusion that LDEQ must reopen the permit to: (1) Reconsider whether NNSR is an applicable requirement for the 1986–1992 projects, and determine the appropriate volatile organic compound emission limit based on this determination; (2) provide an adequate explanation of the periodic monitoring at issue; and (3) provide an adequate statement of basis on these particular NNSR and periodic monitoring issues. The order also explains the reasons for denying the remaining claims.

Dated: May 23, 2003.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

[FR Doc. 03–14574 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–5]

Government-Owned Inventions: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions named below are co-owned by the U.S. Government

and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice the Government may grant exclusive or partially exclusive licenses on the inventions.

Copies of the patents and 37 CFR part 404 can be obtained from Alan Ehrlich, Patent Counsel, U.S. Environmental Protection Agency (EPA) at the address indicated below. Requests for copies of the patents must include the patent numbers listed in this notice.

A party that is interested in obtaining a license must apply to EPA at the contact address below. The license application must contain the information set forth in 37 CFR 404.8, including the license applicant's plan for development or marketing of the inventions.

EPA intends to license these patents in cooperation with the co-owner, the University of Kentucky Research Foundation. Prior to granting an exclusive or partially exclusive license on these inventions, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific inventions and the prospective licensees.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (2377A), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–5457.

Patents

U.S. Patent No. 6,544,419, Method of preparing a composite polymer and silica-based membrane, issued April 8, 2003;

U.S. Patent No. 6,544,418, Preparing and regenerating a composite polymer and silica-based membrane, issued April 8, 2003;

U.S. Patent No. 6,306,301, Silica-based membrane sorbent for heavy metal sequestration, issued October 23, 2001;

U.S. Patent No. 6,139,742, Membrane-based sorbent for heavy metal sequestration, issued October 30, 2000;

U.S. Patent No. 6,103,121, Membrane-based sorbent for heavy metal sequestration, issued August 15, 2000.

Dated: June 1, 2003.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 03–14575 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Tuesday, June 24, 2003 at 1:30 p.m. to 5 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: This meeting will focus on the Bank's business development efforts in Africa, specifically including sub-Saharan Africa. The meeting will discuss pending Bank initiatives to allow U.S. companies to become more competitive in the marketplace as well as interagency cooperative efforts focused on the region, while seeking the advice of committee members in the implementation of the ongoing business development strategy.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 24, 2003, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Peter B. Saba,

General Counsel.

[FR Doc. 03–14484 Filed 6–9–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

June 3, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 11, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov* .

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–1004.

Title: Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 251 respondents, 303 responses.

Estimated Time Per Response: 5 hours (Tier II Reports), 4 hours (Tier III Reports).

Frequency of Response: Quarterly, semi-annual and one-time reporting requirements, recordkeeping requirement.

Total Annual Burden: 1,282 hours.

Total Annual Cost: N/A.

Needs and Uses: Nationwide wireless carriers (Tier I) generally must file quarterly reports with the Commission on February 1, May 1, August 1 and November 1 of each year. Mid-sized wireless carriers (Tier II) also are required to file quarterly reports under this same time schedule. A format for the submission of the quarterly reports is being established to require that beginning with the August 1, 2003 filing, Tier I and II carriers must include with their quarterly reports an Excel spreadsheet detailing certain elements related to E911 implementation status at requesting Public Service Answering Points (PSAPs). Small wireless carriers (Tier III) are not required to submit the spreadsheet with their E911 interim reports, which are due on August 1, 2003, as a one-time filing.

The quarterly reports will continue to be used by the Commission to monitor carrier progress in transition to E911. The Bureau is establishing the format of the data to be submitted in order to permit the Commission to track wireless E911 deployment in a more uniform and consistent manner, as well as to assist E911 stakeholders in coordinating their deployment efforts.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–14481 Filed 6–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

ADDRESSES: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer –Cindy Ayouch–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final Approval Under OMB Delegated Authority of the Extension For Three Years, Without Revision, of the Following Report:

Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending)

Agency form number: Reg Z

OMB Control number: 7100–0199

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations

Annual reporting hours: Open–end credit–initial disclosure 28,463 hours; open–end credit–change in terms notice, 41,250 hours; periodic statement, 125,952 hours; error resolution–credit cards, 22,260 hours; error resolution–other open–end credit, 1,312 hours; credit & charge card accounts–advance disclosure, 29,952 hours; home equity plans–advance disclosure, 13,983 hours; home equity plans–change in terms notice, 354 hours; closed–end credit disclosures, 351,354 hours; advertising, 2,733 hours; and HOEPA pre–closing disclosures, 425 hours.

Estimated average hours per response: Open–end credit–initial isclosure, 1.5 minutes; open–end credit–change in terms notice, 1 minute; periodic statement, 8 hours; error resolution–credit cards, 30 minutes; error resolution–other open–end credit, 30 minutes; credit & charge card accounts–advance disclosure, 8 hours; home equity plans–advance disclosure, 1.5 minutes; home equity plans–change in terms notice, 3 minutes; closed–end credit disclosures, 6.5 minutes; advertising, 25 minutes; and HOEPA pre–closing disclosures, 3 minutes.

Number of respondents: State member banks, 947; branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), 287; commercial lending companies owned or controlled by foreign banks, 3; and Edge and agreement corporations, 75.

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1601, 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction– or account–specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take–one applications are available to the public.

Abstract: TILA and Regulation Z require disclosure of the costs and terms of credit to consumers. For open–end credit (revolving credit accounts) creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. There are special disclosure requirements for credit and charge card applications and solicitations, as well as for home equity plans. For closed–end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.

Recently, the Federal Reserve reevaluated the methodology used to estimate the paperwork burden associated with consumer regulations. As a result of this change, the estimated burden declined.

Final Approval Under OMB Delegated Authority to Conduct Following Survey:

Report title: 2004 Survey of Consumer Finance

Agency form number: FR 3059

OMB Control number: 7100–0287

Frequency: One–time survey

Reporters: U.S. families

Annual reporting hours: 7,500 hours

Estimated average hours per response: Pretest and survey, 75 minutes each

Number of respondents: Pretest, 400 families; Survey, 5,600 families Small businesses are not affected.

General description of report: This information collection is voluntary. The Federal Reserve's statutory basis for collecting this information is section 2A of the Federal Reserve Act (12 U.S.C. 225a); the Bank Merger Act (12 U.S.C. 1828(c)); and sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. 1842 and 1843) and 12 U.S.C. 353 and 461. The names and other characteristics that would permit identification of respondents are deemed confidential by the Board and are exempt from disclosure pursuant to exemption 6 in the Freedom of Information Act (5 U.S.C. 552(b)(6)).

Abstract: For many years, the Board has sponsored consumer surveys to obtain information on the financial behavior of households. The 2004 Survey of Consumer Finance (SCF) will be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing behavior. These are the only surveys conducted in the United States that provide such financial data for a representative sample of households. Data for the SCF are collected by interviewers using a computer program. While some questions may be deleted and others modified, only minimal changes will be made to the questionnaire in order to preserve the time series properties of the data. The pretest will be conducted during 2003 and survey would be conducted between May and December 2004.

Board of Governors of the Federal Reserve System, June 4, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–14536 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Voting Trust Agreement, Apple Valley, Minnesota and its trustee, John Finch Woodhead, Minneapolis, Minnesota; to acquire voting shares of Financial Services of St. Croix Falls, Inc., St. Croix Falls, Wisconsin, and thereby indirectly acquire voting shares of Eagle Valley Bank, National Association, St. Croix, Falls, Wisconsin.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert S. Moran, Jr., Testamentary Trust and Sue Jean Bernard Byrd, Trustee of the Robert S. Moran, Jr., Testamentary Trust, both of Hollis, Oklahoma, to retain control of the outstanding common stock of Great Plains Bancshares, Inc., Hollis, Oklahoma, and thereby indirectly retain voting shares of Great Plains National Bank, Elk City, Oklahoma.

Board of Governors of the Federal Reserve System, June 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14539 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. SAS rue la Boetie, Paris, France; to become a bank holding company by indirectly retaining, through its 70 percent owned bank subsidiary, Credit Agricole, S.A., Paris, France, control of Espirito Santo Bank, Miami, Florida.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. NHB Financial, Inc., Newell, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Hancock Bank and Trust Company, Newell, West Virginia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Independence Bancorp, New Albany, Indiana. and Harrodsburg First Financial Bancorp, Inc., Harrodsburg, Kentucky; to acquire 100 percent of the voting shares of I–Bank, Louisville, Kentucky (in organization).

D. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank Vest, Inc., Denver, Colorado; to become a bank holding company by acquiring 76.5 percent of the voting shares BW Holdings, Inc., Castle Rock, Colorado, and thereby indirectly acquire voting shares of Bankwest, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, June 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14537 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. The Union National Financial Corporation, Mount Joy, Pennsylvania; to acquire Plane Street Housing, L.P., Columbia, Pennsylvania, and thereby engage in community development acticities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–14538 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/CB–2003–01]

Announcement of the Availability of Financial Assistance and Request for Applications to Support Adoption Opportunities Demonstration Activities, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Project Activities, Promoting Safe and Stable Families Activities

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice.

Statutory Authority and Catalog of Federal Domestic Assistance (CFDA) Numbers

Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, (42 U.S.C. 5111) CFDA: 93.652.

Child Abuse and Neglect: Section 104 of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 *et seq.*) CFDA: 93.670.

Child Welfare Training: Section 426 in title IV–B, subpart 1, of the Social Security Act, as amended, (42 U.S.C. 626) CFDA: 93.648.

Promoting Safe and Stable Families: Section 430 in title IV–B, subpart 2, of the Social Security Act, as amended, (42 U.S.C. 629) CFDA: 93.556.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 2003 funds for competing new activities under the Adoption Opportunities Program, the Child Abuse Prevention and Treatment Act (CAPTA), the Child Welfare Training Program, and the Promoting Safe and Stable Families Program. Funds from the Adoption Opportunities Program are designed to provide, among other things, support for demonstration projects that facilitate the elimination of barriers to adoption and provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Funds from CAPTA support research and demonstration projects on the causes, prevention, and treatment of child abuse and neglect. Funds from the Child Welfare Training Program support grants to public or other non-profit institutions of higher learning for special projects for training personnel for work in the field of child welfare. The Promoting Safe and Stable Families program is intended to prevent the unnecessary separation of children from their families by funding family support, family preservation, time-limited family reunification and adoption promotion and support services as well as research, evaluation and technical assistance relating to such services.

DATES: The closing date for submission of applications is July 25, 2003. Items postmarked after the stated due date will be classified as late. Private, non-profit organizations that apply for funds available through this announcement are encouraged to submit with their applications the optional survey located under "Grant Manuals and Forms" at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Note: The complete program announcement, including all necessary forms, can be downloaded and printed from the Children's Bureau Web site at *http://www.acf.dhhs.gov/programs/cb*. Hard copies of the complete program announcement may be requested by calling the National Adoption Information Clearinghouse at 1–888–251–0075. The complete program announcement is necessary for any potential applicant.

FOR FURTHER INFORMATION CONTACT: Patricia Campiglia, Children's Bureau, 202–205–8060.

SUPPLEMENTARY INFORMATION:

Priority Areas

2003A. Adoption Opportunities Activities

2003A.1 Adoptive Placements for Children in Foster Care

Eligible Applicants: Eligibility is limited to State social service agencies. In order to support the broadest range of issues and approaches, priority will be given to applicants who have not been funded under this priority in previous years. However, applicants previously funded under this priority area will not be precluded from receiving grants.

Project Duration: The projects will be awarded for a project period of 60

months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $350,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least ten percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $350,000 per budget period must include a match of at least $38,889 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to eight projects will be funded.

2003A.2: Projects To Improve Recruitment of Adoptive Parents in Rural Communities

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies, adoptive family groups and nonprofit organizations, including community and faith-based organizations, with experience working with rural populations and with access to children in foster care. Collaborative efforts and interdisciplinary applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $400,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $400,000 per budget period must include a match of at least $44,444 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to eight projects will be funded.

2003A.3: Developing a National Network of Adoption Advocacy Programs

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, university (including university-affiliated programs) or adoptive family groups and community-based organizations and nonprofit organizations including community and faith-based organizations with adoption expertise. Eligible applicants must have the capacity to operate and support a national network as well as assist in the development and support of local adoption advocacy programs that are modeled on the One Church, One Child program. Collaborative efforts and interdisciplinary applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The project will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $250,000 for the first budget period and $500,000 for each of the subsequent budget periods.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $250,000 for year one and $500,000 per budget period for years two through five must include a match of at least $27,778 in year one and $55,556 per budget period for years two through five. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2003A.4: Administration of the Interstate Compact on Adoption and Medical Assistance (ICAMA)

Eligible Applicants: Any State, local, public and private nonprofit agency or organization, including community and faith-based organizations, or institutions of higher learning with demonstrated expertise in the field of child welfare.

Project Duration: The length of the project period for the grant may not exceed 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The grant amount will not exceed $200,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least ten percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $22,222 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2003B: Child Abuse and Neglect Discretionary Activities

2003B.1: Fellowships for University-Based Doctoral Candidates and Faculty for Investigator-Initiated Research in Child Abuse and Neglect

Eligible Applicants: Public or private non-profit institutions of higher learning on behalf of qualified doctoral candidates in human service disciplines enrolled in the institution and faculty employed by the institution. To be eligible to administer such a grant, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and/or the Council on Post-Secondary Accreditation. While an individual is considered to be the beneficiary of the grant support, awards will be made only to eligible institutions on behalf of their qualified candidates.

Project Duration: The length of the projects may not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $130,000 per academic institution, with a maximum of $25,000 per student and $30,000 for the faculty member. Each application must involve two to four student-candidates and a single faculty member.

Matching or Cost Sharing Requirement: There is no matching requirement. The academic institution, in accepting the award, agrees to waive overhead charges (indirect costs) and pass the entirety of the funds on to students and faculty as fellowships or stipends.

Anticipated Number of Projects to be Funded: It is anticipated that up to seven institutional awards will be funded.

2003B.2: Improving Child Welfare Outcomes Through Systems of Care

Eligible Applicants: State, territory, county or city child welfare agencies and federally recognized Native American Tribes are eligible applicants. No more than one application will be funded from any one State in order to insure geographic distribution of the awards. Collaborative applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $500,000.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to 10 awards will be made.

2003C: Child Welfare Training Project Activities

2003C.1: Professional Education for Public Child Welfare Practitioners:

2003C.1A: Professional Education for Prospective MSW Level Public Child Welfare Staff (Awarding MSW Degree)

2003C.1B: Professional Education for Current Public Child Welfare Agency Staff (Awarding BSW and/or MSW Degree)

2003C.1C: Professional Education for Prospective and Current American Indian and/or Alaskan Native Public Child Welfare Staff who are currently enrolled or plan to enroll in BSW or MSW Social Work Programs (Awarding BSW and/or MSW Degree)

Note: In order to be responsive to a number of unique, professional education needs related to public child welfare practice, this priority area is being subdivided into three subcategories as outlined above. An institution may submit only one application under this priority area and must identify the sub-priority area to which it is responding in the abstract and narrative sections of the application.

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs. Priority will be given to applicants with a strong public child welfare agency/university partnership and/or applicants prepared to re-design their curriculum to maximize student learning opportunities for work in public child welfare agencies. Previously funded applicants under this priority area will not be precluded from receiving a grant.

Project Duration: Sub-priority area 2003C.1A will be awarded for a project period not to exceed 48 months. Sub-priorities 2003C.1B and 2003C.1C will be awarded for a project period not to exceed 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the 12-month budget period. A traineeship must not exceed $7,500 per student per budget year. A minimum of 75 per cent of the total project funds must be used for traineeships.

Matching or Cost Sharing Requirement: No matching funds are required for the portion of the budget that pays for traineeships. However, grantees must provide a match to equal at least 25 percent of the total cost of grant activities other than traineeships. The total approved cost of these non-traineeship activities is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through a cash contribution. Therefore, a project requesting $75,000 in Federal funds (with $56,250 for traineeships and $18,750 for non-traineeship activities per budget period) must include a match of at least $6,250 (25 percent of the total cost for the non-traineeship activities). Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to 27 projects will be funded: eleven in sub-priority area 2003C.1A, twelve in sub-priority area 2003C.1B and four in sub-priority area 2003C.1C.

2003C.2: Training for Effective Child Welfare Practice in Rural Communities

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work programs or other accredited bachelor- or graduate-level programs leading to a degree relevant to work in child welfare. Under this priority area, only those institutions that have knowledge and experience in training professionals for work in rural communities and have child welfare-related experience in serving rural America would be eligible to apply.

Project Duration: Awards will be made for a project period of 60 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding

would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is estimated that up to seven projects will be funded.

2003C.3: Developing Models of Effective Child Welfare Staff Recruitment and Retention Training

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: Awards will be made for a project period of 60 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is estimated that up to 13 projects will be funded.

2003C.4: Training for Healthy Marriage and Family Formation

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work programs or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: Awards will be made for a project period of 60 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is estimated that up to eight projects will be funded.

2003C.5: National Evaluation of Child Welfare Training Grants

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare. To be eligible, the institution must demonstrate knowledge and skills in the areas of child welfare administration, research, evaluation and curriculum development and implementation.

Project Duration: Awards will be made for a project period of 36 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $350,000 per budget year.

Matching or Cost Sharing Requirement: No match required.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2003D: Promoting Safe and Stable Families Activities

2003D.1: Replication of Demonstrated Effective Programs in the Prevention of Child Abuse and Neglect

Eligible Applicants: Public or private non-profit organizations, including community and faith-based organizations, and institutions of higher education. Collaborative efforts and interdisciplinary applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $175,000 for the first year and up to $350,000 for each subsequent year.

Matching Requirements: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $175,000 for year one and $350,000 per budget period for years two through five must include a match of at least $19,444 in year one and $38,889 per budget period for years two through five. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to eight projects will be funded.

2003D.2: Evaluations of Existing Child Abuse and Neglect Prevention Programs

Eligible Applicants: Public (State, tribal, or local) or private nonprofit organizations, including community and faith-based organizations, or institutions of higher learning are eligible to apply. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget period.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to four projects will be funded.

2003D.3: Evaluations of Existing Family Support, Family Preservation, Reunification, or Adoption Promotion and Support Programs

Eligible Applicants: Public (State, tribal, or local) or private nonprofit organizations, including community and faith-based organizations, or institutions of higher learning are eligible to apply. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Cost: The maximum Federal share of the project is $200,000 per budget period.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to three projects will be funded.

2003D.4: Projects to Develop Programs to Strengthen Marriages

Eligible Applicants: State child welfare agencies, local (county or community) child welfare or child protective service agencies in partnership with experienced marriage services providers which may be public or nonprofit organizations including community and faith-based organizations. The child welfare agency must be the primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget period.

Matching or Cost Sharing Requirement: No match is required.

Anticipated Number of Projects to be Funded: It is anticipated that up to 10 projects will be funded.

Evaluation Criteria

Reviewers will consider the following factors when scoring applications. Applicants, in order to adequately prepare their applications, must refer to the full program announcement for the specific evaluation criteria for each priority area.

Criterion 1: Objectives and Need for Assistance. Applications will be judged on the extent to which they clearly specify the purposes and/or strategies of the proposed project and their relationship to legislative authority and child welfare outcomes, as appropriate; the quality of their statement regarding the need for the project; and evidence that the applicant understands current issues and recent developments in the field that may have relevance to the implementation of the project. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Approach. Applicants will be judged on the clarity, feasibility, and thoroughness of their description of the approach that they intend to use in implementing proposed projects. The approach sections will be expected to include, as appropriate, information on barriers to implementation and proposed solutions to those barriers; necessary collaborations with other organizations and agencies and their respective roles; evaluation plans; reporting requirements; and staffing plans. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 3: Organizational Profiles. Applicants will be judged on the experience and demonstrated competence of staff who are proposed to implement the project and, as appropriate, the experience of the organization in implementing related projects. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Budget and Budget Justification. Applicants will be judged on the adequacy, reasonableness, and completeness of their budget requests to support their proposed projects, including their management plans to control and account for expenditure of project funds. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

The Paperwork Reduction Act of 1995 (Public Law)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor and a person is not required to respond to, collections of information unless it displays a currently valid OMB control number.

Required Notification of the Single Point of Contact

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected

to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants to the Adoption Opportunities program are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. A list of the Single Points of Contact for each State and Territory can be found online at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Dated: May 27, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–14486 Filed 6–9–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0224]

Premarket Notification for Food Contact Substances; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: FDA Workshop on the Notification Process for Food Contact Substances. The purpose of the meeting is to discuss the food contact notification (FCN) process so that notifiers and/or their representatives, consumer interest groups, and other interested members of the general public can have a better understanding of the FCN process, the information requirements of an FCN, and the common deficiencies to be avoided.

DATES: The meeting will be held on Wednesday, June 25, 2003, from 11:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Chicago, 151 East Wacker Dr., Chicago, IL.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3088, FAX: 202–418–3131, or e-mail: *wjt@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In November 1997, Congress passed the Food and Drug Administration Modernization Act of 1997 (FDAMA). Section 309 of FDAMA amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish a notification process for food contact substances (FCSs). An FCS is defined as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have a technical effect in such food" (21 U.S.C. 348(h)(6)). The FCN process is used to authorize the marketing of an FCS except where the Secretary determines that submission of a food additive petition is necessary or the Secretary and a manufacturer or supplier agree that a food additive petition may be submitted (21 U.S.C. 348(h)(3)(A)).

Under 21 U.S.C. 348(h), the notification process requires a manufacturer or supplier of an FCS to notify FDA at least 120 days prior to the introduction or delivery for introduction in interstate commerce of an FCS. If FDA does not object to the notification within 120 days, the notification becomes effective (21 U.S.C. 348(h)(2)(A)), and the substance may be legally marketed for the requested use by the notifier (21 U.S.C. 348(a)(3)(B)).

In the **Federal Register** of May 21, 2002 (67 FR 35724), FDA published a final rule amending the food additive regulations regarding the premarket notification process for FCSs. The rule became effective on June 20, 2002, and requires that a notification for an FCS contain sufficient scientific information to demonstrate that the FCS that is the subject of the notification is safe for the intended use (21 CFR 170.101). Since the inception of the FCN process in 1999, FDA has found that FCNs frequently have deficiencies which cause them to be incomplete. FDA is having this public meeting to discuss the data requirements for an FCN and the commonly observed deficiencies and to assist notifiers and/or their representatives in submitting adequate and complete FCNs.

II. Registration and Written Questions

Persons interested in attending the June 25, 2003, meeting should send their registration information (including name, title, business affiliation, address, and telephone and fax number) to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To expedite processing, registration information may also be faxed to 202–418–3131 or e-mailed to *wjt@cfsan.fda.gov*. There will be no registration charges for attending the meeting. If you need special accommodations due to disability, please notify the contact person by June 13, 2003.

III. Availability of Guidance Documents for FCNs

Administrative, chemistry, and toxicology guidance documents for FCNs are available at the following Web site: *http://www.cfsan.fda.gov/~dms/opa-notf.html*.

IV. Agenda and Goals

FDA will present its recommendations for information necessary to make an FCN adequate and complete. Topics to be presented will be broadly divided among the general categories of administrative, chemical, toxicological, and environmental information. The agenda will include the following items:

(1) Administrative: guidance document, an overview of the review process, common FCN deficiencies, Form 3480, confidentiality, one FCS per FCN, and conditions under which a food additive petition should be submitted;

(2) Chemical: guidance document, common FCN deficiencies, approaches for determining migrant levels in food, estimated daily intake, and cumulative estimated daily intake;

(3) Toxicological: guidance document, common FCN deficiencies, acceptable daily intake, risk assessments, structure activity relationships, and recommended testing; and

(4) Environmental: requirements, exclusions, and requirements for an environmental assessment.

V. Comments

Written comments regarding the agenda may be submitted and should be identified with the docket number found in brackets in the heading of this document. Comments should be annotated and organized to identify the specific issues to which they refer. These comments should be submitted by June 13, 2003, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments may also be sent to the Dockets Management Branch at the following e-mail address: *fdadockets@oc.fda.gov* or via the FDA Web site at *http://www.fda.gov*.

Dated: June 5, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14607 Filed 6–5–03; 2:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 2003 Competitive Cycle for the Graduate Geropsychology Education Program (GPEP)— CFDA 93.191

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for the Graduate Geropsychology Education Program (GGEP) for Fiscal Year 2003.

Authorizing Legislation: These applications are solicited under section 755(b)(1)(J) of the Public Health Service Act as amended, and the FY 2003 Appropriations Act, Pub. L. 108–7 which provides $1.5 million to support graduate geropsychology education programs to train clinical geropsychologists in accredited psychology programs.

Purpose: Grants will be awarded to assist eligible entities in meeting the costs to plan, develop, operate; or maintain graduate geropsychology education programs to train clinical geropsychologists to work with underserved elderly populations to foster an integrated approach to health care services and address access for underserved elderly populations. The Graduate Geropsychology Education Program addresses the interrelatedness of behavior and health and the critical need for integrated health care services for the underserved elderly. Funding may be made available to doctoral programs, doctoral internship programs, and post-doctoral residency programs accredited by the American Psychological Association (APA).

Eligible Applicants: Eligible entities: accredited health profession schools, universities, and other public or private nonprofit entities. Applicant programs must be accredited by the American Psychological Association (APA). As provided in section 750, to be eligible to receive assistance, the eligible entity must use such assistance in collaboration with two or more disciplines.

Statutory Funding Preference: A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of applications. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (1) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. "High Rate" refers to a minimum of 20 percent of graduates in academic year 2000–2001 or academic year 2001–2002, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings and that not less than 15% of graduates from the most recent years are working in these settings.

"Significant Increase in the Rate" means that, between academic years 2000–2001 and 2001–2002, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent.

If the applicant is applying for the Funding Preference as a New Program, please note the following: New programs (*i.e.*, programs that have graduated less than three classes) can qualify for the statutory funding preference if four or more of the following criteria are met:

1. The mission statement of the program identifies a specific purpose of preparing health professionals to serve underserved populations.

2. The curriculum includes content that will help to prepare practitioners to serve underserved populations.

3. Substantial clinical training experience is required in medically underserved communities.

4. A minimum of 20 percent of the faculty spend at least 50 percent of their time providing/supervising care in medically underserved communities.

5. The entire program or a substantial portion of the program, (*i.e.*, the primary, ambulatory education training sites) is physically located in a medically underserved community.

6. Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.

7. The program provides a placement mechanism for deploying graduates to medically underserved communities.

Administrative Funding Preference: An administrative funding preference will be given to qualified applicants who have an existing clinical geropsychology education program.

Administrative Funding Priority: A funding priority will be given to qualified applicants who educate and train clinical geropsychologists in rural and frontier areas.

Administrative Special Consideration: Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Estimated Amount of Available Funds: $1,300,000.

Estimated Number of Awards: 6.

Estimated Average Size of Each Award: $225,000–$250,000.

Estimated Funding Period: 3 years.

Application Requests, Availability, Date and Addresses: Application materials will be available for downloading via the Web at *http://bhpr.hrsa.gov/grants/default.htm* on June 10, 2003. Applicants may also request a hardcopy of the application material by contacting the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland, 20879, by calling at 1–877–477–2123, or by fax at 1–877–477–2345. In order to be considered for competition, applications must be postmarked or submitted to the address listed above by the due date July 11, 2003. Applicants should request a legibly dated U.S. Postal postmark or obtain a legibly dated receipt from a

commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. An application receipt will be provided. Applications submitted after the deadline date will be returned to the applicant and not processed. Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Projected Award Date: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Broome, Division of State, Community and Public Health, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; or e-mail at *bbroome@hrsa.gov*. Telephone number is (301) 443–6866.

Paperwork Reduction Act: The application for the Graduate Geropsychology Education Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 22, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–14548 Filed 6–9–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Redesignation of Contract Health Service Delivery Area; Rosebud Sioux Tribe of the Rosebud Indian Reservation

AGENCY: Indian Health Service, HHS.

ACTION: Final notice.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) is redesignating the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Rosebud Sioux Tribe ("The Tribe"). The Tribe's CHSDA was comprised of Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, and Tripp, SD counties in South Dakota and Nebraska. These counties were designated as the Tribe's CHSDA when the IHS published its updated list of CHSDAs in the **Federal Register** of January 10, 1984 (49 FR 1291). The redesignated CHSDA is comprised of seven counties in the States of South Dakota and Nebraska, Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD, Gregory, SD and Lyman, SD. This notice is issued under authority of 43 FR 34654, August 4, 1978.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Leslie Morris, Director, Division of Regulatory and Legal Affairs, Office of Management Support, Indian Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20857, Telephone 301–443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 136.22, last published in the 2002 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations in effect on September 15, 1987. See 42 CFR 136.21, et seq. (2002).

As applicable to the Tribe, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, the IHS published a proposal in 68 FR 12914, March 18, 2003, to redesignate the CHSDA for the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota. No comments were received.

Pursuant to a Tribal Resolution 2000–32, dated March 9, 2000, the Tribe requested the IHS to redesignate their current CHSDA, which incorporates Mellette, Bennett, Todd, Trip and Cherry Counties in the State of South Dakota and Nebraska, to include Gregory and Lyman counties.

In applying the aforementioned CHSDA redesignation criteria required by 42 CFR 136.22, the following findings are made:

(1) The Tribe enrollment and census records identify 519 tribal members residing in Gregory County and 0 tribal members residing in Lyman County.

(2) The Tribe has determined that contract health services would be available to all its members and members of other federally recognized tribes who reside in Gregory County and Lyman County having close social and economic ties with the Tribe.

(3) Gregory County is presently a CHSDA county for the Yankton Sioux Tribe. There are 158 Tribal members, of the 519 total, who are eligible for the Yankton Sioux CHS program because of close economic-social ties. The Yankton Sioux and Rosebud Sioux CHS programs will work together on the eligibility and CHS coverage on a case-by-case basis. Lyman County is presently a CHSDA county for the Lower Brule Sioux Tribe. There are 0 Tribal members who are eligible for the Lower Brule Sioux CHS program. The Lower Brule and Rosebud CHS program will work together on the eligibility and CHS coverage on a case-by-case basis if/when there are Rosebud Sioux residing within Lyman County.

(4) At this time, although Gregory County does not border the Rosebud Sioux's reservation, Gregory County was within the original boundaries of the reservation and continues to have a significant population of Rosebud Sioux. The Tribe chose to include Lyman County in the expansion even though, at the time of the analysis, there were no Rosebud Sioux tribal members residing in Lyman County. The close proximity to the original boundaries of the reservation was considered because there could be members residing in Lyman County in the future.

(5) The 519 tribal members residing in Gregory County presently utilize the Rosebud Indian Health Service facility's direct care services. Therefore, the clinical work load units will not be impacted. It is estimated that the current eligible contract health service population will be increased by 519 in Gregory County. The Rosebud CHS program has a recurring CHS funding base of $4,233,730. The formula used to determine what impact the additional 519 members, residing in Gregory County, would have on the Rosebud CHS fund is determined by using the Aberdeen Area's type of facility per capita of $327 × 519 = $169,713. The 0 number residing in Lyman County would have no impact at this time. The Rosebud Indian Health Service facility recognizes that there will be no additional CHS funding for this CHSDA expansion but they do not expect a significant impact on their present funding and support the tribe's CHSDA expansion and redesignation. The expansion and redesignation of the CHSDA to include both Gregory County and Lyman County is within the present available resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations the IHS is redesignating the CHSDA of the Tribe to consist of Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD, Gregory, SD and Lyman, SD, Counties of South Dakota and Nebraska.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Dated: June 3, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director Indian Health Service.

[FR Doc. 03–14549 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Program Announcement No. CFDA 93.576; Discretionary Funds for Refugee Family Enrichment Projects

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Request for applications to conduct projects to strengthen refugee families through services promoting healthy marriages and the adjustment of refugee elderly and refugee youth to changing family dynamics.

SUMMARY: ORR invites the submission of applications for assistance that supports activities in three categories aimed at strengthening refugee family life by promoting healthy marriages for refugee couples and support services for adjustment of refugee elderly and refugee youth.[1]

DATES: The closing date for submission of applications is July 10, 2003. ACF will acknowledge receipt of applications. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Daphne Weeden, Grants Management Officer, 370 L'Enfant Promenade SW., 4th Floor West, Washington, DC 20447. *See* Part IV of this announcement for more information on submitting applications.

Announcement Availability: The program announcement and the application materials are available from Irving Jones, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade, SW., 8th Fl., Washington, DC 20447 and from the ORR Web site at: *http://www.acf.hhs.gov/programs/orr.*

[1] Eligibility for refugee social services includes: (1) refugees; (2) asylees; (3) Cuban and Haitian entrants; (4) certain Amerasians from Vietnam, including U.S. citizens; (5) victims of a severe form of trafficking (see 45 CFR 400.43 and ORR State Letter #01–13 *http://www.acf.dhhs.gov/programs/orr/policy/sl01–13.htm* as modified by ORR State Letter 02–01 *http://www.acf.dhhs.gov/programs/orr/policy/sl02–01.htm* on trafficking victims). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons.

FOR FURTHER INFORMATION CONTACT: For all categories, contact Irving Jones, Division of Community Resettlement (DCR), ORR, Administration for Children and Families (ACF), (202) 401–6533; Fax (202) 401–0981; E-mail: *ijones@acf.hhs.gov* or Daphne Weeden, Office of Grants Management (OGM), (ACF), (202) 401–4577; E-mail: *dweeden@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: The Program—legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods, background, program purpose and objectives, allowable activities, non-allowable activities, and review criteria.

Part II: The Review Process—intergovernmental review, initial ACF screening, and competitive review.

Part III: The Application—application forms, application submission and deadlines, certifications, assurances, and disclosure required for non-construction programs, general instructions for preparing a full project description, and length of application.

Part IV: Post-award—applicable regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): The public reporting burden for this collection of information, for preparing the application, is estimated to average 15 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. Information collection is included in the following program announcement: OMB Approval No. 0970–0139, ACF Uniform Project Description (UPD) attached as Appendix A, which expires 12/30/03. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: The Program

Legislative Authority

This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522 (c)(1)(A), as amended, the Director of ORR recognizes that refugees have specific needs for services that are authorized under section 412(c)(1)(A) iii, as follows:

to make grants to, and enter into contracts with, public or private non-profit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional

refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.

Funding Availability

This program announcement governs the availability of, and award procedures for, the Refugee Family Enrichment Program, which will be funded using FY 2003 discretionary social service funds.

Category 1—Refugee Marriage Enrichment Projects through one cooperative agreement for approximately $1 million to one public or private non-profit agency with extensive knowledge of and comprehensive experience in working with refugees through reception and placement services and ongoing resettlement activities.

Category 2—Refugee Marriage Enrichment Projects through two to four cooperative agreements of approximately $400,000–$750,000 each to two to four public or private non-profit agencies with extensive knowledge of, and comprehensive experience in, working with, refugee community-based organizations.

Category 3—Refugee Family Enrichment Projects for Elderly and Youth through an estimated twenty grants ranging from $75,000 to $100,000 each to faith-based or community organizations and public agencies.

CFDA Number—93.576.

Eligible Applicants

Eligible applicants for these funds include public or private non-profit agencies, including faith-based and community organizations and public agencies. Applicants in all three categories must demonstrate, in detail, their relationship to the refugee communities they seek to serve and how those communities will participate in the proposed services. Also, applicants to category 1 and category 2 of this announcement should demonstrate their knowledge of and relationship to family enrichment activities.

Any non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled, *or* by providing a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, *or* any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Private, nonprofit organizations are encouraged to submit with their applications the optional survey located under "Grant Manuals & Forms" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Project and Budget Periods

This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. No matching or cost sharing is required.

Background

The Administration for Children and Families (ACF) is currently supporting several initiatives that promote and encourage healthy marriages and strengthen families. This program announcement reflects ORR's participation in these initiatives as they relate to refugee populations. The cultures of most refugee populations are built upon successful and stable family life. This strength is worthy of preservation and ORR seeks, through this announcement, to support activities toward that end. ORR believes that refugee couples face unique difficulties because of their flight from persecution and long periods of insecurity and that marriage education is a social service that can help refugees cope with these difficulties. ORR also believes that there are benefits to marriage that extend to children, adults and to all society. Thus ORR is committed to promoting policies and programs that help strengthen marriage as an institution and help refugee parents raise their children in positive and healthy environments.

Many refugee families have endured persecution or torture, trauma, abrupt flight from war, and separation from, or death of, friends and family members. Furthermore, the relationships in refugee families may become strained before arrival because of suffering and deprivation endemic to the refugee condition. Refugees in the U.S. face many challenges. The pressures of their new American environment may weaken the strong, positive family relationships that refugees have brought with them to the United States.

Family relationships may undergo strain and transformation when refugees resettle in the U.S. Strong authoritarian and sometimes patriarchal family structures may provoke conflicts when members take on new roles as they adapt to American culture. For example, school/parent relationships may differ from those in their home countries and may produce miscommunication and tension; refugee parents may have concerns or object to the range of freedom American youth are afforded; and the physical disciplinary practices between a husband and wife or between parents and children may differ from what is the norm or legal in the U.S. The low wages of entry-level jobs may force both adults to work outside the home, thereby disrupting traditional roles. Typically, low incomes force refugee households to locate in neighborhoods with high crime rates. Poor public transportation adds to time spent away from family members and complicates efforts to access services and participate in community activities. The resulting strain from these difficulties may damage refugee marriages, families and communities.

Marriage education can help refugee couples strengthen and adjust relationship skills and help them cope with the difficulties of their new American environment with the result of improving the quality of family life. Along with the skills that enable couples to communicate more effectively, manage conflict and work together as a team, marriage education can also teach the benefits that can be obtained from identifying future challenges in their relationships so that these challenges can be successfully negotiated when they arise.

Research reveals that the benefits of healthy marriages are particularly beneficial for children. On average, children raised by parents in healthy marriages are less likely to fail at school, suffer an emotional or behavioral problem requiring psychiatric treatment, be victims of child abuse and neglect, get into trouble with the law, use illicit drugs, smoke cigarettes, abuse alcohol, engage in early and promiscuous sexual activity, grow up in poverty or attempt suicide. On average, children raised by parents in healthy marriages are more likely to have a higher sense of self-esteem, form healthy marriages when they marry, attend college and are physically healthier.

In summary, ORR seeks to use this announcement to provide opportunities for refugees to strengthen marital and parenting skills within healthy and supportive relationships. ORR also seeks to expand understanding of the refugees' marriage and family difficulties in the resettlement experience and the factors that contribute to successfully meeting the challenges to the marriage relationship. Despite difficult hurdles such as trauma, cultural adjustment and low wage jobs, refugee families are resilient. Once in the U.S., most envision a bright future for themselves and their children. If the issues faced by refugee families are addressed early through marriage education, the problems they encounter may be reduced or prevented and refugee families can achieve the bright future they seek.

Other Vulnerable Refugee Family Members: Elderly and Youth

ORR is also interested in programs that support services for the elderly and youth, who may be the more vulnerable family members. Refugee elderly and youth have also experienced or witnessed persecution. They also face hardships while resettling and pose unique challenges to their families, communities and the agencies that seek to serve them.

Older refugees face various issues that make them particularly vulnerable: chronic health and emotional problems stemming from the conditions of refugee flight; family loss or separation; an inability to advocate for themselves because of cultural, linguistic, or educational barriers; limited access to appropriate health and social service agencies; limited income due to lack of work history; and barriers to meeting the requirements for naturalization. Many older refugees in the United States, particularly women, live in difficult circumstances in which they may live alone without a caregiver, have low incomes, or may be abused, neglected or exploited. Additionally, some elderly refugees have lost Supplementary Security Income and Medicaid due to expiration of eligibility.

Refugee youth also confront a number of challenges as they integrate into American society. Because youth usually adapt more quickly to their new surroundings than adult refugees, relationships with parents often undergo stress and change. Youth often learn English more quickly and become translators for their parents. This shifts power to the young, disrupting traditional relationships within the family. Refugee youth often face problems in the United States that did not exist in their home countries, depriving them of the wisdom and experience of their parents who never dealt with these problems. Youth also face dilemmas surrounding relationships with the opposite sex, as male/female relationships in the U.S. may differ significantly from those of their home country. In addition, the stress of working while attending school, along with conflicts with students, teachers and school administrators over conduct, dress or diet may impede success at school. Refugee youth may also reject their home culture and desire acceptance from peers in the U.S. This desire for acceptance can lead to discipline problems in school and at home and to problems with local law enforcement agencies.

Through category 3 of this announcement ORR seeks to fund programs that address the particular challenges faced by refugee elderly and youth so that they can meet the challenges in their resettlement experiences.

Category 1—Marriage Enrichment Projects

Category 1 Purposes and Objectives

ORR intends to award funds, under one cooperative agreement, to a public or private non-profit agency with extensive knowledge of and comprehensive experience in working with refugees through (1) reception and placement services and (2) ongoing resettlement activities. Through this cooperative agreement, the grantee will meet the needs of a wide variety of ethnicities among recently arrived refugee populations. To reach these populations and to ensure that the services provided are culturally and linguistically appropriate, the applicant should have local offices or affiliated organizations with an ongoing relationship to, and the trust and respect of each group of refugees. The family enrichment activities proposed in this announcement may be outside the experience of many refugees and may be difficult to implement without a well-established relationship between the refugees and the applicant.

Applicants should describe their efforts to create collaborations, with both national and local marriage education providers who have knowledge or expertise in family strengthening activities. Information about organizations providing marriage enrichment activities can be found on the ORR web site at: *http://www.acf.dhhs.gov/programs/orr/programs,* or applicants may contact Irving Jones, Division of Community Resettlement, ORR, Administration for Children and Families (ACF), (202) 401–6533; E-mail: *ijones@acf.hhs.gov.*

ORR expects that approximately 90 percent of the funding will be expended at the local level, and that the applicant should budget for no more than one full-time staff person at the national level. Through this cooperative agreement, ORR intends to review and approve: (1) A plan for sub-grants, including plans for geographical distribution and technical assistance; (2) a plan for implementation, which should include the building of coalitions and client outreach; (3) all written materials developed and proposed for dissemination; (4) timelines and major program outcomes; and (5) a reporting format that outlines the difficulties refugee couples face, a description of the proposed intervention and the impact of the intervention on the refugee family.

Category 1—Allowable Activities—Projects may be designed to translate and adapt contemporary American approaches to traditional refugee practices and cultural settings, in coalition with marriage enrichment organizations, at both the national and local levels. ORR supports creative and unique approaches that address the needs of refugee families as well as the development of strategies for partnerships with marriage enrichment organizations. Applicants may propose activities that include, but are not limited to, the following:

- Award 10–20 sub-grants to local organizations to conduct marriage enrichment activities with refugees.
- Develop culturally and linguistically appropriate marriage enrichment and family strengthening materials to be used in training local refugee communities.
- Assist sub-grantees, in coalition with marriage enrichment organizations, to provide culturally and linguistically appropriate communication and conflict resolution skills training to refugee couples to help them improve their relationships and enrich their marriages.
- Assist sub-grantees to train refugee couples to act as mentors in their ethnic community. Newly married refugee couples should be considered a priority group for mentoring.
- Conduct local workshops on marriage and relationship skills for refugees that may include coping with the customs of a new community,

conflict resolution, financial management and job and career advancement.

• Conduct customized pre-marital education and marriage enrichment programs for refugee youth and young adults.

• Develop refugee resource centers to help enhance the relationships in refugee families.

• Teach effective child-rearing techniques, including positive and culturally-acceptable child disciplinary practices and parenting skills for refugees.

• Provide information about U.S. cultural and legal issues as they affect gender, parenting roles and intergenerational family relationships.

Category 1 Review Criteria—Category 1 applications will be reviewed and rated based on the following criteria:

1. *Organizational Profiles (30 points)*—Application demonstrates an extensive knowledge of and comprehensive experience in working with refugees through reception and placement services and ongoing resettlement activities. Application includes letters of support that demonstrate the organization's strong relationship with the local refugee resettlement community; experience in providing refugee resettlement services; and relationship with marriage enrichment programs. Individual staff position descriptions, volunteer positions, consultants and coalition organizations are appropriate to the goals of the project. The administrative and management features of the project, including a monitoring and technical assistance plan for program and fiscal activities, are adequately described. The applicant provides a copy of its most recent audit report.

2. *Objectives and Need for Assistance (20 points)*—Applicant (a) fully and clearly describes the need for activities to support and strengthen refugee marriages, (b) demonstrates a comprehensive understanding of the refugees' experiences in resettlement services in local U.S. communities and demonstrates access to agencies that provide reception and placement services (c) clearly understands the marriage enrichment concept and can effectively integrate it with refugee resettlement activities, and (d) proposes establishing a coalition with marriage enrichment organizations at the local level for purposes of providing marriage education services to the refugee community.

3. *Approach (20 points)*—The proposed approach for the cooperative agreement and awarding of sub-grants is fully and clearly described. The strategy and plan demonstrate the ability to achieve the proposed results. The proposed communities and the resident refugee groups along with strategies for recruiting them into the program are described in detail. Timeframes are reasonable and feasible. The proposed activities are likely to lead to the desired results, *i.e.*, healthy marriages among refugee communities.

4. *Results or Benefits Expected (20 points)*—Applicant describes outcomes that are consistent with the goals of marriage enrichment programs for refugee families. The outcomes are likely to be reached through the activities proposed. Proposed outcomes are measurable and achievable within the grant project period.

5. *Budget and Budget Justification (10 points)*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Approximately 90 percent of the funding is expended at the local level. The budget contains no more than one full-time staff position at the national level.

Category 2—Refugee Marriage Enrichment

Category 2 Purpose and Objectives

ORR is interested in funding, under cooperative agreements, two to four public or private non-profit agencies with extensive knowledge of, and comprehensive experience in, working with refugee community-based organizations. Through this category, ORR plans to meet the needs of more targeted populations of refugees who may have been in the country for a longer period of time. To reach this population and to ensure that the services provided are culturally and linguistically appropriate, the applicant should have an ongoing relationship with and the trust and respect of refugees within the community. Unlike Category 1, Category 2 applicants need not be conducting ongoing reception and placement activities. The successful applicants for Category 2 will provide funds and training to five to ten agencies including faith-based and community organizations, which may include (1) local affiliates of the applicant or affiliates of other non-applicant refugee national organizations with whom the applicant has formed a collaboration; (2) independent refugee organizations, or (3) entities that have demonstrated an ability to work closely with refugees. The successful applicants will provide financial and program support to enable families within the refugee community to receive marriage enrichment training. The marriage enrichment activities proposed in this announcement may be outside the experience of many refugees and may be difficult to implement without a well-established relationship between the refugees and the grantee. Applicants should also demonstrate a relationship to marriage enrichment resources.

ORR is interested in projects which can address refugee needs for cultural and linguistic access to family enrichment services and this is often best achieved through partnerships with grass-roots organizations, including refugee community-based organizations or faith-based organizations. The successful applicants will, through grassroots organizations, provide culturally sensitive marriage enrichment to refugee couples.

Applicants should describe their efforts to create collaborations with marriage education providers and knowledge or expertise in marriage strengthening activities. Information about organizations providing marriage enrichment activities can be found on the ORR web site at: *www.acf.dhhs.gov/programs/orr/programs*, or by contacting Irving Jones, Division of Community Resettlement, ORR, Administration for Children and Families (ACF), (202) 401–6533; E-mail: *ijones@acf.hhs.gov*.

ORR expects that approximately 90 percent of the funding will be expended at the local level, and that the applicant should budget for no more than one full-time staff person at the national level. Through this cooperative agreement, ORR intends to review and approve: (1) A plan for sub-grants, including plans for geographical distribution and technical assistance; (2) a plan for implementation, which should include the building of coalitions and client outreach; (3) all written materials developed and proposed for dissemination; (4) timelines and major program outcomes; and (5) a reporting format that outlines the difficulties refugee couples face, a description of the proposed intervention and the impact of the intervention on the refugee family.

Category 2 Allowable Activities—ORR is interested in the preservation of refugee families and in ensuring their long-term stability and self-sufficiency. ORR supports creative and unique approaches that address the needs of refugee families as well as the development of strategies for partnerships with marriage enrichment organizations. These projects may be designed to translate and adapt contemporary American approaches to traditional practices and cultural settings. Applicants may propose activities that include, but are not limited to, the following:

• Award 5—10 sub-grants to local organizations to conduct marriage enrichment activities for refugees.

• Develop culturally and linguistically appropriate marriage enrichment and family strengthening materials to be used in training local refugee communities.

• Assist sub-grantees, in coalition with marriage enrichment organizations, to provide culturally and linguistically appropriate communication and conflict resolution skills training to refugee couples in specific refugee ethnic communities to help them improve their relationships and enrich their marriages.

• Assist sub-grantees to train refugee couples to act as mentors in their ethnic community. Newly married refugee couples should be considered a priority.

• Conduct local workshops on marriage and relationship skills that may include coping with the customs of a new community, conflict resolution, financial management, and job and career advancement for refugees.

• Conduct customized premarital education and marriage enrichment programs for refugee youth and young adults.

• Develop refugee resource centers to help enhance the relationships in refugee families.

• Teach effective child-rearing techniques, including positive and culturally-acceptable child disciplinary practices and parenting skills for refugees.

• Provide information about U.S. cultural and legal issues as they affect gender, parenting roles, and intergenerational family relationships for refugees.

The successful application will demonstrate extensive knowledge of, and comprehensive experience working with, refugee communities in providing services or access to services to refugees. The successful application also will demonstrate knowledge of marriage enrichment organizations, both national and in the local communities of sub-grantees.

Category 2 Review Criteria—Category 2 applications will be reviewed and rated based on the following criteria:

1. *Organizational Profiles (30 points)*—Application demonstrates an extensive knowledge of and comprehensive experience working with local entities, including faith-based and community organizations. Application includes letters of support that demonstrate the organization's strong relationship with the local refugee community groups and relationship with marriage enrichment programs. Individual staff position descriptions, volunteer positions, consultants and coalition organizations are appropriate to the goals of the project. The administrative and management features of the project, including a monitoring and technical assistance plan for program and fiscal activities, are adequately described. The applicant provides a copy of its most recent audit report.

2. *Objectives and Need for Assistance (20 points)*—Applicant (a) fully and clearly describes the need for activities to support and strengthen refugee marriages, (b) demonstrates a comprehensive understanding of the refugee experience in local U.S. communities and demonstrates access to agencies that have relationships with refugees, including faith-based and community organizations, (c) clearly understands the marriage enrichment concept and can effectively integrate it with the activities of local refugee community-based organizations, and (d) proposes establishing a coalition with marriage enrichment organizations at the local level for purposes of providing marriage education services to the refugee community.

3. *Approach (20 points)*—The proposed approach for the cooperative agreement and awarding of sub-grants is fully and clearly described. The strategy and plan demonstrate the ability to achieve the proposed results. The proposed communities and the resident refugee groups along with strategies for recruiting them into the program are described in detail. Timeframes are reasonable and feasible. The proposed activities are likely to lead to the desired results, *i.e.*, healthy families among refugee communities.

4. *Results or Benefits Expected (20 points)*—Applicant describes outcomes that are consistent with the goals of marriage enrichment programs for refugee families. The outcomes are likely to be reached through the proposed activities. Proposed outcomes are measurable and achievable within the grant project.

5. *Budget and Budget Justification (10 points)*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Approximately 90 percent of the funding is expended at the local level. The budget contains no more than one FTE at the national level.

Category 3—Refugee Family Enrichment Projects for Elderly and Youth

Category 3 Purpose and Objectives: ORR is interested in funding 20 or more

public or private agencies, including faith-based or community organizations to aid the elderly in accessing appropriate services and to work with youth to promote healthy development. Programs should focus on unmet needs and not duplicate or supplant programs available under any other Federal source of funding.

The successful applicant must demonstrate extensive knowledge of and comprehensive experience in working with refugee communities in providing specialized services to the youth and elderly and promoting access to mainstream services for refugees.

The specific services proposed may be as diverse as the refugee populations and the resettlement communities themselves. Proposed activities and services should be planned in conjunction with mainstream service providers and should provide linkages to these services. ORR is particularly interested in projects that are planned and implemented through coalitions with community-based organizations and local service providers. Such projects would address refugee needs for cultural and linguistic access to services, and would work with their refugee community members to help the elderly to access appropriate services, or with youth, to promote healthy development and adjustment.

Category 3 Allowable Activities—ORR is interested in applications in which an applicant addresses, based on an analysis of service needs and available resources, the difficulties which refugee elderly and youth face. The goals and expected outcomes of activities should be clearly stated and should respond to the particular needs of the elderly and youth in refugee families. The application should clearly outline how the agency will accomplish the goals and how the proposed activity fits into the existing network of services.

An application may include activities for youth, the elderly, or a combination thereof. ORR seeks to support local communities in finding innovative approaches that fit the unique needs of families in different communities. Projects may be designed to adapt contemporary American approaches to traditional practices and cultural settings. Applicants may propose activities that include, but are not limited to, the following:

Elderly

• Develop or implement programs or provide linkages to existing local programs that enable older refugees to live independently as long as possible.

• Provide services that meet the needs of older refugees, such as

outreach, information, referrals, follow-up, nutrition programs (both congregate and home delivered), and transportation to senior centers or medical appointments.

- Conduct outreach to locate and inform elderly refugees of the existence of services in their community.
- Provide transportation services.
- Conduct case management.
- Provide services and/or information and referral to appropriate services that offer in-home care, adult day care, institutionalized care, and State Nursing Home Ombudsmen.
- Offer programs or provide linkages to existing programs that prevent or discourage the abuse of elderly refugees.
- Offer English tutoring or home-based English language training for homebound refugees.
- Provide employment support services, especially with agencies involved with the Older American Act, Title V Senior Employment Programs.
- Provide linkages to caregiver programs.
- Help elderly become naturalized.

Youth

- Conduct workshops for parents and youth on dating and gender cultural norms in the U.S.
- Help students negotiate the school system, familiarizing them with the school rules and fostering better communication between youth, administrators, counselors, mentors and tutors.
- Support or foster parental outreach programs that involve refugee parents in their children's education to help them understand school life.
- Provide youth employment support services.
- Provide after-school tutorials focused on helping students understand and complete assignments.
- Conduct programs that encourage high school completion and full participation in school activities.
- Conduct after-school activities that foster engagement in constructive activities.
- Conduct cognitive enrichment programs to bridge the gap between refugee students' intellectual abilities and the elements of school and curriculum that are culture-based.

Category 3 Review Criteria—Category 3 applications will be reviewed and rated based on the following criteria:

1. *Organizational Profiles (25 points)*—Application demonstrates a history, in-depth experience with, and access to, local refugee communities. Individual staff position descriptions, volunteer positions, consultants and coalition organizations are appropriate to the goals of the project. Application includes letters of support that demonstrate the organization's ability to accomplish, with appropriate partnerships with community organizations, the purpose and objectives of the application. The administrative and management features of the project, including a monitoring and technical assistance plan for program and fiscal activities, are adequately described. The applicant provides a copy of its most recent audit report.

2. *Objectives and Need for Assistance (20 points)*—The application clearly describes the youth or elderly refugees' physical, economic, social, financial, institutional and/or other issues requiring a solution. The need for assistance must be demonstrated and the objectives of the project must be clearly stated. The application clearly describes how funding through this program will meet those needs.

3. *Results or Benefits Expected (20 points)*—The applicant fully and clearly describes the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators for the well-being of refugee elderly and youth and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period and the proposed monitoring and information collection are adequately planned.

4. *Approach (20 points)*—The strategy and plan are likely to achieve the proposed results and the proposed activities and timeframes are reasonable and feasible. The proposed activities focus on unmet needs and do not duplicate or supplant programs available under any other Federal source of funding. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of life for refugee elderly and youth and communities by (1) improving refugees' abilities to access services, providing mutual assistance and creating services where they are not available and (2) instituting change among service providers to make these services more accessible.

5. *Budget and Budget Justification (15 points)*—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results. The budget narrative provides justification in relation to the proposed activities and anticipated outcomes.

Part II: The Review Process

Intergovernmental Review—This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected not to participate in the Executive Order process. Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants should contact their Single-Points-of-Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants from participating jurisdictions must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (the date of contact) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 30 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Grants Management Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 4th floor, Washington DC, 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Initial ACF Screening—Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria—Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Part III: The Application

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as appendix A.

Application Forms—Applicants requesting financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-Construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

Application Submission and Deadlines—An application with an original signature and two clearly identified copies are required. Applicants must clearly indicate on the SF 424 the grant announcement number under which the application is submitted.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Daphne Weeden." (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (e.g. floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Grants Management Officer, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, West Wing, Washington, DC 20447, Telephone: (202) 401–4577.

Certifications, Assurances, and Disclosure Required for Non-Construction Programs—Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications. Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification need not mail back the certification with the applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications. Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification need not mail back the certification with the applications.

General Instructions for Preparing a Full Project Description—The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information they consider relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

Length of Applications—Each application narrative should not exceed 20 pages in a double spaced 12-pitch

font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and an executive summary should be included but will not count in the page limitations. Each page should be numbered sequentially, including the attachments and appendices. This limitation of 20 pages should be considered as a maximum, and not necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Part IV: Post-Award

Applicable Regulations—Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

Treatment of Program Income—Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives.

Reporting Requirements

All required reports must be submitted in a timely manner. Program progress reports must be submitted quarterly. A grantee is allowed 30 days to submit the report following the end of the period. Recommended formats for the reports will be provided. The final report is due 90 days after the end of the project. Grantees are required to file the Financial Status Report (SF–269) semi-annually.

Funds awarded must be accounted for, and reported under the distinct grant number ascribed. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the Grants Management Officer, Administration for Children and Families/Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor West, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report must be submitted within 30 days of the end of each reporting period directly to the Office of Grants Management.

A Final Financial and Program Report will be due 90 days after the project expiration date or termination of Federal budget support.

Appendix A—Uniform Project Description OMB No. 0970–0139

The project description is approved under OMB control number 0970–0139 which expires 12/31/03.

Part I: The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a marriage enrichment program, describe who will access program services, and how those services will benefit refugees.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities to be accomplished. For example, when applying for a grant to establish a marriage enrichment program, describe the number of refugee couples expected to access marriage enrichment services for the quarter. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs.

[Self-explanatory]

Dated: June 5, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–14593 Filed 6–9–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies: Correction

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice; Correction.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month.

Inadvertently, a currently certified laboratory was left off the list published on June 3, 2003, in FR Vol. 68, No. 106, Pages 33173–33175.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratory has met the minimum standards set forth in the Guidelines: Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–14670 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15325]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Hazardous Cargo Transportation Security Subcommittee will meet to discuss security issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Thursday, July 17, 2003, from 8 a.m. to 4 p.m. The Subcommittee on Hazardous Cargo Transportation Security will meet on Tuesday, July 15, 2003, from 8 a.m. to 4 p.m. and Wednesday, July 16, 2003, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 7, 2003. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before July 7, 2003.

ADDRESSES: CTAC will meet at the Romano Mazzoli Federal Building, 600 Martin Luther King, Jr. Place, Louisville, KY, in room 27. The Subcommittee on Hazardous Cargo Transportation Security will meet at American Commercial Barge Line (ACBL) Company, 1701 E. Market St., Jeffersonville, IN, on the fifth floor. Send written material and requests to make oral presentations to Commander James M. Michalowski, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on July 15–16, 2003

(1) Introduce Subcommittee members and attendees.

(2) Discuss inland vessel tracking system.

(3) Discuss communications/publications.

(4) Discuss crew concerns.

(5) Discuss Declaration of Security (DOS) forms.

(6) Discuss outreach initiatives concerning U.S. Coast Guard security regulations.

(7) Review and prepare comments for six interim rules that promulgate maritime security requirements mandated by the Maritime Transportation Security Act of 2002.

Agenda of CTAC Meeting on Thursday, April 17, 2003

(1) Introduce Committee members and attendees.

(2) Review and prepare comments for six interim rules that promulgate maritime security requirements mandated by the Maritime Transportation Security Act of 2002.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before July 7, 2003. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than July 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: June 4, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–14589 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 03–01]

Customs Accreditation of BSI Inspectorate America Corporation as a Commercial Laboratory

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of BSI Inspectorate America Corporation of Garden City, Georgia, as a commercial laboratory.

SUMMARY: BSI Inspectorate America Corporation of Garden City, Georgia has applied to Customs and Border Protection under § 151.12 of the Customs Regulations for an extension of accreditation as a commercial laboratory to analyze petroleum products under Chapter 27 and Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, BSI Inspectorate America Corporation has been granted accreditation to perform the following test methods at their Garden City, Georgia site: (1) Distillation of Petroleum Products, ASTM D86; (2) Water in Petroleum Products and Bituminous Materials by Distillation, ASTM D95; (3) API Gravity by Hydrometer, ASTM D287; (4) Kinematic Viscosity of Transparent and Opaque Liquids, ASTM D445; (5) Sediment in Crude Oils and Fuel Oils by Extraction, ASTM D473; (6) Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, ASTM D1298; (7) Water and Sediment in Fuel Oils by the Centrifuge Method, ASTM D1796; (8) Water and Sediment in Middle Distillate Fuels by Centrifuge, ASTM D2709; (9) Water in Crude Oil by Distillation, ASTM D4006; (10) Percent by Weight of Sulfur by Energy-Dispersive X-Ray Fluorescence, ASTM D4294; (11) Water in Crude Oils by Coulometric Karl Fischer Titration, ASTM D4928; and (12) Vapor Pressure of Petroleum Products, ASTM D5191. Therefore, in accordance with Part 151.12 of the Customs Regulations, BSI Inspectorate America Corporation of Garden City, Georgia is hereby accredited to analyze the products named above.

Location: BSI Inspectorate America Corporation accredited site is located at: Miles Street, Georgia Port Authority Gate #2, Garden City, Georgia, 31408.

Effective Date: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: May 20, 2003.

Donald A. Cousins,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 03–14535 Filed 6–9–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on July 30, 2003 in Washington, DC.

DATES: The meeting will be held on July 30, 2003, at 9 a.m.

ADDRESSES: The meeting will be held at Holiday Inn Capitol, Columbia Ballroom, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–4321; or e-mail *pat.tenorio@dhs.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) Federal agencies' updates, (3) reports from FRPCC subcommittees, (4) old and new business, and (5) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the July 30, 2003, FRPCC meeting should request time, in writing, from W. Craig Conklin, FRPCC Chair, FEMA, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 03–14488 Filed 6–9–03; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–07]

Notice of Proposed Information Collection for Public Comment: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 11, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marie Lihn, Economic and Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410; telephone (202) 708–0590, extension 5866; e-mail *marie_l._lihn@hud.gov*. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Lihn.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey.

OMB Control Number: 2528–0142.

Description of the need for the information and proposed use: This provides HUD with a fast, inexpensive way to estimate and update Section 8 Fair Market Rents (FMRs) in areas not covered by AHS or CPI surveys, and in areas where FMRs are believed to be incorrect. It also provides estimates of annual rent changes. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition Programs; payment standards for the Rental Voucher Program; and any other programs whose regulations specify their use.

Random digit dialing (RDD) telephone surveys have been used for several years to adjust FMRs. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. HUD contracts with a private company to conduct two types of RDD surveys: (1) Approximately 50 individual FMR areas are surveyed every year to test the accuracy of their FMRs; (2) In addition, 20 RDD surveys are conducted very year to provide updating factors for FMRs not surveyed individually and for Annual Adjustment Factors (AAFs). These surveys are conducted in the non-metropolitan portions of all 10 HUD regions, and in the 10 metropolitan portions of the regions that do not have their own Consumer Price Index (CPI) surveys.

Members of affected public: Individuals or households living in areas surveyed.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Number of phone calls made	Average minutes each	Minutes	Hours
Telephone surveys:				
Number who pick up phone but are screened out	416,970	1.16	484,942	8,082
Total interviewed (movers and stayers)	42,205	4.32	182,364	3,039
Mail surveys	3,984	5.00	19,920	332
Annual total	463,159		687,226	11,454

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and section 8(C)(1) of the United States Housing Act of 1937.

Dated: June 5, 2003.

Christopher D. Lord,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 03–14595 Filed 6–9–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Status Review and 12-Month Finding for a Petition To List the Washington Population of the Western Gray Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list a distinct population segment (DPS) of the western gray squirrel (*Sciurus griseus griseus*) in Washington, in accordance with the Endangered Species Act of 1973, as amended. After reviewing the best scientific and commercial information available, we find that the petitioned action is not warranted because the petitioned entity is not a DPS and, therefore, not a listable entity. Additionally, we evaluated the Washington populations of the western gray squirrel relative to the entire range of the subspecies and determined that the Washington populations collectively do not constitute a significant portion of the range of the subspecies. We ask the public to submit to us any new information that becomes available concerning the status of or threats to this subspecies. This information will help us monitor and encourage the conservation of this subspecies.

DATES: The finding announced in this document was made on May 30, 2003. Although further listing action will not result from this finding, we request that you submit new information concerning the status of or threats to this subspecies whenever it becomes available.

ADDRESSES: You may send data, information, or questions concerning this finding to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. In order to inspect the petition, the administrative finding, supporting information, and comments received, you may make an appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Western Washington Fish and Wildlife Office (*see* **ADDRESSES**) (telephone 360/753–9440, facsimile 360/753–9405).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific or commercial information that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, or (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

On January 4, 2001, we received a petition dated December 29, 2000, from the Northwest Ecosystem Alliance, Bellingham, Washington, and the Tacoma Audubon Society, University Place, Washington. The petition requested an emergency rule to list the Washington population(s) of the western gray squirrel (Sciurus griseus griseus) as threatened or endangered under the Act or, alternatively, the immediate emergency listing of just the southern Puget Sound population of western gray squirrels, followed by a later consideration of the "full Washington State distinct population segment under the standard processing requirements." On October 29, 2002, we announced an initial petition finding in the **Federal Register** (67 FR 65931) concluding the petition presented substantial information to indicate there may be one or more distinct population segments (DPS) of western gray squirrels in Washington for which listing may be warranted. We are making this 12-month petition finding in accordance with a court order to complete this finding by June 1, 2003 (*Northwest Ecosystem Alliance* v. *U.S. Fish and Wildlife Service* (CV No. 02–945 KI (D.OR)).

Taxonomy

The western gray squirrel belongs to the mammalian order Rodentia, the suborder Sciurognathi, and the family Sciuridae. There are three subspecies of western gray squirrel: *Sciurus griseus griseus*, which ranges from central Washington to the western Sierra Nevada Range in central California; *S. g. nigripes*, which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County; and *S. g. anthonyi*, which ranges from the southern tip of the Coast Range (near San Luis Obispo, California) into south-central California (Hall 1981). *Sciurus griseus griseus* was described from a squirrel seen by Lewis and Clark at The Dalles in Wasco County, Oregon (Bailey 1936; Hall 1981).

The western gray squirrel is the largest native tree squirrel in the Pacific Northwest and is the only member of the genus *Sciurus* native to Washington. Two other members of the genus found in Washington are introduced species: the eastern gray squirrel (*S. carolinensis*) and the fox squirrel (*S. niger*) (Washington Department of Wildlife (WDW) 1993). Other common names applied to this subspecies include the silver-gray squirrel (Bailey 1936; Booth 1947; Maser *et al.* 1981), California gray squirrel (Grinnell and Storer 1924; Couch 1926), Oregon gray squirrel (Bowles 1921), Columbian gray squirrel (Bailey 1936), banner-tail (Scheffer 1923), and gray squirrel (Bowles 1920, Booth 1947).

Description and Natural History

Western gray squirrels are silvery-gray with dark flanks and creamy white underneath. The tail is long, bushy, and edged with white; darker hairs in the tail give it a pepper-gray frost effect. Large ears without tufts also distinguish the western gray squirrel from other tree squirrels. There is a light reddish-brown wash on the backs of the ears, but otherwise the western gray squirrel is entirely gray. To some extent it resembles the eastern gray squirrel, native to the eastern United States but introduced into the range of the western gray squirrel. However, eastern gray squirrels, which are smaller in size, also have smaller tails and rufous (reddish) coloration on the head, back, flanks, and underparts (WDW 1993; Carraway and Verts 1994; Ryan and Carey 1995a).

Body measurements of western gray squirrels can be variable. Adult weights can range from 18 to 33 ounces (520 to 942 grams). Total lengths (inclusive of body and tail) may range from 20 to 24 inches (in) (500 to 615 millimeters (mm)), with tail lengths ranging on average from 9 to 15 in (240 to 381 mm) and body lengths ranging from 10 to 15 in (265 to 391 mm) (Hall 1981; Carraway and Verts 1994). Based on the results of four studies, body measurements of western gray squirrels in Klickitat County, Washington, were found to be significantly larger than elsewhere in the subspecies range (Mary Linders, Washington Department of Fish and Wildlife (WDFW), pers. comm. 2003d).

Western gray squirrels are arboreal (adapted for living in trees) and, although they forage on the ground, they rarely stray far from trees. They use tree canopies for escape, cover, and nesting. Western gray squirrels can move rapidly and cover long distances among tree canopies when canopy conditions permit. A contiguous tree canopy that allows arboreal travel for at least 198 feet (ft) (60 meters (m)) around the nest is an important feature of western gray squirrel habitat (Ryan and Carey 1995a).

Western gray squirrels avoid open spaces; in the Puget Trough, western gray squirrels will not cross the prairie to use an isolated tree (Ryan and Carey 1995a). Western gray squirrels, when released from traps and pointed toward openings, did not cross the prairie or open areas any larger than about 40 ft (12 m). Movements across relatively open areas to small groups of trees or small habitat patches can be facilitated by scattered saplings and small trees in fence lines or in the open areas. For example, one radio telemetered squirrel was observed in a group of three isolated trees separated from the main stand by scattered individual trees. The distance of movement, which is rapidly completed, across a relatively open area with scattered trees may be about 150 ft (50 m) (M. Linders, pers. comm. 2003a).

Ryan and Carey (1995b) found that western gray squirrels on Fort Lewis Military Reservation (Fort Lewis) in Washington were rarely seen in small (less than 5 ac (2 ha)), isolated pure oak stands or in pure Douglas-fir (*Pseudotsuga menziesii*) stands away from oaks. Western gray squirrels preferred stands with a mixture of conifers, oaks, and other food-bearing tree species, and were seen most often in stands greater than 5 acres (ac) (2 hectares (ha)) in size and not more than 1,280 ft (390 m) away from water.

In Washington, and elsewhere within the subspecies' range, the principal food is acorns, although the seeds of Douglas-fir and other conifers are also eaten (Dalquest 1948). While pine nuts and acorns are considered essential foods for storing body fat and conditioning western gray squirrels for winter, green vegetation, seeds and nuts of trees and shrubs, fleshy fruits, mushrooms, and other foods are also consumed. Hypogeous fungi (underground fungi such as truffles) comprise a large portion of the western gray squirrel diet (WDW 1993; Carraway and Verts 1994; Ryan and Carey 1995a).

The western gray squirrel is in the northern portion of its range in Washington, where the diversity of mast-producing tree species is less than in Oregon or California. "Mast" includes fruits and nuts used as a food source by wildlife. A decreased diversity of food resources increases the likelihood that concurrent mast failures could seriously affect the survivability of a mast dependent species such as the western gray squirrel population (Ryan and Carey 1995a, b; Linders 2000).

Western gray squirrels require a year-round source of water. On Fort Lewis, western gray squirrels select forested stands within 1,800 ft (550 m) of permanent water (Ryan and Carey 1995b). The majority of nests at one site in Okanogan County, Washington were within 0.6 mile (mi) (1 kilometer (km)) of water, with a maximum distance of 1 mi (1.6 km) (M. Linders, pers. comm. 2003d). Western gray squirrels drink freely from permanent and intermittent water sources, including lakes, marshes, rivers, streams, and puddles (Ryan and Carey 1995a).

Western gray squirrels are active throughout the day, but are most active in the morning. They were observed from dawn to dusk and year round on Fort Lewis; no nocturnal activity has been observed. Western gray squirrels are most active in August and September, when they are collecting and storing food for winter, and they are less visible in June and July (Ryan and Carey 1995a).

Home range sizes can differ with age, sex, location, population density, and from year to year. Home range size increases with social rank and the number of nests used by an individual. Typically, home range sizes for western gray squirrels vary across the subspecies' range from 1.2 ac (0.5 ha) recorded for males in a city park in California, to 16 ac (6.5 ha) in northern Oregon. Recorded home ranges of females vary from 0.3 ac (0.1 ha) in California to 42 ac (17 ha) in Oregon in the summer (Ryan and Carey 1995a). However, a study on the Klickitat Wildlife Area in Klickitat County, Washington, documented average home range sizes of 180 ac (73 ha) for males and 52 ac (21 ha) for females (Linders 2000). These home range estimates from Klickitat County were significantly larger than in other parts of the subspecies' distribution. However, methods used to determine home range sizes may be a source of variability (Ryan and Carey 1995a).

Western gray squirrels use two types of stick nests: large, round, covered shelter nests are used in winter, and broad platforms are for seasonal or temporary use (Ryan and Carey 1995a). Cavity nests are also used for rearing young and for sleeping at other times (Carraway and Verts 1994). Western gray squirrels frequently use more than one nest, with different individuals often occupying the same nest on successive nights; two squirrels rarely occupy the same nest simultaneously (Linders 2000). Construction and use of multiple nests by individual squirrels, overlap in use, and the fact that nests may remain intact for 3 to 5 years makes it difficult to associate the number of nests with an estimate of the population size. As an example, in Klickitat County, most pregnant and lactating females used cavity nests in oaks and averaged 14.3 nests each, significantly more than the 3.5 nests per squirrel reported for southern Oregon.

Males reach sexual maturity at 1 year and females at 10 to11 months of age. In western Washington, breeding occurs from January to September, and lactating females have been observed from May to August (Ryan and Carey 1995a; M. Linders, pers. comm. 2003d). Most researchers believe western gray squirrels have only one litter each year, although there is some indirect evidence to indicate two litters may be biologically possible, but uncommon (Ryan and Carey 1995a). Litter counts ranged from one to five, averaging about 2.6 young/litter over a 3-year period (M. Linders, pers. comm. 2003d).

Distribution

Historically, the western gray squirrel's distribution was widespread throughout Washington, Oregon, California, and in western Nevada along the base of the Carson Range and in Washoe County (Dalquest 1948). Currently, the subspecies is rare in Nevada and absent from the Central Valley in California. Western gray squirrels still occur in the interior valley margin of the Cascade Mountains in Oregon and Washington; the foothills of the Coast Range in Oregon; the Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, and Laguna Mountains in central and southern California; and westward through the Coast Ranges of California (Carraway and Verts 1994). In California, the western gray squirrel is fairly common in the Klamath Mountains of northern California, and the Transverse and Peninsular Ranges of southern California (California Department of Fish and Game (CDFG) 1990). In Oregon, the western gray squirrel distribution extends along the southwestern foothills of the Coast Range northward to Coos Bay, and north along the eastern side of the Coast Range and along both sides of the Cascade Mountains into Washington (Verts and Carraway 1998).

Western gray squirrels in Washington once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascades, and north along the eastern slopes of the Cascades to Lake Chelan. Documentation for western gray squirrels includes records for Pierce, Thurston, Grays Harbor, Lewis, Clark, Skamania, Klickitat, Yakima, Kittitas, Chelan, and Okanogan Counties in Washington. There is one record from extreme northeastern Whatcom County, probably associated with western gray squirrels in the northern Cascade Mountains (WDW 1993; WDFW 2002). Currently in Washington, the western gray squirrel distribution has been reduced to three geographically isolated western gray squirrel populations in Washington: the "Puget Trough" population, now centered in Thurston and Pierce Counties in the Puget Sound region; the "South Cascades" population in extreme eastern Skamania County and Klickitat and Yakima Counties; and the "North Cascades" population in Chelan and Okanogan counties (Bayrakçi *et al.* 2001, WDW 1993). The distribution of western gray squirrels in each of these counties is limited.

Status Review

On October 29, 2002, we published a positive initial 90-day administrative finding on the petition to list the Washington population of the western gray squirrel in the **Federal Register** indicating the petitioned action may be warranted (67 FR 65931). At that time, we requested public comments on this initial finding and any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of the subspecies throughout its range in Washington, Oregon, California, and Nevada. We asked for information regarding the subspecies' historic and current distribution, habitat conditions and use, biology and ecology, threats, and ongoing conservation measures for the subspecies and its habitat. We requested any available information on the three Washington populations of the western gray squirrel concerning (1) the genetics of these populations as they relate to each other and to the closest populations in Oregon; (2) the extent to which the two populations east of the Cascade Mountains are discrete from each other; (3) current status and trends of each of these populations; (4) the presence of the subspecies on additional public or private lands; (5) identification of the current specific threats to each of the populations; and (6) any additional information supporting the DPS analysis of significance, as defined in our DPS policy (61 FR 4722), of each of these populations to the subspecies as a whole.

We received comments, information, and data concerning the status of the western gray squirrel from 27 individuals, State and local agencies, nongovernmental organizations, industries, museums, and universities. Some commenters expressed only support for or opposition to a potential listing without providing additional documentation. Information or data from more substantive comments are incorporated, where appropriate, and concerns raised in the comments are addressed throughout this petition finding. We also reviewed information from peer-reviewed journal articles, agency reports and file documents, telephone interviews, and correspondence with biologists familiar with the western gray squirrel.

Western Gray Squirrel Status Summary

The rangewide status review initiated in the 90-day petition finding (67 FR 65931) entailed obtaining and considering the best scientific and commercial information available to assist us in our DPS analysis for the western gray squirrel in Washington.

Nevada

Western gray squirrels are considered uncommon in Nevada. They are only found on the Carson Range in west-central Nevada where they are yearlong residents; they are not documented to currently occur elsewhere in Nevada (Biological Resources Research Center, University of Nevada-Reno (UNR) 2003). Johnson (1954) reported collection of the subspecies in Washoe County near the California State line, and observations of individuals along the base of the Carson Range. Hall (1981) cites marginal records in Verdi and just southwest of Carson City.

The Nevada western gray squirrel population probably represents a migrant population from the Sierra Nevada in California on the fringe of the subspecies' range (UNR 2003). Although western gray squirrels occur along the west slope of the Sierra Nevada, up to 7,700 ft (2,347 m) at times, they probably crossed into Nevada from lower elevations in the northern Sierra Nevada. The subspecies has never been wide-ranging in Nevada, and its limited range in Nevada is probably related to the absence of oak trees (Johnson 1954).

The western gray squirrel is a "protected species" under the Nevada Administrative Code (NAC) (NAC 503.030). There is no open season on species classified as protected (NAC 503.090), according to criteria specified in NAC 503.103. The National Heritage Status Rank for the western gray squirrel in Nevada is S4 (Apparently Secure) (NatureServe Explorer 2002).

Current distribution and population sizes in Nevada have not been documented. Although small and possibly isolated from other populations in the subspecies' range in California, this western gray squirrel population has apparently never been large. Two public comments in response to our request for information in the 90-day finding provided data suggesting that western gray squirrels are "common in the Lake Tahoe basin, especially in the urbanized areas of the basin" (J. Shane Romsos, Tahoe Regional Planning Agency (NV), pers. comm. 2002) and are "common and well-adapted to the urban/forest interface setting in South Lake Tahoe, California" (Peter Maholland, California Tahoe Conservancy, pers. comm. 2002). Western gray squirrels are apparently adapted to habitat and food sources available in these urbanized areas.

California

The western gray squirrel is fairly common in California where it occupies mature stands of most conifer, hardwood, and mixed hardwood-conifer habitats in the Klamath, Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, Laguna Mountains, and Transverse and Peninsular Ranges. Western gray squirrels are also found in riparian stands and other suitable habitats in the Sacramento Valley (CDFG 1990).

The western gray squirrel is a regulated game species in California. CDFG bases hunting regulations on estimates of approximately 12 million ha (30 million ac) of western gray squirrel habitat, not including orchards, that are occupied by approximately 18 million squirrels just before the breeding season. Their estimates include an average net increase of about 1.2 million squirrels annually, after assuming a 50 percent juvenile mortality, a 50 percent adult mortality, and a hunting harvest rate of less than 1 percent each year. Their conclusions, based on these estimates, are that hunting mortality does not have adverse effects on the western gray squirrel populations, and that environmental and density-dependent mechanisms help keep the populations in check with their habitats (CDFG 2002). Also, CDFG data indicate the number of tree squirrel hunters has declined from a high of about 68,000 in the late 1960s to about 12,000 hunters in 2000. The number of tree squirrels harvested has declined from a peak of about 350,000 in the late 1970s to about 75,000 tree squirrels harvested in 2000 (CDFG 2002).

The National Heritage Status Rank for the western gray squirrel in California is S4 (Apparently Secure) and S5 (Secure) (NatureServe Explorer 2002). None of the subspecies of the western gray squirrel is included on the CDFG "special animal" list. This list is a general term referring to all of the taxa the California Natural Diversity Data Base is interested in tracking, regardless of their legal and protection status (CDFG 1999).

Several conservation programs, policies, and regulations help maintain western gray squirrel habitat in California. The Integrated Hardwood Range Management Program, established in 1986, aims to maintain, and increase where possible, acreage of California's hardwood range resources. In 2001, the Oak Woodlands Conservation Act created the Oak Woodlands Conservation Fund for conservation actions to preserve oak woodlands and guidelines for the program are under development. The California Forest Practice Rules provide regulations for maintaining hardwood and riparian components during timber harvest planning. California Partners in Flight prepared an oak woodland bird conservation plan to conserve and restore oak woodlands, which will help maintain western gray squirrel habitats and populations. The 1985 hardwood conservation policy and 1989 hardwood guidelines developed by the California Fish and Game Commission are used as references to ensure hardwood conservation measures are considered in all project proposals reviewed under the California Environmental Quality Act (Patrick Lauridson, CDFG, *in litt.* 2002).

Oregon

There are no historical or current population data for the western gray squirrel in Oregon, but based on Bailey (1936) and anecdotal information (Marshall *et al.* 1996), the numbers and distribution of western gray squirrels appear to be much reduced. The Natural Heritage Rank for the western gray squirrel in Oregon is S4? (*i.e.*, the subspecies is not rare and apparently secure, but with cause for long-term concern; the "?" indicates the assigned rank is uncertain) (Oregon Natural Heritage Program 2001).

Oregon maintains a list of State threatened and endangered species under the authority of ORS 496.172, the Oregon Endangered Species Act of 1987 (OESA) (Oregon Administrative Rule (OAR) 635–100–100 to 635–100–130), which helps in carrying out the State's policy of preventing the serious depletion of any indigenous species. Oregon's Sensitive Species Rule (OAR 635–100–040) requires the Oregon Department of Fish and Wildlife (ODFW) to develop and maintain a State list of sensitive vertebrate species that are likely to become threatened or endangered throughout all or any significant portion of their range in Oregon. This list was created for the purpose of encouraging actions that will prevent further declines in species' populations and habitats and avoid the need for listing under the OESA. The western gray squirrel is classified by ODFW as a sensitive species of "undetermined status" in Oregon, which indicates the subspecies may be susceptible to population decline of sufficient magnitude that it could qualify for State classification as endangered, threatened, critical, or vulnerable status, but additional research is needed (ODFW 1997; Oregon Natural Heritage Program 2001). The basis for the western gray squirrel's sensitive species classification in Oregon includes population declines caused by timber harvesting and competition with other tree squirrel species (Marshal *et al.* 1996). Western gray squirrels are legally hunted in Oregon. Hunting restrictions that delay and shorten the hunting season in north-central Oregon, however, help avoid take of lactating females (Marshal *et al.* 1996).

Washington

The western gray squirrel was once considered one of the most commonly encountered mammals in the Pacific Northwest (Bowles 1921). The western gray squirrel was more widely distributed in prehistoric times, probably ranging throughout western Washington and the Cascade Mountains in association with oak communities, but has diminished in recent times along with the decrease in distribution of oak woodlands (Rodrick 1987; WDW 1993). One hypothesis suggests that the western gray squirrel migrated northward into Washington with the spread of Oregon (Garry) white oak (*Quercus garryana*) from the Willamette Valley in Oregon. Dalquest (1948) described the western gray squirrel in Washington as being a species "of oak woods rather than coniferous forest" with its geographic range largely regulated by the distribution of oaks, especially Oregon white oak. The range of this subspecies in Washington, formerly widespread in the oak-conifer forests, is now less widely distributed and limited to small scattered populations that follow the range of Oregon white oak (Ryan and Carey 1995a; WDFW 1995).

In Washington, western gray squirrels once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascade Mountains, and north along the east side of the Cascade Mountains to Lake Chelan (Booth 1947; Larrison 1970). During the last century, the western gray squirrel distribution in Washington has been reduced to three geographically isolated western gray squirrel populations in Washington: The "Puget Trough" population, now centered in Thurston and Pierce Counties in the Puget Sound region; the "South Cascades " population in extreme eastern Skamania County and Klickitat and Yakima Counties; and the "North Cascades" population in Chelan and Okanogan counties (WDW 1993). The National Heritage Status Rank for the western gray squirrel in Washington is S2 (imperiled) (NatureServe Explorer 2002).

There have been relatively few studies of western gray squirrels in Washington. Early literature was largely observational and anecdotal (Bowles 1920, 1921; Scheffer 1923; Couch 1926; Dalquest 1948; Larrison 1970). Recent studies to determine western gray squirrel densities, biology, and ecology have not been consistent in objectives, effort, or techniques, and have not been directed at determining the status and trends of the subspecies in all areas of the State.

A regional assessment of the conservation status for potential western gray squirrel habitat in Washington determined that there are approximately 1.8 million ac (719,035 ha) of potential western gray squirrel habitat in the state (M. Linders, pers. comm. 2003d). In the Puget Trough, there are 1,797 ac (727 ha) of occupied habitat remaining (David Brittell, WDFW, *in litt.* 2003). The estimate of "occupied" habitat was based on western gray squirrels and nest locations buffered by a 183–ac (74–ha) circle, the average home range size for male squirrels in Klickitat County (D. Britell, *in litt.* 2003). A 1996 model was developed to direct survey efforts in Klickitat County, where 62,189 ac (25,167 ha) were identified as occupied. However, application of the buffering method, developed in a later study, to the 1996 potential habitat model indicated there may be only 56,607 ac (22,908 ha) that are occupied in Klickitat County. In Chelan and Okanogan Counties, 3,094 ac (1,252 ha) were identified as occupied (Cassidy *et al.* 1997; D. Brittell, *in litt.* 2003).

Puget Trough Population. Bowles (1920, 1921) stated that western gray squirrels were in the Puget Trough as early as 1896, although "by no means common" at that time, probably because of adverse environmental conditions and lack of legal protection. He suggested that western gray squirrels had always been in Pierce County in low numbers, traveling up from Oregon over time and becoming permanent residents if food and other natural conditions were satisfactory. Bowles reported that following legal protection about 1910, there was an "immense increase" in numbers of western gray squirrels. By 1921, there was significant damage to trees caused by western gray squirrels stripping bark for food in the Pierce County area. Squirrel hunting was reinstated in 1926 and continued until 1943, except for a localized hunt in Thurston and Pierce Counties in 1949 and 1950. The western gray squirrel became a State protected species in 1954. Although records show that western gray squirrels still occurred in the Puget Trough in the 1970s and 1980s, they had become increasingly rare and were found only in isolated relict populations restricted to a few locations in the state (Rodrick 1987, WDW 1993, WDFW 2002).

Current population estimates of the western gray squirrel in the Puget Trough area are limited. In southern Thurston County, the last western gray squirrel was seen in the late 1970s (WDFW 2002). Surveys during 1985 and 1986 detected western gray squirrels on just 4 of 26 sites (15 percent), and these were confined to the Fort Lewis area (Rodrick 1987). In Statewide surveys of 40–ac (16–ha) survey blocks from 1994 to 2000 by WDFW, western gray squirrels or nest locations were found in 9 of 100 (9 percent) survey blocks in the Puget Trough. In February 1996, no western gray squirrels were detected in WDFW surveys in Thurston County (D. Brittell, *in litt.* 2002). Isolated occurrences have been reported in the past in Grays Harbor and Lewis Counties (WDFW 2002), and more recently in Clark County (Tracy Fleming, National Air and Stream Improvement Council, pers. comm. 2003). In 2002, fewer than a dozen sightings of western gray squirrels were reported (Dave Clouse, Fort Lewis, pers. comm. 2003).

Although the western gray squirrel was once common on the partially wooded prairies adjacent to Puget Sound, the surviving Puget Trough population is now centered on Fort Lewis in southern Pierce and northern Thurston Counties where the largest area of oak woodlands remains. From 1992 to 1993, 156 western gray squirrel observations were documented on 169 sites on Fort Lewis. These observations were estimated to represent 81 individual western gray squirrels on 44 oak-conifer sites (Ryan and Carey 1995b). During intensive surveys in 1998 to 1999, only 6 western gray squirrels in only 4 percent (5 of 133) suitable habitat stands were detected in over 4,000 hours of survey effort. The researchers concluded that the low western gray squirrel population on Fort Lewis is at a high risk of extirpation (Bayrakçi *et al.* 2001). Subsequent western gray squirrel sightings included 3 (including 1 road kill) in 2000 and 11 (including 1 road kill) in 2002 (D. Clouse, pers. comm. 2003). Factors that may have influenced the decline of western gray squirrels on Fort Lewis include (1) poor acorn crops or undependable food resources; (2) drought and unavailability of water in many oak ecotones; (3) road kills; (4) competition with eastern gray squirrel and Douglas' squirrels (*Tamiasciurus douglasii*); (5) reduction in quality and quantity of oak habitat; (6) diseases and parasites; and (7) predation (Carey and Harrington 2001).

From 1993 to 1995, The Nature Conservancy of Washington conducted surveys, analyzed nest trees, and trapped western gray squirrels on McChord Air Force Base (McChord AFB) adjacent to Fort Lewis. Fifteen observations of western gray squirrels occurred at 6 different locations on McChord AFB. Most of these observations (13) occurred in 1993, with the remaining two observations occurring in 1995; none were observed in 1994 (The Nature Conservancy of Washington and Washington Natural Heritage Program 1996). They hypothesized that western gray squirrels were dispersing from Fort Lewis to McChord AFB to use acorns and other food resources when available, but only when environmental conditions were favorable (*e.g.*, when water sources are available in wet years). In the mid-1990s, a western gray squirrel occupied a nest box erected for American kestrels (*Falco sparverius*) on McChord AFB. Two or three western gray squirrels were seen in 1995, and possible western gray squirrel nests were found in 1996 (McChord AFB 2002). Although western gray squirrels were previously found on private lands, the last observation of western gray squirrels on private lands adjacent to the military bases was in 1990 (WDFW 2002).

The western gray squirrel in the Puget Trough of western Washington persists in a transitional ecological setting, in comparison with the subspecies' populations elsewhere in its range. Western gray squirrels in the Puget Trough occupy an ecotone (transitional) habitat composed of Oregon white oak woodlands situated between upland Douglas-fir forests and prairies (Ryan and Carey 1995; Bayrakçi *et al.* 2001). Here, scattered woodlands of Oregon white oak and Douglas-fir encircle the prairies (WDW 1993).

This western gray squirrel population, located at the northwestern limits of the subspecies' range, occur in habitat that closely conforms to the distributional range of the Oregon white oak. The western gray squirrel ranges only as far north in the Puget Trough as the northern limit of the continuous distribution of Oregon white oak on the gravelly prairies just south of Tacoma (Dalquest 1948; Larrison 1970; Stein 1990; WDW 1993). While the Puget Trough area is essentially the northwestern limit of the continuous range of the Oregon white oak, it does occurs in discontinuous patches further north on the islands of Puget Sound and, in British Columbia, Canada, on Vancouver Island and in two disjunct stands on the mainland (Stein 1990).

Geologic and floristic evidence indicates that Oregon white oak associations have evolved through successive eras as components of relatively arid pine forest that repeatedly advanced northward from a locus in the southwestern U.S. and northwestern Mexico as climates warmed and retreated as climates cooled. The most recent northward expansion ended about 6,000 years ago (Stein 1990). Pollen spectra samples show that oak communities were common around Puget Sound during the warm, dry post-glacial period 10,000 years ago. Subsequent trends toward cooler and moister conditions have influenced the replacement of Oregon white oaks by conifers (Stein 1990; Agee 1993; WDW 1993).

Prehistorically, the "Tacoma prairies" once occupied the lowland areas of Pierce and Thurston Counties in the Puget Sound region of the Puget Trough, with a southward finger into Lewis County; prairies intermittently reappeared in Clark County down to the Columbia River (Kruckeberg 1991). This landscape feature of the Puget Trough consists of a mosaic of prairie, oak woodland, and open forest called a "gravelly outwash plain." The gravelly outwash prairies coincide with the southern terminus of the last continental ice sheet during the Vashon glaciation, which ended 15,000 years ago (Kruckeberg 1991).

Although the Puget Trough of western Washington has a wetter climate than occurs in much of the Oregon white oak range, the Puget Sound area is near sea-level and has a warm, relatively dry climate because of the Puget Sound and the surrounding mountain ranges (Thysell and Carey 2001). The Puget Sound region is included in the *Tsuga heterophylla* (western hemlock) Zone, with many of the same plant communities. Large areas in this region, however, differ from the surrounding plant community types in that prairie, oak woodland, and pine forest are encountered. These plant-community type differences, related to both climate and soil, include Oregon white oak stands and prairies being invaded by Douglas-fir and the occurrence of species rarely or never found in western Washington or northwestern Oregon (Franklin and Dyrness 1988).

As previously discussed, western gray squirrels depend primarily on acorns and pine seeds (Sumner and Dixon 1953; Kruckeberg 1991; Carraway and Verts 1994). Because of the wetter climate and flatter topography of the Puget Trough in comparison with the rest of the western gray squirrel range, the habitat is more homogeneous, and there are fewer mast-producing trees (C. Maser, pers. comm. 2003). Consequently, in this region, the success of the western gray squirrel is probably more intimately tied to the success of Oregon white oak because it provides an essential winter food item for this squirrel.

Elsewhere in the subspecies' range, Oregon white oaks occur in communities that include a wider range of mast-producing tree species. In western Washington, the western gray squirrel depends primarily on Oregon white oak, Douglas-fir, and where available, ponderosa pine (*Pinus ponderosa*). In Oregon, the western gray squirrel diet includes seeds from a

wider variety of oak (*i.e.*, Oregon white oak, tanoak (*Lithocarpus densifloris*), Sadler oak (*Quercus sadleriana*), canyon live oak (*Quercus chrysolepis*), California black oak (*Quercus kelloggii*), valley oak (*Quercus lobata*) and pine species (*i.e.*, sugar pine (*Pinus lambertiana*), Jeffrey pine (*Pinus jeffreyi*), lodgepole pine (*Pinus contorta*) than are available to western gray squirrels in the Puget Trough of Washington (Carraway and Verts 1994; Marshall *et al.* 1996).

In California, the western gray squirrel is dependent on mature stands of conifer and oak habitats and is closely associated with oaks (CDFG 1990). Oak species in western gray squirrel habitat in California include valley oak (*Quercus lobata*), blue oak (*Quercus douglasii*), California black oak, interior live oak (*Quercus wislizenii*), and scrub oak (*Quercus dumosa*). In addition to Douglas-fir and ponderosa pine, other tree species in California western gray squirrel habitats include Fremont cottonwood (*Populus fremontii*), digger pine (*Pinus sabiniana*), white fir (*Abies concolor*), sugar pine, giant sequoia (*Sequoiadendron giganteum*), redwood (*Sequoia sempervirens*), and eucalyptus (*Eucalyptus globulus*) (Carraway and Verts 1994).

Although western gray squirrels consume hypogeous fungi and seeds and nuts of various trees and shrubs, acorns and pine seed may be more critical in the diet because they are high-energy foods needed for overwintering (Ryan and Carey 1995a). In the Puget Trough, acorns are the principal diet from late summer through early spring. Mushrooms and truffles are mostly eaten in spring and fall, and Douglas-fir seed are eaten upon ripening in the late summer through fall. However, mast crops differ each year caused by the depletion of food reserves in a heavy seed year, weather in year of fruiting or previous years, diseases and parasites, and maturation differences among tree groups (Ryan and Carey 1995a). Oak mast production is sporadic and unpredictable, with good mast years occurring only once in 7 to 10 years. During an 8-year study in northern Oregon, there were 4 years with poor Oregon white oak acorn crops. In 1991, there was no acorn crop in the Columbia River Gorge and an insignificant crop in 1992. When ponderosa pine is not available, western gray squirrels also rely on Douglas-fir seed (WDW 1993). However, environmental factors make the Douglas-fir seed crop erratic, and abundant crops are produced sporadically, from 2 to 11 years apart. One crop failure and two or more light to medium crops usually occur between heavy crops (U.S. Forest Service 1974).

South Cascades Population. Although Booth (1947) noted that western gray squirrels were uncommon in the southern part of the Cascade Mountains and more common in Pierce County, the South Cascades population currently is the largest remaining population of western gray squirrels in Washington. The western gray squirrel appears to be widely distributed across Klickitat County, but the populations are localized. Western gray squirrels remain along the Klickitat River and Catherine, Major, and Rock Creeks (WDW 1993). Between 1994 and 1996, systematic field surveys to delineate western gray squirrel distribution in the Columbia River Gorge documented the presence of individuals or their sign (*e.g.*, nests) in 22 watershed administrative units. Surveys were conducted in parts of 275-square mi (712-square km) sections containing suitable western gray squirrel habitat; their presence was recorded in 61 percent of these sections (M. Linders, pers. comm. 2003d).

Based on intensive and widespread surveys in Washington from 1994 to 2000, 89 percent (1,642 of 1,847) of all western gray squirrel nests and observations occurred in Klickitat County (D. Brittell, *in litt.* 2002). Eighty-three percent (514 of 618) of the occupied survey blocks had nest locations alone, and 10 percent (59 of 618) of the survey units had both western gray squirrels and their nests. The 7 percent (45 of 618) of the survey units having western gray squirrels with no known nest locations may have represented dispersal or breeding movements. Nest-only sites likely had associated western gray squirrels. Because nests persist for several years, however, a die-off would be difficult to detect (D. Brittell, *in litt.* 2002). More recent information is limited to forest practice surveys and random encounters. Residents noticed a decline of western gray squirrels in Klickitat County, particularly following introduction of California (Beechey's) ground squirrels (*Spermophilus beecheyi*) (Rodrick 1987; WDW 1993).

Statewide surveys from 1994 to 2002 established that most observations of western gray squirrels and their nests occurred in Klickifat County (M. Linders, pers. comm. 2003c). Surveys in 2000 and 2001 on the Klickitat Wildlife Area documented density estimates of 0.08–0.13 western gray squirrels/ha and a more recent estimate for western gray squirrels in this area was slightly higher (0.1–0.2 squirrels/ha) (M. Linders, pers. comm. 2003b). Density estimates for western gray squirrels in California ranged from 1.37/ha in the spring in Lake County to 2.47/ha in the Yosemite Valley (Grinnell and Storer 1924). There are no density estimates for western gray squirrels in Oregon or Nevada.

Booth (1947) described the western gray squirrel as uncommon in the southern Cascade Mountains. In Yakima County, western gray squirrels were abundant in the Ahtanum and Cowiche Creek drainages, and less common along Oak Creek prior to the 1950s. A mange epidemic in the 1940s and 1950s decimated western gray squirrel populations (Stream 1993). Western gray squirrels may have been extirpated from the Oak Creek Management Area following a severe mange epidemic in the 1940s and 1950s; a reintroduction attempt in the area, using western gray squirrels from Oregon, was not successful (WDW 1993).

Little is known about western gray squirrels on the Yakama Indian Nation Reservation. Between 1995 and 1998, the Yakama Indian Nation conducted limited surveys across the reservation. Small nest clusters, scattered individual western gray squirrels, and negative surveys were reported (D. Brittell, *in litt.* 2002).

North Cascades Population. The North Cascades population has received the least attention of the three Washington populations; no population or trend data, including density estimates, are available. There were no systematic attempts to delineate the distribution of western gray squirrels in the North Cascades prior to 1995. During 1995 surveys by WDFW on the west side of the Methow Valley of Okanogan County, 21 western gray squirrels (including 3 killed by automobiles) and 2 nests were observed. In 1996, 22 western gray squirrels, including roadkills, and 89 nests were observed. No western gray squirrels were observed during surveys of the east side of the Methow Valley in 1997. When interviewed, residents of the upper Methow Valley believed that numbers of western gray squirrels were declining, but residents of the lower Methow Valley thought the populations had been stable over the past 15 to 30 years (M. Linders, pers. comm. 2003d).

In 2000, surveys of all areas previously known to have western gray squirrel nests detected only 3 remnants out of the 89 nests recorded in a 1996 survey (M. Linders, pers. comm. 2003d). Eighteen previously unreported nests were documented and four western gray squirrels were observed. Relocating individual nests, however, can be difficult without detailed mapping and marking (Vander Haegen *et al.* 2003). Also, western gray squirrels build and use more than one nest per season, and nests may remain intact for 3 to 5 years. Consequently, the fact that only 3 remnant nests and 18 previously unreported nests in an area that formerly had 89 nests may represent a significant reduction in the number of western gray squirrel nests in the Methow Valley, possibly suggesting a corresponding population decline. Additional nest surveys in Chelan County, not previously surveyed, located seven previously unreported nests, three western gray squirrels, and one western gray squirrel skin (no body) (M. Linders, pers. comm. 2003d).

The North cascades population occurs in an ecological setting that differs from the Puget Trough area. The native range of oaks extended only into southeastern Yakima County with a patchy distribution in central Yakima County, central Kittitas County, and northeastern Pierce County (Stein 1990). The range expansion northward from Yakima County required adaptations to habitats lacking oaks, the main source of winter foods for this subspecies in most of its range.

Couch (1928) describes the range of the "silver gray squirrel" as being known from Goldendale (Klickitat County) to Lake Chelan (Chelan County). Taylor and Shaw (1929) describe the range of the western gray squirrel as ranging along the eastern edge of the Cascades north to Lake Chelan. There are verified (reported by reliable biologists or other knowledgeable individuals) western gray squirrel sightings recorded for Chelan County from 1938 in the WDFW Natural Heritage Database (WDFW 2002). Booth (1947) notes records from Lake Chelan. Larrison (1970) describes the range as including the lower east slopes of the Cascades to Lake Chelan. He also notes that, while western gray squirrels are most numerous in the oak woods, they are spotty and scarce elsewhere in their range.

The western gray squirrel range extension into Okanogan County may have occurred in response to groves of English walnut (*Juglans regia*) and black walnut (*J. nigra*) planted during the 1940s and 1950s (WDW 1993). Stream (1993) conducted interviews, compiled data from WDW wildlife data printouts, literature reports, and old files from the WDW Yakima Regional office and concluded that the western gray squirrel was native to the east slopes of the Cascade Mountains. He notes that there was "apparently a native population in Chelan County, especially around Lake Chelan," but that the documentation was not clear. Although the predominant habitat used by western gray squirrels was the oak/pine associations in Yakima County, the oak association was not found where the western gray squirrels occurred around Lake Chelan. The interviews revealed that English walnut trees were planted from 1915 to 1920, and by the 1940s, the western gray squirrel was expanding its range northward due to these planted mast-producing trees. By the 1960s, western gray squirrels were showing up in canyons where black walnut trees were planted in the 1940s.

Western gray squirrels were present at Lake Chelan at least as early as the 1920s, and may have been expanding northward before mast-producing trees planted in nut orchards began producing. Their secretive behavior and low population densities may have made them hard to see. Although the nut orchards probably stimulated the northward expansion and helped population sizes increase, western gray squirrels were also found in natural habitats. Western gray squirrels were regularly seen on Chelan Butte (southeast side of Lake Chelan) in the 1960s and in Purtteman Gulch (northeast end of Lake Chelan), but were no longer found there after fires burned the habitat. In the late 1960s, a western gray squirrel nest was found on a pine tree branch in Ribbon Cliff Canyon (along the Columbia River north of Entiat). Western gray squirrels were using pine trees and bigleaf maples (*Acer macrophyllum*) for food. A few western gray squirrels were found in Stehekin (northwestern end of Lake Chelan in Chelan County), but could not survive because of the harsh weather (Mil Sharp, retired WDW wildlife agent, pers. comm. 1992, as cited in Stream 1993).

Distinct Population Segment Review

Under the Act, we must consider for listing any species, subspecies, or any distinct population segments of vertebrates if sufficient information exists to indicate that such action may be warranted. We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration-Fisheries), developed a joint policy that addresses the recognition of DPS for potential listing actions (61 FR 4722). The policy allows for more refined application of the Act that better reflects the biological needs of a part of the taxon being considered, and avoids inclusion of entities that do not require the Act's protective measures.

Under our policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. These elements are (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the taxon to which it belongs. If we determine that a population segment being considered for listing meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine if listing the population segment as either threatened or endangered is warranted.

Under current conditions, the Washington population of the western gray squirrel consists of three isolated, disjunct populations. The three populations resulted from western gray squirrels moving northward, from the region that is now the State of Oregon and later became separated from more southern populations by the Columbia River. The distribution of the western gray squirrel in Washington once extended from south Puget Sound, east along the Columbia River, and northward to Lake Chelan and subsequently expanded northward into Okanogan County in more recent times. We view these three populations as isolated portions of a once-continuous population, with a common evolutionary history.

Discreteness

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.

On the basis of available information, we conclude that the Washington population segment of the western gray squirrel may be discrete in relation to the remainder of the subspecies' populations because it appears to be physically separated from other populations to the south in Oregon, California, and Nevada as a result of geographical isolation by the Columbia River. Additionally, each of the three Washington populations appear to potentially be discrete from each other and this is supported by preliminary genetic analysis (Warheit (2003)). The Columbia River has likely been a barrier

to movement and genetic flow for at least 13,000 years (Mercer and Roth 2003), as discussed further below.

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to (1) evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Ecological Setting. The western gray squirrel in the Puget Trough of western Washington persists in a transitional ecological setting, where it occupies habitat composed of Oregon white oak in an ecotone (transitional) between upland Douglas-fir forests and prairies, in comparison with the subspecies' populations elsewhere in its range (Ryan and Carey 1995; Bayrakçi *et al.* 2001). Consequently, existence of the western gray squirrel in the Puget Trough is more intimately tied to the success of Oregon white oak: Oregon white oak is the only native oak in Washington (Stein 1990) and provides an essential winter food item for this squirrel (Sumner and Dixon 1953; Kruckeberg 1991; Carraway and Verts 1994). Acorns and pine seed are critical high-energy foods needed for overwintering (Ryan and Carey 1995a). In western Washington, western gray squirrels have adapted to a more homogeneous environment with fewer and less reliable food resources (Oregon white oak, Douglas-fir, and some ponderosa pine), particularly relying on the acorn of a single tree species as its essential storable winter food resource, thus occupying a less suitable, marginal habitat. Elsewhere in the subspecies' range, Oregon white oaks occur in communities having a wider range of mast-producing tree species, including a variety of oak and pine species, which allows western gray squirrels to use different food resources when one food resource has a poor year for mast production.

The North Cascades population found east of the Cascade Mountains also persists in an ecological setting which differs from the Puget Trough and the South Cascades. In this population, western gray squirrels expanded their distribution into areas beyond the native range of Oregon white oak. The presence of western gray squirrels in Chelan County early in the twentieth century (Couch 1928; Booth 1947; Larrison 1970; Stream 1993; WDFW 2002) indicates adaptations to using other food resources. The continuous distribution of Oregon white oak extended into Yakima County, with only a spotty distribution into Kittitas County (Stein 1990). The range expansion northward from Yakima County required occupying habitats lacking oaks that provided the main winter food for the subspecies, relying on ponderosa pine as the primary food.

The Washington populations of western gray squirrels are found in differing ecological settings within the State. However, it is not clear that they should collectively or independently be considered as unique ecological settings for the taxon. For example, while the grasslands and oak woodlands of the Puget Sound area have different vegetation complexes compared to the grasslands and oak woodlands where western gray squirrels are found in northern California or southern Oregon, these differences are not so great that we consider the habitat of the Puget Sound population to be a unique or unusual ecological setting for western gray squirrel. The South Cascades population shares many habitat features common to the habitat for western gray squirrels found in Oregon. The North Cascades population's habitat is notable in its absence of oaks, the main source of winter foods for this subspecies in most of its range. This population appears to rely on the seed of pine trees and bigleaf maples (*Acer macrophyllum*). Throughout their range, however, western gray squirrels consume a variety of types of tree seeds, including many conifer species. In summary, we do not find that the Washington populations individually or collectively are located in an ecological setting unusual or unique for the taxon, such that they meet the significance criterion of the DPS policy.

Gap in the Range. The Washington population segment of the western gray squirrel is at the northern portion of the historic and current distribution of the subspecies. Within the Washington population segment, the Puget Trough population represents the northwestern extension, and the North Cascades population represents the northeastern extension of the subspecies' range.

Within the distribution of every species there exists a peripheral population, an isolate or subpopulation of a species at the edge of the taxon's range. The population is the basic evolutionary and ecological functional unit. The local population is where responses to environmental challenges occur, where adaptations arise, and where genetic diversity is maintained and reshuffled each generation. A species can continue to exist even though many of its populations are destroyed, resulting in a loss of biodiversity and what may be unique genetic or phenotypic traits (Meffe *et al.*1997). Peripheral populations are often located at a species' ecological limits where unique genetic combinations are exposed to and tested by environmental circumstances that may not be found elsewhere in the range of the species. When a peripheral population is isolated from gene flow from other populations, the isolated peripheral population may become highly adapted to local conditions. Distinctive traits found in peripheral populations can be important for the survival and evolution of a species as a whole (Meffe *et al.* 1997).

Long-term geographic isolation and the loss of gene flow between populations is the foundation for genetic changes in populations resulting from natural selection or chance. Evidence of changes in peripheral populations may include genetic, behavioral and/or morphological differences from populations in the rest of the subspecies' range. Ecological differences were described above, and genetic differences in western gray squirrels are discussed below. We also considered information regarding morphological and behavioral differences in regard to adaptations that may be occurring in the western gray squirrel in Washington.

The secretive behavior of the western gray squirrel in Washington has been frequently noted and might represent an adaptation of a population on the periphery of its range. Bowles (1921) wrote, regarding western gray squirrels in Pierce County, Washington, that "although extremely numerous, we may walk for days in the country they inhabit and never see one." Scheffer (1923) indicated that in the more heavily timbered country in Washington, the gray squirrel was only occasionally seen. Couch (1926) noted that, although western gray squirrels are hard to see, the presence of western gray squirrels in the lower Puget Sound region is evident in the peeled bark of Douglas-fir. Larrison (1970) wrote that western gray squirrels in Washington are "rather shy and do not mix well with civilization," and in the few places where they have entered settled areas it "keeps hidden from the watcher." During surveys on McChord AFB, observers noted that western gray squirrels often fled from the presence of the observer (The Nature Conservancy of Washington and Washington Department of Natural Resources (WDNR) 1996). More recently, researchers conducting surveys on Fort Lewis described western gray squirrels as "very wary and challenging to approach and therefore can be difficult for observers to detect" (Bayrakçi *et al.* 2001).

In Oregon, although described as "shy and retiring" in the countryside where they have little human contact, western gray squirrels can be found in urban parks where they are more tolerant of human contact (Susan Weston, *in litt.* 2003). Along the Nevada/California border, western gray squirrels appear to be well-adapted to the urban-forest interface (P. Maholland, pers. comm. 2003) and have been reported as common in the Lake Tahoe basin, especially in the urbanized areas (J.S. Romsos, pers. comm. 2003).

Whether the western gray squirrels in Washington are more secretive than those elsewhere in the range of the subspecies is unclear. Although evidence of shy behavior of the western gray squirrel has long been documented for the Washington population, similar behavior has been documented in Oregon (Susan Weston, *in litt.* 2003). We believe this behavior may be consistent with a species at the edge of its range, where the amount of habitat is restricted by fragmentation and may be less than optimum, and that rather than being "shy," they are difficult to observe and maintain a close affinity with the habitat that remains. The observation of western gray squirrels in towns in Oregon and Nevada may also be an artifact of there being larger populations of squirrels in this portion of the subspecies' range. The differences between rural and urban communities may also be less distinct in Oregon and Nevada, with the rural characteristic of large Oregon white oak or ponderosa pine trees or possibly other planted nut trees providing suitable habitat for the squirrels in the urban environment.

Overall, much of the available information on "secretiveness" of the subspecies is anecdotal in nature and there are no comparative studies to determine whether real behavioral differences in secretiveness exist across the range of the subspecies. Even if such differences do exist, the reasons for them are not clear, including whether or how such behavior might be related to the periphery of the range. The significance of such differences, if they exist, also is unclear.

In evaluating potential differences in the subspecies at the northern extent of its range, we also considered information on morphology and home range size. Body measurements of western gray squirrels in Klickitat County, Washington, were found to be significantly larger than elsewhere in the subspecies' range (M. Linders, pers. comm. 2003d). This study was conducted in a small area of Klickitat County and results were compared to another study in Washington with a small sample size, and with two California studies. Based on the limited area studies and the small sample size, the results may not be conclusive and applicable for western gray squirrels over their entire range. We also considered information showing that western gray squirrels on the Klickitat Wildlife Area have substantially larger home range sizes when compared with home range estimates elsewhere in the subspecies' distribution. In this same study, western gray squirrels also used significantly more nests per squirrel than recorded for the subspecies in Oregon (Linders 2000). These results, while interesting, do not explain the reasons for the differences in home range size and numbers of nests. The limited sample size is a confounding factor in interpreting these results. Also, as noted above, differences in methods used to determine home range sizes may be a source of variability in results among studies (Ryan and Carey 1995a). Many factors could account for these differences, and we have no basis for concluding that these results should be attributed to the location of the study area at the northern periphery of the range of the subspecies. Consequently, we do not believe that the information concerning morphology, home range size, or number of nests described for western gray squirrels in Klickitat County provides a justification for a determination of significance under the DPS policy.

The importance of peripheral populations in relation to climate change is a continuing source of discussion and study in the scientific community. Species' ranges can change dramatically with global shifts in climate. Peripheral populations may survive in isolated refugia that later, with different environmental conditions, serve as a source population for an expanded range and subsequent radiation. What constitutes a peripheral population today could be the center of a species' range in the future, and consequently peripheral populations are vitally important to a species' past, present, and future existence (Nielsen *et al.* 2001).

We have considered the extent to which western gray squirrels in Washington may be significant in relation to climate change. As the result of a climate shift, as occurred in the past when Oregon white oaks moved northward from Oregon, the northern limits of the western gray squirrel range could expand northward as the changing climate again favors Oregon white oak distribution over conifer distributions. At this time there is speculation, but no clear evidence, of the potential role that western gray squirrels in Washington might play in relation to the rest of the subspecies in response to climate change. Similarly, the nature and extent of the effects of climate change on ecological conditions for the western gray squirrel in Washington are not known. Based on the speculative nature of the situation involving the western gray squirrel in relation to climate change, we do not have a basis for concluding that a potential gap in the distribution of western gray squirrels at the northern extent of its range would have evolutionary implications for the subspecies in relation to the potential effects of climate change.

Lastly we consider whether the potential reduction in the range of the subspecies that could occur in the event of the hypothetical loss of the Washington populations, collectively or individually, would meet the significance criterion of the DPS policy. Individually, we do not find that the loss of range that would be represented by the loss of any of the current Washington populations meets the significance criterion of the DPS policy. The limited population information available makes a determination about potential significance particularly difficult, but when viewed individually we do not see the potential reduction in range of each population as reaching significance to the subspecies. Collectively, the loss of all of the Washington populations would represent a serious reduction in the species range. However serious such a hypothetical reduction might be, we do not have information currently that demonstrates this consideration would meet the DPS policy's requirement of significance to the taxon (subspecies) as a whole, since there is only limited information on the potential biological and ecological significance for Washington in terms of range of the subspecies.

Whether the Population Represents the Only Surviving Natural Occurrence of the Taxon. As part of a determination

of significance, our DPS policy suggests that we consider whether there is evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. The western gray squirrel in Washington is not the only surviving natural occurrence of the subspecies. Consequently, this factor is not applicable to our determination regarding significance.

Marked Differences in Genetic Characteristics. The DPS policy suggests that one measure of significance is evidence that the discrete population segment differs markedly from other populations of the subspecies in its genetic characteristics. Preliminary evidence of genetic variation among the three western gray squirrel populations in Washington and two populations in Oregon showed that genetic variability may exist (Parametrix, Inc. 1999). The sample sizes, however, were too small for substantive conclusions (M. Linders, pers. comm. 2003d).

In 2003, researchers from WDFW and the University of Washington completed genetic analyses, using standard conservation genetic research techniques, the results point towards significant genotypic differentiation between Washington populations and squirrel populations south of the Columbia River. The report presents the results of two different types of genetic analyses (microsatellite DNA analysis and mitochondrial control region sequence analyses). The following discussion of the results of the genetic analyses is summarized from Warheit (2003).

Microsatellite DNA Analysis

Microsatellite DNA analyses were completed on samples from 128 western gray squirrels from California (3), Oregon (24), and Washington (101). Samples were obtained from museum skins, museum tissue collections, road-killed individuals, and ear punches from live-trapped individuals.

Microsatellites are short (no longer than six base pairs (nitrogenous bases that are part of the DNA molecule, such as cytosine and guanine)) tandemly repeated segments interspersed throughout the chromosome. Changes in the repeats result in different lengths of DNA, and a specific length of DNA can be used as a marker for a microsatellite locus (position on the chromosome). Seven of these loci that showed variation were analyzed. The results of the microsatellite analysis was summarized by the genetic diversity (the variation in chromosomes) and the genetic differentiation (how different genetically are the populations).

Genetic Diversity

- An allele is a series of two or more different genes that occupy the same position on a chromosome. All populations in Oregon and California showed at least three private alleles (alleles present in only that population), while no Washington population had a private allele. This indicates that while all alleles present in each of the Washington populations are also present in at least one of the Oregon or California populations, there are alleles present in either Oregon or California that are not present in Washington.
- The Washington populations show reduced genetic diversity at all measures compared with populations south of the Columbia River, despite the fact that the mean sample size per locus is larger for each of the Washington populations.
- The reduction in genetic diversity within the Washington populations may be a function of genetic drift, which in turn may be the result of relatively smaller effective population sizes in Washington compared with that in Oregon and California.

Genetic Differentiation

- There is significant differentiation between each of the Washington populations, and the Oregon and California populations.
- These data support the hypothesis that each of the Washington Western Gray Squirrel populations are genetically distinct from each other, and are now functioning as separate and isolated populations.
- What these analyses demonstrate is that there is considerably more genetic differentiation between Washington and Oregon or California, than there is between Oregon and California populations.

Mitochondrial Control Region Sequence Analyses

A subset (67) of the same samples from 128 western gray squirrels used in the Microsatellite DNA analyses were used for an additional mitochondrial control region sequence analyses. Mitochondria are structures in the cell, but outside of the nucleus, which contain DNA inherited only from the mother. A 367 basepair portion of the DNA from the control region of mitochondria was sequenced (Warheit 2003).

- The haplotype is the set, made up of one allele of each gene. Haplotypes comprise the genotype (or genetic constitution of an individual or taxon). They identified only three haplotypes from 40 Washington individuals, compared with 14 haplotypes from 27 Oregon and California individuals, and no haplotype was shared across the Columbia River.
- Genetic differences between populations can also be measured using nucleotide diversity (*i.e.*, average sequence difference). The nucleotide diversity between populations equated to long time intervals since these the Washington and California or Oregon populations diverged (roughly 12,000 to 126,000 years ago).
- Some haplotypes in Washington are more closely related to haplotypes in Oregon than other haplotypes in Washington.

Warheit (2003) summarized the results of these analyses by noting:

> this study still requires additional analyses for at least three reasons. First, samples sizes need to be increased for each of the populations south of the Columbia River. Although I do not anticipate that an increase in sample size for each of the Oregon and California will significantly alter the conclusions drawn from the current data set, a greater likelihood and confidence in these conclusions will arise from more samples from Oregon and California. Second, the overall levels of genetic diversity for each of the seven microsatellite markers used in this study are low, and a greater number of microsatellite loci will provide us with a broader survey of the squirrel genome. [T]hird, we need to obtain the control region sequences for the new samples included in the expanded analysis of microsatellites. A more complete set of analyses is needed on the control region data to help understand the historical events that may have produced the phylogeographic patterns drawn from the data (*e.g.*, nested clade analysis).

Despite the preliminary nature of these analyses, the following set of conclusions have been strengthened by the inclusion of a larger sample size from the Fort Lewis and Okanogan Western Gray Squirrel populations:

1. Washington populations of Western gray Squirrels show reduced genetic diversity at both nuclear (microsatellite) and mitochondrial (control region sequences) markers compared with populations from Oregon and California. This reduction in genetic diversity may be the result of genetic drift and relatively smaller effective populations sizes.
2. There is significant genetic differentiation between Washington Western Gray Squirrels, and squirrels from populations south of the Columbia River. Both the microsatellite and sequence data support the hypothesis that the Washington squirrels are a population(s) distinct from those in Oregon and California.
3. There is significant genetic differentiation among the three Washington populations. * * *

Additional and more variable microsatellites should be included in any subsequent study. It may be advantageous to develop microsatellites specifically for Western Gray Squirrels, rather than adapt microsatellites developed in other species of sciurids.

Thus, the preliminary information from Warheit (2003) suggests that there is genetic differentiation between Washington western gray squirrels, and squirrels from populations south of the Columbia River. We believe that this information supports our contention that western gray squirrel populations in Washington collectively or individually could meet the discreteness criterion of the DPS policy. However, we find that based on the genetic information currently available, the western gray squirrel populations in Washington collectively or individually do not differ markedly from other populations of the subspecies in their genetic characteristics such that they should be considered biologically or ecologically significant based simply on genetic characteristics. Biological and ecological significance under the DPS policy is always considered in light of Congressional guidance (*see* Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used "* * * sparingly" while encouraging the conservation of genetic diversity.

One of the more notable pieces of genetic information in the Washington populations is the lack of genetic diversity. As noted above, this reduction in genetic diversity may be the result of genetic drift and relatively smaller effective populations sizes. While there is clearly some genetic information that shows that the Washington populations are different from other populations (*e.g.*, in the microsatellite DNA analyses no haplotype was shared across the Columbia River, also evidence suggests a long time interval since the Washington and California or Oregon populations diverged), at this time we do not be believe them to be markedly so. The information we believe counterbalances the differential information is the fact that all alleles present in each of the Washington populations are also present in at least one of the Oregon or California populations, that some haplotypes in Washington are more closely related to haplotypes in Oregon than other haplotypes in Washington, and the fact that the Washington populations of western gray squirrels show reduced genetic diversity at both nuclear (microsatellite) and mitochondrial (control region sequences) markers.

Information on genetics supports the contention that western gray squirrels in Washington have been isolated from other populations for a long period of time. The results suggest that genetic differences may occur between populations of the western gray squirrel throughout its range. The genetics studies by Warheit (2003) rely on relatively limited sample sizes for some populations, n = 3 for California. Results from the genetics studies may be confounded by the effects of small population size and the consequent inbreeding and genetic drift. The patterns of differentiation that were observed may reflect the negative consequences of isolation, range contraction, and recent significant declines of local populations. To what extent the forces of isolation, genetic drift and/or inbreeding have impacted the western gray squirrel population remaining in Washington is uncertain.

Conclusion

On the basis of available information, we determined that the Washington populations of the western gray squirrel may be discrete in relation to the remainder of the subspecies' populations. This determination is based on information showing that the populations appear to be geographically separated from, and to have some genetic differences from, other populations to the south in Oregon, California, and Nevada as a result of isolation by the Columbia River. But, pursuant to our DPS policy, this apparent directness does not necessarily mean that the populations in Washington are significant to the remainder of the taxon.

Consequently, following a review of the available information, we conclude that the western gray squirrel populations in Washington are not significant to the remainder of the taxon. We made this determination based on the best available information, which does not demonstrate that (1) these populations persist in ecological settings that are unique for the taxon; (2) the loss of these populations would result in a significant gap in the range of the taxon; and (3) these populations differ markedly from other populations of the subspecies in their genetic characteristics, or in other considerations that might demonstrate significance. Further, the available information does not demonstrate that the life history and behavioral characteristics of these populations in Washington are unique to the subspecies. We acknowledge that, while the precise biological and ecological importance of a discrete population segment is likely to vary from case to case, we were unable to identify any other information that might bear on the biological and ecological importance of these populations.

Significant Portion of the Range

Pursuant to the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. Consequently, we evaluated the three populations in Washington to determine if they collectively constitute a significant portion of the range of the subspecies. In our evaluation we considered whether the geographic extent of the range of the western gray squirrel in Washington is significant relative to the remainder of the subspecies' range. Based on the extent of the range of the western gray squirrel subspecies, from southern California north to Washington as discussed in the Background section of this notice, we do not believe that Washington constitutes a significant portion of the geographic extent of the subspecies, and subsequently the range of the subspecies. Further, the available information regarding the collective abundance of animals in the three populations in Washington does not indicate that the Washington population constitutes a significant portion of the western gray squirrel population rangewide. Consequently, we have determined that the population of the western gray squirrel in Washington does not constitute a significant portion of the subspecies or its range.

Finding

We have carefully assessed the best scientific and commercial information available regarding the discreteness and significance of the western gray squirrel in Washington. We reviewed the petition, literature cited in the petition, information available in our files, peer-reviewed literature and other published and unpublished literature and information, and information submitted to us during the comment period following our 90-day petition finding. We have consulted with biologists and researchers, including geneticists familiar with the western gray squirrel, and reviewed the status of the western gray squirrel in light of the requirements of our DPS policy. On the basis of the best scientific and commercial information available, we conclude that the populations of western gray squirrel in Washington do not represent a DPS, and are therefore not a listable entity. Our review did indicate that these populations may be discrete from other western gray squirrel populations south of the Columbia River, but under our DPS policy, the Washington populations collectively or individually are not

significant to the remainder of the taxon. This finding is primarily based on the fact that available information does not demonstrate that the Washington populations have marked genetic, ecological, or behavioral differences when compared with the remainder of the subspecies. As such, we find that the petitioned action is not warranted. Further, we have concluded that the three populations in Washington are not significant to the remainder of the taxon, and consequently do not constitute a significant portion of the range of the subspecies.

References Cited

A complete list of all references cited in this document and additional references can be requested from the Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

This document was prepared by the Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 30, 2003.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–14354 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Planning Advisory Committee Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Hanford Reach National Monument Federal Planning Advisory Committee Meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing four meetings of the Hanford Reach National Monument (Monument) Federal Planning Advisory Committee (Committee). In the next four meetings, the Committee will continue their work on making recommendations to the Service and the Department of Energy (DOE) on the preparation of a Comprehensive Conservation Plan and associated Environmental Impact Statement (CCP/EIS) which will serve as a long-term management plan for the Hanford Reach National Monument. The Committee is focusing on advice that identifies and reconciles land management issues while meeting the directives of Presidential Proclamation 7319 that established the Monument.

DATES: The Committee has scheduled the following meetings:

1. Tuesday, June 24, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.
2. Thursday, August 7, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.
3. Thursday, September 25, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.
4. Thursday, December 4, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.

ADDRESSES: The meeting locations are:

1. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.
2. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 210, 212 and 214, Richland, WA.
3. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.
4. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.

Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official. Comments may be submitted via e-mail to *hanfordreach@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: Verbal comments will be considered during the course of the meeting and written comments will be accepted at the close of the meeting. Comments may also be submitted via e-mail or mail to the Monument office addresses above. The meetings are open to the public. Over the next several months, the Committee will receive information from Planning Workshops and present advice to the Service and Department of Energy on draft products from those Workshops that will be considered in the CCP/EIS. The Committee will also nominate and elect a chair and vice-chair.

Dated: May 29, 2003.

David J. Wesley,

Deputy Regional Director.

[FR Doc. 03–14668 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Renewal of Loan Guaranty, Insurance, and Interest Subsidy, Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of information collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on the collection of information necessary for utilization of the Loan Guaranty, Insurance, and Interest Subsidy Program. This is necessary to continue the use of forms for this program approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The public will have the opportunity to comment on the time and expense required by these forms to access the program.

DATES: Submit comments on or before August 11, 2003.

ADDRESSES: Send comments to Ray Brown, Acting Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C St., NW., Mail Stop 2412–MIB, Washington, DC 20240; or hand deliver them to Room 2412 at the above address. We cannot use e-mail but you may comment by telefacsimile at (202) 208–7419.

FOR FURTHER INFORMATION CONTACT: David B. Johnson, Division of Indian Affairs, Office of the Solicitor, (202) 208–340.

SUPPLEMENTARY INFORMATION: The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established in the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974 and the regulations implementing it have existed since 1975, with significant revision in 2001. It is necessary to collect information from users of this program in order to determine eligibility and credit worthiness of respondents.

Request for Comments: The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, 9 a.m. to 4 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0020.

Type of review: Renewal.

Title: Loan Guaranty, Insurance, and Interest Subsidy, 25 CFR part 103.

Brief Description of Collection: The purpose of the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.*, is to encourage private lending to individual Indians and organizations of Indians, by providing lenders with loan guaranties or loan insurance to reduce their potential risk. Lenders, borrowers, and the loan purpose all must qualify under Program terms. In addition, the Secretary of the Interior must be satisfied that there is a reasonable prospect that the loan will be repaid. BIA collects information under the proposed regulations to assure compliance with Program requirements.

Based upon historical records, BIA anticipates approximately 64 applications for loan guaranties each year. Although there have never been any loan insurance applications, apparent need suggests that BIA will receive approximately 20 additional loan insurance applications or notices of loan insurance per year. Of the combined 84 applications/notices, BIA expects that it will guarantee or insure approximately 64 new loans each year, of which approximately 45 will receive interest subsidy.

In all, BIA estimates the total annual Program compliance burden to range from approximately 4 to 12 hours per loan, with the average loan causing a burden of approximately 6.18 hours. Most compliance burdens fall below this average. BIA assumes the average hourly cost per respondent to be $20.00:

Respondents: Commercial banks.

Number of Respondents: 84.

Number of Responses Annually: 852.

Estimated Time per Respondent: 6 hours.

Frequency of Response: As needed.

Total Annual Burden to Respondents: 519.

Total Annual Cost to Respondents: $10,382.00.

Dated: May 26, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–14531 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–6687–A; KOA–2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act, will be issued to Old Harbor Native Corporation, for lands in T. 33 S., R. 24 W.; Seward Meridian, Alaska, located in the vicinity of Old Harbor, Alaska, containing 277.71 acres. Notice of this decision will also be published four times in the *Kodiak Daily Mirror*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 10, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have until 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, by phone at (907) 271–3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–14453 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1010 (Final)]

Lawn and Garden Steel Fence Posts from China

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of lawn and garden steel fence posts, provided for in subheadings 7326.90.85 and 7308.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 1, 2002, following receipt of a petition filed with the Commission and Commerce by Steel City Corp., Youngstown, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of lawn and garden steel fence posts from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun and Commissioner Stephen Koplan dissenting.

Federal Register of January 21, 2003 (68 FR 2794). The hearing was held in Washington, DC, on April 22, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 2, 2003. The views of the Commission are contained in USITC Publication 3598 (June 2003), entitled *Lawn and Garden Steel Fence Posts from China: Investigation No. 731–TA–1010 (Final).*

By order of the Commission.

Issued: June 4, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–14581 Filed 6–9–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1039–1041 (Preliminary)]

Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations No. 731–TA–1039–1041 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France, Japan, and Korea of certain wax and wax/resin thermal transfer ribbons,[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 14, 2003. The Commission's views are due at Commerce within five business days thereafter, or by July 21, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 30, 2003, by IIMAK International Imaging Materials, Inc., Amherst, NY.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 20, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher Cassise ((202) 708–5408) not later than June 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 25, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14582 Filed 6–9–03; 8:45 am]

BILLING CODE 7020–02–P

[1] Products include wax and wax/resin thermal transfer ribbons ("TTR"), in slit or unslit ("jumbo") form, designed for use in printers generating alphanumeric and machine-readable characters, with a total wax (natural or synthetic) content of all the image side layers equal to or greater than 20 percent by weight and a wax content of the colorant layer equal to or greater than 10 percent by weight, and a black color, as defined by industry standards by the Lab color specification such that L*<35, -20>a*<35 and −40<b*<31. Excluded from product coverage are: (1) Slitted thermal transfer ribbons for fax or for multi-function thermal transfer printing devices with a width equal to or greater than 212 millimeters ("mm") but not greater than 220 mm (or 8.35 inches and 8.66 inches) and a length of 230 meters or less (including cassettes); (2) pure resin TTR; and (3) color TTR. The products are provided for in heading 3702 and subheadings 3921.90.40 and 9612.10.90 (imported under statistical reporting numbers 3921.90.4025 and 9612.10.9030) of the Harmonized Tariff Schedule of the United States (HTS).

DEPARTMENT OF JUSTICE

Civil Divison; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Extension of a currently approved collection; Application for Representative Payee.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 250, page 79648 on December 30, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until [The Federal Register will insert the date 30 days from the date this notice is published in the **Federal Register**. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* Application for Representative Payee.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: Non. Office of the Attorney General, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: None. Abstract: The Application for Representative Payee will collect information about applicants regarding their eligibility to serve as a Representative Payee and therefore receive funds directly on behalf of minor children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 2,000 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,000 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 5, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14534 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosive

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: revision of a currently approved collection; Application for Permit, User Limited Display Fireworks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approved in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 51, page 12715 on March 17, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Application For Permit, User Limited Display Fireworks.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F 5400.21, Department of Justice.

(4) *Affected pubic who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, State, Local or Tribal Government. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a permit under 18 U.S.C. chapter 40 and responsible persons of such companies are not prohibited from shipping, transporting, receiving, or possessing explosives, on a one-time basis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 150 respondents will complete the application in approximately 1 hour and 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 225 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 4, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14532 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Die Products Consortium ("DPC")

Notice is hereby given that, on May 19, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Die Products Consortium ("DPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, August Technology, Bloomington, MN; Intel Corp., Hillsboro, OR; Motorola SPS, Austin, TX; and Samsung Electronics, Seoul, Republic of Korea have been added as parties to this venture. Also, Agere Systems, Allentown, PA; Amkor Technology, Inc., West Chester, PA; and Tempo Electronics, North Hollywood, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DPC intends to file additional written notification disclosing all changes in membership.

On November 15, 1999, DPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on February 1, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2002 (67 FR 10759).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–14599 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on May 19, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tim Farlow (individual member), Waterloo, IA; Marc Lavine (individual member), Paris, FRANCE; and Valliappan Ramanathan (individual member), Nadu, INDIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 6, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on February 25, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 18, 2003 (68 FR 12933).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–14601 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on May 20, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Concrete Promotion Council of Northern California, Citrus Heights, CA has been added as a party to this venture. Also, Norval Inc., Brooklyn, NY and Claudius Peters (Americas), Dallas, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 31, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 3, 2003 (60 FR 10034).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–14600 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register**, Volume 68, Number 58, page 14698, on March 21, 2003, allowing 60 days for public comment.

The purpose of this notice is to allow for an additional 30 days for public comment until July 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the accuracy, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, (including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Overview of this information:

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* National Crime Victimization Survey.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: NCVS–1, NCVS–1A, NCVS–2, NCVS–500, NCVS–7, NCVS–572(L), NCVS–573(L), NCVS–574(L), NCVS–541, NCVS–545, NCVS–1SP, and NCVS–2SP.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. Other: None. The National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons age 12 or older living in about 45,650 interviewed households.

(5) *An estimate of the total number of respondents is 110,100 and the amount of time estimated for an average respondent to respond/reply:* It will take the average interviewed respondent an estimated 23 minutes to respond, the average non-interviewed respondent an estimated 7 minutes to respond, the estimated average follow-up interview is 12 minutes, and the estimated average follow-up for a non-interview is 1 minute.

(6) An estimate of the total public burden (in hours) associated with the collection is 74,010 hours annual burden.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 4, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14533 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 2, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king. darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Agency, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of

the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Prohibited Transaction Class Exemption 97–41; Collective Investment Funds Conversion Transactions.

OMB Number: 1210–0104.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Number of Respondents: 75.

Number of Annual Responses: 75.

Estimated Time Per Response: 35 hours.

Total Burden Hours: 2,625.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $186,750.

Description: Prohibited Transaction Class Exemption 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits an employee benefit plan to purchase shares of one or more open-end investment companies (Mutual Funds) registered under the Investment Advisers Act of 1940 in exchange for plan assets transferred in-kind to the Mutual Fund from a collective investment fund (CIF) maintained by a bank or plan adviser, where the bank or plan adviser is both the investment adviser to the Mutual Fund and a fiduciary of the plan. The transfer and purchase must be in connection with a complete withdrawal of a plan's assets from the CIF. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the bank or plan adviser and the Mutual Fund.

In order to ensure that the exemption is not abused and that rights of participants and beneficiaries are protected, the Department requires the bank to give the independent fiduciary notice of the in-kind transfer and full written disclosure of information concerning the registered investment company. Further, the bank or plan adviser must provide the independent fiduciary with certain ongoing disclosures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–14528 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–11; Exemption Application No. D–10840 et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG, located in New York, New York.

[Prohibited Transaction Exemption 2003–11; Exemption Application Number D–10840.]

Exemption

Section I—Retroactive Relief

For the period from June 4, 1999, until June 10, 2003, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Bank Plan or a Client Plan (either, a Plan) in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin),[1] and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) The investment is:

(i) Made by a Bank Plan; or

(ii) Made by a Client Plan and expressly authorized pursuant to a provision of such Plan (or trust thereof) or expressly authorized by an independent fiduciary,[2] as defined in section III(g), with respect to such Plan; and

(d) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

Section II—Prospective Relief

Effective after June 10, 2003, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) Prior to: (i) an investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG–

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan.

Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to June 10, 2003, the first request occurs not later than July 25, 2003, and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following June 10, 2003, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG maintains or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described below in paragraph (l) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

(l)(1) Except as provided in paragraph (2) of this section (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) are unconditionally available at their customary location in the United States for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) The term "bank" means a bank supervised by the United States, a state, or a sovereign government.

(b) An "affiliate" of a person includes:

(1) Any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

[1] For purposes of this exemption, supervision of Deutsche Bank AG by the BAFin is deemed to include supervision of Deutsche Bank AG by the Federal Banking Supervisory Authority (das Bundesaufsichtsamt fuer das Kreditwesen), the predecessor to the BAFin.

[2] The Department notes that the Act's general standards of fiduciary conduct apply to arrangements involving the investment of Plan assets permitted by this exemption. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent fiduciary with respect to a Plan must act prudently with respect to: (1) The decision to enter into an arrangement described herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.

(d) A "Client Plan" refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A "Bank Plan" means a plan sponsored or maintained by: (1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or; (2) any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A "reasonable" rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be "reasonable" does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, no interest may be paid if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An "independent fiduciary" means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003, at 68 FR 10035.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Deutsche Bank AG (Deutsche Bank), located in Germany, with Affiliates in New York, New York and other locations.

[Prohibited Transaction Exemption 2003–12; Exemption Application Number D–11055]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 11, 2001, to the following foreign exchange transactions between Deutsche Bank or a foreign affiliate thereof that is a bank or broker-dealer (collectively, DBAG), and an employee benefit plan with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

(1) An income item conversion; or

(2) A *de minimis* purchase or sale transaction.

Section II. Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by DBAG in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) DBAG does not have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.

(d) DBAG maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for DBAG knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of DBAG. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and

(2) That the authorization may be terminated by either party without penalty on no more than 10 days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by DBAG that such items are good funds, and a foreign custodian which is an affiliate of DBAG, provides such notice to DBAG within "one business day" of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either DBAG receives notice from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by DBAG and a foreign custodian which is an affiliate of DBAG provides such notice to DBAG within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, DBAG establishes either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by DBAG from the foreign custodian that such funds are good funds. If it is the policy of DBAG to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after such receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of DBAG to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by DBAG for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market (provided that the independent service chosen will be consistently used in determining whether the deviation limitation has been met) for such currency at the time such range or rates is established by DBAG;

(h) Prior to the execution of the authorization referred to in paragraph (e), DBAG provides the independent fiduciary with a copy of DBAG's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that DBAG will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. DBAG shall include a description of the methodology that DBAG uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income item conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income item conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that DBAG aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which DBAG's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(i) DBAG furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

(1) With respect to income item conversions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that good funds were received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Identity of foreign currency;

(G) Amount of foreign currency sold;

(H) Amount of U.S. dollars or other currency credited to the plan; and

(2) With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Currencies exchanged:

i. Identity of the currency sold;

ii. Amount sold;

iii. Identity of the currency purchased; and

iv. Amount purchased.

(j) DBAG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(k) DBAG maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (l) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific exchange rate or range of exchange rates DBAG established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond DBAG's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than DBAG shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records, are not maintained by DBAG, or are not made available for examination by DBAG, or its affiliate as required by paragraph (l) of this section.

(l)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) of this section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine DBAG's trade secrets or commercial or financial information of DBAG, which is privileged or confidential.

Section III. Definitions and General Rules

For purposes of this exemption,

(a) A "foreign exchange" transaction means the exchange of the currency of one nation for the currency of another nation.

(b) The term "standing instruction" means a written authorization from a plan fiduciary, who is independent of DBAG, to DBAG to effect the transactions specified therein pursuant to the instructions provided in such authorization.

(c)(1) The term "independent of DBAG" means a plan fiduciary who is unrelated to, and independent of, DBAG. For purposes of this exemption, a plan fiduciary will be deemed to be unrelated to, and independent of, DBAG if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG and represents that such fiduciary shall advise DBAG if those facts change.

(2) Notwithstanding anything to the contrary in this section III (c), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with DBAG;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from DBAG for his own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of DBAG as a directed trustee or custodian and (B) the decision to authorize or terminate authorization for transactions described in section I, then section III(c)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance) or any other officer who performs a policy-making function for the entity.

(d) The term "control" means the power to exercise a controlling influence over the management of policies of a person other than an individual.

(e) An "income item conversion" means: (1) The conversion into U.S. dollars of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio; or (2) the conversion into any currency as required and specified by the standing instruction of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends, or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio, provided that the converted funds are either transferred to an interest bearing account which provides a reasonable rate of interest within 24 hours of the conversion and held therein pending reinvestment by the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan.

(f) A "*de minimis* purchase or sale transaction" means the purchase or sale of foreign currencies in an amount of no more than 300,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(g) For purposes of this exemption the term "employee benefit plan" refers to a pension plan described in 29 CFR 2510.3–2 and/or a welfare benefit plan described in 29 CFR 2510.3–1.

(h) For purposes of this exemption, the term "good funds" means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(i) For purposes of this exemption, the term "business day" means a banking day as defined by federal or state banking regulations.

(j) For purposes of this exemption, a "foreign affiliate" of Deutsche Bank means any non-U.S. entity that is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank.

(k) For purposes of this exemption, the term "bank" means a foreign affiliate of Deutsche Bank: (1) That is a banking institution supervised and examined by the German banking authorities (currently, the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin), in cooperation with the Deutsche Bundesbank (the Bundesbank)), or is subject to regulation by similar governmental banking authorities located in the same country as such affiliate; and (2) whose activities are monitored and controlled pursuant to the statutory and regulatory standards of German law applicable to the foreign affiliates of Deutsche Bank engaged in banking activities.

(l) For purposes of this exemption, the term "broker-dealer" means a foreign affiliate of Deutsche Bank: (1) Engaged in the business of effecting transactions in securities for the account of others, or regularly engaged in the business of buying and selling securities for its own account through a broker or otherwise; and (2) supervised by the German authorities responsible for regulating the activities described in (1) of this paragraph, or subject to regulation by similar governmental authorities located in the country in which such affiliate is located.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 30, 2002 at 67 FR 79649.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8544. (This is not a toll-free number.)

Law Offices of Richard D. Gorman Pension & Profit Sharing Plan (the Plan), located in Monterey, California.

[Prohibited Transaction Exemption No. 2003–13; Application No. D–11104]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of unimproved real property (the Property) by the Plan to Mr. Richard Gorman, a trustee of the Plan, and a party in interest with respect to the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) $290,000; or (ii) the fair market value for the Property established at the time of the sale by an independent, qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on March 21, 2003, at 68 FR 13964.

FOR FURTHER INFORMATION CONTACT: Khalif I. Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP), located in Roseville, Minnesota.

[Prohibited Transaction Application 2003–14: Exemption Application No. D–11146]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale on August 28, 2001 (the Stock Redemption), by the ESOP to the ACR Homes, Inc., the sponsoring employer (the Employer), of 3,600 shares of the Employer's class A common stock (the Shares) for $511,250 in cash; provided that the following conditions were satisfied:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the fair market value of the Shares as determined by an independent, qualified appraiser on the date of the Stock Redemption; and

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption.

EFFECTIVE DATE: This exemption is effective as of August 28, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 16, 2003, at 68 FR 18686 (the notice).

Written Comments

The Department received one written comment (the Comment) with respect to the notice and no requests for a hearing. The Comment was filed by the attorney for the applicant. The Comment states that the chart contained in Paragraph 2 of the Summary of Facts and Representations in the notice erroneously lists the number of shares owned by Dorothy Nelson (Mrs. Nelson) before the Stock Redemption as 10,400. The correct amount owned by Mrs. Nelson before the Stock Redemption was 10,000 shares.

The Department acknowledges the applicant's correction to the notice, as stated in the Comment. Accordingly, based on the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 5th day of June, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–14594 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 11, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community.

The Secretary of Labor's Opportunity and EVE award recipients must be Federal contractors covered by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

The Secretary of Labor's Opportunity Award is presented to one contractor each year that has established and instituted comprehensive workforce strategies to ensure equal employment opportunity. The EVE Award is given to those contractors who have demonstrated through programs or activities, exemplary and innovative efforts to create an inclusive American Workforce. The EPIC Award is presented to public interest organizations that have supported equal employment opportunity and linked their efforts with those of the Federal contractors to enhance employment opportunities for those with the least opportunity to join the workforce. Guidelines for the nomination process can be found in Administrative Notice Number 261 dated January 21, 2003.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval to collect this information to recognize outstanding Federal contractors and non-profit public interest organizations with exceptional equal opportunity and nondiscrimination programs that support the OFCCP mission.

Type of Review: New Collection.

Agency: Employment Standards Administration.

Title: Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards.

OMB Number: 1215-.

Agency Number:

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents/Responses: 80.

Total Annual responses: 80.

Frequency: Annually.

Estimated Total Burden Hours: 95,760.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 4, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–14526 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petitions for Modification of Mandatory Safety Standards

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 44.9, 44.10, and 44.11; Petitions for Modification of Mandatory Safety Standards.

DATES: Submit comments on or before August 11, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Assistant Secretary of Labor for Mine Safety and Health, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification of Mandatory Safety Standards.

OMB Number: 1219–0065.

Recordkeeping: Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10 The petition must be in writing, filed with the Assistant Secretary of Labor for Mine Safety and Health, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 158.

Estimated Average Time Per Respondent: 35 hours.

Total Burden Hours: 5,520 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $41.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this fourth day of June, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–14527 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of the Financial Disclosure Form, a new Standard Form, that will be used to make personnel security determinations, including whether to grant a security clearance, to allow access to classified information, sensitive areas, and equipment; or to permit assignment to a sensitive national security position. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Financial Disclosure Form.

OMB number: 3095–NEW.

Agency form number: Standard Form NEW.

Type of review: Regular.

Affected public: Business or other for-profit, Federal government.

Estimated number of respondents: 25,897.

Estimated time per response: 2 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 51,794 hours.

Abstract: Executive Order 12958 as amended, "Classified National Security Information" authorizes the Information Security Oversight Office (ISOO) to develop standard forms that promote the implementation of the Government's security classification program. This is a continuing authority, which was first given to ISOO with the issuance of the predecessor executive order on security classification, Executive Order 12356. Prior to E.O. 12356, executive branch agencies developed their own forms to address security needs. For example, each agency had a different cover sheet for each of the classification levels. With the issuance of Standard Forms SF 703, 704 and 705 in 1985, executive branch agencies began using the same standard form to serve as a shield to protect classified information at the Top Secret, Secret and Confidential levels. These forms promoted and continue to promote consistency and uniformity in the protection of classified information. An individual can go from one agency to another and know that an orange cover sheet has Top Secret information attached to it (SF 703).

In the wake of the Aldrich Ames espionage case, Congress passed

legislation in 1994 (50 U.S.C. 436) that authorized investigative agencies to obtain financial information about Government employees with access to classified information who are suspected of compromising classified information. To facilitate investigations and as a condition for obtaining a security clearance, Executive Order 12968, "Access to Classified Information," issued on August 4, 1995, required: (1) All employees granted access to classified information to provide written consent (SF 713) for access to certain financial records under specified conditions; and (2) that employees who have regular access to particularly sensitive classified information submit, as a condition of maintaining access to such information, relevant information concerning their financial condition as may be necessary to ensure appropriate security. The Security Policy Board, created in 1993 by Presidential Directive to consolidate security policy groups and abolished in February, 2001 by National Security Presidential Directive Number 1, originally developed a draft consent form and a draft financial disclosure form after lengthy meetings/negotiations with the major classifying agencies.

Under the new policy coordinating structure created by National Security Presidential Directive 1 of April 21, 2001, several policy coordinating committees (PCCs) were established to serve as the main "day-to-day" forum for interagency coordination of national security policy. The PCC on Records Access and Information Security is the PCC that handles security classification and personnel security matters. It is this PCC that resurrected the Financial Disclosure Form to solicit views from its members and to obtain final approval. The members of this PCC include NSC as Chairman, NSC as Executive Secretary, Department of Defense, Director Central Intelligence Agency, Department of State, Department of Justice, Department of Energy, Office of Management and Budget, Information Security Oversight Office and an industry observer. The Director of Records Access at the NSC chairs this committee. All members unanimously endorsed the Financial Disclosure Form now submitted for processing as a Standard Form.

The Financial Disclosure Form will contain information that will be used to make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as a part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings.

The Financial Disclosure Form will help law enforcement obtain pertinent information in the preliminary stages of potential espionage and counter terrorism cases. The PCC on Records Access and Information Security forwarded the current form to the Information Security Oversight Office for issuance. The Office of Management and Budget is aware of the form.

Dated: June 2, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–14530 Filed 6–9–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 25, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–03–8, 2 items, 2 temporary items). Appointment records of Air Force transportation officers and agents, including appointment orders, requests for appointments, records relating to qualifications of potential appointees, and files relating to termination of orders. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of Defense, National Imagery and Mapping Agency (N1–537–03–4, 19 items, 19 temporary items). Records of the Office of Inspector General relating to intelligence oversight inspections, audit and investigative cases, relationships with external auditing agencies, procedures, and planning. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Defense, National Imagery and Mapping Agency N1–537–03–15, 5 items, 4 temporary items). Records relating to forms management and extra copies of policy documents. Proposed for permanent retention are recordkeeping copies of the master file of all internal policy documents. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Energy, Agency-wide (N1–434–03–1, 5 items, 5 temporary items). Files relating to security clearance matters and access authorizations. Included are files documenting the processing of individuals for access authorizations, records relating to the revocation or denial of access, and indexes to personnel security records.

5. Department of Health and Human Services, Food and Drug Administration (N1–88–03–2, 12 items, 12 temporary items). Inputs, outputs, master files, system documentation, and system backups associated with an electronic information system relating to the certification of performance requirements for x-ray systems. Included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to paper records and scanned images.

6. Department of the Treasury, Bureau of the Public Debt (N1–53–03–3, 57 items, 57 temporary items.) Records relating to savings bond and marketable securities. Included are such records as savings and marketable securities accounting records, administrative records, agency qualification agreements, audit reports, consignment agent files, detached requests for payment, EasySaver enrollment forms, reissue requests for current income savings bonds, savings bond issue records, tenders and related documents, and statistical and management reports. Also included are electronic copies of documents created using electronic mail and word processing.

7. Administrative Office of the U.S. Courts, Agency-wide (N1–116–03–5, 6 items, 6 temporary items). Records relating to heritage celebrations, the resolution of financial irregularities, and work measurement studies. Also included are electronic copies of documents created using electronic mail and word processing.

8. Central Intelligence Agency, Directorate of Science and Technology (N1–263–03–1, 2 items, 2 temporary items). Open source publications, including such materials as trade brochures, academic theses, conference proceedings, and documents originated by other agencies. These documents are collected in response to requirements levied by the Intelligence Community. Also included is an electronic index to the publications.

9. National Archives and Records Administration, Electronic and Special Media Records Services Division (N2–185–03–1, 1 item, 1 temporary item). Panama Canal Commission ship data bank system, which contains information concerning ships that have passed through the canal. Records were accessioned into the National Archives, but cannot be copied due to technical problems.

10. National Science Foundation, Office of Inspector General (N1–307–03–2, 12 items, 8 temporary items). Investigative files lacking historical value, files covering allegations that do not result in the creation of a formal investigative file, audit and review files without significant historical value, audit work papers, work papers and other background materials relating to policies and procedures, and other administrative files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as investigative cases and audit reports that have significant historical value, policies and procedures, and semiannual reports.

11. Office of Personnel Management, Federal Executive Boards (N1–414–03–1, 24 items, 12 temporary items). Administrative records such as working papers, meeting logistics records, feeder reports, and routine committee files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as organization and functions files, directives, Executive Directors' correspondence, meeting minutes, annual reports, and publications.

12. United States International Trade Commission, Office of the Secretary (N1–81–03–1, 12 items, 11 temporary items). Import Injury Investigation Case Files, Research Program Case Files, and Intellectual Property-Based Import Investigations. Recordkeeping copies of these files created after 1995 are maintained in a centralized electronic document repository. Also proposed for disposal are Action Jackets that do not pertain to rulemaking. Recordkeeping copies of Action Jackets that relate to rulemaking are proposed for permanent retention.

Dated: June 3, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–14529 Filed 6–9–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Music: June 30–July 2, 2003, Room 716 (Creativity category—Panel A). A portion of this meeting, from 1 p.m. to 2 p.m. on July 2nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 30th and July 1st, and from 9 a.m. to 1 p.m. and 2 p.m. to 2:30 p.m. on July 2nd, will be closed.

Music: July 2, 2003, Room 714 (Services to Arts Organizations and Artists category). This meeting will be closed.

Music: July 14–18, 2003, Room 714 (Creativity category—Panel B). A portion of this meeting, from 9 a.m. to 10:30 a.m. on July 18th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on July 14th–17th, and from 10:30 a.m. to 3 p.m. on July 18th, will be closed.

Theater: July 14–18, 2003, Room 730 (Creativity category). A portion of this meeting, from 3 p.m. to 4:30 p.m. on July 17th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 14th–16th, from 9:30 a.m. to 3 p.m. and 4:30 p.m. to 6:30 p.m. on July 17th, and from 9:30 a.m. to 5 p.m. on July 18th, will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202)682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: June 3, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–14568 Filed 6–9–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; System of Records

AGENCY: National Labor Relations Board.

ACTION: Notice of revised Privacy Act System of Records.

SUMMARY: The National Labor Relations Board (NLRB) Office of Inspector General (OIG) is revising its Privacy Act System of Records, NLRB 18, Office of Inspector General Investigative Files, to include as routine uses the disclosure of information (1) to the public when a legitimate public interest exists; (2) to the public when it is necessary for the protection from imminent threat to life or property; (3) to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency (PCIE/ECIE) for the purpose of accurate reporting to the President and Congress on the activities of the Inspectors General; (4) to members of the PCIE/ECIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for investigative qualitative assessment review. The PCIE/ECIE is establishing a peer review process to ensure that adequate internal safeguards and management procedures continue to exist. The objectives of the review are to assess whether adequate internal safeguards and management procedures are met, foster high-quality investigations and investigative processes, ensure that the highest levels of professionalism are maintained, and promote consistency in investigative standards and practices within the Inspector General investigative community.

The revision also includes the addition of routine uses to allow the disclosure of information to the Agency's legal representative; other Federal agencies in response to their requests in connection with background investigations; State and local bar associations for disciplinary proceeding and inquiries; the Office of Government Ethics for any purpose consistent with that office's mission; in association with the collection of debt, Program Fraud Civil Remedies Act litigation; and to the Office of Management and Budget when seeking advice regarding the Agency's obligations under the Privacy Act.

EFFECTIVE DATE: The changes to this System of Records will become effective without further notice 30 days from the date of this publication (July 10, 2003), unless comments are received on or before that date which result in further modifications.

ADDRESSES: Written comments regarding proposed revisions to the NLRB Privacy Act Systems of Records, NLRB–18 may be submitted to the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Suite 11610, Washington, DC 20570. Copies of all comments received will be available for inspection between 8:30 a.m. and 5 p.m. in Room 11600.

FOR FURTHER INFORMATION CONTACT: David P. Berry, Counsel to the Inspector General, Office of Inspector General, National Labor Relations Board, 1099 14th Street, NW., Suite 9820, Washington, DC 20570, (202) 273–1960.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended systems in the **Federal Register** when there is a revision, change, or addition. NLRB is amending the Routine Uses of System of Records, NLRB 18 Office of Inspector General Investigative files previously published at 57 FR 11523 (Apr. 3, 1992).

The Routine Use Notice is being amended to specifically allow for a legitimate public interest the disclosure of names of indicted or convicted individuals in the Office of Inspector General (OIG) Semiannual Report, monthly reports, and press releases or other forms of communication with the media. NLRB's objective in allowing disclosure of names is to enhance the deterrence of similar crimes against the Agency. In addition, the amended routine uses would allow the disclosure of information to the PCIE/ECIE for the preparation of reports to the President and Congress on the activities of the Inspectors General. Finally, the amendments would allow the disclosure of information to members of the PCIE/ECIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of investigative qualitative assessment reviews to ensure adequate internal safeguards and management procedures are maintained.

The revision also includes the addition of routine uses to allow the disclosure of information to the Agency's legal representative; other Federal agencies in response to their requests in connection with background investigations; State and local bar associations for disciplinary proceeding and inquiries; the Office of Government Ethics for any purpose consistent with that office's mission; in association with the collection of debt, Program Fraud Civil Remedies Act litigation; and to the Office of Management and Budget when seeking advice regarding the Agency's obligations under the Privacy Act.

The notice contains minor typographical changes. Several data elements have also been updated and clarified: NLRB 18, Office of Inspector General Investigative Files, safeguards, retention and disposal, system manager(s) and address, and record source categories.

System Name:

Office of Inspector General Investigative Files—NLRB 18.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

These records may be disclosed as a routine use to other agencies, offices, establishments, and authorities, whether Federal, State, or local, (including State or local bar associations and other professional, regulatory, or disciplinary bodies) authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order pursuant thereto.

These records may be disclosed, as a routine use, to the Agency's legal representative, to include the Department of Justice and other outside counsel, where the Agency is a party in litigation or has an interest in litigation when either (a) NLRB, or any component thereof; (b) any employee of NLRB in his or her official capacity; (c) any employee of NLRB in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (d) the United States, where NLRB determines that litigation is likely to affect NLRB or any of its components, is a party to litigation or has an interest in such litigation, and NLRB determines that the use of such records by the Department of Justice is relevant and necessary to litigation; provided however, that in each case, NLRB determines that disclosures to the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may routinely be disclosed to other Federal agencies, in response to their requests in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718. These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Fraud Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom, and to counsel for the defendant party in any such litigation.

These records may be disclosed, as a routine use, for a legitimate public interest to the news media and public to provide information on events in the criminal process following an indictment, the filing of formal charges by another means, or a conviction; or when necessary for protection from imminent threat to life or property. These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General. These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of NLRB OIG to ensure that adequate internal safeguards and management procedures are maintained.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding the NLRB's obligations under the Privacy Act.

Dated: June 4, 2003.

By Direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary, National Labor Relations Board.

NLRB 18

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, National Labor Relations Board, 1099 14th Street, NW., Suite 9820, Washington, DC 20570, (202) 273–1960.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subject individuals include, but are not limited to, current and former employees; contractors, subcontractors, their agents, or employees; and others whose actions affect the NLRB, its programs, and operations.

CATEGORIES OF THE RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda; copies of all subpoenas issued during the investigation; affidavits, statements from witnesses, and transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working papers of the staff; other documents and records relating to the investigations, and records relating to "Hotline" complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. app. at 1184 (1988); 5 U.S.C. 552a.

PURPOSE(S):

These records are used by the Inspector General's Office in the investigation of programs and operations of the National Labor Relations Board pursuant to the Inspector General Act Amendments of 1988, 5 U.S.C. app. at 1184 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other agencies, offices, establishments, and authorities, whether Federal, State, or local, (including State or local bar associations and other professional, regulatory, or disciplinary bodies) authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether

criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order pursuant thereto.

Any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

Independent auditors or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or noncriminal investigation, or to analyze, collate, aggregate, or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when the NLRB determines it is relevant and necessary to the litigation.

A court or other adjudicative body before which the NLRB is authorized to appear, when either (a) the NLRB, or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity, where the NLRB has agreed to represent the employee, or (d) the United States, where the NLRB determines that litigation is likely to affect the NLRB or any of it components, is a party to litigation or has interest in such litigation, and the NLRB determines that disclosure of the records to a court or other adjudicative body is relevant, necessary, and compatible with the purpose for which the records were collected.

The Department of Justice for use in litigation when either (a) the NLRB, or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, where the NLRB determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the NLRB determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may be disclosed, as a routine use, to the Agency's legal representative, to include the Department of Justice and other outside counsel, where the Agency is a party in litigation or has an interest in litigation when either (a) NLRB, or any component thereof; (b) Any employee of NLRB in his or her official capacity; (c) Any employee of NLRB in her or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (d) The United States, where NLRB determines that litigation is likely to affect NLRB or any of its components, is a party to litigation or has an interest in such litigation, and NLRB determines that the use of such records by the Department of Justice is relevant and necessary to litigation; provided however, that in each case, NLRB determines that disclosures of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may routinely be disclosed to other Federal agencies, in response to their requests in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Fraud Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom, and to counsel for the defendant party in any such litigation.

A member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of an individual about whom the record is maintained. In such cases, the member has no greater right to access to the record than does the individual.

These records may be disclosed, as a routine use, for a legitimate public interest to the news media and public to provide information on events in the criminal process following an indictment, the filing of formal charges by another means, or a conviction; or when necessary for protection from imminent threat to life or property.

These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of NLRB OIG to ensure that adequate internal safeguards and management procedures are maintained.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding the NLRB's obligations under the Privacy Act.

The Department of Justice for the purpose of obtaining its advice in the event that the NLRB concludes it is desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Inspector General Investigative Files consists of paper records maintained in files, records on computer disks and diskettes, and records on computer tapes.

RETRIEVABILITY:

The records are retrievable by case number and individual name.

SAFEGUARDS:

These records are only available to those persons whose official duties require such access. The records are kept in a limited access area during on duty hours. During off-duty hours they are kept inside locked offices, in locked file cabinets, or in safes. Computer records can be accessed only through use of confidential procedures and passwords.

RETENTION AND DISPOSAL:

As prescribed in NLRB Records Schedule, Job Number N1–025–01–1, OIG Investigative Files are generally destroyed 10 years after a case is closed. Cases that are unusually significant for documenting major violations of criminal law or ethical standards are offered to the National Archives for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, National Labor Relations Board, 1099 14th Street, NW., Suite 9820, Washington, DC 20570, (202) 273–1960.

NOTIFICATION PROCEDURE:

The OIG Investigative Files are exempt pursuant to 5 U.S.C. 552a (j)(2) and (k)(2); however, consideration will be given to requests addressed to the system manager. The request should include the individual's name and date of birth.

RECORD ACCESS PROCEDURE:

See "Notification Procedures" above. Requestors should specify the record contents being sought. Under section 7(b) of the Inspector General Act of 1978 (Pub. L. 95–452), the identity of an employee or other personal source who makes a complaint or provides information to the Office of the Inspector General (OIG) via the OIG "Hotline" is exempt from disclosure unless the Inspector General determines such disclosure is unavoidable during the course of an investigation.

CONTESTING RECORD PROCEDURES:

Contact the system manager at the above address, and identify the record, specify the information to be contested, and the corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:

The Office of Inspector General collects information from a wide variety of sources, including information from the NLRB and other Federal, state, and local agencies, witnesses, complainants and other nongovernmental sources.

SYSTEMS EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records, to the extent it consists of investigatory material compiled for criminal law enforcement purposes, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2), this system of records, to the extent it consists of investigatory material compiled for law enforcement purposes other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2), is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

These exemptions are contained in 29 CFR part 102.

[FR Doc. 03–14479 Filed 6–9–03; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Advisory Committee for Physical Anthropology and Archaeology Data Sharing is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Physical Anthropology and Archaeology Data Sharing (#16587).

Purpose: Advise the National Science Foundation (NSF) on matters concerning sharing of primary data within physical anthropology and archaeology. Recognizing unique characteristics of such information, it will assist Foundation officials in producing guidelines to implement NSF's data sharing policies. It will engage in discussion and prepare a report with recommendations.

Responsible NSF Official: Mark Weiss, Program Director, Physical Anthropology, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: 703/292–8740.

Dated: June 5, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–14597 Filed 6–9–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATE: Weeks of June 9, 16, 23, 30, July 7, 14, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 9, 2003
Wednesday, June 11, 2003
10:30 a.m. All Employees Meeting (Public Meeting).
1:30 p.m. All Employees Meeting (Public Meeting).
Friday, June 13, 2003
8:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of June 16, 2003—Tentative
There are no meetings scheduled for the Week of June 16, 2003

Week of June 23, 2003—Tentative
There are no meetings scheduled for the Week of June 23, 2003

Week of June 30, 2003—Tentative
Tuesday, July 1, 2003
10 a.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

Week of July 7, 2003—Tentative
There are no meetings scheduled for the Week of July 7, 2003

Week of July 14, 2003—Tentative
There are no meetings scheduled for the Week of July 14, 2003

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information; David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 4–0 on May 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Intervenor's Request for Suspension of Proceeding Pending Decision on Rulemaking Petition" be held on May 16, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 5, 2003.

D. L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–14687 Filed 6–6–03; 10:12 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, May 16, 2003, through May 29, 2003. The last biweekly notice was published on May 27, 2003 (68 FR 28843).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 10, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: January 29, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.5.1, "Drywell," Surveillance Requirement 3.6.5.1.3 to delay the performance of the next drywell bypass leakage test to no later than November 23, 2008. The proposed amendment would also revise TS 5.5.13, "Primary Containment Leakage Rate Testing Program," to remove an exception which is no longer applicable and to reflect a one-time deferral of the primary containment Type A test to no later than November 23, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will revise TS 3.6.5.1, "Drywell," Surveillance Requirement SR 3.6.5.1.3 to delay the performance of the next drywell bypass leakage rate test (DBLRT) to no later than November 23, 2008. This request will also revise CPS [Clinton Power Station] TS 5.5.13, "Primary Containment Leakage Rate Testing Program," to reflect a one-time deferral of the primary containment Type A test to no later than November 23, 2008. The current Type A test interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test. In addition, AmerGen is proposing to delete from TS 5.5.13 the expired exception that allowed deferral of the leakage rate testing of the primary containment penetration 1MC–042 until the seventh refueling outage.

The drywell houses the reactor pressure vessel, the reactor coolant recirculating loops, and branch connections of the Reactor Coolant System (RCS), which have isolation valves at the primary containment boundary. The function of the drywell is to maintain a pressure boundary that channels steam from a Loss of Coolant Accident (LOCA) to the suppression pool, where it is condensed. Air forced from the drywell is released into the primary containment through the suppression pool. The suppression pool is a concentric open container of water with a stainless steel liner that is located at the bottom of the primary containment. The suppression pool is designed to absorb the decay heat and sensible heat released during a reactor blowdown from safety/relief valve (SRV) discharges or from a LOCA.

The function of the Mark III containment is to isolate and contain fission products released from the RCS following a design basis LOCA and to confine the postulated release of radioactive material to within limits. The test interval associated with the drywell bypass leakage and Type A testing is not a precursor of any accident previously evaluated. Therefore, extending these test intervals on a one-time basis from 10 years to 15 years does not result in an increase in the probability of occurrence of an accident. The successful performance history of the drywell bypass leakage and Type A testing provides assurance that the CPS drywell and primary containment will not exceed allowable leakage rate values specified in the TS and will continue to perform its design function following an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes for a one-time extension of the drywell bypass leakage and Type A tests and deletion of an expired local leak rate test exception for CPS, will not affect the control parameters governing unit

operation or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment or modes of system operation. No installed equipment will be operated in a new or different manner. As such, no new failure mechanisms are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

CPS is a General Electric BWR/6 plant with a Mark III containment system. The Mark III containment design is a single-barrier pressure containment and a multi-barrier fission containment system consisting of the drywell and primary containment. The drywell houses the reactor pressure vessel, the reactor coolant recirculating loops, and branch connections of the RCS, which have isolation valves at the primary containment boundary. The function of the drywell is to maintain a pressure boundary that channels steam from a LOCA to the suppression pool, where it is condensed. The suppression pool is an annular pool of demineralized water between the drywell and the outer primary containment boundary. This pool covers the horizontal vent openings in the drywell to maintain a water seal between the drywell interior and the remainder of the containment volume. The primary containment consists of a steel-lined, reinforced concrete vessel, which surrounds the RCS and provides an essentially leak-tight barrier against an uncontrolled release of radioactive material to the environment. Additionally, this structure provides shielding from the fission products that may be present in the primary containment atmosphere following accident conditions. The primary containment is penetrated by access, piping and electrical penetrations.

The integrity of the drywell is periodically verified by performance of the DBLRT. This test ensures that the measured drywell bypass leakage is bounded by the safety analysis assumptions. The drywell integrity is further verified by a number of additional tests, including drywell airlock door seal leakage tests, overall drywell airlock leakage tests and periodical visual inspections of exposed accessible interior and exterior drywell surfaces. Additional confidence that significant degradation in the drywell leaktightness has not developed is provided by the periodic qualitative assessment of drywell performance.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak-tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." These tests are performed to verify the essentially leak-tight characteristics of the primary containment at the design basis accident pressure. The proposed changes for a one-time extension of the drywell bypass leakage and Type A tests and deletion of an expired local leak rate test exception for CPS, do not effect the method for drywell or containment testing or the test acceptance criteria.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: April 25, 2003.

Description of amendments request: **The amendments would revise Specification 5.3.1 in Section 5.3, "Unit Staff Qualifications," of the Technical Specifications, and add a new Specification 5.3.2. Specification 5.3.1 states the qualifications of the unit staff. The revision would state there is an exception for operator license applicants and the new specification would provide the requirements for these applicants. Only the qualifications of operator license applicants are being changed. Because a new specification would be added, the existing Specification 5.3.2 would also be renumbered 5.3.3.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification (TS) change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. These changes conform to the current requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

Although licensed operator qualifications and training may have an indirect impact on accidents [involving operator action] previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. Palo Verde's licensed operator training program is accredited by INPO [Institute of Nuclear Power Operations] and is based on a systems approach to training.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program and to conform to the revised 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident [involving operator action] from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. [That is to say an accredited license operator training program that is based on a systems approach to training would not introduce a new or different kind of accident.] As previously noted, Palo Verde's licensed operator training program is accredited by INPO and is based on a systems approach to training.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Thus, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator-training program. This change is consistent with the requirements of 10 CFR [Part] 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 [rule] determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, Palo Verde's licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO accredited, systems approach based licensed operator training program is equivalent to maintaining [an] NRC approved licensed operator training program which conform[s] with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO accredited licensed operator training program.

In addition, the NRC has published NRC Regulatory Issue Summary 2001–01, "Eligibility of Operator License Applicants," dated January 18, 2001, "to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants." The document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, there is no change in the analysis results and the proposed amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 10, 2002.

Description of amendment request: **The proposed amendment would revise Technical Specification (TS) 4.6.E, "Jet Pump Surveillance Requirements" and its Bases. Specifically, Notes 1 and 2 would be added to the surveillance to provide clarity for performing the surveillance under the designated condition. The proposed change would also modify the applicability of the surveillance. Additionally, the condition for flow imbalance of the two recirculation loops would be changed from 15% to 10%. A reference in TS 4.11.C.1 to the bases for Specification 3.3.B.5 would also be changed to reference TS Table 3.2.C.1, Note 5.**

Basis for proposed no significant hazards consideration determination: **As required by title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Pilgrim TS 4.6.E imposes more restrictive surveillance requirements in accordance with the Standard Technical Specifications (STS) surveillance requirement 3.4.3.1 to ensure jet pump integrity during startup and run modes. The more restrictive conditions are: the recirculation loops have a flow imbalance of less than 10%, instead of the current 15%, when the pumps are operated at the same speed, and the occurrence of two of three conditions, instead of the simultaneous occurrence of all three conditions currently specified in TS 4.6.E for jet pump integrity.

The proposed more restrictive surveillance requirements ensure safe operation of the plant during startup and run modes. The requirements are not accident precursors. The proposed change that corrects a reference in Surveillance 4.11.C.1 is an administrative change with no impact on safety. These changes do not create accident conditions or increase the probability of previously evaluated accidents. The proposed changes provide additional assurance that the assumptions (*i.e.*, jet pump integrity) are met. Therefore, the probability or the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident [from] any accident previously evaluated?

Response: No.

The proposed changes do not involve a change to the plant design or a new mode of equipment operation. As a result, the proposed changes do not affect parameters or conditions that could contribute to the initiation of any new or different kind of accident. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed surveillance requirements increase the margin of safety by providing additional assurance of jet pump integrity. The proposed change to correctly reference the existing Specification is administrative in nature. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: March 19, 2003.

Description of amendment request: **The proposed amendment would delete Technical Specification (TS) 5.5.3, "Post Accident Sampling," requirements to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by an Order for many facilities and were added to, or included in, the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means, or is of little use in the assessment and mitigation of accident conditions.**

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the Federal Register on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the Federal Register on March 20, 2002 (67 FR 13027). The licensee affirmed the

applicability of the following NSHC determination in its application dated March 19, 2003.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) section 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 8, 2003.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," to add a note allowing intermittent opening of penetration flow paths, under administrative control, that are isolated to comply with TS ACTIONS and to revise the operability requirement for the Reactor Core Isolation Cooling (RCIC) steam supply line low pressure isolation instrumentation to be consistent with the RCIC system operability requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to adopt TSTF [Technical Specification Task Force]-306 allows primary containment and drywell isolation valves to be unisolated under administrative controls when the associated isolation instrumentation is not operable. The isolation function is an accident mitigating function and is not an initiator of an accident previously evaluated. Administrative controls are required to be in effect when the valves are unisolated so that the penetration can be rapidly isolated when the need [for isolation] is indicated. Therefore the probability or consequences of previously evaluated accidents are not significantly increased.

The proposed change also allows the RCIC turbine steam line low pressure containment isolation instrumentation to be inoperable during low startup operating pressures. These instruments primarily provide automatic isolation when steam line pressure is too low for RCIC turbine operation. The low pressure automatic isolation feature will only be unavailable during the time that the RCIC system is not required to be operable. Therefore the change does not adversely affect the ability of the RCIC system to perform its safety function.

The RCIC steam line low pressure instruments also provide a diverse signal to indicate a possible system break. Even though the low pressure automatic isolation function will not be available for a short period during plant startup, the likelihood of a steam line break during the short period of time is low due to the low operating pressure. In addition, the safety function of providing containment integrity is maintained since there are other diverse leak detection instruments as well as other barriers or isolation capabilities that provide the isolation function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The TS currently allow[s] containment and drywell isolation valves to be open under administrative controls after being closed to comply with TS ACTIONS for inoperable valves. Extending this allowance to the supporting instrumentation does not introduce any new method of isolation that has not already been evaluated.

Allowing the RCIC turbine steam line low pressure isolation instrumentation to be inoperable during low startup operating pressures does not create the possibility of any new failure modes other than those previously evaluated. No new or different type of equipment will be installed. There are no new failure mechanisms or accident initiators introduced. The low pressure isolation is designed to terminate RCIC turbine operation at low steam pressures for equipment protection. However, this function is not required since the RCIC system is not required to be operable and the same function is accomplished by maintaining the turbine trip/throttle valve closed. The low pressure isolation function will continue to be required when the RCIC system is required to be operable.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The change to allow containment and drywell isolation valves to be unisolated under administrative control does not reduce any margins to safety since the proposed allowance for the supporting isolation instrumentation is no less restrictive than the allowance for the equipment it supports. When the valves are unisolated, the design basis function of containment isolation is maintained by administrative controls.

The change to allow the RCIC turbine steam line low pressure isolation instrumentation to be inoperable during low startup operating pressures does not reduce any margins to safety. The current bounding analysis for a steam line break outside of containment remains bounding for a[n] RCIC steam break at lower pressures. In addition, the current high energy line break evaluations and subcompartment pressurization evaluations remain bounding for the low pressure condition. The design basis functions of containment isolation and containment integrity are maintained by the diverse leak detection instruments as well as other barriers or isolation capabilities that provide the isolation function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 2003.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to remove the MODE restrictions for performance of Surveillance Requirement (SR) 3.8.4.7 and SR 3.8.4.8 for the Division 3 direct current electrical power subsystem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The power supplied by the battery is used only as a source of control and motive power for the HPCS [High Pressure Core Spray] system logic, HPCS diesel-generator set control and protection, and other Division 3 related controls. The loads supplied by this system are only loads associated with Division 3 of the Emergency Core Cooling Systems (ECCS).

The battery testing period is within the period of time that the system is scheduled to be out of service for other planned maintenance. The battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS. Any risk associated with the testing of the Division 3 batteries will be enveloped by the risk management of the system outage.

The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65. The HPCS system reliability and availability are monitored and evaluated in relationship to Maintenance Rule goals to ensure that total outage times do not degrade operational safety over time.

Therefore, the proposed change will have no effect on the probability or consequences of any previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves the testing of the HPCS battery on-line while the system is already out of service. The testing will not add additional out of service time. Testing during this period has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. The method of performing the test is not changed. No new accident modes are created by testing during the period when the system is already unavailable. Because the system is already out of service, no safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The battery testing will be performed when the HPCS system is already out of service for maintenance. The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65. The batteries are not expected to be unavailable for more than 24 hours. This testing period is within the period of time that the system is scheduled to be out of service for other planned maintenance. Therefore, the battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS. Timing of this test has no effect on any fission product barrier.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 2003.

Description of amendment request: The proposed amendment would change the Technical Specification (TS) 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," to add a provision to the APPLICABILITY requirement specified in Table 3.3.6.1–1, to eliminate the requirement that the instrumentation for the Residual Heat Removal (RHR) System Isolation

Function on Reactor Vessel Water Level-Low, Level 3, be OPERABLE during certain conditions in MODE 5. Specifically, the proposed change would remove the requirement when the upper containment reactor cavity is at the High Water Level condition specified in TS 3.5.2, "Emergency Core Cooling Systems (ECCS) Shutdown."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the applicability requirement for the Residual Heat Removal (RHR) System Isolation function of the Primary Containment and Drywell Isolation Instrumentation during MODE 5. The change removes the requirement that the instrumentation be operable during certain conditions during refueling outages. The function is intended to mitigate reactor vessel draindown events. Although draindown events during refueling operations are not specifically evaluated in the Updated Final Safety Analysis Report (UFSAR), these events were evaluated in support of licensing actions for the Alternate Decay Heat Removal System (ADHRS). The probability that a draindown event will be initiated is unrelated to operability requirement for this instrumentation or the associated isolation valves. The evaluation supporting this change determined that mitigating actions can be taken to terminate all postulated draindown events prior to fuel uncovery. As a result, the probability of draindown events causing fuel uncovery and the potential for radiological releases has not significantly increased. The operation or failure of the shutdown cooling suction isolation does not contribute to the occurrence of an accident. No active or passive failure mechanisms that could lead to an accident are affected by the proposed change.

The consequences of a vessel drainage event are not significantly increased by the proposed change. Entergy [Entergy Operations, Inc.] has evaluated various draindown and pumpdown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained and a radiological release does not occur.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Entergy has evaluated various draindown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate any events such that adequate core cooling is maintained. With the containment refueling cavity flooded, sufficient inventory is available to allow operator action to terminate the inventory loss prior to reaching a low water level in the reactor. Installed equipment is not operated in a new or different manner, no new or different system interactions are created, and no new processes are introduced. No new failures have been created by the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the containment and drywell isolation function is also unchanged. The change simply modifies the applicability of the Technical Specifications (TS) by removing the requirement that the RHR system isolation on low reactor vessel level be operable with the upper containment cavity flooded in MODE 5. During MODE 5, the RHR system isolation mitigates postulated draindown events through the RHR system. Entergy has evaluated various draindown events through this flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 2003.

Description of amendment request: The proposed amendment would change administrative Technical Specification (TS) 5.5.12 regarding containment integrated leakage rate testing (ILRT) and TS 3.6.5.1.1 regarding drywell bypass leak rate testing (DWBT). The change would allow for a one-time extension of the interval (15 years) for performance of the next ILRT and DWBT.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to TS 5.5.12 adds a one-time extension to the current interval for Type A testing (*i.e.*, the ILRT) and the DWBT. The current interval of ten years, based on past performance, would be extended on a one-time basis to 15-years from the date of the last test. The proposed extension to the Type A test cannot increase the probability of an accident since there are no design or operating changes involved and the test is not an accident initiator. The proposed extension of the test interval does not involve a significant increase in the consequences since research documented in NUREG–1493, "Performance Based Containment Leak Rate Test Program," has found that, generically, fewer than 3% of the potential containment leak paths are not identified by Type B and C testing. A risk evaluation of the interval extension for GGNS [Grand Gulf Nuclear Station, Unit 1] is consistent with these results. In addition, the testing and containment inspections also provide a high degree of assurance that the containment will not degrade in a manner detectable only by a Type A test. Inspections required by the Maintenance Rule (10 CFR 50.65) and by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code are performed to identify containment degradation that could affect leak tightness.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed extension to the interval for the Type A test does not involve any design or operational changes that could lead to a new or different kind of accident from any accidents previously evaluated. The tests are not being modified, but are only being performed after a longer interval. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The generic study of the increase in the Type A test interval, NUREG–1493, concluded there is an imperceptible increase in the plant risk associated with extending the test interval out to twenty years. The evaluations done in support of this change confirm that (conclusion). Further, the extended test interval would have a minimal effect on this risk since Type B and C testing detects 97% of potential leakage paths. For the requested change in the GGNS ILRT/DWBT interval, it was determined that the risk contribution of leakage will increase 0.99%. This change is considered very small and does not represent a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 18, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will modify TS Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," to add the requirement to perform a Channel Check in accordance with Surveillance Requirement (SR) 3.3.6.1.1 to thirteen listed instrument functions. The proposed change is the result of the replacement of existing plant equipment with equipment that has the capability of permitting the performance of a Channel Check with the plant in MODE 1, 2, and 3. The proposed change is consistent with the wording specified in NUREG–1434, "Standard Technical Specifications General Electric Plants, BWR/6," Revision 2, dated June 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change to Technical Specifications (TS) Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation" will incorporate into the LaSalle County Station (LSCS) TS, wording specified in NUREG–1434, "Standard Technical Specifications General Electric Plants, BWR/6," Revision 2, dated June 2001. The proposed change will modify TS Table 3.3.6.1–1 to add the requirement to perform a Channel Check in accordance with Surveillance Requirement (SR) 3.3.6.1.1 to thirteen listed instrument functions. The performance of TS surveillance testing is not a precursor to any accident previously evaluated. A Channel Check is a monitoring activity that does not represent an accident initiator. Thus, the proposed change does not have any effect on the probability of an accident previously evaluated.

The function of instrumentation listed on TS Table 3.3.6.1–1, in combination with other accident mitigation features, is to limit fission product release during and following postulated Design Basis Accidents (DBAs) to within limits. The surveillance testing specified in TS Table 3.3.6.1–1 will provide assurance that the instrumentation will perform as designed. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The failure modes of the new instrumentation do not give rise to a new or different kind of accident. The proposed change does not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The leak detection system at LaSalle County Station uses ambient or differential temperature increases to detect small primary coolant boundary leaks in the Main Steam Line Tunnel and in various rooms of the Reactor Core Isolation Cooling (RCIC) System and the Reactor Water Cleanup (RWCU) System. The existing thermocouple monitors did not have the capability to allow a Channel Check to be performed without undue risk of initiating an inadvertent system isolation in MODE 1, 2 and 3. Thus, the LSCS TS took exception to the guidance contained in NUREG–1434 and did not specify on TS Table 3.3.6.1–1 that a SR 3.3.6.1.1 Channel Check be performed on the above listed thirteen instrument functions.

The new thermocouple monitors have continuously reading digital displays that permit the performance of a Channel Check with the Unit in MODE 1, 2 and 3 without risk of inadvertent system isolations. The new thermocouple digital displays have been installed on Unit 2 during the January/February 2003 refuel outage and are scheduled to be installed in Unit 1 during the upcoming January 2004 refuel outage. LSCS after the return to service of Unit 2 in March of 2003, verified that the thermocouple digital displays do permit a Channel Check to be successfully performed on the above listed thirteen instrument functions. Therefore, LSCS is requesting that TS Table 3.3.6.1–1 be modified to specify that a SR 3.3.6.1.1 Channel Check be performed in MODE 1, 2 and 3, consistent with the guidance contained in NUREG–1434, Rev. 2.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 18, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will modify TS Surveillance Requirement (SR) 3.6.1.3.8 to identify that the specified testing requirement is applicable to reactor instrumentation lines. The proposed change is consistent with the SR wording specified in

NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4," Revision 2, dated June 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specifications (TS) Surveillance Requirement (SR) 3.6.1.3.8 will incorporate into the SR, wording specified in NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4," Revision 2, dated June 2001. The proposed change will specify that the testing required by SR 3.6.1.3.8 is applicable to reactor instrumentation line excess flow check valves (EFCVs). The performance of TS surveillance testing is not a precursor to any accident previously evaluated. Thus, the proposed change does not have any affect on the probability of an accident previously evaluated.

The function of reactor instrumentation line EFCVs, in combination with other accident mitigation features, is to limit fission product release. The surveillance testing specified in SR 3.6.1.3.8 will provide assurance that the reactor instrumentation line EFCVs will perform as designed. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

NUREG–1433, Rev. 2, provided licensees with the latest NRC recommended content and format for TS. The NUREG–1433 SR for testing EFCVs, SR 3.6.1.3.10, specifies that this testing is associated with reactor instrumentation line EFCVs. The Bases to SR 3.6.1.3.10 in NUREG–1433, Rev. 2, provides a reference to NEDO–32977–A, "Excess Flow Check Valve Testing Relaxation," dated June 2000. NEDO–32977–A was approved for use by licensees in a NRC letter dated March 14, 2000. NEDO–32977–A states the following on the scope of TS testing associated with EFCVs:

EFCVs in instrument lines which connect to the reactor coolant pressure boundary (RCPB) are normally tested during refueling outages to meet Technical Specification requirements. Instrument lines that connect to the containment atmosphere, such as those which measure drywell pressure, or monitor the containment atmosphere or suppression pool water level, are considered extensions of primary containment. A failure of one of these instrument lines during normal operation would not result in the closure of the associated EFCV, since normal operating containment pressure is not sufficient to operate the valve. Such EFCVs will only close with a downstream line break concurrent with a Loss of Coolant Accident (LOCA). Since these conditions are beyond the plant design basis, EFCV closure is not needed and containment atmospheric instrument line EFCVs need not be tested.

The proposed change will incorporate the wording from NUREG–1433 into LaSalle County Station SR 3.6.1.3.8 to limit the scope of TS required testing to EFCVs that are directly connected to the RCPB.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 14, 2003.

Description of amendment request: The proposed amendment would modify the Technical Specifications by allowing entry into Mode 3 operation (shutdown with reactor coolant system temperature equal to or greater than 280 degrees Fahrenheit) during the current outage only with neither high pressure injection (HPI) pump capable of taking suction from the low pressure injection system trains when aligned for containment sump recirculation. The HPI system will otherwise be operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows the plant to operate in Mode 3 in support of RCS [reactor coolant system] leakage inspection activities conducted during the ongoing Thirteenth Refueling Outage, utilizing a limited exception to Limiting Condition for Operation (LCO) 3.5.2. This LCO applies in plant operational Modes 1 (Power Operation), 2 (Startup), and 3 (Hot Standby). Under the proposed exception, for entry into Mode 3, both HPI trains would be required to be operable except for the capability of maintaining suction from the containment emergency sump during the recirculation phase.

The ability of the HPI pumps to draw suction from the containment emergency sump (via the LPI [low pressure injection] pumps) is a design feature credited by the Davis-Besse Nuclear Power Station Updated Safety Analysis Report (USAR) for mitigation of various types of loss-of-coolant accidents (LOCAs). Due to the potential susceptibility to damage from debris contained in the pumped fluid, the existing HPI pumps may not be capable of maintaining suction from the containment emergency sump without an increased probability for malfunction. However, the current plant conditions are unique in that decay heat generation rate in the reactor core is extremely low due to the fact that the plant has not operated in more than 14 months and 76 unirradiated fuel assemblies have been loaded into the core, replacing irradiated fuel assemblies.

A LOCA evaluation has been performed considering the current reactor core decay heat generation rate. The evaluation shows that in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, the accident can be mitigated without crediting HPI flow during the recirculation phase, while crediting additional operator actions not presently credited in the USAR. In addition, a risk evaluation has been performed and shows that the increase in core damage frequency, accounting for human error probability for the additional operator actions, is very small. Also, in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, radiological consequences would be very small compared to the accident analyses results of record, given the fission product decay over the extended plant shutdown. Therefore, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no new or different accident initiators introduced by the proposed change to allow the plant to operate n Mode 3 under a limited exception, with the HPI pumps not capable of maintaining suction from the containment emergency sump (via the LPI pumps) during the recirculation phase of a LOCA. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows the plant to operate in Mode 3 under a limited exception, with the HPI pumps not capable of maintaining suction from the containment emergency sump (via the LPI pumps) during the recirculation phase of a LOCA. Although the ability of the HPI pumps to draw suction from the containment emergency sump (via the LPI pumps) is a design feature credited by the Davis-Besse Nuclear Power Station USAR for mitigation of various types of LOCAs, an evaluation shows that given the extremely low decay heat generation rate in the reactor core under current plant conditions, and crediting additional operator actions, in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, the accident can be mitigated without crediting HPI flow during the recirculation phase. In addition, a risk evaluation has been performed and shows that the increase in core damage frequency, accounting for human error probability for the additional operator actions, would be expected to be very small. Also, in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, radiological consequences would be very small compared to the accident analyses results of record, given the fission product decay over the extended plant shutdown. Accordingly, given that accident severity or consequences will not be significantly increased under the proposed change, a significant reduction in a margin of safety is not involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 19, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by removing the designation of safety grade as a description of the flow indication for the motor driven feedwater pump system. The licensee inadvertently requested that the flow indication be designated as safety grade in an amendment request that was approved as license Amendment No. 193.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change corrects a post modification and repair Surveillance Requirement for the Motor Driven Feedwater Pump System. This surveillance is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The Technical Specifications continue to require the MDFP System to be operable and capable of performing its design function. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed correction does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed correction does not result in a significant reduction in the margin of safety. The corrected Surveillance Requirement continues to ensure that the Motor Driven Feedwater Pump System can perform its required function. Thus, appropriate equipment continues to be tested in a manner that provides confidence that the equipment can perform its assumed function. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 21, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by relocating to the licensee's Technical Requirements Manual the TS surveillance requirement pertaining to flow balance testing of the emergency core cooling system (ECCS) high pressure injection and low pressure injection subsystems following system modifications that alter subsystem flow characteristics. Also, the proposed amendment would add an ECCS pump operability requirement to the TS consistent with NUREG–1430, Standard Technical Specifications-Babcock and Wilcox Plants, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed surveillance requirement relocation and replacement does not alter the design, operation, or testing of any structure system or component. No previously analyzed accident scenario is changed. Initiating conditions and assumptions remain as previously analyzed. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed surveillance requirement relocation and replacement does not alter the design, operation, or testing of any structure system or component. No new or different accident initiators are created as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed surveillance requirement relocation and replacement does not reduce or adversely affect the capabilities of the ECCS. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin; Docket No. 50–255, Palisades Plant, Van Buren County, Michigan; and Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 30, 2003.

Description of amendment request: **The proposed amendments would revise the Kewaunee Nuclear Power Plant Technical Specification (TS) Section 6.3, "Plant Staff Qualifications," Palisades Plant TS Section 5.3, "Plant Staff Qualifications," and Point Beach Nuclear Plant TS 5.3, "Facility Staff Qualifications," to specify an exception to the current TS minimum qualifications. This exception requires licensed operators to meet the education and experience eligibility requirements of the National Academy for Nuclear Training (NANT) (ACAD 00–003), "Guidelines for Initial Training and Qualification of Licensed Operators," dated January 2000.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:**

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification (TS) amendments are administrative changes to clarify the current requirements for licensed operator qualifications and licensed operator training program. With these amendments, the TS continue to meet the current requirements of 10 CFR 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the Nuclear Regulatory Commission (NRC) considered this impact during the rulemaking process, and by issuance of the revised 10 CFR 55 rule, concluded that this impact remains acceptable, as long as the licensed operator training programs are certified to be accredited and are based on a systems approach to training. NMC licensed operator training programs are accredited by the National Nuclear Accrediting Board (NNAB) and are based on a systems approach to training. The proposed TS amendments take credit for the NNAB accreditation of the licensed operator training programs. The TS requirements for all other facility staff qualifications remain unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS amendments are administrative changes to clarify the current requirements for licensed operator qualifications and licensed operator training programs and to conform to the revised 10 CFR 55.

As discussed above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by issuance of the revised rule, concluded that this impact remains acceptable, as long as licensed operator training programs are certified to be accredited and based on a systems approach to training. As previously noted, NMC licensed operator training programs are accredited by NNAB and are based on a systems approach to training. The proposed TS amendments take credit for the NNAB accreditation of the licensed operator training programs. The TS requirements for all other facility staff qualifications remain unchanged.

Additionally, the proposed TS amendments do not affect plant design, hardware, system operation, or procedures. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS amendments are administrative changes to clarify the current requirements applicable to licensed operator qualifications and licensed operator training programs. With these changes the TS continue to be consistent with the requirements of 10 CFR 55. The TS qualification requirements for all other facility staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by issuance of the revised 10 CFR 55, determined that this impact remains acceptable, when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, NMC licensed operator training programs are accredited by NNAB and are based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," that the standards and guidelines applied by the Institute for Nuclear Power Operations in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining NNAB accredited, systems approach based, licensed operator training programs is equivalent to maintaining NRC approved licensed operator training programs, which conform to applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining the NNAB accredited licensed operator training programs.

In addition, the NRC published NRC Regulatory Issue Summary 2001–01, "Eligibility of Operator License Applicants," dated January 18, 2001, "to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants." This document acknowledges that the National Academy for Nuclear Training guidelines for education and experience outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 22, 2003.

Description of amendment request: **The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) operating license and Technical Specifications (TSs) to increase the licensed rated power by 6.0 percent from 1673 megawatts thermal (MWt) to 1772 MWt.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Proposed Power Level Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The stretch uprate evaluations performed included performance of accident analyses at uprated power parameters using approved methodologies. Results of these analyses continue to meet the event acceptance criteria. An evaluation of components and systems, including interface and control systems, that could be affected by the change in power level, were performed for the stretch power uprate. Components and systems will continue to function as designed and performance requirements for these systems will continue to be met. Additionally, the proposed change in power level was not found to initiate any accident, and therefore, does not increase the probability of an accident.

Dose consequences were evaluated using the uprated power parameters. Acceptance criteria continue to be met. Therefore, the change also does not increase the consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The change has no adverse effect on any safety related system and does not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of this proposed change in power. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

All analyses supporting the proposed uprated power condition continue to meet the appropriate acceptance criteria. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the changes in rated power level.

Proposed Safety Limit Change

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an industry accepted safety limit applicable to the KNPP transition to Westinghouse fuel. Therefore, the change does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change in fuel centerline temperature. The change has no adverse effect on the fuel or the performance or integrity of the fuel. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The proposed safety limit change is backed by technical evaluations performed by Westinghouse and experimental data. The limit is shown to be met as part of reload safety evaluations performed on a cycle specific basis. All applicable analyses supporting the proposed uprated power condition continue to meet the appropriate acceptance criteria. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the change in the safety limit.

Engineered Safety Feature (ESF) Setting Change

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The stretch power uprate evaluations performed included performance of accident analyses. Results of the accident analyses have verified that the acceptance criteria continue to be met. Neither the change in the analytical limit nor the change in the TS setting limit changes how the system functions. Systems will continue to function as designed and system performance criteria will continue to be met. Dose consequences have also been evaluated at uprate conditions and doses remain within the appropriate acceptance criteria. Therefore, the change does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The change has no adverse effect on any safety related system and does not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of the proposed change in the high-high steam flow TS setting limit. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The results of the accident analyses demonstrate the acceptance criteria continue to be met. Systems will continue to function as designed and system performance criteria continue to be met. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the change in the high-high steam flow TS setting limit.

Proposed Containment Cooling Systems Change

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Removal of the LCO [limiting condition for operation] is conservative in that it eliminates relaxation of a design requirement for system redundancy. Deletion of the less conservative condition is more conservative by definition. Maintaining the system in a more conservative condition cannot create new challenges to components and systems that could adversely affect their ability to mitigate accident consequences or diminish the integrity of any fission product barrier. Therefore, the deletion of the LCO does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Maintaining the system in a more conservative condition does not adversely affect any fission product barrier, nor does it alter the safety function of safety related systems, structures, and components depended upon for accident prevention or mitigation. Equipment important to safety will continue to function at its design capacity. No new equipment is being added, replaced, or taken away by the deletion of the LCO. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

Safety analysis acceptance criteria continue to be satisfied for containment heat removal with deletion of this LCO. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the containment cooling systems change.

Proposed Condensate Storage Tank (CST) Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The stretch power uprate project evaluations performed included a review of the SBO [station blackout] event. Results of the evaluation verified that with the increase in the CST [condensate storage tanks] inventory, the evaluation criteria continue to be met. Systems will continue to function as designed and system performance criteria will continue to be met. Additionally, dose consequences have been evaluated for the power uprate and results remain within the appropriate acceptance criteria. Therefore, the changes to CST inventory do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The changes have no adverse effect on any safety related system and do not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of the proposed changes in inventory. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The results of the SBO event review have verified that the analysis criteria continue to be met. Systems will continue to function as designed and system performance criteria

continue to be met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the changes in CST inventory.

Proposed Auxiliary Feedwater System Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The LONF accident analyses have demonstrated that the TS required AFW [auxiliary feedwater] trains at the minimum assumed flow capability provide sufficient heat removal capacity to mitigate the LONF accident such that acceptance criteria are satisfied. Single failure criteria are still met, and no physical system changes have been made. Dose consequences have been evaluated for the power uprate and the results remain within the appropriate acceptance criteria. Therefore, the changes to the auxiliary feedwater system technical specifications do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The change has no adverse effect on any safety related system and does not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of these proposed changes to technical specifications. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The LONF analysis supporting the proposed changes to technical specifications meets the appropriate acceptance criteria. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the auxiliary feedwater system technical specification changes.

Proposed Editorial and Administrative Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The editorial and administrative changes do not affect the analysis performed in support of the stretch power uprate. Therefore, the changes do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The editorial and administrative changes do not affect the analysis performed in support of the stretch power uprate. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed editorial and administrative changes. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The editorial and administrative changes do not affect the analysis performed in support of the stretch power uprate. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the editorial changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW, Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 10, 2003.

Description of amendment request: The amendments would modify the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Technical Specifications (TSs) Table 3.3–1 "Condition and Setpoint" description for permissive P–7 to reflect the new location of pressure transmitters.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed change involve a significant increase in probability or consequences of an accident previously evaluated?

The proposed change to replace the words "impulse chamber" with "steam line input" in the descriptive text associated with the P–7 function of the Reactor Trip System does not involve any physical or design change to the P–7 function. The proposed change renames the turbine inlet pressure to reflect the change in turbine design and the new location where the pressure is sensed. Because the P–7 function is not affected by the proposed amendment request, the changes to the Salem TSs are effectively editorial in nature. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The intent of the proposed change is to revise the description of the P–7 permissive as a result of changes to the design of the turbine. The P–7 permissive function is based on a relationship between first stage turbine inlet pressure and rated thermal power (RTP). Although the pressure sensed at the new location will be slightly higher, the instrument and controls logic, and all design basis functions that rely on the P–7 function, will remain the same. Therefore, the proposed change does not create the possibility of a new or different kind of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

As previously stated, the proposed change is editorial in nature and maintains the design basis functions associated with the P–7 permissive interlock. This is accomplished because the turbine pressure input to the P–7 function will continue to exhibit a consistent and accurate relationship to RTP following plant modifications. Therefore, because there will be no changes to the input assumptions associated with Salem's accident analysis, the proposed change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 11, 2003.

Description of amendment request: The amendment would modify Surveillance Requirements and Bases regarding response time testing of the Engineered Safeguards System Actuation System (ESFAS) and the Reactor Trip System (RTS).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change to the Technical Specifications does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS and ESFAS instrumentation is being used; the time response allocations/modeling assumptions in the Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [safety analysis report]. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

The proposed change to remove the footnote from Unit 1 Surveillance Requirement 4.3.2.1.3 is an administrative change and does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not alter the performance of the pressure and differential pressure transmitters and switches used in the plant protection systems. All sensors will still have response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain sensors (assuring equipment operability) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the sensor response characteristic. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to remove the footnote from Unit 1 Surveillance Requirement 4.3.2.1.3 is an administrative change and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect sensor response time. Based on the above, it is concluded that the proposed license amendment does not result in a reduction in margin with respect to plant safety.

The proposed change to remove the footnote from Unit 1 Surveillance Requirement 4.3.2.1.3 is an administrative change and does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 31, 2003.

Description of amendment request: The proposed change would replace "Central Power and Light Company (CPL)" with "AEP Texas Central Company" throughout the Operating License of each unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed administrative license amendment only changes the name of one of the owners of STP in the Operating Licenses. This is not an initiator for accidents nor does this action affect the consequences of an accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed administrative license amendment only changes the name of one of the owners of STP in the Operating Licenses. This is not an initiator for accidents. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed administrative license amendment only changes the name of one of the owners of STP in the Operating Licenses. The proposed action does not affect margin of safety at all. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92 and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 30, 2003.

Description of amendment request: The amendment would modify several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs would have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that are currently not allowed by the TSs. The current SRs are not allowed to be performed in Modes 1 and 2. Several of the current SRs also cannot be performed in Modes 3 and 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design of plant equipment is not being modified by the proposed changes. In addition, the DGs [diesel generators] and their associated emergency loads are accident mitigating features. As such, testing of the DGs themselves is not associated with any potential accident-initiating mechanism. Therefore, there will be no significant impact on any accident probabilities by the approval of the requested changes.

The changes include an increase in the online time that a DG under test will be paralleled to the grid (for SRs 3.8.1.10 and

3.8.1.14). As such, the ability of the tested DG to respond to a design basis accident [(DBA)] could be adversely impacted by the proposed changes. However, the impacts are not considered significant based, in part, on the ability of the remaining DG to mitigate a DBA or provide safe shutdown. With regard to SR 3.8.1.10 and SR 3.8.1.14, experience shows that testing per these SRs typically does not perturb the electrical distribution system. In addition, operating experience and qualitative evaluation of the probability of the DG or bus loads being adversely affected concurrent with or due to a significant grid disturbance, while the DG is being tested, support the conclusion that the proposed changes do not involve any significant increase in the likelihood of a safety-related bus blackout or damage to plant loads.

The SR changes that are consistent with TSTF [Technical Specification Task Force]-283 have been approved by the NRC for submittal by licensees. The on-line tests allowed by the TSTF are only to be performed for the purpose of establishing OPERABILITY [of the DG being tested]. Performance of these SRs during restricted MODES will require an assessment to assure plant safety is maintained or enhanced.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The capability to synchronize a DG to the offsite source (via the associated plant bus) and test the DG in such a configuration is a design feature of the DGs, including the test mode override in response to a safety injection signal. Paralleling the DG for longer periods of time during plant operation may slightly increase the probability of incurring an adverse effect from the offsite source, but this increase in probability is judged to be still quite small and such a possibility is not a new or previously unrecognized consideration.

The proposed changes would not require any new or different accidents to be postulated since no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems that are potential accident initiators; nor does it have any significantly adverse impact on any accident mitigating systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design [safety] functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes do not directly affect these barriers, nor do they involve any significantly adverse impact on the DGs which serve to support these barriers in the event of an accident concurrent with a loss of offsite power. The proposed changes to the testing requirements for the plant DGs do not affect the OPERABILITY requirements for the DGs, as verification of such OPERABILITY will continue to be performed as required (except during different allowed MODES [of operation]). These changes have an insignificant impact on DG availability, as continued verification of OPERABILITY supports the capability of the DGs to perform their required [safety] function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Only one DG is to be tested at a time, so that the remaining DG will be available to safely shut down the plant if required. Consequently, performance of the fission product barriers will not be impacted by implementation of the proposed amendment.

In addition, the proposed changes involve no changes to [safety] setpoints or limits established or assumed by the accident analyses. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: May 1, 2003, as supplemented by letter dated May 2, 2003..

Brief description of amendment request: The proposed amendments would modify Technical Specification Surveillance Requirements to provide an alternative means of testing the Unit 1 main steam electromatic relief valves, including those that provide the automatic depressurization and the low set relief functions, and provide an alternative means for testing the Units 1 and 2 dual function Target Rock safety/relief valves.

Date of publication of individual notice in ***Federal Register:*** May 13, 2003 (68 FR 25645).

Expiration date of individual notice: May 27, 2003.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, (Fermi 1) Monroe County, Michigan

Date of amendment request: January 28, 2003 (Reference NRC–03–0011).

Brief description of amendment: This amendment revises the Fermi 1, Technical Specifications by removing the requirements for Water Intrusion alarms, associated surveillances, and liquid waste tank level check surveillance. The sections containing Reactor Building and Fuel and Repair Building drains descriptions are removed in their entirety, clarification is added for evolutions when tritium sampling is not required. This amendment also removes previously deleted items and re-numbers/letters remaining sections, and makes several editorial corrections.

Date of issuance: May 16, 2003.

Effective date: On the date of issuance of this amendment and must be fully implemented no later than 60-calendar days from the date of issuance.

Amendment No.: 20.

Facility Operating License No. DPR–9: Amendment revised the Technical Specifications by: (1) Deleting Sections A.1, 2, 4, 8, C.1, D, E.1, H.3.b, I.5, I.7b, I.9.d, which were previously deleted and the word "Deleted" used as a place marker to alleviate the need to renumber or re-letter the remaining sections. Also, the remaining sections were renumbered or re-lettered as appropriate. (2) Deleting Sections C.2 and E.2 which cover the Reactor Building and Fuel and Repair Building Drains. These requirements are no longer necessary in this phase of Fermi 1 decommissioning. (3) In Section F, the following words were added, "Monitoring or sampling for tritium will not be required if the sample results have determined that tritium is not present during a given evolution." This wording was added to clarify during which evolutions resulting in radioactive gaseous effluents the effluents would be monitored or sampled and analyzed for tritium. (4) Sections H.1 and H.2, which covered water intrusion monitoring system alarms, including surveillances, allowed out-of-service time, compensatory measures and alarm readouts for alarms associated with water intrusion, were deleted. (5) In Section H.3 the surveillance requirement for radiation for the sump pump serving the reactor building annulus will not be required once the pump is made inactive and the surveillance requirement for radiation of the steam cleaning room access plug is deleted. In Section H.4 the requirement for a monthly level check of the liquid waste tanks was deleted. (6) Table H–1, which only lists water intrusion alarms, was deleted. (7) Editorial changes included in this amendment are in Section I.2, the word "employes" was changed to "employees'; in Section I.2.b the word "He" was changed to "The Health Physicist'; in Section I.7 the word "his" was removed from the following sentence, "The Custodian may temporarily change a procedure by Written Order following his determination that the change does not constitute a significant increase in the hazards associated with the operation." In Section I.9.h the word "usual" will be changed to "unusual."

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18271). The NRC's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments: None received.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 23, 2002.

Brief description of amendment: The amendment deletes License Condition 2.C.(19) of the Operating License which pertains to historical actions that have been met. The amendment also deletes Section 2.F of the Operating License which requires reporting violations of the requirements in Section 2.C of the Operating License. The reporting requirements in Section 2.F are either adequately addressed by the requirements of 10 CFR 50.72 and 10 CFR 50.73, or are not needed because more restrictive requirements are contained in the specific License Condition.

In its May 23, 2003, application, the licensee also proposed to delete License Conditions 2.C.(20) and 2.C.(21) which pertain to historical actions that have been met. The Nuclear Regulatory Commission staff's evaluation of the proposed deletion of License Conditions 2.C.(20) and 2.C.(21) will be addressed under separate cover.

Date of issuance: May 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 155.

Facility Operating License No. NPF–43: Amendment revises the Operating License.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42817). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 13, 2002.

Brief description of amendment: The amendment revised selected radiological-related technical specifications of the Millstone Unit 1 Permanently Defueled Technical Specifications. These changes are a result of the revision to part 20 of title 10 of the Code of Federal Regulations.

Date of issuance: May 15, 2003.

Effective date: May 15, 2003, and shall be implemented within 120 days from the date of issuance.

Amendment No.: 112.

Facility Operating License No. DPR–21: The amendment revised the Permanently Defueled Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48215). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: May 13, 2002.

Brief description of amendments: The amendments revise the Millstone Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) changing selected MP2 and MP3 radiological-related TSs. These changes are due to the revision to part 20 of title 10 of the Code of Federal Regulations.

Date of issuance: May 15, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 276 and 215.

Facility Operating License Nos. DPR–65 and NPF–49: These amendments revised the TSs.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45562). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 17, 2003.

Brief description of amendments: The amendments revised the Technical Specifications Surveillance Requirement 3.10.1.9 to increase the loading requirements for the Standby Shutdown Facility Diesel Generator from ≥ 3000 kW to ≥ 3280 kW.

Date of Issuance: May 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 331, 331, and 332.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 1, 2003 (68 FR 15759). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 27, 2003.

Brief description of amendment: The amendment deletes Technical Specification 5.5.3, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system for the James A. FitzPatrick Nuclear Power Plant.

Date of issuance: May 16, 2003.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 278.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18276). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 12, 2002, as supplemented on April 3, 2003 and May 2, 2003.

Brief description of amendment: The amendment revises the Facility Operating License and the Technical Specifications (TSs) to increase the licensed core thermal power level to 3114.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3071.4 MWt. The power uprate is based on the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, "ECCS Evaluation Models," to Part 50 of Title 10 of the Code of Federal Regulations. Specifically, the reduced uncertainty is obtained by using a more accurate measurement of feedwater flow. In addition, changes were made to TS Sections 1.1, 2.1, 2.3, 3.1, 3.4, 6.9, and the applicable TS Bases to account for the change in power level.

Date of issuance: May 22, 2003.

Effective date: May 22, 2003.

Amendment No.: 237.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 00801). The April 3 and May 3, 2003, letters provided clarifying information that did not enlarge the scope of the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: November 22, 2002, as supplemented by letter dated March 13, 2003.

Brief description of amendment: The amendment allows for a one-time change to revise the steam generator in-service inspection frequency requirements in Technical Specification 4.4.5.3.a to allow a 40-month inspection interval after one inspection, rather than after two consecutive inspections, based on the results falling into the C–1 classification.

Date of issuance: May 28, 2003.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 247.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78520). The March 13, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 12, 2002.

Brief description of amendments: The amendments would add a new Surveillance Requirement to Technical Specification Section 3.7.5, "Auxillary Feedwater (AF) System," which requires operation of the diesel-driven AF pump on a monthly frequency (*i.e.,* once every 31 days) for greater than or equal to 15 minutes.

Date of issuance: May 22, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 132/127.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications 3.7.5.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7817). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 28, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments deleted TS 5.5.3, "Post Accident Sampling," and thereby eliminated the requirements to have and maintain the post accident sampling system for Peach Bottom Atomic Power Station, Units 2 and 3.

Date of issuance: May 22, 2003.

Effective date: As of the date of issuance, to be implemented within 180 days.

Amendments Nos.: 248 and 251.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2802). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: August 30, 2002 as supplemented by letters dated February 27, April 7, April 29, and May 2, 2003.

Brief description of amendments: The amendments revise the reactor trip system and engineered safety features actuation system surveillance requirements, increasing selected surveillance intervals for analog channels, logic cabinets, and reactor trip breakers. Additionally, the amendments revise the reactor trip system and engineered safety features actuation system surveillance requirements, increasing the completion time and bypass time for the reactor trip breakers.

Date of issuance: May 23, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 277 and 260.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63695). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 11, 2003.

Brief description of amendment: The amendment changes the operating license by adding a paragraph authorizing the licensee to revise the updated final safety analysis report by deleting the notation that the Nuclear Regulatory Commission does not endorse the reactor building crane as single-failure-proof.

Date of issuance: May 16, 2003.

Effective date: As of the date of issuance and shall be implemented no later than the update of the final safety analysis report to be submitted in accordance with 10 CFR 50.71(e).

Amendment No.: 251.

Facility Operating License No. DPR–49: The amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18278). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 10, 2002, as supplemented May 9, 2003.

Brief description of amendments: The amendments change the Sequoyah Nuclear Plant (SQN) Technical Specifications (TSs) by modifying the requirements applicable when actions or other requirements direct suspension of activities that involve a positive reactivity change for the SQN TSs. The proposed change will remove the requirement to not make positive reactivity changes during certain conditions. The changes will permit limited positive reactivity changes that are necessitated by plant operations. These changes will limit the amount of reactivity changes to those that will continue to assure appropriate reactivity limits are met, either shutdown margin or refueling boron concentration, as appropriate.

Date of issuance: May 22, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 285 and 274.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50961). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 2002, as supplemented February 28, 2003, March 14, 2003, and April 25, 2003.

Brief description of amendment: The Amendments revise the Technical Specification (TS) 3.7.1.3, "Condensate Storage Water," Limiting Condition for Operation by increasing the required minimum amount of stored water from 190,000 gallons to 240,000 gallons. This change is being made to support the replacement steam generator requirements.

Date of issuance: May 27, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 286 and 275.

Facility Operating License No. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5682). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: August 19, 2002.

Brief description of amendments: The amendment revised Technical Specification Section 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," to extend the interval between slave relay tests.

Date of issuance: May 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–152 ; Unit 2–140.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61685). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of June, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–14277 Filed 6–9–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. MC2003–2; Order No. 1373]

Experimental Parcel Return Services

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: This document provides notice that the Postal Service has filed a request with the Commission seeking an expedited decision approving a two-year experiment testing bulk parcel return services. It briefly describes the proposal, which focuses primarily on the customer-to-merchant segment of retail transactions. The notice also addresses related terms and conditions, proposed rates, and eligibility for participation in the experiment. It identifies conference dates and deadlines for certain procedural steps in the initial stages of this case.

DATES: 1. June 18, 2003: notices of intervention, requests for a hearing, and comments on experimental status.

2. June 24, 2003: (optional) comments on discovery-related deadlines.

3. June 25, 2003: prehearing conference (2 p.m.).

4. June 27, 2003: responses to conditional motion for waiver of certain filing requirements.

ADDRESSES: Submit documents electronically via the Commission's Filing Online system, which can be accessed at *http://www.prc.gov.* Settlement and prehearing conferences will be held in the Commission's hearing room, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION: On May 28, 2003, the Postal Service filed a request seeking a recommended decision approving an experimental change in the Domestic Mail Classification Schedule (DMCS) to establish rate categories, including rates and fees, for certain parcels and bound printed matter that are returns from customers to merchants.[1] The request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

In contemporaneous filings, the Postal Service requests expedited consideration of its proposal, including establishment of settlement procedures,[3] and a conditional motion for waiver of the filing requirements.[4] The Postal Service's request for expedition is in addition to that generally available under the Commission's experimental rules [39 CFR 3001.67–3001.67d]. The request, accompanying testimony of witnesses Gullo (USPS–T–1), Eggleston (USPS–T–2), Kiefer (USPS–T–3), and Wittnebel (USPS–T–4), and other related material are available for inspection in the Commission's docket room during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. Proposed Parcel Return Services

The Postal Service proposes an experimental bulk parcel return service applicable to merchandise returned as either Parcel Post or Bound Printed Matter (BPM) mail. Collectively, the experimental changes are referred to as Parcel Return Services, comprised of Parcel Select Return Service (PSRS) and Bound Printed Matter Return Service (BPMRS). Witness Kiefer sponsors the proposed rates and classifications. *See* USPS–T–3. The proposed rates are based on workshare savings for returned parcels retrieved in bulk by shippers (or their agents) at designated delivery units or bulk mail centers.

PSRS adds two rate categories to the Parcel Post subclass, Parcel Select Return Delivery Unit (RDU) and Parcel Select Return Bulk Mail Center (RBMC). The proposed RDU rate for mail retrieved in bulk at delivery units is $2.00 per parcel. The proposed RBMC rates for parcels retrieved in bulk at the first BMC they reach range between $0.86 and $1.51 below the non-workshared rates for regular-sized parcels.[5] *Id.* at 2.

BPMRS adds one rate category to the BPM subclass, Bound Printed Matter Bulk Mail Center (RBMC). Similar to Parcel Select Return Service, the RBMC rate is applicable to BPM parcels retrieved in bulk at the first BMC they reach. The proposed rates are $0.24 below the non-workshared BPM rates. *Id.*; see also Request at 2.[6]

Witness Kiefer's proposed rates are based on cost data supplied by witness Eggleston. *See* USPS–T–2. The Postal Service indicates that the cost avoidance measures underlying its proposed rates are estimated using the same cost base supporting the Commission rate recommendations in Docket No. R2001–1. In addition, the Postal Service states that the proposed experiment will not materially affect its overall revenues. Request at 2–3.

In support of its proposal, the Postal Service also submits the testimony of witness Gullo (USPS–T–1), who describes the proposed Parcel Return Services products, and witness Wittnebel, who discusses, from a mailer's perspective, the processing of returns and the benefits associated with the experiment (USPS–T–4).

Experimental designation. By designating its proposal as experimental, the Postal Service seeks consideration of its Request under rules 67–67d. The Postal Service suggests that these rules are appropriate as they contemplate review of proposed experimental classifications in the absence of historical data that normally underlie requests for permanent classification changes. While acknowledging that it lacks data about the potential response to the experiment, the Postal Service states that it intends to gather more complete data during the proposed term of the experiment. It says this effort may support a request for a permanent classification. *Id.* at 3–4. The Service proposes that the experimental classification be in effect for two years, but also seeks approval of a provision that would allow for a brief extension if permanent classification authority is sought while the experiment is pending. The Postal Service proposes to limit the number of participants to 20 in the first year of the experiment, enlarging it by 10 in the second year. USPS–T–1 at 16.

The Service says the expedition allowed under the experimental rules is appropriate in the interest of putting the proposed services into effect in time for the 2003 holiday mailing season. Request at 5.

II. Conditional Request for Waiver of Certain Filing Requirements

The Postal Service avers that its filing complies with applicable Commission filing requirements, but, as a precautionary alternative, seeks waiver of various filing requirements should the Commission conclude otherwise.[7] In support of its request, the Postal Service says its compliance statement (attachment F to the request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent materials from docket no. R2001–1, the most recent omnibus rate case.[8] It states that incorporation satisfies the filing requirements pertaining to classes of mail and special services. In addition, the Postal Service contends that the experimental parcel return services will not materially alter the rates, fees and classifications established in docket No. R2001–1. It concludes that its proposal will have only a limited impact on overall postal costs, volumes, and revenues. *Id.* at 1. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in docket No. R2001–1. *Id.* at 2.

Notwithstanding its principal position, the Postal Service recognizes that the Commission may find that it has failed to comply with the filing requirements. Accordingly, the Postal Service requests a waiver of certain filing requirements if the Commission concludes that the materials incorporated from the omnibus case are not sufficient to satisfy those requirements. *Id.* at 4. Responses to the Postal Service's conditional motion are due on or before June 27, 2003.

III. The Postal Service Requests Expedition, Suggesting Several Specific Procedures, Including Settlement Procedures

In support of its request for expedition beyond that contemplated by the rules governing experimental classifications, the Postal Service asserts that the proposed classification change is straightforward, and of limited scope and duration. It also states that the proposed parcel return services would have an insignificant effect on overall volumes, revenues, and costs. Further, it states that, based on discussions with industry representatives, the proposal has widespread support and should have no significant adverse impact on competitors. The Postal Service believes there is a distinct possibility for settlement.[9]

In lieu of proposing a specific schedule, the Postal Service identifies four procedures the Commission could employ to expedite the proceeding. These include setting a relatively short intervention period and requiring participants to identify, in their notices of intervention, whether they intend to seek a hearing and to identify any genuine issues of material fact that may warrant such a hearing. In addition, the Postal Service requests that a settlement conference be scheduled as quickly as possible following the deadline for intervention. Finally, it suggests that the time allotted for discovery, if found to be necessary, be abbreviated and limited to matters related directly to its proposal. *Id.* at 2–3.

IV. Commission Ruling

Proceeding under the experimental rules. The Postal Service's request was filed pursuant to the Commission's rules 67–67d involving experimental classification changes. Formal status as an experiment under these rules is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of the experimental designation and application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by June 18, 2003. *See* rule 67(c).

Postal Service's request for expedition. The Postal Service requests that the Commission expedite this proceeding, advancing several reasons to support its request. First, the Postal Service states that the proposal is straightforward and has a limited scope and duration, as explained in the testimony of witness Gullo and in its Request. Further, the Postal Service contends that the proposed changes would not significantly effect its overall revenues, volumes, or costs. Finally, the Postal Service states that industry representatives support the proposal, concluding that it should have no adverse effect on competitors.[10]

To expedite the proceeding, the Postal Service suggests several procedures for the Commission's consideration, including establishing a relatively short intervention period, requiring the prospective participants to request a hearing and identify any issues of material fact in their notices of intervention.[11] In addition, the Postal Service requests that a settlement conference be convened at an early date, and further that the time allotted for discovery, if necessary, be abbreviated.[12]

The reasons offered by the Postal Service in support of expedition are essentially the same as advanced in prior requests.[13] This undercuts the claim for expedition since there is nothing to distinguish this proceeding from any other. Moreover, it gives the appearance that such requests have become routine. In any event, the reasons advanced to accelerate this proceeding are not particularly compelling.

It would appear to be axiomatic that any proposed experiment would have the characteristics that the Postal Service offers to support an expedited schedule. For example, presumably all experimental changes would have a limited scope and duration, be sufficiently explained by supporting testimony, and be supported by industry representatives. Even taking these as a given, they fail to warrant accelerating this proceeding in the manner suggested by the Postal Service.

The Postal Service requests a relatively short intervention period. The Postal Service does not suggest a

---

[1] Request of the United States Postal Service for a Recommended Decision on Experimental Parcel Return Services, Docket No. MC2003–2, May 28, 2003 (Request).

[2] Attachment A contains the proposed classification schedule provisions; attachment B sets forth the proposed rate and fee schedules; attachment C contains the certified financial statements for the years ending September 30, 2001 and September 30, 2002; attachment D is the certification required by Commission rule 54(p); attachment E is an index of testimonies; and attachment F is the statement addressing compliance with various filing requirements.

[3] United States Postal Service Request for Expedition and Establishment of Settlement Procedures, May 28, 2003 (Request for Expedition).

[4] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, May 28, 2003 (Conditional Motion).

[5] Nonmachinable RBMC Parcel Post mail is subject to nonmachinable surcharges. See proposed DMCS 521.7.

[6] BPM mailers are eligible for RDU service and rates if they so choose.

[7] The Request (at 5) limits the waiver request to rules 54 and 64. While the Conditional Motion also references rule 67 (at 4), the relief requested is limited to rules 54 and 64. Conditional Motion at 5, n.4.

[8] Conditional Motion at 1 and 3.

[9] Request for Expedition at 1–2.

[10] Request for Expedition at 1–2.

[11] *Id.* at 2–3.

[12] *Id.* at 3.

[13] Compare United States Postal Service Request for Expedition and Establishment of Settlement Procedures, Docket No. MC2002–3 September 26, 2002; and Motion of the United States Postal Service for Expedition, and Waiver of Certain Provisions of Rule 161 and Certain Provisions of 64(h), Docket No. MC2000–1, September 27, 2000.

specific deadline, creating some uncertainty as to what might satisfy its request since the Commission's rules do not specify an intervention deadline. Deadlines for interventions in the last three proceedings under the experimental rules were 22 days (docket no. MC2002–3), 28 days (docket no. MC2002–2), and 20 days (docket no. MC2001–2).[14] In any event, it would appear that the request is designed to compel potential participants to evaluate the merits of the proposal in an even shorter time. Under the circumstances, that result would be inappropriate.

By statute, the Commission is required "to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties."[15] Accordingly, the Commission will conduct this proceeding with dispatch. Moreover, assuming this case is considered under the experimental rules, nothing in those rules precludes an adoption of a recommended decision in advance of the 150-day deadline. See rule 67d.

The Postal Service indicates it wishes to implement this program in time for the 2003 holiday mailing season, suggesting an early October effective date would be necessary.[16] This is a reasonable goal, but the Service does not provide any explanation of when a recommendation would have to be issued to enable the Service to achieve that goal. The Postal Service controls its own calendar. It is the Commission's understanding that this proposal has been under development for some time, perhaps 12 months or more.

The due date for notices of intervention is June 18, 2003. Any person wishing to intervene must file a notice electronically via the Commission's Filing Online system, in conformance with the Commission's rules 9 through 12. See 39 CFR 3001.9–3001.12. Notices should indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a.

Turning to the balance of the Postal Service's suggestions, participants should indicate in their notices of intervention whether they request a hearing and, if so, they should identify all issues of material fact that may warrant such a hearing.[17] Given the due date for interventions established by this order, prospective intervenors will have sufficient time to review the Postal Service's proposal and formulate a position on whether or not to request a hearing. No decision has been made at this point on whether a hearing will be held in this case.

Settlements are to be encouraged. Given the Postal Service's representations that the proposal is widely supported and should not adversely affect competitors or other mailers, the Commission will authorize settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, Postal Service counsel shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on June 23, 24 or 25, 2003, at 10:00 a.m. in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's experimental status or on the need for a hearing.

Finally, under the Commission's rules, discovery is permissible upon intervention. The Postal Service suggests that time limits for discovery be abbreviated without suggesting specific time limits. At this stage of the proceeding, the Commission is unable to determine whether and to what extent, if any, discovery may ensue. Nonetheless, to facilitate resolution of this proceeding, participants desiring to engage in any discovery are encouraged to submit it promptly and to be prepared to discuss the need for additional discovery at the prehearing conference. Postal Service's responses will be due within 10 days after the filing of the discovery. Objections, if any, should be filed within 7 days of the filing of the discovery. Motions to compel, if any, should be filed within 7 days of the filing of the relevant objection.[18]

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Prehearing conference. A prehearing conference will be held June 25, 2003, at 2 p.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

Ordering Paragraphs

It is ordered:

1. The Commission establishes docket no. MC2003–2, experimental parcel return services, to consider the Postal Service request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is June 18, 2003.
4. Notices of intervention shall indicate whether the participant seeks a hearing and, if so, identify with particularity any genuine issues of material fact that may warrant a hearing.
5. Responses to the Postal Service's conditional motion for waiver of certain filing requirements are due on or before June 27, 2003.
6. The United States Postal Service's request for expedition and establishment of settlement procedures is denied, in part, and granted, in part, as set forth in the body of this order.
7. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.
8. A prehearing conference will be held June 25, 2003 at 2:00 p.m. in the Commission's hearing room.
9. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
10. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Issued June 3, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–14483 Filed 6–9–03; 8:45 am]

BILLING CODE 7710–FW–P

[14] See PRC Order No. 1347, October 2, 2002, PRC Order No. 1346, September 24, 2002, and PRC Order No. 1323, September 25, 2001, respectively.

[15] 39 U.S.C. 3624(b); *see also* id. at 3624(a) ("The Postal Rate Commission shall promptly consider a request made under section 3622 or 3623 of this title, * * *.")

[16] Request at 4–5; Request for Expedition at 2.

[17] Notices of intervention not addressing these issues will be deemed not to have requested a hearing.

[18] Participants may, if desired, file comments concerning these deadlines. Such comments should be provided on or before June 24, 2003.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26067; 812–12792]

AB Funds Trust, et al.; Notice of Application

June 4, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end investment companies to participate in a joint lending and borrowing facility.

Applicants: AB Funds Trust (the "Trust") and SBC Financial Services, Inc. ("SBC Financial").

Filing Dates: The application was filed on March 4, 2002, and amended on June 4, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 30, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Donald W. Smith, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Todd Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company and is organized as a Delaware business trust. The Trust is composed of thirteen series; each series has separate investment objectives, policies, and assets (the "Funds").[1] SBC Financial, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each Fund. An existing Commission order permits the non-money market Funds to invest uninvested cash balances in certain money market Funds that comply with rule 2a–7 under the Act ("Money Market Funds").[2]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed.

3. If the Funds were to borrow money from a bank, under their current credit arrangement the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the bank would earn for serving as a middleman between a borrower and a lender. The borrowing Funds also pay commitment and facility fees to the bank.

4. Applicants request an order that would permit the Funds to enter into master interfund lending agreements ("Interfund Lending Agreements") with each other that would permit the Funds to lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants state that the proposed credit facility would reduce potential borrowing Funds' costs and enhance lending Funds' ability to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to continue the existing lines of credit or establish new lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide borrowing Funds with significant savings when the cash position of the Funds is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption requests normally are satisfied immediately. The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Under such circumstances, the Fund could (i) fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or (ii) sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would give the Funds access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a Money Market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any loan made pursuant to the proposed credit facility (the "Interfund Loan Rate") would be determined daily

[1] Applicants request that the relief also apply to any future series of the Trust and to any other registered open-end management investment company or series thereof that is advised by SBC Financial or any person controlling, controlled by, or under common control with SBC Financial ("Future Funds," included in the term "Funds"). All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] AB Funds Trust, ICA Rel. Nos. 24999 (June 7, 2001) (notice) and 25054 (June 29, 2001) (order).

and would be the average of (i) the "Repo Rate" and (ii) the "Bank Loan Rate," both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investments in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by SBC Financial according to a formula established by each Fund's board of trustees ("Board"), intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) which rate would vary so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Fund's Board. The Board of each Fund periodically would review the continuing appropriateness of reliance on the publicly available rate used to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. The credit facility would be administered by staff members of SBC Financial who are not portfolio mangers (the "Administrative Staff"). Under the credit facility, the portfolio managers for each participating Fund, or the staff of SBC Financial responsible for coordinating the portfolio managers and overseeing their management of each Fund, (who are not the Administrative Staff) could provide standing instructions to participate in the credit facility daily as a borrower or lender. On each business day, the Administrative Staff would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Fund's custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Administrative Staff would allocate loans among borrowing Funds without any further communication from portfolio managers. After the Administrative Staff has allocated cash for Interfund Loans, the Administrative Staff will invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds.

10. The Administrative Staff would allocate borrowing demand and cash available for lending among the Funds on what the Administrative Staff believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as (i) the time of filing requests to participate, (ii) minimum loan lot sizes, and (iii) the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. SBC Financial would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by the Board, including a majority of the Board members who are not "interested persons" of the Funds as that term is defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. SBC Financial would administer the credit facility as part of its duties under its existing advisory contract with each Fund and would receive no additional fee as compensation for its services. SBC Financial may collect standard pricing and record keeping, bookkeeping, and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to SBC Financial in connection with an Interfund Loan would be no higher than those associated with comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (i) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (ii) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (iii) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from sections 12(d)(1)(A) and (B) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having SBC Financial as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment companies involved, as recited in their registration statements, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (i) SBC Financial would administer the program as a disinterested fiduciary in the best interests of the Funds' shareholders; (ii) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (iii) the Interfund Loans would not involve a greater risk than such other investments; (iv) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (v) a borrowing Fund would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions that applicants propose would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company, except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders. SBC Financial would administer the credit facility under its existing advisory agreements with the Funds, and would receive no additional compensation for its services. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, when acting as principal, from effecting any joint transaction unless the transaction is approved by the Commission. Rule 17d-1(b) under the Act provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from, or less advantageous than, that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by, and unfair advantage to, investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the proposed credit facility will be on terms no different from, or less advantageous than, that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, SBC Financial will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (i) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any Money Market Fund in which the lending Fund could otherwise invest and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its

total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

11. The Administrative Staff will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manger of the Funds. The Administrative Staff will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Administrative Staff will invest any amount remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

12. SBC Financial will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. The Fund's Board, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, SBC Financial will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds.[3] The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Money Market Fund in which the lending Fund could otherwise invest and such other information presented to the Fund's Board in connection with the review required by conditions 12 and 13.

16. SBC Financial will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, SBC Financial will report on the operations of the credit facility at the quarterly Board meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates SBC Financial's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and if applicable, the yield of the Money Market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and, (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, a Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

18. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14562 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[3] If the dispute involves Fund with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27684]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 4, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 27, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, *et al.* (70–9755)

Northeast Utilities ("NU"), located at 174 Brush Hill Avenue, West Springfield, MA 01090–0010, a registered holding company under the Act, Northeast Utilities Service Company ("NUSCO"), its wholly-owned service company subsidiary, located at 107 Selden Street, Berlin, CT 06307, and NU's wholly-owned public-utility subsidiaries, Western Massachusetts Electric Company ("WMECO"), located at 174 Brush Hill Avenue, West Springfield, MA 01090–0010, The Connecticut Light and Power Company ("CL&P"), located at 107 Selden Street, Berlin, CT 06307, Holyoke Water Power Company ("HWP"), located at One Canal Street, Holyoke, MA 01040, Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("NAEC"), both located at 780 North Commercial Street, Manchester, NH 03101, Northeast Nuclear Energy Company ("NNECO") and NU's wholly-owned nonutility subsidiaries, NU Enterprises, Inc. ("NUEI"), a wholly-owned nonutility holding company subsidiary of NU and its direct and indirect wholly-owned subsidiaries, Northeast Generation Company ("NGC"), Northeast Generation Services Company ("NGS"), ES Boulos Company ("Boulos"), Woods Electrical Company, Inc. ("Woods"), Woods Network Services, Inc. ("Woods Network"), Select Energy, Inc. ("Select Energy"), Select Energy New York, Inc. ("SENY"), Mode 1 Communications, Inc. ("Mode 1"); Yankee Energy System, Inc. ("YES"), a wholly-owned holding company subsidiary exempt under 3(a)(1) of the Act by rule 2 and its wholly-owned subsidiaries, Yankee Gas Services Company ("Yankee Gas"), a gas public-utility, Yankee Energy Financial Services Company ("Yankee Financial"), Yankee Energy Services Company ("YESCO") and NorConn Properties, Inc. ("NorConn"); The Rocky River Realty Company ("RR") and The Quinnehtuk Company ("Quinnehtuk"), all located at 107 Selden Street, Berlin, CT 06307; Select Energy Services, Inc., (formerly HEC Inc.) ("SESI"), located at 24 Prime Parkway, Natick, MA 01760 (collectively, the "Applicants"), have filed a post-effective amendment to their application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 43, 53 and 54.

I. Background

NU has seven public-utility company subsidiaries, CL&P, WMECO, PSNH, Yankee Gas, HWP, NAEC and NNECO. CL&P, WMECO and PSNH engage, among other things, in the sale of electric energy at retail and Yankee Gas engages in the sale of natural gas at retail. Prior to the sale by the NU system of all of its nuclear assets, NAEC and NNECO were an owner and a manager, respectively, of various nuclear generating assets. As noted above, YES is an intrastate exempt holding company subsidiary of NU. CL&P, WMECO, PSNH, YES and Yankee Gas are referred to collectively below as the "Utility Borrowers."

Applicant nonutility subsidiaries of NU are: NUSCO, the NU system service company; NGC, an exempt wholesale generator ("EWG"); NUEI, a nonutility holding company; RR, Quinnehtuk and NorConn, each a real estate company; SESI, an energy services company; Select, SENY, NGS, Woods, Boulos and YESCO, each a rule 58 company; Mode 1 and Woods Network, each an exempt telecommunications company under section 34 of the Act ("ETC"); and Yankee Financial, a financial services company. The Applicants, with the exception of NUSCO, are also referred to as "Pool Participants" and NU, YES, Mode 1, Woods Network and NGC are referred to as "Non-borrowing Pool Participants."

By order dated December 28, 2000 (the "Prior Order"), the Commission authorized NU, CL&P, WMECO, PSNH, YES and Yankee Gas, among others, to enter into short-term unsecured debt within specified limits and parameters through June 30, 2003.[1] In addition, the Prior Order authorized all of the Applicants, except NUSCO, to enter into short-term debt transactions with NU and to extend credit to, and acquire promissory notes from, one another through their participation in the NU Money Pool. The Prior Order authorized NUSCO to administer the NU Money Pool.

Applicants now seek the following authorizations:

1. continuation through June 30, 2006 (the "Authorization Period") for NU and the Utility Borrowers to issue short-term unsecured debt to unaffiliated third parties;

2. amendment of the NU, utility and nonutility subsidiary dollar limitations imposed by the Prior Order upon the short-term borrowings of the respective company, whether from unaffiliated third parties or the NU Money Pool;

[1] Holding Co. Act Release No. 27328.

3. authorization through the Authorization Period for the Utility Borrowers to issue short-term secured debt, pending completion of the record;

4. authorization for NU and the Utility Borrowers to enter into interest rate hedging transactions ("Interest Rate Hedges") related to their short-term debt transactions;

5. continuation through June 30, 2004 of the NU Money Pool, with NUSCO as the administrator;

6. participation in the NU Money Pool by those companies authorized to participate by the requested order and previous orders, subject to (a) amendment of the NU Money Pool Agreement to provide for utility subsidiaries' borrowing priority over Nonutility Pool Participants and (b) the Applicants' submission to the Commission by December 31, 2003 of a feasibility study concerning the creation of a separate money pool for nonutility subsidiaries of NU;

7. participation of Boulos, Woods and SENY, each a nonutility subsidiary, in the NU Money Pool both as lenders and borrowers;

8. participation of Woods Network in the NU Money Pool solely as a lender; and

9. addition of any additional participants to the Money Pool.

II. The Proposed External Financings

A. General Terms and Conditions

Financings with third parties by NU and the Utility Borrowers will be subject to the following conditions ("Financing Parameters"): (i) the effective cost of capital on short-term debt financings will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality, provided that in no event will the effective cost of capital on short-term debt borrowings exceed 500 basis points over the comparable term London Interbank Offered Rate, and (ii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities requested will not exceed the greater of 5% of the principal or total amount of the securities being issued.

B. Use of Proceeds

The proceeds from the short-term debt of NU and the Utility Borrowers authorized by the Commission pursuant to this Application will be used for (i) general corporate purposes, including investments by and capital expenditures of NU and its subsidiaries, including, without limitation, the funding of future investments in EWGs, foreign utility companies (each to the extent permitted under the Act or Commission order), rule 58 subsidiaries and ETCs, (ii) the repayment, redemption, refunding or purchase by NU or any subsidiary of any of its own securities from non-affiliates pursuant to rule 42, and (iii) financing working capital requirements of NU and its subsidiaries.

C. Short-Term Debt Limits

The Applicants seek external short-term debt financing authorization for NU and the five Utility Borrowers, subject to aggregate limits described below. The external financing authorization for HWP, NAEC and NNECO expires on June 30, 2003 and these utility subsidiaries' authorization will be limited to borrowings through the NU Money Pool, also described below. The short-term debt of NU, CL&P, WMECO, PSNH, HWP, NAEC, NNECO, YES and Yankee Gas outstanding at any one time, whether through external financings (which authorization expires on June 30, 2006) or borrowings through the NU Money Pool (which authorization expires on June 30, 2004), pursuant to the authority requested in this Application, will not exceed the following:

Company	Aggregate limits (millions)
NU	$400
CL&P	[2] 375
WMECO	200
PSNH	[3] 100
HWP	5
NAEC	10
NNECO	10
YES	50
Yankee Gas	100

[2] CL&P's aggregate unsecured debt is also restricted by charter provisions relating to its preferred stock. CL&P is authorized by its preferred stockholders, through March 31, 2004, to issue securities representing unsecured indebtedness to a maximum of 20% of its capitalization. Based on its capitalization as of December 31, 2002, CL&P is limited to $480 million of unsecured indebtedness, which exceeds the authorization sought here.

[3] PSNH aggregate short-term debt is restricted by New Hampshire law to an amount equal to 10% of its net fixed plant without further New Hampshire Public Utilities Commission ("NHPUC") approval. Any short-term debt of PSNH in excess of 10% of net fixed plant would require NHPUC approval and would be exempt from this Commission's jurisdiction pursuant to rule 52(a). PSNH currently has approval from NHPUC to issue up to $100 million in short-term debt, which is in excess of 10% of net fixed plant debt limit, for general corporate purposes. NHPUC Order 23,841, November 9, 2001. However, in the event the NHPUC order is revoked, lapses or its rescinded or issuance of short-term debt in an amount to $100 million is not exempt pursuant to rule 52, PSNH wishes to have the flexibility to issue such debt pursuant to this Commission's authorization.

With respect to the Utility Borrowers, as described below, these limitations would include both unsecured and secured debt amounts.

D. Northeast Utilities Short-Term Debt

NU requests authority to issue and sell, through the Authorization Period, short-term unsecured debt in an aggregate principal amount at any time outstanding not to exceed $400 million. The short-term unsecured debt of NU will take a variety of forms, including commercial paper and notes to banks or other financial institutions, and will be on terms that are generally available to borrowers with comparable credit ratings. All NU short-term unsecured debt will have maturities of less than one year from the date of issuance.

Subject to its short-term debt limit and the Financing Parameters, NU intends to renew and extend outstanding short-term debt as it matures, to refund such short-term debt with other similar short-term debt, to repay such short-term debt or to increase the amount of its short-term debt from time to time.

E. Utility Borrowers' Short-Term Unsecured and Secured Debt

The Utility Borrowers request authority to issue and sell, through the Authorization Period, short-term unsecured debt, on terms that are generally available to borrowers with comparable credit ratings, subject to the applicable debt limits, Financing Parameters and the same terms as are applicable to NU, described above. In addition, the Utility Borrowers request the Commission to reserve jurisdiction, through the Authorization Period, over their request to issue and sell short-term secured debt, on terms that are generally available to borrowers with comparable credit ratings, pending their completion of the record. In all other respects the proposed short-term secured debt would be subject to the applicable debt limits, Financing Parameters and, to the extent appropriate, the same terms as are applicable to NU.

Subject to the applicable short-term debt limits and the Financing Parameters, discussed above, as in the case of NU, the Utility Borrowers intend to renew and extend outstanding short-term debt as it matures, to refund such short-term debt with other similar short-term debt, to repay such short-term debt or to increase the amount of their short-term debt from time to time.

III. Authorization to Engage in Interest Rate Hedge Transactions

NU and the Utility Borrowers also request authorization to enter into interest rate hedging transactions with respect to its outstanding indebtedness ("Interest Rate Hedges"), subject to the limitations and restrictions below, in order to reduce or manage the effective interest rate cost. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or those of any credit support providers guaranteeing the Approved Counterparties, as published by Standard & Poor's Rating Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investor Service or Fitch IBCA, or through on-exchange transactions.

Interest Rate Hedges will involve the use of financial instruments commonly used in the capital markets, such as options, interest rate swaps, locks, caps, collars, floors, exchange-traded futures and options, and other similar appropriate instruments. The transactions would be for fixed periods and stated notional amounts as are generally accepted as prudent in the capital markets. In no case will the notional principal amount of any Interest Rate Hedge exceed that of the underlying debt instrument. Neither NU nor the Utility Borrowers will engage in speculative transactions within the meaning of such term in Statement of Financial Accounting Standard 133, as amended. Transaction fees, commissions and other amounts payable to brokers in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

IV. The NU Money Pool

The Applicants request authorization to continue the NU Money Pool through June 30, 2004, with NUSCO as the NU Money Pool administrator. The Applicants also request continued participation in the NU Money Pool by those companies authorized to participate, subject to (a) amendment of the NU Money Pool Agreement to provide for utility subsidiaries' borrowing priority over Nonutility Pool Participants and (b) the Applicants' submission to the Commission by December 31, 2003 of a feasibility study concerning the creation of a separate money pool for nonutility subsidiaries of NU.

The Pool Participants, other than the Non-borrowing Pool Participants, request authority to continue to enter into, from time to time, short-term unsecured debt transactions through the NU Money Pool, to contribute surplus funds to the NU Money Pool and to lend to (and acquire promissory notes from) one another through the NU Money Pool. The Non-borrowing Pool Participants also request authority solely to contribute surplus funds and to lend to the Pool Participants through the NU Money Pool.

In addition, the Applicants seek authorization for Boulos, Woods and SENY to participate in the Money Pool, as both borrowers and lenders, and for Woods Network to participate in the NU Money Pool, solely as a lender, through June 30, 2004.

Finally, the Nonutility Pool Participants request authorization to borrow from the NU Money Pool to the following limits: Quinnehtuk to $10 million, NUEI to $100 million, NGS to $25 million, Select to $200 million, RR to $30 million, Yankee Financial to $10 million, NorConn to $10 million, YESCO to $10 million, SESI (formerly HEC, Inc.) to $35 million, Boulos to $10 million, Woods to $10 million and SENY to $10 million.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14563 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47956; File No. SR–Amex–2003–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Adoption of a Per Contract Licensing Fee for Transactions in Options on iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), and iShares Lehman 20+ Year Treasury Bond Fund (TLT)

May 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 22, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend its options fee schedule by adopting a per contract license fee in connection with specialist and registered options traders ("ROTs") transactions in options on iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), and iShares Lehman 20+ Year Treasury Bond Fund (TLT) (collectively, the "iShares Lehman Treasury Funds").

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds ("ETFs"). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), and the iShares Goldman Sachs Corporate Bond Fund (LQD); (2) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (3) $0.05 per contract side for options on the S&P 100 iShares (OEF).[3]

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of options on the iShares Lehman Treasury Funds. The proposed licensing fee will be collected on every option transaction of the iShares Lehman Treasury Funds in which the specialist or ROT is a party. The Exchange proposes to charge $0.10 per contract side for options on the iShares Lehman Treasury Funds. Accordingly, Amex believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated the iShares Lehman Treasury Fund options and the ROTs trading such products is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

Amex notes that in recent years it has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and to reduce Exchange subsidies of such services.[4] Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the iShares Lehman Treasury Funds. In addition, Amex believes that this fee will help allocate, to those specialists and ROTs transacting in options on the iShares Lehman Treasury Funds, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.[5]

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[6] in general, and with section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of April 22, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–29 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14567 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001), 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003) and 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003).

[4] *See* Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002), and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[5] The Exchange represents that it will not impose the proposed license fee on any transaction if the non-reimbursed licensing or other third-party fee is recouped by the Exchange via another Exchange fee or assessment. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on May 22, 2003.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47971; File No. SR–CHX–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Decrease Certain Technology and Connectivity Fees

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") to decrease certain technology and connectivity fees charged to the Exchange's on-floor member firms, and to waive those fees for the month of June 2003. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by decreasing the charges assessed to on-floor member firms for the computer equipment and connectivity that the Exchange provides, and by waiving the fees for this technology for the month of June 2003.

The Exchange made changes to this section of the Schedule in February 2003, decreasing many of the fees and instituting new connectivity fees.[4] The new charges set forth in the instant proposed rule change reflect a further decrease in the amounts charged for this equipment and connectivity to better reflect the costs to the Exchange of providing both this technology and the services associated with it, and to ensure that these fees do not have an unintended financial impact on the Exchange's member firms. The Exchange also seeks to waive these otherwise-applicable fees for the month of June 2003, to counteract, to some extent, the impact of the initially higher fees instituted in February 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2003–14, and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14564 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 47369 (February 14, 2003), 68 FR 8788 (February 25, 2003)(SR–CHX–2003–01).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47970; File No. SR–NASD–2003–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

June 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through December 1, 2003, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM–3350").[5] Without such an extension this standard would terminate on May 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[6] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[7] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on May 31, 2003.[8] Nasdaq now proposes to extend, through December 1, 2003, that pilot program. Extension until December 1st, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[9] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect "legal" short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–88 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14565 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In its filing, Nasdaq inadvertently referred to text changes in subparagraph (b)(1) of IM–3350 instead of subparagraph (b)(2). Recent changes to NASD Rule 3350 and IM–3350 renumbered subparagraph (b)(1) as subparagraph (b)(2). *See* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002). Telephone call between Gregory J. Dumark, Division of Market Regulation, Commission, and Thomas P. Moran, Office of General Counsel, Nasdaq.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[8] Securities Exchange Act Release No. 47309 (February 4, 2003), 68 FR 6981 (February 11, 2003).

[9] *See* SR–NASD 2002–09.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47965; File No. SR–NYSE–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Program To Disengage NYSE Direct+® in Five Actively Traded Stocks

June 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to extend its pilot to disengage NYSE Direct+[6] in five actively-traded stocks to assess the impact of autoquoting[7] of bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.[8] NYSE also proposes to amend the language in NYSE Rule 1000, which originally restricted the pilot to a one-week period. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are bracketed.

* * * * *

Rule 1000

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i)–(vi) No change.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.

[One-week] *During a [one-week]* pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the *time* [week] the pilot will run.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–NYSE–2003–10, the Commission approved the Exchange's proposed rule change to conduct a one-week pilot to disengage NYSE Direct+ in five actively-traded stocks.[9] The purpose of the pilot was to assess the impact of autoquoting bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.[10] According to the NYSE, the pilot was initially scheduled to run from May 21, 2003 until May 28, 2003, and NYSE LiquidityQuote was initially scheduled to begin on May 21, 2003. However, the Commission issued an order granting an interim stay on the implementation of NYSE LiquidityQuote until June 6, 2003.[11]

To assess the impact of autoquoting bids and offers in connection with the liquidity quote initiative, the NYSE is proposing to extend the pilot until June 20, 2003. The NYSE believes that continuing the pilot will provide continuity and avoid starting and stopping the disengagement of NYSE Direct+. According to the NYSE, this continuity should aid in the learning process for NYSE Floor personnel.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The NYSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] NYSE Rules 1000–1005 provide for the automatic execution of limit orders of 1,099 shares or less against the Exchange's disseminated bid or offer. NYSE Direct+ was originally filed as a one-year pilot. *See* Securities Exchange Act Release No. 43767 (Dec. 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–00–18). The Direct+ pilot was subsequently extended for an additional year by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50), and recently extended for an additional year by Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47).

[7] The Exchange will autoquote or automatically update the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer).

[8] For further details on LiquidityQuote, *see* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55).

[9] *See* Securities Exchange Act Release No. 47793 (May 2, 2003), 68 FR 25071 (May 9, 2003). The stocks are American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C).

[10] *See supra* note 7.

[11] *See In the Matter of the Application of Bloomberg L. P.*, Securities Exchange Act Release No. 47891 (May 20, 2003).

[14] 17 CFR 200.30–3(a)(12).

Further, NYSE proposes to amend NYSE Rule 1000 to reflect that the pilot is not limited to a one-week period.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is Section 6(b)(5) of the Act,[12] which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NYSE has requested a waiver of the five-day written notice and the 30-day operative delay requirements. The Commission believes that waiving the five day pre-filing requirement and the 30-day operative delay will allow the NYSE to continue, without undue interruption, to assess the impact on the autoquoting of bids and offers in connection with the LiquidityQuote initiative in five actively-traded stocks without the impact of NYSE Direct+.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to SR–NYSE–2003–20 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14491 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47975; File No. SR–Phlx–2003–25]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule

June 4, 2003.

I. Introduction

On April 3, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Supplementary Material .07 to Phlx Rule 229 to modify the Exchange's Automatic Price Improvement ("API") program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to the "tick" requirements of Rule 10a–1 under the Act[3] (the "Short Sale Rule"). The proposed rule change was published for comment in the **Federal Register** on April 28, 2003.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange's API program allows specialists to provide automatic price improvement to automatically executable market and marketable limit orders in New York Stock Exchange, Inc. and American Stock Exchange LLC ("Amex") listed securities received through Phlx's Automated Communication and Execution System ("PACE")[5] for 599 shares or less of either $.01 or a percentage of the PACE Quote when the order is received.[6] Specialists may choose to offer API in each individual specialty security. If a specialist offers API in an individual security, then the specialist must offer it to all customers and all eligible market orders in that security. Participation in the API program and PACE is voluntary.

Currently, API is not available to certain buy orders if the execution price of those buy orders would be on a minus or zero-minus tick.[7] The Exchange has proposed to amend Supplementary Material .07 to Phlx Rule 229 to modify the Exchange's API program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to the "tick" requirements of the Short Sale Rule.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that expanding the types of securities that may receive API to include those securities that are not subject to the "tick" requirements of the Short Sale Rule should allow customers to receive more opportunities for price improvement.

The Exchange has stated that it will issue a regulatory circular informing its members which securities are currently exempt from the "tick" requirements of the Short Sale Rule and thus available for API under the rule change. At this time, securities that trade on the Exchange that the Commission has exempted from the "tick" requirements of the Short Sale Rule include Exchange-Traded Funds ("ETFs")[11] and certain Trust Issued Receipts ("TIRs").[12]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2003–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14566 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10a–1. Paragraph (a) of Rule 10a–1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported pursuant to an "effective transaction reporting plan" ("Reported Securities"). A short sale of a Reported Security listed on a national securities exchange may not be effected at a price either: (1) below the last reported price of a transaction reported in the consolidated transaction reporting system ("minus tick"); or (2) at the last reported price if that price is lower than the last reported different price ("zero-minus tick")."

[4] *See* Securities Exchange Act Release No. 47714 (April 22, 2003), 68 FR 22447.

[5] PACE is the Exchange's automated order routing, delivery, execution and reporting system for listed securities. *See* Phlx Rule 229.

[6] *See* Supplementary Material .07 to Phlx Rule 229.

[7] *See* Supplementary Material .07(c)(i)(A) to Phlx Rule 229.

[8] 17 CFR 240.10a–1.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See, e.g.*, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation ("Division"), Commission, to Claire P. McGrath, Vice President, Amex, dated August 17, 2001("Amex Letter"); letter from Nancy J. Sanow, Assistant Director, Division, Commission, to James F. Duffy, General Counsel, Amex, dated January 22, 1993 (regarding SPDRs listed on the Amex); letter from James A. Brigagliano, Assistant Director, Division, Commission, to James F. Duffy, General Counsel, Amex, dated March 3, 1999 (regarding QQQs listed on the Amex).

[12] *See* letter from James A. Brigagliano, Assistant Director, Division, Commission, to Janet L. Fisher, Cleary, Gottlieb, Steen & Hamilton, dated March 19, 2002 (regarding the Biotech Basket Opportunity Exchangeable Securities series ("BOXES") traded on the Amex and Phlx). In order to be exempt from the Short Sale Rule, a TIR must meet certain size, concentration, and ADTV criteria.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3505]

State of Illinois

(Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 3, 2003, the above numbered declaration is hereby amended to include Union County as a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 6 through May 11, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Jackson in the State of Illinois; and Perry County in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 14, 2003, and for economic injury the deadline is February 17, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14541 Filed 6–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3496]

State of Kansas

(Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 22, 2003, the above numbered declaration is hereby amended to include Haskell, Meade and Seward Counties in the State of Kansas as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clark, Finney, Ford, Grant, Gray, Kearny and Stevens in the State of Kansas; and Beaver and Texas Counties in the State of Oklahoma may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14542 Filed 6–9–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SPECIAL COUNSEL

Proposed Information Collection Activities; Request for Comment

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork

Reduction Act of 1995 (44 U.S.C. chapter 35), and implementing regulations at 5 CFR part 1320, this is the second Federal Register notice published by the U.S. Office of Special Counsel (OSC) about proposed information collection activities, consisting of two forms for the collection of information pursuant to OSC regulations at 5 CFR 1800.1 (Filing complaint of prohibited personnel practices or other prohibited activities) and 5 CFR 1800.2 (Filing disclosures of information). OSC is requesting approval from the Office of Management and Budget (OMB) to extend the use of two previously approved information collections: (1) Form OSC–11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity); and (2) Form OSC–12 (Disclosure of Information), as revised. Both forms to be submitted include minor technical edits previously approved by OMB. Form OSC–11 (complaint form) also includes: (1) revisions to three consent statements in the form; (2) the addition of information on OSC's jurisdiction over employees of the Transportation Security Administration; (3) revision of the format of the cover sheet providing information on how to file a complaint; and (4) revision of the format for providing information on disclosures alleged to have been the basis for whistleblower retaliation. OMB's current approval for these collections of information expires on August 31, 2003.

On March 10, 2003, notice of this request for OMB approval with a request for public comment was published in the Federal Register at 68 FR 11442. The notice and the proposed forms were also posted on OSC's Web site (at *http://www.osc.gov*) on March 10, 2003. No comments on these information collections were received.

Federal employees, other federal agencies, and the general public are invited to comment on OSC's information collection activities relating to possible prohibited employment practices and whistleblower disclosures.

DATES: Comments should be received on or before July 10, 2003.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs at the Office of Management and Budget, 725 Seventeenth Street, NW, Attention: Desk Officer for U.S. Office of Special Counsel, Washington, DC 20503. A copy of any comments should also be sent to Kathryn Stackhouse, General Law Counsel, Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Copies of the collections of information and supporting documentation are available from Kathryn Stackhouse, General Law Counsel, Legal Counsel and Policy Division, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, NW, Suite 300, Washington, DC 20036–4505; telephone (202) 653–8971; facsimile (202) 653–5151.

SUPPLEMENTARY INFORMATION: Comment is requested on the following two collections of information:

1. Title of Collection: Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity.

Agency Form Number: OSC–11 (OMB Control Number 3255–0002).

Summary of the Collection of Information: This complaint form is required for use by current and former Federal employees and applicants for Federal employment, under 5 CFR 1800.1, to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, except for allegations involving the Hatch Act, which may be submitted by providing the information described at 5 CFR 1800.1.

Need for Information and Proposed Use: This information is needed by OSC to investigate and seek any appropriate remedies for allegations of prohibited personnel practices and other prohibited activity, pursuant to its statutory authority at 5 U.S.C. 1211, *et seq.*

Likely Respondents: Current and former federal employees, and applicants for federal employment.

Estimated Annual Number of Respondents: 1771.

Frequency: On occasion.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Estimated Annual Burden: 2214 hours.

2. Title of Collection: Disclosure of Information.

Agency Form Number: OSC–12 (OMB Control Number 3255–0002).

Summary of the Collection of Information: This form is intended for use by current and former federal employees, and applicants for federal employment, in making whistleblower disclosures of violations of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

Need for Information and Proposed Use: This information is needed by OSC to review whistleblower disclosures of wrongdoing in federal agencies, and to refer disclosures in appropriate cases to the head of the agency involved for investigation, pursuant to its statutory authority at 5 U.S.C. 1211, *et seq.*

Likely Respondents: Current and former federal employees, and applicants for federal employment.

Estimated Annual Number of Respondents: 475.

Frequency: On occasion.

Estimated Average Burden Per Respondent: 1 hour.

Estimated Annual Burden: 475 hours.

The two proposed forms described above are available on OSC's Web site (at *http://www.osc.gov*). Consistent with §§ 1703 and 1705 of the Government Paperwork Elimination Act, Public Law 105–277, Title XVII, OSC plans to provide submitters with the option of filing complaints and disclosures electronically, after completion of the necessary planning and implementation measures, no later than October 21, 2003.

Dated: June 2, 2003.

William E. Reukauf,

Acting Special Counsel.

[FR Doc. 03–14552 Filed 6–9–03; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 4381]

Culturally Significant Objects Imported for Exhibition Determinations: "Marc Chagall"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Marc Chagall," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the San Francisco Museum of Modern Art, San Francisco, CA from on or about July 26, 2003 to on or about November 4, 2003, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 30, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–14576 Filed 6–9–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 30, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15275.

Date Filed: May 27, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC31 South 0141 dated 23 May 2003, TC31 South Pacific Expedited Resolution 015v, Intended effective date: July 1, 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–14584 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15361]

Ultrawideband Compatibility Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Federal Aviation Administration, Office of Spectrum Policy and Management, is conducting bench tests to investigate the impact of ultrawideband emissions on selected aeronautical systems which operate below 1 GHz and on the global positioning system (GPS). Public comment is being sought on the test plans, and therefore a two week comment period will follow the date of posting of this notice. Three draft test plans cover (1) global positioning system (GPS) receiver, (2) Air Traffic Control communication receiver, and (3) other navigation receivers. The three test plans may be viewed and downloaded from the World Wide Web at: *http:www.faa.gov/ats/aaf/asr/library/downloads.htm*. Click on "ultrawideband". The documents are available in both MS Word and Acrobat 5 format.

Comments should be directed to: UWB Test Plan Comments, FAA, ASR–1, 800 Independence Avenue, SW., Washington, DC 21591.

Comments can also be send by e-mail to *Oscar.Alvarez@faa.gov*.

DATES: Comments will be accepted during the two week period following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Alvarez, FAA Spectrum Policy and Management, ASR–2, 800 Independence Ave., SW., Washington, DC 20591, (202) 267–7531, e-mail *oscar.alvarez@faa.gov*.

Issued in Washington, DC, on June 4, 2003.

Donald Willis,

Manager, Spectrum Planning and International Division, ASR–200, Spectrum Policy and Management.

[FR Doc. 03–14587 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: Pitkin, Eagle and Garfield Counties, CO

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) and, DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA and FTA are jointly issuing this Revised Notice of Intent to advise the public that an Environmental Impact Statement (EIS) will not be prepared for a proposed transportation improvement project along State Highway 82 in the counties of Pitkin, Eagle and Garfield, Colorado.

FOR FURTHER INFORMATION CONTACT: Eva LaDow or Edrie Vinson, FHWA Colorado Division, 555 Zang Street, Room 250, Lakewood, Colorado 80228. Telephone (303) 969–6730 Extensions 341 and 378, respectively. Dave Beckhouse, FTA Region VIII, 216 16th Street, Suite 650, Denver, Colorado 80202. Telephone (303) 844–4266. Tom Mauser, CDOT Modal Planning, 4201 E. Arkansas Ave., DTD B–606, Denver, Colorado 80222. Telephone (303) 757–9768.

SUPPLEMENTARY INFORMATION: On December 31, 1997 the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for proposed transportation improvements in Pitkin, Eagle, and Garfield Counties. As a result of the study effort to date, no major federal action is being proposed, therefore the FTA and FHWA are terminating their involvement in the preparation of an EIS.

Comments or questions concerning this proposed action should be directed to the Colorado Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 23, 2003.

William C. Jones,

Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

Charles Dolby,

Assistant Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 03–14138 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–14793 (Notice No. 03–6)]

Hazardous Materials: Regulations for the Safe Transport of Radioactive Material (TS–R–1); Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting and request for written comments.

SUMMARY: RSPA will conduct a public meeting and accept written comments pertaining to 63 proposed changes to the International Atomic Energy Agency's (IAEA) Regulations for the Safe Transport of Radioactive Materials, TS–R–1, scheduled for revision in the year 2005. Interested persons are invited to attend.

DATES: *Public meeting.* The public meeting will be held on July 22, 2003 from 9:30 a.m. to 11:30 a.m.

Comments. Comments must be received by August 8, 2003.

ADDRESSES: *Public meeting.* The meeting will be held at Department of Transportation Headquarters, Nassif Building, 400 Seventh Street, SW., Washington DC, 20590–0001, in room 6244.

Comments. You may submit comments identified by the docket number (RSPA–03–14793 (Notice No. 03–6)) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: At the public meeting held July 22, 2003 or to the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9:00 am and 5:00 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Supplementary Information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (*see* **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Boyle, Office of Hazardous Material Technology, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington DC, 20590–0001; (202) 366–2993; *rick.boyle@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this meeting is to receive public comments on the transport regulation changes proposed by the International Atomic Energy Agency (IAEA) as part of its ongoing regulatory review process. These comments will be used to develop U.S. positions on the 63 proposed changes for the IAEA regulatory review meeting scheduled for November 10–14, 2003, in Bonn, Germany. The public is invited to attend without prior notification. Due to heightened security measures at DOT Headquarters, participants are encouraged to arrive early to allow time to undergo the security checks necessary to obtain access to the building.

The regulatory changes proposed by IAEA are available on the Internet at *http://hazmat.dot.gov/files/IAEA_TS-R-1_rev_prop.pdf.* A consolidated draft of the endorsed proposed TS–R–1 revision may be downloaded at *http://hazmat.dot.gov/files/IAEA_TS-R-1_rev_draft.pdf.* Although not required, electronic submission using the standard comment form that can be downloaded at *http://hazmat.dot.gov/files/comment_form_prop_chgs.doc* is preferred.

II. Public Participation

Comments should identify the docket number (RSPA–03–14793 (Notice No. 03–6)) and if sent by mail, comments are to be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Internet users may access all comments received by the U.S. Department of Transportation at *http://dms.dot.gov.*

III. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or may visit *http://dms.dot.gov.*

Issued in Washington, DC, on June 4, 2003.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–14585 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–167 (Sub–No. 1094)A]

Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this case on Thursday, July 24, 2003, in New York City, NY. The hearing will provide a forum for interested persons to express their views on the matters at issue in this proceeding. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday, July 24, 2003. Persons wishing to speak at the hearing should file with the Board a written notice of intent to participate (and should indicate a requested time allotment) as soon as possible but no later than July 15, 2003. Written statements by persons participating in the hearing may be submitted prior to the hearing but are not required. Persons wishing to submit written statements should do so by July 17, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and any written statements should refer to Docket No. AB–167 (Sub-No. 1094)A, and should be sent to: Surface Transportation Board, Attn: Docket No. AB–167 (Sub-No. 1094)A, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Joseph Dettmar, (202) 565–1609. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: In 1992, the Board's predecessor, the Interstate Commerce Commission (ICC), agreed to withdraw its jurisdiction over the Highline,[1] a 1.45-mile elevated viaduct owned by Consolidated Rail Corporation (Conrail) in New York City, NY.[2] Chelsea Property Owners, a group comprised of owners of property crossed by the Highline, had sought the withdrawal to enable them to pursue condemnation and demolition of the viaduct. The ICC conditioned its order on CPO agreeing to indemnify Conrail for all demolition costs in excess of $7 million.

Ten years later in August 2002, CPO advised the Board that it had negotiated a proposed settlement agreement with Conrail, CSX Transportation, Inc. (CSX), and the other rail interests, and with the involved governmental interests. CPO asked the Board to find that this agreement satisfies the indemnity condition imposed by the ICC. Friends of the Highline, Inc. has filed a petition to reopen the *Chelsea* decision based on historic and environmental grounds. The City of New York, which CPO evidently expected to be a signatory to the proposed agreement, has asked the Board instead to issue a certificate of interim trail use (CITU) in this case. A CITU would permit the City to negotiate with Conrail to preserve, *i.e.*, "rail bank" the Highline pending the viaduct's possible future restoration to rail service. Conrail and CSX have asked the Board to determine whether it has the authority to issue a CITU in these circumstances.

Date of Hearing. The hearing will begin at 2 p.m. on Thursday, July 24, 2003, in the Federal Conference Center, in the Jacob Javits Federal Building, 26 Federal Plaza, New York, New York, and will extend, if necessary for every person scheduled to speak to be heard, for 2 hours.

Notice of Intent To Participate. Persons wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than July 15, 2003.

Written Statements. Persons wishing to submit written statements should do so by July 17, 2003.

Paper Copies. Persons intending to speak at the hearing and/or to submit written statements prior to the hearing should submit an original and 10 paper copies, respectively, of their notices and/or written statements.

Board Releases Available via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: June 4, 2003.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14412 Filed 6–9–03; 8:45 am]

BILLING CODE 4915–00–P

[1] *Chelsea Property Owners—Aban.—The Consol. R. Corp.*, 8 I.C.C.2d 773 (1992) *(Chelsea), aff'd sub nom. Consolidated Rail Corp.* v. *I.C.C.*, 29 F.3d 706 (D.C. Cir. 1994) *(Conrail).*

[2] The Highline is an elevated steel and concrete viaduct built in Lower Manhattan in 1930. The Highline rises from grade level on steel columns near the corner of 34th Street and Eleventh Avenue just to the north of the Caemmerer West Side Yard; loops around the Yard before turning south at 30th Street near Tenth Avenue; and extends south mostly to the west of Tenth Avenue until terminating at Gansevoort Street. The Highline was constructed pursuant to easements that require Conrail to absorb all demolition costs when the easements terminate. Abandonment constitutes termination under the easements. For a history of the Highline, *see Chelsea Property Owners—Aban.—The Consol. R. Corp.*, 7 I.C.C.2d 991, 992–94 (1991).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–POL

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–POL, U.S. Income Tax Return for Certain Political Organizations.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Certain Political Organizations.

OMB Number: 1545–0129.

Form Number: 1120–POL.

Abstract: Certain political organizations file Form 1120–POL to report the tax imposed by Internal Revenue Code section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under Code section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 6,527.

Estimated Time Per Respondent: 36 hours., 38 min.

Estimated Total Annual Burden Hours: 239,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14605 Filed 6–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Guidance to Federal Financial Assistance Recipients: Providing Meaningful Access to Individuals Who Have Limited English Proficiency in Compliance With Title VI of the Civil Rights Act of 1964

AGENCY: Department of Veterans Affairs.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Executive Order 13166, Improving Access to Service for Persons with Limited English Proficiency (LEP), this notice requests comments on the Department of Veterans Affairs (VA) draft guidance on improving access for persons with limited English proficiency to VA assisted programs and activities. Executive Order 13166, requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a notice containing Departmental guidance that assists recipients in complying with obligations under Title VI of the Civil Rights Act of 1964 and Title VI regulations to ensure meaningful access to Federally assisted programs and activities for LEP persons.

DATES: Comments must be received on or before July 10, 2003

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "LEP Guidance". All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Tyrone Eddins, Office of Resolution Management (08), at (202) 501–2801; or Royce Smith, Office of General Counsel (024), at (202) 273–6374, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The purpose of Executive Order 13166 is to eliminate, under Title VI, to the maximum extent possible, limited English proficiency (LEP) as an artificial barrier to full and meaningful participation by beneficiaries in all Federally assisted and Federally conducted programs and activities. The purpose of this policy is to further clarify the responsibilities of recipients of Federal financial assistance from VA, and assist them in fulfilling their responsibilities to LEP persons, pursuant to Title VI and Title VI regulations. The policy guidance explains that to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons have meaningful access to the programs, activities, benefits, services, and information those recipients provide, free of charge.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report To Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." The report made several recommendations designed to minimize confusion and ensure that funds dedicated to LEP services will provide meaningful access for LEP individuals. One significant recommendation was the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients.

In a memorandum to all Federal funding agencies, dated July 8, 2002, Assistant Attorney General Ralph Boyd of the Department of Justice's (DOJ) Civil Rights Division requested that agencies model their agency-specific guidance for recipients after Sections I–VIII of DOJ's June 18, 2002 guidance. Therefore, this proposed guidance is modeled after the language and format of DOJ's revised, final guidance, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published June 18, 2002, 67 FR 41455.

Because this Guidance must adhere to the Federal-wide compliance standards and framework detailed in the model DOJ LEP Guidance issued on June 18, 2002, VA specifically solicits comments on the nature, scope and appropriateness of the VA specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance through VA.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

The text of the complete guidance document appears below.

Approved: May 28, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

Guidance on Executive Order 13166, Limited English Proficiency (LEP) Title VI Prohibition Against National Origin Discrimination In Federally Assisted Programs

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient (LEP). While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

[1] VA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP population it encounters, and its prior experience in providing language services in the community it serves.

[2] This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

This policy guidance clarifies responsibilities, under existing law, of recipients of Federal financial assistance from the Department of Veterans Affairs (VA) to provide meaningful access to LEP persons. The purpose is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria VA will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the VA, in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, the VA plans to work with DOJ, recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches and to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own Federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov*, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. The Department of Justice and the VA have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

VA is comprised of three distinct benefits administrations: Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA). Each of these administrations has programs that provide Federal financial assistance to recipients. Each has existing Title VI program responsibilities that are administered independent of each other.

VHA administers several programs and activities that receive Federal financial assistance from the VA. With more than 163 VA medical centers nationwide, VHA manages one of the largest health care systems in the United States. VA medical centers within a Veterans Integrated Service Network (VISN) work together to provide efficient, accessible health care to veterans in their areas. VHA also conducts research and education and provides emergency medical preparedness.

VBA is responsible for ensuring compliance in proprietary, non-college educational institutions approved to train veterans and/or their beneficiaries. VBA also provides benefits and services to veterans and their beneficiaries through more than 50 VA regional offices. Some of the benefits and services provided by VBA include compensation and pension, education, loan guaranty, and insurance.

NCA provides Federal assistance to States to establish, expand, or improve state owned or established veterans cemeteries. The State Cemetery Grants Program (SCGP) provides these services to eligible state veterans cemeteries. NCA is responsible for providing burial benefits to veterans and eligible dependents. The delivery of these benefits involves operating 120 national cemeteries in the United States and Puerto Rico, providing headstones and grave markers worldwide, administering the State Cemetery Grants program that complements the national cemeteries, and administering the Presidential Memorial Certificate Program, which provides certificates bearing the President's signature to the next of kin of honorably discharged, deceased veterans.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability. 42 U.S.C. 2000d–1.

VA regulations implementing Title VI, provide in 38 CFR at part 18.3(b) that

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual, which is different, or is provided in a different manner, from that provided to others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which such services,

financial aid or other benefits, or facilities will be provided may not directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination, because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects to individuals of a particular race, color or national origin." (Emphasis added. 104(b)(2)).

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000), was issued on August 11, 2000. Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to Agency Civil Rights Officers setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order and enforcement of Title VI of the Civil Rights Act of 1964, "National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) ("DOJ LEP Guidance"). The Department of Justice's role under Executive Order 13166 is unique. The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address.

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.[3] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities—the Executive Order remains in force.

VA's policy guidance is consistent with and is issued under the Title VI and the Title VI regulations, and is also consistent with the August 11, 2000, DOJ "Policy Guidance Document on Enforcement of National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000); Executive Order 13166; and the DOJ LEP guidance issued on June 18, 2002. 67 FR 41457 (June 18, 2002).

[3] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, e.g., Sandoval, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are inspired by, at the service of, and inseparably intertwined with "Sec. 601 * * *" when Sec. 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

III. Who Is Covered?

All entities that receive Federal financial assistance from the VA, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance (*see* list 38 CFR, part 18, appendix A). Covered entities include (1) any state or local agency, private institution or organization, or (2) any public or private individual that operates, provides, or engages in activities, and that receives Federal financial assistance.[4]

The term Federal financial assistance to which Title VI applies includes, but is not limited to, grants and loans of Federal funds, grants or donations of Federal property, details of Federal personnel, or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient/covered entity receives Federal financial assistance for a particular program or activity, the recipient's entire operation is covered. This is true even if only one part of the recipient receives the Federal assistance.

Example: VA provides assistance to a state agency to improve a particular cemetery. All of the operations of the entire state agency, not just the particular cemetery are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

VHA administers several programs and activities that receive Federal financial assistance from the VA. All entities that receive Federal financial assistance from VA are listed in 38 CFR, part 18, appendix A, either directly or indirectly, through a grant, contract, or subcontract, are covered by this policy guidance. Covered entities include (1) any state or local agency, private institution or organization, or (2) any public or private individual that operates, provides, or engages in health, or social service programs and activities, and that receives Federal financial assistance from VA directly or through another recipient/covered entity.

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the VA LEP Guidance are to additionally apply to the programs and activities of federal agencies, including the VA.

Examples of covered entities include, but are not limited to hospitals; nursing homes; home health agencies; managed care organizations; universities and other entities with health or social service research programs; state, county, and local health agencies; state Medicaid agencies; state, county, and local welfare agencies; programs for families, youth and children; Head Start programs; physicians; and other providers who receive Federal financial assistance from VA.

VBA is responsible for ensuring compliance in proprietary, non-college degree granting educational institutions approved to train veterans and/or their beneficiaries. In 1968, the Attorney General ruled that recipients of tuition or other payments from veterans for education programs are receiving Federal financial assistance. The U.S. District Court upheld this principle in *Bob Jones University, et at,* v. *Donald E. Johnson*, 396 F. Supp. 597 (D.S.C. 1974), aff'd 529 F.2d 514 (4th Cir. 1975).

VBA is also responsible for ensuring Title VI compliance in certain education and training programs funded by the U.S. Department of Education (ED). Under a delegation agreement, VA has Title VI compliance responsibilities for ED-funded proprietary educational institutions, except those operated by a hospital. VA is also delegated Title VI responsibility for post-secondary, nonprofit educational institutions, other than colleges and universities, except if operated by a college, university, hospital, or a unit of State or local government. VA's LEP guidance applies only to recipients for whom VA has compliance responsibility.

VBA's Title VI compliance responsibility also applies to recognized national service organizations whose representatives assist veterans in the preparation, presentation and prosecution of claims for VA benefits. In December 1975, DOJ's "Interagency Report: Evaluation of Title VI Enforcement at the Veterans Administration," concluded that representatives of recognized service organizations afforded the use of Federally-owned property provided by VA without charge are recipients of Federal assistance. These service organizations are considered recipients within the meaning of Title VI. Recognized national veterans' service organizations and State employment services both use VA office space and, therefore, VA's LEP guidance applies to those entities.

VBA recipients receiving Federal financial assistance, and covered by the LEP policy guidance include but are:

- Educational institutions whose programs are approved for training under 38 U.S.C., chapters 30, 31, 32, 35 and 10 U.S.C., chapter 1613.
- Representatives of recognized national veterans service organizations who utilize VBA space and office facilities (38 U.S.C. 5902(a)(2)).
- Representatives of State employment services who utilize VBA space and office facilities (38 U.S.C. 7725(1)).

NCA administers the State Cemetery Grants Program (SCGP). Examples of covered entities include, but are not limited to: Cemeteries; state, county and local agencies; and other providers who receive Federal financial assistance from VA.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not read, write, speak, or understand English can be limited English proficient, or "LEP" entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by VA recipients and should be considered when planning language services include, but are not limited to, for example:

- —Persons seeking healthcare services or benefits;
- —Persons seeking access to veterans cemeteries, including family members and friends of deceased veterans and others who are eligible for burial in such cemeteries;
- —Persons seeking educational, training, including spouses and children;
- —Persons seeking assistance in the preparation, presentation, and prosecution of claims for VA benefits;
- —Other persons who encounter or seek services, benefits, or information from entities receiving Federal financial assistance from VA.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for different types of programs or activities. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. VA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a VA facility serves a large LEP population, the appropriate service area is most likely the area serviced by the facility, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may

be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be under served because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.

The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak those languages speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using census data, for instance, it is important to focus in on the languages spoken by those who are not proficient in English. Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves a LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If a LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligation to communicate with a person seeking medical services differs, for example, from those to provide voluntary recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, state, or local entity to make an activity compulsory, such as access to important benefits and services can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

However, resource and cost issues can often be reduced by technological advances, the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies, and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and videoconferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be late and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a healthcare recipient operating in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a veterans' social facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: Oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

—Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

—Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[5]

—Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

—Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of hearings, the provision of healthcare, or the provision of other vital services or exchange of vital information, the use of certified interpreters is strongly encouraged. For those languages in which no formal accreditation or certification currently exists, such entities should consider a formal process for establishing the credentials of the interpreter. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a prison hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition of "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOJ recipients providing law enforcement, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as 911 operators, police officers, guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages.

Contracting for Interpreters. Contract interpreters may be a cost-effective

[5] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages, which do not have an appropriate direct interpretation of some medical or benefits-related terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical, medical, or legal terms specific to the program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for recipients' less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting applicable confidentiality and impartiality rules.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative interest in accurate interpretation. In many circumstances, family members (especially children), or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interests may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, mental health, family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For VA recipient programs and activities, this is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when an LEP person seeks medical care from a VA funded recipient. In such a case, use of family members or neighbors to interpret for the LEP patient may raise serious issues of competency, confidentiality, and conflict of interest and be inappropriate. While issues of competency, confidentiality, and conflicts of interest in the use of family members (especially children), or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary.

An example of this is a voluntary educational tour of a VA facility offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, a LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for adjudicatory, medical, administrative, or other reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take extra care to ensure that the LEP person's choice is voluntary that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

Written Language Services (Translation) Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, recipients may determine that an effective LEP plan ensures that certain vital written materials are translated into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

—Consent and complaint forms
—Forms with the potential for important consequences
—Written notices of rights, denial, loss, or decreases in benefits or services, and hearings
—Notices advising LEP persons of free language assistance
—Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
—Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for certain recreational programs should not generally be considered vital, whereas applications for drug and alcohol counseling should be considered vital. Where appropriate, recipients are encourage to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. To have meaningful access, service, benefit, or information, LEP persons may need to be aware of their existence. Thus, vital information may include, for instance, documents indicating how to obtain oral assistance in understanding other information not contained in the translated documents. Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message. Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between the more frequent languages encountered by a recipient and less common languages. Many recipients serve communities in large cities or across the country. These recipients may serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently encountered languages and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether, and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of a recipient's program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral

interpreters where oral language services are needed and are reasonable.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

There may be languages that do not have an appropriate direct translation of some terms, and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may require translators that are less skilled than important documents with technical legal, medical, or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner their plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of an effective written implementation plan, however, the absence of them does not necessarily mean there is non-compliance.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish," in English and Spanish or "I speak Vietnamese in English and Vietnamese", etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan includes information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available.
—How staff can obtain those services.
—How to respond to LEP callers.
—How to respond to written communications from LEP persons.
—How to respond to LEP individuals who have in-person contact with recipient staff.
—How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan includes training to ensure that:

—Staff knows about LEP policies and procedures.
—Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by their staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to services or activities provided by VA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language. The Social Security Administration has made such signs available on their Web site. These signs could be modified for recipient use.

Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.

Working with community-based organizations and other stakeholders to inform LEP individuals of the recipient.

Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

Including notices in local newspapers in languages other than English.

Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered.
—Frequency of encounters with LEP language groups.
—Nature and importance of activities to LEP persons.
—Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
—Whether existing assistance is meeting the needs of LEP persons.
—Whether staff knows and understands the LEP plan and how to implement it.
—Whether identified sources for assistance are still available and viable.
—In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by VA through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that VA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, VA will inform the recipient/covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, VA must inform the recipient/covered entity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, VA must secure compliance through: (a) Federal assistance after the recipient/covered entity has been given an opportunity for an administrative hearing and/or (b) referral to a DOJ litigation section to for injunctive relief or other enforcement proceedings; or (c) any other means authorized by law.

As the Title VI regulations set forth above indicate, VA has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. VA will engage in voluntary compliance efforts, and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, VA will propose reasonable timetables for achieving compliance and will consult with and assist recipient/covered entities in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with Title VI and the regulations, VA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, VA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically

reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, VA will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonable require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

[FR Doc. 03–14414 Filed 6–9–03; 8:45 am]
BILLING CODE 8320–01–P



Federal Register

Tuesday,
June 10, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Blackburn's Sphinx Moth; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH94

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Blackburn's Sphinx Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Blackburn's sphinx moth *(Manduca blackburni)*, pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 22,440 hectares (55,451 acres) fall within the boundaries of the 9 critical habitat units designated on the Hawaiian islands of Hawaii, Kahoolawe, Maui, and Molokai for Blackburn's sphinx moth. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of our proposal, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on July 10, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."

Currently, only 306 species or 25% of the 1,211 listed species in the U. S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions. Sidle, J.G. 1987. Critical Habitat Designation: Is it Prudent? Environmental Management 11(4):429–437.

Background

Blackburn's sphinx moth (moth) (*Manduca blackburni*) is one of Hawaii's largest native insects. We provided a detailed species description as well as a biogeographical overview of the Hawaiian islands in the proposed rule (67 FR 40633), we incorporate that information by reference in this final designation.

Blackburn's Sphinx Moth Biology and Status

Very few specimens of the moth have been seen since 1940, and after a concerted effort by staff at the Bishop Museum to relocate this species in the late 1970s, it was considered to be extinct (Gagné and Howarth 1985). In

1984, a single population was rediscovered on Maui (Riotte 1986), and subsequently, populations on two other islands were rediscovered. Currently, the moth is known only from populations on Maui, Kahoolawe, and Hawaii. Moth population numbers are known to be small based upon past sampling results; however, no reasonably accurate estimate of population sizes has been determinable at this point because of the adult moth's wide-ranging behavior and overall rarity (Arthur Medeiros, U.S. Geological Survey-Biological Resources Division (USGS–BRD), pers. comm. 1998; Van Gelder and Conant 1998). Before humans arrived, dry and mesic shrubland and forest covered about 823,283 hectares (ha) (2,034,369 acres (ac)) on all the main islands (Hawaii Natural Heritage Program (HHP) 2000), and it is likely that the Blackburn's sphinx moth inhabited much of that area (Riotte 1986). Reports by early naturalists indicate the species was once widespread and abundant, at least during early European settlement on nearly all the main Hawaiian islands (Riotte 1986).

The moth has been recorded from the islands of Kauai, Kahoolawe, Oahu, Molokai, Maui, and Hawaii, and has been observed from sea level to 1,525 m (5,000 ft) elevation. Most historical records were from coastal or lowland dry forest habitats in areas receiving less than 127 cm (50 in) of annual rainfall. On the island of Kauai, the moth was recorded only from the coastal area of Nawiliwili. Populations were known from Honolulu, Honouliuli, and Makua on leeward Oahu, and Kamalo, Mapulehu, and Keopu on Molokai. On Hawaii, it was known from Hilo, Pahala, Kalaoa, Kona, and Hamakua. It appears that this moth was historically most common on Maui, where it was recorded on Kahului, Spreckelsville, Makena, Wailuku, Kula, Lahaina, and West Maui.

Blackburn's sphinx moth larvae feed on plants in the nightshade family (Solanaceae). The natural host plants are native trees within the genus *Nothocestrum* (aiea), on which the larvae consume leaves, stems, flowers, and buds. However, many of the plants recorded for this species are not native to the Hawaiian Islands, and include *Nicotiana tabacum* (commercial tobacco), *Nicotiana glauca* (tree tobacco), *Solanum melongena* (eggplant), *Lycopersicon esculentum* (tomato), and possibly *Datura stramonium* (jimson weed). Sphingid moths are known to exploit nutritious but low-density, low-apparency host plants such as vines and sapling trees. Development from egg to adult can take as little as 56 days, but pupae may remain in a state of torpor (inactivity) in the soil for up to a year. The growth rates of larvae for many closely related sphingid species are reported to decrease when their host plants lack suitable water content. In fact, suitable host plant water content can improve the later fecundity of the adult stage (Murugan and George 1992).

Adult moths have been found throughout the year, and have been observed feeding on nectar from *Ipomoea indica* (koaliawa). Other likely native nectar-providing plants for the moth are other *Ipomea* species (spp.), *Capparis sandwichiana* (maiapilo), and *Plubago zeylancia* (iliee). Many sphingid studies have shown that air temperature restricts adult feeding activity above a certain temperature (usually 30 degrees Celsius (86 degrees Fahrenheit)) (Herrera 1992). During Van Gelder and Conant's captive-rearing study (1998), adult moth feeding was not observed and captive-reared adult moths lived no longer than 12 days. In general, sphingids are known to live longer than most moths because of their ability to feed and take in water from a variety of sources, rather than relying only upon stored fat reserves. Because they live longer than most moths, female sphingid moths have less time pressure to mate and lay eggs, and often will take more time in locating the best host plants for egg laying (B. Gagné, pers. comm. 1994; David Hopper, Service, *in litt.* 2000, 2002; Williams 1931, 1947; Riotte 1986; Van Gelder and Conant 1998; Kitching and Cadiou 2000). Because there are no studies showing any sphingid-species adults being short-lived, we believe that some unknown factor contributed to the brief adulthood of the Blackburn's sphinx moths observed during Van Gelder and Conant's (1998) study.

Blackburn's Sphinx Moth Habitat and Range

Plant species composition in the moth's habitat varies considerably depending on location and elevation, but some of the most common native plants in areas where the moth occurs are the trees *Diospyros sandwicensis* (lama), *Rauvolfia sandwicensis* (hao), *Reynoldsia sandwicensis* (ohe), *Pouteria sandwicensis* (alaa), the shrubs *Erythrina sandwicensis* (wiliwili), *Dodonaea viscosa* (aalii), and *Myoporum sandwicense* (naio) (Roderick and Gillespie 1997; Van Gelder and Conant 1998; Wagner *et al.* 1999; Cabin *et al.* 2000; Wood 2001a, 2001b).

The largest populations of Blackburn's sphinx moths, on Maui and Hawaii, are associated with trees in the genus *Nothocestrum* (Van Gelder and Conant 1998). For example, the large stand of *Nothocestrum* trees within the Ka naio Natural Area Reserve (NAR), Maui, is likely the largest in the State (Medeiros *et al.* 1993), and this fact may explain why the moth occurs with such regularity in the Ka naio area (A. Medeiros, pers. comm. 1994). *Nothocestrum* is a genus of four species endemic to the Hawaiian Islands (Simon 1999) which currently occur on Kauai, Oahu, Molokai, Lanai, Hawaii, and Maui. One species, *N. longifolium*, primarily occurs in wet forests, but can occur in mesic forests as well. Three species, *N. latifolium*, *N. brevifolium*, and *N. peltatum*, occur in dry to mesic forests, the habitat in which the moth has been most frequently recorded. Moth larvae have been documented feeding on two *Nothocestrum* spp., *N. latifolium*, and *N. brevifolium*; it is likely that *N. peltatum* and *N. longifolium* are suitable host plants for larval moths as well. This is supported not only by the fact that these two species are closely related to known larval hosts, but also because past historical records document the moth as occurring on the islands of Kauai and Oahu, where *N. latifolium* is not abundant and *N. brevifolium* does not occur. Furthermore, the species is known to feed on a variety of native and nonnative Solanaceae.

On Molokai, moth habitat includes vegetation consisting primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 2000). Although Molokai is not known to currently contain a moth population, past moth sightings on Molokai have been reported. The island does contain native *Nothocestrum* larval host plants, including *N. longifolium* and *N. latifolium*, as well as adult host plants and restorable, manageable areas associated with these existing host plants (Wood 2001a). Because of its proximity to Maui (currently and historically home to the most persistent and largest population) and the fact that Molokai has in the past and presently supports *N. latifolium*, many researchers believe the moth could re-establish itself on the island and become a viable population(s) in the future (Frank Howarth, Bishop Museum, pers. comm. 2001).

The endangered larval host plant, *Nothocestrum brevifolium*, as well as adult host plants, occur in the areas on Hawaii Island that support populations of the moth (Marie Bruegmann, Service,

pers. comm. 1998), where there are many recorded associations of eggs, larvae, and adult moths with this plant species. This tree species is primarily threatened by habitat conversion associated with development; competition from nonnative species such as *Schinus terebinthifolius* (Christmas berry), *Pennisetum setaceum* (fountain grass), *Lantana camera* (lantana), and *Leucaena leucocephala* (Kona hao le); browsing by cattle; fire; random environmental events such as prolonged drought; and reduced reproductive potential resulting from the small number of existing individuals (59 FR 10325).

Although *Nothocestrum* spp. are not currently reported from Kahoolawe, there were very few surveys of this island prior to the intense ranching activities, which began in the middle of the last century, and the subsequent use of the island as a weapons range for 50 years. Prior to their removal, goats also played a major role in the destruction of vegetation on Kahoolawe (Cheetah and Stone 1990). It is likely that the reappearance of some vegetation as a result of the removal of the goats and the cessation of military bombing activities have allowed the moth to inhabit the island. On Kahoolawe, moth larvae feed on the nonnative *Nicotiana glauca*, which appears to adequately support production and growth of the larval stage during nondrought years. However, the native *Nothocestrum* are more stable and drought-resistant than the *Nicotiana glauca*, which dies back significantly during especially dry years (A. Medeiros, pers. comm. 2001). Therefore, it appears likely that long-term survival of the moth on Kahoolawe will require the planting of *Nothocestrum latifolium* (A. Medeiros, pers. comm. 1998).

Threats to the Conservation of Blackburn's Sphinx Moth

Habitat Loss and Degradation

Dry to mesic forest habitats in Hawaii have been severely degraded by past and present land management practices, including ranching, the impacts of introduced plants and animals, wildfire, and agricultural development (Cheetah and Stone 1990). Because of these factors, *Nothocestrum peltatum* on Kauai and *N. brevifolium* on Hawaii are now federally listed as endangered species (59 FR 9327; 59 FR 10325). Although all *Nothocestrum* spp. are not presently listed as endangered or threatened, the entire genus is declining and considered uncommon (Medeiros *et al.* 1993; HHP 2000). For example, while *N. latifolium* presently occurs at moderate densities at Ka naio NEAR (HHP 1993), there has been a complete lack of seedling survival and the stand is being degraded by goats (F. Howarth, pers. comm. 1994; Steven Montgomery, pers. comm. 1994; Medeiros *et al.* 1993). Goats have played a major role in the destruction of dryland and mesic forests throughout the Hawaiian Islands (Van Riper and Van Riper 1982; Stone 1985).

Because the moth was once so widespread and sphinx moths are known to be strong fliers, we believe it is likely that inter-island dispersal of the species occurred to some degree prior to the loss of much of its historical habitat. Currently, the areas of dry to mesic shrub and forest habitats below 1,525 m (5,000 ft) elevation that are suitable for Blackburn's sphinx moth are approximately 148,585 ha (367,161 ac).

Localized Extirpation

In addition to, or perhaps because of, habitat loss and fragmentation, Blackburn's sphinx moths are also susceptible to seasonal variations and weather fluctuations affecting their quality and quantity of available habitat and food. For example, during times of drought, nectar availability for adult moths are expected to decrease. During times of decreased nectar availability, life spans of individuals may not be affected, but studies with butterflies have shown marked decreases in reproductive capacity for many species (Center for Conservation Biology 1994). In another study, Jansen (1984) reported that host plant availability directly affected sphingid reproductive activity. In fact, for some lepidopteran (butterflies and moths) species, if nectar intake is cut in half, reproduction is also cut approximately in half. Such resource stress may occur on any time scale, ranging from a few days to an entire season, and a pattern of continuous long-term adult feeding stress could affect the future viability of a population (Center for Conservation Biology 1994).

Often, habitat suitability for herbivorous insects is determined by factors other than host plant occurrence or density. Microclimatic conditions (Thomas 1991; Solbreck 1995) and predator pressure (Roland 1993; Roland and Taylor 1995; Walde 1995) are two such widely reported factors. In a study of moth population structure, habitat patch size and the level of sun exposure were shown to affect species occupancy, while patch size and the distance from the ocean coast were reported to affect moth density. Moth populations in small habitat patches were more likely to become extinct (Forare and Solbreck 1997).

Nonnative Arthropods

The geographic isolation of the Hawaiian Islands restricted the number of original successful colonizing arthropods and resulted in the development of an unusual fauna. Only 15 percent of the known insect families are represented by the native insects of Hawaii (Howarth 1990). Some groups that often dominate continental arthropod faunas, such as social Hymenoptera (group-nesting ants, bees, and wasps), are entirely absent from the native Hawaiian fauna. Accidental introductions from commercial shipping and air cargo to Hawaii have now resulted in the establishment of over 2,500 species of alien arthropods (Howarth 1990; Howarth *et al.* 1994), with a continuing establishment rate of 10 to 20 new arthropod species per year (Nishida 1997). In addition to the accidental establishment of nonnative species, private individuals and government agencies began importing and releasing nonnative predators and parasites for biological control of pests as early as 1865. This resulted in the introduction of 243 nonnative species between 1890 and 1985, in some cases with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988; Lai 1988). Alien arthropods, whether purposefully or accidentally introduced, pose a serious threat to Hawaii's native insects, through direct predation, parasitism, and competition for food or space (Howarth and Medeiros 1989; Howarth and Ramsay 1991).

Ants

Ants are not a natural component of Hawaii's arthropod fauna, and native species evolved in the absence of predation pressure from ants. Ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993). Because they are often generalist feeders, ants may affect prey populations independent of prey density, and may locate and destroy isolated individuals and populations (Nafus 1993a). At least 36 species of ants have become established in the Hawaiian Islands, and three particularly aggressive species have severely affected the native insect fauna (Zimmerman 1948).

For example, in areas where the big-headed ant (*Pheidole megacephala*) is present, native insects, including most moths, have been eliminated (Perkins 1913; Gagné 1979; Gillespie and Reimer 1993). The big-headed ant generally does not occur at elevations higher than 610 m (2,000 ft), and is also restricted by rainfall, rarely being found in particularly dry (less than 35 to 50 cm (15 to 20 in) annually) or wet (more than 250 cm (100 in) annually) areas (Reimer *et al.* 1990). The big-headed ant is also known to be a predator of eggs and caterpillars of native Lepidoptera, and can completely exterminate populations (Zimmerman 1958). This ant occurs on all the major Hawaiian Islands, including those currently inhabited by Blackburn's sphinx moth and is a direct threat to these populations (Neil Reimer, Hawaii Department of Agriculture (HDOA), pers. comm. 2001; Medeiros *et al.* 1993; Nishida 1997).

Several additional ant species threaten the conservation of Blackburn's sphinx moth. The Argentine ant (*Linepithema humilis*) has been reported on several islands, including Maui, Kahoolawe, and Hawaii (Adam Asquith, Service, pers. comm. 1998; A. Medeiros, pers. comm. 1998; Nishida 1997). The long-legged ant (*Anoplolepis longipes*) is reported on several islands, including Hawaii and Maui (Hardy 1979). At least two species of fire ants, *Solenopsis geminata* and *S. papuana*, are also important threats (Reagan 1986; Gillespie and Reimer 1993) and occur on many of the major islands (Reimer *et al.* 1990; Nishida 1997). *Ochetellus glaber*, a recently reported ant introduction, occurs on Maui, Hawaii, and Kahoolawe (A. Medeiros, pers. comm. 1998; N. Reimer, pers. comm. 2001; Nishida 1997).

Parasitic Wasps

Hawaii also has a limited fauna of native Hymenopteran wasp species, with only two native species in the family Braconidae (Beardsley 1961), neither of which is known to parasitize Blackburn's sphinx moth. In contrast, other species of Braconidae are common predators (parasitoids) on the larvae of the tobacco hornworm and the tomato hornworm in North America (Gilmore 1938). There are now at least 74 nonnative species, in 41 genera, of braconid wasps established in Hawaii, of which at least 35 species were purposefully introduced as biological control agents (Nishida 1997). Most species of alien braconid and ichneumonid wasps that parasitize moths are not host-specific, but attack the caterpillars or pupae of a variety of moths and have become the dominant larval parasitoids even in intact, high-elevation, native forest areas of the Hawaiian Islands (Zimmerman 1948, 1978; Funasaki *et al.* 1988; Howarth *et al.* 1994). These wasps lay their eggs within the eggs or caterpillars of Lepidoptera. Upon hatching, the wasp larvae consume internal tissues, eventually killing the host. At least one species established in Hawaii, *Hyposeter exiguae*, is known to attack the tobacco hornworm and the related tomato hornworm in North America (Carlson 1979). This wasp is recorded from all of the main islands except Kahoolawe and Lanai (Nishida 1997) and is a recorded parasitoid of the lawn armyworm (*Spodoptera maurita*) on tree tobacco on Maui (Swezey 1927). Because of the rarity of Blackburn's sphinx moths, no documentation exists of alien braconid and ichneumonid wasps parasitizing the species. However, given the abundance and the breadth of available hosts of these wasps, they are considered significant threats to the moth (F. Howarth, pers. comm. 1994; Howarth 1983; Gagné and Howarth 1985; Howarth *et al.* 1994).

Small wasps in the family Trichogrammatidae parasitize insect eggs, with numerous adults sometimes developing within a single host egg. The taxonomy of this group is confusing, and it is unclear if Hawaii has any native species (John Beardsley, University of Hawaii, pers. comm. 1994; Nishida 1997). Several alien species are established in Hawaii (Nishida 1997), including *Trichogramma minutum*, which is known to attack the sweet potato hornworm in Hawaii (Fullaway and Krauss 1945). In 1929, the wasp *Trichogramma chilonis* was purposefully introduced into Hawaii as a biological control agent for the Asiatic rice borer (*Chilo suppressalis*). This wasp parasitizes the eggs of a variety of Lepidoptera in Hawaii, including sphinx moths (Funasaki *et al.* 1988). Williams (1947) found 70 percent of the eggs of Blackburn's sphinx moth to be parasitized by a *Trichogramma* wasp that was probably *T. chilonis*. Over 80 percent of the eggs of the alien grasswebworm (*Herpetogramma licarsisalis*) in Hawaii are parasitized by these wasps (Davis 1969). In Guam, *Trichogramma chilonis* effectively limits populations of the sweet potato hornworm (Nafus and Schreiner 1986), and is considered under complete biological control by this wasp in Hawaii (Lai 1988). While this wasp probably affects Blackburn's sphinx moth in a density-dependent manner (Nafus 1993a), and theoretically is unlikely to directly cause extinction of a population or the species, the availability of more abundant alternate hosts (any other lepidopteran eggs) may allow for the extirpation of Blackburn's sphinx moth by this or other egg parasites as part of a broader host base (Tothill *et al.* 1930; Howarth 1991; Nafus 1993b).

Parasitic Flies

Hawaii has no native parasitic flies in the family Tachinidae (Nishida 1997). Two species of tachinid flies, *Lespesia archippivora* and *Chaetogaedia monticola*, were purposefully introduced to Hawaii for control of army worms (Funasaki *et al.* 1988; Nishida 1997). These flies lay their eggs externally on caterpillars, and upon hatching, the larvae burrow into the host, attach to the inside surface of the cuticle, and consume the soft tissues (Etchegaray and Nishida 1975b). In North America, *C. monticola* is known to attack at least 36 species of Lepidoptera in eight families, including sphinx moths; *L. archippivora* is known to attack over 60 species of Lepidoptera in 13 families, including sphinx moths (Arnaud 1978). These species are on record as parasites of a variety of Lepidoptera in Hawaii and are believed to depress populations of at least two native species of moths (Lai 1988). Over 40 percent of the caterpillars of the monarch butterfly (*Danaus plexippus*) on Oahu are parasitized by *Lespesia archippivora* (Etchegaray and Nishida 1975a), and the introduction of a related species to Fiji resulted in the extinction of a native moth there (Tothill *et al.* 1930; Howarth 1991). Both of these species occur on Maui and Hawaii (Nishida 1997) and are direct threats to the Blackburn's sphinx moth.

Based on the findings discussed above, nonnative predatory and parasitic insects are considered important factors contributing to the reduction in range and abundance of the Blackburn's sphinx moth, and in combination with habitat loss and fragmentation, are a serious threat to its continued existence. Some of these nonnative species were intentionally introduced by HDOA or other agricultural agencies (Funasaki *et al.* 1988) and importations and augmentations of lepidopteran parasitoids continues. Although the State of Hawaii requires new introductions to be reviewed before release (HDOA 1994), post-release biology and host range cannot be predicted from laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992), and the purposeful release or augmentation of any lepidopteran parasitoid is a potential threat to the conservation of the Blackburn's sphinx moth (Gagné and Howarth 1985; Simberloff 1992).

As Table 1 indicates, the assemblage of potential alien predators and parasites on each island may differ.

TABLE 1.—POTENTIAL NONNATIVE INSECT PREDATORS AND PARASITES OF BLACKBURN'S SPHINX MOTH

Order/family	Genus/species	Major island(s) on which the species has been reported	Major island(s) on which the species has not been reported
Diptera/Tachinidae	Chaetogaedia monticola (fly)	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Diptera/Tachinidae	Lespesia archippivora (fly)	Hawaii, Kauai, Maui, Molokai, Oahu	Kahoolawe, Lanai.
Hymenoptera/Formicidae	Anoplolepis longipes (long-legged ant).	Hawaii, Kauai, Maui, Oahu	Kahoolawe, Lanai, Molokai.
Hymenoptera/Formicidae	Linepithema humilis (Argentine ant)	Hawaii, Kahoolawe, Kauai, Lanai, Maui.	Molokai, Oahu.
Hymenoptera/Formicidae	Ochetellus glaber (ant)	Hawaii, Kahoolawe, Kauai, Maui, Oahu.	Lanai, Molokai.
Hymenoptera/Formicidae	Pheidole megacephala (big-headed ant).	Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Oahu.	none.
Hymenoptera/Formicidae	Solenopsis geminita (fire ant)	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Hymenoptera/Formicidae	Solenopsis papuana (fire ant)	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Hymenoptera/Vespidae	Vespula pennsylvanica (yellow jacket wasp).	Hawaii, Kauai, Maui, Oahu	Kahoolawe, Molokai.
Hymenoptera/Ichneumonidae	Hyposoter exiguae (wasp)	Hawaii, Kauai, Maui, Molokai, Oahu	Kahoolawe, Lanai.
Hymenoptera/ Trichogrammatidae.	Trichogramma chilonis (wasp)	Kauai, Oahu	Hawaii, Maui, Kahoolawe, Lanai, Molokai.
Hymenoptera/ Trichogrammatidae.	Trichogramma minutum (wasp)	Hawaii, Lanai, Molokai, Oahu	Kauai, Kahoolawe, Maui.

Furthermore, the arthropod community may differ from one area to another, even on the same island, based upon elevation, temperature, prevailing wind pattern, precipitation, or other factors (Nishida 1997). Conserving and restoring Blackburn's sphinx moth populations in multiple locations should decrease the likelihood that the effect of any single alien parasite or predator, or the combined pressure of such species, could result in the diminished vigor or extinction of the moth.

Because of the threats discussed above, we do not believe the existing habitats containing Blackburn's sphinx moth populations are sufficient to ensure the long-term survival of the species. A diverse set of habitats and climates within its former range is necessary to remove the long-term risk of rangewide extinction of the species. Threats to the moth identified in the final listing rule include vandalism and collection, predation/parasitism by alien arthropods, and habitat alteration and loss from nonnative plant and ungulate invasion (65 FR 4770; February 1, 2000). Considering the rarity of the moth, small population size is also believed to be a factor that threatens the long-term survival of the species, since random population fluctuations and catastrophic events are more likely to result in the extirpation of local populations. Wildfire and feral ungulate pressure on the moth's habitat, along with direct pressure of alien predators and parasites, are important factors currently reducing the moth's range and abundance and threatening the species' continued existence (Funasaki *et al.* 1988).

Previous Federal Action

A summary of previous Federal actions on this species up to the time we proposed this critical habitat designation is found in the **Federal Register** notice proposing designation of this critical habitat (67 FR beginning page 40638).

On June 13, 2002, we published a proposed rule for designation of critical habitat for Blackburn's sphinx moth on approximately 40,240 ha (99,433 ac) of land on the islands of Hawaii, Kahoolawe, Maui, and Molokai (67 FR 40633). The publication of the proposed rule opened a 60-day public comment period, which closed on August 12, 2002.

Subsequently, we determined that an additional extension of time was needed to complete this designation process. On August 21, 2002, the District Court in Hawaii approved another joint stipulation extending the date for the final rule designating critical habitat for Blackburn's sphinx moth to May 30, 2003.

On August 26, 2002, we published a notice (67 FR 54763) announcing the reopening of the comment period until December 30, 2002, and notice of a public hearing on the proposed rule to be held on the island of Maui. On September 12, 2002, we held a public hearing at the Maui Arts and Cultural Center Meeting Room, Kahului.

On October 10, 2002, we published a notice of a public hearing on the proposed rule to be held on the island of Hawaii (67 FR 63064). On October 29, 2002, we held a public hearing in Kailua-Kona, Hawaii.

On November 15, 2002, we published a notice of the availability of, and invitation for, comments on the draft economic analysis (DEA) for the proposed rule (67 FR 69179). The second public comment period closed on December 30, 2002.

Summary of Comments and Recommendations

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited, during a prepublication peer review process, independent opinions from 15 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region that the species occurs in, and the principles of conservation biology. We received comments from five reviewers. After publication of the proposed rule, we solicited independent opinions from 27 knowledgeable individuals with similar expertise. We received 8 written responses from those 27 individuals. All eight reviewers generally supported our methodology and conclusion, and supported the proposed critical habitat designation, although they recognized the limitations of scientific knowledge of life history and population characteristics of the Blackburn's sphinx moth. All of the reviewers supported including currently unoccupied habitat within the designation. Several reviewers suggested specific locations where critical habitat should have been expanded; in most cases this was to include additional mesic habitat areas for the moth. Several reviewers specifically expressed concern with the identified primary constituent elements, particularly pertaining to the fact that nonnative tree tobacco (*Nicotiana glauca*) was not identified as such. We summarize and address comments received from the peer reviewers in the following section. We considered all reviewers' comments in developing the final rule.

In the June 13, 2002, proposed critical habitat designation (67 FR 40633), we requested all interested parties submit comments on the specifics of the proposal, including information related to biological justification, policy, economics, and proposed critical habitat boundaries. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. The comment period was scheduled to close on August 12, 2002. To allow for additional comments on the proposed designation and to allow for comments on the DEA of the proposed critical habitat, we extended the comment period until December 30, 2002 (67 FR 54763). We received 30 individually written letters, from 10 designated peer reviewers, 4 State agencies, and 16 individuals or organizations. Approximately 715 additional letters were submitted as part of a mailing campaign, all of which supported the proposed designation.

We received three requests for a public hearing. We announced the date and time of the public hearings and invited comments in letters to appropriate elected officials; Federal, State, and local agencies; scientific organizations; and other interested parties. We also published notices in several news sources, including the **Federal Register**, Star Bulletin, West Hawaii Today, Hawaii Tribune Herald, Honolulu Advertiser, Molokai Advertiser News, and the Maui News. Five individuals at the October 2002 Kahului, Maui, public hearing and 5 individuals at the November 2002 Kailua-Kona, Hawaii, public hearing, gave testimony on the Blackburn's sphinx moth critical habitat proposal.

We provided notification of the DEA through letters and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also published notice of its availability in the **Federal Register** (67 FR 69179; November 15, 2002), and the DEA and associated material were made available on our Region 1 Fish and Wildlife Office Internet site following its release on November 15, 2002.

We reviewed all comments received for substantive issues and new information regarding the Blackburn's sphinx moth. Similar comments were grouped into six general issue categories relating specifically to the proposed critical habitat determination and DEA on the proposed determination. Comments have been incorporated directly into the final rule or final addendum to the economic analysis, and/or they have been addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* Multiple commenters, including one official with HDOA, stated that the Service should not designate unoccupied habitat for the moth, and that unoccupied areas should be excluded from the designation. However, all peer reviewers of the proposed rule, including one with the Hawaii Division of Forestry and Wildlife (DOFAW) and one with HDOA, were in support of the designation of unoccupied habitat. Many of the peer reviewers stated that unoccupied habitat is essential since currently occupied areas would be inadequate for conservation of the species.

Our Response: Because of the comparatively limited current range of this species, designating only occupied areas would not meet the conservation requirements of the species. Many peer reviewers agreed with this and stated that currently occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, cannot provide all of the essential life-cycle needs of the species, nor provide all of the habitat components essential for the conservation (primary constituent elements) of this species. Therefore, providing the opportunity for expansion of this species to areas that were known to have been historically occupied (*i.e.*, Molokai) is essential to its conservation, and should help to prevent the possibility of the species' extinction in the event that some populations are extirpated by catastrophes such as large wildfires or hurricanes.

When designating currently unoccupied habitat for this species, we first evaluated lands that are suitable. Of this suitable habitat, we then identified those areas essential for the conservation of the species if they contained one or more of the primary constituent elements; were either in acceptable condition for conservation efforts, or could be made acceptable through appropriate management actions; and would provide the space and distribution needed by the moth to sustain itself in the future.

The one unoccupied area designated in this final rule is located on the island of Molokai. Although currently unoccupied by the moth, the area contains both larval stage and adult moth native host plants. The area is close enough in proximity to the Maui moth population that many peer reviewers stated it is feasible that the area may again be repopulated by the moth on its own. However, because it is a separate island, some additional protection from a potential natural catastrophe affecting, for example, the Maui population, may be afforded a future moth population on Molokai. Furthermore, as Molokai is the closest island to Oahu, we believe that allowing for a future moth population on Molokai may facilitate the species' dispersal and provide a flight corridor for moths eventually dispersing to the island of Oahu, which is also part of its historical range.

Molokai was designated as critical habitat in lieu of, or rather than, other suitable unoccupied areas, because we determined, to the best of our abilities, that it is the highest quality unoccupied habitat essential to the conservation of the moth. Lastly, the designated unoccupied area on Molokai may lack some of the serious potential threats to the moth (see Table 1). Conserving and restoring Blackburn's sphinx moth populations in multiple locations decreases the likelihood that the effect of any single alien parasite or predator, or the combined pressure of such species and other threats, could result in the diminished vigor or extinction of the species.

(2) *Comment:* Critical habitat designation should consider the following: (1) The importance of designating the best remaining elements of ecosystems for multispecies conservation; (2) the practicality of managing and protecting scattered units without apparent physical boundaries; and (3) the importance of public/private partnerships for species conservation.

Our Response: We agree that all these factors are important for the conservation of listed species. We have designated only areas that are essential for the conservation of the Blackburn's sphinx moth, and which contain primary constituent elements within the highest quality remaining habitats. We also agree that public/private partnerships are often essential for species conservation. As an example,

we are excluding portions of proposed Units 1 and 2 because some private landowners are managing portions of their lands for the conservation benefit of the moth and numerous other listed species. We believe that the benefits of exclusion outweigh the benefits of including these areas as critical habitat because there is a higher likelihood of beneficial conservation activities occurring in those two areas without designated critical habitat. *See* Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

(3) *Comment:* The majority of peer reviewers noted the lack of knowledge regarding basic biology of the species. They noted that little peer-reviewed biological and ecological information is available for the Blackburn's sphinx moth, and that much of the technical information used for the critical habitat designation is based on unpublished reports and field observations by Service staff, State biologists, and university researchers. One peer reviewer with DOFAW stated that the use of information from studies of other sphinx moths or butterflies is probably not valid for Blackburn's sphinx moth. Another peer reviewer suggested the use of studies for other lepidopterans could be problematic. However, other peer reviewers agreed that it was acceptable and appropriate for the Service to use studies and information on other lepidopterans, especially since there is limited information on the moth.

Our Response: As noted in the Background section of this rule, we recognize the limited amount of scientific data available for this species, especially the very limited amount of information that is available in a peer-reviewed format. However, the Act requires us to use the best available scientific and commercial information in undertaking species listing and conservation actions, including the designation of critical habitat as set forth in this rule.

Prior to the rulemaking process associated with listing the Blackburn's sphinx moth as endangered, we participated in, led, or sponsored a number of surveys and studies in numerous habitat areas on several islands to document the presence or absence of the moth or its essential host plant species at these locations. In addition, other natural resource agencies and organizations, including the University of Hawaii, USGS-BRD, DLNR, and the National Botanical Garden, provided us with reports of field observations at many sites on several islands. While we acknowledge the limited amount of peer-reviewed published information regarding the Blackburn's sphinx moth, as required by law we have used the best scientific and commercial data available to identify and delineate the critical habitat boundaries. Furthermore, we believe that we have been cautious in using information from studies of other, similar lepidoptera in identifying critical habitat for this moth species. For example, throughout this rule, we have explicitly identified where we were making comparisons between Blackburn's sphinx moth and related taxa rather than making assumptions outright about the moth. We have also acknowledged throughout the rule that additional studies are needed to confirm certain aspects of the species's biology, including, but not limited to, its host plant co-interactions.

(4) *Comment:* Some commenters stated that the Service did not adequately consider recovery science and management in its proposed critical habitat designation.

Our Response: When developing the rule to designate critical habitat for the moth, we have used the best scientific and commercial data available. This included, but is not limited to, documented locations of known Blackburn's sphinx moth populations and locations of the primary constituent elements, including peer-reviewed scientific publications; unpublished reports by researchers; the rule listing the species (65 FR 4770); the Blackburn's sphinx moth Recovery Outline (Service 2000); the HHP's current database; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); information received during the public comment periods and public hearings; recent biological surveys and reports; information received in response to outreach materials and requests for species and management information that we sent to all landowners, land managers, and interested parties; responses to the published Blackburn's sphinx moth critical habitat proposed rule; and the DEA.

The critical habitat unit approach in this rule addresses the numerous risks to the long-term survival and conservation of Blackburn's sphinx moth by employing two widely recognized and scientifically accepted methods for promoting viable populations of imperiled species—(1) creation or maintenance of multiple populations to reduce the possibility that a single or series of catastrophic events could threaten to extirpate the species; and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Tear *et al.* 1995; Meffe and Carroll 1996; Service 1997a).

In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Blackburn's sphinx moth. By maintaining viable populations in the designated critical habitat units, the threats represented by a fluctuating environment are reduced and the species has a greater likelihood of achieving conservation. Conversely, loss of a Blackburn's sphinx moth critical habitat unit will result in an appreciable increase in the risk that the species may not recover and survive.

Re-establishing the species to a diverse set of habitats and climates within its former range is necessary to remove the long-term risk of rangewide extinction due to catastrophic events and the numerous direct threats to the species and its habitat (Service 1997a). We are keenly aware that simply designating an area as critical habitat will not ensure its long-term conservation and recovery and, in fact, we know and recognize that active management actions and proven recovery science methods will be far more important in the long run for the moth. In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we also solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat for the Blackburn's sphinx moth was based on scientifically sound data, assumptions, and analysis, and recovery science. The comments of all of the peer reviewers were taken into consideration in the development of this final designation. Furthermore, we are in the process of developing a draft recovery plan for the moth, and all peer reviewers, stakeholders, and other interested parties will have an opportunity to provide input to ensure that the best recovery science is outlined for the moth's long-term conservation and recovery.

(5) *Comment:* Numerous comments were submitted regarding the Service's identification of the Blackburn's sphinx moth's primary constituent elements. Most peer reviewers stated that the Service had properly identified the primary constituent elements for this species. However, several reviewers, including one with HDOA and one with DOFAW, expressed concern with the Service's decision not to include tree tobacco (*Nicotiana glauca*) as a primary constituent element because the adult moth often lays eggs on this plant species, and the moth's larval stage appears to feed readily and successfully on it. In addition, *N. glauca* is believed to be the only larval stage host plant that the Kahoolawe island Blackburn's sphinx moth population is utilizing.

Our Response: Although Blackburn's sphinx moth larvae feed on the nonnative *Nicotiana glauca*, we do not consider this plant to be a primary constituent element for the designation of critical habitat. As previously discussed, the native *Nothocestrum* spp. are more stable and persistent components of dry-to-mesic forest habitats than *N. glauca*. *Nicotiana glauca* is a short-lived species that may disappear from areas during prolonged drought (A. Medeiros, pers. comm. 1998) or during successional changes in the plant community (F. Howarth, pers. comm. 2001; Simon 1999). Many studies have shown that insects, and particularly lepidopteran larvae, consume more food when the food has a relatively high water content (Murugan and George 1992). Relative consumption rate and growth have been reported to decrease for many sphingids closely related to the Blackburn's sphinx moth when raised on host plants or diets with a relatively low water content (Murugan and George 1992). The vulnerability of *N. glauca* to drought conditions suggests that its water content frequently may not be suitable for optimal growth of Blackburn's sphinx moth larvae.

Numerous conservation and restoration plans for particular areas throughout the State of Hawaii have identified as primary goals the restoration of native plants, including the native host plants for the Blackburn's sphinx moth and other endangered species. Achieving these restoration goals may also require the control or elimination of nonnative vegetation, potentially including *Nicotiana* spp. (*See also* Comment #22).

Additionally, unlike the *Nothocestrum* spp., *Nicotiana glauca* is more likely to occur in habitats less suitable because of their occupation by alien insect predators (D. Hopper, *in litt.* 2000, 2002; Simon 1999). Therefore, in comparison with *N. glauca*, the native *Nothocestrum* spp. better fulfill the primary biological needs of the moth larvae. For all of these reasons, we are not considering *N. glauca* as a primary constituent element for the designation of critical habitat.

(6) *Comment:* Several reviewers stated that the native *Nothocestrum* spp. host plant populations are currently very rare and most of them are not demonstrating regeneration, so that reviewers questioned the likelihood of the Blackburn's sphinx moth's eventual recovery. Several reviewers also pointed out that the few existing *Nothocestrum* populations are highly vulnerable to extirpation by catastrophic events such as large wild fires or hurricanes. Reviewers recommended that *Nothocestrum* populations be aggressively managed using techniques that include fencing and weed and feral ungulate control; otherwise, the decline of *Nothocestrum* populations would continue. Furthermore, it was suggested that existing *Nothocestrum* populations be augmented and new populations be established with techniques including outplanting and propagation.

Our Response: We agree that active management of the remaining *Nothocestrum* spp. populations will be necessary to prevent their continued decline and thereby facilitate the moth's long-term conservation. This critical habitat designation and the draft recovery plan, which we are currently preparing, identify these needs.

(7) *Comment:* One peer reviewer questioned whether it was prudent to identify nectar food source plants for the adult Blackburn's sphinx moths as primary constituent elements because these plants, especially *Ipomea* spp., are more widespread than the native larval stage host plants identified as primary constituent elements, and they are found outside of the boundaries of proposed critical habitat. The reviewer noted that some areas proposed as critical habitat, *i.e.*, proposed Unit 2, were selected partly because the areas are known to contain adult moth primary constituent elements, even if currently devoid of native *Nothocestrum* spp.

Our Response: We agree that known and likely native nectar food sources for adult Blackburn's sphinx moths are more widespread and abundant than known native food sources for larval moths. We included native nectar food sources as primary constituent elements for the moth to identify the specific habitat components needed for the species to complete its entire life cycle. We determined that identifying critical habitat based solely on the existing locations of larval stage primary constituent elements, *i.e.*, *Nothocestrum* spp., would not meet the species' needs essential for its conservation. Some critical habitat areas were selected because they are known to contain adult moth primary constituent elements, even if currently devoid of native *Nothocestrum* spp. We included such areas when we determined that the areas were: (1) Within the moth's current or historic range; and/or (2) known or believed to have been occupied by *Nothocestrum* spp. in the past and capable of supporting *Nothocestrum* spp. again if properly protected or restored.

(8) *Comment:* One peer reviewer suggested that some areas currently occupied by the Blackburn's sphinx moth and proposed as critical habitat may actually be suboptimal habitat for the species. It was hypothesized that these same areas are occupied currently only because some threats, such as ants or certain *Trichogramma* parasitic wasp species, are either lacking or present in sufficiently low levels to allow the moth to persist there. The same peer reviewer also suggested that soil substrate is an important habitat component that may have been overlooked in the proposed rule. It was noted that the moth has often been found in areas with rocky, cinderlike, and relatively barren substrate. It was hypothesized that the moth may prefer such a loose, uncompacted substrate for the purpose of burrowing to complete pupation. However, it was also noted that moth occurrences in these areas may be due to the fact that such substrates are somewhat comparatively abiotic and sparsely vegetated, and may thus yield lower moth parasite and predator populations.

Our Response: The best available information, both historic and current, was used from a variety of sources (see Methods section) to determine the primary constituent elements for the Blackburn's sphinx moth and its current and former range. As pointed out by reviewers, historic information is extremely scant for the species, but the only information currently available indicates the species is restricted to somewhat dry and leeward areas. While we acknowledge that additional studies are needed to better understand the moth's long-term conservation needs, the designated lands represent, to the best of our current knowledge, the areas essential to the species' conservation. We are currently preparing a draft recovery plan for the moth, and this plan identifies several priority research tasks such as the investigation of substrate preferences and effects of various predators and parasites on the species. We may revise this critical habitat designation in the future if new information indicates revisions are warranted.

(9) *Comment:* One peer reviewer recommended that the Service conduct

a genetic analysis of moth populations from both Kahoolawe and Maui to determine if the moth has perhaps evolved either a preference for, or an adaptation to, feeding on *Nicotiana glauca*. It was suggested that the Service might learn whether the Kahoolawe moth population is dependent upon Maui moth populations for recruitment. Furthermore, genetic analysis might reveal that *Nicotiana glauca* raised moth populations are dependent upon *Nothocestrum* spp. plants or that such moth populations are genetically distinct from those moth populations that appear to be *Nothocestrum* spp. dependent.

Our Response: We agree that a greater understanding of the moth's genetics is needed to better address its long-term conservation needs. However, researching this aspect of the moth's biology is beyond the scope of this document. We are currently preparing a draft recovery plan for the moth that will identify a genetics study, in addition to other priority research objectives.

(10) *Comment:* Most of the peer reviewers stated that the proposed critical habitat areas seem suitable in size and that they are ecologically appropriate, provided that: (1) The proposed areas are protected from their primary threats, and (2) the excluded lands are properly managed and of large enough size to be ecologically sustainable.

Our Response: We believe the core area of suitable habitat has been demarcated by the critical habitat boundaries as presented in this final rule. Moreover, the designated critical habitat units were chosen to create an array of multiple discrete populations across the four islands to reduce the risk of extinction resulting from catastrophic natural events, such as hurricanes, and to enhance the likelihood of conservation. Furthermore, the units were chosen because they are the highest quality native habitats essential to the moth's conservation and all are identified as manageable, restorable, and sufficient in size to capably support self-sustaining moth populations. Our conclusion is that 9 sites located within historic range on four islands are sufficient to achieve these goals. If provided with new information, we may revise the critical habitat designation in the future.

(11a) *Comment:* Three peer reviewers and one commenter noted that the proposed rule did not contain a great deal of information about the distribution of the mesic habitat plant, *Nothocestrum longifolium* nor its potential as a host plant for the larval stage of the moth. It was recommended that the Service map the distribution of *N. longifolium* by island. (11b) *Comment:* Two reviewers and one commenter, including one with HDOA, noted that very little mesic habitat, other than on Molokai, was proposed as critical habitat for the Blackburn's sphinx moth. They recommended that the Service include more mesic habitat in the final designation, especially in light of the fact that the islands have undergone, and often undergo, long periods of drought. (11c) *Comment:* One peer reviewer with HDOA provided additional observational data for the moth at light traps located near Olinda, East Maui, and suggested that the moths were either flying long distances from known habitat areas, or represented adults from an undocumented population potentially utilizing *N. longifolium* plants in mesic forests of northwest Haleakala. (11d) *Comment:* Another peer reviewer with DOFAW provided additional observational data for the moth on Maui that may indicate a distinct seasonal pattern to its appearances on that island. It was suggested that these respective periods of moth appearance coincided with annual regional precipitation patterns, and might indicate the moth was taking advantage of appropriate opportunities for larval development and flower (*e.g.*, nectar) foraging. (11e) *Comment:* The same reviewer recommended the inclusion of an altogether new unit on West Maui that was not proposed as critical habitat. The unit was justified since it would include additional mesic habitat and was persistently and strongly occupied by the moth. Additionally, the area contained adult Blackburn's sphinx moth primary constituent elements, specifically *Plumbago* spp. and *Ipomea* spp., as well as other potential larval stage host plants (not identified as primary constituent elements) such as *Solanum nelsoni* and *Scaevola sericea*. Lastly, it was suggested that the new unit might provide an important corridor for adult moths migrating toward the proposed Unit 7 on Molokai because of its proximity to Molokai and the area's relative lack of strong winds like those found in the isthmus area of Maui between West Maui and Haleakala.

Our Response: We did not designate additional mesic land on East or West Maui because those lands are not essential for the conservation of the moth. This conclusion is based on available information concerning the status of the Blackburn's sphinx species in specific areas and/or the level of habitat degradation. We agree that some mesic forest areas not designated as critical habitat, especially on Maui, may potentially harbor undocumented populations of Blackburn's sphinx moth. We also acknowledge that additional survey efforts are needed to ascertain the existence of these moth populations or potential host plant populations. In preparation of this rule, we did fund three surveys for moth host plants within mesic habitats (Perry 2001; Wood 2001a; 2001b). While new reports of moth sightings provided by reviewers will be useful in focusing future survey efforts and research needs, the fact remains that too little is known about the moth's potential mesic habitat requirements. For example, the potential host plant suitability of mesic habitat plants such as *Nothocestrum longifolium*, to warrant the designation of additional mesic habitat for the moth beyond what we have designated. Furthermore, the mesic habitat we designated on the island of Molokai was identified as the best quality mesic habitat essential for the conservation of the moth. Lastly, the two designated units within the Maui isthmus, Units 5 and 6 are expected to adequately serve as a corridor for moths migrating to the designated unit on Molokai (Unit 9).

(12) *Comment:* Two peer reviewers noted that the quality of 'darkness' (*i.e.*, absence of artificial lighting) could be an important factor in the Blackburn's sphinx moth's biology, and suggested this habitat quality be considered a primary constituent element. It was stated that 'darkness' may be important for the normal nocturnal foraging, biology, and movement behavior of the adult Blackburn's sphinx moth. Furthermore, it was noted that most of the proposed critical habitat units are still in relatively dark areas, with the exception of proposed Units 3, 5a, and 5b. One commenter provided information about two occasions in which the moth was observed flying to bright lights at the State Forestry Baseyard in Kahului, Maui. During one of the occasions, the moth became disoriented and was killed by a feral cat. Two reviewers and one commenter suggested that management for darkness may be an important issue for Blackburn's sphinx moth conservation, especially if specific critical habitat units became more developed, such as in proposed Units 3, 5a, and 5b. One reviewer suggested that low-intensity and/or shielded lighting strategies might help reduce attraction and disorientation of nocturnally migrating adult moths. One commenter recommended that proposed Unit 3 not be included in the designation because of the absence of 'darkness.' Another reviewer with DOFAW questioned whether future development within the two proposed Kailua-Kona units, and the subsequent reduction of darkness, might negatively impact moth behavior within that area.

Our Response: We agree that the quality of darkness might be an important factor in the adult Blackburn's sphinx moth's behavior. However, at this time the we are unaware of prior studies on this issue. In the draft recovery plan for this species that we are currently preparing, we will include a research objective to explore the importance of the 'darkness' habitat quality to the moth. If provided with new information, we may revise the critical habitat designation in the future.

(13) *Comment:* One peer reviewer recommended the identification of additional primary constituent elements for the adult Blackburn's sphinx moth, *Scaevola sericea* and *S. coriacea*, located within coastal areas, and other *Scaevola* spp. located within montane areas. The reviewer had documented several observations of similar sphingid species taking nectar from *Scaevola* spp., although no Blackburn's sphinx moths were observed feeding upon these species. Furthermore, within coastal areas of proposed Unit 3, sphingid moths had been documented foraging during crepuscular (twilight) hours on *Scaevola* spp. within less than 50 m (164 ft) of *Nicotiana glauca* host plants containing Blackburn's sphinx moth larvae. It was suggested it was highly likely that some of the observed foraging adult moths could have been Blackburn's sphinx moth adults.

Our Response: We agree that *Scaevola* spp. could potentially serve as a nectar food source for foraging adult moths. Flowers produced by this plant group share many of the characteristics of the flowers of plants described as primary constituent elements in this rule. We will include a research objective to explore the suitability of *Scaevola* spp. as a moth nectar resource in the draft recovery plan for this species that is currently being prepared.

Issue 2: Effects of Designation

(14) *Comment:* Multiple commenters stated that the designation of critical habitat alone will not prevent the loss of remaining natural habitats, and that funds would be better spent on natural resource management activities. Additionally, some reviewers, including one with DOFAW, stated that if management is not realistic, it makes little sense to designate critical habitat.

Our Response: We are required under the Act to designate critical habitat on the basis of best available information. Management needs for the species will be addressed in the draft recovery plan that we are currently preparing.

(15) *Comment:* Multiple commenters expressed concern about the potential impacts to hunting activities and traditional gathering rights of native Hawaiians as a result of the proposed critical habitat designation. One commenter suggested the Service should involve hunter groups in any relevant discussions should it be determined that game animal management or hunting activities may be affected by the designation.

Our Response: We agree that in many circumstances a well-designed hunting program can be an important component in the conservation of native ecosystems in Hawaii by helping to control excessive damage caused by large populations of feral mammals. In preparation of this rule, we did conduct public information meetings with State agencies and hunting groups to address these kinds of concerns.

Unless there is Federal nexus to the activity, an activity by the State or private landowner or individual, such as farming, grazing, logging, and gathering, generally is not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. Recreational, commercial, and subsistence activities on non-Federal lands, including hunting, are not regulated by this critical habitat designation. These activities may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(16) *Comment:* Some commenters stated that critical habitat should be consistent with current and ongoing conservation efforts in priority areas so that resources are not directed elsewhere in an uncoordinated manner. It was suggested that the Service and landowners and managers work together to develop approaches that are more likely to lead to species conservation, rather than a passive designation lacking management.

Our Response: We agree and recognize that the ultimate purpose of critical habitat is to contribute to the conservation of listed species, a purpose that can be best reached by cooperation between ourselves and the community. As an example, we are excluding portions of proposed Units 1 and 2 because some private landowners are managing portions of their lands for the conservation benefit of Blackburn's sphinx moth and numerous other listed species. We believe there is a higher likelihood of beneficial conservation activities occurring in those two areas without designated critical habitat than there would be with designated critical habitat in those locations. See Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

Issue 3: Site-Specific Biological Comments

(17) *Comment:* One peer reviewer with DOFAW commented that the two proposed Kailua-Kona Units (5a and 5b) may be too small and urbanized to be effective for the long-term conservation of the Blackburn's sphinx moth. One commenter with the Housing and Development Corporation of Hawaii (HCDCH), a State agency, provided more recent survey data that indicated the proposed Unit 5b no longer contained living *Nothocestrum brevifolium* host plants. Another commenter questioned whether the proposed Unit 5a was actually essential to the species. It was suggested that the 1992 data used to indicate presence of the *N. brevifolium* host plants was outdated, and at any rate, the presence of only two known *N. brevifolium* host plants failed to prove the area would be capable of supporting a viable moth population. Furthermore, it was questioned whether inclusion of the area would actually facilitate dispersal of the moth to other proposed areas, and ultimately whether the unit would contribute to genetic exchange between moth populations on the island of Hawaii. The commenter inquired as to the number of past moth sightings within the unit. One commenter requested that the proposed Units 5a and 5b be excluded from the designation since the rule did not demonstrate that exclusion would result in extinction of the moth.

Our Response: We have excluded proposed Units 5a and 5b from the final designation. See the Summary of Changes from the Proposed Rule section for additional detail concerning the exclusion of these units.

(18) *Comment:* One peer reviewer suggested that it may be difficult to defend the inclusion of the Kahului Airport runway safety zone within Unit 3 because the area does not currently support native *Nothocestrum* spp. host plants. It is also unlikely to do so in the future since any potentially outplanted *Nothocestrum* spp. may not survive the strong winds and salt spray prevalent within the area. However, it was noted that the area could possibly support other native solanaceous plants such as

Solanum nelsoni, which may be suitable larval stage host plants.

Our Response: We were provided with additional information in the form of recently completed surveys for portions of the proposed Unit 3. The study, conducted by the Hawaii Biological Survey and the Bishop Museum, showed that areas on the western edge of the proposed Unit 3, encompassing and bordering some Kahului Airport lands, were in fact relatively devoid of identified primary constituent elements, and the area would therefore not appear to provide suitable long-term habitat for the moth. As a result of receiving the additional information on the proposed Unit 3, critical habitat in the area is now designated in the form of two smaller units that do not encompass the Kahului Airport runway safety zone, nor any other Kahului Airport lands other than that contained within the Kanaha Pond Wildlife Sanctuary boundaries. See the Summary of Changes from the Proposed Rule section for additional detail on the changes that were made to this unit.

We agree that *Solanum nelsoni* could potentially serve as an alternate coastal host plant food source for the moth's larval stage. We will include a research objective to explore the suitability of *Solanum nelsoni* as larval stage host plant in the draft recovery plan for this species, currently under preparation.

(19) *Comment:* One commenter pointed out that approximately 4 ha (10 ac) of proposed Unit 3 overlapped with a private parcel under a grazing lease. It was requested that the area in question be removed from the designation if the primary constituent elements were not present, or if the area did not warrant special management considerations.

Our Response: As a result of receiving additional information on proposed Unit 3, we excluded several portions of this proposed unit, including the area in question from critical habitat because we determined that those areas lacked the moth's primary constituent elements. *See* the Summary of Changes from the Proposed Rule section for additional detail on the changes we made to this unit.

(20) *Comment:* One peer reviewer with HDOA suggested that the lack of collection records for certain potential parasites and predators on Molokai does not mean those organisms are not present on the island. Rather it is possible that the lack of records is, in fact, an artifact of limited prior collecting work there. It was recommended that searches for these potential parasites and predators should be conducted on Molokai before special effort is put forth to utilize the island as a restoration site for the Blackburn's sphinx moth.

Our Response: We agree. The need to better document the presence of potential predator and parasites within identified habitat conservation areas for the Blackburn's sphinx moth will be addressed in the draft recovery plan currently being prepared for the species.

(21) *Comment:* One peer reviewer with DOFAW suggested that the proposed Units 1, 2, 6, and 7 would require fencing and large scale feral ungulate management to ensure conservation of the moth and its host plants in those areas. On a related note, one reviewer and one commenter suggested that the use of managed grazing could potentially aid moth habitat restoration through the suppression of invasive weeds and fire fuels.

Our Response: We agree with the reviewer regarding the identified fencing needs, yet we also acknowledge that managed grazing, and even highly managed game animal populations, may potentially serve as tools in the suppression of invasive weeds and fire fuels. Many of these concepts are explored in greater detail within the draft recovery plan currently being prepared for the moth. Furthermore, we look forward to developing and implementing innovative strategies to restore identified Blackburn's sphinx moth habitat conservation areas with our public and private partners involved in the management of game or livestock.

(22) *Comment:* One peer reviewer with DOFAW stated that a potential, but resolvable, conflict in land management could occur within proposed Unit 3, specifically within the boundaries of the Kanaha Pond Wildlife Sanctuary, based on current management plans to ultimately restore the 95 ha (235 ac) of sanctuary lands as much as possible to native pre-contact conditions. The planned removal of all alien plant species may entail the removal of all existing *Nicotiana glauca* plants, the nonnative host plant for the moth. It was suggested that planned experimental outplanting of native *Nothocestrum* spp. may be attempted within the sanctuary. However, it was noted that if the attempts were unsuccessful, there may then be a need to retain the *N. glauca* for the moth, an important change in both the sanctuary's management and management plans.

Our Response: We agree that the restoration of the Kanaha Pond area to a more native and pre-contact condition will benefit the remaining native components of that ecosystem, and that it should benefit the Blackburn's sphinx moth as well. We look forward to developing and implementing an innovative restoration strategy for this area with DOFAW. Determining if there are suitable, native coastal host plants that could be outflanked for the moth's larval stage is a research need that we will address in the draft recovery plan.

(23) *Comment:* One commenter provided additional information about the extent of grazing activities within proposed Unit 7 on Molokai, and questioned whether the area actually contained the Blackburn's sphinx moth's primary constituent elements. It was requested that the area be excluded from the designation.

Our Response: As a result of receiving the additional information on proposed Unit 7, several portions of the proposed unit were excluded from critical habitat because new information revealed some lands in that unit did not contain the primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species. *See* the Summary of Changes from the Proposed Rule section for additional detail on the changes that were made to this unit.

(24a) *Comment:* It was recommended by two commenters that some of the areas within proposed Unit 1 be excluded since they did not contain the moth's primary constituent elements. One peer reviewer suggested that proposed Unit 1 could be extended eastward of the southern Haleakala boundary to Kaupo, especially along the coast (*e.g.*, Nui coastline), to include additional areas containing the primary constituent elements. (24b) *Comment:* Another peer reviewer with DOFAW recommended that the boundaries of proposed Unit 3 be expanded by extending the unit to the south and southeast to include the area demarcated by Highway 36, and east along Highway 36 to the three-way intersection of Highway 37 with Old Haleakala Highway and Hana Highway. The reviewer noted that both Blackburn's sphinx moth adults and larvae had been observed on numerous occasions, often in good numbers within the area. Furthermore, the reviewer suggested that this expansion of proposed Unit 3 would provide additional windward and mesic habitat for the moth, a habitat type not highly represented in the proposed areas.

Our Response: As a result of receiving the additional information on proposed Unit 1, critical habitat in the area is now designated in the form of four smaller units. *See* the Summary of Changes from the Proposed Rule section for additional detail on the changes that were made to this unit. In this final rule, several portions of proposed Unit 1 were excluded from critical habitat it was determined that these areas lacked the moth's primary constituent elements. Other portions of proposed Unit 1 were excluded because we decided that the benefits of excluding critical habitat outweighed the benefits of including critical habitat. *See* Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

We did not include these additional lands in critical habitat Units 1 and 3 because we concluded that they were not essential for the conservation of the Blackburn's sphinx moth. This was based on available information concerning the status of the species in specific areas and the level of habitat degradation. We agree that some of these additional lands may potentially harbor undocumented populations of Blackburn's sphinx moth, and we also acknowledge that additional survey efforts are needed to ascertain the existence of potential moth or host plant populations in these areas and likely in other areas as well. While new reports of moth sightings or other observations of potentially suitable habitat provided by reviewers will be useful in focusing future survey efforts and research needs, we believe we have identified for designation, the best quality habitat essential for the conservation of the moth.

Issue 4: Mapping

(25) *Comment:* Two commenters stated that greater precision is needed to identify manmade structures and features such as roads, houses, and buildings already present within the proposed critical habitat designation areas. The DEA conceded that a lack of clarity regarding excluded features and structures could force landowners to incur costs to investigate the implications of the regulations.

Our Response: The maps in the **Federal Register** are meant to provide a general location and shape of critical habitat. The legal descriptions are readily plotted and transferable to a variety of mapping formats, and are available electronically upon request for use with GIS programs. At the two public hearings, the maps were expanded to wall size to assist the public in better understanding the proposal. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed designation.

As stated in the proposed rule and this final rule, existing manmade features and structures within the boundaries of the mapped areas. This includes features such as the following that do not contain one or more of the primary constituent elements, and therefore, are not included in the critical habitat designations: Buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations (section in a stream channel equipped with facilities for obtaining streamflow data), intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; lawns; and other rural residential landscaped areas.

To further address concerns with the potential costs of identifying nondesignated areas, the Economic Analysis Addendum (Addendum) revisited the hour estimates presented in the DEA. Chapter VI, section 4.I of the DEA indicated that the landowners may want to learn how the designation may affect: (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. Since no commenters provided an estimate of time or cost incurred in order to investigate implications of critical habitat, and because of the reduction in acreage from proposed to designated, the Addendum revised the number of landowners downward, which resulted in a cost for landowners of $173,000 to $616,000 to investigate the implication of critical habitat.

While some landowners may expend time and money to investigate the implications of critical habitat on their land during the designation process, many landowners may not do so until after final designation is complete. Thus, the DEA and the Addendum treated these costs as a cost attributable to the final designation.

Issue 5: Policy and Regulations

(26) *Comment:* One commenter stated that excluding any areas from designation based on current management would violate 16 U.S.C. 1533(a)(3), and further stated that conservation efforts do not alter the habitat's critical nature or the need to ensure its protection. Multiple commenters stated that areas already subject to conservation measures, or which may be the subject of conservation agreements in the future, should not be excluded from critical habitat.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12; in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. If an area is covered by a plan that already provides adequate management, we believe it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not considered to be in need of special management or protection. We considered a plan to be adequate when it provides: (1) A conservation benefit to the species, *i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan; (2) assurances that the management plan will be implemented, *i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule in place, and/or have adequate funding for the management plan; and (3) assurances that the conservation plan will be effective, *i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives. Therefore, if an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area would not have constituted critical habitat, as defined by the Act, because the physical and biological features found there do not require special management. However, in the case of the moth no areas were found currently to be adequately managed, and therefore no areas have been excluded on that basis.

As to future conservation agreement, several owners have indicated that including their lands in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts for the moth and other species. After weighing the benefits of including these areas as critical habitat with the benefits of excluding them, we concluded that the designation of critical habitat would have a net negative conservation effect in some situations, and we excluded some of these areas from the final designation of critical habitat. *See* our

discussion under *the Exclusions Under Section 4(b)(2) section.*

(27) *Comment:* Multiple commenters, including DLNR, a State agency, noted that the Service has stated critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land. However, the commenters stated that this fails to address the breadth of Federal activities that affect private property in Hawaii, and the extent to which private landowners are required to obtain Federal approval before they can develop their property. Such requirements extend to all State agencies using Federal funds in connection with a proposed action, and community actions for which Federal approval or review is necessary. The requirements also extend to loan and grant programs such as Natural Resources Conservation Service (NRCS) loans and grants.

Our Response: Under section 7 of the Act, all Federal agencies must consult with the Service to insure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. We have provided our best assessment of what may be the effects of this consultation requirement on private landowners as well as for State agencies. However, not every project, land use, and activity that has a Federal involvement has historically been subject to a formal or informal section 7 consultation with the Service. The draft economic analysis and Addendum were confined to those projects, land uses, and activities that are, in practice, likely to be subject to consultation and are based on review of past consultations, current practices, and the professional judgments of Service staff and other Federal agency staff.

If the Service finds that the proposed actions are likely to jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat, we suggest reasonable and prudent alternatives that would allow the Federal agency to implement their proposed action without such adverse consequences. Again, we have provided our best assessment for what this may mean in terms of management actions or land uses and any associated costs in the draft economic analysis and Addendum.

(28) *Comment:* Two commenters, including the Hawaii Department of Transportation, Airports Division (DATA), stated that prudence cannot be determined without an analysis of the economic impacts of critical habitat. The prudence of critical habitat designation is a final conclusion based on weighing all relevant factors, including economic factors. While the Service promised to complete its economic impact analysis before it promulgates its final determination of critical habitat, it risks putting the decision before the analysis. The prior determination that critical habitat is prudent and is therefore required, is treated as a given, even though it ignored economic factors. The Service should revisit (*Sierra Club* v. *U.S. Fish and Wildlife Service*, 245 F.3d 434, 440–443 (5th Cir. 2001).

Our Response: We determine whether critical habitat designation is prudent according to regulations found at 50 CFR 424.12(a)(1). In accordance with these regulations and recent case law, critical habitat designation is not prudent only when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species. To determine whether critical habitat would be prudent for the species, we analyzed the potential threats and benefits to the species. The economic analysis is conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If designation of critical habitat is prudent, we look at all of the impacts of designating specific areas as critical habitat to see if the benefits of designation outweigh the benefits of excluding it from critical habitat. If we find that economic or other impacts outweigh the benefit of designating critical habitat in a given area, that area will be excluded. We concluded in the final rule listing the Blackburn's sphinx moth as endangered that there may be benefits of critical habitat designation that may outweigh the risks. Therefore, critical habitat is prudent for the species.

(29a) *Comment:* Multiple commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii Land Use Law. Critical habitat could result in changes to zoning under State law.

Our Response: Chapter VI, section 4.e. of the DEA and section 4.b. of the Addendum address costs involved in redistricting lands from the Urban, Rural and Agricultural Districts to the Conservation District. About 50,772 acres of Agricultural land, one acre of Rural land, and 430 acres of Urban land are included in the intended designation. Of this, approximately 12,352 acres of Agricultural land is owned by private landowners; one acre of Rural land is owned by private landowners; and 32 acres of Urban land is owned by private landowners. In the event that all of these private lands were redistricted to the Conservation District, the total economic cost could range from $80 million to $249 million. However, as discussed in the economic analysis, the redistricting of all lands to Conservation is not envisioned for several reasons.

HRS section 195D–5.1 states that the Department of Land and Natural Resources (DLNR) "shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district." HRS section 205–2(e) specifies that "conservation districts shall include areas necessary for * * * conserving indigenous or endemic plants, fish and wildlife, including those which are threatened or endangered * * *." Unlike the automatic conferral of State law protection for all federally listed species (see HRS 195D–4(a)), these provisions do not explicitly reference federally designated critical habitat and, to our knowledge, DLNR has not proposed amendments in the past to include all designated critical habitat in the Conservation District. Nevertheless, according to the Land Division of DLNR, DLNR is required by HRS 195D–5.1 to initiate amendments to reclassify critical habitat lands to the Conservation District (Deirdre Mamiya, Administrator, Land Division, in litt. 2002).

State law only permits other State departments or agencies, the county in which the land is situated, and any person with a property interest in the land to petition the State Land Use Commission (LUC) for a change in the boundary of a district. HRS section 205–4. The Hawaii Department of Business, Economic Development & Tourism's (DBEDT) Office of Planning also conducts a periodic review of district boundaries taking into account current land uses, environmental concerns and other factors and may propose changes to the LUC.

The State Land Use Commission determines whether changes proposed by DLNR, DBEDT, other state agencies, counties or landowners should be enacted. In doing so, State law requires LUC to take into account specific criteria, set forth at HRS 205–17. While the LUC is specifically directed to consider the impact of the proposed reclassification on "the preservation or maintenance of important natural systems or habitats," it is also specifically directed to consider five other impacts in its decision: (1) "Maintenance of valued cultural, historical, or natural resources;" (2) "maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;" (3) "commitment of state funds and resources;" (4) "provision for employment opportunities and economic development;" and (5) "provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups." HRS 205.17. Approval of redistricting requires six affirmative votes from the nine commissioners, with the decision based on a "clear preponderance of the evidence that the proposed boundary is reasonable." HRS 205–4.

Thus, even if all federally designated critical habitat is petitioned for redistricting, the likelihood of redistricting will vary parcel by parcel. While the LUC may redistrict some parcels, it is unlikely that lands with a high economic value to the community, such as lands with significant State investments, prime agricultural land, land planned for the economic and community development, and land planned for the provision of housing, would be redistricted. By way of illustration, in the last State district boundary review only five privately owned parcels were redistricted to Conservation even though several hundred parcels were proposed for redistricting. While concern has been expressed that a third party would challenge a decision by the LUC not to redistrict a critical habitat parcel in State court, State courts have been deferential to the LUC decisions if they are supported by the record, consistent with statutory provisions, and not affected by errors. *See, e.g., Kilauea Neighborhood Ass'n.* v. *Land Use Comm'n.* 751 P.2d 1031, 1035 (Haw. Ct. App. 1988) (finding that, although LUC's findings were poorly drawn, the record provided sufficient support for the decision); *Outdoor Circle* v. *Harold K.L. Castle Trust Estate*, 675 P.2d 784, 793 (Haw. Ct. App. 1983) (upholding LUC's decision as consistent with statutory provisions and not affected by errors).

In summary, while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood appears small, absent litigation, that these lands would be redistricted.

(29b) *Comment:* Multiple commenters stated that the Service did not adequately address the direct or indirect "takings" of private property as a result of designating critical habitat for the Blackburn's sphinx moth. If the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property. Also, the incremental impact of designating critical habitat, over and above the original listing, is that it creates a presumption that modification of the land will "take" members of the species. The Service is obliged to calculate the impact of deterring landowners use of their land. If any economic use of the land not already developed is prevented, the Service is liable to compensate the private landowner for such losses.

Our Response: Any redistricting of land to Conservation and any corresponding loss of economically beneficial use would be decided by the State Land Use Commission, not the Service, based on an array of state laws and other factors, including the extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan (*see* our response to comment 29a); the extent to which the proposed reclassification conforms to the applicable district standards; and the impacts of the proposed reclassification on the following: preservation or maintenance of important natural systems or habitats; maintenance of valued cultural, historical, or natural resources; maintenance of other natural resources relevant to Hawaii's economy; commitment of state funds and resources; provision for employment opportunities and economic development; and provision for housing opportunities for all income groups; and the representations and commitments made by the petitioner in securing a boundary change.

In chapter VI, section 4 of the November 2002 DEA under indirect costs and in section 4 of the Addendum, they examined the indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. The economic analysis did not conclude that designation of critical habitat on Agricultural lands would prevent a rancher from using those lands. Rather, the economic analysis recognized that many areas within the critical habitat designation have been grazed for tens or hundreds of years, yet still contain the primary constituent elements for Blackburn's sphinx moth. The DEA concluded that sustainable grazing does not adversely affect the moth, and in fact, may indirectly benefit the species by reducing fire danger and controlling nonnative weeds. Moreover, the DEA concluded that areas historically subject to grazing were unlikely to meet the standards of a natural ecosystem required to be put in the Protective Subzone (HAR § 13–5–11). As a result, even if Agricultural land within the critical habitat designation were redistricted to Conservation, the DEA anticipated that agricultural activities could continue because typical agricultural activities are allowed in all subzones, except the Protective Subzone, with permission of the State Board of Land and Natural Resources (BLNR).

(30) *Comment:* Multiple commenters stated the proposal fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands.

Our Response: We recognize the importance of landowner cooperation for conservation of listed species. This is true for many of the lands designated for the Blackburn's sphinx moth that are under private ownership. We also recognize that critical habitat designations could potentially have a negative impact on voluntary partnerships with private landowners. Conservation of the moth requires control of threats from alien species and fire, and outplanting of host plant species that have been extirpated from the wild. Several owners have indicated that including their lands in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts for the moth and other species. After weighing the benefits of including these areas as critical habitat with the benefits of excluding them, we concluded that the designation of critical habitat would have a net negative conservation effect in some situations, and we excluded some of these areas from the final designation of critical habitat. *See* our discussion under the Exclusions Under Section 4(b)(2) section.

(31) *Comment:* One commenter stated that although they support protection for endangered species, they are also concerned about protecting nonnative species. The current interpretation of critical habitat allows the Federal government and its partners to utilize any methodology they wish in dealing with feral animals, even though such

methods may be cruel and environmentally unsound.

Our Response: The designation of critical habitat does not give the Federal government and its partners the authority to utilize any methodology they wish in dealing with feral animals. Any potential animal control program would be subject to all applicable State, Federal, and local laws.

(32) *Comment:* DATA commented that the Service has provided inadequate support for its decision to reverse its prior determination that designation of critical habitat for the Blackburn's sphinx moth is not "prudent."

Our Response: Our reasoning for determining that the designation of critical habitat for the Blackburn's sphinx moth is prudent is thoroughly discussed in the final rule listing the moth as an endangered species (65 FR 4770), which was published in the **Federal Register** on February 1, 2000, and is consistent with recent case law.

(33) *Comment:* DATA stated that the proposed rule does not contain an analysis of the potential impacts to aviation safety that might result from the designation of certain areas contained within proposed Unit 3. The Service is required by law to analyze any relevant potential impacts when proposing a specific area as critical habitat. The commenter recommended that the proposed rule be withdrawn until an analysis of the potential impacts to aviation safety has been conducted.

Our Response: As discussed in the DEA (Chapter VI, section 3.h. Hawaii Department of Transportation, Airports Division expressed concern about designating critical habitat within the boundaries of Kahului Airport, due to possible conflicts with safety requirements. In this final rule, we have not included Kahului Airport lands from critical habitat designation due to a lack of primary constituent elements or because the areas were not essential to the moth's conservation (see Summary of Changes from the Proposed Rule section). We are unaware of any other areas in which aviation safety may be an issue as a result of the designation of critical habitat for the Blackburn's sphinx moth.

(34) *Comment:* The Service has misinterpreted the intent of the Act with exclusion of areas under 3(5)(A)(I). If a specific area of Blackburn's sphinx moth habitat is recognized to be critical to the extent that management is already taking place, the notion that such management renders designation unnecessary does not make sense. In fact, designation of these areas would seem more urgent.

Our Response: Although we disagree with the commenter, we have not found any areas that are currently adequately managed for the moth. Therefore, we have not excluded areas on that basis. Please also refer to our response to Comment 26.

(35) *Comment:* The proposal violates the "commerce clause" because the Blackburn's sphinx moth is not related to interstate commerce. Critical habitat designation, and the underlying decision to list the species as endangered, are the subject of the designation and exceed the constitutional limits of the Service's delegated authority. Congress enacted the Act as an exercise of its Commerce Clause power and delegated exercise of that Commerce Clause power to the Service to apply the Act by regulation. The listed species exists only in Hawaii and does not cross State lines. Nor is it in commerce as the subject of any economic endeavor and it lacks any commercial value. Therefore, the Service's regulations listing this species and designating critical habitat for it within Hawaii exceed the Federal power to regulate interstate commerce under the governing precedents interpreting the Commerce Clause.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to apply the protections of the Act to species that occur within a single State. A number of court cases have specifically addressed this issue. The *National Association of Homebuilders* v. *Babbitt*, 130 F. 3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct, 2340 (1998), involved a challenge to application of Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one State. The court held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition. Similar conclusions have been reached in other cases, *see Gibbs* v. *Babbitt*, No. 99–1218 (4th Cir. 2000) and *Rancho Viejo* v. *Norton*, No. 01–5373 (D.C. Cir. 2003).

Issue 6: Economic Issues

(36) *Comment:* HDOA suggested that the Service is required to conduct a cumulative impacts analysis to determine the economic impacts resulting from all critical habitat designations on all the islands.

Our Response: The commenter appears to be using the term "cumulative impacts" in the context of the National Environmental Policy Act (NEPA). We are required to consider only the effect of the designation of critical habitat for Blackburn's sphinx moth. The appropriate baseline for use in this analysis is the regulatory environment without this regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with this designation of critical habitat. When critical habitat for other species has already been designated, it is properly considered part of the baseline for this analysis. Proposed and future critical habitat designations for other species in the area will be part of separate rulemaking, and consequently, their economic effects will be considered separately.

We have determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, which includes critical habitat designations. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

(37) *Comment:* The DEA lists economic impacts; however, there is no indication that the Service has identified appropriate critical habitat boundaries or modified the critical habitat boundaries in consideration of these economic impacts.

Our Response: We considered the economic impacts that were analyzed and summarized in the DEA, and addendum, and excluded two units (proposed Units 5a and 5b) from critical habitat (*see* Exclusions Under Section 4(b)(2)).

(38) *Comment:* The DEA fails to distinguish potential costs resulting from the designation from those costs resulting from listing the moth as endangered. Nowhere does the draft provide any analysis of what impacts, if any, designating critical habitat for the moth would impose above and beyond those associated with the species' listing. Because the DEA does not distinguish between these costs, it cannot exclude proposed critical habitat from a final critical habitat designation pursuant to section 4(b)(2).

Our Response: Our draft economic analysis evaluated potential future effects associated with the listing of Blackburn's sphinx moth as an endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to section 7 implementation, including both the section 7 listing provisions and the proposed critical habitat designation, the analysis evaluated a "without section 7" baseline and compared it to a "with section 7" scenario. The "without section 7" baseline represented the current and expected economic activity under all modifications except those associated with section 7, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the implementation of section 7 for the Blackburn's sphinx moth. The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits.

The majority of consultations resulting from the critical habitat designation for the Blackburn's sphinx moth are likely to address land development and road construction or road expansion activities. The planned road projects (proposed Ane Keohokalole Highway) within proposed Unit 5A is not in this designation. The final economic analysis estimates that, over the next 10 years, the designation may result in potential direct economic costs ranging from approximately $1,183,800 to $1,739,000, and concludes that economic impacts from the designation of critical habitat would not be significant.

A more detailed discussion of our analyses are contained in the November 15, 2002, DEA and the Addendum to the DEA. Both documents are available for inspection at the Pacific Islands Office (see **ADDRESSES** section).

(39) *Comment:* The Service has failed to consider the cascading impacts resulting from State-led regulatory activities that must, by law, be implemented as a result of critical habitat designation. Additional concerns include the broad interpretation of "take" under Hawaii's Endangered Species Act (ESA) (HRS Ch. 195D); mandatary "downzoning" of private lands under Hawaii's Land Use Law (HRS Ch. 205); unreasonably frequent requirements for full environmental impact statements for minor actions under Hawaii's Environmental Impact Statement Law (HRS Ch. 343); unreasonable permit delays for County-regulated Special Management Area permits under Hawaii's Coastal Zone Management Law (HRS Ch. 205A); and uncertainty of interpretation of the reach and extent of State regulatory authority under Hawaii's State Water Code (HRS Ch. 174C) and implications for water quality standards under Hawaii Administrative Rules Ch. 11–54, Water Quality Standards.

Our Response: Possible costs resulting from interplay of the Act and Hawaii State laws were discussed in Chapter VI, section 4 of the November 2002 DEA under indirect costs and in section 4 of the Addendum. They examine the indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. Take prohibitions under Hawaii law are attributable to a listing decision and they are not coextensively costs of critical habitat designations. Where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not considered in the economic analysis of critical habitat designation. Other possible indirect impacts, such as the loss of development or loss in property values due to State redistricting of land from agricultural or rural to conservation were analyzed (see also our response to Comment 29a). However, there is considerable uncertainty as to whether any or all of these indirect impacts may occur since they depend on actions and decisions other than the source statute, and there is only limited history to serve as guidance.

(40) *Comment:* A commenter stated the following: The narrative exclusion of areas underlying currently developed areas such as buildings and driveways ("unmapped holes") is too vague considering the cryptic nature of the moth and its habitat. Although the DEA concedes that the lack of clarity can force landowners to incur costs to investigate the implications of the regulations, it fails to fully consider the economic impacts of landowners' costs to properly demarcate "unmapped holes" in the process of obtaining necessary permits for development projects. The estimate that this will only take 15 to 40 hours is too low given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals.

Another commenter also stated that the DEA's analysis of potential costs expected to be incurred by private landowners to investigate the implications of critical habitat on their lands was flawed, because the analysis failed to recognize that the costs to investigate the implications of critical habitat are associated with the designation process, not additional costs that the final designation would impose. The commenter further stated that any concerned party investigating the proposed designation of critical habitat on their lands would have already hired lawyers and consultants, and would have incurred the costs associated with figuring out the implications of designation on their lands. Moreover, were the private landowners' lands ultimately excluded from the final critical habitat designation, the landowners would still not recoup those costs; the money has already been spent. Thus, the commenter concluded that these costs should not be included in the analysis of future potential costs from designation since they have already been incurred, and were incurred, regardless of the final designation decision.

Our Response: Chapter VI, section 4.I of the DEA indicated that landowners may want to learn how the designation may affect (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. It is recognized that some landowners may spend a great deal of time investigating, while other landowners may not conduct any investigation. The estimate contained in the DEA is a range that reflects the total cost for all landowners based on an average cost per landowner. Public comment did not provide an alternative estimate of time or cost incurred in order to investigate implications of critical habitat sufficient to require changes to the estimated average cost per landowner. Thus, the Addendum does not revise the number of hours that the DEA estimated the landowner and/or his attorneys or professional staff would spend on investigating the issues.

However, the Addendum does revise the number of affected landowners to 65 because of the intended modifications to the critical habitat indicated by us. As described in section 4.e. of the Addendum, an estimate of the costs involved with investigation for the intended designation ranges from roughly $173,000 to $618,000.

While some landowners may expend time and money to investigate the implications of critical habitat on their land during the designation process, many landowners may not do so until after final designation is complete. Thus, the DEA and the Addendum conservatively treat these costs as costs attributable to the final designation.

(41) *Comment:* DOTA stated that project modification costs, such as those to roads, are underestimated, particularly the cascading effect of project realignment with the purpose of avoiding critical habitat.

Our Response: The project modification cost estimates were developed considering a wide array of projects, locations, and contingencies, as well as by examining the limited historical record of project modifications regarding the Blackburn's sphinx moth. The planned road project (proposed Ane Keohokalole Highway) within proposed Unit 5A is not in this designation.

(42) *Comment:* HCDCH stated the following: The DEA only partially considers the "indirect impacts" of critical habitat designation, and instead focuses on "direct impacts" resulting primarily from consultations under section 7 of the Act because of precedent set by *New Mexico Cattle Growers*, the Service must fully consider both types of impacts, and the DEA must present a thorough analysis of these economic effects. Several other commenters stated the DEA overemphasizes the direct costs attributable to critical habitat designation and ignores or omits other indirect impacts, such as: Impacts to housing supply, including affordable housing; decreases in public revenues as a result of lost construction and reduced economic activity; impacts to subsistence activities and their role in the local economy; and impacts to public infrastructure such as roads and water systems.

Our Response: An analysis of both direct and indirect impacts was presented in chapter VI of the DEA and sections 3 and 4 of the Addendum. With respect to indirect effects, there is considerable uncertainty regarding whether any or all of the indirect impacts may actually occur, because they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the likelihood of different outcomes. Thus, based on the available information, indirect impacts were discussed qualitatively in the DEA and Addendum. In addition, where possible, estimates were given of worst-case scenarios for illustrative purposes and a sense of the likelihood of occurrence was provided.

The impact to the supply of affordable housing was discussed in the DEA in chapter VI, section 4.e. The DEA recognized that some landowners feared the possibility of redistricting land within the critical habitat designation to the Conservation District, and discussed the impact to the affordable housing supply should redistricting occur and prevent planned development. Specifically, in regards to the planned Villages at Laiopua (VOLA), affordable housing development planned by the State in proposed Unit 5b (island of Hawaii), the DEA noted that the County of Hawaii requires developers to provide a certain number of affordable housing units, or pay $4,720 to the County for each unit not built. Using this value as a proxy for the social value of affordable housing, the DEA estimated that the loss of 570 affordable units in the VOLA development equates to a loss of almost $2.7 million to the community. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

Further, the DEA also addressed the potential impact on public revenues as a result of lost construction. In chapter VI, section 4.e., the DEA recognized that a loss in development can lead to economic losses due to the "ripple-effect." For example, if a home cannot be built, both the developer and construction company who would have built the home would have reduced revenues. In addition, the lumber company and other companies supplying the construction company would have reduced revenues, an impact that would "ripple" through the regional economy and could result in reduced public revenues. However, due to the availability of suitable land outside the critical habitat designation, the DEA concluded that any economic activity displaced within critical habitat for the moth due to redistricting of land to the Conservation District would still be expected to occur, just in other locations. Thus, the DEA implicitly concluded that there would be no appreciable impact on public revenues.

The DEA addressed the impacts to subsistence and their role in the local economy in chapter VI, section 4.d. The DEA recognized that subsistence not only plays an important role in community life, but also provides important sustenance to many residents in communities on Maui, the island of Hawaii, and Molokai. The DEA estimated that restriction of access and prohibition of subsistence activities in all areas proposed for critical habitat designation was extremely unlikely, and that more likely to occur were restrictions in small, localized areas of significant biological importance. Because of the strong stewardship and conservation values associated with those practicing subsistence activities within the proposed critical habitat, as well as the traditional recognition of the value of protecting certain areas through the kapu system, the DEA concluded that the impact of critical habitat designation on subsistence activities would be minimal.

Finally, the economic analysis addressed impacts to public infrastructure such as roads and water systems in chapter VI, sections 3.I and 3.j. of the DEA, and section 3.j. of the Addendum. These sections addressed projects planned within the critical habitat designation. Final estimated potential section 7 costs for planned road projects are $32,600 for consultations and $985,000 to $1,230,000 for project modifications. Final estimated potential section 7 costs for planned water projects are $20,600 to $61,200 for consultations and up to $6,200 for project modifications.

(43) *Comment:* A commenter stated that the DEA acknowledges some or all lands designated as critical habitat may be redistricted/rezoned at the State or county level to preclude further development, and that the actual economic costs of redistricting could be very high. The commenter noted that while these estimates are mentioned in the text, they are not included in the summaries of the economic impacts.

Our Response: Tables ES–1 and VI–3 ("Summary Tables") of the DEA and Table Add-2 of the Addendum summarize the economic impacts associated with the Blackburn's sphinx moth critical habitat designation are also discussed in detail in the response to Comment 29a. Although chapter VI, section 4 of the DEA, and section 4 of the Addendum provided general estimates of some of the potential indirect costs, including costs associated with State redistricting of land (chapter VI, section 4.e. of the DEA, section 4.b. of the Addendum), these estimates were not totaled in the Summary Tables because the probability that many of the indirect costs will occur is unknown. As noted on each of the Summary Tables, the Tables instead reported qualitatively on the likelihood and the potential magnitude of each of the indirect costs. Moreover, the Summary Tables referred the reader to the narrative analyses for additional information on any of the indirect impacts.

(44) *Comment:* A commenter stated the following: The DEA does not account for investments and other expenditures already made on lands with the expectation that rezoning and redistricting will allow future development and hence a return on investment, nor does it account for the potential lost recapture of investment yields that may be foregone due to lost development potential for lands that have successfully been rezoned and permitted for development at a very high cost.

Our Response: Chapter VI, section 4.e.(6) of the DEA and section 4.b. of the Addendum specifically considered the investments and expenditures already made on lands within the critical habitat designation to facilitate future planned development, as well as the future profits that may be foregone due to lost development potential as a result of redistricting. The total cost associated with previous expenditures and estimated future profits for planned projects within the intended critical habitat designation ranges from $62.4 million to $74.4 million. Please refer to our response to Comment 29a for a detailed discussion of rezoning and redistricting.

(45) *Comment:* HDOA stated the following: The DEA underestimated economic costs because the costs are limited to what is likely to occur within 10 years. Critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of nondesignation, or if the species is delisted.

Our Response: A listed species is delisted when it is recovered or has gone extinct. Recovery is defined as no longer needing the protections provided by the Act, including critical habitat. Thus, when a species is delisted, critical habitat for that species would no longer be in effect.

Furthermore, a 10-year time horizon is used because many landowners and managers do not have specific plans for projects beyond 10 years, and timeframes beyond 10 years greatly increases the subjectivity of estimating potential economic impacts. In addition, the forecasts in the analysis of future economic activity are based on current socioeconomic trends and the current level of technology, both of which are likely to change over the long term.

(46) *Comment:* A commenter stated the following: The level of effort to document and analyze the potential economic impacts resulting from critical habitat designation greatly exceeded the level of effort to document and analyze the potential economic benefits due to designation, such as the benefits of watershed protection and improvement, protection of other stream and riparian biota, the value of the species as an indicator of ecological health, the value of protecting culturally significant species, the value that Hawaiians place on conservation of Hawaiian species, the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. The Service cannot exclude land from critical habitat designation if it considers only the costs, and not the benefits, of critical habitat designation. In failing to discuss these benefits, the Service missed an opportunity to educate the public regarding the value of protecting native species and native ecosystems. The Service must use the tools available, such as a study by the University of Hawaii (UH) Secretariat for Conservation Biology that estimated the value of ecosystem services, to quantify the benefits of critical habitat. The DEA results in an unbalanced overestimation of detrimental economic impacts, and an unfair under-estimation of economic benefits due to designation of critical habitat.

However, multiple other commenters stated the following: The benefits of species protection are overstated and speculative. The DEA does not present the expected circumstances or timeline for delisting the species, nor is there a quantifiable estimate of the economic benefits of delisting. Additionally, multiple commenters stated that the species themselves have no economic value. Any estimate of economic benefit derived from not fully developing lands proposed for critical habitat are speculative and unquantifiable, and the likelihood of new conservation dollars entering the State is speculative. Furthermore, in the DEA summary of costs and benefits, the benefits of designating critical habitat are "difficult to estimate" and are exceeded by the costs.

Our Response: The DEA discussed the benefits mentioned above. There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. Such benefits have also been ascribed to preservation of open space, general biodiversity, and ecosystem function, all of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend.

It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the proposed critical habitat for Blackburn's sphinx moth because of the scarcity of available studies and information relating to the size and value of beneficial changes that area likely to occur as a result of listing the moth or designating critical habitat. In particular, the following information is not currently available: (1) Quantified data on the value of the moth or its critical habitat; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation.

Although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the critical habitat designation for the moth for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation. Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the critical habitat of the moth. For example, the Koolau Mountains were evaluated as a contiguous area, whereas the moth critical habitat is composed of separate areas on four different islands.

The value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu—conditions that are not applicable to Maui, Molokai, Kahoolawe, or the island of Hawaii due to the differences in size and population. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin, so must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which

is not necessarily the case with the moth critical habitat. Delisting of the moth is not anticipated within the 10-year time horizon of this economic analysis, and it is beyond the scope of the economic analysis to forecast when delisting may occur beyond this period. The economic analysis does not conclude that the moth or critical habitat for the moth has no economic value; rather, it simply states that the value of the species cannot be quantified at this time. The economic analysis does not attempt to quantify the economic benefit derived from not fully developing lands proposed for critical habitat. Rather, the economic analysis acknowledges there may be benefits resulting from the preservation of open lands that might otherwise be developed, but concludes that because much of the critical habitat designation is already kept as open space and governed by existing State and local land use laws and county plans, these benefits may be insignificant. Finally, while the economic analysis concludes that many of the benefits of critical habitat designation are "difficult to estimate," it does not necessarily lead to a conclusion that the benefits are exceeded by the costs. We believe that the benefits of the species and of critical habitat designation are best expressed in biological terms that can be weighed against the expected costs of the rulemaking.

(47) *Comment:* One commenter pointed out that critical habitat does not benefit ecotourism by creating new special places for people to visit, as the DEA suggested. Rather, it helps to protect the special places that already exist from degradation, ensuring that they will be around in the future to attract future ecotourists.

Our Response: Chapter VI, section 6.b.(1) of the DEA indicated that the proposed critical habitat may enhance the appeal of ecotourism by providing a marketing dimension. However, the DEA also stated that this benefit may be slight since these places may already be regarded as special due to the existing natural and cultural resources in the area.

(48) *Comment:* A commenter stated that assigning an economic value to preservation of ecosystem functions that may result from the designation of critical habitat (such as groundwater recharge, protection of coastal marine waters and fisheries, and other ecosystem services) is now an acceptable method of economic analysis, and that the dollar value of these services is high. The commenter noted that this analysis was done in a qualitative, narrative manner in the DEA and questioned why it was not done in a quantitative manner.

Our Response: The economic analysis recognized that the preservation of ecosystem functions may result from the designation of critical habitat for the Blackburn's sphinx moth. It was not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the proposed critical habitat for the moth because of the scarcity of available studies and information relating to the size and value of beneficial changes that are likely to occur as a result of listing the moth or designating critical habitat. In particular, the following information is not currently available: (1) Quantified data on the value of the moth or the moth's critical habitat; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation.

(49) *Comment:* A commenter stated that there was no attempt in the DEA to quantify the value of open space (parks, preserves, even golf courses) surrounding real estate. The commenter noted that such increased property values are acknowledged but there was no attempt to estimate the corresponding increases in property values. Also, the commenter noted that some tourists prefer less developed areas.

Our Response: As discussed in the DEA and in the Addendum, there are only two areas where Blackburn's sphinx moth critical habitat could potentially increase the amount of open space. These areas include approximately 89 ha (220 ac) planned for single-family and multi-family homes in the Kaloko Properties development in proposed Unit 5a (island of Hawaii), and approximately 30 ha (75 ac) planned single-family and multi-family homes in the State VOLA project in proposed Unit 5b (island of Hawaii). (Note: this area was not included in this designation.) If these areas are redistricted to the Conservation District, the likelihood of which, as discussed in the Addendum, is considered small, they may remain open spaces but they will not necessarily be converted into golf courses and parks. Most golf courses and parks are not consistent with the regulations associated with the Conservation District. If the areas are left in the natural state or as preserves, the positive impact on surrounding real estate is likely to be minimal because much of the area is currently open and likely remain open over the next 10 years.

(50) *Comment:* Multiple commenters, including HDOA, opposed the designation of Agricultural land and lands needed to support agriculture and ranching. Commenters were concerned that designation would reduce property values and the ability to develop lands that were previously planned for development and also stated the following: Thirty-three percent of the proposed designated land is within the State Conservation District, which includes irrigation water essential to agriculture. The rest of the lands proposed for designation are primarily in the State Agricultural District. Designation of Agricultural lands could prevent a farmer or rancher from using those lands since the very nature of those uses would in all likelihood entail cutting, uprooting, or injuring plants to a certain extent. The DEA failed to examine the economic impact of a landowner not being able to use his own land for fear of injuring a species he doesn't even recognize. No protection is afforded to farmers who unwittingly "harm" the designated critical habitat.

Our Response: Chapter VI, section 4.e. of the DEA discussed potential indirect impacts to Agricultural land, including the potential reduction in property values and the impact of redistricting Agricultural land to the Conservation. Section 4.b. of the Addendum revised these estimates based upon the intended modifications to the critical habitat designation to remove areas for biological reasons. The Addendum estimated the loss in property value associated with an extreme scenario—that of all unplanned Agricultural land on Maui, Molokai, and the island of Hawaii being redistricted to Conservation—at $17 million to $169 million. The loss of development potential on the Agricultural land in proposed Unit 5a (island of Hawaii) is estimated at $13 million to $25 million. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)). Please refer to our responses to comment 29a for a detailed discussion of this issue. Additionally, it is important to note that the Land Use Commission considers the "maintenance of other resources relevant to Hawaii's economy, including, but not limited to, agricultural resources" as well as "the preservation or maintenance of important natural systems or habitats" when considering a petition for redistricting.

In addition, the economic analysis did not conclude that designation of critical habitat on Agricultural lands would prevent a rancher from using those lands. Rather, the economic analysis recognized that many areas within the critical habitat designation have been

grazed for tens or hundreds of years, yet still contain the primary constituent elements for Blackburn's sphinx moth. The DEA concluded that sustainable grazing does not adversely affect the moth, and in fact, may indirectly benefit the species by reducing fire danger and controlling nonnative weeds. Moreover, the DEA concluded that areas historically subject to grazing were unlikely to meet the standards of a natural ecosystem required to be put in the Protective Subzone (HAR § 13–5–11). As a result, even if Agricultural land within the critical habitat designation were redistricted to Conservation, the DEA anticipated that agricultural activities could continue because typical agricultural activities are allowed in all subzones, except the Protective Subzone, with permission of the State Board of Land and Natural Resources (BLNR).

(51) *Comment:* Several commenters were concerned about the potential for critical habitat to decrease the amount of available hunting lands and game animals. Frustration was expressed that governmental officials value plants and insects more than hunting, an important family and cultural tradition, means of subsistence, and way of life. In addition, commenters stated the following: Members of all ethnic groups hunt and depend on subsistence activities as a real part of their income. Hunting also contributes to the economy via money spent on pet foods, interisland trips, gasoline, supplies, etc. Additionally, DLNR will lose money as the demand for hunting licenses and tag fees dwindles. The DEA does not adequately reflect the costs associated with management of game mammals and loss of hunting lands.

Our Response: Chapter VI, section 4.b. of the DEA discussed the potential indirect impact of critical habitat on the management of game mammals on Molokai and the island of Hawaii, the only areas where the critical habitat designation overlaps with State-managed hunting units. The DEA noted that section 7 of the Act by itself does not require DLNR to manage State hunting lands to protect critical habitat; assure the survival and conservation of listed species; or participate in projects to recover species for which critical habitat has been established. Moreover, the DEA noted that critical habitat designation does not require: (1) Creating any reserve, refuge, or wilderness areas; (2) fencing for any reason; (3) removing ungulates; or (4) closing areas to hunters.

However, the DEA recognized that a change in game-management strategy as a result of a lawsuit or as a voluntary decision by DLNR is possible, but not likely.

Nonetheless, for illustration purposes, chapter VI, section 4.b. of the DEA presented potential costs that could result if DLNR removed areas within the intended designation from the State-managed hunting units. To illustrate the magnitude of the impacts on Molokai, if about half of those who hunt game mammals on the affected lands were to give up hunting, then hunting activity could drop by about 8 percent (half of 16 percent, which is the estimated percentage of the accessible State-managed hunting lands on Molokai proposed for designation). This translates into an annual decrease in economic activity related to hunting on Molokai of about $25,000 in direct sales; $45,000 in total direct and indirect sales; one job; and $15,000 in income. To illustrate the magnitude of the impacts on the island of Hawaii, if about half of those who hunt game mammals on the affected lands were to give up hunting, then hunting activity could drop by about 12.5 percent. While the proposed critical habitat covers only 3 percent of the total hunting area on the island of Hawaii, the actual hunting activity within the area proposed for designation is much higher than 3 percent. Based on information provided by DLNR regarding the popularity and the number of hunting trips in the Puu Waawaa area, it is assumed the area included in critical habitat supports approximately 25 percent of the hunting activity on the island of Hawaii. A reduction in hunting activity by half in this area would translate into an annual decrease in economic activity related to hunting on the island of Hawaii of about $425,000 in direct sales; $750,000 in total direct and indirect sales; 13 jobs; and $250,000 in income. However, the $450,000 ($25,000 + $425,000) decrease in expenditures by the displaced hunters would probably be spent on other activities, goods and services, so these figures are likely to overstate economic costs.

In addition to the change in economic activity discussed above, a reduction in hunting activity would also result in a loss in value or benefit to hunters (consumers' surplus). Chapter VI, section 4.b. of the DEA estimates this potential loss in value at $238,000 ($13,000 for hunting on Molokai and $225,000 for hunting on the island of Hawaii) annually and recognizes that benefits derived from recreational activities that replace game mammal hunting would partially offset this loss. Because the intended revisions did not significantly reduce the amount of overlap between State-managed hunting units and the intended designation, the Addendum made no changes to the conclusions reported in the DEA regarding hunting.

(52) *Comment:* DOTA stated that the proposed rule fails to adequately consider potential economic impacts to the Kahului Airport as a result of the designated airport lands.

Our Response: Chapter VI, section 3.h. of the DEA and section 3.i. of the Addendum discussed direct economic impacts associated with activity by DATA at Kahului Airport. Specifically, the DEA recognized that DOTA opposes designation of critical habitat in this area due to a possible conflict with safety requirements. In addition, the DEA noted that while DOTA receives Federal funding for transportation improvements, the Federal funds were not likely to be used for activities within the proposed critical habitat designation. Thus, while the possibility of a future Federal nexus was recognized, the DEA concluded that no section 7 consultations or project modifications were anticipated because there was no known Federal involvement for the existing activities.

During public comment, DOTA objected to designation of Kahului Airport and stated that the proposed designation failed to adequately consider the potential economic impacts to the Kahului Airport. As noted in the DEA, activities within the critical habitat designation primarily involve the clearance and cutting back of vegetation. These activities are not typically supported through Federal funds. However, based on discussions with DOTA, it is assumed that DOTA would avoid utilizing Federal funds, if they were available, to support activities within the area designated for critical habitat in order to avoid Federal involvement and section 7 consultation. As DOTA does not currently use or anticipate using Federal funds to support activities within the critical habitat designation, the economic impact of forgoing Federal funding sources is estimated to be zero.

DOTA did not provide any specific information demonstrating economic impact, identify any other activities that would be impacted by the designation, or raise any other Federal nexus. As discussed above, there is no anticipated Federal involvement for activities at Kahului Airport. Thus, no section 7 consultations or project modifications relating to Kahului Airport are anticipated.

(53) *Comment:* The MID Corporation and TSA Corporation (MID/TSA) stated that the DEA vastly understated potential economic impacts to its

various projects as a result of designation of lands in proposed proposed Unit 5a. The commenters suggested indirect costs approximating $415 million. Furthermore, the commenters stated that the DEA fails to address broader economic impacts to the community of Kailua-Kona and the State such as costs approximating $24 million as a result of potential loss of land development.

Our Response: We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(54) *Comment:* Table ES–1: Under "Residential Development," needs to add reference to Kaloko Properties Development.

Our Response: The Kaloko Properties development is referenced in section 3.a. of the Addendum and it is included in the heading "Other Residential Development, Agricultural District" in Table Add-1.

(55) *Comment:* Page VI–11, second to last paragraph: Based on maps supplied by the Service, MID/TSA estimates that 15 ha (37 ac) are in the Urban District (Kaloko Industrial Park, Phases III & IV). Assuming the referenced 5 ha (13 ac) refers to lands north of Hina Lani Street, the second sentence should be revised to reflect that there are plans to develop golf course and residential uses on Urban lands proposed for critical habitat designation. Page VI–13, 2nd paragraph: The second sentence should be revised to reflect that as part of the Kaloko Properties development, there are plans to develop golf course and residential uses on lands proposed for critical habitat designation. Development is planned within the next 10 years. Page VI–14, 2nd paragraph under 3.c: The paragraph should be revised to reflect that: (1) The developer is TSA Corporation, and (2) county zone change allowing for commercial-industrial mixed use development was granted. Page VI–28, section 3.i.(2) New Roads: In the first paragraph, the County of Hawaii no longer plans to extend Olowalu Street. As such, this paragraph should be deleted. Page VI–39, section 3.m.(2) Planned Golf Courses: The discussion should add the planned Kaloko Golf Course in proposed Unit 5a that has Urban zoning and is planned to be constructed on approximately 78 ha (194 ac) in TMK Parcel 7–3–09: 25.

Our Response: This information is included in section 3.l. of the Addendum; however, there is no change in the DEA cost estimate.

(56) *Comments:* Page VI–64, last paragraph: Need to also add reference to the Kaloko Properties development; Page VI–65, Previous Expenditures and Future Profits: Need to add reference to the economic impacts from Kaloko Properties development; Page VI–65, 7th paragraph regarding Kaloko Industrial Park: We estimate up to 33 lots would be affected, with an economic loss of $15 million based on property sales in the latest phase; Page VI–69, 3rd paragraph, Potential Redistricting Costs: The potential economic cost range of $255 million to $550 million appears to be grossly understated given our own estimate of the loss of $415 million on our Properties in proposed Unit 5a, but even then, this cost range (including Kaloko Properties costs) should be included in the summary tables, rather than being dismissed as "speculative."

Our Response: All of this information is included in section 4.b. of the Addendum. The potential economic impacts to the Kaloko Industrial Park expansion in proposed Unit 5a (island of Hawaii) include a loss of $500,000 in previous expenditures and $12 million in future profits. The potential impacts to the Kaloko Properties development in proposed Unit 5a (island of Hawaii) include $4.2 million in previous expenditures and $13 million to $25 million in future profits. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(57) *Comment:* HCDCH commented that the DEA incorrectly concluded that economic impacts to the VOLA project would be moderate or modest because there is not likely to be any Federal involvement. The VOLA project may in the future request Federal funding to assist with development of affordable housing. The State would then lose money due to the direct impacts of various required consultations. Furthermore, the DEA does not acknowledge the cost of developing affordable housing at VOLA in lieu of Federal funding assistance.

Our Response: Section 3.c. of the Addendum specifically addresses HCDCH concerns. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(58) *Comment:* The DLNR identified five parcels (TMK (2) 1–8–001:005; TMK (2) 2–1–004:049; TMK (2) 2–1–006:076; TMK (2) 2–1–006:077; and TMK (2) 2–1–006:078) that should be excluded from designation because the DEA failed to establish that the benefits of including these parcels in the designation outweigh the costs of including these parcels in the designation.

Our Response: Two of the five parcels (TMK (2) 1–8–001:005 and TMK (2) 2–1–004:049) are leased for pasture purposes. The other three parcels (TMK (2) 2–1–006:076, TMK (2) 2–1–006:077, and TMK (2) 2–1–006:078) are identified as lands with either high land values or with development potential.

Section 3.g. of the Addendum evaluated the direct economic impact of critical habitat designation on these two parcels under lease for pasture purposes and concluded that no direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

Sections 4.a. and 4.b. of the Addendum discussed indirect costs, specifically the possibility of mandated conservation management measures that would interfere with the ability to lease these lands for pasture purposes, and the possibility of restrictions on the State's ability to develop the land in the future as a result of redistricting.

As discussed in section 4.a., mandated conservation management of all of the land in critical habitat is not reasonably foreseeable. The concern expressed by some is that the prohibition on taking endangered and threatened species could be triggered by designation of critical habitat if courts apply the principles of *Palila* v. *Hawaii Department of Land and Natural Resources* 471 F. Supp. 985 (D. Haw. 1979), *aff'd* 639 F.2d 495 (9th Cir. 1981) and *Palila* v. *Hawaii Department of Land and Natural Resources* 649 F. Supp. 1070 (D. Haw. 1986) *aff'd* 852 F.2d 1106 (9th Cir. 1988). While the circumstances considered by these cases happened to occur in the palila's critical habitat, the legal issues involved interpretation of "harm" in the Act's definition of "take" affirming that habitat degradation can constitute "harm" to a listed species. They did not announce a rule that degradation of designated critical habitat automatically constitutes take. While critical habitat may provide information to help a landowner identify where take through habitat modification may occur, the Federal and State take prohibitions are triggered by the listing of a species. These prohibitions apply whether or not critical habitat has been designated. In addition, there is legal interpretation Federal, State, or county law or regulation that mandates conservation management for critical habitat. As such, this analysis concludes that mandated conservation management based on critical habitat designation is not likely.

Section 4.b. of the Addendum discussed the possible impact on future development on the three parcels identified by DLNR. The Addendum recognized that while it is possible that redistricting of these parcels (should it occur) could restrict the ability of DLNR to develop these lands in the future, the economic impact of such a restriction

was impossible to estimate due to the speculative nature of such development at this time in light of the fact that there were no current plans for development of these parcels. In addition, section 4.b. concluded that while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood is small that the petition would actually result in redistricting any particular parcel of land into the Conservation District. This conclusion was based on the requirements for redistricting, including the requirement that the Land Use Commission consider the "commitment of State funds and resources" as well as "the preservation or maintenance of important natural systems or habitats" when considering a petition for redistricting.

(59) *Comment:* DOTA stated that the proposed designations on the islands of Maui and Hawaii would greatly increase costs to maintain and repair State Highway facilities. Specifically, the proposed Kanaha Pond-Spreckelsville unit would impact costs to the planned widening project for Route 36. The proposed Kailua-Kona Unit 5b will impact planned widening for Route 197, and the proposed Puu Waawaa Unit will impact planned improvements for Route 190. DOTA recommends that a buffer zone of 30 m (100 ft) on the sides of the State highway right of way lines be excluded from critical habitat units to eliminate or minimize designation-related additional costs for improvements, maintenance, and repair.

Our Response: Section 3.j. of the Addendum evaluated the impact of critical habitat designation on these three identified road projects. While the existing roadway of Route 36 (Hana Highway) is located outside of the Blackburn sphinx moth critical habitat designation, future widening of the roadway could possibly involve use of land inside the critical habitat designation. The widening of the area adjacent to the critical habitat designation was planned for construction between 1996 and 2000 in the 1997 Maui Long Range Transportation Plan. However, in the January 2002 Final Joint County/State Maui Interim Transportation Plan, the project is designated as a long-term project with no anticipated date of construction. Given the circumstances and the number of other priority projects listed before it, it is deemed unlikely that widening of Hana Highway will occur within the next 10 years.

The Mamalahoa Highway (Route 190) safety improvements in proposed Unit 6 (Unit 8, island of Hawaii) involve simple reading and resurfacing of the existing roadway. As mentioned in the DEA, the critical habitat provisions of section 7 do not apply to the operation and maintenance of existing manmade features and structures because these features are excluded from the designation. Although we are unable to individually map out every road and other manmade features and structures, they have been excluded in narrative form. Thus, the reading and resurfacing of the existing roadway planned for Mamalahoa Highway in proposed Unit 6 (Unit 8, island of Hawaii) would not be subject to section 7 consultation for critical habitat because they would not occur within designated critical habitat.

Finally, because proposed Kailua-Kona Unit 5b is not included the proposed widening of Kealakehe Parkway (Route 197) will not be affected by this critical habitat designation.

(60) *Comment:* Multiple commenters stated the following: The DEA failed to consider economic impacts of critical habitat that result through interaction with Hawaii's Land Use Law. Critical habitat could result in changes to zoning under State law. There is an overriding directive under State law that endangered plant species are to be protected in the State's planning and zoning process. HRS § 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen lawsuits. Areas for endangered species are placed in the protected Subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, increase property tax, and make the land unmortgageable. Although the Service acknowledges that there could be substantial indirect costs relating to redistricting of land to the Conservation District, several commentators disagreed with the characterization of these costs as "minor" and with the statement that the probabilities of redistricting as "slight to small."

Our Response: As indicated in the section 4.b. of the Addendum, about 20,547 ha (50,772 ac) of Agricultural land, 0.4 ha (1 ac) of Rural land, and 174 ha (430 ac) of Urban land are included in the intended designation. Of this, approximately 5,099 ha (12,600 ac) of Agricultural land is owned by private landowners; 0.4 ha (1 ac) of Rural land is owned by private landowners; and 18 ha (45 ac) of Urban land is owned by private landowners. Assuming a most extreme scenario, the potential cost to agricultural activities could range from $250,000 to $3 million. Reduction in land values for unplanned land due to redistricting from the Agricultural, Rural, or Urban District to Conservation District could range from $17 million to $169 million, and the cost of contesting redistricting could reach $2.5 million. Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, as discussed more fully in section 4.b., while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood is small that the petition would actually result in redistricting any particular parcel of land into the Conservation District.

In addition, under a most extreme scenario, planned development on the privately owned Agricultural and Urban land would be stopped. The economic impact to the developer would include the amount of money already invested in the project plus the expected profits that would not be realized due to redistricting. The potential cost associated with such a scenario is approximately $62.4 million to $74.4 million. Combined with the impacts mentioned above, the total economic cost associated with redistricting could range from $80 million to $249 million. Again, and as discussed more fully in section 4.b., while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood is small that the petition would actually result in redistricting any particular parcel of land into the Conservation District.

(61) *Comment:* Multiple commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it "substantially affects a rare, threatened or endangered species or its habitat." This will result in costly procedural requirements and delays.

Our Response: Chapter VI, section 4.f. of the DEA discussed the concern that

critical habitat will result in more expensive environmental studies. The DEA noted that subject to certain exemptions, a State Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required for projects that: (1) Use State or county lands or funds; (2) are in the Conservation District; (3) are in the Shoreline Setback Area (usually 12 m (40 ft) inland from the certified shoreline); (4) require an amendment to a county plan that would designate land to some category other than Agriculture, Conservation or preservation; or (5) involve reclassification of State Conservation District lands. If a project "substantially affects a rare, threatened, or endangered species, or its habitat," then a State EIS might be required instead of the simpler and less expensive EA.

Based on a review of projects planned within the critical habitat designation, the DEA concluded that five projects could be affected: Makena State Park; Kanaha Beach Park improvements; Kahoolawe Island Reserve Commission projects; and water tank installation and fire control at Puu Waawaa. The DEA reported that if all these projects subsequently require EISs, the additional cost to prepare them could be between $125,000 and $375,000. However, the DEA also recognized that this estimate may overstate costs, because other aspects of these projects may compel the preparation of an EIS rather than an EA. Because the areas surrounding these five projects remain within the intended designation, the Addendum made no changes to the conclusions reported in the DEA.

(62) *Comment:* Multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. One commenter speculated that Special Management Area permits administered by Maui County as required by Hawaii's Coastal Zone Management Act will be harder to get, will result in delays, will cause a decline in property values, and may make it impossible to develop. This economic impact disappears because the DEA's bottom line erroneously counts only so-called "direct" costs of consultation.

Another commenter expressed concern that the Service may get involved in county permitting processes, stating: "[r]egardless of whether there is a Federal nexus for a proposed action, State and local agencies can and will require consultations with the Service (whether formal or informal) on actions that they approve in areas within or near critical habitat, and are likely to place restrictions on those actions as a result of such consultations. For example, a recent informal consultation between the County of Maui and the Service, pursuant to issuance of a County Special Management Area Permit for a proposed A & B project near BSM habitat in Kahului, resulted in the incorporation of permit conditions requiring the planting of three native *Nothocestrum latifolium* trees for every tree tobacco plant removed from the project area. The proposed project would not have impacted any BSM critical habitat, nor would it have resulted in the take of any BSM. Mandatory compensatory measures therefore do not appear to have been warranted for this project under any provisions of the Endangered Species Act."

Finally, another commenter stated the following: The Service has taken the position in other states that it has a right to intervene in local land use proceedings if they affect endangered species on private property. For example, the Service petitioned the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. The failure of the Service to address this type of activity in the DEA is a fundamental error of the analysis.

Our Response: The DEA acknowledged that if a proposed project requires major State or county approvals and is within critical habitat, developers are likely to be required by State and county agencies to request comments from us on the project. If we indicate that the project would have a negative impact on the habitat of listed species, then State and county agencies may require project mitigation to address our concerns. This would be expected even with no Federal involvement. The DEA concluded that the cost of the potential mitigation would depend upon the circumstances. Because there were no anticipated projects within the proposed critical habitat for the moth that would require major discretionary approvals by the State or county, there was no specific discussion in the DEA of what mitigation measures might be required by the State or county as a condition of receiving the discretionary approvals for projects within the critical habitat designation.

During public comment, a landowner in proposed Unit 5a (island of Hawaii) indicated that the Kaloko Properties development in critical habitat will require major discretionary approvals from the State and county, including Land Use District Boundary Amendment and a county zone change. (Note: this area was not included in this designation.) Section 4.c. of the Addendum addresses the costs of potential State and county mitigation measures that could be associated with approvals for this project. For example, as a mitigation measure for this project, the State or county may require the landowner to use native vegetation that is beneficial to the moth in the residential and golf course construction. The cost of this mitigation measure is estimated at $720,000 to $750,000. In a most extreme scenario, if the State or county did not grant the discretionary approvals as a result of the moth critical habitat designation, the landowner may not be able to continue with the current plans for residential and golf course development. In this case, the total cost for the Kaloko Properties development would be $4.2 million in previous expenditures and $13 million to $25 million in the potential loss of future profits. The specific likelihood of either occurrence is unknown, as it depends upon the actions of the State or county agency with permit approval under circumstances for which there is no prior history. In addition, the State or county may develop their own mitigation measures based on the particular circumstances before them when reviewing the permit. Based on the professional judgment of the team of economists preparing the economic analysis, it is not deemed likely that discretionary approval for the Kaloko Properties project would be denied solely on the basis of moth critical habitat designation. However, for illustrative purposes, costs associated with this most extreme scenario are reported.

(63) *Comment:* Multiple commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states "adequate provision shall be made for protection of fish and wildlife." HRS 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Multiple commenters were concerned that water resource development would be greatly restricted leading to many indirect costs. The proposed rule states that activities such as watershed alteration or water diversion may trigger section 7 consultations if there is Federal involvement. If the ability to divert or take water from these sources or systems is restricted or limited, the impact would be far reaching and affect all lands served by such water sources or systems. The Service has an obligation to thoroughly investigate this issue, and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species. One commenter stated that opponents of water diversions may use critical habitat as a tool to delay, and effectively stop, many worthwhile water diversion projects.

Our Response: Future (*i.e.*, currently unplanned) water diversion projects are most likely to be planned in mountainous areas with significant rainfall or existing water resources. In other words, they are most likely to occur in areas already in the Conservation District and thus, would be subject to discretionary approval by the BLNR. While development is already limited within the Conservation District, the designation of critical habitat would be relevant to BLNR's determination of whether to grant a permit. More specifically, the designation of critical habitat could make it more likely that BLNR would find that a proposed land use would cause substantial adverse impact to existing natural resources within the surrounding area (Hawaii Administrative Rules 13–5–30). Therefore, it is possible that critical habitat designation could result in additional environmental studies, project delays, project modifications, and potential project denials (as discussed generally in chapter VI, section 4.f. of the DEA). However, without more specific information on the scope and location of a future (and currently unplanned) water diversion project, it is not possible to meaningfully estimate the potential indirect costs associated with these events.

Moreover, no costs would be expected to occur from such impacts to water systems, because neither the Blackburn's sphinx moth nor the host plants on which it relies are stream-dependent for their survival and, therefore, would not cause a reduction in existing water diversions.

(64) *Comment:* A commenter stated the following: The DEA failed to consider the more restrictive Habitat Conservation Plan (HCP) guidelines under the Hawaii Endangered Species Law (HRS 195D–4, HRS 195D–21) that required the State HCP permittee show a net benefit to the species. The DEA failed to analyze impacts due to the circumstance in which a landowner qualifies for a Federal HCP but is unable to obtain a State HCP.

Our Response: As discussed in chapter III of the DEA, the Act allows us to permit take by private applicants that would otherwise be prohibited, provided such taking is "incidental to, and not [for] the purpose of, the carrying out of an otherwise lawful activity." Section 10(a)(1)(B) of the Act allows non-Federal parties planning activities that have no Federal involvement, but which could result in the incidental taking of listed animals, to apply for an incidental take permit. The application must include an HCP laying out the proposed actions, determining the effects of those actions on affected fish and wildlife species and their habitats (often including proposed or candidate species), and defining measures to minimize and mitigate adverse effects. We must issue an incidental take permit if the incidental take is to be minimized by reasonable and prudent measures and implementing terms and conditions that are stipulated in the permit. The HESA has a comparable incidental take provision that also requires the permittee to show a net benefit to the species to receive the permit.

The economic analysis considers the economic impacts of section 7 consultations related to critical habitat, even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level (*e.g.*, further regulating the take of federally listed species), the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are tied to the Federal listing of the species and do not co-extensively occur because of critical habitat designation. Thus, the circumstance in which a landowner qualifies for a Federal HCP but is unable to obtain a State HCP is outside the scope of the economic analysis and was not addressed by it.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed critical habitat determination, we have reevaluated our proposed designations and included several changes to the final designation of critical habitat. These changes include the following:

(1) We revised the list of manmade features that are excluded from the designation in order to exclude additional features based on information received during the public comment periods. The revised list is described in the Criteria Used to Identify Critical Habitat section, and in regulatory language for section 17.95, "Critical habitat— fish and wildlife," described at the end of this document.

(2) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, which indicated: (1) The primary constituent elements were not present in certain portions of the proposed units; (2) certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements; or (3) the areas were not essential to the conservation of the species. Specifically, private landowners on the islands of Molokai, Maui, and Hawaii provided us with new information regarding current land uses or prior land changes to some to the proposed areas that allowed us to identify certain lands as not essential or unsuitable for the long-term conservation of the Blackburn's sphinx moth. Likewise, the State provided us with new information regarding current land uses or prior land changes to some proposed areas on islands of Maui, Kahoolawe, and Hawaii that allowed us to identify portions of some proposed units as not essential or unsuitable for the long-term conservation of the moth. In addition, information obtained during the process of finalizing critical habitat designations for plants on the islands of Maui, Molokai, and Hawaii helped us to identify some proposed areas on those islands that are lacking the primary constituent elements, or are unsuitable for the long-term conservation of the moth. Lastly, some areas were excluded based on weighing the benefits of inclusion versus exclusion pursuant to section 4(b)(2) of the Act (*see* Economic Analysis section). A brief summary of the modifications made to each unit is given below (*see* also Figures 1–4).

BILLING CODE 4310–55–P

Figure 1 - Summary of Changes from Proposed Rule to Final Rule

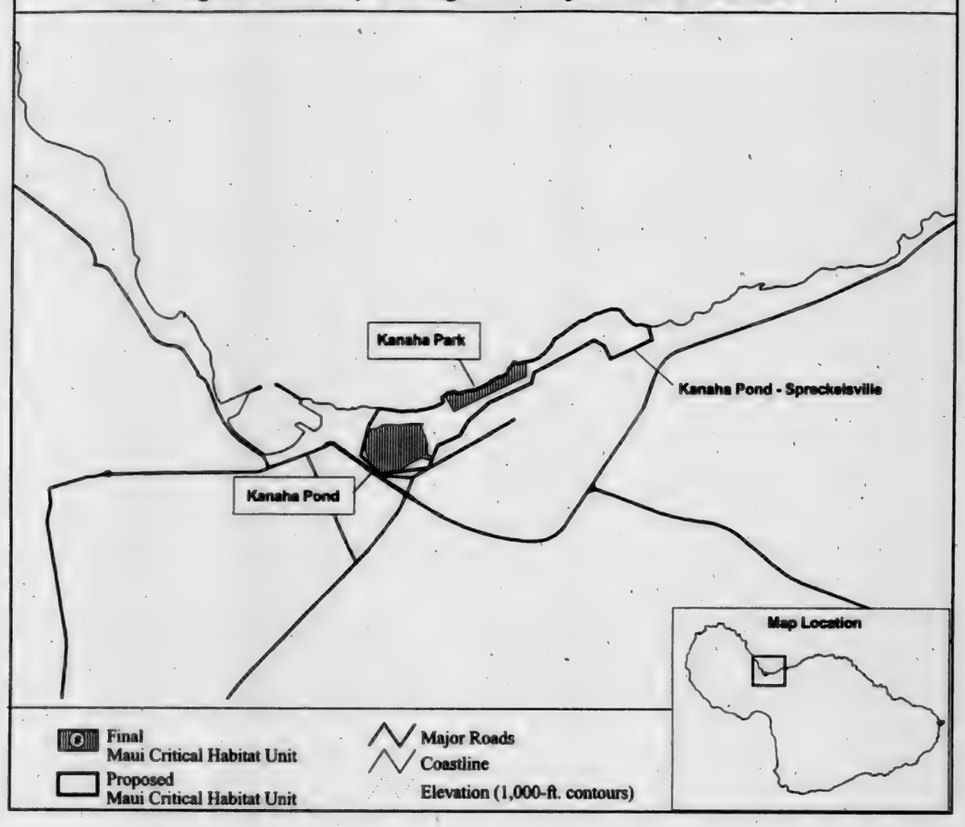


Figure 2 - Summary of Changes from Proposed Rule to Final Rule

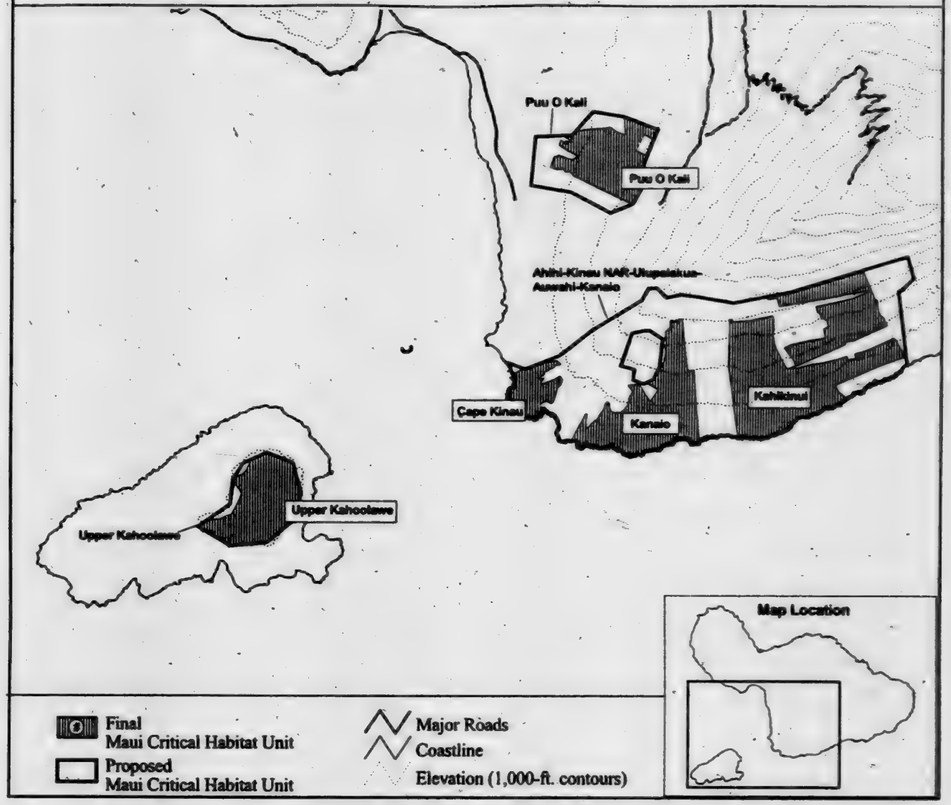


Figure 3 - Summary of Changes from Proposed Rule to Final Rule

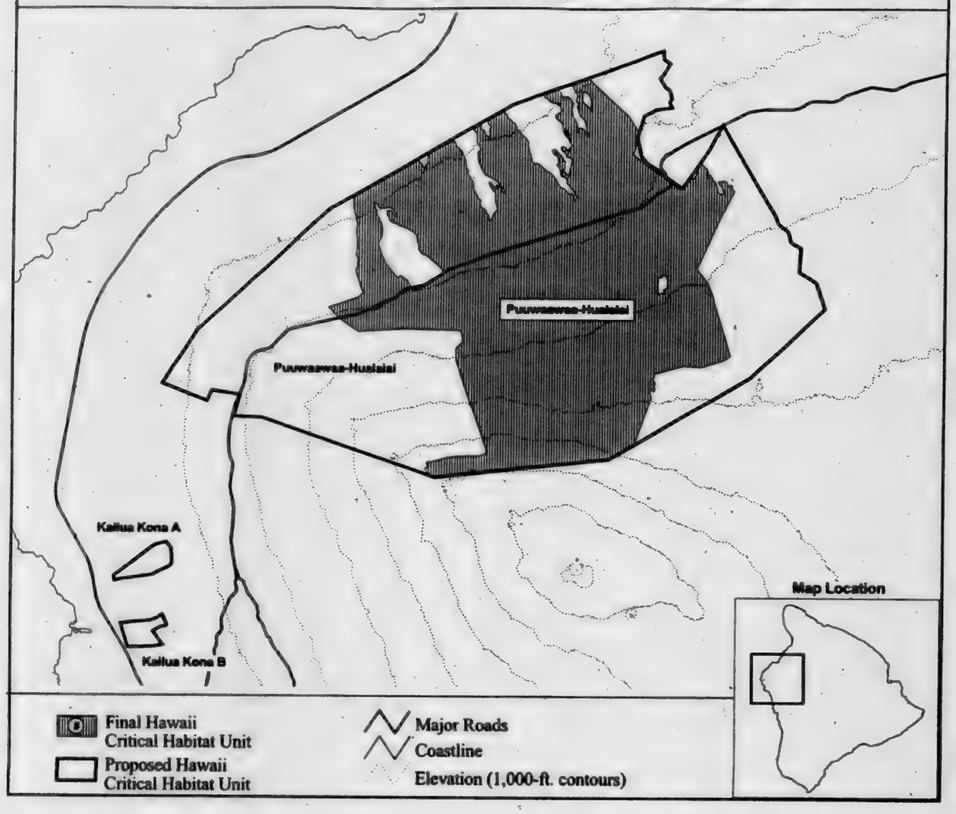
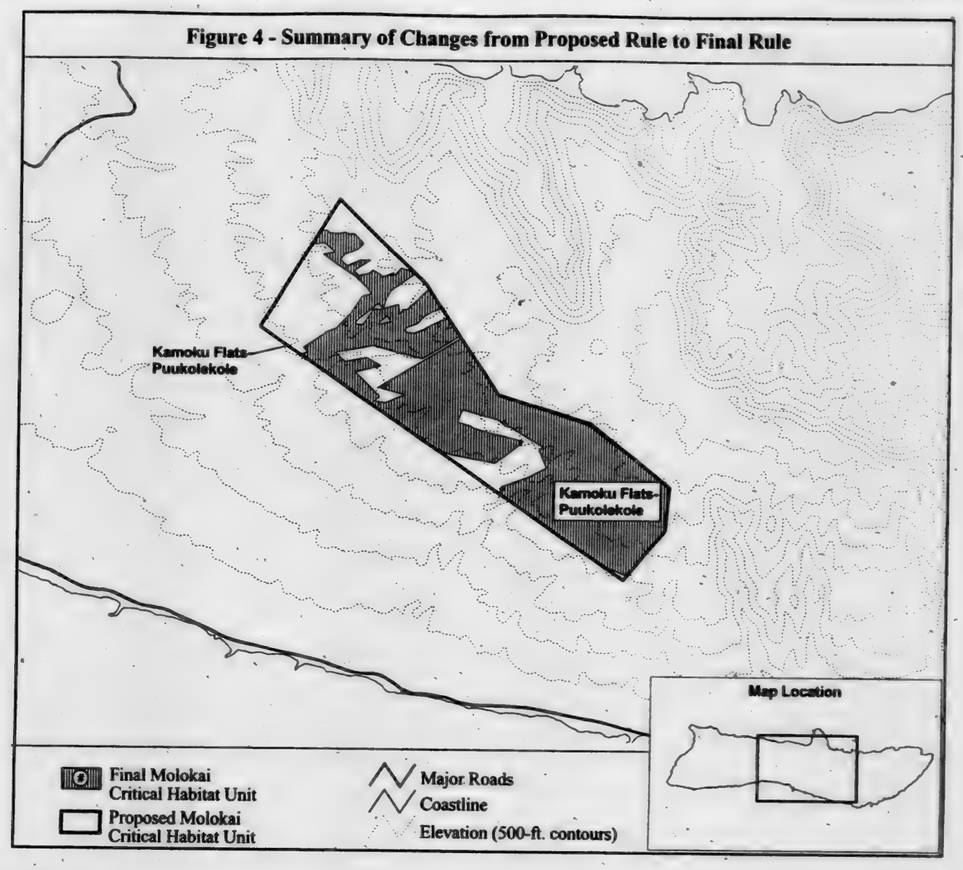


Figure 4 - Summary of Changes from Proposed Rule to Final Rule



BILLING CODE 4310-55-C

Former Unit 1. Ahihi-Kinau NEAR—Ulupalakua—Auwahi—Ka naio Maui Meta Unit (Formerly 15,216 ha (37,599 ac))

This unit has been subdivided into three smaller separate units (Unit 2, Cape Kinau; Unit 3, Ka naio; and Unit 4, Kahikinui) (*see* Table 2 and 3), which resulted in a total net decrease of 7,393 ha (18,269 ac).

TABLE 2.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT, ISLAND AND LANDOWNERSHIP IN HECTARES AND ACRES

Critical habitat unit	Island	State	Private	Total
1. Puu O Kali	Maui	1,503 ha 3,715 ac	101 ha 250 ac	1,604 ha 3,965 ac
2. Cape Kinau	Maui	597 ha 1,475 ac	6 ha 15 ac	603 ha 1,490 ac
3. Ka naio	Maui	2,416 ha 5,971 ac	4 ha 10 ac	2,420 ha 5,981 ac
4. Kahikinui	Maui	4,783 ha 11,820 ac	16 ha 39 ac	4,799 ha 11,859 ac
5. Kanaha Pond	Maui	56 ha 139 ac	0 ha 0 ac	56 ha 139 ac
6. Kanaha Park	Maui	25 ha 62 ac	0 ha 0 ac	25 ha 62 ac
7. Upper Kahoolawe	Kahoolawe	1,721 ha 4,252 ac	0 ha 0 ac	1,721 ha 4,252 ac
8. Puuwaawaa—Hualalai	Hawaii	9,120 ha 22,535 ac	835 ha 2,063 ac	9,954 ha 24,598 ac
9 Kamoko Flats—Puukolekolè	Molokai	331 ha 817 ac	926 ha 2,288 ac	1,256 ha 3,105 ac
Total		20,552 ha 50,786 a	1,888 ha 4,665 ac	22,440 ha 55,451 ac

TABLE 3.—APPROXIMATE FINAL CRITICAL HABITAT AREA IN HECTARES (ACRES), ESSENTIAL AREA, AND EXCLUDED AREA ON HAWAII, KAHOOLAWE, MAUI, AND MOLOKAI

Area considered essential on Hawaii, Kahoolawe, Maui, and Molokai	27,366 ha (67,625 ac)
Area considered essential on Maui	14,226 ha (35,152 ac)
Maui Area excluded under 4(b)(2) (Haleakala and Ulupalakua Ranches)	4,717 ha (11,656 ac)
Final Critical Habitat on Maui	9,509 ha (23,496 ac)
Area considered essential on Hawaii	10,164 ha (25,115 ac)
Hawaii Area excluded under 4(b)(2) (MID/TSA Corp, and State)	210 ha (518 ac)
Final Critical Habitat on Hawaii	9,954 ha (24,597) ac)
Final Critical Habitat on Hawaii, Kahoolawe, Maui, and Molokai	22,440 ha (55,451 ac)

Some areas from the original unit were excluded under section 4(b)(2) because the benefits of designation of critical habitat are outweighed by the negative effect on the landowners' voluntary conservation activities on their property. Additional area was excluded because new information revealed that some lands in question did not contain moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 2. Puu O Kali Unit (formerly 2,750 ha (6,794 ac))

This unit was renamed Unit 1 Puu O Kali, and is now 1,604 ha (3,965 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 1,145 ha (2,829 ac). Some areas from the original unit were excluded under section 4(b)(2) because designation of critical habitat would have had a negative effect on the landowners' voluntary conservation activities on their property. Additional area was excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 3. Kanaha Pond—Spreckelsville Unit (formerly 226 ha (559 ac))

This unit has been subdivided into two smaller, separate units (Unit 5 Kanaha Pond and Unit 6 Kanaha Park) (*see* Table 2), which resulted in a total net decrease of 145 ha (358 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 4. Upper Kahoolawe Unit (formerly 1,878 ha (4,641 ac))

This unit was renamed Unit 7 Upper Kahoolawe, and is now 1,721 ha (4,252 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 157 ha (389 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species (PBR Hawaii *et al.* 1995).

Former Unit 6. Puuwaawaa—Hualalai Meta Unit (formerly 18,111 ha (44,753 ac))

This unit was renamed Unit 8 Puuwaawaa—Hualalai, and is now 9,954 ha (24,598 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 8,156 ha (20,155 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 7. Kamoko Flats—Puukolekole Unit (formerly 1,829 ha (4,520 ac))

This unit was renamed Unit 9 Kamoko Flats—Puukolekole, and is now 1,256 ha (3,105 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 573 ha (1,415 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we believe to be critical habitat, using the best information available to us.

Our regulations state that "The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not indicate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for

recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for conservation. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species.

Methods

As required by section 4(b)(2) of the Act and regulations 50 CFR 424.12, we used the best scientific information available to determine areas containing the physical and biological features that are essential for the conservation of Blackburn's sphinx moth. We evaluated areas containing dry and mesic habitats as well as data on known moth occurrence. The best scientific information we analyzed included peer-reviewed scientific publications; unpublished reports by researchers; the final rule listing the species (65 FR 4770); the Blackburn's sphinx moth Recovery Outline (Service 2000); the HHP database; island-wide GIS coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); information received during the public comment periods and public hearings; recent biological surveys and reports; and information received in response to outreach materials and from landowners, land managers, and interested parties.

The critical habitat unit approach in this rule addresses the numerous risks to the long-term survival and conservation of Blackburn's sphinx moth by employing two widely recognized and scientifically accepted methods for promoting viable populations of imperiled species—(1) creation or maintenance of multiple populations to reduce the possibility that a single or series of catastrophic events could threaten to extirpate the species; and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Tear *et al.* 1995; Meffe and Carroll 1996; Service 1997a).

In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Blackburn's sphinx moth. By maintaining viable populations in the designated critical habitat units, the threats represented by a fluctuating environment are reduced and the species has a greater likelihood of achieving conservation. Conversely, loss of a Blackburn's sphinx moth critical habitat unit will result in an appreciable increase in the risk that the species may not recover and survive.

The Blackburn's sphinx moth is short-lived, extremely mobile, and rare; hence population densities are not easily determined (A. Medeiros, pers comm., 1998; Janzen 1984; Roderick and Gillespie 1997; Van Gelder and Conant 1998). Even if the threats responsible for the decline of the moth were controlled, the persistence of existing populations is hampered by the small number of extant populations and the small number of individuals in known populations. These circumstances make the species more vulnerable to extinction resulting from a variety of natural processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and decreased ability to cope with environmental change (Lande 1988; International Union for Conservation of Nature and Natural Resources 1994).

Populations small in size are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio, and to catastrophes such as hurricanes (Lande 1988). We believe the existing Blackburn's sphinx moth populations on Kahoolawe, Hawaii, and Maui are insufficient in size and too limited in range to ensure the conservation of the species. While Blackburn's sphinx moth population sizes may be naturally small, establishing the species to a diverse set of habitats and climates within its former range is necessary to remove the long-term risk of rangewide extinction due to catastrophic events and the numerous direct threats to the species and its habitat (Service 1997a).

Janzen (1984) described the characteristics of tropical sphingid moths found in a Costa Rican National Park. In general, adult sphingids are nocturnal or crepuscular (dusk-flying) and regularly drink with a long proboscis from many kinds of sphingophilous flowers while hovering in front of them. Sphingophilus flowers are characterized by lightly colored tubular corollas, evening anthesis (opening), and nocturnal nectar and scent production (Haber and Frankie 1989). Fecundity was unknown, but estimated in the hundreds if the female can feed freely.

Particularly helpful in understanding the conservation needs of sphingids is Janzen's (1984) description of the adult moth biological characteristics, including that they have large latitudinal ranges, feed heavily over a long period of time and extensively at spatially particulate resources relatively fixed in location, *i.e.*, they feed on specific resources spread throughout the landscape, live for weeks to months, lay few eggs per night, probably oviposit (deposit eggs) on many host plant individuals and repeatedly visit many of them, have less synchronous eclosion (emergence from the pupa) during the rainy season than other moths, migrate, and are highly mobile, repeatedly returning to the same food plants. In another study of sphingids, adults were reported to travel greater distances to pollinate and visit flowers than those distances traveled by other insect pollinators or even hummingbirds (Linhart and Mendenhall 1977).

Sphingid caterpillars are known to feed heavily over a long time period and eat limited types of foliage, typically plants rich in toxic small molecules (*e.g.*, in the family Solanaceae). They also have less synchronous eclosion than other moths. Since sphingids search widely for good local conditions, Janzen (1984) concluded that isolated habitats may have difficulty supporting

sphingid populations, *i.e.*, connectivity between habitat areas is necessary to support wide-ranging sphingid species.

Ehrlich and Murphy (1987) noted that populations of herbivorous insects such as lepidopterans are often regulated by environmental factors, such as weather conditions, and thus small populations can be particularly at risk of extinction. Ehrlich and Murphy (1987) identified a number of principles important for the conservation of herbivorous insects. First, in most cases, a series of diverse demographic units will typically be needed to conserve a species. Second, where possible, corridors among the sites should be established to promote re-colonizations in areas where the species once occurred. Lastly, they noted that when populations are very sensitive to environmental changes and limited information is available on the species' population biology, it is easy to underestimate the conservation needs of such insects.

Murphy *et al.* (1990) also noted that reviews of butterfly population ecology demonstrate that environmental factors play important roles in determining butterfly population dynamics. They stated that most documented population extinctions have resulted from habitat deterioration combined with extreme weather events. Decreases in the quality or abundance of larval host plants and adult nectar sources are caused by changes in plant community composition, particularly changes associated with succession, disturbance, and grazing regimes. But, because many butterfly species are especially sensitive to thermal conditions, habitat changes that disrupt micro-climatic regimes can cause habitat deterioration without elimination of plant resources. Ehrlich and Murphy (1987) noted several patterns within typical butterfly populations: A number of subpopulations within a given specie's metapopulation (a set of local populations or breeding sites within an area, where typically migration from one local population or breeding site to other areas containing suitable habitat is possible, but not routine) are often extirpated and later re-colonized; and a given species may not be present in many of its habitat remnants, including within those containing the highest host plant diversity.

Section 3(5)(A)(i) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. Although our knowledge of the Blackburn's sphinx moth's historical range is incomplete, we believe the existing natural habitats needed to support viable populations of the moth are too small, isolated, and seriously threatened to ensure its long-term conservation, particularly in light of the foraging needs of adult sphingid moths (Janzen 1984) and the apparent wide-ranging Blackburn's sphinx moth foraging habits (Fern Duvall, DOFAW, pers. comm. 2001; B. Gagne, pers. comm. 2001; D. Hopper, *in litt.* 2000, 2002; HHP 2000).

Long-term conservation of the species will require the protection and subsequent restoration of additional and larger areas of dry and mesic habitat that include the larval and adult primary constituent elements at different elevational and rainfall gradients, in order to improve the likelihood of successful larval development and adult moth foraging (A. Medeiros, pers. comm. 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998). The long-term persistence of the existing populations will likely improve if they could be increased in size, and if the connectivity among the populations was enhanced, thus promoting dispersal of individuals across intervening lands. Restoring moth populations in multiple locations would decrease the likelihood that the effect of any single alien parasite, predator, or combined pressure of such species could result in the diminished vigor or extinction of the moth.

Small habitats tend to support small populations, which frequently are extirpated by events that are part of normal environmental variation. The continued existence of such satellite populations requires the presence of one or more large reservoir populations, which may provide colonists to smaller, outlying habitat patches (Ehrlich and Murphy 1987). Based on recent field observations of the Blackburn's sphinx moth, we believe the species likely occurs within two regional populations on separate islands, one centered in the area of leeward East Maui (Units 1–4 (*see* Unit Descriptions below)), and one centered near Puuwaawaa (Unit 8) on Hawaii Island, north of Kailua-Kona (A. Medeiros, pers. comm. 1998; F. Howarth, pers. comm. 2001). Both of these two areas contain populations of the moth regarded as probable source areas or "reservoirs" (Murphy *et al.* 1990) for dispersing or colonizing moth adults.

Habitat areas close to the two large reservoir areas are also designated in order to promote genetic variability in the Blackburn's sphinx moth population, contributing to the long-term persistence and conservation of the species. These areas will serve as corridors for dispersing adult moths or as overflow habitat during particularly fecund years, which could be very important to the integrity of moth populations. For example, adult moths observed at Cape Kinau (Unit 2) on Maui may have originated from larval host plants located in the Kanaio NAR (Unit 3). The moth populations inhabiting these habitat areas appear to be taking advantage of lower elevation adult native host plants and nonnative host plants such as tree tobacco upon which the larval stage is completed successfully. In addition, these habitat areas may be able to support persistent moth populations independent of the reservoir areas, significantly contributing to conservation of the species.

Molokai is an example of essential habitat because it provides for the expansion of the species' range and for improved connectivity of the different populations. While the designated unit on this island is not known to currently harbor a Blackburn's sphinx moth population, preserving this habitat is important because some threats to the species may be absent there (Table 1 shows several of the potential moth predators and parasites are not reported on Molokai). Likewise, because of Molokai's distance from islands currently inhabited by the moth, we believe the designated critical habitat on this island will be extremely important for the species' conservation as it will help protect the species from extinction by catastrophic events, which could impact other more closely grouped populations (*e.g.*, those on Maui or the island of Hawaii). For these reasons, we find that inclusion of an area such as on Molokai, identified as containing the primary constituent elements, is essential to the conservation of the species even though it does not currently contain known Blackburn's sphinx moth populations.

Due to the species' presently reduced range, the Blackburn's sphinx moth is now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat and food. Furthermore, the moth is now more susceptible to direct pressure from numerous nonnative insect predators and parasites. For these reasons, and the reasons discussed above, those areas currently occupied would be inadequate to ensure the conservation of the species, and we have designated 9 units on four islands.

We are developing a draft recovery plan for this species. The overall objective of this recovery plan will be to ensure the species' long-term conservation and identify research

necessary so that the moth can be reclassified to threatened and ultimately removed from the list of endangered and threatened species. Because a recovery plan for the moth has not yet been completed, in making this determination we evaluated the remaining potential habitat, the biological and life history characteristics of the moth, and the best available scientific information on conservation planning to determine what will be required to ensure viable populations of this species. However, should our understanding of what areas support essential features for the conservation of the moth change after completing the recovery planning process, we may revise the existing critical habitat designation accordingly.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or egg laying; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Blackburn's sphinx moth include specific habitat components identified as essential for the primary biological needs of foraging, sheltering, maturation, dispersal, breeding, and egg laying, and are organized by life cycle stage. The primary constituent elements required by the Blackburn's sphinx moth larvae for foraging, sheltering, maturation, and dispersal are the two documented host plant species within the endemic genus *Nothocestrum* (*N. latifolium* and *N. breviflorum*), and the dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation. The primary constituent elements required by Blackburn's sphinx moth adults for foraging, sheltering, dispersal, breeding, and egg production are native, nectar-supplying plants including, but not limited to, *Ipomoea indica* and other species within the genus *Ipomoea*, *Capparis sandwichiana*, and *Plumbago zeylanica*, and within the dry to mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation.

Both the larval and adult food plants are found in undeveloped areas supporting mesic and dry habitats, typically receiving less than 250 cm (100 in) of rain per year and are located between the elevations of sea level and 1,525 m (5,000 ft). Vegetative communities in these areas include native plants, and in some instances, introduced plant species (A. Medeiros, pers. comm. 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Although Blackburn's sphinx moth larvae feed on the nonnative *Nicotiana glauca*, we do not consider this plant to be a primary constituent element for the designation of critical habitat. As previously discussed, the native *Nothocestrum* species are more stable and persistent components of dry to mesic forest habitats than *Nicotiana glauca*. *Nicotiana glauca* is a short-lived species that may disappear from areas during prolonged drought (A. Medeiros, pers. comm. 1998), or during successional changes in the plant community (F. Howarth, pers. comm. 2001; Symon 1999). Many studies have shown that insects, and particularly lepidopteran larvae, consume more food when the food has a relatively high water content (Murugan and George 1992). Relative consumption rate and growth have been reported to decrease for many sphingids closely related to the Blackburn's sphinx moth when raised on host plants or diets with a relatively low water content (Murugan and George 1992). *Nicotiana glauca's* vulnerability to drought conditions suggests that its water content frequently may not be suitable for optimal growth of Blackburn's sphinx moth larvae.

The restoration of native host species for the moth and other endangered species may also require the control or elimination of nonnative vegetation, potentially including *Nicotiana*. Additionally, unlike the *Nothocestrum* species, *Nicotiana glauca* is more likely to occur in habitats less suitable due to their occupation by alien insect predators (D. Hopper, *in litt.* 2000, 2002; Symon 1999). Therefore, in comparison with *Nicotiana glauca*, the native *Nothocestrum* species better fulfill the primary biological needs of the moth larvae. For all of these reasons, we are not considering *Nicotiana glauca* as a primary constituent element for the designation of critical habitat at this time.

Criteria Used To Identify Critical Habitat

We identified critical habitat areas essential to the conservation of Blackburn's sphinx moth in the primary locations where it currently occurs or has been known to occur. We have designated sufficient critical habitat at each site to maintain self-sustaining populations of Blackburn's sphinx moth at each of these locations.

During the development of this rule, we considered the role of unoccupied habitat in the conservation of Blackburn's sphinx moth. Due to the historic loss of the habitat that supports this species, we believe that future conservation and recovery of this taxon depends not only on protecting it in the limited area that it currently occupies, but also on providing the opportunity to expand its distribution by protecting currently unoccupied habitat that contains the necessary primary constituent elements within its historic range.

To help achieve our goal of conservation of Blackburn's sphinx moth, we are including one critical habitat unit on Molokai, despite the fact that the moth has not been documented there in recent years. The area is located within dry to mesic forest on the southern uplands of Molokai and contains both larval and adult stage host plants. By allowing the moth to recover to this area, either through its own ability or with assistance, the threat of extinction due to natural catastrophe occurring within the currently, close-grouped populations will be minimized. We believe the site is essential to the conservation of the species because it is the most appropriate site for a reestablishment effort. The combination of limited range, few populations, and restricted habitat, makes the moth susceptible to extinction or extirpation due to random events, such as disease, hurricanes, or other occurrences (Shaffer 1981, 1987; Primack 1993; Meffe and Carroll 1994). Such events are a concern when the number of populations or the geographic distribution of a species is severely limited, as is the case with Blackburn's sphinx moth. Establishment of the Molokai unit for the moth is likely to prove important in reducing the risk of extinction due to such catastrophic events.

Given the large size and strong flight capabilities of the Blackburn's sphinx moth, the species is believed to use large areas of habitat. Therefore, moth population linkages will likely be enhanced if designated habitat occurs in large contiguous blocks or within a matrix of undeveloped habitat (A. Medeiros, pers. comm. 1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998). To the extent possible with the limited potential habitat remaining, we have attempted to consider the wide-ranging behavior of the Blackburn's sphinx moth. Since the moth is believed to be a strong flier and able to move many kilometers from one area to another, areas of larval or adult presence and feeding may be separated from similar habitat areas and still serve important functions in maintaining moth populations.

Some small habitat areas are also suitable for Blackburn's sphinx moth larvae (*e.g.*, Units 2, 5, 6, and 9 (see unit descriptions below)) and are critical for the species' conservation since such habitats may facilitate adult moth dispersal and promote genetic exchange between populations located on different islands. These areas also provide nectar resources and sheltering opportunities required by the adult moth. However, geographically isolated populations may be subject to decreased viability caused by inbreeding depression, reductions in effective population size due to random variation in sex ratio, and limited capacity to evolve in response to environmental change (Soule 1987). The adult moth is dependent on its primary constituent element nectar source host plants for dispersal and migrating to and from various habitats. Because the factors threatening the moth's conservation are often not so mobile, providing for access to the moth's adult stage primary constituent elements, and thereby facilitating its ability to disperse, can minimize the effect of the various threats.

Blackburn's sphinx moth populations fluctuate from year to year and season to season, apparently correlated with environmental and climatic variation. The moth is likely sensitive to thermal conditions and habitat changes that disrupt its microclimatic requirements. Therefore, the critical habitat units include dry and mesic habitats containing the primary constituent elements along wide elevational gradients to better ensure adult moth foraging needs, up and downslope, within their range. Furthermore, the boundaries include elevational gradients to better ensure larval host plant availability during periods of drought. Numerous habitat elevations containing the various primary constituent elements are believed to be necessary for successful conservation of the sphingid species (Ehrlich and Murphy 1987; Shaffer 1987; Murphy and Weiss 1988; Murphy *et al.* 1990) in order to minimize the effects of annual localized drought conditions throughout different areas of the species' host plant range (Murugan and George 1992).

Critical habitat is being designated on those Hawaiian Islands where the Blackburn's sphinx moth's primary constituent elements are known to occur and are considered essential for the conservation of the species. This will allow the species the ability to persist and recolonize areas where it has become extirpated due to catastrophic events or demographic stochasticity (randomness) (Shaffer 1987). For example, on the island of Kauai in 1992, Hurricane Iniki blew over large areas of native forest, leaving open areas where nonnative plants became established, and created paths for further invasion of nonnative animals, both of which have been identified as threats to the survival of the moth.

Natural areas of suitable native, dry-to-mesic habitat containing at least one *Nothocestrum* plant adjacent to or near other *Nothocestrum* populations are included in the critical habitat units. We have included suitable habitat without *Nothocestrum* larval host plants, provided it contained the adult stage primary constituent elements including, but not limited to, *Ipomoea* species, *Capparis sandwichiana*, or *Plumbago zeylanica*. This is especially true for areas lying between or adjacent to large populations of *Nothocestrum* spp. that could serve as a flight corridor to other larger host plant habitat areas. An area may also serve as a corridor when it contains adult native host plants, thereby providing foraging opportunities for adults. Natural areas of primarily native vegetation containing the larval or adult stage primary constituent elements and where habitat could support a moth population and increase the potential for conservation are also designated as critical habitat. The designation and protection of a unit not known to currently contain a moth population (*i.e.*, the unit on Molokai), but which contains the primary constituent elements and lacks some of the serious threats to the species (*see* Table 1), will enhance population expansion and connectivity, thereby improving the likelihood of the species' conservation.

Mapping

Following publication of the proposed critical habitat rule for Blackburn's sphinx moth (67 FR 40633), we re-evaluated the proposed critical habitat units and modified the boundaries using additional information from peer review experts and comments on the proposed rule. We excluded areas that do not contain one or more of the primary constituent elements, or that are highly degraded and thus not essential for the conservation of the species. In addition, some areas were excluded under section 4(b)(2) of the Act (*see* Exclusions Under Section 4(b)(2)). The specific modifications are described above in the Summary of Changes from the Proposed Rule section. The boundaries of the final critical habitat units are described by their Universal Transverse Mercators (UTMs).

Within the critical habitat boundaries, section 7 consultation is generally necessary, and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In designating critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, which are unlikely to contribute to the conservation of the species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for this species did not allow us to exclude all such developed areas, or other areas unlikely to contain the primary constituent elements from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as the following, do not contain one or more of the primary constituent elements, and are therefore excluded under the terms of this regulation: buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations, intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; and other rural residential landscaped areas. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

The lack of scientific data on Blackburn's sphinx moth life history makes it impossible for us to develop a quantitative model (*e.g.*, population viability analysis) to identify the optimal number, size, and location of

critical habitat units (Ginzburg *et al.* 1990; Menges 1990; Murphy *et al.* 1990; Karieva and Wennergren 1995; Taylor 1995; Bessinger and Westphal 1998). At this time, we are only able to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of the Blackburn's sphinx moth's long-term survival and conservation. Therefore, we used the best available information to identify as critical habitat a reasonable number of additional units.

The one unoccupied area designated in this final rule is located on the island of Molokai (Unit 9). Although currently unoccupied by the moth, the area contains both larval stage and adult moth native host plants. The area is close enough in proximity to the Maui moth population that the area may again be re-populated by the moth on its own, yet because it is a separate island, some additional protection from a potential natural catastrophe affecting, for example, the Maui population, may be afforded a future moth population on Molokai. Also, as Molokai is the closest island to Oahu, we believe that allowing for a future moth population on Molokai may facilitate the species' dispersal and provide a flight corridor for moths eventually migrating to the island of Oahu, which is also part of its historical range.

Molokai was designated as critical habitat rather than other suitable unoccupied areas because we determined, to the best of our abilities, that it is the highest quality unoccupied habitat essential to the conservation of the moth. The designated unoccupied area on Molokai may lack some of the serious potential threats to the moth (*see* Table 1). Conserving and restoring Blackburn's sphinx moth populations in multiple locations decreases the likelihood that the effect of any single alien parasite or predator, or the combined pressure of such species and other threats, could result in the diminished vigor or extinction of the species.

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of such exclusions outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

Economic Impacts

Following the publication of the proposed critical habitat designation on June 13, 2002, a DEA was prepared to estimate the potential economic impact of the designation, in accordance with recent decisions in the *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001). The DEA was made available for review on November 15, 2002 (67 FR 69179). We accepted comments on it until the comment period closed on December 30, 2002.

Our DEA evaluated the potential direct and indirect economic impacts associated with the proposed critical habitat designation for Blackburn's sphinx moth on Hawaii, Kahoolawe, Maui, and Molokai over the next 10 years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits not related to the specific provisions of the Act. Examples of indirect impacts include potential effects to property values, redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

The DEA included an evaluation of the economic impacts associated with implementation of the section 7 provisions of the Act for the Blackburn's sphinx moth. To quantify the proportion of total potential economic impacts attributable to section 7 implementation, including both the section 7 listing provisions and the proposed critical habitat designation, the analysis evaluated a "without section 7" baseline and compared it to a "with section 7" scenario. The "without section 7" baseline represented the current and expected economic activity under all modifications except those associated with section 7, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the implementation of section 7 for the Blackburn's sphinx moth. Because of the uncertainty of the costs resulting solely from critical habitat designation, we believe it is reasonable to estimate the total impacts of section 7 application. However, it is important to note that inclusion of impacts attributable co-extensively to listing does not convert this economic analysis into a tool to be used in making listing decisions.

Following the close of the comment period on the DEA, an addendum was completed that incorporated public comments on the draft analysis and made other changes in the draft as necessary. These changes were primarily the result of information received during the comment period indicating that certain areas do not contain the necessary primary constituent elements or are not essential to the conservation of the species. However, the Addendum did analyze the economic impacts of areas that have been excluded pursuant to section 4(b)(2) in this final rule. Therefore, the total area and the potential impacts evaluated in the Addendum are greater than the total area designated as critical habitat and the actual impacts.

Together, the DEA as modified by the addendum constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation may result in potential direct economic costs ranging from approximately $1,183,800 to $1,739,000. This reduction of approximately $27,399 to $175,400 from the costs estimated in the DEA is primarily due to the reduction in acreage for biological reasons.

Our final economic analysis for this rule also includes an evaluation of potential indirect costs associated with the designation of critical habitat for the Blackburn's sphinx moth. For example, in the event that designation results in a rezoning of property from agricultural district to conservation district a landowner could be expected to spend $50,000 to contest a potential re-zoning of their property, and a CDUA might cost as much as $100,000. Also, as described in section 4.e. of the Addendum, an estimate of the costs involved with investigation for the intended designation ranges from approximately $173,000 to $618,000.

In addition, the final economic analysis discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

A more detailed discussion of our economic analysis is contained in the DEA and the Addendum. Both documents are included in our administrative record and available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including or excluding areas from critical habitat. The likely cost of designating critical habitat for the Blackburn's sphinx moth is estimated to be between $118,380 to $173,900 per year over the next 10 years.

Approximately 4,717 ha (11,656 ac) within two proposed critical habitat units (Units 1 and 2) are located on private lands owned by Ulupalakua and Haleakala Ranches. We are excluding both ranches from designation because the benefits provided by these two landowners' voluntary conservation activities within and adjacent to these units outweigh the benefits provided by a designation of critical habitat.

Ulupalakua Ranch

The portion of proposed Unit 1 on Ulupalakua Ranch lands is occupied habitat for Blackburn's sphinx moth.

As discussed previously, conservation of the moth will require self-sustaining, reproducing populations located in a geographic array across its range, with population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats. The highest priority conservation tasks include active management, such as host plant propagation and reintroduction, fire control, alien species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extirpation of this moth species from those areas. Many of these types of conservation actions in this area of Maui are carried out as part of Ulupalakua Ranch's participation with our Partners for Fish and Wildlife and other landowner incentive-based programs, and by actions taken on the landowner's initiative in areas outside the partnership area. These activities, which are described in more detail below, require substantial voluntary cooperation by Ulupalakua Ranch.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: Whether critical habitat designation would confer regulatory conservation benefits on this species; whether the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land.

If excluding an area from a critical habitat designation will provide substantial conservation benefits, and at the same time including the area fails to confer a counter-balancing benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

Critical habitat was proposed for Blackburn's sphinx moth on 3,533 ha (8,730 ac) in the Ulupalakua Ranch portion of proposed Unit 1. The primary direct benefit of inclusion of this portion of proposed Unit 1 as final critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present. In contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act. The portion of Unit 1 being excluded is occupied by the moth, and thus would be subject to consultation anyway. *See e.g.*, 50 CFR section 402.12 (biological assessments are based on a list of species present in the action area).

Historically, we have conducted no formal or informal consultations under section 7 on Maui for Blackburn's sphinx moth. We have conducted only two informal intraservice consultations regarding Ulupalakua Ranch, and these have been on the effects of fencing and outplanting of certain endangered plants including *Alectryon Micrococcus* var. *auwahiensis* and *Zanthoxylum hawaiiense* within the Puu Makua Partnership Project area and the Auwahi Partnership Project area (*see* discussion below). Current and likely future economic activities on the ranch include cattle grazing, diversified agriculture such as strawberry and papaya production, eco-tourism, wild fowl hunting, and lease of lands for cellular phone and radio transmission towers. The most likely future Federal involvement on these lands includes the development of voluntary conservation agreements between the ranch and Federal agencies such as the Service and NRCS. Additionally, it is possible the ranch may apply for and receive Farm Service loans for land improvement projects pertaining to agricultural needs or to enhance habitat for wild fowl.

As a result of the low level of previous Federal activity on Ulupalakua Ranch, and after considering the likely future Federal activities in this area, it is our opinion that there is likely to be a low number of future Federal activities that would affect designated Blackburn's sphinx moth critical habitat on Ulupalakua Ranch. Even if a Federal action is proposed in the future, it would likely be subject to section 7 consultation because of the presence of the moth. The Final Economic Analysis (FEA) prepared for this rule does discuss the possibility that a re-zoning of some lands from agricultural status to conservation status could occur which might limit certain agricultural activities. However, the FEA concedes that the possibility of re-zoning of agricultural lands is low or unlikely. Furthermore, there are different levels of conservation district land use categories, and in the event of a potential re-zoning, activities such as grazing would likely continue. Therefore, we anticipate little direct regulatory benefits from including Ulupalakua Ranch lands in critical habitat.

Another possible benefit if including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the moth species for which critical habitat was proposed in Unit 1 that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

However, we believe we have achieved the same educational benefits through ongoing conservation activities

and the critical habitat designation process. The portion of proposed Unit 1 that lies within Ulupalakua Ranch has been identified as essential to the conservation of the Blackburn's sphinx moth and has been addressed in this rule. In addition, the existing conservation activities being conducted within proposed Unit 1, as well as within other areas of Ulupalakua Ranch, by the Service and other Federal agencies (*e.g.*, NRCS), the State, and private organizations (*e.g.*, Ducks Unlimited, Incorporated (DU)) demonstrates that the landowner and the public is already aware of the importance of this area for the conservation of Blackburn's sphinx moth.

In summary, we believe that a critical habitat designation for Blackburn's sphinx moth on Ulupalakua Ranch lands would provide a relatively low level of additional regulatory conservation benefits to the species. Any regulatory conservation benefits would accrue through the benefit associated with section 7 consultation. Based on a review of past consultations and consideration of the likely future activities in this area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. We also believe that a final critical habitat designation provides little additional educational benefits since the conservation value is already known by the landowner, the State, Federal agencies, and private organizations, and the area has been identified as essential to the conservation of Blackburn's sphinx moth. Both the additional regulatory conservation benefits to the species and the additional educational benefits appear marginal when considering the past and likely future conservation partnership opportunities with this landowner. Through cooperative and creative land restoration activities which have occurred on the ranch and are likely to continue to occur, a significant amount of land (hundreds of acres or more) can and will likely be restored for the long-term conservation of the moth, its host plant species, and other native Hawaiian ecosystem components. No such future conservation partnerships with this landowner are likely to occur if the proposed portions of the ranch are designated as outlined by the landowner within several letters.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts on private lands are necessary to prevent the extinction and promote the conservation of this species on Maui and other Hawaiian islands (Wilcove and Chen 1998; Wilcove *et al.* 1998; Shogren *et al.* 1999). This is especially important in areas where species or their essential habitat components, *i.e.*, host plants, have been extirpated and their recovery requires access and permission for reintroduction or restoration efforts. For example, the Blackburn's sphinx moth's larval stage host plant species, *Nothocestrum latifolium*, associated with proposed Unit 1, are in decline on Ulupalakua Ranch lands, and natural repopulation is likely not possible without human assistance and landowner cooperation.

Ulupalakua Ranch is involved in several important voluntary conservation agreements, and is currently carrying out some of these activities for the conservation of the moth and its essential habitat components. For example, the Partners for Fish and Wildlife Auwahi and Puu Makua agreements were entered into in 1997 and 1998 with the stated purpose of protecting and restoring dryland forest, including construction of exclosure fences, a greenhouse, access road, and propagation and outplanting of native plants. Preservation of these areas conserves critically endangered species of plants and animals in one of Hawaii's most degraded ecosystem types, the lowland dry forest. This management strategy is consistent with recovery of the Blackburn's sphinx moth. The Auwahi agreement is between Ulupalakua Ranch, USGS–BRD, and the Service. We provided funding ($64,388) for fence materials, plant propagation and outplanting, and weed control, Ulupalakua Ranch provided labor and materials valued at $18,000, and USGS–BRD provided materials and technical assistance as well as staff and volunteer labor. In the 4 ha (10 ac) Auwahi project area, Ulupalakua Ranch has built the exclosure fence, outplanted native plants grown in the greenhouse including *Nothocestrum latifolium*, removed the majority of non-native alien species within the fence, and removed all ungulates. We provided $31,675, through an agreement with Ulupalakua Ranch, for restoration work at Puu Makua. Ulupalakua Ranch has provided in-kind labor and materials valued at $37,055 to construct a fence around the 40 ha (100 ac) exclosure, removal of ungulates, control of nonnative plants and out-planting of native plants. The first two tasks have been completed, with weed control and out-planting ongoing.

A third voluntary partnership project undertaken in cooperation with the landowner is the Auwahi II Dryforest Restoration Project. We provided $76,500 (matched by in-kind services valued at $52,000) for this 8 ha (20 ac) restoration effort adjacent to the Auwahi I project. This project is ongoing, and will employ the same methods used at Auwahi I: Construct ungulate exclosure fence, remove ungulates, control nonnative plants, and outplant native species, including listed species.

Ulupalakua Ranch entered a partnership with Ducks Unlimited (DU), a private conservation organization, and the NRCS's Wetland Reserve Program (WRP) in 2000, to create wetland complexes suitable for the Hawaiian goose, nene (*Branta sandvicensis*) and Hawaiian duck, koloa (*Anas wyvilliana*). The NRCS WRP provided $100,000 for funding and technical support to develop the wetland complex, DU provided funds and provided full survey, design, construction management and completion of wetland development practices, and Ulupalakua Ranch provided fencing, equipment, labor or other in-kind serves as required to match the WRP funds. DU also conducted waterfowl monitoring at the four ponds for 1 full year after pond construction. In 2001, a 14 ha (35 ac) area was fenced and encompassed the four constructed ponds and associated upland habitat at a 1,585 m (5,200 ft) elevation site. The ponds were created to attract nene and koloa pairs to forage and nest within the protected pond/wetland area, which totals approximately 0.4 ha (1 ac) of surface water, with 0.9–1.8 m (3–6 ft) depths filled and maintained by natural hydrology and rainfall.

In addition to the projects described above, to address the conservation needs of the species in a larger area, Ulupalakua Ranch has expanded their Partners for Fish and Wildlife projects with the Service and in cooperation with the State NAR program for conserving additional areas, which include the following important voluntary actions by Ulupalakua Ranch:

(1) Construction of exclosure fencing around a portion of Ulupalakua Ranch and the Ka naio NAR (a portion of proposed Unit 1 (approximately 283 ha (700 ac)) with $50,000 provided us, matched by in-kind services (*e.g.*, labor and materials) valued at $50,000;

(2) Active management of feral ungulates that are negatively affecting listed plants within the fenced areas;

(3) Active management of nonnative grasses and other fire hazards, and development of fire control measures; and

(4) Nursery propagation and planting of native flora, including *Nothocestrum latifolium*, within the fenced areas.

Currently, this is the only large-scale planned nursery production of the moth's native larval host plants in the State.

We believe that Blackburn's sphinx moth habitat and host plant populations originally included within the Ulupalakua Ranch portion of proposed Unit 1 will benefit substantially from these management actions. Specifically, the planned and current conservation actions on 324 ha (800 ac) or approximately 10 percent of the area originally proposed on ranch lands should directly benefit the moth and its host plants. These benefits include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the potential for reintroduction of moth host plants currently extirpated from various areas. Also, these benefits include what is current or currently planned only, additional benefits could be derived from projects not yet conceived.

On Maui, simply preventing "harmful activities" will not slow the extinction of listed species. Where consistent with the discretion provided by the Act, we believe it is necessary to provide positive incentives to private landowners to voluntarily conserve natural resources. The FEA for this rule concluded that the likelihood of any particular parcel being rezoned as conservation district was low. However, the potential costs of such a rezoning should it occur, could entail additional costs to a landowner. For example, a landowner could be expected to spend $50,000 to contest a rezoning, and a conservation district use application (CDUA) might cost as much as $100,000. However, the FEA also conceded that some economic activities such as grazing would likely be permitted to continue even with a conservation district rezoning. Although the FEA concludes that the potential effects of rezoning are anticipated to be low, this landowner and other commenters nevertheless believe there is a risk that the critical habitat designation will result in the rezoning of lands, a decrease in the Ulupalakua Ranch's ability to remain economically competitive, and an increased risk of third-party litigation. The landowner has expressed concern over these potential negative impacts and has stated in several letters that they would cease all voluntary conservation activities on ranch property. We believe the ranch's cooperation on all current and planned future conservation projects on ranch property are necessary to conserve the moth. Current conservation projects alone will result in the direct restoration and conservation of approximately 10 percent of the ranch's property proposed for designation.

As described earlier, Ulupalakua Ranch has a history of entering into conservation agreements with various Federal and State agencies and private organizations on biologically important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Puu Makua and the two Auwahi Dryland Forest Restoration Partners for Fish and Wildlife projects (in cooperation with USGS–BRD and funded through Partners for Fish and Wildlife), wetland restoration/creation (in cooperation with NRCS and DU), and the Ka naio Dry Forest Restoration Project (in cooperation with DOFAW and funded through Partners for Fish and Wildlife and section 6 of the Act).

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where we have little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Knight 1999; Main *et al.* 1999; Shogren *et al.* 1999; Norton 2000; Bean 2002; James 2002). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse *et al.* 2002). Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of the Blackburn's sphinx moth and other listed species in Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners. Thus, we believe it is essential for the conservation of Blackburn's sphinx moth to build on continued conservation activities such as these with a proven partner.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the Ulupalakua Ranch portion of proposed Unit 1 as critical habitat outweigh the benefits of including it as critical habitat for Blackburn's sphinx moth. This conclusion is based on the following analysis:

(1) *Benefits of inclusion:* There will be little Federal regulatory benefit to the moth as a result of including ranch property in the designation because, as described in the FEA and in this rule, there is a low likelihood that this critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The designation of critical habitat can serve to educate the general public, as well as conservation organizations regarding the potential conservation value of an area. However, this goal has already been effectively accomplished through the identification of this area in the management agreements described above. Lastly, even if any given ranch parcel were re-zoned as conservation district as a result of the designation, the FEA concluded that grazing activities would likely continue. Given the current Partners for Fish and Wildlife agreements between ourselves and the landowner, we believe the overall regulatory and educational benefits of including the Ulupalakua Ranch lands portion of proposed Unit 1 as critical habitat are relatively small.

(2) *Benefits of exclusion:* Excluding Ulupalukua Ranch property from the designation will result in the elimination of uncertainty about decreased land values and potential third party litigation. Potential costs to the landowner resulting from the need to investigate the effect of designation or to contest potential conservation rezoning, for example, will be eliminated. Lastly, and perhaps, most important for the conservation of the moth, excluding the properties from designation will ensure the landowner's continued voluntary participation in proactive conservation agreements and partnerships as the landowner has stated in several letters to the Service.

(3) In the past, Ulupalakua Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. The ranch has a long history of participation in conservation projects beginning in the 1960s through the present. A substantial amount (approximately 10 percent) of the Ulupalakua Ranch portion of proposed Unit 1 is currently being managed by the landowner on a voluntary basis to achieve important conservation goals and which directly benefits numerous native Hawaiian plant and animal species including the

moth. For example, the landowner is currently cooperating with the Service and the State to restore and actively manage approximately 324 ha (800 ac) of high quality habitat for the moth and its host plants.

Simple regulation of potential "harmful activities" is not sufficient to conserve the Blackburn's sphinx moth on private lands. Landowner cooperation and support will be required to prevent its extirpation in this area of Maui and promote the recovery of the moth's host plants in this area due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation and reintroduction. This need for landowner cooperation is especially important because the Ulupalakua portion of proposed Unit 1 is part of the habitat for what is considered a core or *metapopulation* of the moth. In fact, some portions of the ranch's property currently being fenced and actively managed for restoration include some of the highest quality moth habitat remaining anywhere in the State. Future conservation efforts, such as maintaining and conserving Blackburn's sphinx moth host plant habitat in this area, will require the cooperation of Ulupalakua Ranch.

In conclusion, we find that the designation of critical habitat in the Ulupalakua Ranch portion of proposed Unit 1 would most likely have a net negative conservation effect on the recovery and conservation of Blackburn's sphinx moth. As described above, the overall benefits to this moth of a critical habitat designation for this portion of Unit 1 are relatively small. We conclude there is a greater likelihood of beneficial conservation activities occurring on this area of Maui without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because the landowner is more likely to continue and increase their ongoing voluntary conservation efforts for the moth and other listed species if their property is not designated as critical habitat. In fact, the landowner has stated in several letters to the Service that all voluntary conservation activities will cease if ranch property is designated. Therefore, it is our conclusion that the net benefits of excluding this portion of proposed Unit 1 from critical habitat for the Blackburn's sphinx moth outweigh the benefits of including it.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of this portion of proposed Unit 1 might result in the extinction of Blackburn's sphinx moth, we considered the impacts to the species. It is our conclusion that the current partnership agreements developed by Ulupalakua Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed Unit 1 as critical habitat. These agreements will provide tangible proactive conservation benefits that will result in the direct restoration and active management of 324 ha (800 ac) of habitat for the moth and its native host plants within proposed Unit 1. Specifically, the benefits will include the construction of exclosure fencing around a large portion of high quality moth habitat, active management of feral ungulates and nonnative grasses and weeds, development of fire control methods, and nursery propagation of the moth's host plants. These benefits will reduce the likelihood of the moth's extirpation in this area of Maui, reduce the likelihood of its extinction, and increase its likelihood of conservation overall. Extinction of the Blackburn's sphinx moth as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed Unit 1 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service, and the exclusion of the portion of proposed Unit 1, have the highest likelihood of preventing extinction of this species and enhancing its conservation.

In addition, critical habitat is being designated in other areas of Maui and on the islands of Hawaii, Kahoolawe, and Molokai for Blackburn's sphinx moth. These other designations identify conservation areas for the maintenance and expansion of existing populations.

In summary, the above analysis indicates there is a much greater likelihood of the landowner undertaking conservation actions on Maui to prevent extinction, such as the outplanting of moth host plants to expand and establish additional populations, without the Ulupalakua Ranch portion of proposed Unit 1 being designated as critical habitat. Therefore, the exclusion of this portion of proposed Unit 1 will not cause extinction and should in fact improve the chances of conservation for Blackburn's sphinx moth.

Haleakala Ranch

Most of the portion of proposed Units 1 and 2 on Haleakala Ranch lands is believed to be occupied habitat for Blackburn's sphinx moth.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: Whether critical habitat designation would confer regulatory conservation benefits on this species; whether the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land.

If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out, and at the same time fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding such areas from critical habitat outweigh the benefits of including them. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

On Haleakala Ranch property, critical habitat was proposed for Blackburn's sphinx moth on 393 ha (972 ac) for proposed Unit 1 and 791 ha (1,955 ac) for proposed Unit 2. The primary direct benefit of inclusion of this portion of proposed Units 1 and 2 as final critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

Historically, there have been no formal consultations of informal consultations under section 7 involving Haleakala Ranch lands, except the consultation in the process of being completed for the Puu Pahu conservation project that we are funding in part.

Current and likely future economic activities on the ranch include cattle grazing, diversified agriculture, ecotourism, hunting, and lease of lands for cellular phone and radio transmission towers. Likely future Federal involvement includes the development of voluntary conservation agreements between the ranch and Federal agencies such as the Service and NRCS. Additionally, it is possible the ranch may apply for and receive Farm Service loans for land improvement projects pertaining to agricultural needs or to enhance habitat for wild fowl.

As a result of this low level of Federal activity on Haleakala Ranch, and after considering the likely future Federal activities in this area, it is our opinion that there is likely to be a low number of future Federal activities that would affect designated Blackburn's sphinx moth critical habitat on Haleakala Ranch. Even if a Federal action is proposed in the future, it would likely be subject to section 7 consultation because of the presence of the moth. The FEA prepared for this rule does discuss the possibility that a rezoning of some lands from agricultural status to conservation status could occur which might limit certain agricultural activities. However, the FEA concedes that the possibility of rezoning of agricultural lands is low or unlikely. Furthermore, there are different levels of *conservation district land use* categories, and in the event of a potential rezoning, activities such as grazing would likely continue. Therefore, we anticipate little regulatory benefits from including Haleakala Ranch lands in critical habitat.

Another possible benefit of including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. This outcome would be important for the Blackburn's sphinx moth. Any information about the species and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

However, we believe we have achieved the same educational benefits through ongoing conservation actions and the critical habitat designation process. The portion of proposed Units 1 and 2 that lie within Haleakala Ranch has been identified as essential to the conservation of the Blackburn's sphinx moth. In addition, the existing conservation activities being conducted within proposed Units 1 and 2, as well as within other areas of Haleakala Ranch, by the Service and other Federal agencies (*e.g.*, NRCS), the State, and private organizations (*e.g.*, The Nature Conservancy (TNC)) demonstrates that the landowner and the public is already aware of the importance of these areas for the conservation of the moth.

In summary, we believe that a critical habitat designation for Blackburn's sphinx moth on Haleakala Ranch lands would provide a relatively low level of additional regulatory conservation benefits to the species. Any regulatory conservation benefits would accrue through the benefit associated with section 7 consultation. Based on a review of past consultations and consideration of the likely future activities in this area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. In addition, we believe that the critical habitat proposal and final designation provides some conservation benefits by educating the public on the site-specific areas on Maui essential to the conservation of the Blackburn's sphinx moth. Both the additional regulatory conservation benefits to the species and the additional educational benefits appear marginal when considering the past and likely future conservation partnership opportunities with this landowner. Through cooperative and creative land restoration activities which have occurred and are likely to continue to occur on the ranch, a significant amount of land (hundreds of acres or more) can and will likely be restored for the long-term conservation of the moth, its host plant species, and other native Hawaiian ecosystem components. No such future conservation partnerships with this landowner are likely to occur if the proposed portions of the ranch are designated as outlined by the landowner within several letters.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts on private lands are necessary to prevent the extinction and promote the conservation of this species on Maui and other Hawaiian islands (Wilcove and Chen 1998; Wilcove *et al.* 1998; Shogren *et al.* 1999). This is especially important in areas where species or their essential habitat components, *i.e.*, host plants, have been extirpated and their recovery requires access and permission for reintroduction or restoration efforts. For example, the Blackburn's sphinx moth's host plant species, associated with proposed Units 1 and 2 are either extirpated or in decline on Haleakala Ranch lands, and natural repopulation is likely not possible without human assistance and landowner cooperation.

Haleakala Ranch is involved in several important voluntary conservation agreements, some of which benefit the moth. For example, in the mid-1980s, Haleakala Ranch Company sold to TNC a perpetual conservation easement that included over 19,000 ha (47,000 ac) (Waikamoi Preserve) in order to protect its native forest resources and watershed from damage caused by pigs and cattle. Haleakala Ranch Company has been working with the Central Maui Soil and Water Conservation District to address soil and resource issues. In cooperation with the NRCS Environmental Quality Incentives Program (EQIP), Haleakala Ranch Company has been implementing a weed control program that has been ongoing for over 80 years. Eight years ago, the Haleakala Ranch Company Directors created and filled a Land Steward position in order to shepherd conservation efforts of the ranch and update the conservation plans for all Haleakala Ranch lands.

The Partners for Fish and Wildlife Puu Pahu agreement was begun in 2001 with the stated purpose of protecting and restoring native subalpine dry shrubland including construction of a 6.9 kilometers (km) (4.3 miles (mi)) *exclosure fence*, and removal of ungulates within the area in order to allow the already semi-intact native vegetation to regenerate. Preservation of this area conserves critically endangered species of plants and animals in one of Hawaii's most restricted ecosystem types, subalpine dry shrubland. The agreement is between Haleakala Ranch, the Service, and NRCS. The Service and NRCS provided funding for fencing materials ($91,418 from us), and are providing technical assistance on the conservation of certain native plants and restoration of the subalpine dry shrubland, whereas Haleakala Ranch is building the fence and removing the ungulates (in-kind cost-share valued at $28,875). This work is to be completed by August 30, 2003. Haleakala Ranch has also been working with DOFAW for the past 2 years on an ungulate free reserve for native habitat regeneration in the Waiopae area. Haleakala Ranch is fencing the area for better grazing management from the forest to the shoreline. These actions will include riparian protection to improve habitat for native plants and watershed management. The area contains high quality habitat for both the moth's larval and adult stage host plants, and when completed, it would involve the conservation, restoration, and management of approximately 445 ha (1,100 ac) of moth habitat.

Through voluntary agreements with our Partners for Fish and Wildlife and the NRCS Wildlife Habitat Incentives Programs (WHIP), and in cooperation with the Native Hawaiian Plant Society, USGS-BRD and DOFAW, Haleakala Ranch is assisting with the fencing and exclusion of feral axis deer in the Puu

o Kali project area (part of proposed Unit 2) by granting access to the area. Furthermore, the success of this project, a high quality habitat area for the moth and its host plants, can be enhanced and facilitated by voluntary cooperation of Haleakala Ranch. Currently, the ranch is planning to implement similar fire control, weed, and ungulate management, and fence construction efforts on its properties adjacent and partly surrounding the Puu o Kali project area. Additionally, the ranch is fencing and excluding feral ungulates from a high elevation shrubland adjacent to Haleakala National Park, for conservation of endangered plants and animals and habitat protection purposes. Preservation of both these habitat areas conserves critically endangered species of plants and animals in two of Hawaii's most degraded ecosystem types. This management strategy is consistent with the conservation needs of Blackburn's sphinx moth and should directly benefit the moth's host plant habitat.

In addition, Haleakala Ranch has informed us that they are currently devising additional management plans for conserving habitat, including that of the moth. These plans include the following important voluntary actions by Haleakala Ranch:

(1) Construction of a 9 ha (22 ac) exclosure fence around Keokea Gulch in Kihei to reduce sedimentation on the shoreline and reef, and to reduce the fire hazard in the area by using R–1 (highest quality recycled water) water to irrigate a riparian buffer; exclosure fencing of a dryland lava flow in the Keokea area, in cooperation with the Service. Additionally, the ranch has begun planning with the Service and DOFAW to fence and restore a significant portion of the Waiopae area (within proposed Unit 1) for habitat protection of native forest and riparian areas. The project would involve the enclosure and management of approximately 445 ha (1,100 ac) of high quality moth habitat, or approximately 30 percent of the amount of Haleakala Ranch lands proposed for designation.

(2) Control of feral ungulates that are negatively impacting listed and rare plants, including the Blackburn's sphinx moth's host plants, within all the currently fenced areas and planned project areas;

(3) Control of nonnative grasses and other fire hazards, and development of fire control measures within many project areas including some occupied by the moth; and

(4) Habitat protection for natural regeneration of native flora including Blackburn's sphinx moth host plants, within many of the fenced project areas.

We believe that Blackburn's sphinx moth habitat included within the Haleakala Ranch portion of proposed Units 1 and 2 will benefit substantially from these management actions. Specifically, the planned and current conservation actions on approximately 445 ha (1,100 ac) or approximately 30 percent of the ranch property amount originally proposed should directly benefit the moth and its host plants. These benefits include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the potential for reintroduction of moth host plants currently extirpated from various areas. Furthermore, these benefits include what is current or currently planned only, additional benefits could be derived from projects not yet conceived.

On Maui, simply preventing "harmful activities" will not slow the extinction of listed species. Where consistent with the discretion provided by the Act, we believe it is necessary to provide incentives to private landowners to voluntarily conserve natural resources. The FEA for this rule concluded that the likelihood of any particular parcel being rezoned as conservation district was low. However, the potential costs of such a rezoning, should it occur, could entail additional costs to a landowner. For example, a landowner could be expected to spend $50,000 to contest a rezoning, and a CDUA might cost as much as $100,000. However, the FEA also conceded that some economic activities such as grazing would likely be permitted to continue even with a conservation district rezoning. Although the FEA concludes that the potential effects of rezoning are therefore anticipated to be low, this landowner and other commenters nevertheless believe there is a risk that the critical habitat designation will result in the rezoning of lands, a decrease in the Haleakala Ranch's ability to remain economically competitive and that there is an increased risk of third-party litigation. The landowner has expressed concern over these potential negative impacts and has stated in several letters that they would cease all voluntary conservation activities on ranch property. We believe the ranch's cooperation on all current and planned future conservation projects on ranch property are necessary to conserve the moth. Current and planned conservation projects alone could result in the direct restoration and conservation of approximately 30 percent of the ranch property acreage amount proposed for designation.

As described earlier, Haleakala Ranch has a history of entering into conservation agreements with various Federal and State agencies, and private organizations on important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments ranging from the Partners for Fish and Wildlife projects, and an agreement with DOFAW to fence areas in Waiopae, to weed control programs with NRCS WHIP, and a perpetual easement to TNC (Waikamoi Preserve).

We believe it is essential for the conservation of Blackburn's sphinx moth to build on continued conservation activities such as these with a proven partner. Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where we have little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Knight 1999; Main *et al.* 1999; Shogren *et al.* 1999; Norton 2000; Bean 2002; James 2002). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse *et al.* 2002). Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of the Blackburn's sphinx moth and other listed species in Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the Haleakala Ranch portion of proposed Units 1 and 2 as critical habitat outweigh the benefits of including it as critical habitat for Blackburn's sphinx moth. This conclusion is based on the following analysis:

(1) *Benefits of inclusion:* There will be little Federal regulatory benefit to the moth as a result of including ranch property in the designation because, as described in the FEA and in this rule, there is a low likelihood that this critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The designation of critical habitat can serve to educate the general public, as well as conservation organizations regarding the potential conservation value of an area. However, this goal has already been effectively accomplished through the identification of this area in the management agreements described above. Lastly, even if any given ranch parcel were re-zoned as conservation district as a result of the designation, the FEA concluded that grazing activities would likely continue. Given the current Partners for Fish and Wildlife agreements between ourselves and the landowner, we believe the overall regulatory and educational benefits of including the Haleakala Ranch lands portion of proposed Units 1 and 2 as critical habitat are relatively small.

(2) *Benefits of exclusion:* Excluding Haleakala Ranch property from the designation will result in the elimination of uncertainty about decreased land values and potential third party litigation. Potential costs to the landowner resulting from the need to investigate the effect of designation or to contest potential conservation rezoning, for example, will be eliminated. Lastly, and perhaps, most important for the conservation of the moth, excluding the properties from designation will ensure the landowner's continued voluntary participation in proactive conservation agreements and partnerships as the landowner has stated in several letters to the Service.

(3) In the past, Haleakala Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. Currently only a small percentage of the Haleakala Ranch portion of proposed Units 1 and 2 are being restored or managed for the moth. However, a substantial amount (approximately 30 percent) of the ranch's portion of proposed Units 1 and 2 is within the planning stage to be restored and managed by the landowner on a voluntary basis to achieve important conservation goals, and to directly benefit numerous native Hawaiian plant and animal species including the moth. For example, the landowner is currently planning with the Service and the State to restore and actively manage approximately 445 ha (1,100 ac) of high quality habitat for the moth and its host plants.

Simple regulation of potential "harmful activities" is not sufficient to conserve the Blackburn's sphinx moth on private lands. Landowner cooperation and support will be required to prevent its extirpation in this area of Maui and promote the recovery of the moth's host plants in this area due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation and reintroduction. This need for landowner cooperation is especially important because the Haleakala Ranch portion of proposed Units 1 and 2 is part of the habitat for what is considered a core or metapopulation of the moth. Future conservation efforts, such as maintaining and conserving Blackburn's sphinx moth host plant habitat in this area, will require the cooperation of Haleakala Ranch.

In conclusion, we find that the designation of critical habitat in the Haleakala Ranch portion of proposed Units 1 and 2 would most likely have a net negative conservation effect on the recovery and conservation of Blackburn's sphinx moth. As described above, the overall benefits to this moth of a critical habitat designation for this portion of Units 1 and 2 are relatively small. We conclude there is a greater likelihood of beneficial conservation activities occurring within this area of Maui without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because the landowner is more likely to continue and increase their ongoing voluntary conservation efforts for the moth and other listed species if their property is not designated as critical habitat. In fact, the landowner has stated in several letters to the Service that all voluntary conservation activities will cease if ranch property is designated. Therefore, it is our conclusion that the net benefits of excluding this portion of proposed Units 1 and 2 from critical habitat for the Blackburn's sphinx moth outweigh the benefits of including it.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species,

In considering whether or not exclusion of this portion of proposed Units 1 and 2 might result in the extinction of Blackburn's sphinx moth, we considered the impacts to the species. It is our conclusion that the current partnership agreements developed and planned by Haleakala Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed Units 1 and 2 as critical habitat. These agreements will provide tangible proactive conservation benefits that may result in the direct restoration and active management of 445 ha (1,100 ac) of habitat for the moth and its native host plants within proposed Units 1 and 2. Specifically, the benefits would include the construction of exclosure fencing around a large portion of high quality moth habitat, active management of feral ungulates and nonnative grasses and weeds, and development of fire control methods. These benefits will reduce the likelihood of the moth's extirpation in this area of Maui, reduce the likelihood of its extinction, and increase its likelihood of conservation overall. Extinction of the Blackburn's sphinx moth as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed Units 1 and 2 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service, and the exclusion of the portion of proposed Units 1 and 2, have the highest likelihood of preventing extinction of this species and enhancing its conservation.

In addition, critical habitat is being designated in other areas of Maui and on the islands of Hawaii, Kahoolawe, and Molokai for Blackburn's sphinx moth. These other designations identify conservation areas for the maintenance and expansion of existing populations.

In summary, the above analysis indicates there is a much greater likelihood of the landowner undertaking conservation actions on Maui to prevent extinction, such as the restoration and management of moth host plant habitat, without the Haleakala Ranch portion of proposed Units 1 and 2 being designated as critical habitat. Therefore, the exclusion of this portion of proposed Units 1 and 2 will not cause the species' extinction and should, in fact, improve the chances of conservation for Blackburn's sphinx moth.

Other Private Lands

Approximately 567 acres of State and private land within two proposed critical habitat units (Units 5A and 5B) are excluded because the economic impacts of their inclusion outweigh the benefits provided by a designation of critical habitat. The economic analysis indicates that activities already planned for these two units, including the State VOLA master planned community with over 1,000 units of affordable housing, and the Kaloko Properties projects, could incur indirect costs ranging between $49.9 and $61.9 million. While

there is no certainty that any or all of these indirect costs would be incurred, these figures are illustrative of the order of magnitude of the indirect impacts that could occur from the designation.

(1) Benefits of Inclusion

These areas proposed for development or other uses are proposed Units 5A and 5B. Proposed Unit 5A absent this exclusion would consist of 226 acres of State and private land. Proposed Unit 5B absent this exclusion would consist of 232 acres of State land. Both units are unoccupied by the moth.

If these areas were designated as critical habitat, any Federal agency which proposed to approve, fund or undertake any action which might adversely modify the critical habitat would be required to consult with us. This is commonly referred to as a "Federal nexus" for requiring the consultation. Since the areas in question are not occupied by the plants, this consultation would not be required absent the critical habitat designation.

The draft economic analysis and final addendum indicate no projects within the areas proposed for exclusion which have a Federal nexus, and thus there is no expectation that there would be any section 7 consultations if these areas were designated as critical habitat for the moth.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. These units have already been identified through the draft proposal and final designation. In addition, the State has included a preserve for listed plants within its VOLA development project, which will contribute to the long-term educational benefit of conserving the habitat of listed species.

In summary, we believe that a critical habitat designation for the moth on these properties would provide relative low additional Federal regulatory benefits. There is no Federal activity which might trigger the section 7 consultation process for these species known or anticipated for the lands to be excluded. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the notice and comments which accompanied the development of this regulation, and the proposed critical habitat is known to the landowners. In addition, the State is planning for a preserve for the listed plants within the VOLA development which will provide ongoing educational benefits regarding the habitat of listed species.

(2) Benefits of Exclusion

There are two development projects currently planned within the pre-exclusion boundaries of proposed Units 5A and 5B which could suffer significant economic impacts due to indirect effects of the critical habitat designation.

The Housing and Community Development Corporation of Hawaii has since 1990 had a master-planned community development project known as "Villages at Laiopua" (VOLA), much of which is within the pre-exclusion boundary of proposed Unit 5B. This includes a planned 570 "affordable housing" homes within the area proposed for designation. The State of Hawaii has already invested $30 million in infrastructure costs, including roads, utilities, a High School, planning and expanding the local waste-water treatment plant, and some of the project has been constructed.

There are real but undeterminable possibilities that designation of these areas as critical habitat would lead to loss or significant restriction of the project through actions not under the control of the Federal government but resulting from the critical habitat designation. These include redistricting of land, rezoning and other regulatory approvals, and litigation related to both.

Hawaii has statewide land classifications of Urban, Rural, Agricultural and Conservation, with restrictions on what type of activities can be conducted within the different classifications. The State Department of Land and Natural Resources commented on this proposal that they would be required to initiate rezoning of lands designated as critical habitat into the "Conservation" classification, which prohibits development.

While there is a low probability that the State Land Use Commission would finally vote to redistrict the lands proposed for the VOLA project, that possibility exists. In addition, there could well be litigation designed to either force the Commission to act or to have a court make the decision.

The VOLA project has already been troubled by litigation and defaulting developers; additional regulatory or legal uncertainties arising from this designation could well cause further delays or kill the project altogether. If this were to occur, the Housing and Community Development Corporation would lose the $30 million in sunk costs, and the affordable housing units that would have been constructed. Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of $2.7 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the available information indicates that there are no other affordable housing projects planned within the next 10 years.

The second project within the excluded areas is known as the Kaloko Properties/Kaloko Town Center. This project has been underway since 1987, and covers 1,150 acres, of which 240, or 21%, is within the preexclusion boundary of the proposed units. The developers have already expended over $20 million for infrastructure improvements, engineering and related costs, which approximately $4.2 (by percentage allocation) is associated with the portion of the project within the proposed critical habitat. This project will need both redistricting from the State and rezoning from the county for portions of the land. The final addendum to the economic analysis finds there is a reasonably foreseeable chance that the designation of critical habitat would affect this development.

In the worst-case scenario, the State or county might decide not to grant the discretionary approvals needed for the project—redistricting and rezoning—or might be prevented from doing so by litigation. This could lead to loss of the $4.2 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire $20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between $40 to $80 million. Using a present value discount, the loss would range between $13 and $25 million.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

The VOLA project has already been troubled by litigation and defaulting developers; additional regulatory or legal uncertainties arising from this designation could well cause further delays or kill the project altogether. If this were to occur, the Housing and Community Development Corporation would lose the $30 million in sunk costs, and the affordable housing units that would have been constructed. Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of $2.7 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the available information indicates that there are no other affordable housing projects planned within the next 10 years.

We accordingly do not find that the benefits from the designation of critical habitat for lands within the VOLA project, as discussed above, exceed the benefits of avoiding the possible economic and social costs which could well arise from this designation.

For the Kaloko Properties/Kaloko Town Center, there is also the real possibility that the designation of critical habitat could lead to loss of necessary regulatory approvals. This in turn could lead to loss of the $4.2 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire $20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between $40 to $80 million. Using a present value discount, this loss would range between $13 and $25 million. (There could also be the loss of all project revenues in the event the inability to utilize the lands within the critical habitat designation caused the failure of the entire project.)

The possibility of significant economic impacts to this project, while not certain, clearly exist. As noted above, we cannot find offsetting benefits from the designation of critical habitat in these two units which exceed the benefits of avoiding these possible economic costs.

There are two other factors of which we take note but upon which our decision does not rest. First, in June 2002, the State enacted legislation allowing State entities to enter into Safe Harbor agreements and Habitat Conservation Plans for three designated areas, including the VOLA project. There were previously specimens of the moth's larval host plant, which presumably could be reintroduced. There are also populations of the various plants on which adult moths feed. This area is thus a candidate for a Safe Harbor agreement. Absent the exclusion, it is highly unlikely the State would pursue these conservation options.

Secondly, the developers of this project contacted us after the close of the comment period offering to undertake a number of actions designed to provide conservation benefits to the species. Specifically, the offer included: (1) To set aside 100 to 130 acres within the proposed Unit 13; (2) enter into good faith negotiations with the Federal, State or county entities for acquisition of the area; (3) agree to enter into a Safe Harbor agreement with us; and (4) to enter into a memorandum of understanding or cooperative agreement to address habitat protection, monitoring and management actions for the remainder of their property relating to Blackburn's sphinx moth and two species of endangered plants.

Due to the court-ordered date by which this designation must be completed, we were unable to conclude such an agreement with the developers or to enter into a Safe Harbor agreement with the State prior to issuing this notice and regulation. However, if we had been, these are the types of agreements for which we have found in other cases that the benefits of the agreement exceed the benefits of designation and thus warrant exclusion (*See* previous discussions of exclusions under section 4(b)(2)).

It has been our policy not to make exclusions under section 4(b)(2) based on offers of conservation agreements, and we are not doing so in either case here. However, we find it highly unlikely that either party would pursue them absent the exclusions, and note the ability to pursue the agreements as a secondary benefit of the exclusions. A decision by the developers to follow through on their offer and by the State to pursue a Safe Harbor agreement might well be in both their and the species best interest.

(4) Exclusion Will Not Cause Extinction of the Species

In considering whether or not exclusion of this portion of the proposed critical habitat might result in the extinction of Blackburn's sphinx moth, we considered the impacts on the species. Given that the units in question are unoccupied, we find, based on all of the information available to us, that the projects proposed for the areas to be excluded will not adversely impact existing populations of the moth.

The exclusions will provide an opportunity to pursue beneficial conservation agreements with the landowners, as noted above, that most likely would not exist without the exclusions.

Critical habitat for the moth is also designated on Molokai, Maui, and Kahoolawe, and in other locations on the island of Hawaii.

We accordingly find no basis for any conclusion that these exclusions would cause extinction of the species.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of Blackburn's sphinx moth and the special management needs of this species, and are based on the best scientific and commercial information available. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for this species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

Descriptions of Critical Habitat Units

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 2.

Critical habitat includes habitat for the Blackburn's sphinx moth on the islands of Hawaii, Kahoolawe, Maui, and Molokai. Lands designated as critical habitat have been divided into 9 units. A brief description of each unit is presented below.

Unit 1: Puu O Kali (Maui)

Unit 1 consists of approximately 1,604 ha (3,965 ac) on State and private land, encompassing portions of the leeward slope of Haleakala and adjacent portions of the upper southeast isthmus. The unit is bounded on the north and the south by pasture lands, on the east by the lower slopes of Haleakala below the area of Kula, and on the west by the coastal town of Kihei. Natural features within the unit include widely spread, remnant dry forest communities, rugged aa lava flows, and numerous cindercones, including the highly visible Puu O Kali. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 1993).

Along with Units 2, 3, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium*, and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide temporary (ephemeral) habitat for migrating Blackburn's sphinx moths.

Unit 2: Cape Kinau (Maui)

Unit 2 consists of approximately 603 ha (1,490 ac) on State and private land, encompassing Cape Kinau and the entire Ahihi-Kinau NAR. The unit is

bounded on the north by Puu Naio, to the south by the ocean, to the east by La Perouse Bay, and on the west by Ahihi Bay. Natural features within the unit include widely spread, remnant dry forest communities, and numerous rugged aa lava flows. Vegetation consists primarily of mixed-species dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 1993).

Along with Units 1, 3, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium*, and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide ephemeral habitat for migrating Blackburn's sphinx moths.

Unit 3: Kanaio (Maui)

Unit 3 consists of approximately 2,421 ha (5,982 ac) on State and private land, encompassing portions of the leeward slope of Haleakala and adjacent portions of the upper southeast isthmus. The unit is bounded on the north by pasture lands, to the south by ocean, to the east by the Kanaio NAR boundary and Puu Hokukano, and on the west by the Kanaio Homesteads and Cape Hanamanioa. Natural features within the unit include widely spread, remnant dry forest communities, rugged aa lava flows, and numerous cindercones including the highly visible Puu Pimoe. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 1993).

Along with Units 1, 2, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium*, and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide ephemeral habitat for migrating Blackburn's sphinx moths.

Unit 4: Kahikinui (Maui)

Unit 4 consists of approximately 4,799 ha (11,859 ac) on State and private land, encompassing portions of the leeward slope of Haleakala. The unit is bounded on the northeast by the 1,525 m (5,000 ft) elevation contour of Haleakala Volcano, to the south by the ocean, to the east by Poopoo Gulch, and on the west by Lualailua Hills. Natural features within the unit include widely spread, remnant dry forest communities, rocky coastline, numerous cindercones, and some of the most recent lava flows on Maui. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 1993).

Along with Units 1, 2, and 3, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium*, and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide ephemeral habitat for migrating Blackburn's sphinx moths.

Unit 5: Kanaha Pond (Maui)

Unit 5 consists of approximately 56 ha (139 ac) on State land, entirely comprised of the Kanaha Pond State Sanctuary on Maui. It is bounded on the south by the Kahului Airport, on the north by the ocean, on the east by coastline, and to the west by the town of Kahului. Natural features within the unit includes Kanaha Pond and remnant coastal dune communities. Vegetation consists primarily of mixed-species, dry coastal shrub land communities composed of native and introduced plants, including nonnative larval host plants (HHP 2000).

Although devoid of naturally occurring *Nothocestrum* spp., the unit is essential to the species' conservation because it contains adult Blackburn's sphinx moth primary constituent elements, and recent observations of both larvae and adults have been documented within the sanctuary. Although this unit is lower in elevation than areas currently containing *Nothocestrum* plants, the persistent occurrence of Blackburn's sphinx moth within the Kanaha Pond State Sanctuary and other nearby areas indicates this site provides habitat for this area's moth population, and plays an important role in the species' population dynamics. Based upon an understanding of this species and other moth species' flight capabilities and migrational needs, we believe that designation of this area contributes to the available matrix of undeveloped habitat necessary as refugia for Blackburn's sphinx moths migrating to other areas of existing suitable host plant habitat on Maui (A. Medeiros, pers. comm. 1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Unit 6: Kanaha Park (Maui)

Unit 6 consists of approximately 25 ha (62 ac) of State land, entirely comprised of coastal land on Maui. It is bounded on the south by the Kahului Airport, on the north by the ocean, on the east by other coastal lands, and immediately to the west by the Kanaha Pond State Sanctuary. Natural features within the unit include remnant coastal dune communities. Vegetation consists primarily of mixed-species, dry coastal shrub land communities composed of native and introduced plants, including nonnative larval host plants (HHP 2000).

We have no recent and verified Blackburn's sphinx moth observations within this unit. However, the unit is considered essential to the species' conservation because it is within the geographical area occupied by the species at the time of listing and contains the moth's adult stage primary constituent elements. Furthermore, recent observations of both larvae and adults have been documented within the adjacent Kanaha Pond State Sanctuary and in the nearby Kanaha-Spreckelsville area. Although this unit is lower in elevation than areas currently containing *Nothocestrum* plants, the persistent occurrence of Blackburn's sphinx moth within the nearby Kanaha Pond State Sanctuary, and other nearby areas, indicates this site provides habitat for this area's moth population and plays an important role in the species' population dynamics. Based upon an understanding of this species and other moth species' flight capabilities and migrational needs, we believe that designation of this area contributes to the available matrix of undeveloped habitat necessary as refugia for adult Blackburn's sphinx moths migrating to other areas of existing suitable host plant habitat on Maui in order to forage or lay eggs (A. Medeiros, pers. comm. 1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Unit 7: Upper Kahoolawe (Kahoolawe)

Unit 7 consists of approximately 1,721 ha (4,252 ac) on State land, encompassing portions of the upper elevational contour of Kahoolawe, approximately above 305 m (1,000 ft) in elevation. Kahoolawe is located approximately 11 km (6.7 mi) south of Maui and is approximately 11,655 ha (28,800 ac) in total land area. Natural features within the unit include the main caldera, Lua Makika, and Puu Moaulaiki. Vegetation within the unit consists primarily of mixed-species, mesic and dry grass and shrubland communities composed of primarily introduced plants and some native plant species (HHP 2000).

This unit contains a large Blackburn's sphinx moth population, which may or may not be part of the larger Maui populations. Adult host plants identified as primary constituent elements are numerous within this area. Because the unit is occupied, harbors adult native host plants, and is in close proximity to the large Maui moth population, this unit is essential for Blackburn's sphinx moth conservation and would improve dispersal and migration corridors and thus expand population recruitment potential (P. Higashino, pers. comm. 2001).

Unit 8: Puuwaawaa—Hualalai (Hawaii)

Unit 8 consists of approximately 9,954 ha (24,597 ac) on State and private land, encompassing portions of the flows and northwest slopes of Hualalai volcano on the island of Hawaii. It is bounded on the south by the Kailua-Kona region and large expanses of barren lava flows, on the north by Parker Ranch and large expanses of nonnative grass lands, to the east by the upper slopes of Hualalai volcano, and to the west by lava flows and coastal land. Natural features within the unit include Puuwaawaa cindercone and significant stands of native dry forest including the adult Blackburn's sphinx moth's nectar food plants and large numbers of *Nothocestrum breviflorum* host plants (Perry 2001). Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 2000).

This unit is essential to the species' conservation because frequent and persistent observations of both Blackburn's sphinx moth larvae and adults throughout this unit indicate that Unit 8 contains the largest population of Blackburn's sphinx moth on the island of Hawaii. In addition to providing habitat for this area's population, Unit 8 provides refugia for moths migrating to other areas of existing suitable host plant habitat. As previously discussed, given the large size and strong flight capabilities of the Blackburn's sphinx moth, support for moth population linkages requires habitat in large contiguous blocks or within a matrix of undeveloped habitat (A. Medeiros, pers. comm.1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Unit 9: Kamoko Flats—Puukolekole (Molokai)

Unit 9 consists of approximately 1,256 ha (3,105 ac) on State and private land, encompassing portions of the higher, yet drier portions of east Molokai. It is bounded on the north by wet forests, to the south by drier coastal land, to the east by rugged, dry gullies and valleys, and to the west by dry to mesic lowland forest. Natural features within the unit include numerous forested ridges and gullies. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 2000).

This unit is part of the historical range of the moth. Unit 9 is not known to currently contain a Blackburn's sphinx moth population, but it does contain native *Nothocestrum* host plants, including *N. longifolium* and *N. latifolium* (Wood 2001a), as well as adult native host plants. Because Unit 9 contains both larval and adult native host plants and is in close proximity to the large Maui population, it is essential for Blackburn's sphinx moth conservation. It would allow the species to expand into a former part of its historical range in very close proximity to its current range on the island of Maui. Furthermore, it may facilitate dispersal and provide a flight corridor for moths eventually migrating to the island of Oahu, which is also part of its historical range.

Due to its proximity to the island of Maui where the current and presumed highest historical concentration of Blackburn's sphinx moth occurred, and because this unit contains currently and historically known dry and mesic habitats to support the larval and adult native host plants, scientists believe that the Blackburn's sphinx moth will re-establish itself on this unit over time (F. Howarth, pers. comm. 2001). Furthermore, this unit lacks some of the serious potential threats to the moth, three ant, and one wasp species (*see* Table 1). Conserving and restoring Blackburn's sphinx moth populations in multiple locations decreases the likelihood that the effect of any single alien parasite or predator or the combined pressure of such species and other threats could result in the diminished vigor or extinction of the moth. Including this unit also reduces the possibility of the species' extinction from catastrophic events impacting the existing populations on other islands. Designating critical habitat within this area on Molokai is complementary to existing and planned management activities of the landowners. The critical habitat unit lies within a larger existing conservation area to be managed for watershed conservation and the conservation of endangered and rare species. The landowners, State and Federal resource agencies, and local citizens groups are involved with these planned natural resource management activities on Molokai.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation measures in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content

and conclusion(s) of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, which are economically and technologically feasible, and which the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Federal activities that may affect Blackburn's sphinx moth or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action (funding or authorization from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC)) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require Section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Recreational activities that appreciably degrade vegetation;

(3) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(4) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of its habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 NE. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entitiesm, *i.e.*, small businesses, small organizations, and small governmental jurisdictions. However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (DEA and Addendum), we are certifying that the critical habitat designation for Blackburn's sphinx moth will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation.

Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The RFA/SBREFA requires

that agencies use the Small Business Administration's definition of "small business" that has been codified at 13 CFR 121.201. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, neither Maui nor Hawaii County is a small governmental jurisdiction because both counties had populations exceeding 50,000 in 2000. Although certain State agencies, such as the DLNR, may be affected by this critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. SBREFA further defines "small organization" as any not for profit enterprise that is independently owned and operated and is not dominant in its field.

The RFA/SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation. This analysis considers the relative number of small entities likely to be impacted in an area. In addition, Federal courts and Congress have indicated that an RFA/SBREFA is properly limited to impacts to entities directly subject to the requirements of the regulation (Service 2002). Therefore, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

The primary projects and activities that might be affected by the designation that could affect small entities include ranching operations and conservation projects. Our DEA found that the only small or potentially small entities that could be impacted by the listing of Blackburn's sphinx moth and critical habitat designation were: (1) Ka Ohana O Kahikinui on Maui (participation in residential loan program; conservation activities; development of water collection system); (2) one to two lending institutions on Maui (loans for Department of Hawaiian Home Lands residential development); and (3) one farmer or rancher on Maui, Molokai, or the island of Hawaii (participation in farm loan programs). The DEA concluded that these entities did not represent a substantial number of small entities in their respective fields or industries. Because estimated section 7 costs associated with possible lessee participation in the Housing and Urban Development loan insurance and guarantee program are no longer expected, the Addendum estimates that the one to two lending institutions on Maui would no longer be impacted by critical habitat designation, and no new small entities were identified as being potentially impacted. Thus, the Addendum concluded that the critical habitat designation would not have a significant economic impact on a substantial number of small entities in Hawaii.

These conclusions are supported by the history of consultations on the Blackburn's sphinx moth. Since the species was listed in February 2000, there have been no formal section 7 consultations and only five informal section 7 consultations concerning the species, specifically on the island of Kahoolawe and entirely involved the Department of the Navy. The Navy is not a small entity.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for the Blackburn's sphinx moth will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the DEA and final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for Blackburn's sphinx moth on the islands of Hawaii, Kahoolawe, Maui, and Molokai will affect future energy production. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) For reasons described in the economic analysis, this rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a "significantly regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not "significantly or uniquely" affect small governments so a Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for Blackburn's sphinx moth on

the islands of Hawaii, Kahoolawe, Maui, and Molokai in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant federalism effects or impose substantial direct compliance costs on State and local governments. This designation requires Federal agencies to ensure that their actions do not adversely modify critical habitat; it does not impose direct obligations on State or local governments. A federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The economic analysis does address possible impacts to State programs (*e.g.* hunting, airport operations) that may receive Federal funding. However, it does not conclude that there will be substantial costs to those programs due to the designation of critical habitat.

The designations may have some benefit to these governments, in that the areas essential to the conservation of the moth are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of this species are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of Blackburn's sphinx moth.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the Blackburn's sphinx moth. Therefore, designation of critical habitat for this species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary author of this final rule is Mike Richardson, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for "Moth, Blackburn's Sphinx" under INSECTS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habita	Special trules
Common name	Scientific name						
INSECTS							
Moth, Blackburn's sphinx.	*Manduca blackburni*	U.S.A. (HI)	NA	E	682	17.95(I)	NA

■ 3. Amend § 17.95(i) by adding critical habitat for the Blackburn's sphinx moth (*Manduca blackburni*), in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Blackburn's Sphinx Moth (*Manducà blackburni*)

(1) Critical habitat units are depicted for the Hawaiian islands of Maui, Kahoolawe, Hawaii, and Molokai on the maps below.

(2) The primary constituent elements of critical habitat for Blackburn's sphinx moth include specific habitat components identified as essential for the primary biological needs of foraging, sheltering, maturation, dispersal, breeding, and egg-laying.

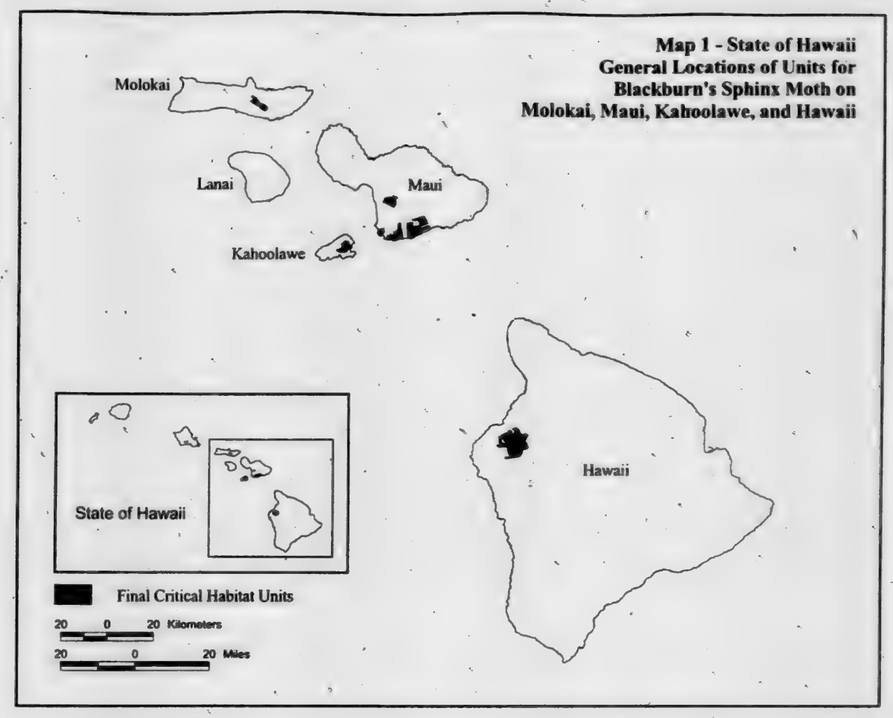
(i) Based on our current knowledge of the species, the primary constituent elements required by Blackburn's sphinx moth larvae for foraging and maturation are two larval host plant species in the endemic genus *Nothocestrum* (*N. breviflorum* and *N. latifolium*) and the habitats that support these plants, *i.e.*, dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) that receive between 25 and 250 cm (10 and 100 in) of annual precipitation.

(ii) Based on our current knowledge of the species, the primary constituent elements required by Blackburn's sphinx moth adults for foraging, sheltering, dispersal, breeding, and egg production are native nectar-supplying plants, including, but not limited to, *Ipomoea* spp., *Capparis sandwichiana*, and *Plumbago zeylanica*, and the habitats that support these plants, *i.e.*, dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) that receive between 25 and 250 cm (10 and 100 in) of annual precipitation.

(3) Existing manmade features and structures within the boundaries of the mapped areas do not contain one or more of the primary constituent elements described for the species in paragraph (2) of this section, and therefore, are not included in the critical habitat designations. These features include, but are not limited to: buildings; roads; aqueducts and other water system features such as pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations (section in a stream channel equipped with facilities for obtaining streamflow data), intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; lawns; and other rural residential landscaped areas.

(4) Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following index map shows the general locations of the 9 critical habitat units designated on the islands of Hawaii, Kahoolawe, Maui, and Molokai.

(i) **Note:** Map 1—State of Hawaii General Locations of Units for Blackburn's Sphinx Moth on Molokai, Maui, Kahoolawe, and Hawaii follows:



Map 1 - State of Hawaii General Locations of Units for Blackburn's Sphinx Moth on Molokai, Maui, Kahoolawe, and Hawaii

(ii) Unit 1: Island of Maui, Puu O Kali (1,604 ha; 3,965 ac):

(A) Unit 1 consists of the following 38 boundary points: Start at 770230, 2293671; 769969, 2293640; 769876, 2293794; 769523, 2293779; 769444, 2293784; 769146, 2293904; 769358, 2294451; 769492, 2294471; 769569, 2294563; 770123, 2294379; 770384, 2294317; 770707, 2294517; 770169, 2294794; 769629, 2295149; 769732, 2295410; 770032, 2295219; 769985, 2295371; 770360, 2295328; 769892, 2295671; 770362, 2295705; 770578, 2295954; 771492, 2296086; 772138, 2296102; 772522, 2296179; 772876, 2295933; 773384, 2295733; 773324, 2296764; 775265, 2296040; 775041, 2295484; 774484, 2295757; 774033, 2294844; 774654, 2294538; 774448, 2294006; 774392, 2292779; 773825, 2291760; 772032, 2292639; 770772, 2293255; 770524, 2293353; return to starting point.

(B) **Note:** Unit 1 is depicted below on Map 2—Units 1, 2, 3, and 4—Island of Maui.

(iii) Unit 2: Island of Maui, Cape Kinau (603 ha; 1,490 ac):

(A) Unit 2 consists of the following 36 boundary points: 769419, 2281688; 769716, 2281856; 769854, 2281648; 769726, 2281351; 769548, 2281173; 769433, 2280683; 769312, 2280406; 769251, 2280342; 769175, 2280353; 769073, 2280442; 768954, 2280466; 768791, 2280406; 768658, 2280329; 768621, 2280282; 768645, 2279874; 768737, 2279820; 767046, 2281800; 767136, 2281768; 767208, 2281837; 767139, 2281940; 767151, 2281994; 767136, 2282020; 767607, 2282308; 767710, 2282266; 767837, 2282318; 767857, 2282291; 768160, 2282410; 769380, 2282944; 769746, 2282588; 769429, 2282400; 769103, 2282123; 768598, 2281510; 768687, 2281391; 768737, 2281399; 768836, 2281460. 768738, 2279820. Coast.

(B) **Note:** Unit 2 is depicted below on Map 2—Units 1, 2, 3, and 4—Island of Maui.

(iv) Unit 3: Island of Maui, Kanaio (2,420 ha; 5,981 ac):

(A) Unit 3 consists of the following 45 boundary points: 777366, 2282219; 777421, 2281595; 777453, 2281235; 777531, 2280334; 777588, 2279661; 777719, 2278166; 770402, 2278173; 770445, 2278268; 770936, 2279194; 771208, 2279714; 771289, 2279691; 771211, 2279314; 771211, 2278906; 771368, 2278922; 771525, 2279173; 771854, 2279424; 772011, 2279707; 772231, 2279974; 772357, 2280335; 772451, 2280445; 772514, 2280351; 772561, 2280068; 772687, 2279848; 772938, 2279801; 773221, 2279817; 773425, 2280021; 773676, 2280335; 773676, 2280665; 773888, 2280993; 773606, 2281355; 774253, 2281430; 774897, 2280433; 775340, 2281119; 774662, 2281499; 775105, 2281701; 775435, 2282376; 775590, 2284264; 776004, 2284678; 776020, 2285055; 776484, 2284998; 776553, 2285169; 776691, 2285141; 776878, 2283402; 777021, 2282206; 777227, 2278017. Coast.

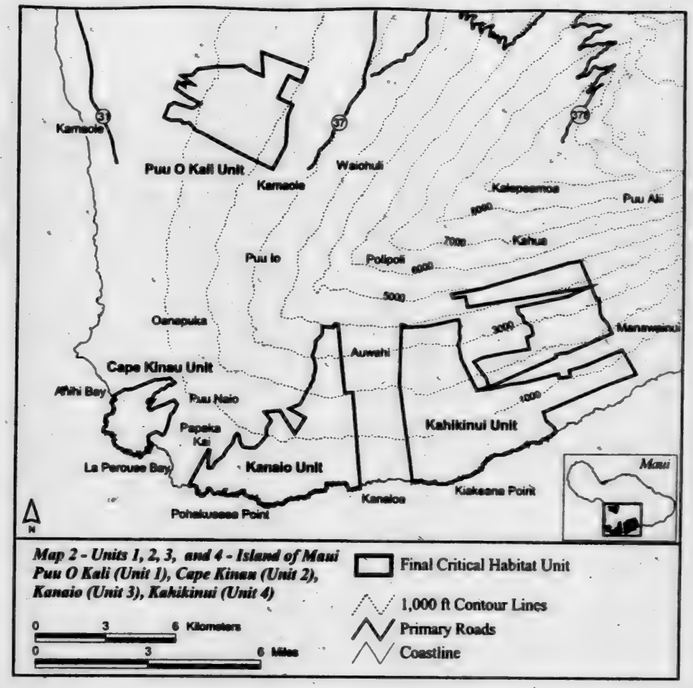
(B) Unit excludes an area (1 ha; 2 ac) consisting of the following 6 boundary points: 771887, 2277914; 771944, 2277910; 771986, 2277995; 771948, 2277989; 771909, 2277980; 771870, 2277975.

(C) **Note:** Unit 3 is depicted below on Map 2—Units 1, 2, 3, and 4—Island of Maui.

(v) Unit 4: Island of Maui, Kahikinui (4,799 ha; 11,859 ac):

(A) Unit 4 consists of the following 79 boundary points: 786068, 2283893; 786089, 2283760; 782956, 2282353; 783312, 2282399; 784167, 2282606; 784764, 2282682; 785521, 2282878; 786198, 2283068; 786227, 2282882; 786706, 2282953; 786657, 2283206; 787388, 2283424; 787555, 2283500; 788907, 2284087; 789388, 2283321; 789534, 2283053; 788185, 2282559; 786399, 2281761; 785563, 2281400; 785715, 2281039; 786057, 2280754; 786112, 2280548; 779950, 2278500; 779720, 2280135; 779703, 2280237; 779617, 2280887; 779412, 2282307; 779402, 2282377; 779372, 2282585; 779368, 2282602; 779376, 2282933; 779427, 2285142; 779549, 2285133; 779550, 2285007; 780604, 2285092; 781898, 2285373; 781956, 2285061; 781923, 2284848; 781966, 2284607; 781902, 2284320; 782032, 2283672; 782491, 2282783; 782731, 2282340; 783230, 2282514; 783112, 2282850; 782587, 2283565; 782996, 2283744; 783721, 2283912; 784941, 2284106; 784823, 2284611; 785088, 2284724; 785012, 2285109; 784719, 2285271; 784639, 2285526; 784482, 2285613; 784385, 2285910; 786498, 2286367; 787288, 2286710; 787415, 2286765; 787506, 2286804; 787311, 2286772; 782285, 2285909; 782162, 2286366; 781651, 2286291; 781569, 2286457; 782827, 2286695; 786589, 2287817; 787091, 2287913; 787800, 2286248; 787893, 2286297; 787957, 2285636; 788105, 2285388; 788261, 2285257; 788481, 2284803; 788363, 2284742; 786517, 2283943; 786510, 2283966; 786068, 2283893; 779965, 2278394. Coast.

(B) **Note:** Unit 4 is depicted on Map 2—Units 1, 2, 3, and 4—Island of Maui, which follows:



(vi) Unit 5: Island of Maui, Kanaha Pond (56 ha; 139 ac):

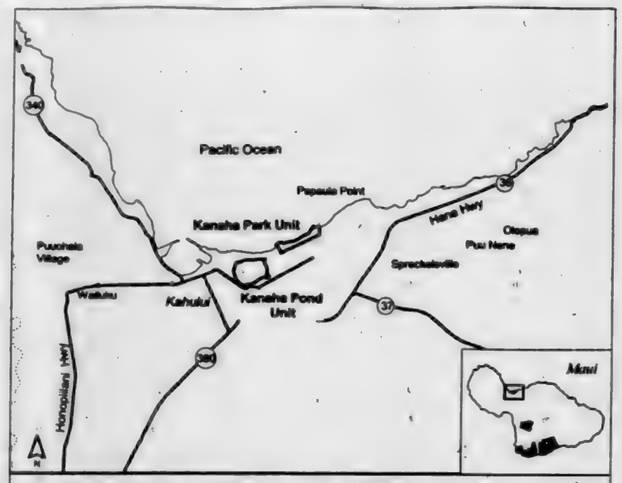
(A) Unit 5 consists of the following 35 boundary points: Start at 764695, 2312624; 764849, 2312615; 765062, 2312636; 765174, 2312639; 765226, 2312636; 765201, 2312573; 765221, 2312534; 765223, 2312502; 765259, 2312452; 765291, 2312304; 765287, 2312260; 765291, 2312223; 765281, 2312190; 765356, 2312144; 765352, 2312121; 765325, 2312090; 765284, 2312093; 765213, 2312118; 765183, 2312109; 765157, 2312091; 765106, 2312075; 765069, 2312044; 765036, 2312036; 764954, 2311971; 764872, 2311927; 764845, 2311912; 764588, 2311880; 764530, 2311946; 764474, 2311988; 764424, 2312038; 764390, 2312140; 764336, 2312293; 764397, 2312539; 764542, 2312565; 764615, 2312613; return to starting point.

(B) **Note:** Unit 5 is depicted below on Map 3—Units 5 and 6—Island of Maui.

(vii) Unit 6: Island of Maui, Kanaha Park (25 ha; 62 ac):

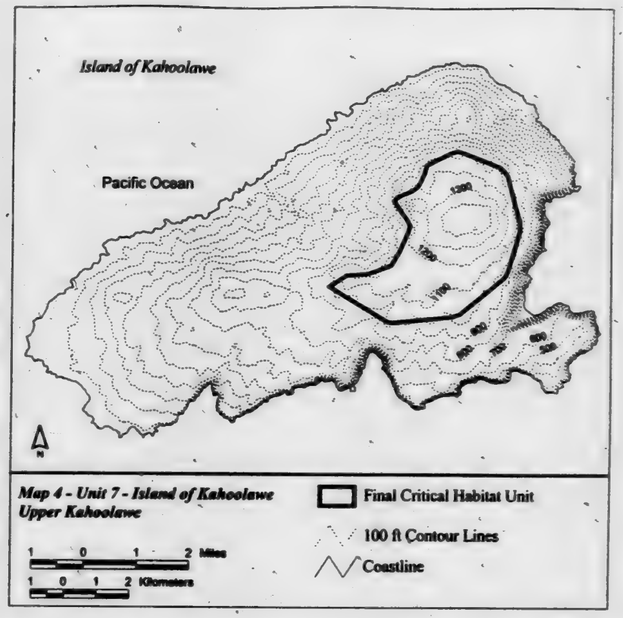
(A) Unit 6 consists of the following 7 boundary points: 766783, 2313583; 766781, 2313351; 766330, 2313141; 765776, 2312874; 765717, 2312838; 765689, 2312823; 765557, 2313073. Coast.

(B) **Note:** Unit 6 is depicted on Map 3—Units 5 and 6—Island of Maui, which follows:



(A) Unit 7 consists of the following 39 boundary points: Start at 751848, 2276600; 751944, 2276801; 752021, 2277051; 752708, 2277402; 752817, 2277444; 752922, 2277482; 753039, 2277468; 754266, 2276996; 754390, 2276868; 754486, 2276715; 754758, 2275711; 754871, 2275319; 754880, 2275141; 754868, 2275021; 754822, 2274844; 754523, 2273789; 754438, 2273635; 754364, 2273546; 754213, 2273418; 753057, 2272446; 752825, 2272362; 750995, 2272184; 750869, 2272206; 750787, 2272247; 749069, 2273302; 749575, 2273659; 750287, 2273729; 750943, 2273970; 751205, 2274403; 751431, 2274927; 751475, 2275037; 751531, 2275180; 751447, 2275330; 751428, 2275366; 751291, 2275543; 751032, 2275938; 751109, 2276062; 751570, 2276254; 751752, 2276408; return to starting point.

(B) **Note:** Unit 7 is depicted on Map 4—Unit 7—Island of Kahoolawe, which follows:



(ix) Unit 8: Island of Hawaii, Puuwaawaa—Hualalai (9,954 ha; 24,598 ac):

(A) Unit 8 consists of the following 449 boundary points: Start at 193748, 2193379; 193979, 2193518; 194022, 2193428; 194091, 2193386; 194109, 2193303; 194145, 2193281; 194185, 2193225; 194212, 2193188; 194225, 2193213; 194201, 2193260; 194232, 2193325; 194227, 2193356; 194266, 2193381; 194290, 2193366; 194306, 2193379; 194301, 2193431; 194281, 2193478; 194292, 2193504; 194286, 2193538; 194291, 2193598; 194328, 2193648; 194331, 2193666; 194320, 2193710; 194969, 2194077; 195027, 2194069; 195065, 2194098; 195121, 2194107; 195172, 2194152; 195231, 2194087; 195235, 2194013; 195256, 2193957; 195324, 2193909; 195378, 2193840; 195441, 2193804; 195564, 2193455; 195558, 2193407; 195590, 2193322; 195588, 2193245; 195641, 2193182; 195659, 2193134; 195645, 2193064; 195682, 2192983; 195722, 2192963; 195793, 2192836; 195838, 2192773; 195829, 2192664; 195844, 2192499; 195907, 2192445; 196009, 2192213; 196079, 2192144; 196061, 2192063; 196077, 2191999; 196121, 2191888; 196184, 2191891; 196196, 2191837; 196250, 2191837; 196287, 2191749; 196280, 2191681; 196331, 2191672; 196361, 2191560; 196379, 2191428; 196414, 2191446; 196473, 2191524; 196497, 2191624; 196494, 2191708; 196593, 2191768; 196656, 2191837; 196644, 2191885; 196593, 2192093; 196576, 2192195; 196596, 2192288; 196581, 2192409; 196566, 2192451; 196506, 2192484; 196397, 2192655; 196367, 2192770; 196427, 2192764; 196452, 2192703; 196581, 2192577; 196614, 2192547; 196623, 2192577; 196605, 2192634; 196608, 2192685; 196679, 2192667; 196749, 2192610; 196804, 2192476; 196831, 2192436; 196879, 2192403; 196885, 2192466; 196815, 2192586; 196717, 2192687; 196614, 2192809; 196241, 2193037; 196094, 2193227; 196003, 2193494; 195985, 2193759; 196088, 2193858; 195949, 2194099; 195958, 2194379; 195865, 2194469; 195811, 2194559; 196050, 2194687; 196076, 2194653; 196055, 2194610; 196109, 2194511; 196184, 2194505; 196223, 2194361; 196256, 2194337; 196322, 2194285; 196334, 2194171; 196370, 2194174; 196348, 2194291; 196379, 2194331; 196367, 2194427; 196363, 2194508; 196372, 2194578; 196427, 2194610; 196385, 2194670; 196314, 2194718; 196304, 2194841; 196831, 2195161; 196944, 2195021; 196930, 2194959; 197092, 2194830; 197104, 2194773; 197179, 2194752; 197273, 2194622; 197279, 2194550; 197361, 2194467; 197477, 2194325; 197573, 2194252; 197613, 2194177; 197654, 2194115; 197640, 2194033; 197654, 2193943; 197697, 2193753; 197750, 2193692; 197778, 2193488; 197871, 2193374; 197922, 2193401; 197995, 2193392; 198304, 2193109; 198362, 2193103; 198518, 2192944; 198584, 2192854; 198620, 2192761; 198680, 2192715; 198716, 2192658; 198731, 2192586; 198801, 2192589; 198879, 2192547; 198921, 2192493; 199051, 2192352; 199101, 2192412; 199177, 2192324; 199171, 2192201; 199246, 2192141; 199252, 2192243; 199294, 2192252; 199303, 2192291; 199225, 2192348; 199243, 2192397; 199186, 2192439; 199156, 2192529; 199084, 2192566; 199047, 2192643; 198948, 2192736; 198956, 2192786; 198949, 2192835; 198931, 2192888; 198913, 2192924; 198819, 2192954; 198760, 2192979; 198741, 2193028; 198777, 2193070; 198746, 2193098; 198718, 2193126; 198730, 2193180; 198683, 2193290; 198609, 2193325; 198679, 2193472; 198648, 2193542; 198669, 2193598; 198623, 2193633; 198602, 2193685; 198553, 2193675; 198480, 2193748; 198442, 2193839; 198494, 2193857; 198550, 2193860; 198819, 2193594; 198819, 2193514; 198882, 2193479; 198872, 2193388; 198872, 2193252; 198861, 2193199; 198844, 2193143; 198935, 2193063; 198981, 2193027; 199010, 2192968; 199103,

2193492; 199103, 2193552; 199015, 2193608; 198931, 2193619; 198910, 2193717; 198753, 2193867; 198735, 2193951; 198805, 2193972; 198889, 2193941; 198942, 2193853; 199005, 2193794; 199050, 2193829; 199001, 2193880; 199029, 2193930; 199092, 2193962; 199110, 2194004; 199025, 2194133; 199012, 2194241; 198896, 2194308; 198861, 2194399; 198799, 2194485; 198862, 2194479; 198938, 2194378; 199015, 2194329; 198987, 2194392; 198934, 2194434; 198931, 2194472; 198798, 2194560; 198795, 2194672; 198749, 2194749; 198623, 2194860; 198553, 2194937; 198550, 2195004; 198637, 2195060; 198683, 2195074; 198746, 2195175; 198714, 2195256; 198707, 2195340; 198588, 2195399; 198497, 2195417; 198402, 2195429; 198344, 2195490; 198302, 2195511; 198274, 2195563; 198179, 2195584; 198172, 2195658; 198127, 2195703; 198641, 2195878; 198662, 2195829; 198714, 2195780; 198732, 2195665; 198809, 2195633; 198970, 2195626; 199047, 2195549; 199075, 2195469; 199141, 2195427; 199087, 2195235; 199101, 2195127; 199124, 2194955; 199208, 2194840; 199267, 2194675; 199270, 2194567; 199260, 2194504; 199263, 2194437; 199310, 2194460; 199347, 2194479; 199306, 2194541; 199326, 2194591; 199424, 2194595; 199508, 2194525; 199522, 2194441; 199582, 2194392; 199598, 2194329; 199643, 2194295; 199662, 2194406; 199599, 2194462; 199596, 2194588; 199515, 2194853; 199368, 2195011; 199260, 2195319; 199312, 2195434; 199235, 2195476; 199274, 2195696; 199169, 2195847; 199138, 2195938; 199071, 2196039; 199663, 2196234; 199977, 2195921; 200985, 2194989; 201320, 2194454; 201268, 2194305; 201289, 2194176; 201150, 2193708; 201809, 2193212; 202487, 2192751; 202713, 2192557; 202794, 2192559; 203007, 2192869; 203088, 2192979; 203136, 2192967; 203139, 2192921; 203197, 2192911; 203224, 2192943; 203218, 2192991; 203264, 2193014; 203275, 2193130; 203278, 2193165; 203253, 2193224; 203277, 2193250; 203296, 2193248; 203321, 2193200; 203355, 2193261; 203340, 2193353; 203398, 2193434; 203487, 2193372; 203534, 2193296; 203580, 2193267; 203611, 2193247; 203631, 2193197; 203661, 2193126; 203650, 2193032; 203644, 2192994; 203649, 2192943; 203665, 2192930; 203692, 2192935; 203681, 2193005; 203695, 2193038; 203743, 2193045; 203751, 2193024; 203738, 2192991; 203747, 2192970; 203800, 2192948; 203810, 2192905; 203819, 2192867; 203833, 2192838; 203878, 2192830; 203916, 2192790; 203944, 2192724; 203935, 2192680; 203951, 2192655; 203968, 2192628; 203952, 2192587; 203978, 2192535; 203975, 2192477; 203992, 2192466; 204025, 2192444; 204044, 2192404; 204086, 2192392; 204133, 2192395; 204170, 2192417; 204186, 2192474; 204162, 2192528; 204130, 2192602; 204129, 2192641; 204081, 2192714; 204046, 2192717; 204022, 2192755; 204021, 2192835; 204057, 2192840; 204076, 2192827; 204105, 2192829; 204151, 2192846; 204218, 2192835; 204283, 2192808; 204311, 2192754; 204327, 2192655; 204350, 2192684; 204434, 2192709; 204459, 2192700; 204478, 2192684; 204469, 2192614; 204482, 2192593; 204485, 2192570; 204478, 2192547; 204485, 2192512; 204523, 2192529; 204540, 2192511; 204553, 2192479; 204294, 2191977; 203325, 2189871; 203670, 2189403; 203884, 2188867; 203876, 2188804; 204461, 2186966; 204241, 2186814; 203491, 2186573; 202905, 2186615; 201914, 2186332; 201935, 2186229; 201876, 2186192; 201969, 2186029; 201914, 2185947; 201962, 2185871; 201921, 2185754; 201866, 2185830; 201776, 2185816; 201838, 2185534; 201270, 2183971; 200424, 2183478; 194641, 2182859; 194391, 2182952; 194378, 2183030; 194326, 2183157; 194456, 2183246; 194375, 2183319; 194389, 2183392; 194641, 2183400; 195006, 2183522; 195441, 2183574; 195719, 2183591; 196066, 2183591; 196362, 2183670; 196372, 2183812; 195923, 2185051; 195805, 2185370; 195527, 2186175; 195324, 2186794; 195333, 2187189; 195544, 2187388; 195515, 2187690; 195450, 2187775; 193517, 2187814; 192035, 2187735; 191436, 2188145; 191395, 2188201; 191330, 2188228; 191183, 2188413; 191053, 2188549; 192020, 2188888; 192202, 2189030; 192137, 2189101; 192046, 2189432; 191945, 2189652; 191926, 2189817; 192000, 2189918; 191994, 2190055; 192009, 2190194; 191926, 2190322; 191954, 2190387; 191972, 2190616; 191961, 2190800; 191953, 2190938; 191917, 2191094; 191981, 2191296; 191943, 2191461; 191923, 2191548; 191871, 2191672; 191850, 2191864; 191834, 2192269; return to starting point.

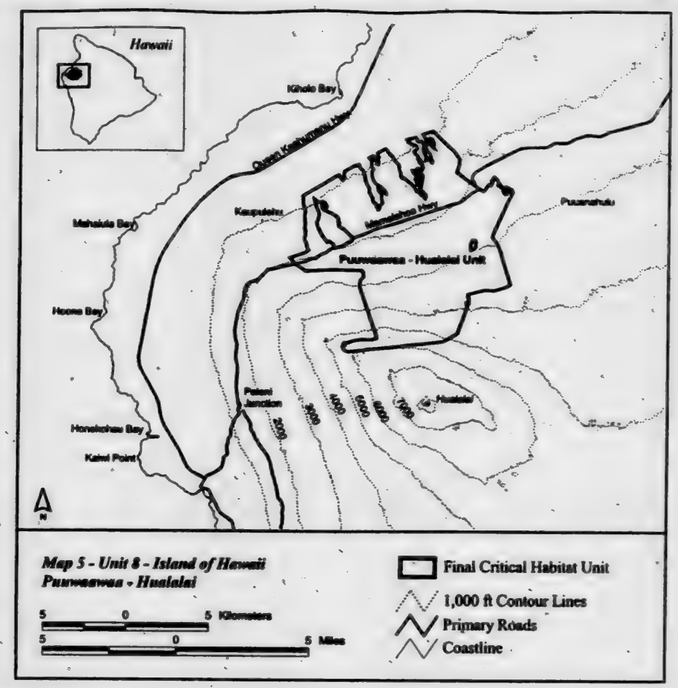
(B) This unit excludes three areas:

(*1*) Unit excludes an area (292 ha; 723 ac) consisting of the following 53 boundary points: Start at 194866, 2189663; 194567, 2189462; 194355, 2189326; 194325, 2189306; 194187, 2189261; 193786, 2189183; 193790, 2189211; 193677, 2189413; 193430, 2189605; 193325, 2189528; 192941, 2190012; 192773, 2190361; 192668, 2190673; 192763, 2190854; 192807, 2191149; 192721, 2191436; 192600, 2191671; 192527, 2191928; 192513, 2192089; 192642, 2191999; 192658, 2191915; 192697, 2191881; 192913, 2191886; 193004, 2191923; 193133, 2191855; 193180, 2191784; 193280, 2191621; 193278, 2191563; 193175, 2191653; 193109, 2191763; 193075, 2191789; 192949, 2191779; 192960, 2191622; 193028, 2191556; 193012, 2191490; 193102, 2191393; 193291, 2191346; 193364, 2191272; 193540, 2191230; 193782, 2191099; 193918, 2190994; 193958, 2190933; 193989, 2190799; 193984, 2190718; 194048, 2190643; 194008, 2190547; 194039, 2190466; 194149, 2190358; 194304, 2190298; 194449, 2190177; 194695, 2189967; 194808, 2189833; 194848, 2189683; return to starting point.

(*2*) Unit excludes an area (15 ha; 38 ac) consisting of the following 12 boundary points: Start at 202034, 2189562; 202141, 2189566; 202153, 2189649; 202308, 2189645; 202298, 2189564; 202339, 2189548; 202329, 2189219; 202193, 2189187; 202230, 2189088; 202042, 2189024; 202020, 2189151; 202024, 2189554; return to starting point.

(*3*) Unit excludes an area (11 ha; 28 ac) consisting of the following 23 boundary points: Start at 199447, 2195793; 199533, 2195796; 199635, 2195736; 199639, 2195696; 199701, 2195643; 199708, 2195591; 199713, 2195537; 199743, 2195499; 199737, 2195444; 199746, 2195368; 199725, 2195312; 199732, 2195273; 199753, 2195207; 199772, 2195162; 199732, 2195181; 199706, 2195245; 199646, 2195283; 199615, 2195345; 199573, 2195368; 199509, 2195416; 199449, 2195478; 199437, 2195611; 199430, 2195734; return to starting point.

(C) **Note:** Unit 8 is depicted on Map 5–Unit 8—Island of Hawaii, which follows:



(x) Unit 9: Island of Molokai, Kamoko Flats—Puukolekole (1,256 ha; 3,105 ac):

(A) Unit 9 consists of the following 170 boundary points: Start at 713960, 2337883; 713787, 2337815; 713641, 2337737; 713587, 2337686; 713542, 2337635; 713525, 2337608; 713514, 2337604; 713488, 2337574; 713275, 2337497; 713260, 2337442; 713302, 2337415; 713444, 2337400; 713651, 2337482; 713677, 2337507; 713828, 2337580; 713834, 2337585; 713841, 2337587; 713989, 2337659; 714006, 2337664; 714030, 2337681; 714036, 2337674; 714090, 2337691; 714150, 2337601; 714065, 2337490; 714169, 2337531; 714182, 2337553; 714217, 2337500; 714313, 2337356; 714267, 2337327; 713658, 2336950; 713641, 2336937; 713639, 2336938; 713638, 2336937; 713592, 2336909; 713171, 2337020; 713128, 2337025; 713101, 2337039; 712948, 2337083; 712768, 2337134; 712739, 2337127; 712714, 2337150; 712707, 2337152; 712647, 2337156; 711929, 2337023; 712115, 2336844; 712527, 2336930; 712811, 2336772; 712314, 2336653; 712783, 2336203; 712700, 2336108; 712785, 2336093; 712927, 2336085; 713147, 2336184; 713257, 2336224; 713265, 2336238; 712778, 2336365; 712783, 2336372; 712923, 2336457; 713217, 2336633; 714333, 2337309; 714341, 2337313; 715056, 2336242; 715073, 2336232; 716805, 2335668; 717490, 2335146; 717565, 2335112; 718350, 2334490; 718276, 2333666; 717554, 2332806; 717447, 2332851; 717080, 2333001; 716796, 2333195; 715114, 2334345; 715139, 2334491; 715684, 2334688; 716000, 2334857; 715980, 2334880; 715849, 2335177; 715914, 2335254; 715842, 2335306; 715274, 2335635; 715213, 2335636; 715076, 2335749; 715046, 2335773; 714377, 2335948; 714372, 2335938; 714373, 2335938; 714280, 2335711; 714494, 2335653; 714617, 2335594; 714901, 2335519; 715544, 2335359; 715547, 2335358; 715174, 2335053; 715005, 2334932; 714716, 2334982; 714205, 2335078; 714040, 2335127; 714024, 2335088; 711244, 2336986; 711354, 2337009; 711401, 2337037; 711322, 2337112; 711727, 2337380; 711733, 2337403; 711948, 2337483; 712220, 2337776; 712433, 2338103; 712602, 2338152; 712517, 2338265; 712284, 2338486; 711968, 2338683; 711759, 2338845; 711681, 2338900; 711900, 2338941; 711710, 2339118; 711642, 2339123; 711579, 2339096; 711465, 2339097; 711625, 2339356; 711763, 2339365; 711777, 2339323; 711817, 2339308; 711969, 2339303; 712089, 2339324; 712130, 2339297; 712272, 2339304; 712447, 2339115; 712346, 2339007; 712231, 2338953; 712098, 2338911; 712002, 2338805; 712132, 2338664; 712392, 2338783; 712579, 2338783; 712421, 2338675; 712279, 2338579; 712353, 2338489; 712568, 2338528; 712635, 2338591; 712780, 2338508; 712777, 2338472; 712895, 2338488; 713001, 2338534; 713003, 2338502; 713072, 2338512; 713177, 2338629; 713424, 2338561; 713452, 2338533; 712978, 2338207; 712867, 2337997; 712845, 2337873; 713121, 2337952; 713150, 2337771; 713181, 2337784; 713184, 2337801; 713189, 2337803; 713196, 2337826; 713191, 2337829; 713197, 2337831; 713204, 2337853; 713303, 2337864; 713482, 2338023; 713503, 2338044; 713520, 2338067; 713525, 2338081; 713557, 2338108; 713664, 2338205; 713713, 2338254; 713731, 2338228; return to starting point.

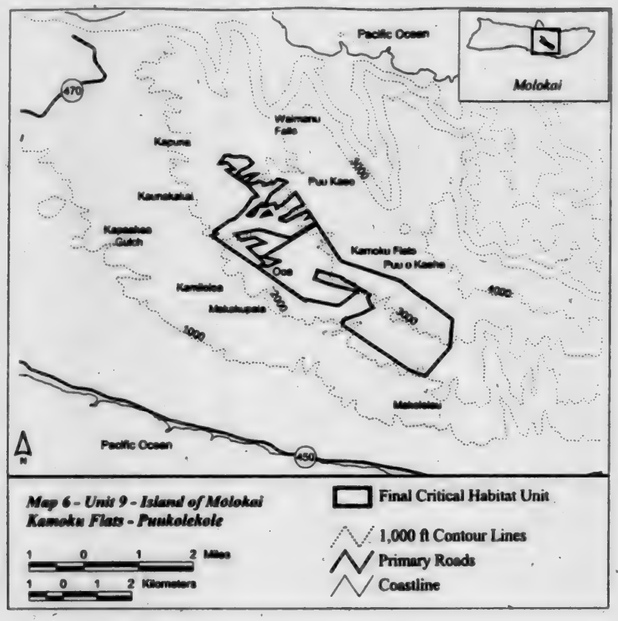
(B) This unit excludes two areas:

(*1*) Unit excludes an area (2 ha; 4 ac) consisting of the following 5 boundary

points: Start at 712804, 2337632; 712923, 2337724; 712990, 2337608; 712917, 2337600; 712748, 2337553; return to starting point.

(2) Unit excludes an area (5 ha; 13 ac) consisting of the following 10 boundary points: Start at 712742, 2337968; 712839, 2337857; 712748, 2337850; 712646, 2337870; 712632, 2337823; 712481, 2337590; 712425, 2337550; 712313, 2337564; 712299, 2337574; 712360, 2337661; return to starting point.

(C) **Note:** Unit 9 is depicted on Map 6–Unit 9–Island of Molokai, which follows:



Dated: May 30, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–14144 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
June 10, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 413

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1469–P2]

RIN 0938–AL20

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we are considering an adjustment to the annual update for skilled nursing facilities (SNFs) that would account for forecast errors. In addition, we are proposing to make a technical correction to correct a misspelling in existing regulation text. This proposed rule supplements the proposed rule that we published previously in the **Federal Register** on May 16, 2003 (68 FR 26758), which included proposed updates to the payment rates used under the prospective payment system (PPS) for SNFs, for fiscal year (FY) 2004, as required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 7, 2003 (*see* section VI of this proposed rule for a discussion of the comment period).

ADDRESSES: Mail written comments (one original and three copies) to the following address:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1469–P2, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or

Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–1469–P2 on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Stephen Heffler, (410) 786–1211 (for information related to the SNF Market Basket Index and forecast error adjustments). Bill Ullman, (410) 786–5667, and Sheila Lambowitz, (410) 786–7605 (for general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

I. Background and Purpose of this Proposed Rule
II. Proposed Adjustment to the Annual Update to Account for Forecast Error in the SNF Market Basket
A. Background
B. Possible Approaches
C. SNF Market Basket Forecast Error for FYs 2000 through 2002
D. Process for Adjusting for SNF Market Basket Forecast Error
III. Solicitation of Comments on Quality of Care Efforts under SNF PPS
IV. Provisions of the Proposed Rule
V. Collection of Information Requirements
VI. Response to Public Comments
VII. Regulatory Impact Analysis
Regulation Text

I. Background and Purpose of this Proposed Rule

Annual updates to the prospective payment system (PPS) rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554), relating to Medicare payments and consolidated billing for SNFs.

On May 16, 2003, we published in the **Federal Register** a proposed rule (68 FR 26758) in connection with the Medicare PPS for skilled nursing facilities (SNFs). The proposed rule included updated payment rates for fiscal year (FY) 2004, as well as a number of proposed revisions and technical corrections to the associated regulations. We are now publishing this supplemental proposed rule in order to propose an additional possible change, concerning the regulations in 42 CFR 413.337(d)(2) for determining the annual update to the SNF payment rates. Specifically, we are considering an adjustment that would account for forecast error. In addition, we propose to make a technical correction to correct a misspelling in the existing regulation text at § 413.345.

We note that the issue of establishing an adjustment to account for forecast error is one that we have considered previously. To date, we have not implemented such an adjustment, because we were concerned that it might tend to detract from the prospective nature of the SNF payment system. Additionally, we note that, in the past, our evaluation of a possible adjustment to account for forecast error has not taken place in isolation, but rather, within the broader context of considering the possibility of developing a SNF-specific update framework, which would keep track of the various factors that affect costs and payment per case. This would include not only the market basket, but also other factors as well, such as productivity changes, intensity changes, and adjustment for case-mix creep. For example, the May 12, 1998 interim final rule on the SNF PPS (63 FR 26293) discussed the possibility of adopting a forecast error adjustment, similar to the one employed in the existing update framework for the inpatient hospital PPS:

> We are considering a mechanism to adjust future SNF PPS rates for forecast errors. * * * In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increases in prices faced by SNFs and the forecast used in calculating the update factors.

We further noted that if such a mechanism were adopted,

> * * * an adjustment would be made only if the forecasted market basket percentage change for any year differs from the actual percentage change by 0.25 percentage points or more. There would be a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for an error in forecasting the 1997 market basket percentage used to compute the PPS rates effective with this interim final rule through an adjustment to the fiscal year 1999 update to the SNF PPS rates.

As noted in the May 12, 1998 interim final rule, the existing update framework for the inpatient hospital capital PPS already includes an adjustment to account for forecast error (see the regulations at § 412.308(c)(1)(ii)). The update framework for the inpatient hospital operating PPS includes a similar forecast error adjustment as well. However, the latter framework serves as the basis for making a recommendation to the Congress, which then establishes the actual update amount for the operating PPS through legislation. In the context of discussing a possible update framework for the SNF PPS in the FY 2002 proposed rule published on May 10, 2001 (66 FR 24018 through 24019), we observed that in this existing update framework,

> a forecast error adjustment has typically been included, to reflect that the updates are set prospectively and some degree of forecast error is inevitable. In the case of the inpatient hospital PPS, this adjustment is made on a two-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

Further, in the FY 2002 final rule published on July 31, 2001 (66 FR 39586), one commenter specifically suggested establishing a mechanism in the SNF PPS to account for forecast error. In response, we noted that the development of a SNF-specific update framework "* * * would give us the ability to factor in a forecast error adjustment in our recommendation for an update to SNF payments."

As the preceding discussion indicates, our consideration of adopting a mechanism for making forecast error adjustments has, to date, occurred exclusively within the broader context of developing a SNF-specific update framework, where the end result would be solely a recommendation to the Congress, rather than an actual adjustment to the payment rates. However, it might also be possible to establish a forecast error adjustment mechanism independently as a separate initiative, as we discuss in the following sections of this proposed rule.

II. Proposed Adjustment to the Annual Increase in the SNF Market Basket Index Amount to Account for Forecast Error

A. Background

Since the implementation of the SNF PPS in July 1998, annual updates to the national PPS rate have been based on the forecasted percent change in the SNF market basket for the upcoming fiscal year. The SNF market basket was described in detail in the interim final rule that we published on May 12, 1998 (63 FR 26289), and in the final rule published on July 31, 2001 (65 FR 39581). The use of a forecasted market basket percent change is consistent with section 1888(e)(5) of the Act, which directs us to establish a market basket index for SNFs that "* * * reflects changes over time in the prices of an appropriate mix of goods and services" included in covered SNF services, and to calculate the percentage change in that index from the midpoint of the prior fiscal year to the midpoint of the current one. It is also consistent with the methodology used for other prospective payment systems, most notably the inpatient hospital PPS.

The forecast of the SNF market basket percent change for the upcoming fiscal year is based on data that are available when the final rule is developed. This generally means that historical data that are available through the first quarter of the current calendar year are used to develop forecasts for the upcoming fiscal year. For example, the SNF market basket percent change for the FY 2003 payment update was forecast in June 2002, with historical data available through the first quarter of 2002. We purchase the forecasts of the individual price series in the SNF market basket from a leading macroeconometric forecasting firm, Global Insights, Inc. We define the SNF market basket forecast error as the difference in the forecasted percent change in the SNF market basket and the actual percent change in the SNF market basket for a given period, generally the fiscal year.

Upon further consideration of the language of the statute and consistent with the use of a forecast to calculate the market basket percentage under section 1888(e)(5) of the Act, we believe that the statute provides us with authority to make adjustments to the update to the SNF per diem amount computed under section 1888(e)(4)(E)(ii)(IV) of the Act to adjust for differences in the forecasted percent change in the SNF market basket and the actual percent change in the SNF market basket, determined on the basis of later acquired, actual data. Pursuant to section 1888(e)(4)(E)(ii)(IV) of the Act, the SNF market basket percentage calculated by the Secretary is used to update the per diem rate computed for the prior fiscal year in order to determine the unadjusted Federal per diem rates to be applied during the upcoming fiscal year. Consistent with section 1888(e)(4)(H)(i) of the Act, before August 1, the Secretary shall publish in the **Federal Register** "the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year." There is, however, no requirement that this published figure be used for purposes of computing the payment rate for the following fiscal year. Rather, the annual update to the SNF per diem rate is equal to "the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved" (section 1888(e)(4)(E)(ii)(IV) of the Act). Accordingly, we believe the language of these provisions supports an interpretation of the Act in which the payment rate for a fiscal year can be computed again after the end of a fiscal year to reflect later acquired, actual data regarding changes in the market basket, and that this recomputed rate could then be used in determining updates to the SNF payment rate for the subsequent fiscal year. Because the payment rates to be applied during a fiscal year are the rates that are published in the **Federal Register** by the August 1 preceding the start of the fiscal year, (*see* section 1888(e)(4)(H)(i) of the Act), any such adjustments would be made for FY 2004 and subsequent years.

B. Possible Approaches

We believe that establishing an adjustment for forecast error in prior years could help to further ensure that the payment rates appropriately reflect changes over time in the price of goods and services. However, it is important to consider certain additional factors in evaluating the feasibility of such an approach. In order to ensure that any such adjustment reflects actual market conditions accurately, it is absolutely essential that the adjustment be applied uniformly—not only in those instances where the forecasted percent change is lower than the actual percent change (as has been the case up to this point under the SNF PPS), but also in those instances where the forecasted percent change is higher than the actual percent change.

We note that the latter circumstance would result in SNFs receiving lower than expected payments. In fact, it is even possible that, under a certain set of circumstances (for example, a year in which the law specifies an adjustment of the SNF market basket percentage change minus one percentage point, in combination with a negative forecast error correction and low price inflation), it could actually yield a net *decrease* in payment rates.

This possibility underscores a potential disadvantage of establishing a forecast error adjustment, in that it would inevitably introduce an element

of uncertainty regarding the amount of future updates. This uncertainty, in turn, would tend to detract from the prospective nature of the SNF payment system. In fact, the final rule that we published on January 3, 1984 at the inception of the prospective payment system for inpatient hospital services (49 FR 252) cited those very concerns in declining to adopt a suggestion to establish a forecast error adjustment at that point:

> One of the purposes of the prospective payment system is that hospitals will know in advance of each discharge the amount of Medicare payment. Using the latest available market basket projections prior to the beginning of a particular Federal fiscal year is consistent with this concept. To permit retroactive adjustments of the market basket inflation rates would erode the prospective nature of the system. We believe this would introduce an element of uncertainty incompatible with the very purpose of the prospective payment system. Therefore, we have not adopted the suggestion that the rates be adjusted if market basket projections prove to be inaccurate.

Thus, while there are considerations that argue in favor of establishing an adjustment to account for forecast error, we believe that such a change also raises a number of concerns. Accordingly, we seek comments on the advisability of pursuing this approach.

Further, along with the basic question of whether to adopt a forecast error adjustment, it is also necessary to consider other related issues involving the precise nature of any such adjustment. For example, as further discussed in section II.D of this proposed rule, we are considering the inclusion of a threshold under which no forecast error adjustment would be made if the forecasted percent change is within 0.25 percentage points of the actual percent change (as is currently the case under the inpatient capital PPS). However, it would also be possible to set a different threshold, such as the 0.3 percentage point level that was used in updating the SNF routine cost limits under the reasonable cost payment methodology that preceded the SNF PPS. Alternatively, we could even use a significantly higher threshold in this context, such as a full percentage point.

In addition, we are considering that the initial forecast error adjustment would occur in FY 2004, and would take into account the cumulative forecast error between FYs 2000 and 2002, that is, since the beginning of the SNF PPS. We would apply the forecast error threshold of 0.25 percentage points to the forecast error calculation for the entire cumulative forecast error for FYs 2000 through 2002 instead of applying it to each year individually. We would do this because, in this calculation, the base payment rate is being adjusted in FY 2004 to bring the payment system in line with the actual experience. Alternatively, we could adopt an approach under which the initial adjustment takes into account only the forecast error for periods beginning after the effective date of the FY 2004 final rule. Under this alternative approach, the initial adjustment would not occur until FY 2006, and would take into account the forecast error from FY 2004. Accordingly, we invite comments not only on whether to adopt an adjustment to account for forecast error, but also on the specific characteristics of any such adjustment. The following describes the methodology that would be used if we considered an initial, cumulative forecast error adjustment provision.

C. SNF Market Basket Forecast Error for FYs 2000 Through 2002

The initial SNF market basket forecasted update under the SNF PPS was for FY 2000 (3.1 percent), followed by forecasted updates for FY 2001 (3.161 percent), FY 2002 (3.3 percent), and FY 2003 (3.1 percent). Historical market basket data are now available through FY 2002; therefore, we can calculate the cumulative SNF market basket forecast error for FYs 2000 through 2002, as shown in Table A. Historical data for the FY 2003 SNF market basket increase will not be available until early in 2004.

TABLE A.—CUMULATIVE SNF MARKET BASKET FORECAST ERROR FOR FYS 2000 THROUGH 2002

	Forecasted SNF market basket percent change	Actual SNF market basket percent change
FY 2000	3.1	4.1
FY 2001	3.161	5.1
FY 2002	3.3	3.4
Cumulative Growth FY 2000 through 2002	9.869	13.129
Cumulative SNF Market Basket Forecast Error		3.26

Note: The FY 2000 and FY 2001 SNF market basket percent changes are based on the 1992-based SNF market basket. The FY 2002 SNF market basket percent changes are based on the 1997-based SNF market basket.

As indicated in Table A, the cumulative SNF market basket forecast error from FYs 2000 through 2002 is 3.26 percent. This figure is calculated by taking the difference in the cumulative forecasted SNF market basket increase over this period (1.031*1.03161*1.033=1.09869) and the cumulative actual SNF market basket increase (1.041*1.051*1.034=1.13129). As mentioned previously in section II.B of this proposed rule, we applied the forecast error threshold of 0.25 percentage points to the forecast error calculation for the entire cumulative forecast error for FYs 2000 through 2002 instead of applying it to each year individually. We did this because, in this calculation, the base payment rate is being adjusted in FY 2004 to bring the payment system in line with the actual experience. The difference between these two cumulative increases equals 0.0326 (1.13129 minus 1.09869). This means that the SNF market basket was under-forecast by 3.26 percent for the period FY 2000 through 2002. Similarly, the base payment rate computed for FY 2003 was 3.26 percent lower than it would have been if actual data had been used.

The major reason that the SNF market basket forecast was under-forecast during this period was that wages and benefits for nursing home workers increased more rapidly than expected. This faster-than-expected increase occurred primarily because the health sector continued to grow rapidly despite the economic downturn, and also because of the impacts of nursing staff shortages and other conditions generally affecting the health care market.

In order to illustrate the potential impact that an initial, cumulative forecast error adjustment provision would have on payment rates, we are reproducing the original figures from Tables 1 and 2 in the FY 2004 SNF PPS proposed rule that appeared in the **Federal Register** on May 16, 2003 (68 FR 26761). The Federal rates in that proposed rule reflect an update to the rates that we published in the July 31, 2002 **Federal Register** (67 FR 49798) equal to the full change in the SNF market basket index. According to our interpretation of section 1888(e)(4)(E)(ii)(IV) of the Act, we would update the SNF PPS national base payment rate for FY 2003 by the cumulative forecast error amount. Thus, we would increase the SNF PPS national base payment rate for FY 2003 by 3.26 percent. We would then update the rate by adjusting the revised rate by the full SNF market basket index (see the May 16, 2003 proposed rule (68 FR 26775) for an explanation of how we calculate the full SNF market basket index). The FY 2004 market basket increase factor is 2.9 percent. We are inviting comments on including an adjustment to the SNF PPS base payment rate to account for the cumulative forecast error between FY 2000 and FY 2002. Using this approach, we would update the FY 2003 SNF PPS national payment rate by an additional 3.26 percent above the 2.9 percent SNF market basket increase currently forecasted for FY 2004. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252).

As explained in section II.D, we have also included additional figures that are adjusted to reflect a 3.26 percent forecast error adjustment. The following describes the process we could consider using if we apply a forecast error adjustment only in future years.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Original Per Diem Amount without Forecast Error Adjustment	$125.15	$94.27	$12.42	$63.87
Revised Per Diem Amount with Forecast Error Adjustment	129.23	97.34	12.82	65.96

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Original Per Diem Amount without Forecast Error Adjustment	$119.57	$108.70	$13.26	$65.06
Revised Per Diem Amount with Forecast Error Adjustment	123.47	112.24	13.69	67.18

D. Process for Adjusting for SNF Market Basket Forecast Error

We are also inviting comments on applying the forecast error adjustment in future years, by adjusting the SNF PPS base payment rate annually for any forecast error in the SNF market basket. This process would involve making a one-time adjustment for the forecast error from the most recently available fiscal year. For example, for the FY 2005 update, we could adjust for forecast error for FY 2003 only; FY 2004 information would not yet be final. Similarly, for the FY 2006 update, we could adjust for the FY 2004 forecast error. This process creates what is essentially a 2-year lag on the forecast error correction, but is as timely as possible given the availability of historical data.

The method of adjusting for annual forecast error would be similar to that described above for the FY 2004 update. We could adjust for forecast error in a fiscal year by adjusting the SNF PPS national base payment by the forecast error amount. For example, if the FY 2004 SNF market basket were over-forecast by 0.5 percent, we would reduce the SNF PPS national base payment rate in FY 2006 by 0.5 percent. Accordingly, this is a prospective adjustment and is consistent with the methodology currently employed under the inpatient hospital capital PPS, and with the update framework that we discussed in the FY 2002 SNF PPS proposed rule published on May 10, 2001 (66 FR 24016) and FY 2002 final rule published on July 31, 2001 (66 FR 39587).

In addition, as mentioned previously in section II.B, we are considering adopting a threshold under which no forecast error adjustment would be made if the forecasted percent change is within a defined range of the actual percent change. As noted previously, the inpatient hospital capital PPS already uses a threshold of 0.25 percentage points. We are soliciting comments on what threshold would be appropriate in the context of the SNF PPS. This methodology is again consistent with the methodology used under the inpatient capital PPS, and reflects the concept that there is a certain level of imprecision associated with measuring statistics. We invite comments on the use of this standard.

III. Solicitation of Comments on Quality of Care Efforts Under SNF PPS

We noted above that a major reason the SNF market basket forecast was under-forecasted for previous periods was that wages and benefits for SNF workers increased more rapidly than expected. Part of this wage increase may have been caused by nursing staff shortages which, coupled with the increased demand for services during this period, drove up wages not only in SNFs but in the entire health sector. Since the factors that drive costs in SNFs can also relate to nursing home quality of care, we believe it is important to reflect appropriately the market conditions facing SNFs.

We have focused significant resources in the past two years on improving the quality of health care provided by Medicare providers. Our efforts with respect to nursing home quality have been particularly intensive. In December 2001, we announced a Nursing Home Quality Initiative. This initiative is part of the goal of the Department of Health and Human Services to continue to improve the quality of health care for all Americans, including those covered by the Medicare and Medicaid programs. After a successful six-State pilot in the Spring of 2002, we released quality of care information on November 12, 2002 for nearly 17,000 nursing homes in all 50 States, the District of Columbia, and some U.S. Territories. Consumers can view these measures and other helpful information at *http://www.medicare.gov*.

The Nursing Home Quality Initiative is a four-prong effort that consists of: regulation and enforcement efforts conducted by State survey agencies and by us; improved consumer information on the quality of care in nursing homes; continual, community-based quality improvement programs designed to help nursing homes improve their quality of care; and collaboration and partnership to utilize available knowledge and resources most effectively. State pilot in the Spring of 2002, we released quality of care information on November 12, 2002 for nearly 17,000 nursing homes in all 50 States, the District of Columbia, and some U.S. Territories. Consumers can view these measures and other helpful information at *http://www.medicare.gov*.

The Nursing Home Quality Initiative is a four-prong effort that consists of: regulation and enforcement efforts conducted by State survey agencies and by us; improved consumer information on the quality of care in nursing homes; continual, community-based quality improvement programs designed to help nursing homes improve their quality of care; and collaboration and partnership

to utilize available knowledge and resources most effectively.

To the extent that market basket adjustments to the SNF PPS result in more appropriate payments to SNFs in future years, it is expected that a majority of the additional payments made in the future to SNFs will be used for direct care services to nursing home residents. Further, we expect that SNFs will use such payments to continue to engage in proactive, quality improvement activities and programs. Accordingly, we invite comments on how SNFs will account for these direct care funds and how CMS may use its authority under section 1888 of the Act or elsewhere to further promote quality improvement efforts among SNFs. We also invite comments on available legal authority, as well as the advisability of refining and structuring payments under the SNF PPS to promote additional caregiver staffing at SNFs.

IV. Provisions of the Proposed Rule

In this proposed rule, we propose to make the following revisions to the existing text of the regulations:

- In § 413.337(d)(2), we would insert additional text at the end of the paragraph, which would provide for an adjustment to the annual update of the previous fiscal year's rate to account for forecast error in the SNF market basket beginning with FY 2004.
- In § 413.345, we would make a technical correction to the second sentence of the regulation text, in order to correct the spelling of the word "standardized."

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES** section of this preamble and respond to those comments in the preamble to that rule.

Waiver of 60-day Comment Period

As discussed previously in section I of this preamble, we are issuing this proposed rule specifically in order to supplement the proposed rule that we published previously in the **Federal Register** on May 16, 2003 (68 FR 26758). Section 1871(b)(1) of the Act normally requires a 60-day public comment period for a proposed rule. However, under section 1871(b)(2)(C) of the Act, this requirement can be waived for good cause in situations where the agency finds that its application would be "* * * impracticable, unnecessary, or contrary to the public interest" (*see* 5 U.S.C. § 553(b)). We note that under section 1888(e)(4)(H) of the Act, the updated payment rates for FY 2004 must be published in the **Federal Register** no later than July 31, 2003. This means that providing a full 60-day comment period for this supplemental proposed rule could leave insufficient time following the close of the comment period to include any resulting revisions in that publication. We believe it to be in the public interest to consider any revisions in conjunction with the annual update to the SNF PPS rates so any adjustment to the payment rate could be done as part of the annual update process. Moreover, promulgating such revisions in a separate final rule published later than July 31 would require revising the rate structure after the start of the new fiscal year in order to accommodate the change, which would impose an inordinate administrative burden. Additionally, we note that, other than to propose a minor technical correction in the existing regulations text, the sole focus of this supplemental proposed rule concerns a single potential change, to adjust the annual update to the SNF payment rates in order to account for forecast error. Given the extremely narrow scope of this document, we believe that even a comment period of less than 60 days would still give interested parties sufficient opportunity to comment adequately on it.

For the reasons set forth in the preceding discussion, which indicate that providing a full comment period would be contrary to the public interest, we find that there is good cause to modify the 60-day comment period in this instance. Accordingly, the closing date of the comment period for this supplemental proposed rule is hereby set at July 7, 2003, to coincide with the close of the initial proposed rule's comment period.

VII. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is a major rule, as defined in 5 U.S.C. 804(2), because, if we proceed with a forecast error adjustment, we estimate that the impact of such a change would be approximately $450 million in FY 2004 (based on the cumulative SNF market basket forecast error of 3.26 percent for FYs 2000 through 2002, as shown in Table A). The $450 million estimate also assumes the use of a 0.25 percentage point threshold (and would be reliable for thresholds up to 3.26 percent). However, as noted previously in section II.D, this estimated impact could change in any given year if we were to adopt a different threshold level.

The RFA requires agencies to analyze options for the regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity.

The revision that we are considering in this proposed rule would simply provide for adjusting the annual increase in the applicable SNF market basket index amount, effective with FY 2004, to account for forecast error. Accordingly, we certify that this proposed rule would not have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For a proposed rule, this analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the change in methodology set forth in this proposed rule would also affect rural hospital swing-bed services, we believe that this proposed rule would similarly affect small rural hospitals. However, because the incremental change in payments for Medicare swing-bed services would be relatively minor in comparison to overall rural hospital revenues, this proposed rule would not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This proposed rule would have no substantial effect on State, local, or tribal governments. We believe the private sector cost of this proposed rule falls below these thresholds as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this proposed rule would have no substantial effect on State and local governments.

As stated previously, the purpose of this proposed rule is simply to consider an adjustment to the annual update to account for forecast error in the SNF market basket. We believe that such a revision would have, at most, only a negligible overall effect in terms of the RFA and the other provisions discussed in this section. As such, it would not represent an additional burden to the industry.

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart J—Prospective Payment for Skilled Nursing Facilities

2. In § 413.337(d)(2), paragraph (d)(2) is revised to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(d) *Annual updates of Federal unadjusted payment rates.* * * *

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount. Beginning with fiscal year 2004, an adjustment to the annual update of the previous fiscal year's rate will be computed to account for forecast error. The initial adjustment (in fiscal year 2004) to the update of the previous fiscal year's rate will take into account the cumulative forecast error between fiscal years 2000 and 2002. Subsequent adjustments in succeeding fiscal years will take into account the forecast error from the most recently available fiscal year for which there is final data.

* * * * *

§ 413.345 [Amended]

3. In the second sentence of § 413.345, the word "tandardized" is removed and the word "standardized" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program.)

Dated: May 22, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–14632 Filed 6–6–03; 10:38 am]

BILLING CODE 4120–01–P

Reader Aids

Federal Register

Vol. 68, No. 111

Tuesday, June 10, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, Indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B.....33883

3 CFR

Proclamations:
7683.....33339

4 CFR

81.....33831

7 CFR

319.....34517
457.....34261
800.....32623
802.....34519
1400.....33341

Proposed Rules:
810.....33408
3560.....32872
3565.....34552

9 CFR

430.....34208

Proposed Rules:
93.....33028

10 CFR

72.....33611
73.....33611
765.....32955

12 CFR

615.....33347, 33617
703.....32958
742.....32958
1700.....32627

13 CFR

121.....33348

Proposed Rules:
121.....33412

14 CFR

25.....33834, 33836
39.....32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854
71.....32633, 33231, 33360, 3361, 33579, 33623
95.....34522
97.....32633

Proposed Rules:
25.....33659
36.....34256
39.....32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557
71.....33426, 33427, 34340

15 CFR

742.....34526
744.....34192
745.....34526
772.....34192
774.....34526

17 CFR

30.....33623
40.....33623

19 CFR

201.....32081
204.....32081
206.....32081
207.....32081
210.....32081
212.....32081

20 CFR

Proposed Rules:
220.....34341

21 CFR

165.....34272
201.....32979
310.....33362, 34273
347.....33362
349.....32981
350.....34273
352.....33362
369.....34273
510.....33381, 34293
520.....34533
522.....33856, 34533
524.....33381
558.....34534
878.....32983
888.....32635

Proposed Rules:
201.....33429
343.....33429

24 CFR

Proposed Rules:
1000.....34344

25 CFR

170.....33625

26 CFR

1.....33381, 34293
301.....33857
602.....34293

Proposed Rules:
1.....34344
14a.....34344
157.....32698
301.....33887
602.....32698

27 CFR

Proposed Rules:
7.....32698

25.....32698

28 CFR

5.....33629
571.....34299, 34301
802.....32985

29 CFR

1910.....32637

Proposed Rules:

1910.....33887, 34036
1915.....34036
1926.....34036

30 CFR

Proposed Rules:

906.....33032
934.....33035
938.....33037

31 CFR

1.....32638
210.....33826
594.....34196

33 CFR

100.....32639, 32641
117.....32643, 34302, 34303, 34535
165.....32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537

Proposed Rules:

165.....33894, 33896, 34370

36 CFR

215.....33582
230.....34309
242.....33402
1253.....33404

38 CFR

3.....34539
13.....34539
21.....34319, 34326
61.....34332

Proposed Rules:

20.....33040

39 CFR

111.....33858

40 CFR

51.....33764
52.....32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543
62.....34332
180.....33876
261.....32645
271.....34334

Proposed Rules:

Ch. I.....33898
51.....32802
52.....33041, 33042, 33043, 33665, 33898, 33899, 34560
82.....33284
146.....33902
194.....33429

42 CFR

412.....34122, 34494

Proposed Rules:

412.....33579, 34492
413.....33579, 34492, 34768

43 CFR

4.....33794
3800.....32656
4100.....33794
5000.....33794

44 CFR

64.....32657
65.....32659, 32660
67.....32664, 32669
206.....34545

Proposed Rules:

67.....32699, 32717

46 CFR

221.....33405

47 CFR

2.....32676, 33020, 33640, 34336
21.....34547
25.....33640, 34336
52.....34547
73.....32676, 33654
74.....32676, 34336
78.....34336
80.....32676
87.....32676
90.....32676
95.....32676
97.....32676, 33020

Proposed Rules:

1.....34560
2.....33043, 33666
15.....32720
21.....34560
25.....33666
64.....32720
73.....33431, 33668, 33669
74.....34560
101.....34560

48 CFR

2.....33231
32.....33231
52.....33231
252.....33026

Proposed Rules:

15.....33330
31.....33326
52.....33326
206.....33057

49 CFR

1.....34548
107.....32679
171.....32679
173.....32679
177.....32679
180.....32679
567.....33655
571.....33655
574.....33655
575.....33655
597.....33655

50 CFR

17.....34710
100.....33402
648.....33882
660.....32680
679.....34550

Proposed Rules:

16.....33431
17.....33058, 33234, 34569
402.....33806
648.....33432
660.....33670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 10, 2003

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant related quarantine; foreign:
- Ya pears from Hebei Province, China; Oriental fruit fly cold treatment requirement removed; published 6-10-03

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:
- Commerce Control List—
  - Chemical and biological weapons controls; cross flow filtration equipment; Australia Group understandings implementation; published 6-10-03

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- West Virginia; published 4-11-03

Hazardous waste program authorizations:
- Tennessee; published 4-11-03

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Commercial mobile radio services—
  - Facilitate provision of fixed and mobile broadband access, education, and other advanced services in 2150-2162 and 2500-2690 MHz bands; published 6-10-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Fenbendazole; published 6-10-03
- Pyrantel pamoate paste; published 6-10-03
- Sponsor name and address changes—
  - Cross Vetpharm Group Ltd.; published 6-10-03

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:
- Transportation Security Adminstration and United States Coast Guard; removal of references; published 6-10-03

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:
- Veterans Education and Benefits Expansion Act of 2001; compensation and pension provisions; published 6-10-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in—
- California; comments due by 6-20-03; published 4-21-03 [FR 03-09672]

Potatoes (Irish) grown in—
- Colorado; comments due by 6-16-03; published 5-30-03 [FR 03-13519]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Portland International Airport, OR; livestock exportation port designation; comments due by 6-18-03; published 5-19-03 [FR 03-12389]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Exotic Newcastle disease; quarantine area designations—
  - Texas and New Mexico; comments due by 6-16-03; published 4-16-03 [FR 03-09322]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Asian longhorned beetle; comments due by 6-18-03; published 5-19-03 [FR 03-12390]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Multi-serve, meal-type meat and poultry products; nutrient content claims; comments due by 6-16-03; published 4-16-03 [FR 03-09258]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - South Atlantic pelagic sargassum habitat; comments due by 6-16-03; published 4-17-03 [FR 03-09490]
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 6-19-03; published 5-20-03 [FR 03-12648]
- South Atlantic fisheries—
  - South Atlantic pelagic sargassum habitat; correction; comments due by 6-16-03; published 5-5-03 [FR 03-10802]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 6-17-03; published 6-2-03 [FR 03-13704]

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - National Defense Authorization Act for 2002 FY; implementation; medical benefits, etc.; comments due by 6-16-03; published 4-16-03 [FR 03-09153]

Federal Acquisition Regulation (FAR):
- Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12025]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12026]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12474]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12475]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12178]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12179]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12027]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12030]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Allethrin, etc.; nomenclature changes; comments due by 6-17-03; published 4-18-03 [FR 03-09484]
Propylene oxide, etc.; nomenclature changes; comments due by 6-16-03; published 4-17-03 [FR 03-09483]

FARM CREDIT ADMINISTRATION
Farm credit system:
Financing eligibility and scope, loan policies and operations, and general provisions—
Credit and related services; miscellaneous amendments; comments due by 6-20-03; published 5-21-03 [FR 03-12631]

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Bank director eligibility, appointment, elections; comments due by 6-17-03; published 3-19-03 [FR 03-06595]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General and plastic surgery devices—
Silicone sheeting; classification; comments due by 6-18-03; published 3-20-03 [FR 03-06646]
Reports and guidance documents; availability, etc.:
Developing Medical Imaging Drug and Biological Products; comments due by 6-18-03; published 5-19-03 [FR 03-12370]

HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; comments due by 6-16-03; published 4-17-03 [FR 03-09497]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Valdez and Valdez Narrows, AK; security zone; comments due by 6-15-03; published 5-16-03 [FR 03-12183]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Tampa Bay, FL; security zones; comments due by 6-17-03; published 4-18-03 [FR 03-09650]
Regattas and marine parades, and drawbridge operations:
Toledo Tall Ships Parade, OH; comments due by 6-15-03; published 5-20-03 [FR 03-12492]

HOMELAND SECURITY DEPARTMENT
Critical Infrastructure Information; handling procedures; comments due by 6-16-03; published 4-15-03 [FR 03-09126]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Emergency operations; comments due by 6-16-03; published 4-16-03 [FR 03-09310]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Sound recordings and ephemeral recordings; digital performance right; comments due by 6-19-03; published 5-20-03 [FR 03-12349]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Public use; threats added as prohibited behavior; comments due by 6-17-03; published 4-18-03 [FR 03-09585]
Correction; comments due by 6-17-03; published 5-2-03 [FR 03-10808]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Nasdaq-listed securities; uniform trading rules; petition; comments due by 6-19-03; published 5-20-03 [FR 03-12604]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Mental disorders; medical evaluation criteria; comments due by 6-16-03; published 3-17-03 [FR 03-06278]

STATE DEPARTMENT
Claims and stolen property:
Stolen property under treaty with Mexico; CFR part removed; comments due by 6-16-03; published 5-16-03 [FR 03-12294]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 6-16-03; published 4-16-03 [FR 03-09011]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 6-16-03; published 5-1-03 [FR 03-10728]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; comments due by 6-19-03; published 5-20-03 [FR 03-12110]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Learjet; comments due by 6-20-03; published 4-21-03 [FR 03-09430]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 6-16-03; published 4-15-03 [FR 03-08892]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Raytheon; comments due by 6-20-03; published 5-5-03 [FR 03-10726]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 6-16-03; published 4-15-03 [FR 03-09017]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-16-03; published 4-21-03 [FR 03-09729]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Future air bags designed to create less risk of serious injuries for small women and young children, etc.; requirements phase-in; comments due by 6-19-03; published 5-5-03 [FR 03-10945]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (2001 CY); comments due by 6-16-03; published 4-15-03 [FR 03-09186]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Securities; reporting and disclosure requirements; comments due by 6-20-03; published 5-21-03 [FR 03-12259]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

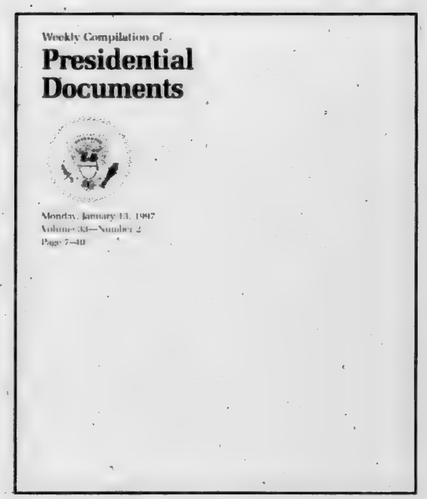
Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5420**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

6–11–03 Wednesday
Vol. 68 No. 112 June 11, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–11–03 Wednesday
Vol. 68 No. 112 June 11, 2003

Pages 34775–35148

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 112
Wednesday, June 11, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service
See Rural Utilities Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 34909

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35052–35059

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35005–35006

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—New Mexico and Texas, 34779–34781
NOTICES
Plant-related quarantine, foreign:
Orchids from Taiwan in growing media; importation, 34898–34899

Army Department
NOTICES
Environmental statements; availability, etc.:
Sierra Army Depot, CA; transfer of Honey Lake, 34909

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
Indian Network of Positive People, 34972
Grants and cooperative agreements; availability, etc.:
Cancer Surveillance Standards Development and Maintenance Program, 34972–34976
National Healthy Homes Training Center and Network Development Program, 34977–34979

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Citizenship and Immigration Services Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34995

Coast Guard
RULES
Drawbridge operations:
Illinois, 34799–34800
New Jersey, 34801–34803
Ports and waterways safety:
Lake Michigan, Chicago, IL; safety zone, 34803–34805
PROPOSED RULES
Drawbridge operations:
New Jersey, 34877–34879

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34905–34907

Commodity Credit Corporation
RULES
Loan and purchase programs:
Tobacco, flue-cured, 34777–34779

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Eligible bunched customer orders; account identification, 34790–34795

Copyright Office, Library of Congress
NOTICES
Small Webcaster Settlement Act of 2002:
Noncommercial webcasters; sound recordings reproduction and performance agreement; rates and terms, 35008–35012

Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34995–34997

Defense Department
See Air Force Department
See Army Department
PROPOSED RULES
Acquisition regulations:
Activity address codes in contract numbers, 34879–34880
NOTICES
Meetings:
Technology and Privacy Advisory Committee, 34909

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Houba, Inc., 35006
Noramco, Inc., 35006
Varian, Inc., 35006–35007

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34909–34911
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Evaluating State Education Technology Programs, 35125–35129

Migrant Education Program, 34911–34913
Special education and rehabilitative services—
Rehabilitation Research and Training Centers Program; correction, 34913
Vocational and adult education—
Community Technology Centers Program; correction, 34913
Reports and guidance documents; availability, etc.:
Elementary and secondary education—
District of Columbia; written findings and compliance agreement, 34914–34929

Employee Benefits Security Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 35007–35008

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Rhode Island, 34813–34821
Vermont, 34808–34813
Washington, 34821–34825
Hazardous waste program authorizations:
Utah, 34829–34831
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methoprene, 34825–34829
Toxic substances:
Preliminary assessment information reporting—
Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl), etc., 34832–34838
Water pollution; effluent guidelines for point source categories:
Pharmaceutical manufacturing
Partially withdrawn, 34831–34832
NOTICES
Grants and cooperative agreements; availability, etc.:
State Innovation Program, 34944–34945
Meetings:
Science Advisory Board, 34945–34947
Pesticide, food, and feed additive petitions:
BASF Corp., 34950–34955
Eastman Chemical Co., 34955–34958
Syngenta Seeds, Inc., 34959–34962
Pesticide registration, cancellation, etc.:
BASF Corp., 34947–34948
Syngenta Seeds, 34949–34950
Pesticides; experimental use permits, etc.:
Circle One Global, Inc., 34962–34964
Superfund; response and remedial actions, proposed settlements, etc.:
Horseshoe Bend Dump Site, TN, 34964

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34964–34969

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Farm Service Agency
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Tobacco, flue-cured, 34777–34779

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 34781–34790
Eurocopter France, 34786–34787
PROPOSED RULES
Airworthiness directives:
Boeing, 34843–34847
McDonnell Douglas, 34847–34851

Federal Communications Commission
NOTICES
Meetings:
Network Reliability and Interoperability Council, 34969

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34969–34970

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Asset retirement obligations; accounting, financial reporting, and rate filing requirements
Correction, 34795
NOTICES
Environmental statements; availability, etc.:
Arizona Public Service Co., 34939
Lake Dorothy Hydro, Inc., 34939
Hydroelectric applications, 34939–34943
Preliminary permits surrender:
Hulah Hydro, LLC, 34943
Reports and guidance documents; availability, etc.:
Electric Quarterly Reports; public utility filing requirements and software demonstrations, 34943–34944
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 34929
ANR Storage Co., 34929–34930
CenterPoint Energy Gas Transmission Co., 34930
Clear Fork Pipeline Co., 34930
Colorado Interstate Gas Co., 34930–34931
Columbia Gulf Transmission Co., 34931
Dauphin Island Gathering Partners, 34931–34932
Discovery Gas Transmission LLC, 34932
Enbridge Offshore Pipelines (UTOS) LLC, 34932–34933
Enbridge Pipelines (AlaTenn) L.L.C., 34933–34934
Enbridge Pipelines (KPC), 34933
Enbridge Pipelines (Midla) L.L.C., 34933
Maritimes & Northeast Pipeline, L.L.C., 34934
Natural Gas Pipeline Co. of America, 34934
Northern Border Pipeline Co., 34934–34935
Northwest Natural Gas Co., 34935
PG&E Gas Transmission, Northwest Corp., 34935–34936
Questar Southern Trails Pipeline Co., 34936
Saltville Gas Storage Company, L.L.C., 34936
Tennessee Gas Pipeline Co., 34937
Texas Gas Transmission, LLC, 34937
Toca Producers, 34937–34938
Transwestern Pipeline Co., 34938
Wyoming Interstate Co., Ltd., 34938

Federal Maritime Commission
NOTICES
Agreements filed, etc., 34970
Complaints filed:
Monarch Shipping Agency, LLC, et al., 34970
Investigations, hearings, petitions, etc.:
Royal Caribbean Cruises Ltd. et al., 34970–34971
Ocean transportation intermediary license:
Eggi's Express Shipping et al., 34971
Ocean transportation intermediary licenses:
Aero Expediting, Inc., et al., 34971–34972
Jagremar Marine, Inc., et al., 34972

Federal Motor Carrier Safety Administration
RULES
Motor carrier safety standards:
Household goods transportation; consumer protection regulations, 35063–35113
NOTICES
Motor carrier safety standards:
Driver qualifications—
Becotte, Richard, et al.; vision requirement exemptions denied, 35050–35051

Fish and Wildlife Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34998
Endangered and threatened species:
Incidental take permits—
Gila and Maricopa Counties, AZ; southwestern willow flycatcher, etc., 34999–35000
Endangered and threatened species and marine mammal permit applications, 34998–34999

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Carprofen, 34796
Tepoxalin, 34795–34796
Biological products:
Accelerated approval; technical amendment, 34796–34797
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34979–34980
Human drugs:
Drug products withdrawn from sale for reasons other than safety or effectiveness—
Brimonidine tartrate ophthalmic solution 0.2%, 34980–34981

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34899–34900

Food Safety and Inspection Service
NOTICES
Meetings:
Meat and Poultry Inspection National Advisory Committee, 34900–34901

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Revenue-producing visitor services in conservation system units within national forests of Alaska; procedures establishment, 35115–35124
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34901–34902
Environmental statements; notice of intent:
Medicine Bow-Routt National Forests and Thunder Basin National Grassland, WY, 34902–34903
Meetings:
Resource Advisory Committees—
Lake County, 34903–34904

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
NOTICES
Meetings:
Minority Health Advisory Committee, 34972

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Chiropractor and Pharmacist Loan Repayment Demonstration Project, 34981–34982

Homeland Security Department
See Citizenship and Immigration Services Bureau
See Coast Guard
See Customs and Border Protection Bureau
See Transportation Security Administration
NOTICES
Committees; establishment, renewal, termination, etc.;
Human Resource Management System Senior Review Advisory Committee, 34994–34995

Indian Health Service
NOTICES
Grant and cooperative agreement awards:
Porcupine Clinic, 34982

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 34982–34986

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes, etc.:
Automatic time extension to file certain information returns and exempt organization returns, 34797–34799

PROPOSED RULES
Income taxes:
Stock dispositions; suspension of losses—
Hearing cancellation, 34874
Income taxes, etc.:
Automatic time extension to file certain information returns and exempt organization returns; cross-reference, 34875–34877
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35059–35062

International Trade Administration
NOTICES
Antidumping:
Potassium permanganate from—
China, 34907
Applications, hearings, determinations, etc.:
University of—
California, Berkeley, 34907–34908
California, San Diego, 34908
Missouri, Kansas City, 34907

International Trade Commission
NOTICES
Import investigations:
Colored synthetic organic oleoresinous pigment dispersions from—
India, 35003–35004
Milk protein products in U.S. market; competition conditions, 35004–35005

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration

Labor Department
See Employee Benefits Security Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Utah, 35000
Meetings:
Resource Advisory Councils—
Front Range, 35000–35001
Superfund; response and remedial actions, proposed settlements, etc.:
Dinero Complex Site, Leadville, CO, 35001

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Designated Federal Entities and Federal Entities; list, 35015–35016

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Defect and noncompliance—
Early warning and customer satisfaction campaign documentation; reporting requirements, 35131–35148
Occupant crash protection—
Smart air bags, vehicles without; warning labels, manual cutoff switches, etc.; reduction of dangerous impacts on children; correction, 34838–34842

National Institutes of Health
NOTICES
Meetings:
Advisory Committee to Director, 34986–34987
National Cancer Institute, 34987
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 34988–34992
National Institute of Child Health and Human Development, 34987
National Institute of Dental and Craniofacial Research, 34991
National Institute of Diabetes and Digestive and Kidney Diseases, 34990
National Institute of Environmental Health Sciences, 34988
National Institute of Neurological Disorders and Stroke, 34989
National Institute of Nursing Research, 34987
National Institute on Aging, 34989–34990
National Institute on Alcohol Abuse and Alcoholism, 34987–34988
National Institute on Deafness and Other Communication Disorders, 34989
Scientific Review Center, 34992–34994

National Oceanic and Atmospheric Administration
PROPOSED RULES
Ocean and coastal resource management:
Coastal Zone Management Act; Federal consistency process, 34851–34874
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34908

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Bend National Park, TX, 35001–35002
Environmental statements; notice of intent:
Big Bend National Park, TX, 35002
Realty actions; sales, leases, etc.:
Alaska, 35003

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Linguagen Corp., 35012
Virginia Electric & Power Co., 35013–35014
Regulatory guides; issuance, availability, and withdrawal, 35014
Reports and guidance documents; availability, etc.:
Backfit guidance; fuel cycle facilities, 35014–35015

Office of Management and Budget
See Management and Budget Office

Postal Service
RULES
Domestic Mail Manual:
Delivery and signature confirmation services with first-class mail and package services parcels, 34805–34808

Presidential Documents
PROCLAMATIONS
Special observances:
Flag Day and National Flag Week (Proc. 7684), 34775–34776

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Hazard communication requirements changes; labels and placards specifications for materials poisonous by inhalation; revisions, 34880–34897
NOTICES
Pipeline safety; waiver petitions:
Duke Energy Gas Transmission Co., 35051–35052

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34904
Environmental statements; availability, etc.:
Lawrence County Generation Plant, IN, 34904–34905

Securities and Exchange Commission
NOTICES
Public Company Accounting Oversight Board:
Public accounting firms; registration system, 35016–35030
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 35030–35035
Chicago Board Options Exchange, Inc., 35035–35037
Depository Trust Co., 35037–35043
National Association of Securities Dealers, Inc., 35043–35044
New York Stock Exchange, Inc., 35045–35049
Philadelphia Stock Exchange, Inc., 35049–35050

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Yolo Shortline Railroad Co., 35052

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34997–34998

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 35062

Separate Parts In This Issue

Part II
Transportation Department, Federal Motor Carrier Safety Administration, 35063–35113

Part III
Agriculture Department, Forest Service, 35115–35124

Part IV
Education Department, 35125–35129

Part V
Transportation Department, National Highway Traffic Safety Administration, 35131–35148

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7684 34775

7 CFR
723 34777
1464 34777

9 CFR
82 34779

14 CFR
39 (3 documents) 34781, 34786, 34787
Proposed Rules:
39 (3 documents) 34843, 34847, 34849

15 CFR
Proposed Rules:
930 34851

17 CFR
1 34790

18 CFR
201 34795

21 CFR
520 34795
522 34796
601 34796

26 CFR
1 34797
31 34797
602 34797
Proposed Rules:
1 (2 documents) 34874, 34875
25 34875
31 34875
53 34875
55 34875
156 34875

33 CFR
117 (3 documents) 34799, 34800, 34801
165 34803
Proposed Rules:
117 34877

36 CFR
251 35117

39 CFR
111 34805

40 CFR
52 (3 documents) 34808, 34813, 34821
180 34825
271 34829
439 34831
712 34832

48 CFR
Proposed Rules:
204 34879

49 CFR
375 35064
377 35064
571 34838
579 (2 documents) 35132, 35145
Proposed Rules:
171 34480
172 34480
173 34480

Federal Register
Vol. 68, No. 112
Wednesday, June 11, 2003

Presidential Documents

Title 3—

The President

Proclamation 7684 of June 6, 2003

Flag Day and National Flag Week, 2003

By the President of the United States of America

A Proclamation

Each year, we set aside June 14 to commemorate the day in 1777 when the Continental Congress adopted the Stars and Stripes as the official flag of our Republic. With this act, the Congress declared that we were one Nation, under one flag, united for the cause of liberty and justice for all.

As a symbol of our patriotism, the American flag continues to invoke pride and resolve among our people, especially when we see it next to a headstone, on the masts of our military ships, worn by the generations of Americans who have proudly served our country, or emerging from the wreckage caused by a natural or manmade disaster. Flying over public buildings, monuments, schools, and homes, our flag is testament to the ideals of American democracy.

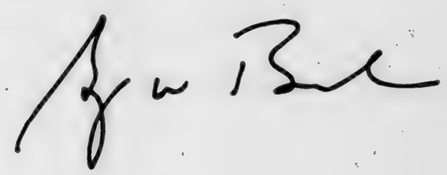
Through the years, millions of immigrants have come to our shores seeking to share in the promise of freedom represented by our flag. From war-torn Europe, to the mountains of Afghanistan, to the deserts of Iraq, the flag and those who carry it are universally recognized as harbingers of liberation, justice, and peace. Regardless of circumstance, our flag endures as a sign of hope.

On Flag Day, we look to the red, white, and blue as a symbol of our commitment to advancing the universal hope of liberty and justice for all. Old Glory abounds in the landscape of our daily lives, reminding us of the freedom we share. The 50 stars and 13 stripes are not just a random pattern, they symbolize the blessings of liberty we enjoy as Americans.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested that the President issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as "National Flag Week" and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 14, 2003, as Flag Day and the week beginning June 8, 2003, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03-14907
Filed 6-10-03; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 68, No. 112
Wednesday, June 11, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560-AG60

2002 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) for the 2002 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended, (1938 Act), the Secretary determined the 2002 marketing quota for flue-cured tobacco to be 582.0 million pounds. In accordance with the Agricultural Act of 1949, as amended, (1949 Act), the Secretary determined the 2002 price support level to be 165.4 cents per pound. This rule will also codify the 2000 and 2001 marketing quotas and price support levels. The intended effect of this rule is to codify the announced quota levels as required.

EFFECTIVE DATE: December 15, 2001.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250-0514, telephone 202-720-5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and was reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule since neither the Commodity Credit Corporation (CCC) nor the Farm Service Agency (FSA) are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

An environmental evaluation found that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

This rule contains no unfunded mandates and, thus, is not subject to the provisions of title II of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

These amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Rulemaking

This rule is issued pursuant to the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99-972 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking in 5 U.S.C. 553 or in any directive of the Secretary. Further, this rule affirms existing decisions which were time-sensitive. Hence, a delay in the implementation of the matters affirmed in this notice would have been impracticable, unnecessary, and counter to the public interest. Thus, the matters affirmed in this notice were made effective at the time that they were announced by press release.

On December 15, 2001, the Secretary announced the national marketing quota and the price support level for the 2002 crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule affirms. In addition this rule affirms similar determinations made with respect to the 2000 and 2001 crops of flue-cured tobacco.

Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) the amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on United States auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 2002 crop of flue-cured tobacco by December 1, 2002. Five such manufacturers were required to submit such a statement for the 2002 crop and the total of their intended purchases for the 2002 crop is 310.0 million pounds. The 3-year average of exports is 249.9 million pounds.

The national marketing quota for the 2001 crop year was 548.9 million

pounds. In accordance with section 301(b)(14)(C) of the 1938 Act the reserve stock level is the greater of 15 percent of the previous year's quota (548.9 million pounds x .15 = 82.3 million pounds) or 100.0 million pounds. Thus, the reserve stock level for use in determining the 2002 marketing quota for flue-cured tobacco is 100.0 million pounds.

Pre-1997 loan crops have been sold. Further, manufacturers agreed in December of 1998, 1999, and 2000 to purchase an additional 210.0 million pounds, thereby reducing loan inventory to 46.9 million pounds. In addition, the Agricultural Rural Development, Food and Drug Administration and Related Agencies Appropriations Act of 2001 (Public Law 106–387), as amended, allowed the forfeiture of 1999 loan inventories. Loans from the 2001 crop total 121 million pounds, making total loan stocks 77.9 million pounds. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 22.1 million pounds.

The total of the three marketing quota components for the 2001–2002 Marketing Year (MY) is 582 million pounds. Accordingly, the national marketing quota for the MY beginning July 1, 2002, for flue-cured tobacco is 582 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or ensure the usability of the tobacco and increase the net return per pound to the producers. Since average yields have not changed significantly in recent years, the national average yield goal for the 2002 MY will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 2002 crop of flue-cured tobacco is determined to be 278,735.63 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 2002 crop of flue-cured tobacco of 733 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 2002 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 1.06, which is the result of dividing the 2002 national allotment (278,735.63 acres) minus the national reserve (733 acres) by the total of allotments established for flue-cured tobacco farms in 2001 (262,265.98 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 2002 crop of flue-cured tobacco is determined to be 0.9251, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,257 pounds).

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 2002 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 2002 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 2001 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MY's immediately preceding the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MY's immediately preceding the MY prior to the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year for which the determination is made.

The difference between the two 5-year averages (*i.e.*, the difference between (A)(I) and (A)(II)) is 0.10 cent per pound. The difference in the cost index from January 1, 2001, to December 31, 2001, is −1.7 cents per pound. Applying these components to the price support formula (0.0 cent per pound, two-thirds weight; −1.7 cents per pound, one-third weight) results in a weighted total of −0.6 cent per pound. As indicated, section 106 of the 1949 Act provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. As there was no justifiable basis found for limiting the decrease (which reflected a change in production costs), and in order to aid in the marketing of the crop, that discretion was not utilized. Accordingly, the 2002 crop of flue-cured tobacco will be supported at 165.4 cents per pound, 0.6 cent lower than the 2001 crop.

The 2000 and 2001 quotas and price support were determined using the same methodology as described for the 2002 quota and price support. With respect to the marketing quota determinations, for the 2000 crop the purchase intentions, exports (three year average), reserve stock average, and final quota (103% of the total) were 286.0, 334.1, (−92.9), and 543.0 and for 2001 were 297.0, 297.7, (−61.8), and 548.9. The adjustment up to 103% was made, as allowed by statute, to lessen the impact on producers of the declining quotas. Following the time of the determinations for the 2002 crops, the Congress, in Pub. L. 107–71, adjusted the reserve stock level for flue-cured tobacco, doing so in section 1610 of that Act. That change will impact future crops. With respect to price support the price indices used in the price support level determination, the changes (in cents) in prices received and in prices paid per pound were for the 2000 crop determination, 0.4 and 1.5 and for the 2001-crop calculation (−0.2) and 6.5. In order to aid the marketing of the 2000 and 2001 crops, the Secretary used the discretion allowed by the authorizing statute to limit the price support increase to 65% of the increase that would have otherwise been produced by the formula. Copies and other supporting documents are available from Mr. Robert L. Tarczy, USDA, Farm Service Agency, Stop 0514,1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–5346.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs-agriculture, Price support programs, Tobacco, Reporting and recordkeeping requirements, Warehouses.

■ Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

■ 1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C., 1301–1314, 1314–1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

■ 2. Section 723.111 is amended by adding paragraphs (h) through (j) to read as follows:

§ 723.111 Flue-cured (types 11–14) tobacco.

* * * * *

(h) The 2000 crop national marketing quota is 543.0 million pounds.

(i) The 2001 crop national marketing quota is 548.9 million pounds.

(j) The 2002 crop national marketing quota is 582.0 millions pounds.

PART 1464—TOBACCO

■ 3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1, 15 U.S.C. 714b and 714c; Pub. L. 106–78, Pub. L. 106–113, Stat.1135 and Pub. L. 106–224.

■ 4. Section 1464.12 is amended by adding paragraphs (h) though (j) to read as follows:

§ 1464.12 Flue-cured (types 11–14) tobacco.

* * * * *

(h) The 2000 crop national price support level is 164.0 cents per pound.

(i) The 2001 crop national price support level is 166.0 cents per pound.

(j) The 2002 crop national price support level is 165.4 cents per pound.

Signed in Washington, DC, on June 3, 2003.

James R. Little,

Administrator, Farm Service Agency, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–14624 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–8]

Exotic Newcastle Disease; Removal of Areas from Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, from the list of quarantined areas. This action removes restrictions on the movement of birds, poultry, and certain other articles from those areas.

DATES: This interim rule was effective June 5, 2003. We will consider all comments that we receive on or before August 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–8, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–8. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–8" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.16, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Portions of Arizona, California, Nevada, New Mexico, and Texas are designated as quarantined areas in § 82.3(c) of the regulations. As a result, the interstate movement from the quarantined areas of birds, poultry, products, and materials that could spread END is prohibited or restricted. Further, because the Secretary has declared an extraordinary emergency because of END in those States, the regulations in § 82.16 provide that the intrastate movement from those quarantined areas of birds, poultry, products, and materials that could spread END is prohibited or restricted.

In this interim rule, we are reducing the size of the quarantined area in Texas and eliminating the quarantined area in New Mexico based on the results of extensive surveillance and investigations conducted in those States. These activities are described below.

On April 9, 2003, END was confirmed in backyard poultry on a premises in the town of Socorro, El Paso County, TX. Therefore, in an interim rule effective April 10, 2003, and published in the **Federal Register** on April 16, 2003 (68 FR 18531–18532, Docket No. 02–117–5), we amended § 82.3(c) by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM. As provided for by the regulations in § 82.3(a), this quarantined area

encompassed the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Following the detection of END in Texas, intensive surveys were conducted in the five-county quarantined area. The original infected premises proved to be the only premises with END-infected birds. Three "dangerous contact" premises (*i.e.*, premises with an epidemiological link to the infected premises) were identified, along with 51 premises (42 containing poultry and 9 with only pet birds) located within a 1 kilometer radius of the infected premises. All birds and poultry on those 54 premises were tested for END with negative results. Across the five-county quarantined area, additional surveys were conducted in targeted high-risk areas. Populated areas, reports from animal control units, and leads derived from reports of sick birds or poultry or other epidemiological information were used to define the high-risk areas. No additional cases were identified in any of these areas. Passive surveillance, including education and outreach efforts, continues to be conducted throughout the States. A total of 1,591 investigations were conducted in New Mexico and Texas, with 839 flocks tested. No evidence of additional disease spread was identified through this surveillance. There is a single commercial premises in the quarantined area, located in Berino, Dona Ana County, NM. Swabs were submitted on a weekly basis from this facility, all with negative results. A review of biosecurity procedures and other records was also conducted on a weekly basis. All test results reported through May 12, 2003, have been negative.

Reduction of Quarantined Areas

As noted previously, the regulations in § 82.3(a) provide that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Animal and Plant Health Inspection Service epidemiologists have evaluated the results of the investigations conducted in New Mexico and Texas and have determined that we may now reduce the size of the quarantined area in Texas and that it is no longer necessary to maintain quarantined areas in New Mexico. This determination is based on, among other things, the demonstrated absence of birds or poultry infected with or exposed to END in specific areas. The regulations in § 82.14 provide requirements that must be met before an area may be removed from quarantine, but those requirements relate to measures taken with respect to END-infected or -exposed birds and poultry, their eggs and manure, and articles and premises with which such birds or their manure or litter have come in contact. As there were no END-infected or -exposed birds or poultry in the areas that we are removing from quarantine, there are no requirements under § 82.14 that need to be met before those areas can be removed from quarantine.

Therefore, in this interim rule, we are amending § 82.3(c) by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, from the list of quarantined areas because the continued quarantine of these areas is no longer necessary to contain all birds and poultry infected with or exposed to END. That portion of El Paso County, TX, that will remain as a quarantined area, which is described in the amendments to § 82.3(c) at the end of this document, has been deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. We have determined that Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, may now be removed from the list of areas quarantined because of END. Therefore, immediate action is warranted to relieve the prohibitions or restrictions that have applied to the movement of birds, poultry, products, and other materials from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by removing Dona Ana, Luna, and Otero Counties, NM, Hudspeth County, TX, and portions of El Paso County, TX, from the list of quarantined areas. This action needs to be made effective immediately in order to remove restrictions on the movement of birds, poultry, and certain other articles from those areas that are no longer necessary.

This situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c), the entry for New Mexico is removed and the entry for Texas is revised to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

Texas

El Paso County. That portion of the county in the Town of Socorro that is bounded as follows: Beginning at the intersection of Muscat Street and Tokay Avenue; then northeast on Tokay Avenue to Fredonia Street; then southeast on Fredonia Street to Vineyard Road; then southwest on Vineyard Road to Muscat Street; then northwest on Muscat Street to the point of beginning.

Done in Washington, DC, this 5th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14723 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–41–AD; Amendment 39–13178; AD 2003–11–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and 727–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 and 727–200 series airplanes, that requires, under certain conditions, replacement of the installed autopilot pitch control computer with a modified computer, testing of the modified system, and revision of the Airplane Flight Manual (AFM). The actions specified by this AD are intended to prevent undesirable and potentially dangerous pitch oscillations during coupled instrument landing system (ILS) approaches. This AD is intended to address the identified unsafe condition.

DATES: Effective July 16, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thanh Truong, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6486; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and 727–200 series airplanes was published in the **Federal Register** on September 10, 2001 (66 FR 46968). That action proposed to require replacement of the installed autopilot pitch control computer with a modified computer, testing of the modified system, and revision of the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One operator reports that the actions specified in the proposed AD have been incorporated on all of its airplanes.

Request To Withdraw AD

One operator asserts that accomplishment of the actions specified in the proposed AD would not eliminate the identified unsafe condition, and suggests that pilot training and procedures would eliminate unstable category II approaches by autopilot disconnect. The FAA infers that the commenter is requesting withdrawal of the proposed AD.

The FAA does not agree. The unsafe condition is related to the accident described in the proposed AD involving a Model 727 series airplane during a coupled instrument landing system (ILS) category II approach. The circumstances surrounding that accident led in part to the issuance of this AD. The divergent pitch oscillations of the airplane resulted from an improper autopilot desensitization rate and contributed to the accident. This AD addresses the improper autopilot desensitization rate. The AFM revisions required by this AD provide data to the flightcrew regarding certain limitations, such as autopilot disconnect, inherent in the design of Sperry SP–50 and SP–150 autopilots. Observing these limitations will help the flightcrew take the appropriate action necessary for a successful landing or go-around.

Request To Delay AD Issuance Pending Further Study

One operator requests that issuance of the AD be delayed until further studies, as described in the proposed AD, can be completed. The proposed AD describes additional studies in process that are intended to develop appropriate limits for flap settings and airspeeds and to investigate other aspects such as winds and glideslope angles as possible contributors to the unsafe condition. The commenter requests that the studies be completed before the proposed AFM revisions and modifications are mandated.

The FAA does not agree. If the results of the studies ultimately suggest the need for additional intervention, or if additional data are presented that would justify revising any requirements of this AD, the FAA may consider further rulemaking on this issue. In consideration of the amount of time that has already elapsed since issuance of the original notice of proposed rulemaking, the FAA has determined that further delay of this final rule action is not appropriate.

Request To Remove Landing Flap Limitation

Two operators request removal of the landing flap limitation specified in paragraph (d) of the proposed AD. To justify the request, the commenters state that the difference in the approach speeds between the 30-degree and 40-degree landing flap configurations is only 5 knots, and the proposed limitation would provide only minimal improvement in glideslope beam tracking.

The FAA is aware of the small difference in approach speeds and agrees with the request to remove the landing flap limitation. In the preamble of the proposed AD, the FAA indicated that additional studies were being conducted to develop applicable operating limitations that would address approach flap settings. The FAA has since obtained additional analysis indicating that the new gain schedule applies to both 30-degree and 40-degree landing flap configurations. Therefore, paragraph (d) of the proposed AD has been removed from the final rule, and subsequent paragraphs have been reidentified.

Request To Revise Applicability: Exclude Certain Airplanes

Two operators request that the applicability of the proposed AD be revised to exclude airplanes equipped with single-pitch channels that use radio altimeter-based glideslope gain programming. One commenter reports that most of the affected airplanes in its fleet have been modified to incorporate a dual-pitch computer configuration in accordance with Sperry Service Bulletin 21–1132–121, dated November 23, 1982 (for SP–50 autopilots); or 21–1132–122, dated February 7, 1983 (for SP–150 autopilots). (Those service bulletins were cited in the proposed AD as the appropriate source of service information for the one-time test of the modified autopilot.) This commenter adds that compliance with paragraphs (b) and (c) of the proposed AD would be impossible for those airplanes because the proposed AD and Boeing service bulletin are targeted for airplanes with single-channel autopilot systems. In addition, this commenter states that paragraph (a) of the proposed AD imposes an undesirable restriction on modified airplanes by preventing them from flying category II and category III approaches into airports with inoperative middle markers. This commenter asserts that this restriction is unnecessary for the modified airplanes because their autopilot configurations use radio altimeter glideslope gain programming (radio altitude-based desensitization), and are therefore not susceptible to the airworthiness concern associated with inoperative middle markers addressed by the proposed AD. The commenter recommends that the applicability of the proposed AD be revised to exclude those airplanes.

The other commenter notes that affected airplanes with single-pitch channels on which the actions specified in Boeing Service Bulletin 727–22–0052 have been incorporated do not use the middle marker in gain programming. The commenter concludes that these airplanes should not be prohibited from category II approaches if no middle marker is available.

The FAA agrees. In this case, where the autopilot has already been modified with an FAA-approved design that does not normally use time-based gain programming, the FAA agrees that excluding airplanes equipped with radio altimeter-based autopilots from the applicability of the AD will not compromise the safety of the fleet. The applicability of this AD has been revised accordingly.

Request To Revise Applicability: Clarify Intent

Several commenters request that the applicability of the proposed AD be revised to clarify that the requirements apply only if operators desire to maintain the capability of the autopilot coupled ILS approach. One operator, conducting "Cat I approach only," requests exclusion from the applicability of the AD.

The FAA partially agrees. The intent of the AD is to "prevent dangerous pitch oscillations during coupled (ILS) approaches"; affected operators could comply with the AD simply by never conducting coupled approaches. Although the cited wording does not directly address category I coupled approaches, analysis has shown that, if the unmodified autopilot is used, potentially unsafe pitch oscillation can begin at 400 feet above ground level (AGL), which is well above the typical decision height for category I approaches of 200 feet AGL. As a result, category I and category II coupled approaches would be prohibited for airplanes that have unmodified autopilot gains. However, manually flown approaches using autopilot guidance (glideslope and localizer needle deviations) or flight director guidance would be permitted. Because the middle marker signal is typically received at 200 feet AGL and because during typical category I coupled approaches the pilot disconnects the autopilot at 200 feet AGL (compared to 100 feet AGL, which is typical for category II approaches), no AFM restriction for category I approaches is discussed in the AD even though modification of the autopilot is required if it is used for any coupled approach. The AFM language has been further revised in paragraph (a) of this final rule to clarify that the autopilot must be modified if any coupled ILS approach is conducted. To more clearly identify those airplanes affected by this requirement, new paragraph (e) has been added to the final rule to require modification of the autopilot unit only if autopilot coupled ILS approaches are to be used with that airplane. Subsequent paragraphs that appeared in the proposed AD have been reidentified in the final rule.

Request To Revise Applicability: Add Certain Airplanes

The applicability of the proposed AD includes only those Model 727–100 and –200 series airplanes that are listed in Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000. One operator reports that some of its airplanes are not listed in the service bulletin but are equipped with SP–50 and/or SP–150 autopilots. The FAA infers that the commenter is requesting that the applicability of the proposed AD be expanded to include any Model 727–100 and –200 series airplane equipped with a subject autopilot.

The FAA does not agree. Not all Model 727–100 or –200 series airplanes with the subject autopilots are susceptible to the unsafe condition identified by this AD. For example, airplanes delivered after November 1977 are not susceptible because they use radio altimeter gain scheduling for the SP–150 autopilots instead of the time-based gain scheduling discussed in the proposed AD. No change to the applicability of the final rule is necessary in this regard.

Request for Clarification of Test

Two commenters request clarification of the one-time test specified by paragraph (c) of the proposed AD. The commenters state that this requirement, as written, is either redundant or subject to misinterpretation. The Sperry service bulletins, described previously, were cited in the proposed AD: in paragraph (c) for the one-time test procedures and in paragraph (d) for the autopilot modification procedures. (Paragraph (d) has since been removed from the final rule, as discussed previously.) The proposed AD specified that the test be done concurrently with the modification, before reinstallation of the modified autopilot, and before further flight. The commenters suggest that the wording of the proposed AD could cause operators to perform unnecessary rework. The commenters suggest that the proposed test requirement be a one-time test of the autopilot unit, because "the timing in relation to the modification is immaterial."

One operator requests that the proposed test requirement be revised to distinguish the requirements associated with the autopilot from those associated with the airplane. This commenter suggests that paragraph (c) of the proposed AD be revised to read as follows: "Following any * * * modification, perform a one-time test procedure of the modified autopilot." The wording in the proposed AD suggests that two tests are to be done at the same time. The commenter requests this change to clarify the requirements and to avoid unnecessary rework.

The FAA partially agrees. The requirements regarding the autopilot test may be redundant because the Sperry service bulletins already specify testing the unit using test information provided in those service bulletins. However, those same service bulletins note that, "Test information given in this bulletin shall be disregarded when revised Component Maintenance Manuals become available." This note may be misinterpreted to mean the test is not required, so the FAA finds it necessary to clarify the test requirement. The FAA has learned that many operators have already accomplished the modifications and post-modification testing specified in the proposed AD. Therefore, paragraph (c) of the final rule has been revised to clarify this requirement.

Request To Allow Alternative Testing Methods

One operator asserts that a variety of effective methods have been used to verify the new time constants described in the Sperry service bulletins for the test. The commenter suggests that the methods of compliance for paragraph (c) of the proposed AD be broadened to allow the option of "other valid methods." The commenter reports that some of its autopilot units were modified and tested in-house in accordance with established test procedures described in the component maintenance manual. The commenter adds that other autopilot units were purchased already modified in accordance with the procedures described in the Sperry service bulletins. The commenter suggests this change to avoid unnecessary retesting of autopilot units for which the use of the new time constants has already been confirmed.

The FAA agrees with the request for the reasons stated by the commenter. Paragraph (c) of the final rule has been further revised to provide operators this testing option.

Request To Revise Requirements for Spare Parts

One operator requests that paragraph (e) of the proposed AD be either removed from the AD or revised to extend the time allowed for spares modifications and AFM revisions. This commenter asserts that a minimum of 6 months will be necessary to modify spare parts and revise the AFM.

The FAA partially agrees. The FAA finds that the AFM limitations imposed by this AD will sufficiently ensure safety of an affected airplane until spare parts can be acquired and modified; therefore, allowing additional time to modify spare parts will not compromise safety. However, the FAA does not agree that it is necessary to extend the time by which the AFM revisions must be completed. The basic intent of an AFM revision may be accomplished by inserting a copy of the AD into the AFM; operators should be able to complete this action in a short time. Paragraph (f) of the final rule (paragraph (e) in the proposed AD) has been revised to extend the time by which the installation of unmodified spare parts will be prohibited.

Request To Revise Cost Estimate

Two operators request a revision of the proposed cost estimates. One operator notes that the proposed AD does not address the costs associated with obtaining a master change from Boeing to eliminate the need for a middle marker to begin second-stage gain programming. One operator notes that the proposed AD does not address the costs associated with airplane diversions that would result if category II approaches are prohibited at airports without middle markers.

The FAA partially agrees. Since category II approaches are prohibited at airports that do not have middle markers, an operator may elect to fly category I or manual approaches, divert to another airport, or modify the autopilot to operate with radio-altimeter-based gain schedule with control law that does not depend on the middle marker signal. However, the middle marker signal has always been and remains a necessary part of the autopilot that is programmed with a time-based gain schedule. This AD in part is intended to ensure the safe operation of an airplane—within the original autopilot design constraints associated with use of middle markers—by way of operational requirements. No change to the final rule is necessary in this regard.

Request To Revise Parts Cost Estimate

One operator asserts that the parts cost to modify each SP–150 autopilot is $641—not $168 as stated in the proposed AD.

According to updated information provided by Boeing to the FAA, the parts cost is $522 for the SP–50 autopilot and $620 for the SP–150 autopilot. The Cost Impact section of the final rule has been revised accordingly.

Request To Reactivate Middle Markers

The proposed AFM revision requirement would prohibit a category II autopilot coupled ILS approach when the middle marker is inoperative. One operator suggests that the FAA reactivate middle markers as an alternative to the AFM revision requirement. The commenter claims that the FAA has deactivated ground-based middle marker beacons, and some operators have maintained their airborne marker beacon systems.

The FAA does not agree with the request. The use of the middle marker is an original design feature of the subject autopilots. If the middle marker is inoperative or nonexistent, these autopilots—which are time-based—will not work properly. The FAA has approved autopilots that do not rely on marker beacons. Furthermore, the FAA currently is not considering reactivating the marker beacon system due to the International Civil Aviation Organization's September 1984 revision to Annex 10, which expanded the use of ILS/distance measuring equipment (DME) as a substitute for all or part of the marker beacon system. No change to the final rule is necessary in this regard.

Request To Revise Cause of Unsafe Condition

Boeing requests a change to the second sentence of the Discussion section of the proposed AD. Specifically, this commenter requests that the revised sentence read as follows: "The approach was normal until the airplane passed through 200 feet above ground level, where the airplane, responding to a [glideslope] beam anomaly, started a pitch oscillation that continued to increase." The FAA infers that the commenter is suggesting that the glideslope beam anomaly contributes to the pitch oscillation problem.

The FAA does not agree with the request, but agrees that the glideslope beam anomaly can contribute to the pitch oscillation problem, and may have been a contributing factor to the accident described in the proposed AD. However, there were no indications that a glideslope anomaly contributed directly to the accident. Numerous runway 14R records dating from a time prior to the accident indicate no glideslope deviations or other ILS-related problems. The results of normal and special flight checks of the ILS were also within normal limits. Furthermore, results of simulator testing using typical glideslope profiles have indicated that

the autopilot with the 150-second desensitization period responded to the disturbances (induced turbulence and vertical wind gusts) by commanding oscillatory pitch changes or changes in pitch that are oscillatory in nature, which increased over time and resulted in significant deviations from the desired flight path. No change to the final rule is necessary in this regard.

Request To Expand AFM Requirements

Boeing suggests that the proposed AFM revisions include additional indicators for approach performance, such as flightcrew monitoring for allowable ILS deviations and horizontal stabilizer activity that indicate an out-of-trim nonstabilized approach. The commenter provides no justification for this request.

In consideration of the amount of time that has already elapsed since the issuance of the original notice, the FAA has determined that further delay of this final rule is not appropriate. However, if additional data are presented that would justify revising the requirements of this AD, the FAA may consider further rulemaking to require AFM revisions that would include the specific requested performance indicators. No change to the final rule is necessary in this regard.

Request To Revise Special Flight Permit Specifications

Boeing requests that, instead of issuing a special flight permit to allow operation of the airplane to a location where the requirements of the AD can be accomplished, the FAA impose operational restrictions on autopilot coupled ILS approaches for that flight.

The FAA partially concurs. The FAA finds that such operational restrictions are acceptable but not necessary in this case because another method is available to operate the airplane; *i.e.*, the airplane can be manually operated during approaches. No change to the final rule regarding this issue is necessary.

Request To Clarify Airplanes Affected by Certain Requirements

One operator requests that paragraph (e) ("Spare Parts") of the proposed AD be revised to more clearly identify those airplanes that would be affected by that proposed requirement. The commenter suggests that the term "any airplane," as it is used in that paragraph, be clarified to explain that not all Model 727–100 and -200 series airplanes are subject to this requirement.

The FAA agrees that not all existing Model 727–100 and -200 series airplanes are subject to the identified unsafe condition; however, the FAA does not agree that revision of this paragraph is necessary. As stated earlier, the applicability of the final rule has been revised to exclude airplanes equipped with radio altimeter-based autopilots. Any qualifier (including "any" and "all") used to identify airplanes subject to a particular requirement of an AD is relative to the overall applicability of the AD.

Request To Revise Description of the Unsafe Condition

Boeing requests a revision of one sentence in the third paragraph of the Discussion section of the proposed AD. That sentence reads as follows:

> Because glideslope deviations close to the runway require smaller pitch corrections than those required far from the runway, the autopilot sensitivity has to be reduced as the airplane nears the runway.

The commenter requests that the sentence be replaced with the following:

> The autopilot sensitivity has to be reduced as the airplane nears the runway because the glideslope beam converges as the distance to the glideslope transmitter is decreased (and the same vertical displacement from the beam centerline results in a larger glideslope deviation signal).

This commenter provides no justification for this requested change.

The FAA does not agree with this request. Although the requested language is technically correct, the FAA finds that the simpler explanation in the Discussion section of the proposed AD is adequate to explain the conditions that require autopilot sensitivity changes. No change to the final rule is necessary in this regard.

Request To Revise Description of Accident Cause

Boeing requests a change to one sentence of the final paragraph of the Discussion section of the proposed AD. That sentence reads as follows:

> Based on the NTSB's studies and FAA findings, the improper desensitization schedule is considered a contributing factor in the destabilized approach of the accident flight and in the reported pitch event that occurred in 1997.

This commenter requests that the word "improper" be changed to "150-second."

The FAA partially concurs. The requested wording is specific; however, the Discussion section is not repeated in a final rule, so no change is necessary in this regard.

Explanation of Additional Changes to AFM

Some minor additional changes have been made to paragraph (a) of this final rule. First, the prohibition of coupled ILS approaches, specified in the proposed AD only for "inoperative" middle markers, has been changed in this final rule to "inoperative or nonexistent" middle markers. Second, the second sentence of the revised AFM language has been changed from "* * * during Cat II autopilot coupled ILS approaches" to "* * * during coupled ILS CAT II approaches."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 750 airplanes of the affected design in the worldwide fleet. The FAA estimates that 162 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to revise the AFM, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the required AFM revisions on U.S. operators is estimated to be $9,720, or $60 per airplane.

It will take approximately 1 work hour per airplane to modify and test the SP–50 autopilot and 2 work hours per airplane to modify and test the SP–150 autopilot. Required parts will cost approximately $522 for the SP–50 autopilot and $620 for the SP–150 autopilot. Based on these figures, the cost impact of the modification and test is estimated to be $582 (SP–50) or $740 (SP–150) per airplane.

The overall cost to the affected fleet could range from $104,004 to $301,320.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–11–19 Boeing: Amendment 39–13178. Docket 2001–NM–41–AD.

Applicability: Model 727–100 and 727–200 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000; excluding airplanes equipped with radio altimeter-based autopilots.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undesirable and potentially dangerous pitch oscillations during coupled instrument landing system (ILS) approaches, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) For any airplane on which autopilot coupled ILS approaches with time-based glideslope gain programming are used: Within 6 months after the effective date of this AD, revise the Limitations Section, under AUTOPILOT/FLIGHT DIRECTOR SYSTEM, of the FAA-approved AFM by adding the following (this may be accomplished by inserting a copy of this AD into the AFM):

"Coupled ILS approaches are prohibited unless the autopilot has been modified in accordance with AD 2003–11–19, amendment 39–13178.

CAT II autopilot coupled ILS approach shall not be performed if the Middle Marker (ground or airborne system) is inoperative or nonexistent.

Disconnect the autopilot at, or prior to, 80 ft. (above the runway's touchdown-zone elevation) during coupled ILS CAT II approaches."

Modification and Testing of Autopilot

(b) Except as provided by paragraph (d) of this AD: Within 18 months after the effective date of this AD, modify the existing SP–50 or SP–150 single-channel autopilot in accordance with Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000.

(c) Except as provided by paragraphs (d) and (e) of this AD: After modification of the autopilot unit required by paragraph (b) of this AD, and before reinstallation of the modified autopilot and further flight, perform a one-time test procedure of the modified autopilot, in accordance with Sperry Service Bulletin 21–1132–121, dated November 23, 1982 (for SP–50 autopilots); or 21–1132–122, dated February 7, 1983 (for SP–150 autopilots); as applicable. Testing done before the effective date of this AD in accordance with Component Maintenance Manual (CMM) test procedures is also acceptable, provided that the procedures implement all the CMM changes and test steps described in the applicable Sperry service bulletin. For autopilot units manufactured with the actions of the applicable Sperry service bulletin already incorporated, testing is not required.

Exempt Conditions

(d) For airplanes with autopilots already modified prior to the effective date of this AD in accordance with Sperry Service Bulletin 21–1132–121 or 21–1132–122: Only the AFM limitation specified in paragraph (a) of this AD is required.

(e) For any airplane on which coupled approaches are not used: Only the AFM limitation specified in paragraph (a) of this AD is required, provided a flight deck placard is installed that states, "Autopilot coupled ILS approach prohibited" or equivalent, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. However, for any airplane placed into service that uses autopilot coupled ILS approaches, the requirements of this AD must be accomplished before the first flight when a coupled approach is used.

Part Installation

(f) As of 6 months after the effective date of this AD, no person may install on any airplane an autopilot pitch control computer unless it has been modified in accordance with this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations or Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Alert Service Bulletin 727–22A0093, dated December 20, 2000; Sperry Service Bulletin 21–1132–121, dated November 23, 1982; and Sperry Service Bulletin 21–1132–122, dated February 7, 1983; as applicable. Only the first page of Sperry Service Bulletins 21–1132–121 and 21–1132–122 contain the document number; no other page of the documents contain this information. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on July 16, 2003.

Issued in Renton, Washington, on May 28, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13976 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–13–AD; Amendment 39–13180; AD 2003–11–21]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332 C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332 C, L, and L1 helicopters. This action requires revising the Rotorcraft Flight Manual (RFM) Limitations section if certain fuel control units are installed. This AD is prompted by the discovery of an anomaly in certain fuel control units that may lead to inadequate fuel flow in single-engine flight. This condition, if not corrected, could result in failure of the engine to develop the maximum 2½ minute one engine inoperative (OEI) power, reduced helicopter performance, and subsequent loss of control of the helicopter during OEI operation.

DATES: Effective June 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 2003.

Comments for inclusion in the Rules Docket must be received on or before August 11, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332 C, L, and L1 helicopters, with Turbomeca Makila 1A and Makila 1A1 engines installed with fuel control unit (FCU), part number (P/N) 0 164 16 820 0 or P/N 0 164 16 835 0, having serial numbers (S/N) 100M through 525M, except for fuel control units with S/N 168M, 323M, 369M, 371M, 378M, 382M, 396M, 407M, 422M, 445M, 449M, 460M, 469M, 472M, 479M, 488M, 499M, 513M, 518M, 523M, or FCUs that have incorporated Turbomeca Service Bulletin No. 298 73 0802, dated September 17, 2002. The DGAC advises that their AD was issued following the discovery of an anomaly affecting the maximum fuel flow limit adjustment on some Makila 1A and 1A1 engines. This anomaly leads to a fuel flow reduction outside the tolerance limits and can have an effect on single-engine flight performance.

Eurocopter has issued Alert Telex No. 73.00.01, dated October 2, 2002, which specifies a weight limitation for takeoff from helipads; a weight limitation in hover flight; and a rate of climb limit in certain portions of the approved flight envelope. The DGAC classified this alert telex as mandatory and issued AD 2002–551(A), dated November 13, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent failure of the engine to develop the maximum 2½ minute OEI power, reduced helicopter performance, and subsequent loss of control of the helicopter during OEI operation. This AD requires revising the RFM Limitations section in certain conditions if certain FCUs are installed. The actions must be done in accordance with the alert telex described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the power available for single engine operations of the helicopter. Therefore, revising the RFM for certain helicopters is required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 4 helicopters and determining the applicability of this AD will take approximately 1 work hour at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators will be $240, assuming no affected FCUs will be discovered.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–13–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–11–21 Eurocopter France: Amendment 39–13180. Docket No. 2003–SW–13–AD.

Applicability: AS332 C, L, and L1 helicopters, certificated in any category, with Turbomecca Makila 1A or Makila 1A1 engines installed with fuel control unit (FCU), part number (P/N) 0 164 16 820 0 or P/N 0 164 16 835 0, having serial numbers (S/N) 100 through 525, with a suffix of "M", except:

(1) FCUs with S/N 168M, 323M, 369M, 371M, 378M, 382M, 396M, 407M, 422M, 445M, 449M, 460M, 469M, 472M, 479M, 488M, 499M, 513M, 518M, 523M; or

(2) FCUs that have been tested and found to provide the correct fuel flow rate in accordance with Turbomeca Service Bulletin No. 298 73 0802, dated September 17, 2002.

Compliance: Before further flight, unless accomplished previously.

To account for the inability of the engine to develop the maximum 2½ minute one engine inoperative (OEI) power, reduced helicopter performance, and subsequent loss of control of the helicopter during OEI operation, accomplish the following:

(a) Revise the Limitations section of the Rotorcraft Flight Manual in accordance with the Accomplishment Instructions, paragraph 2.A. of Eurocopter France Alert Telex No. 73.00.01, dated October 2, 2002.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations Group, Rotorcraft Directorate, FAA for information about previously approved alternative methods of compliance.

(c) Special flight permits will not be issued.

(d) The Rotorcraft Flight Manual revision shall be done in accordance with Eurocopter France Alert Telex No. 73.00.01, dated October 2, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 26, 2003.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–551(A), dated November 13, 2002.

Issued in Fort Worth, Texas, on May 27, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–14135 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–394–AD; Amendment 39–13185; AD 2003–11–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing transport category airplanes listed above. This AD requires an initial inspection to identify all H–11 steel bolts on the outer chord of the body station (BS) 2360 aft pressure bulkhead between stringers 12L and 12R, follow-on repetitive inspections to identify all remaining H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead, and follow-on and corrective actions if necessary. This AD also requires eventual replacement of all H–11 steel bolts with Inconel bolts. This action is necessary to prevent broken bolts, which could result in progressive failure of the remaining bolts and consequent structural damage, rapid depressurization, and loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 16, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on September 25, 2002 (67 FR 60189). That action proposed to require an initial inspection to identify all H–11 steel bolts on the outer chord of the body station (BS) 2360 aft pressure bulkhead between stringers 12L and 12R, follow-on repetitive inspections to identify all remaining H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead, and follow-on and corrective actions if necessary. That action also proposed to require eventual replacement of all H–11 steel bolts with Inconel bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has given due consideration to the comments received.

Request to Revise Statement of Unsafe Condition

One commenter requests that the FAA revise the unsafe condition in the proposed AD, which states that the consequences of not finding broken H–11 steel bolts is progressive failure of the remaining bolts and consequent structural damage and rapid depressurization of the airplane. The commenter notes that, while these are effects of progressive bolt failure, it is more significant that such failure could result in loss of control of the airplane. We concur and have revised the statement of unsafe condition throughout this final rule.

Request to Clarify Subject of Repetitive Inspections

One commenter requests that we revise paragraph (c) of the proposed AD to clarify that the repeat inspections in that paragraph apply only to the remaining H–11 steel bolts (that is, the H–11 steel bolts that have not been replaced with Inconel bolts). We concur that the repetitive ultrasonic inspections and torque checks for cracked or broken bolts are necessary only for the remaining H–11 steel bolts. We have clarified paragraph (c) of this final rule accordingly.

Request to Revise Instructions in Paragraph (d) of Proposed AD

One commenter requests that we revise the instructions in paragraph (d) of the proposed AD to remove the instruction to coat the Inconel bolt with corrosion-inhibiting compound after installation. The commenter states that the instructions for applying corrosion protection on the replacement Inconel bolt that are stated in paragraph (d) of the proposed AD are incomplete and suggests alternative instructions. The commenter recommends that paragraph (d) refer to Figure 4 of the service bulletin.

We do not agree that any change is necessary. Paragraph (d) of this AD requires replacing all subject H–11 steel bolts per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. When we refer to a service bulletin in this way in an AD, operators are required to follow all procedures in the service bulletin, including the instructions for corrosion prevention that are specified in Figure 4 of the service bulletin. (We note that the Accomplishment Instructions of the service bulletin refer to Figure 4 of the service bulletin for replacement procedures.) No change to the final rule is needed in this regard.

Request to Require Inspection or Replacement of Adjacent H–11 Steel Bolts

One commenter requests that we consider requiring operators to inspect or replace an H–11 steel bolt (including reworking the bolt hole) found on either side of a cracked H–11 steel bolt during the initial inspection. The commenter states that such a requirement should not add significant downtime and will better ensure safety.

We do not agree that any change is necessary. This AD requires inspecting all H–11 steel bolts in the subject area, which would include H–11 bolts adjacent to cracked or broken bolts. While an operator has the option of immediately replacing any H–11 steel bolt that is adjacent to a cracked or broken bolt, we find that performing repetitive inspections of remaining H–11 steel bolts will provide an acceptable level of safety until all H–11 steel bolts are replaced as required by paragraph (d) of this AD. (Such replacement is required within 6 years after the effective date of the AD.) No change to the final rule is needed in this regard.

Clarification of Applicability

We have revised the applicability statement of this AD to clarify that Boeing Model 747–400, –400D, and –400F series airplanes are not affected by this AD. The airplanes with line numbers 1 through 644 inclusive are Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 487 airplanes of the affected design in the worldwide fleet. The FAA estimates that 165 airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per airplane to accomplish the required initial inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the initial inspection on U.S. operators is estimated to be $89,100, or $540 per airplane.

It will take approximately 35 work hours per airplane to accomplish the required follow-on inspection to identify all remaining H–11 steel bolts on the entire outer chord, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the follow-on inspection on U.S. operators is estimated to be $346,500, or $2,100 per airplane, per inspection cycle.

Should an operator be required to replace the H–11 steel bolts, it will take approximately 108 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,233 per airplane. Based on these figures, the cost impact is estimated to be $9,713 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–11–25 Boeing: Amendment 39–13185. Docket 2001–NM–394–AD.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes; line numbers 1 through 644 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken H–11 steel bolts, which could result in progressive failure of the remaining bolts and consequent structural damage, rapid depressurization, and loss of control of the airplane, accomplish the following:

Initial Inspection

(a) Within 18 months after the effective date of this AD: Do a detailed inspection to identify all H–11 steel bolts on the outer chord of the body station (BS) 2360 aft pressure bulkhead between stringers 12L and 12R. Do the inspection by checking the bolt part number stamped on the bolt head, or verifying the bolt is steel by using a magnet, per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. If no H–11 steel bolt is found, no further action is required by this paragraph. If any H–11 steel bolt is found, do the requirements specified in paragraph (c) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-On Inspections/Corrective Actions

(b) Within 18 months after doing the inspection required by paragraph (a) of this AD, or within 18 months after the effective date of this AD, whichever is later: Do a detailed inspection to identify all remaining H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead, per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. If no H–11 steel bolt is found, no further action is required by this paragraph. If any H–11 steel bolt is found, do the requirements specified in paragraph (c) of this AD.

(c) For any H–11 steel bolt found during any inspection required by paragraph (a) or (b) of this AD: Before further flight, do either an ultrasonic inspection or a torque check for cracked or broken bolts, or replace the H–11 steel bolt with an Inconel bolt per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. Replace any cracked or broken bolt with an Inconel bolt before further flight per the service bulletin. Then repeat the inspection of the remaining H–11 steel bolts at intervals not to exceed 18 months until the terminating action required by paragraph (d) of this AD is done.

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace all H–11 steel bolts on the entire outer chord of the BS 2360 aft pressure bulkhead with Inconel bolts (including visually inspecting the bolt hole for corrosion, oversizing the hole up to 1/32 inch to remove any corrosion, and, after installing an Inconel bolt, coating the bolt with corrosion inhibitor compound), per Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. When this paragraph is done, the requirements of this AD are terminated.

Exceptions to Service Information

(e) Where Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Spares

(f) As of the effective date of this AD: No person shall install an H–11 steel bolt on the outer chord of the BS 2360 aft pressure bulkhead on any airplane.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise provided by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2474, dated October 25, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on July 16, 2003.

Issued in Renton, Washington, on May 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14274 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB93

Account Identification for Eligible Bunched Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending Commission Rule 1.35(a–1)(5) ("Rule 1.35(a–1)"), which allows certain account managers to bunch customer orders for execution and to allocate them to individual accounts at the end of the day. The amended rule will expand the availability of bunching to all customers, simplify the process and clarify the respective responsibilities of account managers and futures commission merchants ("FCMs").

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or R. Trabue Bland, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430. Email: *lpatent@cftc.gov.* or *tbland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 1.35(a–1), in effect since August 27, 1998 has allowed bunched orders for eligible customers to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution. Rule 1.35(a–1) has limited post-execution allocation of bunched orders to sophisticated customers and required eligible account managers [1] to make certain disclosures regarding the allocation methodology, the standard of fairness of allocations, composite or summary data of the trades, and whether the account manager has any interest in the bunched order.

In December 2000, the Commodity Futures Modernization Act ("CFMA") was enacted. One of the mandates of the CFMA was for the Commission to review its rules relating to intermediaries with an eye to identifying areas where greater flexibility might be warranted. Since the enactment of the CFMA, numerous industry participants have stated to Commission staff that the regulations related to bunched orders needed to be revisited for a number of reasons and the Commission so reported to Congress in its Intermediaries Study in June 2002.

For example, enhancements in technology have made it easier for account managers to enter orders directly, thereby making certain aspects of the current requirements less workable. In addition, many account managers use "give-up" agreements and multiple FCMs for clearing and execution. Thus, while the current rule requires that an account manager identify eligible customer accounts to which fills will be allocated before placing an order eligible for post-execution allocation, FCMs may not know that an order has been executed for a particular client until that order has been executed and cleared.[2] Account managers and FCMs have also commented that their responsibilities under the current rule are unclear, especially their respective recordkeeping responsibilities. Therefore, as markets become more global in scope, account managers, both domestic and foreign, and FCMs have claimed that the current bunched order requirements serve as a disincentive to using U.S. futures markets.

On February 2, 2001, the National Futures Association ("NFA") and the Futures Industry Institute issued an industry-wide study of issues associated with order transmission and order entry process by commodity professionals ("Best Practices Study").[3] The study reported that, although the current rule increased flexibility over previously applicable requirements, many commenters in the study felt that the current rule caused "unnecessary processing delays without adding customer protections that otherwise could be realized through equally effective, less costly procedures."[4]

Based upon the foregoing, on March 14, 2003, the Commission published the proposed amendments to Rule 1.35(a–1).[5] The Commission received twenty-five comments on the proposed rule. The commenters included ten FCMs[6], four exchanges[7], two industry associations[8], one commodity trading advisor ("CTA")[9], seven individuals[10] and NFA. The FCMs, exchanges, industry associations, NFA and the CTA supported the amendments to the rule, generally stating that the essential customer protections would be retained while clarifying the responsibilities of FCMs and account managers. Six individuals submitted comments expressing concern over the possible unfair allocation by account managers. One commenter submitted comments expressing concern over the Commission's ability to monitor for unfair allocation under the amended rule. These comments are discussed fully below.

II. Final Rules

A. Eligible Customers

The current rule limits the post-execution allocation of bunched orders to "eligible customers," who, in essence, are sophisticated customers. In its comment, NFA noted that "[a]ll customers deserve to have their orders filled efficiently and at the most favorable terms under the circumstances." The NFA and other commenters expressed the view that bunched orders can meet these objectives because bunched orders can provide better pricing and execution of orders. The Commission agrees; accordingly, as proposed, the amendments to Rule 1.35(a–1)(5) will expand eligibility to all customers who provide written investment discretion to account managers.[11]

In the proposal, the Commission requested comment on whether it should retain an interpretive notice currently found at Appendix C to Part 1.[12] Appendix C allows CTAs to bunch orders if they prefile their allocation procedures with a clearing member, NFA, or an exchange. As the Commission noted in the proposal, Appendix C may prove unnecessary given the amended rule. One commenter, FIA, stated that the Commission should make clear that the amended rule supercedes any NFA interpretive notices or Commission rules to the extent they are inconsistent. The Commission notes that Appendix C governs the allocation of bunched orders pursuant to a pre-filed or contemporaneously-filed allocation scheme as opposed to the amended Rule, which governs the post-execution allocation of bunched orders. However, if any conflict between the two rules arises, the standards set forth in this rule supercede any interpretive guidance on bunched orders issued by the Commission. The Commission will retain Appendix C as guidance to account managers who may wish to allocate orders under the circumstances described therein and as an example of permissible allocation methods, but may reconsider this issue in the future.

B. Eligible Account Managers

Current rule 1.35(a–1) includes as eligible account managers registered CTAs and Investment Advisers ("IAs"), banks, insurance companies, trust companies, and savings and loan associations. Rule 1.35(a–1), as amended, expands the class of account managers permitted to bunch orders.[13] Generally, the Commission and the Securities and Exchange Commission exempt certain CTAs and IAs from registration or other regulatory requirements if they exclusively service certain sophisticated customers.[14] The Commission believes that post-execution allocation should be expanded to these entities. The amended rule expands the list of eligible account managers to include CTAs and IAs who are exempt from registration, or are excluded from the definition of CTA or IA by operation of law or rule. In addition, the amended rule allows foreign advisors, who exercise discretionary trading authority over the accounts of non-United States persons, to be eligible account managers regardless of whether the foreign advisor has been granted an exemption pursuant to Rule 30.10.[15]

As noted in the proposal, the amended rule does not apply to associated persons or introducing brokers exempt from Commission registration as CTAs pursuant to Rule 4.14(a)(3) and (6).[16] As also noted in the proposed rule, the Commission will retain antifraud and antimanipulation authority over account managers who are exempt from registration. The Commission notes that foreign advisers would be foreign brokers or foreign traders subject to Commission Rule 15.05, which makes the FCMs through which foreign advisers make or cause to be made trades the agents of the foreign advisers for purposes of communications from the Commission.[17]

C. Information

The Commission has converted the disclosure requirement of Rule 1.35(a–1) to an information availability requirement. Under the amended rule, account managers are required to make the following information available to customers upon request: (1) The general nature of the allocation methodology the account manager uses; and (2) summary or composite data sufficient for that customer to compare its results with those of other relevant customers and, if applicable, any account in which the account manager has an interest. In addition, the Commission has added a requirement that account managers make available information on whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation.[18]

One commenter, John Henry & Company, suggested that the amended rule clarify the definition of "results" to include only the result of executions and allocations as opposed to a broader measure such as account performance results. The Commission agrees. Therefore, under the amended Rule 1.35(a–1), account managers must only make available the results of executions and allocations to comply with Rule 1.35(a–1)(5)(ii)(C).

D. Allocation

The amended rule clarifies the allocation procedures for post-execution allocation of bunched orders. In particular, the rule makes clear that the Commission will examine allocation fairness over time, rather than trade-by-trade.

The amended rule requires that account managers observe three requirements when allocating post-execution. First, pursuant to Rule 1.35(a–1)(5)(iii)(A), allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment. Second, to determine whether the account manager is allocating fills fairly, the amended rule mandates that account managers use an allocation methodology sufficiently objective and specific to permit independent verification of the fairness of the allocation.[19] The final rule permits the account manager to exercise discretion over the allocation methodology, recognizing that allocation strategies may need to vary in order to treat all customers fairly. However, the Commission must be able to reconstruct the allocation methodology sufficiently to verify that the account manager is acting without bias.

One commenter, Paul H. Bjarnason, Jr., expressed concern that the amended rule may allow biased allocations by unscrupulous account managers. To combat biased allocations, Mr. Bjarnason recommended that the amended rule define allocation bias and require measurement of it with an

---

[1] The term account manager as used herein includes commodity trading advisors, investment advisers and other persons identified in the revised regulation, who would place orders and direct the allocation in accordance with the procedures set forth in the revised rule.

[2] 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

[3] National Futures Association & Futures Industry Institute, Recommendations for Best Practices in Order Entry and Transmission of Exchange Traded Futures and Options Transactions (2001).

[4] *Id.* at 25.

[5] 68 FR 12319 (March 14, 2003).

[6] ABN AMRO, Inc., Bear Stearns & Co., Carr Futures, Inc., Credit Suisse First Boston, Fimat USA, Inc., Goldman Sachs & Co., J.P. Morgan Futures Inc., Lehman Brothers, Morgan Stanley & Co., and Prudential Securities Inc.

[7] The New York Board of Trade, Chicago Board of Trade, Chicago Mercantile Exchange, and the New York Mercantile Exchange.

[8] Futures Industry Association ("FIA") and the Managed Funds Association ("MFA").

[9] John Henry & Company, Inc.

[10] One commenter, Paul H. Bjarnason, Jr., is a former Commission employee. Six other individual commenters submitted identical letters.

[11] Rule 1.35(a–1)(5) and NFA Compliance Rule 2–8(a), require that grants of discretionary authority to account controllers be in writing.

[12] 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997).

[13] In the proposal, the Commission requested comment on whether it was appropriate to expand the list of eligible account managers. All comments received on this issue supported the expansion of eligible account managers.

[14] Another Commission rule proposal would expand the number of entities that are exempt from CTA registration. See, 68 FR 12622 (March 17, 2003).

[15] 17 CFR 30.10 (2002). Rule 30.10 permits any person to petition for an exemption from certain of the Commission's Part 30 rules, which govern foreign futures and option trading by persons located in the United States. Commission orders issued pursuant to Rule 30.10 permit firms, among other things, to solicit and accept orders for foreign futures and option contracts from United States customers without registering under the Commodity Exchange Act, based upon substituted compliance with the rules and regulations of the jurisdiction in which the firm is located.

[16] 17 CFR 4.14(a)(3) (2002), 17 CFR 4.14(a)(6) (2002).

[17] See 17 CFR 15.00(e) and 17 CFR 15.05 (2002).

[18] In the proposal, the Commission requested comment on whether the information availability requirement was sufficient to inform customers. All comments received on this issue supported the information availability requirement.

[19] Appendix C of Part 1 contains examples of allocation methods. See, 17 CFR Part 1, Appendix C (2002), 62 FR 25470 (May 8, 1997). As noted in Appendix C, "the appropriateness of any particular method for allocating split and partial fills depends on the CTA's overall trading approach. For example, a daily rotation of accounts may satisfy the general standards for CTAs who trade on a daily basis but inappropriate for CTAs who trade less frequently."

appropriate accounting system. In addition, Mr. Bjarnason suggested that the amended rule require account managers to track for bias in their trade allocations.

As noted above, the Commission mandates that allocations be fair and equitable. The Commission agrees that account managers should diligently monitor for bias in their trade allocations and notes that NFA, in its interpretive notices, provides guidance on the type of allocation methodologies designed to provide non-preferential treatment.[20] In its comment letter, NFA notes that it will amend its interpretive notices regarding bunched orders, but will retain the requirement that CTAs use an allocation methodology designed to provide non-preferential treatment for all accounts.[21] Thus, given that NFA will be retaining this requirement, the Commission believes that it is unnecessary to modify the rule to define allocation bias further.

The third requirement that account managers must observe under the amended rule is to provide information to FCMs no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. FIA, in its comment, noted a discrepancy in the proposing release. FIA noted that the preamble to the proposed rule stated that account managers must provide allocation information to FCMs in a time sufficiently before the end of the "trading session," although the proposed rule text stated that account managers must provide allocation information sufficiently before the end of the "trading day." In response, the Commission wishes to make clear that account managers must provide allocation information to FCMs before the end of the trading day during which the order is executed.

As noted above, the amended rule clarifies the respective responsibilities of account managers and FCMs.[22] Account managers are responsible for the allocation of bunched orders, not FCMs. Comments submitted by FCMs stated that the proposed amendments accurately reflect today's increasing use of electronic order entry systems. As Goldman Sachs noted in its comment, "[t]he wide use of give-up arrangements means that an account manager's transactions on behalf of its clients frequently are executed through one FCM and later cleared through several different FCMs * * *. An FCM, therefore may have no reason to know that an order has been executed for a client's account until the transaction has been executed and cleared."

All FCMs will continue to have responsibility to monitor for unusual account activity. As noted in the proposed release, an interpretive notice accompanying NFA Compliance Rule 2–10, states that "[t]he FCM has certain basic duties to its customers, including the duty to supervise its own activities in a way designed to ensure that it treats its customers fairly. Specifically, an FCM would violate this duty if it has actual or constructive notice that allocations for its customers may be fraudulent and fails to take appropriate action. An FCM with such notice must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities."[23]

Under the amended rule, account managers have a responsibility to allocate trades fairly and equitably and FCMs must monitor account managers for unusual account activity. Paul H. Bjarnason, Jr., in his comment, expressed concern that, although account managers and FCMs have a duty to ensure that customers receive fair treatment, the amended rule may not prescribe sufficient oversight of allocations. Mr. Bjarnason suggests that account managers submit allocation reports to NFA and that NFA provide adequate audits of trade allocations. In response, as explained below, the Commission will require that account managers keep records sufficient to demonstrate that all allocations are fair and equitable and that the allocation methodology used by the account manager is objective. These records will be available to the Commission and other appropriate regulatory agencies. Customers will also have access to this information as well. In addition, the Commission notes that NFA schedules CTA audits using a risk-based auditing system that incorporates a regular auditing cycle. In its comment, NFA stated that any complaint involving fraudulent allocations would result in an immediate examination of any account manager registered with the Commission as a CTA. Therefore, given the recordkeeping requirements of the amended rule and NFA oversight, the Commission has determined to adopt the provision as proposed.

E. Records

Amended Rule 1.35(a–1)(5)(vi) requires that account managers keep two types of records. First, account managers must keep records of information maintained pursuant to amended Rule 1.35(a–1)(5)(ii). Second, account managers must make records available that allow independent verification of the fairness of the account manager's allocation methodology as required in Rule 1.35(a–1)(5)(iii). The records kept pursuant to amended Rule 1.35(a–1)(5)(iv) must be made available to any representative of the Commission, the United States Department of Justice, or other appropriate regulatory body.

The amended rule contains a provision to address cases in which account managers fail to provide the Commission with the information requested pursuant to amended Rule 1.35(a–1)(5)(iv)(A) or (B). Specifically, the Commission may prohibit the account manager from submitting orders for execution on designated contract markets and prohibit FCMs from accepting orders from such account managers. Commission action under this provision would not require prior notice and hearing. The failure of an account manager to respond to a request for information under this rule would be sufficient to trigger the prohibition. Any account manager that believes he or she is adversely affected by this process may use the procedures outlined in Rule 21.03(g).[24] Any prohibitions imposed pursuant to this Rule 1.35(a–1)(5)(iv)(D) would be without prejudice to any other remedies the Commission or any other regulatory body may have against the account manager in question for violation of the rule or any other legal requirements.[25]

Two commenters, MFA and John Henry & Company, expressed concern that the proposed information request provision would be too severe. MFA suggested that the standard of failure to provide requested information should be revised to "willful failure to provide" requested information. In the alternative, MFA suggested that the prohibition should be limited to the prohibition of the use of bunched orders, rather than a blanket prohibition of trading on all contract markets. John Henry & Company echoed MFA's concern, suggesting that the standard of failure to provide requested information should be revised to "willful failure to provide."

The Commission recognizes that prohibiting account managers from trading on contract markets would have a serious impact on the account manager and possibly the account manager's customers. The Commission notes that this approach is the same as that in similar provisions in the Act and rules and that the prohibition can only be invoked by the Commission, itself, when it has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B).[26] In addition, account managers will have the opportunity to have a hearing to contest the prohibition.[27] Thus, weighing the impact of this provision on account managers with the interest of protecting customers, the Commission has determined to adopt the provision as proposed, that a failure to answer a Commission request for information will result in a prohibition of trading on all contract markets.

The amended rule also provides that FCMs must retain certain records. Pursuant to amended Rule 1.35(a–1)(5)(iv)(C), FCMs that execute trades for orders eligible for bunching, or that carry accounts to which contracts executed for such orders are allocated, must maintain records that identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.[28]

In order for FCMs to keep records required pursuant to the rule, account managers employing post-execution allocation procedures generally would be expected to forward written allocation instructions to the clearing firm by facsimile, e-mail, or other electronic means. In those instances in which allocation instructions are furnished orally, the FCM must create a written record of the account manager's instructions. In each case, these records will be available to the Commission and other regulatory agencies or self-regulatory organizations.

F. Account Certification and Self Regulatory Organization Rule Enforcement and Audit Procedures

As noted above, the Commission is clarifying the relative responsibilities of FCMs and account managers. Therefore, the amended rule, as proposed, deletes the requirement that account managers send certifications of their compliance with Rule 1.35(a–1) to FCMs. In addition, as the Commission is converting the recordkeeping requirement into an information availability requirement; the amended rule, as proposed, deletes the requirement that self regulatory organizations must adopt procedures to determine compliance with the previous rule's recordkeeping requirements.

III. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets[29], futures commission merchants[30], registered commodity pool operators[31] and large traders[32] are not "small entities" for purposes of the Regulatory Flexibility Act. Although the Commission did not receive any comments on the impact of the amended rule on "small entities," some account managers may be considered "small entities" for the purposes of the Regulatory Flexibility Act. In such cases, the amendments to the rule will have the net effect of decreasing the regulatory burden for such small entities. In addition, the Commission has previously determined to evaluate within the context of a particular rule proposal whether all or some commodity trading advisors should be considered "small entities" for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on commodity trading advisors of any such rule at that time.[33] Commodity trading advisors who would place eligible orders pursuant to these procedures would likely do so for multiple clients and would likely be participating as investment managers in more than one financial market. Accordingly, the Commission does not believe that commodity trading advisors should be considered "small entities" for purposes of this rule.

B. Paperwork Reduction Act of 1995

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Commission has submitted a copy of the rule amendments to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amended rule is intended to facilitate increased flexibility and consistency, and to rationalize application of Commission regulations to entities subject to other regulatory frameworks. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. Protection of market participants and the public.

While amended Rule 1.35(a–1)(5) is expected to lessen the burden imposed

---

[20] Interpretive Notice, NFA Compliance Rule 2–10: The Allocation of Block Orders for Multiple Accounts (June 9, 1998). Not all eligible account managers, *e.g.*, foreign account managers, will be subject to NFA requirements or inspections. However, FCMs will remain subject to the duty to supervise accounts, whether or not managed by third party account managers. *See*, 17 CFR 166.3 (2002). In addition, FCMs are subject to NFA's requirements.

[21] In addition, NFA anticipates it will continue to (1) provide guidance on the type of allocation methodologies designed to provide non-preferential treatment; (2) require CTAs to regularly analyze each trading program to ensure that the allocation method has been fair and equitable and to document this analysis and (3) remind FCMs that they have certain basic duties to their customers in connection with bunched orders.

[22] In the proposal, the Commission requested comment on whether the proposed rule struck the appropriate balance with regard to judging allocation and assigning responsibilities to account managers and FCMs. All comments received on this issue supported the changes.

[23] *Id.*

[24] 17 CFR 21.03(g) (2002).

[25] Cf. 17 CFR 21.03(h) (2002) (providing for other Commission remedies).

[26] See, 17 CFR part 21 (2002).

[27] Similar statutory provisions and Commission rules have the same standard for failure to provide information. See, *e.g.*, 7 U.S.C. § 2(h)(5)(C)(ii) (2001), 17 CFR 21.03 (2002).

[28] The recordkeeping provisions of Rule 1.31 would still apply. 17 CFR 1.31 (2002). It is important to note that at the time of order placement with the FCM, current rules require that a customer identification code must be placed on an order ticket, unless the order is bunched. *See*, 17 CFR 1.35(a–1) (2002).

[29] 47 FR 18618, 18619 (April 30, 1982).

[30] *Id.*

[31] *Id.* at 18620.

[32] *Id.*

[33] *Id.*

upon FCMs and account managers, market participants and the public will be protected by requirements in the allocation procedure. Accordingly, the amended rule should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition.

The amended rule is expected to benefit efficiency in the commodity futures and options markets, resulting in greater liquidity and market efficiency.

3. Financial integrity of futures markets and price discovery.

The amended rule should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound risk management practices.

The amended rule should have no effect on sound risk management practices.

5. Other public interest considerations.

The amended rule will also take into account certain effects of legislative changes and the passage of time.

After considering these factors, the Commission has determined to issue the amended rule.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Commodity options, Consumer protection, Contract markets, Customers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements, Rule enforcement programs.

■ In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5, 5a, 5b, 6(a), 6b, 8a(7), and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby amends Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

■ 2. Section 1.35 is amended by revising paragraph (a–1)(5) to read as follows:

§ 1.35 Records of cash commodity, futures and option transactions.

* * * * *

(a–1) * * *

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a–1)(5)(i)–(iv) of this section are met.

(i) *Eligible account managers.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) or § 4.14(a)(6) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter.

(ii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the account manager has an interest.

(iii) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) *Records.*

(A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a–1)(5)(ii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a–1)(5)(iii) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants that execute orders or that carry accounts eligible for post-execution allocation, and members of contract markets that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B) of this section, the Commission may inform in writing any designated contract market or derivatives transaction execution facility and that designated contract market or derivatives transaction execution facility shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market or derivatives transaction execution facility from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (a–1)(5)(iv)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

* * * * *

Issued in Washington, DC, on June 5, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–14776 Filed 6–10–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 201

[Docket No. RM02–7–000; Order No. 631]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations; Notice of Correction

June 3, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of April 21, 2003, a final rule amending its accounting and reporting requirements for asset retirement obligations. Inadvertently, account 364.9, asset retirement costs for base load liquefied natural gas terminaling and processing plant, and related instruction was not included in the Gas Plant Accounts in the natural gas companies' Uniform System of Accounts. This correction includes the account in the Uniform System of Accounts.

DATES: Effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Project Manager), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published in the **Federal Register** of April 21, 2003, (68 FR 19610) a final rule amending its accounting and financial reporting requirements for asset retirement obligations. Inadvertently, Gas Plant Account 364.9 (Asset retirement costs for base load liquefied natural gas terminaling and processing plant) and the instruction related to this account were not incorporated into the Uniform System of Accounts for natural gas companies in part 201 of the Commission's regulations. To address this omission, the Commission will publish in the **Federal Register** the following correction to the final rule document that was published in the **Federal Register** at 68 FR 19610, on April 21, 2003.

■ In rule FR Doc. 03–9260 published on April 21, 2003 (68 FR 19610) make the following correction.

■ On page 19624, in the second column, account 364.9 is added to part 201 in Gas Plant Accounts following account 363.6 to read as follows:

Gas Plant Accounts

* * * * *

364.9 Asset retirement costs for base load liquefied natural gas terminaling and processing plant.

This account shall include asset retirement costs on plant included in the base load liquefied natural gas terminaling and processing plant function.

* * * * *

Magalie R. Salas,

Secretary.

[FR Doc. 03–14561 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tepoxalin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for the veterinary prescription use of tepoxalin tablets for the control of pain and inflammation associated with osteoarthritis in dogs.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed NADA 141–193 that provides for veterinary prescription use of ZUBRIN (tepoxalin) Tablets for the control of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of March 31, 2003, and the regulations in part 520 (21 CFR part 520) are amended by adding new § 520.2340 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 31, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.2340 is added to read as follows:

§ 520.2340 Tepoxalin.

(a) *Specifications.* Each tablet contains 30, 50, 100, or 200 milligrams (mg) tepoxalin.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 10 mg per kilogram (/kg) daily; or 20 mg/kg on the initial day of treatment, followed by 10 mg/kg daily.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 27, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–14678 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Injectable or Implantable Dosage Form New Animal Drugs; Carprofen

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for a once daily, 2-milligram-per-pound dosage of carprofen solution, by subcutaneous injection, for the relief of pain and inflammation associated with osteoarthritis in dogs.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 141–199 for RIMADYL (carprofen) Injectable used for the relief of pain and inflammation associated with osteoarthritis in dogs. The supplemental NADA provides for veterinary prescription use of a once daily, 2-milligram-per-pound dosage of carprofen solution by subcutaneous injection. The supplemental application is approved as of March 25, 2003, and the regulations are amended in 21 CFR 522.312 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning March 25, 2003.

The agency has determined under § 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority:

21 U.S.C. 360b.

■ 2. Section 522.312 is amended by revising (d)(1) to read as follows:

§ 522.312 Carprofen.

* * * * *

(d) * * *

(1) *Amount.* 2 mg/lb (4.4 mg/kg) body weight once daily or 1 mg/lb (2.2 mg/kg) twice daily, by subcutaneous injection.

* * * * *

Dated: May 29, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14544 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 91N–0278]

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to correct certain errors that were incorporated into the regulations. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has discovered certain errors that were inadvertently included in the agency's codified regulations for part 601 (21 CFR part 601). In the **Federal Register** of December 11, 1992 (57 FR 58942), we published a final rule that, among other things, established subpart E of part 601, which encompasses §§ 601.40 through 601.46. Currently, § 601.43(a) refers to § 601.40, instead of the correct § 601.41; § 601.43(b) refers to § 601.40, instead of the correct § 601.42. Accordingly, we are amending § 601.43(a) by replacing the incorrect reference to § 601.40 with a reference to § 601.41, and we are amending § 601.43(b) by replacing the incorrect reference to § 601.40 with a reference to § 601.42. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

■ 1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356B, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 601.43 [Amended]

■ 2. Section 601.43 *Withdrawal procedures* is amended in the introductory text of paragraph (a) by removing "§§ 601.40 and 640.42" and adding in its place "§ 601.41 or § 601.42", and in paragraph (b) by removing "§ 601.40 or § 601.41" and adding in its place "§ 601.41 or § 601.42".

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14621 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[TD 9061]

RIN 1545–BB55

Automatic Extension of Time To File Certain Information Returns and Exempt Organization Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations providing an automatic extension of time to file certain information returns and exempt organization returns. The temporary regulations remove the requirement for a signature and an explanation to obtain an automatic extension of time to file these returns. The temporary regulations affect taxpayers who are required to file certain information returns and/or exempt organization returns and need an extension of time to file. The text of the temporary regulations also serves as a portion of the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 11, 2003.

Applicability Date: For dates of applicability for these regulations, see §§ 1.6081–8T, 1.6081–9T, and 31.6081(a)–1T(d).

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under OMB control number 1545–1840. Responses to this collection of information are required by the IRS for taxpayers to obtain a benefit (an automatic extension of time to file certain information or exempt organization returns).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR parts 1, 31, and 602 under section 6081 of the Internal Revenue Code. Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Title 26 or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months. The regulations under section 6081 provide specific rules taxpayers must follow to request an extension of time to file Federal tax returns.

Under the generally applicable rule, a taxpayer must submit an application for the extension on or before the due date of the return. The application must be in writing, must be properly signed by the taxpayer or his duly authorized agent, and must clearly set forth the particular tax return for which the extension of the time for filing is desired and a full recital of the reasons for requesting the extension. These rules apply to all returns other than those for which the regulations provide special rules. In addition, the Employment Tax Regulations provide rules for employers to obtain an extension of time to file the Social Security Administration copy of Forms W–2 and W–3. Under those rules, the request must contain a concise statement of the reasons for requesting the extension.

Explanation of Provisions

Information Returns

Filers and transmitters of information returns on Form 1099 (series), 1098 (series), 5498 (series), W–2 (series), W–2G, 1042–S, and 8027 can obtain an extension of time to file these information returns by submitting a signed paper Form 8809, "Request for Extension of Time to File Information Returns." The extensions are most often for a period of 30 days. Filers and transmitters may thereafter request an additional 30-day extension. The extensions apply only to the filing with the government. The filer or transmitter is still required to provide statements to the recipients by the date specified in the Code or the regulations.

Currently, in compliance with the regulations, Form 8809 requires a signature and asks for an explanation of the reasons for the request for an extension. In current practice, however, the explanation is not a determining factor for the initial extension. If the filer supplies the name, address, Employer Identification Number, tax year, and type of form(s), the initial extension is routinely granted. An extension beyond the initial 30-day period will not be granted, however, unless the filer provides a detailed explanation.

These temporary regulations allow filers and transmitters to request an automatic 30-day extension of time to file without having to sign Form 8809 and provide an explanation. An explanation and a signature are required if filers and transmitters need additional time to file after receiving the automatic 30-day extension. These regulations also permit employers to obtain an extension of time to file the Social Security Administration copy of Forms W–2 and W–3 without providing a statement of the reasons for requesting the extension.

The new rules will allow the IRS to develop an effective online version of the extension request. Filers and transmitters will benefit from the simplified extension procedure that will provide immediate approval. The IRS will benefit from the efficiencies inherent in such a system and will move closer to achieving electronic filing goals.

Filers and transmitters are eligible for only one automatic extension of time to file. Filers and transmitters filing Forms W–2 on an expedited basis under section 31.6071(a)–1(a)(3)(ii) may receive an automatic extension of time to file Forms W–2 under Rev. Proc. 96–57, 1996–2 C.B. 389. These filers and transmitters are not eligible to obtain the 30-day automatic extension under § 1.6081–8T(b). If these filers and transmitters need additional time, they may request an extension under the generally applicable procedures for obtaining additional extensions of time to file Form W–2.

Exempt Organization Returns

These temporary regulations also allow an exempt organization required to file a return on Form 990 (series), 1041–A, 4720, 5227, 6069, or 8870 an automatic three-month extension of time to file if (a) an application is submitted on Form 8868, "Application for Extension of Time To File an Exempt Organization Return," (b) the application is filed on or before the date the return is due, (c) the application shows the full amount properly estimated as tax, and (d) the application is accompanied by full remittance of the amount properly estimated as tax that is unpaid as of the date prescribed for the filing of the return.

A signature and an explanation of the reasons for requesting the extension are not required for an exempt organization to receive the automatic three-month extension of time to file. If an exempt organization needs additional time to file a return after receiving the automatic three-month extension, the exempt organization may file a signed Form 8868 that explains in detail why the additional time is needed. The IRS may grant an additional three months for the exempt organization to file.

Deadwood Provisions

These regulations also remove § 1.6081–1T and §§ 31.6011(a)–5(b)(1) and 31.6081(a)–1(a)(2). Section 1.6081–1T is removed because it relates only to returns for tax years ending before February 1, 1985. Sections 31.6011(a)–5(b)(1) and 31.6081(a)–1(a)(2) are removed because they relate to information returns that are no longer required.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of the regulations is Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6081–8T also issued under 26 U.S.C. 6081.

Section 1.6081–9T also issued under 26 U.S.C. 6081. * * *

§ 1.6081–1T [Removed]

■ **Par. 2.** Section 1.6081–1T is removed.

■ **Par. 3.** Section 1.6081–8T is added to read as follows:

§ 1.6081–8T Automatic extension of time to file certain information returns (temporary).

(a) *In general.* A person required to file an information return (the filer) on Form W–2 series, W–2G, 1042–S, 1098 series, 1099 series, 5498 series, or 8027 will be allowed an automatic 30-day extension of time to file the return after the date prescribed for filing the return if the filer or the person transmitting the return for the filer (the transmitter) files an application in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an application must—

(1) Be submitted on Form 8809, "Request for Extension of Time To File Information Returns," or in any other manner as may be prescribed by the Commissioner; and

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Penalties.* See sections 6652, 6693, 6721, 6722, and 6723 for failure to file an information return.

(d) *Additional 30-day extension of time to file*—(1) *In general.* This paragraph (d) provides procedures for obtaining an additional extension of time for filing an information return on a form listed in paragraph (a) of this section. No extension of time will be granted under this paragraph (d) unless the filer or transmitter has first obtained an automatic extension.

(2) *Procedures.* In the case of an information return on a form listed in paragraph (a) of this section, one additional 30-day extension of time to file the return may be allowed if the filer or transmitter submits a request for the additional extension before the expiration of the automatic 30-day extension. The request must—

(i) Be submitted on Form 8809 or in any other manner as may be prescribed by the Commissioner;

(ii) Explain in detail why the additional time is needed;

(iii) Be signed by the filer or transmitter; and

(iv) Otherwise satisfy the requirements of § 1.6081–1.

(e) *No effect on time to provide statement to recipients.* An extension under this section of time to file an information return does not extend the due date for providing a statement to the person with respect to whom the information is required to be reported.

(f) *Effective date.* This section applies to requests for extension of time to file information returns due after June 11, 2003. The applicability of this section expires on June 12, 2006.

■ **Par. 4.** Section 1.6081–9T is added to read as follows:

§ 1.6081–9T Automatic extension of time to file exempt organization returns (temporary).

(a) *In general.* An exempt organization required to file a return on Form 990 (series), 1041–A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section. For guidance on extensions of time for an exempt organization to file Form 1120–POL, U.S. Income Tax Return for Certain Political Organizations, see § 1.6081–3.

(b) *Requirements.* To satisfy this paragraph (b), an application for an automatic extension under this section must—

(1) Be submitted on Form 8868, "Application for Extension of Time To File an Exempt Organization Return," or in any other manner as may be prescribed by the Commissioner;

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return;

(3) Show the full amount properly estimated as tentative tax for the exempt organization for the taxable year; and

(4) Be accompanied by the full remittance of the amount properly estimated as tentative tax which is unpaid as of the date prescribed for the filing of the return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the exempt organization a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on the application for extension or to the exempt organization's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6651 and 6652(c) for failure to file an exempt organization return or failure to pay the amount shown as tax on the return.

(e) *Coordination with § 1.6081–1.* No extension of time will be granted under § 1.6081–1 for filing an exempt organization return listed in paragraph (a) of this section until an automatic extension has been allowed pursuant to this section.

(f) *Effective date.* This section applies to requests for extensions of time to file an exempt organization return due after June 11, 2003. The applicability of this section expires on June 12, 2006.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 5.** The authority citation for part 31 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6081(a)–1T also issued under 26 U.S.C. 6081. * * *

■ **Par. 6.** Section 31.6011(a)–5 is amended by revising paragraph (b) to read as follows:

§ 31.6011(a)–5 Monthly returns.

* * * * *

(b) *Information returns on Form W–3 and Social Security Administration copies of Form W–2.* See § 31.6051–2 for requirements with respect to information returns on Form W–3 and Social Security Administration copies of Form W–2.

* * * * *

§ 31.6051–1 [Amended]

■ **Par. 7.** Section 31.6051–1(d)(2)(i)(*c*) is amended by removing the language "§ 31.6081(a)–1(a)(3)" and adding "§ 31.6081(a)–1(a)(2)" in its place.

§ 31.6051–2 [Amended]

■ **Par. 8.** Section 31.6051–2(c) is amended by removing the language "31.6081(a)–1(a)(3)" and adding "31.6081(a)–1(a)(2)" in its place.

■ **Par. 9.** Section 31.6081(a)–1 is amended by:

■ 1. Removing paragraph (a)(2).

■ 2. Redesignating paragraph (a)(3) as paragraph (a)(2).

■ 3. Revising newly designated paragraph (a)(2)(i).

The revision reads as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(2) * * * (i) [Reserved]. For guidance on extensions of time to file the Social Security Administration copy of Forms W–2 and W–3 due after June 11, 2003, see § 31.6081(a)–1T.

* * * * *

■ **Par. 10.** Section 31.6081(a)–1T is added to read as follows:

§ 31.6081(a)–1T Extensions of time for filing returns and other documents (temporary).

(a)(1) [Reserved]. For further guidance, see § 31.6081(a)–1(a)(1).

(2) *Information returns of employers on Forms W–2 and W–3*— (i) *In general.* The Commissioner may grant an extension of time in which to file the Social Security Administration copy of Forms W–2 and the accompanying transmittal form which constitutes an information return under paragraph § 31.6051–2(a). For further guidance regarding extensions of time to file the Social Security Administration copy of Forms W–2 and W–3, see § 1.6081–8T of this chapter.

(a)(2)(ii) through (c) [Reserved]. For further guidance, see § 31.6081(a)–1(a)(2)(ii) through (c).

(d) *Effective date.* This section applies to requests for extensions of time to file the Social Security Administration copy of Forms W–2 and W–3 due after June 11, 2003. The applicability of this section expires on June 12, 2006.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 11.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 12.** In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB control No.
* * * * *	
1.6081–8T	1545–1040
1.6081–9T	1545–1040
* * * * *	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: May 21, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–14603 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–025]

Drawbridge Operation Regulations; Illinois Waterway, Beardstown, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Beardstown Railroad Drawbridge, across the Illinois Waterway, mile 88.8 at Beardstown, Illinois. This deviation allows the drawbridge to remain closed to navigation for three separate 10½-hour increments from June 9, 2003 until June 11, 2003. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 7 a.m. on June 9, 2003, until 5:30 p.m. June 11, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railway requested a temporary deviation on May 9, 2003 to allow time to conduct preventative maintenance to the Beardstown Railroad Drawbridge, across the Illinois Waterway, mile 88.8 at Beardstown, Illinois. The Beardstown. Railroad Drawbridge currently operates in accordance with 33 CFR 117.393(a) which requires that the drawbridge be maintained in the open-to-navigation position and closed only for the passage of rail traffic. In order to replace the up and down haul cables, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for three separate 10½-hour intervals from 7 a.m. until 5:30 p.m., June 9, 2003, from 7 a.m. until 5:30 p.m., June 10, 2003, and from 7 a.m. until 5:30 p.m., June 11, 2003. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 88.8 on the Illinois Waterway. The drawbridge will be incapable of opening for emergencies during the 10½-hour repair periods.

The Beardstown Railroad drawbridge provides a vertical clearance of 19.6 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 3, 2003.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 03–14800 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–019]

Drawbridge Operation Regulations; Illinois Waterway, Hardin, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Hardin Drawbridge, across the Illinois Waterway, mile 21.6 at Hardin, Illinois. This deviation allows the drawbridge to remain closed to navigation for 14 days from August 18, 2003 until August 31, 2003. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 6 a.m., August 18, 2003 through 6 p.m., August 31, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation on April 7, 2003 to allow time to conduct preventative maintenance to the Hardin Drawbridge, across the Illinois Waterway, mile 21.6 at Hardin, Illinois. The Harding Drawbridge currently operates in accordance with 33 CFR 117.5 which requires the drawbridge to open on signal for passage of vessel traffic. In order to replace wire rope and trunnions, re-boring of sheaves for new trunnions and replacing secondary enclosed gear reducers, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 14 days from 6 a.m., August 18, 2003 until 6 p.m., August 31, 2003. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 21.6 on the Illinois Waterway. The drawbridge will be incapable of opening for emergencies during the 14-day repair period.

The Hardin drawbridge provides a vertical clearance of 25.9 feet above pool stage in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 4, 2003.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 03–14801 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–054]

RIN 1625–AA09

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Route 70 Bridge across Manasquan River, mile 3.4, at Riviera Beach, New Jersey. The final rule will require the draw of the bridge to open on signal on the hour, except that from 11 p.m. to 7 a.m. and on Monday through Friday from 4 p.m. to 7 p.m., the draw need not be opened. This change would reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: This rule is effective July 11, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CCGD05–02–054 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 12, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Manasquan River, New Jersey" in the **Federal Register** (67 FR 57773). We received 14 letters commenting on the proposed rule. No public meeting was requested, and none was held.

On March 20, 2003, we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Drawbridge Operation Regulations; Manasquan River, New Jersey" in the **Federal Register** (68 FR 13641). We received 10 letters commenting on the supplemental proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Route 70 Bridge is a movable bridge (single-leaf bascule) owned and operated by the New Jersey Department of Transportation (NJDOT) connecting the Borough of Point Pleasant and Brick Township in Ocean County with Brielle Borough and Wall Township in Monmouth County. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.727 requires that the draw of the S70 Bridge, mile 3.4 at Riviera Beach, shall open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. In the closed position to vessels, the bridge has a vertical navigation clearance of approximately 15 feet at mean high water.

On behalf of residents and business owners in the area, NJDOT requested changes to the existing regulations for the Route 70 Bridge in an effort to balance the needs of mariners and vehicle drivers transiting in and around this seaside resort area. Route 70 is a principal arterial highway that serves as a major evacuation route in the event of tidal emergencies. Bridge openings at peak traffic hours during the tourist season often cause considerable vehicular traffic congestion while accommodating relatively few vessels. To ease traffic congestion, NJDOT requested that the movement of marine traffic be regulated. We reviewed NJDOT's yearly drawbridge logs for 1999, 2000, and 2001, which revealed that the bridge opened for vessels 1028, 1026, and 1020 times, respectively. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened 750, 792, and 794 times, respectively. With an average of only five openings per day during the prime boating period, NJDOT contends that vessel traffic through the bridge is minimal. Also, NJDOT officials, residents and business owners pointed out that from 4 p.m. to 7 p.m. on Fridays, vehicular traffic congestion is at its peak. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened from 4 p.m. to 7 p.m. on Fridays, 36, 35, and 26 times, respectively. Limiting the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and no openings required from 4 p.m. to 7 p.m. on Fridays would enhance vehicular traffic without significantly affecting vessel traffic. The Coast Guard received 14 comments on the NPRM; most suggesting additional changes to the proposed regulations.

Based on these comments and our further review of the bridge logs, the Coast Guard considered the minimal number of openings year-round during the closure period from 4 p.m. to 7 p.m. that included Monday through Thursday, an alternative proposal, as set forth in the SNPRM, was appropriate.

Discussion of Comments and Changes

The Coast Guard received 14 comments on the NPRM. Eleven letters supported the proposed changes to the regulations, two responses opposed the proposed changes and another comment suggested a height restriction placed on vessels that travel under the bridge.

Of the 11 letters supporting the proposed changes to the regulations, five letters went further in asking to extend the suggested "no openings" on Fridays from 4 p.m. to 7 p.m. to include Monday through Thursday; two letters supported the proposal without changes; one comment requested commuter hours from 6:30 a.m. to 8:30 a.m. and 5 p.m. to 7 p.m.; one comment requested no openings of the bridge on any days between 5 p.m. and 7 p.m.; and another letter considered operating the bridge to open hourly from 8 a.m. to 4 p.m. during the months of March, April, October and November and only open with a 24-hour advance notice during December, January and February. Two comments, one from the U.S. Fish and Wildlife Service and the other from the New Jersey Historic Preservation Office, had no objection to the issuance of the proposed regulations.

Two of the remaining three comments opposed the proposed changes to the regulations and one had no opinion to the proposed regulation. One comment from a yacht club stated that their membership objects to any changes to the proposed regulations for the following reasons: safety, the environment and liability losses. Another comment had suggested a reduction of the bridge closure to 5 p.m. to 7 p.m. especially if done five days a week, and emergency openings for boater safety. The Coast Guard responded to these comments and indicated that in the event of marine emergency Title 33 CFR part 117.31, "Operation of draw for emergency situations," adequately provides for vessels for unscheduled openings of the bridge. The last comment requested a height restriction placed on vessels with lowerable appurtenances (*i.e.* antennas etc.) that transit under the bridge. Further review of the bridge logs reveal from 1999 through 2001, the bridge opened year-round from 4 p.m. to 7 p.m., Mondays through Thursdays, 72, 73, and 60 times respectively. The Coast Guard responded to the comments by limiting the required openings of the

draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

The Coast Guard received ten comments on the SNPRM. Eight supported, one opposed and another had no opinion to the supplemental proposal. Of the eight supporting the supplemental proposed changes, four also indicated that passage under the bridge can also be accomplished by vessel owners lowering their lowerable appurtenances (*i.e.* antennas, outriggers etc.), two supported the regulations without changes, one was a resolution from the Borough of Brielle in support of the regulations, and one from the U.S. Fish and Wildlife Service which had no objections to the issuance of the supplemental proposed regulations.

One of the remaining two comments opposed and the other had no opinion to the supplemental proposed changes. The opposing comment considered the weekday closure period from 4 p.m. to 7 p.m. a major inconvenience to commercial fishing boats entering Manasquan Inlet. The remaining comment only indicated that the bridge should never have been "on demand." All comments and the Coast Guard's written response to those comments are contained in the docket.

Based on these comments to the new proposal, the lowering of non-structural vessel appurtenances that are not essential to navigation and the minimal number of openings identified by the bridge logs, the Coast Guard is amending 33 CFR 117.727 with a new provision to limit the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We reached this conclusion based on the fact that the final rule has only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings and lower their non-structural appurtenances that are not essential to navigation to further minimize delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

■ 2. § 117.727 is revised to read as follows:

§ 117.727 Manasquan River.

The draw of the Route 70 Bridge, mile 3.4, at Riviera Beach, shall open on signal on the hour, except that from 4 p.m. to 7 p.m. Monday through Friday and from 11 p.m. to 7 a.m., every day the draw need not be opened.

Dated: June 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–14802 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–215]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety encompassing a portion of Lake Michigan, Chicago, IL. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over a portion of Lake Michigan. The safety zone is intended to restrict vessel traffic from a portion of Lake Michigan, Chicago, Illinois.

DATES: This temporary final rule is effective from 10 p.m. (local), until 11 p.m. on June 14, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CDG09–03–215 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U. S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Similarly, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 41° 52′15″ N; 087° 36′44″ W. These coordinates are based upon North American Datum 1983 (NAD 83). All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative. The on-scene representative will be the Patrol Commander, and may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the zone is only in effect for two hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (*see* **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–215 is added to read as follows:

§ 165.T09–215 Safety Zone; Lake Michigan, Chicago, Illinois.

(a) *Location.* The following is a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41°52′15″ N; 087°36′44″ W (NAD 83).

(b) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into the zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

(c) *Effective date.* This section is effective from 10 p.m. until 11 p.m. on June 14, 2003.

Dated: May 21, 2003.

Glenn A. Cekus,

Commander, U.S. Coast Guard, Acting Captain of the Port Chicago.

[FR Doc. 03–14588 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Delivery Confirmation and Signature Confirmation Services With First-Class Mail Parcels and Package Services Parcels

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts revisions to the *Domestic Mail Manual* (DMM) that clarify when it is permissible to use Delivery Confirmation service or Signature Confirmation service with mailpieces claimed at First-Class Mail or Package Services rates. In particular, this final rule specifies that, for First-Class Mail and Package Services mailpieces, Delivery Confirmation service or Signature Confirmation service may be used only with parcels and not with letter-size mail or flat-size mail as defined by the Postal Service.

EFFECTIVE DATE: July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645, Mailing Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: In a proposed rule published on April 15, 2003, in the **Federal Register** (68 FR 18174–18176), the Postal Service put forward for public comment revised language to the DMM that would clarify the mailing standards governing the use of Delivery Confirmation service or Signature Confirmation service with First-Class Mail parcel-shaped mailpieces and Package Services parcel-shaped mailpieces. For this clarification, the general term "box," as used in part of the original language of those mailing standards to identify "parcel-shaped" mail, is to be replaced with the specific dimensional definitions of a parcel currently used in DMM C050 for machinable parcels, irregular parcels, and outside parcels.

The term "box" was initially adopted when classification changes extended the use of Delivery Confirmation service and Signature Confirmation service to First-Class Mail parcels only and confined the use of those two special services to Package Services parcels only. Those classification changes took effect on June 30, 2002, as announced on April 16, 2002, in the **Federal Register** (67 FR 18684–18771).

The term "box" had been carefully selected for the classification changes for two important reasons. First, the term offered a functional and convenient description of a parcel that could be easily understood by the general mailing public, parcel and merchandise shippers, and Postal Service employees at retail units and business mail entry units. Second, the term permitted a wide range of First-Class Mail and Package Services mailpieces—including pieces measuring ¾ inch thick or less—to qualify as "parcel-shaped" mail if prepared in boxes. This second reason was also important because most mailpieces measuring ¼ inch thick or less are generally categorized as letter-size mail ("letters"), and most mailpieces measuring between ¼ and ¾ inch thick are generally categorized as flat-size mail ("flats") under DMM C050.

The original mailing standards underlying the term "box," which this final rule now effectively revises, were first presented in sections C100.5.0 and C700.1.0h of Issue 57 of the DMM, dated June 30, 2002. Those original mailing standards permitted the use of either special service with a First-Class Mail mailpiece or a Package Services mailpiece only if the piece met the following conditions:

a. Has an address side with enough surface area to fit the delivery address, return address, postage, markings and endorsements, and special service label; and

b. Is in a box or, if not in a box, is more than ¾ inch thick at its thickest point.

In the case of First-Class Mail parcels and Package Services parcels, these standards reflected both a customer need and an operational requirement to maintain high rates of successful scanning of Delivery Confirmation barcodes and Signature Confirmation barcodes by segregating the pieces With these barcodes from letter-size and flat-size mailpieces.

Nevertheless, the use of the term "box" to define a parcel has continued to create uncertainty among customers and Postal Service employees in determining whether specific mailing containers qualify as "boxes" and whether specific mailpieces qualify as "parcel-shaped" mail. This uncertainty comes into play especially for mailpieces prepared in lightly constructed or flimsy containers. These pieces can easily flatten or compress during transportation and mail processing into flat-size pieces or, on occasion for smaller containers, even into letter-size pieces. Flattened or compressed pieces, even if originally prepared as parcels, no longer meet the intent or the function of parcels. As a consequence, they are not handled in the parcel mailstream. Instead, these pieces are generally processed as flats and, as a result, invariably fail to receive a Delivery Confirmation or Signature Confirmation scan.

One way to remove the uncertainty about the term "box" would be to define a parcel as any mailpiece that is neither letter-size nor flat-size. This approach at first seems relatively straightforward in resolving the uncertainty surrounding the term "box," by providing a practical definition that can be reasonably and uniformly applied as a mailing requirement. Even with a specification such as "any mailpiece thicker than ¾ inch is not letter-size or flat-size," customers and employees would encounter two new and unforeseen issues:

- Merchandise items sent as First-Class Mail or Package Services pieces that are thinner than ¾ inch thick—such as compact discs, coins in flat plastic display cases, and some children's picture books—would not be eligible for the use of Delivery Confirmation service or Signature Confirmation service because their dimensions of length, height, and, most notably, thickness would generally fall within the dimensional definition of letter-size or flat-size mail.
- Any qualifying mailpiece that passed the thickness requirement (that is, the piece measured more than ¾ inch thick) but was not uniformly thick might also be ineligible for the use of either special service if part of the mailpiece could, in some cases, fall within the dimensional requirements for either flat-size mail or letter-size mail.

To overcome these two issues and to ensure that customers and parcel shippers can benefit from the use of Delivery Confirmation service or Signature Confirmation service in such cases, the Postal Service is adopting the current three parcel definitions in DMM C050 for a machinable parcel, an irregular parcel, and an outside parcel for the purposes of defining First-Class Mail parcels and Package Services parcels eligible for the use of Delivery Confirmation service or Signature Confirmation service.

The Postal Service has also added a clarification to the descriptions of Delivery Confirmation service and Signature Confirmation service with information that states that some statutes and regulations governing the mailing of documents with legal significance may require the use of

Certified Mail or Registered Mail rather than Delivery Confirmation service or Signature Confirmation service.

Comments

The Postal Service received three comments to its proposed rule. One commenter was a third-party provider of printing, mailing, and related services to the merchandising, magazine, book, directory and financial markets. The second commenter was a software developer for certain mailing applications and electronic book publishing. The third commenter was a box and carton manufacturer.

Signature Confirmation Service With Standard Mail Pieces

The first commenter, who was the third-party provider, stated that his firm mails more than 150 million parcels each year for a large client base. This commenter requested the extension of the use of Signature Confirmation service to Standard Mail parcels. This commenter correctly noted that the use of Signature Confirmation service was extended on June 30, 2002, to First-Class Mail parcels but not to Standard Mail parcels. This commenter then pointed out that the physical characteristics of both First-Class Mail parcels and Standard Mail parcels are similar in regard to size, shape, and weight (First-Class Mail parcels are permitted to weigh up to 13 ounces and Standard Mail parcels are permitted to weigh up to but not including 16 ounces.)

Although using Signature Confirmation service with Standard Mail parcels would provide many shippers with a more enhanced level of service than Delivery Confirmation service, limited market research has not shown a large potential demand for this special service for these reasons:

- The comparatively high fee for the special service. Except for Priority Mail, which has no additional charge for the Delivery Confirmation electronic option, the difference between electronic option fees for the two services for other eligible classes of mail is considerable: $1.30 for Signature Confirmation service compared with $0.13 for Delivery Confirmation service, The Signature Confirmation fee is also high in relation to typical Standard Mail postage. If the use of Signature Confirmation service were extended to Standard Mail pieces, the electronic option would probably be the option required.
- The generally low extrinsic value of most items shipped by Standard Mail. Shippers sending valuable items tend to use classes of mail such as Priority Mail or First-Class Mail that can provide additional benefits and permit a larger range of special service options.

From a procedural and legal perspective, the Postal Service cannot introduce the use of Signature Confirmation service with Standard Mail parcels without proceeding through a rate and classification filing with the Postal Rate Commission. Such a filing would require the collection of costing data and extensive market research that would be unreasonable to undertake outside an omnibus rate case. Even though this comment is beyond the scope of this final rule, the Postal Service appreciates the recommendation and interest in this special service and plans to have the organizations responsible for managing the Delivery Confirmation and Signature Confirmation programs consider this recommendation as future plans are developed.

Maintenance of Shape Specification

The software developer and the box manufacturer both commented that the proposed rule for DMM S918.1.2c and DMM S919.1.2c would provide mailers and the box manufacturing industry with the latitude of choosing materials and configurations that could produce mailing containers and mailpieces that would meet the intent of that standard.

Both commenters, however, added that a parcel, on average, must maintain a certain thickness to distinguish it from a letter-size or flat-size piece. These commenters believed that inserting such a clause or qualifier into the proposed standards would ensure that customers and shippers would adhere to the original intent of the mailing standards to limit Delivery Confirmation service and Signature Confirmation service to parcel-shaped First-Class Mail and parcel-shaped Package Services mailpieces. That intent, as correctly cited by the commenters, rests on the need to restrict the two special services to parcels in order to prevent entry of Delivery Confirmation pieces and Signature Confirmation pieces into the letter-size or flat-size mail processing streams, and thus ensure scanning of the Delivery Confirmation barcodes and the Signature Confirmation barcodes.

The Postal Service recognizes that, by adopting the current definitions of parcels as presented in DMM C050, some machinable parcels could range within the measurements defining either letter-size or flat-size mail. By creating a new minimum thickness above the current ¼-inch minimum required for machinable parcels, the Postal Service would, however, impose a hardship on mailers already mailing small merchandise items as machinable parcels and using Delivery Confirmation service or Signature Confirmation service for those parcels.

The Postal Service, therefore, does not plan to revise the current dimensional requirements for the parcel mail processing categories, which are understood and accepted by the mailing industry and the Postal Service. Moreover, any change to those requirements would complicate issues in mail acceptance by introducing two different thickness minimums for machinable parcels. As a consequence, the Postal Service is adding a rigidity requirement to the standards for machinable parcels that measure ¾ inch thick or less only for the purposes of using the two special services in question as a means to prevent such pieces from collapsing into letter-size or flat-size mail.

Container Certification

Both the software developer and the box manufacturer strongly urged the Postal Service to develop a national process of certifying eligible mailing containers that meet the definition of a parcel for the purposes of using Delivery Confirmation service or Signature Confirmation service as described in DMM S918 and S919, respectively. Both commenters affirmed that a manufacturer can invest considerable resources in developing mailing containers that might be later rejected by Postal Service employees in some parts of the country. This rejection would also affect customers who purchase such containers and plan to use one of the two special services with either First-Class Mail or Package Services parcels.

The box and carton manufacturer conducted an informal test to determine the durability of certain prototype containers and the resultant Delivery Confirmation scan rate for those containers. The manufacturer stated that he mailed 100 empty prototype 5/8-inch-thick containers, which had been produced with two different paperboard thicknesses of clay-coated newsback paperboard. The manufacturer reported that half the containers were mailed from a business mail entry unit (BMEU) and the other half from a retail window to eight cities throughout the United States.

According to the same commenter, of the 100 mailpieces mailed, 99 received a delivery scan. In addition, the commenter claimed that 86% of the mailpieces maintained their parcel shape throughout mail processing and delivery. In addition to submitting a spreadsheet detailing the information for each mailing container, the commenter also provided three photographs showing the condition of delivered parcel-shaped pieces that he ranked as "best," "average," and "worst."

Although the establishment of a national certification process for mailing containers has merit for box manufacturers in particular and for some customers in general, such a certification process would also increase the complexity and administrative burden on box manufacturers, on customers, and on the Postal Service. Furthermore, limiting the available types and sizes of mailing containers to those that have successfully passed a certification process could create unnecessary problems for certain mailers. Finally, certification of a container cannot always be done in the abstract, without regard to the contents within the container.

Establishing a national process for certifying the eligibility of specific mailing containers for Delivery Confirmation service and Signature Confirmation service would be similar to establishing a process for certifying the eligibility of envelopes and other containers for all other types of mailing or services. The Postal Service does not believe that such a process at this time would yield the greatest benefit to the largest number of customers and parcel shippers.

As far as the informal test conducted by the box and carton manufacturer, the Postal Service cannot validate such results as a form of certification. There are various testing institutions recognized throughout the shipping industry such as the International Safe Transit Association (ISTA), which supports the industry-wide development of effective packaging, methods, and logistic systems that prevent or reduce transportation and handling damage of packages.

The commenter did not explain how he mailed 50 pieces at the business mail entry unit, which normally accepts and verifies presorted rate mail or permit imprint mail. Permit imprint rate mail requires a minimum of 200 pieces or 50 pounds, even for single-piece rate First-Class Mail prepared with a permit imprint. Moreover, because First-Class Mail mailpieces may not weigh more than 13 ounces each, a mailer would need at this maximum weight per piece at least 62 13-ounce pieces in a mailing to qualify for the use of a permit imprint.

For the reasons presented in the proposed rule and those noted above in this final rule, and in consideration of the public comments received, the Postal Service adopts the following changes to the *Domestic Mail Manual*, which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

* * * * *

C100 First-Class Mail

* * * * *

[*Delete current 5.0. Redesignate current 6.0 as new 5.0.*]

* * * * *

C700 Package Services

[Revise heading to read as follows:]

1.0 DIMENSIONS

* * * * *

[Delete 1.0h.]

* * * * *

S Special Services

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S918 Delivery Confirmation

1.0 BASIC INFORMATION

1.1 Description

[Add the following sentence at the end of 1.1 to read as follows:]

* * * Some statutes and regulations governing the mailing of documents with legal significance may require the use of Certified Mail or Registered Mail rather than Delivery Confirmation.

1.2 Eligible Matter

[Revise 1.2 to read as follows:]

Delivery Confirmation is available for First-Class Mail parcels defined in C050 as machinable (with no minimum weight), irregular, or outside parcels; for all Priority Mail pieces; for Standard Mail pieces subject to the residual shape surcharge (electronic option only); and for Package Services parcels defined in C050 as machinable, irregular, or outside parcels. For the purposes of using Delivery Confirmation with a First-Class Mail parcel or a Package Services parcel, the parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container is secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

1.3 Ineligible Matter

[Revise 1.3 to read as follows:]

Delivery Confirmation is not available for the following:

a. Express Mail and Periodicals pieces.

b. First-Class Mail letter-size and flat-size pieces.

c. Standard Mail pieces not subject to the residual shape surcharge and all Enhanced Carrier Route Standard Mail pieces.

d. Package Services flat-size pieces.

e. Mail paid with precanceled stamps.

f. Mail addressed to APO/FPO destinations.

g. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

S919 Signature Confirmation

1.0 BASIC INFORMATION

1.1 Description

[Add the following sentence at end of 1.1 to read as follows:]

* * * Some statutes and regulations governing the mailing of documents with legal significance may require the use of Certified Mail or Registered Mail rather than Signature Confirmation.

1.2 Eligible Matter

[Revise 1.2 to read as follows:]

Signature Confirmation is available for First-Class Mail parcels defined in

C050 as machinable (with no minimum weight), irregular, or outside parcels; for all Priority Mail pieces; and for Package Services parcels defined in C050 as machinable, irregular, or outside parcels. For the purposes of using Signature Confirmation with a First-Class Mail parcel or a Package Services parcel, the parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container is secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

1.3 Ineligible Matter

[Revise 1.3 to read as follows:]

Signature Confirmation is not available for the following:

a. Express Mail, Periodicals, and Standard Mail pieces.

b. First-Class Mail letter-size and flat-size pieces.

c. Package Services flat-size pieces.

d. Mail paid with precanceled stamps.

e. Mail addressed to APO/FPO destinations.

f. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect the changes will be published.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–14631 Filed 6–10–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT–19–1222b; FRL–7493–5]

Approval and Promulgation of Air Quality Implementation Plans; Vermont Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Vermont that are incorporated by reference (IBR) into the Vermont State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective June 11, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, New England Regional Office (Region 1), One Congress Street, Suite 1100, Boston, MA 02114–2023; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T), NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Cooke, Environmental Scientist, at the above EPA New England Region address or at (617) 918–1668.

SUPPLEMENTARY INFORMATION: The State Implementation Plan (SIP) is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference (IBR) Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On September 8, 2000, EPA published a document in the **Federal Register** (65 FR 54413) beginning the new IBR procedure for Vermont. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 24, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart UU—Vermont

■ 2. In § 52.2370 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to April 23, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 23, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of April 23, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114–2023; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) *EPA approved regulations.*

EPA APPROVED VERMONT REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Chapter 5 Air Pollution Control				
Subchapter I. Definitions				
Section 5–101	Definitions	07/29/93	04/22/98, 63 FR 19828	Definitions IBR'd 101 into the Vermont SIP are numbered consecutively by EPA, and do not necessarily correspond to the State's assigned definition number in the Vermont State Regulation, which are re-numbered whenever definitions are added or deleted from the State Regulation.

EPA APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Subchapter II. Prohibitions				
Section 5–201	Open burning prohibited.	07/22/98	04/22/98, 63 FR 19828.	
Section 5–202	Permissible open burning.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–203	Procedures for local authorities to burn natural wood.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–211	Prohibition of visible air contaminants.	08/12/78	04/16/82, 47 FR 16331	Except Section 5–211(3)
Section 5–221	Prohibition of potentially polluting materials in fuel.	01/25/78	12/21/78, 43 FR 59496	Except Section 5–221 (1)(c)(i) and Section 5–221(1)(c)(ii).
Section 5–231	Prohibition of particular matter.	11/13/81	02/26/85, 50 FR 7767.	
Section 5–241	Prohibition of nuisance and odor.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–251	Control of nitrogen oxides emissions.	01/04/95	04/09/97, 62 FR 17084	Requires RACT for major stationary sources of NO_x.
Section 5–252	Control of Sulfur dioxide emissions.	11/04/79	02/19/80, 45 FR 10775.	
Section 5–253.1	Petroleum liquid storage in fixed roof Tanks.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.2	Bulk gasoline terminals.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.3	Bulk gasoline plants	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.4	Gasoline tank trucks	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.5	Stage I vapor recovery controls at gasoline dispensing facilities.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.10	Paper coating	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.12	Coating of flat wood paneling.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.13	Coating of miscellaneous metal parts.	07/29/93	04/22/98, 63 FR 19829.	
Section 5–253.14	Solvent metal cleaning.	07/29/93	04/22/98, 63 FR 19829.	
Section 5–253.15	Cutback and emulsified asphalt.	08/02/94	04/22/98, 63 FR 19829.	
Section 5–253.20	Other sources that emit volatile organic compounds.	08/03/93	04/09/97, 62 FR 17084.	
Section 5–261	Control of hazardous air contaminants.	11/03/81	02/10/82, 47 FR 6014.	
Subchapter III. Ambient Air Quality Standards.				
Section 5–301	Scope	12/15/90	03/05/91, 56 FR 9177.	
Section 5–302	Sulfur dioxide primary	03/24/79	02/19/80, 45 FR 10775.	
Section 5–303	Sulfur dioxide secondary.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–306	PM_{10} primary and secondary standards.	11/01/90	08/01/97, 62 FR 41282	Removal of the TSP standard (Section 5–304 and 5–305) and establishment of PM_{10} standard (Section 5–306).
Section 5–307	Carbon monoxide primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–306, renumbered to 5–307 when new Section 5–306 for PM_{10} was created.
Section 5–308	Ozone primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–307, renumbered to 5–308 when new Section 5–306 for PM_{10} was created.
Section 5–309	Lead primary and secondary.	11/03/81	02/10/82, 47 FR 6014	Formerly Section 5–308, renumbered to 5–309 when new Section 5–306 for PM_{10} was created.
Section 5–310	Nitrogen dioxide primary and secondary.	12/15/90	03/05/91, 56 FR 9177	Formerly Section 5–309, renumbered to 5–310 when new Section 5–306 for PM_{10} was created.

EPA APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Subchapter IV. Operations and Procedures				
Section 5–401	Classification of air contaminant sources.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–402	Written reports when requested.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–403	Circumvention	12/10/72	05/31/72, 37 FR 10899.	
Section 5–404	Methods for sampling and testing of sources.	03/24/78	02/19/80, 45 FR 10775.	
Section 5–405	Required air monitoring.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–406	Required air modeling	03/24/79	02/19/80, 45 FR 10775.	
Subchapter V. Review of New Air Contaminant Sources				
Section 5–501	Review of construction or modification of air contaminant sources..	09/17/86	07/17/87, 52 FR 26982.	
Section 5–502	Major stationary sources and major modifications.	07/14/95	08/04/98, 62 FR 41870.	
Subchapter VII. Motor Vehicle Emissions				
Section 5–701	Removal of control devices.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–702	Excessive smoke emissions from motor vehicles.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–801	Effective date	03/24/79	01/30/80, 45 FR 6781.	
Tables				
Table 1	Table 1 Process weight standards.	01/25/78	12/21/78, 43 FR 59496.	
Table 2	Table 2 PSD increments.	12/15/90	03/05/91, 56 FR 9177.	
Table 3	Table 3 Levels of significant impact for non-attainment areas..	11/03/81	02/10/82, 47 FR 6014.	
Subchapter VIII. Registration of Air Contaminant Sources				
Section 5–801	Definitions	04/20/88	01/10/95, 60 FR 2527.	
Section 5–802	Requirement for registration.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–803	Registration procedure.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–804	False or misleading information.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–805	Commencement or recommencement of operation.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–806	Transfer of Operation	04/20/88	01/10/95, 60 FR 2527.	

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS

Name of Source	Permit No.	State effective date	EPA approval date	Explanations
Simpson Paper Company, Centennial Mill in Gilman, Vermont.	Environmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–251(2).	01/04/95	04/09/97, 45 FR 17087	Administrative orders for Simpson Paper Company, in Gilman, Vermont, adopted and effective on January 4, 1995.
U.S. Samaica Corporation, in Rutland, VT.	Environmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–253.20.	01/04/95	04/09/97, 45 FR 17087	Administrative orders for U.S. Samaica Corporation, in Rutland, Vermont, adopted and effective on January 4, 1995.

(e) *Nonregulatory.*

VERMONT NON REGULATORY

Name of Non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
Notice of public hearing	Statewide	Submitted 02/03/72	06/15/72, 37 FR 11911	(c)(1) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 02/25/72	5/31/72, 37 FR 10899	(c)(2) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 03/03/75	01/21/76, 41 FR 3085	(c)(4) Vermont Agency of Environmental Conservation. Deletion of Winooski sampling site for particulates and sulfur dioxide.
Plans to meet various requirements of the Clean Air Act, including Part C.	.....	Submitted 03/21/79, and 11/21/79.	01/30/80, 45 FR 6781	(c)(9) See Plans to attain below.
Attainment Plans to meet the requirements of Part D and the Clean Air Act, as amended in 1977.	.....	Submitted 03/21/79, 11/21/79, 11/27,79, and 12/19/79.	02/19/80 45 FR 10775	(c)(10) Plans to attain. State of Vermont air quality implementation plan (March 1979). The secondary TSP standard for Barre City and a portion of the Champlain Valley Air Management Area, the carbon monoxide standard in the Champlain Valley Air Management Area and the ozone standard in Chittenden, Addison, and Windsor Counties. A program was also submitted for the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas. Certain miscellaneous provisions were also included.
A plan to provide for public, local and state involvement in federally funded air pollution control activities.	.....	Submitted 03/28/80	09/09/80, 45 FR 59314	(c)(11) A plan to provide for public, local and state involvement in federally funded air pollution control activities.

VERMONT NON REGULATORY—Continued

Name of Non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
A plan to attain and maintain the National Ambient Air Quality Standard for lead.	.....	Submitted 06/24/80, and 11/07/80.	03/18/81, 46 FR 17192	(c)(12) A plan to attain and maintain the National Ambient Air Quality Standard for lead. A letter further explaining the state procedures for review of new major sources of lead emissions.
A revision to the air quality monitoring network.	.....	Submitted 03/21/79	10/08/80, 45 FR 66789, corrected by 03/16/81 46 FR 15897.	(c)(13) meets the requirements of 40 CFR part 58.
Narrative submittal "Implementation Plan for the Protection of Visibility in the State of Vermont" and "Appendices".	.....	Submitted 04/15/86	07/17/87, 52 FR 26973	(c)(19) Describing procedures, notifications, and technical evaluations to fulfill the visibility protection requirements of 40 CFR part 51, subpart P.
State Implementation Plan narrative.	.....	Submitted 12/07/90, and 01/10/91.	03/05/91, 56 FR 9175	(c)(20) State of Vermont Air Quality Implementation Plan dated November, 1990.
State Implementation Plan narrative.	.....	Submitted 08/09/93	01/10/95, 60 FR 2524	(c)(21) State of Vermont Air Quality Implementation Plan dated February, 1993. To meet the emission statement requirement of the CAAA of 1990.
Revisions to the State Implementation Plan.	.....	Submitted 02/03/93, 08/09/93, and 08/10/94.	04/22/98, 63 FR 19828	(c)(25) State of Vermont: Air Quality Implementation Plan dated August 1993.
Revisions to the State Implementation Plan.	.....	Submitted 08/03/98	07/10/00, 65 FR 42290	(c)(26) letter from VT Air Pollution Control Division dated July 28, 1998 stating a negative declaration for the aerospace coating operations CTG category.

[FR Doc. 03–14571 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–38–6985b; FRL–7493–4]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Rhode Island that are incorporated by reference (IBR) into the Rhode Island State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective June 11, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, New England Regional Office (Region 1), One Congress Street, Suite 1100, Boston, MA 02114–2023; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Cooke, Environmental Scientist, at the above EPA New England Region address or at (617) 918–1668.

SUPPLEMENTARY INFORMATION: The State Implementation Plan (SIP) is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference (IBR) Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On August 9, 1999, EPA published a document in the **Federal Register** (64 FR 43083) beginning the new IBR procedure for Rhode Island. In this

document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 24, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. In § 52.2070 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to April 23, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 23, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of April 23, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114–2023; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) *EPA approved regulations.*

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 1.	Visible emissions	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 2.	Handling of soft coal	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 3.	Particulate emissions from industrial processes.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 4.	Open fires	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 5.	Fugitive dust	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 6.	Continuous emission monitors	11/22/89	09/30/91, 56 FR 49416	RI Air Pollution Control Regulation Number 6 is also referred to by the title "Opacity Monitors".
Air Pollution Control Regulation 7.	Emission of air contaminants detrimental to persons or property.	07/19/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 8.	Sulfur content of fuels	05/02/85	01/08/86, 51 FR 756	
Air Pollution Control Regulation 9.	Air pollution control permits	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 9 is approved with the exception of Sections 9.13, 9.14, 9.15, and Appendix A which Rhode Island did not submit as part of SIP revision.
Air Pollution Control Regulation 10.	Air pollution episodes	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 11.	Petroleum liquids marketing and storage.	01/31/93	12/17/93, 58 FR 65933	
Air Pollution Control Regulation 12.	Incinerators	04/22/81	04/26/82, 47 FR 17817	
Air Pollution Control Regulation 13.	Particulate emissions from fossil fuel fired steam or hot water generating units.	10/05/82	03/29/83, 48 FR 13027	
Air Pollution Control Regulation 14.	Record keeping and reporting	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised.
Air Pollution Control Regulation 15.	Control of organic solvent emissions.	04/08/96	12/02/99, 64 FR 67500	Limited approval. Applicability threshold decreased to 50 tpy. Definition of VOC revised. All of No. 15 is approved with the except of 15.2.2 which Rhode Island did not submit as part of the SIP revision.
Air Pollution Control Regulation 16.	Operation of air pollution control systems.	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 17.	Odors	02/22/77	05/07/81, 46 FR 25446	
Air Pollution Control Regulation 18.	Control of Emissions from Organic Solvent Cleaning.	Withdrawn	12/02/99, 64 FR 67500	No. 18 is superseded by No. 36.
Air Pollution Control Regulation 19.	Control of Volatile Organic Compounds from Surface Coating Operations.	03/07/96	12/02/99, 64 FR 67500	Definition of VOC revised. Wood products requirements deleted because state adopted new Regulation No. 36 which addresses wood products. Except 19.2.2.
Air Pollution Control Regulation 21.	Control of Volatile Organic Compounds from Printing Operations.	04/08/96	12/02/99, 64 FR 67500	Applicability threshold decreased to 50 tpy. Definition of VOC revised. All on No. 21 is approved with the exception of Section 21.2.3 which the State did not submit as part of the SIP revision.

EPA-APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 25.	Control of VOC Emissions from Cutback and Emulsified Asphalt.	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 25 is approved with the exception of Section 25.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 26.	Control of Organic Solvent Emissions from Manufacture of Synthesized Pharmaceutical Products.	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 26 is approved with the exception of 26.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 27.	Control of nitrogen oxide emissions.	01/16/96	09/02/97, 62 FR 46202	
Air Pollution Control Regulation 29.3.	Emissions Caps	04/28/95	03/22/96, 61 FR 11735	This rule limits a source's potential to emit, therefore avoiding RACT, Title V Operating Permit.
Air Pollution Control Regulation 30.	Control of VOCs from Automotive Refinishing Operations.	04/08/96	12/02/99, 64 FR 67500	Definition of VOC revised. All of No. 30 is approved with the exception of Section 30.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 31.	Control of VOCs from Commercial and Consumer Products.	04/08/96	12/09/99, 64 FR 67500	Definition of VOC revised. All of No. 31 is approved with the exception of Section 31.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 32.	Control of VOCs from Marine Vessel Loading Operations.	04/08/96	12/02/99, 64 FR 67501	Definition of VOC revised. All of No. 32 is approved with the exception of Section 32.2.2 which the State did not submit as part of the SIP revision.
Air Pollution Control Regulation 33.	Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings.	04/08/96	12/02/99, 64 FR 67501	Definition of VOC revised. All of No. 33 is approved with the exception of Section 33.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 34.	Rhode Island Motor Vehicle Inspection/Maintenance Program.	03/30/00	02/09/01, 66 FR 9663	Department of Environmental Management regulation containing I/M standards.
Air Pollution Control Regulation 35.	Control of VOCs and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations.	07/07/96	12/02/99, 64 FR 67501	All of No. 35 is approved with the exception of Section 35.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	04/18/96	12/02/99, 64 FR 67501	All of No. 36 is approved with the exception of Section 36.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 37.	Rhode Island's Low Emission Vehicle Program.	12/07/99	03/09/00, 65 FR 12480	Includes National LEV as a compliance alternative.
Air Pollution Control Regulation 38.	Nitrogen Oxides Allowance Program.	06/10/98	06/02/99, 64 FR 29567	
Air Pollution Control Regulation 41.	NO_x Budget Trading Program	10/01/99	12/27/00, 65 FR 81748	
Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1.	Rhode Island Motor Vehicle Inspection/Maintenance Program.	01/31/01	02/09/01, 66 FR 9663	Department of Administration regulations for the I/M program.

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Narragansett Electric Company South Street Station in Providence.	A.H. File No. 83–12–AP	08/29/03	07/27/84, 49 FR 30177	Revisions to Air Pollution Control Regulation 8, "Sulfur Content of Fuels," specifying maximum sulfur-in-coal limits (1.21 lbs/MMBtu on a 30-day rolling average and 2.31 lbs/MMBtu on a 24-hour average). These revisions approve Section 8.3.4, "Large Fuel Burning Devices Using Coal," for South Street Station only.
Stanley Bostitch, Bostitch Division of Textron.	A.H. File No. 85–8–AP	06/06/85	12/11/86, 51 FR 44604	RI DEM and Bostitch administrative consent agreement effective 6/6/85. Requires Bostitch to reformulate certain solvent-based coatings to low/no solvent formulation by 12/31/86. Also addendum dated 9/20/85 defining emission limitations reformulated coatings must meet. (A) An administrative consent agreement between the RI DEM and Bostitch Division of Textron. (B) A letter to Bostitch Division of Textron from the RI DEM dated September 20, 1985 which serves as an addendum to the consent agreement. The addendum defines the emission limitations which Bostitch's Division of Textron reformulated coatings.
Keene Corporation, East Providence, RI.	A.H. File No. 85–10–AP	09/12/85	08/31/87, 52 FR 2793	RI DEM and Keene Corporation administrative consent agreement effective 9/12/85 Granting final compliance date extension for the control of organic solvent emissions from sixpaper coating lines. (A) Letter from the RI DEM dated November 5, 1985 submitting revisions to the RI SIP. (B) An administrative consent agreement between the RI DEM and Keene Corporation.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Tech Industries	File No. 86–12–AP	11/24/87	03/10/89, 54 FR 10147	RI DEM and Tech Industries original administrative consent agreement (86–12–AP) [except for provisions 7 and 8) effective 6/12/86, an addendum effective 11/24/87, defining and imposing reasonably available control technology to control volatile organic compounds. (A) An administrative consent agreement (86–12–AP), except for Provisions 7 and 8, between the RI DEM and Tech Industries effective June 12, 1986. (B) An addendum to the administrative consent agreement (86–12–AP) between the RI DEM and Tech Industries. The addendum was effective November 24, 1987. (C) Letters dated May 6, 1987; October 15, 1987; and January 4, 1988 submitted to the EPA by the RI DEM.
University of Rhode Island	A.P. File No. 87–5–AP	03/17/87	09/19/89, 54 FR 38517	Revisions to the SIP submitted by the RI DEM on April 28, 1989, approving a renewal of a sulfur dioxide bubble for the University of Rhode Island
University of Rhode Island.	File No. 95–50–AP	03/12/96	09/02/97, 62 FR 46202	An administrative consent agreement between RIDEM and University of Rhode Island, Alternative NOx RACT (RI Regulation 27.4.8)
Providence Metalizing in Pawtucket, Rhode Island.	File No. 87–2–AP	04/24/90	09/06/90, 55 FR 36635	Define and impose RACT to control volatile organic compound emissions. (A) Letter from the RIDEM dated April 26, 1990, submitting a revision to the RI SIP. (B) An administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective July 24, 1987.. (C) An amendment to the administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective May 4, 1989. (D) An addendum to the administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective April 24, 1990.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Tillotson-Pearson in Warren, Rhode Island.	File No. 90–1–AP	06/05/90	08/31/90, 55 FR 35623	Revisions to the SIP submitted by the RI DEM on May 24, 1990, to define and impose RACT to control volatile organic compound emissions. (A) Letter from the RI DEM dated May 24, 1990 submitting a revision to the RI SIP. (B) An Administrative consent agreement (90–1–AP) between the RI DEM and Tillotson-Pearson.
Rhode Island Hospital	File No. 95–14–AP.	11/27/95	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between the RI DEM and RI Hospital.
Osram Sylvania Incorporated	File No. 96–06–AP; Air Pollution Permit Approval, No. 1350..	09/04/96	09/02/97, 62 FR 46202	Alternate NOx RACT. (A) An Administrative consent agreement between the RI DEM and Osram Sylvania Incorporated, file no. 96–06–AP, effective September 4, 1996. (B) An air pollution Permit approval, no. 1350 Osram Sylvania Incorporated Issued by RIDEM effective May 14, 1996.
Algonquin Gas Transmission Company.	File No. 95–52–AP	12/05/95	09/02/97, 62 FR 46202	Alterate NOx RACT. (A) Letter from the RI DEM dated September 17, 1996 submitting a revision to the RI SIP. (B) An administering consent agreement between RIDEM and Algonquin Gas Transmission Company, effective on December 5, 1995.
Bradford Dyeing Association, Inc.	File No. 95–28–AP	11/17/95	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between RIDEM and Bradford Dyeing Association, Inc.
Hoechst Celanese Corporation	File No. 95–62–AP	11/20/95	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between RIDEM and Hoechst Celanese Corporation.
Naval Education and Training Center in Newport.	File No. 96–07–AP	03/04/96	09/02/97, 62 FR 46202	Alternative NOx RACT. An administrative consent agreement between RIDEM and Naval Education and Training Center in Newport.
Rhode Island Economic Development.	File No. 96–04–AP	09/02/97	06/02/99, 64 FR 29567	Alternative NOx RACT. A consent agreement between RIDEM and Rhode Island Economic Development Corporation's Central Heating Plant in North Kingstown.
Cranston Print Works	A.H. File No. 95–30–AP	12/19/95	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.
CCL Custom Manufacturing	A.H. File No. 97–02–AP	04/10/97 10/27/99	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.
Victory Finishing Technologies	A.H. File No. 96–05–AP	05/24/96	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.
Quality Spray and Stenciling	A.H. File No. 97–04–AP	10/21/97 07/13/99	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Guild Music	A.H. File No. 95–65–AP	11/09/95	12/02/99, 64 FR 67501	Non-CTG VOC RACT Determination.

(e) *Nonregulatory.*

RHODE ISLAND NON REGULATORY

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Notice of public hearing	Statewide	Submitted 02/09/72	06/15/72, 37 FR 11911	Proposed Implementation Plan Regulations, RI Department of Health.
Miscellaneous non-regulatory additions to the plan correcting minor deficiencies.	Statewide	Submitted 02/29/72	07/27/72, 37 FR 15080	Approval and promulgation of Implementation Plan Miscellaneous Amendments, RI Department of Health.
Compliance schedules	Statewide	Submitted 04/24/73	06/20/73, 38 FR 16144	Submitted by RI Department of Health.
AQMA identifications for the State of Rhode Island.	Statewide	Submitted 04/11/74	04/29/75, 40 FR 18726	Submitted by RI Department of Health.
Letter identifying Metropolitan Providence as an AQMA.	Metropolitan Providence	Submitted 09/06/74	04/29/75, 40 FR 18726	Submitted by the Governor.
A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58.	Statewide	Submitted 01/08/80	01/15/81, 46 FR 3516	Submitted by the RI Department of Environmental Management Director.
Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977. Included are plans to attain the carbon monoxide and ozone standards and information allowing for the re-designation of Providence to non-attainment for the primary TSP standard based on new data.	Statewide	Submitted 05/14/79, 06/11/79, 08/13/79, 01/08/80, 01/24/80, 03/10/80, 03/31/80, 04/21/80, 06/06/80, 06/13/80, 08/20/80, 11/14/80, 03/04/81, 03/05/81 and 04/16/81	05/07/81, 46 FR 25446	Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977.
A program to the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas. Certain miscellaneous provisions unrelated to Part D are also included.				
Section VI, Part II, "Stationary Source Permitting and Enforcement" of the narrative.	Statewide	Submitted 05/14/82; and 07/01/82	06/28/83, 48 FR 29690	As submitted by RI DEM on May 14, 1982 and July 1, 1982 for review of new major sources and major modifications in nonattainment areas. Also included are revisions to add rules for banking emission reductions.
Revisions to the Rhode Island State Implementation Plan for attainment of the primary National Ambient Air Quality Standard for ozone. 1982 Ozone Attainment Plan	Statewide	Submitted 05/14/82; 07/01/82; 07/07/82; 10/04/82; and 03/02/83	07/06/83, 48 FR 31026	Submitted by the Department of Environmental Management.
Revisions to attain and maintain the lead NAAQS.	Statewide	Submitted 07/07/83	09/15/83, 48 FR 41405	Submitted by the Department of Environmental Management.
Section VI, Part II of the associated narrative of the RI SIP.	Statewide	Submitted 02/06/84; 01/27/84; and 06/06/84	07/06/84, 49 FR 27749	To incorporate the requirements for the Prevention of Significant Deterioration of 40 CFR 51.24, permitting major stationary sources of lead and other miscellaneous changes.
Letter from RI DEM submitting an amendment to the RI State Implementation Plan. Section VII of the RI SIP Ambient Air Quality Monitoring.	Statewide	Submitted 01/14/94; and 06/14/94	10/30/96, 61 FR 55897	A revision to the RI SIP regarding ozone monitoring. RI will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.
Letter from RI DEM submitting revisions.	Statewide	Submitted 03/15/94	10/30/96, 61 FR 55903	Revision to the RI SIP regarding the States' Contingency Plan.

RHODE ISLAND NON REGULATORY—Continued

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Letter from RI DEM submitting revision—Rhode Island's 15 Percent Plan and Contingency Plan.	Statewide	Submitted 03/15/94	04/17/97, 62 FR 18712	The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA approved only the following portions of these submittals: 15 Percent Plan—the EPA approved the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating, printing operations, marine vessel loading, plant closures (0.79 tons per day approved out of 0.84 claimed), cutback asphalt, auto refinishing, stage II, reformulated gas in on-road and off-road engines, and tier I motor vehicle controls. Contingency Plan—the EPA approved the calculation of the required emission reduction, and a portion of the emission reduction credits claimed from Consumer and Commercial products (1.1 tons per day approved out of 1.9 tons claimed), and architectural and industrial maintenance (AIM) coatings (1.9 tons per day approved out of 2.4 tons claimed). EPA concurrently disapproved portions of these SIP submissions, as discussed within Section 52.2084(a)(2).
Letter from RI DEM submitting revision for Clean Fuel Fleet Substitution Plan.	Providence (all of Rhode Island) nonattainment area.	10/05/94	03/09/00, 65 FR 12476	
Letter outlining commitment to national LEV.	Statewide	02/22/99	03/09/00, 65 FR 12476	Includes details of the State's commitment to National LEV.
Negative Declaration for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor Processes Control Techniques Guidelines Categories.	Statewide	Submitted 04/05/95	12/02/99, 65 FR 67495.	
October 1, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted October 1, 1999	12/27/2000, 65 FR 81748	Submitted Air Pollution Control Regulation No. 14, "NO_x Budget Trading Program," and the "NO_x State implementation Plan (SIP) Call Narrative."
"NO_x State implementation Plan (SIP) Call Narrative," September 22, 1999.	Statewide	Submitted October 1, 1999	12/27/2000, 65 FR 81748	
November 9, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted November 9, 1999	12/27/2000, 65 FR 81748	Stating RI's intent to comply with applicable reporting requirements.
Negative Declaration for Aerospace Coating Operations Control Techniques Guideline Category.	Statewide	Submitted 03/28/00	07/10/00, 65 FR 42292	

[FR Doc. 03–14572 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # WA–70–7148; FRL–7493–8]

Approval and Promulgation of Air Quality Implementation Plan; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving most, but not all of the State Implementation Plan (SIP) revisions for visibility submitted by the State of Washington on November 5, 1999. The significant provisions of this SIP revision that we are approving include an improved smoke management plan and the Southwest Air Pollution Control Agency (SWAPCA) emission limitations on the Centralia Power Plant located in central western Washington.

DATES: This action is effective on July 11, 2003.

ADDRESSES: Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–0782.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

Background
I. Background on this Action
II. Background on Visibility

A. What is visibility protection and why do we have it?
B. What are the main visibility protections provided by Federal rules?
C. How has visibility been protected in Washington?
III. What are the required provisions of a visibility SIP?
A. Long-Term Strategy
B. Monitoring
C. Best Available Retrofit Technology
IV. What does this proposed Visibility SIP revision change and how do these changes compare to the Federal requirements?
A. Provisions to revise the protection of Integral Vistas
B. Provisions to revise the Smoke Management Plan
i. What is Washington's Smoke Management Plan?
ii. How does Washington's 1999 SIP Revision change the Plan?
iii. How does the Smoke Management Plan compare to Federal requirements?
C. Provisions to include the SWAPCA Reasonably Available Control Technology Emission Limitations for Centralia Power Plant
D. Provisions to revise the State's Best Available Retrofit Technology and New Source Review Rules
V. Response to Public Comments
VI. Statutory and Executive Order Reviews

Background

I. Background on This Action

On October 23, 2002, EPA proposed in the **Federal Register**, approving certain portions of the proposed Washington Visibility SIP revision and taking no action on other provisions of the proposed SIP revisions. *See* 67 FR 65077, October 23, 2002. In that notice, EPA provided a 30 day review and comment period and solicited comments on our proposal. EPA received no comments. EPA is now taking final action on the SIP revision consistent with the published proposal.

II. Background on Visibility

A. What Is Visibility Protection and Why Do We Have It?

Section 169A of the Federal Clean Air Act (CAA or Act) requires States to protect visibility in mandatory Class I Federal areas. Mandatory Class I Federal areas are specified large National Parks or Wilderness Areas. In Washington, there are 8 mandatory Class I Federal areas: the Mount Rainier National Park, North Cascades National Park, Olympic National Park, Alpine Lakes Wilderness Area, Glacier Peak Wilderness Area, Goat Rocks Wilderness Area, Mount Adams Wilderness Area, and Pasayten Wilderness Area. *See* 40 CFR 81.434. The Federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P.

B. What Are the Main Visibility Protections Provided by the Federal Rules?

The Clean Air Act sets out a goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas. *See* 42 U.S.C. 7491. Employing a close coordination process among the state and the Federal Land Managers (FLMs), the Federal rules require monitoring of visibility in mandatory Class I Federal areas, as well as the development of a long-term strategy for making reasonable progress towards the national visibility goal. The visibility protection rules also provide for an assessment of visibility impacts from any new or major modification to a major stationary source that may affect mandatory Class I Federal areas. Additionally, in the event that a FLM certifies impairment of visibility in a mandatory Class I Federal area that could be caused, or contributed to, by an existing stationary facility, emission limitations representing Best Available Retrofit Technology (BART) may be imposed on the facility.

The Federal visibility rules were modified in 1999 to include provisions for addressing regional haze. *See* 64 FR 35714, July 1, 1999. Regional haze is visibility impairment which results from the cumulative impact of emissions from many point and non-point sources. All states are currently in the process of developing revisions to their SIPs to address the regional haze provisions. Therefore, the SIP submission under discussion in this action is not required to comply with the regional haze provisions of 40 CFR part 51, subpart P.

C. How Has Visibility Been Protected in Washington?

The initial proposed Visibility SIP for Washington was submitted by the State and approved in part by EPA on May 4, 1987, (52 FR 16243). EPA approved the Washington State Visibility Protection Program (with exceptions described below), certain provisions of 173–403 Washington Administrative Code (WAC) Implementation of Regulations for Air Contaminant Sources, and the 1983 Smoke Management Program. EPA disapproved section V.B., the new source review program, Appendix A, the Proposed Best Available Retrofit Technology (BART) rule, and the Proposed New Source Review Regulations.

III. What Are the Required Provisions of a Visibility SIP?

40 CFR 51.302 provides the requirements for Visibility SIPs. These requirements and how the Washington Visibility SIP meets these requirements are summarized below.

A. Long-Term Strategy

The SIP needs to include a long-term (10–15 year) strategy that includes emission limitations, schedules of compliance, and other measures as deemed necessary to make reasonable progress toward the national goal. *See* 40 CFR 51.302(c)(2)(i). In general, Section VI of the proposed 1999 SIP revision provides a discussion of the long-term strategy, including measures for stationary sources, mobile sources, area sources, and interstate coordination. The long-term strategy must include:

- A strategy for evaluating visibility in mandatory Class I Federal areas by visual observation or other appropriate monitoring techniques. *See* 40 CFR 51.305(a). Section V of the proposed 1999 SIP revision provides for monitoring through the IMPROVE monitoring network and an assessment strategy.
- A provision for the available visibility data and a mechanism for its use in decisions required by the regulations. *See* 40 CFR 51.305(b). Section IX of the proposed 1999 SIP revision provides for the development and use of available data for SIP review and development.
- A strategy to address any existing impairment the FLM certifies to the State and integral vista of which the FLM notifies the State at least 6 months prior to plan submission. *See* 40 CFR 51.306(a)(1). Section I of the proposed 1999 SIP revision discusses certification of impairment in mandatory Class I Federal areas. Section III of the proposed 1999 SIP revision discusses integral vistas.
- A discussion, with reasonable specificity, why the long-term strategy is adequate for making reasonable progress. *See* 40 CFR 51.306(a)(3). Section VI of the proposed 1999 SIP revision discusses all source categories, the control measures that apply to them, and a qualitative assessment of how these are adequate for making reasonable progress. Section IX of the proposed 1999 SIP revision discusses the evaluation of progress toward achieving the national visibility goal.
- Coordination of the long-term strategy with other existing plans and goals, including those provided by affected FLMs. *See* 40 CFR 51.306(a)(3). Section IV of the proposed 1999 SIP revision provides for the consultation with FLMs for the review and revision of the visibility SIP and New Source Review rules.
- Provisions for periodic review and revision as appropriate of not less than every three years. *See* 40 CFR 51.306(c). This review must include:

(1) Progress achieved in remedying existing impairment;
(2) The ability of the long-term strategy to prevent future impairment;
(3) Any change in visibility since the last report;
(4) Additional measures, including the need for SIP revisions that may be needed to assure reasonable progress;
(5) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy; and
(6) The impact of any exemption granted under 40 CFR 51.303.
(7) The need for BART to remedy existing visibility impairment of any integral vista.

Section IV of the proposed 1999 SIP revision provides for the review of the visibility SIP.

- Provisions for review of the impacts of any new or modified major stationary source. *See* 40 CFR 51.306(d). The Washington Department of Ecology has a fully delegated Prevention of Significant Deterioration (PSD) program. The Department of Ecology was notified of this delegation by letter dated February 7, 2002.

B. Monitoring

The plan must contain an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment. *See* 40 CFR 51.302(c)(2)(ii). Section V of the proposed 1999 SIP revision provides for visibility monitoring of the mandatory Class I Federal areas. Section IV of the proposed 1999 SIP revision provides a general discussion of the effect of measures on preventing future and remedying existing impairment.

C. Best Available Retrofit Technology

The State must identify and analyze for BART each existing stationary facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal area where the impairment is reasonably attributable to that existing stationary facility. *See* 40 CFR 51.302(c)(4). The plan must also contain emission limitations representing BART for any existing stationary facility identified according to 40 CFR 51.302(c)(4).

The State has not determined that existing impairment in any mandatory Class I Federal area for which impairment has been certified can be reasonably attributed to a specific major stationary source.

IV. What Does This Proposed Visibility SIP Revision Change and How Do These Changes Compare to the Federal Requirements?

A. Provisions To Revise the Protection of Integral Vistas

The 1987 SIP included a list of "Preliminary Integral Vistas" that were proposed by the National Park Service (NPS). The 1987 SIP provides that until the NPS finalizes the list of vistas in accordance with 40 CFR 51.304, the panoramas listed in the January 15, 1981, **Federal Register** (Table III–2) will be protected under the visibility SIP. These integral vistas were never finalized by the NPS. Thus, there are no federally recognized integral vistas to be protected. In the interim, no emission limitation was established for a source that specifically protected an integral vista, nor is the State proposing to revise and relax an emission limitation established for integral vista protection. The 1999 proposed SIP revision removes the provisions that would have continued these protections. The Federal visibility regulations (40 CFR 51.304(d)) indicate that a state need not in its implementation plan list any integral vista the identification of which was not made in accordance with the criteria in 40 CFR 51.304(a). Since no integral vistas have been identified by the FLM, there is no relaxation of SIP emission requirements and since the 1999 proposed SIP revision meets the applicable requirements for visibility protection in mandatory Class I Federal areas, EPA proposes approval of this revision.

B. Provisions To Revise the Smoke Management Plan

i. What Is Washington's Smoke Management Plan?

Washington's Smoke Management Plan (SMP) is a program designed to manage smoke impacts from the burning of silviculture and agriculture wastes. The SMP balances forest and agricultural land burning with preventing smoke from being carried to, or accumulating in, designated areas and other areas sensitive to smoke.

ii. How Does Washington's 1999 Proposed SIP Revision Change the Plan?

The SMP of 1998 submitted in the proposed 1999 Visibility SIP revision significantly improves the 1983 SMP included in the 1987 SIP. The 1983 SMP provided for reduced emissions from prescribed fires through optimization of fuel conditions (*i.e.* dry fuel), improves ventilation and dispersion through meteorology, and minimizes impact by controlling smoke drift into populated areas. There was no consideration for protection of visibility in mandatory Class I Federal areas.

The 1998 SMP requires approval from the Resource Protection Division Manager, Department of Natural Resources for all prescribed fires. Approval requirements differ depending whether the fire is a "large fire" involving over 100 tons of fuel or a small fire. Large fire burn approval considers a number of factors including likelihood of smoke intrusion into populated areas or mandatory Class I Federal areas, air quality regulations, violation of emission reductions targets, violation of another state's air quality standards; and whether smoke will disperse within given timeframes. Operators of small fires (less than 100 tons of fuel) must call a toll-free phone number and follow the instructions that apply for that day and location of the proposed fire.

The SMP further requires emissions from prescribed fires be reduced by 20% from baseline levels (defined in the SMP) by December 1994 and until December 2000. Emissions from burning must be permanently reduced by 50% from baseline levels by December 2000.

iii. How Does the Smoke Management Plan Compare to Federal Requirements?

The visibility protection provisions at 40 CFR part 51, subpart P suggest that states consider SMPs in developing long-term strategies for visibility protection. However, there are no specific Federal requirements for states to develop and adopt SMPs. In September 1992, the Environmental Protection Agency published *The Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* to assist states in the development of Smoke Management Plans [EPA–450/2–92–003].

C. Provisions To Include the SWAPCA Reasonably Available Control Technology Emission Limits for Centralia Power Plant

The Centralia Power Plant (CPP) is a coal-fired electrical generating station that has a potential to emit (PTE) 90,000 t/yr Sulfur dioxide (SO2). It is a BART eligible source as defined by 40 CFR 51.301. It is located near the mandatory Class I Federal area, Mt. Rainier National Park in Washington state. The

NPS has certified visibility impairment at Mt. Rainier National Park. The State of Washington has not determined that this visibility impairment is reasonably attributable to the CPP.

The SIP must contain emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to 40 CFR 51.302 (c)(4). The state needs to identify each existing facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal areas where the impairment in the mandatory Class I Federal area is reasonably attributable to that existing stationary facility. The State has not identified CPP, or any other source or group of small sources as an existing facility that may reasonably be expected to contribute to visibility impairment to mandatory Class I Federal areas. Therefore, under 40 CFR 51.302(c)(4), a BART analysis is not required for CPP. In the future regional haze SIP, a BART analysis may be required for the CPP under 40 CFR 51.308(e).

In a separate activity, the State, SWAPCA, the NPS and U.S. Forest Service, owners of the CPP, and EPA entered into a negotiated agreement to establish emission limits for SO2, oxides of nitrogen (NO_X), and particulate matter with an aerodynamic diameter of less than 10 micrometers (PM–10) for the CPP. The SWAPCA, who has regulatory authority over the CPP, issued the CPP a Reasonably Available Control Technology (RACT) order under state law that contain the negotiated emission limitations. This RACT Order is included in the proposed 1999 Visibility SIP revision.

Both SWAPCA in their Technical Support Document for the RACT Order and EPA Region 10 have independently conducted an analysis of the emission limits in the RACT Order comparing them against what would have been required using the Clean Air Act definition of BART and EPA BART guidelines. Additional details on this analyses can be found in the Technical Support Document in the docket of this action. The conclusion of both analyses is that the RACT Order emission limits for SO2 and PM–10 represent BART. EPA is approving these emissions limitations as meeting the BART requirements of 40 CFR 51.308(c)(4). Additionally, while the NO_X emission limitation may have represented BART when the emission limits in the RACT Order were negotiated, recent technology advancements have been made. EPA cannot now say that the emission limitations in the SWAPCA RACT Order for NO_X represent BART. However EPA is approving the emission limits for NO_X as a strengthening of the SIP for visibility purposes.

D. Provisions To Revise the State's Best Available Retrofit Technology and New Source Review Rules.

The proposed 1999 SIP revision also included revised BART rules (WAC 173–400–151) and New Source Review (NSR) (WAC 173–400–110, 112, 113, & 141). Subsequent to the submittal in 1999, the State has verbally indicated that new rules are being developed and the rules in this submittal will soon be obsolete. Therefore EPA is taking no action on these rules.

V. Response to Comments

EPA solicited comments on the proposed action in the October 23, 2002, **Federal Register** document (67 FR 65077). EPA received no comments. Therefore, there is no response to comments.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 24, 2003.

L. John Iani,

Regional Administrator, Region 10.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

■ 2. Amend § 52.2470 by adding paragraph (c)(82) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(82) On November 5, 1999, the State of Washington, Department of Ecology submitted a revision to the Visibility SIP. EPA approves all provisions to the November 5, 1999 Visibility SIP revision including, but not limited to the 1998 Smoke Management Plan, and South West Air Pollution Control Agency, Reasonably Available Control Technology order on the Centralia Power plant. EPA is taking no action on Section VIII. Identification and Analysis for Best Available Retrofit Technology (BART) and Section X, New Source Review, of the November 5, 1999, Visibility SIP revision.

(i) Incorporation by reference.

(A) South West Air Pollution Control Agency (SWAPCA) regulatory order, SWAPCA 97–2057R1, Regulatory Order to Establish RACT Limits and Order of Approval, Adopted February 26, 1998.

(B) [Reserved]

■ 3. Amend § 52.2475 by adding paragraph (g) to read as follows:

§ 52.2475 Approval of plans.

* * * * *

(g) Visibility.

(1) EPA approves as a revision to the Washington State Implementation Plan, the November 5, 1999, Visibility SIP revision, except that EPA is taking no action on Section VIII. Identification and Analysis for Best Available Retrofit Technology (BART), and Section X, New Source Review of the November 5, 1999, Visibility SIP revision.

(2) [Reserved]

■ 4. In § 52.2479, the table is amended by revising the entries under Section 5 to read as follows:

§ 52.2479 Contents of the Federally approved, State submitted implementation plan.

* * * * *

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS—TABLE OF CONTENTS

Section 5—Federally Mandated Programs [Dates in brackets indicate EPA effective date]
5.BAP—Business Assistance Program [5/8/95]
5.IM—Motor Vehicle Inspection/Maintenance Program [9/25/96]
5.OXY—Oxygenated Gasoline Program [3/21/94]
5.SMP—Smoke Management Program [7/6/87]
5.VIS—Washington State Visibility Protection Program [7/6/87]
5.VIS.NSR—Visibility New Source Review (NSR) for nonattainment areas for Washington [7/28/86]
Supplemental Section A—Reference Material [Date in brackets indicate EPA effective date]
A.1—Description of Source test Program for the State Implementation Plan [10/24/84]
Supplemental B—Administrative and Procedural Material [Dates in brackets indicate EPA effective date]
B.3—Correspondence
B.3.1—Legal Authority [6/05/80]
B.3.2—Correspondence prior to 1991
B.3.2.1—New Source Performance Standards (NSPS) for Tri-Counties [9/23/81]

[FR Doc. 03–14573 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0159; FRL–7309–5]

Methoprene, Watermelon Mosaic Virus-2 Coat Protein, and Zucchini Yellow Mosaic Virus Coat Protein; Final Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the text of the exemption from the requirement of a tolerance for methoprene and is revoking all of the tolerances for residues for methoprene because a recent EPA review finds that no harm is expected to the public from exposure to residues of methoprene. Therefore, these tolerances are no longer needed and their associated uses are covered by tolerance exemptions. Also, EPA is revoking the exemptions for watermelon mosaic virus-2 coat protein, and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash, because these exemptions are covered in later sections of 40 CFR part 180. Because methoprene's 35 tolerances and the 2 exemptions from the virus materials were previously reassessed, the regulatory actions taken in this document do not contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996.

DATES: This regulation is effective June 11, 2003. Objections and requests for hearings, identified by docket ID

number OPP–2003–0159, must be received on or before August 11, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7378; e-mail address: mandula.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IIA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification ID number OPP–2003–0159. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of February 12, 2003 (68 FR 7097) (FRL–7288–7), EPA issued a proposed rule to amend the exemption expression for methoprene to indicate that methoprene is exempt from tolerances when used on food commodities as an insect larvicide, to revoke all the tolerances for residues of methoprene because they are no longer needed to protect the public, and to revoke the exemptions for watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash, because these exemptions are covered in later sections of 40 CFR part 180. Also, the February 12, 2003 proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards. No comments were received.

On August 1, 2002, EPA concluded that there is a reasonable certainty that no harm will result to the general population, infants, and children from aggregate exposure to residues of methoprene based on its review and evaluation of available information and conservative assumptions that assumed the existence of a broad-based tolerance exemption; i.e., that methoprene can be used on all crop commodities. In addition, EPA determined that all methoprene tolerances in 40 CFR 180.359 and its exemption in § 180.1033 were considered to be reassessed. For reassessment counting purposes, the tolerance for the cereal grain milled fractions was counted as two to reflect the original tolerances found previously in 40 CFR 185.4150 and 186.4150. Methoprene is being granted a tolerance exemption for use as an insect larvicide on all food commodities based on the Agency's safety finding which supports tolerance exemption. The tolerances revoked by this final rule are no longer necessary for the continued use of methoprene as a pesticide. A copy of EPA's August 1, 2002 memo is available in e-docket OPP–2002–0274.

EPA is aware that revocation of some of the methoprene tolerances leads to or continues a lack of harmonization with some of the existing methoprene CODEX maximum residue limits (MRLs). For egg, the EPA tolerance of 0.1 ppm is being revoked while the CODEX MRL remains at 0.05 milligrams/kilogram (mg/kg). For mushroom, EPA's tolerance of 1.0 ppm is being revoked while the CODEX MRL remains at 0.2 mg/kg. For peanut, EPA's tolerance of 2.0 ppm is being revoked while the CODEX MRL remains at 2 mg/kg. For residues of methoprene in other food commodities, there was either a tolerance or there is a CODEX MRL, but not both; therefore, a lack of harmonization remains for residues in these other food commodities.

EPA is revoking the methoprene tolerances in all food commodities because a thorough risk analysis has shown that these tolerances are not necessary to protect human health or the environment. Risk assessments were performed for oral exposure for acute, short-term, intermediate-term, and chronic exposures. No evidence of risk to adults, infants, or children were found, and the EPA review stated "There are no concerns for chronic dietary exposure." Similarly, the review states "There are no concerns for any oral, dermal, or inhalation intermediate-term exosures to methoprene." The review concludes, "Based on its review and evaluation of the available information, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to residues of methoprene." In addition, EPA's risk assessment was based on conservative assumptions that assumed the existence of the tolerance exemption.

Therefore, EPA is amending 40 CFR 180.1033 to exempt methoprene from the requirement of a tolerance by revising the commodities from "raw agricultural" to "food" and the use of control from "mosquito" to "insect" larvae. Because they are no longer needed, EPA is revoking all 35 tolerances for methoprene in 40 CFR 180.359, including: barley; buckwheat; cattle, fat; cattle, meat; cattle, meat byproducts; cereal grain milled fractions (except flour and rice hulls); corn (except popcorn and sweetcorn); egg; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; millet; mushroom; oat; peanut; poultry, fat; poultry, meat; poultry, meat byproducts; rice; rice, hulls; rye; sheep, fat; sheep, meat; sheep, meat byproducts; sorghum (milo); and wheat in § 180.359(a)(1), and feed supplement tolerances for beef cattle and dairy cattle in § 180.359(a)(2).

On July 9, 2002, EPA concluded that exemptions in 40 CFR 180.1132 watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein, and the genetic material necessary for the production of these proteins in or on summer squash were superseded by the exemption in 40 CFR 180.1184 in or on all food commodities. In addition, the Agency determined that these two exemptions were considered to be reassessed. Therefore, EPA is revoking the exemptions in 40 CFR 180.1132 because they are no longer needed. This final rule does not change availability or use of the pesticides mentioned. A copy of the July 9, 2002 memo is in the docket for this action.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses if a numerical tolerance is being replaced by a tolerance exemption for those uses, or if the tolerance statement is redundant or has been superceded. EPA also proposes revocation of tolerances for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

The actions in this final rule are effective on the date of its publication in the **Federal Register**. The only effect of the final rule will be to remove redundancies and inconsistencies in 40 CFR part 180. No person or entity is expected to be adversely affected. This final rule does not change the regulatory status of any registered products.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of May 7, 2003, EPA has reassessed over 6,500 tolerances. In this final rule, EPA is revoking 35 tolerances and 2 exemptions. These tolerances and exemptions were previously reassessed and counted as described in Unit II.A.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the Internet at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0159 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 11, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0159, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

This final rule revokes tolerances established under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, the pesticides mentioned in this rule have tolerance exemptions and will therefore remain available after this rule becomes effective. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 21, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§180.359 and 180.1132 [Removed]

■ 2. Sections 180.359 and 180.1132 are removed.

■ 3. Section 180.1033 is revised to read as follows:

§180.1033 Methoprene; exemption from the requirement of a tolerance.

Methoprene is exempt from the requirement of a tolerance in or on all food commodities when used to control insect larvae.

[FR Doc. 03–14330 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7511–1]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Utah applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes satisfy all requirements needed to qualify for Final authorization. Thus, with respect to these revisions, EPA is granting Final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments (HSWA) of 1984.

DATES: Final authorization for the revisions to Utah's hazardous waste management program will become effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139 or e-mail: *shurr.kris@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Utah initially received Final Authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989 (54 FR 7417), effective March 7, 1989; May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291), both effective July 22, 1991; May 15, 1992 (57 FR 20770), effective July 14, 1992; February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994 (59 FR 52084), effective December 13, 1994; May 20, 1997 (62 FR 27501), effective July 21, 1997; January 13, 1999 (64 FR 02144), effective March 15, 1999; October 16, 2000 (65 FR 61109), effective January 16, 2001, and May 7, 2002 (67 FR 30599), effective July 7, 2002.

On February 12, 2003, Utah submitted a final complete program revision application, seeking authorization of additional changes to its program in accordance with 40 CFR 271.21. On April 10, 2003, EPA published both an Immediate Final Rule (68 FR 17556) granting Utah Final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a Final authorization (68 FR 17577). EPA announced in both notices that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day public comment period. The public comment period ended on May 12, 2003. EPA did receive identical written comments from two commenters during the public comment period. Today's action responds to the comments EPA received and publishes EPA's Final determination granting Utah Final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Utah for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenters are summarized and responded to in Item B.

B. What Were the Comments and Responses to EPA's Proposal?

Both commenters challenged Region VIII's process for authorizing revisions

to Utah's program in not providing for a public hearing, which, they state, is required by 40 CFR 271.20. EPA disagrees. The regulations relied upon by the commenters apply to initial program authorization, and not program revision authorizations. Rather, we have proceeded in accordance with 40 CFR 271.21, which does not require public hearings. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 **Federal Register**, EPA stated: "As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing." (51 FR 07541).

Consequently, EPA Region VIII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. We also believe, that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

Both commenters shared a concern about the "use constituting disposal" provisions of 40 CFR part 266, subpart C. They appear to have concerns about the provisions of Utah regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, "hazardous wastes," like lime-based slag, to be used as a "fertilizer." They argue that Utah's statute (like RCRA) does not allow the land application of hazardous wastes (beneficial or not) unless it occurs at a permitted disposal facility. For the reasons set forth below, EPA disagrees. EPA's regulations accommodate the proper reuse, recycling, and reclamation of as many resources destined for disposal as possible, while regulating hazardous wastes and hazardous waste residuals that must be discarded. EPA's regulations at 40 CFR part 266, subpart C, place controls on the management of hazardous wastes before such wastes are made into a fertilizer. Producing fertilizer from an otherwise hazardous waste is a type of recycling which, in EPA's regulations, is referred to as "use constituting disposal." Rather than prohibiting the use of waste-derived fertilizers, EPA promulgated regulations to require that hazardous wastes that are going to be made into fertilizers be managed in accordance with all applicable hazardous waste management requirements until the wastes are actually made into a fertilizer. With regard to the "use constituting disposal" provisions of 40 CFR part 266, subpart C, in the context of fertilizer applications, these provisions in Utah's program were authorized by EPA as part of Utah's first program revision, which took effect on March 7, 1989—over fourteen years ago. Utah's rules currently incorporate the Federal rules by reference making them identical. Utah's current revision application, for which we recently published a tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment we has received on "use constituting disposal" is not part of Utah's most recent program revision application, we believe the public comments on "use constituting disposal" are not within the scope of this Agency action.

Both commenters raised concerns that the "Express RCRA Authorization" process circumvents the requirements of 40 CFR 271.7. They feel that the use of this process fails to identify deficiencies in the State program and does not allow the State to have regulations that are more protective than the Federal minimum requirements.

The "Express RCRA Authorization" initiative should not be confused with the "Abbreviated Authorization Revisions" discussed at 40 CFR 271.21(h). The Abbreviated Authorization Revision process is an optional process, may only be used under limited circumstances, and the prerequisite provisions must be listed in 40 CFR 271.21, Table 1. Any change to this process must be publicly noticed and opportunity for public comment provided.

The "Express RCRA Authorization" initiative is only a restructuring of the components submitted by the State in an authorization revision application. It was designed to make the application process more efficient and less resource intensive for the States and EPA. Although the submittal format is significantly different from what was previously used, all the components required by 40 CFR 271.21 (and thus, 40 CFR 271.7) are still provided in the revision application. Since there was no change in the required components, a public notice and public comment period was not required.

An Express Authorization application now requires a simplified State Attorney General's statement which certifies the State's statutory authority along with a table identifying the applicable State statutes. In the past, the State Attorney General had to submit a complex statutory and regulatory statement that could obscure the State's statutory authority and often duplicated the rule checklists (which are still provided and used as a tool to identify the State's equivalent rules). This new statement actually makes the State's statutory authority more apparent, rather than less, while maintaining all the requirements of 40 CFR 271.7. In addition to clarifying the State's statutory authority, the new format also makes it more apparent to the Region where the State's rules are different from the Federal rules, especially those that are more stringent or broader-in-scope, thereby reducing the time to review and approve a revision application. The Express Authorization approach does not restrict, in any way, the State's ability to adopt rules that are either more protective of human health and the environment or broader in scope than the Federal program. Nor does it limit the requirement for EPA to make a determination that the State's rules are equivalent and no less stringent than the Federal rules.

Both commenters point out that Utah's Solid and Hazardous Waste Act at 19–6–102(17)(b)(iii) exempts certain wastes, specifically: fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily for the combustion of coal or other fossil fuels, from the definition of solid waste that are not exempt from the Federal definition of solid waste at 40 CFR 261.4(b)(4).

An authorization review generally compares Federal regulations to State regulations. We would compare a State statute to a Federal regulation only if the State does not adopt a regulation and uses the State statute as its equivalent provision. In addition, the review of a State program revision focuses on the changes identified by the EPA-generated checklist (a tool used by both the State and EPA to identify all required changes) and any other changes identified by the State. A review of a State's entire program is conducted periodically using a different review process.

Our review has determined that Utah has adopted equivalent rules to 40 CFR 261.4(b)(4) at R315–2–4(b)(4) where it lists "fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily for the combustion of coal or other fossil fuels, * * *" as solid wastes which are not hazardous wastes. Since neither the federal nor state rules consider these wastes as hazardous wastes, Utah's exclusion in its Statutes of these wastes from the definition of solid waste is not within the scope of this action.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Utah's RCRA program revisions should proceed. EPA has made a final determination that Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA adopts under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Utah, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Utah's RCRA program revisions, please refer to the preambles of EPA's April 10, 2003 Proposed and Immediate Final Rules at 68 FR 17577 and 68 FR 17556, respectively.

D. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective June 11, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 2, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–14748 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

[FRL–7510–6]

RIN 2040–AD85

Partial Withdrawal of Direct Final Rule; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Pharmaceutical Manufacturing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule and revisions.

SUMMARY: Because EPA received adverse comment, we are withdrawing certain portions of the direct final rule for the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Pharmaceutical Manufacturing Point Source Category. The direct final rule published on March 13, 2003 (68 FR 12265) made three amendments to the final regulations published on September 21, 1998 (63 FR 50424) and non-substantive editorial and format changes. We stated in the direct final rule that if we received adverse comment by May 12, 2003, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule. We will address that comment in a subsequent final action based on the parallel proposal also published on March 13, 2003 (68 FR 12276). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of June 11, 2003, EPA withdraws amendments to §§ 439.17 (a) and (b), 439.27(a) and (b), 439.37(a) and (b), and 439.47(a) and (b) published at 68 FR 12265, on March 13, 2003. Revisions to the introductory text and paragraph (a) of §§ 439.17 and 439.37 are effective on June 11, 2003. The remaining provisions published on March 13, 2003 will be effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Hund, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC, 20460; telephone: 202–566–1027; e-mail: *hund.frank@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a direct final rule (68 FR 12265) and parallel proposed rule (68 FR 12276) on March 13, 2003, to make minor amendments to the final rule establishing effluent guidelines and standards for the Pharmaceutical Manufacturing Point Source Category (40 CFR part 439) published on September 21, 1998. In this direct final rule, EPA clarified the date on which a discharger subject to the New Source Performance Standards (NSPS) and the Pretreatment Standards for New Sources (PSNS) would be subject to effluent limitations and pretreatment standards established in the 1998 regulation. In addition, EPA re-established a minimum concentration for the monthly average BOD_5 limitation that EPA inadvertently omitted from the Best Practicable Control Technology (BPT) requirements in two subcategories of the 1998 regulation and corrected an error in EPA's pass-through analysis from the 1998 rule by deleting methyl Cellosolve (2-methoxyethanol) from the pretreatment standards in two subcategories and from Appendix A, Table 2, "Surrogate Parameters for Indirect Dischargers." Finally, the Agency made other non-substantive editorial and format changes such as removing redundancies, and adding definitions.

The partial withdrawal of the direct final rule involves withdrawing language in (a) and (b) from §§ 439.17, 439.27, 439.37, and 439.47 of the direct final rule regarding the compliance schedule for new source dischargers who commenced operations after November 21, 1988 and prior to November 20, 1998. Today's action also revises the introductory text and paragraph (a) in §§ 439.17 and 439.37 to be consistent with the remaining amendments of the direct final rule. EPA has received comment concerning the applicability of the 10-year protection period provided in section 306(d) of the Clean Water Act for new source facilities. EPA will address those comments in a subsequent final action based on the parallel proposal. The provisions for which we did not receive adverse comment will become effective on June 11, 2003, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 439

Environmental protection, Drugs, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 5, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

■ For reasons set out in the preamble, part 439, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 439—PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY

■ 1. The authority citation for part 439 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

■ 2. Section 439.17 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 439.17 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the same standards as specified in § 439.16.

(a) Sources that discharge to a POTW with nitrification capability (defined at § 439.2(i)) are not required to achieve the pretreatment standard for ammonia (as N).

* * * * *

■ 3. Section 439.37 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 439.37 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the same standards as specified in § 439.36.

(a) Sources that discharge to a POTW with nitrification capability (defined at § 439.2(i)) are not required to achieve the pretreatment standard for ammonia (as N).

* * * * *

[FR Doc. 03–14744 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPT–2002–0061; FRL–7306–7]

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule addresses the request of the Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) in its 48th Report, as modified in its 50th and 51st ITC Reports, by adding benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. It also addresses the request of the ITC in its 50th Report by adding stannane, dimethylbis[(1-oxoneodecyl)oxy]-; benzene, 1,3,5-tribromo-2-(2-propenyloxy)-; and 1-triazene, 1,3-diphenyl- to the PAIR rule. Finally, it addresses the request of the ITC in its 51st Report by adding 43 vanadium compounds to the PAIR rule. This PAIR rule will require manufacturers (including importers) of these 47 Chemical Abstract Service (CAS)-numbered chemicals added to the ITC's TSCA section 4(e) *Priority Testing List* to submit certain production, importation, use, and exposure-related information to EPA.

DATES: This final rule is effective on July 11, 2003.

Any person who believes that TSCA section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before June 25, 2003, detailed reasons for that belief.

See Unit II.D. of the **SUPPLEMENTARY INFORMATION** concerning the submission date for those manufacturers required to submit PAIR Forms.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–4780; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in § 712.30(d) of the regulatory text portion of this document. Entities potentially affected by this action may include, but are not limited to:

- Chemical manufacturers (including importers), (NAICS 325, 32411), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0061. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 712 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr712_00.html*, a beta site currently under development.

Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Branch Home Page on the Internet at *http://www.epa.gov/opptintr/chemtest/pairform.pdf*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to

consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0061. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2002–0061. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0061. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve this final rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is issuing a final TSCA section 8(a) PAIR rule which will require manufacturers (including importers) of 47 CAS-numbered chemicals added to the ITC's TSCA section 4(e) *Priority Testing List* to submit production and exposure reports. The regulatory text of this rule lists the 47 chemicals that are being added to the PAIR rule.

B. What is the Agency's Authority?

EPA promulgated the PAIR rule in 40 CFR part 712 under TSCA section 8(a) (15 U.S.C. 2607(a)). This model TSCA section 8(a) rule establishes standard reporting requirements for manufacturers (including importers) of the chemicals listed in the rule at § 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the PAIR Form entitled *Manufacturer's Report-Preliminary Assessment Information* (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on chemicals.

This model rule provides for the automatic addition of TSCA section 4(e) *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective July 11, 2003.

C. What Chemicals are to be Added ?

In this document, EPA is adding 47 chemicals to the TSCA section 8(a) PAIR rule. This document addresses the request of the ITC in its 48th Report (Ref. 1), as modified in its 50th ITC Report (Ref. 2) and 51st ITC Report (Ref. 3), by adding benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) to the PAIR rule.This document also addresses the request of the 50th ITC Report by adding stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7); benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5); and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) to the PAIR rule. Finally, this document addresses the request of the 51st ITC Report by adding 43 vanadium compounds which are listed in the amendment to § 712.30(e) of this document.

D. Who Must Report Under this PAIR Rule?

All persons who manufactured (defined by statute to include import) the chemicals identified in the regulatory text of this document during their latest complete corporate fiscal year must submit a PAIR Form (EPA Form No. 7710–35) for each site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency as specified in § 712.28 no later than September 9, 2003. Persons who have previously and voluntarily submitted a PAIR Form to the ITC or EPA may be able to submit a copy of the original report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the PAIR Form are available from the Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Branch Home Page on the Internet at *http://www.epa.gov/opptintr/chemtest/pairform.pdf*.

E. How is a Chemical Substances Removed From the PAIR Rule?

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before June 25, 2003, detailed reasons for that belief. EPA, in its discretion, may remove the substance from this rule (see § 712.30(c)). When withdrawing a chemical from the PAIR rule, EPA will publish a final rule amending the PAIR rule in the **Federal Register**.

F. References

The following documents constitute the public record for this rule under docket ID number OPPT–2002–0061.

1. ITC. 2001. Forty-Eighth Report of the ITC. **Federal Register** (66 FR 51276, October 5, 2001) (FRL–6786–7). Available online at *http://www.epa.gov/fedrgstr/*.

2. ITC. 2002. Fiftieth Report of the ITC. **Federal Register** (67 FR 49530, July 30, 2002) (FRL–7183–7). Available online at *http://www.epa.gov/fedrgstr/*.

3. ITC. 2003. Fifty-first Report of the ITC. **Federal Register** (68 FR 8976, February 26,2003) (FRL–7183–7). Available online at *http://www.epa.gov/fedrgstr/*.

4. EPA. 2003. Economic Analysis for the Addition of 47 Chemical Abstract Service (CAS)-numbered Chemicals Requested to be added to EPA's Preliminary Assessment Information Reporting (PAIR) Rule in the 48th, 50th, and 51st Reports of the TSCA Interagency Testing Committee. April 18, 2003.

G. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. As discussed in Unit III., whenever EPA announces the receipt of an ITC report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. EPA finds, therefore, that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553 (b)(3)(B)) to make these amendments without prior notice and comment.

H. Economic Analysis

The economic analysis for the addition of the 47 chemicals to the TSCA section 8(a) PAIR rule is entitled, "Economic Analysis for the Addition of 47 Chemical Abstract Service (CAS)-numbered Chemicals Requested to be added to EPA's Preliminary Assessment Information Reporting (PAIR) Rule in the 48th, 50th, and 51st Reports of the TSCA Interagency Testing Committee" (Ref. 4). Seven of the 47 chemicals were located in EPA's 1998 Chemical Update System (CUS) utilizing the ITC-supplied CAS numbers, yielding 6 companies producing these chemicals at 7 sites. Because the threshold for reporting to CUS under the Inventory Update Rule is 10,000 lbs., and the threshold for PAIR reporting is 500 kg (1,100 lbs.), and because there is no requirement that inorganic chemicals be reported to CUS (the majority of the vanadium compounds are inorganic), EPA assumed that one manufacturer exists per chemical to account for the possibility that there may be manufacturers producing PAIR-reportable amounts that weren't captured by CUS. But EPA has no way of ascertaining this, a fact which highlights the need for PAIR reporting on these chemicals. Given the assumptions in this unit, the costs and burden associated with this rule are estimated in the Economic Analysis (Ref. 4) to be the following:

Reporting Costs (dollars)

47 reports estimated at [cost] per report = $1465.88

Total Cost = $61537.12

Mean cost per site/firm = $61537.12/47 sites = $1465.88

Reporting Burden (hours)

Rule familiarization: 7 hours/site x 47 sites =329 hours

Reporting:1001.3 hours

Total burden hours = 1330.3 hours

Average burden per site/firm = 1330.3 hours/37 sites = 28.3 hours/site

EPA Costs (dollars)

It is estimated that the annual cost to the Federal Government will be $10,226.11 (47 reports x $217.58), plus 0.0176 Full Time Equivalent Employees (FTEs). At an estimated $91,873.60 per FTE, the total of 0.1186 FTEs will cost EPA $10,898.95 in salaries, bringing the total costs to the Federal Government to $21,125.06 (i.e., $10,226.11 + $10,898.95) (Ref. 4).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and

included on the related collection instrument. The information collection activities related to this action have already been approved by OMB, under OMB control number 2070–0054 (EPA ICR No. 586) for PAIR reporting. This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to be 1330.3 hours (Ref. 4). Of that total, an estimated 329 hours are spent in an initial review of the rule, and the remaining 1001.3 hours are associated with actual reporting activities (Ref. 4). Because this rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) and the Small Business Enforcement Fairness Act (SBREFA), EPA is required to consider whether a regulatory action will have a significant adverse impact on small entities. Both the RFA and SBREFA require EPA to determine whether a rulemaking may result in "significant economic impact on requirements of the rule on a substantial number of small entities," and if so, to tailor the requirements of the rule to mitigate such impacts, while still maintaining a high level of environmental protection.

The small business size standards promulgated by the Small Business Administration (SBA) (61 FR 3280, 3289–3291, January 31, 1996) for chemical manufacturers are based solely on the number of employees, with a base threshold of 1,000 employees for the ultimate corporate parent, under which all businesses are considered small. Of the 47 businesses assumed to be affected by this rule, none meet this definition of small business. Thus, EPA has determined that this rule will not impose a significant impact on a substantial number of small entities. Information relating to this EPA determination is included in the docket for this rule (OPPT–2002–0061). Any comments regarding the economic impacts that this action imposes on small entities should be submitted to the Agency at any time after June 11, 2003 using the methods discussed in Unit I.C.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Based on EPA's experience with past TSCA section 8(a) rulemakings, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As a result, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (52 FR 19855, April 23, 1997), does not apply to this rule, because it is not "economically significant" as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of production, importation, use, and exposure-related information to EPA by manufacturers (including importers) of certain chemicals requested by the ITC to be added to the PAIR rule in its 48th ITC Report (Ref. 1), in its 50th ITC Report (Ref. 2), and its 51st ITC Report (Ref. 3).

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive order.

L. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: June 3, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. In § 712.30, the table in paragraph (d) is amended by adding the chemicals: "Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-;" "stannane, dimethylbis[(1-oxoneodecyl)oxy]-;" "benzene, 1,3,5-tribromo-2-(2-propenyloxy)-;" and "1-triazene, 1,3-diphenyl-" listed in ascending CAS number order to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(d) * * *

CAS No.	Substance	Effective date	Reporting date
136–35–6	1-Triazene, 1,3-diphenyl-	July 11, 2003	September 9, 2003
3278–89–5	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	July 11, 2003	September 9, 2003
29091–20–1	Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-.	July 11, 2003	September 9, 2003
68928–76–7	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	July 11, 2003	September 9, 2003

* * * * *

■ 3. In § 712.30, the table in paragraph (e) is amended by adding in alphabetical order the category "Vanadium Compounds" to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
Vanadium compounds:			
1314–34–7	Vanadium oxide (V2O3) [Vanadium trioxide]	July 11, 2003	September 9, 2003
1314–62–1	Vanadium oxide (V2O5) [Vanadium pentoxide]	July 11, 2003	September 9, 2003
1686–22–2	Vanadium, triethoxyoxo-, (T-4)- [Triethyl orthovanadate].	July 11, 2003	September 9, 2003
3153–26–2	Vanadium, oxobis (2,4-pentanedioriato-.kappa.O,.kappa.O')-, (SP-5-21)-.	July 11, 2003	September 9, 2003
5588–84–1	Vanadium, oxotris(2-propanolato)-, (T-4)- [Vanadium triisopropoxide oxide].	July 11, 2003	September 9, 2003
7440–62–2	Vanadium	July 11, 2003	September 9, 2003
7632–51–1	Vanadium chloride (VCl4), (T-4)- [Vanadium tetrachloride].	July 11, 2003	September 9, 2003
7718–98–1	Vanadium chloride (VCl3) [Vanadium trichloride]	July 11, 2003	September 9, 2003
7727–18–6	Vanadium, trichlorooxo-, (T-4)- [Vanadium oxytrichloride].	July 11, 2003	September 9, 2003
7803–55–6	Vanadate (VO31-), ammonium, [Ammonium metavanadate].	July 11, 2003	September 9, 2003
10049–16–8	Vanadium fluoride (VF4) [Vanadium tetrafluoride]	July 11, 2003	September 9, 2003
10213–09–9	Vanadium, dichlorooxo- [Vanadyl dichloride]	July 11, 2003	September 9, 2003
10580–52–6	Vanadium chloride (VCl2) [Vanadium dichloride]	July 11, 2003	September 9, 2003
11099–11–9	Vanadium oxide [Polyvanadic acid]	July 11, 2003	September 9, 2003
11115–67–6	Ammonium vanadium oxide	July 11, 2003	September 9, 2003
11130–21–5	Vanadium carbide	July 11, 2003	September 9, 2003
12007–37–3	Vanadium boride (VB2)	July 11, 2003	September 9, 2003
12035–98–2	Vanadium oxide (VO)	July 11, 2003	September 9, 2003
12036–21–4	Vanadium oxide (VO2)	July 11, 2003	September 9, 2003
12070–10–9	Vanadium carbide (VC)	July 11, 2003	September 9, 2003

CAS No.	Substance	Effective date	Reporting date
12083–48–6	Vanadium, dichlorobis (.eta.5-2,4-cyclopentadien-1-yl)-.	July 11, 2003	September 9, 2003
12166–27–7	Vanadium sulfide (VS)	July 11, 2003	September 9, 2003
12439–96–2	Vanadium, oxo[sulfato(2-)-.kappa.O]-, pentahydrate [Vanadyl sulfate (VOSO4), pentahydrate].	July 11, 2003	September 9, 2003
12604–58–9	Vanadium alloy, base, V,C,Fe (Ferrovanadium)	July 11, 2003	September 9, 2003
13470–26–3	Vanadium bromide (VBr3)	July 11, 2003	September 9, 2003
13476–99–8	Vanadium, tris(2,4-pentanedionato-.kappa.O,.kappa.O')-, (OC-6-11)- [Vanadium tris(acetylacetonate)].	July 11, 2003	September 9, 2003
13497–94–4	Silver vanadium oxide (AgVO3)	July 11, 2003	September 9, 2003
13517–26–5	Sodium vanadium oxide (Na4V2O7) [Sodium pyrovanadate].	July 11, 2003	September 9, 2003
13718–26–8	Vanadate (VO31-), sodium [Sodium metavanadate].	July 11, 2003	September 9, 2003
13721–39–6	Sodium vanadium oxide (Na3VO4) [Sodium orthovanadate].	July 11, 2003	September 9, 2003
13769–43–2	Vanadate (VO31-), potassium [Potassium metavanadate].	July 11, 2003	September 9, 2003
13930–88–6	Vanadium, oxo[29H,31H-phthalocyaninato(2-)-*COM001*.kappa.N29,.kappa.N30,.kappa.N31,.kappa.N32]-, (SP-5-12)-.	July 11, 2003	September 9, 2003
14059–33–7	Bismuth vanadium oxide (BiVO4)	July 11, 2003	September 9, 2003
19120–62–8	Vanadium, tris(2-methyl-1-propanolato)oxo-, (T-4)-[Isobutyl orthovanadate].	July 11, 2003	September 9, 2003
24646–85–3	Vanadium nitride (VN)	July 11, 2003	September 9, 2003
27774–13–6	Vanadium, oxo[sulfato(2-)-.kappa.O]- [Vanadyl sulfate].	July 11, 2003	September 9, 2003
30486–37–4	Vanadium hydroxide oxide (V(OH)2O)	July 11, 2003	September 9, 2003
39455–80–6	Ammonium sodium vanadium oxide	July 11, 2003	September 9, 2003
53801–77–7	Bismuth vanadium oxide	July 11, 2003	September 9, 2003
65232–89–5	Vanadium hydroxide oxide phosphate	July 11, 2003	September 9, 2003
68130–18–7	Vanadium hydroxide oxide phosphate (V6(OH)3O3(PO4)7).	July 11, 2003	September 9, 2003
68815–09–8	Naphthenic acids, vanadium salts	July 11, 2003	September 9, 2003
68990–29–4	Balsams, copaiba, sulfurized, vanadium salts	July 11, 2003	September 9, 2003

* * * * *

[FR Doc. 03–14749 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15343]

RIN 2127–AJ09

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation.

ACTION: Correcting amendment.

SUMMARY: This rule corrects errors in Figures 6a, 6b, 7, 8, and 9 of Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection* (FMVSS No. 208). These figures were added to the standard in two separate and unrelated rulemakings. They provide instructions regarding format that are inconsistent with the requirements in the regulatory text of the standard. This document resolves the problem by removing the inconsistent instructions from the figures.

DATES: This final rule is effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lou Molino, Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS–112. Telephone: (202) 366–2264. Fax: (202) 493–2739.

For legal issues, you may contact Rebecca MacPherson, Office of Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On March 19, 2001, NHTSA provided Mr. Todd Mitchell of ITW Meyercord with a letter of legal interpretation stating that three of four warning labels specified in FMVSS No. 208 were required to be outlined with black horizontal and vertical lines. This interpretation was based on the figures in the standard for those labels. The figures depict labels with an outline and contain an instruction specifying the color of the outline ("Label Outline, Vertical and Horizontal Line Black"). Based on the depiction of an outline and on the specification of a color for the outline, the agency concluded that an outline is required. NHTSA determined that the fourth label is not required to have an outline because the instructions in the figure for that label do not include a color specification explicitly referring to an "outline."[1]

On May 2, 2001, the Alliance of Automobile Manufacturers submitted a letter to NHTSA asking the agency to reconsider the interpretation. It argued that the regulatory text of the standard neither requires conformity with the format of the label shown in the figures

[1] NHTSA determined that the labels depicted in Figures 6a, 6b, and 8 required an outline. The label depicted in Figure 6c did not. Two other labels, depicted in the regulation in Figures 7 and 9, were not addressed. However, the response would have been the same as the agency response regarding Figures 6a, 6b, and 8.

nor requires that the label have an outline.

We agree with the Alliance that the standard does not require an outline. Instead of simply reversing the legal interpretation, we believe it is more appropriate to resolve the matter by issuing a correcting amendment to the standard.

On August 6, 1996, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (61 FR 40784, Docket No. NHTSA–97–2705) proposing the adoption of new, attention-getting air bag warning labels. The regulatory text in the NPRM simply stated that the labels "shall conform in size, content, color, and format" to the labels shown in the figures. No other requirements regarding label size, content, color or format were included in the regulatory text. Figures 6a through 8 depicted the messages and, if any, pictogram for each label. The figures also contained instructions specifying color and size of each label.[2]

In their comments on the NPRM, vehicle manufacturers requested that only the content of the labels be required to conform to the figures.

In the final rule (61 FR 60206, NHTSA Docket No. NHTSA–97–2716, November 27, 1996), NHTSA agreed there was no need to specify either the arrangement of the information on the labels or the shape of the labels, both of which it characterized as formatting. It also determined that it did not need to specify the size of the label or typeface, although it did specify minimum areas for the message text and pictogram.

Accordingly, the agency replaced the proposed requirement in the regulatory text that labels "shall conform in size, content, color, and format" with the figures with a narrower requirement that labels "shall conform in content" with the figures. At the same time, it expanded the regulatory text by adding requirements that restated most, but not all, of the color instructions in the figures. The agency also deleted the instructions about minimum size of the labels.

There are two instructions in Figures 6a and 6b and one instruction in Figure 7 that are not restated in any requirements in the regulatory text. One is a format/color instruction about a black outline. The other is a color instruction about using red for bullets in the message area. Figure 7 contains only the format/color instruction about the black outline.

The presence of the instructions creates an ambiguity as to whether the black outline instruction and the red bullet instruction are required components of the standard. The labels proposed in the NPRM and those adopted in the final rule are different. Accordingly, it is not possible to argue that the instruction in the figures that the labels be outlined with horizontal and vertical black lines was an inadvertent remnant of the proposed labels. However, there is nothing in the preamble to the final rule to suggest that the agency intended to require these format/color instructions. Rather, as the new labels went through various iterations before the agency decided on a final version, the reference was inadvertently left in the figures, even though the agency ultimately decided not to specify these format and color instructions in the regulatory text.

We believe that these instructions in the figures are more akin to format than to content and were not specifically included in the regulatory text because the agency did not wish to require them. This position is bolstered by the language of the regulatory text in S4.5.1(b)(1) which states that the labels shall conform in content with the referenced figures and meet the requirements listed in S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv) and similar language in S4.5.1(b)(2) and in S4.5.1(e)(1) and S4.5.1(e)(2). These requirements include the limitations on color provided in the figure instructions, but do not include the instruction regarding an outline or bullets.

Accordingly, we are amending Figures 6a, 6b and 7 of FMVSS No. 208 to remove the reference to a black outline. We are also amending Figures 6a and 6b to delete the reference to red bullets. We are likewise amending Figures 8 and 9. Figure 8 was based, in large part, on Figures 6a and 6b. Figure 9 was based on Figure 7. When the advance air bag final rule incorporating Figures 8 and 9 was published (65 FR 30680, Docket No. NHTSA–00–7013, May 12, 2000), the agency had already indicated in the earlier rollover label rulemaking that it did not believe the outline in Figures 6a, 6b and 7 were required. The instruction should not have been included in Figures 8 and 9, since we made no findings in that rulemaking that our previous position was incorrect.

[2] NHTSA ultimately decided against adopting one of the proposed labels. In the final rule, the labels were depicted in Figures 6a, 6b, 6c, and 7.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising Figures 6a, 6b, 7, 8, and 9 to read as follows:

BILLING CODE 4910–59–P

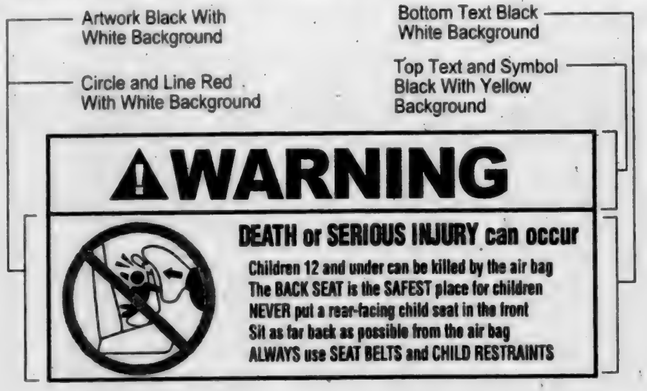


Figure 6a. Sun Visor Label Visible when Visor is in Down Position.



Figure 6b. Sun Visor Label Visible when Visor is in Down Position.

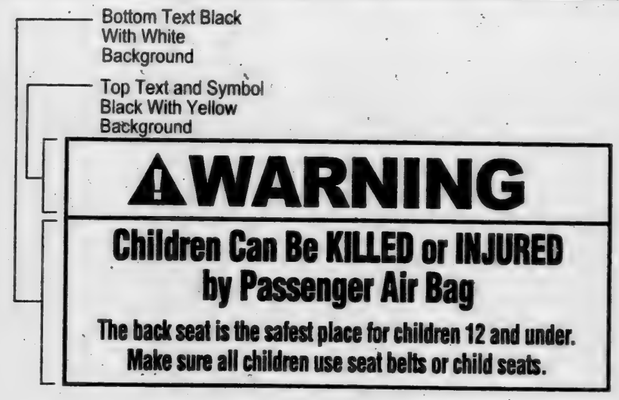


Figure 7. Removable Label on Dash.



Figure 8. Sun Visor Label Visible when Visor is in Down Position.

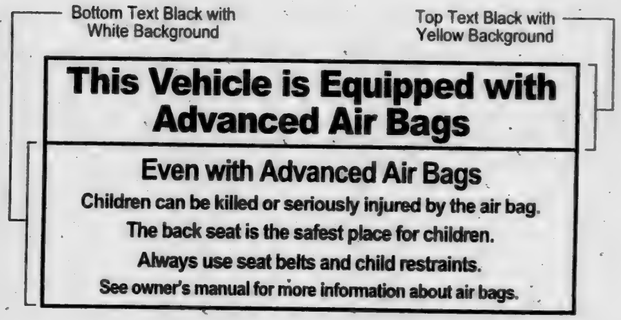


Figure 9. Removable Label on Dash.

Issued on: June 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14694 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–69–C

Proposed Rules

Federal Register
Vol. 68, No. 112
Wednesday, June 11, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing airplane models, that would have superseded an existing AD currently requiring either inspections for discrepancies of the fueling float switch wiring in the center fuel tank and follow-on actions, or deactivation of the float switch. The proposed AD would have removed the option to deactivate the float switch and would have required repetitive inspections for discrepancies of the float switch wiring and various other actions. This new action would require replacing the float switches in the center and wing fuel tanks with new, improved parts, installing a conduit liner system in the center fuel tank, and replacing conduit assemblies in the wing fuel tanks with new parts, which would terminate the existing requirements. For certain airplanes, this new action also would require replacing certain existing sections of the electrical conduit in the center fuel tank with new conduit. This new action also would add one additional airplane model to the applicability and remove another. These actions are necessary to prevent contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit, which could present an ignition source inside the fuel tank that could cause a fire or explosion. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by July 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 99–NM–78–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6514; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 28, 2000 (65 FR 24889). That NPRM proposed to supersede AD 99–05–12, amendment 39–11060 (64 FR 10213, March 3, 1999). (A correction of that AD was published in the **Federal Register** on March 9, 1999 (64 FR 11533).) That proposal would have continued to require inspection of the fueling float switch wiring in the center fuel tank to detect discrepancies, accomplishment of corrective actions, and installation of double Teflon sleeving over the wiring of the float switch. That NPRM would

have eliminated deactivation of the float switch as an option for complying with the existing AD, and would have required, for all affected airplanes, repetitive inspections of the float switch wiring to detect discrepancies, replacement of the float switch and wiring if necessary, and replacement of the double Teflon sleeving. For certain airplanes, that NPRM also would have added a new requirement for inspection and installation of partial double Teflon sleeving in a certain area. That NPRM was prompted by a report indicating that chafing of the direct current (DC) powered float switch wiring insulation in the center fuel tank occurred on several airplanes. That condition, if not corrected, could result in arcing from the wiring to the in-tank conduit, which could present an ignition source inside the fuel tank and result in consequent fire/explosion.

In the preamble to AD 99–05–12, we stated that the actions required by that AD were considered "interim action" and that we were considering further rulemaking action. We have now determined that further rulemaking action is indeed necessary, and this supplemental NPRM follows from that determination.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002. That service bulletin describes procedures for replacing the existing float switches with new, improved float switches and installing a conduit liner system in the center fuel tanks, and replacing the float switches and conduit assemblies with new, improved float switches and conduit assemblies in the wing fuel tanks. The new, improved float switches are more resistant to contamination by fuel or moisture, and the new conduit assemblies for the float switch eliminate sharp bends within the conduit and include a conduit liner system that provides added protection against chafing of the float switch wiring. For airplanes on which the float switch for the center fuel tank was deactivated previously, the service bulletin also contains procedures for removal of placards and stencils associated with that deactivation. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Other Relevant Rulemaking

We have previously issued AD 2002–26–18, amendment 39–13006 (68 FR 481, January 6, 2003), which applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD requires replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies. This supplemental NPRM would require similar actions for Model 737–200, –200C, –300, –400, and –500 series airplanes.

Comments

Due consideration has been given to the comments received in response to the original NPRM. Certain comments are no longer relevant because of the issuance of the service bulletin described previously. Certain other comments have revealed a need for clarification, as explained below.

Support for the Original NPRM

Two commenters support the original NPRM.

Request To Provide Credit for Actions Accomplished Previously

One commenter requests that a statement be added to the proposed AD to clarify that credit is given for accomplishment of the proposed initial inspection and replacement prior to the effective date of this AD.

Though the FAA concurs with the commenter's intent, the FAA does not concur that any change to the supplemental NPRM is necessary. Credit for actions accomplished previously is given by means of the phrase in the "Compliance" section of the AD, "Required as indicated, unless accomplished previously."

Request To Provide for Airplanes Grounded for Extended Period

One commenter requests that the original NPRM be revised "to be written in such a manner [that] would not require inspecting airplanes [that] have been grounded for an extended period, until they are prepared for return to service."

The FAA points out that no change to the supplemental NPRM is necessary to meet the intent of the commenter's request. Part 39.3 of the Federal Aviation Regulations (14 CFR 39.3) states that, "No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive." This regulation provides relief for airplanes that are not being operated because affected airplanes need only be in compliance prior to their return to service.

Explanation of Change Made to Restatement of AD 99–05–12

As explained in the original NPRM, paragraph (a) of this supplemental NPRM, which is restated from AD 99–05–12, states that the paragraph applies to Model 737–200, –300, –400, and –500 series airplanes having line numbers 1 through 3108 inclusive. Paragraph (a) of AD 99–05–12 did not specify the line numbers affected by that paragraph. The FAA has determined that airplanes having line numbers 3109 and subsequent had double Teflon sleeving installed over the wiring of the float switch during production. Therefore, it is not necessary for operators of these airplanes to accomplish paragraph (a) of this supplemental NPRM.

Explanation of Applicability of Supplemental NPRM

Boeing Model 737–200C series airplanes are not specifically identified in the applicability of the existing AD or the original NPRM. However, certain Model 737–200C series airplanes are included in the effectivity listings of Boeing Alert Service Bulletins 737–28A1132 and 737–28A1141, and those airplanes are subject to the actions specified in those service bulletins. Therefore, for Model 737–200C series airplanes, we have added a new paragraph (f) to this supplemental NPRM to require accomplishment of the actions required by paragraph (b) or (c) of this AD prior to the accumulation of 30,000 flight hours, or within 30 days after the effective date of this AD, whichever is later. If the actions specified in paragraph (b) or (c) of this AD have already been accomplished before the effective date of the AD, no further action would be required by paragraph (f) of this AD.

Also, Model 737–100 series airplanes have been removed from the applicability statement of this supplemental NPRM. These airplanes are not affected by the proposed actions and were inadvertently included in the original NPRM.

Explanation of Additional Changes to Original NPRM

We have changed all references to "detailed visual inspection" in the original NPRM to "detailed inspection" in this supplemental NPRM.

Conclusion

Since certain changes described previously expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Explanation of Proposed Requirements of Supplemental NPRM

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this supplemental NPRM proposes to supersede AD 99–05–12 to continue to require inspection of the fueling float switch wiring in the center fuel tank to detect discrepancies, accomplishment of corrective actions, and installation of double Teflon sleeving over the wiring of the float switch. The supplemental NPRM would require replacement of the float switches with new, improved float switches and installation of a conduit liner system in the center fuel tank, and replacement of the float switches and conduit assemblies with new, improved float switches and conduit assemblies in the wing fuel tanks. This replacement would terminate the requirements of the existing AD. The float switch replacements would be required to be done in accordance with Boeing Alert Service Bulletin 737–28A1141, Revision 1. For certain airplanes, the supplemental NPRM would require replacement of certain sections of conduit in the center fuel tank with new conduit, in accordance with Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999.

Cost Impact

There are approximately 2,886 Model 737–200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,111 airplanes of U.S. registry would be affected by this supplemental NPRM.

The removal and inspection of the fueling float switch in the center fuel tank and installation of double Teflon sleeving, which is provided as one alternative for compliance with AD 99–05–12, takes approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $30 per airplane. Based on these figures, the cost impact of the removal and inspection of the float switch and installation of double Teflon sleeving, if accomplished, is estimated to be $1,110 per airplane.

The deactivation of the float switch and installation of "Caution" signs that are provided as the other alternative for compliance with AD 99–05–12, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the deactivation and installation, if accomplished, is estimated to be $180 per airplane.

The new replacement of float switches and installation of a conduit liner in the center fuel tank, and the replacement of float switches and conduit assemblies in the wing fuel tanks, that are proposed in this supplemental NPRM would take approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $3,633 and $5,061 per airplane. Based on these figures, the cost impact of the proposed replacement is estimated to be between $7,353 and $8,781 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11060 (64 FR 10213, March 3, 1999), corrected at 64 FR 11533, March 9, 1999, and by adding a new airworthiness directive (AD), to read as follows:

BOEING: Docket 99–NM–78–AD. Supersedes AD 99–05–12, Amendment 39–11060.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes; on which the center wing tanks are activated; excluding those airplanes equipped with center wing tank volumetric topoff systems, or alternating current (AC) powered center tank float switches; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit, which could present an ignition source inside the fuel tank that could cause a fire or explosion, accomplish the following:

Requirements of AD 99–05–12:

Compliance Time for Initial Action

(a) For Model 737–200, –300, –400, and –500 series airplanes having line numbers (L/N) 1 through 3108 inclusive: Prior to the accumulation of 30,000 total flight hours, or within 30 days after March 18, 1999 (the effective date of AD 99–05–12, amendment 39–11060), whichever occurs later, accomplish the requirements of paragraph (b) or (c) of this AD.

Initial Inspection: Procedures

(b) Remove the fueling float switch and wiring from the center fuel tank and perform a detailed inspection of the float switch wiring to detect discrepancies (*i.e.*, evidence of electrical arcing, exposure of the copper conductor, presence or scent of fuel on the electrical wires, or worn insulation), in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999. After the effective date of this AD, only Revision 2 may be used. Pay particular attention to the wire bundle where it passes through the wing pylon vapor seals and under the wire bundle clamps.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Initial Inspection: Follow-On Actions

(1) If no discrepancy is detected, prior to further flight, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Measure the resistance between the wires and the float switch housing, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(A) If the resistance is less than 200 megohms, prior to further flight, replace the float switch and wiring with a new float switch and wiring, and install double Teflon sleeving over the wiring of the float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; or replace the float switch and wiring with a new, improved float switch and wiring in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002. After the effective date of this AD, only a new, improved float switch and wiring may be installed. If a replacement float switch and wiring are not available, prior to further flight, accomplish the requirements specified in paragraphs (c) and (d) of this AD.

(B) If the resistance is greater than or equal to 200 megohms, prior to further flight, blow dirt out of the conduit, install double Teflon sleeving over the wiring of the float switch, and reinstall the existing float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(ii) Replace the float switch and wiring with a new float switch and wiring, and install double Teflon sleeving over the wiring of the float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; or replace the float switch and wiring with a new, improved float switch and wiring in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002. After the effective date of this AD, only a new, improved float switch and wiring may be installed. If a replacement float switch and wiring are not available, prior to further flight, accomplish the requirements specified in paragraphs (c) and (d) of this AD.

(2) If any worn insulation is detected, and if no copper conductor is exposed, and if no evidence of arcing is detected; accomplish the requirements specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(3) If any electrical arcing or exposed copper conductor is detected, prior to further flight, accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Replace any section of the electrical conduit where the arcing occurred with a new section, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; and accomplish the requirements specified in paragraph (b)(1)(ii) of this AD.

(ii) Perform a detailed inspection to detect fuel leaks of the electrical conduit, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(A) If no fuel leak is detected, prior to further flight, accomplish the requirements specified in paragraph (b)(1)(ii) of this AD. Repeat the inspection required by paragraph (b)(3)(ii) of this AD thereafter at intervals not to exceed 1,500 flight hours, until the replacement required by paragraph (b)(3)(ii)(B) of this AD is accomplished.

(B) If any fuel leak is detected, prior to further flight, replace, with new conduit, any section of the electrical conduit where a leak is found, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999. Prior to further flight after accomplishment of the replacement, accomplish the requirements specified in paragraph (b)(1)(ii) of this AD. Accomplishment of electrical conduit replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

(4) If any presence or scent of fuel on the electrical wires is detected, prior to further flight, locate the source of the leak and replace the damaged conduit with a new conduit, in accordance with the alert service bulletin; and accomplish the requirements specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, unless accomplished previously in accordance with paragraph (b)(1), (b)(2), or (b)(3) of this AD.

Deactivation of Float Switch

(c) Accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(1) Deactivate the center tank float switch (*i.e.*, cut the two wires for the float switch at the splices on the front spar and cap and stow the four wire ends), paint a "Caution" sign that shows a conservative maximum fuel capacity for the center tank on the underside of the right-hand wing near the fueling station door, and install an INOP placard on the fueling panel.

(2) Deactivate the center tank float switch (*i.e.*, cut, stow, and splice the two wires for the float switch at the splices on the front spar), and paint a "Caution" sign that shows a conservative maximum fuel capacity for the center tank on the underside of the right-hand wing near the fueling station door.

Deactivation of Float Switch: Additional Requirements

(d) For airplanes on which the requirements specified in paragraph (c) of this AD have been accomplished: Accomplish the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Operators must ensure that airplane fueling crews are properly trained in accordance with the procedures specified in Boeing Telex M–7200–98–04486, dated December 1, 1998, or procedures approved by the FAA. This one-time training must be accomplished prior to utilizing the procedures specified in paragraph (d)(3) of this AD.

(2) Prior to fueling the airplane, perform a check to verify that the fueling panel center tank quantity indicator is operative. Repeat this check thereafter prior to fueling the airplane. If the fueling panel center tank quantity indicator is not operative, prior to further flight, replace the fueling panel center tank quantity indicator with a serviceable part.

(3) One of the two manual fueling procedures for the center fuel tank must be used for each fueling occurrence, in accordance with Boeing Telex M–7200–98–04486, dated December 1, 1998, or a method approved by the FAA.

Note 3: For the purposes of this AD, the term "the FAA," is defined in paragraph (d) of this AD as "the cognizant Principal Maintenance Inspector (PMI)."

Note 4: Where there are differences between Boeing Alert Service Bulletin 737–28A1132 and this AD, the AD prevails.

Deactivation of Float Switch: Dispatch

(e) Dispatch with the center fuel tank float switch deactivated, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; is allowed until replacement float switches and wiring are available for installation or until the compliance time for the replacement required by paragraph (h) of this AD. Where there are differences between the Master Minimum Equipment List (MMEL) and the AD, the AD prevails.

New Requirements of this AD

Compliance Time for Initial Action for Model 737–200C Series Airplanes

(f) For Model 737–200C series airplanes having L/Ns 1 through 3108 inclusive: Prior to the accumulation of 30,000 total flight hours, or within 30 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraph (b) or (c) of this AD. (If the actions specified in paragraph (b) or (c) of this AD have been accomplished before the effective date of this AD, no further action is required by this paragraph.) If the actions required by paragraph (h) of this AD are accomplished within the compliance time specified in this paragraph, operators are not required to do paragraph (b) or (c) of this AD.

Replacement of Conduit

(g) For airplanes having L/Ns 1 through 3108 inclusive, on which the inspection required by paragraph (b)(3)(ii) of this AD has been accomplished prior to the effective date of this AD, and on which replacement of conduit specified in paragraph (b)(3)(ii)(B) has NOT been accomplished: Within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace, with new conduit, any section of the electrical conduit where arcing or a leak occurred, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999. Such replacement of the conduit constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

Replacement of Center and Wing Tank Float Switches

(h) Within 2 years after the effective date of this AD, accomplish paragraphs (h)(1) and (h)(2) of this AD, as applicable. Except as provided by paragraph (j) of this AD, accomplishment of the actions in paragraphs (h)(1) and (h)(2) of this AD, as applicable, terminates the requirements of this AD.

(1) For all airplanes: In the center fuel tank, replace the existing float switches with new, improved float switches, and install a conduit liner system; and in the wing fuel tanks, replace the existing float switches and conduit assemblies with new, improved float switches and conduit assemblies that include a liner system inside the conduit. Do these replacements in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002.

(2) For airplanes subject to the repetitive inspections required by paragraph (b)(3)(ii)(A) of this AD, on which the electrical conduit in the center fuel tank has not been replaced as specified in paragraph (b)(3)(ii)(B) or (g) of this AD: Prior to or concurrently with the replacement of the float switch in the center fuel tank required by paragraph (h)(1) of this AD, replace, with new conduit, any section of the center fuel tank electrical conduit where arcing or a leak occurred, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

Credit for Previously Accomplished Actions

(i) Replacement of float switches and conduit assemblies, and installations of conduit liner systems, as applicable, accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–28A1141, dated September 5, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install a float switch having part number F8300–146 on any airplane.

Alternative Method of Compliance

(k)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–05–12, amendment 39–11060, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14666 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–74–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposal would require a one-time visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–74–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-74-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-74-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of smoke and electrical odor in the flight compartment and cabin area of McDonnell Douglas Model DC-9-81, -82, and -83 airplanes. Investigation revealed that long-term use and breakdown of the internal components of circuit breakers manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation contributed to internal overheating and arcing of the circuit breakers. This condition, if not corrected, could result in smoke and fire in the flight compartment and main cabin.

The circuit breakers on certain Model MD-11 and MD-11F airplanes may be the same as those on the affected McDonnell Douglas Model DC-9-81, -82, and -83 airplanes. Therefore, these models may be subject to this same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 and MD-11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003 (the original issue of the service bulletin specified installation of incorrect circuit breakers for the Wood Electric circuit breakers, if installed). Revision 01 of the service bulletin describes procedures for a one-time visual inspection to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Potter Brumfield Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD11-24A137, dated February 28, 2002), and replacement of any discrepant circuit breaker with a new, approved circuit breaker. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 01 of the service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and the Service Bulletin

Although the service bulletin recommends that inspection be done within 18 months after release of the service bulletin, this AD would require a compliance time of within 24 months after the effective date of the proposed AD. We have determined that the proposed compliance time will better accommodate the time necessary for affected operators to schedule the work to be done without adversely affecting safety, and will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary.

Clarification of Compliance Time for Circuit Breaker Replacement

We have confirmed that there could be a parts availability problem due to the fact that the number of discrepant circuit breakers on each airplane cannot be determined without accomplishing the proposed inspection. If there is a large number of suspect circuit breakers found during the inspection, there may not be sufficient parts available to return the airplane to service. Therefore, we have determined that the compliance time for replacement of affected circuit breakers, which would normally be before further flight after discrepant circuit breakers are found, will be at the next scheduled maintenance visit, but not later than 24 months after the effective date of the proposed AD.

Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $331,200, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002-NM-74-AD.

Applicability: Model MD-11 and MD-11F airplanes, as listed in Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 24 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD11-24A137, dated February 28, 2002), per Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: At the next scheduled maintenance visit, but not later than 24 months after the effective date of this AD, replace the circuit breaker with a new, approved circuit breaker, per Revision 01 of the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker having a part number listed in the "Existing Part Number" column in the table specified in paragraph 2.C.2., of Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 5, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-14673 Filed 6-10-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-103-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas MD-90-30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-90-30 airplanes. This proposal would require a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-103-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–103–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–103–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of smoke and electrical odor in the flight compartment and cabin area of McDonnell Douglas Model DC–9–81, -82, and -83 airplanes. Investigation revealed that long-term use and breakdown of the internal components of circuit breakers manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation contributed to internal overheating and arcing of the circuit breakers. This condition, if not corrected, could result in smoke and fire in the flight compartment and main cabin.

Although no Model MD–90–30 airplanes were delivered with circuit breakers manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation, they may have been installed during maintenance. Therefore, these models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003. (The original issue of the service bulletin specified installation of incorrect circuit breakers for the Wood Electric circuit breakers, if installed.) Revision 01 of the service bulletin describes procedures for a one-time visual inspection to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Potter Brumfield Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD90–24A081, dated February 14, 2002), and replacement of any discrepant circuit breaker with a new, approved circuit breaker. Accomplishment of the actions specified in Revision 01 of the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 01 of the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

Cost Impact

There are approximately 126 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,200, or $1,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–103–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 18 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD90–24A081, dated February 14, 2002), per Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: Before further flight, replace the circuit breaker with a new, approved circuit breaker, per the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install a circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 5, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14674 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 030604145–3145–01]

RIN 0648–AR16

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to revise the Federal Consistency regulations under the Coastal Zone Management Act of 1972 (CZMA). NOAA is proposing this rule to address the CZMA-related recommendations of the Report of the National Energy Policy Development Group (Energy Report) as described in NOAA's July 2, 2002, Advanced Notice of Proposed Rulemaking (67 FR 44407–44410) (ANPR). This proposed rule seeks to make improvements to the Federal Consistency regulations to clarify some sections and provide greater transparency and predictability to the Federal Consistency regulations.

DATES: Comments on this document must be received by July 11, 2003.

ADDRESSES: Please send comments as an attachment to an email in either WordPerfect or MSWord, or in the body of an email, to *CZMAFC.ProposedRule@noaa.gov*.

Address all comments regarding this notice to David Kaiser, Federal Consistency Coordinator, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Written comments may also be sent to this address.

All comments received by the comment deadline, this **Federal Register** notice, and an underline/strikeout version of the sections of the regulations proposed to be revised will be posted at OCRM's Federal Consistency Web page at: *http://coastalmanagement.noaa.gov/czm/federal_consistency.html*.

FOR FURTHER INFORMATION CONTACT: David Kaiser, Federal Consistency Coordinator, OCRM/NOAA; 301–713–3155 ext. 144, *david.kaiser@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

For nearly 30 years the CZMA has met the needs of coastal States, Great Lake States and United States Trust Territories and Commonwealths (collectively referred to as "coastal States" or "States"), Federal agencies, industry and the public to balance the protection of coastal resources with coastal development, including energy development. When States develop and amend their Coastal Management Programs (CMPs), and when making coastal management decisions, the CZMA requires the States to adequately consider the national interest in the CZMA objectives and to give priority consideration to coastal dependant uses and processes for facilities related to national defense, energy, fisheries, recreation, ports and transportation.

States have collaborated with industry on a variety of energy facilities, including oil and gas pipelines, nuclear power plants, hydroelectric facilities, and alternative energy development. States have reviewed and approved thousands of offshore oil and gas facilities and related onshore support facilities. On December 8, 2000, NOAA issued a comprehensive revision to the Federal Consistency regulations, which reflected substantial effort and participation by Federal agencies, States, industry, and the public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is making improvements to address the issues raised in the ANPR and to make other technical modifications.

In February 2001, the Vice President established the National Energy Policy Development Group to bring together business, government, local communities and citizens to promote a dependable, affordable, and environmentally sound National Energy Policy. Vice-President Cheney submitted the Energy Report to President Bush on May 16, 2001.

The Energy Report contains numerous recommendations for obtaining a long-term, comprehensive energy strategy to advance new, environmentally beneficial technologies to increase energy supplies and encourage less polluting, more efficient energy use. The CZMA and the Outer Continental Shelf Lands Act (OCSLA), a statute administered by the Minerals Management Service (MMS) within the Department of the Interior (Interior), are specifically mentioned. The Energy Report found that the effectiveness of Commerce and Interior programs are "sometimes lost through a lack of clearly defined requirements and information needs from federal and state entities, as well as uncertain deadlines during the process." To address these issues, the Energy Report recommended that Commerce and Interior "re-examine the current federal legal and policy regime (statutes, regulations, and Executive Orders) to determine if changes are needed regarding energy-related activities and the siting of energy facilities in the coastal zone and on the Outer Continental Shelf (OCS)." Energy Report at 5–7.

In July 2002, NOAA published the ANPR seeking comments on whether improvements could be made to NOAA's Federal Consistency regulations. This proposed rulemaking is the product of recommendations contained in the Energy Report and comments received in response to the ANPR.

II. History of the CZMA and NOAA's Federal Consistency Regulations

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the balancing of competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to Federal guidelines. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and other State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Thirty-five coastal States are eligible to participate. Thirty-four of the eligible States have federally approved CMPs. Illinois is not currently participating.

Once NOAA approves a State's CMP, then the CZMA Federal Consistency provision applies. Federal Consistency is a limited waiver of Federal supremacy and authority. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-Federal applicants for Federal authorizations and funding must be fully consistent with the enforceable policies of State CMPs. The Federal Consistency provision is a cornerstone of the CZMA program and a primary incentive for States to participate. While States have negotiated changes to thousands of Federal actions over the years, States have concurred with approximately 93% of all Federal actions reviewed.

NOAA's Federal Consistency regulations, first promulgated in 1979, are designed to provide reliable procedures and predictability to the implementation of Federal Consistency. In general, the regulations operate well for the Federal and State agencies and permit applicants and provide a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 also necessitated revisions to the regulations.

In late 1996, OCRM began a process to revise the regulations by informally consulting and collaborating with Federal agencies, States, industry, Congress, and other interested parties. NOAA submitted two sets of draft rules to States, Federal agencies and others for comments and produced written responses to comments to each draft, and then issued a proposed rule in April 2000. NOAA published a final rule on December 8, 2000, which became effective on January 8, 2001.

Most of the changes in the revised regulations were dictated by changes in the CZMA or by specific statements in the accompanying legislative history. For instance, the new regulations added language concerning the scope of the Federal Consistency "effects test." Prior to the 1990 amendments, Federal agency activities "directly affecting" the coastal zone were subject to Federal Consistency. The amendments broadened this language by dropping the word "directly" to include actions with "effects" on any land or water use or natural resource of the coastal zone. Other changes in the 2000 final rule improved and clarified procedural processes based on long-standing interpretive practice by NOAA.

III. The Role of the CZMA in OCS Energy Development

The CZMA and the OCSLA interact both by explicit cross-reference in the statutes and through their regulatory implementation. Both statutes mandate State review of OCS oil and gas Exploration Plans (EP's) and Development and Production Plans (DPP's). Both statutes and their corresponding regulations provide a compatible and interrelated process for States to review EP's and DPP's.

When MMS offers an OCS lease sale, it is considered a Federal agency activity. If MMS determines that the lease sale will have reasonably foreseeable coastal effects, then MMS provides a CZMA consistency determination to the affected State(s) stating whether the lease sale is "consistent to the maximum extent practicable" with the enforceable policies of the State's CMP. If the State objects, MMS may still proceed with the lease sale if MMS' administrative record and the OCSLA shows that it is fully consistent or consistent to the maximum extent practicable.

The CZMA requires that when a lessee seeks MMS approval for its EP or DPP, the lessee must certify to the affected State(s) that the activities authorized by the licenses or permits described in the plans are fully consistent with the enforceable policies of the State's CMP. If the State objects to the consistency certification, then MMS is prohibited from approving the license or permits described in detail in the EP or DPP. The lessee may appeal to the Secretary of Commerce to override the State objection and allow MMS to issue its approvals described in the plan. When deciding an appeal, the Secretary, among other elements, balances the national interest in energy development against adverse effects on coastal resources and coastal uses.

The CZMA and NOAA's regulations ensure that the national interest in the CZMA objectives are furthered. These safeguards are discussed below using OCS oil and gas activities to illustrate.

The *"Effects Test."* As discussed above, Federal Consistency review is triggered only when a Federal action has reasonably foreseeable coastal effects, referred to as the "effects test." Consistency does NOT apply to every action or authorization of a Federal agency, or of a non-Federal applicant for Federal authorizations.

For OCS oil and gas lease sales, MMS determines if coastal effects are reasonably foreseeable and provides affected States with a Consistency Determination. For example, MMS has established the Eastern Planning, Central Planning and Western Planning Areas for the Gulf of Mexico. MMS may determine that lease sales in the Eastern Planning Area will not have reasonably foreseeable effects on coastal uses or resources within the Central Planning Area. Therefore, MMS may choose not to provide States adjacent to the Central Planning Area with a Consistency Determination. MMS could also determine that a lease sale held far offshore in the Eastern Planning Area would not have coastal effects on Florida or Alabama coastal uses or resources.

For OCS EP's and DPP's the CZMA mandates, as a general matter, State consistency review. However, as with Federal agency activities, a coastal State's ability to review the Plans stops where coastal effects are not reasonably foreseeable. For OCS EP's and DPP's located far offshore, this would be a factual matter to be determined by the State, applicant and MMS on a case-by-case basis.

Under NOAA's regulations, if a State wanted to ensure that OCS EP's and DPP's located in a particular offshore area would automatically be subject to State CZMA review, a State could, if NOAA approved, amend its CMP to specifically describe a geographic location outside the State's coastal zone where such plans would be subject to State review. *See* 15 CFR 930.53. Or, if a State wanted to review an EP or DPP where the applicant and/or MMS have asserted that coastal effects are not reasonably foreseeable, the State could request approval from NOAA to review such plans on a case-by-case basis. See 15 CFR 930.54 (unlisted activities). In both situations, NOAA would approve only if the State could make a factual showing that effects on its coastal uses or resources are reasonably foreseeable as a result of a particular EP or DPP.

NOAA Approval of State CMPs. NOAA, with substantial input from Federal agencies, local governments, industry, non-governmental organizations and the public, must approve State CMPs and their enforceable policies, including later changes to a State's CMP. NOAA's required approval ensures consideration of Federal agency activities and authorizations. For example, NOAA has denied State requests to include policies in its federally approved CMP that would prohibit all oil and gas development or support facilities off its coast because such policies conflict with the CZMA requirements to consider the national interest in energy development and to balance resource protection with coastal uses of national significance.

"Consistent to the Maximum Extent Practicable and Fully Consistent." For Federal agency activities under CZMA section 307(c)(1), such as the OCS Lease Sales, a Federal agency may proceed with the activity over a State's objection if the Federal agency is Consistent to the Maximum Extent Practicable with the enforceable policies of the State's CMP. This means that even if a State objects, MMS may proceed with an OCS lease sale if MMS provides the State the reasons the OCSLA and MMS's administrative record for the lease sale requires MMS to proceed, despite inconsistency with the State's enforceable policies. MMS could also proceed if it determined that its activity was fully consistent. Under NOAA's regulations, the consistent to the maximum extent practicable standard also allows Federal agencies to deviate from State enforceable policies and CZMA procedures due to unforeseen circumstances and emergencies.

Appeal to the Secretary of Commerce. For non-Federal applicants for Federal authorizations, such as OCS lessees, the applicant may appeal a State's objection to the Secretary of Commerce pursuant to CZMA sections 307(c)(3) and (d). The State's objection is overridden if the Secretary finds that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. If the Secretary overrides the State's objection, then the Federal agency may issue its authorization.

Since 1978, MMS has approved over 10,600 EP's and over 6,000 DPP's. States have concurred with nearly all of these plans. In the 30-year history of the CZMA, there have been only 14 instances where the oil and gas industry appealed a State's Federal Consistency objection to the Secretary of Commerce and the Secretary issued a decision (there were several appeals where the Secretary did not issue a decision because the appeals were withdrawn due to settlement negotiations between the State and applicant or a settlement agreement between the Federal government and the oil companies involved in the projects). Of the 14 decisions (1 DPP and 13 EP's), there were 7 decisions to override the State's objection and 7 decisions not to override the State.

Since the 1990 amendments to the CZMA, there have been several OCS oil and gas lease sales by MMS and only one State objection. In that one objection OCRM determined that the State's objection was not based on enforceable policies, MMS determined that it was consistent to the maximum extent practicable with the State's CMP, and the lease sale proceeded. Thus, all lease sales offered by MMS since the 1990 amendments have proceeded under the CZMA Federal Consistency provision. In addition, since 1990, there have been six State objections to OCS plans. In three of those cases, the Secretary did not override the State's objection. In two of the cases the Secretary did override the State allowing MMS approval of the permits

described in the plans, and in one case the State objection was withdrawn as a result of a settlement agreement between the Federal government and the oil companies involved in the project.

Presidential Exemption. After any final judgement, decree, or order of any Federal court, the President may exempt from compliance the elements of a Federal agency activity that are found by a Federal court to be inconsistent with a State's CMP, if the President determines that the activity is in the paramount interest of the United States. CZMA § 307(c)(1)(B). This exemption was added to the statute in 1990 and has not yet been used.

Mediation. While mediation is not technically a legal safeguard as those described above, it has been used to resolve Federal Consistency disputes and allowed Federal actions to proceed. In the event of a serious disagreement between a Federal agency and a State, either party may request that the Secretary of Commerce mediate the dispute. NOAA's regulations also provide for OCRM mediation to resolve disputes between States, Federal agencies, and other parties.

IV. Explanation of Proposed Changes to the Federal Consistency Regulations

Rule Change 1: § 930.1(b) Overall Objectives. This proposed change moves the parenthetical with the description of "Federal action" from § 930.11(g) to the first instance of the term. Federal action is used throughout the regulations to refer, when appropriate, to subparts C, D, E, F and I.

Rule Change 2: § 930.10 Definitions Table of Contents. Definition of Failure Substantially to Comply with an OCS Plan. The reference to section 930.86(d) is incorrect. There is no 930.86(d). The reference should be to 930.85(d) under the 2000 rule, and what is now proposed as 930.85(c).

Rule Change 3: § 930.11(g) Definitions. Effect on any coastal use or resource (coastal effects). This proposed change moves the parenthetical for "Federal actions" to the first instance of Federal action in § 930.1(b) and proposes to insert more specific language for Federal agency activity and federal license or permit activity.

Rule Change 4: § 930.31(a) Federal agency activity. This proposed change would not alter the current application of the definition of Federal agency activity, but would clarify that a "function" by a Federal agency refers to an actual *proposal for action*. The examples included would also be re-written to emphasize that a proposed action is an essential element of the definition.

It has always been NOAA's view that Federal Consistency applies to proposals to take an action or initiate a series of actions that have reasonably foreseeable coastal effects, and not to agency deliberations or internal tasks related to a proposed agency action. Thus, a planning document that explores possible projects or priorities for an agency is not a Federal agency activity, as there is no action proposed. However, as included in the proposed revised example, a Federal agency plan or rulemaking that documents a decision or proposes a new action would be a Federal agency activity subject to the effects test.

Once a Federal agency proposes an action, it is the proposal for action that is the subject of the consistency review. The State only reviews the proposed action and does not review all tasks, ministerial activities, meetings, discussions, and exchanges of views incidental or related to a proposed action, and does not review other aspects of a Federal agency's deliberative process. In addition, Federal agency activities do not include interim or preliminary activities incidental or related to a proposed action for which a consistency determination has been or will be submitted and which do not make new commitments for actions with coastal effects. Such interim or preliminary activities do not propose independent actions that are subject to Federal Consistency review.

For example, where a Federal agency has not yet submitted a consistency determination to a State or where a State has concurred with a Federal agency's consistency determination for a proposed action, planning activities may occur before or after the State's Federal Consistency review that are incidental to the proposed action and which are related to the agency's deliberative process. In these cases the interim or preliminary activity would not be subject to Federal Consistency review.

In the OCS oil and gas context, examples of interim or preliminary activities that are not Federal agency activities include the publication of OCS 5-Year programs, as discussed below; or rulemakings that establish administrative procedures for OCS-related activities that do not affect coastal uses or resources (*e.g.*, rulemaking prescribing the completion and submission of forms). Consistent with the Ninth Circuit's decision in *California ex rel. Cal. Coastal Comm'n* v. *Norton*, 150 F. Supp.2d 1046 (N.D. Cal. 2001), *aff'd*, 311 F.3d 1162 (9th Cir. 2002), granting or directing suspensions of OCS operations or production by MMS would be interim or preliminary activities and would not be Federal agency activities when a lease suspension would either not have coastal effects or, if the lease suspension set forth milestones that would have coastal effects, the State had previously reviewed the lease sale for Federal Consistency. (The Ninth Circuit emphasized that the leases at issue in *California* v. *Norton* had never been reviewed by California.) *See* NOAA's response to COMMENT 33 for further discussion on lease suspensions and *California* v. *Norton* and NOAA's conclusion that in all foreseeable instances, lease suspensions would not be subject to Federal Consistency review since (1) in general, they do not authorize activities with coastal effects, and (2) if they did contain activities with coastal effects, the activities and coastal effects would be covered in a State's review of a lease sale, an EP or a DPP. If a State believes that a particular lease suspension should be subject to Federal Consistency, the State could notify MMS. MMS could determine that the lease suspension is an interim activity that does not propose a new action with coastal effects and/or provide the State with a negative determination pursuant to 15 CFR § 930.35.

Not all "planning" or "rulemaking" activities are subject to Federal Consistency since such planning or rulemaking may merely be part of the agency's deliberative process. Likewise, the plan or rulemaking may not propose an action with reasonably foreseeable coastal effects and would therefore not be subject to Federal Consistency. If, however, an agency's administrative deliberations result in an actual plan to take an action, then that plan could be subject to Federal Consistency if coastal effects are reasonably foreseeable. For example, in the OCS oil and gas program, MMS produces a 5-year Leasing Program "Plan." MMS has informed NOAA that the 5-Year Program Plan is a preliminary activity that does not set forth a proposal for action and thus, coastal effects cannot be determined at this stage. Accordingly, MMS' proposal for action would occur when MMS conducts a particular OCS oil and gas lease sale.

In another example of what is subject to State consistency review, consider the situation when the Navy proposes to construct a pier. The project involves compliance with numerous federal laws, *e.g.*, National Environmental Policy Act (NEPA) documents, Endangered Species Act (ESA) section 7 consultation, a Rivers and Harbors Act section 10 permit from the Army Corps of Engineers (Corps), contracts with a construction company to build the pier, etc. These various authorizations and activities related to the Navy's proposal to build the pier are not separate Federal agency activities subject to Federal Consistency. The Federal agency activity for purposes of 15 CFR 930.31 is the proposal to build the pier. The State reviews the pier proposal. The State uses the information provided by the Navy, pursuant to 15 CFR 930.39(a), that is necessary to evaluate coastal effects and determine consistency with the State's enforceable policies. The State may request, or the Navy may provide, the Corps section 10 permit application, or the Biological Opinion under the ESA or the NEPA EIS, with the Navy's consistency determination. Or information in these documents may be used as part of the necessary information required by 15 CFR 930.39, but they are not required to be part of the information required in § 930.39(a) and are not reviewed as the proposed Federal agency activity for consistency.

NOAA has proposed to change "event(s)" to "activity(ies)" since the term "activities" more closely follows the statute and NOAA's regulations.

Rule Change 5: § 930.31(d) Federal agency activity. General Permits. In the 2000 rule, NOAA acknowledged the hybrid nature of general permits and gave Federal agencies the option of issuing a general permit under either CZMA § 307(c)(1) (Federal agency activity) or CZMA § 307(c)(3)(A) (Federal license or permit activity), even though NOAA has opined that, for CZMA purposes, a general permit was more appropriately treated as a Federal agency activity. In this proposed rule, NOAA would remove the option to allow Federal agencies to treat their general permits as a Federal license or permit activity for purposes of complying with CZMA § 307 and 15 CFR part 930. If a general permit is proposed by a Federal agency and coastal effects are reasonably foreseeable, then the general permit would be treated as a Federal agency activity under CZMA § 307(c)(1) and 15 CFR part 930, subpart C. NOAA's determination that general permits are Federal agency activities and not Federal license or permit activities under CZMA § 307 is for CZMA purposes only and does not affect the status of general permits under the Administrative Procedure Act or under any other Federal statute.

There are several reasons why a general permit cannot be a Federal license or permit activity under CZMA § 307. Under NOAA's regulations, Federal agencies are not "applicants" within the meaning of 15 CFR 930.52. *See* 65 FR 77145 (col 1&2) (Dec. 8, 2000). Even if NOAA were to change its regulations to allow a Federal agency to be an "applicant," the Federal agency could not appeal the State's objection to the Secretary of Commerce.

Further, even if a general permit were treated as a Federal license or permit activity for CZMA § 307 purposes and a State objected, the potential users of a general permit could not appeal the State's objection since there would be no case specific factual inquiry on which the Secretary could base her decision.

Other changes would clarify that if a State objects to a Consistency Determination for a general permit, the general permit would still be in legal effect for that State, but that 15 CFR part 930, subpart C of the consistency regulations would no longer apply. Thus, a State objection to a Consistency Determination for the issuance of a general permit would alter the form of CZMA compliance required, transforming the general permit into a series of case-by-case CZMA decisions and requiring each potential user of the general permit to submit an individual consistency certification in compliance with 15 CFR part 930, subpart D.

NOAA reiterates that if a State concurs with a consistency determination for general permit, then the State may not subsequently review individual uses of the general permit under subpart C or D. For example, in the OCS oil and gas context, if a State has concurred with the Environmental Protection Agency's Consistency Determination for an OCS National Pollutant Discharge Elimination System (NPDES) general permit under the Clean Water Act, then the State may not review the use of the NPDES general permit for consistency at the OCS EP or DPP stage of reviews or when a facility files a notice of intent to be covered by a general permit under the NPDES regulations. If, however, a State objects to the OCS NPDES general permit, then each user, or "applicant" in CZMA parlance, must file a consistency certification with the State and obtain the State's concurrence before the applicant may avail itself of the NPDES general permit.

Rule Change 6: § 930.35(d) General Negative Determination. Section 930.35(d) would be changed to (e) and a new section 930.35(d) would be added. The General Negative Determination (General ND) would be an administrative convenience for Federal agencies to use when they undertake repetitive activities that, either on an individual, case-by-case basis or cumulatively, do not have coastal effects. The General ND would not diminish the factual basis required for Federal Consistency reviews. The Federal agency must still make a factual effects analysis for the repetitive activities. It is proposed as an analogue to the existing General Consistency Determinations (15 CFR 930.36(c)), for repetitive activities which do have cumulative effects.

A General ND would not affect the application of the "effects test" and the requirement for Federal agencies to provide Consistency Determinations to coastal States when there are reasonably foreseeable coastal effects. For example, a General ND may apply to activities far away from the coastal zone because coastal effects are not foreseeable, but might not apply to the same activities proposed in or near the coastal zone where the proximity to coastal uses or resources may have coastal effects and require a General Consistency Determination or Consistency Determination.

A Federal agency would not be required to use a General ND. If any of the conditions for a negative determination are met, then a Federal agency could choose to provide the State with either a Negative Determination, or if applicable, a General ND. The conditions for a Negative Determination are when a Federal agency determines that there will not be coastal effects and the activity is listed in the State's program, the State has notified the Federal agency that it believes coastal effects are reasonably foreseeable, the activity is the same as or is similar to activities for which consistency determinations have been prepared in the past, or the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity. *See* 15 CFR 930.35(a)(1)–(3).

If a State subsequently finds that a General ND may no longer be applicable, the State agency may request that the Federal agency reassess the General ND. In the case of a disagreement between the State and the Federal agency, the conflict resolution provisions of subpart G are available.

Rule Change 7: § 930.41(a) State agency response. This change would clarify when the State's consistency review period begins for Federal agency activities. The proposed changes provide additional clarification to States that the State's determination of whether the information provided by

the Federal agency pursuant to 15 CFR 930.39(a) is complete, is not a substantive review. Instead, it is a "checklist" review to see if the description of the activity, the coastal effects, and the evaluation of the State's enforceable policies are included in the submission to the State agency. If the items required by § 930.39(a) are included, then the 60-day review starts. This review does not determine or evaluate the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the 60-day review period.

To help resolve disputes as to when the 60-day review period started when a State later claims that required information was not provided, NOAA proposes to replace the requirement to "immediately" notify the Federal agency that information required by § 930.39(a) is missing with a 14-day notification period. If the State agency has not notified the Federal agency of missing information within this 14-day period, then the State waives the ability to make that claim and the 60-day review period started when the State received the initial determination and information. This would require that State agencies pay close attention to the consistency determinations they receive, but would not affect the State's ability to review the activity or to object for lack of information at the end of the 60-day review period.

Rule Change 8: § 930.51(a) Federal license or permit. The proposed changes would emphasize and clarify NOAA's long-standing view of the elements that are needed to subject a "federal license or permit" to State Federal Consistency review. First, Federal law must require that the applicant obtain the federal authorization. Second, the purpose of the federal authorization is to allow a non-federal applicant to conduct a proposed activity. Third, the proposed activity to be federally permitted must have reasonably foreseeable effects on a State's coastal uses or resources, and fourth, the proposed activity was not previously reviewed by the State agency for Federal Consistency (unless the authorization is a renewal or major amendment pursuant to § 930.51(b)). All four of these elements are required for Federal Consistency review.

Federal license or permit does not include, for CZMA Federal Consistency purposes, federal authorizations for activities that do not have coastal effects. Federal Consistency does not apply to a required federal certification of an applicant's ministerial paperwork which is merely incidental or related to an activity that either does not have coastal effects or an activity that is already subject to Federal Consistency review. For example, when MMS makes certain determinations such as the qualification of bidders for OCS lease sales, bonding certifications, certifications of financial responsibility, approvals of departures from regulations in order to enhance safety. Or a Federal agency may be required to certify the equipment to be used for an activity which has already been the subject of a consistency review. Each of these certifications are merely incidental to the activity undertaken by the applicant which has already or will in the near future be the subject of a full Federal Consistency review.

As another example, MMS has "Notification requirements" which are not subject to Federal Consistency since they only require the operator to notify MMS of an activity and MMS' approval is not required. Another example would be when a power plant is transporting spent nuclear waste by ship; the plant must provide the U.S. Coast Guard with a transportation plan which the Coast Guard reviews, but Coast Guard approval is not required by Federal law. Because Coast Guard approval was not required and the Coast Guard merely reviewed the transportation plan, there was no Federal Consistency review under CZMA § 307(c)(1) or 307(c)(3)(A).

However, a lease issued by a Federal agency to a non-Federal entity that is the only authorization to use federal property for a non-Federal activity would still be reviewable under the listed and unlisted requirements in §§ 930.53 and 930.54, if the lease was required by law, the proposed activity will have coastal effects, and the State did not previously review a Federal authorization for the same project.

Thus, the proposed change to the rule would ensure that the definition of "Federal license or permits" is not overly-inclusive or beyond the commonly understood meaning of license or permit, while at the same time retaining the phrase "any required authorization" to capture any form of Federal license or permit that is: (1) Required by Federal law, (2) authorizes an activity, (3) the activity authorized has reasonably foreseeable coastal effects, and (4) the authorization is not incidental to a Federal license or permit previously reviewed by the State. Thus, the removal of the forms of approvals listed in the current language would not exclude a category of Federal authorizations from Federal Consistency, but would emphasize that any form of Federal authorization must have the required elements to be considered a "Federal license or permit" for CZMA purposes.

Factual disputes concerning whether a Federal authorization is subject to Federal Consistency can be addressed through NOAA's regulations regarding the review of listed or unlisted federal license or permit activities. 15 CFR 930.53 and 930.54.

The effects test language at the end would be deleted as superfluous since subpart C contains the effects analysis for Federal agency activities.

Rule Change 9: § 930.51(e) Substantially different coastal effects. Section (e) was added in the 2000 rule to emphasize that determining whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input of all parties. NOAA used the phrase "the opinion of the State agency's views shall be *accorded deference*," (emphasis added) to help ensure that the State agency has the opportunity to review coastal effects which may be substantially different than previously reviewed. NOAA expected that the parties would discuss the matter and agree whether effects are substantially different. NOAA did not intend to use the phrase to have the State agency make the decision on whether coastal effects are substantially different. Thus, to provide clarification, NOAA proposes new language stating that the expert permitting Federal agency makes this determination after consulting with the State and applicant. If a State disagrees with a Federal agency's determination of substantially different coastal effects, then the State could either request NOAA mediation or seek judicial review to resolve the factual dispute.

Rule Change 10: § 930.58(a)(1) Necessary data and information. This change would provide a greater level of specificity for information requirements for federal license or permit activities. The purpose of § 930.58 is to identify the information needed to start the six-month consistency review period and to the extent possible, identify the information needed by the State agency to make its concurrence or objection. Thus, the more specific the information requirements are, the more predictable and transparent the process.

Section 930.58(a)(1) would be reorganized to clarify that "necessary data and information" includes (1) a copy of the federal application, and (2) all supporting material provided to the Federal agency in support of the application, (3) information that is required and specifically described in the State's management program, and (4) if not included in 1 or 2, a detailed description of the activity, its associated facilities and the coastal effects.

NOAA proposes to remove the clause in § 930.58(a)(1) that says "and comprehensive data and information sufficient to support the applicant's consistency certification." This clause is not needed since the rest of the section, especially as changed, describes the information NOAA determined necessary and § 930.58(a)(2) allows the State to describe in its CMP necessary information in addition to that required by NOAA regulations. The language proposed to be removed is ambiguous as it could refer to the other paragraphs in this section or to other undefined information, and could create uncertainty in the determination of when the six-month review period starts.

These changes would not affect a State's ability to specifically describe "necessary data and information" in the State's federally approved management program (§ 930.58(a)(2)), or to request additional information during the six-month review period (§ 930.60(b)), or to object for lack of information (§ 930.63(c)).

Rule Change 11: § 930.58(a)(2) Necessary data and information (State permits). In the 2000 rule, NOAA allowed States to describe State permits as necessary data and information. Unfortunately, implementation of this provision had the potential to require applicants to obtain State permit approval before the six-month consistency review period could begin. NOAA does not believe the statutorily defined six-month review process anticipated such a conundrum. While it may be appropriate or necessary for a State to include complete State permit *applications* as necessary data and information, it is not appropriate to require an approved permit. Thus, NOAA proposes to remove "State permits" as eligible necessary data and information, but has retained State permit applications.

Rule Change 12: § 930.60 Commencement of State agency review. This change would clarify when the State's consistency review period begins for federal license or permit activities. The changes would provide additional clarification to States that the State's determination of whether the information provided by the applicant pursuant to 15 CFR 930.58 is complete, is not a substantive review. Instead it is a "checklist" review to see if the application, description of the activity, the coastal effects, the evaluation of the State's enforceable policies, and specific information described in the State's federally approved program are included in the submission to the State agency. If the items required by § 930.58 are included, then the six-month review starts. This review does not determine or evaluate the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the six-month review period. The change would also further clarify that a State may not stop, stay or otherwise alter the consistency timeclock once it begins, unless the applicant agrees in writing to stay the time period for a specific or defined amount of time. NOAA proposes to delete the word "extend" because the six-month period is set by statute and cannot be extended by rule. Thus, the State agency and applicant can stay or "toll" the running of the six-month period for an agreed upon time, after which the remainder of six-month statutory period would continue.

NOAA reiterates that if a State wants to require certain information prior to starting the six-month review period, the only way it can do so is to amend the State's management program to identify specific "necessary data and information" pursuant to § 930.58(a)(2).

NOAA also proposes to change the section to remove a State's option of starting the six-month review period when a consistency certification has not been submitted. *See* below under *Collier Decision* for further information.

The proposed re-write of paragraph (a)(2) is not a substantive change, but is merely a more clear restatement of the existing paragraph.

The Collier Decision. Under the 2000 rule, § 930.60(a)(1)(ii) allowed a State to start the six-month consistency review period even if the applicant had not provided a consistency certification or the necessary data and information. However, now, as described in *Collier*, NOAA has determined that a State could not start the six-month review without the applicant's consistency certification. *See* NOAA's Dismissal Letter in the Consistency Appeal of Collier Resources Company (April 17, 2002). In *Collier*, NOAA determined that:

> An applicant's failure to provide a state with a consistency certification cannot divest a state of its authority pursuant to CZMA section 307(c)(3)(A). However, filing a state objection without an underlying consistency certification provided by the applicant is neither a remedy for the applicant's failure to comply with the CZMA, nor a valid exercise of [the State's] own CZMA authorities.
>
> The statutory language and scheme of the CZMA presumes that the applicant has the first opportunity to demonstrate that its activity is consistent with the enforceable policies of the state CMP. Section 307(c)(3)(A) provides in pertinent part: "[a]t the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification." The NOAA regulations also require a state objection be made in response to the applicant's consistency certification. 15 CFR 930.64. Likewise, consistency cannot be presumed without the receipt of a consistency certification. 16 U.S.C. 1456(c)(3)(A) and 15 CFR 930.63. Finally, NOAA's regulations anticipate that the applicant will have the first opportunity to provide the state with the necessary information and data to demonstrate consistency with the state CMP and that only after the receipt of that information can the state consistency review process begin. *See* 15 CFR 930.58.
>
> Given the language and structure of the statute and NOAA's implementing regulations, it is clear that an applicant's consistency certification is essential to a state's Federal consistency review. Therefore, I conclude that a State may not "object" within the meaning of the CZMA, to an application for a Federal license or permit when no consistency certification has been submitted. Florida's objection in this case has no effect or is not valid.
>
> A coastal state is not without remedy, however, when a recalcitrant applicant declines to provide the necessary consistency certification. First, both the statute and the regulations make it clear that a Federal agency cannot issue a license or permit until "the state or its designated agency has concurred with the applicant's consistency certification or until by the state's failure to act, the concurrence is conclusively presumed." 16 U.S.C. 1456(c)(3)(A). In addition, a state may seek enforcement of the CZMA in Federal court. Unlike the Secretary of Commerce, the Federal courts have the authority to require compliance with Federal law through the issuance of mandamus, injunction and other relief.
>
> Optimally, in matters such as this, where an applicant disagrees that its permit or license activity is subject to the provisions of a state CMP can be resolved through the availability of mediation services of NOAA's Office of Ocean and Coastal Resource Management (OCRM), 15 CFR 930.55, or an advisory letter issued by OCRM pursuant to 15 CFR 930.142 (15 CFR 930.3(2001)). While these informal procedures do not carry the weight of a federal court order, they represent the views of the expert agency charged with the implementation of the CZMA. These informal remedies are also more expedient and less costly than the Secretarial appeals process or federal litigation.

While not central to the decision made in *Collier*, NOAA opined in *Collier* that the six-month review period could also only start after receipt of the necessary data and information. *Id.* However, NOAA has determined that a State could, if it wished to, start the six-month review upon receipt of a consistency certification, but without the necessary data and information (but could not then later stop the six-month

time period without agreement from the applicant). NOAA makes this distinction because, as discussed in *Collier*, a consistency certification is central to the State's jurisdiction and authority under the statute to conduct a consistency review. Allowing necessary data and information to be submitted after the six-month period has begun provides flexibility to the State and applicant to remedy the submission of the necessary data and information during the six-month review.

Rule Change 13: § 930.63(d). The cross reference to 930.121(d) is incorrect. There is no 930.121(d). The reference should be to 930.121(c).

Rule Change 14: § 930.76(a) and (b) Submission of an OCS plan, necessary data and information and consistency certification. These proposed changes would address information requirements for OCS plans. The changes would provide a more specific list of the information required. Clean Air Act and Clean Water Act permits are not added to NOAA's regulations as these permits are already required to be "described in detail" in OCS plans and are covered under the State's review of the OCS plan. *See* 30 CFR 250.203(b)(4), 203(b)(19), 204(b)(8)(ii) and 204(b)(14). Thus, States should not review CWA and CAA permit applications independently of the OCS plan review.

While the status of the completion of NEPA documents is an issue raised by coastal States when performing consistency reviews, NOAA is not adding language requiring that NEPA documents be included as information necessary to start the six-month review period. A requirement that NEPA documents (draft or final) be completed prior to the start of the six-month review period would be incompatible with statutory requirements in the OCSLA. MMS must make its decision whether to approve an EP within 30 days of receipt of the EP. Within that 30-day period, MMS completes its Environmental Assessment (EA). Thus, to meet OCSLA requirements and not to delay the CZMA process, MMS submits the EP and accompanying information to the State within days of receipt of the EP. The six-month review period starts when the State receives that information. MMS sends the EA to the State when the EA is completed. Since the State receives the EA within a very short period (20–30 days) after the start of the six-month review period, there is no harm to the State and the CZMA process is not delayed unnecessarily.

For DPP's, where MMS prepares a new Environmental Impact Statement (EIS), there is additional time in the process and States, if they want a draft EIS prior to starting the six-month consistency review process, can amend their programs, pursuant to 15 CFR 930.58(a)(2), to include draft EIS' and other information as data and information necessary to start the six-month review. States will not be able to amend their programs to require final EIS' for OCSLA purposes as part of the necessary data and information because the OCSLA requires MMS to approve or deny a DPP within 60 days after completion of the final EIS. *See* 43 U.S.C. 1351(h) and 30 CFR 250.204(l). This would not provide sufficient time for the CZMA process.

Paragraph (a) is proposed to be deleted and combined with (b) as (a) is redundant with (b), particularly (1) and (3).

Rule Change 15: § 930.77(a) Commencement of State agency review and public notice. This change would clarify when the State's consistency review period begins for OCS plans. The proposed changes would provide additional direction to States that the State's determination of whether the information provided by the person pursuant to 15 CFR 930.76 is complete, is not a substantive review. Instead, it is a "checklist" review to see if the OCS plan, description of the activity, the coastal effects, the evaluation of the State's enforceable policies, specific information described in the State's federally approved program, and information required by Interior's regulations are included in the submission to the State agency. If the items required by § 930.76 are included, then the six-month review starts. This review does not determine the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the six-month review period.

The proposed changes would also clarify that if the State wants to require additional information for its review of OCS plans, it must describe such information in its program, pursuant to § 930.58(a)(2).

This section would also be changed to address the circumstances where a State believes the information submitted pursuant to NOAA's regulations is insufficient (*e.g.*, either the analysis was substantively inadequate, or that the OCS plan addresses new activities or effects not foreseen and for which information was not provided). In such a case a State may request additional information. The proposed change would require that such a request be made within the first three months of the six-month review period. A request for additional information does not stop, stay or otherwise alter the six-month review period.

Rule Change 16: § 930.82 Amended OCS plans. To be consistent with § 930.76(c), this proposed change would clarify that it is Interior, not the person, that submits the consistency certification and information to the State for amended OCS plans.

Rule Change 17: § 930.85(c) Failure to comply substantially with an approved OCS plan. While this section existed prior to the 2000 rule revisions, NOAA proposes this change to more closely coordinate CZMA and OCSLA requirements. Under NOAA's regulations and the OCSLA program, it is MMS that determines whether a change to an OCS plan is "significant" and thus, whether the change requires CZMA Federal Consistency review. This determination should be the same for failure to substantially comply with an approved OCS plan. This change would be consistent with CZMA section 307(c)(3)(B), and in fact the language is taken directly from the statute. The previous language was developed in the 1979 regulations as a means of determining when a person has substantially failed to comply. However, the existing section has not been used and NOAA believes that such determinations should be made by MMS. Also, to be consistent with § 930.76(c), this change would clarify that it is Interior, not the person, that submits the consistency certification and information to the State for OCS plans.

Rule Change 18: § 930.121(c) Alternatives on appeal. This provision was amended in the 2000 rule to address "confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or [sic] when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal." 65 FR 77151 (December 8, 2000). Implementation of this change has prompted NOAA to propose several refinements in the language. The word "new" would be struck to clarify that all information submitted to the Secretary during the appeal may be considered in determining whether an alternative is reasonable and available. The word "submitted" would be substituted for the word "described" to reflect more accurately the manner in which information becomes part of the decision record of an appeal.

The last sentence has been proposed to make clear that the Secretary would not substitute the Secretary's judgement for that of the State in determining whether an alternative is consistent with the enforceable policies of the management program. This is not a change in standards or practice, only a clarification. As in the 2000 rule, both the State and appellant and commenters on the appeal will be able to provide the Secretary with information concerning an alternative. The addition of this sentence, however, would make clear that any alternative, whether submitted to the Secretary by the appellant, the State, a third party, or identified by the Secretary from previous appeal decisions, will not be considered by the Secretary as "reasonable" or "available" unless the State submits a statement to the administrative record of the appeal that the alternative will allow the activity to be conducted in a manner consistent with the enforceable policies of the management program. To allow otherwise would require the Secretary to make a finding that the alternative would be consistent with the management program and would effectively substitute the Secretary's judgement for that of the State. The Secretarial appeals process is a *de novo* consideration of whether a proposed activity is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. It does not review whether the proposed activity is consistent with the State's enforceable policies. Likewise, the Secretary relies on the State to determine whether an alternative is consistent with the enforceable policies of the management program.

Rule Change 19: § 930.125 Notice of appeal and application fee to the Secretary. In order to process an appeal within the proposed time frames under § 930.130, necessary changes are proposed to various sections (§§ 125, 127, 128, 129 and 130) to ensure that briefs, information, and public and Federal agency comment periods accommodate a shorter time period for developing the decision record and issuing a decision. These proposed procedures will provide sufficient due process to all parties, but will be strictly adhered to, otherwise NOAA will not be able to meet the proposed appeal time frames.

Rule Change 20: § 930.127 Briefs and Supporting Materials. The proposed changes in § 930.127 are to reflect changes in practice necessary to accommodate the proposed time frames for the closure of the decision record in § 930.130 and to make the administration of the appeals process more efficient and transparent to the public, States and potential appellants. These changes would likely mean that States, appellants, Federal agencies and the public will have to be more diligent in providing thorough and complete information to the Secretary in a shorter amount of time. The proposed changes would allow each party and the public, in most cases, only one opportunity to provide their arguments to the Secretary. The proposed changes reflect the fact that the Secretary needs only sufficient time and information required to make a rational and well-reasoned determination of each of the elements in 15 CFR 930.121 or 930.122.

The proposed change to § 930.127(d) would move language from § 930.130(d) regarding the appellant's burden to support its appeal, and makes clear the State's burden of submitting evidence when asserting an alternative to the proposed action is reasonable, available and consistent with the State management program. This has been the Secretary's long-standing practice in accordance with the Secretary's decision in Korea Drilling Inc. (1989). This change would codify existing practice and consistency appeal precedent.

Rule Change 21: § 930.128 Public notice, comment period, and public hearing. The proposed changes to § 930.128 would accommodate the proposed 270-day period to develop the decision record in § 930.130. Other changes are intended to promote clarity and efficiency, obtaining comments from the public and interested Federal agencies, and in processing the appeal. In addition, NOAA proposes to make explicit the Secretary's practice of giving additional weight to Federal agencies' comments when they concern topics within the area(s) of the Federal agency's technical expertise.

Rule Change 22: § 930.129 Dismissal, remand, stay, and procedural override. The proposed additions to 930.129 would accommodate the proposed 270-day period to develop the decision record in § 930.130.

Rule Change 23: § 930.130 Closure of the decision record and issuance of decision. This proposed change would provide 270 days as a definitive date by which the Secretary shall close the decision record in appeals filed from State objections under 15 CFR part 930, subparts D, E and F. Three exceptions to the 270-day period are proposed to allow the parties to mutually agree to stay the 270-day period and to ensure that the Secretary has relevant NEPA and ESA documents, if the Secretary determines that such information is needed to decide the appeal. These exceptions would not mean that the Secretary would create NEPA or ESA documents for the appeal. The stay of the 270-day decision record period would apply *only* when the NEPA and/or ESA documents are *required* to issue for the Federal agency authorization or funding subject to the appeal. If the parties to an appeal wanted to provide comments on the NEPA and/or ESA document to the Secretary as part of the decision record for an appeal, then the parties could avail themselves of proposed section 930.130(a)(2)(i) and mutually agree to stay the closing of the decision record.

Other changes are proposed to more accurately track the existing statutory language.

V. Comments Received by NOAA on the ANPR

NOAA issued an ANPR on July 2, 2002, primarily to address issues raised by the Energy Report related to the scope of information needed by the States and the Secretary in their respective reviews of OCS oil and gas activities. In the ANPR NOAA sought public comment on the following six questions:

1. Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.

2. Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.

3. Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.

4. Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.

5. Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the "listing" and "geographic location"

descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.

6. Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EP's and DPP's, whether other associated approvals, air and water permits not "described in detail" in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

NOAA received comments from States, environmental groups, industry, the public, members of Congress, and Federal agencies. This proposed rule is based on NOAA's evaluation of the ANPR issues, comments submitted in response to the ANPR, and some technical and clarifying changes that should be made to the regulations. Below are NOAA's response to comments on the ANPR.

General Comments. All commenters except two Federal agencies and the oil and gas industry representatives urged NOAA to take no action because the recent 2000 rulemaking was comprehensive and further rulemaking is unwarranted as no problems have emerged with the existing regulations. The majority of the commenters urged additional stakeholder meetings first, and noted that Congress has sought to broaden, not narrow, the scope of CZMA review. They also stated that the consistency process has worked well for many years, and that any controversy was not the result of the CZMA process, but the proposed projects and their effects on coastal uses and resources were themselves controversial. Commenters also suggested that any lack of effectiveness in CZMA–OCSLA interactions is the result of a project proponent's lack of early coordination, familiarity and experience with the CZMA. Further, these commenters urged NOAA to commit additional resources to its Federal Consistency education and outreach efforts. Many of these commenters also felt that changes to address many of the ANPR questions could jeopardize the CZMA effects test and public review. A few of these commenters, while generally opposing any changes, did offer some rulemaking suggestions on the six ANPR questions.

Federal agency and industry comments urged NOAA to make many changes to the regulations to refine and improve the partnership between Federal and State agencies. These commenters believe that NOAA's 2000 rule was overly broad and inconsistent with the CZMA's objective to consider the national interest. Further, the two Federal agencies that commented believe that States can use the CZMA for the cancellation of energy projects, even after a Federal agency has approved the project. NOAA's proposed changes address Federal agency and industry concerns.

NOAA Response to General Comments. As stated in the ANPR, NOAA is not seeking to alter the balance of State and Federal interests provided for in the CZMA and the 2000 rule. Neither the Energy Report nor the ANPR suggest changing the States' or public's rights under the CZMA or 2000 rule. NOAA does believe, however, that there are some improvements that can be made to the Federal Consistency regulations.

NOAA agrees that the Federal Consistency process is not primarily a source of conflict, but that the projects reviewed through the CZMA process are often controversial. Most projects are approved by the coastal States and there is little litigation.

Early coordination was stressed in NOAA's 2000 revision to the regulations and in recent Federal Consistency Workshops conducted by NOAA. NOAA hopes to continue its education and outreach efforts, as budget and resources allow. Through workshops and web based information NOAA intends help stakeholders avoid problems arising from inadequate knowledge of the consistency requirements, limited experience with consistency, or insufficient State-federal coordination.

NOAA agrees that some improvements can be made to the regulations, but does not believe that NOAA's regulations are overly broad. The 2000 rulemaking reflects CZMA directives and Congressional intent and was finalized after four years of coordination and collaboration with all stakeholders. It may be that some of the issues raised in the comments are not really problems with NOAA's regulations, but result from requirements and policy set forth by Congress in the statute. For example, NOAA does not have the authority to exempt federal actions from CZMA review and States have the authority to object to the issuance of federal licenses or permits to be issued by Federal agencies.

The figures discussed above and those provided by some of the State commenters demonstrate that offshore oil and gas exploration and development not only continues to occur, but flourishes. Coastal States continue to ensure that both the CZMA's energy development and resource protection objectives are met. There has, of course, been negotiation between coastal States, MMS and industry, and there have been some issues. NOAA is attempting to address some of those issues through this rulemaking.

NOAA appreciates the concern raised in the example provided by industry where a State required changes to oil and gas project to be located on an ice-platform. It may be that some of the changes proposed by NOAA will address those concerns or that better coordination is needed between the State, industry and MMS. However, the State's use of consistency to ensure that the ice-platform met State enforceable policies is in fact how a State is authorized by Congress to use Federal Consistency. Through the CZMA, Congress gave the States the ability to review federal actions, independent of the Federal agencies' reviews. It is important to note the statistics referred to above and acknowledge that States concur with most projects reviewed, including oil and gas projects.

ANPR Questions

Information Needs

Comment 1. Existing provisions in the CZMA regulations address information needs for most projects. Describing specific documents in the regulations that a State may need would be ineffective and cumbersome because information needs change from project-to-project. The type of information needs of a State can vary from project-to-project depending on how detailed the EP or DPP is and the complexity of a project. One of the fundamental attributes of the CZMA is that it allows each State to develop its own coastal management program in light of the individual characteristics and priorities of the States. Thus, the development and imposition of detailed nationwide information requirements appears to be incompatible with the statutory framework of the CZMA.

Most of the OCSLA information requirements ask for fairly specific and physical descriptions, while the CZMA requires an analysis of the proposed project's consistency with the enforceable policies of a State's CMP. Where there is a problem, the proper remedy is the development of guidance or memoranda of understanding coordinating information requirements between the State and Federal agencies. There have been few instances where the lack of availability of an EIS or other NEPA document led to an objection based on lack of information. If information problems (such as lack of NEPA documents) do occur, they can be resolved using the procedures available under 15 CFR 930.60, adopted when the Federal Consistency regulations were updated in 1990, which clarified when the consistency time clock may begin. If OCRM does revise the information requirements aspect of the regulations, California stated it would not oppose language analogous to that of § 930.37 being placed in subparts D and E of the regulations.

NOAA Response to Comment 1. NOAA's regulations at 15 CFR 930.58 and 930.76, and MMS' regulations already provide "national standards" for information needs for OCS oil and gas plans. NOAA's regulations also provide the mechanism for addressing individual State information needs, both through each State's enforceable policies which are approved by NOAA and the "necessary data and information" specifically identified in a State's federally approved management program, pursuant to 15 CFR 930.58(a)(2). Section 930.76(b) and includes the information requirements of § 930.58.

These information requirements provide adequate guidance for most projects. Issues have been raised regarding OCS oil and gas projects and whether MMS and NOAA regulations provide enough detail about the information needed or whether additional information should be described in the regulations. In addressing these issues, NOAA recognizes that information required for MMS' purposes may not be sufficient for State CZMA purposes. Thus, NOAA is not proposing to eliminate 15 CFR 930.58(a)(2), but, rather encourages States to make better use of the section so that State information needs will be known before CZMA review begins and the applicant and Federal agency will be able to plan for the State information needs when developing the project. NOAA has proposed various improvements to increase clarity and efficiency to the Federal Consistency regulations concerning information needs.

NOAA agrees that States and Federal agencies should have flexibility to coordinate NEPA information issues.

Comment 2. MMS' comprehensive Notice to Lessees for the Gulf of Mexico addresses many of the same issues as NOAA's proposed rule-making and can be used as a model for those States and regions outside the Gulf region, precluding the need for NOAA to further revise the regulations on these issues.

NOAA Response to Comment 2. Neither the current nor the proposed regulations would prohibit State-Federal memoranda of understanding on information needs, such as the recent effort by MMS and the Gulf States. NOAA will continue to encourage such agreements.

Comment 3. For Virginia's Chesapeake Bay Preservation Act Program, the State would like detailed maps showing (1) the layout of proposed on shore facilities and other elements of the project (*i.e.*, transmission lines, reservoirs, borrow areas, waste disposal locations, etc.); and (2) delineation of Chesapeake Bay Preservation Areas on the properties under study.

NOAA Response to Comment 3. The State could amend its management program to describe the information as being "necessary data and information," pursuant to 15 CFR 930.58(a)(2) and (c), and thus required of the applicant. If States include detailed information requirements in their management programs pursuant to § 930.58(a)(2), then problems associated with unpredictable State requests for additional information will dissipate.

Comment 4. States are allowed to request additional data and information during the CZMA process even though they may have already received this information, through MMS, in the documents prepared and submitted to the federal permitting authority by a company. Since MMS has very thorough environmental review regulations, information generated for this process should be honored by the States and not requested anew. States should work with the federal permitting agency and MMS to identify what information is necessary at the beginning of the OCSLA and CZMA processes.

NOAA Response to Comment 4. All parties should identify information needs as early as possible. This should occur before CZMA review begins. There should not be a need to develop information in addition to that required by MMS regulations and 15 CFR 930.58 and 930.76(b) once the CZMA review begins, except in limited, unforeseen circumstances and/or where issues regarding the substantive adequacy or completeness of the information submitted have arisen. Once the CZMA review begins, coastal States need to allow sufficient time for industry or MMS to respond to any requests for additional information. Thus, NOAA proposes to clarify information needs and, for OCS plans, proposes a cut off date at the three month period after which no additional information can be requested by a State.

Comment 5. A better description of the scope and nature of information will be beneficial. Preparation of a list of the specific information that is required to complete the CZMA process for energy projects is encouraged. The applicants should have access to these lists of informational needs when they are preparing the necessary applications. This approach would assure that all the players understand the type and extent of the information that must be submitted prior to the submission of any application. The information requirements should be keyed to the approved coastal management plan and enforceable policies of the plan. By ensuring that the information requests are firmly grounded in the approved plan, NOAA can encourage States to keep their plans current.

NOAA Response to Comment 5. NOAA agrees that one reason for information uncertainty is that some States do not list information needs pursuant to 15 CFR 930.58(a)(2). Another reason for uncertainty is that many States have not kept their management programs up to date by submitting program changes to NOAA. NOAA has begun to address this issue with the States. In addition, NOAA is looking for ways to facilitate the process to update State programs, which is primarily a resource issue for both the States and NOAA.

Comment 6. NOAA's regulation at 15 CFR 930.58(a)(1) includes: "comprehensive data and information sufficient to support the applicant's consistency certification." This language is too broad and has been used as a basis for continual requests by States for additional information. Information required by MMS regulations should be adequate for the States to determine consistency. Unreasonable requests for more information result in substantial costs and delays, create differing requirements among the States and this unpredictability has a dampening effect on OCS energy projects.

NOAA Response to Comment 6. NOAA agrees that the language in § 930.58(a)(1) which says "and comprehensive data and information sufficient to support the applicant's consistency certification" is not needed since the section describes the information needed and § 930.58(a)(2) allows the State to describe any necessary information in addition to that required by NOAA regulations. The language proposed to be removed is ambiguous and could create uncertainty in the determination of when the six-month review period starts. NOAA proposes to remove this clause from

§ 930.58(a)(1) and replace it with a requirement for "information, if any, relied on by the applicant." This phrase describes a set of information that can be specifically defined and does not require additional evaluation by the applicant. NOAA also proposes restructuring the section to provide greater clarity.

Comment 7. More and more frequently, States are delaying the issuance of the consistency concurrence until the NEPA process is completed. If a final NEPA document contains no further analysis of coastal effects, the information in it is irrelevant to the State's concurrence or objection to the consistency determination. Furthermore, by withholding a State response to the consistency determination until a final NEPA document is published, the State denies the Federal agency any benefit the agency might get from the State's comments on the consistency determination. We recommend that States not be allowed to delay their responses to consistency determinations under the ruse of the need for additional information. States should be held to the timelines established in 15 CFR part 930. To accomplish this, NOAA should clarify the purpose of the consistency analysis, and the importance of a timely State response, so that Federal agencies can address that response in any final NEPA documentation.

NOAA Response to Comment 7. States cannot delay their consistency responses for any reason, unless the State, Federal agency and, if applicable, the applicant agree. If a State does not concur or object within the regulatory time frames, the State's concurrence is presumed, and the Federal agency may proceed. Requests for additional information do not toll or stay the regulatory time periods. For Federal agency activities under CZMA section 307(c)(1), the Federal agency makes the determination of coastal effects, consistency with the State's enforceable policies and whether the Federal agency has sufficient information to make such determinations, pursuant to 15 CFR part 930, subpart C. The State may request additional information or object, but the Federal agency is not obligated to provide information in addition to that required by 15 CFR 930.39, or to extend the regulatory review period. NOAA agrees that a final NEPA document may not be needed for CZMA review, unless there is a substantial change between a draft and final document.

Comment 8. A State agency may effectively extend the required 60-day consistency determination review period merely by requesting additional information from the submitting Federal agency. The State agency is under no obligation to make its information request(s) in a timely manner.

NOAA Response to Comment 8. As discussed above and stated in the regulations, States cannot unilaterally alter the CZMA review periods. In this proposed rule NOAA has further clarified this fact. Section 930.39 sets out information requirements for consistency determinations. It is up to the Federal agency to determine the information necessary to support its consistency determination. NOAA's Federal Consistency regulations provide general information guidelines, but do not, and could not, presume to determine when another Federal agency's administrative record is complete and sufficient to support a consistency determination. Given the 60-day time period for review of Federal agency activities, NOAA proposes to require States to notify Federal agencies within 14 days of receipt of a consistency determination if the State believes the Federal agency has not submitted the information described in § 930.39. Otherwise, a Federal agency's submission is presumed complete and by operation of the NOAA rule, the 60-day review period began when the State received the consistency determination. If the Federal agency believes it has provided sufficient information to the State, the Federal agency can make a fully consistent finding or consistent to the maximum extent practicable finding based on its own administrative record.

Comment 9. Public participation is not required for State action on Federal Consistency determinations (*See* 16 U.S.C. 1456(c)(1) and (2)). There are times when, from the perspective of the Federal agency submitting information to a State agency, maintaining information security, especially handling of sensitive infrastructure and operational information (*e.g.*, anti-terrorist/force protection related projects), is a critical concern. Consequently, NOAA should revise its rules or provide guidance that clarifies that Federal agencies, not State reviewing agencies, should make final determinations concerning the release of sensitive infrastructure or operational information that is submitted in support of a consistency determination under 16 U.S.C. 1456(c)(1) or (2).

NOAA Response to Comment 9. Public participation is required for State review of a Federal agency's consistency determination for Federal agency activities. CZMA section 306(d)(14), 15 CFR 930.42; *see* 65 FR 77126, 77141 (Dec. 8, 2000). NOAA's regulations provide ample means for Federal agencies to deal with emergencies and sensitive information. *See* 15 CFR 930.32(a), (b) and (c). Section 930.32(c) on classified activities and information was added in 2000 with the assistance of the U.S. Navy.

Comment 10. Section 121(c), regarding the evaluation of alternatives on appeal to the Secretary, should be amended to require the Secretary to consult with expert Federal agencies regarding the availability or reasonableness of any alternatives considered by the Secretary.

NOAA Response to Comment 10. NOAA's regulations provide for Federal agency comment into all substantive aspects of a consistency appeal under § 930.121(a), (b) and (c) and Federal agency comments are a part of the Secretary's decision record. NOAA's regulation at 15 CFR 930.128(c) specifically provides for Federal agency comment. NOAA proposes to amend § 930.128 to clarify its historic practice regarding weight given to comments by Federal agencies.

Comment 11. A State can delay the start of the consistency review period for Federal agency activities by claiming the Federal agency's submission is incomplete or otherwise insufficient.

NOAA Response to Comment 11. NOAA proposes to clarify when the State's consistency review period begins for Federal agency activities.

Appeal Time Frames

Comment 12. States do not object to most Federal actions reviewed. No deadline for a Secretarial decision should be allowed to undermine the already well-established methods for resolving disputes in § 930.129(c) and (d) of the CZMA regulations. Retaining flexibility available under current regulations serves the interests of both applicants and regulatory agencies. The only way to further shorten the time frame for appeals would be to have a limited time period for development of the record, once an appeal is filed. However, this would prevent the Secretary from arriving at a decision based on all available information. It would also prejudice the States, because the State is the respondent to the appeal, which usually contains new information supplied by the appellant. If it is decided that a definitive date is necessary, it should not preclude consideration of federal environmental reviews, that include relevant information, in the administrative record.

NOAA Response to Comment 12. NOAA agrees that the States do not object to the great majority of projects reviewed and that of the few objections there are very few appeals to the Secretary. However, NOAA believes that improvements can be made to the regulations governing the consistency appeals process and still allow the Secretary to develop an adequate record under the Administrative Procedure Act (APA). NOAA's proposed change to § 930.130 would provide parties to an appeal with the flexibility to agree to stay the appeal process in order to negotiate a resolution. Under these parameters, no party would be prejudiced. NOAA's proposed change to close the decision record 270 days after it issues a Notice of Appeal (notice issued within 30 days of the filing of an appeal) would provide a workable time frame for OCS appeals, so long as NOAA makes the procedural adjustments proposed in the other sections of subpart H.

Comment 13. A definitive time frame within which the Secretary of Commerce must issue a decision can be established. At minimum, a known action time frame would give the appellant applicant an understanding of the term of the process. Additional environmental reviews should not be required for a consistency appeal. A copy of the completed EA or EIS should be included as part of the administrative record, since many of the criteria for a secretarial override involve consideration of environmental issues. It should be clear, however, that the Secretary's role does not involve review of the legal sufficiency of the EA or EIS. Rather, the Secretary should rely on the conclusions of the EA or EIS with respect to environmental impacts and mitigations, and should accept the document as sufficient unless a court determines otherwise.

NOAA Response to Comment 13. NOAA has proposed a limited consistency appeal review period. *See* proposed change to § 930.130. The Secretary may rely on relevant materials such as NEPA documents. NOAA is not suggesting that the Secretary create new NEPA or ESA documents. In some appeals the NEPA and ESA documents being prepared to support the decision on the Federal authorization will be needed for the Secretary's review. The Secretary needs flexibility to adjust the closure of the decision record to accommodate the Federal agency preparing the necessary document(s).

Comment 14. It is not the function of the Secretary, in deciding an appeal, to adjudicate the merits of the underlying activity. For OCS plans, that function is with MMS. If the Secretary overrides a State's objection, then MMS may approve the plan and is still required to complete environmental clearances required by law. MMS supplies the Secretary with all relevant information including NEPA documents. Information contained in an EA or a draft EIS, added to the information provided by an applicant, is sufficient information for the Secretary to evaluate an appeal. An appeal before the Secretary will also include all the information that was before the State. We see no reason why the appeal process should be delayed in order to obtain additional information to add to that administrative record.

NOAA Response to Comment 14. The Secretary's review is *de novo*, to determine if the project is consistent with the CZMA or in the interest of national security. It is not a review of the basis for the State's objection or the basis for issuing the Federal agency authorization. The Secretary does not substitute the Secretary's judgement for that of the authorizing Federal agency regarding the merits of the project, nor does the Secretary determine whether a proposed project complies with other Federal law. However, because of the multiple national interest requirements of the CZMA, the Secretary must evaluate an authorization of a project in light of competing CZMA objectives. Varying levels of information and detail are required to make these determinations which are dictated by many factors such as the nature of the project, scale and scope of effects on coastal uses and resources, alterations to the proposal, etc. Normally, when the Secretary needs information, he waits for the authorizing Federal agency to complete some level of environmental review or generate a document. Since these documents are required by other federal law, there is no delay to the applicant or Federal agency.

Coordinated Federal Documents

Comment 15. While the CZMA regulations make an admirable attempt to coordinate CZMA and OCSLA requirements, problems with coordination of federal environmental review documents occur because of unrealistic timeframes imposed by OCSLA and its implementing regulations. The most troublesome requirement relates to comment deadlines imposed by OCSLA and the related regulations for reviews of EP's and DPP's. For EP's, the MMS has 30 days and for DPP's 60 days, to approve, disapprove or request modifications from the date the plan was deemed complete (30 CFR 250.204(i)). A change to OCSLA to allow the MMS to have a longer comment period before making a decision would alleviate this problem.

NOAA Response to Comment 15. While a change to the OCSLA timeframes might improve the CZMA-OCSLA interaction, that is beyond the scope of this rulemaking, which is to determine if there are improvements that can be made to NOAA's regulations.

Comment 16. Coordination is already a cornerstone of the Federal Consistency review process, and in practice it is the norm. Consistency reviews occur simultaneously with MMS and NEPA reviews to the degree practical under relevant statutes. If information problems (such as lack of NEPA documents) do occur, they can be resolved using the procedures available under 15 CFR 930.60, which clarify when the consistency time clock may begin. General consistency concurrences with the MMS help minimize the scope and duration of the review of an OCS plan for consistency. Coordination is best accomplished through the interaction of individual States and Federal agencies and this is what the CZMA consistency regulations recognize and encourage. Ambiguity and uncertainty can be eliminated by improved education on the part of the applicants as to the States' information requirements and consistency procedures.

States can use the analyses in the lease sale EIS to calibrate impacts from individual projects. Additionally, MMS has given notice of the preparation of a programmatic environmental assessment (EA) for exploratory drilling and associated activities in the Eastern Planning Area of the Gulf of Mexico. This programmatic EA is intended to consider the area wide environmental impacts of exploratory drilling. Subsequent site-specific EA's prepared by MMS for an operator's Exploration Plan can then be tiered from the programmatic EA and the analyses can be focused on specific activities proposed. This is a good example of a Federal agency working within the statutory framework of CZMA and OCSLA to coordinate the completion of environmental review documents with the information needs of the States. Industry recommends that this approach be adopted in the Federal Consistency requirements. Effective coordination is best achieved by maintaining the freedom and flexibility to enter into agreements and discussions among the parties. A regulatory mandate for such coordination may have a dampening effect and hinder the parties from negotiating resolution to specific cases.

NOAA Response to Comment 16. NOAA will continue to encourage early coordination between Federal agencies

and States. This early coordination is important for identifying information needs and coordinating reviews with completed documents. The MMS Gulf of Mexico Region's recent efforts to coordinate reviews and information needs may provide a useful model. NOAA also agrees that the tiering of NEPA documents is beneficial, especially when the documents are ready as the State starts its CZMA review.

Comment 17. The regulations at section 930.60 contain a consistency review "start" provision, which begins when the State receives the consistency determination and supporting information under section 930.58. The problem is that unlimited requests for additional information can delay the start of this review period indefinitely. The regulations should be revised to provide that a State's requests for information do not stop the timeline without NOAA approval. The State should not be the final arbiter of when the timeline begins.

NOAA Response to Comment 17. NOAA proposes to clarify that consistency starts when the certification and necessary data and information described in § 930.58 are received by the State.

General Negative Determination

Comment 18. We are not aware of repetitive Federal agency activities related to the OCS, so it appears that no efficiency would be gained by this provision. The flexibility already exists in the existing regulations for negative determinations that would enable submittals covering multiple activities.

We support a regulatory provision for a general negative determination, similar to the existing regulation for general consistency determinations. This would improve the efficiency of the Federal Consistency process.

No objection provided scope of the activity covered and geographical area are agreed upon with the State and Federal agency.

NOAA Response to Comment 18. NOAA's regulations provide for a "general consistency determination" (general CD) which result in one State review for multiple occurrences of an activity where the actions are repetitive, do not have coastal effects when performed separately, but have cumulative effects. The general CD was created in 1979 as an administrative efficiency so that Federal agencies may avoid the necessity of issuing separate CD's for each repetitive action. There may be times when a Federal agency proposes repetitive activities that do not have coastal effects, when performed separately or cumulatively. In such cases where an individual ND is required under 15 CFR 930.35, NOAA believes that the Federal agency should be able to issue a General Negative Determination (general ND). The Federal agency would have to provide supporting information as is the case for a ND. Since the use of a general ND would be an effects determination made by the Federal agency, as is the case for a CD, general CD or ND, State agreement to use a general ND would not be required. If a State objected, the resolution provisions of 15 CFR part 930, subpart C would apply.

Comment 19. We recommend that the Federal Consistency regulations be amended to grant "Negative Determination" status to any Federal agency activity meeting the definition of a categorical exclusion under its own agency's NEPA regulations. Second, we recommend that NOAA implement the proposed "General Negative Determination" process, but reserve it only for those Federal agency activities that are not covered by a NEPA Categorical Exclusion but still may be determined by the Federal agency to be repetitive and not reasonably likely to have either individual or cumulative coastal effects.

NOAA Response to Comment 19. A general ND would not be an exemption for any type of activity, including an "environmentally non-adverse" activity. Such an exemption, as discussed in the 2000 NOAA rulemaking, would not be authorized under the CZMA. Changing the CZMA Federal Consistency effects test to equate it with the NEPA test is not authorized by the CZMA because the NEPA test is different than the CZMA effects test (a categorical exclusion (CE) under NEPA is available when there is no potential for effects on the human environment, 40 CFR 1508.4). Like a CE, a general ND would still require a factual determination of coastal effects. (A CE is not an exemption from NEPA like an ND or general ND for the purposes of compliance with the CZMA, a CE is compliance with NEPA and a determination of no effect. *See* 65 FR 77124–77125, 77130–77133 (Dec. 8, 2000)(discussing effects test).

Comment 20. A general negative determination could obviate the need to revisit non-resolved issues and result in considerable savings to the Federal agencies and the States. Any such regulation must preserve the fact that the Federal agency determines whether there are coastal effects. NOAA's overly-broad definitions of some terms may hamper the use of a general negative determination.

NOAA Response to Comment 20. As discussed in NOAA's response to the general comments, NOAA disagrees that NOAA's CZMA consistency regulations are "over-broad." As noted in the preamble to the 2000 rule, consistency is based on the "effects test" and there are no exceptions to this Congressionally mandated principle. NOAA's regulations would not hamper the use of a general ND. If a Federal agency determines a project will have no coastal effects, and a negative determination (ND) is not required, then the Federal agency does not have to coordinate with the State at all. 15 CFR 930.35, 930.33(a)(2). Administrative activities have not been subjected to consistency review in the past, probably because they do not propose an action with coastal effects. Even in the rare case where a State requested consistency review for such an activity, NOAA's regulation provides the solution: a negative determination. NOAA has also addressed administrative actions in the proposed change to the definition of Federal agency activities in § 930.31.

Geographic Considerations

Comment 21. The CZMA establishes an *effects-based* evaluation process rather than categorizing activities based on geographic location or type. It would be particularly difficult to develop geographic criteria for activities conducted in the open ocean, where effects can occur hundreds of miles from the point of origin. The existing regulations adequately address this question. State agencies are already required to describe geographic areas within which federally permitted activities beyond State waters are subject to consistency review. Moreover, as the ANPR points out (at p. 44409), a coastal State's ability to review the activities stops where coastal effects are not reasonably foreseeable.

NOAA Response to Comment 21. NOAA has not proposed a regulatory change to address State review of OCS plans located far offshore. NOAA has determined that conflicts are isolated examples, would most likely only occur in the Gulf of Mexico, and can be dealt with on a case-by-case basis should an issue arise. To create a new regulatory process to determine when an OCS plan will have coastal effects on a particular State would be difficult to develop and would likely increase administrative and fact-finding burdens on industry, the States and Federal agencies.

The determination of coastal effects for federal license or permit activities is made by NOAA, in coordination and consultation with the States and the Federal agency. This is done through the listing and geographical location description requirements in NOAA's regulations at 15 CFR 930.53. States are required to list the federal license or permit activities that the State believes will have coastal effects in their management programs. The State either develops this list as part of management program development or after management program approval through NOAA's program change procedures. *See* 15 CFR 930.53(c), and 15 CFR part 923, subpart H. When listing Federal license or permit activities, States determine whether it is reasonably foreseeable that the activity, when conducted inside the coastal zone, will affect coastal resources. Once listed in the State's federally approved program, all applications for the listed Federal authorization in the coastal zone are automatically subject to the consistency process.

To review activities located outside the coastal zone, NOAA must approve or deny a State's request to describe a geographic location outside its coastal zone where activities will be presumed to have coastal effects. A State must describe with specificity the geographic areas from which it is reasonably foreseeable that activities will affect coastal uses or resources. Federal agencies and other interested parties may comment to NOAA. NOAA's approval is based on whether effects on the coastal zone are reasonably foreseeable.

A State can also review a listed activity located outside the coastal zone that is not in a described geographic location as an "unlisted" activity on a case-by-case basis, pursuant to 15 CFR 930.54. NOAA approval is required in such circumstances and NOAA's approval is also based on whether coastal effects are reasonably foreseeable.

The purpose of these listing requirements is to provide predictable procedures to determine when a Federal license or permit activity is subject to CZMA Federal Consistency review. These procedures provide reasonable notice to Federal agencies and applicants for federal authorizations as to when and how consistency applies. These requirements have been in place since 1979.

However, the geographic location description requirement for Federal license or permit activities has not applied to Federal authorizations described in detail in OCS plans because these activities are specifically described in the CZMA, 16 U.S.C. 1456(c)(3)(B), if coastal effects are reasonably foreseeable. In the past, most OCS oil and gas plans were for projects located near shore and coastal effects were readily identified. Now, however, technology allows industry to drill for oil and gas far offshore and the connection between a project and effects to a particular coastal State is not as clear. In these cases a person could assert that its project will not have coastal effects on a particular State. If MMS agreed with the person's assertion and factual basis but a coastal State still believed the OCS activity will have coastal effects, then the factual matter may be resolved through the mediation provisions of the CZMA, OCSLA provisions and/or litigation.

Comment 22. The 1990 amendments to the CZMA did not give *carte blanche* to the States to assert consistency review over all OCS leasing activities no matter how far beyond a State's coastal zone they take place. Rather, "effects" must still be demonstrated. Moreover, this legislative history does not apply to the entirely separate provisions regarding consistency review for federal permits in section 307(c)(3)(A), or OCS plans in section 307(c)(B). Congress made it very clear that technical amendments to the provision calling for State review of private permits were made solely to conform this provision to changes made to the Federal agency activity provision, and did not expand a State's scope of consistency review. Despite the clear legislative history, Commerce's preamble blurs the distinction between "Federal agency activities" and "Federal activities," in general, *e.g.*, approval of private permits/licenses, and OCS plans, and incorrectly emphasizes the 1990 amendments' expansion of consistency review for "Federal activities." (65 FR 77125 middle column, December 8, 2000). Such statements should be corrected.

NOAA Response to Comment 22. The 1990 CZMA amendments apply to all the consistency requirements. The "technical amendments" were to conform all of CZMA section 307 with the changes made to CZMA § 307(c)(1). Moreover, "direct" effects were not a limiting factor to the pre-1990 CZMA application of Federal Consistency for Federal license or permit activities. As noted by the comment, the effects test is the controlling factor. Thus, the preamble to the 2000 final rule at 65 FR 77125, 2d col, needs no correction.

The effects test, discussed in the Conference Report and other legislative history, speak to a cause and effect analysis, or the so-called series or chain of events analysis. If a Federal agency activity will have reasonably foreseeable effects, then consistency applies. Thus, as discussed in the preamble to the 2000 rule, the type of Federal agency activity is not the determinative factor. *Id.*

Comment 23. The term "foreseeable coastal effects" is ambiguous, recommend that guidance be developed to assist in making this determination.

NOAA Response to Comment 23. NOAA need not further define reasonably foreseeable coastal effects. The varied State programs, the analysis of effects, and the case-by-case nature of Federal Consistency precludes rigid definitions of effects and what is reasonably foreseeable. 65 FR 77130, 2d col. (Dec. 8, 2000). Further, as described above under the general comments and in detail in the preamble to the 2000 rule, the definitions of coastal effects and coastal uses and resources have not been expanded beyond what was already required by the statute, particularly the 1990 amendments to the CZMA.

Comment 24. NOAA should monitor the States' interpretations of the "effects test," and the implementation of the "listing and geographic location" regulations found at 930.53, to ensure that States assert a right of consistency review in a reasonable manner. This is particularly applicable for projects at increasing distance from a State's coastal zone.

NOAA Response to Comment 24. NOAA monitor's the States' use of Federal Consistency through (1) day-to-day interactions with States, Federal agencies, industry and others; (2) periodic evaluations of the States' programs, pursuant to CZMA § 312; and (3) the Secretary of Commerce's review of consistency appeals.

Comment 25. NOAA should revise the definition of "Coastal Use or Resource" at § 930.11. By adding terms such as "scenic and aesthetic enjoyment" and "air", this definition goes far beyond the statutory definition of coastal use or resource, and inappropriately extends the "reach of reasonably foreseeable effects."

NOAA Response to Comment 25. NOAA need not revise the definition of "coastal use or resource" at § 930.11. The definition in the 2000 rule did not create new thresholds, but is based on the effects test as described in the statute and the Conference Report to the CZMA 1990 amendments, as discussed in the preamble to the 2000 rule.

Comment 26. Commerce regulations should delete the provision that an action with minimal or no environmental effects may affect coastal use. Requiring consistency review without regard to significance of environmental impact is not good public policy.

NOAA Response to Comment 26. As discussed throughout this proposed rule and the preamble to the 2000 rule, the CZMA applies to federal actions that have reasonably foreseeable coastal effects. The CZMA does not provide a "significance" threshold for such effects, and in fact the 1990 CZMA amendments removed thresholds by removing "direct" effects from the statute. Thus, NOAA has no authority to exempt an activity from consistency review. Likewise, regarding the "significance" of a coastal effect, the CZMA prohibits such a distinction. *See* 65 FR 77125, 2d col., 77129–77130, 77135–77136 (Dec. 8, 2000). The policy purposes of the CZMA are best fulfilled by the required analysis of the relationship between coastal effects and the State's enforceable policies.

Comment 27. We strongly object to the development of guidance or regulations that would extend State review to any Federal maritime activities that occur well beyond a State's lawful jurisdiction.

NOAA Response to Comment 27. NOAA is not extending in any way State review to activities that do not have coastal effects. Federal Consistency applies to a Federal agency activity, regardless of location, if coastal effects are reasonably foreseeable. NOAA's existing regulations provide geographic location considerations for the application of the effects test.

Consolidated Permit Reviews

Comment 28. Existing regulations already encourage, and many States already implement, to the extent practical, substantial interagency coordination and multiple-permit consolidated reviews. The requirements of the CZMA are independent of other Federal requirements, and mandatory consolidation would be inconsistent with the CZMA. In addition, industry often will not invest resources into the level of detailed design required for some permits, such as air permits, until they have secured overall discretionary approvals first.

Comment 29. Acceptable if sufficient information were available to inform of all the permits.

Comment 30. Multiple Federal authorizations should be consolidated into a single review process in order to reduce procedural delays.

Comment 31. A single consistency certification for an OCS EP or DPP should cover associated approvals such as air and water permits necessary to the EP or DPP. Ideally, MMS should issue a directive making it clear that air and water permits are required to be described in detail in the OCS plan, and are therefore covered under one consistency certification. Likewise, Federal Consistency regulations should be revised to clarify that the States must provide consistency review and, if applicable, Commerce should issue a decision on an override appeal of the OCS plan and OCS-related activities at the same time.

Comment 32. Such consolidation may prove impractical for a number of reasons. When a DPP is submitted to a State, the CZMA time clock starts. In order to consolidate reviews of all permits, the lessee would have had to submit all its applications to the appropriate agencies and certifications to the States at the same time. There would be a problem if not all applications were ready to go or if there was a problem with just one. It would not be appropriate to withhold consistency on all permits or the DPP while a State's objection for one permit was appealed to the Secretary.

NOAA Response to Comments 28–32. NOAA agrees that consolidation may not be practicable or desirable in some cases. One way to address consolidating as many permits as is practicable is to ensure that the permits "described in detail" in EP's and DPP's include air and water permits and other applicable federal authorizations, appropriate for inclusion in the EP's or DPP's as described in detail.

NOAA notes that the existing regulations allow Federal agencies to issue permits described in detail in an EP or DPP determined by the State agency to be consistent, even though the State may have objected to other permits in an OCS plan. *See* 15 CFR 930.81(b)(2).

Comment 33. The definition of "Federal license or permit" is too broad and the use of the term "certification" may encompass ministerial paperwork that does not grant any authorization to anyone to do something that otherwise would be impermissible. Also, the definition exposes other OCS approvals to the consistency process and includes OCS lease suspensions.

NOAA Response to Comment 33. The definition of Federal license or permit in § 930.51(a) does not expand the definition based on the 1990 CZMA amendments. The term "required" in the definition is self-explanatory: a Federal authorization is subject to consistency only if Federal law requires the applicant to obtain that Federal authorization in order to conduct the activity. As for OCS oil and gas approvals, all Federal authorizations described in detail in an EP or DPP are covered under the States' review of the plans under 15 CFR part 930, subpart E. Subpart E only applies to Federal authorizations described in detail in the OCS EP or DPP.

If an offshore operator is also required by Federal law to obtain a Federal authorization that is not described in detail in an EP or DPP, and the activity covered by the authorization will have coastal effects, then that Federal authorization may also be subject to State consistency review under 15 CFR part 930, subpart D, if the State has either listed the Federal authorization in its federally approved management program, or NOAA has approved the State's review on a case-by-case basis as an "unlisted activity" under 15 CFR 930.54. In both cases, the State would have to show, and NOAA would have to find, that the activity to be allowed under the Federal authorization would have reasonably foreseeable coastal effects. If the authorization is a "purely ministerial paperwork," then it is extremely unlikely NOAA would approve the State's proposed listing of the Federal authorization or request to review as an unlisted activity because coastal effects would not be reasonably foreseeable and the ministerial action would be incidental or related to an action receiving Federal Consistency review.

However, as provided in the proposed change to § 930.51(a) and discussed in the accompanying explanation, NOAA proposes to remove the various descriptions of Federal license or permit types and have the phrase "any required authorization" become a catch-all for a Federal license or permit for an activity that would have a coastal effect. Further, NOAA notes that there are ministerial certifications which do not have coastal effects or are incidental/related to a Federal license or permit activity that was already reviewed by a State, and therefore would not be reviewed as a "Federal license or permit."

The Energy Report directs Commerce and Interior to re-examine CZMA and OCSLA requirements. While the OCSLA is under the purview of Interior and changes to the OCSLA or Interior's regulations are best left to Interior, Interior could help improve the efficiency and effectiveness of the OCSLA programs by including more Federal authorizations as "described in detail" in OCS plans.

In the preamble to the 2000 rule, NOAA posited that lease suspensions granted by Interior are Federal license or permit activities. Lease suspensions are not listed in any State's management program and NOAA has never approved a request to review a lease suspension as an unlisted activity (there was only one such request made which was withdrawn). Activities covered under a lease suspension could either have been already covered under the State's review of the lease sale, EP or DPP. Thus, while NOAA could not exempt lease suspensions from potential consistency review, NOAA does not currently anticipate approving any State's request to either list lease suspensions or to review lease suspensions on a case-by-case basis as an unlisted activity, except in some rare, limited circumstance.

Further, NOAA's view on lease suspensions as federal license or permit activities has been superceded by the Ninth Circuit, at least for the lease suspensions that were the subject of the California litigation. *California ex rel. Cal. Coastal Comm'n* v. *Norton*, 150 F. Supp.2d 1046 (N.D. Cal. 2001), *aff'd*, 311 F.3d 1162 (9th Cir. 2002). On June 20, 2001, the U.S. District Court for Northern California ordered Interior to provide California with a consistency determination pursuant to CZMA section 307(c)(1) for the lease suspensions it issued for 36 leases located offshore California. The Court also ordered Interior to provide, pursuant to NEPA, a reasoned explanation for its reliance on a categorical exemption for the lease suspensions.

On appeal by the United States, the Ninth Circuit affirmed the District Court's finding that the lease suspensions, in the case of these 36 leases, whether granted or directed by Interior, were Federal agency activities under CZMA section 307(c)(1), and not "Federal license or permit activities" under CZMA section 307(c)(3)(A). The Ninth Circuit found that the suspensions allowed the leases to continue for lengthy additional terms and, more importantly, these leases had not been previously reviewed by California under the CZMA. The Court viewed the suspensions as an extension of the leases and thus any suspension of the lease was, in the Court's view, a Federal agency activity under CZMA section 307(c)(1). The Ninth Circuit further found that the lease suspensions at issue would have coastal effects since, among other things, the suspensions required lessees to engage in certain milestone activities which could affect coastal resources. The Ninth Circuit also determined that the effect of the 1990 amendments to the CZMA in overturning the decision of the Supreme Court in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984), is that lease suspensions are not subsidiary to exploration plans and development and production plans (and thus are not barred from consistency review by CZMA section 307(c)(3)(B)), and that activities with coastal effects preceding exploration plans and development and production plans are subject to consistency review. In making this finding, the Ninth Circuit stated:

> In subjecting lease sales to consistency review, Congress has made it clear that the statute [CZMA] does not prohibit consistency review of federal agency activities that are not subsidiary to exploration and development and production plans. The exploration and development and production plan stages are *not* the only opportunities for review afforded to States under the statutory scheme.

Referring to the fact-specific inquiry necessary to determine if a Federal action has coastal effects and, thus, is subject to Federal Consistency review, the Ninth Circuit, quoting from NOAA's preamble to its 2000 final rule, agreed "with the reasoning of the National Oceanic and Atmospheric Administration that a lease suspension or set of lease suspensions might 'affect the uses or resources of the State's coastal zone, and thus CZMA bars * * * categorically exempting suspensions from consistency [review.]'"

It is NOAA's view that the *California* v. *Norton* decision is limited to the 36 leases in that case and that in all foreseeable instances, lease suspensions would not be subject to Federal Consistency review since (1) as a general matter, they do not authorize activities with coastal effects, and (2) if they did contain activities with coastal effects, the activities and coastal effects should be covered in a State's review of a lease sale, an EP or a DPP. If a State believes that a particular lease suspension should be subject to Federal Consistency, the State could notify MMS. MMS could determine that the lease suspension is an interim activity that does not propose a new action with coastal effects and/or provide the State with a negative determination pursuant to 15 CFR 930.35.

Comment 34. Section 930.85(c) should be amended to ensure that Interior first determines that an amended plan meets the requirements of the OCSLA, before it is sent to the State agency.

NOAA Response to Comment 34. NOAA agrees that Interior should decide first that an amended OCS plan meets OCSLA requirements before sending to the State agency. The same technical change should also be made to § 930.82. In this way, Interior ensures completeness with the OCSLA prior to sending an amended plan to the State agency, as is the case for initial OCS plan review under § 930.76(c).

Other Comments

Comment 35. Delete Conditional Concurrence Procedures or Narrow the Conditions that Can be Imposed. Conditional Concurrences create an unclear process, neither a concurrence nor objection, and could delay or terminate OCS projects. Conditions may usurp Federal permitting authority.

NOAA Response to Comment 35. The new conditional concurrences section, § 930.4, contains adequate standards to ensure State conditions are based on specific enforceable policies. If the requirements for a conditional concurrence are not met, then it is automatically treated as an objection pursuant to 15 CFR 930.4. Thus, if an applicant does not agree with a condition and does not amend its application to the Federal agency, then it is automatically an objection. Likewise, if a Federal agency finds a condition is contrary to its statutory mandate and refuses to accept the condition, then it is automatically an objection. The benefit of the conditional concurrence is that if the requirements are met, and the conditions are acceptable to the applicant and the Federal agency, then the Federal agency can approve the project. If conditional concurrences were not allowed, then the State would simply object. All of this happens within the State consistency review time frames established by the CZMA and NOAA's regulations. Thus, there is no delay and there is very clear direction regarding time frames, the substance of the conditions, and whether the State has objected or concurred.

NOAA, the States and the Federal agencies spent considerable time discussing the pros and cons of conditional concurrences as part of the 2000 rulemaking. NOAA does not anticipate proposed changes to this section until such time as a problem arises in implementing the section.

Comment 36. Clarify that the determination of whether a Federal agency activity has coastal effects is in the purview of the Federal agency conducting the activity. Commerce has insisted that pre-lease activities such as the 5-Year OCS lease plan are "development projects" under section 930.33 and are subject to consistency review.

NOAA Response to Comment 36. NOAA has not declared that Interior's pre-lease activities are "development projects" under 15 CFR 930.33. All that NOAA has said is that a Federal agency activity is subject to consistency if there are coastal effects. This is required by the CZMA. *See* 65 FR 77125, 77129–

77133 (Dec. 8, 2000). NOAA defers to Interior regarding the determination of effects for any specific Interior activity.

Comment 37. Delete the Interstate Consistency regulations. A logical implementation of the new consistency review for activities "outside of the coastal zone" contained in the 1990 amendments does not lead to interstate review. These regulations also raise constitutional issues as to whether one State's policies can be legally enforceable against Federal activities taking place entirely in a different State.

NOAA Response to Comment 37. Interstate consistency review is authorized by the CZMA effects test. *See* 65 FR 77125, 77129–77133, 77152–77153 (Dec. 8, 2000) (discussion of the effects test and application to interstate review).

Comment 38. Commerce regulations at section 930.121 require that an activity must "significantly or substantially" further the national interest before the Secretary can override an objection based on the statutory "national interest" criteria. This change can potentially be very problematic. While the preamble to the 2000 regulations state that "an example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development," there is no such statement of intent with regard to oil and gas *exploration*. The preamble should be revised to make it clear that exploration meets the new override criteria otherwise the term "significantly or substantially" should be deleted from the regulations.

NOAA Response to Comment 38. The use of the phrase "oil and gas development" in the preamble to the 2000 rule when discussing the phrase "significantly or substantially" in 15 CFR 930.121, was intended as an example and not meant to apply only to DPP's. The term "development" was used as a general descriptor for OCS oil and gas activities. At this time, NOAA cannot foresee a case where OCS oil and gas activities do not further the national interest in a significant or substantial manner, inclusive of the exploration, development and production phases.

Comment 39. Section 930.3 imposes a requirement on OCRM to conduct a continuing review of approved management programs. This is a critical part of the Federal Consistency program and one that should receive sufficient resources and funding within OCRM to fully effectuate. OCRM should carefully monitor the States' application of their management programs to evaluate whether a State is inappropriately singling out a particular proposed federal activity in or outside its coastal zone, and objecting to such an activity on its face, without any demonstration that such activity may impact a State's coastal zone. We recommend that Commerce amend section 930.3 as follows: (1) To require that OCRM conduct a continuing review of the States' application of their enforceable programs on at least a semiannual basis, (2) the goal of such review would be, among others, to ensure that the States have supporting documentation and justification for an objection to a proposed federal activity, and that the States are not using their CZM programs to prevent a certain category of activity from taking place in or outside their coastal zone, and (3) the definition of "enforceable policy" in section 930.11 be changed to delete the statement that "Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency."

NOAA Response to Comment 39. NOAA conducts a statutorily mandated continuing review of State programs under CZMA § 312. As part of these section 312 evaluations, NOAA looks closely at the State's implementation of Federal Consistency. These reviews occur every three years. NOAA also scrutinizes State use of consistency on a case-by-case basis when called for and, as a threshold matter, on appeal of a State's objection to the Secretary. Conducting a more formalized review semi-annually or annually, would require substantial additional resources, with little foreseeable benefit.

NOAA also ensures that State programs continue to adequately address the national interest in, among other priority areas, energy facility siting. This is accomplished through the section 312 reviews and when reviewing proposed changes to a State's federally approved management program. For example, NOAA has denied State requests to include in their management programs State policies that ban all offshore oil and gas activities as inconsistent with the CZMA's national interest requirements.

The definition of enforceable policy in NOAA's regulations is based on the statutory definition and on *American Petroleum Institute* v. *Knecht*, 456 F. Supp. 889 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979). *See* 65 FR 77130, 2d col., (Dec. 8, 2000) (discussion of "enforceable policy").

Comment 40. A State can delay the start of the consistency review period for Federal agency activities by claiming the Federal agency's submission is incomplete or otherwise insufficient.

NOAA Response to Comment 40. If the Federal agency has provided the consistency determination and information required by 15 CFR 930.39, then the 60-day State review period begins on the date of the State's receipt of the information. The State cannot stay, stop or alter the commencement of the 60-day period once it starts, unless the Federal agency and State agency agree to an alternative time period. The State is not the arbiter of completeness; the Federal agency is. If a consistency determination and the information required by § 930.39 are provided, even though the State may believe it needs clarification or additional information, the 60-day period begins when the State received the Federal agency's information. The State has no authority to delay the start of the 60-day period. If the Federal agency provided the information required by § 930.39, then the Federal agency may presume State concurrence if the State has not objected (or requested an extension as allowed under the regulations) within 60 days from the State's receipt of the information. However, NOAA proposes a modification to § 930.41(a) that would ensure that States notify Federal agencies if the State believes the consistency determination is not complete.

Comment 41. Modify the definition of consistent to the maximum extent practicable under § 930.32 to allow the Federal agency to determine that full consistency is not practical due, but not limited to, such factors as logistical impediments, lack of adequate technology, illegality, time and space considerations, conflicts with other statutory law, cost effectiveness, availability of equipment, etc., etc.

NOAA Response to Comment 41. The definition of "consistent to the maximum extent practicable" was not significantly changed in 2000. NOAA's definition is long-standing (since 1979) and clearly reflects the language and intent of the CZMA. NOAA's language was specifically endorsed by Congress in the conference report to the 1990 CZMA reauthorization and has been upheld by Courts since then.

The suggested changes would provide Federal agencies with complete discretion as to whether or not they would be consistent with a State's enforceable policies. Such a change would violate the statute and Congressional intent. The change would also cause untold and unwarranted ambiguity in the application of consistency and in legal precedent, particularly court decisions. Congress declared:

NOAA has interpreted the term "maximum extent practicable" in a manner which requires strict adherence to the enforceable policies of state programs where a federal agency has discretion (15 CFR 930.32). *The Committee supports this long-standing interpretation.*

Cong. Rec. H 8073, 8076 September 26, 1990 (emphasis added). A recent Federal court decision has addressed NOAA's definition of "consistent to the maximum extent practicable." In *California Coastal Commission* v. *Dept. of the Navy*, 5 F. Supp. 2d. 1106 (S.D. Cal. 1998), the Navy argued that it complied to the "maximum extent practicable" with California's dredging and disposal policies because it was obligated to follow a modified § 404 permit issued by the Corps. The court noted that the federal permit was "not existing Federal law" that would excuse compliance with the State policies and consistency requirements of the CZMA. *Id.* at 1111.

Congress partially waived the Federal Government's supremacy over State law when it created the CZMA. As such, the only *objective* means to determine "consistent to the maximum extent practicable" is based on the legal requirements of Federal agencies and their administrative records. Otherwise, a Federal agency would be making arbitrary decisions, on an agency by agency basis, based on subjective criteria and outside the confines of Federal law applicable to the agency.

The 2000 rule provided clear guidance as to when a Federal agency can proceed over a State's objection: due to an unforeseen circumstance or emergency, or when a Federal agency asserts, based on its own administrative decision record, it is fully consistent, or because of the requirements of other Federal law. NOAA added these provisions in 2000 at Federal agencies' requests.

NOAA has provided, and will continue to provide, advice to Federal agencies on how to effectively use the consistent to the maximum extent practicable standard in connection with their statutes and case-by-case decision records.

Comment 42. The deference to be given a State's determination of "substantially different coastal effects" under 15 CFR § 930.51(e), for purposes of determining if a renewal or major amendment of a federal license or permit is an unlawful transfer of Federal authority to the States and could delay OCS permit activities.

NOAA Response to Comment 42. The determination of substantially different coastal effects should be made by input from all the parties. While NOAA's language did not transfer Federal authority to the States, NOAA agrees the section should be revised to reflect NOAA's original intent that the State's view be accorded some weight.

VI. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The proposed changes in the Federal Consistency regulations are intended to facilitate Federal agency coordination with coastal States, and ensure that Federal actions affecting any coastal use or resource are consistent with the enforceable policies of approved State coastal management programs. The CZMA and these revised implementing regulations promote the principles of federalism articulated in Executive Order 13132 by granting the States a qualified right to review certain Federal actions that affect the land and water uses or natural resources of State coastal zones. Congress partially waived the Federal government's supremacy over State law when it created the CZMA. Section 307 of the CZMA and NOAA's implementing regulations effectively balance responsibilities between Federal agencies and State agencies whenever Federal agencies propose activities or applicants for required federal license or permit propose to undertake activities affecting State coastal uses or resources. Through the CZMA, Federal agencies are required to carry out their activities in a manner that is consistent to the maximum extent practicable with federally approved State management programs and licensees and permittees to be fully consistent with the State programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to Federal actions that are not consistent with the State's management program. A State objection prevents the issuance of the Federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance State authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule will make only minor changes to existing regulations. The existing regulations do not have a significant economic impact on a substantial number of small entities and, thus, these clarifying changes will not result in any additional economic impact on affected entities. To the extent the proposed rule impacts small entities, it is to diminish their regulatory burden and obligations. The proposed rule revises provisions of the Federal Consistency regulations to improve Federal-State coordination of actions affecting the coastal zone, and does not impose any new requirements on States, federal agencies, businesses, or the public.

The term "small entity" includes small businesses, small organizations, and small governmental jurisdictions. The Federal Consistency regulations, and the proposed rule, primarily affect States and federal agencies. Federal Consistency also applies to individual land owners proposing certain activities affecting the coastal zone that require federal authorizations. State and Federal agencies and individual landowners are not small entities under the Regulatory Flexibility Act (RFA). Federal Consistency does apply to some small businesses, small organizations and small governmental jurisdictions proposing activities that affect the coastal zone. The RFA defines a small jurisdiction as any government of a district with a population of less than 50,000.

The number of small entities affected by the consistency provisions of the CZMA generally, are insignificant when compared to the total number of small businesses and governmental jurisdictions in the 34 coastal States with approved coastal management programs. State coastal management programs concur with 95–97 percent of all federal license or permit activities, and over 99 percent of all applicable small organization and governmental jurisdiction federal assistance activities. For example, in the State of North Carolina, for the period January 1, 1998,

to December 31, 1998, the State reviewed 26 applications for federal licenses or permits under 15 CFR part 930, subpart D (the existing regulations), for activities that did not require a State permit. Of these 26 applications, no small entities were subject to the State's CZMA Federal Consistency review authority and the existing regulations. During the same period the State also reviewed 90 applications by State agencies and local governments for federal financial assistance. Of these 90 applications, 28 small entities were subject to the State's CZMA Federal Consistency review authority and the existing regulations. The State did not object to any of these financial assistance applications. Moreover, all of these financial assistance activities involved allowing federal funds to improve local infrastructure. North Carolina is a representative State in the use and application of the Federal Consistency requirement and the existing regulations.

In addition, the Federal Consistency appeal process affects very few entities of any kind. Since the CZMA was enacted in 1972, only 39 consistency appeals have been decided by the Secretary of Commerce. Of those 39 consistency appeals, only 5 appeals have involved small entities. In 27 years of implementation, only five small entities have been affected by these regulations governing consistency appeals to the Secretary of Commerce.

Thus, the existing regulations do not, and the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains no additional collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

National Environmental Policy Act

NOAA has concluded that this proposed regulatory action does not have the potential to pose significant impacts on the quality of the human environment. Further, NOAA has concluded that this proposed rule, if adopted, would not result in any changes to the human environment. As defined in sections 5.05 and 6.03c3(i) of NAO 216–6, this proposed action is of limited scope, a technical and procedural nature and any environmental effects are too speculative or conjectural to lend themselves to meaningful analysis. Thus, this proposed rule, if adopted, is categorically excluded from further review pursuant to NEPA.

List of Subjects in 15 CFR Part 930

Administrative practice and procedure, Coastal zone, Reporting and record keeping requirements.

Dated: June 5, 2003.

Alan Neuschatz,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons stated in the preamble, NOAA proposes to revise 15 CFR part 930 as follows:

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1451 *et seq.*

2. Section 930.1 is proposed to be amended by revising paragraph (b) to read as follows:

§ 930.1 Overall Objectives.

* * * * *

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities (the term "federal action" includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.);

* * * * *

3. Section 930.10 is proposed to be amended by amending the table as follows:

§ 930.10 Index to definitions for terms defined in part 930.

Term	Section
. . . . .	
Failure substantially to comply with an OCS plan.	930.85(c).
. . . . .	

4. Section 930.11 is proposed to be amended by revising the first sentence of paragraph (g) to read as follows:

§ 930.11 Definitions.

* * * * *

(g) *Effect on any coastal use or resource (coastal effect).* The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) * * *

* * * * *

5. Section 930.31 is proposed to be amended by revising paragraphs (a) and (d) as follows:

§ 930.31 Federal agency activity.

(a) The term "Federal agency activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities, which includes a range of activities where the Federal agency makes a proposal for action which initiates an activity or series of activities and if coastal effects are reasonably foreseeable, *e.g.*, a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. "Federal agency activity" does not include the issuance of a federal license or permit to an applicant or person (*see* subparts D and E of this part) or the granting of federal assistance to an applicant agency (*see* subpart F of this part).

* * * * *

(d) A general permit proposed by a Federal agency is subject to this subpart if the general permit does not involve case-by-case or individual approval of a license or permit by the Federal agency. When proposing a general permit, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with review, and if necessary, conditions that would permit the State agency to concur with the Federal agency's consistency determination. State concurrence shall remove the need for the State agency to review individual uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, to the maximum extent practicable, incorporate State conditions into the general permit. If the State's conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not available in that State unless the potential users in those States provide the State agency with a consistency certification under subpart D of this part and the State agency concurs.

* * * * *

6. Section 930.35 is proposed to amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) as follows:

§ 930.35 Negative determinations for proposed activities.

* * * * *

(d) *General Negative Determinations.* In cases where Federal agencies will be performing a repetitive activity, that the Federal agency determines will not have reasonably foreseeable coastal effects, whether performed separately or cumulatively, the Federal agency may provide a State agency(ies) with a General Negative Determination, thereby avoiding the necessity of issuing separate negative determinations for each occurrence of the activity. The General Negative Determination must adhere to all requirements for negative determinations under § 930.35. In addition, the General Negative Determination must describe in detail the activity covered by the General Negative Determination and the expected number of occurrences of the activity over a specified time period. If a Federal agency issues a General Negative Determination, it may periodically assess whether the General Negative Determination is still applicable.

* * * * *

7. Section 930.41 is proposed to be amended by revising paragraph (a) as follows:

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information required by § 930.39(a). The 60-day review period begins when the State agency receives the consistency determination and supporting information required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall notify the Federal agency in writing within 14 days of receiving the determination and supporting information that the 60-day review period has not begun, identify missing information required by § 930.39(a), and that the 60-day review period will begin when the missing information is received by the State agency. If the State agency has not notified the Federal agency that information required by § 930.39(a) is missing within the 14 day notification period, then the 60-day review period shall begin on the date the State agency received the consistency determination and accompanying information. The State agency's determination of whether the information required by § 930.39(a) is complete is not a substantive review of the adequacy of the information provided. Thus, If a Federal agency has submitted a consistency determination and information required by § 930.39(a), then the State agency shall not assert that the 60-day review period has not begun because the information contained in the items required by § 930.39(a) are substantively deficient, or for failure to submit information that is in addition to that required by § 930.39(a).

* * * * *

8. Section 930.51 is proposed to be amended by revising paragraph (a) and paragraph (e) as follows:

§ 930.51 Federal license or permit.

(a) The term "federal license or permit" means any required authorization which any Federal agency is empowered to issue to an applicant that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone. The term does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part, or leases issued pursuant to lease sales conducted by a Federal agency (*e.g.*, outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part.

* * * * *

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the Federal agency after consulting with the State agency, and applicant. The Federal agency shall give considerable weight to the opinion of the State agency and the terms "major amendment," "renewals" and "substantially different" shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

* * * * *

9. Section 930.58 is proposed to be amended by revising paragraph (a)(1) and the third sentence of paragraph (a)(2) as follows:

§ 930.58 Necessary data and information.

(a) * * *

(1) A copy of the application for the Federal license or permit and

(i) all material provided to the Federal agency in support of the application; and

(ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;

(2) * * * Necessary data and information may include State or local government permit applications which are required for the proposed activity.

* * *

* * * * *

10. Section 930.60 is proposed to be revised as follows:

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the necessary data and information required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:

(i) The State agency's review has not yet begun, and that its review will commence upon receipt of the missing certification or information; or

(ii) In the case where the applicant has provided a certification, but not all necessary data and information required pursuant to § 930.58, the State agency's review has begun, and that the missing information must be received by the State agency during the State's review period.

(2) Within 30 days of receipt of the certification or necessary data and information that was deemed missing, pursuant to paragraph (a)(1) of this section, the State agency shall notify the applicant and Federal agency that the certification and necessary data and

information required pursuant to § 930.58 is complete, the date the information deemed missing was received, and that the State agency's consistency review commenced on the date of receipt.

(3) Once the six-month review period has begun under paragraphs (a), (a)(1) or (2) of this section, State agencies shall not stop, stay, or otherwise alter the consistency timeclock without the applicant's written agreement. State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock. Such an agreement shall be in writing and a copy shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such written agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) The State agency's determination that a certification and necessary data and information under paragraph (a) of this section is complete is not a substantive review of the adequacy of the information provided. If an applicant has submitted the documents required by § 930.58, then a State agency's or Federal agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's or Federal agency's request for clarification of the information provided, or information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

11. Section 930.63 is proposed to be amended by revising the fourth sentence in paragraph (d) as follows:

§ 930.63 State agency objection to a consistency certification.

* * * * * *

(d) * * * See § 930.121(c) for further details regarding alternatives for appeals under subpart H of this part.

* * * * * *

12. Section 930.76 is proposed to be amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraphs (a) and (b) as follows:

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee (1) a copy of the OCS plan, (2) the consistency certification, (3) the necessary data and information required pursuant to § 930.58, and (4) the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program regulations (*see* 30 CFR part 252).

(b) The Secretary of the Interior or designee shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section, (excluding proprietary information).

* * * * * *

13. Section 930.77 is proposed to be amended by revising paragraph (a) as follows:

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives the information required pursuant to § 930.76(a) and (b). If a person has submitted the documents required by § 930.76(a) and (b), then a State agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's request for clarification of the information provided, or information and data in addition to that required by § 930.76 shall not delay or otherwise change the date on which State agency review begins.

(2) To assess consistency, the State agency shall use the information submitted pursuant to § 930.76. If a State agency needs information in addition to the information required pursuant to § 930.76, it shall amend its management program pursuant to § 930.58(a)(2).

(3) After the State agency's review begins, if the State agency requests additional information, it shall describe in writing to the person and to the Secretary of the Interior or its designee the reasons why the information provided under § 930.76 is not adequate to complete its review, and the nature of the information requested and the necessity of having such information to determine consistency with the enforceable policies of the management program. The State agency shall make its request for additional information no later than three months after commencement of the State agency's review period. The State agency shall not request additional information after the three-month notification period described in § 930.78(a).

* * * * * *

14. Section 930.82 is proposed to be revised as follows:

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification.

15. Section 930.85 is proposed to be amended by removing paragraph (d) and revising paragraph (b) and paragraph (c) as follows:

§ 930.85 Failure to comply substantially with an approved OCS plan.

* * * * * *

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If a person fails substantially to comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall comply with the approved plan or shall submit an amendment to such plan or

a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

16. Section 930.121 is proposed to be amended by revising paragraph (c) as follows:

§ 930.121 Consistent with the objectives or purposes of the Act.

* * * * * *

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. An alternative shall not be considered unless the State submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

17. Section 930.125 is proposed to be amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), and by adding a new paragraph (b) as follows:

§ 930.125 Notice of appeal and application fee to the Secretary.

* * * * * *

(b) The appellant's notice of appeal shall include a statement briefly explaining the appellant's argument for each ground for appeal of the State agency's objection under § 923.121, as well as any procedural/threshold arguments regarding the State's objection. Grounds for appeal or issues concerning the State agency's objection not identified in the appellant's notice of appeal shall not be considered by the Secretary and will not be considered part of the Secretary's decision record.

* * * * * *

18. Section 930.127 is proposed to be revised as follows:

§ 930.127 Briefs and Supporting Materials.

(a) Within 30 days of the filing of the Notice of Appeal, the appellant shall submit to the Secretary a brief accompanied by all such supporting documentation and material as the appellant deems necessary for the consideration of the Secretary. Within 30 days of the State's receipt of the Appellant's brief and supporting documentation and material, the State shall submit to the Secretary a brief and all such supporting documentation and material the State deems necessary for the consideration of the Secretary.

(b)(1) Both the appellant and State agency shall send four copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910, one of which must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) At the same time that materials are submitted to the Secretary, the appellant and State agency shall serve at least one copy of their briefs, supporting materials and all requests and communications to the Secretary and on each other.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party and on GCOS. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with time periods specified in this subpart for filing with the Secretary or without certification of service on the other party may be disregarded and not entered into the Secretary's decision record of the appeal.

(c)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The Secretary determines the content of the appeal decision record. Briefs and supporting materials submitted by the State agency and appellant, public comments and the comments of interested Federal agencies usually comprise the decision record of an appeal. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials addressing and/or relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in 930.127(a) and (c)(1) as necessary.

(4) Unless additional briefs are requested by the Secretary under paragraphs (1) or (2), the parties shall not submit any briefs or materials in addition to those described in paragraph (a) of this section, and any unrequested briefs or materials may be disregarded and not entered into the Secretary's decision record of the appeal.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. The State agency bears the burden of submitting evidence in support of any alternatives proposed by the State agency or submitted to the Secretary by the State agency during the conduct of the appeal.

(e) The Secretary may extend the time for submission of briefs and supporting materials only in the event of exigent or unforeseen circumstances.

(f) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in sections 930.129(b) and (c).

19. Section 930.128 is proposed to be revised as follows:

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal and payment of application fees by publishing a Notice in the **Federal Register** and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal of no less than 30 days to run concurrently with the opportunity to comment provided to interested Federal agencies. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section and may be provided in the same Notice as the Notice of the filing of the appeal.

(c)(1) Notice of the opportunity for interested Federal agencies to comment

on the appeal shall take the same form as Notice required in paragraph (a) of this section and may be provided in the same Notice as the Notice of the filing of the appeal. The Secretary shall accord greater weight to those Federal agencies whose comments are within the areas of their expertise.

(2) The Secretary may, on the Secretary's own initiative or upon written request, for good cause shown, reopen the period for Federal agency comments before the closure of the decision record.

(d) The Secretary may hold a public hearing in response to a request or on the Secretary's own initiative. A request for a public hearing must be filed with the Secretary within 45 days of the publication of the Notice in the **Federal Register** required in paragraph (a). If a hearing is held by the Secretary, it shall be noticed in the **Federal Register** and guided by the procedures described within § 930.113.

20. Section 930.129 is proposed to be amended by revising paragraph (c) and paragraph (d) as follows:

§ 930.129 Dismissal, remand, stay, and procedural override.

* * * * *

(c) The Secretary may stay the processing of an appeal or extend the period for the development of the Secretary's decision record, in accordance with § 930.130.

(d) The Secretary may remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, that was not provided to the State agency as part of its consistency review, is submitted to the Secretary by the State agency, the appellant, the public or a Federal agency. The Secretary shall determine a time period for the remand to the State not to exceed 20 days and the time period for remand must be completed within the period described in § 930.130 for the development of the Secretary's decision record. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal. If the State agency concurs that the activity is consistent with the enforceable policies of the State's management program, then the Secretary shall declare the appeal moot and notify the Federal agency that the activity may be federally approved.

21. Section 930.130 is proposed to be amended by revising paragraphs (a), (b), (c) and (d) as follows:

§ 930.130 Closure of the decision record and issuance of decision.

(a)(1) With the exception of paragraph (2), the Secretary shall close the decision record and not consider additional information, briefs or comments for an appeal no later than 270 days after the date of the Secretary's Notice of Appeal published in the **Federal Register** under § 930.128(a). Upon closure of the decision record, the Secretary shall immediately publish in the **Federal Register** a notice indicating when the decision record has been closed.

(2) The Secretary may stay the closing of the decision record beyond the 270-day period described in paragraph (1):

(i) for a specified period mutually agreed to in writing by the appellant and the State agency; or

(ii) as needed to receive, on an expedited basis, the final (A) environmental analyses required under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for the Federal agency's proposed issuance of a license or permit or grant of assistance; or (B) Biological Opinions issued pursuant to the Endangered Species Act (16 U.S.C. 1531 *et seq.*) for the Federal agency's proposed issuance of a license or permit or grant of assistance.

(b) No later than 90 days after publication of a **Federal Register** notice indicating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the **Federal Register** explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of a **Federal Register** notice explaining why a decision cannot be issued within the 90-day period.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information in the decision record supports this conclusion.

* * * * *

[FR Doc. 03–14663 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1502 of the Internal Revenue Code that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock.

DATES: The public hearing originally scheduled for June 20, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, March 14, 2003, (68 FR 12324), announced that a public hearing was scheduled for June 20, 2003, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code. The public comment period for these regulations expires on June 12, 2003. The outlines of oral testimony were due on May 30, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, June 6, 2003, no one has requested to speak. Therefore, the public hearing scheduled for June 20, 2003, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–14785 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 31, 53, 55, and 156

[REG–107618–02]

RIN 1545–BB29

Automatic Extension of Time To File Certain Information Returns and Exempt Organization Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing an automatic extension of time to file certain information returns and exempt organization returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 9, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–107618–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–107618–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Treena Garret, (202) 622–7180; concerning the regulations, Charles A. Hall, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of information should be received by August 11, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.6081–8T and § 1.6081–9T. This collection of information is required by the IRS for taxpayers to obtain a benefit (an automatic 30-day extension of time to file certain information returns and an automatic three-month extension of time to file exempt organization returns). The respondents are taxpayers required to file certain information returns or exempt organization returns.

Estimates of the reporting burden in § 1.6081–8T of these proposed regulations are reflected in the burden estimates of Form 8809, "Request for Extension of Time to File Information Returns."

Estimated total annual reporting burden for 2001 for Form 8809: 155,000 hours.

Estimated number of responses for 2001 Form 8809: 50,000.

Estimated average annual burden hours per response for 2001 Form 8809: 3 hours and 6 minutes.

Estimates of the reporting burden in § 1.6081–9T of these proposed regulations are reflected in the burden estimates of Form 8868, "Application for Extension of Time To File an Exempt Organization Return."

Estimated total annual reporting burden for 2001 for Form 8868: 1,373,335 hours.

Estimated number of responses for 2001 Form 8868: 248,932.

Estimated average annual burden hours per response for 2001 Form 8809: 5 hours and 31 minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1 and 31. The temporary regulations provide that filers and transmitters of certain information returns may obtain an automatic 30-day extension of time to file. The temporary regulations also provide that exempt organizations may obtain an automatic three-month extension of time to file an exempt organization return. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. In addition, these regulations also propose other minor changes to conform the regulations under section 6081 to current law and practice.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the collection of information imposed by this regulation is not significant because the burden in these regulations is more than offset by the reduction of the burden in Forms 8809 and 8868. These regulations reduce the burden in those forms by removing the signature requirement and the requirement to provide an explanation of the need for the extension of time to file. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 31, 53, 55, and 156 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6081–8 also issued under 26 U.S.C. 6081(a).

Section 1.6081–9 also issued under 26 U.S.C. 6081(a). * * *

Par. 2. Section 1.6081–1 is amended by revising paragraph (a) to read as follows:

§ 1.6081–1 Extension of time for filing returns.

(a) *In general.* The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months, and the extension of time for filing the return of a DISC (as defined in section 992(a)), as specified in section 6072(b), shall not be granted. An extension of time for filing an income tax return shall not operate to extend the time for the payment of the tax or any installment thereof unless specified to the contrary in the extension. For rules relating to extensions of time for paying tax, see § 1.6161–1.

* * * * *

Par. 3. Section 1.6081–8 is added to read as follows:

§ 1.6081–8 Automatic extension of time to file certain information returns.

[The text of proposed § 1.6081–8 is the same as the text of § 1.6081–8T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.6081–9 is added to read as follows:

§ 1.6081–9 Automatic extension of time to file exempt organization returns.

[The text of proposed § 1.6081–9 is the same as the text of § 1.6081–9T published elsewhere in this issue of the **Federal Register**].

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 6. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 7. In § 31.6081(a)–1, paragraph(a)(2)(i) is revised to read as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(2) * * * (i) [The text of proposed § 31.6081(a)–1(a)(2)(i) is the same as the text of § 31.6081(a)–1T(a)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 8. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 9. The first sentence of the authority citation for part 55 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805. * * *

PART 156—EXCISE TAX ON GREENMAIL

Par. 10. The authority citation for part 156 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805.

Par. 11. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column in its place:

Section	Remove	Add
1.6081–2(f), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.

Section	Remove	Add
1.6081–3(d), first sentence	District director, including the Director of International Operations, or the director of a service center may, in his discretion.	Commissioner may.
1.6081–4(c), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–5(a)(1)	1.6031–1(e)(2)	1.6031(a)–1(e)(2).
1.6081–6(d), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–7(d), first sentence	District director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
25.6081–1, second sentence	District director or director of the service center.	Commissioner.
31.6081(a)–1(b), first sentence	District director or director of a service center	Commissioner.
53.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is.
53.6081–1(b), first sentence	To the district director or director of the service center with whom the return is to be filed.	In accordance with the instructions to the extension request form.
55.6081–1, first sentence	District directors and directors of service centers are.	The Commissioner is.
156.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is.
156.6081–1(b), first sentence	To the district director or director of the service center with whom the return is to be filed.	In accordance with the instructions to the extension request form.

Judith B. Tomaso,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–14604 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–03–050]

RIN 1625–AA09

Drawbridge Operating Regulation; Great Channel Between Stone Harbor and Nummy Island, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the County of Cape May Bridge across Great Channel at mile 0.7 between Stone Harbor and Nummy Island, New Jersey. The bridge area would be closed to navigation beginning 8 a.m. on October 15, 2003, through 11 p.m. on May 14, 2004. This closure is necessary to facilitate extensive mechanical rehabilitation and to maintain the bridge's operational integrity.

DATES: Comments and related material must reach the Coast Guard on or before August 11, 2003.

ADDRESSES: You may mail comments and related material to Commander (Oan-b), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 431 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6334. The Commander (Oan-b), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Bonenberger, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–050), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Cape May County Department of Public Works (CMC) owns and operates the County of Cape May Bridge across Great Channel. The bridge is located between Stone Harbor and Nummy Island, New Jersey. The current regulations at 33 CFR 117.720 require the draw to open on signal except from May 15 through October 15 from 10 p.m. to 6 a.m., the draw need only open if at least four hours notice has been given. From October 16 through May 14, the draw need only open if at least 24 hours notice has been given.

Agate Construction Company, on behalf of CMC, has requested a temporary change to existing regulations for the County of Cape May Bridge to facilitate necessary repairs. The repairs consist of extensive mechanical rehabilitation of the bascule span. To facilitate the repairs, the bascule span would be locked in the closed position to vessels from 8 a.m. on October 15, 2003, through 11 p.m. on May 14, 2004.

The Coast Guard reviewed the bridge logs for the last 10 years. From October 16 to May 14, the current regulation requires the draw need only open if at least 24 hours notice is given. From 1993 to 2002, the bridge logs revealed only two openings were provided each year, between October 15 and May 14. The earliest and latest opening dates occurred May 15, 1998, and November 6, 1994, respectively. Also, the bridge is not land-locked on either side of Great Channel providing alternate vessel access to the Atlantic Ocean, to the south, and to the New Jersey Intracoastal Waterway, to the north. We contacted the local Coast Guard unit (USCG Marine Safety Office Philadelphia) of the bridge's temporary inability to open for vessels and they did not object. Therefore, vessels should not be negatively impacted by this proposal.

Discussion of Proposed Temporary Rule

The Coast Guard proposes to temporarily amend 33 CFR 117.720 by inserting a new provision allowing the bridge to remain closed to navigation from 8 a.m. on October 15, 2003, to 11 p.m. on May 14, 2004. Upon completion of repairs, the bridge will return to the current operating schedule.

Regulatory Evaluation

This proposed temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion was based on the fact that the change will have a very limited impact on maritime traffic transiting this area. Mariners can plan their transits by using alternate routes to gain access to larger bodies of water.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed temporary rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed temporary rule would not have a significant economic impact on a substantial number of small entities.

The proposed temporary rule would not have a significant economic impact on a substantial number of small entities because even though the rule closes this small area to mariners, they will not be land-locked at either end and will be able to plan their transits by using available alternate routes.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed temporary rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed temporary rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District (757) 398–6222.

Collection of Information

This proposed temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3502).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed temporary rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed temporary rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed temporary rule and concluded that, under figure 2–1, paragraph (32) (e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to temporarily amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From October 15, 2003, through May 14, 2004, § 117.720(b) is temporarily suspended and a new paragraph (c) is added to read as follows:

§ 117.720 Great Channel.

* * * * *

(c) From 8 a.m. on October 15, 2003, until 11 p.m. on May 14, 2004, the draw of the County of Cape May Bridge, mile 0.7, between Stone Harbor and Nummy Island need not be opened for the passage of vessels.

Dated: June 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–14799 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Part 204 and Appendix G to Chapter 2

[DFARS Case 2003–D005]

Defense Federal Acquisition Regulation Supplement; DoD Activity Address Codes in Contract Numbers

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to prescribe the use of DoD activity address codes in the first six positions of solicitation and contract numbers, instead of the current practice of using DoD activity address numbers in the first six positions. This change will provide consistency in the method of identifying DoD activities and will eliminate the need for maintenance of the list of DoD activity address numbers in DFARS Appendix G.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 11, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2003–D005 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D005.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Subpart 204.70 to prescribe the use of a contracting office's DoD activity address code in the first six positions of a solicitation or contract number, instead of the DoD activity address number found in DFARS Appendix G. DoD is planning to use activity address codes in numbering solicitations and contracts, beginning October 1, 2003. DoD activity address codes are maintained by the Defense Logistics Agency and are available at *https://day2k1.daas.dla.mil/dodaac/dodaac.asp*.

The proposed change will eliminate the need for maintenance of the list of activity address numbers in DFARS Appendix G. However, there will still be a need to maintain the two-position codes, presently found in Appendix G, that contracting offices use when placing an order against another activity's contract or agreement. These codes will be relocated to the Defense Procurement and Acquisition Policy Web site (*http://www.acq.osd.mil/dpap*), and Appendix G will be removed from the DFARS. The administrative information included in section 204.7005 of this proposed rule is also being considered for a location outside of the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because assignment of solicitation and contract numbers is an administrative function performed by the Government. Since the rule makes no change to the number of characters in a solicitation or contract number, it should not have a significant effect on the operation of automated systems. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection

requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 204 and Appendix G to Chapter 2 as follows:

1. The authority citation for 48 CFR Part 204 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7000 is revised to read as follows:

204.7000 Scope.

This subpart—

(a) Prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments; and

(b) Does not apply to communication service authorizations issued by the Defense Information Technology Contracting Organization of the Defense Information Systems Agency in accordance with 239.7407–2.

3. Section 204.7003 is amended by revising paragraph (a)(1) to read as follows:

204.7003 Basic PII number.

(a) * * *

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the DoD Activity Address Code (DoDAAC) assigned to the issuing office. DoDAACs can be found at *https://day2k1.daas.dla.mil/dodaac/dodaac.asp*.

* * * * *

4. Section 204.7004 is amended in paragraph (d)(2)(i) by revising the second sentence to read as follows:

204.7004 Supplementary PII numbers.

* * * * *

(d) * * *

(2) * * *

(i) * * * The first and second positions contain the call/order code assigned to the ordering office in accordance with 204.7005. * * *

* * * * *

5. Section 204.7005 is added to read as follows:

204.7005 Assignment of order codes.

(a) The Defense Logistics Agency, Acquisition Operations Team, Fort Belvoir, VA 22060–6221, is the executive agent for maintenance of code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (see 204.7004(d)(2)). The executive agent distributes blocks of two-character order codes to department/agency monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in two-character order codes to their respective monitors in accordance with department/agency procedures. Order code monitors—

(1) Approve requests for additions, deletions, or changes; and

(2) Provide notification of additions, deletions, or changes to—

(i) The executive agent; and

(ii) The executive editor, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

(c) Order code monitors are—

ARMY

Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

NAVY AND MARINE CORPS

Office of the Assistant Secretary of the Navy (RD&A), 2211 South Clark Place, Crystal Plaza 5, Room 506, Arlington, VA 22202–3738

AIR FORCE

SAF/AQCX, 1060 Air Force Pentagon, Washington, DC 20330–1060

DEFENSE LOGISTICS AGENCY

Defense Logistics Agency, Acquisition Operations Team, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221

OTHER DEFENSE AGENCIES

Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

(d) Order code assignments can be found at *http://www.acq.osd.mil/dpap*.

Appendix G to Chapter 2—[Removed and Reserved]

6. Appendix G to Chapter 2 is removed and reserved.

[FR Doc. 03–14782 Filed 6–10–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[RSPA–03–15327 (Docket No. HM–206B)]

RIN 2137–AD28

Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation (PIH)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing changes to the hazard communication requirements of the Hazardous Materials Regulations (HMR), including revisions of the specifications for labels and placards, based on petitions for rulemaking, requests for clarification, and our own belief that clarifications and improvements in the HMR may be appropriate. The effect of the proposed regulatory changes would be to improve safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

DATES: Comments must be submitted on or before August 11, 2003. To the extent possible, we will accept late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify Docket Number RSPA–03–15327 (HM–206B) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System Web site at "*http://dms.dot.gov/*" and following the instructions for submitting a document electronically. If you prefer, you can fax comments to 202–493–2251 for filing in the docket.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System Web site at *http://dms.dot.gov/*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov/*.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–8553.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
II. Marking Requirements
  A. NON-ODORIZED Marking on Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gas
  B. Organic Peroxide Identification Number Marking
  C. Fumigant Marking
III. Materials Poisonous by Inhalation (PIH)
  A. Revision of PIH Label and Placard and Transition Provisions
  B. Hydrogen Fluoride, Anhydrous, and Similar Materials
  C. Residues (When PIH Subsidiary)
IV. Other Requirements for Labels and Placards
  A. Color Standards for Labels and Placards
  B. ASTM D4956–95 (Red and White) for Reflective Colors
  C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label
  D. Cylinder Markings in Accordance With CGA Pamphlet C–7
  E. Placarding Exception for Class 9 Materials (Domestic)
  F. Footnote to Table 1 (placards)—Editorial Correction
V. Training and Emergency Response Information
  A. Emergency Response Telephone Number Requirements
  B. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains
  C. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids
VI. Security Plans
  A. Infectious Substances—Select Agent
VII. Regulatory Analyses and Notices
  A. Executive Order 12866 and DOT Regulatory Policies and Procedures
  B. Executive Order 13132
  C. Executive Order 13175
  D. Regulatory Flexibility Act
  E. Paperwork Reduction Act
  F. Regulatory Identification Number (RIN)
  G. Unfunded Mandates Reform Act
  H. Environmental Assessment

I. Background

In general, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require that during transportation: (1) Non-bulk packages of hazardous materials must be marked with the shipping name and identification number of the material and have a hazard warning label; (2) bulk shipments of hazardous materials must be identified by placards and identification number markings attached to the transport vehicle or bulk package; and (3) hazardous materials must be described and identified on a shipping paper that accompanies the shipment in transportation and contains an emergency response telephone number that is monitored at all times while the hazardous material is in transportation. This telephone number is used by emergency responders to obtain detailed, product-specific information that includes guidance for the initial actions to be taken in the event of an incident. These requirements are designed to provide fire and emergency response personnel, transport workers, and the public with information in the event of a transportation incident involving hazardous materials. Hazard communication and emergency response information requirements are set forth in subparts C through G of part 172 of the HMR. The hazard communication system in the HMR is consistent with international standards.

In this NPRM, RSPA (we) is proposing a number of clarifications and improvements to the shipping paper, identification number, other marking, labeling and placarding, and emergency response telephone number requirements. The changes are intended to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. These changes should result in better response by, and protection of emergency response personnel, fire or police personnel and the public, and help to ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

We received a number of petitions for rulemaking requesting changes to the hazard communications requirements of the HMR. The following chart summarizes the petitions considered in this NPRM:

Petition No.	Request
0804	Amend placarding requirements for PROPANE to require the phrase NON-AEROMATIC be displayed on a placard when there is no detectable odor to alert emergency response personnel. Requested by New Jersey State Firemen's Mutual Benevolent Association (Proposed in §§ 172.301, 172.326, 172.328, 172.330).
1113	Amend the requirements for color standards for labels and placards to reference certain colors from the Pantone® Matching System, Pantone® Color Formula Guide, First Edition 2000–2001. Requested by the Dangerous Goods Advisory Council (DGAC, formerly HMAC) (Proposed in §§ 172.407(d) and 172.519(d)).
1285	Amend the labeling requirements to allow commercial motor carriers to transport Division 2.1 or 2.2 gases in cylinders or Dewars marked in conformance with CGA Pamphlet C–7. Requested by the Compressed Gas Association (CGA) (Proposed in §172.400a(a)(1)).
1327	Amend the hazard communication system to require display of the identification number on each bulk packaging, unit load device, freight container, transport vehicle or rail car, when transporting an "Organic peroxide, temperature controlled" material subject to placarding provisions in § 172.504(e), Table 1. Requested by the Los Angeles Police Department (Proposed in § 172.336(b)(2)).
1368	Revise paragraphs (b) and (e) of § 173.9 to: (1) Require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR; (2) allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated; and (3) clarify that the phrase "or treated with any material," applies to ready-to-use liquid formulations or "foggers", such as ant or roach repellants. Requested by the Industrial Fumigant Company (Proposed revision in paragraph (e) in § 173.9).

Petition No.	Request
1416	Amend the requirements for materials listed as hazardous substances in the § 172.101 Table, Appendix A, Table I, that only meet the hazard class definition of a Class 9 (miscellaneous) material. The petitioner requested that markings, labels, and placards be allowed to remain on such packages containing a residue of such substances, although the rail cars have been unloaded to a quantity less than the reportable quantity (RQ). Requested by Bayer Corporation (Proposed revision in § 172.514(b) to eliminate confusion regarding these types of returned rail car shipments).

II. Marking Requirements

A. Non-Odorized Marking on Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gas

With certain exceptions, all liquefied petroleum gas (LPG) must be odorized when transported in portable tanks or cargo tanks, as prescribed in Note 2 of § 173.315(b)(1). Odorization must indicate positively, with a distinctive odor, the presence of gas down to a concentration in air of not more than one-fifth the lower limit of combustibility. Exceptions are permitted if odorization is harmful in the use or further processing of LPG, or if odorization will serve no useful purpose as a warning agent. There is no requirement in the HMR to odorize LPG in cylinders or tank cars. The fact that LPG is odorized or not is not required to be communicated to emergency responders or the general public.

The New Jersey State Firemen's Mutual Benevolent Association (the Association) petition requested that packages containing non-odorized propane that are already required to be placarded have the phrase NON-AEROMATIC or NON-ODORIZED added either above or below the word "propane." The Association stated that emergency response personnel may be unaware of leaks or spills of propane because there is no detectable odor to alert these persons of the hazardous condition present.

We believe this petition has merit. This lack of additional hazard warning information could cause emergency responders to make inappropriate decisions in mitigating an accident, potentially jeopardizing their safety or the public safety.

In 1984, we published an NPRM, Docket HM–126D; Notice No. 84–11 (49 FR 38164) that proposed several changes in parts 171, 172 and 173 regarding odorization of liquefied petroleum gas (LPG), in addition to other revisions. The comments we received ranged from complete support to direct opposition. In a final rule (52 FR 29526) published August 10, 1987, we stated that the odorization issue would be handled under a separate docket. In comments to the HM–126D rulemaking, an LPG carrier representative and the National LP-Gas Association stated that non-odorized LPG is transported in fewer than 300 cargo tanks, fewer than 600 tank cars, approximately 3500 cylinders, and approximately 100 portable tanks. Commenters also stated that less than 1 percent of the LPG transported by motor vehicle is non-odorized and approximately 94 percent of LPG is transported by motor vehicle.

Emergency responders may assume that each bulk packaging displaying the LPG proper shipping name, or a technical name such as butane, isobutylene, or propane, contains an odorant. However, to provide the appropriate hazard warning information when packagings do not contain an odorant, we believe NON-ODORIZED should be marked in association with the proper shipping name on a cylinder (except for DOT 2P and 2Q containers and DOT 39 cylinders), portable tank, cargo tank, or tank car containing LPG. The specification DOT 2P, 2Q or 39 packagings would not be subject to the marking requirement because of their small size. At an incident involving such cylinders, emergency response personnel would have to get too close to such packages to determine whether they were marked NON-ODORIZED, which could jeopardize the health and safety of the responders.

Therefore, to provide the necessary warning, we propose to require NON-ODORIZED marking on certain cylinders, portable tanks, cargo tanks and tank cars. For portable tanks, cargo tanks and tank cars, the size of the marking would be as prescribed in the general marking requirements for bulk packagings. The annual cost of this marking, using pressure sensitive, vinyl labels that have a 5- to 7-year life expectancy, would be minimal. Accordingly, we propose to amend §§ 172.301, 172.326, 172.328, and 172.330, to require the marking NON-ODORIZED for LPG that does not contain an odorant.

B. Organic Peroxide Identification Number Marking

Currently, a Division 5.2 ORGANIC PEROXIDE placard is specified in both Table 1 and Table 2 of § 172.504. In Table 1, a Division 5.2 placard is required for any quantity of an organic peroxide, Type B, liquid or solid, temperature controlled. In Table 2, a Division 5.2 placard is required for organic peroxides not covered by Table 1 when 1,001 pounds or more are on a transport vehicle. Thus, an ORGANIC PEROXIDE placard may or may not indicate that the material is temperature controlled.

The Los Angeles Police Department (LAPD) petition (P–1327) requested that we require an identification number to be displayed on each bulk packaging, unit load device, freight container, transport vehicle, or rail car, when the material transported is a temperature-controlled organic peroxide subject to placarding under § 172.504(e), Table 1. The LAPD said this will clearly identify the organic peroxides requiring special response needs based on temperature controls. The LAPD said that the current requirement to placard any amount of "5.2, Organic peroxide, Type B, liquid or solid, temperature-controlled" material does not convey the warning to emergency personnel that the material must be temperature controlled. This issue was previously discussed in a final rule responding to petitions for reconsideration under HM–206 (62 FR 39398; 07/22/97). During that process, we denied LAPD's petition because such a change was not proposed in the NPRM, and was beyond the scope of that rulemaking. However, because organic peroxides that require refrigeration for stabilization purposes during transportation pose a substantial hazard in any incident that would result in a loss of temperature control, we said this suggestion had merit, and would be considered in future rulemaking.

Under the current regulations, a bulk packaging is required to display an identification number marking. Similarly, a transport vehicle or freight container containing a single hazardous material in non-bulk packagings having an aggregate gross weight of 4000 kg (8,820 pounds) or more is also required to display the identification number on the exterior of the transport vehicle or freight container. In addition, the shipping paper provides appropriate information on organic peroxide temperature-controlled material, including the identification number. However, the shipping paper may not be immediately available at the scene of an incident. Thus, other than the ORGANIC PEROXIDE placard, there may not be other information readily available to inform responders of the unique characteristic (*i.e.*, temperature controlled) of this type of material to assist them in determining an appropriate response. We believe the LAPD petition has merit and propose to add a new paragraph (b)(2) in § 172.336 to require the identification number to be displayed on a transport vehicle or freight container containing any quantity of an organic peroxide, temperature controlled, material that is required to be placarded in accordance with the requirements in § 172.504(e), Table 1.

C. Fumigant Marking

Effective October 1, 1998, we adopted new requirements for fumigated loads (62 FR 1217; 01/08/97). Formerly, fumigation requirements applied only to rail transportation and set forth different provisions depending on the type of fumigant used. We adopted requirements in § 173.9 specifying that a fumigated transport vehicle or freight container is a "package" for purposes of the fumigation requirements, and expanded the requirements to cover all modes of transportation. The rule applies to fumigation with any material and set forth defining criteria and concentration thresholds for unlisted fumigants. This approach benefits shippers, carriers, law enforcement agencies, and, in particular, transport workers who may be exposed unknowingly when they open transport units. Thus, if the transport unit or freight container has been treated with any material, or is undergoing fumigation, it is subject to the fumigation marking requirements of the HMR.

The Industrial Fumigant Company (IFC) petitioned us (P–1368) to amend the HMR to revise paragraphs (b) and (e) of § 173.9 to require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR. The petition also requested that we allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated. In addition, the petitioner requested that we clarify the phrase "or treated with any material," as it applies to materials, such as ready-to-use liquid formulations or "foggers," such as ant and roach repellants. IFC said that these "foggers," or non-residual insecticides, are lower in toxicity than fumigants and can be found in ready-to-use liquid formulations used in a household environment. IFC stated it would be incorrect to place a FUMIGANT marking on an application such as this, and that the phrase "or treated with any material" is too broad and could cause confusion.

In regard to ready-to-use liquid formulations, such as pyrethrin, we believe persons entering a transport unit should be made aware of the presence of chemicals that may pose a threat to their health and safety. We do not agree with IFC that such chemicals do not pose a risk during transportation, and we continue to believe that persons offering or transporting treated or fumigated loads must have immediate knowledge relative to such materials or fumigants.

We also do not agree that only the EPA fumigant marking or label should be displayed on a transport vehicle or freight container containing fumigated lading. The design of the FUMIGANT marking was adopted for consistency with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) for fumigated lading in transportation in commerce. For domestic transportation, we allow the hazard warning label authorized by EPA under 40 CFR part 156 as an alternative to the FUMIGANT marking.

However, we believe that this petition has merit and should, in part, be granted. We understand that some fumigated materials are aerated without being unloaded from the transport vehicle or freight container. Thus, the requirement as written in § 173.9(e)(1), that the FUMIGANT marking must remain on the package unless both the fumigated lading is unloaded and the transport vehicle is sufficiently aerated may be an unnecessary burden on the fumigation industry. In this NPRM, we propose to revise the requirements in paragraph (e) of § 173.9 to specify that the FUMIGANT marking must remain on the vehicle or container until the fumigated lading is "unloaded or has undergone sufficient aeration." The word "or" replaces the word "and" in the current paragraph (e)(1). This revision will permit aeration or ventilation of the vehicle or container without unloading.

III. Materials Poisonous by Inhalation (PIH)

A. Revision of PIH Label and Placard and Transition Periods

In a final rule issued January 8, 1997 (62 FR 1217), we adopted new labels and placards for both liquids (Division 6.1) and gases (Division 2.3) that are PIH materials to enhance their identification when transported in commerce. The dark background for skull and crossbones of the symbol depicted on the PIH label and placard graphically conveys the appropriate information to alert responders to the hazards of PIH materials. The new PIH label and placard also improve hazard communication by creating an instantly recognizable difference between PIH materials and other poisons. The effective date was delayed one year, until October 1, 1998. At that time, we included transitional provisions for continued use of the POISON or POISON GAS labels and placards, until October 1, 1999, and October 1, 2001, respectively.

However, on the new PIH label and placard, we inadvertently specified a smaller skull and crossbones symbol in the upper black diamond than currently shown on the Poison placard and label. In this notice, we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the placards and labels to conform, pictorially, in size, with the symbol on the Poison placard and label used for poisons other than those that are PIH materials. Increasing the size of the symbol will make these placards and labels more visible from a distance and will enhance the ability of emergency responders and transport workers to identify the PIH materials.

Identification number markings are not prohibited on the POISON GAS or POISON INHALATION HAZARD placards, as specified in § 172.334. Display of an identification number on a hazard warning placard must be in conformance with the identification number marking requirements prescribed in § 172.332(c) of the HMR. That is, the identification number must be displayed across the center area of the placard in 88 mm (3.5 inches) black Alpine Gothic or Alternate Gothic No. 3 numerals on a white background 100 mm (3.9 inches) high and approximately 215 mm (8.5 inches) wide, and the top of the 100 mm (3.9 inches) high white background must be 40 mm (1.6 inches) above the placard horizontal center line. Because we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the PIH placards, identification number markings displayed on the proposed PIH placards may cause overlapping of the lower point of the upper black diamond and

impinge on space used for identification number display on such placards.

To allow space for the identification number, we propose allowing the lower point of the upper black diamond to impinge on space used to display an identification number marking on a PIH placard. A provision would be added in § 172.332(c) to allow the overlapping or clipping-off of the lower point of the black square-on-point (upper black diamond) above the horizontal center line on both the POISON GAS and POISON INHALATION HAZARD placards displayed on transport vehicles or freight containers containing materials poisonous by inhalation.

We are also proposing in § 171.14(a) and (b) to allow those persons who had begun, prior to October 1, 2001, to use and maintain a supply of the new PIH labels and placards with smaller size symbols to continue to use them in transportation. For non-permanent placard displays (*e.g.*, tagboard), the proposed compliance date would be October 1, 2006. The proposed compliance date for use of the proposed revised labels (with enlarged symbols on the upper black background) would be October 1, 2004, except that if a permanent PIH label (*e.g.*, labels printed, embossed or stamped on the surface of a package) conforms to the specifications in effect on October 1, 1998, and is manufactured and installed prior to October 1, 2003, it may continue to be used for its useful life. For permanent placard displays (*e.g.*, metal "flip-type", that cannot be transferred to another motor vehicle, rail car, freight container, etc.), we propose that if a permanently-mounted PIH placard conforms to the specifications in effect on October 1, 1998 (delayed effective date of HM–206), and is manufactured and installed prior to October 1, 2003, it may continue to be used for its useful life. Accordingly, the present requirements in paragraphs (a) and (b) in § 171.14, which are obsolete and therefore no longer necessary, would be removed and new paragraphs (a) and (b) would be added to include continued use provisions and transition dates for PIH labels and placards.

B. Hydrogen Fluoride, Anhydrous, and Similar Materials

In the HM–206 final rule (62 FR 1217; 1/8/97), materials such as hydrogen fluoride, anhydrous, that meet the definition of a PIH material, were not specifically addressed in the provisions for labeling and placarding PIH materials in Division 6.1. To correct this oversight, we are proposing to revise §§ 172.400 and 172.504 to require an inhalation hazard label or placard for all materials that meet the definition of a PIH material in § 171.8.

C. Placarding Requirement for Residues (When PIH Subsidiary)

In accordance with § 173.29, a non-bulk packaging containing only a residue of a hazardous material covered by placarding Table 2 of § 172.504 of the HMR need not be included in determining the applicability of the placarding requirements in subpart F of part 172 and is not subject to shipping paper requirements when collected and transported by a contract or private carrier for reconditioning, manufacturing, or reuse. However, the exception in § 173.29(c) was not intended to apply to the residue of a material shipped in non-bulk packagings that has a subsidiary PIH hazard that would require the transport vehicle to be placarded in accordance with the subsidiary placarding requirements in § 172.505(a). Therefore, we are proposing to clarify that the exception in § 173.29(c) does not apply to the residue of a PIH material.

IV. Other Requirements for Labels and Placards

A. Color Standards for Labels and Placards

The Dangerous Goods Advisory Council (DGAC) (formerly, the Hazardous Materials Advisory Council) petitioned RSPA (P–1113) to consider alternative means of achieving reasonable conformance to color standards for hazard warning labels and placards. DGAC said the specifications for colors in the Tables in Appendix A of part 172 of the HMR cause difficulty since the systems on which they are based (*i.e.*, Munsell Notations) are not in common use. According to DGAC, this is reinforced by the lack of specified standards in the UN Recommendations, the International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air. DGAC said that, while the text of each document refers to some degree of conformance to the illustrations shown, variation does exist within a given color. Some of DGAC's member companies note that the color tolerance charts previously available from RSPA are no longer available. DGAC recommended that color standards for labels and placards conform generally to the same standards prescribed in the Canadian Transport of Dangerous Goods (TDG) Regulations, which are colors conforming to the Pantone® Formula Guide published by Pantone Incorporated (Pantone®). DGAC suggested specific colors based on the Pantone® Formula Guide and proposed regulatory language. DGAC stated that these standards should apply to labels, placards, and identification number markings that are surfaced with printing inks. Where colors are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation would be required to ensure a proper match with the color standards suggested in the petition.

The use of the Pantone® Formula Guide was addressed in the NPRM under Docket HM–206 (59 FR 41848; 8/15/94). No changes were proposed in the NPRM to the present label and placard color code system because there was insufficient cost and safety information available to justify adopting a new color system. At that time, we asked for comments or information concerning color code systems that would allow for a range of color and estimates of the costs and benefits of adopting a new color tolerance system. The Pantone® Formula Guide uses specific colors and does not allow for deviations or tolerances as do the Munsell Notations. In the HM–206 NPRM, we also asked commenters to provide information on specific colors from the Pantone® Formula Guide that, in their view, constitute compliance with the label and placard color standards, including tolerances currently referenced in the HMR. However, commenters did not provide any new or additional safety or cost information on this issue.

Pantone sells samples for over 1,100 colors, along with printing ink formulas to achieve each color. All colors are mixed from a set of 14 standard base colors. Pantone's product line consists of loose-leaf books of color samples and instructions to enable graphic artists and printers to reproduce each color on various types of paper and other printing materials. In past discussions, Pantone said that any manufacturers' inks can be used to achieve Pantone's colors. This distinguishes its system from other color systems, which prescribe formulas for printers to use, but may require printers to use only its brand of inks. Dyes used for paints are different from printing dyes, but are expected to be longer lasting, more durable, and stand up against fading. Printing dyes are relatively inexpensive, but not designed to last for long periods of time.

We understand that the Munsell Notations present problems for persons making hazard warning labels and placards because the system is not widely recognized or used, and many printers do not understand it. Therefore, based on DGAC's petition, in this NPRM we propose to reference certain Pantone® Formula Guide numbers as a convenience to users, not as a requirement. Sections 172.407 and 172.519 would be revised to voluntarily permit the use of certain Pantone® Formula Guide colors for identification number and other markings and hazard warning labels and placards as an alternative to the Munsell notations. These color standards conform generally to the same standards under the Canadian TDG Regulations.

For many years now, the set of Color Tolerance Charts, prescribed in §§ 172.407 and 172.519, which are used to compare and determine compliance with the colors for identification number markings and hazard warning labels and placards, have not generally been available. Recently, we have become aware of the availability of the Color Tolerance Charts from a commercial source, Hale Color Charts, Inc. The set of Color Tolerance Charts displays the desired color (central) with a series of tolerance limits and color matches. The availability of these charts will assists enforcement personnel in the field in determining compliance with colors for markings, labels and placards and assist persons who wish to produce their own labels and placards based on the range of colors set forth in these charts for comparison. Therefore, we have added this source to our "Commercial Suppliers" lists of hazardous materials regulatory and emergency response publications at our Hazmat Safety Web site at *http://hazmat.dot.gov*.

B. ASTM D4956–95 (Red and White) for Reflective Colors

Domestically, reflective or retroreflective placards are permitted, but not required, under the HMR. In accordance with the provisions in § 172.519(a)(3), reflective materials may be used on a placard if the prescribed colors, strengths, and durability are maintained. Place Quick, Inc. (Place Quick), filed an application for exemption (11972–N) from certain requirements in the HMR to use retroreflective material and colors that meet the Federal Highway Administration Standard FP–96 for highway safety colors. In support of its application, Place Quick submitted samples of placards and labels made from Scotchlite™ Reflective Sheeting Diamond Grade reflective materials. That material conforms to Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment specified in 49 CFR 571.108. Because the exemption application concerns a matter of general applicability and future effect, we advised Place Quick that, in accordance with 49 CFR 107.113(i), this matter would be addressed in this docket. We stated that the placard colors (including red) do not fall within prescribed color tolerances. More recently, Place Quick said that it is only concerned with the red and white reflective colors on placards, which would be used by its clients on "dedicated" trucks.

In this NPRM, we are proposing an alternate color standard for labels and placards constructed of retroreflective materials. Specifically, we are focusing on retroreflective red or white conforming to Type V sheeting in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control. This is the standard referenced in 49 CFR 571.108 for conspicuity systems as specified under paragraph (b) and defined in S5.7 of 49 CFR 571.108, applicable to certain truck tractors and trailers. We believe that the retroreflective red or white conforming to Type V sheet in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control may enhance nighttime visibility or conspicuity of hazard warning labels and placards in daylight and darkness. Accordingly, we propose to revise §§ 171.7, 172.407 and 172.519 to include provisions for use of red or white Type V sheeting for reflective materials for hazard warning labels and placards, as appropriate. Because other colors in ASTM D 4956 so poorly match the current and proposed color standards for placards and labels, we are not including them in this proposed rule. The Canadian TDG Regulations' "Clear Language Edition" no longer contains a provision that requires the use of a retroreflective placard, or a retroreflective "yellow band" for various hazard classes of hazardous materials in a large freight container or transport vehicle.

C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label

There is an inconsistency between the subsidiary labeling requirements in the UN Recommendations and the HMR. Under the HMR, the additional labeling requirements in § 172.402 specify that each package containing a hazardous material must be labeled with both primary and subsidiary hazard warning labels. In accordance with § 172.402(a)(2), a package containing a Division 5.2 (organic peroxide) material that also meets the definition of Class 3 (flammable liquid) material must be labeled ORGANIC PEROXIDE and FLAMMABLE LIQUID, except for Class 3 material in Packing Group III (see exception in § 172.402(a)(2)). However, paragraph 5.2.2.1.9 of the UN Recommendations specifies that a subsidiary FLAMMABLE LIQUID label is not required on such a package because the ORGANIC PEROXIDE label is understood to convey the inherently flammable nature of organic peroxides. Therefore, for consistency with the UN Recommendations, and in order to clear up any misunderstanding regarding additional labeling of a Division 5.2 (organic peroxide) material that exhibits a Class 3 (flammable liquid) subsidiary hazard, we propose to adopt this exception in a new paragraph (h) in § 172.402.

D. Cylinder Markings in Accordance With CGA Pamphlet C–7

Currently, the HMR provide exceptions for labeling certain compressed gases (*i.e.*, Division 2.1 or Division 2.2) carried by private or contract motor carriers if certain conditions as prescribed in § 172.400a(a)(1) are met. In place of a hazard warning label, the markings specified in Compressed Gas Association (CGA) Pamphlet C–7, "Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A," may be used to satisfy the labeling requirements in the HMR. CGA petitioned RSPA (P–1285) to amend the HMR to allow common motor carriers to transport Division 2.1 or Division 2.2 gases in cylinders or Dewars marked in conformance with CGA Pamphlet C–7.

Appendix A of CGA Pamphlet C–7 sets forth the CGA marking system for compressed gas cylinders. CGA developed the basic marking to provide immediate identification of cylinder contents. The basic marking, illustrated in Figure 1, Pamphlet C–7, consists of a reduced size square-on-point hazard warning label, indicating the hazard class of the contained gas, combined with a panel containing the proper shipping name and the product identification number of the contained gas. The panel must be located to the left of the square-on-point. For certain gases with additional hazards, multiple labels may be required. For such gases, the basic marking must include an additional square-on-point denoting each secondary hazard. The square-on-point configurations must be adjacent to one another, but the adjoining points may overlap by not more than 10 mm (⅜ inch), as illustrated in Figure 2 of Pamphlet C–7.

CGA suggested several factors that it believes justify this proposal. For example, cylinder neck labels are less subject to abrasions than cylinder body labels and are less likely to loosen and fall off. Further, the smaller markings affixed to the shoulder of cylinders are more visible when cylinders are grouped together than when the information is on a label affixed to the cylinder wall. These markings have been used in Canada since 1985, and thus reciprocity with Canada would be maintained. Furthermore, CGA stated that the CGA Pamphlet C–7 marking enhances industry's ability to meet the Occupational Safety and Health Administration's requirement that precautionary labels not be removed from containers until containers have been emptied.

We believe that the CGA petition has merit. Experience shows that this alternative marking, currently authorized for cylinders carried by private and contract carriers, clearly communicates the degree of hazard associated with Division 2.1 or Division 2.2 gases in cylinders offered for transportation in commerce. The marking prescribed in the CGA Pamphlet C–7, Appendix A, will not detract from a common carrier's ability to segregate and stow cylinders since cylinders shipped individually must be moved individually by employees who are close enough to read the smaller marking and label. In addition, the proper shipping name and identification number of the hazardous material are marked adjacent to the smaller hazard warning label, which makes identification of the products easier. For consistency with international standards, we are proposing to permit the use of the markings specified in Pamphlet C–7 on cylinders containing compressed gases in Divisions 2.1, 2.2, or 2.3, which may be shipped in accordance with the exceptions from labeling prescribed in § 172.400a.

We believe such markings will be equally effective in communicating the hazard of the material being shipped. Safety would not be reduced because shipping papers and placards on the transport vehicles provide hazard warning information that can be used in the event of an emergency. Paragraph 5.2.2.2.1.2 of the UN Recommendations permits cylinders for Class 2 gases to bear labels representative of those specified. The Canadian and European regulations, which are based on the UN Recommendations, authorize labels which have been reduced in size, as appropriate, for display on the non-cylindrical part of the cylinders. Thus, this proposal would enhance international harmonization of standards. Therefore, in this NPRM, for consistency with provisions in the UN Recommendations and Canadian and European regulations, we are proposing to revise the requirement in § 172.400a(a)(1) to broaden the labeling exception to apply to all modes of transportation, by air, water, rail or highway.

E. Placarding Exception for Class 9 Materials (Domestic)

Mr. Tom Sever, Hazardous Materials Coordinator, Motor Vehicle Enforcement, Iowa Department of Transportation, requested we rescind an interpretation dated February 25, 1997 pertaining to domestic transportation of Class 9 (miscellaneous) material, change the definition of domestic transportation listed in § 171.8, or eliminate the Class 9 placarding requirements in § 172.504(f)(9) and the placard itself in § 172.560. Mr. Sever said that the requirement should have uniform intent; that is, require use of the CLASS 9 placard when the shipment is passing through the United States and destined for a foreign country.

Our February 25, 1997 letter addressed a highway shipment of 12,440 pounds of "Environmentally hazardous substances, solid, n.o.s., 9, UN 3077, PG III, RQ (Lead)" from Garland, Texas to Alberta, Canada. We stated that for those portions of transportation that occur within the borders of the United States, a shipment in international transportation is eligible for the same placarding exceptions that apply to transportation which is domestic only. For these purposes, the definition of "domestic transportation" includes not only transportation exclusively within the United States, but also that domestic portion of international transportation that occurs between places within the United States. Therefore, CLASS 9 placards are not required to be displayed on a shipment of Class 9 hazardous material while it is within the United States.

We do not agree that the placarding exception in § 172.504(f)(9) should be eliminated, but we do agree that the provision should be clarified to minimize misunderstanding. Therefore, we propose to revise the provision to clarify that the Class 9 placarding exception applies to international shipments of Class 9 material while moving in the United States.

F. Footnote to Table 1 (Placards)—Editorial Correction

We are proposing an editorial revision in § 172.504(e), Table 1, to correct citations in Footnote 1, pertaining to placarding for certain shipments of radioactive materials. The footnote would be corrected to read as follows: "Radioactive placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter."

V. Training and Emergency Response Information

A. Emergency Response Telephone Number Requirements

The HMR require a person offering a hazardous material for transportation to provide an emergency response telephone number (including the area code or international access code) on the shipping paper for use in the event of an emergency involving the material. The emergency response telephone number must be that of a person who has comprehensive knowledge of emergency response and incident mitigation information about the hazardous material being shipped. As an alternative, the number may be of a person who has "immediate access" to a person who possesses such information. The emergency response telephone number must be monitored at all times for as long as the hazardous material is being transported, including during storage incidental to the movement of the hazardous material. Storage that is incidental to movement generally is storage that occurs between the time a hazardous material is offered for transportation and the time it reaches its destination and is delivered to the consignee.

We know that some shippers have misinterpreted "immediate access" as authorizing them to use a "call back" system that requires an emergency responder to wait for a return telephone call. To clarify the requirement for "immediate access," we are proposing to revise § 172.604 to indicate that beeper numbers and call-back systems do not conform to the requirements in § 172.604 and are not acceptable under the HMR.

B. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains

An "empty" packaging is not subject to any other requirement of the HMR if any hazardous material shipping name and identification number markings, any hazard warning labels or placards, and any other markings indicating that the material is hazardous (*e.g.*, RQ) are removed, obliterated, or securely covered in transportation and: (1) The packaging is unused; (2) the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazard; (3) the packaging is refilled with a material that is not hazardous to such an extent that any residue remaining in the packaging no longer poses a hazard; or (4) the packaging contains the residue of certain materials listed in this section. Otherwise, an empty packaging containing the residue of a hazardous material must be offered for transportation and transported in the same manner as when it previously contained a greater quantity of the material.

Bayer Corporation (Bayer) petitioned RSPA (P–1416) to add new paragraphs 172.514(b)(3) and 173.29(h) for empty packagings or packagings that contain residues of hazardous substances that meet the definition of a Class 9 (miscellaneous) material, and do not meet any of the other hazard class definitions. Bayer said the proposed additions would address the residue remaining in a container after it had been unloaded to a quantity less than the reportable quantity (RQ). For example, a rail car loaded with 185,000 pounds of MDI (RQ, 5000 lbs.) would be shipped as a Class 9 (miscellaneous) material because the rail car contains more than the RQ. Once the car is unloaded by the consignee and ready for return to the original shipper, the rail car no longer contains the reportable quantity, would not be subject to the HMR, and would not be shipped as a regulated material. This requires the waybill to be changed and all placards and markings removed for the return shipment. Bayer said that this situation has created a compliance nightmare for shippers, its customers, and the various State and Federal enforcement agencies. The railroads are confused because a loaded car is moved into a facility under the HMR, but is offered for the return shipment as a non-regulated car.

On January 31, 1997, the Federal Railroad Administration (FRA) issued a memorandum (Ref. No. HM–97–4) to its Regional Administrators and Railroad Safety Specialists for hazardous materials. In the memorandum, FRA said a rail car that contains any material (or its mixture) listed in Appendix A to the § 172.101 Hazardous Materials Table in a quantity less than its RQ in one package, is not subject to the requirements of the HMR, provided the material does not meet the criteria for any other hazard class and is not a hazardous waste or a marine pollutant. FRA also said that the determination of whether the package contains an RQ of the hazardous substance is the responsibility of the shipper. Generally, the shipper is not expected to actually measure the amount remaining after unloading, but can, in good faith, estimate it by using its knowledge of the material, the packaging, and the unloading method. Bayer said that an enormous amount of time is spent in trying to explain to the railroads and various enforcement agencies why a MDI rail car must return as non-regulated when it was originally offered under the HMR.

We believe the petition has merit. Since a Class 9 hazardous substance is only subject to the HMR because of the RQ in one package, an empty packaging containing the residue of a Class 9 hazardous substance below its RQ is not subject to the HMR, including shipping paper requirements. In this rulemaking, we are clarifying that a tank car containing less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation as a regulated material if the residue of this material is offered for transportation with all applicable hazard warning marks, placards and shipping papers. We propose to revise § 172.514(b) to allow the markings and placards, if any, to remain on a returning rail car that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

C. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids

A combustible liquid that is in a bulk packaging or a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant is not subject to the requirements of the HMR except those prescribed in § 173.150(f)(3) pertaining to: (1) Shipping papers, way bills, switching orders, and hazardous waste manifests; (2) marking of packages; (3) display of identification numbers on bulk packages; (4) placarding requirements of subpart F of part 172; (4) carriage aboard aircraft and vessels; (5) reporting incidents as specified in § 171.15 and § 171.16; (6) packaging requirements of subpart B of part 173 and, in addition, non-bulk packagings must conform with requirements of § 173.203; and (7) the requirements of §§ 173.1, 173.21, 173.24, 173.24a; 173.24b, 174.1, 177.804; 177.817, 177.834(j), and 177.837(d) of the HMR.

However, the emergency response information and training requirements prescribed in subparts G and H of part 172 of the HMR are currently not specified in the requirements in § 173.150(f)(3), although we did not intend to exempt such shipments from these requirements. To correct this oversight, we are proposing to revise § 173.150(f)(3) to clarify that the emergency response information and training requirements of subparts G and H of part 172, respectively, apply to a shipment of a combustible liquid in a bulk packaging or to a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant.

VI. Security Plans

On March 25, 2003, we published a final rule under Docket HM–232 (68 FR 14510) that requires persons who offer for transportation and persons who transport in commerce certain hazardous materials to develop and implement security plans. Among the hazardous materials subject to the security plan requirement are infectious substances that are select agents and toxins regulated by the Centers for Disease Control and Prevention under 42 CFR part 73. Since publication of the HM–232 final rule, several carriers have suggested that carrier employees may not know that a package contains a select agent and, therefore, is subject to security plan requirements, unless that fact is communicated to the carrier. To address this potential problem, in this NPRM, we are proposing to add a new paragraph (p) to § 172.203 that would require each person who offers a select agent for transportation in commerce to include the words "Select Agent" in association with the basic shipping description on the shipping paper that accompanies the shipment. Commenters are invited to suggest alternative methods for addressing this issue; we may modify this proposal in the final rule based on comments received.

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. A regulatory evaluation prepared for the August 15, 1994 NPRM and subsequently modified for the January 8, 1997 HM–206 final rule is available in the docket. The implementation of certain provisions of this proposal (*i.e.*, allowances for continued use of the previous PIH placards and labels) reduce or eliminate impacts from the proposed changes. Therefore, the costs and benefits associated with this proposed rule are considered to be so minimal as to not warrant changes to the regulatory evaluation.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items 1, 2, and 3 above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This proposed rule is necessary to improve the safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. RSPA proposes that the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. The proposals in this NPRM will impose only minimal new costs of compliance on the regulated industry and, in fact, should reduce overall costs of compliance. I hereby certify that while the proposals in this NPRM apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

Need for the NPRM. We are proposing changes to the hazard communication requirements in the HMR based on petitions for rulemaking, requests for clarification, and our own determination that clarifications and improvements may be appropriate. This action is being taken to improve safety and enhance emergency response to hazardous materials incidents.

Description of Actions. In this NPRM, we propose to amend the HMR to:

—Clarify that beeper numbers and call-back systems that require an emergency responder to wait for a return telephone call do not conform to the requirements for an emergency response telephone number on shipping papers.

—Revise certain package marking requirements to more accurately convey information about the material being transported to emergency responders, transport workers, and the general public.

—Revise the PIH labels and placards to increase the size of the skull-and-crossbones symbol.

—Permit more flexibility in color requirements for placards.

—Provide exceptions for the return transportation of rail cars that contain residues of hazardous substances so that placards and required markings need not be removed.

In addition, we are proposing several clarifications and editorial revisions to current hazard communication requirements.

Identification of potentially affected small entities. Businesses likely to be affected by the final rule are shippers and transporters of hazardous materials. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms subject to this final rule are small businesses. For the most part, these entities will incur minimal costs to comply with the proposals in this NPRM.

Reporting and recordkeeping requirements. This NPRM does not propose new reporting or recordkeeping requirements.

Related Federal rules and regulations. With respect to hazard communication requirements for hazardous materials transported in commerce, there are no related rules or regulations issued by other departments or agencies of the Federal Government.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazard communication requirements for hazardous materials transported in commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

This NPRM was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this NPRM. For example, the NPRM proposes to minimize the burden associated with the revised PIH labels and placards by providing a lengthy transition period. Other proposed changes provide clarification of certain provisions to eliminate confusion and enhance compliance. In addition, we are proposing several exceptions from current requirements to decrease compliance burdens.

Conclusion. We conclude that while this NPRM applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. The compliance costs associated with proposed requirements in this NPRM are minimal. Moreover, this NPRM should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This proposed rule does not propose any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The proposed improvements to the hazard communication system in this rule would have a net positive effect on the environment by improving response to and mitigation of incidents involving hazardous materials in transportation. We have determined that there would be no significant environmental impact associated with this proposed rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Shippers—general requirements for shipments and packagings.

In consideration of the foregoing, 49 CFR parts 171, 172 and 173 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

2. In § 171.7, in paragraph (a)(3), a new entry would be added in numerical order under the entry for American Society for Testing and Materials; and in paragraph (b), a new entry would be added in alphabetical order to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference.*

* * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
American Society for Testing and Materials	
ASTM D 4956–95 Standard Specification for Retroreflective Sheeting for Traffic Control	172.407, 172.519

(b) *List of information materials not requiring incorporation by reference.*

* * *

Source and name of material	49 CFR reference
Pantone Incorporated, 590 Commerce Boulevard, Carlstadt, New Jersey, 07072–3098; PANTONE ® Formula Guide, 2000–2001	172.407, 172.519

* * * * *

3. In § 171.14, paragraphs (a) and (b) would be removed, and new paragraphs (a) and (b) would be added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

(a) *Continued use provisions and transition dates for PIH labels.* Notwithstanding §§ 172.416 and 172.429 of this subchapter, when labels are required by subpart E of part 172 of this subchapter to be affixed to the surface of a package containing a material poisonous by inhalation—

(1) A non-permanent label (adhesive, paper, etc.), that conforms to the requirements of this subchapter in effect on October 1, 2002, may continue to be used until stocks have been depleted, or until October 1, 2004, whichever comes first; and

(2) A permanent label that conforms to the specifications in effect on October 1, 2002, that was printed, embossed, stamped, or permanently-mounted on the surface of a package prior to October 1, 2003, may continue to be used for its useful life.

(b) *Continued use provisions and transition dates for PIH placards.* Notwithstanding §§ 172.540 and 172.555 of this subchapter, when placards are required by subpart F of part 172 of this subchapter to be affixed to a bulk packaging, rail car, transport vehicle or freight container containing a material poisonous by inhalation—

(1) A non-permanent placard (*e.g.*, adhesive, tagboard) that conforms to the requirements of this subchapter in effect on October 1, 2002, may continue to be used until stocks have been depleted, or until October 1, 2006, whichever comes first; and

(2) A permanent type placard (*e.g.*, metal) that conforms to the specifications in effect on October 1, 2002 and is installed prior to October 1, 2003, may continue to be used for its useful life.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS

4. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.203, paragraph (p) would be added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(p) *Infectious substances.* If an infectious substance is a select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73, the words "Select Agent" must be entered in association with the basic description.

6. In § 172.301, paragraph (f) would be added to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(f) *NON-ODORIZED marking on cylinders containing LPG.* No person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, that contains an unodorized liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section.

7. In § 172.326, paragraph (d) would be added to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) *NON-ODORIZED marking on portable tanks containing LPG.* No person may offer for transportation or transport a portable tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section.

8. In § 172.328, paragraph (d) would be added to read as follows:

§ 172.328 Cargo Tanks.

* * * * *

(d) *NON-ODORIZED marking on cargo tanks containing LPG.* No person may offer for transportation or transport a cargo tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (b)(1) of this section.

9. In § 172.330, paragraph (c) would be added to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

* * * * *

(c) No person may offer for transportation or transport a tank car or multi-unit tank car tank containing liquefied petroleum gas (LPG) that is unodorized unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (a)(2) of this section.

10. In § 172.332, paragraphs (c)(5) and (c)(6) would be redesignated as paragraphs (c)(6) and (c)(7), and a new paragraph (c)(5) would be added to read as follows:

§ 172.332 Identification number markings.

* * * * *

(c) * * *

(5) For a POISON GAS or POISON-INHALATION HAZARD placard used to display an identification number, the lower point of the upper black square-on-point configuration above the horizontal center line may overlap, be clipped-off, or impinge on space authorized for display of an identification number on a placard, provided the identification number is legible and visible.

* * * * *

11. In § 172.336, new paragraph (b)(2) would be added to read as follows:

§ 172.336 Identification numbers, special provisions.

* * * * *

(b) * * *

(2) For any quantity of an organic peroxide, temperature controlled material required to be placarded in accordance with the requirements in § 172.504(e), Table 1, the identification number specified for the material in the § 172.101 table must be marked on each side and each end of a bulk packaging, unit load device, transport vehicle, freight container, or rail car, as specified in § 172.332.

* * * * *

12. In § 172.400, in the table in paragraph (b), the entries for "6.1" would be revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design section reference
* * * * * * *		
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter)).	POISON INHALATION HAZARD	172.429
6.1 (other than material poisonous by inhalation)	POISON	172.430
* * * * * * *		

13. In § 172.400a, paragraph (a)(1) would be revised to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(i) A cylinder or Dewar flask conforming to § 173.320 of this subchapter containing a compressed gas (Divisions 2.1, 2.2, or 2.3) that is—

(i) Carried by highway, rail, aircraft or vessel;

(ii) Not overpacked; and

(iii) Durably and legibly marked in accordance with CGA Pamphlet C–7, Appendix A (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

14. In § 172.402, paragraph (h) would be added to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(h) *Division 5.2 (organic peroxide) Materials.* Unless otherwise specified in this subchapter, a Flammable Liquid subsidiary hazard label is not required on a package containing a Division 5.2 material.

15. In § 172.407, paragraph (d)(5) would be revised and paragraphs (d)(6), (d)(7) and (d)(8) would be added to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(5) The following color standards in the Pantone® Formula Guide, as incorporated by reference in § 171.7 of this subchapter, may be used to achieve the required colors on markings and hazard warning labels and placards:

(i) Red—Pantone Color No. 186U

(ii) Orange—Pantone Color No. 151U

(iii) Yellow—Pantone Color No. 109U

(iv) Green—Pantone Color No. 335U

(v) Blue—Pantone Color No. 285U

(vi) Purple—Pantone Color No. 513U

(6) Where specific colors from the Pantone® Matching System, as incorporated by reference in § 171.7 of this subchapter, are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation must be used to ensure a proper match with the color standards in the Pantone® Color Formula Guide for colors prescribed in paragraph (d)(5) of this section.

(7) The specified label color must extend to the edge of the label in the area designated on each label, except for the CORROSIVE, RADIOACTIVE YELLOW-II, and RADIOACTIVE YELLOW-III labels on which the color must extend only to the inner border.

(8) Reflective or retroreflective materials may be used on a label if the prescribed colors, strength and durability are maintained. Retroreflective white and red Type V sheeting conforming to ASTM D 4956–95, Standard Specification for Retroreflective Sheeting for Traffic Control (incorporated by reference; *see* § 171.7 of this subchapter) may be used, as appropriate, for red and white colors on a label.

* * * * *

16. Section 172.416 would be revised to read as follows:

§ 172.416 POISON GAS label.

(a) Except for size and color, the POISON GAS label must be as follows:



(b) In addition to complying with § 172.407, the background on the Poison Gas label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 6.3 mm (0.25 inches) above the horizontal center line.

17. Section 172.429 would be revised to read as follows:

§ 172.429 Poison Inhalation Hazard label.

(a) Except for size and color, the POISON INHALATION HAZARD label must be as follows:



(b) In addition to complying with § 172.407, the background on the POISON INHALATION HAZARD label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 6.3 mm (0.25 inches) above the horizontal center line.

18. In § 172.504, in paragraph (e), the entry "6.1" in tables 1 and 2, footnote 1 to table 1, and paragraph (f)(9) would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (Hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter))	POISON INHALATION HAZARD	172.555

[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.

TABLE 2

Category of material (Hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
6.1 (other than material poisonous by inhalation	POISON	172.554

(f) * * *

(9) For Class 9, a CLASS 9 placard is not required for domestic transportation, including that portion of international transportation, defined in § 171.8 of this subchapter, which occurs within the United States. However, a bulk packaging must be marked with the appropriate identification number on a CLASS 9 placard, an orange panel, or a white square-on-point display configuration as required by subpart D of this part.

* * * * *

19. In § 172.514, paragraph (b) would be revised to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(b) Each bulk packaging that is required to be placarded when it contains a hazardous material, must remain placarded when it is emptied, unless it—

(1) Is sufficiently cleaned of residue and purged of vapors to remove any potential hazard;

(2) Is refilled, with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous; or

(3) Contains the residue of a hazardous substance in Class 9 in a quantity less than the reportable quantity, and conforms to § 173.29(b)(1) of this subchapter.

* * * * *

20. In § 172.519, paragraphs (a)(3) and (d)(3) would be revised to read as follows:

§ 172.519 General specification for placards.

(a) * * *

(3) Reflective or retroreflective materials may be used on a placard if the prescribed colors, strength and durability are maintained. Retroreflective white and red Type V sheeting conforming to ASTM D 4956–95, Standard Specification for Retroreflective Sheeting for Traffic Control (incorporated by reference; see § 171.7 of this subchapter) may be used, as appropriate, for red and white colors on a placard.

* * * * *

(d) * * *

(3) Upon visual examination, a color on a placard must fall within the—

(i) Color tolerances displayed on the appropriate Hazardous Materials Label and Placard Color Tolerance Chart (see § 172.407(d)(4)); or

(ii) The Pantone® Color Formula Guide, as incorporated by reference in § 171.7 of this subchapter, as specified for colors in § 172.407(d)(5).

* * * * *

21. Section 172.540 would be revised to read as follows:

§ 172.540 Poison GAS placard.

(a) Except for size and color, the POISON GAS placard must be as follows:



(b) In addition to complying with § 172.519, the background on the Poison Gas placard and the symbol must be white. The background of the upper diamond must be black and at least 100 mm (3.9 inches) on each side. The lower point of the upper diamond must be 30 mm (1.2 inches) above the horizontal center line. The text, class number, and inner border must be black.

22. Section 172.555 would be revised to read as follows:

§ 172.555 POISON INHALATION HAZARD placard.

(a) Except for size and color, the POISON INHALATION HAZARD placarst be as follows:



(b) In addition to complying with § 172.519, the background on the POISON INHALATION HAZARD placard and the symbol must be white. The background of the upper diamond must be black and at least 100 mm (3.9 inches) on each side. The lower point of the upper diamond must be 30 mm (1.2 inches) above the horizontal center line. The text, class number, and inner border must be black.

23. In § 172.604, paragraph (a)(2) would be revised to read as follows:

§ 172.604 Emergency response telephone number.

(a) * * *

(2) The number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of paragraph (a) of this section; and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

24. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

25. In § 173.9, paragraph (e)(1) would be revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

* * * * *

(e) * * *

(1) The fumigated lading is unloaded; or

* * * * * *

26. In § 173.29, the introductory text at paragraph (c) would be revised and paragraph (h) would be added to read as follows:

§ 173.29 Empty packagings.

* * * * *

(c) A non-bulk packaging containing only the residue of a hazardous material covered by Table 2 of § 172.504 of this subchapter that is not a material poisonous by inhalation or its residue shipped under the subsidiary placarding provisions of § 172.505—

* * * * *

(h) A package that contains a residue of a hazardous substance, Class 9, listed in the § 172.101 Table, Appendix A, Table I, that does not meet the definition of another hazard class and is not a hazardous waste or marine pollutant, may remain marked, labeled, and/or placarded in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for a hazardous substance.

27. In § 173.150, in paragraph (f)(3), the title of the section and paragraphs (vii) and (viii) would be revised and paragraphs (ix) and (x) would be added to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform with requirements of § 173.203;

(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d) of this subchapter;

(ix) Emergency response information requirements of subpart G of part 172, and

(x) Training requirements of subpart H of part 172 of this subchapter.

* * * * *

Issued in Washington, DC, on June 4, 2003, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–14583 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 68, No. 112

Wednesday, June 11, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–035–4]

Importation of *Phalaenopsis spp.* From Taiwan in Growing Media; Availability of Environmental Assessment and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for an environmental assessment for a proposal to allow orchids of the genus *Phalaenopsis* to be imported from Taiwan in approved growing media. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before July 9, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–035–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–035–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–035–3" on the subject line.

You may read any comments that we receive on this environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1998, we published in the **Federal Register** (63 FR 46403–46406, Docket No. 98–035–1) a proposal to amend the regulations in 7 CFR 319.37–8 to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported from all areas of the world in an approved growing medium subject to specified growing, inspection, and certification requirements. We accepted comments on our proposal for a total of 90 days, ending December 1, 1998.[1]

In response to comments received on the proposed rule, APHIS narrowed the application of the rule to *Phalaenopsis* spp. from Taiwan only and entered into informal section 7 consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under the Endangered Species Act. On April 7, 2003, FWS concluded the section 7 consultation process by concurring with APHIS's determination that the importation of *Phalaenopsis* spp. from Taiwan in growing media will not adversely affect federally listed or proposed endangered or threatened species or their habitats.

Upon receiving concurrence from FWS, APHIS prepared an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS" NEPA Implementing Procedures (7 CFR part 372).

On May 9, 2003, we published in the **Federal Register** (68 FR 24915, Docket No. 98–035–3) a notice announcing the availability of the environmental assessment. In that notice, we requested public comments on the environmental assessment, which is titled "Proposed Rule for the Importation of Moth Orchids (*Phalaenopsis* spp.) in Growing Media From the Republic of China (Taiwan)" and dated April 2003.

Comments on the environmental assessment were required to be received on or before June 9, 2003. We are reopening and extending the comment period on Docket No. 98–035–3 until July 9, 2003. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between June 9, 2003 (the day after the close of the original comment period) and the date of this notice.

Please note that on June 4, 2003, we made a correction to the version of the environmental assessment that had been posted on our website since May 9, 2003. This correction involved removing references to a specific document (U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Policy Analysis and Development. 2002. *PAD Response to Public Comments on NPR in Docket 98–035–1*, 8 pp.) and replacing them with references to a personal communication. This correction has no substantive bearing on the environmental assessment, and is reflected in the version currently posted on APHIS's website.

The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html*. You may request paper copies of the environmental assessment from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also

[1] The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on October 29, 1998 (63 FR 57932).

available for review in our reading room (the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 5th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14722 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance To Conduct Formative Research for Development of Nutrition Education Materials and Related Tools for Food and Nutrition Service Population Groups

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other interested parties to comment on a proposed information collection. This information collection will conduct research in support of FNS' goal of delivering science-based nutrition education to targeted audiences. From development through testing of materials and tools with the target audience, FNS plans to conduct data collections that involve formative research including focus groups, interviews (dyad, triad, telephone, etc.), surveys and web-based collection tools.

DATES: Written comments must be received on or before August 11, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Judy F. Wilson, Director, Nutrition Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1012, Alexandria, VA 22302. Comments may also be faxed to the attention of Judy F. Wilson at (703) 305–2576.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1012.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Judy F. Wilson, (703) 305–2585 or Marion Hinners, (703) 305–2116.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Formative Research for Development of Nutrition Education Materials and Related Tools for FNS Population Groups.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection.

Abstract: This information collection is based on the Child Nutrition Act of 1966, as amended, the National School Lunch Act of 1966, as amended, the Food Stamp Act of 1977, as amended, the Agriculture and Consumer Protection Act of 1973, as amended, and the Emergency Food Assistance Act of 1983, as amended. This request for approval of information collection is necessary to obtain input into the development of nutrition education interventions for population groups served by the U.S. Department of Agriculture—Food and Nutrition Service (USDA–FNS).

Diet has a significant impact on the health of citizens and is linked to four leading causes of disease, which can reduce the quality of life and cause premature death. While these diet-related problems affect all Americans, they have a greater impact on the disadvantaged populations reached by many of the FNS programs. One of FNS' goals includes improving the nutrition of children and low-income families by providing access to program benefits and nutrition education. The FNS programs include Child Nutrition, Food Distribution, Food Stamp and Supplemental Foods Programs.

The basis of our approach rests on the philosophies that all health communications and social marketing activities must be science-based, theoretically grounded, audience-driven, and results-oriented. Secondly, consumer-based health communications require a focus on specific target audiences, encouraging positive behaviors in culturally relevant ways, unique benefits and supports for adopting the new behavior, insights into the most appropriate time and place to deliver messages, and striking the right tone to enhance attention and action to the message. Interventions need to be crafted in such a way that they can be delivered through different types of media and in an array of formats for diverse audiences.

FNS initiated a nutrition education and promotion campaign, entitled Eat Smart. Play Hard.™ (the Campaign) in FY 2000 (OMB number 0584–0502). The Campaign is designed to convey science-based, behavior-focused nutrition messages about healthy eating and physical activity to children eligible to participate in FNS nutrition assistance programs and their caregivers. The messages are based on the 2000 Dietary Guidelines for Americans (DGAs) and the Food Guide Pyramid. A most recent approval was granted for information collection (OMB number 0584–0517) for four projects: Phase II of Eat Smart. Play Hard.™, Campaign Web Site Development, Cultural Adaptation of Campaign Materials for Hispanic Audiences and Dietary Guidelines Low-Literacy Materials Development. Future projects will support the Eat Smart. Play Hard.™ Campaign, which has been designated as a specific administration action in the President's Healthier US initiative.

Fundamental to FNS' success in delivering science-based nutrition messages and reaching diverse and low literacy segments of the population is obtaining qualitative feedback from key components of the target audience on the communication strategies and interventions that will be developed. This formative research is essential to advancing Eat Smart. Play Hard.™ as well as other FNS nutrition education efforts. Formative input and testing activities described will help in the development of more effective tools and communication strategies. Collection of this information will increase FNS' ability to formulate nutrition education interventions that resonate with the target population of low-income American families, who have the highest need and can derive the most benefit.

Formative research methods and information collection will include focus groups, interviews (dyad, triad,

telephone, *etc.*), surveys and web-based information gathering tools. The data obtained will provide input regarding the potential use of materials and products during both the developmental and testing stages. In order to determine future nutrition education needs, tools and dissemination strategies, key informant interviews will be conducted. This task involves collecting a diverse array of information from a variety of groups including: Perspectives from people familiar with the target audiences; the objectives of nutrition education interventions and projects; program constraints at State and local levels; and related issues. Expert opinions from program constituencies, researchers, and practitioners will be collected through interviews, surveys and other methods. FNS will also collect information regarding effective nutrition education initiatives being implemented by State agencies that administer nutrition assistance programs to address critical nutrition issues.

Findings from all data collection will be included in summary reports submitted to USDA–FNS. The reports will describe the data collection methods, findings, conclusions, implications, and recommendations for the development and effective dissemination of nutrition education materials and related tools for FNS population groups. There will be no specific quantitative analysis of data. No attempt will be made to generalize the findings to be nationally representative or statistically valid.

Respondents: Recipients and those persons eligible for FNS nutrition assistance programs, State and local staff administering FNS programs, FNS stakeholders and consumers, and other interested parties.

Estimated Number of Respondents: 14,500.

Focus Group Screeners—2800
Interview Screeners/Surveys—1000
Focus Groups—1100
Intercept Interviews—500
Dyad/Triad Interviews—100
Telephone Interviews—1000
Confidentiality Agreement—7000
Survey Instruments—500
Web-based Collections—500

Number of Responses per Respondent: One.

Estimated Time per Response:

Focus Group Screeners—10 minutes
Interview Screeners/Surveys—10 minutes
Focus Groups—120 minutes
Intercept Interviews—30 minutes
Dyad/Triad Interviews—60 minutes
Telephone Interviews—15 minutes
Confidentiality Agreement—10 minutes
Survey Instruments—30 minutes
Web-based Collections—30 minutes

Estimated Total Annual Burden on Respondents:

Focus Group Screeners—28,000 minutes
Interview Screeners/Surveys—10,000 minutes
Focus Groups—132,000 minutes
Intercept Interviews—15,000 minutes
Dyad/Triad Interviews—6,000 minutes
Telephone Interviews—15,000 minutes
Confidentiality Agreement—70,000 minutes
Survey Instruments—15,000 minutes
Web-based Collections—15,000 minutes

Public reporting burden for this collection of information is estimated to average 14,500 respondents with a total estimated burden of 306,000 minutes or 5,100 hours.

Dated: June 2, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–14692 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–021N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on June 23–24, 2003, to review and discuss the following issues: Impact of Bio-security Issues on Industry; Delivery of Training; and State Review Methods. Three subcommittees of the full committee will also meet on June 23, 2003, to work on the issues discussed during the full Committee session.

DATES: The full Committee will hold a public meeting on Monday, June 23 and Tuesday, June 24, 2003, from 8:30 a.m. to 5 p.m. Subcommittees will hold open meetings on Monday, June 23, 2003, from 7 p.m. to 9 p.m.

ADDRESSES: All Committee meetings will take place at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA; telephone (703) 837–0440. The full Committee will meet on June 23–24, 2003. A meeting agenda is available on the Internet at *http://www.fsis.usda.gov/OPPDE/nacmpi*, which is a sub-web page of the FSIS home page at *http://www.fsis.usda.gov*. Submit one original and two copies of written comments to the FSIS Docket Room, reference docket 03–021N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments may also be sent by facsimile (202) 205–0381. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for reviewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 720–2982 or e-mail *robert.tynan@fsis.usda.gov* and Sonya L. West for meeting information at (202) 720–2561, FAX (202) 205–0157, or e-mail *sonya.west@fsis.usda.gov*. Persons requiring a sign language interpreter or other special accommodations should notify Ms. West no later than June 13, 2003, at the above numbers or by e-mail. Information is also available on the Internet at *http://www.fsis.usda.gov/OPPDE/nacmpi*.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs pursuant to sections 301 (a)(4), 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat and poultry industry; State government officials; and academia. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Ms. Charlotte Christin, Center for Science in the Public Interest; Dr. James Denton, University of Arkansas; Dr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Health; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

The Committee has three subcommittees to deliberate on specific issues and make recommendations to the whole Committee.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss.

Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, the update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*.

Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on: June 6, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–14724 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal, without change, of a previously approved information collection. This information collection will provide the Forest Service with the necessary information needed to complete an Agreement to Initiate and an Exchange Agreement. The Agreement to Initiate is a written, nonbinding statement, by both the non-Federal party and the Forest Service, of their present intent to initiate and pursue a land exchange. The legally binding Exchange Agreement documents the conditions that must be met to complete the land exchange. Forest Service personnel collect the information from non-Federal land exchange parties to complete the Agreement to Initiate and the Exchange Agreement.

DATES: Comments must be received in writing on or before August 11, 2003.

ADDRESSES: All comments should be addressed to Jack L. Craven, Director, Lands Staff, Mail Stop 1124, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–1124 or e-mail: *landexchange@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Cynthia Swanson, Lands Specialist, at (202) 205–1248 or Kathleen L. Dolge, Realty Specialist, at (202) 205–1248.

SUPPLEMENTARY INFORMATION:

Background

Land exchanges are discretionary, voluntary, real estate transactions between the Secretary of Agriculture, acting by and through the Forest Service, and a non-Federal exchange party. Land exchanges can be initiated by any non-Federal party including a landowner, an agent of a landowner, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an Agreement to Initiate in accordance with Title 36, Code of Federal Regulations (CFR), section 254.4. This document specifies the preliminary and non-binding intentions of the non-Federal land exchange party and of the Forest Service in pursuing a land exchange. The Agreement to Initiate can contain such information as the description of properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding Exchange Agreement pursuant to 36 CFR 254.14. The Exchange Agreement documents the conditions, which must be met to complete the exchange and can contain such information as identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, and all other terms and conditions necessary to complete an exchange.

The Forest Service collects the information from the non-Federal party in order to complete the Agreement to Initiate and the Exchange Agreement. Data from this information collection can be unique to each land exchange and is not available from other sources.

Description of Information Collection

1. *Title:* Agreement to Initiate.
OMB Number: 0596–0105.
Expiration Date of Approval: June 30, 2003.
Type of Request: Extension of a previously approved information collection.
Abstract: The Agreement to Initiate contains such information as the description of the properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item. The information is collected by Forest Service personnel by phone or meeting with the exchange party and is used to complete the Agreement to Initiate.
Estimate of Burden: 1 hour.
Type of Respondents: Non-Federal land exchange party.
Estimated Number of Respondents: 100.
Estimated Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 100 hours.

Data from this information collection is used to facilitate a mutually beneficial land exchange between the Forest Service and a non-Federal party and is not available from other sources.

Description of Information Collection

2. *Title:* Exchange Agreement.
OMB Number: 0596–0105.
Expiration Date of Approval: June 30, 2003.

Type of Request: Extension of a previously approved information collection.

Abstract: The Exchange Agreement contains such information as the identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests. This information is collected by Forest Service personnel by phone or meeting with the exchange party and used to complete the Exchange Agreement.

Estimate of Burden: 1 hour.

Type of Respondents: non-Federal land exchange partners.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Data from this information collection is used to facilitate a mutually beneficial land exchange between the Forest Service and a non-Federal party and is not available from other sources.

Comment Is Invited

The agency invites comments on the following: (a) The necessity of the proposed collection of information for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 3, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–14627 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland Carbon County, WY, Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare and Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of a site-specific proposal to reduce the spread of dwarf mistletoe and mountain pine beetle in area lodgepole pine stands, increase patch size of forested areas that have had past harvest, improve resiliency and reduce susceptibility to future disease and insect attack, salvage fire damaged trees, and promote and maintain area aspen and ponderosa pine stands within the Blackhall-McAnulty Analysis Area of the Brush Creek/Hayden Ranger District of the Medicine Bow-Routt National Forests within Carbon County, Wyoming, using a combination of clearcutting and partial harvest treatments.

The proposal also includes: prescribed fire to improve forage for big game and livestock, boundary treatments to reduce hazardous fuels on National Forest adjacent to private land, watershed restoration projects, improvement of the Big Creek Trailhead, and travel management within this portion of the Sierra Madre Range.

DATES: The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during August 2003. At that time, the EPA will publish a Notice of Availability (NOA) of the draft EIA in the **Federal Register**. The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is important that those interested in the management of this area comment at that time.

The final EIS is expected to be available in November 2003. In the final EIS, the Forest Service will respond to any comments received during the public comment period that pertain to the environmental analysis. Those comments and the Forest Service responses will be disclosed and discussed in the final EIS and will be considered when the final decision about this proposal is made.

ADDRESSES: Send written comments to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331. Electronic Mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250. Telephone: (307) 326–2518.

FOR FURTHER INFORMATION CONTACT: Mail correspondence to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, (telephone (307) 326–2518), or Scott Armentrout, District Ranger, Brush Creek-Hayden Ranger District, PO Box 249, Saratoga, WY 82331, (telephone (307) 326–5250). Electronic mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to improve the health and resiliency of area forests to reduce the current outbreak of mountain pine beetle and to decrease their susceptibility to insects and disease, maintain and restore aspen and ponderosa pine to its historic prominence, improve wildlife habitat capability, minimize human-caused soil erosion, reduce non-native cheatgrass in the area, and treat vegetation along portions of the Forest boundary to reduce the wildfire hazard to adjacent private land and structures.

Proposed Action

The proposed action includes commercial timber sales, mountain pine beetle treatments, prescribed fire, hazardous fuels reduction adjacent to private land, precommercial thinning, travel management, trailhead improvement, and watershed restoration.

Possible Alternatives

1. No action
2. Proposed Action with less road decommissioning
3. No clearcutting
4. Watershed restoration only

Background Information

The Blackhall-McAnulty Analysis combines projects that were previously identified on the Schedule of Proposed Actions: The Blackhall Timber Sale, the McAnulty/Beaver Creek Timber Sale, the McAnulty 2 Fuels Management project, and the Sierra Madre Travel Management Analysis. Comments submitted in response to any of these projects previously will be considered as part of this analysis.

Responsible Official

Mary Peterson, Forest Supervisor, USDA Forest Service, Medicine Bow-Routt National Forest, 2468 Jackson Street, Laramie, Wyoming 82070, is the official responsible for making the decision on this action. She will document her decision and rationale in a Record of Decision.

Nature of Decision To Be Made

The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will include a determination whether or not to implement the proposed action or another alternative.

Scoping Process

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.

The Forest Service is soliciting comments during the scoping phase of the environmental analysis process from Federal, State and local agencies, Indian Tribes, and organizations and individuals who may be interested or affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of the issues to be analyzed in detail.
3. Elimination of non-significant issues, issues addressed by previous environmental analyses, and issues not within the scope of this decision.

Public Involvement

Public scoping describing the Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management was initiated on April 10, 2003. Comments from scoping efforts will be reviewed to identify potential issues from this analysis. While comments are welcome at any time, comments received within 30 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. As previously mentioned, comments may be sent by electronic mail (e-mail) to *tdelay@fs.fed.us*.

Written comments may be mailed to the Brush Creek/Hayden Ranger District, P.O. Box 249, Saratoga, WY 82331, Attention: Terry DeLay. Please reference the *Blackhall-McAnulty Timber Sale, Prescribed Burn and Travel Management* on the subject line. The name and mailing address of the commenter should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

Preliminary Issues

The following potential issues and concerns were identified through previous internal and external scoping: (1) Clearcutting, (2) cumulative effects/habitat and wildlife diversity/fragmentation, (3) forest insects and diseases, and (4) watershed restoration/travel management.

Release of Names

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Action publishes the notices of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised during the draft environmental impact statement stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points.

Dated: June 4, 2003.

Mary H. Peterson.

Forest Supervisor.

[FR Doc. 03–14672 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on July 10, 2003, from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger district, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: e-mail *dmcintosh@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the March 20, 2003 Meeting; (3) Finalize business for 2002; (4) Wrap up Discussion on Lake/Mendocino RAC; (5) Soda Creek Stream Condition Improvement Discussion; (6) Title II funds available for Projects for 2003; (7) Recommend Projects for 2003; (8) Discuss Project Cost Accounting USFS/County of Lake; and (9) Pubic Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 4, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–14783 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by August 11, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Type of Request: Extension of a currently approved information collection.

Abstract: This program is necessary in order for the Rural Utilities Service (RUS) to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. This information is also used by RUS to determine that the Government's security for loans made by RUS is reasonable, adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9.17 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 8.12.

Estimated Total Annual Burden on Respondents: 3,721.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 5, 2003.

Roberta D. Purcell,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–14720 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lawrence County Generation Plant; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and 7 CFR Part 1794, Environmental Policies and Procedures, has made a finding of no significant impact (FONSI) with respect to a project proposed by Hoosier Energy Rural Electric Cooperative, Inc., (Hoosier Energy) located in Bloomington, Indiana, and Wabash Valley Power Association, Inc. (Wabash Valley), located in Indianapolis, Indiana. The proposed project will have six units of natural gas fired simple-cycle combustion turbines of 43 megawatts (MW) each for a total of 258 MW. The proposed plant will be located in Lawrence County, Indiana. Wabash Valley applied for assistance from RUS to finance the construction of the proposed project.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414, or e-mail: *nislam@rus.usda.gov*. Information is also available from Ms. Sheila M. Wheeler, Burns & McDonnell Engineering Company, Inc., 9400 Ward Parkway, Kansas City, Missouri 64114, telephone: (816) 822–3250, or e-mail: *swheele@burnsmcd.com*.

SUPPLEMENTARY INFORMATION: Rural Utilities Service, in accordance 7 CFR 1794.42, published a notice of availability of the environmental assessment (EA) for the proposed project and solicited public comments. Hoosier Energy and Wabash Valley also published notices of availability of the EA in local newspapers seeking comments on the proposed project. Notices were published twice in the Bedford Times Mail and Mitchell Tribune, a daily and weekly newspaper, respectively.

Agencies that reviewed and provided comments on the EA are (1) Indiana Department of Environmental Management (IDEM); (2) U.S. Environmental Protection Agency (EPA); (3) Hoosier National Forest (National Forest), U.S. Department of Agriculture; (4) U.S. Army Corps of Engineers (COE), Louisville District, and (5) Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology. Appropriate responses to the above agency comments are presented in the FONSI statement prepared for the project. Environmental coordination will continue with IDEM and other agencies as appropriate on various environmental issues during planning and construction of the project. Hoosier Energy and Wabash Valley have already secured or will secure the following approval or permits prior to initiation of construction of the project as needed: (1) A storm water permit; (2) a wastewater treatment facility construction permit; (3) a permit to construct in a floodway, and (4) a National Pollution Discharge Elimination System permit.

Hoosier Energy and Wabash Valley agreed to follow all agency recommendations and mitigation measures discussed in the EA. Based on the EA, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air and water quality, and noise. RUS has also determined that there would be no disproportionately high and adverse human health or environmental effects on minority populations and low-income populations as a result of construction of the project. RUS has concluded that the impacts of the proposed project would not be significant and the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

Copies of the EA and FONSI can be reviewed at RUS at the address provided in this notice, at the headquarters of Hoosier Energy, 7398 North State Road 37, Bloomington, Indiana 47402, telephone: (812) 876–0374, and Wabash Valley, 722 North High School Road, Indianapolis, Indiana 46214, telephone: (317) 481–2842, and also at Bedford Public Library, 1323 K Street, Bedford, Indiana 47421, telephone: (812) 275–4471, and Mitchell Community Public Library, 804 Main Street, Mitchell, Indiana 47446, telephone: (812) 849–2412.

Any final action by RUS related to this proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: June 5, 2003.

Alfred Rodgers,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 03–14721 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Public Telecommunications Facilities Program (PTFP) Grant Monitoring.

Form Number(s): None.

OMB Approval Number: 0660–0001.

Type of Review: Regular submission.

Burden Hours: 6,779.

Number of Respondents: 1,950.

Average Hours Per Response: 28 hours for online responses and 39 hours for paper responses.

Needs and Uses: The Public Broadcasting Act authorizes grants to be awarded for the planning and construction of public telecommunications facilities. NTIA/PTFP must collect construction schedules/planning timetables that gives NTIA/PTFP the ability to monitor a project. Quarterly performance reports are required to alert NTIA/PTFP if the project is falling behind in its completion. The close-out reports ensure that Federal funds were expended in accordance with the grant award. Annual reports help maintain and protect the Federal interest for the statutorily-specified 10-year period.

Affected Public: Not-for-profit institutions; State, Local, or Tribal government.

Frequency: Quarterly, annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 6, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14794 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

[I.D. 060603A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: American Fisheries Act: Vessel and Processor Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0393.

Type of Request: Regular submission.

Burden Hours: 42.

Number of Respondents: 20.

Average Hours Per Response: 2 hours for an application for an AFA catcher vessel permit; 30 minutes for application for an AFA Permit for Replacement Vessel; 2.5 hours for an application for an AFA Inshore Catcher Vessel Cooperative Permit; 2 hours for an application for an AFA mothership permit; and 2 hours for an application for an AFA inshore processor permit.

Needs and Uses: The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock

in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA. All AFA vessel and processor permits have no expiration date and will remain valid indefinitely unless revoked by NOAA. Inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock total allocated catch (TAC) are required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit will be in effect. The information must be collected once a year because NOAA must identify the universe of participating vessels and processors prior to the start of each fishing year in order to assign allocations of pollock TAC to eligible groups of vessels that form cooperatives.

Affected Public: Business or other for-profit organizations.

Frequency: Annually or on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14795 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 060603C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Estuary Restoration Act Database Projects.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 1,000.

Average Hours Per Response: 4 hours for a new project; and 2 hours for updating an existing project.

Needs and Uses: Collection of estuary habitat restoration project information (e.g., location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act of 2000. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. Estuary habitat restoration project information will be submitted by habitat restoration project managers through an interactive Web site, and will be accessible to the public via Internet for data queries and project reports.

Affected Public: Not-for-profit institutions; business or other for-profit organizations; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14797 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

[I.D. 060603D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0411.

Type of Request: Regular submission.

Burden Hours: 20,535.

Number of Respondents: 4,111.

Average Hours Per Response: 8 hours for a State objection or concurrence letter for a consistency certification or determination; 4 hours for a State request for review of unlisted activities; 1 hour for public notice requirements for a project; 4 hours for a request for remedial action of a supplemental review; 1 hour for coordination of a listing notice; 2 hours for a request for Secretarial mediation; and 202 hours for an appeal. These are average estimates and burden can significantly vary based on the individual situation.

Needs and Uses: A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with the CZMA requirements. The requirements are detailed in 15 CFR Part 930. The information will be used by coastal States with Federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a State's coastal zone are consistent with the States' programs.

Affected Public: State, Local, or Tribal Government; individuals or households; and business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14798 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–001]

Potassium Permanganate from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1009 or (202) 482–4406, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On February 26, 2002, the Department published a notice of initiation for the administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China, covering the period January 1, 2001, through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780. On February 18, 2003, the Department published the preliminary results of its review. *See Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 7768. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days after publication of the preliminary results. The final results are currently due on June 18, 2003.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than August 17, 2003. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: June 5, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–14780 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–023.

Applicant: University of Missouri—Kansas City, Kansas City, MO 64110.

Instrument: OptoTOP HE 3–D Digitizing System.

Manufacturer: Breuckmann GmbH, Germany.

Intended Use: The instrument is intended to be used to digitally image and measure the skeletal remains and teeth of extant and fossil mammals. Research is aimed to learn more about the patterns and processes of mammalian evolution by studying the three-dimensional form of the skeletal and dental anatomy. The specimens studied will be preserved specimens housed in the collections of various natural history museums. Three-dimensional, digital images will be collected and stored in a digital archive. Using a computer graphics workstation, the images will be subjected to morphometric analyses of variation in size and shape.

Application accepted by Commissioner of Customs: May 20, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14777 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Berkeley; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–019.

Applicant: University of California—Berkeley, Berkeley, CA 94720–2020.

Instrument: Fiber Optical Coherence Tomography Apparatus.

Manufacturer: Institute of Applied Physics RAS, Russia.

Intended Use: See notice at 68 FR 23979, May 6, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides suitability for studying the smaller eyes of animal rather than human subjects by allowing (1) use of a stereotaxic apparatus for head stabilization, (2) higher in-depth and transverse resolutions and (3) the option of sequential sampling. The National Institutes of Health advises in its memorandum of April 28, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14778 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–017.

Applicant: University of California, San Diego, La Jolla, CA 92093–0658.

Instrument: Laser Capture Microdissection System.

Manufacturer: Molecular Machines & Industries AG, Switzerland.

Intended Use: See notice at 68 FR 23978, May 6, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) Minimal damage to cellular structures during laser microdissection of small tissue samples and (2) superior optics due to the optical geometry of the operating arrangement. The National Institutes of Health advises in its memorandum of April 28, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–14779 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060603B]

Proposed Information Collection; Comment Request; Gulf of Mexico Shrimp Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Travis at 727–570–5335 or at *Mike.Travis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA proposes to collect information on fishing vessel expenses and earnings on a voluntary and continuous basis in the Gulf of Mexico offshore shrimp fishery. The information will be used to conduct socioeconomic analyses that will improve fishery management in that fishery. It will be used in conjunction with catch and effort data already being collected in this fishery as part of federal and state dealer reporting programs, as well as Coast Guard and federal and state fishing permit data on vessel characteristics, to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations.

II. Method of Collection

The information will be collected through interviews.

III. Data

OMB Number: 0648–0476.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Response: 67 minutes.

Estimated Total Annual Burden Hours: 558.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–14796 Filed 6–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the Technology and Privacy Advisory Committee (TAPAC)

AGENCY: DoD.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a forthcoming open meeting of the Technology and Privacy Advisory Committee. The purpose of the meeting is for presentations of interest and discussion concerning the legal and policy considerations implicated by the application of advanced information technologies to counter-terrorism and counter-intelligence missions. Due to administrative error, this notice is given less than 15 days before the meeting date.

DATES: Thursday, June 19, 2003, 9 a.m. to 5 p.m.

ADDRESSES: Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA, 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Davis, TAPAC Executive Driector, The Pentagon, Room 3E1045, Washington, DC 20301–3330, Telephone 703–695–0903.

Dated: June 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14811 Filed 6–6–03; 3:24 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Transformational Communications Advanced Technology Study. The purpose of the meeting is to conduct a review of the study. This meeting will be closed to the public.

DATES: June 5–6, 2003.

ADDRESSES: Bldg 201, Kirtland AFB NM 87117.

FOR FURTHER INFORMATION CONTACT: Lt Col. John J. Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–14633 Filed 6–10–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the Transfer of Honey Lake at Sierra Army Depot (SIAD), Herlong, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the EA and FNSI for the proposed action to transfer Honey Lake (property made available by the realignment of SIAD) in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

DATES: Submit comments on or before July 11, 2003.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. David Bauman, U.S. Army Corps of Engineers, Sacramento District, ATTN: CESPK–PD–R, 1325 J Street, Sacramento, CA 95814 or via email at *David.J.Bauman@usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. David Bauman at (916) 557–5256.

SUPPLEMENTARY INFORMATION: The proposed action evaluated in the EA is the transfer of property not required by the Army for its mission at Sierra Army Depot, Herlong, California. The 62,090.5 acres of Honey Lake comprise the excess property addressed in the EA.

The proposed transfer of Honey Lake to a non-Federal entity is the latest in a series of BRAC actions at SIAD. The installation has disposed of, or is in the process of disposing of, four other parcels located on the Main Depot. These include Herlong, Southeast Corner, East Shore, and the Airfield. These disposal actions at SIAD are described in the EA for the disposal and reuse of the BRAC parcels at Sierra Army Depot, California (February 1998).

Alternatives evaluated in the EA for the transfer of Honey Lake include: (1) No action, (2) transfer to the State of California or its designee, and (3) conveyance to a non-profit natural resources conservation organization. Based on the analysis in the EA, it has been determined that the transfer of Honey Lake would have no significant direct, indirect, or cumulative effects on the quality of the natural or human environment. Because no significant environmental effects would result from the transfer of Honey Lake, an Environmental Impact Statement will not be prepared.

The Army will not initiate the transfer action for 30 days following the completion of the EA and FNSI, and publication of a public notice in a local newspaper. This EA will be distributed for public review and comment, and will be available for public review at the following locations: Sierra Army Depot, Building 1, Herlong, California 96113, (530) 827–5353; Susanville Public Library, 1618 Main Street, Susanville, CA 96130, (530) 251–8127; Reno Public Library, 301 Center Street, Reno, NV 89501, (775) 327–8300; Division of Toxic Substance Control (DTSC), 8800 Cal Center Drive, Sacramento, CA 95826, (916) 255–6684.

Dated: June 6, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 03–14810 Filed 6–10–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 11, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 5, 2003.

Angela C. Arrington,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: National Assessment of Educational Progress, 2003–2004 Long Term Trend.

Frequency: One-time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 85,000. *Burden Hours:* 21,250.

Abstract: This clearance request is for the background questions for the National Assessment of Educational Progress Long-Term Trend. These are a series of surveys that have been conducted since 1986. This assessment will be conducted in 2003/2004. Since bridging studies will be required to relate the existing format to the newly adopted format, some questionnaires will still consist of all the existing questions, thus all are being submitted for clearance. In these assessments, students 9, 13 and 17 years of age are assessed.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://ediesweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2250. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14725 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 11, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 5, 2003.

Angela C. Arrington,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: State and Local Implementation of IDEA '97.

Frequency: Annually; Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 5,219. *Burden Hours:* 14,879.

Abstract: The Office of Special Education Programs (OSEP) is conducting a five-year study to evaluate the state and local impact and implementation of the Individuals with Disabilities Education Act (IDEA) of 1997. The evaluation will provide information on the types and impacts of policies and practices engaged in by states, school districts, and schools to implement the provisions of IDEA '97, particularly with regard to nine key issues identified by the law. OSEP is engaging in this evaluation to report to Congress, in accordance with the provisions of IDEA '97 (Sec. 674). Clearance is sought for multiple instruments. Respondents will be state special education directors, district special education directors, and school principals.

Requests for copies of the proposed information collection request may be accessed from *http://ediesweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2272. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *Sheila Carey at her e-mail address Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14726 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Migrant Education Formula Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Department announces interpretations of section 1303(a) and (b) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, under which the Department establishes rules for allocating Migrant Education Program funds to States, the District of Columbia, and the Commonwealth of Puerto Rico for Fiscal Year (FY) 2003.

DATES: Effective date: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E315, FOB–6, Washington, DC 20202–6135. Telephone: (202) 260–1394, or via Internet: *james.english@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

The Migrant Education Program (MEP), authorized in Title I, Part C, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), is a State-operated and State-administered formula grant program. It provides assistance to State educational agencies (SEAs) to support high-quality and comprehensive educational programs that provide migratory children appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet.

Through this notice, we clarify our interpretations of the formula for awarding FY 2003 MEP funds to States, including the District of Columbia and the Commonwealth of Puerto Rico (Puerto Rico). Under these interpretations, because the overall amount of MEP funds available for allocation to States (including the District of Columbia and Puerto Rico) in FY 2003 will be equal to the amount allocated in FY 2002, the MEP formula amounts to be awarded to each State (including the District of Columbia and Puerto Rico) for FY 2003 will be equal to the amounts awarded to each in FY 2002.

The State Formula. Section 1303(a) and (b) of the ESEA provides the statutory formula under which the Department awards MEP funds to States, including the District of Columbia and Puerto Rico. Section 1303(a)(1) provides a formula for the distribution of FY 2002 MEP funds to all States "other than the Commonwealth of Puerto Rico." This formula relies upon an estimate of the full-time-equivalent (FTE) number of migrant children in each State multiplied by "40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States."

Section 1303(a)(2) also stipulates that, except as provided under sections 1303(a)(2)(ii) and (b), the amount that each State "other than the Commonwealth of Puerto Rico" is entitled to receive in FY 2003 and subsequent years is the sum of—

1. The amount of MEP funds the State received for FY 2002, and

2. The amount (of those funds, if any, that may be appropriated for any subsequent fiscal year in excess of the FY 2002 appropriation level) determined by multiplying the sum of (i) the number of identified eligible migratory children, aged 3 through 21, who during the prior year resided in the State, and (ii) the number of such children who received MEP services in a State summer or intersession program, by 40 percent of the average per-pupil expenditure in the State, except that the amount so determined may not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

For Puerto Rico, section 1303(b)(1) provides that each year the Commonwealth is entitled to receive an award in the amount "determined by multiplying the number of children who would be counted under subsection (a)(1)(A) if such subsection applied to the Commonwealth of Puerto Rico by the product of—

(A) the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

(B) 32 percent of the average per-pupil expenditure in the United States."

In addition, section 1303(b)(2) provides an increasing minimum percentage to be used in paragraph (b)(1)(A) for FYs 2002 through 2005 and succeeding years. This amount is 77.5 percent for FY 2002, 80 percent for FY 2003, 82.5 percent for FY 2004, and 85 percent for FYs 2005 and beyond.

Section 1303(b)(3) provides that, if application of paragraph (b)(2) for any fiscal year would cause any State to receive less than it received for the preceding fiscal year, the percentage described in paragraph (b)(1)(A) used for Puerto Rico's allocation for that fiscal year is to be the greater of the actual percentage in paragraph (b)(1)(A) for that fiscal year or the percentage used for the preceding fiscal year.

Finally, section 1303(c) of the ESEA requires the Department to ratably reduce MEP grant awards made to all States (including Puerto Rico) if "the amount appropriated for these grants is insufficient to pay in full the amounts for which all States are eligible."

FY 2002 MEP Awards. The amended ESEA established very clear procedures for determining the amount of FY 2002 MEP funds the Department provided to each State, including Puerto Rico. It required the Department to provide to all States (section 1303(b)(1)(A)) and to Puerto Rico (section 1303(b)(1)) an FY 2002 award derived by multiplying the total of the State's FTE count of migratory children by the appropriate per-pupil-expenditure amount identified in section 1303(a)(1)(B) and 1303(b)(1)(A) and (2), respectively. As the FY 2002 appropriation was insufficient to make awards to all States and Puerto Rico in these amounts, the Department then applied the ratable reduction provision in section

1303(c)(1) to determine the actual size of the FY 2002 MEP grant awards.

FY 2003 MEP Awards. Section 1303 is far less clear about how the Department is to determine the size of FY 2003 MEP allocations for all States (including Puerto Rico). Because the amount available for FY 2003 awards is no greater than the amount that was available for FY 2002 MEP awards, section 1303(a)(2)(A)(i)(I) provides that, except as is required by section 1303(b) to allocate funds to Puerto Rico, each State other than Puerto Rico is generally entitled to receive the amount of MEP funds that the State received for FY 2002.

At the same time, section 1303(b) fails to establish a clear and consistent method to calculate Puerto Rico's allocation for FY 2003. Section 1303(b)(1) and (b)(2) seems to establish an entitlement for Puerto Rico based on multiplying an FTE count described in section 1303(a)(1)(A) and an adjusted State per-pupil expenditure (SPPE) amount determined by sections (b)(1)–(3). However, the law is unclear as to whether the FTE data and/or the SPPE data in question should be frozen at the FY 2002 level or adjusted annually. In addition, it is unclear as to whether any of these options make sense in light of the fact that NCLB changed the funding formula for all other States starting in FY 2003, specifically to move toward use of more accurate and less burdensome actual counts of migrant children and away from the outdated FTE counts. [**Note:** The FTE counts are outdated because they are calculated using adjustment factors that are based on State data collected in 1994.]

Regardless of how Puerto Rico's entitlement is calculated, it is also unclear how to apply the ratable reduction in section 1303(c)(2) consistently across all States and Puerto Rico when, as in FY 2003, the appropriation falls short of the entitlements for all States and Puerto Rico. Section 1303(a)(2) provides that, in general, the entitlement for all States but Puerto Rico is their actual FY 2002 award amounts, which already went through a ratable reduction in FY 2002. However, under section 1303(b), Puerto Rico's FY 2003 entitlement is not tied to its actual FY 2002 award amount and, thus, never went through an initial ratable reduction in FY 2002. The process of calculating Puerto Rico's FY 2003 entitlement amount, therefore, is inconsistent with the process for calculating the entitlements for all the other States. If the ratable reduction in section 1303(c) is then applied to all States and Puerto Rico in the same manner, the amount Puerto Rico would be entitled to receive for FY 2003 would be the amount it would have been entitled to receive in FY 2002 had there been *no* ratable reduction, *increased* by a 2.5 percent reduction in the gap between its SPPE and the lowest SPPE of any of the 50 States. This would mean that the FY 2003 allocations for all States but Puerto Rico would be affected by two ratable reductions from the amount of FY 2002 MEP funds to which they otherwise would have been entitled—one for FY 2002 and another for FY 2003—while Puerto Rico's FY 2003 allocation would be affected by a ratable reduction only for FY 2003. However, interpreting the statute this way would result in a substantial increase in the amount of FY 2003 MEP funds that Puerto Rico would receive, at the expense of the other States.

These kinds of anomalies, however, are not necessary. In particular, one also can interpret sections 1303(b)(1) and 1303(a)(2) to mean that, for FY 2003 and subsequent years, the amount of MEP funds for which Puerto Rico and every other State may apply is to be based on the same State migrant FTE counts—and hence the same ratable-reduction factor—that the Department applied when it calculated the FY 2002 MEP awards. Such an interpretation of the MEP statutory formula seems to make the most sense programmatically, and to comport best with what we believe is Congress' intent.

There is no legislative history to suggest that Congress intended that the Department adopt an interpretation of the MEP formula under which Puerto Rico would receive a substantial increase of MEP funds from FY 2002 to FY 2003—an increase that, because the MEP is funded for FY 2003 at a level that would not permit the maximum formula-based allocations to States, would have the effect of reducing every other State's award proportionately. Rather, Congress appears to have intended that Puerto Rico instead benefit from the gradual narrowing of the per-pupil expenditure gap, as provided in section 1303(b)(2). Narrowing of this gap would result in increases in the size of Puerto Rico's MEP allocation commensurate with increases in appropriations for the MEP.

We, therefore, interpret sections 1303(b)(1), which requires using "the number of children counted under subsection (a)(1)(A)," to mean that the FY 2003 MEP award to Puerto Rico, like the FY 2003 award to all other States, will be based on the FTE number of migratory children counted for purposes of the FY 2002 award under section 1303(a)(1). This reading of section 1303(b)(1) is consistent with section 1303(a)(2), which, by providing that each State's base amount of MEP funds in FY 2003 and subsequent years is the amount that the State received for FY 2002, in effect incorporates into the base amount for FY 2003 the FTE number of that State's migratory children used for the FY 2002 allocation under section 1303(a)(1). Any adjustment in FY 2003 MEP funds for Puerto Rico would be due solely to the increase in the minimum per-pupil expenditure adjustment factor authorized in section 1303(b)(2) and (b)(3). However, paragraph (b)(3) specifically provides that this increase will not occur if it decreases any State's MEP award below the amount it received during the previous fiscal year. Therefore, because the amount available for FY 2003 MEP awards is the same as the amount available for FY 2002 MEP awards, the Department will continue to apply for FY 2003 the minimum per-pupil expenditure adjustment factor for Puerto Rico of 77.5 percent that paragraph (b)(2) required to be used for FY 2002.

In short, based on the above interpretations, and because the overall amount of MEP funds available for award to States in FY 2003 is equal to the amount awarded for FY 2002, the Department will make available to all States, including Puerto Rico, FY 2003 MEP awards that are identical in size to what was awarded to them in FY 2002.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, under 5 U.S.C. 553(b)(A) the Secretary is not required to offer the public an opportunity to comment on an interpretative rule. These rules advise the public of our interpretation of sections 1303(a) and (b) of ESEA, as amended. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required. For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(2).

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document in text at the following site: *http://www.ed.gov/offices/OESE/OME/index.html*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children)

Dated: June 5, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–14717 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133B–1, 84.133B–5, 84.133B–7]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice Inviting Applications for Fiscal Year (FY) 2003; Correction

SUMMARY: On May 29, 2003 a notice inviting applications for new awards for Rehabilitation Research and Training Centers (RRTCs) for fiscal year (FY) 2003 was published in the **Federal Register** (68 FR 32023).

On page 32023, in the table, for 84.133B–5 Community Integration Outcomes, the "Estimated available funds" figure reads "2,400,000" and the "Maximum award amount (per year)" figure reads "600,000". These figures, respectively, are corrected to read "3,000,000" and "750,000".

On page 32023, in the table, for 84.133B–7 Health and Function, the "Estimated available funds" figure reads "200,000" and the "Maximum award amount (per year)" figure reads "$600,000". These figures, respectively, are corrected to read "5,600,000" and "800,000".

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: June 6, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–14784 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.341]

Community Technology Centers Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003; correction.

SUMMARY: On June 3, 2003 a notice inviting applications for new awards for the Community Technology Centers Program for FY 2003 was published in the **Federal Register** (68 FR 33321).

On page 33323, in column one, the "Deadline for Transmittal of Applications" date reads "June 30, 2003" and the "Deadline for Intergovernmental Review" date reads "August 29, 2003". These dates, respectively, are corrected to read "July 7, 2003" and "September 5, 2003".

FOR FURTHER INFORMATION CONTACT: If you need further assistance and need to speak with someone in the CTC program, you may contact Gisela Harkin by phone at (202) 205–4238, by mail at 330 C Street, SW., Room 4324, Washington, DC 20202, or via e-mail at *commtech.center@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7263–7263b.

Dated: June 6, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–14718 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Written Findings and Compliance Agreement With the District of Columbia Public Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about compliance. On March 29, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered a compliance agreement with the District of Columbia Public Schools (DCPS). According to section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Sue Rigney, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 3C139, Washington, DC 20202–6132. Telephone: (202 260–0931).

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **SUPPLEMENTARY INFORMATION.**

Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards, aligned with its content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

DCPS submitted, and the Department approved, evidence that it has content standards and performance descriptors in at least reading/language arts and mathematics. In October 2000, DCPS submitted evidence of its final assessment system and performance standards. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that DCPS' proposed final assessment system and performance standards did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law" applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

20 U.S.C. 1234c(a)(1) through (4)

In a letter dated June 20, 2001, to Dr. Paul L. Vance Superintendent of Schools for the District of Columbia, the 3 Acting Deputy Assistant Secretary notified DCPS that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means for bringing about such compliance.

On March 29, 2002, the Assistant Secretary issued written findings, holding that compliance by DCPS with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its assessment system for peer review in October 2000, DCPS was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, DCPS administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps DCPS has already taken to comply, its commitment of resources, and the plan it has developed for further action agreement sets out the action plan that DCPS must meet to come into compliance with the Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely DCPS' progress in meeting terms of the compliance agreement. The Superintendent of DCPS, Dr. Paul L. Vance, signed the Agreement on March 28, 2002 and the Assistant Secretary signed it on March 29, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2) the text of the Assistant Secretary's written 2002 findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in Text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202 512–1530).

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available on GPO access at *http//www.access.gpo.gov/nara/index.html.* (Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: June 5, 2003.

Eugene W. Hickok,

Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the District of Columbia Public Schools (DCPS) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for DCPS to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that DCPS failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory time frame.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with DCPS to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, DCPS will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standard. By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: Grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.

20 U.S.C. 6311(b)(3) [1]

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance is genuinely not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings together with the substance of any compliance agreement, in the **Federal Register**. (20 U.S.C. 1234f(b)(2)).

A compliance agreement must set forth an expiration date later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements (20 U.S.C. 1234f(c)(1)). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect (20 U.S.C. 1234f(c)(2)). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously (20 U.S.C.1234f(d)).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and DCPS is appropriate, the Assistant Secretary must first determine whether compliance by DCPS with the Title I standards and assessment requirements is genuinely not feasible until a future date (20 U.S.C. 1234f(b)). The second issue that the Assistant Secretary must resolve is whether DCPS will be able, within a period of up to three years to come into compliance with the Title I requirements. Not only must DCPS come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible then a compliance agreement between the Assistant Secretary and DCPS would not be appropriate.

B. DCPS Has Failed To Comply Substantially With Title I Standards and Assessment Requirements.

In October 2000, DCPS submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that DCPS' proposed final assessment system did not meet a number of the Title I requirements Specifically the Acting Deputy Assistant Secretary determined that DCPS must do the following:

- Develop or select an assessment system that represents the full range of the DCPS content standards in at least reading/language arts and mathematics at the benchmark grades.
- In addition, DCPS must document the alignment of the assessments with DCPS' content and performance standards.
- Complete the creation of DCPS' performance standards by identifying the scores on the assessments that define each of DCPS' performance levels.
- Provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with DCPS' use of the results.

[1] On January 8, 2002, the No Child Left Behind Act of 2001 reauthorized Title I of the Elementary and Secondary Education Act (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

• Establish assessment procedures and reports that include all students with disabilities in DCPS' assessment system, including completion of an alternate assessment; include the test results for these students in DCPS' school accountability measures.

• Establish assessment procedures to maximize participation of limited English proficient (LEP) students in the assessment system and include test results for these students in DCPS' school accountability measures and determine the practicability of administering a native language version of DCPS' assessments and include the results in the accountability system.

• Monitor school-level decisions regarding participation in the alternate assessment or exemptions based on limited English proficiency to ensure consistency across schools and over time.

• Provide to the Department accurate enrollment, participation, and exclusion data; report school-level results for all students tested; and base school accountability measures on all students.

• Develop and disseminate annual school reports that display results for all students, disaggregated by gender, major racial and ethnic groups, LEP status, migrant status students with disabilities compared to non-disabled students, and economically disadvantaged students compared to non-disadvantaged students.

• Modify individual student reports to reflect DCPS' performance standards when the standards are completed.

C. DCPS Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under the Title I statute, DCPS was required to implement a final assessment system no later than the 2000–2001 school year (20 U.S.C. 6311(b)(6)). DCPS submitted evidence of its assessment system in October 2000, but the Acting Deputy Assistant Secretary determined, on the basis of that evidence, DCPS' system did not fully meet the Title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Acting Deputy Assistant Secretary's concerns, DCPS was not able to complete that task between the time it submitted its system for review and the spring 2001 assessment window. Thus, in April 2001, DCPS administered the assessment that the Acting Deputy Assistant Secretary had determined did not meet the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for DCPS to come into compliance until a future date.

D. DCPS Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years

At the public hearing, DCPS presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years.

For example, in one year, DCPS developed, for pre-kindergarten through grade 12, a set of approved content standards in language arts and mathematics as well as standards in a number of other areas such as science. DCPS also developed approved performance descriptors in reading and mathematics. DCPS has also developed and piloted alternate assessments for students with disabilities and limited English proficient students including a portfolio assessment for English language learners. It must modify these alternate assessments, however, to ensure full alignment and inclusion of all students. Moreover, DCPS has committed resources and personnel to continue the work of developing, aligning, implementing, and evaluating assessment system.

Finally, DCPS has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that DCPS has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, DCPS is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that DCPS will be well on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that DCPS must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether DCPS is meeting each of the commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the Title I requirements is not a quick or easy one. However the Assistant Secretary has determined that, given the commitment of DCPS to comply with the terms and conditions of the compliance agreement, it is possible for DCPS to come into full compliance with the Title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by DCPS with the standards and assessment requirements of Title I is not feasible until a future date; and (2) that DCPS can meet the terms and conditions of the attached compliance agreement and come into full compliance with the Title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with DCPS. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: March 29, 2002.

Susan B. Neuman,
Assistant Secretary for Elementary and Secondary Education.

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the District of Columbia Public Schools

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (Title I) required each State, including the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Title I also required each State to develop or adopt performance standards, aligned with its content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

The District of Columbia Public Schools (DCPS) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive Title I funds while working to comply with the statutory requirements, Dr. Paul L. Vance, Superintendent of DCPS, indicated DCPS' interest in entering into a compliance agreement with the Office of Elementary and Secondary education (OESE) of the United States Department of Education. On November 13, 2001, OESE conducted a public hearing regarding DCPS' ability to come into compliance with the Title I standards and assessment requirements within three years. Based on testimony at that hearing, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) determined that compliance by DCPS with the Title I standards and assessment requirements was genuinely not feasible until a future date because of the "magnitude and complexity of meeting those requirements." The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps DCPS has already taken to address its noncompliance, its commitment of resources and the plans it has developed for further action. These plans are summarized in the Commitments and Timetable below.

Pursuant to this Compliance Agreement under 20 U.S.C. § 1234r, DCPS must be in full compliance with the requirements of Title I no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, DCPS must ensure and document that it will have met the following requirements:

1. Develop or select an assessment that represents the full range of the DCPS content standards at the benchmark grades in at least reading language arts and mathematics and is consistent with Title I requirements for use of multiple measures of student performance, including measures that assess higher order thinking and understanding. Document the alignment of the assessment(s) with DCPS content and performance standards, and provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with the District's uses of the results. Reliability of both student and school classifications should be reported.

2. Complete the definition of DCPS performance standards by identifying the scores on the assessment(s) that define each of the DCPS performance levels. DCPS teachers or other persons who are thoroughly familiar with the DCPS standards must be included in this activity.

3. Establish assessment procedures to maximize participation of limited English proficient students (LEP) in the assessment and include test results for these students in the school accountability measures. Any students exempted from the regular assessment on the basis of language proficiency must be included in the accountability system in some manner. DCPS is also responsible for determining the practicability of administering a native language version of the DCPS assessment(s), and including the results in the accountability system.

4. Monitor school-level decisions regarding participation in the alternate assessment or exemption based on limited English proficiency to ensure consistency across schools and over time.

5. Develop and disseminate annual school reports that display results for all students, disaggregated by gender, major racial/ethnic groups, LEP status, migrant status, students with disabilities as compared to non-disabled, and economically disadvantaged students compared to non-disadvantaged. These school profiles must be shared with teachers and other educators, parents and the community.

During the period that this Compliance Agreement is in effect, DCPS is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this Agreement, as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth above the action steps DCPS must take to come into compliance with its Title I obligations.

The action steps incorporated into this Compliance Agreement may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the Agreement.

If DCPS fails to comply with any of the terms and conditions of this Compliance Agreement, including the action steps below, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order.

For the District of Columbia Public Schools:

Dated: March 28, 2002.
Dr. Paul L. Vance,
Superintendent.

For the United States Department of Education:

Dated: March 29, 2002.
Susan B. Neuman, *Assistant Secretary, Office of Elementary and Secondary Education.*

Date this Compliance Agreement becomes effective: March 29, 2002.

Expiration Date of this Agreement: March 29, 2005.

BILLING CODE 4000–01–P

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

ACTION STEPS	COMPLETION DATE	DOCUMENTATION
REQUIREMENT 1		
Develop or select an assessment that represents the full range of the DCPS content standards at the benchmark grades in at least reading/language arts and mathematics and is consistent with Title I requirements for use of multiple measures of student performance, including measures that assess higher order thinking and understanding. Document the alignment of the assessment(s) with DCPS content and performance standards, and provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with the District's uses of the results. Reliability of both student and school classifications should be reported.		
1A: Establish technical committee to inform assessment development process:		
1A.1: Convene the *Assessment Advisory Committee* (AAC) to provide recommendations for completing the comprehensive assessment system that meets Title I requirements.	Mar 31, 2002	AAC membership roster
1A.2: Schedule quarterly meeting to address technical issues and district options related to standards setting, alignment, documentation of technical quality, reports and accommodations.	Apr 30, 2002 Jul 31, 2002 Oct 31, 2002	Agendas, Meeting Notes, and Recommendations
1A.3: DPS will add qualified staff to supervise implementation of the compliance agreement.	June 30, 2002	Job description. Name of new hire
1A.4: Empanel technical subcommittee to advise DCPS staff by clarifying decision options, examining the cost/benefits of alternative choices, summarizing best practices and emerging technical knowledge, or outlining appropriate technical documentation required for assessment and accountability practices consistent with current professional standards.	Apr 30, 2002 Jul 31, 2002 Oct 31, 2002 And periodically thereafter as needed	Meeting notes, recommendations
1B: Development of Aligned, Standards-Based Assessment System:		
1B.1: In collaboration with the AAC, create an assessment ***"Blueprint"*** that describes characteristics of assessments required for valid representation of DC standards, such as **(1)** standards to be addressed by instruments,	Jun 30, 2002	Written ***"Blueprint"*** for assessment system, and evidence that *"Blueprint"* has

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

ACTION STEPS	COMPLETION DATE	DOCUMENTATION
(2) item formats, **(3)** measurement objectives, **(4)** details for the content match, **(5)** cognitive emphasis and **(6)** levels of item complexity.		been reviewed and approved by superintendent and board.
1B.2: Commence assessment development consistent with the *"Blueprint"* by issuing an RFP for a customized instrument. **[OR]** Conduct an alignment study of existing assessment component and revise the assessment package (e.g., multiple choice, open-ended item, and writing component) as needed to ensure its appropriateness for measuring student learning outcomes.	Aug 31, 2002	Report on study results and recommendations .
1B.3: Select contractor to develop additional assessment components or items, as needed, to ensure appropriate alignment.	Sep 30, 2002	Signed contract or other signed procurement letter.
1B.4: Develop and field test items or forms.	May 31, 2003	Agendas, manuals, rosters and notes.
1C: Continued development and move to full implementation of PASS/ALT (Alternate Portfolio Package for Special Education students).		
1C.1: Continue work with current contractor, the University of Kentucky, to refine and continue the implementation of portfolios for special education students. A new contract is being negotiated as the training continues.	Mar 31, 2002	Memorandum of Agreement, agendas, rosters, and revised PASS/ALT manual.
1C.2: Prepare and disseminate alternate portfolio design document that includes **(1)** Links to academic standards, **(2)** required contents and **(3)** guidelines for participation.	Mar 31, 2002	Revised PASS/ALT manual.
1C.3: Revise manual and protocol based on results from pilot; prepare and disseminate revised materials for June 2002 portfolio collection.	Mar 31, 2002	Revised materials
1C.4: Full implementation of the Alternative Portfolio for special education students, including the following **steps:** **(1)** Training; **(2)** Portfolio Collection;	Sep 30, 2002 May 31, 2002 May 31, 2002 Jul 31, 2002	Materials for training sessions, agendas, memoranda and reports.

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

ACTION STEPS	COMPLETION DATE	DOCUMENTATION
(3) Portfolio Scoring; **(4)** Preparation of data for reporting.	Sep 30, 2002	
REQUIREMENT 2		
Complete the creation of DCPS performance standards by identifying the scores on the assessment(s) that define each of the DCPS performance levels. DCPS teachers or other persons who are thoroughly familiar with the DCPS standards must be included in this activity.		
2A: Implement final assessment(s) and complete definitions of DC Performance Standards:		
2A.1: Pilot test the revised assessments at the benchmark grades. This procedure will be required: **(1)** if new components have been added to the assessment system that have been previously piloted; and/or **(2)** if assessment design has changed; and/or **(3)** if new items have been added.	May 31, 2003	Assessment specifications, memoranda, and administrative guidelines
2A.2: Design assessment reports that are consistent with ESEA requirements.	Apr 31, 2004	Sample report and instructions to contractors.
2A.3: Administer the revised assessments with accommodations, as appropriate, for students with disabilities and students with limited English proficiency..	May 31, 2004	Administrative guidelines and assessment data.
2A.4: After assessments have been scored, conduct standards setting sessions, using the procedures recommended by the AAC. Define cut scores, generate final descriptions for performance levels of "*below basic*," "*basic*," "*proficient*" and "*advanced*."	Aug 31, 2004	●Notes from AAC meeting with recommendation for preferred standards-setting procedures. ●Written documentation of procedures and results. ●List of participants, including teachers and other personnel familiar with special populations.

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

ACTION STEPS	COMPLETION DATE	DOCUMENTATION
2A.5: Make recommendations to the Superintendent for final performance levels, including data on actual performance. When performance levels have been adopted by the superintendent and/or the board, submit description of process and results to the U.S. Dept. of Education (USDE) for review and approval.	Nov 30, 2004	Evidence of approval by the superintendent and/or the board.
2A.6: Revise standard for adequate yearly progress measures to match requirements of "***No Child Left Behind***" legislation.	Nov 30, 2004	Definition of starting point, intermediate goals and annual measurable objectives for adequate yearly progress.
2A.7: Implement the revised standard for adequate yearly progress.	Aug 31, 2004	Transmittal memorandum and report to superintendent, board and USDE.
2A.8: Submit ***"Blueprint"*** for the final assessment system for printing.	Dec 31, 2004	Transmittal memorandum, notes and comments.
2A.9: Submit documentation on DCPS comprehensive assessment system to USDE for peer review.	Jan 31, 2005	Transmittal memorandum, notes and comments.

REQUIREMENT 3			
Establish assessment procedures to maximize participation of limited English proficient students (LEP) in the assessment and includes test results for these students in the school accountability measures. Any students exempted from the regular assessment on the basis of language proficiency must be included in the accountability system in some manner. DCPS is also responsible for determining the practicability of administering a native language version of the DCPS assessment(s), and including the results in the accountability system.			
3A: Inclusion of English Language Learners:			
3A.1:	Reconvene the core team to revise criteria for exclusion from system- wide assessment to meet ESEA requirements.	Mar 31, 2002	Agendas, minutes from meetings and documentation of comments.
3A.2:	Review and refine, as needed, procedures to collect accurate data on the number of English Language Learners (ELL) enrolled.	Apr 31, 2002 Apr 31, 2003	Submit annual report as required by ESEA.
3A.3:	Refine accommodations policy to ensure maximum accessibility for ELL students as assessment system is developed.	Jan 31, 2003 Jan 31, 2004 Jan 31, 2005	Meeting agendas, memoranda and suggestions.
3A.4:	Inform principals and administrators of revised policies and responsibilities regarding the ELL student participation in the large-scale system and the alternate assessments.	Mar 31, 2002 Mar 31, 2003 Mar 31, 2004	Written procedures, report of discrepancies, actions taken to correct inappropriate practices.
3A.5:	Monitor all decisions to exempt individuals. Keep up-to-date records of language proficiency test results.	Jul 31 2002 Jul 31, 2003 Jul 31, 2004	Meeting agendas, memoranda, training schedule and handouts.
3A.6:	Investigate use of the preschool Language and Pre-Language Assessment Scales (LAS and PLAS) to capture literacy assessment information about ELL and their participation in the large-scale state assessment.	Sep 30, 2002	Written review and findings.
3A.7:	Investigate use of the Spanish version of the SAT9 for students who	Sep 30, 2002	Written summary.

	receive instruction in Spanish -- if the decision is made to augment the SAT9.		
3B: Complete Implementation of Alternative Portfolio Package for English Language Learners:			
3B.1:	Review the *existing* portfolio system for ELL students to determine its appropriateness for measuring student leaning outcomes in a manner consistent with Title I requirements. **Specify:** **(1).** How portfolio is aligned with DCPS content and performance standards; **(2).** Required contents; **(3).** Criteria for participation; **(4).** How results will be reported and incorporated in accountability system.	Oct 31, 2002	Proposed requirements from JLSSA.
3B.2:	Augment the existing portfolio system for ELL students, as needed, to ensure its completeness for measuring the same student learning outcomes as those established for all students.	Oct 31, 2002	Refine procedures and manual.
3B.3:	Conduct training sessions for administrators, bilingual coordinators and teachers.	Nov 31, 2002	Rosters, agendas, sample materials and handouts.
3B.4:	Conduct pilot portfolio system for ELL students.	Jun 30, 2003	Data from Pilot Process.
3B.5:	Review process and results for verification of data quality.	Aug 31, 2003	Data from Pilot Process and recommendations.
3B.6:	Full implementation of the alternate portfolio system for ELL students, **including:** **(1).** Training required for local educators; **(2).** Portfolio collection; **(3).** Portfolio scoring; **(4).** Preparation and distribution of reports.	Oct 31, 2003	Proposed requirements from ILSSA.
REQUIREMENT 4			

Monitor school-level decisions regarding participation in the alternate assessment or exemption based on limited English proficiency to ensure consistency across schools and over time.

4A: Monitoring School-Level Decisions Regarding Inclusion of All Students in Assessments:

4A.1:	Determine if the current data systems will provide accurate enrollment information, with consultation from the Assessment Advisory Committee. Refine procedures, where needed, to ensure that data are accurate and complete.	Nov 31, 2002 and ongoing	Report of finding.
4A2:	Review current data collection procedures for participation and exclusion data. Refine procedures, where needed, to ensure that data are accurate and complete.	Nov 31, 2002 and ongoing	Meeting notes and refined procedures.
4A3:	Revise policy and procedures regarding inclusion of special education students in a manner consistent with Title I requirements.	Nov 31, 2002 and ongoing	Policy statement and evidence of adoption by board.
4A2:	Monitor inclusion to assure that all special education students participate in either the regular or alternate assessment.	Jul 31, 2002 and ongoing	Annual documentation of participation and corrective actions.

REQUIREMENT 5

Develop and disseminate annual school reports that display results for all students, disaggregated by gender, major racial/ethnic groups, LEP status, migrant status, students with disabilities as compared to non-disabled, and economically disadvantaged students compared to non-disadvantaged. These school profiles must be shared with teachers and other educators, parents, and the community.

5A: Develop and disseminate annual school *"report cards"* and profiles:

5A1:	Review coding system for students to ensure that requirements for disaggregation and comparison of scores can be met. Implement quality control procedures as needed to ensure accurate data collection and reports.	Mar 31, 2002	Findings of review, quality control procedures and sample reports in manual.
5A2:	Investigate ways to obtain poverty information for high school students. Data on poverty/non-poverty students for DC will be available in school year 2001-2002. For charter schools, data will be available in school year 2002-2003.	Jun 30, 2002	Summary of recommendations and adopted procedures.
5A3:	Describe dissemination strategies consistent with Title I requirements, including information on how results can be interpreted and understood by parents, including use of native language forms or explanation.	Nov 30, 2004	Agendas, written plan and recommendations.
5A4:	Review and revise the school performance profiles and performance indices to be consistent with Title I requirements.	Oct 31, 2002	Revised performance profiles and indices.

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

REQUIREMENT 6

All States must meet the requirements of ***No Child Left Behind Act of 2001***, insofar as the completion of the assessment system permits.
The following action steps are goals to be accomplished by the date shown. DCPS will have until 6 months from the date of the agreement or 30 days after publication of final regulations (whichever comes first) to determine the specific intermediate tasks and dates required to satisfy each goal.

6A: Requirements related to *No Child Left Behind Act of 2001*.

Draft content standards in science Distributed for stakeholder review and comment **Completed and adopted by Board of Education**		Aug 31, 2004 Aug 31, 2005	Draft standards
Develop standards-based assessments in remaining grades 3-8 Complete test blueprint Draft and field test items Pilot assessments in the non-benchmark grades		Fall 2003 Spring 2004 Spring 2005	Test blueprint Field test data Pilot administration manual
6A1:	Dissemination of disaggregation data at the school and district levels from the assessments currently in use (addressed by DCPS in Section 8). Disaggregation is required **(1)** by gender, **(2)** by each major racial and ethnic group, **(3)** by English proficiency status, **(4)** by migrant status, **(5)** by student with disabilities compared with non-disabled students, and **(6)** by economically disadvantaged students compared with students who are not economically disadvantaged.	Aug 31, 2003	Sample reports based on test administered in 2001-2002.
6A2:	Distribution of an itemized score analysis to support instructional improvement.	Aug 31, 2003	Sample reports based on test administered in 2001-2002.
6A3:	Implementation of the English language proficiency testing required under Title I and Title III, including **(1)** Identification of instrument; **(2)** Administration to all LEP students; **(3)** Development of measurable objectives for gains in English proficiency, as required in Sse. 3122;	Aug 31, 2003 and ongoing	Instructions to schools, test administration manuals, and sample reports.

District of Columbia Schools – *ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT*

	(4) Reporting of results required by NCLB.		
6A4:	Participation in the ***National Assessment of Education Progress*** (NAEP) in 2003 and 2005; and, if selected, participate in the field tests in "off" years.	Aug 31, 2003 and ongoing	Documentation in Consolidated Application.
6A5:	Distribution of a state report card, as required under section 1111 of Title I. State report card must include the following assessment components by date: **(1)** Data disaggregated for academic assessment results by performance level; **(2)** Disaggregated summaries of percentages of students tested; and **(3)** Comparisons must be made between annual objectives and actual performance levels for each student groups . (Note: report card requirements must be met as quickly as possible.)	Sep 30, 2002 Sep 30, 2003 Sep 30, 2004	Copy of state report card. Copy of state report card. Copy of state report card.
6A6:	Continued identification of schools in need of improvement, based on data for all children in grades assessed and, where possible: **(1)** for subgroups; **(2)** for other indicators required by NCLB legislation; and **(3)** based on application of the 95 percent participation rule.	Aug 31, 2002 Aug 31, 2003 Aug 31, 2004	Transitional rules under NCLB Rules appropriate for assessment(s) in use.
6A7:	Annual report to the Secretary as described in Section 1111(h)(4), including: **(1)** Information on State progress in developing all required academic assessments (2002-2003); **(2)** Disaggregated student achievement data (2002-2003); **(3)** Data on acquisition of English proficiency by (2002-2003); **(4)** Number and names of schools identified for school improvement, the reason for identification, and measures taken to address achievement problems (2002-2003); **(5)** Number of students and schools that participated in public school choice and supplemental services (2002-2003); and **(6)** Information on quality of teachers and percent of classes taught by highly qualified teachers (2002-2003).	Aug 31, 2002	Data will be reported as part of the Annual Title Performance Report.
6A8:	All other requirements of NCLB legislation pertaining to schools identified	Aug 31, 2003	Implementation and

Action Plan for Title I – Page 36

District of Columbia Schools – ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT

for improvement, corrective action, or restructuring during the period of the compliance agreement.	documentation of choice, supplemental services, corrective actions, as appropriate.

DC COMPLIANCE AGREEMENT –SLR 3.15.02

[FR Doc. 03–14719 Filed 6–10–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–502–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective June 1, 2003:

Fifty-Sixth Revised Sheet No. 8
Fifty-Sixth Revised Sheet No. 9
Fifty-Fifth Revised Sheet No. 13
Sixty-Eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.2 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its part 284 firm transportation customers to collect ninety percent of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent. ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $3,091,394 to $2,228,076.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–14762 Filed 6–10–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–504–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to become effective April 1, 2003:

Second Revised Volume No. 1
Second Revised Sheet No. 2G
Original Volume No. 2
Tenth Revised Sheet No. 6
Twelfth Revised Sheet No. 7
First Revised Sheet No. 1334
First Revised Sheet No. 1359

ANR states that the above-referenced tariff sheets are being filed to cancel ANR's Rate Schedules X–115 and X–116 as approved by Commission order issued on January 30, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–14764 Filed 6–10–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–508–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, ANR Storage Company (ANR Storage) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to become effective April 1, 2003:

Original Volume No. 1
First Revised Sheet No. 1A
Original Volume No. 2
Fourth Revised Sheet No. 1
Second Revised Sheet No. 177
Second Revised Sheet No. 203

ANR Storage states that the above-referenced tariff sheets are being filed to cancel ANR Storage's Rate Schedules X–9 and X–10 as approved by Commission order issued on January 30, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14768 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–103]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

June 5, 2003.

Take notice that on May 30, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective June 1, 2003:

Second Revised Sheet No. 861
Original Sheet No. 893
Sheet Nos. 894–1999

CEGT states that the purpose of this filing is to reflect implementation of a new negotiated rate transaction and an amendment to an existing negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14769 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–295–000]

Clear Fork Pipeline Company; Notice of Petition for Declaratory Order

June 4, 2003.

Take notice that on May 9, 2003, Clear Fork Pipeline Company (Clear Fork) filed with the Federal Energy Regulatory Commission (Commission) pursuant to rule 207(a)(2) of the Commission's rules of practice and procedure, 18 CFR 385.207(a)(2), a Petition for Declaratory Order in Docket No. CP03–295–000, requesting that the Commission declare that the acquisition by Clear Fork of Colorado Interstate Gas Company's (CIG) Silver Tip Lateral in Park County, Wyoming, and the subsequent ownership and operation of these facilities, will have the primary function of gathering of natural gas and thereby be exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA).

Clear Fork states that the Silver Tip Lateral is a 5.3 mile lateral consisting of 4 pipeline, terminating at the Elk Basin Plant in Park County, Wyoming. Clear Fork states that it purchased all of CIG's rights, title and interests in the Silver Tip Lateral and related facilities pursuant to a Purchase and Sale Agreement dated July 1, 2002 and that the line currently is idle.

Following Commission action on the instant petition, Clear Fork states that it intends to incorporate the Silver Tip Lateral and related facilities into the preexisting non-jurisdictional gathering system and intends to operate such facilities as an integral part of the gathering and production facilities needed to gather natural gas and transport it to the Elk Basin Plant for processing.

Clear Fork states that CIG has abandoned the Silver Tip Lateral and related facilities under its blanket authorization in Docket No. CP83–21. Clear Fork states that because it is not otherwise engaged in the ownership and operation of facilities in interstate commerce that are subject to the NGA and the Commission's jurisdiction, a declaratory order is requested disclaiming jurisdiction over Clear Fork's ownership and operation of the facilities purchased from CIG.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14609 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–505–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

June 5, 2003.

Take notice that on May 30, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Eighth Revised Sheet No. 11A, to become effective July 1, 2003.

CIG states the tariff sheet is being filed to revise the quarterly Fuel Reimbursement Percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14765 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–512–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of July 1, 2003:

Sixth Revised Sheet No. 144
Second Revised Sheet No. 144A
Fourth Revised Sheet No. 318

Columbia Gulf states that it is submitting this filing to include in its Tariff new provisions permitting Columbia Gulf to agree with its shippers, on a not unduly discriminatory basis, to a contractual right of first refusal ("ROFR"), equivalent to the ROFR right set forth from time to time in Section 4 of the General Terms and Conditions of its Tariff, for service agreements that have a term of 12 or more consecutive months of service but bear a rate that is either discounted or negotiated.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14772 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–346–002 and RP01–16–002]

Dauphin Island Gathering Partners; Notice of Compliance Filing

June 5, 2003.

Take notice that on May 30, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets included in Appendix A to the filing, with an effective date July 1, 2003.

Dauphin Island states that the revised tariff sheets are being filed in anticipation of implementing the Order 637 tariff sheets on July 1, 2003. The tariff sheets incorporate the tariff changes from Dauphin Island's Order No. 587-O compliance filing which were submitted after Dauphin Island's last Order No, 637 filing.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14757 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–511–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 181, to become effective July 1, 2003.

Dauphin Island states that this tariff sheet is being filed to clarify how prior period adjustments are handled for imbalances.

Dauphin Island states that copies of the filing are being served contemporaneously on its firm and interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14771 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–503–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

June 5, 2003.

Take notice that on May 30, 2003, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of July 1, 2003:

Fifth Revised Sheet No. 20
Third Revised Sheet No. 33
Third Revised Sheet No. 44
Third Revised Sheet No. 53

Discovery states that the tariff sheets are being filed to update its Lost and Unaccounted For Gas percentage.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14763 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–497–000]

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Offshore Pipelines (UTOS) LLC (Enbridge UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No.1, the tariff sheets listed in appendix A of the filing, effective July 1, 2003.

Enbridge UTOS states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge UTOS's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge UTOS states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14614 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–498–000]

Enbridge Pipelines (KPC); Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in appendix A of the filing, to be effective July 1, 2003.

Enbridge KPC states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge KPC's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge KPC states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14615 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–499–000]

Enbridge Pipelines (Midla) L.L.C.; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Pipelines (Midla) L.L.C. (Enbridge Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in appendix A of the filing, to be effective July 1, 2003.

Enbridge Midla states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge Midla's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge Midla states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14616 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–500–000]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, Enbridge Pipelines (AlaTenn) L.L.C. (Enbridge AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in appendix A of the filing, to be effective July 1, 2003.

Enbridge AlaTenn states that it is making this filing pursuant to the directives in Order No. 587–R, Final Rule, issued on March 12, 2003, in Docket No. RM96–1–024. The revised tariff sheets included in Enbridge AlaTenn's filing reflect the Version 1.6 standards and the partial day recall standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, as adopted by the Federal Energy Regulatory Commission (Commission) and incorporated by reference in the Commission's regulations.

Enbridge AlaTenn states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14617 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–78–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Technical Conference

June 5, 2003.

On June 19, 2003, the Staff of the Commission will hold a technical conference concerning the status of the pipeline expansion proposal made by Maritimes & Northeast Pipeline, L.L.C. in the above referenced proceeding.

The conference will be held at 2 p.m. at the Commission's offices at 888 First Street NE., Washington, DC.

Any parties to this proceeding with questions about the technical conference should call Richard Foley at (202) 502–8955.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14750 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–087]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

June 5, 2003.

Take notice that on June 2, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 2003.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction with Wisconsin Electric-Commodity Resources under Natural's Rate Schedule IBS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14774 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–403–004 and RP01–388–004]

Northern Border Pipeline Company; Notice of Compliance Filing

June 5, 2003.

Take notice that on June 2, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing the FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified at Appendices A and B to the filing.

Northern Border states that the revised tariff sheets are being filed in order to comply with the Commission's May 6, 2003 Order in the referenced proceedings, and that the revised tariff sheets relate to compliance with Order Nos. 637, 637–A, and 637–B and the Commission's Remand Order at Docket No. RM98–10–011.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted Shippers, interested state regulatory commissions, and all parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14758 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–507–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 2003:

Seventh Revised Sheet No. 119
Fifth Revised Sheet No. 272
Original Sheet No. 272A
Original Sheet No. 272B

Northern Border states that it is proposing to add a new Subsection 26.5 to the General Terms and Conditions of its tariff to establish a provision regarding the reservation of capacity for future expansion/extension projects and to clarify contract term extension rights for interim shippers under Section 5 of Rate Schedule T–1 for capacity reserved under Subsection 26.5.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14767 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–297–000]

Northwest Natural Gas Company; Notice of Compliance Filing

June 4, 2003.

Take notice that on May 15, 2003, Northwest Natural Gas Company (Northwest Natural), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 7 of the Natural Gas Act (NGA) and § 284.224 of the Commission's regulations to amend its limited jurisdiction blanket certificate of public convenience and necessity to allow it to use its capacity on the Kelso Beaver (KB) pipeline system, now or hereafter acquired, to transport gas which it does not own and to receive natural gas from, and deliver natural gas to, Northwest Pipeline Corporation at its interconnections with KB for its FERC jurisdictional customers. Northwest Natural also requests related waivers of the shipper must have title and capacity brokering rules so that it can use its KB capacity without restriction for its FERC jurisdictional customers, that the Commission confirm that granting the certificate amendment and the waivers will not affect Northwest Natural's exemptions under section 1(c) and other sections of the NGA, and that the Commission grant other approvals which may be appropriate, consistent with the application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14610 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–501–000]

PG&E Gas Transmission, Northwest Corporation; Notice Compliance Filing

June 4, 2003.

Take notice that on May 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing workpapers supporting the restatement of its fuel and line loss surcharge in compliance with Paragraph 37 of the General Terms and Conditions of its Tariff.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385,214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14618 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–045]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

June 5, 2003.

Take notice that on June 2, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fourteenth Revised Sheet No. 15, with an effective date of June 1, 2003.

GTN states that this sheet is being filed to reflect the implementation of one new negotiated rate agreement and the removal of four negotiated rate agreements that have expired.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14775 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–510–000]

Questar Southern Trails Pipeline Company; Notice of Annual Fuel Gas Reimbursement Report

June 5, 2003.

Take notice that on June 2, 2003, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing its annual Fuel Gas Reimbursement Percentage (FGRP) report and proposed a -0.25% variance adjustment to be effective July 1, 2003.

Southern Trails stated that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14770 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–430–001 and CP02–430–002]

Saltville Gas Storage Company, L.L.C.; Notice of Technical Conference

June 4, 2003.

Take notice that a technical conference will be held on June 17, 2003, at 1 p.m., in a room to be determined, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This conference is being held in accordance with the Commission's May 16, 2003 Order Directing Compliance Filing, Convening Technical Conference and Deferring Action on Requests for Rehearing,[1] in which the Commission directed staff to convene a technical conference to address issues relating to Saltville Gas Storage Company's (Saltville) assertion of Hinshaw status.

Attendance at the conference is limited to Commission staff and existing parties as of the issuance of the Commission's May 16 order.

There will be no transcript of the conference, and there will be no telephone link communications. For more information about the conference, please contact Marcia Lurensky at (202) 502–8504 or *jack.kendall@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14608 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Saltville Gas Storage Company, 103 FERC ¶ 61,187 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–509–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

June 5, 2003.

Take notice that on May 30, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a current accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on November 27, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14769 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–005, RP01–97–004, and RP03–211–001]

Texas Gas Transmission, LLC formerly Texas Gas Transmission Corporation; Notice of Compliance

June 5, 2003.

Take notice that on June 2, 2003, Texas Gas Transmission, LLC (Texas Gas), formerly Texas Gas Transmission Corporation, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below:

Effective June 1, 2003 First Revised Sheet No. 12B

Effective July 1, 2003

Second Revised Sheet No. 55
Second Revised Sheet No. 56
Third Revised Sheet No. 57
Third Revised Sheet No. 71
Third Revised Sheet No. 72
Second Revised Sheet No. 80C
Second Revised Sheet No. 80D
Second Revised Sheet No. 91
Third Revised Sheet No. 92
Second Revised Sheet No. 99H
Second Revised Sheet No. 99I
First Revised Sheet No. 99J
First Revised Sheet No. 99W
First Revised Sheet No. 99X
Second Revised Sheet No. 107
Second Revised Sheet No. 237
First Revised Sheet No. 238
Sheet No. 239

Texas Gas states that the tariff sheets are being filed in compliance with the Commission's May 22, 2003, Order on Compliance Filings (103 FERC ¶ 61,218), which conditionally accepted Texas Gas's previously filed tariff sheets and directed Texas Gas to file revised tariff sheets within 10 days of that Order to address issues discussed within the Order itself.

Texas Gas states that copies of the tariff sheets are being mailed to all parties in this docket, on Texas Gas's official service list, and to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14759 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–484–000 and RP01–208–000 (not consolidated)]

The Toca Producers, Complainant, v. Southern Natural Gas Company, Amoco Production Company, et al., Respondents; Notice of Complaint

June 5, 2003.

Take notice that on May 28, 2003, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, BP America Production Company, Chevron U.S.A. Inc., ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, and Shell Offshore Inc. (jointly the Toca Producers) filed a complaint under Sections 4 and 5 of the Natural Gas Act, against Southern Natural Gas Company (Southern) and a request for an evidentiary hearing. The Toca Producers also move to hold the related and pending case, Amoco Production Company, *et al.*, Docket No. RP01–208–000, in abeyance during the litigation of this complaint.

The Toca Producers allege that the lack of objective and nondiscriminatory liquefiable hydrocarbon gas quality standards in Southern's tariff is inconsistent with the public interest and permits Southern to discriminate unduly among parties delivering natural gas into Southern's system. The Toca Producers request an evidentiary hearing before an ALJ to develop a

record upon which the contested issues of material fact can be resolved.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14761 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–360–001]

Transwestern Pipeline Company; Notice of Compliance Filing

June 5, 2003.

Take notice that on June 2, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 2003:

Substitute 7th Revised Sheet No. 50
10th Revised Sheet No. 95B.01
Substitute 9th Revised Sheet No. 95C
Original Sheet No. 95C.01
8th Revised Sheet No. 95D
Substitute 9th Revised Sheet No. 95E
10th Revised Sheet No. 95F

Transwestern states that on March 12, 2003, in Docket No. RM96–1–024, the Commission issued Order No. 587–R (Order 587–R), amending its open access regulations governing standards for conducting business with interstate pipelines. Transwestern states that Order 587–R required pipelines to make tariff filings by May 1, 2003 to implement provisions of that order to become effective on July 1, 2003. Transwestern explains that it submitted its compliance filing on April 30, 2003, and that on May 21, 2003, the Commission issued an Order accepting Transwestern's April 30, 2003 filing, subject to Transwestern filing revisions to the above tariff sheets within ten days of the May 21 Order. Transwestern states the instant filing reflects the revisions as directed by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14760 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–506–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2003.

Take notice that on May 30, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to become effective June 29, 2003.

Third Revised Sheet No. 87
Fourth Revised Sheet No. 88
Third Revised Sheet No. 89
Second Revised Sheet No. 90
Fourth Revised Sheet No. 91

WIC states that the tariff sheets revise its Form of Service Agreement applicable to service under WIC's firm rate schedule to include additional contracting practices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14766 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2069–007 Arizona]

Arizona Public Service Company; Notice of Availability of Draft Environmental Assessment

June 4, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of license for the major, constructed Childs Irving Hydroelectric Project. The project is located on Fossil Creek, in Yavapai and Gila counties, Arizona. The project is located entirely on lands of the National Forest System: it occupies 326.8 acres within the Coconino National Forest and 17.2 acres within the Tonto National Forest. The Commission staff has prepared a Draft Environmental Assessment (DEA) on the license surrender.

The DEA contains the staff's analysis of the potential environmental impacts of the retirement of the project and the removal of most of the project facilities, and has concluded that surrendering the license, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2069–007 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

For further information, contact Dianne Rodman, Environmental Coordinator, at (202) 502–6077.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14612 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12379–000—AK]

Lake Dorothy Hydro, Inc.; Notice of Availability of Draft Environmental Assessment

June 4, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff have reviewed the application for Lake Dorothy Hydro, Inc.'s proposed Lake Dorothy Hydroelectric Project and has prepared a Draft Environmental Assessment (DEA). The proposed project would be located at Lake Dorothy on Dorothy Creek, near Juneau, Alaska, and would occupy approximately 1,790 acres of land within the Tongass National Forest administered by the U.S. Forest Service. This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Comments on the DEA should be filed by July 3, 2003. Comments should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Copies of the DEA can be viewed at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14613 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–455]

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2232–455.

c. *Date Filed:* April 21, 2003.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, a division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. FERC Contacts: Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–455) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site under *http://www.ferc.gov* the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee proposes to grant a lease for a Commercial Residential Marina to Lake James Properties, LLC for the Arbor on Lake James Subdivision. The proposal includes two parcels of project land containing a total of 1.918 acres for a proposed commercial residential marina facilities. Nine cluster boat-docks having 110 boat slips would provide access to the reservoir by residents of The Arbor on Lake James Subdivision, located in McDowell County, North Carolina.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14751 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2392–021.

c. *Date Filed:* April 22, 2003.

d. *Applicants:* American Paper Mills of Vermont, Inc. (Transferor) and Dalton Hydro, LLC (Transferee).

e. *Name of Project:* Gilman Project.

f. *Location:* On the Connecticut River in Essex County, Vermont and Coos County, New Hampshire. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contacts:* Douglas J. Wolinsky, Esq., Eggleston & Cramer, Ltd., P.O. Box 1489, Burlington, Vermont 05402–1489, (802) 864–0880 (Transferor); Steve Harmsen, Dalton Hydro, LLC, 26 North State Street, Salt Lake City, Utah 84103 and David John Mullett, Esq., P.O. Box 127, Montpelier, Vermont 05601–0127, (802) 223–3080 (Transferee).

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (2392–021) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* The applicants seek after-the-fact Commission approval to transfer the license for the Gilman Project from American Paper Mills of Vermont, Inc., who is in Chapter 11 Bankruptcy proceedings, to Dalton Hydro, LLC, who purchased the project at an auction related to the bankruptcy proceedings.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14752 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2716–041]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Increase its Authorized Generating Capacity.

b. *Project No:* 2716–041.

c. *Date Filed:* December 13, 2002.

d. *Applicant:* Virginia Electric Power Company.

e. *Name of Project:* Bath County Pumped Storage Project.

f. *Location:* The project is located on the Back Creek and Little Back Creek in Bath County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Martin L. Bowling, Jr., Dominion Virginia Power, 5000 Dominion Boulevard, Glen Allen, VA 23060, (804) 273–3034.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 7, 2003.

k. *Description of Request:* The licensee proposes to overhaul all six turbine-generators for the project over the next seven years, starting on October 6, 2003, and continuing at the pace of one unit per year. The overhaul includes replacement of the runners which will result in increases in turbine hydraulic capacity and generating capacity. The licensee states that the proposed capacity increase: (1) Would not affect the upper or lower minimum or maximum reservoir levels, (2) would increase the rate of flow between the reservoirs, and (3) would not affect the releases from both the upper reservoir into Little Back Creek and the lower reservoir into Back Creek.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact FERCONLINESUPPORT@ferc.gov. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14753 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 5, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2984–042.

c. *Date filed:* March 29, 2002.

d. *Applicant:* S.D. Warren Company.

e. *Name of Project:* Eel Weir Hydroelectric Project.

f. *Location:* The existing project is located on the Presumpscot River at the outlet of Sebago Lake, in Cumberland County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Thomas P. Howard, S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597; Telephone (207) 856–4286.

i. *FERC Contact:* Allan Creamer, (202) 502–8365 or *allan.creamer@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance of this notice. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filing.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Eel Weir Project operates in a store-and-release mode. The project consists of the following features: (1) A 115-foot-long, 22-foot-high stone masonry spillway dam; (2) a 900-foot-long stone and earth-fill east abutment section that varies in height from a few inches to a maximum of 20 feet; (3) a 260-foot-long stone and earth-fill west abutment section with variable height; (4) five 6.5-foot-high by 4.75-foot-wide discharge gates; (5) four 8.8-foot-high by 7-foot-wide canal intake gates; (6) a 12-mile-long, 28,771-acre impoundment, Sebago Lake, at elevation 266.65 msl; (7) a 6,700-mile-long bypassed reach; (8) a 90-foot-long fish screen, located upstream of the canal gates; (9) a 4,826-foot-long, 15-foot-deep earthen power canal; (10) three canal waste gates that discharge to the upper bypassed reach, each with an integral minimum flow gate, and two canal sluice gates, located along the canal wall integral to the powerhouse intake structure wall, which discharge to the lower bypassed reach; (11) a powerhouse containing three Hercules turbines and generating units, having an installed capacity of 1,800 kilowatts; (12) a 3.5-mile-long, 11-kilovolt transmission line; and (13) appurtenant facilities. The average annual generation is estimated to be about 12,300 megawatt-hours. All power generated by the project is utilized by the applicant's paper mill in Westbrook, Maine.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field (P–2984), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Notice of availability of the draft NEPA document.	October 2003.
Initiate 10(j) process	October 2003.
Notice of availability of the final NEPA document.	February 2004.
Ready for Commission decision on the application.	May 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14754 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2003.

Take notice that the following compliance report has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Usage Report.

b. *Project No:* 9690–071.

c. *Date Filed:* April 29, 2003.

d. *Applicant:* Mirant, NY-Gen. LLC.

e. *Name of Project:* Rio Project.

f. *Location:* The project is located on the Mongaup River in Orange County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* William McLaughlin, Engineering Group Leader, Mirant NY-Gen LLC, Four Executive Boulevard, Suite 100, Suffern, NY 10901, (845) 357–5266.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–9690–071) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov.* under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Filing:* Mirant filed its Recreation Usage Report for 2002 required by article 408, as amended. This report provides an evaluation of the recreation facilities downstream of the Rio Dam and the effectiveness of the whitewater releases in meeting the needs of the public.

l. *Location of the Filing:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described filing. A copy of the filing may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14755 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12228–001]

Hulah Hydro, LLC; Notice of Surrender of Preliminary Permit

June 5, 2003.

Take notice that Hulah Hydro, LLC, permittee for the proposed Hulah Dam Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on November 5, 2002, and would have expired on October 31, 2005. The project would have been located on the Caney River in Osage County, Oklahoma.

The permittee filed the request on April 30, 2003. The preliminary permit for Project No. 12228 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14756 Filed 6–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Revised Public Utility Filing Requirements; Notice of Extension of Time

June 4, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports (EQR). Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 EQR submissions to ensure that the data filed was correct. Utilities were directed to re-submit their corrected data by April 11, 2003, which was extended to April 18, 2003.

Despite the extended due dates, several companies requested further extensions to the filing deadlines to resolve problems they experienced with compiling and formatting their data. Notice is hereby given that the deadlines for filing EQR data are extended to the dates listed for each company identified in the attachment to this notice.

Magalie R. Salas,

Secretary.

ATTACHMENT

Utility	Quarters requested	Date of requested extension
ACN Energy, Inc.	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 24, 2003.
Dominion Resources Services[2]	1st Q 2003	June 16, 2003.
Enron Energy Services, Inc. and Enron Energy Marketing Corp.	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 30, 2003.
PPM Energy	1st Q 2003	June 6, 2003.
Sprague Energy Corp	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 6, 2003.
Western Energy Marketers	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 23, 2003.
The Boralex Companies[3]	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 19, 2003.
California Independent System Operator Corp	4th Q 2002; 1st Q 2003	June 20, 2003.

[2] Includes affiliates of Virginia Electric and Power Company and Dominion Energy Marketing, Inc.

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

[3] Includes Boralex Stratton Energy, Inc., Boralex Fort Fairfield, Inc., Boralex Ashland, Inc., Boralex Livermore Falls, Inc., Boralex Athens Energy, Inc., Boralex Chateaugay, Inc.

[FR Doc. 03–14611 Filed 6–10–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–7]

State Innovation Grant Program, Preliminary Notice and Request for Input on the Development of a Solicitation for Proposals for 2003/2004 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation (OPEI) is giving a preliminary notice of its intention to solicit proposals for a 2003/2004 grant program to support innovation by state environmental regulatory agencies—the "State Innovation Grant Program." The Agency is also seeking input from State Environmental Regulatory Agencies on the topic areas for the solicitation. In addition, EPA is asking each State Environmental Regulatory Agency to designate a point of contact at the management level (in addition to the Commissioner or Cabinet Secretary level) who should receive further communication about the upcoming solicitation. EPA anticipates publication of a **Federal Register** notice to announce the availability of the next solicitation within 60 days.

DATES: State Environmental Regulatory Agencies will have 30 days from the date of publication until [insert date 30 days after publication of this notice in the FR] of this pre-announcement notice in the **Federal Register** to respond with: (1) Suggestions for broad topic areas (*e.g.*, a subject area and 1–2 paragraphs of description) for the next solicitation; and (2) point of contact information (name, title, mailing address, telephone and fax numbers, and e-mail address) for the person within the State Environmental Regulatory Agency (in addition to Commissioner or Cabinet Secretaries) who should receive future notices about the State Innovation Grants.

ADDRESSES: Information should be sent to: State Innovation Grant Program; Office of Policy, Economics and Innovation; U.S. Environmental Protection Agency (1807T); 1200 Pennsylvania Ave., NW., Washington, DC 20460. Responses may also be sent by fax to (202–566–2220), addressed to the "State Innovation Grant Program," or by e-mail to: *Innovation_State_Grants@EPA.gov*. We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Gerald Filbin at 202–566–2182. EPA will acknowledge all responses it receives to this notice.

SUPPLEMENTARY INFORMATION:

Background

EPA pilot tested the State Innovation Grant Program with a solicitation in June, 2002 and subsequent awards starting in the fall of 2002. The 2002 Program solicitation focused on "innovation in environmental permitting programs" as they addressed the goals identified in EPA's plan for future innovation, Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA (EPA 100–R–02–002; *http://www.epa.gov/opei/strategy*). The Agency's Innovation Strategy, which will remain key to this year's Solicitation, presents a framework for innovation consisting of four major elements:

(1) Strengthen EPA's innovation partnerships with States and Tribes;

(2) Focus on priority environmental areas:
—Reduce greenhouse gases
—Reduce smog
—Restore and maintain water quality
—Reduce the cost of water and wastewater infrastructure;

(3) Diversify our environmental protection tools and approaches, including:
—Information resources and technology
—Environmental technology
—Incentives
—Environmental Management Systems
—Results-based goals and measures;

(4) Foster "innovation-friendly" systems and organizational.

The 2002 program focused on innovation in permitting, including the use of incentives and the development of Environmental Results Programs (ERPs) such as the one initially developed by Massachusetts and now being adopted by other States. For more information on last year's solicitation, the proposals received, and the 2002 award decisions, please see the Web site at: *http://www.epa.gov/innovation/stategrants*.

Request for State Input on Solicitation Themes and Priorities

The 2003/2004 State Innovation Grant Program, building on the 2002 pilot program, will seek to strengthen EPA's innovation partnership with States by providing a source of funding to facilitate State efforts to test new models for "next generation" environmental protection that will provide better environmental results, consistent with the goals of EPA's *Innovation Strategy*.

EPA plans to retain the focus area of "innovation in permitting" (including support for development of Environmental Results Programs) for the upcoming solicitation, but will add other topic areas of mutual interest to this year's solicitation, as well. (These grants will not be applied to the development or demonstration of new environmental technologies.) EPA is including additional focus areas in response to feedback received from States that found "innovation in permitting" to be too narrow a topic to capture their State priorities. Additional areas of competition in the solicitation will provide for development and implementation of other innovative approaches to solving priority environmental problems.

EPA is asking for State environmental regulatory agencies to provide brief (about 1 paragraph) suggestions about additional innovation themes that might be included as subject areas in this solicitation. Specifically, EPA is interested in hearing what activities in addition to permitting States believe are ripe for innovation. EPA will continue to encourage project proposals that address the four priority environmental areas identified above (*i.e.*, reduce greenhouse gases; reduce smog; restore and maintain water quality; reduce the cost of water and wastewater infrastructure) and use tools (*i.e.*, incentives, information, performance measurement, etc.) highlighted in the Innovation Strategy. State Environmental Regulatory Agency respondents should send their suggestions to EPA by mail, e-mail, or fax as described in the "Addresses" section above.

Competition Limited to the State Environmental Regulatory Agency

The competition will be limited to the principal Environmental Regulatory Agency within each State, although these agencies are encouraged to partner with other agencies within the State that have environmental mandates (*e.g.*, natural resources management, transportation, public health, energy). EPA will accept only one proposal from each State and it must be submitted by the principal Environmental Regulatory Agency from that State. States are also encouraged to partner with neighboring States to address cross-boundary issues and to consider partnering with Tribal governments in developing projects and proposals. Multi-state or State-Tribal proposals will be accepted in addition to an individual State proposal, but a State may appear in no more than one multi-State or State-Tribal proposal in addition to their individual State proposal.

EPA is currently working through its American Indian Environmental Office and other Program Offices within the Agency to explore ways to make similar grants available to American Indian Tribes through a parallel process.

Request for State To Designate a Primary Point of Contact

EPA asks that each State Environmental Regulatory Agency designate as a primary point-of-contact, a manager who we will add to the EPA notification list for further announcements about the State Innovation Grant Program. We are asking that this name be submitted with the approval of the highest levels of management within an Agency (Secretary, Commissioner, or their deputies) within 30 days after publication of this notice in the FR July 11, 2003. Please submit this information to EPA as described in the "Addresses" section above.

Dated: June 4, 2003.

Elizabeth Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 03–14745 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–8]

Clean Air Scientific Advisory Committee Science Advisory Board; National Ambient Air Monitoring Strategy (NAAMS) Subcommittee Notification of Public Advisory Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), announces a public meeting and two publicly-accessible teleconferences of the Clean Air Scientific Advisory Committee (CASAC) to review the Agency's National Ambient Air Monitoring Strategy (NAAMS).

DATES: There are three CASAC NAAMS Subcommittee meetings or teleconferences:

(a) *July 1,.2003:* A publicly accessible teleconference will take place from 1 to 3 pm (Eastern Time) to address any outstanding questions that subcommittee members and others might have concerning the proposed charge to the NAAMS Subcommittee, the NAAMS review materials, and the logistics for the face-to-face meeting on July 8–9, 2003.

(b) *July 8–9, 2003:* A public meeting will take place July 8, from 9 a.m. to 5 p.m. (Eastern Time), and on July 9, from 9 a.m. to 3 p.m. (Eastern Time), at the EPA campus, Building C, Room C111–C, Research Triangle Park (RTP) North Carolina. A publicly-accessible teleconference line is available for the entire meeting.

(c) *August 6, 2003:* A publicly-accessible contingency conference call from 1 to 3 p.m. (Eastern Time), in the event that the NAAMS Subcommittee feels that it is necessary to discuss some remaining issues before completing its report.

Contact: Members of the public who wish to obtain the call-in numbers and access codes to participate in the aforementioned publicly-accessible teleconferences must contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, or via e-mail at: *darden.delores@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting or either teleconference, or who wishes to submit brief oral comments (10 minutes or less) must contact Mr. Fred Butterfield, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4561; FAX (202) 501–0582; or via e-mail at *butterfield.fred@epa.gov*. Request for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting or teleconferences in order to reserve time on the meeting agenda. Written comments (preferably via e-mail) should be sent to Mr. Butterfield by the same deadline so that the comments can be provided to the NAAMS Subcommittee prior to the meeting or teleconferences. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Summary

The Clean Air Scientific Advisory Committee was established by 42 U.S.C. 7409 to provide advice, information and recommendations on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The NAAMS Subcommittee will report to the Administrator of EPA through the CASAC, which is administratively located under the EPA Science Advisory Board. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Both the CASAC and the SAB are Federal advisory committees chartered under the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The CASAC NAAMS Subcommittee will comply with the provisions of FACA and all appropriate SAB procedural policies.

Background

States, local agencies and Tribes establish and operate the Nation's regulatory-based ambient air monitoring networks. These networks are funded in part with Federal grants and are managed nationally by the EPA. The network data are used to support:

(a) Designation of attainment and non-attainment areas with respect to the National Ambient Air Quality Standards (NAAQS);

(b) Dissemination of air quality information to the public;

(c) Development (and tracking progress of) emission reduction strategies;

(d) Characterization of long-term air quality trends; and

(e) Studies in health and atmospheric science disciplines.

The associated monitoring network, instrumentation and quality assurance requirements are included in 40 CFR parts 50, 53 and 58.

EPA has recently completed development of the final draft of the National Ambient Air Monitoring Strategy document under the direction of the National Monitoring Strategy Committee (NMSC), an intergovernmental partnership

comprising representatives from EPA (*i.e.*, the Office of Air Quality Planning and Standards (OAQPS), the Office of Research and Development (ORD) and Regional Offices), and State and local agencies and Tribes, *i.e.*, the principal Federal grantee organizations that operate the majority of the monitoring networks. The NAAMS document contains technical information underlying planned revisions of the National Ambient Air Monitoring program. The Strategy proposes a restructuring of the national regulatory-based air monitoring networks—commonly referred to as National Air Monitoring Stations (NAMS), State or Local Air Monitoring Stations (SLAMS), and Photochemical Assessment Monitoring Stations (PAMS)—to accommodate emerging priorities of air programs, the public and the scientific community. Specifically, the NAAMS provides a series of proposed changes for network design and improvements, assessments of existing networks, incorporation of new measurement and information transfer technologies, and revisions both to the current quality assurance program and the monitoring regulations. The principal proposed changes include:

(a) A shift toward collocated multiple pollutant monitoring stations under a new national monitoring network design referred to as "NCore."

(b) Incorporation of new continuous particle monitoring instruments, additional air toxics measurements and information transfer technologies to enhance the scope of near-real-time data delivered to the public.

(c) Adoption of new network design recommendations and the introduction of advanced monitoring technologies through performance-based standards.

(d) Reductions in existing monitoring stations that provide limited value for public protection or air quality planning needs, with attendant resource savings redirected to meeting new measurement needs.

EPA intends to propose revisions to the monitoring regulations that have emerged from this strategy during 2003. A public comment period on the proposed regulations will be announced at a later date by EPA's Office of Air and Radiation. The NAAMS document is available through EPA's Ambient Monitoring Technology Information Center (AMTIC) Web site at the following URL address: *http://www.epa.gov/ttn/amtic/stratmem.html*. Any questions concerning the NAAMS should be directed to Dr. Richard Scheffe, EPA's OAQPS Monitoring and Quality Assurance Group Leader, at phone: (919) 541–4650; or e-mail: *Scheffe.Rich@epamail.epa.gov*.

Request for and Proposed Charge to the NAAMS Subcommittee

EPA's Office of Air and Radiation (OAR) has requested that the Clean Air Act Scientific Advisory Committee form a subcommittee to review the NAAMS document. The "Widecast" notice requesting nominations to this new NAAMS Subcommittee of the CASAC appeared in the **Federal Register** on November 5, 2002 (67 FR 67403), and noted that nominees should be recognized, national-level experts in one or more of the following disciplines: (a) Atmospheric sciences and air quality simulation modeling; (b) health effects and exposure; (c) air quality measurement science; or (d) State or local agency experience. This new CASAC subcommittee is charged with providing consultation to EPA on the technical bases and design aspects of the National Ambient Air Monitoring Strategy. In particular, the Subcommittee is asked to provide a formal consultation on the following elements of the strategy:

(a) The NCore proposal, including conceptual approach to tiered monitoring levels, recommended measurements and numbers and locations of Level 2 sites. Consideration to phasing of measurements included in Level 2 sites should be addressed based on currently available and expected emerging monitoring technologies. The Subcommittee is also requested to advise on the scope and breadth of research-grade Level 1 sites.

(b) The use of spatial analysis approaches for network design and other air program planning needs. The monitoring strategy has utilized various spatial design approaches on National and Regional scales to identify areas of redundant monitoring as well as gaps requiring additional monitoring.

(c) The use of performance-based approaches for standardizing monitoring method requirements for particulate matter measurements. Performance-based approaches rely on applying data quality objectives to determine the allowable statistical uncertainties for instrument performance. This third subject area has evolved from discussions with the existing CASAC Subcommittee on Particulate Monitoring, and plays an important role in facilitating accommodation of new technologies into air monitoring networks.

Availability of Additional Meeting Materials

Copies of the draft agendas for the meetings that are described in this notice will be posted on the SAB Web site (*www.epa.gov/sab*) (under the "Agendas" subheading) approximately 10 days before each NAAMS Subcommittee public meeting or teleconference. Other materials that may be available will also be posted on the SAB Web site during this time-frame.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Butterfield at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 4, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–14746 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0195; FRL–7310–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0195, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0195. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0195. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0195. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0195.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0195. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included in Any Previously Registered Products

1. *File Symbol:* 7969–ENL. *Applicant:* BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. *Product Name:* BAS 670 336SC Herbicide. *Type of product:* Herbicide. *Active ingredient:* [3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1*H*-pyrazol-4-yl)methanone at 29.7%. *Proposed classification/Use:* None. For weed control on corn.

2. *File Symbol:* 7969–ENU. *Applicant:* BASF Corporation. *Product Name:* BAS 670 H Technical Herbicide. *Type of product:* Herbicide. *Active ingredient:* [3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1*H*-pyrazol-4-yl)methanone at 99.2%. *Proposed classification/Use:* None. For the formulation of herbicides.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 28, 2003.

Debra Edwards,

Director, Registration Division Division, Office of Pesticide Programs.

[FR Doc. 03–14329 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0100; FRL–7296–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0100, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0100. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the

comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0100. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0100. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0100.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0100. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Not Included in Any Previously Registered Product

1. *File Symbol:* 67979–U. *Applicant:* Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709. *Product name:* VIP3A. *Type of product:* Plant-incorporated protect. *Active ingredient: Bacillus thuringiensis* VIP3A control protein as expressed in Event COT102 cotton plants. *Proposed classification/Use:* None. For insect control on plants.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Division, Office of Pesticide Programs.

[FR Doc. 03–14326 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0194; FRL–7310–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0194, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0194. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0194. The system is an "anonymous access" system, which means EPA will not

know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0194. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0194.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0194. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

May 28, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by BASF Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 3F6568

EPA has received a pesticide petition (PP 3F6568) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of (3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl)-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone in or on the raw agricultural commodities: Corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernal plus cob with husks removed; corn, sweet, stover; cattle, kidney; cattle, liver; goat, kidney; goat, liver; hog, kidney; hog, liver; horse, kidney; horse, liver; sheep, kidney; and sheep, liver at 0.05; 0.01; 0.05; 0.01; 0.05; 0.05; 0.01; 0.05; 0.02; 0.70; 0.20; 0.70; 0.20; 0.70; 0.20; 0.70; 0.20; and 0.70 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of BAS 670 H (3-(4,5-dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl)-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone) was determined in corn forage, stover and grain using ^{14}C labeled materials applied to young corn plants at an exaggerated application rate of 0.134 lb active ingredient/acre. BAS 670 H and

one significant metabolite, M670H05, were found in low levels in the plant matrices with the majority of the radioactive residues incorporated into natural products. M670H05 resulted from oxidation of the carbonyl bridge to a carboxylic acid with concomitant loss and breakdown of the pyrazole ring. The significant metabolite M670H05 was found in the rat metabolism study.

2. *Analytical method.* Suitable independently validated analytical methods (for crop and animal matrices) are submitted for detecting and measuring BAS 670 H levels in or on food with a limit of detection that is satisfactory for enforcing the requested tolerances. Residues are first extracted from the matrices by aqueous solvent then cleaned up by acid partitioning into organic solvent, then base partitioned, and quantified with application to high performance liquid chromatography with dual mass selective detectors (LC/MS/MS).

3. *Magnitude of residues.* Field studies were conducted at 30 sites over 2 years with sites selected to fulfill both EPA and Canadian Pest Management Regulatory Agency (PMRA) requirements. The end product, BAS 670 00H, was applied broadcast over corn plants in two applications at 25 g active ingredient/ha (0.022 lb a.i./acre) + 75 g a.i./ha (0.067 lb a.i./acre) for a total of 100 g a.i./ha (0.089 lb a.i./acre) with the final application targeted for 45 days before milk stage. Samples of field corn were harvested at the milk stage to cover sweet corn harvest timing. All matrices were analyzed for parent and M670H05 with the limit of quantitation (LOQ) setting the proposed tolerances. No residues were detected above the LOQ in any of the corn RAC samples analyzed (fresh corn, forage, grain, and stover). To determine the fate of any BAS 670 residues in processed grain, the field study incorporated an exaggerated 5x application rate. No residues above LOQ were detected in the 5x treated grain samples; therefore, the analyses of the grain processed fractions was not required. The cow feeding study at three dosing levels show that food tolerances for parent in only kidney and liver matrices are necessary (and not for any other matrices such as meat, fat, and milk).

B. Toxicological Profile

1. *Acute toxicity—i.* Oral (rat): $(LD)_{50}$ = >2,000 milligrams/kilogram body weight (mg/kg bwt) (male/female) = Category III.

ii. Dermal (rat): $(LD)_{50}$ = >2,000 mg/kg bwt (male/female) = Category III.

iii. Inhalation (rat): $(LC)_{50}$ = >5.8 milligrams/per liter (mg/L) (male/female) = Category IV.

iv. Primary eye irritation (rabbit): Slightly irritating = Category III.

v. Primary dermal irritation (rabbit): Slightly irritating = Category III.

vi. Dermal sensitization (guinea pig): Not a sensitizer.

vii. Oral neurotoxicity (rat): NOAEL = 2,000 mg/kg bwt (male/female).

2. *Genotoxicty.* BAS 670 H was tested for its genotoxic potential in a battery of five *in vitro* or *in vivo* studies covering all required end-points (gene mutations, chromosomal and chromosome aberrations, and DNA damage and repair). Several batches of BAS 670 H have been tested over the time, from early laboratory produced material to current manufacturing process material. BAS 670 H did not demonstrate any genotoxic effects *in vivo*. *In vitro*, either batches tested for chromosomal aberrations caused a slight, significant clastogenic effect in the presence of S-9 mix, but the *in vivo* test for the equivalent end-point was negative. Three of the four batches tested in the bacterial reverse mutation assay were not mutagenic, but, the batch with the least purity displayed a weak mutagenic effect at the highest dose in *Salmonella typhimurium* TA98 in the absence of S-9 mix, most likely caused by impurities, which are not present in the current production batch. Overall, the weight of the evidence is that BAS 670 H is not genotoxic.

3. *Reproductive and developmental toxicity.* The reproductive and developmental toxicity of BAS 670 H was investigated in a 2-generation rat reproduction study as well as in rat, mouse and several rabbit teratology studies (with different batches of BAS 670 H) and a rat developmental neurotoxicity study.

There were no adverse effects on fertility of both genders and no effect on the reproductive performance of males in the two-generation study at any dose tested. There was, however, a high litter loss in F_0 and F_1 associated with insufficient maternal care at higher dose levels with clear maternal toxicity. General parental toxicity included eye and kidney effects, caused by elevated tyrosine levels due to hydroxyphenylpyruvate dioxygenase (HPPD) inhibition. The same organs were affected in subchronic and chronic feeding studies with rats. Pup effects were observed in the F_1 and F_2 generation including perinatal pup mortality and impaired body weight gain, the lower body weight effects were considered to lead to brain and spleen weight changes and delays in preputial separation. As observed in the parental animals, effects on eyes and kidneys were observed in the pups. Renal pelvis dilation was observed at lower doses, although, there was no overt maternal toxicity, significantly elevated tyrosine levels were observed in the dams and pups. The no observed adverse effect level (NOAEL) for fertility (F_0 and F_1, both genders) was 4,000 ppm (about 450 mg/kg bwt/day); the NOAEL for reproductive performance was 40 ppm (about 4 mg/kg body weight/day) for the F_1 females. The NOAEL for general toxicity was 4 ppm (about 0.4 mg/kg bwt/day). The NOAEL for developmental toxicity (growth and development of the offspring) was 4 ppm (about 0.4 mg/kg body weight/day) for the F_1 pups, but was lower than 4 ppm for the F_2 pups due to renal pelvis dilations at all dose levels.

Developmental neurotoxicity was not observed at any dose in the developmental neurotoxicity study. At all dose levels, eye effects due to elevated tyrosine levels were found in dams and pups. Additionally, there were decreased body weights in the dams at the high and mid dose, but there were no indications of adverse effects on reproductive performance of the parental females. In pups of both genders, decreased preweaning and postweaning body weight gains and body weights were observed at the low dose level and above. This is an indicator of a retardation of the general physical development, which is considered to be responsible for a slight delay of maturation. The NOAEL for developmental neurotoxicity was 800 mg/kg bwt/day (highest dose tested). There is no NOAEL for the eye lesions and reduced body weight gain of the pups. NOAELs for these effects were determined in prenatal development studies in rats, rabbits and mice.

No developmental toxicity was noted in the mouse prenatal development study. In the prenatal development study in rats no teratogenic effect was observed, but there was maternal toxicity together with skeletal variations in the pups. The same skeletal variation (i.e. supernumerary ribs) was also found in rabbit prenatal development studies. This effect is associated with the family of HPPD inhibiting substances. In addition, several rabbits had pups with a soft tissue malformation: unilateral kidney agenesis. The NOAEL for the skeletal variations and the kidney agenesis was 0.5 mg/kg bwt/day, the NOAEL for overt maternal toxicity was 50 mg/kg bwt/day. The developmental effects in rabbits occurred at dose-levels below overt maternal toxicity; however, measured tyrosine blood levels in the

dams were substantially elevated at these dose levels. Elevated tyrosine levels are known to cause kidney toxicity.

4. *Subchronic toxicity.* The subchronic toxicity of BAS 670 H was investigated in 90–day feeding studies in rats, mice and dogs, and in a 28–day dermal administration study in rats. Several supplemental short-term mechanistic studies in rats and mice were performed to elucidate the mode of action. Generally, very mild toxicity was observed in mice and dogs at high doses. In a combined neurotoxicity 90–day feeding study in rats, no signs of neurotoxicity were observed. Effects were seen in the pancreas, eye, kidney, liver, and thyroid gland. The target organs are identical with those in the chronic feeding studies with rats.

Two modes of action have been elucidated for BAS 670 H by short-term mechanistic studies, one leading to effects on eyes, kidney and liver, and a second leading to effects at the thyroid: BAS 670 H causes elevated tyrosine levels by HPPD inhibition accounting for effects on eye, liver and kidney. The mouse is the accepted model for this tyrosine level elevations, and a NOAEL of 1.2 mg/kg bwt/day was established for tyrosine elevation in mice. Other mechanistic studies demonstrated an impairment of pituitary-thyroid hormone levels by enhancing the hepatic clearance of thyroid hormones. The NOAEL for interference with thyroid hormones was 0.4 mg/kg bwt/day. The NOAEL for effects on the exocrine pancreas in rats was 1.1 mg/kg/bwt/day. Similar effects were seen in the 28–day dermal study with rats; the NOAEL was 100 mg/kg bwt/day.

5. *Chronic toxicity.* The chronic toxicity and oncogenicity studies with BAS 670 H include two 12–month feeding studies with dogs, an 18–month mouse feeding study, a 12–month rat chronic feeding study and a 24–month rat oncogenicity study. In the chronic dog study, mild reductions of the body weight were observed at high doses. The NOAEL was 100 ppm (2.9 and 3.1 mg/kg bwt/day in males and females respectively).

In the 18–month chronic feeding study in mice, increased liver weights were seen at high doses, The NOAEL was 80 ppm (19 and 26 mg/kg bwt/day in males and females respectively). BAS 670 H was not carcinogenic to mice. In the chronic feeding studies in rats, the main target organs were eye, liver, kidney, thyroid gland, and pancreas. The same organs were affected in the subchronic studies. Short-term mechanistic studies demonstrated that BAS 670 H causes elevated tyrosine levels by HPPD inhibition accounting for effects on the eye, liver and kidney. The mouse is the accepted model for this tyrosine level elevation, and a NOAEL of 1.2 mg/kg bwt/day was established for tyrosine elevation in mice. The NOAEL for effects on the exocrine pancreas in rats 6 ppm in both genders (0.4 and 0.5 mg/kg bwt/day in males and females respectively). At the end of the 24–month oncogenicity study, there was a slight but significant increase in benign thyroid adenomas in both genders. The thyroid was the only organ affected and the increase of the adenomas was significant only at the highest dose tested, while considerable general toxicity was already seen at 20–times lower doses. The mechanism of thyroid tumor formation by BAS 670 H was thoroughly investigated in short-term mechanistic studies. An enhanced hepatic clearance of thyroid hormones impairs pituitary-thyroid hormone levels leading to hypertrophy, hyperplasia and ultimately neoplasia. There is general agreement, that this mechanism is well understood in rodents and is of minor relevance to humans. A clear NOAEL of 0.4 mg/kg bwt/day was demonstrated for effects on thyroid hormone levels. A threshold (non-linear) cancer assessment is proposed and a cancer classification as "not likely to be a human carcinogen."

6. *Animal metabolism.* In the rat metabolism studies, the majority of the residue was excreted within 48 hours from both males and females. In all matrices investigated unchanged parent is the main component. Degradation starts with hydroxylation of the oxazole ring. The identified metabolites from both pyrazole ring label and phenyl ring label studies are reported. Goat and hen metabolism studies were conducted with feeding levels of about 10 ppm. In the goat, the majority of the applied dose was excreted. Non-metabolized BAS 670H was the major radioactive residue, and M670H02, formed from hydroxylation at the 4-position of the isoxazole ring, was the only significant metabolite formed. In poultry BAS 670 F was also rapidly excreted. Residues in liver consisted mainly of BAS 670H, and the only significant metabolite in poultry was again M670H02. The significant metabolite M670H02 was found in the rat metabolism study.

7. *Metabolite toxicology.* Toxicity of the metabolites of BAS 670 H with potential exposure to humans was concurrently evaluated during toxicity testing of the parent, because both plant and animal metabolites are formed during the course of toxicity testing. Both plant and animal metabolites are considered not of toxicological concern. Some testing was conducted on the anaerobic aquatic metabolite, 670M10. The results as given below show no toxicological concern:

- Bacterial reverse mutation test (Ames): No effect = negative.
- Mammalian somatic cell gene mutation test (MNT): No effect = negative.
- Cytogenetic study *in vivo* (mouse HPRT): No effect = negative.
- 28–Day feeding study (rat): NOAEL 1,197 mg/kg bwt/day and 1,304 mg/kg bwt/day (male and female, respectively).

8. *Endocrine disruption.* BAS 670 H has been shown to alter thyroid hormone levels in rats as also observed with other 4-hydroxyphenylpyruvate dioxygenase enzyme inhibitor active ingredients. However, there have been no effects noted on sexual or other hormones in numerous subchronic and chronic toxicity studies with multiple species.

C. Aggregate Exposure

1. *Dietary exposure.* A chronic population adjusted dose (cPAD) of 0.00044 mg/kg/day is proposed. This cPAD is based on a lowest observed adverse effect level (LOAEL) of 0.4 mg/kg/day for pup renal pelvis dilation in the 2-generation rat reproduction study with an extra 3X uncertainty factor for using the LOAEL (rather than a NOAEL) plus a 3X Food Quality Protection Act (FQPA) factor on top of the standard 100X uncertainty factor. So the total uncertainty factor is 900 (3 x 3 x 100), and the cPAD is calculated as 0.4/900 = 0.00044.

An acute dietary population adjusted dose (aPAD) is proposed as 0.0013 mg/kg/day. This aPAD is based upon a NOAEL of 0.4 mg/kg/day obtained in the rat thyroid hormone study and a 3X FQPA uncertainty factor on top of the standard 100 (0.4/300 = 0.0013).

BAS 670 H has been shown to be non-carcinogenic in mice, but was associated with an increase in thyroid follicular cell tumors at high doses in the rat. These tumors have been shown to develop by a non-genotoxic mode of action, in fact they were the consequence of induced changes of thyroid hormone levels. Therefore BAS 670 H should be classified as "not likely to be a human carcinogen."

i. *Food.* Exposure estimates were compared against the cPAD and aPAD of 0.0013 mg/kg bwt/day and 0.004 mg/kg bwt/day, respectively. Results of the chronic dietary exposure assessments demonstrated that even with the worst-case assumptions (residues at tolerance level and 100% crop treated), the estimated chronic dietary exposure was less than 12.5% of the cPAD for the total U.S. population and all the subpopulations. The greatest exposure occurred in infants and children. Exposure estimates for the acute dietary assessment were well under 100% of the acute population adjusted dose (aPAD) at the 99th percentile. The overall U.S. population and the highest exposed subpopulation (infants <1 year) utilized only 5.3% and less than 21%, respectively.

ii. *Drinking water.* There are no established maximum contaminant levels or health advisory levels for residues of BAS 670 H or its metabolites in drinking water. A tier 1 drinking water modeling assessment for BAS 670 H using the FIRST model (for surface water) and SCI-GROW (for ground water) produced estimated maximum concentrations of 0.22 parts per billion (ppb) (chronic) for surface water and 0.20 ppb for ground water. These estimated concentrations are less than a worst case calculated acceptable level of 3.95 ppb children chronic drinking water levels of concern (DWLOC) for residues in drinking water based on chronic aggregate exposure. Therefore, taking into account all uses and exposures one concludes, with reasonable certainty that residues of BAS 670 H in drinking water will not result in unacceptable levels of aggregate human health risk at this time.

2. *Non-dietary exposure.* There are no registered or proposed residential uses for BAS 670 H.

D. Cumulative Effects

At this time, there is no available information to indicate that BAS 670 H or its metabolites have a common mechanism of toxicity with other substances. Therefore, there is no reason to include this pesticide or its metabolites in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that BAS 670 H and its metabolites have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Aggregate exposure to the overall U.S. population utilized only 8.7% of the aPAD and 12.7% of the cPAD, respectively. Therefore, no harm to the overall U.S. population would result from the use of BAS 670 H on field, sweet, or pop corn.

2. *Infants and children.* There is a complete toxicity base for BAS 670 H and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Taking into account the completeness of the data base, BASF Corporation concludes that the FQPA safety factor should be retained but reduced to 3X. This is based on the occurrence of kidney malformations in rabbits and skeletal variations in rabbits and rats, all occurring at doses, which caused either maternal tyrosine elevations or other evidence of maternal toxicity. The full toxicological data base that has been developed for BAS 670 H includes many additional mechanistic studies, revealing consistency and the mode of action of these effects. The kidney was a target organ in all repeated dose studies and these effects were caused by elevated tyrosine levels due to inhibition of the HPPD enzyme. Using the standard worst case exposure assumptions (residues at tolerance level and 100% crop treated), aggregate exposure to BAS 670 H from food and water will utilize 33% and less than 24% of the aPAD and cPAD, respectively for infants and children. EPA generally has no concern for exposures below 100% of the PAD because it represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. BASF Corporation concludes that there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to BAS 670 H residues with the approval of this tolerance petition.

F. International Tolerances

No maximum residue levels (MRLs) have been established for BAS 670 H by the CODEX Alimentarius Commission or in Mexico.

[FR Doc. 03–14328 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0177; FRL–7308–7]

Acetic Acid; Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirements of a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0177, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address:*benmhend.driss@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0177. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket

facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0177. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0177. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0177.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Attention: Docket ID Number OPP–2003–0177. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 2003.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of pesticide chemical residues or an explanation of why no such method is needed.

Eastman Chemical Company

PP 3F6516

EPA has received a pesticide petition (3F6516) from Eastman Chemical Company, P.O. Box 511, Kingsport, TN 37662 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide acetic acid. Pursuant to section 408(d)(2)(A)(i) of the FFDCA as amended, Eastman Chemical Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. The summary of the petition was prepared by the petitioner and represent the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

It is the purpose of this petition to re-establish an exemption from the requirement of a tolerance for acetic acid when used as a grain and hay preservative on agricultural commodities such as alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut grass, Timothy, vetch, and wheat grain, or commodities described as grain or hay.

Acetic acid is currently exempt from the requirement of a tolerance when used as a catalyst under 40 CFR 180.1001(c). Previously, acetic acid was exempt from the requirement of a tolerance (40 CFR 180.1029), when used as a preservative on the above-mentioned commodities. This exemption was canceled, but only because the registrants at that time, did not wish to maintain the registration. Subsequent to the cancellation of the registrations, the tolerance exemption was revoked.

A. Residue Chemistry

There have been no analytical procedures conducted to ascertain residual acetic acid on treated commodities. The application rate for the preservation of grain and hay as per instructions, will result in concentrations of about 1% on hay and about 1.5% on grain. Additionally, acetic acid is generally recognized as safe (GRAS) under the Food and Drug Administration (FDA), 40 CFR 184.1005, for use in food when used in accordance with good manufacturing or feeding practice.

Since this request is for an exemption from the requirement of a tolerance, residual acetic acid on hay and grain will not pose a problem of exposure to humans or the environment especially since acetic acid is in the food chain and is naturally occurring in nature. Residuals at this low level are less than is found in vinegar used on foods.

B. Toxicological Profile

1. *Acute toxicity.* Acute oral at 4,960 milligrams/kilogram body weight (mg/kg) (bwt) (Category III). Acute dermal at 1,060 mg/kg bwt (Category II). Acute inhalation at 11.4 milligrams/Liter (mg/L) (Category III). Eye irritation, corrosive (Category I). Dermal irritation, corrosive (Category I). Mild irritant to guinea pigs at 20 mg/24 hours. (Category IV). Contact with concentrated acetic acid solutions may cause local damage to skin, eye, or mucosa.

2. *Genotoxicity.* Acetic acid and the sodium salt of acetic acid, provided negative results for mutagenicity assays in strains of *Salmonella typhimurium*.

3. *Reproductive and developmental toxicity.* In a teratogenicity study by the Food and Drug Research Laboratories, 5% acetic acid (apple cider vinegar), the administration of up to 1,600 mg/kg bwt, to pregnant mice for 10 consecutive days had no clear discernible effect on nidation or on maternal or fetal survival.

Additionally, similar acids to acetic acid, such as fumaric acid and citric acid, illicit no teratogenic or reproductive toxicity in rats or chick embryos. This is also true for propionic acid (or salts thereof) which is used in the same manner as proposed for acetic acid.

4. *Subchronic toxicity.* Waivers have been requested for the 90–day feeding, dermal and inhalation studies. The conditions of potential exposure requiring these studies are not triggered. Acetic acid is a food acid and is naturally occurring. Acetic acid is absorbed from the gastrointestinal tract and through the lungs and is readily, although not completely, oxidized in the organism. Acetic acid is proposed to be used as a hay and grain preservative at low concentrations, and for animal food only, and these low concentrations are lower than is found in commercially available vinegar (5% to 7%). Therefore, there would be no expected subchronic effects from the limited exposure expected to acetic acid, and the waivers should be granted.

5. *Chronic toxicity.* Waivers have been requested for chronic toxicity requirements for acetic acid. However, the results of two Russian studies reported the induction of hyperplasia in rats at 60 mg/kg bwt. This result is similar to induction of hyperplasia in rats by propionic acid in a 2–year study.

6. *Animal metabolism.* Acetic acid is a food acid and is naturally occurring. Acetic acid is utilized as an energy source in the body by combining first with Co-enzyme A to form Acetyl-CoA which then enters the Kreb's citric acid cycle by combining with oxaloacetate to yield citrate. This process is active in all animals and higher plants and is carried out in the mitochondria. Acetic acid is proposed to be used as a hay and grain preservative at low concentrations, and for animal food only. There are no expected adverse effects.

7. *Metabolite toxicity.* Acetic acid is a food acid and is naturally occurring in the environment as well as in plants and animals. Acetic acid is utilized as an energy source in the body by combining first with Co-enzyme A to form Acetyl-CoA which then enters the Kreb's citric acid cycle by combining with oxaloacetate to yield citrate. This process is active in all animals and higher plants and is carried out in the mitochondria.

C. Aggregate Exposure

1. *Dietary exposure.* Acetic acid is a food acid and is naturally occurring in plants and animals. Acetic acid is utilized as an energy source in the body by combining first with Co-enzyme A to form Acetyl-CoA which then enters the Kreb's citric acid cycle by combining with oxaloacetate to yield citrate. This process is active in all animals and higher plants and is carried out in the mitochondria.

Acetic acid is most commonly encountered by the human population in the form of vinegar, varying in concentration of acetic acid, from 4–7%. Acetic acid is considered generally recognized as safe (GRAS) by FDA when directly added to foods (20 CFR. 184.1005). There are no reports in the literature of contact sensitization to vinegar.

Used in accord with instructions for the preservation of grain and hay, the concentration of acetic acid on the commodities used for animal food, will be less than 2%. Dietary exposure to acetic acid used in this application will therefore pose no threat to humans or the environment.

2. *Non-dietary exposure.* The only non-dietary exposure to acetic acid is the occupational exposure. Acetic acid end-use products are sprayed on grains and hay at application rates in ranges of less than 3% on the commodity, depending on the moisture content of the treated crop. Based on the use patterns, the potential for exposure of applicators and workers in the field being treated with acetic acid could be significant. However, applicators are generally confined in the cab of the tractor pulling the collecting systems to which the applicating sprays are attached. The hay or grain collected would contain less than 3% of the acetic acid and therefore subsequent exposure to the crop would cause no significant exposure to the acetic acid.

Certain protective clothing is recommended for acetic acid users due to eye and skin hazards associated with the handling of concentrated acetic acid and the use of such clothing and protective equipment is presented on the label.

D. Cumulative Effects

Acetic acid is used similarly as propionic acid, for the preservation of hay and grains. Under an aerobic conditions propionic acid acts as a carbon source for various microbes and is metabolized to acetic acid, methane, carbon dioxide, and water. For propionic acid, the metabolite of acetic acid poses no problems because acetic acid is also found in the food chain, is naturally occurring, and is applied in the same manner as propionic acid as a pesticide. For propionic acid all environmental fate data requirements are waived for the uses this petition requests for acetic acid. There should be no concern for cumulative effects for acetic acid as well.

E. Safety Determination

Human health assessment—i. U.S. population. Acetic acid is a normal component of metabolism in the human body and humans ordinarily consume acetic acid as vinegar, as a natural component of common foods, and as an added ingredient. Dietary exposure from pesticidal use would be very low.

ii. *Infants and children.* As noted above acetic acid is produced by the human body. Humans include infants and children as well as adults. For the same reasons as above, dietary exposure from pesticidal use would be of minimal concern.

F. Tolerance Exemptions for the Proposed Uses

The petitioner proposes that the use of acetic acid as a grain and hay preservative be granted an exemption from the requirement of a tolerance, as proposed below:

1. Post-harvest application of acetic acid, when used as a fungicide or preservative is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, Timothy, vetch, and wheat grain, or commodities described as grain or hay.

2. Acetic acid is exempt from the requirement of a tolerance for residues in or on meat, and meat by-products: Cattle, sheep, hogs, goats, horses, and poultry, milk, and eggs when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain.

3. Post-harvest application of acetic acid when used as a fungicide/preservative is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Cottonseed, peanuts, rice grain, and soybeans.

Noticeably, this tolerance exemption request re-establishes the same exemption criteria as was previously granted for acetic acid for this use.

G. International Tolerances

There are no known international tolerances for residues of acetic acid in food or animal feed.

[FR Doc. 03–14200 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0165; FRL–7306–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of an inert ingredient hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for its production in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0165, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0165. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your

comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0165. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0165. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0165.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Attention: Docket ID Number OPP–2003–0165. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Inc.

PP 3G6590

EPA has received pesticide petition (PP 3G6590) from Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide inert ingredient hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for its production in or on cotton.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Hygromycin B phosphotransferase (APH4) marker protein is proposed for use as a plant-incorporated protectant formulation inert ingredient. APH4 protein is an aminocyclitol phosphotransferase that catalyzes the phosphorylation of hygromycin and closely related aminoglycoside antibiotics. Expression of the APH4 gene in plant cells allows for growth and selection of transformed cells in the presence of hygromycin B. APH4 has no insecticidal activity.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The *aph4* gene in event COT102 cotton plants was derived from a plasmid harbored by a hygromycin-resistant isolate of *E. coli*, and encodes a 341 amino-acid enzyme, hygromycin B phosphotransferase (APH4). Hygromycin B phosphotransferases with significant homology to the APH4 protein in event COT102 plants have also been identified in other microbes including *Streptomyces hygroscopicus*, the source of hygromycin B.

APH4 has a molecular weight of ca. 42,000 and catalyzes the phosphorylation of the 4-hydroxyl group on the hyosamine moiety of hygromycin B, thereby inactivating it. The enzyme has a narrow range of substrates, in that it phosphorylates hygromycin B, hygromycin B_2 and the closely related antibiotics destomycin A and destomycin B, but does not phosphorylate other aminocyclitol or aminoglycoside antibiotics including neomycin, streptomycin, gentamicin, kanamycin, spectinomycin, tobramycin, and amikacin. Hygromycin B is not used in human clinical therapy, but is principally used as an antihelminthic agent in swine and poultry feeds.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of APH4 protein measured in various plant parts including seeds of VIP3A cotton, as measured by enzyme linked immunosorbent assay (ELISA). APH4 was either not detectable in most COT102 plant tissues or the levels were too low to quantify. Pollen was the only tissue in which quantifiable levels were measured.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the APH4 protein by ELISA analysis.

C. Mammalian Toxicological Profile

Syngenta Seeds is providing the results of a mammalian toxicology study, *in vitro* digestibility study, and bioinformatics evaluations conducted on the selectable marker protein APH4. These studies, summarized herein, demonstrate the lack of toxicity of the APH4 protein following acute oral exposure to mice, rapid degradation of APH4 upon exposure to simulated gastric and intestinal fluids, and the lack of amino acid sequence similarity of the APH4 protein to proteins known to be mammalian toxins or human allergens.

When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Ref. 1). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Because it is not possible to extract sufficient APH4 protein from transformed plants for toxicology studies, APH4 protein was produced in recombinant *E. coli* by over-expressing the same *aph4* gene that was introduced into VIP3A cotton event COT102. The *aph4* gene was cloned into the inducible, over-expression pET-3a® vector (Novagen, Madison, WI) in *E. coli* BL21DE3pLysS. The APH4 protein, as encoded in this vector, was identical in amino acid sequence to that encoded by the plant transformation vector, pCOT1, except for an additional 11 amino acids from the T7 Tag™ and three amino acids from the vector polylinker. Following purification from *E. coli*, dialysis and lyophilization, the resulting sample, designated Test Substance APH4-0102, was estimated by ELISA to contain ca. 42.6% APH4 protein by weight. The test material was confirmed to be enzymatically active.

An acute mouse oral toxicity study was conducted at the Syngenta Central Toxicology Laboratory (Alderley Park, Macclesfield, Cheshire, UK) according to OPPTS Harmonized Guideline 870.1100. Test substance APH4-0102 (see above description of test substance) was administered to five male and five female mice strain Alderley Park albino mouse (APfCD-1); 8–9 weeks old via a gavage dose of 1,828 milligrams/kilogram (mg/kg) body weight. The test substance contained ca. 42.6% APH4 protein by weight. Therefore, the mice received ca. 779 mg APH4/kg body weight. A negative control group (5 mice/sex) concurrently received the dosing vehicle alone, a suspension of 1% methylcellulose, at the same dosing volume as used for the test material mixture. Food was provided ad libitum, except during the ca. 1–hour prior to dosing, when the animals were fasted. Water was provided ad libitum throughout the study. Observations for mortality and clinical/behavioral signs of toxicity were made at least twice on the day of dosing, and at least once daily thereafter for 14 days. Detailed clinical observations were made for each animal at each observation time. Body weights were recorded daily and food consumption was recorded weekly. Surviving animals were euthanized 14 days post dosing and subjected to gross necropsy. Organ weights (brain, liver with gall bladder, kidneys and spleen) were recorded and principal tissues were processed for microscopic examination.

No mortalities occurred during the study, and no clinical signs of toxicity were observed in either the test or control groups. There were no treatment-related effects on body weight, food consumption, or organ weights, nor were any treatment-related effects observed following macroscopic or microscopic examination. APH4–0102 is not acutely toxic to mice. There is no evidence of toxicity of the test substance at 1,828 mg APH4–0102/kg body weight, representing ca. 779 mg APH4 protein/kg body weight. The estimated LD_{50} value for pure APH4 protein in male and female mice is >779 mg/kg body weight, the single dose tested.

The APH4 protein shows no homology to proteins known to be

mammalian toxins or human allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal.

The genetic material necessary for the production of APH4 as an inert ingredient are the nucleic acids (DNA) which comprise genetic material encoding this protein and its regulatory regions. "Regulatory regions" are the genetic material that control the expression of the genetic material encoding the protein, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency has previously stated that they are not aware of an instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject inert ingredient, have been adequately characterized. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject inert plant pesticidal ingredient.

D. Aggregate Exposure

1. *Dietary exposure—i. Food.* Derivatives of cottonseed (e.g., refined cottonseed oil) and fiber (e.g., linters, which are essentially 100% cellulose) are used in some food products. However, APH4 was not detected in most of the samples of COT102-derived cottonseed analyzed or any of the cotton fiber samples analyzed. In the few cottonseed samples in which APH4 was detectable, the quantities were below the limit of quantification (<137 ng APH4/g fresh wt; <150 ng APH4/g dry wt). It is expected that any trace quantities of APH4 in cottonseed will be eliminated by standard seed processing methods. As demonstrated by the analysis of cottonseed products for VIP3A protein, no VIP3A was detected in refined cottonseed oil from COT102-derived plants, despite the presence of ca. 3 micrograms VIP3A/g seed (fresh or dry wt.). Additionally, no protein of any kind was detected in the same sample of refined cottonseed oil. It can be concluded that APH4, as produced in COT102-derived cotton plants, does not pose a risk of becoming allergenic via food, because there will be no exposure via food. Additionally, the APH4 protein shows no amino acid sequence homology to known allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal.

ii. *Drinking water.* No exposure to the APH4 and the genetic material necessary for its production as an inert ingredient via drinking water are expected. The protein is incorporated into the plant and will therefore not be available to drinking water sources.

2. *Non-dietary exposure.* Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure via dermal or inhalation routes is unlikely because the inert ingredient is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the APH4 protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity to the APH4 protein, it is reasonable to conclude that there are no cumulative effects for this inert ingredient.

F. Safety Determination

1. *U.S. population.* The lack of mammalian toxicity at high levels of exposure to the APH4 protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated via consumption of processed food products produced from VIP3A cotton. Moreover, little to no human dietary exposure to APH4 protein is expected to occur via VIP3A cotton. Due to the lack of toxicity of the APH4 protein and its very low potential for allergenicity, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children.* Syngenta has evaluated the acute toxicity data generated on APH4, the lack of homology to known allergens or toxins, and the limited exposure to this protein based on the residue profile and limited number of food/feed products resulting from cotton and has determined that there is ample evidence to indicate a reasonable certainty of no harm to infants and children as a result of the use of this product.

G. Effects on the Immune and Endocrine Systems

The inert ingredient APH4 is a protein, derived from sources that are not known to exert an influence on the endocrine or immune systems.

H. Existing Tolerances

The registrant is not aware of any known existing tolerances or exemptions for APH4 and the genetic material necessary for its production as an inert ingredient.

I. International Tolerances

The registrant is not aware that any Codex maximum residue levels exist for the APH4 protein and the genetic material necessary for its production.

J. Reference

1. Sjoblad, R.D., J.T. McClintock and R. Engler (1992) Toxicological considerations for protein components of biological pesticide products. *Regulatory Toxicol. Pharmacol.* 15: 3–9.

[FR Doc 03–14327 Filed 6–10–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0187; FRL–7311–8]

Experimental Use Permit; Receipt of Application for Use of Aspergillus Flavus NRRL 21882

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 75624-EUP-R from Circle One Global, Inc. requesting an experimental use permit (EUP) for the *Aspergillus flavus* NRRL 21882. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2003–0187, must be received on or before July 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be

of interest to an agricultural producer, food manufacturer, pesticide manufacturer, or a person who may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0187. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0187. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0187. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in

WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0187.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0187. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Circle One Global, Inc., One Arthur St., P.O. Box 28, Shellman, GA 39886–0028, has applied for an EUP for field testing of a new end-use product of a microbial pesticide containing the active ingredient, *Aspergillus flavus* NRRL 21882, in a non-crop destruct program. The product is to be ground applied and is a granular formulation. At the proposed use rate of 20 lbs/acre, the equivalent amount of active ingredient applied is only 0.002 lbs/acre. The requested EUP is for a total of 5,000 acres to be treated for a total application of 10 lbs of the active ingredient. Concurrent with this application, the applicant filed a pesticide petition number 3G6559 for a temporary exemption from tolerance for residues of *Aspergillus flavus* NRRL 21882 in/on the food/feed commodity peanut. Application of the pesticide is proposed to reduce aflatoxin-producing colonies of *Aspergillus flavus* on the crop and in the soil by competitive displacement. Testing of 100 lbs of the active ingredient will occur in three States: Alabama, Florida, and Georgia.

III. What Action is the Agency Taking?

Following the review of the Circle One Global, Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 2, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–14462 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–9]

Horseshoe Bend Dump Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a settlement at the Horseshoe Bend Dump Superfund Site in Lawrenceburg, Lawrence County, Tennessee under a CERCLA 122(h) Agreement for recovery of Response Costs to settle claims for past costs at the Site. The two (2) parties to the agreement have returned signature pages accepting EPA's settlement offer. EPA will consider public comments on the proposed settlement until July 11, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written Comments made be submitted to Ms. Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: May 21, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–14747 Filed 6–10–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission

ACTION: Notice.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension without change of the existing recordkeeping requirements under 29 CFR part 1602 *et seq.* Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before August 11, 2003.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Richard V. Roscio, Assistant Legal Counsel, Legal Services Programs, Thomas J. Schlageter, Assistant Legal Counsel or Mona Papillon, General Attorney, at (202) 663–4669 or TDD (202) 663–4074. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act, which prohibit discrimination on the basis of race, color, religion, sex, national origin or disability. Sections 709(c) of Title VII and section 107(a) of the ADA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 *et seq.* Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of these regulations without change.

Overview of This Information Collection

Collection Title: Recordkeeping under Title VII and the ADA.
OMB-Number: 3046–0040.
Description of Affected Public: Employers with 15 or more employees are subject to Title VII and the ADA.
Number of Responses: 627,000.
Reporting Hours: One.
Number of Forms: None.
Federal Cost: None.
Abstract: Section 709(c) of Title VII, 42 U.S.C. 2000e–8(c) and section 107(a) of the ADA, 42 U.S.C. 12117(a) require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a).

Burden Statement: The estimated number of respondents is approximately 627,000 employers. The recordkeeping requirement does not require reports or the creation of new documents; it merely requires retention of documents that the employer has made or kept. Thus, the burden imposed by these regulations is minimal. The burden is estimated to be less than one hour per employer.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: June 4, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–14628 Filed 6–10–03; 8:45 am]

BILLING CODE 6570–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1) Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed revision of the Employer Information Report (EEO–1).

SUMMARY: In the late 1990's, the Office of Management and Budget (OMB) issued revisions of three standard Federal classifications related to the U.S. Equal Employment Opportunity Commission's Employer Information Report (EEO–1)—the North American Industry Classification System (1997), the Standards for the Classification of Federal Data on Race and Ethnicity (1997), and the Standard Occupational Classification (1999).

In response to the changes in the OMB classification standards, and under § 709(c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 200e–8(c)), the U.S. Equal Employment Opportunity Commission (EEOC or Commission) is proposing modifications to the system currently used to classify the race and ethnicity and job categories used by respondents to file annual EEO–1 reports. This notice solicits public comment on the EEOC proposals. The proposed EEO–1 form can be found at *http://www.eeoc.gov/eeo1*.

DATES: Written comments on this notice must be submitted on or before August 11, 2003. A public hearing concerning these proposed changes will be held on

a date and at a time and place to be announced.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of a FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: On October 30, 1997, OMB issued a **Federal Register** notice (Vol. 62. No. 210, Part II, pp. 58781–58790) titled "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity." On September 30, 1999, OMB issued its Notice of final decision for the Standard Occupational Classification system in the **Federal Register** (Vol. 64. No. 189, Part IV, pp. 53135–53163). These proposed revisions to the EEO–1 respond to these changes in the Federal classification standards. EEOC seeks to avoid burden and disruption by proposing these changes simultaneously.

The Commission is soliciting public comment on its proposals to modify the EEO–1 form to use the revised race and ethnicity and job categories, as well as comments addressing the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Persons wishing to present their views orally should notify the Commission of their desire to do so, in writing, no later than [Insert 60 days from the date of publication] with a request to Francis Hart, Executive Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. The request should include a written summary of the remarks to be offered.

The remainder of this **SUPPLEMENTARY INFORMATION** section provides the public with access to the information it will need to comment on the EEOC proposals. It is organized into three parts—an overview of the information collection, followed by discussions of the proposed changes for EEO–1 data on race and ethnicity and proposed changes for EEO–1 job category data.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: OMB Number 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private industry employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers with 100 or more employees and certain Federal Government contractors and first tier subcontractors with 50 or more employees.

	Current	Proposed
Reporting Hours	402,700	644,320
Respondent Cost	$6.0 million	$9.7 million.
Federal Cost	$1.3 million	$2.1 million.
Number of Forms	1	1

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–8(c)), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations set forth in the Code of Federal Regulations, title 29, chapter XIV, subpart B, Section 1602.7. Employers in the private sector with 100 or more employees and some Federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data are used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with eighty-six State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 report survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between 3 and 4 EEO–1 reports annually. The annual number of responses is approximately 170,000. The proposed form is estimated to impose 644,320 burden hours annually. It is also estimated that the total one time implementation burden for the proposed revision for all reporters will be about 660,000 hours or about $9.9 million. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Proposed Changes for EEO–1 Data on Race and Ethnicity

Revised Race/Ethnic Category Definitions

Table 1 below compares the current EEO–1 race/ethnic categories in the first column, as they have appeared on the EEO–1 since 1977, with the proposed EEO–1 race/ethnic categories in the second column. Definitions of the proposed EEO–1 ethnicity and race categories are in accordance with the 1997 revised standards and are as follows:

Ethnicity

Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Race

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American—A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Phillipine Islands, Thailand, and Vietnam.

American Indian or Alaska Native—A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Two or More Races—All person who identify with more than one of the above five races

TABLE 1

Current EEO–1	Proposed EEO–1 (Answer for both male and female)
Hispanic	Hispanic or Latino. (This category includes all employees who answe—YES—to the question—are you Hispanic or Latino? Report in the appropriate categories below all employees who answer—No—to the question—are you Hispanic or Latino?
White (Not of Hispanic origin)	White not Hispanic or Latino.
Black (Not of Hispanic origin)	Black or African American not Hispanic or Latino.
Asian or Pacific Islander	Native Hawaiian or Other Pacific Islander not Hispanic or Latino. Asian not Hispanic or Latino.
American Indian or Alaskan Native	American Indian or Alaska Native not Hispanic or Latino.
	Two or more Races not Hispanic or Latino.

Race and Ethnicity Reporting Instructions on the Proposed Revised EEO–1 Race and Ethnic Identification

Self identification is the preferred method of identifying the race and ethnic information necessary for the EEO–1 report. Employers are strongly encouraged to rely on employee self-identification to obtain this information. It self-identification is not feasible, post-employment records or observer identification may be used to obtain this information. The following language is suggested for use by employers when collecting race and ethnicity information from employees.

Suggested Employee Questionnaire on Race and Ethnicity

Below are two questions, the first is about your ethnicity and the second about your race. You are to answer both questions. In answering the second question, you may select one or more races. The summarized information is reported to the Federal government for civil rights enforcement and monitoring purposes. For these purposes, if you mark "Yes, Hispanic or Latino", your race will not be reported. The summarized information on race will be reported in the following categories only:

1. White
2. Black or African American
3. Asian
4. Native Hawaiian or Other Pacific Islander
5. American Indian or Alaska Native
6. Two or More Races

If you select more than one race, you will be reported to the Two or More Races category. For example, if you select Black and American Indian or Alaska Native, you will be reported in the Two or More Races category.

Question 1—Ethnicity

Are our Hispanic or Latino?

_____ No, not Hispanic or Latino

_____ Yes, Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Question 2—Race

What is your race? Select one or more of the following five race categories.

_____ White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

_____ Black or African American—A person having origins in any of the Black racial groups of Africa.

_____ Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

_____ Native Hawaiian or Other Pacific Islander—A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

_____ American Indian or Alaska Native—A person having origins in any of the original peoples of North and South American (including Central America), and who maintains tribal affiliation or community attachment.

Proposed Changes for EEO–1 Job Category Data

Proposed EEO–1 Job Categories

The Commission is also proposing to modify the current EEO–1 job categories by: using the detailed 2000 (SOC) job definitions; cross-classifying them against the 2000 Census Occupational classification codes; aggregating them according to a skill-based schema; and

also subdividing the current Officials and Managers category into three distinct hierarchical sub-categories. The proposed EEO–1 job categories would continue to be skill-based rather than industry-based. Consequently, the proposed EEO–1 job categories differ from the 2000 SOC intermediate level aggregation categories and are not comparable. Please *see http://www.eeoc.gov/stats/census/crosswalk.html* for a detailed crosswalk to the proposed EEO–1 job categories.

The Commission is also proposing to include most business and financial operations occupations in the Officials and Managers category and to split that category into three levels of responsibility, allowing for more detailed assessment of the utilization of minorities and women in these activities. This split would increase the current number of job categories by two. Table 2 compares the current and the proposed EEO–1 job categories:

TABLE 2.—CURRENT AND PROPOSED EEO–1 JOB CATEGORIES

Current EEO–1	Proposed EEO–1
1. Officials and Managers.	1.1 Executive/Senior Level Officials and Managers. 1.2 Mid-Level Officials and Managers. 1.3 Lower-Level Officials and Managers.
2. Professionals	2. Professionals.
3. Technicians	3. Technicians.
4. Sales Workers	4. Sales Workers.
5. Office and Clerical	5. Administrative Support Workers.
6. Craft Workers (Skilled).	6. Service Workers.
7. Operatives (Semi-skilled).	7. Craft Workers.
8. Laborers (Unskilled).	8. Operatives.
9. Service Workers.	9. Laborers and Helpers.

Description of Proposed EEO–1 Job Categories

The proposed EEO–1 job categories are listed below, including a brief description of the skills and training required for occupations in that category, examples of the jobs that fit each category and the ranges of 2000 Census Occupation codes included in the category. Please *see http://www.eeoc.gov/stats/census/crosswalk.html* for a detailed crosswalk. These job categories are primarily based on average skill levels, knowledge, and responsibility involved in each occupation within the job category. They are not industry based and thus are not directly comparable to the 2000 SOC intermediate aggregation levels. The examples presented below are illustrative and not intended to be exhaustive of all job titles in a job category.

Executive/Senior Level Officials and Managers. Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of companies/organizations for the development and delivery of products or services at a global or national level, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct or coordinate activities with the support of subordinate executives and staff managers. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners. (2000 Census Occupation Codes: 001–010)

Mid-Level Officials and Managers. Individuals who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. They get their directions from the executive/senior level management. These jobs include vice president or director. They typically lead departments, divisions, programs, regional offices or other major business units. Through subordinate managers and within parameters established by executive/senior management, they implement policies, processes, products, services, programs and other directives of executive/senior management. Examples of these kinds of managers include: group, regional or divisional controllers; treasurers; human resources; information systems; marketing; and operations managers. (2000 Census Occupation Codes: 011–016)

Lower-Level Officials and Managers. Individuals at functional, line of business segment or branch levels who are responsible for directing and executing the day-to-day operational objectives of companies/organizations, directly supervising the activities of exempt and non-exempt personnel. Reporting to mid-level officials and managers, they may be first-line managers, team or unit managers. Examples of these types of managers include: operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers. (2000 Census Occupational Codes: 020–043, 050–060, 070–073, 081–095, 470–471, 601, 666, 931)

Professionals. Most jobs in this category require bachelor and graduate degrees, and/or professional, certification, In some instances, comparable experience may establish a person's qualifications. These kinds of positions include: accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dietitians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; surveyors and similar workers (2000 Census Occupation Codes: 062, 080, 100–153, 160–186, 200–211, 220–243, 255–286, 291–326, 434, 493, 903)

Technicians. Jobs in this category include activities that require applied scientific skills, usually obtained by bachelor degree education, although in some instances additional training, certification, or comparable experience is required. These types of positions include: drafters; emergency medical technicians; dental hygienists; and licensed vocational nurses. (2000 Census Occupation Codes: 154–156, 190–196, 290, 300–354, 904)

Sales Workers. These jobs include non-managerical activities that wholly and primarily involve direct sales. These types of positions: include: advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale and retail sales agents; securities, commodities, and financial services sales agents; personal financial advisors; telemarketers; demonstrators; retail sales workers; counter and rental clerks; and cashiers. (2000 Census Occupation Codes: 470–492, 494–496)

Administrative Support Workers. These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings. These types of positions include: office and administrative support workers; bookkeepers; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks. (2000 Census Occupation Codes: 214–215, 244–254, 500–593)

Service Workers. This overall category includes four subcategories, covering food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Food service positions include: cooks, bartenders and other food service workers. Personal service positions include: medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants. Cleaning service positions include: cleaners, janitors, and porters. The protective service worker subcategory includes: transit and railroad police and fire fighters; guards; private detectives; and investigators. (2000 Census Occupation Codes: 360–420, 422–224, 430–432, 440–465)

Craft Workers. This category includes higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples include: boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glazers, pipe-layers; pipe-fitters and plumbers; plasterers; roofers; elevator installers; earth-drillers; derrick operators, oil and gas rotary drill operators; and blasters and explosive workers. Also includes occupations related to the installation, maintenance and part-replacement of equipment, machines and tools, such as automotive mechanics; aircraft mechanics, electric and electronic equipment repairers. This category also contains some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly-defined task specifications, such as millwrights; etchers and engravers; tool and die makers; and pattern makers. (2000 Census Occupation Codes: 620–625, 630–653, 670–674, 676–756, 762–770, 774, 803, 806, 813, 816, 823, 825, 833, 835, 845, 850–851, 855–862, 875–876, 891, 951–952)

Operatives. This category includes intermediate skilled occupations and includes workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers; laundry and dry cleaning workers; milliners; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers and graders; bakers; and butchers or other meat, poultry or fish-processing workers. Also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus or taxi driver; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand-packers and packagers. (2000 Census Occupation Codes: 604, 771–773, 775–801, 804, 810, 814–815, 820–822, 824, 826–832, 834, 836–842, 846, 853–854, 863–874, 880–886, 892–894, 896, 900, 912–930, 933–935, 941–942, 956–960, 964–965, 975)

Laborers and Helpers. This category includes workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers, refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners. (2000 Census Occupation Codes: 421, 425, 435, 600, 605–613, 626, 660, 675, 761, 895, 936, 961–963, 972)

Dated: June 4, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–14739 Filed 6–10–03; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice; cancellation of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, Public Law 92–463, as amended, this notice advises interested persons that the meeting of the Network Reliability and Interoperability Council scheduled for June 13, 2003 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at 202–418–1096, TTY 202–418–2989, or e-mail *Jeffery.Goldthorp@fcc.gov.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–14741 Filed 6–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

OMB Number: 3064–0018.

Form Number: 6710/07.

Annual Burden:

Estimated annual number of respondents: 14.

Estimated time per response: 16 hours.

Total annual burden hours: 224 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: Section 19 of the Federal Deposit Insurance Act requires insured depository institutions to obtain the FDIC's consent prior to any participation in their affairs by a person convicted of crimes involving dishonesty or breach of trust. Form 6710/07 is the vehicle for requesting FDIC consent.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Activities and Investments of Insured State Banks.

OMB Number: 3064–0111.

Annual Burden:

Estimated number of respondents: 130.

Estimated time per response: 8 hours.

Total annual burden hours: 1,040 hours.

Expiration Date of OMB Clearance: August 31, 2003.

SUPPLEMENTARY INFORMATION: Part 362 of the FDIC's rules and regulations, implement the provisions of section 24 of the Federal Deposit Insurance Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. The

collection of information involves banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before July 11, 2003, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: June 4, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–14639 Filed 6–10–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 201144.

Title: ILWU/PMA Marine Clerk Opportunity Assessment Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: The agreement provides the basis for the assessment under the Pacific Coast Clerks' Contract Document.

Agreement No.: 011848–001.

Title: WWL/K–Line Transatlantic Space Charter Agreement.

Parties: Wallenius Wilhelmsen Lines AS Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement modification clarifies the authority contained in Articles 5.4 and 5.5. It further changes the notice period for withdrawal from the agreement.

Agreement No.: 011856.

Title: SCM Lines Caribbean Feeder Services, Ltd./Evergreen Marine Corp. Space Charter Agreement.

Parties: SCM Lines Caribbean Feeder Services, Ltd. ("SCM Lines") Evergreen Marine Corp. ("Evergreen").

Synopsis: The proposed agreement would enable Evergreen to take from one to 250 TEUs on SCM Lines' vessels on an "as available" basis between ports in the Caribbean, South America, and Central America and U.S. East Coast and Gulf Coast ports. The parties request expedited review.

Agreement No.: 201103–002.

Title: ILWU/PMA Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: The agreement amendment changes the basis for the man-hour and tonnage assessment rates. The agreement continues to run for an indefinite period.

By Order of the Federal Maritime Commission.

Dated: June 6, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14805 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–05]

Monarch Shipping Agency, LLC, Monarch Shipping Lines, Inc., and American Lines, LLC v. Logistec Connecticut, Inc., Logistec USA, Inc., Coastline Terminals of Connecticut, Inc., and American Stevedoring, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Monarch Shipping Agency, LLC, Monarch Shipping Lines, Inc., and American Lines, LLC ("Complainants") against Logistec Connecticut, Inc., Logistec USA, Inc., Coastline Terminals of Connecticut, Inc., and American Stevedoring, Inc. ("Respondents"). Complainants contend that Respondents violated sections 10(b)(9), 10(b)(10), 10(d)(1), 10(d)(2), 10(d)(3) and 13(c) of the Shipping Act by engaging in certain activities. Specifically, Complainants allege that Respondents violated the Shipping Act by cancelling a contract and locking Complainants and its customers out of Respondents' terminal facilities; by failing to establish and observe reasonable regulations relating to the receipt, handling and storage of property by providing inadequate security which resulted in loss and damage to vehicles and equipment; by an arrangement that resulted in an unlawful boycott and unreasonable discrimination in the provision of terminal services due to Complainants being locked out of certain facilities in Brooklyn, New York; and by failing to deal or negotiate with Complainants to resolve their disputes. Complainants seek various orders prohibiting Respondents from violating the Shipping Act and reparations in the amount of $10,000,000 plus interest, attorney fees and such further order or orders as the Commission determines to be proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 8, 2004, and the final decision of the Commission shall be issued by October 6, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14804 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–15]

Notice of Hearing Schedule

The Commission has established the following allotment of time and order of presentation for the hearing scheduled in this proceeding. The hearing will convene at 10 a.m., June 11, 2003, in the Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC 20573.

Company	Participant(s)	Time allotment (in minutes)
Royal Caribbean Cruises Ltd	John P. Fox, Vice President; Industry Relations, Hopewell H. Darneille III and Michael G. Roberts, Thompson Coburn, LLP.	10
The Passenger Vessel Association	Edmund B. Welch, Legislative Director	10
Visa U.S.A. Inc	Oliver I. Ireland, Morrison & Foerster, LLP	10
Discover Financial Services, Inc	Thomas M. Byrne, Sutherland Asbill & Brennan LLP	10
Norwegian Cruise Line	Robert M. Kritzman, Senior Vice President and General Counsel	10

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14806 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean TransportationIntermediary Applicants

Eggi's Express Shipping, 1004 Halsey Street, Brooklyn, NY 11207, Egbert Sylvester Jeffers, Sole Proprietor.

Topocean Consolidation Service (New York), Inc., 181 S. Franklin Ave., #204, Valley Stream, NY 11581. *Officer:* Robert Wang, President/CEO/CFO (Qualifying Individual).

Valu Freight Consolidators, Inc., 1325 NW 21st Street, Miami, FL 33142. *Officers:* Mildred Evette Ferguson, Vice President (Qualifying Individual), Barry Ferguson, President.

CNR International, Inc., 500 E. Carson Plaza Drive, #2165, Carson, CA 90746. *Officers:* Sukyol (Chris) Oh, Vice President (Qualifying Individual), Ray Hyun Sung, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Payson International Freight, Inc., 145–52 157th Street, Jamaica, NY 11434. *Officer:* Shlomo Greenberg, President (Qualifying Individual).

Stern, Rogers & Co., Inc., 145–40 157th Street, Jamaica, NY 11434. *Officer:* Orhan Konur, President (Qualifying Individual).

Saltair Projects, LLC, 18900 8th So., Suite 1100, Seatac, WA 98148. *Officer:* Gregory Carl Aden, Owner (Qualifying Individual).

Dated: June 6, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14809 Filed 6–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 3748F.
Name: Aero Expedited, Inc. dba Aero Expediting, Inc.
Address: 29101 Airport Drive, Romulus, MI 48174.
Date Revoked: May 29, 2003.
Reason: Failed to a maintain valid bond.

License Number: 3307N.
Name: American Freight International, Inc.
Address: 8169 NW 67th Street, Miami, FL 33166.
Date Revoked: May 16, 2003.
Reason: Surrendered license voluntarily.

License Number: 3723NF.
Name: Birkart of America Inc. dba Birkart Fairs & Events c/o Thiel Logistics.
Address: 3200 NW 112 Avenue, Miami, FL 33172.
Date Revoked: April, 30, 2003.
Reason: Failed to maintain valid bonds.

License Number: 2363F.
Name: Cargoza Forwarding Corporation.
Address: P.O. Box 661275, Miami Springs, FL 33266.
Date Revoked: May 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 18051F.
Name: Dominicana Air & Ocean Freight Corp.
Address: 1332 NW 36th Street, Jamaica, NY 33142.
Date Revoked: May 22, 2003.
Reason: Failed to maintain a valid bond.

License Number: 7653N.
Name: Erika Charterers Inc.
Address: 3200 South Andrews Avenue, Suite 103, Ft. Lauderdale, FL 33316.
Date Revoked: May 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17912N.
Name: GPS Logistics, Inc. dba GPS Logistics Group.
Address: 175–18 147th Avenue, Jamaica, NY 11434.
Date Revoked: May 20, 2003.
Reason: Failed to maintain a valid bond.

License Number: 7013N.
Name: Midas Maritime, Inc.
Address: 950 Linden Avenue, S. San Francisco, CA 94080.
Date Revoked: May 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 11101N.
Name: Taiun Company (U.S.A.) Inc.
Address: 725 North Nash Street, El Segundo, CA 90245.
Date Revoked: May 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 14222N.
Name: Trademar Consolidators Corp.
Address: 8454 NW 70th Street, Miami, FL 33166.
Date Revoked: May 24, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4515NF.
Name: Transports P. Fatton Inc.
Address: 145 Hook Creek Blvd., Valley Stream, NY 11581.

Date Revoked: May 29, 2003.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–14807 Filed 6–10–03; 8:45 am]
BILLING CODE 6730–01–P

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–14808 Filed 6–10–03; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice is given of the June meeting.

The Advisory Committee on Minority Health will meet on Thursday, June 26, 2003, from 9 a.m. to 5 p.m., and Friday, June 27, 2003, from 8:30 a.m. to 12 noon. The meeting will be held at the Hilton Garden Inn (Franklin Square), Georgetown ABC Rooms, 815 14th Street, NW., Washington, DC 20005. The meeting is metro accessible to the McPherson Square station.

The Advisory Committee will discuss racial and ethnic disparities in health, as well as, other related issues.

The meeting is open to the public. There will be an opportunity for public comment, which will be limited to five minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least two business days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila P. Merriweather, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 301–443–9923 Fax: 301–443–8280.

Dated: June 4, 2003.

CAPT Tuei Doong,
Deputy Director, Office of Minority Health.
[FR Doc. 03–14626 Filed 6–10–03; 8:45 am]
BILLING CODE 4150–29–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
16356N	Jagremar Marine, Inc. 15490 Vickery Drive Houston, TX 77032	May 1, 2003.
11170NF	Sage Freight Systems Inc. dba Sage Container Lines 182–30 150th Road., Suite 108, Jamaica, NY 11413.	April 26, 2003.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03072]

Strengthen Indian Network of Positive People Chennai, India; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for the development and implementation of programs aimed at improving the quality of life for people living with AIDS in India. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Indian Network of Positive People (INP+). INP+ is in a unique position to provide linkages between the GHTM and community level health care and support for individuals who are HIV+ and their families. INP+ has the experience in the development, testing and production of education and training materials for prevention and care that are sensitive and can meet the needs of the positive community.

C. Funding

Approximately $40,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Nancy Hedemark Nay, MPH, Associate Director for Operations, Global AIDS Program, c/o U.S. Consulate, 220 Mount Road, Chennai, 600 006, India, Telephone: 91–44–2811–2000, E-mail address: *nhn1@cdc.gov.*

Dated: June 4, 2003.

Sandra R. Manning,
Director, Procurement and Grants Office, Centers for Disease Control and Prevention.
[FR Doc. 03–14669 Filed 6–10–03; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03121]

Standards Development and Maintenance for Cancer Surveillance; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k)(2) of the Public Health Service (PHS) Act, (42 U.S.C. sections 241 and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Standards Development and Maintenance for Cancer Surveillance. This program addresses the "Healthy People 2010" focus area of Cancer.

This program will promote the development and maintenance of standards, which can be utilized by the National Program of Cancer Registries (NPCR) network of hospitals, free-standing pathology laboratories, central cancer registries, and software developers, to collect, edit, and transmit data.

This program consists of 2 parts:

Part I—Standard-setting activities related to the operation of population-based cancer registries.

The purpose of Part I is to support efforts to improve the quality of population-based central cancer registry data and operations through data item and transmittal standards, to facilitate coordination and communication from health care facilities to (and among) central cancer registries, and to promote the use of cancer incidence data for cancer control such as health care interventions planning, resource allocation, program evaluation, and research.

Part II—Standardized reporting and Encoding of surgical pathology reports.

The purpose of Part II is to support and promote the development of a controlled medical vocabulary for: encoding pathology data elements, indexing the entire medical vocabulary, and establishing guidelines for standardizing the reporting of surgical specimens.

This program announcement addresses the National Center for Chronic Disease Prevention and Health Promotion performance goal to improve the quality of state-based cancer registries.

C. Eligible Applicants

Part I—Eligible applicants for Part I are non-profit, non-governmental organizations with a nationwide organizational infrastructure and the capacity to bring together cancer registry standard-setting organizations, central cancer registries, hospital cancer registries, and software developers in order to attain consensus on data item definitions, codes, format, transmission record layouts, and time line for implementation of new standards.

Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

Part 2—Eligible applicants for Part 2 are non-profit, non-governmental organizations with a nationwide organizational infrastructure and the capacity to develop standardized medical vocabularies and structures for encoding the content of pathology reports; to obtain consensus from the clinical and anatomic pathology community; and to provide education and technical assistance to promote and encourage consistent pathology reporting throughout the United States.

Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

D. Funding

Availability of Funds

Approximately $900,000 is available in FY 2003 to fund the following categories:

Part I—Standard-setting activities related to the operation of population-based cancer registries: Approximately $600,000 is available in FY 2003 to fund a single award.

Part II—Standardized reporting and encoding of surgical pathology reports: Approximately $300,000 is available in FY 2003 to fund a single award.

Applicants may apply for Part I, Part II, or both based on eligibility. It is expected that awards will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, program progress, and the availability of funds.

Recipient Financial Participation

Matching funds are not required.

E. Program Requirements

In conducting activities to achieve the purposes of Parts I and/or II, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Part I

a. Develop and provide infrastructure and management to address cancer registration issues including standards for completeness, timeliness, and quality (CTQ) for central cancer registries in the collection and processing of cancer incidence data. Performance will be measured by the extent to which the applicant develops, maintains, and promotes such standards.

b. Develop and provide infrastructure for the development of educational materials, guidance, and forums that promote the use of cancer registry data for the purposes of cancer control and prevention. Performance will be measured by the extent to which the applicant participates in or develops forums to either gain information or to educate constituents in cancer registry data use.

c. Coordinate and facilitate regional and national meetings of central cancer registry staff and related partners for consensus building, model development, and guidance development in the areas of central cancer registry operations, standard data item definitions, formats for the electronic transmittal of data, use of mortality data, cancer incidence and mortality rates, and mechanisms to share cancer reports with the community.

Performance will be measured by the extent to which the applicant participates in or coordinates such regional and national meetings to gain information; facilitate consensus; develop models and guidance; and to educate constituents in the accomplishment of program goals and objectives.

d. Participate in CDC-sponsored meetings and events. Performance will be measured by the extent to which the applicant attends and participates in NPCR–CDC conferences.

e. Participate in a post-award meeting (to occur no later than 45 days after the notice of award) to share information, clarify expectations, and establish regular conference call and face-to-face meetings (to occur at a minimum of every two months) to discuss issues and report progress.

Part II

a. Facilitate and promote the development, enhancement, and use of a controlled medical vocabulary to allow the encoding of information in a pathology report, typically a key component of a cancer patient's medical record, from a synoptic checklist as opposed to the traditional narrative-style report. Performance will be measured by the extent to which the applicant develops, enhances, and promotes the use of controlled medical vocabulary and site-specific synoptic checklists.

b. Monitor and evaluate the use of vocabulary among pathologists, registries, and pathology laboratory software vendors to identify inconsistent uses and new pathological trends in order to adjust and update the controlled medical vocabulary. Performance will be measured by the extent to which the applicant identifies inconsistencies and new trends and updates the controlled medical vocabularies.

c. Work to enhance the ability to reflect cancer protocols, as identified by committees of pathologists representing the United States, in the controlled medical vocabularies and the site-specific synoptic checklist. Performance

will be measured by the extent to which the applicant's controlled medical vocabularies and site-specific synoptic checklist reflect nationally recognized cancer protocols.

d. Identify, attend, and facilitate educational meetings and provide technical assistance to promote the use of controlled medical vocabularies and site-specific synoptic checklists in the pathologist community. Performance will be measured by the extent to which the applicant attends and facilitates educational meetings and provides technical assistance to promote the use of controlled medical vocabularies and site-specific synoptic checklists.

e. Participate in CDC-sponsored meetings and events. Performance will be measured by the extent to which the applicant attends and participates in NPCR–CDC conferences.

f. Participate in a post-award meeting (to occur no later than 45 days after the notice of award) to share information, clarify expectations, and establish regular conference call and face-to-face meetings (to occur at a minimum of every two months) to discuss issues and report progress.

2. CDC Activities

Part I

a. Participate in a post-award meeting (to occur no later than 45 days after the notice of award) to share information, clarify expectations, and establish regular conference calls and face-to-face meetings (to occur at a minimum of every two months) to discuss issues and report progress.

b. Enhance standards for completeness, timeliness, and quality (CTQ) for central cancer registries in the collection and process of cancer incidence data to ensure that CDC funded cancer registries continue to meet program standards.

c. Develop educational materials that promote the use of cancer registry data for the purposes of cancer control and prevention to ensure that CDC funded cancer registries continue to meet program standards.

d. Attend and participate in regional and national meetings of central cancer registry staff and related partners for consensus building, model development, and guidance development.

e. Monitor attendance of applicant at NPCR–CDC meetings and events.

Part II

a. Participate in a post-award meeting to share information, clarify expectations, and establish routine meetings to discuss issues and report progress.

b. Develop controlled medical vocabulary and site-specific synoptic checklists to promote the use of electronic data submissions from pathology laboratories to CDC funded cancer registries.

c. Monitor the development, publication, and use of controlled medical vocabulary and site-specific synoptic checklists to promote the use of electronic data submissions from pathology laboratories to CDC funded cancer registries.

d. Monitor and attend educational conferences and meetings where controlled medical vocabularies and site-specific synoptic checklists are promoted.

F. Content

Letter of Intent (LOI)

A LOI is requested from potential applicants. The non-binding LOI will be used to determine the level of interest for this program announcement. The narrative should be no more than two, single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter should include the following information: Program announcement number, name of the principal investigator, and specifically which Part(s) the applicant plans to apply for.

Pre-Application Conference Call

A Pre-application conference call is scheduled for [Fill in after HHS review]. Eligible applicants are invited to participate in this conference call. The purpose of the conference call will be to communicate the specifics of the application process and to respond to any questions applicants may have regarding this announcement. Participation in this conference call is optional. A summary of the questions and answers will be made available for those unable to participate. Information for this conference call will be sent to all eligible applicants that have submitted an LOI by [Fill in after HHS review].

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections for Parts I–II to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative for Part I and Part II should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced 12-point font. The original and each copy of the application must be submitted unstapled and unbound. Pages should be clearly numbered and a complete index to the application and any appendices should be included.

Applicants may apply for support under one or both of the Parts. Only one application should be submitted. For each Part applied for, include a separate and complete narrative, a separate budget, and a separate budget justification that can stand alone as an application for review purposes.

Include funding for staff for Parts I and II to attend the following meetings: (1) A 1-day, post-award meeting in Atlanta; and (2) an additional 2-day meeting in a city to be determined later.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The program Plan should address activities to be conducted over the entire five-year project period.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 25, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Form

Submit the signed original and two copies of PHS 5161 (OMB 0348–0043). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 28, 2003. Submit the application to: Technical Information Management—PA#03121, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date.

Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objective of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application individually against the following criteria.

Specific evaluation criteria for each part are as follows:

Part I—Evaluation Criteria

1. Methods (31 points total)—

a. The extent to which the applicant adequately describes the methods that will be used to accomplish the objectives of the project. (20 points)

b. The extent to which the timetable incorporates project activities and milestones and is specific, measurable and realistic (11 points)

2. Program Need (24 points total)—

a. The extent to which the applicant demonstrates the ability to provide infrastructure and management to address cancer registration issues including standards for completeness, timeliness, and quality for cancer incidence data. (6 points)

b. The extent to which the applicant demonstrates the ability to participate in activities that promote States' accessibility and use of cancer registry data for cancer control activities. (6 points)

c. The extent to which the applicant demonstrates the ability to convene regional and national meetings of central cancer registry staff and partner organizations for consensus building, model development, and guidance development in the areas of central cancer registry operations, standard data item definitions, formats for the electronic transmittal of data, use of mortality data, cancer incidence and mortality rates, and mechanism to share cancer reports with the community. (6 points)

d. The extent to which the applicant demonstrates the ability to participate in NPCR–CDC sponsored meetings and events. (6 points)

3. Objectives (20 points)—The extent to which the applicant demonstrates that the proposed program objectives are measurable, specific, time-phased, and related to the recipient activities, program purpose, and program need.

4. Evaluation (15 points)—The extent to which the applicant describes adequate plans for providing on-going communication including feedback and quality control suggestions for improvement and implementation of project objectives.

5. Program Management and Staffing Plan (10 points)—The extent to which proposed staffing and management is adequate as defined by:

a. Job descriptions for existing and proposed positions.

b. Descriptions of background, experience and qualification for the proposed responsibilities; education, experience and licensure requirements, and curriculum vitae for each staff member.

c. An organizational chart that identifies lines of communication, accountability and reporting authority.

6. Human Subjects (not scored)—Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

7. Requirements concerning the inclusion of women, racial, and ethnic groups (not scored)—Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community (ies) and recognition of mutual benefits.

8. Budget (not scored)—The extent to which the budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

Part II—Evaluation Criteria

1. Methods (31 points total)—

a. The extent to which the applicant adequately describes the methods that will be used to accomplish the objectives of the project. (20 points)

b. The extent to which the timetable incorporates project activities and milestones and is specific, measurable, and realistic. (11 points)

2. Program Need (24 points total)—

a. The extent to which the applicant demonstrates an ability to facilitate and foster development, revision, and enhancement of controlled medical vocabulary to encode the information in a pathology checklist report, which constitutes an essential part of a cancer patient's medical record. (6 points)

b. The extent to which the applicant describes a need to monitor the use of the vocabulary by clinical groups' members, pathology laboratories, registries, and laboratory information system vendors to detect problems and address needs in implementation of a medical vocabulary. (6 points)

c. The extent to which the applicant describes a need to facilitate and foster the development, revision, and enhancement of cancer protocols by pathology laboratories, including automation of data entry, coding, and storage. (6 points)

d. The need to target appropriate educational and technical assistance interventions and workshops that would increase the use of encoded pathology reports and other data, including standardized reports that use cancer protocols. (6 points)

3. Objectives (20 points)—The extent to which the applicant demonstrates that the proposed program objectives are measurable, specific, time-phased, and related to the recipient activities, program purpose, and program need.

4. Evaluation (15 points)—The extent to which the applicant describes adequate plans for providing on-going communication including feedback and quality control suggestions for

improvement and implementation of project objectives.

5. Project Management and Staffing Plan (10 points)—The extent to which proposed staffing and management is adequate as defined by:

a. Job descriptions for existing and proposed positions.

b. Descriptions of background, experience and qualification for the proposed responsibilities; education, experience and licensure requirements, and curriculum vita for each staff member.

c. An organizational chart that identifies lines of communication, accountability, and reporting authority.

6. Human Subjects (not scored)—Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

7. Requirements concerning the inclusion of women, racial, and ethnic groups (not scored)—Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community (ies) and recognition of mutual benefits.

8. Budget (not scored)—The extent to which the budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An interim progress report. The interim progress report will be due on the 15th of March each year through 2008. This interim progress report will serve as your non-competing continuation application. A second report is due 90 days after the end of each budget period. These reports must include the following elements:

a. A succinct description of the program accomplishments and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

b. A succinct description of the program accomplishments/narrative and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

c. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

d. Current Budget Period Financial Progress.

e. New Budget Period Proposed Activities and Objectives.

f. Detailed Line-Item Budget and Justification.

g. For all proposed contracts, provide the name of contractor, method of selection, period of performance, scope of work, and itemized budget and budget justification. If the information is not available, please indicate "To Be Determined" until the information becomes available; it should be submitted to CDC Procurement and Grants Management Office contact identified in this program announcement.

2. Financial status report, no more than 90 days after the end of the budget period. The financial status report should include an attachment that identifies unspent balances for each program component.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

To obtain business management and budget assistance, contact:

Glynnis Taylor, Grants Management Specialist, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2752, E-mail address: *gld1@cdc.gov.*

For business management and budget assistance in the territories, contact:

Charlotte Flitcraft, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2632, E-mail address: *caf5@cdc.gov.*

For program technical assistance, contact:

Part I

Faye Floyd, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention, and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS–K53, Atlanta, GA 30341–3717, Telephone number: (770) 488–4518, E-mail address: *ffloyd@cdc.gov.*

Part II

Ken Gerlach, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, MS–K53, Atlanta, GA 30341–3717, Telephone number: (770) 488–3008, E-mail address: *KGerlach@cdc.gov.*

Dated: June 3, 2003.

Sandra Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 03–14671 Filed 6–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03076]

Development of a National Healthy Homes Training Center and Network; Notice of Availability of Funds

Application Deadline: July 28, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 311 and 317(c) of the Public Health Service Act, [42 U.S.C. sections 241, 243 NS 247B–4], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2003 funds for a cooperative agreement program for the development of a national healthy homes training center and network. This program addresses the "Healthy People 2010" focus area(s) Environmental Health, Injury and Violence Prevention, and Public Health Infrastructure.

Housing conditions have an important impact on public health. This project is designed to address the training and education needs of environmental public health managers and practitioners and housing specialists and inspectors whose work-related activities result in healthy and safe housing environments. Specifically, the purpose of the project is to develop a National Healthy Homes Training Center and Network (hereafter referred to as the Center). Note: The term "Healthy Homes" refers to a coordinated, comprehensive, systematic, and holistic approach to preventing disease and injury that result from environmental hazards and deficiencies related to housing.

The Center will develop a training center and network to deliver appropriate course material through formal programs, both at the Center and other locations, based on state and local needs. The Center also will develop internet-based course materials. At least one on-site pilot training program will be conducted and evaluated within the first operational year. In subsequent years, depending upon available funding, at least two training programs will be conducted on-site, and two training programs will be conducted off-site, determined by the award recipient with input from CDC.

The Center will address urban, rural, and Native American health and housing-related issues that impact public health and will complement the CDC draft Healthy Homes Training Center and Network Initiative (see Addendum II—all addendums referenced in this announcement are posted with the announcement on the CDC web site.) The Center's training programs will serve as a forum to (1) exchange information about federal, state, tribal, and local healthy homes related activities; (2) introduce new healthy homes research findings; (3) discuss program gaps and potential resources; and (4) create new opportunities for networking, collaboration, and partnerships.

Measurable outcomes of the program will be in alignment with the following performance goal of the National Center for Environmental Health (NCEH): To increase the capacity of state and local health departments and local housing authorities to deliver environmental public health services.

The program will also increase the understanding of the relationship between substandard, inadequate, or unsafe housing and health effects.

C. Eligible Applicants

Applications may be submitted by the following:

1. Academic Centers for Public Health Preparedness: A project of the Public Health Practice Program Office, CDC, that operates through the Association of Schools of Public Health (see Addendum III). These Centers are part of a national system for competency-based training for the public health work force and have an infrastructure in place to improve the competencies of the public health and housing work forces. Note: To create healthy homes, strategic partnerships must be developed with public health agencies and organizations, local housing agencies, and other appropriate disciplines. An applicant must provide evidence of collaboration with those agencies and organizations that have complementary responsibilities, and must describe how each contributes to the overall goals and objectives as described in the application.

There must be evidence of partnerships or working relationships with the following: state and/or local health departments, local housing agencies, an undergraduate college with an environmental health curriculum, and a national research and training organization with vested interest and responsibility that supports creating and maintaining healthy homes.

2. National Healthy Homes Research and Training Organizations: National, non-profit organizations with a mission that promotes through research, training, education, and outreach the protection of citizens from health and safety risks associated with inadequate, substandard, or unsafe housing conditions.

Note: To create healthy homes, strategic partnerships must be developed with public health agencies and organizations, local housing agencies, and other appropriate disciplines. An applicant must provide evidence of collaboration with those agencies and organizations that have complementary responsibilities, and must describe how each contributes to the overall goals and objectives as described in the application. There must be evidence of partnerships or working relationships with the following: state and/or local health departments, local housing agencies, and an undergraduate college with an environmental health curriculum with vested interest and responsibility that supports creating and maintaining healthy homes.

Applicants must demonstrate that the mission of the organization is committed to improving public health infrastructure and manpower development. Applications that do not include the above information will be determined as non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month initial budget period. Additional years will be for 12-month periods, within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The recipient may use funds for the development, implementation, and operation of the National Healthy Homes Training Center and Network. This may include support for staff and materials to develop the curriculum and electronic, classroom, seminar and announcement materials; and costs related to implementing and conducting

the training programs on- and off-site, including subcontracting costs for experts to assist in developing the curriculum, course materials, and conduct the training.

Recipient Financial Participation

Matching funds are not required.

E. Program Requirements

In conducting activities to achieve the purpose of this project, the recipient will be responsible for the activities listed in 1. Recipient Activities. CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities:

a. Organize an eight to ten-member Healthy Homes Training Work Group, with input and approval from CDC and HUD, of environmental public health and housing experts to advise the award recipient on matters related to the development of the curriculum and course materials.

b. Develop the National Healthy Homes Training Center and Network, including a curriculum that includes a variety of course and seminar materials that can be presented on- and off-site.

Note: The curriculum and all course materials will be submitted to CDC for review and approval. Courses, seminars, and related materials will focus on the concept of healthy homes, methods of inspection and approaches to remediation, evaluation, and resource identification to create healthy and safe homes.

c. Conduct at least one training session within the first year of operation, limited to 15 enrollees.

d. Evaluate the activities, process, and outcome of the Healthy Homes Training Center and Network. The evaluation will include an analysis of the curriculum, and participant assessments.

2. CDC Activities:

a. Serve as technical consultants to the Healthy Homes Training Work Group that provides recommendations to the award recipient on matters related to the development of the curriculum and course materials. This includes ongoing consultation with appropriate recipient staff and other experts.

b. Review and approve the curriculum and course materials, and participate with the recipient and others in conducting courses. This includes identification of presenters, selection of the pilot training site and future training sites, and onsite participation of selected CDC experts in all workshops.

c. Participate with the award recipient in the selection of the pilot-training site and assist the award recipient in the evaluation of the pilot training program.

d. Assist the recipient in an analysis of the curriculum, the evaluation of courses, and participant assessments. This will include review and approval of evaluation materials.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to follow them in laying out your program plan.

The narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Appendices should not exceed 30 pages, and curriculum vitae summaries are acceptable.

The narrative should consist of a Statement of Need and Plan; Collaboration and Partnerships; Personnel and Technical Experts; Objectives and Methods; Timeline; Evaluation; and Budget. The Timeline should address activities to be conducted over the entire three-year project period.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of the application PHS 5161–1 (OMB Number 0920–0428. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, July 28, 2003. Submit the application to: Technical Information Management—PA#03076, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Statement of Need and Plan (20 points)

a. The extent to which the applicant understands the need, requirements, problems, and complexities of this healthy homes work force training project, and the need to increase the capacity and performance of the environmental public health and housing work forces.

b. The adequacy of the operational plan to develop and implement the National Healthy Homes Training Center and Network, including the curriculum, course materials, and to conduct two pilot training programs.

2. Collaboration and Partnership (20 points)

The extent to which the applicant demonstrates their ability to collaborate on this project with other agencies, organizations, and academic institutions that have a vested interest and responsibility that supports creating and maintaining healthy homes. Strategic partners will include national advocacy organizations, public health agencies and organizations, local housing agencies, and other disciplines. Letters of support from these collaborating agencies and organizations must include detailed information on the level of commitment and support they will provide to the project in terms of personnel and other resources.

3. Personnel and Technical Expertise (20 points)

The extent to which the applicant describes the qualifications of the staff and subcontractors to successfully accomplish the project goals, objectives and activities, including development and implementation of the National Healthy Homes Training Center and Network, development of the curriculum and course-related materials, conducting one pilot training program, and the evaluation plan.

4. Objectives and Activities (20 points)

The extent to which the proposed objectives and their activities are clearly stated, realistic, time-phased, and related to the goals of the project.

5. Timeline (10 points)

The extent to which the applicant presents a concise and realistic timeline for the entire project period to accomplish the goals, objectives and activities to develop, implement, and operate the National Healthy Homes Training Center and Network.

6. Evaluation Plan (10 points)

The extent to which the applicant presents a quality evaluation plan for the various initiatives of the project.

7. Budget (Not scored)

The extent to which the applicant provides justification for budget expenditures as well as their appropriateness to activities proposed in the project. The applicant should include costs for one person to travel to Atlanta, GA (three-overnight stays) to attend the 6th National Environmental Health Conference, December 3–5, 2003.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program:

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

For a complete description of each additional requirement, see Addendum I of the program announcement as posted on the CDC web site.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ms. Mildred Garner, Grants Management Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: (770) 488–2745. E-mail address: *Mgarner@cdc.gov*.

For program technical assistance, contact: Mr. Jerry Hershovitz, Associate Director for Program Management, Division of Emergency and Environmental Health Services, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop F30, Atlanta, GA 30341–3724, (770) 488–4542, E-mail address: *jmh@cdc.gov*.

Dated: June 3, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14667 Filed 6–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0053]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 11, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yakota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Interstate Shellfish Dealers Certificate (OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with, and aid, State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this

authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038 entitled "Interstate Shellfish Dealer's Certificate." FDA uses this information to publish the "Interstate Certified Shellfish Shippers List," a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified, and possibly unsafe, shellfish in interstate commerce, and its effectiveness would be nullified.

In the **Federal Register** of March 6, 2003 (68 FR 10730), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3038	34	62	2,108	.10	211

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the numbers of certificates received in the past 3 years.

Dated: June 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14622 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0383]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 2003 (68 FR 11117), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0012. The approval expires on May 31, 2004.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14623 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02P–0391 and 02P–0404]

Determination That Brimonidine Tartrate Ophthalmic Solution 0.2% Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Alphagan 0.2% (brimonidine tartrate ophthalmic solution) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for brimonidine tartrate ophthalmic solution 0.2%.

FOR FURTHER INFORMATION CONTACT: Aileen H. Ciampa, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Alphagan 0.2% (brimonidine tartrate ophthalmic solution) is the subject of NDA 20–613, held by Allergan, Inc. (Allergan). Alphagan 0.2% is administered as an eye drop to lower intraocular pressure in patients with open-angle glaucoma or ocular hypertension. FDA approved NDA 20–613 on September 6, 1996. In a letter dated August 20, 2002, Allergan informed FDA that it was withdrawing Alphagan 0.2% from the market. In a letter dated September 6, 2002, Allergan clarified that it was not requesting that approval be withdrawn for NDA 20–613, nor was Alphagan 0.2% being recalled from the market. Instead, Allergan explained that it was in the process of discontinuing distribution of Alphagan 0.2%. Following receipt of Allergan's letters, the agency moved Alphagan 0.2% from the "Prescription Drug Product List" section to the "Discontinued Drug Product List" section of the Orange Book.

In citizen petitions submitted under 21 CFR 10.30 and dated August 27, 2002 (Docket No. 02P–0404/CP1), and August 30, 2002 (Docket No. 02P–0391/CP1), respectively, Alcon, Inc. (Alcon), and IVAX Pharmaceuticals, Inc. (IVAX), requested that the agency determine whether brimonidine tartrate ophthalmic solution 0.2% was withdrawn from sale for reasons of safety or effectiveness. On October 28, 2002, Allergan submitted a citizen petition (Docket No. 02P–0469/CP1) opposing the granting of Alcon's and IVAX's petitions. Comments were submitted in response to Allergan's petition on November 13, 2002, and December 5, 2002, by Alcon and Bausch & Lomb, Inc. (Bausch & Lomb), respectively. Allergan responded to the comments on January 23, 2003. Bausch & Lomb submitted additional comments on February 10, 2003, and Allergan responded on March 18, 2003.

FDA has considered the information contained in the citizen petitions, comments, and agency records and has determined that Alphagan 0.2% was not withdrawn from sale for reasons of safety or effectiveness. There are several grounds for FDA's finding. First, Alphagan 0.2% has a safety and effectiveness profile that is comparable to that of Alphagan P (brimonidine tartrate ophthalmic solution 0.15%), the subject of NDA 21–262 approved March 16, 2001, for the same indication as Alphagan 0.2%. Approval of Alphagan P was based, in part, on references to the safety and efficacy of Alphagan 0.2% and the products' comparability as demonstrated in head-to-head studies. Second, FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports regarding brimonidine tartrate ophthalmic solutions, but has found no information that would indicate that Alphagan 0.2% was withdrawn for reasons of safety or effectiveness.

After considering the information contained in the citizen petitions, comments, and agency records, FDA determines that, for the reasons outlined above, brimonidine tartrate ophthalmic solution 0.2% approved under NDA 20–613 was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Alphagan 0.2% (brimonidine tartrate ophthalmic solution) in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Alphagan 0.2% (brimonidine tartrate ophthalmic solution) may be approved by the agency.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14680 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Chiropractor and Pharmacist Loan Repayment Demonstration Project

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications from qualified chiropractors and pharmacists who agree to serve underserved populations in Primary Care Health Professional Shortage Areas (HPSAs) throughout the Nation will be accepted by the National Health Service Corps (NHSC) for loan repayment awards. A two-year service commitment is required. There is no guarantee that participants in this demonstration project will have an opportunity to continue their service and loan repayments beyond the initial two-year service period. Chiropractors and pharmacists, with qualifying educational loans, must serve at organized primary health care sites in Primary Care HPSAs that have another NHSC clinician on staff who will be concurrently fulfilling an NHSC service commitment through the scholarship or loan repayment program and who is licensed to prescribe medications.

This demonstration project will include an evaluation component to determine whether adding chiropractors and pharmacists as permanent NHSC members would enhance the effectiveness of the NHSC. A maximum of 36 individuals will be awarded loan repayment contracts under this demonstration project.

Purpose: Eligible chiropractors and pharmacists will participate in the Loan Repayment Demonstration Project to determine whether their services will enhance the effectiveness of the NHSC.

Legislative Authority: These applications are solicited under section 338L of the Public Health Service (PHS) Act, as amended by Pub. L. 107–251.

Eligible Applicants: Eligible applicants must (1) be citizens or nationals of the United States, (2) possess a current unrestricted license to practice as a chiropractor or pharmacist in the State in which they intend to practice, (3) be negotiating or have secured employment at an eligible community site, and (4) meet the additional eligibility requirements outlined in the application materials. Chiropractors must also have a doctor of chiropractic degree from a four-year chiropractic college that is currently fully accredited by the Commission on Accreditation of the Council on Chiropractic Education, and successfully passed the entire examination by the National Board of Chiropractic Examiners. Pharmacists must also have a baccalaureate or doctor of pharmacy degree from a school that is currently fully accredited by the American Council on Pharmaceutical Education.

Funding Priorities or Preferences: Priority will be given to (A) applicants who have characteristics that increase the probability of their continuing to practice in HPSAs after they have completed service, and (B) subject to paragraph (A), applicants from disadvantaged backgrounds. A funding preference will also be given to applicants serving Primary Care HPSAs

of greatest shortage (based on the HPSA scores).

Statutory Matching or Cost Sharing Requirement: None.

Review Criteria: Loan repayment applications will be evaluated to determine: (1) The eligibility of the applicant, and (2) the applicant's priority for funding.

Estimated Amount of this Competition: $3,000,000.

Estimated Number of Awards: 36.

Estimated or Average Size of Each Award: $75,000.

Estimated Project Period: 2 years.

Application Requests, Availability, Dates and Addresses: Application materials are available for downloading via the web at *http://nhsc.bhpr.hrsa.gov.* Applicants may also request a hard copy of the application materials by contacting the National Health Service Corps at 1–800–221–9393. All applications must be submitted in hard copy format. Only the original signed copy of the application is required for submission. In order to be considered for an award, applications from chiropractors and pharmacists must be postmarked, or delivered to the HRSA National Health Service Corps, by no later than July 11, 2003. Completed applications must be mailed or delivered to: Division of National Health Service Corps, NHSC Loan Repayment Program, c/o I.Q. Solutions, 11300 Rockville Pike, Suite 801, Rockville, MD, 20852. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications postmarked or submitted after the deadline date, or sent to any other address other than that above, will be returned to the applicant and not processed. NHSC will acknowledge receipt of the application if the applicant chooses to complete the notification postcard that is included in the application materials.

Application Availability Date: June 11, 2003.

Application Deadline: July 11, 2003.

Projected Award Date: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: NHSC Loan Repayment Program, 12312–A Wilkins Avenue, Rockville, Maryland, 20852. Telephone: 1–800–221–9393. E-mail: *NHSC@hrsa.gov.*

Paperwork Reduction Act: The application for the Chiropractor and Pharmacist Loan Repayment Demonstration Project has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0127. Should the evaluation component involve data collection activities that fall under the purview of the Paperwork Reduction Act, OMB clearance will be sought.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 22, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–14681 Filed 6–10–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Porcupine Clinic

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) announces the Grant Award to the Porcupine Clinic for start up cost in reopening the Porcupine Dialysis Center for the dialysis patients who had utilized this center. Those dialysis patients have had to travel a long distance to make their appointments two to three times a week. The award is issued under the authority of the Indian Health Care Improvement Act, Section 1621(c), and is included under the Catalog of Federal Domestic Assistance number 93.933. The specific objectives of the project are:

1. To be used to prolong the lives of dialysis patients.

2. To provide culturally-based care for the Lakota people; and,

3. To ameliorate conditions resulting from lack of transportation, insufficient funding, and extreme social problems on the Pine Ridge Indian Reservation.

DATES: The Non-Competitive Emergency Grant is from 06/01/2003 to 5/31/2004 with a one time funding of $75,000.

FOR FURTHER INFORMATION CONTACT: For further information for program information, contact Paul Iron Cloud, Porcupine Clinic Executive Director, PO Box 275, Porcupine, South Dakota 57772, telephone (605) 867–5665 or Bruce Williams, Directors, Porcupine Clinic Dialysis Center, telephone (605) 867–6111. For grants information, contact Sylvia Ryan, Grants Management Specialist, Division of Acquisitions and Grants Management Branch, 801 Thompson Avenue, Rockville, Maryland 20852, telephone (301) 443–5204.

SUPPLEMENTARY INFORMATION: This project has been awarded on a non-competitive single source basis. Porcupine Dialysis Center is the only organization that represents approximately 23 dialysis patients who are treated two to three times a week. This dialysis center provides care to Native American people who live on the Pine Ridge and Rosebud reservations or who live in non-reservation areas with significant Native American populations. The population served by these programs is the same as IHS's user population.

The Grant Award has been awarded because of the need for dialysis and to present the need for dialysis renal failure. This grant is for one time funding of $75,000.

Dated: May 30, 2003.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 03–14688 Filed 6–10–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABBAS, SYED MOHAMMAD ... JAMAICA, NY	06/19/2003
ACOSTA, ARACELIS C ..... MIAMI, FL	06/19/2003
ALEXANDER, GWENDOLYN .. CHICAGO, IL	06/19/2003
ALVAREZ, PAULA V ..... MIAMI, FL	06/19/2003
ALVAREZ, JUAN U ..... MIAMI, FL	06/19/2003
AVERILL, JERRY ..... MARION, IL	06/19/2003
BRAACK, FORREST H ..... ROCHESTER, MN	06/19/2003
BULLOCK, JOHN III ..... ST LOUIS, MO	06/19/2003
BURGESS, KATHERINE COOK ..... GILBERT, SC	06/19/2003
CADSAWAN, IRENEO ..... WESTLAKE, OH	06/19/2003
CAMACHO, AUBREY A ..... FORSYTH, GA	06/19/2003
CANNADY, DORIS ..... FLORISSANT, MO	06/19/2003
CARADINE, LAVAUGHN ..... ERRE HAUTE, IN	06/19/2003
CASTALLANO, TOMETA ..... ROCHESTER, NY	06/19/2003
CHAVEZ, ESPERANZA ..... MIAMI, FL	06/19/2003
COHEN, TEDDY ALAN ..... LAS VEGAS, NV	06/19/2003
COHEN, ALAN STUART ..... WILLIAM ISLAND, FL	06/19/2003
COJOE, VAUCHEL KIM ..... NEW ORLEANS, LA	06/19/2003
CORIATY, EHAB ..... WHITE DEER, PA	06/19/2003
COURTNEY, ROBERT RAY .... GREENVILLE, IL	06/19/2003
COURTNEY PHARMACY, INC GREENVILLE, IL	06/19/2003
CPM CORPORATION ..... COLUMBIA, MD	06/19/2003
CUNNINGHAM, DEAN SCOTT LEWISBURG, PA	06/19/2003
DACOSTA, JANICE MARIA ..... OPA LOCKA, FL	06/19/2003
DAVIS, JAMES M ..... N MIAMI, FL	06/19/2003
DAVTYAN, ANDRANIK ..... GLENDALE, CA	06/19/2003
DENMAN, STEPHANIE ROSE NEWTON, IA	06/19/2003
DILAKYAN, GEGANUSH ..... SUN VALLEY, CA	06/19/2003
DIRECTO, JON EDWIN ..... LOS ANGELES, CA	06/19/2003
ETO, CARLTON ..... KANEOHE, HI	06/19/2003
FARRAR, FREDERICK R ..... MESA, AZ	06/19/2003
FRIEDMAN, MICHAEL ALLEN BROKEN ARROW, OK	06/19/2003
GIL, FREDRICK G ..... GARDEN GROVES, CA	06/19/2003
GOFF, GERALD ARTHUR ..... COLUMBIA, SC	06/19/2003
GOLI, RAJITHA ..... PEKIN, IL	06/19/2003
GREEN, JAMES W ..... LOUISVILLE, KY	06/19/2003
HALL, GEORGANN B ..... LEWIS CENTER, OH	06/19/2003
HAVERTY, CONSTANCE MAUREEN ..... PORTLAND, OR	06/19/2003
HENEGAR, DIANE ..... CINCINNATI, OH	06/19/2003
HOLMES, KEISHA C ..... WASHINGTON, DC	06/19/2003
HORAN, KIMBERLY KAY ..... MCALESTER, OK	06/19/2003
HUNTEMAN, DENISE MERE-DITH ..... GREELEY, CO	06/19/2003
HUSKINSON, KENNETH D ..... BURLEY, ID	06/19/2003
IACONO, CANELA ..... HIALEAH, FL	06/19/2003
JOHNSON, SANDRA MARIE .. GRAND MEADOW, MN	06/19/2003
KALFUS, DENIS HERBERT .... WASHINGTON TWNSHP, NJ	06/19/2003
L & Z CORPORATION ..... W ORANGE, NJ	06/19/2003
LOPEZ, ADOLFO J ..... MIAMI, FL	06/19/2003
M & G LIVERY & TRANSPOR-TATION ..... W ORANGE, NJ	06/19/2003
MAKKI, MUSTAFA O ..... BUTNER, NC	06/19/2003
MELCHIOR, STACY LYNN ..... ARVADA, CO	06/19/2003
MURRAY, HARRY LYNN ..... LONG BEACH, CA	06/19/2003
NGANDJUI, ANTOINE ..... MINERSVILLE, PA	06/19/2003
O'BRIEN, PAUL EUGENE ..... FORT LAUDERDALE, FL	06/19/2003
OSTAD, MOSHE ..... ROSLYN, NY	06/19/2003
PARK, DAVID MIN ..... TAFT, CA	06/19/2003
PARSONS, JAMES THEO-DORE ..... BEAUMONT, TX	06/19/2003
PINTADO-GARCIA, IGNACIO EGLIN AFB, FL	06/19/2003
PINTADO-GARCIA, ISIDORO YAUCO, PR	06/19/2003
POWERS, ERIC JAMES ..... LA BELLE, FL	06/19/2003
PROVO, BENJAMIN EARL ..... DELANO, CA	06/19/2003
RANDOLPH, RICHARD A ..... MIDDLETOWN, NY	06/19/2003
RANKIN, RAYNELL ..... NEW ORLEANS, LA	06/19/2003
RENFRO, AUGUSTUS LAWSON JR ..... CANON CITY, CO	06/19/2003
RICE, LISA KAY ..... WILLS POINT, TX	06/19/2003
ROACH, KENDRA A ..... CARNESVILLE, GA	06/19/2003
ROFFMAN, JAY RONNIE ..... ORLANDO, FL	06/19/2003
SARAOS, NESTOR W ..... LOS ANGELES, CA	06/19/2003
SCEARCE, ROSANNA ELAINE LIVINGSTON, TX	06/19/2003
SOIL, VALERIE DENISE ..... KANSAS CITY, MO	06/19/2003
SPARKS, VIRGINIA DELORES KINGMAN, AZ	06/19/2003
SPINELLA, JOSEPH A ..... VENICE, FL	06/19/2003
SREENIVASAN-GEIBEL, SHEILA ..... BOISE, ID	06/19/2003
STRANGE, JONATHAN R ..... EASLEY, SC	06/19/2003
SVERDLOV, GREGORY ..... LEESBURG, NJ	06/19/2003
TAHA, MOHAMED A ..... GOLDSBORO, NC	06/19/2003
TAYLOR, TENISHA MARIE ..... INGLEWOOD, CA	06/19/2003
TAYLOR, LOIS ANN ..... DENVER, CO	06/19/2003
TERSAKYAN, KHACHATUR ... TAFT, CA	06/19/2003
THOMPSON, ADRIANNE YVONNE ..... KNOXVILLE, TN	06/19/2003
TOROSYAN, ANAIT ..... N HOLLYWOOD, CA	06/19/2003
TURTURO, FRANK JAMES ..... MIAMI, FL	06/19/2003
ULIBARRI, NANCY ..... ELLENSBURG, WA	06/19/2003
VANDERGRIFF, DAVID VON .. SURFSIDE BEACH, SC	06/19/2003
WHELDEN, TIFFANI ANN ..... COMSTOCK, NY	06/19/2003
WILEY, NELSON PAUL ..... PHILADELPHIA, PA	06/19/2003
WOOTEN, WAYNE MAXSON ... COLUMBIA, SC	06/19/2003
WRIGHT, RAYMOND ..... BEDFORD, OH	06/19/2003
YATROFSKY, STEVEN D ..... SANTA ANA, CA	06/19/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD	
ACOSTA, CHRISTINA MARIA PEORIA, AZ	06/19/2003
ADAMS, JAIME LEE ..... CAPE MAY CT HOUSE, NJ	06/19/2003
ANSELMO, CHARLES ..... PORT NEECHES, TX	06/19/2003
BULL-CHAMBLISS, JEWELLE ST PETERSBURG, FL	06/19/2003
CASE, LISA MORRIS ..... FULTONDALE, AL	06/19/2003
CATES, KILAH PETTY ..... HAYDEN, AL	06/19/2003
CAVARETTA, KAREN ..... PITTSBURGH, PA	06/19/2003
CLOUGH, CHRISTINE A ..... N OLMSTED, OH	06/19/2003
DOONAN, GREGG C ..... MIDDLETON, MA	06/19/2003
GARRITY, ROBERT J ..... LAKEWOOD, OH	06/19/2003
GLADIEUX, MICHAEL SCOTT, PERRYSBURG, OH	06/19/2003
HANEY, KANDY K ..... GREAT BEND, KS	06/19/2003
HIGGINS, MAUREEN TERESA MARBLEHEAD, MA	06/19/2003
HOWARD, JENNIFER CATH-ERINE	06/19/2003

Subject, city, state	Effective date
TUCSON, AZ	
JOHNSON, KIMBERLY R	
PURVIS	06/19/2003
LEXINGTON, KY	
MEEHAN, JOHN MICHAEL	06/19/2003
HAMILTON, OH	
MIDLICK, MICHELE M	06/19/2003
COLUMBUS, OH	
MORRISON, KELLY J	06/19/2003
MESA, AZ	
OLLIER, JO ANN	06/19/2003
UNION, KY	
PEARSON, KIMBERLY ANN	06/19/2003
WAUKON, IA	
RUIZ, CHRISTINA PALOMINO	06/19/2003
TUCSON, AZ	
SALVATI, PETER A	06/19/2003
BREWSTER, MA	
SAVRAN, STEVEN H	06/19/2003
LAGUNA NIGUEL, CA	
UHRINEK, JOSEPH M	06/19/2003
ENOLA, PA	
VERIZZO, ARLENE E	06/19/2003
SARASOTA, FL	
WAXLER, RICHARD M	06/19/2003
COLUMBIA, MD	

FELONY CONTROL SUBSTANCE CONVICTION

ALEXANDER, MARY JO	06/19/2003
BIRMINGHAM, AL	
BROOKS, STEPHANIE ANN	06/19/2003
CHESAPEAKE, VA	
CAUGHEY, MICHAEL	06/19/2003
VIRGINIA BEACH, VA	
CAZORLA, JUAN MIGUEL	06/19/2003
SAN DIEGO, CA	
COUP, KELLI	06/19/2003
NORTH PORT, FL	
DORFMAN, ALVIN	06/19/2003
CINCINNATI, OH	
EFFENBERGER, BOBBIE JEAN	06/19/2003
DENVER, CO	
FLEMING, JAMES E	06/19/2003
BRATENAHL, OH	
FONDREN, FRANK BURKETT	06/19/2003
SILVERHILL, AL	
GILL, ALYSON R	06/19/2003
LAUREL SPRINGS, NJ	
JOHNSON, JERRY LEE	06/19/2003
FLORENCE, AZ	
JONES, STEVEN DANIEL	06/19/2003
YUCCA VALLEY, CA	
JOSEY, WILLIE L	06/19/2003
PORTSMOUTH, OH	
LAFORGE, JOYCE	06/19/2003
CROW AGENCY, MT	
MORELOS, LISA A	06/19/2003
TOMS RIVER, NJ	
MORTON, DIANNE MARIE	06/19/2003
LOGAN, OH	
O'BRIEN, MICHAEL J	06/19/2003
STEUBENVILLE, OH	
ROSENBERG, LEONARD	06/19/2003
WINTHROP, MA	
STANDRIDGE, DARLENE	06/19/2003
VENICE, FL	
THOMPSON, DEBORAH A	06/19/2003
CAMDEN, NJ	
TOBACK, BARRY	06/19/2003
EDGEWATER, NJ	
TRIFTSHAUSER, CLARK G	06/19/2003
ALBION, NY	
VANCE, TERESA WALLACE	06/19/2003
REMLAP, AL	
WILLSON, CHARLES R	06/19/2003
BERLIN CENTER, OH	
WINTERHALTER, VICTORIA L	06/19/2003
CINCINNATI, OH	
WOOD, LIBBY M	06/19/2003
BIRMINGHAM, AL	

PATIENT ABUSE/NEGLECT CONVICTIONS

AMOAH, FAUSTINA	06/19/2003
COLUMBUS, OH	
BOGDANOFF, BRUCE M	06/19/2003
WALLINGFORD, PA	
CHEN, WEI TANG	06/19/2003
BUCKLEY, WA	
DELGADO, EDWIN ANTONIO	06/19/2003
CALIPATRIA, CA	
DUNN, CHARLES E	06/19/2003
REDGRANITE, WI	
DUNNING, ELIZABETH K	06/19/2003
HENDERSONVILLE, NC	
FREEDLANDER, DEAN GARY	06/19/2003
SAN FRANCISCO, CA	
FREEMAN, KATHRYN R	06/19/2003
ELGIN, OK	
GRUBB, TRAVIS ESTEN	06/19/2003
MORENO VALLEY, CA	
HAYES, KINTA MARIE	06/19/2003
TOPEKA, KS	
HURT, JAMES HOLLIS JR	06/19/2003
STRINGTOWN, OK	
KAHORO, JANE W	06/19/2003
CLAYMONT, DE	
LEONARD, DANIEL L	06/19/2003
WARREN, ME	
MCGOOKIN, ROGER BRIAN	06/19/2003
FOUNTAIN VALLEY, CA	
MOSELEY, APRIL DAWN	06/19/2003
ARVADA, CO	
MYERS, MARIE	06/19/2003
DENMARK, SC	
SANCHEZ, EDUARDO A	06/19/2003
FLUSHING, NY	
SCHAUERHAMER, ROBERT ALLAN	06/19/2003
MINNEAPOLIS, MN	
SMITH, TONEY O'NEAL	06/19/2003
TUCSON, AZ	
THOMAS, JULIANA PIERRETTE	06/19/2003
ORLANDO, FL	
THOMPSON, JACQUELINE	06/19/2003
CINCINNATI, OH	
WILTURNER, DAVID WAYNE	06/19/2003
NEW IBERIA, LA	

CONVICTION FOR HEALTH CARE FRAUD

HENDERSON, TWILA D	06/19/2003
TANGENT, OR	
JACOBS, DANIEL K	06/19/2003
BLOOMFIELD, MI	

CONVICTION-OBSTRUCTION OF AN INVESTIGATION

RENCHER, TAMLA.	
IDAHO FALLS, ID	

LICENSE REVOCATION/SUSPENSION/ SURRENDERED

ACOSTA, WENDY JEANNE	06/19/2003
IDAHO FALLS, ID	
ALFONE, SHEILA ANNE	06/19/2003
PLYMOUTH, MA	
BAILEY, JANE ANN	06/19/2003
FORT WAYNE, IN	
BARDOLPH, THOMAS RICHARD	06/19/2003
RANCHO PALOS VERDES, CA	
BARLOW, LILLY N	06/19/2003
PHOENIX, AZ	
BARTIS, SAMANTHA	06/19/2003
HOLLIS, NH	
BERNAS, PATRICIA	06/19/2003
CHESTER, VA	
BOXWELL, DAVID WARREN	06/19/2003
COLCHESTER, CT	
BRACCIA, JOSEPH L	06/19/2003
REVERE, MA	
BROWN, HARRY LEON JR	06/19/2003
PHOENIX, AZ	
BRUNS, MONTE TODD	06/19/2003
PRIOR LAKE, MN	
BRYANT, KIMBERLY ANN	06/19/2003
ALTUS, OK	
BUDNICHUK, ALFRED D	06/19/2003
BEL AIR, MD	
BURKE, KAREN M	06/19/2003
HOLBROOK, MA	
BUSER, KAREN JANE	06/19/2003
MELBOURNE, FL	
CALLAN, BRENT LEE	06/19/2003
HINTON, OK	
CALNAN, JEROME PETER	06/19/2003
GLENDORA, CA	
CALVELO, ARSENIO C JR	06/19/2003
HOUSTON, TX	
CASSELLI, MARIA GINA	06/19/2003
MILFORD, CT	
CHAUDHARI, DASHRATH D	06/19/2003
CLEVELAND, TN	
CHINETTI, STEPHEN E	06/19/2003
SALEM, NH	
CLAIRE, MICHELE RENA	06/19/2003
CARTHAGE, TN	
CLARK, MELISSA WILDER	06/19/2003
KEOKEE, VA	
CLARK, RENEE CATHERINE	06/19/2003
ROCHESTER HILLS, MI	
CLAUSEN, CHRISTOPH K	06/19/2003
TUCSON, AZ	
CLEMENT, RICHARD JOSEPH	06/19/2003
LAKE CHARLES, LA	
COCKRELL, DELLA FRANCES	06/19/2003
LAMESA, TX	
COHEN, ADRIAN M	06/19/2003
SILVER SPRING, MD	
CONLEY, DAVID JOSEPH	06/19/2003
NORMAN, OK	
COPELAND, DEBORAH SWINNEY	06/19/2003
CHARLOTTE, NC	
COPPEDGE, GEORGETTE E	06/19/2003
COVINA, CA	
COX, ALICIA	06/19/2003
TEMPE, AZ	
CRAFT, BRIDGETT JANE	06/19/2003

Subject, city, state	Effective date
OXFORD, AL	
CRANE, KRISTIN ALEXANDRA	06/19/2003
PHOENIX, AZ	
CRIDDLE NISSON, DEENA MARIE	06/19/2003
DOWNEY, ID	
CROUCH, DONNA L	06/19/2003
WASHINGTON, DC	
CURTISS, JAMES RICHARD	06/19/2003
MOBILE, AL	
DAVIDSON, DANIEL GLEN	06/19/2003
MALVERN, IA	
DAVIDSON, SUSAN M	06/19/2003
HOUMA, LA	
DEGRAZIA, JANETTE ANN	06/19/2003
POWAY, CA	
DEROQUE, JENNIFER BETH	06/19/2003
WALNUT CREEK, CA	
DILLINGHAM, DALE EDWARD	06/19/2003
O'FALLON, MO	
DOBBS, COLLEEN AGNES	06/19/2003
DUNCANVILLE, TX	
DUVERNE, JEAN M	06/19/2003
FT MYERS, FL	
ECHELBERGER, MARY A	06/19/2003
RICHMOND, VA	
EDWARDS, THOMAS A	06/19/2003
FT PIERCE, FL	
ENGLISH, LORRIE ELIZABETH	06/19/2003
THORNTON, CO	
ERICKSON, BETH M	06/19/2003
EDINA, MN	
ESIGBONE, FREEBORN M	06/19/2003
LEWISVILLE, TX	
EVANS, MARK WILLIAM	06/19/2003
INDIANAPOLIS, IN	
EZIUKWU, CALLISTUS M	06/19/2003
POWDER SPRINGS, GA	
FAPPIANO, DEBORAH D	06/19/2003
PORT CHARLOTTE, FL	
FELLS, DEBORAH JEAN	06/19/2003
PRATTVILLE, AL	
FISHER, GAIL WELCH	06/19/2003
MORRIS, CT	
FLEET, RICHARD CHRISTOPHER	06/19/2003
DAVIE, FL	
FORD, LANE J	06/19/2003
VIRGINIA BEACH, VA	
FREEBURN, AGNES KATE	06/19/2003
TUCSON, AZ	
FRIEND, CHARLES W	06/19/2003
PENNSAUKEN, NJ	
GALLAGHER, KEITH J	06/19/2003
PHOENIX, AZ	
GIPSON, DAPHENEY	06/19/2003
DENVER, CO	
GLADNEY, SAMUEL LANGHORNE	06/19/2003
SAGINAW, TX	
GOFORTH, LAMONT R	06/19/2003
PUEBLO, CO	
GORDEN, CHRISTINE M	06/19/2003
STUARTS DRAFT, VA	
HACKBERT, WILLIAM JAMES	06/19/2003
SAN DIEGO, CA	
HALL, LINDA MAE	06/19/2003
LOS ANGELES, CA	
HANSEN, KAREN JEAN	06/19/2003
PEACE VALLEY, MO	
HANSHAW, EARL RAY	06/19/2003
COCOA BEACH, FL	
HARPER, JENNIFER R	06/19/2003
WOODBURY, NJ	
HARVEY, BERTHA BOWEN	06/19/2003
NEW BERN, NC	
HASLAM, CINDY R	06/19/2003
JOHNSTON, IA	
HASSELMAN, BRIAN T	06/19/2003
ST MARY'S, PA	
HAYNES, CHRIS E	06/19/2003
TUCSON, AZ	
HAYS, MARY ELIZABETH	06/19/2003
DECATUR, AL	
HEILBRUNN, HOWARD I	06/19/2003
SAN DIEGO, CA	
HERNANDEZ, GRACIELA DE	06/19/2003
LA GARZ	
HICKS, RICKY	06/19/2003
HACIENDA HGTS, CA	
HILDENSTEIN, ROBERT JOHN	06/19/2003
WOOD RIVER, IL	
HOPPE, JACK C	06/19/2003
EYOTA, MN	
HOWELL, ZENITH Z	06/19/2003
LOMA LINDA, CA	
HUETT, KATHERINE ELIZABETH	06/19/2003
BIRMINGHAM, AL	
HUNT, LORRAINE TANGELLA	06/19/2003
BOLIGEE, AL	
ICO, LELITA ORIA	06/19/2003
REDLANDS, CA	
JOBE, JILL ALLISON JETER	06/19/2003
LITTLE ROCK, AR	
JOHNSON, MICHELLE	06/19/2003
SAN BERNARDINO, CA	
JOHNSON, BRIAN	06/19/2003
PHOENIX, AZ	
JONES, MILES JAMES ALFRED JR	06/19/2003
LEE'S SUMMIT, MO	
KARETA, SUSAN MARY	06/19/2003
WESTFIELD, MA	
KENDALL, TONY M	06/19/2003
HANOVER, VA	
KENT, ELIZABETH	06/19/2003
W PALM BEACH, FL	
KIRDY, ANGELA	06/19/2003
PORT CHARLOTTE, FL	
KOTSCH, SIMONE PAMELA	06/19/2003
HUNTINGTON BCH, CA	
LAMPKIN, MARILYN	06/19/2003
PINE BLUFF, AR	
LAUTENSCHLAGER, ANDREA	06/19/2003
MESA, AZ	
LEE, DEBBIE J	06/19/2003
SAHUARITA, AZ	
LEISSOO, VIRGINIA M	06/19/2003
DENVER, CO	
LEMIEUX, DAVID GERARO	06/19/2003
TORRINGTON, CT	
LEPKOWSKI, PHYLLIS R	06/19/2003
PHOENIX, AZ	
LEWIS, PAMELA G	06/19/2003
PHOENIX, AZ	
LOPEZ, EDWARD J	06/19/2003
SAN DIEGO, CA	
LUKE, MARY R	06/19/2003
WILLCOX, AZ	
LUSMAN, JULES M	06/19/2003
LOS ANGELES, CA	
LYONS, JULIE LYNNE	06/19/2003
HESPERIA, CA	
MACIAK, CYNTHIA A	06/19/2003
ST LOUIS, MO	
MADDEN, BERNADETTE ANN	06/19/2003
HERRIN, IL	
MAHAN, RONALD GENE	06/19/2003
MESA, AZ	
MARASCO, KAYE L	06/19/2003
INDIANOLA, IA	
MARTIN, RUTHIE A	06/19/2003
PASCAGOULA, MS	
MARTIN, STEPHEN WEEDE	06/19/2003
SPRINGERVILLE, AZ	
MARTIN, VALERIE	06/19/2003
APTOS, CA	
MAY, WILLA D	06/19/2003
LOUISA, KY	
MEYER, KELLY ANN	06/19/2003
SANTA BARBARA, CA	
MILLER, NANCY J	06/19/2003
DELTA, CO	
MILLWARD, MONTY LEE	06/19/2003
SLIGO, PA	
MONROY, LORRAINE	06/19/2003
PALM DESERT, CA	
MUHAMMAD, LASONJI T	06/19/2003
CHICAGO, IL	
NGOMA, ANGELA ROBINSON	06/19/2003
YOUNGSTOWN, OH	
NICHOLS, LANA CAROL	06/19/2003
LOUISVILLE, KY	
NOLES, ROBIN CHERRY	06/19/2003
PINSON, AL	
OAKES, CECIL EVERETT JR	06/19/2003
SAN RAFAEL, CA	
PATTERSON, KATRINA VERNICE	06/19/2003
NORFOLK, VA	
PELAT, GARY MICHAEL	06/19/2003
MONTGOMERY, AL	
PELZMAN, DEBORAH LOUISE	06/19/2003
DURANGO, CO	
PEREZ, CHRISTINE	06/19/2003
POMONA, CA	
PERILLI, DONNA MARIE	06/19/2003
DRACUT, MA	
PULOS, GEORGE THOMAS	06/19/2003
SAN FRANCISCO, CA	
QUINONES, MARY E	06/19/2003
TUCSON, AZ	
RABIDEAU, MARTIN SCOTT	06/19/2003
ARVADA, CO	
RAULSOME, RUTH ANN	06/19/2003
GROTON, CT	
READ, MATTHEW J	06/19/2003
MESA, AZ	
REYES, ARISTEO	06/19/2003
SANTA ANA, CA	
REYNOLDS, ADA BARNES	06/19/2003
HOUSTON, TX	
RICE, REBECCA L GURLEY	06/19/2003
HARTWELL, GA	
RICHEY, JAMES CURTIS	06/19/2003
BESSEMER, AL	
RITTALL, LAURA JEAN	06/19/2003
BOOTHBAY, ME	
ROBERTS, LEA ANN	06/19/2003
KNOXVILLE, TN	
RODENBERG, CHRISTINA	06/19/2003
PLANT CITY, FL	
RODRIGUEZ, RAMON ROGELIO	06/19/2003
VALENCIA, CA	
ROESNER, ELIZABETH KAYE	06/19/2003

Subject, city, state	Effective date
FYFFE, AL	
RUTLAND, ANDREW ANAHEIM HILLS, CA	06/19/2003
SALEH, SAEED ORCHARD LAKE, MI	06/19/2003
SANDERS, JULIANNE L LOAMI, IL	06/19/2003
SCHMIDT, PETE E JR PITTSBURGH, PA	06/19/2003
SCHNIPER, WYNNE CAROLINE ODENVILLE, AL	06/19/2003
SCHOOLER, SUSAN D SCOTTSDALE, AZ	06/19/2003
SEXTON, SARAH JANEEN GALESBURG, IL	06/19/2003
SHIH, HSIEN SHOU ARCADIA, CA	06/19/2003
SHUMWAY, JASON PHILIP MORGANTOWN, KY	06/19/2003
SIMON, JOLENE ANNETTE TABLE ROCK, NE	06/19/2003
SLOAN, JENNIFER J CAMERON, MO	06/19/2003
SMITH, VANCE E LAKEWOOD, CO	06/19/2003
SMITH, VIRGINIA A FT MYERS, FL	06/19/2009
SOMMERVILLE, TERRI RAE KOUTS, IN	06/19/2003
SPENCER, SHEILA R SMITHS GROVE, KY	06/19/2003
STETLER, ROBERT GALAX, VA	06/19/2003
STONE, KRYSTAL L MONTROSE, CO	06/19/2003
STRICKLAND, CINDY FONTAINE TALLADEGA, AL	06/19/2003
TAYLOR, KENNETH EDWARD MONROVIA, CA	06/19/2003
TAYLOR, SHANNON LYNN NASHUA, NH	06/19/2003
THOMPSON, JERRY E SR PHILADELPHIA, PA	06/19/2003
TIBBLES, JAY HAROLD FONTANA, CA	06/19/2003
TRIPP, JOAN CHRISTINE OLATHE, CO	06/19/2003
TURNAGE, KATHY J DUNN, NC	06/19/2003
VALLEE, CHERYL DENICE NEW MILFORD, CT	06/19/2003
VARA, JOY B COLERAIN, NC	06/19/2003
VINCENT, PATRICK SANFORD, FL	06/19/2003
VINCENT, ALICE F HATTIESBURG, MS	06/19/2003
VINCI, JUDITH SPOTSWOOD, NJ	06/19/2003
WACTOR, DONNA L MONTCLAIR, NJ	06/19/2003
WILKINSON, LISA MICHELE PHOENIX, AZ	06/19/2003
WILLIAMS, BETTY LOUISE CORTHAN RIVERDALE, GA	06/19/2003
WISE, APRIL DIONNE BAY MINETTE, AL	06/19/2003
WOOD, KIMBERLY A PHOENIX, AZ	06/19/2003
WORKMAN, DAWN R LOUISVILLE, KY	06/19/2003
WULFF, SHAWNNA JEAN PHOENIX, AZ	06/19/2003
YAZZIE, THOMASCITA CHINLE, AZ	06/19/2003
YOUNG, LANITA ANN BIRMINGHAM, AL	06/19/2003
ZUCHOWSKI, EDWARD MICHAEL OMAHA, NE	06/19/2003
FEDERAL/STATE EXCLUSION/SUSPENSION	
BIRCH, AARON LINCOLNWOOD, IL	06/19/2003
LITTLEFIELD, SUSAN CANOGA PARK, CA	06/19/2003
RASH, WAYNE CHARLES SAN BERNARDINO, CA	06/19/2003
FRAUD/KICKBACKS	
SHRUM, DALE G PALM DESERT, CA	11/26/2002
OWNED/CONTROLLED BY CONVICTED ENTITIES	
BARTOB PHARMACY, INC EDGEWATER, NJ	06/19/2003
CENTRO EQUIPOS MEDICOS YAUCO, PR	06/19/2003
CHIROPRACTIC DIAGNOSTIC CARDIO MIAMI, FL	06/19/2003
DIAGNOSTIC CARDIOLINE MIAMI, FL	06/19/2003
DIAGNOSTIC RESEARCH LABORATORI MIAMI, FL	06/19/2003
EMERGENCY MANAGEMENT, INC TUSCALOOSA, AL	06/19/2003
EMERGENCY PHYSICIANS, P C TUSCALOOSA, AL	06/19/2003
EMERGI-CARE CLINIC, P C TUSCALOOSA, AL	06/19/2003
FIRST OPTION DIAGNOSTIC CTR MIAMI, FL	06/19/2003
FIRST OPTION MEDICAL CTR, INC MIAMI, FL	06/19/2003
JAMES D SPEER CORPUS CHRISTI, TX	06/19/2003
KRISTA DISCOUNT PHARMACY, INC MIAMI, FL	06/19/2003
ROBINSON INSTITUTE, INC NEW YORK, NY	06/19/2003
SOUTHERN INTEGRATED MEDICAL SV YAUCO, PR	06/19/2003
SUNSHINE CHIROPRACTIC CLINIC SAN JOSE, CA	06/19/2003
THE HERBERT ALDEN PROFESSIONAL FT LAUDERDALE, FL	06/19/2003
DEFAULT ON HEAL LOAN	
BUAHIN, KWAME G SACRAMENTO, CA	05/07/2003

Dated: June 3, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–14634 Filed 6–10–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health, Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: June 30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: Topics proposed for discussion include ongoing and new committee business and scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Shelly Pollard, ACD Coordinator, Building 2, National Institutes of Health, Bethesda, MD 20892. 301–496–0595.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14656 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: July 15, 2003.

Time: 8:30 a.m. to 3:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Abby B Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Bilogy Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14651 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Review of Mentored Research Scientist Development Awards.

Date: June 17, 2003.

Time: 4:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14648 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Social and Behavioral Research on New Biomedical Methods for HIV/STD Prevention.

Date: June 30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Inferity Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14649 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 Application(s) Review.

Date: June 27, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14650 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environment Health Sciences Review Committee.

Date: July 17–18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, PO Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14652 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFA ES–03–001: Breast Cancer and the Environmental Research Centers.

Date: July 23–25, 2003.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, PO Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Mentored Clinical Scientist Development Applications (K08s).

Date: July 28, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14653 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Grants.

Date: July 2, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A Ansari, PhD, Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892. (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14654 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Temporal Bone Hearing and Balance Pathology Resource Registry.

Date: July 10, 2003.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD 20892–7180. (301) 496–8683. *azadegan@nih.gov*.

Name of Committee: National Institute of Deafness and Other Communications Disorders Special Emphasis Panel, Small Grant Program.

Date: July 16, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC 7180, Bethesda, MD 20892–7180. 301–496–8683. *so14s@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Health Communication Research: Improved Strategies.

Dqte: July 17, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD 20892–7180. (301) 496–8683. *azadegan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14658 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NeuroOncology Center.

Date: June 15–16, 2003.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton International Hotel—BWI, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14659 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Heart and Stem Cells.

Date: July 7–8, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin at Times Square, 270 West 43rd Street, New York, NY 10036.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 496–9666. *harwoodjmail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Brain Study.

Date: July 7–8, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 866 Third Avenue, New York, NY 10022.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesa, MD 20892. 301–402–7704 *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Brain Diseases of Aging.

Date: July 8–9, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Drisco, 2901 Pacific Avenue, San Francisco, CA 94115.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–7705.

Name of Committee: National Institute on Aging Special Emphasis Panel, A Consortium to Study the Genetics of Longevity.

Date: July 22–23, 2003.

Time: 7 p.m. to 8 a.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7703. *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Molecular Biology of Aging.

Date: August 6, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave, 2C212, Bethesda, MD 20814. (Telephone conference call.)

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 496–966. *harwoodj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance program No.s 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14660 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Potential Study on Chronic Renal Insufficiency in Children.

Date: July 7, 2003.

Time: 5:30 PM to 10 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14661 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–P–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Grants.

Date: June 25, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14729 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Program Project Grants.

Date: June 11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda, Bethesda Marriott Suites Hotel, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Aftab A Ansari, PhD, Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos., 93.846. Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of federal Advisory Committee Policy.

[FR Doc. 03–14730 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 3–69, Review of R01s.

Date: July 15, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–59, Review of R01s.

Date: July 17, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–64, Review of R44s.

Date: July 18, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–68, Review of R44s.

Date: July 23, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 03–66, Review of R44s.

Date: July 24, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14731 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Project Grants.

Date: July 7, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14732 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects.

Date: July 1, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockville Pike, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD., Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14733 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 10, 2003, 12 p.m. to June 10, 2003, 2 p.m., National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on May 27, 2003, 68 FR 28833–28834.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20882. The date and time remain the same. The meeting is closed to the public.

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14655 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Brain Disorders and Clinical Neuroscience 6, June 12, 2003, 3:30 a.m. to June 13, 2003, 5 p.m. Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036 which was published in the **Federal Register** on May 30, 2003, 68 FR 32534–32537.

The starting time of the meeting has been changed to 8:30 a.m. on June 12, 2003. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14657 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Reviews in Substance Abuse and Addiction.

Date: June 11, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BM–1 Regular Mix Minus TB.

Date: June 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 4.

Date: June 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142 MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy. and Immunology Study Section.

Date: June 19–20, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–1 F05(2) L Fellowships: Cell and Development.

Date: June 19–20, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive. Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis, Panel, Immunology Fellowship Study Section.

Date: June 20, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Axon Guidance.

Date: June 20, 2003.

Time: 10:15 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tuberculosis SEP.

Date: June 23, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro–SEP.

Date: June 23, 2003.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.

Date: June 26–27, 2003.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.

Date: June 26–27, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 8 (10): Small Business: Bioengineering and Physiology.

Date: June 26–27, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 435–1176, *parakkap@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.

Date: June 26–27, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *johnsong@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.

Date: June 26–27, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2(10B) Proteomics, Protein Expression, and Protein Therapeutics.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods

Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle Biology.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Doyle Hotel Group, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry/Biophysics SBIR/STTR Panel.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychosocial Risk and Disease Prevention.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radission Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0678, *sirccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biodefense SEP ZRG1 BM1–02.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7008, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnosis and Treatment of Cancer.
Date: June 26–27, 2003.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–2681, *mayyasis@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 3.
Date: June 26–27, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSX 10B: Small Business: Electromagnetics.
Date: June 26, 2003.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *roseni@csr.nig.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB(02)M:Salt-Induced Hypertension.
Date: June 26, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Russell T. Dowell, PhD, Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nigh.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Skeletal Muscle.
Date: June 26, 2003.
Time: 5 p.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Doyle Hotel Group, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14662 Filed 6–10–03; 8:45 am]

BILLING CODE 4140–01–P–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Human Resource Management System Senior Review Advisory Committee

AGENCY: Department of Homeland Security, DHS.

ACTION: Notice of committee establishment.

SUMMARY: Under the Federal Advisory Committee Act, the Secretary of Homeland Security is establishing the Human Resource Management System Senior Review Advisory Committee.

Purpose and Objective: The Committee is charged with reviewing the work of the DHS/OPM Human Resource System Design Team and providing options to the Secretary of DHS and the Director of OPM for their consideration in establishing the new Human Resources Management System provided for in section 841 of the Homeland Security Act.

Balanced Membership Plans: The Committee consists of senior leadership from DHS, OPM and DHS' major unions, as well as individuals with particular expertise, knowledge and experience in human resources.

Duration: The Committee will exist for 2 years from the date of the Charter, unless earlier renewed or terminated.

Responsible DHS Official: The Chief Human Capital Officer, Department of Homeland Security, Washington, DC 20528. Phone number: (202) 786–0061.

Dated: June 5, 2003.

Ronald J. James,

Chief Human Capital Officer.

[FR Doc. 03–14781 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Affidavit of Support under Section 213A of the Act, Contract Between Sponsor and Household Member, EZ Affidavit of Support under Sec. 213 of the Act, and Intending Immigrant's Affidavit of Support Exemption; Forms I–864, I–864A, I–864EZ and I–864W.

The Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 10, 2003, at 68 FR 6773, allowing for a 60-day public comment period. No comments were received by the DHS on the proposed extension of this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 11, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Room 10235, Washington, DC 20503; Attn: Department of Justice Desk Officer.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the Act, Contract Between Sponsor and Household Member, EZ Affidavit of Support under Section 213 of the Act, and Intending Immigrant's Affidavit of Support Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–864, Form I–864A, I–864EZ, and I–864W. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The form are mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 439,500 principal I–864 responses at 6 hours per response; 215,800 I–864A responses at 1.75 hours per response; 100,000 I–864EZ responses at 2.5 hours per response, and 1,000 I–864W responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,265,650 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: June 5, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–14629 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Extension of Bond for Temporary Importation

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Extension of Bond for Temporary Importation. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5696) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 11, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1651–0015.

Form Number: Customs Form—3173.

Abstract: Imported merchandise which is to remain in the Bureau of Customs and Border Protection territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form—3173.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 348.

Estimated Total Annualized Cost on the Public: $5,568.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 3, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14689 Filed 6–10–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application and Approval to Manipulate, Examine, Sample or Transfer Goods

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application and Approval to Manipulate, Examine, Sample or Transfer Goods. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5697–5698) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 11, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application & Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1651–0006.

Form Number: Form–3499.

Abstract: CBP Form–3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under CBP supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

Current Actions: This submission is being submitted to extend the expiration date, with a change to the expiration date.

Type of Review: Extension (with change).

Estimated Number of Respondents: 151,140.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

Estimated Total Annualized Cost on the Public: $302,280.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 3, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14690 Filed 6–10–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Deferral of Duty on Large Yachts Imported for Sale. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 5695–5696) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 11, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651–0080.

Form Number: N/A.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: $2,200.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 3, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–14691 Filed 6–10–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Employment Standards, 49 CFR Parts 1542 and 1544

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 6, 2002, 67 FR 72720.

DATES: Send your comments by July 11, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, Office of Finance and Administration, Transportation Security Administration HQ, West Tower, Floor 4, TSA–17, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Employment Standards.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0006.

Forms(s): NA.

Affected Public: Airports and air carriers.

Abstract: Section 105 of Public Law 101–604, the Aviation Security Improvement Act of 1990, directed the Federal Aviation Administration (FAA) to prescribe standards for the hiring and continued employment of air carrier and airport security personnel. These standards were developed and implemented at 14 CFR parts 107 and 108. The Aviation and Transportation

Security Act of 2001, Public Law 107–71, transferred the responsibility for civil aviation security, including the prescribing of employment standards as outlined above, from FAA to TSA. In February 2002, TSA implemented its employment standards at 49 CFR parts 1542 and 1544, while 14 CFR parts 107 and 108 were repealed. Airport operators maintain records of compliance with part 1542 for those employees with access privileges to secure areas of the airport. Air carrier operators maintain records of compliance with part 1544 for selected crew and security employees. TSA civil aviation security inspectors review these records to ensure that the safety and security of the public is not compromised. Estimates regarding the burden this collection places on the affected public were recalculated to more accurately reflect the time and effort that is being devoted to this collection in the wake of September 11, 2001.

Number of Respondents: 1165.

Estimated Annual Burden Hours: 120,005.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on June 6, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–14803 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval; Togiak National Wildlife Refuge Oral History Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. The information collection requirement is described in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments before July 11, 2003.

ADDRESSES: Submit your comments on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–5806 (fax); *ruth_solomon@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB for approval of a new collection of information on the traditional ecological knowledge of residents in the vicinity of Togiak National Wildlife Refuge, in southwestern Alaska. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Because this would be a new information collection, we are asking OMB to assign a new control number to this activity.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) amends and builds on the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended) (Act) to improve the management of the National Wildlife Refuge System. Section 5 of the Act specifies that each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established, and to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans. To help fulfill the goals of the Act, we are requesting OMB approval of a collection of information on traditional ecological knowledge relating to persistence and change over time of the fish and wildlife populations and habitats of the area in and around Togiak National Wildlife Refuge. The information collected during this project would be used by cooperators to create a permanent record of the long-term, local subsistence activities and status of natural resources in the area of the refuge.

Title: Oral History and Traditional Knowledge-Gathering Within Togiak National Wildlife Refuge.

Frequency of Collection: Annually.

Description of Respondents: Local rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average 5.5 hours per respondent. The total annual burden is 55 hours.

Total Annual Responses: We expect 10 individuals to participate in the survey per year.

We invite comments concerning this new request on: (1) Whether the collection of information is necessary for the proper performance of our refuge management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: June 5, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–14664 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 11, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Wildlife Conservation Society, Bronx, New York, PRT–070315.

The applicant requests a permit to export one female captive born snow leopard (*Uncia uncia*) to the Calgary Zoo, Alberta, Canada for the purpose of enhancement of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 30, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14711 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Record of Decision To Authorize Issuance of a Section 10 Permit to the Salt River Project for Incidental Take of Southwestern Willow Flycatcher, Yuma Clapper Rail, Bald Eagle, and Yellow-Billed Cuckoo in Gila and Maricopa Counties, AZ

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service (Service) has issued an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), to the Salt River Project (SRP). The permit authorizes the incidental take of the following federally listed and candidate species: Southwestern willow flycatcher (*Empidonax traillii extimus*)(flycatcher), Yuma clapper rail (*Rallus longirostris yumanensis*) (clapper rail), bald eagle (*Haliaeetus leucocephalus*), and the yellow-billed cuckoo (*Coccyzus americanus*)(cuckoo). The authorized take will occur in Gila and Maricopa counties, Arizona, as a result of management actions allowing Roosevelt Lake to fill, causing inundation of occupied habitat. The Service issued an Environmental Impact Statement (EIS) that evaluated the impacts of alternatives considered prior to issuance of the ITP. SRP submitted the Roosevelt Habitat Conservation Plan (RHCP) and Implementing Agreement with their permit application. These documents describe measures to minimize and mitigate the effects of the taking of listed and candidate species and the habitats upon which they depend.

The Record of Decision became effective on February 27, 2003. It states that the preferred alternative, as described in the Final EIS, will be implemented, and discusses all factors leading to the decision.

ADDRESSES: The Record of Decision for the SRP can be accessed on the Internet at *http://southwest.fws.gov/htopic.html* or viewed at the following locations (by appointment at government offices):

- Department of the Interior, Natural Resources Library, 1849 C. St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701.
- U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.
- Salt River Project, 1521 Project Drive, Tempe, AZ 85281.
- Globe Public Library, 339 S. Broad St., Globe, AZ 85501.
- Government Document Service, Arizona State University, Tempe, AZ 85287.
- Payson Public Library, 328 N. McLane Road, Payson, AZ 85541–4340.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004.
- Tonto Basin Library, 1 School St., Tonto Basin (Punkin Center), AZ 85553.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field Supervisor, Tucson Suboffice, U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701 at 520/670–4617.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Service gathered the information necessary to (1) determine impacts and formulate alternatives for the EIS, related to the issuance of an ITP to SRP; and (2) develop and implement the RHCP, which describes measures to minimize and mitigate the effects of the incidental take of federally listed species to the maximum extent practicable.

The Notice of Availability for the draft EIS, Application for the ITP, draft RHCP, and draft Implementing Agreement was published in the **Federal Register** on July 19, 2002 (67 FR 47564).

The Notice of Availability for the Final EIS, Final RHCP, and Implementing Agreement was published in the **Federal Register** on November 29, 2002 (67 FR 71193).

Background: Roosevelt is operated by SRP in conjunction with three other reservoirs on the Salt River and two reservoirs on the Verde River as integral features of the Salt River Reclamation Project, authorized by the Reclamation Act of 1902, and pursuant to a 1917 contract with the United States. Since completion in 1911, Roosevelt has provided water for power generation, irrigation, municipal and other uses. Currently, SRP reservoirs supply water to more than 1.6 million people in the cities of Phoenix, Mesa, Chandler, Tempe, Glendale, Gilbert, Scottsdale, Tolleson, and Avondale. In addition, water is provided to irrigate agricultural lands within SRP and for other uses. Also, water is delivered to the Salt River Pima-Maricopa Indian Community, Fort McDowell Indian Community, Gila River Indian Community, Buckeye

Irrigation Company, Roosevelt Irrigation District, Roosevelt Water Conservation District, and others. Roosevelt and the other SRP reservoirs also provide a variety of recreational uses and environmental benefits in central Arizona. Due to dry conditions in central Arizona for the past six years, the water level at Roosevelt has been below normal. As a result, riparian vegetation has invaded and flourished in the portion of Roosevelt historically used by SRP to store water for use in the Phoenix metropolitan area. Animals that use riparian habitat have followed the vegetation growth and now occupy areas within the reservoir. In particular, a population of flycatchers now occupies habitat within the storage space at Roosevelt. Thus, periodic refilling of the reservoir may adversely affect habitat used by the flycatcher, clapper rail, bald eagle, and cuckoo.

Bryan Arroyo,

Acting Regional Director, Southwest Region.

[FR Doc. 03–14677 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–78953]

Notice of Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease offering by sealed bid, South Crandall Canyon Tract.

SUMMARY: Notice is hereby given that at 1 p.m., June 12, 2003, certain coal resources in lands hereinafter described in Emery County, Utah will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair market value as determined by the authorized officer. A company or individual is limited to one sealed bid. If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

Authority: 43 CFR 3422.2(a).

This lease is being offered for sale under the provisions set forth in the regulations for Leasing on Application at 43 CFR part 3425.

The lease sale will be held in the Bureau of Land Management Fourth Floor Conference Room, 324 South State Street, Suite 400, Salt Lake City, Utah, at 1 p.m. on June 12, 2003. At that time, the sealed bids will be opened and read. No bids received after 10 a.m., June 12, 2003, will be considered.

Coal offered: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Emery County, Utah, approximately 10 miles northwest of Huntington, Utah on public land located in the Manti-LaSal National Forest:

T. 16 S., R. 7 E., SLM, Utah;
Sec. 4, W2SW, S2SWNW;
Sec. 5, SE, S2SENE;
Sec. 8, E2, NENW, S2NW;
Sec. 9, NW.

Containing 880.00 acres.

The tract has two potentially minable coal seams, the Blind Canyon and the Hiawatha. The minable portions of the seams in this area are from 6 to 8 feet in thickness. This tract contains more than 7.63 million tons of recoverable high volatile C bituminous coal.

The estimated coal quality using weighted averages of samples on an as-received basis is:

BTU/lb.	12,790
Percent moisture	5.26
Percent sulphur	0.61
Percent ash	4.68
Percent fixed carbon	45.88
Percent volatile matter	44.18

(Totals do not equal 100% due to rounding).

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

SUPPLEMENTARY INFORMATION: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, PO Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (Room 400), 324 South State Street, Salt Lake City, Utah 84111. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

Dated: May 13, 2003.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. 03–14734 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XM–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on July 16 and 17, 2003 at the Holiday Inn, 333 Sante Fe in Alamosa, Colorado and will begin at 9:30 a.m. on July 16. The public comment period will begin at approximately 9:45 a.m. and the meeting will end for the day at 4:30 p.m. On July 17 the meeting will reconvene at the same location at 8 a.m. for the field trip and will adjourn at 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include:

July 16

Manager reports
Update on Blanca Wildlife Habitat Area
Overview of the Fuels Management and Travel Management Program.

July 17

Sites visited on the Field Trip will include Blanca Wetlands and the Rio Grande Corridor.

All meetings are open to the public. The public can make oral statements to the Council at 9:45 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: June 3, 2003.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 03–14665 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–03–1010–NQ]

Notice of Availability for Public Comment of an Administrative Order Concerning the Dinero Mine Located Near Leadville, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for public comment of an administrative order on consent concerning the dinero mine located near Leadville, Colorado.

SUMMARY: Pursuant to section 122(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(1), notice is hereby given that the Bureau of Land Management (BLM), by and through the Department of the Interior, and the Environmental Protection Agency (EPA), have signed a proposed Administrative Order on Consent (AOC) concerning the Dinero Complex Site (Site) located near Leadville, Colorado. The Department of Justice has issued its concurrence with the AOC.

The Site affects public land managed by BLM and includes private land owned by John D. Lundquist (Lundquist). The Site includes two mine waste rock piles estimated to contain approximately 40,000 cubic yards of material extracted from the nearby Dinero mine tunnel. The piles are partially located on wetlands within the Sugarloaf Gulch drainage, a tributary of the Lake Fork of the Arkansas River. Several studies conducted at the Site indicate that the two mine waste rock piles contain toxic metal compounds which, when coming into contact with surface and ground water, release toxic metals and acidic drainage into the nearby wetlands and downstream surface waters. After completing an engineering evaluation/cost analysis (EE/CA) of response alternatives, BLM selected a non-time critical removal action to address releases from the two mine waste rock piles. Under the selected alternative, BLM will remove the waste from the gulch and consolidate it into two on-site repositories, which will be covered and revegetated. In addition, hydrological controls will be installed so as to minimize contact of surface water runoff with the repositories.

Through the proposed AOC, the United States and Mr. Lundquist would resolve the alleged liability of Mr. Lundquist under section 107 of CERCLA, 42 U.S.C. 9607. Mr. Lundquist would provide access and materials needed to implement the removal action, and would authorize the construction of a portion of the mine waste rock repositories on his lands. In addition, Mr. Lundquist would grant a covenant running with the land that would prevent disturbance of the portion of his lands subject to removal action.

DATES: BLM will receive comments on the proposed AOC until July 11, 2003. Comments should refer to the Dinero Complex Site. The proposed AOC may be examined at the BLM Royal Gorge Field Office in Canon City, Colorado, or at the Timberline Campus of the Colorado Mountain College in Leadville, Colorado.

ADDRESSES: A copy of the proposed AOC may also be obtained from the BLM Royal Gorge Field Office upon request. Comments or requests to obtain a copy of the proposed AOC should be addressed to: Dan Grenard, BLM Royal Gorge Field Office, 3170 East Main Street, Canon City, Colorado 81212, (719) 269–8500.

Robert H. Robinson,

Abandoned Mine Land Program, Division of Energy, Lands and Minerals.

[FR Doc. 03–14625 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–JG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Draft Environmental Impact Statement/ General Management Plan, Big Bend National Park, Texas

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C), the National Park Service announces the availability of a Draft Environmental Impact Statement for a General Management Plan (DEIS/GMP) for Big Bend National Park, Texas.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement through 60 days from the date of this notice. Public meetings will be held but have not been scheduled at this time. Dates, times and locations will be announced in the local media.

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Big Bend National Park, P.O. Box 129, Big Bend National Park, Texas 79834. Public reading copies of the DEIS/GMP will be available for review at the following locations: Office of the Superintendent, Park Headquarters (Administration Office), Big Bend National Park, P.O. Box 129, Big Bend National Park, Texas 79834. Telephone: (915) 477–1101.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287. Telephone: (303) 969–2851 (or (303) 969–2377).

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Room 7012, Washington, DC 20240. Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Superintendent or Management Assistant, Big Bend National Park at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION: If you wish to comment you may submit your comments by any one of several methods. You may mail comments to Superintendent, P.O. Box 129, Big Bend National Park, Texas 79834. You may comment via the Internet to *BIBE_Superintendent@NPS.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: GMP Team" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Superintendent Frank Deckert directly at telephone (915) 477–1101 or Management Assistant Lou Good at telephone (915) 477–1103. Finally you may hand-deliver your comments to park headquarters, Panther Junction, Big Bend National Park, Texas. Comments should be received no later than 60 days from the publication of this notice of availability. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the

extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 31, 2003.

Michael D. Synder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 03–14637 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Environmental Impact Statement, Big Bend National Park, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Fire Management Plan, Big Bend National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the Fire Management Plan for Big Bend National Park. This cooperative effort among park staff, other Federal and State agencies, non-profit organizations, and the public, is expected to result in a comprehensive management plan that protects life, property, and cultural resources; provides opportunities for visitor interpretation; and returns natural processes to park ecosystems. In cooperation with neighboring property owners attention will also be given to resources outside the boundaries that affect the integrity of Big Bend National Park. The international border forms the park's southern boundary, and coordination with Mexico is also integral to the fire management program. There are four Fire Management Alternatives being considered. These are No-Action, Full Suppression, Full Wildland Fire Use, and Progressive Fire Use. The No Action alternative maintains the current management direction of suppressing fires in the high Chisos and on park boundaries, along Rio Grande and around inholdings. Fire may be allowed to burn under pre-determined conditions in the rest of the park. The Full Suppression alternative suppresses all ignitions, while the Full Wildland Fire Use alternative allows for the use of naturally ignited fires to reduce fuels and benefit ecosystems except around developed areas, sensitive resources, and portions of the park boundary. The final alternative is Progressive Fire Use. It is similar to the Full Wildland Fire Use in that sensitive areas receive protection, and allows the use of prescribed and natural ignitions in the park. Unlike the Full Wildland Fire Use alternative; however, its application would be initially limited with expansion based on monitoring of prescribed fire projects and research results. Such information would help managers develop effective prescriptions for managing fires to meet ecological goals.

Major issues for fire management in the park include:

- Safety of firefighters, the public, and park staff;
- Persistence of unique habitats;
- Preservation of high quality visitor experiences;
- Maintenance of populations of threatened and endangered species;
- Control of the spread of exotic plant species;
- Concerns of neighboring landowners;
- Impacts on local communities and their economies;
- Protection of historic and prehistoric cultural resources and cultural landscapes.

A scoping newsletter has been prepared that details the issues identified to date. The newsletter will also announce the locations, times and dates of public scoping meetings that will be held in Alpine, TX and Study Butte, TX. The newsletter is available for downloading as a pdf document from Big Bend National Park's expanded Web site at *www.nps.gov/bibe/press.htm* or to obtain a paper copy call or write Richard Gatewood, Fire Ecologist, P.O. Box 368 Alpine, Texas 79839, Phone: (915)837–7056 e-mail: *Richard_Gatewood@nps.gov.*

DATES: Public scoping meetings are to be held in the towns of Study Butte, TX and Alpine, TX at locations, times and dates to be published in the scoping newsletter mentioned above. The National Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the Office of the Superintendent, Frank Deckert, Big Bend National Park, P.O. Box 129 Big Bend National Park, TX 79834 phone: (915) 477–2251.

FOR FURTHER INFORMATION CONTACT: Richard Gatewood, Fire Ecologist, Big Bend National Park, P.O. Box 368 Alpine, TX 79830, phone: (915) 837–7056, email: *Richard_Gatewood@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping newsletter or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent P.O. Box 129 Big Bend National Park, TX 79830. You may also comment via the Internet to *BIBE_Superintendent@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Superintendent" and your name and return address in your Internet message and please indicate if you want confirmation that we received your comments. If you do not receive a confirmation that we have received your Internet message, contact directly Richard Gatewood, Fire Ecologist at (915) 837–7056. Finally, you may hand-deliver comments to Visitor's Center and Park Headquarters, Route 11, Panther Junction, Big Bend National Park. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 14, 2003.

Michael D. Synder,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–14638 Filed 6–10–03; 8:45 am]

BILLING CODE 4310–AY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action for Proposed Land Exchange

SUMMARY: A land exchange is proposed of a federally owned conservation easement on privately owned lands for a similar conservation easement on adjacent privately owned lands, located in Lake Clark National Preserve, and the Lake and Peninsula Borough, Alaska.

I. The following described federally owned conservation easement, which was acquired by the National Park Service in 1992, has been determined to be suitable for disposal by exchange. The authority for this exchange is section 1302 (h), Public Law 96–487, Alaska National Interest Lands Conservation Act, December 2, 1980. The current federally owned conservation easement is within the boundary of Lake Clark National Preserve. It is not required for retention, in that park unit. This federal conservation easement, which is proposed for disposal, is a 40-acre portion of a 66-acre conservation easement (Tract No. 08–107) that was acquired by the United States of America by deed recorded in Deed Book 20 on Page 528 of the Iliamna Recording District, Alaska. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request from the National Park Service Land Resources Program Center at the address set forth below.

Fee ownership to the federally owned property (conservation easement) is to be exchanged. Conveyance of the interest in land by the United States of America will be done by a Quitclaim Deed.

II. In exchange for the portion of the conservation easement identified in section 1 (above) the United States of America will acquire a 53-acre conservation easement on adjoining lands (Tract No. 08–106) that are currently owned by Ms. Bella Hammond, and which also lie within the boundary of Lake Clark National Preserve. The exchange will consolidate lands in protected status and lands subject to development. The value of the property interests exchanged shall be determined by current fair market value appraisals, and if they are not appropriately equal, the values shall be equalized by payment of cash as circumstances require. Detailed information concerning this exchange, including precise legal descriptions, is contained in an environmental assessment, cultural reports, and Finding of No Significant Impact, which are available at the National Park Service, Land Resources Office, 2525 Gambell Street, Anchorage, Alaska 99503–2892, or call 907–257–2590. For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: May 6, 2003.

Marcia Blaszen,

Acting Regional Director, Alaska.

[FR Doc. 03–14636 Filed 6–10–03; 8:45 am]

BILLING CODE 4312–64–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary)]

Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions From India

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of the preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping investigation nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of certain colored synthetic organic oleoresinous pigment dispersions. This petition covers imports of colored synthetic organic pigment dispersions, in flush or base form, containing pigments classified in either the Azo or Phthalo chemical classes that have been dispersed in an oleoresinous organic vehicle system comprising assorted combinations of various solvents, oils, and resins ("the varnish"). The subject pigment dispersions are a thick putty that contain by weight 20 percent or more pigment dispersed in the varnish. The subject pigment dispersions are used primarily for the manufacture of letterpress and lithographic printing inks, provided for in subheadings 3204.17.6020 (Pigment Blue 15:4), 3204.17.6085 (Pigments Red 48:1, Red 48:2, Red 48:3, and Yellow 174), 3204.17.90 (Pigments Red 57:1, Yellow 12, Yellow 13, Yellow 74, Blue 15:3, Green 7), and 3204.17.9085 (Pigments Red 22, Red 48:4, Red 49:1, Red 49:2, Red 52:1, Red 53:1, Yellow 14, Yellow 83, and Green 36) of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by July 21, 2003. The Commission's views are due at Commerce within five business days thereafter, or by July 28, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 5, 2003, by Apollo Colors, Inc., Rockdale, IL, General Press Colors, Ltd.,

Addison, IL, Magruder Color Company, Inc., Elizabeth, NJ, and Sun Chemical Corporation, Fort Lee, NJ.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to these investigations under the APO issued in these investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 27, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187 or *fruggles@usitc.gov*) not later than June 25, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing duties and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 2, 2003, a written brief containing information and arguments pertinent to the subject matter of these investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: June 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14793 Filed 6–10–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–453]

Conditions of Competition for Milk Protein Products in the U.S. Market

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: June 5, 2003.

SUMMARY: Following receipt of the request on May 14, 2003, from the Senate Committee on Finance, the Commission instituted investigation No. 332–453 *Conditions of Competition for Milk Protein Products in the U.S. Market*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by the Committee, the Commission will conduct an investigation and provide a report on competitive conditions for milk protein products in the U.S. market. In its report the Commission will provide, to the extent possible, the following:

- An overview of the global market for milk proteins in their various forms, including such factors as consumption, production, and trade during the period 1998–2002;
- Profiles of the milk protein industries of the United States and major dairy exporting countries, and in particular, the industries of Australia, New Zealand, and the European Union;
- Information on the overall level of government support and other government intervention affecting producers of milk proteins in the United States and in each of the above-referenced trading partners together with a discussion of competitive factors, including government policies, that impact U.S. production, use, and trade in milk protein products in their various forms;
- Information on U.S. imports and exports of milk protein in its various forms with data broken down, to the extent possible, by protein content, end use, and manufacturing processes;
- A history of U.S. tariff classification of milk proteins and tariff treatment of these products, including any fees or quotas imposed under section 22 of the Agricultural Adjustment Act, tariff rate quotas established pursuant to the Uruguay Round Agreements, and U.S. Customs Service classification decisions;
- A qualitative and, to the extent possible, quantitative assessment of how imported milk proteins affect farm level milk prices in the United States; and,
- Other information relating to competitive factors affecting: (1) The U.S. industry that imports and consumes milk proteins; (2) the U.S. industry that supplies competitive products, and (3) the competitive factors, including government policies, that impact potential U.S. production of milk proteins in their various forms.

As requested by the Committee, the Commission's report will provide information on the competitiveness of a variety of milk proteins in the U.S. market, focusing on milk protein concentrate, casein, and caseinate and the market for those products compared with other milk proteins, including whole milk, skim milk, dried whole milk, dried skim milk, whey, dried whey, and whey protein concentrates, covering the period 1998–2002. As requested, the Commission will transmit its report to the Committee by May 14, 2004. The Committee indicated that it intends to make the report public.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Jonathan Coleman, Project Leader (202–205–3465 or *jcoleman@usitc.gov*) or Warren Payne, Deputy Project Leader (202–205–3317 or *wpayne@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on legal aspects of this investigation, contact William Gearhart of the Office of General Counsel (202–205–3091 or *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC beginning at 9:30 a.m. on December 4, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., November 20, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., November 24, 2003, the deadline for filing post-hearing briefs or statements is 5:15 p.m., December 18, 2003. In the event that, as of the close of business on November 20, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–1806) after November 20, 2003, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Senate Committee on Finance has requested that the Commission prepare a public report (containing no confidential business information). Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 18, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 8036 (Nov. 8, 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Milk proteins, government intervention, tariffs, and imports.

Issued: June 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–14792 Filed 6–10–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection Commnets Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 51, and page 12716 on March 17, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 11, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503: Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overviews of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6NIA (5330.3D). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* none. *Abstract:* This information collection is needed to determine if the firearms or ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15,000 respondents, who will complete the form within approximately 30 mintues.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are 7,500 estimated total burden hours associated with this collection.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suit 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 5, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14620 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Pending Registration

By Notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003, (68 FR 6183), Houba, Inc., 16235 State Road 17, Culver, Indiana 46511, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of Schedule II controlled substances Oxycodone (9143) and Hydrocodone (9193). The firm plans to bulk manufacture the controlled substances for sale to its customers for the production of finished dosage form products.

Comments and Objections have been filed with the Drug Enforcement Administration and are currently under review. A final decision regarding the firm's renewal application as a bulk manufacturer is hereby being held pending investigation and resolution of issues raised.

Houba, Inc. is authorized to continue operating under the manufacturer registration issued pursuant to the Notice of Registration published June 13, 2002 (67 FR 40752) pending final approval or denial of the renewal application.

Dated: May 23, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–14737 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 24, 2002, Noramco, Inc. (formerly Noramco of Delaware, Inc.), 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal and on December 4 and 26, 2002, by letters to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Morphine-N-Oxide	I
Codeine-N-Oxide (9053)	I
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 11, 2003.

Dated: May 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–14755 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 3, 2002, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7470)	II
1-Piperidincyclohexane-carbonitrille (8603).	II
Benzoylecgoonine (9180)	II

The firm plans to manufacture small quantities of controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than August 11, 2003.

Dated: May 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–14736 Filed 6–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Optional Professional Management Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Friday, June 27, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study optional professional management for defined contribution plans.

The session will taken place in Room N–4437 C–D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 3:30 p.m., is for working group members to hear testimony from witnesses about the optional professional management for defined contribution plans, including employer delegation to professional managers.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentations should be limited to 20 minutes, but an extended statement may be submitted for the record. Individual with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC this 5th day of June 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14698 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

122nd Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 122nd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, June 27, 2003.

The session will take place in Conference Room N–4437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will begin at 3:30 p.m. and end at approximately 4:30 p.m., is for the chairs of this year's three Working Groups to provide progress reports on their individual study topics to the full Council.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentations should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC this 5th day of June 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14699 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Defined Benefit Funding and Discount Rate Issues Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the Authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, June 26, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study defined benefit plan funding and discount rate issues.

The session will take place in Room S–2322, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:15 a.m. to approximately 5 p.m., is for working group members to hear testimony from witnesses about the appropriate discount rate for defined benefit plans, and related funding issues.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentations should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC, this 5th day of June, 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14700 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Health Care Security Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, June 25, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study health care security.

The session will take place in Room N–4437 C–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 4 p.m., is for Working Group members to hear testimony from witnesses about the relative merits of defined contribution and self-insured health plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrisey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives or organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693–8668 before June 18. Oral presentatives should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

Signed in Washington, DC this 5th day of June 2003.

Paul Zurawski,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–14701 Filed 6–10–03; 8:45 am]

BILLING CODE 4510–29–M

LIBRARY OF CONGRESS

Copyright Office

Notification of Agreement Under the Small Webcaster Settlement Act of 2002

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of agreement.

SUMMARY: The Copyright Office is publishing an agreement which sets rates and terms for the reproduction and performance of sound recordings made by a noncommercial webcaster under the section 112 and 114 statutory licenses. Noncommercial webcasters who meet the eligibility requirements may choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreement published herein rather than the rates and terms adopted by the Librarian of Congress in an earlier proceeding.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423. See the final paragraph of the **SUPPLEMENTARY INFORMATION** for information on where to direct questions regarding the rates and terms set forth in the agreement.

SUPPLEMENTARY INFORMATION:

Background

In 1998, Congress amended the Copyright Act, title 17 of the United States Code, to make clear that an eligible nonsubscription service may publicly perform copyrighted sound recordings by means of digital audio transmissions under a statutory license, 17 U.S.C. 114, provided that the service pays the appropriate royalty fee and complies with the terms of the license. At the same time, Congress created a second statutory license, 17 U.S.C. 112(e), to allow for the making of ephemeral reproductions for the purpose of facilitating the digital audio transmissions made by the nonsubscription services under the section 114 license. Rates and terms for both licenses were set after a hearing before a copyright arbitration royalty panel ("CARP"). *See* 67 FR 45239 (July 8, 2002). However, some small webcasters, including some noncommercial webcasters, did not participate in that proceeding and expressed reservations about the fee structure adopted through that process.

In response to those concerns, Congress passed the Small Webcaster Settlement Act of 2002 ("SWSA"), Pub. L.107–321, 116 Stat. 2780, amending the section 112 and section 114 statutory licenses as they relate to small commercial webcasters and noncommercial webcasters. Specifically, the SWSA authorizes SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc. and the Receiving Agent designated by the Librarian of Congress in the initial rate setting proceeding, to enter into agreements on behalf of all copyright owners and performers for the purpose of establishing an alternative payment structure for small commercial webcasters [1] and noncommercial webcasters [2] operating under the section 112 and section 114 statutory licenses.

The rates and terms set forth in such agreements apply only to the time periods specified in the agreement and have no precedential value in any proceeding concerned with the setting of rates and terms for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings. To make this point clear, Congress included language expressly addressing the precedential value of such agreements. Specifically, section 114(f)(5)(C), as added by the SWSA, states that:

> Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral recordings or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice and recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

17 U.S.C. 114(f)(5)(C) (2002).

[1] SoundExchange and small commercial webcasters negotiated such an agreement and submitted it to the Copyright Office for publication in December, 2002. *See* 67 FR 78510 (December 24, 2002).

[2] For purposes of the SWSA, a "noncommercial webcaster" is defined as a webcaster that: (1) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986, 26 U.S.C. 501; (2) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or (3) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes. 17 U.S.C. 114(f)(5)(E).

Request for Publication of Negotiated Rates and Terms Available to Certain Noncommercial Webcasters

On June 2, 2003, SoundExchange, and a group of membership organizations, including American Council on Education, Collegiate Broadcasters, Inc., the Intercollegiate Broadcasting System, Inc., Harvard Radio Broadcasting Co., Inc., and the National Religious Broadcasters Music License Committee, on behalf of their members and/or stations that operate or plan to operate noncommercial webcasting services, notified the Copyright Office that they had negotiated such an agreement for the reproduction and performance of sound recordings by noncommercial webcasters under the section 112 and section 114 statutory licenses, and requested that the Copyright Office publish the Rates and Terms in the **Federal Register**, as required under section 114(f)(5)(B) of the Copyright Act, as amended by the SWSA.

Thus, in accordance with the requirement set forth in amended section 114(f)(5)(B), the Copyright Office is publishing the submitted agreement, as Appendix A, thereby making the rates and terms in the agreement available to any noncommercial webcaster meeting the eligibility conditions of the agreement as an alternative to the rates and terms announced by the Librarian in his July 8, 2002 order. Moreover, publication of the agreement in the **Federal Register** makes the agreement binding on all copyright owners of sound recordings and other persons entitled to payment under section 114 in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress and fulfills the Copyright Office's responsibility with respect to this agreement.

Beyond publication of this document, the Copyright Office has no responsibility for administering the rates and terms of the agreement. For this reason, questions regarding the rates and terms set forth in this agreement should be directed to SoundExchange (for contact information, *see http://www.soundexchange.com*). Similarly, questions regarding the previously published agreement between SoundExchange and small commercial webcasters should also be directed to SoundExchange.

Dated: June 6, 2003.

Marybeth Peters,

Register of Copyrights.

Note: This appendix will not be codified in Title 37, part 261, of the Code of Federal Regulations.

Appendix A

Rates and Terms Available to Certain Noncommercial Webcasters

1. General

(a) *Availability of Rates and Terms.* The rates and terms set forth herein (the "Rates and Terms") cover the making of public performances of sound recordings by means of digital audio transmissions under the statutory license of 17 U.S.C. 114 by "Noncommercial Webcasters" (as defined in Section 9(e) hereof), and the reproduction of ephemeral recordings used solely to facilitate such transmissions under the statutory license of 17 U.S.C. 112(e), during the period beginning on October 28, 1998, and ending on December 31, 2004. A Noncommercial Webcaster may elect to be subject to these Rates and Terms, in their entirety, by complying with the procedure set forth in Section 2 hereof.

(b) *Relationship to Other Provisions.* Subject to Section 7, any Noncommercial Webcaster relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 under these Rates and Terms shall comply with the requirements of 17 U.S.C. 112 and 114, these Rates and Terms and other governing provisions established by the Copyright Office. Any terms determined in accordance with 17 U.S.C. 112 and 114 and applicable to the collection and distribution by SoundExchange of payments under 17 U.S.C. 112 and 114 from commercial eligible nonsubscription transmission services (*e.g.* terms relating to distribution of royalties by SoundExchange, deductions from distributions, unclaimed funds, possible designation of successors to SoundExchange in the event of its dissolution, retention of records, verification, and confidentiality of payment information) shall apply to payments under these Rates and Terms except to the extent inconsistent with these Rates and Terms.

(c) *Relationship to Other Agreements.* These Rates and Terms are without prejudice to, and subject to, any voluntary agreements that a Noncommercial Webcaster may have entered into with any sound recording copyright owner. Should there be any voluntarily negotiated rates and terms arrived at between copyright owners and webcasters that are adopted by the Librarian of Congress during 2003 as rates and terms for eligible nonsubscription transmission services following publication of such rates and terms in the **Federal Register** pursuant to 37 CFR 251.63(b), any Noncommercial Webcaster that qualifies for such rates may, by written notice to SoundExchange, elect, for 2004, to pay royalties under the rates and terms adopted by the Librarian in lieu of the rates and terms applicable hereunder; provided that if a Noncommercial Webcaster does so, it shall at the time its first 2004 payment is due under the terms adopted by the Librarian, pay any additional amount that would have been due under the rates and terms adopted by the Librarian for the period beginning on October 28, 1998, and ending on December 31, 2003, in excess of the royalties previously paid by the Noncommercial Webcaster for that period under these Rates and Terms.

(d) *CARP Proceedings.* A Noncommercial Webcaster that elects to be subject to these Rates and Terms agrees that it has elected these terms in lieu of participating in a copyright arbitration royalty panel ("CARP") proceeding to set rates for the 2003–2004 period and in lieu of any different rates and terms that may be determined through such a CARP proceeding. Thus, once a Noncommercial Webcaster has elected these Rates and Terms, it shall refrain from participating in any such CARP proceeding and can opt out of these Rates and Terms only as provided in Section 1(c).

2. Election for Treatment as a Noncommercial Webcaster

(a) *Election Process.* A Noncommercial Webcaster that wishes to elect to be subject to these Rates and Terms in lieu of any other royalty rates and terms that otherwise might apply under 17 U.S.C. 112 and 114 for the period beginning on October 28, 1998, and ending on December 31, 2004, shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than the date 30 days after publication of these Rates and Terms in the **Federal Register**. Notwithstanding the preceding sentence—

(1) if a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its election by no later than the first date on which it would be obligated under these Rates and Terms to make a royalty payment for the use of sound recordings under the section 112 or 114 statutory license; and

(2) an "NEE" (as defined in Section 9(d)) may make its election by no later than October 15, 2003.

(b) *Effect of Election or Nonelection.* A Noncommercial Webcaster that fails to make a timely election shall pay royalties as otherwise provided under 17 U.S.C. 112 and 114 (the "Statutory Rate"). Subject to Section 1(c), if a Noncommercial Webcaster timely elects to be covered by these Rates and Terms, the Noncommercial Webcaster shall thereafter be obligated to pay royalties under

and comply with the provisions of these Rates and Terms through December 31, 2004, provided that such Noncommercial Webcaster continues to meet the conditions for eligibility as a Noncommercial Webcaster, as set forth in 17 U.S.C. 114(f)(5)(E)(i) (as added by the Small Webcaster Settlement Act of 2002).

(c) *Proof of Eligibility.* A Noncommercial Webcaster that makes an election pursuant to Section 2(a) shall make available to SoundExchange, within 30 days after SoundExchange's written request at any time during the 3 years following such election, sufficient evidence to support its eligibility as a Noncommercial Webcaster and, if applicable, as an NEE. Any proof of eligibility provided hereunder shall be provided with a certification signed by the chief executive officer of the Noncommercial Webcaster, or other person with similar management authority over the Noncommercial Webcaster, certifying that the information provided is accurate and the person signing is authorized to act on behalf of the Noncommercial Webcaster.

3. Minimum Annual Fees

(a) *NEEs Transmitting a Single Channel.* Except as provided in Section 3(c) and subject to Section 4, each NEE shall pay nonrefundable minimum annual fees as set forth below for all or any portion of a year in which it made or makes any digital audio transmissions of sound recordings under the section 114 statutory license (whether a "Broadcaster Simulcast" (as defined in Section 9(b)), an Internet-only transmission or otherwise):

(1) $200 for the period beginning on October 28, 1998, and ending on December 31, 1999 (which shall be treated as one year for purposes of these Rates and Terms);

(2) $250 for each of the years 2000 through 2003; and

(3) $500 for 2004, except in the case of an NEE that is, or is affiliated with, an educational institution with fewer than 10,000 enrolled students, in which case the minimum fee shall be $250.

(b) *Other Noncommercial Webcasters Transmitting a Single Channel.* Except as provided in Section 3(c) and subject to Section 4, each Noncommercial Webcaster that is not an NEE shall pay nonrefundable minimum annual fees as set forth below for all or any portion of a year in which it made or makes any digital audio transmissions of sound recordings under the section 114 statutory license (whether a Broadcaster Simulcast, an Internet-only transmission or otherwise):

(1) $200 for the period beginning on October 28, 1998, and ending on December 31, 1999 (which shall be treated as one year for purposes of these Rates and Terms);

(2) $250 for 2000;

(3) $300 for 2001, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250;

(4) $350 for 2002, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250;

(5) $400 for 2003, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250; and

(6) $500 for 2004, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be $250.

(c) *Noncommercial Webcasters Transmitting Multiple Channels.* Notwithstanding Section 3(a) or (b) as applicable, the nonrefundable minimum annual fee shall be $500 for each year (as identified in Section 3(a)(1) through (3) or 3(b)(1) through (6)) for any Noncommercial Webcaster that made or makes digital audio transmissions of sound recordings on more than one channel or station of programming; provided that—

(1) if the digital audio transmissions of sound recordings over any channels or stations in excess of one consist only of "Incidental Performances" (as defined in Section 9(f)), the nonrefundable minimum annual fee shall be as provided in Section 3(a) or (b) as applicable;

(2) if substantially all of the programming of all of a Noncommercial Webcaster's channels and stations is reasonably classified as news, talk, sports or business programming, the minimum fee shall be $250;

(3) if a Noncommercial Webcaster that owns or operates multiple over-the-air terrestrial AM or FM radio stations offers more than one Internet channel or station on which substantially all of the programming consists of Broadcaster Simulcasts, then—

(A) a nonrefundable minimum annual fee otherwise determined in accordance with this Section 3(c) shall extend to only three such Internet channels or stations offering Broadcaster Simulcasts, as well as associated Internet-only channels (subject to Section 5);

(B) additional nonrefundable minimum annual fees shall be payable under this Section 3(c) for additional groups of up to three Internet channels or stations offering Broadcaster Simulcasts, as well as associated Internet-only channels (subject to Section 5);

(C) each such group of up to three such Internet channels or stations, as well as associated Internet-only channels (subject to Section 5), shall be treated as a separate Noncommercial Webcaster for purposes of Sections 3(c)(2), 4 and 5;

(D) all such channels or stations offering Broadcaster Simulcasts in a group shall be treated as a single channel or station for purposes of Section 5;

(E) any additional channels or stations considered with the group for purposes of Section 5 shall also be considered with the group for purposes of Section 4; and

(F) accordingly, the Noncommercial Webcaster may offer two additional Internet-only channels or stations with each group of up to three channels or stations offering Broadcaster Simulcasts without triggering payments under Section 5(b), but all of such channels or stations (up to a total of five) shall be considered together for purposes of determining whether the Noncommercial Webcaster exceeds the 146,000 Aggregate Tuning Hour threshold in Section 4; and

(4) for purposes of determining the number of channels or stations of programming offered by a Noncommercial Webcaster, an "archived program" (as defined in 17 U.S.C. 114(j)(2)) that complies with the conditions in 17 U.S.C. 114(d)(2)(C)(iii)(I) and (II) shall not be considered a separate channel or station of programming except in the case of a Noncommercial Webcaster that exclusively makes digital audio transmissions of archived programming.

(d) *Payment in Lieu of Providing Reports of Use.* All Noncommercial Webcasters' payments of nonrefundable minimum annual fees for each of 2003 and 2004 shall be accompanied by an additional payment of $50 in 2003 and $25 in 2004 in lieu of the provision of reports of use of sound recordings, as described in Section 7.

4. Usage Fees for 2004

(a) *In General.* Subject to Section 5, the nonrefundable minimum annual fee payable under Section 3 for 2004 shall constitute full payment for digital audio transmissions totaling not more than 146,000 "Aggregate Tuning Hours" (as defined in Section 9(a)) per month. If, in any month during 2004, a Noncommercial Webcaster makes digital audio transmissions of sound recordings under the section 114 statutory license in excess of 146,000 Aggregate Tuning Hours, the Noncommercial Webcaster shall pay additional royalties for those digital audio transmissions in excess of 146,000 Aggregate Tuning Hours at the following rates, subject to an election as provided in Section 4(b):

(1) $0.0002176 (.02176¢) per "Performance" (as defined in Section 9(f)); or

(2) $.00251 (.251¢) per "Aggregate Tuning Hour," except in the case of channels or stations where substantially all of the programming is reasonably classified as news, talk, sports or business programming, in which case the royalty rate shall be $.0002 (.02¢) per Aggregate Tuning Hour.

For the avoidance of doubt, a Noncommercial Webcaster shall calculate its Aggregate Tuning Hours of digital audio transmissions each month and shall pay any additional royalties owed for such month as provided above in this Section 4(a), but the Noncommercial Webcaster shall not owe any additional royalties for any subsequent months until such time as the Noncommercial Webcaster again exceeds the 146,000 Aggregate Tuning Hour threshold during a given month.

(b) *Election of Per Performance or Aggregate Tuning Hour Rate.* The first time a Noncommercial Webcaster is required to pay additional royalties under Section 4(a), the Noncommercial Webcaster shall elect to pay based on the per performance royalty set forth in Section 4(a)(1) or the aggregate tuning hour royalty set forth in Section 4(a)(2) for all additional royalties under Section 4(a) incurred during the remainder of 2004, if any. Thus, for example, a Noncommercial Webcaster may not in one month when its digital audio transmissions exceed 146,000 Aggregate Tuning Hours calculate its additional royalties based on the per performance royalty and in another month when its digital audio transmissions exceed 146,000 Aggregate Tuning Hours calculate its additional royalties based on the aggregate tuning hour royalty.

(c) *Reporting.* For 2004, each Noncommercial Webcaster making digital audio transmissions in excess of 146,000 Aggregate Tuning Hours in any month shall report its Aggregate Tuning Hours of digital audio transmissions to SoundExchange in its monthly statement of account under Section 6(d). Each Noncommercial Webcaster having a statutory license in 2004 and not making digital audio transmissions in excess of 146,000 Aggregate Tuning Hours in any month shall so certify in the statement of account accompanying its first payment in 2005, if any.

5. Fees for More Than Three Channels of Programming

Subject to Section 3(c)(3), if in any year (as identified in Section 3(a)(1) through (3) or 3(b)(1) through (6)), a Noncommercial Webcaster made or makes digital audio transmissions of sound recordings on more than three channels or stations of programming, then—

(a) the Noncommercial Webcaster shall by written notice to SoundExchange at the time of its first payment for the year or its inception of its first channel or station in excess of three, whichever is later, designate three channels or stations for which the nonrefundable minimum annual fee payable under Section 3, and in 2004, any additional royalty payment under Section 4, shall constitute full payment; and

(b) the Noncommercial Webcaster shall pay royalties for all its digital audio transmissions of sound recordings under the section 114 statutory license over its other channels and stations at the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services at such time, provided that—

(1) the Noncommercial Webcaster shall not be required to make any minimum payment that otherwise applies to commercial eligible nonsubscription transmission services;

(2) the nonrefundable minimum annual fee payable under Section 3 shall not be creditable toward such payments for its other channels and stations;

(3) such payments for its other channels and stations shall be due at the times provided in Section 6 (rather than any different times otherwise applicable to commercial eligible nonsubscription transmission services), except that if the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services has not then been determined, such payments for its other channels and stations shall be due 45 days following the month in which the Statutory Rate is determined; and

(4) the Noncommercial Webcaster shall comply with other terms relating to royalty payments that otherwise apply to commercial eligible nonsubscription transmission services (*e.g.* terms concerning any election among payment options).

For the avoidance of doubt, by operation of Section 3(c)(3), when a Noncommercial Webcaster that owns or operates multiple over-the-air terrestrial AM or FM radio stations offers more than one Internet channel or station on which substantially all of the programming consists of Broadcaster Simulcasts: (i) such Broadcaster Simulcasts shall in no event be subject to the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services, and (ii) only programming offered on Internet-only channels or stations in excess of two that may be associated with a group of up to three channels or stations offering Broadcaster Simulcasts may be subject to that Statutory Rate as provided in this Section.

6. Payment of Royalties in General

(a) *Timing of Minimum Payments.* Payments of nonrefundable minimum annual fees under Section 3 for the period beginning on October 28, 1998, and ending on December 31, 2003, shall be due by October 15, 2003. Nonrefundable minimum annual fees for 2004 shall be due by January 31, 2004. Notwithstanding the foregoing provisions of this Section 6(a), when a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its first payment of nonrefundable minimum annual fees within 45 days following the month in which the Noncommercial Webcaster commences digital audio transmissions of sound recordings under the section 114 statutory license.

(b) *Timing of Other Payments.* Any payments due under Section 4 or 5 shall be due 45 days following the month in which the liability accrues.

(c) *Credit.* Any payments of section 112 or 114 statutory license royalties made by a Noncommercial Webcaster to SoundExchange prior to its election under Section 2 shall be creditable to the payments due under Sections 3 through 5 of these Rates and Terms.

(d) *Remittance.* Payments of all amounts due under these Rates and Terms shall be made to SoundExchange and shall under no circumstances be refundable. Payments shall be accompanied by a statement of account in the form made available on the SoundExchange Web site located at *http://www.soundexchange.com.*

(e) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made during the period beginning on October 28, 1998, and ending on December 31, 2004, and used solely by a Noncommercial Webcaster to facilitate transmissions for which it pays royalties as and when provided in these Rates and Terms shall be deemed to be included within, and to comprise 8.8% percent of, the Noncommercial Webcaster's royalty payments under these Rates and Terms.

(f) *Continuing Obligation to Pay.* If Statutory Rates and terms for Noncommercial Webcasters for the period beginning January 1, 2005, have not been established by December 31, 2004, then Noncommercial Webcasters shall continue to make payments at the 2004 rates under these Rates and Terms until such successor rates and terms are established. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within 30 days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms.

(g) *Late Payments.* A Noncommercial Webcaster shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by SoundExchange after the due date. Late fees shall accrue from the due date until payment is received by SoundExchange.

7. Notice and Recordkeeping

(a) *Data for Distributions.* Noncommercial Webcasters electing these Rates and Terms shall not be required to provide reports of use of sound recordings for 2003 and 2004, even if the Librarian of Congress issues regulations otherwise requiring such reports by Noncommercial Webcasters. The payments required by Section 3(d) are intended to facilitate SoundExchange's ability to collect or otherwise acquire substitute data on which to base distributions to copyright owners and performers of payments made by Noncommercial Webcasters, although SoundExchange shall be under no obligation to spend such payments in any particular way or to collect or otherwise acquire any particular data by any particular means. SoundExchange may base its distributions to copyright owners and performers of payments made by Noncommercial Webcasters on any data or methodology determined by its board.

(b) *Future Reporting.* The Noncommercial Webcasters shall designate a task force of not less than five members that shall be obligated to use reasonable efforts to work with SoundExchange to determine data fields and report formats and recommend policies, procedures and systems for the delivery of electronic reports of use of sound recordings to SoundExchange sufficient to permit SoundExchange, beginning in 2005, to distribute the royalties paid by Noncommercial Webcasters to those copyright owners and performers whose sound recordings are used by Noncommercial Webcasters based on data reported by or on behalf of Noncommercial Webcasters. In the absence of agreement among the Noncommercial Webcasters concerning the membership of such task force, each Noncommercial Webcaster shall be obligated to use reasonable efforts to do the foregoing.

8. Default

A Noncommercial Webcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the Noncommercial Webcaster that, unless the breach is remedied within 30 days from the date of notice and not repeated, the

Noncommercial Webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms will be automatically terminated. Such termination renders any public performances and ephemeral reproductions as to which the breach relates actionable as acts of infringement under 17 U.S.C. 501 and fully subject to the remedies provided by 17 U.S.C. 502–506 and 509.

9. Definitions

As used in these Rates and Terms, the following terms shall have the following meanings:

(a) The term "*Aggregate Tuning Hours*" means the total hours of programming that a Noncommercial Webcaster has transmitted during the relevant period to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions, less the actual running time of any sound recordings for which the Noncommercial Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Webcaster transmitted 1 hour of programming to 10 simultaneous listeners, the Noncommercial Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Webcaster's Aggregate Tuning Hours would equal 10.

(b) A "*Broadcaster Simulcast*" is a simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, where such Internet transmission or retransmission is made by a Noncommercial Webcaster that owns or operates the over-the-air radio station making the AM or FM broadcast.

(c) An "*Incidental Performance*" is a Performance that both:

(1) makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk, sports and business programming, brief background performances during disk jockey announcements, brief performances during commercials of 60 seconds or less in duration, or brief performances during sporting or other public events; and

(2) other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than 30 seconds (as a sound recording used as a theme song is featured).

(d) An "*NEE*" or "*Noncommercial Educational Entity*" is a Noncommercial Webcaster that is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution, but that is not a "public broadcasting entity" (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

(e) The term "*Noncommercial Webcaster*" shall have the meaning given in 17 U.S.C. 114(f)(5)(E)(i) (as added by the Small Webcaster Settlement Act of 2002).

(f) A "*Performance*" is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission or retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) a performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(2) a performance of a sound recording for which the Noncommercial Webcaster has previously obtained a license from the copyright owner of such sound recording; and

(3) an Incidental Performance.

[FR Doc. 03–14791 Filed 6–10–03; 8:45 am]

BILLING CODE 1410–33–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35334]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 29–30560–01, Linguagen, Corp., Paramus, NJ

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Linguagen Corp. for Materials License No. 29–30560–01, to authorize release of its facility in Paramus, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Paramus, New Jersey facility for unrestricted use. Linguagen Corp. has been authorized by NRC since April 13, 2002 to use radioactive materials for research and development purposes at the site. On January 3, 2003, Linguagen Corp. requested that NRC release the facility for unrestricted use. Linguagen Corp. has conducted surveys of the facility as required by 10 CFR part 20 and has determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Linguagen Corp.'s request and the results of the surveys and has concluded that the completed action complies with Subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031550264, ML030080404, ML030430589, ML030650126, ML030690328 and ML030630684. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 4th day of June, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–14682 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–16]

Environmental Assessment and Finding of No Significant Impact Related to Virginia Electric and Power Company's Proposed Amendment to License No. SNM–2507

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to Special Nuclear Material License No. 2507 (SNM–2507) held by Virginia Electric and Power Company (Dominion) for the North Anna independent spent fuel storage installation (ISFSI). The requested amendment would revise the Technical Specifications (TS) of SNM–2507 to specifically permit the use of the TN–32 storage cask to store spent fuel with a higher initial enrichment and burnup than currently specified in the TS for the North Anna ISFSI. An environmental assessment (EA) was performed by the NRC staff in support of its review of the license amendment request, in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI).

Environmental Assessment

Identification of Proposed Action: By letter dated May 28, 2002, as supplemented, Dominion requested an amendment to revise the TS of SNM–2507 for the North Anna ISFSI. The changes would specifically permit the use of the TN–32 storage cask to store spent fuel with a higher initial enrichment and burnup than currently specified in the TS. Currently, the TS for the North Anna ISFSI limit the fuel to be stored in the TN–32 to the following: initial enrichment of ≤3.85% (wt U-235), assembly average burnup of ≤40,000 MWD/MTU, and heat generation of ≤0.847 Kw/assembly. This amendment requests the limits be amended as follows: initial enrichment of ≤4.35% (wt U-235), assembly average burnup ≤45,000 MWD/MTU, and heat generation of ≤1.02 Kw/assembly.

Need for the Proposed Action: The proposed action is necessary to allow continued storage of spent fuel in dry casks at the North Anna ISFSI. Without this amendment, North Anna will be unable to load spent fuel in TN–32 casks because the remaining spent fuel at the site has the higher enrichment and burnup. If unable to store spent fuel in TN–32 casks, North Anna will not be able to retain full core offload capability. North Anna would eventually have to find an alternate means to store fuel, or shut down.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action and concludes that granting the request for amendment to allow the storage of spent fuel assemblies with burnup and initial enrichment of up to 45,000 MWD/MTU and 4.35% (wt U-235), respectively, in TN–32 casks used at the North Anna ISFSI, will not increase the probability or consequence of accidents beyond that bounded by previous analysis. No changes are being made in the types of any effluents that may be released offsite. With regard to radiological impacts, the addition of higher burnup and initial enrichment spent fuel assemblies was calculated to yield an average surface dose rate of 218 mrem/hour at the TN–32 cask side surface. A re-evaluation of occupational doses based on actual operating experience and the revised surface dose rate, indicates that the overall exposure to workers during cask loading, transport, and emplacement will increase from the original estimate of 7.19 person-rem to 14.30 person-rem. The dose to the nearest permanent resident due to ISFSI operations was calculated to be 2.10 mrem/yr. If the proposed amendment is approved, the total annual dose for all site sources (ISFSI, Unit 1 and Unit 2) would be 5.10 mrem/yr. This is well below the 25 mrem/yr limit cited in 10 CFR 72.104(a). Based on the occupational and public dose analysis results, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the contents of the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impact of the Alternative to the Proposed Action: The alternative to the proposed action would be to deny the request for amendment (*i.e.*, the "no-action" alternative). Denial of the proposed action would result in North Anna having to store its remaining spent fuel in the spent fuel pool. Without dry cask storage, North Anna would lose the capability to maintain full core offload and eventually both units would have to shut down due to lack of storage space. The electrical generating capacity lost would have to be replaced by another source of power, which could result in greater environmental impact and/or higher electricity rates for customers. Increased storage in the spent fuel pool could potentially lead to greater occupational exposure than dry cask storage due to the proximity of workers to the fuel. The environmental impacts of the alternative action could be greater than the proposed action.

Given that the alternative action of denying the approval for the amendment has no lesser environmental impacts associated with it, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted and Sources Used: On April 9, 2003, Mr. Les Foldese of the Virginia Department of Health, Radiological Health Programs, was contacted regarding the proposed action and had no concerns. The NRC staff have determined that the proposed amendment will not introduce any new effects on listed species, critical habitat, or historical properties. Therefore no further consultation is required. 10 CFR part 51 was used as a source.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to permit the use of the TN–32 dry storage casks to store spent fuel with a higher initial enrichment (≤4.35% wt U-235) and burnup (≤45,000 MWD/MTU) at the North Anna ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

The request for the amendment was docketed under 10 CFR part 72, Docket 72–16. For further details with respect to this action, see the amendment application dated May 28, 2002, as supplemented, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of June, 2003.

For the Nuclear Regulatory Commission.

Mary Jane Ross-Lee,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–14683 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.194, "Atmospheric Relative Concentrations for Control Room Radiological Habitability Assessments at Nuclear Power Plants," provides guidance on determining atmospheric relative concentration (χ/Q) values in support of design basis control room radiological habitability assessments at nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Regulatory Guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; *http://www.ntis.gov/*; telephone 1–800–553–6847. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 30th day of May 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–14684 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.195, "Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors," provides guidance to licensees of operating power reactors on methods and assumptions for performing evaluations of fission product releases and radiological consequences of several postulated light-water reactor design basis accidents.

Regulatory Guide 1.196, "Control Room Habitability at Light-Water Nuclear Power Reactors," provides guidance and criteria acceptable to the NRC staff for implementing the NRC's regulations regarding control room habitability.

Regulatory Guide 1.197, "Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors," provides an approach acceptable to the NRC staff for measuring inleakage into the control room and associated rooms and areas at nuclear power reactors.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Regulatory Guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 29th day of May 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–14685 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on Draft NMSS Policy and Procedures Letter 1–82 and Backfit Guidance

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for comment.

SUMMARY: The NRC's Office of Nuclear Material Safety and Safeguards (NMSS) has drafted guidance for the NRC staff on applying the backfit requirements of 10 CFR part 70 to fuel cycle facilities. The draft guidance is titled, NMSS Policy and Procedures Letter (P&PL) 1–82, "10 CFR part 70 Backfit Guidance." The P&PL is now available for stakeholder review and comment.

DATES: Written comments must be filed within 30 days of the publication of this **Federal Register** notice. Comments received after this date will be considered, however the Commission will only be able to ensure the incorporation of comments received on or before this date.

Availability of Documents

A copy of this draft P&PL is available in the NRC's Agency-Wide Document Access and Management System (ADAMS). This document can be viewed by searching for ADAMS accession no. ML030730680. ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html*. Comments should be clear and reproducible, and include name, affiliation (as applicable) and address of sender. Comments on this document must be sent to the Chief, Rules and Directives Branch, ADM, U.S. NRC, Washington, DC, 20555, or may be hand-delivered to 11555 Rockville Pike, Rockville, Maryland, 20852, between the hours of 7:45 a.m. and 4:15 p.m. on Federal work-days. All comments will be made available for public inspection in ADAMS and at the NRC headquarters public document room (PDR). Following evaluation of the comments, changes will be made to the final version of the P&PL and the guidance published for NRC staff use. The draft P&PL is available to read and copy for a fee at the NRC's PDR located at 11555 Rockville Pike, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Mechanical Systems Engineer, Office of Nuclear Materials Safety and Safeguards, U.S. NRC, Mail Stop T8 A33, Washington, DC, 20555, or by e-mail at *bcg@nrc.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the draft P&PL 1–82 is to provide guidance to the NRC staff for implementing the backfit provisions in 10 CFR 70.76. In this context, 10 CFR 70.76 will become effective upon issuance of the final NMSS P&PL 1–82 for all Part 70 requirements, except for subpart H, and following NRC approval of a licensee's ISA Summary, the requirements of 10 CFR 70.76 become effective for Subpart H requirements.

The availability of this document is the latest step in an NRC effort to improve the efficiency of the NRC's fuel cycle oversight program and to enable open communications with stakeholders.

Dated at Rockville, Maryland, this 2nd day of June, 2003.

For the Nuclear Regulatory Commission.

Susan M. Frant,

Chief, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–14686 Filed 6–10–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

2003 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

FOR FURTHER INFORMATION CONTACT: Office of Federal Financial Management, Office of Management and Budget, at 202–395–3993.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 2003 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act. This list is also posted on the OMB Web site at *http://www.whitehouse.gov/financial*.

The list is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The Designated Federal Entities are listed in the IG Act, except that those agencies which have ceased to exist or have changed status have been deleted from the list.

Federal Entities are required to report annually to each House of the Congress and OMB on audit and investigative activities in their organizations. Federal Entities are defined as any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. For 2003, there is one addition to the Designated Federal Entities list (Election Assistance Commission) and two deletions to the Federal Entities list (the Export-Import Bank now has a Inspector General nominated by the President and confirmed by the Senate, and the National Commission on Libraries and Information Science was not funded in 2003), for a total of three changes from the 2002 list.

The 2003 List of Designated Federal Entities and Federal Entities was prepared in consultation with the U.S. General Accounting Office.

Linda M. Springer,

Controller, Office of Federal Financial Management.

Herein follows the text of the 2003 List of Designated Federal Entities and Federal Entities:

2003 List of Designated Federal Entities and Federal Entities

The Inspector General Act of 1978, as subsequently amended, requires OMB to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—President
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Denali Commission—Chairperson
8. Election Administration Commission—Chairperson
9. Equal Employment Opportunity Commission—Chairperson
10. Farm Credit Administration—Chairperson
11. Federal Communications Commission—Chairperson
12. Federal Election Commission—Chairperson
13. Federal Housing Finance Board—Chairperson
14. Federal Labor Relations Authority—Chairperson
15. Federal Maritime Commission—Chairperson
16. Federal Trade Commission—Chairperson
17. Legal Services Corporation—Board of Directors
18. National Archives and Records Administration—Archivist of the United States
19. National Credit Union Administration—Chairperson
20. National Endowment for the Arts—Chairperson
21. National Endowment for the Humanities—Chairperson
22. National Labor Relations Board—Chairperson
23. National Science Foundation—National Science Board
24. Peace Corps—Director
25. Pension Benefit Guaranty Corporation—Chairperson

26. Securities and Exchange Commission—Chairperson
27. Smithsonian Institution—Secretary
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Governors of the Postal Service

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Commission on Ocean Policy—Chairperson
13. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
14. Court of Appeals for Veterans Claims—Chief Judge
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delta Regional Authority—Federal Co-Chairperson
17. Farm Credit System Financial Assistance Corporation—Chairperson
18. Farm Credit System Insurance Corporation—Chairperson
19. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
20. Federal Mediation and Conciliation Service—Director
21. Federal Mine Safety and Health Review Commission—Chairperson
22. Federal Retirement Thrift Investment Board—Executive Director
23. Harry S. Truman Scholarship Foundation—Chairperson
24. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
25. Institute of Museum and Library Services—Director
26. Inter-American Foundation—Chairperson
27. James Madison Memorial Fellowship Foundation—Chairperson
28. Japan-U.S. Friendship Commission—Chairperson
29. Marine Mammal Commission—Chairperson
30. Merit Systems Protection Board—Chairperson
31. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
32. National Capital Planning Commission—Chairperson
33. National Council on Disability—Chairperson
34. National Mediation Board—Chairperson
35. National Transportation Safety Board—Chairperson
36. National Veterans Business Development Corporation—Chairperson
37. Neighborhood Reinvestment Corporation—Chairperson
38. Nuclear Waste Technical Review Board—Chairperson
39. Occupational Safety and Health Review Commission—Chairperson
40. Office of Government Ethics—Director
41. Office of Navajo and Hopi Indian Relocation—Chairperson
42. Office of Special Counsel—Special Counsel
43. Offices of Independent Counsel—Independent Counsels
44. Overseas Private Investment Corporation—Board of Directors
45. Pacific Charter Commission—Chairperson
46. Postal Rate Commission—Chairperson
47. Presidio Trust—Chairperson
48. Selective Service System—Director
49. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
50. Smithsonian Institution/National Gallery of Art—President
51. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
52. Trade and Development Agency—Director
53. U.S. Holocaust Memorial Museum—Chairperson
54. U.S. Institute of Peace—Chairperson
55. Vietnam Education Foundation—Chairperson

[FR Doc. 03–14738 Filed 6–10–03; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47990; File No. PCAOB–2003–03]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Registration System

June 5, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 ("Act"), notice is hereby given that on May 8, 2003, the Public Company Accounting Oversight Board ("Board" or "PCAOB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rules described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

The Board proposes to adopt a registration system for public accounting firms to implement section 102 of the Act. The proposed registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300, plus definitions that would appear in Rule 1001) and a form (PCAOB Form 1). The text of the proposed rules is available for inspection at the Office of the Secretary, the PCAOB, the Commission's Public Reference Room, and on the Board's Internet Web site at *http://www.pcaobus.org/pcaob_rulemaking.htm.*

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing audit reports on issuers, as that term is defined in the Act and the Board's rules, or from participating in these activities. The Act provides that firms must register during the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of Title I of the Act and to enforce compliance therewith.[1] The Commission made this determination on April 25, 2003. In order to permit public accounting firms to comply with this requirement, the Board has adopted proposed rules to implement a registration system. The registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300, plus definitions that would appear in Rule 1001) and a form (PCAOB Form 1). Each of the rules and each part of the form are discussed below.

[1] *See* sections 101(d) and 102(a) of the Act.

Rule 1001—Definitions of Terms Employed in Rules

Rule 1001 contains definitions of terms used in the Board's rules. Certain of the definitions are taken, or closely track, those found in section 2 of the Act.[2] Other definitions are based on those used in the Commission's rules.

Accountant

Although used in the Act, the term "accountant" is not defined in the Act. As used in the Act, the term refers to a natural person, as opposed to a legal entity.[3] This concept of "accountant" is different from the Commission's definition of accountant under Regulation S–X, which includes legal entities, such as a registered public accounting firm.[4] Therefore, to reflect the context in which the term "accountant" is used in the Act, and to distinguish the Board's definition from that in Regulation S–X, the Board is adopting a definition of "accountant" in Rule 1001(a)(ii) that is limited to natural persons.[5]

The definition covers three types of natural persons: (i) Those who are certified public accountants, (ii) those who hold a college, university, or higher professional degree in accounting, or a license or certification authorizing him or her to engage in the business of auditing or accounting, and (iii) those who hold a college, university, or higher professional degree in a field, other than accounting, and who participate in audits. The definition also specifies that the term does not include persons engaged only in ministerial or clerical tasks.

The Board's definition is intended to include all natural persons, who have the requisite licensing, certification, training, and/or experience, whether obtained in the U.S. or a non-U.S jurisdiction, to be considered an accountant. In its proposing release, the Board put forth a similar definition. Commenters raised several concerns with the proposed definition. First, several commenters suggested that the proposed definition was overbroad and asked the Board to limit its application to only certified public accountants, or, at least, to clarify that it does not apply to persons with college degrees that perform only clerical or ministerial tasks on an audit. After considering these comments, the Board decided to revise the definition to clarify that the term does not capture persons engaged only in clerical or ministerial tasks. The Board did not, however, adopt the suggestions to limit the definition to only certified public accountants because such a definition would be significantly narrower than the common meaning of the term and because the Board understands that accountants who are not certified public accountants often participate in the preparation or issuance of audit reports. In addition, at least one non-U.S. commenter suggested that the proposed definition's use of the term "undergraduate degree" would not be meaningful as applied to non-U.S. accountants. Accordingly, at this commenter's suggestion, the Board has decided to change this part of the definition to refer to a "college, university, or higher professional degree."

Associated Entity

Rule 1001(a)(iv) defines "associated entity," as "with respect to a public accounting firm (i) any entity that directly, indirectly, or through one or more intermediaries, controls or is controlled by, or is under common control with, such public accounting firm; or (ii) any "associated entity," as used in Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–10(f)(2), that would be considered part of that firm for purposes of the Commission's auditor independence rules." This definition of "associated entity" is meant to give the term the same meaning as in the Commission's auditor independence rules.[6]

A few commenters suggested that the Board create its own definition of this term, rather than relying on the meaning of the term in the Commission's rules. One of these commenters suggested that the Board define the term as those firms with which the applicant "holds itself out as being associated." The Board has decided not to adopt this suggestion because the suggested definition is narrower than the Commission's interpretation of the term, in some contexts, and does not seem more definite than the SEC's interpretation.

Audit

In general, Rule 1001(a)(v) defines "audit" as an examination of an issuer's financial statements by an independent public accounting firm in accordance with the rules of the Board or the Commission for purposes of expressing an opinion on such statements. For the period preceding the adoption of the Board's applicable rules under section 103 of the Act, however, the term covers an examination of an issuer's financial statements by an independent public accounting firm in accordance with generally accepted auditing standards ("GAAS").[7] The Board has adopted the same meaning for "audit" as used in section 2(a)(2) of the Act.

Audit Report

Rule 1001(a)(vi) defines "audit report" to mean "a document or other record (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or (ii) asserts no such opinion can be expressed." The Board has adopted the same meaning for audit as used in section 2(a)(4) of the Act.

Two commenters suggested that the term could be confusing to applicants and, if applied in certain contexts, could be overbroad. The Board has decided not to change the definition of this term since the term is defined in the Act. If specific issues arise in administering the definition in the context of the Board's registration rules or otherwise, the Board will consider issuing guidance on the definition.

Audit Services

Rule 1001(a)(vii)(1) defines "audit services" as "professional services

[2] Certain definitions in the Board's rules that are taken verbatim from the statute or that are self-evident are not discussed below.

[3] For example, section 102(b)(2)(E) of the Act requires disclosure of a list of "all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person * * *."

[4] Under Rule 2–01(f)(1) of Regulation S–X, accountant means a "registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required." Rule 2–01(f)(1) provides further that "references to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated." *See* Rule 2–01(f)(1) of Regulation S–X, 17 CFR 210.2–01(f)(1).

[5] The definitions in proposed Rule 1001 are marked with a letter and a Roman numeral. The letter matches the first letter of the word or phrase being defined and the Roman numeral serves to distinguish the definition from other defined words or phrases beginning with the same letter. This system has been adopted so that the definitions within Rule 1001 will remain in rough alphabetical order.

[6] *See* Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–01(f)(2); *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919, at notes 490 and 491 (November 21, 2000).

[7] Because GAAS and Commission rules require interim reviews of issuers' financial statements by independent public accountants, the term audit includes work performed in the context of such reviews. *See* American Institute of Certified Public Accountants ("AICPA") Statement on Auditing Standards ("SAS") 100 and Rule 10–01 of Regulation S–X, 17 CFR 210.10–01; *see also* section 2(a)(8) of the Act (implicitly stating that these reviews are audit services, by excluding from the definition of "non-audit services" services provided to an issuer "in connection with an audit or review of the financial statements of an issuer").

rendered for the audit of an issuer's annual financial statements and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports." This definition of "audit services" is intended to capture the same category of services for which fees were required to be disclosed as "audit fees" pursuant to the Commission's 2000 proxy disclosure rules.[8]

Several commenters suggested that the Board change the definition of "audit services" to conform to the category of fees disclosed as "audit fees" under the SEC's recently revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. As noted below in the discussion of Part II of the Form, the Board has decided not to change this definition at this time. However, the Board has decided to add paragraph (2) to this rule, which provides that, effective after December 15, 2003, the term "audit services" will mean "professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years." This definition in paragraph (2) is intended to conform to the category of fees disclosed as "audit fees" under the SEC's recently revised auditor independence rules.

Foreign Public Accounting Firm

Rule 1001(f)(i) defines foreign public accounting firm as a "public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof." This definition, which follows closely the definition of foreign public accounting firm in section 106(d) of the Act, is intended to clarify that the term covers accounting firms that are organized and operate in any jurisdiction outside of the United States.[9]

Issuer

Rule 1001(i)(iii) defines the term "issuer" to include any public company, regardless of the jurisdiction of its organization or operation, that is required to file reports with the Commission or that has filed a registration statement for a public offering of securities. This definition is the same as the definition of the term "issuer" in section 2(a)(7) of the Act.

Non-Audit Services

Rule 1001(n)(ii)(1) defines "non-audit services" to mean services related to financial information systems design and implementation as defined in Rule 2–01(c)(4)(ii) of Regulation S–X, 17 CFR 2–01(c)(4)(ii), and all other services, other than audit services or other accounting services. This definition will be effective through December 15, 2003. Paragraph (2) of the rule provides that effective after December 15, 2003, "non-audit services" will mean "all other services other than audit services, other accounting services, and tax services." The definition in paragraph (2) is designed to be consistent with the category of services disclosed as "all other fees" under the Commission's revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. This definition is further addressed as part of the discussion of Part II of the Form below.

Other Accounting Services

Rule 1001(o)(i)(1) defines "other accounting services" as services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than "audit services." The Board has modeled its definition of "other accounting services" on concepts used in the Commission's recent revision of its auditor independence disclosure rules.[10] The term is meant to capture two categories of services: (1) Services the fees for which are to be disclosed as "audit fees" under the Commission's revised rules, but that were not previously disclosed as "audit fees," and (2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

The first category generally consists of those services that, while not captured as "audit services" under the Board's rules, are performed to comply with GAAS. As explained in the Commission's adopting release, certain services, such as tax services and accounting consultations, may not be billed as audit services, but are necessary to comply with GAAS.[11] This category would also include "services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements" and "services that only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with review of documents filed with the Commission."[12]

The term is also meant to capture services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised auditor independence disclosure rules.[13] In general, these are fees for "assurance and related services (*e.g.*, due diligence services) that traditionally are performed by the independent accountant." More specifically, as noted in the Commission's adopting release, these services would include, among others, "employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statute or regulation and consultation concerning financial accounting and reporting standards."[14]

In addition, paragraph (2) of the rule provides that, effective after December 15, 2003, the term "other accounting services" will mean assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services. The Board intends that this definition in paragraph (2) be consistent with the category of services disclosed as "audit-related fees" under the Commission's revised auditor independence rules. This definition is discussed further below in connection with the discussion of Part II of the Form.

[8] *See* Schedule 14A, Item 9(e)(1), 17 CFR 240.14a–101; *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000).

[9] Section 106(d) of the Act defines foreign public accounting firm as a "public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof."

[10] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

[11] *Id.* At 39.

[12] *Id.*

[13] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003). *See also* Schedule 14A, Item 9(e)(2), 17 CFR 240.14a–101 (as amended, January 28, 2003).

[14] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

Person Associated With A Public Accounting Firm (and Related Terms)

The Board is adopting the same meaning for "person associated with a public accounting firm" as used in section 2(a)(9) of the Act, with a few, technical modifications. Commenters raised a number of concerns about the proposed definition. A number of commenters suggested that the definition should be limited to only a public accounting firm's employees, or at least should leave out certain independent contractors. While the Board does not believe that all independent contractors should be excepted from the definition, the Board has revised the definition to clarify that the term does not include persons whom the applicant reasonably believes are persons primarily associated with another registered public accounting firm. In addition, the Board has clarified that the definition does not cover persons engaged in only clerical or ministerial tasks. Finally, the word "other" has been eliminated before the terms "professional employee" and "independent contractor" to clarify that an employment or an independent contractor relationship with a public accounting firm is not required for a person to be covered by the definition. Commenters' concerns about this definition were related to their concerns about the scope of Parts V and VIII of the Form. As discussed below, Part V, and, for foreign public accounting firms, Part VIII of the Form are being modified in light of commenters' concerns.

Play a Substantial Role in the Preparation or Furnishing of an Audit Report

Rule 1001(p)(ii) defines the phrase "play a substantial role in the preparation or furnishing of an audit report" to mean "(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, or (2) to perform the majority of audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of such issuer necessary for the principal accountant to issue an audit report" on the issuer.

The first prong of this definition is based on language in section 106(b)(1) of the Act.[15] Note 1 to Rule 1001(p)(ii) explains that the term "material services" as used in this definition means services for which the engagement hours or fees constitute 20 percent or more of the total engagement hours or fees, respectively, provided by the principal accountant in connection with the issuance of all or part of its audit report with respect to any issuer.[16]

The second prong of this definition is based on a similar standard used in the Commission's auditor independence rules related to partner rotation.[17] As Note 2 to the rule indicates, the phrase "subsidiary or component" is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

For both the definition of material services as well as the second prong of the overall definition, the Board believes that a quantitative, as opposed to a qualitative, test imposes less of a burden on firms in determining whether or not they fall into this category. The Board has included a threshold of 20 percent, since this threshold is consistent with accounting literature on "significance" tests.[18] Several commenters indicated their agreement with the 20 percent threshold.

Commenters raised several concerns about this proposed definition. One commenter expressed concern that the use of the phrase "material services" in the first prong could be read to include non-audit services, such as internal audit services, provided to non-audit clients when those services are relied upon by an auditor in issuing its audit report. Several accounting firms indicated that the first prong of the proposed definition would be difficult for non-affiliated foreign public accounting firms to comply with, since they would need access to the total engagement hours and fees, and therefore favored elimination of the first prong. Other commenters, however, raised concerns that the second prong of the definition might capture firms that perform relatively minor services such as routine observations of inventory test counts for a subsidiary or component of an issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of the issuer. Finally, commenters raised practical concerns about when and how the assets and revenues tests of the second prong of the definition should be administered.

After carefully considering the comments it received, the Board has decided to keep both prongs of the definition, but to modify both prongs slightly and to clarify the second prong's application. Specifically, the Board has decided to add a sentence to Note 1 to the rule to clarify that "material services" does not include non-audit services provided to a non-audit client. Second, to avoid capturing routine procedures on a significant subsidiary as part of an audit, the second prong has been limited to performing "the majority of audit procedures * * * necessary for the principal accountant to issue an audit report on the issuer." Finally, the Board has addressed commenters' concerns about the implementation of the second prong by adding Note 3 to the rule, which clarifies that the 20 percent determination should be made at the beginning of the issuer's fiscal year using prior year information and should be made only once during the issuer's fiscal year.

Public Accounting Firm

Rule 1001(p)(iii) defines "public accounting firm" to mean a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports. The Board has adopted the same meaning of public accounting firm as used in section 2(a)(11)(A) of the Act. However, this definition is intended to include only legal entities, and not natural persons. An individual accountant that prepares or issues an audit report in his or her name would be a "proprietorship" and

[15] Section 106(b)(1) provides that foreign public accounting firms shall be deemed to have consented to produce audit workpapers and to be subject to the jurisdiction of the U.S. courts for purposes of enforcement of any request for such workpapers if the firm issues an opinion or "otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in the audit report."

[16] One commenter expressed concern that this test would be applied on an aggregated basis. This test would be administered on a firm-by-firm basis. In other words, if a public accounting firm does work for the principal accountant and individually does not meet the 20 percent of engagement hours or fees tests, the firm would not need to register solely because its work, when aggregated with other firms working on the same audit, would meet the 20 percent threshold.

[17] The Commission's adopting release provides that "the lead partner on subsidiaries of issuers whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of 'audit partner.'" *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

[18] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003), note 139 (citing APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," and ARB No. 43, Chapter 7, "Capital Accounts.").

therefore fall under this definition. Under section 2(a)(11)(B) of the Act, the Board has the authority to expand this definition and designate by rule "any associated person of any entity" described in section 2(a)(11)(A) as a "public accounting firm." The Board has not chosen to exercise this authority at this time.

State

Rule 1001(s)(iii) would define "State" to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States. The Board has adopted the same definition of state as used in section 2(a)(16) of the Act. The idea of including this definition, and the definition itself, was suggested by a commenter.

Tax Services

Rule 1001(t)(i) defines "tax services" as "professional services rendered for tax compliance, tax advice, and tax planning." This definition is based on, and meant to include the same group of services the fees for which would be disclosed as "tax fees" under the Commission's recently revised auditor independence disclosure rules." [19] More specifically, as set forth in the Commission's adopting release, "tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services" and "[t]ax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities." [20] This definition is discussed further below in connection with the discussion of Part II of the Form.

Rule 2100—Registration Requirements for Public Accounting Firms

Rule 2100(a) requires any public accounting firm that prepares or issues audit reports with respect to any issuer to register with the Board. In addition, Rule 2100(b) requires the registration of any public accounting firm that "plays a substantial role in the preparation or furnishing of an audit report" with respect to any issuer. These registration requirements implement section 102(a) of the Act, which provides that "it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer."

By introducing the "substantial role" test (defined through the quantitative test in Rule 1001(p)(ii) as described above), the rule clarifies the phrase "participate in the preparation or issuance of, any audit report with respect to any issuer" used in section 102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it easier for firms and others to determine which firms are required to register with the Board. Stated differently, a firm that does not prepare or issue audit reports with respect to any issuer, but that does "participate" in the preparation of such reports, is only required to register if that participation amounts to a "substantial role," as defined in Rule 1001(p)(ii).

Rule 2100 does not exempt non-U.S. public accounting firms from registration. Therefore, a public accounting firm that is organized or that operates outside the United States must register if it prepares or issues an audit report on any issuer. In addition, such firms that play a substantial role in the preparation or furnishing of an audit report on any issuer must also register, even if the firm does not itself issue the audit report. Consistent with the Act, a Note to the rule provides that registration with the Board will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. federal or state courts, other than with respect to controversies between such firms and the Board.

Under Rule 2100, individual accountants that are associated with public accounting firms are not required to register. As noted above, the definition of the term "public accounting firm" includes proprietorships, and an individual accountant that prepares or issues, in his or her own name, an audit report on an issuer would be viewed as a sole proprietor and required to register.[21] Individual accountants that are associated with public accounting firms, however, are not required to register.

Under the Act, the registration requirement will be effective 180 days after the date on which the Commission makes its determination under section 101(d) of the Act that the Board is capable of carrying out its responsibilities under the Act. Since this determination was made on April 25, 2003, the rule will specify that domestic public accounting firms that wish to participate in or contribute to the preparation of audit reports must register by October 22, 2003. The Board has also decided to allow foreign public accounting firms an additional 180 days to register. Accordingly, the rule will provide that the mandatory registration date for these firms is April 19, 2004.

Several commenters suggested that the Board's proposed rules were unclear as to whether they required the registration of firms that do not plan to participate in audits of issuers after October 22, 2003, but that have issued audit reports for issuers covering periods prior to the mandatory registration date. These commenters noted that such a firm may be asked to issue a consent with respect to the use of its opinion for the prior period. To address this concern, the Board has added a note to the rule that provides that the issuance of a consent to include an audit report for a prior period by a public accounting firm, that does not currently have and does not expect to have an engagement with any issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

Rule 2101—Application for Registration

Rule 2101 requires public accounting firms applying for registration with the Board to complete and file an application for registration on Form 1. This rule is consistent with section 102(b) of the Act, which provides that "a public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section."

Rule 2101 further requires that, unless the Board directs otherwise, applications for registration and any exhibits to such applications must be filed electronically with the Board through the Board's Web-based registration system. The online registration mechanism is currently being developed and will be available in sufficient time for public accounting firms to register.

In addition, several commenters suggested that the Board should provide a procedure for applicants to withdraw their applications. In response to these comments, the Board has added a sentence to Rule 2101 providing that an applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application. The Board will consider rules relating to the withdrawal from registration of registered public accounting firms at a later date.

[19] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003) (footnotes omitted).

[20] *Id.*

[21] *See* Rule 1001(p)(iii).

Rule 2102—Date of Receipt

Rule 2102 defines the date of receipt of an application for registration as, unless the Board directs otherwise, the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is submitted to the Board through its Web-based registration system. Although the Board had initially planned to have its registration system scan applications for completeness before accepting them, this step has been eliminated for administrative reasons. Applications will not be deemed received, however, until the required registration fee has been paid.

Rule 2103—Registration Fee

Rule 2103 requires that each public accounting firm applying for registration with the Board pay a non-refundable registration fee. This rule is consistent with section 102(f) of the Act, which provides that "[t]he Board shall assess and collect a registration fee * * * from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications * * *."

The Board will publicly announce the registration fee amount and the payment procedure before the registration system is operational. The Board contemplates that the amount of an applicant's fee will be determined by formula and that fees will vary with the size of the applicant and the number of its issuer audit clients. Once the registration system is operational, the Board will, from time to time, announce (most likely by posting on its Web site or by a similar form of dissemination) the current registration fee for applicants. Several commenters made comments about the amount the Board should seek to recover in registration fees and the criteria the Board should use in allocating fees to applicants. The Board will consider these comments in connection with its setting of the registration fee.

Rule 2104—Signatures

Rule 2104 requires each person signing the application for registration (including any consents) to manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing of the application for registration. Such a document is required to be signed before the application is electronically filed with the Board through the Board's Web-based system. Further, consistent with the Act's provision on the retention of audit workpapers,[22] filers are required to retain the manually signed documents for seven years. In addition, under the rules, the Board or its staff may request a copy of any manually signed document retained pursuant to Rule 2104. The Board's rule tracks the Commission's requirement on signatures for electronic filings in Regulation S–T.[23]

Rule 2105—Conflicting Non-U.S. Laws

Rule 2105 provides that an applicant may withhold information from its application for registration when submission of the information to the Board would cause the applicant to violate non-U.S. laws. A number of commenters raised a concern that submitting information in connection with an application for registration could cause an applicant to have to choose between obeying the laws of a non-U.S. jurisdiction and completing the application. The Board has decided to allow applicants to withhold such information from an application for registration.

The rule further provides, however, that an applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted,[24] and include as exhibits to Form 1: (i) A copy of the relevant portion of the conflicting non-U.S. law; (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict. Like all other parts of the application, these exhibits must be submitted in English.

While the Board expects that this rule will mainly be used by non-U.S. applicants, the rule would also allow a U.S. applicant to withhold information that would cause it to violate non-U.S. laws if submitted to the Board. It should be noted that, for purposes of this rule, the term "non-U.S. law" does not include laws of any state, territory, or political subdivision of the United States.

Rule 2106—Action on Applications for Registration

Rule 2106 governs the Board's approval process. In general, under this rule, unless the applicant consents otherwise, the Board is required to take action on an application for registration not later than 45 days after the date of receipt of the application. Rule 2102 defines the date of receipt. Such action may consist of approval, issuance of a written notice of a hearing specifying the proposed grounds for disapproval, or a request for additional information. Rule 2106 is consistent with section 102(c)(1) of the Act, which provides that "[t]he Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, a prospective registrant." An applicant that does not elect to treat a notice of hearing as a notice of disapproval will be deemed to have waived the provisions in section (b) of this rule and in section 102(c)(1) that require the Board to act on applications within 45 days.

Specifically, Rule 2106(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable to determine that this standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds

[22] *See* section 103(a)(2)(A)(i); *see also* Commission Final Rule: Retention of Records Relevant to Audits and Reviews, Release No. 33–8180 (January 24, 2003) (requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements).

[23] *See* Rule 302(b) of Regulation S–T, 17 CFR 232.302(b).

[24] The Board's Web-based registration system will include an option, next to each item on the Form, for the applicant to indicate that it is withholding information based on a conflicting non-U.S. law.

for disapproval and may, at the applicant's election, be treated as a written notice of disapproval for purposes of section 102(c) of the Act.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. The Board may request additional information when an applicant has failed to complete fully Form 1, or when the information is otherwise necessary in order to make a determination on the application.[25] Rule 2106(c) provides that the Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application.[26] If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete (and disapprove it on that basis, pursuant to Rule 2106(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

Commenters raised several concerns with Rule 2106 as proposed by the Board. Some commenters suggested that the Board's standard for approval was too subjective or, at least, that the Board should provide more guidance on how it will be applied by the Board. Section 102 of the Act does not provide an explicit standard for the Board's determination to approve or disapprove an application for registration. At the same time, the Act clearly contemplates that the Board will apply some standard to applications for registration before deciding whether to approve or disapprove a completed application.[27] The standard in Rule 2106(a) is based on the Board's mandate under section 101(a) of the Act. The Board considered providing more specific criteria, but has decided that additional criteria would be inappropriate in light of the varied circumstances of public accounting firms that likely will be applying for registration. For instance, the Board considered providing that the failure of an applicant or its associated accountants to have all licenses and registrations required by governmental and professional organizations would be a basis for disapproval. In response to the Board's proposal to require applicants to represent that they have all such licenses, a number of commenters gave reasons why they could not provide such a representation. In addition, the Board considered providing that certain criminal and/or civil governmental actions would be a basis for disapproval. Actions against an accountant that might justify disapproval of the application of a sole proprietor might not warrant disapproval of the application of a large public accounting firm if the accountant was one of many employees of the firm, however. Accordingly, the Board has determined to retain the current standard and make an evaluation based on the facts and circumstances of whether each application meets the criteria in Rule 2106(a).

Several commenters suggested that applicants should have "due process" procedures through which they could seek and obtain review of a disapproval of their application within the Board. The Board has addressed these comments by changing the rule to provide that, if the Board is unable to determine that the statutory standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings,[28] to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Because the statute provides for the Board to make these decisions within 45 days and also provides for appeal to the Commission, the applicant may, at its election, treat the notice as a written notice of disapproval for purposes of section 102(c) of the Act. Under sections 102(c)(2) and 107(c) of the Act, a written notice of disapproval may be appealed to the Commission. Therefore, an election to treat a hearing notice as a disapproval will afford applicants an immediate opportunity to seek Commission review.

Rule 2300—Public Availability of Information Submitted to the Board: Confidential Treatment Requests

Rule 2300(a) provides that applications for registration will be publicly available as soon as practicable after the Board approves or disapproves the application. This is consistent with section 102(e) of the Act, which provides that applications for registration "or such portions of such applications * * * as may be designated under the rules of the Board" must be available for public inspection.

In order to prevent the disclosure of confidential information,[29] Rule 2300 also sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with their applications for registration. Under Rule 2300(b), an applicant for registration may request confidential treatment of any portion of an application that either (i) contains information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

Rule 2300(c)(2) requires that confidential treatment requests contain a detailed explanation of the reasons that, based on the facts and circumstances of the particular case, the information for which confidentiality is sought meets the requirements in Rule 2300(b). Rule 2300(f) states that unless the applicant seeking confidential treatment consents otherwise, confidential treatment requests themselves will be afforded confidential treatment without the need for a request for confidential treatment. Rule 2300(d) provides that pending a determination by the Board as to whether to grant the request for confidential treatment, the information in question will not be made available to the public. Rule 2300(e) states that if the Board determines to deny a request, the applicant requesting confidential treatment will be notified of the Board's decision in writing and of the date on which the information in question will be made public.

Under Rule 2300(g), the information as to which the Board grants confidential treatment under Rule 2300 will not be made public. The Board anticipates that a notation in the application that is made publicly available will appear in the place of the information for which confidential treatment was granted. However, the granting of confidential treatment will not limit the Board's ability to provide this information to the Commission or to comply with any subpoena issued by a court or other body of competent jurisdiction, nor will it prevent the Board from making use of this information in connection with the execution of its responsibilities under the Act. For example, the information may be used in the Board's inspection program and investigations, as well as in any resulting proceedings, subject to the applicant's right to seek a protective order in such a proceeding. In the event the Board receives a subpoena, the Board will notify the applicant of such subpoena to allow the applicant an opportunity to object to the subpoena. Finally, Rule 2300(h) delegates the Board's functions under this Rule to the Director of Registration and Inspection.

Commenters made several suggestions to improve the Board's proposed confidentiality rule. One commenter suggested the Board delegate the function of determining these requests and allow for appeal to the Board. Rule 2300(h) responds to this suggestion. Several commenters noted that the proposed rule did not specify when applications would be made available publicly and suggested that that should not take place until the applications had been approved or disapproved. Rule 2300(a) has been modified to reflect that applications will not be made available publicly until after the Board has approved or disapproved them. Commenters also suggested that the Board should provide notice to an applicant upon receiving a third-party subpoena seeking access to information the Board has granted confidential treatment and oppose such subpoenas. Rule 2300(g) now provides for such notice. While the Board does not believe it would be appropriate to provide in its rules that it will object to all such subpoenas, the Board will respond to such subpoenas in a manner consistent with its responsibilities under the Act, including its responsibility to protect proprietary information under section 102(e) of the Act. The confidential treatment requester will, of course, be free to protect its interests by seeking to participate in the proceeding from which the subpoena arose.

Form 1

The proposed rules also consist of instructions to PCAOB Form 1, which is the form to be used by public accounting firms to register with the Board. The Board plans to develop a Web-based form that will be available only electronically.

Form 1 consists of general instructions and nine parts, subdivided into various items requiring the disclosure of particular information concerning the applicant and its associated accountants, and the applicant's audit clients. The information these items call for is, in general, required by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application. The general instructions and each of the parts of the Form is explained in more detail below.

General Instructions

The general instructions to the Form contain basic information about the application and the application process. In general, these instructions are self-explanatory. General instructions 7, 9 and 10 were added in response to comments received on the Board's proposal.

Many non-U.S. commenters suggested that the disclosure of certain information required by the Form, as originally proposed, would violate non-U.S. laws, particularly related to confidentiality, data protection and privacy. In response to these comments, the Board added General Instruction 7, which allows an applicant to withhold information from its application where disclosure of the information would cause the applicant to violate non-U.S. laws. General Instruction 7 specifies that an applicant claiming that submitting information would cause it to violate non-U.S. laws must so indicate by making a notation under the relevant item number of the Web-based form, and furnish as exhibits: (i) A copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion supporting the applicant's position, and (iii) an explanation of the applicant's efforts to seek consents or waivers, if applicable, and a representation that the applicant was unable to obtain such consents to eliminate the conflict.

In addition, some commenters were concerned that it may be difficult to ensure that application information is current when submitted in light of the fact that, particularly for larger public accounting firms, it may take significant amounts of time to compile the information necessary to apply for registration. To address this concern, the Board has added General Instruction 9 to provide that where the Form seeks current information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application and that such information will be deemed current for purposes of the Form. General Instruction 10 specifies that information submitted as part of Form 1, including any exhibits to the Form, must be in English.

Part I—Identity of the Applicant

Part I of the Form calls for information about the identity of the applicant. This Part is generally intended to elicit basic information about the applicant and its operations and to facilitate the Board's interaction with the applicant. The seven specific items in this part require information about the applicant's name and identification number, contact information, primary contact with the Board, form of organization, offices, associated entities engaged in the practice of public accounting, and professional licenses or certifications.

In Item 1.1, applicants are required to state the legal name of the applicant and, if different, the name or names under which the applicant currently, or in the past five years, issues or has issued audit reports. This Item has been changed in two respects from the Board's proposal. First, this Item as proposed required applicants that have such a number to disclose their federal employer identification number (or comparable non-U.S. identifier), and, in the case of a sole proprietor, the applicant's social security number. In response to commenters' concerns about disclosure of confidential personal identifiers, the Board has eliminated the requirement for applicants to provide identifying numbers in response to this Item. Second, at least one commenter suggested that the Board clarify which predecessor entities constitute the applicant for purposes of the disclosure of names under which the applicant has issued audit reports in the last five years. The Board has sought to clarify this by modifying Item 1.1 to apply only to those predecessors for which the applicant is the successor in interest with respect to the entity's liabilities.

Items 1.2 and 1.3 ask for basic contact information from the applicant. These Items are unchanged from the Board's proposal, except that the Board has added a requirement to Item 1.2 that applicants state their Web site address, if available.

Item 1.4 asks for the applicant's legal form of organization and the jurisdiction under the law of which the applicant is organized or exists. Under the Board's registration system, organizations, and not natural persons, are required to apply for registration. Accordingly, among the examples given of legal forms of organizations are "proprietorship" and "partnership." This Item

[25] Accordingly, the Board may request additional information regarding any of the applicant's responses contained in Form 1, as well as additional matters that have come to the Board's attention and that are relevant to the Board's decision on an application.

[26] This sentence was added to the Rule at the suggestion of a commenter that was concerned that the Board might take the full 45-day period notwithstanding that only relatively minimal supplemental information was involved.

[27] See section 102(c) of the Act.

[28] These rules will be the subject of a future Board rulemaking.

[29] Section 102(e) also states that the public availability of registration applications is subject to "applicable laws relating to the confidentiality of proprietary, personal, or other information" and directs the Board to "protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information."

contemplates that natural persons practicing accounting under their own name and that are not organized as a legal entity will apply as a "proprietorship." Likewise, groups of natural persons practicing accounting that are not organized as another legal entity should apply as a "partnership," whether a partnership has been legally formed or not.

Item 1.5 requires applicants with more than one office to furnish, as an exhibit, the physical address (and, if different, mailing address) of each of the applicant's offices. Item 1.6 requires applicants to list the name and address of their "associated entities" that engage in the practice of public accounting or preparing or issuing audit reports or comparable reports prepared for clients that are not issuers. The term "associated entities" is defined in the Board's rules in a manner consistent with the term's use in the Commission's auditor independence rules.[30]

One commenter suggested that Item 1.5 be limited to offices that issue audit reports, as that term is defined in the Act and the Board's rules. In addition, several commenters suggested that Item 1.6 be limited to only associated entities that issue audit reports or that the term "associated entities" be defined differently or limited to entities within one particular country. After considering these comments, the Board has decided to leave these Items as proposed. The Board chose the term "associated entities" to capture certain entities that are related to the applicant, but that are not necessarily in a control relationship with the applicant. The term is presumably one public accounting firms are familiar with because of its use in the Commission's auditor independence rules. The instruction makes clear that individual accountants associated with the applicant should not be listed in responding to this Item. The Board believes that obtaining information on all the applicant's offices and those associated entities of the applicant that engage in the practice of public accounting or preparing or issuing audit reports, or comparable reports prepared for clients that are not issuers, strikes the appropriate balance between the Board's need for information about the applicant's operations and the need to avoid overburdening applicants for registration.

Item 1.7 requires applicants to list every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting, and the name of the issuing authority. This Item does not require applicants to list the license numbers of individual associated accountants within the firm (these are required by Item 7.1), nor does it require applicants to furnish information on business licenses required of entities engaged in businesses other than accounting or auditing.

As proposed, Item 1.8 would have required applicants to state if the firm and all individual accountants associated with the firm who participate in or contribute to the preparation of audit reports have all required licenses and certifications. This Item was intended to ensure that public accounting firms applying for registration have the requisite governmental and professional licenses and certifications to audit issuers. Although one commenter supported and suggested expanding this Item, a number of both large and small public accounting firms suggested that, for various reasons, they could not affirmatively answer this question despite their good faith efforts to ensure that the firm and all its associated accountants maintained all required licenses. In light of these concerns, and because information on the applicant's and its associated accountants' licenses or certifications is still required through Items 1.7 and 7.1, the Board has decided to eliminate Item 1.8.

Part II—Listing of Applicant's Public Company Audit Clients and Related Fees

As required by Section 102(b)(2)(A) and (B) of the Act, Part II of the Form requires disclosure of the names of all issuers for which the applicant has prepared or issued audit reports during the previous calendar year, and for which the applicant expects to prepare or issue audit reports during the current calendar year, and the annual fees received by the applicant from these issuers for audit services, other accounting services, and non-audit services. Part II implements this directive through four specific items.

The first three items require disclosures about the applicant's issuer audit clients, including their names, identifying information, and disclosures about the fees billed the issuer by the applicant. The contours of the required fee disclosures are specified through definitions of the terms "audit services," "other accounting services," and "non-audit services."[31]

To capture different time periods, these disclosures are divided into three items. Item 2.1 covers issuers for which the applicant prepared or issued any audit report during the previous calendar year. Item 2.2 covers issuers for which the applicant prepared or issued any audit report during the current calendar year. Item 2.3 covers issuers for which the applicant expects to prepare or issue any audit report during the current calendar year. Items 2.1 and 2.2 require the same information: the issuer's name, business address, the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services. Because Item 2.3 refers to a future period, it only asks for the issuer's name and business address. A Note to Items 2.3 and 2.4 clarifies when an applicant can "expect to prepare or issue" an audit report for an issuer.

Finally, Item 2.4 seeks information from applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report during the current calendar year. Specifically, this Item seeks information about the issuers for which these applicants played, or expect to play, a substantial role in the preparation of an audit report during the preceding or current calendar year. For these issuers, the applicant must disclose the issuer's name, business address, the name of the public accounting firm that issued, or is expected to issue, the audit report, the date (or expected date) of the audit report, and the type of substantial role played by the applicant with respect to the audit report.

Commenters expressed a number of practical concerns about compiling the necessary information to respond to Part II of the Form as proposed. In particular, a number of commenters suggested that the fee disclosures track the categories used in the SEC's revised auditor independence disclosure rules and pointed out that a number of issuers that will be required to disclose fees in those categories have not previously been required to publicly report these fees.

In response to these comments, the Board has modified the definitions of "audit services," "other accounting services," and "non-audit services" to make clear that, once the revised SEC rules are effective, the Board intends to use these categories for the fee disclosures required by Part II of the Form.

The Board understands that fee information in these categories has not been collected historically and that public accounting firms are in the process of putting in place systems to track information in these categories. Nonetheless, section 102(b)(2)(B) of the Act specifically requires applications for registration to include disclosure of fees for "audit services," "other accounting services" and "non-audit services." Accordingly, until such time as the SEC's revised rules are effective, the Board has, to the extent permissible under the Act, used categories from the existing SEC proxy disclosure rules that were adopted in November 2000 for the disclosures required by this Part of the Form.

Specifically, until December 15, 2003, the term "audit services" will be defined to mean the same category of services for which fees are required to be disclosed as "audit fees" pursuant to the Commission's 2000 proxy disclosure rules.[32] Section 102(b)(2)(B) of the Act specifically requires applicants to disclose fees for "other accounting services," which are not required to be disclosed under the existing proxy disclosure rules. Accordingly, the Board has defined "other accounting services" by reference to concepts from the SEC's revised auditor independence disclosure rules. As explained in greater detail above in connection with the discussion of the definition of "other accounting services," until December 15, 2003, this term will include two categories of services: (1) services the fees for which are to be disclosed as "audit fees" under the Commission's revised rules, but that were not previously disclosed as "audit fees;" and (2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

While fee disclosures are not currently being made in these categories, these categories of fees have been defined with some precision through the SEC's rulemaking process. In addition, some issuers and public accounting firms may be in the process of developing systems to track fees in these categories since disclosures of these amounts will be required under the SEC's revised rules, effective for filings after December 15, 2003.

Under the existing proxy disclosure rules, fees must also be disclosed for financial information systems design and implementation, as defined in Rule 2–01(c)(4)(ii) of Regulation S–X, 17 CFR 2–01(c)(4)(ii), and all other services (*i.e.*, services the fees for which are not disclosed as audit fees or financial information systems design and implementation fees). Until December 15, 2003, the term "non-audit services" will be defined to include these two categories of services. After December 15, 2003, applicants will be required to disclose fees for the category of services the fees for which are disclosed as "all other fees" under the Commission's revised auditor independence rules.

The Board understands that not all issuers are subject to these requirements and that companies subject to the requirements currently are not required to disclose fees for "other accounting services," as specifically required by section 102(b)(2)(B) of the Act. To address commenters' concerns about the difficulty of accurately compiling this information in these situations, the Board added a Note to Items 2.1 and 2.2 that provides that, to the extent these fee amounts have not previously been disclosed or otherwise known by the applicant, estimated amounts may be used in responding to these Items of the Form. The Board does not intend to penalize applicants that use good faith efforts to estimate the fees for "other accounting services" during this time. Consistent with these changes, applicants will not be separately required to disclose fees for "tax services," as had been proposed. The Board may choose, once the SEC's revised rules are effective, to require disclosure of "tax services" as part of registered public accounting firms' annual reports. The contents of these reports will be the subject of a future Board rulemaking.

In response to other comments received, the Board has simplified and clarified Part II of the Form in several other respects. First, the Board has eliminated the requirement to provide the issuer's standard industry code ("SIC"). Second, the Board has slightly modified the wording of Items 2.1 through 2.3 to make clear that the disclosure requirements pertain to audit reports *dated* during the relevant time period. Third, the Board has added language to the Notes to Items 2.2 and 2.3 to further clarify when applicants can "expect to prepare or issue" an audit report for an issuer. Specifically, those Notes now provide that an applicant may presume that it is expected to prepare or issue an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for an issuer, absent an indication from the issuer that it no longer intends to engage the applicant.

Fourth, in response to some commenters' concerns about the burden of making the necessary determinations to comply with Item 2.4, the Board has limited this Item to those applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year. In other words, as the Note to this Item explains, applicants that disclose the name of an issuer in response to any of Items 2.1–2.3 need not respond to this Item. Finally, the requirement in Item 2.4 to explain the applicant's role in the audit has been modified to require only identification of the type of substantial role played by the applicant with respect to the audit report. To enable applicants to comply with this instruction, it is contemplated that the Web-based Form will contain a "pull-down menu" with a list of types of substantial roles, including an option to check "other."

The Board will consider issuing additional guidance on the fee disclosures required by Part II of the Form as the date for registration to begin nears.

Part III—Applicant's Financial Information

Section 102(b)(2)(C) of the Act provides that the Board may require applicants to submit "such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request." Consistent with this provision of the Act, the Board proposed that applicants disclose fees received by the applicant during its most recently completed fiscal year for: audit services, other accounting services, tax services, and all other products and services, whether the fees were received from "issuers" or from their other clients.

A number of commenters stated that they are not currently tracking revenues in these categories for all their clients and that compiling this information in this form would be impractical or at least very burdensome. In light of these comments, the Board has decided not to require this information as part of public accounting firms' registration applications at this time. The Board does, however, intend to require applicants to submit information in these categories as part of their annual reports with the Board under section 102(d) of the Act. Although the contents of the annual and periodic reports will be the subject of a future Board rulemaking, the Board encourages

[30] *See* Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–01(f)(2).

[31] A Note to Items 2.1 and 2.2 explains that, consistent with the Commission's proxy disclosure rules, only fees billed by the principal accountant need be disclosed in response to this item. The Note also explains how disclosures are to be made for issuers that are investment companies. The treatment is based on and is consistent with the Commission's disclosure rules.

[32] *See* Schedule 14A, Item 9(e)(1), 17 CFR 240.14a–101; *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000).

public accounting firms planning to register with the Board to begin collecting fee information in these four categories for all their clients in order to be able to report revenue in this format on an ongoing basis in the future.

Part IV—Statement of Applicant's Quality Control Policies

As required by section 102(b)(2)(D) of the Act, Part IV requires the applicant to provide, as an exhibit, a narrative, summary description of its quality control policies for its accounting and auditing practices, including procedures to monitor compliance with independence requirements. GAAS requires accounting firms to have quality controls for their audit practices.[33]

A few commenters suggested that this Part of the Form should be limited to a representation about the firm's quality control policies complying with applicable standards. The Board does not believe that this approach would be consistent with the statutory directive. Several other commenters sought clarification of the parameters of the description called for by this Part of the Form. As explained in the proposing release, the description should be in a clear, concise, and understandable format and should convey the scope and the key elements of the applicant's quality controls for its accounting and auditing practice. A description that addresses all of the elements of quality control covered by the professional quality control standards the firm is subject to will be sufficient. Technical descriptions and detailed explanations of procedures are not required. Absent unusual circumstances, the Board does not contemplate granting confidential treatment requests for this Item.

Part V—Listing of Certain Proceedings Involving the Applicant

As required by section 102(b)(2)(F) of the Act, Part V calls for information about criminal, civil, or administrative or disciplinary proceedings against the applicant or its associated persons. While the Act only requires applicants to submit information about pending proceedings related to audit reports, the Form requires information about certain additional proceedings that may reflect on the applicant's fitness for registration, even though the proceedings may no longer be pending or do not relate to audit reports.

As proposed, this Part of the Form was divided into six specific items that sought disclosure of different types of proceedings involving different persons for different periods of time. Many commenters expressed concerns about both the scope and the complexity of the disclosures required of applicants by this Part of the Form.[34] Accordingly, the Board has sought both to simplify and to narrow its request for information in this Part of the Form, while still preserving the information necessary to decide whether to approve or disapprove registration applications.

Specifically, this Part now contains three Items. Item 5.1 would, in general, require applicants to disclose whether the applicant or any associated person of the applicant is currently a defendant or respondent (or was a defendant or respondent in a proceeding that resulted in an adverse finding against the applicant or person during the previous five years) in three types of proceedings:

1. Any pending criminal proceeding;
2. Any pending civil (or alternative dispute resolution) proceeding initiated by a governmental entity arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer; and
3. Any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer.

The third part of this Item further specifies what types of proceedings qualify as "administrative or disciplinary proceedings" and provides that investigations that have not resulted in the commencement of a proceeding need not be included. At least one commenter specifically suggested that, if the Board required disclosure of more than pending proceedings, the look-back period should be limited to five years since this period is consistent with the disclosure requirements for past proceedings against officers and directors of public companies.[35]

Item 5.2 would require applicants to disclose pending civil proceedings (or ADR proceedings) against the applicant or its associated persons initiated by a private (*i.e.*, non-governmental) entity that involve conduct in connection with an audit report or a comparable report prepared for a client that is not an issuer. This Item is largely required by section 102(b)(2)(F) of the Act. For each proceeding listed in response to Items 5.1 and 5.2, applicants are asked to provide basic information about the proceeding, the parties, the allegations, and the proceeding's outcome.

The phrase "a comparable report prepared for a client that is not an issuer," as used in these Items, is meant to capture reports of audits performed for clients that are not issuers. Notes to Items 5.1 and 5.2 provide that, for these Items, foreign public accounting firm applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least 10 hours of audit services for any issuer during the last calendar year. This is the same group of persons within foreign public accounting firms that must be listed in response to Part VII of the Form and for which consents must be obtained under Part VIII of the Form.

Finally, Item 5.3, permits, but does not require, applicants to include an exhibit describing any proceeding listed in response to this Part and giving the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration. The failure to file such an exhibit with respect to a particular proceeding will not raise any inference concerning the applicant's view of the impact of that proceeding on its application. The Board will consider any information provided pursuant to this Item in its approval process.

Part VI—Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients

As required by section 102(b)(2)(G) of the Act, Part VI requires applicants to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. For each such instance in the preceding or current calendar year, the applicant is required to disclose the name of the issuer, the name and date of the filing, and to submit, as exhibits, copies of the identified filings. Disagreements under this Part are specified by reference to the provisions of Regulation S–K that require such disclosures.

To clarify an issue raised by a few commenters, an applicant is only required to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in such issuers' Commission filings. Therefore, if an issuer did not disclose a disagreement in a Commission filing or if such disclosure is not required by a Commission filing,[36] the applicant of that issuer audit client need not disclose such disagreement in Form 1.

Several commenters suggested that the Board obtain information required by Part VI from the Commission's Edgar system or require applicants to provide only a hyperlink to or a Central Index Key ("CIK") number for a particular filing, as opposed to providing copies of the actual filings. While the Board recognizes that the information requested in this Item is or will be publicly available through Edgar, section 101(b)(2)(G) of the Act specifically requires that an applicant submit "as part of its application for registration * * * copies of periodic or annual disclosure filed by an issuer with the Commission * * *." Moreover, this information is not organized by the public accounting firms involved in the disclosed disagreements in the Commission's Edgar system.

Part VII—Roster of Associated Accountants

As required by section 102(b)(2)(E) of the Act, Part VII requires applicants to submit information about the accountants associated with the firm who participate in or contribute to the preparation of audit reports. The scope of this requirement is different for foreign firms than for domestic firms. Domestic applicants must list all accountants who are "persons associated with the applicant" and provided at least 10 hours of audit services for any issuer during the last calendar year. Foreign public accounting firms applying for registration must list all accountants who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least 10 hours of audit services for any issuer during the last calendar year.

For each accountant listed, applicants must provide the person's name and all license or certification numbers (and name of issuing authority) authorizing the person to engage in the business of auditing or accounting.

In addition, both domestic and non-U.S. applicants are required to disclose the total numbers of accountants and CPAs (or accountants with comparable licenses from non-U.S. jurisdictions) employed with the applicant, and the total number of personnel employed by the applicant.

Many commenters indicated that the disclosure required by Items 7.1 and 7.2, as originally proposed, was administratively burdensome and suggested that the Board narrow the scope of the roster and clarify which accountants would be covered by the roster. To address these concerns, the Board has limited the roster reporting requirements for domestic applicants to accountants who are "persons associated with the applicant" and provided at least 10 hours of audit services for any issuer during the last calendar year, and the requirements for non-U.S. applicants to partners or managers who provided at least 10 hours of audit services for any issuer during the last calendar year.[37] In addition, as noted above, by excluding from its definition of the term "accountant" persons who are engaged in only clerical or ministerial tasks, the Board has further limited the disclosure required in Part VII of the Form, as originally proposed.

Further, in light of privacy and confidentiality concerns expressed by commenters, the Board has also eliminated the requirement to disclose the social security number (or comparable non-U.S. identifier) of each accountant listed on the roster.

Also, at least one commenter requested clarification of the time frame for reporting the information required by Part VII. To address this concern, the Board has added an instruction to the Form that specifies that applicants may submit information as of a date not earlier than 90 days prior to the submission of the application and that such information will be deemed current for purposes of the Form.

Part VIII—Consents of Applicant

As required by section 102(b)(3) of the Act, Part VIII of the Form requires applicants to furnish, as an exhibit to their applications, consents related to the applicant's and its associated persons' cooperation and compliance with any request for testimony or the production of documents made by the Board. Note 1 to the instruction makes clear that the consent and the language in the instruction (except for insertion of the applicant's name) must be verbatim. The note also specifies that the consents from the applicant's associated persons required by paragraph (b) of the Item must be secured by the applicant no later than 45 days after submitting the application or, for persons who become associated persons of the firm subsequent to the submission of the application, at the time of the person's association with the firm. The consents must be signed in accordance with Rule 2104, which, among other things, requires the manually signed version of the statement to be retained for seven years.

Many commenters indicated that compliance with Part VIII, as originally proposed, would cause an applicant to violate certain non-U.S. laws. In response to this concern, the Board has added Rule 2105 and corresponding instructions in the Form, which allow an applicant to withhold information from its application for registration, including the firm and associated person consents required by Part VIII, where disclosure of the information would cause the applicant to violate non-U.S. laws.

Further, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the Board has added Note 3 to this Item, which narrows the scope of "associated persons" from whom non-U.S. applicants are required to secure consents. As revised, for non-U.S. applicants, the term "associated persons" as used in this item covers only those accountants who are partners or managers and who provided at least 10 hours of audit services for any issuer during the last calendar year.

In addition, some commenters noted that Part VIII, as originally proposed, did not specify the language to be used in the consents that the applicant is required to secure from its associated persons. In response to this comment, the Board has added Note 2 to this item, which sets forth the exact language to be used in the associated persons' consents. Moreover, in response to the suggestion that the Board extend the 45-day deadline for securing consents from associated persons in order to ease the administrative burden for larger firms, the Board has clarified that applicants must secure such consents not later than 45 days after submitting their applications. In other words, an applicant does not have to wait until its application is submitted to the Board to secure such consents, but can begin obtaining these consents as soon as possible. Further, many commenters objected to the blanket consent used in Part VIII and suggested that the Board amend its proposal to include a reservation in the consent form, to only require applicants to use their best efforts to secure the associated person consents, to clarify that the consent would only apply prospectively to

---

[33] *See* SAS No. 25; AU § 161; *see also* Statements on Quality Control Standards ("SQCS") No. 2; AICPA SEC Practice Section ("SECPS") Membership Requirements, Appendix K, SECPS sec. 1000.45.

[34] In particular, a number of non-U.S. accounting firms and professional associations expressed concern that proposed Item 5.5 would require applicants to familiarize themselves with, and analogize to, a number of provisions of the U.S. Code. This Item has been eliminated from the Form.

[35] Item 401 of Regulation S–K. 17 CFR 229.401(f).

[36] For instance, currently annual reports for foreign private issuers on Forms 20–F and 40–F do not require this type of disclosure.

[37] The Board has used the term "manager" in Parts V, VII and VIII of the Form because of the term's use in, and familiarity to, the accounting profession. The term is intended to capture the highest level of supervisory position below the partner level of the firm.

independent contractors, and/or to limit the consents to cover only reasonable, and not simply any, requests by the Board. Section 102(b)(3) of the Act,[38] however, specifies the scope and contents of the consents, and the Board therefore has decided not to modify this item to include these suggested qualifications.[39] Some commenters expressed concern about the amount of work involved in securing, gathering and maintaining written consents from each of their associated persons in accordance with Rule 2104. While the Board is requiring that the applicant's consent and the associated persons' consents be manually signed and that such manually signed documents be retained for seven years in accordance with Rule 2104, the Board leaves it to the individual applicants to determine other details as to how such consents will be obtained and maintained internally.

Part IX—Signature of Applicant

Part IX requires an authorized partner or officer of the applicant to sign the application in accordance with Rule 2104 and to certify the application's completeness and accuracy. Incomplete and inaccurate applications are subject to possible disapproval under Rule 2106(b)(2).

Part X—Exhibits

Part X lists the exhibits that must accompany the application and includes instructions on the format for exhibits with multiple pages. The nature of each exhibit is described in the corresponding items, Rule 2105 or Rule 2300.

[38] Section 102(b)(3) specifically requires that "each application * * * include * * * a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board * * * and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm."

[39] While commenters did not identify any state laws that conflict with the required consents, one commenter suggested that the Board make explicit that the Board's rules, as approved by the Commission, requiring the consents would preempt any contrary state law. The Board's rules implement Congress' determination in the Act that applicants for registration must agree to "secure and enforce [such] consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with the firm." Accordingly, any otherwise applicable state or local law that conflicts with this requirement or stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress would be preempted. *See Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *City of New York* v. *FCC*, 486 U.S. 57, 64 (1988).

2. Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Under the proposed rules, all public accounting firms must register with the Board if they wish to prepare or issue audit reports on issuers, as that term is defined in the Act and the Board's rules, or to play a substantial role in the preparation or issuance of such reports. In general, the information required to complete the Board's registration application is specifically required to be a part of those applications by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, either necessary to facilitate the Board's responsibilities or reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application.

Moreover, to the extent permissible under the Act and consistent with the Board's responsibilities, the Board has sought to base the contents of the application on information public accounting firms currently collect, in part to avoid imposing any undue burden on applicants that could have a disproportionate effect on smaller public accounting firms. In addition, the proposed rules provide a mechanism for applicants to seek confidential treatment of any proprietary information included in their application that should not be publicly available. The Board has also allowed public accounting firms that do not currently prepare or issue audit reports, or play a substantial role in the preparation or issuance of audit reports, but that wish to enter this business, to register with the Board. Further, the Board has announced that registration fees will vary based on the size of the applicant and the number of its issuer audit clients.

Several commenters suggested that requiring foreign public accounting firms to register with the Board could discourage smaller foreign public accounting firms, and foreign public accounting firms that are not affiliated with large international networks of firms, from auditing issuers. The Board has given careful consideration to the impact of its registration rules on non-U.S. firms and has taken a number of steps to minimize any such effect. In particular, as described in Section II.A above, the Board has crafted certain changes to its original proposal to minimize, where permissible under the statute and consistent with the Board's responsibilities, the burdens on foreign public accounting firms applying for registration. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms,[40] and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released its registration system proposal for public comment on March 7, 2003. The Board received 46 written comment letters relating to its proposal. In addition, on March 31, 2003, the Board convened a public roundtable to discuss special issues raised by registration and oversight of non-U.S. firms, at which 14 representatives of foreign governments, non-U.S. public accounting firms and professional organizations, and U.S. institutional investors participated.[41]

The Board has carefully considered all comments it has received. In response to the written comments received and remarks made at the roundtable, the Board has clarified and modified certain aspects of its proposed

[40] In general, under the Board's registration system, non-affiliated foreign public accounting firms will be required to respond to the same information requests as affiliated foreign public accounting firms applying for registration. Because much of the information requested in Form 1 is focused on the applicant's practice of auditing "issuers," as that term is defined in the Act and the Board's rules, foreign public accounting firms with more issuer audit clients will necessarily be requested to provide more information to apply for registration than foreign public accounting firms with smaller practices auditing issuers.

[41] The following governments, firms and organizations participated in the public roundtable meeting: European Commission; U.K. Department of Trade and Industry; Embassy of Switzerland; Embassy of Australia; Financial Services Agency (Japan); Canadian Public Accountability Board; Wirtschaftspruferkammer (German Chamber of Accountants); Fédération des Experts Comptables (FEE); Ernst & Young (Brussels, Belgium); PricewaterhouseCoopers (Toronto, Canada); Deloitte Touche Tohmatsu (Santiago, Chile); KPMG (London); Pennsylvania Public Employees' Retirement System; and the State of Wisconsin Investment Board.

rules and form instructions. The changes made to the proposed rules and form instructions in response to these comments are summarized in Section II.A.1. above.

In addition, under section 106(c) of the Act, the Board and the Commission each have the authority to "exempt any foreign public accounting firm" from any provision of the Act as "necessary or appropriate in the public interest or for the protection of investors." The Board received numerous comments in letters from public accounting firms, foreign governments and foreign professional accounting associations, requesting such exemptions from the Board's registration requirements, as well as its inspections and disciplinary programs.[42]

Some commenters expressed concerns about registration of non-U.S. public accounting firms, including that the Board's registration of non-U.S. public accounting firms (1) would be duplicative of existing or planned home-country auditor oversight programs, (2) would require information, the disclosure of which would violate foreign laws on confidentiality, data protection and privacy, (3) would require information that does not have clear equivalents in non-U.S. jurisdictions, (4) would require accumulation of information not already compiled and not readily available, and (5) would lessen competition among public accounting firms by discouraging some firms from registering.

In response to the concern that registration of non-U.S. public accounting firms would be duplicative of existing or planned auditor oversight programs, as an initial step, the Board sought, as part of its roundtable meeting, to gather information about existing or planned oversight bodies outside the United States. The Board has also commenced dialogue with non-U.S. oversight bodies in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection and discipline.

Many commenters suggested that registration of non-U.S. firms would require information, the disclosure of which would violate non-U.S. laws, particularly those related to confidentiality, data protection and privacy. In response to this concern, the Board added Rule 2105 and corresponding instructions in Form 1, which allow applicants to withhold information from its application for registration where disclosure of the information would cause the applicant to violate non-U.S. laws. Also, in order to allow firms time to give full consideration to the potential conflict of law issues, the Board has afforded non-U.S. firms an additional 180 days to register.

Furthermore, in light of concerns with respect to conflicts with confidentiality, data protection, and privacy laws, the Board has eliminated or narrowed the scope of information required by Form 1, as originally proposed. Specifically, any requirements to provide Social Security numbers, taxpayer numbers, and comparable non-U.S. tax identifiers have been eliminated. In part to address concerns with respect to the confidentiality of information on criminal, civil and administrative proceedings in Part V, the Board has significantly narrowed the disclosure required for non-U.S. applicants. Also, the list of accountants associated with a non-U.S. firm has been narrowed. In particular, as revised, Form 1 requires non-U.S. accounting firms to list only those accountants who are proprietors, partners, principals, shareholders, officers or managers of the applicant and who each provide at least 10 hours of audit services for any issuer during the last calendar year. Finally, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the scope of "associated persons" from whom the applicant is required to secure consents has been narrowed to cover only those accountants identified on the list of accountants. As discussed above, to the extent that a non-U.S. law would prohibit disclosure of information that is still required, new Rule 2105 permits a firm to withhold the information and submit instead (i) a copy of the conflicting non-U.S. law, in English, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law, and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

The Board has eliminated or modified certain disclosure requirements where determining a non-U.S. equivalent may be particularly burdensome, in an effort to address concerns that registration would require information that does not have clear equivalents in non-U.S. jurisdictions. For example, in response to a comment that the term "undergraduate degree" was not meaningful in a non-U.S. context, the Board revised the educational reference in its originally proposed definition of accountant to "a college, university or higher professional degree." The Board has also eliminated the requirement from its original proposal to disclose a "violation of a substantially equivalent non-U.S. statute" to certain provisions of the United States Code.

In response to concerns that registration of non-U.S. firms would require accumulation of information not already compiled and not readily available, the Board has allowed an additional 180 days for firms to compile information and to obtain any necessary consents or waivers from associated persons to provide the information requested by the form. Further, the Board has significantly modified and in some cases eliminated disclosure requirements, the information for which commenters noted, would be burdensome to gather. For example, Part III of Form 1, which as proposed required disclosure of information on firm revenues, has been eliminated. Moreover, with respect to Part II in Form 1, the Board has modified the disclosure categories for audit, non-audit, and other accounting services to track more closely those used by the Commission. As a practical matter, at the time when non-U.S. firms are required to be registered with the Board (*i.e.*, by April 19, 2004), the disclosure categories in effect will be those used in the Commission's recently revised auditor independence disclosure rules, with which foreign private issuers will be required to comply for periodic annual reports filed after December 15, 2003.

In addition, the Board has tried to facilitate the reporting in Part II by allowing applicants to use estimates to the extent that such information has not been previously disclosed or is not known. Finally, in an effort to minimize the administrative burden of compiling information for the registration process, the requirements in Form 1 to provide accountant names and license numbers, consents to cooperate with Board inspections and investigations, and information about certain legal proceedings, as applied to non-U.S. firms, have been significantly narrowed to include only partners and managers who participate in or contribute to the preparation of audit reports for issuers.

[42] The Board also received comment letters against such exemptions, for example on the grounds that "[i]ncluding foreign auditors under the purview of the new Public Company Accounting Oversight Board would, thus, add a much-needed element of auditor oversight for firms reviewing corporations trading in U.S. markets." *See* Letter from Senator Carl Levin dated March 21, 2003 (in PCAOB Docket No. 1 public file).

Several commenters raised concerns that registration of non-U.S. firms would lessen competition among public accounting firms by discouraging some firms from registering. As described above, the Board has eliminated and modified many of the disclosure requirements originally proposed. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

While the Board believes that it must require registration of non-U.S. firms, it also recognizes that it must be flexible about how registration operates in the case of those firms and that it may not be practical to treat foreign accounting firms as if they were, for purposes of the Board's regulation, in all respects the same as U.S.-based firms. The Board is prepared to work with its foreign counterparts to find ways to accomplish the goals of the Act without subjecting foreign firms to unnecessary burdens or conflicting requirements. Where possible, the Board will seek to build compliance with its requirements on compliance with foreign regulatory regimes. The proposed 180-day deferral of foreign firm registration will afford the Board the opportunity to explore ways of accomplishing that goal with non-U.S. accounting oversight bodies.

In addition, the nature of the oversight to be exercised over registered foreign public accounting firms is a matter the Board has yet to resolve. The Board is aware that several countries have adopted or proposed corporate reforms that include new regulatory oversight of the auditing profession, and many countries have already adopted or planned programs to register, inspect and discipline accounting firms that prepare and issue audit reports for filing in those respective jurisdictions. The Board expects that the various reforms being considered in other jurisdictions will continue to improve the quality of audit reports prepared by firms worldwide. In this regard, the Board has already commenced dialogue with other oversight bodies outside the United States in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection, and discipline.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Board consents, the Commission will:

(A) By order approve such proposed rules; or

(B) Institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the Act or as necessary or appropriate in the public interest or for the protection of investors. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB–2003–03 and should be submitted by July 2, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14715 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

DIA–DIAMONDS®
QQQ —Nasdaq—100® Index Tracking Stock
SPY—SPDRs®

[1] 15 U.S.C. 78s(b)(1).

BHH–B2B Internet HOLDRs™
BBH–Biotech HOLDRs
BDH—Broadband HOLDRs

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47974; File No. SR–Amex–2003–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Transaction Charges for Certain iShares Funds

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until June 30, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund and the iShares Lehman 7–10 year Treasury Bond Fund. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Amex Equity Fee Schedule

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.

Notes:

1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR—Consumer Discretionary

XLP—Select Sector SPDR—Consumer Staples
XLE—Select Sector SPDR—Energy
XLF—Select Sector SPDR—Financial
XLV—Select Sector SPDR—Health Care
XLI—Select Sector SPDR—Industrial
XLB—Select Sector SPDR—Materials
XLK—Select Sector SPDR—Technology
XLU—Select Sector SPDR—Utilities

EKH—Europe 2001 HOLDRs
IAH—Internet Architecture HOLDRs
HHH—Internet HOLDRs
IIH—Internet Infrastructure HOLDRs
MKH—Market 2000+HOLDRs
OIH—Oil Service HOLDRs
PPH—Pharmaceutical HOLDRs
RKH—Regional Bank HOLDRs
RTH—Retail HOLDRs
SMH—Semiconductor HOLDRs
SWH—Software HOLDRs
TTH—Telecom HOLDRs
UTH—Utilities HOLDRs
WMH—Wireless HOLDRs
SHY—iShares Lehman 1–3 Year Treasury Bond Fund
IEF—iShares Lehman 7–10 Year Treasury Bond Fund
TLT—iShares Lehman 20+ Year Treasury Bond Fund
LQD—IShaores GS $ InvesTop Corporate Bond Fund
[TFT—Treasury 1 FITR ETF
TOU—Treasury 2 FITR ETF
TFI—Treasury 5 FITR ETF
TTE—Treasury 10 FITR ETF]

Customer transaction charges for the iShares S&P 100 Index Fund are $.0015 per share ($.15 per 100 shares), capped at $100 per trade.

Until [May 31] *June 30,* 2003, transaction charges also have been suspended in SHY[,] *and* IEF[,] [TFT, TOU, TFI and TTE] for specialist, Registered Trader and broker dealer orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until June 30, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY) and iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension of such charges until November 30, 2002,[3] December 31, 2002,[4] January 31, 2003,[5] February 28, 2003,[6] March 31, 2003,[7] April 30, 2003,[8] and May 31, 2003.[9]

The fee suspension contained in the previous filings also applied to transactions in four Treasury FITR ETFs—the Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (Symbol: TFI); Treasury 2 FITR ETF (Symbol: TOU); and Treasury 1 FITR ETF (Symbol: TFT). The ETF Advisors Trust determined to liquidate the portfolios of these funds on or about May 27, 2003. Trading in these ETFs was halted on the Exchange on May 22, 2003, and they are no longer listed or traded on the Exchange. The amendment to the fee schedule, therefore, deletes reference to these funds.

The Exchange believes that a suspension of fees for the SHY and IEF is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(4)[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)[13] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its

[3] *See* Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).

[4] *See* Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).

[5] *See* Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).

[6] *See* Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR–Amex–2003–04).

[7] *See* Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR–Amex–2003–15).

[8] *See* Securities Exchange Act Release No. 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (SR–Amex 2003–22).

[9] *See* Securities Exchange Act Release No. 47858 (May 14, 2003), 68 FR 27872 (May 21, 2003) (SR–Amex 2003–40).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 17 CFR 240.19b–4(f)(6).

intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-traded funds that are the subject of this filing have been previously filed with the Commission.[14] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–57 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14641 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[14] *See supra* notes 3–9.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47983; File No. SR–Amex–2003–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard & Poor's 500 Stock Index

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Section 107A of the Amex Company Guide ("Company Guide"), notes linked to the performance of the Standard & Poor's 500 Index ("Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under Section 107A of the Company Guide notes, the performance which is linked to the Index (the "Accelerated Return Notes" or "Notes").[6] The Index is determined, calculated and maintained solely by S&P.[7] The Notes will provide for a multiplier of any positive performance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 27, 2003. Amendment No. 1, corrects the formulas for determining payment at maturity of the Notes.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 28, 2003. Amendment No. 2, replaces in its entirety Amendment No. 1.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[6] Credit Suisse First Boston (USA), Inc. ("CSFB") and Standard & Poor's Corporation ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by CSFB and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible and will not participate in the issuance and creation of the Notes.

The Exchange stated that the Index value will be disseminated at least once every fifteen seconds throughout the trading day. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Hong-Anh Tran, Special Counsel, Division, Commission, dated May 27, 2003.

[7] The Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through the Nasdaq Stock Market, Inc. ("Nasdaq"). The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

of the Index during such term subject to a maximum payment amount or ceiling.

The Notes initially conform to the listing guidelines under Section 107A[8] and continued listing guidelines under Sections 1001–1003[9] of the Company Guide. The Notes are senior non-convertible debt securities of CSFB. The Notes will have a term of not less than one, nor more than ten years. CSFB will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be $1000 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the Index. At maturity, if the value of the Index has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three (3) times the amount of that percentage increase, not to exceed a maximum payment (the "Capped Amount") to be determined at the time of issuance of the Notes. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, the Notes are not "principal protected," and are fully exposed to any decline in the level of the Index.[10] The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") depends entirely on the relation of the average of the values of the Index at the close of the market on five (5) business days shortly before maturity of the Notes (the "Final Level") and the closing value of the Index on the date the Notes are priced for initial sale to the public (the "Initial Level").

If the Final Level is greater than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 + \left[3 \times \$1000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right)\right], \text{ subject to Capped Amount.}^{11}$$

If the Final Level is less than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 \times \left(\frac{\text{Final Level}}{\text{Initial Level}}\right)^{12}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the Index.[13]

As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7.503 million shares[14] and from a high of 3.446 million shares to a low of 0.046 million shares respectively.

Because the Notes are issued in $1,000 denominations, the Amex's existing floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[15] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[16] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, CSFB will deliver a prospectus in connection with the initial sales of the Notes.

[8] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 shareholders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[9] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[10] A negative return of the Index will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment.

[11] *See* Amendment No. 2, supra note 4.

[12] *See* Amendment No. 2, supra note 4.

[13] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index); 31591 (December 16, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the Index); 45160 (December 17, 2001) 66 FR 66485 (December 26, 2001) (approving the listing and trading of notes based on the Balanced Strategy Index); and 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of notes based on the Select Fifty Index.

[14] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, to Hong-Anh Tran, Special Counsel, Division, Commission, dated May 27, 2003.

[15] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[16] *See* Amex Rule 462.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [17] in general, and furthers the objectives of section 6(b)(5),[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–2003–45 and should be submitted by July 2, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[19] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[20] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[21]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the Index has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to a cap.

The Commission notes that the Notes are not-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Index has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Amount, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Exchange's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities to: (1) determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that CSFB will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by it employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7,503 million shares and from a high of 3.446 million shares to a low of 0.046 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Exchange equity margin rules and debt trading rules will apply to the Securities. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential from manipulation of the underlying securities is minimal, thereby protecting investors and the public interest. The Commission further notes that the Index is managed by the S&P, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, CSFB. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[22] In any event, financial information regarding CSFB, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.[23]

The Commission also has a systemic concern, however, that a broker-dealer such as CSFB, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of CSFB.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[25] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[26] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–2003–45), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[28]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14646 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the DJIA); 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the Select Fifty Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Balanced Strategy Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index).

[21] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Company Guide Section 107A.

[23] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[24] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq–100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[25] *See* supra note 20.

[26] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47957; File No. SR–CBOE–2003–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Marketing Fee Procedures

May 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change by the CBOE, which relates to marketing fee procedures. At the same time, the Commission is adopting the proposed rule change as a pilot program on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby proposes to adopt, on a pilot basis, a new Interpretation and Policy .12 to CBOE Rule 8.7 specifying the procedures by which a trading crowd may determine whether to participate in the CBOE's marketing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fee program.[3] The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective August 1, 2001, the CBOE suspended its $.40 per contract marketing fee.[4] As described in SR–CBOE–2003–19,[5] the CBOE has determined to reinstate its marketing fee program, and proposes to adopt the procedures set forth in proposed new Interpretation and Policy .12 to CBOE Rule 8.7 to specify how a trading crowd determines whether or not to participate in the marketing fee program. The CBOE proposes to institute these procedures on a pilot basis to expire one year after Commission approval. The Exchange has requested that the Commission approve the pilot program on an accelerated basis so that it can compete effectively with other exchanges that have marketing fee programs.

As described in SR–CBOE–2003–19, the marketing fee will be assessed only on those market-maker transactions (including DPMs) resulting from orders from customers of payment-accepting firms with which the DPM has agreed to pay for that firm's order flow. In the instant filing, the CBOE proposes that after the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes located at a particular trading station, the members of a trading crowd may determine not to continue participating in this marketing fee program pursuant to the procedures proposed to be set forth in Interpretation .12 to CBOE Rule 8.7, as described below. The CBOE asserts that these procedures are substantially the same as the procedures contained in Interpretation and Policy .03 to CBOE Rule 8.95. These procedures were utilized by trading crowds in 1999 to indicate that they no longer wish to trade an option class opened for trading prior to May 1, 1987.[6]

The Exchange states that two procedural aspects of the administration of the trading crowd vote are embodied in proposed Interpretation and Policy .12 to CBOE Rule 8.7: (i) To define which trading crowd[7] members are entitled to participate in the vote; and (ii) to adopt voting procedures to be used for purposes of determinations made under the rule. The CBOE states that proposed Interpretation and Policy .12 provides that eligible trading crowd members are those market-makers in the subject trading crowd who have transacted at least 80% of their market-maker contracts and transactions in each of the three immediately preceding calendar months in option classes traded at that trading crowd's station, and who continue to be present in the trading crowd in the capacity of a market maker at the time of the vote.[8] According to the CBOE, this assures that only those members who are currently engaged as market makers in that trading crowd, and who have concentrated their activity in that trading crowd over the last three months, participate in the vote.

Process To Request a Vote

The CBOE asserts that the DPM or any eligible trading crowd member may request that a vote be held by submitting a written request to that effect to the Secretary of the Exchange. The Exchange will provide at least ten calendar days' posted notice to the trading crowd of the time and date of the vote. The Secretary of the Exchange will verify that the member requesting a vote is an eligible trading crowd member and will keep the identity of such individual confidential.

Trading Crowd Participating in Marketing Fee Program

The CBOE states that after a trading crowd has participated in the marketing fee program for the initial three consecutive calendar month period, the trading crowd may determine to opt-out of the program. Proposed Interpretation and Policy .12 to CBOE Rule 8.7 provides that a trading crowd will be deemed to have indicated that it does not wish to continue participating in the marketing fee program only if: (i) The question is put to a vote of the eligible trading crowd members;[9] (ii) a majority of the eligible trading crowd members participate in the vote; and (iii) a majority of the votes cast are in favor of not participating in the marketing fee program. In the event the vote of the members of the trading crowd is tied, the marketing fee program will remain in effect in that trading crowd for the next three consecutive months.

Trading Crowd Not Participating in Marketing Fee Program

According to the Exchange, twenty days after a trading crowd votes not to participate in the marketing fee program, any eligible trading crowd member may then request that another vote be held to determine whether the trading crowd should participate in the marketing fee program.[10] In this case, if a majority of the votes cast are in favor of participating in the marketing fee program, the trading crowd will be deemed to have indicated that it wishes to participate in the marketing fee program and the marketing fee program will be in effect in that trading crowd for the next three consecutive months. In the event that the vote of the members of the trading crowd is tied, the trading crowd will be deemed to have indicated that it does not wish to participate in the marketing fee program.

The CBOE asserts that these voting procedures are substantially similar to the procedures set forth in CBOE Rule 8.95.03 and the procedures set forth in CBOE Rule 2.40(d) concerning recommendations of a market-maker surcharge under that rule. In other respects, a marketing fee oversight committee of the CBOE shall determine administrative procedures for conducting the vote. If a payment accepting firm materially changes its execution status or a DPM transfers its DPM appointment to a separate organization pursuant to CBOE Rule 8.89, any member of the eligible trading crowd may then request that a vote be held to determine whether or not the trading crowd should participate in the marketing fee program by conducting a vote pursuant to the above procedures.

2. Statutory Basis

The CBOE believes that proposed Interpretation .12 to CBOE Rule 8.7 will provide fair and orderly procedures for the administration of the marketing fee program that the CBOE has determined to reinstate, and thus is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act[11] to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–20 and should be submitted by July 2, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as a Pilot Program

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[12] and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that this proposal, which allows the appropriate trading crowd to determine after a three-month period whether to continue to participate in the Exchange's marketing fee program, promotes member participation in the procedures of the Exchange. Further, the Commission notes that the contemplated voting procedures are substantially similar to the voting procedures contained in CBOE Rules 8.95.03 and 2.40(d), which have previously been reviewed by the Commission.

Finally, the Commission notes that the Exchange is proposing to institute these procedures as a pilot program that will expire one year after Commission approval, or such earlier time as the Commission has approved the procedures on a permanent basis.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14643 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The CBOE recently reinstated its payment for order flow program. *See* Exchange Act Release No. 47948 (May 30, 2003) (SR–CBOE–2003–19).

[4] *See* Exchange Act Release No. 44717 (August 16, 2001), 66 FR 44655 (August 24, 2001), (SR–CBOE–2001–43).

[5] *See* Exchange Act Release No. 47948 (May 30, 2003), (SR–CBOE–2003–19).

[6] *See* Exchange Act Release No. 41641 (July 22, 1999), 64 FR 41477 (July 30, 1999), granting immediate effectiveness to SR–CBOE–99–31.

[7] CBOE Rule 8.8.01 provides that the term "trading crowd" is synonymous with the term trading "station." That rule defines "station" as "a location on the trading floor, at which classes of option contracts are traded, which classes of options compose all or part of a market maker appointment. An appointment must at least include all of the classes of options traded at one station." The same definition of "trading crowd" applies to proposed Interpretation and Policy .12 to CBOE Rule 8.7.

[8] The CBOE represents that it routinely monitors market maker trading activity for purposes of determining compliance with CBOE Rule 8.7.03 appointment and in-person trading requirements. Additionally, the CBOE represents that it has committed to monitor market maker trading activity for purposes of determining compliance with the electronic quoting requirements proposed in CBOE–2002–05 (the Hybrid Trading System). As such, the CBOE believes that it has the capability to determine who constitutes an eligible trading crowd member for purposes of this rule filing.

[9] The DPM is considered an eligible trading crowd member and, as such, may (but is not required to) participate in the vote. The DPM entity is entitled to only one vote regardless of the number of nominees or representatives it employs in the trading crowd.

[10] The CBOE notes that actual votes may only be held once every thirty days. Because there is a ten calendar day notice period prior to a vote, however, an eligible trading crowd member may request a vote twenty days after the preceding vote.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47978; File No. SR–DTC–2003–02]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers

June 4, 2003.

I. Introduction

On February 3, 2003, The Depository Trust Company filed with the Securities and Exchange Commission ("Commission") and on February 11, 2003, amended proposed rule change SR–DTC–2003–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on February 22, 2003.[2] Eighty-nine comment letters were received.[3] For the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47365, (February 13, 2003), 68 FR 8535 (February 21, 2003).

[3] Letters from H. Glenn Bagwell, Jr., Esq. (March 6, 2003); Bruce Barrett (March 4, 2003); Bruce M. Barrett (March 19, 2003); Cristy Barrett (March 13, 2003); Jake Barrett (March 13, 2003); Robert D. Becker, Senior Vice President, National City Bank (March 18, 2003); Lester Bianco, Director, Ingalls & Snyder LLC (April 4, 2003); Pete Bowman, Managing Director, First Clearing Corporation (March 18, 2003); Michael R. Brennan, Vice President and Managing Director of Operations, Ameritrade, Inc. (April 28, 2003); Earl D. Bukolt, Managing Director and Chief Operating Officer, Sterne, Agee & Leach, Inc. (April 21, 2003); Leonard W. Burningham, Esq. (March 21, 2003); Leonard W. Burningham, Esq. (March 22, 2003); Leonard W. Burningham, Esq. (March 24, 2003); Neil C. Carfora, Senior Vice President, State Street Corporation (March 11, 2003); Mark Cashion (March 6, 2003); David L. Cermak, Senior Vice President and Director of Operations, RBC Dain Rauscher (April 21, 2003); Frank M. Ciavarella, Cashiers Division, Prudential Securities Incorporated (April 3, 2003); John Cirrito, Senior Managing Director and Chief Operating Officer, ING Financial Markets LLC (March 17, 2003); Kevin Cundy (March 6, 2003); Richard J. Curran, Director, Credit Suisse First Boston LLC (April 14, 2003); Dennis Dejose (March 8, 2003); Patricia Dowd, Patricia Dowd Inc. (March 5, 2003); Paul A. Ebeling (March 11, 2003); Harry Filowitz, Vice President, Mizuho Trust & Banking Co. (USA) (April 7, 2003); Mary L. Forgy, Chairperson, Bank Depository User Group (March 14, 2003); Mary L. Forgy, Union Planters Trust & Investment Group (March 13, 2003); Susan A. Gessman, Assistant Vice President of Operations, Raymond James and Associates (April 25, 2003); Russell Godwin, President, Medinah Minerals Inc. (March 13, 2003); Jeff Hamel, President, Cashiers' Association of Wall Street, Inc. (March 18, 2003); Edward Hazel, Managing Director, Spear, Leeds & Kellogg (April 9, 2003); James Hendricks (March 8, 2003); Joseph Hoofnagel, Jr. (March 8, 2003); Gordon D. House (March 6, 2003); Tom Ittner, Director, National Financial Services LLC (March 17, 2003); Kent N. Jacobson, President and Chief Executive Officer, James Barclay Alan Inc. (March 7, 2003); Peter Johnston, Managing Director, Goldman, Sachs & Co. (March 24, 2003); Jack

Continued

reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Recently a number of issuers of securities have independently requested that DTC withdraw from the depository all securities issued by them.[4] Generally, these issuers have also advised DTC that they will not allow their securities to be reregistered in the name of DTC or its nominee, Cede & Co. The securities of these issuers generally became eligible for DTC services at the request of DTC's participants so that they could utilize DTC's services, including its book-entry transfer system. The securities are held by DTC in its nominee name for the benefit of its participants. DTC has stated that, in its opinion, these issuers have no legal or beneficial interest in the securities they are requesting to be withdrawn from DTC.

DTC's current rules and procedures provide for participants to submit withdrawal requests if they wish to withdraw their securities from DTC.[5] However, DTC's current rules and procedures do not provide for DTC to comply with a withdrawal request from an issuer without also receiving instructions from its participants.

DTC's proposed rule change provides that upon receipt of a withdrawal request from an issuer, DTC will take the following actions: (1) DTC will issue an Important Notice notifying its participants of the receipt of the withdrawal request from the issuer and reminding participants that they can utilize DTC's withdrawal procedures if they wish to withdraw their securities from DTC; and (2) DTC will process withdrawal requests submitted by participants in the ordinary course of business but will not effectuate withdrawals based upon a request from the issuer.

DTC stated in its filing that the application of its procedures is not affected by any purported approval of the request by the shareholders or board of directors of the issuer.[6]

III. Comment Letters

The Commission received 89 comment letters regarding the proposed rule change.[7] Forty-seven commenters submitted fifty-two comment letters opposing the proposed rule change.[8] Thirty-five commenters submitted thirty-six comment letters supporting the proposed rule change.[9] DTC submitted a letter in response to certain issues raised by comment letters opposing the rule change.

A. Comment Letters Opposing DTC's Proposed Rule Change

A majority of the forty-seven commenters opposed to DTC's filing believe that approval of the proposed rule change would allow DTC to continue to facilitate, either directly or indirectly, short selling in the over-the-counter securities market in violation of DTC's obligation to promote the prompt and accurate clearance and settlement of securities transactions.[10] Seven of these commenters characterized DTC's current settlement process as aiding and abetting illegal short selling or as creating an environment that permits unregistered securities offerings.[11]

At least twenty-six commenters contended that an issuer should have a choice as to whether the company's securities are eligible for deposit at DTC,[12] particularly, as some of these commenters argued, when making the securities eligible for deposit at DTC requires the issuer's consent.[13] Most of the twenty-six commenters stated that issuers should have the right to withdraw their securities from DTC in order to protect their shareholders and their share price from the alleged negative consequences of naked short selling by broker-dealers.[14] These commenters believe that by requiring certification and by prohibiting ownership by nominees, including depositories, issuers will better be able to track, address, or preclude naked short selling.[15]

Ten commenters raised a number of concerns regarding the legal basis for the proposal.[16] Seven of the ten commenters stated that DTC's refusal to honor issuers' withdrawal requests or to allow issuers the option of not having securities deposited at DTC conflicts with state law and that state corporation laws, not DTC rules, govern whether a company can restrict securities so that all positions must be certificated or so that just custody-only trading is allowed.[17] Further, they contend that state law determines the conditions that must be met for the proper transfer of securities. One commenter argued that a transfer agent is the agent of the issuer and that unless the issuer has elected to make its securities eligible at DTC, its transfer agent is not subject to DTC rules and regulations or operational arrangements but rather is subject to Commission and NASD rules and regulations.[18] Another of these commenters stated that if transfer agents, which are agents of issuers and as such generally have a duty to follow issuers' instructions including any restrictions imposed by the issuer's by-laws or articles of incorporation, have obligations to both the issuer and to DTC, transfer agents will be effectively "frozen," and the parties will be forced to litigate their disputes.[19]

Four of the seven commenters questioned the need for the filing and in particular questioned DTC's statement that it was only clarifying its existing rules and procedures rather than promulgating a new rule.[20] Some of these commenters said that if this were true, DTC would have either not filed at all or would have filed a rule interpretation pursuant to Section 19(b)(3) of the Act,[21] which would not have required Commission approval. One of the seven commenters observed that while DTC stated that its rules do not provide for issuers' requests to withdraw their securities, DTC did not cite to any rule prohibiting honoring such requests.[22]

Three commenters believe that the manner in which DTC handled this "policy change" was arbitrary, capricious, and detrimental to companies, particularly in light of the fact that DTC has worked with some companies to withdraw their securities but has refused to assist other companies to withdraw their securities.[23] Several commenters also stated they did not understand how at least one company, such as AT&T, could have the right to determine that its stockholders must hold their stock in book-entry form but other issuers do not have the right to determine that their stockholders must hold their stock in certificated form.[24]

Eight commenters took issue with the fact that DTC does not effectively work to protect the interest of the issuer or the issuer's shareholders but rather works in the interest of its participants, the same entities that profit from naked short selling.[25] One of these commenters suggested that this conflict of interest should disqualify DTC from deciding whether an issuer could withdraw its securities.[26]

Finally, eight commenters suggested that the Commission should deny approval of DTC's proposal until the Commission or DTC can investigate and consider appropriate regulation to address naked short selling or until the public is given an opportunity to more fully comment on the proposal.[27] Some of these commenters argued that DTC's current course of action (*i.e.*, filing a proposed rule change) does not sufficiently provide a vehicle for in-depth analysis or meaningful public comment. Several of these commenters suggested that alternatives to DTC such as issuers or transfer agents operating their own book-entry system or a certificated, custody-only system, are available and could be used in lieu of DTC.

B. Comment Letters Supporting DTC's Proposed Rule Change

A majority of the thirty-five commenters supporting DTC's proposed rule change expressed concern that permitting issuers to withdraw their securities from DTC undermines the securities industry's long-term efforts to streamline securities processing, settlement, custodianship in the U.S. market, to achieve straight-through-processing ("STP"), and to ultimately shorten settlement cycles. Twenty-four of these commenters contended that one of the major stumbling blocks to achieving STP involves the difficulties related to processing certificates, which is primarily a manual process.[26] The

Continued

Kennedy (March 8, 2003); Will Kernen (March 8, 2003); Patrick Kirby, Director, Salomon Smith Barney (March 14, 2003); Donald D. Kittell, Executive Vice President, Securities Industry Association (March 11, 2003); Jeremy D. Kraus, Valesc Medical Specialists (March 4, 2003); Philip Lanz, Managing Director, Bear, Stearns Securities Corp. (April 11, 2003); Arthur Lee, Vice President, Banc of America Securities LLC (March 18, 2003); Joseph M. Liguori, Vice President, JP Morgan Securities, Inc. (April 14, 2003); Erick Lihme (March 8, 2003); Luiz Lima, Director, Americas Regional Service Center, Citibank North America, Inc. (April 22, 2003); Lori Livingston, President and Chief Operating Officer, Transfer Online, Inc. (March 5, 2003); Richard Mangiarelli, President and Chief Operating Officer, Cybertel Communications Corporations (March 5, 2003); John Masse, Executive Director, Morgan Stanley (May 21, 2003); Thomas J. Mazzarisi, Executive Vice President and General Counsel, JAG Media Holdings, Inc. (March 14, 2003); Joseph Meuse (March 5, 2003); Michael Moran, First Vice President, National Investor Services Corp. (March 11, 2003); Lawrence Morillo, Managing Director, Pershing LLC (April 3, 2003); John O'Brien (March 11, 2003); Thomas J. O'Hara, Department Leader, Edward Jones (April 15, 2003); John M. Osmanski (March 4, 2003); David E. Patch (March 4, 2003); Dave Patch (March 6, 2003); D. Patch (March 15, 2003); John L. Petersen, Esq., Petersen & Fefer, on behalf of Blue Industries, Inc. (March 12, 2003); Ernest A. Pittarelli, USB Warburg LLC (April 24, 2003); Robert M. Post (March 8, 2003); James E. Pratt, Esq., on behalf of Composite Holdings, Inc. (March 27, 2003); Joe Raia (March 11, 2003); Richard Reincke, Chief Operating Officer, Aegis Assessments, Inc. (March 3, 2003); Peter Richardson (March 8, 2003); John Rideout (March 12, 2003); Rodney J. Roncaglio (April 29, 2003); Robert S. Rondeau (May 20, 2003); Greg Rotman (March 14, 2003); David Salk (March 6, 2003); Henry F. Schlueter, Esq., Schlueter & Associates, P.C. (March 12, 2003); Robert J. Scott, President and Chief Operating Officer, The Auxer Group, Inc. (March 20, 2003); Joseph J. Selinger, Esq., Tobin, Carberry, O'Malley, Riley & Selinger, P.C. (March 14, 2003); Marshal Shichtman, Esq., Marshal Shichtman & Associates, P.C. (March 11, 2003); Scott Sieck (March 5, 2003); Steven Simonyi-Gindele, President and Chief Executive Officer, ID Superstore (March 17, 2003); Maurisa Sommerfield, Executive Vice President, Charles Schwab & Co., Inc. (April 15, 2003); Michael Sondow (March 4, 2003); Chris Spencer, Chief Executive Officer, Wizzard Software Corporation (March 11, 2003); Roger J. Steffensen (March 8, 2003); SuperVP (March 20, 2003); Kristle Thompson, President, SIA Customer Account Transfer Division (April 4, 2003); Larry E. Thompson, Managing Director and Deputy Chief Counsel, The Depository Trust Company (March 27, 2003); Leon Urbaitel, Chief Operating Officer, StockTransfer.com (March 6, 2003); Brian Urkowitz, Merrill Lynch (April 23, 2003); C. Michael Viviano, BNY Clearing (April 4, 2003); Geoffrey F. Walsh, Chief Operating Officer, Solution Capital (March 7, 2003); and William J. Winter, Senior Vice President, A.G. Edwards & Sons, Inc. (March 14, 2003).

[4] As explained in further detail by many of the commenters opposing DTC's proposal, the issuers making these requests have alleged that their securities have been the target of manipulative short sellers.

[5] *See, e.g.*, Rules 2, 6, 9(A), and 9(B) of DTC's Rules.

[6] DTC's current procedures and this proposed rule filing do not apply to withdrawal requests submitted by issuers in situations where an issue which should not have been made eligible and deposited at DTC was inadvertently made eligible and deposited (*e.g.*, securities restricted pursuant to Rule 144 or Rule 145 under the Securities Act of 1933). In such situations, DTC will continue its practice of working with the issuer and its participants to exit the security from DTC.

[7] *Supra* note 3.

[8] Letters from Aegis Assessments, Inc., H. Glenn Bagwell, Bruce Barrett, Bruce M. Barrett, Cristy Barrett, Jake Barrett, Blue Industries, Inc., Leonard W. Burningham (three letters), Composite Holdings, Inc., Kevin Cundy, Cybertel Communications Corporations, Dennis Dejose, Patricia Dowd Inc., Paul A. Ebeling, James Hendricks, Joseph Hoofnagle, Jr., Gordon D. House, ID Superstore, James Barclay Alan Inc., Jack Kennedy, Will Kernen, Erick Lihme, JAG Media Holdings, Inc., Medinah Minerals Inc., Joseph Meuse, John O'Brien, John M. Osmanski, David E. Patch, Dave Patch, David Patch, Robert M. Post, Joseph Raia, Peter Richardson, Rodney J. Roncaglio, Robert S. Rondeau, Greg Rotman, David Salk, Henry F. Schlueter, Robert J. Scott, Joseph J. Selinger, Marshal Shichtman, Scott Sieck, Solution Capital, Michael Sondow, Roger J. Steffenson, StockTransfer.com, SuperVP, Transfer Online, Inc., Valesc Medical Specialists, and Wizzard Software Corporation.

[9] Letters from A.G. Edwards & Sons, Inc., Ameritrade, Inc., Banc of America Securities LLC, Bank Depository User Group, BNY Clearing, Cashiers' Association of Wall Street, Inc., Mark Cashion, Charles Schwab & Co., Inc., Citibank North America, Inc., Credit Suisse First Boston LLC, Edward Jones, First Clearing Corporation, Goldman, Sachs & Co., Ingalls & Snyder LLC, ING Financial Markets LLC, JP Morgan Securities, Inc., Merrill Lynch, Mizuho Trust & Banking Co. (USA), Morgan Stanley, National City Bank, National Financial Services LLC, National Investor Services Corp., Pershing LLC, Prudential Securities Incorporated, Raymond James and Associates, RBC Dain Rauscher, John Rideout, Salomon Smith Barney, Securities Industry Association, Securities Industry Association Customer Account Transfer Division, Spear, Leeds & Kellogg, State Street Corporation, Stearns Securities Corp., Sterne, Agee & Leach, Inc., Union Planters Trust & Investment Group, and USB Warburg LLC.

[10] In addition to alleging that DTC facilitates abusive short selling, some of these commenters took issue with the Commission's regulation of DTC, broker-dealers, and other entities that the commenters believe are responsible for the problems associated with naked short selling.

[11] Several of these commenters characterized the imbalance between the number of shares trading through short selling and the number of shares outstanding as an unregistered securities offering. Others characterized this imbalance as "counterfeiting securities." Letters from H. Glenn Bagwell, Blue Industries, Inc., James Henricks, ID Superstore, Scott Sieck, Solution Capital, and Michael Sondow.

[12] Letters from Aegis Assessments, Inc., H. Glenn Bagwell, Blue Industries, Inc., Bruce Barrett, Cybertel Communications Corporations, Dennis Dejose, James Hendricks, Gordon D. House, JAG Media Holdings, Inc., James Barclay Alan Inc., Eric Lihme, Medinah Minerals Inc., Joseph Meuse, John O'Brien, John M. Osmanski, David E. Patch, Joseph Raia, Peter Richardson, Henry F. Schlueter, Robert J. Scott, Joseph J. Selinger, Marshall Shichtman, Michael Sondow, Super VP, Transfer Online, Inc., and Valesc Medical Specialists.

[13] Letters from Henry F. Schlueter, Joseph J. Selinger, and Marshal Shichtman.

[14] Letters from Aegis Assessments, Inc., H. Glenn Bagwell, Blue Industries, Inc., Cybertel Communications Corporations, Dennis Dejose, James Hendricks, Gordon D. House, JAG Media Holdings, Inc., James Barclay Alan Inc., Erick Lihme, John O'Brien, John M. Osmanski, David E. Patch, Joseph Raia, Peter Richardson, Henry F. Schlueter, Robert J. Scott, Joseph J. Selinger, Marshall Shichtman, Michael Sondow, Transfer Online, Inc., and Valesc Medical Specialists.

[15] Some commenters refer to allowing the transfer of certificated positions registered only in the name of the final beneficial owner as "custody-only trading."

[16] Letters from H. Glenn Bagwell, Jr., Bruce M. Barrett, JAG Media Holdings, Inc., John M. Osmanski, David E. Patch, Greg Rotman, Henry F. Schlueter, Joseph J. Selinger, Marshal Shichtman, and Solution Capital.

[17] Letters from Bruce M. Barrett, JAG Media Holdings, Inc., David E Patch, Henry F. Schlueter, Joseph J. Selinger, Marshal Shichtman, and Greg Rotman.

[18] Letter from Henry F. Schlueter.

[19] Letter from Marshal Shichtman. The commenter did not explain why he believed the transfer agent has an obligation to DTC.

[20] Letters from H. Glenn Bagwell, Jr., JAG Media Holdings, Inc., John M. Osmanski, and David E. Patch.

[21] Letters from JAG Media Holdings, Inc., John M. Osmanski, and David E. Patch.

[22] Letter from Joseph J. Selinger.

[23] Letters from JAG Media Holdings, Inc., David E. Patch, and Henry F. Schlueter.

[24] Letters from JAG Media Holdings, Inc., David E. Patch, and Solution Capital.

[25] Letters from Cristy Barrett, Jake Barrett, Joseph Meuse, David Patch, Joseph Raia, Joseph J. Selinger, StockTransfer.com, and Wizzard Software Corporation.

[26] Letter from Joseph J. Selinger.

[27] Letters from Aegis Assessments, Inc., Leonard W. Burningham, David E. Patch, David Salk, Joseph J. Selinger, Marshall Shichtman, StockTransfer.com, and Transfer Online, Inc.

[28] Letters from Ameritrade, Inc., Banc of America Securities LLC, Bank Depository User Group, Cashiers' Association of Wall Street, Inc., Mark Cashion, Citibank North America, Inc., Credit Suisse First Boston LLC, Edward Jones, ING Financial Markets LLC, JP Morgan Securities, Inc., Merrill Lynch, Mizuho Trust & Banking Co. (USA), National Financial Services LLC, National Investor Services Corp., Pershing LLC, Prudential Securities Incorporated, RBC Dain Rauscher, Salomon Smith Barney, Stearns Securities Corp., Securities Industry Association, Securities Industry Association Customer Account Transfer Division State Street Corporation, Sterne, Agee & Leach, Inc., USB Warburg LLC, and Union Planters Trust & Investment Group. Several commenters referred to dematerialization or immobilization as a "building

industry, these commenters believe, has achieved success in significantly reducing risk in the trading markets and in enhancing processing efficiencies within the securities infrastructure supporting book-entry clearance and settlement. In their view, much of the success can be attributed to immobilizing stock certificates and mandating book-entry settlement among financial institutions and their financial intermediaries. Accordingly, many of the commenters claimed that a move to certificated securities is a step backwards in the development of the modern securities processing system and will hinder the industry's efforts to reduce risk, cost, and inefficiencies for all parties involved in securities transactions.[29]

Fourteen commenters specifically raised concerns that an increase in the use of certificates will raise costs and cause significant inconveniences for investors.[30] They believe that increased costs associated with transfers, lost certificates, custody, and trading delays will ultimately be borne by investors. One commenter stated that the withdrawal from DTC might require customer securities to be held in the broker's vault in order to meet the customers' needs and will increase costs associated with transactions, including transfer costs, which are currently ranging from $50.00 to $100.00 per certificate.[31] This commenter claims that these costs are hard to justify to shareholders when the shareholder did not request a certificate.

Ten commenters contended that operating outside the DTC environment would undermine the ability of broker-dealers to effectively complete transactions on behalf of their customers.[32] Forced withdrawals of customer positions held in street name would prevent shareholders from fully participating in services provided by their broker, such as margin accounts, automated dividend payments or reinvestments, asset management, proxy services, account transfers, and prompt processing of corporate actions (particularly where old securities need to be exchanged for new securities as required, for example, in mergers and tender offers). Seven of the ten commenters also indicated that such an action would result in an increase in trading delays and trade failures, which would increase risk in the system.[33]

Three commenters believe that the final decision regarding custody and registration should reside with the beneficial owners or their appointed agents and not with the issuers of such securities.[34] These commenters objected to imposing registration restrictions on beneficial owners, because such registration restrictions would be disruptive to market practices, would impose costs on investors, and would cause inefficiencies in the market. Further, nine commenters noted that the direct registration system ("DRS")[35] was specifically designed by the industry to give shareholders an alternative to either holding a certificate or holding in street name registration.[36] Several commenters pointed to AT&T's decision to dematerialize its securities as further support of the industry's initiatives to dematerialize.[37]

Four commenters stated they believe DTC's proposed rule change complies with its obligation under section 17A of the Act to promote the prompt and accurate settlement of securities transactions.[38] In fact, one of these commenters stated that honoring issuers' request to withdraw from DTC was inconsistent with section 17A.[39] One commenter expressed surprise that DTC's filing on this issue was necessary because of the ability of an owner of a negotiable security to register the securities in whatever name it wished has existed for a long time under the Uniform Commercial Code and therefore should not be restricted by the issuer.[40]

With regard to the naked short selling issue, one commenter indicated that the withdrawal of securities from DTC would not have any material or effective impact on the short selling concerns of issuers.[41] Another contended that short selling is vital to ensuring the asset price reflects the underlying fundamentals of the asset and thereby facilitates a more efficient market.[42] This commenter noted that as a result of the additional costs and trade delays associated with certificate-only securities, some brokers are refusing to conduct trades in issues that have been withdrawn from DTC, which has resulted in an illiquid market for those securities.

C. DTC's Response Letter to Opposing Comment Letters

DTC emphasizes in its response letter that the proposed rule change does not constitute a departure from DTC's existing rules and procedures approved by the Commission. Those rules, DTC contends, govern requests to make shares eligible and enable participants to withdraw shares on behalf of themselves or their customers from the DTC system through DTC's withdrawal-by-transfer mechanism.[43]

Further, DTC states that issuers do not have continuing ownership rights in shares they have sold into the marketplace and therefore cannot control the disposition of shares already registered in DTC's nominee name by directing that those shares be surrendered to the transfer agent or by restricting their eligibility for book-entry transfer at DTC.[44] DTC contends that attempts by issuers to control their publicly-traded securities are improper and may constitute conversion. DTC states that by purporting to exercise the rights of the shareholders, issuers are interfering with the legal and beneficial rights of DTC and its participants with respect to securities deposited at DTC and with DTC's obligations under section 17A of the Act.

DTC disagreed with the commenters' contention that it had an obligation to take action to resolve the issues associated with naked short selling because those issues arise in the context of trading and not in the book-entry transfer of securities. DTC pointed out that if beneficial owners believe that their interests are best protected by not having their shares subject to book-entry transfer at DTC, then they can instruct their broker-dealer to execute a withdrawal-by-transfer, which will remove the securities from DTC and transfer them to the shareholder in certificated form.

Finally, DTC contested certain commenters' assertion that issuers cause their shares to become eligible at DTC and therefore have the right to withdraw from DTC eligibility. DTC states that most shares are made eligible at the request of participants and not issuers. But regardless of how the shares are made eligible, DTC believes it continues to own and hold the shares for the convenience and at the request of its participants. DTC believes that if it were to exit shares upon demand of an issuer, there is no mechanism to ensure that the shares entrusted to DTC by its participants would be returned to their rightful owners. This, DTC contended, would be inconsistent with its obligations under section 17A.

IV. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[45] For the reasons described below, the Commission finds that the rule change is consistent with section 17A of the Act.

Pursuant to section 17A of the Act, Congress set forth its finding that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and safeguarding of securities and funds related to clearance and settlement activities, is necessary for the protection of investors and those acting on behalf of investors.[46] Inefficient clearance and settlement procedures, Congress found, impose unnecessary costs on investors and those acting on their behalf.[47] Congress vested with the Commission the authority and responsibility to regulate, coordinate, and direct the operations of all persons involved in processing securities transactions toward the goal of establishing a national system for the prompt and accurate clearance and settlement of transactions in securities ("National Clearance and Settlement System") in an effort to increase efficiency and reduce risk.[48] The Commission's approval of DTC's registration as a clearing agency constituted an important step in its efforts to facilitate the development of a National Clearance and Settlement System and a significant step in achieving the goals established by Congress.[49]

As a registered clearing agency, DTC has adopted rules under section 19(b) of the Act to act as a depository that operates a centralized system for the handling of securities certificates through book-entry movements.[50] Generally, those rules, including adoptions, deletions, or changes to DTC's constitution, articles of incorporation, bylaws, rules, or stated policies, practices, and interpretations, must be filed with the Commission and must be approved by the Commission if the Commission finds the rule change consistent with the Act.[51] Furthermore, DTC can only act in accordance with its rules. DTC has adopted rules that permit deposits of securities into DTC by participants[52] and rules that permit withdrawals from DTC by participants and pledgees.[53] However, DTC has not adopted rules that permit issuers to withdraw securities from DTC. Accordingly, a procedure allowing issuers to withdraw securities from DTC would have to be filed and approved by the Commission. DTC has not filed such a rule change.

In accordance with its rules, DTC accepts deposits of securities from its participants (*i.e.*, broker-dealers and banks), credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities.[54] The securities deposited with DTC are registered in DTC's nominee name, Cede & Co. (making DTC's nominee the registered owner of the securities) and are held in fungible bulk. Each participant or pledgee having an interest in securities of a given issue credited to its account has a pro rata interest in the securities of that issue held by DTC. Among other services it provides, DTC provides facilities for payment by participants to other participants in connection with book-entry deliveries of securities, collects and pays dividends and interest to participants for securities, and provides facilities for the settlement of institutional trades. By centralizing and automating securities settlement, by reducing the movement of publicly traded securities in the U.S. markets, and by facilitating the prompt and accurate settlement of securities transactions, DTC serves a critical function in the National Clearance and Settlement System.

DTC's rules also accommodate withdrawal requests from participants or under certain conditions, from pledgees.[55] Securities credited to a participant's or pledgee's account may be withdrawn in certificated form (if the issue is not dematerialized).[56] DTC's rules, both prior to and after the approval of the clarification which is the subject of this rule filing, obligates and allows DTC to take instructions only from its participants.

Some commenters opposing DTC's proposed rule change contend that issuers should have a choice as to whether their securities are made

---

block" to achieving STP or shorter settlement cycles.

[29] Letters from A.G. Edwards & Sons, Inc., Ameritrade, Inc., Banc of America Securities LLC, Bank Depository User Group, BNY Clearing, Cashiers' Association of Wall Street, Inc., Citibank North America, Inc., Edward Jones, Ingalls & Snyder LLC, ING Financial Markets LLC, JP Morgan Securities, Inc., Merrill Lynch, Mizuho Trust & Banking Co. (USA), Morgan Stanley, National City Bank, National Financial Services LLC, National Investor Services Corp., Pershing LLC, Prudential Securities Incorporated, John Rideout, Salomon Smith Barney, Securities Industry Association, Securities Industry Association Customer Account Transfer Division, Spear, Leeds & Kellogg, State Street Corporation, Stearns Securities Corp., Sterne, Agee & Leach, Inc., Union Planters Trust & Investment Group, and USB Warburg LLC.

[30] Letters from Ameritrade, Inc., Mark Cashion, Citibank North America, Inc., First Clearing Corporation, Merrill Lynch, Mizuho Trust & Banking Co. (USA), National Investor Services Corp., Pershing LLC, RBC Dain Rauscher, John Rideout, Salomon Smith Barney, Securities Industry Association Customer Account Transfer Division, Stearns Securities Corp., and Union Planters Trust & Investment Group.

[31] Letter from Raymond James and Associates. According to this comment letter, Raymond James recently initiated a client certificate transfer fee as a disincentive to requesting a certificate. This fee, the commenter claims, has reduced certificate requests by 67% over the past two years.

[32] Letters from Ameritrade, Inc., BNY Clearing, Mark Cashion, First Clearing Corporation, Mizuho Trust & Banking Co. (USA), National City Bank, National Investor Services Corp., RBC Dain Rauscher, John Rideout, and Union Planters Trust & Investment Group.

[33] Letters from Ameritrade, Inc., BNY Clearing, Mizuho Trust & Banking Co. (USA), National City Bank, First Clearing Corporation, RBC Dain Rauscher, and Union Planters Trust & Investment Group.

[34] Letters from First Clearing Corporation, Mizuho Trust & Banking Co. (USA), and John Rideout.

[35] DRS allows a shareholder to hold a book-entry position in his or her own name on the books of the issuer. As a result, shareholders can enjoy the benefits of both holding their securities in a book-entry system and being a "named" shareholder on the issuer's record.

[36] Letters from Banc of America Securities LLC, Edward Jones, Merrill Lynch, Pershing LLC, Prudential Securities Incorporated, RBC Dain Rauscher, Securities Industry Association Customer Account Transfer Division, Stearns Securities Corp., and Sterne, Agee & Leach, Inc.

[37] Letters from Edward Jones, Pershing LLC, RBC Dain Rauscher, and Stearns Securities Corp.

[38] Letters from A.G. Edwards & Sons, Inc., Banc of America Securities LLC, Prudential Securities Incorporated, and Securities Industry Account Customer Account Transfer Division.

[39] Letter from Prudential Securities Incorporated.

[40] Letter from A.G. Edwards & Sons, Inc.

[41] Letter from Citibank North America, Inc.

[42] Letter from John Rideout.

[43] *See e.g.* Rules 2, 6, and 9 of DTC's Rules.

[44] DTC also noted that none of the securities where the issuer is attempting to restrict the transferability of its shares bear any legend, conspicuous or otherwise, noting the restrictions.

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] 15 U.S.C. 78q–1(a)(1)(A).

[47] 15 U.S.C. 78q–1(a)(1)(B).

[48] 15 U.S.C. 78q–1(a)(1)(A)(i). Congress expressly envisioned the Commission's authority to extend to every facet of the securities handling process involving securities transaction within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[49] Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983).

[50] As a registered clearing agency, DTC is a self-regulatory organization and as such, must file with the Commission any proposed rule or rule change pursuant to section 19 of the Act. 15 U.S.C. 78s(b).

[51] Section 3(a)(27) of the Act defines the term "rules of a clearing agency." The Commission's role in the approval of such rules is described in section 17A and section 19(b) of the Act. 15 U.S.C. 78q–1 and 15 U.S.C. 78s.

[52] DTC has informed the Commission that issuers of book-entry-only securities (*i.e.*, some corporate debt and most municipal securities) enter into a contract with DTC whereby the issuer deposits their securities into DTC and DTC then credits the securities to the accounts of participants. *See* also note 55 infra and accompanying text.

[53] *See e.g.* Rules 2, 6, and 9 of DTC's Rules.

[54] *See e.g.* Rule 6 of DTC's Rules. All deposits, whether made by a participant or, in the case of book-entry-only securities, by an issuer must be credited to a participant's account at DTC.

[55] *See e.g.* Rules 2, 6, and 9 of DTC's Rules.

[56] *See e.g.* Rule 6 of DTC's Rules, By-Laws and Organization of Certificate.

eligible for deposit at DTC. [57] In this way, these commenters argue, issuers would be better able to protect their shareholders from the negative effects naked short selling has on their securities' share price.[58] Securities deposited at DTC are registered in the name of Cede & Co. and are held beneficially for DTC participants, who in turn may hold the securities beneficially for their customers.[59] Since DTC participants and their customers, not issuers, have ownership interest in the securities, DTC participants and their customers have the authority to determine whether to deposit securities with DTC or not. Participants deposit certificates with DTC in order to avail themselves of the efficiencies and safeguards provided by DTC. It would not be consistent with DTC rules to allow issuers to withdraw securities which they have not deposited at DTC or have no ownership interest.

Furthermore, the issues surrounding naked short selling are not germane to the manner in which DTC operates as a depository registered as a clearing agency. Decisions to engage in such transactions are made by parties other than DTC. DTC does not allow its participants to establish short positions resulting from their failure to deliver securities at settlement. While the Commission appreciates commenters' concerns about manipulative activity, those concerns must be addressed by other means.[60]

Several commenters claim that DTC is acting arbitrarily by permitting some issuers to withdraw their securities while prohibiting others from withdrawing their securities because DTC did accommodate a few earlier requests from issuers in the belief that they were unusual circumstances. However, DTC only withdrew these securities based upon instructions made by participants pursuant to DTC's rules and procedures. DTC bore the substantial expense resulting from coordinating the communications and actions among DTC participants, the transfer agent, and the issuer in order to accommodate each issuer's request. When it became clear to DTC that many more issuers intended to attempt to withdraw their securities from DTC, it decided that it would no longer bear the substantial additional cost and expense of time in accommodating such requests. In none of the situations where DTC assisted an issuer in having its securities withdrawn did DTC act on an issuer's instructions. DTC facilitated the issuer by having DTC participants issue instructions to withdraw the securities.

With regard to commenters' contention that state law permits companies to adopt certain restrictions on publicly traded securities, this filing does not address the validity of such restrictions since the securities that are the subject of this filing are securities which are registered in the name of (*i.e.*, legally owned) Cede & Co. prior to the imposition of any restrictions. The securities of issuers, such as the ones that recently attempted to withdraw their securities from DTC, were issued without restrictions or notice of an adverse claim, and no restrictions were imposed on or claims made against the securities when DTC participants deposited the securities at DTC or when the transfer agent registered them in the name of Cede & Co.

While not a direct subject of this rule filing, we note that actions by some issuers of publicly traded securities to require transfer only by certificate [61] and to restrict ownership of the securities by a depository or financial intermediary could result many of the inefficiencies and risks sought to be avoided when Congress promulgated section 17A of the Act.[62] We also note in this connection that section 17A(e) directs the Commission to use its authority "to end the physical movement of the securities certificate in connection with settlement among brokers and dealers of securities transactions by means of the mails or other means or instrumentalities of interstate commerce." [63] Consistent with this directive, the Commission has encouraged the use of alternatives to holding securities in certificated form in an effort to improve efficiencies and decrease risks associated with processing securities certificates. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities [64] and require that, before any security can be listed for trading, it must have been made depository eligible if possible.[65] More recently the Commission has approved the implementation and expansion of DRS.[66]

[57] Some commenters argued that because some issuers sign an Operating Agreement or Letter of Representation with DTC in order to make their shares eligible at DTC, they should retain the right to withdraw their securities. DTC has informed the Commission that as a general rule only those issuers who issue in "book-entry-only" form (*i.e.*, certain debt and municipal securities where no certificate is available) sign an Operating Agreement with DTC. Furthermore, DTC's Underwriting Service Guide, which describes DTC's eligibility requirements and deposit process, makes clear that generally only issuers of book-entry-only securities must execute a Letter of Representation to make the securities eligible for deposit. Since most equity securities make certificates available, participants make most deposits of securities into DTC.

[58] A short sale is generally a sale of a security that the seller does not own or as effectuated by the delivery of borrowed securities within the required settlement timeframe. Although the Commission notes that a "naked short sale" is not a defined term, it generally refers to where a seller sells a security without owning or borrowing the security and does not deliver when delivery is due.

[59] DTC participants holding securities on behalf of a customer are generally obligated to act pursuant to their customers' instructions.

[60] *See* Rhino Advisors, Inc. and Thomas Badian: Lit. Rel. No. 18003 (February 27, 2003); *See also SEC* v. *Rhino Advisors, Inc. and Thomas Badian*, Civ. Action No. 03 civ 1310 (RO) (Southern District of New York).

[61] One commenter questioned how AT&T could choose to dematerialize but other issuers cannot choose to issue in certificated form only. AT&T is incorporated in the State of New York and trading on the New York Stock Exchange ("NYSE"). New York law permits companies to issue in book-entry-only and NYSE rules permit listed companies to not offer certificates provided the issuer is participating in DRS pursuant to NYSE rules. However, prior to AT&T dematerializing, the vast majority of AT&T's stock was immobilized at DTC in order to facilitate book-entry transfers at DTC. Only individuals holding certificates were practically effected by AT&T's decision to dematerialize.

[62] We note that in the late 1960s and early 1970s, the securities industry experienced a "Paperwork Crisis" that nearly brought the industry to a standstill and directly or indirectly caused the failure of large number of broker-dealers. This crisis primarily resulted from increasing trade volume coupled with inefficient, duplicative, and extensively manual clearance and settlement systems particularly with securities certificates, poor records, and insufficient controls over funds and securities. Securities and Exchange Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13 (1971). Congress held extensive hearings to investigate the problems and ultimately enacted the Securities Acts Amendments of 1975. Securities Acts Amendments of 1975: Hearings on S. 3412, S. 3297, S. 2551 Before the Subcomm. On Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 92nd Cong., 2nd Sess. (1972).

[63] 15 U.S.C. 78q–1(e). *See also supra* note 46 and accompanying text.

[64] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[65] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995) (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[66] DRS provides an investor with the ability to register her securities in her own name on the issuer's records and to efficiently transfer by book-entry movements her securities positions to her broker. Using DRS, an investor can register a position directly with the issuer and can electronically move the position to a broker of choice for disposition within the current settlement timeframes as well as within any future shortened settlement cycle.

[67] 17 CFR 200.30–3(a)(12).

The use of certificates can result in significant delays and expenses in processing securities transactions and can raise safety concerns associated with lost, stolen, and forged certificates. The concerns associated with lost certificates was dramatically demonstrated during the September 11, 2001, tragedy when tens of thousand of certificates maintained in broker-dealers' vaults either were destroyed or were unavailable for transfer.

Accordingly, for the reasons stated above the Commission finds that the rule change, which clarifies that DTC's rules only permit it to honor its participants' requests to withdraw securities, is consistent with section 17A of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder. *It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2003–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[67]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14642 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47982; File No. SR–NASD–2003–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Codify the Policy of the Nasdaq Market Operations Review Committee With Respect to Review Panels

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to codify the policy of the Nasdaq Market Operations Review Committee with respect to the use of review panels. Below is the text of the proposed rule change. New text is in *italics*.

* * * * *

4612. Primary Nasdaq Market Maker Standards

(a)–(h) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(e) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

4620. Voluntary Termination of Registration

(a)–(d) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

4710. Participant Obligations in NNMS

(a)–(e) No change.

Cross Reference—IM–11890–2, Review by Panels of the MORC

* * * * *

11890. Clearly Erroneous Transactions

(a)–(d) No change.

IM–11890–1. Refusal to Abide by Rulings of a Nasdaq Officer or the MORC

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq officer or the MORC under Rule 11890.

IM–11890–2. Review by Panels of the MORC

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq decisions by the MORC, a decision of the MORC may be rendered by a panel of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to codify the existing practice of the Market Operations Review Committee (the "MORC") with respect to convening panels of its members to undertake reviews of Nasdaq decisions that are subject to review by the MORC. The MORC is a standing committee selected by the Nasdaq Board of Directors. Under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the "Delegation Plan"), however, no more than 50 percent of the MORC's members may be directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues. At this time, five members of the MORC are market maker representatives under the standard established by the Delegation Plan, while the remaining nine members of the MORC are not. Currently, the MORC's primary function is to review Nasdaq's decisions to nullify or modify clearly erroneous

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 30, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq added cross-references to proposed new IM–11890–2 to the text of related rules. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 2, 2003, when Amendment No. 1 was filed.

transactions under Rule 11890. In addition, the MORC reviews Nasdaq decisions (i) to deny a market maker's request for an excused withdrawal of quotations, or to impose conditions upon its reentry, under Rule 4619; and (ii) to deny a market maker's request for reinstatement following a voluntary termination of its registration as a market maker under Rule 4620 or a withdrawal of quotations under Rule 4710(b)(5).[4]

According to Nasdaq, the MORC has generally rendered decisions by convening panels of its members, usually consisting of three members.[5] All panels must satisfy the same compositional requirements as the MORC itself (*i.e.*, no more than 50 percent of the members of a panel may be directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues). As the Commission has noted, an expeditious resolution of disputes relating to transactions that are alleged to be clearly erroneous benefits market participants and helps to ensure the accuracy of transactional information disseminated to investors.[6] Consistent with this view, Nasdaq and the MORC concluded that the use of panels was necessary for the MORC to provide an expeditious resolution of matters presented to it. It is not practical to require all members of the MORC to adjudicate each matter presented for its review. MORC members are generally market or legal professionals who must take time out of their schedules to participate in MORC adjudications, which may occur whenever a member requests a review of a staff determination by the MORC. In 2002, there were 51 appeal hearings conducted by the MORC; hearings are scheduled as soon as possible, and almost always on the same day as the decision being appealed. It would simply not be possible to convene a meeting of all MORC members each time that an appeal to the MORC is made, nor would it be fair to MORC members to require them to participate in each adjudication. Accordingly, if the practice of using panels were not used, it is likely that appeals could only be heard at regularly scheduled intervals, rather than at the time of the decision being appealed. Under such an arrangement, timely resolution of disputed transactions would be impossible, and Nasdaq believes that it would have more difficulty in finding qualified persons to serve as members of the MORC.

Nasdaq has concluded, however, that in the interest of clarity, the use of MORC panels should be explicitly reflected in NASD rules. Accordingly, Nasdaq is submitting this filing to codify the existing policy with respect to the administration of Rule 11890 and all other rules that allow review of Nasdaq decisions by the MORC. For purposes of such rules, a decision of the MORC may be rendered by a panel of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] in general, and with section 15A(b)(6) of the Act,[8] in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest. The proposed rule change will promote the fair and efficient resolution of disputes involving clearly erroneous transactions and other matters that are subject to review by the MORC.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[9] and subparagraph (f)(1) of Rule 19b–4 thereunder because it is designated as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. NASD–2003–80 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14645 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Under Rule 4612, the operation of which is currently suspended (*see* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002)), the MORC would also have authority to review denial of a request for reconsideration of a decision to withhold designation as a primary market maker.

[5] The practice of using panels to render decisions was noted in Securities Exchange Act Release No. 32349 (May 21, 1993), 58 FR 30836, n.4 (May 27, 1993) (SR–NASD–93–31).

[6] Securities Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333, 4336 (January 28, 1998) (SR–NASD–96–51). Likewise, Nasdaq believes that speedy resolution of market maker's disputes under Rules 4619, 4620, and 4710 concerning their rights and obligations with respect to posting quotes is important to ensure equitable treatment of market makers.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(6).

[9] 15 U.S.C. 78*s*(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] *See supra* note 3. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 2, 2003, when Amendment No. 1 was filed.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47984; File No. SR–NYSE–2003–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc.; Adding Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4) to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

June 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" for imposition of fines for minor violations of rules and/or policies ("List") by adding to the List failure to comply with the provisions of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4). The Exchange believes it is appropriate to make the failure to comply with the provisions of the cited rules subject to the possible imposition of a fine under NYSE Rule 476A procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The purpose of the NYSE Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. NYSE believes that NYSE Rule 476A preserves due process rights, and further states that it identifies those rule violations which may be the subject of summary fines, and includes a schedule of fines. In SR–NYSE–84–27,[3] which initially set forth the provisions and procedures of NYSE Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of NYSE Rule 476A as experience with it was gained.

The Exchange is seeking approval to add failure to comply with the provisions of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4) to the List subject to imposition of fines under NYSE Rule 476A procedures.

NYSE Rule 60 pertains to the dissemination of quotations for reported securities.

NYSE Rule 124 relates to prohibited odd-lots, the unbundling of round-lot orders, failure to aggregate odd-lot orders into round-lot orders, the entry of both buy and sell odd-lot limit orders for the purpose of capturing the spread in the stock, and order entry practices intended to circumvent the round-lot market.

NYSE Rule 130 pertains to the submission of trade data required for overnight comparison of transactions effected on the Exchange.

NYSE Rule 407A requires members to report and update information to the Exchange regarding certain accounts in which they have an interest.

NYSE Rule 411(b) requires persons entering multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lots, where possible, for execution in the round-lot auction market.

NYSE Rule 440I requires the maintenance of certain compensation records by members and member organizations.

NYSE Rule 445(4) requires the designation and identification to the Exchange of a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of Anti-Money Laundering Programs.

The NYSE states that the purpose of the proposed change to the list is to facilitate the Exchange's ability to induce compliance with all aspects of the cited rules. The Exchange believes failure to comply with the requirements of the cited rules should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (*e.g.*, the issuance of a fine rather than an admonition letter) to a minor violation of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4).

The Exchange wishes to emphasize the importance it places upon compliance with the NYSE Rules. While the Exchange, upon investigation, may determine that a violation of any of these rules is a minor violation of the type which is properly addressed by the procedures adopted under NYSE Rule 476A, in those instances where investigation reveals a more serious violation of the NYSE Rules, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under NYSE Rule 476.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(6)[4] of the Act, which provides that members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being

[3] *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (SR–NYSE–84–27).

[4] 15 U.S.C. 78*f*(b)(6).

associated with a member, or any other fitting sanction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2003–14 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14712 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47985; File No. SR–NYSE–2003–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend the Fine Schedule for Individuals and Member Organizations Who Commit Minor Rule Violations Under Rule 476A

June 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend the fine schedule for individuals and member organizations who commit minor rule violations under NYSE Rule 476A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of NYSE Rule 476A is to provide an efficient and effective way by which the Exchange may encourage full compliance with NYSE rules by its members, member organizations, allied members, approved persons and registered and non-registered employees of member organizations. The rule permits the Exchange to impose a fine (not to exceed $5,000), in lieu of commencing a disciplinary proceeding before a Hearing Panel, for a rule violation which the NYSE determines to be minor in nature, but which the NYSE nevertheless believes requires the imposition of a meaningful sanction. Fines imposed pursuant to NYSE Rule 476A are not required to be reflected on a member or member organization's Form BD.

The person against whom the fine is sought to be imposed under NYSE Rule 476A is served with a written statement indicating the specific rule that has been violated, the act or omission constituting the violation, and the fine. The written statement also indicates the date by which the fine must be paid, or the person must submit a written response contesting the Exchange's determination to impose the fine. If the person against whom a fine is sought to be imposed under NYSE Rule 476A chooses to contest the fine and submits a written answer within the time allowed, the matter becomes a "disciplinary proceeding" subject to NYSE Rule 476, including review by an Exchange Hearing Panel, with the usual right of appeal to the Board of Directors. The NYSE believes that the freedom of the person charged to contest the fine and seek a full hearing on the charges in accordance with established procedures provides that person with his full "due process" rights and prevents misuse of NYSE Rule 476A.

Currently, the fine schedule is as follows:

Fine amount	Individual	Member organization
First Time Fined	$500	$1,000
Second Time Fined**	1,000	2,500
Subsequent Fines**	2,500	5,000

** Within a "rolling" 12-month period.

The purpose of the fine procedure is to deter violations of Exchange rules through the imposition of a meaningful sanction. The current fine schedule was originally adopted in 1985,[3] and has not been revised since it was first introduced. The Exchange believes that it is appropriate at this time to increase the amounts of certain of the fines that may be imposed pursuant to NYSE Rule 476A to ensure that the fine program for minor rule violations continues to be a meaningful deterrent to violative behavior.

The NYSE is proposing to amend NYSE Rule 476A to establish only two levels of fines for member organizations by raising the first time fine for member organizations to $2,500, and all subsequent fines to $5,000. For individuals, the first fine would be $1,000, the second fine would be $2,500, and subsequent fines would be $5,000.

The proposed schedule is as follows:

Fine amount	Individual
First Time Fined	$1000
Second Time Fined**	2500
Subsequent Fines**	5000

Fine amount	Member organization
First Time Fined	2,500
Subsequent Fines**	5,000

** Within a "rolling" 12-month period

The NYSE notes that the procedures authorized by NYSE Rule 476A are not mandatory. Under the rule, the Exchange may, in any case where it does not consider the rule violation to be minor, proceed to bring charges and commence a formal disciplinary proceeding under NYSE Rule 476.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE further believes that the proposed rule will also advance the objectives of Section 6(b)(6)[5] of the Act in that it will permit Exchange members and persons associated with members to be "appropriately disciplined" for violation of Exchange rules. In addition, the Exchange believes that it also supports Section 6(b)(7)[6] of the Act in that it provides a fair procedure for the disciplining of members and persons associated with members. Finally, the Exchange believes that it also advances the objectives of Section 6(b)(1)[7] of the Act in that it allows the Exchange to enforce compliance with its rules by its members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2003–13 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14713 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 22415 (Sept. 17, 1985), 50 FR 38600 (Sept. 23, 1985) (SR–NYSE–84–27).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(b)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47992; File No. SR–NYSE–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Implementation Date To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

June 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on May 27, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date for the six-month pilot program that would permit a Floor broker to use an Exchange authorized and provided portable telephone on the Exchange Floor to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted with the approval of SR–NYSE–2002–11.[3]

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) ("Original Order").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the Original Order, the Commission approved the Exchange's amendment to NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and provided portable telephone on the Floor to be implemented as a six-month pilot beginning on or about May 1, 2003. The Exchange also committed in the Original Order to complete a study of communications on the Exchange Floor within three months of implementation of the portable telephone pilot program, which would have been on or about August 1, 2003.[4] In addition, the Exchange committed to notify the Commission's Office of Compliance, Inspections & Examinations ("OCIE"), the Division of Market Regulation ("Division"), and the Exchange's membership within one week prior to the actual implementation date.

The Exchanges states that the implementation date in the Original Order (on or about May 1, 2003) was delayed pending the finalization of several contract issues with the provider of portable phone service. The Exchange now proposes to implement the six-month pilot program no later than June 23, 2003, with a commitment to complete the above-mentioned study no later than September 23, 2003. In addition, the Exchange reiterates its commitment to notify the Commission's OCIE, the Division, and the Exchange's membership one week prior to the actual implementation date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b–4(f)(6)(iii).[9] The Exchange believes that waiver of this period will allow the Exchange to immediately implement the use of Exchange authorized and provided portable telephones on the Floor.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.[10] The Commission believes that the waiver of the 30-day operative delay will allow the NYSE to immediately notify the public of the general timeframe to implement its proposal to allow Exchange provided and authorized portable telephones on the Floor, consistent with the protection of investors and the public interest.[11]

The Commission also reiterates its expectation from the Original Order that the NYSE complete, within three months of implementation of the portable telephones, a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange,[12] and to provide notice to NYSE members, the Division, and OCIE one week prior to the pilot program's implementation. In addition to the study, the Commission, as noted in the Original Order, requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. If the NYSE decides to request permanent approval or an extension of the pilot, we would expect, in addition to the report due in three months, that the NYSE submit information documenting the usage of the phones, any problems that have occurred, and any advantages or disadvantages that have resulted.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2003–19 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14714 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See infra* note 12.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] As previously stated in the Original Order, the Commission notes that should the NYSE be unable to implement the filing by June 23, 2003, it would have to submit a rule proposal under Section 19(b) of the Act to change the date.

[12] *See In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

[13] This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47977; File No. SR–Phlx–2003–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Delete the Prohibition Against the Delivery of Electronically Generated Orders Via AUTOM

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on May 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Phlx Rule 1080(i), which prohibits the delivery of electronically generated orders delivered via AUTOM.[3] The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the Exchange to compete for order flow by allowing electronically generated orders to be delivered via AUTOM.

In September 2000, the Exchange adopted Phlx Rule 1080(i), which restricts the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM.[4] At the time, the Exchange represented that allowing electronically generated and communicated customer orders to be routed directly to AUTOM and AUTO–X would give customers with such electronic systems a significant advantage over Exchange specialists and Registered Options Traders ("ROTs"), who are responsible for the maintenance of fair and orderly markets on the Exchange, and who provide liquidity on the Exchange.

Since the time the Exchange adopted Phlx Rule 1080(i), the Exchange has modified its AUTOM and AUTO–X system in several significant respects. For example, in September and October 2002, the Exchange incorporated a new software program into its Auto-Quote[5] system that enables the Exchange to disseminate a firm quotation size of at least the sum of limit orders at the Exchange's disseminated price.[6] The Exchange has also expanded the eligible order types[7] and delivery sizes[8] eligible for AUTOM delivery and automatic execution via AUTO–X.

Based on the significant changes to the Exchange's AUTOM System since the time the Exchange adopted Phlx Rule 1080(i), the Exchange believes that it has developed systems that have narrowed the gap with respect to any actual or perceived advantage an off-floor customer or broker-dealer could have over a specialist or ROT in sending electronically generated orders to the Exchange via AUTOM. The Exchange represents that it will continue to surveil for, and enforce, compliance with other rules that help specialists and ROTs in managing their risk while making markets on the Exchange.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic option order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] *See* Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 59488 (October 5, 2000) (SR–Phlx–00–79).

[5] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. Specialists may submit their own quotations by establishing a specialized connection by-passing the Exchange's Auto-Quote system, which is known as a Specialized Quote Feed ("SQF").

[6] *See* Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002), (SR–Phlx–2002–15).

[7] In October 2002, the Commission permanently approved an Exchange pilot that allowed orders for the account(s) of broker-dealers to be delivered via AUTOM, and to be eligible for automatic execution via AUTO–X. *See* Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR–Phlx–2002–50). The Exchange then adopted rules providing for automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39). Most recently, the Exchange adopted rules providing an equal firm quotation size and equal AUTO–X guaranteed size for both customer and broker-dealer orders. *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[8] In March 2003, the Exchange adopted rules to increase the eligible AUTOM order delivery size for off-floor broker dealer orders from 200 contracts to 1,000 contracts for all options. At the same time, the Exchange determined to allow the delivery Immediate or Cancel orders via AUTOM. *See* Securities Exchange Act Release No. 47543 (March 20, 2003), 68 FR 14737 (March 26, 2003) (SR–Phlx–2003–11).

[9] For example, the Exchange will continue to surveil for, and enforce, compliance with Phlx Rule 1080(c)(ii), which sets forth the obligations of an Exchange Order Entry Firm, defined as a member organization of the Exchange that is able to route orders to AUTOM, and a User, defined as any person or firm that obtains access to AUTO–X through an Order Entry Firm. Specifically, the rule requires Order Entry Firms to comply with all applicable Exchange options trading rules and procedures; provide written notice to all Users regarding the proper use of AUTO–X; and neither enter nor permit the entry of multiple orders in call options and/or put options in the same option issue within any 15-second period for an account or accounts of the same beneficial owner.

Accordingly, the Exchange is proposing to delete the prohibition against the delivery of electronically generated orders via AUTOM in order to attract additional order flow. The Exchange expects to monitor the effects of the deletion of this prohibition in order to readily ascertain its effects on the risk management activities of on-floor members and member organizations. In the event that the Exchange determines that such effects are detrimental to the risk management activities of on-floor members and member organizations, the Exchange expects to take appropriate action, including the filing of appropriate rules and/or systems changes, in order to address such a situation.

The Exchange believes that allowing the delivery of electronically generated orders in an increasingly competitive marketplace, given the Exchange's technological advances since the time Phlx Rule 1080(i) was adopted, and continued surveillance and enforcement of compliance with rules concerning AUTOM Order Entry Firms and Users, should enable the Exchange to compete for an additional type of order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [10] in general, and furthers the objectives of section 6(b)(5) of the Act [11] in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by allowing the delivery via AUTOM of electronically generated orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–37 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14644 Filed 6–10–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces that 41 individuals were denied exemptions from the Federal vision standards applicable to interstate truck drivers and the reasons for the denials. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions does not provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial drivers.

FOR FURTHER INFORMATION CONTACT: Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (MC–PSD), 202–366–2987, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption. (49 CFR 391.41(b)(10))

Accordingly, FMCSA evaluated 41 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety that exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

The following 25 applicants lacked sufficient recent driving experience over three years: Becotte, Richard; Bodiford, Jr., Cecil; Cavendar, David; Clegg, Jr., Henry; Davidson, Donald; Day, Larry; Floyd, Jack; Harper, Norman; Herrboldt, Nathan; Johnson, Robert; Jones, Joe; Longcrier, Michael; McCandless, Jr., William; Petersen, Christian; Petty, Clarence; Phipps, Gary; Reed, Donna; Rosborough, Franklin; Russell, Michael; Shanks, Jr., Willis; Shaw III, Sam; Sheibley, Thomas; Wehner, Peter; Winters, Johnny; Young, Ronald.

Three applicants, Mr. Randall Benson, Ms. Darrlyn Price, and Mr. Steven Risley, do not have experience operating a commercial motor vehicle (CMV) and therefore presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

The following 6 applicants do not have 3 years of experience driving a CMV on public highways with the vision deficiency: Dean, Joseph; DiPasqua III, Louis; Kirkland, Willie; Osborne, Hudson; Pittman, Larry; Storm, Stacey.

Four applicants do not have 3 years recent experience driving a CMV with the vision deficiency: Gerdes, Donald; Webb, William; Moates, Tommy; Thompson, Ronald.

One applicant, Mr. Robert Aurandt, had more than two CMV moving violations during a 3-year period or while the application was pending. Each applicant is only allowed two moving citations.

One applicant, Mr. William Whitson, license was suspended during the 3-year period because of a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, Mr. Kenneth Walker, had two serious CMV violations within the 3-year period. Each applicant is allowed a total of two moving citations, of which only one can be serious.

Issued on: June 6, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–14696 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–15122; Notice 1]

Pipeline Safety: Petition for Waiver; Duke Energy Gas Transmission Company

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; petition for waiver for extension of time.

SUMMARY: Duke Energy Gas Transmission Company (DEGT) petitioned the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) for a 12-month extension of time to comply with the provisions of 49 CFR 192.611(d), which require pipeline operators to confirm or revise the maximum allowable operating pressure within 18 months after a class location change.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by July 11, 2003. Late-filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov*, click on "Comment/Submissions." You can also read comments and other material in the docket at *http://dms.dot.gov*. General information about our pipeline safety program is available at *http://ops.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, RSPA, OPS, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at *james.reynolds@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: DEGT petitioned RSPA/OPS for a waiver from compliance with 49 CFR 192.611(d) for selected gas transmission pipeline segments in Pennsylvania. DEGT is asking for an additional 12 months beyond the 18 months allowed by § 192.611(d) to present, discuss, and have RSPA/OPS review alternative actions to maintain an equal or higher level of safety.

Section 192.611(d) requires an operator to complete a class location change study whenever it believes an increase in population density may have caused a change in class location as defined in § 192.5. The operator must complete a study and confirm or revise its maximum authorized operating pressure within 18 months of the class location change. The operator is required to either reduce pressure or replace the pipe with thicker-walled pipe to lower pipe wall stress to acceptable percentages of specified minimum yield strength.

DEGT's waiver request for an extension of time is specific to four pipeline segments on Line 12 and Line 19, which are part of its Texas Eastern Pipeline System in the state of Pennsylvania. These segments are located in the towns of Entriken, Perulack, Bernville, and Bechtelsville. The pipelines are 24-inch and 30-inch in diameter and the class locations have changed from Class 1 to Class 2.

When these pipelines were built between 1954 through 1963, they were hydrotested to at least 100% of the pipe's specified minimum yield strength (SMYS) with the exception of 10 feet of pipe on the Bechtelsville discharge line, which was tested to 90% SMYS.

DEGT has internally inspected each of these pipelines. DEGT first inspected the pipelines in 1986 using Tuboscope's conventional magnetic flux leakage (MFL) tool. Between 1996 and 2002, DEGT performed a second inspection of these lines using Tuboscope's conventional MFL tool and Tuboscope's high resolution MFL tool.

During the same years, DEGT also inspected and evaluated the condition of the coal tar enamel pipeline coatings and evaluated the cathodic protection current demands on each of the pipelines. DEGT reported that the coatings were in good condition and that the cathodic protection systems were not experiencing excessive current demands.

Because DEGT has internally inspected its pipelines and performed other tests in excess of the minimum requirements of 49 CFR part 192, RSPA/OPS will consider granting DEGT a 12-month extension from the requirements of § 192.611 (d).

DEGT further seeks to present an alternative technical proposal for permanent waiver of compliance with § 192.611 by September 2003. RSPA/OPS will determine if the alternative will yield an equal or higher level of safety than that required by the regulation. If RSPA/OPS decides that the alternative will yield an equal or higher level of safety, we will issue a **Federal Register** notice by December 2003 announcing the proposed technical waiver of § 192.611. The notice will provide an opportunity for public comment. If RSPA/OPS does not believe DEGT's proposal will yield an

equal or higher level of safety, DEGT will be required to fully comply with § 192.611 by September 2004.

Authority: 49 App. U.S.C. 60118(c) and 2015; and 49 CFR 1.53.

Issued in Washington, DC on June 5, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–14695 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34351]

Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company

Sierra Railroad Company (SRC) and Yolo Shortline Railroad Company (YSL), Class III rail carriers, have jointly filed a verified notice of exemption for SRC to acquire control of YSL through stock purchase of YSL's parent, Midland Railroad Enterprises Corporation.[1]

The transaction is expected to be consummated by June 30, 2003.

SRC and YSL state that: (i) The railroads do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34351, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Michael G. Hart, 220 Sierra Avenue, Oakdale, CA 95361 and David Magaw, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14728 Filed 6–10–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Application For Transfer of Spirits and/or Denatured Spirits in Bond.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1513–0038.

Form Number: TTB F 5100.16,

Abstract: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond. Records are kept as long as the approved application remains in effect.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden Hours: 300.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14554 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants Warehousing Records and Reports.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants Warehousing Records and Reports.

OMB Number: 1513–0039.

Form Number: TTB F 5110.11.

Recordkeeping Requirement ID Number: TTB REC 5110/02.

Abstract: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis. The record retention period is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 230.

Estimated Total Annual Burden Hours: 5,520.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14555 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants—Excise Taxes.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants—Excise Taxes.

OMB Number: 1513–0045.

Recordkeeping Requirement ID Number: TTB REC 5110/06.

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 133.

Estimated Total Annual Burden Hours: 3,458.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14556 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau

[1] In addition to this acquisition, the parties plan a corporate reorganization. To obtain necessary Board authorization for this subsequent transaction, on June 3, 2003, the parties filed a notice of exemption under 49 CFR 1180.2(d)(3) in STB Finance Docket No. 34360, *Sierra Railroad Company—Corporate Family Merger Exemption—Yolo Shortline Railroad Company.*

within the Department of the Treasury is soliciting comments concerning the Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Number: 1513–0046.

Form Number: TTB F 5110.38.

Abstract: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made and restrictions to the label and/or manufacturing process. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden Hours: 4,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14557 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Denaturation Records and Reports.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

OMB Number: 1513–0049.

Form Number: TTB F 5110.43.

Recordkeeping Requirement ID Number: TTB REC 510/04.

Abstract: This information collection is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning. The record retention requirement for this information collection is 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 98.

Estimated Total Annual Burden Hours: 1,176.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14558 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the

Distilled Spirits Plant (DSP)—Transaction and Supporting Records.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP)-Transaction and Supporting Records.

OMB Number: 1513–0056.

Recordkeeping Requirement ID Number: TTB REC 5110/5.

Abstract: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by TTB to verify those accounts and consequent tax liabilities. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 278.

Estimated Total Annual Burden Hours: 6,060.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14559 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Equipment and Structures.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Equipment and Structures.

OMB Number: 1513–0080.

Recordkeeping Requirement ID Number: TTB REC 5110/12.

Abstract: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Total Annual Burden Hours: One (1).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14560 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Formula and/or Process For Articles Made With Specially Denatured Spirits.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650

Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Formula and/or Process For Articles Made With Specially Denatured Spirits.

OMB Number: 1513–0011.

Form Number: TTB F 5150.19.

Abstract: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of U.S.C. 5273.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,683.

Estimated Total Annual Burden Hours: 2,415.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14704 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Users' Report of Denatured Spirits.

DATES: Written comments should be received on or before August 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Users' Report of Denatured Spirits.

OMB Number: 1513–0012.

Form Number: TTB F 5150.18.

Abstract: TTB F 5150.18 is submitted annually by holders of permits to use specially denatured spirits to summarize their manufacturing activities during the preceding year. The information is used by TTB to pinpoint unusual activities that could indicate a threat to the Federal revenue or possible dangers to the public. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,765.

Estimated Total Annual Burden Hours: 830.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14705 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Certification of Tax Determination—Wine.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Certification of Tax Determination—Wine.

OMB Number: 1513–0029.

Form Number: TTB F 5120.20

Abstract: Refund of tax on wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported. TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 500.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14706 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Registration and Records of Vinegar Vaporizing Plants.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Registration and Records of Vinegar Vaporizing Plants.

OMB Number: 1513–0081.

Recordkeeping Requirement ID Number: TTB REC 5110/9.

Abstract: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: One (1).

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14707 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

OMB Number: 1513–0082.

Recordkeeping Requirement ID Number: TTB REC 5170/7.

Abstract: When an exporter seeks to use an alternate method or procedure or

an emergency variation from regulatory requirements of 27 CFR Part 252, such exporter requests a variance by letter, following the procedure in 27 CFR 252.20. TTB uses the information to determine if the requested variance is allowed by statute and does not pose a jeopardy to the revenue. The applicant is informed of the approval or disapproval of the request. TTB also uses the information to analyze what changes should be made to existing regulations. Records must be maintained only while the applicant is using the authorization.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14708 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau is soliciting comments concerning the Labeling of Sulfites in Alcoholic Beverages.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, 650 Massachusetts Ave., NW., Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Labeling of Sulfites in Alcoholic Beverages.

OMB Number: 1513–0084.

Abstract: In accordance with our consumer protection responsibilities, as mandated by law, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. Sulfiting agents have been shown to produce allergic-type responses in humans, particularly asthmatics, and the presence of these ingredients in alcohol beverages may have serious health implications for those who are intolerant of sulfites. Disclosure of sulfites on labels of alcohol beverages will minimize their exposure to these ingredients.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,787.

Estimated Total Annual Burden Hours: 3,159.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14709 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Recordkeeping Requirements for Importers of Tobacco Products.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Importers of Tobacco Products.

OMB Number: 1513–0106.

Abstract: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare TTB F 5220.6, Importers Monthly Report. The records will be maintained to allow TTB officers to trace tobacco product transactions and determine that tax liabilities have been accurately determined and discharged by the importers. The record retention requirement for this information collection 3 years. There is no estimated time required of the respondent as these recordkeeping requirements involve usual and customary business records.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Total Annual Burden Hours: One (1).

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–14710 Filed 6–10–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 23

AGENCY:
TREASURY.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 23, Application for Enrollment to Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545–0950.

Form Number: 23.

Abstract: Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal government.

Estimated Number of Respondents: 2,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14786 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[FI–255–82]

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, FI–255–82 (TD 7852), Registration Requirements With Respect to Debt Obligations (§ 5f.103–1(c)).

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Debt Obligations.

OMB Number: 1545–0945.

Regulation Project Number: FI–255–82.

Abstract: These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and, state, local or tribal governments.

Estimated Number of Recordkeepers: 50,000.

Estimated Time Per Recordkeeper: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14787 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 99–34.

Abstract: Notice 97–34 provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14788 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8860

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8860, Qualified Zone Academy Bond Credit.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualified Zone Academy Bond Credit.

OMB Number: 1545–1606.

Form Number: 8860.

Abstract: Under Internal Revenue Code section 1397E, a qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations and state, local or tribal governments.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 7 hours., 40 min.

Estimated Total Annual Burden Hours: 383.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14789 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8844

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8844, Empowerment Zone Employment Credit. DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Empowerment Zone Employment Credit.

OMB Number: 1545–1444.

Form Number: 8844.

Abstract: Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee. The credit is applicable from the date of designation through the year 2004.

Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 13 was added to show the sum of the regular tax before credits and the alternative minimum tax. Also, because the alternative minimum tax is added to the regular tax (line 13), we no longer need to differentiate how the credit is

applied against income tax and alternative minimum tax. Therefore, lines 24 and 25 were eliminated. In addition, the instructions were revised to include two new urban empowerment zones, Cleveland, OH, and Los Angeles, CA.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

Estimated Number of Respondents: 40,000.

Estimated Time Per Response: 15 hours., 40 minutes.

Estimated Total Annual Burden Hours: 586,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14790 Filed 6–10–03; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday—June 19, 2003 (11 a.m.–9 p.m.), Friday—June 20, 2003 (9 a.m.–6 p.m.).

LOCATION: Carter Hall Conference Center, 255 Carter Hall Lane, Millwood, Virginia 22646.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: June 2003 Board Meeting; Approval of Minutes of the One Hundred Ninth Meeting (March 20, 2003) of the Board of Directors; Chairman's Report; President's Report; Review, Discussion and Approval of Solicited Topics for Grants; Selection of National Peace Essay Contest Winners; Committee Reports; Discussion of Strategic Plan; Other General Issues.

FOR MORE INFORMATION CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: June 3, 2003.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 03–14900 Filed 6–9–03; 3:04 pm]

BILLING CODE 6820–AR–M

Federal Register

Wednesday,
June 11, 2003

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 375 and 377

Transportation of Household Goods; Consumer Protection Regulations; Interim Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 375 and 377

[Docket No. FMCSA–97–2979]

RIN 2126–AA32; formerly RIN 2125–AE30

Transportation of Household Goods; Consumer Protection Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: FMCSA is amending its regulations governing the interstate transportation of personal effects or property used, or to be used, in a private residence (household goods). Our regulations specify how motor carriers who transport household goods by motor vehicle in interstate commerce (movers) must assist their individual customers who ship household goods. We are updating the regulations to make them easier to understand and have made several changes designed to assist consumers. We seek additional public comment on the information collection requirements for this interim final rule. We will not enforce the information collection requirements of this interim final rule until we obtain approval for them from the Office of Management and Budget (OMB).

DATES: *Effective Date:* This interim final rule is effective on September 9, 2003.

Compliance Date: Mandatory compliance with this interim final rule must begin on March 1, 2004.

Comment Date: You must submit comments concerning the *information collection requirements* of this interim final rule on or before August 11, 2003.

If you submit copies of your comments to the Office of Management and Budget (OMB) concerning the *information collection requirements* of this document, your comments to OMB will be most useful if received at OMB by July 11, 2003. The OMB prefers to receive them by July 11, 2003, but you can submit them to OMB until August 11, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–1997–2979 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). This statement is also available at *http://dms.dot.gov.*

Comments to OMB: If you submit copies of comments to the OMB concerning the *information collection requirements* of this document, you should mail, hand deliver, or fax a copy of your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503, fax: (202) 395–6566.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel Jackson, Household Goods Enforcement Team Leader, (202) 385–2423, Insurance Compliance Division (MC-ECI), FMCSA, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Background

In 1999 Congress authorized FMCSA to regulate household goods carriers engaged in interstate operations for individual shippers in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, December 9, 1999, 113 Stat. 1749). The Interstate Commerce Commission (ICC) administered household goods regulations from 1940 to 1995. In the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88), Congress terminated the ICC and transferred the household goods program to the Federal Highway Administration (FHWA) effective January 1, 1996. The FHWA administered the household goods program through its Office of Motor Carrier and Highway Safety. The regulations governing interstate household goods transportation are in 49 CFR part 375.

The FHWA published a notice of proposed rulemaking (NPRM) on May 15, 1998 (63 FR 27126) requesting comments on its proposal to update the household goods regulations. These regulations set forth regulatory requirements for moving companies who provide transportation for individual shippers. An individual shipper is generally a retired person or someone changing jobs. The individual shipper uses for-hire truck transportation services infrequently and may have little or no information about the regulations movers must follow and how they operate. This information may be essential in enabling a shipper to make informed decisions in selecting a mover and ensuring a satisfactory move.

On March 5, 2001, the General Accounting Office (GAO) released its report to Congressional Committees, "Consumer Protection: Federal Actions Are Needed to Improve Oversight of the Household Goods Moving Industry," No. GAO–01–318. Section 209 of the MCSIA directed that GAO study the effectiveness of DOT's consumer protection activities for the interstate household goods moving industry and identify alternative approaches for providing consumer protection in the industry. A copy of the report is in the docket. The GAO findings on the FMCSA's household goods program included the following: (1) The Department of Transportation has done little to oversee the Household Goods moving industry; (2) Consumer education activities have been minimal; (3) The Department does not know the extent to which it has examined carriers' compliance with Household Goods rules; and (4) The Department has not determined whether its level of enforcement is appropriate.

These regulations represent FMCSA's effort to provide a reasonable level of protection to consumers of household goods moves. Comments to the NPRM and FMCSA enforcement actions have established the need to address weaknesses in the system for movement of household goods. Given the volume and scope of household goods movements each year, FMCSA acknowledges that it cannot intervene in individual cases to assure consumers their desired result. With these regulations, FMCSA attempts to establish parameters of fair dealing for household goods movers and a reasonable level of protection for consumers. The agency seeks to equip consumers with information adequate to make informed decisions about moving their household goods.

Interim Final Rule: Request for Comments on Information Collection Requirements

When the FHWA published the NPRM on May 15, 1998 (63 FR 27126) requesting comments on its proposal to update the household goods regulations, it failed to send the package separately to OMB for its review of the information collection requirements. Because of this error, it is necessary to publish this document as an Interim Final Rule, rather than a Final Rule, to allow OMB time to complete its review and to allow the public additional time to submit comments on the information collection requirements. As described above under "**DATES:** *Comment Date:*" OMB allows 60 days for public comment, but the rule becomes effective September 9, 2003, allowing time for FMCSA and OMB to resolve any concerns about the information collection requirements in this Interim Final Rule. For more information on FMCSA's analysis of the paperwork impact, see "Paperwork Reduction Act" later in this preamble.

Docket Comments

In response to the NPRM, the agency received 53 letters from 48 different individuals or entities. Twenty-four (24) letters did not comment on any specific aspect of the NPRM. Each of these 24 letters told of alleged abuses the authors had suffered in past moves of their own household goods. Each supported in general terms the goals of the NPRM to protect individual shippers.

The docket received substantive responses from the following entities:

Action Scale & Weighing Systems, Inc. (Action)
Air Weigh
The American Moving and Storage Association, Inc. (AMSA)
As a combined comment, the Attorneys General of Alabama, Arkansas, Arizona, Florida, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, Missouri, New Jersey, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Washington, Wisconsin, and West Virginia (25AG)
The Attorney General of Connecticut (AGCT)
Cat Scale Company (Cat)
The Commonwealth of Pennsylvania's Department of Agriculture
Deskin Scale Company, Inc. (Deskin)
The National Association of Consumer Agency Administrators (NACAA)
The Oklahoma Corporation Commission (OCC)
Sisson Scale and Equipment Co., Inc. (Sisson)
Starving Students
The State of California's Department of Agriculture
The State of Colorado's Department of Agriculture
The State of Idaho's Department of Agriculture
The State of Michigan's Department of Agriculture
The State of New Hampshire's Department of Agriculture
The State of Oregon's Department of Agriculture
The State of New York's Department of Transportation (NYDOT)
The University of Minnesota's Student Legal Services
Weighing Consultants, Inc. (WCI)

FMCSA will discuss each of the substantive comments in relation to the specific sections they addressed.

Section 375.101 Who Must Follow These Regulations?

AMSA objected to the use of the term "motor common carrier engaged in the transportation of household goods" in this section and Appendix A. AMSA notes the ICCTA deleted reference to "common" carriers. It refers to section 13102(12) of the ICCTA. AMSA believes the part 375 regulations should reflect the terms used in the ICCTA and we should strike the word "common" wherever it appears in connection with "motor carrier(s)."

Response to Comments

Although the ICCTA no longer includes a definition of "common carrier," FMCSA is still registering household goods carriers subject to these regulations as "common" carriers, under the transitional rule of 49 U.S.C. 13902(d). However, FMCSA, in implementing the Uniform Carrier Registration System required by 49 U.S.C. 13908 expects to eventually eliminate the distinction between common and contract carriers in registering motor carriers. Consequently, we are adopting AMSA's suggestion by applying the regulations to for-hire motor carriers engaged in the interstate transportation of household goods for individual shippers.

Section 375.103 What Are the Definitions of Terms Used in this Part?

AMSA comments that the term "advertisement" is defined as "any communication to the public in connection with an offer or sale of any interstate transportation service." It believes we should define this term more accurately in the context of part 375 by adding the words "household goods" before the word "transportation." The revised definition would read as follows:

> "Advertisement" means any communication to the public in connection with an offer or sale of any interstate household goods transportation service.

The AGCT comments that the proposed definition of "transportation of household goods" should include handling of a shipper's goods by the carrier or his agent, while loading at the point of pickup, unloading at the point of delivery, and all handling in between, whether in storage or in transit.

AMSA believes that FMCSA should change the regulatory definition "Transportation of household goods" by eliminating subparagraph (2), reading "Another party arranges and pays for the transportation of household goods." AMSA believes this recommended change is also consistent with the clear intention of the original 49 CFR part 1056 (1995) regulations that restricted their application to transportation paid for by the householder, specifically referencing 49 CFR 1056.1(b)(1) (1995). AMSA comments that we should change the definition to read as follows:

> "Transportation of household goods" means the householder (an individual shipper) arranges and pays for the transportation of household goods. This may include transportation from a factory or store when the individual shipper purchases the household goods with the intent to use the goods in his or her dwelling.

AMSA comments on the AGCT's comments, stating that it believes that such a change is not necessary. The definition of "Transportation" contained in 49 U.S.C. 13102(19) includes each of the services enumerated in the AGCT's recommendation and, for purposes of

these regulations, the statutory definition is controlling.

AMSA also comments about this section's definition of an "individual shipper or householder," contending that it does not correspond to the definition of an individual shipper contained in 49 U.S.C. 13102(10)(A). It provides, in addition to owning the goods being transported, the individual shipper is also the party paying for the move. This "arranged and paid for by the householder" provision serves to distinguish moves on behalf of individual shippers from those paid for by national accounts "corporations" for their employees as identified in 49 U.S.C. 13102(10)(B). AMSA states that national account shippers differ from individual shippers in that orders for service are not required (purchase orders or other similar documents are frequently issued in lieu of orders for service). National accounts also often have relocation policies that conflict with or supersede certain requirements of the existing regulations. Since this is an important distinction, AMSA believes, it suggests we change the wording of this provision to accurately define an individual shipper as follows:

> "Individual shipper or householder" means any person who is the consignor or consignee of a household goods shipment identified as such in the bill of lading contract, who also owns the goods being transported and pays the moving charges.

AMSA believes the agency should modify the definition of "reasonable dispatch" to make it clear that shippers are liable for charges related to additional services they request or require, as follows:

> For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, plus the costs for additional services that were performed en route or at destination which were necessary to complete the transportation, you have not transported the goods with reasonable dispatch.

Response to Comments

We agree with AMSA's suggestion to eliminate proposed subparagraph (2) from the definition of "transportation of household goods." In the interim final rule we have combined the definitions for "household goods" and "transportation of household goods." This is consistent with 49 U.S.C. 13102(10). We believe the AGCT recommendation regarding "transportation of household goods" could have an unintended consequence for many individual shippers. If the agency were to adopt its recommendation, a mover may be able to convince an individual shipper that a mover or its agents, and only a mover or its agents, could handle the shipper's goods for loading at the point of pickup, unloading at the point of delivery, and all handling in between whether in storage or in transit. Depending on how the individual shipper contracts for moving services, other companies or the shipper herself may perform the other services.

Movers and their agents perform many services, including what AMSA states on page 36 of its comments as "the precise requirements necessary to properly remove the contents of a residence, secure them in an over-the-road vehicle and effect delivery at the new residence" that "can result in additional services which, in turn, require the assessment of additional charges."

The individual shipper may determine he/she wants to perform the additional services or have another party do them. Adopting the AGCT's comments may have the unintended consequence of having a disreputable mover claim to be the only entity that can handle the shipper's goods. FMCSA does not question that reputable movers and their reputable agents perform these extra services with value to the shipper, but the shipper may be on a tight budget, and the shipper may choose not to have the mover perform those "precise requirements necessary to properly" effect delivery.

We do not agree with AMSA's suggested change to the definition of "reasonable dispatch" because the change would imply that carriers could demand payment for additional services before delivery. Under this interim final rule, the most that a carrier could demand before delivery is 100 percent of a binding estimate or 110 percent of a non-binding estimate.

The agency has adopted AMSA's comments regarding the definition of "advertisement" and "individual shipper." We also removed the exclusion of advertisements on radio and television from the definition and clarified that Yellow Pages advertising is included in the definition. FMCSA also has chosen to keep the definitions for "Commercial shipper" and "Government bill of lading shipper" the same as in the current rules. We are moving the definition of "Certified scale" from proposed § 375.507 to this section. Finally, we are adding new definitions to explain the terms "Tariff" and "Surface Transportation Board."

Section 375.201 What Is My Normal Liability for Loss and Damage When I Accept Goods From an Individual Shipper?

The AGCT recommended the title of the section should be changed from "loss and damage" to "loss or damage" to clarify the differences between contractually agreed upon increases in the carrier's liability and the availability of insurance coverage. The AGCT believes we should require the carrier to disclose the limits of its liability in a clear, concise manner and preclude a carrier from characterizing contractually agreed upon increases in liability as "insurance." AGCT also believes the rules should provide that a carrier may have additional liability if it sells excess liability insurance. It is unclear to AGCT whether the proposed rule used the term "excess liability insurance" as it is normally used in the insurance industry or as a term of art meaning insurance in excess of the carrier's liability as limited by its released rates. If FMCSA intended to define insurance in excess of the carrier's liability as limited by its released rates, AGCT recommends we should simply refer to it as "liability insurance."

AMSA believes that the AGCT suggestion that we clarify language in § 375.201 to explain the difference between carrier liability under released rates orders (RRO) and the availability of excess liability insurance is unnecessary. Section 375.201 is directed to movers and AMSA believes we intended to restate the mover's understanding of the parameters of liability. AMSA believes movers do not require additional explanations along these lines to understand their liability.

AMSA comments that paragraph (a) of this section, which states the mover is legally liable for loss or damage occurring during the transportation of household goods, should be modified to eliminate confusion as to the full extent of a mover's liability. Proposed paragraph (a) reads as follows:

(a) In general, you are legally liable for loss or damage if it happens during performance of any one of the following three services identified on your lawful bill of lading:

(1) Transportation of household goods.

(2) Storage-in-transit of household goods, including incidental pickup or delivery service.

(3) Servicing of an appliance or other article, if you or your agent performs the servicing.

AMSA proposes revising paragraph (a) to read as follows:

(a) In general, you are legally liable for loss or damage if it happens during performance of any transportation of household goods and all related services identified on your lawful bill of lading.

AMSA comments that paragraph (c) of this section provides that the mover may incur additional liability if it sells excess liability insurance. AMSA states when a mover arranges for the purchase of insurance and a shipment is transported under separate liability insurance, the mover's liability is specifically limited to 60 cents per pound per article. AMSA believes the regulations provide for no additional coverage by the mover unless the mover fails to issue a copy of the insurance policy or other appropriate evidence of insurance as explained in proposed § 375.303(h). Given these circumstances, AMSA recommends we delete this provision.

Response to Comments

We do not agree with AGCT's suggestion to change "loss and damage" in the title of the section to "loss or damage" because we believe the words are interchangeable and essentially mean the same thing. We agree with AMSA's comments on paragraph (a). By using the phrase "and all related services" we can eliminate subparagraphs (a)(1)–(a)(3). This clarifies that the mover has liability for any services offered in the bill of lading.

We are also adopting the AGCT's comments to change "excess liability insurance" to "liability insurance." We agree with AGCT concerning the need for additional explanations regarding carrier liability in this section and have included appropriate language in § 375.201(d). We do not agree with AMSA's comments concerning paragraph (c). Paragraph (c) builds upon proposed § 375.303(h) by noting the full liability the carrier may be subject to if it fails to issue a copy of the insurance policy or other appropriate evidence of insurance as explained in proposed § 375.303(h). Thus, we are keeping the provision, but have added clarifying language concerning § 375.303(h) (§ 375.303(g) in this interim final rule).

In addition, FMCSA is replacing the reference in paragraph (b) to the 1993 released rates order with a more generic reference. This order was recently amended, effective May 12, 2002. Because Surface Transportation Board released rates orders may change over time, the regulations should not be date-specific in referencing such orders.

Section 375.203 What Actions of an Individual Shipper May Limit or Reduce My Normal Liability?

AMSA comments that paragraph (a) provides that the inclusion of perishable household goods in a shipment without notice to the mover relieves the mover of liability. It suggests that to comport with generally applicable tariff provisions that allow the mover to limit liability when perishables are disclosed and accepted for transportation, this provision should be expanded to include reference to hazardous and dangerous articles, as follows:

> If an individual shipper includes perishable, dangerous or hazardous articles in the shipment without your knowledge, you need not assume liability for those articles or for the loss or damage caused by their inclusion in the shipment. If the shipper requests that you accept such articles for transportation, you may elect to limit your liability for any loss or damage by appropriately published tariff provisions.

AMSA believes paragraph (b), by including reference to units of weight and measure in metric terms with the Imperial equivalent expressed parenthetically, will prove unduly confusing to both individual shippers and the moving industry. It recommends that until such time as the metric system is more commonly recognized in the United States, the terms should be reversed, with the metric equivalent shown in parenthesis.

Response to Comments

We have adopted AMSA's comments concerning dangerous and hazardous articles. This change also comports with 49 CFR 175.25 concerning passengers transporting dangerous or hazardous materials in airline baggage and 18 U.S.C. 1716 and U.S. Postal publication number 52, July 1999 (available at *http://www.usps.com/cpim/ftp/pubs/pub52.pdf* and *http://www.usps.com/cpim/ftp/pubs/pub52.htm*) concerning hazardous, restricted, and perishable articles being proper for mailing. We have also placed a warning similar to § 175.25(a)(1) in Appendix A to part 375—Your Rights and Responsibilities When You Move (YRRWYM), noting that the mover may limit its liability for the transportation of such materials in household goods.

The National Institute of Standards and Technology (NIST) has advised FMCSA that we should primarily use SI (metric) measurements. The Omnibus Trade and Competitiveness Act of 1988 cites metric units before inch-pound units where both units appear together and places separate sections containing requirements in metric units before corresponding sections containing requirements in inch-pound units. In some cases, however, trade practice is currently restricted to the use of inch-pound units; therefore, some NIST requirements continue to specify only inch-pound units until the National Conference of Weights and Measures achieves a broad consensus on the permitted metric units. In accord with NIST policy, FMCSA will use trade practice until the National Conference on Weights and Measures achieves a broad consensus on the permitted metric units.

Section 375.205 May I Have Agents?

The AGCT comments that we should require disclosure of any agency relationships to a shipper. AMSA does not object to such a requirement since it is normal industry practice to explain agency relationships. In fact, subpart B of YRRWYM contains an explicit explanation that alerts shippers to the existence of these relationships.

Response to Comments

We note that requiring disclosure of any agency relationships to a shipper would subject us to additional information collection requirements of 5 CFR part 120 for that disclosure. We note the largest motor carriers have agents and transport the most household goods shipments. Since we explain in the YRRWYM that motor carriers may have agents and AMSA believes it is normal industry practice to make such disclosures, we believe it is not necessary to require a separate notice for shippers. We believe shippers have plenty of notice that agency relationships may exist and may ask about them. If a mover transports a shipment that used the services of an agent, and the agent acted upon, or omitted, items in its performance of such transportation, the shipper has the right to file a complaint with us against the motor carrier or the agent.

Section 375.209 How Must I Handle Complaints and Inquiries?

NACAA supports the requirement that movers maintain a procedure for handling complaints. The AGCT requested that FMCSA impose an explicit affirmative requirement upon a mover to respond promptly and appropriately to complaints by a shipper.

AMSA disagrees with the AGCT because:

> * * * as the [AGCT] concedes, the proposed language contemplates that movers maintain internal systems that are responsive to shippers' complaints. The requirement that telephone numbers be furnished to shippers is sufficient to ensure ready access to the mover's system and, obviously, what may constitute an "appropriate" response is dependent upon the facts of each situation. This is not a matter that warrants a more explicit attempt to regulate.

Response to Comments

We believe it is sufficient to ensure ready access to the carrier's system by requiring a telephone number. As AMSA points out, what may constitute an "appropriate" response, and even a prompt response, is dependent upon the facts of each situation. We do not believe explicit regulation is warranted. We believe shippers are knowledgeable enough, and should be responsible enough, to inquire with better business bureaus and us if they are dissatisfied with a mover's complaint handling. Better business bureaus also monitor the number of and types of complaints businesses receive.

Section 375.211 Must I Have an Arbitration Program?

A majority of household goods complaints we receive involve loss and damage claims. The 24 individual shippers who submitted docket comments generally complain about the handling of their loss and damage claims rather than commenting directly about any particular aspect of the proposed rule or solutions to correct such problems. The ICCTA imposes an arbitration requirement for the handling of most loss and damage claims against interstate movers. *See* 49 U.S.C. 14708. We proposed to amend the former "information for shippers" section of the regulations, formerly 49 CFR 375.2 (proposed § 375.213), to replace the required summary of the carrier's dispute settlement program with a summary of its arbitration procedures and results.

As we discussed in the NPRM, Congress established the arbitration system in the ICCTA to afford consumers a forum for resolving loss and damage claims arising from transportation of household goods and to replace the informal dispute resolution functions previously handed by the ICC. The ICC conducted the informal dispute resolution functions under its general authority to regulate movers, but did not have a specific statutory requirement to perform that function. The Congress wanted "private, commercial disputes to be resolved the way all other commercial disputes are resolved—by the parties." *See* H.R. Rep. No. 104–311, at 87–88 (1995). *See also* pages 117 and 121. The MCSIA expanded the availability of arbitration by requiring that carriers provide arbitration, upon shipper request, for claims of up to $5,000 (as opposed to the $1,000 limit in the ICCTA). The GAO report also studied the roles of consumers in preventing and resolving disputes.

NACAA supports having movers maintain an arbitration program for loss and damage claims.

The Consumers Union recommends we require each mover give its arbitration information at the time an estimate is made rather than before executing an order for service.

The OCC believes arbitration should be expanded to include a format for alternative dispute resolution. Arbitration alone limits available dispute resolution means, and inasmuch as alternative dispute resolution enjoys widespread recognition, it would seem illogical to omit it.

The AGCT requests FMCSA require the mover to provide a fair and prompt process that is paid for by the mover. By requiring the mover to bear the cost of the arbitration, the mover has an incentive to resolve claims and arbitration proceedings in a timely manner.

The 25AG suggest modifying proposed § 375.211(a)(2) to include a paragraph (iv) to require conspicuous disclosure of the right to the information contained in § 375.211(a)(3). They believe that § 375.211(a)(2) and (b) are inadequate as disclosure requirements because they provide no guidance as to either the timing or manner of disclosure.

The 25AG also believe consumers need to know of their right to forego arbitration and pursue court action under 49 U.S.C. 14704. They claim that many movers refuse to participate in their own program or do so in a dilatory fashion. They recommend that we require arbitration be provided at a reasonable cost and at a reasonable location, without undue delay before a neutral independent third party. The arbitrator should be empowered to grant whatever relief would be available in court under law or in equity.

In AMSA's view, a requirement that all household goods carriers file annual arbitration reports would likely not be useful to consumers, itself, and the moving industry. AMSA disagrees that such reports would assist us in meeting our statutory responsibility to report to Congress regarding arbitration, and in providing individual consumers with relevant claims information.

Details regarding arbitration and the relative success or failure of the single program that represents virtually all movers are readily available from AMSA, it asserts. To assist us in meeting our statutory reporting requirements, AMSA stated that it sent reports to FHWA containing the results of its arbitration program, both in advance of the June 1997 due date of the FHWA report to Congress and after June 1997.

AMSA believes that the information contained in the periodic AMSA reports is sufficient. It believes we can use its reports to monitor the moving industry under 49 U.S.C. 14708(g). From a consumer standpoint, AMSA is not convinced that the requested claims handling information would provide consumers with meaningful claims data. Furthermore, it also is not convinced that individual consumers are interested in claims data when it comes to their selection of a mover. Consumers are more interested, AMSA believes, in whether the mover is properly licensed, has insurance, has a good professional reputation, and complies with the regulations. AMSA reported the industry has a claims frequency ratio of roughly 21 percent, *i.e.*, only one in every five shipments results in a claim. AMSA interprets this to mean that the proposed report would have no relevance to almost 80 percent of the consumer shippers whose shipments do not sustain loss or damage. It asserts that the incidence of arbitration is even less frequent. AMSA's experience is that less than one percent of all claims result in arbitration; thus more than 99 percent of the shipments transported will not become involved in the arbitration process.

From a technical standpoint, AMSA believes the proposed report only requires the reporting of the total number of shipments transported and the number of claims less than and over the statutory maximum for mandatory arbitration. It believes the meaning of our "total shipments" (all household goods shipments; only COD shipments, excluding civilian government, military and national accounts) is unclear, as is the "number of claims" (claims filed; claims paid, and so on). AMSA presumes that it would be left to consumers to try to calculate a claims frequency ratio from the data provided and, if they get that far, to compare their particular mover's frequency with that of other movers or with industry average data. Complicating this situation is the fact that some carriers encourage the use of arbitration, while others do not. Therefore, individual carrier data may be entirely misleading, *e.g.*, a high number of arbitration cases could be construed to mean the carrier has an unacceptable claims experience when precisely the opposite may be true since the number of arbitrations may bear no relation to the number of claims.

In addition, AMSA asserts that the language of the proposal makes it clear that FMCSA will be required to process and maintain over 2,000 carrier annual reports in order to respond to consumer requests for information. Also, FMCSA would be required to allocate resources to answer consumer questions regarding the reports and compile aggregate statistics to be in a position to answer consumer questions regarding the importance and meaning of a given carrier's data. Consumers will be unable to make informed decisions regarding report data unless they know how specific carrier data compares to industry average data. All of this assumes that we have the necessary staff to collect, process, and disseminate more than 2,000 such reports each year to even a fraction of the 600,000 individual shippers who may choose to request a copy. Since experience has shown AMSA that considerably less than 1,000 shippers will request arbitration in any year, any benefits that may be derived from this system will be overshadowed by the time, effort, and money expended preparing, filing, copying, and disseminating such reports.

AMSA also comments that paragraph (a)(3) would require that, upon an individual shipper's request for arbitration, the mover must furnish forms and information necessary to initiate an action to resolve a dispute. It believes the requirement that specific forms be furnished will be unduly burdensome.

Section 14703 of the Code, it argues, requires that movers furnish shippers with written information explaining the availability of their dispute settlement programs. One of the benefits of these programs is that the process (at least the AMSA version of the process) is quite informal and easy to use. No forms are required. Instead, shippers need only submit a written request for arbitration by letter or facsimile. AMSA believes requiring the use of specific forms to initiate the procedure will only serve to unduly complicate a program that has been running effectively without such forms for more than two years. Accordingly, it recommends that the words "forms and" should be deleted from paragraph (a)(3).

The AGCT recommends that the cost of arbitration be borne entirely by movers to provide an incentive to resolve claims promptly.

AMSA believes that Congress has addressed this point. Shippers may not be assessed more than one-half the cost of arbitration and arbitrators' decisions may include cost assessments. *See* 49 U.S.C. 14708(b)(5). It argues that Congress no doubt viewed the payment by shippers of a portion of the expense of arbitration as a means to discourage the presentation of frivolous claims. Of course, movers may elect to bear a greater portion or all of these costs if they so elect.

The OCC recommends that arbitration be expanded to include "Alternative Dispute Resolution," arguing that arbitration alone is limiting. AMSA believes that Congress has also addressed this point. The applicable statute, 49 U.S.C. 14708, refers to "arbitration" as a means of settling disputes between movers and shippers. That aside, "Alternative Dispute Resolution" is a generic term that refers to a wide array of practices which are intended to resolve disagreements at lower cost than would be incurred in litigation and includes arbitration.

The 25AG recommend that the proposed arbitration section should be strengthened in several respects by the addition of requirements for prominent disclosure of consumers' rights at the outset of the transportation transaction and expeditious processing of requests for arbitration by impartial third parties.

AMSA is not opposed to an explicit recitation of mover responsibilities related to disclosure and other aspects of statutorily mandated arbitration programs. However, it argues that the predicate for the 25AG's argument is that if the regulations are not explicit, "* * * many movers will not participate in arbitration in good faith otherwise." Such a proposition is obviously inconsistent, it states.

If a mover is intent on violating the requirements of law, AMSA argues, explicit regulatory language will not act as a deterrent. This is a matter of enforcement. To the extent the 25AG have, as they assert, encountered movers that do not participate in an arbitration program, AMSA argues that those movers should be reported to FMCSA for enforcement action.

Moreover, AMSA notes that the proposed regulation contains no less than 14 explicit directives that will govern all aspects of mover arbitration programs. One of those requirements states that: "You must produce and distribute a concise, easy-to-read, accurate summary of your arbitration program, including the items in this section." § 375.211(b). In addition, paragraph (a)(2) requires that "Before the household goods are tendered for transport, your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration. * * *" Thus AMSA believes these and other provisions of the proposed regulations clearly address the 25AG's concerns.

Response to Comments

We agree with AMSA. We believe the annual arbitration report (proposed §§ 375.901–375.907) will not be a benefit to shippers, the industry, or FMCSA. We also believe we should not retain the ICC's annual performance report elements for a combined annual report. Consumers will have to make informed decisions regarding movers' products and services without past performance reports that have been, and most likely would continue to be, inaccurate. FMCSA does not have the necessary staff to collect, process, verify, and disseminate such reports each year to all individual shippers, consumer advocacy organizations, and attorneys general who may choose to request a copy.

AMSA was correct that FMCSA would be required to process and maintain over 4,000 carrier annual reports in order to respond to consumer requests for information. (The NPRM used the figure 2,000 for the number of motor carriers, but we are using 4,000 in this Interim Final Rule, based on the FMCSA Motor Carrier Management Information System and Insurance Division's best estimate in March 2002 of the number of active household goods carriers authorized to operate in interstate commerce.) Also, the agency would have to allocate resources to answer consumer questions regarding the reports and compile aggregate statistics if we were to be in a position to answer consumer questions regarding the importance and meaning of a given carrier's data. Consumers would be unable to make informed decisions regarding report data unless they know how specific carrier data compares to industry average data. All of this would assume that FMCSA would have the necessary staff to collect, process, and disseminate more than 4,000 such reports each year to even a fraction of the 600,000 individual shippers who may choose to request a copy. Any benefits that may be derived from a reporting system would be outweighed by the time, effort, and money expended preparing, filing, copying, and disseminating such reports. FMCSA cannot justify the information collection costs in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, FMCSA is withdrawing the proposal to require the filing of an annual arbitration report.

We congratulate AMSA for not needing forms to initiate its arbitration programs. As AMSA points out, however, it does not represent all interstate movers. FMCSA does not want to preclude a mover who finds it

necessary to have a form from requiring that form and we would require the mover provide it upon the individual shipper's request.

We note, in response to comments by NACAA and OCC, that consumers have numerous remedies available to them before entering the arbitration process or if carriers fail to establish and maintain arbitration processes. As the 25AG note, consumers, NACAA, and the OCC should know of the consumer's right to decline from participating in arbitration, and, instead, pursue court action under 49 U.S.C. 14704. We believe it is not necessary to inform movers of this right in part 375 since AMSA has shown through its comments that its members have a good understanding of the statute. FMCSA has added this information to the YRRWYM appendix, though, to be provided to shippers for their benefit.

NACAA should not be surprised about our position regarding our limited role in dispute resolution. The Congress, as the NPRM noted, provided a clear understandable directive against allocating scarce resources to resolve private disputes and indicated that our primary role was to oversee the regulations. The GAO report also noted this Congressional directive.

We are not adopting the NACAA recommendation that the regulations require that other Federal, State, and local agencies retain jurisdiction over movers' acts and practices. This can be accomplished only by statute, not through these regulations.

Section 375.213 What Information Must I Provide to a Prospective Individual Shipper?

NACAA supports requiring movers to provide all prospective customers with the YRRWYM booklet. NACAA further believes movers should be required to insert their prior two years arbitration reports in YRRWYM to enable consumers to examine the claims history of a prospective mover. It believes the expense to movers will be negligible. It also recommends that all movers post annual arbitration reports on the Internet with references to their web site in YRRWYM and that FMCSA audit these arbitration reports.

The AGCT suggests requiring movers to provide a prospective shipper with a copy of a blank uniform bill of lading used by the mover before loading the shipment, to give the shipper an opportunity to review and ask meaningful questions about the terms listed on the form. It also would require movers to provide copies of their tariffs to properly inform the consumer of possible charges that may be levied by the mover.

The Consumers Union recommends that the information required by this section be provided at the time an estimate is given rather than before an order for service is executed.

AMSA believes the AGCT's recommendation that movers be required to provide a blank bill of lading and their tariffs to prospective shippers is unrealistic and burdensome. AMSA alleges that industry data indicates that roughly three shipment surveys are performed for each shipment booked. AMSA did not provide the data for the docket. AMSA believes requiring the distribution of bills of lading and tariffs containing several hundred pages of technical matter to prospective shippers would burden shippers and movers alike. In any event, Congress has addressed this issue by requiring in 49 U.S.C. 13702(c)(1) that movers provide notice of the availability of their tariffs for shippers who would elect to examine tariff provisions related to their move.

Consumers Union strongly urges FMCSA to redraft YRRWYM into even plainer language. As one example it states that subpart K should be at the front of the pamphlet.

AMSA disagrees with the Consumers Union. The proposed YRRWYM publication is a substantial revision of the former ICC publication. AMSA believes it significantly clarifies many points that are important to consumers in language that represents a major improvement over the former ICC language.

Response to Comments

FMCSA will adopt the specific recommendation provided by the Consumers Union by moving Subpart K to the front of the pamphlet.

In the interim final rule, FMCSA has added a paragraph (a)(3) requiring movers to provide notice of the availability of the applicable sections of their tariffs for shippers' examination or have copies sent to them upon request. FMCSA believes this addition provides shippers with adequate information to assist themselves in asking informed questions.

To require significant additional consumer information be provided by carriers, as recommended by some commenters (arbitration reports, blank bills of lading, complete copies of tariff) at the time an estimate is given, would add significant burdens on carriers beyond anything proposed in the NPRM. Since shippers frequently obtain more than one estimate, the additional burden on carriers could be multiplied several times. Also, because most tariffs are voluminous documents, FMCSA believes that it is beneficial to both shippers and carriers to limit the additional requirements in paragraph (a)(3) to the applicable sections of the tariff.

Section 375.215 How Must I Collect Charges?

The OCC recommends the option of pre-payment be made available at the shipper's election, especially for weight-based shipments. The mover would insure an accurate weight before shipping to protect its weight-based revenues. The shipper, in turn, would have more confidence in the weight and pre-payment of freight charges would eliminate unexpected destination or other charges.

AMSA questions whether OCC's recommendation would serve the interests of shippers. Section 375.401(a)(1) of the proposed regulations provides a mechanism for guaranteed charges. Shippers have the option of electing to tender their goods under a binding estimate and, in fact, many exercise that option. AMSA states that its data indicates that 47.2 percent of all COD consumer shipments were transported under binding estimate tariff provisions in 1996. (AMSA did not provide this data for the docket.) AMSA believes that authorizing payment of transportation charges in advance of the actual delivery of goods could provide unscrupulous movers with the opportunity to deceive shippers. As a case in point, it notes the experience of Ms. Josephine Meany, whose complaint is included in the NACAA comments. Unfortunately, Ms. Meany paid thousands of dollars to an unlicensed mover for what amounted to essentially no service. Her son's goods were not transported to the intended destination and she was forced to hire and pay a second mover to transport the goods. AMSA urges that we reject the OCC recommendation.

Response to Comments

FMCSA agrees with AMSA. The shipper may not know at the time he or she contracts for transportation whether circumstances related to the move may cause additional freight charges beyond those agreed upon at origin. The mover should not be held accountable for poor planning on the shipper's part. FMCSA, however, has added regulatory text to the interim final rule that specifies that all rates and charges for the transportation and services rendered must be in accordance with the mover's applicable tariff in effect, including the method of payment.

Section 375.217 How Must I Collect Charges Upon Delivery?

NACAA requests a modification stating that the mover "may specify two forms of payment acceptable, only one being cash or a cash equivalent."

The AGCT suggested FMCSA establish nondiscriminatory rules governing cash-on-delivery (COD) service and collection of COD funds rather than allowing movers to develop their own procedures in the tariff. It suggested modifying paragraph (b) to require movers to relinquish possession of a shipment upon payment by the consumer of an amount substantially less than the binding or non-binding estimate. This provides the consumer with some leverage over the mover in the event of a dispute. The mover would have to pursue a claim against the consumer rather than requiring full payment by the consumer and forcing the consumer to pursue the mover. Such a burden shift provides greater protection for the consumer.

AMSA comments that the NACAA proposal, if adopted, would limit the options available to movers and their customers to effect the payment of transportation charges. The generally applicable options for payment are cash, certified check, traveler's check, or bank check (drawn by a bank and signed by a bank officer). *See* HGB Tariff 400–M, Item 29. In addition, the existing credit regulations in § 377.215, the household goods regulations in § 375.19, and proposed § 375.221, authorize the credit card option for payment and provide specific requirements related to the use of credit. Taken as a whole, AMSA believes these provisions adequately address the concerns expressed by NACAA.

AMSA believes the AGCT proposal for adopting nondiscriminatory rules for the collection of transportation charges in this proceeding is addressed in the preceding paragraph. Additionally, AMSA asserts that the AGCT has apparently neglected to consider the discussion at page 27128 of the NPRM that outlines the FHWA response to the moving industry's request for amendment of the existing credit regulations. AMSA states "obviously, household goods movers are not at liberty to fashion payment and/or extension of credit tariff provisions that would violate the existing or proposed FHWA regulations."

The 25AG argue that the form of payment issue is directly related to consumer overcharge complaints. The 25AG therefore propose that § 375.221 require that, if a mover agrees to accept a credit card at the beginning of the shipment transaction, the credit card should be accepted at delivery. They also propose a related amendment to § 375.503(b)(9) dealing with bill of lading contents, which would require disclosure of the form of payment required upon delivery if it is different from that agreed to at the outset of the transaction.

In a similar vein, the AGCT is opposed to permitting movers to treat the reversal of a credit card transaction as an involuntary extension of credit. It argues that consumers should be authorized to treat a mover's failure to pay a claim for delay or loss/damage as an "involuntary extension of the shipper's credit to the mover," thus subjecting the mover to the same financial penalties as the consumer bears under the credit regulations at § 375.807.

AMSA asserts that each of these proposals is fraught with the potential for endless controversies between movers and shippers. More importantly, it believes, they reflect a misunderstanding of Congressional intent. Section 13707 provides that a motor carrier "* * * shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made." Since the extension of credit by movers is permissive, it would be foolhardy to adopt regulations that would attempt to address these issues since they cannot adequately anticipate the many circumstances that occur when drivers and consumers settle accounts at the time of delivery. AMSA argues that accepting a credit card at origin, for example, provides the consumer with sufficient time to seek alternative means of payment should the charge amount be declined by the card issuer. If a driver delivers on weekends or after hours and the mover's credit/collection department is closed, the driver cannot call in the charges and the mover will not be in a position to make certain that the card issuer will accept the charge. Dealing with a credit card at delivery may also cause unnecessary delays. If the charge is declined, the consumer must seek alternative means of payment that could unnecessarily delay delivery. In the meantime, the mover must wait, which could result in additional charges, vehicle detention, or storage-in-transit. These proposals could have the unfortunate result of forcing movers to limit the payment alternatives that are presently offered to shippers.

AMSA strongly opposes the AGCT proposal that movers should be required to relinquish possession of a shipment upon payment of an amount "substantially less than the binding or non-binding estimate" in order to provide consumers with "leverage" in the event a dispute arises. AMSA believes it obviously ignores the requirements of 49 U.S.C. 13707 and the important requirement contained in 49 U.S.C. 13702(a)(2) that:

> The mover may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

AMSA believes the 25AG have approached this and a number of other issues as if the regulations to be promulgated should be treated in a vacuum with no consideration given to underlying statutory directives or restraints. They also ignore the fact that movers have a lien on the goods they transport and may refuse to deliver until their charges are paid or guaranteed. *Illinois Steel Co.* v. *Baltimore & Ohio Railroad Co.*, 320 U.S. 508 (1944).

Response to Comments

FMCSA appreciates the comments received regarding this section and has incorporated the recommendation that we require the mover to specify the form of payment when the mover prepares the estimate. The mover and its agents must honor the form of payment at delivery, except when a shipper agrees to a change. The mover must include the same information on the order for service and bill of lading. It is important to state in the rule that the carrier must accept the method of payment originally agreed in order to avoid unnecessarily burdening the shipper, who may not be prepared to make an alternative form of payment. For example, in a case where a cashier's check is the agreed payment and the carrier demands cash on a Saturday evening when the bank is closed, a serious problem would be created for the shipper, most likely resulting in the driver leaving without unloading the shipment.

FMCSA has also added another requirement to the interim final rule. If the mover or its agent agrees to accept a charge or credit card payment as the method to pay for receipt of goods at delivery, then the mover must arrange for delivery during the time the mover's credit/collection department is open to seek approval of payment by card issuer, unless the vehicle is equipped to process credit card payments.

Section 375.221 May I Use a Charge or Credit Card Plan for Payments?

The OCC believes the term "cashier's check" should not supplant the term "money order." A loss of an open money order that does not denote a payee can result in a stop payment of the same. No stop payment is available for the loss of cash. A shipper may hesitate to carry a large sum of cash and may want to go to a convenience store and convert the cash into consecutive money orders. AMSA agrees that both terms should be used.

The 25AG believe the regulations should mandate that the mover's payment policy be the same at all stages of the transaction. If charge or credit cards are permitted at the order for service, the cards should be allowed at the time of delivery. They suggest that carriers should inform consumers of their payment policies.

The AGCT suggests the regulations should not allow carriers to treat reversal of credit card transactions as an involuntary extension of credit. This is not consumer protection, it believes. If carriers suffer financial loss due to actions of the consumer, carriers should be required to rely on the same avenues of dispute resolution that are available to the shipper. It further recommends that FMCSA should allow a consumer to treat a carrier's failure to pay a claim for untimely shipments or damage or loss as an involuntary extension of the shipper's credit to the carrier, subjecting the carrier to the same financial penalties as the consumer listed in § 375.807.

Response to Comments

FMCSA has added money orders as a form of acceptable payment in the interim final rule. If a mover accepts money orders as an acceptable form of payment, the mover must include the provision in its tariff.

FMCSA has also added language to § 375.221(a) to make it clear that a carrier is bound by the payment provisions in its tariff from the time it gives an estimate until completion of any transaction that results from that estimate, unless otherwise agreed with a shipper under § 375.217(a).

FMCSA has retained the rule language that allows a carrier to treat a reversal of a credit card transaction as an involuntary extension of credit because the use of a credit card is considered an alternative to payment in cash, certified check, money order, or cashiers check, which are payment methods that cannot be reversed.

However, FMCSA has not added a provision allowing a consumer to treat an unpaid claim against a carrier as an involuntary extension of credit. Adding such a provision would be beyond the scope of the NPRM. Resolution of a claim that may be in dispute is traditionally resolved in a State court.

Section 375.301 What Service Options May I Provide?

The AGCT recommends that the regulations should require carriers to have liability insurance covering casualty losses resulting from the actions of the carrier.

AMSA comments that the rationale underlying the AGCT recommendation is not clear. AMSA states that carriers are liable for cargo loss and damage under 49 U.S.C. 14706 and must provide evidence of insurance pursuant to 49 U.S.C. 13906(a)(3). As a general proposition, casualty insurance coverage contemplates personal injury losses, a subject that is not related to this proceeding. In any event, carriers are also required by statute to maintain liability insurance in amounts prescribed by the Secretary covering bodily injury, etc. *See* 49 U.S.C. 13906(a)(1).

Response to Comments

FMCSA agrees with AMSA. The AGCT's recommendation appears to contemplate requiring personal injury loss coverage in these regulations. This is not within the scope of this rulemaking and is already required by statute and regulation.

Section 375.303 If I Sell Liability Insurance Coverage, What Must I Do?

The 25AG recommend requiring clear and conspicuous disclosure to consumers of all limitations on liability coverage and any inventory requirements needed for valuation of their shipments, as well as requiring disclosure, at the time of delivery, of whether any agents were used during the move and whether the consumer's goods were stored during the shipment. They further recommend that upon the consumer's request, carriers should provide numerous pieces of information. Such information would include the agents or subcontractors used during the move, liability coverage for that move, identification of all storage facilities used, and liability coverage attendant to that storage. They also suggest development of regulations that will sharply limit the use of disreputable tactics by some carriers to avoid legitimate liability coverage obligations.

The AGCT suggested the regulations require carriers to procure insurance on behalf of the shipper. If a carrier sells or offers to sell liability insurance to the shipper, the carrier must comply with any applicable licensing requirements of a State insurance regulatory body. If the carrier sells or procures insurance on behalf of the consumer, the consumer must be the named insured on the policy and the carrier must provide the consumer with a copy of the policy and a certificate of insurance indicating the period of coverage.

AMSA comments that the language proposed in § 375.303(a)(1) and (2) is unclear in establishing the conditions under which carriers may sell or procure insurance coverage for cargo loss or damage. As written, paragraph (a) provides that insurance may be procured only under the two conditions set out in paragraphs (a)(1) and (2). However, those paragraphs are not connected with the conjunctive "and" or the disjunctive "or." Moreover, AMSA believes the language in paragraph (a)(2) is confusing. It describes a situation where the shipper fails to declare a valuation of $1.25 per pound and pays or agrees to pay the carrier for assuming liability equal to "the declared value." This condition is at odds with itself.

AMSA points out that under the outstanding Surface Transportation Board released rates order (RRO), the failure to declare a lump sum value or valuation of $1.25 per pound will result in the shipment being deemed to have been released to a declared lump sum value of $1.25 per pound times the weight of the shipment. *See* 9 I.C.C. 2d 523.

In any event, AMSA believes paragraph (a)(2) can be eliminated as unnecessary. Historically, carriers were authorized to sell or procure excess insurance only when the shipment was released to a value not exceeding 60 cents per pound. Although current § 375.11(a) contains the additional condition that "the shipper does not declare a valuation of $1.25 or more," it is clear that the latter condition is superfluous. Although stated as two conditions, they are actually the same. If a shipper releases a shipment at 60 cents per pound, he could not declare a valuation at $1.25 per pound or more. Conversely, if he declares a valuation at $1.25 or more, he could not release the shipment at 60 cents per pound. This mutual exclusivity is made clear in the RRO giving rise to this language. *See* RRO No. MC–505, Released Rates of Motor Common Carriers of Household Goods, June 7, 1966, and Released Rates Decision No. MC–999, 9 ICC. 2d 523 (1993). AMSA therefore recommends that paragraph (a)(2) be deleted.

AMSA further argues that paragraphs (b) and (c) are duplicative to some extent. Current § 375.11(a) is limited to insurance for loss and damage just as appears in proposed paragraph (c). It therefore recommends that paragraph (b) be deleted, paragraph (c) be redesignated as (b), and the remaining paragraphs be redesignated accordingly.

With respect to the 25AG recommendation that more explicit language should be employed to preclude carrier avoidance of payment of loss or damage claims, AMSA believes that proposed § 375.303 is not intended to deal with this issue. Carriers, it asserts, are required to process claims for loss or damage in accordance with the regulations contained in 49 CFR part 370. If, as the 25AG argue, they encounter situations in which they believe carriers have violated part 370, a complaint can be made to FMCSA.

AMSA believes that the AGCT recommendation that carriers be required to procure insurance on behalf of shippers and, if appropriate, comply with any applicable State licensing requirements, confuses the carrier's role in procuring insurance. Carriers do not sell insurance, but may procure insurance on behalf of a shipper from an insurance entity that is authorized to issue a policy under applicable State law.

Response to Comments

In response to the 25AG, we believe that the carrier, its employees, and agents are essentially one and the same, in that the carrier is responsible for the acts of both the employees and agents. Therefore, the authorized carrier named in the bill of lading would be primarily responsible for any activity involving the move, including the selling of insurance and providing the shipper with a policy from the insurance carrier. If the authorized carrier used an owner-operator under lease agreement, the carrier would be fully liable for the move.

The Surface Transportation Board's revised RRO states that unless the shipper expressly releases the shipment to a value not exceeding 60 cents per pound per article, the carrier's maximum liability for loss and damage shall be either the lump sum value declared by the shipper or an amount equal to $4.00 times the actual weight of the shipment, whichever is greater. Additionally, the shipper may purchase additional liability insurance coverage from the carrier. The revised RRO provides that the $4.00 rate may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

As we noted in our response to § 375.201, we have added regulatory text to § 375.201 concerning the full liability to which the carrier may be subject if it fails to issue a copy of the insurance policy or other appropriate evidence of insurance. Also, we have adopted AMSA's recommendation to delete proposed paragraphs (a)(2) and (b) in § 375.303.

Section 375.401 Must I Estimate Charges?

NACAA supports estimates being given in writing. The AGCT suggests changing "binding estimate" everywhere in the proposed regulations to "guaranteed delivery price." It believes that the term "estimate" implies approximation rather than a fixed price. It further suggests changing paragraph (b) to reflect the fact that the final charges will be based on the actual weight "or volume" because this is consistent with estimates to be given based on weight or volume.

Starving Students has a deep concern about requiring written estimates. It states that a written estimate requires a personal visit to the shipper's residence, which is costly. It estimates that requiring a prior written estimate would add $250 or more to the cost of the move and believes adding such costs would discourage many shippers from hiring a mover for small moves.

Starving Students also believes that there is not enough advance time to perform a visual inspection for a written estimate. Shippers often schedule moves with very short notice, which does not permit a prior visual inspection to be performed. The majority of Starving Students' bookings are booked within seven days of the scheduled move.

Starving Students also notes that numerous moves occur from locations where movers do not have a local office in the vicinity. A prior visual inspection will be impossible in these cases. The consumer would have to select a mover not based on price or service, but on the proximity of a field estimator. Small movers offer low cost, no frills alternatives to the large van lines. It argues that excluding small movers, like Starving Students, from interstate moves based on a lack of a national network of estimators is an unfair restraint of trade. In summary, Starving Students believes that shippers and carriers want the same thing, *i.e.*, for the consumer to pay, and the carrier to receive, a reasonable price for the transportation of household goods across state lines.

AMSA believes this section provides that individual shippers must be given a written estimate before an order for service is executed and commends FMCSA for including these provisions in the proposed regulations. Providing as many written estimates as possible will certainly serve to reduce shipper complaints and misunderstandings over final charges. However, AMSA believes there are certain aspects of this requirement that should be considered further.

AMSA believes that most moves are booked at least two weeks in advance with the majority booked a month or more in advance. However, situations arise when moves are booked on much less than two weeks' notice or sudden last-minute changes make the preparation of a written estimate in advance of the move impossible. Situations brought about by unusual circumstances such as unexpected employment changes, domestic disputes, evictions, foreclosures, or emergency evacuations do not always permit much in the way of advance notice. AMSA believes that requiring a written estimate, which is, in turn, subject to the 110 percent rule, will cause some movers to refuse short notice shipments to avoid being held to the 110 percent payment provision because there is no opportunity to perform a visual inspection. Shippers will then be left with fewer options to accommodate their requirements, *e.g.*, move on their own or use unlicensed movers who ignore FMCSA regulations.

AMSA recommends that an alternative procedure be adopted for short notice shipments. Shippers would be given the opportunity to waive the requirement for a written estimate (or to waive the 110 percent rule) in short notice situations. The shipper will nonetheless receive service from a licensed professional mover subject to all of the other protections provided by the proposed regulations, it believes. It suggests that paragraph (a)(2) should be amended by revising paragraph (a) and adding a new paragraph (e), as follows:

(a) Before you execute an order for service for a shipment of household goods for an individual shipper, you must estimate the total charges in writing, except as provided in paragraph (e) below. The written estimate must be in one of the following two types:

* * * * *

(e) Waiver—Signatures Required. Subject to the shipper's agreement to waive the requirement for a written binding or non-binding estimate, pursuant to the provisions of § 375.407, you may provide a price quotation which shall be your reasonably accurate estimate of the approximate costs the individual shipper can expect to pay. The

shipper's agreement to waive the written estimate requirement must also include collection or credit arrangements acceptable to the shipper for payment of the total charges. The waiver agreement must be in writing and signed by the shipper before the shipment is loaded, and a copy must be retained as an addendum to the bill of lading.

AMSA believes for situations other than short-notice shipments, the provisions of § 375.407 that have been designed to deal with "hostage shipments" are a welcome addition to the proposed regulations. AMSA routinely receives complaints from desperate shippers whose shipments are being held by unscrupulous movers to be exchanged for the payment of charges in excess of the 110 percent maximum. If the government enforces these provisions, AMSA asserts, many complaints of this nature will be eliminated.

In response to AGCT's suggestion that the term "guaranteed delivery price" be used in this section and throughout in lieu of "binding estimate," AMSA notes the term "binding estimate" is rooted in the underlying statute, 49 U.S.C. 13704(a)(1).

Response to Comments

We did not require that a personal visit had to be made to execute the written estimate when we proposed the section regarding written estimates. We believe a written estimate could be executed after any telephone interview with a prospective shipper. Whatever the estimator estimates the total to be and communicates it to the shipper, the estimator would follow it up in writing.

We believe that the requirement to provide a written non-binding estimate, subject to the 110 percent rule, would cause some movers to make more accurate estimates for short notice shipments. This is because the incentive to add charges for additional services should be less when a carrier would not have to be paid for at least 30 days after delivery, and when the additional charges could be disputed by the shipper. This should provide shippers with a more accurate estimate to compare to other movers. Shippers would then be in a better position to compare and pay a more realistic amount than what some movers have allowed their agents to estimate.

In the interim final rule, we have added a requirement that the mover provide each shipper with an explanation in writing of the formula used when an estimate is given in terms of volume and then converted to weight. We have added a requirement that the mover specify the final charges will be based on actual weight and services, subject to the 110 percent rule at delivery.

We have also added a requirement that the mover must determine charges for any accessorial services such as elevators, long carries, *etc.*, before preparing the order for service and the bill of lading. If the mover fails to ask the shipper about such charges and fails to determine such charges before preparing the order for service and the bill of lading, the mover must deliver the goods and bill the shipper after 30 days for the additional charges.

In addition the interim final rule contains a new paragraph (b) specifying that, at the time the estimate is presented, the mover must specify the form of payment that it will accept at delivery.

To clarify the role of household goods brokers in the estimating process, FMCSA has added a new § 375.409, discussed below.

Section 375.403 How Must I Provide a Binding Estimate?

The AGCT suggests requiring all carriers include a binding estimate provision in their tariffs and to provide a binding estimate if requested by the consumer. It suggests the rules should not allow carriers to unilaterally refuse to honor the binding estimate and carriers should be required to provide the service as originally agreed on. It recommends that carriers be permitted to negotiate with the consumer for any additional services requested at the time of pickup, either as a binding or non-binding estimate, and that the rules should affirmatively require carriers to inquire of site conditions at the destination or other matters which may result in the imposition of additional charges at the delivery point. If the carrier fails to ask whether there are any long flights of stairs, AGCT states, the carrier should "not be permitted to charge for any additional services at the destination which may have reasonably been anticipated and not listed as an additional charge in its estimate. This is reasonable, since the carrier has experience in this area, and knows such services often require additional charges."

The AGCT believes carriers should be required to relinquish possession and bill the consumer for such additional services rather than demand immediate payment at the time of delivery.

AMSA comments about paragraph (a)(5), which provides three options for the carrier if the shipper tenders additional household goods or requests additional services that were not included in the original binding estimate. While the first three options will cover most situations, AMSA writes, other circumstances may result in a failure between the mover and the shipper to agree to a price for the additional services. Therefore, AMSA believes it is appropriate to include a fourth option to address this situation as follows:

(iv) If an agreement cannot be reached as to the price and/or service requirements for the additional goods or services, you are not required to service the shipment.

Paragraph (a)(7) provides that the carrier may require full payment for additional services requested by the shipper or required to be performed at destination (such as stair carry, long carry, storage, etc.). AMSA notes that during a typical moving scenario, the shipper may also request additional services while a shipment is en-route, such as a diversion with an extra pick-up or delivery to a friend or relative at an intermediate point. AMSA believes that the proposed language should be clarified to accommodate such requests as follows:

(7) If the individual shipper adds or requires additional services en-route or at destination to complete the transportation, and the services fail to appear on your estimate, you may require full payment at the time of delivery for such added services.

AMSA states that AGCT's proposal that carriers be required to include a binding estimate provision in their tariffs conflicts with the permissive authority conferred by 49 U.S.C. 13704(a) (1) and 14104(b)(l), which provide that carriers "may" provide binding estimates of charges.

AMSA believes that the AGCT's suggestions reflect a failure to understand the operational conditions carriers often confront in order to properly service shipments. During a typical move, additional services may be required to complete the move or the shipper may request additional services while the shipment is en-route or before delivery. Since the transportation of household goods is a labor intensive process, the failure of the shipper to properly inform the carrier of the precise requirements necessary to properly remove the contents of a residence, secure them in an over-the-road vehicle and effect delivery at the new residence, can result in additional services which, in turn, require the assessment of additional charges.

AMSA asserts that owner-operators perform the majority of the labor services that are required to load, transport, and unload household goods shipments. These individuals cannot, nor should they be expected to, perform their services without compensation or for compensation that is less than is necessary to attract their services. AMSA believes that it should be apparent that the fact that the costs and related charges incurred to perform a move may not agree with an estimate of charges is not the exclusive result of carrier misfeasance or deception as certain arguments suggest.

For example, AMSA notes, NACAA proposes that, by paying an additional 10 percent, the shipper is not admitting the legitimacy of the expense or waiving any rights to bring a private action under State or local law. NACAA also proposes that the regulations state that it is an unfair, misleading or deceptive act or practice for a mover to fail to deliver the goods after an offer to pay 110 percent is made.

In response to the AGCT's recommendation that consumers be allowed to reduce the amount they must pay for a carrier to relinquish a COD shipment to "substantially" less than 100 percent of the estimate, and that they be allowed to offset any damages from the balance of any remaining charges owed to the carrier, AMSA states that certain AMSA testimony in 1998 before the U.S. House of Representatives Subcommittee on Surface Transportation of the Committee on Transportation and Infrastructure warrants repeating:

> The overwhelming majority of all movers are reputable, regulated businesses. They perform an essential public service by complying with the consumer and other regulations that govern our business and were put in place by the former ICC. * * *
>
> In its evaluation of this situation, and in its consideration of possible legislative solutions, we urge Congress not to lose sight of the fact that the moving industry performs 1.3 million interstate moves each year, the vast majority of which are accomplished without incidence and to the customer's satisfaction. It is the exceptional, out of the norm "horror story" that attracts media attention and portrays the industry in a bad light. No attention is paid to the hundreds of thousands of incident-free moves that take place each year. [footnote omitted] This is somewhat understandable since the media concentrates on the exception rather than the rule in its attempt to alert the public to what it perceives to be potential problems. My industry understands that motivation. In fact, we also firmly believe the public should be encouraged to make certain they are selecting a licensed, reputable mover when they require moving services. My point is, given the existing, somewhat negative climate the moving industry is dealing with, Congress should not react in a manner that will unduly burden the industry by imposing regulatory obstacles that translate into less efficient, more costly service to the public. (Testimony of Joseph M. Harrison, President, AMSA, delivered August 5, 1998.)

Attached to Mr. Harrison's testimony were copies of a small sampling of congratulatory letters AMSA members received from customers expressing their satisfaction with the carrier's service. AMSA noted those letters reflect the high level of service all reputable movers strive to achieve. AMSA also noted no publicity was paid to the customer's laudatory comments.

AMSA comments that in the context of estimates of charges versus actual lawful charges, changes in service requirements usually occur either because the shipper requested the changes or because the mover determined they were necessary to properly service a shipment. AMSA argues that one needs merely to review carrier tariffs to understand the many services carriers must perform that may result in changes in estimates of charges. These include vehicle detention, distance and stair carries, impracticable operations, pickup or delivery on Saturdays, Sundays or Holidays, stop-offs, appliance service, shuttle service, and storage-in-transit. Available industry statistics obtained from the AMSA Continuing Traffic Study for COD shipments transported in 1995 indicate the following:

11.7 percent of COD shipments required either an extra pick-up, an extra delivery, or both;

14.2 percent required long carry service or elevator service;

14.0 percent required stair carries; and

2.8 percent required shuttle service to complete pickup or delivery at inaccessible locations or waiting time to accommodate shippers' schedules when accomplishing delivery.

In the aggregate, 56.8 percent of the COD shipments required these or other additional services either at the shippers' specific request or because such service was required to accomplish delivery.

AMSA also believes it is appropriate to consider the former ICC's analysis of the difficulties associated with estimating. In concluding that 10 percent above estimated charges is the appropriate margin for collection by carriers at delivery, the Commission stated:

> In doing so, we recognize that carriers should be permitted some leeway in estimating charges. Calculating approximately the weights of various items of household goods, arriving at an opinion of the total weight of a shipment, and working out the probable costs of accessorial services at origin and destination, all coupled with the element of human error, should not be the bases for establishing the amount beyond which the carrier should be required to extend credit to the shipper. We therefore conclude that a 10 percent margin should be allowed to the carrier in arriving at its reasoned judgment of total charges, and that such a variation will not be an unreasonable burden to the shipper. *Practices of Motor Common Carriers of Household Goods*, 111 M.C.C. 427, 468 (1970). See also *Practices of Motor Common Carriers of Household Goods*, 132 M.C.C. 599, 609 (1981).

Response to Comments

FMCSA agrees with the AGCT that, at the time of pickup, movers should inquire of site conditions at the destination or other circumstances which may result in the imposition of additional charges at the delivery point. If the mover fails to ask whether there are any long flights of stairs, for example, the mover would relinquish possession and bill the shipper for such additional services rather than demand immediate payment at the time of delivery. We have added appropriate language to the interim final rule to incorporate these comments.

In addition, FMCSA requires in § 375.403(a)(8) in the interim final rule that if a shipper asks for additional services after the goods are in-transit, the mover must inform the shipper additional money must be paid. If a mover believes additional services are necessary to properly service a shipment after goods are in-transit, the mover must inform the shipper what the additional services are before performing those services. The mover must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the shipper agrees to pay for the additional services, the mover must execute a written attachment to the bill of lading and have the shipper sign the written attachment. This could be accomplished through faxes between the parties.

If the additional services are not acceptable by the shipper and the shipment is in transit, the carrier should deliver for the amount of the original estimate and bill for any remainder after 30 days.

FMCSA believes it is the carrier's responsibility to ask and determine at origin if the conditions at the destination require additional services (*i.e.*, shuttle, long carry, elevator, stairs, and other accessorial services) to effect delivery, and to advise the shipper of the cost of such additional services, as well as method of payment for the services at the time of delivery. If the shipper refuses to pay for additional services at origin and before loading, the carrier has the option to accept or deny the shipment. *See* § 375.403(a)(5) in the interim final rule. If the shipper refuses to pay for additional services at the

destination when the carrier arrives for delivery, then the carrier can attempt to negotiate different payment terms for the cost of additional services; however, the carrier must deliver the shipment.

We disagree with AMSA that when the individual shipper adds or requires additional services en-route or at destination to complete the transportation, and the services failed to appear on the mover's binding estimate, the mover may require full payment at the time of delivery for such added services. We believe the better approach is to allow the binding estimate to be paid on delivery and the additional charges be billed at least 30 days after delivery. By requiring the mover to determine the appropriate accessorial charges before loading the shipment and permitting the carrier to refuse servicing the shipment before loading, the problem of inaccurate estimates because of surprise charges and services at destination will be minimized. If new charges or services do occur, we will require the individual shipper to pay them, but only after a period when the individual shipper has had the opportunity to establish his or her financial relationships in the new community. Requiring an individual shipper to raise hundreds, if not thousands, of dollars at the destination in a very short time can cause a severe hardship.

Section 375.405 How Must I Provide a Non-Binding Estimate?

NACAA supports movers retaining shipping records, including written cost estimates, for a period of one year. The Consumers Union believes the rules should require that carriers give consumers a maximum price with a non-binding estimate. The Union suggests allowing a carrier to self-determine how it provides the maximum price, whether through a simplified tariff schedule handed to the consumer, or by calculating a maximum price above the estimate. It asserts that information about a maximum price enhances the consumer's ability to compare carriers.

AMSA believes consistency requires expanding proposed paragraph (b) to address the circumstances presented when changes occur in the services required to transport a shipment that moves on a non-binding estimate just as is provided by § 375.403(a)(5), (6), and (7) for binding estimate shipments. AMSA recommends adding the following similarly worded paragraphs to paragraph (b):

(7) If it appears, before loading, that an individual shipper has tendered additional household goods or requires additional services not identified in the non-binding estimate, you are not required to honor that estimate. However, before loading the shipment, you must do one of the following three things:

(i) Reaffirm your initial non-binding estimate;

(ii) Negotiate a revised written non-binding estimate listing the additional household goods or services;

(iii) If an agreement cannot be reached as to price and/or service requirements for the additional goods or services, you are not required to service the shipment.

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect at delivery more than 110 percent of the amount of the original non-binding estimate, plus the full payment for additional services that were performed en-route or at destination that do not appear on your non-binding estimate.

AMSA believes the same additions should be made to the Your Rights and Responsibilities When You Move publication, under the explanation of Non-Binding Estimates.

AMSA also believes the words "best estimate" contained in paragraph (b) should be changed to "reasonably accurate estimate" because estimates are just that and accuracy is the goal, not best or worst or some other misnomer.

AMSA believes that the proposed requirement that movers retain records of all non-binding estimates of charges for at least one year from the date the estimate was prepared will be unnecessarily burdensome. As part of the normal course of arranging for a move, shippers are encouraged to obtain multiple estimates before their move. As a result, most movers perform many more estimates than moves. AMSA believes that the intent of paragraph (c) is to ensure that estimates are preserved only for the moves that are actually performed. Thus, AMSA suggests deleting paragraph (c) and adding the 1-year retention requirement paragraph (b)(4), as follows:

(4) You must retain a copy of the non-binding estimate for each move you perform for at least one year from the date you made the estimate as an addendum to the bill of lading.

AMSA also recommends that § 375.403(c) and § 375.407(d) should be amended to incorporate these recommended changes.

AMSA comments that the Consumers Union proposal to require carriers to give consumers a maximum price with a non-binding estimate has been addressed by Congress in 49 U.S.C. 14104(b), which does not mandate binding estimates. According to AMSA, a requirement that carriers furnish maximum prices would be tantamount to a mandated binding estimate and inconsistent with the statute.

Response to Comments

FMCSA believes that whether a mover provides an estimate via telephone or a personal visit, the estimate must be in writing. The carrier should provide an estimate that is reasonably accurate and include all services to be provided. The estimate should also be based on the carrier's applicable tariff. This would not be a new burden, as the carriers are already required to do this. The estimate must clearly note the shipper is only required to pay 110 percent of the non-binding estimate at time of delivery. We have added the following provisions to the interim final rule to clarify how to handle changes to non-binding estimates: Any changes in a non-binding estimate must be mutually agreed to in a written attachment to the bill of lading. If a shipper asks for additional services after the goods are in-transit, the mover must inform the shipper additional money must be paid. If a mover determines additional services are necessary to properly service a shipment after the goods are in-transit, the mover must inform the shipper what the additional services are. The mover must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the shipper agrees to pay for the additional services, the mover must execute a written attachment to the bill of lading and have the shipper sign the written attachment.

FMCSA agrees with AMSA that a requirement that carriers furnish maximum prices would be tantamount to a mandatory binding estimate. FMCSA also agrees with AMSA that paragraphs (a)(7) and (8) of § 375.405 should parallel § 375.403(a)(5)–(7) and has changed the interim final rule language accordingly.

FMCSA also agrees with AMSA's comment on paragraph (b) and has changed "best estimate" to "reasonably accurate estimate."

FMCSA also agrees that requiring the retention of all estimates for one year would be burdensome, and has changed §§ 375.403(c), 375.405(d), and 375.407(d) so that a mover need only retain for one year copies of estimates for moves actually performed.

Section 375.407 Under What Circumstances Must I Relinquish Possession of a Collect-on-Delivery Shipment Transported Under a Non-Binding Estimate?

NACAA supports the requirement that all goods be released upon payment of no more than 110 percent of the estimated charge. It also suggests that language should be added clarifying that the consumer, in accepting delivery, is not waiving any rights to proceed against the mover in a private action to recover transportation charges, or waiving State or local enforcement. It argues that the rules should provide that it is unfair, misleading and a deceptive act or practice to fail to deliver household goods when a mover is offered 110 percent of the written estimate.

The AGCT recommends the rules substantially reduce the amount of money that the consumer must pay to the carrier in order for the carrier to relinquish possession of the shipment. The AGCT strongly supports the deferred payment provision of paragraph (c) and believes the consumer should be permitted to offset any damages from the balance of any remaining charges owed to the carrier.

AMSA recommends that to avoid potential misunderstandings, the wording of paragraph (a) should be changed to comport with the language contained in current § 375.3(d), as follows:

(a) If an individual shipper pays you at least 110 percent of the estimated charges on a collect-on-delivery shipment on which a non-binding estimate of the approximate costs was furnished, plus the costs for additional services that were performed en-route or at destination which were necessary to complete the transportation, you must relinquish possession of the shipment at the time of delivery. You may specify the form of payment acceptable to you.

Paragraph (c) includes an explanation of how carriers must handle the collection of balances due in excess of the 110 percent amount paid on shipments that moved under non-binding estimates. Although it believes that the example provided in the NPRM is clear, AMSA would like language added to avoid any misunderstandings concerning the assessment of authorized service charges on delinquent payments as would be authorized by proposed § 375.807. AMSA recommends adding the following sentence at the conclusion of paragraph (c) of § 375.407:

If the $400 is not paid within the 30-day period following issuance of your freight or expense bill, you must assess a service charge of one percent of the freight bill, subject to a $20 minimum charge for each subsequent 30-day period or fraction thereof.

AMSA also believes it is necessary to consider the language contained in proposed § 375.801(b) *What types of charges apply to subpart H?*, and the discussion in Subpart H of the Your Rights and Responsibilities publication as they deal with the extension of credit to COD shippers.

AMSA believes the existing credit regulations make it clear that they do not apply to COD non-binding estimate shipments that move under the 110 percent rule. It refers to 49 CFR 377.215(a), and its reference to 49 CFR 375.3(d). This language was lifted in its entirety from the former ICC credit regulations, 49 CFR 1320.8(a), which contained the same inapplicability reference, *i.e.*, 49 CFR 1056.3(d). Under both versions of these regulations, COD shippers must pay not less than 110 percent of the estimated charges on a non-binding estimate shipment at the time of delivery. If a balance remains beyond the 110 percent amount paid, the carrier may request payment of that amount not sooner than 30 days after the date of delivery. There are no other credit arrangements available for the COD customer. The extension of credit regulations contained in 49 CFR 377.215 and 49 CFR 1320.8 apply to shippers, other than COD shippers, to whom carriers extend credit. For example, a national account shipper may arrange for the transportation of its employees' goods under a carrier's tariff rather than under a contract. Because of the repetitive nature of that shipper's business, the carrier may elect to extend credit to the shipper for the payment of transportation charges, in which case the provisions of § 377.215 would apply.

AMSA believes that in the drafting of proposed § 375.801 and the narrative contained in Subpart H of Your Rights and Responsibilities, we incorrectly assumed that the existing credit regulations apply to COD shippers whose goods move under the 110 percent rule. AMSA believes the language and instructions in proposed § 375.801 are bound to create confusion among individual shippers who may assume that their mover will defer its request for payment and extend credit 30 days or more beyond the date of delivery. AMSA recommends rewriting § 375.801 and subpart H to avoid misunderstandings between individual shippers and movers. It believes the regulations and shipper guidance must make it perfectly clear carriers will expect payment of not more than 110 percent of the estimated charges on a COD non-binding estimate shipment at the time of delivery. It also believes the mover rule and shipper guidance must make it perfectly clear the shipper will be billed for any balance due not sooner than 30 days after delivery.

Response to Comments

We do not agree with the AGCT proposal to reduce the amount of payment required at delivery to substantially less than 110 percent of the estimated charges. We believe the 110 percent requirement strikes a fair balance between the carrier's right to receive prompt payment for its services and the shipper's right to pay an amount reasonably close to the estimated charges at the time of delivery. Allowing shippers to offset damages from any remaining charges owed the carrier would violate 49 U.S.C. 13702, which requires household goods carriers to charge and receive the rate specified in their tariffs. In response to NACAA, the right to take claims to court is established by law and does not need to be specifically mentioned in these regulations.

FMCSA agrees with the AMSA comments. We have modified the section to state that the mover may expect payment of no more than 110 percent of the estimated charges on a COD non-binding estimate shipment at the time of delivery and that the shipper will be billed for any balance due not sooner than 30 days after delivery. We have also modified the last sentence in paragraph (a) to state the mover must accept the form of payment agreed upon at time of estimate, including credit card, and relinquish the shipment.

Section 375.409 May Household Goods Brokers Provide Estimates?

We have added new § 375.409 to eliminate confusion regarding the authority of household goods brokers to issue estimates of transportation charges. Twenty-five years ago, the Interstate Commerce Commission concluded that brokers were prohibited from providing estimates because the duty to comply with the household goods regulations rests with the carrier, and shippers aggrieved by an act or omission of a broker would be unprotected by the regulations. In *Entry Control of Brokers*, 126 M.C.C. 476, 520 (1977), the Commission stated:

For example, if a broker provides a c.o.d. shipper with an estimate it has made, on which the shipper relies, the shipper would be deprived of the protection of 49 CFR 1056.8(b) of the household goods regulations, which provides that where the transportation charges exceed a carrier-made estimate by more than 10 percent, the shipper must pay only 110 percent of the charges upon delivery and is given a period of 15 days following delivery to make payment in full. Since this protection applies only to carrier-made estimates, a c.o.d. shipper who relies upon an incorrect estimate of a broker will have to pay the carrier's entire freight charges

upon delivery, regardless of the extent the actual charges might exceed the broker's estimate.

In *Exec-Van Systems, Inc., Broker Application,* 128 M.C.C. 669, 678 (1978), the ICC noted that a broker's proposal to make estimates "would appear to be inconsistent with our established regulations, since 49 CFR 1056.8(a) places the obligation for making estimates solely upon the carrier. Applicant would, therefore, be advised not to interfere with the carrier in the performance of his obligations in making estimates, as this responsibility is intended by our regulations to be performed solely by the carrier or his agent."

Along these same lines, the Commission, in *Ward Moving & Storage Co., Inc., Household Goods Broker Application,* 132 M.C.C. 589, 596 (1981), stated that "49 CFR 1045.7(b) * * * implicitly forbids the broker offering services or making contractual obligations which only a carrier may offer. It must be clear to the public that the broker is only an arranger of transportation, acting only in an advisory nature and offering services ancillary to the physical transportation." The rule cited in this quotation, now codified in 49 CFR 371.7(b), prohibits brokers from misrepresenting themselves, directly or indirectly, as carriers.

Although brokers may not enter into agency agreements with household goods carriers because they are required to exercise discretion in allocating traffic among carriers, we believe it would be permissible for a carrier to enter into a more limited type of agreement authorizing the broker to provide estimates on behalf of the carrier. Under such an agreement, the carrier would have to adopt the broker's estimate as a carrier-issued estimate and incorporate it into the order for service and bill of lading for purposes of compliance with part 375, particularly the 110 percent rule. We believe that under these circumstances, the individual shipper would not be deprived of the protections provided in part 375 because the carrier would still be held accountable for complying with this part. However, a household goods broker may not issue an estimate without entering into such an agreement with a carrier because otherwise the requirements of part 375 would not apply to the broker-issued estimate.

Section 375.501 Must I Write Up an Order for Service?

NACAA supports requiring all prices, terms and services to be presented in written documents signed by the mover and delivered to the shipper before the household goods are packed and loaded; and that these documents must be retained for a period of one year. NACAA also urges us to prohibit movers from requiring shippers to sign blank or incomplete documents, such as estimates, orders for service, or bills of lading.

The AGCT suggests the rules should allow a shipper to proceed against the mover if the mover fails to deliver the shipment in accordance with the time requirements in the contract. It believes that the shipper should not have to pay an additional fee to the mover to ensure pickup and delivery of the goods on the specific dates or within a specific period. The AGCT argues that we should grant the shipper a three-day grace period allowing the shipper to rescind the order for service without any penalty, provided the ordered services are scheduled more than three days after the order is written and that the mover should provide shippers with the items listed in § 375.503(b)(2), (4), (9), (10), and (11).

The AGCT argues that paragraph (a)(5) should allow the shipper to deduct any penalties or per diem amount due to the shipper from any amounts that the shipper owes to the carrier. Alternatively, the mover should be required to make payment to the shipper at the time of delivery in the manner specified by the shipper to level the playing field and allow both parties to collect amounts due them at the same time. Paragraph (a)(6) should require the carrier to affirmatively note the shipper's denial of any special or accessorial services that might be reasonably expected.

In response to the AGCT comments, AMSA argues that shippers do not ordinarily incur additional costs for delivery date commitments unless equipment availability is limited and a specific request requires special operations. With respect to the shipper remedies suggested by the AGCT, AMSA states that: (1) Shippers routinely cancel orders for service for a variety of personal reasons and incur no penalty for doing so; (2) as a general rule, the information listed in § 375.503(b)(2), (4), (9), (10), and (11) is routinely furnished when an order for service is executed; (3) any amount that may be due a shipper as a result of loss, damage or inconvenience must be presented and processed pursuant to the regulations at 49 CFR part 370, or the carrier's lawful tariffs; and (4) if an accessorial service is requested or required, presumably performance of that service is necessary to safely transport a shipment. AMSA questions the advisability of a rule that would permit shippers to refuse services that "might be reasonably expected."

Response to Comments

Although carriers may routinely permit shippers to cancel orders for service without penalty and furnish references to several bill of lading provisions when an order for service is executed, the comments from the AGCT indicate that not all carriers adopt such practices. We believe that mandating a 3-day grace period and reference to the bill of lading provisions provides additional consumer protection (*See* new paragraphs (e) and (a)(6) through (a)(10) in the interim final rule).

We adopt the AGCT's comment about paragraph (a)(6) (which is codified at (a)(11) in the final rule) and agree with AMSA that a required accessorial service may be necessary to safely transport a shipment if the mover could reasonably expect it. We require, in new paragraph (b) of the interim final rule, that if an accessorial service is necessary to safely transport a shipment, the mover must refuse to accept the shipment. As a safety agency, we will not allow the mover to provide unsafe transportation even when requested by an individual shipper.

In response to comments by NACAA, in new paragraph (d) in the interim final rule we are prohibiting movers from requiring shippers to sign blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

Must I Write Up an Inventory?

NACAA believes the rules should mandate shipment inventories that itemize every box and item consigned to protect shippers and movers for all weight-rated and hour-rated moves, unless the shipper signs a clear and conspicuous waiver of the inventory. NACAA recommends that an inventory form also be required.

AMSA concurs in the NACAA recommendation stating that detailed inventories of the goods tendered for transportation serve to protect the interests of shippers and carriers. AMSA recommends inclusion of the following provision:

Proposed § 375.502 Must I Write Up an Inventory?

(a) You must prepare a written, itemized inventory for each shipment of household goods you transport for an individual shipper. The inventory must identify every carton and every uncartoned item that is included in the shipment. When you prepare the inventory, an identification number that corresponds to the inventory must be placed on each article that is included in the shipment.

(b) You must prepare the inventory before the shipment is loaded in the vehicle for transportation in a manner that provides the individual shipper with the opportunity to observe and verify the accuracy of the inventory if he or she so requests.

(c) You must furnish a complete copy of the inventory to the individual shipper before beginning to load the shipment. A copy of the inventory, signed by both you and the shipper, must be provided to the shipper, together with a copy of the bill of lading, before you begin to load the shipment.

(d) Upon delivery, you must provide the shipper with the opportunity to observe and verify that the same articles are being delivered and the condition of those articles. You must also provide the shipper the opportunity to note, in writing, any missing articles and the condition of any damaged or destroyed articles. In addition, you must also provide the shipper with a copy of all such notations.

(e) You must retain inventory forms for at least one year from the date you created the form.

AMSA noted its recommended addition would also entail a change in that portion of the Your Rights and Responsibilities publication which deals with this issue (Subpart E—Pick Up of My Shipment of Household Goods).

AMSA therefore recommends adopting the following language in lieu of that proposed:

Should my mover write up an inventory of the shipment?

Yes. Your mover should prepare an inventory of your shipment before loading. The inventory should be a detailed listing of the cartons and uncartoned articles included in your shipment noting any damage or unusual wear to any articles. The purpose of the inventory is to make a list of the articles included in your shipment and a record of the condition of each article.

After completing the inventory both you and the driver should sign each page. Before you sign it, make sure that the inventory lists every item in the shipment and that the entries regarding the condition of each article are accurate. You have the right to note any disagreement in the form. When your mover delivers your shipment, your ability to prove that any articles were lost or damaged may depend on the accuracy of the inventory. Your mover should give you a copy of the inventory. Be sure to keep your copy in a safe place; it is an important part of your shipment records. Your mover will keep the original. If your mover's driver completed the inventory, the mover will attach the complete inventory to the bill of lading as an addendum.

Response to Comments

FMCSA agrees with NACAA and AMSA. We have added the proposed requirements in § 375.503 of the interim final rule and included that a mover must write an inventory of all items involved in a move, assigning each item an identification number. The mover must prepare an inventory before it allows its agents or drivers to load the shipment. The mover must provide a complete copy to the shipper before loading the shipment. Upon delivery, the mover must provide the shipper with an opportunity to verify the same articles are being delivered and the condition of those articles. The mover must provide the shipper the opportunity to note any missing articles and the condition of any damaged or destroyed articles. Finally, the mover must provide the shipper with a copy of all such notations.

Section 375.503 Must I Write Up a Bill of Lading?

NACAA supports the requirement that all prices, terms, and services be presented in written documents signed by the mover and delivered to the shipper before the household goods are packed and loaded and that the allowable form of payment be specified in writing. NACAA supports requiring movers to retain shipping records, including bills of lading, for a period of one year.

The 25AG recommend that the rules should require clear and conspicuous disclosure on all documents, including estimates and bills of lading, of what form of payment will be required upon delivery of household goods, if different from the form of payment received at the outset of the transaction. If a carrier accepts a credit card as only a guarantee, the 25AG assert, the carrier should disclose that the credit card is not the form of payment that will be accepted upon delivery and also must disclose the form acceptable at delivery.

Response to Comments

FMCSA has modified this section (renumbered as § 375.505 in the interim final rule) based on the comments. New paragraph (b)(4) requires movers to specify on the bill of lading the form of payment acceptable at delivery, which must be the same form of payment entered on the estimate and order for service. New paragraph (b)(14) specifies that the attachments to the bill of lading are an integral part of the bill of lading contract. Also, proposed paragraph (b)(4) has been deleted as unnecessary.

Section 375.505 Must I Determine the Weight of a Shipment?

The 25AG strongly agree with the proposed opposition to the use of non-certified on-board trailer scales.

Air-Weigh states that its scales convert truck and trailer air-spring air pressure to accurate weight display. Its scale determines how much weight per pound of air pressure the suspension is supporting by comparing empty and loaded vehicle weights with air pressure required to support the weight. It states that once calibrated, the scale displays the on-the-ground weight of each axle group to within 200 to 300 pounds of an accurate platform scale. Comparative statistical research is being conducted, which Air Weigh intends to forward to the FMCSA when it becomes available.

The Cat Scale Company believes that on-board weighing is not in the best interest of the shipper when addressing the issue of shipper protection. It stated that "the allowance of on-board weighing would eliminate the customer being given a certified, 'legal for trade' weight of their goods as performed by a third party. The owner of the on-board scale would actually be the party transporting the goods and therefore have an interest in the weight of those goods."

Cat Scale states further that full length certified scales are governed by regulations established by the National Institute of Standards and Technology (NIST) under the U.S. Department of Commerce. Cat states these regulations are published in the Handbook 44 publication. Most States have adopted Handbook 44 as the State's governing regulations or have regulations in force that are based, in large part, on Handbook 44. Cat asserts that each State very aggressively checks certified scales to insure their compliance with Handbook 44 and in turn seals the scale to show that the scale may be used to give a "legal for trade" weight.

Cat also states that significant ongoing maintenance of a certified scale is necessary in order to keep it 100 percent accurate and able to meet Handbook 44 requirements. For example, Cat uses a 200,000 pound capacity scale, having 10,000 graduations of 20 pounds each found in Table 6 Handbook 44 Section 2.20, Scales, pages 2–23. In order for Cat to maintain proper calibration of that scale, when Cat applies 25,000 pounds of test weights to the scale, the maximum deviation tolerance allowed by NIST would be three graduations or 60 pounds. When Cat initially placed into service the scale, the maximum allowable deviation was one half that or 30 pounds. It is Cat's understanding that the deviation of an on-board scale (using Air-Weigh's model 5600 as an example) is 200–300 pounds per axle group. That equates to as much as 900 pounds of potential error per typical load. If the average household goods load weighs 6,023 pounds, Cat believes 900 pounds represents a significant percentage of

that total and could translate into significant unnecessary costs to the shipper.

Cat re-calibrates its scale every 90 days or four times per year. Cat states that typically a State will check calibration and reseal the scale once per year. However, Cat's scale is subject to a random check by the State at any time.

Important to the certified weighing process, Cat believes, is the necessity of the scale to be constructed on a level plane with a 10-foot level approach at each end of the scale. If the scale is not absolutely level, the potential for error exists and is multiplied the more out of level the condition is. Cat asserts it is very difficult to achieve a level surface on many streets or driveways.

Cat states the remote sensor processor on an on-board scale converts the pressure readings at the axle group's air spring to a number and updates the scale every 4.8 seconds. By contrast, on its scale unit, the scale indicator reads data from each load cell 16 times per second, or 76 times more often.

In addition, Cat states Air Weigh's on-board scale systems are not approved by the National Type Evaluation Program of the NIST and are totally unregulated by any standards organization. Cat states it is concerned with shipper protection and customer satisfaction and guarantees its weights to be accurate. If a driver weighs legal on its scale and then receives an overweight citation, Cat states it will either reimburse the driver or trucking company for the amount of the fine, or it will appear in court with the driver as an expert witness. Cat also keeps copies of all of its scale tickets for seven years as required by law. This gives the shipper the opportunity to request a copy of the original ticket if he/she suspects fraud. In the case of its weights being used for billing purposes, Cat's guarantee still applies to make sure that drivers get paid for what they've hauled—no more, no less.

Cat does not think it is in the best interest of the shipper for FMCSA to approve on-board scales for the moving and storage industry because of the potential for error and the lack of a governing body to check the accuracy of the scale system. These factors could equate to shippers incurring additional unnecessary expenses in connection with their household moves.

Weighing Consultants, Inc., (WCI) believes that on-board weighing systems for trucks and trailers are available that meet the tolerance requirements for commercial application, which are 0.1 percent of the applied (net) load. WCI attached to its comments the National Type Evaluation Program of the NIST Certificate of Conformance 99–091 issued to NORAC Systems International for an on-board weighing system. WCI stated the request by Air-Weigh for FMCSA to accept Air-Weigh's technology was based on data accurate at best to 1.0 percent of applied load. WCI recommends rejecting it based on product already available that meets commercial requirements.

A WCI representative made a household move and the net weight of the household goods was 9,540 pounds. WCI stated that this represented the contents of a four-bedroom house and was above the average net weight of a household move. On a certified platform scale the tolerance allowed on this 9,540 pounds would be plus or minus 20 pounds. (WCI refers to Table 6 Handbook 44 Class IIIL scale). The 200–300 pound weight differential stated by Air-Weigh is 10 to 15 times greater. WCI stated, "If in fact the differential of the Air-Weigh system is 200–300 pounds per axle group, the differential from a certified scale would be 20 to 30 times greater than the presently allowable tolerance. Handbook 44 also states the allowable tolerance for Class IIII scales, allowed for use by law enforcement only, at a maximum of 5 divisions which would be 100 pounds on an axle scale. The Air-Weigh product accuracy is stated as 2 to 3 times the generous Class IIII tolerance."

WCI believes FMCSA should continue the policy of requiring all weights to be determined on scales certified by a State's Weights and Measures Department. This policy, it believes, will continue to ensure equity in the marketplace and leave the statutory authority for weights and measures with the states. WCI asserts that the National Conference on Weights and Measures and NIST Office of Weights and Measures have always encouraged the development of new technology and evaluate many new weighing device types each year under the National Type Evaluation Program. WCI believes Air-Weigh should be encouraged to submit its product to the National Type Evaluation Program for evaluation as its competitor NORAC System International did.

The Sisson Scale and Equipment Company, Inc., supports the current regulation requiring the use of certified scales for independent shippers by the moving and storage industry.

The Deskin Scale Company, Inc. states that the regulatory guide for its industry has been Handbook 44 since 1949. The NIST has a statutory responsibility for "cooperation with States in securing uniformity of weights and measures laws and methods of inspection," Deskins states.

The only on-board weighing systems that Deskin was aware of that are actually accepted for commercial use are fork lift scales and lifting devices for trash haulers, which use load cells connected to the forks for measuring and do not in any way derive weight information from the pressure of hydraulics or air. Deskin stated its experience has been that "those who do rely on hydraulics or air pressure do not repeat to any degree of accuracy which is demanded by H–44 and therefore in the interest of the shipper should not be considered for use." It is Deskin's opinion that the shipper's best interest will only be served by use of those devices that meet the requirements of Handbook 44.

The Action Scale & Weighing Systems, Inc., states Toledo, Ohio is a "hub" for truck traffic coming from the North, South, East, and West, including Michigan "train trucks" and grain vehicles from Canada. It is Action's opinion that "on-board weighing would not be in the best interest of the public, as the fox would virtually be guarding the hen house. The only way to insure accurate weights is on a static scale operated by a third party."

The California, Colorado, Idaho, Michigan, New Hampshire, Oregon, and Pennsylvania Departments of Agriculture strongly support the use of certified scales for all aspects of commerce done by weight. They support the retention of the regulation requiring the moving and storage industry to use certified scales when conducting commerce where cost is determined by weight. The Pennsylvania Department of Agriculture believes the use of on-board non-certified scales will be an invitation for unscrupulous operators to defraud shippers, based on its experience discovering and prosecuting moving and storage companies for falsifying weighmaster certificates by "bumping." "Bumping" is any method where additional charges to the customer are claimed by the moving and storage company by adding additional weight to the load or by adding weight to the scale and then weighing the load.

The State of Idaho Department of Agriculture, Bureau of Weights & Measures, does not dictate what type of scales the moving and storage industry uses, as long as they are commercial type scales, and are therefore capable of being certified. It believes there are a myriad of devices made today that fall short of the requirements for commercial use, but are manufactured for estimation, internal accounting, sorting, or other non-commercial applications. The Idaho Department of Agriculture states there is at least one on-board weighing system for semi-trailer use (Weigh-Tronix, model STS–50, 50,000 times 20 pounds) that has a certificate of compliance on the market today.

The Idaho Department of Agriculture is concerned that non-commercial type on-board weighing systems are being used. It is also concerned that manufacturers are using this rulemaking to try to circumvent the National Type Evaluation Program of the NIST requirements being met by other scale manufacturers. The Idaho Department of Agriculture encourages Air-Weigh and Hi-Tech Scale to work to get their products approved through the National Type Evaluation Program system.

The Idaho Department of Agriculture notes that the National Conference on Weights and Measures along with NIST advisers have determined the requirements for commercial scales. The tolerances and performance requirements have been set to prevent either the buyer or seller from being damaged in transactions. These standards are recognized not only in every jurisdiction in this country but throughout the world. The Idaho Department of Agriculture urges FMCSA to ensure any rule change continues to require shipping and storage charges be determined on a commercial scale—whatever form that scale may be, a vehicle scale or on-board scale system.

The Michigan Department of Agriculture would not object to the non-commercial use of non-certified scales, provided they are clearly marked "Not Legal For Trade" and could thus be used for estimates only. Otherwise, the Michigan Department of Agriculture strongly supports maintaining the "certified scale" requirement for commercial sales.

The Handbook 44 serves the California Department of Agriculture as a uniform model governing performance, use, and testing of commercial weighing and measuring devices. The California Department of Agriculture urges FMCSA to retain a policy of requiring weights upon which charges are based to be determined on scales that have been tested and sealed by State weights and measures officials applying the requirements of Handbook 44. Companies who wish to offer weighing and measuring devices for use in determining charges for goods or services, should ensure that they comply with the uniform standards contained in Handbook 44, and should continue to be required by FMCSA to submit such devices to testing and verification by weights and measures officials.

The Oregon Department of Agriculture requires that: (1) Any weighing or measuring device must be licensed, tested and approved by the Oregon Department of Agriculture Measurement Standards Division when the device is used commercially for the measurement of vehicles; and (2) any commercial weighing or measuring instrument or device must be issued a Certificate of Conformance traceable to NIST.

The New Hampshire Department of Agriculture believes that on-board scales are not in the best interest of shippers and competitors. The potential error of 200–300 pounds per axle group is unacceptable, as well as its "incorrect" status under Handbook 44.

The Colorado Department of Agriculture does not have a problem with on-board weighing. It believes any rules that are adopted must take into account the individual State requirements for commercial measuring devices. All states currently have requirements for commercial measuring devices that are rooted in years of experience. These requirements manifest themselves as Handbook 44.

The Colorado Department of Agriculture states that if FMCSA elects to allow the use of on-board weighing systems, it must (1) ensure that the system is as accurate as the certified scales that are currently used for shipping; and (2) ensure the on-board weighing system meets the same standards, with regard to specifications, as other commercial devices, *i.e.*, that it meets the criteria of Handbook 44. The Colorado Department of Agriculture believes that meeting Handbook 44 requirements will ensure that both the shipper and carrier are treated equally, and scale manufacturers can compete equitably.

AMSA urges us to acknowledge the advantages of advances in technology that have become available throughout the moving industry for the weighing of shipments. It asserts that the use of on-board scales promotes shipper satisfaction by producing immediate, on-site shipment weights without the need to follow a tractor-trailer to an available scale. It proposed adding new § 375.523, which it believes will protect shippers' rights by requiring that shippers observe the weighing procedure, and allow them to reject the results of the on-board weighing procedure and elect to have the shipment weighed on a traditional scale. The recommended provision would read as follows:

> If a trailer is so equipped, at the shipper's option, shipment weight may be determined with an on-board trailer scale if the shipper observes the weighing of the trailer both before and after the loading of the shipment. If the shipper accepts the final weight determination, you must obtain a signed statement to that effect and retain it as part of the shipment file. If the shipper rejects the on-board scale weight determination, the shipment must be weighed on a certified motor vehicle scale in accordance with the requirements of § 375.509.

Response to Comments

FMCSA opposes the use of non-certified on-board trailer scales. The comments show they are not in the best interest of shippers. On-board weighing has the potential for manipulation of actual weight. While we acknowledge there may be advantages to using new technology for the weighing of shipments, AMSA and its device manufacturer have not produced evidence that its system is compliant with Handbook 44.

FMCSA believes the issue of on-board trailer scales should be discussed in a separate and specific rulemaking. We believe the moving industry must work with the NIST and the States before asking us to allow their use. The NIST is the government agency responsible for promoting uniformity in United States weights and measures laws, regulations, and standards. The NIST regulations achieve equity between buyers and sellers in the marketplace and enhance shipper confidence in the marketplace. FMCSA does not have this expertise and will defer to the NIST for its opinions in this matter. The NIST does not want FMCSA approving a device that may set non-uniform weight regulations and may achieve inequality between buyers and sellers in the marketplace and degrade shipper confidence in the marketplace.

The moving industry may also want the NIST to research the issue as allowed by 15 CFR 200.101 *Measurement research*. The NIST provides basic research and development activities aimed at meeting broad general needs. The NIST may also undertake investigations or developments to meet specialized physical measurement problems of an industrial group using funds supplied by the requesting organization.

AMSA has not indicated how it will safeguard shippers' rights other than requiring that shippers observe the on-board weighing procedure and permitting them to reject the results of this procedure. The comments by the weighing industry and State regulatory agencies suggest that AMSA's methods and device may provide false weights.

AMSA does not specify how often the device would be calibrated, who would ensure calibration accuracy, and what happens if the calibration was done in another State and the shipper wishes to contest the weight in another State.

FMCSA has added a requirement in the interim final rule that the mover must provide a written explanation of volume to weight conversions, when the mover provides an estimate by volume and converts the volume to weight. Also, this section has been renumbered as § 375.507.

Section 375.507 What Is a Certified Scale?

The regulatory text of proposed § 375.507, which defined "certified scale," has been moved to § 375.103, where it is more appropriate.

Section 375.509 How Must I Determine the Weight of a Shipment?

The 25AG believe the proposed rule fails to provide the shipper disclosures necessary to assure that carriers do not double bill on so-called split loads. They allege shippers are presented with recently issued official weight tickets from a nearby certified public scale at the time of delivery; however, the shipper is unaware that a partial load bound for another destination remains onboard, and that it formed a portion of the total load reflected on the ticket. They believe the rules should require that each shipper's shipment must be weighed separately.

AMSA states that a requirement that each shipper's shipment be weighed separately would result in operating gridlock. To comply with such a rule, carriers would be required to unload one shipment that is on a van to accommodate a second shipment solely for weighing purposes. The impracticalities of coordinating such operations should be obvious.

Response to Comments

FMCSA is not adopting the 25AG's proposal. FMCSA believes it is economically costly and time consuming to weigh each shipment separately as suggested by the 25AG. The rules as proposed are adequate. The weight must be determined by weighing the shipment at origin or back weighing the shipment. The shipper is further protected by the regulations that allow a shipper to witness the weighing and the right to request a re-weigh. Final transportation charges are based on actual weight in accordance with applicable tariff provisions.

Section 375.511 May I Use an Alternative Method for Shipments Weighing 454 Kilograms or Less?

AMSA states this section adopts the provisions of the current regulations, which provide that shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale in lieu of a scale designed for weighing motor vehicles. AMSA understands the agency's concerns that an increase in the minimum shipment weight threshold might allow movers to charge a minimum rate at the higher weight threshold when the shipment actually weighs less and that defining a small shipment as one weighing 3,000 pounds or less could be perceived as giving our blessing to an increase in the minimum rate threshold in household goods carriers' tariffs. However, AMSA does not agree that these concerns will actually occur if the 1,000 pound small shipment weight is increased. AMSA argues that tariff charges, historically, have not been linked to the minimum weight determination threshold. For more than 40 years, AMSA states, the tariff minimum weight remained at 500 pounds (even though the minimum scale weight was 1,000 pounds) as personal effects shipments continued to gradually increase in weight. As a result, in June 1984, the tariff minimum was increased to 1,000 pounds, not because the increase corresponded to the threshold, but because of increases in the fixed administrative costs associated with the servicing of small shipments.

As a matter of practice, the moving industry already considers shipments weighing less than 3,000 pounds to be classified as small shipments and has adjusted its principal tariff series accordingly. A small shipment surcharge applicable to shipments weighing less that 3,000 pounds was initiated in May 1989 to offset the administrative costs associated with handling these shipments. This surcharge remained in effect until May 1996 when it was incorporated into the line-haul tariff rates. Therefore, an increase in the minimum scale weight would not impact existing tariff provisions since they have already been adjusted to reflect the costs associated with the handling of small shipments.

With this history in mind, and because the minimum scale weight and the minimum tariff rate have been unrelated to one another, AMSA does not agree that an increase in the minimum scale weight to 3,000 pounds will have a causal effect on tariff rates. Instead, AMSA believes that increasing the weight limit to 3,000 pounds would promote greater efficiency in the weighing of shipments on certified warehouse and platform scales which will, in turn, help reduce tractor-trailer traffic and congestion in areas where larger motor vehicle scales are operated.

AMSA notes that the proposed and current regulations require that if shipment charges are weight-based, the carrier must obtain a gross and tare weight for each shipment. Separate weight tickets identifying each weighing of a shipment are required to be provided to the shipper. The certificates list the scale name, location, weighing date, identification of tare, gross or net weights, vehicle identifications, and the name of the shipper. Clearly, this is sufficient to ensure that carriers obtain accurate shipment weights.

Response to Comments

We agree with the AMSA comments on this section and have modified the interim final rule to raise the weight threshold from 454 kilograms (1,000 pounds) to 3,000 pounds.

Section 375.513 Must I Give the Individual Shipper an Opportunity to Observe the Weighing?

NACAA supports requiring movers to afford shippers an opportunity to observe weighing of their shipments.

Response to Comments

The proposed observation requirement is adopted without change.

Section 375.515 May an Individual Shipper Waive His/Her Right To Observe Each Weighing?

AMSA argues this provision should be modified. AMSA recommends the provision should indicate that the shipper's decision not to observe weighings constitutes a waiver of that right. It argues that proposed § 375.513 clearly requires that carriers "* * * must give the person who will observe the weighings a reasonable opportunity to be present to observe the weighings." Assuming a shipper elects not to observe the weighings, to be consistent, § 375.515 should be amended to indicate that right was waived. 49 U.S.C. 14104(c) requires that shipper waiver of the right to observe re-weighings must be accomplished in writing. Therefore, to accommodate both situations, AMSA recommends revising the section to read as follows:

If an individual shipper elects not to observe a weighing, the shipper is presumed to have waived that right. If an individual shipper elects not to observe a re-weighing, the shipper shall waive that right in writing. This does not affect any other rights of the individual shipper under this part or otherwise.

Response to Comments

FMCSA agrees with AMSA and has added language to the interim final rule that a shipper's waiver of the right to observe a re-weighing must be in writing. We allow the shipper to send the writing via fax, e-mail, or any other electronic means.

Section 375.521 What Must I Do if an Individual Shipper Wants To Know the Actual Weight or Charges for a Shipment Before I Tender Delivery?

NACAA supports requiring movers to comply with the shipper's requests for notice of the shipment weight and charges before delivery.

Response to Comments

The proposed notification requirement is adopted without change.

Section 375.601 Must I Transport the Shipment in a Timely Manner?

NACAA supports requiring movers to transport goods in a timely manner.

Response to Comments

The proposed reasonable dispatch requirement is adopted without change.

Section 375.605 How Must I Notify an Individual Shipper of Any Service Delays?

NACAA supports requiring movers to retain notices relating to service delays for a period of one year and supports requiring movers to notify shippers of service delays.

AMSA believes there is a basic problem with the language employed in this section. The section states that a carrier must notify a shipper of service delays. AMSA believes the inconsistency lies in the fact that if a carrier is unable to pick up a shipment on the agreed upon date(s), it must notify the shipper of the delay and amend the order for service. It makes little sense to AMSA to amend an order for service for delay at origin. The practical result of this section, as written, is that carriers will never be responsible for delays at origin because the order for service will reflect that the shipment was actually loaded on the agreed upon pick-up date. Appropriate changes should be made.

In addition, AMSA notes that paragraph (b)(6) requires the mover, in the instance of delay notification, to furnish the shipper with a "true copy" of the notice by first class mail or in person. AMSA believes this provision, while carried over from the existing regulations, will be no more feasible to perform under the proposed regulations than it is under the existing regulations. During the course of a move, while both the shipment and the shipper are in transit, there is no practical benefit in mailing a copy of the delay notification to the shipper. Since the shipper, who has already received notice of a delay by telephone, telegram, or in person is not at his old or his future address, no purpose is served by mailing a duplicate notice. AMSA submits that the solution lies in simply adding the words "if the shipper requests a copy of the notice." Such a revision would ensure that "interested shippers" who desire a copy of the notice for their records or to support a claim for delay or inconvenience will be furnished a copy, while duplicate copies would not be automatically forwarded to other shippers who have already received their shipments and have no need for the notice.

Response to Comments

FMCSA agrees with AMSA's comments on this section and has made appropriate changes in the interim final rule language.

Section 375.607 What Must I Do if I Am Able To Tender a Shipment for Final Delivery More Than 24 Hours Before a Specified Date or Period of Time?

The AGCT comments that carriers should be required to deliver the shipment in accordance with the delivery dates or periods specified in the contract. Paragraph (c) should preclude a carrier from limiting its liability for storage-in-transit to the delivery period. It is inequitable to allow a carrier to avoid any liability for delays in shipment while providing no similar mechanism to excuse a shipper's delay, even if the delay is caused by circumstances beyond the shipper's control. It recommends we should permit movers only limit their liability to the last day of the delivery period specified in the bill of lading.

AMSA comments on this AGCT proposal that paragraph (c) preclude movers from limiting their "liability" for storage-in-transit. In addition, it is suggested that this subsection be modified to only permit the mover to limit its "liability" to the last day of the period specified in the bill of lading. The proposed regulation speaks in terms of "responsibility" and not "liability." The rule is apparently intended to authorize movers, at their option, to not assess storage charges, or, alternatively, to assess charges beyond the agreed date. In support of the AGCT's position, it argues that it is "inequitable" to allow carriers to avoid liability for delays with no similar mechanism to excuse shipper delays. AMSA believes that movers routinely honor delay and/or inconvenience claims in accordance with their tariff provisions that are not intended to avoid carrier liability.

Response to Comments

FMCSA agrees with the comments of this section.

Section 375.609 What Must I Do for Shippers Who Store Household Goods in Transit?

NACAA supports requiring movers to retain notices issued under this section for a period of one year.

The AGCT comments that the nine-month limitation on a shipper's right to file a claim against the carrier for damage or loss of goods in paragraph (b)(2) runs counter to a shipper's right to bring an action within the State of Connecticut's statutory period. It believes the rules should acknowledge the shipper's right to rely on a State-established statutory period for bringing an action against the carrier. Any other action is not shipper protection in its opinion. It also recommends that we modify paragraphs (a) and (b) to impose liability on the carrier until ten days after the carrier actually gave notice to the shipper that the period of storage-in-transit will expire and the shipment will be governed by rules and charges of the warehouseman. It believes the ten-day period is consistent with the provisions in paragraph (c).

AMSA asserts that paragraph (d) will require that notifications to shippers regarding the expiration of storage-in-transit (SIT) be accomplished by certified mail, return receipt requested. This provision should be expanded to include notification by facsimile transmission and overnight courier. Such a change will permit movers to take advantage of faster methods of transmitting the required notifications. This is particularly important for SIT periods of less than 10 days when only 1-day notice is required as contemplated by § 375.609(e).

In connection with paragraph (b)(2), AMSA believes that the AGCT's suggestion conflicts with the nine-month statutory period provided for the filing of claims for loss or damage in 49 U.S.C. 14706(e)(1).

In response to the AGCT proposal to retain carrier liability until 10 days after the carrier actually gives notice, AMSA does not believe that a notice related to the expiration of storage-in-transit should be allowed to unduly extend the SIT period. AMSA states shippers are advised at the time their goods are placed in storage that the SIT storage period is 90 days and if a longer period

applies by virtue of a particular carrier's tariff, the shipper is so advised.

Response to Comments

In the interim final rule, FMCSA has added to paragraph (d) that notification can be made by facsimile, overnight courier, e-mail, or certified mail return receipt. All of these methods can confirm delivery notification to the shipper. We cannot adopt the AGCT's comment about the shipper's right to bring an action within a State's statutory limitation period. The Federal statute takes precedence for interstate moves. Also, FMCSA cannot add a new requirement that would impose on carriers a potential additional 9 days of liability when it has failed to give the 10 day notification under paragraph (c). The rule, as adopted, imposes liability on a carrier for an indefinite period if it does not give notice and ensures the shipper of at least 24 hours notice that a carrier liability for goods in storage will end.

Section 375.701 May I Provide for a Release of Liability on My Delivery Receipt?

NACAA supports the requirement that movers must not include in their paperwork a release from liability for damages, but believes permitting carriers to include the "statement the property was received in apparent good condition except as noted in the shipping documents" is not justified and can lead to serious shipper harm. It suggests that proposed § 375.701(b) be removed. It also proposes requiring check boxes with statements such as "I have not had an opportunity to open all boxes to verify the condition of their contents or determine if anything is missing." It believes the rules should mandate inclusion of a statement that the "mover remains liable for all losses suffered by shipper" with an explanation of the procedure and time limits for making a claim.

The AGCT recommends amending this section to make explicit that the "apparent good condition" language is not binding and the rules should not allow a carrier to include a statement that the property was received in good condition unless otherwise noted. It asserts that the shipper does not have the time to inspect all goods as the carrier unloads them. This is especially true for any items that are boxed and unavailable for inspection at the time of delivery. It believes the regulation creates a barrier to the shipper's ability to successfully assert damage claims against the carrier.

AMSA argues that paragraph (a) makes it clear that any carrier statement attempting to release it from liability is not permitted. The statement NACAA objects to is a general acknowledgment indicating that the services ordered have been accomplished and the shipment has been delivered in "apparent" good condition. The shipper is only expected to note conspicuous loss or damage at the time of delivery. The presumption of "apparent" good condition is routinely rebutted by shippers after they have had an opportunity to unpack and perform a more thorough inspection.

Response to Comments

FMCSA agrees with AMSA's comments on this section and believes no changes are necessary.

Section 375.703 What Is the Maximum Collect-on-Delivery Amount I May Demand at the Time of Delivery?

The AGCT recommends requiring carriers to relinquish possession of the shipment in an amount substantially less than 100 percent of the estimate.

AMSA comments that the maximum COD amount that may be collected on a non-binding estimate shipment is 110 percent of the estimated amount. It states that this provision should be revised to mirror its earlier suggested change in § 375.403(a)(7), to provide that the carrier may also require full payment for additional services requested or required by the shipper that do not appear on the estimate and were performed by the mover en-route or at destination. The proposed subsection would read as follows:

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of charges, except that full payment may be collected at the time of delivery for any added additional services that were performed en-route or at destination which were necessary to complete the transportation and do not appear on your non-binding estimate. You may specify the form of payment acceptable to you.

Response to Comments

We have not made the changes to this section suggested by AMSA since we are providing in § 375.403(a)(7) that the carrier may not require full payment for additional services required by the shipper that do not appear on the estimate and were performed by the mover en-route or at destination. We believe that all shipments based on non-binding estimates should be released to the shipper for no more than 110 percent of the original estimate and the remainder billed after 30 days.

Section 375.705 If a Shipment Is Transported on More Than One Vehicle, What Charges May I Collect at Delivery?

The AGCT requested the rules should not permit demand for payment until the entire shipment is delivered. Shipments are not split for the shipper's benefit, but only for the convenience of the carrier. Shippers should only be required to tender payment upon the carrier delivering the entire shipment.

AMSA comments that the proposed section is patterned after the existing regulation and, on split delivery shipments, it would authorize carriers to defer collection of transportation charges until final delivery or collection of a pro-rata portion of those charges based upon the quantity of goods included in the first delivery.

AMSA argues the AGCT also ignored the requirements of 49 U.S.C. 13707, that provides that carriers must not relinquish possession of goods until transportation charges are paid. Thus, collection of a pro-rata portion of transportation charges equal to the quantity of goods delivered is required by statute.

From an operational standpoint, AMSA alleges, industry data indicates that less than 2 percent of the shipments transported in 1994 moved in two or more vans. This percentage is nearly equal to the number of shipments (2 percent) that weighed more than 18,000 to 20,000 pounds, the normal capacity of a moving van, and required the service of two or more vans. AMSA stated this data came from the latest year for which such data was available from the AMSA Continuing Traffic Study, though AMSA did not submit the study as part of its comments. Therefore, AMSA contends that, contrary to the AGCT's position, most shipments that involve split deliveries are not the result of carrier convenience. They are dictated by operational requirements.

Response to Comments

FMCSA agrees with the AMSA comments on this section and has made no changes to the proposed rule.

Section 375.707 If a Shipment Is Partially Lost or Destroyed, What Charges May I Collect at Delivery?

The AGCT comments that it is unimaginable that a carrier can lose or destroy part of a shipment and yet demand full payment before being obligated to relinquish possession of the remainder of the shipment. It believes this provision is abhorrent and strongly anti-shipper. The proposed regulation is silent as to when the carrier must refund the amount of the lost or destroyed shipment to the shipper. The AGCT argues the carrier should be forced to relinquish possession of a shipment and only bill the shipper for amounts due and owing 30 days after delivering the shipment to the shipper.

AMSA comments that as proposed, in the event of partial loss or destruction of a shipment, the mover must determine, at its own expense, the portion of the shipment that was delivered intact. It recommends that the wording of this provision be revised for clarity to avoid confusion concerning the basis for refunding charges that were applicable to lost or destroyed portions of shipments, as follows:

(b)(4) You must determine, at your own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

AMSA argues that the AGCT's comments evoke the same degree of incredulity that the AGCT professes regarding the proposed rule. AMSA argues that carriers routinely process claims for loss or damage, the sum of which includes a portion of the transportation charge related to lost goods. It is difficult to understand the rationale that would deny payment on a 10,000 pound shipment if, for example, cartons weighing 500 pounds were not tendered at the time of delivery. In such a situation, the carrier is liable for the value of the lost goods and a pro-rata portion of the transportation charges. As AMSA had commented previously, the ICCTA requires that carriers "* * * shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made."

Response to Comments

FMCSA agrees with the AMSA comments on this section and has modified paragraph (b)(4) in the interim final rule accordingly.

Section 375.709 If a Shipment Is Totally Lost or Destroyed, What Charges May I Collect at Delivery?

The AGCT comments that carriers should be required to pay shippers the declared value of a lost or destroyed shipment on or before the last day of the contractually agreed on delivery date, less the specific valuation charge.

AMSA comments that under this section as proposed, movers will not be entitled to collect or require shippers to pay freight charges (including charges for accessorial or terminal services) when a shipment is totally lost or destroyed in transit. The provisions of paragraph (a)(2) appear to be in conflict by providing that "you may apply paragraph (a) of this section only to the transportation of household goods and not to charges for other services the individual shipper ordered." AMSA is unclear as to the difference between the prohibited "accessorial services" charges referred to in paragraph (a) and the permitted "other services" charges referred to in paragraph (a)(2). AMSA recommends that paragraph (a)(2) be deleted to avoid confusion concerning the meaning of this section.

AMSA states that the settlement of claims for loss or damage does not fall into the simple scenario presented by the AGCT. All such claims must be substantiated. If a claimant declared a shipment value of $100,000, that does not automatically entitle the claimant to that amount in the event of a total loss. If the goods are actually valued at $75,000 and the claimant can substantiate that amount, the carrier will honor a claim for the same amount. 49 U.S.C. 14706 imposes liability "* * * for the actual loss or injury to the property * * *" The regulations require that claims for loss or damage be submitted, in writing in accordance with the requirements of 49 CFR part 370, and that they, inter alia, include a "certification of values [and] depreciation reflected thereon." 49 CFR 370.7(b). Obviously, the processing and settlement of claims for loss or damage by carriers must follow the explicit requirements of the regulations.

Response to Comments

FMCSA agrees with AMSA's comments for this section and has changed the interim final rule accordingly.

Section 375.801 What Types of Charges Apply to Subpart H?

The AGCT again asserts the rules should require carriers to relinquish possession of shipments in an amount substantially less than 100 percent of the estimate.

Response to Comments

FMCSA does not agree with the AGCT comments. We believe that all binding estimates should be released to the shipper for no more than 100 percent of the original estimate. Sections 375.801–375.807 do not apply to non-binding estimates.

Section 375.805 If I Am Forced To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Do I Collect the Balance?

The AGCT comments that carriers should not be allowed to present freight or expense bills before the expiration of a 30-day period after delivery.

AMSA comments that in order to collect the balance of charges due on collect-on-delivery shipments, proposed § 375.805 would require carriers to present the freight bill within 7 days from the date the shipment was delivered at destination. Such a requirement is unreasonably short and unrealistic. Typically, a freight bill cannot be prepared until all shipment paperwork is received from the delivering driver. It is not uncommon for this process to consume most of the proposed 7-day period. A 7-day requirement is also inconsistent with the 15-day requirement contained in proposed § 375.807, and there is no justification for the two different time periods. It therefore recommends that § 375.805 be revised to read:

On "collect-on-delivery" shipments, you must present your freight bill for all transportation charges as provided in § 375.807(a).

Response to Comments

FMCSA agrees with AMSA's comment and has changed the rule text to be 15 days as required by § 375.807.

Section 375.807 What Actions May I Take To Collect the Charges Upon My Freight Bill?

The AGCT comments that shippers should not be automatically subjected to a one percent service charge by the operation of a regulation and believes the FMCSA should consider imposing a one percent ceiling on any service charge imposed by the carrier.

AMSA comments that as proposed, individual shippers will be assessed a service charge equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for extension of the normal credit period. AMSA believes this wording should be clarified to indicate that the one-percent fee applies in 30-day increments, rather than once for the entire extended credit period. For example, if the bill remains unpaid for 60 additional days following the initial 30-day period (for a total of 90 days), the one percent service charge would be applied three times, once for each 30-day extension or fraction thereof.

AMSA believes the AGCT suggestion that the regulation should limit to one percent any service charge imposed by carriers is an unreasonable request. AMSA asserts the cost of credit and capital and the cost to carriers of carrying delinquent accounts does not equate to a flat one percent of an outstanding amount.

Response to Comments

FMCSA agrees with AMSA's comments and has modified paragraph (c)(2) in the interim final rule to state the service charge will be assessed for each 30-day extension of the credit period during which the charges go unpaid.

Section 375.901 What Is An Annual Arbitration Report?

We discussed the comments concerning the arbitration report under § 375.211 in our discussion of the arbitration program as a whole. As we have decided to not require such a report, we have removed proposed §§ 375.901–375.907.

Section 375.1001 What Penalties Do We Impose for Violations of This Part? (Section 375.901 in Interim Final Rule)

NACAA supports movers being subject to statutory penalties for failure to comply with these regulations. In addition to these penalties, NACAA proposes that carriers be made subject to actions brought pursuant to State unfair or deceptive trade practices laws by adding the following language to this section:

The regulations are supplementary law; that is, the remedies provided herein shall be cumulative and supplementary to all other remedies otherwise provided by Federal, State and local law.

The OCC requests this section include the following language. "Not withstanding the above civil penalties, nothing in this Section shall deprive any holder of a receipt of bill of lading any remedy or right of action under existing law. Where litigation is pursued under other existing rights, the prevailing party shall be allowed attorney fees, trial preparation costs, and court costs." The OCC believes its proposed language should also be paraphrased in YRRWYM on the front page. It believes that shippers should be able to choose the choice of forum in the State of shipping or destination and that a list of State agencies that take complaints concerning household goods moves should be included.

AMSA comments that the NPRM attempted to explain and/or define the penalties, civil and criminal, arising from violations of the proposed regulations. AMSA believes this to be inadvisable. AMSA notes that 49 U.S.C. Chapter 149 consists of 14 specific laws that require 36 pages of written text (sections and related statutory and case notes) defining the scope of these penalty provisions. An attempt to restate these provisions in a short-hand version is likely to lead to misinterpretations and debate over Congressional intent. AMSA believes the statutory penalty provisions speak for themselves and, if invoked, they will prevail and not the proposed regulations. Therefore, AMSA recommends that all but the first two sentences of proposed § 375.1001 be eliminated.

Response to Comments

FMCSA agrees with AMSA's comments on this section and has removed all but the first two sentences of § 375.1001 (renumbered as 375.901 in the interim final rule). Regarding NACAA's comments, the Carmack amendment, now codified at 49 U.S.C. 14706, imposes a uniform regime of carrier liability for interstate shipments of property designed to eliminate the uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that Carmack preempts (or supercedes) a broad range of State consumer protection laws potentially applicable to interstate household goods carriers, regardless of whether these laws are consistent with Carmack. The language proposed by NACAA is inconsistent with prevailing case law and beyond the authority of FMCSA to impose in this rulemaking proceeding.

We agree with OCC's recommendation that this section include the following language: "Notwithstanding the above civil penalty, nothing in this section shall deprive any holder of a receipt of a bill of lading, any remedy or right of action under existing law."

Appendix A Your Rights and Responsibilities When You Move

FMCSA has modified appendix A to be consistent with the interim final rules as modified by the above comments.

Order of the Final Regulations

The following table specifies the new section of each rule, the old section (if any) where the rule originated, and the title of the new section.

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE

New section	Old section	Title of new section
SUBPART A—GENERAL REQUIREMENTS		
375.101	375.1(a)	Who must follow these regulations?
375.103	375.1(b)	What are the definitions of terms used in this part?
375.105	None	What are the information collection requirements of this part?
SUBPART B—BEFORE OFFERING SERVICES TO CUSTOMERS		
Liability Considerations		
375.201	375.12	What is my normal liability for loss or damage when I accept goods from an individual shipper?
375.203	375.12	What actions of an individual shipper may limit or reduce my normal liability?
General Responsibilities		
375.205	375.14	May I have agents?
375.207	375.17	What items must be in my advertisements?
375.209	375.13	How must I handle complaints and inquiries?
375.211	None	Must I have an arbitration program?
375.213	375.2	What information must I provide to a prospective individual shipper?
Collecting Transportation Charges		
375.215	373, subpart A	How must I collect charges?
375.217	377, subpart A	May I collect charges upon delivery?
375.219	377.215(a) and (b)	May I extend credit to shippers?
375.221	375.19	May I use a charge card plan for payments?
SUBPART C—SERVICE OPTIONS PROVIDED		
375.301	None	What service options may I provide?
375.303	375.11	If I sell liability insurance coverage, what must I do?
SUBPART D—ESTIMATING CHARGES		
375.401	375.3	Must I estimate charges?
375.403	375.3	How must I provide a binding estimate?
375.405	375.3	How must I provide a non-binding estimate?
375.407	375.3	Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?
375.409	None	May household goods brokers provide estimates?
SUBPART E—PICK-UP OF SHIPMENTS OF HOUSEHOLD GOODS BEFORE LOADING		
375.501	375.5	Must I write up an order for service?
375.503	None	Must I write up an inventory?
375.505	375.6	Must I write up a bill of lading?
Weighing the Shipment		
375.507	375.7	Must I determine the weight of a shipment?
375.509	375.7	How must I determine the weight of a shipment?
375.511	375.7	May I use an alternative method for shipments weighing 3,000 pounds or less?
375.513	375.7	Must I give the individual shipper an opportunity to observe the weighing?
375.515	375.7	May an individual shipper waive his/her right to observe each weighing?
375.517	375.7	May an individual shipper demand re-weighing?
375.519	375.7	Must I obtain weight tickets?
375.521	375.7	What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?
SUBPART F—TRANSPORTATION OF SHIPMENTS		
375.601	375.8	Must I transport the shipment in a timely manner?
375.603	375.8	When must I tender a shipment for delivery?
375.605	375.8	How must I notify an individual shipper of any service delays?
375.607	375.8	What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date or period of time?
375.609	375.12(c)	What must I do for shippers who store household goods in transit?
SUBPART G—DELIVERY OF SHIPMENTS		
375.701	375.10	May I provide for a release of liability on my delivery receipt?
375.703	375.3(d)	What is the maximum collect-on-delivery amount I may demand at the time of delivery?
375.705	375.16	If a shipment is transported on more than one vehicle, what charges may I collect at delivery?
375.707	375.15	If a shipment is partially lost or destroyed, what charges may I collect at delivery?
375.709	375.15	If a shipment is totally lost or destroyed, what charges may I collect at delivery?
SUBPART H—COLLECTION OF ACTUAL CHARGES		
375.801	None	What types of charges apply to subpart H?
375.803	377.205	How must I present my freight or expense bill?
375.805	375.3(d)	If I was forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?
375.807	377.215 (c)	What actions may I take to collect the charges upon my freight bill?
SUBPART I—PENALTIES		
375.901	None	What penalties do we impose for violations of this part?
APPENDIX A		
Part 375, Appendix A	Part 375 Form: Office of Compliance and Enforcement (OCE)–100.	Your Rights and Responsibilities When You Move.

Compliance and Effective Dates

The agency is specifying when motor carriers and drivers must comply with this interim final rule. The effective date cited in the **DATES** heading at the top of this document is the date that this interim final rule's amendments affect the current Code of Federal Regulations published by the Office of the Federal Register. Motor carriers and drivers transporting household goods may not begin to comply with this interim final rule on that date.

The compliance date is the date that motor carriers and drivers must begin to comply with this interim final rule. Motor carriers, drivers, and the FMCSA must do many necessary things before the rules can be enforced. The FMCSA must update motor carrier information, compliance, and enforcement computer systems and manuals. The FMCSA has eight computer software packages where it must find the correct code, write new code, test the new software, and distribute it to its division offices.

The agency must develop training, distribute training materials, and ensure training materials are read, taught, and understood by the FMCSA's inspectors, investigators, and auditors. The agency also plans to provide training and presentations to the public about the new rules.

Motor carriers must develop training or use FMCSA's training materials, distribute training materials, and ensure training materials are read, taught, and understood by the drivers engaged in interstate commerce who transport household goods. The FMCSA cannot do its part, and cannot expect motor carriers to do their part, within 90 days after today.

The agency believes a compliance date near the end of the "off-season" will be the least burdensome to all carriers and enforcement officials. Most affected carriers subject to this interim final rule have fewer household goods shipments between October and March and most affected carriers would suffer less disruption to their operations if the rule took effect near the beginning of a new moving season (April through September). Therefore, the agency is providing a compliance date when all carriers, drivers, and enforcement officials will switch from the current rule to the new rule: Monday, March 1, 2004.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because there is substantial public interest. It is anticipated that the economic impact of this rulemaking will be minimal.

The rules affect a broad segment of the public. In addition, the agency received comments to the NPRM from the California, Colorado, Idaho, Michigan, New Hampshire, Oregon, and Pennsylvania Departments of Agriculture, the elected Attorney Generals from 26 States, and numerous consumer groups.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The changes being made to the existing rule by FMCSA do not impose a significant economic impact on a substantial number of small entities. The original rule issued by the ICC imposed paperwork requirements that would take 785 hours for each entity. Today's IFR increases that burden by 458 hours; the new total of the burden hours is 1,243 hours. The total is being added to FMCSA's information collection budget, since the original amount was never "transferred" from the ICC.

The interim final rule bases this estimate of 1,243 hours upon the estimated costs identified to create records, duplicate records, store the original and duplicated copies of records, and practice inventory control for the records.

The information required for preparing these documents is the type of information already developed by such entities in the normal course of conducting a household goods transportation business. The time necessary to compile the incremental data for the documents required in these regulations should be minimal and would vary proportionately with the number of shipments transported by the carrier.

FMCSA did not propose any different requirements or timetables for small entities. As noted above, we do not believe these requirements will be onerous, with many carriers already having to comply with these requirements. Furthermore, FMCSA has eliminated existing performance reporting requirements for both large and small carriers.

As explained above, FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the protection of consumers. Exempting them could have the same impact as not issuing (or enforcing) these proposals. Therefore, FMCSA certifies that this interim final rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). State Attorneys General submitted comments to the May 2, 1998 NPRM, which were considered in developing this interim final regulation. The FMCSA has addressed the concerns of the Attorneys General in the interim final rule. The FMCSA certifies that this interim final rule has federalism implications because it directly impacts the distribution of power and responsibilities among the various levels of government.

Federalism Summary Impact Statement

The FMCSA Position Supporting the Need To Issue This Regulation

The State Attorneys General generally believe they hold authority to enforce laws and regulations governing the interstate transportation of household goods and want FMCSA to acknowledge their role. However, the interstate transportation of household goods involves issues that are national in scope that have been regulated exclusively by the Federal government for many years. Regulations implementing the Household Goods Transportation Act of 1980 were promulgated by the Interstate Commerce Commission (ICC) in 1981 and were subsequently transferred to DOT by the ICC Termination Act of 1995 where Congress, in 49 U.S.C. 14104, conferred authority on the Secretary of Transportation to 'issue regulations protecting individual shippers.' The Secretary subsequently delegated this authority to FMCSA under 49 CFR 1.73(a)(6). Thus, the Carmack Amendment, now codified at 49 U.S.C. 14706, imposes a uniform regime of carrier liability for interstate shipments of property designed to eliminate the uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that

Carmack preempts a broad range of State consumer protection laws potentially applicable to interstate household goods carriers. As was the case with the former ICC regulation amended by today's interim final rule, under current case law this rule preempts all State regulations that purport to regulate the interstate transportation of household goods subject to Federal jurisdiction.

AMSA commented that the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect and is likely to promote uncertainty and potential conflicts with States. AMSA wrote "In promulgating these regulations FHWA has expressly preempted application of any State law that would impact the services required to perform interstate transportation of household goods. States, for example, may not regulate the manner in which household goods carriers are required by FHWA to execute orders for service nor may they enforce any State regulation that would affect any other aspect of the interstate moving service performed by household goods carriers regulated by FHWA. *See, e.g., Fidelity Federal S. Sr L. Assn.* v. *de la Cuesta,* 458 U.S. 141, 73 L.Ed.Zd 664 (1982) (Even where Congress has not completely displaced State regulation in a specific area, State law is nullified to the extent that it actually conflicts with Federal law. Federal regulations have no less pre-emptive effect than Federal statutes.) FHWA authority to issue the proposed regulations is without question. As the NPRM notes, in enacting section 14104 of the Termination Act, the enabling statute in this proceeding-Congress conferred authority on the Secretary to 'issue regulations protecting individual shippers.' That is precisely what the Secretary proposes and his action in doing so preempts all State regulations that would purport to regulate the same activities. For these reasons, the cited sentence should be removed or clarified in the final decision in this proceeding. In a similar vein, it is appropriate at this point to address certain comments of NACAA. NACAA urges that the proposed regulations should announce that they are supplementary law only and that violations will also subject movers to remedies provided by other Federal, State and local laws, such as State deceptive trade practices laws. (Comments, p. 7). This suggestion reflects a fundamental misconception of the Supremacy Clause, U.S. Constitution, Art. VI, clause 2, and Federal preemption. There is not the slightest suggestion in the law or its precedent that Congress ever intended this explicit and comprehensive regulatory scheme to be supplemental to or superseded by any State law or regulation. Congress could not have been clearer in expressing its intent to occupy the field of interstate household goods transportation regulation. AMSA asserts the NACAA's contention is flatly wrong." The FMCSA agrees that AMSA has correctly stated current case law on the preemption issue.

Prior Consultations With State and Local Officials

As the AMSA pointed out, the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect. Thus, the requirement in section 6(c) to consult "with State and local officials early in the process of developing the proposed regulation" in accordance with OMB guidance to send letters to State and local officials or their regional or national representative organizations, such as the National Association of Governors, did not occur. The agency did receive comments to the docket from State and local officials.

Summary of the Nature of State and Local Officials' Concerns

State officials recommended that the rules incorporate additional consumer protection provisions, including: (1) More comprehensive disclosure requirements, particularly with respect to insurance and carrier liability; (2) stronger arbitration requirements; (3) uniform rules governing cash-on-delivery service, including requiring movers to relinquish possession of a shipment upon payment of an amount substantially less than the amount of the estimate; (4) requiring movers to offer guaranteed delivery prices if requested by the shipper; (5) restricting billing for additional services not contained in the estimate; (6) establishing a three-day grace period allowing a shipper to rescind an order for service without penalty; (7) permitting the shipper to deduct penalties for late deliveries from the transportation charges; (8) relaxing limitations on a shipper's right to file loss and damage claims, including claims for loss and damage occurring during storage-in-transit; and (9) prohibiting demands for payment until the entire shipment is delivered.

Statement of the Extent To Which the FMCSA Has Addressed the Concerns of State and Local Officials

In response to these comments, FMCSA modified the proposed rules by: (1) Revising the consumer information pamphlet that movers must give shippers to include guidance regarding their right to decline arbitration; (2) clarifying carrier liability disclosure requirements; (3) requiring movers to disclose the identity of subcontractors used to handle the move; (4) requiring movers to relinquish delivery and defer demanding payment for charges not in the estimate which the mover could have reasonably determined at the time of pick-up; and (5) mandating a three-day grace period for shippers to cancel orders for service without penalty.

Conclusion

The FMCSA submitted State and local official comments to the docket and this federalism summary impact statement to the Director of the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes in this interim final rule will not have an impact of $100 million or more in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The majority of the information collection (IC) requirements in this IFR are not new. Yet, the FMCSA has determined, for reasons set forth below, that the information collection requirements in this IFR would technically constitute a new collection of information undertaking, thus needing a new OMB approval and control number.

The FMCSA seeks approval of the collection of information requirements in this IFR to generate, maintain, retain, disclose, and provide information to, or for, the agency under 49 CFR part 375. The information collected will assist individual household goods shippers in their commercial dealings with interstate household goods carriers, thereby providing a desirable consumer

protection service. The collection of information would be used by prospective household goods shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods carrier industry. These information collection items were required by the former ICC regulations. When these items transferred from the ICC to the FMCSA, however, no OMB control number was assigned to cover this information collection transfer. It is therefore necessary to calculate the old information collection burden hours for these items approved under the ICC rules versus the new burden generated by this IFR. The only information collection items changing from the former ICC's rules regarding household goods transportation are the addition of an arbitration program summary, written non-binding estimates and inventory, and the elimination of the annual performance reporting requirement.

Assumptions used for calculations in this PRA section include the following: (1) There are currently approximately 4,000 active household goods carriers—up from the 2,000 estimated in the 1998 NPRM; (2) an estimated 75 new household goods carriers will start-up business each year; (3) over the next 3 years, two large van lines will start-up business; and (4) the arbitration report that was proposed at NPRM stage will not be required.

The following table summarizes the information collection burden hours of this IFR by setting forth the appropriate section of part 375 that is affected. The total annual burden hour estimate in this IFR is *4,370,037* (the estimate at NPRM stage was 4,811,127 burden hours, a difference of 441,090 burden hours). The chart also shows which information collection activities were required under the former-ICC regulations and those which are new, set forth for the first time in this IFR. A detailed analysis of the burden hours can be found in the OMB Supporting Statement that corresponds with this IFR. The Supporting Statement and its attachments are in the docket associated with this rule (Docket No. FMCSA–97–2979).

Type of burden	Proposed section	Hourly burden	New burden?
Agency Agreements	375.205	19	No
Minimum Advertising Information Soliciting Prospective Individual Shippers	375.207	684	No
Complaint and Inquiry Handling	375.209	500,000	No
Arbitration Program Summary	375.211	8,000	Yes
Your Rights and Responsibilities When You Move Booklet	375.213	8,334	No
Selling Insurance Policies	375.303	100,000	No
Estimates—Binding	375.401	1,836,000	No
Estimates—Non-binding	375.401	1,224,000	Yes
Orders for Service	375.501	300,000	No
Inventory	375.503	0[1]	Yes
Bills of Lading	375.505	300,000	No
Volume to Weight Conversions	375.507	4,000	No
Weight Tickets	375.519	42,000	No
Notifications of Reasonable Dispatch Service Delays	375.605	16,000	No
Delivery More Than 24 Hrs. Ahead of Time	375.607	1,000	No
Notification of Storage-in-Transit Liability Assignments	375.609	30,000	No
"Old" Burden Hours			3,136,037
"New" Burden Hours			1,232,000
Total Burden Hours for IC		4,370,037	

[1] Making inventories is a usual and customary moving industry practice that the FMCSA is adopting at the suggestion of the NACAA and the AMSA. The PRA regulations at 5 CFR 1320.3(b)(2) allow the FMCSA to calculate no burden when the agency demonstrates that the activity needed to comply is usual and customary. The supporting statement in the docket demonstrates that moving industry drivers usually and customarily write inventories before loading shipments, although drivers have not been required by law to do so before today's **Federal Register**.

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of 49 CFR part 375 to protect consumers, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on the *information collection burden* addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by July 11, 2003. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The agency has analyzed this rulemaking for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects

49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements

49 CFR Part 377

Credit, Freight forwarders, Highways and roads, Motor carriers.

■ For the reasons set out in the preamble, FMCSA amends 49 CFR parts 375 and 377 as set forth below:

■ 1. Part 375 is revised to read as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

Subpart A—General Requirements

Sec.

375.101 Who must follow these regulations?
375.103 What are the definitions of terms used in this part?
375.105 What are the information collection requirements of this part?

Subpart B—Before Offering Services to My Customers

Liability Considerations

375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?
375.203 What actions of an individual shipper may limit or reduce my normal liability?

General Responsibilities

375.205 May I have agents?
375.207 What items must be in my advertisements?
375.209 How must I handle complaints and inquiries?
375.211 Must I have an arbitration program?
375.213 What information must I provide to a prospective individual shipper?

Collecting Transportation Charges

375.215 How must I collect charges?
375.217 May I collect charges upon delivery?
375.219 May I extend credit to shippers?
375.221 May I use a charge or credit card plan for payments?

Subpart C—Service Options Provided

375.301 What service options may I provide?
375.303 If I sell liability insurance coverage, what must I do?

Subpart D—Estimating Charges

375.401 Must I estimate charges?
375.403 How must I provide a binding estimate?
375.405 How must I provide a non-binding estimate?
375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?
375.409 May household goods brokers provide estimates?

Subpart E—Pick Up of Shipments of Household Goods

Before Loading

375.501 Must I write up an order for service?
375.503 Must I write up an inventory?
375.505 Must I write up a bill of lading?

Weighing the Shipment

375.507 Must I determine the weight of a shipment?
375.509 How must I determine the weight of a shipment?
375.511 May I use an alternative method for shipments weighing 3,000 pounds or less?
375.513 Must I give the individual shipper an opportunity to observe the weighing?
375.515 May an individual shipper waive his/her right to observe each weighing?
375.517 May an individual shipper demand re-weighing?
375.519 Must I obtain weight tickets?
375.521 What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?

Subpart F—Transportation of Shipments

375.601 Must I transport the shipment in a timely manner?
375.603 When must I tender a shipment for delivery?
375.605 How must I notify an individual shipper of any service delays?
375.607 What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date?
375.609 What must I do for shippers who store household goods in transit?

Subpart G—Delivery of Shipments

375.701 May I provide for a release of liability on my delivery receipt?
375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?
375.705 If a shipment is transported on more than one vehicle, what charges may I collect at delivery?
375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?
375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?

Subpart H—Collection of Charges

375.801 What types of charges apply to subpart H?
375.803 How must I present my freight or expense bill?
375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?
375.807 What actions may I take to collect the charges upon my freight bill?

Subpart I—Penalties

375.901 What penalties do we impose for violations of this part?

Appendix A to Part 375—Your Rights and Responsibilities When You Move

Authority: 5 U.S.C. 553; 49 U.S.C. 13301, 13704, 13707, 14104, 14706; and 49 CFR 1.73.

Subpart A—General Requirements

§ 375.101 Who must follow these regulations?

You, a for-hire motor carrier engaged in the interstate transportation of household goods, must follow these regulations when offering your services to individual shippers. You are subject to this part only when you transport household goods for individual shippers by motor vehicle in interstate commerce.

§ 375.103 What are the definitions of terms used in this part?

Terms used in this part are defined as follows. You may find other terms used in these regulations defined in 49 U.S.C. 13102. The definitions contained in this statute control. If terms are used in this part and the terms are neither defined here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Advertisement means any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This includes written or electronic database listings of your name, address, and telephone number in an on-line database. This excludes listings of your name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included in the definition.

Cashier's check means a check that has all four of the following characteristics:

(1) Drawn on a bank as defined in 12 CFR 229.2.

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer.

(3) A direct obligation of the bank.

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

Certified scale means any scale inspected and certified by an authorized scale inspection and licensing authority, and designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, or designed as a platform or warehouse type scale.

Commercial shipper means any person who is named as the consignor or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods. The beneficial owner of the goods is normally an employee of the consignor and/or consignee. A freight forwarder tendering a shipment to a carrier in furtherance of freight forwarder operations is also a commercial shipper. The Federal government is a government bill of lading shipper, not a commercial shipper.

Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Government bill of lading shipper means any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the Federal government to the carrier responsible for the transportation of the shipment.

Household goods, as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by the individual shipper or by another individual on behalf of the shipper. Household goods includes property moving from a factory or store if purchased with the intent to use in a dwelling and transported at the request of the householder, who also pays the transportation charges.

Individual shipper means any person who is the consignor or consignee of a household goods shipment identified as such in the bill of lading contract. The individual shipper owns the goods being transported and pays the transportation charges.

May means an option. You may do something, but it is not a requirement.

Must means a legal obligation. You must do something.

Order for service means a document authorizing you to transport an individual shipper's household goods.

Reasonable dispatch means the performance of transportation on the dates, or during the period, agreed upon by you and the individual shipper and shown on the Order For Service/Bill of Lading. For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, you have not transported the goods with reasonable dispatch. The term "reasonable dispatch" excludes transportation provided under your tariff provisions requiring guaranteed service dates. You will have the defenses of force majeure, *i.e.*, superior or irresistible force, as construed by the courts.

Should means a recommendation. We recommend you do something, but it is not a requirement.

Surface Transportation Board means an agency within the Department of Transportation. The Surface Transportation Board regulates household goods carrier tariffs among other responsibilities.

Tariff means an issuance (in whole or in part) containing rates, rules, regulations, classifications or other provisions related to a motor carrier's transportation services. The Surface Transportation Board requires a tariff contain specific items under § 1312.3(a) of this title. These specific items include an accurate description of the services offered to the public and the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms. A tariff must be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment.

We, *us*, and *our* means the Federal Motor Carrier Safety Administration (FMCSA).

You and *your* means a motor carrier engaged in the interstate transportation of household goods and its household goods agents.

§ 375.105 What are the information collection requirements of this part?

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126_____.

(b) The information collection requirements are found in the following sections:

Section 375.205, Section 375.207, Section 375.209, Section 375.211, Section 375.213, Section 375.215, Section 375.217, Section 375.303, Section 375.401, Section 375.403, Section 375.405, Section 375.409, Section 375.501, Section 375.503, Section 375.505, Section 375.507, Section 375.515, Section 375.519, Section 375.521, Section 375.605, Section 375.607, Section 375.609, Section 375.803, Section 375.805, and Section 375.807.

Subpart B—Before Offering Services to My Customers

Liability Considerations

§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

(a) In general, you are legally liable for loss or damage if it happens during performance of any transportation of household goods and all related services identified on your lawful bill of lading.

(b) You are liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's released rates order. Contact the Surface Transportation Board for a current copy of the Released Rates of Motor Carrier Shipments of Household Goods. The rate may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(c) As required by § 375.303(g), you may have additional liability if you sell liability insurance and you fail to issue a copy of the insurance policy or other appropriate evidence of insurance.

(d) You must, in a clear and concise manner, disclose to the individual shipper the limits of your liability.

§ 375.203 What actions of an individual shipper may limit or reduce my normal liability?

(a) If an individual shipper includes perishable, dangerous, or hazardous articles in the shipment without your knowledge, you need not assume liability for those articles or for the loss or damage caused by their inclusion in the shipment. If the shipper requests that you accept such articles for transportation, you may elect to limit your liability for any loss or damage by appropriately published tariff provisions.

(b) If an individual shipper agrees to ship household goods released at a value greater than 60 cents per pound ($1.32 per kilogram) per article, your liability for loss and damage may be limited to $100 per pound ($220 per kilogram) per article if the individual shipper fails to notify you in writing of articles valued at more than $100 per pound ($220 per kilogram).

(c) If an individual shipper notifies you in writing that an article valued at greater than $100 per pound ($220 per kilogram) will be included in the shipment, the shipper will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

General Responsibilities

§ 375.205 May I have agents?

(a) You may have agents provided you comply with paragraphs (b) and (c) of this section. A household goods agent is defined as either one of the following two types of agents:

(1) A *prime agent* provides a transportation service for you or on your behalf, including the selling of, or arranging for, a transportation service. You permit or require the agent to provide services under the terms of an agreement or arrangement with you. A prime agent does not provide services on an emergency or temporary basis. A prime agent does not include a household goods broker or freight forwarder.

(2) An *emergency or temporary agent* provides origin or destination services on your behalf, excluding the selling of, or arranging for, a transportation service. You permit or require the agent to provide such services under the terms of an agreement or arrangement with you. The agent performs such services only on an emergency or temporary basis.

(b) If you have agents, you must have written agreements between you and your prime agents. You and your retained prime agent must sign the agreements.

(c) Copies of all your prime agent agreements must be in your files for a period of at least 24 months following the date of termination of each agreement.

§ 375.207 What items must be in my advertisements?

(a) You and your agents must publish and use only truthful, straightforward, and honest advertisements.

(b) You must include, and you must require each of your agents to include, in all advertisements for all services (including any accessorial services incidental to or part of interstate household goods transportation), the following two elements:

(1) Your name or trade name, as it appears on our document assigning you a U.S. DOT number, or the name or trade name of the motor carrier under whose operating authority the advertised service will originate.

(2) Your U.S. DOT number, assigned by us authorizing you to operate as a for-hire motor carrier transporting household goods.

(c) Your FMCSA-assigned U.S. DOT number must be displayed only in the following form in every advertisement: U.S. DOT No. (*assigned number*).

§ 375.209 How must I handle complaints and inquiries?

(a) You must establish and maintain a procedure for responding to complaints and inquiries from your individual shippers.

(b) Your procedure must include all four of the following items:

(1) A communications system allowing individual shippers to communicate with your principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from an individual shipper by any means of communication.

(c) You must produce a clear and concise written description of your procedure for distribution to individual shippers.

§ 375.211 Must I have an arbitration program?

(a) You must have an arbitration program for individual shippers. You must establish and maintain an arbitration program with the following eleven minimum elements:

(1) You must design your arbitration program to prevent you from having any special advantage in any case where the claimant resides or does business at a place distant from your principal or other place of business.

(2) Before the household goods are tendered for transport, your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration, including all three of the following items:

(i) A summary of the arbitration procedure.

(ii) Any applicable costs.

(iii) A disclosure of the legal effects of election to use arbitration.

(3) Upon the individual shipper's request, you must provide information and forms you consider necessary for initiating an action to resolve a dispute under arbitration.

(4) You must require each person you authorize to arbitrate to be independent of the parties to the dispute and capable of resolving such disputes, and you must ensure the arbitrator is authorized and able to obtain from you or the individual shipper any material or relevant information to carry out a fair and expeditious decisionmaking process.

(5) You must not charge the individual shipper more than one-half of the total cost for instituting the arbitration proceeding against you. In the arbitrator's decision, the arbitrator may determine which party must pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

(6) You must refrain from requiring the individual shipper to agree to use arbitration before a dispute arises.

(7) Arbitration must be binding for claims of $5,000 or less, if the individual shipper requests arbitration.

(8) Arbitration must be binding for claims of more than $5,000, if the individual shipper requests arbitration and the carrier agrees to it.

(9) If all parties agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The arbitrator may extend the 60-day period for a reasonable period if you or the individual shipper fail to provide, in a timely manner, any information the arbitrator reasonably requires to resolve the dispute.

(b) You must produce and distribute a concise, easy-to-read, accurate summary of the your arbitration program, including the items in this section.

§ 375.213 What information must I provide to a prospective individual shipper?

(a) Before you execute an order for service for a shipment of household goods, you must furnish to your prospective individual shipper, all five of the following documents:

(1) The contents of appendix A of this part, "Your Rights and Responsibilities When You Move."

(2) A concise, easy-to-read, accurate estimate of your charges.

(3) A notice of the availability of the applicable sections of your tariff for the estimate of charges, including an explanation that individual shippers may examine these tariff sections or have copies sent to them upon request.

(4) A concise, easy-to-read, accurate summary of the your arbitration program.

(5) A concise, easy to read, accurate summary of your customer complaint and inquiry handling procedures. Included in this description must be both of the following two items:

(i) The main telephone number the individual shipper may use to communicate with you.

(ii) A clear and concise statement concerning who must pay for telephone calls.

(b) To comply with paragraph (a)(1) of this section, you must produce and distribute a document with the text and general order of appendix A to this part as it appears. The following three items also apply:

(1) If we, the Federal Motor Carrier Safety Administration, choose to modify the text or general order of appendix A, we will provide the public appropriate notice in the **Federal Register** and an opportunity for comment as required by part 389 of this chapter before making you change anything.

(2) If you publish the document, you may choose the dimensions of the publication as long as the type font size is at least 10 point or greater and the size of the booklet is at least as large as 36 square inches (232 square centimeters).

(3) If you publish the document, you may choose the color and design of the front and back covers of the publication. The following words must appear prominently on the front cover in at least 12 point or greater bold or full-faced type: **"Your Rights And Responsibilities When You Move. Furnished By Your Mover, As Required By Federal Law."** You may substitute your name or trade name in place of "Your Mover" if you wish (for example, *Furnished by XYZ Van Lines, As Required By Federal Law*).

(c) Paragraphs (b)(2) and (b)(3) of this section do not apply to exact copies of appendix A published in the **Federal Register** or the *Code of Federal Regulations*.

Collecting Transportation Charges

§ 375.215 How must I collect charges?

You must issue an honest, truthful freight or expense bill in accordance with subpart A of part 373 of this chapter. All rates and charges for the transportation and related services must be in accordance with your appropriately published tariff provisions in effect, including the method of payment.

§ 375.217 How must I collect charges upon delivery?

(a) You must specify the form of payment when you prepare the estimate. You and your agents must honor the form of payment at delivery, except when a shipper agrees to a change in writing.

(b) You must specify the same form of payment provided in paragraph (a) of this section when you prepare the order for service and the bill of lading.

(c) Charge or credit card payments:

(1) If you agree to accept payment by charge or credit card, you must arrange with the individual shipper for the delivery of the household goods during the time your credit/collection department is open so you may seek approval of payment by the card issuer.

(2) Paragraph (c)(1) of this section does not apply to you when you have equipped your motor vehicle(s) to process card transactions.

(d) You may maintain a tariff setting forth nondiscriminatory rules governing collect-on-delivery service and the collection of collect-on-delivery funds.

(e) If an individual shipper pays you at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, you must relinquish possession of the shipment at the time of delivery.

§ 375.219 May I extend credit to shippers?

You may extend credit to shippers, but, if you do, it must be in accordance with § 375.807.

§ 375.221 May I use a charge or credit card plan for payments?

(a) You may provide in your tariff for the acceptance of charge or credit cards for the payment of freight charges. Accepting charge or credit card payments is different than extending credit to shippers in §§ 375.219 and 375.807. Once you provide an estimate you are bound by the provisions in your tariff regarding payment as of the estimate date, until completion of any transaction that results from that estimate, unless otherwise agreed with a shipper under § 375.217(a).

(b) You may accept charge or credit cards whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check, money order, or a cashier's check.

(c) If you allow an individual shipper to pay for a freight or expense bill by charge or credit card, you are deeming such payment to be the same as payment by cash, certified check, money order, or a cashier's check.

(d) The charge or credit card plans you participate in must be identified in your tariff rules as items permitting the acceptance of the charge or credit cards.

(e) If an individual shipper causes a charge or credit card issuer to reverse a charge transaction, you may consider the individual shipper's action tantamount to forcing you to provide an involuntary extension of your credit. In such instances, the rules in § 375.807 apply.

Subpart C—Service Options Provided

§ 375.301 What service options may I provide?

(a) You may design your household goods service to provide individual shippers with a wide range of specialized service and pricing features. Many carriers provide at least the following five service options:

(1) Space reservation.

(2) Expedited service.

(3) Exclusive use of a vehicle.

(4) Guaranteed service on or between agreed dates.

(5) Liability insurance.

(b) If you sell liability insurance, you must follow the requirements in § 375.303.

§ 375.303 If I sell liability insurance coverage, what must I do?

(a) You, your employee, or an agent, may sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments of any individual shippers only when the individual shipper releases the shipment for transportation at a value not exceeding 60 cents per pound ($1.32 per kilogram) per article.

(b) You may offer, sell, or procure any type of insurance policy on behalf of the individual shipper covering loss or damage in excess of the specified carrier liability.

(c) You must issue to the individual shipper a policy or other appropriate evidence of the insurance the individual shipper purchased.

(d) You must provide a copy of the policy or other appropriate evidence to the individual shipper at the time you sell or procure the insurance.

(e) You must issue policies written in plain English.

(f) You must clearly specify the nature and extent of coverage under the policy.

(g) Your failure to issue a policy, or other appropriate evidence of insurance purchased, to an individual shipper will subject you to full liability for any claims to recover loss or damage attributed to you.

(h) You must provide in your tariff for the provision of selling, offering to sell, or procuring liability insurance coverage. The tariff must also provide for the base transportation charge, including your assumption for full liability for the value of the shipment. This would be in the event you fail to issue a policy or other appropriate evidence of insurance to the individual shipper at the time of purchase.

Subpart D—Estimating Charges

§ 375.401 Must I estimate charges?

(a) Before you execute an order for service for a shipment of household goods for an individual shipper, you must estimate the total charges in writing. The written estimate must be one of the following two types:

(1) A *binding estimate*, an agreement made in advance with your individual shipper. It guarantees the total cost of the move based upon the quantities and services shown on your estimate.

(2) A *non-binding estimate*, what you believe the total cost will be for the move, based upon the estimated weight or volume of the shipment and the accessorial services requested. A non-binding estimate is not binding on you. You will base the final charges upon the actual weight of the individual shipper's shipment and the tariff provisions in effect.

(b) You must specify the form of payment you and your agent will honor at delivery. Payment forms may include, but are not limited to, cash, a certified check, a money order, a cashier s check, a specific charge card such as American Express™, a specific credit card such as Visa™, or your credit as allowed by § 375.807.

(c) For non-binding estimates, you must provide your reasonably accurate estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of such shipments. If you provide an inaccurately low estimate, you may be limiting the amount you will collect at the time of delivery as provided in § 375.407.

(d) If you provide a shipper with an estimate based on volume that will later be converted to a weight-based rate, you must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight. You must specify the final charges will be based on actual weight and services subject to the 110 percent rule at delivery.

(e) You must determine charges for any accessorial services such as elevators, long carries, etc., before preparing the order for service and the bill of lading for binding or non-binding estimates. If you fail to ask the shipper about such charges and fail to determine such charges before preparing the order for service and the bill of lading, you must deliver the goods and bill the shipper after 30 days for the additional charges.

(f) You and the individual shipper must sign the estimate of charges. You must provide a dated copy of the estimate of charges to the individual shipper at the time you sign the estimate.

(g) Before loading a household goods shipment, and upon mutual agreement of both you and the individual shipper, you may amend an estimate of charges. You may not amend the estimate after loading the shipment.

§ 375.403 How must I provide a binding estimate?

(a) You may provide a guaranteed binding estimate of the total shipment charges to the individual shipper, so long as it is provided for in your tariff. The individual shipper must pay the amount for the services included in your estimate. You must comply with the following nine requirements:

(1) You must provide a binding estimate in writing to the individual shipper or other person responsible for payment of the freight charges.

(2) You must retain a copy of each binding estimate as an attachment to be made an integral part of the bill of lading contract.

(3) You must clearly indicate upon each binding estimate's face the estimate is binding upon you and the individual shipper. Each binding estimate must also clearly indicate on its face the charges shown are the charges being assessed for only those services specifically identified in the estimate.

(4) You must clearly describe binding estimate shipments and all services you are providing.

(5) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the binding estimate, you are not required to honor the estimate. If an agreement cannot be reached as to the price or service requirements for the additional goods or services, you are not required to service the shipment. However, if you do service the shipment, before loading the shipment, you must do one of the following three things:

(i) Reaffirm your binding estimate.

(ii) Negotiate a revised written binding estimate listing the additional household goods or services.

(iii) Agree with the individual shipper, in writing, that both of you will consider the original binding estimate as a non-binding estimate subject to § 375.405.

(6) Once you load a shipment, failure to execute a new binding estimate or a non-binding estimate signifies you have reaffirmed the original binding estimate. You may not collect more than the amount of the original binding estimate.

(7) If you believe additional services are necessary to properly service a shipment after the household goods are in-transit, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions. You must bill the individual shipper for the additional services after 30 days after delivery. If the shipper does not agree to pay the additional services performed by the carrier after the shipment is picked up, the carrier should perform the additional services as required to complete the delivery and bill the individual shipper for the additional services after 30 days after delivery.

(8) If the individual shipper requests additional services after the household goods are in-transit, you must inform the individual shipper additional charges will be billed. You must require full payment at destination of the original binding estimate only. You must bill for the payment of the balance of any remaining charges after 30 days after delivery. For example, if your binding estimate to an individual shipper estimated total charges at delivery as $1,000, but your actual charges at destination are $1,500, you must deliver the shipment upon payment of $1,000. You then must issue freight or expense bills after 30 days after delivery for the remaining $500.

(9) Failure to relinquish possession of a shipment upon an individual shipper's offer to pay the binding estimate amount constitutes a failure to transport a shipment with "reasonable dispatch" and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(b) If you do not provide a binding estimate to an individual shipper, you

must provide a non-binding estimate to the individual shipper in accordance with § 375.405.

(c) You must retain a copy of the binding estimate for each move you perform for at least one year from the date you made the estimate and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.405 How must I provide a non-binding estimate?

(a) If you do not provide a binding estimate to an individual shipper in accordance with § 375.403, you must provide a non-binding written estimate to the individual shipper.

(b) If you provide a non-binding estimate to an individual shipper, you must provide your reasonably accurate estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of the shipment. You must comply with the following ten requirements:

(1) You must provide reasonably accurate non-binding estimates based upon the estimated weight or volume of the shipment and services required. If you provide a shipper with an estimate based on volume that will later be converted to a weight-based rate, you must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight.

(2) You must explain to the individual shipper final charges calculated for shipments moved on non-binding estimates will be those appearing in your tariffs applicable to the transportation. You must explain to the individual shipper these final charges may exceed the approximate costs appearing in your estimate.

(3) You must furnish non-binding estimates without charge and in writing to the individual shipper or other person responsible for payment of the freight charges.

(4) You must retain a copy of each non-binding estimate as an attachment to be made an integral part of the bill of lading contract.

(5) You must clearly indicate on the face of a non-binding estimate, the estimate is not binding upon you and the charges shown are the approximate charges to be assessed for the services identified in the estimate. The estimate must clearly state that the shipper may not be required to pay more than 110 percent of the non-binding estimate at the time of delivery.

(6) You must clearly describe on the face of a non-binding estimate the entire shipment and all services you are providing.

(7) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the non-binding estimate, you are not required to honor the estimate. If an agreement cannot be reached as to the price or service requirements for the additional goods or services, you are not required to service the shipment. However, if you do service the shipment, before loading the shipment, you must do one of the following two things:

(i) Reaffirm your non-binding estimate.

(ii) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect more than 110 percent of the amount of the original non-binding estimate at destination.

(9) If you believe additional services are necessary to properly service a shipment after the household goods are in-transit, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he/she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions. You must bill the individual shipper for the additional services after 30 days after delivery. If the shipper does not agree to pay the additional services performed by the carrier after the shipment is picked up, the carrier should perform the additional services as required to complete the delivery and bill the individual shipper for the additional services after 30 days after delivery.

(10) If the individual shipper requests additional services after the household goods are in-transit, you must inform the individual shipper additional charges will be billed. You may require full payment at destination of no more than 110 percent of the original non-binding estimate. You must bill for the payment of the balance of any remaining charges after 30 days after delivery. For example, if your non-binding estimate to an individual shipper estimated total charges at delivery as $1,000, but your actual charges at destination are $1,500, you must deliver the shipment upon payment of $1,100 (110 percent of the estimated charges) and forego demanding immediate payment of the balance. You then must issue a freight or expense bill for the remaining $400 after the 30-day period expires.

(c) If you furnish a non-binding estimate, you must enter the estimated charges upon the order for service and upon the bill of lading.

(d) You must retain a copy of the non-binding estimate for each move you perform for at least one year from the date you made the estimate and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

(a) If an individual shipper pays you at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, you must relinquish possession of the shipment at the time of delivery. You must accept the form of payment agreed to at the time of estimate, unless the shipper agrees in writing to a change in the form of payment.

(b) Failure to relinquish possession of a shipment upon an individual shipper's offer to pay 110 percent of the estimated charges constitutes a failure to transport the shipment with "reasonable dispatch" and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(c) You must defer billing for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery. After this 30-day period, you may demand payment of the balance of any remaining charges, as explained in § 375.405.

§ 375.409 May household goods brokers provide estimates?

A household goods broker must not provide an individual shipper with an estimate of charges for the transportation of household goods unless there is a written agreement between the broker and you, the carrier, adopting the broker's estimate as your own estimate. If you make such an agreement with a broker, you must ensure compliance with all requirements of this part pertaining to estimates, including the requirement that you must relinquish possession of the shipment if the shipper pays you 110 percent of a non-binding estimate at the time of delivery.

Subpart E—Pick Up of Shipments of Household Goods

Before Loading

§ 375.501 Must I write up an order for service?

(a) Before you receive a shipment of household goods you will move for an individual shipper, you must prepare an order for service. The order for service must contain the information described in the following 15 items:

(1) Your name and address and the FMCSA U.S. DOT number assigned to the mover who is responsible for performing the service.

(2) The individual shipper's name, address and, if available, its telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent located at or nearest to the destination of the shipment.

(4) A telephone number where the individual shipper/consignee may contact you or your designated agent.

(5) One of the following three entries must be on the order for service:

(i) The agreed pickup date and agreed delivery date of the move.

(ii) The agreed period(s) of the entire move.

(iii) If you are transporting the shipment on a guaranteed service basis, the guaranteed dates or periods for pickup, transportation, and delivery. You must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, who will participate in interline transportation of the shipment.

(7) The form of payment you and your agents will honor at delivery. The payment information must be the same that was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount you will demand at the time of delivery to obtain possession of the shipment, when you transport on a collect-on-delivery basis.

(10) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The released rates may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment, subject to the following two conditions:

(i) If you provide service for individual shippers on rates based upon the transportation of a minimum weight or volume, you must indicate on the order for service the minimum weight- or volume-based rates, and the minimum charges applicable to the shipment.

(ii) If you do not indicate the minimum rates and charges, your tariff must provide you will compute the final charges relating to such a shipment based upon the actual weight or volume of the shipment.

(12) Any identification or registration number you assign to the shipment.

(13) *For non-binding estimates,* your reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (no more than 110 percent of the non-binding estimate) you will demand at the time of delivery to relinquish possession of the shipment.

(14) *For binding estimates,* the amount of charges you will demand based upon the binding estimate and the terms of payment under this estimate.

(15) Whether the individual shipper requests notification of the charges before delivery. The individual shipper must provide you with the telephone number(s) or address(es) where you will transmit the notification.

(b) You, your agent, or your driver must inform the individual shipper if you reasonably expect a special or accessorial service is necessary to safely transport a shipment. You must refuse to accept the shipment when you reasonably expect a special or accessorial service is necessary to safely transport a shipment and the individual shipper refuses to purchase the special or accessorial service. You must make a written note if the shipper refuses any special or accessorial services that you reasonably expect to be necessary.

(c) You and the individual shipper must sign the order for service. You must provide a dated copy of the order for service to the individual shipper at the time you sign the order.

(d)(1) You may provide the individual shipper with blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

(2) You are forbidden from requiring the individual shipper to sign any blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

(e) You must provide the individual shipper the opportunity to rescind the order for service without any penalty for a three-day period after the shipper signs the order for service, if the shipper scheduled the shipment to be loaded more than three days after signing the order.

(f) Before loading the shipment, and upon mutual agreement of both you and the individual shipper, you may amend an order for service.

(g) You must retain a copy of the order for service for each move you perform for at least one year from the date you made the order for service and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.503 Must I write up an inventory?

(a) You must prepare a written, itemized inventory for each shipment of household goods you transport for an individual shipper. The inventory must identify every carton and every uncartoned item that is included in the shipment. When you prepare the inventory, an identification number that corresponds to the inventory must be placed on each article that is included in the shipment.

(b) You must prepare the inventory before the shipment is loaded in the vehicle for transportation in a manner that provides the individual shipper with the opportunity to observe and verify the accuracy of the inventory if he or she so requests.

(c) You must furnish a complete copy of the inventory to the individual shipper before beginning to load the shipment. A copy of the inventory, signed by both you and the individual shipper, must be provided to the shipper, together with a copy of the bill of lading, before you begin to load the shipment.

(d) Upon delivery, you must provide the individual shipper with the opportunity to observe and verify that the same articles are being delivered and the condition of those articles. You must also provide the individual shipper the opportunity to note in writing any missing articles and the condition of any damaged or destroyed articles. In addition, you must also provide the shipper with a copy of all such notations.

(e) You must retain inventories for each move you perform for at least one year from the date you made the inventory and keep it as an attachment to be made an integral part of the bill of lading contract.

§ 375.505 Must I write up a bill of lading?

(a) You must issue a bill of lading. The bill of lading must contain the terms and conditions of the contract. You must furnish a complete copy of the bill of lading to the individual shipper before beginning to load the shipment.

(b) On a bill of lading, you must include the following 14 items:

(1) Your name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in transportation of the shipment.

(3) The name, address, and telephone number of your office (or the office of your agent) where the individual shipper can contact you in relation to the transportation of the shipment.

(4) The form of payment you and your agents will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When you transport on a collect-on-delivery basis, the name, address, and if furnished, the telephone number of a person to notify about the charges.

(6) *For non-guaranteed service,* the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) *For guaranteed service,* subject to tariff provisions, the dates for pickup and delivery, and any penalty or per diem entitlements due the individual shipper under the agreement.

(8) The actual date of pickup.

(9) The company or carrier identification number of the vehicle(s) upon which you load the individual shipper's shipment.

(10) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(11) The maximum amount you will demand at the time of delivery to obtain possession of the shipment, when you transport under a collect-on-delivery basis.

(12) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The released rates may be increased annually by the carrier based on the Department of Commerce's Cost of Living Adjustment.

(13) Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. The following three items must be added as an attachment to the bill of lading.

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

(c) A copy of the bill of lading must accompany a shipment at all times while in your (or your agent's) possession. When you load the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment.

(d) You must retain bills of lading for each move you perform for at least one year from the date you created the bill of lading.

Weighing the Shipment

§ 375.507 Must I determine the weight of a shipment?

(a) When you transport household goods on a non-binding estimate dependent upon the shipment weight, you must determine the weight of each shipment transported before the assessment of any charges.

(b) You must weigh the shipment upon a certified scale.

(c) You must provide a written explanation of volume to weight conversions, when you provide an estimate by volume and convert the volume to weight.

§ 375.509 How must I determine the weight of a shipment?

(a) You must weigh the shipment by using one of the following two methods:

(1) *First method—origin weigh.* You determine the difference between the tare weight of the vehicle before loading at the origin of the shipment and the gross weight of the same vehicle after loading the shipment.

(2) *Second method—back weigh.* You determine the difference between the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after you unload the shipment.

(b) The following three conditions must exist for both the tare and gross weighings:

(1) The vehicle must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of the shipment.

(2) The driver and other persons must be off the vehicle at the time of either weighing.

(3) The fuel tanks on the vehicle must be full at the time of each weighing, or, in the alternative, when you use the *first method—origin weigh,* in paragraph (a)(1) of this section, where the tare weighing is the first weighing performed, you must refrain from adding fuel between the two weighings.

(c) You may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(d) You must use the net weight of shipments transported in containers. You must calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of the shipment) and the gross weight of the container with the shipment loaded in the container.

§ 375.511 May I use an alternative method for shipments weighing 3,000 pounds or less?

For shipments weighing 3,000 pounds or less (1,362 kilograms or less), you may weigh the shipment upon a platform or warehouse certified scale before loading for transportation or after unloading.

§ 375.513 Must I give the individual shipper an opportunity to observe the weighing?

You must give the individual shipper or any other person responsible for the payment of the freight charges the right to observe all weighings of the shipment. You must advise the individual shipper, or any other person entitled to observe the weighings, where and when each weighing will occur. You must give the person who will observe the weighings a reasonable opportunity to be present to observe the weighings.

§ 375.515 May an individual shipper waive his/her right to observe each weighing?

(a) If an individual shipper elects not to observe a weighing, the shipper is presumed to have waived that right.

(b) If an individual shipper elects not to observe a re-weighing, the shipper must waive that right in writing. The individual shipper may send the writing via fax, e-mail, or any other electronic means.

(c) Waiver of the right to observe a weighing or re-weighing does not affect any other rights of the individual shipper under this part or otherwise.

§ 375.517 May an individual shipper demand re-weighing?

After you inform the individual shipper of the billing weight and total charges and before actually beginning to unload a shipment weighed at origin (*first method* under § 375.509(a)(1)), the individual shipper may demand a re-weigh. You must base your freight bill charges upon the re-weigh weight.

§ 375.519 Must I obtain weight tickets?

(a) You must obtain weight tickets whenever we require you to weigh the shipment in accordance with this subpart. You must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) The identification of the weight entries as being the tare, gross, or net weights.

(4) The company or carrier identification of the vehicle.

(5) The last name of the individual shipper as it appears on the bill of lading.

(6) The carrier's shipment registration or bill of lading number.

(b) When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

(c) As part of the file on the shipment, you must retain the original weight ticket or tickets relating to the determination of the weight of a shipment.

(d) All freight bills you present to an individual shipper must include true copies of all weight tickets obtained in the determination of the shipment weight in order to collect any shipment charges dependent upon the weight transported.

§ 375.521 What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?

(a) You must comply with a request of an individual shipper of a shipment being transported on a collect-on-delivery basis who specifically requests notification of the actual weight or volume and charges on a shipment. This requirement is conditioned upon the individual shipper supplying you with an address or telephone number where the individual shipper will receive the communication. You must make your notification by telephone, telegram, or in person.

(b) The individual shipper must receive your notification at least one full 24-hour day before any tender of the shipment for delivery, excluding Saturdays, Sundays and Federal holidays.

(c) You may disregard the 24-hour notification requirement on shipments in any one of the following three circumstances:

(1) The shipment will be back weighed (*i.e.*, weighed at destination).

(2) Pickup and delivery encompass two consecutive weekdays, if the individual shipper agrees.

(3) The shipment is moving under a non-binding estimate and the maximum payment required at time of delivery is 110 percent of the estimated charges, but only if the individual shipper agrees to waive the 24-hour notification requirement.

Subpart F—Transportation of Shipments

§ 375.601 Must I transport the shipment in a timely manner?

Yes. Transportation in a timely manner is also known as "reasonable dispatch service." You must provide reasonable dispatch service to all individual shippers, except for transportation on the basis of guaranteed pickup and delivery dates.

§ 375.603 When must I tender a shipment for delivery?

You must tender a shipment for delivery for an individual shipper on the agreed delivery date or within the period specified on the bill of lading. Upon the request or concurrence of the individual shipper, you may waive this requirement.

§ 375.605 How must I notify an individual shipper of any service delays?

(a) When you are unable to perform either the pickup or delivery of a shipment on the dates or during the periods specified in the order for service and as soon as the delay becomes apparent to you, you must notify the individual shipper of the delay, at your expense, in one of the following three ways:

(1) By telephone.

(2) By telegram.

(3) In person.

(b) You must advise the individual shipper of the dates or periods you expect to be able to pick up and/or deliver the shipment. You must consider the needs of the individual shipper in your advisement. You also must do the following four things:

(1) You must prepare a written record of the date, time, and manner of notification.

(2) You must prepare a written record of your amended date or period for pick-up or delivery.

(3) You must retain these records as a part of your file on the shipment. The retention period is one year from the date of notification.

(4) You must furnish a copy of the notice to the individual shipper by first class mail or in person if the individual shipper requests a copy of the notice.

§ 375.607 What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date?

(a) You may ask the individual shipper to accept an early delivery date. If the individual shipper does not concur with your request or the individual shipper does not request an early delivery date, you may, at your discretion, place a shipment in storage under your own account and at your own expense in a warehouse located near the destination of the shipment. If you place the shipment in storage, you must comply with paragraph (b) of this section. You may comply with paragraph (c) of this section, at your discretion.

(b) You must immediately notify the individual shipper of the name and address of the warehouse where you place the shipment. You must make and keep a record of your notification as a part of your shipment records. You have responsibility for the shipment under the terms and conditions of the bill of lading. You are responsible for the charges for redelivery, handling, and storage until you make final delivery.

(c) You may limit your responsibility under paragraph (b) of this section up to the agreed delivery date or the first day of the period of time of delivery as specified in the bill of lading.

§ 375.609 What must I do for shippers who store household goods in transit?

(a) If you are holding goods for storage-in-transit (SIT) and the period of time is about to expire, you must comply with this section.

(b) You must notify the individual shipper, in writing of the following four items:

(1) The date of conversion to permanent storage.

(2) The existence of a nine-month period after the date of conversion to permanent storage when the individual shipper may file claims against you for loss or damage occurring to the goods in transit or during the storage-in-transit period.

(3) The fact your liability is ending.

(4) The fact the individual shipper's property will be subject to the rules, regulations, and charges of the warehouseman.

(c) You must make this notification at least 10 days before the expiration date of either one of the following two periods:

(1) The specified period of time when the goods are to be held in storage.

(2) The maximum period of time provided in your tariff for storage-in-transit.

(d) You must notify the individual shipper by facsimile transmission,

overnight courier, e-mail, or certified mail, return receipt requested.

(e) If you are holding household goods in storage-in-transit for a period of time less than 10 days, you must give notification to the individual shipper of the information specified in paragraph (b) of this section one day before the expiration date of the specified time when the goods are to be held in such storage.

(f) You must maintain a record of notifications as part of the records of the shipment.

(g) Your failure or refusal to notify the individual shipper will automatically effect a continuance of your carrier liability according to the applicable tariff provisions with respect to storage-in-transit, until the end of the day following the date when you actually gave notice.

Subpart G—Delivery of Shipments

§ 375.701 May I provide for a release of liability on my delivery receipt?

(a) Your delivery receipt or shipping document must not contain any language purporting to release or discharge you or your agents from liability.

(b) The delivery receipt may include a statement the property was received in apparent good condition except as noted on the shipping documents.

§ 375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?

(a) On a binding estimate, the maximum amount is the exact estimate of the charges.

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of the charges.

§ 375.705 If a shipment is transported on more than one vehicle, what charges may I collect at delivery?

(a) At your discretion, you may do one of the following three things:

(1) You may defer the collection of all charges until you deliver the entire shipment.

(2) If you have determined the charges for the entire shipment, you may collect charges for the portion of the shipment tendered for delivery. You must determine the percentage of the charges for the entire shipment represented by the portion of the shipment tendered for delivery.

(3) If you cannot reasonably calculate the charges for the entire shipment, you must determine the charges for the portion of the shipment being delivered. You must collect this amount. The total charges you assess for the transportation of the separate portions of the shipment must not be more than the charges due for the entire shipment.

(b) In the event of the loss or destruction of any part of a shipment transported on more than one vehicle, you must collect the charges as provided in § 375.707.

§ 375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?

(a) If a shipment is partially lost or destroyed, you may first collect your freight charges for the entire shipment, if you choose. If you do this, you must refund the portion of your published freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services), at the time you dispose of claims for loss, damage, or injury to the articles in the shipment under part 370 of this chapter.

(b) To calculate the amount of charges applicable to the shipment as delivered, you must multiply the percentage corresponding to the delivered shipment by the total charges applicable to the shipment tendered by the individual shipper. The following four conditions also apply:

(1) If the charges computed exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of household goods and not to charges for other services the individual shipper ordered.

(2) You must collect any specific valuation charge due.

(3) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.

(4) You must determine, at your own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

(c) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) partially lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

§ 375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?

(a) You are forbidden from collecting, or requiring an individual shipper to pay, any freight charges (including any charges for accessorial or terminal services) when a household goods shipment is *totally lost or destroyed* in transit. The following two conditions also apply:

(1) You must collect any specific valuation charge due.

(2) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.

(b) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) totally lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

Subpart H—Collection of Charges

§ 375.801 What types of charges apply to subpart H?

(a) This subpart applies to all shipments subject to binding estimates.

(b) This subpart does not apply to collect-on-delivery shipments subject to the 110 percent rule for non-binding estimates. You may expect payment of not more than 110 percent of the estimated charges on a collect-on-delivery non-binding estimate at the time of delivery. You must bill the individual shipper for any balance due not sooner than 30 days after delivery.

§ 375.803 How must I present my freight or expense bill?

You must present your freight or expense bill in accordance with § 377.205 of this chapter.

§ 375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?

On "collect-on-delivery" shipments, you must present your freight bill for all transportation charges within 15 days as required by § 375.807.

§ 375.807 What actions may I take to collect the charges upon my freight bill?

(a) You must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at its destination.

(b) The credit period must be seven days (including Saturdays, Sundays, and Federal holidays).

(c) You must provide in your tariffs the following four things:

(1) You must automatically extend the credit period to a total of 30 calendar days for any shipper who has not paid your freight bill within the 7-day period.

(2) You will assess a service charge to each individual shipper equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for the extension of the credit period. You will assess the service charge for each 30-day extension the charges go unpaid.

(3) You must deny credit to any shipper who fails to pay a duly-presented freight bill within the 30-day period. You may grant credit to the individual shipper when the individual shipper satisfies he/she will promptly pay all future freight bills duly presented.

(4) You must ensure all payments of freight bills are strictly in accordance with the rules and regulations of this part for the settlement of your rates and charges.

Subpart I—Penalties

§ 375.901 What penalties do we impose for violations of this part?

The penalty provisions of 49 U.S.C. Chapter 149, Civil and Criminal Penalties apply to this part. These penalties do not overlap. Notwithstanding these civil penalties, nothing in this section shall deprive any holder of a receipt or a bill of lading any remedy or right of action under existing law.

Appendix A to Part 375—Your Rights and Responsibilities When You Move

You must furnish this document to prospective individual shippers as required by § 375.213. The text as it appears in this appendix may be reprinted in a form and manner chosen by you, provided it complies with § 375.213(b)(2) and (b)(3). You do not have to italicize titles of sections.

YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE

OMB No. 2126–_____.

Furnished By Your Mover, As Required By Federal Law

Authority: 49 U.S.C. 13301, 13704, 13707, and 14104; 49 CFR 1.73.

What is Included in This Pamphlet?

In this pamphlet, you will find a discussion of each of these topics:

Why Was I Given This Pamphlet?

What Are The Most Important Points I Should Remember From This Pamphlet?

What If I Have More Questions?

Subpart A—General Requirements

Who must follow the regulations?

What definitions are used in this pamphlet?

Subpart B—Before Requesting Services From Any Mover

What is my mover's normal liability for loss or damage when my mover accepts goods from me?

What actions by me limit or reduce my mover's normal liability?

What are dangerous or hazardous materials that may limit or reduce my mover's normal liability?

May my mover have agents?

What items must be in my mover's advertisements?

How must my mover handle complaints and inquiries?

Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?

Must my mover have an arbitration program?

Must my mover inform me about my rights and responsibilities under Federal law?

What other information must my mover provide to me?

How must my mover collect charges?

May my mover collect charges upon delivery?

May my mover extend credit to me?

May my mover accept charge or credit cards for my payments?

Subpart C—Service Options Provided

What service options may my mover provide?

If my mover sells liability insurance coverage, what must my mover do?

Subpart D—Estimating Charges

Must my mover estimate the transportation and accessorial charges for my move?

How must my mover estimate charges under the regulations?

What payment arrangements must my mover have in place to secure delivery of my household goods shipment?

Subpart E—Pickup of My Shipment of Household Goods

Must my mover write up an order for service?

Must my mover write up an inventory of the shipment?

Must my mover write up a bill of lading?

Should I reach an agreement with my mover about pickup and delivery times?

Must my mover determine the weight of my shipment?

How must my mover determine the weight of my shipment?

What must my mover do if I want to know the actual weight or charges for my shipment before delivery?

Subpart F—Transportation of My Shipment

Must my mover transport the shipment in a timely manner?

What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?

What must my mover do for me when I store household goods in transit?

Subpart G—Delivery of My Shipment

May my mover ask me to sign a delivery receipt releasing it from liability?

What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?

If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?

If my shipment is partially or totally lost or destroyed, what charges may my mover collect at delivery?

How must my mover calculate the charges applicable to the shipment as delivered?

Subpart H—Collection of Charges

Does this subpart apply to most shipments?

How must my mover present its freight or expense bill to me?

If I forced my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?

What actions may my mover take to collect from me the charges in its freight bill?

Do I have a right to file a claim to recover money for property my mover lost or damaged?

Subpart I—Resolving Disputes with My Mover

What may I do to resolve disputes with my mover?

Why Was I Given This Pamphlet?

The Federal Motor Carrier Safety Administration's (FMCSA) regulations protect consumers on interstate moves and define the rights and responsibilities of consumers and household goods carriers.

The household goods carrier (mover) gave you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. Your primary responsibility is to select a reputable household goods carrier, ensure that you understand the terms and conditions of the contract, and understand and pursue the remedies that are available to you when problems arise. You should talk to your mover if you have further questions. The mover will also furnish you with another booklet describing its procedure for handling your questions and complaints. The other booklet will include a telephone number you can call to obtain additional information about your move.

What Are the Most Important Points I Should Remember From This Pamphlet?

1. Movers must give written estimates.
2. Movers may give binding estimates.
3. Non-binding estimates are not always accurate; actual charges may exceed the estimate.
4. You should not sign blank or incomplete documents or allow anyone representing you to do so.
5. You may request from the mover the availability of guaranteed pick up and delivery dates.
6. Be sure you understand the mover's responsibility for loss or damage, and request an explanation of the difference between valuation and actual insurance.
7. You have the right to be present each time your shipment is weighed.
8. You may request a re-weigh of your shipment.
9. If you agree to move under a non-binding estimate, you should confirm with your mover—in writing—the method of payment at delivery as cash, certified check, cashier's check, money order, or credit card.
10. Movers must offer a dispute settlement program as an alternative means of settling loss or damage claims. ASK YOUR MOVER FOR DETAILS.

11. You should ask the person you speak to whether he/she works for the actual mover or a household goods broker. A household goods broker only arranges for the transportation. A household goods broker must not represent itself as a mover. A household goods broker does not own trucks of its own. The broker is required to find an authorized mover to provide the transportation. You should know a household goods broker generally has no authority to provide you an estimate on behalf of a specific mover. If a household goods broker provides you an estimate, it may not be binding on the actual mover and you may have to pay the actual charges the mover incurs. A household goods broker is not responsible for loss or damage.

12. You may request complaint information about movers from the Federal Motor Carrier Safety Administration under the Freedom of Information Act. You may be assessed a fee to obtain this information. *See* 49 CFR part 7 for the schedule of fees.

13. You should seek estimates from at least three different movers. You should not disclose any information to the different movers about their competitors, as it may affect the accuracy of their estimates.

What If I Have More Questions?

If this pamphlet does not answer all of your questions about your move, do not hesitate to ask your mover's representative who handled the arrangements for your move, the driver who transports your shipment, or the mover's main office for additional information.

Subpart A—General Requirements

The primary responsibility for your protection lies with you in selecting a reputable household goods carrier, ensuring you understand the terms and conditions of your contract with your mover, and understanding and pursuing the remedies that are available to you when problems arise.

Who Must Follow the Regulations?

The regulations inform motor carriers engaged in the interstate transportation of household goods (movers) what standards the movers must follow when offering services to you. You, an individual shipper, are not directly subject to the regulations. However, your mover may be required by the regulations to force you to pay on time. The regulations only apply to your mover when the mover transports your household goods by motor vehicle in interstate commerce, *i.e.*, when you are moving from one State to another. The regulations do not apply when your interstate move takes place within a single commercial zone. A commercial zone is roughly equivalent to the local metropolitan area of a city or town. For example, a move between Brooklyn, NY, and Hackensack, NJ, would be considered to be within the New York City commercial zone and would not be subject to these regulations. Commercial zones are defined in 49 CFR part 372.

What Definitions Are Used in This Pamphlet?

Accessorial (additional) services—These are services such as packing, appliance servicing, unpacking, or piano stair carries you request to be performed (or are necessary because of landlord requirements or other special circumstances). Charges for these services are in addition to the transportation charges.

Advanced charges—These are charges for services not performed by the mover, but by someone else. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading charges.

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an on-line database. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

Agent—A local moving company authorized to act on behalf of a larger, national company.

Appliance service—The preparation of major electrical appliances to make them safe for shipment. Charges for these services are in addition to the transportation charges.

Bill of lading—The receipt for your goods and the contract for its transportation.

Carrier—The mover transporting your household goods.

Cash on delivery (COD)—This means payment is required at the time of delivery at the destination residence (or warehouse).

Certified scale—Any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale properly inspected and certified.

Estimate, binding—This is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Estimate, non-binding—This is what your mover believes the cost will be based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment, the services provided, and the tariff provisions in effect.

Expedited service—This is an agreement with the mover to perform transportation by a set date in exchange for charges based upon a higher minimum weight.

Flight charge—An extra charge for carrying items up or down flights of stairs.

Guaranteed pickup and delivery service—An additional level of service featuring guaranteed dates of service. Your mover will provide reimbursement to you for delays. This premium service is often subject to minimum weight requirements.

High value article—These are items included in a shipment valued at more than $100 per pound ($220 per kilogram).

Household goods as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by you or by another individual on your behalf. This may include items moving from a factory or store when you purchase them to use in your dwelling. You must request that these items be transported and you (or another individual on your behalf) must pay the transportation charges to the mover.

Inventory—The detailed descriptive list of your household goods showing the number and condition of each item.

Linehaul charges—The charges for the vehicle transportation portion of your move. These charges apply in addition to the accessorial service charges.

Long carry—An added charge for carrying articles excessive distances between the mover's vehicle and your residence.

May—An option. You or your mover may do something, but it is not a requirement.

Mover—A motor carrier engaged in the transportation of household goods and its household goods agents.

Must—A legal obligation. You or your mover must do something.

Order for service—The document authorizing the mover to transport your household goods.

Order (bill of lading) number—The number used to identify and track your shipment.

Peak season rates—Higher linehaul charges applicable during the summer months.

Pickup and delivery charges—Separate transportation charges applicable for transporting your shipment between the storage-in-transit warehouse and your residence.

Reasonable dispatch—The performance of transportation on the dates, or during the period of time, agreed upon by you and your mover and shown on the Order For Service/Bill of Lading. For example, if your mover deliberately withholds any shipment from delivery after you offer to pay the binding estimate or 110 percent of a non-binding estimate, your mover has not transported the goods with reasonable dispatch. The term "reasonable dispatch" excludes transportation provided under your mover's tariff provisions requiring guaranteed service dates. Your mover will have the defenses of force majeure, *i.e.*, that the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Should—A recommendation. We recommend you or your mover do something, but it is not a requirement.

Shuttle service—The use of a smaller vehicle to provide service to residences not accessible to the mover's normal linehaul vehicles.

Storage-in-transit (SIT)—The temporary warehouse storage of your shipment pending further transportation. For example, you may need SIT if your new home is not quite ready to occupy. You must specifically request SIT service. This may not exceed a total of 180 days of storage. You will be responsible for the added charges for SIT service, as well as the warehouse handling and final delivery charges.

Surface Transportation Board—An agency within the Department of Transportation that regulates household good carrier tariffs among other responsibilities. The Surface Transportation Board's address is 1925 K Street NW., Washington, DC 20423–0001 Tele. 202–565–1674.

Tariff—An issuance (in whole or in part) containing rates, rules, regulations, classifications or other provisions. The Surface Transportation Board requires a tariff contain three specific items. First, an accurate description of the services the mover offers to the public. Second, the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms for services offered to the public. Finally, the mover's tariff must be arranged in a way that allows you to determine the exact rate(s) and service terms applicable to your shipment.

Valuation—The degree of "worth" of the shipment. The valuation charge compensates the mover for assuming a greater degree of liability than is provided for in its base transportation charges.

Warehouse handling—An additional charge applicable each time SIT service is provided. This charge compensates the mover for the physical placement and removal of items within the warehouse.

We, Us, and Our—The Federal Motor Carrier Safety Administration (FMCSA).

You and Your—You are an individual shipper of household goods. You are a consignor or consignee of a household goods shipment and your mover identifies you as such in the bill of lading contract. You own the goods being transported and you pay the transportation charges to the mover.

Where may other terms used in this pamphlet be defined? You may find other terms used in this pamphlet defined in 49 U.S.C. 13102. The statute controls the definitions in this pamphlet. If terms are used in this pamphlet and the terms are neither defined here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Subpart B—Before requesting services from any mover

What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?

In general, your mover is legally liable for loss or damage if it happens during performance of any transportation of household goods and all related services identified on your mover's lawful bill of lading.

Your mover is liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's Released Rates Order. You may obtain a copy of the current Released Rates Order by contacting the Surface Transportation Board at the address in the definition of the Surface Transportation Board. The rate may be increased annually by your mover based on the Department of Commerce's Cost of Living Adjustment. Your mover may have additional liability if your mover sells liability insurance to you.

All moving companies are required to assume liability for the value of the goods transported. However, there are different levels of liability, and you should be aware of the amount of protection provided and the charges for each option.

Basically, most movers offer two different levels of liability (options 1 and two, below) under the terms of their tariffs and the Surface Transportation Board's Released Rates Orders. These orders govern the moving industry.

Option 1: Released Value

This is the most economical protection option available. This no-additional cost option provides minimal protection. Under this option, the mover assumes liability for no more than 60 cents per pound ($1.32 cents per kilogram), per article. Loss or damage claims are settled based upon the pound (kilogram) weight of the article multiplied by 60 cents per pound ($1.32 cents per kilogram). For example, if your mover lost or destroyed a 10-pound (4.54-kilogram) stereo component valued at $1000, your mover would be liable for no more than $6.00. Obviously, you should think carefully before agreeing to such an arrangement. There is no extra charge for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it.

Option 2: Full Value Protection (FVP)

Under this option, the mover is liable for the replacement value of lost or damaged goods (as long as it doesn't exceed the total declared value of the shipment). If you elect to purchase full value protection, when your mover loses, damages or destroys your articles, your mover must repair, replace with like items, or settle in cash at the current market replacement value, regardless of the age of the lost or damaged item. The minimum declared value of a shipment under this option is $5,000 or $4.00 times the actual total weight (in pounds) of the shipment, whichever is greater. For example, the minimum declared value for a 4,000-pound (1,814.4-kilogram) shipment would be $16,000. Your mover may offer you FVP with a $250 or $500 deductible, or with no deductible at all. The amount of the deductible will affect the cost of your FVP coverage. The $4.00 per pound minimum valuation rate may be increased annually by your mover based on changes in the household furnishings element of the Consumer Price Index established by the U.S. Department of Labor's Bureau of Labor Statistics.

Unless you specifically agree to other arrangements, the mover must assume liability for the entire shipment based upon this option. The approximate cost for FVP is $8.50 for each $1000 of declared value; however, it may vary by mover. In the example above, the valuation charge for a shipment valued at $16,000 would be $136.00. This fee may be adjusted annually by your mover based on changes in the household furnishings element of the Consumer Price Index.

Under these two options, movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically list these articles on the shipping documents. An article of extraordinary value is any item whose value exceeds $100 per pound ($220 per kilogram). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and to make the necessary declaration.

These optional levels of liability are not insurance agreements governed by State insurance laws, but instead are authorized under Released Rates Orders of the Surface Transportation Board of the U.S. Department of Transportation.

In addition to these options, some movers may also offer to sell, or procure for you, separate liability insurance from a third-party insurance company when you release your shipment for transportation at the minimum released value of 60 cents per pound ($1.32 per kilogram) per article (Option 1). This is not valuation coverage governed by Federal law, but optional insurance regulated under State law. If you purchase this separate coverage and your mover is responsible for loss or damage, the mover is liable only for an amount not exceeding 60 cents per pound ($1.32 per kilogram) per article, and the balance of the loss is recoverable from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.

What Actions by Me Limit or Reduce My Mover's Normal Liability?

Your actions may limit or reduce your mover's normal liability, under the following three circumstances:

(1) You include perishable, dangerous, or hazardous materials in your household goods without your mover's knowledge.

(2) You ship household goods valued at more than 60 cents per pound ($1.32 per kilogram) per article.

(3) You fail to notify your mover in writing of articles valued at more than $100 per pound ($220 per kilogram). (If you *do* notify your mover, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.)

What Are Dangerous or Hazardous Materials That May Limit or Reduce My Mover's Normal Liability?

Federal law forbids you shipping hazardous materials in your household goods boxes or luggage without informing your mover. A violation can result in five years'

imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). You may also lose or damage your household goods by fire, explosion, or contamination.

If you offer hazardous materials to your mover, you are considered a hazardous materials shipper and must comply with the hazardous material requirements in 49 CFR parts 171, 172, and 173, including, but not limited to package labeling and marking, shipping papers, and emergency response information. Your mover must comply with 49 CFR parts 171, 172, 173, and 177 as a hazardous materials carrier.

Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, and radioactive materials.

Examples: Nail polish remover, paints, paint thinners, lighter fluid, gasoline, fireworks, oxygen bottles, propane cylinders, automotive repair and maintenance chemicals, and radio-pharmaceuticals.

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your household goods and certain smoking materials carried on your person. For further information contact your mover.

May My Mover Have Agents?

Yes, your mover may have agents. If your mover has agents, your mover must have written agreements with its prime agents. Your mover and its retained prime agent must sign their agreements. Copies of your mover's prime agent agreements must be in its files for a period of at least 24 months following the date of termination of each agreement.

What Items Must Be in My Mover's Advertisements?

Your mover must publish and use only truthful, straightforward, and honest advertisements. Your mover must include certain information in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation). Your mover must require each of its agents to include the same information in their advertisements. The information must include the following two pieces of information about your mover:

(1) Name or trade name of the mover, under whose U.S. DOT number the advertised service will originate.

(2) U.S. DOT number, assigned by the FMCSA authorizing your mover to operate. Your mover must display the information as: USDOT No. (assigned number).

You should compare the name or trade name of the mover and its U.S. DOT number to the name and USDOT number on the sides of the truck(s) that arrive at your residence. The names and numbers should be identical. If the names and numbers are not identical, you should ask your mover immediately why the names and numbers are not identical. You should not allow the mover to load your household goods on its truck(s) until you obtain a satisfactory response from the mover's local agent. The discrepancies may warn of problems you will have later in your business dealings with this mover.

How Must My Mover Handle Complaints and Inquiries?

All movers are expected to respond promptly to complaints or inquiries from you, the customer. Should you have a complaint or question about your move, you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of these persons, you should then contact the mover's principal office. When you make such a call, be sure to have available your copies of all the documents relating to your move. *Particularly important is the number assigned to your shipment by your mover.*

Interstate movers are also required to offer neutral arbitration as a means of resolving consumer loss or damage disputes involving loss of, or damage to, household goods. Your mover is required to provide you with information regarding its arbitration program. You have the right to pursue court action under 49 U.S.C. 14704 to seek judicial redress directly and to not participate in your mover's arbitration program.

All interstate moving companies are required to maintain a complaint and inquiry procedure to assist their customers. At the time you make the arrangements for your move, you should ask the mover's representative for a description of the mover's procedure, the telephone number to be used to contact the mover, and whether the mover will pay for such telephone calls. Your mover's procedure must include the following four things:

(1) A communications system allowing you to communicate with your mover's principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from you by any means of communication.

Your mover must give you a clear and concise written description of its procedure. You may want to test the system to see how it works for you.

Do I Have the Right To Inspect My Mover's Tariffs (Schedules of Charges) Applicable to My Move?

Federal law requires your mover to advise you of your right to inspect your mover's tariffs (its schedules of rates or charges) governing your shipment. Mover tariffs are made a part of the contract of carriage (bill of lading) between you and the mover. You may inspect the tariff at the mover's facility, or, upon request, the mover will furnish you a free copy of any tariff provision containing the mover's rates, rules, or charges governing your shipment.

Tariffs may include provisions limiting the mover's liability. This would generally be described in a section on declaring value on the bill of lading. A second tariff provision may set the periods for filing claims. This would generally be described in Section 6 on the reverse side of a bill of lading. A third tariff provision may reserve your mover's right to assess additional charges for additional services performed. For non-binding estimates, another tariff provision may base charges upon the exact weight of the goods transported. Your mover's tariff may contain other provisions that apply to your move. Ask your mover what they might be.

Must My Mover Have an Arbitration Program?

Your mover must have an arbitration program for your use in resolving disputes concerning loss or damage to your household goods. You have the right not to participate in the arbitration program. You may pursue court action under 49 U.S.C. 14704 to seek judicial remedies directly. Your mover must establish and maintain an arbitration program with the following eleven minimum elements:

(1) The arbitration program offered to you must prevent your mover from having any special advantage, because you live or work in a place distant from the mover's principal or other place of business.

(2) Before your household goods are tendered for transport, your mover must provide notice to you of the availability of neutral arbitration, including the following three things.

(a) A summary of the arbitration procedure.

(b) Any applicable costs.

(c) A disclosure of the legal effects of electing to use arbitration.

(3) Upon your request, your mover must provide information and forms it considers necessary for initiating an action to resolve a dispute under arbitration.

(4) Each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes fairly and expeditiously. Your mover must ensure the arbitrator is authorized and able to obtain from you or your mover any material or relevant information to carry out a fair and expeditious decision making process.

(5) You must not be required to pay more than one-half of the arbitration's cost. The arbitrator may determine the percentage of payment of the costs for each party in the arbitration decision, but may not make you pay more than half.

(6) Your mover must not require you to agree to use arbitration before a dispute arises.

(7) You will be bound by arbitration for claims of $5,000 or less, if you request arbitration.

(8) You will be bound by arbitration for claims of more than $5,000, only if you request arbitration and your mover agrees to it.

(9) If you and your mover both agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The 60-day period may be extended for a reasonable period if you or your mover fail to provide information in a timely manner.

Your mover must produce and distribute a concise, easy-to-read, accurate summary of its arbitration program.

Must My Mover Inform Me About My Rights and Responsibilities Under Federal Law?

Yes, your mover must inform you about your rights and responsibilities under Federal law. Your mover must produce and distribute this document. It should be in the general order and contain the text of appendix A to 49 CFR part 375.

What Other Information Must My Mover Provide to Me?

Before your mover executes an order for service for a shipment of household goods, your mover must furnish to you the following four documents:

(1) The contents of appendix A, "Your Rights and Responsibilities When You Move," this pamphlet.

(2) A concise, easy-to-read, accurate summary of your mover's arbitration program.

(3) A notice of the availability of the applicable sections of your mover's tariff for the estimate of charges, including an explanation that you may examine the tariff sections or have copies sent to you upon request.

(4) A concise, easy to read, accurate summary of your mover's customer complaint and inquiry handling procedures. Included in this summary must be the following two items:

(a) The main telephone number you may use to communicate with your mover.

(b) A clear and concise statement concerning who must pay for telephone calls.

Your mover may, at its discretion, provide additional information to you.

How Must My Mover Collect Charges?

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. Your mover's freight or expense bill must contain the following 19 items:

(1) Name of the consignor.

(2) Name of the consignees.

(3) Date of the shipment.

(4) Origin point.

(5) Destination points.

(6) Number of packages.

(7) Description of the freight.

(8) Weight of the freight (if applicable to the rating of the freight).

(9) The volume of the freight (if applicable to the rating of the freight).

(10) The measurement of the freight (if applicable to the rating of the freight).

(11) Exact rate(s) assessed.

(12) Disclose the actual rates, charges, and allowances for the transportation service, when your mover electronically presents or transmits freight or expense bills to you. These rates must be in accordance with the mover's applicable tariff.

(13) Indicate whether adjustments may apply to the bill.

(14) Total charges due and acceptable methods of payment.

(15) The nature and amount of any special service charges.

(16) The points where special services were rendered.

(17) Route of movement and name of each mover participating in the transportation.

(18) Transfer points where shipments moved.

(19) Address where you must pay or address of bill issuer's principal place of business.

Your mover must present its freight or expense bill to you within 15 days of the date of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays.

If your mover lacks sufficient information to compute its charges, your mover must present its freight bill for payment within 15 days of the date when sufficient information does become available.

May My Mover Collect Charges Upon Delivery?

Yes. Your mover must specify the form of payment acceptable at delivery when the mover prepares an estimate and order for service. The mover and its agents must honor the form of payment at delivery, except when you mutually agree to a change in writing. The mover must also specify the same form of payment when it prepares your bill of lading, unless you agree to a change. See also "May my mover accept charge or credit cards for my payments?"

You must prepare yourself to pay 10 percent more than the estimated amount, if your goods are moving under a non-binding estimate. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery.

May My Mover Extend Credit to Me?

Extending credit to you is not the same as accepting your charge or credit card(s) as payment. Your mover may relinquish possession of freight before you pay its tariff charges, at its discretion. Your mover may extend credit to you in the amount of the tariff charges. Your mover must ensure you will pay its tariff charges within the credit period. If your mover extends credit to you, your mover becomes like a bank offering you a line of credit, whose size and interest rate are determined by your ability to pay its tariff charges within the credit period.

The credit period must begin on the day following presentation of your mover's freight bill to you. Under Federal regulation, the standard credit period is 15 days, including Saturdays, Sundays, and Federal holidays, except your mover may establish its own standard credit period of up to 30 calendar days. Your mover may also establish a service charge for extending credit, including a minimum service charge. Your mover's service charge only applies when your payments are made after its established standard credit period. For example, if your mover's established standard credit period is less than the maximum 30-calendar-day period, your mover may extend credit including a service charge for the additional time up to the maximum 30-calendar-day period. If your mover extends such credit, you may elect to postpone payment, including the service charge until the end of the extended credit period.

Your mover may establish additional service charges for payments made after the expiration of the 30-calendar-day period. If your mover establishes additional service charges, your mover must begin to compute service charges on the day following the last day of its standard credit period. If your mover establishes service charges, your mover must notify you about the following three things:

(1) The only purpose of the service charge is to prevent you from having free use of the mover's funds.

(2) The service charge encourages your prompt payment.

(3) Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal household-goods-transportation credit regulations in good faith in the future before extending credit again.

May My Mover Accept Charge or Credit Cards for My Payments?

Your mover may allow you to use a charge or credit card for payment of the freight charges. Your mover may accept charge or credit cards whenever you ship with it under an agreement and tariff requiring payment by cash or cash equivalents. Cash equivalents are a certified check, money order, or a cashier's check (a check drawn by a financial institution—bank, credit union, savings & loan, etc.—upon itself and signed by an officer of the financial institution).

If your mover allows you to pay for a freight or expense bill by charge or credit card, your mover deems such a payment to be equivalent to payment by cash, certified check, or a cashier's check. It must note in writing on the order for service and the bill of lading whether you may pay for the transportation and related services using a charge or credit card. You should ask your mover at the time the estimate is written whether it will accept charge or credit cards at delivery.

The mover must specify what charge or credit cards it will accept, such as American Express™, Discover™, MasterCard™, or Visa™. The mover must arrange with you for delivery during the time when the mover's credit or collection department is open so the mover may seek approval of the payment by the card issuer. The mover does not have to make these delivery arrangements with you when it has equipped its motor vehicle(s) with card transaction processing machines.

If you cause a charge or credit card issuer to reverse a transaction, your mover may consider your action tantamount to forcing your mover to provide an involuntary extension of its credit.

Subpart C—Service Options Provided

What Service Options May My Mover Provide?

Your mover may provide any service options it chooses. It is customary for movers to offer several price and service options.

The total cost of your move may increase if you want additional or special services. Before you agree to have your shipment moved under a bill of lading providing special service, you should have a clear understanding with your mover what the

additional cost will be. You should always consider whether other movers may provide the services you require without requiring you to pay the additional charges.

One service option is a *Space Reservation.* If you agree to have your shipment transported under a space reservation agreement, you will pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van your shipment actually occupies.

A second option is *Expedited Service.* This aids you if you must have your shipments transported on or between specific dates when the mover could not ordinarily agree to do so in its normal operations.

A third customary service option is *Exclusive Use of a Vehicle.* If for any reason you desire or require your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service.

Another service option is *Guaranteed Service on or Between Agreed Dates.* You enter into an agreement with the mover where the mover provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined amount or a daily rate (per diem) regardless of the expense you actually might have incurred as a result of the mover's failure to perform.

Before requesting or agreeing to any of these price and service options, be sure to ask the mover's representatives about the final costs you will pay.

Transport of Shipments on Two or More Vehicles

Although all movers try to move each shipment on one truck, it becomes necessary, at times, to divide a shipment among two or more trucks. This may occur if your mover has underestimated the cubic meters of space required for your shipment and it will not all fit on the first truck. Your mover will pick up the remainder or "leave behind" on a second truck at a later time and this part of your shipment may arrive at the destination at a later time than the first truck. When this occurs, your transportation charges will be determined as if the entire shipment moved on one truck.

If it is important for you to avoid this inconvenience of a "leave behind," be sure your estimate includes an accurate calculation of the cubic meters required for your shipment. Ask your estimator to use a "Table of Measurements" form in making this calculation. Consider asking for a binding estimate. A binding estimate is more likely to be conservative with regard to cubic meters than a non-binding estimate. If the mover offers space reservation service, consider purchasing this service for the necessary amount of space plus some margin for error. In any case, you would be prudent to "prioritize" your goods in advance of the move so the driver will load the more essential items on the first truck if some are left behind.

If My Mover Sells Liability Insurance Coverage, What Must My Mover Do?

If your mover provides the service of selling additional liability insurance, your mover must follow certain regulations.

Your mover, its employees, or its agents, may sell, offer to sell, or procure additional liability insurance coverage for you for loss or damage to your shipment, if you release the shipment for transportation at a value not exceeding 60 cents per pound ($1.32 per kilogram) per article.

Your mover may offer, sell, or procure any type of insurance policy covering loss or damage in excess of its specified liability.

Your mover must issue you a policy or other appropriate evidence of the insurance you purchased. Your mover must provide a copy of the policy or other appropriate evidence to you at the time your mover sells or procures the insurance. Your mover must issue policies written in plain English.

Your mover must clearly specify the nature and extent of coverage under the policy. Your mover's failure to issue you a policy, or other appropriate evidence of insurance you purchased, will subject your mover to full liability for any claims to recover loss or damage attributed to it.

Your mover must provide in its tariffs for the provision of liability insurance coverage. The tariff must also provide for the base transportation charge, including its assumption for full liability for the value of the shipment. This would be in the event your mover fails to issue you a policy or other appropriate evidence of insurance at the time of purchase.

Subpart D—Estimating Charges

Must My Mover Estimate the Transportation and Accessorial Charges for My Move?

We require your mover to prepare a written estimate on every shipment transported for you. You are entitled to a copy of the written estimate when your mover prepares it. Your mover must provide you a written estimate of all charges, including transportation, accessorial, and advance charges. Your mover's "rate quote" is not an estimate. You and your mover must sign the estimate of charges. Your mover must provide you with a dated copy of the estimate of charges at the time you sign the estimate.

You should be aware that if you receive an estimate from a household goods broker, the mover is not required to accept the estimate. Be sure to obtain a written estimate from the mover if a mover tells you orally that it will accept the broker's estimate.

Your mover must specify the form of payment it and its delivering agent will honor at delivery. Payment forms may include, but are not limited to, cash, a certified check, a money order, a cashier's check, a specific charge card such as American Express™, a specific credit card such as Visa™, or your mover's own credit.

If your mover provides you with an estimate based on volume that will later be converted to a weight-based rate, the mover must provide you an explanation in writing of the formula used to calculate the conversion to weight. Your mover must specify that the final charges will be based on actual weight and services. Before loading your household goods, and upon mutual agreement of both you and your mover, your mover may amend an estimate of charges. Your mover may not amend the estimate after loading the shipment.

A *binding estimate* is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on your mover's estimate.

A *non-binding estimate* is what your mover believes the total cost will be for the move, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on your mover. Your mover will base the final charges upon the actual weight of your shipment, the services provided, and its tariff provisions in effect. You must prepare yourself to pay 10 percent more than the estimated amount at delivery.

How Must My Mover Estimate Charges Under the Regulations?

Binding estimates. Your mover may charge you for providing a binding estimate. The binding estimate must clearly describe the shipment and all services provided.

When you receive a binding estimate, you cannot be required to pay any more than the estimated amount at delivery. If you have requested the mover provide more services than those included in the estimate, the mover may not demand full payment for those added services at time of delivery. Instead he must bill for those services later, as explained below. Such services might include destination charges often not known at origin (*i.e.*, long carry charges, shuttle charges, or extra stair carry charges).

A binding estimate must be in writing and a copy must be made available to you before you move.

If you agree to a binding estimate, you are responsible for paying the charges due by cash, certified check, money order, or a cashier's check. The charges are due your mover at the time of delivery unless your mover agrees, before you move, to extend credit or to accept payment by a specific charge card such as American Express™ or a specific credit card such as Visa™. If you are unable to pay at the time the shipment is delivered, the mover may place your shipment in storage at your expense until you pay the charges.

Other requirements of binding estimates include the following eight elements:

(1) Your mover must retain a copy of each binding estimate as an attachment to the bill of lading.

(2) Your mover must clearly indicate upon each binding estimate's face the estimate is binding upon you and your mover. Each binding estimate must also clearly indicate on its face the charges shown are the charges to be assessed for only those services specifically identified in the estimate.

(3) Your mover must clearly describe binding estimate shipments and all services to be provided.

(4) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the binding

estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following three things:

(a) Reaffirm the binding estimate.

(b) Negotiate a revised written binding estimate listing the additional household goods or services.

(c) Add an attachment to the contract, in writing, stating both of you will consider the original binding estimate as a non-binding estimate. You should read more below. This may seriously affect how much you may pay for the entire move.

(5) Once your mover loads your shipment, your mover's failure to execute a new binding estimate or to agree with you to treat the original estimate as a non-binding estimate signifies it has reaffirmed the original binding estimate. Your mover may not collect more than the amount of the original binding estimate, except as provided in the next two paragraphs.

(6) Your mover may believe additional services are necessary to properly service your shipment after your household goods are in-transit. Your mover must inform you what the additional services are before performing those services. Your mover must allow you at least one hour to determine whether you want the additional services performed. Such additional services include carrying your furniture up additional stairs or using an elevator. If these services do not appear on your mover's estimate, your mover must deliver your shipment and bill you later for the additional services.

If you agree to pay for the additional services, your mover must execute a written attachment to be made an integral part of the bill of lading and have you sign the written attachment. This may be done through fax transmissions. You will be billed for the additional services 30 days following the date of delivery.

(7) If you add additional services after your household goods are in-transit, you will be billed for the additional services, but will only be expected to pay the full amount of the binding estimate to receive delivery. Thirty days after delivery, your mover must bill you for the balance of any remaining charges. For example, if your binding estimate shows total charges at delivery should be $1,000, but your actual charges at destination are $1,500, your mover must deliver the shipment upon payment of $1,000. The mover must bill you for the remaining $500 after 30 days after delivery.

(8) Failure of your mover to relinquish possession of a shipment upon your offer to pay the binding estimate amount constitutes your mover's failure to transport a shipment with "reasonable dispatch" and subjects your mover to cargo delay claims pursuant to 49 CFR part 370.

Non-Binding Estimates

Your mover is not permitted to charge you for giving a non-binding estimate.

A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. This is why it is important to ask for copies of the mover's tariffs before deciding on a mover. The charges contained in mover's tariffs are essentially the same for the same weight shipment moving the same distance. If you obtain differing non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may have no effect on the amount that you will ultimately have to pay.

You must prepare yourself to pay 10 percent more than the estimated amount at the time of delivery. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. If you order additional services from your mover after your goods are in transit, the mover will then bill you 30 days after delivery for any remaining charges.

Non-binding estimates must be in writing and clearly describe the shipment and all services provided. Any time a mover provides such an estimate, the amount of the charges estimated must be on the order for service and bill of lading relating to your shipment. When you are given a non-binding estimate, do not sign or accept the order for service or bill of lading unless the amount estimated is entered on each form when prepared by the mover.

Other requirements of non-binding estimates include the following nine elements:

(1) Your mover must provide reasonably accurate non-binding estimates based upon the estimated weight of the shipment and services required.

(2) Your mover must explain to you that all charges on shipments moved upon non-binding estimates will be those appearing in your mover's tariffs applicable to the transportation. If your mover provides a non-binding estimate of approximate costs, your mover is not bound by such an estimate.

(3) Your mover must furnish non-binding estimates without charge and in writing to you.

(4) Your mover must retain a copy of each non-binding estimate as an attachment to the bill of lading.

(5) Your mover must clearly indicate on the face of a non-binding estimate, the estimate is not binding upon your mover and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) Your mover must clearly describe on the face of a non-binding estimate the entire shipment and all services to be provided.

(7) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the non-binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following two things:

(a) Reaffirm the non-binding estimate.

(b) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once your mover loads your shipment, your mover's failure to execute a new estimate signifies it has reaffirmed the original non-binding estimate. Your mover may not collect more than 110 percent of the amount of this estimate at destination.

(9) Your mover may believe additional services are necessary to properly service your shipment after your household goods are in-transit. Your mover must inform you what the additional services are before performing those services. Your mover must allow you at least one hour to determine whether you want the additional services performed. Such additional services include carrying your furniture up additional stairs or using an elevator. If these services do not appear on your mover's estimate, your mover must deliver your shipment and bill you later for the additional services.

If you agree to pay for the additional services, your mover must execute a written attachment to be made an integral part of the bill of lading and have you sign the written attachment. This may be done through fax transmissions. You will be billed for the additional services after 30 days after delivery.

(10) If you add additional services after your household goods are in-transit, you will be billed for the additional services, but will only be expected to pay no more than 110 percent of the non-binding estimate to receive delivery. Thirty days after delivery, your mover must bill you for the balance of any remaining charges. For example, if your non-binding estimate shows total charges at delivery should be $1,000, but your actual charges at destination are $1,500, your mover must deliver the shipment upon payment of $1,100. The mover must bill you for the remaining $400 after 30 days after delivery.

If your mover furnishes a non-binding estimate, your mover must enter the estimated charges upon the order for service and upon the bill of lading.

Your mover must retain a record of all estimates of charges for each move performed for at least one year from the date your mover made the estimate.

What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?

If your total bill is 110 percent of the non-binding estimate or less, the mover can require payment in full upon delivery. If the bill exceeds 110 percent of the non-binding estimate, your mover must relinquish possession of the shipment at the time of delivery upon payment of 110 percent of the estimated amount. Your mover should have specified its acceptable form of payment on the estimate, order for service, and bill of lading. Your mover's failure to relinquish possession of a shipment after you offer to pay 110 percent of the estimated charges constitutes its failure to transport the shipment with "reasonable dispatch" and subjects your mover to your cargo delay claims under 49 CFR part 370.

Your mover must bill for the payment of the balance of any remaining charges after 30 days after delivery.

Subpart E—Pickup of My Shipment of Household Goods

Must My Mover Write Up an Order for Service?

We require your mover to prepare an order for service on every shipment transported for you. You are entitled to a copy of the order for service when your mover prepares it.

The order for service is not a contract. Should you cancel or delay your move or if you decide not to use the mover, you should promptly cancel the order.

If you or your mover change any agreed dates for pick up or delivery of your shipment, or agree to any change in the non-binding estimate, your mover may prepare a written change to the order for service. The written change must be attached to the order for service.

The order for service must contain the following fifteen elements:

(1) Your mover's name and address and the U.S. DOT number assigned to your mover.

(2) Your name, address and, if available, your telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent located at or nearest to the destination of your shipment.

(4) A telephone number where you may contact your mover or its designated agent.

(5) One of the following three dates and times:

(a) The agreed pickup date and agreed delivery date of your move.

(b) The agreed period(s) of the entire move.

(c) If your mover is transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Your mover must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, who will participate in interline transportation of the shipment.

(7) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount your mover will demand at the time of delivery to obtain possession of the shipment, when transported on a collect-on-delivery basis.

(10) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the Department of Commerce's Cost of Living Adjustment.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.

(12) Any identification or registration number your mover assigns to the shipment.

(13) For non-binding estimated charges, your mover's reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (110 percent of the non-binding estimate) your mover will demand at the time of delivery for you to obtain possession of the shipment.

(14) For binding estimated charges, the amount of charges your mover will demand based upon the binding estimate and the terms of payment under the estimate.

(15) An indication of whether you request notification of the charges before delivery. You must provide your mover with the telephone number(s) or address(es) where your mover will transmit such communications.

You and your mover must sign the order for service. Your mover must provide a dated copy of the order for service to you at the time your mover signs the order. Your mover must provide you the opportunity to rescind the order for service without any penalty for a three-day period after you sign the order for service, if you scheduled the shipment to be loaded more than three days after you sign the order.

Your mover may provide you with blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move for informational purposes. However, your mover is forbidden from requiring you to sign any blank or incomplete estimates, orders for service, bills of lading, or any other blank or incomplete documents pertaining to the move.

Before loading your shipment, and upon mutual agreement of both you and your mover, your mover may amend an order for service. Your mover must retain records of an order for service it transported for at least one year from the date your mover wrote the order.

Your mover must inform you if the mover reasonably expects a special or accessorial service is necessary to safely transport a shipment. Your mover must refuse to accept the shipment when your mover reasonably expects a special or accessorial service is necessary to safely transport a shipment and you refuse to purchase the special or accessorial service. Your must make a written note if you refuse any special or accessorial services that your move reasonably expects to be necessary.

Must My Mover Write Up an Inventory of the Shipment?

Yes. Your mover must prepare an inventory of your shipment before loading. If your mover's driver fails to prepare an inventory, you should write a detailed inventory of your shipment listing any damage or unusual wear to any items. The purpose is to make a record of the existence and condition of each item.

After completing the inventory, you should sign each page and ask the mover's driver to sign each page. Before you sign it, it is important you make sure the inventory lists every item in the shipment and the entries regarding the condition of each item are correct. You have the right to note any disagreement. When your mover delivers the shipment, if an item is missing or damaged, your ability to dispute the items lost or damaged may depend upon your notations.

You should retain a copy of the inventory. Your mover may keep the original if the driver prepared it. If your mover's driver completed an inventory, the mover must attach the complete inventory to the bill of lading as an integral part of the bill of lading.

Must My Mover Write Up a Bill of Lading?

The bill of lading is the *contract* between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports. *The information on a bill of lading is required to be the same information shown on the order for service.* The driver who loads your shipment must give you a copy of the bill of lading before loading your furniture and other household goods.

It is your responsibility to read the bill of lading before you accept it. It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.

The bill of lading requires the mover to provide the service you have requested. You must pay the charges set forth in the bill of lading.

The bill of lading is an important document. Do not lose or misplace your copy. Have it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

A bill of lading must include the following 14 elements:

(1) Your mover's name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in the transportation of the shipment.

(3) The name, address, and telephone number of the office of the motor carrier you must contact in relation to the transportation of the shipment.

(4) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When your mover transports your shipment under a collect-on-delivery basis, your name, address, and telephone number where the mover will notify you about the charges.

(6) *For non-guaranteed service*, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) For *guaranteed service*, the dates for pickup and delivery and any penalty or per diem entitlements due you under the agreement.

(8) The actual date of pickup.

(9) The identification number(s) of the vehicle(s) in which your mover loads your shipment.

(10) The terms and conditions for payment of the total charges including notice of any minimum charges.

(11) The maximum amount your mover will demand from you at the time of delivery for you to obtain possession of your shipment, when your mover transports under a collect-on-delivery basis.

(12) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the Department of Commerce's Cost of Living Adjustment.

(13) Evidence of any insurance coverage sold to or procured for you from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. The following three items must be added as attachments:

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

A copy of the bill of lading must accompany your shipment at all times while in the possession of your mover or its agent(s). When your mover loads the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. Your mover must retain bills of lading for shipments it transported for at least one year from the date your mover created the bill of lading.

Should I Reach an Agreement With My Mover About Pickup and Delivery Times?

You and your mover should reach an agreement for pickup and delivery times. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is your mover's responsibility to tell you if it can provide service on or between those dates, or, if not, on what other dates it can provide the service.

In the process of reaching an agreement with your mover, you may find it necessary to alter your moving and travel plans if no mover can provide service on the specific dates you desire.

Do not agree to have your shipment picked up or delivered "as soon as possible." The dates or periods you and your mover agree upon should be definite.

Once an agreement is reached, your mover must enter those dates upon the order for service and upon the bill of lading.

Once your goods are loaded, your mover is contractually bound to provide the service described in the bill of lading. Your mover's only defense for not providing the service on the dates called for is the "Defense of Force Majeure." This is a legal term. It means when circumstances change, were not foreseen, and are beyond the control of your mover, preventing your mover from performing the service agreed to in the bill of lading, your mover is not responsible for damages resulting from its non-performance.

This may occur when you do not inform your mover of the exact delivery requirements. For example, because of restrictions trucks must follow in your new city, the mover may not be able to take its truck down the street of your residence and must find helpers to provide long carries to carry your furniture and other household goods down a street where it can drive and park its trucks. Another example would be if your mover is not aware that your new residence is on the third floor, requiring six flight stair carries and workmen that can carry your furniture and household goods up stairs.

Must My Mover Determine the Weight of My Shipment?

Generally yes. If your mover transports your household goods on a non-binding estimate under the mover's tariffs based upon weight, your mover must determine the weight of the shipment. If your mover provided a binding estimate and has loaded your shipment without claiming you have added additional items or services, the weight of the shipment will not affect the charges you will pay. If your mover is transporting your shipment based upon the volume of the shipment (*i.e.*, a set number of cubic yards or meters), the weight of the shipment will also not affect the charges you will pay.

Your mover must determine the weight of your shipment before requesting you pay for any charges dependent upon your shipment's weight.

Most movers usually have a minimum weight or volume charge for transporting a shipment. Usually the minimum is the charge for transporting a shipment of at least 3,000 pounds (1,362 kilograms).

If your shipment appears to weigh less than the mover's minimum weight, your mover must advise you on the order for service of the minimum cost before transporting your shipment. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight instead of the minimum weight.

How Must My Mover Determine the Weight of My Shipment?

Your mover must weigh your shipment upon a certified scale.

The weight of your shipment must be obtained by using one of two methods.

Origin weighing—Your mover may weigh your shipment in the city or area where it loads your shipment. If it elects this option, the driver must weigh the truck before coming to your residence. This is called the *tare weight*. At the time of this first weighing, the truck may already be partially loaded with one or more other shipments. This will not affect the weight of your shipment. The truck should also contain the pads, dollies, hand-trucks, ramps, and other equipment normally used in the transportation of household goods shipments.

After loading, the driver will weigh the truck again to obtain the loaded weight, called the *gross weight*. The net weight of your shipment is then obtained by subtracting the *tare weight* before loading from the *gross weight*.

Gross weight – tare weight before loading=net weight

Destination weighing (Also called *back weighing*)—The mover is also permitted to determine the weight of your shipment at the destination after it delivers your load. The fact your mover weighs your shipment at the destination instead of the origin will not affect the accuracy of the weight of your shipment. *The most important difference is your mover will not determine the exact charges on your shipment before it is unloaded.*

Destination weighing is done in reverse of origin weighing. After arriving in the city or area where you are moving, the driver will weigh the truck. Your shipment will still be on the truck. Your mover will determine the *gross weight* before coming to your new residence to unload. After unloading your shipment, the driver will again weigh the truck to obtain the tare weight. The net weight of your shipment will then be obtained by subtracting the *tare weight* after delivery from the *gross weight*.

Gross weight – tare weight after delivery=net weight

At the time of both weighings, your mover's truck must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of your shipment. The driver and other persons must be off the vehicle at the time of both weighings. The fuel tanks on the vehicle must be full at the time of each weighing. In lieu of this requirement, your mover must not add fuel between the two weighings when the tare weighing is the first weighing performed.

Your mover may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

Your mover may use an alternative method to weigh your shipment if it weighs 3,000 pounds or less (1,362 kilograms or less). The only alternative method allowed is weighing the shipment upon a platform or warehouse certified scale before loading your shipment for transportation or after unloading.

Your mover must use the net weight of shipments transported in large containers, such as ocean or railroad containers. Your mover will calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of your shipment) and the gross weight of the container with your shipment loaded in the container.

You have the right, and your mover must inform you of your right, to observe all weighings of your shipment. Your mover must tell you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighings.

You may waive your right to observe any weighing or re-weighing. This does not affect any of your other rights you have under Federal law.

Your mover may request you waive your right to have a shipment weighed upon a certified scale. Your mover may want to weigh the shipment upon a trailer's on-board non-certified scale. You should demand your right to have a certified scale used. The use of a non-certified scale may cause you to pay a higher final bill for your move, if the non-

certified scale does not accurately weigh your shipment. Remember, certified scales are inspected and approved for accuracy by a government inspection or licensing agency. Non-certified scales are not inspected and approved for accuracy by a government inspection or licensing agency.

Your mover must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) Identification of the weight entries as being the tare, gross, or net weights.

(4) The company or mover identification of the vehicle.

(5) Your last name as it appears on the Bill of Lading.

(6) Your mover's shipment registration or Bill of Lading number.

Your mover must retain the original weight ticket or tickets relating to the determination of the weight of your shipment as part of its file on your shipment.

When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

Your mover must present all freight bills with true copies of all weight tickets. If your mover does not present its freight bill with all weight tickets, your mover is in violation of Federal law.

Before the driver actually begins unloading your shipment weighed at origin and after your mover informs you of the billing weight and total charges, you have the right to demand a re-weigh of your shipment. If you believe the weight is not accurate, you have the right to request your mover re-weigh your shipment before unloading.

You have the right, and your mover must inform you of your right, to observe all re-weighings of your shipment. Your mover must tell you where and when each re-weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the re-weighings.

You may waive your right to observe any re-weighing, however, you must waive that right in writing. You may send the written waiver via fax, e-mail, or any other electronic means. This does not affect any of your other rights you have under Federal law.

Your mover is prohibited from charging you for the re-weighing. If the weight of your shipment at the time of the re-weigh is different from the weight determined at origin, the mover must recompute the charges based upon the re-weigh weight.

Before requesting a re-weigh, you may find it to your advantage to estimate the weight of your shipment using the following three-step method:

1. Count the number of items in your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory do not include this item in the count of the total items.*

2. Subtract the weight of any automobile included in your shipment from the total weight of the shipment. If the automobile was not weighed separately, its weight can be found on its title or license receipt.

3. Divide the number of items in your shipment into the weight. If the average weight resulting from this exercise ranges between 35 and 45 pounds (16 and 20 kilograms) per article, it is unlikely a re-weigh will prove beneficial to you and could result in you paying higher charges.

Experience has shown the average shipment of household goods will weigh about 40 pounds (18 kilograms) per item. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 45 pounds or more (20 kilograms or more).

What Must My Mover Do if I Want To Know the Actual Weight or Charges for My Shipment before Delivery?

If you request notification of the actual weight or volume and charges upon your shipment, your mover must comply with your request when it is moving your goods on a collect-on-delivery basis. This requirement is conditioned upon you supplying your mover with an address or telephone number where you will receive the communication. Your mover must make its notification by telephone, telegram, or in person.

You must receive its notification at least one full 24-hour day before your mover's delivery, excluding Saturdays, Sundays and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three things:

(1) Back weigh (when your mover weighs your shipment at its destination).

(2) Pickup and delivery encompassing two consecutive weekdays, if you agree.

(3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if you agree.

Subpart F—Transportation of My Shipment

Must My Mover Transport the Shipment in a Timely Manner?

Yes, your mover must transport your household goods in a timely manner. This is also known as "reasonable dispatch service." Your mover must provide reasonable dispatch service to you, except for transportation on the basis of guaranteed delivery dates.

When your mover is unable to perform either the pickup or delivery of your shipment on the dates or during the periods of time specified in the order for service, your mover must notify you of the delay by telephone, telegram, or in person, at your mover's expense. As soon as the delay becomes apparent to your mover, it must give you notification it will be unable to provide the service specified in the terms of the order for service.

At the time of your mover's notification of delay, it must advise you of the dates or periods of time it may be able to pickup and/or deliver the shipment. Your mover must consider your needs in its advisement.

Your mover must prepare a written record of the date, time, and manner of its notification. Your mover must prepare a written record of its amended date or period for delivery. Your mover must retain these records as a part of its file on your shipment. The retention period is one year from the date of notification. Your mover must furnish a copy of the notification to you by first class mail or in person if you request a copy of the notice.

Your mover must tender your shipment for delivery upon the agreed delivery date or within the period specified on the bill of lading. Upon your request or concurrence, your mover may deliver your shipment on another day.

The establishment of a delayed pickup or delivery date does not relieve your mover from liability for damages resulting from your mover's failure to provide service as agreed. However, when your mover notifies you of alternate delivery dates, it is your responsibility to be available to accept delivery on the dates specified. If you are not available and are not willing to accept delivery, your mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and assess additional charges.

If after the pickup of your shipment, you request your mover to change the delivery date, most movers will agree to do so providing your request will not result in unreasonable delay to its equipment or interfere with another customer's move. However, your mover is under no obligation to consent to amended delivery dates. Your mover has the right to place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the date agreed to in the bill of lading.

If your mover fails to pick up and deliver your shipment on the date entered on the bill of lading and you have expenses you otherwise would not have had, you may be able to recover those expenses from your mover. This is what is called an inconvenience or delay claim. Should your mover refuse to honor such a claim and you continue to believe you are entitled to be paid damages, you may take your mover to court under 49 U.S.C. 14704. *The Federal Motor Carrier Safety Administration (FMCSA) has no authority to order your mover to pay such claims.*

While we hope your mover delivers your shipment in a timely manner, you should consider the possibility your shipment may be delayed and find out what payment you can expect if a mover delays service through its own fault before you agree with the mover to transport your shipment.

What Must My Mover Do if It Is Able To Deliver My Shipment More Than 24 Hours Before I Am Able To Accept Delivery?

At your mover's discretion, it may place your shipment in storage. This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment. Your mover may do this if you fail to request or concur with an early delivery date, and your mover is able to deliver your shipment more than 24 hours before your specified date or the first day of your specified period.

If your mover exercises this option, your mover must immediately notify you of the name and address of the warehouse where your mover places your shipment. Your mover must make and keep a record of its notification as a part of its shipment records. Your mover has full responsibility for the shipment under the terms and conditions of the bill of lading. Your mover is responsible for the charges for redelivery, handling, and storage until it makes final delivery. Your mover may limit its responsibility to the agreed delivery date or the first day of the period of delivery as specified in the bill of lading.

What Must My Mover Do for Me When I Store Household Goods in Transit?

If you request your mover to hold your household goods in storage-in-transit (SIT) and the storage period of time is about to expire, your mover must notify you, in writing, about the four following items:

(1) The date when storage-in-transit will convert to permanent storage.

(2) The existence of a nine-month period after the date of conversion to permanent storage when you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.

(3) Your mover's liability will end.

(4) Your property will be subject to the rules, regulations, and charges of the warehouseman.

Your mover must make this notification at least 10 days before the expiration date of one of the following two periods of time:

(1) The specified period of time when your mover is to hold your goods in storage.

(2) The maximum period of time provided in its tariff for storage-in-transit.

Your mover must notify you by facsimile transmission, overnight courier, e-mail, or certified mail, return receipt requested.

If your mover holds your household goods in storage-in-transit for a period of time less than 10 days, your mover must notify you of the same information specified above one day before the expiration date of the specified time when your goods are to be held in such storage.

Your mover must maintain a record of all notifications to you as part of the records of your shipment. Your mover's failure or refusal to notify you will automatically effect a continuance of your mover's liability according to the applicable tariff provisions with respect to storage-in-transit, until the end of the day following the date when your mover actually gives you notice.

Subpart G—Delivery of My Shipment

May My Mover Ask Me To Sign a Delivery Receipt Purporting To Release It From Liability?

At the time of delivery, your mover will expect you to sign a receipt for your shipment. You generally will sign each page of your mover's copy of the inventory.

Your mover's delivery receipt or shipping document must not contain any language purporting to release or discharge it or its agents from liability.

Your mover may include a statement about your receipt of your property in apparent good condition, except as noted on the shipping documents.

DO NOT SIGN the delivery receipt if it contains any language purporting to release or discharge your mover or its agents from liability. Strike out such language before signing or refuse delivery if the driver or mover refuses to provide a proper delivery receipt.

What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?

On a binding estimate, the maximum amount is the exact estimate of the charges. Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (*e.g.*, a certified check).

On a non-binding estimate, the maximum amount is 110 percent of the approximate costs. Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (*e.g.*, cash).

If My Shipment Is Transported on More Than One Vehicle, What Charges May My Mover Collect at Delivery?

Although all movers try to move each shipment on one truck, it becomes necessary at times to divide a shipment among two or more trucks. This frequently occurs when an automobile is included in the shipment and it is transported on a vehicle specially designed to transport automobiles. When this occurs your transportation charges are the same as if the entire shipment moved on one truck.

If your shipment is divided for transportation on two or more trucks, the mover may require payment for each portion as it is delivered.

Your mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion, not yours. When you order your move, you should ask the mover about its policies in this respect.

If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?

Movers customarily make every effort to not lose, damage, or destroy your items while your shipment is in their possession for transportation. However, despite the precautions taken, articles are sometimes lost or destroyed during the move.

In addition to any money you may recover from your mover to compensate for lost or destroyed articles, you may also recover the transportation charges represented by the portion of the shipment lost or destroyed. Your mover may only apply this paragraph to the transportation of household goods. Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you. Your mover must require you to pay any specific valuation charge due.

For example, if you pack a hazardous material (*i.e.*, gasoline, aerosol cans, motor oil, etc.) and your shipment is partially lost or destroyed by fire in storage or in the mover's trailer, your mover may require you to pay for the full cost of transportation.

Your mover may first collect its freight charges for the entire shipment, if your mover chooses. At the time your mover disposes of claims for loss, damage, or injury to the articles in your shipment, it must refund the portion of its freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services).

Your mover is forbidden from collecting, or requiring you to pay, any freight charges (including any charges for accessorial or terminal services) when your household goods shipment is totally lost or destroyed in transit, unless the loss or destruction was due to an act or omission by you.

How Must My Mover Calculate the Charges Applicable to the Shipment as Delivered?

Your mover must multiply the percentage corresponding to the delivered shipment times the total charges applicable to the shipment tendered by you to obtain the total charges it must collect from you.

If your mover's computed charges exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of your household goods.

Your mover must require you to pay any specific valuation charge due.

Your mover may not refund the freight charges if the loss or destruction was due to an act or omission by you. For example, you fail to disclose to your mover your shipment contains perishable live plants. Your mover may disregard its loss or destruction of your plants, because you failed to inform your mover you were transporting live plants.

Your mover must determine, at its own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

Your rights are in addition to, and not in lieu of, any other rights you may have with respect to your shipment of household goods your mover lost or destroyed, or partially lost or destroyed, in transit. This applies whether or not you have exercised your rights provided above.

Subpart H—Collection of Charges

Does This Subpart Apply to Most Shipments?

No, this subpart does not apply to most shipments. Most movers perform COD service subject to the 110 percent rule for non-binding estimates. Read and understand this subpart only if your mover is providing a shipment subject to a binding estimate.

How Must My Mover Present Its Freight or Expense Bill to Me?

At the time for payment of transportation charges, your mover must give you a freight bill identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as a freight bill; however, some movers use an entirely separate document for this purpose.

Except in those instances where a shipment is moving on a binding estimate, the freight bill must specifically identify each service performed, the rate per unit for each service, and the total charges for each service. *If this information is not on the freight bill, DO NOT accept or pay the freight bill.*

Movers customarily provide in tariffs the freight charges must be paid in cash, by

certified check, or by a cashier's check. When this requirement exists, the mover will not accept personal checks. At the time you order your move, you should ask your mover about the form of payment your mover requires.

Some movers permit payment of freight charges by use of a charge or credit card. However, do not assume your nationally recognized charge, credit, or debit card will be acceptable for payment. Ask your mover at the time you request an estimate. Your mover must specify the form of payment it will accept at delivery.

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate.

If, before payment of the transportation charges, you discover an error in the charges, you should attempt to correct the error with the driver, the mover's local agent, or by contacting the mover's main office. If an error is discovered after payment, you should write the mover (the address will be on the freight bill) explaining the error and request a refund.

Movers customarily check all shipment files and freight bills after a move has been completed to make sure the charges were accurate. If an overcharge is found, you should be notified and a refund made. If an undercharge occurred, you may be billed for the additional charges due.

On "to be prepaid" shipments, your mover must present its freight bill for all transportation charges within 15 days, from the date your mover received the shipment. This period excludes Saturdays, Sundays, and Federal holidays.

On "collect" shipments, your mover must present its freight bill for all transportation charges on the date of delivery, or, at its discretion, within 15 days, measured from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover's freight bills and accompanying written notices must state the following five items:

(1) Penalties for late payment.
(2) Credit time limits.
(3) Service or finance charges.
(4) Collection expense charges.
(5) Discount terms.

If your mover extends credit to you, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time must state "You may be subject to tariff penalties for failure to timely pay freight charges" or a similar statement. Your mover must state on its freight bills or other notices when it expects payment, and any applicable service charges, collection expense charges and discount terms.

When your mover lacks sufficient information to compute its tariff charges at its time of billing, your mover must present its freight bill for payment within 15 days following the day when sufficient information becomes available. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover must not extend more credit to you, if you fail to furnish sufficient information to your mover. Your mover must have sufficient information to render a freight bill within a reasonable time after the shipment.

When your mover presents freight bills by mail, it must deem the time of mailing to be the time of presentation of the bills. The term "freight bills," as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes, disks, or the Internet when the mails (U.S. mail, e-mail) are used to transmit them.

When you mail acceptable checks or drafts in payment of freight charges, your mover must deem the act of mailing the payment within the credit period to be the proper collection of the tariff charges within the credit period for the purposes of Federal law. In the case of a dispute as to the date of mailing, your mover must accept the postmark as the date of mailing.

If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of All Charges, How Must My Mover Collect the Balance?

On "collect-on-delivery" shipments, your mover must present its freight bill for all transportation charges within 15 days, measured from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays.

What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination.

The credit period must be 15 days (including Saturdays, Sundays, and Federal holidays).

Your mover must provide in its tariffs the following three things:

(1) A provision automatically extending the credit period to a total of 30 calendar days for you if you have not paid its freight bill within the 15-day period.

(2) A provision indicating you will be assessed a service charge by your mover equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for the extension of the credit period. The mover will assess the service charge for each 30-day extension that the charges go unpaid.

(3) A provision your mover must deny credit to you, if you fail to pay a duly presented freight bill within the 30-day period. Your mover may grant credit to you, at its discretion, when you satisfy your mover's conditions you will pay all future freight bills duly presented. Your mover must ensure all your payments of freight bills are strictly in accordance with Federal rules and regulations for the settlement of its rates and charges.

Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?

Should your move result in the loss or damage to any of your property, you have the right to file a claim with your mover to recover money for such loss or damage.

You have nine months following either the date of delivery, or the date when the shipment should have been delivered, to file a claim. You should file a claim as soon as possible. If you fail to file a claim within nine months following delivery and later bring a legal action against the mover to recover the damages, you may not be able to recover your attorney fees even though you win the court action.

While the Federal Government maintains regulations governing the processing of loss and damage claims (49 CFR part 370), it cannot resolve those claims. If you cannot settle a claim with the mover, you may file a civil action to recover your claim in court under 49 U.S.C. 14704. You may obtain the name and address of the mover's agent for service of legal process in your state by contacting the Federal Motor Carrier Safety Administration. You may also obtain the name of a process agent via the Internet at *http://www.fmcsa.dot.gov* and click on Licensing and Insurance (L&I) section.

In addition, your mover must participate in an Arbitration Program. The program, described earlier in this pamphlet, provides you with the opportunity to settle certain types of unresolved loss or damage claims through a neutral arbitrator. You may find submitting your claim to arbitration under such a program to be a less expensive and more convenient way to seek recovery of your claim. If the mover does not provide you with information about its arbitration program before you move as it must do, ask the mover for the details of the program.

Subpart I—Resolving Disputes With My Mover

What May I Do To Resolve Disputes With My Mover?

The Federal Motor Carrier Safety Administration does not help you settle your dispute with your mover.

Generally, you must resolve your own disputes with your mover. You enter a contractual arrangement with your mover. You are bound by each of the following three things:

(1) The terms and conditions you negotiated before your move.

(2) The terms and conditions you accepted when you signed the bill of lading.

(3) The terms and conditions you accepted when you signed for delivery of your goods.

You have the right to take your mover to court. We require your mover to offer you arbitration to settle your disputes with it.

The Federal Motor Carrier Safety Administration does not have the resources to seek a court injunction on your behalf to obtain your household goods if your mover is holding your goods "hostage."

PART 377—PAYMENT OF TRANSPORTATION CHARGES

■ 2. The authority citation for part 377 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13701–13702, 13706, 13707, and 14101; 49 CFR 1.73.

§ 377.215 [Removed and Reserved]

■ 3. Section 377.215 is removed and reserved.

Issued on: June 4, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–14439 Filed 6–10–03; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Wednesday,
June 11, 2003

Part III

Department of the Interior

Forest Service

36 CFR Part 251

Land Uses; Revenue-Producing Visitor Services in Alaska; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB57

Land Uses; Revenue-Producing Visitor Services in Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting regulations to establish procedures by which certain persons may conduct revenue-producing visitor services in Conservation System Units within the National Forests in Alaska. These regulations are required by section 1307 of the Alaska National Interest Lands Conservation Act. This final rule will guide the solicitation, selection of applications, and issuance of permits for visitor services within Conservation System Units for the National Forests in Alaska. The intent is to establish workable procedures for recognizing and administering statutory rights and preferences for conducting visitor services within these units.

EFFECTIVE DATE: This rule is effective July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Hagadorn, Recreation, Lands, and Minerals Staff, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802, (907) 586–9336.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) provides for the disposition and use of a variety of federally administered lands in Alaska. Section 1307 (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to revenue-producing visitor services on certain lands designated by ANILCA as Conservation Units (CSUs) under the administration of the Secretary of Agriculture.

Under section 102(4) of ANILCA, a CSU, as it relates to the National Forests, means any unit in Alaska of the National Wild and Scenic Rivers System, National Trails System, and National Wilderness Preservation System, or a National Forest Monument, including existing units or any such unit established, designated, or expanded hereafter (16 U.S.C. 3102(4)).

Section 1307(a) of ANILCA (16 U.S.C. 3197(a)) provides that, notwithstanding any other provision of law, the Secretary of Agriculture, under such terms and conditions as the Secretary deems reasonable, shall allow any person who, on or before January 1, 1979, was engaged in adequately providing any type of visitor service within any area established as, or added to a CSU, to continue providing that type of service and similar types of visitor services within that CSU, if those services are consistent with the purposes for which the CSU was established or expanded.

Section 1307(b) of ANILCA (16 U.S.C. 3197(b)) provides that in selecting a person to provide any type of visitor service for any CSU, except sport fishing and hunting guiding activities, and except as provided in section 1307(a), the Secretary of Agriculture shall (1) give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of that CSU; and (2) give preference to persons determined to be local residents.

Section 1307(c) of ANILCA (16 U.S.C. 3197(c)) defines "visitor service" to mean any service made available for a fee or charge to persons who visit a CSU, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

Summary of Public Comments

The Forest Service proposed rule at 36 CFR part 251, subpart E, was published in the **Federal Register** on April 25, 1997 (62 FR 20140) and provided for a 60-day comment period ending June 24, 1997. Efforts to notify the public of this proposal included news releases, published legal notices, and notification letters to permit holders, Native Corporations in southeast and southcentral Alaska, and Federal, State, and local community officials. Four written comments on the proposed rule were received: One from the State of Alaska, two from Native Corporations, and one from a private, nonprofit corporation.

Most of the comments dealt with (1) § 251.120, involving the scope and applicability of the regulations; (2) § 251.122, the process of how historical rights would be determined; and (3) § 251.123, the administration of preferred operator preferences, including the effect of the regulations on other operators without preferred status. No comments were received on the information collection requirements or criteria for determining the most directly affected Native Corporation status. One Native Corporation responded enthusiastically about the prospect for participating in the visitor industry and requested a determination of most directly affected status. Minor changes have been made in the final rule to respond to the comments received and to achieve clarity and consistency with Forest Service policy. In addition, to be consistent with section 1307 of ANILCA, the final rule will apply only to CSUs on the Tongass and Chugach National Forests in Alaska and not to other designations of National Forest System lands.

Interagency Coordination

The Forest Service has coordinated with the National Park Service and the U.S. Fish and Wildlife Service in the U.S. Department of the Interior in the development of this final rule. While not identical, this final rule is consistent (insofar as is practical within the framework of each agency's legal mandates) with provisions of the final rules of the U.S. Department of the Interior implementing section 1307 of ANILCA for the National Park Service at 36 CFR part 13 (61 FR 54334, Oct. 18, 1996) and for the U.S. Fish and Wildlife Service at 50 CFR part 36 (62 FR 1838, Jan. 14, 1997).

Analysis of Public Comments and Section-by-Section Description of Final Rule

The following is an analysis of public comments received on the proposed rule and a section-by-section description of the final rule for revenue-producing visitor services in Alaska.

Section 251.120 Scope and Applicability

Section 251.120 of the proposed rule explained that the regulations at subpart E would implement section 1307 of ANILCA with regard to the continuation of visitor services existing as of January 1, 1979. It also explained the preferences granted to local residents and certain Native Corporations for obtaining special use authorizations for visitor services on designated lands within National Forest System lands in Alaska. The proposed rule stated that the provisions of subpart E would apply only to existing and future Forest Service-administered CSUs in Alaska, not to all National Forest System lands, and provided a comprehensive list of CSUs within the Tongass and Chugach National Forests.

This section also explained that existing regulations in 36 CFR part 251, subpart B, apply to all requests involving revenue-producing visitor services in Alaska unless expressly waived by subpart E, and that subpart E would not apply to the guiding of sport hunting and fishing.

The following is an analysis of and response to comments received on § 251.120 of the proposed rule.

Comment: The State of Alaska wanted the Forest Service to clarify that the proposed regulations would not apply to State-owned lands and waters, including navigable waters, shore lands, tidelands, and submerged lands within the boundaries of national forests in Alaska. The State of Alaska contends that these lands and waters are, and will continue to be, managed and regulated by the State.

Response: The regulations at 36 CFR part 251, subpart E, apply only to CSUs, which, in accordance with section 103(c) of ANILCA, exclude State and private lands. To provide further clarification of the application of subpart E, the words "National Forest System lands" have been added to § 251.120(a) in the final rule.

Comment: The State of Alaska believed that it was unclear whether the proposed regulation applied to the Nellie Juan-College Fiord Wilderness Study Area and to rivers identified as eligible for inclusion in the Wild and Scenic Rivers System. The State of Alaska supported application of these regulations to the wilderness study area and to these rivers.

Response: Section 102(4) of ANILCA defines CSUs as existing units or units that are established; designated, or expanded in the future. Therefore, the statutory rights and preferences created by section 1307 of ANILCA do not apply to study areas or areas identified as eligible units of the Wild and Scenic Rivers System. To clarify the applicability of the regulations, the following wording based on section 102(4) of ANILCA has been added to the end of the definition of "Conservation System Unit" in § 251.121 of the final rule: "* * * including existing units and any such unit established, designated, or expanded hereafter."

Comment: One respondent stated that section 506 of ANILCA provides certain Alaska natives specific rights on Admiralty Island in addition to the more general rights granted by section 1307 of ANILCA.

Response: Section 506 of ANILCA addresses a number of specific lands issues associated with the Admiralty Island National Monument that involve several Native Corporations, including a provision for consultation and cooperation in the management of specific lands with Kootznoowoo, Incorporated. The regulations at 36 CFR part 251, subpart E, are not intended to diminish or supersede the provisions of section 506 of ANILCA; therefore, no change has been made in the final rule with regard to this issue.

In the final rule, the Department has added a sentence to § 251.120(b) providing that in case of a conflict between subpart B and subpart E, subpart E controls.

Section 251.121 Definitions

Proposed § 251.121 provided definitions for special terms used in the regulations. No public comments were received on § 251.121. However, the Department has made minor changes in the final rule to clarify definitions, revise references, and maintain a format consistent with subpart B.

The term *best offer* in the proposed rule has been changed to *best application* in the final rule for consistency with the agency's competitive application process.

The definition of *Conservation System Unit* has been clarified to address the applicability of the rule to future CSUs and to additions to existing CSUs, consistent with the wording in section 102(4) of ANILCA. This change was made in response to a comment from the State of Alaska regarding application of the rule to Wilderness Study areas and areas eligible for inclusion in the Wild and Scenic Rivers System.

The definition of *controlling interest* has been revised by adding the phrase "or its capital" following "the entity" to clarify that a controlling interest includes ownership of capital assets. Additionally, the word "business," which preceded the word "entity," has been deleted because it was unnecessary.

The definition of *historical operator* has been simplified to remove the word "current" as a description of a holder because the three criteria adequately describe a qualifying holder. Additionally, the words "revenue-producing" as a description of visitor services have been removed because this concept applies to all of subpart E and is addressed in its title.

Local area in the proposed rule was defined as "that area within 100 miles * * *" In the final rule, the definition has been modified to read "any site within 100 miles * * *" to allow for greater specificity in determining the point to which a measurement will be made.

The definition of *local resident* for individuals has been changed by adding the phrase "Alaska residents." This revision clarifies the intent of the proposed rule that persons otherwise qualifying as local area residents must be Alaska residents. Additionally, the other entities in which a controlling interest may be held that are referenced in the definition for *controlling interest* have been added to paragraph (2) of the definition for *local resident*. Finally, the following sentence was removed from the definition for *local resident* and inserted at § 251.124(d) to improve the organization and clarity of the rule: "Factors demonstrating the location of an individual's primary, permanent residence and business include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registration."

In the definition for *preferred operator*, the reference to § 251.124 has been changed to § 251.123, and the reference to § 251.123 has been changed to § 251.124, in accordance with the renumbering of those sections in the final rule, as discussed in the following descriptions of those sections.

Responsive offer has been changed to *responsive application* in the final rule for consistency with nomenclature in the agency's competitive application process. The phrase "terms and conditions" was replaced with "requirements" because "terms and conditions" are contained in a permit, not a prospectus.

Section 251.122 Historical Operator Special Use Authorizations

Section 251.122 of the proposed rule provided that persons who were adequately providing visitor services within CSUs on National Forest System lands in Alaska prior to January 1, 1979, would be permitted to continue to provide those services and similar types of services under appropriate terms and conditions, if these services are consistent with the purposes for which the CSUs were established or expanded. Consequently, persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a CSU in Alaska, have continued to provide that visitor service and have retained the controlling interest in the business providing the visitor service, would be considered "historical operators" under these regulations and would be entitled to the rights conferred by section 1307(a) of ANILCA. However, a right to continue to provide visitor services under section 1307(a) is not unlimited; rather, it is subordinate to the management of the CSU and does not grant a monopoly to provide all visitor services in a given area to the exclusion of other individuals or entities.

This section of the proposed rule also specified under what circumstances the rights of a historical operator would be lost. These included revocation due to failure to comply with special use

authorization terms and conditions; refusal of an offer to reissue a special use authorization; and failure to provide authorized services for 24 consecutive months. In addition, the rights of a historical operator would terminate upon a change in the controlling interest in the business providing the visitor services, unless the controlling interest passed to those who otherwise qualify as historical operators.

The following is an analysis of and response to a comment on § 251.122 of the proposed rule.

Comment: One respondent suggested that a provision be added to § 251.122 to require that before making a decision to grant historical operator status, the authorized officer notify any Native Corporations that have applied for designation as the most directly affected Native Corporation for the CSU and give them the opportunity to comment before making the determination. The respondent stated that notice and opportunity to comment are equitable and consistent with due process because a determination granting historical operator status for a particular CSU may defeat the most directly affected Native Corporation's preference right within the same CSU. According to the respondent, information that can be provided by the most directly affected Native Corporation should, therefore, be obtained before any final determination is made regarding historical operator rights within an affected CSU.

Response: The Department disagrees with this respondent and has not revised the rule to require notice and comment prior to granting historical operator status because the Department disagrees that a determination granting historical operator status for a particular CSU may defeat a most directly affected Native Corporation's preference right within the same CSU. Historical operator rights conferred by section 1307(a) of ANILCA are separate from the preferences granted to local residents and most directly affected Native Corporations under section 1307(b) of ANILCA. In addition, historical operator determinations are based on objective, specific statutory criteria applied to information contained in established special use authorization files. Consequently, the Department believes that public notice and comment would be an unnecessary administrative burden and would not greatly aid in making historical operator determinations. Finally, the Department wants its rule to be as consistent as possible with the final rules published by the National Park Service and the U.S. Fish and Wildlife Service, neither of which provides for public notice and comment in connection with historical operator determinations.

In the final rule, the Department has added a paragraph to § 251.122 to address a concept in the statute that was omitted in the proposed rule. The new paragraph (c) clarifies that a historical operator may apply for an authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979, and specifies the criteria under which that type of application will be granted. The new language is almost identical to the language governing this subject in the National Park Service rule. Under this new provision, the authorized officer shall approve the application if the visitor services to be provided are (1) similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; (2) consistent with the purposes for which the applicable CSU was established or expanded; and (3) consistent with the legal rights of any other person.

A corresponding change was made to paragraph (i) to clarify that the preference granted to historical operators applies only to the use authorized pursuant to paragraph (d). Any increase in the scope or level of use authorized pursuant to paragraph (d) for either the same or similar services is not subject to the preference granted to historical operators.

In the final rule, a sentence has been added to paragraph (e)(2)(ii) to make it clear that when only historical operators participate in a competitive process to allocate use because reductions in visitor capacity make it necessary to reduce operators in an area, they may not claim a preference as a preferred operator under § 124.

Section 251.123—Most Directly Affected Native Corporation Determination

Proposed § 251.124 (which has been redesignated at § 251.123 in the final rule) specified the process for making the most directly affected Native Corporation determination.

No comments were received on this section, and no comments were received on the related information requirements or the process for applying for most directly affected Native Corporation status.

In addition to the change in the numbering of this section in the final rule, the Department is replacing the phrases "more than one Native Corporation is" with "two or more Native Corporations are," and "within the meaning of this section" with "for purposes of the most directly affected Native Corporation determination pursuant to this section." These changes clarify that if two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination, each of those Native Corporations is considered a preferred operator.

Section 251.124—Preferred Operator Competitive Special Use Authorization Procedures

Section 251.123 of the proposed rule, which has been redesignated at § 251.124 in the final rule, provided for implementation of section 1307(b) of ANILCA and would grant a preference to local residents (as defined in proposed § 251.121) and to most directly affected Native Corporations, as determined under proposed § 251.124 (§ 251.123 of the final rule), in the competitive issuance of special use authorizations to provide visitor services in CSUs. In the proposed and final rules, local residents and most directly affected Native Corporations are collectively referred to as "preferred operators" and have equal preference in the issuance of a special use authorization.

This section further provided that if a preferred operator's offer under this subpart was in the form of a joint venture, the offer would be considered valid only when it is documented to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the joint venture. Additionally, Native Corporations and local residents who submitted an offer in the form of a joint venture with other persons would retain their preferred operator status as long as the Native Corporations or local residents have the controlling interest in the joint venture. This provision would allow flexibility without compromising the statutory intent of section 1307 of ANILCA.

Section 251.123 in the proposed rule is redesignated § 251.124 in the final rule, and § 251.124 in the proposed rule is redesignated § 251.123 in the final rule. The new sequence in the final rule is more logical for two reasons: (1) The section governing the determination of most directly affected Native Corporation status (§ 251.123) now precedes the section in the final rule governing the competitive selection process (§ 251.124), where the preference for most directly affected Native Corporations is applied; and (2) the section addressing preferred operator competitive special use authorization procedures (§ 251.124) now precedes the section governing preferred operator privileges and limitations (§ 251.125).

Proposed § 251.123(a) (§ 251.124(a) in the final rule) set out a procedure for the solicitation and issuance of special use authorizations that would effectuate the rights of preferred operators under section 1307(b) of ANILCA. The proposed rule provided that an authorized officer must publicly solicit offers to provide visitor services by issuing a prospectus, when the Forest Service determines that:

(1) There is a need for visitor services within the area of a CSU;

(2) There is a need to limit authorized visitor use in the area and/or the number of authorized operators;

(3) There is an opportunity for competitive bidding to provide such services; and

(4) The proposed visitor services are consistent with the Forest Plan direction and all applicable laws and regulations.

In all other situations, except as provided in proposed § 251.122 for historical operators, special use authorizations would be issued noncompetitively on a first-come, first-served basis upon application to the authorized officer in accordance with the provisions at 36 CFR part 251, subpart B.

The following is an analysis of and response to a comment received on § 251.123(a) of the proposed rule (now § 251.124(a) of the final rule).

Comment: One respondent was concerned about the process the Forest Service would use to determine when authorized use needs to be restricted. The respondent stated that determination to restrict use should be made only as part of the public planning process, with adequate opportunity for notice and comment prior to implementation of restrictions.

Response: The Department agrees with this respondent. Existing Forest Service policy provides that decisions to limit use be made in accordance with the National Environmental Policy Act of 1969, its implementing regulations, and Forest Service Manual (FSM) 1950, which provides for public notice and comment. Additionally, land use allocations are made through the forest planning process and delineated in Forest land and resource management plans. Therefore, no changes were made in the final rule in response to this comment.

The Department has made the following changes to proposed § 251.123(a), which has been redesignated as § 251.124(a) in the final rule. The requirement for public solicitation through issuance of a prospectus has been moved to § 251.124(b) in the final rule. The remaining provisions in § 251.123(a) of the proposed rule have been removed in their entirety since they duplicate agency policy in Forest Service Manual (FSM) 2712 and 2343 and in Forest Service Handbook (FSH) 2709.11, chapter 40, that applies to a competitive selection process and establishment of limitations on use. Section 251.124(a) of the final rule is similar to § 13.85 of the final National Park Service rule, which provides that a preference shall be given to a preferred operator when a competitive selection process is used to select a provider for visitor services.

Proposed § 251.123(b) (§ 251.124(b) in the final rule) specified the evaluation criteria that would be used to select an applicant. There were no comments on proposed § 251.123(b). However, the Department has made the following changes in the final § 251.124(b). The provisions contained in § 251.123(b) of the proposed rule have been removed in their entirety since they duplicate policy in the FSM 2712 and 2344 that establishes evaluation criteria used in a competitive evaluation process. Section 251.124(b) of the final rule includes a requirement for public solicitation through issuance of a prospectus when the opportunity to issue authorizations is limited. This section also provides that when authorizations, including priority use permits, expire they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

Proposed § 251.123(c) (§ 251.124(c) in the final rule) specified that in order to be a preferred operator under subpart E, an applicant responding to a prospectus must be a local resident or a most directly affected Native Corporation. There were no comments on this provision, and no substantive changes have been made in § 251.124(c) of the final rule.

Proposed § 251.123(d) (§ 251.124(f) in the final rule) specified that a qualified preferred operator would be given preference over all other operators, except historical operators. The following is an analysis and response to comments received on § 251.123(d) of the proposed rule.

Comment: One respondent stated that the proposed regulations do not make clear the impacts of a Forest Service decision to restrict access, solicit applications, and grant a preference on other commercial operators in the affected area and questioned whether existing permits, including priority use outfitter-guide permits, would be revoked.

Response: Existing special use authorizations in CSUs in Alaska will be revoked only for cause, such as for noncompliance with their terms and conditions. Except for permits held by historical operators, authorizations will not be reissued when there is a need to limit use and there is competitive interest by preferred operators. The business opportunities previously authorized by these permits will be allocated through issuance of a prospectus, as provided in § 251.124 of the final rule.

This section of the final rule will preempt the Forest Service's national outfitting and guiding policy in FSH 2709.11, chapter 40 (60 FR 30830), that authorizations providing for priority use are subject to renewal. To make the preemptive effect of this rule clearer, the Department has added the following sentence at the end of § 251.124(b): "Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook (FSH) 2709.11, chapter 40, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators." Preemption of agency policy authorizing reissuance of priority use outfitting and guiding permits without competition is required to effectuate the preferences granted to Native Corporations and local residents under section 1307(b) of ANILCA.

Additionally, to make clear that priority use permits shall not be reissued without competition if the criteria under 36 CFR 251.124(b) are met, the Forest Service is issuing Amendment 2709.11–2003–2 to FSH 2709.11, chapter 40, to revise direction at sections 41.53c and 41.54f regarding priority use by adding a reference to 36 CFR part 251, subpart E. This amendment is available via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

Comment: One respondent questioned if the Forest Service intended that preferred operators would have exclusive rights to provide visitor services in a specific area. The respondent further stated that if this were so, it would be clearly contrary to the intent of Congress that the preference is not a license to create a monopoly, and that public policy favors diversity in the provision of visitor services.

Response: Section 1307(b) of ANILCA grants a preference, rather than exclusive rights or a monopoly, to Native Corporations and local residents in the issuance of a visitor service authorization. Where the need exists, and where use limits allow, the prospectus may provide for more than

one operator to be allocated a portion of the available use.

Comment: One respondent questioned how the Forest Service would allocate permits if all available use were not allocated to a preferred operator. The respondent noted that the preamble to the proposed rule suggested that remaining use be allocated by permits on a first-come, first-served basis, which would be highly unfair to operators who have provided quality, reliable services for a number of years and who have made a substantial investment in the continuation of these services.

The respondent further stated that in all instances where use is restricted but some commercial operators, other than those with a statutory preference, will be permitted to operate in the area, priority should be given to those seeking reissuance of a special use authorization, in order of the date their authorization was first issued (assuming continuous service).

Response: If there is a limit on the number of special use authorizations for a CSU and all available use is not allocated to a preferred operator, the Forest Service will allocate the remaining use according to the competitive process set forth in § 251.124 of the final rule. The commentary about first-come, first-served in the preamble of the proposed rule discussing § 251.123 refers to situations where there are no limitations on the number of special use authorizations being issued and therefore no competitive issuance of special use authorizations.

In CSUs where there are limits on the number of special use authorizations, all authorizations, other than those for historic operators under § 251.122, will be issued competitively in accordance with § 251.124 of the final rule. However, commercial operators without a statutory preference who have performed satisfactorily under a special use authorization likely will be more competitive than other operators without a statutory preference who either do not have satisfactory evaluations or who have not had an authorization. No change from the proposed rule is warranted based on this comment.

The Department has added a new § 251.124(d) to the final rule to clarify and describe factors that demonstrate local residency for applicants seeking preferred operator status. This new paragraph incorporates the factors previously set out in the definition of *local resident* at § 251.121 of the proposed rule.

Proposed § 251.123(e) (§ 251.124(g) in the final rule) specified that if the best offer to a prospectus is made by a non-preferred operator, the preferred operator with the best offer would be given an opportunity to amend its offer to meet the offer of the non-preferred operator. No comments were received on this provision. However, the Department has made minor changes in the final rule. The word "offer" has been changed to "application" for consistency with the definitions and Forest Service policy, and the provisions governing application of the preference have been modified for clarity and consistency with the final rules promulgated by the National Park Service and the U.S. Fish and Wildlife Service.

Proposed § 251.123(f) (§ 251.124(e) in the final rule) required a preferred operator to document that it holds the controlling interest in a joint venture submitting an application. No comments were received on this provision of the proposed rule. The Department has, however, modified and clarified this section by adding examples of the types of entities for which documentation of a controlling interest might be required.

Section 251.125 Preferred Operator Privileges and Limitations

Proposed § 251.125 contained a number of provisions enumerating preferred operator privileges and limitations.

No comments were received on § 251.125, and no substantive changes were made to this section in the final rule; only minor changes have been made in this section for consistency with existing Forest Service policy. In addition, the order of the paragraphs in this section has been changed for clarity. Paragraph (a) in the proposed rule has been removed because it repeats a provision in § 251.124(f) in the final rule, and paragraph (d) in the proposed rule has been removed because it repeats a provision in § 251.124(e) in the final rule; the remaining paragraphs have been re-designated (a) through (e) in the final rule.

Section 251.126 Appeals

Proposed § 251.126 provided that decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service or to the modification of special use authorizations to reflect historical use are subject to administrative appeal under subpart C of this part.

No comments were received on § 251.126, and no substantive changes were made from the proposed rule.

Regulatory Certifications

Environmental Impact

An environmental assessment (EA) was prepared for the proposed rule. Notice of the availability of this EA was published in the **Federal Register** notice of the proposed rule (62 FR 20143). No comments were received on the EA. The Department has determined that there are no significant environmental impacts associated with adoption of this final rule. A copy of the EA and Finding of No Significant Impact may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** earlier in this document.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy, nor will this rule adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. This rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this rule will not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients under such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the act. Section 1307 of ANILCA provides a competitive advantage for Native Corporations and local residents that qualify as small entities. This rule merely implements section 1307 and does not increase or decrease any preference granted by the statute. This final rule will not impose record-keeping requirements; will not affect the competitive position of small entities in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132 on federalism and has determined that the rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further consultation with State governments is necessary upon adoption of this final rule.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the final rule does not pose a risk of a taking.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. Upon adoption of this final rule, (1) all State and local laws and regulations that are in conflict with this final rule or that will impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) this final rule does not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply." It has been determined that this final rule will not have an adverse effect on the supply, distribution, and use of energy.

Consultation With Tribal Governments

This final rule has been reviewed under Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments." It has been determined that this final rule does not implicate the consultation provisions of that Executive order. Native corporations are not Indian tribes. Providing a preference for certain providers of visitor services in CSUs in Alaska does not directly affect Indian tribes or the relationship between the Federal government and the tribes in the State of Alaska.

Controlling Paperwork Burdens on the Public

The information requirements associated with implementation of this regulation were set out in the proposed rule. No comments were received concerning information requirements associated with this rule.

The information collection required to determine which Alaska Native Corporations qualify for the statutory preference in the award of competitively issued special use authorizations for commercial visitor services on designated lands within the National Forests in Alaska is currently covered under the information requirements in subpart B of this part, which are assigned OMB control number 0596–0082.

List of Subjects in 36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and record-keeping requirements, and Water resources.

■ Therefore, for the reasons set forth in the preamble, amend part 251 of Title 36 of the Code of Federal Regulations by adding a new subpart E to read as follows:

PART 251—LAND USES

Subpart E—Revenue-Producing Visitor Services in Alaska

Sec.

251.120 Applicability and scope.
251.121 Definitions.
251.122 Historical operator special use authorizations.
251.123 Most directly affected Native Corporation determination.
251.124 Preferred operator competitive special use authorization procedures.
251.125 Preferred operator privileges and limitations.
251.126 Appeals.

Subpart E—Revenue-Producing Visitor Services in Alaska

Authority: 16 U.S.C. 3197.

§ 251.120 Applicability and scope.

(a) These regulations implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3197) with regard to the continuation of visitor services offered as of January 1, 1979, and the granting of a preference to local residents and certain Native Corporations to obtain special use authorizations for visitor services provided on National Forest System lands within Conservation System Units of the Tongass and Chugach National Forests in Alaska.

(b) Except as may be specifically provided in this subpart, the regulations at subpart B shall apply to special use authorizations issued under this subpart. However, if subpart B conflicts with subpart E, subpart E controls.

(c) This subpart does not apply to the guiding of sport hunting and fishing.

§ 251.121 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

Best application—the application, as determined by the authorized officer, that best meets the evaluation criteria contained in a prospectus to solicit visitor services.

Conservation System Unit (CSU) as it relates to the Tongass and Chugach National Forests in Alaska—a National Forest Monument or any unit of the National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, including existing units and any such unit established, designated, or expanded hereafter.

Controlling interest—in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

Historical operator—a holder of a valid special use authorization to provide visitor services in a CSU under Forest Service jurisdiction who:

(1) On or before January 1, 1979, was lawfully and adequately providing visitor services in that CSU;

(2) Has continued lawfully and adequately to provide the same or similar types of visitor services within that CSU; and

(3) Is otherwise determined by the authorized officer to have a right to continue to provide the same or similar visitor services.

Local area—any site within 100 miles of the location within a CSU where any visitor services covered by a single solicitation by the Forest Service are to be authorized.

Local resident:

(1) *For individuals*—Alaska residents who have lived within the local area for 12 consecutive months prior to issuance of a solicitation of applications for a visitor services authorization for a CSU; who maintain their primary, permanent residence and business within the local area; and who, whenever absent from this primary, permanent residence, have the intention of returning to it.

(2) *For corporations, partnerships, limited partnerships, joint ventures, individual entrepreneurships, and other circumstances*—where the controlling interest is held by an individual or individuals who qualify as local residents within the meaning of this section.

(3) *For nonprofit entities*—where a majority of the board members and a majority of the officers qualify as local residents within the meaning of this section.

Native Corporation has the same meaning as under section 102(6) of ANILCA (16 U.S.C. 3197).

Preferred operator—a Native Corporation that is determined, pursuant to § 251.123, to be most directly affected by establishment or expansion of a CSU; or a local resident, as defined in this section, who competes for a visitor service special use authorization under § 251.124 of this subpart.

Responsive application—an application that is received in a timely manner and that meets the requirements stated in the prospectus.

Visitor service—any service or activity for which persons who visit a CSU pay a fee, commission, brokerage, or other compensation, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

§ 251.122 Historical operator special use authorizations.

(a) A historical operator has the right to continue to provide visitor services under appropriate terms and conditions contained in a special use authorization, as long as such services are determined by the authorized officer to be consistent with the purposes for which the CSU was established or expanded. A historical operator may not operate without such an authorization.

(b) Any person who qualifies as a historical operator under this subpart and who wishes to exercise the rights granted to historical operators under section 1307(a) of ANILCA (16 U.S.C. 1397(a)) must notify the authorized officer responsible for the CSU.

(c) A historical operator may apply for a special use authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979. The authorized officer shall grant the application if those visitor services are determined by the authorized officer to be:

(1) Consistent with the purposes for which the applicable CSU was established or expanded;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(d) Upon the authorized officer's determination that the person qualifies as a historical operator, under either paragraph (a) or paragraph (c) of this section, the authorized officer shall amend the current special use authorization or issue a new special use authorization to identify that portion of the authorized services that is deemed to be historical operations. The special use authorization shall identify the location, type, and frequency or volume of visitor services to be provided.

(e) When a historical operator's special use authorization expires, the authorized officer shall offer to reissue the special use authorization for the same or similar visitor services, as long as the visitor services remain consistent with the purposes for which the CSU was established or expanded, the historical operator was lawfully and adequately providing visitor services under the previous special use authorization, and the historical operator continues to possess the capability to provide the visitor services adequately.

(1) If the operator accepts the offer to reissue, the authorized officer shall issue a new special use authorization that clearly identifies the historical operations as required by paragraph (d) of this section.

(2) If the authorized officer determines that it is necessary to reduce the visitor services to be provided by a historical operator, the authorized officer shall modify the historical operator's special use authorization to reflect the reduced services as follows:

(i) If more than one historical operator provides services in the area where visitor service capacity is to be reduced, the authorized officer shall apportion the reduction among the historical operators, taking into account historical operating levels and such other factors as are relevant to achieve a proportionate reduction among the operators.

(ii) If the reductions in visitor service capacity make it necessary to reduce operators in an area, the authorized officer shall select, through a competitive process that is limited to historical operators only, the operator or operators to receive a special use authorization from among the historical operators. Historical operators participating in this competitive process may not claim a preference as a preferred operator under § 251.124.

(f) Any of the following shall result in the loss of historical operator status:

(1) Revocation of a special use authorization for historical types and levels of visitor services for failure to comply with the terms and conditions of the special use authorization;

(2) A historical operator's refusal of an offer to reissue a special use authorization made pursuant to paragraph (e) of this section;

(3) A change in the controlling interest of a historical operator through sale, assignment, devise, transfer, or otherwise, except as provided in paragraph (g) of this section; or

(4) An operator's failure to provide the authorized services for a period of more than 24 consecutive months.

(g) A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals, who were personally engaged in the visitor service activities of the historical operator before January 1, 1979, shall not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(h) Nothing in this section shall prohibit the authorized officer from authorizing persons other than historical operators to provide visitor services in the same area, as long as historical operators receive authorization to provide visitor services that are the same as or similar to those they provided on or before January 1, 1979.

(i) If an authorized officer grants to a historical operator an increase in the scope or level of visitor services from what was provided on or before January 1, 1979, beyond what was authorized under paragraph (d) of this section, for either the same or similar visitor services, the historical operator has no right of preference for the increased amount of authorized services. If additional operations are authorized, the special use authorization shall explicitly state that they are not subject to the historical operator preference.

§ 251.123 Most directly affected Native Corporation determination.

(a) Before issuance of the first special use authorization for a specific CSU pursuant to § 251.124 on or after the effective date of this subpart, the authorized officer shall give notice to Native Corporations interested in providing visitor services within the CSU and give them an opportunity to submit an application to be considered the Native Corporation most directly affected by the establishment or expansion of the CSU under section 1307(b) of ANILCA (16 U.S.C. 1397(b)). In giving notice of the application procedure, the authorized officer shall make clear that this is the only opportunity to apply for most directly affected status for that particular CSU.

(1) At a minimum, an application from an interested Native Corporation shall include the following:

(i) Name, address, and telephone number of the Native Corporation; date of its incorporation; its articles of incorporation and structure; and the name of the applicable CSU and the solicitation to which the Native Corporation is responding;

(ii) Location of the Native Corporation's population centers; and

(iii) An assessment of the socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on the Native Corporation resulting from establishment or expansion of the applicable CSU.

(2) In addition to the minimum information required by paragraph (a)(1) of this section, Native Corporations may submit such additional information as they consider relevant.

(b) Upon receipt of all applications from interested Native Corporations, the authorized officer shall determine the most directly affected Native Corporation considering the following factors:

(1) Distance and accessibility from the Native Corporation's population centers and/or business address to the applicable CSU;

(2) Socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on Native Corporations resulting from establishment or expansion of the applicable CSU; and

(3) Information provided by Native Corporations and other information considered relevant by the authorized officer to assessment of the effects of establishment or expansion of the applicable CSU.

(c) In the event that two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination pursuant to this section, each such Native Corporation shall be considered a preferred operator under this subpart.

(d) A Native Corporation determined to be most directly affected for a CSU shall maintain that status for all future visitor service solicitations for that CSU.

§ 251.124 Preferred operator competitive special use authorization procedures.

(a) In selecting persons to provide visitor services for a CSU, the authorized officer shall, if the number of visitor service authorizations is to be limited, give a preference (subject to any rights of historical operators under this subpart) to preferred operators as defined in this subpart who are determined to be qualified to provide such visitor services.

(b) In such circumstances, the authorized officer shall solicit applications competitively by issuing a prospectus for persons to apply for a visitor services authorization. Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook 2709.11, chapter 40, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

(c) To qualify as a preferred operator under this subpart, an applicant responding to a solicitation made under this section must be determined by the authorized officer to be a local resident as defined in § 251.121 of this subpart, or the Native Corporation most directly affected by establishment or expansion of the CSU covered by the solicitation pursuant to § 251.123 of this subpart.

(d) Applicants seeking preferred operator status based on local residency must provide documentation verifying their claim. Factors demonstrating the location of an individual's primary, permanent residence and business include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska; tax returns, and voter registration.

(e) An application from a preferred operator in the form of a corporation, partnership, limited partnership, joint venture, individual entrepreneurship, nonprofit entity, or other form of organization shall be considered valid only when the application documents to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the corporation, partnership, limited partnership, joint venture, individual entrepreneurship, nonprofit entity, or other form of organization.

(f) A qualified preferred operator shall be given preference, pursuant to paragraph (g) of this section, over all other applicants, except with respect to use allocated to historical operators pursuant to § 251.122 of this subpart.

(g) If the best application from a preferred operator is at least substantially equal to the best application from a non-preferred operator, the preferred operator shall be issued the visitor service authorization. If an application from an applicant other than a preferred operator is determined to be the best application (and no preferred operator submits a responsive application that is substantially equal to it), the preferred operator who submitted the best application from among the applications submitted by preferred operators shall be given the opportunity, by amending its application, to meet the terms and conditions of the best application received. If the amended application of that preferred operator is considered by the authorized officer to be at least substantially equal to the best application, the preferred operator shall be issued the visitor service authorization. If a preferred operator does not amend its application to meet the terms and conditions of the best application, the authorized officer shall issue the visitor service authorization to the applicant who submitted the best application in response to the prospectus.

§ 251.125 Preferred operator privileges and limitations.

(a) A preferred operator has no preference within a National Forest in Alaska beyond that authorized by section 1307 of ANILCA (16 U.S.C. 1397) and by § 251.124 of this subpart.

(b) Local residents and most directly affected Native Corporations have equal priority for consideration in providing visitor services pursuant to § 251.124 of this subpart.

(c) Nothing in this subpart shall prohibit the authorized officer from issuing special use authorizations to other applicants within the CSU, as long

as the requirements of § 251.124 are met.

(d) If an operator qualifies as a local resident for any part of an area designated in the solicitation for a specific visitor service, in matters related solely to that solicitation, the operator shall be treated as a local resident for the entire area covered by that solicitation.

(e) The preferences described in this section may not be sold, assigned, transferred, or devised, either directly or indirectly, in whole or in part.

§ 251.126 Appeals.

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service under this subpart or related to the modification of special use authorizations to reflect historical use are subject to administrative appeal under subpart C of this part.

Dated: May 27, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–14630 Filed 6–10–03; 8:45 am]

BILLING CODE 3410–11–P



Federal Register

Wednesday,
June 11, 2003

Part IV

Department of Education

Office of Elementary and Secondary Education—Evaluating State Education Technology Programs Grant Competition; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.318A]

Office of Elementary and Secondary Education—Evaluating State Education Technology Programs Grant Competition—Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of this program is to increase the capacity of States to design, conduct, and procure high-quality evaluations of educational technology. To do so, this competition supports grants to States to: (1) Build their capacity to conduct scientifically based evaluations of educational technology interventions, by planning and conducting an experimental or quasi-experimental evaluation of a State-selected educational technology initiative; and (2) widely disseminate pertinent information, based on what is learned about the evaluation methods, practices, analyses, and instruments used, that will help other States enhance their ability to conduct similar empirical evaluations.

States receiving awards will:

(1) Develop a plan to conduct a scientifically based evaluation of an educational intervention that uses technology applications as a tool to increase student achievement in one or more core academic subjects.

(2) Conduct the evaluation in a manner that tests the impact of the intervention as well as the efficacy of the empirical methods, practices, and instruments used to assess the impact of the intervention on student achievement.

(3) Disseminate information about the evaluation plan, its implementation, and the results to other States and to school districts so they may learn from and replicate the approach.

For FY 2003, the competition for new awards focuses on projects designed to meet the priority we describe in the Priority section of this application notice.

Eligible Applicants: The Secretary seeks to fund applications that are submitted by a State educational agency (SEA), or an SEA on behalf of a consortium (partnership).

Eligible partnerships are comprised of an SEA (that must serve as the fiscal agent) and at least one entity from among the following entities:

(1) Institutions of higher education.
(2) Other public institutions.
(3) Research organizations.
(4) Not-for-profit organizations.
(5) For-profit organizations.
(6) Other State educational agencies (SEAs).
(7) Local educational agencies (LEAs).
(8) Regional educational entities.

Applications Available: June 11, 2003.

Deadline for Transmittal of Applications: July 28, 2003.

Estimated Available Funds: $4,200,000.

Estimated Range of Awards: $300,000 to $650,000 (per annum).

Estimated Average Size of Awards: $475,000 (per annum).

Maximum Award: We will reject any application that proposes a budget that exceeds $650,000 for any of the three 12-month budget periods.

Estimated Number of Awards: 6–9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Statute and Regulations: (a) Section 2421(c) of part D of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB); (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Background

Section 2421(c) of part D (Enhancing Education Through Technology Act) of the ESEA authorizes the Secretary to award competitive grants for technical assistance to States to carry out activities to achieve the purposes of that part. Section 2402 (a)(7) of part D provides that one of the purposes of the Act is "To support the rigorous evaluation of programs funded under this part, particularly regarding the impact of such programs on student academic achievement, and ensure that timely information on the results of such evaluations is widely accessible through electronic means."

The intent of this competition is to help States learn to conduct and procure high-quality evaluations by making funds available to a limited number of States to plan, conduct, and report such evaluations. States receiving awards will be expected not only to benefit directly from the experience, but actively share their work with other States. Therefore, grant awards from this competition are for States, with assistance from their grant partners or contractors, to: Plan and conduct rigorous, scientifically based evaluations of technology-enhanced educational interventions; test and refine the methods, practices, analyses, and instruments used; document project activities and outcomes; and to inform the evaluation efforts of other States by making available to those States documented information about the evaluation plan, its implementation, and results.

The Department expects that the projects it funds under this grant announcement will yield the following outcomes:

(1) Increased capacity within recipient States to routinely design and conduct scientifically based evaluations, particularly in carrying out directed State technology grant competitions under title II, part D of the ESEA.

(2) A body of knowledge that can inform other States about effective methods, practices, instruments, and conditions for conducting scientifically based evaluations, including:

a. Replicable methods, practices, analyses, and instruments States and districts can use to conduct rigorous scientifically based evaluations of educational interventions that use technology as a tool to enhance teaching and learning.

b. Methodological frameworks States and districts can use to identify technology-enhanced educational interventions that measurably increase student academic achievement, improve instruction, and enhance curriculum, including interventions that integrate new and emerging technologies into the curriculum.

In addition, the Department expects the evaluation findings that result from this competition will yield empirical evidence about the conditions and practices under which educational technology is effective in helping students meet challenging academic content standards and in increasing student academic achievement.

The Department expects to have substantial involvement with applicants that obtain grants under this competition. Therefore, the Department will enter into a cooperative agreement with each grantee. Under the agreement, the Department will work with the grantee to refine the evaluation and dissemination plans proposed in the application and will review plans and other deliverables before further work proceeds. (The terms "cooperative agreement" and "grant" are used interchangeably in this solicitation.)

In applying for awards under this announcement, applicants must propose a plan to evaluate the impact of technology-based educational interventions on student achievement in the core academic subjects. Of particular interest to the Department are elementary and secondary school technology interventions that are consistent with the mission and goals of the No Child Left Behind Act of 2001, that is, interventions to help students meet challenging State academic content standards and student academic achievement standards and to close the achievement gap between low-income and minority students and their peers. To identify and select an intervention for evaluation applicants might consider, for example:

(a) Innovative distance learning strategies that deliver, particularly to high-need student populations, specialized or rigorous academic courses and curricula through the use of advanced technologies, including video conferencing and virtual instruction strategies.

(b) Professional development programs to enable teachers to integrate advanced technologies, including emerging technologies, into curricula and instruction in order to prepare students to meet challenging State academic content and academic achievement standards.

(c) Programs that use technology to connect schools and teachers with parents and students in order to promote meaningful parental involvement; foster increased communication (about curricula, assignments, and assessments) between students, parents, and teachers; and assist parents to understand the technology being applied in their child's education, so that parents are able to reinforce at home the instruction that their child receives at school.

(d) Classroom-based courses and curricula that include integration of technology and are designed to help students meet challenging State academic content and student academic achievement standards.

(e) Programs that use technology to help teachers meet the high standards of teacher quality defined in ESEA.

(f) Programs that use technology to meet the educational needs of students in rural areas.

Examples of evaluation activities that may be funded include, but are not limited to:

(a) Studies that compare the achievement of students who take high school virtual courses with the achievement of students who take the same courses in regular classrooms in order to determine whether the virtual courses result in the same or different levels of student achievement as courses taught in the regular classroom;

(b) Studies to determine the relative effectiveness of various locally adopted, technology-enhanced instructional programs in increasing student achievement. These studies might compare the academic achievement of students in classrooms or schools where one instructional program or approach is being used with the academic achievement of students in classrooms or schools where another technology-enhanced instructional program or approach is being used; or

(c) Studies to determine the impact on student achievement of technology-enhanced instruction in specific academic content areas versus academic content area instruction without the use of technology.

Applicants, in developing their proposals, should detail:

1. The evaluation approach they propose to take, including the methods, practices, and analyses for: (a) Selecting the intervention, population, and problem for study; (b) choosing the sample; and (c) collecting and analyzing data.

2. Provisions for assessing the efficacy of the evaluation approach and making refinements as warranted.

3. Plans for documenting project activities and disseminating to other States and school districts the knowledge gained over the course of the grant about how and under what conditions similar evaluations can be replicated. Proposed strategies should include, but not be limited to, the use of the Internet and other emerging technologies and venues. At a minimum, dissemination strategies should include the establishment and maintenance of a project Website that will host continually updated information about: (a) The technology intervention being evaluated; (b) the evaluation methods, practices, and analyses carried out, including the data collection plans and instruments used; (c) any modifications that occurred during the implementation of the project along with the rationale for those modifications; (d) the processes and conditions necessary for other States and school districts to replicate the approach; and (e) the evaluation results and other project findings.

Priority

This competition focuses on projects designed to meet the following priority. Under 34 CFR 75.105(c)(2)(i), applications will receive up to 20 additional points depending on how well they meet the priority. These points are in addition to any points the application earns under the selection criteria.

Competitive Preference Priority

The project is designed to determine whether the program implemented produces meaningful effects on student achievement or teacher performance through a rigorous evaluation. Evaluations using an experimental design are the strongest for determining program effectiveness. Thus, the project preferably uses an experimental design. An evaluation using an experimental design is one where subjects (students, teachers, classrooms, or schools) are randomly assigned to receive the program being evaluated or to be in a control group that does not receive the program. Evaluations using an experimental design will receive up to 20 points.

If random assignment is not feasible, the project may employ a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching program participants (students, teachers, classrooms or schools) with non-participants possessing similar pre-program characteristics. Evaluations of this type will receive up to 10 points.

Proposed evaluations that use neither experimental designs with random assignment or quasi-experimental designs using a matched comparison group will receive 0 points under the competitive preference priority.

Data from reliable and valid measures of the intervention that the program intends to implement and of the outcomes that the program intends to effect should be collected before and after participation in the program or the comparison condition.

Points awarded under this priority will be determined by the quality of the proposed evaluation. In determining the quality of the evaluation, we will consider the extent to which the applicant presents a feasible, credible plan that includes: The type of design to be used (random assignment or matched comparison); outcomes to be measured; a discussion of how students, teachers, classrooms, or schools will be assigned to the program or matched for comparison with other students, teachers, classrooms, or schools; and a proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation.

Selection Criteria

We will use the following selection criteria to evaluate applications for new grants under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Significance* (20 points). In determining the significance of the

proposed project, the Secretary will consider the following factors:

(1) The extent to which the application supports the Department's strategic interests embodied in the No Child Left Behind Act of 2001: greater accountability for student achievement, increased flexibility and local control, more parental choice, and a focus on what works.

(2) The extent to which the application offers a reasonable and sound plan that likely will produce outcomes, products, or publications that will inform the field about evaluation practice to determine the effectiveness of new and advanced technology tools and applications in education, and that are easily exportable to different settings, including urban, rural, and suburban communities.

(3) The extent to which the application proposes to disaggregate evaluation results so that the impact of the intervention on the academic achievement of sub-groups of students, such as students who are ethnic or language minorities, rurally isolated, or from families with incomes below the poverty line, can be determined.

(b) *Quality of the project design* (35 points). In determining the quality of the design of the proposed project, the Secretary will consider the following factors:

(1) The extent to which the methodology proposed is thorough, feasible, and employs a methodologically sound experimental or quasi-experimental design to determine the effectiveness of the educational technology intervention under study.

(2) The extent to which the methodology proposed includes the use of valid, reliable, and objective performance measures that are clearly related to the intended outcomes of the intervention being evaluated.

(3) The extent to which the proposed project is designed to build evaluation capacity and practice that will extend beyond the period of Federal financial assistance.

(4) The extent to which the design for implementing the proposed evaluation, documenting evaluation activities, and disseminating knowledge, will result in information to guide replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(c) *Quality of project personnel* (15 points). In determining the quality of project personnel, the Secretary will consider:

(1) The extent to which the applicant encourages applications for employment from persons without regard to race, color, national origin, gender, age, or disability.

(2) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources* (15 points). In determining the adequacy of resources for the proposed project, the Secretary will consider the following factors:

(1) The extent to which the partnership members contribute to the activities assisted under the grant by providing substantial support in the form of non-Federal funds and/or in-kind contributions, including staff and facilities.

(2) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(e) *Quality of the management plan* (15 points). In determining the quality of the management plan for the proposed project, the Secretary will consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and other program requirements. Ordinarily, this practice would have applied to the competitive priority, selection criteria, and requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new program from this requirement. The competition covered by this notice is a new activity under the National Technology Activities authorized by the ESEA, as reauthorized by the No Child Left Behind Act of 2001. The Secretary, in accordance with section 437(d)(1) of GEPA, in order to ensure timely grant awards, has decided to forego public comment with respect to the competitive priority, selection criteria and program requirements. The competitive priority, selection criteria, and requirements of this grant notice will apply only to the FY 2003 grant competition.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2003 Evaluating State Education Technology Programs Grant Competition be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reasons(s) must be outlined in a letter addressed to: Enid Simmons, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E215, Washington, DC 20202. We must receive your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Evaluating State Education Technology Programs Grant Competition is one of the programs included in the pilot project.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of the electronic submission of applications and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-Application system.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Evaluating State Education Technology Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines Between Paper and Electronic Applications) in the application package.

FOR FURTHER INFORMATION CONTACT: Enid Simmons, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E215, Washington, DC 20202. Telephone: (202) 708–9499 or via Internet: *enid.simmons@ed.gov.*

If you use a telecommunications device for the deaf (TODD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6771(c).

Dated: June 5, 2003.

Eugene W. Hickock,

Under Secretary of Education.

[FR Doc. 03–14716 Filed 6–10–03; 8:45 am]

BILLING CODE 4000–01–P



Federal Register

Wednesday,
June 11, 2003

Part V

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 579

Reporting of Information and Documents About Potential Defects; Final Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 5]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to previously-unaddressed issues raised in petitions for reconsideration of the final rule published on July 10, 2002, that implemented the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety. NHTSA responded to some of the issues raised in the petitions in a notice published on April 15, 2003, and stated that it would respond to the remaining issues in the future.

DATES: *Effective Date:* The effective date of the amendments made by this final rule is July 11, 2003. *Petitions for Reconsideration:* Petitions for reconsideration of any amendments made by this final rule must be received not later than July 28, 2003.

ADDRESSES: Petitions for reconsideration of the amendments made by this final rule must refer to the docket or Regulatory Identification Number (RIN) for this rulemaking, and be addressed to the Administrator, National Highway Traffic Safety Administration (NHTSA). You may submit a petition by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting petitions.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information.

Petitions for reconsideration of the rule were filed on or before August 26, 2002, by the Alliance of Automobile Manufacturers (the Alliance), General Motors Corporation (GM), the National Association of Trailer Manufacturers (NATM), the National Truck Equipment Association (NTEA), the Recreational Vehicle Industry Association (RVIA), and the Juvenile Products Manufacturers Association (JPMA).

GM and NATM filed untimely supplemental comments on October 15, 2002, and a petition for rulemaking was filed by the National Trailer Dealers Association (NTDA) on November 1, 2002 relating to the threshold for full reporting. On November 23, 2002, NATM filed a petition for rulemaking to delay the initial reporting date under the rule, as did NTEA and RVIA jointly, on December 5, 2002. Additional comments were filed by Public Citizen on November 26, 2002, and Stephen E. Selander on November 27, 2002.

On October 10, 2002, the Alliance wrote NHTSA requesting that certain issues it had raised in its petition be treated on a prioritized basis. It separated its issues into three groups and explained that "Generally, those issues given a priority "1" rating are those that require resolution to allow Alliance members to effectively plan and efficiently execute actions needed to develop compliant reporting systems." These issues concerned field reports, in-plant inspection records and other documents, one-time historical reports, and multiple "substantially similar" platforms. After reviewing the Alliance's comments and letter of October 10, the agency concluded that granting this request would aid in an orderly implementation of the final rule and, on April 15, 2003, we published a notice addressing the Alliance's priority "1" issues as well as other issues (68 FR 18136).

This notice addresses remaining issues raised by the Alliance and other persons in timely filed petitions for reconsideration of the final rule. Issues related to thresholds for reporting will be addressed in a subsequent notice.

II. Petitions Concerning the Recordkeeping Requirements of 49 CFR Part 576

Each manufacturer of motor vehicles and motor vehicle equipment is required to retain the underlying records on which the information that it reports to NHTSA under the final early warning reporting rule is based. These records must be kept for a period of five calendar years from the date on which they were generated or acquired by the manufacturer (see 49 CFR 576.5(b)). Among the information to be reported to NHTSA under the early warning reporting final rule is the one-time submission by certain manufacturers of certain historical information for a period that begins April 1, 2000 (Section 579.28(c)). Section 576.5(b) requires manufacturers of motor vehicles to retain the underlying records for the one-time historical report, which covers the 12-quarterly period ending March 31, 2003, until the same date in 2008. The Alliance asserted that these two regulatory provisions have the effect of requiring manufacturers to retain records for periods longer than five years, "a burden that was not identified or estimated in connection with the adoption of the final rule or in the Paperwork Reduction Act clearance request submitted by the agency to OMB." The Alliance suggested that "manufacturers [could] retain the supporting information for each historic report for a period of time equal to five years from the beginning of the reporting quarter. Thus, for example, the record used to prepare the historic report for the third quarter of 2002 would be retained until the third quarter of 2007—five years after their creation."

The Alliance's interpretation differs from ours. The regulatory requirement is to retain the underlying records for a period of five years "from the date on which they were generated, or acquired by the manufacturer" not five years after the date of the report to NHTSA. Under the existing regulation, as we interpret it, the records underlying the oldest data used to prepare the historical report, those for the second quarter of 2000, would be retained until the second quarter of 2005, five years after the records were generated. This is consistent with the outcome that the Alliance requested.

JPMA asked whether it was necessary to retain "non-substantive information (such as name, address, telephone number of claimant), or hard-copies of incoming or outgoing correspondence related to the claim (such as letters obtaining additional information from the claimant), that complete the entire underlying claim record." The answer is yes, it is necessary to retain this information. It is substantive material. For example, we may wish to contact the claimant. The records underlying the reports to NHTSA will not be complete without the information referred to by JPMA.

III. Petitions To Clarify Production Numbers To Be Reported Under Part 579

The final rule requires reporting of production numbers by manufacturers who sell vehicles in the United States even if those vehicles are made outside the United States. The Alliance, JPMA, and RMA viewed the production reporting as ambiguous, that it could be interpreted as requiring a manufacturer to report its world-wide production. The Alliance assumed that NHTSA only wants production figures for units destined for sale in the United States, otherwise NHTSA could be comparing U.S. trend-indicator data against a world-wide production number. The Alliance is correct, with the caveat that vehicles destined for lease in the United States are included as well. Moreover, for the same reason, manufacturers producing vehicles in the United States for export should not include the exported vehicles in their production numbers.

IV. Petitions To Amend or To Clarify Section 579.4(c), Other Terms

Section 579.4(c) contains definitions of terms used in the early warning reporting final rule. We were asked to amend or to clarify a number of these terms as well as to add definitions.

1. *Affiliate.* The final rule defines "affiliate" in pertinent part as "a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified." RMA recognized that we had based this definition on regulations of the Securities and Exchange Commission (SEC) (17 CFR 230.405), which also provide a separate definition of "control." RMA urged us to adopt the SEC definition "in order to ensure that the term 'affiliate' is defined with specificity." We concur with this recommendation, and are defining the term "control" as follows:

> Control (including the terms controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

2. *Base.* JPMA asked whether "base" means only a detachable base used with an infant seat and not the permanently-installed base associated with some designs of convertible child restraints that allow changing positions for child comfort. We defined "base" as "the detachable bottom portion of a child restraint system that may remain in the vehicle to provide a base for securing the system to a seat in a motor vehicle." Thus, this term applies only to the detachable base used with an infant seat.

3. *Buckle and release harness.* JPMA also asked whether the definition of "buckle and restraint harness" included "harness clips." See Section 579.25(b)(2). Our definition included "the components that are intended to restrain a child seated in such a system. * * *" A harness clip can help ensure that the harness is properly positioned on the child's shoulders and chest at time of impact. However, under the early warning rule, we do not view it as a component intended to restrain a seated child. If a manufacturer receives a claim or notice of a death or injury that is alleged to be due to a problem or defect in a harness clip, the incident would be reported under "other" rather than "buckle and restraint harness."

4. *Claim.* In its comments on the NPRM, the Alliance recommended that early warning reports of injuries should not include claims or notices about "emotional" and other non-physical injuries because these are not ordinarily the type of injury with which NHTSA is concerned under the Vehicle Safety Act. We disagreed, noting that a claim for emotional distress following (for example) an inadvertent airbag deployment or a loss of vehicle control would be of interest to us (p. 45840). The final rule requires manufacturers of 500 vehicles or more, and manufacturers of tires and child restraint systems, to provide information on claims of injuries and on notices of injuries occurring in the United States that are alleged or proven to be due to a defect in the manufacturer's product. Reportable injuries were not limited in the regulatory text. The preamble indicated that NHTSA intends the term "injury" to include non-physical as well as physical injuries. Saying that it had not been clear as to what we meant, the Alliance requested that we exclude from the definitions of "claim" and "notice" any injury claim "that is derivative of a fatality/injury claim that is separately reportable under the early warning system." In support of its latest request, the Alliance evoked the specter of derivative claims by persons related to persons injured in a crash but who themselves were not physically present when the injury occurred. The Alliance asserted that reporting of derivative injury claims will distort the real injury accident rate for a particular make/model of vehicle.

We have reviewed the Alliance's request and are modifying the regulations in part. Claims may be asserted until the statute of limitations runs. In some cases, the initial claim against a manufacturer will be made by a person physically injured as a direct result of a crash, whether the claimant is inside a vehicle or outside of it. But in other cases, the initial claim may be filed by a person outside the vehicle who was not physically injured by the crash or physically present at the crash. There could be a considerable difference in time between the submission of the two claims. We want to be aware of claims arising out of alleged defects as soon as possible, and therefore do not want to broadly exempt all derivative claims. However, a derivative injury claim would appear to provide little benefit for early warning reporting purposes when an incident involving a death or injury that is the predicate for the derivative claim has been reported to NHTSA. We are balancing these concerns by retaining the general requirement that manufacturers report claims and notices by vehicle occupants and people outside vehicles who were not physically injured in a crash but presented claims for emotional distress, but are adding an exclusion that these claims and notices need not be reported if the manufacturer has reported the incident as an incident involving a death or injury. This exclusion includes a claim for a non physical injury presented in the same document as a claim for death or a physical injury, and a claim for a non physical injury received by the manufacturer in the same reporting period as the claim for death or physical injury, regardless of which was received first. To clarify this point, we are adding a subsection to Section 579.28 that states that if a manufacturer has reported a claim or notice relating to an incident involving

death or injury, the manufacturer need not report a claim or notice arising out of the incident by a person who was not injured physically. For further discussion of this subsection, see Paragraph VI below relating to property damage claims.

RMA also urged NHTSA to exclude non-physical injuries. It was concerned that such a requirement "could lead to the filing of frivolous or baseless claims that may be part of a campaign designed solely to damage the reputation of a tire manufacturer." RMA has not demonstrated that in reality this would be a likely problem. We addressed the issue in the final rule. We further note that the rules of many courts preclude the filing of frivolous claims. *See, e.g.*, Rule 11(b), Fed. R. Civ. P. In any event, we will be able to deal with such matters during the screening process.

5. *Field report.* We reviewed our revised redefinition of "field report" after its publication on April 15, 2003 (68 FR 18136 at 18142) and concluded that it could be clarified and simplified by removal of some commas. We have revised the definition accordingly.

6. *Fire.* The final rule defined "fire" to mean "combustion or burning of any material in a vehicle as evidenced by, but not limited to, flame, smoke, sparks, or smoldering." The Alliance objected to the definition and asserted that the definition includes events which may not result in a fire. Consequently, in their view, the reporting category may overstate "fires" to the uninformed when "they may involve nothing more than reports of exhaust smoke * * *." The Alliance recommended that the title of the reporting category be changed to "FSSS" to indicate that more events are included than just fire events, *i.e.*, "flame, smoke, sparks, or smoldering."

We agree that some of the events referred to under the current definition of "fire" are not generally considered fires as that term is normally used by the public. However, many of the system and component categories include items that are not fully consistent with a layman's use of the word. That is why we developed regulatory definitions. Therefore, we see no need to revise the definition as requested. However, we will make a wording change to clarify that not all events covered by the definition involve flame. Moreover, we have recently encountered euphemistic descriptions of fires by manufacturers as "thermal events." We are adding a reference to "thermal events" to assure that they are not omitted in reporting. Of course, thermal events would not include heat generated by a normally operating engine or heating/cooling by a vehicle's climate control system. Therefore, the term "fire" is amended to mean

> combustion or burning of any material or fuel in or from a vehicle as evidenced by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke, sparks, or smoldering, but does not include events and phenomena associated with a normally functioning vehicle such as combustion of fuel within the engine or exhaust from an engine.

7. *Handle.* JPMA pointed out that the final rule requires child restraint system manufacturers to report incidents involving "handles." Because some child restraints do not have separate handles, and are designed to be carried by the shell, JPMA asserted that it is necessary to define "handle" as a separate element of a child restraint. It suggested a definition of "handle," with which we generally concur. We are adopting a definition of "handle" to read as follows:

> *Handle* means any element of a child restraint system that is designed to facilitate carrying the restraint outside a motor vehicle, other than an element of the seat shell.

8. *Minimal specificity.* Under the final rule, a tire manufacturer must report the aggregate number of property damage claims it received during a calendar quarter that identify the manufacturer, model, and tire line. The reporting manufacturer must also identify the component of the tire allegedly giving rise to the claim. However, if the property damage claim fails to specify the component, the manufacturer is not required to include the report in the aggregate number reported.

RMA reiterated its comment to the NPRM that the tire identification number (TIN) be added to the definition of "minimal specificity." Its request focused on property damage claims. RMA argued that a report of property damage claims is meaningless unless the TIN of the tire involved in the claim is known, and that, in many instances, the TIN and other information, including the component code to be identified, will not be specified in a claim. RMA urged us to "reconsider this issue," and "require the inclusion of the TIN information for purposes of satisfying the 'minimal specificity' necessary to trigger a tire manufacturer's obligation to report property damage claims." In support, RMA argued that without the TIN, manufacturers will not be able to report at the level of the stock keeping unit (SKU) number for a tire, which is a required reporting element under Section 579.26. Without the TIN, RMA claimed that data could only be completed by tire line and size and would be of limited benefit to NHTSA. With respect to property damage claims, we agree and are amending the last sentence of Section 579.26(c) to state that "No reporting is necessary if the system or component involved is not specified in such codes, or if the TIN is not specified in any property damage claim." As elsewhere under the early warning rule, the term "claim" includes both the initial document received by the manufacturer and subsequent documents. However, we are not changing the definition of minimal specificity with respect to tires, so claims and notices of deaths or injuries must be reported under Section 579.26(b) even if the TIN is not known. As specified in Section 579.28(f)(2)(i), if the tire manufacturer subsequently became aware of the TIN, it must submit an updated report.

RMA also claimed that an actual physical inspection is necessary to provide meaningful information about potential tire problems. However, we decline RMA's suggestion to only report property damage claims involving tires that have been inspected. For early warning reporting purposes, we are collecting information on the basis of what is "claimed" rather than the manufacturer's view of the claim.

9. *Model.* Under the final rule, a child restraint system is defined as "equipment." Under Section 579.25(a), manufacturers of child restraint systems must provide information on each make and "model." For equipment, we defined "model" as "the name that its manufacturer uses to designate it." JPMA asserted that the industry uses model designators for reasons that do not always correspond with structural or material differences in the product. Manufacturers may assign a different "model number" to identify different patterns on the pad fabric or to identify products destined for different retailers. Requiring reporting by "model number" could result in separating similar restraints into different reports. Accordingly, JPMA recommended that "model" be defined "to be child restraints with the same shell and same restraint/harness system." Thus, in its opinion, child restraints offered with and without bases would be the same "model" if they nevertheless have the same shell and restraint/harness system. If two restraints use the same shell but different restraint/harness configurations, they would be defined as separate "models."

The definitional problem is that "model" has been defined to mean a "name" that a manufacturer uses to designate a vehicle or equipment. JPMA's comment did not indicate that child restraint system manufacturers use the same name to identify systems with the same shell and restraint/harness if they otherwise differ. However, it is our understanding that they do. We have considered whether adopting JPMA's suggested definition, which does not include "base" as a definitional criterion, might result in a reduction of reporting that could lead to a failure to receive early indicators of problems with bases. If Model X, for example, having the same shell and restraint/harness is manufactured in two configurations, one with a base and one without, and its manufacturer receives reportable data regarding the configuration with a base, the data cannot be realistically evaluated for early warning purposes if it is considered in the context of a total production that includes the configuration without a base. Ordinarily, it should be considered in the context of the total production of Model X systems with bases. Therefore, we have concluded that it is necessary to add "base (if so equipped)" to JPMA's suggested definition. Accordingly, we are amending the definition of "model" to state that, for child restraint systems, model means "the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped), and restraint system." Under this definition of "model," a restraint system with the same seat shell, buckle, and restraint system would nevertheless be divided into different models for reporting purposes if it were available both with a base and without a base.

10. *Model year.* With reference to vehicles and equipment to which manufacturers have not designated a model year, the definition of "model year" in the final rule means the year in which the vehicle equipment item was produced. This year is generally understood to be the calendar year. Because the final rule contains numerous references to "production year" (*see, e.g.*, Section 579.25) without a definition for the term, we have decided to revise the definition of "model year" and adopt a definition of "production year." Under the revised definition, "model year" means "the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured." The added term "production year" means "for a vehicle, the calendar year in which a vehicle is produced if the vehicle's manufacturer has not assigned it a model year. For equipment and tires, it means the calendar year in which the item was produced."

11. *Seat shell.* JPMA sought assurance that the term "seat shell" does not include "shell accessories," such as the tether, the label, or the seat pad. The final rule defined "seat shell" to mean the component, be it plastic or other material, which forms the structural shape, form, and support for the child seating system and other components to allow the seat to be secured to a passenger seat. The "accessories" listed by JPMA are not any of these components. JPMA also sought our assurance that accessories sold separately from child restraint systems (such as tether strap sets, latch retrofit units and bases) are not covered as well. We confirm that these separately-sold accessories are not covered under Section 579.25(c). However, information about claims or notices of deaths and injuries allegedly due to a defect in accessories such as tether strap sets, latch retrofit units and bases would have to be submitted pursuant to Section 579.27.

12. *Service brake system.* The definition of "service brake system" includes brake-related "equipment installed in a vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135." The Alliance pointed out that certain components of the parking brake system (a separate defined system for early warning reporting purposes) are covered in Standards Nos. 105 and 135, and that the definition should be amended to clarify that "service brake system" does not include parking brakes. The point is well taken, and we are amending the definition to add an exclusion after the reference to "135" to read "(except equipment relating specifically to a parking brake)." This will clarify that dual reporting is not required with respect to problems with a parking brake installed pursuant to either FMVSS No. 105 or No. 135.

13. *Tire.* RMA took issue with that portion of our definition of "tire" that includes "the tire inflation valves, tubes, and tire pressure monitoring regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.) and mounting elements (such as brackets, fasteners, etc.)." The latter included tire pressure monitoring system components. RMA objected "to including non-tire components" on the grounds that NHTSA did not propose a definition of "tire," and thus the industry had no chance to comment on it. They have taken the opportunity to comment in their request for reconsideration.

Although we recognize that these components are not actually "tires" in the common usage of the word, we believe that it is important to retain the definition as adopted in order to capture tire-related information in the possession of vehicle manufacturers that can affect the performance of a tire on a vehicle, as well as the actual tire itself. Therefore, we are denying RMA's petition on this point. However, to clarify that the broad definition of tire does not affect the reporting responsibilities of tire manufacturers under Section 579.26, we are amending the definition to state that it only applies to Sections 579.21–.24 and 579.27.

14. *Warranty claim.* The definition of "warranty claim" excludes "work performed * * * in connection with an emissions-related recall under the Clean Air Act." The Alliance requested us to amend this definition to exclude work performed in connection with any emissions-related recall under state emissions laws, such as might be required by the California Air Resources Board (CARB). It asserted that such an exclusion is consistent with the exclusion of Federal emissions recall work. We agree that there is no need to report work to satisfy State emissions-related recalls such as CARB might require on the so-called California car which distinguishes it from the EPA-regulated vehicles for initial sale in almost all other states. See 42 U.S.C. 7543(b), 7507; *Motor Vehicle Manufacturers Ass'n* v. *N.Y. State*, 17 F.3d 521 (2d Cir. 1994). Therefore, we are amending the definition of "warranty claim" to exclude "claims for reimbursement * * * in connection with a motor vehicle emissions-related recall under the Clean Air Act, or, in accordance with State law as authorized under 42 U.S.C. 7543(b) or 7507."

V. Petition by the Alliance Requesting Clarification of Property Damage Claims To Be Reported by Manufacturers of Motor Vehicles and Tires

With respect to the reporting of property damage claims with associated fatalities/injuries, the NPRM stated (66 FR 45846) that "If the incident that allegedly led to the property damage also resulted in a death or injury, the manufacturer would only report the incident as one involving a death or injury, and it would not be required to report the incident under the property damage requirement. Otherwise there could be a misleading 'double count.'" The Alliance noted that this clarification was not repeated in the final rule and asked for confirmation "that property damage claims are not separately reportable if the same

incident resulted in a reported death or injury."

Our omission in the final rule was unintentional. However, to simplify reporting by manufacturers, we will not require such property damage claims to be included. Therefore, we are adding new subsection (h) to Section 579.28, which also includes the exclusion of derivative claims discussed above, and which reads as follows:

> (h) When a report involving a claim or notice or is not required. If a manufacturer has reported a claim or notice relating to an incident involving death or injury, the manufacturer need not:
>
> (i) report a claim or notice arising out of the incident by a person who was not injured physically, and
>
> (ii) include in its number of property damage claims a property damage claim arising out of the incident.

This exemption includes property damage claims that may be received during or subsequent to the quarter in which a claim or notice of death or injury is reported.

We are redesignating existing subsections (h) through (l) as (i) through (m) respectively.

VI. Petition by JPMA To Reconsider Some Requirements of Section 579.25 That Apply to Manufacturers of Child Restraint Systems

JPMA commented that the preamble to the final rule indicated that child restraint system manufacturers would have to identify the "type" of restraint (*e.g.*, rear-facing infant seat, booster seat, or other) for which a quarterly report is being made. However, this requirement was not contained in Section 579.25. When NHTSA posted reporting templates on its Web site on August 14, 2002, only the production template specified that the "type" of child restraint be indicated. This requirement was not included in the templates for any of the substantive reporting categories such as death/injury. This led JPMA to believe that it was unclear "what value it is to NHTSA to require segregating production numbers by 'type.'"

Our omission of the word "type" in Section 579.25(a) was inadvertent, and we are correcting that omission here (we previously included "type" in Section 579.21(a), which applies to light vehicles). With regard to JPMA's other comment, the production template links the make, model, and production year with the "type." The reporting templates for categories of death/injury, warranty/consumer complaints, etc., contain the make, model, and production year. The data reported on the production template provide the information which will allow us to link the make, model, and production year data on the death/injury, warranty/consumer complaints etc. to a particular "type."

JPMA also commented that the three reporting categories of "rear facing infant seat," "booster seat," and "other" do not cover the range of products available. It asked how its members should categorize a hybrid product that is both a rear-facing infant seat and a toddler seat. We believe that these three categories are sufficient; in response to the specific question, hybrids such as infant/toddler or toddler/booster should be reported under "other."

We note here that the definitions of "rear-facing infant seat," "booster seat," and "other" were revised in the earlier final rule on reconsideration, published on April 15, 2003 (68 FR 18136).

Section 579.25(b)(1) requires a child restraint manufacturer to submit "a report on each incident involving one or more deaths or injuries that is identified in a claim against and received by the manufacturer * * *." JPMA asked for clarification of how its members should report to NHTSA "when there are injuries to adults or unrestrained children in a collision that also involved an allegedly restrained child." JPMA presented the following example: Manufacturer A receives a claim for an injury to a child allegedly restrained in a child restraint manufactured by A. The same claim is also served on child restraint manufacturer B, in whose product a second child was allegedly injured, and on vehicle manufacturer C, in whose vehicle the two restrained children, their unrestrained brother, and their two parents were allegedly injured.

In JPMA's view, it would contaminate the data base if JPMA member reports also included the adult injuries or unrestrained child injuries that occurred in the same motor vehicle collision, or if they included the injuries that allegedly occurred to a child restrained in a competitor's product. JPMA members will likely be on notice of these other injuries because any claim/lawsuit will list all the theories on which the claimants seek relief. JPMA sought our concurrence that only those injuries/fatalities to children purportedly restrained in child restraints manufactured by the reporting manufacturer should be reported by its members.

We do not concur with JPMA's interpretation. The hypothetical presented by JPMA likely would result in a separate claim against two separate manufacturers of child restraints and the manufacturer of the motor vehicle in which the child restraints were installed. Each manufacturer is required to report only the claim against it; other manufacturers receiving a multiple-party claim will report the claim as it applies to them, which would relate to their products. Also, if a restraint broke and impacted a child seated in a different manufacturer's restraint, the manufacturer of the broken restraint would have to report a claim against it by the child in the other restraint.

Another question asked by JPMA was whether the early warning reporting rule requires manufacturers to report warranty claims/consumer complaints related to lower anchor/tether issues. The commenter observed that under NHTSA's definitions, all complaints/claims regarding vehicle components installed in accordance with FMVSS No. 225 are reportable by the vehicle manufacturer as "seat belt" issues. We confirm JPMA's interpretation is correct, insofar as it states that child restraint manufacturers are not required to report on claims that by their terms are based on lower anchor/tether anchorage issues involving vehicle equipment. However, if a child restraint manufacturer receives a claim or a notice of death or injury alleging, for example, that a defect in the child restraint caused it to detach from such an anchorage, that claim or notice would have to be reported under Section 579.25(b).

JPMA sought NHTSA's guidance on "how to handle the situation in which a consumer complaint/warranty claim comes into the company but the production date is not ascertainable because the date code is not legible."

For child restraint systems, "minimal specificity" does not include the production year. Thus, the absence of a statement specifying the year the restraint was produced does not excuse the manufacturer from reporting a claim, notice, consumer complaint, warranty claim, or field report to the agency. This issue does not create a problem in the vehicle or tire context since the model/production year is almost always known by the manufacturer through the VIN or the TIN. To address this situation in the child restraint system context, we will require manufacturers to add a separate category of "unknown" model year (designated by the number "9999") in addition to the up-to-five production years on which they currently must report the number of consumer complaints/warranty claims. We are amending Section 579.25 appropriately. Moreover, since the production year may not be specified in a claim or notice involving other types of equipment (aside from tires) we are making a similar addition to Section 579.27(c).

These changes will also be reflected in the reporting templates.

JPMA commented that child restraint systems are often returned to the manufacturer for inspection following a consumer complaint. In many cases, the inspection may also cover aspects of the system not directly related to the complaint of the customer who returned the restraint. JPMA cited as an example, "a restraint returned for a customer complaint of a 'sticky buckle' may be inspected and deemed to have a properly functioning buckle, but the inspector notes a deformation in the seat shell that indicates potential misuse." JPMA asked how a "field report" describing that inspection should be categorized in the quarterly report.

The fact that the employee or representative of the manufacturer who conducted the inspection believes that the buckle functioned properly and that the shell may have been misused in service does not excuse the manufacturer from reporting both of these conditions in the field report category. A written communication does not have to be verified or assessed to have merit to be reported in this category (see definition of "field report"). In the example given, the report would be included in the number of field reports under both "buckle and restraint harness" and "seat shell" since there was an indication of a review and assessment related to both components. However, the original consumer complaint would only have to be reported in the "buckle and restraint harness" category.

Finally, JPMA pointed out that the template on NHTSA's Web site for reporting incidents of death or injury contains five spaces for entering a code number corresponding to one of four component codes, one for "other" and one for "unknown," a total of six possibilities. JPMA asked that the templates be revised to add a sixth space.

We do not believe that this is necessary. The spaces in the template are not dedicated to particular component categories, and there are no circumstances under which all six spaces would be required (*e.g.*, a manufacturer reporting problems in all four component categories, and "other" as well, will not be reporting "unknown").

VII. Petition by RMA To Reconsider Some Requirements of Section 579.26 That Apply to Manufacturers of Tires

RMA asserted that the vast majority of property damage claims fail to provide information needed to properly categorize the tire or assign the proper component code for reporting. It cited a recent survey in which each of its six members reviewed ten consecutive property damage claims; of the 60 claims, only 13 had information concerning the condition of the tire allegedly associated with the claim. For this reason, it asked that tire manufacturers not be required to report a property damage claim until it had inspected a tire.

Section 579.26(c) requires a report on the number of property damage claims "which involve the components specified in codes 71 through 73, and 98;" that is to say, a tire manufacturer must report claims involving tread, sidewall, bead, or a component other than tread, sidewall, and bead. The operative word here is "involve." A property damage claim need not be reported until the component "involved" in the claim is identified in some fashion (especially for code 98). However, this does not mean that the manufacturer can wait until it inspects the tire, since the claim itself may identify an alleged problem component, and, in any event, the result of a manufacturer's inspection cannot justify a failure to report based on a claim. The manufacturer would include the claim in the number of claims for the quarter in which the component is identified, even if that is a different quarter from the one in which the manufacturer initially receives the claim. If the component is never identified, either by the claimant or upon the manufacturer's inspection of the tire, the manufacturer would not have to report the claim.

RMA asked us to reconsider the decision we made in issuing the final rule (67 FR at 45853) not to include "customer satisfaction conditions" as a reportable category under "warranty adjustments." We have re-examined the discussion of this issue in the NPRM (66 FR 66190), RMA's comment to it, and our response in the preamble to the final rule, cited above. We have concluded that it is not necessary to establish a separate category to address RMA's concern. To explain: in the NPRM, proposed Section 579.27(c) referred to reporting by tire manufacturers of "warranty claims (adjustments)." The NPRM defined "warranty claim" as including any claim presented to a manufacturer for payment pursuant to "good will." "Good will," in turn, was defined in the NPRM as repair or replacement "not covered under warranty." RMA commented that not all good will claims would be captured in the categories of "warranty claims (adjustment) that manufacturers must report on" and that to capture all good will claims, we should add a category of "customer satisfaction conditions."

The final rule differed from the proposal. With respect to tire manufacturers, the final rule adopted the term "warranty adjustment," which was defined without reference to good will, *i.e.*, a "warranty adjustment" is "payment or other restitution" by a tire manufacturer made pursuant "to a warranty program offered by the manufacturer." The definition adopted for "good will," which applies to all manufacturers, included, as proposed, repair or replacement "not covered under warranty." The issue raised by RMA is that the warranty (adjustment) systems of tire manufacturers may or may not have separate entries/designations for "good will." Thus, if a manufacturer's warranty (adjustment) program does not include restitution where the tread, bead, sidewall, or other component has not performed satisfactorily due to adverse operating conditions, customer abuse, or service abuse, but the manufacturer nevertheless compensates for them, it would not have to report these restitutions as "warranty adjustments." However, this is not what we intended. To address this, we are amending the definition of "warranty adjustment" to include reference to "a warranty program offered by the manufacturer or good will."

Notwithstanding this change, we also want to confirm that we adhere to our view that we do not want to receive data on warranty adjustments that do not relate to one or more of the four identified component categories. Information about adjustments made for other reasons (*e.g.*, replacing three additional tires when only one experienced a problem) would not help us to identify potential safety defects.

In the NPRM, we proposed that a manufacturer of tires need only report information (other than incidents involving a death, as specified in paragraph (b) of this section, if the tires of the same size and design were not manufactured or imported in quantities greater than 15,000 in any single calendar year. However, the final rule substituted for the figure 15,000 "tires that are limited production tires or are otherwise exempted from the Uniform Tire Quality Grading Standards [UTQGS] by Section 575.104(c)(1)" (*i.e.*, "deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less"). See the last sentence in the introductory paragraph of Section 579.26. A "limited production tire" is one that meets four criteria, "as applicable," which are posited on

annual limits of 15,000, 10,000, and 35,000 tires. In its petition for reconsideration, RMA asserted that "determining whether a tire meets the UTQGS exemption is not a simple matter and could lead to vastly different interpretations by tire manufacturers. Whether or not NHTSA intended the early warning reporting exemption to be identical to the UTQGS exemption, by doing so the agency has introduced a great deal of complexity into what should be a relatively straightforward issue." In light of this, RMA requested "that the final rule be revised to exempt all tires with an annual production of 5,000 or less from the early warning reporting requirements in Sec. 579.26, and to delete the reference to UTQGS."

Our intent through this rulemaking has been to establish a threshold for full reporting of an annual production or importation of 15,000 tires, as originally proposed (66 FR at 66225). Our decision to reference the UTQGS was an effort to simplify the process. It appears from RMA's statement that by referring to "limited production tires," we inadvertently made it more complicated. Therefore, we have decided to return to the specific number of 15,000 tires per year. However, we will retain the exclusion from full reporting for the types of tires excepted by Section 575.104(c)(1), since we believe that full reports on such tires would be unlikely to yield valuable information. Accordingly, the excepted phrase has been amended to incorporate the substance of Section 575.104(c)(1) without referencing UTQGS.

Our review of this issue revealed that we had made an inadvertent omission in the sentence establishing this exclusion. We stated that, with respect to the excluded tires, a manufacturer "need only report information on incidents involving a death, as specified in paragraph (b) of this section." However, Section 579.26(b) actually requires reports of "incidents involving death *or injury*" (emphasis supplied). Therefore, we will add the words "or injury" to the sentence allowing exclusions from full reporting, which will now read:

> For each group of tires with the same SKU, plant, and year for which the volume produced or imported is less than 15,000, or are deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need only report information on incidents involving a death or injury, as specified in paragraph (b) of this section.

We decline to adopt RMA's suggestion to reduce the threshold to 5,000 tires per year. While a lower threshold would result in additional reporting (and increase the reporting burden on manufacturers producing between 5,000 and 15,000 of a given tire annually), it is unlikely that this additional information would lead to the identification of significant numbers of safety defects.

Under Section 579.26(d), a tire manufacturer must provide NHTSA with a list of common green tires on a quarterly basis. Included in the information to be provided is the plant where the common green tire was manufactured, brand names, and brand name owners. RMA asserted that this would not enhance the value of common green information, which is to be able to group tires "according to common internal manufacturing specifications." We are willing to simplify reporting by tire manufacturers by eliminating the requirement identify the tire plant, which the RMA asserted is repetitive with production charts and may be linked through the SKU number provided in common green tire reporting. However, we believe that a tire fabricator must identify in the common green listing tire brand name and brand name owners for the applicable tire line. Otherwise, we would not have reports of who is a brand name owner and should be reporting under Subpart C. Accordingly, we are revising the second sentence of Section 579.26(d) to read as follows:

> (d) Common green tire reporting. * * * For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes, SKU numbers, and brand name owners.

RMA asked how manufacturers should treat tires that are imported as original equipment on imported motor vehicles, or imported as replacement tires. With respect to imported replacement tires, it recommended that the final rule be amended to allow tire manufacturers to report only the quantity of tires imported during the quarterly reporting period for purposes of complying with Section 579.26(a). For tires that are imported as original equipment on motor vehicles, RMA asserted that tire manufacturers do not have access to all information required by Section 579.26(a), since it is proprietary to the vehicle manufacturer. For such imported tires, tire manufacturers can only report fatalities and injuries "for which they receive notification." RMA recommended that the final rule be revised "to require tire manufacturers to report only injuries and fatalities associated with imported tires on OE vehicles."

The final rule requires reporting by a "manufacturer" who has imported tires into the United States. See Section 579.26(a). Clearly, this covers an importer of replacement tires who, by virtue of being an importer of motor vehicle equipment for resale, is a manufacturer as defined by statute. See 49 U.S.C. 30102(a)(5)(B).

Under Section 579.26(a), a tire manufacturer must report "Information that states the manufacturer's name, the quarterly reporting period, the tire line, the tire size, the tire type code, the SKU, the plant where manufactured, whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the cumulative warranty production, and the cumulative total production through the end of the reporting period." An importer of tires for resale can determine this information from an examination of the tires, with the possible exception of the SKU, and the make, model, and model year of vehicles for which the tire is approved for original equipment. As the statute equates the act of importation with the act of production, the importer should not report total worldwide production, but only the number of tires of each tire line, size, etc., imported cumulatively through the end of the reporting period.

We generally do not consider importers of motor vehicles (with tires manufactured abroad) to be importers of the tires installed as OE on their vehicles, even though such tires are considered as "replacement equipment" for purposes of defect and noncompliance responsibility. See 49 CFR 573.4. Thus, with one exception (discussed below), we will not require importers of motor vehicles with foreign-made tires installed on the vehicle when imported to report under Section 579.26 as a tire manufacturer (though they would be required to report as a tire manufacturer if they import such tires separately for replacement purposes). If a vehicle manufacturer receives a claim, complaint, or field report about a tire on one of its vehicles (whether the tire was manufactured in the United States or imported), it must report that claim, etc. in the "tire" component category (code 19). Such claims, etc., would have to be reported to us even if the vehicle manufacturer forwarded them to the tire manufacturer for action or payment.

Nor would we expect tire manufacturers to report comprehensively on tires installed on new motor vehicles that they did not import themselves, since they would not have complete information as to

production or other matters. Nevertheless, tire manufacturers must report information that they do receive, from whatever source, regarding claims or notices of death or injury, property damage claims, and warranty adjustments on their tires in the United States, whether they imported them or not. If such information were not reported, we would have an incomplete picture of emerging safety problems with such tires.

Notwithstanding the above discussion, an importer/manufacturer of vehicles equipped with tires at the time of importation must report as a tire manufacturer under Section 579.26 with respect to the tires installed as original equipment on its imported vehicles under the rare circumstance where the foreign fabricator of the tires does not itself import any tires into the United States and therefore would not be reporting any early warning information to us. We have made a corresponding revision to Section 579.26.

Turning to motorcycle tires, RMA asserted that because of the way they are sold and distributed, it is not possible for tire manufacturers to identify the manufacturer of the motorcycle on which their tires will be OE, "nor to easily obtain this information." It urged deletion of the OEM column from the early warning reporting format for motorcycle tires. We are retaining the column (for all tires) because where a tire manufacturer does know the make, model, and model year for the OE application(s) of a tire, that information should be reported. If the tire manufacturer knows that a particular tire line, size, etc. is not used as OE on any vehicles, it should state "N" (for "none") in that field in the template. If it is not sure, it should state "U" (for "unknown") in that field.

Section 579.26 requires the reporting of early warning data "for each reporting period." The format that RMA suggested in its comment to the NPRM would provide for cumulative (*i.e.*, to the date of the report) reporting. Although NHTSA adopted RMA's suggested format to a large extent, the final rule required quarterly rather than cumulative reporting. In its petition, RMA reiterated its view that Section 579.26 should require the reporting of cumulative early warning data received by a manufacturer, by year of manufacture, through the end of each reporting period. We are denying RMA's petition on this point for the reasons stated in the final rule and because we want consistency in the manner of reporting among all manufacturers.

Finally, RMA raised several concerns about disclosure of early warning data. The reconsideration of the early warning final rule is not the appropriate forum for resolving issues of substance regarding confidential submissions of early warning reporting information, which will be addressed in our ongoing rulemaking to revise 49 CFR Part 512.

VIII. Petition by the Alliance Requesting Reconsideration and Clarification of Some Requirements of Sections 579.21 and 579.28

In its petition for reconsideration, the Alliance contended that the requirement imposed by Section 579.28(b) to file reports "not later than 30 days after the last day of the reporting period" does not take into account that the 30th day could be a Saturday, Sunday, or Federal holiday. It suggested that the rule should explicitly provide that the due date would be the first business day following the weekend or Federal holiday. We are granting this request, and amending Section 579.28(b) appropriately.

Finally, in its letter of October 10, 2002, the Alliance noted an inconsistency between Section 579.21(c), and Sections 579.21(b) and (d). Section 579.21(c) requires submission of information relating to "the nine model years prior to the earliest model year in the reporting period," whereas the information to be submitted under Sections 579.21(b) and (d) relates to vehicles "less than ten calendar years old at the beginning of the reporting period." The Alliance recommended that subsections (b) and (d) be revised to use the same language as subsection (c). We are granting the Alliance's request, and, as well, are revising similar subsections in Sections 571.22–26.

IX. Issues Arising at NHTSA's Artemis Workshop

In January 2003, we conducted a workshop to familiarize personnel from industry with the data collection and retention system that we have established for the submission of early warning reporting data (referred to as "Artemis"). The workshop indicated several areas where clarifications and simplifications could be made, and we are "fine tuning" the final rule with some minor amendments.

1. Cover Sheets

Based on our previous experience with safety recalls and from a canvass of manufacturers at the workshop, some manufacturers may wish to provide cover sheets to explain or clarify one or more portions of the data they submit. For example, a manufacturer may wish to provide an explanation for a spike appearing in data regarding a particular make, model, and model year of vehicle. We are willing to accept cover sheets provided on a voluntary basis. They may be sent to the Chief of the Defect Assessment Division, Office of Defects Investigation, NHTSA.

2. Reporting of Deaths and Injuries

At the workshop, some manufacturers requested that a new field be added to the Death and Injury Reporting Template that would allow a manufacturer to assign a unique alphanumeric code to its submission of information under paragraph (b) of Sections 579.21–26. We are adding this field to the data template but wish to emphasize that assigning such a code is voluntary and is not required. If a manufacturer has not assigned a code, it may leave the field blank.

We also want to emphasize that subsequent submissions of information to supplement that previously reported is required only for reporting of incidents involving death or injury. See Section 579.28(f) and the associated preamble discussion at 67 FR 45862–63.

The question arose whether a manufacturer who reports under Section 579.27(a) must file a report on deaths and injuries at the end of a quarter in which it received no claims or notices of death or injury. The answer is no, and we are amending Section 579.27(b) to make this clear. To require such a report would impose an unnecessary burden upon low-volume vehicle manufacturers and manufacturers of original or replacement equipment other than child restraint systems and tires. On the other hand, we believe that reports should be required of all manufacturers reporting under Sections 579.21–.26 and cover all categories of reporting, even when no relevant information has been received during a quarter. If we do not require a "zero" report, we will not know at the end of a quarter whether a report is overdue. This will assure that we have an uninterrupted flow of reports. We are making an appropriate amendment to Section 579.28(b).

3. Field Reports

The final rule requires that copies of non-dealer field reports be submitted "alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year." See, *e.g.*, Section 579.21(d). This information standing alone will not allow us to easily identify, review, and analyze the subject of these field reports in any organized manner. We need to know the applicable system(s) or component(s) covered by a given field report. This

should not complicate reporting since manufacturers already have to review field reports to sort them by model and model year.

To accomplish this goal, and to allow efficient analysis of these non-dealer field reports, we have developed a naming convention for them and have included an appropriate template on our website. That template will include fields to allow identification of the manufacturer submitting the field report, the make, model, and model year(s) of the vehicle(s) covered by the field report, and the component(s) or system(s) addressed in the report. If a non-dealer field report refers to more than one system or component category, the manufacturer must identify each such category, up to five such categories.

While ordinarily a field report will address a single make/model of vehicle, we recognize that on occasion a field report may address more than one make/model. For example, a General Motors field report could address a possible problem with a component of the fuel system and specifically mention certain Buick and Pontiac passenger cars. In order to assure consistency and to simplify reporting, we have decided that, for vehicles, when a field report refers to more than one model built on a single platform (as defined in Section 579.4(c)), in the submission of field reports it should be identified by that platform rather than by one or more of the particular makes/models referred to in the field report. In the relatively rare case where a field report refers to makes/models built on more than one platform, in order to allow us to effectively use the information, manufacturers will be required to submit multiple copies, one for each platform.

If a field report refers to more than one model year (or production year) of a given make/model or platform, the manufacturer shall submit it as though it applied to the earliest model year covered by the report. (However, when identifying the field report using the template, each model year covered by the report shall be specified.) We are making appropriate amendments in the sections on field reports to implement these changes.

Electronic submissions of field reports must be submitted as one report per file, so that we will be able to identify and review them individually. However, where a number of files are involved, manufacturers may "Zip" the files together.

4. Designation of Types of Trailers and Medium-Heavy Trucks and Buses

TTMA requested that we consider requiring trailer manufacturers to identify the "model" of trailers using the DOT VIN code designation, and provided a list of nine "models." We have accepted this suggestion, but note that the "models" described by TTMA are more properly considered "types." We are making an appropriate amendment to Section 579.24, adding a "type" field to the template, and amending the definition of "type" in Section 579.4(c) to specify, for trailers, that it refers to one of the ten separate categories, the nine suggested by TTMA (van trailer, flatbed, trailer converter dolly, lowbed, dump, tank, dry bulk, live stock, boat, auto transporter, and other), plus recreational trailers.

We had previously required manufacturers to identify the "type" of light vehicles and of child restraint systems. The TTMA request has led us to conclude that it would also be appropriate to also require manufacturers of medium-heavy vehicles and buses to identify the "type" of such vehicle. Viewed broadly, these types include truck, tractor, school bus as defined in 49 CFR 571.3, transit bus (a bus for local travel), coach (a bus for intercity travel), recreational vehicle (a motor vehicle other than a trailer that is designed and equipped for leisure travel), emergency vehicle (a motor vehicle, other than a light vehicle, designed for emergency service, such as fire fighting, ambulance, rescue, police use, and similar applications), and other (a medium heavy vehicle or bus not otherwise included in the types listed above). Therefore, we are making appropriate amendments to Sections 579.22 and 579.4(c), and to the template for this category of vehicles.

5. Tires

At the workshop, some tire manufacturers asked that they be allowed to use the DOT standardized plant code that NHTSA assigns (see 49 CFR 574.5(a) and 574.6(b)) for tires produced for sale in the United States as an identification of the plant where a tire was manufactured when they submit information required by Section 579.26(a) and (c). We have concurred with this. If a tire manufacturer so chooses, it may reference the two-character DOT alphanumeric codes for U.S.-located production plants. However, the full plant name must be provided for foreign tire production plants.

6. Correction of Section 579.23(c)

The reporting requirements for motorcycle manufacturers cover 20 specific systems or components identified by codes 01–20 in Section 579.23(b)(2). Section 579.23(c) erroneously refers to "codes 01 through 22 in paragraph (b)(2) of this section." We are correcting the reference to "22" in subsection (c) to "20."

X. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

XI. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be significant by the Office of Management and Budget under E.O. 12866 because of congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for this rulemaking and filed in the docket. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business.

The changes made in this final rule on reconsideration are relatively minor and may reduce burdens on some small manufacturers although not in a quantifiable way.

Based on the best information available to us at this time, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism). Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this final rule on reconsideration are relatively minor and may reduce paperwork burdens on some manufacturers though not in a quantifiable way.

Data Quality Act. Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, § 515, codified at 44 U.S.C. § 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation.

NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures as appropriate.

Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

These amendments to the final rule (67 FR 45822 at 45872–45883) are not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. It is not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 49 CFR part 579 is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 2. Section 579.4(c) is amended by revising the definitions of "Field report," "Fire," the second sentence of "Model," "Model year," the first sentence of "Service brake system," "SKU (Stock Keeping Unit)," "Tire," "Warranty adjustment," and the second sentence of "Warranty claim," and adding the definitions of "Control," "Handle," a third sentence to "Model," "Production year," and two new sentences in the definition of "Type" before the present second sentence, in alphabetical order, to read as follows:

§ 579.4 Terminology.

* * * * *

(c) Other terms. * * *

Control (including the terms controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

* * * * *

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer, or from a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment or any part thereof produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney-client privilege or the work product exclusion.

Fire means combustion or burning of material in or from a vehicle as evidence by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke, sparks, or smoldering, but does not include events and phenomena associated with a normally functioning vehicle, such as combustion of fuel within an engine or exhaust from an engine.

* * * * *

Handle means any element of a child restraint system that is designed to facilitate carrying the restraint outside a motor vehicle, other than an element of the seat shell.

* * * * *

Model * * * For equipment other than child restraint systems, it means the name that the manufacturer uses to designate it. For child restraint systems, it means the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped) and restraint system.

Model year means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured. If the manufacturer has not assigned a model year, it means the calendar year in which the vehicle was manufactured.

* * * * *

Production year means, for equipment and tires, the calendar year in which the item was produced.

* * * * *

Service brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135 (except equipment relating specifically to a parking brake). * * *

* * * * *

SKU (Stock Keeping Unit) means the alpha-numeric designation assigned by a manufacturer to uniquely identify a tire product. This term is sometimes referred to as a product code, a product ID, or a part number.

Tire means an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of a vehicle, including the spare tire. For purposes of §§579.21 through 579.24 and §579.27 of this part, this term also includes the tire inflation valves, tubes, and tire pressure monitoring and regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Type * * * In the context of a medium heavy vehicle and bus, it means one of the following categories: Truck, tractor, transit bus, school bus, coach, recreational vehicle, emergency vehicle, or other. In the context of a trailer, it means one of the following categories: Recreational trailers, van trailers, flatbed trailer, trailer converter dolly, lowbed trailer, dump trailer, tank trailer, dry bulk trailer, livestock trailer, boat trailer, auto transporter, or other.

* * *

* * * * *

Warranty adjustment means any payment or other restitution, such as, but not limited to, replacement, repair, credit, or cash refund, made by a tire manufacturer to a consumer or to a dealer, in reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer or goodwill.

Warranty claim * * * It does not include claims for reimbursement for costs or related expenses for work performed to remedy a safety-related defect or noncompliance reported to NHTSA under part 573 of this chapter, or in connection with a motor vehicle emissions-related recall under the Clean Air Act or in accordance with State law as authorized under 42 U.S.C. 7543(b) or 7507.

Subpart C—Reporting of Early Warning Information

■ 3. The introductory text of paragraph (b) and paragraph (d) of §579.21 are revised to read as follows:

§ 579.21 Reporting requirements for manufacturers of more than 500 light vehicles annually.

* * * * *

(b) *Information on incidents involving death or injury.* For all light vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all light vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of light vehicle produced by a manufacturer on a particular platform, the manufacturer shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 4. In §579.22, the first sentence of paragraph (a), the introductory text of paragraph (b), and paragraph (d) are revised to read as follows:

§ 579.22 Reporting requirements for manufacturers of 500 or more medium heavy vehicles and buses annually.

* * * * *

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, and the production. * * *

(b) *Information on incidents involving death or injury.* For all medium heavy vehicles and buses manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all medium heavy vehicles and buses manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of vehicle produced by a manufacturer on a particular platform, the manufacturer shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 5. In §579.23, the number "22" in paragraph (c) is revised to read "20", and the introductory text of paragraph (b) and paragraph (d) are revised to read as follows:

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

* * * * *

(b) *Information on incidents involving death or injury.* For all motorcycles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all motorcycles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section or fire, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motorcycle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of motorcycle produced by a manufacturer on a particular platform, the manufacturer shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 6. In §579.24, paragraph (a), the introductory text of paragraph (b), and paragraph (d) are revised to read as follows:

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased. For each model that is manufactured and available with more than one type of service brake system (*i.e.*, hydraulic and air), the information required by this subsection shall be reported by each of the two brake types (*i.e.*, "H" for hydraulic, "A" for air). If the service brake system in a trailer is not readily characterized as either hydraulic or air, the trailer shall be considered to have hydraulic service brakes. If a model has no brake system, it shall be reported as "N," for none.

(b) *Information on incidents involving death or injury.* For all trailers manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

(d) *Copies of field reports.* For all trailers manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section or fire, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a trailer or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year. For purposes of this paragraph, if a field report refers to more than one make or model of trailer produced by a manufacturer on a particular platform, the manufacturer

shall submit the report alphabetically by platform rather than by make or model. If such a field report refers to more than one platform, separate copies shall be submitted for each such platform. If a field report refers to more than one model year of a specified make/model or platform, the manufacturer shall submit it by the earliest model year to which it refers.

■ 7. §579.25 is amended by adding a sentence at the end of the introductory text, by revising the first sentence of paragraph (a) and the introductory text of paragraph (b), by adding a sentence at the end paragraph (b)(2), and by revising paragraph (d) to read as follows:

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

* * * For paragraph (c) of this section, if any consumer complaints or warranty claims regarding a model of child restraint system do not specify the production year of the system, the manufacturer shall submit information for "unknown" production year in addition to the up-to-five production years for which the manufacturer must otherwise report the number of such consumer complaints/warranty claims.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the production year, the type, and the production. * * *

(b) *Information on incidents involving death or injury.* For all child restraint systems manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period:

* * * * *

(2) * * * If the production year of the child restraint system is unknown, the manufacturer shall specify the number "9999" in the field for production year.

* * * * *

(d) *Copies of field reports.* For all child restraint systems manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a child restraint system (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by production year. For purposes of this paragraph, if a field report refers to more than one make or model of child restraint system produced by a manufacturer, the manufacturer shall submit the report under the first such model in alphabetical order. If a field report refers to more than one production year of a specified make/model, the manufacturer shall submit it by the earliest production year to which it refers.

■ 8. In §579.26, the introductory text is revised, a sentence is added at the end of paragraph (a), introductory text is added in paragraph (b), and the last sentences of paragraph (c) and of paragraph (d) are revised to read as follows:

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported tires in the United States shall submit the information described in this section. For purposes of this section, an importer of motor vehicles for resale is deemed to be the manufacturer of the tires on and in the vehicle at the time of its importation if the manufacturer of the tires is not required to report under this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the reporting period, including tire lines no longer in production. For each group of tires with the same SKU, plant where manufactured, and year for which the volume produced or imported is less than 15,000, or are deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need only report information on incidents involving a death or injury, as specified in paragraph (b) of this section. For purposes of this section, the two-character DOT alphanumeric code for production plants located in the United States assigned by NHTSA in accordance with §§574.5(a) and 574.6(b) of this chapter may be used to identify "plant where manufactured." If the production plant is located outside the United States, the full plant name must be provided.

(a) *Production information.* * * * If the manufacturer knows that a particular group of tires is not used as original equipment on a motor vehicle, it shall state "N" in the appropriate field, and if the manufacturer is not certain, it shall state "U" in that field.

(b) *Information on incidents involving death or injury.* For all tires manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period:

* * * * *

(c) *Numbers of property damage claims and warranty adjustments.* * * * No reporting is necessary if the system or component involved is not specified in such codes, or if the TIN is not specified in any property damage claim.

(d) *Common green tire reporting.* * * * For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes, SKU numbers, brand names, and brand name owners.

■ 9. Section 579.27 is amended by adding a sentence at the end of paragraph (b) and by adding a new paragraph (c)(6) to read as follows:

§ 579.27 Reporting requirements for manufacturers of fewer than 500 vehicles annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

* * * * *

(b) *Information on incidents involving deaths.* * * * If a manufacturer has not received such a claim or notice during a reporting period, the manufacturer need not submit a report to NHTSA for that reporting period.

(c) * * *

(6) For original and replacement equipment, if the production year of the equipment is unknown, the manufacturer shall specify the number "9999" in the field for model or production year.

■ 10. Section 579.28 is amended by adding two sentences at the end of paragraph (b), by redesignating paragraphs (h), (i), (j), (k), and (l) as (i), (j), (k), (l), and (m), respectively, and by adding new paragraph (h) to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(b) *Due date of reports.* * * * Except as provided in §579.27(b), if a manufacturer has not received any of the categories of information or documents during a quarter for which it is required to report pursuant to §§579.21 through 579.26, the manufacturer's report must indicate that no relevant information or documents were received during that quarter. If the due date for any report is a Saturday, Sunday, or a Federal holiday, the report shall be due on the next business day.

* * * * *

(h) *When a report involving a claim or notice is not required.* If a manufacturer has reported a claim or notice relating to an incident involving death or injury, the manufacturer need not:

(1) Report a claim or notice arising out of the incident by a person who was not injured physically, and

(2) Include in its number of property damage claims a property damage claim arising out of the incident.

* * * * *

■ 11. Section 579.29(b) is amended by adding a new last sentence to read as follows:

§ 579.29 Manner of reporting.

* * * * *

(b) *Submission of documents.* * * * Each document shall be identified in accordance with the templates provided at NHTSA's early warning Web site, which is identified in paragraph (a)(1) of this section.

* * * * *

Issued on: June 5, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–14702 Filed 6–6–03; 4:12 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 6]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds to petitions to extend the initial period for quarterly reporting and the due date for one-time historical reports established by the final rule published on July 10, 2002, and implementing the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will continue to be required to report information and to submit documents that may assist NHTSA to promptly identify defects related to motor vehicle safety.

This document changes the initial reporting period for quarterly incident and statistical data reports from the second quarter of 2003 to the third quarter of 2003, changes the reporting period for one-time historical reports by one quarter, and makes a corresponding change of the reporting date for the one-time historical report to December 31, 2003. The document also defers the initial reporting period for copies of non-dealer field reports for two quarters until the first quarter of 2004, and changes the due dates for the submission of copies of non-dealer field reports.

The agency's response to petitions for reconsideration of certain other provisions of the final rule appears in another notice separately published in the **Federal Register**.

DATES: *Effective Date:* The effective date of the amendments made by this final rule is July 11, 2003. *Applicability Dates:* Various provisions of this final rule are applicable on the dates stated in the regulatory text. Petitions for Reconsideration: Petitions for reconsideration of amendments made by this final rule must be received not later than July 28, 2003.

ADDRESSES: Petitions for reconsideration of the amendments made by this final rule must refer to the docket or Regulatory Identification Number (RIN) for this rulemaking, and be addressed to the Administrator, National Highway Traffic Safety Administration (NHTSA). You may submit a petition by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

See Section IV "Privacy Act Statement" for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information. The reader is also referred to a response to some issues raised by other petitions for reconsideration of the final rule. 68 FR 18136 (April 15, 2003). We are responding to other issues raised by such petitions in a separate notice published in the **Federal Register**.

The EWR provisions addressed by this notice appear in Subchapter C of 49 CFR part 579, *Reporting of Information and Documents About Potential Defects,* specifically Sections 571.21–29. The final rule establishes a schedule for the reporting of information and documents by calendar quarters. Under that schedule, the first reporting quarter is the second quarter of 2003 (April 1–June 30), with reports and copies of non-dealer field reports due not later than 60 days after the end of the quarter, that is to say, August 29, 2003. See Sections 579.28(a) and (b). In addition, not later than September 30, 2003, all manufacturers of 500 or more motor vehicles annually, manufacturers of child restraint systems, and manufacturers of tires must file a one-time report of historical information on the numbers of warranty claims or warranty adjustments and field reports that they received in each calendar quarter from April 1, 2000 to March 31, 2003. See Section 579.28(c), as amended (68 FR 18143 (April 15, 2003)).

II. Petitions for Extension of the Date of Reporting Requirements

NHTSA has received a number of petitions related to the final rule. For example, General Motors Corporation (GM) submitted a petition for reconsideration raising issues about the date established by the final rule for submission of the one-time historical reports. Thereafter, we received a number of related petitions.

On November 22, 2002, the National Association of Trailer Manufacturers (NATM) filed a "Petition for Postponement of Compliance Date for Certain Trailers." NATM sought delayed compliance dates for reporting of information. Shortly thereafter, on December 5, 2002, the National Truck Equipment Association (NTEA) and the Recreational Vehicle Industry Association (RVIA) jointly petitioned NHTSA to "extend for a period of six months" the periods for and the dates that manufacturers of motorhomes, multi-stage vehicles, alterers, and trailers and trailer equipment would report, or, alternatively, "all affected manufacturers that meet the Small Business Administration's definition of 'small entities' as stated in 13 CFR Sec. 121.201." This petition asked that the first quarterly reporting period begin October 1, 2003, with the first report due not later than February 29, 2004, and that the one-time historical report be due on March 31, 2004.

Finally, on March 18, 2003, the Rubber Manufacturers Association (RMA) submitted a petition to postpone the periods for which reporting is required until after NHTSA has responded to RMA's timely petition for reconsideration of various provisions of the final rule. We are responding to RMA's petition for reconsideration in Notice 5.

We have decided to extend the reporting dates, for the reasons discussed below, which we regard as a partial grant of these petitions.

III. Revisions to the Dates in the EWR Regulation

In the final rule, we addressed how NHTSA plans to handle and utilize information submitted under the rule. See 67 FR at 45865. We noted that 49 U.S.C. 30166(m)(4)(A)(i) and (ii) require that our early warning rule specify how the information reported to us will be used. Among other things, we stated that data submitted by manufacturers would be entered into a new computer system and data warehouse called ARTEMIS—Advanced Retrieval (Tire, Equipment, Motor vehicles) Information System. ARTEMIS is being developed for NHTSA's Office of Defects Investigation (ODI) under an agreement with the Volpe National Transportation Systems Center (Volpe) in Cambridge, Massachusetts. ARTEMIS will provide for centralized storage of information, include a document management system, use data analysis tools, and facilitate the provision of appropriate information to the public.

There are three basic types of EWR data that will be reported quarterly (with slight variations depending on the type of manufacturer): (1) Information about incidents involving deaths and injuries in claims and notices received by a manufacturer; (2) statistical data about the number of items produced, property damage claims, consumer complaints, warranty claims,and field reports; and (3) copies of non-dealer field reports.

Numerous interpretation questions have been submitted by manufacturers and their associations. The agency has been responding to these questions. In addition, our April 15, 2003, notice (Notice 4) responding to some issues raised in petitions for reconsideration made changes to some requirements, and other changes are being made in the response to other issues raised by these petitions (Notice 5). To ensure that we have consistent data and that manufacturers have time to incorporate all needed changes into their data collection systems, in response to these regulatory changes and in light of NHTSA's interpretations, we are extending the reporting period one quarter. We are correspondingly extending the date these reports are due, to Monday, December 1, 2003. (To make it more convenient for manufacturers to submit their data and to protect against a possible system overload that could occur if every manufacturer tried to submit its data on the afternoon of December 1, we plan to work with the larger manufacturers to develop a schedule under which their data will be submitted over several days at the end of November and/or early December.)

We are extending the requirement for the submission of copies of non-dealer field reports, which must be submitted to ODI pursuant to subsection (d) of Sections 579.21–579.25, for a longer period. Manufacturers use a myriad of data retention and transmission tools and procedures to generate, describe, store, and submit these field reports. In view of the different approaches, various issues must be addressed before manufacturers transmit these field reports electronically to assure that ODI will be able to receive, store, access, and effectively utilize these reports. To capture the unique attributes of each specific field report and to make the field report data retrievable in an effective manner, ODI has decided to create a file naming convention that will allow the field reports to be stored in a relational and accessible manner. Although we have advised the industry that we plan to create such a convention, we have not yet notified manufacturers of its specific terms. We anticipate that we will be able to do so before the end of the second quarter of 2003.

Because each non-dealer field report will have to be individually reviewed and coded by the manufacturers, to allow manufacturers time to become familiar with the file naming convention, we are deferring the initial reporting period for the submission of copies of non-dealer field reports for two calendar quarters beyond the calendar quarter for which numerical reports will be required, *i.e.*, until the first quarter of 2004.

In addition, since transmission of electronic copies of field reports will utilize a great deal of bandwidth, which could delay or interfere with the transmission of other EWR data, we have decided that the submission date for these documents should be different from the date that other EWR information is due. Thus, we are amending the regulation to provide that copies of these reports will be due 30 days after the other quarterly EWR data are due. This amendment will reduce the burden on the manufacturers' computer facilities and on ARTEMIS.

With regard to one-time historic reporting, we understand that the September 30, 2003 due date is presenting a challenge to some manufacturers, notwithstanding the use of temporary staff. In its petition for reconsideration, GM represented that many of the documents it maintains exist in uncoded systems, requiring manual retrieval, review, and coding into the specified system/component categories, concluding that "GM estimates that it will take multiple labor years—just to compile the historical report." We note that NTEA/RVIA asked for a six-month delay in this requirement as well. An extension beyond September 30 will ease the burden on manufacturers and will also provide ODI with additional time to complete its review of the initial quarterly submissions. The period covered by the one-time historical report is also adjusted by one quarter (*e.g.*, for motor vehicles, the period for which data must be reported begins on July 1, 2000 (rather than April 1, 2000), and ends on June 30, 2003 (rather than March 31, 2003). Therefore, the due date for one-time historical reports submitted pursuant to Section 579.28(c), as amended, will be December 31, 2003.

IV. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

V. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. The underlying rulemaking has been determined to be significant by the Office of Management and Budget under E.O. 12866 because of Congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts of the underlying rulemaking can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for the rulemaking completed in July 2002 and filed in the docket. The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule. Except for this short-term adjustment, they do not change the reporting requirements.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. This was addressed in the final rule. 67 FR 45870–71. The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule. Based on the best information available to us at this time, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism). Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive 13132.

Civil Justice Reform. This rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. Provisions of the final rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of that Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this rule do not change the overall paperwork burden. They simply delay the reporting and applicability dates of the provisions of the EWR rule.

Data Quality Act Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Public Law 106–554, § 515, codified at 44 U.S.C. § 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. As noted in the final rule, NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule and do not have any effects on data quality.

Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The rule did not have unfunded mandates implications. 67 FR 49263 (July 30, 2002). The changes made by today's rule simply delay the reporting and applicability dates of the provisions of the EWR rule and do not create any unfunded mandates within the meaning of this Act.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 2. In § 579.5(d), the date of "April 1, 2003," is revised to read "July 1, 2003."

Subpart C—Reporting of Early Warning Information

■ 3. In § 579.28, paragraphs (a), (b), and (c)(1) are revisedm and paragraph (n) is added, to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

(a) *Initial submission of reports.* Except as provided in paragraph (n) of this section, the first calendar quarter for which reports are required under §§ 579.21 through 579.27 of this subpart is the third calendar quarter of 2003.

(b) *Due date of reports.* Except as provided in paragraph (n) of this section, each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 30 days after the last day of the reporting period. Notwithstanding the prior sentence, the due date for reports covering the third and fourth calendar quarter of 2003 and the first calendar quarter of 2004 shall be 60 days after the last day of the reporting period.

(c) *One-time reporting of historical information.* (1) No later than December 31, 2003:

(i) Each manufacturer of vehicles covered by §§ 579.21 through 579.24 of this part shall file separate reports providing information on the numbers of warranty claims recorded in the manufacturer's warranty system, and field reports, that it received in each calendar quarter from July 1, 2000, to June 30, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model);

(ii) Each manufacturer of child restraint systems covered by § 579.25 of this part shall file separate reports covering the numbers of warranty claims recorded in the manufacturer's warranty system and consumer complaints (added together), and field reports, that it received in each calendar quarter from July 1, 2000, to June 30, 2003, for child restraint systems manufactured from July 1, 1998, to June 30, 2003, and

(iii) Each manufacturer of tires covered by § 579.26 of this part shall file separate reports covering the numbers of warranty adjustments recorded in the manufacturer's warranty adjustment system for tires that it received in each calendar quarter from July 1, 2000, to June 30, 2003, for tires manufactured from July 1, 1998, to June 30, 2003.

* * * * *

(n) *Submission of copies of field reports.* Copies of field reports required under this subpart shall be submitted not later than 30 days after reports are due pursuant to paragraphs (a) and (b) of this section. The first calendar quarter for which copies of field reports are required to be submitted under §§ 579.21(d), 579.22(d), 579.23(d), 579.24(d), and 579.25(d) of this subpart is the first calendar quarter of 2004.

Issued on: June 6, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–14703 Filed 6–6–03; 4:12 pm]

BILLING CODE 4910–59–P

Reader Aids

Federal Register

Vol. 68, No. 112

Wednesday, June 11, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10
34775–35148	11

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR
Proposed Rules:
Subtitles A and B 33883

3 CFR
Proclamations:
7683 33339
7684 34775

4 CFR
81 33831

7 CFR
319 34517
457 34261
723 34777
800 32623
802 34519
1400 33341
1464 34777
Proposed Rules:
810 33408
3560 32872
3565 34552

9 CFR
82 34779
430 34208
Proposed Rules:
93 33028

10 CFR
72 33611
73 33611
765 32955

12 CFR
615 ..... 33347, 33617
703 32958
742 32958
1700 32627

13 CFR
121 33348
Proposed Rules:
121 33412

14 CFR
25 ..... 33834, 33836
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787
71 ..... 32633, 33231, 33360, 3361, 33579, 33623
95 34522
97 32633
Proposed Rules:
25 33659
36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849
71 ..... 33426, 33427, 34340

15 CFR
742 34526
744 34192
745 34526
772 34192
774 34526
Proposed Rules:
930 34851

17 CFR
1 34790
30 33623
40 33623

18 CFR
201 34795

19 CFR
201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

20 CFR
Proposed Rules:
220 34341

21 CFR
165 34272
201 32979
310 ..... 33362, 34273
347 33362
349 32981
350 34273
352 33362
369 34273
510 ..... 33381, 34293
520 ..... 34533, 34795
522 ..... 33856, 34533, 34796
524 33381
558 34534
601 34796
878 32983
888 32635
Proposed Rules:
201 33429
343 33429

24 CFR
Proposed Rules:
1000 34344

25 CFR
170 33625

26 CFR
1 ..... 33381, 34293, 34797

31 34797
301 33857
602 ..... 34293, 34797

Proposed Rules:
1 ..... 34344, 34874, 34875
14a 34344
25 34875
31 34875
53 34875
55 34875
156 34875
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698

28 CFR

5 33629
571 ..... 34299, 34301
802 32985

29 CFR

1910 32637

Proposed Rules:
1910 ..... 33887, 34036
1915 34036
1926 34036

30 CFR

Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196

33 CFR

100 ..... 32639, 32641
117 ..... 32643, 34302, 34303, 34535, 34799, 34800, 34801
165 ..... 32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803

Proposed Rules:
117 34877
165 ..... 33894, 33896, 34370

36 CFR

215 33582
230 34309
242 33402
251 35117
1253 33404

38 CFR

3 34539
13 34539
21 ..... 34319, 34326
61 34332

Proposed Rules:
20 33040

39 CFR

111 ..... 33858, 34805

40 CFR

51 33764
52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821
62 34332
180 ..... 33876, 34825
261 32645
271 ..... 34334, 034829
439 34831
712 34832

Proposed Rules:
Ch. I 33898
51 32802
52 ..... 33041, 33042, 33043, 33665, 33898, 33899, 34560
82 33284
146 33902
194 33429

42 CFR

412 ..... 34122, 34494

Proposed Rules:
412 ..... 33579, 34492
413 ..... 33579, 34492, 34768

43 CFR

4 33794
3800 32656
4100 33794
5000 33794

44 CFR

64 32657
65 ..... 32659, 32660
67 ..... 32664, 32669
206 34545

Proposed Rules:
67 ..... 32699, 32717

46 CFR

221 33405

47 CFR

2 ..... 32676, 33020, 33640, 34336
21 34547
25 ..... 33640, 34336
52 34547
73 ..... 32676, 33654
74 ..... 32676, 34336
78 34336
80 32676
87 32676
90 32676
95 32676
97 ..... 32676, 33020

Proposed Rules:
1 34560
2 ..... 33043, 33666
15 32720
21 34560
25 33666
64 32720
73 ..... 33431, 33668, 33669
74 34560
101 34560

48 CFR

2 33231
32 33231
52 33231
252 33026

Proposed Rules:
15 33330
31 33326
52 33326
204 34879
206 33057

49 CFR

1 34548
107 32679
171 32679
173 32679
177 32679
180 32679
375 35064
377 35064
567 33655
571 ..... 33655, 34838
574 33655
575 33655
579 ..... 35132, 35145
597 33655

Proposed Rules:
171 34880
172 34880
173 34880

50 CFR

17 34710
100 33402
648 33882
660 32680
679 34550

Proposed Rules:
16 33431
17 ..... 33058, 33234, 34569
402 33806
648 33432
660 33670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 11, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Raisins produced from grapes grown in—
California; published 5-12-03; comments due by 12-30-99; published 5-12-03 [FR 03-11704]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Northeastern United States fisheries—
Atlantic bluefish; published 5-12-03; comments due by 12-30-99; published 5-12-03 [FR 03-11739]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act), natural gas companies (Natural Gas Act), and oil pipeline companies (Interstate Commerce Act):
Asset retirement obligations; accounting, financial reporting, and rate filing requirements
Correction; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14561]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Rhode Island; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14572]
Vermont; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14571]

Hazardous waste program authorizations:
Utah; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14748]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methoprene; published 6-11-03; comments due by 8-11-03; published 6-11-03 [FR 03-14330]

Water pollution; effluent guidelines for point source categories:
Pharmaceutical manufacturing; published 3-13-03; comments due by 5-12-03; published 3-13-03 [FR 03-05716]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Administrative practice and procedure:
Biologics, confidential business information; technical amendment; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14621]

Animal drugs, feeds, and related products:
Carprofen; injectable or implantable; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14544]
Tepoxalin; oral dosage; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14678]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Occupant crash protection—
Smart air bags, vehicles without; warning labels, manual cutoff switches, etc, reduction of dangerous impacts on children; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14694]

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:
Automatic time extension to file certain information returns and exempt organization returns; published 6-11-03; comments due by 12-30-99; published 6-11-03 [FR 03-14603]

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in—
California; comments due by 6-20-03; published 4-21-03 [FR 03-09672]

Potatoes (Irish) grown in—
Colorado; comments due by 6-16-03; published 5-30-03 [FR 03-13519]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
Portland International Airport, OR; livestock exportation port designation; comments due by 6-18-03; published 5-19-03 [FR 03-12389]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Texas and New Mexico; comments due by 6-16-03; published 4-16-03 [FR 03-09322]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 6-18-03; published 5-19-03 [FR 03-12390]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Multi-serve meal-type meat and poultry products; nutrient content claims; comments due by 6-16-03; published 4-16-03 [FR 03-09258]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; comments due by 6-16-03; published 4-17-03 [FR 03-09490]
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 6-19-03; published 5-20-03 [FR 03-12648]
South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; correction; comments due by 6-16-03; published 5-5-03 [FR 03-10802]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-17-03; published 6-2-03 [FR 03-13704]

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
National Defense Authorization Act for 2002 FY; implementation; medical benefits, etc.; comments due by 6-16-03; published 4-16-03 [FR 03-09153]

Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12025]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning

purposes; designation of areas:
Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12026]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12474]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12475]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12178]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12179]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12027]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12030]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Allethrin, etc.; nomenclature changes; comments due by 6-17-03; published 4-18-03 [FR 03-09484]
Propylene oxide, etc.; nomenclature changes; comments due by 6-16-03; published 4-17-03 [FR 03-09483]

FARM CREDIT ADMINISTRATION
Farm credit system:
Financing eligibility and scope, loan policies and operations, and general provisions—
Credit and related services; miscellaneous amendments; comments due by 6-20-03; published 5-21-03 [FR 03-12631]

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Bank director eligibility, appointment, elections; comments due by 6-17-03; published 3-19-03 [FR 03-06595]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General and plastic surgery devices—
Silicone sheeting; classification; comments due by 6-18-03; published 3-20-03 [FR 03-06646]
Reports and guidance documents; availability, etc.:
Developing Medical Imaging Drug and Biological Products; comments due by 6-18-03; published 5-19-03 [FR 03-12370]

HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; comments due by 6-16-03; published 4-17-03 [FR 03-09497]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Valdez and Valdez Narrows, AK; security zone; comments due by 6-15-03; published 5-16-03 [FR 03-12183]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Tampa Bay, FL; security zones; comments due by 6-17-03; published 4-18-03 [FR 03-09650]
Regattas and marine parades, and drawbridge operations:
Toledo Tall Ships Parade, OH; comments due by 6-15-03; published 5-20-03 [FR 03-12492]

HOMELAND SECURITY DEPARTMENT
Critical Infrastructure Information; handling procedures; comments due by 6-16-03; published 4-15-03 [FR 03-09126]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Emergency operations; comments due by 6-16-03; published 4-16-03 [FR 03-09310]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Sound recordings and ephemeral recordings; digital performance right; comments due by 6-19-03; published 5-20-03 [FR 03-12349]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Public use; threats added as prohibited behavior; comments due by 6-17-03; published 4-18-03 [FR 03-09585]
Correction; comments due by 6-17-03; published 5-2-03 [FR 03-10808]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Nasdaq-listed securities; uniform trading rules; petition; comments due by 6-19-03; published 5-20-03 [FR 03-12604]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Mental disorders; medical evaluation criteria; comments due by 6-16-03; published 3-17-03 [FR 03-06278]

STATE DEPARTMENT
Claims and stolen property:
Stolen property under treaty with Mexico; CFR part removed; comments due by 6-16-03; published 5-16-03 [FR 03-12294]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 6-16-03; published 4-16-03 [FR 03-09011]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 6-16-03; published 5-1-03 [FR 03-10728]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; comments due by 6-19-03; published 5-20-03 [FR 03-12110]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Learjet; comments due by 6-20-03; published 4-21-03 [FR 03-09430]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 6-16-03; published 4-15-03 [FR 03-08892]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Raytheon; comments due by 6-20-03; published 5-5-03 [FR 03-10726]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 6-16-03; published 4-15-03 [FR 03-09017]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-16-03; published 4-21-03 [FR 03-09729]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Future air bags designed to create less risk of serious injuries for small women and young children, etc.; requirements phase-in; comments due by 6-19-03; published 5-5-03 [FR 03-10945]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (2001 CY); comments due by 6-16-03; published 4-15-03 [FR 03-09186]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Securities; reporting and disclosure requirements; comments due by 6-20-03; published 5-21-03 [FR 03-12259]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**	A renewal notice will be sent approximately 90 days **before the shown date.**
AFR SMITH212J DEC97 R 1 JOHN SMITH 212 MAIN STREET FORESTVILLE MD 20704	AFRDO SMITH212C DEC97 R 1 JOHN SMITH 212 MAIN STREET FORESTVILLE MD 20704

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5468

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **Federal Register (FR)**; *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

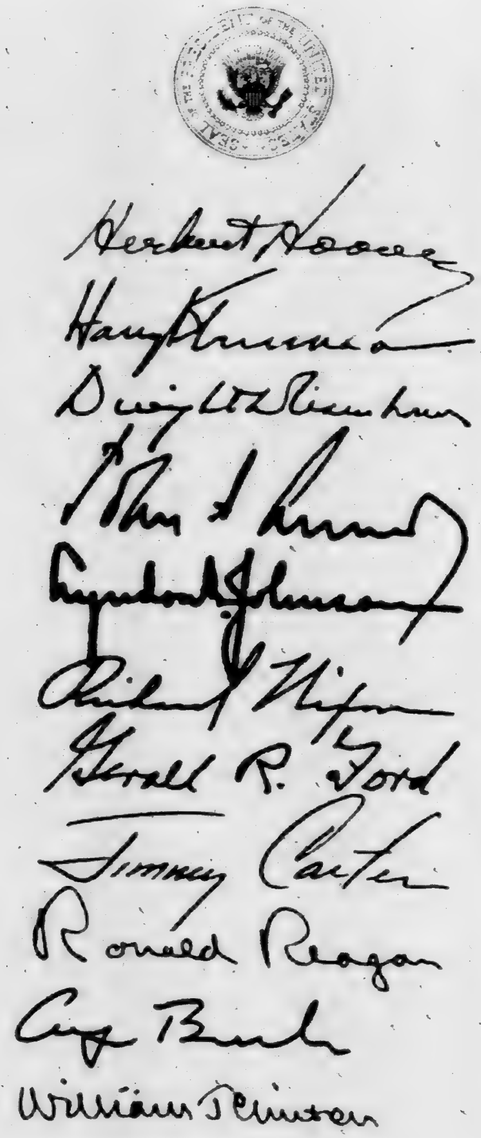
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**
1998 (Book I)	**$74.00**
1998 (Book II)	**$75.00**
1999 (Book I)	**$71.00**
1999 (Book II)	**$75.00**
2000–2001 (Book I)	**$68.50**
2000–2001 (Book II)	**$63.00**
2000–2001 (Book III)	**$75.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 6/02)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

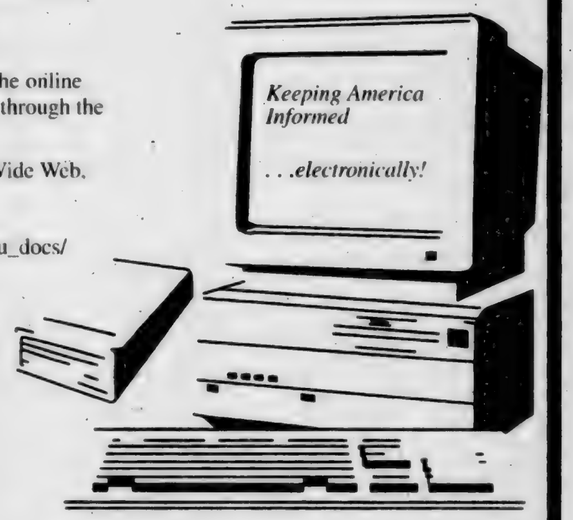
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

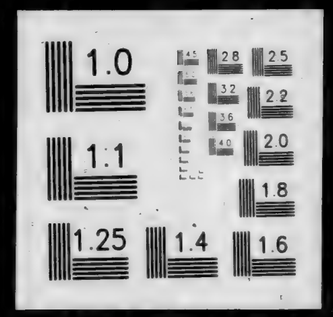


You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Printed on recycled paper



U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

6–12–03 Thursday
Vol. 68 No. 113 June 12, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–12–03 Thursday
Vol. 68 No. 113 June 12, 2003

Pages 35149–35264

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 113
Thursday, June 12, 2003

Agriculture Department
See Foreign Agricultural Service
See Forest Service
RULES
Organization, functions, and authority delegations:
Revisions
Correction, 35256

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35227–35229

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35229

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35229–35231

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 35197

Coast Guard
RULES
Ports and waterways safety:
Hampton Roads, VA—
Regulated navigation area, 35172–35177

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 35201–35202
Textile and apparel categories:
African Growth and Opportunity Act, Andean Trade Promotion and Drug Eradication Act, and Caribbean Basin Trade Partnership Act; short supply requests—
Ring spun single yarns made of micro modal fiber and U.S. pima cotton, 35202–35203

Consumer Product Safety Commission
PROPOSED RULES
Federal Hazardous Substances Act:
Baby bath seats and rings; meeting, 35191

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Parent Drug Corps Program, 35203

Defense Department
NOTICES
Privacy Act:
Systems of records, 35203–35204

Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35239–35240

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana, 35181–35183
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana, 35191–35192
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35207–35211
Air pollution control:
Citizens suits; proposed settlements—
Engine Manufacturers Association et al., 35211–35212
Committees; establishment, renewal, termination, etc.:
Science Advisory Board, 35212–35213
Superfund; response and remedial actions, proposed settlements, etc.:
Meadowlands Plating & Finishing Site, NJ, 35214
Water pollution control:
Marine discharges of vessel sewage, prohibition; petitions, etc.—
New Jersey, 35214–35215

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
BAE Systems (Operations) Ltd., 35163–35164
Boeing, 35160–35162
Bombardier, 35152–35155
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 35157–35158
Israel Aircraft Industries, Ltd., 35158–35160
McCauley Propeller Systems, 35155–35157
PROPOSED RULES
Airworthiness directives:
Airbus, 35186–35191

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35215–35216
Common carrier services:
Full power television, low power television, and FM broadcast stations; construction permits; closed broadcast auction; notice and filing requirements, etc., 35216–35225

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 35225–35226

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 35207
Preliminary permits surrender:
Symbiotics, LLC, 35207
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 35205
Dominion Cove Point LNG, LP, 35205
East Tennessee Natural Gas Co., 35205–35206
Gulf South Pipeline Co., LP, 35206
High Island Offshore System, L.L.C., 35206

Federal Transit Administration
NOTICES
Buy America waivers:
New Flyer of America et al., 35249–35250

Fish and Wildlife Service
NOTICES
Meetings:
North American Wetlands Conservation Council, 35236–35237

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35231–35233
Reports and guidance documents; availability, etc.:
On-farm feed manufacturing and mixing operations; interpretation; withdrawn, 35233–35234
Veterinary Medicinal Products, International Cooperation on Harmonisation of Technical Requirements for Approval—
Pre-approval information for registration of new veterinary medicinal products for food-producing animals with respect to antimicrobial resistance, 35234–35235

Foreign Agricultural Service
NOTICES
Uruguay Round Agreements Act; agricultural safeguard trigger levels, 35193–35194

Forest Service
NOTICES
Appealable decisions; legal notice:
Southern Region, 35194–35197
Meetings:
Resource Advisory Committees—
Okanogan and Wenatchee National Forests, 35197

General Services Administration
NOTICES
Acquisition regulations:
Identification cards removed from forms web site; camera copy option for local reproduction, 35226

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Exchange Visitor Program; two-year foreign residence requirement; waiver request, 35226–35227

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Geriatric Academic Career Awards Program, 35235–35236

Homeland Security Department
See Coast Guard
RULES
Organization, functions, and authority delegations:
Parole authority; implementation, 35151–35152

Indian Arts and Crafts Board
RULES
Indian Arts and Crafts Act of 1990; implementation:
Protection of Indian art and craftsmanship, 35164–35172

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Frozen fish fillets from—
Vietnam; correction, 35197
Lawn and garden steel fence posts from—
China, 35197–35199
Tapered roller bearings and parts from—
China, 35199

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
National Steel Corp., 35237–35238
Rico Development Corp. et al., 35238
Schwarz, Edward, et al., 35239

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Public land orders:
Utah; correction, 35237
Withdrawal and reservation of lands:
Washington, 35237

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
AMMERSEE, 35250–35251
BRISTOL GOOSE, 35251
OSCEOLA, 35251–35252
RAVEN, 35252
VOYAGER, 35252–35253

National Aeronautics and Space Administration
NOTICES
Privacy Act:
Systems of records, 35240–35241

National Highway Traffic Safety Administration
RULES
Consumer information:
Uniform tire quality grading standards—
Treadwear testing procedures; correction, 35184–35185
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35253–35254

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Fishing vessel permits; charter boat operations, 35185
NOTICES
Grants and cooperative agreements; availability, etc.:
Fisheries Disaster Financial Assistance Program; blue crab, 35199–35201

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Kerr McGee Corp., 35241–35242

Occupational Safety and Health Administration
RULES
Construction safety and health standards:
Crane and Derrick Negotiated Rulemaking Advisory Committee; establishment, 35172

Presidential Documents
ADMINISTRATIVE ORDERS
Russian Federation; blocking Government property relating to disposition of highly enriched uranium from nuclear weapons (Notice of June 10, 2003), 35149–35150

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35242–35243
Securities:
Rating agencies and use of credit ratings under Federal securities laws, 35257–35264
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 35243–35244
Government Securities Clearing Corp., 35244–35246
National Association of Securities Dealers, Inc., 35246–35248

Small Business Administration
NOTICES
Disaster loan areas:
Kansas, 35248
Kentucky, 35248–35249
Meetings:
Veterans Business Affairs Advisory Committee, 35249
Applications, hearings, determinations, etc.:
Zon Capital Partners, L.P., 35248

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Cundiff, Gregory B., et al., 35254–35255
Mississippi Tennessee Railnet, Inc., 35255

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Organization, functions, and authority delegations:
Secretarial succession, 35183–35184

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Montgomery GI Bill-Active Duty program; accelerated payments, 35177–35181
NOTICES
Meetings:
Vocational Rehabilitation and Employment Task Force, 35255

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 35257–35264

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13159 (See Notice of June 10, 2003).....35149
Administrative Orders:
Notices:
Notice of June 10, 2003.....35149

7 CFR
2.....35256

8 CFR
212.....35151

14 CFR
39 (6 documents).....35152, 35155, 35157, 35160, 35163
Proposed Rules:
39.....35186

16 CFR
Proposed Rules:
1500.....35191

25 CFR
309.....35164

29 CFR
1926.....35172

33 CFR
165.....35172

38 CFR
21.....35177

40 CFR
62.....35181
Proposed Rules:
62.....35191

49 CFR
1.....35183
575.....35184

50 CFR
635.....35185

Federal Register
Vol. 68, No. 113
Thursday, June 12, 2003

Presidential Documents

Title 3—

The President

Notice of June 10, 2003

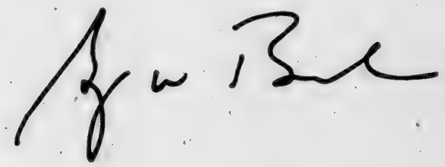
Continuation of the National Emergency with Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Usable Fissile Material in the Territory of the Russian Federation

On June 21, 2000, the President issued Executive Order 13159 (the "Order") blocking property and interests in property of the Government of the Russian Federation that are in the United States, that hereafter come within the United States, or that are or hereinafter come within the possession or control of United States persons that are directly related to the implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the "HEU Agreements"). The HEU Agreements allow for the downblending of highly enriched uranium derived from nuclear weapons to low enriched uranium for peaceful commercial purposes. The Order invoked the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation.

A major national security goal of the United States is to ensure that fissile material removed from Russian nuclear weapons pursuant to various arms control and disarmament agreements is dedicated to peaceful uses (such as downblended to low enriched uranium for peaceful commercial uses), subject to transparency measures, and protected from diversion to activities of proliferation concern. Pursuant to the HEU Agreements, weapons-grade uranium extracted from Russian nuclear weapons is converted to low enriched uranium for use as fuel in commercial nuclear reactors. The Order blocks and protects from attachment, judgment, decree, lien, execution, garnishment, or other judicial process the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2003, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process for the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to weapons-usable fissile material

in the territory of the Russian Federation. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
June 10, 2003.

[FR Doc. 03–15031
Filed 6–11–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 113
Thursday, June 12, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 212

[ICE No. 2278–03]

RIN 1653 AA25

Authority of the Secretary of Homeland Security; Parole Authority

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296) (HSA), which created the new Department of Homeland Security (Department or DHS). The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). DHS is promulgating this rule to continue the process of conforming the text of Title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. The rule addresses parole authority under section 212(d)(5) of the Immigration and Nationality Act. With regard to parole authority the rule implements changes in the field structures of the Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Customs and Border Protection (CBP), and the Bureau of Immigration and Customs Enforcement (ICE) by amending the titles of officers given parole authority.

DATES: This final rule is effective June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Muhletaler, Bureau of Immigration and Customs Enforcement, Office of General Counsel, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Explanation of Changes

This rule amends parole authority under 8 CFR 212.5 to reflect the new titles under the organizational structures of the BCIS, CBP, and ICE. The term "Commissioner" has been replaced with "Secretary" to reflect the transfer of authority over parole issues from the Service to DHS and the component organizations of the BCIS, CBP, and ICE. Component heads of the three bureaus are the Director of the BCIS, Commissioner of CBP and Assistant Secretary for ICE. The rule does not make any substantive changes to the standards for making determinations regarding requests for parole.

Procedural Requirements

Good Cause Exception

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking or delayed effective date is unnecessary as this rule relates to agency organization and management. Accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

Executive Order 12866

This rule is limited to agency organization, management or personnel matters, and therefore is not a regulation or rule as defined by Executive Order 12866. It has also been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal government, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; Public Law 107–296, 116 Stat 2135 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 2. Section 212.5 is amended by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (b)(3) introductory text;
■ c. Revising paragraph (b)(5);
■ d. Revising paragraph (c);
■ e. Revising paragraph (d) introductory text;
■ f. Revising paragraph (d) (1); and by
■ g. Revising paragraph (e)(2)(i).

The revisions read as follows:

§ 212.5 Parole of aliens into the United States.

(a) The authority of the Secretary to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Assistant Commissioner, Office of Field Operations; Director, Detention and Removal; directors of field operations; port directors; special agents in charge; deputy special agents in charge; associate special agents in charge; assistant special agents in charge; resident agents in charge; field office directors; deputy field office directors; chief patrol agents; district directors for services; and those other officials as may be designated in writing, subject to the parole and detention authority of the Secretary or his designees. The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

(b) * * *

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The Director, Detention and Removal; directors of field operations; field office directors; deputy field office directors; or chief patrol agents shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (b)(3)(i) through (iii) of this section in determining under what conditions a juvenile should be paroled from detention:

* * * * *

(5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section.

(c) In the case of all other arriving aliens, except those detained under § 235.3(b) or (c) of this chapter and paragraph (b) of this section, those officials listed in paragraph (a) of this section may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (d) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (f) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3(b) or (c) of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(d) *Conditions.* In any case where an alien is paroled under paragraph (b) or (c) of this section, those officials listed in paragraph (a) of this section may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. Those officials should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I–352 in such amount as may be deemed appropriate;

* * * * *

(e) * * *

(2)(i) *On notice.* In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody.

* * * * *

Dated: June 3, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–14932 Filed 6–10–03; 2:49 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–98–AD; Amendment 39–13191; AD 2003–12–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. This action also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number. This action also provides for an optional terminating action for the AFM revision and inspection. This action is necessary to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation. This action is intended to address the identified unsafe condition.

DATES: Effective June 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2003.

Comments for inclusion in the Rules Docket must be received on or before July 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov.* Comments sent via the Internet must contain "Docket No. 2003–NM–98–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. TCCA advises that it has received several reports of failure of the wing anti-ice (WAI) ducts. Failure analysis indicates that the WAI ducts, located in the under-floor pressurized area, can collapse due to insufficient strength for the applied differential pressure. This condition, if not corrected, could result in cracks or rupture of the WAI ducts, and consequent leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation.

TCCA Airworthiness Directive

TCCA issued airworthiness directive CF–2003–07, effective on March 25, 2003, to ensure the continued airworthiness of these airplanes in Canada. The Canadian airworthiness directive requires an amendment to the Master Minimum Equipment List (MMEL)/Minimum Equipment List (MEL) to prohibit operations into known or forecast icing conditions under certain conditions, and accomplishment of the actions specified in CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007 (described below).

Explanation of Relevant Service Information

The manufacturer has issued CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003. The alert service bulletin describes procedures for a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number (P/N) that is free of any dent or other handling damage. The alert service bulletin also describes procedures for eventual replacement of all four WAI ducts with new ducts.

TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2003–07 to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the WAI ducts from collapsing, cracking, or rupturing, and consequent leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation. This AD requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. This AD also requires accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between This AD and Service Bulletin/Canadian Airworthiness Directive

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions of the surrounding equipment and structure of the external shroud of the WAI ducts, this AD requires the inspection of those areas to be accomplished per a method approved by either the FAA or TCCA (or its delegated agent). In light of the type of inspection that will be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, an inspection approved by either the FAA or TCAA (or its delegated agent) will be acceptable for compliance with this AD.

The Canadian airworthiness directive requires an amendment to the MMEL/MEL to prohibit operations into known or forecast icing conditions under certain conditions. In the United States, the MMEL and the MEL are not developed or approved as part of the certification requirements of the airplane. Therefore, in order to prohibit operations into known or forecast icing conditions under certain conditions, the FAA has determined that it is necessary to address the identified unsafe condition by requiring a revision to the Limitations Section of the AFM. In accordance with 14 CFR 121.628(b)(2), this AD has the effect of overriding the MMEL/MEL, so it has the same effect as the Canadian airworthiness directive.

Interim Action

The FAA is considering further rulemaking action to supersede this AD to require replacement of all four WAI ducts with new ducts per CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, which would terminate the inspection and AFM requirements of this AD. However, the planned compliance time for the replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approved AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–98–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–06 Bombardier, Inc. (Formerly Canadair): Amendment 39–13191. Docket 2003–NM–98–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, serial numbers 10004 through 10119 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wing anti-ice (WAI) ducts from collapsing, cracking, or rupturing, consequent leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on, insufficient heat for the anti-ice system, and aerodynamic degradation, accomplish the following:

Referenced Service Information

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003, including Appendices A and B, dated March 18, 2003.

Airplane Flight Manual (AFM) Revision

(b) Within 48 hours after the effective date of this AD, revise the Limitations Section of the CRJ 700 AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"1. Anti-Ice Bleed Leak Detection Controller (AILC) Channels (see Note 1):

Flight with "WING A/I FAULT" status message on the engine indication and crew alerting system (EICAS) is not authorized, except as follows:

One may be inoperative as indicated by "WING A/I FAULT" status message on EICAS provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

2. Wing/Fuselage Anti-Ice Bleed Leak Detection Loops (see Note 1):

Flight with Wing/Fuselage Anti-Ice Bleed Leak Detection Loops inoperative is not authorized, except as follows:

One loop (A or B) may be inoperative provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

Note 1: This limitation supersedes the Master Minimum Equipment List (MMEL)."

Detailed Inspection and Corrective Actions if Necessary

(c) Within 150 flight hours after the effective date of this AD, do a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the WAI ducts are open or cracked, per the alert service bulletin.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any external shroud of a WAI duct is found open or cracked, before further flight, inspect the surrounding equipment and structure per a method approved by the Manager, New York Aircraft Certification Office, FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(3) If any damaged WAI duct is found, before further flight, replace the WAI duct with a new duct or a duct with the same part number (P/N) that is free of any dent, crease, or other handling damage, per the alert service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Optional Terminating Action

(d) Replacement of all four WAI ducts with new ducts having P/N GG670–80504–5 or –6, or P/N GG670–80312–3 or –4, as applicable, per the service bulletin, terminates the requirements of this AD. After doing the replacement, the AFM revision required by paragraph (b) of this AD may be removed.

Reporting Requirement

(e) Submit a report of the results of the inspection required by paragraph (c) of this AD per the alert service bulletin specified in paragraph (c) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 14 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 14 days after the effective date of this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, New York ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions must be done per CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003, including Appendices A and B, dated March 18, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–07, effective on March 25, 2003.

Effective Date

(h) This amendment becomes effective on June 27, 2003.

Issued in Renton, Washington, on June 5, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14676 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–06–AD; Amendment 39–13190; AD 2003–12–05]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems 1A103/TCM Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to McCauley Propeller Systems 1A103/TCM series propellers. That AD currently requires an initial inspection for cracks in the propeller hub in accordance with a dye penetrant inspection procedure, replacement of propellers with cracks that do not meet acceptable limits, rework of propellers with cracks that meet acceptable limits, and repetitive inspections of all affected propellers. This amendment allows additional rework operations to be performed at more than one bolt hole location. This amendment is prompted by the need to clarify the requirement to use a steel backing plate and Mylar gasket during installation of the propeller, and to relax the replacement requirements. The actions specified in the proposed AD are intended to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane.

DATES: Effective July 17, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from McCauley Propeller Systems, 3535 McCauley Drive, PO Drawer 5053, Vandalia, OH 45377–5053; telephone: 937–890–5246; fax: 937–890–6001. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2350 East Devon Avenue, Room 323, Des Plaines, IL 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–06–16, Amendment 39–9973 (62 FR 16064, April 4, 1997), which is applicable to McCauley Propeller Systems 1A103/TCM series propellers, was published in the **Federal Register** on September 27, 2002 (67 FR 61043). That action proposed to require:

- An initial inspection for cracks in the propeller hub in accordance with a dye penetrant inspection procedure.
- Replacement of propellers with cracks that do not meet acceptable limits.
- Rework of propellers with cracks that meet acceptable limits.
- Painting of the propeller hub before installation of the propeller.
- Repetitive inspections of all affected propellers.
- Installation of a steel backing plate and Mylar gasket during installation of the propeller.

These actions must be done in accordance with McCauley Propeller Systems Alert Service Bulletin (ASB) 221C, dated September 7, 1999.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter agrees with the NPRM as written.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 6,100 propellers of the affected design in the worldwide fleet. The FAA estimates that approximately 3,000 propellers installed on airplanes of U.S. registry will be affected by this AD. The FAA also estimates that it will take approximately 3 work hours per propeller to perform the required actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $17 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $591,000 per year.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–9973 (62 FR 16064, April 4, 1997) and by adding a new airworthiness directive, Amendment 39–13190, to read as follows:

2003–12–05 McCauley Propeller Systems: Amendment 39–13190. Docket No. 97–ANE–06–AD. Supersedes AD 97–06–16, Amendment 39–9973.

Applicability: This airworthiness directive (AD) is applicable to McCauley Propeller Systems 1A103/TCM series propellers with numeric serial numbers 770001 through 777390; and propellers with alphanumeric serial numbers BC001 up to, but not including KC001. These propellers are installed on but not limited to Cessna 152, Cessna A152, Reims F152, and Reims FA152 series airplanes. All alphanumeric serial number propellers beginning with the letters "B" through "J" are affected by this AD.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated below, unless already done.

To prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane, do the following:

Inspection and Rework Requirements

(a) Inspect propellers, rework or replace with a serviceable propeller, as necessary, and install in accordance with Sections II, III, IV, and V of McCauley Propeller Systems Alert Service Bulletin (ASB) No. 221C, dated September 7, 1999, as follows:

(1) For propellers with 3,000 or more hours time-in-service (TIS), or unknown TIS, on the effective date of this AD, as follows:

(i) If not already done, perform an initial dye penetrant inspection in accordance with Section II of the ASB before further flight.

(ii) Thereafter, perform repetitive dye penetrant inspections in accordance with Section IV of the ASB at intervals not to exceed 800 hours TIS, or 12 calendar months since last dye penetrant inspection, whichever occurs first.

(iii) If cracks are discovered that are not within the rework limits described in Section III of the ASB, before further flight remove the propeller from service and replace with a serviceable propeller.

(iv) If cracks are discovered that are within the rework limits described in Section III of the ASB, before further flight rework the propeller in accordance with Section III of the ASB, and resume inspecting repetitively in accordance with paragraph (a)(1)(ii) of this AD.

(2) For propellers with less than 3,000 hours TIS on the effective date of this AD, upon accumulating 3,000 hours TIS perform the steps required by paragraph (a)(1)(i) through (a)(1)(iv) of this AD.

(b) Paint camber side of the propeller in accordance with Section II or Section III of the ASB.

(c) Install propeller in accordance with Section V of the ASB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (CHIACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, CHIACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the CHIACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The inspections, rework and replacement must be done in accordance with McCauley Propeller Systems Alert Service Bulletin (ASB) No. 221C, dated September 7, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McCauley Propeller Systems, 3535 McCauley Drive, PO Drawer 5053, Vandalia, OH 45377–5053; telephone: 937–890–5246; fax: 937–890–6001. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on July 17, 2003.

Issued in Burlington, Massachusetts, on June 4, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14675 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–88–AD; Amendment 39–13189; AD 2003–12–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that requires replacing the four Gamah clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies. For certain airplanes, this AD also requires replacing the two supports for the engine bleed air duct with two new supports. The actions specified by this AD are intended to prevent hot air leaks from the bleed air duct due to disconnection of the duct joint, which could result in heat damage to components near the duct, and consequent increased risk of fire in the rear baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Effective July 17, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes was published in the **Federal Register** on January 30, 2003 (68 FR 4725). That action proposed to require replacing the four Gamah clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies. For certain airplanes, that action also proposed to require replacing the two supports for the engine bleed air duct with two new supports.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter has no objections to the proposed AD.

Requests To Cite Recent Service Bulletin Versions

The proposed AD cited EMBRAER Service Bulletin 145–36–0024, dated May 31, 2001, as the appropriate source of service information for the proposed requirements. Several commenters request that the FAA revise the proposed AD to reflect the most current revision levels of the service bulletin revisions. (Change 01 of the service bulletin was issued August 7, 2002, and Change 02 was issued December 13, 2002.) One commenter requests that the proposed AD be revised to also allow future revisions of the service bulletin for compliance with the AD to avoid the need for requests and approvals of alternative methods of compliance.

The FAA partially agrees with the requests. Because the actions in both revisions are essentially the same as those in the original service bulletin, paragraph (a) in this final rule has been revised to cite Change 02 and to provide credit for work accomplished in accordance with the original or Change 01 of the service bulletin. However, to use a later revision of the cited service bulletin, affected operators must request approval of an alternative method of compliance under the provisions of paragraph (c) of this final rule. In an AD, use of the phrase "or later FAA-approved revisions" in reference to a specific service bulletin violates Office of the Federal Register regulations for approving materials that are incorporated by reference.

Request To Revise Applicability of Proposed AD

One commenter notes that in Change 02 of the service bulletin the effectivity was revised. Because the applicability of the proposed AD excluded certain airplanes listed in the original version of the service bulletin, the commenter requests that the applicability of the proposed AD be revised to refer to Change 02 of the service bulletin.

The FAA agrees. Certain airplanes were removed from the effectivity of the revised service bulletin. Therefore, the applicability statement of this final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 346 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately between $1,978 and $2,007 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $746,668 and $756,702; or between $2,158 and $2,187 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time

necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–04—EMPRESA BRASILEIRA DE AERONAUTICA S.A. (EMBRAER): Amendment 39–13189. Docket 2002–NM–88–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–36–0024, Change 02, dated December 13, 2002; excluding those airplanes listed in "In-production effectivity" in paragraph 1.A., "Effectivity," of the service bulletin; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hot air leaks from the bleed air duct due to disconnection of the duct joint, which could result in heat damage to components near the duct, and consequent increased risk of fire in the rear baggage compartment, accomplish the following:

Replacement

(a) Within 1,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per EMBRAER Service Bulletin 145–36–0024, Change 02, dated December 13, 2002. Accomplishment of those actions in accordance with EMBRAER Service Bulletin 145–36–0024, dated May 31, 2001; or Change 01, dated August 7, 2002; are acceptable for compliance with the requirements of this paragraph.

(1) For all airplanes: Replace the four Gamah clamp/sleeve joints from the bleed line at the baggage compartment between frames 68 and 69 with new threaded coupling assemblies (including re-identifying, cleaning, and lubricating the bleed ducts; and installing protection sleeves).

(2) For airplanes having serial numbers listed in paragraph 3.G. of the Accomplishment Instructions of the service bulletin: Replace the two supports for the engine bleed air duct with two new supports, having part number 145–35923–007.

Parts Installation

(b) As of the effective date of this AD, no person shall install parts listed in paragraphs (b)(1) and (b)(2) of this AD, as applicable.

(1) For all airplanes: Gamah clamp/sleeve joints, from the bleed line at the baggage compartment between frames 68 and 69, having part number G30020CD, G30020TD, G30020C, or G30020T.

(2) For airplanes having serial numbers listed in paragraph 3.G. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–36–0024, Change 02, dated December 13, 2002: Supports for the engine bleed air duct, with part number 145–35923–007.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions must be done in accordance with EMBRAER Service Bulletin 145–36–0024, Change 02, dated December 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–09–03, dated October 2, 2001.

Effective Date

(f) This amendment becomes effective on July 17, 2003.

Issued in Renton, Washington, on June 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14524 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–01–AD; Amendment 39–13188; AD 2003–12–03]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes, that requires revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen. This action is intended to address the identified unsafe condition.

DATES: Effective July 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, PO Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes was published in the **Federal Register** on March 25, 2003 (68 FR 14353). That action proposed to require revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 198 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–03 ISRAEL AIRCRAFT INDUSTRIES, LTD.: Amendment 39–13188. Docket 2003–NM–01–AD.

Applicability: All Model 1124 and 1124A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, accomplish the following:

Revision to Airplane Flight Manual (AFM)

(a) Within 1 month after the effective date of this AD, revise the Emergency Procedures section of the AFM, as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 1124 series airplanes: Insert Israel Aircraft Industries, Ltd. 1124-Westwind Temporary Revision 3, dated January 16, 2001, into the 1124 Westwind AFM.

(2) For Model 1124A series airplanes: Insert Israel Aircraft Industries, Ltd. 1124A-Westwind Temporary Revision 5, dated January 16, 2001, into the 1124A Westwind AFM.

(b) When the information in the temporary revisions identified in paragraph (a) of this AD has been incorporated into the general revisions of the respective AFM, the general revisions may be incorporated into the AFMs, and these temporary revisions may be removed from the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Israel Aircraft Industries, Ltd. 1124-Westwind, Airplane Flight Manual, Temporary Revision 3, dated January 16, 2001; or Israel Aircraft Industries, Ltd. 1124A-Westwind Temporary Revision 5, dated January 16, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, PO Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Israeli airworthiness directive 21–02–07–01, dated July 22, 2002.

Effective Date

(f) This amendment becomes effective on July 17, 2003.

Issued in Renton, Washington, on June 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14523 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–64–AD; Amendment 39–13186; AD 2003–12–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 777 series airplanes, that requires either a one-time inspection or a review of the airplane maintenance records for both stabilizer trim control modules (STCM) of the trim system of the horizontal stabilizer to determine if STCMs having certain serial numbers are installed; and follow-on corrective actions, if necessary. This amendment also requires eventual replacement of affected STCMs with new or reworked STCMs, which would terminate the follow-on actions. The actions specified by this AD are intended to prevent an uncommanded stabilizer trim due to simultaneous failure of two static seals on one STCM, combined with failure of the automatic shutdown function of the stabilizer trim system. Such failures could result in loss of pitch control and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 17, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Fairhurst, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 777 series airplanes was published in the **Federal Register** on August 30, 2002 (67 FR 55737). That action proposed to require either a one-time inspection or a review of the airplane maintenance records for both stabilizer trim control modules (STCM) of the trim system of the horizontal stabilizer to determine if STCMs having certain serial numbers (S/N) are installed; and follow-on corrective actions, if necessary. That action also proposed to require eventual replacement of affected STCMs with new or reworked STCMs, which would terminate the follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Change Paragraphs (b) and (d)

Three commenters ask that certain wording in paragraphs (b) and (d) of the proposed AD be changed. Two commenters ask that the wording be changed to specify allowing installation of STCMs having S/Ns 006 through 556 inclusive, if the part has been reworked and marked with an "R" on the nameplate, or if MOOG Aircraft Group Service Bulletin Number 160300–27–124 is marked on the modification plate. The third commenter asks that the information phrase (modified and marked with an "R" suffix) be removed from paragraph (b) of the proposed AD, and that "unless reworked per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001," be added to paragraph (d) of the proposed AD.

The FAA agrees with the commenters because Part 2 of the Work Instructions of the referenced service bulletin specifies procedures for the installation of STCMs that have been reworked and marked with an "R" on the nameplate, or that include MOOG Aircraft Group Service Bulletin Number 160300–27–124 on the modification plate. We also agree to remove the information phrase (modified and marked with an "R" suffix) from paragraph (b) of the final rule, because the STCM also can be marked with the MOOG service bulletin number. Paragraphs (b) and (d) of this final rule have been changed accordingly.

Requests To Change STCM Serial Numbers

Two commenters state that the range of STCM S/Ns specified in the proposed AD section titled "Explanation of Relevant Service Information" is incorrect and should be changed. The first commenter states that the S/Ns in that section should be corrected to specify 006 through 556 inclusive. The second commenter states that Part 2 of the Work Instructions of the referenced service bulletin references S/Ns 006 through 549 inclusive (however, it actually specifies 006 through 556 inclusive). The commenter states that S/Ns 006 through 556 are the correct S/Ns and recommends those numbers be specified throughout the proposed AD to eliminate any confusion. The commenter also states that listing airplanes having S/Ns 2 through 266 and 273, excluding line numbers 256, 258, and 260 through 263 inclusive, as being subject to the actions specified in service bulletin, could be misinterpreted. The commenter recommends that the S/Ns in the applicability of the proposed AD should match the S/Ns (006 through 556 inclusive) listed in MOOG Aircraft Group Service Bulletin Number 160300–27–124.

Although we acknowledge and agree with both commenters' remarks on the section in the preamble of the proposed AD titled "Explanation of Relevant Service Information," that section is not restated in this final rule.

We do not agree with the second commenter's request to add S/Ns to the applicability specified in the final rule. In the section of the proposed AD titled "Differences Between Service Information and This Proposed AD," we stated that we have determined that the proposed AD applies to all Model 777 series airplanes. The reason for this is that the subject STCMs are line-replaceable units and may have been installed on other airplanes not included in the effectivity of the referenced service bulletin. Therefore, no change to the final rule is necessary in this regard.

Request To Reduce Compliance Time for Terminating Action

Two commenters ask that the compliance time for the terminating action specified in paragraph (b) of the proposed AD be reduced from "Within 2 years after the effective date of this AD" to "Within 1 year after the effective date of this AD." The first commenter gives no reason for this request. The second commenter, the STCM component manufacturer, states that after inspecting 83 percent of STCMs with S/N 006 through 556, the only requirement on the majority of the components was to stamp either the identification plate or the modification plate for the STCM. The commenter also notes that it has accommodated operators in getting their units inspected and returned within 10 days, and adds that a 2-year compliance period is not warranted.

We do not agree to reduce the compliance time to "Within 1 year after the effective date of this AD." In developing an appropriate compliance time for this terminating action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of doing the terminating action within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In addition, we find that the repetitive tests required by paragraph (a)(1) of the final rule, along with adequate maintenance, will provide an acceptable level of safety until the affected STCMs are replaced. However, operators are always permitted to accomplish the actions earlier than the compliance time specified in an AD. No change to the final rule is necessary in this regard.

Request for Editorial Changes

One commenter suggests that the following editorial changes should be made to the proposed AD:

- Change all references from "the trim system of the horizontal stabilizer" to "the horizontal stabilizer trim system."
- Discussion section: Add the word "airplane" right before "nose-down," add that a single STCM seal failure can result in an uncommanded valve motion in the airplane nose-down direction, and add that two static seals in one STCM combined with failure of the automatic shutdown function could result in loss of pitch control and consequent loss of control of the airplane.
- Add the date to the reference to Revision 2 of the service bulletin in the last paragraph of the Explanation of Relevant Service Information section.

We do not agree that these are substantial changes, nor do they make any essential change to the unsafe condition specified in the proposed AD. Therefore, no change to the final rule is necessary in this regard.

Request for Clarification of Terminating Action

One commenter recommends that the wording specified in paragraph (b) of the proposed AD be clarified. The commenter states that there has been confusion in the past, since the directions have been unclear to several operators and maintenance personnel in the field. The commenter reiterates the wording on page 5, Note 2, of MOOG Aircraft Group Service Bulletin Number 160300–27–124, and recommends adding it to paragraph (b) of the proposed AD to ensure that the STCM units that have already been modified are not removed from service.

We agree with the commenter and have added a new Note 3 to this final rule, for clarification, which specifies that STCM assemblies that have been reworked and marked per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001, are acceptable for compliance with paragraph (b) of this final rule. Subsequent notes have been renumbered accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 404 airplanes of the affected design in the worldwide fleet. The FAA estimates that 131 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the inspection/review, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/review required by this AD on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to do the functional test, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test on U.S. operators is estimated to be $60 per airplane, per test cycle.

Should an operator be required to do the replacement, it will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the vendor at no cost to operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $180 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–01—Boeing: Amendment 39–13186. Docket 2002–NM–64–AD.

Applicability: All Model 777 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded stabilizer trim due to simultaneous failure of two static seals on one stabilizer trim control module (STCM), combined with failure of the automatic shutdown function of the stabilizer trim system, which could result in loss of pitch control and consequent loss of control of the airplane, accomplish the following:

One-Time Inspection/Review of Maintenance Records

(a) Within 30 days after the effective date of this AD: Do either a one-time general visual inspection or a review of the airplane maintenance records of both STCMs of the trim system of the horizontal stabilizer to determine the serial numbers (S/N), per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001. If any affected S/N (6 through 556 inclusive) is found on either STCM, within 150 flight hours after doing the inspection or review, do the actions specified in either paragraph (a)(1) or (a)(2) of this AD. If no affected serial number is found, no further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-on Corrective Actions

(1) Do a functional test of the trim system of the horizontal stabilizer per Part 1 of the Work Instructions of the service bulletin.

(i) If a test condition of PASSED is reported per Part 1.A.1. of the service bulletin, or considered serviceable per Part 1.A.5.a. of the service bulletin, repeat the test at intervals not to exceed 150 flight hours until the terminating action required by paragraph (b) of this AD is done.

(ii) If a test condition of FAILED is reported, or if the stabilizer does not move, correct the condition as specified in the Boeing 777 Airplane Maintenance Manual, and repeat the functional test at intervals not to exceed 150 flight hours until the terminating action specified in paragraph (b) of this AD is done. If failure of either STCM is found during the test, before further flight, replace the affected STCM with a new or reworked STCM as required by paragraph (b) of this AD.

(2) Replace any affected STCM with a new or reworked STCM as required by paragraph (b) of this AD.

Terminating Action

(b) Except as provided by paragraphs (a)(1)(ii) and (a)(2) of this AD: Within 2 years after the effective date of this AD, replace any STCM having an affected serial number identified in paragraph (a) of this AD with a new or reworked STCM per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001. Such replacement ends the repetitive functional tests required by paragraph (a)(1) of this AD.

Note 3: STCM assemblies having an affected serial number, as identified in paragraph (a) of this AD, that have been reworked and marked per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001, are acceptable for compliance with paragraph (b) of this AD.

Credit for Actions Accomplished Per Previous Revisions of Service Bulletin

(c) Replacement of affected STCMs before the effective date of this AD per Boeing Alert Service Bulletin 777–27A0047, dated September 21, 2000; or Boeing Service Bulletin 777–27A0047, Revision 1, dated November 2, 2000; is considered acceptable for compliance with paragraph (b) of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install on any airplane a STCM having S/N 6 through 556 inclusive, unless reworked and marked per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided there has been no known failure of any STCM during any functional test required by paragraph (a)(1) of this AD.

Incorporation by Reference

(g) Unless provided otherwise in this AD, the actions shall be done in accordance with Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on July 17, 2003.

Issued in Renton, Washington, on June 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14521 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–162–AD; Amendment 39–13187; AD 2003–12–02]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited Model ATP airplanes, that requires installing a baulking device for the pintle pin in the nose landing gear (NLG). This action is necessary to prevent failure of the NLG due to an unlocked pintle pin migrating from its support housings, and consequent jamming or collapse of the NLG. This action is intended to address the identified unsafe condition.

DATES: Effective July 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model ATP airplanes was published in the **Federal Register** on March 17, 2003 (68 FR 12614). That action proposed to require installing a baulking device for the pintle pin in the nose landing gear.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $900 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,300, or $2,100 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–02 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13187. Docket 2002–NM–162–AD.

Applicability: All Model ATP airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the installation, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) due to an unlocked pintle pin migrating from its support housings, and consequent jamming or collapse of the NLG, accomplish the following:

Installation

(a) Within 3 years after the effective date of this AD, install a baulking device for the pintle pin in the NLG by accomplishing the actions specified in the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ATP–32–105, dated April 9, 2002. The actions must be done per the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin ATP–32–105, dated April 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–04–2002.

Effective Date

(e) This amendment becomes effective on July 17, 2003.

Issued in Renton, Washington, on June 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14522 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

25 CFR Part 309

RIN 1076–AE16

Protection of Products of Indian Art and Craftsmanship

AGENCY: Indian Arts and Crafts Board (IACB), Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule implements the Indian Arts and Crafts Enforcement Act of 2000, an amendment to the Indian Arts and Crafts Act of 1990. The rule provides guidance to persons who produce, market, or purchase arts and crafts marketed as Indian products. The rule clarifies the regulatory definition of "Indian product," as defined under the Indian Arts and Crafts Act of 1990, by including specific examples of "Indian product," as well as examples of what is not an "Indian product."

EFFECTIVE DATE: September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Meridith Z. Stanton, Director, Indian Arts and Crafts Board, Room 4004–MIB, 1849 C Street, NW., Washington, DC 20240, telephone 202–208–3773 (not a toll-free call), fax 202–208–5196, or e-mail *iacb@os.doi.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Indian Arts and Crafts Board (IACB) was created by Congress pursuant to the Act of August 27, 1935 (49 Stat. 891; 25 U.S.C. 305 *et seq.*; 18 U.S.C. 1158–59) ("1935 Act"). The IACB is responsible for carrying out the Indian Arts and Crafts Act of 1990, promoting the development of American Indian and Alaska Native arts and crafts, improving the economic status of members of federally recognized Tribes, and helping to establish and expand marketing opportunities for arts and crafts produced by American Indians and Alaska Natives.

The Indian Arts and Crafts Act of 1990, Public Law 101–644, 104 Stat. 4662 (hereinafter the "1990 Act") is essentially a truth-in-marketing law designed to prevent, through both civil and criminal sanctions, marketing of products in a manner that falsely suggests such products are produced by Indians when the products are not, in fact, made by an Indian as defined by the 1990 Act. As used herein, "marketing" occurs when a person offers or displays for sale or sells a good. Under section 104(a) of the 1990 Act (18 U.S.C. 1159(c)(2)), "the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' have the meaning given such term in regulations which may be promulgated by the Secretary of the Interior."

Under the Secretary's implementing regulations for the 1990 Act, at 25 CFR part 309, prior to these amendments, the term "Indian product" was defined as:

"(1) *In general.* "Indian product" means any art or craft product made by an Indian.

"(2) *Illustrations.* The term Indian product includes, but is not limited to:

"(i) Art works that are in a traditional or non-traditional Indian style or medium;

"(ii) Crafts that are in a traditional or non-traditional Indian style or medium;

"(iii) Handcrafts, *i.e.* objects created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

"(3) *Exclusion for products made before 1935.* The provisions of this part shall not apply to any art or craft products made before 1935."

This definition reflects the IACB's determination that "Indian product" under the 1990 Act applies to Indian arts and crafts, and not all products generally. This determination is consistent with the IACB's organic legislation enacted in 1935, the IACB's primary mission as established by Congress, and the Congressional intent of the 1990 Act. The 1935 cut-off date for products regulated by the 1990 Act is in keeping with the Congressional intent of the 1990 Act and the legislated mission of the IACB—economic growth through the development and promotion of contemporary Indian arts and crafts.

The "Indian product" definition under the 1990 Act's implementing regulations, at 25 CFR part 309, focused on the nature and Indian origin of products covered by the 1990 Act, and did not provide specific arts and crafts examples. The Indian Arts and Crafts Enforcement Act of 2000, (hereinafter the "2000 Act"), an amendment to the 1990 Act, was enacted on November 9, 2000. Under this amendment, Congress sought to strengthen the cause of action for misrepresentation of Indian arts and crafts. Section 2 of the 2000 Act directed the IACB to "promulgate regulations to include in the definition of the term 'Indian product' specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act."

This final rule carries out the 2000 Act by clarifying the definition of "Indian product." It also provides specific examples of items that may be marketed as Indian products and those that may not, thereby informing the public as to when an individual may be subject to civil or criminal penalties for falsely marketing a good as an "Indian product."

Public Participation

Prior to drafting regulations for the 2000 Act, in early January, 2001, the IACB sent out individual letters to the Tribal leaders of all federally recognized Tribes informing them of the 2000 Act and providing them with copies of the legislation. The letters invited the Tribal leaders to designate a member of their staff or Tribal member from their arts and crafts community with whom the IACB could discuss their Tribe's interest in specific language for consideration in the further clarification of "Indian product." This Tribal involvement was intended to ensure that the amended definition properly encompasses Indian art and craft products that should be protected by the 1990 Act.

Following written and telephone communications and subsequent teleconference consultations with designated representatives from a broad range of interested Tribes, the IACB published the proposed rulemaking for the 2000 Act on May 21, 2001. 66 Fed. Reg. 27915–27920. In addition to publication, several thousand copies of the proposed rulemaking were distributed to interested parties, including every federally recognized Tribe, members of the Indian arts and crafts industry, key offices within the Department of Justice, including U.S. Attorneys and the Federal Bureau of Investigation, State Governors, State Attorneys General, and State Arts Councils.

The IACB received 25 public comments on the proposed rulemaking, and each was carefully reviewed, analyzed, and considered. These comments are grouped in the following summary.

Summary and Analysis of Public Comments

A broad range of Tribal, federal, State, and Indian arts and crafts industry comments were received in response to the proposed rulemaking for the 2000 Act. The respondents provided a variety of comments, including concern for the protection of Indian artists and artisans' economic livelihood, suggestions for changes to the proposed product categories, product items, and descriptions, as well as requests to further clarify that the labor component of the Indian art or craft product must be entirely Indian.

Overall Comments

Definition of "Indian"

One respondent requested that a working definition of "Indian" be developed to assist in the definition of "Indian product," while another respondent questioned whether State-recognized Tribes met the definition of "Indian." One comment proposed that, under the "Background" section's definition of "Indian product," the terms "American Indian or Alaska Native" be substituted for "Indian." Another respondent requested that the definition of Indian be expanded to permit people of Indian descent, yet who are not enrolled in State or federally recognized Tribes, to sell their work as Indian art.

The final rule has not adopted these comments. The term "Indian" and the interrelated term "Indian Tribe" are defined by Congress by statute in the 1990 Act and may not be changed by regulation. As defined by the 1990 Act, however, the terms "Indian" and "Indian Tribe" already include, for purposes of sections 104, 105, and 107 of the 1990 Act, members of State-recognized Tribes and Alaska Natives, as well as members of federally recognized Tribes.

Sections 104 and 105 of the 1990 Act define "Indian" and "Indian Tribe" as follows:

"The term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;"

"The term 'Indian tribe' means—

"Any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"Any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority."

In response to the comment regarding the sale of art by individuals who are not members of federally or State-recognized Tribes, but are of Indian descent, it should be noted that such individuals may market their goods as an Indian, provided they are certified as an "Indian artisan" by an Indian Tribe. Certification is at the option of the Tribe. Certification by a Tribe, under 25 CFR 309.4, requires that the individual be of the Indian lineage of one or more members of that Tribe. As a result, it is not necessary to adopt this comment. Furthermore, neither the 1990 Act nor the 2000 Act prohibit any statements about a person's Indian heritage in the marketing of his or her art or craft work that are truthful and that do not falsely suggest the individual is a member of an Indian Tribe, as defined by the 1990 Act.

Materials Used To Make Indian Arts and Crafts

One respondent expressed concerns regarding the use and representation of stabilized turquoise in Indian jewelry, as well as the need for information regarding the 1990 Act to reach markets and businesses violating the 1990 Act. Issues regarding the use and representation of stabilized turquoise in Indian jewelry are beyond the scope of the 1990 Act, which focuses on Indian labor, not on art and craft base materials. While the IACB welcomes any suggestions to improve its efforts to educate the industry and public about the 1990 Act, as well as any information regarding potential violations of the 1990 Act, these comments have not been adopted in the final rule as they do not address the 2000 Act's statutory mandate to further clarify the definition of "Indian product."

One respondent recommended that the Lanham Act language, 15 U.S.C. 1125(a), which addresses strict liability for misleading words and markings, be adopted to further clarify what kind of conduct the IACB will interpret as "falsely suggests" that products are Indian for purposes of civil action. Another comment requested that the statutory language "In a manner that 'falsely suggests' it is Indian produced," 18 U.S.C. 1159(a), be changed to "In a manner that 'falsely states' it is Indian produced," to narrow the gap in the proof of criminal intent. Another respondent recommended that the term "falsely suggests" be used consistently throughout the regulations, rather than the word "misrepresented" to avoid confusion.

The final rule has not incorporated the first comment recommending adoption of the Lanham Act's strict liability language to clarify conduct that "falsely suggests" an art or craft is an Indian product or the second comment regarding a change in statutory language. Both of these recommendations are beyond the scope of IACB's Congressional mandate under the 2000 Act to promulgate regulations to further clarify the definition of Indian product. However, the third

recommendation regarding consistent use of "falsely suggests" has been adopted to mirror the use of these terms in the 1990 Act.

Section-by-Section Comments

Section 309.2 What Are the Key Definitions for Purposes of the Act?

Definition of "Indian Product," § 309.2(d)

In light of comments to §§ 309.6 and 309.7, the final rule contains additional clarification that "made by an Indian" includes products in which the Indian has provided the labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. The labor component of the product must be entirely Indian and is what makes the Indian art or craft object an "Indian product."

One comment requested that the requirement in § 309.7(h) note 2—that the labor component of an "Indian product" must be entirely Indian—be stated boldly in a prominent location at the beginning of the final rule to emphasize its paramount importance. This comment has been adopted and incorporated in the key definitions of Indian product under § 309.2(d).

Several respondents requested that a range of items, such as food and agricultural products, music, poetry, and stories, be included as examples of Indian products. Two of these respondents also requested that "Indian product" be defined in the broadest way possible. One respondent stated that "Indian product" includes any "typically Indian product" designed and produced by Indians. One respondent requested that "Indian product" be defined as any product made by an Indian, while another respondent requested that the definition of "Indian product" be narrowed.

The final rule has not adopted these comments. As explained in the "Section-by-Section Comments—Definition of Indian Product, § 309.2" of the preamble to the 1990 Act's regulations, the "Supplementary Information; Background" for the 2000 Act's Notice of Proposed Rulemaking, and the Background section of this document, the IACB has determined that the 1990 and 2000 Acts apply to Indian arts and crafts and not all products generally. This determination is based upon the IACB's 1935 organic legislation, IACB's primary mission as established by Congress, and the language and Congressional intent of the 1990 and 2000 Acts.

One respondent requested that the final rule add sacred and traditional Indian cultural symbols, patterns, and designs used in traditional Indian weavings under the definition of "Indian product" to protect against imported products that appropriate Indian cultural symbols.

Under the 1990 Act, the IACB oversees the receipt, analysis, and referral of complaints of art and craft work offered or displayed for sale or sold within the United States in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe, or Indian arts and crafts organization resident within the United States. While the IACB acknowledges the significant concerns cited by the respondent, the protection of Indian cultural symbols, patterns, and designs, and related cultural property of an Indian Tribe, clan, or moiety is a matter of cultural patrimony and beyond the scope of the 1990 Act, unless misrepresentation is involved. Therefore, the final rule has not incorporated this request. Of course, if the art or craft work depicting the Indian cultural symbols is marketed in the United States in a manner that falsely suggests that it is the product of a particular Tribe or as Indian made, then a violation of the 1990 Act would occur.

Illustration of "Handcrafts," § 309.2(d)(1)(iii)

Two respondents requested that, under § 309.2(d)(1)(iii), the terms "Indian handmade arts and crafts" be substituted for 'handcrafts' made by an Indian." This request has not been adopted as it does not improve the understanding of § 309.2(d)(1).

Exclusions From Definition of Indian Product, § 309.2(d)(2)(iii)

Two comments expressed concern that, under § 309.2(d)(2)(iii), bronze castings reproduced from an original Indian stone sculpture in a commercial foundry by non-Indians would be prohibited from being sold as an Indian product. The respondents requested clarification regarding limited editions of original Indian art works. The final rule has not incorporated these comments. Under the regulations, a product in the style of Indian arts and crafts that is designed by an Indian but produced by non-Indian labor is not an Indian product under the 1990 Act. The original stone sculpture is an Indian product. The limited edition bronze casting by non-Indian labor is a non-Indian reproduction of an original Indian stone sculpture.

Exclusions, § 309.2(d)(2)(v)

One respondent requested clarification regarding the use of the term "without a 'substantial handcraft element' provided by Indian labor" under § 309.2(d)(2)(v), to describe a product in the style of Indian arts and crafts that does not meet the definition of Indian product. The respondent viewed this definition in conflict with the definition of 'handcrafts' made by an Indian" under § 309.2(d)(1)(iii), "objects created with the help of such devices as allow the manual skill * * *" For clarification, the term "substantial transformation" has been substituted for "substantial handcraft element" under § 309.2(d)(2)(v).

Exclusions, § 309.2(d)(2)(vi)

One comment requested that § 309.2(d)(2)(vi), excluding industrial products from the definition of Indian products, be removed from the final rule. This request has not been adopted because it is inconsistent with the scope and intent of the 1990 Act.

Exclusions, § 309.2(d)(2)(vii)

One respondent requested that § 309.2(d)(2)(vii) regarding assembly line production of a product in the style of Indian arts and crafts be further clarified. It was suggested the example provided as "not an Indian product," a pipe in the style of an Indian product, be changed to another example that focused more on the requirement of entirely Indian labor for Indian products. While the previous example remains valid, the final rule has adopted the respondent's recommended language to eliminate potential confusion.

Section 309.6 When Does a Commercial Product Become an Indian Product?

One commenter requested that beadwork on commercially available items, such as medicine bottles and combs, not be considered authentic "Indian products." The subject of transforming commercial products into Indian art or craft products is addressed in §§ 309.6, 309.7, and 309.14. By adding sufficient art and craft work to a commercial product through Indian labor, the qualities and appearance of the commercial product can be substantially transformed into an art or craft work. Therefore, this request has not been adopted in the final rule.

One respondent expressed concern that the provisions provided under § 309.6 exhibited a lack of support for non-traditional art forms. To the contrary, the proposed rulemaking and the final rule state, in § 302.2(d)(1)(ii), that the key definitions of Indian product include "crafts made by an Indian that are in a traditional or non-traditional style or medium." Furthermore, § 309.22 clarifies that the definition of Indian product includes "art forms to be developed in the future." The final rule therefore has not incorporated this comment regarding non-traditional art forms.

One respondent requested clarification about when a commercial product becomes an Indian product. For example, if an Indian artisan were to use industrial steel, bottles, and cans in a sculpture, at what point does it change from an industrial or commercial product into an Indian product? The final rule clarifies that once commercial items, such as cups and bottles, kitchen utensils, or marble components, are substantially transformed entirely by Indian labor into an art or craft object, such as a sculpture, the result is an Indian product.

One comment requested clarification between the definition of commercial and industrial products. This comment has been adopted in part by adding explanatory language to § 309.6 of the final rule. The rule now states that commercial products are goods designed for profit and mass distribution that lend themselves to Indian embellishment, for example clothing and accessories. For purposes of the final rule, industrial products, on the other hand, are goods that have an exclusively functional purpose, do not serve as a traditional artistic medium, and that do not lend themselves to Indian embellishment, such as appliances and vehicles. An industrial product may not become an Indian product. This comment has been adopted in part by adding descriptive language to § 309.6 of the final rule.

Section 309.7 How Should a Seller Disclose the Nature and Degree of Indian Labor When Selling, Offering, or Displaying Art or Craft Work for Sale?

A comment requested that the terms "Indian style," "Indian design," "Indian inspired," and "Indian assembled" be removed from § 309.7 and throughout the final rule to avoid confusion among consumers and to avoid substantial interpretive problems. The final rule makes various revisions to § 309.7(d), which incorporate the comments in part.

Section 309.7(a) Indian Production of an Indian Product

Two respondents expressed concern that § 309.7 may lead people to believe that in order for an Indian product to be marketed as such, it must be conceived and designed by an Indian. We believe, however, that § 309.6 makes it clear that when an item is "substantially transformed" by Indian artistic or craft work labor, it becomes an Indian product. Design or conception by an Indian alone is insufficient to constitute substantial transformation. The Indian labor must substantially transform the materials, such as beads, precious metals, and other base materials, into an Indian product. Thus, even commercial products featuring Indian arts and crafts embellishments done by Indian labor that sufficiently transform the nature, qualities, and appearance of the original commercial item are considered "Indian products." The final rule has not incorporated the comment.

Section 309.7(d) Indian Designed and Non-Indian Made Products

One commenter requested that an Indian designed and non-Indian made product, and therefore not an Indian product, be sold as "not an Indian product," without the option to market it as "Indian designed." This comment has not been adopted in the final rule because dictating how products that are not Indian products may be marketed is outside the scope of this rule. Also, we will retain the suggestion to market items as "Indian designed" because we believe that providing suggested alternatives to marketing products as Indian products will enhance compliance with the rule.

Section 309.7(e) A Product Assembled From a Substantial Amount of Non-Indian Made Materials

Several respondents requested clarification regarding guidelines for characterizing art and craft work when those products were made from a substantial amount of non-Indian made products, such as beads, gold, silver, and purchased basketry materials. Although §§ 309.11 through 309.22 address a vast range of "Indian products," including beadwork, gold and silver jewelry and crafts, basketry, and textile products, the respondents point out that § 309.7(e) could create confusion.

A wide variety of Indian arts and crafts products may be made from non-Indian made materials, such as beads, precious metals, and other base materials, provided that Indian artistic creation and labor—as opposed to assembly line work—substantially transforms these materials into Indian products. For example, a piece of silver artistically designed, shaped, and finely engraved by an Indian becomes a handcrafted Indian bracelet. By contrast, the type of products under § 309.7(e) are essentially those products that are simply assembled from "fit together parts" kits and related products. For example, assembled jewelry that requires non-artistic Indian labor, such as stringing overseas mass-produced fetishes or heshi and attaching a clasp, is not an Indian product. Conversely, for example, Indian artistically-crafted beadwork products, regardless of where the beads were manufactured and the amount of non-Indian materials, such as beaded medallion necklaces, pouches, and hair clips, as well as gold engraved bracelets, and silver and turquoise crafted rings, do not fall under the "assembled" category of § 309.7(e) and are Indian products.

The respondent's requests for clarification have been adopted in the final rule. Section 309.7(e) has been revised to read "A product, such as jewelry, made with non-artistic Indian labor, from assembled or 'fit together parts,' does not meet the definition of Indian product."

One comment recommended that § 309.7(e) note 1 eliminate the term "Indian assembled" as a marketing guideline and replace it with the phrase "not an Indian product." The comment has not been adopted in the final rule. The product addressed in § 309.7(e) note 1 is not an Indian product under the 1990 Act, but it may be marketed as "Indian assembled" without violating the 1990 Act. Thus, rather than attempting to dictate affirmative marketing representations for the manner in which such a product should be marketed, the final rule only provides an example of how it may be marketed. (The 1990 Act only prohibits falsely suggesting that a product is an Indian product. It does not affect the marketing of non-Indian products.)

One respondent requested that "kachina" be removed, under § 309.7(e) note 1, and another product be substituted as an example of kit assembled products. The intent of this request was to prevent the generic use of a religious and culturally sensitive item in the rulemaking. This request has been adopted by removing the kachina example and inserting "dream catcher" under § 309.7(e) note 1.

Section 309.7(f) A Product Assembled by Non-Indian Labor From Kits

In keeping with the request for further clarification to § 309.7(f), the guidelines state that a product assembled by non-Indian labor from a kit, that is made in the style of an Indian product, is not an Indian product.

Section 309.8 Identifying Authentic Indian Products

A respondent asked that an individual's enrollment number be incorporated in the recommended method of identifying authentic Indian products, under § 309.8. The final rule has incorporated this recommendation. The addition of an Indian artist's or artisan's enrollment number under the recommended methods of identifying authentic Indian products, along with the name of the artist or artisan and the name of his or her Tribe, will assist consumers in identifying authentic Indian products, contribute to consumer confidence, and help raise consumer appreciation of authentic Indian arts and crafts.

Sections 309.8 and 309.9 Marketing Products by "Certified Indian Artisans"

A respondent requested that § 309.8, regarding identifying authentic Indian products, include reference to how a "certified Indian artisan" should identify his or her art work. The respondent also requested that § 309.9, regarding how non-Indians can market products in the style of Indian arts and crafts, take the "certified Indian artisan" issue into consideration. The request to address how a "certified Indian artisan" should identify his or her art work has been adopted in the text of § 309.8. The request to include the "certified Indian artisan" issue under § 309.9, regarding non-Indian products, has not been adopted. The 1990 Act's definition of "Indian," under Sections 104 and 105, includes any individual certified as an Indian artisan by an Indian Tribe. As the art and craft work of certified Indian artisans meet the definition of Indian product, it would be inappropriate to include their art and craft work under non-Indian products.

Section 309.9 Is it Illegal for a Non-Indian to Make and Sell Indian Style Art and Craft Products?

Two respondents recommended that the heading of § 309.9 be changed to the format of the related sections. The final rule has adopted one of the two recommendations. The former heading for § 309.9, "Is it illegal . . .," is replaced with the current heading "When can non-Indians make and sell products in the style of Indian art and craft products?"

One respondent commented that, under § 309.9, products in the style of Indian art and craft products that are not Indian made should be offered for sale as "non-Indian made" only, and not "Indian inspired." The request has been adopted in part. In response to this comment, and a previously addressed comment, "Indian inspired" has been struck from the last sentence of § 309.9, as well as the entire text of the final rule, to reduce or alleviate consumer confusion.

Section 309.11 What Are Examples of Jewelry That Are Indian Products?

One respondent suggested adding seashells and abalone as descriptive jewelry examples under § 309.11. These two examples have not been adopted, as shell jewelry is listed under Indian jewelry products.

Section 309.12 What Are Examples of Basketry That Are Indian Products?

One respondent suggested a variety of descriptive terms be added to this section on basketry, including cedar capes and dresses. A number of the recommended descriptive terms have been adopted in § 309.12 of the final rule.

Sections 309.12 and 309.13 What Are Examples of Basketry, Weaving, and Textile Indian Products?

One comment requested that all references to hemp be removed from the final rule, which occurred under §§ 309.12 and 309.13. In line with federal law (the Controlled Substances Act, 21 U.S.C. 801 *et seq.*) the final rule has adopted this request by substituting fiber for hemp under §§ 309.12 and 309.13.

Section 309.15 What Are Examples of Apparel That Are Indian Products?

One respondent requested that wording be added under § 309.15 to include the specific reference to apparel items made from both traditional materials and designs and from modern textiles. The final rules have not adopted this comment. The key definitions of Indian product, under § 309.2, describe art works and crafts as "made by an Indian that are in a traditional or non-traditional style or medium." Therefore, it is understood that traditional and modern apparel, as well as other traditional and modern art and craft works, are included in the range of Indian products provided as examples.

Section 309.17 What Are Examples of Woodwork That Are Indian Products?

One comment requested additional descriptive terms be incorporated under § 309.17, including red and yellow cedar seagoing canoe paddles and broad leaf maple ladles, spoons, and soup bowls. This request has been adopted in part.

One comment requested that traditional ceremonial Indian structures be included under § 309.17. The final rule has not adopted this request. While what constitutes an Indian art or craft product is potentially very broad, the range of examples of woodwork products currently listed under § 309.17 is sufficient.

Section 309.21 What Are Examples of Dolls and Toys That Are Indian Products?

A respondent requested that kachina dolls be removed from § 309.21, listing examples of dolls, and moved to § 309.20, listing examples of carvings. This request has been adopted.

Section 309.22 What Are Examples of Painting and Other Fine Art Forms That Are Indian Products?

One respondent requested a new section, § 309.23, be added to the final rule to give "art forms to be developed in the future" its own section, rather than included in § 309.22. The request has not been adopted, as a separate category for work yet to be defined is unwarranted. The current categories of art and craft work are sufficiently broad to reflect evolution of art forms.

Section 309.23 Does This Part Apply to Products Made Before 1935?

On comment suggested adding a new § 309.23 for other Indian products, such as pouches, animal fetishes, and pipes, and moving § 309.23 on pre-1935 products to § 309.24. The final rule has not adopted this suggestion as the other Indian products are sufficiently covered in §§ 309.11–309.22.

Drafting Information

This final rule was prepared by Meridith Z. Stanton (Director, Indian Arts and Crafts Board).

Compliance With Other Laws and Directives

1. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or tribal governments or communities. The rule is simply a Congressionally mandated further clarification of an existing regulatory definition of "Indian product."

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule, the further clarification of an existing regulatory definition of "Indian product," does not involve another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not involve any budgetary or entitlements issues.

(4) This rule does not raise novel legal or policy issues. Again, it is simply the further clarification of an existing regulatory definition of "Indian product.".

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) A number of individuals, small businesses, and tribal governments may be affected in some way. As this rule simply clarifies an existing regulatory definition, however, it will not have a significant economic effect on any of these small entities, either through increasing compliance costs or otherwise.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The annual effect is insignificant.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Clarification of the term "Indian product" and guidance on how to represent Indian products in the marketplace will not cause any significant increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. Through the clarification of the term "Indian product," the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be significantly affected. In fact, it should assist U.S. Indian arts and crafts producers to compete with counterfeit Indian arts and crafts produced overseas.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. It simply clarifies an existing regulatory definition of "Indian product." A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule does not involve government action or interference with Constitutionally protected rights.

6. Federalism (Executive Order 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect the relationship between State and federal governments. A Federalism Assessment is not required.

7. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 25 CFR 309

Indians—arts and crafts, Penalities, Trademarks.

■ For the reasons set out in the preamble, part 309 of 25 CFR Chapter II is amended as follows:

PART 309—PROTECTION OF INDIAN ARTS AND CRAFTS PRODUCTS

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 18 U.S.C. 1159; 25 U.S.C. 305 *et seq.*

■ 2. In § 309.2, paragraph (d) is revised to read as follows:

§ 309.2 What are the key definitions for purposes of the Act?

* * * * *

(d) *Indian product*—(1) *In general.* The term "Indian product" means any art or craft product made by an Indian. For this purpose, the term "made by an Indian" means that an Indian has provided the artistic or craft work labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. This may include more than one Indian working together. The labor component of the product, however, must be entirely Indian for the Indian art or craft object to be an "Indian product."

(2) *Illustrations.* The term "Indian product" includes, but is not limited to:

(i) Art made by an Indian that is in a traditional or non-traditional style or medium;

(ii) Craft work made by an Indian that is in a traditional or non-traditional style or medium;

(iii) Handcraft made by an Indian, *i.e.* an object created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(3) *Examples of non-qualifying products.* An "Indian product" under the Act does not include any of the following, for example:

(i) A product in the style of an Indian art or craft product made by non-Indian labor;

(ii) A product in the style of an Indian art or craft product that is designed by an Indian but produced by non-Indian labor;

(iii) A product in the style of an Indian art or craft product that is assembled from a kit;

(iv) A product in the style of an Indian art or craft product originating from a commercial product, without substantial transformation provided by Indian artistic or craft work labor;

(v) Industrial products, which for this purpose are defined as goods that have an exclusively functional purpose, do not serve as a traditional artistic medium, and that do not lend themselves to Indian embellishment, such as appliances and vehicles. An industrial product may not become an Indian product.

(vi) A product in the style of an Indian art or craft product that is produced in an assembly line or related production line process using multiple workers not all whom are Indians. For

example, if twenty people make up the labor to create the product(s), and one person is not Indian, the product is not an "Indian product."

* * * * *

§§ 309.3–309.6 [Redesignated as §§ 309.24–309.27]

■ 3. Sections 309.3 through 309.6 are redesignated as §§ 309.24 through 309.27

■ 4. Sections 309.6 through 309.23 are added to read as follows:

§ 309.6 When does a commercial product become an Indian product?

In addressing Indian embellishments to originally commercial products, the Indian labor expended to add art or craft work to those objects must be sufficient to substantially transform the qualities and appearance of the original commercial item. "Commercial products," under this part, are consumer goods designed for profit and mass distribution that lend themselves to Indian embellishment, for example clothing and accessories. Through substantial transformation due to Indian labor, a product changes from a commercial product to an Indian product. Examples of formerly commercial products that become Indian products include tennis shoes to which an Indian applies beadwork and denim jackets to which an Indian applies ribbon appliqués.

§ 309.7 How should a seller disclose the nature and degree of Indian labor when selling, offering, or displaying art and craft work for sale?

The Indian Arts and Crafts Act is a truth-in-marketing law. Those who produce and market art and craft work should honestly represent and clarify the degree of Indian involvement in the production of the art and craft work when it is sold, displayed or offered for sale. The following guidelines illustrate the way in which art and craft work may be characterized for marketing purposes and gives examples of products that may be marketed as Indian products.

If . . .	then . . .
(a) An Indian conceives, designs, and makes the art or craft work	it is an "Indian product."
(b) An Indian produces a product that is "handcrafted," as explained in 309.3(d)(iii).	it can be marketed as such and it meets the definition of "Indian product."
(c) An Indian makes an art or craft work using some machine made parts.	it is "Indian made" and meets the definition of "Indian product."
(d) An Indian designs a product, such as a bracelet, which is then produced by non-Indians.	it does not meet the definition of "Indian product" under the Act.
(e) A product, such as jewelry, is made with non-artistic Indian labor, from assembled or "fit together parts".	it does not meet the definition of "Indian product" under the Act.[1]
(f) A product in the style of an Indian product is assembled by non-Indian labor from a kit.	it does not meet the definition of "Indian product" under the Act.
(g) A product is in the style of an Indian art or craft product, but not made by an Indian.	it does not meet the definition of "Indian product" under the Act.
(h) An Indian and a non-Indian jointly undertake the art or craft work to produce an art or craft product, for example a concho belt.	less than all of the labor is Indian and hence it does not meet the definition of "Indian product" under the Act.[2]

[1] For example, a necklace strung with overseas manufactured fetishes or heshi. If an Indian assembled the necklace, in keeping with the truth-in-marketing focus of the Act, it can be marketed as "Indian assembled." It does not meet the definition of "Indian product" under the Act. Similarly, if a product, such as a dream catcher is assembled by an Indian from a kit, it can be marketed as "Indian assembled." It does not meet the definition of "Indian product" under the Act.

[2] In order to be an "Indian product," the labor component of the product must be entirely Indian. In keeping with this truth-in-marketing law, a collaborative work should be marketed as such. Therefore, it should be marketed as produced by "X" (name of artist or artisan), "Y" (Tribe of individual's enrollment) or (name of Tribe providing official written certification the individual is a non-member Indian artisan and date upon which such certification was issued by the Tribe), and "Z" (name of artist or artisan with no Tribe listed) to avoid providing false suggestions to consumers.

§ 309.8 For marketing purposes, what is the recommended method of identifying authentic Indian products?

(a) The recommended method of marketing authentic Indian products is to include the name of the artist or artisan, the name of the Tribe in which the artist or artisan is enrolled, and the individual's Tribal enrollment number. If the individual is a certified non-member Indian artisan, rather than an enrolled Tribal member, the product identification should include the name of the Tribe providing official written certification that the individual is a non-member Indian artisan and the date upon which such certification was issued by the Tribe. In order for an individual to be certified by an Indian Tribe as a non-member Indian artisan, the individual must be of Indian lineage of one or more members of such Indian Tribe and the certification must be issued in writing by the governing body of an Indian Tribe or by a certifying body delegated this function by the governing body of the Indian Tribe.

(b) For example, the Indian product should include a label, hangtag, provenance card, or similar identification that includes W (name of the artist or artisan), and X (name of the Tribe in which the individual is enrolled) and Y (individual's Tribal enrollment number), or a statement that the individual is a certified non-member Indian artisan of Z (name of the Tribe providing certification and the date upon which the certification was issued by the Tribe).

§ 309.9 When can non-Indians make and sell products in the style of Indian arts and crafts?

A non-Indian can make and sell products in the style of Indian art or craft products only if the non-Indian or other seller does not falsely suggest to consumers that the products have been made by an Indian.

§ 309.10 What are some sample categories and examples of Indian products?

What constitutes an Indian product is potentially very broad. However, to provide guidance to persons who produce, market, or purchase items marketed as Indian products, §§ 309.11 through 309.22 contain a sample listing of "specific examples" of objects that meet the definition of Indian products. There is some repetition, due to the interrelated nature of many Indian products when made by Indian artistic labor. The lists in these sections contain examples and are not intended to be all-inclusive. Additionally, although the Indian Arts and Crafts Act of 1990 and the Indian Arts and Crafts Enforcement Act of 2000 do not address materials used in Indian products, some materials are included for their descriptive nature only. This is not intended to restrict materials used or to exclude materials not listed.

§ 309.11 What are examples of jewelry that are Indian products?

(a) Jewelry and related accessories made by an Indian using a wide variety of media, including, but not limited to, silver, gold, turquoise, coral, lapis, jet, nickel silver, glass bead, copper, wood, shell, walrus ivory, whale baleen, bone, horn, horsehair, quill, seed, and berry, are Indian products.

(b) Specific examples include, but are not limited to: ivory and baleen scrimshaw bracelets, abalone shell necklaces, nickel silver scissortail pendants, silver sand cast bracelets, silver overlay bolos, turquoise channel inlay gold rings, cut glass bead rosette earrings, wooden horse stick pins, and medicine wheel quilled medallions.

§ 309.12 What are examples of basketry that are Indian products?

(a) Basketry and related weavings made by an Indian using a wide variety of media, including, but not limited to, birchbark, black ash, brown ash, red cedar, yellow cedar, alder, vine maple, willow, palmetto, honeysuckle, river cane, oak, buck brush, sumac, dogwood, cattail, reed, raffia, horsehair, pine needle, spruce root, rye grass, sweet grass, yucca, bear grass, beach grass, rabbit brush, fiber, maidenhair fern, whale baleen, seal gut, feathers, shell, devil's claw, and porcupine quill, are Indian products.

(b) Specific examples include, but are not limited to: double weave river cane baskets, yucca winnowing trays, willow burden baskets, honeysuckle sewing baskets, black ash picnic baskets, cedar capes and dresses, pine needle/raffia effigy baskets, oak splint and braided sweet grass fancy baskets, birchbark containers, baleen baskets, rye grass dance fans, brown ash strawberry baskets, sumac wedding baskets, cedar hats, fiber basket hats, yucca wicker basketry plaques, and spruce root tobacco pouches.

§ 309.13 What are examples of other weaving and textiles that are Indian products?

(a) Weavings and textiles made by an Indian using a wide variety of media, including, but not limited to, cornhusk, raffia, tule, horsehair, cotton, wool, fiber, linen, rabbit skin, feather, bison fur, and qiviut (musk ox) wool, are Indian products.

(b) Specific examples include, but are not limited to: corn husk bags, twined yarn bags, cotton mantas, willow cradle boards, horsehair hatbands, Chiefs Blankets, Two Grey Hills rugs, horse blankets, finger woven sashes, brocade table runners, star quilts, pictorial appliqué wall hangings, fiber woven bags, embroidered dance shawls, rabbit skin blankets, and feather blankets.

§ 309.14 What are examples of beadwork, quillwork, and moose hair tufting that are Indian products?

(a) Beadwork, quillwork, and moose hair tufting made by an Indian to decorate a wide variety of materials, including, but not limited to, bottles, baskets, bags, pouches, and other containers; belts, buckles, jewelry, hatbands, hair clips, barrettes, bolos, and other accessories; moccasins, vests, jackets, and other articles of clothing; and dolls and other toys and collectibles, are Indian products.

(b) Specific examples include, but are not limited to: quilled pipe stems, loom beaded belts, pictorial bags adorned with cut glass beads, deer skin moccasins decorated with moose hair tufting, beaded miniature dolls, and quilled and beaded amulets.

§ 309.15 What are examples of apparel that are Indian products?

(a) Apparel made or substantially decorated by an Indian, including, but not limited to, parkas, jackets, coats, moccasins, boots, slippers, mukluks, mittens, gloves, gauntlets, dresses, and shirts, are Indian products.

(b) Specific examples include, but are not limited to: seal skin parkas, ribbon appliqué dance shawls, smoked moose hide slippers, deer skin boots, patchwork jackets, calico ribbon shirts, wing dresses, and buckskin shirts.

§ 309.16 What are examples of regalia that are Indian products?

(a) Regalia are ceremonial clothing, modern items with a traditional theme, and accessories with historical significance made or significantly decorated by an Indian, including, but not limited to, that worn to perform traditional dances, participate in traditional socials, used for dance competitions, and worn on special occasions of tribal significance. If these items are made or significantly decorated by an Indian, they are Indian products.

(b) Specific examples include, but are not limited to: hide leggings, buckskin dresses, breech cloths, dance shawls, frontlets, shell dresses, button blankets, feather bustles, porcupine roaches, beaded pipe bags, nickel silver stamped armbands, quilled breast plates, coup sticks, horse sticks, shields, headdresses, dance fans, and rattles.

§ 309.17 What are examples of woodwork that are Indian products?

(a) Woodwork items made by an Indian, including, but not limited to, sculpture, drums, furniture, containers, hats, and masks, are Indian products.

(b) Specific examples include, but are not limited to: hand drums, totem poles, animal figurines, folk carvings, kachinas, embellished long house posts, clan house carved doors, chairs, relief panels, bentwood boxes, snow goggles, red and yellow cedar seagoing canoe paddles, hunting hats, spirit masks, bows and arrows, atlatls, redwood dug out canoes, war clubs, flutes, dance sticks, talking sticks, shaman staffs, cradles, decoys, spiral pipe stems, violins, Native American Church boxes, and maple ladles, spoons, and soup bowls.

§ 309.18 What are examples of hide, leatherwork, and fur that are Indian products?

(a) Hide, leatherwork, and fur made or significantly decorated by an Indian, including, but not limited to, parfleches, tipis, horse trappings and tack, pouches, bags, and hide paintings, are Indian products.

(b) Specific examples include, but are not limited to: narrative painted hides, martingales, saddles, bonnet cases, drapes, quirts, forelocks, rosettes, horse masks, bridles, head stalls, cinches, saddle bags, side drops, harnesses, arm bands, belts, and other hand crafted items with studs and tooling.

§ 309.19 What are examples of pottery and ceramics that are Indian products?

(a) Pottery, ceramics, and related arts and crafts items made or significantly decorated by an Indian, including, but not limited to, a broad spectrum of clays and ceramic material, are Indian products.

(b) Specific examples include, but are not limited to: ollas, pitch vessels, pipes, raku bowls, pitchers, canteens, effigy pots, wedding vases, micaceous bean pots, seed pots, masks, incised bowls, blackware plates, redware bowls, polychrome vases, and storytellers and other figures.

§ 309.20 What are examples of sculpture, carving, and pipes that are Indian products?

(a) Sculpture, carving, and pipes made by an Indian, including, but not limited to, wood, soapstone, alabaster, pipestone, argillite, turquoise, ivory, baleen, bone, antler, and shell, are Indian products.

(b) Specific examples include, but are not limited to: kachina dolls, fetishes, animal figurines, pipestone pipes, moose antler combs, argillite bowls,

ivory cribbage boards, whalebone masks, elk horn purses, and clamshell gorgets.

§ 309.21 What are examples of dolls and toys that are Indian products?

Dolls, toys, and related items made by an Indian, including, but not limited to, no face dolls, corn husk dolls, patchwork and palmetto dolls, reindeer horn dolls, lacrosse sticks, stick game articles, gambling sticks, gaming dice, miniature cradle boards, and yo-yos, are Indian products.

§ 309.22 What are examples of painting and other fine art forms that are Indian products?

Painting and other fine art forms made by an Indian including but, not limited to, works on canvas, photography, sand painting, mural, computer generated art, graphic art, video art work, printmaking, drawing, bronze casting, glasswork, and art forms to be developed in the future, are Indian products.

§ 309.23 Does this part apply to products made before 1935?

The provisions of this part do not apply to any art or craft products made before 1935.

Dated: March 26, 2003.

Lynn Scarlett,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 03–14827 Filed 6–11–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of Establishment of Negotiated Rulemaking Advisory Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing its decision to establish a Crane and Derrick Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act (NRA), the Occupational Safety and Health Act (OSH Act) and the Federal Advisory Committee Act (FACA).

DATES: The Charter will be filed on June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. I), the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) and the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*) and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the establishment of the Crane and Derrick Negotiated Rulemaking Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act.

The Committee will function as a part of the Department's rulemaking on revising safety standards for cranes and derricks in construction. It will attempt, using face-to-face negotiations, to reach consensus on the coverage and the substance of these rules, which can be used as the basis of a Notice of Proposed Rulemaking. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, attempting to arrive at a consensus, and submitting to the Secretary of Labor proposed regulatory text for an occupational safety standard governing worker safety for crane and derrick work in construction.

Meetings shall be held as necessary, however, no fewer than eight meetings shall be held over a two-year period. The Committee will terminate two years from the date of this charter or upon the publication of a proposed crane and derricks in construction rule, whichever is earlier.

The committee will be composed of no more than 25 members and a facilitator, appointed by the Secretary of Labor. Members may represent the following interests in appropriate balance: Crane and derrick manufacturers, suppliers, and distributors; companies that repair and maintain cranes and derricks; crane and derrick leasing companies; owners of cranes and derricks; construction companies that use leased cranes and derricks; general contractors; labor organizations representing construction employees who operate cranes and derricks and who work in conjunction with cranes and derricks; owners of electric power distribution lines; civil, structural and architectural engineering firms and engineering consultants involved with the use of cranes and derricks in construction; training organizations; crane and derrick operator testing organizations; insurance and safety organizations, and public interest groups; trade associations; government entities involved with construction safety and with construction operations involving cranes and derricks, and other companies, organizations, and trade associations whose interests are affected by an occupational safety standard governing worker safety for crane and derrick work in construction. Also, the Agency is a member of this committee.

The Committee will report to the Assistant Secretary for Occupational Safety and Health in compliance with the applicable provisions of the FACA and the NRA. Its Charter will be filed under the FACA fifteen (15) days from the date of this publication.

OSHA published a **Federal Register** Notice requesting comments on the advisability of establishing this Negotiated Rulemaking Committee (67 FR 46612, July 16, 2002). Virtually all commenters agreed with the need to establish this committee.

Authority: This document was prepared under the direction of Elaine L. Chao, Secretary of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to section 6 and 7 of the Occupational Safety and Health Act (29 U.S.C. 655 and 656); the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*); the Federal Advisory Committee Act (5 U.S.C. Appendix 1); 41 FR parts 101–6 and 102–3 and 29 CFR part 1911.

Signed at Washington, DC, this 6th day of June 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–14856 Filed 6–11–03; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–02–099]

RIN 1625–AA11 (Formerly RIN 2115–AE84)

Regulated Navigation Area in Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the Regulated Navigation Area in Hampton Roads, Virginia, by imposing vessel reporting requirements and speed limit restrictions in certain areas of the port. These measures are necessary because of the unique physical characteristics and resources contained in the port. These regulations will enhance the safety and security of vessels and property in the Hampton Roads port complex while minimizing, to the extent possible, the impact on commerce and legitimate waterway use.

DATES: This rule is effective June 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–099 and are available for inspection or copying at Marine Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lewis Fisher, Jr., Marine Safety Division, Fifth Coast Guard District, (757) 398–6387, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 29, 2003, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area in Hampton Roads, VA in the **Federal Register** (68 FR 22648). We received three letters commenting on the proposed rule. No public hearings were requested, and none were held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule will make permanent the two temporary final rules (68 FR 2201 and 68 FR 2884) discussed below. The temporary final rules will expire on June 15, 2003. During the effective period of these temporary final rules, dating back to October and December of 2001 respectfully, we have received no comments concerning the proposed changes to the Regulated Navigation Area in Hampton Roads, VA. This final rule is necessary to ensure the continued safety and security of vessels operating within the Port of Hampton Roads, VA. There have been recent reports, all a matter of public record that indicate a continuing high risk of terrorist activity in the United States. Delay in implementing this rule, would therefore be contrary to public interest.

We have issued a notice of proposed rulemaking; withdrawal (68 FR 34370) which was published on June 9, 2003, for a duplicate notice of proposed rulemaking entitled "Regulated Navigation Area in Hampton Roads, VA" (68 FR 27948) which was published on May 22, 2003. The May 22, 2003, notice of proposed rulemaking was inadvertently published after the initial April 29, 2003, publication of a substantially similar notice of proposed rulemaking entitled "Regulated Navigation Area in Hampton Roads, VA" (68 FR 22648). The Coast Guard has only withdrawn the May 22, 2003, notice of rulemaking. The April 29, 2003, notice of proposed rulemaking is the basis of this rule.

Background and Purpose

History

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism,* (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead Federal agency for maritime homeland security, has determined that the District Commander must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A Regulated Navigation Area is a tool available to the Coast Guard that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors, or other waters.

On October 24, 2001, we published a temporary final rule entitled, "Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters," in the **Federal Register** (66 FR 53712). The temporary final rule required that all vessels of 300 gross tons or greater reduce speed to eight knots in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels. In June 2002, this temporary final rule was extended in the **Federal Register** (67 FR 41337). On December 22, 2002, we republished this temporary final rule in the **Federal Register** (68 FR 2201).

On December 27, 2001, we published a temporary final rule entitled, "Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters," in the **Federal Register** (66 FR 66753). The temporary rule expanded the geographic definitions of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and added new port security measures. The port security measures require that vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined, check-in with the Captain of the Port or his representative at least 30 minutes prior to entry to obtain permission to transit the Regulated Navigation Area. The vessel may enter the Regulated

Navigation Area upon authorization and approval by the Captain of the Port or his representative. A vessel that receives permission to enter the Regulated Navigation Area remains subject to a Coast Guard port security boarding. Thirty (30) minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF-FM channel 13 or 16, call (757) 444–5209/5210 or (757) 668–5555 for the Captain of the Port Duty Officer. In June 2002, this temporary final rule was extended in the **Federal Register** (67 FR 41337). On December 22, 2002, we republished this temporary final rule in the **Federal Register** (68 FR 2201).

On April 29, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area in Hampton Roads, VA" in the **Federal Register** (68 FR 22648). We received three letters commenting on the proposed rule.

This rule will make permanent the above two temporary rules as well as update the Regulated Navigation Area to encompass aspects of navigational safety and security in a post September 11, 2001, environment. The reporting and speed limit restrictions will enable the COTP to closely monitor vessel movements in the Regulated Navigation Area.

Discussion of Comments and Changes

We received two letters on the eight knots speed limit for vessels over 300 gross tons in the Norfolk Harbor Reach channel. The comments stated that in some instances it is difficult for vessels to operate at this reduced speed. Depending on individual ship construction and engine type, eight knots may be near or at the lower limit of speed necessary to maintain positive control of a vessel's steering system. The comments stated that when a vessel is transiting with the current, it may be necessary to operate at a "dead slow" bell to maintain an eight knot speed, which may limit steering capability and introduce a safety concern. The Coast Guard agrees with these comments and has changed the speed restriction in the Norfolk Harbor Reach channel from eight knots to ten knots.

We received one letter with four comments on specific regulations. The first comment regarded the expansion of the Regulated Navigation Area to twelve nautical miles offshore, noting that vessels over 300 gross tons that are transiting the coast without intent to enter the Port of Hampton Roads would still have to request permission from the Joint Harbor Operations Center if they would be passing within 12 nautical miles. This is the intent of the rule. To increase maritime domain awareness, the Coast Guard desires that all vessels over 300 gross tons contact the Joint Harbor Operations Center so that their intent of transit may be ascertained. This increases the Coast Guard's ability to detect potential security risks to the port as early as possible.

The second comment stated that the requirement for vessels over 300 gross tons to contact the Joint Harbor Operations Center for permission to enter the Regulated Navigation Area is redundant with separate advance notice of arrival requirements. The comment stated that the Coast Guard should coordinate local and national regulations. The Coast Guard believes that these regulations are both coordinated and complementary. When vessels over 300 gross tons give advance notice of arrival, their expected arrival date and time are provided in a daily list to the Joint Harbor Operations Center. When a specific vessel calls to request permission to enter the Regulated Navigation Area, the Joint Harbor Operations Center is able to rapidly verify that the vessel is expected. This procedure provides a positive measure of security to the port, in that the Joint Harbor Operations Center can identify an unexpected arrival of a vessel over 300 gross tons.

The third comment stated that the security provisions of the regulation seemingly allow members of the Coast Guard to board vessels without a valid purpose and without identification. The Coast Guard has an overall methodology for managing security in the port. Random vessel boardings are a defined part of that methodology. Therefore, all vessel boardings conducted by Coast Guard boarding teams are sanctioned and valid in nature. All Coast Guard personnel will have proper identification at all times, and Coast Guard vessels will be properly marked and will be flying the Coast Guard ensign.

The fourth comment concerned the requirement to provide photo identification and a valid purpose to board vessels over 300 gross tons, asking if this requirement applied at dockside, shipyards and for passenger ferries. This is the intent of the rule. We do expect this requirement to be fully enforced for vessels over 300 gross tons at dockside. Regarding shipyards, we recognize that persons go on and off ships in repair status constantly. We expect that individual shipyard security programs will manage who is in the shipyard at all times and will ensure compliance with this requirement. The rule does apply to passenger ferries, recognizing that there are currently no passenger ferries over 300 gross tons that make routine stops within the Regulated Navigation Area. It is possible that a passenger ferry over 300 gross tons could operate within the Regulated Navigation Area, and the Coast Guard would expect compliance with the regulation. Operators of ferries over 300 gross tons that anticipate conducting passenger operations within the Regulated Navigation Area are encouraged to contact the Marine Safety Office Hampton Roads if they have concerns with this rule.

Finally, we have re-arranged the definitions section of the regulations so that the definitions are in alphabetical order. No other changes were made.

Discussion of Rule

On April 29, 2003, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area in Hampton Roads, VA in the **Federal Register** (68 FR 22648).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is not necessary. The speed limit restriction for the Norfolk Harbor Reach would apply to vessels 300 gross tons or greater. The speed limit requirements would only be in effect for less than 4 miles, and based on the typical vessel speeds we expect delays for vessels to be less than 5 minutes in each direction. The port security measures will affect only those vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads. The additional changes to this rule clarify and simplify existing regulations, and remove unnecessary restrictions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities. The rule affects the following entities, some of which might be small entities: Shipping companies, towing companies, dredging companies, commercial fishing vessels, small passenger vessels and recreational vessels that operate within the Regulated Navigation Area.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: It will limit the speed of vessels 300 gross tons or greater transiting Norfolk Harbor Reach to 10 knots. It will institute additional port security measures for vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads. Vessels under 300 gross tons are exempt.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or Local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart F as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Revise § 165.501 to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area.

(a) *Location.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) *Offshore zone.* A line drawn due East from the mean low water mark at the North Carolina and Virginia border at latitude 36°33′03″ N, longitude 75°52′00″ W, to the Territorial Seas boundary line at latitude 36°33′05″ N, longitude 75°36′51″ W, thence generally Northeastward along the Territorial Seas boundary line to latitude 38°01′39″ N, longitude 74°57′18″ W, thence due West to the mean low water mark at the Maryland and Virginia border at latitude 38°01′39″ N, longitude 75°14′30″ W, thence South along the mean low water mark on the Virginia coast, and eastward of the Colregs Demarcation Lines across Chincoteague Inlet, Assawoman Inlet, Gargathy Inlet, Metompkin Inlet, Wachapreague Inlet, Quinby Inlet, Great Machipongo Inlet, Sand Shoal Inlet, New Inlet, Ship Shoal Inlet and Little Inlet, to the Colregs Demarcation Line across the mouth of Chesapeake Bay, continuing south along the Virginia low water mark and eastward of the Colregs Demarcation Line across Rudee Inlet to the point of beginning. All positions reference NAD 83.

(2) *Inland zone.* The waters enclosed by the shoreline and the following lines:

(i) A line drawn across the entrance to Chesapeake Bay between Wise Point and Cape Charles Light, and then continuing to Cape Henry Light.

(ii) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(iii) A line drawn across the James River along the eastern side of U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(iv) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(v) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(vi) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(vii) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Fortsmouth, Virginia.

(viii) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(ix) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(x) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(xi) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(xii) A line drawn across Lynnhaven Inlet along the northern side of Shore Drive (U.S. Route 60) Bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

CBBT means the Chesapeake Bay Bridge Tunnel.

Coast Guard Patrol Commander is a Coast Guard commissioned, warrant or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

Designated representative of the Captain of the Port means a person, including the duty officer at the Coast Guard Marine Safety Office Hampton Roads, the Joint Harbor Operations Center watchstander, or the Coast Guard or Navy Patrol Commander who has been authorized by the Captain of the Port to act on his or her behalf and at his or her request to carry out such orders and directions as needed. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

I–664 Bridge Tunnel means the Monitor Merrimac Bridge Tunnel.

Inland waters means waters within the COLREGS Line of Demarcation.

Thimble Shoal Channel consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Thimble Shoal Lighted Gong Buoy 17, thence to Thimble Shoal Lighted Buoy 19, thence to Thimble Shoal Lighted Buoy 21, thence to Thimble Shoal Lighted Buoy 22, thence to Thimble Shoal Lighted Buoy 18, thence to Thimble Shoal Lighted Buoy 2, thence to the beginning.

Thimble Shoal North Auxiliary Channel consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Thimble Shoal Lighted Buoy 18.

Thimble Shoal South Auxiliary Channel consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Thimble Shoal Lighted Gong Buoy 17, thence to Thimble Shoal Lighted Buoy 19, thence to Thimble Shoal Lighted Buoy 21.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations.*

(1) *Anchoring restrictions.* No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, with these exceptions:

(i) The vessel has the permission of the Captain of the Port.

(ii) Only in an emergency, when unable to proceed without endangering the safety of persons, property, or the environment, may a vessel anchor in a channel.

(iii) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting permission to anchor within this area.

(2) *Anchoring detail requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(3) *Secondary towing rig requirements on inland waters.*

(i) A vessel over 100 gross tons may not be towed in the inland waters of the Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessel's hull.

(4) *Thimble Shoals Channel controls.*

(i) A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Masters should consider the squat of their vessel based upon vessel design and environmental conditions. Channel crossings shall be made as perpendicular to the channel axis as possible.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(iii) Except when crossing the channel, a vessel in the Thimble Shoal South Auxiliary Channel shall proceed in an eastbound direction.

(5) *Restrictions on vessels with impaired maneuverability.*

(i) Before entry. A vessel over 100 gross tons, whose ability to maneuver is impaired by heavy weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port.

(ii) After entry. A vessel over 100 gross tons, which is underway in the Regulated Navigation Area, that has its ability to maneuver become impaired for any reason, shall, as soon as possible, report the impairment to the Captain of the Port.

(6) *Requirements for navigation charts, radars, and pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board:

(i) Corrected charts of the Regulated Navigation Area. Instead of corrected paper charts, warships or other vessels owned, leased, or operated by the United States Government and used only in government noncommercial service may carry electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety.

(ii) An operative radar during periods of reduced visibility;

(iii) When in inland waters, a pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(7) *Emergency procedures.*

(i) Except as provided in paragraph (d)(7)(ii) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I–664 Bridge Tunnel shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(8) *Vessel speed limits.*

(i) *Little Creek.* A vessel may not proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(ii) *Southern Branch of the Elizabeth River.* A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(iii) *Norfolk Harbor Reach.* Nonpublic vessels of 300 gross tons or more may not proceed at a speed over 10 knots between the Elizabeth River Channel Lighted Gong Buoy 5 of Norfolk Harbor Reach (southwest of Sewells Point) at approximately 36°58′00″ N, 076°20′00″ W, and gated Elizabeth River Channel Lighted Buoys 17 and 18 of Craney Island Reach (southwest of Norfolk International Terminal at approximately 36°54′17″ N, and 076°20′11″ W.

(9) *Port security requirements.* Vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall not enter the Regulated Navigation Area, move within the Regulated Navigation Area, or be present within the Regulated Navigation Area, unless they comply with the following requirements:

(i) Obtain authorization to enter the Regulated Navigation Area from the designated representative of the Captain of the Port prior to entry. All vessels entering or remaining in the Regulated Navigation Area may be subject to a Coast Guard boarding.

(ii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification.

(iii) Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway.

(iv) The designated representative of the Captain of the Port shall be contacted on VHF–FM channel 12, or by calling (757) 444–5209, (757) 444–5210, or (757) 668–5555.

(v) In addition to the authorities listed in this part, this paragraph is promulgated under the authority under 33 U.S.C. 1226.

(e) *Waivers.*

(1) The Captain of the Port may, upon request, waive any regulation in this section.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of vessels within the regulated navigation area.*

(1) When necessary to prevent damage, destruction or loss of any vessel, facility or port infrastructure, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed for the maritime, commercial or security interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: June 5, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–14866 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL22

Accelerated Payments Under the Montgomery GI Bill—Active Duty Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with a minor non-substantive change, a proposed rule amending the regulations governing various aspects of the educational assistance programs the Department of Veterans Affairs (VA) administers. The final rule implements some of the provisions of the Veterans Education and Benefits Expansion Act of 2001. These provisions include accelerated payments to individuals under the Montgomery GI Bill—Active Duty program who are enrolled in approved training programs that lead to employment in high tech industries and whose charged tuition and fees exceed an amount equal to 200 percent of the monthly rate of basic educational assistance allowance otherwise payable. This rule also amends the regulation defining educational institution to include certain private technology entities.

DATES: This final rule is effective June 12, 2003.

Applicability Dates: The revisions to the various sections of the Code of Federal Regulations amended in this final rule are applied retroactively to October 1, 2002, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT: Lynn M. Cossette, Education Advisor, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–273–7294.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on September 11, 2002 (67 FR 57543), VA published a proposed rule amending subparts D and K of 38 CFR part 21, regarding criteria for accelerated

payment of Montgomery GI Bill benefits as stated in the **SUMMARY** portion of this document.

Interested persons were given 60 days to submit comments on the proposed rule and the proposed information collections. VA received one comment concerning the proposed rule. The comment came from a director of a company that has a financial interest in a construction trade school. He requested that VA include "Construction Trades" or "Construction Crafts" in the list of industries an individual must intend to seek employment in to qualify for the accelerated payment provisions. The Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103) allows an accelerated payment only for courses leading to employment in a "high technology" industry. Although the construction trade does offer jobs in technical fields, the construction trade industry did not appear as a "high technology" industry in the data we reviewed. The **SUPPLEMENTARY INFORMATION** section of the proposed rule shows the data we used in arriving at the list of "high technology" industries. Because the law specifically states the training must lead to employment in a "high technology" industry, VA cannot offer accelerated payment for courses leading to employment in other industries. Thus, we did not amend the proposed rule based on the comment received.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, except as stated below.

We amended proposed § 21.7151(c) to include information inadvertently omitted. The amendment, located at § 21.7151(c)(1)(vi), applies when an individual who received an accelerated payment applies for a subsequent accelerated payment. This amendment states that an individual must make all certifications required in § 21.7154(d) for any previous accelerated payment before we make a subsequent accelerated payment. The purpose of this amendment is to ensure proper payment of benefits by avoiding overpayments. Generally, Montgomery GI Bill payments are paid at the end of each month after students certify their attendance for that month. However, under the accelerated payment provisions individuals can receive the payment at the start of a course but their certification is not required until the end of the course. An individual could receive a payment of $6,000 at the start of the course. After receiving payment he or she might drop out of the course and therefore may not be entitled to the full $6,000 payment. The certification shows whether the individual completed the course or not. If he or she dropped the course, the certification will show the date last attended. VA uses the certification information to recalculate the payment and determine if an overpayment of benefits occurred. Before we release another accelerated payment, we must be certain that an overpayment has not occurred. If an overpayment has occurred, we would notify the individual of the amount owed VA and, if necessary reduce the subsequent accelerated payment by that amount.

Additionally, paragraph (b) of § 21.7140 has been changed to correct typographical errors that were published in the proposed rule on September 11, 2002, at 67 FR 57543. The first error was an incorrect cite to § 21.7151(d), which does not exist. The second error was an incorrect cite to § 21.7154(c), which should have read § 21.7154(d). This document corrects those errors.

Paperwork Reduction Act

The final rule contains new reporting requirements. We described the new reporting requirements in the preamble of the proposed rule and provided a comment period. We did not receive any comments concerning the new reporting requirements. The Office of Management and Budget assigned control number 2900–0636 to the new reporting requirements.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private section, of $100 million or more in any given year. This final rule has no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule affects only individuals and will not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 12, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 21 (subparts D and K) is amended to read as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch.1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

■ 2. Section 21.4138 is amended by:

■ a. In paragraph (f)(1)(v), removing "basis; or" and adding, in its place, "basis;".

■ b. In paragraph (f)(1)(vi), removing "basis." and adding, in its place, "basis; or".

■ c. Adding paragraph (f)(1)(vii).

The addition reads as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(f) * * *

(1) * * *

(vii) The veteran receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

* * * * *

■ 3. Section 21.4200 is amended by:

■ a. In paragraph (a)(4), removing "section; or", and adding, in its place, "section;";

■ b. In paragraph (a)(5), removing "program.", and adding, in its place, "program; or"; and

■ c. Adding paragraph (a)(6); and paragraphs (aa) through (dd) immediately after the authority citation at the end of paragraph (z).

■ d. Revising the authority citation at the end of paragraph (a).

The revisions and additions read as follows:

§ 21.4200 Definitions.

(a) * * *

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

* * * * *

(aa) *High technology industry.* The term *high technology industry* includes the following industries:

(1) Biotechnology;

(2) Life science technologies;

(3) Opto-electronics;

(4) Computers and telecommunications;

(5) Electronics;

(6) Computer-integrated manufacturing;

(7) Material design;

(8) Aerospace;

(9) Weapons;

(10) Nuclear technology; and

(11) Any other identified advanced technologies in the biennial Science and Engineering Indicators report published by the National Science Foundation.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(bb) *Employment in a high technology industry. Employment in a high technology industry* means employment in a high technology occupation specific to a high technology industry.

(Authority: 38 U.S.C. 3014A)

(cc) *High technology occupation.* The term *high technology occupation* means an occupation that leads to employment in a high technology industry. These occupations consist of:

(1) Life and physical scientists;

(2) Engineers;

(3) Mathematical specialists;

(4) Engineering and science technicians;

(5) Computer specialists; and

(6) Engineering, scientific, and computer managers.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(dd) *Computer specialists.* The term *computer specialists* includes the following occupations:

(1) Database, system, and network administrators;

(2) Database, system, and network developers;

(3) Computer and network engineers;

(4) Systems analysts;

(5) Programmers;

(6) Computer, database, and network support specialists;

(7) All computer scientists;

(8) Web site designers;

(9) Computer and network service technicians;

(10) Computer and network electronics specialists; and

(11) All certified professionals, certified associates and certified technicians in the information technology field.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

* * * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 4. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

■ 5. Section 21.7020 is amended by adding paragraphs (b)(47) through (b)(51) immediately following the authority citation at the end of the section.

The additions read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(47) *High technology industry.* The term *high technology industry* has the same meaning as provided in § 21.4200(aa).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(48) *Employment in a high technology industry. Employment in a high technology* industry has the same meaning as provided in § 21.4200(bb).

(Authority: 38 U.S.C. 3014A)

(49) *High technology occupation.* The term *high technology occupation* has the same meaning as provided in § 21.4200(cc).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(50) *Computer specialist.* The term *computer specialist* has the same meaning as provided in § 21.4200(dd).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(51) *Accelerated payment.* An *accelerated payment* is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for an individual's enrollment for a term, quarter, or semester in an approved program of education leading to employment in a high technology industry. In the case of a program of education not offered on a term, quarter, or semester basis, the accelerated payment is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for the entire such program.

(Authority: 38 U.S.C. 3014A)

■ 6. Section 21.7076 is amended by revising paragraphs (a), (b)(1) introductory text, and (b)(7) to read as follows:

§ 21.7076 Entitlement charges.

(a) *Overview.* VA will make charges against entitlement as stated in this section.

(1) Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. chapter 30 as the assistance is paid.

(2) There will be a charge (for record purposes only) against the remaining entitlement, under 38 U.S.C. chapter 34, of an individual who is receiving the educational assistance under § 21.7137 of this part. The record-purpose charges against entitlement under 38 U.S.C. chapter 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chapters 30 and 34 to which the veteran or service member may be entitled. (*See* § 21.4020(a) of this part).

(3) Generally, VA will base those entitlement charges on the principle that a veteran or service member who trains full time for one day should be charged one day of entitlement. However, this general principle does not apply to a veteran or servicemember who:

(i) Is pursuing correspondence training;

(ii) Is pursuing flight training;

(iii) Is pursuing an apprenticeship or other on-job training; or

(iv) Is paid an accelerated payment.

(4) The provisions of this section apply to:

(i) Veterans and service members training under 38 U.S.C. chapter 30; and

(ii) Veterans training under 38 U.S.C. chapter 31 who make a valid election under § 21.21 of this part to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3013, 3014(A), 3014(b))

(b) * * *

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-the-job training, those who are receiving tutorial assistance, and those who receive an accelerated payment, VA will make a charge against entitlement:

* * * * *

(7) When a veteran or servicemember is paid an accelerated payment, VA will make a charge against entitlement for each accelerated payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month; and

(ii) Will be determined by dividing the amount of the accelerated payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. If the rate of basic educational assistance increases during the enrollment period, VA will charge entitlement for the periods covered by the initial rate and the increased rate, respectively.

(Authority: 38 U.S.C. 3014A)

* * * * *

■ 7. Section 21.7140 is amended by:
■ a. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively.
■ b. Adding a new paragraph (b).
■ c. Revising newly redesignated paragraph (c)(1) introductory text.
■ The addition and revision read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(b) *Accelerated payments.* VA will apply the provisions of §§ 21.7151(a), (c), and 21.7154(d) in making accelerated payments.

(c) * * *

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship or other on-job training, a correspondence course, one who qualifies for advance payment, one who qualifies for an accelerated payment, or one who qualifies for a lump sum payment) only after—

* * * * *

§ 21.7142 [Redesignated as § 21.7143]

■ 8. Section 21.7142 is redesignated as § 21.7143.

■ 9. A new § 21.7142 is added to read as follows:

§ 21.7142 Accelerated payments.

The accelerated payment will be the lesser of—

(a) The amount equal to 60 percent of the charged tuition and fees for the term, quarter or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(b) The aggregate amount of basic education assistance to which the individual remains entitled under this chapter at the time of the payment.

(Authority: 38 U.S.C. 3014A)

■ 10. Section 21.7151 is amended by:
■ a. Revising the section heading.
■ b. Adding paragraph (c) and the information parenthetical immediately following the authority citation at the end of the section.
■ The revision and additions read as follows:

§ 21.7151 Advance payment and accelerated payment certifications.

* * * * *

(c) *Accelerated payments.* (1) A veteran or servicemember is eligible for an accelerated payment only if—

(i) The veteran or servicemember submits a signed statement to the school or to VA that states "I request accelerated payment";

(ii) The veteran or servicemember is enrolled in a course or program of education or training beginning on or after October 1, 2002;

(iii) The veteran is enrolled in an approved program as defined in § 21.4200 (aa);

(iv) The charged tuition and fees for the term, quarter, or semester (or entire program for those programs not offered on a term, quarter or semester basis) divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of basic educational assistance allowance otherwise payable under §§ 21.7136 or 21.7137, as applicable;

(v) The veteran or servicemember requesting the accelerated payment has not received an advance payment under § 21.7140(a) for the same enrollment period; and

(vi) The veteran or servicemember has submitted all certifications required under § 21.7154(d) for any previous accelerated payment he or she received.

(2) Except as provided in paragraph (c)(5) of this section, VA will make the accelerated payment directly to the educational institution, in the veteran's or servicemember's name, for delivery to the veteran or servicemember if:

(i) The educational institution submits the enrollment certification required under § 21.7152 before the actual start of the term, quarter or semester (or the start of the program for a program not offered on a term, quarter or semester basis); and

(ii) The educational institution at which the veteran or servicemember is accepted or enrolled agrees to—

(A) Provide for the safekeeping of the accelerated payment check before delivery to the veteran or servicemember;

(B) Deliver the payment to the veteran or servicemember no earlier than the start of the term, quarter or semester (or the start of the program if the program is not offered on a term, quarter or semester basis);

(C) Certify the enrollment of the veteran or servicemember and the amount of tuition and fees therefor; and

(D) Certify the delivery of the accelerated payment to the veteran or servicemember.

(3) VA will make accelerated payments directly to the veteran or servicemember if the enrollment certification required under § 21.7152 is submitted on or after the first day of the enrollment period. VA will electronically deposit the accelerated payment in the veteran's or servicemember's bank account unless—

(i) The veteran or servicemember does not have a bank account; or

(ii) The veteran or servicemember objects to payment by electronic funds transfer.

(4) VA must make the accelerated payment no later than the last day of the month immediately following the month in which VA receives a certification from the educational institution regarding—

(i) The veteran's or servicemember's enrollment in the program of education; and

(ii) The amount of the charged tuition and fees for the term, quarter or semester (or for a program that is not offered on a term, quarter, or semester basis, the entire program).

(5) The Director of the VA field station of jurisdiction may direct that accelerated payments not be made in advance of the first day of the enrollment period in the case of veterans or servicemembers attending an educational institution that demonstrates its inability to discharge its responsibilities for accelerated payments. In such a case, the accelerated payment will be made directly to the veteran or servicemember as provided in paragraph (a)(3).

(Authority: 38 U.S.C. 3014A)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0636.)

■ 11. Section 21.7154 is amended by:
■ a. Revising the authority citation at the end of paragraph (a) and the information parenthetical at the end of the section.

■ b. Adding paragraph (a)(4) immediately following the authority citation at the end of paragraph (a)(3); and by adding paragraph (d) immediately following the authority citation at the end of the section.
■ The revision and additions read as follows:

§ 21.7154 Pursuit and absences.

* * * * *

(a) * * *

(4) Has received an accelerated payment for the enrollment period.

(Authority: 38 U.S.C. 3014A, 3034, 3684)

* * * * *

(d) *Additional requirements for individuals receiving an accelerated payment.*

(1) When an individual receives an accelerated payment as provided in § 21.7151(c) and (d), he or she must certify the following information within 60 days of the end of the term, quarter or semester (or entire program when the program is not offered on a term, quarter, or semester basis) for which the accelerated payment was made:

(i) The course or program was successfully completed, or if the course was not completed—

(A) The date the veteran or servicemember last attended; and

(B) An explanation why the course was not completed;

(ii) If the veteran or servicemember increased or decreased his or her training time—

(A) The date the veteran or servicemember increased or decreased training time; and

(B) The number of credit/clock hours pursued before and after each such change in training time; and

(iii) The accelerated payment was received and used.

(2) VA will establish an overpayment equal to the amount of the accelerated payment if the required certifications in paragraph (c)(1) of this section are not timely received.

(3) VA will determine the amount of the overpayment of benefits for courses not completed in the following manner—

(i) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, and who does not substantiate mitigating circumstances for not completing, VA will establish an overpayment equal to the amount of the accelerated payment.

(ii) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, but who substantiates mitigating circumstances for not completing, VA will prorate the amount of the accelerated payment to which he or she is entitled based on the number of days from the beginning date of the enrollment period through the date of last attendance. VA will determine the prorated amount by dividing the accelerated payment amount by the number of days in the enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the date of last attendance. The result of this calculation will equal the amount the individual is due. The difference between the accelerated payment and the amount the individual is due will be established as an overpayment.

(Authority: 38 U.S.C. 3014A(g))

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0465 and 2900–0636.)

[FR Doc. 03–14860 Filed 6–11–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN156–1a; FRL–7512–4]

Approval and Promulgation of State Plans for Facilities and Pollutants: Indiana; Plan for Controlling Emissions from Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the plan submitted by the Indiana Department of Environmental Management (IDEM) on December 20, 2002, under sections 111(d) and 129 of the Clean Air Act (Act). This plan is designed to implement and enforce the federal Emission Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration units (CISWI) for which construction commenced on or before November 30, 1999.

DATES: This rule is effective on August 11, 2003 without further notice unless EPA receives significant adverse written comment by July 14, 2003. If EPA receives such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments must be submitted to J. Elmer Bortzer, Chief, Regulation Development Section, Air and Radiation Division (AR–18J) Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. You may examine copies of materials relevant to this action during normal business hours, by appointment at the following locations: Environmental Protection Agency, Region 5, 18th Floor Docket Room, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, at (312) 886–6084, or e-mail at *paskevicz.john@epa.gov*, if you intend to visit the Region 5 office.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "you" refer to the reader of this rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refers to EPA.

Table of Contents

I. Background
II. What does the State plan contain?
III. Does the State plan meet EPA requirements?
IV. What action is EPA taking today?
V. Statutory and Executive Order Reviews

I. Background

On December 1, 2000, in accordance with sections 111 and 129 of the Act, the EPA promulgated CISWI EGs and compliance schedules for the control of emissions from CISWI units. *See* 65 FR 75362. EPA codified these regulations at 40 CFR part 60, subpart DDDD. Under section 129(b)(2) of the Act and the regulations at subpart DDDD, states with subject sources must submit to EPA plans that implements the EGs. These plans must be at least as protective as the EGs, which are not federally enforceable until EPA approves a State plan (or adopts a federal plan for implementation and enforcement).

On February 23, 2001, Region 5, EPA sent a letter to Indiana, as well as other States in the Region, informing the State of the need to develop a CISWI plan for its subject sources. We also identified the nine elements necessary for an approvable CISWI plan, as contained in 40 CFR 60.2515.

On December 20, 2002, IDEM submitted to EPA its CISWI plan. This submission followed public hearings on February 6, 2002 and public notice of the State plan on October 7, 2002. The State adopted the rule in final form on May 1, 2002; it became effective on September 6, 2002. The plan includes State rule 326 IAC 11–8, which establishes emission standards for existing CISWI consistent with 40 CFR part 60, subpart DDDD.

II. What Does the State Plan Contain?

The State submittal is based on the CISWI model rule (40 CFR 60.2575 to 60.2875) and incorporates by reference significant portions of that rule. As indicated in Table 1, the State plan contains the nine required elements.

The State plan contained or addressed all of the elements listed in Section 60.2515 of the December 1, 2000, model rule. The plan contained:

1. An inventory of affected CISWI units.
2. An inventory of the emissions from each of the CISWI units.
3. A State rule (326 IAC 11–8–2) specifying the requirement for a final control plan and specifying when the units must be in final compliance.
4. Incorporation by reference (IBR) of EPA emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWI units.
5. IBR for performance testing, recordkeeping, and reporting requirements.
6. Certification that a hearing on the State plan was held, and a brief written summary of comments.
7. A statement that the State will submit data and information using the EPA Aerometric Emissions Information Retrieval System.
8. A discussion that the State chose as an enforcement mechanism, a State rule (326 IAC 11–8) which contains IBR of the EPA's CISWI EG.
9. A detailed list which demonstrates the State has legal authority to carry out sections 111(d) and 129 of the Clean Air Act, in the State plan.

The Indiana rule details the increments of progress for the affected CISWI. It also calls for final compliance by September 1, 2005, and, in this regard, is somewhat more restrictive than the EPA requirement.

III. Does the State Plan Meet the EPA Requirements?

EPA evaluated the CISWI State plan submitted by Indiana for consistency with the Act, EPA regulations and policy. EPA has determined that the plan meets all applicable requirements and, therefore, is approving it. This approval is based on our findings that in addition to the technical elements provided by IDEM, that:

(a) Provided adequate public notice of public hearings for the proposed rulemaking that allows Indiana to carry out and enforce provisions that are at least as protective as the EGs for CISWIs; and,

(b) Demonstrated legal authority to: incorporate by reference emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and, make emission data publicly available.

Additional details concerning EPA's evaluation of the Indiana plan are included in the technical support file available for inspection from the EPA contact listed above.

IV. What Action Is EPA Taking Today?

EPA is approving the plan which Indiana submitted on December 20, 2002, for the control of emissions from existing CISWI sources in the State. EPA is publishing this approval notice without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rule section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the State plan in the event adverse comments are filed. If we do not receive any adverse comments by July 14, 2003 this action will be effective on August 11, 2003.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* § 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Metals, Sulfur oxides, Particulate matter, Carbon monoxide, Acid gases, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: May 29, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Part 62 of chapter 1, title 40, of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

■ 2. A new undesignated center heading and § 62.3660 are added to Subpart P to read as follows:

CONTROL OF AIR EMISSIONS FROM EXISTING COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATOR UNITS

§ 62.3660 Identification of plan.

On December 20, 2002, Indiana submitted a plan to control emissions from Commercial and Industrial Solid Waste Incinerators (CISWI). The Indiana plan incorporates by reference substantial portions of 40 CFR part 60, subpart DDDD, Emission Guidelines and Compliance Times for CISWI units built on or before November 30, 1999.

[FR Doc. 03–14871 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket Number: OST–1999–6189]

RIN 9991–AA38

Organization and Delegation of Powers and Duties; Secretarial Succession

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the order of Secretarial succession for the Department, including changes due to recent legislation.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie Angermann-Stucker, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW., Room 10102, Washington, DC 20590; Telephone: (202) 366–9166.

SUPPLEMENTARY INFORMATION: In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth as follows: The Deputy Secretary, General Counsel, Assistant Secretary for Budget and Programs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Administration, Associate Deputy Secretary, Under Secretary of Transportation for Security, Federal Aviation Administrator, Federal Aviation Administration Regional Administrator, Southwest Region, Federal Aviation Administration Regional Administrator, Great Lakes Region.

Section 102(e) of title 49, United States Code, authorizes the Secretary to prescribe the order of succession for the Department's Assistant Secretaries and the General Counsel. Section 215 of the Maritime Transportation Security Act of 2002 amended section 102 of title 49, United States Code, by creating the position of Under Secretary of Transportation for Policy, who is designated to act for the Secretary when the Secretary and the Deputy Secretary are absent or unable to serve, or when the offices of Secretary and Deputy Secretary are vacant. Section 215(c) also amends section 102(g) of title 49, United States Code, as redesignated by section 215(a)(1), by deleting the position of Associate Deputy Secretary, on the date that an individual is appointed to the position of Under Secretary of Transportation for Policy. Section 403 of the Homeland Security Act of 2002 transfers the functions of the Transportation Security Administration, including the duties and responsibilities of the Under Secretary of Transportation for Security, from the Department of Transportation to the Department of Homeland Security. We are updating our Secretarial Order of Succession to reflect these statutory changes as well as recent Secretarial decisions concerning the order of succession for Assistant Secretaries of Transportation.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on this rule are unnecessary under 5 U.S.C. 553(b)(3)(A). In addition, the Secretary finds that there is good cause to make this rule effective upon publication pursuant to 5 U.S.C. 553(d)(2), as a change to internal policy.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of

the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect a delegation of authority from the Secretary to the FMCSA Administrator and to the Undersecretary of Transportation for Security, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

■ 1. The authority citation for Part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064 (2002); Pub L. 107–296, 116 Stat. 2135 (2002).

■ 2. In § 1.26 remove paragraphs (a)(2) through (a)(12) and add paragraphs (a)(2) through (a)(11) to read as follows:

§ 1.26 Secretarial succession.

(a) * * *

(2) Under Secretary of Transportation for Policy.

(3) General Counsel.

(4) Assistant Secretary for Aviation and International Affairs.

(5) Assistant Secretary for Transportation Policy.

(6) Assistant Secretary for Budget and Programs.

(7) Assistant Secretary for Governmental Affairs.

(8) Assistant Secretary for Administration.

(9) Federal Aviation Administrator.

(10) Federal Aviation Administration Regional Administrator, Southwest Region.

(11) Federal Aviation Administration Regional Administrator, Great Lakes Region.

* * * * *

Issued this 28th day of May, 2003, in Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–14697 Filed 6–11–03; 8:45 am]

BILLING CODE 4190–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–03–15366]

Consumer Information Regulations; Uniform Tire Quality Grading Standards; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correcting amendment.

SUMMARY: On November 15, 1991, the National Highway Traffic Safety Administration (NHTSA) published a final rule amending the treadwear testing procedures of the Uniform Tire Quality Grading Standards (UTQGS) to permit the use of front-wheel drive passenger cars, as well as light trucks, and MPVs. Previously, UTQGS specified testing of tires using only rear-wheel drive passenger cars. The effective date of the amendment was December 16, 1991. However, this new language was later inadvertently deleted in an unrelated amendment.

This document corrects NHTSA's inadvertent deletion of that regulatory language.

DATES: These amendments to the final rule are effective July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. George Feygin, Office of Chief Counsel (Telephone: (202) 366–2992) (Fax: (202) 366–3820), 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Uniform Tire Quality Grading Standards (UTQGS) sets forth procedures for treadwear testing in 49 CFR 575.104(e). The purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life.

On November 15, 1991, the agency amended section 575.104(e)(1)(iv) of the treadwear grading procedures to permit treadwear convoys to consist of front-wheel drive passenger cars and light trucks, vans and multipurpose passenger vehicles (MPVs) (or any combination thereof) (56 FR 57988). Previously, the regulations had specified that only rear-wheel drive passenger cars could be used in the testing to determine treadwear grades.

In drafting the November 15, 1991 amendment, NHTSA inadvertently overlooked the fact that a June 11, 1991 final rule; response to a petition for reconsideration amended the same section of the regulation with a later effective date of September 1, 1993. As a result, the new regulatory language was later inadvertently deleted from the CFR.

NHTSA is publishing this correcting amendment to reinstate regulation language allowing for use of front-wheel drive vehicles, light trucks, and MPVs in treadwear convoys that was inadvertently deleted.

This amendment to the final rule is effective 30 days after the date of publication in the **Federal Register**. Remedying this error on the part of the agency will not impose any additional substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that any notice of proposed rulemaking and opportunity for comment on these amendments are not necessary.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 575—CONSUMER INFORMATION REGULATIONS

■ Accordingly, 49 CFR Part 575 is corrected by making the following correcting amendment:

■ 1. The authority citation for Part 575 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 575.104 is corrected by revising paragraph (e)(1)(iv) to read as follows:

§ 575.104 Standard No. 104 Uniform tire quality grading standards.

* * * * *

(e) Treadwear grading conditions and procedures—(1) Conditions.

* * * * *

(iv) A test convoy consists of two or four passenger cars, light trucks, or MPVs, each with a GVWR of 10,000 pounds or less.

* * * * *

Issued: June 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14693 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325070–3146–04; I.D. 071299C]

RIN 0648–AM91

Atlantic Highly Migratory Species (HMS); Fishing Vessel Permits; Charter Boat Operations; Temporary Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule; temporary rule.

SUMMARY: This rule provides a limited time during which Atlantic Tunas General category permit holders may change to the new Atlantic HMS Angling category. This one-time allowance is meant to alleviate confusion resulting from the establishment of this new permit category.

DATES: Effective June 9, 2003, through July 9, 2003. All permit changes must be made by July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown or Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION: A final rule published on December 18, 2002 (67 FR 77434), established a new HMS Angling category vessel permit. This new permit category was meant to allow recreational fishers to fish for, possess, and retain HMS. Further, the final rule specified that Atlantic Tunas General category permits could no longer be used by recreational fishers to fish for, possess, or retain HMS other than bluefin tuna. The final rule also specified that vessel category changes could not be made after a permit is issued for a fishing year.

NMFS has recently received comments that the new permit category and the change to activities formerly allowed under General category rules has caused confusion. Due to this confusion, many permit holders obtained Atlantic Tunas General category vessel permits in error. Due to the unique circumstances of the new HMS Angling permit requirement, this rule provides a 30 day period for Atlantic Tunas General category permit holders to change their permit category and obtain Atlantic HMS Angling category permits. Pending receipt of a new permit, permit holders are subject to the regulations applicable to their currently held permits.

Permit Category Changes

NMFS maintains an automated permitting system for the issuance of Atlantic tunas vessel permits and HMS Angling vessel permits. To make a permit category change under this temporary rule, dial (888) 872–8862 and press "0" from the main menu to reach a Customer Service representative.

Classification

This rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment for this temporary rule; as required under 5 U.S.C. 553(b)(B), is impracticable and contrary to the public interest. The Atlantic HMS Fishery opened on June 1, 2003. Over the past week, fishermen notified NMFS that, as a result of confusion regarding the new HMS recreational Angling permit requirement, they had unintentionally applied for and received General category permits. Having General category permits precludes them from participating in recreational tournaments. Tournaments are underway now and are scheduled throughout the summer. Because the fishery has already begun and tournaments are currently taking place, providing prior notice and an opportunity for public comment on allowing fishermen who intended to fish under the new Angling category to change from their incorrect permit category would effectively prevent these fishermen from being allowed to fish.

Because this rule relieves a restriction by allowing an otherwise prohibited permit change, it is not subject to a 30–day delay in effective date pursuant to 5 U.S.C. 553(d)(1).

NMFS will rapidly communicate this action to fishery participants through its FAX network and HMS Information Line.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This action is not significant within the meaning of Executive Order 12866.

Dated: June, 9, 2003.

William T. Hogarth,

Assistant Adminstrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–14863 Filed 6–9–03; 1:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 113
Thursday, June 12, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–302–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R Series Airplanes (Collectively Called A300–600); Model A310 Series Airplanes; Model A319, A320, and A321 Series Airplanes; Model A330–301, –321, –322, –341, and –342 Series Airplanes; and Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes; and Model A340 series airplanes; that would have required, among other actions, replacement of certain pitot probes with certain new pitot probes. This new action would revise the replacement procedures of the proposed AD by requiring enlargement of the holes for the pitot probes. The actions specified by this new proposed AD are intended to prevent loss or fluctuation of indicated airspeed, which could result in seriously misleading information being provided to the flightcrew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–302–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–302–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD) applicable to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes; and Model A340 series airplanes; was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 4, 2002 (67 FR 72115) (hereafter referred to as the "original NPRM"). That original NPRM would have required, among other actions, replacement of certain pitot probes with certain new pitot probes. That original NPRM was prompted by several cases of loss or fluctuation of indicated airspeed when flying through heavy precipitation or freezing weather conditions. The probable cause has been attributed to the presence of ice crystals and/or water exceeding the weather limits for which the pitot probes are currently certified. Loss or fluctuation of indicated airspeed, if not corrected, could result in inadvertent excursions outside the normal flight envelope.

Actions Since Issuance of Previous Proposal

Since the issuance of the original NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued a new revision to French airworthiness directive 2001–265(B) R1, dated December 12, 2001, which was one of the French airworthiness directives cited in the original NPRM. This new revision, French airworthiness directive 2001–265(B) R2, dated November 13, 2002, among other things, specifies enlarging the holes for the pitot probes and clarifies the name of a parts manufacturer.

New revisions to two of the service bulletins that were cited in the original NPRM were issued to revise certain procedures to specify the need to enlarge certain holes when replacing the pitot probes. The various revisions to the two service bulletins are described as follows:

- A310–34–2154, Revision 01, dated April 19, 2000, was cited in the original NPRM as an appropriate source of service information. The manufacturer later issued Revision 02, dated November 5, 2001; Revision 03, dated January 25, 2002; Revision 04, dated April 30, 2002; Revision 05, dated July 9, 2002; and Revision 06, dated August 6, 2002. All of these revisions add airplanes in the effectivity of the service bulletin. However, Revision 04 of the service bulletin also includes procedures for enlarging the holes for installing the pitot probes. Revision 07, dated October 8, 2002, which is cited in this supplemental NPRM as the appropriate source of information for Model A310 series airplanes, also adds airplanes to the effectivity of the service bulletin.
- A300–34–6141, dated December 3, 2001, was cited in the original NPRM as an appropriate source of service information. The manufacturer later issued Revision 01, dated February 20, 2002, to add airplanes to the effectivity of the service bulletin. Revision 02, dated April 30, 2002, was issued to provide procedures for enlarging the holes for installing the pitot probes. Revision 03, dated August 27, 2002, which is cited in this supplemental NPRM as the appropriate source of information for Model A300 B4–600R series airplanes, was issued to add airplanes to the effectivity of the service bulletin.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Support for the Proposed NPRM

One commenter, the manufacturer, supports the content of the proposed NPRM.

Request to Correct Name of Parts Supplier

One commenter suggests changing all references throughout the original NPRM from BF Goodrich to Rosemount Aerospace Inc. The commenter states that Rosemount Aerospace is the correct legal name. The FAA concurs with this request and has revised this supplemental NPRM accordingly.

Request To Delay Issuance of Proposal

One commenter states that it has no concerns with the actions required by the original NPRM, and that those actions have been accomplished on all Model A319 and A320 series airplanes. However, since this accomplishment, the commenter has experienced a continuation in airspeed anomalies. For this reason, the commenter states that it will share such data with us, and suggests that we conduct a more extensive review of the experience of additional operators regarding airspeed anomalies before mandating any actions in an AD.

Although we acknowledge the commenter's concern, we do not concur that issuance of this proposed AD should be delayed until we receive additional data regarding airspeed anomalies. However, based on these concerns, we encourage that additional data be submitted to us by the commenter or others. We have determined that to delay this action would be inappropriate since an unsafe condition exists, and that the revised procedure for replacing the pitot probes must be accomplished to ensure continued safety. Additional rulemaking may be considered in the future, if warranted by additional data regarding the identified unsafe condition. No change to this supplemental NPRM is necessary in this regard.

Request To Expand the Applicability of the Proposed NPRM

One commenter is concerned about certain requirements in the original NPRM regarding the pitot probes used on certain airplane models. The commenter asks whether the unsafe condition identified on one manufacturer's product line of pitot probes also exists on the product lines of other manufacturers. The commenter states that one of the manufacturers issued an alert service bulletin regarding unauthorized repairs on certain pitot static tubes found installed on a number of airplane models. The commenter is concerned that additional airplane models also may have similar discrepant pitot probes installed. In addition, if a serious safety issue exists for pitot probes manufactured per the requirements of Technical Standard Order TSO C–16, dated September 1, 1948, and amended April 16, 1951, the applicability of the original NPRM may need to be expanded.

We acknowledge the commenter's concern and may consider additional rulemaking to address that concern in the future on certain airplanes. While there may be merit to the commenter's suggestions, this supplemental NPRM is not the appropriate context in which to evaluate those suggestions. Since the suggested changes would alter the actions currently required by this supplemental NPRM, additional rulemaking would be required. We find that to delay this action would be inappropriate in light of the identified unsafe condition. We do not concur that we should expand the applicability of this supplemental NPRM. No change to the applicability of this supplemental NPRM is necessary in this regard.

Request to Add a Service Bulletin Reference

One commenter states that a reference to Airbus Service Bulletin A320–34–1170, Revision 05, dated September 11, 2000, should be added to certain paragraphs in the original NPRM, for certain airplanes. That service bulletin describes procedures for replacing certain Thales (formerly Sextant) pitot probes with new Rosemount Aerospace pitot probes.

We do not concur for several reasons. First, the commenter did not specify any justification for adding a reference to Airbus Service Bulletin A320–34–1170. Second, French airworthiness directive 2001–265(B) R2 does not include a reference to that service bulletin. In addition, French airworthiness directive 2001–362(B), dated August 8, 2001, states that airplanes equipped with certain pitot probes per Airbus Service Bulletin A320–34–1170 are not applicable to the requirements of that airworthiness directive. No change to this supplemental NPRM is necessary in this regard.

Conclusion

Since these changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide

additional opportunity for public comment.

Cost Impact

We estimate that 559 Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes of U.S. registry would be affected by this proposed AD. The "Table—Cost Figures" shows the estimated cost impact for certain airplanes affected by this proposed AD. The average labor rate is $60 per work hour. "Table—Cost Figures" is as follows:

TABLE—COST FIGURES

Model	U.S.-registered airplanes	Work hours (estimated)	Parts cost (estimated)	Total cost (estimated)
A300 B2 and A300 B4	24	Between 3 and 631	Between $120 and $56,669 per airplane (depending on airplane configuration).	Between $300 and $94,529 per airplane (depending on airplane configuration).
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	83	3	$5,700	$488,040, or $5,880 per airplane.
A310	46	3	$5,700 or $5,856 (depending on airplane configuration)..	Between $270,480 and $277,656; or $5,880 and $6,036 per airplane (depending on airplane configuration).
A319, A320, and A321	397	3	$6,000	$2,453,460, or $6,180 per airplane.
A330–301, –321, –322, –341, and –342.	9	3	$6,000 or $11,100 (depending on airplane configuration).	Between $55,620 and 101,520; or $6,180 and $11,280 per airplane (depending on airplane configuration).

The cost impact figures in the table above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. The cost of required parts would be $6,000 or $11,100 (depending on airplane configuration). Based on these figures, the cost impact of this AD would be $6,180 or $11,280 per airplane (depending on airplane configuration).

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–302–AD.

Applicability: The series airplanes, certificated in any category, listed in Table—Applicability:

TABLE—APPLICABILITY

Model and series	Excluding airplanes modified per—	Excluding airplanes equipped with—
A300 B2 and A300 B4	Airbus Modification No. 12236 in service (reference Airbus Service Bulletin A300–34–0166, dated March 30, 2001, in service).	None.

TABLE—APPLICABILITY—Continued

Model and series	Excluding airplanes modified per—	Excluding airplanes equipped with—
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600)	Airbus Modification No. 11858 in production (reference Airbus Service Bulletin A300–34–6116, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; in service). or Airbus Modification No. 12223 in service (reference Airbus Service Bulletin A300–34–6141, dated December 3, 2001; or Revision 01, dated February 20, 2002); and on which concurrent incorporation of Airbus repair procedures to enlarge the holes for the pitot probes was accomplished; in service; or Airbus Modification No. 12223 in service (reference Airbus Service Bulletin A300–34–6141, Revision 02, dated April 30, 2002; or Revision 03, dated August 27, 2002; in service).	None.
A310	Airbus Modification No. 11858 in production (reference Airbus Service Bulletin A310–34–2137, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; in service); or Airbus Modification No. 12223 in service (reference Airbus Service Bulletin A310–32–2154, dated January 13, 2000; Revision 01, dated April 19, 2000; Revision 02, dated November 05, 2001; or Revision 03, dated January 25, 2002); and on which concurrent incorporation of Airbus repair procedures to enlarge the holes for the pitot probes were accomplished; in service; or Airbus Modification 12223 in service (reference Airbus A310–32–2154, Revision 04, dated April 30, 2002; Revision 05, dated July 9, 2002; Revision 06, dated August 6, 2002; or Revision 07, dated October 8, 2002; in service).	None.
A319, A320, and A321	Airbus Modification 25998 in production (reference Airbus Service Bulletin A320–34–1127, dated April 24, 1997, in service);	Rosemount (formerly BF Goodrich or New Rosemount) pitot probes part number 0851HL per Airbus Modification No. 25578 (reference Airbus Service Bulletin A320–34–1170, dated April 12, 1979; Revision 01, dated March 14, 1980; Revision 02, dated April 10, 1980; Revision 03, dated March 23, 1981; Revision 04, dated October 1, 1981; or Revision 05, dated September 11, 2000.)
A330–301, –321, –322, –341, and –342	Airbus Modification No. 44836 in production (reference Airbus Service Bulletin A330–34–3038, dated November 19, 1996, in service); or Airbus Modification No. 45638 in production (reference Airbus Service Bulletin A330–34–3071, dated December 11, 1998, in service).	None.
A340–211, –212, –213, –311, –312, and –313	Airbus Modification 44836 in production (reference Airbus Service Bulletin A340–34–4042, dated November 19, 1996, in service); or	None.

TABLE—APPLICABILITY—Continued

Model and series	Excluding airplanes modified per—	Excluding airplanes equipped with—
	Airbus Modification 45638 in production (reference Airbus Service Bulletin A340–34–4079, dated December 11, 1998; Revision 01, dated May 27, 1999; or Revision 02, dated October 6, 1999; in service).	

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss or fluctuation of indicated airspeed, which could result in seriously misleading information being provided to the flightcrew, accomplish the following:

For Model A300 B2 and A300 B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) Series Airplanes; and Model A310 Series Airplanes: Replacement of Pitot Probes With New Pitot Probes

(a) Within 30 months after the effective date of this AD, do the action specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes: Replace the Thales (formerly Sextant) pitot probes from the forward fuselage panel between FR6 and FR7 with new Rosemount (formerly BF Goodrich) pitot probes (including O-rings, gaskets, and nuts), per Airbus Service Bulletin A300–34–0166, dated March 30, 2001 (for Model A300 B2 and B4 series airplanes); Airbus Service Bulletin A300–34–6116, Revision 02, dated May 25, 2000 (for Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes); or Airbus Service Bulletin A310–34–2137, Revision 02, dated May 25, 2000 (for Model A310 series airplanes); as applicable.

(2) For Model A300 B4–600R, A310–203, and A310–304 series airplanes: Replace the Thales (formerly Sextant) pitot probes from the forward fuselage panel between FR6 and FR7 with Thales or Sextant pitot probes (including O-rings, gaskets, and nuts) per Airbus Service Bulletin A300–34–6141, Revision 03, dated August 27, 2002 (for Model A300 B4–600R series airplanes); or Airbus Service Bulletin A310–34–2154, Revision 07, dated October 8, 2002 (for Model A310 series airplanes); as applicable.

For Model A300 B2 and A300 B4 Series Airplanes: Before or Concurrent Requirements

(b) For Model A300 B2 and A300 B4 series airplanes: Before or concurrently with the requirements of paragraphs (a)(2) of this AD, as applicable, replace the Captain's, First Officer's, and standby Badin Crouzet pitot probes in zones 121 and 122 between STA881/FR6 and STA904FR7 with new Badin Crouzet pitot probes (including replacement of O-rings, gaskets, and nuts with new parts; and modification of electrical wiring and equipment of electrical wiring); per Airbus Service Bulletin A300–34–069, Revision 05, dated April 8, 1982, as revised by A300 Service Bulletin Change Notice 5A, dated February 16, 1987.

(c) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 004 through 028 inclusive, 030 through 051 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the relay box of the automatic ground depression systems by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–21–053, Revision 2, dated January 3, 1980; per the service bulletin.

(d) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 005 through 007 inclusive, 009 through 014 inclusive, 016, and 017: Before or concurrently with the requirements of paragraph (c) of this AD, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD per Airbus Service Bulletin A300–32–052, dated November 15, 1976.

(1) Clean, restore paint coats, and apply mystik tape 7355 to shock strut (barrel) of the main landing gear.

(2) Replace the lower arm link with a new, reidentified lower arm lock link.

(e) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 005 through 007 inclusive, 009 through 012 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the electronic racks, electrical wiring, and cable routing by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–031, dated June 25, 1979, per the service bulletin.

For Model A319, A320, and A321 Series Airplanes: Replacement of Thales Pitot Probes

(f) For Model A319, A320, and A3Z1 series airplanes: Within 24 months after the effective date of this AD: Replace the Thales (formerly Sextant) pitot probes in zones 125, 9DA2, and 122 with new Thales pitot probes, per Airbus Service Bulletin A320–34–1127, dated April 24, 1997.

For Model A330–301, –321, –322, –341, and –342 Series Airplanes: Replacement of Rosemount Pitot Probes

(g) Within 30 months after the effective date of this AD, do the action specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–301, –321, –322, –341, and –342 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Rosemount (formerly BF Goodrich) pitot probes, per Airbus Service Bulletin A330–34–3038, dated November 19, 1996.

(2) For Model A330–301 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Thales (formerly Sextant) pitot probes, per Airbus Service Bulletin A330–34–3071, dated December 11, 1998.

For Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes: Replace the Rosemount Pitot Probes

(h) Within 30 months after the effective date of this AD, do the actions specified in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For Model A340–211, –212, –213, –311, –312, and –313 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Rosemount (formerly BF Goodrich) pitot probes, per Airbus Service Bulletin A340–34–4042, dated November 19, 1996.

(2) For Model A340–211, –212, and –311 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Thales (formerly Sextant) pitot probes, per Airbus Service Bulletin A340–34–4079, dated December 11, 1998. This replacement must be done before or concurrently with the requirements of paragraph (h)(1) of this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–362(B), dated August 8, 2001; and 2001–265(B) R2, dated November 23, 2002.

Issued in Renton, Washington, on June 6, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14849 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Public Meeting Concerning Bath Seat Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") will conduct a public meeting on July 28, 2003 (possibly extending to July 29) to receive comments on the CPSC staff briefing package, which recommends that the Commission issue a notice of proposed rulemaking proposing that bath seats meet certain requirements. The Commission invites oral presentations from members of the public with information or comments related to the briefing package. The Commission will consider these presentations in its deliberations on the rulemaking.

DATES: The meeting will begin at 9 a.m. on July 28, 2003 and may continue to July 29 if necessary. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the CPSC Office of the Secretary no later than July 21, 2003. Persons making presentations at the meeting should provide an additional 25 copies for dissemination on the date of the meeting.

The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent duplicative presentations, groups will be directed to designate a spokesperson.

Written submissions, in addition to, or instead of, an oral presentation may be sent to the address listed below and will be accepted until August 28, 2003.

ADDRESSES: The meeting will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, MD. Requests to make oral presentations, and texts of oral presentations should be captioned "Bath Seat NPR" and be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Requests and texts of oral presentations may also be submitted by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting contact Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7577; e-mail: *phackett@cpsc.gov*. For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In July 2000, the Commission received a petition from the Consumer Federation of America ("CFA") and eight other organizations requesting that the Commission issue a rule that would ban bath seats and bath rings (hereafter "bath seats") under the Federal Hazardous Substances Act ("FHSA"). The Commission evaluated information from the CFA petition, a staff briefing package and public comments on the petition. On May 30, 2001, the Commission voted to grant the CFA petition and begin rulemaking. On August 1, 2001, the Commission published an advance notice of proposed rulemaking ("ANPR") in the **Federal Register**. 66 FR 39692. The Commission received ten comments from nine individuals in response to the ANPR.

The staff reviewed the comments and relevant information and forwarded a briefing package to the Commission.

The staff recommends that the Commission issue a notice of proposed rulemaking ("NPR") that would propose three requirements to address the three main hazard scenarios the staff identified from the reported fatalities.

The staff recommends a stability requirement to address the hazard of bath seats tipping over while in use. The staff has identified 30 fatalities and 80 non-fatal incidents or complaints involving bath seats tipping over that were reported from January 1983 through December 2002. The staff recommends a stability requirement that is essentially the same as the stability requirement in the ASTM voluntary standard but requires testing on a slip-resistant surface.

The staff has identified 3 deaths and 17 non-fatal incidents or complaints involving children who were submerged or entrapped in bath seats that were reported from January 1983 through December 2002. To address this hazard, the staff recommends a performance requirement specifying that the bath seat's leg openings not allow passage of probes that represent the shoulder and torso of an infant. This requirement is identical to one that ASTM approved in March 2003 for inclusion in its revised standard, ASTM F 1967–03.

The staff has identified 19 fatalities and 13 non-fatal incidents or complaints involving children coming out of bath seats that were reported from January 1983 through December 2002. The staff has not been able to develop performance criteria that could effectively address this hazard. The staff recommends a revised warning label to better alert caregivers to the danger of leaving a child alone in a bath seat.

B. The Public Meeting

The purpose of the public meeting is to provide a forum for oral presentations on the CPSC staff briefing package concerning the bath seat NPR.

Participation in the meeting is open. See the **DATES** section of this notice for information on making requests to give oral presentations at the meeting and on making written submissions.

Dated: June 3, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–14482 Filed 6–11–03; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN156–1b; FRL–7512–5]

Approval and Promulgation of Implementation Plans; Indiana; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final procedure,

the Commercial and Industrial Solid Waste Incineration plan submitted by the Indiana Department of Environmental Management (IDEM). The implementation plan affects selected incineration units and was submitted to EPA in a letter from Janet G. McCabe, IDEM Assistant Commissioner on December 30, 2002, following the required public process. The intent of Indiana's action is to satisfy a Federal requirement to develop a plan as protective as the emission guideline contained in Subpart DDDD, to control emissions from these categories of sources in order to protect public health and reduce exposure to air pollution including several hazardous pollutants. EPA is approving this plan because it fulfills the requirements of sections 111 and 129 of the Clean Air Act.

In the Final Rules section of this **Federal Register**, EPA is approving the State plan for CISWI as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by July 14, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Indiana request for revision to the State plan is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to the Indiana plan submitted by the State which demonstrates the Indiana plan will protect the public health of the citizens of Indiana by reducing emissions of air pollutants including some hazardous pollutants from CISWI sources in the State.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201–7601q. *et seq.*

Dated: May 29, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–14872 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 113
Thursday, June 12, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

WTO Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products, which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. It also includes the relevant period applicable for trigger levels on each of those products.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Charles R. Bertsch, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530—South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6278, or e-mail *charles.bertsch@usda.gov*.

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, QUANTITY BASED SAFEGUARD TRIGGER dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43(a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States and in the Secretary of Agriculture's Notice of Safeguard Action, published in the **Federal Register** at 60 FR 427, January 4, 1995.

Notice: As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are supeceded by the levels indicated in the Annex to this notice.

Issued at Washington, DC, this 4 day of June.

K.J. Roberts,

Acting Administrator, Foreign Agricultural Service, Annex.

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register,** at 60 FR 427, January 4, 1995.

QUANTITY-BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	1,186,106 mt	January 1, 2003 to December 31, 2003.
Mutton	17,117 mt	January 1, 2003 to December 31, 2003.
Cream	5,534,383 liters	January 1, 2003 to December 31, 2003.
Evaporated or Condensed Milk	7,455,620 kilograms	January 1, 2003 to December 31, 2003.
Nonfat Dry Milk	4,466,516 kilograms	January 1, 2003 to December 31, 2003.
Dried Whole Milk	3,564,465 kilograms	January 1, 2003 to December 31, 2003.
Dried Cream	7,653 kilograms	January 1, 2003 to December 31, 2003.
Dried Whey/Buttermilk	69,343 kilograms	January 1, 2003 to December 31, 2003.
Butter	13,733,235 kilograms	January 1, 2003 to December 31, 2003.
Butter Oil and Butter Substitutes	10,526,925 kilograms	January 1, 2003 to December 31, 2003.
Dairy Mixtures	4,895,300 kilograms	January 1, 2003 to December 31, 2003.
Blue Cheese	4,218,407 kilograms	January 1, 2003 to December 31, 2003.
Cheddar Cheese	15,619,014 kilograms	January 1, 2003 to December 31, 2003.
American-Type Cheese	21,653,472 kilograms	January 1, 2003 to December 31, 2003.
Edam/Gouda Cheese	8,310,586 kilograms	January 1, 2003 to December 31, 2003.
Italian-Type Cheese	18,789,008 kilograms	January 1, 2003 to December 31, 2003.
Swiss Cheese with Eye Formation	37,381,545 kilograms	January 1, 2003 to December 31, 2003.
Gruyere Process Cheese	8,092,469 kilograms	January 1, 2003 to December 31, 2003.
Lowfat Cheese	3,404,944 kilograms	January 1, 2003 to December 31, 2003.
NSPF Cheese	58,201,906 kilograms	January 1, 2003 to December 31, 2003.
Peanuts	64,394 mt	April 1, 2003 to March 31, 2003.
Peanut Butter/Paste	19,583 mt	January 1, 2003 to December 31, 2003.

QUANTITY-BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
Raw Cane Sugar	1,358,418 mt	October 1, 2002 to September 30, 2003.
	1,292,926 mt	October 1, 2003 to September 30, 2004.
Refined Sugar and Syrups	46,395 mt	October 1, 2002 to September 30, 2003.
	66,348 mt	October 1, 2003 to September 30, 2004.
Blended Syrups	2 mt	October 1, 2002 to September 30, 2003.
	0 mt	October 1, 2003 to September 30, 2004.
Articles Over 65% Sugar	10 mt	October 1, 2002 to September 30, 2003.
Articles Over 10% Sugar	80,886 mt	October 1, 2002 to September 30, 2003.
	80,886 mt	October 1, 2003 to September 30, 2004.
	0 mt	October 1, 2003 to September 30, 2004.
Sweetened Cocoa Powder	759 mt	October 1, 2002 to September 30, 2003.
	843 mt	October 1, 2003 to September 30, 2004.
Chocolate Crumb	22,524,838 kilograms	January 1, 2003 to December 31, 2003.
Lowfat Chocolate Crumb	460,521 kilograms	January 1, 2003 to December 31, 2003.
Infant Formula Containing Oligosaccharides	125,000 kilograms	January 1, 2003 to December 31, 2003.
Mixes and Doughs	5,364 mt	October 1, 2002 to September 30, 2003.
	5,358 mt	October 1, 2003 to September 30, 2004.
Mixed Condiments and Seasonings	523 mt	October 1, 2002 to September 30, 2003.
	554 mt	October 1, 2003 to September 30, 2004.
Ice Cream	3,832, 905 liters	January 1, 2003 to December 31, 2003.
Animal Feed Containing Milk	5,772 kilograms	January 1, 2003 to December 31, 2003.
Short Staple Cotton	5,273,740 kilograms	September 20, 2002 to September 19, 2003.
	328,762 kilograms	September 20, 2003 to September 19, 2004.
Harsh or Rough Cotton	0 mt	August 1, 2002 to July 31, 2003.
	0 mt	August 1, 2003 to July 31, 2004.
Medium Staple Cotton	740,504 kilograms	August 1, 2002 to July 31, 2003.
	175,688 kilograms	August 1, 2003 to July 31, 2004.
Extra Long Staple Cotton	6,562,505 kilograms	August 1, 2002 to July 31, 2003.
	6,218,181 kilograms	August 1, 2003 to July 31, 2004.
Cotton Waste	0 kilograms	September 20, 2002 to September 19, 2003.
	0 kilograms	September 20, 2003 to September 19, 2004.
Cotton, Processed, Not Spun	1,790 kilograms	September 11, 2002 to September 10, 2003.
	1,042 kilograms	September 11, 2003 to September 10, 2004.

[FR Doc. 03–14550 Filed 6–11–03; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers to be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5(a), the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico

Atlanta Journal, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the newspaper of record elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions

Bankhead Ranger District: *Northwest Alabamian*, published bi-weekly (Wednesday & Saturday) in Haleyville, AL

Conecuh Ranger District: *The Andalusia Star News*, published Daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL

Talladega Ranger District: *The Daily Home*, published daily in Talladega, Al

Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, Al

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR

San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: *The News Observer* (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA

Brasstown Ranger District: *North Georgia News*, (newspaper of record) published weekly (Wednesday), in Blairsville, GA

Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA

Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: *Northeast Georgian*, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, (secondary) published weekly (Thursday) in Dahlonega, GA

Chattooga Ranger District: *Chatsowrth Times*, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: *Eatonton Messenger*, published weekly (Thursday) in Eatonton, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN

District Ranger Decisions

Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN

Tellico Ranger District: *Monroe County Advocate*, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN

Nolichucky-Unaka Ranger District: *Greeneville Sun*, publsiehd daily (except Sunday) in Greeneville, TN

Watauga Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions

Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY

Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY

London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY

Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY

Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY

Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions

Apalachicola Ranger District: *Calhoun-Liberty Journal*, published weekly (Wednesday) in Bristol, FL

Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL

Osceola Ranger District: *The Lake City Reporter*, published daily (Monday–Saturday) in Lake City, FL

Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL

Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday), Newberry, SC

Andrew Pickens Ranger District: *The Daily Journal*, published daily in Seneca, SC

Long Cane Ranger District: *The Augusta Chronicle*, published in Augusta, GA

Wambaw Ranger District: *Post and Courier*, published daily in Charleston, SC

Winterbee Ranger District: *Post and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District: *Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA
James River Ranger District: *Virginian Review*, published daily (except Sunday) in Convington, VA
Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA
Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
New River Ranger District: *Roanoke Times*, published daily in Roanoke, VA
Glenwood/Pedlar Ranger District: *Roanoke Times*, published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times*, published daily in Roanoke, VA
Mount Rogers National Recreation Area: *Bristol Herald Courier*, published in daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News*, published daily in Kingsport, TN

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger Distriction: *Minden Press Herald*, (newspaper of record) published daily in Minden, LA
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *The Town Talk* puublished daily in Alexandria, LA
Calcasieu Ranger District: *The Town Talk*, (newspaper of record) published in daily in Alexandria, LA
The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA
Kisatchie Ranger District: *Natchitoches Times:* published daily (Tuesday through Friday and on Sunday)
Winn Ranger District: *Winn Parish Enterprise*, by Wednesday) in Winnfield, LA

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion–Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
De Soto Ranger District: *Clarion Ledger*, published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal*, published daily (except Saturday) in New Bern, NC
Grandfather Ranger District: *McDowell News*, published daily in Marion, NC
Highlands Ranger District: *The Highlander*, published weekly (mid May–mid Nov, Tues & Fri; mid Nov–mid May, Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC
Unwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press*, published bi-weekly (Tuesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Jessieville/Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Mena/Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Poteau/Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak): *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times*, published weekly in Jasper, AR
Bayou Ranger District: *The Courier*, published daily (Tuesday through Sunday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sam Houston National Forest: *The Courier*, published daily in Conroe, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX

Dated: June 6, 2003.

Roberta A. Moltzen,

Deputy Regional Forester.

[FR Doc. 03–14842 Filed 6–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of alternate meeting date.

SUMMARY: An alternate date of June 24 is being proposed for the Okanogan and Wenatchee National Forests Resource Advisory Committee meeting that is scheduled for July 2, 2003. If a quorum is not available for the July 2, 2003 meeting, then this alternate meeting will need to take place. The alternate meeting would be held at the Chelan County Rural Fire District #1 office located at 206 Easy Street, Wenatchee, Washington. The meeting would begin at 9 a.m. and continue until 3 p.m. Committee members would vote on Kittitas County Project selection, and review and select Chelan County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend. To verify meeting status please call 509–662–4335.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: June 5, 2003.

Darrel L. Kenops,

Forest Supervisor, Okanogan and Wenatchee National Forests.

[FR Doc. 03–14846 Filed 6–11–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, June 20, 2003, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 9, 2003 Meeting
III. Closed Meeting to Discuss Personnel Matter
IV. Staff Director's Report
V. Staff Director's Report
VI. State Advisory Committee Report: Civil Rights Concerns in the Metropolitan Washington, DC Area in the Aftermath of the September 11, 2001, Tragedies (Washington, DC, Maryland, and Virginia)
VII. Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?: Volume III
IX. Briefing on Racial and Cross-National Disparities in Prisoner Incarceration Rates
X. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications, (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–15063 Filed 6–10–03; 4:00 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552–801]

Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam; Correction.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The Department of Commerce published a notice in the **Federal Register** on May 28, 2003, concerning preliminary critical circumstances for Certain Frozen Fish Fillets from the Socialist Republic of Vietnam. The document contained incorrect information at Paragraph 2.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

Critical Circumstances

In the **Federal Register** of May 28, 2003, in 68 FR 31681 in the second column, correct the first sentence of the second paragraph and add an additional sentence to read:

"On January 24, 2003, the Department, pursuant to section 733(e) of the Tariff Act of 1930, as amended ("the Act"), made preliminary determinations regarding critical circumstances for the four mandatory respondents: An Giang Fisheries Import Export Joint Stock Company ("Agifish"), Can Tho Agricultural and Animal Products Import Export Company ("CATACO") Nam Viet Company Limited ("Nam Viet"), Vinh Hoan Company Limited ("Vinh Hoan"), as well as for the Vietnam-wide entity. We made affirmative preliminary critical circumstances determinations for Nam Viet and the Vietnam-wide entity only, and we did not find a sufficient basis to believe or suspect critical circumstances with respect to Agifish, CATACO, or Vinh Hoan."

Dated: June 6, 2003.

Barbara Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–14886 Filed 6–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–877]

Notice of Antidumping Duty Order: Lawn and Garden Steel Fence Posts from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Chris Welty, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1784, (202) 482–0186, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On April 25, 2003, the Department of Commerce (the Department) published

its final determination in the antidumping duty investigation of lawn and garden steel fence posts from the People's Republic of China (PRC). *See Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 68 FR 20373 (April 25, 2003) (*Final Determination*).

On June 2, 2003, the International Trade Commission (the ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC.

Scope of Order

For purposes of this order, the products covered consist of all "U" shaped or "hat" shaped lawn and garden fence posts made of steel and/or any other metal, weighing 1 pound or less per foot, and produced in the PRC. The fence posts included within the scope of this order weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor posts and exclude round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden fence posts are normally made of 14 gauge steel (0.068 inches - 0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden steel fence posts are normally made of 13 gauge steel (0.082 inches - 0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the order.

Imports of these products are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the order if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are other posts made of steel and/or other metal including "tee" posts, farm posts, and sign posts, regardless of weight.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Antidumping Duty Order

On June 2, 2003, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing lawn and garden steel fence posts is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from the PRC.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Bureau of Customs and Border Protection (BCBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all relevant entries of lawn and garden steel fence posts from the PRC, except for (1) subject merchandise exported by China Nanyang Import & Export Corporation, which was produced by Tianjin Shenyuan Steel Company, Ltd. or Tianjin Sunny Steel Products Company, Ltd., and (2) subject merchandise exported by Shanghai BaoSteel International Economic and Trading Co., Ltd., which was produced by Hangzhou Hongyuan Sporting Goods Co., Ltd., both of which received de minimis antidumping duty margins. The antidumping duties will be assessed on all unliquidated entries of lawn and garden steel fence posts subject to this order, entered, or withdrawn from warehouse, for consumption on or after December 4, 2002, the date of publication of the Department's preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 67 FR 72141 (December 4, 2002). Finally, we will instruct BCBP to liquidate without regard to antidumping duties and to refund all cash deposits or bonds posted on subject merchandise exported by China Nanyang Import & Export Corporation, which was produced by Tianjin Shenyuan Steel Company, Ltd. or Tianjin Sunny Steel Products Company, Ltd.

On or after the date of publication of this notice in the **Federal Register**, the BCBP must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "PRC-Wide Rate" rate applies to all non-excluded exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-Average Margin (percent)
Hebei Metals and Minerals Imports and Export Corporation	6.60
PRC-Wide Rate	15.61

[1] Tee posts are made by rolling red hot steel into a "T" shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses.

This notice constitutes the antidumping duty order with respect to lawn and garden steel fence posts from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211(b).

Dated: June 6. 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14887 Filed 6–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–601]

Notice of Postponement of Final Results of 2001–2002 Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Anthony Grasso at (202) 482–3853 or Andrew Smith at 202–482–1276, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively. Further, the Department may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

Postponement of Final Results

On July 18, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, covering the period June 1, 2001 to May 31, 2002 (67 FR 48435). On February 14, 2003, the Department published the preliminary results and partial rescission of this administrative review of TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003) ("*Preliminary Results*"). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty investigation no later than 120 days after the date of publication of the preliminary results (*i.e.*, February 14, 2003).

Due to the complexity of the issues, the Department concludes that these reviews are extraordinarily complicated. *See* Memorandum from Team to Jeffrey May, "Extension of Time Limit for Final Results," dated, June 6, 2003. Therefore, the Department is extending the time limit for completion of these final results to not later than July 16, 2003, in accordance with section 751(a)(3)(A) of the Act.

This extension is in accordance with section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 6, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–14885 Filed 6–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030523132–3132–01; I.D. 051603B]

Financial Assistance for Fisheries Disasters; Blue Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: This Fisheries Disaster program provides assistance for the blue crab fishing industry which has been adversely affected by reduced harvests and sales of blue crab.

DATES: Your application must be received by close of business 5 p.m. eastern daylight time on June 27, 2003.

ADDRESSES: You can obtain an application package from, NMFS, Southeast Region, State/Federal Liaison Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702; (727–570–5324) or the NMFS, Northeast Region, State, Federal and Constituent Programs Office, One Blackburn Drive, Gloucester, MA 01930; (978–281–9243). You may also obtain forms from: *http://caldera.sero.nmfs.gov/grants/grants.htm*.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office, NMFS Southeast Region at 727–570–5324; *Ellie.Roche@noaa.gov* or Harry Mears, Director, State, Federal and Constituent Programs Office, NMFS Northeast Region at 978–281–9243; *Harry.Mears@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Authority

We are soliciting applications for Federal assistance pursuant to Division N, Title V, Section 501 (Fisheries Disasters), of the Consolidated Appropriations Resolution, 2003 Public Law 108–7. Catalog of Federal Domestic Assistance Number: 11.452 Unallied Industry Projects

II. Program Description and Purpose

Assistance, as described below, is being provided to blue crab fisheries affected by reduced harvests and sales of blue crab in proportion to the amount of the catch landed by each State. Funds may be used only for: personal assistance with priority given to food, energy needs, housing assistance, transportation fuel, and other urgent needs; assistance for small businesses including fishermen, fish processors, and related businesses serving the fishing industry; domestic product marketing and seafood promotion; and state seafood testing programs.

III. Funding Availability

Approximately $5.0 million will be available in fiscal year (FY) 2003 for new projects for blue crab fisheries affected by reduced harvests and sales of blue crab in proportion to the amount of the catch landed by each state.

IV. Funding Period and Restrictions

Grants will be awarded for a maximum period of 36 months. Not

more than 5 percent of grant funds may be used for administrative expenses, and no funds may be used for lobbying activities or representational expenses. Construction is not an allowable activity under this program, so applications will not be accepted for construction projects.

V. Cost Sharing

Cost-sharing is not required for this fisheries disaster program.

VI. Eligibility Information

State, local and Indian tribal governments and institutions of higher education are eligible to apply.

VII. Application Information

Content, Form and Submission of Applications

Project applications must include a narrative project description to include (1) documentation that the blue crab fisheries have been affected by reduced harvests and sales of blue crab; (2) documentation of the amount of blue crab landed in the state each year from 1999 to 2001; (3) project goals and objectives which provide a clear presentation of the proposed work; (4) a statement of work (project design and management, including who is responsible, expected products, and participants other than the applicant; (5) methods for carrying out the project; and (6) a summary of the existing state of knowledge related to the project, and contribution and relevance of how the proposed activities will fulfill the purposes of the disaster assistance, as described in Section II above. Project applications must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by those participants. A budget, which includes a detailed breakdown by category of expenditures, with appropriate cost estimates and justifications as they relate to specific aspects of the project, must be provided.

Applications must be one-sided and unbound. You must submit one signed original and two signed copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

The three copies (one original and two copies) should be submitted to either the NMFS Southeast Regional Office, State/Federal Liaison Office or the NMFS Northeast Regional Office, State, Federal and constituent Programs Office (see **ADDRESSES**). We must receive your application by close of business 5 p.m. eastern daylight time on June 27, 2003. Applications received after that time will not be considered for funding. All incomplete applications will be returned to the applicant.

Applications received after the deadline (see **DATES**) will not be considered for funding. Postmark prior to the end of the receipt period will not be sufficient. Facsimile applications will not be accepted. Generally, applicants will be notified within 45 days from the date of publication of this notice whether their applications have been recommended for funding. It may take up to an additional 30 days for the Grants Office to process the awards. Applicants should consider this processing time in developing requested start dates for their applications.

VIII. Application Review and Selection Process

When we receive applications we will screen them to ensure the following: that they were received by the deadline date (see DATES); that the included SF 424 was signed and dated by an authorized and eligible representative; that the proposal addresses the program purpose; and that a budget, statement of work, milestones, and clearly identified principal investigators and organizations carrying out work under the proposed project are included.

Merit Review - Applications responsive to this solicitation will be evaluated by three individuals having expertise in fisheries disaster funding assistance in order to determine their merit. Reviewers will assess the applications on the criteria listed below, which are weighted equally. Each reviewer will provide individual evaluations of the proposals. Based on these individual evaluations, NMFS, as applicable, will rank the applications received on behalf of the blue crab fisheries fishing industries of each the state.

The following Evaluation Criteria will be applied by the reviewers: (1) Importance/relevance and applicability of the application - how the application relates to the accomplishments of the program's purpose; (2) Technical and/or scientific merit - whether the application has sufficient technical and scientific merit that will adequately address project goals and objectives; (3) Overall qualifications of the applicant - experience with the fishing industry; (4) Project costs - whether the proposed costs are reasonable and consistent with Section II, Program Description and Purpose, and Section III, Funding Availability; and (5) Outreach and education - whether the scope of the applicant's proposed activities are sufficient to disseminate disaster relief information.

Following the merit review, the applications will be provided to the Regional Administrator, Southeast Region or the Regional Administrator, Northeast Region who are the selecting officials for their respective regions. In determining the projects to be recommended for funding, the Regional Administrators will consider the evaluation and rankings of the review panel members, along with the following selection factors: Availability of funding; balance/distribution of funds by geography/institutions/project types; duplication of effort through other projects funded or considered for funding by NOAA or other federal agencies; program priorities and policy factors; applicants' prior award performance; and partnerships with/participation of targeted groups.

IX. Award Administration Information

1. Award Notices - Successful applicants of proposed projects generally will be notified approximately within 30 days from the date of publication of this notice. Projects must not be initiated until a signed award is received from the NOAA Grants Office. Unsuccessful applications will be returned to the applicant.

2. Administrative Requirements - If you are selected to receive a grant award for a project, you must:

- Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

- Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to the NOAA Grants Office in accordance with the award conditions.

3. Reporting - Successful applicants will be required to:

- Submit semiannual project status reports on the use of funds and describing the progress of the project and other acceptable deliverable to NMFS within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

- Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project. Upon request, we will provide you with formats for the semiannual and final reports.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are encouraged to submit final reports in electronic format, in accordance with the award terms and conditions. The costs associated with preparing and transmitting your final reports in electronic format to the grant award are allowable expenses.

X. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 55109), are applicable to this solicitation.

Intergovernmental Review - Applications under this program are subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under Executive Order 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Classification

This action has been determined to be not significant for the purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 USC 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 USC 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) control number. This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, and 269 has been approved by OMB under the respective control numbers 0348–0043, and 0348–0039.

Dated: June 6, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–14864 Filed 6–11–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2002). Also see 67 FR 63891, published on October 16, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on June 12, 2003, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Sublevels in Group I	
317/326	24,701,692 square meters of which not more than 4,589,417 square meters shall be in Category 326.
335	387,745 dozen.
336	194,035 dozen.
338/339	2,334,524 dozen of which not more than 1,783,565 dozen shall be in Categories 338–S/339–S [2].
340	796,599 dozen of which not more than 410,497 dozen shall be in Category 340–Z [3].
341	698,800 dozen of which not more than 426,831 dozen shall be in Category 341–Y [4].
342	279,419 dozen.
347/348	2,297,290 dozen.

Category	Twelve-month limit [1]
351	639,733 dozen.
352	1,669,894 dozen.
361	4,733,235 numbers.
362	7,754,288 numbers.
363	22,632,509 numbers.
443	129,418 numbers.
445/446	280,700 dozen.
447	72,004 dozen.
614	13,495,825 square meters.
636	574,966 dozen.
638/639	2,493,889 dozen.
640	1,377,989 dozen.
641	1,303,838 dozen.
642	375,597 dozen.
644	3,572,431 numbers.
648	1,149,812 dozen.
651	851,427 dozen of which not more than 150,661 dozen shall be in Category 651–B [5].
652	3,200,952 dozen.
666pt. [6]	516,784 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[5] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[6] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–14826 Filed 6–11–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

June 9, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a determination that certain ring spun single yarns, made of micro modal fiber and U.S. pima cotton, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, and the ATPDEA.

SUMMARY: On June 5, 2003, the Chairman of CITA received a petition from Alston and Bird, L.L.P., on behalf of their client, Ge-Ray Fabrics, Inc., alleging that ring spun single yarn of English yarn numbers 30 and 50, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton, classified in subheading 5510.30.000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that women's and girls' knit blouses, shirts, lingerie, and underwear from such yarns or from U.S.-formed fabrics containing such yarns be eligible for preferential treatment under the AGOA, the CBTPA, and the ATPDEA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 27, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW. Washington, DC. 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

Background

The AGOA, the CBTPA, and the ATPDEA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA, the CBTPA, and the ATPDEA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On June 5, 2003, the Chairman of CITA received a petition from Alston and Bird, L.L.P., on behalf of their client, Ge-Ray Fabrics, Inc., alleging that ring spun single yarn of English yarn numbers 30 and 50, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton, classified in subheading 5510.30.000 of the HTSUS, for use in women's and girls' knit blouses, shirts, lingerie, and underwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests quota- and duty-free treatment under the AGOA, the CBTPA, and the ATPDEA for these apparel articles that are both cut (or knit-to-shape) and sewn in one or more AGOA, CBTPA, or ATPDEA beneficiary countries from such yarns or U.S.-formed fabrics containing such yarns.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for this yarn for purposes of the intended use. Comments must be received no later than June 27, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that this yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–14958 Filed 6–10–03; 12:47 pm]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for Parent Drug Corps Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding availability.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") announces the availability of approximately $4,167,000 in grant funds for a nonprofit organization to implement the Parent Drug Corps Program ("the Parent Corps Program"). The purpose of the grant is to fund a national training system and develop a network of volunteer parents engaged in a nationwide substance abuse prevention effort. This estimate is a projection for the guidance of potential applicants. The Corporation is not bound by any estimate in this notice. These funds are available under authority provided in Public Law 108–7, the Omnibus Appropriations Act for fiscal year 2003. The program is a special volunteer program under section 122 of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4992). Applicable regulations include the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations, 45 CFR part 2543.

Eligible nonprofit organizations, including community organizations (faith-based and secular), are encouraged to apply. The Corporation anticipates receiving fewer than ten applications for this solicitation, and anticipates making one grant award under this announcement. The Corporation will make an award covering a period not to exceed three years. The grant proposal must include a proposed budget and proposed activities for the performance period. The Corporation is uncertain as to whether additional funds will be made available for Parent Drug Corps program grants in subsequent years, and has no obligation to provide additional funding beyond the period of this grant. Future funding is contingent on performance and the availability of appropriations.

Note: This Notice is not a complete description of the activities to be funded or of the application requirements. For supplementary information and application guidelines go to the Corporation's Web site at *http://www.cns.gov/whatshot/notices.html.*

DATES: We must receive your application by 5 p.m. on July 14, 2003. We anticipate announcing selections under this Notice no later than August 20, 2003.

ADDRESSES: Submit your application to the following address: Corporation for National and Community Service, Attn: Nancy Talbot, 1201 New York Avenue, NW., Box PDC, Washington, DC 20525. Due to delays in delivery of regular mail to government offices, there is no guarantee that an application sent by regular mail will arrive in time to be considered. We therefore suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline. We will not accept an application that is submitted via email or facsimile.

FOR FURTHER INFORMATION CONTACT: Nancy Talbot at 202–606–5000, ext. 470 (*ntalbot@cns.gov*). The TDD number is 202–565–2799. For a printed copy of this NOFA and the supplementary information and application guidelines (available on-line), contact Ms. Shanika Ratliff at 202–606–5000 ext. 164 (*sratliff@cns.gov*). Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: June 6, 2003.

Robin Dean,

Program Manager, Department of Research and Policy Development.

[FR Doc. 03–14870 Filed 6–12–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add systems of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of

records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on July 14, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Directives and Records Division, Directives and Records Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on May 28, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

System name:

Qualification of Civilian Defense Counsel for Military Commissions.

SYSTEM LOCATION:

Chief Defense Counsel, Office of Military Commissions, Office of the General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301–1600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian Defense Counsel seeking admission to practice before Military Commissions in accordance with Military Commission Instruction No. 5.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the professional qualifications of civilian counsel to practice before Military Commissions. Records include full name of the individual, work address and phone number; Social Security Number; proof of U.S. citizenship; certificate showing good standing with the bar of a qualifying jurisdiction; statement detailing all sanctions or disciplinary actions pending or final, to which he/she has been subject; information required to conduct a background investigation for security clearance; a properly executed 'Authorization for Release of Information' and 'Affidavit and Agreement by Civilian Defense Counsel'; and a one-page resume from the civilian defense counsel that will be provided to the detainees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 113, Secretary of Defense; Military Commission Instruction No. 5, Qualification of Civilian Defense Counsel; section 4C(3)(b) of Military Commission Order No. 1, Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism; Military Order of November 13, 2001, Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism; and E.O. 9397 (SSN).

PURPOSE(S):

The information is collected for the purpose of determining whether the individual meets prescribed eligibility criteria to serve as civilian defense counsel for an accused who will appear before a Military Commission.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To accused for purposes of furnishing information on individuals who are qualified to appear before a Military Commission as a civilian defense counsel.

The DoD "Blanket Routine Uses" set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

RECORDS ARE STORED AS PAPER FILES ONLY.

RETRIEVABILITY:

Retrieved by the individual's full name.

Safeguards:

Records are maintained in a secure, limited access or monitored area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is limited to those who require the records to perform their official duties. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposition of these records, treat records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Defense Counsel, Office of Military Commissions, Office of the General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301–1600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief Defense Counsel, Office of Military Commissions, Office of the General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301–1600.

Requests for information should contain the individual's full name.

RECORDS ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system of records should address written inquiries to the Chief Defense Counsel, Office of Military Commissions, Office of the General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301–1600.

Requests for information should contain the individual's full name.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of record is from the individuals concerned and State Bar Associations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–14815 Filed 6–11–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–332–006]

ANR Pipeline Company; Notice of Revised Tariff Sheet

June 6, 2003.

Take notice that on June 4, 2003, ANR Pipeline Company, (ANR) tendered for filing a revised tariff sheet to correct an inadvertent error on proposed Third Revised Tariff Sheet No. 99. The correction preserves the right of ANR and a Shipper to agree that the Shipper shall have the right to change its primary point to another primary point at a discounted rate.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14893 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–299–002]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

June 6, 2003.

Take notice that on May 15, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing an explanation of its filed fuel retainage percentages for transportation service.

Cove Point states that its filing provides the additional information it was directed to provide in the Commission's April 30, 2002, order in this proceeding.

Cove Point states that copies of its filing have been served upon all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14895 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–308–000]

East Tennessee Natural Gas Company; Notice of Filing

June 6, 2003.

Take notice that on June 4, 2003, East Tennessee Natural Gas Company (East Tennessee), 5400 Westheimer Court, Houston, Texas 77056–5310, filed with the Federal Energy Regulatory Commission (Commission) an abbreviated application pursuant to the Natural Gas Act (NGA) to utilize existing vaporization capacity to provide additional vaporization service at its liquefied natural gas (LNG) storage facility located near Kingsport, Tennessee (Kingsport LNG Facility), all as more fully set forth in the application. The application is on file with the Commission and open for public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, East Tennessee states that its currently effective certificate for the Kingsport LNG Facility authorizes East Tennessee to use 100,000 Mcf/d of the facility's daily vaporization capacity and that the LNG Vaporization Project, the subject of this application, will enable East Tennessee to utilize the full 150,000 Mcf/d of vaporization capacity available at Kingsport LNG Facility to satisfy the daily sendout demands of its storage customers. East Tennessee requests that the Commission act on this filing expeditiously and issue a final certificate granting the requested authorizations on or before September 1, 2003, to allow it to begin using the excess sendout deliverability of the Kingsport LNG Facility in time to meet the demands of the upcoming winter withdrawal season. East Tennessee states that since no construction or facility modifications are required for this project, there will be no environmental or landowner impacts. East Tennessee also states that there will be no new facilities installed pursuant to this application and proposes no rate change. East Tennessee also states that the LNG Vaporization Project will

increase flexibility and improve the reliability of East Tennessee's pipeline and storage facilities by increasing the sendout deliverability of the Kingsport LNG Facility. And finally East Tennesse states that it has executed binding agreements with 17 LNGS shippers for the additional sendout deliverability.

Any questions regarding this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, East Tennessee Natural Gas Company, 5400 Westheimer Court, Houston, Texas, 77056–5310 at (713) 627–5113, fax (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14890 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–64–002]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

June 6, 2003.

Take notice that on June 4, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Attachment 1 to the filing, to become effective May 5, 2003.

Gulf South states that this compliance filing includes those tariff sheets necessary to reflect the requirements of the Commission's May 5th Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14896 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–000]

High Island Offshore System, L.L.C.; Notice of Informal Settlement Conference

June 6, 2003.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on June 13, 2003, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Donald Heydt at (202) 502–8740, *donald.heydt@ferc.gov* or Irene Szopo at (202) 502–8323, *irene.szopo@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14894 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing and Soliciting Comments, Motions to Intervene, and Protests

June 6, 2003.

Take notice that the following report has been filed with the Commission and is available for public inspection:

a. *Filing Type:* Recreation Plan Update.

b. *Project No:* 2459–140.

c. *Date Filed:* March 28, 2003.

d. *Applicant:* Allegheny Energy Supply Company, LLC (AE).

e. *Name of Project:* Lake Lynn Hydroelectric Project.

f. *Location:* On the Cheat River, in Monongalia County, West Virginia, and Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles L. Simon, 4350 Northern Pike, Monroeville, PA 15146–2841. Phone: (412) 858–1675.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674 or *shana.high@ferc.gov*.

j. *Deadline for filing comments and/or motions:* July 7, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (2459–140) on any comments or motions filed.

k. *Description of Proposal:* AE developed an Updated Recreation Plan (plan) to comply with article 417 of the project license. The plan was prepared following an evaluation of facility usage data and addresses recreation use as well as the adequacy of facilities. Specifically, the update addresses safety and security, navigational problems, swimming use, user demand patterns for boating use, primitive camping, and privileged permit leases. AE states that the current recreational facilities are meeting the demonstrated demand for recreation at the project and no changes are proposed in the update.

l. *Locations of the Application:* This filing is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

p. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14892 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12033–001]

Symbiotics, LLC.; Notice of Surrender of Preliminary Permit

June 6, 2003.

Take notice that Symbiotics, LLC, permittee for the proposed Helena Valley Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on November 6, 2001, and would have expired on October 31, 2004. The project would have been located on Ten Mile Creek in Lewis and Clark County, Montana.

The permittee filed the request on April 30, 2003, and the preliminary permit for Project No. 12033 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14891 Filed 6–11–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0018; FRL–7512–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Mercury, ICR Number 0113.08, OMB Number 2060–0097

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Mercury, OMB Control Number 2060–0097, EPA ICR Number 0113.08. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 14, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; E-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0018, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comment, whether submitted electronically or on paper, will be available for public viewing in EDOCKET, as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Mercury (40 CFR part 61, subpart E) OMB Control Number 2060–0097, EPA ICR Number 0113.08. This is a request to renew an existing, approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The NESHAP for Mercury, published at 40 CFR part 61, subpart E, were proposed on December 7, 1971, promulgated on April 6, 1973, and amended on October 14, 1975 and March 19, 1987. These standards apply to all stationary sources which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge. Approximately 107 sources (100 sludge incineration and drying plants and seven mercury-cell chlor-alkali plants) are currently subject to the standard; and no additional sources are expected to become subject to the standard in the next three years. Mercury is the pollutant regulated under this standard. This information is being collected to assure compliance with 40 CFR part 61, subpart E.

Owners or operators of affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. These facilities must also maintain records of performance test results, startups, shutdowns, and malfunctions. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. A written report of each period for which hourly monitored parameters fall outside their established limits is required semiannually for mercury-cell chlor-alkali facilities. Reporting and recordkeeping is mandatory under section 114 of the Clean Air Act as amended in 40 CFR part 61. Records of emission test results and other data needed to determine total emissions will be maintained at the source and made available for inspection for a minimum of two years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 156 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Stationary Mercury processing facilities.

Estimated Number of Respondents: 107.

Frequency of Response: Annually, Semiannually, and initially.

Estimated Total Annual Hour Burden: 17,818.

Estimated Total Annual Cost: $0 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 8,686 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden from the most recently approved ICR is due to a decrease in the number of sources. We have determined that the number of sources currently subject to this standard has decreased based on the most recent data available on the Air Facility System database for NESHAP respondent cost is due to a labor rate change where the rate was increased; however, the total overall cost is reduced due to the smaller number of sources covered by the rule.

Dated: June 5, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–14874 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0048; FRL–7512–2]

Agency Information Collection Activities; Submission of EPA ICR No. 1060.12 (OMB No. 2060–0038) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (Renewal). This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 14, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0048, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (40 CFR part 60, subparts AA and AAa) (Renewal) (OMB Control Number 2060–0038, EPA ICR Number 1060.12). This is a request to renew an existing approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for electric arc furnaces were proposed on October 21, 1974 (39 FR 37466) and promulgated on September 23, 1975 (40 CFR 43850). These standards apply to the following affected facilities in steel plants that produce carbon, alloy, or specialty steels: Electric arc furnaces (EAFs) and dust handling systems commencing construction, modification or reconstruction after the date of proposal and on or before August 17, 1983. A review of subpart AA in 1980 resulted in the promulgation of a new standard (NSPS, subpart AAa). The review of NSPS subpart AA found that fugitive emissions capture technology had improved since promulgation of NSPS subpart AA, and that argon-oxygen decarburization (AOD) vessels are a significant source of particulates in specialty steel shops. NSPS, subpart AAa was proposed on August 17, 1983 and promulgated on October 31, 1984. The new standard established new standards applicable to EAFs, AOD vessels, and dust handling systems constructed, modified, or reconstructed after August 17, 1983. On March 2, 1999, the Agency promulgated a direct final rule to amend subparts AA and AAa in response to a petition made by the Common Sense Initiative Council, established under a charter approved pursuant to the Federal Advisory Committee Act (FACA), which approved daily visible emissions observations as an alternative to static pressure monitoring at an EAF with a

direct shell evacuation system, and clarified some definitions.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 303 (rounded) hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Plants with electric arc furnaces, AOD vessels, and dust handling systems that produce carbon, alloy, or specialty steels.

Estimated Number of Respondents: 95.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 58,195 hours (rounded).

Estimated Total Capital and Operations & Maintenance (O&M) Annual Costs: $289,890 which includes $4,140 annualized capital/startup costs and $285,750 annual O&M costs.

Changes in the Estimates: There is an increase of 9,782 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase on the number of sources and revisions to the assumptions made to determine the industry burden. A net increase of 5 sources (90 to 95) was determined due to the inclusion of 10 steel forging facilities that use electric arc furnaces to develop intermediate products as affected facilities which offset the decreased (90 to 85) number of minimills. In addition, the increase is due to corrections made to the percentages used to evaluate the burden associated with the different types of activities sources are conducting to comply with the monitoring of stack emissions and the fugitive emissions monitoring requirements.

Dated: June 5, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–14875 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0042; FRL–7512–1]

Agency Information Collection Activities; Submission of EPA ICR Number 1093.07 (OMB Number 2060–0162) to OMB Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for the Surface Coating of Plastic Parts for Business Machines (Renewal). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 14, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0042, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or on paper, will be available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for the Surface Coating of Plastic Parts for Business Machines (40 CFR part 60, subpart TTT) (Renewal) (OMB Control Number 2060–0162, EPA ICR Number 1093.07). This is a request to renew an existing, approved collection that is scheduled to expire on July 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Industrial surface coating operations emit volatile organic compounds (VOCs) in quantities that the Administrator believes cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, New Source Performance Standards for the surface coating of plastic parts for business machines were promulgated. VOC emissions from these facilities are the result of operation of the spray booths that apply prime coats, color coats, texture coats or touch-up coats. The standards ensure that owners or operators of these facilities use coatings that contain a low proportion of VOCs, and coating application equipment that provides a high transfer efficiency. In addition, or as an alternative, sources may use control equipment to meet the emission limits. In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Responses to the collection of information are mandatory. The required information has been determined not to be confidential. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 (rounded) hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities that apply coatings to plastic parts for business machines.

Estimated Number of Respondents: 10.

Frequency of Response: Quarterly and semiannually.

Estimated Total Annual Hour Burden: 978 hours.

Estimated Total Capital and Operations & Maintenance (O&M) Annual Costs: $0.

Changes in the Estimates: There is a decrease of 2,661 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of sources.

Dated: June 5, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–14876 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7511–3]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in the following cases filed in the U.S. Court of Appeals for the District of Columbia Circuit: *Engine Manufacturers Ass'n* v. *EPA*, No. 00–1066; *Engine Manufacturers Ass'n, et al.* v. *EPA*, Nos. 01–1129 and 02–1080; *International Truck and Engine Corp., et al.* v. *EPA*, Nos. 00–1510 and 00–1512; *International Truck and Engine Corp.* v. *EPA*, No. 01–1137; and *Engine Manufacturers Ass'n* v. *EPA*, No. 03–1007. These cases concern the U.S. Environmental Protection Agency's (EPA) promulgation of regulations requiring manufacturers of heavy-duty diesel motor vehicle engines and nonroad marine diesel engines to control emissions by meeting not-to-exceed (NTE) emission standards and test procedures, and EPA's issuance of guidance concerning certification of heavy-duty diesel motor vehicle engines.

DATES: Written comments on the proposed settlement agreement must be received by July 14, 2003.

ADDRESSES: Copies of the proposed settlement are available from Phyllis Cochran, Air and Radiation Division (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–7606. Written comments should be sent to Michael Horowitz at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz at 202–564–5583.

SUPPLEMENTARY INFORMATION: EPA has promulgated regulations in several separate rules requiring manufacturers of heavy-duty diesel motor vehicle engines and nonroad marine engines to control emissions by meeting not-to-exceed (NTE) emission standards and test procedures. 64 FR 73300 (Dec. 29, 1999), 65 FR 59896 (Oct. 6, 2000), 66 FR 5002 (Jan. 18, 2001), and 67 FR 68242 (Nov. 8, 2002). EPA also issued guidance concerning certification of heavy-duty diesel motor vehicle engines, on January 19, 2001. EMA and certain member companies (Manufacturer Parties) filed petitions challenging these rules and guidance. EPA and Manufacturer Parties entered into negotiations and have reached a proposed settlement of this litigation.

The proposed settlement agreement outlines a rulemaking proposal to establish a manufacturer-run in-use testing program for heavy-duty diesel motor vehicles. The proposed settlement also calls for issuance by EPA of guidance regarding implementation of the NTE regulations for heavy-duty diesel motor vehicle

engines and nonroad marine diesel engines, and discusses the elements of a manufacturer-run in-use testing program for nonroad diesel engines.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: June 4, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 03–14873 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7511–9]

Clean Air Scientific Advisory Committee, Science Advisory Board: Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency (EPA or Agency) is announcing the reconstitution of the Ozone Review Panel (Panel) and is hereby soliciting nominations for this Panel.

DATES: Nominations should be submitted by July 3, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–4561; or via e-mail at: *butterfield.fred@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Fred Butterfield, DFO, as indicated above. General information concerning the CASAC or the EPA Science Advisory Board can be found at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Summary

The Clean Air Scientific Advisory Committee is announcing the reconstitution of its Ozone Review Panel to conduct reviews of the criteria and national ambient air quality standards (NAAQS) for ozone. The CASAC is hereby soliciting nominations to establish the members of the new Panel. The Ozone Review Panel is intended to operate for two to five (nominally, three) years, with a separate charge to be issued to the Panel by the Agency for each review or project.

The CASAC, which comprises seven members appointed by the EPA Administrator, was established by section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice and recommendations related to the Agency's periodic reviews of the criteria and NAAQS required under sections 108 and 109 of the Act. To provide the appropriate range of expertise needed for the review of the criteria and standards for each pollutant for which NAAQS are established, a Panel of experts is typically formed by supplementing the expertise provided by the seven CASAC members themselves. As the Agency is now in the early stages of its review of the criteria and standards for ozone, the Ozone Review Panel is being reconstituted at this time. The CASAC, which is administratively located under the EPA Science Advisory Board, reports to the EPA Administrator. All seven statutory members of the CASAC will also serve as members of the CASAC Ozone Review Panel. Accordingly, once the CASAC Ozone Review Panel completes its deliberations on a given activity, its report will be transmitted directly to the Administrator.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Both the CASAC and the SAB are Federal advisory committees chartered under the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The CASAC Ozone Review Panel will comply with the provisions of FACA and all appropriate SAB procedural policies, including the process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can found at: *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Nominator's Assessment of Expertise

When submitting nominations to the CASAC Ozone Review Panel, please explicitly indicate the specific areas of expertise the candidate could contribute. The CASAC requests nominees who are recognized, national-level experts in one or more of the following disciplines:

(a) *Atmospheric Science*. Expertise in physical/chemical properties of ozone and other photochemical oxidants, their precursor substances, and atmospheric processes involved in the formation, transport, and degradation of ozone and other photochemical oxidants in the atmosphere, including interaction with global climate and stratospheric ozone. Also, expertise in the evaluation of natural and man-made (anthropogenic) sources and emissions of precursors of tropospheric ozone and other photochemical oxidants, pertinent monitoring/measurement methods for such substances, and spatial/temporal trends in atmospheric concentrations of them.

(b) *Exposure and Risk Assessment/Modeling*. Expertise in measuring human population exposure to ozone and/or in modeling human exposure to ambient and indoor pollutants. Also, expertise in human health risk analysis modeling for ozone or other pollutants causing respiratory and/or other non-cancer health effects.

(c) *Ecological Effects and Resource Valuation*. Expertise in evaluation of: Patterns of exposure to ozone and/or other photochemical oxidants of ornamental and/or agricultural plants and/or natural ecosystems and their components; effects of ozone and other photochemical oxidants on natural ecosystems (especially terrestrial) and their components (both flora and fauna), ranging from biochemical/sub-cellular effects and identification of indicators of pathophysiological effects at the individual plant level, to effects on species and populations, on up to include impacts on increasingly more complex (*e.g.*, landscape) levels of ecosystem organization. Also, expertise in (i) ecosystem risk assessment and (ii) ecological resource valuation/economics.

(d) *Dosimetry*. Expertise in conducting and/or evaluation of the dosimetry of animal and human subjects, including identification of factors determining differential patterns of inhalation and/or deposition/uptake in respiratory tract regions that may contribute to differential susceptibility of human population subgroups and animal-to-human dosimetry extrapolations.

(e) *Toxicology*. Expertise in conducting and/or evaluation of experimental laboratory animal studies of the effects of ozone and/or other photochemical oxidants on respiratory and non-respiratory (*e.g.*, lung defense/other immune function mechanisms) endpoints.

(f) *Controlled Human Exposure*. Expertise in conducting and/or evaluation of controlled human exposure studies of the effects of such substances on healthy and compromised (having pertinent preexisting chronic disease, *e.g.*, asthma) human adults and children, including medical doctors (M.D.) with experience in the clinical treatment of asthma.

(g) *Epidemiology and Biostatistics*. Expertise in epidemiological evaluation of the effects of exposures to ambient ozone and/or other major ambient air co-pollutants (*e.g.*, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide) on human population groups, including effects on mortality and/or morbidity (*e.g.*, respiratory symptoms, lung function decrements, asthma medication use, respiratory-related hospital admissions) endpoints. Also, expertise in associated biostatistics and/or health risk analysis (including Bayesian statistical approaches).

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified individuals to add expertise to the Panel in the areas of expertise described above. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, and any questions concerning any aspects of the nomination process may contact Mr. Fred Butterfield, DFO, as indicated above in this **Federal Register** notice. Nominations should be submitted in time to arrive no later than July 3, 2003.

To be considered, all nominations must include: (a) A current biography, curriculum vitae (C.V.) or resume, which provides the nominee's background, experience and qualifications for the Panel; and (b) a brief biographical sketch ("biosketch"). The biosketch should be no longer than one page and must contain the following information for the nominee:

(i) Current professional affiliations and positions held;

(ii) Area(s) of expertise, and research activities and interests;

(iii) Leadership positions in national associations or professional publications or other significant distinctions;

(iv) Educational background, especially advanced degrees, including when and from which institutions these were granted;

(v) Service on other advisory committees, professional societies, especially those associated with issues under discussion in this review; and

(vi) Sources of recent (*i.e.*, within the preceding two years) grant and/or other contract support, from government, industry, academia, etc., including the topic area of the funded activity.

Please note that even if there is no responsive information (*e.g.*, no recent grant or contract funding), this must be indicated on the biosketch (by "N/A" or "None"). Incomplete biosketches will result in nomination packages not being accepted.

The EPA Science Advisory Board will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the CASAC Ozone Review Panel.

For the EPA SAB, a balanced review panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the Panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) skills working in committees, subcommittees and advisory panels. Ozone Review Panel members will likely be asked to attend two to three public, face-to-face meetings and several public teleconference meetings per year over the anticipated two-to five-year course of the Panel's activity.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is used by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

Dated: June 5, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–14877 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7511–2]

Proposed Administrative Peripheral Party, Inability To Pay, Cash-out Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Regarding the Meadowlands Plating & Finishing Site, East Rutherford, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative cash-out agreement and opportunity for public comment.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* In accordance with EPA guidance, notice is hereby given of a proposed administrative settlement pursuant to section 122(h)(1) of CERCLA concerning the Meadowlands Plating & Finishing Site, located in East Rutherford, New Jersey. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve a responsible party's civil liability for response costs incurred by EPA at the Meadowlands Plating & Finishing Site. CERCLA provides EPA the authority to settle certain claims for response costs incurred by the United States with the approval of the Attorney General of the United States.

The proposed settlement provides that Andrew Marchese, will pay $30,000 over 18 months, in reimbursement of response costs incurred by EPA in remediating the Meadowlands Plating & Finishing site in return for a covenant not sue under section 107 of CERCLA from the United States.

DATES: Comments must be provided by July 14, 2003.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866 and should refer to: In the Matter of Meadowlands Plating & Finishing Site, Andrew Marchese, Settling Party, U.S. EPA Region II Docket No. CERCLA–02–2003–2010.

FOR FURTHER INFORMATION: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866, Attention: Patricia C. Hick, Esq. (212) 637–3137.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866.

Dated: May 30, 2003.

William McCabe,

Acting Director, Emergency & Remedial Response Division.

[FR Doc. 03–14878 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7512–9]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Final Affirmative Determination

Notice is hereby given that EPA has made a final affirmative determination regarding the petition dated March 27, 2002 that was received from the State of New Jersey. The Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), has found that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Barnegat Bay, Ocean County, New Jersey. This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Barnegat Bay Estuary Program, New Jersey Marine Sciences Consortium, Ocean County Planning Board and Ocean County Vocational-Technical School. Upon the receipt of this affirmative determination, NJDEP will completely prohibit the discharge of sewage, whether treated or not, from any vessel in the Barnegat Bay Complex in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

On April 1, 2003, EPA published a Receipt of Petition and Tentative Determination and accepted comments from the public for a thirty (30) day period. EPA received letters from the following individuals:

1. A. Jerome Walnut, Chairman, Ocean County Planning Department, P.O. Box 2191, Toms River, New Jersey 08754.
2. Christopher Claus, President, Ocean Nature and Conservation Society, 21 Winding River Drive, Toms River, NJ 08755–5122.
3. David J. McKeon, Assistant Planning Director, Ocean County Planning Board, P.O. Box 2191, Toms River, NJ 08754–2191.
4. William deCamp, Jr., President, Save Barnegat Bay, 906–B Grand Central Avenue, Lavallette, NJ 08735.
5. Angela C. Andersen, South Jersey Coordinator, American Littoral Society, P.O. Box 1306, Tuckerton, NJ 08097.
6. Cindy Zipf, Executive Director, Clean Ocean Action, P.O. Box 305, Highlands, NJ 07732–0505.

EPA received emails from the following individual:

1. Bob Scro, Barnegat Bay Estuary Program Director, Ocean County Planning Department, P.O. Box 2191, Toms River, New Jersey 08754.

Mr. Scro identified some typographical errors made in the original petition submitted to EPA: "Ocean County Vacation and Technical School" should read as "Ocean County Vocational-Technical School" and "Ocean County Municipal Utilities Authority" should read as "Ocean County Utilities Authorities". Mr. Scro also commented that since the petition was submitted, a third pumpout boat had been purchased and is servicing boaters in Barnegat Bay. These corrections have been made to this Final Determination.

Several of the commenters expressed support for the establishment of a No Discharge Zone (NDZ) and commented that this Final Determination was an important step in protecting the water quality of Barnegat Bay and its marine resources. The Ocean County Planning Board forwarded a Resolution, passed by the Ocean County Board of Chosen Freeholders, supporting the NDZ. Many of the commenters, especially the Ocean County Planning Board, stated that there were a number of threats to Barnegat Bay including non-point source pollution and that this designation was just one of many action items in the Barnegat Bay Comprehensive Conservation and Management Plan.

The American Littoral Society (ALS) expressed support for the establishment of the NDZ, but asked several questions regarding education, enforcement, water quality improvements and legislative issues. Regarding the issues of education, ALS commented that a mechanism should exist to inform boaters about the requirements of a NDZ. As part of the petition, an education program is outlined. This program is part of the New Jersey Clean Vessel Act Program and the Barnegat Bay Estuary Program. Regarding the enforcement of the NDZ, the U.S. Coast is responsible for the enforcement and the State of New Jersey has a Memorandum of Understanding, with the Coast Guard, designating the New Jersey State Police as the lead law enforcement agency. The petition submitted to EPA states that the State Police will enforce the boating safety standards and marine sanitation device regulations. ALS raises a question regarding improvements in water quality and whether EPA or NJDEP will attempt to quantify the improvements in water quality as a result if this designation is approved. Certainly, improvements in water quality can be demonstrated through routine ambient sampling. Since there are several ongoing programs to improve the water quality in the estuary, it is difficult to attribute these improvements to a specific program. Currently, EPA is undertaking a national study to evaluate the efficacy of the NDZ designations and will publish the results when they are available. ALS asked whether EPA is aware of a legislative bill that was introduced by Congressman Saxton that would eliminate NDZ restrictions for vessels that use state of art treatment devices. ALS raised certain concerns about this bill and asked if EPA had comments or concerns. In response, EPA is aware of the legislative bill but chooses not to comment on the bill at this time.

No changes to the determination are necessary based on the comments received.

Barnegat Bay is a shallow, lagoon-type estuary characteristic of a back bay system of a barrier island coastline. Barnegat Bay is bordered by two barrier islands, Island Beach and Long Beach Island. These islands are approximately 64 km in total length, are oriented north-south and separate the bay from the Atlantic Ocean. The NDZ will include Barnegat Bay Complex and its navigable tributaries. The boundary lines have been defined for the Point Pleasant Canal, Barnegat Inlet and Egg Harbor Inlet as lines between the following points:

Point Pleasant Canal	40 04.030 N 74 03.281 W	40 04.068 N 74 03.278 W
Barnegat Inlet	Inside South Buoy 39 45.457 N 74 05.519 W	Inside North Buoy 39 45.525 N 74 05.519 W
Egg Harbor Inlet	39 30.521 N 74 18.389 W	39 30.476 N 74 17.322 W

Barnegat Bay provides recreational, economic, and aesthetic benefits to the coastal users of New Jersey. The estuary is productive for shellfish harvesting, recreational activities such as fishing, kayaking, swimming and boating. The bay supports hard clam harvest and blue crab landings. NJDEP Bureau of Marine Water Classification and Analysis has divided the State into 36 Shellfish growing water reaches. The bay complex is identified as Reaches 7 through 13 which are as follows:

Reach 7—Barnegat Bay (Bay Head to Seaweed Point)
Reach 8—Barnegat Bay (Seaweed Point to Mathis Bridge)
Reach 9—Toms River
Reach 10—Barnegat Bay (Mathis Bridge to Forked River)
Reach 11—Barnegat Bay (Forked River to Main Point)
Reach 12—Manahawkin/Little Egg Harbor Bay (Main Point to Long Point)
Reach 13—Long Point to Beach Haven Inlet

Information submitted by the State of New Jersey indicate that there are sixty-six existing pumpout facilities and three pumpout boats available to service vessels throughout the Barnegat Bay Complex. The typical facility is available to the boating community from April through November with hours of operation from 8:00AM until 5:00PM, seven days a week. Seven facilities are available all year. Sixty-three of the existing pumpout facilities are connected to municipal sewage lines. Sewage from these facilities is routed to the Ocean County Utilities Authority where it undergoes secondary treatment. Three pumpout facilities (Ocean Gate Yacht Basin, Ocean Beach South and Causeway Boat Rental and Marina) store their waste in holding tanks for disposal by a septic waste hauler.

According to the State's petition, the vessel population for the waters of Barnegat Bay Complex is approximately 15,587 vessels which are docked at private residences and 12,900 vessels docked or moored at marinas or yacht clubs. The total vessel population is 28,487. The ratio of boats to pumpout facilities has been based on the total number of vessels which could be expected. With sixty-six shore-side pumpout facilities and two pumpout vessel available to boaters, the ratio of docked or moored boats (including transients) is approximately 420 vessels per pumpout. Standard guidelines refer to acceptable ratios falling in the range of 300 to 600 vessels per pumpout. If the EPA calculation is employed (as listed in the guidance manual entitled, "Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials—April 1994"), it estimates that twenty-four pumpouts are needed to provide adequate facilities.

Commercial vessels which operate in and around Barnegat Bay are engaged in fishing activities exclusively. Most of the operators will use the pumpout facilities where they dock or obtain fuel. The larger fishing vessels do not operate in the bay, but dock in the vicinity of Barnegat Light and fish the Atlantic Ocean.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Barnegat Bay Complex in Ocean County, New Jersey.

Dated: May 30, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–14879 Filed 6–11–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 4, 2003.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications

Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0810.
OMB Approval Date: 05/23/2003.
Expiration Date: 05/31/2006.
Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.
Form No.: N/A.
Estimated Annual Burden: 100 responses; 6,200 total annual hours; 62 hours per respondent.
Needs and Uses: 47 U.S.C. 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. In this Order, the Commission concludes that petitions for designation filed under section 214(e)(6) relating to "near reservation" areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking ETC designation in such areas must follow the procedures out-lined in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

OMB Control No.: 3060–0514.
OMB Approval Date: 05/20/2003.
Expiration Date: 05/31/2006.
Title: Section 43.21 (b)—Holding Company Annual Report.
Form No.: N/A.
Estimated Annual Burden: 20 responses; 20 total annual hours; 1 hour per respondent.
Needs and Uses: The SEC 10K form is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Control No.: 3060–0400.
OMB Approval Date: 05/20/2003.
Expiration Date: 05/31/2006.
Title: Tariff Review Plan.
Form No.: N/A.
Estimated Annual Burden: 41 responses; 2,501 total annual hours; 61 hours per respondent.
Needs and Uses: Certain local exchange carriers are required annually to submit Tariff Review Plan in partial fulfillment of cost support material required by 47 CFR part 61. The information used by FCC and the public to determine the justness and reasonableness of rates, terms and conditions in tariffs as required by the Communications Act of 1934, as amended.

OMB Control No.: 3060–0894.
OMB Approval date: 05/09/2003.
Expiration Date: 05/31/2006.
Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.
Form No.: N/A.
Estimated Annual Burden: 51 responses; 153 total annual hours; 3 hours per respondent.
Needs and Uses: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254 (e).

OMB Control No.: 3060–0755.
OMB Approval Date: 05/09/2003.
Expiration Date: 05/31/2006.
Title: 47 CFR Sections 59.1–59.4—Infrastructure Sharing.
Form No.: N/A.
Estimated Annual Burden: 1,425 responses; 2,325 total annual hours; 1–2 hours per respondent.
Needs and Uses: In CC Docket No. 96–237, the Commission implemented the infrastructure sharing provisions of the Communicaitons Act of 1934, as added by the Telecommunications Act of 1996. Section 259 requires incumbent LECs to file any arrangements showing the conditions under which they share infrastructure per section 259. Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. The Commission also requires incumbent LECs to provide 60 day notices prior to terminating section 259 agreements.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 03–14814 Filed 6–11–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–54–B (Auction No. 54); DA 03–1547]

Closed Broadcast Auction No. 54 Construction Permits for New Broadcast Stations Scheduled for July 23, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures, minimum opening bids, and revised inventory for the upcoming auction of construction permits for new full power television (TV), low power television (LPTV), and FM broadcast stations ("Auction No. 54") scheduled for July 23, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 54 is scheduled to begin on July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch at (202) 418–0660; Lyle Ishida, Operations Branch at (202) 418–0660 or Linda Sanderson, Operations Branch at (717) 338–2888. Audio Division: Lisa Scanlan at (202) 418–2700. Video Division: Shaun Maher at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 54 Procedures Public Notice* released on May 12, 2003. The complete text of the *Auction No. 54 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 54 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. This document is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/54/*.

I. General Information

A. Introduction

1. The *Auction No. 54 Procedures Public Notice* announces the procedures and minimum opening bids for the upcoming auction of construction permits for new full power television (TV), low power television (LPTV), and FM broadcast stations ("Auction No. 54"), scheduled for July 23, 2003. On April 11, 2003, in accordance with the Balanced Budget Act of 1997, the Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released the *Auction No. 54 Comment Public Notice*, 68 FR 19816 (April 22, 2003), seeking comment on the establishment of reserve prices and/or minimum opening bids and other procedures for Auction No. 54. The Bureaus received no comments in response to the *Auction No. 54 Comment Public Notice*.

i. Construction Permits To Be Auctioned

2. Auction No. 54 will include construction permits for one TV, two LPTV, and four FM broadcast stations. These broadcast stations are the subject of pending, mutually exclusive FCC Form 301 or Form 346 applications for construction permits for the referenced broadcast services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), participation in this auction is limited to the applicants identified in Attachment A of the *Auction No. 54 Procedures Public Notice*. All applications within a mutually exclusive applicant group ("MX Group") are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX Group identified in Attachment A of the *Auction No. 54 Procedures Public Notice*. Applicants will be eligible to bid on only those construction permits selected on their previously filed FCC Form 301 or Form 346. The minimum opening bids and upfront payments for these broadcast construction permits are also included in Attachment A of the *Auction No. 54 Procedures Public Notice*.

3. As stated in the *Broadcast First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding. When two or more short-form applications (FCC Form 175) are accepted for filing within an MX Group, mutual exclusivity exits for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 54 Procedures Public Notice*; the *Auction No. 54 Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with part 1, subpart Q of the Commission's rules concerning competitive bidding proceedings. In particular, broadcasters should also familiarize themselves with the Commission's recent amendments and clarifications to its general competitive bidding rules.

5. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554, or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

ii. Prohibition of Collusion

6. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same market from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for construction permits in the same market are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

7. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits in the same market. In Auction No. 54, for example, the rule would apply to any applicants bidding for the same market (*i.e.*, Victor, ID, MX Groups FM2 and FM3). Therefore, applicants that apply to bid for any construction permit in the same market would be precluded from communicating after filing the FCC Form 175 application with any other applicant for a construction permit in that same market. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same market. By signing their FCC Form 175 applications, applicants are certifying their compliance with §§ 1.2105(c) and 73.5002.

8. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of

such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

9. A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment F of the *Auction No. 54 Procedures Public Notice*.

iii. Due Diligence

10. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

11. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 54 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 54 are strongly encouraged to continue such research during the auction.

12. Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may effect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 54.

13. Potential bidders for the new full power television facility should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the Class A Report and Order, the winning bidder in Auction No. 54, upon submission of its long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television station proposed in this auction. Information about the identity and location of Class A television stations is available from the Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mb*) and on the Media Bureau's Class A television web page: *http://www.fcc.gov/mb/video/files/classa.html*

14. Potential bidders for the new full power television facility are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

15. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418–2662, or via e-mail at *mbinfo@fcc.gov*.

iv. Bidder Alerts

16. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a construction permit, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

17. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 54 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 54 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225–5322).

v. National Environmental Policy Act (NEPA) Requirements

18. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

19. Auction No. 54 will begin on Wednesday, July 23, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

20. Auction No. 54—Closed Broadcast.

iii. Bidding Methodology

21. The bidding methodology for Auction No. 54 will be simultaneous, multiple round bidding.

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well.

As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

22. The following is a list of important dates related to Auction No. 54:

Auction Seminar—June 12, 2003
Short-Form (FCC Form 175) Filing Window Opens—June 12, 2003; 12 p.m. ET
Short-Form (FCC Form 175) Application Deadline—June 20, 2003; 6 p.m. ET
Upfront Payments (via wire transfer)—July 3, 2003; 6 p.m. ET
Mock Auction—July 18, 2003
Auction Begins—July 23, 2003

i. Requirements for Participation

23. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6 p.m. ET, June 20, 2003. No other application may be substituted for the FCC Form 175.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, July 3, 2003.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

i. General Contact Information

24. The following is a list of general contact information related to Auction No. 54:

GENERAL AUCTION INFORMATION

General Auction Questions, Seminar Registration—FCC Auctions Hotline (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations—Auctions and Industry Analysis Division, Legal Branch (202) 418–0660

LICENSING INFORMATION

Rules, Polices, Regulations; Licensing Issues; Due Diligence Incumbency Issues—Audio Division (202) 418–2700; Video Division (202) 418–2700

TECHNICAL SUPPORT

Electronic Filing, Automated Auction System—FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY); Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET

PAYMENT INFORMATION

Wire Transfers, Refunds—FCC Auctions Accounting Branch; (202) 418–1995, (202) 418–2843 (Fax)

TELEPHONIC BIDDING

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Qualex International

Additional Copies of Commission documents—Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898, (Fax), *qualexint@aol.com* (E-mail)

PRESS INFORMATION

Meribeth McCarrick (202) 418–0654

FCC FORMS

(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html*

FCC INTERNET SITES

http://www.fcc.gov
http://wireless.fcc.gov/auctions
http://www.fcc.gov/mb

II. Short-Form Application (FCC Form 175) Requirements

25. Guidelines for completion of the short-form application (FCC Form 175) are set forth in Attachment D of the *Auction No. 54 Procedures Public Notice*.

A. License Selection

26. The Bureaus notes that as part of the FCC Form 175 filing process, applicants must identify which construction permits they may bid on as part of the auction. While the electronic FCC Form 175 will allow for the selection of all construction permits, applicants should only select from among those construction permits that they selected on their previously filed FCC Form 301 or Form 346. Applicants that select construction permits on their FCC Form 175 that were not selected on the FCC Form 301 or Form 346 will not be permitted to bid on those construction permits during the auction.

B. Ownership Disclosure Requirements (FCC Form 175.Exhibit A)

27. The Commission indicated in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform part 1 ownership disclosure standards would apply. Specifically, in completing FCC Form 175, all applicants will be required to provide information required by §§ 1.2105 and 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

28. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.

29. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

D. New Entrant Bidding Credit (Form 175 Exhibit C)

30. To fulfill its obligations under section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

i. Eligibility

31. The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing dead—June 20, 2003. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form application filing deadline—June 20, 2003.

32. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in § 73.5008(b). A medium of mass communications is defined in 47 CFR 73.5008 (b) and includes non-commercial broadcast stations. For more

information, *see* section II.C. of the *Auction No. 54 Procedures Public Notice.*

ii. Application Requirements

33. In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C.

iii. Bidding Credits

34. Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

35. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

D. Provisions Regarding Defaulters and Former Defaulters (Form 175 Exhibit D)

36. Each applicant must provide a certification on its FCC Form 175 application, made under penalty of perjury, that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must provide a certification on its FCC Form 175 application, made under penalty of perjury, indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175.

37. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 54, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

38. Installment payment plans will not be available in Auction No. 54.

F. Other Information (FCC Form 175 Exhibits E and F)

39. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants must specify the file number of the pending FCC Form 301 or Form 346 on Exhibit F (Miscellaneous Information). Applicants wishing to submit additional information may do so on Exhibit F.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

40. After the short-form application filing deadline (June 20, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, changes in ownership of the applicant that would constitute a change of control of the applicant, or changes affecting eligibility for the new entrant bidding credit). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction54@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 54. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

41. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

42. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

43. On June 12, 2003 the FCC will sponsor a free seminar for Auction No. 54 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the broadcast service and auction rules.

B. Short-Form Application (FCC Form 175)—Due June 20, 2003

44. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on June 20, 2003. Late applications will not be accepted.

45. There is no application fee required when filing an FCC Form 175.

i. Electronic Filing

46. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at 12 noon ET on June 12, 2003, until 6 p.m. ET on June 20, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on June 20, 2003.

47. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 54 Procedures Public Notice.* Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

ii. Completion of the FCC Form 175

48. Applicants should carefully review 47 CFR 1.2105 and 73.5002, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 54 Procedures Public Notice.*

iii. Electronic Review of FCC Form 175

49. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 54 Procedures Public Notice* for details on accessing the review system.

50. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed, and the FCC has issued a public notice explaining the status of the applications. **Note:** Applicants should not include sensitive information (*i.e.*, Taxpayer Identification Number or Employer Identification Number) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

51. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the construction permits for which they applied); (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due July 3, 2003

52. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on July 3, 2003. For specific instructions regarding upfront payments, *see* section III.D. of the *Auction No. 54 Procedures Public Notice.*

i. Making Auction Payments by Wire Transfer

53. Wire transfer payments must be received by 6 p.m. ET on July 3, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

54. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 54." Bidders should confirm the receipt of their upfront payment at Mellon Bank by contacting their sending financial institution. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 54 Procedures Public Notice.*

ii. Amount of Upfront Payment

55. The Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have an eligibility level that meets the number of bidding units assigned to that construction permit. (While the electronic FCC Form 175 allows for the selection of all construction permits, applicants should only select from among those construction permits that they selected on their previously filed FCC Form 301 or Form 346). At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one construction permit applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction. No comments were received; therefore, the Bureaus adopt its proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 54 Procedures Public Notice.*

56. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with construction permits on which the bidder has the standing high bid from the previous round and construction permits on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

57. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, in conjunction with the selections made on the FCC Form 175.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

58. The Commission will use wire transfers for all Auction No. 54 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser or Tim Dates, at (202) 418–2843 by July 3, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at 202–418–0578 or Tim Dates at (202) 418–0496.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

E. Auction Registration

59. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

60. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

61. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, July 16, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

62. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear *in person* with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

63. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 54. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

64. SecurID cards can be recycled, and the Bureaus encourages bidders to return the cards to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

65. All qualified bidders will be eligible to participate in a mock auction on Friday, July 18, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

66. The first round of bidding for Auction No. 54 will begin on Wednesday, July 23, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

67. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed to award all the construction permits in Auction No. 54 in a simultaneous multiple round auction. The Bureaus received no comments on this issue. The Bureaus therefore concludes that it is operationally feasible and appropriate to auction the construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in successive rounds of bidding.

ii. Maximum Eligibility and Activity Rules

68. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the maximum initial eligibility (as measured in bidding units) for each bidder. No comments were received concerning the eligibility rule.

69. For Auction No. 54, the Bureaus will adopt its proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

70. In addition, the Bureaus received no comments on its proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopts its proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is a bidder must either place a bid and/or be the standing high bidder during each round of the auction.

71. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a permanent reduction in the bidder's bidding eligibility, possibly eliminating them from the auction.

iii. Activity Rule Waivers and Reducing Eligibility

72. Each bidder will be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

73. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers remaining; or (ii) bidders eligible to bid on more than one construction permit override the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder that is eligible to bid on only one construction permit has no activity rule waivers available, the bidder's eligibility will be reduced, eliminating it from the auction. If a bidder that is eligible to bid on more than one construction permit has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

74. A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

75. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new bids will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

76. For Auction No. 54, the Bureaus proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit or applies a proactive waiver.

77. The Bureaus also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver or a new bid on any construction permit on which it is not the standing high bidder.

78. The Bureaus further proposed retaining the discretion to keep an auction open even if no new bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

79. In addition, the Bureaus proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureaus proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time.

80. The Bureaus adopt all of the proposals concerning the auction stopping rules. Auction No. 54 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule.

v. Auction Delay, Suspension, or Cancellation

81. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety.

B. Bidding Procedures

i. Round Structure

82. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the qualified bidders public notice.

83. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

84. For Auction No. 54, the Bureaus proposed establishing minimum opening bids based on the potential value of the spectrum, including the type of service, proposed population coverage, market size, industry cash flow data and recent broadcast transactions. The Bureaus received no comments on this issue therefore, it adopts its proposal. The specific minimum opening bids for each construction permit are set forth in Attachment A of the *Auction No. 54 Procedures Public Notice.*

85. The minimum opening bids the Bureaus adopts for Auction No. 54 are reducible at its discretion. The Bureaus emphasizes, however, that such

discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain any requests to reduce the minimum opening bid on specific construction permits.

iii. Minimum Acceptable Bids and Bid Increments

86. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed to use a fixed percentage to calculate minimum acceptable bids. The Bureaus further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

87. The Bureaus adopts the proposal contained in the *Auction No. 54 Comment Public Notice*. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) − (standing high bid). The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

88. For Auction No. 54, the Bureaus will use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) * (1.10).

89. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the percentage increment, rounded as described, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment){rounded} − (minimum opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

90. The Bureaus retain the discretion to compute the minimum acceptable bids through other methodologies if they determine circumstances so dictate. Advanced notice of the Bureaus' decision to do so will be announced via the FCC Automated Auction System.

iv. High Bids

91. At the end of a bidding round, the FCC Automated Auction System determines the high bid for each construction permit based on the highest gross bid amount received for each construction permit. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.

92. A Sybase® SQL pseudo-random number generator based on the Lecuyer algorithm will be used to select a high bid in the event of identical high bids on a construction permit in a given round (*i.e.*, tied bids). The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the construction permit.

v. Bidding

93. During a bidding round, a bidder may submit bids for any or all construction permits selected on its FCC Form 175 (subject to its eligibility based on previously filed FCC Forms 301 or Form 346), remove bids placed in the same bidding round, or if eligible to bid on more than one construction permit, permanently reduce eligibility. Bidders also have the option of making multiple submissions in each round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

94. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.

95. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (i) The construction permits applied for on FCC Form 175 (applicants are eligible to bid on only those construction permits selected on their previously filed FCC Form 301 or Form 346); and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

96. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the tokencode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

97. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information.

98. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described in section IV.B.iii.

vi. Bid Removal and Bid Withdrawal

99. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed that bidders not be permitted to withdraw bids in any round. The Bureaus received no comments on this issue. Therefore, the Bureaus adopt their proposal and will not permit bidders to withdrawal bids in any round during the auction.

100. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid. No comments were received on this issue, therefore, the Bureaus adopts these procedures for Auction No. 54.

vii. Round Results

101. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 54 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

102. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

103. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction54@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 54. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

104. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments

105. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders and down payments due.

106. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 54 to 20 percent of its net winning bid (actual bids less any applicable bidding credit).

B. Long-Form Application

107. The auction closing public notice will specify procedures for submitting any necessary minor amendments to the winning bidder's previously filed long form application. In accordance with Commission rules, the winning bidder may not submit amendments that constitute a major change from either the technical or legal proposal specified in the previously filed long form application. Given the length of time that the long form applications have been pending, the winning bidder should take into account any relevant rule changes in amending their long form applications on file.

C. Default and Disqualification

108. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission will offer the construction permit to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.

D. Refund of Remaining Upfront Payment Balance

109. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 54 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

110. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number ("TIN") and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

111. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division.

[FR Doc. 03–14813 Filed 6–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 12, 2003, meeting open to the public:

The following item was withdrawn from the agenda: Draft Advisory Opinion 2103–05: National Association of Home Builders of the United States (NAHB) by counsel, E. Mark Braden and William H. Schweitzer.

DATE AND TIME: Thursday, June 19, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–14: The Home Depot, Inc. by counsel, Brett G. Kappel.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–15043 Filed 6–10–03; 3:10 pm]

BILLING CODE 6715–01–M

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Stocking of an Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of tighter security throughout the Federal Government, any type of identification card has now been removed from the GSA forms Web site.

Since the form is authorized for local reproduction, agencies can only request a camera copy to use for printing from: Forms Management, (202) 501–0581 or e-mail to *barbm.williams@gsa.gov*.

DATES: Effective June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: June 4, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–14838 Filed 6–11–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Applications Available To Request Waiver of the Two-Year Foreign Residence Requirement for Physicians with J–1 Visa Who Will Deliver Health Care Service

ACTION: Notice of Availability of Applications.

SUMMARY: The HHS Exchange Visitor Program announces the availability of applications to request waiver of the two-year foreign residency requirement for physicians with J–1 visas who agree to deliver health care services for three years in primary care or mental health Professional Shortage Areas (HPSAs) or medically underserved areas or populations (MUA/Ps).

FOR FURTHER INFORMATION CONTACT: Michael Berry, Bureau of Health Professions, 5600 Fishers Lane, Rm. 8–67, Rockville, MD 20857. Telephone: 301–443–4154; Fax: 301–443–7904; *MBerry@HRSA.gov*.

ADDRESSES: Applications to request waivers to deliver health care services are available at *http://www.globalhealth.gov* and the Office of Global Health Affairs, 200 Independence Ave., SW., Room 639–H, Washington, DC 20201. Telephone: 202–690–6174; Fax: 202–690–7127.

SUPPLEMENTARY INFORMATION: On December 19, 2002, the Department of Health and Human Services (HHS) published in the **Federal Register** (67 FR 77692) an interim-final rule amending the regulations at 45 CFR part 50 governing the HHS Exchange Visitor Program. Under this program, HHS acts as an Interested Government Agency (IGA) to request waivers, on the Exchange Visitors' behalf, of the two-year foreign residency requirement. The amendments expanded the program to permit institutions and health care facilities to submit to HHS requests for waiver of the two-year home-country physical presence requirement for physician Exchange Visitors to deliver primary health care services in underserved areas, in addition to waivers to perform research.

In determining whether to request a waiver for an Exchange Visitor to deliver primary health care services, HHS will consider information from and coordinate with State Departments of Public Health (or the equivalent), other IGAs, HHS programs such as the National Health Service Corps, and other relevant government agencies.

HHS will process applications in the order received. Please note that HHS will not accept applications submitted by Exchange Visitors. Applications for waiver requests must be submitted by private or non-federal institutions, organizations, or agencies or by a component agency of HHS.

In brief, the criteria for a waiver recommendation by HHS acting as an IGA are as follows:

1. Eligibility to apply for HHS waiver requests is limited to primary care physicians, and general psychiatrists who have completed their primary care or psychiatric residency training programs. Primary care physicians are defined as: physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology and who are willing to work in a primary care HPSA or MUA/P; and general psychiatrists willing to work in a Mental Health HPSA.

Note: The regulations restrict eligibility to primary care physicians, and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than 12 months before the date of commencement of employment under the contract described below. 45 CFR 50.5(b). For applications submitted prior to October 1, 2003, HHS will ease this12-month eligibility condition to enable physicians who completed their training programs in June 2002 to be eligible to apply for a waiver. Without this modification, physicians who completed their training programs in June 2002 would be unable to begin employment by the required date, July 2003, and thus would be ineligible to seek waivers. Accordingly, for applications received prior to October 1, 2003, the physician seeking a waiver must have completed a primary care or general psychiatric residency no earlier than June 1, 2002.

2. The petitioning health care facility must establish that it has recruited actively and in good faith for U.S. physicians in the recent past, but has been unable to recruit a qualified U.S. physician.

3. The head of a petitioning health care facility must execute a statement to confirm that the facility is located in a specific, designated HPSA or MUA/P, and that it provides medical care to Medicaid and Medicare eligible patients and the uninsured indigent.

4. The Exchange Visitor must execute a statement that he or she does not have pending, and will not submit, other IGA waiver requests while HHS processes the waiver request.

5. The employment contract must require the Exchange Visitor to practice a specific primary care discipline or general psychiatry for a minimum of three years, 40 hours per week in a specified HPSA or MUA/P. It may not include a non-compete clause that limits the Exchange Visitor's ability to continue to practice in any HHS-designated primary care or mental health HPSA or MUA/P after the period of obligation. The contract must be terminable only for cause and not terminable by mutual agreement until completion of the three-year commitment, except that the contract may be assigned to another eligible employer, subject to approval by HHS and consistent with all applicable INS and Department of Labor requirements.

Dated: June 5, 2003.

William R. Steiger,

Director, Office of Global Health Affairs.

[FR Doc. 03–14882 Filed 6–11–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–75]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Dale Verell, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Questionnaire Design Research Laboratory (QDRL) 2004–2007, (OMB No. 0920–0222)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The QDRL conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey) and other federally sponsored surveys. The most common questionnaire evaluation method is the cognitive interview. In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of about 12 interviews; ideally, the questionnaire is re-worked between rounds and revisions are tested iteratively until interviews yield relatively few new insights. When possible, cognitive interviews are conducted in the survey's intended mode of administration. For example, when testing telephone survey questionnaires, participants often respond to the questions via a telephone in a laboratory room. This method forces the participant to answer without face-to-face interaction, but still allows QDRL staff to observe response difficulties, and to conduct a face-to-face debriefing. In general, cognitive interviewing provides useful data on questionnaire performance at minimal cost and respondent burden (note that respondents receive remuneration for their travel and effort). Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents.

Respondents	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Test Volunteers	500	1	72/60	600
Total				600

Dated: June 6, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14845 Filed 6–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–68]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Dale Verell, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Implementation of a Computer-Assisted Telephone Interview (CATI) System for the Pregnancy Risk Assessment Monitoring System (PRAMS).—New— National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Pregnancy Risk Assessment System (PRAMS) is part of the CDC initiative to reduce infant mortality and low birthweight and promote safe motherhood. PRAMS is a state-specific, population-based risk factor surveillance system of women who have recently delivered a live-born infant.

PRAMS is designed to identify and monitor selected maternal experiences and behaviors that occur before and during pregnancy and during the child's early infancy. PRAMS is funded through cooperative agreements between CDC's Division of Reproductive Health (DRH) and participating state and local health departments. In 2003, 31 states and the city of New York (NYC) are funded by CDC to conduct PRAMS.

CDC is proposing to contract out for the development of a standard Computer-Assisted Telephone Interviewing (CATI) system that PRAMS programs can use for collecting telephone interview data. Sampled women are contacted by mail with telephone follow-up for nonrespondents. Approximately 15 percent of all interviews in each program's area (state or NYC) are conducted by telephone. CDC had provided funds for programs interested in using CATI technology to develop CATI systems for the telephone interviews. Some programs have developed their own CATI systems, while many continue to record telephone interviews on paper. The dual modes used and the variations in CATI systems developed by the PRAMS programs have created data management problems for PRAMS administrators at CDC. CDC cleans and weights the program data and provides each program with an analysis dataset. The variations in data files have resulted in backlogs in providing analysis datasets to PRAMS programs. The proposed CATI system will collect telephone interview data in a similar manner and consistent file layout across all PRAMS programs.

The new CATI system will also simplify the data collection process in the programs. As each woman is interviewed by telephone, the interviewer will directly record her responses into the CATI system. For programs still recording telephone interviews on paper, the CATI system will eliminate the extra step of keying the survey responses after the interview is completed. In addition, the CATI system will record operational information about successful call attempts which will assist programs in contacting women more efficiently. For CDC, receiving telephone interview data in a standardized format will simplify the data cleaning process and allow for provision of analysis datasets to programs in a more timely manner. There is no cost to respondents for completing the survey.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
PRAMS Programs	32	312.5	20/60	3,333
Total				3,333

Dated: June 6, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14847 Filed 6–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–74]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Dale Verell, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Healthy People 2010—National Survey of Public Health Agencies—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC). The proposed survey is designed to collect data to address objectives in Chapter 23; Healthy People 2010 focus area 23, Public Health Infrastructure. The Centers for Disease Control and Prevention and the Health Resources and Services Administration are co-lead agencies for focus area 23. The overall goal of objectives in focus area 23 is to ensure that federal tribal, State and local health agencies have the infrastructure to provide essential public health services effectively. This one-time survey is expected to take place over two to three months. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Local health Agencies	1300	1	20/60	434
Tribal Agencies	250	1	20/60	84
Total				535

Dated: June 4, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14848 Filed 6–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–216]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/ Histocompatibility Laboratory Statement of Reimbursable Costs, Manual Instructions and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* CMS–216 (OMB# 0938–0102); *Use:* This form is required by statute and regulation for participation in the Medicare program. The information is used to determine payment for Medicare. Organ Procurement Organizations and Histocompatibility Laboratories are the users.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 108; *Total Annual Responses:* 108; *Total Annual Hours:* 4,860.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: June 5, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 03–14816 Filed 6–11–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2786]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Fire Safety Survey Report Forms and Supporting Regulations in 42 CFR 416.44, 418.100, 482.41, 483.70, 483.470; *Form No.:* CMS–2786 M, R, and T–Y (OMB# 0938–0242); *Use:* CMS surveys facilities to determine compliance with the Life Safety Code of 2000. The providers must make documentation proving compliance available to the surveyors; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 25,496; *Total Annual Responses:* 25,496; *Total Annual Hours:* 2125. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 5, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–14817 Filed 6–11–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Procedures to Use Child Care and Development Fund (CCDF) for Construction or Major Renovation.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction or major renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 and first updated in February 2001. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction and Renovation	10	1	20	200

Estimated Total Annual Burden Hours: 200

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 5, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14742 Filed 6–11–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: (1) TANF Data Report, ACF–199; (2) SSP–MOE Data Report, ACF–209.

OMB No.: 0970–0199.

Description: States, the District of Columbia and certain U.S. territories are required by 42 U.S.C. 611 and 45 CFR Part 265 to collect on a monthly basis and report to HHS on a quarterly basis a wide variety of disaggregated case record information for their programs funded under Temporary Assistance for Needy Families (TANF). If a respondent wants to qualify for a high performance bonus or receive a caseload reduction credit, the respondent must submit similar data for its separate state programs. A respondent may comply with these requirements by collecting and submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. HHS collects the information electronically through the use of the TANF Data Report (ACF–199) and the SSP–MOE Data Report (ACF–209) and their associated TANF Sampling and Statistical Methods Manual. HHS is proposing to extend this information collection for another three years.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report (ACF–199)	54	4	2,153.56	465,169
SSP–MOE Data Report (ACF–209)	29	4	674.25	78,213

Estimated Total Annual Burden Hours: 543,382

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, *E-mail address: lauren_wittenberg@omb.eop.gov.*

Dated: June 5, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14743 Filed 6–11–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0213]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reporting and recordkeeping, general and specific requirements, and the availability of sample electronic products for manufacturers and distributors of electronic products.

DATES: Submit written or electronic comments on the collection of information by August 11, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products (OMB Control No. 0910–0025)—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss), FDA has the responsibility to protect the public from unnecessary exposure from radiation from electronic products. The regulations issued under these authorities are listed in the Code of Federal Regulations, title 21, chapter I, subchapter J. Specifically, subchapter A regulations, 21 CFR 5.10(a)(3), 5.25(b), 5.35(a)(4), and 5.600 through 5.606, delegate administrative authorities to FDA.

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act directs the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards.

Section 537(b) of the act contains the authority to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

Parts 1002 through 1010 (21 CFR parts 1002 through 1010) specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050).

FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to

encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection: (1) Form FDA 2767, "Notice of Availability of Sample Electronic Product," (2) Form FDA 2877, "Declaration for Imported Electronic Products Subject to Radiation Control Standards," and (3) Form FDA 3147, "Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device."

The most likely respondents to this information collection will be electronic product and x-ray manufacturers, importers, and assemblers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.3		10	1	10	12	120
1002.10 and 1010.3		540	1.6	850	24	20,400
1002.11		1,000	1.5	1,500	0.5	750
1002.12		150	1	150	5	750
1002.13 Annual		900	1	900	26	23,400
1002.13 Qtrly		250	2.4	600	0.5	300
1002.20		40	1	40	2	80
1002.50(a) and 1002.51		10	1.5	15	1	15
	FDA 2877	600	32	19,200	0.2	3,840
1010.2		1	1	1	5	5
1010.4 (b)		1	1	1	120	120
1010.5 and 1010.13		3	1	3	22	66
	FDA 2767	145	11.03	1,600	0.09	144
1020.20 (c)(4)		1	1	1	1	1
1020.30(d), (d)(1), and (d)(2)	FDA 2579	2,345	8.96	21,000	0.30	6,300
1020.30 (g)		200	1.33	265	35	9,275
1020.30(h)(1) through (h)(4), 1020.32(a)(1) and (g)		200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)		9	1	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)		8	1	8	40	320
1030.10(c)(4)		41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)		41	1.61	66	20	1,320
1030.10(c)(6)(iii) and (c)(6)(iv)		1	1	1	1	1
1040.10(a)(3)(i)		83	1	83	3	249
1040.10(h)(1)(i) through (h)(1)(vi)		805	1	805	8	6,440

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1040.10(h)(2)(i) and (h)(2)(ii)		100	1	100	8	800
1040.11(a)(2)		190	1	190	10	1,900
1040.11(c)	FDA 3147	53	2.2	115	0.5	58
1040.20(d), (e)(1), and (e)(2)		110	1	110	10	1,100
1040.30(c)(1)		1	1	1	1	1
1040.30(c)(2)		7	1	7	1	7
1050.10(f)(1) through (f)(2)(iii)		10	1	10	56	560
Total Annual Reporting Burden						89,278

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1002.30 and 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505
1002.40 and 1002.41	2,950	49.2	145,140	2.4	7,080
1020.30(g)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1.0	83
Totals					235,679

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel and actual data collected from industry over the past 3 years. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in the "Estimated Annual Reporting Burden" table.

The following information collection requirements are not subject to review by OMB because they do not constitute a "collection of information" under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); and 1005.21(a) through (c). These requirements "apply to the collection of information during the conduct of general investigations or audits" (5 CFR 1320.4(b)). The following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)): Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: June 5, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14821 Filed 6–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0727]

Interpretation of On-Farm Feed Manufacturing and Mixing Operations; Withdrawal of Draft Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal of draft guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance for industry (#77) entitled "Interpretation of On-farm Feed Manufacturing and Mixing Operations," that was issued on September 23, 1998. FDA has decided to withdraw the draft guidance. FDA has decided that the draft guidance did not address adequately the industry

practices of on-farm mixers. Instead, the agency directs you to FDA guidance for industry (#69) entitled "Small Entities Compliance Guide for Feeders of Ruminant Animals With On-farm Feed Mixing Operations," which addresses on-farm mixing practices more completely.

FOR FURTHER INFORMATION CONTACT: Neal Bataller, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0163, e-mail: *nbatalle@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of September 23, 1998 (63 FR 50918), FDA announced the availability of a draft guidance for industry (#77) entitled "Interpretation of On-farm Feed Manufacturing and Mixing Operations." The draft guidance discusses the applicability of certain paragraphs of 21 CFR 589.2000 *Animal proteins prohibited in ruminant feed.* Written comments were to be received by November 23, 1998.

FDA received one letter containing several comments from an industry association on the draft guidance. The comments from the association expressed that they were "extremely concerned" that the draft guidance would be "extremely difficult to monitor and administer" in the section concerning commingling or cross-contamination of prohibited with nonprohibited mammalian protein. The comment further indicated that the draft guidance did not capture the regulation's requirements regarding equipment clean-out procedures.

After further consideration, FDA has decided to withdraw the draft guidance. FDA has decided that the draft guidance did not address adequately the industry practices of on-farm mixers. Instead, the agency directs you to FDA guidance for industry (#69) entitled "Small Entities Compliance Guide for Feeders of Ruminant Animals With On-farm Feed Mixing Operations," which addresses on-farm mixing practices more completely.

II. Electronic Access

Persons with access to the Internet may obtain FDA guidance for industry #69 at *http://www.fda.gov/cvm/guidance/guidance.html.*

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14820 Filed 6–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0051]

International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals With Respect to Antimicrobial Resistance" (VICH GL27); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#144) entitled "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals with Respect to Antimicrobial Resistance" (VICH GL27). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is an initial step in developing harmonized technical guidance in the European Union, Japan, and the United States for approval of therapeutic antimicrobial veterinary medicinal products intended for use in food-producing animals with regard to characterization of antimicrobial resistance selection in bacteria of human health concern. The draft guidance outlines the types of studies and data which are recommended for assessing the potential for resistance to develop in association with the use of antimicrobial drugs in food-producing animals.

DATES: Submit written or electronic comments on the draft guidance by July 14, 2003, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514, e-mail: wflynn@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 13, 2002 (67 FR 58058), FDA announced the availability of a related draft guidance for industry (#152) entitled "Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern." Draft guidance #152 represents FDA's current thinking on an approach for using data, such as that outlined in the VICH draft guidance, for completing an assessment on the safety of antimicrobial drugs that focuses on antimicrobial resistance concerns. The publication of the draft VICH guidance (#144) in the United States was delayed until FDA developed an understanding of how the outlined data could be incorporated into an assessment process such as that described in the FDA draft guidance #152.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/ New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Antimicrobial Resistance

The VICH Steering Committee held a meeting on June 28, 2001, and agreed that the draft guidance document entitled "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food Producing Animals with Respect to Antimicrobial Resistance" (VICH GL27) should be made available for public comment. However, subsequent to the June 2001 Steering Committee meeting, the FDA decided to delay the publication of the draft VICH guidance in the United States until the FDA draft guidance (#152) related to antimicrobial resistance was published. FDA believed that it was important to first develop its thinking on how data, such as that described in the draft VICH guidance, could be used for completing an assessment on antimicrobial resistance.

The draft VICH guidance is an initial step in developing harmonized technical guidance in the European Union, Japan, and the United States for approval of therapeutic antimicrobial veterinary medicinal products intended for use in food-producing animals with regard to characterization of antimicrobial resistance selection in bacteria of human health concern.

This draft guidance outlines the types of studies and data that may be used to characterize the potential for resistance to develop in the target animal when an antimicrobial drug product is used under the proposed conditions. This includes information which describes the drug substance, drug product, nature of the resistance, and potential exposure of gut flora in the target animal species.

FDA and the VICH Expert Working Group on Antimicrobial Resistance will consider comments about the draft guidance document. Information collection is covered under the Office of Management and Budget control number 0910–0032.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." Because guidance documents are not binding, mandatory words such as "must," "shall," and "will" in the original VICH document have been substituted with "should." Similarly, words such as "require" or "requirement" have been replaced by "recommend" or "recommendation" as appropriate to the context.

The draft VICH guidance (#144) is consistent with the agency's current thinking, described in draft guidance #152, on the type of preapproval information that should be considered for new veterinary medicinal products for food-producing animals with regard to characterization of antimicrobial resistance selection in bacteria of human health concern. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document to the Dockets Management Branch (see **ADDRESSES**). Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may also be submitted electronically on the Internet at http://www.fda.gov/dockets/ecomments. Once on this Internet site, select Docket No. 03D–0051 "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals with Respect to Antimicrobial Resistance" and follow the directions.

Copies of the draft guidance document entitled "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals with Respect to Antimicrobial Resistance" (VICH GL27) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14822 Filed 6–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–019 Fiscal Year 2003 Geriatric Academic Career Awards (GACA)—CFDA 93.250

AGENCY: Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for the second of two solicitations for the Geriatric Academic Career Awards Program for Fiscal Year 2003.

Purpose: The purpose of this program is to increase the number of junior faculty in geriatrics at accredited schools of medicine and osteopathic medicine and to promote their careers as academic geriatricians. The GACA stipend supports the career development of junior faculty members for a period of five years.

Authorizing Legislation: These applications are solicited under the

authority of Title VII, section 753 (c), of the Public Health Service Act (PHS), (42 U.S.C. 294c).

Eligible Applicants: Geriatric Academic Career Awards are provided for individuals who meet the following criteria: (1) Are board certified or board eligible in internal medicine, family practice, or psychiatry; (2) have completed an approved fellowship program in geriatrics; and (3) have a junior faculty appointment at an accredited school of medicine (allopathic or osteopathic).

Funding Priorities and/or Preferences: None.

Service Requirements: Award recipients agree to serve as members of the faculties of accredited schools of allopathic or osteopathic medicine providing teaching services, within the service requirements under this award, for up to 5 years. Prior to submitting an application for the Geriatric Academic Career Award, individuals must have an agreement with an eligible school setting forth the terms and conditions of the award. The agreement with the school must permit the individual to serve as a full-time (as determined by the school) member of the faculty, for not less than the period of the award. As provided in section 753 (c)(5), an individual who receives an award shall provide training in clinical geriatrics, including the training of interdisciplinary teams of health care professionals. The provision of such training shall constitute at least 75 percent of the obligations of the individual under this award. Geriatric career awards are made directly to individuals, not institutions.

Review Criteria

(1) Extent to which the applicant's career goals as identified in the career development plan meet the purpose of the Geriatric Academic Career Award—to develop into an academic geriatrician who emphasizes teaching geriatrics, including teaching interdisciplinary teams—and the quality of the applicant's plan for assessing his or her own progress toward meeting career goals; (Maximum Value: 20 points)

(2) Potential of the applicant to achieve identified goals and objectives based on past training and experience; (Maximum: 20 points)

(3) Extent to which specific plans will result in (a) meeting the statutory service requirement (75% time pursuing the goals of the GACA), (b) interacting with and learning from other clinician-educators locally and nationally, and (c) obtaining the necessary pedagogical skills to achieve career goals; (Maximum Value: 20 points)

(4) Extent to which specific plans will result in research and/or publication opportunities and productivity in national professional societies; (Maximum Value: 20 points)

(5) Extent to which the commitment of the mentor and institution to provide a supportive environment for the achievement of the applicant's career goals and willingness to meet reporting requirements are demonstrated. (Maximum Value: 20 points)

Estimated Amount of Available Funds: It is estimated that $1 million will be available for this second solicitation in fiscal year 2003.

Estimated Number of Awards: The estimated number of awards will be 20.

Estimated or Average Size of Each Award: The estimated size of each award will be $55,000.

Estimated Project Period: Applications may be submitted for a five-year grant period. The first budget period is September 1, 2003–August 31, 2004; the second budget period is September 1, 2004–September 29, 2005; the third budget period is September 30, 2005–September 29, 2006; the fourth budget period is September 30, 2005–September 29, 2006; the fifth budget period is September 30, 2006–September 29, 2007.

Application Requests, Availability, Dates and Addresses: Application materials are available for downloading via the Web at *http://bhpr.hrsa.gov/grants.htm*. In order to be considered for competition, applications must be postmarked or delivered by July 14, 2003, to the HRSA's Grants Management Office ATTN: GACA, 5600 Fishers Lane, Room 11A–33, Rockville, MD 20857. Applicants should request a legibly dated U.S. Postal postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered Postmarks shall not be acceptable as proof of timely mailing. Applications submitted after the deadline date will be returned to the applicant and not processed. Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Projected Award Date: September 30, 2003.

For Further Information Contact: Kathleen Bond, Division of State, Community and Public Health, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number: (301) 443–8681. E-mail: *kbond@hrsa.gov*.

Paperwork Reduction Act

The Application for the Geriatric Academic Career Awards Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 29, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–14859 Filed 6–11–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

DATES: July 9, 2003, 1 p.m.

ADDRESSES: The meeting will be held at the Hotel Loews Le Concorde, 1225 Place Montcalm, Quebec City, Quebec, Canada. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov*. Proposals require a minimum of 50 percent non-Federal matching funds. Canadian, Mexican, U.S. Standard and U.S. Small grant proposals will be considered at the Council meeting. The tentative date for the Commission meeting is September 10.

Dated: May 30, 2003.

Paul R. Schmidt,

Assistant Director—Migratory Birds and State Programs.

[FR Doc. 03–14839 Filed 6–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 78566]

Public Land Order No. 7552; Withdrawal of National Forest System Lands for the Trial, Washington, and Lost Lake Dams, Bonneville Unit, Central Utah Project; Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects an error in the land description published as FR Doc. 03–3566 in the **Federal Register**, 68 FR 7388, February 13, 2003, for a Bureau of Reclamation withdrawal.

On page 7388, column 2, line 14 from the bottom, which reads "NW½NE¼SE¼, SE¼NE¼SE¼," is hereby corrected to read "W½NE¼SE¼, SE¼NE¼SE¼,"

Dated: June 6, 2003.

Kent Hoffman,

Deputy State Director, Division of Lands and Minerals.

[FR Doc. 03–14843 Filed 6–11–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG–03–0011; WAOR–57965]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 276.41 acres of public lands, for a period of 20 years, to protect the unique natural, scenic, and recreation values, and the investment of Federal funds on 11 tracts in the San Juan Archipelago. This notice segregates the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to the public land and mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by September 10, 2003.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: William Schurger, Wenatchee Field Office, 509–665–2116, or, Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application to withdraw the following described public lands from location and entry under the United States mining laws, subject to valid existing rights:

Willamette Meridian

Tract I (Lopez Island: Chadwick Hill/Watmough Bay):

T. 34 N., R. 1 W.,
Sec. 21, lot 1, NW¼NW¼.

Tract L (Lopez Island: Cape St. Mary):

T. 34 N., R. 1 W.,
Sec. 15, lot 1.

Tract M (Lopez Island: Lopez Pass):

T. 35 N., R. 1 W.,
Sec. 33, lot 1.

Tract N (Eliza Island: south end):

T. 36 N., R. 2 E.,
Sec. 5, unsurveyed portion of Eliza Island.

Tract O (Lummi Island: Carter Point):

T. 36 N., R. 2 E.,
Sec. 6, unsurveyed portion of Lummi Island.

Tract P (Lummi Rocks):

T. 37 N., R. 1 E.,
Sec. 27, unsurveyed Lummi Rocks in the NW¼ and SW¼NE¼.

Tract Q (Chuckanut Rock):

T. 37 N., R. 2 E.,
Sec. 24, unsurveyed Chuckanut Rock.

The portions of the following lands are more particularly identified and described by metes and bounds in the official records of the Bureau of Land Management:

Tract H (Lopez Island: NW Chadwick Hill & Wetland):

T. 34 N., R. 1 W.,
Sec. 17, m&b in SE¼.

Tract J (Lopez Island: Watmough Bay):

T. 34 N., R. 1 W.,
Sec. 21, m&b in lot 2, and SW¼NW¼.

Tract K (Lopez Island: Watmough Head & Watmough Bay):

T. 34 N., R. 1 W.,
Sec. 21, m&b in lot 2.

Tract R (west end of Patos Island):

T. 38 N., R. 2 W.,
Sec. 17, most westerly 5 acres of Patos Island.

The areas described aggregate approximately 276.41 acres in San Juan and Whatcom Counties.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: May 29, 2003.

Helen L. Honse,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 03–14862 Filed 6–11–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 30, 2003, a proposed Consent Decree in *United States and State of Illinois* v. *National Steel Corporation*, Case No. 1:03cv3338 was lodged with the United

States District Court for the Northern District of Illinois.

In this action the United States sought civil penalties and injunctive relief arising from National Steel Corporation's improper characterization and disposal of hazardous wastes in an on-site landfill at its Granite City Division facility in Granite City, Illinois. The Consent Decree provides that National Steel Corporation will close its on-site landfill and increase the monitoring and post-closure care of its landfill. In addition, the Consent Decree requires payment of a civil penalty of $500,000. Payment of the penalty will be subject to procedures in National Steel Corporation's Chapter 11 Bankruptcy proceeding, *In Re: National Steel Corporation, et al.*, No. 02–08699 (Bankr. N.D. Ill., filed March 6, 2002).

National Steel Corporation is currently negotiating the final terms for a court-approved transfer of its assets to the United States Steel Corporation. Therefore the Consent Decree provides a procedure for United States Steel Corporation to assume the obligations of National Steel Corporation once the Bankruptcy Court has approved the final transfer of assets.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Illinois* v. *National Steel Corporation*, D.J. Ref. 90–11–3–07887. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Suite 300, Chicago, IL 60604 and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14825 Filed 6–11–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Clean Water Act and Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 2, 2003, two (2) proposed Consent Decrees in *United States and State of Colorado* v. *Rico Development Corporation, Janice Graham, Independent Executor of the Estate of Wayne Webster, and Gary M. Sell, Personal Representative of the Estate of Virginia Sell*, Civil Action No. 99–MK–1386, were lodged with the United States District Court for the District of Colorado.

In this action, Plaintiffs United States and the State of Colorado sought injunctive relief pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and pursuant to the Colorado Water Quality Control Act, Section 25–8–101 *et seq.*, Colorado Revised Statutes, for alleged violations of Rico Development Corporation's ("RDC") Colorado Discharge Permit System permit ("Permit"). Plaintiffs also sought, pursuant to Section 7–114–108, C.R.S., recovery of assets distributed by RDC to its shareholders, Wayne Webster and Virginia Sell. Additionally, the United States sought to recover costs incurred by it for response action performed under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, at RDC's mine wastewater treatment facility located at the Rico Argentine mine site near Rico, Colorado (the "Site").

The alleged Clean Water Act violations occurred over the course of several years during which RDC exceeded its Permit limits on numerous occasions and discharged at another location without authorization. The United States also sought compensation for response costs incurred by it in connection with a cleanup of hazardous substances performed at the Site. Under Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1), the United States alleged that the defendants, as current owners, or as past owners and operators at the time of disposal, are liable for those response costs incurred by the United States not inconsistent with the national contingency plan. In the proposed Consent Decrees, Defendant Janice Graham, Independent Executor of the Estate of Wayne Webster, and Gary M. Sell, Personal Representative of the Estate of Virginia Sell, agree, respectively, to pay the United States $180,000 and $110,000, which sums will be deposited by the United States Environmental Protection Agency ("EPA") in the Rico-Argentine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Colorado* v. *Rico Development Corporation, Janice Graham, Independent Executor of the Estate of Wayne Webster, and Gary M. Sell, Personal Representative of the Estate of Virginia Sell*, D.J. Ref. DJ#90–5–1–1–06498.

The Consent Decrees may be examined at U.S. EPA Region 8,999 18th Street, Suite 300, Denver, Colorado, 80202. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html*. A copy of each Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.00 for the Consent Decree with Janice Graham, Independent Executor of the Estate of Wayne Webster and $2.80 for the Consent Decree with Gary M. Sell, Personal Representative of the Estate of Virginia Sell.

Robert D. Brook,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14824 Filed 6–11–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree for Relief Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980

Under 28 CFR 50.7, notice is hereby given that on May 16, 2003, a proposed Consent Decree resolving the United States' claims in *United States of America* v. *Edward Schwarz, et al.*, Civil Action No. 1:02–CV–568, was lodged with the United States District Court for the Western District of Michigan.

In this action the United States sought recovery of response costs incurred in performing a removal action at the Orbit Enterprise Superfund Site located at 344 through 368 Burnham Street in Battle Creek, Michigan ("the Site"), pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability of 1980, as amended ("CERCLA"), 42 U.S.C. 9607(a). The United States asserts that Donald and Charlotte Walter, whose estates are now represented by the defendants, owned and operated the Site during the time that hazardous substances were released at the Site.

Pursuant to the Consent Decree, the defendants will pay the United States $400,000 of the $725,202.97 in past response costs incurred by the EPA (including administrative, enforcement, and indirect costs) in performing a removal action at the Site. This payment will be due within 30 days after entry of the Consent Decree, and will resolve the United States' cost recovery claim the Walters' liability for failing to respond to an EPA information request issued pursuant to section 104(e) of CERCLA, and the EPA lien previously placed on the Site property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General; Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Edward Schwarz, et al.*, Civil Action No. 1:02–CV–568, DOJ Ref. No. 90–11–3–07524.

The Consent Decree may be examined at the Office of the United States Attorney, 330 Ionia Avenue NW., Grand Rapids, MI 49503, and at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. a copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $6.25 payable to the U.S. Treasury.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14823 Filed 6–11–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Extension of a Currently Approved Collection, U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms), Order Form Requisition.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 66, page 16830 on April 7, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a Currently Approved Collection.

(2) Title of the Form/Collection: U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms), Order Form Requisition.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: DEA Form 222, DEA Form 222a. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: Federal Government, State, Local or Tribal Government, nonprofit entities. Abstract: DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data is needed to provide an audit of transfer and purchase. DEA–222a Requisition Form is used to obtain the DEA–222 Order Form. Respondents are DEA registrants eligible to handle these controlled substances.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that there are a total of 100,870 respondents to this information collection. It is estimated to take 0.05 hours for a purchaser to requisition DEA Forms 222, using DEA Form 222a. It is estimated to take purchasers 0.333 hours to complete,

annotate and file each order. It is estimated to take suppliers 0.333 hours to enter data regarding each order into a computer system, annotate the order and file it. It is estimated to take suppliers 9 hours a month to log and track DEA Forms 222 and prepare the monthly mailing of required information to DEA. it is estimated to take 0.25 hours to sign and execute each power of attorney letter. The annual average time spent is dependent on the number of orders completed and filled.

(6) An estimate of the total public burden (in hours) associated with the collection:

The average annual total public burden is 3.9 million hours, assuming a 6 percent annual growth rate in the number of orders.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 9, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–14884 Filed 6–11–03; 8:45 am]

BILLING CODE 4410–00–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–062)]

Privacy Act: Report of New System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of New System of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to publish description of the systems of records it maintains containing personal information when a system is substantially revised, deleted, or created. In this notice, NASA provides the required information for a new system of records related to NASA's Integrated Financial Management Program (IFMP) Core Financial System. This new system will improve NASA's financial management systems in accordance with the requirements set forth in the Chief Financial Officers Act of 1990 and the Federal Financial Management Improvement Act of 1996.

DATES: Effective date: June 12, 2003. Submit comments on or before July 14, 2003.

ADDRESSES: Send comments to Office of the Chief Information Officer, Code AO, NASA Headquarters, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Patti F. Stockman, 202–358–4787.

NASA 10IMF1

SYSTEM NAME:

Integrated Financial Management (IFM) Program—Core Financial System.

SECURITY CLASSIFICATION:

This system is categorized in accordance with OMB Circular A–11 as a Special Management Attention Major Information System. A security plan for this system has been established in accordance with OMB Circular A–130, Management of Federal Information Resources.

SYSTEM LOCATION:

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the NASA Core Financial (CF) System include former and current NASA employees and nonNASA individuals requiring any type of payment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may include information about the individuals including Social Security Number (Tax Identification Number), home address, telephone number, e mail address, and bank account information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Aeronautics and Space Act of 1958, *et seq.* as amended. 42 U.S.C. 2473 (2003); Federal Records Act, 44 U.S.C. 3101 (2003); Chief Financial Officers Act of 1990 205(a), 31 U.S.C. 901 (2003); Financial Management Improvement Act of 1996 802, 31 U.S.C. 3512 (2003).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following are routine uses: (1) Furnish data to the Department of Treasury for financial reimbursement of individual expenses, such as travel, books, and other miscellaneous items; (2) Process payments and collections in which an individual is reimbursing the Agency; (3) Ongoing administration and maintenance of the records, which is performed by authorized NASA employees, both civil servants and contractors; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B—STANDARD ROUTINE USES—NASA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored as electronic media.

RETRIEVABILITY:

Records may be searched by name or SSN (Tax ID).

SAFEGUARDS:

An approved security plan for this system has been established in accordance with OMB Circular A–130, Management of Federal Information Resources. Individuals will have access to the system only in accordance with approved authentication methods. Only key authorized employees with appropriately configured system roles can access the system and only from workstations within the NASA Intranet.

RETENTION AND DISPOSAL:

Records are stored in the IFM database and managed, retained and dispositioned in accordance with the guidelines defined in the NASA Procedure & Guidelines (NPG) 1441.1D, NASA Records Retention Schedules, Schedule 9.

SYSTEM MANAGER(S) AND ADDRESS:

AD04/Manager of the IFMP Competency Center, George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the System Manager at the address given above.

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the address given above.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records, procedures for contesting the contents and for contesting the contents and for appealing initial determinations are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

The information is received by the IFMP Core Financial System through an electronic interface from the NASA Personnel Payroll System (NPPS). In certain circumstances, updates to this information may be submitted by NASA employees and recorded directly into the IFMP Core Financial System.

Bobby German,

Deputy Program Director.

[FR Doc. 03–14053 Filed 6–11–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08006]

Environmental Assessment and Finding of No Significant Impact for Kerr McGee Corporation's Request to Amend Source Materials License

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to Kerr McGee Corporation's Source Materials License SUB–986. The proposed amendment will approve the Derived Concentration Guideline Levels (DCGLs) and Decommissioning Plan (DP) with consideration of license termination for the Kerr McGee Technical Center located in Oklahoma City, Oklahoma. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Kerr McGee's license termination request, in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. Environmental Assessment

Background

This EA is being performed to evaluate the environmental impacts of the proposed amendment to Kerr McGee Corporation's Source Materials License SUB–986, to approve the DCGLs and the DP and subsequent termination of the source materials license for unrestricted release of facilities used under the license located at the Technical Center in Oklahoma City, Oklahoma. The license termination will be based upon NRC staff's approval of the licensee's Final Status Survey Report as required by the DP.

The Technical Center was established in 1963 to provide research and development for conducting chemical and radiochemical laboratory analysis. The primary use of the source material was for the development, testing and calibration of instruments used for the company's mineral prospecting business unit. At no time did the Technical Center engage in the degree of production activities associated with a fuel cycle facility.

The Kerr-McGee Corporation's NRC License SUB–986 is managed by Kerr-McGee Chemical, LLC, which operates the Technical Center to conduct research and development activities in support of its chemical facilities. In January 1999, the licensee determined it would no longer require source materials use authorizations, provided by NRC License SUB–986, to support any work. Additionally, the licensee had been notified by the Oklahoma Department of Transportation that the department would be expanding State Highway 74 and thus, would be expanding the existing right-of-way which may include the area where uranium calibration test pits, previously used under the license, were located.

The licensee has completed the remediation of the test pits with inspection oversight and confirmatory in-process surveys by the Region IV office of the NRC. The NRC staff conducted three inspections (ADAMS Accession Nos. ML011520263, ML023500440, ML030370529) and performed split sample analyses of the soils and surface water to assess the levels of contamination and subsequent remediation of the outdoor areas.

Identification of the Proposed Action

The proposed action is to issue a license amendment to Source Materials License SUB–986 for approval of the DP with proposed DCGLs that define the maximum amount of residual contamination in soils and building surfaces that would satisfy NRC's regulations in 10 CFR part 20, subpart E, "Radiological Criteria for License Termination." Additional consideration for license termination of Source Materials License SUB–986 for unrestricted release of the site, is contingent on NRC staff's approval of the licensee's submittal of the final status survey report, as required by the DP.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to terminate Source Materials License SUB–986 and release the site for unrestricted use in accordance with the radiological criteria for license termination in subpart E, 10 CFR part 20; "Radiological Criteria for License Termination." The NRC is fulfilling its responsibility under the Atomic Energy Act to make a decision for the proposed license termination that ensures protection of the public health and safety and the environment.

Alternatives to the Proposed Action

Final approval for release of the site for unrestricted use would be contingent upon NRC staff's approval of the licensee's final status survey report. The no-action alternative would be to keep the facility on the license. Maintaining the areas under a license would provide, negligible, if any, environmental benefit, but would reduce options for future use of the property. Furthermore, this no-action alternative is not acceptable because it would conflict with NRC's requirement in 10 CFR 40.42, "Expiration and termination of licenses and decommissioning of sites and separate building or outdoor areas," of timely remediation at facilities or outdoor areas that have ceased NRC licensed operations. Therefore, the no-action alternative is not considered to be reasonable and is not analyzed further in this EA.

The Affected Environment and Environmental Impacts

The facility consists of approximately 160 acres of land in which the facility buildings are located on approximately 10 acres of land with the rest of the land area consisting of grass fields or water, and not used for the facility's activities. Since the site would be surveyed and meet the NRC criteria for unrestricted use in accordance with 10 CFR part 20, the environmental impacts resulting from the release of this site for unrestricted use are expected to be insignificant. There are no additional activities which would result in cumulative impacts to the environment.

Agencies and Persons Contacted

The NRC staff has prepared this EA with input from the Oklahoma Natural Heritage Inventory by letter dated April 12, 2002, and the U.S. Fish and Wildlife Service by letter dated May 9, 2002, and documented that the proposed action will have no effect on listed species, wetlands or other important wildlife resources. By letter dated May 2, 2002, after reviewing the documentation concerning the referenced project in Oklahoma County, the Oklahoma Historical Society determined that there are no historic properties affected by the referenced project. In its letter dated April 11, 2002, the Oklahoma Archaeological Survey indicated that the referenced project has been reviewed and cross-checked with the state site files containing approximately 17,500 archaeological sites that are currently recorded in the State of Oklahoma and no sites are listed as occurring within the project area. Additionally, the Oklahoma

Archaeological Survey indicated that based on the topographic and hydrological setting, no archaeological materials are likely to be encountered. A draft of this EA was provided to the State of Oklahoma for review. The State of Oklahoma is in agreement with the proposed action and had no additional comments.

References

NRC, "Radiological Criteria for License Termination," 10 CFR part 20, subpart E, 62 FR 39088, July 28, 1997.

NRC, "NMSS Decommissioning Standard Review Plan, "NUREG–1727, August 1991.

NRC, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)," NUREG–1575, December 1997.

NRC, "Consolidated NMSS Decommissioning Guidance," NUREG–1757, Volume 1, September 2002.

NRC, Draft, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," NUREG–1748, September 2001.

NRC, Draft, "Manual for Conducting Radiological Survey in Support of License Termination," NUREG/CR–5849, June 1992.

NRC, NMSS Decommissioning Standard Review Plan," NUREG–1727, September 2000.

FR 1997, Radiological Criteria for License Termination, IV. Summary of Public Comments, Responses to Comments, and Changes from Proposed Rule, A.2.2.1, page 39061, **Federal Register**, Vol 62, Rules and Regulations, July 21, 1997.

FR 2001, Rules and Regulations, pages 55752–55753, **Federal Register**, Vol 66, No. 213, November 2, 2001.

Kerr-McGee Technical Center, "Revised Decommissioning Plan," April 5, 2001 (ADAMS Accession Nos. ML011840119 and ML011840269).

Kerr-McGee Technical Center, "Responses to NRC Region IV Request for Information to Support the Environmental Assessment of Proposed Remediation Activities," April 22, 2002 (ADAMS Accession No. ML021140360).

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly the staff has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

These references listed above may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The references and inspection reports with ADAMS accession numbers may also be viewed in the NRC's Electronic Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to this action should be referred to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011–4005. Telephone: (817) 860–8191, FAX number (817) 860–8188.

Dated at Arlington, Texas, this 5th day of June 2003.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 03–14858 Filed 6–11–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form F–3, OMB Control No. 3235–0256, SEC File No. 270–251

Form F–7, OMB Control No. 3235–0383, SEC File No. 270–331

Form F–8, OMB Control No. 3235–0378, SEC File No. 270–332

Schedule 14D–1F, OMB Control No. 3235–0376, SEC File No. 270–338

Schedule 14D–9F, OMB Control No. 3235–0382, SEC File No. 270–339

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Form F–3 is used by foreign issuers to register securities pursuant to the Securities Act of 1933. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–3 takes approximately 166 hours per response and is filed by approximately 120 respondents for a total burden of 19,920 hours. It is estimated that 25% of the total burden hours (4,980 reporting burden hours) is prepared by the issuer.

Form F–7 may be used to register under the Securities Act securities offered for cash upon exercise of rights that are granted to its existing shareholders of the registrant to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Approximately 5 respondents file Form F–7 and it takes approximately 4 hours per response for a total burden of 20 hours. It is estimated that 25% of the total burden hours (5 reporting burden hours) is prepared by the company.

Form F–8 may be used to register under the Securities Act securities of certain Canadian issuers to be used in exchange offers or business combinations. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Approximately 10 respondents file Form F–8 and it takes approximately 1 hour per response for a total burden of 10 hours. It is estimated that 25% of the total burden hours (2.5 reporting burden hours) is prepared by the company.

Schedule 14D–1F may be used by any person making a cash tender or exchange offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40% of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in securities of Canadian issuers. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. Approximately 5 respondents file Schedule 14D–1F and it takes approximately 2 hours per response for total burden of 10 hours.

Schedule 14D–9F is used by any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is foreign private issuer (the "subject company"), or by any director or officer of such issuer, where the issuer's is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. Approximately 5 respondents file Schedule 14D–9F and it takes approximately 2 hours per response for total burden of 10 hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 2, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14828 Filed 6–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47991; File No. SR–CBOE–2001–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5, 6, 7, and 8 by the Chicago Board Options Exchange, Inc. To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading Under $20

June 5, 2003.

I. Introduction

On December 12, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to initiate a one-year pilot program that will allow the Exchange to list options on selected stocks trading below $20 at one-point intervals ("$1 Strike Pilot Program" or "Pilot Program"). The Exchange filed Amendments No. 1, 2, 3, 4, 5, 6, 7, and 8 to the proposed rule change on March 13, 2002,[3] June 21, 2002,[4] December 6, 2002,[5] March 7, 2003,[6] March 25, 2003,[7] April 16, 2003,[8] April 24, 2003,[9] and April 25, 2003,[10] respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 5, 2003.[11] The Commission received one comment letter on the proposed rule change.[12] This order approves the proposed rule change, as amended, through June 5, 2004.

II. Description of the Proposal

CBOE proposes to amend CBOE Rule 5.5, Interpretation and Policy .01 to implement the $1 Strike Pilot Program. The Pilot Program will operate for a one-year period beginning June 5, 2003, and ending on June 5, 2004. The Pilot Program will allow CBOE to list options on selected stocks trading below $20 at one-point intervals, provided that the strike prices are $20 or less, but not less than $3. For an option to be eligible for inclusion in the Pilot Program, the underlying stock must close below $20 in its primary market on the previous business day. CBOE may select up to five individual stocks to be included in its Pilot Program. In addition, CBOE may list $1 strike prices in any equity option included in the $1 strike pilot program of any other options exchange. CBOE will only list $1 strike prices that fall within a $5 range of the underlying stock price. CBOE will not list long-term options series ("LEAPS") at $1 strike price intervals, nor will CBOE list $1 strike prices at levels that "bracket" existing $2.50 intervals (*e.g.*, $7 and $8 strikes around a $7.50 strike). As the $2.50 intervals are phased-out, the Exchange will introduce the $1 prices that bracket the phased-out prices.

CBOE Rule 5.5, Interpretation and Policy .03 will govern the addition of expiration months for $1 strike series. Upon expiration of the near-term month, CBOE may list an additional expiration month provided that the underlying stock closes below $20 on its primary market on expiration Friday. If the underlying stock closes at or above $20 on expiration Friday, CBOE will not list an additional month for a $1 strike series until the stock again closes below $20.

At any time, CBOE may cease listing $1 strike prices on existing series by submitting a cessation notice to the Options Clearing Corporation ("OCC"). As discussed above, if the underlying stock closes at or above $20 on expiration Friday, CBOE will not list any additional months with $1 strike prices until the stock subsequently closes below $20. If the underlying stock does not subsequently close below $20, thereby precluding the listing of

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002 ("Amendment No. 1").

[4] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Elizabeth King, Associate Director, Division, Commission, dated June 20, 2002 ("Amendment No. 2").

[5] *See* letter from Steve Youhn, Attorney, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated December 5, 2002 ("Amendment No. 3").

[6] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated March 6, 2003 ("Amendment No. 4").

[7] On March 25, 2003, the Exchange filed Amendment No. 5, which supercedes the original filing and Amendments No. 1, 2, 3, and 4 in their entirety.

[8] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 15, 2003 ("Amendment No. 6").

[9] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 22, 2003 ("Amendment No. 7").

[10] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 25, 2003 ("Amendment No. 8").

[11] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784.

[12] *See* letter from Steven Dillinger, Cornerstone Partners, LP, to Margaret H. McFarland, Deputy Secretary, Commission, dated May 26, 2003 ("Cornerstone Letter").

additional strike prices and months, the existing $1 series will eventually expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of the notice, the underlying stock will no longer count towards the five stocks that CBOE may select for its Pilot Program. Once the Exchange submits the cessation notice, it will not list any additional month for trading with strikes below $20 unless the underlying again closes below $20, and then, only if the CBOE has not already selected a replacement stock.

According to CBOE, the Options Price Reporting Authority ("OPRA") has the capacity to accommodate the increase in the number of series that would be added pursuant to the Pilot Program. In addition, CBOE notes that it listed approximately 109,000 series in December 2000 and approximately 100,000 series in September 2001. The CBOE believes that the increase in the number of series resulting from the Pilot Program will be substantially lower than the 9,000 series decrease the CBOE experienced.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change, which supports the proposal.[13] Specifically, the commenter believes that the CBOE's proposal would provide equity investors with the flexibility necessary to hedge their risk as efficiently as possible.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at less than $20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that CBOE monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the CBOE's proposal on a one-year pilot basis. In the event that CBOE proposes to extend the Pilot Program beyond June 5, 2004, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal.[16] The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the CBOE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the CBOE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the CBOE addressed them; (6) any complaints that the CBOE received during the operation of the Pilot Program and how the CBOE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2001–60) is approved, on a pilot basis, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14829 Filed 6–11–03; 8:45 am]

BILLING CODE 8010–01–P

[13] See Cornerstone Letter, *supra* note 12.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission expects the CBOE to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the CBOE wishes to extend, expand, or seek permanent approval of the Pilot Program.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47998; File No. SR–GSCC–00–12]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Insolvency and Clearing Fund Requirements

June 6, 2003.

I. Introduction

On October 5, 2000, Government Securities Clearing Corporation ("GSCC") [1] filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–GSCC–00–12 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and on December 14, 2000, amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on June 17, 2002.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

On January 30, 1996, the Commission issued an order approving GSCC's proposed rule change permitting foreign entities to become members of GSCC's netting system.[4] The rule change established application and continuing membership requirements for foreign entities, including the delivery to GSCC of an opinion of foreign counsel addressing the particular jurisdictional concerns raised by the admission of a foreign entity to netting system membership.[5]

Having gained experience from reviewing the legal opinions regarding foreign law that were provided in connection with the applications of the foreign banks that GSCC has admitted to its netting system to date, GSCC has determined to clarify its insolvency rule, rule 22, in the manner described in subsection (i) below so that the insolvency rule more appropriately references the types of insolvency proceedings to which a foreign member might become subject. GSCC will also make conforming language changes to GSCC's rules dealing with applications for membership standards as they apply to foreign members.

Some of the legal opinions referred to in the previous paragraph have indicated that GSCC would be exposed to "legal risk" as a result of the application of the particular jurisdiction's law to a foreign member's insolvency or bankruptcy. The legal risk can take the form of prohibiting or delaying GSCC from: Accessing some or all of the clearing fund deposit of the member; performing its netting, close-out, or liquidation of transactions; or setting off obligations as set forth in its clearing fund rule (rule 4), its ceasing to act rule (rule 21), or its insolvency rule (rule 22) or taking any other action contemplated by these rules. GSCC is amending its rules to better protect itself and its members from these types of legal risk in the circumstances where GSCC reasonably determines based upon factors such as outside legal advice or discussions with a relevant regulator that such legal risk exists. The proposed rule changes are described more fully in subsection (ii) below.

GSCC's experience in connection with the admission of U.S. branches of foreign banks has also indicated that certain issues that are described in these opinions could affect GSCC's rights in the event of the insolvency or bankruptcy of a domestic member. GSCC believes, given the importance of its being able to exercise its rights as set forth in its clearing fund rule, its ceasing to act rule, and its insolvency rule that the proposed rule changes discussed below in subsection (ii) should also apply to domestic members that present GSCC with legal risk. GSCC would reasonably determine that such legal risk exists based upon factors such as outside legal advice or discussions with a relevant regulator.

GSCC is also adding language to its clearing fund rule clarifying its right to rehypothecate the cash deposits of its clearing fund.

(i) Changes to Insolvency Rule

GSCC's insolvency rule contains a section that lists the various types of events or proceedings that would permit GSCC to treat a member as insolvent. The rule was written utilizing terms common in United States insolvency or bankruptcy proceedings. GSCC is amending its insolvency rule to add language so that the rule more appropriately references the types of insolvency proceedings to which a foreign member might become subject.

GSCC's foreign membership agreements have already been expanded to incorporate the insolvency triggering events that GSCC is now making part of its rules. The changes will bring the rules into conformity with the foreign membership agreements and specifically give GSCC the right pursuant to its rules to declare a foreign member to be insolvent under the requisite circumstances.[6]

(ii) Clearing Fund Requirements

One of GSCC's most important risk management tools is its clearing fund, which is comprised of cash, certain netting-eligible securities, and eligible letters of credit. The purposes served by the clearing fund are: (1) To have on deposit from each netting member assets sufficient to satisfy any losses that may be incurred by GSCC as the result of the default by the member and the resultant close-out of that member's settlement positions; (2) to maintain a total asset amount sufficient to satisfy potential losses to GSCC and its members resulting from the failure of more than one member (and the failure of such members' counterparties to pay their pro rata allocation of loss); and (3) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

A member's clearing fund deposit, to serve its intended purpose, should be immediately accessible by GSCC in the event of the member's bankruptcy or insolvency. However, the application of certain domestic or foreign laws could delay or prevent GSCC from accessing the portion of the member's clearing fund deposit that is in the form of cash and securities. The portion of the member's clearing fund deposit that is in the form of letters of credit ("LCs") is generally not subject to the same risk because LCs are typically not considered to be part of the bankrupt/insolvent entity's estate.

The rules with respect to the calculation of a member's clearing fund deposit do not currently address this legal risk. In order to better protect itself and its members, GSCC is amending its rules to require a domestic or foreign member that in management's reasonable view (which may be based upon factors such as outside legal advice or discussions with a relevant regulator) presents heightened legal risk to GSCC to deposit additional collateral over what would normally be required under GSCC's clearing fund rule and/or to post some additional portion of its clearing fund deposit requirement in the form of an LC.[7]

(iii) Clarification of Rehypothecation Right With Respect to Cash Deposits

GSCC's clearing fund rule contains a provision that permits GSCC to rehypothecate, transfer, or assign its clearing fund collateral in the event that GSCC needs to secure a loan or to satisfy an obligation incurred by it incident to its clearance and settlement business. GSCC is clarifying the provision with respect to the portions of the clearing funds that may be rehypothecated, transferred, or assigned by GSCC. The provision refers to the securities and the LCs that members pledge or deposit to the clearing fund as well as to the "deposits or other instruments in which the cash deposits" are invested. GSCC believes that this language could be read to not actually refer to the cash deposits themselves. Therefore, GSCC believes that it is prudent to specifically add a reference in the rule to "cash deposits" in order to eliminate any doubt as to GSCC's ability to use the cash portion of the clearing fund in the manner set forth in the clearing fund rule.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

[1] On January 1, 2003, MBS Clearing Corporation was merged into GSCC under New York law and GSCC was renamed the Fixed Income Clearing Corporation. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (File Nos. SR–GSCC–2002–10 and MBSCC–2002–01).

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 46053 (June 10, 2002), 67 FR 41285.

[4] Securities Exchange Act Release No. 36788 (January 10, 1996), 61 FR 4500 (February 6, 1996) (File No. SR–GSCC–95–05).

[5] GSCC also requires each prospective foreign member to provide a legal opinion on insolvency discussing applicable U.S. Federal and State laws.

[6] In addition, the proposed rule change makes conforming language changes to GSCC's rule 2 (Members) and rule 3 (Financial Responsibility and Operational Capability Standards) as they apply to foreign members.

[7] GSCC's clearing fund rule requires that LCs constitute no more than 70 percent of a member's clearing fund deposit. GSCC is amending its rule so that it may ask for a higher percentage in the form of an LC if circumstances warrant.

rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F) of the Act, which requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control or for which it is responsible.[8] The Commission finds that by having the ability to require an additional clearing fund deposit or deposits in the form of letters of credit in circumstances as described above, the proposed rule change will help to ensure that GSCC has adequate clearing fund assets available to it in the event that it must liquidate the collateral of an insolvent participant. Additionally, the change to GSCC's insolvency rule to include references to certain insolvency proceedings against foreign members will better equip GSCC to handle the financial difficulties of foreign members and should help GSCC to assure the safeguarding of securities and funds in the its custody or control or for which it is responsible. Therefore, the proposed rule change is consistent with GSCC safeguarding obligations under section 17A(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–00–12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14831 Filed 6–11–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47993; File No. SR–NASD–2003–81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Quote Decrementation in SuperMontage

June 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On May 29, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify how the quotes of order-delivery Electronic Communication Networks ("ECNs") in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage") will be decremented after they decline an order shipped to them, or partially fill an order sent to them, or fail to respond to the delivery within 30 seconds.[4] Under the proposal, order-delivery ECNs that decline an order, partially fill an order, or fail to respond within 30 seconds to orders sent to them ("time-out") by SuperMontage will no longer have all of their trading interest at or better than the declined price level removed from the system. Instead, the system after a decline, partial fill, or time-out, will remove the entire amount of each individual quote(s)/order(s) to which the orders was delivered to by NNMS. The proposed rule text is as follows:

Proposed new language is *italicized*; proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) through (B)—No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next [Quoting Market Participant] *eligible Quote/Order* in queue. The system then will zero out [the] *those* ECN['s] Quote/Orders *to which the Non-Directed Order was delivered.* [at that price level on that side of the market,] *If there are no other Quote/Orders at the declined price level,* [and] the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in rule 4707 and subparagraph (b) of this rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the rules of the SuperMontage provide that if an NNMS Order Delivery ECN declines,[5] partially fills, or fails to respond within 30 seconds to a non-directed order delivered to it by the system, without immediately transmitting a revised Attributable Quote/Order at an inferior price, NNMS will zero out all the Quotes/Orders of that ECN on the same side of the market at the price level of the declined order or better.[6] This processing was incorporated into SuperMontage to ameliorate locked or crossed markets[7] that had previously occurred in Nasdaq when ECNs declined to trade with other market participants, usually based on a dispute over the imposition, or the amount, of an ECN's quote-access fee. The following example illustrates how the quote/order reduction process currently operates for an ECN alone at the inside that elected to enter three separate bid quotes/orders at the same price level in SuperMontage:

ECN Quote (#1)—1000 shares @ 20.00
ECN Order (#2)—500 shares @ 20.00
ECN Order (#3)—300 shares @ 20.00
The inside aggregated bid shows 1800 shares @ 20.00.

1. SuperMontage receives an 800 share market sell order.

2. In response, SuperMontage sends an 800 share order to ECN Quote (#1). Upon dispatch, SuperMontage decrements ECN Quote (#1) by the amount of the delivery (800 shares) leaving a display quote of 1000 shares (including 200 shares in ECN Quote (#1)) that remains available for execution.

3. The ECN declines to execute the 800 share order delivered to ECN Quote (#1), and does not immediately transmit a revised Attributable Quote/Order at an inferior price.

4. If not yet executed against by a subsequent incoming order, the ECN's decline results in the removal of ECN Quote (#1) (*i.e.*, the 800 shares originally decremented and the 200 share remainder of ECN Quote (#1)), and Orders (#2) and (#3) from the system.

5. The inside moves to the next best bid less than 20.00 and the system reallocates the 800 shares from the incoming order received in Step 1.

In response to concerns raised by some NNMS Order Delivery ECNs that the above quote decrementation method disadvantages Quotes/Orders entered by them that would otherwise be executed but for the elimination of all the ECN's trading interest on the same side of the market at the declined price level,[8] Nasdaq has determined to modify the SuperMontage quote/order reduction process. Under the new approach to ECN quote/order decrementation after a decline, partial-fill, or time-out, will no longer result in an ECN's entire trading interest at the declined price level or better being removed from the system. Instead, SuperMontage will only remove the total amount of each individual quote(s)/order(s) to which the orders were delivered by SuperMontage. That is, SuperMontage will remove in their entirety only those Quotes/Orders with which the system attempts to trade with an order delivery ECN, but fails to do because of a decline, partial fill, or time-out. The following example illustrates how the new quote/order reduction process would operate for an ECN alone at the inside that elected to enter three separate bid quotes/orders at the same price level in SuperMontage:

ECN Quote (#1)—1000 shares @ 20.00
ECN Order (#2)—500 shares @ 20.00
ECN Order (#3) 300 shares @ 20.00
The inside aggregated bid shows 1800 shares @ 20.00.

1. SuperMontage receives an 800 share market sell order.

2. In response, SuperMontage sends an 800 share delivery to ECN Quote (#1). Upon dispatch, SuperMontage decrements ECN Quote (#1) by the amount of the delivery (800 shares) leaving a display quote of 1000 shares in ECN Quote (#1) that remains available for execution.

3. The ECN declines to execute the 800 share delivery to ECN Quote (#1).

4. If not executed against by a subsequent incoming order, the ECN's decline results only in the removal of ECN Quote (#1), *i.e.*, the 800 shares originally decremented and the 200 share remainder of ECN Quote (#1). Orders (#2) and (#3) remain in the system and continue to be eligible for execution.

5. The system reallocates the 800 shares from the incoming order in Step 1 against ECN orders (#2) and (#3) before moving, if necessary, to the next best bid.

In short, only individual Quotes/Orders are removed in full by a decline, partial-fill, or a time-out where no revised Attributable Quote/Order is immediately transmitted at an inferior price; not all trading interest at the declined price level or better. Other ECN Quotes/Orders at a particular price level that are not part of a SuperMontage delivery resulting in a decline or a time-out are retained in the system and remain available for execution and are not traded through. Nasdaq notes that nothing in this new processing of Order Delivery ECN Quotes/Orders after declines, partial-fills, or time-outs allows the creation of a locked or crossed market during the trading day in SuperMontage. As such, Nasdaq believes that the above approach draws an appropriate balance between its need to ensure the smooth operation of its market and the desire of NNMS Order Delivery ECNs to maximize the potential for execution for Quotes/Orders they submit to NNMS.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 29, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq replaced the proposed rule change in its entirety.

[4] Nasdaq's original target date for implementation of this proposal, if approved by the Commission, was June 16, 2003. Nasdaq has revised its intended implementation time-frame for mid-July 2003, and will notify the Commission and market participants when a firm date has been set. Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission on June 5, 2003.

[5] An ECN's decline to a delivered order must be the result of an access fee-dispute, or otherwise be permitted under the SEC Firm Quote rule. NASD Regulation surveils for violations of the Firm Quote rule.

[6] Nasdaq notes that it recently filed a proposed rule change to reduce the maximum 30-second response time to a 7 second response time. *See* Securities Exchange Act Release No. 34–47883 (May 16, 2003), 68 FR 28312 (May 23, 2003) (Notice of File No. NASD–2003–72).

[7] *See* Securities Exchange Act Release No. 34–43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[8] For example, Nasdaq notes the concern that the removal of all the ECN's trading interest at the declined price level may prevent other Quotes/Orders that did not specifically decline a delivery from SuperMontage from potentially executing with market participants that have arrangements with the ECN to pay an access fee.

provisions of section 15A of the Act,[9] in general and with section 15A(b)(6) of the Act,[10] in particular, in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.; Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–81 and should be submitted by July 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14830 Filed 6–11–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(6).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0623]

Zon Capital Partners, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zon Capital Partners, L.P. ("Zon"), 5 Vaughn Drive, Suite 104, Princeton, New Jersey 08540, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and § 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (2002)). Zon proposes to provide equity financing to HR Technologies, 2700 Westchester Avenue, Purchase, New York 10577. The financing is contemplated for funding growth and acquisitions.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Early Stage Enterprises L.P., an Associate of Zon, owns greater than 10 percent of HRT and therefore HRT is considered an Associate of Zon as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this notice shall be published, in accordance with § 107.730 (g), in the **Federal Register** by SBA.

Dated: June 6, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–14854 Filed 6–11–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3496, Amdt. 3]

State of Kansas

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30 and June 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 4, 2003, and continuing through May 30, 2003. This declaration is also amended to include Allen County in the State of Kansas as a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003, and continuing through May 30, 2003.

All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14853 Filed 6–11–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3508]

Commonwealth of Kentucky

As a result of the President's major disaster declaration on June 3, 2003, I find that Anderson, Boyd, Breckinridge, Boyle, Bullitt, Caldwell, Carter, Crittenden, Elliott, Fleming, Garrard, Grayson, Greenup, Hardin, Hart, Henderson, Hopkins, Jefferson, Jessamine, Larue, Lewis, Lawrence, Mason, McLean, Meade, Mercer, Nelson, Rowan, Union, Washington, Webster and Woodford Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe storms, flooding, mud and rock slides, and tornadoes occurring on May 4 through May 27, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 4, 2003, and for economic injury until the close of business on March 3, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Barren, Bath, Bracken, Butler, Casey, Christian, Daviess, Edmonson, Fayette, Franklin, Green, Hancock, Johnson, Lincoln, Livingston, Lyon, Madison, Marion, Martin, Menifee, Metcalfe, Morgan, Muhlenberg, Nicholas, Ohio, Oldham, Robertson, Rockcastle, Scott, Shelby, Spencer, Taylor and Trigg in the Commonwealth of Kentucky; Adams, Brown, Lawrence and Scioto counties in the State of Ohio; Gallatin and Hardin counties in the State of Illinois; Clark, Crawford, Floyd, Harrison, Perry, Posey, Spencer, Vanderburgh and Warrick counties in the State of Indiana; and Wayne county in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350811. For economic injury the number is 9V7500 for Kentucky; 9V7600 for Ohio; 9V7700 for Illinois; 9V7800 for Indiana; and 9V7900 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14855 Filed 6–11–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration (SBA), pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), will be hosting the second meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be held at 409 3rd Street, SW., Washington, DC 20416, on Tuesday, June 24, 2003, from 9 a.m. to 5 p.m. and on Wednesday, June 25, 2003, from 9 a.m. to 12 p.m.

If you have any questions or concerns regarding the meeting, please contact Ms. Cheryl Clark in the Office of Veterans Business Development (OVBD) at (202) 619–1697.

Candace H. Stoltz,

Director of Advisory Councils, Office of Communications.

[FR Doc. 03–14852 Filed 6–11–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waivers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: The following waivers allow New Flyer of America and the North American Bus Industries (NABI) to count a foreign-manufactured articulating joint system used in low and standard floor bus as a domestic component for purposes of calculating the aggregate domestic content of the vehicle and was predicated on the non-availability of the item in the domestic market. The New Flyer waiver was granted on April 24, 2003, and the NABI waiver on May 9, 2003. For reasons discussed in the text of the waivers, both expire on July 1, 2004. This notice shall insure that the public is aware of the waivers. FTA requests that the public notify it of any relevant changes in the domestic articulating joint market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: See waivers below.

Issued: June 9, 2003.

Jennifer L. Dorn,

Administrator.

April 24, 2003.

Mr. Paul Smith,

Vice President, Sales and Marketing, New Flyer of America, 711 Kerneghan Avenue, Winnipeg, Manitoba, Canada R2C 3T4.

Mr. Smith: This letter responds to your correspondence of March 24, 2003, in which New Flyer of America (New Flyer) requests a non-availability waiver of the Buy America requirements for the procurement of the Hubner Manufacturing Corporation (Hubner) articulated joint system for New Flyer's low floor buses.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). Section 5323(j)(2)(C) addresses the general requirements for the procurement of rolling stock. This section provides that all rolling stock procured with FTA funds must have a domestic content of at least 60 percent and must undergo final assembly in the U.S. You request a waiver under 49 U.S.C. 5323(j)(2)(B), which states the Buy America requirements shall not apply if the item or items are not produced in the U.S. in sufficient and reasonably available quantities or are not of a satisfactory quality. The implementing regulation provides that non-availability waivers may be granted for a component of rolling stock. 49 CFR 661.7(f).

FTA post a summary of this waiver request on its website and requested comment. We received four comments, one against and three in favor of granting the waiver.[1] The comment against the waiver argues that the Buy America rules for rolling stock already allow a waiver of up to forty percent foreign content, and when a component is unavailable from a domestic source, the vehicle maker should use part of its allotted foreign content. However, as noted above, the regulation currently allows component waivers for rolling stock when the product is not available from a domestic source. FTA received no comments indicating that these articulating joint systems are available from a U.S. source.

Based on a thorough review of the industry, FTA previously granted a two-year non-availability waiver to Newflyer for this articulated joint system on April 24, 2001. You state that the circumstances necessitating the current waiver remain unchanged and in the near term, New Flyer must still use the Hubner joint, which is still not available from a domestic source.

In response to the original waiver, FTA received a comment from a U.S. bellows

[1] The comment against the waiver was from Gillig Corporation. The comments in favor of the waiver were from CAPtech, Inc., North American Bus Industries, and Hubner Manufacturing.

manufacturer, A&A Manufacturing, expressing concern that because the articulated joint system is made of separate subcomponents that could be supplied separately by different manufacturers, the waiver effectively prevented A&A from selling its product, the bellows, to New Flyer's response stated that in the low floor bus, the articulated joints are purchased as an entire unit and any changes or integration of a subcomponent, such as new bellows, would require sufficient time to design, integrate and test.

On January 17, 2001, FTA directed Newflyer to work with domestic suppliers for these parts to develop alternative sources. We noted that this good faith effort to qualify new domestic suppliers would be considered should New Flyer request a renewal of the waiver. Newflyer now informs FTA that it plans to install an articulated joint, utilizing A&A's bellows and manufactured by a domestic manufacturer, in August 2003. The requisite testing should be completed by April 2004. FTA has also been advised by Hubner Manufacturing, that it plans to relocate the entire articulation systems manufacturing process from Germany to South Carolina by the end of 2003.

Based on the information you have provided, I have determined that the grounds for a non-availability waiver still exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is granted for the procurement of Hubner's articulated joint system for New Flyer low floor buses until June 30, 2004, as requested. The waiver will allow time for Hubner's relocation to the U.S. and completion of necessary testing for the alternate U.S. joint system. In order to insure that the public is aware of this waiver, particularly potential manufacturers, this waiver will be published in the **Federal Register**.

If you have any questions, please contact Meghan G. Ludtke at (202) 366–1935.

Very truly yours,

Gregory B. McBride,
Deputy Chief Counsel.
May 9, 2003.

Mr. Bill Coryell,
Vice President, Marketing and Sales, North American Bus Industries, Inc., 20350 Ventura Blvd., Suite 205, Woodland Hills, California 91364.

Dear Mr. Coryell: This letter responds to your correspondence of April 22, 2003, in which North American Bus Industries, Inc. (NABI) requests a non-availability waiver of the Buy America requirements for the procurement of the Hubner Manufacturing Corporation (Hubner) articulated joint system for use in NABI's low floor and standard floor articulated buses. The system is comprised of a mechanical articulating joint incorporating an electronically controlled, hydraulic damping subsystem.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). Section 5323(j)(2)(C) addresses the general requirements for the procurement of rolling stock. This section provides that all rolling stock procured with FTA funds must have a domestic content of at least 60 percent and must undergo final assembly in the U.S. You request a waiver under 49 U.S.C. 5323(j)(2)(B), which states the Buy America requirements shall not apply if the item or items are not produced in the U.S. in sufficient and reasonably available quantities or are not of a satisfactory quality. The implementing regulation provides that non-availability waivers may be granted for a component of rolling stock. 49 CFR 661.7(f).

FTA posted a request for comments and received one comment against the waiver. Gillig Corporation argues that the Buy America rules for rolling stock already allow a waiver of up to forty percent foreign content, and when a component is unavailable from a domestic source, the vehicle maker should use part of its allotted foreign content. However, as noted above, the regulation currently allows component waivers for rolling stock when the product is not available from a domestic source. FTA received no comments indicating that these articulating joint systems are available from a U.S. source. We received two comments in favor of the waiver, one from Hubner, the subject joint manufacturer, and the other from CAPtech, Inc., which argues that allowing foreign manufacturers into the market place will result in better U.S. products.

FTA issued a similar waiver to New Flyer of America on April 24, 2001, which was valid until April 24, 2003. Based in part on the waiver issued to New Flyer in 2001, NABI requested a similar waiver on August 9, 2002. In grating NABI's waiver, we wrote "we will grant this waiver to NABI for all solicitations responded to until April 24, 2003, which is when New Flyer's waiver expires. We will then evaluate the situation with respect to all vehicle and articulating joint manufacturers." New Flyer and NABI have both requested a renewal of this waiver and on April 24, 2003, FTA issued another waiver to New Flyer.

You state that the circumstances necessitating the current waiver remain unchanged and in the near term, NABI must still use the Hubner joint, which is still not available from a domestic source. FTA has been advised by Hubner Manufacturing that it plans to relocate the entire articulation systems manufacturing process from Germany to South Carolina by the end of 2003. Based on a review of the industry and the information provided by New Flyer, NABI, and Hubner, I have determined that the grounds for a non-availability waiver still exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), and consistent with the waiver issued to New Flyer on April 24, 2003, a waiver is granted for the procurement of Hubner's articulated joint system for NABI's low floor and standard buses until June 30, 2004. This waiver will allow time for Hubner's relocation to the U.S. In order to insure that the public is aware of this waiver, particularly potential manufacturers, this waiver will be published in the **Federal Register**.

If you have any questions, please contact Meghan G. Ludtke at (202) 366–1936.

Very Truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–14888 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2003–15377]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMMERSEE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15377 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15377. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *AMMERSEE* is:

Intended Use: "Short cruises with campers."

Geographic Region: "Maine Coast."

Dated: June 6, 2003.

By order of the Maritime Administrator.

Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 03–14834 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2003–15378]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BRISTOL GOOSE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15378 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15378. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Bristol Goose* is:

Intended Use: "Captained cruises from Baltimore on the Chesapeake Bay and its tributaries, lasting a week or less. Vessel will not carry more than 6 passengers at a time."

Geographic Region: "Chesapeake Bay and its tributaries; Maryland waters only."

Dated: June 6, 2003.

By order of the Maritime Administrator.

Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 03–14835 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2003–15375]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OSCEOLA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15375 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15375. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Osceola* is:

Intended use: "6 pack charters."

Geographic Region: "Florida."

Dated: June 6, 2003.

By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 03–14832 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2003–15379]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RAVEN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15379 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15379. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Raven* is:

Intended Use: "Recreational sightseeing and kayak trip support."

Geographic Region: "Prince William Sound and Blying Sound, Alaska."

Dated: June 6, 2003.

By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 03–14836 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2003–15376]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VOYAGER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15376 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15376. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 7th St., SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VOYAGER is:

Intended Use: "Occasional Charter."

Geographic Region: "US West Coast, including Mexico and Canada."

Dated: June 6, 2003.

By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 03–14833 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2003–15374]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VOYAGER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15374 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15374. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 7th St., SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Voyager* is:

Intended Use: "Charter party fishing boat."

Geographic Region: "Waters off the coast of North Carolina."

Dated: June 6, 2003.

Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15374 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 14, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15374. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Voyager* is:

Intended Use: "Charter party fishing boat."

Geographic Region: "Waters off the coast of North Carolina."

Dated: June 6, 2003.

By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 03–14837 Filed 6–11–03; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2003–15324]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed information collections, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before August 11, 2003.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marvin M. Levy, Ph.D., NHTSA 400 Seventh Street, SW., Room 6240, NTI–131, Washington, DC 20590. Dr. Levy's telephone number is (202) 366–5597.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing for a 60-day comment period and otherwise consult members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following proposed collection of information:

Title: National Survey of Drinking and Driving Attitudes and Behavior

OMB Clearance Number: None.

Affected Public: Under this proposed collection, a telephone interview would be administered to each of 6,000 randomly selected members of the general public age 16 and older. The respondent sample would be selected from all 50 states plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would be not be interviewed.

Form Number: This collection of information uses no standard forms.

Abstract: The National Highway Traffic Safety Administration's (NHTSA) has a central role in the national effort to reduce motor-vehicle related traffic injuries and deaths. After years of steady decline, the number of alcohol-related fatalities in the U.S. reversed direction and rose to 17,448 in 2001. The agency's goal is to reduce the rate of alcohol-related crashes from 0.63 to 0.53 crashes per 100 million vehicle miles traveled by the end of 2003.

In order to plan and evaluate programs intended to reduce alcohol-impaired driving, NHTSA needs to periodically update its knowledge and understanding of the public's attitudes and behaviors with respect to drinking

and driving. NHTSA began measuring the driving age public's attitudes and behaviors regarding drinking and driving in 1991. The proposed study, to be administered in the 3rd quarter of 2003, and the seventh in this series of biennial surveys, will collect data on topics included in the first six studies. These topics include the frequency of drinking and driving; ways to prevent driving after drinking; respondents' perceptions of enforcement of drinking and driving laws, including the use of sobriety checkpoints; and crash and injury experience.

The survey will be administered by telephone to a national probability *sample of the driving-age public* (aged 16 years or older as of their last birthday). The interview is anticipated to average approximately 20 minutes: For non-drinkers and non-drivers the interview will average below 20 minutes; while for drinker-drivers, it will average slightly over 20 minutes. Interviewers will use a computer assisted telephone interviewing technique (CATI) for reducing survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. Participation by respondents will be voluntary and all respondents' results will remain anonymous and completely confidential. Participant names are not collected during the interview and the telephone number used to reach the respondent is separated from the data record prior to its entry into the analytical database.

The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving, and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus future programs and activities to achieve improved efficiencies and outcomes. This may involve modifying existing or developing new programs that can decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies in their efforts to reduce impaired driving related traffic crashes and injuries. The requested expiration date of approval is December 31, 2005.

Estimate of the Total Annual Burden Resulting from the Collection of Information: NHTSA estimates that respondents in the sample would require an average of 20 minutes to complete the telephone interview. Thus, estimated reporting burden on the general public would be a total of 2000 hours per year for the proposed study. The respondents would not incur any reporting or record keeping cost from the information collection.

Number of Respondents: It is anticipated that the number of respondents will be 6,000 persons age 16 or older living in the United States.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Marilena Amoni,

Associate Administrator for Program Development and Delivery, National Highway Traffic Safety Administration.

[FR Doc. 03–14889 Filed 6–11–03; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34356]

Gregory B. Cundiff, Connie Cundiff, CGX, Inc., and Ironhorse Resources, Inc.—Continuance in Control Exemption—Mississippi Tennessee Holdings, LLC and Mississippi Tennessee Railroad, LLC

Gregory B. Cundiff, Connie Cundiff, CGX, Inc. (CGX), and Ironhorse Resources, Inc. (Ironhorse) (collectively, applicants), noncarriers, have filed a verified notice of exemption to continue in control of Mississippi Tennessee Holdings, LLC (MTH) and Mississippi Tennessee Railroad, LLC (MTR), upon MTH and MTR becoming rail carriers.

The transaction was expected to be consummated on or after May 27, 2003, the effective date of the exemption (7 days after the notice was filed).

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34355, *Mississippi Tennessee Holdings, LLC and Mississippi Tennessee Railroad, LLC—Acquisition and Operation Exemption—Rail Line of Mississippi & Tennessee Railnet, Inc., between Houston, MS, and Middleton, TN, in Chickasaw, Pontotoc, Union and Tippah Counties, MS, and Hardeman County, TN*, wherein MTH and MTR seek to acquire and operate 87.7 miles of rail line currently owned by Mississippi Tennessee Railnet, Inc.

MTH and MTR are currently owned by CGX, a noncarrier holding company, that owns three carriers: Crystal City Railroad, Inc., Lone Star Railroad, Inc., and Rio Valley Railroad, Inc. CGX also owns Ironhorse, a noncarrier holding company, that owns four carriers: Railroad Switching Service of Missouri, Texas Railroad Switching, Inc., Rio Valley Switching Company, and Southern Switching Company. CGX is owned by Mr. and Mrs. Cundiff, noncarrier individuals.

Applicants state that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to enable MTH and MTR to improve operating efficiency.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324–25 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34356, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: June 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14869 Filed 6–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34355]

Mississippi Tennessee Holdings, LLC and Mississippi Tennessee Railroad, LLC—Acquisition and Operation Exemption—Rail Line of Mississippi & Tennessee Railnet, Inc., Between Houston, MS, and Middleton, TN, in Chickasaw, Pontotoc, Union and Tippah Counties, MS, and Hardeman County, TN

Mississippi Tennessee Holdings, LLC (MTH) and Mississippi Tennessee Railroad, LLC (MTR), noncarriers, have jointly filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate an 87.7-mile line of the Mississippi Tennessee Railnet, Inc. (Railnet), extending between milepost GG 281.0 at Houston, in Chickasaw, Pontotoc, Union and Tippah Counties, MS, and milepost GG 368.7 at Middleton in Hardeman County, TN.[1]

MTH and MTR certify that MTR's projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.[2]

The transaction was scheduled to be consummated on or after May 27, 2003 (7 days after the notice was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34355, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: June 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14868 Filed 6–11–03; 8:45 am]

BILLING CODE 4915–00–P

[1] This proceeding is related to STB Finance Docket No. 34356, *Gregory B. Cundiff, Connie Cundiff, CGX, Inc., and Ironhorse Resources, Inc.—Continuance in Control Exemption—Mississippi Tennessee Holdings, LLC and Mississippi Tennessee Railroad, LLC*, wherein Gregory B. Cundiff, Connie Cundiff, CGX, Inc., and Ironhorse Resources, Inc., have concurrently filed a notice of exemption to continue in control of MTH and MTR upon their becoming rail carriers.

[2] MTR will be the operator of the line.

DEPARTMENT OF VETERANS AFFAIRS

VA Vocational Rehabilitation and Employment Task Force; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the VA Vocational Rehabilitation and Employment (VR&E) Task Force will be held on Monday, June 23, 2003, from 9 a.m. to 5 p.m., and on Tuesday, June 24, 2003, from 9 a.m. to 4 p.m., in Room 230, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Task Force is to conduct an independent review of the VR&E program within the Veterans Benefits Administration (VBA). The Task Force will provide recommendations to the Secretary of Veterans Affairs on improving the Department's ability to provide comprehensive services and assistance to veterans with service-connected disabilities and employment handicaps in becoming employable, and obtaining and maintaining suitable employment. The Task Force will also assess independent living services provided by VBA.

On June 23, VBA officials will make presentations on independent living services, self-employment program, and employment placement services. There will be a panel discussion with VA Regional Office Directors on the status of VR&E programs. The Small Business Administration and VA Office of Small and Disadvantaged Business Utilization will provide comment on self-employment opportunities for disabled veterans. On June 24, presentations will be made by the United States Postal Service, AFL–CIO, National Council on Independent Living, and National Organization on Disability with a focus on employment of disabled persons. The Task Force will be briefed by VBA on the G.I. Bill. The Task Force will hear remarks from senior officials from the Department of Health and Human Services and the Department of Education on employing individuals with disabilities. The Commission on Accreditation of Rehabilitation Facilities will also provide comment.

No time will be allocated for receiving oral presentations from the public. Interested parties who wish to attend the meeting should have adequate identification for entry into the building and will be subject to a security screening process. Members of the public may submit written comments for review by the Committee to: Mr. John O'Hara, Executive Director, VA Vocational Rehabilitation and Employment Task Force, VA Office of Policy, Planning, and Preparedness (008B), 810 Vermont Avenue, NW., Washington, DC 20420. Mr. O'Hara can be reached at (202) 273–5130; fax number (202) 273–5991 and e-mail address *john.o'hara@mail.va.gov*.

Dated: June 4, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–14812 Filed 6–11–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 113
Thursday, June 12, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

Correction

In rule document 03–12142 beginning on page 27431 in the issue of Tuesday, May 20, 2003 make the following corrections:

§ 2.24 [Corrected]

1. On page 27439, in the second column, in §2.24, in amendatory instruction 12.c., in the second line, "2003" should read "2000".

§ 2.93 [Corrected]

2. On page 27447, in the third column, in §2.93, in amendatory instruction 39.a., in the third line, after "(a)(12)" add "(a)(16), and".

[FR Doc. C3–12142 Filed 6–11–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
June 12, 2003

Part II

Securities and Exchange Commission

Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8236; 34–47972; IC–26066; File No. S7–12–03]

RIN 3235–AH28

Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Concept release; request for comments.

SUMMARY: As part of the Commission's review of the role of credit rating agencies in the operation of the securities markets, the Commission is seeking comment on various issues relating to credit rating agencies, including whether credit ratings should continue to be used for regulatory purposes under the Federal securities laws, and, if so, the process of determining whose credit ratings should be used, and the level of oversight to apply to such credit rating agencies.

DATES: Comments should be received on or before July 28, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–12–03. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; Mark M. Attar, Special Counsel, at (202) 942–0766; or Mandy B. Sturmfelz, Attorney, at (202) 942–0085.

SUPPLEMENTARY INFORMATION:

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make publicly available.

I. Introduction [2]

Since 1975, the Commission has relied on credit ratings from market-recognized credible rating agencies for distinguishing among grades of creditworthiness in various regulations under the Federal securities laws. These credit rating agencies, known as "nationally recognized statistical rating organizations," or "NRSROs," are recognized as such by Commission staff through the no-action letter process. There currently are four NRSROs [3]—Moody's Investors Service, Inc.; Fitch, Inc.; Standard & Poor's, a division of the McGraw-Hill Companies, Inc.; and Dominion Bond Rating Service Limited ("DBRS").[4] Although the Commission originated the use of the term "NRSRO" for a narrow purpose in its own regulations, ratings by NRSROs today are widely used as benchmarks in Federal and State legislation, rules issued by financial and other regulators, foreign regulatory schemes, and private financial contracts. The Commission's initial regulatory use of the term "NRSRO" was solely to provide a method for determining capital charges on different grades of debt securities under the Commission's net capital rule for broker-dealers, rule 15c3–1 under the Exchange Act (the "Net Capital rule"). Over time, as the reliance on credit rating agency ratings increased, so too did the use of the NRSRO concept.

In recent years, the Commission and Congress have reviewed a number of issues regarding credit rating agencies and, in particular, the subject of regulatory oversight of them. In 1994, the Commission solicited public comment on the appropriate role of credit ratings in rules under the Federal securities laws, and the need to establish formal procedures for recognizing and monitoring the activities of NRSROs.[5] Comments received by the Commission led to a rule proposal in 1997 which, among other things, would have defined the term "NRSRO" in the Net Capital rule.[6] However, the Commission has not acted upon that rule proposal. More recently, the initiation of broad-based Commission and Congressional reviews of credit rating agencies following the collapse of Enron has resulted in the need for a fresh look at the issue.

On January 24, 2003, the Commission submitted to Congress its Report on the role and function of credit rating agencies in the operation of the securities markets in response to the Congressional directive contained in section 702 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act").[7] The Report was designed to address each of the topics identified for Commission study in section 702, including the role of credit rating agencies and their importance to the securities markets, impediments faced by credit rating agencies in performing that role, measures to improve information flow to the market from credit rating agencies, barriers to entry into the credit rating business, and conflicts of interest faced by credit rating agencies.[8] The Report also addresses certain issues regarding credit rating agencies, such as allegations of anticompetitive or unfair practices, the level of due diligence performed by credit rating agencies when taking rating actions, and the extent and manner of Commission oversight of credit rating agencies, that go beyond those specifically identified in the Sarbanes-Oxley Act.

As the Commission enters the next phase of its review, a fundamental threshold matter is the appropriate degree of regulatory oversight that should be applied to credit rating agencies. At one end of the spectrum, the Commission could cease using the NRSRO designation, exit the business of rating agency oversight, and devise alternative means to fulfill its regulatory objectives. At the other, the Commission could implement, perhaps with additional legislative authority, a much more pervasive regulatory scheme for credit rating agencies that addresses the full range of issues raised in the Report.

Discussed below are broad issues that have been raised during the Commission's ongoing review of credit rating agencies. Following the discussion of each issue is a possible approach the Commission could develop to address that issue, as well as a series of questions, the answers to which would assist the Commission in its review. The Commission wishes to encourage comments from market participants, other regulators, and the public at large.

[2] For a detailed discussion on credit rating agencies and the Commission's use of credit ratings under the Federal securities laws, *see* the *Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, As Required by Section 702(b) of the Sarbanes-Oxley Act of 2002*, U.S. Securities and Exchange Commission, January 2003 (hereinafter, the "Report"). The Report is available on the Commission's Web site at *http://www.sec.gov/news/studies/credratingreport0103.pdf*.

[3] Since 1975, four additional rating agencies have been recognized as NRSROs. However, each of these firms has since merged with or been acquired by other NRSROs. These four additional rating agencies were Duff and Phelps, Inc., McCarthy, Crisanti & Maffei, Inc., IBCA Limited and its subsidiary, IBCA, Inc., and Thomson BankWatch, Inc.

[4] On February 24, 2003, the Commission's Division of Market Regulation (the "Division") responded to a request by DBRS that the Division will not recommend enforcement action against broker-dealers that consider ratings by DBRS as NRSRO ratings when computing net capital pursuant to rule 15c3–1 under the Securities Exchange Act of 1934 ("Exchange Act"). *See* letter from Annette L. Nazareth, Director, Division, Commission, to Mari-Anne Pisarri, Pickard and Djinis LLP (February 24, 2003). This letter is available on the Commission's Internet Web site at *http://www.sec.gov/divisions/marketreg/mr-noaction/dominionbond022403-out.pdf*.

[5] *See* Nationally Recognized Statistical Rating Organizations, Release No. 34–34616 (August 31, 1994), 59 FR 46314 (September 7, 1994).

[6] *See* Capital Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934, Release No. 34–39457 (December 17, 1997), 62 FR 66018 (December 30, 1997).

[7] *See* the Report, *supra* note 2.

[8] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, § 702(b), 116 Stat. 745 (2002).

II. Discussion

A. Alternatives to the NRSRO Designation

Some commenters [9] believe that the NRSRO designation acts as a barrier to entry into the credit rating business. Others have raised concerns about the extent of the Commission's legal authority to regulate or impose requirements on NRSROs. Commenters argue that the Commission does not have explicit regulatory authority over NRSROs, and that it would be inappropriate for the Commission to impose a more comprehensive regulatory framework on rating agencies absent legislation. Others have argued that NRSRO rating activities are journalistic and are consequently afforded a high level of protection under the First Amendment. According to these commenters, suggestions that the Commission inspect or otherwise impose regulatory burdens on NRSROs would implicate the NRSROs' First Amendment rights. They further believe that new legislation providing the Commission with additional authority over NRSROs would face the same First Amendment challenges.

In light of these concerns, some commenters have recommended that the Commission consider ceasing its use of the NRSRO designation. Before doing so, however, the Commission would need to identify alternatives capable of achieving the regulatory objectives currently served by use of the NRSRO designation in certain Commission rules.[10] (Other regulatory or legislative bodies would need to determine appropriate substitutes for that designation in any non-Commission rules or legislation.) To further that discussion, the Commission staff has identified possible alternatives to the NRSRO designation for significant Commission rules that utilize that concept. For example:

- *Rule 15c3–1 under the Exchange Act.* The Commission could allow broker-dealers to use internally-developed credit ratings for purposes of determining the capital charges on different grades of debt securities under the Net Capital rule. Strict firewalls could be required between the broker-dealer employees who develop internal credit ratings and those responsible for revenue production. In addition, a broker-dealer could be required to obtain regulatory approval of its credit rating procedures and rating categories before it could use internal credit ratings for calculating capital charges. The Commission also could allow broker-dealers to calculate capital charges using model-based statistical scoring systems and/or market-based alternatives, such as credit spreads. Finally, the Commission could require the securities industry self-regulatory organizations ("SROs") to set appropriate standards for broker-dealers to use in determining rating categories for net capital purposes.
- *Rule 2a–7 under the Investment Company Act of 1940.* Rule 2a–7 limits money market funds to investing in "high quality" securities. The rule contains minimum quality standards based on an objective test—ratings issued by NRSROs—and on a subjective test—the credit analysis performed by the adviser to the money market fund. The Commission could eliminate the objective test from rule 2a–7, and rely solely on the subjective test.
- *Form S–3 under the Securities Act of 1933.* The Commission could allow a registrant to use Form S–3 for offerings of certain nonconvertible securities and asset-backed securities where specified investor sophistication or large size denomination criteria are met. With regard to asset-backed securities, the Commission also could permit Form S–3 to be used where specified asset and structure experience criteria are met.

The Commission seeks commenters' views in evaluating the advisability and feasibility of eliminating the NRSRO designation from Commission rules, the possible alternatives identified above, and/or any other possible alternatives to the NRSRO designation. In particular, the Commission seeks commenters' views in response to the following questions:

Question 1: Should the Commission eliminate the NRSRO designation from Commission rules?

Question 2: If so, what alternatives could be adopted to meet the regulatory objectives of the Commission rules that currently incorporate the NRSRO designation? What are their respective strengths and weaknesses?

Question 3: Specifically, what are the advantages and disadvantages of allowing broker-dealers to use internally-developed credit ratings to determine capital charges under the Net Capital rule? Is it appropriate to require strict firewalls between the broker-dealer employees who develop internal credit ratings and those responsible for revenue production? Should a broker-dealer be required to obtain regulatory approval of its credit rating procedures and rating categories before it could use internal credit ratings for calculating capital charges? If so, what factors should the Commission review in determining whether to grant such approval? If the Commission substitutes internal credit ratings for the NRSRO designation in the Net Capital rule, what would be the impact on broker-dealers, including small broker-dealers, and what costs would be associated with this change? If there would be an inordinate financial impact on small broker-dealers, are there market-based solutions that could reduce the compliance costs for them? For example, should the Commission permit large broker-dealers to sell their internal credit ratings to small broker-dealers for these purposes? If so, would this help to provide a more competitive marketplace for credit ratings? To what extent should the Commission exercise additional regulatory oversight of this activity (*e.g.*, to control potential conflicts of interest)?

Question 4: What are the advantages and disadvantages of allowing broker-dealers to use credit spreads to determine capital charges under the Net Capital rule and/or other Commission rules? How could capital charges be determined using credit spreads? For example, could the Commission base capital charges on the yield differential between particular debt securities and U.S. Treasury securities of comparable maturity, such that a larger differential results in a larger haircut? How could credit spreads be determined for newly-issued, thinly-traded, or privately-issued securities? Or for variable rate and other short-term synthetic securities

[9] The term "commenters" includes those who formally submitted comments in response to the Commission's 1994 concept release and 1997 rule proposal, as well as those contributing to the Commission's recent review of credit rating agencies, including participants at the Commission's November 2002 hearings.

[10] The NRSRO concept is currently utilized in the following Commission rules: 17 CFR 228.10(e), 229.10(c), 230.134(a)(14), 230.436(g), 239.13, 239.32, 239.33, 240.3a1–1(b)(3), 240.10b–10(a)(8), 240.15c3–1(c)(2)(vi)(E), (F), and (H), 240.15c3–1a(b)(1)(i)(C), 240.15c3–1f(d), 242.101(c)(2), 242.102(d), 242.300(k)(3) and (l)(3), 270.2a–7(a)(10), 270.3a–7(a)(2), 270.5b–3(c), and 270.10f–3(a)(3).

held by money market funds? Are there readily available public sources of information sufficient to calculate credit spreads on domestic and foreign debt securities? Are there other model-based statistical scoring systems and/or market-based alternatives that would be viable alternatives to NRSRO ratings?

Question 5: What are the advantages and disadvantages of requiring the SROs to set appropriate standards for broker-dealers to use in determining rating categories for net capital purposes? What form might these standards take?

Question 6: What are the advantages and disadvantages of eliminating the "objective test" from rule 2a–7, and relying solely on the "subjective test"—the credit analysis performed by the adviser to the money market fund—for the purposes of determining asset quality?

Question 7: What are the advantages and disadvantages of relying upon specified investor sophistication, large size denomination, or asset and structure experience criteria for purposes of determining Form S–3 eligibility? Should the Commission explore these possibilities in more depth? If so, what specific criteria should be considered?

Question 8: Are there alternatives other than those discussed above that might be better substitutes for the NRSRO designation in particular Commission rules?

Question 9: If the Commission discontinued using the NRSRO designation, should an entity other than the Commission recognize NRSROs for uses other than Commission rules? If another entity, which entity? How would the transition from the Commission to that entity take place?

Question 10: If, on the other hand, the Commission should continue to use the NRSRO designation in some Commission rules, could that designation be eliminated from other rules? If so, which rules?

B. Recognition Criteria

Since the Commission adopted the NRSRO designation, Commission staff has developed a number of criteria for assessing the credit rating agencies whose ratings can be used for regulatory purposes. Before recognizing a credit rating agency as an NRSRO, the Commission staff first determines that the rating agency satisfies certain established criteria. The single most important criterion is that the rating agency is widely accepted in the U.S. as an issuer of credible and reliable ratings by the predominant users of securities ratings. The staff also reviews the operational capability and reliability of the rating agency, including: (1) The organizational structure of the rating agency; (2) the rating agency's financial resources (to determine, among other things, whether it is able to operate independently of economic pressures or control from the companies it rates); (3) the size and experience and training of the rating agency's staff (to determine if the entity is capable of thoroughly and competently evaluating an issuer's credit); (4) the rating agency's independence from the companies it rates; (5) the rating agency's rating procedures (to determine whether it has systematic procedures designed to produce credible and reliable ratings); and (6) whether the rating agency has internal procedures to prevent the misuse of non-public information and to minimize possible conflicts of interest, and whether those procedures are followed. These criteria are intended to reflect the view of the marketplace as to the credibility of the credit rating agency, and were developed, in part, after evaluating public comments received by the Commission on the NRSRO designation.

While some commenters believe that the current NRSRO recognition criteria are appropriate given the objectives of the NRSRO designation, others have commented that the criteria impose barriers to entry into the business of acting as a credit rating agency. Commenters have also indicated that the current NRSRO recognition process is not sufficiently transparent.

In addition, in light of recent corporate failures, some have criticized the performance of the credit rating agencies. Concerns also have been raised regarding the training and qualifications of credit rating agency analysts.

If the Commission retains the NRSRO designation, the Commission could seek to improve the transparency of the NRSRO recognition process by developing the following approach:

- The Commission could specify in more detail the types of information applicants need to provide to demonstrate, and that could be reviewed in evaluating, satisfaction of the various NRSRO criteria. For example, in reviewing the general acceptance of a rating agency as an issuer of credible and reliable ratings, the Commission could clarify that the review would consider evidence such as: (1) Attestations from authorized officers of users of securities ratings representing a substantial percentage of the relevant market that the applicant's ratings are credible and actually relied on by the user; (2) interviews with representatives of such users regarding the same; and (3) statistical data demonstrating market reliance on the applicant's ratings (*e.g.*, market movements in response to the applicant's rating changes).
- A rating agency that confines its activity to a limited sector of the debt market could be recognized as an NRSRO. The appropriateness of recognizing as an NRSRO a rating agency that confines its activity to a limited, or largely non-U.S., geographic area also could be considered.
- Recognition of NRSROs could occur through Commission action (rather than through staff no-action letters).
- Applications for NRSRO recognition could be publicized by the Commission, and public comment sought on the credibility and reliability of the applicant's ratings.
- The Commission could develop supplemental criteria that would be used to evaluate ratings quality applicable to both rating agencies performing traditional fundamental credit analysis and those primarily reliant on statistical models.
- A rating agency could be required to follow generally accepted industry standards of diligence, to be developed in consultation with a broad-based committee of market participants, in performing its ratings analysis.
- The Commission could establish a time period (*e.g.*, 90 days from receipt of all required information) to serve as a goal for action on NRSRO applications.

To assist the Commission in determining whether to modify the criteria currently used to recognize NRSROs (assuming the Commission continues to utilize the NRSRO concept), we seek commenters' views in response to the following questions:

Existing Substantive Criteria

Question 11: Are the criteria currently used by Commission staff to determine whether a credit rating agency qualifies as an NRSRO appropriate? If not, what are the appropriate criteria? How should a determination be made as to whether a credit rating agency has met each criterion?

Question 12: Is it appropriate to condition NRSRO recognition on a rating agency being widely accepted as an issuer of credible and reliable ratings by the predominant users of securities ratings in the United States (*e.g.*, underwriters, dealers, banks, insurance companies, mutual funds, issuers)? Would this general acceptance be verifiable through the examples set forth above (*e.g.*, requiring verification through attestations from, and interviews with, authorized officers of users of securities ratings, as well as using statistical data to demonstrate market reliance on an applicant's ratings)? As a more objective way of evidencing market reliance and credibility, should NRSRO recognition be conditioned on a credit rating agency documenting that it has been retained to rate securities issued by a broad group of well-capitalized firms?

Question 13: Should the Commission condition NRSRO recognition on a rating agency developing and implementing procedures reasonably designed to ensure credible, reliable, and current ratings? At a minimum, should each NRSRO have rating procedures designed to ensure that a similar analysis is conducted for similarly situated issuers and that current information is used in the rating agency's analysis? What minimum standards should the Commission use to determine whether the agency's ratings are current? Should each NRSRO use uniform rating symbols, as a means of reducing the risk of marketplace confusion? When reviewing a rating agency's procedures for obtaining information on which to base a rating action, should the Commission establish minimum due diligence requirements for rating agencies? How could these minimum requirements be developed? By the Commission? By the industry, with Commission oversight?

Question 14: Should the extent of contacts with the management of issuers (including access to senior level management of issuers) be a criterion used to determine NRSRO status? Should the Commission limit the credit ratings that can be used for regulatory purposes to credit ratings that include access to senior management of an issuer? If so, why?

Question 15: To the extent a credit rating agency uses computerized statistical models, what factors should be used to review the models? Could a credit rating agency that solely uses a computerized statistical model and no other qualitative inputs qualify as an NRSRO?

Question 16: Should the size and quality of the credit rating agency's staff be considered when determining NRSRO status? Should the Commission condition NRSRO recognition on a rating agency adopting minimum standards for the training and qualifications of its credit analysts? If so, what entity should be responsible for oversight of qualifications and training? How could the Commission verify whether a member of a rating agency's staff is or was previously subject to disciplinary action by a financial (or other) regulatory authority?

Question 17: Should the Commission condition NRSRO recognition on an entity's meeting standards for a minimum number of rating analysts or a maximum average number of issues covered per analyst? For example, should the Commission question whether a single analyst can credibly and reliably issue and keep current credit ratings on securities issued by hundreds of different issuers? Or would this level of scrutiny involve the Commission too deeply in the business practices of rating agencies?

Question 18: Is a credit rating agency's organizational structure an appropriate factor to consider when evaluating a request for NRSRO status? Should the agency that seeks recognition consent to limiting its business to issuing credit ratings or could it conduct other activities, such as rating advisory services?

Question 19: Should the Commission consider a credit rating agency's financial resources as a factor in determining NRSRO status? If so, how? Should NRSRO recognition be conditioned on a rating agency meeting minimum capital or revenue requirements?

Other Factors To Be Considered

Question 20: Should a rating agency that confines its activity to a limited sector of the debt market be considered for NRSRO recognition? Should a rating agency that confines its activity to a limited (or largely non-U.S.) geographic area also be considered?

Question 21: Should the Commission consider a provisional NRSRO status for rating agencies that comply with NRSRO recognition criteria but lack national recognition?

Question 22: Should the Commission develop supplemental criteria to evaluate ratings quality that would be applicable to both rating agencies performing traditional fundamental credit analysis and those primarily reliant on statistical models?

Question 23: Should the Commission consider other criteria in making the NRSRO determination, such as the existence of effective procedures reasonably designed to prevent conflicts of interest and alleged anticompetitive, abusive, and unfair practices, and improve information flow surrounding the ratings process?[11]

Question 24: Should the Commission expect NRSROs to follow generally accepted industry standards of diligence? If so, should the Commission encourage the establishment of a committee of market participants to develop those standards? Or should they be devised through other means?

Recognition Process

Question 25: Should recognition of NRSROs occur through Commission action (rather than through staff no-action letters)? Should the Commission establish an appeal process if the staff remains responsible for the recognition of NRSROs?

Question 26: Should the Commission publicize applications for NRSRO recognition, and seek public comment on the credibility and reliability of the applicant's ratings?

Question 27: Should the Commission establish a time period to serve as a goal for action on applications for NRSRO recognition? If so, would an appropriate time period be 90 days after all required information has been received, or a shorter or longer period?

C. Examination and Oversight of NRSROs

Each of the current NRSROs is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Commission's 1997 NRSRO rule proposal would have required this registration. Commenters disagree on whether NRSROs should or could be subject to this amount of regulatory oversight, or even greater regulatory oversight. Some indicate that greater regulation is essential given the importance of their credit ratings to investors, and the influence such ratings can have on the securities markets. Others question the authority and the feasibility of the Commission to impose greater oversight. Some also question whether additional regulatory oversight—particularly the burdens associated with the possibility of a regulatory assessment of the quality of ratings analysis—is justified in light of the performance of credit rating agencies over the past decades.

Assuming the Commission can and should increase its ongoing oversight of NRSROs, the Commission could develop the following approach:

- The Commission could condition NRSRO recognition on a rating agency's agreeing to file annual certifications with the Commission that it continues to comply with all of the NRSRO criteria.
- The Commission also could solicit public comment annually on the performance of each NRSRO, including whether the NRSRO's ratings continue to be viewed as credible and reliable.
- The Commission could condition NRSRO recognition on a rating agency's

[11] *See* sections D, E, and F *infra* for additional discussion of these issues.

agreeing to maintain specified records relating to its ratings business, including those relating to ratings decisions.

• The Commission could condition NRSRO recognition on a rating agency's agreeing to submit to regular Commission inspections and examinations to determine compliance with the appropriate regulatory regime for NRSROs.

• The Commission could condition NRSRO recognition on a rating agency's agreeing to provide Commission staff with access to all personnel and books and records.

• The Commission could condition NRSRO recognition on a rating agency's agreeing to cooperate with the Commission in relevant investigations, including providing access to records and personnel.

To seek commenters' views on whether credit rating agencies should be subject to ongoing oversight, the Commission requests responses to the following questions:

Question 28: Should NRSRO recognition be conditioned on an NRSRO's meeting the original qualification criteria on a continuing basis? If so, should a failure to meet the original qualification criteria lead to revocation of NRSRO recognition? Should some other standard of revocation apply?

Question 29: What would be the appropriate frequency and intensity of any ongoing Commission review of an NRSRO's continuing compliance with the original qualification criteria?

Question 30: Should NRSRO recognition be conditioned on a rating agency's filing annual certifications with the Commission that it continues to comply with all of the NRSRO criteria?

Question 31: Should the Commission solicit public comment on the performance of each NRSRO, including whether the NRSRO's ratings continue to be viewed as credible and reliable? If so, how frequently should public comment be solicited (*e.g.*, annually)?

Question 32: Should NRSROs be subject to greater regulatory oversight? If so, what form should this additional oversight take? If necessary, should the Commission seek additional jurisdictional authority from Congress?

Question 33: Should NRSRO recognition be conditioned on a rating agency's registering as an investment adviser under the Advisers Act? If so, how should the various sections of the Advisers Act apply to NRSROs? Could the Advisers Act rules be amended to make them more relevant to the businesses of NRSROs? Alternatively, would it be more appropriate for the Commission to adopt a separate registration and regulatory regime for NRSROs?

Question 34: Should NRSRO recognition be conditioned on recordkeeping requirements specifically tailored to the ratings business? Should NRSRO recognition be conditioned on a rating agency's maintaining records relating to the ratings business, including those relating to rating decisions?

Question 35: Are there minimum standards or best practices to which NRSROs should adhere? If so, how should these be established? By the Commission? By the industry, with Commission oversight? Should they be incorporated into the conditions for NRSRO recognition? Would it, or would it not, be a productive use of Commission resources to develop the expertise to review, *e.g.*, issues related to the quality and diligence of the ratings analysis?

Question 36: If a currently recognized NRSRO gave up its NRSRO recognition because of concerns regarding the regulatory and liability environment, what effect, if any, would that action have on the market?

D. Conflicts of Interest

Conflicts of interest may arise in several areas within a credit rating agency. As registered investment advisers, the current NRSROs have a legal obligation to avoid conflicts of interest or disclose them fully to subscribers. Reliance by credit rating agencies on issuer fees could lead to a conflict of interest and the potential for rating inflation. While many commenters believe that NRSROs have effectively managed this conflict, they stress the importance of NRSROs implementing stringent firewalls, independent compensation, and other related procedures. The NRSROs have represented that they have implemented a number of policies and procedures designed to assure the independence and objectivity of the ratings process, such as requiring ratings decisions to be made by a ratings committee, imposing investment restrictions, and adhering to fixed fee schedules. In addition, they assert that rating analyst compensation is merit-based (*e.g.*, based on the demonstrated reliability of their ratings), and is not dependent on the level of fees paid by issuers the analyst rates. Further, the NRSROs take the position that their reputation for issuing objective and credible ratings is of paramount importance and that they would not jeopardize their reputation by attempting to appease an issuer.

Some also believe that conflicts of interest can arise when credit rating agencies offer consulting or other advisory services to the entities they rate. The NRSROs generally represent that they have established extensive guidelines to manage conflicts in this area, including firewalls to separate their ratings services from other ancillary businesses. They also indicate that advisory services presently represent a very small portion of their total revenues. Commenters have also expressed concern that conflicts in this area could become much greater if these ancillary services were to become a substantial portion of an NRSRO's business, and suggestions were made that their percentage contribution to the total revenues of an NRSRO be capped. Others were concerned that issuers could be unduly pressured to purchase advisory services, particularly in cases where they were solicited by a rating analyst at an NRSRO.

Finally, some have expressed concern that subscribers, as a practical matter, have preferential access to rating analysts and, as a result, inappropriately may learn of potential rating actions or other nonpublic information.

To manage these potential conflicts of interest, the Commission could develop the following approach:

• NRSRO recognition could be conditioned on a rating agency's developing and implementing procedures to address issuer influence (*e.g.*, prohibiting ratings employees from participating in the solicitation of new business or fee negotiations, and basing their compensation on factors other than business maintenance or development).

• NRSRO recognition could be conditioned on a rating agency's developing and implementing procedures to address subscriber influence (*e.g.*, restricting private contacts between ratings employees and subscribers, to help prevent intentional or inadvertent disclosure of confidential issuer information and information regarding forthcoming rating changes).

• NRSRO recognition could be conditioned on a rating agency's developing and implementing procedures to address issues regarding ancillary fee-based services (*e.g.*, establishing strict firewalls between ratings employees and ancillary business development, and prohibiting compensation of ratings employees from being impacted by revenues from these services).

• NRSRO recognition could be conditioned on a rating agency's having adequate financial resources (*e.g.*, net assets of at least $100,000, or annual gross revenues of at least $1,000,000) to reduce dependence on individual issuers or subscribers.

• NRSRO recognition could be conditioned on a rating agency's deriving less than a certain percentage of its revenues (*e.g.*, 3%) from a single source to help assure that the NRSRO operates independently of economic pressures from individual customers.

To address the concerns raised with regard to conflicts of interest, the Commission requests commenters' views in response to the following questions:

Question 37: Should the Commission condition NRSRO recognition on an NRSRO's agreeing to document its procedures that address potential conflicts of interest in its business including, but not limited to, potential issuer and subscriber influence? If so, what other potential conflicts should these procedures address?

Question 38: To what extent could concerns regarding potential conflicts of interest be addressed through the disclosure of existing and potential conflicts of interest when an NRSRO publishes ratings?

Question 39: Should NRSRO recognition be conditioned on an NRSRO prohibiting employees involved in the ratings process (*e.g.*, rating analysts and rating committee members) from participating in the solicitation of new business and from fee negotiations? Would conditioning NRSRO recognition on a rating agency's establishing strict firewalls between employees in these areas and credit analysts address potential conflicts? Should the Commission also address the credit analyst compensation structure to minimize potential conflicts of interest?

Question 40: Should NRSRO recognition be conditioned on an agreement by a rating agency not to offer consulting or other advisory services to entities it rates? Could concerns regarding conflicts of interest be addressed by limiting or restricting consulting or advisory services offered by rating agencies?

Question 41: Should NRSRO recognition be conditioned on a prohibition on credit rating analysts employed by NRSROs from discussing rating actions with subscribers? If not prohibited, should the Commission adopt limits on contacts between analysts and subscribers? Or are existing remedies—antifraud, contractual, or otherwise—sufficient to deter inappropriate disclosures to subscribers?

Question 42: Should NRSRO recognition be conditioned on a rating agency having adequate financial resources (*e.g.*, net assets of at least $100,000, or annual gross revenues of at least $1,000,000) to reduce dependence on individual issuers or subscribers?

Question 43: Should NRSRO recognition be conditioned on a rating agency not deriving more than a certain percentage of its revenues (*e.g.*, 3%) from a single source to help assure that the NRSRO operates independently of economic pressures from individual customers?

Question 44: Are there other ways to address potential conflicts of interest in the credit rating business or to minimize their consequences?

E. Alleged Anticompetitive, Abusive, and Unfair Practices

Some have alleged that certain of the larger credit rating agencies abused their dominant market position by engaging in certain aggressive competitive practices. Fitch complained that S&P and Moody's were attempting to squeeze it out of certain structured finance markets by engaging in the practice of "notching"—lowering their ratings on, or refusing to rate, securities issued by certain asset pools (*e.g.*, collateralized debt obligations), unless a substantial portion of the assets within those pools were also rated by them.

With respect to unsolicited ratings, some commenters have questioned the appropriateness of a rating agency's attempting to induce an issuer to pay for a rating the issuer did not request (*e.g.*, sending a bill for an unsolicited rating, or sending a fee schedule and "encouraging" payment).

To address these issues, the Commission could develop the following approach:

• NRSRO recognition could be conditioned on a rating agency's implementing adequate procedures to prevent anticompetitive and other unfair practices, including prohibitions on: (1) Requiring a ratings client to purchase an ancillary service as a precondition for performance of the ratings service and, perhaps, other anticompetitive practices (even those that would not violate the antitrust laws); and (2) engaging in specified "strong-arm" tactics with respect to unsolicited ratings.

The Commission invites commenters' views concerning the existence of these practices and requests commenters' views on the following questions:

Question 45: Should the Commission identify specific anti-competitive practices that NRSROs would agree to prohibit as a condition to NRSRO recognition? If so, what are those practices?

Question 46: Would it be sufficient to condition NRSRO recognition on the adoption of procedures intended to prevent anticompetitive, abusive, and unfair practices from occurring?

Question 47: Should NRSRO recognition specifically be conditioned on an NRSRO's agreeing to forbear from requiring issuers to purchase ancillary services as a precondition for performance of the ratings service?

Question 48: Should NRSRO recognition specifically be conditioned on an NRSRO's not engaging in specified practices with respect to unsolicited ratings (*e.g.*, sending a bill for an unsolicited rating, sending a fee schedule and "encouraging" payment, indicating a rating might be improved with the cooperation of the issuer)?

F. Information Flow

Several commenters have stressed the importance of transparency in the ratings process. Among other things, they assert that fluctuations in security prices in response to rating actions could often be less pronounced if credit rating agencies disclosed more information about the assumptions underlying their ratings (*e.g.*, specific events that might prompt a rating change), as well as the information and documents reviewed by them in reaching a ratings decision (*e.g.*, whether the issuer participated in the rating process).

To address issues that have been raised with regard to information flow from credit rating agencies, the Commission could develop the following approach:

• NRSRO recognition could be conditioned on a rating agency's implementing procedures to assure appropriate disclosure of key information about its ratings and rating processes, including: (1) Widespread public dissemination of its ratings; (2) identifying an unsolicited rating as such; (3) annual disclosure of specified ratings performance information; and (4) public disclosure of the key bases of, and assumptions underlying, the ratings decision (pursuant to generally accepted industry standards to be developed by a broad-based committee of market participants).

• NRSRO recognition could be conditioned on a rating agency's implementing procedures to assure appropriate public notification when it ceases rating/following an issuer.

To explore ways to improve the quality of information available to users of credit ratings, the Commission requests commenters' views on the following questions:

Question 49: Should the Commission address concerns about information flow from rating agencies? If so, should

the Commission condition NRSRO recognition on a rating agency's agreeing to establish procedures to assure certain disclosures relating to its ratings business, such as those described above? Are there other disclosures that could be appropriate?

Question 50: Specifically, should NRSRO recognition be conditioned on a rating agency disclosing the key bases of, and assumptions underlying its rating decisions? If so, should these disclosures be made pursuant to standards developed by the industry, or otherwise?

Question 51: Would it be advisable for the Commission to condition NRSRO recognition on a rating agency's agreeing to disclose performance information periodically? If so, what type of performance information would be most useful? How often should it be disclosed?

Question 52: Should NRSRO recognition be conditioned on a rating agency's disclosing whether or not an issuer participated in the rating process? Or, could issuers be required to make such disclosures?

Question 53: Concerns have been raised that certain credit rating agencies make their credit ratings available only to paid subscribers, and that it would be inappropriate to require users of credit ratings to subscribe for a fee to an NRSRO's services to obtain credit ratings for regulatory purposes. What steps, if any, should the Commission take to address these concerns? For example, should NRSRO recognition be conditioned on a rating agency's agreeing to public dissemination of its ratings on a widespread basis at no cost, as is currently the case?

Question 54: Should NRSRO recognition be conditioned on a rating agency's implementing procedures to assure public notification when it ceases rating/following an issuer. If so, what form of public notification would be appropriate?

G. Other

During the Commission's review of credit rating agencies, certain issues were raised that do not directly relate to the topics discussed above, but on which the Commission is interested in receiving comment. First, the Commission is interested in exploring whether there are types of information that, if disclosed by an issuer, or disclosed in a more meaningful way, would be useful to rating agencies in making their credit assessments. In addition, concerns were raised that a "ratings cliff" exists in the commercial paper market, such that a slight downgrade of an issuer's commercial paper rating can dramatically restrict its access to the U.S. money markets.

In this regard, the Commission solicits commenters' answers to the following questions:

Question 55: What steps, if any, can the Commission take to improve the extent and quality of disclosure by issuers to rating agencies or to the public generally, and in particular, regarding: (a) Ratings triggers in financial covenants tied to downgrades; (b) conditional elements of material financial contracts; (c) short-term credit facilities; (d) special purpose entities; and (e) material future liabilities.

Question 56: Is it appropriate for the Commission to take steps to minimize the ratings "cliff" that has been represented to be particularly pronounced in the commercial paper market? If so, what steps should the Commission take?

III. Solicitation of Additional Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to credit rating agencies. Please be as specific as possible in your discussion and analysis of any additional issues.

By the Commission.

Dated: June 4, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14867 Filed 6–11–03; 8:45 am]

BILLING CODE 8010–01–P

Reader Aids

Federal Register

Vol. 68, No. 113

Thursday, June 12, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10
34775–35148	11
35149–35264	12

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339
7684 34775

Executive Orders:
13159 (See Notice of June 10, 2003) 35149

Administrative Orders:
Notices:
Notice of June 10, 2003 35149

4 CFR

81 33831

7 CFR

2 35256
319 34517
457 34261
723 34777
800 32623
802 34519
1400 33341
1464 34777

Proposed Rules:
810 33408
3560 32872
3565 34552

8 CFR

212 35151

9 CFR

82 34779
430 34208

Proposed Rules:
93 33028

10 CFR

72 33611
73 33611
765 32955

12 CFR

615 ..... 33347, 33617
703 32958
742 32958
1700 32627

13 CFR

121 33348

Proposed Rules:
121 33412

14 CFR

25 ..... 33834, 33836
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787, 35152, 35155, 35157, 35160, 35163
71 ..... 32633, 33231, 33360, 3361, 33579, 33623
95 34522
97 32633

Proposed Rules:
25 33659
36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849, 35186
71 ..... 33426, 33427, 34340

15 CFR

742 34526
744 34192
745 34526
772 34192
774 34526

Proposed Rules:
930 34851

16 CFR

Proposed Rules:
1500 35191

17 CFR

1 34790
30 33623
40 33623

18 CFR

201 34795

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

20 CFR

Proposed Rules:
220 34341

21 CFR

165 34272
201 32979
310 ..... 33362, 34273
347 33362
349 32981
350 34273
352 33362
369 34273
510 ..... 33381, 34293
520 ..... 34533, 34795

522 .....33856, 34533, 34796
524 33381
558 34534
601 34796
878 32983
888 32635

Proposed Rules:
201 33429
343 33429

24 CFR

Proposed Rules:
1000 34344

25 CFR

170 33625
309 35164

26 CFR

1 .....33381, 34293, 34797
31 34797
301 33857
602 .....34293, 34797

Proposed Rules:
1 .....34344, 34874, 34875
14a 34344
25 34875
31 34875
53 34875
55 34875
156 34875
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698

28 CFR

5 33629
571 .....34299, 34301
802 32985

29 CFR

1910 32637
1926 35172

Proposed Rules:
1910 .....33887, 34036
1915 34036
1926 34036

30 CFR

Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196

33 CFR

100 .....32639, 32641
117 .....32643, 34302, 34303, 34535, 34799, 34800, 34801
165 .....32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803, 35172

Proposed Rules:
117 34877
165 .....33894, 33896, 34370

36 CFR

215 33582
230 34309
242 33402
251 35117
1253 33404

38 CFR

3 34539
13 34539
21 .....34319, 34326, 35177
61 34332

Proposed Rules:
20 33040

39 CFR

111 .....33858, 34805

40 CFR

51 33764
52 .....32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821
62 .....34332, 35181
180 .....33876, 34825
261 32645
271 .....34334, 34829
439 34831
712 34832

Proposed Rules:
Ch. I 33898
51 32802
52 .....33041, 33042, 33043, 33665, 33898, 33899, 34560
62 35191
82 33284
146 33902
194 33429

42 CFR

412 .....34122, 34494

Proposed Rules:
412 .....33579, 34492
413 .....33579, 34492, 34768

43 CFR

4 33794
3800 32656
4100 33794
5000 33794

44 CFR

64 32657
65 .....32659, 32660
67 .....32664, 32669
206 34545

Proposed Rules:
67 .....32699, 32717

46 CFR

221 33405

47 CFR

2 .....32676, 33020, 33640, 34336
21 34547
25 .....33640, 34336
52 34547
73 .....32676, 33654
74 .....32676, 34336
78 34336
80 32676
87 32676
90 32676
95 32676
97 .....32676, 33020

Proposed Rules:
1 34560
2 .....33043, 33666
15 32720
21 34560
25 33666
64 32720
73 .....33431, 33668, 33669
74 34560
101 34560

48 CFR

2 33231
32 33231
52 33231
252 33026

Proposed Rules:
15 33330
31 33326
52 33326
204 34879
206 33057

49 CFR

1 .....34548, 35183
107 32679
171 32679
173 32679
177 32679
180 32679
375 35064
377 35064
567 33655
571 .....33655, 34838
574 33655
575 .....33655, 35184
579 .....35132, 35145
597 33655

Proposed Rules:
171 34880
172 34880
173 34880

50 CFR

17 34710
100 33402
635 35185
648 33882
660 32680
679 34550

Proposed Rules:
16 33431
17 .....33058, 33234, 34569
402 33806
648 33432
660 33670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 12, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Shell eggs, voluntary grading:
- USDA "Produced From" grademark requirements; published 5-13-03

Tobacco inspection:
- Flue-Cured Tobacco Advisory Committee; membership regulations amendments; published 5-13-03

ENVIRONMENTAL PROTECTION AGENCY
Water pollution; effluent guidelines for point source categories:
- Metal products and machinery; published 5-13-03

FEDERAL COMMUNICATIONS COMMISSION
Radio broadcasting:
- World Radiocommunication Conferences; frequency bands below 28 MHz; published 5-13-03
- Correction; published 6-2-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
- Texas; published 5-13-03

HOMELAND SECURITY DEPARTMENT
Organization, functions, and authority delegations:
- Parole authority; implementation; published 6-12-03

POSTAL SERVICE
Domestic Mail Manual:
- Restricted or nonmailable articles and substances—
  - Infectious substances; mailing and packaging standards; published 6-6-03

TRANSPORTATION DEPARTMENT
Organization, functions, and authority delegations:
- Secretarial successsion; published 6-12-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- General Electric Co.; published 5-8-03

Class E airspace; published 5-9-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
- California; comments due by 6-20-03; published 4-21-03 [FR 03-09672]

Potatoes (Irish) grown in—
- Colorado; comments due by 6-16-03; published 5-30-03 [FR 03-13519]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
- Portland International Airport, OR; livestock exportation port designation; comments due by 6-18-03; published 5-19-03 [FR 03-12389]

Interstate transportation of animals and animal products (quarantine):
- Exotic Newcastle disease; quarantine area designations—
  - Texas and New Mexico; comments due by 6-16-03; published 4-16-03 [FR 03-09322]

Plant-related quarantine, domestic:
- Asian longhorned beetle; comments due by 6-18-03; published 5-19-03 [FR 03-12390]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
- Multi-serve, meal-type meat and poultry products; nutrient content claims; comments due by 6-16-03; published 4-16-03 [FR 03-09258]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - South Atlantic pelagic sargassum habitat; comments due by 6-16-03; published 4-17-03 [FR 03-09490]
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 6-19-03; published 5-20-03 [FR 03-12648]
- South Atlantic fisheries—
  - South Atlantic pelagic sargassum habitat; correction; comments due by 6-16-03; published 5-5-03 [FR 03-10802]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 6-17-03; published 6-2-03 [FR 03-13704]

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - National Defense Authorization Act for 2002 FY; implementation; medical benefits, etc.; comments due by 6-16-03; published 4-16-03 [FR 03-09153]

Federal Acquisition Regulation (FAR):
- Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; VA approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12025]

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12474]
- Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12178]
- Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12027]
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Allethrin, etc.; nomenclature changes; comments due by 6-17-03; published 4-18-03 [FR 03-09484]
  - Propylene oxide, etc.; nomenclature changes; comments due by 6-16-03; published 4-17-03 [FR 03-09483]

FARM CREDIT ADMINISTRATION
Farm credit system:
- Financing eligibility and scope, loan policies and operations, and general provisions—
  - Credit and related services; miscellaneous amendments; comments due by 6-20-03; published 5-21-03 [FR 03-12631]

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
- Bank director eligibility, appointment, elections; comments due by 6-17-03; published 3-19-03 [FR 03-06595]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
- Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
- General and plastic surgery devices—
  - Silicone sheeting; classification; comments due by 6-18-03; published 3-20-03 [FR 03-06646]

Reports and guidance documents; availability, etc.:
- Developing Medical Imaging Drug and Biological Products; comments due by 6-18-03; published 5-19-03 [FR 03-12370]

HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
- Health Insurance Portability and Accountability Act of 1996—
  - Civil money penalties; investigations

procedures; penalties imposition, and hearings; comments due by 6-16-03; published 4-17-03 [FR 03-09497]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Valdez and Valdez Narrows, AK; security zone; comments due by 6-15-03; published 5-16-03 [FR 03-12183]
Tampa Bay, FL; security zones; comments due by 6-17-03; published 4-18-03 [FR 03-09650]
Regattas and marine parades, and drawbridge operations:
Toledo Tall Ships Parade, OH; comments due by 6-15-03; published 5-20-03 [FR 03-12492]

HOMELAND SECURITY DEPARTMENT
Critical Infrastructure Information; handling procedures; comments due by 6-16-03; published 4-15-03 [FR 03-09126]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Emergency operations; comments due by 6-16-03; published 4-16-03 [FR 03-09310]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Sound recordings and ephemeral recordings; digital performance right; comments due by 6-19-03; published 5-20-03 [FR 03-12349]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Public use; threats added as prohibited behavior; comments due by 6-17-03; published 4-18-03 [FR 03-09585]
Correction; comments due by 6-17-03; published 5-2-03 [FR 03-10808]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Nasdaq-listed securities; uniform trading rules; petition; comments due by 6-19-03; published 5-20-03 [FR 03-12604]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Mental disorders; medical evaluation criteria; comments due by 6-16-03; published 3-17-03 [FR 03-06278]

STATE DEPARTMENT
Claims and stolen property:
Stolen property under treaty with Mexico; CFR part removed; comments due by 6-16-03; published 5-16-03 [FR 03-12294]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 6-16-03; published 4-16-03 [FR 03-09011]
Boeing; comments due by 6-16-03; published 5-1-03 [FR 03-10728]
Dassault; comments due by 6-19-03; published 5-20-03 [FR 03-12110]
Learjet; comments due by 6-20-03; published 4-21-03 [FR 03-09430]
McDonnell Douglas; comments due by 6-16-03; published 4-15-03 [FR 03-08892]
Raytheon; comments due by 6-20-03; published 5-5-03 [FR 03-10726]
Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 6-16-03; published 4-15-03 [FR 03-09017]
Class E airspace; comments due by 6-16-03; published 4-21-03 [FR 03-09729]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Future air bags designed to create less risk of serious injuries for small women and young children, etc.; requirements phase-in; comments due by 6-19-03; published 5-5-03 [FR 03-10945]
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (2001 CY); comments due by 6-16-03; published 4-15-03 [FR 03-09186]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Securities; reporting and disclosure requirements; comments due by 6-20-03; published 5-21-03 [FR 03-12259]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS * PERIODICALS * ELECTRONIC PRODUCTS

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

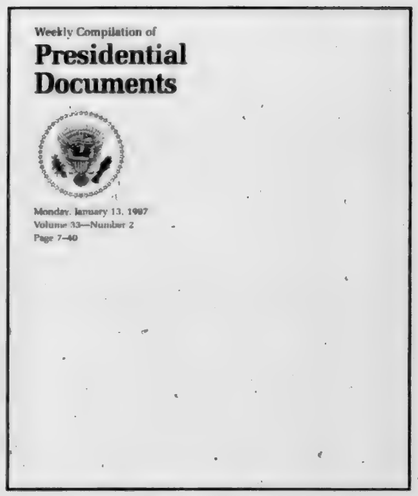
Company or personal name (Please type or print)
Additional address/attention line
Street address
City, State, ZIP code
Daytime phone including area code
Purchase order number (optional)
May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)
Thank you for your order!
Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 5420**

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

6–13–03 Friday
Vol. 68 No. 114 June 13, 2003

Federal Register

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–13–03 Friday
Vol. 68 No. 114 June 13, 2003

Pages 35265–35524

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register
Vol. 68, No. 114
Friday, June 13, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Federal Crop Insurance Corporation
See Food and Nutrition Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Air Force Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35391

Animal and Plant Health Inspection Service
RULES
Viruses, serums, toxins, etc.:
Biological products; residual free formaldehyde content determination; standard requirements, 35282–35283

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Amine azide propellant, 35391
Controlled debonding of elements using shape memory alloy actuators; article and method, 35391
Easy access dental field operating and treatment system having over-the-patient delivery, 35391–35392
Enzymatic polymerization of anilines or phenols around a template, 35392
Microfluidized leishmania lystate and methods of using and making, 35392
Shaped charge explosive device and method of making same, 35392
Spread spectrum image steganography, 35392

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35416–35418
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 35418
Injury Prevention and Control Advisory Committee, 35418–35419
National Institute for Occupational Safety and Health—Safety and Occupational Health Study Section, 35419

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alabama, Arkansas, Louisiana, and Mississippi, 35380–35381
Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee, 35381
Pennsylvania, 35381

Coast Guard
RULES
Drawbridge operations:
Florida, 35296–35297

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 35379–35380

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Macau, 35388
Macedonia, 35388–35389
Malaysia, 35389–35390
Textile and apparel categories:
African Growth and Opportunity Act; short supply requests—
Light- and medium-weight dyed warp pile cotton velvet for use in apparel articles, 35390–35391

Commodity Credit Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Grassland Reserve Program, 35360–35363

Comptroller of the Currency
RULES
Debt cancellation contracts and debt suspension agreements; national bank standards; compliance date change, 35283–35285

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
See Navy Department

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Anabolic steriod products
Suspension, 35293–35294

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and other programs, 35393–35394

Employment and Training Administration
NOTICES
Reports and guidance documents; availability, etc.:
Workforce security programs; unemployment compensation and public employment services; Unemployment Insurance Program Letters interpreting Federal law, 35429–35444

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 35444–35454

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Woodbridge River Basin, Middlesex County, NJ; flood control and aquatic ecosystem restoration study, 35392–35393

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Various States, 35299–35303
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Imidacloprid, 35303–35315
Toxic substances:
Significant new uses—
Burkholderia cepacia complex, 35315–35320
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Various States, 35348–35349
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Humates, 35349–35354
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 35407–35408
Weekly receipts, 35406–35407
Water pollution control:
National Pollutant Discharge Elimination System—
Colorado; Federal facility small municipal separate storm sewer systems; storm water discharges; general permit, 35408–35409

Farm Service Agency
PROPOSED RULES
Program regulations:
Value-added producer grants and agricultural innovation centers, 35321–35334

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Iraq; flights within territory and airspace; prohibition removed, 35523–35524
Airworthiness directives:
Pratt & Whitney, 35286–35287
Airworthiness standards:
Special conditions—
Raytheon Aircraft Co. HS 125 Series 700A and 700B airplanes; correction, 35285
Class E airspace, 35287–35288
Commercial space transportation; licensing regulations; technical amendments, 35289–35290
Federal airways and jet routes, 35288–35289
PROPOSED RULES
Airworthiness standards:
Special conditions—
Boeing Model 777 series airplanes, 35335–35345
NOTICES
Advisory circulars; availability, etc.:
Reusable software components, 35472
Meetings:
RTCA, Inc., 35473
RTCA Program Management Committee, 35472–35473
Reports and guidance documents; availability, etc.:
Diesel Engine Installation; policy statement, 35473
Multi-function displays; installation approval using Approved Model List Supplemental Type Certification Process; policy statement, 35473–35474

Federal Communications Commission
NOTICES
Common carrier services:
Telecommunications relay services—
Consumer information and complaints; office or contact person requirement, 35409–35410

Federal Crop Insurance Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Risk Management Education Commodity Partnerships and Crop Insurance Education in Targeted States, 35363–35372
Risk management research partnerships, 35372–35376

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
FPL Energy Seabrook, LLC, et al., 35394–35395
Midwest Independent Transmission System Operator, Inc., et al., 35395–35398

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 35410–35411
Formations, acquisitions, and mergers, 35411

Federal Retirement Thrift Investment Board
RULES
Thrift Savings Plan:
New record keeping system, implementation decisions, and addition of post-employment withdrawal methods; miscellaneous amendments, 35491–35521

Food and Drug Administration
RULES
Human drugs:
Skin protectant products (OTC)—
Astringent products; final monograph, 35290–35293
PROPOSED RULES
Human drugs:
Skin protectant products (OTC)—
Astringent products; final monograph, 35346–35348
NOTICES
Reports and guidance documents; availability, etc.:
Juice processing; HACCP principles application; standardized training curriculum, 35420

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35376–35377

Forest Service
NOTICES
Environmental statements; notice of intent:
Nez Perce National Forest, ID, 35377–35379

General Accounting Office
NOTICES
Commercial activities performance (OMB Circular A-76):
Bid protest regulations, etc., 35411–35413

General Services Administration
NOTICES
Environmental statements; notice of intent:
Silver Spring, MD; Food and Drug Administration; campus expansion and new eastern access road, 35413–35414

Grain Inspection, Packers and Stockyards Administration
RULES
Fees:
Official inspection and weighing services
Correction, 35490

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Meetings:
Vital and Health Statistics National Committee, 35414
Reports and guidance documents; availability, etc.:
Cystic fibrosis; mucus and mucins in bronchoalveolar lavage fluids from infants; characterization; research protocol, 35414–35415
Sleep mechanism in children; role of metabolism; research protocol, 35415–35416

Health Resources and Services Administration
NOTICES
Meetings:
Infant Mortality Advisory Committee, 35420–35421

Homeland Security Department
See Coast Guard
RULES
Organization, functions, and authority delegations:
Immigration powers and authority for officers and employees; Internal review process for standards for enforcement activities; revisions, 35273–35282
NOTICES
Meetings:
Homeland Security Advisory Council, 35421

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35421–35422
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 35422
Meetings:
Manufactured Housing Consensus Committee; conference call, 35423

Industry and Security Bureau
NOTICES
Export transactions:
Best practices for exporters/re-exporters and trade facilitation/freight forwarding companies regarding dual-use items transit, transshipment, and reexport
Correction, 35381

Interior Department
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35484–35485

International Trade Administration
NOTICES
Antidumping:
Glycine from—
China, 35382–35383
Saccharin from—
China, 35383
Silicon metal from—
China, 35383–35384
Welded stainless steel pipe from—
Taiwan, 35384–35385
Antidumping and countervailing duties:
Durum wheat and hard red spring wheat from—
Canada, 35381–35382
Grants and cooperative agreements; availability, etc.:
International Buyer Program; domestic trade shows support (2005 FY), 35385–35386

Justice Department
See Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35427–35429

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Horning Seed Orchard, OR; pest management program, 35423–35424
Provolt and Sprague Seed Orchards, OR; pest management program, 35424–35425
Southwest Oregon; Port-Orford-cedar management, 35425

Tyrell Seed Orchard, OR; pest management program, 35426
West Mojave Plan, CA, 35426–35427

National Aeronautics and Space Administration
RULES
Grant and Cooperative Agreement Handbook:
Unsolicited proposals, 35290
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35455
Meetings:
Transformation activities and initiatives; forum between agency's senior management and company representatives, 35455–35456
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Evergreen Performance & Compliance, Inc., 35456
HyPerComp Engineerings, Inc., 35456
Intellimotion, Inc., 35456
Phoenix Systems International, Inc., 35456–35457

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Brake hoses
Correction, 35354

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 35354–35359
NOTICES
Marine mammals:
Commercial fishing operations; incidental taking—
Atlantic Large Whale Take Reduction Plan, 35386–35388

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 35393
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Star Cyroelectronics, 35393

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 35457
Reports and guidance documents; availability, etc.:
Panoramic and underwater irradiators authorized to possess greater than 370 TerraBecquerels of byproduct material in form of sealed sources, 35458–35462

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health National Advisory Committee, 35454–35455

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing and paying benefits, 35294–35296
NOTICES
Employee Retirement Income Security Act:
International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan; special withdrawal liability rules; approval, 35462–35466
Multiemployer plans:
Interest rates and assumptions, 35466

Personnel Management Office
RULES
Employment:
Homeland Security Act of 2002; implementation—
Severe shortage of candidates and critical hiring needs; Governmentwide human resources flexibilities (direct-hire authority, etc.), 35265–35270
Retirement:
Homeland Security Act of 2002—
Voluntary early retirement, 35270–35273

Postal Service
NOTICES
Government Performance and Results Act:
Five-year strategic plan (2004-2008); revision and update, 35467–35468

Public Debt Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35485–35489

Rural Business-Cooperative Service
PROPOSED RULES
Program regulations:
Value-added producer grants and agricultural innovation centers, 35321–35334

Rural Housing Service
PROPOSED RULES
Program regulations:
Value-added producer grants and agricultural innovation centers, 35321–35334

Rural Utilities Service
PROPOSED RULES
Program regulations:
Value-added producer grants and agricultural innovation centers, 35321–35334

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35468–35469
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 35469–35472

Small Business Administration
RULES
Small business size standards:
Nonmanufacturer rule; waivers—
Overhead fiber optic groundwire and ancillary hardware components, 35285
PROPOSED RULES
Small business size standards:
Nonmanufacturer rule; waivers—
Other ordnance and accessories manufacturing, 35334
Small arms manufacturing, 35334–35335

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern et al., 35474–35480

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Public Debt Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35480–35484

Veterans Affairs Department
RULES
Privacy Act; implementation, 35297–35299

Western Area Power Administration
NOTICES
Power rate adjustments:
Loveland Area Projects, 35398–35402
Pick-Sloan Missouri Basin Program-Eastern Division, 35402–35406

Separate Parts In This Issue

Part II
Federal Retirement Thrift Investment Board, 35491–35521

Part III
Transportation Department, Federal Aviation Administration, 35523–35524

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
230 35265
301 35265
316 35265
333 35265
337 35265
410 35265
831 35270
842 35270
1600 35492
1601 35492
1603 35492
1604 35492
1605 35492
1606 35492
1640 35492
1645 35492
1650 35492
1651 35492
1653 35492
1655 35492
1690 35492

7 CFR
800 35490
Proposed Rules:
1951 35321
4284 35321

8 CFR
1 35273
103 35273
239 35273
287 35273

9 CFR
113 35282

12 CFR
37 35283

13 CFR
121 35285
Proposed Rules:
121 (2 documents) 35334

14 CFR
25 35285
39 35286
71 (4 documents) 35287, 35288
91 35524
401 35289
404 35289
413 35289
1260 35290
Proposed Rules:
25 35335

21 CFR
347 35290
1308 35293
Proposed Rules:
347 35346

29 CFR
4022 35294
4044 35294

33 CFR
117 35296

38 CFR
1 35297

40 CFR
62 35299
180 35303
725 35315
Proposed Rules:
62 35348
180 35349

49 CFR
Proposed Rules:
271 35354

50 CFR
Proposed Rules:
660 35354

Rules and Regulations

Federal Register
Vol. 68, No. 114
Friday, June 13, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230, 301, 316, 333, 337, and 410

RIN 3206–AJ 99

Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining System, and Training

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement certain Governmentwide human resources flexibilities contained in the Homeland Security Act of 2002. This regulation provides agencies with: increased flexibility in assessing applicants using alternative (category-based) rating and selection procedures; the ability to select qualified candidates for positions, including temporary and term positions, in the competitive service using direct-hire procedures; the authority to pay or reimburse the costs of academic degree training from appropriated or other available funds under specified conditions; and increased flexibility in the use of academic degree training to address agency-specific human capital requirements and objectives. This interim regulation will also remove part 333 of title 5, Code of Federal Regulations, Recruitment and Selection for Temporary and Term Appointments Outside the Register, and all related references to this part, including the authority to appoint using temporary appointments pending establishment of a register (TAPER).

DATES: These regulations are effective June 13, 2003. We will consider comments received on or before August 12, 2003.

ADDRESSES: Send, deliver or fax written comments to Ms. Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov*; fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: On alternative rating and selection procedures and direct-hire authority, Ms. Suzy Barker by telephone at (202) 606–0830, fax at (202) 606–2329 or by e-mail at *smbarker@opm.gov*. On emergency indefinite appointments, overseas employment, TAPER, and outside the register appointments, Ms. Diane Tyrrell by telephone at (202) 606–0830, fax at (202) 606–2329 or by e-mail at *dmtyrrel@opm.gov*. On training, Ms. LaVeen M. Ponds by telephone at (202) 606–1394, fax at (202) 606–2329 or by e-mail at *lmponds@opm.gov*. Ms. Barker, Ms. Tyrrell and Ms. Ponds may also be contacted by TTY at (202) 418–3134.

SUPPLEMENTARY INFORMATION: On November 25, 2002, the President signed the Homeland Security Act of 2002 (Act), Public Law 107–296, into law. This Act provides Federal agencies with a number of human resources (HR) flexibilities. These flexibilities include direct-hire authority and alternative (that is, category) rating and selection procedures, which will aid in recruitment and hiring. The Act also provides Federal agencies with the authority to pay or reimburse employees for the costs of academic degree training.

Direct-Hire Authority

Title 5 U.S.C. 3304 provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there is a severe shortage of candidates or a critical hiring need. The requirements and justification for the direct hire authorities are presented separately and distinct from each other in these interim regulations.

We are soliciting comments on whether we should combine the requirements and justification for a severe shortage of candidates and critical hiring needs into a single section or keep them in separate sections as written.

OPM may decide, on its own, that a severe shortage of candidates or a critical hiring need exists, either Governmentwide or in specified agencies, for one or more specific occupational series, grades (or equivalent), or geographic locations. Alternatively, an agency may, in a written request to OPM, identify the position(s) for which it believes a severe shortage or a critical hiring need exists. The agency must include relevant evidence, as described below, to support its request. Agencies that use this direct-hire authority must adhere to public notice requirements, as set forth in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G.

To demonstrate that a severe shortage of candidates exists for a position or group of positions, an agency must provide information showing that it is unable to identify candidates possessing the competencies required to perform the necessary duties of the position despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives. In determining whether there is a severe shortage of candidates for a position or group of positions, OPM will consider all relevant evidence, including an agency's demonstrated recruitment efforts, human capital management strategic plans that forecast agency workforce needs, relevant analyses made in connection with an agency's workforce planning efforts, labor market data, and employment trends. OPM will also consider whether a nationwide or geographical skills shortage exists, as well as the extent to which the position(s) at issue are located in an undesirable geographic location, will require the incumbent to perform onerous or undesirable duties, or will require the incumbent to work under extraordinary or extreme conditions.

To prove that a critical hiring need exists, an agency must demonstrate that it has a critical need to fill the position or positions to meet mission requirements brought about by an exigency such as a national emergency, threat or potential threat, environmental disaster, or other unanticipated or unusual event or mission requirement. A critical hiring need may also be triggered by the need to conform to

requirements of law, Presidential directive or Administration initiative, or a congressional or other mandate to meet new or expanded mission requirements by a particular date. In a request for direct-hire authority due to a critical hiring need, an agency must provide sufficient evidence to demonstrate that filling the position(s) is critical to the agency's mission and that the use of other hiring authorities is impracticable or ineffective.

To provide agencies with the ability to use the new direct-hire authority, as appropriate, for temporary and term appointments, emergency-indefinite appointments in a national emergency, and overseas limited appointments, OPM is revising 5 CFR 230.402, Agency Authority to Make Emergency-indefinite Appointments in a National Emergency; 5 CFR part 301, subpart B, Overseas Limited Appointments; 5 CFR 316.302, Selection of Term Employees; and 5 CFR 316.402, Procedures for Making Temporary Appointments.

This interim regulation will add subpart B to 5 CFR part 337 and amends 5 CFR parts 230, 301 and 316.

Elimination of Outside-the-Register Procedures

OPM is eliminating 5 CFR part 333, Recruitment and Selection for Temporary and Term Appointments Outside the Register, based on its conclusion that this hiring authority is now obsolete.

The current outside-the-register procedure is available for use only when there is an insufficient number of eligibles on the appropriate register. OPM initially established these procedures to give agencies an alternative to traditional examining methods when there were not enough qualified eligibles on a particular register. The Act, however, provides OPM with the authority to permit agencies to utilize an alternative to traditional examining methods (*i.e.*, direct-hire authority) when there is a severe shortage of candidates possessing the competencies to perform the job requirements or a critical hiring need. Currently, agencies using outside-the-register procedures are required to provide public notice, apply veterans' preference, and provide selection priorities to certain displaced employees. These requirements are essentially the same as those for the new direct-hire authority. Based upon the foregoing, the current procedures for outside-the-register appointments under 5 CFR part 333 are duplicative and no longer needed, and we are therefore eliminating this regulation.

This interim regulation removes 5 CFR part 333.

Elimination of the TAPER Authority

Based on the elimination of the outside-the-register authority, OPM is also eliminating the Temporary Appointments Pending the Establishment of a Register (TAPER) authority. The TAPER authority was proposed for elimination in 1996, but was ultimately retained to provide agencies with a simplified examining process when filling Worker-Trainee (GS–1 and WG–1 and 2) positions with applicants who had limited education and experience. The decision to retain this authority thus was in response to the Governmentwide need, in connection with the "Welfare to Work" initiative, to provide opportunity for welfare recipients to enter the workforce.

Within the past several years, OPM has authorized the use of a number of alternative hiring flexibilities to assist agencies when recruiting individuals with limited education and experience. For example, in 1999, OPM gave agencies authority to use alternatives to the written test normally required when making appointments to clerical positions. These changes, combined with the flexibilities provided by the Act, give agencies the authority to bypass the selection procedures established in title 5 of the United States Code in appropriate circumstances, and therefore obviate the need for an authority to temporarily appoint an individual pending establishment of a register.

Eliminating this regulation will not adversely affect employees currently serving under TAPER appointments. These individuals will continue to work under these appointments until they have completed the 3 years of service that entitles them, under 5 U.S.C. 3304a, to be converted to career appointments. Based on the foregoing, there is no longer a need to retain the TAPER authority.

This interim regulation eliminates 5 CFR part 316, subpart B.

Category Rating and Selection Procedures

Title 5 U.S.C. 3319 provides agencies with the authority to develop a category-based rating method as an alternative way of assessing and rating job applicants for positions filled through the competitive examining process. Traditionally, applicants for Federal jobs are assigned numerical scores, including veterans' preference points, if appropriate, and are considered for selection based on the "rule of three" (5 U.S.C. 3318(a)). The category rating system prescribed by the Act does not add veterans' preference points or apply the "rule of three" but protects the rights of veterans by placing them ahead of non-preference eligibles within each category. For all positions other than scientific and professional positions at GS–9 (and equivalent) or higher, otherwise qualified preference eligibles who have a compensable service-connected disability of at least 10 percent must be listed in the highest quality category. This requirement is similar to the provisions of 5 U.S.C. 3313, which are used in numerical rating.

Under a category rating system, the agency assesses candidates against job-related criteria and then places candidates into two or more pre-defined categories. The categories are defined through a job analysis conducted in accordance with the "*Uniform Guidelines on Employee Selection Procedures*," at 29 CFR part 1607 and 5 CFR part 300. The categories must be distinct from one another and clearly differentiate between the relative quality of candidates in each. For example, an agency could adopt a two-category system in which the higher category is used for those candidates who meet minimum qualifications and are highly proficient in all the requirements of the job, while the lower category is reserved for those candidates who meet the minimum qualifications and are proficient in some, but not all, of the requirements of the job. For each position to be filled, an agency must decide in advance if they will assess candidates using the traditional numerical ranking and "rule of three" procedures or category rating, and must publish this information in the job announcement. When using the category rating procedure, the job announcement must then clearly define the categories.

Specific guidance on using the category rating process will be included in OPM's Delegated Examining Operations Handbook (*www.opm.gov/deu/*).

The category rating process provides for selections to be made from the highest category or, if fewer than three candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second-highest quality categories. If a preference eligible is in the category, an agency may not select a non-preference eligible unless the agency requests to pass over the preference eligible, and its request is approved. Objections to a preference eligible must be processed by the agency's delegated examining office in accordance with 5 U.S.C. 3318(b) and 5 CFR 332.406. In addition, agencies are required to follow the provisions of 5 CFR 330.606 and 330.705, pertaining to order of selection.

The Act requires agencies to submit an annual report to Congress on the use of their category rating and selection procedures. For oversight purposes, OPM has required agencies to forward a copy of these reports to OPM.

This interim regulation adds subpart C to 5 CFR part 337.

Expanded Academic Degree Training Authority

Section 1331(a) of the Act amends the provisions of 5 U.S.C. 4107 by expanding the authority of an agency to pay or reimburse employees for the cost of academic degree training when such training contributes significantly to meeting an identified agency training need, resolving an identified agency staffing problem, or accomplishing goals in the agency's human capital management strategic plan. Such training must be part of a planned, systemic, and coordinated agency employee development program linked to accomplishing strategic human capital goals. According to 5 U.S.C. 4107(b)(2) agencies may not provide such training for the sole purpose providing an academic degree or as a means of qualifying for a position that requires an academic degree. However, an agency may provide an employee with the opportunity to obtain an academic degree or qualify for an appointment to a particular position for which the degree is required provided that the training is consistent with the agency's human capital management strategic plan and that selection for such training follows established competitive procedures. The academic training program must be provided by a college or university that is accredited by a nationally recognized body. OPM is amending its regulations to reflect these changes.

Agencies that pay or reimburse employees for academic degree training must generally require the employee benefiting from such training to enter into a continued service agreement with the agency prior to attending the training. Continued service agreement requirements apply to both tuition reimbursement programs and academic degree training programs.

This interim regulation revises subpart C of 5 CFR part 410.

Executive Order 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Waiver of Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the program changes do not mandate but will give agencies needed flexibilities to recruit, hire and retain high quality candidates quickly and effectively to respond to changing and critical mission requirements. The General Accounting Office has designated strategic human capital management as a Governmentwide high-risk area citing serious human capital shortfalls that erode the ability of agencies to "economically, efficiently and effectively perform their missions." The President's Management Agenda calls for agencies to "flatten the Federal hierarchy, reduce the time to make decisions, and increase the number of employees that provide services to citizens. The reform also will pursue targeted civil service reforms, such as performance-based compensation and management flexibilities to recruit, retain, and reward a high-quality workforce." With 50% of Federal employees eligible for retirement in the coming years, agencies must have contemporary, flexible tools for workforce management. Recent media articles have highlighted the public perception that getting a Federal job takes too long and is far too complicated. The Government needs the very best applicants; in turn applicants deserve a streamlined, understandable application process. These changes will accommodate that need.

None of the three flexibilities proposed by these regulations are new or untried. In fact, category rating has been used successfully by some agencies for a decade or more under demonstration authority and enabling legislation. Studies of category rating as implemented by the Department of Agriculture indicate that employment of veterans increases and diversity is not reduced. Private-sector companies routinely use tuition payment as a strategy to attract and retain high quality employees.

These flexibilities were proposed after broad consultation with a variety of stakeholders including employees, managers and the human resources community. They long have been advocated by numerous public and private groups including the Merit Systems Protection Board and the Partnership for Public Service as forward thinking, solid human capital strategies that should be available Governmentwide rather that to a few select agencies.

Direct hire, in particular, is critical if agencies are to respond effectively to the needs of the Nation. With a nationwide shortage of nurses and other healthcare workers, the Government must be able to move quickly and efficiently to hire excellent candidates—direct hire would provide that flexibility. Without it, the staffing to provide care to veterans and others in Federal medical facilities is diminished. Similarly, the critical need to hire talented, highly skilled workers to respond to a national crisis including an environmental threat such a raging wildfire can not be left to traditional hiring methods designed decades ago.

The alternatives provided by these regulations are not mandatory but may be used strategically by agencies to improve the management of human capital, to meet mission requirements and to respond to the President's call for a Government that is citizen focus and results oriented. There is a compelling need to provide these flexibilities without delay.

Finally, OPM will issue final regulations within 1 year of the publication of these interim regulations or these regulations will sunset.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Parts 230, 301, 316, 333, 337, and 410

Civil defense, Education, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending parts 230, 301, 316, 333, 337, and 410 of title 5 of the Code of Federal Regulations, as follows:

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

■ 1. The authority for part 230 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; sec., 230.401 also issued under 5 U.S.C. 1104.

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

■ 2. Revise § 230.402 paragraphs (c), (h)(1), and (h)(2) to read as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

* * * * *

(c) *Appointment under direct-hire authority.* An agency may make emergency-indefinite appointments under this section using the direct-hire procedures in part 337 of this chapter.

* * * * *

(h)(1) The term *indefinite employee* includes an emergency-indefinite employee or an employee under an emergency appointment as used in the following: Parts 351, 353 of this chapter, subpart G of part 550 of this chapter, and part 752 of this chapter.

(2) The selection procedures of part 337 of this chapter apply to emergency-indefinite appointments that use the direct-hire authority under paragraph (c) of this section.

* * * * *

PART 301—OVERSEAS EMPLOYMENT

■ 3. The authority citation continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR 1954–1958 Comp., p. 274, unless otherwise noted.

Subpart B—Overseas Limited Appointment

■ 4. Revise § 301.201 to read as follows:

§ 301.201 Appointments of United States citizens recruited overseas.

When there is a shortage of eligible applicants resulting from a competitive announcement, an agency may give an overseas limited appointment to a United States citizen recruited for a position overseas.

■ 5. Revise § 301.205 to read as follows:

§ 301.205 Requirements and restrictions.

The requirements and restrictions in subpart F of part 300 of this chapter apply to appointments under this subpart.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 6. The authority citation continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Subpart B—[Reserved]

■ 7. Remove and reserve Subpart B (§§ 316.201 and 316.202).

Subpart C—Term Employment

■ 8. Revise § 316.302 paragraph (a) to read as follows:

§ 316.302 Selection of term employees.

(a) *Competitive term appointments.* An agency may make a term appointment under part 332 of this title, by using competitive procedures, or under part 337 of this title, by using direct-hire procedures, as appropriate.

* * * * *

Subpart D—Temporary Limited Employment

■ 9. Revise § 316.402 paragraph (a) to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) *Competitive temporary appointments.* In accordance with the time limits in § 316.401 of this chapter, an agency may make a temporary appointment under part 332 of this title, by using competitive procedures, or under part 337 of this title, by using direct-hire procedures, as appropriate.

* * * * *

PART 333—[REMOVED AND RESERVED]

■ 10. Remove and reserve Part 333.

PART 337—EXAMINING SYSTEM

■ 11. Remove the authority citations for §§ 337.101 and 337.102 and add an authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a) (2), 1302, 3301, 3302, 3304, 3319, 5364, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980.

■ 12. Add Subpart B to part 337 to read as follows:

Subpart B—Direct-Hire Authority

Sec.
337.201 Coverage and purpose.
337.202 Definitions.
337.203 Public notice requirements.
337.204 Severe shortage of candidates.
337.205 Critical hiring needs.
337.206 Terminations, modifications, extensions and reporting.
337.207 Sunset.

Subpart B—Direct-Hire Authority

§ 337.201 Coverage and purpose.

OPM will permit an agency with delegated examining authority under 5 U.S.C. 1104(a) (2) to use direct-hire authority under 5 U.S.C. 3304 for a position or group of positions if OPM determines that there is either a severe shortage of candidates or a critical hiring need for such positions.

§ 337.202 Definitions.

In this subpart:

(a) A *direct-hire authority* permits hiring without regard to the provisions of 5 U.S.C. 3309 through 3318, and parts 211 and 337, subpart A of this chapter.

(b) A *severe shortage of candidates* for a particular position or group of positions means that an agency is unable to identify candidates possessing the competencies required to perform the job requirements despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives.

(c) A *critical hiring need* for a particular position or group of positions means that an agency has a need to fill the position(s) to meet mission requirements brought about by an emergency, potential threat, or unanticipated or unusual mission requirement, or to conform to the requirements of law, a Presidential directive or Administration initiative, or an unexpected event outside of an agency's control.

§ 337.203 Public notice requirements.

Agencies must comply with public notice requirements, as prescribed in 5 U.S.C. 3327 and 3330, and part 330, subpart G of this chapter with respect to any position that an agency seeks to fill using direct-hire authority.

§ 337.204 Severe shortage of candidates.

(a) OPM will determine when a severe shortage of candidates exists for particular occupations, grades (or equivalent), and/or geographic locations. OPM may decide on its own that such a shortage exists, or may make this decision in response to a written request from an agency.

(b) In a request for direct-hire authority under this section, an agency must identify the position(s) it is unable to fill and must include supporting evidence that demonstrates the existence of a severe shortage of candidates with respect to the position(s). The evidence should include, as applicable, information about:

(1) The results of workforce planning and analysis;

(2) Employment trends including the local or national labor market;

(3) The existence of nationwide or geographic skills shortages;

(4) Agency efforts including recruitment initiatives, use of other appointing authorities (*e.g.*, schedule A, schedule B) and flexibilities, training and development programs tailored to the position(s), and an explanation of why these recruitment and training efforts have not been sufficient;

(5) The availability and quality of candidates;

(6) The desirability of the geographic location of the position(s);

(7) The desirability of the duties and/or work environment associated with the position(s); and

(8) Other pertinent information such as selective placement factors or other special requirements of the position, as well as the agency's use of hiring flexibilities such as recruitment or retention allowances.

§ 337.205 Critical hiring needs.

(a) OPM will determine when there is a critical hiring need for particular occupations, grades (or equivalent) and/or geographic locations. OPM may decide on its own that there is such a need, or may make this decision in response to a written request from an agency.

(b) In a request for direct-hire authority under this section, an agency must:

(1) Identify the position(s) that it must fill;

(2) Describe the event or circumstance that has created the need to fill the position(s);

(3) Specify the duration for which the critical need is expected to exist; and

(4) Include supporting evidence that demonstrates why the use of other hiring authorities is impracticable or ineffective.

§ 337.206 Terminations, modifications, extensions, and reporting.

(a) *Termination and modification.* On a periodic basis, for each direct-hire authority that it previously granted, OPM will review the appropriate agency's use of the authority to ensure that the agency is using the authority properly and to determine if the agency's continued use of the authority is supportable. OPM will terminate or modify a direct-hire authority previously granted to an agency if OPM determines that there is no longer a severe shortage of candidates or a critical hiring need. OPM may also terminate an agency's authority when the agency has used its authority improperly.

(b) *Extension.* OPM may extend an agency's direct-hire authority if OPM determines that there is or will continue to be a severe shortage of candidates or a critical hiring need with respect to a particular position as of the date on which the agency's authority is due to expire.

(c) *Reporting requirement.* On a periodic basis, OPM may request information from agencies regarding their use of these direct-hire authorities.

§ 337.207 Sunset.

The authority to use direct hire authority terminates June 14, 2004.

■ 13. Add Subpart C to part 337 to read as follows:

Subpart C—Alternative Rating and Selection Procedures

Sec.
337.301 Coverage and purpose.
337.302 Definitions.
337.303 Agency responsibilities.
337.304 Veterans' preference.
337.305 Reporting requirements.
337.306 Sunset.

Subpart C—Alternative Rating and Selection Procedures

§ 337.301 Coverage and purpose.

This subpart implements the category rating and selection procedures at 5 U.S.C. 3319. This law authorizes agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) to develop a category rating method as an alternative process to assess applicants for jobs filled through competitive examining.

§ 337.302 Definitions.

In this subpart:

(a) *Category rating* is synonymous with alternative rating as described at 5 U.S.C. 3319, and is a process of evaluating qualified eligibles by quality categories rather than by assigning individual numeric scores. The agency assesses candidates against job-related criteria and then places them into two or more pre-defined categories.

(b) *Quality categories* are groupings of individuals with similar levels of job-related knowledge, skills, abilities, or competencies.

§ 337.303 Agency responsibilities.

To use a category rating system, agencies must:

(a) Establish a system for evaluating applicants that provides for two or more quality categories;

(b) Define each quality category through job analysis conducted in accordance with the *"Uniform Guidelines on Employee Selection Procedures"* at 29 CFR part 1607 and part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

(c) Describe each quality category in the job announcement and apply the provisions of part 330, subparts B, F and G of this chapter;

(d) Place applicants into categories based upon their job-related knowledge, skills, abilities or competencies; and

(e) Establish documentation and record-keeping procedures for reconstruction purposes.

§ 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in section 1312(a)(2) of Public Law 107–296, the Homeland Security Act, and codified at 5 U.S.C. 3319; and

(b) Veterans' preference points as prescribed in § 337.101 are not applied in category rating.

§ 337.305 Reporting requirements.

Any agency that uses category rating must forward to OPM a copy of the annual report that it must submit to Congress pursuant to 5 U.S.C. 3319.

§ 337.306 Sunset.

The authority to use category rating terminates June 14, 2004.

PART 410—TRAINING

■ 14. Revise the authority citation in part 410 to read as follows:

Authority: 5 U.S.C. 4101, et seq., 4107; E.O. 11348, and (3 CFR, 1967 Comp., p. 275).

Subpart C—Establishing and Implementing Training Programs

■ 15. Revise § 410.308 to read as follows:

§ 410.308 Training to obtain an academic degree.

(a) An agency may authorize training for an employee to obtain an academic degree under conditions as prescribed at 5 U.S.C. 4107(a).

(b) Colleges and universities used in an academic degree training program must be accredited by a nationally recognized body. A "nationally recognized body" is a regional, national, or international accrediting organization recognized by the U.S. Department of Education. The listing of accrediting bodies is available at the Department.

(c) The selection of employees for an academic degree training program must follow the requirements of § 335.103(b)(3) and part 300, subpart A of this chapter. Subject to the additional requirement that the purpose of the selection and assignment is to accomplish an identified goal consistent with the agency's human capital management strategic plan, an agency may competitively select and assign an employee to an academic degree training program that qualifies the

employee for promotion to a higher graded position or to a position that requires an academic degree.

(d) Agency heads must assess and maintain records on the effectiveness of training assignments under this section.

(e) On a periodic basis, OPM may request agency information on the use and effectiveness of training assignments under this section.

(f) The authority to authorize training for an employee to obtain an academic degree terminates June 14, 2004.

[FR Doc. 03–14971 Filed 6–10–03; 4:46 pm]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AJ82

Voluntary Early Retirement Under the Homeland Security Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim voluntary early retirement authority (VERA) regulations. These regulations implement the VERA provisions of the Homeland Security Act of 2002, which apply to most executive branch agencies. These interim regulations explain how an agency requests authority from OPM to offer voluntary early retirement to its employees.

DATES: These regulations are effective June 13, 2003. OPM will consider written comments if received no later than August 12, 2003.

ADDRESSES: Send written comments to Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, Room 6500, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Charles W. Gray at 202–606–0960, FAX at 202–606–2329, TTY at 202–418–3134, or e-mail at *cwgray@opm.gov*.

SUPPLEMENTARY INFORMATION Section 1313(b) of the "Homeland Security Act of 2002" (Public Law 107–296, 116 Stat. 2135) provides agencies the option to offer voluntary early retirement when restructuring as well as when downsizing. Previously, voluntary early retirement was only available in downsizing situations.

Subsection 1313(b)(1) of Public Law 107–296 covers employees under the Civil Service Retirement System (CSRS), and is codified in 5 U.S.C. 8336(d)(2). Section 831.114 is revised to implement the new voluntary early retirement provisions under CSRS.

Subsection 1313(b)(2) of Public Law 107–296 covers employees under the Federal Employees Retirement System (FERS), and is codified in 5 U.S.C. 8414(b)(1). Section 842.213 is revised to implement the new voluntary early retirement provisions under FERS.

The voluntary early retirement provisions are the same under CSRS and FERS. The revised regulations explain which employees are potentially eligible for voluntary early retirement, how an agency requests voluntary early retirement authority from OPM, and how the agency manages the voluntary early retirement authority after approval.

Under the interim regulations, an agency's human capital plan and/or voluntary separation incentive plan may be used to satisfy the requirements for requesting a voluntary early retirement authority if it contains the information required in the VERA regulations.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days.

OPM has already promulgated interim regulations regarding use of the Voluntary Separation Incentive Payment (VSIP) authority pursuant to Congressional mandate. While agencies may now receive OPM approval to use VSIP to reshape their workforces, they cannot use VERA for that purpose until these regulations are available. In this case, compliance with notice and comment procedures, as well as with the 30-day waiting period, would severely undercut the usefulness of the VSIP authority and would deny employees who have not attained full retirement eligibility the opportunity to be considered for VSIPs. The alternative to reshaping the workforce through voluntary measures such as early retirement is generally reduction in force—a tool that is disruptive and costly both to employees and agencies. The inability of agencies to offer this option to employees undermines the intent of Congress and the Administration in providing agencies with the ability to use both the VERA and VSIP flexibilities for workforce reshaping and impacts employee options for "soft landings."

This regulation is needed to allow agencies to immediately use the VERA flexibilities that Congress accorded to them in the Homeland Security Act (Act). Prior to the enactment of this Act, agencies could obtain from OPM the authority to offer individuals voluntary early retirement based on a need to downsize. Also, if they had their own VSIP law, they could offer VSIP to their employees on the same basis. In the Act, however, Congress introduced the ability to request authority from OPM to offer VERA or VSIP, or both, based on a need for workforce reshaping. This is a flexibility that Congress deemed necessary to ensure that agencies could accomplish their respective missions, which, in many cases, have changed significantly since September 11, 2001. The VERA flexibility is designed so that it may be used in tandem with the VSIP flexibility. In fact, the VSIP authority may be ineffective in some instances, or not fully effective, if there is not a corresponding VERA authority to allow employees to retire early.

Moreover, delaying the effective date for OPM's VERA regulations could lessen the usefulness of VSIPs for reshaping this year. The financial advantage of VSIP rapidly diminishes the later it is used in a fiscal year, because the cost of the VSIP payment and the payout for accrued leave is more likely to exceed the amount of the employee's salary for the remainder of the year. Congress's inclusion of the new VERA flexibilities in the Homeland Security Act indicates that it intended for agencies to use these flexibilities this year. Waiver of the requirements regarding notice, comment, and the effective date is necessary to ensure that Congress' intent is honored.

Finally, OPM will issue final regulations within 1 year of the publication of these interim regulations or these regulations will sunset.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Firefighters, Government employees, Income taxes, Intergovernmental regulations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air Traffic Controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends parts 831 and 842 of title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under sections 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

■ 2. Section 831.114 is revised to read as follows:

§ 831.114 Voluntary early retirement-substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A "specific designee" is defined as a senior officer or official within an agency who has been specifically designated to sign requests for voluntary early retirement authority for or in place of the head of the agency. Examples include the Chief Human Capital Officer or the Assistant Secretary for Administration.

(b) 5 U.S.C. 8336(d)(2) covers both the basis for an agency's request for voluntary early retirement authority and OPM's subsequent determination concerning the request.

(c) An agency's request for voluntary early retirement authority must be signed by the head of the agency or by a specific designee with that authority.

(d) The request must contain the following information:

(1) Identification of the agency or organizational unit(s) for which the agency requests the authority;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency's personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency's need for voluntary early retirement authority. (Examples include separations, transfers, reassignments, and downgradings.)

(e) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency's human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(f) Regardless of the method used, the request must include all of the information required by paragraph (d) of this section.

(g) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period covers multiple years.

(h) After OPM approves an agency's request, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(i) The agency may limit voluntary early retirement offers based on:

(1) An established opening and closing date that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(j) Within the timeframe specified for its approved VERA, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a

new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved VERA.

(k) An employee who separates from the service voluntarily after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the conditions covered in 5 U.S.C. 8336(d)(2).

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) An agency may not offer or process voluntary early retirements beyond the stated expiration date of a VERA or offer early retirements to employees who are not within the scope of the VERA approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that voluntary early retirement authority regulations are being properly followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

(q) The terms, conditions, and procedures in this section do not apply to the General Accounting Office.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–125.

Subpart B—Eligibility

■ 4. Section 842.213 is revised to read as follows:

§ 842.213 Voluntary early retirement-substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A "specific designee" is defined as a senior officer or official within an agency who has been specifically designated to sign requests for voluntary early retirement authority for or in place of the head of the agency. Examples include the Chief Human Capital Officer or the Assistant Secretary for Administration.

(b) 5 U.S.C. 8414(b)(1)(B) covers both the basis for an agency's request for voluntary early retirement authority and OPM's subsequent determination concerning the request.

(c) An agency's request for voluntary early retirement authority must be signed by the head of the agency or by a specific designee with that authority.

(d) The request must contain the following information:

(1) Identification of the agency or organizational unit(s) for which the agency requests the authority;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency's personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency's need for voluntary early retirement authority. (Examples include separations, transfers, reassignments, and downgradings.)

(e) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency's human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(f) Regardless of the method used, the request must include all of the information required by paragraph (d) of this section.

(g) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period crosses multiple years.

(h) After OPM approves an agency's request, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(i) The agency may limit voluntary early retirement offers based on:

(1) An established opening and closing date that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(j) Within the timeframe specified for its approved VERA, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved VERA.

(k) An employee who separates from the service voluntarily after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the conditions covered in 5 U.S.C. 8414(b)(1)(B).

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) An agency may not offer or process voluntary early retirements beyond the stated expiration date of a VERA or offer early retirements to employees who are not within the scope of the VERA approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that voluntary early retirement authority regulations are being properly followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

(q) The terms, conditions, and procedures in this section do not apply to the General Accounting Office.

(r) The authority to VERA to restructure the workforce terminates June 14, 2004.

[FR Doc. 03–14970 Filed 6–10–03; 4:46 pm]

BILLING CODE 6325–38–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 103, 239 and 287

[ICE No. 2274–03]

RIN 1653 AA26

Powers and Authority of Officers and Employees; Revisions to the Internal Review Process for Alleged Violations of the Standards for Enforcement Activities

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296) (HSA), which created the new Department of Homeland Security (Department or DHS). Pursuant to the provisions of the HSA, DHS came into existence on January 24, 2003. The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). The transition and savings provisions of the HSA, including sections 1512(d) and 1517, provide that references relating to the Service in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS. DHS is promulgating this rule to continue the process of conforming the text of Title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. This rule is not intended to and does not restrict or otherwise limit the authority of any DHS officer.

DATES: This final rule is effective June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Muhletaler, Bureau of Immigration and Customs Enforcement, Office of General Counsel, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION

Explanation of Changes

First, the final rule expands the definitions of the terms "Service," "Commissioner," and "director" at 8 CFR 1.1. Definitions for the terms "Department," "Secretary," and "Bureau" have been added. Definitions have also been added for "BCIS," "CBP," and "ICE," which are the acronyms for the bureaus within DHS that have been delegated the authorities of the former Service. The definitions provide clarification that the functions of the legacy components of the Service continue under the Department. The definitions refer to the "Service" in recognition that the term "Service" continues to be used throughout Title 8 of the Code of Federal Regulations, and this final rule amends only limited portions of that title.

Second, the term "immigration enforcement agent" has been added to 8 CFR 103.1(b) in recognition of an ongoing modification to the field structure of the Bureau of Immigration and Customs Enforcement (ICE). As part of a position reclassification the immigration agent position (within the investigations program of ICE) and the detention enforcement officer position (within the detention and removal program of ICE) will be combined and reclassified into the immigration enforcement agent position. Immigration enforcement agents will have responsibilities that include the identification and processing of detained criminal aliens within the institutional removal program.

Third, the final rule revises the regulation at 8 CFR 239.1 that delegates authority to issue notices to appear. In his discretion, the Secretary of Homeland Security has published this delegation of authority to issue notices to appear in the Code of Federal Regulations, cross-referencing his general delegation authority under 8 CFR 2.1. The list of officers authorized

to issue notices to appear is amended to reflect the ongoing reorganization of functions of the former Service among the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement. Removed from the list of those authorized to issue a notice to appear is the Director of Juvenile Affairs, based on the transfer of functions with respect to the care of unaccompanied alien children to the Department of Health and Human Services pursuant to section 462 of the Homeland Security Act of 2002, as amended, 6 U.S.C. 279.

Fourth, the final rule revises 8 CFR 287 part 1 with respect to the powers and authority of officers and employees of these three bureaus. Deportation officers have been provided the authority to execute search warrants under 8 CFR 287.5(e)(1).

In recognition of the position reclassification of detention enforcement officers to immigration enforcement agents, the term "immigration enforcement agent" is added to the existing term of "detention enforcement officer" in 8 CFR 103.1(b), 287.5(c)(6), 287.5(e)(3), 287.5(f), 287.8(a)(1)(iv) and 287.8(a)(2)(iii). Pursuant to their duties and responsibilities within the institutional removal program, immigration enforcement agents are delegated the authority to make arrests under 8 CFR 287.5(c)(1), and 8 CFR 287.5(c)(2), to conduct searches under 8 CFR 287.5(d), to execute search warrants under 287.5(e)(1), to serve warrants of arrest for non-immigration violations under 287.5(e)(4), and to issue detainers under 8 CFR 287.7(b).

Fifth, the final rule revises the regulation at 8 CFR 287.10 regarding the internal review process for alleged violations of the standards for enforcement activities to replace the references to offices within the Department of Justice that had been responsible for reviewing such allegations with the appropriate offices within DHS.

Sixth, the final rule revises or removes several paragraphs in 8 CFR 239.2 (cancellation of notices to appear), 8 CFR 287.3 (aliens arrested without warrant), and 8 CFR 287.4 (subpoenas), to reflect the recodification of regulations governing immigration proceedings. Under the HSA, the Executive Office for Immigration Review (EOIR), including the immigration judges and the Board of Immigration Appeals, remain in the Department of Justice, and the regulations pertaining to proceedings before EOIR have been codified in Chapter V of 8 CFR. Accordingly, this final rule makes conforming changes to 8 CFR 239.2, 287.3, and 287.4 in recognition that the regulations governing immigration proceedings before the immigration judges and the Board are now codified at 8 CFR 1003 *et seq.* (including with reference to this rule, 8 CFR 1003.14, 1239.2, 1287.4, and 1292.2).

Finally, the rule revises the regulation at 8 CFR 287.8 by adding a new subsection (g) which states that the criminal law enforcement activities authorized under this rule will be exercised in a manner consistent with all applicable DHS and Department of Justice guidelines and policies.

Good Cause Exception

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking or delayed effective date is unnecessary as this rule relates to agency organization and management. Accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

Executive Order 12866

This rule making is limited to agency organization, management or personnel matters, and therefore is not a regulation or rule as defined by Executive Order 12866. It has also been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal government, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 239

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 287

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

Chapter I—Department of Homeland Security (Immigration and Naturalization)

■ 1. The chapter heading is revised to read as set forth above.

PART 1—DEFINITIONS

■ 2. The authority citation for part 1 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 5 U.S.C. 301; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1, *et seq.*).

■ 3–4. Section 1.1 is amended by revising paragraphs (c), (d), (o) and (p) and adding paragraphs (u) through (z) to read as follows:

§ 1.1 Definitions.

* * * * *

(c) The term *Service* means the Immigration and Naturalization Service, as it existed prior to March 1, 2003. Unless otherwise specified, references to the Service after that date mean the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement.

(d) The term *Commissioner* means the Commissioner of the Immigration and Naturalization Service prior to March 1, 2003. Unless otherwise specified, references after that date mean the Director of the Bureau of Citizenship and Immigration Services, the Commissioner of the Bureau of Customs and Border Protection, and the Assistant Secretary for the Bureau of Immigration and Customs Enforcement.

* * * * *

(o) The terms *director* or *district director* prior to March 1, 2003, mean the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: service center director; special agent in charge; field office director; district director for services; district director for interior enforcement; or director, field operations. The terms also mean such other official, including an official in an acting capacity, within the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above referenced for a particular geographic district, region, or area.

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

* * * * *

(u) The term *Department*, unless otherwise noted, means the Department of Homeland Security.

(v) The term *Secretary*, unless otherwise noted, means the Secretary of Homeland Security.

(w) The term *Bureau* means generally, unless otherwise noted, the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement, as created by the Homeland Security Act of 2002, as amended, Pub. L. 107–296, November 25, 2002, 116 Stat. 2135, and the President's Reorganization Plan, as modified.

(x) The term *BCIS* means the Bureau of Citizenship and Immigration Services.

(y) The term *CBP* means the Bureau of Customs and Border Protection.

(z) The term *ICE* means the Bureau of Immigration and Customs Enforcement.

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 5. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 6. Section 103.1(b) is revised to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

* * * * *

(b) *Immigration Officer.* The following employees of the Department of Homeland Security, including senior or supervisory officers of such employees, are designated as immigration officers authorized to exercise the powers and duties of such officer as specified by the Act and this chapter I: Immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, immigration enforcement agent, intelligence officer, intelligence agent, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), applications adjudicator, contact representative, legalization adjudicator, legalization officer, legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in § 2.1 of this chapter.

PART 239—INITIATION OF REMOVAL PROCEEDINGS

■ 7. The authority citation for part 239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 8. Section 239.1 is revised to read as follows:

§ 239.1 Notice to appear.

(a) *Issuance of notice to appear.* Any immigration officer, or supervisor thereof, performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

(1) District directors (except foreign);
(2) Deputy district directors (except foreign);
(3) Chief patrol agents;
(4) Deputy chief patrol agents;
(5) Assistant chief patrol agents;
(6) Patrol agents in charge;
(7) Assistant patrol agents in charge;
(8) Field operations supervisors;
(9) Special operations supervisors;
(10) Supervisory border patrol agents;
(11) Service center directors;
(12) Deputy service center directors;
(13) Assistant service center directors for examinations;
(14) Supervisory district adjudications officers;
(15) Supervisory asylum officers;
(16) Officers in charge (except foreign);
(17) Assistant officers in charge (except foreign);
(18) Special agents in charge;
(19) Deputy special agents in charge;
(20) Associate special agents in charge;
(21) Assistant special agents in charge;
(22) Resident agents in charge;
(23) Supervisory special agents;

(24) Directors of investigations;
(25) District directors for interior enforcement;
(26) Deputy or assistant district directors for interior enforcement;
(27) Director of detention and removal;
(28) Field office directors;
(29) Deputy field office directors;
(30) Supervisory deportation officers;
(31) Supervisory detention and deportation officers;
(32) Directors or officers in charge of detention facilities;
(33) Directors of field operations;
(34) Deputy or assistant directors of field operations;
(35) District field officers;
(36) Port directors;
(37) Deputy port directors; or
(38) Other officers of employees of the Department or of the United States who are delegated the authority as provided by § 2.1 of this chapter to issue notices to appear.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

■ 9. Section 239.2 is amended by:
■ a. Revising paragraphs (c) and (d); and by
■ b. Removing paragraph (f).
The revisions read as follows:

§ 239.2 Cancellation of notice to appear.

* * * * *

(c) *Motion to dismiss.* After commencement of proceedings pursuant to 8 CFR 1003.14, ICE counsel, or any officer enumerated in paragraph (a) of this section, may move for dismissal of the matter on the grounds set out under paragraph (a) of this section.

(d) *Motion for remand.* After commencement of the hearing, ICE counsel, or any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration.

* * * * *

PART 287—FIELD OFFICERS; POWERS AND DUTIES

■ 10. The authority citation for part 287 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 11. Section 287.1 is amended by:
■ a. Revising the words "district director" to read "chief patrol agent for CBP, or the special agent in charge for ICE" in paragraph (a)(2);
■ b. Revising paragraphs (b) and (g);
■ c. Removing the words "and § 242.2(a) of this part" in paragraph (e); and by
■ d. Adding paragraphs (h) and (i).
The revisions and additions read as follows:

§ 287.1 Definitions.

* * * * *

(b) *Reasonable distance; fixing by chief patrol agents and special agents in charge.* In fixing distances not exceeding 100 air miles pursuant to paragraph (a) of this section, chief patrol agents and special agents in charge shall take into consideration topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States: *Provided*, That whenever in the opinion of a chief patrol agent or special agent in charge a distance in his or her sector or district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such chief patrol agent or special agent in charge shall forward a complete report with respect to the matter to the Commissioner of CBP, or the Assistant Secretary for ICE, as appropriate, who may, if he determines that such action is justified, declare such distance to be reasonable.

* * * * *

(g) *Basic immigration law enforcement training.* The phrase basic immigration law enforcement training, as used in §§ 287.5 and 287.8, means the successful completion of one of the following courses of training provided at the Immigration Officer Academy or Border Patrol Academy: Immigration Officer Basic Training Course after 1971; Border Patrol Basic Training Course after 1950; Immigration Detention Enforcement Officer Basic Training Course after 1977; and Immigration Customs Enforcement Special Agent Training, after 2002; or training substantially equivalent thereto as determined by the Commissioner of CBP or the Assistant Secretary for ICE with respect to personnel in their respective bureaus. The phrase basic immigration law enforcement training also means the successful completion of the Other than Permanent Full-Time (OTP) Immigration Inspector Basic Training Course after 1991 in the case of individuals who are OTP immigration inspectors. Conversion by OTP immigration to any other status requires training applicable to that position.

(h) References to specific titles of officers mean all individuals holding such positions and any individual acting in such position.

(i) Nothing in this part limits the authority of any DHS officers to act pursuant to any authorities that they may otherwise possess.

§ 287.2 [Amended]

■ 12. Section 287.2 is amended by:
■ a. Revising the words "district director" to read "special agent in charge, port director,";
■ b. Adding the phrase "immigration and nationality" immediately before the phrase "laws administered or enforced"; and by
■ c. Revising the word "Service" to read "Department".

§ 287.3 [Amended]

■ 13. Section 287.3 is amended by:
■ a. Revising the words "8 CFR part 3" to read "8 CFR part 1003" in paragraph (c); and by
■ b. Adding the phrase "or 8 CFR 1292.2" immediately after the phrase "§ 292.2 of this chapter" in paragraph (c).
■ 14. Section 287.4 is amended by:
■ a. Revising paragraph (a);
■ b. Adding the word "immigration" immediately before the word "officer" and by revising the word "Service" to read "Department" in paragraph (b)(1);
■ c. Revising the word "making" to read "taking", adding the word "immigration" immediately before the word "officer" and by revising the word "Service" to read "Department" in paragraph (b)(2); and by
■ d. Revising paragraph (c).
The revisions read as follows:

§ 287.4 Subpoena.

(a) *Who may issue—(1) Criminal or civil investigations.* All District Directors; Deputy District Directors; Chief Patrol Agents; Deputy Chief Patrol Agents; Assistant Chief Patrol Agents; Officers in Charge; Patrol Agents in Charge; Assistant Patrol Agents in Charge; Field Operations Supervisors; Special Operations Supervisors; Supervisory Border Patrol Agents; Assistant District Directors, Investigations; Supervisory Criminal Investigators, Anti-Smuggling; Regional Directors; Service Center Directors; Assistant District Directors, Examinations; Director, Detention and Removal; Special Agents in Charge; all Special Agents in supervisory positions; Field Office Directors; Deputy Field Office Directors; and any other immigration officer who has been expressly delegated such authority as provided by 8 CFR 2.1 may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

(2) *Proceedings other than naturalization proceedings—*(i) *Prior to commencement of proceedings.* All District Directors; Deputy District Directors; Chief Patrol Agents; Deputy Chief Patrol Agents; Officers in Charge; Director, Detention and Removal; Special Agents in Charge; Deputy Special Agents in Charge; Resident Agents in Charge; District Field Officers; Field Office Directors; Deputy Field Office Directors; and Port Directors may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this chapter I, other than under 8 CFR part 335, or any application made ancillary to the proceeding.

(ii) *Subsequent to commencement of any immigration court proceeding.* Procedures for the issuance of a subpoena after the commencement of proceedings, in cases other than those arising under part 335 of this chapter, are set forth at 8 CFR 1003.35(b) and 1287.4.

* * * * *

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director; Deputy District Director; Chief Patrol Agent; Deputy Chief Patrol Agent; Assistant Chief Patrol Agent; Patrol Agent in Charge; Officer in Charge; Assistant District Director, Investigations; Supervisory Criminal Investigator, Anti-Smuggling; Regional Director; Special Agent in Charge; Deputy Special Agent in Charge; Resident Agent in Charge; District Field Officer; Field Office Director; Deputy Field Office Director; Supervisory Deportation Officer; Supervisory Detention and Deportation Officer; and Port Director having administrative jurisdiction over the office in which the subpoena is issued. The Director, Detention and Removal, shall also have the authority to make such designation. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Department, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

* * * * *

■ 15. Section 287.5 is revised to read as follows:

§ 287.5 Exercise of power by immigration officers.

(a) *Power and authority to interrogate and administer oaths.* Any immigration officer as defined in 8 CFR 103.1(b) is hereby authorized and designated to exercise anywhere in or outside the United States the power conferred by:

(1) Section 287(a)(1) of the Act to interrogate, without warrant, any alien or person believed to be an alien concerning his or her right to be, or to remain, in the United States, and

(2) Section 287(b) of the Act to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States; or concerning any matter which is material or relevant to the enforcement of the Act and the administration of the immigration and naturalization functions of the Department.

(b) *Power and authority to patrol the border.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to patrol the border conferred by section 287(a)(3) of the Act:

(1) Border patrol agents, including aircraft pilots;
(2) Special agents;
(3) Immigration inspectors (seaport operations only);
(4) Adjudications officers and deportation officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections (seaport operations only);
(5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
(6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary for ICE.

(c) *Power and authority to arrest—*(1) Arrests of aliens under section 287(a)(2) of the Act for immigration violations. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(2) of the Act and in accordance with 8 CFR 287.8(c):

(i) Border patrol agents, including aircraft pilots;
(ii) Special agents;
(iii) Deportation officers;
(iv) Immigration inspectors;
(v) Adjudications officers;
(vi) Immigration enforcement agents;
(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
(viii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(2) Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(4) of the Act and in accordance with 8 CFR 287.8(c):

(i) Border patrol agents, including aircraft pilots;
(ii) Special agents;
(iii) Deportation officers;
(iv) Immigration inspectors;
(v) Adjudications officers;
(vi) Immigration enforcement agents;
(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
(viii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(3) Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(A) of the Act and in accordance with 8 CFR 287.8(c):

(i) Border patrol agents, including aircraft pilots;
(ii) Special agents;
(iii) Deportation officers;
(iv) Immigration inspectors (permanent full-time immigration inspectors only);
(v) Adjudications officers when in the uniform of an immigration inspector

and performing inspections or supervising other immigration inspectors performing inspections;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary for ICE.

(4) Arrests of persons under section 287(a)(5)(B) of the Act for any felony. (i) Section 287(a)(5)(B) of the Act authorizes designated immigration officers, as listed in paragraph (c)(4)(iii) of this section, to arrest persons, without warrant, for any felony cognizable under the laws of the United States if:

(A) The immigration officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(B) The immigration officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest;

(C) There is a likelihood of the person escaping before a warrant can be obtained for his or her arrest; and

(D) The immigration officer has been certified as successfully completing a training program that covers such arrests and the standards with respect to the immigration enforcement activities of the Department as defined in 8 CFR 287.8.

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(B) of the Act and in accordance with 8 CFR 287.8(c):

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors (permanent full-time immigration inspectors only);

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified by the Director of Training as successfully completing a training course encompassing such arrests and the standards for enforcement activities as defined in 8 CFR 287.8. Such certification shall be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner of CBP or the Assistant Secretary for ICE, or their respective designees, for just cause.

(5) Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.

(i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law. When making an arrest, the designated immigration officer shall adhere to the provisions of the enforcement standard governing the conduct of arrests in 8 CFR 287.8(c).

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are authorized and designated to exercise the arrest power conferred by section 274(a) of the Act:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors;

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(6) Custody and transportation of previously arrested persons. In addition to the authority to arrest pursuant to a warrant of arrest in paragraph (e)(3)(iv) of this section, detention enforcement officers and immigration enforcement agents who have successfully completed basic immigration law enforcement training are hereby authorized and designated to take and maintain custody of and transport any person who has been arrested by an immigration officer pursuant to paragraphs (c)(1) through (c)(5) of this section.

(d) *Power and authority to conduct searches.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to conduct searches conferred by section 287(c) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(e) *Power and authority to execute warrants*—(1) *Search warrants.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to execute a search warrant:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration enforcement agents;

(v) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph, and

(vi) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(2) *Issuance of arrest warrants for immigration violations.* A warrant of arrest may be issued by an immigration officer who has been authorized or delegated such authority:

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

(x) Assistant officers in charge (except foreign);

(xi) Chief patrol agents;

(xii) Deputy chief patrol agents;

(xiii) Assistant chief patrol agents;

(xiv) Patrol agents in charge;

(xv) Assistant patrol agents in charge;

(xvi) Field operations supervisors;

(xvii) Special operations supervisors;

(xviii) Supervisory border patrol agents;

(xix) The Assistant Commissioner, Investigations;

(xx) Institutional Hearing Program directors;

(xxi) Area port directors;

(xxii) Port directors;

(xxiii) Deputy port directors;

(xxiv) Supervisory deportation officers;

(xxv) Supervisory detention and deportation officers;

(xxvi) Director, Office of Detention and Removal;

(xxvii) Special Agents in Charge;

(xxviii) Deputy Special Agents in Charge;

(xxix) Associate Special Agents in Charge;

(xxx) Assistant Special Agents in Charge;

(xxxi) Resident Agents in Charge;

(xxxii) Field Office Directors;

(xxxiii) Deputy Field Office Directors; or

(xxxiv) District Field Officers.

(3) *Service of warrant of arrests for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to section 287(a) of the Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Detention enforcement officers or immigration enforcement agents (warrants of arrest for administrative immigration violations only);

(v) Immigration inspectors;

(vi) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(4) *Service of warrant of arrests for non-immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to execute warrants of criminal arrest for non-immigration violations issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration enforcement agents;

(v) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vi) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(f) *Power and authority to carry firearms.* The following immigration officers who have successfully completed basic immigration enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to carry firearms provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force in 8 CFR 287.8(a):

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Detention enforcement officers or immigration enforcement agents;

(5) Immigration inspectors;

(6) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

■ 16. Section 287.7 is revised to read as follows:

§ 287.7 Detainer provisions under section 287(d)(3) of the Act.

(a) *Detainers in general.* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form I–247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) *Authority to issue detainers.* The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(c) *Availability of records.* In order for the Department to accurately determine

the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Department of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Department with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) *Temporary detention at Department request.* Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

(e) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter I shall incur any fiscal obligation on the part of the Department, until actual assumption of custody by the Department, except as provided in paragraph (d) of this section.

17. Section 287.8 is revised to read as follows:

§ 287.8 Standards for enforcement activities.

The following standards for enforcement activities contained in this section must be adhered to by every immigration officer involved in enforcement activities. Any violation of this section shall be reported to the Office of the Inspector General or such other entity as may be provided for in 8 CFR 287.10.

(a) *Use of force*—(1) *Non-deadly force.* (i) Non-deadly force is any use of force other than that which is considered deadly force as defined in paragraph (a)(2) of this section.

(ii) Non-deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(1)(iv) of this section, has reasonable grounds to believe that such force is necessary.

(iii) A designated immigration officer shall always use the minimum non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

(iv) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to use non-deadly force should circumstances warrant it:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Detention enforcement officers or immigration enforcement agents;

(E) Immigration inspectors;

(F) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(H) Immigration officers who need the authority to use non-deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(2) *Deadly force.* (i) Deadly force is any use of force that is likely to cause death or serious physical injury.

(ii) Deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(2)(iii) of this section, has reasonable grounds to believe that such force is necessary to protect the designated immigration officer or other persons from the imminent danger of death or serious physical injury.

(iii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to use deadly force should circumstances warrant it:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Detention enforcement officers or immigration enforcement agents;

(E) Immigration inspectors;

(F) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(H) Immigration officers who need the authority to use deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(b) *Interrogation and detention not amounting to arrest.* (1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.

(2) If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.

(3) Information obtained from this questioning may provide the basis for a subsequent arrest, which must be effected only by a designated immigration officer, as listed in 8 CFR 287.5(c). The conduct of arrests is specified in paragraph (c) of this section.

(c) *Conduct of arrests*—(1) *Authority.* Only designated immigration officers are authorized to make an arrest. The list of designated immigration officers varies depending on the type of arrest as listed in 8 CFR 287.5(c)(1) through (c)(5).

(2) *General procedures.* (i) An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.

(ii) A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.

(iii) At the time of the arrest, the designated immigration officer shall, as soon as it is practical and safe to do so:

(A) Identify himself or herself as an immigration officer who is authorized to execute an arrest; and

(B) State that the person is under arrest and the reason for the arrest.

(iv) With respect to an alien arrested and administratively charged with being in the United States in violation of law, the arresting officer shall adhere to the procedures set forth in 8 CFR 287.3 if the arrest is made without a warrant.

(v) With respect to a person arrested and charged with a criminal violation of the laws of the United States, the arresting officer shall advise the person of the appropriate rights as required by law at the time of the arrest, or as soon thereafter as practicable. It is the duty of the immigration officer to assure that the warnings are given in a language the subject understands, and that the subject acknowledges that the warnings are understood. The fact that a person has been advised of his or her rights shall be documented on appropriate Department forms and made a part of the arrest record.

(vi) Every person arrested and charged with a criminal violation of the laws of the United States shall be brought without unnecessary delay before a United States magistrate judge, a United States district judge or, if necessary, a judicial officer empowered in accordance with 18 U.S.C. 3041 to commit persons charged with such crimes. Accordingly, the immigration officer shall contact an Assistant United States Attorney to arrange for an initial appearance.

(vii) The use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited.

(d) *Transportation*—(1) *Vehicle transportation.* All persons will be transported in a manner that ensures the safety of the persons being transported. When persons arrested or detained are being transported by vehicle, each person will be searched as thoroughly as circumstances permit before being placed in the vehicle. The person being transported shall not be handcuffed to the frame or any part of the moving vehicle or an object in the moving vehicle. The person being transported shall not be left unattended during transport unless the immigration officer needs to perform a law enforcement function.

(2) *Airline transportation.* Escorting officers must abide by all Federal Aviation Administration, Transportation Security Administration, and airline carrier rules and regulations pertaining to weapons and the transportation of prisoners.

(e) *Vehicular pursuit.* (1) A vehicular pursuit is an active attempt by a designated immigration officer, as listed in paragraph (e)(2) of this section, in a designated pursuit vehicle to apprehend fleeing suspects who are attempting to avoid apprehension. A designated pursuit vehicle is defined as a vehicle equipped with emergency lights and siren, placed in or on the vehicle, that emit audible and visual signals in order to warn others that emergency law enforcement activities are in progress.

(2) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to initiate a vehicular pursuit:

(i) Border patrol agents, including aircraft pilots;

(ii) Supervisory personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(iii) Immigration officers who need the authority to initiate a vehicular pursuit in order to effectively accomplish their individual mission and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(f) *Site inspections.* (1) Site inspections are Border and Transportation Security Directorate enforcement activities undertaken to locate and identify aliens illegally in the United States, or aliens engaged in unauthorized employment, at locations where there is a reasonable suspicion, based on articulable facts, that such aliens are present.

(2) An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.

(3) Adequate records must be maintained noting the results of every site inspection, including those where no illegal aliens are located.

(4) Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.

(g) *Guidelines.* The criminal law enforcement authorities authorized under this part will be exercised in a manner consistent with all applicable guidelines and policies of the Department of Justice and the Department of Homeland Security.

■ 18. Section 287.9 is amended by:

■ a. Revising the word "Commissioner" to read "Commissioner of CBP and the Assistant Secretary for ICE" in paragraph (a); and by

■ b. Revising paragraph (b).

The revisions read as follows:

§ 287.9 Criminal search warrant and firearms policies.

* * * * *

(b) In using a firearm, an immigration officer shall adhere to the standard of conduct set forth in 8 CFR 287.8(a)(2). An immigration officer may carry only firearms (whether Department issued or personally owned) that have been approved pursuant to guidelines promulgated by the Commissioner of CBP or the Assistant Secretary for ICE. These officials shall promulgate guidelines with respect to:

(1) Investigative procedures to be followed after a shooting incident involving an officer;

(2) Loss or theft of an approved firearm;

(3) Maintenance of records with respect to the issuance of firearms and ammunition; and

(4) Procedures for the proper care, storage, and maintenance of firearms, ammunition, and related equipment.

■ 19. Section 287.10 is revised to read as follows:

§ 287.10 Expedited internal review process.

(a) *Violations of standards for enforcement activities.* Alleged violations of the standards for enforcement activities established in accordance with the provisions of § 287.8 shall be investigated expeditiously consistent with the policies and procedures of the Department of Homeland Security and pursuant to any guidelines issued by the Secretary.

(b) *Complaints.* Any persons wishing to lodge a complaint pertaining to violations of enforcement standards contained in § 287.8 may contact the Department of Homeland Security, Office of the Inspector General, 245 Murray Drive—Building 410, Washington, DC, 20548, or telephone 1–800–323–8603. With respect to employees of the former INS, persons may contact the Office of Internal Audit, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC, 20536.

(c) *Expedited processing of complaints.* When an allegation or complaint of violation of § 287.8 is lodged against an employee or officer of the Department, the allegation or complaint shall be referred promptly for investigation in accordance with the

policies and procedures of the Department. At the conclusion of an investigation of an allegation or complaint of violation of § 287.8, the investigative report shall be referred promptly for appropriate action in accordance with the policies and procedures of the Department.

(d) *Unsubstantiated complaints.* When an investigative report does not support the allegation, the employee or officer against whom the allegation was made shall be informed in writing that the matter has been closed as soon as practicable. No reference to the allegation shall be filed in the official's or employee's official personnel file.

(e) *Jurisdiction of Department of Justice organizations.* Nothing in this section alters or limits, is intended to alter or limit, or shall be construed to alter or limit, the jurisdiction or authority conferred upon the Federal Bureau of Investigation, the United States Attorneys, the Criminal Division or the Civil Rights Division, or any other component of the Department of Justice that may have jurisdiction regarding criminal violations of law.

■ 20. Section 287.12 is revised to read as follows:

§ 287.12 Scope.

With regard to this part, these regulations provide internal guidance on specific areas of law enforcement authority. These regulations do not, are not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the Department or the Secretary. These regulations do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. The Secretary shall have exclusive authority to enforce these regulations through such administrative and other means as he may deem appropriate.

Dated: June 6, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–14931 Filed 6–10–03; 3:25 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 01–091–2]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Determination of Residual Free Formaldehyde Content of Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Virus-Serum-Toxin Act regulations for the determination of residual free formaldehyde in veterinary biologics to specify that such determinations be made using the ferric chloride method, and that the residual free formaldehyde content be measured in grams per liter. The ferric chloride method has been adopted as an international standard by scientific experts and regulatory authorities in the United States, Canada, Japan, and the European Union. The effect of this rule will be to reduce the differences in technical requirements for veterinary biologics among regulatory agencies in different countries and further ensure the safety and shelf life of veterinary biologics by adopting a method that has been standardized and accepted internationally.

EFFECTIVE DATE: July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe standard requirements for the preparation and testing of veterinary biological products. Standard requirements consist of test methods, procedures, and criteria that define the standards for purity, safety, potency, and efficacy for a given type of veterinary biological product. When a standard procedure for testing veterinary biological products is validated and approved by the Animal and Plant Health Inspection Service (APHIS) for general use, it is proposed for codification in the regulations. Sections 113.100 and 113.200 of the regulations prescribe the requirement for determination of residual free formaldehyde content in inactivated bacterial products and killed virus vaccines, respectively.

On April 5, 2002, we published in the **Federal Register** (67 FR 16327–16329, Docket No. 01–091–1) a proposal to amend to amend the regulations for determination of residual free formaldehyde content in inactivated bacterial products and killed virus vaccines to specify that such determinations be made using the ferric chloride method, and that the residual free formaldehyde content be measured in grams per liter. The proposed rule was intended to reduce the differences in technical requirements for veterinary biologics among regulatory agencies in different countries and further ensure the safety and shelf life of veterinary biologics by adopting a method which has been standardized and accepted internationally.

We solicited comments concerning our proposal for 60 days ending on June 4, 2002. We received one comment by that date, from a national trade association representing veterinary biologics manufacturers. The commenter expressed support for the efforts of APHIS and the International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) to harmonize the technical requirements for product registration among the participating regions and recommended that APHIS adopt the provisions of the proposed rule.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Virus-Serum-Toxin Act regulations for determination of residual free formaldehyde content in biological products to require that such free formaldehyde determinations be made using the ferric chloride method, which determines residual free formaldehyde content by measuring the quantity of coloring matter in solution by the quantity of light absorbed in passing through the solution. In addition, this rule provides that the maximum allowable residual free formaldehyde content of veterinary biologics be measured in grams per liter, rather than equivalent percent or parts per million. The effect of this action will be to provide a standardized method that has been shown to be more accurate than the basic fuchsin method and that has been standardized and adopted internationally.

This rule will affect all licensed manufacturers of veterinary biologics that test inactivated bacterial products and killed virus vaccines for free formaldehyde content. Currently, there are approximately 135 veterinary biologics establishments, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

We do not expect that this rule will impose any additional testing or economic burden on these manufacturers because manufacturers currently test their products for free formaldehyde content using the basic fuchsin and other methods, and the reagents and equipment necessary to perform the ferric chloride test for free formaldehyde content that will be required under this rule are expected to be comparable in cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This final rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 113.100, paragraph (f) is revised to read as follows:

§ 113.100 General requirements for inactivated bacterial products.

* * * * *

(f) If formaldehyde is used as the inactivating agent, and the serial has not been found satisfactory by the viricidal activity test, bulk or final container samples of completed product from each serial must be tested for residual free formaldehyde content using the ferric chloride test.[2] Firms currently using tests for residual free formaldehyde content other than the ferric chloride test have until July 14, 2004 to update their Outline of Production to be in compliance with this requirement.

(1) The residual free formaldehyde content of biological products containing clostridial antigens must not exceed 1.85 grams per liter (g/L).

(2) The residual free formaldehyde content of bacterins, bacterin-toxoids, and toxoids, other than those containing clostridial antigens, must not exceed 0.74 grams per liter (g/L).

■ 3. In § 113.200, paragraph (f) is revised to read as follows:

§ 113.200 General requirements for killed virus vaccines.

* * * * *

(f) *Formaldehyde content.* If formaldehyde is used as the killing agent, the residual free formaldehyde content must not exceed 0.74 grams per liter (g/L) as determined using the ferric chloride test.[3] Firms currently using tests for residual free formaldehyde content other than the ferric chloride test have until July 14, 2004 to update their Outline of Production to be in compliance with this requirement.

Done in Washington, DC, this 10th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14957 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–34–P

[2] The procedures for performing the ferric chloride test for residual free formaldehyde may be obtained from USDA, APHIS, Center for Veterinary Biologics-Laboratory, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010.

[3] The procedures for performing the ferric chloride test for residual free formaldehyde may be obtained from USDA, APHIS, Center for Veterinary Biologics-Laboratory, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 37

[Docket No. 03–11]

RIN 1557–AB75

Debt Cancellation Contracts and Debt Suspension Agreements; Change in Compliance Date and Request for Comment

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of delay in compliance date; request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has determined to delay the date when compliance is required with certain provisions of the final rule governing debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) in order to allow the OCC to consider issues that have recently been brought to our attention concerning the application of the DCC/DSA rule in the context of closed-end consumer loan transactions where DCCs and DSAs are offered through unaffiliated, non-exclusive agents. The delay of the compliance date applies only to the extent and to the types of transactions described in this document. In all other circumstances, national banks are required to comply with the DCC/DSA rule as of June 16, 2003, which is the date on which the rule takes effect. The OCC also is inviting comment on issues raised by national banks related to the sale of DCCs and DSAs in connection with closed-end consumer loans offered through such non-exclusive agency relationships.

DATES: *Compliance date:* The compliance date for certain provisions in 12 CFR part 37 published at 67 FR 58962 (September 19, 2002) is delayed indefinitely. *See* **SUPPLEMENTARY INFORMATION** for details. OCC will publish a document in the **Federal Register** announcing the compliance date.

Comment date: Comments must be received by July 14, 2003.

ADDRESSES: Comments should be directed to Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219, Attention: Docket No. 03–11; Fax number (202) 874–4448 or Internet address: *regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to send comments by fax or e-mail when possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Pamela Mount, Compliance Specialist, Compliance Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2002, the OCC published the final rule governing DCCs and DSAs.[1] The final rule establishes consumer protection standards and safety and soundness requirements that apply with respect to DCCs and DSAs entered into by national banks in connection with extensions of credit they make to customers. The rule prohibits national banks from engaging in certain practices, such as tying and misleading marketing or advertising. It also requires, among other things, that national banks provide standardized disclosures about the DCC and DSA products they offer; that they obtain a customer's acknowledgment of receipt of those disclosures; and that they obtain the customer's affirmative election to purchase the product. In addition, the rule requires a national bank that offers a customer the option to pay the fee for a DCC or DSA in a single payment also to offer that customer a *bona fide* option to pay the fee on a periodic basis ("periodic payment option"). The final rule takes effect on June 16, 2003.

The OCC recently has received information that the periodic payment option requirement may present unique issues, of which the OCC was previously unaware, in connection with DCCs and DSAs offered by national banks through unaffiliated, non-exclusive agents, with respect to certain types of consumer purchase transactions, most notably car loans made available through automobile dealers.

Accordingly, we have determined that it is appropriate to delay the mandatory compliance date for the periodic payment option in the case of transactions where unaffiliated, non-exclusive agents of a national bank offer that bank's DCC or DSA in connection with closed-end consumer credit, until the OCC has an opportunity to further evaluate the feasibility of approaches to providing appropriate customer protections in connection with that type of transaction. Because the availability of the periodic payment option also triggers certain disclosures, we also are delaying the time for compliance with certain other provisions in the DCC/DSA final rule that are linked to the requirement to offer a periodic payment option, including the requirement to provide the long form disclosures.

Banks offering DCCs and DSAs through non-affiliated, non-exclusive agents thus remain subject to the following requirements:

- The bank may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the customer's purchase of a DCC or DSA.
- The bank may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.
- The bank may not offer DCCs or DSAs that contain terms giving the bank the right unilaterally to modify the contract unless the modification is favorable to the customer and is made without additional charge to the customer; or the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.
- If a DCC or DSA is terminated, the bank must refund to the customer any unearned fees paid for the contract unless the contract provides otherwise.
- The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.
- If the bank offers the customer the option to finance the fee for a DCC or DSA, the bank must disclose to the customer whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.
- A national bank must provide to the customer at the time of the initial solicitation of the DCC or DSA, the short form disclosures described in Appendix A to part 37, as modified to reflect delay of the compliance date for providing the periodic payment option and related changes. The form of the short form disclosures must be readily understandable and meaningful. The short form disclosures also must be included in advertisements and other promotional material for DCCs and DSAs, unless they are of a general nature.
- Before entering into a contract, the bank must obtain a customer's written affirmative election to purchase the DCC or DSA. The written election must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance.
- A national bank must manage the risks associated with DCCs and DSAs in accordance with safe and sound banking principles.

Description of Provisions Affected

As a result of today's actions, compliance with the following provisions will not be required, until further notice, when a national bank, in connection with closed-end consumer credit[2] extended by that bank, offers a DCC or DSA through an unaffiliated, non-exclusive agent:

- The requirement to offer a periodic payment option set forth in 12 CFR 37.5.
- The requirement set forth in 12 CFR 37.4(a) that a bank that offers a customer a DCC or DSA without a refund provision also must offer that customer a *bona fide* option to purchase a comparable DCC or DSA that provides for a refund.
- The long-form disclosure requirement set forth in 12 CFR 37.6.
- The second disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Lump sum payment of fee," informing the customer that he or she has the option to pay the fee in a single lump sum or in periodic payments.
- The third disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Lump sum payment of fee with no refund," informing the customer that he or she has the option to purchase a DCC or DSA with a refund provision.
- The fifth disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Additional disclosures," indicating that the customer will receive additional information before being required to pay for the DCC or DSA.[3]
- The requirement to obtain a customer's written acknowledgment of receipt of disclosures set forth at 12 CFR 37.7(a).

The OCC expects that national banks that do not provide long forms disclosures will conspicuously inform customers that they will receive a copy of the contract before they are required to pay for the product.

Request for Comment

As we have indicated, the purpose of this delay in the time for compliance is to permit the OCC to consider how best to address compliance issues that arise under the circumstances described in this notice. To aid our review of these issues, we invite comment on the following specific questions, as well as on any other aspect of this notice that commenters wish to address:

1. Please comment on any compliance issues or problems posed by providing the periodic payment option and the associated short and long form disclosures for DCCs or DSAs sold by unaffiliated, non-exclusive agents in connection with closed-end loans.
2. Please explain the types of loan products, *e.g.*, car loans, where this issue arises.
3. What alternative approaches are available to provide appropriate consumer protections?
4. In the case of closed-end loans, should the requirement in the long form disclosures to disclose the total fee for a DCC paid on a monthly or periodic basis be modified? Is there an alternative, effective way to disclose that information that could be added to the rule?

Dated: June 10, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–14972 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–33–P

[1] 67 FR 58962. The rule is codified at 12 CFR part 37.

[2] As used in this notice, the term "closed-end consumer credit" and "closed-end consumer loan" refer to consumer credit other than open-end credit, as defined in the final DCC/DSA rule. These terms do not include loans secured by 1–4 residential real property. See 12 CFR 37.2(a).

[3] The sixth disclosure set forth in Appendix A to part 37, provides banks the option of directing customers either to the long form disclosures or the contract for a full explanation of the terms. Clearly, since the long form is not required for the time being, the bank will refer customers to the contract.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Final decision to waive the Nonmanufacturer Rule.

SUMMARY: This document advises the public that the U.S. Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire and Ancillary Hardware Components. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: June 16, 2003.

Address Comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422, FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–14297 Filed 6–12–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM253, Special Conditions No. 25–235–SC]

Special Conditions: Raytheon Aircraft Company HS 125 Series 700A and 700B Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; Correction

SUMMARY: This document makes corrections to a Final special conditions; request for comment document published in the **Federal Register** on May 19, 2003 (68 FR 26991), which issued special conditions for the Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc., for protection from HIRF.

FOR FURTHER INFORMATION CONTACT: Jan Thor, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–21271 facsimile (425) 227–1330; or e-mail: *jan.thor@faa.gov*.

Correction

In Final special conditions; request for comment document FR Doc. 03–12376, published on May 19, 2003 (68 FR 26991), make the following correction:

1. On page 26991, in the third column, under the **DATES** section of the subject Final special conditions; request for comments document, correct "April 18, 2002" to read "April 18, 2003."

Issued in Renton, Washington, on June 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15000 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–05–AD; Amendment 39–13192; AD 2003–12–07]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. That AD currently requires a determination of the utilization rate and protective coating type of the 7th, 8th, 9th, 10th, 11th, and 12th stage high pressure compressor (HPC) disks, and removal, inspection for corrosion, and recoating of those HPC disks based on utilization rate. This amendment requires removal and replacement of protective coating of 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disks, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. This amendment is prompted by operator reports of cracks found on several JT8D steel HPC disks since the existing AD was published. The actions specified by this AD are intended to prevent fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATES: Effective July 18, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–12–07, Amendment 39–10563 (63 FR 31340, June 9, 1998), which is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines was published in the **Federal Register** on January 24, 2003 (68 FR 3475). That action proposed to require removal and replacement of protective coating of 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disks, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required in accordance with Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. JT8D A6431, dated November 27, 2002. Since the publication of the proposed rule, PW ASB No. JT8D A6431 was reissued as Revision 1 on March 7, 2003.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Effective Dates Should Coincide

One commenter states that the effective date of the AD should coincide with the revision of the Standard Practices Manual to incorporate the disk preservation and storage instructions.

The FAA does not agree. The Standard Practice Manual will be updated to incorporate the disk preservation steps specified in PW ASB No. JT8D A6431, Revision 1, dated March 7, 2003; however until that time, the steps specified in the accomplishment instructions, Paragraphs 8.A. through 8.H. of the ASB, are sufficient to properly perform the preservation technique. Therefore, no changes will be made to the AD.

Underestimated Operational Impact

One commenter states that the operational impact on the operators of the proposed requirements is underestimated. The commenter believes that the more stringent inspection requirements on certain 9th stage HPC disks will increase the demand on other 9th stage HPC disks creating industry shortages.

The FAA agrees. The FAA and the original equipment manufacturer (OEM) are aware that the demand for new 9th stage HPC disks will increase because of the more stringent re-inspection requirements imposed on older 9th stage disks. As a result, steps have been initiated at the OEM to meet the increased demand. The FAA expects that the steps the OEM has taken will prevent industry shortages significant enough not to change the economic impact of this AD. Therefore, no changes will be made to the AD.

Underestimated Costs of Replacement Disks

One commenter states that the costs associated with a new HPC disk are underestimated. The commenter notes that the $7,000 cost of a replacement disk specified in the proposed rule is too low, and that new disk prices range from $11,920 to $23,190.

The FAA does not agree. The FAA believes that it is not necessary to include the full cost of the disk in the economic analysis because the disks must be replaced before reaching their certified life, which would be part of the normal costs of operation. The $7,000 figure is the prorated replacement cost of the disk. This figure is the estimated average residual value of disks lost due to removal before reaching the full certified life of the disk. Therefore, no changes will be made to the AD.

Allowance for Preservation Status

One commenter requests that the AD include a provision to allow spare engines and disks not to accumulate time if placed in a preservation status in accordance with the JT8D Maintenance Manual. The commenter believes that once the engine is installed, then time will accumulate from the installation date, and this will allow the operators to maintain spare equipment and comply with the AD.

The FAA agrees. As the proposed rule is currently worded, an engine or disk does not accumulate time while in storage if preserved in accordance with procedures described in the compliance section of PW ASB No. JT8D A6431, Revision 1, dated March 7, 2003. Paragraphs 1.C. and 1.D of the compliance section of the ASB explain the storage requirements for the full engine and disk piece-parts respectively, and the associated time credits allowed for each storage method. Therefore, no changes will be made to the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–10563 (63 FR 31340, June 9, 1998) and by adding a new airworthiness directive, Amendment 39–13192, to read as follows:

2003–12–07 Pratt & Whitney: Amendment 39–13192. Docket No. 97–ANE–05–AD. Supersedes AD 98–12–07, Amendment 39–10563.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. These engines are installed on, but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done. To prevent fracture of the 7th, 8th, 9th, 10th, 11th, and 12th stage high pressure compressor (HPC) disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, do the following:

(a) Perform initial and repetitive inspections of HPC disks for corrosion pits and cracks after stripping the protective coating in accordance with the intervals specified in the compliance section and procedures specified in the accomplishment instructions of PW Alert Service Bulletin (ASB) No. JT8D A6431, Revision 1, dated March 7, 2003.

(b) Before further flight, replace HPC disks found with corrosion pits or cracks beyond serviceable limits as defined by PW ASB No. JT8D A6431, Revision 1, dated March 7, 2003.

(c) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB No. JT8D A6431, Revision 1, dated March 7, 2003, refers to the release date of the ASB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplanes to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The actions must be done in accordance with Pratt & Whitney Alert Service Bulletin No. JT8D A6431, Revision 1, dated March 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600; fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on July 18, 2003.

Issued in Burlington, Massachusetts, on June 5, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14844 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14843; Airspace Docket No. 03–ACE–28]

Modification of Class E Airspace; Rock Rapids, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Rock Rapids, IA.

EFFECTIVE DATE: 0901 UTC August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 15, 2003 (68 FR 18115). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 7, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 3, 2003.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–14999 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14927; Airspace Docket No. 03–ACE–33]

Modification of Class E Airspace; Crete, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Crete, NE.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 23, 2003 (68 FR 19945). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 3, 2003.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–14998 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14868; Airspace Docket No. 2003–ANE–103]

Amendment to Class E Airspace; Windsor Locks, Bradley International Airport, CT

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule revising the Class E airspace area at Windsor Locks, Bradley International Airport, Connecticut (KBDL), to provide for adequate controlled airspace for those aircraft using Instrument Approach Procedures to the airport.

EFFECTIVE DATE: The direct final rule published at 68 FR 18860 is effective 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: John Donnelly, Air Traffic Division, Airspace Branch, ANE–520, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7552; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 17, 2003 (Vol. 68, No. 74, FR 18860). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Burlington, MA, on June 3, 2003.

Thomas R. Davidson,

Manager, Air Traffic Division, New England Region.

[FR Doc. 03–14997 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2002–13362; Airspace Docket No. 02–ASO–7]

RIN 2120–AA66

Revision of VOR Federal Airways and Jet Routes in the Vicinity of Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on May 15, 2003. Due to an error in rounding decimal places, the legal description of Federal Airway V–437 inadvertently contained an incorrect radial. This action corrects that error.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On May 15, 2003, Docket No. FAA 2002–13362; Airspace Docket No. 02–ASO–7, FR Doc. 03–12049, was published revising seven VOR Federal airways and four jet routes in the vicinity of Savannah, GA. The legal description of Federal Airway V–437 contained an incorrect radial from the Savannah VORTAC. Due to an error in rounding decimal places, the affected radial was published as the "Savannah 053°" radial instead of the correct value which is the "Savannah 054°" radial. This action corrects that error by inserting the correct radial in the legal description.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for V–437 as published in the **Federal Register** on May 15, 2003 (68 FR 26202); FR Doc. 03–12049, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 26204 in the first column, correct the legal description of V–437 to read as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–437 [Corrected]

From Dolphin, FL; INT Dolphin 354° and Pahokee, FL, 157° radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; INT Ormond Beach 360° and Savannah, GA, 177° radials; Savannah; INT Savannah 054° and Charleston, SC, 231° radials; Charleston; to Florence, SC. The airspace within R–2935 is excluded.

* * * * *

Issued in Washington, DC, on June 9, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–14996 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 404, and 413

[Amendment No. 401–3, 404–2, 413–5]

Commercial Space Transportation; Licensing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is amending its commercial space transportation regulations to update an address and certain job titles, to accurately reflect the current organization of the regulations, and to delete some non-essential information. These administrative changes are necessary to keep our regulations clear, accurate, and current. The intended effect is to make our regulations easier for the public and regulated industry to use.

DATES: This rule is effective on June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Charles Huet, Office of Commercial Space Transportation, 800 Independence Avenue, Washington, DC 20591; telephone (202) 385–4659.

SUPPLEMENTARY INFORMATION: The FAA is making some technical or administrative changes to its commercial space transportation regulations. These changes do not affect the substance of the existing regulations, impose no new requirements, and have no impact on activities carried out under the regulations.

The Secretary of Transportation has delegated commercial space licensing authority, which had previously been a function within the Office of the Secretary, to the Federal Aviation Administration. As a result, the address of the Office of Commercial Space Transportation changed. The title of the head of the office changed. Also, the official who designates a legal officer for a regulatory hearing changed. Today's amendments reflect these changes.

The Commercial Space Act of 1998 (Pub. L. 105–303) expanded the jurisdiction of the Office of Commercial Space Transportation. In addition to its previous responsibility, the office now licenses launch of a reusable launch vehicle, operation of a reentry site, and reentry of a reentry vehicle. Previously, the FAA amended the regulations to add parts addressing these areas. The FAA is now amending 14 CFR 413.1 by adding a chart that guides the applicant to the appropriate part.

Procedural Matters

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies must generally publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature of the changes. The changes do not affect the rights or obligations of any regulated entity. It is in the public interest that the changes take effect promptly.

List of Subjects

14 CFR Part 401

Organization and functions (Government agencies), Space transportation and exploration.

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 413

Confidential business information, Space transportation and exploration.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 401—ORGANIZATION AND DEFINITIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 2. Revise § 401.1 to read as follows:

§ 401.1 The Office of Commercial Space Transportation.

The Office of Commercial Space Transportation, referred to in these regulations as the "Office," is a line of business within the Federal Aviation Administration and is located in the Federal Aviation Administration Headquarters, 800 Independence Avenue, SW., Room 331, Washington, DC 20591.

§ 401.3 [Amended]

■ 3. Amend § 401.3 by removing the words "a Director" and adding in its place the words "an Associate Administrator".

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

■ 4. The authority citation for part 404 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

§§ 404.3, 404.5, 404.11, 404.13, 404.17, and 404.19 [Amended]

■ 5. In 14 CFR part 404, remove the word "Director" and add, in its place, the words "Associate Administrator" in the following places:

■ a. Section 404.3(c);
■ b. Section 404.5;
■ c. Section 404.11;
■ d. Section 404.13;
■ e. Section 404.17; and
■ f. Section 404.19(b).

■ 6. Revise the second sentence of § 404.19(b) to read as follows:

§ 404.19 Hearings.

* * * * *

(b) * * * The FAA Chief Counsel designates a legal officer for the hearing.

PART 413—LICENSE APPLICATION PROCEDURES

■ 7. The authority citation for part 413 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 8. Revise § 413.1 to read as follows:

§ 413.1 Scope.

(a) This part prescribes the procedures applicable to applications submitted under this chapter to conduct licensed activities. These procedures apply to all applications for issuance of a license, transfer of an existing license, and renewal of an existing license.

(b) Use the following table to locate specific requirements:

Subject	Part
(1) Launch License	415
(2) License to Operate a Launch Site	420
(3) Launch and Reentry of a Reusable Launch Vehicle (RLV)	431
(4) License to Operate a Reentry Site	433

Subject	Part
(5) Reentry of a Reentry Vehicle other than a Reusable Launch Vehicle (RLV)	435

Issued in Washington, DC, on June 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 03–14995 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

NASA Grant and Cooperative Agreement Handbook—Unsolicited Proposals

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook to consolidate existing coverage regarding unsolicited proposals awarded as grants or cooperative agreements under a single new section.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, Code HC, Washington, DC, (202) 358–0481, e-mail: *paul.brundage@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Coverage regarding unsolicited proposals awarded as grants or cooperative agreements is set out in different sections of NASA's Grant and Cooperative Agreement Handbook. This change consolidates and clarifies that coverage in a new § 1260.17.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes merely consolidates existing guidance.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

List of Subjects in 14 CFR Part 1260

Grant programs—science and technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 14 CFR part 1260 is amended as follows:

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*,) and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENT

■ 1. In section 1260.10, revise paragraph (a)(2) to read as follows:

§ 1260.10 Proposals.

(a) * * *

(2) An *unsolicited proposal.* (*See* § 1260.17.)

■ 2. In section 1260.11, revise paragraph (d) to read as follows:

§ 1260.11 Evaluation and selection.

(d) For unsolicited proposals, *see* § 1260.17.

■ 3. Add section 1260.17 to read as follows:

§ 1260.17 Evaluation and selection of unsolicited proposals.

(a) Unsolicited proposals are for new and innovative ideas. Federal Acquisition Regulation (FAR) 48 CFR Subpart 15.6 and NASA FAR Supplement (NFS) 48 CFR Subpart 1815.6 set out NASA's procedures for their submission and evaluation. Consult "Guidance for the Preparation and Submission of Unsolicited Proposals" (*see http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html*) for additional information. NASA recommends contact with NASA technical personnel before submission of an unsolicited proposal to determine if preparation is warranted. These discussions should be limited to understanding NASA's need for research and do not jeopardize the unsolicited status of any subsequently submitted proposal.

(b) NASA will evaluate unsolicited proposals the same whether awarded as grants or contracts. However, the requirement to synopsize set out in FAR Part 5 does not apply to grants.

(c) All unsolicited proposals recommended for acceptance as grants shall be supported by a Justification for Acceptance of an Unsolicited Proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. However, review and concurrence are not required for technical officers at a division chief or higher level. The grant officer's signature awarding the grant constitutes approval of the JAUP.

(d) If an unsolicited proposal will not be funded, NASA will notify in writing the organization or person that submitted it. The method of notification is at the discretion of the grant officer. Proposals will be returned only when requested.

(e) Because unsolicited proposals are awarded without competition, written justifications for equipment and travel shall be submitted by the technical office to the grant officer when more than half of the proposed budget is for equipment, travel, and their associated indirect costs. The grant officer's signature awarding the grant constitutes approval of the justification.

[FR Doc. 03–14935 Filed 6–12–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N–021A]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products; Final Monograph; Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) skin protectant astringent drug products are generally recognized as safe and effective and not misbranded. This action revises some labeling for astringent drug products to be consistent with the final rule for OTC skin protectant drug products (68 FR 33362, June 4, 2003) and adds labeling for certain small packages (styptic pencils). This action is part of FDA's ongoing review of OTC drug products. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule.

DATES:

Effective Date: This rule is effective October 27, 2003.

Compliance Dates: The compliance dates are either June 13, 2005, or the date of the first major labeling revision after the effective date of October 27, 2003, whichever occurs first.

Comment Dates: Submit written comments by August 27, 2003. If no timely significant adverse comments are received, the agency will publish a document in the **Federal Register** before September 26, 2003, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a document of significant adverse comments in the **Federal Register** and withdraw this direct final rule before September 26, 2003.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 21, 1993 (58 FR 54458), FDA published a final monograph for OTC skin protectant astringent drug products in part 347 (21 CFR part 347), subpart A (the 1993 skin protectant final monograph). In the **Federal Register** of June 4, 2003 (68 FR 33362), FDA published a final rule for OTC skin protectant drug products (the 2003 skin protectant final monograph) and revised the format of part 347. Subpart A was redesignated as "General Provisions," and the astringent active ingredients (§ 347.10) and labeling (§ 347.50) were redesignated as §§ 347.12 and 347.52, respectively.

Two ingredients (colloidal oatmeal and sodium bicarbonate) added to the skin protectant monograph are used as a soak, compress, or wet dressing similar to the astringent active ingredient aluminum acetate. In the 2003 skin protectant final monograph, the agency included a warning about soaking too long (§ 347.50(c)(7)) and included directions for colloidal oatmeal (§ 347.50(d)(2)) and sodium bicarbonate (§ 347.50(d)(3)) that are shorter than the directions for aluminum acetate (§ 347.52(d)(1)) and that are in the new OTC drug labeling format. In this direct final rule, the agency is adding this warning, shortening the directions for aluminum acetate drug products, and arranging these directions in the new OTC drug labeling format.

Section 201.66(d)(10) (21 CFR 201.66(d)(10)) of the OTC drug labeling rule (64 FR 13254 at 13286, March 17, 1999) establishes a modified labeling format for small packages that need more than 60 percent of their total surface area available to bear labeling to meet the requirements of § 201.66(c)(1) through (c)(9) and (d)(1) through (d)(9). The agency stated in that rule that it would consider additional approaches for accommodating certain products in their respective monographs, taking into consideration the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population (64 FR 13254 at 13270, March 17, 1999). The 2003 skin protectant final monograph included additional labeling exemptions for certain small packages (lip protectant products) that meet the size criteria established in § 201.66(d)(10). The agency determined that lip protectant/lip balm products are typically packaged in small amounts, applied to limited areas of the body, have a high therapeutic index, carry extremely low risk in actual consumer use situations, provide a favorable public health benefit, require no specified dosage limitation, and require few specific warnings and no general warnings (e.g., pregnancy or overdose warnings).

Consequently, the agency is now including additional labeling exemptions for certain small packages of skin protectant astringent drug products (styptic pencils) that meet the criteria established in § 201.66(d)(10), taking into consideration the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population. For the safety profile of styptic pencils, the agency considered the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel). The Panel noted that "In 75 years of marketing styptic pencils there have been [no] reported instances of human toxicity" (47 FR 39412 at 39429, September 7, 1982). (The word "no" was inadvertently left out of the September 7, 1982, publication, and the agency corrected this error in its notice of proposed rulemaking for OTC skin protectant astringent drug products (54 FR 13490 at 13493, April 3, 1989).) The Panel also stated that aluminum sulfate (the active ingredient in styptic pencils) "has little, if any, cell permeability and exerts its effect on the cell surface." The only side effect the Panel noted was that application of the styptic pencil on a cut may result in some stinging. Thus, these products have an extremely low risk in actual consumer use situations, and the monograph only requires two general warnings (§ 347.50(c)(1)) and no ingredient specific warnings.

The agency also considered the factors listed previously that were the basis for labeling modifications for OTC lip protectant/lip balm drug products. Like those products, styptic pencils are packaged in small amounts, have a high therapeutic index and a favorable public health benefit (stop bleeding), would be used infrequently and on very limited areas of the body to stop bleeding of minor cuts from shaving, require minimal warnings (there is no pregnancy warning because this is a topical product), and have no specified dosage limitation (the directions for use are to apply to the affected area). For these reasons, the agency is including specific labeling provisions for certain small packages of skin protectant astringent drug products (styptic pencils) in this direct final rule.

II. Description of the Labeling Revisions

The warning in § 347.50(c)(7), when the colloidal oatmeal or sodium bicarbonate product is labeled for use as a soak, compress, or wet dressing, states: "When using this product (bullet) in some skin conditions, soaking too long may overdry." The agency is adding this warning in new § 347.52(c)(4) for products containing aluminum acetate when labeled for use as a soak, compress, or wet dressing. Our decision to revise the warning set forth in this direct final rule is based upon a finding that bathing can dry the skin out and exacerbate some conditions (as discussed in the 2003 skin protectant final monograph, 68 FR 33362 at 33367). Mandating a warning does not require a finding that any or all of the astringent drug products actually caused an adverse event, and FDA does not so find. Nor does FDA's mandate of a warning repudiate the OTC drug monograph under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that this revised warning is necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are

defined in the Federal Food, Drug, and Cosmetic Act.

FDA's decision to act in an instance such as this one need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate a warning, or take similar regulatory action, FDA need not show, nor do we allege, actual causation.

The agency is revising the directions in § 347.52(d)(1)(i) for aluminum acetate used as a soak to read: "For use as a soak: [bullet] soak affected area for 15 to 30 minutes as needed, or as directed by a doctor [bullet] repeat 3 times a day or as directed by a doctor [bullet] discard solution after each use". The agency is revising the directions in § 347.52(d)(1)(ii) for aluminum acetate used as a compress or wet dressing to read: "For use as a compress or wet dressing: [bullet] soak a clean, soft cloth in the solution [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard solution after each use". The agency is also shortening the directions in § 347.52(d)(3) for products containing witch hazel to read: "apply as often as needed".

The agency is adding new § 347.52(e) for products containing aluminum sulfate formulated as a styptic pencil. This section allows products that meet the criteria established in § 201.66(d)(10) to be marketed with reduced labeling.

III. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. This direct final rule revises several older labeling warnings and directions for OTC skin protectant astringent drug products for consistency with recently issued labeling for OTC skin protectant drug products and updates the labeling to the new OTC drug labeling format. The actions taken should be noncontroversial, and the agency does not anticipate receiving any significant adverse comment on this rule.

If FDA does not receive significant adverse comment by 75 days after the date of publication in the **Federal Register**, the agency will publish a document in the **Federal Register** confirming the effective date of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, identical to the direct final rule, that provides a procedural framework within which the proposed rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to part of this direct final rule and that part may be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on the direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

IV. Analysis of Impacts

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The rule that led to the development of this direct final rule was published on October 21, 1993, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this direct final rule that the direct final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this direct final rule is consistent with the principles set out in the Executive order and in these two statutes. The direct final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. FDA has determined that the direct final rule does not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this direct final rule is to make some minor labeling revisions in the previously issued astringents portion of the skin protectant drug products monograph to make the labeling consistent with the rest of the monograph and to add small package labeling provisions for aluminum sulfate marketed as a styptic pencil.

Current manufacturers of these products should incur only minor costs to relabel their products to meet the monograph. Some manufacturers will have to add a warning and revise the directions in their labeling. The agency is providing either 24 months from the date of publication of this direct final rule or the date of the first major labeling revision after the 135-day effective date of this direct final rule, whichever occurs first, for the manufacturers to use up existing labeling and print new labeling that incorporates the labeling in this direct final rule. Further, the labeling in the direct final rule is in the new OTC drug labeling format. Therefore, no additional professional skills are needed and manufacturers will not incur expenses determining how to state the product's labeling.

The agency believes that relabeling costs of the type required by this direct final rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). Assuming that there are about 25 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $50,000 to $75,000. The agency believes that the actual cost could be lower for the reasons stated in the previous paragraph.

For the reasons stated previously and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or three hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 347 is amended to read as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 347.52 is amended by adding paragraphs (c)(4) and (e) and by revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(3) to read as follows:

§ 347.52 Labeling of astringent drug products.

* * * * *

(c) * * *

(4) *For products containing aluminum acetate identified in § 347.12(a) when labeled for use as a soak, compress, or wet dressing.* "When using this product [bullet] in some skin conditions, soaking too long may overdry".

(d) * * *

(1) * * *—(i) *For products used as a soak.* "For use as a soak: [bullet] soak affected area for 15 to 30 minutes as needed, or as directed by a doctor [bullet] repeat 3 times a day or as directed by a doctor [bullet] discard solution after each use".

(ii) *For products used as a compress or wet dressing.* "For use as a compress or wet dressing: [bullet] soak a clean, soft cloth in the solution [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard solution after each use".

* * * * *

(3) *For products containing witch hazel identified in § 347.12(c).* "Apply as often as needed".

(e) *Products formulated and labeled as a styptic pencil and that meet the criteria established in § 201.66(d)(10) of this chapter.* The title, headings, subheadings, and information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications:

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the headings and information described in § 201.66(c)(3) and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(4) and (c)(5) may be presented as follows:

(i) The heading and indication required by § 201.66(c)(4) of this chapter may be limited to: "Use [in bold type] stops bleeding of minor cuts from shaving".

(ii) The "external use only" warning in § 347.52(c)(1) and in § 201.66(c)(5)(i) of this chapter may be omitted. The second warning in § 347.52(c)(1) may state: "avoid contact with eyes". The warning in § 201.66(c)(5)(x) may be limited to the following: "Keep out of reach of children." The subheadings in § 201.66(c)(5)(iii) through (c)(5)(vii) may be omitted, provided the information after the heading "Warning" contains the warnings in this paragraph.

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(3) and (c)(7), and the horizontal barlines and hairlines described in § 201.66(d)(8), may be omitted.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14818 Filed 6–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–236S]

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Suspension of interim rule.

SUMMARY: The DEA is suspending the order published January 15, 2003 designating two pharmaceutical preparations as exempt anabolic steroid products under the Controlled Substances Act (CSA). This suspension was brought about by the receipt of two

comments that raised significant issues regarding the order. This action is part of the ongoing implementation of the Anabolic Steroid Control Act (ASCA) of 1990.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The ASCA of 1990 (Title XIX of Pub. L. 101–647) placed anabolic steroids into Schedule III of the CSA (21 U.S.C. 812). Section 1903 of the ASCA provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the CSA (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The authority to exempt these products was delegated from the Attorney General to the Administrator of the Drug Enforcement Administration (28 CFR 0.1009b), who, in turn, redelegated this authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (28 CFR appendix to subpart R, Section 7, paragraph (g)). The procedure for implementing this section of the ASCA is found in § 1308.33 of Title 21 of the Code of Federal Regulations.

In conformance with § 1308.33 of Title 21 of the Code of Federal Regulations, an application was received from Syntho Pharmaceuticals to exempt two of their anabolic steroid products, Syntest H.S. and Syntest D.S. This application was forwarded to the Secretary of Health and Human Services (HHS) for his evaluation. Upon the recommendation of HHS and other relevant information, the DEA published an interim rule and request for comments (68 FR 1964, January 15, 2003) in which the Deputy Assistant Administrator ordered the products to be added to the list of exempt anabolic steroids.

Suspension of Order To Add Anabolic Steroid Products to the List of Products Exempted From Application of the CSA

DEA received two comments from interested persons that raised significant issues regarding findings of fact or conclusions of law upon which this order was based. As set forth in 21 CFR 1308.33(d), the Deputy Assistant Administrator hereby immediately suspends the effectiveness of this order until she may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator will reinstate, revoke, or amend her original order as she determines appropriate.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–14901 Filed 6–12–03; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in July 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during July 2003, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during July 2003, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during July 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for June 2003) of 0.40 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for June 2003) of 0.50 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2003, the PBGC finds that good cause exists for making the assumptions set forth in this

amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 134 H(e)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 117, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
117	7–1–03	8–1–03	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 117, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
117	7–1–03	8–1–03	3.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
July 2003	.0430	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of June 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–14952 Filed 6–12–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–051]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1070.5 at Hollywood, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the Sheridan Street Bridge, mile 1070.5, Hollywood, Broward County, Florida. This temporary rule allows this bridge to limit openings to a single leaf not more than once every 20 minutes. Double-leaf openings will be available during certain times with a two-hour advance notice to the bridge tender. This temporary rule is necessary to allow the bridge owner to safely complete repairs to the bridge.

DATES: This rule is effective from 7 a.m. on June 5, 2003 to 6 p.m. on September 26, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD07–03–051] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NRPM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to the public interest. Publishing an NPRM and delaying the effective date of the rule would adversely affect public safety by delaying the contractor's ability to safely repair the bridge.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Sheridan Street Bridge, mile 1070.5 at Hollywood, Broward County, Florida, has a vertical clearance of 22 feet at mean high water and a horizontal clearance of 45 feet between the down span and the fender system. The existing operating regulations in 33 CFR 117.5 require the bridge to open on signal.

On February 28, 2003, PCL Contractors requested that the Coast Guard modify the bridge opening schedule because of safety issues including, but not limited to, welding deck plates and modifying counterweight girders. Specifically, they requested that the bridge open only a single leaf no more than every 20 minutes with double-leaf openings available, during certain periods, with two hours advance notice given to the bridge tender. Double-leaf openings, however, will not be available from June 5 until July 3, 2003, because painting tarps will be in position to catch lead paint. Also, workers will be modifying the bridge's counterweights at that time. The contractor will be working 24 hours a day, seven days a week to complete bridge repairs as quickly as possible. This rule is necessary to ensure worker safety during repairs to the bridge and does not significantly hinder navigation. During this time of year, the majority of vessels that would normally require a double-leaf opening will be traversing the open ocean and not using the Intracoastal Waterway.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the regulations affect a limited amount of marine traffic and only for certain periods. Most vessels will be able to safely transit through a single span of the bridge, and both spans of the bridge will open with two hours advance notice to the bridge tender, except from June 5 until July 3, 2003.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. Most vessels will be able to safely transit through a single span of the bridge, and both spans of the bridge can be opened with two hours advanced notice to the bridge tender, except from June 5 to July 3, 2003.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If this temporary rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this temporary rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 12:01 a.m. on June 5, 2003, until 6 p.m. on September 26, 2003, in § 117.261, add a new paragraph (tt) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(tt) The Sheridan Street Bridge, mile 1070.5 at Hollywood, need only open a single leaf of the bridge on the hour, 20 minutes after the hour, and 40 minutes after the hour, except that from 6:01 p.m. July 3, 2003, until 6 p.m. on September 26, 2003, both leaves of the bridge will open at these times if the drawtender receives two hours advance notice requesting a double-leaf opening.

Dated: May 30, 2003.

James S. Carmichael,

Rear Admiral, Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–14987 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AL33

Privacy Act of 1974; Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a. It revises the regulation which exempts certain records from the provisions of the Privacy Act authorized under 5 U.S.C. 552a(j)(2) and (k)(2). This revision permits VA to exempt a new Privacy Act system of records, Police and Security Records—VA (103VA07B).

DATES: This final rule is effective August 12, 2003.

FOR FURTHER INFORMATION CONTACT: Director Police and Security Service (07B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–5544.

SUPPLEMENTARY INFORMATION: This document sets forth the VA regulation to exempt from certain provisions of the Privacy Act an additional VA Privacy Act system of records (see, 38 CFR 1.582) by adding a new system of records, "Police and Security Records—VA (103VA07B)," to that VA system of records already exempt under § 1.582.

In a document published in the **Federal Register** on December 19, 2002 (67 FR 77737), VA proposed to amend VA regulations governing the confidentiality and release of VA records subject to the Privacy Act to exempt certain records from the provisions of the Privacy Act authorized under 5 U.S.C. 552a(j)(2) and (k)(2). This proposal would have allowed VA to exempt a new Privacy Act system of records relating to police and security records. The public comment period ended on February 18, 2003. Since VA did not receive any comments or response on the proposed rule for RIN 2900–AL33, we are now adopting this proposal as a final rule without change.

Under title 5 United States Code (U.S.C.) 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system of records performs as its principal function activities pertaining to the enforcement of criminal laws. The function of the Office of Security and Law Enforcement's Police and Security Service is to provide for the maintenance of law and order and the protection of persons and property on VA property.

The system of records "Police and Security Records—VA (103VA07B)" was created in major part to support the criminal law related activities assigned to the Police and Security Service under the authority of 38 U.S.C. 901. These activities constitute the principal function of this staff. In addition to the principal functions pertaining to the enforcement of criminal laws, the Police and Security Service may receive and investigate complaints or information from various sources concerning the possible existence of activities constituting non-criminal violations of law, rules or regulations or substantial and specific danger to public safety.

Based upon the foregoing, VA exempts this system of records to the extent that it encompasses information pertaining to criminal law related activities from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

5 U.S.C. 552a(c)(3) and (4)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1), (2) and (3)
5 U.S.C. 552a(e)(4)(G), (H) and (I)
5 U.S.C. 552a(e)(5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

Also, VA exempts this system of records to the extent that it does not encompass information pertaining to criminal law related activities under 5 U.S.C. 552a(j)(2) from the following provisions of the Privacy Act of 1974 as permitted by 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c) (3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4)(G), (H) and (I)
5 U.S.C. 552a(f)

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Police and Security Service, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information and to avoid endangering these sources and Police and Security personnel.

Based on the rationale set forth in the proposed rule, we now adopt the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule applies only to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: May 16, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 1.582 is amended by adding paragraph (d) preceding the authority citation at the end of the section, to read as follows:

§ 1.582 Exemptions.

* * * * *

(d) *Exemption of Police and Security Records.* VA provides limited access to one Security and Law Enforcement System of Records, Police and Security Records—VA (103VA07B).

(1) The investigations records and reports contained in this System of Records are exempted [pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3) and (c)(4); (d); (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), and (e)(8); (f); and (g); in addition, they are exempted [pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f).

(2) These records contained in the Police and Security Records—VA (103VA076B) are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources of these records in this system. However, for the reason stated in paragraph (d)(2)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) These records contained in the Police and Security Records—VA (103VA076B) are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Office of Security and Law Enforcement may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Office of Security and Law Enforcement should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these records in the Police and Security Records—VA (103VA07B) from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines "maintain" to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

* * * * *

[FR Doc. 03–14861 Filed 6–12–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7511–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana, New Mexico, Oklahoma and Bernalillo County, NM; Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving negative declarations submitted by the States of Louisiana, New Mexico, Oklahoma, and the City of Albuquerque (Bernalillo County), New Mexico, which certify that there are no existing small municipal waste combustion units in Louisiana, New Mexico, and Oklahoma subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). EPA is also approving negative declarations submitted by the State of New Mexico and the City of Albuquerque (Bernalillo County) which certify that there are no existing hospital/medical/infectious waste incinerators subject to the requirements of sections 111(d) and 129 of the CAA. In addition, EPA is approving a negative declaration submitted by the City of Albuquerque (Bernalillo County) which certifies that there are no existing large municipal waste combustion units subject to the requirements of sections 111(d) and 129 of the CAA. Finally, EPA is approving a negative declaration submitted by the State of New Mexico which certifies that there are no existing commercial and industrial solid waste incineration units subject to the requirements of sections 111(d) and 129 of the CAA. This is a direct final action without prior notice and comment because this action is deemed noncontroversial.

DATES: This direct final rule is effective on August 12, 2003 without further notice, unless EPA receives adverse comment by July 14, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location. Anyone wanting to examine these

documents should make an appointment with the EPA Region 6 Office at least two working days in advance.

Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2833.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7259.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean the EPA.

I. What Is the Background for This Action?

Section 129 of the CAA requires us to develop new source performance standards (NSPS) and emission guidelines (EG) for each category of solid waste incineration units which includes these categories addressed in today's notice: (1) Existing large municipal waste combustion units; (2) existing hospital/medical/infectious waste incinerator units, (3) existing small municipal waste combustion units, and (4) existing commercial and industrial solid waste incinerator units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines required by section 111(d) of the CAA.

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is "any air pollutant, emissions of which are subject to a standard of performance for new stationary sources but for which no air quality criteria has been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA." 40 CFR 60.21(a).

Section 129(b) of the CAA also requires us to develop an EG for each category of existing solid waste incineration units. Under section 129 of the CAA, the EG is not federally enforceable. Section 129(b)(2) requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become Federally enforceable upon EPA approval.

Emission guidelines and compliance times for large municipal waste combustion units constructed on or before September 20, 1994, were promulgated on December 19, 1995 (60 FR 65387) at 40 CFR part 60, subpart Cb. The Federal plan was promulgated on November 12, 1998 (63 FR 63191) at 40 CFR Part 62, subpart FFF.

Emission guidelines and compliance times for hospital/medical/infectious waste incinerators constructed on or before June 20, 1996, were promulgated on September 17, 1997 (62 FR 48348) at 40 CFR part 60, subpart Ce. The Federal plan was promulgated on August 15, 2000 (65 FR 49868) at 40 CFR Part 62, subpart HHH.

Emission guidelines and compliance standards for small municipal waste combustion units constructed on or before August 30, 1999, were promulgated on December 6, 2000 (65 FR 76350) at 40 CFR part 60, subpart BBBB. The Federal plan was promulgated on January 31, 2003 (68 FR 5144) at 40 CFR part 62, subpart JJJ.

The emission guidelines and compliance times for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999, were promulgated December 1, 2000 (65 FR 75338) at 40 CFR part 60, subpart DDDD. The Federal plan has not been promulgated as of the date of this notice. EPA proposed approval of the Federal plan on November 25, 2002 (67 FR 70640).

The status of our approvals of State plans for designated facilities (often referred to as "111(d) plans" or "111(d)/129 plans") is given in separate subparts in 40 CFR part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants." The Federal plan requirements for existing solid waste incineration units are also codified in separate subparts at the end of part 62.

Procedures and requirements for development and submission of state plans for controlling designated pollutants are given in 40 CFR part 60, "Standards of Performance for New Stationary Sources," subpart B, "Adoption and Submittal of State Plans for Designated Facilities" and in 40 CFR part 62, subpart A, "General Provisions." If a State does not have any existing sources of a designated pollutant located within its boundaries, 40 CFR 62.06 provides that the State may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of 40 CFR Part 60, subpart B, for that designated facility. In the event that a designated facility is located in a State after a negative declaration has been approved by EPA, 40 CFR 62.13 requires that the Federal plan for the designated facility, as required by section 129 of the CAA and 40 CFR 62.02(g), will automatically apply to the facility.

This **Federal Register** action approves negative declarations for the following: existing large municipal waste combustion units, existing hospital/medical/infectious waste incinerators, existing small municipal waste combustion units, and existing commercial and industrial solid waste incineration units.

II. State Submittals

A. Existing Large Municipal Waste Combustion Units Negative Declaration From the City of Albuquerque (Bernalillo County), New Mexico

The City of Albuquerque (Bernalillo County) submitted a letter dated September 10, 2002 certifying there are no existing municipal waste combustion units in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board subject to 40 CFR part 60, subpart Cb. This negative declaration meets the requirements of 40 CFR 62.06.

B. Hospital/Medical/Infectious Wastes Incinerators Negative Declarations From the State of New Mexico and the City of Albuquerque (Bernalillo County), New Mexico

The New Mexico Environment Department and the City of Albuquerque (Bernalillo County) have submitted letters certifying that there are no existing hospital/medical/infectious waste incinerators subject to 40 CFR part 62, subpart Ce, under their jurisdictions in the State of New Mexico, and Bernalillo County, New Mexico. These negative declarations meet the requirements of 40 CFR 62.06. The dates that these letters were submitted are identified in the table below.

State agency that submitted the negative declaration	Date of letter to EPA Region 6 Office
New Mexico Environment Department	September 14, 1998.

State agency that submitted the negative declaration	Date of letter to EPA Region 6 Office
City of Albuquerque Environmental Health Department	January 25, 2002.

C. Small Municipal Waste Combustion Units Negative Declarations From the States of Louisiana, New Mexico, and Oklahoma, and the City of Albuquerque (Bernalillo County), New Mexico

The Louisiana Department of Environmental Quality, the New Mexico Environment Department, the Oklahoma Department of Environmental Quality, and the City of Albuquerque (Bernalillo County) have submitted letters certifying that there are no existing small municipal waste combustion units under their jurisdictions in their respective States or in Bernalillo County, New Mexico subject to 40 CFR part 60, subpart BBBB. These negative declarations meet the requirements of 40 CFR 62.06. The dates that these letters were submitted are identified in the table below.

State agency that submitted the negative declaration	Date of letter to EPA Region 6 Office
Louisiana Department of Environmental Quality	December 20, 2002.
New Mexico Environment Department	November 13, 2001.
Oklahoma Department of Environmental Quality	October 2, 2001.
City of Albuquerque, Environmental Health Department	September 10, 2002.

D. Commercial and Industrial Solid Waste Incinerators Negative Declaration From the State of New Mexico

The New Mexico Environment Department submitted a letter dated November 13, 2001, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 62, subpart DDDD, under its jurisdiction in the State of New Mexico (excluding tribal lands and Bernalillo County). This negative declaration meet the requirements of 40 CFR 62.06.

III. Final Action

We are approving a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico certifying that there are no existing municipal waste combustion units in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board subject to 40 CFR part 60, subpart Cb.

We are approving negative declarations submitted by the New Mexico Environment Department and the City of Albuquerque Environmental Health Department certifying that there are no existing hospital/medical/infectious waste incinerators subject to 40 CFR part 60, subpart Ce.

We are also approving negative declarations submitted by the Louisiana Department of Environmental Quality, the New Mexico Environment Department, the Oklahoma Department of Environmental Quality, and the City of Albuquerque Environmental Health Department certifying that there are no existing small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB, within the jurisdictions of the respective State and local agencies.

Finally, we are also approving a negative declaration submitted by the New Mexico Environment Department that there are no existing applicable commercial and industrial solid waste incineration units subject to 40 CFR part 60, subpart DDDD, under its jurisdiction in the State of New Mexico (excluding tribal lands and Bernalillo County).

If a designated facility is later found within any of the noted jurisdictions after publication of this **Federal Register** action, then the overlooked facility will become subject to the requirements of the Federal plan for that designated facility, including the compliance schedule. The Federal plan will no longer apply if we subsequently receive and approve the 111(d)/129 plan from the jurisdiction with the overlooked facility.

Since the States of Louisiana, New Mexico, and Oklahoma have not submitted a demonstration of authority over "Indian Country," (as defined in 18 U.S.C. 1151) we are limiting our approval to those areas that do not constitute Indian Country. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Any existing designated facility that may exist on "Indian Country" is subject to the Federal plan for the designated facility. *See* 40 CFR 62.13.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the "Proposed Rules" section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve these rules should relevant adverse comments be filed. This action will be effective August 12, 2003 unless EPA receives adverse written comments by July 14, 2003.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 12, 2003 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state and local declarations that rules implementing certain federal standards are unnecessary. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves state and local declarations that rules implementing certain federal standards are

unnecessary, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by EO 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132 (64 FR 43255, August 10, 1999). This action merely approves state and local declarations that rules implementing certain federal standards are unnecessary, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to EO 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

■ Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

■ 2. Subpart T is amended by adding a new undesignated center heading and a new § 62.4660 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.4660 Identification of sources—negative declaration.

Letter from the Louisiana Department of Environmental Quality dated December 20, 2002, certifying that there are no existing small municipal waste combustion units in the State of Louisiana subject to 40 CFR part 60, subpart BBBB.

Subpart GG—New Mexico

■ 3. Subpart GG is amended by adding a new undesignated center heading and a new § 62.7860, followed by a new undesignated center heading and a new § 62.7870, followed by a new undesignated center heading and a new § 62.7880, followed by a new undesignated center heading and a new § 62.7890 to read as follows:

Emissions From Existing Large Municipal Waste Combustion Units

§ 62.7860 Identification of sources—negative declaration.

Letter from the City of Albuquerque Air Pollution Control Division dated September 10, 2002, certifying that there are no existing municipal waste combustion units in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo county Air Quality Control Board subject to 40 CFR part 60, subpart Cb.

Emissions From Existing Hospital/Medical/Infectious Wastes Incinerators

§ 62.7870 Identification of sources—negative declaration.

Letters from the New Mexico Environment Department and the City of Albuquerque Environmental Health Department dated September 14, 1998, and January 25, 2002, respectively, certifying that there are no existing Hospital/Medical/Infectious Waste Incinerators subject to 40 CFR part 60, subpart Ce, under their jurisdictions in the State of New Mexico.

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.7880 Identification of sources—negative declaration.

Letters from the New Mexico Environment Department and the City of Albuquerque Environmental Health Department dated November 13, 2001, and September 10, 2002, respectively, certifying that there are no existing small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB under their jurisdictions in the State of New Mexico.

Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units

§ 62.7890 Identification of sources—negative declaration.

Letters from the New Mexico Environment Department dated November 13, 2001 certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subpart DDDD under its jurisdiction in the State of New Mexico (excluding tribal lands and Bernalillo County).

Subpart LL—Oklahoma

■ 4. Subpart LL is amended by adding a new undesignated center heading and a new § 62.9180 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.9180 Identification of sources—negative declaration.

Letter from the Oklahoma Department of Environmental Quality dated October 2, 2001, certifying that there are no existing small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB, under its jurisdiction in the State of Oklahoma.

[FR Doc. 03–15007 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0103; FRL–7310–8]

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as the parent in or on acerola; artichoke, globe; avocado; banana (import); canistel; corn, pop, grain; corn, pop, stover; cranberry; currant; elderberry; feijoa; fruit, stone, group 12; gooseberry; huckleberry; guava; jaboticaba; juneberry; lingonberry; longan; lychee; mango; mustard, seed; okra; papaya; passionfruit; persimmon; pulasan; rambutan; salal; sapodilla; sapote, black; sapote, mamey; Spanish lime; star apple; starfruit; strawberry; vegetable, leaves of root and tuber, group 2; vegetable, legume, group 6, except soybean; vegetable, root and tuber, group 1, except sugar beet; watercress; wax jambu. EPA is also deleting certain imidacloprid tolerances that are no longer needed as result of this action. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) , as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 13, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0103, must be received on or before August 12, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an are agricultural producer, food manufacturer, and pesticide manufacturer Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0103. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of February 5, 2003 (68 FR 5880) (FRL–7287–5) and March 5, 2003 (68 FR 10464) (FRL–7291–1) EPA issued notices pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP1E6268, 1E6254, 1E6237, 1E6225, 0E6203, 2E6403, 2E6406, 2E6409, 2E6417, 2E6421, 2E6435, 2E6414, 2E6458, and 2E6506) by IR–4, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390 and PP 0E6074 Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. Those notices included summaries of the petitions prepared by Bayer CropScience, the registrant. One comment was received in response to the notice of filing of February 5, 2003, from an individual who requested that information about pesticide tolerances be available in grocery stores next to the food labels.

The petitions requested that 40 CFR 180.472 be amended by establishing tolerances for residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl.

moiety, all expressed as imidacloprid in or on the raw agricultural commodities as follows: Bushberry subgroup 13B, lingonberry, juneberry and salal at 3.5 parts per million (ppm) (PP 1E6268), okra at 1.0 ppm (PP 1E6254), watercress at 3.5 ppm (PP 1E6237), artichoke at 2.5 ppm (PP 1E6225), cranberry at 0.05 ppm (PP 0E6203), vegetable, legume, except soybean, group 6 at 4.0 ppm (PP 2E6403), avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, and mamey sapote at 1.0 ppm, and lychee, longan, Spanish lime, rambutan, pulasan and persimmon at 3.0 ppm (PP 2E6406), vegetable, leaves of root and tuber, group 2 at 4.0 ppm (PP 2E6409), strawberry at 0.5 ppm (PP 2E6417), fruit, stone, group 12 at 3.0 ppm (PP 2E6421), guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 1.0 ppm (PP 2E6435), corn, pop, grain at 0.05 ppm and corn, pop, stover at 0.2 ppm (PP 2E6414), mustard seed at 0.05 ppm (PP 2E6458), and vegetable, root and tuber, except sugar beet, group 1, except sugar beet, at 0.4 ppm (PP 2E6506); imported banana at 0.01 ppm (0E6074). The petition for imported banana was subsequently amended to propose a tolerance at 0.02 ppm.

EPA is also deleting several established tolerances in § 180.472(a) and § 180.472(b) that are no longer needed, as a result of this action. The tolerance deletions under § 180.472(b) are time-limited tolerances established under section 18 emergency exemptions that are superceded by the establishment of general tolerances for imidacloprid and its metabolites under § 180.472(a).

The revisions to § 180.472(a) are as follows:

1. Delete bean, edible, podded at 1.0 ppm and bean, succulent, shelled at 1.0 ppm. Replaced with vegetable, legume, group 6, except soybean at 4.0 ppm.

2. Delete dasheen, leaves at 3.5 ppm and turnip greens at 3.5 ppm. Replaced with vegetable, leaves of root and tuber, group 2 at 4.0 ppm.

3. Delete mango at 0.2 ppm. Replaced with mango at 1.0 ppm.

4. Delete potato at 0.3 ppm and vegetable, tuberous and corm, subgroup at 0.3 ppm. Replaced with vegetable, root and tuber, group 1, except sugar beet at 0.4 ppm.

The revisions to § 180.472(b) are as follows:

1. Delete the time-limited tolerance for fruit, stone at 3.0 ppm. Tolerance for fruit, stone, group 12 at 3.0 ppm is established by this action under 180.472(a).

2. Delete the time-limited tolerance for strawberry at 0.1 ppm. Tolerance for strawberry at 0.5 ppm is established by this action under 180.472(a).

3. Delete the time-limited tolerance for turnip, roots at 0.3 ppm. Tolerance for vegetable, root and tuber, group 1, except sugar beet at 0.4 ppm is established by this action under 180.472(a).

4. Delete the time-limited tolerance for turnip, tops at 3.5 ppm. Tolerance for vegetable, leaves of root and tuber, group 2 at 4.0 ppm is established by this action under 180.472(a).

EPA has received objections to a time-limited tolerance it established for residues of imidacloprid on blueberries in connection with an emergency exemption for such use under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* published in the **Federal Register** of January 18, 2002 (67 FR 2580)(FRL–6817–6). The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has initiated a public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7), which ended on October 16, 2002. Although that proceeding remains ongoing, prior to acting on this current tolerance action, EPA reviewed the imidacloprid-specific objections raised by NRDC and has addressed them at relevant points throughout this preamble. Since EPA review of the objections to the time-limited tolerance for blueberry is ongoing, EPA is not establishing the proposed tolerance for blueberry at this time. Individual commodity tolerances for the other members of the bushberry subgroup (currant, elderberry, gooseberry and huckleberry) are established by this action.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that" there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for combined residues of imidacloprid on banana (import) at 0.02 ppm; cranberry; mustard, seed; corn, pop, grain at 0.05 ppm; corn, pop, stover at 0.20 ppm; vegetable, root and tuber, group 1, except sugar beet at 0.40 ppm; strawberry at 0.50 ppm; acerola; avocado; canistel; feijoa; guava; jaboticaba; mango; okra; papaya; passionfruit; sapodilla; sapote, black; sapote, mamey; star apple; starfruit; wax jambu at 1.0 ppm; artichoke, globe at 2.5 ppm; fruit, stone, group 12; lychee; longan; Spanish lime; rambutan; pulasan; persimmon at 3.0 ppm; currant; elderberry; gooseberry; huckleberry; juneberry; lingonberry; salal; watercress at 3.5 ppm; vegetable, leaves of root and tuber, group 2; vegetable, legume, group 6, except soybean at 4.0 ppm.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3200	21/28-Day dermal toxicity (rabbits)	NOAEL = 1,000 mg/kg/day (highest dose tested (HDT)) LOAEL = Not identified
870.3465	4 Week inhalation toxicity (rat)	NOAEL = 0.191 mg/liter/day (HDT) LOAEL = Not identified
870.3700	Prenatal developmental toxicity (rats)	Maternal NOAEL = 10 mg/kg/day LOAEL = 30 mg/kg/day based on decreased body weight gain and decreased corrected body weight gain. Developmental NOAEL = 30 mg/kg/day LOAEL = 100 mg/kg/day based on a slight increase in the incidence of wavy ribs.
870.3700	Prenatal developmental toxicity (rabbits)	Maternal NOAEL = 24 mg/kg/day LOAEL = 72 mg/kg/day based on maternal deaths and decreased maternal absolute body weights, body weight gains, and food consumption. Developmental NOAEL = 24 mg/kg/day LOAEL = 72 mg/kg/day based on abortion, total litter resorptions, increased postimplantation loss due to increased late resorptions, decreased fetal weights, and very low incidences of skeletal alterations.
870.3800	Reproduction and fertility effects (rats)	Parental/Systemic NOAEL = 16.5 mg/kg/day LOAEL = 47.3 mg/kg/day based on decreased premating weight gain by F0 males and females and F1 females and decreased gestational weight gain by F1 females. Reproductive NOAEL = 47.3 mg/kg/day (HDT) LOAEL = not identified Offspring NOAEL = 16.5 mg/kg/day LOAEL = 47.3 mg/kg/day based on decreased pup body weights in both litters of both generations.
870.4100	Chronic toxicity (dogs)	NOAEL = 72 mg/kg/day (HDT) LOAEL = Not identified
870.4200	Carcinogenicity (mice)	NOAEL = Males: 208 mg/kg/day; Females: 274 mg/kg/day LOAEL = Males: 414 mg/kg/day; Females: 424 mg/kg/day based on decreased body weights, food consumption and water intake. No evidence of carcinogenicity.
870.4300	Combined Chronic/Carcinogenicity (rats)	NOAEL = Males: 5.7 mg/kg/day; Females: 7.6 mg/kg/day LOAEL = Males: 16.9 mg/kg/day; Females: 24.9 mg/kg/day based on thyroid toxicity (increased incidence of mineralized particles in thyroid colloid) in males. No evidence of carcinogenicity.
870.5100 870.5300	Gene Mutation	Negative in a battery of test.
870.5375 870.5380 870.5385 870.5395 870.5900	Chromosome aberrations	Negative in battery of tests, except at cytoxic doses in an *in vitro* mammalian chromosome aberration test and an *in vitro* sister chromatid exchange test.
870.5550 870.5575	Other genotoxic effects	Negative in a battery of tests
870.6200	Acute neurotoxicity screening battery rat	NOAEL = not identified. LOAEL = 42 mg/kg based on decreased motor and locomotor activities observed in females.
870.6200	Subchronic neurotoxicity screening battery rat	NOAEL = 9.3 mg/kg/day. LOAEL = 63.3 mg/kg/day based on decreased body weight gain.
870.6300	Developmental neurotoxicity (rat)	Maternal NOAEL = 20 mg/kg/day. LOAEL = 55 mg/kg/day based on decreased food consumption and body weight gain during lactation. Offspring NOAEL = 20 mg/kg/day. LOAEL = 55 mg/kg/day based on decreased body weight and body weight gain, decreased motor activity and decreased caudate/putamen width in females.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics rat	Methylene-labeled imidacloprid was rapidly absorbed. There were no biologically significant differences between sexes, dose levels, or route of administration. Urinary excretion was the major route of elimination, with a lesser amount eliminated in feces. Total tissue burden after 48 hours accounted for only approximately 0.5% of the recovered radioactivity, with major sites of accumulation being the liver, kidney, lung, skin, and plasma and minor sites being the brain and testes. There were two major evident routes of biotransformation. The first included an oxidative cleavage of the parent compound to give 6-CNA and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second included the hydroxylation of imidazolidine followed by elimination of water of the parent compound to give NTN 35884. In a comparison between [Methylene-14C] Imidacloprid and [Imidazolidine-4,5-14C] Imidacloprid, the rates of excretion were similar; however, the renal portion was higher with the imidazolidine-labeled test material. The imidazolidine-labeled test material also demonstrated higher accumulation in the tissues, with the major sites of accumulation being the liver, kidney, lung, and skin, and the minor sites being brain and muscle.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for imidacloprid used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	* Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary all populations	LOAEL = 42 mg/kg/day UF = 300 Acute RfD = 0.14 mg/kg	FQPA SF = 1X aPAD = aRfD/ FQPA SF = 0.14 mg/kg	Acute neurotoxicity - rat LOAEL = 42 mg/kg, based upon the decrease in motor and locomotor activities observed in females.
Chronic Dietary all populations	NOAEL= 5.7 mg/kg/day UF = 100 Chronic RfD = 0.057 mg/kg/day	FQPA SF = 1X cPAD = cRfD/FQPA SF = 0.057 mg/kg/day	Combined chronic tox/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Short-Term Oral (1–30 days)	oral study NOAEL= 10 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	* Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Oral (1–6 months)	oral study NOAEL= 9.3 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Subchronic neurotoxicity - rat LOAEL = 63.3 mg/kg/day, based upon decreased body weight gain.
Short-Term Dermal (1–30 days)	oral study NOAEL= 10 mg/kg/day (dermal absorption rate = 7.2%)2	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain.
Intermediate-Term Dermal (1–6 months)	oral study NOAEL= 9.3 mg/kg/day (dermal absorption rate = 7.2%)2	LOC for MOE = 100 (Residential, includes the FQPA SF)	Subchronic neurotoxicity - rat LOAEL = 63.3 mg/kg/day, based upon decreased body weight gain.
Long-Term Dermal (> 6 months)	oral study NOAEL= 5.7 mg/kg/day (dermal absorption rate = 7.2%)2	LOC for MOE = 100 (Residential, includes the FQPA SF)	Combined chronic tox/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Short-Term Inhalation (1–30 days)	oral study NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain.
Intermediate-Term Inhalation (1–6 months)	oral study NOAEL= 9.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential, includes the FQPA SF)	Subchronic neurotoxicity - rat LOAEL = 63.3 mg/kg/day, based upon decreased body weight gain.
Long-Term Inhalation (>6 months)	oral study NOAEL= 5.7 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential, includes the FQPA SF)	Combined chronic tox/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Cancer (oral, dermal, inhalation)	no evidence of carcinogenicity for humans	Not applicable	No evidence of carcinogenicity in rats and mice.

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

In its objections to a separate imidacloprid tolerance action, NRDC claims that EPA erred by regulating on the basis of a LOAEL for acute and chronic toxicity. As can be seen from the above table, NRDC is mistaken with regard to use of a LOAEL for estimating the RfD for chronic risk. The acute toxicity endpoint was based upon a LOAEL of 42 mg/kg/day from an acute neurotoxicity study in rats. This value was adjusted with a safety factor of 3X to approximate the value of a NOAEL. EPA has high confidence that this value of 3x is sufficient for several reasons. The effect seen at the LOAEL in the acute neurotoxicity study (decreased motor activity), occurred only in one sex of the rat (females), was characterized as minimal, and may have been a result of the use of the gavage dosing in the study. The decreased motor activity was not replicated following repeated dietary administration (non-gavage) at lower and higher doses (10, 70 or 200 mg/kg/day) in the subchronic neurotoxicity study in the same species (rats). Further, using a safety factor of 3X produces a regulatory endpoint lower than the acute effect levels in other standard studies for determining an acute endpoint, developmental toxicity studies in two species, and in another study that is on occasion used for such a purpose, the developmental neurotoxicity study in rats.

Also in these objections, NRDC claims that EPA failed to calculate residential risks for some scenarios, based on low toxicity (no endpoints were chosen). On October 8, 2002, the Health Effects Division (HED), Hazard Identification Assessment Review Committee (HIARC) reviewed the hazard database for imidacloprid and established additional endpoints. Endpoints were chosen for each of the following exposure scenarios: acute dietary, chronic dietary, short-term oral, intermediate-term oral, short-term dermal, intermediate-term dermal, long-term dermal, short-term inhalation, intermediate-term inhalation, and long-term inhalation. In the current risk assessment (Unit E of this document), EPA calculated short-term residential risks (oral, dermal, and inhalation) for both adults and children for a wide-range of representative scenarios, including applications to lawns, ornamental plantings, indoor and outdoor potted plants, and dogs and cats. Based on current residential use patterns for imidacloprid, EPA expects the duration of exposure to be short-term (1-30 days), and would not result in intermediate or long-term exposure. EPA also conducted human health aggregate risk assessments for the following exposure scenarios: acute aggregate (food + drinking water), short-term aggregate exposure (food + drinking water + residential), and chronic aggregate exposure (food + drinking water).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been

established (40 CFR 180.472) for the combined residues of imidacloprid, in or on a variety of raw agricultural commodities. Meat, milk, poultry and egg tolerances have also been established for the combined residues of imidacloprid. In conducting dietary exposure assessments EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID[r]) which incorporates food consumption data as reported by respondents in the USDA [1994-1996 and 1998] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The 1994-96 and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment, but are retained as individual consumption events for acute exposure assessment. Risk assessments were conducted by EPA to assess dietary exposures from imidacloprid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA [1994–1996/1998] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier 1, deterministic acute dietary exposure assessment was conducted using tolerance-level residues, 100% crop treated (CT) information for registered and proposed commodities; and modified DEEMTM (version 7.76) processing factors for some commodities based on guideline processing studies. EPA estimated exposure based on the 95th percentile value from this deterministic exposure assessment.

In its objections to a separate imidacloprid tolerance action, NRDC asserts that EPA erred by relying on the exposure value for the 95th percentile of the population in estimating exposure. NRDC claims that this approach leaves 5 percent of the population unprotected. These comments by NRDC represent a misunderstanding of EPA's exposure assessments. Although EPA estimated exposure using the 95th percentile, EPA most definitely was not, however, acting in a manner designed to protect only 95 percent of the population. To the contrary, EPA's exposure estimates were designed to reasonably capture the full range of exposures in each population subgroup.

As explained in its science policy paper on this subject, EPA, in estimating exposure for population subgroups, generally considers various population percentiles of exposure between 95 and 99.99, depending on the extent of overestimation in the residue data used in the assessment. In each exposure assessment EPA is attempting to reasonably estimate the full range of exposures in a subgroup. Accordingly, as EPA noted in its policy paper, just as when OPP uses the 95th percentile with non-probabilistic exposure assessments OPP is not suggesting that OPP is leaving 5 percent of the population unprotected, OPP is not by choosing the 99.9th percentile for probabilistic exposure assessments concluding that only 99.9 percent of the population deserves protection. Rather, it is OPP's view that, with probabilistic assessments, the use of the 99.9th percentile generally produces a reasonable high-end exposure such that if that exposure does not exceed the safe level, OPP can conclude there is a reasonable certainty of no harm to the general population and all significant population groups. (Office of Pesticide Programs, EPA, *Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern* 31 (March 22, 2000)). Importantly, EPA generally uses a population percentile of 95 when EPA relies on worst case residue values - i.e., all crops covered by the tolerance contain residues at the tolerance value. Even at the 95th percentile of estimated exposure, actual exposure, when based on this assumption tends to be significantly overstated. For example, EPA has found that when it uses realistic residue information (e.g., data from monitoring of the food supply), that exposure estimates are generally substantially lower even at the 99.99th percentile.

As noted above, EPA did use the worst case assumption that all food covered by imidacloprid tolerances would bear residues at the tolerance level. Hence, EPA believes its exposure estimate is unlikely to understate exposure; rather, in all likelihood, the estimate probably substantially overstates exposure.

ii. *Chronic exposure.* The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure assessment was performed using published and proposed tolerance levels, DEEM default processing factors, and percent crop treated information on some commodities.

iii. *Cancer.* A quantitative cancer aggregate risk assessment was not performed because imidacloprid is not carcinogenic.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue: Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent CT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on percent CT.

The Agency used CT information as follows:

For the acute assessment, 100% CT was assumed for all registered and proposed commodities. For the chronic assessment, average weighted percent CT information was used for the following commodities: Apple 34%; brussels sprouts 56%; broccoli 35%; cabbage 14%; cantaloupe 31%; cauliflower 52%; collards 10%; corn, field 1%; cotton 3%; cucumber 2%; eggplant 36%; grapefruit 3%; grape 32%; mustard greens16%; honeydew 26%; kale 30%; lemon 1%; lettuce, head 49%; lime 5%; orange 1%; pear 16%; pepper 62%; pumpkin 7%; spinach 15%; squash 7%; sugarbeet 1%; tangerine 9%; tomato 9%; watermelon 6%; wheat 1%. A default value of 1% was used for all commodities which were reported as having <1% CT.

The Agency believes that the three conditions listed in Unit. III.E. have been met. With respect to Condition 1, percent CT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average percent CT for chronic dietary exposure estimates. This weighted average percent CT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the percent CT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average percent CT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imidacloprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imidacloprid.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to imidacloprid they are further discussed in the aggregate risk sections in Unit.III.E.

Analysis of monitoring data for degradates (ground water only) shows that imidacloprid parent is the dominant residue with imidacloprid urea the most likely degradate. Based on the available information, modeling of total residue results in only modest increases over the exposure estimates with parent alone. Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of imidacloprid (total residue) for acute exposures are estimated to be 36.04 parts per billion (ppb) for surface water and 2.09 ppb for ground water. The EECs for imidacloprid (parent only) for acute exposures are estimated to be 35.89 parts per billion (ppb) for surface water and 1.43 ppb for ground water. The EECs for imidacloprid (total residue) for chronic exposures are estimated to be 17.24 ppb for surface water and 2.09 ppb for ground water. The EECs for imidacloprid (parent only) for chronic exposures are estimated to be 16.52 ppb for surface water and 1.43 ppb for ground water.

The New York State Department of Environmental Conservation, Division of Solid and Hazardous Materials has submitted extensive water monitoring information from Nassau and Suffolk Counties of New York. Nassau and Suffolk counties have ground water that is exceptionally vulnerable to pesticide contamination and have a long history of a number of pesticides being banned from use in these counties over the years. In general, the kinds of concentrations of imidacloprid (parent only) found in the monitoring/observation and private drinking water wells are in the range expected in highly vulnerable ground water. Imidacloprid has been detected in approximately 20 (including some clusters of wells in the same immediate area) out of about 2,000 public and private water supply and monitoring wells. Imidacloprid was detected in 24 of the approximately 3,500 well samples analyzed for imidacloprid in Nassau and Suffolk Counties. Although detection of imidacloprid in about 20 of 2,000 wells in an area with highly vulnerable ground water does not demonstrate particularly widespread ground water contamination, 3 of 2000 wells in this highly vulnerable ground water have at least one detection greater than the SCI-GROW groundwater screening concentration for imidacloprid (parent only) at 1.43 ppb. The three samples that exceed the SCI-GROW groundwater ECs are reported at 2.06 ppb, 5.98, ppb and 6.69 ppb. Since the surface water model screening levels are greater than the ground water model screening levels and the detection levels reported from the water monitoring from Nassau and Suffolk Counties, New York, the Agency will use the surface water ECs for imidacloprid total residue as a worse case estimate for drinking water in the aggregate risk assessment.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imidacloprid is currently registered for use on the following residential non-dietary sites: Granular products for application to lawns and ornamental plants; ready-to-use spray for application to flowers, shrubs and house plants; plant spikes for application to indoor and outdoor residential potted plants; ready-to-use potting medium for indoor and outdoor plant containers; liquid concentrate for application to lawns, trees, shrubs and flowers; ready-to-use liquid for directed spot application to cats and dogs. In addition, there are numerous registered products intended for use by commercial applicators to residential sites. These include gel baits for cockroach control; products intended for commercial ornamental, lawn and turf pest control; products for ant control; and products used as preservatives for wood products, building materials, textiles and plastics.

As these products are intended for use by commercial applicators only, they are not be addressed in terms of residential pesticide handler. The risk assessment was conducted using the following residential exposure assumptions: EPA has determined that residential handlers are likely to be exposed to imidacloprid residues via dermal and inhalation routes during handling, mixing, loading, and applying activities. Based on the current use patterns, EPA expects duration of exposure to be short-term (1-30 days). EPA does not expect imidacloprid to result in exposure durations that would result in intermediate- or long-term exposure.

The scenarios likely to result in adult dermal and/or inhalation residential handler exposures are as follows:

Dermal and inhalation exposure from using a granular push-type spreader.

Dermal exposure from using potted plant spikes.

Dermal exposure from using a plant potting medium.

Dermal and inhalation exposure from using a garden hose-end sprayer (dermal and inhalation exposure from using a RTU trigger pump spray is expected to be negligible).

Dermal and inhalation exposure from using a water can/bucket for soil drench applications.

Dermal exposure from using pet spot-on.

EPA has also determined that there is potential for short-term (1 to 30 days), post-application exposure to adults and children/toddlers from the many residential uses of imidacloprid. Due to residential application practices and the half-lives observed in the turf transferable residue study, intermediate- and long-term post-application exposures are not expected. The scenarios likely to result in dermal (adult and child/toddler), and incidental non-dietary (child/toddler) short-term post-application exposures are as follows:

Toddler oral hand-to-mouth exposure from contacting treated turf.

Toddler incidental oral ingestion of granules.

Toddler incidental oral ingestion of pesticide-treated soil.

Toddler incidental oral exposure from contacting treated pet.

Toddler dermal exposure from contacting treated turf.

Toddler dermal exposure from hugging treated pet/contacting treated pet.

Adult dermal exposure from contacting treated turf.

Adult golfer dermal exposure from contacting treated turf.

Adolescent golfer dermal exposure from contacting treated turf.

Adult dermal exposure from contacting treated pet]

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to imidacloprid and any other substances and imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at http://www.epa.gov/pesticides/cumulative/.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to in utero exposure in developmental studies. There is no quantitative or qualitative evidence of increased susceptibility of rat offspring in the multi-generation reproduction study. There is evidence of increased qualitative susceptibility in the rat developmental neurotoxicity study, but the concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur in the presence of maternal toxicity with the same NOAEL for effects in pups and dams; and,

iii. The doses and endpoints selected for regulatory purposes are protective of the pup effects noted at higher doses in the developmental neurotoxicity study. Therefore, there are no residual uncertainties for pre-/post-natal toxicity in this study.

3. *Conclusion.* There is a complete toxicity data base for imidacloprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X for the following reasons:

The toxicological database is complete for FQPA assessment.

The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100% CT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.

The chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues and % CT data verified by the Agency for several existing uses. For all proposed uses, 100% CT is assumed. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.

The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

The residential handler assessment is based upon the residential standard operating procedures (SOPs) in conjunction with chemical-specific study data in some cases and the Pesticide Handlers Exposure Database (PHED) unit exposures in other cases. The majority of the residential post-application assessment is based upon chemical-specific turf transferrable residue data or other chemical-specific post-application exposure study data. The chemical-specific study data as well as the surrogate study data used are reliable and also are not expected to underestimate risk to adults as well as to children. In a few cases where chemical-specific data were not available, the SOPs were used alone. The residential SOPs are based upon reasonable worst-case assumptions and are not expected to underestimate risk. These assessments of exposure are not likely to underestimate the resulting estimates of risk from exposure to imidacloprid.

In its objections to a separate imidacloprid tolerance action, NRDC argues that in light of the outstanding data requirement for prospective groundwater monitoring studies, EPA should have retained a 10X FQPA factor for imidacloprid. EPA disagrees. Two small- scale prospective ground-water monitoring studies were originally requested by the Agency in 1994. This request predates the development of the Tier 1 ground-water screening model in 1997 and the Food Quality Protection Act of 1996. The field phase of these prospective ground-water monitoring studies commenced in 1996. Results from these studies have now been received and the levels of imidacloprid observed (0.1 ppb) are below the screening concentration of 2.09 ppb calculated on the basis of the SCI-GROW, the Tier 1 ground-water screening model. In any event, as noted above, since higher values are predicted for imidacloprid residues in surface water, these higher values were used in conducting the risk assessment.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to imidacloprid will occupy 25% of the aPAD for the U.S. population, 17% of the aPAD for females 13 to 49 years, 54% of the aPAD for infants < 1 year old and 64% of the aPAD for children 1-2 years. In addition, there is potential for acute dietary exposure to imidacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO IMIDACLOPRID

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.14	25	36.04	2.09	3,700
Females 13–49 years	0.14	17	36.04	2.09	3,500
Infants <1 year	0.14	54	36.04	2.09	650
Children 1–2 years	0.14	64	36.04	2.09	510

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imidacloprid from food will utilize 11% of the cPAD for the U.S. population, 26% of the cPAD for infants < 1 year and 35% of the cPAD for children 1-2 years. Based the use pattern, chronic residential exposure to residues of imidacloprid is not expected. In addition, there is potential for chronic dietary exposure to imidacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMIDACLOPRID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.057	11	17.24	2.09	1,800
Infants <1 year	0.057	26	17.24	2.09	420
Children 1-2 years	0.057	35	17.24	2.09	370
Females 13-49 years	0.057	8.3	17.24	20.9	1,600

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Short-term aggregate risk assessments are needed for adults as there is potential for both dermal and inhalation handler exposure, and dermal post-application exposure from the residential uses of imidacloprid on turf and pets. In addition, short-term aggregate risk assessments are needed for children/toddlers because there is a potential for oral and dermal, post-application exposure resulting from the residential uses of imidacloprid on turf and pets. The pet-treatment scenario resulted in the lowest combined MOE for adults (MOE = 400; handler and post-application) and children (MOE = 260; post-application). The turf-treatment resulted in much lower exposures for both adults (MOE = 15,000; handler and post-application) and children (MOE = 1,500; post-application). Therefore, the pet-treatment exposure estimates were aggregated with the chronic dietary (food) to provide a worst-case estimate of short-term aggregate risk for the U.S. population and children 1-2 years old (the child population subgroup with the highest estimated chronic dietary food exposure).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 320 for the U.S. population, and 170 for children 1-2 years. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of imidacloprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IMIDACLOPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	320	100	17.24	2.09	2,400
Children 1-2 years old	170	100	17.24	2.09	410

4. *Aggregate cancer risk for U.S. population.* There is no evidence of carcinogenicity to humans based on carcinogenicity studies in male and female rats and mice. The Agency concludes that pesticidal uses of imidacloprid are not likely to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imidacloprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of imidacloprid residues of concern in plant (Bayer Gas Chromatography/Mass Spectrometry (GC/MS) Method 00200) and livestock commodities (Bayer GC/MS Method 00191). These methods have undergone successful EPA petition method validations (PMVs), and the registrant has fulfilled the remaining requirements for additional raw data, method validation, independent laboratory validation (ILV), and an acceptable confirmatory method (high performance liquid chromatography/ultraviolet (HPLC/UV) Method 00357). The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no established Codex maximum residue limits (MRLs) for imidacloprid in/on the commodities in the subject petitions. There are currently Canadian and Mexican MRLs for imidacloprid and metabolites containing the 6-chloropicolyl moiety in potatoes at 0.3 ppm. The Mexican and Canadian MRLs are not equivalent to the US-recommended tolerance level. Therefore, harmonization is not possible at this time.

V. Conclusion

Therefore, the tolerances are established for combined residues of imidacloprid, its metabolites containing the 6-chloropyridinyl moiety, all expressed as the parent, in or on banana (import) at 0.02 ppm; cranberry; mustard, seed; corn, pop, grain at 0.05 ppm; corn, pop, stover at 0.20 ppm; vegetable, root and tuber, group 1, except sugar beet at 0.40 ppm; strawberry at 0.50 ppm; acerola; avocado; canistel; feijoa; guava; jaboticaba; mango; okra; papaya; passionfruit; sapodilla; sapote, black; sapote, mamey; star apple; starfruit; wax jambu at 1.0 ppm; artichoke, globe at 2.5 ppm; fruit, stone, group 12; lychee; longan; Spanish lime; rambutan; pulasan; persimmon at 3.0 ppm; currant; elderberry; gooseberry; huckleberry; juneberry; lingonberry; salal; watercress at 3.5 ppm; vegetable, leaves of root and tuber, group 2; vegetable, legume, group 6, except soybean at 4.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0103 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA–. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0103, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.472 is amended:

i. In paragraph (a), in the table, by removing the commodities, "bean, edible, podded," " bean, succulent, shelled," "dasheen, leaves," "mango," "potato," "turnip, greens," and "vegetable, tuberous and corm, subgroup;" and by alphabetically adding the following commodities.

ii. In paragraph (b), in the table, by removing the commodities, "fruit, stone," "strawberry," "turnip, roots," and "turnip, tops."

The additions read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Acerola	1.0
Artichoke, globe	2.5
Avocado	1.0
Bananna[1]	0.02
Canistel	1.0
Corn, pop, grain	0.05
Corn, pop, stover	0.20
Cranberry	0.05
Currant	3.5
Elderberry	3.5
Feijoa	1.0
Fruit, stone, group 12	3.0
Gooseberry	3.5
Guava	1.0
Huckleberry	3.5
Jaboticaba	1.0
Juneberry	3.5
Lingonberry	3.5
Longan	3.0
Lychee	3.0
Mango	1.0
Mustard, seed	0.05
Okra	1.0
Passionfruit	1.0
Papaya	1.0
Persimmon	3.0
Pulasan	3.0
Rambutan	3.0
Salal	3.5
Sapodilla	1.0
Sapote, black	1.0
Sapote, mamey	1.0
Spanish lime	3.0
Star apple	1.0
Starfruit	1.0
Strawberry	0.50
Vegetable, leaves of root and tuber, group 2	4.0
Vegetable, legume, except soybean, group 6	4.0
Vegetable, root and tuber, group 1, except sugar beet	0.40
Watercress	3.5
Wax jambu	1.0

[1] There are no U.S. registration as of June 13, 2003 for use on banana.

* * * * *

[FR Doc. 03–14880 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 725

[OPPT–2002–0041; FRL–7200–3]

RIN 2070–AD43

Burkholderia Cepacia Complex; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for *Burkholderia cepacia* complex (Bcc), a group of naturally-occurring microorganisms. Bcc microorganisms, when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a cystic fibrosis (CF) patient, have the potential to cause a severe infection; resulting in significantly increased rates of mortality. This rule would require persons who intend to manufacture, import, or process any individual member of Bcc for a significant new use to notify EPA at least 90 days before commencing the manufacturing (including import) or processing of Bcc for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective on August 12, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including import), process, or use products that contain living microorganisms subject to jurisdiction under TSCA, especially if you know that your products contain or may contain members of Bcc. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., Persons manufacturing, importing, or processing products for commercial purposes containing Bcc for biofertilizers; biosensors; biotechnology reagents; commodity or specialty chemical production; energy applications; and other TSCA uses.
- Waste management and remediation (NAICS 562), e.g., Waste treatment or pollutant degradation.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the list of substances excluded by TSCA section (3)(2)(B), and the applicability provisions in 40 CFR 725.105(c) for SNUR related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. The OPPTS harmonized test guideline referenced in this document is available at http:/www.epa.gov/opptsfrs/home/guidelin.htm. A frequently updated electronic version of 40 CFR part 725 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr725_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

II. Background

A. What Action is the Agency Taking?

This SNUR will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of any member of Bcc, a group of naturally occurring microorganisms, for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) authorizes EPA to determine that a use of a chemical substance is a "significant new use." See also, 40 CFR part 725, subparts L–M. EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Section 5(a)(2) of TSCA lists the following as potentially relevant factors for EPA to consider:

(A) the projected volume of manufacturing and processing of a chemical substance.

(B) the extent to which a use changes the type or form of exposure to human beings or the environment to a chemical substance.

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Once EPA promulgates a rule designating "significant new uses" for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 725.105(c).

EPA has interpreted the TSCA section 3(2) definition of "chemical substance" as authorizing EPA to regulate microorganisms under TSCA. See the **Federal Register** of April 11, 1997 (62 FR 17910 and 17913) (FRL–5577–2). Microorganisms that are not intergeneric are implicitly included on the TSCA Inventory, which would include naturally-occurring microorganisms such as Bcc (40 CFR 725.8(b)). Thus, such microorganisms are only subject to TSCA section 5 notification requirements upon promulgation of a SNUR, pursuant to TSCA section 5(a)(2).

C. Which General Provisions Apply?

General provisions for SNURs appear under subpart L of 40 CFR part 725. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of Microbial Commercial Activity Notices (MCANs) or TSCA Experimental Release Applications(TERAs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the conditions necessary to qualify for the exemptions under TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), as codified in the regulations at 40 CFR part 725. In contrast to the provisions of 40 CFR part 721, under 40 CFR part 725, EPA has adopted a narrow interpretation of the TSCA section 5(h)(3) exemption for small quantities used in research. Under 40 CFR 725.3, EPA has defined small quantities solely for research and development as "quantities of a microorganism manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that meet the requirements of § 725.234." Any other research and development activity of a microorganism subject to a SNUR must comply with the section 5(a)(1)(A) notification requirements unless that activity has been excluded from coverage under the SNUR. See 40 CFR 725.3, subparts E and F of 40 CFR part 725, and the **Federal Register** of April 11, 1997 (62 FR 17921–17926).

Once EPA receives an MCAN or TERA, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the MCAN or TERA. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy addressing the import certification appears at 40 CFR part 707.

III. Summary of the Final Rule

A. Final Rule

On July 31, 2001, the Cystic Fibrosis Foundation (CFF) submitted a petition under section 21 of TSCA which requested EPA to "establish regulations prohibiting the manufacture, processing, distribution in commerce, use, and improper disposal of bacterial species within the *Burkholderia cepacia* complex." On November 6, 2001 (66 FR 56105) (FRL–6808–7), EPA published in the **Federal Register** a notice denying that petition. EPA also stated in the notice that it intended to issue a SNUR for Bcc. On January 9, 2002 (67 FR 1179) (FRL–6809–2) EPA proposed a SNUR for Bcc, where the significant new use for Bcc was designated as any use other than research and development in the degradation of chemicals via injection into subsurface groundwater. EPA received comments regarding the proposed SNUR only from CFF. EPA's response to those comments is contained in the next paragraph. No one identified any other ongoing commercial uses of Bcc other than those identified by EPA. In addition, no new data were submitted or identified that would change EPA's findings regarding the SNUR for Bcc. Therefore, EPA is issuing the SNUR as proposed. This final rule requires persons who intend to manufacture, import, or process Bcc for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater notify EPA at least 90 days before commencing such activity.

B. Response to Comments

As noted earlier, the only comments submitted on the proposed SNUR were from CFF. CFF did not challenge or object to any of the provisions proposed by the Agency in the proposed SNUR, but instead suggested that the final rule should be expanded beyond what was proposed in two ways. First, CFF stated that EPA should designate as a significant new use all research and development activities that result in potential environmental release of Bcc. Second, CFF stated that EPA should require manufacturers of microoganisms that may contain Bcc to test their products for the presence of Bcc. Leaving aside the fact that these comments go beyond the scope of the proposed SNUR, the changes proposed by CFF are not appropriate for inclusion in a Significant New Use Rule under section 5 of TSCA.

As to CFF's first comment, CFF asks the Agency to require notification even for "research and development in the degradation of chemicals via injection into subsurface groundwater." In the proposed SNUR, EPA identified "research and development in the degradation of chemicals via injection into subsurface groundwater" as an existing use. CFF did not present any information to suggest that this particular use is not an existing use, or that new research and development activities would be significantly different in kind or quantity than existing activities. Under the circumstances, the Agency continues to believe that the particular research and development activities excluded from the proposed SNUR constitute an ongoing use of Bcc, and therefore do not constitute a "significant new use" for purposes of section 5(a)(2) of TSCA. Only significant new uses may be included in a Significant New Use Rule.

As to CFF's request that the SNUR require manufacturers of microorganisms to test their products to determine whether they contain Bcc. EPA concurs that manufacturers of microorganisms are responsible for knowing whether their products contain Bcc and EPA encourages manufacturers to test their products if they are uncertain whether the products contain Bcc. EPA's regulations exempt "chemical" impurities from SNUR reporting requirements (40 CFR 721.45(d)), but those regulations do not provide a similar exemption for "microorganisms" produced as impurities (see 40 CFR 725.912). When this SNUR becomes a final effective rule, all commercial uses of Bcc, except research and development in the degradation of chemicals via injection into subsurface groundwater, will require notification to EPA at least 90 days before commencing the manufacturing (including import) or processing of Bcc. Any manufacturer, importer, or processor of microorganisms that actually contain Bcc, even if the Bcc is present unintentionally as an impurity, will be required to submit a notification before commencing activities subject to this final SNUR. However, the Agency does not believe that a requirement to test products is appropriate for inclusion in a SNUR under section 5 of TSCA.

If a manufacturer, importer, or processor does decide to test its products, the Agency encourages conformity with OPPTS Product Analysis Test Guideline 885.1100 for product identity. Because identification of members of the Bcc may be difficult due to complexities of the taxonomy of this group, EPA believes it advisable to consult experts in this matter prior to testing. EPA encourages any manufacturer, importer, or processor considering such testing to consult the Agency for further guidance or questions.

IV. Objectives and Rationale of the Rule

In determining what would constitute a significant new use for the microorganisms that are the subject of this SNUR, EPA considered relevant information on the toxicity of the microorganisms, likely exposures associated with potential uses, information provided by industry sources, and the relevant factors listed in TSCA section 5(a)(2) and Unit II.B. Based on these considerations, EPA has determined that all uses other than research and development in the degradation of chemicals via injection into subsurface groundwater, are significant new uses.

EPA's considerations under each of the relevant factors are discussed below:

1. *Projected volume of manufacturing and processing of a chemical substance.* At present there is little manufacturing and processing of Bcc, so almost all exposure to Bcc today is from its presence in the natural environment. Any new use of Bcc could result in a significant increase in manufacturing and processing of the compound, and of exposure to it. Microorganisms may reproduce and increase beyond the number initially introduced and may spread beyond the site of manufacture or processing. Thus, what begins as a small localized population of microorganisms may become a large widespread population which could contribute to increased exposure potential for Bcc beyond that which occurs naturally. These facts complicate the Agency's ability to project the potential volume and processing of Bcc. However, Bcc is typically found in the environment in soils at a concentration of 10^2 to 10^4 colony forming units (cfu)/g. Manufacture of Bcc would result in production of batches of 10^{16} cfu of Bcc. Depending on the type and duration of use these batches could be even larger. (See Reference 16, 67 FR 1185, January 9, 2002 (FRL–6809–2))

2. *Extent to which a use changes the type or form of exposure to human beings or the environment to a chemical substance.* Currently, human beings are exposed to Bcc because of its presence in soil, where it is found at concentrations significantly lower than might be seen if it is cultivated for commercial use. In addition to the fact that these uses would likely involve much higher concentrations of Bcc than are naturally found in the environment, some of the potential uses identified for Bcc, including bioremediation (degradation of toxic chemicals), degradation of grease in drains, turf management, and specialty chemicals production, could also significantly increase direct dermal and inhalation exposures of Bcc to human beings and release of Bcc to the environment. (See Reference 16, 67 FR 1185, January 9, 2002). This would be especially true for individuals involved directly in or near the manufacturing or application of formulations containing Bcc. These are types and forms of exposures to which human beings and the environment are exposed on a limited basis during field studies of Bcc in the biodegradation of chlorinated solvents in groundwater.

3. *Extent to which a use changes the magnitude and duration of exposure to human beings or the environment to a chemical substance.* Currently, human beings are exposed to Bcc because of its presence in soil, where it is found at concentrations significantly lower than might be seen if it is cultivated for commercial use. In addition to the fact that these uses would likely involve much higher concentrations of Bcc than are naturally found in the environment, some of the potential uses identified for Bcc, including bioremediation (degradation of toxic chemicals), degradation of grease in drains, turf management, and specialty chemicals production, could also significantly increase direct dermal and inhalation exposures of Bcc to human beings and release of Bcc to the environment. Releases from typical manufacturing could result in releases to surface waters of 10^9 to 10^{13} cfu in water and 10^5 cfu in the air. Inhalation exposures of 450 cfu and dermal exposures of 10^{11} cfu to exposed workers could also result from typical manufacturing. (See Reference 16, 67 FR 1185, January 9, 2002) Exposures from various uses would be the same or higher depending on the method of application. For example, if spray-applied, the potential for inhalation exposure would be higher due to potential inhalation of mist. All Bcc produced for uses such as bioremediation (degradation of toxic chemicals), degradation of grease in drains, and turf management would eventually be released to the environment. New uses could also significantly increase the duration of exposure. Use in bioremediation for research and development could be limited to a few days/yr. In instances where manufacturing and application of formulations containing Bcc are repeated or continuous this increased level of exposure could occur on a daily basis throughout the year. In addition, repeated or continuous applications of formulations containing Bcc at the same location would increase the likelihood that a small localized population could become a larger and more widespread population. All of these factors would contribute to a change in the magnitude and duration of exposure to which human beings and the environment are not currently exposed.

4. *The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.* EPA has not currently identified any

general commercial use of Bcc. EPA has identified field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. (See Reference 15, 67 FR 1185, January 9, 2002) EPA expects only limited exposures from the identified field studies of Bcc as only technically qualified individuals are growing and injecting Bcc directly into groundwater. Other potential uses identified for Bcc which include bioremediation (degradation of toxic chemicals), degradation of grease in drains, turf management, and specialty chemicals production, could significantly increase dermal and inhalation exposures of Bcc to human beings as well as releases to the environment. Currently, there are no exposures to human beings and no releases to the environment from these uses. In most cases these exposures would be higher than typically found in nature and more likely to be encountered by a member of a sensitive population.

EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this rule. EPA wants to ensure that:

- EPA will receive notice of any company's intent to manufacture, import, or process Bcc for a significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in an MCAN or TERA before the notice submitter begins manufacturing, importing, or processing Bcc for a significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of Bcc before a significant new use occurs, provided such regulation is warranted pursuant to TSCA section 5(e) or section (5)(f).

V. Alternatives

Before issuing this SNUR, EPA considered the following alternative regulatory actions for Bcc. In addition, EPA determined that Bcc is currently not subject to Federal notification requirements.

1. *Promulgate a TSCA section 8(a) reporting rule for Bcc.* Under a TSCA section 8(a) rule, EPA could require any person to report information to the Agency when they intend to manufacture or import Bcc. However, the use of TSCA section 8(a) rather than the SNUR authority, would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about Bcc and its interest in having the opportunity to review these substances and regulate them as appropriate, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for Bcc would not meet all of EPA's regulatory objectives.

2. *Regulate Bcc under TSCA section 6.* EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. Based on EPA's findings that there is currently no general commercial use of Bcc, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This SNUR will allow the Agency to address the potential risks associated with any intended significant new use of Bcc.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a MCAN or TSCA Experimental Release Application (TERA). Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 725.160).

However, in view of the potential health risks posed by the significant new uses of Bcc, EPA requests that potential MCAN or TERA submitters include data that would permit a reasoned evaluation of risks posed by Bcc when used for an intended significant new use. EPA also requests that potential MCAN or TERA submitters include data that demonstrate that the bacteria which would be the subject of the MCAN or TERA are in fact in the Bcc. EPA encourages persons to consult with the Agency before submitting an MCAN or TERA for Bcc. As part of this optional pre-notice consultation, EPA will discuss specific data it believes are necessary to evaluate a significant new use of Bcc. EPA urges MCAN or TERA submitters to provide detailed information on human and environmental exposures that would result or could reasonably be anticipated to result from the significant new uses of Bcc. In addition, EPA encourages persons to submit information on risks posed by Bcc compared to risks posed by possible substitutes. An MCAN or TERA submitted without sufficient data to reasonably evaluate risks posed by a significant new use of Bcc may increase the likelihood that EPA will take action under TSCA section 5(e).

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing.

Any person who, after publication of the proposed SNUR, began commercial manufacture, import, or processing of Bcc, for the significant new use in this SNUR, must stop such activity before the effective date of the final rule. To resume commercial manufacture, import or processing of Bcc, those persons will have to meet all applicable MCAN or TERA requirements and wait until the notice review period, including all extensions, expires before engaging in any commercial manufacture, import, or processing of Bcc for a significant new use. If, however, persons who began commercial manufacture or import of Bcc for a significant new use between the proposal and the effective date of the final SNUR met the conditions of advance compliance as codified at 40 CFR 725.912, those persons would be considered to have met the requirements of the final SNUR for those activities.

VIII. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for potential manufacturers, importers, and processors of Bcc. These potential costs are related to the submission of MCANs, TERAs, and the export notification requirements of TSCA section 12(b). EPA notes that, the costs of submission of MCANs or TERAs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR. The Agency's economic analysis is available in the public docket for this rule.

A. MCANs and TERAs

Because of uncertainties related to predicting the number of MCANs or TERAs that will be submitted as a result of this SNUR, EPA is unable to calculate the total annual cost of compliance with the final rule. However, EPA estimates that the cost for preparation and submission of an MCAN ranges from approximately $7,582 to $42,736, which includes the $2,500 user fee required by the Agency. EPA notes that small businesses with annual sales of less than $40 million are subject to a reduced user fee of $100. The cost of a TERA is estimated to range from $6,905 to $73,562.

Based on past experience with SNURs and the low number of Significant New Use Notices (SNUNs) which are submitted on an annual basis, EPA believes that there would be few, if any, MCANs or TERAs submitted as a result of this SNUR. Furthermore, no company is required to submit an MCAN or TERA for Bcc unless the company decides to begin manufacture, import, or processing of Bcc for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater. As a result, EPA expects that companies would be able to determine if the burden of submitting an MCAN or TERA would be likely to create significant adverse economic impacts for the company prior to incurring MCAN/TERA-related costs.

B. Export Notification

As noted in Unit II.C., persons who intend to export a microorganism identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that a company notify EPA of the first shipment to a particular country of an affected microorganism. The estimated cost of the TSCA section 12(b)(1) export notification, which would be required for the first export to a particular country of a microorganism subject to this rule, is estimated to be $158.35 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $14.43 for each subsequent export notification submitted by that exporter.

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market Bcc commercially. If companies were to manufacture the microorganisms covered by this SNUR for export only, these companies would incur costs associated with export notification even if these companies decided to forgo any domestic significant new use. EPA is not aware of any companies in this situation, and expects that any potential impact would be limited to the small burden of export notification.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit an MCAN or TERA to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost between $5,957 and $7,192 per MCAN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required MCAN or TERA. This burden estimate does not include the $2,500 user fee submission of an MCAN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting an MCAN or TERA, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1000 SNURs, the Agency receives fewer than 10 SNUNs per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of an MCAN or TERA (see Unit VIII.A.) are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not

have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001 do not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

L. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 725

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 6, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 725 is amended as follows:

PART 725—[AMENDED]

■ 1. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

■ 2. By adding new § 725.1075 to subpart M to read as follows:

§ 725.1075 Burkholderia cepacia complex.

(a) *Microorganism and significant new uses subject to reporting.* (1) The microorganisms identified as the *Burkholderia cepacia* complex defined as containing the following nine species, *Burkholderia cepacia, Burkholderia multivorans, Burkholderia stabilis, Burkholderia vietnamiensis, Burkholderia ambifaria, Burkholderia pyrrocinia, Burkholderia cepacia* genomovar VIII (*Burkholderia anthina*), and *Burkholderia cepacia* genomovars III and VI are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

(b) [Reserved]

[FR Doc. 03–15010 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register

Vol. 68, No. 114

Friday, June 13, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951 and 4284

RIN 0570–AA40

Value-Added Producer Grants and Agriculture Innovation Centers

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service proposes to implement new regulations for value-added producer grants (Value-Added Producer Grants) and a new demonstration program whereby agriculture innovation centers provide technical and other assistance to agricultural producers to help them establish businesses that produce and sell value-added agricultural commodities or products (Agriculture Innovation Centers). The Agricultural Innovation Center program is authorized under the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). The 2002 Farm Bill also modified and extended the authority of the Secretary of the U.S. Department of Agriculture (Secretary) (USDA) to make Value-Added Producer Grants.

This proposed rule also implements regulations in one central location to consolidate requirements that are common to all grant programs administered by Cooperative Services within the Rural Business-Cooperative Service (RBS), thereby avoiding the necessity of repeating elements shared in common.

This proposed rule also amends the regulations to reduce the matching requirement required of certain institutions of higher education with respect to Rural Cooperative Development Grants from 25 percent to 5 percent and to adjust the scoring criteria to reflect this change.

Finally, this proposed rule amends the regulations to add Value-Added Producer Grants and Agriculture Innovation Center Grants to the list of RBS programs covered by the servicing regulation.

DATES: Written or email comments on this proposed rule must be submitted on or before August 12, 2003. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through August 12, 2003.

ADDRESSES: Submit written comments, in duplicate, via either the U.S. Postal Service or express courier. Comments sent via the U.S. Postal Service should be addressed to the Branch Chief, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. Written comments via Federal Express Mail, or via another mail courier service requiring a street address, should be addressed to the same attention at 300 7th Street, SW., 3rd Floor, Room 701, Washington, DC 20024. Also, comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov* and must contain the word "Value-Added" in the subject line. All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Jim Haskell, Assistant Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3250, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3250, telephone (202) 720–8460, or Internet e-mail *james.haskell@usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be a significant regulatory action by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to these programs are 10.352 (Value-Added Grants), 10.771 (Rural Cooperative Development Grants) and 10.776 (Agriculture Innovation Centers).

Program Administration

These programs are administered through the Cooperative Services Program of the Rural Business-Cooperative Services Agency within the Rural Development mission area of USDA and delivered via the USDA Rural Development state directors.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 the Agency will seek OMB approval of the collection requirements contained in these proposed regulations for the Agriculture Innovation Center Grant program.

The information collection requirements associated with Value-Added Producer Grants and Rural Development Cooperative Grants were granted standard OMB approval under control numbers 0570–0039 and 0570–0006.

Title: Agriculture Innovation Centers.

OMB No.: New Collection.

Abstract: This program will be administered by Cooperative Services within the Rural Business-Cooperative Service. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed May 13, 2002) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award grant funds for a demonstration program under which agricultural producers are provided technical and business development assistance enabling them to produce and market value-added products.

This is a competitive grant program with a matching funds requirement. The rulemaking sets forth the policies and procedures associated with the grant application and evaluation procedures and ongoing administration requirements for the program. The paperwork burden associated with the application process and ongoing reporting is included in this collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 hours per response.

Respondents: Public and private entities engaged in research and technical assistance for developing value added agricultural products.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 43.

Estimate of Total Annual Burden on Respondents: 416.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

I. Background

Section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill) authorized a new grant initiative to establish up to 15 agriculture innovation demonstration centers (Agriculture Innovation Centers or AICs) with the intent of fostering the ability of agricultural producers to reap the benefits of producing and marketing value-added products. Section 6401 of the 2002 Farm Bill expanded a value-added producer grant program initially established by section 231 of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224). These two provisions of the 2002 Farm Bill are the subject of this proposed rulemaking.

The Value-Added Producer Grant program was authorized in 2000. Over $57,000,000 in value-added producer grants have been awarded since this program was first authorized. This proposed rule incorporates the broader standards for eligibility for future producer grants and reflects some of the lessons learned from the experiences of the U.S. Department of Agriculture in implementing this program over the past two years. For example, we have clarified that two separate types of grants are available, *i.e.*, planning and working capital grants, with slight differences in the respective application requirements and evaluation criteria.

The grant purposes for Value-Added Producer grants are primarily to support the development and implementation of business plans and marketing strategies for value-added products and are made directly to agricultural producers. The 2002 Farm Bill added a new dimension to value-added efforts with the authorization of grants for a third value-added program, namely a demonstration program whereby the grant recipients are to be centers that provide technical assistance and marketing and development assistance to producers. The proposed rule contemplates that the centers in question are not new buildings, per se, but may be research and resource centers operating under the umbrella of an established entity.

The eligibility requirements for the Agriculture Innovation Centers authorized in section 6402 of the 2002 Farm Bill place an emphasis on the recipients' capabilities and a plan and board management that reflect the needs of the agricultural community in their state. Their mandate is to provide technical assistance for marketing and business development assistance to enable agricultural producers to produce value-added agricultural products.

II. Program Descriptions

A. Value-Added Producer Grants

Value-Added Agricultural Product

The term value-added agricultural product means any agricultural commodity or product that has been changed, produced, or segregated such that the market for the product has expanded and where the greater portion of the revenue derived from the value-added activity accrues to the producer of the commodity or product.

Use of Grant Funds

The purpose of this program is to enable producers of agricultural commodities to participate in the economic returns to be found in the value-added market. Grants are to be used to develop business plans and develop strategies for creating marketing opportunities. Grants may also be used for feasibility studies and to provide capital to establish alliances or business ventures that allow the producers of the value-added agricultural product to better compete in domestic and international markets.

Grant funds may not be used for planning, repair, rehabilitation, acquisition, or construction of a building or a facility (including a processing facility), or for the purchase, rental, or installation of fixed equipment.

Eligibility

Grants will be awarded only to independent producers, eligible agricultural producer groups, farmer or rancher cooperatives or majority-controlled producer based business ventures. Independent producers include agricultural producers, steering committees of producers and producer-owned corporations and associations who do not produce the agricultural product under contract or joint ownership with any other organization.

Matching Funds

Grant recipients will provide matching non-Federal funds equal to the amount of the grant received. These matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, an equal amount of match funds shall have been funded prior to submitting the request for reimbursement.

B. Agriculture Innovation Centers

Use of Grant Funds

Grant funds are to be used for a demonstration program whereby centers are established to provide agricultural producers with technical and business development assistance for establishing businesses producing and selling value-added agricultural products, assistance in marketing, market development and business planning and organizational and development assistance to increase the viability, growth and sustainability of value-added businesses.

Grants may be used for the following purposes: applied research, consulting services, hiring of employees, the making of matching grants, legal services and other related costs of conducting the above activities. Funds for these purposes may not be used to plan, repair, rehabilitate, acquire, or construct a building or a facility (including a processing facility) or to purchase, rent, or install fixed equipment.

Eligibility

A grant may be made to an entity that demonstrates the capacity and technical expertise to conduct the activities described above. In addition to the capacity factor, the entity must provide a plan with specific goals to be met and support for the entity in the agricultural community. Also, the entity must demonstrate that adequate resources (in cash or in kind) are available, or have been committed for this purpose which will allow the grant recipient to achieve the goals established. Finally, the entity must have a board of directors such that there are representatives of each of the following groups on the board: (a) The two general agricultural organizations with the greatest number of members in the State in which the entity is located, (b) the applicable State department of agriculture and (c) entities representing the four highest grossing commodities produced in the State, determined on the basis of annual gross cash sales. Trade associations are eligible to apply.

III. Rural Cooperative Development Grants and Conforming Amendments

Section 6015 of the 2002 Farm Bill reduced the match funding requirements for rural cooperative development grants imposed on certain institutions of higher learning from 25 percent to 5 percent. These institutions are defined as "1994 Institutions" and are listed by name in the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). This rulemaking proposes to amend the regulation applicable to this grant program to provide for this targeted reduced match funding requirement.

The amendments proposed for subpart F within 7 CFR part 4284 conform the regulations for the rural cooperative development grant program with the newly implemented subpart A that consolidates provisions common to all grant programs administered by Cooperative Services within RBS.

List of Subjects

7 CFR Part 1951

Grant programs—Housing and community development, Reporting requirements, Rural development.

7 CFR Part 4284

Agricultural commodities, Agriculture innovation centers, Agricultural marketing research, Business and industry, Grant programs—housing and community development, Rural areas, Rural development, Value-added.

Accordingly, RBS proposes to amend Chapters XVIII and XLII, title 7, of the Code of Federal Regulations as follows:

PART 4284—GRANTS

1. The authority citation for part 4284 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.
Subpart F also issued under 7 U.S.C 1932(e)
Subpart G also issued under 7 U.S.C 1926(a)(11)
Subpart J also issued under 7 U.S.C 1621 note
Subpart K also issued under 7 U.S.C. 1621 note

2. Subpart A of part 4284, consisting of §§ 4284.1 through 4284.100 is added to read as follows:

Subparts B Through E—[Reserved]

Subpart A—General Requirements for Cooperative Services Grant Programs

Sec.

4284.1 Purpose.
4284.2 Policy.
4284.3 Definitions.
4284.4 Appeals.
4284.5 [Reserved]
4284.6 Applicant eligibility.
4284.7 Electronic submission.
4284.8 Grant approval and obligation of funds.
4284.9 Grant disbursement.
4284.10 Ineligible grant purposes.
4284.11 Award requirements.
4284.12 Reporting requirements.
4284.13 Confidentiality of reports.
4284.14 Grant servicing.
4284.15 Performance reviews.
4284.16 Other considerations.
4284.17 Member delegate clause.
4284.18 Audit requirements.
4284.19 Programmatic changes.
4284.20–4284.100 [Reserved]

§ 4284.1 Purpose.

The purpose of this subpart is to set forth definitions and requirements which are common to all grant programs set forth in this part administered by Cooperative Services within the Rural Business-Cooperative Service (RBS). Programs administered by the Business Programs within RBS are not affected by this subpart.

§ 4284.2 Policy.

It is the policy of Cooperative Services to administer grant programs as uniformly as possible to minimize unnecessary inconsistencies in the administration of the grant programs provided for in this part. The specific provisions or definitions provided in the subparts that are specific to Cooperative Services are supplemental to these general provisions. Where a specific program provision is expressly different from what is provided in this subpart, the program specific subpart shall prevail.

§ 4284.3 Definitions.

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agriculture Producer Group—An organization that represents Independent Producers, whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and seafood products.

Cooperative—A user-owned and controlled business from which benefits are derived and distributed equitably on the basis of use.

Cooperative Services" The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Emerging Market—A new or developing market for the applicant, which the applicant has not traditionally supplied.

Farmer or Rancher Cooperative—A duly recognized farmer or rancher cooperative in good standing under State law.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, to include individuals, for profit and not for profit corporations, LLCs, partnerships or LLPs, solely owned or controlled by producers who do not produce the agricultural product under contract or joint ownership with any other organization. An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture that will be owned and controlled by the independent producers supplying agricultural product to the market.

Majority-Controlled Producer-Based Business Venture—A venture where more than 50% of the ownership and control is held by Independent Producers and or partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, matching funds must be at least equal to the grant amount. Unless otherwise provided, in-kind contributions that conform to the provisions of 7 CFR 3015.50 and 7 CFR 3019.23, as applicable, can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds shall have been funded prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds. Funds used for an ineligible purpose will not be considered matching funds.

National Office—USDA RBS headquarters in Washington, D.C.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

RFP—Request for Proposals.

Rural and rural area—includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in each state.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state, differentiated production or marketing, as demonstrated in a business plan, or product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

§ 4284.4 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11 and subpart B of part 1900. If the Agency makes a determination that a decision is not appealable, a participant may request that it be reviewed by the Director of the National Appeals Division.

§ 4284.5 [Reserved]

§ 4284.6 Applicant eligibility.

An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any assistance until the judgment is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgment.

§ 4284.7 Electronic submission.

Applicants and grant awardees are encouraged, but not required, to submit applications and reports in electronic form as prescribed in requests for proposals issued by USDA and in the applicable grant agreements.

§ 4284.8 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

> The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR part 4284 and 7 CFR parts 3015, 3016, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions.

(b) [Reserved]

§ 4284.9 Grant disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. The Agency may limit the frequency in which a Request for Advance or Reimbursement may be submitted.

§ 4284.10 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the date of grant approval;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have a least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States;

(g) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(h) Purchase, rent or install Fixed Equipment; or

(i) Pay for the repair of privately owned vehicles.

§ 4284.11 Award requirements.

In addition to specific grant requirements, all approved applicants will be required to do the following:

(a) Enter into a grant agreement with USDA in form and substance similar to the form of agreement as may be published within or as an appendix to the applicable RFP;

(b) Submit a feasibility study and business plan showing the viability of the venture, if any Federal grant and matching funds are to be used as working capital;

(c) Use "Request for Advance or Reimbursement" to request advances or reimbursements, as applicable, but not more frequently than once a month;

(d) Maintain a financial management system that is acceptable to the Agency; and

(e) Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

§ 4284.12 Reporting requirements.

Grantees must submit the following to USDA:

(a) A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

(b) Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (a) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

(c) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 30 days of the completion of the project.

§ 4284.13 Confidentiality of reports.

All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

§ 4284.15 Performance reviews.

(a) USDA will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(b) USDA may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, but nevertheless fund the remainder of a request for advance or reimbursement, as applicable, where USDA has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis; or

(3) Such other cause as USDA identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

§ 4284.16 Other considerations.

(a) *Environmental review.* All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. Applications for technical assistance or planning projects are generally excluded from the environmental review process by

§ 1940.333, provided the assistance it not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(b) *Civil rights.* All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. This program will also be administered in accordance with all other applicable Civil Rights Law.

(c) *Other USDA regulations.* The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

§ 4284.17 Member delegate clause.

No member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a member of Congress.

§ 4284.18 Audit requirements.

Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

§ 4284.19 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination and recovery of grant funds.

§§ 4284.204- 284.100 [Reserved]

3. Subpart J of part 4284, consisting of §§ 4284.901 through 4284.1000 is added to read as follows:

Subpart J—Value-Added Producer Grants

Sec.

4284.901 Purpose.
4284.902 Policy.
4284.903 Program administration.
4284.904 Definitions.
4284.905–906 [Reserved]
4284.907 Eligibility for grant assistance.
4284.908 Use of grant and matching funds.
4284.909 Limitations on use of funds.
4284.910 Application processing.
4284.911 Evaluation screening.
4284.912 Evaluation process.
4284.913 Evaluation criteria and weights.
4284.914 Grant closing.
4284.915–4284.999 [Reserved]
4284.1000 OMB control number.

§ 4284.901 Purpose.

This subpart implements the value-added agricultural product market development grant program (Value-Added Producer Grants) administered by the Rural Business-Cooperative Service whereby grants are made to enable producers to develop businesses that produce and market value-added agricultural products.

§ 4284.902 Policy.

It is the policy of the Secretary of Agriculture to fund a broad diversity of projects that help increase the agricultural producers' customer base and share of the food and agricultural system profit, including projects likely to increase the profitability and viability of small and medium-sized farms and ranches.

§ 4284.903 Program Administration.

The Value-Added Producer Grant program is administered by Cooperative Services within the Agency.

§ 4284.904 Definitions.

Planning Grants. Grants to facilitate the development of a defined program of economic activities to determine the viability of a potential value-added venture, including feasibility studies, marketing strategies, business plans and legal evaluations.

Working Capital Grants. Grants to provide funds to operate ventures and pay the normal expenses of the venture that are eligible uses of grant funds.

§§ 4284.905–906 [Reserved]

§ 4284.907 Eligibility for grant assistance.

(a) The proposed project must generate Value-Added for an Agricultural Product.

(b) Independent Producers, Agricultural producer groups, Farmer or Rancher cooperatives and Majority-Controlled Producer-Based Business Ventures, are eligible for grants under this subpart.

(c) Applicants that are a Farmer or Rancher cooperative, an Agriculture producer group or a Majority-Controlled Producer-Based Business Venture must be entering into an Emerging Market as a result of the proposed project. Independent Producers do not have to be entering into an Emerging Market.

(d) No project may be the subject of more than one Planning Grant or more than one Working Capital Grant. The same project may, however, be awarded one Planning Grant and subsequently apply for and receive a Working Capital Grant.

(e) Not more than one project per applicant may receive grant funding under this subpart.

(f) The total amount provided to any grant recipient shall not exceed $500,000.

§ 4284.908 Use of grant and matching funds.

(a) An application may be for either a Planning Grant or a Working Capital Grant, but not both.

(b) Grant funds may be used to pay up to 50 percent of the costs for carrying out relevant projects. Matching funds must be provided for the balance of costs.

(c) Matching funds may only be used for the same purposes allowed for grant funds.

(d) Planning Grant funds may be used to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a value-added producer. These uses include, but are not limited to, the following:

(1) Conduct, or hire a qualified consultant to conduct, a feasibility analysis of the proposed value added project to help determine the potential success of the project;

(2) Develop, or hire a qualified consultant to develop, a business operations plan that provides comprehensive detail on the management, planning and other operational aspects of the proposed project; and

(3) Develop, or hire a qualified consultant to develop, a marketing plan for the proposed value-added product(s) including the identification of a market window, potential buyers, a description of the distribution system and possible promotional campaigns;

(e) Working Capital Grant funds may be used to provide capital to establish alliances or business ventures that allow the producer of the value-added agricultural product to better compete in domestic or international markets. These uses include, but are not limited to, the following:

(1) Establish a working capital account to fund operations prior to obtaining sufficient cash flow from operations;

(2) Hire counsel to provide legal advice and to draft organizational and other legal documents related to the proposed venture;

(3) Hire a Certified Public Accountant or other qualified individual to design an accounting system for the proposed venture; and

(4) Pay salaries, utilities and other operating costs such as inventory financing, the purchase of office equipment, computers and supplies and finance other related activities.

§ 4284.909 Limitations on use of funds.

In addition to the limitations provided in 7 CFR subpart A, neither grant nor matching funds may be used to fund architectural or engineering design work, or other planning work, for a physical facility.

§ 4284.910 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more RFPs. Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) "Application for Federal Assistance."

(2) "Budget Information—Non-Construction Programs."

(3) "Assurances—Non-Construction Programs."

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title page.

(2) Table of contents.

(3) Executive summary. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project. In this section the applicant must clearly state whether the application is for a Planning Grant or a Working Capital Grant and the amount requested.

(4) Eligibility. The narrative must include a detailed discussion of how the applicant meets the eligibility requirements.

(5) Proposal narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information sheet. A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the project. A clear statement of the ultimate goals of the project. There must be an explanation of how a market will be expanded and the degree to which incremental revenue will accrue to the benefit of the agricultural producer(s).

(iv) Work plan. The narrative must contain a description of the project and set forth the tasks involved in reasonable detail.

(v) Performance evaluation criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Proposal evaluation criteria. Each of the proposal evaluation criteria referenced in the RFP must be addressed, specifically and individually, in narrative form.

(6) Verification of matching funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) Certification. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for reimbursement.

§ 4284.911 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the RFP to allow for an informed review. Failure to address any of the required evaluation criteria will disqualify the proposal. Submissions which do not pass the initial screening may be returned to the Applicant. If the submission deadline has not expired and time permits, returned applications may be revised and re-submitted.

§ 4284.912 Evaluation process.

(a) Applications will be evaluated by agricultural economists or other technical experts appointed by the Agency.

(b) After all proposals have been evaluated and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (*e.g.* to ensure geographic distribution, distribution of a commodity or accomplish presidential initiatives.) The maximum number of points that can be added to an application cannot exceed ten percent of the total points of the original score.

(d) After giving effect to the Administrator's point awards, applications will be funded in rank order until all available funds have been obligated.

(e) In the event an insufficient number of eligible applications are received in response to a given RFP, time permitting, subsequent rounds of competition will be initiated by publishing subsequent RFPs.

(f) Unless a proposal is withdrawn, eligible but unfunded proposals from preceding competitions in a given fiscal year will be considered for funding in subsequent competitions in the same fiscal year.

§ 4284.913 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate proposals submitted under this subpart. The distribution of

points to be awarded per criterion will be identified in the applicable RFP.

(a) *Planning grants.* (1) *Nature of the proposed venture.* Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Points will be awarded based on the greatest expansion of markets and increased returns to producers. Evaluators may rely on their own knowledge and examples of similar ventures described in the proposal to form conclusions regarding this criterion.

(2) *Qualifications of those doing work.* Proposals will be reviewed for whether the personnel who are responsible for doing proposed tasks, including those hired to do studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well.

(3) *Project leadership.* The leadership abilities of individuals who are proposing the venture will be evaluated as to whether they are sufficient to support a conclusion of likely project success. Credit may be given for leadership evidenced in community or volunteer efforts.

(4) *Commitments and support.* Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance.

(5) *Work plan/Budget.* The work plan will be reviewed for to whether it provides specific and detailed planning task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points.

(6) *Amount requested.* Points will be awarded based on the size of the grant request. Generally, requests for lower amounts will receive a higher score for this criterion than higher requests. The points to be awarded and request ranges will be established in the applicable RFP.

(7) *Project cost per owner-producer.* This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. Points to be awarded will be established in the applicable RFP.

(8) *Presidential initiatives.* Points may be awarded for proposals that focus on Presidential initiatives. Descriptions of these initiatives and the points to be awarded will be established in the applicable RFP.

(b) *Working capital grants.* (1) *Business viability.* Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the venture and the efficiency of operations.

(2) *Customer base/increased returns.* Proposals that demonstrate strong growth in a market or customer base and greater value-added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized Value-Added returns.

(3) *Commitments and support.* Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature and level and quality of their contributions. End user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance.

(4) *Management team/work force.* The education and capabilities of project managers and those who will operate the venture must reflect the skills and experience necessary to effect project success. The availability and quality of the labor force needed to operate the venture will also be evaluated. Proposals that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

(5) *Work plan/Budget.* The work plan will be reviewed for whether it provides specific and detailed planning task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the venture's operations and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points.

(6) *Amount requested.* Points will be awarded based on the size of the grant request. Requests for lower amounts will receive a higher score for this criterion than higher requests. The points to be awarded and request ranges will be established in the applicable RFP.

(7) *Project cost per owner-producer.* This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. Points to be awarded will be established in the applicable RFP.

(8) *Presidential initiatives.* Points may be awarded for proposals that focus on Presidential initiatives. Descriptions of these initiatives and the points to be awarded will be established in the applicable RFP.

§ 4284.914 Grant closing.

(a) *Letter of conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement.* The Agency and the grantee must sign the Agency's "Value-Added Producer Grant Agreement" prior to the advance of funds.

§§ 4284.915–999 [Reserved]

§ 4284.1000 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by the Office of Management and have been assigned OMB control number 0570–0039 in accordance with the Paperwork Reduction Act of 1995.

4. Subpart K of part 4284, consisting of §§ 4284.1001 through 4284.1100 is added to read as follows:

Subpart K—Agriculture Innovation Demonstration Centers

Sec.

4284.1001 Purpose.
4284.1002 Policy.
4284.1003 Program administration.
4284.1004 Definitions.
4284.1005–1006 [Reserved]
4284.1007 Eligibility for grant assistance.
4284.1008 Use of grant funds.
4284.1009 Application processing.
4284.1010 Evaluation screening.
4284.1011 Evaluation process.
4284.1012 Evaluation criteria and weights.
4284.1013 Grant closing.
4284.1014—4284.1100 [Reserved]

§ 4284.1001 Purpose.

This subpart implements a demonstration program administered by the Rural Business-Cooperative Service whereby grants are made to innovation centers responsible for providing technical and business development assistance to agricultural producers seeking to engage in the marketing or the production of value-added products.

§ 4284.1002 Policy.

It is the policy of the Secretary of Agriculture to fund centers which evidence broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community. It is also the policy of the Secretary, using the research and technical services of the U.S. Department of Agriculture, to assist the grantees in establishing Centers. This program is not intended to fund scientific research.

§ 4284.1003 Program administration.

The Agriculture Innovation Demonstration Center program is administered by Cooperative Services within the Agency.

§ 4284.1004 Definitions.

Board of Directors—The group of individuals that govern the Center.

Center—The Agriculture Innovation Center to be established and operated by the grantees. It may or may not be an independent legal entity, but it must be independently governed in accordance with the requirements of this subpart.

Qualified Board of Directors—A Board of Directors that includes representatives from each of the following groups:

(1) The two general agricultural organizations with the greatest number of members in the State in which the Center is located,

(2) The State department of agriculture, or equivalent, of the State in which the Center is located and

(3) Entities representing the four highest grossing commodities produced in the State in which the Center is located, as determined on the basis of annual gross cash sales.

Producer Services—are those services to be provided by the Centers to agricultural producers. Producer services consist of the following types of services:

(1) Technical assistance, consisting of engineering services, applied research, scale production, and similar services, to enable the agricultural producers to establish businesses to produce value-added agricultural commodities or products;

(2) Assistance in marketing, market development and business planning, including advisory services with respect to leveraging capital assets; and

(3) Organizational, outreach and development assistance to increase the viability, growth and sustainability of businesses that produce value-added agricultural commodities or products.

§§ 4284.1005–1006 [Reserved]

§ 4284.1007 Eligibility for grant assistance.

Non-profit and for-profit corporations, institutions of higher learning and other entities, including a consortium where a lead entity has been designated and agrees to act as funding agent, that meet the following requirements are eligible for grant assistance:

(a) The entity—

(1) Has provided services similar to those listed for Producer Services; or

(2) Demonstrates the capability of providing Producer Services;

(b) The application includes a plan that meets the requirements of § 4284.1009(c)(5)(iv) that also outlines—

(1) The support for the entity in the agricultural community;

(2) The technical and other expertise of the entity;

(3) The goals of the entity for increasing and improving the ability of local agricultural producers to develop markets and processes for value-added agricultural commodities or products;

(c) The entity demonstrates that adequate resources (in cash or in kind) are available, or have been committed to be made available to the entity, to increase and improve the ability of local agricultural producers to develop markets and processes for value-added agricultural commodities or products; and

(d) The proposed Center has a Qualified Board of Directors.

§ 4284.1008 Use of grant funds.

Grant funds may be used to assist eligible recipients in establishing Centers that provide Producer Services and may only be used to support operations of the Center that directly relate to providing Producer Services. Grant funds may be used for the following purposes, subject to the limitations set forth in § 4284.10:

(a) Consulting services for legal, accounting and technical services to be used by the grantee in establishing and operating a Center;

(b) Hiring of employees, at the discretion of the Qualified Board of Directors;

(c) The making of matching grants to agricultural producers, individually not to exceed $5,000, where the aggregate amount of all such matching grants made by the grantee does not exceed $50,000;

(d) Applied research;

(e) Legal services; and

(f) Such other related purposes as the Agency may announce in the RFP.

§ 4284.1009 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other OMB approved forms may be required. This will be published in the applicable RFP.

(1) "Application for Federal Assistance."

(2) "Budget Information—Non-Construction Programs."

(3) "Assurances—Non-Construction Programs."

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title page.

(2) Table of contents.

(3) Executive summary. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project and the amount requested.

(4) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) Proposal narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information sheet. A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the project. The first part of this section should list each Provider Service to be offered by the Center. The second part of this section should list one or more specific goals relating to increasing and improving the ability of identified local agricultural producers to develop a market or process for value-added agricultural commodities or products.

(iv) Work plan. Actions that must be taken in order for the Provider Services to be available from the Center. Each action listed should include a target date by which it will be completed. General start up tasks should be listed, followed by specific tasks listed for each Provider Service to be offered, as well as tasks associated with the start of operations. The tasks associated with the start of operations should include a focused marketing and delivery plan directed to the local agricultural producers that were identified in paragraph (c)(5)(iii) of this section. The actions to be taken should include steps for identifying customers, acquiring personnel and contracting for services to the Center, including arrangements for strategic alliances.

(v) Performance evaluation criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Agricultural community support. Evidence of support from the local agricultural community should be included in this section. Letters in support should reflect that the writer is familiar with the provisions of the Plan for the Center, including the stated goals. Evidence of support can take the form of making employees available to the Center, service as a board member and other in-kind contributions.

(vii) Strategic coordination and alliances. Describe arrangements in place or planned with end users (processing and distribution companies and regional grocers) as well as arrangements with entities having technical research capabilities, broad support from the agricultural community in the State or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community.

(viii) Capacity. Evidence of the ability of the grantee(s) to successfully establish and operate a Center. A description of the grantee's track record in providing services similar to those listed for Producer Services or evidence that the entity has the capability to provide Producer Services. Resumes of key personnel should be included in this section. Past successes should be described in detail, with a focus on lessons learned, best practices, familiarity with producer problems in value-added ventures, and how these barriers are best overcome should be elaborated on in this section. For every challenge identified, the applicant should demonstrate how they are addressed in the Work Plan (see paragraph (c)(5)(iv) of this section). All successes should include a monetary estimate of the value-added achieved.

(ix) Legal structure. Provide a description of the legal relationship between the grantee(s) and the proposed Center. If the Center is to be an independent corporate entity, provide copies of the corporate charter, bylaws and other relevant organizational documents. Describe how funds for the Center will be handled and include copies of the agreements documenting the legal relationships between the Center and related parties. If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined.

(x) Evaluation criteria. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form. Supporting documentation, as applicable, should be included in this section, or a cross reference to other sections in the application should be provided, as applicable.

(xi) Verification of adequate resources. Present a budget to support the work plan showing sources and uses of funds during the start up period prior to the start of operations and for the first year of full operations. Present a copy of a bank statement evidencing sources of funds equal to amounts required in excess of the grant requested, or, in the alternative, a copy of confirmed funding commitments from credible sources such that USDA is satisfied that the Center has adequate resources to complete a full year of operation. Include information sufficient to facilitate verification by USDA of all representations.

(xii) Certification of adequate resources. Applicants must certify that non-Federal funds identified in the budget pursuant to paragraph (c)(5)(xi) of this section will be available and funded commensurately with grant funds.

§ 4284.1010 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further, and may be returned to the applicant. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.1011 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (*e.g.*, to ensure geographic distribution, put emphasis on a specific commodity, or to accomplish presidential initiatives.) The maximum number of points that can be added to an application under this paragraph cannot exceed ten percent of the total points the application originally scored.

(d) After giving effect to the Administrator's point awards, applications will be funded in rank order until all available funds have been obligated.

§ 4284.1012 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Ability to deliver.* The application will be evaluated as to whether it evidences unique abilities to deliver Producer Services so as to create sustainable value-added ventures. Abilities that are transferable to a wide range of agricultural value-added commodities are preferred over highly specialized skills. Strong skills must be accompanied by a credible and thoughtful plan.

(b) *Successful track record.* The applicant's track record in achieving value-added successes.

(c) *Work plan/Budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the strength of non Federal funding commitments.

(d) *Qualifications of personnel.* Proposals will be reviewed for whether the key personnel who are to be responsible for performing the proposed tasks have the necessary qualifications and whether they have a track record of performing activities similar to those being proposed. If a consultant or others are to be hired, points may be awarded for consultants only if the proposal includes evidence of their availability and commitment as well. Proposals using in-house employees with strong track records in innovative activities will receive higher points relative to proposals that out-source expertise.

(e) *Local support.* Proposed Centers must show local support and coordination with other developmental organizations in the proposed service area and with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other rural amenities. Proposed Centers that show strong support from potential beneficiaries and coordination with other developmental organizations will receive more points than those not evidencing such support.

(f) *Future support.* Applicants that can demonstrate financial independence in future years will receive more points for this criterion. Points will be awarded only where future funding sources are documented by letters of commitment.

§ 4284.1013 Grant closing.

(a) *Letter of conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement.* The Agency and the grantee must enter into an "Agriculture Innovation Center Grant Agreement" prior to the advance of funds.

§§ 4284.1014–4284.1100 [Reserved]

5. Subpart F of part 4284, consisting of §§ 4284.501 through 4284.600 is revised to read as follows:

Subpart F—Rural Cooperative Development Grants

Sec.

4284.501 Purpose.
4284.502 Policy.
4284.503 Program administration
4284.504 Definitions.
4284.505–506 [Reserved]
4284.507 Eligibility for grant assistance.
4284.508 Use of grant funds.
4284.509 Limitations on grants.
4284.510 Application processing.
4284.511 Evaluation screening.
4284.512 Evaluation process.
4284.513 Evaluation criteria and weights.
4284.514 Grant closing.
4284.515–4284.599 [Reserved]
4284.600 OMB control number.

§ 4284.501 Purpose.

This subpart outlines the Agency's polices and procedures for making grants for cooperative development in rural areas.

§ 4284.502 Policy.

Rural cooperative development grants will be used to facilitate the creation or retention of jobs in rural areas through the development of new rural cooperatives, Value-Added processing and rural businesses.

§ 4284.503 Program administration.

The rural cooperative development grant program is administered by Cooperative Services within the Agency.

§ 4284.504 Definitions.

Center—The entity established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee.

Cooperative development—The startup, expansion or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that create value-added to farm products through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services and advisory services. Operational improvement includes making the cooperative more efficient or better managed.

1994 Institutions—means those colleges identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). Contact the Agency for a list of currently eligible colleges.

Project—A planned undertaking by a Center that utilizes the funds provided to it to promote economic development in rural areas through the creation and enhancement of cooperatives.

§ 4284.505–506 [Reserved]

§ 4284.507 Eligibility for grant assistance.

Grants may be made to Nonprofit corporations and institutions of higher education. Grants may not be made to Public bodies.

§ 4284.508 Use of grant funds.

Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Matching funds contributed by the applicant may include a loan from another federal source. Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in Rural areas served by the Center:

(a) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(b) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(c) Providing training and instruction for the purpose of cooperative development.

(d) Providing loans and grants for the purpose of cooperative development in accordance with the subpart.

(e) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

§ 4284.509 Limitations on grants.

Grants made pursuant to this subpart shall be for one year or less.

§ 4284.510 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one hard copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) "Application for Federal Assistance"

(2) "Budget Information—Non-Construction Programs"

(3) "Assurances—Non-Construction Programs"

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title page.

(2) Table of contents.

(3) Executive summary. A summary of the proposal should briefly describe the Center, including goals and tasks to be accomplished, the amount requested, how the work will be performed and whether organizational staff, consultants or contractors will be used.

(4) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) Proposal narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFP, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the project. This section must include the following:

(A) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(B) A provision that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(C) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services.

(D) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(iv) Work plan. Applicants must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

(v) Performance evaluation criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Undertakings. The applicant should expressly undertake to do the following:

(A) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sectors;

(B) Make arrangements for the activities by the nonprofit institution operating the Center to be monitored and evaluated; and

(C) Provide an accounting for the money received by the grantee under this subpart.

(vii) Delivery of Cooperative development assistance. The applicant must describe its previous accomplishments and outcomes in Cooperative development activities and/or its potential for effective delivery of Cooperative development services to rural areas. The applicant should also describe the type(s) of assistance to be provided, the expected impacts of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of its Cooperative development strategy and focus to other areas of the U.S.

(viii) Qualifications of personnel. Applicants must describe the qualifications of personnel expected to perform key center tasks, and whether these personnel are to be full/part-time center employees or contract personnel. Those personnel having a track record of positive solutions for complex Cooperative development or marketing problems, or those with a record of conducting feasibility studies that later proved to be accurate, business planning, marketing analysis, or other activities relevant to the Center's success should be highlighted.

(ix) Support and commitments. Applicants must describe the level of support and commitment in the community for the proposed Center and the services it would provide. Plans for coordinating with other developmental organizations in the proposed service area, or with state and local government institutions should be included. Letters supporting cooperation and coordination from potential local customers should be provided.

(x) Future support. Applicants should describe their vision for Center operations beyond the first year, including issues such as sources and uses of alternative funding; reliance on Federal, state, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center.

(xi) Evaluation criteria. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form.

(6) Verification of matching funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) Certification. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for advance.

§ 4284.511 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.512 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, the Agency will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

§ 4284.513 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. Preference will be given to items in paragraphs (a) through (f). The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Administrative capabilities.* The application will be evaluated to determine whether the subject Center has a track record of administering a nationally coordinated, regional or state-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

(b) *Technical assistance and other services.* The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance in Rural areas.

(c) *Economic development.* The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of Rural areas.

(d) *Linkages.* The Agency will evaluate the applicant's demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets.

(e) *Commitment.* The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in Rural areas of the United States.

(f) *Matching Funds.* All applicants must demonstrate Matching Funds equal to at least 25 percent (5 percent for 1994 Institutions) of the grant amount requested. Applications exceeding these minimum commitment levels will receive more points.

(g) *Delivery.* The Agency will evaluate whether the Center has a track record in providing technical assistance in Rural areas and accomplishing effective outcomes in Cooperative development. The Center's potential for delivering effective Cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center's Cooperative development strategy and focus to other States will also be assessed.

(h) *Work plan/Budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non Federal funding commitments.

(i) *Qualifications of those performing the tasks.* The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex Cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success.

(j) *Local support.* Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area and coordination with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center's intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent.

(k) *Future support.* Applications that demonstrate financial independence beyond the year for which grant funding is sought will receive more points for this criterion. Points will be awarded only where future funding sources are documented by letters of commitment.

(l) *Amount requested.* Points may be awarded based on the size of the grant request. Lower requested amounts will receive more points. The points to be awarded and request ranges will be established in the applicable RFP.

§ 4284.514 Grant closing.

(a) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement.* The Agency and the grantee must enter into the Agency's "Agriculture Innovation Center Grant Agreement" prior to the advance of funds.

§§ 4284.515–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0006 in accordance with the Paperwork Reduction Act of 1995.

PART 1951—SERVICING AND COLLECTIONS

6. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

7. Revise § 1951.201 to read as follows:

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations and procedures for servicing the following programs: Water and Waste Disposal System loans and grants, Community Facility loans and grants, Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Direct Business loans; Economic Opportunity Cooperative loans; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and

Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants; and, in part 4284 of this title, Rural and Cooperative Development Grants, Value-Added Producer Grants and Agriculture Innovation Center Grants. Rural Development State Offices act on behalf of the Rural Utilities Service, the Rural Business-Cooperative Service and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Dated: June 5, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–14840 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–XY–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to grant the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before June 25, 2003.

Address Comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing, North American Industry Classification System (NAICS) 332995. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Barry Meltz,

Deputy Associate Administrator, Office of Government Contracting.

[FR Doc. 03–14851 Filed 6–12–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to grant the Nonmanufacturer Rule for Small Arms Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Small Arms Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATE: Comments and sources must be submitted on or before June 25, 2003.

Address Comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW Washington DC, 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Small Arms Manufacturing, North American Industry Classification System (NAICS) 332994. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Barry Meltz,

Deputy Associate Administrator, Office of Government Contracting.

[FR Doc. 03–14850 Filed 6–12–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM81; Notice No. 25–03–04–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Revision to Special Conditions 25–ANM–84

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes to revise Special Conditions 25–ANM–84, applicable to Boeing Model 777 series airplanes. The proposed special conditions revise the extended range operations with two-engine airplanes (referred to as "ETOPS") test requirements defined in the existing special conditions. These revisions include changing the airplane demonstration test requirement from a required 1000 flight cycles to a demonstration of capability in ETOPS flight conditions, and allowing more than one airplane to be used for the airplane demonstration test. In addition, the FAA proposes to add post-test inspection requirements for both the engine demonstration test and the airplane demonstration test articles.

DATES: Comments must be received on or before July 28, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM81, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM81. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Steve Clark, FAA, ETOPS Project Manager, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 917–6496; facsimile (425) 227–1180.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

Because of concerns over engine and airplane reliability, for many years, 14 CFR 121.161 has generally prohibited operations of two-engine airplanes on routes including segments that are more than one hour flight time from a suitable airport. This regulation contains an exception that allows such operations when specifically authorized by the Administrator. These extended range operations with two-engine airplanes are referred to as ETOPS. Advisory Circular (AC) 120–42A describes a method for obtaining ETOPS authorization if an operator can demonstrate sufficient engine and airplane reliability. This method is based on a combination of various design features and operational and maintenance procedures. The AC states that eligibility for 120-minute ETOPS authorization is normally based on a showing of reliable operation for a minimum of 250,000 engine hours of service in the world fleet. Eligibility for 180-minute ETOPS authorization is normally based on a showing of reliable operation for at least one year in 120-minute ETOPS. The AC also describes an option for reducing the number of hours of service if adequate compensating factors are identified to give a reasonably equivalent database.

On May 18, 1994, the FAA issued Special Conditions Number 25–ANM–84 for the Boeing Model 777 airplane (59 FR 28234). These special conditions define requirements for 180-minute ETOPS approval concurrent with basic type certification of the airplane without the service experience outlined in AC 120–42A that would normally be necessary. These special conditions define additional safety standards that the FAA considered necessary to establish a level of safety equivalent to that provided by the airworthiness standards for non-ETOPS airplanes.

The current 777 ETOPS special conditions consist of five main elements needed to provide adequate compensation for the service experience normally required for 180-minute ETOPS eligibility described in AC 120–42A. No single element is considered sufficient by itself, but the FAA has found that the five elements combined provide an acceptable substitute for actual airline service experience. The five elements are:

1. Design for reliability.
2. Lessons learned.
3. Test requirements.
4. Demonstrated reliability.
5. Problem tracking system.

A description of each of these five elements is contained in the preamble to the 777 ETOPS special conditions.

On December 13, 1999, Boeing Commercial Airplane Group applied for an amendment to Type Certificate No. T00001SE to include the new Model No. 777–200LR and 777–300ER airplanes. The Model No. 777–200LR, which is a derivative version of the existing Model 777–200 series airplanes, has the following differences from the 777–200:

- The wingspan is increased from 199 feet, 11 inches to 212 feet, 7 inches.
- Maximum intended takeoff weight is 750,000 pounds.
- It is capable of carrying from 301 to 440 passengers.
- It has provisions for overhead crew and attendant rest areas.
- Its range capability will be up to 8,800 nautical miles (16,298 kilometers).
- It has 110,100 pounds thrust GE90 engines.
- It has a supplemental electronic tail skid.
- It has provisions for up to 3 auxiliary fuel tanks in the forward area of the aft cargo bay.

The 777–300ER, which is a derivative of the Model 777–300 airplanes, has the following differences from the Model 777–300:

- The wingspan is increased from 199 feet, 11 inches to 212 feet, 7 inches.
- Maximum intended takeoff weight is 750,000 pounds.
- It is capable of carrying from 359 to 550 passengers.
- It has provisions for overhead crew and attendant rest areas.
- Its range capability will be up to 7,250 nautical miles (13,427 kilometers).
- It has 115,300 pound thrust GE90 engines.
- It has a supplemental electronic tail skid.
- It has a semi-levered main landing gear.

Both models are currently approved under Type Certificate No. T00001SE.

For the Model 777–300ER and Model 777–200LR, Boeing has proposed certain changes to the ETOPS special conditions in order to take into account the experience from the original baseline Model 777 engine programs and to eliminate any unnecessary burden from the airplane demonstration testing required by paragraph (e)(7) of those special conditions.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, for a change to a type certificate Boeing must show that the Boeing Model 777 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The original type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

ETOPS Certification

All two-engine airplanes operating under 14 CFR part 121 are required to comply with § 121.161, which states, in pertinent part, that "Unless authorized by the Administrator * * * no certificate holder may operate two-engine airplanes * * * over a route that contains a point farther than one hour flying time * * * from an adequate airport." Advisory Circular (AC) 120–42A, "Extended Range Operation With Two-Engine Airplanes (ETOPS)," provides an acceptable means for obtaining FAA approval for two-engine airplanes to operate over a route that contains a point farther than one hour flying time from an adequate airport. The two basic objectives of this advisory circular are to establish that the airplane and its supporting systems are suitable for the extended range mission and that the maintenance and procedures to be employed in conducting ETOPS operations are adequate. This is accomplished by acquiring a substantial amount of service experience during non-ETOPS operation and then extensively evaluating this experience in the areas of systems reliability, maintenance tasks, and operating procedures. When it is determined that the appropriate reliabilities and capabilities have been achieved, the airplane is found eligible to be considered for use in ETOPS operation by an airline.

When Boeing was developing the Model 777 series airplane, it proposed that the Model 777 be approved for ETOPS operation simultaneously with the issuance of the basic type certificate. At that time procedures did not exist for a finding of this type. The proposed issuance of ETOPS type design approval at certification would have precluded using accumulation of service experience, as outlined in AC 120–42A, as a means to meet ETOPS approval requirements. So an alternative method was devised that provided an adequate level of inherent airplane reliability for ETOPS. It is important to note that the requirements for certification of the airplane regarding the design's suitability for ETOPS operation, as described in those special conditions, relate to type certification approval only. Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. It is incumbent upon the operator to apply for operational approval in accordance with appropriate guidance issued by the FAA for such approvals. Satisfaction of the requirements of these special conditions does not constitute operational approval.

Special Conditions 25–ANM–84 contained the additional safety standards that the Administrator considered necessary to establish a level of safety equivalent to that provided by the airworthiness standards for transport category airplanes for non-ETOPS airplanes. Experience with these special conditions since issuance has provided the FAA with additional data to justify a revision to those special conditions as described in this notice.

Discussion of the Proposed Special Conditions

Boeing has requested the FAA to revise certain parts of the test requirements of Special Conditions 25–ANM–84 defined in paragraph (e). The FAA has concurred that some changes are justified based on an analysis of previous experience applying those special conditions to the original three engine types approved for installation on the Model 777 airplane. The specific changes to those requirements and the justification for each proposed change are discussed below.

Paragraph (e)(6) Engine Demonstration Test

The FAA has concluded from a review of in-service experience of the Model 777 series airplanes that the 3000-cycle engine and propulsion system test required by paragraph (e)(6) of Special Conditions 25–ANM–84 provides an adequate opportunity to discover cyclic-related failure modes associated with the design, provided that an adequate post-test evaluation is conducted to find conditions that could result in an inflight shutdown, power loss, or inability to control engine thrust. An FAA review of the test data from the 3000-cycle tests for the three original engine types installed on the Model 777 series airplanes has shown that most of the early in-service 777 engine failure modes could have been discovered had Boeing and the engine manufacturers conducted a more thorough teardown inspection and analysis of the 3000-cycle test engine and propulsion system hardware. Part conditions noted in the teardown inspection reports for the three baseline 777 engine types did later occur in service, and they resulted in engine inflight shutdowns or airplane diversions. Because the specific condition of those 3000-cycle test parts had been characterized as minor deviations from normal however, no specific investigations into how they might progress in service had been required as a prerequisite for ETOPS approval.

Special Conditions 25–ANM–84 currently do not require a post-test teardown inspection. However, all three engine companies, in cooperation with Boeing, conducted post-test teardown inspections on the original baseline engines installed on the Model 777 series airplanes based on their own experience of what would constitute an adequate evaluation. In order to provide a consistent standard for a post-test evaluation of the 3000-cycle test hardware, the FAA is proposing a change to paragraph (e)(6) to require a complete teardown inspection of the engine and airplane nacelle test hardware after completion of the test. The inspection must include an analysis of any abnormal conditions found. The analysis must consider the possible consequences of similar occurrences in service to determine if they might become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. The intent of this change to paragraph (e)(6) is to require further design analysis to catch potential sources of engine inflight shutdowns or diversions.

For similar reasons, we are proposing to add a new subparagraph (e)(7)(v) to require a post-test external and internal visual inspection of the airplane demonstration test engines and propulsion system hardware. An analysis of the inspection results must identify any potential sources of engine inflight shutdown. Appropriate corrective actions must be performed in accordance with the provisions of the special conditions.

Boeing proposed to delete the word *complete* from the description of the airplane nacelle package required for the 3000-cycle test. The rationale for this proposed change was that without the term *complete*, it is still understood that the test is intended to be a propulsion system test inclusive of the engine buildup items, but some allowance is made for configuration differences necessary to accommodate the test setup. The FAA is concerned that, without this qualifier, it is not clear what nacelle hardware must be installed for this test. It could be misinterpreted in such a way that, for instance, a functioning thrust reverser need not be installed. Therefore, the FAA has concluded that the word *complete* must remain in the requirement. However, we agree with Boeing that those configuration differences associated with test instrumentation and test stand interfaces with the engine nacelle package may be excluded, and we propose to add that qualification to the requirement in order to clarify this intent.

Paragraph (e)(7) Airplane Demonstration Test

Number of Test Airplanes: Boeing has proposed a change to paragraph (e)(7) to allow the use of more than one airplane to comply with the airplane demonstration test requirement (three test airplanes for the current Model 777–300ER program). Boeing's justification includes the argument that using multiple airplanes is an enhancement to the ETOPS validation program that takes into account airplane-to-airplane variation. The value of obtaining ETOPS data on multiple airplanes versus one is the increased sample size. The FAA agrees that increasing the number of test airplanes in the airplane demonstration test would provide a better evaluation of airplane-to-airplane variability. The limited experience obtained during the airplane demonstration test program is not really sufficient to evaluate end-of-life wear-out failure modes, so accumulating all of the time and cycles on one airplane is not really necessary. The main program schedule benefit from using multiple flight test airplanes is that testing can be completed in a shorter period. The FAA is proposing a change to paragraph (e)(7) to require that one or more airplanes must complete the airplane demonstration test required by that paragraph.

Capability Demonstration vs. Reliability Demonstration: The 1000-cycle airplane demonstration test requirement was developed with the intent of exposing the airplane to the conditions where the greatest numbers of inflight shutdowns occur. Most inflight shutdowns occur during takeoff and climb. The failure modes associated with these takeoff- and climb-related shutdowns tend to be cyclic in nature for a couple of reasons.[1] For failure modes where the risk of failure increases with engine thrust, the takeoff portion of the flight is most critical. Failure modes that occur due to improper maintenance or engine servicing, for instance loss of engine oil due to improper assembly of an oil tube connection, also tend to occur early in the flight. A larger number of airplane flights increases the exposure to these types of failures. Therefore, the FAA considered a cyclic test to be the most appropriate airplane validation test for the original 777 ETOPS special conditions. However, as stated above, we now consider that the 3000-cycle engine and propulsion system test required by paragraph (e)(6) provides an adequate opportunity to discover cyclic-related failure modes associated with the design when the test hardware goes through an appropriate level of post-test teardown and inspection.

For inflight shutdowns where improper maintenance is a main causal factor, the 1000-cycle airplane demonstration test provides multiple opportunities for these types of failures to occur. However, the maintenance procedure validation program required by paragraph (d)(2) is intended to minimize the probability of these occurrences. The airplane demonstration test airplane provides opportunities to demonstrate those maintenance tasks associated with the normal operation of the airplane. The FAA considers that these demonstrations can be accomplished in fewer than 1000 cycles.

Although the fewest inflight shutdowns occur during cruise, this is the phase of flight that is most important to an ETOPS operation. Traditionally, the FAA and industry have avoided trying to differentiate between those inflight shutdowns that may occur during cruise from those that would only occur in a non-ETOPS environment. The main reason for this approach in existing ETOPS policy is that by correcting all causes of inflight shutdowns, the overall integrity of the propulsion system is assured. Since adequate cyclic exposure would be evaluated by an enhanced 3000-cycle engine demonstration test, as proposed for paragraph (e)(6) of these special

[1] Data provided to the Aviation Rulemaking Advisory Committee (ARAC) ETOPS Working Group confirm that the inflight shutdown rate during the takeoff flight phase is on the order of 6 to 16 times the fleet average inflight shutdown rate and during the climb phase is 2.5 to 4.5 times the fleet average.

conditions, the FAA has concluded that the airplane validation program should emphasize exposure to the cruise phase of flight. During the three 1000-cycle tests conducted for the original 777 engine installation certification programs, only 91 of the total 1000 cycles were of durations of two hours or more. Since the intent of paragraph (e)(7) is to simulate an actual airline operation, this would better be accomplished through longer duration flight cycles. Long duration flight exposure provides additional confidence in the design against those cruise-related failure modes that cannot be evaluated in a cyclic test environment. Such failure modes could include freezing of entrapped water condensation or binding of propulsion system components, neither of which would likely occur in a sea level test facility.

Based on these considerations, the FAA has determined that the airplane demonstration test requirement should be refocused on those conditions that are most prevalent in an ETOPS operating environment. Those conditions include long flights to a variety of airports with broad variations of airport elevation, temperature, and humidity. It is also important that these flights expose the airplane to several enroute climbs, such as may occur with a fully loaded 777–300ER on a long-range flight, and a number of single engine diversions. As such, the FAA proposes that the airplane demonstration test requirement of paragraph (e)(7) be revised to more clearly state the objectives of the test program. Those objectives include demonstrations that the aircraft, its components, and equipment are capable of and function properly during long-range operations and airplane diversions, including engine-inoperative diversions. This change in focus constitutes a significant departure from the original purpose of the 1000-cycle airplane demonstration test requirement, as discussed in the preamble to special conditions 25–ANM–84.

Reliability of 777

In order to further justify this change in philosophy for the airplane demonstration test requirement from being a demonstration of "reliability" to a demonstration of "capability," the FAA reviewed the original intent of Special Conditions 25–ANM–84, as documented in the preamble to those special conditions. The purpose of this review was to assess whether the assumptions we made in justifying the special conditions are still valid, or whether they should be revised based on ETOPS certification experience since their issuance in June 1994.

In the preamble to Special Conditions 25–ANM–84, the FAA stated that: "existing practices to achieve airplane certification safety objectives have involved definition of performance requirements, incorporation of safety margins, and prediction of failure probabilities through analysis and test. However, historical evidence, in general, indicates that a period of actual revenue service experience is necessary to identify and resolve problems not observed during the normal certification process. Successful achievement of this experience has been a prerequisite for granting ETOPS type design approval for a specific airplane engine combination. However, several recent airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. In addition, this high level of reliability was demonstrated by the small number of problems encountered during basic certification activity." Based on these successful airplane and engine development and certification programs, the special conditions were designed to "result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience."

The basic premise behind the engine and airplane demonstration tests required by paragraphs (e)(6) and (e)(7) of the special conditions was that those tests would provide a final validation of an "inherent" level of reliability that was the product of an enhanced design and test process. This is similar to the purpose of the function and reliability testing required by § 21.35(b)(2). The FAA's expectation for these tests was that no significant failures would occur. The probability of significant design failures occurring on a one-airplane flight test is so low that if any DO occur, that would be indicative of a design that is not suitable for ETOPS approval. This expectation is contained in the "type and frequency" requirement of special conditions paragraph (h)(1). Statistical reliability studies have shown that a much larger database would be required to validate a design's true reliability with a significant degree of confidence.

No major engine failures occurred during the 1000-cycle airplane demonstration tests for any of the three engine types certified on the Model 777 series airplane, although several engine design problems were discovered during other certification testing that affected the start and conduct of those tests. The Reliability Assessment Board (RAB) evaluated each of these design problems in compliance with paragraph (g) of the special conditions, and found the 777 to be suitable for ETOPS type design approval with the incorporation of corrective actions identified in Appendix 1 of the RAB final recommendation reports for the three engine types. There were hardware similarities between engines with the original certified thrust ratings and follow-on higher-thrust-rated engines, and the FAA certified each of those follow-on engine derivatives for ETOPS in consideration of those hardware similarities. The FAA accepted the original baseline engine test programs as showing compliance to the 3000-cycle propulsion system ground test and 1000-cycle airplane demonstration test requirements for the follow-on derivative engines. Although the 3000-cycle and 1000-cycle tests were not repeated for those follow-on derivative engines, Boeing and the engine companies completed reduced ground and flight test demonstrations tailored to the design changes being introduced in compliance with the "Test Features" requirement of special conditions paragraph (c)(4). Therefore, the follow-on engine derivatives are not included in this analysis of the 1000-cycle airplane demonstration test requirement.

The Boeing Model 777–200 series airplane powered by Pratt & Whitney PW4077 engines was approved for ETOPS on May 30, 1995 and entered service in June 1995. By all accounts, it was a very successful new model introduction. This was followed by ETOPS approval of the 777–200 powered by General Electric GE90–77B and Rolls-Royce RB211–Trent 877–17 engines in October 1996. The inflight shutdown (IFSD) rate for all three engine types was zero for at least the first year in service. The Pratt & Whitney PW4000 reached a peak 12-month rolling average engine IFSD rate of .018/1000 hours in October 1996. The General Electric GE90 reached a peak of .021 for one month in July 1998 and the Rolls-Royce Trent reached a peak of .016 in December 1997. Although the inflight shutdown rates stayed within the allowable .02/1000 hour standard for 180-minute ETOPS, significant design problems were discovered on each engine type after ETOPS approval.

During the first two years after ETOPS approval of each engine type on the Model 777 series airplanes, the FAA was concerned that the design problems being discovered may have indicated a failure of the early ETOPS process to identify those failure modes before they occurred in service. Some failure modes had the potential to result in inflight shutdowns had they occurred under different circumstances or had they not been detected during maintenance for unassociated reasons. A summary of the actual problem reports for these inflight shutdowns and other events, which were submitted in compliance with paragraph (f) of these special conditions, is contained in Table 1. Had every one of those events resulted in an engine inflight shutdown, the resulting IFSD rates for each engine type would have been significantly higher. Boeing, the engine manufacturers, the FAA, and other regulatory authorities worked together to prevent additional inflight occurrences of these failure types. The actual inflight shutdown rates prove that these early in-service problems were successfully managed to maintain the safety of 777 ETOPS operations worldwide.

TABLE 1

Date occurred	EE–1 #	Engine type	Affected system	Event description
10/1/1995	101	PW	ENGINE—OIL PUMP.	Airplane diversion due to low oil quantity. Engine not shut down, but oil quantity indication went to zero. Related to LP01 problem.
5/19/1996	179	PW	ENGINE	Takeoff aborted due to EGT exceedance. A loose B-nut was found on the PS3 line to the 2.95 bleed valve, which caused erratic operation.
5/30/1996	181	PW	ENGINE	Air turnback due to high oil consumption. Oil wetness noted and corrected from previous flights. Consumption continued to be high.
8/24/1996	233	PW	ENGINE	IFSD—Inflight shutdown due to low oil pressure indication. Plastic shipping cap was left in the LPO1 oil line during installation as part of fleet upgrade.
10/5/1996	254	PW	ENGINE	IFSD—Engine was shut down due to low oil quantity and low oil pressure. Loose main oil line at filter housing. Repeat of oil line shipping cap problem.
10/11/1996	261	PW	ENGINE	Air turnback. Engine experienced high vibration during cruise. Vibration indication exceeded EICAS "Pop-up" level at 4.06.
3/26/1997	385	PW	ENGINE	Twelve quarts of oil lost after a series of training flights due to a leak of an oil line to the fuel/oil cooler. Oil loss took place over approximately 3 hours of flight time.
2/24/1997	G–65	GE	ENGINE GEARBOX.	Air turnback due to loss of right backup generator followed by engine oil filter EICAS message. Root cause was a failed gearbox backup generator pad bearing.
11/4/1997	G–84	GE	ENGINE	IFSD—Engine experienced a power loss during approach. A restart attempt was unsuccessful. Root cause was a sticking bypass valve in the hydromechanical unit (HMU).
11/9/1997	G–87	GE	ENGINE	Flight crew heard a surge toward the end of the takeoff roll and tower reported seeing flames from the engine. At 600 feet, the engine surged again. The flight crew reduced power and returned to the airport.
3/12/1998	G–96	GE	ENGINE	Pilot heard a bang and a tower reported fire from the tailpipe after power was set for takeoff. The takeoff was aborted. Metal was found in the tailpipe.
6/22/1998	G–108	GE	ENGINE	IFSD—After takeoff, the pilot received low oil pressure and low oil quantity indications. The pilot shut down the engine. Two of four oil filter cover bolts were loose due to inserts pulling out of the filter housing casting.
7/1/1998	G–110	GE	ENGINE	IFSD—Uncommanded engine inflight shutdown during cruise at flight level 370. Flight crew noted a rapid loss of oil pressure and N2. Root cause was a Number 3 bearing failure.
7/22/1998	G–112	GE	ENGINE	IFSD—During cruise, EICAS indication of low oil quantity. Pilot shut down the engine. Oil filter housing cover bolts were over-torqued resulting in stripped threads in the oil filter housing inserts.
11/20/1998	G–120	GE	IDG installation	IFSD—Crew started return to departure airport due to indication of complete oil loss. Engine was subsequently shut down when oil pressure dropped to 10 psi. The integrated drive generator (IDG) packing was damaged during installation.
10/11/1996	R–63	RR	ENGINE—RADIAL DRIVE SHROUD.	Flight diverted after crew observed right engine oil quantity loss approx. 5 hours into flight. Found cracked upper radial drive shroud.
10/11/1996	R–64	RR	ENGINE—FUEL NOZZLE.	Fuel found leaking from Zone 2 during investigation of R–63 oil loss. Source of fuel leak was a cracked weld on the No. 24 fuel nozzle (top dead center).
10/25/1996	R–65	RR	ENGINE—RADIAL DRIVE SHROUD.	After engine shutdown at the gate, the right engine oil quantity indicated 9 qts. Upper radial drive shroud found cracked.
11/12/1996	R–67	RR	ENGINE	"ENGINE OIL PRESS R" EICAS message displayed after landing. Engine shut down. Oil pump drive shaft found sheared.
1/26/1997	R–91	RR	ENGINE—STEP ASIDE GEARBOX.	Low oil quantity caused by crack in step aside gearbox housing approximately 4 to 5 inches long.
5/24/1997	R–109	RR	ENGINE	Engine was shut down on takeoff following high power surge. Subsequent borescope inspection revealed HPC rotor 1 blade failure caused by foreign object damage that was consistent with blade damage noted on 5/20/97 inspection.
7/7/1997	R–112	RR	ENGINE	Aircraft diversion caused by excessive oil leakage due to incorrectly installed lower bevel box O-ring seal following radial drive shaft replacement.
7/26/1997	—	RR	ENGINE	Aircraft diversion due to high oil consumption. Not related to step aside gearbox housing cracking problem.

TABLE 1—Continued

Date occurred	EE–1 #	Engine type	Affected system	Event description
9/16/1997	R–113	RR	ENGINE	IFSD—Engine shutdown at 400 feet after takeoff due to high- pressure compressor failure.

Reliability of 737NG

As part of the process of reviewing existing methods for ETOPS approval, the FAA also analyzed data from the initial in-service period for Boeing Models 737–600, 737–700, and 737–800 powered by CFM56–7 engines. As a group, these variants of the 737 were referred to as the 737 Next Generation, or "737NG." Even though early ETOPS special conditions were not issued, the 737NG was chosen for this analysis because it followed an ETOPS approval process program that was very similar to what Boeing is proposing for the 777–300ER. Several months after entry into service, however, the 737NG did not exhibit an acceptable level of propulsion system reliability for ETOPS approval. Early ETOPS special conditions were intended to identify a design not suitable for ETOPS approval prior to type certification.

Boeing proposed in 1994, prior to the 777's type certification, that the 737NG be certified as an early ETOPS airplane in a manner similar to the 777, but *without all of the testing required in the* 777 special conditions. Since the success of the 777 program was still an unknown at the time of Boeing's request for the 737NG, the FAA did not agree to Boeing's proposed changes to the airplane demonstration test requirement. Early ETOPS special conditions for the 737NG were never issued. Even so, Boeing proceeded with those elements of the 777 special conditions that the company had proposed to accomplish. These included the relevant experience assessment, design requirements assessment, 3000-cycle propulsion system ground test, and enhanced problem reporting and resolution.

Although the FAA never issued special conditions for the 737NG program, we agreed that the elements from the 777 special conditions that Boeing did accomplish justified a reduction in the service experience normally required for ETOPS type design approval, as outlined in AC 120–42A. Boeing presented the following information in support of its request for a reduction in service experience required for ETOPS certification.

- "Design involved lessons learned, similar to 777 Early ETOPS process.
- "APU most thoroughly tested in Allied Signal history—more than 3000-cycle ground test, including hot/cold exposure.
- "Propulsion system subjected to 3000-cycle ground test, intentionally unbalanced, with three 180-minute diversion cycles.
- "Flight testing included a Southwest Airlines 50-cycle demonstration, using airline crews and maintenance. During the Function and Reliability testing, 61 ETOPS cycles were conducted with three single engine 180-minute diversions.
- "A proposed ETOPS problem tracking and resolution system, similar to that used on the 777 that will remain in effect until the fleet attains 250,000 engine fleet hours."

In its analysis of the 737NG approval process, the FAA noted that these program elements, at the time, had been accomplished with good results. The engines and airplane system had performed well during the test programs, with results comparable to the 777 test fleet (all engines). The in-service 737NG airplanes had achieved a 98.96% dispatch reliability rate after 45 days in service, better than any previous Boeing airplane. Boeing's proposal included an accumulation of 15,000 fleet engine hours of service experience before requesting ETOPS approval. At that time, there would be three airplanes with more than 1000 flight cycles, the total 737NG fleet would have accumulated more than 20,000 flight cycles, and the high-time airplane/engines would have more than 2000 flight cycles. During the 737 NG approval process, the FAA concurred with Boeing's proposal to require 15,000 hours of service experience based on the following:

- "The FAA has agreed to the concept that ETOPS at entry into service can be achieved by appropriate design and testing as evidenced by the 777 special conditions, which have now been validated through actual service experience,
- "The 737NG/CFM56–7B airframe/engine configuration is a derivative/evolution of the existing 737–300/400/500 which through extensive service experience has demonstrated exceptional reliability, and, is approved for 120-minute ETOPS,
- "Except for the lack of a dedicated 1000-cycle ETOPS test program, design and testing of the 737NG/CFM56–7B mirrors what was done on the 777 to satisfy Early-ETOPS approval.
- "The additional 15,000 engine hour in-service evaluation plus the fact that three 180-minute single engine diversions were performed during Function and Reliability testing more than compensates for the omission of a 1000-cycle test,
- "The satisfactory performance of the 737NG/CFM56–7B airframe/engine configuration during the certification testing, and
- "The proven ability of Boeing to satisfactorily manage ETOPS airworthiness of the 777 fleet in the face of problems encountered in service. The 737NG proposal includes a problem tracking and resolution system that will remain in effect for a full 250,000 engine hours."

The Model 737–700 was the first variant of the 737NG to enter service, in December 1997. Section 4.2 of the FAA-approved 120-minute ETOPS Airplane Assessment Report for the 737–700, Boeing Document Number D033A003, Revision B, states that the Model 737–700 was designed, manufactured, and tested for extended range operations at entry into service. The following additional supporting statements were also made.

a. "The 737–700 airplanes have been designed and manufactured based on regimented application of lessons learned from other ETOPS program experience as well as the in-service experience of earlier 737 models.

b."The 737–700 airplane was subjected to a rigorous test program as described in following paragraphs. Production equivalent equipment where appropriate, was used to support test objectives. Equipment was production equivalent as defined at the time of the test."

No significant propulsion system design problems occurred during any of the testing described above. Two inflight shutdowns did occur during certification flight testing. One was caused by an indication fault within the electronic engine control that was corrected with a simple software change. The other was caused by an inappropriate flight test condition.

Boeing stated in the 737–700's 120-minute ETOPS Airplane Assessment Report that the fleet reached the 15,000-hour mark during the month of April 1998. At that time, there had been no inflight shutdowns in service. However, on May 9, 1998, before the FAA had completed its assessment of the airplane for ETOPS approval, the first inflight shutdown occurred. A second inflight shutdown occurred during the month of May, and the fleet exceeded the accepted 120-minute ETOPS standard of .05 inflight shutdowns per 1000 engine hours. Three inflight shutdowns occurred in June 1998, and one in July 1998. The peak inflight shutdown rate during this period was .085/1000 hours at the end of June 1998, which clearly did not meet the minimum standard for ETOPS type design approval.

The six engine inflight shutdowns were caused by three different failure root causes. Boeing and CFMI, the engine manufacturer, undertook aggressive actions to correct each of these design problems as they occurred. The high rate of fleet hourly accumulation during this period, however, resulted in new ETOPS reportable events occurring faster than the known problems could be corrected. This delayed FAA consideration of the 737–700 for ETOPS approval until the problems were brought under control. A consequence of the high rate of fleet *hourly accumulation was that, with no* additional inflight shutdowns, the inflight shutdown rate decreased rapidly and was within the ETOPS type design approval standard by the end of 1998. The FAA approved the 737–600/–700/–800 (737NG) for 120-minute ETOPS approximately one year after entry into service with over 300,000 engine-hours of service experience and an inflight shutdown rate of .020/1000 hours.

Conclusions From Comparison of 777 and 737NG

In comparing the 737NG experience with that of the 777, the FAA observes that there is a fleet hourly accumulation rate above which aggressive problem management to qualify for early ETOPS certification may become resource prohibitive. Therefore, when certifying an airplane/engine combination that will be entering service with a high production rate resulting in a rapid accumulation of engine hours, manufacturers may find it more cost-effective to use the service experience criteria of AC 120–42A than to follow the rigorous requirements of the early ETOPS process.

As stated earlier, the 777 ETOPS special conditions were designed to "result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience." As previously noted, the current 777 ETOPS special conditions consist of five main elements needed to provide adequate compensation for the service experience normally required for 180-minute ETOPS eligibility described in AC 120–42A. No single element is considered sufficient by itself, but the FAA has found that the five elements combined provide an acceptable substitute for actual airline service experience. The five elements are:

1. Design for reliability.
2. Lessons learned.
3. Test requirements.
4. Demonstrated reliability.
5. Problem tracking system.

Even though the overall objective is a level of airplane and propulsion system reliability that is equivalent to that achieved through service experience, we considered the uncertainty of actually achieving that goal in the development of these special conditions. The first three elements focus on designing an airplane to eliminate sources of engine inflight shutdowns and diversions to the greatest practical extent. This is accomplished by an overall design philosophy to preclude sources of engine inflight shutdowns and diversions using the manufacturer's experience with earlier designs to identify successful and unsuccessful design features. The additional testing required by the special conditions focuses on exposing the design to conditions that in the past have contributed to engine failures, such as high engine vibration or repeated exposure to humid and inclement weather on the ground followed by long-range operation at the extreme cold temperatures at high altitude. These design and test elements do not assure a level of reliability that is equivalent to that based on service experience. Instead, they result in an acceptable level of inherent design reliability from which we can successfully manage ETOPS fleet safety once the airplane enters service.

The fourth element, "demonstrated reliability," provides the FAA with a standard by which to judge a design against existing ETOPS-approved airplanes. This gives the FAA a standard from which to withhold ETOPS approval from airplanes that experience significant failures during certification testing, demonstrating that they are not suitable for ETOPS. However, it does not by itself guarantee that designs showing no significant failures during flight testing will have adequate reliability for ETOPS.

To manage fleet safety after ETOPS approval, we rely on the fifth element of the ETOPS special conditions. Paragraph (f) of the special conditions requires a problem tracking system for the prompt identification of those problems that could impact ETOPS safety. The FAA uses this enhanced problem reporting system to work with the airplane and engine manufacturers to aggressively manage and correct significant design problems identified after ETOPS approval. This requirement is the "catch-all" for those design flaws that are not caught by the other special conditions elements during airplane design and testing.

The first in-service inflight shutdown of the 737–700 variant of the 737NG did not occur until the fleet had accumulated approximately 30,000 engine-hours. The FAA could not have expected that a complete 1000-cycle airplane demonstration test would have had a better chance of discovering the types of problems that occurred in service on the 737NG than the nearly 30,000 hours accumulated on multiple airplanes and engines prior to the first inflight engine shutdown. While significant propulsion system failures occurring during type certification testing, including the additional testing required by the ETOPS special conditions, may indicate that a design is not yet ready to enter ETOPS service, the 737NG experience shows that the reverse cannot be stated with a significant degree of confidence. A lack of significant failures during certification testing does not in itself assure an ETOPS-suitable design at entry into service.

The 777 experience shows that a relatively small fleet can be managed successfully during the initial service period based on the data provided by the enhanced problem tracking system required by special conditions paragraph (f). The 737NG experience shows that a larger fleet may require a much more resource-intensive fleet management program. However, had the 737NG received its ETOPS approval as originally proposed prior to its first inflight shutdown in service, the problem reporting system that Boeing had in place gave the FAA timely identification of the problems causing inflight shutdowns so that we could have required appropriate corrective action through the airworthiness directive process to maintain ETOPS safety. Such airworthiness directives could have required the operators to incorporate design changes prior to

further ETOPS flight or withdrawn ETOPS approval.

Since we cannot be certain that an airplane approved for ETOPS under the special conditions will have the same maturity at original type certification as an airplane that we have approved based on service experience, our experience with the 777 and 737NG confirms that the five elements of the special conditions, in conjunction with the FAA's normal safety oversight processes, adequately compensate for that uncertainty.

The changes we propose for the engine demonstration test and the airplane demonstration test, including enhanced post-test inspection requirements, are intended to address our experience with the existing ETOPS special conditions, which identified several shortcomings in the original test requirements. We are proposing these changes to more clearly focus the testing on the objective of exposing the engines and airplane to those operating conditions that give us the best chance of identifying underlying major design flaws that could jeopardize ETOPS safety in service. These proposed changes would provide a better evaluation of the design than the existing requirements, including the 1000-cycle airplane flight test as previously conducted.

The FAA therefore proposes to change the purpose of the airplane demonstration test requirement of paragraph (e)(7) from being a demonstration of reliability to a demonstration of airplane capability under the types of ETOPS operational and diversion scenarios being proposed in this notice. The requirements of that airplane demonstration test have been changed accordingly.

Aged Engine Requirement

In response to Boeing's request, the FAA is proposing to delete paragraph (e)(7)(ii), which currently requires the installation of the engine and propulsion system from the 3000-cycle engine demonstration test required by paragraph (e)(6), or another suitable aged engine, on the 1000-cycle demonstration test airplane for a minimum of 500 cycles. Boeing provided the following information in support of its request for deleting the aged engine requirement:

Review of the aged engine data from the baseline 777 program showed that the nature of the findings, which occurred on the aged engines, was not related to the aging of the engines. The findings were related to the variation that occurs during manufacturing, assembly, etc. This lesson learned on the aged engines is consistent for each engine manufacturers' baseline 777 ETOPS test program.

The lack of findings related to the aging of an engine in the ETOPS flight test program has been demonstrated three times. Based on this consistent demonstration, there is no further need to maintain the requirement for an aged engine in the flight test program. Additionally, flying more airplane/engine combinations will provide increased opportunities for evaluating potential problem areas.

Boeing reported nine events (EE–1 Reports) which occurred during the "aged" engine portions of the 1000-cycle tests for the three baseline engine types, with an explanation of why the aged engine requirement was not necessary in order to identify each failure. Boeing stated that the lack of any EE–1 reports from the post-test inspections is an indication that there were no significant findings from the aged engine testing.

FAA Analysis of Boeing's Proposal: The original intent of the aged engine requirement was to expose the 3000-cycle test engine, or equivalent, to inflight conditions that cannot be simulated in a ground test environment. This would further validate the propulsion system design out to an age beyond 3000 cycles. Boeing data available at the time the ETOPS special conditions were developed indicated that 95% of all new significant failure modes occur on airplane propulsion systems with 3000 cycles or less. That concept is still valid. The lack of specific findings on the aged engine during the 1000-cycle airplane validation test only confirms the validity of the Reliability Assessment Board's conclusion that those baseline 777 engine installations were suitable for 180-minute ETOPS. A number of significant events during the 1000-cycle test program would have jeopardized that conclusion.

The question that the FAA considers to be more relevant is whether or not a greater benefit would come from a more thorough teardown inspection and analysis of the 3000-cycle test engine and propulsion system hardware than from this additional level of validation. In this regard, the FAA agrees with Boeing that other test articles may provide sufficient experience to uncover the majority of age-related problems independent of the additional exposure provided by the 1000-cycle test inflight exposure.

In consideration of the need to perform a detailed analysis of the 3000-cycle test engine and the extra expense of using a parallel 3000-cycle test engine as "another suitable aged engine," the FAA agrees that the requirement for installation of an aged engine on the ETOPS test airplane can be eliminated provided significantly improved processes are used to analyze the condition of the 3000-cycle test and airplane demonstration test engines at the conclusion of these tests, as being proposed for paragraph (e)(6).

Miscellaneous Amendments

We are also proposing the following revisions.

Re-identification of paragraph (e)(7)(iii) as (e)(7)(iv) and revision of the requirement that the 1000-cycle test airplane be operated and maintained using the recommended operations and maintenance procedures to recognize that more than one test airplane may be used.

Replacement of the reference to the "1000-cycle ETOPS test" with "Airplane Demonstration Test" in paragraph (g)(2) in order to be consistent with the changes being proposed for paragraph (e)(7).

Replacement of the reference to the "1000-flight-cycle ETOPS test" with "Airplane Demonstration Test" in paragraph (h)(1) in order to be consistent with the changes being proposed for paragraph (e)(7).

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should The Boeing Company apply at a later date for a change to the type certificate to modify any model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following revisions to Special Conditions 25–ANM–84 as part of the type certification basis for Boeing Model 777 series airplanes. The existing special conditions are printed in their entirety for clarity. Your comments are invited on the proposed revisions: Sections (e)(6), (e)(7), and the word substitutions in sections (g)(2) and (h)(1).

In addition to the airworthiness requirements of 14 CFR part 25, the Model 777 airplane must comply with the following requirements in order to be eligible for Extended Range Operation with Two-Engine Airplanes (ETOPS) without the requisite operating experience specified in Advisory Circular (AC) 120–42A:

(a) *Introduction.* An approved ETOPS Type Design Assessment Plan covering the engine and each applicable airplane system must be established. The specific methods that will be used to substantiate compliance with the requirements of these special conditions must be defined in the plan. Specific systems that will undergo the complete analysis, testing, and development program tracking defined in paragraph (c) of these special conditions must be identified. Other airplane systems that may contribute to the overall safety of an ETOPS operation, but that do not warrant the rigorous type design requirements and relevant experience assessments defined in paragraph (c) of these special conditions, must be identified and agreed to by the FAA. Compliance must be shown for these other systems with all provisions of these special conditions, except paragraph (c). In showing compliance with these special conditions, tests and analyses conducted to substantiate compliance with the basic airworthiness standards of part 25 may be referenced, if applicable.

(b) *Engine Assessment.*

(1) The ETOPS eligibility of the engine must be determined specifically for the airplane installation for which early ETOPS type design approval is requested.

(2) Procedures for an engine condition monitoring program must be defined and validated at the time of ETOPS type design approval. The engine condition monitoring program must be able to predict when an engine is no longer capable of providing, within certified engine operating limits, the maximum thrust required for a single engine diversion.

(c) *ETOPS Type Design Assessment.*

(1) *Design Requirements Assessment.* 14 CFR part 25, including applicable amendments, defines most of the requirements necessary to design an airplane that is suitable for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. In addition to these requirements, the propulsion system must be designed to preclude failures or malfunctions that could result in an engine inflight shutdown. The applicant must identify and list methods of compliance for each of the applicable ETOPS requirements, including those specific part 25 requirements for which methods of compliance relative to the ETOPS mission are different from those traditionally used for two-engine airplanes. Paragraph (c)(3) of these special conditions lists certain design feature categories that may be affected by a consideration of the ETOPS mission in the design of these systems. The effects of the applicable ETOPS requirements on the design of any of those design feature categories listed in paragraph (c)(3) must be specifically addressed by this assessment.

(2) *Relevant Experience Assessment.* For each system covered by the ETOPS Type Design Assessment, there must be an assessment of the relevant design, manufacturing, and operational problems experienced on previous airplanes built by the applicant. The assessment must include the applicable relevant service experience of vendor supplied systems or, to the extent possible, the service experience of components on aircraft built by other manufacturers. Specific corrective actions taken to preclude similar problems from occurring on the new airplane must be identified.

(3) *Design Features.*

(i) The applicant must define any design features implemented to comply with the design requirements listed in paragraph (c)(1). Consideration of the following design feature categories must be specifically addressed:

(A) Airplane capabilities and capacities of the ETOPS mission;

(B) Fuel system integrity, including consideration of uncontained main engine rotor burst and fuel availability as affected by cross-feed capability and electrical power to pumps and other components;

(C) Fuel quantity indication to the flightcrew, including alerts that consider the fuel required to complete the mission, abnormal fuel management or transfer between tanks, and possible fuel leaks between the tanks and the main engines;

(D) Communication systems for the ETOPS environment;

(E) Navigation systems for the ETOPS environment;

(F) Minimum single engine cruise altitude capability; and

(G) Failure tolerant designs of cockpit indicating systems or avionics systems to prevent unnecessary airplane diversions.

(ii) The applicant must define the specific design features used to address problems identified in the relevant service experience assessment of paragraph (c)(2).

(4) *Test Features.* The applicant must define specific new tests, or enhanced tests, that will be used to assure engine and airplane system design integrity. These test features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(5) *Analysis Features.* The applicant must define specific new analyses, or enhanced analyses, that will be used to assure engine and airplane system design integrity. These analysis features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(6) *Manufacturing, Maintenance, or Operational (Other) Features.* The applicant must define specific new, or enhanced, manufacturing processes or procedures, and maintenance or operational procedures that are being implemented to assure engine and airplane system integrity. These "other" features may be derived from the requirements assessment of paragraph (c)(1) of this section and the relevant service experience assessment of paragraph (c)(2).

(d) *Additional ETOPS Analysis Requirements.*

(1) *Performance and Failure Analyses.* Engine and airplane performance and failure analyses required for certification must be expanded to consider ETOPS mission requirements, including exposure times associated with a 180-minute single-engine diversion and a subsequent 15-minute hold in the terminal airspace at the diversion airport. Consideration must be given to crew workload and operational implications of continued operation with failure effects for an extended period of time. The rationale and all assumptions used in the analyses must be documented, justified, and validated, including maintenance interval and maintainability assumptions.

(2) *Maintenance and Flight Operations Evaluation.* The Type Design Assessment Plan must contain a program to systematically detect and correct problems occurring as a result of improper execution of maintenance or flight operations. Corrective actions for any problems found must be identified and implemented through the Problem Tracking and Resolution System required by paragraph (f).

(3) *Manufacturing Variability.* The Type Design Assessment Plan must contain a program to minimize potential manufacturing problems. The plan should address early validation of tooling and procedures, as well as any related problems, as identified in paragraph (c)(2). Corrective actions for problems that impact the safe operation of the airplane must be identified and implemented through the problem tracking and resolution system required by paragraph (f).

(e) *Additional ETOPS Test Requirements.* As part of, or in addition to, the testing identified in paragraph (c)(4), the following specific test requirements apply:

(1) *Configuration Requirements.* All testing defined in paragraph (e) must be conducted with the configuration proposed for certification, and must include sufficient interfacing system hardware and software to simulate the actual airplane installation.

(2) *Completion of Applicable Failure Analyses.* Failure analyses required for ETOPS type design approval must be submitted to the FAA prior to the start of the testing defined in paragraph (e).

(3) *Vibration Testing.* Vibration testing must be conducted on the complete installed engine configuration to demonstrate that no damaging resonances exist within the operating envelope of the engine that could lead to component, part, or fluid line failures. The complete installed engine configuration includes the engine, nacelle, engine mounted components, and engine mounting structure up the strut to wing interface.

(4) *New Technology Demonstration Testing.* Testing must be conducted to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(5) *Auxiliary Power Unit Demonstration Test.* If requesting credit for APU backup electrical power generation, one auxiliary power unit (APU), of the type to be certificated with the airplane, must complete 3000 equivalent airplane operational cycles.

(6) *Engine Demonstration Test.* One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment except for any configuration differences necessary to accommodate test instrumentation and test stand interfaces with the engine nacelle package. At completion of the engine demonstration test, the engine and airplane nacelle test hardware must undergo a complete teardown inspection. This inspection must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdown. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. Any potential sources of engine inflight shutdown identified must be corrected in accordance with paragraph (g)(2).

(7) *Airplane Demonstration Test.* In addition to the function and reliability testing required by 14 CFR 21.35(b)(2), for each engine type to be certificated with the airplane, one or more airplanes must complete flight testing which demonstrates that the aircraft, its components, and equipment, are capable of and function properly during long range operations and airplane diversions, including engine-inoperative diversions.

(i) The flight conditions must expose the airplane to representative operational variations based on the airplane's system and equipment design and the intended use of the airplane including:

(A) Engine inoperative maximum length diversions to demonstrate the airplane and propulsion system's capability to safely conduct a diversion.

(B) Non-normal conditions to demonstrate the airplane's capability to safely divert under worst case probable system failure conditions.

(C) Simulated airline operations including normal cruise altitudes, step climbs, and maximum expected flight durations out of and into a variety of departure and arrival airports.

(D) Diversions to worldwide airports representative of those intended as operational alternates.

(E) Repeated exposure to humid and inclement weather on the ground followed by long-range operation at normal cruise altitude.

(ii) The flight testing must validate expected airplane flying qualities and performance considering engine failure, electrical power losses, etc. The testing must demonstrate the adequacy of remaining airplane systems and performance and flightcrew ability to deal with an emergency considering remaining flight deck information following expected failure conditions.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program.

(iv) The test airplane(s) must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At completion of the airplane demonstration test, the test engines and engine-mounted equipment must undergo a complete external on-wing visual inspection. The engines must also undergo a complete internal visual inspection. These inspections must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdowns. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns. Any potential sources of engine inflight shutdown that are identified must be corrected in accordance with paragraph (g)(2).

(f) *Problem Tracking System.* An FAA-approved problem tracking system must be established to address problems encountered on the engine and airplane systems that could affect the safety of ETOPS operations.

(1) The system must contain a means for the prompt identification of those problems that could impact the safety of ETOPS operations in order that they may be resolved in a timely manner.

(2) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(3) The system must be in effect during the phases of airplane development that will be used to assess early ETOPS eligibility, and for at least the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. For the revenue service period, this system must define the sources and content of in-service data that will be made available to the manufacturers in support of the problem tracking system. The content of the data provided must include, as a minimum, the data necessary to evaluate the specific cause of all service incidents reportable under § 21.3(c) of part 21, in addition to any other failure or malfunction that could prevent safe flight and landing of the airplane, or affect the ability of the crew to cope with adverse operating conditions.

(4) Corrective actions for all problems discovered during the development and certification test program that could affect the safety of ETOPS operations, or the intended function of systems whose use is relied upon to accomplish the ETOPS mission, must be identified and implemented in accordance with paragraph (g)(2). If, during the certification program, it is discovered that a fault has developed that requires significant rework of manufacturing, maintenance, and/or operational procedures, the FAA will review the ETOPS suitability of the affected system and interfacing hardware and identify any additional actions to be accomplished to substantiate the corrective actions.

(5) For each engine type to be certificated with the airplane, the system must include provisions for an accelerated engine cyclic endurance test program that will accumulate cycles on one representative production-equivalent propulsion system in advance of the high-cycle revenue fleet engine. This test program will assist the applicant and the FAA in identifying and correcting problems before they occur in revenue service. This program must be in place for, at a minimum, the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. The representative production-equivalent propulsion system may, at the manufacturer's discretion, be used for other fleet support activities.

(g) *Reliability Assessment Board.*

(1) An FAA Reliability Assessment Board will be formed to evaluate the suitability of the airplane for ETOPS approval and make a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the type design for 180-minute ETOPS operation. The purpose of this board will be:

(i) To periodically review the development and certification flight test program accomplishments from both type design and operational perspectives;

(ii) To ensure that all specific problems, as well as their implications on the effectiveness of the Early ETOPS process, are resolved; and

(iii) To assess the design suitability for ETOPS. The board will consider design, maintenance, manufacturing, and operational aspects of the type design when finding suitability for ETOPS approval.

(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the *Airplane Demonstration Test*, considering all resolutions of problems. The following suitability criteria will be applied:

(i) Sources of engine shutdown/thrust loss, engine anomalies, or airplane system problems that have a potential significant adverse effect on in-service safety will be resolved.

(ii) Resolutions are identified for all items in paragraph (i) with analysis and/or testing to show all resolutions are effective. These resolutions may be accomplished through one or more of the following categories: Design change, Operating procedure revision, Maintenance procedure revision, Manufacturing change.

(iii) The resolutions of paragraphs (i) and (ii) will be incorporated prior to entry into service.

(iv) The engine shutdown history of the test program indicates that the engine reliability of the configuration is suitable for the ETOPS approval being considered.

(v) Where interim resolutions having operational impact are defined, the cumulative effect must be determined to be acceptable.

(vi) System or component failures experienced during the program are consistent with the assumptions made in the failure analyses.

(h) *Reliability Demonstration Acceptance Criteria.*

(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the *Airplane Demonstration Test* must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

(2) Corrective action for any of the following classes of problems occurring during the testing identified in paragraph (h)(1) that requires a major system redesign would delay ETOPS type design approval, or result in approval of a reduced single-engine diversion time, unless corrective action has been substantiated to, and accepted by, the FAA Reliability Assessment Board:

(i) Any source of unplanned inflight shutdown or loss of thrust.

(ii) Any problem that jeopardizes the safety of an airplane diversion.

(3) The FAA Reliability Assessment Board must determine that the suitability criteria of paragraph (g)(2) have been met.

(i) *Demonstration of Compliance.* In order to be eligible for 180-minute ETOPS type design approval, the following conditions apply:

(1) The engine assessment has been completed and eligibility for ETOPS operation has been approved by the FAA Engine Certification Office.

(2) All design, manufacturing, maintenance, operational, and other features necessary to meet the ETOPS requirements of paragraph (c)(1), and to resolve the problems identified in paragraph (c)(2), have been successfully implemented.

(3) The identified test and analysis features in paragraph (c)(4) and (c)(5) have been shown to be effective in validating the successful implementation of the features in paragraph (i)(2).

(4) The additional analysis requirements of paragraph (d) have been completed and the results have been approved.

(5) The additional test requirements of paragraph (e) have been successfully completed.

(6) All significant problems identified in accordance with paragraph (f) have been resolved, and fixes substantiated to be effective have been implemented.

(7) The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place.

(8) Compliance with the reliability demonstration acceptance criteria of paragraph (h) has been found by the Reliability Assessment Board.

Issued in Renton, Washington on June 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14992 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N–021A]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products; Final Monograph; Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation that established conditions under which over-the-counter (OTC) skin protectant astringent drug products are generally recognized as safe and effective and not misbranded. This action would revise some labeling for astringent drug products to be consistent with the final rule for OTC skin protectant drug products (68 FR 33362, June 4, 2003) and would add labeling for certain small packages (styptic pencils). This action is part of FDA's ongoing review of OTC drug products. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on the proposed rule by August 27, 2003.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 21, 1993 (58 FR 54458), FDA published a final monograph for OTC skin protectant astringent drug products in part 347 (21 CFR part 347), subpart A. In the **Federal Register** of June 4, 2003 (68 FR 33362), FDA published a final rule for OTC skin protectant drug products and revised the format of part 347. Subpart A was redesignated as "General Provisions," and the astringent active ingredients (§ 347.10) and labeling (§ 347.50) were redesignated as §§ 347.12 and 347.52, respectively.

Two ingredients (colloidal oatmeal and sodium bicarbonate) added to the skin protectant monograph are used as a soak, compress, or wet dressing similar to the astringent active ingredient aluminum acetate. In the skin protectant final monograph, the agency included a warning about soaking too long (§ 347.50(c)(7)) and included directions for colloidal oatmeal (§ 347.50(d)(2)) and sodium bicarbonate (§ 347.50(d)(3)) that are shorter than the directions for aluminum acetate (§ 347.52(d)(1)) and that are in the new OTC drug labeling format. In this proposed rule, the agency is adding this warning, shortening the directions for aluminum acetate drug products, and stating these directions in the new OTC drug labeling format.

Section 201.66(d)(10) (21 CFR 201.66(d)(10)) of the OTC drug labeling rule (64 FR 13254 at 13286, March 17, 1999) establishes a modified labeling format for small packages that need more than 60 percent of their total surface area available to bear labeling to meet the requirements of § 201.66(c)(1) through (c)(9) and (d)(1) through (d)(9). The agency stated in that rule that it would consider additional approaches for accommodating certain products in their respective monographs, taking into consideration the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population (64 FR 13254 at 13270, March 17, 1999). The 2003 skin protectant final monograph included additional labeling exemptions for certain small packages (lip protectant products) that meet the size criteria established in § 201.66(d)(10). The agency determined that lip protectant/lip balm products are typically packaged in small amounts, applied to limited areas of the body, have a high therapeutic index, carry extremely low risk in actual consumer use situations, provide a favorable public health benefit, require no specified dosage limitation, and require few specific warnings and no general warnings (e.g., pregnancy or overdose warnings).

Consequently, the agency is now proposing to include additional labeling exemptions for certain small packages of skin protectant astringent drug products (styptic pencils) that meet the criteria established in § 201.66(d)(10), taking into consideration the risks and benefits of the drug, the intended use, and the need to communicate limitations or restrictions about the use of the product to the target population. For the safety profile of styptic pencils, the agency considered the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel). The Panel noted that "In 75 years of marketing styptic pencils there have been [no] reported instances of human toxicity" (47 FR 39412 at 39429, September 7, 1982). (The word "no" was inadvertently left out of the September 7, 1982, publication, and the agency corrected this error in its notice of proposed rulemaking for OTC skin protectant astringent drug products (54 FR 13490 at 13493, April 3, 1989).) The Panel also stated that aluminum sulfate (the active ingredient in styptic pencils) "has little, if any, cell permeability and exerts its effect on the cell surface." The only side effect the Panel noted was that application of the styptic pencil on a cut may result in some stinging. Thus, these products have an extremely low risk in actual consumer use situations, and the monograph only requires two general warnings (§ 347.50(c)(1)) and no ingredient specific warnings.

The agency also considered the factors listed above that were the basis for labeling modifications for OTC lip protectant/lip balm drug products. Like those products, styptic pencils are packaged in small amounts, have a high therapeutic index and a favorable public health benefit (stop bleeding), would be used infrequently and on very limited areas of the body to stop bleeding of minor cuts from shaving, require minimal warnings (there is no pregnancy warning because this is a topical product), and have no specified dosage limitation (the directions for use are to apply to the affected area). For these reasons, the agency is including specific labeling provisions for certain small packages of skin protectant astringent drug products (styptic pencils) in this proposed rule.

II. Description of the Labeling Revisions

The warning in § 347.50(c)(7), when the colloidal oatmeal or sodium bicarbonate product is labeled for use as a soak, compress, or wet dressing, states: "When using this product [bullet] in some skin conditions, soaking too long may overdry." The agency is proposing to add this warning in new § 347.52(c)(4) for products containing aluminum acetate when labeled for use as a soak, compress, or wet dressing. Our decision to revise the warning set forth in this direct final rule is based upon a finding that bathing can dry the skin out and exacerbate some conditions (as discussed in the 2003 skin protectant final monograph (68 FR 33362 at 33367). Mandating a warning does not require a finding that any or all of the astringent drug products actually caused an adverse event, and FDA does not so find. Nor does FDA's mandate of a warning repudiate the OTC drug monograph under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that this revised warning is necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

FDA's decision to act in an instance such as this one need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate a warning, or take similar regulatory action, FDA need not show, nor do we allege, actual causation.

The agency is proposing to revise the directions in § 347.52(d)(1)(i) for aluminum acetate used as a soak to read: "For use as a soak: [bullet] soak affected area for 15 to 30 minutes as needed, or as directed by a doctor [bullet] repeat 3 times a day or as directed by a doctor [bullet] discard solution after each use". The agency is proposing to revise the directions in § 347.52(d)(1)(ii) for aluminum acetate used as a compress or wet dressing to read: "For use as a compress or wet dressing: [bullet] soak a clean, soft cloth in the solution [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard solution after each use". The agency is also proposing to shorten the directions in § 347.52(d)(3) for products containing witch hazel to read: "apply as often as needed".

The agency is proposing to add new § 347.52(e) for products containing aluminum sulfate formulated as a styptic pencil. This section allows products that meet the criteria established in § 201.66(d)(10) to be marketed with reduced labeling.

III. Additional Information

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comments and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document stating that the direct final is effective as of 135 days after the date of publication in the **Federal Register**. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule and, if appropriate, the rule will be finalized under this companion rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published in the final rules section of this issue of the **Federal Register**. FDA will not provide additional opportunity for comment. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this proposed rule is consistent with the principles set out in the Executive order and in these two statutes. The proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. FDA has determined that the proposed rule does not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1–year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to make some minor labeling revisions in the previously issued astringents portion of the skin protectant drug products monograph to make the labeling consistent with the rest of the monograph and to add small package labeling provisions for aluminum sulfate marketed as a styptic pencil.

Current manufacturers of these products should incur only minor costs to relabel their products to meet the monograph. Some manufacturers will have to add a warning and revise the directions in their labeling. The agency will provide either 24 months from the date of publication of a final rule or the date of the first major labeling revision after the effective date of the final rule, whichever occurs first, for the manufacturers to use up existing labeling and to print new labeling that incorporates the labeling included in any final rule that may publish based on this proposal. Further, the labeling in the proposed rule is in the new OTC drug labeling format. Therefore, no additional professional skills are needed and manufacturers will not incur expenses determining how to state the product's labeling.

The agency believes that relabeling costs of the type required by this proposed rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). Assuming that there are about 25 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $50,000 to $75,000. The agency believes that the actual cost could be lower for the reasons stated in the previous paragraph.

For the reasons stated above and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

This comment period runs concurrently with the comment period for the direct final rule; any comments received will be considered as comments regarding the direct final rule. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or three hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number forund in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. In the event the direct final rule is withdrawn, all comments received will be considered comments on this proposed rule.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 347 be amended to read as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 347.52 is amended by adding paragraphs (c)(4) and (e) and by revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(3) to read as follows:

§ 347.52 Labeling of astringent drug products.

* * * * *

(c) * * *

(4) *For products containing aluminum acetate identified in § 347.12(a) when labeled for use as a soak, compress, or wet dressing.* "When using this product [bullet] in some skin conditions, soaking too long may overdry".

(d) * * *

(1) * * *—(i) *For products used as a soak.* "For use as a soak: [bullet] soak affected area for 15 to 30 minutes as needed, or as directed by a doctor [bullet] repeat 3 times a day or as directed by a doctor [bullet] discard solution after each use".

(ii) *For products used as a compress or wet dressing.* "For use as a compress or wet dressing: [bullet] soak a clean, soft cloth in the solution [bullet] apply cloth loosely to affected area for 15 to 30 minutes [bullet] repeat as needed or as directed by a doctor [bullet] discard solution after each use".

* * * * *

(3) *For products containing witch hazel identified in § 347.12(c).* "Apply as often as needed".

(e) *Products formulated and labeled as a styptic pencil and that meet the criteria established in § 201.66(d)(10) of this chapter.* The title, headings, subheadings, and information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications:

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the headings and information described in § 201.66(c)(3) and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(4) and (c)(5) may be presented as follows:

(i) The heading and indication required by § 201.66(c)(4) of this chapter may be limited to: "Use [in bold type] stops bleeding of minor cuts from shaving".

(ii) The "external use only" warning in § 347.52(c)(1) and in § 201.66(c)(5)(i) of this chapter may be omitted. The second warning in § 347.52(c)(1) may state: "Avoid contact with eyes". The warning in § 201.66(c)(5)(x) may be limited to the following: "Keep out of reach of children." The subheadings in § 201.66(c)(5)(iii) through (c)(5)(vii) may be omitted, provided the information after the heading "Warning" contains the warnings in this paragraph.

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter, except that any requirements related to § 201.66(c)(3) and (c)(7) and the horizontal barlines and hairlines described in § 201.66(d)(8), may be omitted.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14819 Filed 6–12–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7511–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana, New Mexico, Oklahoma and Bernalillo County, NM; Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve negative declarations submitted by the States of Louisiana, New Mexico, Oklahoma, and the City of Albuquerque (Bernalillo County), New Mexico, which certify that there are no existing small municipal waste combustion units in Louisiana, New Mexico, and Oklahoma subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). EPA is also proposing to approve negative declarations submitted by the State of New Mexico and the City of Albuquerque (Bernalillo County) which certify that there are no existing hospital/medical/infectious waste incinerators subject to the requirements of sections 111(d) and 129 of the CAA. In addition, EPA is proposing to approve a negative declaration submitted by the City of Albuquerque (Bernalillo County) which certifies that there are no existing large municipal waste combustion units subject to the requirements of sections 111(d) and 129 of the CAA. Finally, EPA is proposing to approve a negative declaration submitted by the State of New Mexico which certifies that there are no existing commercial and industrial solid waste incineration units subject to the requirements of sections 111(d) and 129 of the CAA.

DATES: Written comments must be received by July 14, 2003.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location. Anyone wanting to examine these documents should make an appointment with the EPA Region 6 Office.

Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7259.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the submittals as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 16, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–15008 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0182; FRL–7309–7]

Humates; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing, on its on initiative, to amend the existing tolerance exemption for humic acid, sodium salt to include humic acid, potassium salt and humic acid. Such humate materials would be used as inert ingredients in pesticide formulations applied to growing crops under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: Comments, identified by docket ID number OPP–2003–0182, must be received on or before July 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; fax number: (703) 305–0599; e-mail address: leifer.kerry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop producttion (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0182. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in

printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/ edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0182. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0182. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0182.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0182. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

In the **Federal Register** of April 12, 2000 (65 FR 19759) (FRL–6498–8), EPA issued a notice pursuant to section 408 for the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 6E4705) by LignoTech USA, Inc., 100 Highway 51 South, Rothschild, WI 54474–1198. This notice included a summary of the petition prepared by the petitioner LignoTech USA, Inc. This petition requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of humic acid, sodium salt. Subsequently, the petitioner revised the petition to request the establishment of an exemption from the requirement of a tolerance for residues of humic acid, sodium salt under 40 CFR 180.1001(c) only. There were no comments received in response to the Notice of Filing. In the **Federal Register** of July 18, 2000 (65 FR 44469) (FRL–6595–9), the Agency established an exemption from the requirement of a tolerance for residues of humic acid, sodium salt when used as an inert ingredient (adjuvant, UV protectant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

In the **Federal Register** of March 6, 2002 (67 FR 10203) (FRL–6825–9), the Agency published a Notice of Filing to amend the above pesticide petition 6E4705 from Arctech, Inc. located at 14100 Park Meadow Drive, Chantilly, VA 20151, to amend the existing exemption from the requirement of a tolerance to include residues of humic acid, potassium salt when used as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities (RAC) after harvest, or to animals. The notice included a summary of the petition prepared by the petitioner, Arctech, Inc. There were no comments received in response to this Notice of Filing.

III. What Action is the Agency Taking?

EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a, is proposing to establish an unlimited exemption from the requirement of a tolerance for residues of humic acid, sodium salt (CAS Reg. No. 68131–04–04); humic acid, potassium salt (CAS Reg. No. 68514–28–3); and humic acid (CAS Reg. No. 1415–93–6) when used as an inert ingredient in pesticide formulations that are applied to growing crops under 40 CFR 180.1001(d).

The Agency has not issued a final rule on the petition seeking the establishment of a tolerance exemption for humic acid, potassium salt, but rather is issuing this proposed rule to amend the existing tolerance exemption for humic acid, sodium salt to also include humic acid, potassium salt; and humic acid. Based on a review and evaluation of the available data, which includes a 90–day toxicity study using humic acid, the Agency believes that the tolerance exemption should also include humic acid, not just the two salts, as requested by the petitioners. The existing tolerance exemption for humic acid, sodium salt will also be shifted from 40 CFR 180.1001(c) to 40 CFR 180.1001(d). Given that the nature of the substances considered are naturally occurring materials, and ubiquitous in the environment, but essentially, a component of soil, the Agency believes that 40 CFR 180.1001(d), i.e., application to growing crops to be more appropriate. The Agency has determined that there are no existing products containing humic acid, sodium salt having post-harvest uses. Therefore, this action will not have an effect on any currently registered pesticide product.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for the establishment of an exemption from the requirement of a tolerance for humate materials. EPA's assessment of exposures and risks associated with establishing the exemption from the requirement of a tolerance follows.

IV. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by humate materials are discussed in this unit.

Humate materials or humic substances occur naturally in the environment. They are part of the environment in which we grow our food. The use of the term humus is said to have occurred when Rome was an empire. The term has also been found in 18th century writings. Humic substances are used as soil conditioners to increase the amount of organic matter in the soil; thus, increasing the workability of the soil. They are widely regarded as being beneficial to plants.

The formation of humic substances is not completely understood. It is known that humic substances arise during the decay of organic materials, which is the reason that humic substances are often associated with coal, lignite, and mudstones. There are several theories as to possible formation pathways (lignin theory, polyphenol theory, and sugar-amine condensation). Generally, humic substances can be further subdivided into three categories: humic acids, fulvic acids, and humins. Humic acid is the major extractable component. With humates being natural substances, there is some variation in composition of the various materials.

There is some confusion as to an exact definition of humic acid. According to

various information, humic acids are colloids, that behave somewhat like clays. Humic acids are macromolecules that are soluble in dilute alkali. They vary from dark brown to black in color. They are amorphous, polymeric substances with molecular weights ranging from 5,000 to 50,000. The cation exchange capacity (the total amount of exchangeable cations a soil can retain) ranges from 200 to 500 milliequivalents per 100 grams of soil at pH 7. When the cation exchange sites are mostly hydrogen, then the material is referred to as humic acid. When the predominant cation is sodium. then the material is referred to as humic acid, sodium salt. Similarly, material would be referred to as humic acid, potassium salt if the predominant cation were potassium.

A. Subchronic Toxicity

The following subchronic toxicity data (National Technical Information Service (NTIS) PB92–164946) was located through an internet search using humic as search term. An abstract is located on the National Library of Medicine Specialized Information Services (NLM/SIS). According to the abstract:

Male and female Sprague-Dawley rats were administered drinking water containing humic acids either non-disinfected or following ozonation (O3) ozonation/chlorination (O32) for 90 consecutive days. Test animals drank either of two concentration of humic acids, 0.25 and 1.0 g/L total organic carbon (TOC), while controls feceived phosphate-buffered, distilled water. No consistent significant treatment-related effects were observed in body weight gain, organ weights, food or water consumption, or hematological and clinical chemistry parameters. No target organs were identified from the histopathological examination of the tissues. The most significant observation, an increase in liver to body weight ratio for the male animals in the 1.0 g/LO3/CL2 humic acid group, was not observed in any other group, nor was it corroborated via any biochemical measurements or histopathological analysis.

B. Mutagenicity

An abstract discussing the mutagenicity of two coal-derived humic substances (Sulcis and South Africa, Eniricerche, Italy) was located through the NLM/SIS. Their mutagenic activity on TA98 and TA100 *Salmonella typhimurium* strains, both in the presence or the absence of metabolic acitivation (S9) was discussed. Both compounds showed no effect on the two strains, as observed with natural humic acid.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indooor uses).

EPA establishes exemptions from the requirement of tolerances only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonable foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of tolerance may be established.

A. Dietary Exposure

1. *Food.* Not only are humic substances abundant in nature, but they have been used in commercial agriculture for years to condition soils. Therefore, there is likely a substantial ongoing human dietary exposure to humate materials from these sources and increased dietary exposures from the use of humate materials as an inert ingredient in pesticide formulations is expected to be minimal.

2. *Drinking water exposure.* Humic substances occur in abundance in nature, including soils, fresh water, and oceans. Increased drinking water exposure from the use of humate materials in pesticide formulations would not be expected.

B. Other Non-Occupational Exposure

Humic substances occur in abundance in nature, including soils that are in and around the home. The potential for an increase in the existing non-dietary exposure to the general population, including infants and children, is unlikely as these pestcide formulations containing humate materials would be used in agricultural and horticultural settings.

VI. Cumulative Effects

Section 408(b)(2)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not humic acid, potassium salt shares a common mechanism of toxicity with other chemicals. However, humic acid, potasssium salt is expected to be practically non-toxic to mammals. Due to the expected lack of toxicity, a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population, Infants, and Children

Humic substances are present in abundance in the soil and the environment. Humic substances have been used in commercial agriculture for years to condition soils. Based on available information on these chemically related substances, the Agency believes that humic acid; humic acid, postassium salt; and humic acid, sodium salt are practically non toxic to mammals. Due to the ubiquitous nature of these naturally occurring materials, and the high molecular weights of the humic materials, no chronic or acute effects are expected to occur. There is no available information to indicate that these naturally occurring substances are carcinogenic, mutagenic, or expected to have any effect on the immune or endocrine systems. Because of its abundance in nature and lack of toxicity, the Agency did not use the safety factor analysis in evaluating the risk posed by humate substances and did not apply an additional tenfold safety factor to protect infants and children.

Based on the information in the preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of humic acid; humic acid, potassium salt; and humic acid, sodium salt. Accordingly, EPA finds that exempting these humate materials from the requirement of a tolerance will be safe.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect

produced by a naturally occuring estrogen, or such other endocrine effect...." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing humic acid, potassium salt for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

An exemption from the requirement of a tolerance does exist for humic acid, sodium salt (40 CFR 180.1001(c)) for use as an adjuvant, UV protectant.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for humic substances nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of humic acid; humic acid, potassium salt; and humic acid, sodium salt. Accordingly, EPA finds that exempting humate materials from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This proposed rule establishes a consolidated and expanded exemption from the requirement for a tolerance under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Establishing an exemption from the requirement of a pesticide tolerance (or, expanding and consolidating a tolerance exemption, as is proposed today), is in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 4, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1001 is amended as follows:

i. The table to paragraph (c) is amended by removing the entry for "humic acid, sodium salt."

ii. The table in paragraph (d) is amended by adding alphabetically three inert ingredients to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * * *

Inert ingredients	Limits	Uses
* * *	* * *	*
Humic Acid, CAS Reg. No. 1415–93		Adjuvant, UV Protectant
Humic Acid, Potassium salt CAS Reg. No. 68514–28–3		Adjuvant, UV Protectant
Humic Acid, Sodium Salt CAS Reg. No. 68131–04–4		Adjuvant, UV Protectant
* * *	* * *	*

[FR Doc. 03–14881 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 03–14483, Notice No. 2]

RIN 2127–AH79

Federal Motor Vehicle Safety Standards; Brake Hoses; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 15, 2003. The NPRM proposed to update the Federal motor vehicle safety standard on brake hoses to incorporate the substantive specifications of several Society of Automotive Engineers (SAE) Recommended Practices relating to hydraulic brake hoses, vacuum brake hoses, air brake hoses, and plastic air brake tubing. This correction adds a proposed effective date to the preamble.

FOR FURTHER INFORMATION CONTACT: George Feygin at (202) 366–3992.

Correction

In the notice of proposed rulemaking FR Doc. 03–11292 (68 FR 26384) make the following correction. On page 26406 in the first column, add, before the beginning of the first paragraph the following:

"Effective Date

The agency believes that most, if not all, hoses, tubing, and fittings affected by Standard No. 106 are already designed to meet the SAE specifications we are proposing to add to the standard. The agency is proposing that compliance with the updated version of the standard become mandatory two years after publication of the final rule. NHTSA believes that this date will provide manufacturers with sufficient leadtime to redesign the small proportion of brake hose products that may need modification."

Issued: June 6, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14865 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030602142–3142–01; I.D. 051403C]

RIN 0648–AQ68

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 17 would revise the Pacific Fishery Management Council's (Council's) annual groundfish management process so that it would become a biennial process. Amendment 17 is intended to ensure that the specifications and management measures process comports with a Court ruling, to make the Council's development process for specifications and management measures more efficient so that more time is available for other management activities, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

DATES: Comments must be submitted in writing by July 28, 2003.

ADDRESSES: Comments on Amendment 17 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070.

Copies of Amendment 17 and the environmental assessment/ regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the website of the Office of the **Federal Register**'s website at: *http://www/access/gpo.gov/su_docs/aces140.html*.

Background

NMFS is proposing this rule to implement Amendment 17 to the FMP, which would set the Council's groundfish management process and the NMFS implementation process for specifications and management measures for a biennial period. Amendment 17 would also structure Council development of specifications and management measures so that NMFS has adequate time to implement the biennial specifications and management measures through a notice-and-comment rulemaking. The regulations to implement Amendment 17 would primarily revise references in the Federal groundfish regulations at 50 CFR 660.301–360 to the annual specifications and management measures process so that they reflect the new biennial specifications and management measures process. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Fishery Conservation and Management Act. (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR/IRFA prepared by NMFS for Amendment 17.

Since 1990, the Council has set Pacific coast groundfish harvest levels through an annual regulatory process. This annual process establishes harvest "specifications," which are harvest levels or limits such as acceptable biological catches (ABCs), optimum yields (OYs), or allocations for different user groups. Management measures, such as trip limits, closed times and areas, and gear restrictions are also set in the annual regulatory process. Management measures are partnered with the specifications in the annual process because these measures are specifically designed to allow the fisheries to achieve, but not to exceed, harvest levels established in the specifications.

The Council has historically developed its recommendations for the annual specifications and management measures in a two-meeting process (usually its September and November meetings), followed by a NMFS final action effective January 1 and published in the **Federal Register**. Following publication, this final action was made available for public comment and correction after the effective date of the action. In 2001, NMFS was challenged on this process in *Natural Resources Defense Council, Inc.* v. *Evans* and the Court found that the process violated the Administrative Procedure Act requirement for notice and comment.

NMFS responded in both 2002 and 2003 by publishing the specifications and management measures as a proposed rule, followed by a public comment period and a final rule. In neither year was NMFS able to publish the proposed rule, take public comment, and publish the final rule between the Council's final decision and January 1. Thus for both years, the proposed rule had to be accompanied by an emergency rule to implement groundfish management measures for the period between January 1 and the effective date of the final rule, March 1.

During 2002, the Council considered how it might revise its specifications and management measures development process consistent with the court's ruling in order to allow prior public notice and comment on the specifications and management measures regulatory package. In addition to needing to revise the notice and comment procedure associated with the specifications and management measures, the Council wished to take a new look at efficiency in the annual management process. Groundfish management workload levels have grown in recent years, particularly those associated with setting annual harvest levels for both depleted and healthy stocks. Because of the increasing workload associated with developing specifications and management measures, the Council and NMFS have had less time for addressing many other important groundfish fishery management issues.

NMFS has recently asked all of the fishery management councils to consider how they might streamline their processes for developing regulatory recommendations. To meet this agency-wide request, the Council decided that it would consider whether specifications and management measures could be published for multi-year, rather than single year, periods. To initially investigate both expanded public notice and comment for NMFS specifications regulations and multi-year management periods, the Council created the Ad-Hoc Groundfish Multi-Year Management Committee (Committee.) The Committee included representatives from the fishing industry, the conservation community, the states of Washington, Oregon, and California and NMFS.

The Committee held public meetings in Portland, OR over December 13–14, 2001, and over January 31 - February 1, 2002. During those meetings, the Committee discussed the many issues associated with changing the specifications and management measures notice and comment process and with the possibility of making a transition to multi-year management. In its meetings, the Committee developed a suite of options to address its two management challenges in a potential FMP amendment. At its March 2002 meeting, the Council requested that NMFS analyze the Committee's management options as draft Amendment 17 to the FMP. These options were analyzed and made available to the public for broader comment. Amendment 17 and its associated EA/RIR/IRFA were available for public consideration and discussed by the Council at its June and September 2002 meetings. In November 2002, the Council finalized its recommendations on Amendment 17. The Council's recommendation was for a three-meeting Council process for developing specifications and management measures, a notice and comment period for the harvest specifications, and a biennial management period. Amendment 17 is essentially administrative in nature, and is intended to revise Council and NMFS processes associated with the specifications and management measures. Under Amendment 17, the Council will develop its recommendations for specifications and management measures in a three-meeting process, at their November-April-June meetings for implementation the January 1 following their final decision in June. Once a specifications and management measures package were implemented, it would apply for a two-year period. Harvest specifications like acceptable ABCs and OYs would continue to apply for 1–year periods. For each biennial management period, the ABC/OY for a particular species would be set for each of the two years within that period. However, the management measures established during the biennial process will still be adjusted as the season progresses, in order to achieve but not exceed OYs. If Amendment 17 is approved, the first biennial management period implemented by this FMP amendment would be 2005–2006. Thus by example, specifications and management measures for 2005–2006 would be developed by the Council between November 2003 and June 2004, with notice and comment rulemaking occurring between July 2004 and November 2004, and a final rule becoming effective by January 1, 2005.

NMFS and the states conduct stock assessments on a schedule intended in part to complement the Council's annual specifications and management measures process. Not all groundfish stocks have stock assessments. In general, assessment authors conduct new assessments each year on one-third of those species that have stock assessments. Thus, each assessed species will have a new assessment roughly every three years. Assessment models and results are independently reviewed by the Council's Stock Assessment Review (STAR) panels, which are made up of scientific professionals and reviewers from the Council's groundfish advisory bodies. It is the responsibility of the STAR panels to review draft stock assessment documents and relevant information to determine if they use the best available scientific data effectively to provide a good quality assessment of the condition of the stock. In addition, the STAR panels review the assessment documents to see that they are sufficiently complete and to identify research that may be needed to improve assessments in the future. The STAR process is a key element in an overall process designed to make timely use of new fishery and survey data, to analyze and understand these data as completely as possible, to provide opportunity for public comment, and to assure that the assessment results are as accurate and error-free as possible.

Amendment 17's 2–year management schedule would allow stock assessment authors to revise their assessment schedules such that they deliver assessments on all assessed stocks every other year. New and updated stock assessments would be reviewed through the STAR process prior to the November Council meeting at the start of the Council's management process. In alternate years when stock assessment authors are not delivering assessments to the Council process, they would have time to revise and enhance stock assessment models, as well as to develop new models on habitat and ecosystem functions as they affect groundfish stock status. Under the current process, models and stock assessments are evaluated by the STAR process every year, giving stock assessment authors little time away from the process to consider model refinement.

One of the challenges the Council faced in developing Amendment 17 was how to create a biennial management process that still allowed an annual review of harvest levels against the most recent scientific information. To address this issue, the Council has recommended a process that would take advantage of the initial November specifications development meeting to check current management levels against the most recently available scientific information. For example: The first biennial management cycle would be January 1, 2005, through December 31, 2006, with the second management cycle being January 1, 2007, through December 31, 2008. In 2005, the Council would begin developing specifications and management measures for 2007–2008. The Council would review the new stock assessments intended for the 2007–2008 cycle and check them against the harvest levels they had set for 2006 to ensure that they were adequate to meet rebuilding goals for overfished species and not result in overfishing. The Council will be discussing this process further during 2003 to set parameters for what portions of the specifications and management measures may or may not be revised through this mid-cycle checkpoint process. Depending on the checkpoint process the Council develops, there may be an additional rulemaking associated with Amendment 17.

Revisions to FMP and Federal Regulations Under Amendment 17

Because Amendment 17 deals only with the process by which the Council recommends the specifications and management measures, revisions to the FMP and to Federal regulations are fairly minimal. In the FMP, references to the annual specifications process are revised and the biennial fishing period is defined as being the new time unit for specifications and management measures implementation. Similarly, Federal regulations are proposed to be amended via this rule so that references to the annual management cycle are replaced with references to a biennial management cycle. Amendment 17 does not introduce new regulations or revisions to existing regulations that affect how the groundfish fleets conduct their fishing operations, which is the primary focus of Federal groundfish fishery regulations.

Classification

At this time, NMFS has not determined whether Amendment 17, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (*see* **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and at the beginning of this section of this proposed rule. There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. Approximately 2,000 commercial vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the SBA. Since this is an administrative action, this proposed rule is not expected to yield disproportionate economic impacts between those small and large entities. In the 2001 recreational fisheries, there were 77 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

This rule is administrative in nature and is expected to have only a minimal economic impact on small entities. The proposed rule would maximize time for stock assessment scientists, Council staff, and NMFS staff to prepare documentation needed to implement specifications and management measures without disrupting the historic January 1 season start date. Under the proposed measure, vessel operators should be able to take advantage of whichever seasonal markets best fit their needs. Small vessel operators should not be forced to fish during inclement weather because of concerns about fishery closures during spring and summer months. Vessel operators afforded the privilege of fishing for both Dungeness crab and groundfish, or groundfish and shrimp, should be able to time their fishing trips based on the migratory patterns of their target species and the needs of their own marketing strategies and those of their associated processors. While implementing multi-year groundfish management will not alleviate all season-related management problems for fisheries participants, it should be a positive step toward improving the stability and certainty of seasonal groundfish allocations for participating harvesters. The improved science and management made possible with multi-year planning will help mitigate the closure cycle by stabilizing groundfish allocations and landings throughout the season.

The Council considered 4 alternatives to the proposed measure including a status quo alternative. All alternatives, with the exception of the status quo, would implement biennial specifications. Two of these alternatives considered a March 1 start date with different Council meeting schedules, and one alternative considered a May 1 start date. Given closure trends under the status quo, a March 1 start date would likely result in early allocation attainment and closures during December-February. The negative effects of this closed period would primarily be felt by vessels and processors that rely on the mid-winter flatfish fishery. Many West Coast flatfish species aggregate more closely during the winter months, lowering the bycatch rates of non-flatfish species in flatfish-directed fisheries. As with the status quo, recreational fishing tends to be slow during the winter months. Given closure trends under the status quo, a May 1 start date would likely result in early allocation attainment and closures during February-April period. This schedule would keep the fisheries open through stronger flatfish months and allow participants to switch between flatfish and Dungeness crab at will. A February-April groundfish closure could also have the negative effect of a very lean 3–month period between Dungeness crab fishing/processing season and the shrimp, salmon and albacore seasons. For some of the small boat fishers, this alternative could also mean a lack of fishing opportunity in their traditional start-up fishing months. Early spring recreational fishing opportunities could also be curtailed under this schedule.

The economic effects of changing the fishing year start date vary with each option and vary by which fishery sectors they affect. In general, the difference between the economic effects of a January 1 start date and a March 1 start date are neutral. A May 1 start date, however, would notably shift fishing effort and could result in small businesses having to reconsider their business practices and reschedule their fishing operations.

The Council will retain a one-year specification of ABC and OY. This represents no change and will have no economic impact to vessels affected by the proposed rule. The Council also considered a two-year specification period. However, since early attainment of OY could lengthen closure periods under a two-year specification of these targets, this alternative would be expected to have a potentially adverse economic impact on vessel profitability. With two-year OYs, management measures would need to be more conservative at the start of the two-year fishing period to hedge against early closures during the second year in the fishing period. The Council also considered a mixture of one-year and two-year specifications for different groundfish species. This approach could also have a potentially adverse economic impact on vessel profitability for vessels fishing under two-year specifications for the reasons listed above.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 9, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, a new definition for "Biennial fishing period" is added and the definitions for "Fishing year," and "Reserve," are revised to read as follows:

§ 660.302 Definitions.

* * * * * *

Biennial fishing period means a 24–month period beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the subsequent year.

* * * * * *

Fishing year is the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the same year. There are two fishing years in each biennial fishing period.

* * * * * *

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the fishing year or biennial fishing period to allow for uncertainties in preseason estimates.

* * * * * *

3. In § 660.321, paragraphs (a) through (c) are revised to read as follows:

§ 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks.

(c) *Routine management measures.* Management measures designated "routine" at § 660.323(b) may be adjusted during the fishing year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

* * * * * *

4. In § 660.323, paragraphs (a)(2)(ii)(C)(*1*), (a)(3)(i)(A)(*1*), (a)(3)(vi) introductory text, paragraph (b) introductory text, and paragraphs (b)(1)(i) introductory text and (b)(1)(ii) are revised to read as follows:

§ 660.323 Catch restrictions.

(a)* * *

(2)* * *

(ii)* * *

(C) *Cumulative limits.* (*1*) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. The Regional Administrator will

biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in the **Federal Register**.

* * * * *

(3)* * *

(i)* * *

(A)* * *

(*1*) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

* * * * *

(vi) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (a)(3)(vi)(A) of this section are met. For purposes of this program, "fishing day" means a 24–hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to participate in the program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [Note: For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

* * * * *

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries—(i) Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, splitnose rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and "other fish" as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.

* * * * *

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

* * * * *

5. In § 660.324, paragraphs (d) and (j) are revised to read as follows:

§ 660.324 Pacific Coast treaty Indian fisheries.

* * * * *

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

* * * * *

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established biennially for two subsequent one year periods for the areas between the U.S.-Canadian border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10′ N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

* * * * *

6. In § 660.332, paragraphs (a), (b)(3), and (e) are revised to read as follows:

§ 660.332 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established biennially or annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

* * * * *

(b) * * *

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

* * * * *

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside biennially or annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

* * * * *

7. In § 660.333, paragraph (c)(2) is revised to read as follows:

§ 660.333 Limited entry fishery eligibility and registration.

* * * * *

(c) * * *

(2) The major limited entry cumulative limit periods will be announced in the **Federal Register** with the harvest specifications and management measures, and with routine management measures when the cumulative limit periods are changed.

* * * * *

8. In § 660.350, paragraph (a)(6) is revised to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

(a) * * *

(6) *Accounting for the compensation catch.* As part of the harvest specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle practicable.

* * * * *

[FR Doc. 03–15030 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 114
Friday, June 13, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Grassland Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of availability of program funds for the Grassland Reserve Program.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of $49,492,000 to implement the Grassland Reserve Program (GRP) in fiscal year 2003. Section 2401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Food Security Act of 1985 to authorize this program. The Secretary of Agriculture delegated the authority to administer GRP on behalf of the CCC, to the Administrator, Farm Service Agency (FSA) and the Chief, Natural Resources Conservation Service (NRCS). These agency leaders are officers of the CCC.

Although this notice applies only to funds made available in FY2003, CCC will, at a later date, issue a regulation for FY 2004 through FY 2007 program implementation. The rule will address and seek comment on a number of issues including: the process for establishing program priorities and criteria; the administration of easements and long-term contracts; the process of allocating and focusing funding at State and local levels; and the process for private organizations and State agencies to apply to hold and enforce GRP easements.

DATES: Funds will be available from June 30, 2003 through September 30, 2003.

ADDRESSES: Address all comments to Charles Whitmore, Acting Director, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 720–1845, fax 202–720–4265; Submit electronic comments to *FarmBillRules@usda.gov;* Attn: Grassland Reserve Program.

FOR FURTHER INFORMATION CONTACT: Leslie Deavers, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. 2890, Washington, DC 20013, (202) 720–1067, fax (202) 720–2143, e-mail: *leslie.deavers@usda.gov.*

SUPPLEMENTARY INFORMATION:

Grasslands constitute the largest land cover on America's private lands. Privately-owned grasslands and shrublands cover more than 525 million acres in the United States. These lands contribute significantly to the economies of many regions, provide biodiversity of plant and animal populations, and play a key role in environmental quality. Specifically, grasslands and shrublands impact water quantity and quality and, when properly managed, can result in cleaner water supplies, healthy riparian areas, reduce potential for flooding, and control sediment loadings in streams and other water bodies. These lands are vital for the production of forage for domestic livestock, and provide forage and habitat for maintaining healthy wildlife populations. These lands also improve the aesthetic character of the landscape, provide scenic vistas and open space, provide recreational opportunities, and protect the soil from water and wind erosion.

Large expanses of grassland acreage are annually threatened by conversion to other land uses such as cropland and urban development. Approximately 23 million acres of grassland and shrubland were converted to cropland between 1982 and 1997, and about six million acres were converted to urban and other uses (1997 NRI).

Background

Section 2401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Food Security Act of 1985 to authorize GRP (16 U.S.C. 3838n–3838q). The purpose of the program is to assist landowners with restoring and conserving grassland, rangeland, pastureland, and certain other lands. The statute provides that no more than two million acres of restored or improved grassland, rangeland, and pastureland can be enrolled in the program through FY 2007. The program offers landowners the option to grant an easement to the Secretary or enter into a long-term agreement to preserve and protect the ecological benefits of eligible land.

The GRP statute requires the Secretary to consider grazing operations, biodiversity, and grassland under the greatest threat of conversion when evaluating and ranking applications. In FY 2003, CCC plans to use GRP to protect grazing lands from conversion and support efforts to maintain or enhance biodiversity.

Although CCC is implementing the program nationwide in FY2003, it recognizes that with limited funding and large pool of eligible acreage, nationwide implementation may result in a large number of applications remaining unfunded. Therefore, the application selection criteria are critical to ensure only the highest priority areas are protected.

Definitions

For the purposes of this notice, the following definitions apply.

Conservation plan means a record of the decisions, and supporting information, for the conservation treatment of a unit of land or water. The conservation plan includes the schedule of operations, activities, and estimated expenditures, if needed to solve identified natural resource concerns.

Eligible applicant means the landowner(s) for easement applications because only a landowner can transfer land rights. Easement applications will only be considered when the applicant can provide evidence of ownership. For annual rental agreements, eligible applicant means both landowners and operators who have evidence of control of the land for the agreement period.

Eligible practices means any practice identified in the NRCS Field Office Technical Guide (FOTG) that enhances or restores native grasses, forbs, or shrubs as determined by the NRCS State Conservationist.

Fair market value for easement acquisition means the amount determined through a real property appraisal that will be used to calculate the offer to the participant. Fair market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. For the purposes of GRP, the fair market value will be determined by an appraisal, or other method determined reasonable by CCG, less the grazing value. Grazing values will be determined by CCC based on appraised grazing values.

Forb means any herbaceous plant other than those in the grass family.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants and/or forbs.

Grazing values for rental agreements will be determined by CCC based on local prevailing grazing values.

Rangeland means land on which the native vegetation (climax or natural potential) is predominantly grasses, grass-like plants, forbs, or shrubs suitable for grazing or browsing use. Rangelands include natural grassland, savannas, most deserts, tundra, alpine plant communities, coastal marshes, wet meadows and introduced plant communities managed like rangeland.

Restored grassland means acreage restored from cropland, non-native grasses, or some other vegetative cover to native grass, forbs or shrubs. When native seed is not available, plants that provide similar functions and values for the intended use are permitted.

Shrubland means a type of rangeland dominated by small woody perennial plants.

Program Requirements

Effective upon the publication date of this notice, CCC announces the availability of $49,942,000 for GRP, from June 30, 2003 until September 30, 2003. Applications for participation will be accepted on a continual basis throughout this period at local USDA Service Centers from landowners of private land. NRCS State Conservationists will establish funding cut-off periods throughout FY 2003 to batch and select applications. These cut-off periods will be available in program outreach material provided by CCC. Once funding levels have been exhausted, eligible applicants will remain on file until additional funding becomes available or the applicant chooses to be removed from consideration.

GRP contracts and easements prohibit: (1) The production of crops (other than hay), fruit trees, vineyards, or any other agricultural commodity that requires breaking the soil surface; and (2) any other activity that would disturb the surface of the land except for appropriate land management activities identified in the easement or agreement. For applicants who are interested in restoring grasslands, forbs, and shrublands, the program offers an opportunity to enroll in restoration agreements.

The GRP statute provides that eligible land includes grasslands; land that contains forbs; shrubland, including improved rangeland and pastureland; or, land that is located in an area that has been historically dominated by grassland, forbs or shrubland when these lands have the potential to enhance plant and animal biodiversity. Other eligible land includes land that is incidental to the eligible land when it is considered necessary by CCC for the efficient administration of an agreement or easement.

Applicants may submit applications for easements, rental agreements, and restoration agreements. Offers for participation must include no less than 40 contiguous acres, unless CCC determines a small parcel is appropriate to achieve the purposes of the program. When selecting offers of eligible lands, CCC shall emphasize support for grazing operations; plant and animal biodiversity; and other eligible land under the greatest threat of conversion. The conversion threat may include conversion to agriculture or non-agriculture uses.

Pursuant to section 1604 of the Farm Security and Rural Investment Act of 2002, benefits under this part shall not be available to a person whose adjusted gross income exceeds $2.5 million, as determined under the standards set forth in 7 CFR part 1400.

Enrollment Options

The GRP offers applicants multiple enrollment options. Landowners may submit applications for permanent easements or 30-year easements. Landowners and others who have general control of the acreage being offered may submit applications for 10-year, 15-year, 20-year, or 30-year rental agreements. Each enrollment option permits: (1) Common grazing practices, including maintenance and necessary cultural practices, that are consistent with maintaining the viability of grassland, forb and shrub species common to the local area; (2) haying, mowing, or harvesting for seed production, subject to certain restrictions, such as restrictions during the nesting season of bird species that are in significant decline or those that are required to be protected under Federal or State law, as determined by NRCS or its designee; and (3) fire rehabilitation and the construction of fire breaks and fences. Participants will be required to follow a conservation plan, developed by NRCS or its designee, and the participant, to preserve the integrity of the grassland enrolled in the program.

For easement offers, land is considered enrolled after CCC makes a tentative offer of acceptance, and the landowner signs an intent to continue in the program. For rental agreement offers, the land is considered enrolled after a GRP contract is approved by CCC.

Additional Requirements for Easements

CCC shall use a standard easement deed that is available on-line at *http://www.sc.egov.usda.gov.*

In addition to the requirements identified in the "Program Requirements" section, landowners who participate in an easement enrollment option agree to:

(1) Provide written statement of consent to the easement signed by persons holding a security interest or any vested interest in the land;

(2) Provide proof of clear title;

(3) Comply with other terms of the easement; and

(4) Provide access to NRCS or its representative for easement administration and monitoring activities on the property.

Funding Allocations

The GRP statute requires that of the total amount of funds expended under the program to acquire easements and rental agreements, 60 percent of the program funds are to be used for easements and 30-year agreements and 40 percent of the funds are to be used for 10-year, 15-year, and 20-year rental agreements.

CCC may divide the $49,942,000 into two equal pools. Fifty percent of the funds will be distributed to the USDA State office in proportion to the number of grazing operations, the acres of pasture and rangeland under the threat of conversion, and biodiversity considerations. The remaining funds may be held in a national reserve. This reserve will be distributed after program demand, expressed in terms of the number of applicants, acres, and estimated cost to enroll the land, and, ecological considerations, such as biodiversity and threat of grassland conversion, are known. If the State office is unable to use its allocation, CCC may redistribute funds to other States that can obligate the funds to eligible projects prior to September 30, 2003.

Application Process

CCC will consider for funding under this notice applications received throughout FY 2003. USDA will widely distribute information on the availability of assistance through GRP, State, and National goals, and information needed to submit applications. Applicants must submit an application, Form AD–1153, Application for Long-Term Contracted Assistance, to CCC to be considered for participation. Program applications can be obtained from any local USDA Service Center or on the USDA website at *http://www.sc.egov.usda.gov*. Applications should be submitted to the office that administers the records for the area in which the land being offered for participation is located. Applications may be submitted by mail, fax, or electronically to a USDA Service Center. USDA will evaluate the application for eligibility and complete an application ranking process. Selection of individual applications will be made at the State level as described below.

Application Selection

CCC is required by statute to emphasize support for grazing operations; plant and animal biodiversity; and grassland, land that contains forbs, and shrubland under the greatest threat of conversion. Selection criteria which incorporates these areas of emphasis, will be developed at the State level by the NRCS State Conservationist and the FSA State Executive Director, with advice from the State Technical Committee. Individual application selection will be made at the State level by the NRCS State Conservationist and the FSA State Executive Director. Selection criteria for each State will be made available to the public prior to signup upon request. Each State's application selection criteria will be available on the NRCS Web site at *http://www.nrcs.usda.gov/farmbill* and *http://www.fsa.usda.gov/dafp/grp*.

Selection criteria will, at a minimum, consider the following national criteria: the threat of conversion from grass to cropland; the threat of conversion from grass to non-agriculture use; location significance; whether the land is part of an existing grazing operation; and whether the site serves as habitat that promotes and enhances plant and animal biodiversity, as determined by the NRCS State Conservationist, with advice from the State Technical Committee.

State offices have the flexibility to determine state-specific criteria that emphasizes grasslands of state significance or locations of critical need based on the threat of conversion or biodiversity of plant or wildlife populations.

Payments

For permanent easement acquisition, CCC will provide payment equal to the fair market value of the land, less the grazing value of the land encumbered by the easement. Market values will be determined using an appraisal process. In addition, CCC will provide all the administrative costs associated with recording the easement, including appraisal fees, survey costs, title insurance, and recording fees. For 30-year easements, CCC will provide payment equal to 30 percent of the fair market value of the land, less the grazing value of the land for the period during which the land is encumbered by the easement. Easement payments may be provided, at the participant's request, in lump sum or annual payments (equal or unequal amounts) for no more than 10 years.

For long-term rental agreements, annual rental payments will be an amount not more than 75 percent of the grazing value of the land covered by the agreement for the life of the agreement, as determined by CCC. Payments will be disbursed on the agreement anniversary date of each Federal fiscal year.

For restoration agreements, CCC will provide up to 90 percent of the restoration costs on lands that have never been cultivated, and up to 75 percent of the cost on restored grasslands. Restoration agreements can be entered into in conjunction with either easement projects or rental agreements. Participants will be paid upon certification of the completion of the approved practice(s) by NRCS or an approved third party. Participants may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. The participant's share of the project may be provided by a public or private third party.

Participants may assign the right to receive any payments described in this notice, in whole or in part, as provided in 7 CFR part 1404.

Subject to 7 CFR part 1403, any payment under this notice or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

Delegation of Easement Administration to Private Organizations

The GRP statutory authority provides that the Secretary may permit a private conservation or land trust organization or a State agency to hold and enforce an easement provided that: (1) Granting permission will promote protection of eligible land; (2) the owner authorizes the private organization or State agency to hold and enforce the easement; and (3) the private organization or State agency agrees to assume the costs incurred in administering and enforcing the easement, including costs of restoration or rehabilitation of the land, as specified by the owner and the private organization. In addition, permission is contingent upon the Secretary having the right to conduct periodic inspections, and provide enforcement action, if the private organization is unable to effectively implement enforcement action. The provisions for implementing this authority will be addressed in a proposed rule to be published later this year. The GRP authority is different than the authority provided for the Farm and Ranchland Protection Program (FRPP). Under FRPP the Secretary has the authority to acquire an interest in property that is subject to a pending offer by another entity. In GRP, the Secretary is the holder of the easement and may delegate the easement administration responsibilities to a private organization.

Violations

When the terms or conditions of an easement, rental agreement, or restoration agreement are violated, the easement or rental agreement will remain in force. For rental agreements or restoration agreements, CCC may require the participant to refund all or part of any payments received, with interest. For easement violations, USDA reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations, even under situations where a third party assumed administrative responsibility for the easement. Such entry may be made at the discretion of USDA when such actions are deemed necessary to protect important grassland areas.

Civil Rights

CCC and USDA have collected civil rights data on farmers and ranchers who participate in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits.

Environmental Evaluation

On each farm or ranch, during the application evaluation process, the environmental effects of any proposed actions are evaluated on a case-by-case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an EA nor an EIS has been prepared for this notice.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), USDA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this Notice of Fund Availability is not a "significant regulatory action".

Signed in Washington, DC. on June 1, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 03–14977 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Applications (RFA): Risk Management and Crop Insurance Education

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Announcement of availability of funds and request for applications under two programs—(1) Commodity Partnerships for Risk Management Education and (2) Crop Insurance Education in Targeted States.

SUMMARY: In accordance with sections 552(d) and 524(a) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of funding for two educational and informational programs:

1. Commodity Partnerships for Risk Management Education (Commodity Partnerships program). FCIC announces the availability of up to $3.5 million for partnership agreements for risk management training and informational activities, with a priority for reaching agricultural producers of (a) agricultural commodities covered by section 196 of the Agricultural Market Transition Act (7 U.S.C. 7333); (b) specialty crops; and (c) underserved commodities. (For purposes of these announcements, these commodities are collectively referred to as "Priority Commodities.") A maximum of thirty-nine partnership agreements will be funded: One in each of thirty-five specific States, one in Puerto Rico, and one in each of three multi-state areas. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project.

2. Crop Insurance Education in Targeted States (Targets States program). FCIC announces the availability of up to $4.25 million for cooperative agreements that will be used to conduct crop insurance education and information programs in fifteen States that have been determined to have low participation or are underserved by the Federal crop insurance program. The fifteen States are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. Funding will be limited for each of the fifteen States and a maximum of one cooperative agreement will be funded for each State. Recipients of awards must agree to the substantial involvement of RMA in the project.

Awards under both of these programs will be made on a competitive basis for projects of up to one year. This announcement lists the information needed to submit an application under either of these programs.

CLOSING DATES: The closing date and time for receipt of applications for both programs is 5 p.m. EDT on July 28, 2003. Applications received after the deadline will not be evaluated by the technical review panel.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: 202–720–6356, fax: 202–690–3605, e-mail: *michelle.fuller@wdc.usda.gov*. You may also obtain information regarding this announcement from the RMA website at: *http://www.rma.usda.gov*.

Applicants may download an application package for either of the two programs from the RMA Web site at: *http://www.rma.usda.gov*. Applicants may also request an application package from: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, (Portals Bldgs., Suite 508), Washington, DC 20250–0808, phone: 202–720–6356, fax: 202–690–3605, email:*michelle.fuller@wdc.usda.gov*. <*mailto:michelle.fuller@wdc.usda.gov*.>

Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA. The applicable address for such submissions is: RME Agreement Programs, c/o Michelle Fuller, USDA–RMA–RME, 1250 Maryland Ave. SW., Suite 508, Washington, DC 20024.

Completed and signed application packages sent via the U.S. Postal Service must be sent to the following address: RME Agreement Programs, c/o Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, (Portals Bldg. Suite 508), Washington, DC 20250–0808. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 25), the collection of information requirements contained in this announcement have been approved under OMB Document Nos. 0348–0043, 0348–0044, 0348–0046, and 0348–0040.

The Catalog of Federal Domestic Assistance Number for these programs is 10.450.

SUPPLEMENTARY INFORMATION: This announcement consists of five parts:

Part I—Information for the Commodity Partnerships Program

A. General Information
1. Legislative Authority
2. Background
3. Project Goal
4. Purpose
5. Definition of Priority Commodities
B. Eligibility/Funding
1. Eligible Applicants
2. Non-financial Benefits
3. Project Period
4. Availability of Funds and Amounts
C. Program Description
1. Recipient Activities
2. RMA Activities
3. Other Activities

Part II—Information for the Targeted States Program

A. General Information
1. Legislative Authority
2. Background
3. Project Goal
4. Purpose
B. Eligibility/Funding
1. Eligible Applicants
2. Project Period
3. Availability of Funds and Amounts
C. Program Description
1. Recipient Activities
2. RMA Activities
3. Other Activities

Part III—Preparation of an Application

A. Program Application Materials
B. Content of Applications
C. Submission of Applications
D. Acknowledgment of Applications

Part IV—Review Process

A. General
B. Evaluation Criteria and Weights
C. Confidentiality

Part V—Additional Information

A. Requirement to Use Program Logo
B. Requirement to Provide Project Information to an RMA-selected Contractor
C. Private Crop Insurance Organizations and Potential Conflicts of Interest
D. Access to Panel Review Information
E. Notification of Cooperative Agreement Awards
F. Confidential Aspects of Proposals and Awards
G. Reporting Requirements
H. Audit Requirements
I. Prohibitions and Requirements with Regarding to Lobbying
J. Applicable OMB Circulars

Part I—Information for the Commodity Partnership Program

A. General Information

1. Legislative Authority

The Commodity Partnership program is authorized under section 552(d)(3)(F) of the Federal Crop Insurance Act (Act).

2. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancement in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's four strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, a priority is to be given to producers of Priority Commodities (as specified in subsection 5 of this section).

3. Project Goal

The goal of this program is to ensure that "* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools."

4. Purpose

The purpose of this program is to provide U.S. farmers and ranchers (with an emphasis on producers of Priority Commodities) with training and informational opportunities to be able to understand:

- The kinds of risks addressed by existing and emerging risk management tools;
- The features and appropriate use of existing and emerging risk management tools; and
- How to make sound risk management decisions.

Each partnership agreement awarded through this program will provide the applicant with funds, guidance, and the substantial involvement of RMA to carry out a risk management education and information program for producers in a specific geographical area. RMA envisions that most of the training and informational activitiers under these partnership agreements will be conducted during the November 2003 through March 2004 period, which will be the best time to reach producers with educational programs in most areas. However, activities are not restricted to this time period because certain groups of producers might benefit from a different schedule of educational activities. RMA anticipates that project leaders will have sufficient time to organize and schedule events, commit funds to reserve event facilities, gather materials, raise awareness, and otherwise make the preparations needed to ensure good producer participation in all planned educational activities. Most of all, RMA anticipates that project leaders will prepare by fostering the cooperation and active support of organizations with close ties to local producers. Support from such organizations is essential in influencing local producers to participate in the type of activities envisioned in this educational program. A maximum of thirty-nine partnership agreements will be awarded: One each in thirty-five specific States and one in Puerto Rico (collectively referred to as the "States"), and one each in three multi-state areas (referred to as the "area"). A maximum amount of funding will be available for each of the States and area. The specific States and areas are identified in part I.B.4.

Projects funded through this program are envisioned to include the participation of multiple and diverse partners within the specific States and areas. Partners should include public and private agricultural organizations in the State or area with a state in ensuring that agricultural producers have increased knowledge and skill in dealing with production, price, and financial risk. RMA specifically encourages applicants to address the needs of beginning farmers and ranchers as an important element of the project. Over the past year, livestock and forage producers and livestock producers who use rangeland in certain regions of the U.S. have suffered unusually large financial losses from the effects of prolonged drought. These producers are in special need of education and information on the programs, tools, and risk management strategies that will assist them in dealing with drought. Therefore, RMA is specifically seeking projects for these producers in the States of Montana, South Dakota, Arizona, Multi-state Area 1 (Utah, Nevada, and Wyoming), New Mexico, Texas, Idaho, Oregon, Colorado, Louisiana, and Nebraska. The selection of these States and areas was based on those States and area experiencing severe, extreme, or exceptional drought over a significant area, as identified by the U.S. Drought Monitor of June 3, 2003. Consequently, projects directed to producers of livestock and forage and livestock producers who use rangeland with respect to drought risk mitigation in the above States and areas will be awarded bonus points in the evaluation process. Details are provided in part IV.B.5.

5. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

Agricultural commodities covered by (7 U.S.C. 7333). Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

Specialty crops. Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varities of traditioinal crops.

Underserved commodities. This group includes: (a) Commodities including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage.

A project is considered as giving priority to Priority Commodities if the majority of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

B. Eligibility/Funding

1. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for farmers and ranchers in a specific State or area. Individuals are not eligible applicants. Applicants may apply to deliver education in more than one State or area, but a separate application must be submitted for each State or area.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

2. Non-Financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program).

3. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

4. Availability of Funds and Amounts

Up to $3,500,000 is available in fiscal year 2003 to fund up to 39 partnership agreements. A maximum of one agreement will be funded for each of 35 specific States, Puerto Rico, and three multi-state areas. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements approved and signed no later than September 30, 2003.

Partnership or cooperative agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. To purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the partnership or cooperative agreement application;

e. Fund political activities;

f. Pay costs incurred prior to receiving a partnership or cooperative agreement;

g. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

The approximate funding amount available for each State, Puerto Rico, and multi-state area, along with the RMA Regional Office assigned to those States or areas for purposes of providing substantial involvement, is as follows:

Billings, MT Regional Office:	
Montana	$45,000
North Dakota	50,000
South Dakota	57,000
Davis, CA Regional Officer:	
Arizona	57,000
California	356,000
Hawaii	37,000
Multi-state Area 1* (UT, NV, WY)	118,000
Jackson, MS Regional Office:	
Arkansas	83,000
Kentucky	61,000
Louisiana	47,000
Mississippi	63,000
Tennessee	49,000
Oklahoma City, OK Regional Office:	
New Mexico	55,000
Oklahoma	77,000
Texas	177,000
Raleigh, NC Regional Office:	
North Carolina	103,000
Virginia	56,000
Multi-state Area 2 (ME, NH, VT, CT, RI, MA, NY)	279,000
Multi-state Area 3 (PA, NJ, DE, MD, WV)	245,000
Spokane, WA Regional Office:	
Alaska	31,000
Idaho	67,000
Oregon	70,000
Washington	92,000
Springfield, IL Regional Office:	
Illinois	53,000
Indiana	56,000
Michigan	64,000
Ohio	68,000
St. Paul, MN Regional Office:	
Iowa	92,000
Minnesota	79,000
Wisconsin	93,000
Topeka, KS Regional Office:	
Colorado	81,000
Kansas	101,000
Missouri	69,000
Nebraska	106,000
Valdosta, GA Regional Office:	
Alabama	73,000
Florida	126,000
Georgia	89,000
Puerto Rico	30,000
South Carolina	45,000
Total	$3,500,000

*The partnership agreement for Multi-state area 1 will also be supported with substantial involvement from RMA's Billings, MT Regional Office.

The funding amount for each State and area was determined by first allocating $30,000 to each State and Puerto Rico, for a total of $1,530,000. The amount remaining from the $3,500,000 available for this program ($1,970,000) was then allocated pro rata to each State's share of cash receipts for Priority Commodities. Receipts for Priority Commodities were estimated by

subtracting major program crop receipts from total agricultural receipts for each State using 1999 data.

In the event that additional funds become available under this program or in the event that no application for a given State or area is recommended for funding by the evaluation panel, these additional funds may, at the discretion of the Manger of FCIC, be allocated pro-rata to State or area award recipients by mutual consent for use in broadening the size or scope of awarded projects or may be used to fund more than one project in a State or area.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow.

C. Program Description

In conducting activities to achieve the purpose and goal of this program in a specific State or area, the award recipient will be responsible for the activities listed under paragraph 1 of this part. FCIC, working through RMA, will be substantially involved in each project through one of RMA's ten Regional Offices and will be specifically responsible for the activities listed under paragraph 2.

1. Recipient Activities

Award recipients will be required to perform the following activities:

- Finalize a risk management education delivery plan that will accomplish the purpose of this program in the designated State or area. The plan must describe the manner in which various tasks for the project will be completed, the dates by which each task will be completed, and the partners that will have responsibility for each task. Task milestones must be listed so as to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project. (Note: All partnership agreements resulting from this announcement will include delivery plans prepared in a specific table format. All applicants are strongly encouraged to refer to this table format when preparing a delivery plan as part of the application narrative. Copies of the table format are available from the RMA Web site [www.rma.usda.gov] or upon request).
- Assemble risk management instructional materials appropriate for producers in the State or area to be used in delivering education and information. This will include: (a) Gathering existing instructional materials that meet the local needs of agricultural producers of agricultural commodities; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.
- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers in the State or area of the training and informational opportunities being offered.
- Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise farmers on risk management in the State or area.
- Document all educational activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

2. RMA Activities

RMA will be responsible for the following activities:

- Review and approve in advance the recipient's project delivery plan.
- Collaborate with the recipient in assembling risk management materials for producers. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other risk management publications that have been prepared by RMA; (d) advising the applicant on the materials available over the internet through the AgRisk Education Library; (e) advising the applicant on technical issues related to crop insurance instructional materials; and (f) advising the applicant on the use of the standardized design and layout formats to be used on program materials.
- Collaborate with the recipient on a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.
- Collaborate with the recipient on the delivery of education to agricultural producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all producer and agribusiness educational delivery plans; (b) advising the applicant on technical issues related to the delivery of crop insurance education and information; and (c) assisting the applicant in informing crop insurance professionals about educational plans and scheduled meetings.
- Review and approve recipient's documentation of risk management educational activities.

3. Other Activities

In addition to the specific, required activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA could have substantial involvement in the proposed educational activity.

Part II—Information for the Targeted States Program

A. General Information

1. Legislative Authority

The Targeted States program is authorized under section 524(a)(2) of the Federal Crop Insurance Act (Act).

2. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's four strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 524(a) of the Act. This section authorizes funding for the establishment of crop insurance educational and outreach efforts in States that have historically been underserved by Federal crop insurance program. In accordance with the Act, the Secretary of Agriculture determined that fifteen States met the criteria for "underserved" and they are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia and Wyoming (collectively referred to as "Targeted States").

3. Project Goal

The goal of the Targeted States program is to ensure that farmers and ranchers in the Targeted States are sufficiently informed so as to take full advantage of existing and emerging crop insurance products.

4. Purpose

The purpose of the Targeted States program is to provide farmers and ranchers in Targeted States with education and information to be able to understand:

- The kinds of risk addressed by crop insurance;
- The features of existing and emerging crop insurance products;
- The use of crop insurance in the management of risk; and
- How the use of crop insurance can affect other risk management decisions, such as the use of marketing and financial tools.

Each cooperative agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out a program to achieve this purpose in a Targeted State.

For some farms in Targeted States, existing crop insurance products are either not available or require enhancements to provide effective protection. The Act envisions new and enhanced insurance products that will meet the needs of these farmers and ranchers. Until these new products are available, producers would still benefit from an educational program that provides an understanding of crop insurance and the basic skills required for making a sound crop insurance decision.

RMA envisions that most of the training and informational activities under these cooperative agreements will be conducted during the November 2003 through March 2004 period, which will be the best time to reach producers with educational programs in most areas. However, activities are not restricted to this time period because certain groups of producers might benefit from a different schedule of educational activities. RMA anticipates that, through these cooperative agreements, project leaders will have sufficient time to organize and schedule events, commit funds to reserve event facilities, gather materials, raise awareness, and otherwise make the preparations needed to ensure good producer participation in all planned educational activities. Most of all, RMA anticipates that project leaders will prepare by fostering the cooperation and active support of organizations with close ties to local producers. Support from such organizations is essential in influencing local producers to participate in the type of activities envisioned in this educational program.

Projects funded through this program are envisioned to include the participation of multiple and diverse partners within the specific Targeted State. Partners should include public and private agricultural organizations in the Targeted State with a stake in ensuring that agricultural producers have increased knowledge and skill in using crop insurance. RMA specifically encourages applicants to address the needs of beginning farmers and ranchers as an important element of the project.

B. Eligibility/Funding

1. Eligible Applicants

Eligibility applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of crop insurance education for farmers and ranchers within a Targeted State. Individuals are eligible applicants. Applicants may apply to deliver education in more than one Targeted State, but a separate application must be submitted for each State. Applications for projects directed to producers outside of the Targeted States will not be considered for funding.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

2. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

3. Availability of Funds and Amounts

Approximately $4,250,000 is available in fiscal year 2003 to fund up to 15 projects, a maximum of one project for each of the Targeted States. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements approved and signed no later than September 30, 2003. Partnership or cooperative agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. To purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles.

d. Pay for the preparation of the partnership or cooperative agreement application;

e. Fund political activities;

f. Pay costs incurred prior to receiving a partnership or cooperative agreement;

g. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

The approximate funding amount available for each Targeted State's project is as follows:

Maine	$217,000
New Hampshire	171,000
Vermont	218,000
Connecticut	217,000
Rhode Island	156,000
Massachusetts	202,000
New York	565,000
New Jersey	258,000
Pennsylvania	687,000
Maryland	346,000
Delaware	249,000
West Virginia	202,000
Nevada	201,000
Utah	284,000
Wyoming	277,000
Total	4,250,000

These State funding amounts were determined by first allocating an equal amount of $150,000 to each Targeted State. The remaining funds were allocated on a pro rata basis according

to each Targeted State's share of 1999 agricultural cash receipts relative to the total for all Targeted Sales. Both allocations were totaled for each Targeted State and rounded to the nearest $1,000.

In the event that additional funds become available under this program or in the event that no application for a given Targeted State is recommended for funding by the evaluation panel, these additional funds may, at the discretion of the Manager of FCIC, be allocated pro-rata to State award recipients by agreement between RMA and the award recipient for use in broadening the size or scope of awarded projects within the Targeted State or may be used to fund more than one project in a Targeted State.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements that the available funding might otherwise allow.

C. Program Description

In conducting activities to achieve the purpose and goal of this program in a Targeted State, the award recipient will be responsible for the activities listed under paragraph 1 of this part. FCIC, working through RMA, will be substantially involved in the project and will be specifically responsible for the activities listed under paragraph 2.

1. Recipient Activities

Award recipients will be required to perform the following activities:

- Finalize the crop insurance education delivery plan that will accomplish the purpose of this program in the Targeted State. The plan must describe the manner in which various tasks for the project will be completed, the dates by which each task will be completed, and the partners that will have responsibility for each task. Task milestones must be listed so as to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project. (Note: All cooperative agreements resulting from this announcement will include delivery plans prepared in a specific table format. All applicants are strongly encouraged to refer to this table format when preparing a delivery plan as part of the application narrative. Copies of the table format are available from the RMA website [*www.rma.usda*] or upon request.)
- Assemble crop insurance instructional materials for producers in the Targeted State. This will include: (a) Gathering existing instructional materials that meet the local crop insurance needs of agricultural producers; (b) identifying instructional gaps in existing materials; and (c) development new materials or modifying existing materials to fill existing gaps.
- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance; (b) inform producers of the availability of crop insurance; and (c) inform producers and agribusiness leaders in the Targeted State of the educational activities being offered.
- Deliver education and information to producers and agribusienss professionals. This will include organizing and delivery educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on crop insurance in the Targeted State.
- Document all educational activities conducted under the cooperative agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

2. RMA Activities

RMA will be responsible for the following activities:

- Review and approve in advance the recipient's project delivery plan.
- Collaborate with the recipient in assembling crop insurance educational materials for producers in the Targeted State. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other crop insurance publications from RMA; (d) advising the applicant on the materials available over the internet through the AgRisk Education Library; (e) advising the applicant on technical issues related to crop insurance instructional materials; and (f) advising the applicant on the use of the standardized design and layout formats to be used on program materials.
- Collaborate with the recipient on a promotional program for raising awareness on crop insurance and for informing producers of educational opportunities in the Targeted States. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with crop insurance education.
- Collaborate with the recipient on the delivery of education to producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all educational delivery plans; (b) advising the applicant on technical issues related to crop insurance education and information; and (c) assisting the applicant in informing crop insurance professionals about program delivery plans and scheduled meetings.
- Review and approve recipient's documentation of crop insurance educational activities.

3. Other Activities

In addition to the specific, required activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners. The applicant must also identify specific ways in which RMA could have substantial involvement in the proposed educational activity.

Part II—Preparation of an Application

A. Program Application Materials

Program application materials for both the Commodity Partnerships and Targeted States programs under this announcement may be downloaded from the RMA Web site at: *http://www.rma.usda.gov*. Applicants may also request application materials from: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: (202) 720–6356, fax: (202) 690–3605, e-mail: *michelle.fuller@wdc.usda.gov <mailto:michelle.fuller@wdc.usda.gov>*.

B. Content of Applications

A complete and valid application package must include an electronic copy (Microsoft Word format) of the narrative portion of the application package on diskette or compact disc and an original and two paper copies of the complete application package, which must include the following:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance."
2. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs." Indirect costs allowed for projects submitted under this announcement will be limited to 10 percent of the total direct cost of the partnership or cooperative agreement. If applying under the Commodity Partnerships program, Federal funding requested (the total of direct and indirect costs) must not exceed the level for the respective State or area, as specified in part I.B.4. If applying under the Targeted states program, Federal funding requested (the total of direct and indirect costs) must not exceed the level for the respective Targeted State, as specified in part II.B.3.
3. A budget and detailed narrative in support of the budget that shows all funding sources and itemized costs for each line item contained on the SF–424–A. All budget categories must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the SF–424–A. There must be a detailed breakdown of all costs, including indirect costs. Include budget notes on each budget line item detailing how each line item was derived. Also provide a brief narrative description of any costs that may require explanation (*i.e.*, why specific costs may be higher than market costs). Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act, the applicable Federal cost principles, and are not prohibited under any other Federal statute. Salaries of project personnel should be requested in proportion to the effort that they will devote to the project.
4. A completed and signed OMB Standard Form 424–B, "Assurances, Non-constructive programs."
5. [*For the Commodity Partnerships program only*]: A "Statement of Non-financial Benefits." (Refer to part I.B.2, "Non-financial Benefits") This requirement does not apply to applications submitted under the Targeted States program.
6. A narrative title page. This single page can provide: (a) The name of the project; (b) the name of the program under which funding is being requested, either Commodity Partnerships or Targeted States; (c) the specific State or area for which the project will be directed; (d) the organization submitting the application; (e) a listing of project partners; (f) a brief project summary; and (g) information needed to contact the project's leader, including an e-mail address.
7. A written narrative (limited to ten single-sided pages) that describes the educational project in detail, including the program delivery plan. The narrative should provide reviewers with sufficient information to effectively evaluate the merits of the application under the criteria contained in part IV.B. In preparing narratives, applicants are strongly encouraged to carefully review and understand the specific features and authorities governing the specific program for which funds are being requested, as described in this announcement. The narrative should include the circumstances giving rise to the proposed activity; a clear, concise statement of the objectives; the steps necessary to implement the program to attain the objectives; an evaluation plan for the activities; and the management and work plan that describes how the activities will be managed by the applicant. The work plan should identify each objective and the key tasks to achieve the objective, the entity responsible for the task, the completion date, the task location, and RMA's role. Although the two programs have a number of similarities, there are also some important differences. The Commodity Partnership program, for instance, allows education regarding financial management, crop insurance, marketing contracts and other existing and emerging risk management tools. And it requires an emphasis on the training of producers of Priority Commodities, as described in this announcement. The Targeted States program, on the other hand, seeks to reach producers of all commodities in the fifteen Targeted States, but restricts training and informational activities to crop insurance. The narrative should reflect these differences. Also, all partnership and cooperative agreements resulting from this announcement will have delivery plans that are prepared in a specific table format. Therefore, applicants are strongly encouraged to refer to this table format when preparing a delivery plan and to use it in that portion of the application narrative that addresses the delivery plan. A sample narrative, including the table format, is available from the RMA Web site (*http://www.rma.usda.gov<http://www.rma.usda.gov>*) or upon request.
8. An appendix containing exhibits that the applicant believes will directly support the information provided in the narrative. (Optional under either of the two programs contained in this notice.)
9. A completed and signed OMB Standard From LLL, "Disclosure of Lobbying Activities."
10. A completed and signed AD–1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary Covered Transactions)."
11. A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace."

Applicants are responsible for ensuring the application materials are received by the closing date. Incomplete application packages will not receive further consideration.

C. Submission of Applications

1. An original and two paper copies of the completed and signed application, and one electronic copy (Microsoft Word Format) of the project narrative on diskette or compact disc must be submitted in one package at the time of initial submission.
2. All applications must be submitted by the deadline. Applications that do not meet all the requirements in this announcement are considered as late applications. Late or incomplete applications will not be considered and will be returned to the applicant.
3. Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. The address must appear on the envelope or package containing the application with the not "Attention: Risk Management Education Program."
4. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated above for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to

government offices in the Washington, DC area now requires.

5. RMA cannot accommodate transmissions of applications by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

6. The deadline for receipt of an application is 5 p.m. EDT on July 28, 2003. The application deadline is firm as to date and hour and applies to submission of the original application and two copies.

D. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact Michelle Fuller at (202) 720–6356.

Part IV—Review Process

A. General

Each application will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement and sorted. RMA will first sort applications by program (either Commodity Partnership or Targeted States) then by States, area, or Targeted State in which the applicant proposes to conduct the project. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration.

Second, a review panel will consider the merits of all applications that meet the requirements in the announcement. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. Reviewers will be drawn from USDA, other federal agencies, and others representing public and private organizations as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding.

The panel will examine and score applications for each program (Commodity Partnerships and Targeted States) and for each State or area within each program based on the "Evaluation Criteria and Weights" contained in this paragraph B of this part. Each State or area's applications will be evaluated and scored independently.

Applications for each State or area within each program will be evaluated and scored in each of the criteria listed below. The panel will be looking for the specific elements listed with each criterion when evaluating the applications and scoring them. For each application, panel members will assign a point value up to the maximum for each criterion. After all reviewers have evaluated and scored each of the applications, the scores for the entire panel will be averaged to determine an application's final score. After all applications have been rated and scored, a lottery will be used to resolve any instances of a tie total score for the winning application for a given State or area. If such a lottery is required for a given State or area within a program, the names of all tied applicants will be entered into a drawing. The first applicant drawn will be recommended to received a partnership or cooperative agreement for that State or area under the program. The review panel will report to the Manager of FCIC on the results of the evaluation for both the Commodity Partnerships and Targeted States program. For the Commodity Partnership program, the panel's report will include the recommended applicant to receive a partnership agreement for each State or area. For the Targeted States program, the panel's report will include the recommended applicant to receive a cooperative agreement for each Targeted State. If the final score for the highest rated application for a State, area, or Targeted State is less than 50, the panel may, at its discretion, recommend that the Manager not provide funding for that States, area, or Targeted State. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

An organizations, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the programs described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under either of the two programs of this announcement is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC education or outreach program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

Applications submitted under both the Commodity Partnerships and Targeted States programs will be evaluated according to the following criteria:

1. Project Management—Maximum 25 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producer in the State or area. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to, personnel who have experience in directing agricultural programs or providing educations programs that benefit producers in the State or area will receive higher rankings.

2. Partnering—Maximum 25 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in the State or area. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad and diverse group of farmers and ranchers will be reached; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

3. Delivery Plan—Maximum 25 Points

The applicant must demonstrate that its program delivery plan is clear and specific. For each of the applicant's responsibilities contained in the description of the program for which funds are requested (either part I.C.1 for the Commodity Partnerships program or part II.C.1 for the Targeted States program), the applicant must demonstrate that it can identify specific tasks and provide reasonable time lines that further the purpose of this program. Applicants will obtain a higher score to the extent that the tasks of the project are specific, measurable, and reasonable, have specific time frames for completion, relate directly to the required activities and program objectives described in this announcement, and are sensitive to the needs of producers that are small, have limited resources, are minorities, or are beginning in the farming or ranching business. For guidance on a delivery plan format, applicants are encouraged to refer to a table format available from the RMA Web site (*http://www.rma.usda.gov<http://www.rma.usda.gov>*) or upon request.

4. Project Benefits—Maximum 25 Points

The applicant must demonstrate that the project benefits to farmers and ranchers in the State or area warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the project; (b) justify the estimates with clear specifics related to the delivery plan; (c) identify the actions producers will likely be able to take as a result of the project; and (d) identify specific measures for evaluating the success of the project. Reviewers' scoring will be based on the scope and reasonableness of the applicants' estimates of producers reached through the project, clear descriptions of specific expected project benefits for producers, and well-constructed plans for measuring the project's effectiveness.

5. Bonus (Drought Mitigation in Selected Areas)—Maximum 20 Points

[Limited to applications under the Commodity Partnership program. Bonus scoring does not apply to applications submitted under the Targeted States program.] Bonus points will be awarded for those applications under the Commodity Partnership program that address the educational needs of producers of livestock and forage and livestock producers who use rangeland with respect to drought risk mitigation. Bonus points will be awarded based on the extent that the project focuses on helping these producers understand the programs, tools, and risk management strategies for effectively managing their operations in the face of drought in the States of Montana, South Dakota, Arizona, Multi-state Area 1 (Utah, Nevada, Wyoming), New Mexico, Texas, Idaho, Oregon, Colorado, Louisiana, and Nebraska.

C. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

Part V—Additional Information

A. Requirement To Use Program Logo

Applicants awarded partnership or cooperative agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

B. Requirement To Provide Project Information to an RMA-Selected Contractor

Applicants awarded partnership or cooperative agreements will be required to assist RMA in evaluating the effectiveness of its education programs by providing documentation of educational activities and related information to any contractor selected by RMA for program evaluation purposes.

C. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under either of the two educational programs described in this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Such entities will also not be allowed the receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

D. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identify of reviewers, will be sent to the applicant after the review and awards process has been completed.

E. Notification of Cooperative or Partnership Agreement Awards

Following approval by the awarding official of RMA of the applications selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership or cooperative agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year. RMA will then extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal costs principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice. Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, scored low or were duplicative.

F. Confidential Aspects of Proposals and Awards

When an application results in a partnership or cooperative agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any informaion that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the

basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

G. Reporting Requirements

Applicants awarded partnership or cooperative agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

H. Audit Requirements

Applicants awarded partnership or cooperative agreements are subject to audit.

I. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemtions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other nonappropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available from Michelle Fuller at the above stated address and telephone number.

J. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

Signed in Washington, DC, on May 10, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–14955 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Applications (RFA): Risk Management Research Partnerships

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Announcement of availability of funds and request for application for risk management research partnerships.

SUMMARY: In accordance with section 522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) announces the availability of approximately $4 million for partnership agreements that will fund risk management research activities. Priority will be given to those activities addressing the need for risk management tools for producers of agricultural commodities currently covered by section 196 of the Agricultural Market Transition Act (7 U.S.C. 7333), specialty crops, livestock, rangeland and underserved commodities (For purposes of this announcement, these commodities are collectively referred to as "Priority Commodities"). Applications requesting funding for the specific development or modification of insurance products, plans of insurance or policies are excluded from consideration under this announcement. Awards under this program will be made on a competitive basis for projects of up to three years. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to substantial involvement of RMA in the project. This announcement lists the information needed to submit an application for these funds.

Closing Date: The closing date and time for receipt of an application is 5 p.m. CDT on July 28, 2003. Applications received after the deadline will not be evaluated by the technical review panel.

FOR FURTHER INFORMATION CONTACT: Applicants may download an application package from the Risk Management Agency Web site at *http://www.rma.usda.gov*. Applicants may also request an application package from: USDA, RMA/ RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, phone: (816) 926–6343, fax: (816) 926–7343, e-mail: *RMARED.Application@rma.usda.gov*.

Applicants are encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA. The applicable address for such submissions is: RMA/RED Partnership Agreement Program, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676. Completed and signed application packages sent via the U.S. Postal Service must be sent to the same address. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 25), the collection of information requirements contained in this announcement have been approved under OMB Document Nos. 0348–0043, 0348–0044, 0348–0046, and 0348–0040.

The Catalog of Federal Domestic Assistance Number for this program is 10.450.

SUPPLEMENTARY INFORMATION: This announcement consists of six parts:

Part I—General Information
A. Legislative Authority
B. Background
C. Project Objectives
D. Purpose
E. Definition of Priority Commodities
Part II—Eligibility/Funding
A. Eligible Applicants
B. Non-financial Benefits
C. Project Period
D. Availability of Funds
Part III—Research Program Description
A. Recipient Activities
B. RMA Activities
C. Other Activities
Part IV—Preparation of an Application
A. Research Program Application Materials
B. Content of Applications
C. Submission of Applications
D. Acknowledgement of Applications
Part V—Review Process
A. General
B. Evaluation Criteria and Weights
C. Confidentiality
Part VI—Additional Information
A. Access to Panel Review Information
B. Notification of Partnership Agreement Awards
C. Confidential Aspects of Proposals and Awards
D. Reporting Documents
E. Audit Requirements
F. Prohibitions and Requirements with Regard to Lobbying
G. Applicable OMB Circulars

Part I—General Information

A. Legislative Authority

This program is authorized under section 522(d) of the Federal Crop Insurance Act (Act).

B. Background

RMA is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. It does this by offering Federal crop insurance and other risk management products and tools through a network of private-sector entities and by overseeing the creation of new products, seeking enhancements in existing products and by expanding the use of a variety of risk management tools. Risk management tools are not limited to insurance products. Risk management tools include a variety of risk management options and strategies developed to assist producers in mitigating the risks inherent in agricultural production. Risk management tools may include: Financial management tools to mitigate price and production risks; tools to enhance measurement and prediction of risks in order to facilitate risk diversification; tools to improve production management, harvesting, record keeping or marketing. For the purposes of this announcement, risk management tools do not include insurance products, plans of insurance, policies, modifications thereof or any related material.

Section 552(b) of the Act authorizes RMA to enter into partnerships with public and private organizations for the purpose of increasing the availability of loss mitigation, financial, and other risk management tools for producers with a priority given to risk management tools for producers of Priority Commodities as defined in part I.E.

C. Project Objectives

RMA is only seeking applications that meet the following objectives:

1. To develop risk management tools to assist livestock producers in improving techniques for one or more of the following: Planning and managing the production of livestock, including disease management and control; improving techniques for breeding of livestock; managing price, revenue, or production and market risks.

2. To develop risk management tools to assist forage and rangeland producers in improving techniques for one or more of the following: Managing production, *e.g.*, optimization of grazing patterns; establishing and maintaining forage production records; drought mitigation; harvesting or marketing production.

3. To develop risk management tools to assist organic producers in improving techniques for one or more of the following: Assessing market risks, including price; marketing of production; and comparing organic and conventional production risks.

4. To clarify labor requirements and assist producers in complying with requirements to better meet the physically intense and time-compressed planting, tending, and harvesting requirements associated with the production of specialty crops and underserved agricultural commodities.

5. To develop risk management tools to assist producers in reducing the impact of multiple-year losses.

6. To develop risk management tools to further increase the economic and production stability of wild salmon fishermen.

D. Purpose

The purpose of this program is to fund partnership agreements that assist producers, minimize their production risks, and improve and/or develop risk management tools for the nation's producers. The agreements are for the development of risk management tools for use directly by agricultural producers. To aid in meeting these goals each partnership agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out these risk management initiatives. Applications requesting funding for the development of insurance products, plans of insurance, policies, modifications thereof or related materials are excluded from consideration under this announcement.

E. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities.* This group includes: (a) commodities, including livestock, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage.

Part II—Eligibility/Funding

A. Eligible Applicants

Proposals are invited from qualified public and private entities. Eligible applicants include all colleges and universities, Federal, State, and local agencies, nonprofit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

B. Non-Financial Benefits

Applicants must be able to demonstrate they will receive non-financial benefits as a result of the partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete educational programs).

C. Project Period

Each project will be funded for a period of up to three years for the activities described in this announcement. Projects can also be in two parts with the first part including the research and feasibility studies and the second part including the development, implementation, delivery and maintenance of the risk management tool. If the development of the tool is determined not to be feasible, the partnership may be terminated by RMA after completion of the first part with funding reduced accordingly.

D. Availability of Funds

Approximately $4,000,000 is available in FY2003 to fund partnership agreements. There is no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. Applicants awarded a

partnership agreement for an amount that is less than the amount requested will be required to modify their application to conform to the reduced amount before execution of the partnership agreement. No maximum or minimum funding levels have been established for individual projects. It is expected that the awards will begin to be made on or about September 11, 2003. All awards will be made and agreements completed no later than September 30, 2003.

Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent, or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the partnership application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this partnership agreement;
7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

Part III—Research Program Description

In conducting activities to achieve the purpose of this proposed research, the recipient will be responsible for the activities listed under paragraph A of this part. RMA will be responsible for the activities listed under paragraph B of this part.

A. Recipient Activities

The applicant will be required to perform the following activities:

1. Finalize, in cooperation with RMA, the partnership agreement.
2. Define non-financial benefits and the substantial involvement of the RMA.
3. Coordinate, manage, document and implement the timely completion of the approved research and development activities.
4. Abide by the plans and provisions contained in the partnership agreement.
5. Report on program performance in accordance with OMB Circular A–102 and A–110.
6. The recipient may be required to make a presentation to the FCIC Board of Directors.
7. Adhere to RMA guidelines for systems development and information technology development.
8. In cooperation with RMA, determine the feasibility and if necessary collaborate in the development of a plan to administer, maintain, and update the risk management tool in the future.

B. RMA Activities

1. Collaborate on the research plan;
2. Advise the recipient on the materials available over the internet and through the RMA Web site (*http://www.rma.usda.gov*) and be involved in the gathering of any additional information that may be required;
3. Work with the recipient in all phases of the research and development of the risk management tool, and the educational efforts to enable producers to utilize the risk management tool; and
4. Collaborate with the recipient in the development of all materials associated with the research and development program as it relates to publication or presentation of the results and the risk management tools to the public, any producer groups, RMA, and the FCIC Board of Directors.
5. Collaborate with the recipient in the development of a proposal to administer, maintain and update the risk management tool in the future.

C. Other Activities

In addition to the specific activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners. For any additional activity suggested, the applicant should identify specific ways in which RMA could or should have substantial involvement in that activity.

Part IV—Preparation of an Application

A. Research Program Application Materials

Applicant may download an application package from the Risk Management Agency Web site at: *http://www.rma.usda.gov*. Applicants may also request an application package from: David W. Fulk, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, phone: (816) 926–6343, fax: (816) 926–7343, e-mail: *RMARED_Application@rma.usda.gov*.

B. Content of Applications

A complete and valid application package must include an original, two paper copies, and one electronic copy (Microsoft Word format preferred) of the application package on diskette or compact disc, and:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance".
2. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs". Reviewers will need sufficient information to effectively evaluate the budget. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of the total direct cost of the agreement. A sample budget narrative, including suggestions for format and content, is available on the RMA Web site (*http://www.rma.usda.gov*) or upon request.
3. A completed and signed OMB Standard Form 424–B—"Assurances, Non-construction Programs".
4. Any narrative submitted with the application package should be limited to 10 single-sided pages. Reviewers will need sufficient information to effectively evaluate the application under the criteria contained in part V.B. A sample narrative, including suggestions for format and content, is available on the RMA Web site (*http://www.rma.usda.gov*) or upon request.
5. An appendix containing any attachments that may support information in the narrative (Optional).
6. A statement of the non-financial benefits of any partnership agreement to the recipient. (Refer to Part II.B "Non-financial Benefits").
7. A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities."
8. A completed and signed AD–1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary Covered Transactions.")
9. A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace." Applicants are responsible for ensuring the application materials are received by the closing date. Incomplete application packages will not receive further consideration.

C. Submission of Applications

1. An original and two paper copies of the completed and signed application, and one electronic copy (Microsoft Word format preferred) on diskette or compact disc must be submitted in one package at the time of initial submission.
2. All applications must be submitted and received by the deadline. Applications that do not meet all of the requirements in this announcement are considered incomplete applications. Late or incomplete applications will not be considered in this competition and will be returned to the applicant.
3. Applicants submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. The address must appear on the envelope or package containing the application with the note "Attention: RMA/RED Partnership Application."

Mailed applications will be considered meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated above for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington, DC area now requires.

4. RMA cannot accommodate transmissions of applications by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

5. The deadline for receipt of an application is 5 p.m. Central Daylight Time on July 28, 2003. The application deadline is firm as to date and hour and applies to submission of the original application and two copies.

D. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, each applicant is encouraged to provide an e-mail address in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact David Fulk at (816) 926–6343.

Part V—Review Process

A. General

Each application will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the objectives stated in part I.C and part IV. Applications that do not meet the objectives stated in part I.C and all other requirements in this announcement or are incomplete will not receive further consideration.

Second, a review panel will consider the merits of all applications that are complete and meet the objectives in part I.C and all other requirements in this announcement. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. The panel will be comprised of representatives from USDA, other federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding. The panel will examine and score applications based on the "Evaluation Criteria and Weights" contained in this paragraph B of this part.

All eligible applications will be evaluated using the criteria in part V.B.1. Applications must score at least 32 points under these criteria in order to be to be evaluated further. All applications scoring the required 32 points will be evaluated further under part V.B.2 through 5. After assigning points upon those criteria, applications will be listed in initial rank order and presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement. However, if the Manager of FCIC determines that any lower rated application is sufficiently similar to a project that has been funded or has been recommended to be funded under this announcement or any other research and development program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

1. Research Objectives—Maximum 40 points

The application must receive a minimum score of 32 points under this criterion in order to be considered for further evaluation and funding. Applications receiving less than 32 points will be eliminated and will not be evaluated under criteria 2 through 5.

The proposal clearly defines the development, management and implementation of a risk management tool designed to meet the needs of the producers outlined in the objectives in part I.C. Proposals that best meet the objectives in part 1.C and are innovative, clear, concise, useful and easy to understand will be given the highest score.

2. Indication of RMA Involvement and Non-financial Benefits—Maximum 10 points

The proposal clearly indicates areas of substantial involvement by RMA and clearly indicates benefits derived from the partnership that extends beyond the financial benefits or funding of the research proposal. Those proposals that clearly outline the involvement of RMA in all aspects of the project and demonstrate non-financial benefit will receive the highest score. Examples of non-financial benefits would be the benefits derived by an educational institution by providing research opportunities to students or benefits derived through the furtherance of an organization's mission.

3. Research Approach, Methodology, Development and Implementation—Maximum 40 points

The proposal clearly demonstrates a sound research approach and defines the methodology to be used as well as describes the development and implementation of the risk management tool. Proposals that demonstrate a clear, concise and generally accepted research methodology and innovative approach will receive the highest number of points.

4. Management—Maximum 10 points

The proposal clearly demonstrates the applicant's ability and resources to coordinate and manage all aspects of the proposed research project. The applicant whose approach is the most cost effective and optimizes the use and effective application of the funding will receive the highest score.

5. Bonus Points—Maximum 35 points

Because sections 522(d) and 523 of the Act require RMA to give priority for risk management tools for specific producers or commodities, 15 bonus points are available for proposals that meet one or more of these priorities. The priorities are for projects that cover the Priority Commodities (defined in part I.E), and wild salmon.

Due to the administrative burden of administering these partnerships, the substantial involvement required and RMA's limited resources, 20 bonus

points are available for proposals that have geographic diversity. Geographic diversity means multiple states or regions as defined by the National Agricultural Statistics Service and have the broadest number of producers impacted.

C. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

Part VI—Additional Information

A. Access to Panel Review Information

Upon written request, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

B. Notification of Partnership Agreement Awards and Notification of Non-Selection

Following approval of the applications selected for funding, notice of project approval and authority to draw down funds will be made to the selected applicants in writing. Within the limit of funds available for such purpose, the awarding official of RMA shall enter into partnership agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The partnership agreement provides the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project.

The effective date of the partnership agreement shall be the date the agreement is executed by both parties. All funds provided to the applicant by FCIC must be expended solely for the purpose for which funds are obligated in accordance with the approved application and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied, as a result of any award made pursuant to this announcement.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, proposals that did not meet the objectives, scored low or were duplicative.

C. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within the application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

D. Reporting Document

Applicants awarded a partnership agreement will be required to submit monthly progress and financial reports (SF–269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

E. Audit Requirements

Applicants awarded the partnership agreements are subject to audit.

F. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors (1) to certify that they have neither used nor will use any appropriated funds for payments of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or subcontractors will pay with profit or other nonappropriated funds on or after December 22, 1989; (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available from David Fulk at the above stated address and telephone number.

G. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

Signed in Washington, DC, on May 10, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–14954 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—FNS–380, Worksheet for Food Stamp Program Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection of FNS–380, Worksheet for Food Stamp Program Quality Control Reviews.

DATES: Written comments must be submitted on or before August 12, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Daniel Wilusz, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Daniel Wilusz, (703) 305–2460.

SUPPLEMENTARY INFORMATION:

Title: Worksheet for Food Stamp Program Quality Control Reviews.

OMB Number: 0584–0074.

Form Number: FNS–380.

Expiration Date: November 30, 2003.

Type of Request: Revision of an existing information collection.

Abstract: Form FNS–380 is a worksheet used in the Food Stamp Program to determine eligibility and benefits for households selected for review in the quality control sample of active cases. We estimate the reporting burden for this collection of information averages 8.9764 hours per each States' response. This includes the time for analyzing the household case record; planning and carrying out the field investigation; gathering, comparing, analyzing and evaluating the review data and forwarding selected cases to the Food and Nutrition Service for Federal validation. In addition to the State agency's burden, we also estimate the average burden on each household to be 0.50 hours for each of the estimated 54,703 households being interviewed. This includes a face-to-face interview with the Quality Control Reviewer to verify the identity and existence of the household and explore the household circumstances affecting the eligibility and benefit level. We estimate that the total reporting burden associated with this information collection for both State agencies and the households is 518,388 hours. The total recordkeeping burden for the State agency is 0.0236 hours per record.

We previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 0584–0074. OMB approved the burden through November 30, 2003. Based on the most recent table of active case sample sizes and completion rates (FY 2001), we estimate 54,703 FNS–380 worksheets and interviews will now be completed annually. This is an increase of 40 responses from the estimate made to substantiate the current collection. This estimate will also cause a corresponding increase in the reporting and recordkeeping burden. The increase in responses is a result of an augmented participation rate and is based on a statistical formula. We are requesting a three-year approval from OMB for this information collection.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53 State agencies and 54,703 households.

Estimated Total Number of Responses Per Year: 54,703 responses.

Estimated Time per Response: 8.9764 hours per State agency and 0.50 hours per household.

Estimated Total Annual Reporting Burden: 518,388 hours.

Estimated Number of Records: 54,703.

Estimated Time per Recordkeeping: .0236 hours.

Estimated Total Annual Recordkeeping Burden: 1,291 hours.

Estimated Total Annual Reporting and Recordkeeping Burden: 519,679 hours.

Dated: June 2, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–14956 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Red Pines EIS Project, Nez Perce National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to disclose the environmental impacts of implementing fuel hazard reduction and watershed improvement activities within the Red Pines project area in the Red River watershed. Individuals interested in actions of this nature are encouraged to submit comments and become involved in the planning process.

DATES: Comments concerning the scope of the analysis should be received at the address below on or before July 14, 2003.

ADDRESSES: Send written comments to Bruce Bernhardt, Forest Supervisor, Route 2, Box 475, Grangeville, ID 83530.

FOR FURTHER INFORMATION CONTACT: Kara Chadwick, Project Coordinator, and (208) 983–1950.

SUPPLEMENTARY INFORMATION: The Red Pines project area is located on the Nez Perce National Forest in northern Idaho within Idaho County. The project area lies about 34 air miles southeast of Grangeville Idaho and three air miles southeast of Elk City Idaho. The project area encompasses 31,466 acres and includes Dawson, Little Moose, Blanco and Ditch Creeks and Lower and Main Red River subwatersheds, and small portions of Trail, Soda and Moose Butte Creeks subwatersheds, which drain into Red River, which drains directly into the South Fork Clearwater River.

The actions proposed for implementation would reduce existing and potential fuel loads through the following activities:

A combination of thinning and/or salvaging and underburning on approximately 4,760 acres. This combination would result in some regeneration (clearcut) harvest. A combination of tractor and cable yarding systems would be used.

Approximately 1,645 acres of plantations, 20–50 years in age, would be thinned and underburned, favoring fire resistant species. A combination of tractor and cable yarding systems would be used.

Approximately 100 acres of 15–20 year old plantations would be precommercially thinned.

Approximately 25 miles of temporary road would be constructed to access the fuel hazard reduction areas described above. These roads would be decommissioned following activities.

Approximately 18 miles of existing roads would be reconditioned prior to use for fuel hazard reduction activities.

As part of this project, activities would be implemented to meet Forest Plan requirements for upward trend in fish habitat and water quality. The following activities would maintain or improve aquatic conditions in the subwatersheds in the project area:

Restore soil productivity on 175 to 350 acres through soil restoration techniques, such as decompaction, revegetation, and reestablishing natural drainage features.

Reduce erosion and water quality impacts at four inactive mine sites, using techniques such as reshaping of disturbed areas, soil amendments, revegetation, and possibly treatment of water draining from adits.

Reduce sediment production from existing and temporary roads planned

for use in this project. These activities would include improving the road surface, improving drainage and stabilizing eroding areas.

Decommission 40 to 45 miles of existing road that do not improve access to the area for public recreation or administrative use, using techniques ranging from abandonment to recontouring.

Reduce erosion and water quality impacts from an existing rock pit.

Replace three culverts identified as barriers to fish passage.

Replace as many culverts (85 identified) as possible to prevent them from becoming plugged with debris.

Add large woody debris to stream channels where they have been determined to be debris deficient.

Plant riparian areas with native grasses, forbs and woody species where needed to promote bank stability and/or streamside shade.

Maintain existing fish habitat improvement structures in the main stem of Red River. This would involve mostly handwork, but could include machine work.

Improve two miles of Red River and one mile of Little Moose Creek by placing large woody debris or other structures in the stream, remeandering selected channel reaches, stabilizing banks and planting riparian areas.

Improve dispersed sites in the Blanco area along Red River by defining and hardening campsites to reduce sediment runoff, providing vault-type toilets to reduce pollutants into Red River, and providing a parking area, an unloading ramp, hitching rails and a feed bunk.

Two Forest Plan amendments are necessary to implement fuel hazard reduction activities.

Past activities have caused detrimental soil disturbance in some areas proposed for fuel hazard reduction activities. The proposed amendment would state, "Where detrimental soil conditions from past activities affect 15 percent or less of the activity area, a cumulative minimum of 85 percent of the activity area shall not be detrimentally compacted, displaced, or puddled upon completion of activities" and "Where detrimental soil conditions from past activities affect more than 15 percent of the activity area, the cumulative detrimental soil disturbance from project implementation and past activities shall not exceed the conditions prior to the planned activity and shall provide a net improvement in soil quality."

A second Forest Plan amendment is necessary to implement projects in Ditch, Trail, Bridge, Baston and Soda Creeks and in Upper and Main Red River. Appendix A of the Forest Plan states that "Management—derived sediment which could affect fish habitat will not be allowed until monitoring indicates that habitat has recovered to planned levels." The proposed activities, including the aquatic improvement activities, are expected to produce some sediment in the short term that could affect fish habitat, however, the activities would be designed to result in an upward trend in fish habitat conditions over time.

The following footnote would apply to Siegel, Deadwood, Redhorse, Dawson, Moose Butte, Ditch, Trail, Otterson, Bridge, Upper Baston, Soda, Shcooner and Trapper Creeks and Upper Main, Main, Lower, Lower South Fork, Upper South Fork, Middle Fork and West Fork of Red River, as listed in Appendix A of the Nez Perce Forest Plan:

"Aquatic conditions in these watersheds have been determined to fall below levels needed to meet fish/water quality objectives. General forest management activities can occur concurrently with aquatic improvements in these watersheds as long as an upward trend in habitat carrying capacity is indicated. Upward trend is indicated using multiple sources of information including stream surveys, monitoring data, predictive modeling, literature reviews and/or professional judgment. It is not specifically required that an upward trend be demonstrated through monitoring prior to initiation of general forest management activities."

Five subwatersheds (French Gulch, Lowest Red River, and Campbell, Little Moose and Blanco Creeks) within the Red River watershed have not been rated for water quality conditions. Water quality ratings for these subwatersheds need to be completed on a site- or project-specific basis. If these subwatersheds are determined to be below objective, the footnote described above would apply.

A scoping letter outlining these actions described here is being mailed to over 200 interested individuals and organizations. In addition, the Red River District will host an informal, open house session the evening of June 17, 2003 to answer questions and solicit comments on the proposal. A field trip to the project area is being planned for August 2003. The Draft Environmental Impact Statement will be mailed to all those who responded during the scoping period.

The Interdisciplinary Team has identified five preliminary issues associated with potential effects on the proposed activities: Potential effects of the activities on lynx and lynx habitat; potential effects of the activities on the Region One listed sensitive plant known as candystick; potential effects of the activities on soil productivity; potential effects of the activities on threatened, endangered and sensitive fish, fish habitat and water quality; consistency with the anticipated Total Maximum Daily Load (TMDL) for the 303(d) listed South Fork Clearwater River; and reduction in miles of road and access to the area.

The decision to be made in response to this analysis include: (1) Are fuel hazard reduction activities needed, and if so, where, when and how would they be implemented? (2) What transportation system is necessary in the analysis area and how will it be managed? (3) Are the fish habitat and water quality improvement activities for Forest Plan upward trend requirements needed, and if so, where, when and how would they be implemented? (4) What mitigation is needed to assure forest management activities are consistent with the Nez Perce Forest Plan and environmental law? (5) Are amendments to the Nez Perce Forest Plan necessary to implement the proposed actions? (6) What implementation and effectiveness monitoring is needed?

The responsible official for this project is the Nez Perce Forest Supervisor. Comments to this notice should be sent to the address and contacts identified above and should be submitted within 30 days of publication of this notice in the **Federal Register**. A Draft Environmental Impact Statement (EIS) is expected to be available in January 2004 and a Final EIS in April 2004. Should an action alternative be selected, implementation could be initiated in fall/winter 2004.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments during this scoping and on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: June 3, 2003.

Bruce E. Bernhardt,

Forest Supervisor, Nez Perce National Forest.

[FR Doc. 03–14727 Filed 6–12–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 13, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 29, 2002, March 28, and April 11, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 71133, 68 FR 15150, and 17770/17771) of proposed additions to the Procurement List.

Regulatory Flexibility Act Certification

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Aloud Digital Audio Labeling System.
6515–00–NIB–0226.
Product/NSN: Aloud Audio Labels.
6515–00–NIB–0227.
NPA: Central Association for the Blind & Visually Impaired, Utica, New York.
Contract Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.
Product/NSN: Rough and Ready.
7920–00–NIB–0409 (Medium).
7920–00–NIB–0410 (Large).
NPA: New York City Industries for the Blind, Inc., Brooklyn, New York.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Custodial Service (SH)
Federal Building #2, Food Court
Federal Building #2, Five Star Expresso Coffee Bar
Pentagon Building, Au Bon Pain
Pentagon Building, BC Cafe
Pentagon Building, Common area restrooms
Pentagon Building, Corridor 1 Food Court
Pentagon Building, Corridor 10 Food Court
Pentagon Building, Corridor 9/10 Apex, Five Star Expresso Coffee Bar
Pentagon Building, Grease and Garbage Room
Pentagon Building, Loading dock, 1st Floor, Wedge 1
Pentagon Building, Pentagon Dining Room and Kitchen
Pentagon Building, Production Kitchen
Pentagon Building, Wedge 1 Food Court
Pentagon Building, Common area stairs and corridors, 1st Floor, 2nd Floor, 3rd Floor, Washington, DC.
NPA: The Chimes, Inc., Baltimore, Maryland.
Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.
Service Type/Location: Grounds Maintenance, USDA, Forest Service Office, Beaverhead-Deerlodge National Forest, Butte, Montana.
NPA: BSW, Inc., Butte, Montana.
Contract Activity: USDA–US Forest Service, Butte, Montana.
Service Type/Location: Installation Support Services, Fort Hood, Texas.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas.
Contract Activity: III Corps and Fort Hood Contracting Command, Fort Hood, Texas.
Service Type/Location: Janitorial/Custodial, Armed Forces Reserve Center, Yakima, Washington.
NPA: Yakima Specialties, Inc., Yakima, Washington.
Contract Activity: Naval Facilities Engineering Command—Everett, Everett, Washington.
Service Type/Location: Janitorial/Custodial, U.S. Geological Survey, Klamath Field Office, Klamath Falls, Oregon.
NPA: Klamath County Mental Health, Klamath Falls, Oregon.
Contract Activity: U.S. Geological Survey, Sacramento, California.
Service Type/Location: Operation of Masking/Taping Service, Tobyhanna Army Depot, Tobyhanna, Pennsylvania.
NPA: The Burnley Workshop of the Poconos, Inc., Stroudsburg, Pennsylvania.
Contract Activity: Tobyhanna Army Depot, Tobyhanna, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–15022 Filed 6–12–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: July 13, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Clause)

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Candle
3" × 3" Pillar, Gardenia/M.R. 481
3" × 3" Pillar, Vanilla/M.R. 480
6" × 3" Pillar, Gardenia/M.R. 483
6" × 3" Pillar, Vanilla/M.R. 482
Jar, Lavender/M.R. 485
Jar, Vanilla/M.R. 484
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Pen, Gel Ink, Aristocrat, 7520–00–NIB–1461 (Black Ink).
7520–00–NIB–1481 (Blue Ink).
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Pen, Gel, Executive, 7520–00–NIB–1491.
NPA: West Texas Lighthouse for the Blind, San Angelo, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List. (End of Clause)

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cleaning Compound/7930–01–373–8846
Product/NSN: Cleaning Compound/7930–01–373–8847
Product/NSN: Cleaning Compound/7930–01–373–8850
Product/NSN: Cleaning Compound/7930–01–398–0943
Product/NSN: Cleaning Compound/7930–01–398–0946
Product/NSN: Detergent, General Purpose/7930–00–515–2477
Product/NSN: Detergent, General Purpose/7930–00–526–2919
Product/NSN: Detergent, General Purpose/7930–00–526–2920
Product/NSN: Detergent, General Purpose/7930–00–527–1207
Product/NSN: Detergent, General Purpose/7930–00–527–1237
Product/NSN: Detergent, General Purpose/7930–00–530–8067
Product/NSN: Detergent, General Purpose/7930–00–985–6945
Product/NSN: Detergent, General Purpose/7930–00–985–6946
Product/NSN: Detergent, Laundry/7930–01–045–3515
Product/NSN: Detergent, Laundry/7930–01–045–3517
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–15023 Filed 6–12–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Central Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the (Alabama, Arkansas, Louisiana and Mississippi) will convene at 1:30 p.m. and adjourn at 3 p.m. on Monday, June 30, 2003. The purpose of the conference call is to meet regarding meaningful/measurable outcomes.

This conference call is available to the public through the following call-in number: 1–800–659–8294, access code 17430346. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Farella Robinson, Civil Rights Analyst of the Central Regional Office, 913–551–1400 (TDD 913–551–1414), by 4 p.m. on Friday, June 27, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 5, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14944 Filed 6–12–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Southeastern Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of subcommittees of the Advisory Committees to the Commission from the southern region (Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee) will convene at 2 p.m. and adjourn at 3 p.m. on Thursday, June 12, 2003. The purpose of the conference call is to discuss ways in which the Advisory Committees can achieve meaningful outcomes when considering civil rights issues in their respective states.

This conference call is available to the public through the following call-in number: 1–800–659–1145, access code 17256829. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Bobby Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 400–562–7004), by 4 p.m. on Wednesday, June 11, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 2, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14946 Filed 6–12–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a press conference and briefing session of the Pennsylvania Advisory Committee will convene at 9:30 a.m. and adjourn at 3:30 p.m. (e.d.t.) on Thursday, June 26, 2003, at the City Council Chambers, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219. The Advisory Committee will hold a press conference to promote the dissemination in the Pittsburgh region of its report, *Barriers Facing Minority and Women Owned Businesses in Pennsylvania*, released in Philadelphia in August 2002. The Committee will also hold a briefing session with community representatives, state and local officials, and minority- and women-owned business owners to discuss issues raised in the report that are unique to the Pittsburgh/Allegheny county area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office at 202–376–7533 (TDD 202–376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 5, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14945 Filed 6–12–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030505114–3144–02]

Best Practices for Exporters/Re-Exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items; Correction

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of inquiry; correction.

SUMMARY: The Bureau of Industry and Security published a notice in the **Federal Register** of May 16, 2003 (63 FR 26567) requesting comments on the proposed "Best Practices for Exporters/Reexports and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." That notice contained an incorrect date within which comments were to be submitted. This document corrects the date for the submission of comments.

DATES: Comments on the proposed Best Practices must be received by July 16, 2003.

ADDRESSES: Comments on the proposed Best Practices may be submitted by e-mail to *rcupitt@bis.doc.gov*, by fax at (202) 482–2387, or on paper to Rick Cupitt, Office of the Under Secretary for Industry and Security, Bureau of Industry and Security, Room H3898, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Rick Cupitt, Office of the Under Secretary for Industry and Security at *rcupitt@bis.doc.gov* or (202) 482–1459.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security published a document in the **Federal Register** of May 16, 2003 (63 FR 26567), requesting comments on the proposed "Best Practices for Exporters/Reexports and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." The notice inadvertently stated that comments were to submitted by June 16, 2003. That date was incorrect and the public is advised that the comment period will close on July 16, 2003.

Dated: June 9, 2003.

Kenneth I. Juster,

Under Secretary for Industry and Security.

[FR Doc. 03–15024 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–845; A–122–847; C–122–846; C–122–848]

Notice of Postponement of Final Antidumping Determinations and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni (AD) or Geoffrey Craig (CVD), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4194 and (202) 482–5256, respectively.

Postponement of Final Determinations and Extension of Provisional Measures

On May 1, 2003, the Department of Commerce ("the Department") issued its affirmative preliminary determinations in the antidumping duty investigations of certain durum wheat and hard red spring wheat from Canada (*see Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 24707 (May 8, 2003)). This notice stated we would issue our final determinations in these investigations within 75 days of the date of these preliminary determinations.

On May 16, 2003, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.210(b)(2)(ii), the sole respondent in these investigations, the Canadian Wheat Board ("CWB"), requested a 37-day postponement of the final determinations in the antidumping duty investigations of durum wheat and hard red spring wheat from Canada. The CWB also requested that the Department extend provisional measures from four months for an additional 37 days, in accordance with section 733(d) of the Act and 19 CFR 351.210(e)(2). Furthermore, the CWB reserved the right to request an additional extension of the final determinations for up to the full 60 days, or 135 days after the publication date of the preliminary determinations, under section 735(a)(2) of the Act. Because the preliminary determinations for Canada were affirmative, the CWB's request serves as an adequate basis upon which the Department may extend the final determinations.

As no compelling reason exists for denying the request for postponement, we are extending these final determinations to not later than 112 days after the date of publication of the preliminary determinations (*i.e.*, not later than August 28, 2003). Suspension of liquidation will be extended accordingly.

Further, because the final determinations in the countervailing duty investigations of durum wheat and hard red spring wheat from Canada have been aligned with the final determinations in the antidumping duty investigations of durum wheat and hard red spring wheat from Canada (*see Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 11374 (March 10, 2003)), we are postponing the final determinations in the countervailing duty investigations until August 28, 2003, accordingly.

This notice of postponement is published pursuant to section 735(a) of the Act and 19 CFR 351.210(g).

Dated: May 29, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14981 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–836]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Glycine from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the new shipper review of the antidumping duty order on glycine from the People's Republic of China (PRC) until no later than August 8, 2003. The period of review is March 1, 2001, through February 28, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: June 13, 2003

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Matthew Renkey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–1386 or (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results were issued.

Background

On May 1, 2002, the Department received a properly filed request for a new shipper review from Tianjin Tiancheng Pharmaceutical Co., Ltd. (TTPC) for the antidumping duty order on glycine from the PRC. On May 24, 2002, the Department published its initiation of this new shipper review for the period March 1, 2001, through February 28, 2002. *See Glycine from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 67 FR 36572 (May 24, 2002). The Department completed the preliminary results of this new shipper review on March 11, 2003. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China*, 68 FR 13669 (March 20, 2003). Without an extension, the final results of this new shipper review would be due on June 9, 2003.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated because of the issues that must be addressed, and the final results of this new shipper review cannot be completed within the statutory time limit of 90 days.

Both respondent and petitioner submitted new factual information in their case and rebuttal briefs past established deadlines. After reviewing the briefs and deciding what constituted new factual information, the Department instructed parties to refile their case and rebuttal briefs on May 16, 2003. In addition, the Department became aware of a clerical filing error in petitioners' April 25, 2003 submission. The correction of this error on May 19, 2003, which resulted in new factual information submitted with the agreement of the Department, necessitated the opportunity for respondent to rebut this information within 10 days.

The refiling of a number of documents in this review present the Department with limited time in which to evaluate the arguments contained therein and come to a decision by the current deadline of June 9, 2003. These arguments pertain to, among other things, the *bona fides* of TTPC's U.S. sales, and the selection from a multitude of potential sources of the appropriate surrogate values to be used for the financial ratios in calculating normal value. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the completion of final results for an additional 60 days. The final results will now be due no later than August 8, 2003.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: June 6, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–14978 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–878]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (Suzhou Fine Chemicals Group Co., Ltd.) at (202) 482–3148, Javier Barrientos or Jessica Burdick (Shanghai Fortune Chemical Co., Ltd.) at (202) 482–2243 and (202) 482–0666, or Sally C. Gannon at (202) 482–0162; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

CORRECTION

On May 20, 2003, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China* (68 FR 27530) (*Final Determination*). In the *Final Determination*, the Department inadvertently typed an incorrect rate for the People's Republic of China (PRC)-wide rate. The PRC-wide rate of 329.94 percent, as set forth in the *Final Determination of Saccharin from the People's Republic of China: Analysis of Adverse Facts Available Rate*, Memorandum from Javier Barrientos, through Mark Hoadley, to the File (May 12, 2003), and its attachments, is the correct PRC-wide rate, rather than the rate of 329.33 percent published in the *Final Determination*.

Thus, we are issuing this amended final in accordance with section 351.224(e) of the Department's regulations, which states that the Department will correct any ministerial error by amending the final determination. *See* 19 CFR 351.224(e). Under the regulations, a ministerial error includes mistakes in "addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like." *See* 19 CFR 351.224(f). Therefore, the clerical error in the PRC-wide rate in the *Final Determination* qualifies as a ministerial error and will be corrected in accordance with section 351.224(e) of the Department's regulations.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of saccharin from the PRC. For the PRC-wide entity, the BCBP shall require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margin shown above. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended determination.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act).

Dated: June 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14980 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–806]

Notice of Final Results of Administrative Review: Silicon Metal from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce

SUMMARY: SUMMARY: On March 10, 2003, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on silicon metal from the People's Republic of China (PRC) (68 FR 11369). The review covers one manufacturer, Groupstars Chemical Co., Ltd. (Shandong) (Groupstars), and its exports of the subject merchandise to the United States during the period June 1, 2001 through May 31, 2002.

We gave interested parties an opportunity to comment on the preliminary results of review. We received no comments from any of the parties.

EFFECTIVE DATE: June 13, 2003

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on silicon metal from the PRC on June 10, 1991. *See Antidumping Duty Order: Silicon Metal from the People's Republic of China*, 56 FR 26649 (June 10, 1991). On June 21, 2002, Groupstars, a Chinese exporter of silicon metal, submitted a timely request for the Department to conduct an administrative review for the period June 1, 2001 through May 31, 2002. On July 18, 2002, the Department initiated an administrative review covering the period June 1, 2001 through May 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002).

On August 21, 2002, the Department sent Groupstars the standard non-market-economy antidumping questionnaire. The deadline for responding to the questionnaire was September 27, 2002. As of October 18, 2002, the Department still had not received a response from Groupstars, or

a letter requesting an extension of the deadline. *See Memorandum to File through Maureen Flannery, Program Manager, from Matthew Renkey, Analyst: Status of Questionnaire Response: Silicon Metal from the People's Republic of China (PRC), Administrative Review 6/1/01–5/31/02*, dated October 18, 2002. On October 30, 2002, the Department received a letter from counsel for Groupstars informing us that they were withdrawing from representation of Groupstars because they were also unsuccessful in eliciting a response from the company regarding the substantive nature of this case.

On March 10, 2003, the Department published the preliminary results of review of the antidumping duty order on silicon metal from the PRC (68 FR 11369). The Department has now completed this review in accordance with Section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Antidumping Duty Order

The product covered by the order consists of silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight.

The merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments. Accordingly, we continue to find that a margin of 139.49 percent should be assigned to Groupstars for the period June 1, 2001 through May 31, 2002. The Department will issue assessment instructions directly to the U.S. Bureau of Customs and Border Protection (BCBP).

Duty Assessment and Cash Deposit Requirement

The Department shall determine, and BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respect to all shipments of silicon metal from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review; (2) for companies previously found to be eligible for a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 139.49 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14979 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan; Notice of Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review pursuant to final court decisions.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0159.

SUMMARY: The United States Court of Appeals for the Federal Circuit ("the CAFC") and the United States Court of International Trade ("CIT") have affirmed the Department of Commerce's ("the Department") final remand results affecting final assessment rates for the administrative review of the antidumping duty order of certain welded stainless steel pipe ("steel pipe") from Taiwan. The period of review ("POR") is December 1, 1994, through November 30, 1995. As there is now a final and conclusive court decision in this case, we are amending our final results of review and we will instruct the U.S. Bureau of Customs and Border Protection ("Customs Service") to liquidate entries subject to this review.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1997, the Department published its final results in the third administrative review of steel pipe from Taiwan. *See Final Results of Antidumping Administrative Review; Certain Welded Stainless Steel Pipe From Taiwan*, 62 FR 37543 (July 14, 1997) ("*Final Results*"). The review covered one manufacturer/exporter of the subject merchandise, Ta Chen Stainless Steel Pipe Ltd. ("Ta Chen").

Ta Chen challenged certain aspects of the Department's *Final Results*. On October 28, 1999, the CIT remanded the *Final Results* to the Department on two issues: (1) To give a Ta Chen an opportunity to submit information on Sun Stainless, Inc.'s ("Sun") U.S. sales; and (2) to give Ta Chen an opportunity to submit evidence on any sales to Company C that were made during the POR and on which commissions were paid to Anderson Alloys ("Anderson"). *See Ta Chen Stainless Steel Pipe, Ltd.* v. *United States. NO. 97–08–01344 1999 Ct. Int's Trade LEXIS 110* (CIT 1999). On February 25, 2000, we provided the CIT with our final results of redetermination pursuant to court remand. *See Final . Results of Redetermination Pursuant to Court Remand: Ta Chen Stainless Steel Pipe, Ltd.* v. *United States, Court No. 97–08–01344* ("*Remand Results*"). In the remand redetermination the Department determined: (1) An adverse inference was appropriate for the Sun sales, and assigned the highest calculated margin calculated in the final remand results to Ta Chen's sales to Sun; and (2) not to apply our facts available methodology to the Anderson sales based on Ta Chen's statement that it paid no commissions to Anderson on Company C sales. Upon review, the CIT sustained our *Remand Results*. *See Ta Chen Stainless Steel Pipe, Inc.* v. *United States*. No. 97–08–01344, Slip.Op. 2000–107 (CIT 2000). Ta Chen appealed the CIT's judgment with respect to the application of adverse facts available to Ta Chen's sales to Sun. On August 1, 2002, the CAFC affirmed the CIT's decision. *See Ta Chen Stainless Steel Pipe, Inc.* v. *United States*, 298 F.3d 1330 (Fed. Cir. 2002).

On January 6, 2003, Ta Chen submitted an application to the Chief Justice of the U.S. Supreme Court for an extension of time to file a petition for a *writ of certiorari*. The Chief Justice extended the time to file until the requested new deadline of January 18, 2003. Because the deadline occurred on Saturday, Ta Chen filed the petition for *writ of certiorari* January 21, 2003. On February 28, 2003, an order was given extending the response time to file comments responding to the petition until April 7, 2003. On April 7, 2003, Ta Chen filed an opposition brief. On May 29, 2003, the Supreme Court denied the petition filed by Ta Chen.

There is a final and conclusive court decision in this case. We are amending our final results of review for the period December 1, 1994 through November 30, 1995, and we will instruct the Customs Service to liquidate entries subject to this review.

The revised weighted-average percentage margin is as follows:

Manufacturer/exporter	Margin (percent)
Ta Chen	2.60

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates on the ratio of the total amount of antidumping duties calculated for the examined sales to the total value of sales examined for such importer. The Department will issue appraisement instructions to the Customs Service after publication of this amended final results of review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(1)) and 19 CFR 351.211.

Dated: June 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14982 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 030529137–3137–01]

International Buyer Program Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and call for applications for the FY 2005 International Buyer Program.

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the International Buyer Program (IBP) of the U.S. Department of Commerce (DOC), to support domestic trade shows. Selection is for the International Buyer Program for Fiscal Year 2005 (October 1, 2004 through September 30, 2005).

The IBP was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the DOC United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in 74 countries representing America's major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices. The Department expects to select approximately 32 shows for FY2005 from among applicants to the program. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

DATES: Applications must be received by August 12, 2003. Contributions (discussed below) are for shows selected and promoted during the period between October 1, 2004, and September 30, 2005.

ADDRESSES: Export Promotion Services/International Buyer Program, Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., H2107, Washington, DC 20230. Telephone: (202) 482–0481 (For deadline purposes, facsimile or email applications will be accepted as interim applications, to be followed by signed original applications).

FOR FURTHER INFORMATION CONTACT: Jim Boney, Product Manager, International Buyer Program, Room 2107, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–0146; Fax: (202) 482–0115; E-mail: *Jim.Boney@mail.doc.gov*.

SUPPLEMENTARY INFORMATION: The Commercial Service is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 2004, and September 30, 2005. A contribution of $8,000 for shows of five days or less is required. For shows more than five days in duration, or requiring more than one International Business Center, a contribution of $10,000 is required.

Under the IBP, the Commercial Service seeks to bring together international buyers with U.S. firms by selecting and promoting, in international markets, U.S. domestic trade shows covering industries with high export potential. Selection of a trade show for the IBP is valid for one event, *i.e.*, a trade show organizer

seeking selection for a recurring event must submit a new IBP application to be considered for each occurrence of the event. Even if the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 32 events to support between October 1, 2004, through September 30, 2005. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's statutory mandate to promote U.S. exports, especially those of small and medium size enterprises and that best meet the selection criteria articulated below.

Successful show organizer applicants will be required to enter into a Memorandum of Understanding (MoU) with the DOC. The MoU constitutes an agreement between the DOC and the show organizer specifying which responsibilities are to be undertaken by DOC as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone who requests information regarding applying will be sent a copy of the MoU along with the application package. The responsibilities to be undertaken by DOC will be carried out by the Commercial Service.

The Department selects trade shows to be IBP partners that it determines to be leading international trade shows appropriate for participation by U.S. exporting firms and for promotion in overseas markets by U.S. Embassies and Consulates. Selection as an IBP partner does not constitute a guarantee by the U.S. Government of the show's success. IBP partnership status is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events will not be considered.

General Selection Criteria: The Department will select shows to be IBP partners that, in the judgment of the Department, best meet the following criteria:

(a) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, *e.g.*, Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides).

(b) *International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (*e.g.*, best prospect lists). Previous international attendance at the show may be used as an indicator.

(c) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of U.S. products or products with a high degree of U.S. content will be preferred. To be considered "U.S.", products and services to be exhibited must be produced or manufactured in the U.S., or if produced or manufactured outside of the U.S., the products or services must contain more than 50% U.S. content and must be marketed under the name of a U.S. firm.

(d) *Stature of the show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services, both domestically and internationally, and as a showplace for the latest technology or services in that industry or sector.

(e) *Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) *Overseas Marketing:* There has been a demonstrated effort to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance. Planned cooperation with Visit USA Committees overseas is desirable.

(g) *Logistics:* The trade show site, facilities, transportation services, and availability of accommodations are in the stature of an international-class trade show.

(h) *Cooperation:* The applicant demonstrates a willingness to cooperate with the Commercial Service to fulfill the program's goals and to adhere to target dates set out in the MoU and the event timetable, both of which are available from the program office (see **FOR FURTHER INFORMATION** section above on when, where, and how to apply). Past experience in the IBP will be taken into account in evaluating current applications to the program.

Legal Authority: The Commercial Service has the legal authority to enter into MoUs with for-profit show organizers and other groups (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 ((MECEA), as amended (22 U.S.C. Section 2455(f)) MECEA allows the Commercial Service to accept contribution of funds and services from firms for the purposes of furthering its mission. The statutory program authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3512 *et seq.*) (OMB Control No. 0625–0151). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Don Huber,

Acting Director, Office of Trade Event Programs, U.S. and Foreign Commercial Service, International Trade Administration, Department of Commerce.

[FR Doc. 03–15027 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060503C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of voluntary restrictions on anchored gillnet and lobster trap/pot fishing gear.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, requests that lobster trap/pot and anchored gillnet fishermen remove their gear on a voluntary basis from an area totaling approximately 1,265 square nautical miles (nm2) (4,339 km2), east of Cape Ann, MA for 15 days. Fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours June 10, 2003, 2003, through 2400 hours June 25, 2003, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1:85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On May 30, 2003, NMFS Aerial Survey Team reported a sighting of 3 right whales in the proximity of 42° 39′ N lat. and 69° 09′ W long. This position lies east of Cape Ann, MA in an area called Cashes Ledge. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Because the Seasonal Area Management (SAM) East zone overlaps a portion of the DAM zone, this area is excluded from the DAM zone.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. NMFS requests the voluntary removal of lobster trap/pot and anchored gillnet gear and asks lobster trap/pot and anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The DAM zone is bound by the following coordinates:

42°59′N, 69°36′W (NW Corner)
42°59′N, 68°42′W
42°30′N, 68°42′W
42°30′N, 69°24′W
42°17′N, 69°24′W
42°17′N, 69°36′W

NMFS requests voluntary action within the DAM zone because of the minimal amount of fishing gear in these waters during this time of year and, based on what we know about right whale migration, the animals will likely move into other protected areas, such as the SAM East zone. The request for removal of gear and appeal to avoid the setting of additional gear will be in effect beginning at 0001 hours June 10, 2003, through 2400 hours June 25, 2003, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**.

The request for voluntary action will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant-Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected

officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: June 9, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National marine Fisheries Service.

[FR Doc. 03–15013 Filed 6–10–03; 3:44 pm]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Macau

June 9, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68571, published on December 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 9, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on June 16, 2003, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
333/334/335	476,671 dozen of which not more than 252,153 dozen shall be in Categories 333/335.
338	618,443 dozen.
339	2,511,934 dozen.
342	168,851 dozen.
345	106,033 dozen.
347/348	1,407,689 dozen.
351	131,689 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–14962 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

June 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted to reflect Macedonia's accession to the World Trade Organization (WTO). Also, limits adjusted for swing and special shift in previous **Federal Register** notices and letters to Customs are also being revised to reflect WTO accession. In addition, carryover is being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63895, published on October 16, 2002; 67 FR 65956, published on October 29, 2002; 68 FR 7509, published on February 14, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on October 9, 2002; October 23, 2002; and February 7, 2003 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on June 13, 2003, you are directed to adjust the current limits for the following categories to reflect Macedonia's accession to the World Trade Organization (WTO), as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	adjusted twelve-month limit [1]
433	28,429 dozen.
434	11,417 dozen.
435	31,163 dozen.
443	181,069 numbers.
448	65,064 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–14965 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

June 9, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special swing, special shift, carryover, carryforward, and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63896, published on October 16 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 9, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on June 13, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Fabric Group	
218–220, 225–227, 313–326, 611–O [2], 613/614/615/617, 619 and 620, as a group	193,066,083 square meters equivalent.
Other specific limits	
237	608,922 dozen.
300/301	5,682,835 kilograms.
338/339	2,146,105 dozen.
340/640	2,190,188 dozen.
341/641	2,760,483 dozen of which not more than 1,026,503 dozen shall be in Category 341.
347/348	1,074,332 dozen.
351/651	496,069 dozen.
604	1,811,407 kilograms.
638/639	973,052 dozen.
645/646	496,865 dozen.
647/648	2,726,277 dozen of which not more than 1,993,206 dozen shall be in Category 647–K [3] and not more than 1,993,206 dozen shall be in Category 648–K [4]
Group II	
201, 224, 239pt [5], 332, 352, 359pt. [6], 360–362, 369pt. [7], 400–414, 433, 434, 436, 438–O [8], 440, 443, 444, 447, 448, 459pt. [9], 469pt. [10], 603, 618, 624–629, 633, 643, 644, 652, 659pt. [11], 666pt. [12], 845, 846 and 852, as a group	35,240,443 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[7] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[8] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.11.0070, 6110.12.2070, 6110.19.0070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[9] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[10] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[11] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[12] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–14963 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the United States - African Growth and Opportunity Act (AGOA)

June 10, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain cotton velvet fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

SUMMARY: On April 8, 2003 the Chairman of CITA received a petition from Crystal Apparel Limited. of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed cotton warp pile velvet fabrics (see Annex I for product specifications) classified in subheading 5801.25.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that apparel of such fabrics be eligible for preferential treatment under the AGOA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112 (b)(5)(B) of the AGOA, Section 1 of the Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. Pursuant to Executive Order No. 13191, the President's authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA is exercised by CITA.

On April 8, the Chairman of CITA received a petition from Crystal Apparel Limited. of Hong Kong and Sinotex Mauritius Limited. in Mauritius alleging that certain light- and medium-weight dyed cotton warp pile velvet fabrics (see Annex I for product specifications), classified in subheading 5801.25.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitioner requested quota- and duty-free treatment under the AGOA for apparel articles that are both cut and sewn in one or more AGOA beneficiary countries from such fabrics.

On April 14, 2003, CITA solicited public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On April 30, 2003, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

CITA has determined that certain light- and medium-weight dyed cotton warp pile velvet fabrics, classified in subheading 5801.25.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, can be supplied by the domestic industry in commercial quantities in a timely manner. Crystal Apparel Limited and Sinotex Mauritius Limited's request is denied.

Annex 1

Product Specifications:

1. Name: light-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 100 percent combed cotton
   Yarn: 230 g/m2 to 260 g/m2
   Construction:
   Woven Fabric - 96 x 98
   Warp - 42/2 ply + 42/2 ply
   Weft - 32 single yarn

   Woven Fabric - 96 x 102
   Warp - 42/2 ply + 60/2 ply
   Weft - 32 single yarn

2. Name: medium-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 97 to 98 percent cotton, up to 3 percent spandex yarn
   Yarn: 280 g/m2 to 330 g/m2
   Construction:
   Woven Fabric - 110 x 84
   Warp - 42/2 ply + 50/2 ply
   Weft - 30 single yarn + 40 denier spandex

   Woven Fabric - 126 x 84
   Warp - 42/2 ply + 50/2 ply
   Weft - 30 single yarn + 40 denier spandex

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–14964 Filed 6–12–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force Personnel Center.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Personnel Center, Personnel Procurement and Development Divisions, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by August 12, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to United States Air Force Personnel Center, Line Officer Programs Section, 550C Street West, Ste 10, Randolph AFB TX 78150.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call United States Air Force Personnel Center, Line Officer Programs Section, (210) 665–2102.

Title, Associated Form, and OMB Number: Application & Evaluation For Training Leading To A Commission In The United States Air Force, Air Force Form 56, OMB Number 0701–0001.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 21,000.

Number of Respondents: 7,000.

Responses Per Respondent: 1.

Average Burden Per Response: 180 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Information contained on Air Force Form 56 supports the Air Force's selection for officer training programs for civilian and military applicants. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected the individual cannot be considered for admittance to a commissioning program. Data from this form is used to select fully qualified persons for the training leading to commissioning. Data supports the Air Force in verifying the eligibility of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–14905 Filed 6–12–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Propellant Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel propellant formulation as described in U.S. Patent application "Amine Azide Propellant" (U.S. Patent Application No. 10/389885). Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, MD 21005–5425, telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15017 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Composite Debonding Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel composite debonding technology as described in U.S. Patent application "Article and Method for Controlled Debonding of Elements Using Shape Memory Alloy Actuators" (U.S. Patent Application No. 10/376629). Any license shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg., 459, Aberdeen Proving Ground, MD 21005–5425, telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15015 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning East Access Dental Field Operating and Treatment System Having Over-the-Patient Delivery

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/828,601 entitled "Easy Access Dental Field Operating and Treatment System Having Over-the-Patient Delivery," filed April 6, 2001. Foreign rights are also available (PCT/US02/02283). The United States Government, as

represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Derrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwin, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Dental treatment systems are systems which facilitate the delivery of dental services to patients. The application relates, in general, to portable dental treatment systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15019 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Enzymatic Polymerization of Anilines or Phenols Around a Template

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,569,651B1 entitled "Enzymatic Polymerization of Anilines or Phenols around a Template" issued May 27, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15014 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Microfluidized *Leishmania* Lysate and Methods of Making and Using Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/975,020 entitled "Microfluidized *Leishmania* Lysate and Methods of Making and Using Thereof," filed October 12, 2001. Foreign rights are also available (PCT/US01/31894). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates generally to microfluidized *Leishmania* lysate preparations. In particular, the present invention relates to microfluidized *Leishmania* lysate preparations for assays and immunogenic compositions.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15020 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Shaped Charge Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel shaped charge technology as described in U.S. Patent application "Shaped Charge Explosive Device and Method of Making Same" (U.S. Patent Application No. 10/421899). Any license shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg., 459, Aberdeen Proving Ground, MD 21005–5425, telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15016 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Steganography Technology for Exclusive, Partially Exclusive, or Non-Exclusive Licenses

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses relative to a novel stenography technology as described in U.S. Patent "Spread Spectrum Image Steganography" (U.S. Patent No. 6,557,103), April 29, 2003; Marvel, *et al.* Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg., 459, Aberdeen Proving Ground, MD 21005–5425, telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–15018 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Woodbridge River Basin, Middlesex County, NJ, Flood Control and Aquatic Ecosystem Restoration Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the President's Council of Environmental Quality (CEQ) Rules and Regulations, as defined and amended in 40 Code of Federal Regulations (CFR), Parts 1500–1508, the U.S. Army Corps of Engineers (USACE), New York District (District), is preparing a Draft Environmental Impact Statement (DEIS) to determine the feasibility of implementing flood damage protection and aquatic ecosystem restoration measures along the Woodbridge River Basin in Middlesex, NJ. The Woodbridge River Basin (Basin) is approximately 5 miles in length with a drainage area of approximately 10 miles. Tidal surges and inadequate channel capacities to contain increased stormwater runoff account for flooding problems within the Basin. The Basin has experienced numerous flood events that have incurred damages to homes, businesses and pubic infrastructure; the latest occurring in October of 1996 during which the Township of Woodbridge sustained damages in excess of $1 million. Direct impacts to the Basin's aquatic ecosystem as a result of urbanization include the loss of wetland acreage, floodplain encroachment, stream bank erosion, increased sedimentation and nutrient and pollutant loading. The District will develop and evaluate various structural and non-structural flood damage reduction measures and will investigate opportunities to restore aquatic ecosystem structure and functions.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Rightler, Project Biologist, Planning Division, U.S. Army Corps of Engineers, New York District, NY 10278–0090, (212) 264–9846 or *kimberly.a.rightler@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. This study is authorized by U.S. House of Representatives Resolution Docket 2552 dated May 1998.

2. *Scoping:* Public scoping meeting(s) are anticipated to occur in September 2003. Results from the public scoping meeting(s) with the District and Federal, state, and local agencies will be addressed in the DEIS. A separate notice, in local area newspapers, indicating the location, date and time of the scoping meeting(s) will be released at a later date and a scoping document will be prepared and made available prior to the scoping meeting(s). Parties interested in receiving notices of public scoping meeting(s) or copies of the scoping document should contact Ms. Rightler at the above address.

3. *Date of DEIS Release:* The DEIS is scheduled to be available April 2005.

Frank Santomauro,

Chief, Planning Division.

[FR Doc. 03–15021 Filed 6–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,976,284: Patterned Conducting Polymer Surfaces and Process for Preparing the Same and Devices Containing the Same, Navy Case No. 78,825.//U.S. Patent No. 5,828,432: Conducting Substrate, Liquid Crystal Device Made Therefrom and Liquid Crystalline Composition in Contact Therewith, Navy Case No. 77,014.// Navy Case No. 84,102: Highly Conducting Transparent Thin Polymers Films Formed from Double and Multiple Layers of Poly(3,4 Ethylene Dioxythiophene) and its Perivatives.// Navy Case No. 84,103: Highly Conducting and Transparent Thin Films Formed from New Fluorinated Perivatives of 3,4 Ethylene Dioxythiophene.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell,Ph.D., Head, Technology Transfer Office; NRL Code 1004,4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: June 9, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–14924 Filed 6–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Star Cyroelectronics

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Star Cyroelectronics, a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S, Patent No. 6,051,846 entitled "Monolithic Integrated High-Tc Superconductor-Semiconductor Structure" and U.S. Patent No. 6,165,801 entitled "Method for Making a Monolithic Integrated High-Tc Superconductor-Semiconductor Structure".

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Ward, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave. Room 103, San Diego, CA 92152–5765, telephone (619) 553–3823.

(Authority: 35 U.S.C. 207, 37 CFR part 404.7(a)).

Dated: June 4, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–14906 Filed 6–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), and Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Programs; Developing Hispanic-Serving Institutions (HSIs) Program

AGENCY: Department of Education.

ACTION: Notice reopening application deadline dates for certain applicants.

SUMMARY: The Secretary reopens the deadline dates for certain applications

for the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Programs announced in the **Federal Register** on January 31, 2003 (68 FR 5006), and for the Developing Hispanic-Serving Institutions Program announced in the **Federal Register** on January 29, 2003 (68 FR 4454). We are reopening the competitions for certain applicants due to conflicting information given at a Department-sponsored technical assistance workshop. At the workshop, potential applicants were given information about which parts of the application would not be included in the page limitation that conflicted with the information in the **Federal Register** notices. As a result of this confusion, we are allowing those applicants who submitted timely applications that exceeded the published page limit requirements to resubmit their applications by the deadline date below. The resubmitted applications must meet the page limit requirements published in the original closing date notices for the respective programs. Applicants whose original applications exceeded the page limit requirements who do not resubmit a new application that complies with the page limit requirements by the deadline below will not be considered for funding.

Deadline for Transmittal of Applications: Applications must be postmarked no later than June 23, 2003.

Transmittal of Applications: Resubmitted applications should be sent by hardcopy to the individuals and addresses noted below: Darlene Collins (Title III, Part A Programs), U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Or, Louis Venuto (Title V Program), U.S. Department of Education, 1990 K Street, NW , 6th floor, Washington, DC 20006–8513.

FOR FURTHER INFORMATION CONTACT: For title III, part A programs: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7576 or Thomas Keyes, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7577 or via Internet: *darlene.collins@ed.gov, thomas.keyes@ed.gov*.

For title V program: Louis Venuto, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8513. Telephone: (202) 502–7763 or via Internet: *louis.venuto@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: June 9, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–14951 Filed 6–12–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–69–001, et al.]

FPL Energy Seabrook, LLC, et al.; Electric Rate and Corporate Filings

June 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy Seabrook, LLC and FPL Energy New England Transmission, LLC

[Docket No. EC03–69–001]

Take notice that on May 30, 2003, FPL Energy Seabrook, LLC and FPL Energy New England Transmission, LLC submitted a notice of withdrawal of their joint application for authorization to transfer jurisdictional facilities filed on March 21, 2003, and their joint answer to protests and comments filed on April 28, 2003.

Comment Date: June 20, 2003.

2. U.S. Department of Energy, Bonneville Power Administration

[Docket No. EF03–2021–000]

Take notice that on June 3, 2004, the Bonneville Power Administration (Bonneville) submitted for filing Bonneville's proposed 2004 Transmission and Ancillary Services Rates. Bonneville requests that the Commission confirm and approve the rates pursuant to Sections 7(a)(2) and 7(I)(6) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839(a)(2) and 839e(I)(6), and Subpart B of part 300 of the Commission's regulations, 18 CFR part 300. Bonneville requests that the Commission grant interim approval of the proposed rates by September 30, 2003, followed by final approval, with the rates to be effective October 1, 2003 through September 30, 2005.

Comment Date: June 24, 2003.

3. New York Independent System Operator, Inc.

[Docket No. ER01–3001–006]

Take notice that on June 2, 2003, the New York Independent System Operator, Inc. (NYISO) submitted a report on the status of its demand side management programs and the status of the addition of new generation resources in New York State in compliance with the Commission's previous orders in the above-captioned proceeding.

The NYISO states it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: June 23, 2003.

4. Michigan Electric Transmission Company, LLC

[Docket No. ER03–688–001]

Take notice that on June 3, 2003, Michigan Electric Transmission Company, LLC submitted revisions to its proposed amendment to the "Project I Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan South Central Power Agency," to comply with the Federal Energy Regulatory Commission's May 19, 2003 Order in Docket No. ER03–688–000.

Comment Date: June 24, 2003.

5. Northeast Utilities Service Company

[Docket No. ER03–907–000]

Take notice that on May 30, 2003, Northeast Utilities Service Company (NUSCO), on behalf of its operating company affiliates, The Connecticut Light and Power Company, Wester Massachusetts Electric Company, Holyoke Power and Electric Company and Holyoke Water Power Company (the NU Companies) tenders for filing a Second Amendment (Second Amendment) to the Settlement Agreement approved by the Commission in 88 FERC • 61,006 (the Settlement) to extend the rates, terms and conditions of the Settlement for an additional period of sixty days to allow additional time to complete negotiations of amendments to underlying transmission service agreements.

NUSCO states that a copy of the filing has been mailed to the service list. NUSCO requests an effective date of May 30, 2003 and requests any waiver of the Commission 's regulations that may be necessary to permit such an effective date.

Comment Date: June 20, 2003.

6. Fulcrum Power Marketing LLC

[Docket No. ER03–908–000]

Take notice that on June 2, 2003, Fulcrum Power Marketing LLC petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment Date: June 23, 2003.

7. New Energy Partners, L.L.C.

[Docket No. ER03–909–000]

Take notice that on June 2, 2003, New Energy Partners, L.L.C. tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its Market Rate Tariff, designated as Rate Schedule FERC No. 1, and code of conduct, designated as Supplement No. 1 to Rate Schedule No. 1, both originally accepted for filing in Docket No. ER99–1812–000.

Comment Date: June 23, 2003.

8. New England Power Pool

[Docket No. ER03–910–000]

Take notice that on June 2, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance changes to NEPOOL Market Rule 1 and its Appendices. The Participants Committee requests an August 1, 2003 effective date for the filed changes.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: June 23, 2003.

9. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–911–000]

Take notice that on June 3, 2003, Deseret Generation & Transmission Co-operative, Inc. submitted a filing detailing a Supplemental 2002 Rebate to each of its six member cooperatives under Service Agreement Nos. 1 through 6 of FERC Electric Tariff, Original Volume No. 1.

Comment Date: June 24, 2003.

10. Perryville Energy Partners, L.L.C.

[Docket No. ER03–912–000]

Take notice that on June 3, 2003, Perryville Energy Partners, L.L.C. (Perryville) tendered for filing a First Revised Sheet No. 1 superseding Original Sheet No. 1 of its FERC Electric Tariff, Original Volume No.1. Perryville states that the revisions reflect the change in ownership that occurred June 20, 2002, and the resulting termination of Perryville's status as an affiliate of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company.

Comment Date: June 24, 2003.

11. Avista Corporation

[Docket No. ER03–913–000]

Take notice that on June 3, 2003, Avista Corporation (Avista) submitted a Notice of Cancellation of TXU Energy Trading Company, LP, formerly Enserch Energy Services, Inc., Rate Schedule No. 260.

Avista seeks all waivers necessary to allow the cancellation to be effective as of May 31, 2003. Avista also states that a copy of the filing has been provided to TXU Energy Trading Company.

Comment Date: June 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14922 Filed 6–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2233–004, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

June 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System, Operator, Inc., GridAmerica Participants

[Docket Nos. ER02–2233–004 and EC03–14–004]

Take notice that on May 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the GridAmerica Participants filed: (1) a Second Amended and Restated Appendix I ITC Agreement between GridAmerica LLC and the Midwest ISO; and (2) revised protocols describing the functions to be performed by GridAmerica, the Midwest ISO and the GridAmerica Companies pursuant to the May 15, 2003 Order of the Federal Energy Regulatory Commission, Midwest Independent Transmission System Operator Inc., 103 FERC • 61,178 (2003).

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners.

the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: June 20, 2003.

2. Southern Company Services, Inc.

[Docket No. ER03–355–003]

Take notice that on May 30, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), resubmitted one rollover transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Southern Companies state that the agreement is for firm point-to-point rollover transmission service with Oglethorpe Power Corporation (OPC) (First Revised Service Agreement No. 431), and it is being refiled to comply with the Commission's Order in this proceeding dated May 2, 2003.

Comment Date: June 20, 2003.

3. Devon Power LLC

[Docket No. ER03–563–007]

Take notice that on May 30, 2003, ISO New England Inc., submitted a compliance filing in accordance with the Commission's April 25, 2003 Order in Docket No. ER03–563–000.

ISO New England Inc., stated that copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: June 20, 2003.

4. Midwest Independent Transmission System Operator, Inc., GridAmerica Companies

[Docket Nos. ER03–580–002 and EL03–119–002]

Take notice that on May 30, 2003, the GridAmerica Companies and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed revisions to the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 103 FERC ¶ 61,090 (2003).

The Applicants have requested that the proposed revisions become effective upon the commencement of service over the GridAmerica transmission facilities under the Midwest ISO OATT.

The Applicants have also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Applicants state that they have electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Applicants will provide hard copies to any interested parties upon request.

Comment Date: June 20, 2003.

5. FPL Energy New England Transmission, LLC

[Docket No. ER03–809–000]

Take notice that on May 30, 2003, FPL Energy New England Transmission, LLC submitted a Notice of Withdrawal of the proposed interconnection agreement filed on May 2, 2003.

Comment Date: June 20, 2003.

6. NJR Natural Energy Company

[Docket No. ER03–892–000]

Take notice that on May 27, 2003, NJR Natural Energy Company (NJRNE) tendered for filing a Notice of Cancellation of its FERC Electric Rate Schedule No. 1, which provides for the purchase and resale of electricity at market-based rates.

Comment Date: June 17, 2003.

7. Central Vermont Public Service Corporation

[Docket No. ER03–893–000]

Take notice that on May 30, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 2002 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which Central Vermont Public Service Corporation sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Actual 2002 Cost Report supports a refund to the Customer in the amount of $202,975.01, including interest, as provided by the RS–2 Rate Schedule. The Actual 2002 Cost Report reflects changes to the RS–2 Rate Schedule which were approved by the Commission's June 6, 1989 Order in Docket No. ER88–456–000.

CVPS states that copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment Date: June 20, 2003.

8. New England Power Pool

[Docket No. ER03–894–000]

Take notice that on May 29, 2003, the New England Power Pool (NEPOOL), jointly with ISO New England Inc. (the ISO) submitted for filing the Hydro-Quebec Interconnection Capability Credit (HQICC) values established by the Participants Committee pursuant to the Restated NEPOOL Agreement for the 2003/2004 NEOOL Power Year. This filing is made pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824(d), in accordance with the Commission's direction in the April 30, 2003 order on rehearing in Docket Nos. EL03–25–001, –002, and –003, *NSTAR Electric & Gas Corporation, et al.* v. *New England Power Pool*, 103 FERC ¶ 61,093. A June 1, 2003 effective date is requested for implementation of these HQICC values. NEPOOL and the ISO have also requested expedited Commission action with respect to this filing.

NEPOOL states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: June 19, 2003.

9. White Pine Copper Refinery, Inc.

[Docket No. ER03–895–0000]

Take notice that on May 30, 2003, White Pine Copper Refinery, Inc. (White Pine) petitioned the Commission for acceptance, on a limited and temporary basis, of White Pine's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

White Pine states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. White Pine also states that it is not in the business of generating or transmitting electric power.

Comment Date: June 13, 2003.

10. Southwest Power Pool, Inc.

[Docket No. ER03–896–000]

Take notice that on May 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Firm Point-to-Point Transmission Service with Kansas Municipal Energy Agency (KMEA). SPP seeks an effective date of May 1, 2003 for the service agreement.

SPP states that KMEA was served with a copy of this filing.

Comment Date: June 20, 2003.

11. Southwest Power Pool, Inc.

[Docket No. ER03–897–000]

Take notice that on May 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d/b/a Westar Energy (Westar). SPP seeks an effective date of May 1, 2003 for the service agreement.

SPP states that Westar was served with a copy of this filing.

Comment Date: June 4, 2003.

12. Bangor-Hydro Electric Company

[Docket No. ER03–898–000]

Take notice that on May 30, 2003, Bangor-Hydro Electric Company (BHE) submitted for filing proposed revisions to its open access transmission tariff (OATT) that respond to the Maine Public Utilities Commission's (MPUC) request that BHE coordinate retail rate changes with BHE's annual distribution rate changes. The effect of the proposed revisions is to change the effective date for BHE's annual retail rate changes (calculated pursuant to the Rate Formula in BHE's OATT) from June 1 to July 1. BHE requests an effective date of June 1, 2003 for the proposed tariff revisions.

BHE states that copies of this filing were served on BHE's jurisdictional customers and affected state commissions, including the MPUC.

Comment Date: June 20, 2003.

13. New England Power Pool

[Docket No. ER03–899–000]

Take notice that on May 30, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include SESCO Enterprises, LLC (SESCO). The Participants Committee requests a June 1, 2003 effective date for commencement of participation in NEPOOL by SESCO.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: June 20, 2003.

14. Duke Energy Corporation

[Docket No. ER03–900–000]

Take notice that on May 30, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing executed Service Agreements between Duke and Split Rock Energy LLC for Firm and Non-Firm Point-to-Point Transmission Service under Duke's Open Access Transmission Tariff. Duke seeks an effective date for the Service Agreements of May 12, 2003.

Comment Date: June 20, 2003.

15. Midwest Independent Transmission

[Docket No. ER03–901–000 System Operator, Inc.]

Take notice that on May 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed amendments to transmission service agreements (Service Agreements) between: (1) Midwest ISO and the Michigan Public Power Agency (MPPA), for itself and as agent for Wolverine Power Supply Cooperative, Inc. (Wolverine), for Network Integration Transmission Service (NITS) for load located within the Michigan Electric Transmission Company, LLC (METC) pricing zone; (2) the Midwest ISO and MPPA for Non-Firm Point-to-Point Transmission Service; (3) the Midwest ISO and MPPA for Short-Term Firm Point-to-Point Transmission Service; (4) the Midwest ISO and MPPA for Long-Term Firm Point-to-Point Transmission Service; (5) the Midwest ISO and City of Holland (Holland) for Long-Term Firm Point-to-Point Transmission Service; (6) the Midwest ISO and Holland for Short-Term Firm Point-to-Point Transmission Service and (7) the Midwest ISO and Holland for Non-Firm Point-to-Point Transmission Service under the Midwest ISO open access transmission tariff (OATT or Tariff). Midwest ISO states that the Service Agreements amend the existing agreements between those parties, and will allow for the recovery of certain charges historically recovered from these customers that were omitted from the current versions of the Service Agreements currently on file with the Commission.

The Applicants have also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Applicants states that they have electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO indicates that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Applicants states that they will provide hard copies to any interested parties upon request.

Comment Date: June 20, 2003.

16. Commonwealth Edison Company

[Docket No. ER03–902–000]

Take notice that on May 30, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) seven Service Agreements entered into between ComEd and Wisconsin Electric Power Marketing and associated Dynamic Scheduling Agreement entered into between ComEd and Wisconsin Electric Power Company under ComEd's Open Access Transmission Tariff.

ComEd requests effective dates of June 1, 2003, and June 1, 2004, and accordingly, requests waiver of the notice requirements.

ComEd states that copies of the filing were served upon Wisconsin Electric Power Marketing, Wisconsin Electric Power Company, the Wisconsin Public Service Commission and the Illinois Commerce Commission.

Comment Date: June 20, 2003.

17. Pacific Gas and Electric Company

[Docket No. ER03–903–000]

Take notice that on May 30, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing the 2001 true-up to rates pursuant to Contract No. 14–06–200–2948A (Contract 2948A), PG&E First Revised Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

PG&E states that copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment Date: June 20, 2003.

18. Riverside Canal Power Company, Inc.

[Docket No. ER03–904–000]

Take notice that on May 30, 2003, Riverside Canal Power Company (Riverside) filed a Notice of Cancellation of its FERC Electric Tariff, First Revised Volume No. 1. Riverside indicates that it has been unmanned and the units have been offline since October 2000. Riverside requests that its Notice of Cancellation be effective as of May 29, 2003.

Riverside states that copies of the filing were served upon the parties of record in this docket.

Comment Date: June 20, 2003.

19. Xcel Energy Services, Inc.

[Docket No. ER03–905–000]

Take notice that on May 30, 2003, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing an Exhibit A to the Wholesale Full Requirements Electric Power Service Agreement between SPS and Farmers' Electric Cooperative, Inc. of New Mexico (Farmers').

XES requests that this agreement become effective on May 30, 2003.

Comment Date: June 30, 2003.

20. Southwestern Electric Power Company

[Docket No. ER03–906–000.

Take notice that on May 30, 2003, Southwestern Electric Power Company (SWEPCO) submitted for filing actuarial reports in support of the amounts to be collected in SWEPCO's 2002 actual and 2003 projected formula rates for post-employment benefits other than pensions as directed by the Statement of Financial Accounting Standard No. 106 (SFAS 106), issued by the Financial Accounting Standards Board, and the collection in such formula rates of other post-employment benefits as directed by SFAS 112.

SWEPCO seeks an effective date of January 1, 2002 and, accordingly, requests waiver of the Commission's notice requirements. SWEPCO states it has served copies of the transmittal letter on all of its formula rate customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment Date: June 20, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14923 Filed 6–12ndash;03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Loveland Area Projects Transmission and Ancillary Services

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing rates for Loveland Area Projects (LAP) transmission and ancillary services. Current rates have been extended through March 31, 2004. The proposed rates, which are formula based, will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. Rate impacts are detailed in a brochure to be made available to all interested parties. The proposed rates are scheduled to go into effect on January 1, 2004, and will remain in effect through December 31, 2008. This **Federal Register** notice begins the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end September 11, 2003. Western will present a detailed explanation of the proposed rates at the following public information forums:

1. July 14, 2003, 9 a.m. MDT, Denver, Colorado.

2. July 15, 2003, 1 p.m. CDT, Lincoln, Nebraska.

Western will receive oral and written comments at the following public comment forum:

3. August 6, 2003, 11 a.m. MDT, Denver, Colorado.

ADDRESSES: The public information forums will be held at the following locations:

1. Denver, Radisson Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado.

2. Lincoln, Southeast Community College, 11th and O Street, Lincoln, Nebraska.

The public comment forum will be held at the following location:

3. Denver, Radisson Stapleton Plaza Hotel, 3333 Quebec, Denver, Colorado.

Written comments should be sent to: Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, e-mail: *LAPTransAdj@wapa.gov*. Official comments received via letter and e-mail, as well as other pertinent information, will be posted to our Web site located at *http://www.wapa.gov/rm/rm.htm* after the comment period has closed. To assure consideration of written comments, Western must receive them by the end of the consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7442, e-mail: *dpayton@wapa.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Rates for LAP Transmission

Western does not propose to change the formula-based rate methodology for calculating the revenue requirement for Network, Firm, and Non-Firm transmission services. Rates for these services will be recalculated each year to incorporate the most recent financial and load information and will be applicable to all transmission customers.

Proposed Revenue Requirement for Transmission Service

An annual fixed charge rate methodology is used to determine the revenue requirement to be recovered from Network, Firm, and Non-Firm transmission services. The annual transmission costs included are operation and maintenance expenses, administrative and general expenses, interest expense, and depreciation expense. Transmission expenses, which increase transmission capacity, are also included in the revenue requirement. These expenses are estimated to be $500,000 for FY 2004.

Proposed Rate for Network Transmission Service

The methodology for calculating the Network Transmission Service rate is unchanged from Western's previously approved filing with the Federal Energy Regulatory Commission (FERC). The current methodology derives a network customer's monthly charge by multiplying a customer's load ratio share times one-twelfth (1/12) of the annual network transmission revenue requirement. The proposed revenue requirement for Fiscal Year 2004 is decreasing from $40,570,808 to $38,776,237 or 4.4 percent, based on FY 2002 financial data.

Proposed Rate for Firm Point-to-Point Transmission Service

The proposed rate for Firm Point-to-Point Transmission Service is decreasing from $2.88 per kilowattmonth (kW-month) to $2.68 per kW-month, or 6.9 percent. The proposed rate for this service is the annual revenue requirement for transmission divided by the 12-month coincident monthly peak (12–cp) of the LAP transmission system, and divided again by 12 months. The 12-cp for the LAP transmission system for Fiscal Year 2004, is 1,206,771 kW, based on FY 2002 load data.

Proposed Rate for Non-Firm Point-to-Point Transmission Service

Non-Firm Point-to-Point Transmission Service is available for periods ranging from 1 hour to 1 month. The proposed maximum rate is 3.75 mills/kWh.

Proposed Rates for Ancillary Services

There is no change in the proposed formula-based rate methodologies for calculating revenue requirements for Scheduling, System Control, and Dispatch Service, or the Reactive Supply and Voltage Control Service from Generation Sources. The rates for Operating Reserves, both Supplemental and Spinning, are also unchanged.

The proposed rates do include changes to the formula-based rate methodologies for Regulation and Frequency Response Service and Energy Imbalance Service as outlined below. Additionally, a separate rate for Regulation and Frequency Response Service for Intermittent Renewable Resources has been added.

Two ancillary service rates, not part of the original portfolio of ancillary services filed in 1998, are also being proposed under this filing: (1) Unauthorized Use of Transmission and Control Area Resources service, and (2) Transmission Losses service.

The rates for all of these services, as proposed, are applicable to all customers within the Western Area Colorado Missouri (WACM) control area.

Proposed Rate for Scheduling, System Control, and Dispatch Service

The rate methodology for calculating the revenue requirement for the Scheduling, System Control, and Dispatch Service is unchanged from Western's previously approved filing with FERC. However, the charging basis for this rate will change from per-schedule-per-day, to per-tag-per-day. The rate for this service, as proposed, is applicable to those operating within the control area with schedules/tags that do not include any segment of the Federal transmission system.

The revenue requirement for this service in Fiscal Year (FY) 2004 will decrease from $3,970,226 to $3, 796,470, a decrease of 4 percent. This, combined with the change in the charging basis from schedule to tag, will reduce the rate from $43.09 per schedule per day, to $25.22 per tag per day.

Western will continue to apply this rate against the number of daily tags submitted for transmission transactions that are off the Federal system; *i.e.*, other than LAP or Colorado River Storage Project transmission, and charge the transmission provider.

Proposed Rate for Reactive Supply and Voltage Control Service From Generation Sources

The rate methodology for calculating the revenue requirement for the Reactive Supply and Voltage Control Service from Generation Sources is unchanged from Western's previously approved filing with FERC. The rate is applicable to all transmission transactions within WACM. Customers agreeing to respond to WACM's request for Reactive Supply and Voltage Control Service from Generation Sources will receive a waiver from this charge.

The revenue requirement for this service in FY 2004 is proposed to increase from $1,644,071 to $1,682,672, or 2 percent. In addition, the percentage of LAP capacity used to provide Reactive Supply and Voltage Control Service from Generation Sources is also proposed to increase from 2.3 percent to 2.5 percent, resulting in a slight increase in the FY 2004 rate, from $0.103/kW-month to $0.108/kW-month, or 4.9%.

Proposed Rate for Regulation and Frequency Response Service

Western proposes several changes to the rate methodology for Regulation and Frequency Response Service. The rate is applicable to all transmission transactions with load served within WACM.

Western is proposing a revised annual operational analysis to more accurately determine the amount of capacity needed to meet WACM's regulation requirements. The current analysis determined that WACM needs 75 megawatts (MW) or regulating capacity. Due to the limited availability of hydroelectric capacity, Western has determined that purchases must become a substantial part of the revenue requirement for regulation. Therefore, Western is proposing a mix of Federal resources and non-Federal purchases to provide this capacity. The amount of regulation and cost of these purchases will be revised annually to accurately reflect the capacity needed to supplement hydroelectric resources. The unit cost and revenue requirement for Federal facilities will continue to be calculated each year using the existing methodology's annual fixed charge rate.

Using the proposed methodology, the revenue requirement for Regulation and Frequency Response Service will increase from $3,727,782 to $5,031,873, an increase of 35 percent. The current rate for this service is $0.164/kW-month, and the proposed rate will be $0.185/kW-month, an increase of 13 percent.

Proposed Rate for Regulation and Frequency Response Service for Intermittent Renewable Resources

Western supports the installation of renewable sources of energy, but recognizes certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. These fluctuations require that a rate be developed and implemented that will recover the expenses associated with such variation in capacity. Therefore, Western is also proposing a rate for the regulation requirement associated with intermittent renewable resources.

The rate would be derived from the revenue requirement established for load-based Regulation and Frequency Response Service, $5,031,873; however, the basis would be a charge per unit of capacity. The rate is proposed to be $5.59/kW-month, and would be applied against the amount of capacity used.

An analysis done by Western to measure the variation of intermittent renewable resources within WACM indicates that 27 percent of the nameplate capacity of those units is required for regulation.

Western plans to offer resource owners a credit for more closely matching generation schedules with

actual output. Also, Western is proposing additional charges for resource owners utilizing more than the 27 percent of nameplate capacity.

Proposed Rate for Energy Imbalance Service

No significant changes are proposed for Energy Imbalance Service, but minor modifications are being proposed as a result of public feedback since implementation in July 2002. The rate is applicable to customers with resources and obligations within WACM. Three modifications to the existing rate are being proposed.

The first proposed modification is the expansion of the minimum deviation from 2 MW TO 4 MW.

The second proposed modification is that the hourly energy imbalance will be rounded to the nearest whole number; *e.g.*, 0.4 and below will be rounded down to the nearest whole number, and 0.5 and above will be rounded up to the nearest whole number.

The third proposed modification is a reduction of the penalty associated with excursions for over or under deliveries outside of the bandwidth. The penalty will be reduced from 50 percent to 25 percent.

Western will continue to use a ±5 percent bandwidth, the application of aggregate control area pricing to under or over deliveries within the bandwidth, and LAP average real-time pricing for Energy Imbalance Service.

Proposed Rates for Operating Reserves Service—Spinning and Supplemental

This proposed rate is unchanged. Western is only able to meet its own internal requirements for reserves, and has no long-term reserves available for sale. At a customer's request, Western will purchase and pass through the cost of reserves and any activation energy, plus a fee for administration. For all reserves purchased, the customer will be responsible for purchasing adequate transmission to support the purchase.

Proposed Rate for Unauthorized Use of Transmission and Control Area

Resources Service

This rate, currently approved as a rate for short-term sales by Western's Administrator through March 31, 2004, is proposed to be included in Western's ancillary services portfolio.

The proposed rate will be applicable to all transmission customers utilizing Western-managed facilities without adequate reservation. The charge will be 150 percent of the transmissions service at issue; *i.e.*, hourly, daily, weekly, monthly, with a maximum levy of a monthly charge.

Proposed Rate for Transmission Losses Service

This rate was also approved as a rate for short-term sales by Western's Administrator through March 31, 2004, and is proposed for transition into Western's ancillary service portfolio.

No significant changes are proposed for this service. The only modification will be a pricing change to calculate the cost of the loss energy. Currently, the pricing used for this valuation is Palo-Verde on- and off-peak daily pricing. Western proposes changing to LAP average real-time purchase prices.

These transmission and ancillary service rates for LAP are being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00, approved December 6, 2001, the DOE Secretary of Energy delegated (1) the authority to develop power and transmission rates on a nonexclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Comparison of Rates and Revenue Requirements

	Proposed January 2004 rate	FY 2003 rate
Transmission:		
Point-to-Point Rates:		
Firm Transmission	$2.68/kW-month	$2.88/kW-month.
Non-Firm Transmission	3.75 mills/kWh	3.75 mills/kWh.
Network Revenue Requirement	$38,776,237	$40,570,808.
Scheduling, System Control, and Dispatch Service.	$25.22/tag/day Revenue Requirement: $3,796,470.	$43.09/schedule/day Revenue Requirement: $3,970,226.
Reactive Supply and Voltage Control Service from Generation Sources.	$0.108/kW-month Revenue Requirement: $1,682,672.	$0.103/kW-month Revenue Requirement: $1,644,071.
Regulation and Frequency Response Service	$0.185/kW-month Revenue Requirement $5,031,873.	$0.164/kW-month Revenue Requirement: $3,727,782.
Regulation and Frequency Response Service for Intermittent Renewable Resources.	$5.59/kW-month Revenue Requirement: $5,031,873.	No rate developed.
Energy Imbalance Service	Bandwith: ±5% Minimum Deviation: 4 MW Outside Bandwidth Penalty: 25% Pricing: LAP average real-time purchase/sales pricing with defaults.	Bandwith: ±5%. Minimum Deviation: 2 MW. Outside Bandwidth Penalty: 50%. Pricing: LAP average real-time purchase/sales pricing with defaults.
Operating Reserves Service (Spinning/Supplemental).	None available for long-term purchase. Western will offer to purchase and pass through cost, plus 10% for administration.	None available for long-term purchase. Western will offer to purchase and pass through cost, plus 10% for administration.
Unauthorized Use of Transmission and Control Area Resources Service.	150% of monthly demand charge for service-at-issue.	150% of monthly demand charge for service-at-issue.
Transmission Losses Service	Assessed WACM postage-stamp loss rate to all scheduled transmission transactions. Pricing: LAP average real-time purchase/sale pricing with defaults.	Assessed WACM postage-stamp loss rate to all scheduled transmission transactions. Pricing: Palo Verde daily on-/off-peak pricing.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents made or kept by Western in developing the proposed rates are available for inspection and copying at the Rocky Mountain Customer Service Regional Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents, as well as supporting information, are also available on our website at the following address: *http://www.wapa.gov/rm/rm.htm*.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: May 30, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–14947 Filed 6–12–03; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Loveland Area Projects Firm Electric Service

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing revised rates for Loveland Area Projects (LAP) firm electric service. Current rates, under Rate Schedule L–F4, have been extended through March 31, 2004. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense and repayment of required investment within the allowable period. The rate impacts will be detailed in a brochure to be made available to all interested parties. The proposed rates, under Rate Schedule L–F5, are scheduled to go into effect on January 1, 2004, and will remain in effect through December 31, 2008. Publication of this **Federal Register** notice begins the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end September 11, 2003.

Western will present a detailed explanation of the proposed rates at the following public information forums:

1. July 14, 2003, 1 p.m. MDT in Denver, Colorado.

2. July 15, 2003, 9 a.m. CDT in Lincoln, Nebraska.

Western will receive oral and written comments at the following public comment forum:

1. August 6, 2003, 1 p.m. MDT in Denver, Colorado.

ADDRESSES: The public information forums will be held at the following locations:

1. Denver, Radisson Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado.

2. Lincoln, Southeast Community College, 11th and O Street, Lincoln, Nebraska.

The public comment forum will be held at the following location:

1. Denver, Radisson Stapleton Plaza Hotel, 3333 Quebec, Denver, Colorado.

Written comments should be sent to: Joel K. Bladow, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, or email: *lapfirmadj@wapa.gov*. Official comments received via letter and e-mail will be posted to our Web site located under the "2004 Rate Adjustments" section at *http://www.wapa.gov/rm/rm.htm* after the close of the 90-day consultation and comment period. Western must receive written comments by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7442, email: *dpayton@wapa.gov*.

SUPPLEMENTARY INFORMATION: The proposed rates for LAP firm electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance, and other annual expenses. The projected annual revenue requirement for firm electric service is allocated equally between capacity and energy.

The Department of Energy (DOE) Deputy Secretary approved Rate Schedule L–F4 for LAP firm electric service on an interim basis on January 6, 1994 (Rate Order No. WAPA–61, 59 FR 3339, January 21, 1994), and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on a final basis on July 14, 1994, under FERC Docket No. EF94–5181–000 (68 FERC 62,040). Rate Schedule L–F4 was approved for a 5-year period beginning on February 1, 1994, ending on January 31, 1999. Rate Order No. WAPA–82 extended the existing rate for 2 years, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–89 extended the rate again beginning February 1, 2001, through September 30, 2003. FERC confirmed and approved the rate schedule on August 4, 2000, under FERC Docket No. EF00–5181–000 (92 FERC 62,093). Rate Order No. WAPA–103 extended the rate a third time beginning October 1, 2003, through March 31, 2004.

Under Rate Schedule L-F4, the composite rate effective on October 1, 1994, is 21.70 mills per kilowatthour (mills/kWh); the energy rate is 10.85 mills/kWh and the capacity rate is $2.85 per kilowattmonth (kW-month). Under Rate Schedule L–F5, the proposed rates for LAP firm electric service will result in an overall composite rate increase of approximately 9.7 percent effective on January 1, 2004. The proposed rates for LAP firm electric service are listed in Table 1.

TABLE 1.—PROPOSED FIRM ELECTRIC SERVICE REVENUE REQUIREMENT AND RATES

Firm electric service	Existing revenue requiremer trates	Proposed rev req./rates Jan. 1, 2004	Percent change
LAP Revenue Requirement	$44.3 million	$48.6 million	9.7
Total LAP Composite Rate	21.70 mills/kWh	23.81 mills/kWh	9.7
Firm Energy	10.85 mills/kWh	11.91 mills/kWh	9.8
Firm Capacity	2.85/kW-month	3.14/kW-month	10.2

Although a one-step rate adjustment method is the option being proposed, Western is interested in receiving comments on a two-step rate adjustment option. Under a two-step method, the rates for LAP firm electric service will result in an overall composite rate increase of approximately 7.8 percent effective on January 1, 2004, and another 1.9 percent effective on October 1, 2004, for a total increase of approximately 9.7 percent. The rates under this option for LAP firm electric service are listed in Table 2.

TABLE 2.—TWO-STEP OPTION—FIRM ELECTRIC SERVICE REVENUE REQUIREMENT AND RATES

Firm electric service	Existing rates	First step rates Jan. 1, 2004	Percent change	Second step rates Oct. 1, 2004	Percent change
LAP Revenue Requirement	$44.3 million	$47.7 million	7.7	$48.6 million	1.9
Total LAP Composite Rate	21.70 mills/kWh	23.39 mills/kWh	7.8	23.84 mills/kWh	1.9
Firm Energy	10.85 mills/kWh	11.69 mills/kWh	7.7	11.92 mills/kWh	2.0
Firm Capacity	2.85/kW-month	3.08/kW-month	8.1	3.14/kW-month	1.9

Since the proposed rates constitute a major adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, Western will hold public information forums and a public comment forum. After review of public comments, and possible amendments or adjustments, Western will recommend the proposed rates for approval on an interim basis by the DOE Deputy Secretary.

These firm electric service rates for LAP are being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00, approved December 6, 2001, the Secretary of Energy delegated (1) the authority to develop power and transmission rates on a nonexclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents made or kept by Western in developing the proposed rates are available for inspection and copying at the Rocky Mountain Regional Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents, as well as supporting information, are also available on our Web site under the "2004 Rate Adjustments" section located at *http://www.wapa.gov/rm/rm.htm*.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: May 30, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–14948 Filed 6–12–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Pick-Sloan Missouri Basin Program-Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing revised rates for Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm electric and firm peaking power service. Current rates, under Rate Schedules P–SED–F6 and P–SED–FP6, have been extended through March 31, 2004. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The rate impacts will be detailed in a brochure to be made available to all interested parties. The proposed rates, under Rate Schedules P–SED–F7 and P–SED–FP7, are scheduled to go into effect on January 1, 2004, and will remain in effect through December 31, 2008. Publication of this **Federal Register** notice begins the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end September 11, 2003. Western will present a detailed explanation of the proposed rates at public information forums. The public information forum dates are:

1. July 14, 2003, 1 p.m. to 4 p.m. MDT, Denver, CO.

2. July 15, 2003, 9 a.m. to 12 noon CDT, Lincoln, NE.

3. July 16, 2003, 9 a.m. to 12 noon CDT, Sioux Falls, SD.

4. July 17, 2003, 9 a.m. to 12 noon CDT, Fargo, ND.

Western will receive oral and written comments at public comment forums. The public comment forums will be held on the following dates:

1. August 6, 2003, 1 p.m. to 4 p.m. MDT, Denver, CO.

2. August 7, 2003, 9 a.m. to 12 noon CDT, Sioux Falls, SD.

Western will receive written comments anytime during the consultation and comment period.

ADDRESSES: Written comments should be sent to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, email: *ugp2004rateadj@wapa.gov*. Information pertaining to the rate process will be posted on our Web site at *http://www.wapa.gov/ugp/rates/2004RateAdj/Default.html*. Official comments received via letter and e-mail, will be posted to our Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to be assured consideration.

The public information forum locations are:

1. Denver—Radisson Stapleton Plaza, 3333 Quebec Street, Denver, CO.

2. Lincoln—Southeast Community College (1st Floor of the Energy Plaza), 11th and O Street, Lincoln, NE.

3. Sioux Falls—Ramkota Hotel and Conference Center, 2400 North Louise Avenue, Sioux Falls, SD.

4. Fargo—Doublewood Inn, 3333 13th Avenue South, Fargo, ND.

The public comment forum locations are:

1. Denver—Radisson Stapleton Plaza, 3333 Quebec Street, Denver, CO.

2. Sioux Falls—Ramkota Hotel and Conference Center, 2400 North Louise Avenue, Sioux Falls, SD.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7394, email: *riehl@wapa.gov*.

SUPPLEMENTARY INFORMATION: The proposed rates for P-SMBP-ED firm electric and firm peaking service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance expense, and other expenses. The projected annual revenue requirement for firm electric service is allocated equally between capacity and energy.

The Department of Energy (DOE) Deputy Secretary approved Rate Schedules P–SED–F6 and P–SED–FP6 for P–SMBP–ED firm electric and firm peaking service on January 6, 1994 (Rate Order No. WAPA–60, 59 FR 3348, January 21, 1994), and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedules on July 14, 1994, under FERC Docket No. EF94–5031–000 (68 FERC 62,040). Rate Schedules P–SED–F6 and P–FED–FP6 were approved for a 5-year period beginning on February 1, 1994, ending on January 31, 1999. Rate Order No. WAPA–83 extended the rate for 2 years, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–90 extended the rate again beginning February 1, 2001, through September 30, 2003. Rate Order No. WAPA–102 extended the rate a third time beginning October 1, 2003, through March 31, 2004.

Under Rate Schedule P–SED–F6 , the second step of the composite rate effective on October 1, 1994, is 14.23 mills per kilowatthour (mills/kWh), the energy rate is 8.32 mills/kWh and the capacity rate is $3.20 per kilowattmonth (kW month). Under Rate Schedule P–SED–F7, the proposed rates for P–SMBP–ED firm electric service will result in an overall composite rate increase of approximately 15.4 percent and the firm peaking rate will increase approximately 15.6 percent effective on January 1, 2004. The proposed rates for P–SMBP–ED firm electric and firm peaking service are listed in Table 1.

TABLE 1.—PROPOSED FIRM ELECTRIC SERVICE REVENUE REQUIREMENT AND RATES

Firm electric service	Existing rates	Proposed rates Jan. 1, 2004	Percent change
P–SMBP–ED Revenue Requirement	$135.2 million	$159.2 million	17.8
P–SMBP–ED Composite Rate	14.23 mills/kWh	16.42 mills/kWh	15.4
Firm Capacity	$3.20/kW month	$3.70/kW month	15.6
Firm Energy	8.32 mills/kWh	9.57 mills/kWh	15.0
Tiered > 60 Percent Load Factor	3.38 mills/kWh	7.23 mills/kWh	113.9
Firm Peaking Capacity	$3.20/kW month	$3.70/kW month	15.6
Firm Peaking Energy[1]	8.32 mills/kWh	9.57 mills/kWh	15.0

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

Although a one-step rate adjustment is the option being proposed, Western is interested in receiving comments on a two-step rate adjustment option. Under a two-step adjustment, the rates for P–SMBP–ED firm electric service will result in an overall composite rate increase of approximately 12.3 percent effective on January 1, 2004, and another 3.3 percent effective on October 1, 2004, for a total increase of approximately 15.6 percent. The rates under this option for P–SMBP–ED firm electric service are listed in Table 2.

TABLE 2.—TWO-STEP OPTION—FIRM ELECTRIC SERVICE REVENUE REQUIREMENT AND RATES

Firm electric service	Existing rates	First step rates Jan. 1, 2004	Percent change	Second step rates Oct. 1, 2004	Percent change
P–SMBP–ED Revenue Requirement	$135.2 million	$154.9 million	14.6	$159.5 million	3.4
P–SMBP–ED Composite Rate	14.23 mills/kWh	15.98 mills/kWh	12.3	16.45 mills/kWh	3.3
Firm Capacity	$3.20/kW month	$3.60/kW month	12.5	$3.71/kW month	3.4
Firm Energy	8.32 mills/kWh	9.31 mills/kWh	11.9	9.58 mills/kWh	3.3
Tiered > 60 Percent Load Factor	3.38 mills/kWh	7.23 mills/kWh	113.9	7.23 mills/kWh	0.0
Firm Peaking Capacity	$3.20/kW month	$3.60/kW month	12.5	$3.71/kW monrh	3.4
Firm Peaking Energy[1]	8.32 mills/kWh	9.31 mills/kWh	11.9	9.58 mills/kWh	3.3

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

Since the proposed rates constitute a major adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, Western will hold both a public information forum and a public comment forum. After review of public comments, and possible amendments or adjustments, Western will recommend the proposed rates for approval on an interim basis by the DOE Deputy Secretary.

These firm electric service rates for P–SMBP–ED are being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00, approved December 6, 2001, the DOE Secretary of Energy delegated: (1) The authority to develop power and transmission rates on a nonexclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents made or kept by Western in developing the proposed rates are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on our Web site under the "2004 Rate Adjustment" section located at *http://www.wapa.gov/ugp/rates/2004RateAdj/Default.htm*.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: May 30, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–14949 Filed 6–12–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Order Confirming and Approving an Extension of the Transmission Service Rate Schedules—Rate Order No. WAPA–100

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED) Transmission Service Rate Schedules (UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1 of Rate Order No. WAPA–79, through September 30, 2005. The existing Transmission Service Rate Schedules will expire on July 31, 2003. These Transmission Service Schedules contain formulary rates that are recalculated from yearly updated financial and load data. Rate Order No. WAPA–79 is extended under Rate Order No. WAPA–100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Power Marketing Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7388, or e-mail *riehl@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00 effective December 6, 2001, the Secretary of Energy delegated (1) The authority to develop power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in rate adjustments at 10 CFR part 903, Western's P–SMBP–ED Transmission Service Rate Schedules were submitted to FERC for confirmation and approval on August 3, 1998. On November 25, 1998, in Docket No. EF98–5031–000 at 85 FERC ¶ 61,273, the FERC issued an order confirming, approving, and placing into effect on a final basis the current Transmission Service Rate Schedules for the P–SMBP–ED. The FERC issued an order denying rehearing and rejecting an untimely request for rehearing on the Transmission Service Rate Schedules on April 12, 2002, in Docket No. EF98–5031–001 at 99 FERC ¶ 61,055. The Transmission Service Rate Schedules, Rate Order No. WAPA–79, were approved for 5 years beginning August 1, 1998, and ending July 31, 2003.

Western is currently evaluating several options for joining a FERC-approved Regional Transmission Organization. That decision could redefine our current rate provisions. Therefore, Western believes it is premature to proceed with a formal rate process at this time. Extending the existing Transmission Service Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1 to September 30, 2005, should provide enough time to complete our evaluation process. Western proposes to extend the current rate schedules pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–79 will be extended under Rate Order No. WAPA–100.

Western's existing formulary Transmission Service Rate Schedules, which are recalculated annually, would sufficiently recover project expenses (including interest) and capital requirements through September 30, 2005.

Consistent with 10 CFR 903.23(a), Western did not have a consultation and comment period. The notice of an extension of the Transmission Service Rate Schedules was published in the **Federal Register** on March 4, 2003.

Following review of Western's proposal within the Department of Energy, I approved Rate Order No. WAPA–100, which extends the existing Transmission Service Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1 on an interim basis through September 30, 2005. Rate Order No. WAPA–100 will be submitted to FERC for confirmation and approval on a final basis.

Dated: June 4, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

In the matter of: Western Area Power Administration Rate Extension for Pick-Sloan Missouri Basin Program-Eastern Division Transmission Service Rate Schedules

This rate extension was established following section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), (Act). This Act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly seciton 9(c) and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00 effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR part 903.

Background

On November 25, 1998, in Docket No. EF98–5031–000 at 85 FERC ¶ 61,273, the FERC issued an order confirming, approving, and placing into effect on a final basis the Transmission Service Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT, and UGP–NT1 for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED). The Transmission Service Rate Schedules, Rate order No. WAPA–79, were approved for 5 years beginning August 1, 1998, through July 31, 2003. The FERC issued an order denying rehearing and rejecting an untimely request for rehearing on the Transmission Service Rate Schedules on April 12, 2002, in Docket No. EF98–5031–001 at 99 FERC ¶ 61,055. On July 31, 2003, the P–SMBP–ED Transmission Service Rate Schedules will expire. This makes it necessary to extend the current rates pursuant to 10 CFR part 903. With this approval, Rate Order No. WAPA–79 will be extended under Rate Order WAPA–100. A notice of an extension of the Transmission Service Rate Schedules was published in the **Federal Register** on March 4, 2003. Therefore, Western is extending P–SMBP–ED Transmission Service Rate Schedules under Rate Order No. WAPA–100.

Discussion

On July 31, 2003, the Western's P–SMBP–ED Transmission Service Rate Schedules expire. This makes it necessary to extend the current Rate Schedules , UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1, under 10 CFR part 903.23(a). Western's existing formulary Transmission Service Rate Schedules, which are recalculated annually, would sufficiently recover project expenses (including interest) and capital requirements through September 30, 2005.

Western proposes to extend the existing the P–SMBP–ED Transmission Service Rate Schedules through September 30, 2005. Western is currently evaluating several options for joining a FERC-approved Regional Transmission Organization. That decision could redefine our current rate provisions. Therefore, Western believes it is premature to proceed with a formal rate process at this time. Extending the existing Transmission Service Rate Schedules to September 30, 2005, should provide enough time to complete our evaluation process.

Consistent with 10 CFR part 903.23(a), Western did not have a consultation and comment period. The notice of proposed extension of the Transmission Service Rate Schedules was published in the **Federal Register** on March 4, 2003.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend for a period effective from August 1, 2003, and ending September 30, 2005, the existing Transmission Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1 on an interim basis for transmission service for the P–SMBP–ED. The existing Transmission Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1 for transmission service for the P–SMBP–ED, shall remain in effect pending FERC confirmation and approval of their extension or substitute

rates on a final basis through September 30, 2005.

Dated: June 4, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–14950 Filed 6–12–03; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements, filed June 2, 2003, through June 6, 2003. Pursuant to 40 CFR 1506.9.

EIS No. 030258, FINAL SUPPLEMENT, AFS, MT, Keystone-Quartz Ecosystem Management Plan, Implementation, updated information on alternatives, Beaverhead-Deerlodge National Forest, Wise River Ranger District, Beaverhead County, MT, wait period ends: July 14, 2003, contact: Greg Clark (406) 683–3935.

EIS No. 030259, DRAFT EIS, FHW, NJ, Penns Neck Area Project, Phase I Archeological Survey, located in West Windsor and Princeton Townships, Mercer County, and Plainboro Township, Middlesex County, NJ, due: comment period ends: August 1, 2003, contact: Young Kim (609) 637–4233.

EIS No. 030260, DRAFT EIS, FHW, OH, Butler County, OH–63 Extension to U.S. 127 (Trenton area access), construction of a multi-lane limited access, divided highway on new alignment from east of OH–41/OH–63 interchange in the city of Monroe, Butler County, OH, comment period ends: July 28, 2003, contact: Larry Anderson (614) 469–6896.

EIS No. 030261, DRAFT EIS, NPS, MT, Glacier National Park Commercial Services Plan, General Management Plan, implementation, Glacier National Park, a portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT, comment period ends: July 30, 2003, contact: Mary Riddle (406) 888–7898.

EIS No. 030262, FINAL EIS, NPS, MO, Wilson's Creek National Battlefield General Management Plan, implementation, Battle of Wilson's Creek commemoration and associated battlefield preservation, Greene and Christian Counties, MO, wait period ends: July 14, 2003, contact: Nick Chevance (402) 221–7286. This document is available on the Internet at: *http://www.nps.gov/glac/plans.htm*.

EIS No. 030263, DRAFT SUPPLEMENT, AFS, CA, NV, Sierra Nevada Forest Plan Amendment, new information on a range of alternatives for amending land and resource management plans, Modoc, Lasser, Plumas, Tahoe, Eldorado, Stanislaus, Sequoia, Sierra, Inyo and Humboldt-Toiyabe National Forests, and the Lake Tahoe Basin Management Unit, several counties, CA and NV, comment period ends: September 12, 2003, contact: Kathleen Morse (907) 562–8822.

EIS No. 030264, DRAFT EIS, AFS, CO, Upper Blue Stewardship Project, vegetation management, travel management, and dispersed camping sites designation, implementation, U.S. Army COE 404 permit, White River National Forest, Dillon Ranger District, Summit County, CO, comment period ends: July 28, 2003, contact: Peech Keller (970) 468–5400.

EIS No. 030265, DRAFT EIS, AFS, SD, Prairie Project Area, (Lower Rapid Creek Area) multiple resource management actions, implementation, Black Hills National Forest, Mystic Ranger District, Pennington County, ID, comment period ends: July 28, 2003, contact: Robert Thompson (605) 343–1567.

EIS No. 030266, DRAFT EIS, EPA, OSM, SFW, COE, WVEP, WV, KY, VA, TN, Programmatic EIS—Mountaintop Mining and Valley Fills program guidance, policies or regulations to minimize adverse environmental effects to waters of the U.S. and fish and wildlife resources, implementation, Appalachia, Appalachian study area, WV, KY, VA and TN, comment period ends: August 29, 2003, contacts: John Forren (EPA) (215) 814–2705, Katherine Trott (COE) 202–761–4617, Michael Robinson (DOI/OSM) 412–937–2882, Cindy Tibbott (DOI/FWS) 814–234–4090 and Russell Hunter (WV Dept. of EP) 304–759–0510. This document is available on the Internet at: *http://www.epa.gov/region3/mtntop/index.htm*. U.S. Army Corps of Engineers, U.S. Department of the Interior's Office of Surface Mining and Fish and Wildlife Service, U.S. Environmental Protection Agency and the West Virginia Department of Environmental Protection are joint lead agencies for the above project.

EIS No. 030267, Draft EIS, BLM, CA, West Mojave Plan, Habitat Conservation Plan and Federal Land Use Plan Amendment, implementation, California Desert Conservation Area, portions of San Bernardino, Kern, Inyo, and Los Angeles Cos., CA, comment period ends: September 12, 2003, contact: William Haigh (760) 252–6080.

EIS No. 030268, FINAL SUPPLEMENT, AFS, ID, Brown Creek Timber Sale Project, reviewing and updating information regarding the pileated woodpecker and soil impacts, Payette National Forest, New Meadow Ranger District, Adam County, ID, wait period ends: July 14, 2003, contact: Bob Giles (208) 634–0700. This document is available on the Internet at: *http://www.fs.fed.us/r4/payette/main.html*.

EIS No. 030269, FINAL SUPPLEMENT, AFS, ID, Little Weiser Landscape Vegetation Management Project, reviewing and updating information regarding the pileated woodpecker and soil impacts, Payette National Forest, Adam County, ID, wait period ends: July 14, 2003, contact: Bob Giles (208) 634–0700. This document is available on the Internet at: *http://www.fs.fed.us/r4/payette/main.html*.

EIS No. 030270, FINAL SUPPLEMENT, AFS, ID, Sloan-Kennally Timber Sale Project, reviewing and updating information regarding the pileated woodpecker and soil impacts, Payette National Forest, McCall Ranger District, Adam County, ID, wait period ends: July 14, 2003, contact: Bob Giles (208) 634–0700. This document is available on the Internet at: *http://www.fs.fed.us/r4/Payette/main.html*.

EIS No. 030271, FINAL SUPPLEMENT, AFS, ID, Middle Fork Weiser River Watershed Project, reviewing and updating information regarding the pileated woodpecker and soil impacts, Payette National Forest, Council Ranger District, Adam County, ID, wait period ends: July 14, 2003, contact: Curt Spalding (208) 634–0700. This document is available on the Internet at: *http://www.fs.fed.us/r4/Payette/main.html*.

EIS No. 030272, FINAL SUPPLEMENT, AFS, ID, Goose Creek Watershed Project, reviewing and updating information regarding the pileated woodpecker and soil impacts, Payette National Forest, New Meadows Ranger District, Adam County, ID, wait period ends: July 14, 2003, contact: Curt Spalding (208) 634–0700. This document is available on the Internet at: *http://www.fs.fed.us/r4/Payette/main.html*.

EIS No. 030273, DRAFT SUPPLEMENT, AFS, CA, OR, Port-Orford-Cedar Management Plan, implementation, Coos Bay, Medford, and Roseburg Bureau of Land Management districts and the Siskiyou National Forest, Southwest Oregon, comment period ends: September 12, 2003, contact: Ken Denton (503) 326–2368. The U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Bureau of Land Management are joint lead agencies on the above project. This document is available on the Internet at *http://www.or.blm.gov/planning/Port-Orford-Cedar_SEIS/*.

Amended Notices

EIS No. 030154, Draft EIS, FHW, UT, Southern Corridor, extending from I–15 at reference post 2 in St. George to UT–9 near Hurricane, Endangered Species Act review section 7, right-of-way and U.S. Army Corps section 404 permits, St. George, Washington and Hurricane, Washington County, UT, comment period ends: July 11, 2003, contact: Gregory Punske (801)963–0182. Revision of FR notice published on 4/11/2003: CEQ comment period ending 5/30/2003 has been extended to 7/11/2003.

Dated: June 10, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–15011 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5541–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **FR** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–J65379–CO Rating EC2, Green Ridge Mountain Pine Beetle Analysis Project, Proposal to Reduce the Spread of Mountain Pine Beetle and Associated Tree Mortality, Medicine Bow-Routt National Forest & Thunder Basin National Grassland, Parks Ranger District, Jackson County, CO.

Summary: EPA expressed environmental concerns with harvest activities and road construction because of potential adverse impacts to aquatic resources and contiguous terrestrial habitat. The final EIS should include additional information regarding the use of adaptive management techniques, mitigation measures for soil compaction, habitat fragmentation and impacts from new roads.

ERP No. D–COE–F36164–IL Rating LO, Programmatic EIS—East St. Louis and Vicinity, Illinois Ecosystem Restoration and Flood Damage Reduction Project, Implementation, Madison and St. Clair Counties, IL.

Summary: EPA has no objections to this multi-objective, multi-agency ecological restoration and flood control project.

ERP No. D–COE–K36136–CA Rating EC2, Lower Cache Creek Flood Damage Reduction Project, Implementation, City of Woodland and Vicinity, Yolo County, CA.

Summary: EPA expressed environmental concerns regarding the project's lack of integration and consistency with the Sacramento/San Joaquin River Basins Comprehensive Study, impacts on sediment loading, air quality, water quality and transportation, as well as direct impacts from future operation and maintenance of existing levees, risks from reasonably foreseeable flooding and the costs of residual flood risk.

ERP No. D–COE–K39077–CA Rating LO, East Cliff Drive Bluff Protection and Parkway Project, Alternatives Evaluation for Coastal Bluff Erosion Protection, City of Santa Cruz, Santa Cruz County, CA.

Summary: EPA has a lack of objections to this project. EPA provided recommendations to ensure full disclosure of potential PM2.5 and ozone air quality effects, other potential mitigation measures for visual impacts and project costs.

ERP No. D–FRC–G03020–LA Rating EC2, Hackberry Liquified Natural Gas (LNG) Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Cameron, Calcasieu, and Beauregard Parishes, LA

Summary: EPA expressed environmental concerns over potential impacts and requested that additional information be provided in the FEIS. Additional information requested included analyses of air quality impacts, availability of alternatives and cumulative impacts.

ERP No. D–FRC–K05228–CA Rating EC2, Pit 3, 4, 5 Hydroelectric Project, (FERC No. 233–081), Application for New License, Pit River, Pit River Basin, Shasta-Trinity National Forest and Lassen National Forest, Shasta County, CA.

Summary: EPA expressed environmental concerns regarding impacts to water quality and cultural resources. EPA also requested additional information on impacts of minimum flow on aquatic resources and measures for avoiding the use of herbicides to control noxious weeds.

ERP No. D–SFW–K91011–CA Rating EC2, Programmatic EIS—San Francisco Estuary Invasive Spartina Project, Spartina Control Program to Preserve and Restore Ecological Integrity of the Estuary's Intertidal Habitats, Alameda, Contra Costa, Marin, Napa, San Francisco and San Mateo, CA.

Summary: EPA expressed environmental concerns and recommended the PFEIS include additional evaluation and disclosure of Clean Water Act Section 404 requirements; mitigation measures for biological resources and visual effects; the program approach for managing dredged material reuse, outside seed sources of Spartina, peer reviews, and funding; cumulative impacts and Endangered Species Act section 7 consultation.

ERP No. D–TVA–E29001–TN Rating EC2, Rarity Pointe Commercial Recreation and Residential Development on Tellico Reservoir Project, Request for TVA's Land and Approval of Water Use Facilities, Tellico Reservoir, Loudon County, TN.

Summary: EPA expressed environmental concerns regarding water quality impacts for the Tellico Reservoir.

Final EISs

ERP No. F–COE–E30040–FL Lee County Beach Erosion Control Project, Shore Protection, Gasparilla and Estero Islands, Lee County, FL.

Summary: EPA has no objections to the proposed project.

ERP NO. F–FRC–D03004–00 Greenbrier Pipeline Project, (Docket Nos. CPO 2–396–000 and PF 01–1–00), Proposal to Construct and Operate a Natural Gas Pipeline and Associated Above Ground Facilities extending from east of Clendenin, Kanawha County, WV, VA and Granville County, NC.

Summary: EPA expressed environmental concerns regarding the proposed project, including wetlands losses. In light of the potential loss of wetlands, EPA also requested additional information regarding the proposed wetlands mitigation plan.

ERP No. F–FRC–L05225–OR North Umpqua Hydroelectric Project (FERC Project 1927), New License Issuance for

the existing 185.5-megawatt (MW) Facility, North Umpqua River, Douglas County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FRC–L05228–ID Bear River Hydroelectric Project, Application for a New License for Three Existing Hydroelectric Projects: Soda (FERC No. 20–019), Grace-Cove (FERC No. 2401–007) and, Oneida (FERC No. 472–017) Bear River Basin, Caribou and Franklin Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–SFW–K64021–CA Natomas Basin Habitat Conservation Plan, Issuance of Incidental Take Permit and the Adoption of an Implementing Agreement or Agreements, Natomas Basin, Sacramento and Sutter Counties, CA.

Summary: EPA expressed continuing environmental concerns regarding the mitigation ratio and cumulative effects analysis. EPA recommended the ROD summarize the scientific basis for the 0.5:1 mitigation ratio, include a table demonstrating that the habitat values of habitats lost and conserved are equivalent, include a commitment to and list of all other mitigation requirements, and summarize cumulative impacts. EPA also recommended that the ROD address triggers for new effects analysis or revisions to the Natomas Basin HCP and ITPs, and possible suspension of applicable ITPs.

Dated: June 10, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–15012 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7512–6]

Public Notice of Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Federal Facility Small Municipal Separate Storm Sewer Systems (MS4s) in Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permit.

SUMMARY: Region VIII of EPA is hereby giving notice of its issuance of the NPDES general permit for storm water discharges from regulated small municipal separate storm sewer systems (MS4s). This general permit will apply to federal facilities in urbanized areas (as defined by the 2000 U.S. Census) in the State of Colorado that apply for coverage under this permit. The federal facilities that EPA currently knows to exist in urbanized areas in Colorado, all of which have applied for coverage under this permit, include: Fort Carson; the General Services Administration's Denver Federal Center; Peterson Air Force Base; the U.S. Air Force Academy; the U.S. Department of Commerce—National Institute of Standards and Technology, Boulder Campus; the U.S. Bureau of Prisons Federal Correctional Institution, Englewood; and the Veterans Affairs Medical Center, Denver. Additional federal facilities may need to apply for permit coverage at a later date if justified by subsequent Census data.

NPDES permit coverage is required for small MS4s in accordance with final EPA regulations for Phase II storm water discharges (64 FR 68722, December 8, 1999). Operators of Phase II-designated small MS4s (regulated small MS4s) are required to submit a Notice of Intent (NOI) to EPA Region VIII to be covered under the general permit. In accordance with the general permit, each regulated small MS4 operator must develop, implement, and enforce a program designed to reduce the discharge of pollutants from its MS4 to the maximum extent practicable (MEP) to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. The small MS4 program must include the following six minimum control measures: Public education and outreach; public involvement and participation; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and poliution prevention/good housekeeping. The permit assumes the use of narrative, rather than numeric, effluent limitations achieved through the implementation of best management practices (BMPs). Operators must establish BMPs and measurable goals for each minimum measure in the permit application. However, applicants will have up to five years to fully develop and implement their storm water management programs.

State	Permit No.	Areas covered by the general permit
Colorado	COR042000	Federal Facilities in the State of Colorado, except those located in Indian Country

DATES: The general permit becomes effective on June 13, 2003, and will expire five years from that date. For appeal purposes, the 120 day time period for appeal to the U.S. Federal Courts will begin on June 13, 2003.

ADDRESSES: The general permit and other related documents in the administrative record are on file in the EPA Region VIII NPDES file room and may be inspected upon request any time between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Requests to view these files in the Region VIII NPDES file room should be made to Greg Davis (8EPR–EP); U.S. EPA, Region VIII; 999 18th Street, Suite 300; Denver, CO 80202–2466, by phone at 303–312–6082, or by E-mail at *davis.gregory@epa.gov*. Copies of the general permit and fact sheet may also be downloaded from the EPA Region VIII Web site at *http://www.epa.gov/region8/water/stormwater/downloads.html*.

FOR FURTHER INFORMATION CONTACT: Questions regarding the specific permit requirements may be directed to Greg Davis, telephone (303) 312–6082, or E-mail at *davis.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA Region VIII proposed and solicited comments on the general permit at 68 FR 8902 (February 26, 2003). In addition, EPA Region VIII sent notices and copies of the draft general permit and fact sheet to the seven Federal Facilities designated for permit coverage. EPA did not receive any comments on the draft general permit. Region VIII is not issuing NPDES General Permits for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) located in Indian country. No MS4s in Indian country have been determined to require small MS4 permit coverage at this time.

Appeal of Permit: Any interested person may appeal the "NPDES General Permit for Storm Water Discharges from Federal Facility Small Municipal Separate Storm Sewer Systems (MS4s) in Colorado" in the appropriate federal Circuit Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days of the effective date of the permit. Persons affected by a general NPDES permit may not challenge the conditions of the general permit in EPA administrative proceedings. Instead, they may either challenge the general permit in court or apply for an individual permit (under 40 CFR 122.21 as authorized in 40 CFR 122.28) and then petition the EPA's Environmental Appeals Board (as provided in 40 CFR 124.19).

Paperwork Reduction Act: This action does not impose any new information collection burden. This general permit does not impose any information collection requirements beyond those required by EPA regulations (40 CFR 122.26, 122.28, 122.30–.37, 122.41, and 122.48). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0211, EPA ICR number 1820.03. A copy of each OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Executive Order 12866: Under Executive Order 12866 (58 FR 51735, October 4, 1993) an agency must determine whether its regulatory action is "significant" and therefore subject to OMB review and the requirements of Executive Order 12866. This Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act (RFA): Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under 5 U.S.C. Section 553 (Administrative Procedure Act) or any other law, and is thus not subject to the RFA requirement to prepare a regulatory flexibility analysis. The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6). The APA defines "license" to "include * * * an agency permit * * *." APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).") UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the RFA. That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the APA], or any other law. * * *" As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules."

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 23, 2003.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 03–15009 Filed 6–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–1862]

Notice to State Telecommunications Relay Service (TRS) Programs and Interstate TRS Providers to Notify the Commission of Any Change of Contact Person Information and Substantive Changes in TRS service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this document is to notify state Telecommunications Relay Service (TRS) programs and interstate TRS Providers that they are required to submit to the Commission a contact person or office for TRS consumer information and complaints and to notify the Commission of any changes in this information. This

document also reminds state programs to notify the Commission of substantive changes in their TRS program.

DATES: Effective May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Erica Myers, Consumer & Governmental Affairs Bureau, Disability Rights Office, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 03–1862, released May 30, 2003. State TRS programs and interstate TRS providers may file this information by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. When filing changes, please reference CC Docket No. 98–67. In completing the transmittal screen, parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic document by Internet e-mail. To get filing instructions for e-mail documents, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

State TRS programs and interstate TRS providers who choose to submit by paper must submit an original and four copies of each filing addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554. State TRS programs and interstate TRS providers are encouraged to submit an additional copy to Attn: Erica Myers, Federal Communications Commission, Consumer & Governmental Affairs Bureau, 445 12th Street, SW., Room 6-A432, Washington, DC 20554 or by e-mail at *emyers@fcc.gov*. States and interstate TRS providers should also submit electronic disk copies of their filing on a standard 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be submitted in "read-only" mode and must be clearly labeled with the State or interstate TRS provider name, the filing date and captioned "Change in Contact Information" or "Substantive Change in TRS Service'.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

The filings will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 44512th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Filings may also be viewed on the Consumer & Governmental Affairs Bureau, Disability Rights Office homepage at *http://www.fcc.gov/cgb/dro*.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, auto format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (tty). This *Public Notice* can also be downloaded in Text and ASCII formats at *http://www.fcc.gov/cgb/dro*.

Synopsis

The purpose of this *Public Notice* is to remind state Telecommunications Relay Service (TRS) programs that pursuant to 47 CFR 64.604(c)(2)(i) they must submit to the Commission a contact person or office for TRS consumer information and complaints about intrastate service. The submission shall include the name and address of the state office that receives complaints, grievances, inquiries and suggestions; the voice, TTY, and fax numbers for that office; the e-mail address; and the physical address to which correspondence should be sent. Similarly, interstate TRS providers are reminded that pursuant to 47 CFR 64.604(c)(2)(ii) they must submit to the Commission a contact person or office for TRS consumer information and complaints about the provider's service. The submission shall include the name and address of the office that receives complaints, grievances, inquiries and suggestions; the voice, TTY and fax numbers for that office; the e-mail address; and the physical address to which correspondence should be sent. The Commission must be notified each time there is a change in any of this required information.

The Commission also reminds state TRS programs that pursuant to 47 CFR 64.605 (f) state TRS programs must notify the Commission of any substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet Federal minimum standards after implementing the substantive change.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–14930 Filed 6–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Heidi Re Gesell, St. Paul, Minnesota, and Andrew John Gesell, Woodbury, Minnesota; a group acting in concert, to acquire voting shares of Cherokee Bancshares, Inc., St. Paul, Minnesota, and thereby indirectly acquire Cherokee State Bank of St. Paul, St. Paul, Minnesota.

Board of Governors of the Federal Reserve System, June 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14909 Filed 6–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. AllNations Bancorporation, Inc., Shawnee, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Calumet, Calumet, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. The Ginger Murchison Foundation, Athens, Texas; to become a bank holding company by acquiring 85.9 percent of the voting shares of The First National Bank of Athens, Athens, Texas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Eggemeyer Advisory Corp, WJR Corp., Castle Creek Capital LLC, Castle Creek Capital Partners Fund I, LP, Castle Creek Capital Partners Fund IIa, LP, and Castle Creek Capital Partners Fund IIb, all of Rancho Santa Fe, California; to acquire directly and indirectly more than 25 percent of State National Bancshares, Inc., Lubbock, Texas, State National Bancshares of Delaware, Inc., Dover, Delaware, Independent Bankshares, Inc., Lubbock, Texas, Independent Financial Corporation, Dover, Delaware, and State National Bank, Lubbock, Texas.

In connection with these applications, the Applicants also have applied to acquire, directly and indirectly, ANB Financial Corporation, Arlington, Texas, ANB Delaware Financial Corporation, Dover, Delaware, and Arlington National Bank, Arlington, Texas.

Board of Governors of the Federal Reserve System, June 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14908 Filed 6–12–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL ACCOUNTING OFFICE

Administrative Practice and Procedure; Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) recently announced major revisions to Circular A–76, which governs how Federal agencies determine whether to transfer performance of commercial activities from the public to the private sector, or vice versa. Performance of Commercial Activities, 68 FR 32134 (May 29, 2003). As relevant here, the revisions would make competitions involving in-house government competitors more similar to private/private competitions conducted under the Federal Acquisition Regulation (FAR) than has been the case with the competitive sourcing process. This notice solicits comments regarding two key legal questions, namely, whether the revisions made to the Circular affect the standing of an in-house entity to file a bid protest at the General Accounting Office (GAO), and who would have the representational capacity to file such a protest. This notice also solicits comments on other procedural issues raised by the Circular's revisions.

DATES: Comments should be submitted on or before July 16, 2003.

ADDRESSES: Comments concerning these matters may be submitted by e-mail at *A76Comments@gao.gov*, or by facsimile at 202–512–9749. Due to delivery delays, submission by regular mail is discouraged. Comments may be sent by Federal Express or United Parcel Service to Michael R. Golden, Assistant General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Daniel I. Gordon (Managing Associate General Counsel), Michael R. Golden (Assistant General Counsel) or Linda S. Lebowitz (Senior Attorney); all three can be reached on 202–512–9732.

SUPPLEMENTARY INFORMATION: GAO's statutory authority to hear bid protests is found in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. 3551–56 (2000). CICA establishes the standard for standing to file a protest by stating that a protest may be filed by an "interested party," which is defined in the statute as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. 3551(2); *see also* Bid Protest Regulations, 4 CFR 21.0(a) (2003).

Under this definition, GAO hears bid protests filed by private-sector firms that have participated in A–76 cost comparisons, since a private firm that participated in an A–76 cost comparison is an actual offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract. Over the past three years, private firms have filed more than 50 protests at GAO challenging the conduct of A–76 competitions.

In contrast, GAO consistently has found that Federal employees and their unions cannot protest any aspect of the A–76 competition, because they do not meet CICA's definition of an "interested party," so that, as a matter of law, GAO lacks authority to consider their protests. In *American Fed'n of Gov't Employees, AFL–CIO et al.*, B–282904.2, June 7, 2000, 2000 CPD ¶ 87 at 3–4, GAO identified a number of reasons for

this conclusion. It pointed out that neither individual Federal employees, nor the in-house plan (the "Most Efficient Organization," or MEO), nor the employees' union representatives are offerors. In addition, GAO found that the MEO plan submitted in an A–76 competition is not an offer as defined under the FAR, because the MEO does not constitute a response to a solicitation (the solicitation currently applies only to private-sector competitors), nor would the MEO, if adopted, lead to formation of a contract, which is a mutually binding legal relationship to perform the services. Indeed, as GAO pointed out, no contract is awarded where the MEO prevails in the cost comparison. *See also American Fed'n of Gov't Employees*, B–223323, June 18, 1986, 86–1 CPD ¶ 572; *American Fed'n of Gov't Employees—Recon.*, B–219590.3, May 6, 1986, 86–1 CPD ¶ 436 (affirming an earlier dismissal).

The April 2002 report of the Commercial Activities Panel recommended that, in the context of improvements to the Federal government's process for making sourcing decisions, a way be found to level the playing field by allowing in-house entities to protest at GAO, as private-sector competitors are allowed to do. The report noted that, if a decision were made to permit the public-sector competitor to protest A–76 procurements, the question of who would have representational capacity to file such a protest would need to be carefully considered.

By making a number of changes from the predecessor Circular, the revised Circular may justify GAO reaching a different conclusion regarding the compliance of the in-house entity with CICA's definition of an "interested party." Unlike under the predecessor Circular, the revised A–76 framework contemplates that the in-house government entity will submit an "agency tender" in response to the solicitation that will be evaluated along with private-sector proposals for purposes of ultimately deciding which competitor, public or private, should be selected to perform the work. The agency tender will be developed by an Agency Tender Official (ATO), defined as an agency official with decision-making authority who "represents the agency tender during source selection." Revised Circular at D–2. If the agency tender prevails in the competition, the revised Circular provides that an "MEO letter of obligation" will be issued to an official responsible for performance of the MEO. Revised Circular at B–18. Under the revised Circular, this letter of obligation is required to incorporate appropriate portions of the solicitation and tender. *Id.* Under the revised Circular, the public sector source's failure to perform in accordance with its obligations can result in a termination action. Revised Circular at B–20.

The ATO is among those defined under the revised Circular as a "directly interested party" for purposes of filing an agency-level protest of the performance decision. Revised Circular at D–4. The revised Circular also defines a "directly interested party" to include a "single individual appointed by a majority of directly affected employees as their agent." *Id.* In contrast to the ATO's defined role in the competition, the revised Circular does not define a role for this individual, other than in contesting agency actions taken in connection with an A–76 competition.

It is the cumulative legal impact of these changes that GAO is considering in assessing whether an in-house entity should have standing to file a bid protest at GAO when a competition is conducted under the revised Circular. Under the revised Circular, the agency tender appears to be treated more as an offer than under the predecessor Circular, and, if the source selection results in a decision to accept an agency tender, there will be a letter of obligation, which appears intended to bind the in-house entity, in at least a quasi-contractual way, to the terms of the solicitation and tender. In this regard, it may be viewed as relevant that GAO recently found that a public entity could be an interested party under CICA, even though, if successful in a competition, it would not be obtaining a contract. *Federal Prison Indus., Inc.*, B–290546, July 15, 2002, 2002 CPD ¶ 112. Further, as discussed in *Department of the Navy—Recon.*, B–286194.7, May 29, 2002, 2002 CPD ¶ 76 at 4, GAO reiterated that the in-house entity is essentially a competitor and that in preparing the in-house plan for performance, the MEO team members "functioned * * * as competitors."

GAO recognizes that there are various ways to resolve the legal question of interested-party status for in-house entities under the revised Circular. One way would be through case law. That is, GAO could simply wait until a protest is filed by an ATO or another individual or entity representing in-house interests; in response to a request for dismissal on standing grounds (or at its own initiative), GAO could ask the parties to address the matter in submissions and GAO could then issue a decision resolving the protester's interested-party status. Alternatively, GAO could amend its bid protest regulations to address the impact of the revised Circular, or it could issue a notice in the **Federal Register** announcing its legal conclusion. Another alternative would be for Congress to amend CICA's definition of an interested party for purposes of the filing of protests. Obviously, Congress could act even if GAO does not, and, indeed, legislative action would override action by GAO through its regulations or its case law. Finally, if it is found that GAO does not have authority under CICA to consider such protests, GAO could potentially consider protests by the ATO or another individual or entity representing in-house interests as "non-statutory protests," if agencies agree in writing to have GAO decide the protests.

The purpose of this notice is to solicit comments from the public as to which action, if any, GAO should take. GAO would welcome comments from contracting agencies, other Federal agencies, individual Federal employees, Federal employee unions, contractors and other private-sector firms, attorneys (from all sectors), and others wishing to express a view. The most helpful views will be clear and concise, and will reflect familiarity with GAO's bid protest regulations, practice, and case law, as well as with the Circular A–76 framework. The key questions GAO is seeking views on are: (1) What method of deciding the matter GAO should use: case law (that is, wait for a protest presenting the question to be decided by GAO), amendment to the bid protest regulations, a notice in the **Federal Register** announcing GAO's legal conclusion, or no action by GAO; and (2) if GAO should act, what its decision should be—specifically, whether the in-house competitor should, or should not, be considered an interested party, and, if so, who should be viewed as having representational capacity to file a protest at GAO on behalf of the in-house competitor.

It would also be helpful to know the commenters' views on whether counsel for the ATO or the appointed individual would need to apply for admission (and what conditions might affect the likelihood of that counsel being admitted) to a protective order that GAO would issue (as it normally does) to limit access to nonpublic information regarding the procurement. *See* 4 CFR 21.4.

Finally, commenters may wish to address the impact, if any, on their view of the holding from the Court of Appeals for the Federal Circuit (consistent with GAO's view, as explained above) that Federal employees and their union do not qualify as interested parties to protest a decision pursuant to Circular A–76. *American Fed'n of Gov't Employees, AFL–CIO et al.* v. *United States*, 258 F.3d 1294 (Fed. Cir. 2001).

Another revision to the Circular appears to affect the procedures GAO follows in handling protests of A–76 competitions. Under the predecessor Circular, parties affected by the cost comparison decision were able to challenge the results of the decision under an A–76 administrative appeal process. In light of the availability of this A–76 appeals process, GAO had a longstanding rule, based on comity and efficiency, that it would generally not hear a protest against the propriety of the cost comparison until the A–76 administrative appeals procedure provided by the agency had been exhausted. *See Intelcom Support Servs., Inc.*, B–234488, Feb. 17, 1989, 89–1 CPD ¶ 174; *Direct Delivery Sys.*, B–198361, May 16, 1980, 80–1 CPD ¶ 343. This is so, even though GAO has recognized that there is no statutory or regulatory requirement that an offeror exhaust available agency-level remedies before protesting to GAO. *See BAE Sys.*, B–287189, B–287189.2, May 14, 2001, 2001 CPD ¶ 86 at 17.

The revised Circular abolishes the administrative appeals process, and instead provides that a "directly interested party" may contest various aspects of a standard competition by filing an agency-level protest. Under GAO's Bid Protest Regulations, protesters are not required to file an agency-level protest before filing a protest at GAO. In light of the revised Circular's abolition of the special A–76 administrative appeal process, GAO solicits comments on whether it would be appropriate to continue to apply the exhaustion doctrine to A–76 protests or whether protesters should now be permitted to file their A–76 challenges directly with GAO.

Finally, the revised Circular states that "no party may contest any aspect of a streamlined competition." Revised Circular at B–20. Under the revised Circular, a streamlined competition may entail issuance of a solicitation for proposals from the private sector, but that is not required. Revised Circular at B–4. GAO solicits comments on whether it would have a legal basis to consider a protest, from either the private or the public sector, regarding a streamlined competition.

Anthony H. Gamboa,

General Counsel.

[FR Doc. 03–14934 Filed 6–12–03; 8:45 am]

BILLING CODE 1610–02–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: General Services Administration (GSA); National Capital Region.

ACTION: Notice.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), GSA Order PBS P1095.1F (Environmental considerations in decisionmaking, dated October 19, 1999), and the GSA Public Buildings Service NEPA Desk Guide, GSA plans to prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed campus expansion and new eastern access road to support the consolidation of the Food and Drug Administration (FDA) on the Federal Research Center at White Oak in Silver Spring, Maryland.

FOR FURTHER INFORMATION CONTACT: Harry Debes, Project Executive, General Services Administration, National Capital Region, at (202) 260–9583. Please also call this number if special assistance is needed to attend and participate in the scoping meeting.

SUPPLEMENTARY INFORMATION: The notice of intent is as follows:

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Campus Expansion and New Eastern Access Road to Support the Consolidation of the Food and Drug Administration at the Federal Research Center at White Oak in Silver Spring, Maryland

The General Services Administration intends to prepare a Supplemental Environmental Impact Statement (SEIS) to analyze the potential impacts resulting from the proposed campus expansion and new eastern access road to support the FDA consolidation at the Federal Research Center (FRC) at White Oak in Silver Spring, Maryland.

This SEIS is an update and supplement to the analyses presented in the *U.S. Food and Drug Administration Consolidation, Montgomery County, Final Environmental Impact Statement*, April 1997 (*1997 Final EIS*).

Proposed Campus Expansion

In 1997, GSA completed an environmental impact statement that analyzed the impacts from the consolidation of 5,974 FDA employees at the FRC. In July 2002, new legislation was enacted that expanded FDA's mandate to support the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act (MDUFMA). The new legislation and the growth of other programs will likely result in an increase of employees at the FRC from 5,947 (studied in the *1997 Final EIS*) to 7,720.

Eastern Access Road

In the environmental analysis performed in 1996–1997 for the *1997 Final EIS*, GSA considered traffic impacts and patterns into the FDA facility. It was determined in the Draft EIS, that a new access point was needed from Cherry Hill Road through the eastern portion of the FRC to relieve traffic on New Hampshire Avenue. In order to maintain this access and provide a secure site for the Air Force (located on the northern edge of the FRC), two optional road alignments were studied for the crossing of Paint Branch Creek within the FRC. The road alignment within the FRC was to be selected based on the structural integrity of the existing bridge on Dahlgren Road and on the costs associated with each of the alternatives.

After the release of the Draft EIS, the security requirements of the Air Force changed, and an initial structural investigation found the existing bridge to be sound pending some repair work. Therefore, the two alternative alignments were dropped from the *1997 Final EIS*. The *1997 Final EIS* still proposed a new entrance at Cherry Hill Road because the existing entrance at Dahlgren Road is too close to the Cherry Hill Road/Powder Mill Road intersection to operate safely and efficiently.

In February 2001, the Federal Highway Administration (FHWA—Virginia office), as GSA's agent, prepared a bridge inspection report on Dahlgren Road crossing Paint Branch Creek. In its report, FHWA concluded that "this structure is in poor condition overall, and should be replaced in the near future."

Due to the deteriorating conditions of the existing bridge on Dahlgren Road and the increased traffic demands anticipated from the FDA consolidation, GSA has decided to reevaluate the construction of a new access point to and through the eastern portion of the FRC.

Alternatives Under Consideration

GSA will analyze the proposed action and no action alternatives for the proposed expansion of the FDA headquarters to include PDUFA and

MDUFMA and other expanded programs. GSA will also analyze a range of alternatives for the eastern road access to and through the site including the no action alternative.

As part of the SEIS, GSA will study the impacts of each alternative on the human environment.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, as well as for identifying the significant issues related to the proposed expansion and new road construction to and through the FRC. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies having an interest in the FRC. It is important that Federal, regional, State, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft SEIS.

Public Scoping Meeting

The public scoping meeting will be held on Thursday, June 26, 2003, from 6:30 p.m. to 8:30 p.m. at the CHI Center (Multipurpose Room) located at 10501 New Hampshire Avenue, Silver Spring, Maryland. The meeting will be an informal open house, where visitors may come, receive information, and give comments. GSA will publish notices in the Washington Post and local newspapers announcing this meeting approximately two weeks prior to the meeting. GSA will prepare a scoping report, available to the public, that will summarize the comments received and facilitate their incorporation into the SEIS process.

Written Comments: Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the proposed expansion and construction of a new eastern access road to and through the FRC must be postmarked no later than July 28, 2003, and sent to the following address: General Services Administration, Attention: Harry Debes, Project Executive, 7th and D Streets, SW., Room 2120, Washington, DC 20407. (202) 708–4730 Fax. *Harry.Debes@gsa.gov.*

Dated: June 6, 2003.

Thomas E. James,

Director, Portfolio Management Division.

[FR Doc. 03–15078 Filed 6–12–03; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National committee on Vital and Health Statistics (NCVHS).

Time and date: June 24, 2003, 9 a.m.–2 p.m.; June 25, 2003, 10 a.m.–12:30 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the full Committee will hear updates and status reports from the Department on several topics including an update on HHS Data Council activities, the implementation of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as on implementation of the HIPAA Privacy Rule. A report on the Consolidated Health Informatics Initiative is also planned. In the afternoon there will be reports from Subcommittees on selected activities. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available. On the second day the Committee will hear presentations on the HHS Gateway to Data and Statistics on the web, and on results of a Gallup Survey on Federal Advisory Committee, followed by reports from Subcommittees. Finally, the agendas for future NCVHS meetings will be discussed.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Dated: June 6, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–14943 Filed 6–12–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Public Review and Comment on Research Protocol: Characterization of Mucus and Mucins in Bronchoalveolar Lavage Fluids From Infants With Cystic Fibrosis

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS) is soliciting public review and comment on a proposed research protocol entitled "Characterization of Mucus and Mucins in Bronchoalveolar Lavage Fluids from Infants with Cystic Fibrosis." The proposed research would be supported by a grant awarded by the National Heart, Lung, and Blood Institute, National Institutes of Health. Public review and comment are solicited regarding the proposed research protocol pursuant to the requirements of HHS regulations at 45 CFR 46.407.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. July 28, 2003.

ADDRESSES: Submit written comments to: Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–0527 or by email to: *407panel02@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Leslie K. Ball, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone (301) 496–7005; fax (301) 402–0527; email *LBall@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS which are not otherwise exempt and which propose to involve children as subjects require institutional review board (IRB) review in accordance with the provisions of HHS regulations for the protection of human subjects at 45 CFR part 46, subpart D. Pursuant to HHS regulations at 45 CFR 46.407, if an IRB reviewing a protocol to be conducted or supported by HHS does not believe that the proposed research involving children as subjects meets the requirements of HHS regulations at 45 CFR 46.404, 46.405, or 46.406, the research may proceed only if the following conditions are met: (a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (b) the Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, determines either: (1) That the research in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406, or (2) that the following conditions are met: (i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408.

HHS received a request from the University of North Carolina at Chapel Hill's (UNC) Office of Human Research Studies and Dr. Terry Noah pursuant to the provisions of HHS regulations at 45 CFR 46.407. The proposed research protocol would be funded by the National Heart, Lung, and Blood Institute, National Institutes of Health (NIH), under grant number P50 HL 60280 (SCOR in Pathogenesis of Cystic Fibrosis), principal investigator, Dr. Richard Boucher, and has been adapted from a sub-study contained within this grant, entitled, "Project IV: Airway Surface Liquid Composition of Humans In Vivo." Dr. Terry Noah, the principal investigator of the adapted sub-study, proposes a longitudinal study of the changes in bronchoalveolar lavage fluid (BALF) of infants diagnosed with cystic fibrosis in the neonatal period. The proposed study would enroll infants with a clinical diagnosis of cystic fibrosis in the neonatal period and would obtain BALF from these infants via flexible fiberoptic bronchoscopy at 3 time points: (1) After diagnosis, within the first 6 weeks after birth; (2) at 6 months of age; and (3) at 12 months of age. The goals of the proposed study are to: (a) Quantify mucin in BALF and compare quantities before infection vs. after infection onset in cystic fibrosis; (b) correlate mucin quantity with measures of infection (quantitative bacteriology) and inflammation (cell numbers, neutrophil products, and inflammatory cytokines); and (c) isolate mucus plugs and characterize their histology before and after infection, in order to more accurately describe early relationships among mucus obstruction, infection and inflammation.

After reviewing this research proposal UNC's Committee on the Protection of the Rights of Human Subjects (CPRHS), which serves as UNC's IRB, determined that this research could not be approved under 45 CFR 46.404, 46.405, or 46.406, but was suitable for review under 45 CFR 46.407. The UNC CPRHS found that the research represented more than a minor increase over minimal risk and did not appear to offer the prospect of direct benefit to subjects, but found that the research presented a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children.

Experts in relevant disciplines have reviewed this protocol and each have provided recommendations to the Secretary of HHS. Public review and comment are hereby solicited pursuant to the requirements of 45 CFR 46.407. The Secretary of HHS will consider the experts' recommendations and the public comments in making a final determination regarding whether or not HHS should support this research.

In particular, comments are solicited on the following questions: (1) What are the types and degrees of risk that this research presents to the subjects; (2) what are the potential benefits, if any, to the subjects and to children in general; (3) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (4) if conducted as proposed in the above-cited protocol, would the research be conducted in accordance with sound ethical principles; and (5) have adequate provisions been made for soliciting the assent of children and the permission of their parents or guardians? In formulating a response to question (4), commenters may wish to consider whether the proposed protocol satisfies all the requirements under HHS regulations at 45 CFR 46.111 (criteria for IRB approval of research).

All written comments concerning this matter should be submitted to Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–2071 or by email to: *407panel02@osophs.dhhs.gov.* Materials available for review on the OHRP web page (available at: *http://ohrp.osophs.dhhs.gov/panels/407-02pnl/pindex.htm*) include: Correspondence from the principal investigator and UNC referring the proposed research protocol to the Secretary of HHS for consideration under 45 CFR 46.407; correspondence between the UNC CPRHS and the principal investigator; the UNC CPRHS deliberations on the proposed research; correspondence between OHRP and UNC; relevant excerpts of the NIH grant application; the parental permission document; review of proposed research by the Cystic Fibrosis Foundation's Data and Safety Monitoring Board; UNC's bronchoscopy complication data; and reports from each of experts pursuant to 45 CFR 46.407. A paper copy of the information referenced here is available upon request.

Dated: June 5, 2003.

Cristina V. Beato,

Principal Deputy Assistant Secretary for Health.

[FR Doc. 03–14941 Filed 6–12–03; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Public Review and Comment on Research Protocol: Sleep Mechanism in Children: Role of Metabolism

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS) is soliciting public review and comment on a proposed research protocol entitled "Sleep Mechanisms in Children: Role of Metabolism." The proposed research would be supported by a grant awarded by the National Heart, Lung, and Blood Institute, National Institutes of Health. Public review and comment are

solicited regarding the proposed research protocol pursuant to the requirements of HHS regulations at 45 CFR 46.407.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. July 28, 2003.

ADDRESSES: Submit written comments to: Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–0527 or by email to: *407panel03@osophs.dhhs.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Leslie K. Ball, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone (301) 496–7005; fax (301) 402–0527; email *LBall@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS which are not otherwise exempt and which propose to involve children as subjects require institutional review board (IRB) review in accordance with the provisions of HHS regulations for the protection of human subjects at 45 CFR part 46, subpart D. Pursuant to HHS regulations at 45 CFR 46.407, if an IRB reviewing a protocol to be conducted or supported by HHS does not believe that the proposed research involving children as subjects meets the requirements of HHS regulations at 45 CFR 46.404, 46.405, or 46.406, the research may proceed only if the following conditions are met: (a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (b) the Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, determines either: (1) That the research in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406, or (2) that the following conditions are met: (i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408.

HHS received a request from the Albert Einstein College of Medicine's Committee on Clinical Investigations (the Albert Einstein CCI, which serves as Albert Einstein's IRB) pursuant to 45 CFR 46.407. The principal investigator, Dr. Gabriel Haddad, proposes to measure glycogen, glutamate turnover rate, and glutamate-glutamine cycling in wakefulness and sleep in adolescent children ages 13 to 17 years. The investigator also proposes to study a subset of children in the same manner following sleep deprivation. The study would involve three visits to the Children's Hospital at Montefiore Medical Center. Measurements will be made using NMR spectroscopy following intravenous infusion of ^{13}C-acetate and ^{13}C-glucose. The long term aims of the study are to better understand (a) sleep; and (b) the diseases afflicting children and adults that impact on their sleep; and (c) sleep-related diseases that impact on neurocognitive, cardiovascular, behavioral, and other functions. This study would be funded by the National Heart, Lung, and Blood Institute, National Institutes of Health (NIH), under grant number HL 070919.

After reviewing this research proposal, the Albert Einstein CCI determined that this research could not be approved under 45 CFR 46.404, 46.405, or 46.406 but was suitable for review under 45 CFR 46.407. The Albert Einstein CCI found that the research presented more than minimal risk and did not offer the prospect of direct benefit to subjects, but found that the research presented a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children.

Experts in relevant disciplines have reviewed this protocol and each have provided recommendations to the Secretary of HHS. Public review and comment are hereby solicited pursuant to the requirements of 45 CFR 46.407. The Secretary will consider the experts' recommendations and the public comments in making a final determination regarding whether HHS may support this research.

In particular, comments are solicited on the following questions: (1) What are the types and degrees of risk that this research presents to the subjects; (2) what are the potential benefits, if any, to the subjects and to children in general; (3) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (4) if conducted as proposed in the above-cited protocol, would the research be conducted in accordance with sound ethical principles; and (5) have adequate provisions been made for soliciting the assent of children and the permission of their parents or guardians? In formulating a response to question (4), commenters may wish to consider whether the proposed protocol satisfies all the requirements under HHS regulations at 45 CFR 46.111 (criteria for IRB approval of research).

All written comments concerning this matter should be submitted to Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–2071 or by email to: *407panel03@osophs.dhhs.gov*.

Materials available for review on the OHRP web page (available at: *http://ohrp.osophs.dhhs.gov/panels/407-03pnl/pindex.htm*) include: correspondence from the research institution referring the proposed protocol to the Secretary of HHS for consideration under 45 CFR 46.407; the Albert Einstein CCI protocol application; the Albert Einstein CCI deliberations on the proposed research; the parental permission and assent forms; relevant excerpts of the NIH grant application; and reports from each of the experts pursuant to 45 CFR 46.407. A paper copy of the information referenced here is available upon request.

Dated: June 5, 2003.

Cristina V. Beato,

Principal Deputy Assistant Secretary for Health.

[FR Doc. 03–14942 Filed 6–12–03; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–76]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Youth Risk Behavior Survey (YRBS) Methodological Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention, (CDC). CDC intends to conduct a methodological study in the Spring of 2004 to assess the effects of setting and mode of survey administration on the reporting of health-risk behaviors among adolescents, and thereby, to provide methodological guidance for future surveys, especially surveys of adolescents. In 2000, the Office of the Assistant Secretary for Planning and Evaluation (ASPE) commissioned five expert papers written on the topic "Examining Substance Abuse Data Collection Methodologies." The papers focused on the YRBS, the National Survey on Drug Use and Health (NSDUH, formerly the National Household Survey on Drug Abuse, or NHSDA), and Monitoring the Future (MTF). A consensus among the authors was that disparate results across the studies are most likely a product of methodological differences across the surveys. This YRBS Methodological Study is designed to measure the extent to which the prevalence of health-risk behaviors among students varies by whether the survey is administered in schools vs. students' homes (setting), and by whether the survey is administered using paper-and-pencil questionnaire booklets vs. computer-assisted self-interviewing (mode). Approximately 5,376 high school students will be given questionnaires in one of the four setting/mode combinations. Elucidation of the impact of these factors on prevalence will assist in reducing response effects and improving the quality of the YRBS data. There are not costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
High school students	5,376	1	45/60	4,032
School administrators	104	1	45/60	78
Total				4,110

Dated: June 9, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14911 Filed 6–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–77]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Hemophilia Treatment Center Laboratory Survey—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Up to two million women in the United States may have an inherited bleeding disorder and not know it. Many women learn to live with the problems their bleeding causes, such as heavy periods, and not realize that they could have a bleeding disorder. Other women may have more serious bleeding problems such as hemorrhages after childbirth or surgery, and some have hysterectomies to end their heavy periods. With proper diagnosis, women with bleeding disorders could avoid these complications and surgeries. Management of bleeding in these women can decrease heavy periods and can improve quality of life.

The most common bleeding disorder is called Von Willebrand disease (VWD). VWD is caused by a deficiency or defect in the body's ability to make a protein, von Willebrand factor, which helps blood clot. The symptoms of VWD can range in severity; however, 90 percent of people who have this disease have the mild form. VWD occurs in men and women equally, but women are more likely to notice the symptoms of VWD due to heavy or abnormal bleeding during their menstrual periods and after childbirth. There are many gynecological and physical causes for heavy periods, such as endometriosis, thyroid problems and cancer; however,

the cause is not identified in half the cases. A CDC-Emory University survey found that gynecologists rarely considered bleeding disorders as a cause of heavy menstrual bleeding. However, recent research from Europe and CDC has shown that 15–20 percent of women with heavy periods have inherited bleeding disorders. Women with VWD interviewed by CDC reported an average of 16 years between the onset of bleeding symptoms and diagnosis of a bleeding disorder. CDC and the National Hemophilia Foundation have been working to encourage gynecologists to consider bleeding disorders in women who have menorrhagia. As a result, the American College of Obstetricians and Gynecologists has recently recommended screening for VWD in these women.

An important part of increasing the awareness among physicians and their patients with heavy periods who may have an underlying bleeding disorder is referral for appropriate diagnosis. Federally funded Hemophilia Treatment Centers (HTCs) are thought to be the best source for appropriate laboratory diagnosis, however, the following concerns have been raised: (1) Anecdotal reports from HTC providers describe reduced capacity of in-house laboratory support and access to specialty coagulation laboratory tests that are essential for appropriate diagnosis of bleeding disorders; (2) A CDC, Public Health Practice Program Office (PHPPO), study demonstrated reduced capacity to perform specific coagulation tests through their survey of hospital laboratories, but it is impossible to know if HTCs have higher capacity than the hospitals studied; (3) HTCs report that changes in third party payer policies, especially health maintenance organizations, are dictating the source of laboratory testing requiring shipment of laboratory specimens to sites away from the hospital that reduce the quality of the sample and effect the reliability of the results. It is important to assess the HTCs and determine their capabilities and barriers to delivering comprehensive care to patients with bleeding disorders.

The proposed study will involve the 135 federally funded HTCs. The study participants are composed of medical directors, adult hematologists, pediatric hematologists, and coagulation laboratory technicians. A survey will be distributed to the above personnel to ascertain their perceptions of lab capabilities and procedures. There will be no cost to respondents.

Respondents	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
HTC medical directors & coagulation technicians	325	1	20/60	108
Total				108

Dated: June 9, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14912 Filed 6–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreement for Development of the National Violent Death Reporting System, Program Announcement #03038

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Development of the National Violent Death Reporting System, Program Announcement #03038.

Times and Dates: 8:30 a.m.–8:50 a.m., June 30, 2003. (Open); 8:50 a.m.–4 p.m., June 30, 2003. (Closed)

Place: The Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, GA 30328, Telephone 770.395.3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #03038.

For Further Information Contact: James Belloni, Deputy Director, Office of Program Management and Operations, National Center For Injury Prevention and Control, CDC, 4770 Buford Highway NE., MS–K–62, Atlanta, GA 30341, Telephone 770.488.4538.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–14927 Filed 6–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Subcommittee and Committee meetings.

Name: Science and Program Review Subcommittee to ACIPC.

Time and Dates: 6:30 p.m.–9 p.m., June 22, 2003; 9 a.m.–12 p.m., June 23, 2003.

Place: The Westin Atlanta Airport, 4736 Best Road, Atlanta, Georgia 30337, telephone (404) 762–7676.

Status: Open: 6:30 p.m.–7 p.m., June 22, 2003.

Closed: 7 p.m.–9 p.m., June 22, through 12 p.m., June 23, 2003.

Purpose: The Subcommittee provides advice on the needs, structure, progress, and performance of the National Center for Injury Prevention and Control (NCIPC) programs. They also provide second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee advises on priorities for research to be supported by contracts, grants, and cooperative agreements, and provides concept review of program proposals and announcements.

Matters To Be Discussed: Agenda items include updates on research and review activities, the role of secondary reviewers, and date for secondary review of Special Emphasis Panels (SEPs). Beginning at 7 p.m., June 22, through 12 p.m., June 23, 2003, the Subcommittee will begin the secondary review which includes discussion and evaluation of results of the Injury Research Grant Review Commjttee's (IRGRC) review of a new application received from the University of Pittsburgh Injury Control Research Center (Announcement #03008); and R49s (individual research grant applications received and reviewed by IRGRC in response to Program Announcements #03023, Acute Care, Rehabilitation and Disability Prevention Research; #03024, Violence-Related Injury Prevention Research (Intimate Partner Violence and Sexual Violence); #03027, New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, Acute Care, Disability, and Rehabilitation-Related Research; #03028, Traumatic Injury Biomechanics Prevention Research; #03033, Dissemination Research of Effective Interventions; #03036, Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; #03035, National Academic Centers of Excellence on Youth Violence Prevention; and secondary review, discussion, and evaluation of Small Business Innovation Research applications reviewed by the National Institutes of Health. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Name: Advisory Committee for Injury Prevention and Control.

Time and Date: 1 p.m.–2:30 p.m., June 23, 2003.

Place: The Westin Atlanta Airport, 4736 Best Road, Atlanta, Georgia 30337, telephone (404) 762–7676.

Status: Open: 1 p.m.–1:45 p.m., June 23, 2003.

Closed: 1:45 p.m.–2:30 p.m., June 23, 2003.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injuries. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements, and provides concept review of program proposals and announcements.

Matters To Be Discussed: Agenda items include an update on Center activities from the Deputy Director, NCIPC. Beginning at 1:45 p.m., June 23, 2003, through 2:30 p.m., the Committee will vote on results of the secondary review. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. Agenda items are subject to change as priorities dictate.

Note: Due to program oversight, this **Federal Register** Notice is being published less than 15 days before the date of the meeting.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 6, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14925 Filed 6–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–9 a.m., June 24, 2003; 9:10 a.m.–5:30 p.m., June 24, 2003; 8 a.m.–5 p.m., June 25, 2003.

Place: The Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, telephone (703) 684–5900.

Status: Open 8 a.m.–9 a.m., June 24, 2003. Closed 9:10 a.m.–5:30 p.m., June 24, 2003; 8 a.m.–5 p.m., June 25, 2003.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to NIOSH's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with their program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that the research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–9 a.m. on June 24, 2003, to address matters related to the conduct of SOHSS business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Note: Due to program oversight, this **Federal Register** Notice is being published less than 15 days before the date of the meeting.

Contact Person for More Information: Michael Galvin, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone 404/498–2524, fax 404/498–2569.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 6, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14926 Filed 6–12–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0384]

Guidance for Industry: Standardized Training Curriculum for Application of Hazard Analysis Critical Control Point Principles to Juice Processing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance document entitled "Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing" (the guidance). The guidance advises juice processors of FDA's view that the 1st Edition of the Juice Hazard Analysis Critical Control Point (HACCP) Training Curriculum of the Juice HACCP Alliance (the standardized curriculum) is adequate for use in training individuals to meet the requirements of the juice HACCP regulation. The guidance also advises processors and educators on how the requirements of the juice HACCP regulation may be met using the standardized curriculum or alternative curricula for training individuals and on how they can view, download, or purchase the standardized curriculum.

DATES: You may submit written or electronic comments on the guidance document at any time.

ADDRESSES: Submit written requests for single copies of the guidance to Michael E. Kashtock, Center for Food Safety and Applied Nutrition (CFSAN) (see **FOR FURTHER INFORMATION CONTACT**). Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022, FAX: 301–436–2651, e-mail: *mkashtoc@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's juice HACCP regulation in part 120 (21 CFR part 120) includes in § 120.13 a requirement that individuals who perform certain specified functions, e.g., developing the hazard analysis or the HACCP plan, "shall have successfully completed training in the application of HACCP principles to juice processing at least equivalent to that received under standardized curriculum recognized as adequate by the Food and Drug Administration, or shall be otherwise qualified through job experience to perform these functions." The guidance advises juice processors of FDA's view that the 1st Edition of the Juice HACCP Training Curriculum of the Juice HACCP Alliance (coordinated through the efforts of the National Center for Food Safety and Technology at the Illinois Institute of Technology) (the standardized curriculum) is adequate for use in training individuals to meet the requirements of the juice HACCP regulation. This guidance also advises processors and educators on how the requirements of the juice HACCP regulation may be met using the standardized curriculum or alternative curricula for training individuals and on how they can view, download, or purchase the standardized curriculum.

The guidance document is a level 1 guidance issued consistent with FDA's good guidance practices regulation (21 CFR 10.115) relating to the development, issuance, and use of guidance documents.

In the **Federal Register** of October 7, 2002 (67 FR 62489), FDA announced the availability of a draft guidance document entitled "Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing." The agency solicited public comment on the draft guidance document. FDA did not receive any comments and is finalizing the draft guidance document without revision.

This guidance represents the agency's current thinking on curricula for training juice processing personnel in the application of HACCP principles to juice processing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

A copy of the guidance document is available on the Internet at *http://www.cfsan.fda.gov/guidance.html*.

Dated: June 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14897 Filed 6–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: July 16, 2003, 9 a.m.–5 p.m. July 17, 2003, 8:30 a.m.–3 p.m.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007, (202) 726–5000.

Status: The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010*.

Agenda: Topics that will be discussed include the following: Low-Birth Weight and Preterm Birth; Birth Defects and Other Neonatal Conditions; and the Healthy Start Program. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr.P.H., HRSA, Maternal and Child Health Bureau, Telephone (301) 443–6327.

Dated: June 6, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–14898 Filed 6–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Homeland Security Advisory Council

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC or Council) will hold its inaugural meeting on Monday June 30, 2003 in Washington, DC. The HSAC will meet for the purposes of: (1) Welcoming and introducing the members of the Council; (2) announcing the Chairs and Vice Chairs of the HSAC's Senior Advisory Committees; (3) receiving briefings by senior government officials on the Department's TOPOFF II exercise; and (4) holding roundtable discussions with and among Council members. This meeting will be partially closed; the open portion of the meeting, for purposes of (1), (2), and (3) above will be held at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., from 10 a.m. to 12:15 p.m. The closed portion of the meeting, for purposes of (4) above, will be held at the Renaissance Mayflower Hotel from 12:30 to 3 p.m.

Public Attendance: Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. In addition, due to security concerns, any member of the public who wishes to attend the meeting must provide his or her name, social security number and date of birth no later than 5 p.m. EDT, Wednesday, June 25, 2003, to Mike Miron, member of the HSAC staff, via email at *HSAC@dhs.gov*, or via phone at (202) 786–0279. Persons with disabilities who require special assistance should indicate so in their admittance request. Photo identification will be required for entry into the building, and everyone in attendance must be present and seated by 9:40 a.m.

Basis for Closure: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), the Secretary has issued a determination that portions of this HSAC meeting will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7) and (c)(9)(B) and that, accordingly, these portions of the meeting will be closed to the public.

Public Comments: Members of the public who wish to file a written statement with the HSAC may do so by mail to Mike Miron at the following address: Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528. Comments may also be sent via email to *HSAC@dhs.gov* or via fax to (202) 772–9718.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–15089 Filed 6–11–03; 10:39 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–32]

Notice of Proposed Information Collection: Comment Request Standardized Form for Collecting Information Regarding Race and Ethnic Data

AGENCY: Office of the Administration for Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* August 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410, or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Gauff, AJT, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0667 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Standardized Form for Collecting Information Regarding Collection of Race and Ethnic Data.

OMB Control Number: 2535–0113.

Description of the need for the information and proposed use: HUD's standardized form for the Collection of Race and Ethnic Data complies with OMB's revised standards for Federal agencies issued, October 30, 1997. These standards apply to HUD program office and partners that collect, maintain, and report Federal data on race and ethnicity for program administrative reporting, and civil rights compliance reporting. The new standards are intended to give Federal agencies enhanced ability to collect information that reflect, the growing diversity of the U.S. population.

Agency Form Numbers, if Applicable: HUD–27061.

Members of Affected Public: Individuals or Households, Business or other for-profit, not-for-profit institutions, State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: This proposal will result in no significant increase in the current information collection burden. An estimation of the total number of hours needed to provide the information

for each grant application is 0.01 hour (approximately on minute), however, the burden will be assessed against each individual grant program submission under the Paperwork Reduction Act; number of respondents is an estimated 11,000; 60% of responses will be quarterly and 40% annually.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 9, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14899 Filed 6–12–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–04]

Notice of Proposed Information Collection: Comment Request HOPE for Homeownership of Single Family Homes (HOPE 3)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* August 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia E. Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Patricia Mason, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410,(202) 708–0614, ext 4588 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HOPE for Homeownership of Single Family Homes (HOPE 3).

OMB Control Number, if applicable: 2506–0128.

Description of the need for the information and proposed use: The Homeownership Opportunities for People Everywhere (HOPE 3) Program provides Federal grants to develop and implement homeownership programs for low income people. This information is needed to assist HUD monitor grantees previously awarded HOPE 3 Program Implementation Grants through the collection of data in the Program's Cash and Management Information System, environmental review assessments and annual performance report requirements. The Department does not anticipate additional awards for the HOPE 3 Program.

Agency form numbers, if applicable: SF 424, HUD 40086, 40102–A, 40101–B, 40103, 40104, and 40105.

Members of affected public: State and local governments, nonprofit organizations.

Estimation of the total numbers of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response: The Department estimates that the 158 respondents will require 15,490 hours. Annually (approximately 100 per respondent) to prepare the Information collection.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 34, as amended.

Dated: June 9, 2003.

Roy Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–15028 Filed 6–12–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 5, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–14596 Filed 6–12–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–09]

Conference Call for the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the public.

DATES: The conference call will be held on Friday, June 27, 2003, from 11 a.m. to 1 p m.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can log onto NFPA's Web site for instructions on how to participate and for contact information for the conference call: *http://www.nfpa.org/ECommittee/HUDManufacturedHousing/hud.manufacturedhousing.asp.* Alternately you may contact Jill McGovern of NFPA by phone at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this conference call is to discuss the Consensus Committee's review and recommendations to the Secretary on the Department's draft Proposed Rule for the on-site completion of manufactured homes.

Tentative Agenda

A. Roll Call
B. Discussion of draft on-site rule
C. Balloting on Consensus Committee actions
A. Adjournment

Dated: June 5, 2003.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 03–15029 Filed 6–12–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–931–6320 HAG3–0055]

Notice of Availability of Draft Integrated Pest Management Program Environmental Impact Statement for the Horning Seed Orchard

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Integrated Pest Management Environmental Impact Statement (EIS) for the Horning Seed Orchard.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, a Draft Integrated Pest Management EIS has been prepared for the Bureau of Land Management's Horning Seed Orchard in the Bureau's Salem District. The Draft EIS describes and analyzes options for integrated pest management to control the insect, weed, animal, and disease problems at the orchard and to maintain healthy, vigorous crop trees for the production of seed and other vegetative materials used for reforestation and a variety of land management actions. Preparation of this EIS precedes a final decision regarding the selection of an integrated pest management alternative at Horning Seed Orchard

DATES: Written comments on the Draft EIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register** Written comments may also be presented at a public meeting/open house, which will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: Written comments on the document should be addressed to: Mr. Greg Tyler, Manager Horning Seed Orchard at 27004 Sheckly Road, Colton, OR 97017, or by fax at 503–630–6888, or by e-mail to *orhsoipmeis@or.blm.gov.* Copies will be available at all 13 city and county public libraries located in Clackamas County, OR, and on the BLM Salem District Web site at *http://www.or.blm.gov/salem/html/planning/horning_ipm.htm.* Copies will also be available from the Salem District Office, 1717 Fabry Road, SE, Salem, OR 97306; 503–375–5626. Public reading copies will be available for review at the following BLM locations: BLM Oregon State Office, Portland, OR; and BLM-Office of Public Affairs, Washington, DC. Background information and maps used in developing the EIS are available at the Salem District Office and the Oregon State Office in Portland.

Pursuant to 7 CFR part 1, subpart B, § 1.27, all written and electronic submissions in response to this notice, public scoping letters, and draft and final Environmental Impact Statements will be made available for public inspection at the Salem District office (1717 Fabry Road SE, Salem, OR) during regular hours (7:30 a.m. to 4 p.m., Monday through Friday, except holidays) including the submitter's name and address, unless the submitter specifically requests confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Tyler, Manager Horning Seed Orchard at 27004 Sheckley Road, Colton, OR 97017, 503–630–8406, *orhsoipmeis@or.blm.gov.*

SUPPLEMENTARY INFORMATION: The draft EIS analyzes four action alternatives and the No Action alternative to manage pests at Horning Seed Orchard. The alternatives can be summarized as follows:

Alternative A—Maximum Production Integrated Pest Management. Pests would be managed using all identified biological, chemical, prescribed fire, cultural and other pest control methods, including aerial application of esfenvalerate by helicopter.

Alternative B—Integrated Pest Management with Environmental Protection Emphasis. Pests would be managed using all of the methods in Alternative A, with special restrictions to protect workers' health and safety and the environment. The restrictions are based on the results of the human health and ecological risk assessment, scoping comments, and anticipated consultation issues with the National Marine Fisheries Service under the Endangered Species Act.

Alternative C—Ground-Based Integrated Pest Management. This alternative is identical to Alternative B except for the exclusion of helicopter application.

Alternative D—Non-Chemical Pest Management. Pests would be managed using only the biological, prescribed fire, cultural, and other non-chemical pesticide methods listed under Alternative A. No chemical methods would be permitted.

Alternative E—No Action: Continuation of Current Management Approach. The current management system uses all non-chemical pest control practices at the seed orchard, as well as the use of limited chemicals on a specific case-by-case basis. All biological, prescribed fire, cultural, and other non-chemical pesticide methods would be available for use. When a specific need is identified for a chemical pesticide, the action would be reviewed to determine whether it is encompassed by an existing NEPA document, or whether an environmental assessment or EIS is required.

The preferred alternative is Alternative B.

Public participation has occurred throughout the NEPA process. Two Notices of Intent were filed in the **Federal Register** (FR) on March 26, 1999 (64 FR 14747) and March 29, 2001 (66 FR 17192). An open house, mail-outs, and a site visit also have been conducted to solicit comments and ideas. All comments presented throughout the process have been considered in developing the Draft EIS.

Denis Williamson,

District Manager.

[FR Doc. 03–14285 Filed 6–12–03; 8:45 am]

BILLING CODE 4320–HL–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–931–6320 HAG3–0056]

Notice of Availability of Draft Integrated Pest Management Program Environmental Impact Statement for the Provolt and Sprague Seed Orchards

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Integrated Pest Management Environmental Impact Statement (EIS) for the Provolt and Sprague Seed Orchards.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, a Draft Integrated Pest Management EIS has been prepared for the Bureau of Land Management's Provolt and Sprague Seed Orchards in the Bureau's Medford District. The Draft EIS describes and analyzes options for integrated pest management to control the insect, weed, animal, and disease problems at the orchards and to maintain healthy, vigorous crop trees for the production of seed and other vegetative materials used for reforestation and a variety of land management actions. Preparation of this EIS precedes a final decision regarding the selection of an integrated pest management alternative at Proyolt and Sprague Seed Orchards.

DATES: Written comments on the Draft EIS will be accepted for 60 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Written comments may also be presented at public meetings/open houses and will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: Written comments on the document should be addressed to: Mr. Harvey Koester, Manager Provolt and Sprague Seed Orchards, 3040 Biddle Road, Medford, OR 97504, or by fax to 541–618–2400, or by e-mail to *Medford_SPOEIS_Mail@or.blm.gov*. Copies will be available at Medford and Grants Pass public libraries located in Jackson and Josephine Counties, OR, and on the BLM Medford District Web site at *http://www.or.blm.gov/medford/planning/medpest_eis_main.html*. Copies will also be available from the Medford District Office, 3040 Biddle Road, Medford, OR 97504; 541–618–2200. Public reading copies will be available for review at the following BLM locations: BLM Oregon State Office, Portland, OR; and BLM Office of Public Affairs, Main Interior Building, Washington, DC. Background information and maps used in developing the EIS are available at the Medford District Office and the Oregon State Office in Portland.

Pursuant to 7 CFR part 1, subpart B, § 1.27, all written and electronic submissions in response to this notice, public scoping letters, and draft and final Environmental Impact Statements will be made available for public inspection at the Medford District office (3040 Biddle Road, Medford, OR) during regular hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays) including the submitter's name and address, unless the submitter specifically requests confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Koester, Manager Provolt and Sprague Seed Orchards, 3040 Biddle Road, Medford, OR 97504, 541–618–2401, *Medford_SPOEIS_Mail@or.blm.gov*.

SUPPLEMENTARY INFORMATION: The draft EIS analyzes three action alternatives and the No Action alternative to manage pests at Provolt and Sprague Seed Orchards. The alternatives can be summarized as follows:

Alternative A—Maximum Production Integrated Pest Management. Pests would be managed using all identified biological, chemical, prescribed fire, cultural and other pest control methods.

Alternative B—Integrated Pest Management with Environmental Protection Emphasis. This is the preferred alternative. Pests would be managed using all of the methods in Alternative A, with special restrictions to protect workers' health and safety and the environment. The restrictions are based on the results of the human health and ecological risk assessment, scoping comments, and anticipated consultation issues with the Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act.

Alternative C—Non-Chemical Pest Management. Pests would be managed using only the biological, prescribed fire, cultural, and other non-chemical pesticide methods listed under Alternative A. No chemical methods would be permitted.

Alternative D—No Action: Continuation of Current Management Approach. The current management system uses all non-chemical pest control practices at the seed orchard, as well as the use of limited chemicals on a specific case-by-case basis. All biological, prescribed fire, cultural and other non-chemical pesticide methods available for use. When a specific need is identified for a chemical pesticide, the action would be reviewed to determine whether it is encompassed by an existing NEPA document, or whether an environmental assessment or EIS is required.

Public participation has occurred throughout the NEPA process. Two Notices of Intent were filed in the **Federal Register** (FR) on March 26, 1999 (64 FR 14747) and March 29, 2001 (66 FR 17192). Open houses, mail-outs, and site visits also have been conducted to solicit comments and ideas. All comments presented throughout the process have been considered in developing the Draft EIS.

Mary Smelcer,

Acting District Manager.

[FR Doc. 03–14286 Filed 6–12–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Supplemental Environmental Impact Statement for Management of Port-Orford-Cedar in Southwest Oregon

AGENCIES: USDI, Bureau of Land Management.

ACTION: Notice of availability of the draft supplemental environmental impact statement (SEIS) for management of Port-Orford-cedar in Southwest Oregon.

SUMMARY: The Forest Service (FS) and Bureau of Land Management (BLM) (the Agencies) have prepared a Draft SEIS to supplement the analyses contained in the Final EIS for the Resource Management Plans for the Coos Bay, Medford, and Roseburg BLM Districts (1995) and the Land and Resource Management Plan for the Siskiyou National Forest (1988). These areas are located in southwest Oregon. The Draft SEIS is now available for public review.

DATES: Written comments on the Draft SEIS will be accepted for 90 days following the date that Environmental Protection Agency publishes their Notice of Availability of the Draft SEIS in the **Federal Register**. The Agencies ask that those submitting comments on the Draft SEIS make them as specific as possible, with reference to page numbers and chapters of the document, and meaningful so as to alert the agencies to the reviewer's position and contention.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail your comments to Port-Orford-cedar SEIS Team, PO Box 2965, Portland, OR 97208. You may also comment via e-mail to *ORPOCEIS@or.blm.gov*. Comments received in response to this solicitation, including names and home addresses, will be considered part of the public record on this proposal and are available for public review during regular business hours. Comments, including names and home addresses, may be published as part of the Final SEIS. Requests to receive copies of the Draft SEIS should be sent to the address listed above. Alternately, the Draft SEIS is available on the Internet at *http://www.or.blm.gov/planning/Port-Orford-cedar_SEIS/*. Copies are also available for inspection at Forest Service and BLM offices in southwestern Oregon and northwestern California. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered. Anonymous comments do not create standing or a record of participation. All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ken Denton, SEIS Team Leader, P.O. Box 2965, Portland, Oregon 97208, telephone (503) 326–2368.

SUPPLEMENTARY INFORMATION: The tree species Port-Orford-cedar is killed by an exotic root disease (*Phytophthora lateralis*) that is linked, at least in part, to transport of spore-infested soil by human and other vectors. Water-borne spores then readily spread the disease down slope and down stream.

Five alternatives are considered in detail in the Draft SEIS. Alternative 1, no action, continues the current direction of implementing available disease-management practices based on site-specific analysis. Alternative 2 specifically describes available control practices and adds a risk key to clarify the environmental conditions that require implementation of additional site-specific practices. Alternative 3 includes all elements of Alternative 2,, and adds additional protections for 32 currently uninfested 6th-field watersheds. Alternative 4 removes existing disease management practices, but accelerates the resistant breeding program to provide resistant stock for all areas within 10 years. Alternative 5 also removes existing disease management practices, and stops development of resistant seed for remaining undeveloped breeding zones. The preferred alternative is Alternative 2. A decision to select one of the action alternatives would amend the management direction in the three BLM and one FS land and resource management plans and BLM resource management plans in the planning area.

The SEIS addresses deficiencies identified in a February 12, 2003 U.S. District Court decision, which held the Resource Management Plan Environmental Impact Statement for the Coos Bay District and a related project Environmental Assessment did not adequately analyze the cumulative effects of management activities on the health of Port-Orford-cedar outside the project area.

The analysis considers the entire natural range of Port-Orford-cedar, but only land and resource management plans within the Oregon portion of the range are proposed for amendment at this time.

The responsible official for lands administered by the Forest Service will be the Regional Forester, Region 6. The responsible official for public lands administered by the BLM will be the State Director, Oregon/Washington State Office.

No public hearings or meetings are planned.

Charles E. Wassinger,

Associate State Director, Oregon/Washington, Bureau of Land Management.

[FR Doc. 03–15119 Filed 6–12–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–931–6320 HAG3–0057]

Notice of Availability of Draft Integrated Pest Management Program Environmental Impact Statement for the Tyrrell Seed Orchard

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Integrated Pest Management Environmental Impact Statement (EIS) for the Tyrrell Seed Orchard.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, a Draft Integrated Pest Management Environmental Impact Statement (EIS) has been prepared for the Bureau of Land Management's Tyrrell Seed Orchard in the Bureau's Eugene District. The Draft EIS describes and analyzes options for integrated pest management to control the insect, weed, animal, and disease problems at the orchard and to maintain healthy, vigorous crop trees for the production of seed and other vegetative materials used for reforestation and a variety of land management actions. Preparation of this EIS precedes a final decision regarding the selection of an integrated pest management alternative at Tyrrell Seed Orchard.

DATES: Written comments on the Draft EIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Written comments may also be presented at a public meeting/open house, which will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: Written comments on the document should be addressed to: Mr. Glenn Miller, Manager Tyrrell Seed Orchard, 26350 Siuslaw River Road (PO Box 121), Lorane, OR 97451, or by fax to 541–683–6597, or by e-mail to *OR_Eugene_TSOEIS@or.blm.gov*.

Copies will be available at Eugene (Eugene city library-downtown branch), Springfield, Cottage Grove, and Veneta public libraries located in Lane County, OR, and on the BLM Eugene District Web site at *http://www.edo.or.blm.gov/planning/seed_orchard/pest_mgmt_eis.htm*. Copies will also be available from the Eugene District Office, 2890 Chad Drive, Eugene, OR 97440; 541–683–6600. Public reading copies will be available for review at the following BLM locations: BLM Oregon State Office, Portland, OR; and BLM Office of Public Affairs, Washington, DC. Background information and maps used in developing the EIS are available at the Eugene District Office and the Oregon State Office in Portland.

Pursuant to 7 CFR part 1, subpart B, § 1.27, all written and electronic submissions in response to this notice, public scoping letters, and draft and final Environmental Impact Statements will be made available for public inspection at the Eugene District office (2890 Chad Drive, Eugene, OR) during regular hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays) including the submitter's name and address, unless the submitter specifically requests confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law.

All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Miller, Manager Tyrrell Seed Orchard, 26350 Siuslaw River Road (PO Box 121), Lorane, OR 97451, 541–683–6445, *OR_Eugene_TSOEIS@or.blm.gov*.

SUPPLEMENTARY INFORMATION: The draft EIS analyzes four action alternatives and the No Action alternative to manage pests at Tyrrell Seed Orchard. The alternatives can be summarized as follows:

Alternative A—Maximum Production Integrated Pest Management. Pests would be managed using all identified biological, chemical, prescribed fire, cultural and other pest control methods, including aerial application of esfenvalerate by helicopter.

Alternative B—Integrated Pest Management with Environmental Protection Emphasis. Pests would be managed using all of the methods in Alternative A, with special restrictions to protect workers' health and safety and the environment. The restrictions are based on the results of the human health and ecological risk assessment, scoping comments, and anticipated consultation issues with the National Marine Fisheries Service under the Endangered Species Act.

Alternative C—Ground-Based Integrated Pest Management. This alternative is identical to Alternative B except for the exclusion of helicopter application.

Alternative D—Non-Chemical Pest Management. Pests would be managed using only the biological, prescribed fire, cultural, and other non-chemical pesticide methods listed under Alternative A. No chemical methods would be permitted.

Alternative E—No Action: Continuation of Current Management Approach. The current management system uses all non-chemical pest control practices at the seed orchard, as well as the use of limited chemicals on a specific case-by-case basis. All biological, prescribed fire, cultural, and other non-chemical pesticide methods would be available for use. When a specific need is identified for a chemical pesticide, the action would be reviewed to determine whether it is encompassed by an existing NEPA document, or whether an environmental assessment or EIS is required.

The preferred alternative is Alternative B.

Public participation has occurred throughout the NEPA process. Two Notices of Intent were filed in the **Federal Register** (FR) on March 26, 1999 (64 FR 14747) and March 29, 2001 (66 FR 17192). An open house, mail-outs, and a site visit also have been conducted to solicit comments and ideas. All comments presented throughout the process have been considered in developing the Draft EIS.

Pat Russell,

Acting District Manager.

[FR Doc. 03–14287 Filed 6–12–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–1610–DP]

Notice of Availability for the Draft West Mojave Plan (DWMP) and Draft Environmental Impact Statement (DEIS)

AGENCY: California Desert District (California), Bureau of Land Management.

ACTION: Notice of availability of the Draft West Mojave Plan (DWMP) and Draft Environmental Impact Statement (DEIS).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), this document provides notice that the Bureau of Land Management (BLM) has prepared a Draft West Mojave Plan (DWMP) and Draft Environmental Impact Statement (DEIS) for public review and comment. This planning activity encompasses approximately 3.3 million acres of public land managed by the BLM's California Desert District, located in Inyo, Kern, Los Angeles and San Bernardino Counties in southern California.

The Draft West Mojave Plan was prepared in collaboration with state and local governments, which takes into account local, regional and national needs and concerns.

The conservation strategy to be implemented on public lands include measures that would be compatible with the development of a habitat conservation plan on 3 million acres of private and local government lands within the planning area.

This notice initiates the public review process on the DWMP and DEIS. The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects.

DATES: The comment period will end 90 days following publication of the Environmental Protection Agency's Notice of Availability of the DWMP and DEIS in the **Federal Register**. Comments on the Draft RMP/EIS should be received on or before the end of the comment period at the address listed below.

Public Meetings: Public meetings will be held during the comment period. In order to ensure local community participation and input, public meetings will be held at selected locations in Inyo, Kern, Los Angeles and San Bernardino Counties, California. Early participation by all those interested is encouraged. Meeting locations and dates will be announced at least 15 days in advance through local media and online at *http://www.ca.blm.gov/news/meetings.html*. All individuals, organizations, agencies, and tribes with a known interest in this planning effort have been sent a copy of the document for review.

Written comments will be accepted throughout the planning process at the address shown below. For comments to be most helpful they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and are feasible to be resolved in this planning process.

Written comments should be sent to the Bureau of Land Management, California Desert District Office, Attn. West Mojave Plan Staff, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553.

Documents pertinent to this proposal may be examined at the BLM California Desert District Office, the BLM Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest, California 93555, and the BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311 during regular business hours from 7:45 a.m. to 4 p.m., Monday through Friday, except holidays. The draft documents also are available online at *http://www.ca.blm.gov/cdd/wemo.html*. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact William Haigh, Project Manager, at (760) 252–6080 (Phone), e-mail at *whaigh@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The DWMP addresses the management of 3.3 million acres of public lands administered by the BLM in eastern Kern County, southern Inyo County, northern Los Angeles County and western San Bernardino County, all of which are within the State of California. The BLM's Ridgecrest and Barstow Field Offices administer most of these public lands. A small amount of acreage administered by the BLM's Needles and Palm Springs Field Offices is also affected. All public lands are within the California Desert Conservation Area, and all lie within the jurisdiction of the BLM's California Desert District.

The DWMP is being prepared collaboratively with local jurisdictions, state and other federal agencies. The purpose of the West Mojave Plan is to develop conservation strategies for over 100 listed and sensitive plant and animal species that are found within the western Mojave Desert, including the threatened desert tortoise and the California-listed Mojave Ground Squirrel, and to simplify procedures for complying with the California and federal Endangered Species Acts. Other issues being addressed include the development of a motorized vehicle access network for public lands in the region, and effects of the program on regional economics, growth-inducing impacts, livestock grazing, mining, cultural resources and recreation. The Plan would be implemented on public lands through amendments to BLM's California Desert Conservation Area Plan.

The DEIS considers and analyzes seven (7) alternatives (A–G), including the No Action alternative, with Alternative A identified as the agency's Preferred Alternative. These alternatives have been developed based on extensive public input following an initial round of scoping meetings in January 1992, extensive biological and field survey work in the late 1990's, nearly 50 "task group" attended by representatives of the participating agencies and jurisdictions and the general public between December 1999 and May 2002, numerous other public meetings, and a final round of scoping meetings in June and July 2002. The proposed action and alternatives were based on comments and suggestions offered during those meetings.

The alternatives provide for a wide array of land use allocations and management direction. The alternatives provide for variable levels of commodity production, resource protection, special areas, and authorized land and resource uses, including endangered species conservation, motorized vehicle access to public lands, livestock grazing and various forms of recreation. Any necessary amendments to the BLM's CDCA Plan will be addressed. A final Environmental Impact Statement and proposed West Mojave Plan are expected to be available for public review in October 2003.

Dated: February 14, 2003.

Linda Hansen,

District Manager, California Desert District.

[FR Doc. 03–14910 Filed 6–12–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection: COPS Tribal Resources Grant Program (TRGP) Hiring Progress Report.

The Department Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 12, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collections instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305–7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision.

(2) *Title of the Form/Collection:* COPS Tribal Resources Grant Program Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS. Form Number: Not applicable. Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: TRGP Hiring award recipients Other: None Abstract: The currently approved collection instrument targets TRGP award recipients to gather data on officer positions received under the Tribal Resources Grant Program. The data will be used by the COPS Office to monitor the progress of the TRGP award recipients in implementing their grant and for compliance monitoring efforts.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is half an hour.

(6) *An estimate of the additional public burden (in hours) associated with the collection:* The total estimated burden on the public is 100 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 10, 2003

Brenda Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–15004 Filed 6–12–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection; COPS Tribal Resources Grant Program (TRGP) Equipment and Training Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 12, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collections instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305–7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection

(2) *Title of the Form/Collection:* COPS Tribal Resources Grant Program Equipment and Training Progress Report

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services (COPS). Form Number: Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: TRGP Equipment/Training award recipients Other: None. Abstract: The currently approved collection instruments targets TRGP award recipients to gather data on equipment purchased and/or training received under the Tribal Resources Grant Program. The data will be used by the COPS Office to monitor the progress of the TRGP award recipients in implementing their grant and for compliance monitoring efforts.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is half an hour.

(6) An estimate of the additional public burden (in hours) associated with the collection: The total estimated burden on the public is 100 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 10, 2003.

Brenda Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–15005 Filed 6–12–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC). These interpretations are issued in Unemployment Insurance Programs Letters (UIPLs) to State Workforce Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 30–02, Changes 2 and 3

UIPL 30–02, Changes 2 and 3 and their attachments provide the states with the requirements of the Temporary Extended Unemployment Compensation (TEUC) Act of 2002, as deemed amended by Section 4002 of Public Law 108–11, as operating instructions and responses to questions pertaining to the TEUC available to certain displaced airline and airline related workers.

Dated: June 5, 2003.

Emily Stover DeRocco,

Assistant Secretary.

Employment and Training Administration Advisory System

U.S. Department of Labor, Washington, DC 20210

Classification: OWS
Correspondence Symbol: DUIO
Date: April 25, 2003

Advisory: Unemployment Insurance Program Letter No. 30–02, Change 2.

To: All State Workforce Agencies.
From: Cheryl Atkinson s/s, Administrator, Office of Workforce Security.
Subject: Temporary Extended Unemployment Compensation (TEUC) Act of 2002—Additional TEUC for Displaced Airline and Related Workers.

1. *Purpose.* To provide State Workforce Agencies (SWAs) instructions for implementing the changes to the TEUC program related to displaced airline and related workers.

2. *References.* Title II of the Job Creation and Worker Assistance Act of 2002 (The Temporary Extended Unemployment Compensation Act of 2002), Public Law 107–147; Public Law 108–1; UIPL No. 30–02 dated July 5, 2002; UIPL No. 30–02, Change 1, dated January 9, 2003; Section 4002 of Public Law 108–11, signed by the President on April 16, 2003; Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, as amended; Section 233 of the Trade Act of 1974; 20 CFR Part 615; ET Handbook No. 401; ET Handbook No. 410.

3. *Summary.* Section 4002 of P.L. 108–11 creates special rules for determining TEUC eligibility for certain displaced airline and related workers, who were separated for one of the specified reasons from a qualifying base period employer on or after September 11, 2001. In brief, such workers will qualify for up to 39 weeks of basic TEUC (henceforth "TEUC–A"), plus up to 13 weeks of TEUC–X (henceforth "TEUC–AX"). TEUC–A is payable for weeks of unemployment beginning with the first week beginning after April 16, 2003, through the week ending no later than December 28, 2003. Individuals with TEUC–A or TEUC–AX balances remaining on December 28, 2003, can claim those balances during the transition period which ends with the last week that begins on or before December 26, 2004. TEUC–A claims cannot be augmented with TEUC–AX (that is, TEUC–AX entitlement cannot be established) during the transition period.

Rescissions: None
Expiration Date: Continuing

4. *Summary of the New Provisions.* For weeks of unemployment beginning after April 16, 2003, the new provisions (see Attachment A to this UIPL) do the following for *displaced airline and related workers:*

a. Prescribes that TEUC–A is payable and monetary determinations and redeterminations may be effective through the last week ending before December 29, 2003;

b. Prescribes a basic TEUC–A benefit amount that is the lesser of 150 percent of the maximum benefit amount (MBA) of regular benefits of the parent claim or 39 times the individual's average weekly benefit amount (AWBA);

c. Provides a TEUC–AX augmentation of ½ of the basic TEUC–A MBA for "eligible individuals."

d. Provides a transition period during which benefits may be paid to each eligible individual who has "an amount remaining" in his/her TEUC–A or AX account as of December 28, 2003. The transition period ends with the last week beginning on or before December 26, 2004.

5. *Interpretation.* SWAs are required to continue to follow the Department of Labor's interpretation of the TEUC Act and the operating instructions previously published in UIPL No. 30–02, and UIPL No. 30–02, Change 1, to guide states in administering the TEUC program, except as changed by this advisory with respect to the determination of eligibility for "eligible individuals" as defined in Section 4002(a)(1) of Public Law 108–11.

These instructions are issued to the states and cooperating state agencies as guidance provided by the Department in its role as the principal in the TEUC program. As agents of the United States, the states and cooperating state agencies may not vary from the operating instructions without the prior approval of the Department. The interpretations and procedures issued in this document are in addition to those previously issued as UIPL No. 30–02, and UIPL No. 30–02, Change 1, and apply only with respect to the TEUC determination in accordance with the provisions of Public Law 108–11.

6. *TEUC Agreements.* TEUC, including TEUC–A, is administered through voluntary agreements between states and the Department of Labor. All states have agreements with the Secretary to administer the TEUC program under provisions of the TEUC Act. The existing agreements remain in effect, and no new agreements are necessary.

7. *Notifications.*

a. *Identification and Notification of Potentially Eligible Claimants.* Implementation of the requirements of Section 4002 Public Law 108–11, requires identification of each potentially "eligible individual," including each interstate claimant. To satisfy this requirement, SWAs must send written notification to each individual who was laid-off from a base period employer on or after September 11, 2001. SWAs must send immediate written notification to each such individual who has exhausted all available TEUC benefits from the beginning of the TEUC program. (SWAs are not required to contact individuals whose separation was not due to a lay-off. As discussed in item 8.b. below, these individuals are not eligible for TEUC–A.) We provide the following draft notice:

Notice

Additional benefits are now available under the Temporary Emergency Unemployment Compensation program for unemployed airline and related workers.

If you are currently unemployed, you should contact us if you worked in an airline or related industry and you believe that you lost your job with a base period employer, at least partially, as a result of terrorist actions of September 11, 2001, as a result of security responses to these attacks or the closing of an airport, or as a result of the military conflict in Iraq.

Airline and related industries are: air carriers, businesses operating at an airport, businesses that perform additional, value-added production processes for air carriers or businesses providing products, supplies and services that are receive or utilized by an airline.

To distribute the workload associated with making TEUC–A nonmonetary

determinations and resulting monetary redeterminations, SWAs should consider staggering notifications to such individuals who are in current TEUC or TEUC–X benefit status, allowing sufficient time to determine whether or not the claimant is an "eligible individual" for TEUC–A purposes prior to exhaustion. The notification of claimants that are currently in regular, additional, or extended benefit (EB) status (under the permanent EB program) can be accomplished as a notice included with a TEUC monetary determination.

b. *Notification of Media.* To assure public knowledge of this special extension of the TEUC program for airline and related workers, the SWA must notify appropriate news media having coverage throughout the state and provide appropriate information on its website.

8. *Qualifying Base Period Employment.* Establishing base period employment as "qualifying employment" for TEUC–A purposes is three-fold. First, the employment must have occurred "in whole or in part" during the base period of the "applicable benefit year" for the TEUC–A claim. Second, the employment must be with the type of employer(s) or at the location specified below. Third, the separation from such employment, which may have occurred during the base period or later, must be "in whole or in part" due to a qualifying reason specified in 'b' below.

a. *Qualifying Employment.* To satisfy the requirement for "qualifying employment," some base period employment must be with the type of employer(s) or at the location specified as follows:

(1) *Air Carriers.* Air carriers for purposes of TEUC–A are limited to those that hold a certificate issued under chapter 411 of title 49, United States Code, by the Federal Aviation Administration of the U.S. Department of Transportation. Certificates issued under this chapter include those issued for charter air carriers and all-cargo air carriers. Attachment C provides a listing of all such carriers.

(2) *At a facility at an airport.* A "facility at an airport" includes any employer that is physically located on the grounds of an airport such as:

- Retail food facilities such as restaurants, bars, fast-food shops, and popcorn stands.
- Other retail facilities such as gift shops, newsstands, clothing stores, and kiosks.
- Hotels located on the airport grounds.
- Aircraft maintenance and service facilities.
- Parking facilities.
- Car rental facilities.
- Any other business physically located on the airport grounds, regardless of its business activities.

A "facility at an airport" also includes any airline related business which, although offsite, provides functions that are integrally related to the operation of the airport. These include airport parking on privately owned land, car rental services, or aircraft maintenance and service facilities. Employment with the same employer at a facility that does not meet this definition of "facility at an airport" is not "qualifying employment" for purposes of TEUC–A.

(3) *Supplier for an Air Carrier.* A "supplier" is an employer that produces component parts for, or articles and contract services considered to be a part of the production process or services for, an air carrier or for another supplier or upstream producer whose supplies, products or services are received or utilized by an air carrier and used for airline industry purposes.

Example 1: A catering service that supplies an air carrier with food purchased from another firm is a supplier. The firm from which the food is purchased is also a supplier because it is supplying products to a supplier that are received by an air carrier.

Example 2: An employer manufactures commercial aircraft for air carriers and private aircraft for individuals and non-airline corporations. As a result of the terrorist action, the employer suffers a loss of business in its private aircraft business. It loses no sales to air carriers. The employer separates some workers, including those who manufactured commercial aircraft, because of the lost revenues. Even though the employer supplies air carriers and even though workers who worked on those supplies were separated, the separated workers are not eligible for TEUC–A because there is no loss in air carrier-related business.

Example 3: A janitorial company provides services for an aircraft manufacturer. It does not provide services to an air carrier. Due to a loss in air carrier business, the aircraft manufacturer no longer has a need for these janitorial services. As a result, the janitorial company separates several workers. Even though these workers were separated due to a loss of business by the aircraft manufacturer that could be traced back to the air carrier, they are not eligible for TEUC–A because they did not supply any item or service which was used or received by an air carrier. For eligibility, services must always extend to an air carrier.

Example 4: An accounting firm provides accounting services for a caterer to an air carrier. The air carrier goes out of business because of the terrorist action. The caterer closes because the air carrier was its sole customer. The caterer's closing causes the accounting firm to separate one of its employees who provided services for the caterer. That individual does not have "qualifying employment" because the accounting firm is not a "supplier" within the meaning of the statute. The accounting firm's service to the caterer did not extend to the air carrier.

(4) *Upstream Producer for an Air Carrier.* An "upstream producer" is an employer that "performs additional, value-added, production processes, including firms that perform final assembly, finishing, or packaging of articles, for another firm."

We are not providing an example of an "upstream producer" because the definition of supplier appears to cover all entities eligible under the two definitions.

b. *Qualifying Separations.* To be in qualified employment the separation from base period employment must be due—in whole or in part—to one or more of the following reasons:

- Reductions in service by an air carrier as a result of the terrorist actions on September 11, 2001, or a security measure taken in response to such actions.
- A closure of an airport in the United States as a result of the terrorist actions on September 11, 2001, or a security measure taken in response to such actions.
- The military conflict with Iraq.

The separation from "qualifying employment" that establishes a claimant as an "eligible individual" may occur during the base period or lag period and does not have to be the most recent separation when the "applicable benefit year" was established.

A separation from lag period only employment with a qualified employer does not establish an individual as an "eligible individual." Also, any separation from a qualified employer due to a voluntary quit or discharge for any reason is not a separation for a qualifying reason; the separation must be a "lack-of-work" separation due to one or more of the reasons stated above.

c. *Determining Whether a Claimant Has "Qualifying Employment" and is an "Eligible Individual".* To determine if a claimant is an "eligible individual" for TEUC–A purposes, SWAs must determine if the claimant has "qualifying employment" during the base period of the "applicable benefit year" that was used in the monetary determination for regular benefits. In making this determination, SWAs will follow their usual fact-finding procedures. This will require the SWA to contact employers to determine if the employment was of the type, or performed at the location, specified above, and if the reason for separation was one of the reasons specified above. We have attached a sample form that SWAs may elect to use for this purpose. SWAs may use an altered design as long as the required information is solicited from the employer. Where, after reasonable efforts to obtain information from the employer, the SWA does not have sufficient information to make a determination, then SWAs should evaluate the claimant's statement and follow standard procedures for issuing nonmonetary determinations. SWAs will be expected to preserve all documents relating to the determination for audit purposes.

In the case of larger employers, it may be evident that the employer is an air carrier (based on the attached listing), another type of easily identifiable large employer, or a facility located at an airport; it will not be necessary to verify the nature of the base period employment in such cases. As a result, when such an employer is identified, SWAs are encouraged, in lieu of sending a form for each claimant, to contact the employer as soon as possible to obtain a listing of all individuals laid-off, in whole or in part, due to the reasons described above.

If the SWA determines that the claimant is not an "eligible individual" for TEUC–A purposes, an appealable nonmonetary determination must be issued.

9. *Calculating Entitlement to TEUC–A and TEUC–AX.* Once an individual has been identified as an "eligible individual" qualifying for TEUC–A, the SWA will issue a monetary determination (or redetermination as the case may be) establishing TEUC–A eligibility. Any TEUC–A balance will be payable only for weeks of unemployment beginning after April 16, 2003.

a. *TEUC–A Entitlement.* TEUC–A entitlement will equal the lesser of 150 percent of the MBA of regular benefits payable to the individual during the benefit year or 39 times the individual's AWBA payable during the benefit year for a week of total unemployment. If the state includes dependents' allowances in the calculation of the weekly benefit amount (WBA) for regular benefits, the same rule applies to the calculation of TEUC benefits. If the state calculates dependents' allowances separately from the WBA, the state will apply the same rule to the TEUC determination.

If an individual has already been paid TEUC or TEUC–X, the available TEUC–A balance will be reduced by the amount already paid in TEUC or TEUC–X benefits. Any TEUC–X previously paid is converted to TEUC–A and the TEUC–X determination is disregarded.

b. *TEUC–AX Entitlement.* The amount of a TEUC–AX payable equals one-third of the TEUC–A entitlement. This means TEUC–AX is payable up to 13 times the WBA. Whether an individual qualifies for TEUC–AX will be determined by using the same criteria that apply to TEUC–X. Specifically, an individual must exhaust TEUC–A during an EB or TEUC–X period as authorized by the TEUC Act.

10. *Transition Payments.* TEUC–A and TEUC–AX continue to be payable to individuals with a balance in their TEUC account as of December 28, 2003, during the transition period which ends with the last week beginning on or before December 26, 2004.

11. *Reporting TEUC–A and TEUC–AX Activity.* TEUC–A and TEUC–AX activity is reportable under the existing TEUC reporting requirements for the ETA 207, ETA 218, ETA 227, ETA 539, ETA 2112, ETA 5130 and ETA 5159. Please note that form ETA 2112 has changed recently. Previously, TEUC payment totals had been reported on line 39. The totals are now reportable on line 41. For reporting purposes, no separation of TEUC–A and AX from other TEUC program activity is required, with the following exception: States are to report the total number of newly qualified TEUC–A claimants determined during the month in the comments section of the TEUC ETA 5159 report. This total should be the sum of new TEUC–A determinations for recent exhaustees (of regular additional or extended benefits, as appropriate) plus the redeterminations of existing or previously exhausted TEUC/TEUC–X claims.

The separate financial status report (Standard Form 269) for administrative grants and costs associated with the TEUC program is to include costs associated with this extension related to displaced airline and related workers (TEUC–A and TEUC–AX).

12. *Administrative Funding.* The payment of TEUC–A and TEUC–AX will involve an increase in claims activity and one-time implementation costs.

a. *Claims.* The UI–3 report will compile workload data from the TEUC versions of the ETA 5159, ETA 207, and ETA 5130. In addition, SWAs should enter the number of monetary redeterminations in column (a) of line 12, and a minutes per unit value of 05.000 in column (b).

b. *Implementation Supplemental Budget Requests (SBRs).* SWAs may submit an SBR for reimbursement of TEUC–A implementation costs. SBRs should be limited to one-time costs for the items listed below that are attributable to implementation of TEUC–A:

(1) Forms and supplies (e.g., printed notices mailed to exhaustees)
(2) Computer programming
(3) Training and travel
(4) Public notices on television, radio, or in the newspapers
(5) Overhead related only to the above

Calculations for costs of SWA staff and contractors should be shown in accordance with the SBR instructions in ET Handbook No. 336. Costs for SWA staff should be included only if they are for overtime or if the positions were back-filled.

13. *OMB Approval.* The reporting instructions for the TEUC program have been approved by the Office of Management and Budget (OMB) under OMB Approval No. 1205–0433, expiration date December 31, 2004. However, OMB approval is being sought for approval of the burden hours associated with the request for employer information that is necessary for determining eligibility for TEUC–A. ETA will notify states upon OMB approval.

14. *Action Required.* Administrators are requested to provide this information and instructions to the appropriate staff.

15. *Inquiries.* Direct questions to the appropriate regional office.

16. *Attachment A:* Text of Section 4002, Public Law 108–11.[1]
Attachment B: Questions and Answers
Attachment C: List of Certified Air Carriers
Attachment D: Sample Employer Notice

Attachment B to UIPL No. 30–02, Change 2—Questions and Answers

1. Administrative

a. *Question:* Are new agreements between the state and the Department of Labor necessary for this extension?

Answer: No. The existing agreement remains in effect.

b. *Question:* What is the first week payable under this extension for TEUC–A?

Answer: The first week payable is the first week which begins after April 16, 2003.

c. *Question:* What is an "air carrier" for purposes of TEUC–A?

Answer: A qualifying air carrier is "an air carrier that holds a certificate issued under chapter 411 of title 49, U.S.C." That section provides that an air carrier may provide air transportation only if it holds a certificate issued under chapter 411. Certificates may be issued for charter air carriers and all-cargo air transportations. See Attachment C for a listing of all certified air carriers.

d. *Question:* How will states determine if the individual has "qualifying employment?"

Answer: Unlike other emergency extensions, including the basic TEUC program, for TEUC–A it will be necessary to verify whether at least one base period employer provided qualifying employment. We have prepared and attached a draft form that SWAs may elect to use in contacting employers (See Attachment D).

The employer's failure to respond to the notice does not absolve the agency from the responsibility to pursue the necessary information to verify the qualifying employment. The claimant's statement may be evaluated if the employer does not respond, but the state must meet the same standards required for any nonmonetary determination as stated in the Secretary of Labor's "Standards for Claim Determinations", Part V of the Employment Security Manual. This includes gathering evidentiary facts rather than conclusions, giving the claimant a reasonable opportunity to provide information when requested to do so, and obtaining the information promptly so that benefits will not be unduly delayed.

2. Claimants Potentially Eligible for TEUC Benefits Under This Extension

a. *Question:* What is the universe of claimants who are potentially eligible for TEUC–A under this extension?

Answer: All claimants that meet the definition of "eligible individual" as defined by Public Law 108–11 and otherwise meet the requirements for a TEUC benefit extension.

b. *Question:* Does the extended period for which TEUC–A is payable apply to all TEUC claims?

Answer: No. Only TEUC–A and TEUC–AX are payable during the extended period ending with the last week beginning on or before December 26, 2004.

c. *Question:* Does an individual who was separated from a certified air carrier prior to September 11, 2001, satisfy the definition of an "eligible individual"?

Answer: No. The definition of an "eligible individual" includes a requirement that the individual's regular benefits for the "applicable benefit year" be partially or wholly based on "qualifying employment." To be deemed "qualifying employment," the separation from such employment must have occurred on or after September 11, 2001 because of: (1) reductions in service by an air carrier as a result of a terrorist attack on the United States on September 11, 2001, or security measures taken in response to such attack; (2) a closure of an airport in the United States as a result of such terrorist action or security measures; or (3) a military conflict with Iraq that has been authorized by Congress.

d. *Question:* Does an individual who satisfies the definition of "eligible individual" but who exhausted TEUC in June 2002 and is still unemployed potentially qualify for benefits under this extension?

Answer: Yes.

e. *Question:* Does an "eligible individual" with intervening employment since separation from "qualifying employment" who does not qualify for a new regular claim, based on the intervening employment, continue to meet the definition of an

[1] Attachment A is available in the www.workforcesecurity.doleta.gov Web site under Directives/Advisories.

"eligible individual" for purposes of this extension?

Answer: Yes.

f. *Question:* Does an individual who is separated from an air carrier or from otherwise qualifying airline related employment but whose regular benefits were not based, in whole or in part, on such employment, meet the definition of an "eligible individual" for purposes of TEUC–A?

Answer: No. To meet the definition of an "eligible individual" for purposes of TEUC–A, the claimant's regular benefits must have been based, in whole or in part, on "qualifying employment." In the case described, there is no "qualifying employment" in the base period.

3. Applicable Benefit Year for Airline and Related Workers TEUC Extension Purposes

a. *Question:* Does an individual with a prior benefit year, where regular benefits were based on "qualifying employment," who is eligible for regular benefits in a subsequent benefit year have the option to receive TEUC–A based on the first benefit year?

Answer: No. An individual with existing entitlement to regular compensation is not an exhaustee for TEUC–A purposes.

4. Monetary Eligibility

a. *Question:* What is the maximum amount of TEUC–A benefits available to an "eligible individual?"

Answer: Basic TEUC–A entitlement for "eligible individuals" will be determined as the lesser of 150 percent of the MBA of regular benefits payable to the individual during the benefit year or 39 times the individual's AWBA payable during the benefit year for a week of total unemployment. If the state includes dependents' allowances in the calculation of the weekly benefit amount (WBA) for regular benefits, the same rule applies to the calculation of TEUC–A benefits. If the state calculates dependents' allowances separate from the WBA, the state will apply the same rule to the determination for TEUC–A.

The TEUC–A account of an individual exhausting basic TEUC–A with payment for a week of unemployment beginning after April 16, 2003, and during an extended benefit (EB) period or TEUC–X period in the state, will be augmented by an amount equal to one-third (⅓) of the basic TEUC–A amount.

b. *Question:* When an "eligible individual" is in current claim status with an existing basic TEUC or TEUC–X balance what should the state do?

Answer: The SWA will issue a TEUC–A monetary redetermination to each "eligible individual" who has an existing TEUC balance, as of the effective date of TEUC–A, in an amount that is the lesser of 150 percent of the regular benefit MBA or 39 times the AWBA. All TEUC benefits, including TEUC–X, previously paid will reduce the available basic TEUC–A balance available. The available balance attributable to the redetermination is payable for weeks of unemployment beginning after April 16, 2003. Any TEUC–X previously paid becomes basic TEUC–A payments under the redetermination.

c. *Question:* When an "eligible individual" has exhausted basic TEUC prior to the effective date of this extension, what should the state do other than providing notification of the extension?

Answer: When this claimant files an additional or reopened claim, the SWA will issue a basic TEUC–A monetary redetermination in an amount that is the lesser of 150 percent of the regular benefit MBA or 39 times the AWBA. All TEUC benefits previously paid will reduce the available TEUC–A balance available. The basic TEUC–A balance available as a result of the redetermination is payable for weeks of unemployment beginning after April 16, 2003.

d. *Question:* When an "eligible individual" has exhausted TEUC–X prior to the effective date of this extension, what should the state do other than providing notification of the extension?

Answer: When this claimant files an additional or reopened claim, the SWA will issue a TEUC–A monetary redetermination in the amount of the lesser of 150 percent of the regular benefit MBA benefit amount or 39 times the AWBA effective for weeks of unemployment beginning after April 16, 2003. All basic TEUC and TEUC–X benefits previously paid will reduce the available TEUC–A balance available and are considered basic TEUC–A payments. The basic TEUC–A balance available as a result of the redetermination is payable for weeks of unemployment beginning after April 16, 2003.

e. *Question:* Can TEUC–AX augmentations continue to be made during the transition period?

Answer: No.

f. *Question:* Can a new TEUC–A monetary determination be issued effective for a week ending on or after December 29, 2003?

Answer: No.

BILLING CODE 4510–30–P

Attachment C to UIPL No. 30-02, Change 2

Certified Air Carriers

Carrier	Address	City	State	Zip	Telephone
ABX Air, Inc. **d/b/a Airborne Express, Inc.**	145 Hunter Drive, Airborne Air Park	Wilmington	OH	45177	937-382-5591
Active Aero Charter	*see USA Jet Airlines*				
Aero Micronesia, Inc. **d/b/a Asia Pacific Airlines**	156 Diablo Road, Suite 203	Danville	CA	94526	
Aerodynamics Incorporated	6544 Highland Road, P.O. Box 270100	Waterford	MI	48327	248-666-3500
Air Micronesia, Inc.	Box 8778-G, A.B. Won Pat Int'l Airport	Tamuning	GU	96931	671-646-5125
Air Midwest, Inc. **d/b/a US Airways Express**	Box 7724, 2230 Air Cargo Road	Wichita	KS	67209	316-942-8137
Air Transport International LLC	One Cantrell Center 2800 Cantrell Rd.	Little Rock	AR	72202	501-615-3500
Air Wisconsin Airlines Corp. **d/b/a AirTran JetConnect** **d/b/a United Express**	W6390 Challenger Drive, Suite 203	Appleton	WI	54915	920-739-5123
Airborne Express, Inc.	*see ABX Air*				
Air-Serv., Inc. d/b/a AirServ **d/b/a Indigo, L.L.C.** **d/b/a Indigo Corporate Jet Airline** **d/b/a NewWorldAir Holdings**	445 N. Wells Street, Suite 203	Chicago	IL	60610	312-467-1545
AirTran Airways, Inc.	9955 AirTran Blvd	Orlando	FL	32827	407-251-5558
AirTran JetConnect	*see Air Wisconsin*				
Alaska Airlines, Inc.	Box 68900 Sea-Tac Int'l Airport	Seattle	WA	98168	206-433-3200
Alaska Central Express, Inc.	3551 Postmark Drive	Anchorage	AK	99517	907-245-0231
Alaska Juneau Aeronautics, Inc. **d/b/a Wings of Alaska**	8421 Livingston Way	Juneau	AK	99801	907-789-9863
Alaska Seaplane Service, LLC	1873 Shell Simmons Drive	Juneau	AK	99801	907-789-7880
Allegheny Airlines, Inc. **d/b/a US Airways Express**	Bldg. 601 Harrisburg International Airport	Middletown	PA	17057	717-948-5400
Allegiant Air, Inc.	4955 East Andersen Avenue, Suite 120	Fresno	CA	93727	559-455-5715
Aloha Airlines, Inc.	Box 30028	Honolulu	HI	96820	808-836-4101
America Rising	*see Glenwood Aviation*				
America West Airlines, Inc.	4000 E. Sky Harbor Blvd.	Phoenix	AZ	85034	602-693-0800
America West Express	*see Freedom Airlines*				
America West Express	*see Mesa Airlines*				
American Airlines	*see TWA Airlines*				
American Airlines, Inc.	Box 619616, MD 5621 4330 Amon Carter Blvd.	DFW Airport	TX	75261	817-963-1234
American Connection	*see Trans States Airlines*				
American Eagle	*see Executive Airlines*				
American Eagle Airlines, Inc.	Box 619616, MD 5475	DFW Airport	TX	75261	972-425-1500
American International Airways	*see Kalitta Air*				
American Trans Air	*see ATA Airlines*				
Amerijet International, Inc.	498 SW 34th Street	Ft. Lauderdale	FL	33315	954-359-0077
Ameristar Air Cargo, Inc.	4400 Glenn Curtiss Drive, Suite 202	Addison	TX	75001	972-248-2478, ext. 9375
Arctic Circle Air Service, Inc.	Box 190228	Anchorage	AK	99519	907-243-1380
Arctic Transportation Services, Inc.	5701 Silverado Way, Unit L	Anchorage	AK	99518	907-562-2227
Arrow Air, Inc. **d/b/a Arrow Air** **d/b/a Fine Air** **d/b/a Fine Air Services** **d/b/a Fine Airlines**	2261 NW 67th Ave. Bldg 700	Miami	FL	33122	305-871-6606
Asia Pacific Airlines	*see Aero Micronesia, Inc.*				
ATA	*see American Trans Air*				
ATA Airlines, Inc. **d/b/a ATA** **d/b/a American Trans Air**	Box 51609, Indianapolis Int'l Airport	Indianapolis	IN	46251	317-247-4000

Atlantic Coast Airlines, Inc. d/b/a Delta Connection d/b/a United Express	515A Shaw Road	Sterling	VA	20166	703-925-6000
Atlantic Coast Jet, LLC d/b/a Delta Connection	515A Shaw Road	Dulles	VA	20166	703-925-6000
Atlantic Southeast Airlines, Inc.	100 Hartsfield Center Parkway, Suite 800	Atlanta	GA	30354	404-766-1400
Atlas Air, Inc.	538 Commons Drive	Golden	CO	80401	303-526-5050
Baker Aviation, Inc.	Box 708	Kotzebue	AK	99752	907-442-3108
Bellair, Inc.	Box 60311	Fairbanks	AK	99707	907-457-8359
Bering Air, Inc.	Box 1650	Nome	AK	99762	907-443-5464
Bidzy Ta Hot' Aana, Inc. d/b/a Tanana Air Service	Box 60713	Fairbanks	AK	99706	907-474-0301
Big Sky Transportation Co. d/b/a Big Sky Airlines, Inc. d/b/a Northwest Airlink	1601 Aviation Place	Billings	MT	59105	406-245-9449
BNJ Charter Company L.L.C.	130 Signature Way	East Granby	CT	06026	860-292-1191
Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection	Pease International Tradeport, 14 Aviation Avenue	Portsmouth	NH	03801	603-766-2000
Brendan Airways, LLC d/b/a USA 3000 Airlines	335 Bishop Hollow Road, Suite 100	Newtow Square	PA	19073	610-325-1280
Camai Air	*see Village Aviation*				
Cape Smythe Air Service, Inc.	Box 549	Barrow	AK	99723	907-852-8333
Capital Cargo International Airlines, Inc.	6200 Hazeltine National Dr. Suite 100	Orlando	FL	32822	407-855-2004
Caribbean Sun Airlines, Inc.	580 SW 34th Street, Suite 580	Ft. Lauderdale	FL	33315	954-359-7846
Casino Express Airlines	*see TEM Enterprises*				
CCAir, Inc. d/b/a Piedmont Charter d/b/a Piedmont Commuter d/b/a US Airways Express	Box 19929	Charlotte	NC	28219	704-359-8990
Centurion Air Cargo, Inc.	1800 NW 89th Place	Miami	FL	33172	305-392-2593
Champion Air	*see Grand Holdings*				
Charter America	*see Custom Air Transport*				
Comair, Inc. d/b/a Delta Connection	Box 75021, Cincinnati/ Northern Ky. Int'l Airport	Cincinnati	OH	45275	606-767-2550
Continental Airlines, Inc.	1600 Smith St., 19th Floor	Houston	TX	77002	713-324-5468
Continental Connection	*see SkyWest Airlines*				
Continental Express	*see ExpressJet Airlines*				
Continental Micronesia, Inc. d/b/a Continental/Air Micronesia	Guam Int'l Airport PO Box 8778	Tamuning	GU	96931	671-647-6595
Custom Air Transport, Inc. d/b/a Charter America	3305 SW 9th Ave 2nd Fl.	Ft. Lauderdale	FL	33315	954-523-4211
Daystar Airways, Ltd. d/b/a Nevis Express	1470 Seppala Drive	Nome	AK	99762	907-443-5919 (fax)
Delta Air Lines, Inc. d/b/a Delta Express d/b/a Song	Box 20706, Hartsfield-Atlanta Int'l Airport	Atlanta	GA	30320	404-715-2600
Delta Connection	*see Atlantic Coast Airlines*				
Delta Connection	*see Atlantic Coast Jet*				
Delta Connection	*see Comair*				
Delta Connection	*see SkyWest Airlines*				
Delta Express	*see Delta Air Lines*				
DHL Airways, Inc. d/b/a DHL Worldwide Express	333 Twin Dolphin Drive	Redwood City	CA	94065	415-593-7474
Eagle Canyon Airlines, Inc. d/b/a Scenic Airlines	275 East Tropicana Avenue Ste. 220	Las Vegas	NV	89109	702-736-3333
Eagle Jet Charter, Inc. d/b/a Eagle Air d/b/a Scenic Airlines	275 East Tropicana Avenue Ste. 130	Las Vegas	NV	89109	702-736-1182
Empire Airlines, Inc.	2115 Government Way	Coeur d'Alene	ID	83814	208-667-5400

Era Aviation, Inc. d/b/a Era Classic Airlines d/b/a Era Helicopters	6160 Carl Brady Drive	Anchorage	AK	99502	907-248-4422
Evergreen International Airlines, Inc.	3850 Three Mile Lane	McMinnville	OR	97128	503-472-0011
Everts Air Alaska Everts Air Cargo	*see Tatonduk Outfitters*				
Executive Airlines, Inc. d/b/a American Eagle	Box 38032 Airport Station	San Juan	PR	00937	787-253-6401
Express One International, Inc.	8051 Jetstar Drive, Suite 180	Irving	TX	75063	214-902-2500
Express.net Airlines, LLC	101 Aviation Dr. N.	Naples	FL	34104	941-430-7080
ExpressJet Airlines, Inc. d/b/a Continental Express	1600 Smith St., Suite 1100	Houston	TX	77002	713-324-4421
F.S. Air Service, Inc.	6121 S. Airpark Place	Anchorage	AK	99502	907-248-9595
Falcon Air Express, Inc.	7270 N.W. 12th Street, Suite 680	Miami	FL	33126	305-592-5672
Federal Express Corporation	2005 Corporate Avenue, Third Floor	Memphis	TN	38132	901-395-3367
Fine Air/Fine Airlines/ Fine Air Services	*see Arrow Air*				
Flight Alaska, Inc. d/b/a Yute Air Alaska	Box 190169	Anchorage	AK	99519	907-342-3009
Florida West International Airways, Inc.	7500 NW 25th Street, Suite 237, PO Box 025752	Miami	FL	33102	305-341-9000
Forty Mile Air, Ltd.	Box 539	Tok	AK	99780	907-883-5191
Freedom Airlines, Inc. d/b/a America West Express	5605 N. MacArthur Blvd., Suite 1062	Irving	TX	75038	602-797-1951
Frontier Airlines, Inc.	12015 East 46th Avenue, Suite 200	Denver	CO	80239	303-371-7400
Frontier Flying Service, Inc.	3820 University Avenue	Fairbanks	AK	99709	907-474-0014
Frontier Jet Express	*see Mesa Airlines*				
Gemini Air Cargo, Inc.	44965 Aviation Dr.	Dulles	VA	20166	703-260-8100
Glenwood Aviation, LLC d/b/a America Rising	3060 Washington Road (Rt. 97)	Glenwood	MD	21738	301-854-6850
Grand Holdings, Inc. d/b/a Champion Air	8009 34th Ave., South, Suite 700	Bloomington	MN	55425	612-814-8718
Grant Aviation, Inc.	Box 92200	Anchorage	AK	99509	907-278-7025
Great Plains Airlines	*see Ozark Air Lines				
Gulf and Caribbean Cargo, Inc. d/b/a Gulf and Caribbean Air	1100 Lee Wagener Blvd., Suite 317	Ft. Lauderdale	FL	33315	954-359-7776
Hageland Aviation Services, Inc.	Box 220610	Anchorage	AK	99522	907-522-8684
Hawaiian Airlines, Inc.	Box 30008	Honolulu	HI	96820	808-835-3700
Hooters Air	*see Pace Airlines*				
Horizon Air Industries, Inc. d/b/a Horizon Air	19521 International Blvd.	SEATAC	WA	98188	206-241-6757
Iliamna Air Taxi, Inc.	Box 109	Iliamna	AK	99606	907-571-1248
Indigo Corporate Jet Airline	*see AirServ*				
Indigo, L.L.C.	*see AirServ*				
Inland Aviation Services, Inc.	P.O. Box 244	Aniak	AK	99557	907-675-4624
Island Air Service	*see Redemption, Inc.				
JetBlue Airways Corporation	80-02 Kew Gardens Road	Kew Gardens	NY	11415	718-286-7900
Kalitta Air, L.L.C. d/b/a American International Airways	818 Willow Run Airport	Ypsilanti	MI	48198	734-484-0088
Katmai Air, LLC d/b/a Katmai Air	4550 Aircraft Drive	Anchorage	AK	99502	907-243-5448
Kitty Hawk Aircargo, Inc.	Box 612787, 1515 W. 20th Street	DFW Int'l AP	TX	75261	972-456-2200
L.A.B. Flying Service, Inc.	Box 272	Haines	AK	99827	907-766-2222
Larry's Flying Service, Inc.	Box 2348	Fairbanks	AK	99707	907-474-9169
Lynden Air Cargo, LLC	6441 South Airpark Place	Anchorage	AK	99502	907-245-0641
Mesa Airlines, Inc. d/b/a America West Express d/b/a Frontier Jet Express d/b/a US Airways Express	410 N. 44th St., Suite 700	Phoenix	AZ	85008	602-685-4010

Mesaba Aviation, Inc. d/b/a Mesaba Airlines d/b/a Mesaba Northwest Airlink	7501 26th Avenue, South	Minneapolis	MN	55450	612-726-5151
MetroJet	*see US Airways*				
Miami Air International, Inc. d/b/a QCI d/b/a Quest Cargo International	Box 660880	Miami Springs	FL	33266	305-876-3600
Midway Airlines Corp.	5151 McCrimmon Parkway	Morrisville	NC	27560	916-595-6030
Midwest Airlines, Inc. d/b/a Midwest Express Airlines	6744 South Howell Avenue	Oak Creek	WI	53154	414-570-4000
Midwest Connect	*see Skyway Airlines*				
Midwest Express Airlines	*see Midwest Airlines*				
MN Airlines, LLC d/b/a Sun Country Airlines	2520 Pilot Knob Road, Suite 250	Mendota Heights	MN	55120	612-681-3900
National Airlines, Inc.	6020 Spencer Street	Las Vegas	NV	89119	702-944-2842
Nevis Express	*see Daystar Airways*				
NewWorldAir Holdings, Inc.	*see AirServ*				
North American Airlines, Inc.	Bldg. 75, JFK Int'l Airport, Suite 250	Jamaica	NY	11430	718-656-2650
Northern Air Cargo, Inc.	3900 W. International Airport Road	Anchorage	AK	99502	907-243-3331
Northwest Airlines, Inc.	5101 Northwest Drive	St. Paul	MN	55111	612-726-2111
Northwest Airlink	*see Big Sky Transportation*				
Olson Air Service, Inc.	Box 142, NE Ramp, Airport	Nome	AK	99762	907-443-2229
Omni Air Express	*see Omni Air International*				
Omni Air International, Inc. d/b/a Omni Air Express	Box 582527, Tulsa Int'l Airport	Tulsa	OK	74158	918-836-5393
Ozark Air Lines, Inc. d/b/a Great Plains Airlines	6501 E. Apache Street. Tulsa International Airport	Tulsa	OK	74115	918-835-3500
Pace Airlines, Inc. d/b/a Hooters Air	3800 North Liberty Street	Winston-Salem	NC	27102	800-548-1978
Pacific Wings, L.L.C.	P.O. Box 791537	Paia	HI	96779	808-873-0877
Pan Am Clipper Connection	*see Boston-Maine Airways*				
Pan American Airways Corp.	14 Aviation Avenue, Pease International Tradeport	Portsmouth	NH	03801	603-766-2000
Penair	*see Peninsula Airways*				
Peninsula Airways, Inc. d/b/a Penair	6100 Boeing Avenue	Anchorage	AK	99502	907-243-2485
Piedmont Charter/Commuter	*see CCAir*				
Planet Airways, Inc.	7380 Sand Lake Road, Suite 350	Orlando	FL	32819	407-363-1800
Polar Air Cargo, Inc.	15th Floor, 100 Oceangate	Long Beach	CA	90802	562-436-7471
Promech, Inc. d/b/a Promech Air d/b/a Seaborne Seaplane Adventures	1515 Tongass Avenue	Ketchikan	AK	99901	907-225-3845
QCI	*see Miami Air International*				
Quest Cargo International	*see Miami Air International*				
Redemption, Inc. d/b/a Island Air Service	P.O. Box 125	Kodiak	AK	99615	907-486-6196
Reliant Airlines, Inc.	Willow Run Airport, Box 827	Ypsilanti	MI	48198	734-483-3616
Ryan International Airlines, Inc. d/b/a SunTrips	266 N. Main	Wichita	KS	67202	316-265-7400
Scenic Airlines	*see Eagle Canyon Airlines*				
Scenic Airlines	*see Eagle Jet Charter*				
Seaborne Airlines	*see Seaborne Virgin Islands*				
Seaborne Seaplane Adventures	*see Promech*				
Seaborne Virgin Islands, Inc. d/b/a Seaborne Airlines	34 Strand Street	Christiansted, St. Croix	US VI	00820	340-773-5991
Servant Air, Inc.	PO Box 91186	Fairbanks	AK	99706	907-456-3140
Shuttle America Corporation d/b/a US Airways Express	11102 West Perimeter Road	Ft. Wayne	IN	46819	260-479-6200
Sierra Pacific Airlines, Inc.	7700 North Business Park Drive	Tucson	AZ	85743	520-744-1144
Skagway Air Service, Inc.	Box 357	Skagway	AK	99840	907-983-2218
Sky King, Inc.	3600 Power Inn Road	Sacramento	CA	95826	916-736-6821

Skyway Airlines, Inc. d/b/a Midwest Connect d/b/a Skyway Airlines, The Midwest Airlines Connection d/b/a Skyway Airlines, The Midwest Express Connection	1190 W. Rawson Avenue	Oak Creek	WI	53154	414-570-2300
SkyWest Airlines, Inc. d/b/a Continental Connection d/b/a Delta Connection d/b/a United Express	444 S. River Road	St. George	UT	84790	801-634-3000
Smokey Bay Air, Inc.	P.O. Box 457	Homer	AK	99603	907-235-1511
Song	*see Delta Air Lines*				
Southeast Airlines, Inc.	12552 Belcher Road	Largo	FL	33773	727-532-1632
Southern Air, Inc.	4323 Eastpoint Drive	Columbus	OH	43232	614-759-5000
Southwest Airlines Co.	Box 36611, 2702 Love Field Drive	Dallas	TX	75235	214-792-4000
Spernak Airways, Inc.	1707 Merrill Field Drive	Anchorage	AK	99501	907-272-9475
Spirit Airlines, Inc.	1400 Lee Wagener Blvd.	Ft.Lauderdale	FL	33315	954-447-7965
Sun Country Airlines	*see Sun Country Airlines*				
SunTrips	*see Ryan International*				
Sunworld International Airlines, Inc.	207 Grandview Drive	Fort Mitchell	KY	41017	606-331-0091
Tanana Air Service	*see Bidzy Ta Hot' Aana*				
Taquan Air	*see Venture Travel*				
Tatonduk Outfitters, Limited d/b/a Everts Air Alaska d/b/a Everts Air Cargo	Box 61680	Fairbanks	AK	99706	907-474-4699
TEM Enterprises, Inc. d/b/a Casino Express Airlines	976 Mountain City Highway	Elko	NV	89801	702-738-6040
TPI International Airways, Inc.	550 Connole Street	Brunswick	GA	31520	912-262-9405
TradeWinds Airlines, Inc.	243-A Burgess Road	Greensboro	NC	27409	910-668-7500
Trans States Airlines, Inc. d/b/a American Connection d/b/a US Airways Express	9275 Genaire Drive	St. Louis	MO	63134	314-895-8700
Trans-Air-Link Corporation	3305 SW 9th Ave Ste 110	Ft. Lauderdale	FL	33315	954-523-2123
TransMeridian Airlines, Inc.	680 Thorton Way	Lithia Springs	GA	30122	770-732-6901
TWA Airlines LLC	4333 Amon Carter Blvd.	Ft. Worth	TX	76155	817-967-1254
United Air Lines, Inc.	Box 66919	Chicago	IL	60666	847-700-4000
United Express	*see Air Wisconsin Airlines*				
United Express	*see Atlantic Coast Airlines*				
United Express	*see SkyWest Airlines*				
United Parcel Service Co.	1400 N. Hurstborne Pkwy	Louisville	KY	400223	502-329-3000
UPS	*see United Parcel Service*				
US Airways Express	*see Air Midwest*				
US Airways Express	*see Allegheny Airlines*				
US Airways Express	*see CCAir*				
US Airways Express	*see Mesa Airlines*				
US Airways Express	*see Shuttle America Airlines*				
US Airways Express	*see Trans States Airlines*				
US Airways Shuttle	*see US Airways*				
US Airways, Inc. d/b/a MetroJet d/b/a US Airways d/b/a US Airways Shuttle	2345 Crystal Drive, Crystal Park 4	Arlington	VA	22227	703-418-7000
USA 3000 Airlines	*see Brendan Airways*				
USA Jet Airlines, Inc. d/b/a Active Aero Charter	2068 E Street Willow Run Airport	Belleville	MI	48111	734-547-7200
Vanguard Airlines, Inc.	533 Mexico City Avenue	Kansas City	MO	64153	816-243-2100
Venture Travel, LLC d/b/a Taquan Air	P.O. Box 8495	Ketchikan	AK	99901	907-225-8800
Village Aviation, Inc. d/b/a Camai Air	Box 787	Bethel	AK	99559	907-543-4040
Warbelow's Air Ventures, Inc.	Box 60649, 3758 S. University Avenue	Fairbanks	AK	99709	907-474-0518
Westward Airways, Inc.	250027 Airport Terminal Street	Scottsbluff	NE	69361	308-220-3838

Wings of Alaska	*see Alaska Juneau Aeronautics*				
World Airways, Inc.	101 World Drive	Peachtree City	GA	30269	770-632-8240
Wright Air Service, Inc.	Box 60142, Fairbanks Int'l Airport	Fairbanks	AK	99706	907-474-0502
Yute Air Alaska	*see Flight Alaska, Inc.*				
Zantop International Airlines, Inc.	840 Detroit-Willow Run Airport	Ypsilanti	MI	48198	313-485-8900

Attachment D to UIPL No. 30-02, Change 2

Request for Employer Information - (Sample)

Employer Name and Address:	Claimant Name: Social Security Number:

The above-named claimant has filed a claim for Temporary Emergency Unemployment Compensation, which is available to displaced airline and related workers. To determine this individual's eligibility, we need information from you concerning the nature of your business and the cause of the individual's separation from employment with you during the following period: [insert base period]

SECTION I - TYPE OF EMPLOYMENT

Please answer "yes" or "no" to the following questions/statements and also complete Section II below:

1. If you are an Air Carrier with a certificate issued under Chapter 411 of Title 49 of the United States Code, check "yes" and proceed to Section II.
Yes __ No __

2. Does this company/business have facilities on-site at an airport or off-site nearby that are integrally connected to operations at the airport? Yes __ No __

If "yes" describe_____

3. This company/business provides one of the following to an airline or to a supplier or upstream producer to an airline for the airline's use:

a. Value-added production processes, including final assembly, finishing, or packaging of articles. Yes __ No __

b. Component parts or other articles. Yes __ No __

c. Contract services. Yes __ No __

If you answered "yes" to any statement above, please name at least one airline or company that you provided the product or service to._____
If you name a company, please name at least one air carrier they supply._____

SECTION II - REASON FOR SEPARATION

1. Was the above-named individual laid-off because of a loss of business, in whole or in part, because of:

a. The reductions in airline service following the terrorist actions of September 11, 2001 or resulting security measures. Yes __ No __

b. The closure of an airport in the U.S. as a result of such terrorist action or security measures. Yes __ No __

c. The conflict with Iraq. Yes __ No __

Please provide any facts supporting your answers. Attach additional sheet if necessary. _____

Name:_____ Title:_____ Date:_____

BILLING CODE 4510-30-C

Employment and Training Administration Advisory System

U.S. Department of Labor, Washington, D.C. 20210

Classification: OWS

Correspondence symbol: DUIO
Date: May 7, 2003
Advisory: Unemployment Insurance Program Letter No. 30–02, Change 3.
To: All State Workforce Agencies.

From: Cheryl Atkinson s/s, Administrator, Office of Workforce Security.
Subject: Temporary Extended Unemployment Compensation (TEUC) Act of 2002—Additional TEUC for Displaced Airline and Related Workers.

1. *Purpose.* To respond to questions concerning implementation of the TEUC extension for displaced airline and related workers.

2. *References.* Title II of the Job Creation and Worker Assistance Act of 2002 (The Temporary Extended Unemployment Compensation Act of 2002), Public Law 107–147, signed by the President on March 9, 2002; Public Law 108–1, signed by the President on January 8, 2003; UIPL No. 30–02 dated July 5, 2002; UIPL No. 30–02, Change 1 dated January 9, 2003; UIPL No. 30–02, Change 2 dated April 25, 2003; Section 4002 of Public Law 108–11, signed by the President on April 16, 2003; Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, as amended; Section 233 of the Trade Act of 1974; 20 CFR Part 615; ET Handbook No. 401; ET Handbook No. 410.

3. *Background.* This advisory continues the Department's guidance concerning the TEUC program extension for airline and related workers (hereafter referred to as TEUC–A) by answering questions submitted by states. The answers address specific circumstances consistent with the Department's interpretation of Section 4002 of Public Law 108–11 which creates special rules for determining eligibility for TEUC–A. Please note: There is a typographical error in Attachment A to UIPL No. 30–02, Change 2, page 3, Section (3) ADDITIONAL WEEKS OF BENEFITS, (B) should read as follows: "in subsection (c)(1), by inserting "1/3 of" after "equal to".

Rescissions: None
Expiration Date: Continuing.

The attached questions and answers are organized by category in order to make it easier to find questions and answers of interest.

4. *Action Required.* Administrators are requested to provide this advisory to appropriate staff and ensure adherence to the guidance.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachment.* Questions and Answers for Clarification of Section 4002 of Public Law 108–11.

Attachment to UIPL No. 30–02, Change 3—Questions and Answers for Clarification of Section 4002, of Public Law 108–11

1. Administrative

a. *Question:* Item 7.a. of UIPL No. 30–02, Change 2, indicates that "To satisfy this requirement, State Workforce Agencies (SWAs) must send written notifications to each individual who was laid off from a base period employer on or after September 11, 2001. SWAs must send immediate written notification to each such individual who has exhausted all available TEUC benefits from the beginning of the TEUC program." Shouldn't a notice be sent to anyone laid off after September 11, 2001, regardless of whether he/she exhausted TEUC?

Answer: No. If a claimant's most recent separation from each base period employer was prior to September 11, 2001, written notice is not sent because the claimant is not eligible for TEUC–A. Written notices must be sent to individuals who were laid off from a base period employer on or after September 11, 2001, and who are exhaustees for TEUC purposes, because whether or not they exhausted TEUC, they are potentially eligible for TEUC–A. The statement pertaining to immediate notification of TEUC exhaustees was intended to identify potentially eligible claimants that should be notified quickly because they may still be unemployed and without benefits. Other potentially eligible claimants that must be provided written notice as soon as possible are those claimants laid off by a base period employer after September 11, 2001, that have a remaining balance on their TEUC claim. These claimants are generally in benefit status or have returned to work and are not in need of an immediate TEUC–A determination in order to have benefits available.

b. *Question:* For TEUC or TEUC–X exhaustees, are initial claims required to initiate a determination of TEUC–A eligibility?

Answer: Yes, depending on each individual claimant's situation, *e.g.*, quarter change, benefit year ending, intervening employment, etc. The state must follow the same procedures as apply when there is a break or quarter change during the TEUC claim. The state must determine if the claimant still meets the basic requirements for TEUC.

c. *Question:* Must states determine if an individual has "qualifying employment" prior to making any TEUC–A payments? If so, should they allow their standard time for employers to respond?

Answer: Yes to both questions. Until the state has determined that the claimant is an "eligible individual," no TEUC–A account may be established. However, if the claimant has not previously received a TEUC determination, the state must issue a TEUC determination and make payments pending redetermination to TEUC–A, if appropriate. Employers are to be given the same amount of time to respond to the request for information as they are normally given under state law.

d. *Question:* If a claimant is currently in basic TEUC status, must the state automatically commence converting the individual to TEUC–A?

Answer: No. Claims may not be automatically converted to TEUC–A. The state must first determine if the claimant is an "eligible individual" for TEUC–A purposes. Potentially eligible claimants receiving basic TEUC or TEUC–X must be advised of the TEUC–A option. States should advise claimants in current claim status of the TEUC–A option early enough to allow for the TEUC–A determination to be made before the claimant exhausts to prevent an interruption of payments to TEUC–A eligible claimants.

e. *Question:* Do all base period employers need to be notified or just the employer that the claimant identifies as being in "qualifying employment?"

Answer: In general, each base period employer from which the claimant was laid off on or after September 11, 2001, must be contacted because the state may not issue an ineligible determination without establishing that the claimant does not have "qualifying employment." However, in cases where the claimant appears on a qualified employer's list of individuals that were separated for one of the qualifying reasons, there is no need to contact other employers because the state has sufficient information to determine that the claimant is an "eligible individual."

f. *Question:* An individual is about to exhaust regular benefits and the state is prepared to notify the individual of the TEUC program. Because the individual will be eligible for basic TEUC, is it necessary to immediately investigate the claimant's eligibility for TEUC–A?

Answer: No. However, states should notify individuals of the TEUC–A option at the time of the TEUC initial claim in order to identify claims needing TEUC–A determinations. Notice of TEUC–A should be given no later than at the time of the issuance of the basic TEUC monetary determination. This notice will provide enough time for a TEUC–A determination before exhaustion of TEUC to avoid interruptions in payments to TEUC–A eligible claimants.

Upon finding that the individual is eligible for TEUC–A, the state will redetermine the claim to TEUC–A and report a redetermination in the comments section of the ETA 5159 as a TEUC–A redetermination.

g. *Question:* What is the last date that a new TEUC–A claim can be effective?

Answer: The last week for which a TEUC–A determination can be effective is the week that ends prior to December 29, 2003. That is the week ending December 27, 2003, for all states except New York where it is December 28, 2003.

h. *Question:* What is the last week for which TEUC–A can be paid?

Answer: The last week a TEUC–A claim can be paid is the last week beginning on or before December 26, 2004. That is the week beginning December 26, 2004, for all states except New York where it is December 20, 2004.

2. Applicable Benefit Year for TEUC–A Purposes

a. *Question:* If an individual has received TEUC based on a prior benefit year and has also received TEUC based on a subsequent benefit year that is redetermined to TEUC–A, must the amounts of TEUC previously paid for both TEUC claims be deducted to establish the remaining TEUC–A balance?

Answer: No. Only the TEUC benefits paid based on the same benefit year as the TEUC–A claim are deductible.

b. *Question:* An individual who has a TEUC–A claim is determined eligible for regular benefits for a new benefit year. Upon exhaustion of the regular benefits based on the new benefit year, may the claimant elect to receive TEUC–A based on the prior claim instead of the most recent benefit year?

Answer: No. The determination of TEUC–A eligibility must be based on the "applicable benefit year," which in the scenario cited above is the most recent benefit year. Also, whether or not the claimant is an "eligible individual" for TEUC–A purposes must be based on the base period employment for the "applicable benefit year" and the associated separation(s).

3. Monetary Eligibility

a. *Question:* An individual has two base period employers. Employment with one employer is "qualifying employment," while employment with the other is not. Which employment is the individual's monetary eligibility based on?

Answer: The TEUC–A monetary calculation formula uses other factors and is not based on the amount of the base period wages from "qualifying employment." TEUC–A monetary entitlement is based on the calculation of the lesser of 150 percent of the regular benefit maximum benefit amount (MBA) or 39 times the average weekly benefit amount (AWBA).

b. *Question:* TEUC–A benefits are applicable only to weeks beginning on or after the date of enactment, but all TEUC and TEUC–X benefits previously paid are to be deducted from the TEUC–A calculated MBA to create the TEUC–A account balance. Some TEUC and/or TEUC–X weeks claimed prior to enactment of Public Law 108–11 may not be paid until after the TEUC–A account balance has been established. May these weeks be paid from the balance available in the TEUC–A account?

Answer: Yes. The amount paid for all TEUC and TEUC–X compensable weeks is deductible from the redetermined TEUC–A MBA. When the payments are issued is immaterial. However, the MBA payable as TEUC and TEUC–X for weeks of unemployment ending prior to April 16, 2003, may not exceed the original TEUC amount of the lesser of 50 percent of the MBA or 13 times the AWBA, plus an additional amount up to 13 times the AWBA in high unemployment states. Therefore, after the TEUC–A determination is made, if there are weeks of unemployment prior to the first week beginning after April 16, 2003, for which the claimant is determined eligible, payments can be made but only up to the MBA payable for TEUC (and TEUC–X, if applicable).

c. *Question:* The claimant has exhausted TEUC in a state that has not been and is not in an extended benefit (EB) or TEUC–X period. What is the MBA payable based on a TEUC–A determination?

Answer: The TEUC–A monetary determination is calculated at the lesser of 150 percent of the MBA of the regular claim or 39 times the AWBA minus the TEUC previously paid based on the "applicable benefit year," creating a TEUC–A balance payable of up to 26 times the AWBA. If the claimant exhausts TEUC–A while the state is in an EB or TEUC–X period, the claimant's account will be augmented by an amount equal to 1/3 of the TEUC–A MBA, thereby creating a TEUC–AX balance.

d. *Question:* The claimant has exhausted TEUC and TEUC–X in a state that is currently not in an EB or TEUC–X period. What is the MBA payable based on a TEUC–A determination?

Answer: The TEUC–A monetary is calculated at the lesser of 150 percent of the MBA of the regular claim or 39 times the AWBA minus the TEUC and TEUC–X previously paid based on the "applicable benefit year," creating a balance payable of up to 13 times the AWBA. If the claimant exhausts TEUC–A while the state is in an EB or TEUC–X period, the claimant's account will be augmented by an amount equal to 1/3 of the TEUC–A MBA, thereby creating a TEUC–X balance.

e. *Question:* The claimant has exhausted TEUC and TEUC–X in a state that is currently in an extended benefit or TEUC–X period. What is the MBA payable based on a TEUC–A determination?

Answer: The TEUC–A monetary determination is calculated at the lesser of 150 percent of the MBA of the regular claim or 39 times the AWBA minus the TEUC and TEUC–X previously paid based on the "applicable benefit year," creating a TEUC–A balance of up to 13 times the AWBA. If the claimant exhausts TEUC–A after the state's EB or TEUC–X period has triggered "off," no additional TEUC–A benefits are payable. If the claimant exhausts while the state is in an EB or TEUC–X period, the claimant's account will be augmented by an amount equal to 1/3 of the TEUC–A MBA, thereby creating a TEUC–X balance.

4. Base Period Twenty—Weeks of Work Requirement

a. *Question:* To be eligible for TEUC–A, must the individual's "qualifying employment" in the base period meet the 20 weeks of full-time work or the equivalent in insured wages requirement?

Answer: No. The claimant's total base period employment and wages must meet the "20 weeks of work" requirement.

5. Determining if an Individual Is an "Eligible Individual" for TEUC–A Purposes

a. *Question:* The individual had "qualifying employment" during the base period of the prior benefit year. The new benefit year has no "qualifying employment." Is this individual an "eligible individual?"

Answer: No. For purposes of determining TEUC, and therefore TEUC–A eligibility, the "applicable benefit year" is the current or most recent benefit year. (See UIPL No. 30–02, pages II–1 and III–2.)

b. *Question:* The state has completed its TEUC–A fact-finding and is ready to issue a determination. What type of determination should be issued?

Answer: If the state determines an individual is eligible for TEUC–A, the state will issue or document an eligible nonmonetary determination and issue a TEUC–A monetary determination or redetermination, as appropriate. If the state determines an individual is ineligible for TEUC–A, the state will issue an ineligible nonmonetary determination only. In either case, the nonmonetary determination is reportable under "Miscellaneous" on the TEUC–ETA 207 report.

c. *Question:* The individual had no "qualifying employment" in the base period, but did have "qualifying employment" in the lag period. Is this individual an "eligible individual?"

Answer: No. In order for a claimant to be determined an "eligible individual" for TEUC–A purposes, "qualifying employment" must have been used in the determination of regular compensation for the "applicable benefit year."

d. *Question:* Do claimants have appeal rights if determined not eligible for TEUC–A?

Answer: Yes. States must provide the same appeal rights provided for determinations for regular benefits.

e. *Question:* Is a monetary determination notice sufficient to advise claimants they are not eligible for TEUC–A?

Answer: No. An appealable nonmonetary determination is required if a claimant is determined ineligible for TEUC–A.

f. *Question:* Since employers are being contacted to determine "qualifying employment," are they interested parties to the determination?

Answer: No. Employers are not interested parties because their accounts are not potentially chargeable for TEUC–A.

g. *Question:* After issuing an eligible determination, the state receives late information from an employer that contradicts the claimant's statement. Is the state required to issue a redetermination or does the state follow its regular procedures?

Answer: Late information received from the employer must be considered. If it supports a denial of benefits, a redetermination must be issued. This procedure may differ from state law provisions prohibiting the use of information received after a decision has been issued. Such state provisions are intended to penalize an employer who has not complied with state law provisions concerning employer response. However, the employer is not an interested party to a TEUC–A determination and these state provisions must not be applied.

6. Determining if the Employment is "Qualifying Employment"

a. *Question:* Qualifying separations include those due to "military conflict with Iraq." Must separations due to the "military conflict with Iraq" be related to employment with a certified air carrier, employment at a facility at an airport, or employment with an upstream producer or supplier for an air carrier?

Answer: Yes. The separation has to be from employment with a certified air carrier, employment at a facility at an airport, or employment with an upstream producer or supplier for a certified air carrier. A separation due "in whole or in part" to the military conflict with Iraq is a qualifying separation for purposes of establishing "qualifying employment."

b. *Question:* Eight thousand servicemembers from a local military base were sent to Iraq. Are the local businesses that have suffered a loss of business due to the deployment considered to have provided "qualifying employment" or is that designation limited to airline-related employment?

Answer: The designation "qualifying employment" is limited to airline-related employment from which the individual was

separated for a qualifying reason. Therefore, employment with a non-airline related employers who have suffered a loss of business due to the deployment of large number of military servicemembers from the community is not "qualifying employment."

c. *Question:* If the claimant's regular benefit entitlement is determined using an alternate base period, are the normally lag period wages that are used in the determination "qualifying employment" if all other conditions are met?

Answer: Yes. If regular entitlement is determined using the alternate base period, that is the base period for purposes of determining "qualifying employment."

d. *Question:* During the base period, the claimant was employed with an air carrier and was separated for a nonqualifying reason. Subsequent to establishing the "applicable benefit year," the claimant returned to work with that employer and was separated for a qualifying reason. Would this separation establish the base period employment as "qualifying employment?"

Answer: Yes. The qualifying separation does not have to occur during the base period. In most cases, it will probably occur during the lag period.

e. *Question:* The term "qualifying employment" as expressed in the law provides that separation from the employment must be due "in whole or in part" to one of three conditions. Is it possible that an individual can have employment with more than one base period employer that can be considered qualifying employment?

Answer. Yes.

f. *Question:* There are several hotels "offsite" along the main road of the airport. Would these hotels qualify as hotels at the facility?

Answer: No. Employment with a hotel that is not physically located on the grounds of the airport and that does not provide functions that are integrally related to the operation of the airport, is not "employment at a facility at an airport." A "facility at an airport" includes any facility that is physically located on the grounds of an airport or those offsite businesses/facilities that provide functions that are integrally related to the operation of the airport. An offsite hotel may be convenient, but it is not "integrally related to the operation of the airport."

g. *Question:* A hotel located offsite near an airport had a contract with a certified air carrier to supply a certain number of rooms each night for airline personnel. Due to a reduction in the air carrier's flights, the contract with the hotel was canceled. Does the hotel meet the definition of a "supplier" for TEUC–A purposes?

Answer: Yes. This hotel is a "supplier" that provided services to a certified air carrier.

h. *Question:* An individual worked as a security screener at an airport. In response to the terrorist actions of September 11, 2001, this function was transferred to the newly created federal Transportation Security Administration (TSA). The individual was not hired by the TSA and is, as a result, now unemployed. Is this a qualifying reason for separation for TEUC–A purposes?

Answer: No. The above individual worked at a facility at an airport and was separated from employment due to a security measure taken in response to the terrorist actions of September 11, 2001. However, to have "qualifying employment," the individual must have been separated because of reductions in service by an air carrier or the closure of an airport in the United States. This did not occur under the scenario described. Rather, the individual was separated because the TSA took over security at the airport.

i. *Question:* The claimant has a qualifying employer during the base period and a qualifying separation from that employer. The claimant is subsequently reemployed by the employer and has a disqualifying separation. Is this claimant's first separation from this employer a qualifying separation for TEUC–A purposes?

Answer: No. The definition of an "eligible individual" requires the individual to be separated from "qualifying employment." The determination that base period employment constitutes "qualifying employment" includes a determination that the claimant was separated from the base period employment for a qualifying reason. In this case, although this claimant was separated after September 11, 2001, for a qualifying reason, when the employer recalled the claimant, the claimant was no longer separated from this employer. The claimant's subsequent separation from this base period employer is not for one of the three qualifying reasons.

j. *Question:* The claimant has base period employment with two potentially qualifying employers. One employer laid the individual off after September 11, 2001, for a qualifying reason; the other employer fired the claimant after September 11, 2001, for gross misconduct. Does this claimant have a qualifying separation, and is he/she eligible for TEUC–A?

Answer: Whether this claimant is "eligible" to receive TEUC–A depends on whether he/she has requalified if there was a misconduct disqualification. However, this claimant has "qualifying employment" and meets the definition of "eligible individual" for TEUC–A monetary determination purposes because he/she is separated from a base period employment for a qualifying reason. This situation is different from the individual with two separations from the same employer in that the non-qualifying separation from one base period employer does not nullify the qualifying separation from another base period employer. The issue is not whether the claimant's separation from his/her most recent potentially qualifying employment is qualifying, it is whether the claimant has "qualifying employment," and this claimant does. However, to receive TEUC–A benefits, the individual must still meet all other eligibility requirements. Therefore, if the claimant has been disqualified, no TEUC–A is payable until the claimant has requalified.

k. *Question:* The claimant worked at an airport construction site building a parking ramp or remodeling a building. Would this employment be considered "employment at a facility at an airport?"

Answer: Yes. Although the employer's office may have been located offsite, the claimant's employment at the construction site on the airport grounds constitutes "employment at a facility at an airport." *However,* in order for the claimant to be an "eligible individual," he/she must have been laid off from work at the airport construction site for one of the three qualifying reasons.

l. *Question:* Is a company that makes and supplies parts to an aircraft manufacturer that sells airplanes to a certified air carrier a "supplier" for purposes of TEUC–A?

Answer: Yes, because the air carrier is certified. However, to satisfy the definition of "qualifying employment," the separation from the base period employment must be for a qualifying reason.

m. *Question:* Is a company that is contracted to install phones or computer equipment at an airport considered a "supplier" for an air carrier?

Answer: Yes, if the contract is with a certified air carrier. Also, the individual(s) installing the equipment on the airport grounds is performing services "at a facility at an airport." Therefore, the employment satisfies the definition of "qualifying employment" if the separation was for one of the three qualifying reasons.

n. *Question:* A foreign air carrier has suffered a loss in business associated with the terrorist actions of September 11, 2001, and has laid off workers at airports throughout the United States. Does this employer meet the definition of an "air carrier" for purposes of TEUC–A?

Answer: No. An "air carrier" for purposes of TEUC–A is defined as "an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code." We have been advised by the Federal Aviation Administration that foreign air carriers are not issued such certificates. However, if this employer is located at an airport, then services performed for it at the airport represent "employment at a facility at the airport." To qualify, however, the individual must have a qualifying separation. Because the reduction in service was not by a certified air carrier, the layoff must be due to one of the other two qualifying reasons, *i.e.*, due to an airport closure as a result of the terrorist actions of September 11, 2001, or due to the military conflict in Iraq.

o. *Question:* Due to a drop in business after the terrorist actions of September 11, 2001, a foreign air carrier cancels its contract with the local caterer whose sole contract was with this air carrier. The caterer goes out of business, laying off all of its workers. Does the caterer meet the definition of an "upstream producer" or "supplier" for TEUC–A purposes?

Answer: No. The caterer does not meet the definition of "supplier" because the products and services were not provided to a qualifying "air carrier" as defined in section 4002(a)(3) of Public Law 108–11.

p. *Question:* A manufacturer or supplier of private aircraft exclusively to individuals and non-airline related businesses laid off workers after the terrorist actions on September 11, 2001, when sales of the private aircraft were reduced. Does this constitute "qualifying employment" for purposes of TEUC–A?

Answer: No. Section 4002(a)(3) of Public Law 108–11 is clear in its definition of an "air carrier" for purposes of TEUC-A. Therefore, if the reduction in business is not due to reduction in service by a certified air carrier, the employment does not meet the definition of "qualifying employment."

q. *Question:* The TSA announced that later this year it will cut 11% of the security screeners at the nation's airports. Does this employment at airports with the TSA constitute "qualifying employment" for TEUC–A purposes?

Answer: No. These layoffs are not due to a qualifying reason for separation, *i.e.*, layoffs due to a reduction in service by the certified air carrier due to the September 11, 2001, terrorist actions or security measures taken in response thereto; closure of an airport for that reason; or the military conflict with Iraq.

r. *Question:* The meaning of the term "qualifying employment" includes "employment at a facility at an airport." What is an airport?

Answer: Title 49, Section 40102(g) of the United States Code defines "airport" as "a landing area used regularly by aircraft for receiving or discharging passengers or cargo."

7. Determining if the Separation Is a Qualifying Separation

a. *Question:* The claimant worked in employment with a supplier of services utilized by a certified air carrier and was disqualified for a voluntary quit at the time the benefit year was established. On appeal, the determination was reversed because the employer failed to appear and the claimant maintained that the separation was due to a lay-off for lack of work. The claimant has now filed for TEUC–A and the employer has responded to the TEUC–A request for information stating that the claimant was not separated for a qualifying reason. How is this determination handled?

Answer: Determining whether or not the claimant's separation was for a qualifying reason for TEUC–A purposes is not the issue that was previously determined. Here, the appellate body found that the lay-off was *for* lack of work. The state need only determine for TEUC–A qualifying purposes if the lack of work was for a qualifying reason. A determination that the claimant was not laid off for one of the TEUC–A qualifying reasons does not contradict the appellate decision.

b. *Question:* States are required to determine if the claimant is an "eligible individual" for TEUC–A purposes. Making this determination involves determining if the claimant's base period employment used in the monetary determination for regular benefits meets the definition of "qualifying employment" which includes a determination of whether or not the claimant was separated for a qualifying reason. What section of law does the state cite in its nonmonetary determination and where are these determinations reported on the TEUC ETA 207?

Answer: The state should cite Section 4002(a) of Public Law 108–11. The nonmonetary determination is reportable as "Miscellaneous" in column 17, line 202 of the ETA 207 TEUC report. (See Items 14.c. and d.)

c. *Question:* Information provided by the employer indicates that the employment is "qualifying employment," but the state has reason to doubt the accuracy of this information. Is the state required to accept the employer's statement?

Answer: No. However, the state must have credible information to refute the employer's assertion and to support a determination of TEUC–A ineligibility.

d. *Question:* State National Guard and Air National Guard members were activated by the state and deployed to guard the airports. Does their deactivation constitute a "qualifying separation" for TEUC–A purposes?

Answer: No. The deactivation of the State National Guard and Air National Guard was not due to a qualifying reason for separation, *i.e.*, layoffs due to a reduction in service by the certified air carrier due to the September 11 terrorist actions or security measures taken in response thereto; closure of an airport for the same reason(s); or the military conflict with Iraq.

e. *Question:* State National Guard and Air National Guard members were activated and deployed by the federal government during the military conflict with Iraq. Does their deactivation constitute a qualifying separation for TEUC–A purposes?

Answer: No. The federal government cannot be construed as a certified air carrier, a facility at an airport, or a supplier to a certified air carrier. Nor is the federal government a "firm." These are the terms used in the TEUC–A provisions to describe the employer or type of employment that potentially constitute "qualifying employment." Because military service to the government is not potentially "qualifying employment," the reason for separation is not a potentially qualifying separation.

f. *Question:* Military reservists were activated and deployed due to the military conflict with Iraq. When they are unable to return to their previous employment with an air carrier, employment at a facility at an airport, or with an upstream producer or supplier for an air carrier for one of the qualifying reasons for separation, are they considered to be separated from "qualifying employment" for TEUC–A purposes?

Answer: Yes. Such reservists' inability to return to their prior employer/employment for a reason that satisfies the requirements of Section 4002(a)(2)(A) of P.L. 108–11, constitutes a "qualifying separation" from that employer. If that employment was used in the determination of eligibility for regular benefits, it constitutes "qualifying employment" for TEUC–A purposes.

g. *Question:* Would individuals who worked as travel agents or reservation agents who in whole or in part book passengers for certified air carrier flights be considered as "suppliers" or employees of "suppliers" for TEUC–A purposes?

Answer: Yes. Travel and reservation agents/agencies perform written or implied contract services for certified air carriers by booking passengers' flights. If travel agents did not book the certified air carrier's flights, the certified air carriers themselves would be required to book the flights. Thus, these agents supply services to certified air carriers. If their separation is for a qualifying reason, they have "qualifying employment."

8. Adjudication of Issues Arising Subsequent to "Qualifying Employment"

a. *Question:* An "eligible individual" has had subsequent employment since the "qualifying employment" and is terminated from the subsequent employment for a disqualifying reason. Does this affect the individual's eligibility for TEUC–A?

Answer: Maybe. When an individual has been determined to be an "eligible individual" for TEUC–A purposes, that determination only means that the individual is entitled to a monetary determination using the formula that applies to TEUC–A. To receive TEUC–A benefits, the individual must still meet all other eligibility requirements. Therefore, if the claimant has been disqualified, no TEUC–A is payable until the claimant has requalified.

9. Interstate Benefits/Combined Wage/ICON Applications

a. *Question:* How will "eligible individuals" be identified by the paying state if potentially "qualifying employment" on a combined-wage claim is from a transferring state?

Answer: If the claimant responds to a notice of potential eligibility to TEUC–A, the request for information will be sent directly to the employer in the other state. If the employer is an obvious "large employer" (such as a certified air carrier) that may have already provided the transferring state with information about the claimant, the paying state may instead arrange to check with the transferring state.

b. *Question:* A claimant has employment in more than one state and has base period employment that would satisfy the definition of "qualifying employment." However, it was not used in the monetary determination of the regular claim because the claimant was eligible for the maximum benefit amount payable under the liable state's law without filing a combined wage claim (CWC). Does this claimant have "qualifying employment" for TEUC–A purposes?

Answer: Under the TEUC–A law, an "eligible individual" is one whose eligibility for TEUC "is or would be based on the exhaustion of regular compensation under state law, entitlement to which was based in whole or in part on qualifying employment performed during such individual's base period." The language "would be" permits consideration of employment, for purposes of determining qualifying employment, that the individual chose to exclude from base period employment under a CWC.

10. TEUC–A Eligibility for Individual Filing From Canada

a. *Question:* May individuals filing from Canada qualify for TEUC–A?

Answer: Yes, if they meet the definition of an "eligible individual."

11. TEUC–A Effect on Trade Readjustment Assistance (TRA)

a. *Question:* Original TEUC benefits were deducted from claimants' "basic" TRA entitlement. Is TEUC-A also deductible from TRA entitlement?

- *Answer:* Yes. The same rules apply.

12. Short-Time Compensation Program

a. *Question:* Employers opted to participate in the state's short-time compensation (or worksharing program) or otherwise reduced workers' hours in lieu of lay offs. Would these situations be considered "qualifying separations" for TEUC–A purposes?

Answer: Yes, if the reduction in work hours or weeks by a qualifying employer was caused by one of the three qualifying reasons.

13. TEUC–A Benefit Funding

a. *Question:* Will TEUC–A be funded separately from TEUC?

Answer: No.

14. Reporting Requirements

a. *Question:* How will TEUC–A and AX claims and benefit activity be reported?

Answer: See the reporting instructions in UIPL 30–02, Change 2, Item 11.

b. *Question:* Must TEUC–A benefit activity be reported separately from other TEUC activity?

Answer: No. TEUC, TEUC–X, TEUC–A and TEUC–AX are all reported together on the TEUC reports. However, states are to report a breakout in the comments section of the ETA 5159 of the number of TEUC–A determinations and redeterminations. See reporting instructions in UIPL No. 30–02, Change 2, Item 11.

c. *Question:* Will nonmonetary determinations of "eligible individuals" for TEUC–A be reported on the ETA 207 as countable determinations?

Answer: Yes.

d. *Question:* Does the outcome of the "eligible individual" nonmonetary determination (eligible/not eligible) affect what type of issue is reported on the ETA TEUC–A 207 and would it be reported the same on all reports?

Answer: Whether or not the claimant is an "eligible individual" is a nonseparation nonmonetary determination reportable in the miscellaneous column of the TEUC–A ETA 207 regardless of the outcome of the determination. The TEUC–A ETA 207 is the *only* report where TEUC nonmonetary determinations will be reported.

e. *Question:* Is a separate SF–269 required for reporting TEUC–A administrative costs?

Answer: No. There is only one TEUC program. The TEUC–A and AX costs are included on the SF 269 for the TEUC program.

[FR Doc. 03–14857 Filed 6–12–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which ae determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 27a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in teh localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to teh issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effectibve date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit infomration for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

Connecticut
- CT02–01 (Mar. 1. 2002)(CT03–01)
- CT02–02 (Mar. 1. 2002)(CT03–02)
- CT02–03 (Mar. 1. 2002)(CT03–03)
- CT02–04 (Mar. 1. 2002)(CT03–04)
- CT02–05 (Mar. 1. 2002)(CT03–05)
- CT02–06 (Mar. 1. 2002)(CT03–06)
- CT02–07 (Mar. 1. 2002)(CT03–07)
- CT02–08 (Mar. 1. 2002)(CT03–08)

Massachusetts
- MA02–01 (Mar. 1. 2002)(MA03–01)
- MA02–02 (Mar. 1. 2002)(MA03–02)
- MA02–03 (Mar. 1. 2002)(MA03–03)
- MA02–04 (Mar. 1. 2002)(MA03–04)
- MA02–05 (Mar. 1. 2002)(MA03–05)
- MA02–06 (Mar. 1. 2002)(MA03–06)
- MA02–07 (Mar. 1. 2002)(MA03–07)
- MA02–08 (Mar. 1. 2002)(MA03–08)
- MA02–09 (Mar. 1. 2002)(MA03–09)
- MA02–10 (Mar. 1. 2002)(MA03–10)
- MA02–11 (Mar. 1. 2002)(MA03–11)
- MA02–12 (Mar. 1. 2002)(MA03–12)
- MA02–13 (Mar. 1. 2002)(MA03–13)
- MA02–14 (Mar. 1. 2002)(MA03–14)
- MA02–15 (Mar. 1. 2002)(MA03–15)
- MA02–16 (Mar. 1. 2002)(MA03–16)
- MA02–17 (Mar. 1. 2002)(MA03–17)
- MA02–18 (Mar. 1. 2002)(MA03–18)
- MA02–19 (Mar. 1. 2002)(MA03–19)
- MA02–20 (Mar. 1. 2002)(MA03–20)
- MA02–21 (Mar. 1. 2002)(MA03–21)

Maine
- ME02–01 (Mar. 1. 2002)(ME03–01)
- ME02–02 (Mar. 1. 2002)(ME03–02)
- ME02–03 (Mar. 1. 2002)(ME03–03)
- ME02–04 (Mar. 1. 2002)(ME03–04)
- ME02–05 (Mar. 1. 2002)(ME03–05)
- ME02–06 (Mar. 1. 2002)(ME03–06)
- ME02–07 (Mar. 1. 2002)(ME03–07)
- ME02–08 (Mar. 1. 2002)(ME03–08)
- ME02–09 (Mar. 1. 2002)(ME03–09)
- ME02–10 (Mar. 1. 2002)(ME03–10)
- ME02–11 (Mar. 1. 2002)(ME03–11)
- ME02–12 (Mar. 1. 2002)(ME03–12)
- ME02–13 (Mar. 1. 2002)(ME03–13)
- ME02–14 (Mar. 1. 2002)(ME03–14)
- ME02–15 (Mar. 1. 2002)(ME03–15)
- ME02–16 (Mar. 1. 2002)(ME03–16)

New Hampshire
- NH02–01 (Mar. 1. 2002)(NH03–01)
- NH02–02 (Mar. 1. 2002)(NH03–02)
- NH02–03 (Mar. 1. 2002)(NH03–03)
- NH02–04 (Mar. 1. 2002)(NH03–04)
- NH02–05 (Mar. 1. 2002)(NH03–05)
- NH02–06 (Mar. 1. 2002)(NH03–06)
- NH02–07 (Mar. 1. 2002)(NH03–07)
- NH02–08 (Mar. 1. 2002)(NH03–08)
- NH02–09 (Mar. 1. 2002)(NH03–09)
- NH02–10 (Mar. 1. 2002)(NH03–10)
- NH02–11 (Mar. 1. 2002)(NH03–11)
- NH02–12 (Mar. 1. 2002)(NH03–12)

New Jersey
- NJ02–01 (Mar. 1. 2002)(NJ03–01)
- NJ02–02 (Mar. 1. 2002)(NJ03–02)
- NJ02–03 (Mar. 1. 2002)(NJ03–03)
- NJ02–04 (Mar. 1. 2002)(NJ03–04)
- NJ02–05 (Mar. 1. 2002)(NJ03–05)
- NJ02–06 (Mar. 1. 2002)(NJ03–06)
- NJ02–07 (Mar. 1. 2002)(NJ03–07)
- NJ02–08 (Mar. 1. 2002)(NJ03–08)
- NJ02–09 (Mar. 1. 2002)(NJ03–09)

New York
- NY02–01 (Mar. 1. 2002)(NY03–01)
- NY02–02 (Mar. 1. 2002)(NY03–02)
- NY02–03 (Mar. 1. 2002)(NY03–03)
- NY02–04 (Mar. 1. 2002)(NY03–04)
- NY02–05 (Mar. 1. 2002)(NY03–05)
- NY02–06 (Mar. 1. 2002)(NY03–06)
- NY02–07 (Mar. 1. 2002)(NY03–07)
- NY02–08 (Mar. 1. 2002)(NY03–08)
- NY02–09 (Mar. 1. 2002)(NY03–09)
- NY02–10 (Mar. 1. 2002)(NY03–10)
- NY02–11 (Mar. 1. 2002)(NY03–11)
- NY02–12 (Mar. 1. 2002)(NY03–12)
- NY02–13 (Mar. 1. 2002)(NY03–13)
- NY02–14 (Mar. 1. 2002)(NY03–14)
- NY02–15 (Mar. 1. 2002)(NY03–15)
- NY02–16 (Mar. 1. 2002)(NY03–16)
- NY02–17 (Mar. 1. 2002)(NY03–17)
- NY02–18 (Mar. 1. 2002)(NY03–18)
- NY02–19 (Mar. 1. 2002)(NY03–19)
- NY02–20 (Mar. 1. 2002)(NY03–20)
- NY02–21 (Mar. 1. 2002)(NY03–21)
- NY02–22 (Mar. 1. 2002)(NY03–22)
- NY02–23 (Mar. 1. 2002)(NY03–23)
- NY02–24 (Mar. 1. 2002)(NY03–24)
- NY02–25 (Mar. 1. 2002)(NY03–25)
- NY02–26 (Mar. 1. 2002)(NY03–26)
- NY02–27 (Mar. 1. 2002)(NY03–27)
- NY02–28 (Mar. 1. 2002)(NY03–28)
- NY02–29 (Mar. 1. 2002)(NY03–29)
- NY02–30 (Mar. 1. 2002)(NY03–30)
- NY02–31 (Mar. 1. 2002)(NY03–31)
- NY02–32 (Mar. 1. 2002)(NY03–32)
- NY02–33 (Mar. 1. 2002)(NY03–33)
- NY02–34 (Mar. 1. 2002)(NY03–34)
- NY02–35 (Mar. 1. 2002)(NY03–35)
- NY02–36 (Mar. 1. 2002)(NY03–36)
- NY02–37 (Mar. 1. 2002)(NY03–37)
- NY02–38 (Mar. 1. 2002)(NY03–38)
- NY02–39 (Mar. 1. 2002)(NY03–39)
- NY02–40 (Mar. 1. 2002)(NY03–40)
- NY02–41 (Mar. 1. 2002)(NY03–41)
- NY02–42 (Mar. 1. 2002)(NY03–42)
- NY02–43 (Mar. 1. 2002)(NY03–43)
- NY02–44 (Mar. 1. 2002)(NY03–44)
- NY02–45 (Mar. 1. 2002)(NY03–45)
- NY02–46 (Mar. 1. 2002)(NY03–46)
- NY02–47 (Mar. 1. 2002)(NY03–47)
- NY02–48 (Mar. 1. 2002)(NY03–48)
- NY02–49 (Mar. 1. 2002)(NY03–49)
- NY02–50 (Mar. 1. 2002)(NY03–50)
- NY02–51 (Mar. 1. 2002)(NY03–51)
- NY02–52 (Mar. 1. 2002)(NY03–52)
- NY02–53 (Mar. 1. 2002)(NY03–53)
- NY02–54 (Mar. 1. 2002)(NY03–54)
- NY02–55 (Mar. 1. 2002)(NY03–55)
- NY02–56 (Mar. 1. 2002)(NY03–56)
- NY02–57 (Mar. 1. 2002)(NY03–57)
- NY02–58 (Mar. 1. 2002)(NY03–58)
- NY02–59 (Mar. 1. 2002)(NY03–59)
- NY02–60 (Mar. 1. 2002)(NY03–60)
- NY02–61 (Mar. 1. 2002)(NY03–61)
- NY02–62 (Mar. 1. 2002)(NY03–62)
- NY02–63 (Mar. 1. 2002)(NY03–63)
- NY02–64 (Mar. 1. 2002)(NY03–64)
- NY02–65 (Mar. 1. 2002)(NY03–65)
- NY02–66 (Mar. 1. 2002)(NY03–66)
- NY02–67 (Mar. 1. 2002)(NY03–67)
- NY02–68 (Mar. 1. 2002)(NY03–68)
- NY02–69 (Mar. 1. 2002)(NY03–69)
- NY02–70 (Mar. 1. 2002)(NY03–70)
- NY02–71 (Mar. 1. 2002)(NY03–71)
- NY02–72 (Mar. 1. 2002)(NY03–72)
- NY02–73 (Mar. 1. 2002)(NY03–73)
- NY02–74 (Mar. 1. 2002)(NY03–74)
- NY02–75 (Mar. 1. 2002)(NY03–75)
- NY02–76 (Mar. 1. 2002)(NY03–76)
- NY02–77 (Mar. 1. 2002)(NY03–77)

Guam
- GU02–01 (Mar. 1. 2002)(GU03–01)

Puerto Rico
- PR02–01 (Mar. 1. 2002)(PR03–01)
- PR02–02 (Mar. 1. 2002)(PR03–02)
- PR02–03 (Mar. 1. 2002)(PR03–03)

Rhode Island
- RI02–01 (Mar. 1. 2002)(RI03–01)
- RI02–02 (Mar. 1. 2002)(RI03–02)
- RI02–03 (Mar. 1. 2002)(RI03–03)
- RI02–04 (Mar. 1. 2002)(RI03–04)
- RI02–05 (Mar. 1. 2002)(RI03–05)

Virgin Islands
- VI02–01 (Mar. 1. 2002)(VI03–01)
- VI02–02 (Mar. 1. 2002)(VI03–02)

Vermont
- VT02–01 (Mar. 1. 2002)(VT03–01)
- VT02–02 (Mar. 1. 2002)(VT03–02)
- VT02–03 (Mar. 1. 2002)(VT03–03)
- VT02–04 (Mar. 1. 2002)(VT03–04)
- VT02–05 (Mar. 1. 2002)(VT03–05)
- VT02–06 (Mar. 1. 2002)(VT03–06)
- VT02–07 (Mar. 1. 2002)(VT03–07)
- VT02–08 (Mar. 1. 2002)(VT03–08)
- VT02–09 (Mar. 1. 2002)(VT03–09)
- VT02–10 (Mar. 1. 2002)(VT03–10)
- VT02–11 (Mar. 1. 2002)(VT03–11)
- VT02–12 (Mar. 1. 2002)(VT03–12)
- VT02–13 (Mar. 1. 2002)(VT03–13)
- VT02–14 (Mar. 1. 2002)(VT03–14)
- VT02–15 (Mar. 1. 2002)(VT03–15)
- VT02–16 (Mar. 1. 2002)(VT03–16)
- VT02–17 (Mar. 1. 2002)(VT03–17)
- VT02–18 (Mar. 1. 2002)(VT03–18)
- VT02–19 (Mar. 1. 2002)(VT03–19)
- VT02–20 (Mar. 1. 2002)(VT03–20)
- VT02–21 (Mar. 1. 2002)(VT03–21)
- VT02–22 (Mar. 1. 2002)(VT03–22)
- VT02–23 (Mar. 1. 2002)(VT03–23)
- VT02–24 (Mar. 1. 2002)(VT03–24)
- VT02–25 (Mar. 1. 2002)(VT03–25)
- VT02–26 (Mar. 1. 2002)(VT03–26)
- VT02–27 (Mar. 1. 2002)(VT03–27)
- VT02–28 (Mar. 1. 2002)(VT03–28)
- VT02–29 (Mar. 1. 2002)(VT03–29)
- VT02–30 (Mar. 1. 2002)(VT03–30)
- VT02–31 (Mar. 1. 2002)(VT03–31)
- VT02–32 (Mar. 1. 2002)(VT03–32)
- VT02–33 (Mar. 1. 2002)(VT03–33)
- VT02–34 (Mar. 1. 2002)(VT03–34)
- VT02–35 (Mar. 1. 2002)(VT03–35)
- VT02–36 (Mar. 1. 2002)(VT03–36)
- VT02–37 (Mar. 1. 2002)(VT03–37)
- VT02–38 (Mar. 1. 2002)(VT03–38)
- VT02–39 (Mar. 1. 2002)(VT03–39)
- VT02–40 (Mar. 1. 2002)(VT03–40)
- VT02–41 (Mar. 1. 2002)(VT03–41)
- VT02–42 (Mar. 1. 2002)(VT03–42)
- VT02–43 (Mar. 1. 2002)(VT03–43)

Volume II

District of Col
- DC02–01 (Mar. 1. 2002)(DC03–01)
- DC02–02 (Mar. 1. 2002)(DC03–02)
- DC02–03 (Mar. 1. 2002)(DC03–03)

Delaware
- DE02–01 (Mar. 1. 2002)(DE03–01)
- DE02–02 (Mar. 1. 2002)(DE03–02)
- DE02–03 (Mar. 1. 2002)(DE03–03)
- DE02–04 (Mar. 1. 2002)(DE03–04)
- DE02–05 (Mar. 1. 2002)(DE03–05)
- DE02–06 (Mar. 1. 2002)(DE03–06)
- DE02–07 (Mar. 1. 2002)(DE03–07)
- DE02–08 (Mar. 1. 2002)(DE03–08)
- DE02–09 (Mar. 1. 2002)(DE03–09)
- DE02–10 (Mar. 1. 2002)(DE03–10)
- DE02–11 (Mar. 1. 2002)(DE03–11)

Maryland
- MD02–01 (Mar. 1. 2002)(MD03–01)
- MD02–02 (Mar. 1. 2002)(MD03–02)
- MD02–03 (Mar. 1. 2002)(MD03–03)
- MD02–04 (Mar. 1. 2002)(MD03–04)
- MD02–05 (Mar. 1. 2002)(MD03–05)
- MD02–06 (Mar. 1. 2002)(MD03–06)
- MD02–07 (Mar. 1. 2002)(MD03–07)
- MD02–08 (Mar. 1. 2002)(MD03–08)
- MD02–09 (Mar. 1. 2002)(MD03–09)
- MD02–10 (Mar. 1. 2002)(MD03–10)
- MD02–11 (Mar. 1. 2002)(MD03–11)
- MD02–12 (Mar. 1. 2002)(MD03–12)
- MD02–13 (Mar. 1. 2002)(MD03–13)
- MD02–14 (Mar. 1. 2002)(MD03–14)
- MD02–15 (Mar. 1. 2002)(MD03–15)
- MD02–16 (Mar. 1. 2002)(MD03–16)
- MD02–17 (Mar. 1. 2002)(MD03–17)
- MD02–18 (Mar. 1. 2002)(MD03–18)
- MD02–19 (Mar. 1. 2002)(MD03–19)
- MD02–20 (Mar. 1. 2002)(MD03–20)
- MD02–21 (Mar. 1. 2002)(MD03–21)
- MD02–22 (Mar. 1. 2002)(MD03–22)
- MD02–23 (Mar. 1. 2002)(MD03–23)
- MD02–24 (Mar. 1. 2002)(MD03–24)
- MD02–25 (Mar. 1. 2002)(MD03–25)
- MD02–26 (Mar. 1. 2002)(MD03–26)
- MD02–27 (Mar. 1. 2002)(MD03–27)
- MD02–28 (Mar. 1. 2002)(MD03–28)
- MD02–29 (Mar. 1. 2002)(MD03–29)
- MD02–30 (Mar. 1. 2002)(MD03–30)
- MD02–31 (Mar. 1. 2002)(MD03–31)
- MD02–32 (Mar. 1. 2002)(MD03–32)
- MD02–33 (Mar. 1. 2002)(MD03–33)
- MD02–34 (Mar. 1. 2002)(MD03–34)
- MD02–35 (Mar. 1. 2002)(MD03–35)
- MD02–36 (Mar. 1. 2002)(MD03–36)
- MD02–37 (Mar. 1. 2002)(MD03–37)
- MD02–38 (Mar. 1. 2002)(MD03–38)
- MD02–39 (Mar. 1. 2002)(MD03–39)
- MD02–40 (Mar. 1. 2002)(MD03–40)
- MD02–41 (Mar. 1. 2002)(MD03–41)
- MD02–42 (Mar. 1. 2002)(MD03–42)
- MD02–43 (Mar. 1. 2002)(MD03–43)

MD02–44 (Mar. 1, 2002)(MD03–44)
MD02–45 (Mar. 1, 2002)(MD03–45)
MD02–46 (Mar. 1, 2002)(MD03–46)
MD02–47 (Mar. 1, 2002)(MD03–47)
MD02–48 (Mar. 1, 2002)(MD03–48)
MD02–49 (Mar. 1, 2002)(MD03–49)
MD02–50 (Mar. 1, 2002)(MD03–50)
MD02–51 (Mar. 1, 2002)(MD03–51)
MD02–52 (Mar. 1, 2002)(MD03–52)
MD02–53 (Mar. 1, 2002)(MD03–53)
MD02–54 (Mar. 1, 2002)(MD03–54)
MD02–55 (Mar. 1, 2002)(MD03–55)
MD02–56 (Mar. 1, 2002)(MD03–56)
MD02–57 (Mar. 1, 2002)(MD03–57)
MD02–58 (Mar. 1, 2002)(MD03–58)

Pennsylvania

PA02–01 (Mar. 1, 2002)(PA03–01)
PA02–02 (Mar. 1, 2002)(PA03–02)
PA02–03 (Mar. 1, 2002)(PA03–03)
PA02–04 (Mar. 1, 2002)(PA03–04)
PA02–05 (Mar. 1, 2002)(PA03–05)
PA02–06 (Mar. 1, 2002)(PA03–06)
PA02–07 (Mar. 1, 2002)(PA03–07)
PA02–08 (Mar. 1, 2002)(PA03–08)
PA02–09 (Mar. 1, 2002)(PA03–09)
PA02–10 (Mar. 1, 2002)(PA03–10)
PA02–11 (Mar. 1, 2002)(PA03–11)
PA02–12 (Mar. 1, 2002)(PA03–12)
PA02–13 (Mar. 1, 2002)(PA03–13)
PA02–14 (Mar. 1, 2002)(PA03–14)
PA02–15 (Mar. 1, 2002)(PA03–15)
PA02–16 (Mar. 1, 2002)(PA03–16)
PA02–17 (Mar. 1, 2002)(PA03–17)
PA02–18 (Mar. 1, 2002)(PA03–18)
PA02–19 (Mar. 1, 2002)(PA03–19)
PA02–20 (Mar. 1, 2002)(PA03–20)
PA02–21 (Mar. 1, 2002)(PA03–21)
PA02–22 (Mar. 1, 2002)(PA03–22)
PA02–23 (Mar. 1, 2002)(PA03–23)
PA02–24 (Mar. 1, 2002)(PA03–24)
PA02–25 (Mar. 1, 2002)(PA03–25)
PA02–26 (Mar. 1, 2002)(PA03–26)
PA02–27 (Mar. 1, 2002)(PA03–27)
PA02–28 (Mar. 1, 2002)(PA03–28)
PA02–29 (Mar. 1, 2002)(PA03–29)
PA02–30 (Mar. 1, 2002)(PA03–30)
PA02–31 (Mar. 1, 2002)(PA03–31)
PA02–32 (Mar. 1, 2002)(PA03–32)
PA02–33 (Mar. 1, 2002)(PA03–33)
PA02–34 (Mar. 1, 2002)(PA03–34)
PA02–35 (Mar. 1, 2002)(PA03–35)
PA02–36 (Mar. 1, 2002)(PA03–36)
PA02–37 (Mar. 1, 2002)(PA03–37)
PA02–38 (Mar. 1, 2002)(PA03–38)
PA02–39 (Mar. 1, 2002)(PA03–39)
PA02–40 (Mar. 1, 2002)(PA03–40)
PA02–41 (Mar. 1, 2002)(PA03–41)
PA02–42 (Mar. 1, 2002)(PA03–42)
PA02–43 (Mar. 1, 2002)(PA03–43)
PA02–44 (Mar. 1, 2002)(PA03–44)
PA02–45 (Mar. 1, 2002)(PA03–45)
PA02–46 (Mar. 1, 2002)(PA03–46)
PA02–47 (Mar. 1, 2002)(PA03–47)
PA02–48 (Mar. 1, 2002)(PA03–48)
PA02–49 (Mar. 1, 2002)(PA03–49)
PA02–50 (Mar. 1, 2002)(PA03–50)
PA02–51 (Mar. 1, 2002)(PA03–51)
PA02–52 (Mar. 1, 2002)(PA03–52)
PA02–53 (Mar. 1, 2002)(PA03–53)
PA02–54 (Mar. 1, 2002)(PA03–54)
PA02–55 (Mar. 1, 2002)(PA03–55)
PA02–56 (Mar. 1, 2002)(PA03–56)
PA02–57 (Mar. 1, 2002)(PA03–57)
PA02–58 (Mar. 1, 2002)(PA03–58)
PA02–59 (Mar. 1, 2002)(PA03–59)
PA02–60 (Mar. 1, 2002)(PA03–60)
PA02–61 (Mar. 1, 2002)(PA03–61)
PA02–62 (Mar. 1, 2002)(PA03–62)
PA02–63 (Mar. 1, 2002)(PA03–63)
PA02–64 (Mar. 1, 2002)(PA03–64)
PA02–65 (Mar. 1, 2002)(PA03–65)

Virginia

VA02–01 (Mar. 1, 2002)(VA03–01)
VA02–02 (Mar. 1, 2002)(VA03–02)
VA02–03 (Mar. 1, 2002)(VA03–03)
VA02–04 (Mar. 1, 2002)(VA03–04)
VA02–05 (Mar. 1, 2002)(VA03–05)
VA02–06 (Mar. 1, 2002)(VA03–06)
VA02–07 (Mar. 1, 2002)(VA03–07)
VA02–08 (Mar. 1, 2002)(VA03–08)
VA02–09 (Mar. 1, 2002)(VA03–09)
VA02–10 (Mar. 1, 2002)(VA03–10)
VA02–11 (Mar. 1, 2002)(VA03–11)
VA02–12 (Mar. 1, 2002)(VA03–12)
VA02–13 (Mar. 1, 2002)(VA03–13)
VA02–14 (Mar. 1, 2002)(VA03–14)
VA02–15 (Mar. 1, 2002)(VA03–15)
VA02–16 (Mar. 1, 2002)(VA03–16)
VA02–17 (Mar. 1, 2002)(VA03–17)
VA02–18 (Mar. 1, 2002)(VA03–18)
VA02–19 (Mar. 1, 2002)(VA03–19)
VA02–20 (Mar. 1, 2002)(VA03–20)
VA02–21 (Mar. 1, 2002)(VA03–21)
VA02–22 (Mar. 1, 2002)(VA03–22)
VA02–23 (Mar. 1, 2002)(VA03–23)
VA02–24 (Mar. 1, 2002)(VA03–24)
VA02–25 (Mar. 1, 2002)(VA03–25)
VA02–26 (Mar. 1, 2002)(VA03–26)
VA02–27 (Mar. 1, 2002)(VA03–27)
VA02–28 (Mar. 1, 2002)(VA03–28)
VA02–29 (Mar. 1, 2002)(VA03–29)
VA02–30 (Mar. 1, 2002)(VA03–30)
VA02–31 (Mar. 1, 2002)(VA03–31)
VA02–32 (Mar. 1, 2002)(VA03–32)
VA02–33 (Mar. 1, 2002)(VA03–33)
VA02–34 (Mar. 1, 2002)(VA03–34)
VA02–35 (Mar. 1, 2002)(VA03–35)
VA02–36 (Mar. 1, 2002)(VA03–36)
VA02–37 (Mar. 1, 2002)(VA03–37)
VA02–38 (Mar. 1, 2002)(VA03–38)
VA02–39 (Mar. 1, 2002)(VA03–39)
VA02–40 (Mar. 1, 2002)(VA03–40)
VA02–41 (Mar. 1, 2002)(VA03–41)
VA02–42 (Mar. 1, 2002)(VA03–42)
VA02–43 (Mar. 1, 2002)(VA03–43)
VA02–44 (Mar. 1, 2002)(VA03–44)
VA02–45 (Mar. 1, 2002)(VA03–45)
VA02–46 (Mar. 1, 2002)(VA03–46)
VA02–47 (Mar. 1, 2002)(VA03–47)
VA02–48 (Mar. 1, 2002)(VA03–48)
VA02–49 (Mar. 1, 2002)(VA03–49)
VA02–50 (Mar. 1, 2002)(VA03–50)
VA02–51 (Mar. 1, 2002)(VA03–51)
VA02–52 (Mar. 1, 2002)(VA03–52)
VA02–53 (Mar. 1, 2002)(VA03–53)
VA02–54 (Mar. 1, 2002)(VA03–54)
VA02–55 (Mar. 1, 2002)(VA03–55)
VA02–56 (Mar. 1, 2002)(VA03–56)
VA02–57 (Mar. 1, 2002)(VA03–57)
VA02–58 (Mar. 1, 2002)(VA03–58)
VA02–59 (Mar. 1, 2002)(VA03–59)
VA02–60 (Mar. 1, 2002)(VA03–60)
VA02–61 (Mar. 1, 2002)(VA03–61)
VA02–62 (Mar. 1, 2002)(VA03–62)
VA02–63 (Mar. 1, 2002)(VA03–63)
VA02–64 (Mar. 1, 2002)(VA03–64)
VA02–65 (Mar. 1, 2002)(VA03–65)
VA02–66 (Mar. 1, 2002)(VA03–66)
VA02–67 (Mar. 1, 2002)(VA03–67)
VA02–68 (Mar. 1, 2002)(VA03–68)
VA02–69 (Mar. 1, 2002)(VA03–69)
VA02–70 (Mar. 1, 2002)(VA03–70)
VA02–71 (Mar. 1, 2002)(VA03–71)
VA02–72 (Mar. 1, 2002)(VA03–72)
VA02–73 (Mar. 1, 2002)(VA03–73)
VA02–74 (Mar. 1, 2002)(VA03–74)
VA02–75 (Mar. 1, 2002)(VA03–75)
VA02–76 (Mar. 1, 2002)(VA03–76)
VA02–77 (Mar. 1, 2002)(VA03–77)
VA02–78 (Mar. 1, 2002)(VA03–78)
VA02–79 (Mar. 1, 2002)(VA03–79)
VA02–80 (Mar. 1, 2002)(VA03–80)
VA02–81 (Mar. 1, 2002)(VA03–81)
VA02–82 (Mar. 1, 2002)(VA03–82)
VA02–83 (Mar. 1, 2002)(VA03–83)
VA02–84 (Mar. 1, 2002)(VA03–84)
VA02–85 (Mar. 1, 2002)(VA03–85)
VA02–86 (Mar. 1, 2002)(VA03–86)
VA02–87 (Mar. 1, 2002)(VA03–87)
VA02–88 (Mar. 1, 2002)(VA03–88)
VA02–89 (Mar. 1, 2002)(VA03–89)
VA02–90 (Mar. 1, 2002)(VA03–90)
VA02–91 (Mar. 1, 2002)(VA03–91)
VA02–92 (Mar. 1, 2002)(VA03–92)
VA02–93 (Mar. 1, 2002)(VA03–93)
VA02–94 (Mar. 1, 2002)(VA03–94)
VA02–95 (Mar. 1, 2002)(VA03–95)
VA02–96 (Mar. 1, 2002)(VA03–96)
VA02–97 (Mar. 1, 2002)(VA03–97)
VA02–98 (Mar. 1, 2002)(VA03–98)
VA02–99 (Mar. 1, 2002)(VA03–99)
VA02–100 (Mar. 1, 2002)(VA03–100)
VA02–101 (Mar. 1, 2002)(VA03–101)
VA02–102 (Mar. 1, 2002)(VA03–102)

West Virginia

WV02–01 (Mar. 1, 2002)(WV03–01)
WV02–02 (Mar. 1, 2002)(WV03–02)
WV02–03 (Mar. 1, 2002)(WV03–03)
WV02–04 (Mar. 1, 2002)(WV03–04)
WV02–05 (Mar. 1, 2002)(WV03–05)
WV02–06 (Mar. 1, 2002)(WV03–06)
WV02–07 (Mar. 1, 2002)(WV03–07)
WV02–08 (Mar. 1, 2002)(WV03–08)
WV02–09 (Mar. 1, 2002)(WV03–09)
WV02–10 (Mar. 1, 2002)(WV03–10)
WV02–11 (Mar. 1, 2002)(WV03–11)

Volume III

Alabama

AL02–01 (Mar. 1, 2002)(AL03–01)
AL02–02 (Mar. 1, 2002)(AL03–02)
AL02–03 (Mar. 1, 2002)(AL03–03)
AL02–04 (Mar. 1, 2002)(AL03–04)
AL02–05 (Mar. 1, 2002)(AL03–05)
AL02–06 (Mar. 1, 2002)(AL03–06)
AL02–07 (Mar. 1, 2002)(AL03–07)
AL02–08 (Mar. 1, 2002)(AL03–08)
AL02–09 (Mar. 1, 2002)(AL03–09)
AL02–10 (Mar. 1, 2002)(AL03–10)
AL02–11 (Mar. 1, 2002)(AL03–11)
AL02–12 (Mar. 1, 2002)(AL03–12)
AL02–13 (Mar. 1, 2002)(AL03–13)
AL02–14 (Mar. 1, 2002)(AL03–14)
AL02–15 (Mar. 1, 2002)(AL03–15)
AL02–16 (Mar. 1, 2002)(AL03–16)
AL02–17 (Mar. 1, 2002)(AL03–17)
AL02–18 (Mar. 1, 2002)(AL03–18)
AL02–19 (Mar. 1, 2002)(AL03–19)
AL02–20 (Mar. 1, 2002)(AL03–20)
AL02–21 (Mar. 1, 2002)(AL03–21)
AL02–22 (Mar. 1, 2002)(AL03–22)
AL02–23 (Mar. 1, 2002)(AL03–23)
AL02–24 (Mar. 1, 2002)(AL03–24)
AL02–25 (Mar. 1, 2002)(AL03–25)
AL02–26 (Mar. 1, 2002)(AL03–26)
AL02–27 (Mar. 1, 2002)(AL03–27)
AL02–28 (Mar. 1, 2002)(AL03–28)
AL02–29 (Mar. 1, 2002)(AL03–29)

AL02–30 (Mar. 1, 2002)(AL03–30)
AL02–31 (Mar. 1, 2002)(AL03–31)
AL02–32 (Mar. 1, 2002)(AL03–32)
AL02–33 (Mar. 1, 2002)(AL03–33)
AL02–34 (Mar. 1, 2002)(AL03–34)
AL02–35 (Mar. 1, 2002)(AL03–35)
AL02–36 (Mar. 1, 2002)(AL03–36)
AL02–37 (Mar. 1, 2002)(AL03–37)
AL02–38 (Mar. 1, 2002)(AL03–38)
AL02–39 (Mar. 1, 2002)(AL03–39)
AL02–40 (Mar. 1, 2002)(AL03–40)
AL02–41 (Mar. 1, 2002)(AL03–41)
AL02–42 (Mar. 1, 2002)(AL03–42)
AL02–43 (Mar. 1, 2002)(AL03–43)
AL02–44 (Mar. 1, 2002)(AL03–44)
AL02–45 (Mar. 1, 2002)(AL03–45)
AL02–46 (Mar. 1, 2002)(AL03–46)
AL02–47 (Mar. 1, 2002)(AL03–47)
AL02–48 (Mar. 1, 2002)(AL03–48)
AL02–49 (Mar. 1, 2002)(AL03–49)
AL02–50 (Mar. 1, 2002)(AL03–50)
AL02–51 (Mar. 1, 2002)(AL03–51)
AL02–52 (Mar. 1, 2002)(AL03–52)
AL02–53 (Mar. 1, 2002)(AL03–53)
AL02–54 (Mar. 1, 2002)(AL03–54)
AL02–55 (Mar. 1, 2002)(AL03–55)

Florida

FL02–01 (Mar. 1, 2002)(FL03–01)
FL02–02 (Mar. 1, 2002)(FL03–02)
FL02–03 (Mar. 1, 2002)(FL03–03)
FL02–04 (Mar. 1, 2002)(FL03–04)
FL02–05 (Mar. 1, 2002)(FL03–05)
FL02–06 (Mar. 1, 2002)(FL03–06)
FL02–07 (Mar. 1, 2002)(FL03–07)
FL02–08 (Mar. 1, 2002)(FL03–08)
FL02–09 (Mar. 1, 2002)(FL03–09)
FL02–10 (Mar. 1, 2002)(FL03–10)
FL02–11 (Mar. 1, 2002)(FL03–11)
FL02–12 (Mar. 1, 2002)(FL03–12)
FL02–13 (Mar. 1, 2002)(FL03–13)
FL02–14 (Mar. 1, 2002)(FL03–14)
FL02–15 (Mar. 1, 2002)(FL03–15)
FL02–16 (Mar. 1, 2002)(FL03–16)
FL02–17 (Mar. 1, 2002)(FL03–17)
FL02–18 (Mar. 1, 2002)(FL03–18)
FL02–19 (Mar. 1, 2002)(FL03–19)
FL02–20 (Mar. 1, 2002)(FL03–20)
FL02–21 (Mar. 1, 2002)(FL03–21)
FL02–22 (Mar. 1, 2002)(FL03–22)
FL02–23 (Mar. 1, 2002)(FL03–23)
FL02–24 (Mar. 1, 2002)(FL03–24)
FL02–25 (Mar. 1, 2002)(FL03–25)
FL02–26 (Mar. 1, 2002)(FL03–26)
FL02–27 (Mar. 1, 2002)(FL03–27)
FL02–28 (Mar. 1, 2002)(FL03–28)
FL02–29 (Mar. 1, 2002)(FL03–29)
FL02–30 (Mar. 1, 2002)(FL03–30)
FL02–31 (Mar. 1, 2002)(FL03–31)
FL02–32 (Mar. 1, 2002)(FL03–32)
FL02–33 (Mar. 1, 2002)(FL03–33)
FL02–34 (Mar. 1, 2002)(FL03–34)
FL02–35 (Mar. 1, 2002)(FL03–35)
FL02–36 (Mar. 1, 2002)(FL03–36)
FL02–37 (Mar. 1, 2002)(FL03–37)
FL02–38 (Mar. 1, 2002)(FL03–38)
FL02–39 (Mar. 1, 2002)(FL03–39)
FL02–40 (Mar. 1, 2002)(FL03–40)
FL02–41 (Mar. 1, 2002)(FL03–41)
FL02–42 (Mar. 1, 2002)(FL03–42)
FL02–43 (Mar. 1, 2002)(FL03–43)
FL02–44 (Mar. 1, 2002)(FL03–44)
FL02–45 (Mar. 1, 2002)(FL03–45)
FL02–46 (Mar. 1, 2002)(FL03–46)
FL02–47 (Mar. 1, 2002)(FL03–47)
FL02–48 (Mar. 1, 2002)(FL03–48)
FL02–49 (Mar. 1, 2002)(FL03–49)
FL02–50 (Mar. 1, 2002)(FL03–50)
FL02–51 (Mar. 1, 2002)(FL03–51)
FL02–52 (Mar. 1, 2002)(FL03–52)
FL02–53 (Mar. 1, 2002)(FL03–53)
FL02–54 (Mar. 1, 2002)(FL03–54)
FL02–55 (Mar. 1, 2002)(FL03–55)
FL02–56 (Mar. 1, 2002)(FL03–56)
FL02–57 (Mar. 1, 2002)(FL03–57)
FL02–58 (Mar. 1, 2002)(FL03–58)
FL02–59 (Mar. 1, 2002)(FL03–59)
FL02–60 (Mar. 1, 2002)(FL03–60)
FL02–61 (Mar. 1, 2002)(FL03–61)
FL02–62 (Mar. 1, 2002)(FL03–62)
FL02–63 (Mar. 1, 2002)(FL03–63)
FL02–64 (Mar. 1, 2002)(FL03–64)
FL02–65 (Mar. 1, 2002)(FL03–65)
FL02–66 (Mar. 1, 2002)(FL03–66)
FL02–67 (Mar. 1, 2002)(FL03–67)
FL02–68 (Mar. 1, 2002)(FL03–68)
FL02–69 (Mar. 1, 2002)(FL03–69)
FL02–70 (Mar. 1, 2002)(FL03–70)
FL02–71 (Mar. 1, 2002)(FL03–71)
FL02–72 (Mar. 1, 2002)(FL03–72)
FL02–73 (Mar. 1, 2002)(FL03–73)
FL02–74 (Mar. 1, 2002)(FL03–74)
FL02–75 (Mar. 1, 2002)(FL03–75)
FL02–76 (Mar. 1, 2002)(FL03–76)
FL02–77 (Mar. 1, 2002)(FL03–77)
FL02–78 (Mar. 1, 2002)(FL03–78)
FL02–79 (Mar. 1, 2002)(FL03–79)
FL02–80 (Mar. 1, 2002)(FL03–80)
FL02–81 (Mar. 1, 2002)(FL03–81)
FL02–82 (Mar. 1, 2002)(FL03–82)
FL02–83 (Mar. 1, 2002)(FL03–83)
FL02–84 (Mar. 1, 2002)(FL03–84)
FL02–85 (Mar. 1, 2002)(FL03–85)
FL02–86 (Mar. 1, 2002)(FL03–86)
FL02–87 (Mar. 1, 2002)(FL03–87)
FL02–88 (Mar. 1, 2002)(FL03–88)
FL02–89 (Mar. 1, 2002)(FL03–89)
FL02–90 (Mar. 1, 2002)(FL03–90)
FL02–91 (Mar. 1, 2002)(FL03–91)
FL02–92 (Mar. 1, 2002)(FL03–92)
FL02–93 (Mar. 1, 2002)(FL03–93)
FL02–94 (Mar. 1, 2002)(FL03–94)
FL02–95 (Mar. 1, 2002)(FL03–95)
FL02–96 (Mar. 1, 2002)(FL03–96)
FL02–97 (Mar. 1, 2002)(FL03–97)
FL02–98 (Mar. 1, 2002)(FL03–98)
FL02–99 (Mar. 1, 2002)(FL03–99)
FL02–100 (Mar. 1, 2002)(FL03–100)
FL02–101 (Mar. 1, 2002)(FL03–101)
FL02–102 (Mar. 1, 2002)(FL03–102)
FL02–103 (Mar. 1, 2002)(FL03–103)
FL02–104 (Mar. 1, 2002)(FL03–104)

Georgia

GA02–01 (Mar. 1, 2002)(GA03–01)
GA02–02 (Mar. 1, 2002)(GA03–02)
GA02–03 (Mar. 1, 2002)(GA03–03)
GA02–04 (Mar. 1, 2002)(GA03–04)
GA02–05 (Mar. 1, 2002)(GA03–05)
GA02–06 (Mar. 1, 2002)(GA03–06)
GA02–07 (Mar. 1, 2002)(GA03–07)
GA02–08 (Mar. 1, 2002)(GA03–08)
GA02–09 (Mar. 1, 2002)(GA03–09)
GA02–10 (Mar. 1, 2002)(GA03–10)
GA02–11 (Mar. 1, 2002)(GA03–11)
GA02–12 (Mar. 1, 2002)(GA03–12)
GA02–13 (Mar. 1, 2002)(GA03–13)
GA02–14 (Mar. 1, 2002)(GA03–14)
GA02–15 (Mar. 1, 2002)(GA03–15)
GA02–16 (Mar. 1, 2002)(GA03–16)
GA02–17 (Mar. 1, 2002)(GA03–17)
GA02–18 (Mar. 1, 2002)(GA03–18)
GA02–19 (Mar. 1, 2002)(GA03–19)
GA02–20 (Mar. 1, 2002)(GA03–20)
GA02–21 (Mar. 1, 2002)(GA03–21)
GA02–22 (Mar. 1, 2002)(GA03–22)
GA02–23 (Mar. 1, 2002)(GA03–23)
GA02–24 (Mar. 1, 2002)(GA03–24)
GA02–25 (Mar. 1, 2002)(GA03–25)
GA02–26 (Mar. 1, 2002)(GA03–26)
GA02–27 (Mar. 1, 2002)(GA03–27)
GA02–28 (Mar. 1, 2002)(GA03–28)
GA02–29 (Mar. 1, 2002)(GA03–29)
GA02–30 (Mar. 1, 2002)(GA03–30)
GA02–31 (Mar. 1, 2002)(GA03–31)
GA02–32 (Mar. 1, 2002)(GA03–32)
GA02–33 (Mar. 1, 2002)(GA03–33)
GA02–34 (Mar. 1, 2002)(GA03–34)
GA02–35 (Mar. 1, 2002)(GA03–35)
GA02–36 (Mar. 1, 2002)(GA03–36)
GA02–37 (Mar. 1, 2002)(GA03–37)
GA02–38 (Mar. 1, 2002)(GA03–38)
GA02–39 (Mar. 1, 2002)(GA03–39)
GA02–40 (Mar. 1, 2002)(GA03–40)
GA02–41 (Mar. 1, 2002)(GA03–41)
GA02–42 (Mar. 1, 2002)(GA03–42)
GA02–43 (Mar. 1, 2002)(GA03–43)
GA02–44 (Mar. 1, 2002)(GA03–44)
GA02–45 (Mar. 1, 2002)(GA03–45)
GA02–46 (Mar. 1, 2002)(GA03–46)
GA02–47 (Mar. 1, 2002)(GA03–47)
GA02–48 (Mar. 1, 2002)(GA03–48)
GA02–49 (Mar. 1, 2002)(GA03–49)
GA02–50 (Mar. 1, 2002)(GA03–50)
GA02–51 (Mar. 1, 2002)(GA03–51)
GA02–52 (Mar. 1, 2002)(GA03–52)
GA02–53 (Mar. 1, 2002)(GA03–53)
GA02–54 (Mar. 1, 2002)(GA03–54)
GA02–55 (Mar. 1, 2002)(GA03–55)
GA02–56 (Mar. 1, 2002)(GA03–56)
GA02–57 (Mar. 1, 2002)(GA03–57)
GA02–58 (Mar. 1, 2002)(GA03–58)
GA02–59 (Mar. 1, 2002)(GA03–59)
GA02–60 (Mar. 1, 2002)(GA03–60)
GA02–61 (Mar. 1, 2002)(GA03–61)
GA02–62 (Mar. 1, 2002)(GA03–62)
GA02–63 (Mar. 1, 2002)(GA03–63)
GA02–64 (Mar. 1, 2002)(GA03–64)
GA02–65 (Mar. 1, 2002)(GA03–65)
GA02–66 (Mar. 1, 2002)(GA03–66)
GA02–67 (Mar. 1, 2002)(GA03–67)
GA02–68 (Mar. 1, 2002)(GA03–68)
GA02–69 (Mar. 1, 2002)(GA03–69)
GA02–70 (Mar. 1, 2002)(GA03–70)
GA02–71 (Mar. 1, 2002)(GA03–71)
GA02–72 (Mar. 1, 2002)(GA03–72)
GA02–73 (Mar. 1, 2002)(GA03–73)
GA02–74 (Mar. 1, 2002)(GA03–74)
GA02–75 (Mar. 1, 2002)(GA03–75)
GA02–76 (Mar. 1, 2002)(GA03–76)
GA02–77 (Mar. 1, 2002)(GA03–77)
GA02–78 (Mar. 1, 2002)(GA03–78)
GA02–79 (Mar. 1, 2002)(GA03–79)
GA02–80 (Mar. 1, 2002)(GA03–80)
GA02–81 (Mar. 1, 2002)(GA03–81)
GA02–82 (Mar. 1, 2002)(GA03–82)
GA02–83 (Mar. 1, 2002)(GA03–83)
GA02–84 (Mar. 1, 2002)(GA03–84)
GA02–85 (Mar. 1, 2002)(GA03–85)
GA02–86 (Mar. 1, 2002)(GA03–86)
GA02–87 (Mar. 1, 2002)(GA03–87)
GA02–88 (Mar. 1, 2002)(GA03–88)

Kentucky

KY02–01 (Mar. 1, 2002)(KY03–01)
KY02–02 (Mar. 1, 2002)(KY03–02)
KY02–03 (Mar. 1, 2002)(KY03–03)
KY02–04 (Mar. 1, 2002)(KY03–04)
KY02–05 (Mar. 1, 2002)(KY03–05)
KY02–06 (Mar. 1, 2002)(KY03–06)
KY02–07 (Mar. 1, 2002)(KY03–07)

KY02–08 (Mar. 1, 2002)(KY03–08)
KY02–09 (Mar. 1, 2002)(KY03–09)
KY02–10 (Mar. 1, 2002)(KY03–10)
KY02–11 (Mar. 1, 2002)(KY03–11)
KY02–12 (Mar. 1, 2002)(KY03–12)
KY02–13 (Mar. 1, 2002)(KY03–13)
KY02–14 (Mar. 1, 2002)(KY03–14)
KY02–15 (Mar. 1, 2002)(KY03–15)
KY02–16 (Mar. 1, 2002)(KY03–16)
KY02–17 (Mar. 1, 2002)(KY03–17)
KY02–18 (Mar. 1, 2002)(KY03–18)
KY02–19 (Mar. 1, 2002)(KY03–19)
KY02–20 (Mar. 1, 2002)(KY03–20)
KY02–21 (Mar. 1, 2002)(KY03–21)
KY02–22 (Mar. 1, 2002)(KY03–22)
KY02–23 (Mar. 1, 2002)(KY03–23)
KY02–24 (Mar. 1, 2002)(KY03–24)
KY02–25 (Mar. 1, 2002)(KY03–25)
KY02–26 (Mar. 1, 2002)(KY03–26)
KY02–27 (Mar. 1, 2002)(KY03–27)
KY02–28 (Mar. 1, 2002)(KY03–28)
KY02–29 (Mar. 1, 2002)(KY03–29)
KY02–30 (Mar. 1, 2002)(KY03–30)
KY02–31 (Mar. 1, 2002)(KY03–31)
KY02–32 (Mar. 1, 2002)(KY03–32)
KY02–33 (Mar. 1, 2002)(KY03–33)
KY02–34 (Mar. 1, 2002)(KY03–34)
KY02–35 (Mar. 1, 2002)(KY03–35)
KY02–36 (Mar. 1, 2002)(KY03–36)
KY02–37 (Mar. 1, 2002)(KY03–37)
KY02–38 (Mar. 1, 2002)(KY03–38)
KY02–39 (Mar. 1, 2002)(KY03–39)
KY02–40 (Mar. 1, 2002)(KY03–40)
KY02–41 (Mar. 1, 2002)(KY03–41)
KY02–42 (Mar. 1, 2002)(KY03–42)
KY02–43 (Mar. 1, 2002)(KY03–43)
KY02–44 (Mar. 1, 2002)(KY03–44)
KY02–45 (Mar. 1, 2002)(KY03–45)
KY02–46 (Mar. 1, 2002)(KY03–46)
KY02–47 (Mar. 1, 2002)(KY03–47)
KY02–48 (Mar. 1, 2002)(KY03–48)
KY02–49 (Mar. 1, 2002)(KY03–49)
KY02–50 (Mar. 1, 2002)(KY03–50)
KY02–51 (Mar. 1, 2002)(KY03–51)
KY02–52 (Mar. 1, 2002)(KY03–52)
KY02–53 (Mar. 1, 2002)(KY03–53)

Mississippi

MS02–01 (Mar. 1, 2002)(MS03–01)
MS02–02 (Mar. 1, 2002)(MS03–02)
MS02–03 (Mar. 1, 2002)(MS03–03)
MS02–04 (Mar. 1, 2002)(MS03–04)
MS02–05 (Mar. 1, 2002)(MS03–05)
MS02–06 (Mar. 1, 2002)(MS03–06)
MS02–07 (Mar. 1, 2002)(MS03–07)
MS02–08 (Mar. 1, 2002)(MS03–08)
MS02–09 (Mar. 1, 2002)(MS03–09)
MS02–10 (Mar. 1, 2002)(MS03–10)
MS02–11 (Mar. 1, 2002)(MS03–11)
MS02–12 (Mar. 1, 2002)(MS03–12)
MS02–13 (Mar. 1, 2002)(MS03–13)
MS02–14 (Mar. 1, 2002)(MS03–14)
MS02–15 (Mar. 1, 2002)(MS03–15)
MS02–16 (Mar. 1, 2002)(MS03–16)
MS02–17 (Mar. 1, 2002)(MS03–17)
MS02–18 (Mar. 1, 2002)(MS03–18)
MS02–19 (Mar. 1, 2002)(MS03–19)
MS02–20 (Mar. 1, 2002)(MS03–20)
MS02–21 (Mar. 1, 2002)(MS03–21)
MS02–22 (Mar. 1, 2002)(MS03–22)
MS02–23 (Mar. 1, 2002)(MS03–23)
MS02–24 (Mar. 1, 2002)(MS03–24)
MS02–25 (Mar. 1, 2002)(MS03–25)
MS02–26 (Mar. 1, 2002)(MS03–26)
MS02–27 (Mar. 1, 2002)(MS03–27)
MS02–28 (Mar. 1, 2002)(MS03–28)
MS02–29 (Mar. 1, 2002)(MS03–29)
MS02–30 (Mar. 1, 2002)(MS03–30)
MS02–31 (Mar. 1, 2002)(MS03–31)
MS02–32 (Mar. 1, 2002)(MS03–32)
MS02–33 (Mar. 1, 2002)(MS03–33)
MS02–34 (Mar. 1, 2002)(MS03–34)
MS02–35 (Mar. 1, 2002)(MS03–35)
MS02–36 (Mar. 1, 2002)(MS03–36)
MS02–37 (Mar. 1, 2002)(MS03–37)
MS02–38 (Mar. 1, 2002)(MS03–38)
MS02–39 (Mar. 1, 2002)(MS03–39)
MS02–40 (Mar. 1, 2002)(MS03–40)
MS02–41 (Mar. 1, 2002)(MS03–41)
MS02–42 (Mar. 1, 2002)(MS03–42)
MS02–43 (Mar. 1, 2002)(MS03–43)
MS02–44 (Mar. 1, 2002)(MS03–44)
MS02–45 (Mar. 1, 2002)(MS03–45)
MS02–46 (Mar. 1, 2002)(MS03–46)
MS02–47 (Mar. 1, 2002)(MS03–47)
MS02–48 (Mar. 1, 2002)(MS03–48)
MS02–49 (Mar. 1, 2002)(MS03–49)
MS02–50 (Mar. 1, 2002)(MS03–50)
MS02–51 (Mar. 1, 2002)(MS03–51)
MS02–52 (Mar. 1, 2002)(MS03–52)
MS02–53 (Mar. 1, 2002)(MS03–53)
MS02–54 (Mar. 1, 2002)(MS03–54)
MS02–55 (Mar. 1, 2002)(MS03–55)
MS02–56 (Mar. 1, 2002)(MS03–56)

North Carolina

NC02–01 (Mar. 1, 2002)(NC03–01)
NC02–02 (Mar. 1, 2002)(NC03–02)
NC02–03 (Mar. 1, 2002)(NC03–03)
NC02–04 (Mar. 1, 2002)(NC03–04)
NC02–05 (Mar. 1, 2002)(NC03–05)
NC02–06 (Mar. 1, 2002)(NC03–06)
NC02–07 (Mar. 1, 2002)(NC03–07)
NC02–08 (Mar. 1, 2002)(NC03–08)
NC02–09 (Mar. 1, 2002)(NC03–09)
NC02–10 (Mar. 1, 2002)(NC03–10)
NC02–11 (Mar. 1, 2002)(NC03–11)
NC02–12 (Mar. 1, 2002)(NC03–12)
NC02–13 (Mar. 1, 2002)(NC03–13)
NC02–14 (Mar. 1, 2002)(NC03–14)
NC02–15 (Mar. 1, 2002)(NC03–15)
NC02–16 (Mar. 1, 2002)(NC03–16)
NC02–17 (Mar. 1, 2002)(NC03–17)
NC02–18 (Mar. 1, 2002)(NC03–18)
NC02–19 (Mar. 1, 2002)(NC03–19)
NC02–20 (Mar. 1, 2002)(NC03–20)
NC02–21 (Mar. 1, 2002)(NC03–21)
NC02–22 (Mar. 1, 2002)(NC03–22)
NC02–23 (Mar. 1, 2002)(NC03–23)
NC02–24 (Mar. 1, 2002)(NC03–24)
NC02–25 (Mar. 1, 2002)(NC03–25)
NC02–26 (Mar. 1, 2002)(NC03–26)
NC02–27 (Mar. 1, 2002)(NC03–27)
NC02–28 (Mar. 1, 2002)(NC03–28)
NC02–29 (Mar. 1, 2002)(NC03–29)
NC02–30 (Mar. 1, 2002)(NC03–30)
NC02–31 (Mar. 1, 2002)(NC03–31)
NC02–32 (Mar. 1, 2002)(NC03–32)
NC02–33 (Mar. 1, 2002)(NC03–33)
NC02–34 (Mar. 1, 2002)(NC03–34)
NC02–35 (Mar. 1, 2002)(NC03–35)
NC02–36 (Mar. 1, 2002)(NC03–36)
NC02–37 (Mar. 1, 2002)(NC03–37)
NC02–38 (Mar. 1, 2002)(NC03–38)
NC02–39 (Mar. 1, 2002)(NC03–39)
NC02–40 (Mar. 1, 2002)(NC03–40)
NC02–41 (Mar. 1, 2002)(NC03–41)
NC02–42 (Mar. 1, 2002)(NC03–42)
NC02–43 (Mar. 1, 2002)(NC03–43)
NC02–44 (Mar. 1, 2002)(NC03–44)
NC02–45 (Mar. 1, 2002)(NC03–45)
NC02–46 (Mar. 1, 2002)(NC03–46)
NC02–47 (Mar. 1, 2002)(NC03–47)
NC02–48 (Mar. 1, 2002)(NC03–48)
NC02–49 (Mar. 1, 2002)(NC03–49)
NC02–50 (Mar. 1, 2002)(NC03–50)
NC02–51 (Mar. 1, 2002)(NC03–51)
NC02–52 (Mar. 1, 2002)(NC03–52)
NC02–53 (Mar. 1, 2002)(NC03–53)
NC02–54 (Mar. 1, 2002)(NC03–54)
NC02–55 (Mar. 1, 2002)(NC03–55)
NC02–56 (Mar. 1, 2002)(NC03–56)

South Carolina

SC02–01 (Mar. 1, 2002)(SC03–01)
SC02–02 (Mar. 1, 2002)(SC03–02)
SC02–03 (Mar. 1, 2002)(SC03–03)
SC02–04 (Mar. 1, 2002)(SC03–04)
SC02–05 (Mar. 1, 2002)(SC03–05)
SC02–06 (Mar. 1, 2002)(SC03–06)
SC02–07 (Mar. 1, 2002)(SC03–07)
SC02–08 (Mar. 1, 2002)(SC03–08)
SC02–09 (Mar. 1, 2002)(SC03–09)
SC02–10 (Mar. 1, 2002)(SC03–10)
SC02–11 (Mar. 1, 2002)(SC03–11)
SC02–12 (Mar. 1, 2002)(SC03–12)
SC02–13 (Mar. 1, 2002)(SC03–13)
SC02–14 (Mar. 1, 2002)(SC03–14)
SC02–15 (Mar. 1, 2002)(SC03–15)
SC02–16 (Mar. 1, 2002)(SC03–16)
SC02–17 (Mar. 1, 2002)(SC03–17)
SC02–18 (Mar. 1, 2002)(SC03–18)
SC02–19 (Mar. 1, 2002)(SC03–19)
SC02–20 (Mar. 1, 2002)(SC03–20)
SC02–21 (Mar. 1, 2002)(SC03–21)
SC02–22 (Mar. 1, 2002)(SC03–22)
SC02–23 (Mar. 1, 2002)(SC03–23)
SC02–24 (Mar. 1, 2002)(SC03–24)
SC02–25 (Mar. 1, 2002)(SC03–25)
SC02–26 (Mar. 1, 2002)(SC03–26)
SC02–27 (Mar. 1, 2002)(SC03–27)
SC02–28 (Mar. 1, 2002)(SC03–28)
SC02–29 (Mar. 1, 2002)(SC03–29)
SC02–30 (Mar. 1, 2002)(SC03–30)
SC02–31 (Mar. 1, 2002)(SC03–31)
SC02–32 (Mar. 1, 2002)(SC03–32)
SC02–33 (Mar. 1, 2002)(SC03–33)
SC02–34 (Mar. 1, 2002)(SC03–34)
SC02–35 (Mar. 1, 2002)(SC03–35)
SC02–36 (Mar. 1, 2002)(SC03–36)
SC02–37 (Mar. 1, 2002)(SC03–37)
SC02–38 (Mar. 1, 2002)(SC03–38)

Tennessee

TN02–01 (Mar. 1, 2002)(TN03–01)
TN02–02 (Mar. 1, 2002)(TN03–02)
TN02–03 (Mar. 1, 2002)(TN03–03)
TN02–04 (Mar. 1, 2002)(TN03–04)
TN02–05 (Mar. 1, 2002)(TN03–05)
TN02–06 (Mar. 1, 2002)(TN03–06)
TN02–07 (Mar. 1, 2002)(TN03–07)
TN02–08 (Mar. 1, 2002)(TN03–08)
TN02–09 (Mar. 1, 2002)(TN03–09)
TN02–10 (Mar. 1, 2002)(TN03–10)
TN02–11 (Mar. 1, 2002)(TN03–11)
TN02–12 (Mar. 1, 2002)(TN03–12)
TN02–13 (Mar. 1, 2002)(TN03–13)
TN02–14 (Mar. 1, 2002)(TN03–14)
TN02–15 (Mar. 1, 2002)(TN03–15)
TN02–16 (Mar. 1, 2002)(TN03–16)
TN02–17 (Mar. 1, 2002)(TN03–17)
TN02–18 (Mar. 1, 2002)(TN03–18)
TN02–19 (Mar. 1, 2002)(TN03–19)
TN02–20 (Mar. 1, 2002)(TN03–20)
TN02–21 (Mar. 1, 2002)(TN03–21)
TN02–22 (Mar. 1, 2002)(TN03–22)
TN02–23 (Mar. 1, 2002)(TN03–23)
TN02–24 (Mar. 1, 2002)(TN03–24)
TN02–25 (Mar. 1, 2002)(TN03–25)
TN02–26 (Mar. 1, 2002)(TN03–26)
TN02–27 (Mar. 1, 2002)(TN03–27)
TN02–28 (Mar. 1, 2002)(TN03–28)
TN02–29 (Mar. 1, 2002)(TN03–29)
TN02–30 (Mar. 1, 2002)(TN03–30)
TN02–31 (Mar. 1, 2002)(TN03–31)
TN02–32 (Mar. 1, 2002)(TN03–32)
TN02–33 (Mar. 1, 2002)(TN03–33)
TN02–34 (Mar. 1, 2002)(TN03–34)
TN02–35 (Mar. 1, 2002)(TN03–35)
TN02–36 (Mar. 1, 2002)(TN03–36)
TN02–37 (Mar. 1, 2002)(TN03–37)
TN02–38 (Mar. 1, 2002)(TN03–38)
TN02–39 (Mar. 1, 2002)(TN03–39)
TN02–40 (Mar. 1, 2002)(TN03–40)
TN02–41 (Mar. 1, 2002)(TN03–41)
TN02–42 (Mar. 1, 2002)(TN03–42)
TN02–43 (Mar. 1, 2002)(TN03–43)
TN02–44 (Mar. 1, 2002)(TN03–44)
TN02–45 (Mar. 1, 2002)(TN03–45)
TN02–46 (Mar. 1, 2002)(TN03–46)
TN02–47 (Mar. 1, 2002)(TN03–47)
TN02–48 (Mar. 1, 2002)(TN03–48)
TN02–49 (Mar. 1, 2002)(TN03–49)
TN02–50 (Mar. 1, 2002)(TN03–50)
TN02–51 (Mar. 1, 2002)(TN03–51)
TN02–52 (Mar. 1, 2002)(TN03–52)
TN02–53 (Mar. 1, 2002)(TN03–53)
TN02–54 (Mar. 1, 2002)(TN03–54)
TN02–55 (Mar. 1, 2002)(TN03–55)
TN02–56 (Mar. 1, 2002)(TN03–56)
TN02–57 (Mar. 1, 2002)(TN03–57)
TN02–58 (Mar. 1, 2002)(TN03–58)
TN02–59 (Mar. 1, 2002)(TN03–59)
TN02–60 (Mar. 1, 2002)(TN03–60)
TN02–61 (Mar. 1, 2002)(TN03–61)
TN02–62 (Mar. 1, 2002)(TN03–62)
TN02–63 (Mar. 1, 2002)(TN03–63)
TN02–64 (Mar. 1, 2002)(TN03–64)
TN02–65 (Mar. 1, 2002)(TN03–65)

Volume IV

Illinois

IL02–01 (Mar. 1, 2002)(IL03–01)
IL02–02 (Mar. 1, 2002)(IL03–02)
IL02–03 (Mar. 1, 2002)(IL03–03)
IL02–04 (Mar. 1, 2002)(IL03–04)
IL02–05 (Mar. 1, 2002)(IL03–05)
IL02–06 (Mar. 1, 2002)(IL03–06)
IL02–07 (Mar. 1, 2002)(IL03–07)
IL02–08 (Mar. 1, 2002)(IL03–08)
IL02–09 (Mar. 1, 2002)(IL03–09)
IL02–10 (Mar. 1, 2002)(IL03–10)
IL02–11 (Mar. 1, 2002)(IL03–11)
IL02–12 (Mar. 1, 2002)(IL03–12)
IL02–13 (Mar. 1, 2002)(IL03–13)
IL02–14 (Mar. 1, 2002)(IL03–14)
IL02–15 (Mar. 1, 2002)(IL03–15)
IL02–16 (Mar. 1, 2002)(IL03–16)
IL02–17 (Mar. 1, 2002)(IL03–17)
IL02–18 (Mar. 1, 2002)(IL03–18)
IL02–19 (Mar. 1, 2002)(IL03–19)
IL02–20 (Mar. 1, 2002)(IL03–20)
IL02–21 (Mar. 1, 2002)(IL03–21)
IL02–22 (Mar. 1, 2002)(IL03–22)
IL02–23 (Mar. 1, 2002)(IL03–23)
IL02–24 (Mar. 1, 2002)(IL03–24)
IL02–25 (Mar. 1, 2002)(IL03–25)
IL02–26 (Mar. 1, 2002)(IL03–26)
IL02–27 (Mar. 1, 2002)(IL03–27)
IL02–28 (Mar. 1, 2002)(IL03–28)
IL02–29 (Mar. 1, 2002)(IL03–29)
IL02–30 (Mar. 1, 2002)(IL03–30)
IL02–31 (Mar. 1, 2002)(IL03–31)
IL02–32 (Mar. 1, 2002)(IL03–32)
IL02–33 (Mar. 1, 2002)(IL03–33)
IL02–34 (Mar. 1, 2002)(IL03–34)
IL02–35 (Mar. 1, 2002)(IL03–35)
IL02–36 (Mar. 1, 2002)(IL03–36)
IL02–37 (Mar. 1, 2002)(IL03–37)
IL02–38 (Mar. 1, 2002)(IL03–38)
IL02–39 (Mar. 1, 2002)(IL03–39)
IL02–40 (Mar. 1, 2002)(IL03–40)
IL02–41 (Mar. 1, 2002)(IL03–41)
IL02–42 (Mar. 1, 2002)(IL03–42)
IL02–43 (Mar. 1, 2002)(IL03–43)
IL02–44 (Mar. 1, 2002)(IL03–44)
IL02–45 (Mar. 1, 2002)(IL03–45)
IL02–46 (Mar. 1, 2002)(IL03–46)
IL02–47 (Mar. 1, 2002)(IL03–47)
IL02–48 (Mar. 1, 2002)(IL03–48)
IL02–49 (Mar. 1, 2002)(IL03–49)
IL02–50 (Mar. 1, 2002)(IL03–50)
IL02–51 (Mar. 1, 2002)(IL03–51)
IL02–52 (Mar. 1, 2002)(IL03–52)
IL02–53 (Mar. 1, 2002)(IL03–53)
IL02–54 (Mar. 1, 2002)(IL03–54)
IL02–55 (Mar. 1, 2002)(IL03–55)
IL02–56 (Mar. 1, 2002)(IL03–56)
IL02–57 (Mar. 1, 2002)(IL03–57)
IL02–58 (Mar. 1, 2002)(IL03–58)
IL02–59 (Mar. 1, 2002)(IL03–59)
IL02–60 (Mar. 1, 2002)(IL03–60)
IL02–61 (Mar. 1, 2002)(IL03–61)
IL02–62 (Mar. 1, 2002)(IL03–62)
IL02–63 (Mar. 1, 2002)(IL03–63)
IL02–64 (Mar. 1, 2002)(IL03–64)
IL02–65 (Mar. 1, 2002)(IL03–65)
IL02–66 (Mar. 1, 2002)(IL03–66)
IL02–67 (Mar. 1, 2002)(IL03–67)
IL02–68 (Mar. 1, 2002)(IL03–68)
IL02–69 (Mar. 1, 2002)(IL03–69)
IL02–70 (Mar. 1, 2002)(IL03–70)

Indiana

IN02–01 (Mar. 1, 2002)(IN03–01)
IN02–02 (Mar. 1, 2002)(IN03–02)
IN02–03 (Mar. 1, 2002)(IN03–03)
IN02–04 (Mar. 1, 2002)(IN03–04)
IN02–05 (Mar. 1, 2002)(IN03–05)
IN02–06 (Mar. 1, 2002)(IN03–06)
IN02–07 (Mar. 1, 2002)(IN03–07)
IN02–08 (Mar. 1, 2002)(IN03–08)
IN02–09 (Mar. 1, 2002)(IN03–09)
IN02–10 (Mar. 1, 2002)(IN03–10)
IN02–11 (Mar. 1, 2002)(IN03–11)
IN02–12 (Mar. 1, 2002)(IN03–12)
IN02–13 (Mar. 1, 2002)(IN03–13)
IN02–14 (Mar. 1, 2002)(IN03–14)
IN02–15 (Mar. 1, 2002)(IN03–15)
IN02–16 (Mar. 1, 2002)(IN03–16)
IN02–17 (Mar. 1, 2002)(IN03–17)
IN02–18 (Mar. 1, 2002)(IN03–18)
IN02–19 (Mar. 1, 2002)(IN03–19)
IN02–20 (Mar. 1, 2002)(IN03–20)
IN02–21 (Mar. 1, 2002)(IN03–21)

Michigan

MI02–01 (Mar. 1, 2002)(MI03–01)
MI02–02 (Mar. 1, 2002)(MI03–02)
MI02–03 (Mar. 1, 2002)(MI03–03)
MI02–04 (Mar. 1, 2002)(MI03–04)
MI02–05 (Mar. 1, 2002)(MI03–05)
MI02–06 (Mar. 1, 2002)(MI03–06)
MI02–07 (Mar. 1, 2002)(MI03–07)
MI02–08 (Mar. 1, 2002)(MI03–08)
MI02–09 (Mar. 1, 2002)(MI03–09)
MI02–10 (Mar. 1, 2002)(MI03–10)
MI02–11 (Mar. 1, 2002)(MI03–11)
MI02–12 (Mar. 1, 2002)(MI03–12)
MI02–13 (Mar. 1, 2002)(MI03–13)
MI02–14 (Mar. 1, 2002)(MI03–14)
MI02–15 (Mar. 1, 2002)(MI03–15)
MI02–16 (Mar. 1, 2002)(MI03–16)
MI02–17 (Mar. 1, 2002)(MI03–17)
MI02–18 (Mar. 1, 2002)(MI03–18)
MI02–19 (Mar. 1, 2002)(MI03–19)
MI02–20 (Mar. 1, 2002)(MI03–20)
MI02–21 (Mar. 1, 2002)(MI03–21)
MI02–22 (Mar. 1, 2002)(MI03–22)
MI02–23 (Mar. 1, 2002)(MI03–23)
MI02–24 (Mar. 1, 2002)(MI03–24)
MI02–25 (Mar. 1, 2002)(MI03–25)
MI02–26 (Mar. 1, 2002)(MI03–26)
MI02–27 (Mar. 1, 2002)(MI03–27)
MI02–28 (Mar. 1, 2002)(MI03–28)
MI02–29 (Mar. 1, 2002)(MI03–29)
MI02–30 (Mar. 1, 2002)(MI03–30)
MI02–31 (Mar. 1, 2002)(MI03–31)
MI02–32 (Mar. 1, 2002)(MI03–32)
MI02–33 (Mar. 1, 2002)(MI03–33)
MI02–34 (Mar. 1, 2002)(MI03–34)
MI02–35 (Mar. 1, 2002)(MI03–35)
MI02–36 (Mar. 1, 2002)(MI03–36)
MI02–37 (Mar. 1, 2002)(MI03–37)
MI02–38 (Mar. 1, 2002)(MI03–38)
MI02–39 (Mar. 1, 2002)(MI03–39)
MI02–40 (Mar. 1, 2002)(MI03–40)
MI02–41 (Mar. 1, 2002)(MI03–41)
MI02–42 (Mar. 1, 2002)(MI03–42)
MI02–43 (Mar. 1, 2002)(MI03–43)
MI02–44 (Mar. 1, 2002)(MI03–44)
MI02–45 (Mar. 1, 2002)(MI03–45)
MI02–46 (Mar. 1, 2002)(MI03–46)
MI02–47 (Mar. 1, 2002)(MI03–47)
MI02–48 (Mar. 1, 2002)(MI03–48)
MI02–49 (Mar. 1, 2002)(MI03–49)
MI02–50 (Mar. 1, 2002)(MI03–50)
MI02–51 (Mar. 1, 2002)(MI03–51)
MI02–52 (Mar. 1, 2002)(MI03–52)
MI02–53 (Mar. 1, 2002)(MI03–53)
MI02–54 (Mar. 1, 2002)(MI03–54)
MI02–55 (Mar. 1, 2002)(MI03–55)
MI02–56 (Mar. 1, 2002)(MI03–56)
MI02–57 (Mar. 1, 2002)(MI03–57)
MI02–58 (Mar. 1, 2002)(MI03–58)
MI02–59 (Mar. 1, 2002)(MI03–59)
MI02–60 (Mar. 1, 2002)(MI03–60)
MI02–61 (Mar. 1, 2002)(MI03–61)
MI02–62 (Mar. 1, 2002)(MI03–62)
MI02–63 (Mar. 1, 2002)(MI03–63)
MI02–64 (Mar. 1, 2002)(MI03–64)
MI02–65 (Mar. 1, 2002)(MI03–65)
MI02–66 (Mar. 1, 2002)(MI03–66)
MI02–67 (Mar. 1, 2002)(MI03–67)
MI02–68 (Mar. 1, 2002)(MI03–68)
MI02–69 (Mar. 1, 2002)(MI03–69)
MI02–70 (Mar. 1, 2002)(MI03–70)
MI02–71 (Mar. 1, 2002)(MI03–71)
MI02–72 (Mar. 1, 2002)(MI03–72)
MI02–73 (Mar. 1, 2002)(MI03–73)
MI02–74 (Mar. 1, 2002)(MI03–74)
MI02–75 (Mar. 1, 2002)(MI03–75)
MI02–76 (Mar. 1, 2002)(MI03–76)
MI02–77 (Mar. 1, 2002)(MI03–77)
MI02–78 (Mar. 1, 2002)(MI03–78)
MI02–79 (Mar. 1, 2002)(MI03–79)
MI02–80 (Mar. 1, 2002)(MI03–80)
MI02–81 (Mar. 1, 2002)(MI03–81)
MI02–82 (Mar. 1, 2002)(MI03–82)
MI02–83 (Mar. 1, 2002)(MI03–83)
MI02–84 (Mar. 1, 2002)(MI03–84)
MI02–85 (Mar. 1, 2002)(MI03–85)
MI02–86 (Mar. 1, 2002)(MI03–86)
MI02–87 (Mar. 1, 2002)(MI03–87)
MI02–88 (Mar. 1, 2002)(MI03–88)
MI02–89 (Mar. 1, 2002)(MI03–89)
MI02–90 (Mar. 1, 2002)(MI03–90)
MI02–91 (Mar. 1, 2002)(MI03–91)
MI02–92 (Mar. 1, 2002)(MI03–92)
MI02–93 (Mar. 1, 2002)(MI03–93)
MI02–94 (Mar. 1, 2002)(MI03–94)
MI02–95 (Mar. 1, 2002)(MI03–95)

MI02–96 (Mar. 1, 2002)(MI03–96)
MI02–97 (Mar. 1, 2002)(MI03–97)
MI02–98 (Mar. 1, 2002)(MI03–98)
MI02–99 (Mar. 1, 2002)(MI03–99)
MI02–100 (Mar. 1, 2002)(MI03–100)
MI02–101 (Mar. 1, 2002)(MI03–101)
MI02–102 (Mar. 1, 2002)(MI03–102)
MI02–103 (Mar. 1, 2002)(MI03–103)
MI02–104 (Mar. 1, 2002)(MI03–104)
MI02–105 (Mar. 1, 2002)(MI03–105)
MI02–106 (Mar. 1, 2002)(MI03–106)

Minnesota
MN02–01 (Mar. 1, 2002)(MN03–01)
MN02–02 (Mar. 1, 2002)(MN03–02)
MN02–03 (Mar. 1, 2002)(MN03–03)
MN02–04 (Mar. 1, 2002)(MN03–04)
MN02–05 (Mar. 1, 2002)(MN03–05)
MN02–06 (Mar. 1, 2002)(MN03–06)
MN02–07 (Mar. 1, 2002)(MN03–07)
MN02–08 (Mar. 1, 2002)(MN03–08)
MN02–09 (Mar. 1, 2002)(MN03–09)
MN02–10 (Mar. 1, 2002)(MN03–10)
MN02–11 (Mar. 1, 2002)(MN03–11)
MN02–12 (Mar. 1, 2002)(MN03–12)
MN02–13 (Mar. 1, 2002)(MN03–13)
MN02–14 (Mar. 1, 2002)(MN03–14)
MN02–15 (Mar. 1, 2002)(MN03–15)
MN02–16 (Mar. 1, 2002)(MN03–16)
MN02–17 (Mar. 1, 2002)(MN03–17)
MN02–18 (Mar. 1, 2002)(MN03–18)
MN02–19 (Mar. 1, 2002)(MN03–19)
MN02–20 (Mar. 1, 2002)(MN03–20)
MN02–21 (Mar. 1, 2002)(MN03–21)
MN02–22 (Mar. 1, 2002)(MN03–22)
MN02–23 (Mar. 1, 2002)(MN03–23)
MN02–24 (Mar. 1, 2002)(MN03–24)
MN02–25 (Mar. 1, 2002)(MN03–25)
MN02–26 (Mar. 1, 2002)(MN03–26)
MN02–27 (Mar. 1, 2002)(MN03–27)
MN02–28 (Mar. 1, 2002)(MN03–28)
MN02–29 (Mar. 1, 2002)(MN03–29)
MN02–30 (Mar. 1, 2002)(MN03–30)
MN02–31 (Mar. 1, 2002)(MN03–31)
MN02–32 (Mar. 1, 2002)(MN03–32)
MN02–33 (Mar. 1, 2002)(MN03–33)
MN02–34 (Mar. 1, 2002)(MN03–34)
MN02–35 (Mar. 1, 2002)(MN03–35)
MN02–36 (Mar. 1, 2002)(MN03–36)
MN02–37 (Mar. 1, 2002)(MN03–37)
MN02–38 (Mar. 1, 2002)(MN03–38)
MN02–39 (Mar. 1, 2002)(MN03–39)
MN02–40 (Mar. 1, 2002)(MN03–40)
MN02–41 (Mar. 1, 2002)(MN03–41)
MN02–42 (Mar. 1, 2002)(MN03–42)
MN02–43 (Mar. 1, 2002)(MN03–43)
MN02–44 (Mar. 1, 2002)(MN03–44)
MN02–45 (Mar. 1, 2002)(MN03–45)
MN02–46 (Mar. 1, 2002)(MN03–46)
MN02–47 (Mar. 1, 2002)(MN03–47)
MN02–48 (Mar. 1, 2002)(MN03–48)
MN02–49 (Mar. 1, 2002)(MN03–49)
MN02–50 (Mar. 1, 2002)(MN03–50)
MN02–51 (Mar. 1, 2002)(MN03–51)
MN02–52 (Mar. 1, 2002)(MN03–52)
MN02–53 (Mar. 1, 2002)(MN03–53)
MN02–54 (Mar. 1, 2002)(MN03–54)
MN02–55 (Mar. 1, 2002)(MN03–55)
MN02–56 (Mar. 1, 2002)(MN03–56)
MN02–57 (Mar. 1, 2002)(MN03–57)
MN02–58 (Mar. 1, 2002)(MN03–58)
MN02–59 (Mar. 1, 2002)(MN03–59)
MN02–60 (Mar. 1, 2002)(MN03–60)
MN02–61 (Mar. 1, 2002)(MN03–61)
MN02–62 (Mar. 1, 2002)(MN03–62)

Ohio
OH02–01 (Mar. 1, 2002)(OH03–01)
OH02–02 (Mar. 1, 2002)(OH03–02)
OH02–03 (Mar. 1, 2002)(OH03–03)
OH02–04 (Mar. 1, 2002)(OH03–04)
OH02–05 (Mar. 1, 2002)(OH03–05)
OH02–06 (Mar. 1, 2002)(OH03–06)
OH02–07 (Mar. 1, 2002)(OH03–07)
OH02–08 (Mar. 1, 2002)(OH03–08)
OH02–09 (Mar. 1, 2002)(OH03–09)
OH02–10 (Mar. 1, 2002)(OH03–10)
OH02–11 (Mar. 1, 2002)(OH03–11)
OH02–12 (Mar. 1, 2002)(OH03–12)
OH02–13 (Mar. 1, 2002)(OH03–13)
OH02–14 (Mar. 1, 2002)(OH03–14)
OH02–15 (Mar. 1, 2002)(OH03–15)
OH02–16 (Mar. 1, 2002)(OH03–16)
OH02–17 (Mar. 1, 2002)(OH03–17)
OH02–18 (Mar. 1, 2002)(OH03–18)
OH02–19 (Mar. 1, 2002)(OH03–19)
OH02–20 (Mar. 1, 2002)(OH03–20)
OH02–21 (Mar. 1, 2002)(OH03–21)
OH02–22 (Mar. 1, 2002)(OH03–22)
OH02–23 (Mar. 1, 2002)(OH03–23)
OH02–24 (Mar. 1, 2002)(OH03–24)
OH02–25 (Mar. 1, 2002)(OH03–25)
OH02–26 (Mar. 1, 2002)(OH03–26)
OH02–27 (Mar. 1, 2002)(OH03–27)
OH02–28 (Mar. 1, 2002)(OH03–28)
OH02–29 (Mar. 1, 2002)(OH03–29)
OH02–30 (Mar. 1, 2002)(OH03–30)
OH02–31 (Mar. 1, 2002)(OH03–31)
OH02–32 (Mar. 1, 2002)(OH03–32)
OH02–33 (Mar. 1, 2002)(OH03–33)
OH02–34 (Mar. 1, 2002)(OH03–34)
OH02–35 (Mar. 1, 2002)(OH03–35)
OH02–36 (Mar. 1, 2002)(OH03–36)
OH02–37 (Mar. 1, 2002)(OH03–37)
OH02–38 (Mar. 1, 2002)(OH03–38)

Wisconsin
WI02–01 (Mar. 1, 2002)(WI03–01)
WI02–02 (Mar. 1, 2002)(WI03–02)
WI02–03 (Mar. 1, 2002)(WI03–03)
WI02–04 (Mar. 1, 2002)(WI03–04)
WI02–05 (Mar. 1, 2002)(WI03–05)
WI02–06 (Mar. 1, 2002)(WI03–06)
WI02–07 (Mar. 1, 2002)(WI03–07)
WI02–08 (Mar. 1, 2002)(WI03–08)
WI02–09 (Mar. 1, 2002)(WI03–09)
WI02–10 (Mar. 1, 2002)(WI03–10)
W102–11 (Mar. 1, 2002)(W103–11)
W102–12 (Mar. 1, 2002)(W103–12)
W102–13 (Mar. 1, 2002)(W103–13)
W102–14 (Mar. 1, 2002)(W103–14)
W102–15 (Mar. 1, 2002)(W103–15)
W102–16 (Mar. 1, 2002)(W103–16)
W102–17 (Mar. 1, 2002)(W103–17)
W102–18 (Mar. 1, 2002)(W103–18)
W102–19 (Mar. 1, 2002)(W103–19)
W102–20 (Mar. 1, 2002)(W103–20)
W102–21 (Mar. 1, 2002)(W103–21)
W102–22 (Mar. 1, 2002)(W103–22)
W102–23 (Mar. 1, 2002)(W103–23)
W102–24 (Mar. 1, 2002)(W103–24)
W102–25 (Mar. 1, 2002)(W103–25)
W102–26 (Mar. 1, 2002)(W103–26)
W102–27 (Mar. 1, 2002)(W103–27)
W102–28 (Mar. 1, 2002)(W103–28)
W102–29 (Mar. 1, 2002)(W103–29)
W102–30 (Mar. 1, 2002)(W103–30)
W102–31 (Mar. 1, 2002)(W103–31)
W102–32 (Mar. 1, 2002)(W103–32)
W102–33 (Mar. 1, 2002)(W103–33)
W102–34 (Mar. 1, 2002)(W103–34)
W102–35 (Mar. 1, 2002)(W103–35)
W102–36 (Mar. 1, 2002)(W103–36)
W102–37 (Mar. 1, 2002)(W103–37)
W102–38 (Mar. 1, 2002)(W103–38)
W102–39 (Mar. 1, 2002)(W103–39)
W102–40 (Mar. 1, 2002)(W103–40)
W102–41 (Mar. 1, 2002)(W103–41)
W102–42 (Mar. 1, 2002)(W103–42)
W102–43 (Mar. 1, 2002)(W103–43)
W102–44 (Mar. 1, 2002)(W103–44)
W102–45 (Mar. 1, 2002)(W103–45)
W102–46 (Mar. 1, 2002)(W103–46)
W102–47 (Mar. 1, 2002)(W103–47)
W102–48 (Mar. 1, 2002)(W103–48)

Volume V

Arkansas
AR02–01 (Mar. 1, 2002)(AR03–01)
AR02–02 (Mar. 1, 2002)(AR03–02)
AR02–03 (Mar. 1, 2002)(AR03–03)
AR02–04 (Mar. 1, 2002)(AR03–04)
AR02–05 (Mar. 1, 2002)(AR03–05)
AR02–06 (Mar. 1, 2002)(AR03–06)
AR02–07 (Mar. 1, 2002)(AR03–07)
AR02–08 (Mar. 1, 2002)(AR03–08)
AR02–09 (Mar. 1, 2002)(AR03–09)
AR02–10 (Mar. 1, 2002)(AR03–10)
AR02–11 (Mar. 1, 2002)(AR03–11)
AR02–12 (Mar. 1, 2002)(AR03–12)
AR02–13 (Mar. 1, 2002)(AR03–13)
AR02–14 (Mar. 1, 2002)(AR03–14)
AR02–15 (Mar. 1, 2002)(AR03–15)
AR02–16 (Mar. 1, 2002)(AR03–16)
AR02–17 (Mar. 1, 2002)(AR03–17)
AR02–18 (Mar. 1, 2002)(AR03–18)
AR02–19 (Mar. 1, 2002)(AR03–19)
AR02–20 (Mar. 1, 2002)(AR03–20)
AR02–21 (Mar. 1, 2002)(AR03–21)
AR02–22 (Mar. 1, 2002)(AR03–22)
AR02–23 (Mar. 1, 2002)(AR03–23)
AR02–24 (Mar. 1, 2002)(AR03–24)
AR02–25 (Mar. 1, 2002)(AR03–25)
AR02–26 (Mar. 1, 2002)(AR03–26)
AR02–27 (Mar. 1, 2002)(AR03–27)
AR02–28 (Mar. 1, 2002)(AR03–28)
AR02–29 (Mar. 1, 2002)(AR03–29)
AR02–30 (Mar. 1, 2002)(AR03–30)
AR02–31 (Mar. 1, 2002)(AR03–31)
AR02–32 (Mar. 1, 2002)(AR03–32)
AR02–33 (Mar. 1, 2002)(AR03–33)
AR02–34 (Mar. 1, 2002)(AR03–34)
AR02–35 (Mar. 1, 2002)(AR03–35)
AR02–36 (Mar. 1, 2002)(AR03–36)
AR02–37 (Mar. 1, 2002)(AR03–37)
AR02–38 (Mar. 1, 2002)(AR03–38)
AR02–39 (Mar. 1, 2002)(AR03–39)
AR02–40 (Mar. 1, 2002)(AR03–40)
AR02–41 (Mar. 1, 2002)(AR03–41)
AR02–42 (Mar. 1, 2002)(AR03–42)
AR02–43 (Mar. 1, 2002)(AR03–43)
AR02–44 (Mar. 1, 2002)(AR03–44)
AR02–45 (Mar. 1, 2002)(AR03–45)
AR02–46 (Mar. 1, 2002)(AR03–46)

Iowa
IA02–01 (Mar. 1, 2002)(IA03–01)
IA02–02 (Mar. 1, 2002)(IA03–02)
IA02–03 (Mar. 1, 2002)(IA03–03)
IA02–04 (Mar. 1, 2002)(IA03–04)
IA02–05 (Mar. 1, 2002)(IA03–05)
IA02–06 (Mar. 1, 2002)(IA03–06)
IA02–07 (Mar. 1, 2002)(IA03–07)
IA02–08 (Mar. 1, 2002)(IA03–08)
IA02–09 (Mar. 1, 2002)(IA03–09)
IA02–10 (Mar. 1, 2002)(IA03–10)
IA02–11 (Mar. 1, 2002)(IA03–11)
IA02–12 (Mar. 1, 2002)(IA03–12)
IA02–13 (Mar. 1, 2002)(IA03–13)
IA02–14 (Mar. 1, 2002)(IA03–14)
IA02–15 (Mar. 1, 2002)(IA03–15)
IA02–16 (Mar. 1, 2002)(IA03–16)

IA02–17 (Mar. 1, 2002)(IA03–17)
IA02–18 (Mar. 1, 2002)(IA03–18)
IA02–19 (Mar. 1, 2002)(IA03–19)
IA02–20 (Mar. 1, 2002)(IA03–20)
IA02–21 (Mar. 1, 2002)(IA03–21)
IA02–22 (Mar. 1, 2002)(IA03–22)
IA02–23 (Mar. 1, 2002)(IA03–23)
IA02–24 (Mar. 1, 2002)(IA03–24)
IA02–25 (Mar. 1, 2002)(IA03–25)
IA02–26 (Mar. 1, 2002)(IA03–26)
IA02–27 (Mar. 1, 2002)(IA03–27)
IA02–28 (Mar. 1, 2002)(IA03–28)
IA02–29 (Mar. 1, 2002)(IA03–29)
IA02–30 (Mar. 1, 2002)(IA03–30)
IA02–31 (Mar. 1, 2002)(IA03–31)
IA02–32 (Mar. 1, 2002)(IA03–32)
IA02–33 (Mar. 1, 2002)(IA03–33)
IA02–34 (Mar. 1, 2002)(IA03–34)
IA02–35 (Mar. 1, 2002)(IA03–35)
IA02–36 (Mar. 1, 2002)(IA03–36)
IA02–37 (Mar. 1, 2002)(IA03–37)
IA02–38 (Mar. 1, 2002)(IA03–38)
IA02–39 (Mar. 1, 2002)(IA03–39)
IA02–40 (Mar. 1, 2002)(IA03–40)
IA02–41 (Mar. 1, 2002)(IA03–41)
IA02–42 (Mar. 1, 2002)(IA03–42)
IA02–43 (Mar. 1, 2002)(IA03–43)
IA02–44 (Mar. 1, 2002)(IA03–44)
IA02–45 (Mar. 1, 2002)(IA03–45)
IA02–46 (Mar. 1, 2002)(IA03–46)
IA02–47 (Mar. 1, 2002)(IA03–47)
IA02–48 (Mar. 1, 2002)(IA03–48)
IA02–49 (Mar. 1, 2002)(IA03–49)
IA02–50 (Mar. 1, 2002)(IA03–50)
IA02–51 (Mar. 1, 2002)(IA03–51)
IA02–52 (Mar. 1, 2002)(IA03–52)
IA02–53 (Mar. 1, 2002)(IA03–53)
IA02–54 (Mar. 1, 2002)(IA03–54)
IA02–55 (Mar. 1, 2002)(IA03–55)
IA02–56 (Mar. 1, 2002)(IA03–56)
IA02–57 (Mar. 1, 2002)(IA03–57)
IA02–58 (Mar. 1, 2002)(IA03–58)
IA02–59 (Mar. 1, 2002)(IA03–59)
IA02–60 (Mar. 1, 2002)(IA03–60)
IA02–61 (Mar. 1, 2002)(IA03–61)
IA02–62 (Mar. 1, 2002)(IA03–62)
IA02–63 (Mar. 1, 2002)(IA03–63)
IA02–64 (Mar. 1, 2002)(IA03–64)
IA02–65 (Mar. 1, 2002)(IA03–65)
IA02–66 (Mar. 1, 2002)(IA03–66)
IA02–67 (Mar. 1, 2002)(IA03–67)
IA02–68 (Mar. 1, 2002)(IA03–68)
IA02–69 (Mar. 1, 2002)(IA03–69)

Kansas
KS02–01 (Mar. 1, 2002)(KS03–01)
KS02–02 (Mar. 1, 2002)(KS03–02)
KS02–03 (Mar. 1, 2002)(KS03–03)
KS02–04 (Mar. 1, 2002)(KS03–04)
KS02–05 (Mar. 1, 2002)(KS03–05)
KS02–06 (Mar. 1, 2002)(KS03–06)
KS02–07 (Mar. 1, 2002)(KS03–07)
KS02–08 (Mar. 1, 2002)(KS03–08)
KS02–09 (Mar. 1, 2002)(KS03–09)
KS02–10 (Mar. 1, 2002)(KS03–10)
KS02–11 (Mar. 1, 2002)(KS03–11)
KS02–12 (Mar. 1, 2002)(KS03–12)
KS02–13 (Mar. 1, 2002)(KS03–13)
KS02–14 (Mar. 1, 2002)(KS03–14)
KS02–15 (Mar. 1, 2002)(KS03–15)
KS02–16 (Mar. 1, 2002)(KS03–16)
KS02–17 (Mar. 1, 2002)(KS03–17)
KS02–18 (Mar. 1, 2002)(KS03–18)
KS02–19 (Mar. 1, 2002)(KS03–19)
KS02–20 (Mar. 1, 2002)(KS03–20)
KS02–21 (Mar. 1, 2002)(KS03–21)
KS02–22 (Mar. 1, 2002)(KS03–22)
KS02–23 (Mar. 1, 2002)(KS03–23)
KS02–24 (Mar. 1, 2002)(KS03–24)
KS02–25 (Mar. 1, 2002)(KS03–25)
KS02–26 (Mar. 1, 2002)(KS03–26)
KS02–27 (Mar. 1, 2002)(KS03–27)
KS02–28 (Mar. 1, 2002)(KS03–28)
KS02–29 (Mar. 1, 2002)(KS03–29)
KS02–30 (Mar. 1, 2002)(KS03–30)
KS02–31 (Mar. 1, 2002)(KS03–31)
KS02–32 (Mar. 1, 2002)(KS03–32)
KS02–33 (Mar. 1, 2002)(KS03–33)
KS02–34 (Mar. 1, 2002)(KS03–34)
KS02–35 (Mar. 1, 2002)(KS03–35)
KS02–36 (Mar. 1, 2002)(KS03–36)
KS02–37 (Mar. 1, 2002)(KS03–37)
KS02–38 (Mar. 1, 2002)(KS03–38)
KS02–39 (Mar. 1, 2002)(KS03–39)
KS02–40 (Mar. 1, 2002)(KS03–40)
KS02–41 (Mar. 1, 2002)(KS03–41)
KS02–42 (Mar. 1, 2002)(KS03–42)
KS02–43 (Mar. 1, 2002)(KS03–43)
KS02–44 (Mar. 1, 2002)(KS03–44)
KS02–45 (Mar. 1, 2002)(KS03–45)
KS02–46 (Mar. 1, 2002)(KS03–46)
KS02–47 (Mar. 1, 2002)(KS03–47)
KS02–48 (Mar. 1, 2002)(KS03–48)
KS02–49 (Mar. 1, 2002)(KS03–49)
KS02–50 (Mar. 1, 2002)(KS03–50)
KS02–51 (Mar. 1, 2002)(KS03–51)
KS02–52 (Mar. 1, 2002)(KS03–52)
KS02–53 (Mar. 1, 2002)(KS03–53)
KS02–54 (Mar. 1, 2002)(KS03–54)
KS02–55 (Mar. 1, 2002)(KS03–55)
KS02–56 (Mar. 1, 2002)(KS03–56)
KS02–57 (Mar. 1, 2002)(KS03–57)
KS02–58 (Mar. 1, 2002)(KS03–58)
KS02–59 (Mar. 1, 2002)(KS03–59)
KS02–60 (Mar. 1, 2002)(KS03–60)
KS02–61 (Mar. 1, 2002)(KS03–61)
KS02–62 (Mar. 1, 2002)(KS03–62)
KS02–63 (Mar. 1, 2002)(KS03–63)
KS02–64 (Mar. 1, 2002)(KS03–64)
KS02–65 (Mar. 1, 2002)(KS03–65)
KS02–66 (Mar. 1, 2002)(KS03–66)
KS02–67 (Mar. 1, 2002)(KS03–67)
KS02–68 (Mar. 1, 2002)(KS03–68)

Louisiana
LA02–01 (Mar. 1, 2002)(LA03–01)
LA02–02 (Mar. 1, 2002)(LA03–02)
LA02–03 (Mar. 1, 2002)(LA03–03)
LA02–04 (Mar. 1, 2002)(LA03–04)
LA02–05 (Mar. 1, 2002)(LA03–05)
LA02–06 (Mar. 1, 2002)(LA03–06)
LA02–07 (Mar. 1, 2002)(LA03–07)
LA02–08 (Mar. 1, 2002)(LA03–08)
LA02–09 (Mar. 1, 2002)(LA03–09)
LA02–10 (Mar. 1, 2002)(LA03–10)
LA02–11 (Mar. 1, 2002)(LA03–11)
LA02–12 (Mar. 1, 2002)(LA03–12)
LA02–13 (Mar. 1, 2002)(LA03–13)
LA02–14 (Mar. 1, 2002)(LA03–14)
LA02–15 (Mar. 1, 2002)(LA03–15)
LA02–16 (Mar. 1, 2002)(LA03–16)
LA02–17 (Mar. 1, 2002)(LA03–17)
LA02–18 (Mar. 1, 2002)(LA03–18)
LA02–19 (Mar. 1, 2002)(LA03–19)
LA02–20 (Mar. 1, 2002)(LA03–20)
LA02–21 (Mar. 1, 2002)(LA03–21)
LA02–22 (Mar. 1, 2002)(LA03–22)
LA02–23 (Mar. 1, 2002)(LA03–23)
LA02–24 (Mar. 1, 2002)(LA03–24)
LA02–25 (Mar. 1, 2002)(LA03–25)
LA02–26 (Mar. 1, 2002)(LA03–26)
LA02–27 (Mar. 1, 2002)(LA03–27)
LA02–28 (Mar. 1, 2002)(LA03–28)
LA02–29 (Mar. 1, 2002)(LA03–29)
LA02–30 (Mar. 1, 2002)(LA03–30)
LA02–31 (Mar. 1, 2002)(LA03–31)
LA02–32 (Mar. 1, 2002)(LA03–32)
LA02–33 (Mar. 1, 2002)(LA03–33)
LA02–34 (Mar. 1, 2002)(LA03–34)
LA02–35 (Mar. 1, 2002)(LA03–35)
LA02–36 (Mar. 1, 2002)(LA03–36)
LA02–37 (Mar. 1, 2002)(LA03–37)
LA02–38 (Mar. 1, 2002)(LA03–38)
LA02–39 (Mar. 1, 2002)(LA03–39)
LA02–40 (Mar. 1, 2002)(LA03–40)
LA02–41 (Mar. 1, 2002)(LA03–41)
LA02–42 (Mar. 1, 2002)(LA03–42)
LA02–43 (Mar. 1, 2002)(LA03–43)
LA02–44 (Mar. 1, 2002)(LA03–44)
LA02–45 (Mar. 1, 2002)(LA03–45)
LA02–46 (Mar. 1, 2002)(LA03–46)
LA02–47 (Mar. 1, 2002)(LA03–47)
LA02–48 (Mar. 1, 2002)(LA03–48)
LA02–49 (Mar. 1, 2002)(LA03–49)
LA02–50 (Mar. 1, 2002)(LA03–50)
LA02–51 (Mar. 1, 2002)(LA03–51)
LA02–52 (Mar. 1, 2002)(LA03–52)
LA02–53 (Mar. 1, 2002)(LA03–53)
LA02–54 (Mar. 1, 2002)(LA03–54)

Missouri
MO02–01 (Mar. 1, 2002)(MO03–01)
MO02–02 (Mar. 1, 2002)(MO03–02)
MO02–03 (Mar. 1, 2002)(MO03–03)
MO02–04 (Mar. 1, 2002)(MO03–04)
MO02–05 (Mar. 1, 2002)(MO03–05)
MO02–06 (Mar. 1, 2002)(MO03–06)
MO02–07 (Mar. 1, 2002)(MO03–07)
MO02–08 (Mar. 1, 2002)(MO03–08)
MO02–09 (Mar. 1, 2002)(MO03–09)
MO02–10 (Mar. 1, 2002)(MO03–10)
MO02–11 (Mar. 1, 2002)(MO03–11)
MO02–12 (Mar. 1, 2002)(MO03–12)
MO02–13 (Mar. 1, 2002)(MO03–13)
MO02–14 (Mar. 1, 2002)(MO03–14)
MO02–15 (Mar. 1, 2002)(MO03–15)
MO02–16 (Mar. 1, 2002)(MO03–16)
MO02–17 (Mar. 1, 2002)(MO03–17)
MO02–18 (Mar. 1, 2002)(MO03–18)
MO02–19 (Mar. 1, 2002)(MO03–19)
MO02–20 (Mar. 1, 2002)(MO03–20)
MO02–21 (Mar. 1, 2002)(MO03–21)
MO02–22 (Mar. 1, 2002)(MO03–22)
MO02–23 (Mar. 1, 2002)(MO03–23)
MO02–24 (Mar. 1, 2002)(MO03–24)
MO02–25 (Mar. 1, 2002)(MO03–25)
MO02–26 (Mar. 1, 2002)(MO03–26)
MO02–27 (Mar. 1, 2002)(MO03–27)
MO02–28 (Mar. 1, 2002)(MO03–28)
MO02–29 (Mar. 1, 2002)(MO03–29)
MO02–30 (Mar. 1, 2002)(MO03–30)
MO02–31 (Mar. 1, 2002)(MO03–31)
MO02–32 (Mar. 1, 2002)(MO03–32)
MO02–33 (Mar. 1, 2002)(MO03–33)
MO02–34 (Mar. 1, 2002)(MO03–34)
MO02–35 (Mar. 1, 2002)(MO03–35)
MO02–36 (Mar. 1, 2002)(MO03–36)
MO02–37 (Mar. 1, 2002)(MO03–37)
MO02–38 (Mar. 1, 2002)(MO03–38)
MO02–39 (Mar. 1, 2002)(MO03–39)
MO02–40 (Mar. 1, 2002)(MO03–40)
MO02–41 (Mar. 1, 2002)(MO03–41)
MO02–42 (Mar. 1, 2002)(MO03–42)
MO02–43 (Mar. 1, 2002)(MO03–43)
MO02–44 (Mar. 1, 2002)(MO03–44)
MO02–45 (Mar. 1, 2002)(MO03–45)
MO02–46 (Mar. 1, 2002)(MO03–46)
MO02–47 (Mar. 1, 2002)(MO03–47)
MO02–48 (Mar. 1, 2002)(MO03–48)
MO02–49 (Mar. 1, 2002)(MO03–49)
MO02–50 (Mar. 1, 2002)(MO03–50)

MO02–51 (Mar. 1, 2002)(MO03–51)
MO02–52 (Mar. 1, 2002)(MO03–52)
MO02–53 (Mar. 1, 2002)(MO03–53)
MO02–54 (Mar. 1, 2002)(MO03–54)
MO02–55 (Mar. 1, 2002)(MO03–55)
MO02–56 (Mar. 1, 2002)(MO03–56)
MO02–57 (Mar. 1, 2002)(MO03–57)
MO02–58 (Mar. 1, 2002)(MO03–58)
MO02–59 (Mar. 1, 2002)(MO03–59)
MO02–60 (Mar. 1, 2002)(MO03–60)
MO02–61 (Mar. 1, 2002)(MO03–61)

Nebraska
NE02–01 (Mar. 1, 2002)(NE03–01)
NE02–02 (Mar. 1, 2002)(NE03–02)
NE02–03 (Mar. 1, 2002)(NE03–03)
NE02–04 (Mar. 1, 2002)(NE03–04)
NE02–05 (Mar. 1, 2002)(NE03–05)
NE02–06 (Mar. 1, 2002)(NE03–06)
NE02–07 (Mar. 1, 2002)(NE03–07)
NE02–08 (Mar. 1, 2002)(NE03–08)
NE02–09 (Mar. 1, 2002)(NE03–09)
NE02–10 (Mar. 1, 2002)(NE03–10)
NE02–11 (Mar. 1, 2002)(NE03–11)
NE02–12 (Mar. 1, 2002)(NE03–12)
NE02–13 (Mar. 1, 2002)(NE03–13)
NE02–14 (Mar. 1, 2002)(NE03–14)
NE02–15 (Mar. 1, 2002)(NE03–15)
NE02–16 (Mar. 1, 2002)(NE03–16)
NE02–17 (Mar. 1, 2002)(NE03–17)
NE02–18 (Mar. 1, 2002)(NE03–18)
NE02–19 (Mar. 1, 2002)(NE03–19)
NE02–20 (Mar. 1, 2002)(NE03–20)
NE02–21 (Mar. 1, 2002)(NE03–21)
NE02–22 (Mar. 1, 2002)(NE03–22)
NE02–23 (Mar. 1, 2002)(NE03–23)
NE02–24 (Mar. 1, 2002)(NE03–24)
NE02–25 (Mar. 1, 2002)(NE03–25)
NE02–26 (Mar. 1, 2002)(NE03–26)
NE02–27 (Mar. 1, 2002)(NE03–27)
NE02–28 (Mar. 1, 2002)(NE03–28)
NE02–29 (Mar. 1, 2002)(NE03–29)
NE02–30 (Mar. 1, 2002)(NE03–30)
NE02–31 (Mar. 1, 2002)(NE03–31)
NE02–32 (Mar. 1, 2002)(NE03–32)
NE02–33 (Mar. 1, 2002)(NE03–33)
NE02–34 (Mar. 1, 2002)(NE03–34)
NE02–35 (Mar. 1, 2002)(NE03–35)
NE02–36 (Mar. 1, 2002)(NE03–36)
NE02–37 (Mar. 1, 2002)(NE03–37)
NE02–38 (Mar. 1, 2002)(NE03–38)
NE02–39 (Mar. 1, 2002)(NE03–39)
NE02–40 (Mar. 1, 2002)(NE03–40)
NE02–41 (Mar. 1, 2002)(NE03–41)
NE02–42 (Mar. 1, 2002)(NE03–42)
NE02–43 (Mar. 1, 2002)(NE03–43)

New Mexico
NM02–01 (Mar. 1, 2002)(NM03–01)
NM02–02 (Mar. 1, 2002)(NM03–02)
NM02–03 (Mar. 1, 2002)(NM03–03)
NM02–04 (Mar. 1, 2002)(NM03–04)
NM02–05 (Mar. 1, 2002)(NM03–05)
NM02–06 (Mar. 1, 2002)(NM03–06)
NM02–07 (Mar. 1, 2002)(NM03–07)
NM02–08 (Mar. 1, 2002)(NM03–08)
NM02–09 (Mar. 1, 2002)(NM03–09)
NM02–10 (Mar. 1, 2002)(NM03–10)
NM02–11 (Mar. 1, 2002)(NM03–11)

Oklahoma
OK02–01 (Mar. 1, 2002)(OK03–01)
OK02–02 (Mar. 1, 2002)(OK03–02)
OK02–03 (Mar. 1, 2002)(OK03–03)
OK02–04 (Mar. 1, 2002)(OK03–04)
OK02–05 (Mar. 1, 2002)(OK03–05)
OK02–06 (Mar. 1, 2002)(OK03–06)
OK02–07 (Mar. 1, 2002)(OK03–07)
OK02–08 (Mar. 1, 2002)(OK03–08)
OK02–09 (Mar. 1, 2002)(OK03–09)
OK02–10 (Mar. 1, 2002)(OK03–10)
OK02–11 (Mar. 1, 2002)(OK03–11)
OK02–12 (Mar. 1, 2002)(OK03–12)
OK02–13 (Mar. 1, 2002)(OK03–13)
OK02–14 (Mar. 1, 2002)(OK03–14)
OK02–15 (Mar. 1, 2002)(OK03–15)
OK02–16 (Mar. 1, 2002)(OK03–16)
OK02–17 (Mar. 1, 2002)(OK03–17)
OK02–18 (Mar. 1, 2002)(OK03–18)
OK02–19 (Mar. 1, 2002)(OK03–19)
OK02–20 (Mar. 1, 2002)(OK03–20)
OK02–21 (Mar. 1, 2002)(OK03–21)
OK02–22 (Mar. 1, 2002)(OK03–22)
OK02–23 (Mar. 1, 2002)(OK03–23)
OK02–24 (Mar. 1, 2002)(OK03–24)
OK02–25 (Mar. 1, 2002)(OK03–25)
OK02–26 (Mar. 1, 2002)(OK03–26)
OK02–27 (Mar. 1, 2002)(OK03–27)
OK02–28 (Mar. 1, 2002)(OK03–28)
OK02–29 (Mar. 1, 2002)(OK03–29)
OK02–30 (Mar. 1, 2002)(OK03–30)
OK02–31 (Mar. 1, 2002)(OK03–31)
OK02–32 (Mar. 1, 2002)(OK03–32)
OK02–33 (Mar. 1, 2002)(OK03–33)
OK02–34 (Mar. 1, 2002)(OK03–34)
OK02–35 (Mar. 1, 2002)(OK03–35)
OK02–36 (Mar. 1, 2002)(OK03–36)
OK02–37 (Mar. 1, 2002)(OK03–37)
OK02–38 (Mar. 1, 2002)(OK03–38)
OK02–39 (Mar. 1, 2002)(OK03–39)
OK02–40 (Mar. 1, 2002)(OK03–40)
OK02–41 (Mar. 1, 2002)(OK03–41)
OK02–42 (Mar. 1, 2002)(OK03–42)
OK02–43 (Mar. 1, 2002)(OK03–43)
OK02–44 (Mar. 1, 2002)(OK03–44)
OK02–45 (Mar. 1, 2002)(OK03–45)
OK02–46 (Mar. 1, 2002)(OK03–46)

Texas
TX02–01 (Mar. 1, 2002)(TX03–01)
TX02–02 (Mar. 1, 2002)(TX03–02)
TX02–03 (Mar. 1, 2002)(TX03–03)
TX02–04 (Mar. 1, 2002)(TX03–04)
TX02–05 (Mar. 1, 2002)(TX03–05)
TX02–06 (Mar. 1, 2002)(TX03–06)
TX02–07 (Mar. 1, 2002)(TX03–07)
TX02–08 (Mar. 1, 2002)(TX03–08)
TX02–09 (Mar. 1, 2002)(TX03–09)
TX02–10 (Mar. 1, 2002)(TX03–10)
TX02–11 (Mar. 1, 2002)(TX03–11)
TX02–12 (Mar. 1, 2002)(TX03–12)
TX02–13 (Mar. 1, 2002)(TX03–13)
TX02–14 (Mar. 1, 2002)(TX03–14)
TX02–15 (Mar. 1, 2002)(TX03–15)
TX02–16 (Mar. 1, 2002)(TX03–16)
TX02–17 (Mar. 1, 2002)(TX03–17)
TX02–18 (Mar. 1, 2002)(TX03–18)
TX02–19 (Mar. 1, 2002)(TX03–19)
TX02–20 (Mar. 1, 2002)(TX03–20)
TX02–21 (Mar. 1, 2002)(TX03–21)
TX02–22 (Mar. 1, 2002)(TX03–22)
TX02–23 (Mar. 1, 2002)(TX03–23)
TX02–24 (Mar. 1, 2002)(TX03–24)
TX02–25 (Mar. 1, 2002)(TX03–25)
TX02–26 (Mar. 1, 2002)(TX03–26)
TX02–27 (Mar. 1, 2002)(TX03–27)
TX02–28 (Mar. 1, 2002)(TX03–28)
TX02–29 (Mar. 1, 2002)(TX03–29)
TX02–30 (Mar. 1, 2002)(TX03–30)
TX02–31 (Mar. 1, 2002)(TX03–31)
TX02–32 (Mar. 1, 2002)(TX03–32)
TX02–33 (Mar. 1, 2002)(TX03–33)
TX02–34 (Mar. 1, 2002)(TX03–34)
TX02–35 (Mar. 1, 2002)(TX03–35)
TX02–36 (Mar. 1, 2002)(TX03–36)
TX02–37 (Mar. 1, 2002)(TX03–37)
TX02–38 (Mar. 1, 2002)(TX03–38)
TX02–39 (Mar. 1, 2002)(TX03–39)
TX02–40 (Mar. 1, 2002)(TX03–40)
TX02–41 (Mar. 1, 2002)(TX03–41)
TX02–42 (Mar. 1, 2002)(TX03–42)
TX02–43 (Mar. 1, 2002)(TX03–43)
TX02–44 (Mar. 1, 2002)(TX03–44)
TX02–45 (Mar. 1, 2002)(TX03–35)
TX02–46 (Mar. 1, 2002)(TX03–46)
TX02–47 (Mar. 1, 2002)(TX03–47)
TX02–48 (Mar. 1, 2002)(TX03–48)
TX02–49 (Mar. 1, 2002)(TX03–49)
TX02–50 (Mar. 1, 2002)(TX03–50)
TX02–51 (Mar. 1, 2002)(TX03–51)
TX02–52 (Mar. 1, 2002)(TX03–52)
TX02–53 (Mar. 1, 2002)(TX03–53)
TX02–54 (Mar. 1, 2002)(TX03–54)
TX02–55 (Mar. 1, 2002)(TX03–55)
TX02–56 (Mar. 1, 2002)(TX03–56)
TX02–57 (Mar. 1, 2002)(TX03–57)
TX02–58 (Mar. 1, 2002)(TX03–58)
TX02–59 (Mar. 1, 2002)(TX03–59)
TX02–60 (Mar. 1, 2002)(TX03–60)
TX02–61 (Mar. 1, 2002)(TX03–61)
TX02–62 (Mar. 1, 2002)(TX03–62)
TX02–63 (Mar. 1, 2002)(TX03–63)
TX02–64 (Mar. 1, 2002)(TX03–64)
TX02–65 (Mar. 1, 2002)(TX03–65)
TX02–66 (Mar. 1, 2002)(TX03–66)
TX02–67 (Mar. 1, 2002)(TX03–67)
TX02–68 (Mar. 1, 2002)(TX03–68)
TX02–69 (Mar. 1, 2002)(TX03–69)
TX02–70 (Mar. 1, 2002)(TX03–70)
TX02–71 (Mar. 1, 2002)(TX03–71)
TX02–72 (Mar. 1, 2002)(TX03–72)
TX02–73 (Mar. 1, 2002)(TX03–73)
TX02–74 (Mar. 1, 2002)(TX03–74)
TX02–75 (Mar. 1, 2002)(TX03–75)
TX02–76 (Mar. 1, 2002)(TX03–76)
TX02–77 (Mar. 1, 2002)(TX03–77)
TX02–78 (Mar. 1, 2002)(TX03–78)
TX02–79 (Mar. 1, 2002)(TX03–79)
TX02–80 (Mar. 1, 2002)(TX03–80)
TX02–81 (Mar. 1, 2002)(TX03–81)
TX02–82 (Mar. 1, 2002)(TX03–82)
TX02–83 (Mar. 1, 2002)(TX03–83)
TX02–84 (Mar. 1, 2002)(TX03–84)
TX02–85 (Mar. 1, 2002)(TX03–85)
TX02–86 (Mar. 1, 2002)(TX03–86)
TX02–87 (Mar. 1, 2002)(TX03–87)
TX02–88 (Mar. 1, 2002)(TX03–88)
TX02–89 (Mar. 1, 2002)(TX03–89)
TX02–90 (Mar. 1, 2002)(TX03–90)
TX02–91 (Mar. 1, 2002)(TX03–91)
TX02–92 (Mar. 1, 2002)(TX03–92)
TX02–93 (Mar. 1, 2002)(TX03–93)
TX02–94 (Mar. 1, 2002)(TX03–94)
TX02–95 (Mar. 1, 2002)(TX03–95)
TX02–96 (Mar. 1, 2002)(TX03–96)
TX02–97 (Mar. 1, 2002)(TX03–97)
TX02–98 (Mar. 1, 2002)(TX03–98)
TX02–99 (Mar. 1, 2002)(TX03–99)
TX02–100 (Mar. 1, 2002)(TX03–100)
TX02–101 (Mar. 1, 2002)(TX03–101)
TX02–102 (Mar. 1, 2002)(TX03–102)
TX02–103 (Mar. 1, 2002)(TX03–103)
TX02–104 (Mar. 1, 2002)(TX03–104)
TX02–105 (Mar. 1, 2002)(TX03–105)
TX02–106 (Mar. 1, 2002)(TX03–106)
TX02–107 (Mar. 1, 2002)(TX03–107)
TX02–108 (Mar. 1, 2002)(TX03–108)
TX02–109 (Mar. 1, 2002)(TX03–109)
TX02–110 (Mar. 1, 2002)(TX03–110)
TX02–111 (Mar. 1, 2002)(TX03–111)
TX02–112 (Mar. 1, 2002)(TX03–112)
TX02–113 (Mar. 1, 2002)(TX03–113)
TX02–114 (Mar. 1, 2002)(TX03–114)
TX02–115 (Mar. 1, 2002)(TX03–115)
TX02–116 (Mar. 1, 2002)(TX03–116)
TX02–117 (Mar. 1, 2002)(TX03–117)
TX02–118 (Mar. 1, 2002)(TX03–118)
TX02–119 (Mar. 1, 2002)(TX03–119)
TX02–120 (Mar. 1, 2002)(TX03–120)
TX02–121 (Mar. 1, 2002)(TX03–121)

Volume VI

Alaska
AK02–01 (Mar. 1, 2002)(AK03–01)
AK02–02 (Mar. 1, 2002)(AK03–02)
AK02–03 (Mar. 1, 2002)(AK03–03)
AK02–04 (Mar. 1, 2002)(AK03–04)
AK02–05 (Mar. 1, 2002)(AK03–05)
AK02–06 (Mar. 1, 2002)(AK03–06)
AK02–07 (Mar. 1, 2002)(AK03–07)
AK02–08 (Mar. 1, 2002)(AK03–08)

Colorado
CO02–01 (Mar. 1, 2002)(CO03–01)
CO02–02 (Mar. 1, 2002)(CO03–02)
CO02–03 (Mar. 1, 2002)(CO03–03)
CO02–04 (Mar. 1, 2002)(CO03–04)
CO02–05 (Mar. 1, 2002)(CO03–05)
CO02–06 (Mar. 1, 2002)(CO03–06)
CO02–07 (Mar. 1, 2002)(CO03–07)
CO02–08 (Mar. 1, 2002)(CO03–08)
CO02–09 (Mar. 1, 2002)(CO03–09)
CO02–10 (Mar. 1, 2002)(CO03–10)
CO02–11 (Mar. 1, 2002)(CO03–11)
CO02–12 (Mar. 1, 2002)(CO03–12)
CO02–13 (Mar. 1, 2002)(CO03–13)
CO02–14 (Mar. 1, 2002)(CO03–14)
CO02–15 (Mar. 1, 2002)(CO03–15)
CO02–16 (Mar. 1, 2002)(CO03–16)
CO02–17 (Mar. 1, 2002)(CO03–17)

Idaho
ID02–01 (Mar. 1, 2002)(ID03–01)
ID02–02 (Mar. 1, 2002)(ID03–02)
ID02–03 (Mar. 1, 2002)(ID03–03)
ID02–04 (Mar. 1, 2002)(ID03–04)
ID02–05 (Mar. 1, 2002)(ID03–05)
ID02–06 (Mar. 1, 2002)(ID03–06)
ID02–07 (Mar. 1, 2002)(ID03–07)
ID02–08 (Mar. 1, 2002)(ID03–08)
ID02–09 (Mar. 1, 2002)(ID03–09)
ID02–10 (Mar. 1, 2002)(ID03–10)
ID02–11 (Mar. 1, 2002)(ID03–11)
ID02–12 (Mar. 1, 2002)(ID03–12)
ID02–13 (Mar. 1, 2002)(ID03–13)
ID02–14 (Mar. 1, 2002)(ID03–14)

Montana
MT02–01 (Mar. 1, 2002)(MT03–01)
MT02–02 (Mar. 1, 2002)(MT03–02)
MT02–03 (Mar. 1, 2002)(MT03–03)
MT02–04 (Mar. 1, 2002)(MT03–04)
MT02–05 (Mar. 1, 2002)(MT03–05)
MT02–06 (Mar. 1, 2002)(MT03–06)
MT02–07 (Mar. 1, 2002)(MT03–07)
MT02–08 (Mar. 1, 2002)(MT03–08)
MT02–09 (Mar. 1, 2002)(MT03–09)
MT02–10 (Mar. 1, 2002)(MT03–10)
MT02–11 (Mar. 1, 2002)(MT03–11)
MT02–12 (Mar. 1, 2002)(MT03–12)
MT02–13 (Mar. 1, 2002)(MT03–13)
MT02–14 (Mar. 1, 2002)(MT03–14)
MT02–15 (Mar. 1, 2002)(MT03–15)
MT02–16 (Mar. 1, 2002)(MT03–16)
MT02–17 (Mar. 1, 2002)(MT03–17)
MT02–18 (Mar. 1, 2002)(MT03–18)
MT02–19 (Mar. 1, 2002)(MT03–19)
MT02–20 (Mar. 1, 2002)(MT03–20)
MT02–21 (Mar. 1, 2002)(MT03–21)
MT02–22 (Mar. 1, 2002)(MT03–22)
MT02–23 (Mar. 1, 2002)(MT03–23)
MT02–24 (Mar. 1, 2002)(MT03–24)
MT02–25 (Mar. 1, 2002)(MT03–25)
MT02–26 (Mar. 1, 2002)(MT03–26)
MT02–27 (Mar. 1, 2002)(MT03–27)
MT02–28 (Mar. 1, 2002)(MT03–28)
MT02–29 (Mar. 1, 2002)(MT03–29)
MT02–30 (Mar. 1, 2002)(MT03–30)
MT02–31 (Mar. 1, 2002)(MT03–31)
MT02–32 (Mar. 1, 2002)(MT03–32)
MT02–33 (Mar. 1, 2002)(MT03–33)
MT02–34 (Mar. 1, 2002)(MT03–34)
MT02–35 (Mar. 1, 2002)(MT03–35)

North Dakota
ND02–01 (Mar. 1, 2002)(ND03–01)
ND02–02 (Mar. 1, 2002)(ND03–02)
ND02–03 (Mar. 1, 2002)(ND03–03)
ND02–04 (Mar. 1, 2002)(ND03–04)
ND02–05 (Mar. 1, 2002)(ND03–05)
ND02–06 (Mar. 1, 2002)(ND03–06)
ND02–07 (Mar. 1, 2002)(ND03–07)
ND02–08 (Mar. 1, 2002)(ND03–08)
ND02–09 (Mar. 1, 2002)(ND03–09)
ND02–10 (Mar. 1, 2002)(ND03–10)
ND02–11 (Mar. 1, 2002)(ND03–11)
ND02–12 (Mar. 1, 2002)(ND03–12)
ND02–13 (Mar. 1, 2002)(ND03–13)
ND02–14 (Mar. 1, 2002)(ND03–14)
ND02–15 (Mar. 1, 2002)(ND03–15)
ND02–16 (Mar. 1, 2002)(ND03–16)
ND02–17 (Mar. 1, 2002)(ND03–17)
ND02–18 (Mar. 1, 2002)(ND03–18)
ND02–19 (Mar. 1, 2002)(ND03–19)

Oregon
OR02–01 (Mar. 1, 2002)(OR03–01)
OR02–02 (Mar. 1, 2002)(OR03–02)
OR02–03 (Mar. 1, 2002)(OR03–03)
OR02–04 (Mar. 1, 2002)(OR03–04)
OR02–05 (Mar. 1, 2002)(OR03–05)
OR02–06 (Mar. 1, 2002)(OR03–06)
OR02–07 (Mar. 1, 2002)(OR03–07)
OR02–08 (Mar. 1, 2002)(OR03–08)
OR02–09 (Mar. 1, 2002)(OR03–09)
OR02–10 (Mar. 1, 2002)(OR03–10)
OR02–11 (Mar. 1, 2002)(OR03–11)
OR02–12 (Mar. 1, 2002)(OR03–12)
OR02–13 (Mar. 1, 2002)(OR03–13)
OR02–14 (Mar. 1, 2002)(OR03–14)
OR02–15 (Mar. 1, 2002)(OR03–15)
OR02–16 (Mar. 1, 2002)(OR03–16)

South Dakota
SD02–01 (Mar. 1, 2002)(SD03–01)
SD02–02 (Mar. 1, 2002)(SD03–02)
SD02–03 (Mar. 1, 2002)(SD03–03)
SD02–04 (Mar. 1, 2002)(SD03–04)
SD02–05 (Mar. 1, 2002)(SD03–05)
SD02–06 (Mar. 1, 2002)(SD03–06)
SD02–07 (Mar. 1, 2002)(SD03–07)
SD02–08 (Mar. 1, 2002)(SD03–08)
SD02–09 (Mar. 1, 2002)(SD03–09)
SD02–10 (Mar. 1, 2002)(SD03–10)

Utah
UT02–01 (Mar. 1, 2002)(UT03–01)
UT02–02 (Mar. 1, 2002)(UT03–02)
UT02–03 (Mar. 1, 2002)(UT03–03)
UT02–04 (Mar. 1, 2002)(UT03–04)
UT02–05 (Mar. 1, 2002)(UT03–05)
UT02–06 (Mar. 1, 2002)(UT03–06)
UT02–07 (Mar. 1, 2002)(UT03–07)
UT02–08 (Mar. 1, 2002)(UT03–08)
UT02–09 (Mar. 1, 2002)(UT03–09)
UT02–10 (Mar. 1, 2002)(UT03–10)
UT02–11 (Mar. 1, 2002)(UT03–11)
UT02–12 (Mar. 1, 2002)(UT03–12)
UT02–13 (Mar. 1, 2002)(UT03–13)
UT02–14 (Mar. 1, 2002)(UT03–14)
UT02–15 (Mar. 1, 2002)(UT03–15)
UT02–16 (Mar. 1, 2002)(UT03–16)
UT02–17 (Mar. 1, 2002)(UT03–17)
UT02–18 (Mar. 1, 2002)(UT03–18)
UT02–19 (Mar. 1, 2002)(UT03–19)
UT02–20 (Mar. 1, 2002)(UT03–20)
UT02–21 (Mar. 1, 2002)(UT03–21)
UT02–22 (Mar. 1, 2002)(UT03–22)
UT02–23 (Mar. 1, 2002)(UT03–23)
UT02–24 (Mar. 1, 2002)(UT03–24)
UT02–25 (Mar. 1, 2002)(UT03–25)
UT02–26 (Mar. 1, 2002)(UT03–26)
UT02–27 (Mar. 1, 2002)(UT03–27)
UT02–28 (Mar. 1, 2002)(UT03–28)
UT02–29 (Mar. 1, 2002)(UT03–29)
UT02–30 (Mar. 1, 2002)(UT03–30)
UT02–31 (Mar. 1, 2002)(UT03–31)
UT02–31 (Mar. 1, 2002)(UT03–32)
UT02–33 (Mar. 1, 2002)(UT03–33)
UT02–34 (Mar. 1, 2002)(UT03–34)
UT02–35 (Mar. 1, 2002)(UT03–35)
UT02–36 (Mar. 1, 2002)(UT03–36)

Washington
WA02–01 (Mar. 1, 2002)(WA03–01)
WA02–02 (Mar. 1, 2002)(WA03–02)
WA02–03 (Mar. 1, 2002)(WA03–03)
WA02–04 (Mar. 1, 2002)(WA03–04)
WA02–05 (Mar. 1, 2002)(WA03–05)
WA02–06 (Mar. 1, 2002)(WA03–06)
WA02–07 (Mar. 1, 2002)(WA03–07)
WA02–08 (Mar. 1, 2002)(WA03–08)
WA02–09 (Mar. 1, 2002)(WA03–09)
WA02–10 (Mar. 1, 2002)(WA03–10)
WA02–11 (Mar. 1, 2002)(WA03–11)
WA02–12 (Mar. 1, 2002)(WA03–12)
WA02–13 (Mar. 1, 2002)(WA03–13)
WA02–14 (Mar. 1, 2002)(WA03–14)
WA02–15 (Mar. 1, 2002)(WA03–15)
WA02–16 (Mar. 1, 2002)(WA03–16)
WA02–17 (Mar. 1, 2002)(WA03–17)
WA02–18 (Mar. 1, 2002)(WA03–18)
WA02–19 (Mar. 1, 2002)(WA03–19)
WA02–20 (Mar. 1, 2002)(WA03–20)
WA02–21 (Mar. 1, 2002)(WA03–21)
WA02–22 (Mar. 1, 2002)(WA03–22)
WA02–23 (Mar. 1, 2002)(WA03–23)
WA02–24 (Mar. 1, 2002)(WA03–24)
WA02–25 (Mar. 1, 2002)(WA03–25)
WA02–26 (Mar. 1, 2002)(WA03–26)
WA02–27 (Mar. 1, 2002)(WA03–27)

Wyoming
WY02–01)(Mar. 1, 2002)(WY03–01)
WY02–02)(Mar. 1, 2002)(WY03–02)
WY02–03)(Mar. 1, 2002)(WY03–03)
WY02–04)(Mar. 1, 2002)(WY03–04)
WY02–05)(Mar. 1, 2002)(WY03–05)
WY02–06)(Mar. 1, 2002)(WY03–06)
WY02–07)(Mar. 1, 2002)(WY03–07)
WY02–08)(Mar. 1, 2002)(WY03–08)
WY02–09)(Mar. 1, 2002)(WY03–09)
WY02–10)(Mar. 1, 2002)(WY03–10)
WY02–11)(Mar. 1, 2002)(WY03–11)
WY02–12)(Mar. 1, 2002)(WY03–12)
WY02–13)(Mar. 1, 2002)(WY03–13)
WY02–14)(Mar. 1, 2002)(WY03–14)
WY02–15)(Mar. 1, 2002)(WY03–15)
WY02–16)(Mar. 1, 2002)(WY03–16)
WY02–17)(Mar. 1, 2002)(WY03–17)
WY02–18)(Mar. 1, 2002)(WY03–18)
WY02–19)(Mar. 1, 2002)(WY03–19)
WY02–20)(Mar. 1, 2002)(WY03–20)
WY02–21)(Mar. 1, 2002)(WY03–21)
WY02–22)(Mar. 1, 2002)(WY03–22)
WY02–23)(Mar. 1, 2002)(WY03–23)
WY02–24)(Mar. 1, 2002)(WY03–24)

Volume VII

Arizona

AZ02–01 (Mar. 1, 2002)(AZ03–01)
AZ02–02 (Mar. 1, 2002)(AZ03–02)
AZ02–03 (Mar. 1, 2002)(AZ03–03)
AZ02–04 (Mar. 1, 2002)(AZ03–04)
AZ02–05 (Mar. 1, 2002)(AZ03–05)
AZ02–06 (Mar. 1, 2002)(AZ03–06)
AZ02–07 (Mar. 1, 2002)(AZ03–07)
AZ02–08 (Mar. 1, 2002)(AZ03–08)
AZ02–09 (Mar. 1, 2002)(AZ03–09)
AZ02–10 (Mar. 1, 2002)(AZ03–10)
AZ02–11 (Mar. 1, 2002)(AZ03–11)
AZ02–12 (Mar. 1, 2002)(AZ03–12)
AZ02–13 (Mar. 1, 2002)(AZ03–13)
AZ02–14 (Mar. 1, 2002)(AZ03–14)
AZ02–15 (Mar. 1, 2002)(AZ03–15)
AZ02–16 (Mar. 1, 2002)(AZ03–16)
AZ02–17 (Mar. 1, 2002)(AZ03–17)
AZ02–18 (Mar. 1, 2002)(AZ03–18)
AZ02–19 (Mar. 1, 2002)(AZ03–19)
AZ02–20 (Mar. 1, 2002)(AZ03–20)

California

CA02–01 (Mar. 1, 2002)(CA03–01)
CA02–02 (Mar. 1, 2002)(CA03–02)
CA02–03 (Mar. 1, 2002)(CA03–03)
CA02–04 (Mar. 1, 2002)(CA03–04)
CA02–05 (Mar. 1, 2002)(CA03–05)
CA02–06 (Mar. 1, 2002)(CA03–06)
CA02–07 (Mar. 1, 2002)(CA03–07)
CA02–08 (Mar. 1, 2002)(CA03–08)
CA02–09 (Mar. 1, 2002)(CA03–09)
CA02–10 (Mar. 1, 2002)(CA03–10)
CA02–11 (Mar. 1, 2002)(CA03–11)
CA02–12 (Mar. 1, 2002)(CA03–12)
CA02–13 (Mar. 1, 2002)(CA03–13)
CA02–14 (Mar. 1, 2002)(CA03–14)
CA02–15 (Mar. 1, 2002)(CA03–15)
CA02–16 (Mar. 1, 2002)(CA03–16)
CA02–17 (Mar. 1, 2002)(CA03–17)
CA02–18 (Mar. 1, 2002)(CA03–18)
CA02–19 (Mar. 1, 2002)(CA03–19)
CA02–20 (Mar. 1, 2002)(CA03–20)
CA02–21 (Mar. 1, 2002)(CA03–21)
CA02–22 (Mar. 1, 2002)(CA03–22)
CA02–23 (Mar. 1, 2002)(CA03–23)
CA02–24 (Mar. 1, 2002)(CA03–24)
CA02–25 (Mar. 1, 2002)(CA03–25)
CA02–26 (Mar. 1, 2002)(CA03–26)
CA02–27 (Mar. 1, 2002)(CA03–27)
CA02–28 (Mar. 1, 2002)(CA03–28)
CA02–29 (Mar. 1, 2002)(CA03–29)
CA02–30 (Mar. 1, 2002)(CA03–30)
CA02–31 (Mar. 1, 2002)(CA03–31)
CA02–32 (Mar. 1, 2002)(CA03–32)
CA02–33 (Mar. 1, 2002)(CA03–33)
CA02–34 (Mar. 1, 2002)(CA03–34)
CA02–35 (Mar. 1, 2002)(CA03–35)
CA02–36 (Mar. 1, 2002)(CA03–36)
CA02–37 (Mar. 1, 2002)(CA03–37)

Hawaii

HI02–01 (Mar. 1, 2002)(HI03–01)

Nevada

NV02–01 (Mar. 1, 2002)(NV03–01)
NV02–02 (Mar. 1, 2002)(NV03–02)
NV02–03 (Mar. 1, 2002)(NV03–03)
NV02–04 (Mar. 1, 2002)(NV03–04)
NV02–05 (Mar. 1, 2002)(NV03–05)
NV02–06 (Mar. 1, 2002)(NV03–06)
NV02–07 (Mar. 1, 2002)(NV03–07)
NV02–08 (Mar. 1, 2002)(NV03–08)
NV02–09 (Mar. 1, 2002)(NV03–09)

Mariana Islands

CM02–01 (Mar. 1, 2002)(CM03–01)

General Wage Determination Publication

General Wage Determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 14th day of May 7, 2003.

Carl J. Polesky,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–12713 Filed 6–12–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on July 9 and 10, in Room N3437 (A–C), U.S. Department of Labor, located at 200 Constitution Avenue NW., Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. on July 9 until approximately 4:30 p.m. The meeting will reconvene on July 10 at 8:30 a.m. and end at approximately 12 noon.

Agenda items will include updates of activities of both the Occupational Safety and Health Administration's (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), as well as reports from three workgroups. Workgroups will meet during the afternoon of July 9. Workgroup sessions will be open to the public from 1 p.m. until approximately 2 p.m. Presentations will also be made on the following subjects: the National Personal Protective Technology Laboratory, OSHA's Targeting Program, Hispanic and Immigrant Workers, and Information Dissemination.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Vivian Allen at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; fax 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 at the Department of Labor Building (202–693–2350). For additional information contact: Vivian Allen, Occupational Safety and Health Administration (OSHA); Room N3641, 200 Constitution Avenue NW., Washington, DC, 20210 (phone: 202–693–1935; fax: 202–693–1641; e-mail *Allen.Vivian@dol.gov*); or check the National Advisory Committee on Occupational Safety and Health information pages located at *http://www.osha.gov*.

Signed at Washington, DC this 9th day of June 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–14933 Filed 6–12–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03–067]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Small Business Innovation Research Commercial Metrics.

OMB Number: 2700–0095.

Type of review: Revision.

Need and Uses: This collection is used to assess the contributions of NASA funded Small Business Innovation Research (SBIR) technology.

Affected Public: Business or other for-profit.

Number of Respondents: 1000.

Annual Responses: 200.

Hours Per Request: 1.

Annual Burden Hours: 200.

Frequency of Report: Every three years.

Dated: June 9, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–14983 Filed 6–12–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03–068]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Eric Raynor, Code QS, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Revision.

Need and Uses: This collection provides a means by which NASA employees and contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

Affected Public: Federal Government; business or other for-profit.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Hours Per Request: 15 min.

Annual Burden Hours: 19.

Frequency of Report: As needed.

Dated: June 9, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–14984 Filed 6–12–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Meeting

SUMMARY: NASA will conduct an open forum to discuss the Agency's transformation activities and initiatives. This is a chance for members of NASA's Senior Management to discuss key Agency activities with senior level corporate and operations officials and to provide an opportunity for interaction. The forum is open to all companies currently doing business or that are considering doing business with NASA.

Note: This is not a meeting about "how to do business with NASA" for new firms, nor will it focus on small businesses or specific contracting opportunities. Position papers are not being solicited.

DATES: Thursday, June 26, 2003, from 9 to 11:30 a.m.

ADDRESSES: The meeting will be held at the NASA Headquarters Auditorium, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Yolande Harden, NASA Headquarters, Code HK, Washington, DC 20546, (202) 358–1279, or email: *yharden@nasa.gov*. Auditorium capacity is limited to 236 persons. To ensure adequate seating, a maximum of two representatives per firm is requested. Registration is requested. Interested parties can register at the following Web site: *http://www.hq.nasa.gov/office/procurement/hqforum.html*.

SUPPLEMENTARY INFORMATION:

Admittance: Admittance will be on a first-come, first-served basis. Doors will open a half-hour prior to the presentation.

Format: Remarks will be made by the Deputy Administrator, Chief of Staff, Chief Financial Officer, Deputy General Counsel, and the Assistant Administrator for Procurement followed by a question and answer period.

Key topics of discussion include:

Agency Strategic Plan
Overview—changes in the Agency since December 2000
Agency Transformation/Initiatives
- President's Management Agenda
- One NASA
- Full Cost
- Integrated Financial Management
- Information Technology
- Human Capital
- Program/Project Management

Ethics/Code of Conduct
Procurement Activities
- Competitive Sourcing/FAIR Act Inventory
- A–76

Safety
Acquisition Planning/Early Industry Involvement
NASA Shared Services Center
Small Business
Incentives
Initiatives
Property Issues/Reporting

Tom Luedtke,
Assistant Administrator for Procurement.
[FR Doc. 03–14936 Filed 6–12–03; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–064)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Evergreen Performance & Compliance, Inc., of Ohio, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. KSC–12540 entitled "High Performance Immobilized Liquid Membranes for Carbon Dioxide Separations," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of an exclusive license to Evergreen Performance & Compliance, Inc. should be sent to Assistant Chief Counsel/Patent Counsel, NASA, Mail Code: CC–A, Office of the Chief Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

DATES: Responses to this Notice must be received within June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel/ Assistant Chief Counsel, NASA, Office of the Chief Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: May 30, 2003.
Robert M. Stephens,
Deputy General Counsel.
[FR Doc. 03–14938 Filed 6–12–03; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–066)]

Notice of Prospective Patent License.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that HyPerComp Engineering, Inc. of Brigham City, Utah, has applied for a partially exclusive license to practice the inventions disclosed in NASA Case No. MFS–31727–1 entitled "Impact And Fire Resistant Coating For Pressure Vessels," NASA Case No. MFS–31838–1 entitled "Improved Pressure Vessel Impact Resistance Utilizing Filament Wound Hybrid Fibers," and MFS–31841–1 entitled "Composite Over-Wrap Material For Impact Resistant Pressure Vessels At Low Temperature." HyPerComp Engineering, Inc. may practice the invention in the field of use to design, manufacture and sell specialty high-pressure aluminum lined filament wound composite over-wrapped vessels. Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, (Mareb shall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

Dated: May 30, 2003.
Robert M. Stephens,
Deputy General Counsel.
[FR Doc. 03–14940 Filed 6–12–03; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–065)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Intellimotion, Inc., of Moffett Field, CA, has applied for an exclusive license to practice the invention described and claimed in United States Patent No. 6,167,097 and 6,278,965, "Automated Traffic Management System and Method," and "Real-Time Surface Traffic Advisor," which are both assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Rob M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: May 30, 2003.
Robert M. Stephens,
Deputy General Counsel.
[FR Doc. 03–14939 Filed 6–12–03; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–063)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Phoenix Systems International, Inc. of McDonald, OH, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. KSC–12518 entitled "Hydrogen Peroxide Catalytic Decomposition," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of an exclusive license to Phoenix Systems International, Inc. should be sent to Assistant Chief Counsel/Patent Counsel, NASA, Mail Code: CC–A, Office of the Chief Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

DATES: Responses to this notice must be received within June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel/ Assistant Chief Counsel, NASA, Office of the Chief Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: June 6, 2003.
Robert M. Stephens,
Deputy General Counsel.
[FR Doc. 03–14937 Filed 6–12–03; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 143rd meeting on June 24–25, 2003, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, June 24, 2003

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:40 a.m.–12 Noon: DOE Strategy for Resolving Key Technical Issue (KTI) Agreements (Open)—The Committee will be briefed by DOE representatives on their approach to grouping and resolving all KTI Agreements for the Yucca Mountain Project, including status and path forward.

1 p.m.–2:30 p.m.: Use of Risk Information as Basis for DOE/NRC Agreement Closure (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of Nuclear Materials Safety and Safeguards (NMSS) and DOE representatives on the use of risk information as the basis for closure of technical agreements for the Yucca Mountain Project.

2:45 p.m.–4:15 p.m.: NRC Staff Report on the Risk Significance Ranking of the 293 KTI Agreements (Open)—The Committee will hear an update by the NRC/NMSS staff on how the 293 KTI agreements were ranked into high, medium, and low risk significance.

4:15 p.m.–6 p.m.: Proposed ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting, as well as the proposed ACNW report on Status of KTI Agreement Resolution for the Proposed Yucca Mountain High Level Waste Repository (Tentative).

Wednesday, June 25, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10:30 a.m.: Spent Fuel Characterization Project (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of Nuclear Regulatory Research (RES) on a project involving spent fuel loaded in 1985 in a dry cask and opened and inspected in 1999.

10:45 a.m.–11:45 a.m.: Update on Waste Management Related Research (Open)—The Committee will receive an update from NRC/RES staff on the status of the radionuclide transport research as well as other waste-related research activities.

1 p.m.–1:30 p.m.: Plans for Performance Confirmation Working Group (Open)—The Committee will discuss the final agenda, and plans for the Performance Confirmation Working Group scheduled for the next (144th) meeting.

1:30 p.m.–2 p.m.: 2003–04 ACNW Research Report (Open)—An outline and potential plan for the next ACNW Research Report will be discussed.

2 p.m.–2:15 p.m.: Election of Officers (Open)—The members will nominate and elect members to the positions of Chairman and Vice Chairman for the period July 1, 2003 through June 30, 2004.

2:30 p.m.–5:45 p.m.: Proposed ACNW Reports (Open)—The Committee will continue to discuss proposed ACNW reports.

5:45 p.m.–6 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: June 9, 2003.
Andrew L. Bates,
Advisory Committee Management Officer.
[FR Doc. 03–14959 Filed 6–12–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA–XX–XXX (Redacted)]

In the Matter of All Panorsmic and Underwater Irradiators Authorized to Possess Greater than 370 TerraBecquerels (10,000 Curies) of Byproduct Material in the Form of Sealed Sources; Order Imposing Compensatory Measures (Effective Immediately)

I

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 and 10 CFR part 36 or comparable Agreement State regulations by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing possession of greater than 370 TerraBecquerels (TBq) [10,000 curies (Ci)] of byproduct material in the form of sealed sources either in panoramic irradiators that have dry or wet storage of the sealed sources or in underwater irradiators in which both the source and the product being irradiated are under water. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations, require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations, require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent, measures to address the current threat environment. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2 on all Licensees identified in Attachment 1 of this Order [1] who currently possess, or have near term plans to possess, greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources.

Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. The security measures contained in Attachment 2 of this Order contain safeguards information and will not be released to the public. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of safeguards information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *." This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees must ensure proper handling and protection of safeguards information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of safeguards information contained in Attachment 3. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 3, applicable to the handling and unauthorized disclosure of safeguards information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to safeguards information is limited to those persons who have established the need to know the information, and are considered to be trustworthy and reliable. A need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Licensees must ensure that they develop, maintain and implement strict policies and procedures for the proper handling and unauthorized disclosure of safeguards information in accordance with the requirements in Attachment 3. All licensees must ensure that all contractors whose employees may have access to safeguards information either adhere to the licensee's policies and procedures on safeguards information or develop, maintain and implement their own acceptable policies and procedures, but the licensees remain responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachment 3 must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of safeguards information at fixed sites, in use and in storage, and while in transit; inspections, audits and evaluations; correspondence containing safeguards information; access to safeguards information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the *Safeguards Information* category.

[1] Attachment 1 contains OFFICIAL USE ONLY sensitive information and Attachment 2 contains SAFEGUARDS INFORMATION and will not be released to the public.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources in a panoramic or underwater irradiator shall implement the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR § 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 36, *it is hereby ordered*, effective immediately, that all licensees identified in Attachment 1 to this order shall comply with the requirements of this order as follows:

A. All licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order. The licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by December 3, 2003 [180 days from date of this Order], or the first day that greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources is possessed, which ever is later.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment 2.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's or Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, Licensee submittals that contain specific physical protection or security information considered to be safeguards information shall be put in a separate enclosure or attachment and, marked as "SAFEGUARDS INFORMATION—MODIFIED HANDLING" and mailed (no electronic transmittals *i.e.*, no e-mail or FAX) to the NRC in accordance with Attachment 3.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a

hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 6th day of June, 2003.

For the Nuclear Regulatory Commission

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachments 1 and 2—Redacted

Attachment 3—Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term "Safeguards Information-Modified Handling" (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by state and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement if they possess facility SGI-M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (*See* more under Conditions for Access.)

State or local police units who have access to SGI-M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, *i.e.*, need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, "whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act." Section 147a. of the Act. Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. (*See* sections 147b. and 223 of the Act.)

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the licensee's company, *e.g.*, a parent company, may be considered as employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

1. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;
2. A member of a duly authorized committee of the Congress;
3. The Governor of a State or his designated representative;
4. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the US/IAEA Safeguards Agreement who has been certified by the NRC;
5. A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies;
6. A person to whom disclosure is ordered pursuant to 10 CFR 2.744(e); or
7. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (II) through (VII) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (1) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction. SGI–M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI–M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible; and

Administrative offices (*e.g.*, central records or purchasing) if visitors are escorted and information is not clearly visible.

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a "need-to-know" and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words "Safeguards Information—Modified Handling." The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nation-wide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI–M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as "SGI–M," originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked "Safeguards Information—Modified Handling" in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) the name, title, and organization of the individual authorized to make a SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting "Safeguards Information—Modified Handling."

In additional to the "Safeguards Information—Modified Handling" markings at the top and bottom of page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (*e.g.*, "When separated from SGI–M enclosure(s), this document is decontrolled").

In addition to the information required on the face of the document, each item of correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (*e.g.*, paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal From SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Licensees have the authority to make determinations that specific documents which they created no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M. The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document should indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI–M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are

encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI–M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. (**Note:** if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/140-1/1401val.htm*. SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as "Safeguards Information-Modified Handling" and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M should be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

[FR Doc. 03–14961 Filed 6–12–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of a Second Amendment to Special Withdrawal Liability Rules for International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: The International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan has asked the Pension Benefit Guaranty Corporation ("PBGC") to review and approve a second amendment to a special withdrawal liability rule that PBGC approved in initial and amended form in 1984 and 1998. See Approval of Special Withdrawal Liability Rules ("Notice of Approval"), 49 FR 6043 (February 16, 1984) and Notice of Approval at 63 FR 27774 (May 20, 1998). Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules, and PBGC has prescribed such regulations at 29 CFR Part 4203. The regulations provide that PBGC approval is required for a plan amendment establishing special withdrawal liability rules, as well any modification to a previously approved plan amendment. This notice describes the amendment and invites any interested person to submit written comments about it to PBGC.

DATES: Comments must be submitted on or before July 28, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the same address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov*. The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov*. Copies of the comments and the request for approval may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–325–4040).

FOR FURTHER INFORMATION CONTACT: Gennice D. Brickhouse, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Under section 4201 of ERISA, an employer that withdraws from a multiemployer pension plan incurs liability for a share of the plan's unfunded vested benefits. Section 4203(a) of ERISA provides that a complete withdrawal from a multiemployer plan occurs if an employer either (1) Permanently ceases to have an obligation to contribute under the plan; or (2) permanently ceases all covered operations under the plan. Section 4205(a)(2) of ERISA states that a partial withdrawal occurs if an employer either: (1) Permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location; or (2) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased. Under section 4205(a)(1), a partial withdrawal will also occur if the employer reduces its contribution base units—the factors that determine plan contributions, such as hours worked by employees—by seventy percent or more for three consecutive plan years.

A complete or partial withdrawal of an employer from a pension plan reduces the plan's contribution base and shifts the burden of funding plan benefits to remaining employers. The increased costs of maintaining the plan will in turn encourage other employers to withdraw, and the cumulative damage to the contribution base may eventually cause the plan to fail. "Withdrawal liability responds to these concerns by deterring withdrawals and by shoring up the contribution base of a * * * plan when withdrawals nevertheless occur [and] thus protects the interlocking interests of the PBGC, its premium payers, the non-withdrawn employers" and workers and retirees with vested benefits. *Peick* v. *PBGC*, 539 F.Supp.1025, 1046–47 (N.D.Ill. 1982), affd. 724 F.2d 1247 (7th Cir. 1983). Indeed, "it would be analytically unsound to adopt an approach" that allows a withdrawn employer to escape the costs of reparation to the plan's contribution base. *Calvert & Youngblood Coal Co.* v. *UMWA* 1950 Pension Trust, 6 Employee Benefit Cas. (BNA) 1106, 1112 (N.D. Ala. 1985)(Pointer, C.J.).

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan's contribution base. In the case of the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer performs the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan's contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term "withdrawal" for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement at any time within five years after the employer ceased its contributions.[1] There is a parallel rule for partial withdrawals from construction plans. Under section 4208(d)(1) of ERISA, "[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required."

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans that are not in the construction industry may be amended to use special withdrawal liability rules similar to those that apply to construction plans. Under the statute, the regulations "shall permit the use of special withdrawal liability rules * * * only in industries' that PBGC determines share the characteristics of the construction industry. In addition, each plan application must demonstrate that the special rule "will not pose a significant risk to the [PBGC] insurance system." Section 4208(e)(3) of ERISA provides for parallel treatment of partial withdrawal liability rules.

The regulation on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203), prescribes the procedures a multiemployer plan must follow to request PBGC approval of a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule must be similar to the statutory provision that applies to construction industry plans under section 4203(b) of ERISA. Any special rule for partial withdrawals must be consistent with the construction industry partial withdrawal provisions.

Each request for approval of a plan amendment establishing special withdrawal liability rules must provide PBGC with detailed financial and actuarial data about the plan. In addition, the applicant must provide PBGC with information about the effects of withdrawals on the plan's contribution base. As a practical matter, the plan must demonstrate that the characteristics of employment and labor relations in its industry are sufficiently similar to those in the construction industry that use of the construction rule would be appropriate. Relevant factors include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

PBGC will approve a special withdrawal liability rule only if a review of the record shows that:

(1) The industry has characteristics that would make use of the special construction withdrawal rules appropriate; and

(2) The plan in question would not be aversely affected by the adoption of the special rule. After review of the application and all public comments, PBGC may approve the amendment in the form proposed by the plan, approve the application subject to conditions or revisions; or deny the application.

Request For Comments

On March 28, 2003, the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan ("Plan") asked PBGC to approve a second modification to a previously approved plan amendment that adopted special withdrawal liability rules.[2] The regulation on Extension of Special Withdrawal Liability Rules provides that any interested party may file comments with PBGC about the request. See 29 CFR 4203.5(b).

The remainder of this Notice contains a synopsis of the application and the various legal arguments and factual representations that were submitted in support of the application.

Applicant

The Plan is a multiemployer plan whose headquarters are in San Francisco, California. The Plan was established in 1951 pursuant to collective bargaining agreements between the International Longshoremen's & Warehousemen's Union ("ILWU") and the Pacific Maritime Association ("PMA").

The PMA

The PMA is an employer association whose principal business is to negotiate and administer maritime labor agreements with ILWU. The PMA is composed of American and foreign flag vessel operators, and stevedore and terminal companies that operate in

[1] Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement.

[2] PBGC approved to the original plan amendment in 1984, and the agency approved a revised amendment in 1998. See 49 FR 6043 (1984) and 63 FR 27774 (1998).

California, Oregon and Washington ports.

The ILWU

In 1938, the National Labor Relations Board certified the ILWU as the exclusive bargaining representative for a bargaining unit that includes all longshore workers employed by PMA members on the Pacific Coast. See Shipowners' Association of the Pacific Coast, 7 NLRB 1002, 1041 (1938), review dismissed, 103 F.2d 933 (D.C. Cir. 1939), affirmed, 308 U.S. 401 (1940) (certifying the ILWU as the exclusive bargaining representative for "all workers who do longshore work in the Pacific Coast ports of the United States"). Thus, the PMA–ILWU bargaining agreements cover all workers employed in the loading and unloading of all dry cargo for ocean-going vessels arriving at or departing from ports along the Pacific coast of the United States, including all ports in the states of California, Oregon and Washington.[3]

The Plan

The Plan was established in 1951. Plan benefits are established as part of the collective bargaining process. Plan contributions are determined under a system, established in 1983, that governs all fringe benefit costs under the PMA–ILWU agreement. The system allocates assessments between man-hours and tonnage based on a membership agreement filed with the Federal Maritime Commission. The system works as follows. A man-hour rate is established by dividing a divisor that is established by the agreement into the total annual projected cost for all ILWU–PMA benefits. The result is a man-hour rate that is then multiplied by the total hours expected to be worked during the year to determine the amount of the benefits and costs that will be funded by man-hours. The remaining funds are collected from tonnage. To the extent that man-hours are less than the divisor, assessments are collected on tonnage to fund the benefits in an order of priority established by the agreement. The pension benefits have the highest priority on man-hour contributions. Contributions on tonnage would not be used to fund pensions unless the annual assessments on man-hours were insufficient to meet the annual pension funding obligation required by the Internal Revenue Code.

The total number of contributing employers, based on federal tax identification numbers, has remained stable over several decades. There were 100 contributors in 1972, 107 in 1979, 114 in 1996 and 114 in 2002. The contributors in 1996 that remain contributors in 2002 represent over 99% of the total contributions to the Plan.

Current Financial Status of the Plan

The Plan operates on a July-June fiscal year. The Form 5500 filed for the 2001–02 plan year reports the Plan covered 10,526 active workers, paid benefits to 4547 pensioners and 3759 survivors, and had only 9 inactive participants (or survivors) with vested entitlements. The Plan received $23.9 million in contributions, and paid out $134 million in benefits, as well as $7.8 million in administrative expenses. At year end, plan assets were approximately $1.943 billion.

Under the current version of the special rule, the Plan actuary must provide the PBGC with annual certifications that at least 85% of the Plan's liabilities for vested benefits (determined using specified set actuarial assumptions) are covered by Plan assets. The certification must also show other information about plan contributions and benefit payments. The following table presents this data for the plan years since the PBGC last considered the withdrawal liability exemption.

	Plan year ending June 30, 1997	Plan year ending June 30, 1998	Plan year ending June 30, 1999	Plan year ending June 30, 2000	Plan year ending June 30, 2001	Plan year ending June 30, 2002
Assets	$1.63 billion	$1.91 billion	$2.16 billion	$2.40 billion	$2.22 billion	$1.93 billion
Vested Benefits	$1.69 billion	$1.66 billion	$1.63 billion	$1.83 billion	$1.99 billion	$1.84 billion
Active Participants	8,315	8,859	9,572	9,395	10,070	10,113
Contributions	$104 million	$35.0 million	$28.8 million	$32.5 million	$26.9 million	$23.5 million
Benefit Payments	$101.5 million	$108.0 million	$110.6 million	$126.4 million	$132.9 million	$154 million
Plan Assets As Multiple of Benefits.	16.1	17.7	19.6	19.0	16.6	12.5

Future Industry Prospects

The application lays great emphasis upon the fact that PMA members handled "virtually all of the over 263 million revenue tons of dry cargo that went through West Coast ports in 2002. It is estimated that this cargo had a value of $320 billion and generated ocean shipping revenues of approximately $14.7 billion." The application asserts that the financial health of the Plan "is not tied to the fortunes of any one member. Rather, Plan contributions are dependent only on the amount of cargo shipped through West Coast ports. The Plan is thus not at risk even if some of its largest employers both cease operations and are not replaced by another contributing employer (which * * * is highly unlikely in any event).

The application reported that "the West Coast shipping industry has grown steadily over the past five decades. Total dry cargo at all covered ports amounted to 29 million revenue tons in 1960, 114 million revenue tons in 1980, 182 million revenue tons in 1990 and 263 million revenue tons in 2002. This change is reflected in the number of covered hours by ILWU-represented employees. Such hours increased from 15.6 million in 1992 to more than 24 million in 2002." Thus, the application contends that the PMA–ILWU "lock" on all shipping imports resembles the geographic coverage that is said to typify the construction industry.

The application asserts that "the mobility of longshore workers is quite similar to that of many construction industry workers. Many West Coast longshore workers do not typically work for the same employer on a regular basis." The application uses the payroll system to illustrate the extent of employment mobility. "[W]ithin a single week," the application states, "a longshore worker often has more than one employer." For this reason, "PMA acts as the payroll agent for all of its members. The employers remit cash wages and collectively bargained-for employee benefit contributions to PMA, which in turn issues weekly payroll checks to ILWU members and transmits contributions to various benefit funds. Because of this system, a worker tends to regard PMA as his or her employer, and may have little awareness of who is his or her actual employer."

[3] Vessel operators who are not PMA members must contract with a stevedoring company or terminal operator that belongs to PMA in order to unload cargo.

Special Withdrawal Liability Rules

When approving the amended special withdrawal liability rule, PBGC gave the following synopsis of the original special rule.

Under the special rules, a complete withdrawal occurs if an employer who makes contributions to the Plan for longshore work permanently ceases to have an obligation to make contributions to the Plan, and: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States, (2) resumes such work at any time during the Plan Year in which the contribution obligation ceased through the end of the fifth succeeding Plan Year without renewing the contribution obligation, (3) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained, or (4) ceases to have an obligation to contribute in connection with the withdrawal of every employer from the Plan or substantially all of the employers within the meaning of section 4219(c)(1)(D) of ERISA. A partial withdrawal occurs if an employer incurs a partial withdrawal within the meaning of section 4205 of ERISA and, in addition, at any time from the date of the partial withdrawal through the succeeding five Plan Years: (1) Performs work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States without having an obligation to contribute to the Plan for such work, or (2) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained.

The special withdrawal liability rules were subject to the Plan's satisfying certain funding requirements. In 1998, PBGC approved the Plan's request to modify the funding requirements in connection with an amendment adopted by the PMA and the ILWU. The funding requirement, as amended in 1998, is as follows:

PBGC hereby grants the Plan's request for approval of a plan amendment modifying special withdrawal liability rules, as set forth herein. PBGC grants approval under the condition that such approval will expire, and the Plan's special withdrawal liability rules will be void as of the first day of the Plan Year following a Plan Year for which the Plan is not at least eighty-five percent (85%) funded, and during said following Plan Year the Contributions are less than the least of (a) total administrative cost and benefits for said following Plan Year or (b) the amount required to increase the Funding Percentage to eighty-five percent (85%) for said following Plan Year or (c) the maximum tax-deductible contribution to the Plan. The Plan has agreed to certify to these conditions annually. Should the Plan wish to again amend these rules at any time, PBGC approval of the amendment will be required.

The 2002 Collective Bargaining Agreement

After protracted disagreements and work stoppages, the PMA and ILWU solicited and obtained the assistance of the Chairman of the Federal Mediation and Conciliation Service in an effort to reach a new labor agreement. With his assistance, the parties reached a six-year labor contract that allows for cost savings due to improvements in technology. The new labor contract provided for a gradual increase in Plan benefits from $95 per month per year of service (for a maximum of 35 years of service) to $150 per month per year of service. The entire labor contract (and not just the increase in pension benefits) is contingent on PBGC approval of the pending request. The application represents that the labor agreement must be renegotiated from scratch in the event PBGC denies the request.

The Proposed Amendment

The Plan has requested approval of several amendments to the existing rule. In particular, the Plan seeks to:

(1) Revise certain actuarial assumptions (relating to mortality, disability, marital status, and expected retirement dates) in order to reflect emerging actuarial experience. The Plan does not propose to change other assumptions used for the annual actuarial certification to PBGC.

(2) modify, on a temporary basis, the 85% funding requirement instituted in 1998. The Plan requests that this requirement be lowered to 65% through the end of the plan year ending June 30, 2008. The percentage would then increase by 3% per plan year until it again reaches 85%.

(3) modify, on a temporary basis, the Plan's 80% funding requirement instituted in 1984. That requirement provides for additional contributions as of plan valuation date if the Plan's funded status is projected to fall below 80% in the 5th year following the valuation date. The Plan requests that this requirement be lowered to 65% through the end of the plan year ending June 30, 2008. The percentage funded status requirement would then increase by 3% per plan year until it again reaches 80%.

The Plan acknowledges that the benefit increases promised under the 2002 collective bargaining agreement, combined with "the disappointing stock market performance in the past few years" will be likely to cause the Plan to fall below the 85% funding requirement set in the 1998 agreement with the PBGC. This would evidently require substantial contribution increases over the next several years, and these costs would reduce investment needed, among other things, to reduce shipping costs and thereby improve the long-term funding base of the Plan. The PMA and the ILWU jointly posit that this "temporary reduction" in the 85% funding requirement "will help the West Coast ports to obtain long-term benefits that will long outlast the six-year term of the collective bargaining agreement".

The Plan also maintains that experience from 1984 through the present confirms the accuracy of the PBGC determination that the West Coast shipping industry shares the salient characteristics of a construction plan. In the words of the application:

So long as the work of ILWU members is necessary for the movement of all types of cargo, the contribution base of the Plan rests upon the amount of cargo shipped. The amount of cargo shipped through West Coast ports is independent of the existence of any particular longshore employer.

In addition, like the construction industry, the work is local, performed at the port of embarkation or debarkation. An employer cannot withdraw from the Plan while continuing to perform longshore work at West Coast ports, because longshore work along the entire West Coast for all ocean-going dry cargo work is covered under collective bargaining agreements that require contributions to the Plan. Given that the entire West Coast is one bargaining unit, it is not possible for cargo to be loaded or unloaded at any point on the coast without contributions being paid to the Plan. Thus, as a practical matter, it is not realistic to expect noncontributory, covered work. Nonetheless, if a former contributing employer were to compete against the Plan's other employers in this way, thereby diminishing the Plan's

contribution base, withdrawal liability would be imposed pursuant to the special liability rules previously approved by the PBGC. Because of the local nature of the work and the requirement that contributions be made to the Plan for all longshore work done on the West Coast, the comings and goings of employers do not have an adverse effect on the Plan's contribution base, which is dependent upon the vitality of the West Coast shipping industry as a whole. Thus, the covered industry evidences characteristics that indicate that cessations by employers do not have a weakening effect on the Plan's contribution base.

The Plan further contends that past experience and reasonable future projections show that the relaxation of the current rule will not pose an unacceptable risk of loss to PBGC or participants.

The Plan's funded status has improved dramatically since 1984, underscoring the ability of the industry to fund the Plan * * *. And, even though the Plan's funded status will decline for a time once the amendment fully takes effect, the Plan and the covered industry have unique characteristics that suggest that the Plan's contribution base is likely to remain stable * * * [Actuarial projections show that] the Plan's funding policy will return the Plan to 85% funding in a little over ten (10) years * * *. The Plan's continuation is dependent only on the continued activity in the West Coast shipping industry as a whole. Consequently, the Plan's contribution base is secure and the departure of one employer from the Plan is highly unlikely to have an adverse effect on the contribution base so long as the level of shipping does not decline.

Comments

All interested persons are invited to submit written comments concerning the pending request to PBGC at the above address, on or before July 28, 2003. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov*. Copies of the comments and the pending request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–325–4040).

Issued in Washington, DC, on this 10th day of June 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–14969 Filed 6–12–03; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 2003 is 4.53 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 2002 and June 2003.

For premium payment years beginning in—	The required interest rate is—
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of June, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–14953 Filed 6–12–03; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Request for Comments on Revising and Updating the 2004–2008 Five-Year Strategic Plan, Pursuant to the Government Performance and Results Act of 1993

AGENCY: Postal Service.

ACTION: Request for comments.

SUMMARY: The Government Performance and Results Act of 1993 (GPRA) mandated, in 1997, that the Postal Service™ publish a 5-year plan outlining its goals, targets, and strategies, and that the Postal Service update and revise its 5-year plan at intervals of no less than 3 years. In so doing, GPRA states that the Postal Service must, as an aspect of its strategic planning process, solicit and consider the ideas, knowledge, and opinions of those potentially affected by or interested in its 2004–2008 Five-Year Strategic Plan. This notice, therefore, asks for public comment concerning the development and drafting of the Postal Service's 2004–2008 Five-Year Strategic Plan.

DATES: Comments must be received by July 18, 2003.

ADDRESSES: Written comments should be directed to Julie S. Moore, Acting Vice President, Strategic Planning, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5016, Washington, DC 20260–5142. Comments may also be sent to *5YearStrategicPlan@usps.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Van Coverden, (202) 268–8130.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Government Performance and Results Act of 1993 (GPRA), Public Law 103–62 was enacted to make Federal programs more effective and publicly accountable by requiring agencies to institute results-driven improvement efforts, service-quality metrics, and customer satisfaction programs. Other statutory goals were to improve Congressional decisionmaking and the internal management of the United States government, as cited in Public Law 103–62, section 2(b), 107 Stat 285. Because of the Postal Service's role as an independent establishment of the Executive Branch of the government of the United States, section 7 of the law establishes separate provisions that apply to the Postal Service. (*See* 39 U.S.C. 2801–2805.)

Section 2802 of title 39, United States Code, required that the Postal Service submit to the President and Congress a strategic plan for its program activities no later than September 30, 1997. Additionally, section 2802 requires the Postal Service to update and revise its strategic plan at least every 3 years. This plan is to contain the following:

(1) A comprehensive mission statement covering the major functions and operations of the Postal Service.

(2) General goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Postal Service.

(3) Descriptions of how these goals and objectives are to be achieved and of the operational processes; skills and technology; and the human, capital, information, and other resources required to meet the goals and objectives.

(4) A description of how the performance goals included in the annual performance plan required under section 2803 will be related to the general goals and objectives in the strategic plan.

(5) An identification of the key factors external to the Postal Service and beyond its control that could significantly affect the achievement of its general goals and objectives.

(6) A description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations. (*See* 39 U.S.C. 2802(a).)

GPRA also requires the preparation of annual performance plans covering each program activity set forth in the Postal Service budget. (*See* 39 U.S.C. 2803.) These plans link the organizational goals in the Strategic Plan with ongoing operations. Finally, the law requires the preparation of annual performance reports, which review and compare actual performance with the performance targets stated in the annual plans. (*See* 39 U.S.C. 2804.)

In order to continue to involve the public in this planning process, GPRA also requires the Postal Service, as it develops each new iteration of the Strategic Plan, to "solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan." (*See* 39 U.S.C. 2802(d).)

Discussion of the Postal Service Mission, Vision, and Objectives

In 1970, Congress enacted the Postal Reorganization Act, transforming the former Post Office Department into the United States Postal Service. Its intent was to ensure that the former department became a self-sustaining Federal entity, which operates more like a business. While fulfilling its basic mission of providing affordable and universal service, the Postal Service, as a unique Government enterprise, would also focus more clearly on all its customers' needs than had its predecessor Executive Branch department.

The Postal Reorganization Act states that the Postal Service will have the "basic and fundamental" responsibility to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people. Prompt, reliable, and efficient postal services, the legislation mandates, will be extended to patrons in all areas and to all communities.

In recent years, the historic mission of the Postal Service, as described in 39 U.S.C. 101, has been amplified by additional organizational statements of purpose published most recently in the April 2002 *Transformation Plan*. In the Plan's opening message the then-Chairman of the Board Robert F. Rider and the current Postmaster General and CEO John E. Potter note that the Postal Service must transform "to successfully carry out its long-standing mission of providing universal service." They state that transformation "is about maintaining a fundamental principle and vision that delivery of mail is an important government service, regardless of where one lives or what one's station in life might be. Equal access and opportunity to communicate through the mail to meet personal and commercial needs support a basic American value of equality." In the introduction to the Plan, the Postal Service explains that "At stake is the future of what has been, since this nation's founding, the right of every American to send and receive mail. The Postal Service exists as a governmental entity whose mission is universal service to all. That mission is a direct reflection of the values on which this country was founded, and it is those values of equality of opportunity that drive Postal Service management today just as they drove the managers of the Post Office Department."

The authors of the Transformation Plan further say that "In developing this report, we gratefully acknowledge the assistance of the full range of stakeholders in the postal industry. At the outset, therefore, we would like to articulate a firm commitment to all of these stakeholders, and especially to our customers. During this crucial transformation period, in order to maintain our financial viability and fulfill our universal service mission, we commit that we will:

• Foster growth by increasing the value of postal products and services to our customers;
• Improve operational efficiency; and
• Enhance the performance-based culture."

In their opening message Mr. Rider and Mr. Potter recognize their responsibility "to take definitive action to offer the citizens of America a clear and compelling view of current and planned actions and our vision of where we are headed. At the same time we want to encourage all our stakeholders to remain actively engaged in discussions about postal issues and the Postal Service's future."

It is in this spirit, as the Postal Service develops the 2004–2008 Five-Year Strategic Plan, that we ask stakeholders to once again share their views on its future.

Solicitation of Comments

The United States Postal Service solicits identification of and comment on the key factors external to the Postal Service and beyond its control which could significantly affect the achievement of its mission, vision, and goals. During development of the Transformation Plan and during subsequent Postal Service testimony before the President's Commission on the Postal Service the following fundamental changes were identified as those reshaping the delivery services marketplace:

• *Changing customer needs.* With access to more information and options than ever before, customers have a broad range of choices for delivery of messages, money, and merchandise—our three businesses. Customer requirements for postal services and entrenched network structures and service patterns may be changing.
• *Eroding mail volumes.* Electronic alternatives, particularly bill presentment and payment, pose a definite and substantial risk to First-Class Mail® volume and revenue within the next 5–10 years. This could, in turn, have a negative impact on First-Class Mail rates.
• *Rising costs.* Despite major gains in efficiency and productivity through letter mail automation, the costs of maintaining an ever-expanding postal network are rising faster than revenue, especially costs outside the direct control of the Postal Service, such as retirement and health benefit liabilities.
• *Fixed costs.* Universal service requires a significant infrastructure to deliver postal services. Almost half of current Postal Service costs are spent on these resources, and that level does not change when volume or productivity increases or decreases. This makes cost containment challenging.
• *Merging of public and private operators into global networks.* Former national foreign postal services, some privatized, have entered the U.S. domestic market; giant private firms that dominate global parcel and express markets are entering an increasing portion of the postal value chain.
• *Increasing security concerns.* Rising security concerns will require expensive and sophisticated countermeasures.

Are these factors still relevant? Which ones are relevant and which are not? Are some more important than others? Is the rate of change for each factor increasing or decreasing? Are there other factors that warrant consideration? What are they? In developing the 2004–2008 Five-Year Strategic Plan, the Postal Service would like to receive stakeholders' views and comments on these and other long-term external changes, issues, and trends.

Finally, stakeholders should include their comments that were made to the President's Commission on the Postal Service regarding the United States Postal Service if reviewing such comments would help the Postal Service in developing its 2004–2008 Five-Year Strategic Plan.

The Postal Service also invites comment on its long-range organizational goals, or objectives, published most recently in the Preliminary Annual Performance Plan for 2004 as part of the FY 2002 Comprehensive Statement on Postal Operations. The Postal Service has employed long-range goals, or objectives, as part of a strategic planning process for over two decades, along with systematic performance assessments. The Postal Service has developed a disciplined process to establish the goals, objectives, indicators, and targets; assign resources to programs that support achievement of the targets; implement the programs; and review performance. Stakeholder input will support and enhance both the performance process and the new 2004–2008 Five-Year Strategic Plan.

Specifically, the Postal Service solicits stakeholder comment on the following long-range organizational goals and objectives:

Goal	FY 2004 preliminary performance objective (subgoals)
Growth	• Timeliness and consistency. • Priority Mail® (Air) On Time. • Priority Mail (Surface) On Time. • Express Mail® On Time. • Overnight First-Class Mail On Time. • Two-Day First-Class Mail On Time. • Three-Day First-Class Mail On Time.
Motivated, productive and inclusive workforce.	• Minimize impacts from accidents and absences. • Employees committed to Postal Service success.
Affordability	• Improve productivity to control costs, improve contribution levels, and grow the business.

Any comments pertaining to the means by which the Postal Service can best achieve these goals are welcome. Comments on other aspects of strategic planning, goal-definition, and performance measurement are also welcome.

This request for comments initiates a formal process for the development of the 2004–2008 Five-Year Strategic Plan, and offers an opportunity for stakeholder comments to be given careful consideration in the development of the plan's goals, targets, and strategies. While its July 18 deadline corresponds with a need and requirement for formality in the development of this plan, the strategic planning process itself is continuous and welcomes ongoing input from all stakeholders in the development of annual business environmental assessments, and annual performance plans and reports.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 03–15066 Filed 6–12–03; 8:45 am]
BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:
Rule 489 and Form F–N; SEC File No. 270–361; OMB Control No. 3235–0411.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 489 under the Securities Act of 1933, Filing of Form by Foreign Banks and Certain of their Holding Companies and Finance Subsidiaries; and Form F–N, Appointment of Agent for Service of Process by Foreign Banks and Foreign Insurance Companies and Certain of Their Holding Companies and Finance Subsidiaries Making Public Offerings of Securities in the United States.

Rule 489 under the Securities Act of 1933 requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are excepted from the definition of "investment company" by virtue of rules 3a–1, 3a–5, and 3a–6 under the Investment Company Act of 1940 to file Form F–N to appoint an agent for service of process United States when making a public offering of securities. Approximately four entities are required by rule 489 to file Form F–N, which is estimated to require an average of one hour to complete. The estimated annual burden of complying with the rule's filing requirement is approximately five hours, as one of the entities has submitted multiple filings.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 9, 2003.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–14966 Filed 6–12–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17a–6, SEC File No. 270–433, OMB Control No. 3235–0489.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Rule 17a–6 (17 CFR 240.17a–6) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, "SROs") to destroy or convert to microfilm or other recording media records maintained under Rule 17a–1, if they have filed a record destruction plan with the Commission and the Commission has declared such plan effective.

There are 26 SROs: 9 national securities exchanges, 1 national securities association, 15 registered clearing agencies, and the Municipal Securities Rulemaking Board. These respondents file no more than one record destruction plan per year, which requires approximately 160 hours for each plan. However, we are discounting that figure by a factor of 20 given our experience to date with the number of plans that have been filed. Thus, the total annual compliance burden is estimated to be 8 hours. The approximate cost per hour is $200, resulting in a total cost of compliance for these respondents of $1,600 per year (8 hours @ $200 per hour).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 5, 2003.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–14967 Filed 6–12–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48000; File No. SR–Amex–2003–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Auxiliary Opening Procedures for Nasdaq National Market Securities

June 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act");[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex.[3] Amex filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Commission staff made non-substance typographical changes to the text of the proposed rule change with the permission of Amex. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, June 6, 2003.
[4] 15 U.S.C. 78s(b)(3)(A).
[5] 17 CFR 240.19b–4(f)(6).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Rule 118(k) relating to implementation of auxiliary opening procedures on expiration days in Nasdaq National Market securities traded pursuant to unlisted trading privileges ("UTP"). Below is the text of the proposed rule change. New text is in *italics*.

* * * * *

Trading in Nasdaq National Market Securities

Rule 118.

(a) through (j) No change.

(k) Expiration Day Auxiliary Procedures for the Opening

The Exchange has adopted auxiliary procedures for expiration days in order to integrate stock orders in Nasdaq securities relating to expiring index contracts into the Amex's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices in the underlying security, as identified by a qualified clearing corporation e.g., the Options Clearing Corporation) and the four end-of-calendar-quarter trading days when index options expire. The twelve expiration Fridays are "Expiration Fridays" which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month. Orders relating to index contracts whose settlement pricing is based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's opening prices must be received by the Amex Order File ("AOF") or by the specialist by 9 a.m. These orders may be cancelled or reduced in size. Firms canceling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 153 provides. Stock orders relating to index contracts whose settlement pricing is not based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's opening prices may be entered before or after 9 a.m. To facilitate early order entry, AOF (a) will begin accepting orders at 7:30 a.m. and (b) will accept orders of 99,900 shares or less.

"Limit at the opening" ("limit OPG") orders are permitted, including delivery through Exchange systems. Ordinary limit orders may also be entered.

Order Identification

Stock orders relating to opening-price settling contracts must be identified "OPG". Firms entering these orders through AOF, but unable to identify orders as "OPG," may use a unique branch code or firm identifier (mnemonic) to identify these orders. Firms unable to identify these orders in either way, and firms not using AOF, must submit a list of all these orders and related details to the Amex Market Surveillance Department.

Dissemination of Order Imbalances

On expiration days, for any stocks having a market order imbalance of 25,000 shares or more at 9 a.m., the Exchange will disseminate the size of the order imbalance via a structured communication process established with major news vendors as promptly as practicable after 9 a.m. Imbalances of less than 25,000 shares may be disseminated at that time with Floor Official approval. A "no imbalance" status will not be published for any stock.

Except for the auxiliary procedures described above, all stocks are subject to the regular Amex opening procedures, including price indications where a substantial price change is anticipated. Ten minutes must elapse between a first indication and a stock's opening. However, when more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication.

Indications

Indications before the opening should be disseminated at 9:15 a.m., if possible, but any indications disseminated prior to 9:30 a.m. require the approval of a Floor Governor or Exchange Official, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day. Indications will be disseminated via a structured communication process established with major news vendors.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to provide procedures to accommodate handling opening-price orders on expiration days in Nasdaq National Market securities. The Exchange believes that this will enhance the Exchange's Nasdaq UTP program by facilitating the handling of orders routed to the Exchange before the Exchange opening in Nasdaq stocks on expiration days. Expiration days include Expiration Fridays (when some stock index options, index futures and options on index futures expire or settle concurrently), and the four end-of-calendar-quarter trading days when index options expire.

Nasdaq stocks are not currently subject to auxiliary opening procedures in any market trading Nasdaq securities. According to the Exchange, the New York Stock Exchange ("NYSE") has long implemented such procedures for NYSE-listed issues with the expressed aims of minimizing excess volatility associated with expiration days and allowing market participants the opportunity to react to the additional market information provided under NYSE's auxiliary opening procedures as set forth in NYSE Rule 123C.[6] The Exchange believes similar procedures applicable to Nasdaq securities will provide market participants, including off-Floor participants, with useful information relating to the potential impact of index-related orders on opening prices of securities on expiration days.[7] The Exchange believes that this will provide a model that will increase transparency, reduce volatility and facilitate a fair and orderly opening process in Nasdaq securities on expiration days.

Under current Amex procedures applicable to all securities traded on the Amex, including Nasdaq securities, an order imbalance before the opening may result in a delayed opening, with price indications disseminated where a substantial price change is anticipated. The Exchange believes that providing auxiliary opening procedures for Nasdaq securities traded on the Exchange will provide a valuable additional service for market participants engaging in index-related trading on expiration days, by allowing them to better gauge trading interest in Nasdaq stocks traded on the Exchange on days when there is the potential for additional market pressure resulting from index trading. The Nasdaq National Market stocks traded on the Amex are among the largest Nasdaq stocks and the ones most likely to be the subject of index-related trading on expiration days.

Proposed Amex Rule 118(k) will provide for acceptance on expiration days of opening price orders of 99,900 shares or less in Nasdaq stocks through the Amex Order File ("AOF") beginning at 7:30 a.m. (Eastern Time). Orders relating to index contracts whose settlement pricing is based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's opening prices would be required to be received by the AOF or by the specialist by 9 a.m. These orders could be cancelled or reduced in size. Firms canceling these orders or reducing them in size would be required to prepare contemporaneously a written record describing the rationale for the change and to preserve it as Amex Rule 153 provides.

On expiration days, for Nasdaq stocks having a market order imbalance on the Amex of 25,000 shares or more, the Exchange will disseminate the size of the order imbalance as promptly as practicable after 9 a.m. Stock orders on expiration days relating to opening-price settling contracts would have to be identified "OPG." Firms entering these orders through AOF, but unable to identify orders as "OPG," may use a unique branch code or firm identifier (mnemonic) to identify these orders. Firms unable to identify these orders in either way, and firms not using AOF, must submit a list of all these orders and related details to the Amex Market Surveillance Department. Imbalance information would be disseminated by means of a structured communication process established with major news vendors (*e.g.*, Bloomberg, Dow Jones) utilizing, among other things, File Transfer Protocol to permit public dissemination of order imbalance information at 9 a.m. or as soon thereafter as practicable. With Floor Official approval, imbalances of less than 25,000 shares may be disseminated as soon as practicable after 9 a.m.

With the exception of these auxiliary procedures for expiration days, regular Amex opening procedures for all trading days (not only expiration days) would apply, including price indications where a substantial price change is anticipated. Indications, as well as messages for "opening delay" and "trading resumed," will also be communicated by means of the structured communication process referenced above. Ten minutes would be required to elapse between a first indication and the stock's opening. When more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication. Indications before the opening would have to be disseminated at 9:15 a.m., if possible. An indication disseminated before 9:30 a.m. would require Floor Governor or Exchange Official approval, or Floor Official approval if it relates to a spin-off or if trading had been halted and not resumed the prior day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in response to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), and because Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No.

[6] *See e.g.* Securities Exchange Act Release No. 31733 (January 14, 1993), 58 FR 6034 (January 25, 1993).

[7] The Exchange also has filed with the Commission another proposed rule change relating to auxiliary opening procedures (SR–Amex–2003–21). Those procedures will apply to Amex-listed securities and the Exchange intends to clarify in an amendment to SR–Amex–2003–21 that auxiliary opening procedures for Nasdaq securities would be governed by Amex Rule 118(k).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

Amex–2003–55 and should be submitted by July 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14968 Filed 6–12–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular—Reusable Software Components

AGENCY: Federal Aviation Administration, DOT:

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comments on, a proposed Advisor Circular that guides Reusable Software Component (RSC) developers, integrators, and applicants to gain Federal Aviation Administration (FAA) acceptance of software components that may makeup a part of the system's software application. This proposed AC also provides a means of FAA acceptance for obtaining credit to use previously approved RSC in follow-on projects.

DATES: Submit comments on or before July 15, 2003.

ADDRESSES: Send all comments on the proposed Advisory Circular to: Federal Aviation Administration, Aircraft Certification Service, AIR–120, Room 835, 800 Independence Avenue, SW., Washington, DC 20591. You may deliver comments to: Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Room 835, Washington, DC 20591. Your comments must identify the Advisory Circular file number.

FOR FURTHER INFORMATION CONTACT: Mr. John Lewis, Federal Aviation Administration, Aircraft Certification Servico, AIR–120, Federal Aviation Administration, Room 835, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 493–4841, FAX: (202) 267–5340; E-mail address: *John.Lewis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed Advisory Circular by submitting written data, views, or arguments to the address listed above. You can examine comments received on the proposed Advisory Circular before and after the comment closing date at the FAA's Headquarters Building, Room 835, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final Advisory Circular.

Background

Currently, there are no procedures for Reusable Software Components (RSC) developers to directly transfer their accepted data from one project to the next and across company boundaries. Traditionally, RSC developers provided substantiation in one of two ways. First, by resubmitting the data package and repeating the work for each system's application. Secondly, by providing traceability through the TC, ATC, STC, ASTC, or TSO approval back to the desired data and defending the validity of the original approval basis for each application. This AC builds upon that reuse concept by considering components that are reused company boundaries.

Economic incentives and technical advances in software development have made it desirable to the integrator or applicant to develop a RSC that can be integrated into a number of target computers, environments, or both. In these cases, the RSC developer may partially meet the applicable RTCA/DO–178B objectives, while the integrator, applicant (or both) is responsible for completing the software and certification compliance activities. Examples of potential RSCs include software libraries, input and output data files, operating systems, and communication protocols.

How To Obtain Copies

You may get a copy of the proposed AC from the FAA Web site at: *http://www.airweb.faa.gov/rgl*. You may also request a copy from Mr. John Lewis, see section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address. You may inspect the RTCA document at the FAA office location listed under **ADDRESSES**. However, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc. You may purchase copies of Document No. RTCA/DO–178B from: RTCA Inc., 1828 L Street, NW., Suite 807, Washington, DC 20036 (Web site: *http://www.rtca.org*).

Issued in Washington, DC, on June 5, 2003.

Nancy C. Lane,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–15001 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held June 25, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- June 25
- Opening Session (Welcome and Introductory Remarks, Review/ Approve Summary of Previous Meeting).
- Publication Consideration/Approval:
  - Final Draft, Plans and Principles for the Implementation of Aeronautical Data Link System (ADLS) Edition 1. Aeronautical Telecommunications Network (ATN) Baseline 1, RTCA Paper No. 083–03/PMC–277, prepared by SC–194.
  - Final Draft, NEXCOM Plan, U.S. National Airspace System (NAS) Plan for Transition to Air/Ground ICAO VDL Mode 3 Based Integrated Voice and Data Communications, RTCA Paper No. 067–03/PMC–274, prepared by SC–198.
  - Final Draft, Change 1 to DO–284, Next Generation Air/Ground Communications System (NEXCOM) Safety and Performance Requirements (SPR), RTCA Paper No. 097–03/PMC–278, prepared by SC–198.
- Discussion:
  - Special Committee 202, Portable Electronic Devices.
  - Update Terms of Reference.
  - Special Committee Chairman's Reports.
- Action Item Review:
  - Review/Status—All open action items.
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 3, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–15003 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operation Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM).

DATES: The meeting will be held on July 8–10, 2003, beginning at 10 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 201 meeting. The agenda will include:

- July 8–10:
- Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Background).
- Review comments to Draft Document Version D2.
- Drafting group work on other sections of the document.
- Subgroup A Section 2, Airline Operational Control (AOC), Data Link Services.
- Subgroup B Section 3, Guidelines for Application of AOC Data Link Services.
- Subgroup C Section 4, Affected AOC Data Link Services.
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Note: This agenda will be followed as appropriate over the course of 3 days.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 4, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–15002 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Final Policy Statement, Diesel Engine Installation, PS–ACE100–2002–004

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy.

SUMMARY: This notice announces the issuance of policy PS–ACE100–2002–004, Final Policy Statement, Diesel Engine Installation. The purpose of this policy statement is to identify appropriate certification requirements for installation of a diesel engine into a small airplane. It also includes guidance related to methods of compliance as well as items that may require equivalent level of safety findings (ELOS) or special conditions.

DATES: PS–ACE100–2002–004 was issued by the Acting Manager of the Small Airplane Directorate on May 15, 2003.

How To Obtain Copies: A paper copy of the policy PS–ACE100–2002–004 may be obtained by contacting Mr. Pete Rouse, (816) 329–4135, Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Office, 901 Locust, Room 301, Kansas City, MO 64106, or by faxing your request to (816) 329–4090. The policy will also be available on the Internet at *http://www.airweb.faa.gov/policy*.

Issued in Kansas City, Missouri on May 22, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate.

[FR Doc. 03–14993 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement PS–ACE100–2002–002, Installation Approval of Multi-Function Displays Using the Approved Model List (AML) Supplemental Type Certification (STC) Process

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy

SUMMARY: This notice announces a revision to Policy Statement PS–ACE100–2002–002, Installation Approval of Multi-Function Displays Using the Approved Model List (AML) Supplemental Type Certification (STC) Process. Appendix A has been added to the original policy to describe a process for approval of multi-function displays that provide supplemental navigation information during Instrument Flight Rules (IFR) operation. Minor editorial changes to the policy statement have been incorporated.

DATES: Policy Statement Number PS–ACE100–2002–002 with Revision A was issued by the Manager, Small Airplane Directorate, ACE–100, Aircraft Certification Service, on May 21, 2003.

How To Obtain Copies: A paper copy of the Policy Statement Number PS–ACE100–2002–002 with the appendix may be obtained by contacting Barry Ballenger, Aerospace Engineer, FAA, Small Airplane Directorate, Continued Operational Safety, ACE–113, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4152; facsimile: (816) 329–4149; e-mail: *barry.ballenger@faa.gov*. The policy revision with the appendix will also be available soon on the Internet at: *http://www.airweb.faa.gov/policy*.

SUPPLEMENTARY INFORMATION: The FAA encourages the use of the AML STC process for installation approval of MFDs.

[12] 17 CFR 200.30–3(a)(12).

Discussion

This appendix and policy statement do not introduce new policy or regulation but provide a compilation of existing regulation, guidance, and procedures in the application of the AML STC process for certification projects. The AML STC process may be used whenever the ACO and applicant agree that it is appropriate. The AML STC process may also be effective for a certification project of an aircraft under another certification basis. The applicant should coordinate with the appropriate ACO for final determination.

Issued in Kansas City, Missouri on May 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14994 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34342]

Kansas City Southern—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34342; Notice of Acceptance of Railroad Control Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the KCS–3/TM–3 railroad control application (referred to as the KCS/TM application) filed May 14, 2003, by Kansas City Southern (KCS), The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company (GWER), The Texas Mexican Railway Company (Tex Mex or TM), and Mexrail, Inc. (Mexrail).[1] The KCS/TM application seeks Board approval and authorization under 49 U.S.C. 11321–26 for KCS, which already controls KCSR and GWER, to acquire control of Tex Mex. The Board finds that the transaction proposed in the KCS/TM application is a "minor transaction" under 49 CFR 1180.2(c), although the applicants are subject to the expanded and enhanced requirements discussed herein.

The Board has considered applicants' petition to establish a procedural schedule, also filed May 14, 2003. With a modification to reflect that the KCS/TM application was filed on May 14, 2003, and with further modifications principally intended to allow time for a public hearing and to allow interested parties additional time to file comments, the Board is adopting applicants' proposed procedural schedule, as modified. This will allow the Board to issue a decision 45 days after the close of the record and 24 days prior to the statutory deadline, assuming that no unanticipated environmental review is required and that no oral argument is held.

DATES: The effective date of this decision is June 13, 2003. Applicants must submit their Environmental Appendix and Safety Integration Plan (SIP) to the Board, and must supplement their application in the manner indicated below, by June 23, 2003. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than June 27, 2003, a notice of intent to participate. Applicants must distribute their Environmental Appendix and SIP to parties of record and other designated entities, and must initiate publication of newspaper notices, by July 1, 2003. A public hearing will be held in late July 2003; the precise date and the location will be announced later. All comments on applicants' Environmental Appendix and SIP must be filed by July 31, 2003. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by August 4, 2003. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the KCS/TM application must be filed by September 2, 2003. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 34342 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[2] In addition, one copy of all documents in this proceeding must be sent to: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) William A. Mullins, Esq., Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004–2134; and (4) Richard H. Streeter, Esq., Barnes & Thornburg, 750 Seventeenth Street, NW., Suite 900, Washington, DC 20006.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655.

(Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The KCS/TM common control for which applicants seek approval in the KCS/TM application involves the acquisition by KCS of control of Tex Mex.

Kansas City Southern. KCS, a noncarrier holding company, currently controls two rail carriers: KCSR and GWER.

The Kansas City Southern Railway Company. KCSR, a Class I railroad,[3] is a wholly owned direct subsidiary of KCS. KCSR owns and operates approximately 3,100 miles of main and branch lines in 10 midwestern and southern states (Kansas, Missouri, Illinois, Oklahoma, Arkansas, Tennessee, Texas, Louisiana, Mississippi, and Alabama). KCSR's principal routes extend from Kansas City, MO, via Shreveport, LA, to Beaumont/Port Arthur, TX, Lake Charles, LA, and New Orleans, LA. KCSR also has a route extending from Dallas, TX, via Shreveport, LA, to Meridian, MS, and a branch line route extending north out of Alexandria, LA, to Hope, AR. KCSR's major terminals are: Kansas City and St. Louis, MO; Shreveport, Lake Charles, Baton Rouge, and New Orleans, LA; Beaumont, Port Arthur, and Dallas, TX; and Vicksburg, Jackson, Meridian, and Gulfport, MS. KCSR also provides service, via haulage rights, over 1,200 miles of lines of other railroads, most prominently over lines of Union Pacific Railroad Company (UP) between Springfield and Chicago, IL, between Omaha, NE/Council Bluffs, IA, Lincoln, NE, Topeka and Atchison, KS, and Kansas City, MO, and between Beaumont and Houston/Galveston, TX, and over lines of The Burlington Northern and Santa Fe Railway Company (BNSF) between Kansas City, MO, and Council Bluffs, IA. KCSR also owns a non-controlling 16.6% interest in the Kansas City Terminal Railway Company and a non-controlling 50% interest in the Kansas City Joint Agency, both of which are located in Kansas City, MO.

Gateway Eastern Railway Company. GWER, a Class III railroad, is a wholly owned direct subsidiary of KCSR. GWER owns and operates approximately 17 miles of rail lines between East Alton, IL, and East St. Louis, IL. GWER also operates via trackage rights over 5 miles of Terminal Railroad Association of St. Louis track between WR Tower and Willows Tower, IL, and over 11.07 miles of The Alton and Southern Railway Company track between Lenox Tower and Rose Lake, IL. *See* KCS–3 at 217. GWER is primarily engaged in industrial switching in the Alton and Wood River, IL areas.

The Texas Mexican Railway Company. Tex Mex, a Class II railroad, is a wholly owned direct subsidiary of Mexrail. Tex Mex owns and operates 157 miles of rail line between Laredo and Corpus Christi, TX. Pursuant to a 1996 Board order, *see Union Pacific/Southern Pacific Merger,* 1 S.T.B. at 421–26, Tex Mex also operates via trackage rights over approximately 379 miles of UP lines between Robstown and Beaumont, TX, via Placedo, Victoria, Flatonia, Rosenberg, and Houston, TX. Tex Mex interchanges with KCSR at Beaumont, TX; with The Houston Belt & Terminal Railway Company and The Port Terminal Railway Association at Houston, TX; with BNSF at Corpus Christi, Houston, and Robstown, TX; with UP at Corpus Christi, Houston, Laredo, Robstown, and Victoria, TX; and with TFM, S.A. de C.V. (TFM), on the International Rail Bridge that spans the Rio Grande River between Laredo, TX, and Nuevo Laredo, Tamaulipas, Mexico.[4]

Mexrail. Prior to May 9, 2003, Mexrail, a noncarrier, was a wholly owned direct subsidiary of TFM. Mexrail owns two assets: (1) 100% of the shares of Tex Mex; and (2) 100% of the U.S. portion of the bridge structure (but not the track, which is owned by Tex Mex, *see* KCS–3 at 220) of the International Rail Bridge that runs between Laredo (on the U.S. side of the border) and Nuevo Laredo (on the Mexican side of the border).[5]

TFM. TFM, a railroad located entirely in Mexico, operates from Nuevo Laredo south to Monterrey, San Luis Potosi, Queratero, and Mexico City, and, from the Queratero-Mexico City area, west to Lazero Cardenas and east to Veracruz. TFM owns no U.S. property and does not operate in the U.S.[6] (1) TFM, which (prior to May 9, 2003) held a 100% ownership interest in Mexrail, is owned by Grupo Transportación Ferroviaria Mexicana, S.A. de C.V. (Grupo TFM, which owns an 80% interest in TFM) and the Mexican Federal Government (which owns a 20% interest in TFM).[7] (2) Grupo TFM is owned by NAFTA Rail, S.A. de C.V. ("NAFTA Rail #1," which owns a 36.9% interest in Grupo TFM), TMM Multimodal (which owns a 38.5% interest in Grupo TFM), and TFM (which holds a 24.6% interest, with limited voting rights, in Grupo TFM, its 80% parent). (3) NAFTA Rail #1 is a wholly owned indirect subsidiary of KCS.[8] (4) TMM Multimodal is a 96.3%-owned direct subsidiary of TMM Holdings, S.A. de C.V., which is itself a wholly owned direct subsidiary of Grupo TMM, S.A. (Grupo TMM, a noncarrier).[9]

Two Transactions: KCS/TM and KCS/TFM. On April 21, 2003, KCS and Grupo TMM announced a series of agreements that contemplate two "separate" transactions, which are referred to as the KCS/TM transaction (this transaction contemplates the acquisition, by KCS, of control of Tex Mex) and the KCS/TFM transaction (this transaction contemplates the acquisition, by KCS, of control of TFM). Neither of these two transactions is contingent upon the other. The KCS/TM transaction has been submitted to the Board for regulatory approval, and is the subject of this decision. The KCS/TFM transaction has not been, and will not be, submitted to the Board for regulatory approval. If these two transactions are consummated, KCS—which, as part of the KCS/TFM transaction, will change its name to "NAFTA Rail" (referred to

---

[1] KCS, KCSR, GWER, Tex Mex, and Mexrail are referred to collectively as "applicants." The application does not list Mexrail as an applicant, but Mexrail clearly is a party to the transaction. Consistent with our practice, we will treat Mexrail as an applicant. *See, e.g., Union Pacific/Southern Pacific Merger,* 1 S.T.B. 233, 241 n.3 (1996); *CSX Corp. et al.—Control—Conrail Inc.et al.,* 3 S.T.B. 196, 207 n.3 (1998).

[2] For a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per the Board's requirements as discussed in detail in this decision.

[3] The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of $250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than $20 million but less than $250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of $20 million or less (in 1991 dollars). *See* 49 CFR Part 1201, General Instruction 1–1(a).

[4] Over 50% of all rail freight interchanged between the U.S. and Mexico passes over the International Rail Bridge at Laredo.

[5] Applicants advise that Mexrail has been treated as a noncarrier since its creation, and that they are aware of only one instance in which there has ever been even so much as a suggestion that Mexrail is a carrier. The one instance they cite, *see* KCS–3 at 19 n.12, was a "passing statement" by the Board that "Mexrail is a carrier." *See Mexrail, Inc.* v. *Union Pacific Railroad Company and Missouri Pacific Railroad Company,* STB Finance Docket No. 32980 (*Mexrail*) (STB served July 13, 2000), slip op. at 5 n.9 (whereas Tex Mex owns the track on the U.S. half of the bridge, Mexrail owns the underlying "superstructure" of the bridge). Under these circumstances, applicants are justified in treating Mexrail as a noncarrier (and they are therefore justified in not seeking authority for KCS to control Mexrail).

[6] TFM connects, on the International Rail Bridge that runs between Laredo and Nuevo Laredo, with two U.S. railroads: Tex Mex and UP. Traffic is interchanged, at the middle of the Bridge, between TFM, on the Mexican side, and Tex Mex and UP, on the U.S. side. *See* KCS–3 at 221.

[7] Applicants have advised that Grupo TFM's owners are under an obligation to acquire the Mexican Government's 20% interest in TFM in 2003 unless the Mexican Government "prior to that date sells shares in a public offering." KCS–3 at 12 n.4.

[8] Two points respecting the indirect interest that KCS holds in Grupo TFM are addressed in this footnote. (1) Applicants have indicated that NAFTA Rail #1 is a wholly owned indirect subsidiary not only of KCS but also of KCSR, which (as has already been noted) is itself a wholly owned direct subsidiary of KCS. *See* KCS–3 at 13. If NAFTA Rail #1 were owned by KCS in a single corporate chain that ran through KCSR, NAFTA Rail #1 would indeed be a wholly owned indirect subsidiary of both KCS and KCSR. Applicants have also indicated, however, that NAFTA Rail #1 is owned by KCS via two corporate chains, only one of which runs through KCSR. *See* KCS–3 at 13. The two claims (the claim that NAFTA Rail #1 is a wholly owned indirect subsidiary of KCSR, and the claim that NAFTA Rail #1 is owned by KCS via two corporate chains, only one of which runs through KCSR) cannot both be true. (2) Applicants have indicated that KCS currently owns "an approximate 47% stake" in Grupo TFM. *See* KCS–3 at 12. *See also* KCS–3 at 55 n.1 (applicants indicate that Grupo TFM is "effectively owned" 46.5% by KCS) and KCS–3 at 73 (applicants indicate that KCS has "an economic interest" in Grupo TFM of approximately 46.5%). It is not clear how this calculation was derived. It may, perhaps, have been derived by dividing 36.9% (the interest in Grupo TFM held by KCS through intermediaries) by the sum of 36.9% and 38.5% (the interests in Grupo TFM not held by Grupo TFM's 80%-owned subsidiary), which would yield approximately 48.9%.

[9] Although applicants generally refer to Grupo TMM, S.A., as "TMM," *see* KCS–3 at 8, this decision refers to Grupo TMM, S.A., as "Grupo TMM," to avoid confusion (by using a consistent naming practice that reflects the fact that each "Grupo" entity sits at the top of its respective corporate chain, *see* KCS–3 at 13).

as NAFTA Rail #2)[10]—will control, directly or through one or more corporate intermediaries, four railroads (KCSR, GWER, Tex Mex, and TFM), all of which will be operated as separate subsidiaries under common control.

The KCS/TM Transaction; Purchase Price; Voting Trust. One of the agreements announced on April 21, 2003 (referred to as the KCS/TM Stock Purchase Agreement) contemplated the acquisition by KCS, from TFM, of 51% of TFM's 100% interest in Mexrail, in exchange for approximately $32.7 million in cash. On May 9, 2003, KCS consummated the acquisition (the purchase price was apparently paid on May 9th) and acquired a 51% interest in Mexrail.[11] KCS advises that, to avoid any violation of 49 U.S.C. 11323 *et seq.*, it immediately placed the shares of Mexrail and Tex Mex (*i.e.*, KCS's 51% interest in Mexrail, and Mexrail's 100% interest in Tex Mex), *see* KCS–3 at 19 n.12, into an independent irrevocable voting trust that was established pursuant to an agreement (referred to as the KCS/TM Voting Trust Agreement) that, KCS claims, is consistent with 49 CFR part 1013. KCS advises that, if and when the Board approves the acquisition by KCS of control of Tex Mex, the voting trust will be dissolved, KCS will take full ownership of its 51% interest in Mexrail, and Mexrail will reassume full ownership of its 100% interest in Tex Mex.[12]

The KCS/TFM Transaction; Purchase Price; Several Contingencies. Two or more of the agreements announced on April 21, 2003, contemplate the acquisition by KCS of control of TFM. The KCS/TFM transaction envisioned by these agreements contemplates that Kansas City Southern will be renamed "NAFTA Rail" (referred to as NAFTA Rail #2); that NAFTA Rail #2 will acquire TMM Multimodal's 38.5% interest in Grupo TFM, which, when combined with NAFTA Rail #2's (*i.e.*, KCS's) present 36.9% interest, will give NAFTA Rail #2 a controlling interest in Grupo TFM, and, therefore, a controlling interest in TFM;[13] and that TMM Multimodal will receive 18 million shares of NAFTA Rail #2 representing an approximately 22% (20% voting, 2% subject to voting restrictions) interest in NAFTA Rail #2, plus $200 million in cash and a potential incentive payment of between $100 million and $180 million based on the resolution of certain contingencies.[14] The KCS/TFM transaction, including the change of name from Kansas City Southern to NAFTA Rail, is contingent upon obtaining adequate financing, the approval of the shareholders of KCS, the approval of the shareholders of Grupo TMM, the Hart-Scott-Rodino process at the U.S. Department of Justice (DOJ), the approval of the Mexican Competition Commission, and the approval of the Mexican Foreign Investment Commission.[15]

The KCS/TM Transaction: Public Interest Considerations. Applicants contend that bringing the KCSR/GWER and Tex Mex systems under common control represents one more step in KCS's efforts to develop a "NAFTA Railroad" that will connect Canada, the U.S., and Mexico and provide seamless, efficient, and competitive rail service in all of North America.[16] Common control of KCSR/GWER and Tex Mex, applicants argue, will provide more efficient routing and service options to shippers; it will make possible better coordination of marketing, improved customer service, and improved single-line service; it will allow KCSR/GWER and Tex Mex to reduce expenses and rationalize operations; it will make possible full integration of KCS's Management Control System (MCS),[17] improved freight car utilization, improved performance of the locomotive fleet, reduced time-keeping and payroll-processing costs, and consolidation of general and administrative functions; it will provide financial stability to Tex Mex, which (applicants note) has from time to time in recent years found itself hard pressed to keep pace with the increasing traffic volumes available; and, finally, it will help position KCSR to remain a competitive, independent, and viable carrier. Applicants argue that the combined KCSR/GWER-Tex Mex system will be stronger, financially and operationally, than either system could be separately. Applicants assert that they will be in a better position to provide an effective competitive alternative at Laredo, and better able to compete with other railroads, motor carriers, and barges in providing effective and efficient service to the shipping public.[18]

Applicants further contend that common control of KCSR/GWER and Tex Mex will not result in any loss of competitive rail options for any shipper or any receiver. There are, applicants argue, no shippers or receivers receiving rail service from KCSR/GWER and Tex Mex for which common control would reduce the number of independent railroads serving them from three to two or from two to one. Applicants advise that KCSR/GWER and Tex Mex share only one common connection (at Beaumont, TX). The KCS/TM transaction, applicants maintain, involves an end-to-end connection whereby two carriers that already share common ownership and operating practices will finally be combined under a unified management team. Applicants contend that common control of KCSR/GWER and Tex Mex will not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. And, applicants add, in view of the fact that the KCS/TM transaction occurs in a market in which motor carriers are the dominant mode of transportation, this transaction cannot have an adverse impact on competition.[19]

Applicants also contend that the KCS/TM transaction is not anticompetitive because it does not call for cancellation of any cooperative agreements with other carriers. These agreements include a 1997 NS–KCSR–Tex Mex marketing agreement (renewed in 2000 for 3 years) for traffic moving into Texas and Mexico, the KCSR–CN/IC Alliance,[20] and a 2002 BNSF–KCSR marketing agreement. Applicants add that these agreements provide valuable carloads to the KCSR and Tex Mex systems and form the backbone of the competitive alternative currently provided by KCSR and Tex Mex for NAFTA traffic. They further contend that, because of these agreements, shippers have a choice and do not have to depend solely upon UP or the trucking industry for shipment of their NAFTA traffic. Applicants state that, to improve Tex Mex's financial stability, KCSR intends to work with all of its connecting carriers to increase the amount of traffic flowing over Tex Mex. Applicants acknowledge that, although they will honor all Tex Mex agreements pursuant to the terms, any agreement that does not provide adequate revenues will be reviewed, and, upon expiration, will be renegotiated or not renewed. *See* KCS–3 at 60 n.3.

Labor Protection. Applicants acknowledge that the applicable level of labor protection for the proposed KCS/TM transaction is that set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84–90 (1979). Applicants state that the existing collective bargaining agreements for KCSR and Tex Mex will remain in force. They explain that the implementation of KCSR's MCS on Tex Mex will result in the elimination of a limited number of employee positions and that other anticipated operating economies will result in the elimination of a limited number of positions in marketing management, time-keeping and payroll processing, and a limited number of positions involved with car and locomotive pool. The applicants further acknowledge the possibility that significant changes may occur as they gain experience in the course of implementing common control of KCS and TM. *See* KCS–3 at 158.

KCS/TM Application Accepted. The Board agrees with applicants that the KCS/TM common control transaction may be considered as a "minor transaction" under 49 CFR 1180.2(c), and the Board accepts the KCS/TM application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180.[21]

But while the KCS/*TM* transaction may be designated as "minor" from a regulatory standpoint, the broader transaction, incorporating the related KCS/*TFM* component, could be very significant. Indeed, if the KCS/TFM transaction were subject to the jurisdiction of the Board—which it is not—it would be categorized as a "major" transaction because TFM's size would make it a Class I railroad if it were in the U.S. Moreover, the significance of the role played by TFM in the U.S.-Mexico NAFTA corridor cannot be ignored.

Thus, UP has asked that applicants nevertheless be required to supplement their application to address the implications of the KCS/TFM transaction on the KCS/TM transaction (UP–1 pleading, filed May 27, 2003).[22] UP expressed concern that TFM will not remain an independent and neutral connection at Laredo. UP argues that the KCS/TFM transaction must be evaluated on a record that includes the effect of the KCS/TFM transaction on the KCS/TM transaction and on competition within the U.S.

Notwithstanding that the two transactions nominally are separate and independent of each other, in reality they are two components of a single, larger transaction with broader potential implications in the U.S. Thus, as UP has pointed out, the Board should be prepared to address these effects. Accordingly, the Board will require that, by June 23, 2003, applicants must supplement the KCS/TM application to reflect the implications of the broader transaction for competition within the U.S. In particular, applicants should submit the information specified in 49 CFR 1180.1(k)(1) and 1180.11. Because the applicants likely have already prepared much, if not all, of this information for other purposes or after receiving UP's filing, they should be able to submit the necessary supplemental information by that date.[23]

Public Inspection. The KCS/TM application is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, it may be obtained from applicants' representatives (Mr. Mullins, for KCS, KCSR, and GWER; Mr. Streeter, for Tex Mex and Mexrail) at the addresses indicated above.

Procedural Schedule. Applicants have indicated that they would like to release Tex Mex from the voting trust as soon as possible. They have therefore proposed a 128-day procedural schedule that provides for issuance of a decision by the Board on September 19, 2003, with an effective date of September 24, 2003.[24]

The Board is adopting a 156-day procedural schedule[25] that, although 28 days longer than applicants suggest, still provides for less total time than the 180-day procedural schedule (30 days + 105 days + 45 days) established by the deadlines set forth at 49 U.S.C. 11325(a), (d)(2).[26] Applicants' suggested

---

[10] The new "NAFTA Rail" (*i.e.*, the renamed Kansas City Southern referred to as NAFTA Rail #2) should be distinguished from the old "NAFTA Rail" ("NAFTA Rail, S.A. de C.V.," the wholly owned indirect subsidiary of KCS that is referred to as NAFTA Rail #1).

[11] Although KCS has already purchased 51% of TFM's 100% interest in Mexrail, KCS also has a call on the remaining 49% of TFM's 100% interest in Mexrail. This call apparently allows KCS to purchase the remaining 49% interest. *See* KCS–3 at 14.

[12] The KCS/TM transaction (*i.e.*, the acquisition, by KCS, of a 51% interest in Tex Mex) is subject to the jurisdiction of the Board under § 11323(a)(5) ("Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.").

[13] The KCS/TM application does not appear to state explicitly that NAFTA Rail #2 will acquire *all* of TMM Multimodal's 38.5% interest in Grupo TFM. The context, however, suggests that NAFTA Rail #2 will indeed acquire all of TMM Multimodal's 38.5% interest.

[14] Applicants indicate that the contingencies mainly involve a value added tax dispute in Mexico. *See* KCS–3 at 54.

[15] Although section 11323(a)(5) ("Acquisition of control of a rail carrier [TFM] by a person that is not a rail carrier [KCS] but that controls any number of rail carriers [KCSR and GWER, and, after the termination of the voting trust, Tex Mex]") might suggest the applicability of this provision to acquisition of control of TFM by KCS, this provision is not applicable in this context because the Board has no jurisdiction over the acquisition of control of a rail carrier—like TFM—that is located entirely outside the United States. Similarly, although § 11323(a)(4) ("Acquisition of control of at least 2 rail carriers [KCSR, GWER, and, after the termination of the voting trust, Tex Mex] by a person that is not a rail carrier [Grupo TMM]") might conceivably be applicable to the acquisition of a 20% (or 22%) interest in KCS by Grupo TMM, it has long been understood that acquisition of control by a noncarrier of any number of carriers operating as a "single established system" is not subject to § 11323(a)(4). *Fox Valley & Western Ltd.—Exempt., Acq. and Oper.*, 9 I.C.C.2d 209, 217–18 (1992) (citing cases).

[16] The North American Free Trade Agreement is referred to as NAFTA.

[17] MCS is a computerized shipment and billing management system.

[18] Applicants anticipate that, as a result of common control of KCSR/GWER and Tex Mex, approximately 6,313 carloads of traffic will be diverted to the combined KCSR/GWER-Tex Mex system annually (by the end of the third year following the consummation of common control), generating additional annual revenues of approximately $14.3 million. Applicants predict that much of the diverted traffic will be interchanged with eastern carriers CSX Transportation, Inc. and Norfolk Southern Railway Company (NS). *See* KCS–3 at 221. Applicants further anticipate that common control will result in net operating-expense savings of approximately $3.3 million annually.

[19] Applicants also maintain that KCSR/GWER–Tex Mex common control will not adversely impact the essential services provided by any rail carrier. Applicants estimate that common control will result in losses of 4,123 cars a year to UP (allegedly representing 1.7% of all cars delivered or picked up by UP at Laredo, TX) and 1,692 cars a year to BNSF (allegedly representing 17% of all cars delivered or picked up by BNSF at Brownsville, TX). *See* KCS–3 at 122.

[20] Canadian National Railway Company is referred to as CN. Illinois Central Railroad Company is referred to as IC.

[21] The Board reserves the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

[22] UP's request that applicants be required to supplement the KCS/TM application has been endorsed by E.I. du Pont de Nemours and Company (DuPont) in a pleading filed June 2, 2003. BNSF has also requested supplementation. *See* BNSF–1 (filed June 3, 2003) at 2–10.

[23] Should applicants need additional time to prepare the necessary supplemental information, they may request appropriate revisions to this schedule.

[24] Applicants contend that, because Tex Mex is now operating under a voting trust arrangement, the KCS/TM application should be approved and made effective on as expeditious a schedule as is possible.

[25] The schedule adopted here is similar, in key respects, to the schedule proposed by UP (in its UP–1 pleading, filed May 27, 2003), which is endorsed by DuPont (in its pleading filed June 2, 2003). Likewise, the schedule is also similar to that proposed by The National Industrial Transportation League (in its NITL–2 pleading, filed June 3, 2003). The adopted schedule should afford all non-applicant parties sufficient time to seek discovery regarding all relevant impacts of the Tex Mex transaction and to prepare and submit comments on the impacts of the transactions as requested by CN (in its CN–2 pleading, filed June 3, 2003). The Board realizes that, although the adopted schedule does not give non-applicant parties the 45 days one of them seeks for filing comments after the applicants' submission of supplemental information (see BNSF–1 at 13, filed June 3, 2003), in affording them 42 days, it has essentially accommodated that request.

[26] The Board expects that applicants have adhered to their promise to provide copies of the KCS/TM application to certain parties that had previously requested copies of the application and to all parties required by regulation. The Board further expects that applicants have also adhered

Continued

procedural schedule for this transaction would be shorter than others of its scope. The schedule announced today is consistent with the schedule for similar prior transactions. Applicants must submit their Environmental Appendix and Safety Integration Plan (SIP) to the Board, and supplement the KCS/TM application to reflect the implications, for KCS/TM common control, of KCS/TFM common control, by June 23, 2003. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than June 27, 2003, a notice of intent to participate. Applicants must distribute their Environmental Appendix and SIP to parties of record and other designated entities, and must initiate publication of newspaper notices, by July 1, 2003. A public hearing will be held in July 2003 (the precise date and the location will be announced later). All comments on applicants' Environmental Appendix and SIP must be filed by July 31, 2003. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by August 4, 2003.[27] Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the KCS/TM application must be filed by September 2, 2003. The Board's decision will be issued on October 17, 2003 (the 156th day after the date on which the KCS/TM application was filed, and the 45th day after the close of the record). If, however, it is determined that an Environmental Assessment or Environmental Impact Statement is required, the procedural schedule will be adjusted as necessary. Also, if an oral argument is held, the Board's decision will be issued no later than the 45th day after the date on which the oral argument is held.[28]

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than June 27, 2003, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

The Board will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, Dā 2 Dā Legal Copy Service, to receive copies of Board decisions, orders, and notices served in this proceeding. Dā 2 Dā Legal Copy Service will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for Dā 2 Dā Legal Copy Service is (202) 293–7776.[29]

Public Hearing. A hearing at which members of the public may voice their views regarding the KCS/TM transaction will be held in July 2003. The precise date and location of the public hearing will be announced later. A public hearing is somewhat informal and the views expressed are not expected to be "legal" arguments. On the other hand, an oral argument is more formal and the lawyers representing the parties in a proceeding are expected to express "legal" views regarding any matters that are in dispute. It is possible that an oral argument may be held in this proceeding at a later date.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings by DOJ and DOT, must be filed by August 4, 2003.

Parties (including DOJ and DOT) filing such comments, etc., must submit an original and 25 copies thereof. Each such submission: must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; must refer to STB Finance Docket No. 34342; and must be clearly labeled with an identification acronym and number (*e.g.*, the KCS/TM application was labeled "KCS–3"), *see* 49 CFR 1180.4(a)(2). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, applicants' representatives, and all other PORs, and should include the docket number and title of the proceeding, and the name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

(and will continue to adhere) to their promise to provide, promptly upon request, copies of the KCS/TM application to any other party. The Board understands that applicants' promises rest on the assumption that the parties requesting the KCS/TM application have complied with the protective order granted in Decision No. 1 (served May 13, 2003). *See* applicants' procedural schedule petition at 6 n.3.

[27] DOT, in its DOT–1 pleading (filed June 2, 2003), has asked that the procedural schedule be modified to accommodate its past practice of filing comments not only in response to the application itself but also in response to the comments filed by other parties. As in past proceedings, DOT will be allowed to file its comments in response to other parties' comments on the reply due date (here, September 2, 2003). Applicants will be allowed to late-file (as quickly as possible) a reply to DOT's responsive comments. In this manner, the procedural schedule will not be extended unnecessarily.

[28] If the Board ultimately approves the KCS/TM application, consideration will be given to applicants' request that the decision take effect on the 5th day (and not, as is customary, the 30th day) after the date of service.

[29] An interested person does not need to be on the service list to obtain a copy of the KCS/TM application or any other filing made in this proceeding. The Board's Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." 49 CFR 1180.4(a)(3). The KCS/TM application and other filings in this proceeding will also be available on the Board's Web site at "*http://www.stb.dot.gov*" under "Filings." Furthermore, Dā 2 Dā Legal Copy Service will provide, for a charge, copies of the KCS/TM application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

Because the KCS/TM common control transaction proposed in the KCS/TM application has been determined to be a minor transaction, no responsive applications will be permitted. *See* 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the KCS/TM application or the imposition of conditions upon any approval, on the theory that approval (or approval without imposition of conditions) will harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (DC Cir. 1983).

Responses to Comments, Protests, Requests for Conditions, and other Opposition, Including DOJ and DOT; Rebuttal in Support of KCS/TM Application. Responses to comments, protests, requests for conditions, and other opposition submissions, responses to comments of DOJ and DOT, and rebuttal in support of the KCS/TM application must be filed by September 2, 2003.

Environmental Matters. Applicants assert in their application that the proposed KCS/TM transaction will have insignificant environmental effects and therefore does not require a formal environmental review under the National Environmental Policy Act of 1969 (NEPA). Applicants state that the transaction will not result in changes in carrier operations that would exceed the thresholds triggering environmental review established in the Board's environmental rules at 49 CFR 1105.7(e)(4) or (5).[30] Applicants further state that, under 49 CFR 1105.8(b)(1) and (3), the transaction is exempt from historic preservation reporting requirements because rail operations will continue after consummation of common control, further Board approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Finally, applicants explain that the transaction is subject to a "categorical exclusion" from environmental analysis under NEPA and the Board's environmental rules.[31]

The information set forth in the application is sufficient to create a presumption that this transaction is covered by a categorical exclusion. However, the Board's Section of Environmental Analysis (SEA) must independently determine whether applicants' transaction is appropriately exempt from NEPA. To assist SEA in determining whether formal environmental review of the transaction is necessary, the Board has directed applicants to prepare an Environmental Appendix providing additional details and explanation, including maps, supporting applicants' conclusion that this transaction does not warrant environmental documentation. Applicants shall submit the Environmental Appendix to SEA by June 23, 2003.

Applicants also have been working with the Federal Railroad Administration (FRA) to develop a Safety Integration Plan (SIP), pursuant to the joint regulations adopted by FRA and the Board to ensure adequate and coordinated consideration of safety integration issues by both the Board and FRA. *See* 49 CFR Parts 244 and 1106. The SIP will specifically address the process of safely combining applicants' systems, if the proposed transaction is approved. Applicants shall submit their SIP to SEA by June 23, 2003.

To facilitate public review and comment on all aspects of the Environmental Appendix and the SIP, applicants must, by July 1, 2003, distribute the Environmental Appendix and the SIP to all parties of record and to appropriate agencies (consisting of the regional offices of the U.S. Environmental Protection Agency and the Governor's Office and state equivalent of EPA in each state in which KCS owns track). Applicants must also, by July 1, 2003, publish a notice in major newspapers in communities between Beaumont, TX, and Laredo, TX, with populations more than 5,000 people, alerting the public that the Environmental Appendix and SIP are available and explaining how to obtain copies and submit comments. Interested parties will have 30 days—until July 31, 2003—to submit comments on the Environmental Appendix and the SIP to SEA. Applicants shall certify that they have met these distribution and newspaper notice requirements. The Board will further ensure broad access to the Environmental Appendix and the SIP by making them available on the Board's Web site at "*http://www.stb.dot.gov*."

As discussed above, the information provided by applicants is sufficient to create a presumption that this action does not require formal environmental review. Accordingly, comments challenging the presumption that this matter is categorically excluded from NEPA must demonstrate with specificity why an EA or EIS appears to be warranted in this case.

Based on its consideration of all timely comments and its own independent review of all available environmental information, including the SIP, SEA will then recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether this transaction is categorically excluded from NEPA or, alternatively, whether an EA or an EIS should be prepared. If it appears that an EA or an EIS is required to meet the Board's obligations under NEPA, the procedural schedule set forth in this decision will be adjusted accordingly. Even if no EA or EIS is warranted, the Board intends to include in any decision approving the KCS/TM transaction a condition requiring applicants to comply with their SIP. *See* 49 CFR 1106.4(b)(4).

Discovery. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Electronic Submissions: In General. As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence.[32] Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of

[30] Applicants explain that KCS/TM common control will generate less than a 1% increase in KCSR traffic and less than a 7% increase in Tex Mex traffic. Applicants add that, although there are significant rehabilitation and improvement plans that will take place on Tex Mex property if KCS obtains control authority, such improvements do not require Board approval or environmental review under NEPA. *See* KCS–3 at 41.

[31] Under the regulations of the President's Council on Environmental Quality implementing NEPA and the Board's environmental regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the agency to prepare a full Environmental Impact Statement (EIS). 40 CFR 1501.4(a)(1); 49 CFR 1105.4(f), 1105.6(a). Actions that may or may not have a significant environmental impact ordinarily require the agency to prepare a more limited Environmental Assessment (EA). 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b). Finally, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review. Such activities are said to be covered by a categorical exclusion. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c).

[32] Parties unable to comply with the electronic submission requirement can seek a waiver from the Board.

the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1 (served May 13, 2003), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by computer data will facilitate timely review by the Board and its staff.[33]

Electronic Submissions: Workpapers, Data Bases, and Spreadsheets. In the past, the Board has encountered problems with the "links" in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, parties submitting electronic workpapers, data bases, and/or spreadsheets should use naming and linking conventions that will permit the spreadsheets to operate on the Board's computers.[34] Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.[35] The Board currently uses Microsoft Access 2000, and data bases submitted should be either in this format or another ODBC-compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for the Board to accept the data base in another format.

Excessive Use of Confidentiality Designations. Applicants have included, in their KCS–3 application, copies of the KCS/TM Stock Purchase Agreement and the KCS/TM Voting Trust Agreement. *See* KCS–3 at 160–91 and 192–209, respectively. Initially, however, neither agreement was included in the "Public Version" of the KCS–3 application because, initially, each agreement was designated "Highly Confidential" in its entirety.[36] Subsequently, applicants filed a "Public Version" of the KCS/TM Stock Purchase Agreement, *see* the KCS submission dated May 29, 2003, but they have not filed a "Public Version" of the KCS/TM Voting Trust Agreement. As respects the KCS/TM Voting Trust Agreement, the continuing use of the "Highly Confidential" designation provided for in the protective order granted in Decision No. 1 appears to be excessive. There may, perhaps, be bits and pieces of the KCS/TM Voting Trust Agreement that should be protected under either the "Confidential" designation or the "Highly Confidential" designation. It is highly unlikely, however, that this agreement *in its entirety* merits such protection. Applicants will therefore be required to file, no later than June 20, 2003, either a redacted version of the KCS/TM Voting Trust Agreement or a persuasive explanation of why it is that this agreement requires protection *in its entirety* under either the "Confidential" designation or the "Highly Confidential" designation.[37]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The KCS/TM application in STB Finance Docket No. 34342 is accepted for consideration.

2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. Applicants must file, no later than June 20, 2003, either a redacted version of the KCS/TM Voting Trust Agreement or a persuasive explanation of why this agreement requires protection in its entirety under either the "Confidential" designation or the "Highly Confidential" designation.[38]

5. This decision is effective on June 13, 2003.

Decided: June 9, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

May 14, 2003 KCS/TM application and petition to establish procedural schedule filed

June 13, 2003 Board notice of acceptance of the KCS/TM application published in the **Federal Register**

June 23, 2003 Environmental Appendix and Safety Integration Plan (SIP) due. Supplementation of the KCS/TM application to reflect the implications of KCS/TFM common control on the KCS/TM transaction and on competition within the U.S. due

June 27, 2003 Notices of intent to participate due

July 1, 2003 Applicants distribute Environmental Appendix and SIP to parties of record and other designated entities, and initiate publication of newspaper notices

July 2003 Public hearing to be scheduled; date and location to be announced

July 31, 2003 Comments on Environmental Appendix and SIP due

August 4, 2003 All comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), due

September 2, 2003 Responses to comments, protests, requests for conditions, and other opposition due. Responses to comments of DOJ and DOT due. Rebuttal in support of KCS/TM application due

October 17, 2003 Date of service of final decision (if no environmental review is required and no oral argument is held)

[FR Doc. 03–14902 Filed 6–12–03; 8:45 am]

BILLING CODE 4915–00–P

[33] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations.

[34] The Board will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with the Board's computers can be addressed to William H. Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565–1550.

[35] ODBC is a Windows technology that allows a data base software package, such as Microsoft Access, to import data from a data base created using a different software package. All data bases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

[36] Although there is one indication in the KCS–3 application that the KCS/TM Stock Purchase Agreement was designated "Confidential," *see* KCS–3 at 34, it seems more likely that this agreement was actually designated "Highly Confidential," *see* KCS–3 at 160.

[37] If applicants choose to file an explanation in lieu of a redacted version, the explanation, if applicants think it appropriate, may be designated either "Confidential" or "Highly Confidential."

[38] As respects the KCS/TM Stock Purchase Agreement, applicants should also file a redacted version of the items referred to as Annex I and Annex II, *see* KCS–3 at 163 (these items, although noted in the Table of Contents, do not appear to have been included in either the "Highly Confidential" version or the "Public" version of the KCS/TM Stock Purchase Agreement). If, however, applicants believe that these items should be treated as either "Confidential" or "Highly Confidential," applicants may submit these items under seal.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 14, 2003 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0014.

Form Number: FinCEN 105 (Formerly Customs Form 4790).

Type of Review: Extension.

Title: Report of Financial Transportation of Currency or Monetary Instruments.

Description: FinCEN, and the Department of Homeland Security (DHS) and the DHS Bureaus are required under 31 U.S.C. 5316(a) to collect information regarding the transportation of monetary instruments of more than $10,000 in value into or out of the United States.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents/Recordkeeping: 180,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 11 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 33,000 hours.

Clearance Officer: Steve Rudzinski(703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

BILLING CODE 4810–02–P

FinCEN Form 105
(Formerly Customs Form 4790)
(Rev. July 2003)
Department of the Treasury
FinCEN

DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS

OMB NO. 1506-0014

▶ To be filed with the Bureau of Customs and Border Protection
▶ For Paperwork Reduction Act Notice and Privacy Act Notice, see back of form.

31 U.S.C. 5316; 31 CFR 103.23 and 103.27

▶ Please type or print.

PART I FOR A PERSON DEPARTING OR ENTERING THE UNITED STATES, OR A PERSON SHIPPING, MAILING, OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS. (IF ACTING FOR ANYONE ELSE, ALSO COMPLETE PART II BELOW.)

1. NAME (Last or family, first, and middle)	2. IDENTIFICATION NO. (See instructions)	3. DATE OF BIRTH (Mo./Day/Yr.)

4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD	5. YOUR COUNTRY OR COUNTRIES OF CITIZENSHIP

6. ADDRESS WHILE IN THE UNITED STATES	7. PASSPORT NO. & COUNTRY

8. U.S. VISA DATE (Mo./Day/Yr.)	9. PLACE UNITED STATES VISA WAS ISSUED	10. IMMIGRATION ALIEN NO.

11. IF CURRENCY OR MONETARY INSTRUMENT IS ACCOMPANIED BY A PERSON, COMPLETE 11a OR 11b

A. EXPORTED FROM THE UNITED STATES		B. IMPORTED INTO THE UNITED STATES	
Departed From: (U.S. Port/City in U.S.)	Arrived At: (Foreign City/Country)	Departed From: (Foreign City/Country)	Arrived At: (City in U.S.)

12. IF CURRENCY OR MONETARY INSTRUMENT WAS MAILED OR OTHERWISE SHIPPED, COMPLETE 12a THROUGH 12f

12a. DATE SHIPPED (Mo./Day/Yr.)	12b. DATE RECEIVED (Mo./Day/Yr.)	12c. METHOD OF SHIPMENT (e.g. U.S. Mail, Public Carrier, etc.)	12d. NAME OF CARRIER

12e. SHIPPED TO (Name and Address)

12f. RECEIVED FROM (Name and Address)

PART II INFORMATION ABOUT PERSON(S) OR BUSINESS ON WHOSE BEHALF IMPORTATION OR EXPORTATION WAS CONDUCTED

13. NAME (Last or family, first, and middle or Business Name)

14. PERMANENT ADDRESS IN UNITED STATES OR ABROAD

15. TYPE OF BUSINESS ACTIVITY, OCCUPATION, OR PROFESSION	15a. IS THE BUSINESS A BANK?
	☐ Yes ☐ No

PART III CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE)(To be completed by everyone)

16. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS		17. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B.
Currency and Coins ▶	$	A. Currency Name
Other Monetary Instruments (Specify type, issuing entity and date, and serial or other identifying number.) ▶	$	B. Country
(TOTAL) ▶	$	

PART IV SIGNATURE OF PERSON COMPLETING THIS REPORT

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

18. NAME AND TITLE (Print)	19. SIGNATURE	20. DATE OF REPORT (Mo./Day/Yr.)

CUSTOMS AND BORDER PROTECTION USE ONLY				COUNT VERIFIED Yes ☐ No ☐	VOLUNTARY REPORT Yes ☐ No ☐
DATE	AIRLINE/FLIGHT/VESSEL	LICENSE PLATE STATE/COUNTRY	LICENSE PLATE NUMBER	INSPECTOR (Name and Badge Number)	

FinCEN FORM 105
(Formerly Customs Form 4790)

DRAFT

GENERAL INSTRUCTIONS

This report is required by 31 U.S.C. 5316 and Treasury Department regulations (31 CFR 103).

WHO MUST FILE:

(1) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States or into the United States from any place outside the United States, and

(2) Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time which have been transported, mailed, or shipped to the person from any place outside the United States.

A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES, WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS, IS NOT REQUIRED TO BE REPORTED.

Exceptions: Reports are not required to be filed by:

(1) a Federal Reserve bank,

(2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier,

(3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry, or profession of the customer concerned,

(4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier,

(5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers,

(6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper,

(7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public,

(8) a person with a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated, or by

(9) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

WHEN AND WHERE TO FILE:

A. Recipients—Each person who receives currency or other monetary instruments in the United States shall file FinCEN Form 105, within 15 days after receipt of the currency or monetary instruments, with the Customs officer in charge at any port of entry or departure or by mail with the **Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.**

B. Shippers or Mailers—If the currency or other monetary instrument does not accompany the person entering or departing the United States, FinCEN Form 105 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the **Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.**

C. Travelers—Travelers carrying currency or other monetary instruments with them shall file FinCEN Form 105 at the time of entry into the United States or at the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or the monetary instruments is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any Bureau of Customs and Border Protection office.

PENALTIES: Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than ten years, are provided for failure to file a report, filing a report containing a material omission or misstatement, or filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See 31 U.S.C.5321 and 31 CFR 103.57; 31 U.S.C. 5322 and 31 CFR 103.59; 31 U.S.C. 5317 and 31 CFR 103.58, and U.S.C. 5332.

DEFINITIONS:

Bank—Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any State or of the United States; (2) a private bank; (3) a savings association, savings and loan association, and building and loan association organized under the laws of any State or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any State or of the United States; (7) any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State other than a money service business; (8) a bank organized under foreign law; and (9) any national banking association or corporation acting under the provisions of section 25A of the Federal Reserve Act (12 U.S.C. Sections 611-632).

Foreign Bank—A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities—A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Identification Number—Individuals must enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

Monetary Instruments— (1) Coin or currency of the United States or of any other country, (2) traveler's checks in any form, (3) negotiable instruments (including checks, promissory notes, and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, (4) incomplete instruments (including checks, promissory notes, and money orders) that are signed but on which the name of the payee has been omitted, and (5) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. Monetary instruments do not include (i) checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements, (ii) warehouse receipts, or (iii) bills of lading.

Person—An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

SPECIAL INSTRUCTIONS:

You should complete each line that applies to you. **PART II.** -Block 13; provide the complete name of the shipper or recipient on whose behalf the exportation or importation was conducted. **PART III.** — Specify type of instrument, issuing entity, and date, serial or other identifying number, and payee (if any). **PART IV.** — Block 22A and 22B enter the exact date you shipped or received currency or monetary instrument(s). Block 21, if currency or monetary instruments of more than one country is involved, attach a list showing each type, country or origin and amount.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE:

Pursuant to the requirements of Public law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552a(e)(3) is Public law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No.1 of 1950; Treasury Department Order No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of the Bureau of Customs and Border Protection and any other constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency. The information collected may also be provided to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

Disclosure of this information is mandatory pursuant to 31 U.S.C. 5316 and 31 CFR Part 103. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 U.S.C. 5316(b) and 31 CFR 103.27(d). The social security number will be used as a means to identify the individual who files the record.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The collection of this information is mandatory pursuant to 31 U.S.C. 5316, of Title II of the Bank Secrecy Act, which is administered by Treasury's Financial Crimes Enforcement Network (FINCEN).

Statement required by 5 CFR 1320.8(b)(3)(iii): The estimated average burden associated with this collection of information is 11 minutes per respondent or record keeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39 Vienna, Virginia 22183. DO NOT send completed forms to this office—See When and Where To File above.

FinCEN FORM 105
(Formerly Customs Form 4790)

DRAFT

[FR Doc. 03–14903 Filed 6–12–03; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 14, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0745.
Regulation Project Number: LR–27–83 Temporary and LR–54–85 Temporary.
Type of Review: Extension.
Title: Floor Stocks Credits or Refunds and Consumer Credits or Refunds with Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (LR–27–83); and Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements (LR–54–85).
Description: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 4,100.
Estimated Burden Hours Per Recordkeeper: 1 hour, 1 minute.
Estimated Total Recordkeeping Burden: 4,140 hours.

OMB Number: 1545–1418.
Regulation Project Number: REG–119227–97 Final and Temporary.
Type of Review: Extension.
Title: Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax.
Description: The regulation finalizes proposed and temporary regulations relating to the tax on kerosene, the refund for certain aviation fuel producers, and the registration rules for certain truck dealers.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 346,080.
Estimated Burden Hours Per Respondent/Recordkeeper: 17 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 97,583 hours.

OMB Number: 1545–1438.
Regulation Project Number: CO–8–91 Final.
Type of Review: Extension.
Title: Distributions of Stock and Stock Rights.
Description: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 333 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.

[FR Doc. 03–14904 Filed 6–12–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–FSC and Schedule P (Form 1120–FSC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.

DATES: Written comments should be received on or before August 12, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.
OMB Number: 1545–0935.
Form Number: 1120–FSC and Schedule P (Form 1120–FSC).
Abstract: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 5,000.
Estimated Time Per Respondent: 217 hours, 59 minutes.
Estimated Total Annual Burden Hours: 1,089,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2003.

Glenn P. Kirkland,
IRS Reports Clearance Officer.

[FR Doc. 03–15025 Filed 6–12–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5500–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5500–EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

DATES: Written comments should be received on or before August 12, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.
OMB Number: 1545–0956.
Form Number: 5500–EZ.
Abstract: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the Internal Revenue Code or whether the plan should be audited.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations, and farms.
Estimated Number of Respondents: 250,000.
Estimated Time Per Respondent: 26 hours, 38 minutes.
Estimated Total Annual Burden Hours: 6,660,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2003.

Glenn P. Kirkland,
IRS Reports Clearance Officer.

[FR Doc. 03–15026 Filed 6–12–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Request For Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of A Detached Request is Authorized.
OMB Number: 1535–0004.

Form Number: PD F 1522.

Abstract: The information is requested to establish ownership and request for payment of United States Savings Bonds/Retirement Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 56,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 14,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14913 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Exchange Application For U.S. Savings Bonds of Series HH.

DATES: Written comments should be received on or before August 13, 2003 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Exchange Application For U.S. Savings Bonds of Series HH.

OMB Number: 1535–0005.

Form Number: PD F 3253.

Abstract: The information is used to support a request to exchange Series EE/E bonds or notes for Series HH Savings Bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 39,960.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14914 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Entitlement United States Savings Bonds and/or Checks After Administration of Decedent's Estate.

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Entitlement United States Savings Bonds and/or Checks After Administration of Decedent's Estate.

OMB Number: 1535–0006.

Form Number: PD F 2458.

Abstract: The information is requested to establish entitlement of United States Savings Bonds and Checks After Administration of a Decedent's Estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 7,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 938.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14915 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request For Reissue of United States Savings Bonds To Remove Name Of One Or More Living Registrants.

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request For Reissue of United States Savings Bonds To Remove Name Of One Or More Living Registrants.

OMB Number: 1535–0008.

Form Number: PD F 1938.

Abstract: The information is requested to establish ownership and request reissue of United States Savings Bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 87,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 14,529.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14916 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Claim For Lost, Stolen, or Destroyed United States Registered Securities.

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Claim For Lost, Stolen, or Destroyed United States Registered Securities.

OMB Number: 1535–0014.

Form Number: PD F 1025.

Abstract: The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Registered Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 460.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14917 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Organizations).

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Organizations).

OMB Number: 1535–0015.

Form Number: PD F 1022.

Abstract: The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Bearer Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 92.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14918 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).

OMB Number: 1535–0016.

Form Number: PD F 1022–1.

Abstract: The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Bearer Securities owned by individuals.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 92.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14919 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Affidavit of Forgery for United States Savings Bonds.

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Affidavit of Forgery for United States Savings Bonds.

OMB Number: 1535–0067.

Form Number: PD F 0974.

Abstract: The information is requested to establish whether the registered owner signed the request for payment or if the signature was a forgery.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 750.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing, and Records Branch.

[FR Doc. 03–14920 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Claim For Relief on Account of the Nonreceipt of United States Savings Bonds.

DATES: Written comments should be received on or before August 13, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Claim For Relief on Account of the Nonreceipt of United States Savings Bonds.

OMB Number: 1535–0098.

Form Number: PD F 3062–4.

Abstract: The information is used to support a request for substitute savings bonds in lieu of savings bonds not received.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 5,010.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–14921 Filed 6–12–03; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register
Vol. 68, No. 114
Friday, June 13, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA81

Fees for Official Inspection and Official Weighing Services

Correction

In rule document 03–13679 beginning on page 32623 in the issue of Monday, June 2, 2003, make the following correction:

§800.71 [Corrected]

On page 32626, in §800.71, Table 2 is corrected in part to read as set forth below.

* * * * *

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]

(2) Appeal inspection and review of weighing service [4]	
(i) Board Appeals and Appeals (grade and factor)	82.00
(a) Factor only (per factor—max 2 factors)	43.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	

* * * * *

[FR Doc. C3–13679 Filed 6–12–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
June 13, 2003

Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1600 et al.

Thrift Savings Plan—Employee Investments, Participant's Choices, and Miscellaneous Amendments; Interim Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690

Employee Elections To Contribute to the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule, with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's regulations to reflect the processes and terminology of the Thrift Savings Plan's (TSP) new record keeping system, to codify several policy decisions related to the implementation of this new system, to permit the making of catch-up contributions by TSP participants who are age 50 and over, and to add new methods of post-employment withdrawals. This rule also will allow participants more options and greater flexibility with which to manage their TSP accounts.

EFFECTIVE DATE: This interim rule is effective June 13, 2003.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1659, or Merritt A. Willing on (202) 942–1666.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

Congress amended FERSA in 1996 by enacting the Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

Thus, the Executive Director is amending the TSP regulations that will be affected by the implementation of the new record keeping system. As explained below, the final rule also adopts uniform definitions, eliminates obsolete regulations, and reorganizes various sections of the regulations to make them more easily understood.

The Board published these regulations in proposed form in the **Federal Register** (67 FR 42856) on June 25, 2002. The Board received no comment on the proposed rule.

After the Board published the proposed regulations, Congress amended FERSA to permit participants who are age 50 and older to make supplemental contributions to the TSP called "catch-up" contributions. *See* Federal Thrift Savings Plan Catch-up Contributions Act, Public Law 107–304, 116 Stat. 2363 (November 27, 2002). The Board will offer qualified participants the opportunity to make these catch-up contributions in the second half of 2003. Therefore, on April 4, 2003, the Board published a notice of proposed rulemaking in the **Federal Register** (68 FR 16449), proposing to amend the Board's regulations to permit these contributions. The April 4 notice also proposed additional changes to the Board's regulations to accommodate the operation of the new record keeping system. The Board received no comment on this notice.

Accordingly, the Board is adopting the June 25, 2002, proposed rule as an interim rule with a few substantive revisions, which are described below.

Catch-Up Contributions

The Federal Thrift Savings Plan Catch-up Contributions Act amended 5 U.S.C. 8351(b), 8432(a), and 8440f(a) to authorized TSP participants who are age 50 or older to make additional TSP contributions. These additional contributions exceed the amount the participant could otherwise make by law and are known as "catch-up contributions." Congress" initial reason for permitting these contributions was to allow participants to catch up for years when they were not employed, took time away from work to raise a family, or were otherwise unable to contribute their retirement plans. Congress later decided to allow anyone age 50 or over to make these contributions, but, nevertheless, retained the name "catch-up." Thus, "catch-up" contributions are supplemental contributions from taxable basic pay made by TSP participants who are age 50 and over. These contributions exceed the maximum that a participant could make by law. This interim rule adds a new paragraph (b) to § 1600.22 to explain how eligible participants can make these catch-up contributions.

Specifically, a participant is eligible to make catch-up contributions as long as he or she is: (1) At least 50 years of age during the calendar year (even if the participant's birthday is December 31, of that year); and (2) currently contributing the maximum amount allowed according to the TSP percentage of basic pay limitations, or the Internal Revenue Code elective deferral limit.

In addition, under 5 U.S.C. 8351(b), 8432(a) and 8440f(a), TSP catch-up contributions must be made from basic pay. Therefore, members of the uniformed services may not make catch-up contributions from special, bonus, or incentive pay. In addition, TSP catch-up contributions must comply with section 414(v) of the Internal Revenue Code (26 U.S.C. 414(v)), which requires catch-up contributions to be elective deferrals. Because elective deferrals are, by definition, made from taxable pay, the law also does not allow members of the uniformed services to make catch-up contributions from tax-exempt basic pay (for example, from the basic pay that is fully exempt due to service in a combat zone). Finally, catch-up contributions are not eligible for agency matching contributions. *See* 5 U.S.C. 8432(c)(2); 37 U.S.C. 211(d).

Breakage

The TSP will credit late contributions, and in some cases makeup contributions, with the investment gains and losses they would have earned had the contributions been timely made. The loss incurred or the gain realized on late or makeup contributions is called "breakage." The proposed rule explains how breakage will be computed after implementation of the new record keeping system, with one exception.

Specifically, the proposed rule states that late contributions (and some makeup contributions) will be credited with breakage based on the contribution allocation for the participant's account at the time the contributions should have been made. However, when the new record keeping system is implemented, it will contain only three and one-half years of converted contribution allocation history and contribution records for each participant. Therefore, if the TSP corrects an error that occurred more than three years before implementation of the new system, the TSP will compute breakage based on a calculated rate of investment return derived by the record keeping system, instead of basing breakage on the participant's contribution allocation as of the time of the error. The calculated rate of return will be either the Government Securities Investment Fund (G Fund) rate, or the average of the rates of return for all of the TSP investment funds, whichever rate is greater. The interim rule codifies this procedure in § 1605.2 and § 1605.13.

In addition, because the TSP will not have a record of the participant's contribution history before January 1, 2000, it will be unable to determine the actual present value of an erroneous contribution made to a participant's account before January 1, 2000. Therefore, as explained in interim § 1605.12 and § 1605.14, the TSP will not process an agency-submitted negative adjustment to remove erroneous contributions from a participant's account if the contributions were made before January 1, 2000.

Agency Submission of Contribution and Loan Payments

Employing agencies are required to submit contributions and loan payments to the TSP record keeper within 30 days after the pay date associated with their submissions. Contributions and loan payments submitted beyond the 30-day period are subject to lost earnings. Proposed § 1605.15(c) contemplated reducing that time period to 2 days. However, § 1605.15(c) of the interim rule retains the 30-day period; therefore, contributions and loan payments submitted more than 30 days after the pay date associated with the agency's submission will be subject to breakage.

Hardship In-Service Withdrawals

Under 5 U.S.C. 8433(h)(1)(B), a participant who is still employed by the Federal Government can obtain a financial hardship withdrawal from the TSP to meet certain specified financial obligations. Hardship withdrawals are governed by 5 CFR part 1650. The regulations in effect under the old record keeping system required a participant to document income and expenses on a hardship withdrawal application, which the TSP would use to calculate how much the participant could withdraw from his or her account. This procedure was retained by proposed §§ 1650.32 and 1650.42. However, interim §§ 1650.32 and 1650.42 require the participant to perform the calculation with the use of a worksheet provided with the hardship withdrawal application, and to request a withdrawal amount based on that calculation.

Death Benefits

If the TSP learns that a separated participant died after making a withdrawal request, the TSP will not process the withdrawal. Instead, the TSP will pay the funds as a death benefit according to the order of precedence found at 5 U.S.C. 8424(d). If the participant chose to withdraw his or her account as a joint life annuity or an annuity with a refund or 10-year option, the TSP will pay the account to the joint annuitant or to the beneficiary or beneficiaries of the annuity as designated by the participant.

The TSP considered a change to this process in the proposed rule. Specifically, proposed § 1651.2(b) and (c) stated that the TSP would give effect to a participant's withdrawal request in limited circumstances. The Board has decided to retain the current policy because of issues regarding the negotiability of a payment made to a deceased participant.

TSP Loans

This interim rule codifies two new loan processes not discussed in the proposed rule. Under the old record keeping system, if a participant missed TSP loan payments, but resumed the payments within 90 days of the first missed payment, the missed payments would be added to the end of the participant's loan term. If the participant resumed making loan payments more than 90 days after the first missed payment, the participant was required to reamortize the loan.

Proposed § 1655.14(e) stated that a participant who missed loan payments would be required to make up that missed payment by the end of the next calendar quarter, or the TSP would declare the loan a taxable distribution. Proposed § 1655.14(f) also provided that interest would not accrue on a missed loan payment, as long as the participant made up the payment within a specified time.

Section 1655.14(e) of the interim rule instead requires a participant to become current in his or her loan by making up all missed payments by the end of the next calendar quarter (even those payments missed in the second calendar quarter). In addition, interim § 1655.14(f) provides that interest will accrue on all missed loan payments from the time they were due.

Funds Returned to the TSP as Undeliverable

This TSP is adopting new procedures for the processing of funds that are disbursed from the TSP but returned as undeliverable. The new procedures are codified by the interim rule at § 1650.5 (regarding withdrawals), § 1651.14(g) (court ordered payments), § 1653.5(k) (death benefits), and § 1655.13(e) and § 1655.14(b) (loans). If a withdrawal, a refunded loan overpayment, court-ordered payment, or death benefit payment is returned to the TSP as undeliverable, the TSP will attempt to locate the participant or payee in order to reissue the funds. If the TSP cannot locate the participant or payee within 60 days, the funds will be forfeited to the TSP. The participant or payee may reclaim the funds, but investment earnings will not accrue on them after they are first disbursed from the TSP. In the case of a returned loan disbursement, the TSP will use the returned proceeds to repay the participant's loan if the TSP is unable to locate the participant and reissue the loan.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. These rules are not major rules as defined at 5 U.S.C. 804(2).

Waiver of 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find good cause for making this interim rule effective in less than 30 days. This rule explains the processes of the new TSP record keeping system and codifies policy decisions made in connection with its development. It was impossible to establish in advance an effective date for this rule because it was impossible to predict the implementation date of the new system until it was imminent. However, because the new system replaced the old system, the Board's regulations must be amended to accurately describe the TSP processes to participants, beneficiaries, agencies and the uniformed services. Therefore, the Board has decided to make this rule effective immediately, on an interim basis, and to request comments from interested parties.

List of Subjects

5 CFR Parts 1600, 1601, 1603, 1606, 1645, 1650, 1651, 1653, 1690

Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Parts 1604, 1655

Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1605

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1640

Employee benefit plans, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

Gary A. Amelio,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set out in the preamble, the Executive Director of the Federal Retirement Thrift Investment Board amends 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

■ 1. The authority citation for part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

■ 2. Section 1600.1 is revised to read as follows:

§ 1600.1 Definitions.

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

■ 3. Section 1600.11 is amended by revising paragraph (a), introductory text, to read as follows:

§ 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election must be made pursuant to § 1600.14 and includes the following types of elections:

* * * * *

■ 4. Section 1600.12 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

(b) *Open season elections.* Any employee may make a contribution election during an open season. Each year, an open season will begin on April 15 and will end on June 30; a second open season will begin on October 15 and end on December 31. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

* * * * *

■ 5. Section 1600.13 is amended by revising paragraph (a) to read as follows:

§ 1600.13 Effective dates of contribution elections.

(a) *Participation upon initial appointment or reappointment.* TSP contribution elections made pursuant to § 1600.12(a) will become effective no later than the first full pay period after the election is received by the employing agency or uniformed service.

* * * * *

■ 6. Section 1600.14 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 1600.14 Method of election.

(a) A participant must submit a contribution election to his or her employing agency. Employees may use either the paper TSP election form (*i.e.*, Form TSP–1, TSP–1–C, TSP–U–1, or TSP–U–1–C) or, if available from their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper form must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on the form, if a paper form is used;

* * * * *

■ 7. Section 1600.22 is revised to read as follows:

§ 1600.22 Maximum contributions.

(a) *Regular employee contributions.* The amount a participant can contribute to the TSP under this paragraph is subject to the Internal Revenue Code (I.R.C.) limitations described in paragraphs (a)(3) and (4) of this section.

(1) *FERS percentage limit.* The maximum employee contribution from basic pay for a FERS participant for December 2002 through November 2003 is 13 percent per pay period. The maximum contribution will increase one percentage point in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (a)(2) and (3) of this section.

(2) *CSRS and uniformed services percentage limit.* The maximum employee contribution from basic pay for a CSRS or uniformed services participant for December 2002 through November 2003 is 8 percent per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(3) *I.R.C. limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a dollar limit on the amount an employee may save on a tax-deferred basis through regular contributions to the TSP. The TSP will not accept any regular employee contributions that exceed this limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform to the limit.

(4) *I.R.C. limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Regular employee contributions and employer contributions made to the TSP will be restricted to the I.R.C. section 415(c) limit. No regular employee contributions may be made to the TSP for any year to the extent that the sum of the regular employee contributions and the employer contributions for the year will exceed the section 415(c) limit.

(b) *Catch-up contributions.* (1) A participant may make tax-deferred catch-up contributions from basic pay at any time during the calendar year if he or she:

(i) Is at least age 50 by the end of the calendar year; and

(ii) Is making regular TSP contributions at either the maximum TSP contribution percentage or a dollar amount that will result in reaching the Internal Revenue Code elective deferral limit by the end of the year.

(2) Elections to make catch-up contributions shall be separate from the participant's regular contribution election.

(3) A participant who has both a civilian and a uniformed services account can make catch-up contributions to both accounts, as long as he or she does not exceed the limit for the year.

(4) Catch-up contributions are not eligible for matching contributions.

■ 8. Section 1600.32 is amended by revising paragraph (b)(3) to read as follows:

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

* * * * *

(b) * * *

(3) The participant must submit the completed Form TSP–60 or TSP–U–60, together with a certified check, cashier's check, cashier's draft, money order, treasurer's check from a credit union, or personal check, made out to the "Thrift Savings Plan," for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

* * * * *

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

■ 9. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

Subpart A—General

■ 10. Section 1601.1 is revised to read as follows:

§ 1601.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Acknowledgment of risk means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

■ 11. Subparts B and C are revised to read as follows:

Subpart B—Investing Future Deposits

Sec.

1601.11 Applicability

1601.12 Investing future deposits in the TSP investment funds.

1601.13 Elections.

Subpart C—Redistributing Participants' Existing Account Balances (Interfund Transfers)

1601.21 Applicability.

1601.22 Methods of requesting an interfund transfer.

Subpart B—Investing Future Deposits

§ 1601.11 Applicability.

This subpart applies only to the investment of future deposits to the TSP's investment funds, including contributions, loan payments, and transfers or rollovers from traditional IRAs and eligible employer plans; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

§ 1601.12 Investing future deposits in the TSP investment funds.

(a) *Allocation.* Future deposits in the TSP, including contributions, loan payments, and transfers or rollovers from traditional IRAs and eligible employer plans, will be allocated among the investment funds based on the most recent contribution allocation on file for the participant.

(b) *Investment fund availability.* All participants may elect to invest all or any portion of their deposits in any of the TSP's five investment funds.

§ 1601.13 Elections.

(a) *Contribution allocation.* Each participant may indicate his or her choice of investment funds for the allocation of future deposits by using the TSP Web site or the ThriftLine, or by completing Form TSP–50 (for civilians) or Form TSP–U–50 (for uniformed services), Investment Allocation. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100 percent;

(2) The percentage elected by a participant for investment of future deposits in an investment fund will be applied to all sources of contributions and transfers (or rollovers) from traditional IRAs and eligible employer plans. A participant may not make different percentage elections for different sources of contributions;

(3) A participant who elects for the first time to invest in the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk in accordance with § 1601.33. In addition, a participant who, before June 2003, has only acknowledged the risk of investing in the F Fund or C Fund must execute an acknowledgment of risk in accordance with § 1601.33 before making any new election to invest in the F Fund, C Fund, S Fund, or I Fund;

(4) All deposits made on behalf of a participant who does not have a contribution allocation in effect will be invested in the G Fund; and

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired and had not withdrawn his or her entire TSP account, the participant's last contribution allocation before separation from service will be effective until a new allocation is made.

(b) *Effect of rejection of contribution allocation.* If a contribution allocation on a Form TSP–50 or Form TSP–U–50 is found to be ineffective pursuant to § 1601.34, the attempted allocation will have no effect. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

(c) *Contribution elections.* A participant may designate the amount of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

Subpart C—Redistributing Participants' Existing Account Balances (Interfund Transfers)

§ 1601.21 Applicability.

This subpart applies only to interfund transfers, which involve redistributing participants' existing account balances among the TSP's investment funds; it does not apply to the investment of future deposits, which is covered in subpart B of this part.

§ 1601.22 Methods of requesting an interfund transfer.

(a) Participants may make an interfund transfer using the TSP Web site or the ThriftLine, or by completing a Form TSP–50 or Form TSP–U–50, Investment Allocation. The following rules apply to an interfund transfer request:

(1) Interfund transfer requests must be made in whole percentages (one percent increments). The sum of the percentages elected for all of the investment funds must equal 100 percent.

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both tax-deferred and tax-exempt balances on the effective date of the interfund transfer.

(3) Any participant who elects to invest in the F Fund, C Fund, S Fund, or I Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33. In addition, a participant who, before June 2003, has only acknowledged the risk of investing in the F Fund or C Fund, must execute an acknowledgment of risk in accordance with § 1601.33 before making any new election to invest in the F Fund, C Fund, S Fund, or I Fund.

(b) An interfund transfer request has no effect on deposits made after the effective date of the interfund transfer request; subsequent deposits will continue to be allocated among the investment funds in accordance with the participant's contribution allocation made under subpart B of this part.

(c) If an interfund transfer on a Form TSP–50 or Form TSP–U–50 is found to be invalid pursuant to § 1601.34, the purported transfer will not be made. The TSP will provide the participant with a written statement of the reason the transaction was rejected.

Subpart D—Contribution Allocations and Interfund Transfer Requests

■ 12. Section 1601.32 is revised to read as follows:

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation or an interfund transfer entered into the TSP record keeping system by a participant who uses the TSP Web site or the ThriftLine, or by a TSP Service Office participant service representative at the participant's request, at or before 11 a.m. central time of any business day, will ordinarily be posted that business day. A contribution allocation or an interfund transfer request made on the TSP Web site, the ThriftLine, or with a TSPSO participant service representative, after 11 a.m. central time of any business day will ordinarily be posted on the next business day.

(2) A contribution allocation or an interfund transfer request made on the TSP Web site or the ThriftLine on a non-business day will ordinarily be posted on the next business day.

(3) A contribution allocation or an interfund transfer request made on Form TSP–50 or Form TSP–U–50 will ordinarily be posted under the rules in paragraph (a)(1) of this section, based on when the form is entered into the TSP system by the TSP record keeper. The TSP record keeper ordinarily enters such forms into the system within 24 hours of their receipt.

(4) In most cases, the share price(s) applied to an interfund transfer request is the value of the shares on the date the relevant transaction is posted. In some circumstances, such as error correction, the share price(s) for an earlier date will be used.

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests are received for a participant and would be posted on the same day, the following rules will apply:

(i) If one or more of the contribution allocations or interfund transfer requests are submitted through the Web site or the ThriftLine and one or more are made on Form TSP–50 or Form TSP–U–50 and would be posted on the same day, only the latest contribution allocation or interfund transfer request made through the Web site or the ThriftLine will be posted.

(ii) If one or more of the contribution allocations or interfund transfer requests are made through the TSP Web site or the ThriftLine, only the contribution allocation or interfund transfer request entered at the latest time will be posted.

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP–50 or Form TSP–U–50, the forms will be posted in the order the TSP record keeper receives them.

(2) For purposes of determining the date and time of a contribution allocation or an interfund transfer request in applying the rules of this paragraph (c), the following rules apply:

(i) The date and time of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine is the date and time the participant confirms the percentages.

(ii) Central time is used for determining the date and time on which a transaction is entered and confirmed through the TSP Web site or the ThriftLine.

(d) *Cancellation of contribution allocation or interfund transfer request.* (1) A contribution allocation or an interfund transfer request may be cancelled through the TSP Web site or the ThriftLine, through written correspondence, or by contacting a participant service representative.

(2) A contribution allocation or an interfund transfer request may be cancelled by entering the cancellation on the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, which applies to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. Any subsequent request will then be processed in turn.

(3) A participant may also cancel a contribution allocation or an interfund transfer request by submitting a letter to the TSP record keeper that requests cancellation and meets the following requirements:

(i) The cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth.

(ii) The cancellation for the pending transaction must be received and entered into the system before the cutoff for the day the relevant transaction is submitted for processing in order to be effective to cancel the transaction.

(iii) The letter must state unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel.

(A) If it does not identify the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any pending contribution allocation or interfund transfer request with a date (as determined under this paragraph (d)(3)) before the date of the cancellation letter.

(B) If the date of a cancellation letter is the same as the date of a pending contribution allocation or an interfund transfer request and the request was made on Form TSP–50 or Form TSP–U–50, the form will be cancelled.

(C) If the request was made on the TSP Web site or ThriftLine, it will only be cancelled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be cancelled.

(D) If there is no contribution allocation or interfund transfer pending when the written cancellation is processed by the TSP record keeper, the cancellation will have no effect. Cancellation letters will not be held until a contribution allocation or interfund transfer request is received.

■ 13. Section 1601.34 is revised to read as follows:

§ 1601.34 Effectiveness of Form TSP–50 or Form TSP–U–50.

A Form TSP–50 or Form TSP–U–50 will not be effective if:

(a) It is not signed and dated or if it contains a future date, a date more than one year before the TSP's receipt of the form, or an invalid date.

(b) It is missing a Social Security number, date of birth, or the participant's first or last name.

(c) The participant's date of birth does not match the information in the TSP records.

(d) The contribution allocation or interfund transfer percentages do not total 100 percent, or the percentages are not entered as whole numbers. An error to one of the transactions under this paragraph (d) will not invalidate the other transaction, but only the transaction for which the error occurred.

(e) Any other reasons that may be determined by the Executive Director.

PART 1603—VESTING

■ 14. The authority citation for part 1603 continues to read as follows:

Authority: 5 U.S.C. 8432(g), 8432b(h)(1), 8474(b)(5) and (c)(1).

■ 15. Section 1603.1 is revised to read as follows:

§ 1603.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Service means:

(1) Any non-military service that is creditable under either 5 U.S.C. chapter 83, subchapter III, or 5 U.S.C. 8411. However, that service is to be determined without regard to any time limitations, any deposit or redeposit requirements contained in those statutory provisions after performing the service involved, or any requirement that the individual give written notice of that individual's desire to become subject to the retirement system established by 5 U.S.C. chapters 83 or 84; or

(2) Any military service creditable under the provisions of 5 U.S.C. 8432b(h)(1) and the regulations at 5 CFR part 1620, subpart H.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration, as well as members of the Ready Reserve including the National Guard.

Vested means those amounts in an individual account which are nonforfeitable.

Year of service means one full calendar year of service.

■ 16. Section 1603.2 is amended by revising paragraph (a) to read as follows:

§ 1603.2 Basic vesting rules.

(a) All amounts in a CSRS employee's or uniformed service member's individual account are immediately vested.

* * * * *

PART 1604—UNIFORMED SERVICES ACCOUNTS

■ 17. The authority citation for part 1604 is revised to read as follows:

Authority: 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

■ 18. Section 1604.4(a)(1) is revised to read as follows:

§ 1604.4 Contributions.

(a) * * *

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum TSP regular employee contribution (including contributions from pay earned in a combat zone) a service member may make for January through November 2003 is 8 percent of basic pay per pay period. The maximum contribution will increase one percent in December of each year until December 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraph (a)(2) of this section.

* * * * *

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 19. The authority citation for part 1605 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1).

Subpart A—General

■ 20. Section 1605.1 is revised to read as follows:

§ 1605.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

"As of" date means the date on which a TSP contribution or other transaction entailing acquisition of investment fund shares should have taken place. Employing agencies use this date on payment records to report makeup or late contributions or late loan payments.

Attributable pay date ordinarily means the pay date of an erroneous contribution for which a negative adjustment is being made or, in the case of the uniformed services, the pay date of a contribution that is being recharacterized from tax-deferred to tax-exempt, or vice versa. However, if the erroneous contribution was a makeup or late contribution, the attributable pay date is the "as of" date of the erroneous makeup or late contribution.

Board error means any act or omission by the Board that is not in accordance with applicable statutes, regulations, or the Board's administrative procedures that are made available to employing agencies and/or TSP participants.

Breakage means the loss incurred or the gain realized on makeup or late contributions. It is the difference between the value of the shares of the applicable investment fund(s) that would have been purchased had the contribution been made on the "as of" date and the value of the shares of the same investment fund(s) on the date the contribution is posted to the account.

Employing agency error means any act or omission by an employing agency, which is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board.

FERCCA correction means the correction of a retirement coverage error pursuant to the Federal Erroneous Retirement Coverage Corrections Act, title II, Public Law 106–265, 114 Stat. 770.

Late contributions means:

(1) Employee contributions that were timely deducted from a participant's basic pay but were not timely reported to the TSP record keeper for investment;

(2) Employee contributions that were timely reported to the TSP but were not timely posted to the participant's

account by the TSP because the payment record on which they were submitted contained errors;

(3) Agency matching contributions attributable to employee contributions referred to in paragraphs (1) or (2) of this definition; and

(4) Delayed agency automatic (1%) contributions.

Makeup contributions are employee contributions that should have been deducted from a participant's basic pay or employer contributions that should have been charged to an employing agency on an earlier date, but were not deducted or charged and, consequently, are being deducted or charged currently.

Negative adjustment means the removal of money from a participant's TSP account by an employing agency.

Negative adjustment record means a data record submitted by an employing agency to remove from a participant's TSP account money that the agency had previously submitted in error.

Pay date means the date established by an employing agency for paying its employees or service members.

Payment record means a data record submitted by an employing agency to report contributions or loan payments to a participant's TSP account.

Record keeper error means any act or omission by the TSP record keeper, which is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants.

■ 21. A new § 1605.2 is added to Subpart A to read as follows:

§ 1605.2 Calculating, posting, and charging breakage.

(a) Breakage will be calculated on makeup agency contributions that are reported on current payment records, and on makeup and late contributions from all sources that are reported on late payment records.

(b) *Calculating breakage.* The TSP will calculate breakage as follows:

(1) *For contributions with "as of" dates after December 31, 2000,* the TSP will use three steps to calculate breakage:

(i) The TSP will use the participant's contribution allocation on file for the "as of" date to determine how the contributions would have been invested. If there is no contribution allocation on file, or one cannot be derived based on the investment of contributions, the TSP will consider the contributions to have been invested in the G Fund;

(ii) The TSP will then determine the number of shares of the applicable investment funds the participant would have received had the contributions been made on time. If the "as of" date is before TSP account balances were converted to shares, this determination will be the number of shares the participant would have received on the conversion date, and will include the monthly earnings the participant would have received had the contributions been made on the "as of" date; and

(iii) The TSP will next determine the dollar value on the posting date of the number of shares the participant would have received had the contributions been made on time. The difference between the dollar value of the contribution on the posting date and the dollar value of the contribution on the "as of" date is the breakage.

(2) *For contributions with an "as of" date before January 1, 2000,* the TSP will use two steps to calculate breakage:

(i) The TSP will value the contributions from the "as of" date through the date TSP accounts were converted to shares, by using the greater of either the G Fund monthly rate of return or the average monthly rate of return for all TSP investment funds; and

(ii) The TSP will determine the dollar value of the contributions on the posting date by using the greater of either the G Fund share price or the average share price for all five TSP investment funds. The difference between the dollar value of the contribution on the posting date and the dollar value of the contribution on the "as of" date is the breakage.

(c) *Posting contributions.* Makeup and late contributions, as well as breakage, will be posted to the participant's account according to his or her contribution allocation on file for the posting date. If there is no contribution allocation on file for the posting date, they will be posted to the G Fund.

(d) *Charging breakage.* If the dollar amount posted to the participant's account is greater than the dollar amount of the makeup or late contribution (*i.e.*, the value of the shares is higher on the posting date), the agency will be charged the additional amount. If the dollar amount posted to the participant's account is less than the dollar amount of the makeup or late contribution (*i.e.*, the value of the shares is lower on the posting date), the difference between the amount of the contribution and the amount posted will be forfeited to the TSP.

(e) *Posting of multiple contributions.* If the TSP posts multiple makeup or late contributions with different "as of" dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each contribution, without netting any gains or losses attributable to different "as of" dates. In addition, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, investment fund, and source of contributions.

Subpart B—Employing Agency Errors

■ 22. Section 1605.11 is revised to read as follows:

§ 1605.11 Makeup of missed or insufficient contributions.

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the TSP contributions to which he or she is entitled. This includes situations in which an employing agency error prevents a participant from making an election to contribute to his or her TSP account, in which an employing agency fails to implement a contribution election properly submitted by a participant, in which an employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or in which an employing agency otherwise erroneously contributes less to the TSP for a participant's account than it should have. The corrections required by this section must be made in accordance with this part and the procedures provided to employing agencies by the Board in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to error correction under this section.

(b) *Employer makeup contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required under section 8432(c)(2), or matching contributions that are authorized under 37 U.S.C. 211(d), the following rules apply:

(1) The employing agency must promptly submit all missed contributions to the TSP record keeper on behalf of the affected participant. For each pay date involved, the employing agency must submit a separate payment record showing the "as of" date for the contributions.

(2) The TSP will calculate the breakage due to the participant and post both the contributions and the associated breakage to the participant's account in accordance with § 1605.2.

(c) *Employee makeup contributions.* Within 30 days of receiving information from his or her employing agency indicating that the employing agency acknowledges that an error has occurred which has caused a smaller amount of employee contributions to be made to the participant's account than should have been made, a participant may elect to establish a schedule to make up the deficient contributions through future payroll deductions. Employee makeup contributions can be made in addition to any TSP contributions that the participant is otherwise entitled to make. The following rules apply to employee makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the contributions to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the total amount to be contributed must be established when the schedule is created. After the schedule is created, a participant may, with the agreement of his or her agency, elect to change his or her payment amount (*e.g.*, to accelerate payment). The length of the schedule may not exceed four times the number of pay periods over which the error occurred.

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions which is less than four times the number of pay periods over which the error occurred. The ceiling may not, however, be less than twice the number of pay periods over which the error occurred.

(3) The employing agency must implement the participant's schedule of makeup contributions as soon as practicable.

(4) For each pay date involved, the employing agency must submit a separate payment record showing the "as of" date for which the employee contribution should have been made. An employee is not eligible to make up contributions with an "as of" date occurring during a period of six months following a financial hardship in-service withdrawal, as provided in 5 CFR 1650.33. An employee may make up contributions during a period of ineligibility due to a hardship withdrawal as long as the "as of" date is for an earlier period.

(5) Employee makeup contributions will be invested in accordance with the participant's current contribution allocation. The number of shares of each investment fund that will be purchased will be determined by dividing the amount of the makeup contributions by the share price of the applicable investment fund(s) on the posting date.

(6) Employee makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP, but will be included for purposes of applying the annual limit contained in section 402(g) of the Internal Revenue Code (26 U.S.C. 402(g)(1)). For purposes of applying the annual limit of section 402(g), employee makeup contributions will be applied against the limit for the year of the "as of" date.

(i) Before establishing a schedule of employee makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions for the same year, would exceed the annual contribution limit(s) contained in section 402(g) for the year(s) with respect to which the contributions are being made.

(ii) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit contained in section 402(g).

(7) A schedule of employee makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

(8) A participant may elect to terminate a schedule of employee makeup contributions at any time, but a termination is irrevocable. A participant may not elect to make partial payments under the schedule. If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

(9) At the same time that a participant makes up missed employee contributions, the employing agency must make any agency matching contributions that would have been made had the error not occurred. Agency matching contributions must be submitted pursuant to the rules set forth in paragraph (b) of this section. A participant may not receive matching contributions associated with any employee contributions that are not actually made up. If employee makeup contributions are suspended in accordance with paragraph (c)(7) of this section, the payment of agency matching contributions must also be suspended.

(10) If a participant transfers to an employing agency different from the one by which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether employing agency error was responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(11) Employee makeup contributions may be made only by payroll deduction from basic pay or, for uniformed services participants, from basic pay, incentive pay, or special pay, including bonus pay. Contributions by check, money order, cash, or other form of payment directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

■ 23. Section 1605.12 is amended by revising paragraphs (a), (b)(1), (c), (f)(1), and (f)(2) to read as follows:

§ 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to the removal of funds erroneously contributed to the TSP. The TSP calls this action a negative adjustment, and it is only available to remove erroneous contributions made after December 31, 2000. Erroneous contributions made on or before December 31, 2000, will remain in the participant's account. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions are addressed in § 1605.14.

(b) * * *

(1) To remove money from a participant's account, the employing agency must submit, for each attributable pay date involved, a negative adjustment record stating the amount of the erroneous contribution being removed, the attributable pay date with respect to which the erroneous contribution was made, and the source(s) of the contributions.

* * * * *

(c) *Processing negative adjustments.* A negative adjustment will be allocated

among investment funds in the same manner as the original contribution. The current value of the contributions that the agency seeks to remove by the negative adjustment will be calculated in accordance with the following rules:

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and after December 31, 2000), the TSP will:

(i) For each source of contributions, determine the dollar value of the amount to be removed from each investment fund, as of the last monthly valuation date before TSP accounts were converted to shares, by crediting the contribution with TSP investment fund returns;

(ii) For each source of contributions and each investment fund, convert the dollar value determined in paragraph (c)(1)(i) of this section to shares; and

(iii) Multiply the price per share for the date the adjustment is posted by the number of shares calculated in paragraph (c)(1)(ii) of this section.

(2) If the attributable pay date of the negative adjustment is after the date TSP accounts were converted to shares, the TSP will:

(i) For each source and type of contributions and for each investment fund, determine the number of shares that represent the amount of the contribution to be removed from the investment fund based upon the share price on the attributable pay date; and

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section.

* * * * *

(f) * * *

(1) If multiple negative adjustments for the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses or returned to the employing agency will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different investment funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each investment fund will be treated separately for purposes of these calculations;

(2) The amount computed by application of the rules in this section will be removed from the participant's account *pro rata* from all investment funds, by source, based on the allocation of the participant's most recent account balance; and

* * * * *

■ 24. Section 1605.13 is amended by removing paragraph (a)(4) and by revising paragraphs (a)(3), (b)(3), and (d) to read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

(a) * * *

(3) All makeup contributions under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. However, breakage will be calculated using the breakage rule described in § 1605.2 for the G Fund share prices and, if applicable, rates of return requested by the participant, unless the court or other tribunal with jurisdiction over the back pay case orders otherwise.

(b) * * *

(3) All makeup contributions under this paragraph (b) and associated breakage will be posted to the participant's account based on the participant's contribution allocation on the posting date. Breakage will be calculated either of two ways:

(i) If the retroactive adjustment relates to an "as of" date after December 31, 2000, the TSP will use the participant's contribution allocation on the "as of" date; or

(ii) If the retroactive adjustment relates to an "as of" date on or before December 31, 2000, the rate of return will be either the G Fund rate or the average of the rates of return for all of the TSP investment funds, whichever rate is greater.

* * * * *

(d) *Prior withdrawal of TSP account.* If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if the participant does not provide notice to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. No breakage will be incurred on any restored funds.

* * * * *

■ 25. Section 1605.14 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected:

(1) Employee contributions that exceed the applicable contribution percentage for the pay period(s) involved may remain in the participant's account. The participant may request the return of excess employee contributions made after December 31, 2000; those contributed on or before December 31, 2000, must remain in the participant's account. If the participant requests a refund of excess employee contributions, the employing agency must submit a negative adjustment records to remove these funds, under the procedure described in § 1605.12.

(2) The TSP will forfeit all agency contributions that were made to a CSRS participant's account. An employing agency may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

(b) If a FERS participant is misclassified by an employing agency as a CSRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

(4) If the retirement coverage correction is a FERCCA correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage (or lost earnings) on contributions from all three sources. Breakage (or lost earnings) will be calculated pursuant to § 1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payroll records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

(5) If employee contributions were made up before the Office of Personnel Management implemented its regulations on FERCCA correction, and the correction is considered to be a FERCCA correction, an amount to replicate TSP lost earnings will be calculated by the Office of Personnel Management pursuant to its regulations and provided to the employing agency for transmission to the TSP record keeper.

* * * * *

■ 26. A new § 1605.15 is added to read as follows:

§ 1605.15 Reporting and processing late contributions and late loan payments.

(a) The employing agency must promptly submit late contributions to the TSP record keeper on behalf of the affected participant on late payment records as soon as the error is discovered. For each pay date involved, the employing agency must submit a separate record showing the "as of" date for the contributions. Breakage for both employee and agency contributions will be calculated, posted, and charged to the agency or forfeited to the TSP in accordance with § 1605.2.

(b) If an employing agency deducts loan payments from a participant's pay, but fails to submit those payments to the TSP for the pay date for which they were deducted (or submits them in a manner that prevents them from being timely credited to the participant's account), the employing agency will be responsible for paying breakage using the procedure described in § 1605.2. The loan payment record must contain the "as of" date for which the loan payment was deducted.

(c) All contributions or loan payments on payment records contained in a payroll submission that was received from an employing agency more than 30 days after the pay date associated with the payroll submission (as reported on the appropriate journal voucher), will be subject to breakage calculated, posted, and charged to the employing agency (or forfeited to the TSP) in accordance with § 1605.2. The employing agency will be apprised of the breakage due for each record reported on the late submission.

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

■ 27. The authority citation for part 1606 continues to read as follows:

Authority: 5 U.S.C. 8432a, 8474(b)(3) and (c)(1). Section 1606.5 also issued under Title II, Pub. L. 106–265, 114 Stat. 770.

Subpart A—General Provisions

■ 28. Section 1606.1 is revised to read as follows:

§ 1606.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) Definitions generally applicable to employing agency errors and their correction are set forth at 5 CFR 1605.1.

(c) As used in this part:

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings.

■ 29. Section 1606.2 is revised to read as follows:

§ 1606.2 Purpose.

(a) With the implementation of the TSP's daily valued record keeping system, losses suffered by participants arising out of employing agency errors will be corrected by calculating and posting breakage to an affected participant's account. Breakage will be calculated as described in 5 CFR 1605.2. However, in some cases, an employing agency may have submitted contributions subject to lost earnings before implementation of the daily valued record keeping system, but did not submit the requisite lost earnings record. Therefore, until September 1, 2003, employing agencies may submit separate lost earnings records for makeup and late contributions submitted before implementation of the new record keeping system. All payments posted after implementation of the new record keeping system are covered under 5 CFR part 1605.

(b) After August 31, 2003, the use of lost earning records will be discontinued.

■ 30. Section 1606.4 is amended by revising paragraph (c) to read as follows:

§ 1606.4 Applicability.

* * * * *

(c) As explained in § 1606.2, this part applies to errors that occurred before September 1, 2003.

* * * * *

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

■ 31. Section 1606.5 is amended by revising paragraph (a)(4) to read as follows:

§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.

(a) * * *

(4) The lost earnings will be posted to the participant's account based on the contribution allocation in effect on the posting date.

* * * * *

§§ 1606.7 and 1606.8 [Removed]

■ 32. Sections 1606.7 and 1606.8 are removed.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

■ 33. Section 1606.9 is removed.

Subpart E—Processing Lost Earnings Records

■ 34. Section 1606.13 is revised to read as follows:

§ 1606.13 Calculation and crediting of lost earnings.

(a) Lost earnings records submitted pursuant to this part will be processed daily by the TSP record keeper.

(b) In calculating lost earnings attributable to a lost earnings record, earnings and losses for different sources of contributions or investment funds within a source will not be offset against each other.

(c) Notwithstanding any other provision of this part, where the net lost earnings computed in accordance with this part on any lost earnings record are less than zero within a source of contributions, the employing agency will not be credited with respect to that source of contributions. The amount of the negative lost earnings will be removed from the participant's account and applied against TSP administrative expenses.

Subpart F—[Removed]

■ 35. Subpart F of part 1606 is removed.

■ 36. Part 1640 is revised to read as follows:

PART 1640—PERIODIC PARTICIPANT STATEMENTS

Sec.

1640.1 Definitions.
1640.2 Information regarding account.
1640.3 Statement of individual account.
1640.4 Account transactions.
1640.5 Investment fund information.
1640.6 Methods of providing information.

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

§ 1640.1 Definitions.

Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

§ 1640.2 Information regarding account.

The Board will provide to each participant four (4) times each calendar year the information described in §§ 1640.3, 1640.4, and 1640.5. Plan participants can obtain account balance information on a more frequent basis from the TSP Web site and the ThriftLine.

§ 1640.3 Statement of individual account.

In the quarterly statements, the Board will furnish each participant with the following information concerning the participant's individual account:

(a) Name, Social Security number, and date of birth under which the account is established;

(b) Retirement system coverage and employment status of the participant, as provided by the employing agency;

(c) Statement whether the participant has a beneficiary designation on file with the TSP record keeper;

(d) Contribution allocation that is current at the end of the statement period;

(e) Beginning and ending dates of the period covered by the statement;

(f) The following information for and, as of the close of business on the ending date of, the period covered by the statement:

(1) The total account balance and tax-exempt balance, if applicable;

(2) The account balance and activity for each source of contributions;

(3) The account balance and activity in each of the investment funds, including the dollar amount of the transaction, the share price, and the number of shares; and

(4) Loan information and activity, if applicable;

(g) Any other information concerning the account that the Board determines should be included in the statement.

§ 1640.4 Account transactions.

(a) Where relevant, the following transactions will be reported in each individual account statement:

(1) Contributions;

(2) Withdrawals;

(3) Forfeitures;

(4) Loan disbursements and repayments;

(5) Transfers among investment funds;

(6) Adjustments to prior transactions;

(7) Transfers or rollovers from traditional individual retirement accounts (IRAs) and eligible employer plans; and

(8) Any other transaction that the Executive Director determines will affect the status of the individual account.

(b) Where relevant, the statement will contain the following information concerning each transaction identified in paragraph (a) of this section:

(1) Type of transaction;

(2) Investment funds affected;

(3) Date the transaction was posted and, where relevant, any earlier dates on which the transaction should have been posted or from which the calculation of the amount of the transaction was derived;

(4) Source of the contributions affected by the transaction;

(5) Amount of the transaction (in dollars and in shares);

(6) The share price(s) at which the transaction was posted; and

(7) Any other information the Executive Director deems relevant.

§ 1640.5 Investment fund information.

Each open season, the Board will furnish each participant a statement concerning each of the investment funds. This statement will contain the following information concerning each investment fund:

(a) A summary description of the type of investments made by the fund, written in a manner that will allow the participant to make an informed decision; and

(b) The performance history of the type of investments made by the fund, covering the five-year period preceding the date of the evaluation.

§ 1640.6 Methods of providing information.

(a) *Individual account statement.* The information concerning each participant's individual account described in §§ 1640.3 and 1640.4 will be sent to the participant at the participant's address of record in the TSP system by first class mail, unless otherwise elected under paragraph (b) of this section. It is the participant's responsibility to provide his or her current address to his or her agency or service or, in the case of a separated participant, to the TSP record keeper. For employed participants, the employing agency must provide the current address to the TSP record keeper.

(b) *Individual account statements available from the TSP Web site.* As an alternative to receiving an account statement by mail as provided in paragraph (a) of this section, participants may elect to receive their individual account statements by accessing the TSP Web site. Participants who elect to receive their statements from the TSP Web site will not receive a statement by mail.

(c) *Investment information.* The investment information described in § 1640.5 will be furnished to each participant by:

(1) Mailing the information to the participant by the method described in paragraph (a) of this section;

(2) Making the information available to the participant on the TSP Web site as described in paragraph (b) of this section; or

(3) Including the information in material published by the Board and distributed in a manner reasonably designed to reach the participant. This includes distributing the material through the participant's employing agency or service, or, in the case of a separated employee, through the TSP record keeper.

■ 37. Part 1645 is revised to read as follows:

PART 1645—CALCULATION OF SHARE PRICES

Sec.

1645.1 Definitions.
1645.2 Posting of transactions.
1645.3 Calculation of total net earnings for each investment fund.
1645.4 Administrative expenses attributable to each investment fund.
1645.5 Calculation of share prices.
1645.6 Basis for calculation of share prices.

Authority: 5 U.S.C. 8439(a)(3) and 8474.

§ 1645.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Accrued means that income is accounted for when earned and expenses are accounted for when incurred.

Administrative expenses means expenses described in 5 U.S.C. 8437(c)(3).

Basis means the number of shares of an investment fund upon which the calculation of a share price is based.

Business day means any calendar day for which share prices are calculated.

Forfeitures means amounts forfeited to the TSP pursuant to 5 U.S.C. 8432(g)(2) and other non-statutory forfeited amounts, net of restored forfeited amounts.

§ 1645.2 Posting of transactions.

Contributions, loan payments, loan disbursements, withdrawals, interfund transfers, and other transactions will be posted in dollars and in shares by source and by investment fund to the appropriate individual account by the TSP record keeper, using the share price for the date the transaction is posted.

§ 1645.3 Calculation of total net earnings for each investment fund.

(a) Each business day, net earnings will be calculated separately for each investment fund.

(b) Net earnings for each investment fund will equal:

(1) The sum of the following items, if any, accrued since the last business day:

(i) Interest on money of that investment fund which is invested in the Government Securities Investment Fund;

(ii) Interest on other short-term investments of the investment fund;

(iii) Other income (such as dividends, interest, or securities lending income) on investments of the investment fund; and

(iv) Capital gains or losses on investments of the investment fund, net of transaction costs.

(2) Minus the accrued administrative expenses of the investment fund, determined in accordance with § 1645.4.

(c) The net earnings for each investment fund determined in accordance with paragraph (b) of this section will be added to the residual net earnings for that investment fund from the previous business day, as described in § 1645.5(b), to produce the total net earnings. The total net earnings will be used to calculate the share price for that business day.

§ 1645.4 Administrative expenses attributable to each investment fund.

A portion of the administrative expenses accrued during each business day will be charged to each investment fund. An investment fund's respective portion of administrative expenses will be determined as follows:

(a) Accrued administrative expenses (other than those described in paragraph (b) of this section) will be reduced by accrued forfeitures and accrued earnings on forfeitures, abandoned accounts, and unapplied deposits;

(b) Investment management fees and other accrued administrative expenses attributable only to the F Fund, C Fund, S Fund, or I Fund will be charged solely to the F Fund, C Fund, S Fund, or I Fund, respectively;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (a) of this section, and not described in paragraph (b) of this section, will be charged on a *pro rata* basis to all investment funds, based on the respective investment fund balances on the last business day of the prior month end.

§ 1645.5 Calculation of share prices.

(a) *Calculation of share price.* The shares of each investment fund will have an initial value of $10.00. The share price for each investment fund for each business day will apply to all sources of contributions for that investment fund. The total net earnings (as computed under § 1645.3) for each investment fund will be divided by the total fund basis (as computed under § 1645.6) for that investment fund. The resulting number, computed to ten decimal places, represents the incremental change for the current business day in the value of that investment fund from the last business day. The share price for that investment fund for the current business day is the sum of the incremental change in the share price for the current business day plus the share price for the prior business day, truncated to two decimal places.

(b) *Residual net earnings.* When the total net earnings for each business day for each investment fund are divided by the total fund basis in that investment fund, there will be residual net earnings attributable to the truncation described in paragraph (a) of this section that will not be included in the incremental change in the share price of the investment fund for that business day. The residual net earnings that are not included in the incremental share price for the investment fund may be added to the earnings for that investment fund on the next business day.

§ 1645.6 Basis for calculation of share prices.

The total fund basis for each investment fund will be the sum of the number of shares in all individual accounts from all sources of contributions in that investment fund as of the opening of business on each business day.

■ 38. Part 1650 is revised to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

Sec.

1650.1 Definitions.
1650.2 Eligibility for a TSP withdrawal.
1650.3 Frozen accounts.
1650.4 Certification of truthfulness.
1650.5 Returned funds

Subpart B—Post-Employment Withdrawals

1650.11 Withdrawal elections.
1650.12 Single payment.
1650.13 Monthly payments.
1650.14 Annuities.
1650.15 Abandonment of inactive accounts.
1650.16 Required withdrawal date.
1650.17 Changes and cancellation of a withdrawal request.

Subpart C—Procedures for Post-Employment Withdrawals

1650.21 Information provided by employing agency.
1650.22 Accounts of $200 or more.
1650.23 Accounts of less than $200.
1650.24 How to obtain a post-employment withdrawal.
1650.25 Taxes related to post-employment withdrawals.

Subpart D—In-Service Withdrawals

1650.31 Age-based withdrawals.
1650.32 Financial hardship withdrawals.
1650.33 Contributing to the TSP after an in-service withdrawal.
1650.34 Uniqueness of loans and withdrawals.

Subpart E—Procedures for In-Service Withdrawals

1650.41 How to obtain an age-based withdrawal.
1650.42 How to obtain a financial hardship withdrawal.
1650.43 Taxes related to in-service withdrawals.

Subpart F—[Reserved]

Subpart G—Spousal Rights

1650.61 Spousal rights applicable to post-employment withdrawals.
1650.62 Spousal rights applicable to in-service withdrawals.
1650.63 Executive Director's exception to the spousal notification requirement.
1650.64 Executive Director's exception to the spousal consent requirement.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart A—General

§ 1650.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Eligible employer plan means a plan qualified under I.R.C. section 401(a) (26 U.S.C. 401(a)), including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP that may be available to a participant who has not yet separated from Government service.

Post-employment withdrawal means a withdrawal from the TSP that is available to a participant who is separated from Government service.

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract). (It does not include a Roth IRA, a SIMPLE IRA, or a Coverdell Educational Savings Account (formerly known as an educational IRA).)

§ 1650.2 Eligibility for a TSP withdrawal.

(a) A participant who is separated from Government service can elect to withdraw a portion of his or her account balance in a single payment, or the entire account balance by one or a combination of the withdrawal methods described in subpart B of this part.

(b) A post-employment withdrawal will not be paid unless TSP records indicate that the participant is separated from Government service. The TSP will cancel a post-employment withdrawal election upon receiving information from an employing agency that a participant is no longer separated.

(c) A participant cannot make a post-employment withdrawal until any outstanding TSP loan has either been repaid in full or declared to be a taxable distribution. An outstanding TSP loan will not affect a participant's eligibility for an in-service withdrawal.

(d) A separated participant who is reemployed in a position in which he or she is eligible to participate in the TSP is subject to the following rules:

(1) A participant who is reemployed in a TSP-eligible position on or before the 31st full calendar day after separation is not eligible to withdraw his or her TSP account in accordance with subpart B of this part.

(2) A participant who is reemployed in a TSP-eligible position more than 31 full calendar days after separation and who made a post-employment withdrawal while separated may not withdraw any remaining portion of his or her account balance in accordance with subpart B of this part until he or she again separates from Government service.

(e) A participant who has not separated from Government service may be eligible to withdraw all or a portion of his or her account in accordance with subparts D and E of this part.

(f) A participant can elect to have any portion of a single or monthly payment that is not transferred to an eligible employer plan or traditional IRA deposited directly, by electronic funds transfer, into a savings or checking account at a financial institution in the United States.

(g) If a participant has a civilian TSP account and a uniformed services TSP account, the rules in this part apply to each account separately. For example, the participant is eligible to make one age-based in-service withdrawal from each account.

§ 1650.3 Frozen accounts.

(a) All withdrawals from the TSP are subject to the rules relating to spousal rights (found in subpart G of this part) and to domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (found in 5 CFR part 1653).

(b) A participant may not withdraw any portion of his or her account balance if the account is frozen due to a pending retirement benefits court order, an alimony or child support enforcement order, or a child abuse enforcement order, or because a freeze has been placed on the account by the TSP for another reason.

§ 1650.4 Certification of truthfulness.

(a) By signing a TSP withdrawal form, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the withdrawal process is true and complete, including statements concerning the participant's marital status and, where applicable, the spouse's address at the time the application is filed or the current spouse's consent to the withdrawal.

(b) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status (in the case of a CSRS participant), the spouse's address, or that the signature of the spouse of a FERS participant or uniformed services member was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(c) If the spouse affirms the allegation, the Board will conduct an investigation. If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or, in the case of a CSRS participant, his or her spouse's address, or submitted the withdrawal form with a forged spousal signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

§ 1650.5 Returned funds.

If a withdrawal is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will forfeit the returned funds to the Plan. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

Subpart B—Post-Employment Withdrawals

§ 1650.11 Withdrawal elections.

(a) Subject to the restrictions in this subpart, participants may elect to withdraw all or a portion of their TSP accounts in a single payment, a series of monthly payments, a life annuity, or any combination of these options.

(b) If a participant's account balance is less than $5.00 when he or she separates from Government service, the balance will automatically be forfeited to the TSP. The participant can reclaim the money by writing to the TSP record keeper and requesting the amount that was forfeited; however, TSP investment earnings will not be credited to the account after the date of the forfeiture.

§ 1650.12 Single payment.

(a) *Partial withdrawal.* A participant can elect to withdraw a portion of his or her account balance in a single payment and leave the rest in the TSP until a later date, subject to § 1650.16 and the following requirements:

(1) The participant is eligible for a partial withdrawal only if he or she did not make an age-based in-service withdrawal from that account.

(2) The participant may not elect a partial withdrawal of less than $1,000.

(3) Only one partial withdrawal from that account is permitted.

(b) *Full withdrawal.* A participant can elect to withdraw his or her entire account balance in a single payment.

§ 1650.13 Monthly payments.

(a) A participant electing a full post-employment withdrawal (*i.e.*, a withdrawal of his or her entire account) can elect to withdraw all or a portion of the account balance in a series of substantially equal monthly payments, to be paid in one of the following manners:

(1) *A specific dollar amount.* The amount elected must be at least $25 per month; if the amount elected is less than $25 per month, the request will be rejected. Payments will be made in the amount requested each month until the account balance is expended.

(2) *A monthly payment amount calculated based on life expectancy.* Payments based on life expectancy are determined using the factors set forth in the Internal Revenue Service life expectancy tables codified at 26 CFR 1.401(a)(9)–9, Q&A 1 and 2. The monthly payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments will be made. There is no minimum amount for a monthly payment calculated based on this method.

(b) A participant receiving monthly payments calculated based upon life expectancy can make one election, during a period to be determined by the Executive Director, to change to a fixed monthly payment. A participant can change the amount of his or her fixed payments annually. A participant who is receiving monthly payments based on a fixed dollar amount, however, cannot elect to change to an amount calculated based on life expectancy.

(c) A participant receiving monthly payments, regardless of the calculation method, can elect at any time to receive the remainder of his or her account balance in a final single payment.

(d) The TSP will ensure that the annual total monthly payments satisfy any applicable minimum distribution requirement of the Internal Revenue Code by making a supplemental payment no later than the last date required by the Internal Revenue Service.

(e) A participant receiving monthly payments may change the investment of his or her account balance among the TSP investment funds as provided in 5 CFR part 1601.

(f) Participants who elect to withdraw their account balances in a series of monthly payments cannot transfer or roll over money from a traditional IRA or eligible employer plan into their TSP accounts. Participants who have both a civilian TSP account and a uniformed services TSP account cannot combine the two accounts if they are already receiving monthly payments from one of the accounts.

§ 1650.14 Annuities.

(a) A participant electing a full post-employment withdrawal can use all or a portion of his or her account balance to purchase a life annuity. The portion of the participant's account balance elected and available for the annuity purchase must be at least $3,500. The TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance or the portion specified, unless an amount must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code. In the event that a minimum distribution is required before the date of the first annuity payment, the TSP will compute that amount and pay it directly to the participant.

(b) An annuity will provide a payment for life to the participant and, if applicable, to the participant's survivor, in accordance with the type of annuity chosen. The TSP annuity vendor will make the first annuity payment approximately 30 days after the TSP purchases the annuity.

(c) The amount of an annuity payment will depend on the type of annuity chosen, the participant's age when the annuity is purchased (and the age of the joint annuitant, if applicable), the amount used to purchase the annuity, and the interest rate available when the annuity is purchased.

(d) Participants may choose among the following types of annuities:

(1) *A single life annuity with level payments.* This annuity provides monthly payments to the participant as long as the participant lives. The amount of the monthly payment remains constant.

(2) *A joint life annuity for the participant and spouse with level payments.* This annuity provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as the survivor is alive. The amount of the monthly payment remains constant, although the amount received will depend on the type of survivor benefit elected.

(3) *A joint life annuity for the participant and another person with level payments.* This annuity provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as the survivor is alive. The amount of the monthly payment remains constant. The joint annuitant must be either a former spouse or a person who has an insurable interest in the participant.

(i) A person has an "insurable interest in the participant" if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (either blood or adopted, but not by marriage) who is closer than a first cousin is presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (d)(3)(ii) of this section has an insurable interest in him or her by submitting, with the annuity request, an affidavit from a person other than the participant or the joint annuitant that demonstrates that the designated joint annuitant has an insurable interest in the participant (as described in paragraph (d)(3)(i) of this section).

(4) *Either a single life or joint (with spouse) life annuity with increasing payments.* This annuity provides monthly payments to the participant only, or to the participant and spouse, as applicable. The monthly payments are adjusted once each year on the anniversary of the first payment, based on the Federal Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Each year, the percentage change in the monthly unadjusted CPI–W index for July, August, and September over the monthly unadjusted CPI–W index for July, August, and September of the prior year is calculated. The following calendar year, the amount of the monthly payment is adjusted by the lesser of 3 percent or the percentage increase in the CPI–W, if any. In no case will the amount of the monthly payment be decreased based on the CPI–W. If the participant chooses a joint life annuity, the annual increase also applies to benefits received by the survivor.

(e) A participant who chooses a joint life annuity (with a spouse, a former spouse, or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. The survivor benefit applies when either the participant or the joint annuitant dies.

(1) A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the amount of the payment that is made when both the participant and the joint annuitant are alive.

(2) A 100 percent survivor benefit provides a monthly payment to the survivor, which is equal to the amount of the payment that is made when both the participant and the joint annuitant are alive.

(3) Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option. However, the 100 percent survivor benefit can only be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court

order) if the joint annuitant is not more than 10 years younger than the participant.

(f) The following features are mutually exclusive, but can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, where applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the beneficiary(ies) designated by the participant (or by the joint annuitant, where applicable). This feature can be combined with any type of annuity.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will be made to the beneficiary(ies) until 120 payments have been made. This feature can be combined with any single life annuity, but cannot be combined with a joint life annuity.

(g) Once an annuity has been purchased, the type of annuity, the annuity features, and the identity of the joint annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.15 Abandonment of inactive accounts.

A separated participant must select a full withdrawal option by the time he or she reaches age 70½. If the participant does not do so and the TSP is unable to locate the participant, the inactive account will be declared abandoned in accordance with § 1650.16.

§ 1650.16 Required withdrawal date.

(a) A participant must withdraw his or her account under § 1650.12, or begin receiving payments under §§ 1650.13 or 1650.14, by April 1 of the year following the year in which the participant reaches 70½ years of age or separates from Government service, whichever is later.

(b) For account balances of $200 or more, a separated participant may elect to withdraw his or her account or to begin receiving payments before the date described in paragraph (a) of this section, but is not required to do so.

(c) In the event that a participant does not withdraw his or her account or begin receiving payments in accordance with paragraph (a) of this section, the Board will transfer all of the funds in the participant's account not already invested in the Government Securities Investment (G) Fund to that fund. A notice of this action will be sent to the participant with a warning that his or her account will be declared abandoned and forfeited unless the participant comes into compliance with paragraph (a) by a date certain specified in the notice.

(d) If the participant does not take the appropriate withdrawal action described in paragraph (c) of this section, the Board will purchase an annuity for the participant after the following steps have been taken:

(1) The account has been declared abandoned and the funds in the account have been forfeited;

(2) A notice of this action has been sent to the participant;

(3) The participant reclaims the account balance that was abandoned, but decides against a withdrawal pursuant to §§ 1650.12 or 1650.13; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to § 1650.14.

§ 1650.17 Changes and cancellation of a withdrawal request.

(a) *Before processing.* A pending withdrawal request can be cancelled if the cancellation is processed before the TSP processes the withdrawal request. However, the TSP processes withdrawal requests each business day. Withdrawal requests that are entered into the record keeping system by 11:00 a.m. central time ordinarily will ordinarily be processed that night; those entered after 11:00 a.m. central time will be processed the next business day. Consequently, a cancellation request must be received and entered into the system before the cut-off for the day the withdrawal request is submitted for processing in order to be effective to cancel the withdrawal.

(b) *After processing.* A withdrawal election cannot be changed or cancelled after the withdrawal request has been processed. Consequently, funds disbursed cannot be returned to the TSP record keeper.

(c) *Change in monthly payments.* If a participant is receiving a series of monthly payments, the participant can change at any time: His or her withdrawal election to request a final single payment, the address to which the payments are mailed, whether or not a payment will be transferred (if permitted) and the portion to be transferred, the method by which direct payments to the participant are being sent (EFT or check), the identity of the financial institution to which payments are transferred or sent by EFT, or the identity of the EFT account. Once a year, during a period determined by the Executive Director, the participant may also elect to change the payment amount or to change from a monthly payment based on life expectancy to a final payment amount.

Subpart C—Procedures for Post-Employment Withdrawals

§ 1650.21 Information provided by employing agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government service, his or her employing agency must report the separation and the date of separation to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency, it will not pay a post-employment withdrawal.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government service, his or her employing agency must furnish the participant with information regarding the participant's withdrawal options (*e.g.*, the withdrawal booklet and information about the TSP Web site). The employing agency is also responsible for counseling participants concerning TSP withdrawal options.

§ 1650.22 Accounts of $200 or more.

A participant whose account balance is $200 or more must submit a properly completed withdrawal election to request a post-employment withdrawal of his or her account balance.

§ 1650.23 Accounts of less than $200.

Upon receiving information from the employing agency that a participant has been separated for more than 31 days and that any outstanding loans have been closed, the TSP record keeper will send the participant a check for the entire amount of his or her account balance if the account balance is $5.00 or more but less than $200. The participant may not elect to leave this amount in the TSP, nor will the TSP transfer this amount to an eligible employer plan or traditional IRA, or pay it by EFT. However, the participant may elect to roll over this payment into an eligible employer plan or traditional IRA.

§ 1650.24 How to obtain a post-employment withdrawal.

To request a post-employment withdrawal under this subpart, a participant must submit to the TSP record keeper a properly completed post-employment withdrawal request Form TSP–70 or Form TSP–U–70, or request the withdrawal on the TSP Web site. (A participant's ability to complete a post-employment withdrawal on the Web will depend on his or her retirement system coverage, withdrawal election, account balance, marital status, and whether or not the withdrawal will be transferred to an eligible employer plan or traditional IRA.)

§ 1650.25 Taxes related to post-employment withdrawals.

(a) When a payment is made directly to a participant from the TSP after the participant has separated from Government service, the money is subject to Federal income tax withholding (except contributions from pay subject to the combat zone tax exclusion). However, a participant does not pay taxes on money that the TSP transfers directly to (or that the participant rolls over to) an eligible employer plan or traditional IRA until the money is withdrawn from the plan or IRA. In addition, any portion of a participant's TSP account that is used to purchase an annuity is not taxed at the time the annuity is purchased; monthly annuity payments are taxable income in the year in which they are paid.

(b) A participant may request that the TSP transfer directly to an eligible employer plan or traditional IRA all or part of any withdrawal that is an "eligible rollover distribution" under the Internal Revenue Code. A withdrawal that is not an eligible rollover distribution cannot be transferred to an eligible employer plan or traditional IRA. If an eligible rollover distribution is not transferred, it is subject to mandatory 20 percent withholding.

(c) A traditional IRA or an eligible employer plan that can accept a transfer must be an IRA or a plan maintained in the United States, which means one of the 50 States or the District of Columbia.

(d) The following TSP withdrawal methods are considered eligible rollover distributions under the Internal Revenue Code, 26 U.S.C. 402(c)(4):

(1) A single payment, as described in § 1650.12;

(2) Monthly payments, as described in § 1650.13, where payments are expected to last less than 10 years at the time they begin. This means that if the participant elects a monthly payment amount, that amount, when divided into the participant's account balance at the time of the first payment, must yield a number less than 120. If the participant elects to change the payment amount after payments begin, future payments may not continue to qualify as eligible rollover distributions if they do not also meet the requirements of this section; and

(3) A final single payment, as described in § 1650.13(c).

(e) The following withdrawal methods are not eligible rollover distributions:

(1) An annuity purchased by the TSP;

(2) Monthly payments that do not meet the criteria set forth in paragraph (d)(2) of this section;

(3) A minimum distribution payment or any portion of a payment which represents a minimum distribution;

(4) A plan loan that is deemed to be a taxable distribution because of default; and

(5) A return of excess elective deferrals.

Subpart D—In-Service Withdrawals

§ 1650.31 Age-based withdrawals.

(a) A participant who has reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based withdrawal request must be at least $1,000, unless the withdrawal request is for the entire vested account balance.

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP transfer all or a portion of the withdrawal to a tradition IRA or an eligible employer plan.

(c) A participant is permitted only one age-based withdrawal for an account.

(d) A participant who makes an age-based withdrawal is not eligible to make a partial withdrawal after separating from Government service.

§ 1650.32 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can certify that he or she has a financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal request must be at least $1,000.

(b) To be eligible for a financial hardship withdrawal, a participant must have a financial need that results from at least one of the following four conditions:

(1) The participant's monthly cash flow is negative (*i.e.*, the participant's income is less than his or her monthly expenses on a recurring basis);

(2) The participant has incurred medical expenses as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes. Eligible medical expenses include the cost of household improvements required as a result of a medical condition, illness or injury. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(3) The participant must have paid the cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(4) The participant must have paid attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) When determining financial hardship needs, a participant cannot use any expenses that are already paid or are reimbursable to the participant by insurance or otherwise.

(d) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested; or

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings.

(e) The participant must certify that he or he has a financial hardship as described on the hardship withdrawal form, and that the dollar amount of the withdrawal request does not exceed the actual amount of the financial hardship.

(f) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

§ 1650.33 Contributing to the TSP after an in-service withdrawal.

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months after the withdrawal is processed. Therefore, the participant's employing agency will

discontinue his or her contributions (and any applicable agency matching contributions) for six months after the agency is notified by the TSP; in the case of a FERS participant, agency automatic (1%) contributions will continue. A participant whose TSP contributions are discontinued by his or her agency after a financial hardship withdrawal can resume contributions any time after expiration of the six-month period by submitting a new TSP contribution election. Contributions will not resume automatically.

§ 1650.34 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP record keeper a properly completed age-based withdrawal request, Form TSP–75 or TSP–U–75, or use the TSP Web site to initiate a request. A participant's ability to complete an age-based withdrawal on the Web will depend on his or her retirement system coverage, marital status, and whether or not part or all of the withdrawal will be transferred to an eligible employer plan or traditional IRA.

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed financial hardship withdrawal form, Form TSP–76 or Form TSP–U–76, or use the TSP Web site to initiate a request. A participant's ability to complete a financial hardship withdrawal on the Web will depend on his or her retirement system coverage and marital status.

(b) There is no limit on the number of financial hardship withdrawals a participant can make; however, the TSP will not accept a financial hardship withdrawal request for a period of six months after a financial hardship disbursement is made.

§ 1650.43 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly from the TSP to a participant, the money is taxable income in the year in which the payment is made (except contributions from pay subject to the combat zone tax exclusion). However, a participant does not pay taxes on an age-based withdrawal that the TSP transfers directly or the participant rolls over to a traditional IRA or an eligible employer plan until the money is withdrawn.

(b) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to a traditional IRA or an eligible employer plan, consistent with § 1650.25. If the withdrawal is not transferred, it is subject to mandatory 20 percent withholding. The participant may increase the amount of withholding by submitting IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments, to the TSP with the withdrawal request.

(c) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to a traditional IRA or an eligible employer plan. A financial hardship in-service withdrawal is subject to 10 percent withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments, to the TSP with the withdrawal request.

Subpart F—[Reserved]

Subpart G—Spousal Rights

§ 1650.61 Spousal rights applicable to post-employment withdrawals.

(a) The spousal rights described in this section apply to full post-employment withdrawals when the married participant's vested TSP account balance exceeds $3,500, and to partial post-employment withdrawals without regard to the amount of the participant's account balance.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under § 1650.64 to the spousal notification requirement within 90 days of the date the withdrawal request is processed by the TSP. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a full post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity.

(1) To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary, unless the TSP granted the participant an exception under § 1650.65 to the spousal notification requirement within 90 days of the date the withdrawal form is processed by the TSP. If the TSP granted the participant an exception to the signature requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form.

(2) Because a partial post-employment withdrawal will diminish the amount in the account which is available for a joint and survivor annuity, a spouse's consent is required before a partial withdrawal will be approved, regardless of the amount to be withdrawn.

(3) Both a spouse's waiver of a joint and survivor annuity and a spouse's consent to a partial withdrawal must be properly notarized.

(4) The spouse's waiver or consent is irrevocable for that withdrawal once the TSP record keeper has received it.

§ 1650.62 Spousal rights applicable to in-service withdrawals.

(a) The spousal rights described in this section apply to all in-service withdrawals and do not depend on the amount of the participant's vested account balance or the amount requested for withdrawal.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal, unless the participant was granted an exception under § 1650.64 to the spousal notification requirement within 90 days of the date on which the withdrawal request is processed by the TSP. If the TSP granted the participant an exception to the notice requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) A participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse before obtaining an in-service withdrawal, unless the participant was granted an exception under § 1650.65 to the signature requirement within 90 days of the date the withdrawal form is processed by the TSP. To show the spouse's consent, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a CSRS participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception to the notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP–16 or Form TSP–U–16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A court order stating that the spouse's whereabouts cannot be determined;

(2) A police or governmental agency determination, signed by the appropriate department or division head, which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons, which meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days before the request for an exception was received by the TSP. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, "I have not seen nor heard from him," or "I have not had contact with her," are not sufficient.

(ii) The statements from two other persons must support the participant's statement that he or she does not know the spouse's whereabouts, and substantiate the participant's description of the efforts he or she made to locate the spouse, including the dates the participant made those efforts.

(iii) All statements must be signed and dated and must include the following certification: "I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.".

(b) A withdrawal election will be processed within 90 days of an approved exception so long as the spouse named on the form is the spouse for whom the exception has been approved. The spouse's SSN must be included on the withdrawal request.

(c) The TSP, in its discretion, may require a participant to provide additional information before granting a waiver. The TSP may use any of the information provided to conduct its own search for the spouse.

§ 1650.64 Executive Director's exception to the spousal consent requirement.

(a) Whenever this subpart requires the consent of a spouse of a FERS or uniformed services participant to a loan or withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.64; or

(2) Due to exceptional circumstances, requiring the spouse's signature would be inappropriate.

(i) An exception to the requirement for a spouse's signature may be granted based on exceptional circumstances only when the participant presents a court order or government agency determination that contains a finding or a recitation of exceptional circumstances regarding the spouse which would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed, but are exemplified by a court order or government agency determination that:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her TSP account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A post-employment withdrawal election or an in-service withdrawal request processed within 90 days of an approved exception will be accepted by the TSP so long as the spouse named on the form is the spouse for whom the exception has been approved. The spouse's SSN must be included on the withdrawal request form.

PART 1651—DEATH BENEFITS

■ 39. The authority citation for part 1651 is revised to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 40. Section 1651.1 is revised to read as follows:

§ 1651.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Death benefit means the portion of a deceased participant's account that is payable under FERSA's order of precedence.

Domicile means the participant's place of residence for purposes of state income tax liability.

Order of precedence means the priority of entitlement to a TSP death benefit specified in 5 U.S.C. 8424(d).

TIN means a taxpayer identification number. A TIN may be a Social Security number (SSN), an employer identification number (EIN), or an individual taxpayer identification number (ITIN).

■ 41. Section 1651.2 is revised to read as follows:

§ 1651.2 Entitlement to funds in a deceased participant's account.

(a) *Death benefits.* Except as provided in paragraph (b) of this section, the account balance of a deceased participant will be paid as a death benefit to the individual or individuals surviving the participant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on the TSP designation of beneficiary form that has been properly completed and filed in accordance with § 1651.3;

(2) If there is no designated beneficiary, to the spouse of the participant in accordance with § 1651.5;

(3) If there are no beneficiaries or persons as described in paragraphs

(a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

(4) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant in equal shares or entirely to the surviving parent in accordance with § 1651.7;

(5) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(4) of this section, to the duly appointed executor or administrator of the estate of the participant in accordance with § 1651.8; or

(6) If there are no beneficiaries or persons as described in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who is or are entitled under the laws of the state of the participant's domicile on the date of the participant's death in accordance with § 1651.9.

(b) *TSP withdrawals.* If the TSP processes a notice that a participant has died, it will cancel any pending request by the participant to withdraw his or her account. The TSP will also cancel an annuity purchase made on or after the participant's date of death but before annuity payments have begun, and the annuity vendor will return the funds to the TSP. The funds designated by the participant for the withdrawal will be paid as a death benefit in accordance with paragraph (a) of this section, unless the participant elected to withdrawal his or her account in the form of an annuity, in which case the funds designated for the purchase of the annuity will be paid as described below:

(1) If the participant requested a single life annuity with no cash refund or 10-year certain feature, the TSP will pay the funds as a death benefit in accordance with paragraph (a) of this section.

(2) If the participant requested a single life annuity with a cash refund or 10-year certain feature, the TSP will pay the funds:

(i) As a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of a withdrawal request, Form TSP–70 or Form TSP–U–70; or

(ii) As a death benefit in accordance with paragraph (a) of this section if no beneficiary designated on the withdrawal request survives the participant.

(3) If the participant requested a joint life annuity without additional features, the TSP will pay the funds:

(i) As a death benefit to the joint life annuitant if he or she survives the participant; or

(ii) As a death benefit in accordance with paragraph (a) of this section if the joint life annuitant does not survive the participant.

(4) If the participant requested a joint life annuity with a cash refund or 10-year certain feature, the TSP will pay the funds:

(i) As a death benefit to the joint life annuitant if he or she survives the participant;

(ii) As a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of Form TSP–70 or Form TSP–U–70, if the joint life annuitant does not survive the participant; or

(iii) As a death benefit in accordance with paragraph (a) of this section if neither the joint life annuitant nor any designated beneficiary survives the participant.

(5) If a participant dies after an annuity has been purchased, the annuity vendor will make or stop the payments in accordance with the annuity method selected.

(c) *TSP loans.* If the TSP processes a notice that a participant has died, any pending loan disbursement will be cancelled and the funds designated for the loan will be distributed as a death benefit in accordance with paragraph (a) of this section. If a TSP loan has been disbursed, but the check has not been negotiated (or an electronic funds transfer (EFT) has been returned), the loan proceeds will be used to pay off the loan. If the loan check has been negotiated (or the EFT has been processed), the funds cannot be returned to the TSP and the TSP will declare the loan balance as a taxable distribution in accordance with 5 CFR 1655.15.

(d) *Investment of a TSP account upon notice of death.* If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the TSP will transfer the entire account into the G Fund after it processes a notice that the participant has died, or a death code indicating the participant's death from the participant's agency or service. The account will accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid under this part.

■ 42. Section 1651.14 is amended by revising paragraph (f), and by adding a new paragraph (g) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(f) *Payment to trust.* If payment is to a trust, the payment will be made payable to the trust and mailed in care of the trustee. A TIN must be provided for the trust.

(g) If a death benefit payment is returned as undeliverable, the TSP record keeper will attempt to locate the beneficiary by writing to his or her TSP database address. If the beneficiary does not respond within 60 days, the TSP will forfeit the death benefit payment to the Plan. The beneficiary can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

■ 43. Section 1651.17 is revised to read as follows:

§ 1651.17 Disclaimer of benefits.

(a) *Right to disclaim.* The beneficiary of a TSP account may disclaim his or her right to receive all or part of a TSP death benefit. If the disclaimant is a minor, the parent or guardian of the minor must sign the disclaimer.

(b) *Valid disclaimer.* The disclaimer must expressly state that the beneficiary is disclaiming his or her right to receive either all or a stated percentage of the death benefit payable from the TSP account of the named participant and must be:

(1) Submitted in writing;

(2) Signed by the person (or legal representative) disclaiming the benefit; and

(3) Received before the TSP pays the death benefit.

(c) *Invalid disclaimer.* A disclaimer is invalid if it is revocable or directs to whom the disclaimed benefit should be paid.

(d) *Disclaimer effect.* The disclaimed share will be paid as though the beneficiary predeceased the participant, according to the rules set forth in § 1651.10.

■ 44. Part 1653 is revised to read as follows:

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

Sec.
1653.1 Definitions.
1653.2 Qualifying retirement benefits court orders.
1653.3 Processing retirement benefits court orders.
1653.4 Calculating entitlements.
1653.5 Payment.

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations to Pay Child Support or Alimony Currently

1653.11 Definitions.
1653.12 Qualifying legal processes.
1653.13 Processing legal processes.
1654.14 Calculating entitlements.
1653.15 Payment.

Subpart C—Child Abuse Court Orders

1653.21 Definitions.
1653.22 Purpose.
1653.23 Processing and payment.

Authority: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Court means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

Effective date of a court order means the date it was entered by the clerk of the court or, if the order does not show a date entered, the date it was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date it was signed by the judge.

Retirement benefits court order or *order* means a court decree of divorce, annulment or legal separation, or a court order or court-approved property settlement agreement incident to such a decree. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding.

§ 1653.2 Qualifying retirement benefits court orders.

(a) To be qualifying, and thus enforceable against the TSP, a retirement benefits court order must meet the following requirements:

(1) The order must expressly relate to the Thrift Savings Plan account of a TSP participant. This means that:

(i) The order must expressly refer to the "Thrift Savings Plan" or describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits;

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the participant's TSP account or TSP account balance rather than a benefit formula or the participant's eventual benefits; and

(iii) If the participant has a civilian TSP account and a uniformed services TSP account, the order must expressly identify the account to which it relates.

(2) The order must either require the TSP to freeze the participant's account to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, or to make a payment from the participant's account to a permissible payee.

(3) If the order requires a payment from the participant's account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or fraction of the account;

(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. All of the variables in the formula must have values that are readily ascertainable from the face of the order or from TSP records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(d).

(4) A court order can only require a payment to:

(i) Current or former spouses of the participant;

(ii) Attorneys of current or former spouses of a participant (as fees);

(iii) Dependents of the participant; and

(iv) Attorneys of dependents of the participant (as fees).

(b) The following retirement benefits court orders are not qualifying and thus are not enforceable against the TSP:

(1) An order relating to a TSP account that has been closed;

(2) An order relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(3) An order requiring the return to the TSP of money that was properly paid pursuant to an earlier court order;

(4) An order requiring the TSP to make a payment in the future, unless the present value of the payee's entitlement can be calculated, in which case the TSP will make the payment currently; and

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account.

§ 1653.3 Processing retirement benefits court orders.

(a) The payment of a retirement benefits court order from the TSP is governed solely by FERSA and by the terms of this subpart. The TSP will honor retirement benefits court orders properly issued by a court (as defined in § 1653.1). However, those courts have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying domestic relations proceedings.

(b) The TSP will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Retirement benefits court orders should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana, 70161–1500. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a court order must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's Social Security number (SSN);

(2) The name and last known mailing address of each payee covered by the order; and

(3) The payee's SSN and state of legal residence if he or she is the current or former spouse of the participant.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawal or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)) will be allowed until the account is unfrozen. All other account activity will be permitted.

(d) The following documents do not purport to be qualifying retirement benefits court orders, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or is not accompanied by a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

(3) A court order dated before June 6, 1986;

(4) A court order that does not award all or any part of the TSP account to someone other than the participant; and

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) The TSP will review a complete copy of an order to determine whether it is a qualifying retirement benefits court order as described in § 1653.2. The TSP will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the court order is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the court order has on the participant's TSP account; and

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax information and income tax withholding forms to the person responsible for paying Federal income tax on the payment;

(iv) Information and the form needed to transfer the payment to an eligible employer plan or traditional IRA (if the payee is the current or former spouse of the participant); and

(v) Information and the form needed to receive the payment through an electronic funds transfer (EFT).

(g) The TSP decision letter is a final determination of the parties' rights in the account. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen upon receipt of an incomplete order, the account will be unfrozen if a complete order is not received within 30 days of the date of the request described in paragraph (e) of this section;

(2) If the account was frozen in response to an order issued to preserve the *status quo* pending final resolution of the parties' rights to the participant's TSP account, the account will be unfrozen if the TSP receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the *status quo*, even if it does not qualify to require a payment from the TSP;

(3) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Forty-five (45) days after the date of the TSP decision letter if the court order is not qualifying. The 45-day period will be terminated, and the account will be unfrozen, if both parties submit to the TSP a written request for such a termination.

(i) The TSP will hold in abeyance the processing of a court-ordered payment if the TSP is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP must be provided with proper documentation of the appeal and citations to legal authority, which address the effect of the appeal on the enforceability of the underlying court order.

(i) If the TSP receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages or fractions of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

(ii) In the order of their effective dates, if received by the TSP on the same day.

(4) In all other cases, the TSP will honor multiple qualifying court orders relating to the same TSP account in the order of their receipt by the TSP.

§ 1653.4 Calculating entitlements.

(a) For purposes of computing the amount of a payee's entitlement under this section, a participant's TSP account balance will include any loan balance outstanding as of the date used for calculating the payee's entitlement, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP will use the participant's account balance as of the last preceding business day.

(c) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply that percentage or fraction, the TSP will use the effective date of the order.

(d) If the court order awards a specific dollar amount, the payee's entitlement will be the lesser of:

(1) The dollar amount stated in the court order; or

(2) The vested account balance on the date of disbursement.

(e) If a court order describes a payee's entitlement in terms of a fixed dollar amount and a percentage or fraction of the account, the TSP will pay the fixed dollar amount, even if the percentage or fraction, when applied to the account balance, would yield a different result.

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise.

(2) If earnings are awarded and a rate is specified, the rate must be expressed as an annual percentage rate or as a *per diem* dollar amount added to the payee's entitlement.

(3) If earnings are awarded and the rate is not specified, the TSP will credit the payee's entitlement with the rate of return for the G Fund.

(4) Earnings at the G Fund rate will accrue on a monthly basis through May 31, 2003, beginning with the month following the entitlement date; thereafter, G Fund earnings will accrue on a daily basis, beginning with the business day following the date used for calculating the payee's entitlement (or beginning June 1, 2003, if interest or earnings commence before June 1, 2003) and ending 2 business days before payment is made.

(g) The TSP will estimate the amount of a payee's entitlement when it prepares the court order decision letter and will recalculate the entitlement at the time of payment. The recalculation may differ from the initial estimation because:

(1) The estimation of the payee's entitlement includes both vested and nonvested amounts in the participant's account. If, at the time of payment, the nonvested portion of the account has not become vested, the recalculated entitlement will apply only to the participant's vested account balance;

(2) After the estimate of the payee's entitlement is prepared, the TSP may process account transactions that have an effective date on or before the date used to compute the payee's entitlement. Those transactions will be included when the payee's entitlement is recalculated at the time of payment; and

(3) The amount available for payment from the account may be reduced due to changes in share price (*i.e.*, investment losses).

§ 1653.5 Payment.

(a) Payment pursuant to a qualifying retirement benefits court order ordinarily will be made 60 days after the date of the TSP decision letter. This is intended to permit the payee sufficient time to consider decisions about tax withholding, payment by EFT, and transfer, if applicable, under paragraph (e) of this section. An earlier distribution may be made as follows:

(1) If the payee is the current or former spouse of the participant, the payee can request to receive the payment sooner than 60 days by making a tax withholding election, by requesting a payment by EFT, or by requesting a transfer described in paragraph (e)(1) of this section. The TSP decision letter will provide the forms a payee can use to request an earlier disbursement.

(2) If the payee is someone other than the current or former spouse of the participant, the participant can request a disbursement sooner than 60 days by making the tax withholding election described in paragraph (e)(2) of this section (on forms provided to the participant with the TSP decision letter).

(3) If the court order makes an award to multiple payees, a disbursement may be made earlier than 60 days only if requests for expedited payment are received from all of the payees.

(4) In no event will payment be made earlier than 31 days after the date of the TSP decision letter.

(b) In no case will payment exceed the participant's vested account balance, minus any outstanding loan balance.

(c) The entire amount of a court order payee's entitlement must be disbursed at one time. A series of payments will not be made, even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all rights to any further payment under that order, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate court order.

(d) Payment will be made *pro rata* from all TSP investment funds in which the account is invested, based on the balance in each fund on the date payment is made, and from both tax-deferred and tax-exempt balances, if any. The TSP will not honor provisions of a court order that require payment to be made from specific investment funds or contribution sources. A court order may, however, specify a particular payment from the tax-exempt balance of a uniformed services TSP account.

(e) Payment will be made only to the person or persons specified in the court order.

(1) If payment is made to the current or former spouse of the participant, the distribution will be reported to the Internal Revenue Service (IRS) as income to the payee.

(i) A current or former spouse of a participant may request that the TSP transfer all or a portion of the payment to an eligible employer plan or traditional IRA. A retirement benefits court order cannot prevent the TSP from providing this transfer option to a current or former spouse of a participant.

(ii) Any amount that is not so transferred will be distributed to the payee. That distribution will be subject to mandatory Federal income tax withholding. The payee may elect to have an additional amount withheld by filing with the TSP the forms provided to the payee with the decision letter.

(iii) Any distribution directly to the payee will be made under the following rules:

(A) If the court order specifies a third-party mailing address for the payment, the TSP will mail to the address specified any portion of the payment that is not transferred to an eligible employer plan or traditional IRA. That portion will be disbursed in the form of a United States Treasury check made payable solely to the court order payee, and mailed in care of the third party addressee.

(B) If the court order does not specify a third party addressee, the payee can choose to receive the distribution by United States Treasury check or by electronic funds transfer (EFT) to a checking or savings account at a financial institution.

(2) If the payment is made to anyone other than the current or former spouse of the participant, the following rules apply:

(i) The payment is taxable to the participant and is subject to Federal income tax withholding. The participant can elect the amount to be withheld by filing with the TSP the forms provided to the participant with the decision letter. If the participant does not make a withholding election, the TSP will withhold 10 percent from the payment. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (*i.e.*, the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

(ii) The payment will be made under the same rules described in paragraph (e)(1)(iii) of this section.

(f) Payment will not be made jointly to two or more persons. If the court order requires payments to more than one person, the order must separately indicate the amount to be paid to each.

(g) If there are insufficient funds to pay each court order payee, payment will be made as follows:

(1) If the order specifies an order of precedence for the payments, the TSP will honor it.

(2) If the order does not specify an order of precedence for the payments, the TSP will pay a current or former spouse first, a dependent second, and an attorney third.

(h) If the payee dies before a payment is disbursed, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before payment is made, the order will be honored so long as it is submitted to the TSP before the TSP account has been closed.

(i) If the parties to a divorce or annulment have remarried each other, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(j) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other

person claiming entitlement to the payment.

(k) If a court ordered payment is returned as undeliverable, the TSP record keeper will attempt to locate the payee by writing to his or her TSP database address. If the payee does not respond within 60 days, the TSP will forfeit the funds to the Plan. The payee can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

Subpart B—Legal Process for the Enforcement of a Participant's Legal Obligations To Pay Child Support or Alimony Currently

§ 1653.11 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1600.1.

(b) As used in this subpart:

Alimony means the payment of funds for the support and maintenance of a spouse or former spouse. Alimony includes separate maintenance, alimony *pendente lite*, maintenance, and spousal support. Alimony can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Child support means payment of funds for the support and maintenance of a child or children of the participant. Child support includes payments to provide for health care, education, recreation, clothing, or to meet other specific needs of a child or children. Child support can also include attorney fees, interest, and court costs, but only if these items are expressly made recoverable by qualifying legal process, as described in § 1653.12.

Competent authority means a court or an administrative agency of competent jurisdiction in any State, territory or possession of the United States; a court or administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor the process; or an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction pursuant to state or local law.

Legal process means a writ, order, summons, or other similar process in the nature of a garnishment, which is brought to enforce a participant's legal obligations to pay child support or alimony currently.

§ 1653.12 Qualifying legal processes.

(a) The TSP will only honor the terms of a legal process that is qualifying under paragraph (b) of this section.

(b) A legal process must meet each of the following requirements to be considered qualifying:

(1) A competent authority must have issued the legal process;

(2) The legal process must expressly relate to the Thrift Savings Plan account of a TSP participant, as described in § 1653.2(a)(1);

(3) The legal process must require the TSP to:

(i) Pay a stated dollar amount from a participant's TSP account; or

(ii) Freeze the participant's account in anticipation of an order to pay from the account.

(c) The following legal processes are *not* qualifying:

(1) A legal process relating to a TSP account that has been closed;

(2) A legal process relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Federal service;

(3) A legal process requiring the return to the TSP of money that was properly paid pursuant to an earlier legal process;

(4) A legal process requiring the TSP to make a payment in the future; and

(5) A legal process requiring a series of payments.

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the Federal Employees' Retirement System Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP will honor legal processes properly issued by a competent authority, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP will review a legal process to determine whether it is enforceable against the TSP only after the TSP has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Legal processes should be submitted to the TSP record keeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, LA 70161–1500. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a legal process must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's Social Security number (SSN);

(2) The name and last known mailing address of each payee covered under the order; and

(3) The SSN and state of legal residence of the payee if he or she if the current or former spouse of the participant.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying legal process, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, contribution allocations and interfund transfers.

(d) The following documents will not be treated as purporting to be a qualifying legal processes, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued by a competent authority;

(2) A legal process relating to a TSP account that has been closed; and

(3) A legal process that does not relate either to the TSP or to the participant's retirement benefits.

(e) After the participant's account is frozen, the TSP will review the document further to determine if it is complete; if the document is not complete, the TSP will request a complete document. If a complete copy is not received by the TSP within 30 days of that request, the account will be unfrozen and no further action will be taken with respect to the document.

(f) As soon as practicable after receipt of a complete copy of a legal process, the TSP will review it to determine whether it is a qualifying legal process as described in § 1653.12. The TSP will mail a decision letter to all parties containing the same information described at § 1653.3(f).

(g) The TSP decision letter is final. There is no administrative appeal from the TSP decision.

(h) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days of the date of a request described in paragraph (e) of this section;

(2) If the account was frozen pursuant to a legal process requiring the TSP to freeze the participant's account in anticipation of an order to pay from the account, the account will be unfrozen if any one of the following events occurs:

(i) As soon as practicable after the TSP receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary order qualifies to place a freeze on the account);

(ii) Upon payment pursuant to the order to pay from the account, if the TSP determines that the order is qualifying; or

(iii) As soon as practicable after the TSP issues a decision letter informing the parties that the order to pay from the account is not a qualifying legal process;

(3) If the account was frozen after the TSP received a document that purports to be a legal process requiring payment from the participant's account, the account will be unfrozen:

(i) Upon payment pursuant to a qualifying legal process; or

(ii) As soon as practicable after the TSP informs the parties that the document is not a qualifying legal process.

(i) The TSP will hold in abeyance the processing of a payment required by legal process if the TSP is notified in writing that the legal process has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the legal process. The notification must be accompanied by the documentation and citations to legal authority described at § 1653.3(i).

(j) Multiple qualifying legal processes relating to the same TSP account and received by the TSP will be processed as follows:

(1) If the legal processes make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP will only honor the legal process bearing the latest effective date.

(2) If the legal processes relate to different payees, the legal process will be honored:

(i) In the order of their receipt by the TSP, if received by the TSP on different days; or

(ii) In the order of their effective dates, if received by the TSP on the same day.

§ 1653.14 Calculating entitlements.

A qualifying legal process can only require the payment of a specified dollar amount from the TSP. Payment pursuant to a qualifying legal process will be calculated in accordance with § 1653.4(a), (d), (f) and (g).

§ 1653.15 Payment.

Payment pursuant to a qualifying legal process will be made in accordance with § 1653.5.

Subpart C—Child Abuse Court Orders

§ 1653.21 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this subpart:

Child means an individual less than 18 years of age.

Judgment against a participant for physically, sexually, or emotionally abusing a child means any legal claim perfected through a final enforceable judgment which is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

§ 1653.22 Purpose.

Under 5 U.S.C. 8437(e)(3) and 8467(a)(2), the TSP will honor a court order or other similar process in the nature of a garnishment that is brought to enforce a judgment against a participant for physically, sexually, or emotionally abusing a child.

§ 1653.23 Processing and payment.

To the maximum extent consistent with sections 8437(e)(3) and 8467(a)(2), child abuse court orders will be processed by the TSP under the procedures described in subparts A and B of this part.

■ 45. Part 1655 is revised to read as follows:

PART 1655—LOAN PROGRAM

Sec.
1655.1 Definitions.
1655.2 Eligibility for loans.
1655.3 Information concerning the cost of a loan.
1655.4 Number of loans.
1655.5 Loan repayment period.
1655.6 Amount of loan.
1655.7 Interest rate.
1655.8 Quarterly statements.
1655.9 Effect of loans on individual account.
1655.10 Loan application process.
1655.11 Loan acceptance.
1655.12 Loan agreement.
1655.13 Loan approval and issuance.
1655.14 Loan payments.
1655.15 Taxable distributions.
1655.16 Reamortization.
1655.17 Prepayment.
1655.18 Spousal rights.
1655.19 Effect of court order on loan.
1655.20 Residential loans.

Authority: 5 U.S.C. 8433(g) and 8474.

§ 1655.1 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

(b) As used in this part:

Amortization means the reduction in a loan by periodic payments of principal and interest according to a schedule of payments.

Date of application means the day on which the TSP record keeper receives the loan application, either electronically on the TSP Web site or on Form TSP–20 or Form TSP–U–20.

General purpose loan means any TSP loan other than a loan for the purchase or construction of a primary residence.

Guaranteed funds means a cashier's check, money order, certified check (*i.e.*, a check certified by the financial institution on which it is drawn), cashier's draft, or treasurer's check from a credit union.

Loan issue date means the date on which the TSP record keeper disburses funds from the participant's account for the loan amount.

Loan repayment period means the time over which payments that are required to repay a loan in full are scheduled.

Principal or *principal amount* means the amount borrowed by a participant from his or her individual account, or, after reamortization, the amount financed.

Reamortization means the recalculation of periodic payments of principal and interest.

Residential loan means a TSP loan for the purchase or construction of a primary residence.

Taxable distribution means the amount of outstanding principal and interest on a loan which must be reported to the Internal Revenue Service as taxable income as a result of the failure of a participant to repay a loan in full, according to the terms of the loan agreement.

§ 1655.2 Eligibility for loans.

A participant who is eligible to contribute to the TSP and who is in pay status is eligible to apply for a loan from his or her TSP account. Only a participant who has at least $1,000 in employee contributions and attributable earnings in his or her account may receive a loan (subject to the other terms and conditions set forth in this part). A participant who is separated from Government service may not receive a loan from his or her TSP account.

§ 1655.3 Information concerning the cost of a loan.

Information concerning the cost of a loan is provided in the booklet TSP Loan Program (available on the TSP Web site, from the participant's personnel office or service, or from the TSP record keeper). From this information, a participant can determine the effects of a loan on his or her final account balance and can compare the cost of a loan to that of other sources of financing.

§ 1655.4 Number of loans.

A participant may have no more than two loans outstanding from his or her

TSP account at any time. Only one of the two outstanding loans may be a residential loan. A participant with both a civilian TSP account and a uniformed services TSP account may have two outstanding loans from each account.

§ 1655.5 Loan repayment period.

(a) *Minimum.* The minimum repayment period a participant may request for a loan is one year of scheduled payments.

(b) *Maximum.* The maximum repayment period a participant may request for a general purpose loan is five years of scheduled payments. The maximum repayment period a participant may request for a residential loan is 15 years of scheduled payments.

§ 1655.6 Amount of loan.

(a) *Minimum amount.* The initial principal amount of any loan may not be less than $1,000.

(b) *Maximum amount.* The principal amount of a new loan must be less than or equal to the smallest of the following:

(1) The portion of the participant's individual account balance that is attributable to employee contributions and attributable earnings (not including any outstanding loan principal);

(2) 50 percent of the participant's vested account balance (including any outstanding loan balance) or $10,000, whichever is greater, minus any outstanding loan balance; or

(3) $50,000 minus the participant's highest outstanding loan balance (if any) during the last 12 months.

(c) If a participant has both a civilian TSP account and a uniformed services TSP account, the maximum loan amount available will be based on a calculation that takes into consideration the account balances and outstanding loan balances for both accounts.

§ 1655.7 Interest rate.

(a) Except as provided in paragraph (b) of this section, loans will bear interest at the monthly G Fund interest rate established by the Department of the Treasury in effect on the date the TSP record keeper processes the paper application or on the date the request is entered on the TSP Web site.

(b) The interest rate calculated under this section remains fixed until the loan is repaid, unless a civilian participant informs the TSP record keeper that he or she entered into active duty military service, and, as a result, requests that the interest rate on a loan issued before entry into active duty military service be reduced to an annual rate of 6 percent for the period of such service. The civilian participant must provide the record keeper with the beginning and ending dates of active duty military service.

§ 1655.8 Quarterly statements.

Information relating to any outstanding loan will be included on the quarterly participant statements.

§ 1655.9 Effect of loans on individual account.

(a) The amount borrowed will be removed from the participant's account when the loan is disbursed. Consequently, these funds will no longer generate earnings.

(b) The loan principal will be disbursed from that portion of the account represented by employee contributions and attributable earnings, *pro rata* from each investment fund in which the account is invested and *pro rata* from tax-deferred and tax-exempt balances.

(c) Loan payments, including both principal and interest, will be credited to the participant's individual account. Loan payments will be credited to the appropriate investment fund in accordance with the participant's most recent contribution allocation.

§ 1655.10 Loan application process.

(a) Any participant may apply for a loan by submitting a completed loan application (Form TSP–20 or Form TSP–U–20) to the TSP record keeper.

(b) The following participants may also apply for and complete a loan request on the TSP Web site:

(1) FERS participants or members of the uniformed services requesting a general purpose loan if they are:

(i) Unmarried; or

(ii) Married and have been granted an exception to the spousal requirements described in § 1655.18.

(2) CSRS participants requesting a general purpose loan if they are:

(i) Unmarried;

(ii) Married and provide a current address for their spouse; or

(iii) Married and have been granted an exception to the spousal requirements described in § 1655.18.

(c) Persons not described in paragraph (b) of this section may use the TSP Web site to submit a loan application and obtain a loan agreement, but must complete the process by submitting the resulting loan agreement and any related documentation on paper.

§ 1655.11 Loan acceptance.

The TSP record keeper will reject a loan application if:

(a) The participant is not qualified to apply for a loan under § 1655.2 or has failed to provide all required information on the loan application;

(b) The participant has the maximum number of loans outstanding or, if the application is for a residential loan, the participant has a residential loan outstanding from the same account;

(c) The participant has a pending loan agreement or in-service withdrawal request;

(d) The amount of the requested loan is less than the minimum amount set forth in § 1655.6(a);

(e) A hold has been placed on the account pursuant to 5 CFR 1653.3(c); or

(f) The participant has received a taxable loan distribution from the TSP within the 12-consecutive-month period preceding the date of the application, unless the taxable distribution was the result of the participant's failure to repay the loan upon his or her separation from Government service.

§ 1655.12 Loan agreement.

(a) Upon determining that a loan application meets the requirements of this part, the TSP record keeper will provide the participant with the terms and conditions of the loan, as follows:

(1) If the participant submits a paper loan application, the TSP record keeper will mail the loan agreement (Form TSP–21–G, TSP–U–21–G, TSP–21–R, or TSP–U–21–R, as applicable), and other information as appropriate, to the participant.

(2) If the participant initiates a loan request on the TSP Web site, which cannot be completed on the Web site, the participant must print the partially completed loan agreement directly from the Web site, provide any missing information (including spouse's signature or documents supporting a residential loan request, if applicable), and submit it to the TSP record keeper.

(b) By signing the loan agreement, either electronically or on the form, the participant agrees to be bound by all of its terms and conditions, agrees to repay the loan by payroll deduction, and certifies, under penalty of perjury, to the truth and completeness of all statements made in the loan application and loan agreement to the best of his or her knowledge.

(c) For loans submitted on paper and those that cannot be completed on the TSP Web site, the TSP record keeper must receive the completed loan agreement (including any required supporting documentation) before the expiration date stated on the loan agreement or the agreement will not be processed.

(d) The signed loan agreement must be accompanied by:

(1) In the case of a residential loan, supporting materials that document the purchase or construction of the residence and the amount requested (as described in § 1655.20); and

(2) Any other information that the Executive Director may require.

(e) A participant may request that the loan be disbursed by direct deposit to a checking or savings account maintained by the participant in a financial institution by properly completing the required information on the loan agreement or on the TSP Web site, if the loan request can be completed on the Web site.

§ 1655.13 Loan approval and issuance.

(a) When the completed loan agreement is signed electronically or returned by the participant to the TSP record keeper, together with any documentation required to be submitted, the loan will be initially approved or denied by the TSP record keeper based upon the requirements of this part, including the following conditions:

(1) The participant has signed the promise to repay the loan, has agreed to repay the loan through payroll deductions, and has certified that the information given is true and complete to the best of the participant's knowledge;

(2) Processing of the loan would not be prohibited by § 1655.19 relating to court orders;

(3) The spouse of a FERS or uniformed services participant has consented to the loan or, if the spouse's whereabouts are unknown or exceptional circumstances make it inappropriate to secure the spouse's consent, an exception to the spousal requirement described in § 1655.18 has been granted;

(4) The spouse of a CSRS participant has been given notice or, if the spouse's whereabouts are unknown, an exception to the spousal requirement described in § 1655.18 has been granted;

(5) When a paper agreement is required, the completed loan agreement, including all required supporting documentation, was received by the TSP record keeper before the expiration date specified on the loan agreement; and

(6) The participant has met any other conditions that the Executive Director may require.

(b) If approved, the loan will be issued unless:

(1) The participant's employing agency has reported the participant's separation from Government service;

(2) The TSP receives written notice that the participant has died;

(3) The participant's account balance on the loan issue date does not contain sufficient employee contributions and associated earnings to make a loan of at least $1,000;

(4) A hold on the account is processed before the loan is disbursed; or

(5) A taxable distribution on an outstanding loan is declared before the new loan is issued.

(c) If the loan is otherwise acceptable but the amount available to borrow is less than the requested amount (but is at least $1,000), the loan will be issued in the maximum amount available at the time of the disbursement. In such a case, the periodic payment amount will remain the same and the loan term may be shortened.

(d) The loan issue date is considered to be the date the loan was made.

(e) If a loan disbursement is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will repay the loan with the returned loan proceeds.

§ 1655.14 Loan payments.

(a) Loan payments must be made through payroll deduction in accordance with the loan agreement. Once loan payments begin, the employing agency cannot terminate the payroll deductions at the employee's request, unless the TSP instructs it to do so. For example, employing agencies must stop loan payments if the participant becomes a debtor in a chapter 13 bankruptcy action, unless the bankruptcy court expressly permits the payments to continue.

(b) The participant may make additional payments by mailing a personal check or guaranteed funds to the TSP record keeper. If the TSP receives a payment that repays the outstanding loan amount and overpays the loan by $10.00 or more, the overpayment will be refunded to the participant. Overpayments of less than $10 will be applied to the participant's account and will not be refunded. If a loan overpayment refund is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 60 days, the TSP will forfeit the overpayment refund to the Plan. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(c) The initial payment on a loan is due on or before the 60th day following the loan issue date. Interest accrues on the loan from the date of issuance.

(d) Subsequent payments are due at regular intervals as prescribed in the loan agreement, or most recent amortization, according to the participant's pay cycle.

(e) If a payment is not made when due, the TSP will notify the participant of the missed payment and the participant must make up the payment in full. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP will declare the loan to be a taxable distribution in accordance with § 1655.15. The participant's make-up payment must be in the form of a personal check or guaranteed funds.

(f) Interest will accrue on all missed payments and will be included in the calculation of any taxable distribution subsequently declared in accordance with § 1655.15. Interest will also accrue on payments missed while a participant is in nonpay status.

§ 1655.15 Taxable distributions.

(a) The Board may declare any unpaid loan principal, plus unpaid interest, to be a taxable distribution from the Plan if:

(1) A participant is in a confirmed nonpay status for a period of one year or more, has not advised the TSP that he or she is serving on active military duty, and payments are not resumed after the participant is notified the loan has been reamortized;

(2) A participant separates from Government service and does not repay the outstanding loan principal and interest in full within the period specified by the notice to the participant from the TSP record keeper explaining the participant's repayment options;

(3) The TSP record keeper advises the participant that there are missing payments and the participant fails to make (by personal check or guaranteed funds) a direct payment of the entire missing amount or repayment in full by the deadline established in accordance with § 1655.14(e);

(4) Any material information provided in accordance with § 1655.10, § 1655.12, or § 1655.18 is found to be false;

(5) With the exception of a loan described in 5 CFR 1620.45, the loan is not repaid in full (including interest due) within five years, in the case of a general purpose loan, or within 15 years, in the case of a residential loan, from the loan issue date;

(6) The participant dies; or

(7) The participant's loan payments were stopped when he or she because a debtor in a chapter 13 bankruptcy action, and the bankruptcy court did not expressly permit the payments to recommence.

(b) If a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the

participant of the amount and date of the distribution. The Board will report the distribution to the Internal Revenue Service as income for the year in which it occurs. That portion of a loan that represents a uniformed services participant's contributions from pay subject to the combat zone tax exclusion will not be included in this calculation.

(c) If a participant dies and a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant's estate of the amount and date of the distribution. Neither the estate nor any other person, including a beneficiary, may repay the loan of a deceased participant, nor can the funds be returned to the TSP.

(d) If, because of Board or TSP record keeper error, a TSP loan is declared a taxable distribution under circumstances that make such a declaration inconsistent with this part, or inconsistent with other procedures established by the Board or TSP record keeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate loan payments or repay in full the outstanding balance on the loan.

§ 1655.16 Reamortization.

(a) A participant may request reamortization of a loan at any time to change the amount of the payments, unless the loan is in a default status.

(b) Upon reamortization, the outstanding principal balance remains the same. Any accrued interest is paid off first before payments are applied to principal and current interest.

(c) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

(d) A participant may request reamortization by using the TSP Web site or by contacting a TSPSO participant service representative.

(e) When a participant's pay cycle changes for any reason, he or she should request a reamortization to adjust the scheduled payment to an equivalent amount in the new pay cycle. If the new pay cycle results in fewer payments per year and the participant does not reamortize the loan, the loan may be declared a taxable distribution pursuant to § 1655.15(a)(3).

§ 1655.17 Prepayment.

(a) A participant may repay a loan in full, without a penalty, at any time before the declaration of a taxable distribution under § 1655.15, unless the participant has separated from Government service and has submitted a signed statement that he or she has forfeited the right to repay the loan in full. Repayment in full means receipt by the TSP record keeper of a payment, by personal check or guaranteed funds made payable to the Thrift Savings Plan, of all principal and interest due on the loan.

(b) If a participant returns a loan check to the TSP record keeper, it will be treated as a repayment; however, additional interest may be owed, which, if not paid, could result in a taxable distribution. The loan, even though repaid, will also be taken into account in determining the maximum amount available for future loans, in accordance with § 1655.6(b).

(c) The amount outstanding on a loan can be obtained from the TSP Web site, the ThriftLine, or a TSPSO participant service representative, or by a written request to the TSP record keeper.

§ 1655.18 Spousal rights.

(a) *Spouse of CSRS participant.* (1) Before a loan is disbursed to a CSRS participant, the TSP record keeper will send a notice to the participant's current spouse that the participant has applied for a loan.

(2) A CSRS participant may obtain an exception to the requirement described in paragraph (a)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that the spouse's whereabouts are unknown as described in paragraph (c) of this section.

(b) *Spouse of FERS or uniformed services participant.* (1) Before a loan agreement is approved for a FERS or uniformed services participant, the spouse must consent to the loan by signing the loan agreement.

(2) A FERS or uniformed services participant may obtain an exception to the requirement described in paragraph (b)(1) of this section if the participant establishes, to the satisfaction of the Executive Director, that:

(i) The spouse's whereabouts are unknown; or

(ii) Exceptional circumstances prevent the participant from obtaining the spouse's consent.

(c) *Exception to spousal requirements.* The procedures for obtaining an exception to the spousal requirements described in paragraphs (a)(1) and (b)(1) of this section are the same as the procedures described in 5 CFR 1650.64 and 1650.65.

(d) *Certification of truthfulness.* (1) By signing the loan application and the loan agreement, electronically or on paper, the participant certifies, under penalty of perjury, that all information provided to the TSP during the loan process is true and complete, including statements concerning the participant's marital status, the spouse's address at the time the application is filed, or the current spouse's consent to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his or her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant was forged, the Board will submit the information or document in question to the spouse and request that he or she state in writing that the information is false or that the spouse's signature was forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three samples of his or her signature.

(3) If the spouse affirms the allegation, in accordance with the procedure set forth in paragraph (d)(2) of this section, and the loan has been disbursed, the Board will give the participant an opportunity to repay the unpaid loan principal and interest within 60 days. If the loan is repaid during this period, the Board will not investigate the spouse's allegation.

(4) Paragraph (d)(3) of this section will not apply if the participant has received a final divorce decree before the Thrift Savings Plan receives the funds.

(5) If the unpaid loan principal and interest are not repaid to the Plan in full within the time period provided in paragraph (d)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the Thrift Savings Plan receives the funds, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his or her marital status or spouse's address (in the case of a CSRS participant), or submitted the loan agreement with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

(7) Upon receipt of an allegation described in paragraph (d)(2) of this section, the participant's account will be frozen and no loan will be permitted until after:

(i) Thirty (30) days have elapsed since the participant's spouse was sent a copy of the information or document in question, and the Board has received no written affirmation of the alleged false information or forgery (together with signature samples, if required);

(ii) The loan is repaid pursuant to paragraph (d)(3) of this section;

(iii) The Executive Director concludes that the Board's investigation did not yield persuasive evidence that supports the spouse's allegation;

(iv) The Executive Director has been assured in writing by the spouse that any future request for a loan or withdrawal comports with the applicable requirement of notice or consent; or

(v) The participant is divorced.

§ 1655.19 Effect of court order on loan.

Upon receipt of a document that purports to be a qualifying retirement benefits court order, qualifying legal process relating to a participant's legal obligation to provide child support or to make alimony payments, or a qualifying child abuse order, the participant's TSP account will be frozen. After the account is frozen, no loan will be allowed until the account is unfrozen. The Board's procedures for processing court orders and legal processes are explained in 5 CFR part 1653.

§ 1655.20 Residential loans.

(a) A residential loan will be made only for the purchase or construction of the primary residence of the participant, or for the participant and his or her spouse, and for related purchase costs. The participant must actually bear all or part of the cost of the purchase. If the participant purchases a primary residence with someone other than his or her spouse, only the portion of the purchase costs that is borne by the participant will be considered in making the loan. A residential loan will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for a primary residence purchased more than 2 years before the date of the loan application.

(b) The participant's primary residence is his or her principal residence. A primary residence may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, a mobile home, a boat, or a recreational vehicle; a primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construction of a new residence. A residential loan will not be made for a lease-to-buy option, unless the option to buy is being exercised. Construction of an addition to or the renovation of a residence or the purchase of land only does not constitute the purchase of a primary residence.

(d) Related purchase costs are any costs that are incurred directly as a result of the purchase or construction of a residence and which can be added to the basis of the residence for Federal tax purposes. Points or loan origination fees charged for a loan, whether or not they are treated as part of the basis, are not considered a purchase cost. Real estate taxes cannot be included.

(e) The documentation required for a loan under this section is as follows:

(1) For all purchases, except for construction, a copy of a home purchase contract or a settlement sheet; or

(2) For construction, a home construction contract. If a single home construction contract is unavailable, other contracts, building permits, receipts, assessments, or other documentation that demonstrates the construction of an entire primary residence and expenses in the amount of the loan may be accepted at the discretion of the Executive Director.

(f) The documentation provided under this section must:

(1) Be from a third party;

(2) Show the participant as the purchaser or builder;

(3) Show the purchase price or construction price;

(4) Show the full address of the residence; and

(5) Bear a date that is no more than 24 months preceding the expiration date of the loan agreement.

■ 46. Part 1690 is revised to read as follows:

PART 1690—THRIFT SAVINGS PLAN

Subpart A—General

Sec.
1690.1 Definitions.

Subpart B—Miscellaneous

1690.11 Plan year.
1690.12 Power of attorney.
1690.13 Guardianship and conservatorship orders.

Authority: 5 U.S.C. 8474.

Subpart A—General

§ 1690.1 Definitions.

As used in this chapter:

Account or *individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

Account balance means the sum of the dollar balances for each source of contributions in each investment fund for an individual account. The dollar balance in each investment fund on a given day is the product of the total number of shares in that investment fund multiplied by the share price for the investment fund on that day.

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2).

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition of participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be. For members of the uniformed services, it is basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. chapter 206.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

Catch-up contributions mean TSP contributions from taxable basic pay that are made by participants age 50 and over, which exceed either the elective deferral limit of 26 U.S.C. 402(g), or the maximum contribution percentage limit of 5 U.S.C. 8351(b) (for CSRS participants), 5 U.S.C. 8432(a) (for FERS participants), or 5 U.S.C. 8440f(a) (for all other participants).

Contribution allocation means the participant's apportionment of his or her future contributions, loan payments, and transfers or rollovers from eligible employer plans or traditional IRAs among the TSP investment funds.

Contribution election means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

Court of competent jurisdiction means the court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3).

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent Federal retirement system.

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS.

Date of appointment means the effective date of an employee's accession as established by the current employing agency.

Day means calendar day, unless otherwise stated.

Eligible employer plan means a plan qualified under I.R.C. section 401(a) (26 U.S.C. 401(a)), including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), and agency matching contributions under 5 U.S.C. 8432(c)(2) or 5 U.S.C. 8440e(e).

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual. It includes the uniformed services.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

FERS employee or *FERS participant* means any employee or TSP participant covered by FERS.

FERSA means the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The provisions of FERSA that govern the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code.

Former spouse means (as defined at 5 U.S.C. 8401(12)) the former spouse of a TSP participant if the participant performed at least 18 months of civilian service creditable under 5 U.S.C. 8411 as an employee or member, and if the participant and former spouse were married to one another for at least nine months.

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

G Fund interest rate means the interest rate computed under 5 U.S.C. 8438(e)(2).

I Fund means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

In-service withdrawal request means a properly completed withdrawal election for either an age-based in-service withdrawal or a financial hardship in-service withdrawal, on any form required by the TSP, together with the supporting documentation required by the application.

Investment fund means any investment fund established pursuant to 5 U.S.C. 8438.

Open season means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

Plan participant or *participant* means any person with an account in the Thrift Savings Plan or who would have an account but for an employing agency error.

Post-employment withdrawal request means a properly completed withdrawal election on any form required by the TSP in order for a participant to elect a post-employment withdrawal of his or her account balance.

Posting means the process of crediting or debiting transactions to an individual account.

Posting date means the date on which a transaction is credited or debited to a participant's account.

Regular employee contributions mean TSP contributions from taxable basic pay that are subject to the Internal Revenue Code limits on elective deferrals and contributions to qualified plans (26 U.S.C. 402(g) and 415(c), respectively), and the maximum contribution percentage limits of 5 U.S.C. 8351(b), 5 U.S.C. 8432(a), or 5 U.S.C. 8440f(a).

S Fund means the Small Capitalization Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(D).

Separation from Government service means generally the cessation of employment with the Federal Government. For civilian employees it means termination of employment with the U.S. Postal Service or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP, for 31 or more full calendar days. For uniformed services participants it means the discharge from active duty or the Ready Reserve or the transfer to inactive status or to a retired list as more fully described in 5 CFR 1604.2.

Share means a portion of an investment fund. Transactions are posted to accounts in shares at the share price of the date the transaction is posted. The number of shares for a transaction is calculated by dividing the dollar amount of the transaction by the share price of the appropriate date for the investment fund in question. The number of shares is computed to four decimal places.

Share price means the value of a share in an investment fund. The share price is calculated separately for each investment fund for each business day. The share price includes the cumulative net earnings or losses for each investment fund through the date the share price is calculated.

Source of contributions means regular employee contributions, agency automatic (1%) contributions, or agency matching contributions. All amounts in a participant's account are attributed to one of these three sources. (Catch-up contributions, transfers, rollovers, and loan payments are included in the regular employee contribution source.)

Spouse means the person to whom a TSP participant is married on the date he or she signs a form on which the TSP requests spousal information, including a spouse from whom the participant is legally separated, and a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live. [Where a participant is seeking to reclaim an account that has been forfeited pursuant to 5 CFR 1650.16, spouse also means the person to whom the participant was married on the withdrawal deadline.]

Tax-deferred balance means employee or employer contributions that would otherwise be includible in gross income if paid directly to the participant and earnings on those contributions.

Tax-exempt balance means employee contributions that are made by uniformed services participants from pay subject to the combat zone tax exclusion. It does not include earnings on such contributions.

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437.

Thrift Savings Plan, TSP, or *Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan Service Office or *TSPSO* means the office of the TSP record keeper, which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

ThriftLine means the automated voice response system by which TSP participants may, among other things, access their accounts by telephone. The ThriftLine can be reached at (504) 255–8777.

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

TSP record keeper means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

TSP Web site means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is *www.tsp.gov*.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

Vested account balance means that portion of an individual's account which is not subject to forfeiture under 5 U.S.C. 8432(g).

Subpart B—Miscellaneous

§ 1690.11 Plan year.

The Thrift Savings Plan's plan year is established on a calendar-year basis for all purposes, except where another applicable provision of law requires that a fiscal year or other basis be used. As used in this section, the term "calendar-year basis" means a twelve-month period beginning on January 1 and ending on December 31 of the same year.

§ 1690.12 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a TSP form, where the participant desires to effect transactions through an agent (*i.e.*, an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the TSP must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the participant's personal property or in Federal Government retirement, financial, or business transactions, or a special power of attorney which authorizes the attorney-in-fact to effect transactions in the TSP on behalf of the participant. For the TSP to approve a power of attorney, it must be authenticated, attested, acknowledged, or certified by the principal before a notary public or other official authorized by law to administer oaths or affirmations. The TSP will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

§ 1690.13 Guardianship and conservatorship orders.

This section applies to all regulations in this chapter that require a signature by the participant on a TSP form, where the participant is legally unable to sign his or her name because of physical or mental incapacity. Before a guardian or conservator may sign a TSP form on behalf of such a participant, the Board must have approved a guardianship or conservatorship order issued by a court of competent jurisdiction, as defined in § 1690.1, which generally authorizes the guardian or conservator to manage the participant's estate, personal property, business or financial affairs, or retirement benefits, or which specifically authorizes the guardian or conservator to act on behalf of the participant to effect transactions in the TSP. For a guardianship or conservatorship order to be acceptable to affect TSP transactions, documentation must be submitted establishing that any bonding requirement or other preconditions specified in the court order have been satisfied. The Board will advise the guardian or conservator whether the order is valid to effect transactions in the TSP.

[FR Doc. 03–14647 Filed 6–12–03; 8:45 am]
BILLING CODE 6760–01–P

Federal Register

Friday,
June 13, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Between the United States and Iraq; Final Rule; Removal

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2003–15269 (Old Docket No. 26380); SFAR No. 61–2]

Prohibition Against Certain Flights Between the United States and Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 61–2, which prohibits flight operations between the United States and Iraq, except under certain conditions. SFAR 61–2 is removed because the United Nations Security Council has lifted sanctions on Iraq and has encouraged all countries to participate in the reconstruction of that country, to include providing humanitarian flights. This final rule informs the public that the restrictions on flights between the United States and Iraq, which are contained in SFAR 61–2, are lifted.

This action does not remove the Iraq flight prohibition of SFAR 77, which affects certain operations by U.S. air carriers and commercial operators, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. The flight prohibition under SFAR 77, which was imposed for safety reasons, remains in effect.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–3732 or 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet through the FAA's web page at *http://www2.faa.gov/avr/arm/index.cfm*

You can get a paper copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information and advice about compliance statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.dot.gov*.

Background

On September 25, 1990, the United Nations Security Council adopted Resolution 670, which, among other things, mandated an embargo of air traffic with Iraq on the part of all member nations except to provide food and medical supplies in humanitarian circumstances or in support of the UN Military Observer Group. In support of this action, the United States issued Executive Orders 12722 and 12724, which prohibited certain transactions, including air transportation, between the United States and Iraq. In support of Resolution 670 and Executive Orders 12722 and 12724, the FAA adopted SFAR 61 on November 9, 1990. SFAR 61 prohibited the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of the Iraq. SFAR 61 expired on November 9, 1991. SFAR 61–2 replaced SFAR 61, and has continued to support the ban on flights between the United States and Iraq throughout the recent hostilities.

On May 22, 2003, the United Nations Security Council by unanimous vote adopted Resolution 1483, which, among other things, lifted the sanctions imposed by Resolution 670, including the flight prohibitions described above. Because of the UN action, the FAA finds that the underlying legal basis for SFAR 61–2 has been removed. Accordingly, SFAR 61–2 should be terminated immediately.

This action does not remove the Iraq flight prohibition of SFAR 77, which affects certain operations by U.S. air carriers and commercial operators, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. The flight prohibition under SFAR 77, which was imposed for safety reasons, remains in effect.

Immediate Adoption

On the basis of the above, I am ordering the removal of SFAR 61–2. Because this action lifts a prohibition on certain flight operations conducted by U.S. air carriers and commercial operators, and persons exercising the privileges under FAA issued certificates with limited exception, I find that notice and public comment under 5 U.S.C. 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 533(d) for making this rule effective immediately upon issuance.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends part 91 of Title 14 of the Code of Federal Regulations, by removing SFAR 61–2 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

SFAR 61–2 [Removed]

■ 2. Special Federal Aviation Regulation No. 61–2— Prohibition Against Certain Flights Between the United States and Iraq is removed.

Issued in Washington, DC, on June 10, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–14973 Filed 6–10–03; 3:44 pm]

BILLING CODE 4910–13–P

Reader Aids

Federal Register

Vol. 68, No. 114

Friday, June 13, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10
34775–35148	11
35149–35264	12
35265–35524	13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339
7684 34775

Executive Orders:
13159 (See Notice of June 10, 2003) 35149

Administrative Orders:
Notices:
Notice of June 10, 2003 35149

4 CFR

81 33831

5 CFR

230 35265
301 35265
316 35265
333 35265
337 35265
410 35265
831 35270
842 35270
1600 35492
1601 35492
1603 35492
1604 35492
1605 35492
1606 35492
1640 35492
1645 35492
1650 35492
1651 35492
1653 35492
1655 35492
1690 35492

7 CFR

2 35256
319 34517
457 34261
723 34777
800 ..... 32623, 35490
802 34519
1400 33341
1464 34777

Proposed Rules:
810 33408
1951 35321
3560 32872
3565 34552
4284 35321

8 CFR

1 35273
103 35273
212 35151
239 35273
287 35273

9 CFR

82 34779
113 35282
430 34208

Proposed Rules:
93 33028

10 CFR

72 33611
73 33611
765 32955

12 CFR

37 35283
615 ..... 33347, 33617
703 32958
742 32958
1700 32627

13 CFR

121 ..... 33348, 35285

Proposed Rules:
121 ..... 33412, 35334

14 CFR

25 ..... 33834, 33836, 35285
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787, 35152, 35155, 35157, 35160, 35163, 35286
71 ..... 32633, 33231, 33360, 33361, 33579, 33623, 35287, 35288
91 35524
95 34522
97 32633
401 35289
404 35289
413 35289
1260 35290

Proposed Rules:
25 ..... 33659, 35335
36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849, 35186
71 ..... 33426, 33427, 34340

15 CFR

742 34526
744 34192
745 34526
772 34192
774 34526

Proposed Rules:
930 34851

16 CFR

Proposed Rules:
1500.....35191

17 CFR

1.....34790
30.....33623
40.....33623

18 CFR

201.....34795

19 CFR

201.....32081
204.....32081
206.....32081
207.....32081
210.....32081
212.....32081

20 CFR

Proposed Rules:
220.....34341

21 CFR

165.....34272
201.....32979
310.....33362, 34273
347.....33362, 35290
349.....32981
350.....34273
352.....33362
369.....34273
510.....33381, 34293
520.....34533, 34795
522.....33856, 34533, 34796
524.....33381
558.....34534
601.....34796
878.....32983
888.....32635
1308.....35293

Proposed Rules:
201.....33429
343.....33429
347.....35346

24 CFR

Proposed Rules:
1000.....34344

25 CFR

170.....33625
309.....35164

26 CFR

1.....33381, 34293, 34797
31.....34797
301.....33857
602.....34293, 34797

Proposed Rules:
1.....34344, 34874, 34875
14a.....34344
25.....34875
31.....34875
53.....34875
55.....34875
156.....34875
157.....32698
301.....33887
602.....32698

27 CFR

Proposed Rules:
7.....32698
25.....32698

28 CFR

5.....33629
571.....34299, 34301
802.....32985

29 CFR

1910.....32637
1926.....35172
4022.....35294
4044.....35294

Proposed Rules:
1910.....33887, 34036
1915.....34036
1926.....34036

30 CFR

Proposed Rules:
906.....33032
934.....33035
938.....33037

31 CFR

1.....32638
210.....33826
594.....34196

33 CFR

100.....32639, 32641
117.....32643, 34302, 34303, 34535, 34799, 34800, 34801, 35296
165.....32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803, 35172

Proposed Rules:
117.....34877
165.....33894, 33896, 34370

36 CFR

215.....33582
230.....34309
242.....33402
251.....35117
1253.....33404

38 CFR

1.....35297
3.....34539
13.....34539
21.....34319, 34326, 35177
61.....34332

Proposed Rules:
20.....33040

39 CFR

111.....33858, 34805

40 CFR

51.....33764
52.....32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821
62.....34332, 35181, 35299
180.....33876, 34825, 35303
261.....32645
271.....34334, 34829
439.....34831
712.....34832
725.....35315

Proposed Rules:
Ch. I.....33898
51.....32802
52.....33041, 33042, 33043, 33665, 33898, 33899, 34560
62.....35191, 35348
82.....33284
146.....33902
180.....35349
194.....33429

42 CFR

412.....34122, 34494

Proposed Rules:
412.....33579, 34492
413.....33579, 34492, 34768

43 CFR

4.....33794
3800.....32656
4100.....33794
5000.....33794

44 CFR

64.....32657
65.....32659, 32660
67.....32664, 32669
206.....34545

Proposed Rules:
67.....32699, 32717

46 CFR

221.....33405

47 CFR

2.....32676, 33020, 33640, 34336
21.....34547
25.....33640, 34336
52.....34547
73.....32676, 33654
74.....32676, 34336
78.....34336
80.....32676
87.....32676
90.....32676
95.....32676
97.....32676, 33020

Proposed Rules:
1.....34560
2.....33043, 33666
15.....32720
21.....34560
25.....33666
64.....32720
73.....33431, 33668, 33669
74.....34560
101.....34560

48 CFR

2.....33231
32.....33231
52.....33231
252.....33026

Proposed Rules:
15.....33330
31.....33326
52.....33326
204.....34879
206.....33057

49 CFR

1.....34548, 35183
107.....32679
171.....32679
173.....32679
177.....32679
180.....32679
375.....35064
377.....35064
567.....33655
571.....33655, 34838
574.....33655
575.....33655, 35184
579.....35132, 35145
597.....33655

Proposed Rules:
171.....34880
172.....34880
173.....34880
271.....35354

50 CFR

17.....34710
100.....33402
635.....35185
648.....33882
660.....32680
679.....34550

Proposed Rules:
16.....33431
17.....33058, 33234, 34569
402.....33806
648.....33432
660.....33670, 35354

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 13, 2003

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; published 4-14-03
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Imidacloprid; published 6-13-03

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Repetitious or conflicting applications; published 5-14-03

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift Savings Plan:
New record keeping system, implementation decisions, and addition of post-employment withdrawal methods; miscellaneous amendments; published 6-13-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Testimony by employees and production of documents in proceedings where U.S. is not party; published 5-14-03

HOMELAND SECURITY DEPARTMENT
Organization, functions, and authority delegations:
Immigartion powers and authority for officers and employees; Internal review process for standards for enforcement activities; revisions; published 6-13-03

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Plant species from Maui and Kahoolawe, HI; published 5-14-03

JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
Anabolic steriod products; suspension; published 6-13-03

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Grant and Cooperative Agreement Handbook:
Unsolicited proposals; published 6-13-03

PERSONNEL MANAGEMENT OFFICE
Employment:
Homeland Security Act of 2002; implementation—
Severe shortage of candidates and critical hiring needs; Governmentwide human resources flexibilities (direct-hire authority, etc.); published 6-13-03
Retirement:
Homeland Security Act of 2002—
Voluntary early retirement; published 6-13-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; published 5-29-03
Commercial space transportation; licensing regulations; published 6-13-03
Jet routes; published 6-13-03

VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Tinnitus; published 5-14-03

RULES GOING INTO EFFECT JUNE 14, 2003

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Grosse Point Shores, MI; safety zone; published 6-10-03
Lake Michigan, Chicago, IL; safety zone; published 6-11-03

RULES GOING INTO EFFECT JUNE 15, 2003

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Connecticut; published 6-2-03
Ports and waterways safety:
Hampton Roads, VA—Regulated navigation area; published 6-12-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-20-03; published 4-21-03 [FR 03-09672]
Potatoes (Irish) grown in—
Colorado; comments due by 6-16-03; published 5-30-03 [FR 03-13519]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Portland International Airport, OR; livestock exportation port designation; comments due by 6-18-03; published 5-19-03 [FR 03-12389]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Texas and New Mexico; comments due by 6-16-03; published 4-16-03 [FR 03-09322]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 6-18-03; published 5-19-03 [FR 03-12390]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Multi-serve, meal-type meat and poultry products; nutrient content claims; comments due by 6-16-03; published 4-16-03 [FR 03-09258]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-17-03; published 6-2-03 [FR 03-13704]

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
National Defense Authorization Act for 2002 FY; implementation; medical benefits, etc.; comments due by 6-16-03; published 4-16-03 [FR 03-09153]
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12025]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; comments due by 6-16-03; published 4-17-03 [FR 03-09490]
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 6-19-03; published 5-20-03 [FR 03-12648]
South Atlantic fisheries—
South Atlantic pelagic sargassum habitat; correction; comments due by 6-16-03; published 5-5-03 [FR 03-10802]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-17-03; published 6-2-03 [FR 03-13704]

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
National Defense Authorization Act for 2002 FY; implementation; medical benefits, etc.; comments due by 6-16-03; published 4-16-03 [FR 03-09153]
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning

purposes; designation of areas:
Colorado; comments due by 6-16-03; published 5-15-03 [FR 03-12026]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12474]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 6-19-03; published 5-20-03 [FR 03-12475]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12178]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Tennessee; comments due by 6-16-03; published 5-16-03 [FR 03-12179]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12027]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Utah; comments due by 6-16-03; published 5-15-03 [FR 03-12030]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Allethrin, etc.; nomenclature changes; comments due by 6-17-03; published 4-18-03 [FR 03-09484]
Propylene oxide, etc.; nomenclature changes; comments due by 6-16-03; published 4-17-03 [FR 03-09483]

FARM CREDIT ADMINISTRATION
Farm credit system:
Financing eligibility and scope, loan policies and operations, and general provisions—
Credit and related services; miscellaneous amendments; comments due by 6-20-03; published 5-21-03 [FR 03-12631]

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Bank director eligibility, appointment, elections; comments due by 6-17-03; published 3-19-03 [FR 03-06595]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General and plastic surgery devices—
Silicone sheeting; classification; comments due by 6-18-03; published 3-20-03 [FR 03-06646]
Reports and guidance documents; availability, etc.:
Developing Medical Imaging Drug and Biological Products; comments due by 6-18-03; published 5-19-03 [FR 03-12370]

HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; comments due by 6-16-03; published 4-17-03 [FR 03-09497]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Port Valdez and Valdez Narrows, AK; security zone; comments due by 6-15-03; published 5-16-03 [FR 03-12183]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Tampa Bay, FL; security zones; comments due by 6-17-03; published 4-18-03 [FR 03-09650]
Regattas and marine parades, and drawbridge operations:
Toledo Tall Ships Parade, OH; comments due by 6-15-03; published 5-20-03 [FR 03-12492]

HOMELAND SECURITY DEPARTMENT
Critical Infrastructure Information; handling procedures; comments due by 6-16-03; published 4-15-03 [FR 03-09126]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Emergency operations; comments due by 6-16-03; published 4-16-03 [FR 03-09310]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Sound recordings and ephemeral recordings; digital performance right; comments due by 6-19-03; published 5-20-03 [FR 03-12349]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Supply Schedules services and blanket purchase agreements; comments due by 6-17-03; published 4-18-03 [FR 03-09554]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Public use; threats added as prohibited behavior; comments due by 6-17-03; published 4-18-03 [FR 03-09585]
Correction; comments due by 6-17-03; published 5-2-03 [FR 03-10808]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Nasdaq-listed securities; uniform trading rules; petition; comments due by 6-19-03; published 5-20-03 [FR 03-12604]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Mental disorders; medical evaluation criteria; comments due by 6-16-03; published 3-17-03 [FR 03-06278]

STATE DEPARTMENT
Claims and stolen property:
Stolen property under treaty with Mexico; CFR part removed; comments due by 6-16-03; published 5-16-03 [FR 03-12294]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 6-16-03; published 4-16-03 [FR 03-09011]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 6-16-03; published 5-1-03 [FR 03-10728]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; comments due by 6-19-03; published 5-20-03 [FR 03-12110]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Learjet; comments due by 6-20-03; published 4-21-03 [FR 03-09430]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 6-16-03; published 4-15-03 [FR 03-08892]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Raytheon; comments due by 6-20-03; published 5-5-03 [FR 03-10726]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 6-16-03; published 4-15-03 [FR 03-09017]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-16-03; published 4-21-03 [FR 03-09729]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Future air bags designed to create less risk of serious injuries for small women and young children, etc.; requirements phase-in; comments due by 6-19-03; published 5-5-03 [FR 03-10945]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (2001 CY); comments due by 6-16-03; published 4-15-03 [FR 03-09186]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Securities; reporting and disclosure requirements; comments due by 6-20-03; published 5-21-03 [FR 03-12259]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5421

☐ **YES**, enter the following indicated subscriptions for one year:

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
_____ **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)
Additional address/attention line
Street address
City, State, ZIP code
Daytime phone including area code
Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5468

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.
_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)
Additional address/attention line
Street address
City, State, ZIP code
Daytime phone including area code
Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

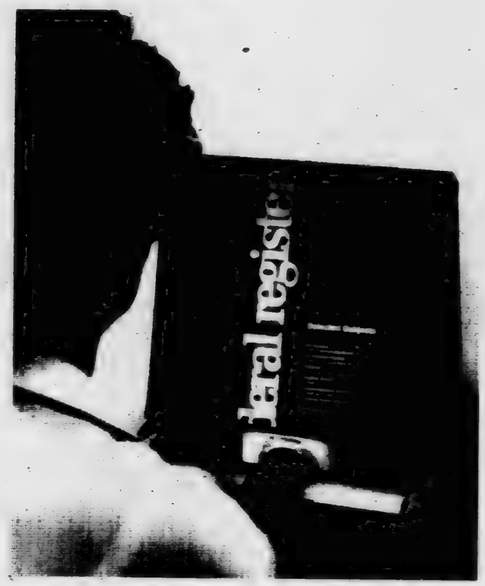
Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00



Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5419**

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

Charge your order. It's Easy! MasterCard VISA
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

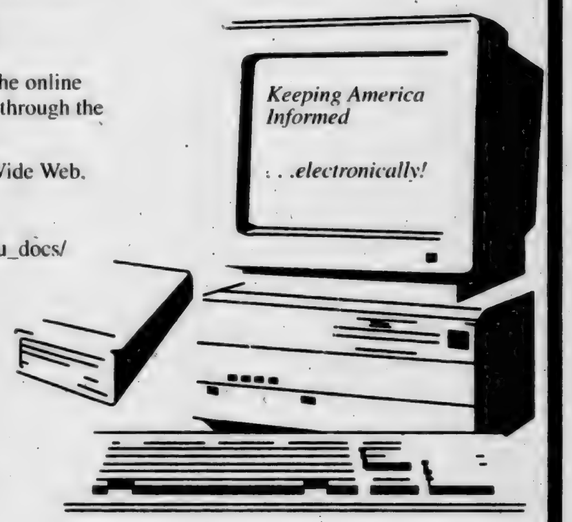
GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE



Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m, Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Order Processing Code
***7917**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please send me ——— copies of **The United States Government Manual** 2002/2003, S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

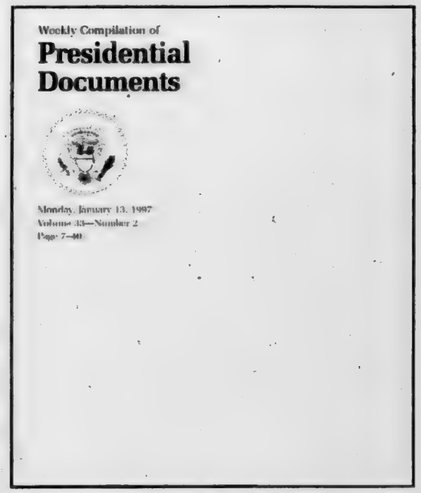
Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

6–16–03 Monday
Vol. 68 No. 115 June 16, 2003

Federal Register

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–16–03 Monday
Vol. 68 No. 115 June 16, 2003

Pages 35525–35782

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register
Vol. 68, No. 115
Monday, June 16, 2003

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35676–35677

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35618

Air Force Department
NOTICES
Privacy Act:
Systems of records, 35646–35652

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Cattle from Mexico; tuberculosis testing, 35529–35534
NOTICES
Reports and guidance documents; availability, etc.:
Hass avocado fruit importation from Mexico; pest risk analysis, 35619

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 35622

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Milwaukee Harbor, WI; safety zone, 35615–35617

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35619–35620

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 35631–35632

Comptroller of the Currency
PROPOSED RULES
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:
Regulatory publication and review, 35589–35612

Consumer Product Safety Commission
PROPOSED RULES
Poison prevention packaging:
Child-resistant package requirements—
Unit dose packaging; pass/fail criterion; petition, 35614
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35632

Defense Department
See Air Force Department
See Defense Logistics Agency
See Navy Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35632–35633
Environmental statements; availability, etc.:
Airborne Laser Program, 35635
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 35633–35634
Meetings:
Military Personnel Testing Advisory Committee, 35635
Science Board task forces, 35635–35636
Privacy Act:
Systems of records
Inspector General, 35636–35640
Senior Executive Service:
Defense Contract Audit Agency Performance Review Boards; membership, 35634
Travel per diem rates, civilian personnel; changes, 35640–35646

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 35652–35655

Delaware River Basin Commission
NOTICES
Meetings and hearings, 35669–35671

Disability Employment Policy Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Mentoring Youth with Disabilities; intermediary grants, 35704–35721
Youth with disabilities; improving transition outcomes through use of intermediaries; innovative State alignment grants, 35721–35740

Education Department
NOTICES
Elementary and secondary education:
Elementary and Secondary Education Act; implementation—
Unsafe School Choice Option; implementation deadline, 35671–35672

Energy Department
See Energy Efficiency and Renewable Energy Office

NOTICES
Meetings:
Fusion Energy Sciences Advisory Committee, 35672–35673

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Biomass Research and Development Technical Advisory Committee, 35673
State Energy Advisory Board, 35673

Environmental Protection Agency
NOTICES
Meetings:
Environmental Policy and Technology National Advisory Council, 35674

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class D and Class E4 and E5 airspace, 35534–35535
Class E5 airspace, 35535–35536
Standard instrument approach procedures, 35536–35540
PROPOSED RULES
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes, 35612–35614
NOTICES
Passenger facility charges; applications, etc.:
Chicago Midway International Airport, IL, et al., 35770
Reports and guidance documents; availability, etc.:
Electrical system wiring practices on small airplanes; voluntary consensus standards development, 35771
Materials; policy statement, 35770–35771

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 35542
Indiana, 35540
New Mexico, 35540–35541
Texas, 35541–35542
PROPOSED RULES
Radio stations; table of assignments:
Indiana, 35617

Federal Deposit Insurance Corporation
PROPOSED RULES
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:
Regulatory publication and review, 35589–35612

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Illinois, 35685
Kansas, 35685–35686
Kentucky, 35686
Missouri, 35686–35687
New York, 35687
Oklahoma, 35687–35688
Meetings:
National Fire Academy Board of Visitors, 35688

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 35674–35675

Federal Maritime Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 35675

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Barrett, Gary A., et al.; vision requirement exemptions, 35772–35773

Federal Reserve System
PROPOSED RULES
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:
Regulatory publication and review, 35589–35612
NOTICES
Banks and bank holding companies:
Change in bank control, 35675
Formations, acquisitions, and mergers, 35675–35676

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35677–35679
Meetings:
Drugs; proprietary names evaluation for confusion potential; minimizing medication errors; correction, 35679
Transmissible Spongiform Encephalopathies Advisory Committee, 35679–35680

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Alabama
Hyundai Motor Manufacturing Alabama, LLC; motor vehicle manufacturing plant, 35622–35623
Michigan
Perrigo Co.; pharmaceutical manufacturing and distribution facilities; correction, 35623

Forest Service
NOTICES
Environmental statements; notice of intent:
Coconino and Tonto National Forests, AZ, 35620–35622

General Services Administration
NOTICES
Acquisition regulations:
Medical Record-Dental (SF 521); form cancellation, 35676
Catalog of Federal Domestic Assistance; discontinuance of printing and distribution of printed version, 35676
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 35633–35634

Health and Human Services Department
See Aging Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Meetings:
National Health Service Corps National Advisory Council, 35680

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35688–35689

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35776–35781

International Trade Administration
NOTICES
Antidumping:
Ball bearings and parts from—
Various countries, 35623–35626
Cut-to-length carbon steel plate from—
Ukraine, 35626–35627
High and ultra-high voltage ceramic station post insulators from—
Japan, 35627–35630

International Trade Commission
NOTICES
Import investigations:
Brake drums and rotors from—
China, 35702–35703
U.S.-Sub-Saharan Africa; trade and investment; report availability, 35703–35704

Justice Department
See Parole Commission

Labor Department
See Disability Employment Policy Office
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Grand Staircase-Escalante National Monument, UT, 35689–35690
Meetings:
Resource Advisory Councils—
Arizona, 35691
Realty actions; sales, leases, etc.:
Colorado, 35691–35692
Montana, 35692–35693
Recreation management restrictions, etc.:
Arizona—
Lake Havasu, AZ and CA; boating, camping, and day use of shoreline campsites; fees and supplementary rules, 35693–35696
Butte Field Office, MT; Land and Water Conservation Fund-administered sites; fee collection; supplementary rules, 35696–35698
Lower Blackfoot River Corridor, MT; recreation use; supplementary rules, 35698–35700
Resource management plans, etc.:
Kemmerer planning area, WY, 35690–35691
North Fruita Desert Area, CO, 35700–35701

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 35633–35634

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 35773–35774

National Institute of Standards and Technology
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35630

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35680–35681
Meetings:
National Human Genome Research Institute, 35681
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 35682–35683
National Institute of Child Health and Human Development, 35681–35682
National Institute of Mental Health, 35682
National Institute on Aging, 35682
Scientific Review Center, 35683–35685

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction, 35575–35584
NOTICES
Permits:
Endangered and threatened species, 35630–35631

Navy Department
NOTICES
Privacy Act:
Systems of records, 35655–35669

Nuclear Regulatory Commission
RULES
Byproduct material; medical use:
Clarifications and amendments, 35534
PROPOSED RULES
Rulemaking petitions:
Union of Concerned Scientists and Mothers for Peace, 35585–35589
NOTICES
Reports and guidance documents; availability, etc.:
Debris blockage; potential impact on emergency sump recirculation at pressurized-water reactors, 35741
Applications, hearings, determinations, etc.:
Sequoyah Fuels Corp., 35740–35741

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35740

Parole Commission
NOTICES
Meetings; Sunshine Act, 35704

Presidential Documents
ADMINISTRATIVE ORDERS
Belarus; continuation of waiver authority (Presidential Determination No. 2003-25 of May 29, 2003), 35527
Vietnam; continuation of waiver authority (Presidential Determination No. 2003-24 of May 29, 2003), 35525

Reclamation Bureau
NOTICES
Meetings:
Glen Canyon Dam Adaptive Management Work Group, 35701

Research and Special Programs Administration
RULES
Pipeline safety:
Hazardous liquid transportation—
Required repairs delayed by need to obtain permits; alternative mitigation measures, 35574–35575

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 35741
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 35741–35743
Depository Trust Co., 35743–35745
Fixed Income Clearing Corp., 35745–35746
Philadelphia Stock Exchange, Inc., 35746–35748

Small Business Administration
NOTICES
Reports and guidance documents; availability, etc.:
Small Business Technology Transfer Program; policy directive, 35748–35770

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35701–35702

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 35774
Railroad services abandonment:
Canadian Pacific Railway Co., 35774–35775
Union Pacific Railroad Co., 35775

Thrift Supervision Office
PROPOSED RULES
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:
Regulatory publication and review, 35589–35612

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
RULES
Participation by disadvantaged business enterprises in DOT financial assistance programs; revision, 35542–35574
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 35770

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Reports and guidance documents; availability, etc.:
Terrorism Risk Insurance Act of 2002—
Life and other lines of insurance coverage; potential effects of terrorist acts on availability, 35775–35776

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35781–35782

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 2003-24 of May 29, 2003 35525
No. 2003-25 of May 29, 2003 35526

9 CFR
93 35529

10 CFR
35 35534
Proposed Rules:
50 35585

12 CFR
Proposed Rules:
Ch. I 35589
Ch. II 35589
Ch. III 35589
Ch. V 35589

14 CFR
71 (2 documents) 35534, 35535
97 (2 documents) 35536, 35538
Proposed Rules:
25 35612

16 CFR
Proposed Rules:
1700 35614

33 CFR
Proposed Rules:
165 35615

47 CFR
73 (4 documents) 35540, 35541, 35542
Proposed Rules:
73 35617

49 CFR
26 35542
192 35574
195 35574

50 CFR
660 35575

Federal Register
Vol. 68, No. 115
Monday, June 16, 2003

Presidential Documents

Title 3—

The President

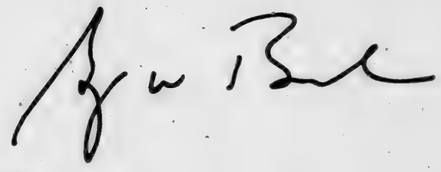
Presidential Determination No. 2003–24 of May 29, 2003

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority for Vietnam

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter the "Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 29, 2003.

[FR Doc. 03–15277
Filed 6–13–03; 8:45 am]
Billing code 4710–10–P

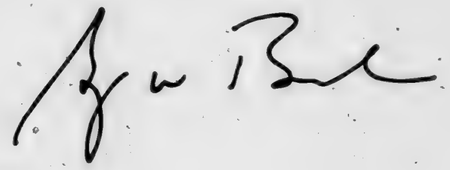
Presidential Documents

Presidential Determination No. 2003–25 of May 29, 2003

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority for the Republic of Belarus

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter the "Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Belarus will substantially promote the objectives of section 402 of the Act. You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 29, 2003.

[FR Doc. 03–15278
Filed 6–13–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 68, No. 115
Monday, June 16, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–102–2]

Tuberculosis Testing for Imported Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal import regulations to require that an import permit be obtained for the importation of cattle from Mexico; to require certification regarding the tuberculosis history of the herds from which a group of cattle is assembled for export to the United States; to require information regarding each premises where cattle intended for export to the United States have resided; and to add a definition for *herd of origin* and revise the definitions of *herd, official tuberculin test,* and *whole herd test.* This action is necessary to help us better ensure that imported cattle are free of tuberculosis, thereby protecting against the spread of tuberculosis within the United States.

DATES: This interim rule is effective June 16, 2003. We will consider all comments that we receive on or before August 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–102–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–102–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–102–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Senior Staff Officer, Assistant to the Associate Deputy Administrator, Animal Health Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–5875.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals and birds into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (referred to below as the regulations) governs the importation of ruminants.

In an interim rule effective and published in the **Federal Register** on April 20, 2001 (66 FR 20187–20190, Docket No. 00–102–1), we amended the regulations to require that all cattle imported into the United States, except cattle imported for immediate slaughter, and except cattle from Canada, be tested twice with negative results for tuberculosis. (The interim rule provided that Canada would have the option of following the new requirements or the existing requirements in § 93.418.) These new requirements were located in amended § 93.406, and all previous tuberculosis testing requirements for imported cattle, except cattle from Canada, were removed.

We solicited comments concerning the interim rule for 60 days ending June 19, 2001. We received four comments by that date. The comments generally supported the establishment of more stringent tuberculosis testing requirements for cattle imported into the United States. Some of the commenters, however, expressed concern that the provisions of our interim rule were not stringent enough. Others suggested specific changes to the interim rule.

In this interim rule, we are making additional amendments to the regulations based on some of the comments we received. Specifically, this interim rule amends the regulations to require that an import permit be obtained for the importation of cattle from Mexico; to require certification regarding the tuberculosis history of the herds from which a group of cattle is assembled for export to the United States; to require information regarding each premises where cattle intended for export to the United States have resided; and to add a definition for *herd of origin* and revise the definitions of *herd, official tuberculin test,* and *whole herd test.* These changes are necessary to help us better ensure that imported cattle are free of tuberculosis, thereby protecting against the spread of tuberculosis within the United States. Our rationale for each of these changes is presented below in the discussion of the comments.

Cattle Imported from Canada

One commenter objected to the provision in the interim rule that allowed importers of cattle from Canada to import animals under either the requirements of the interim rule or the provisions of § 93.418, which were in place prior to the interim rule. Under the existing provisions in § 93.418, cattle from Canada may be imported without being quarantined in the United States or being held at the border for additional testing. The commenter recommended that cattle imported from Canada be subject to the same requirements as cattle from other foreign countries.

We are making no changes based on this comment at this time. However, we will review the status of Canada and other countries or regions regarding their approach to managing tuberculosis as part of a proposed rulemaking we

intend to undertake regarding the importation of cattle into the United States. Currently, we consider the conditions in § 93.418 under which cattle may be imported from Canada into the United States to be adequate.

Reliable Testing

One commenter expressed concern about the reliability of the tuberculosis testing within Mexico and urged that such testing be reviewed by the U.S./Mexico Bi-National Tuberculosis Committee.

From our long history of cooperation with Mexico, we are confident that the tuberculosis testing protocols used in Mexican States for the export of cattle to the United States are reliable. Those testing protocols are reviewed by the U.S./Mexico Bi-National Tuberculosis Committee, which was created in 1994 to assist Mexico with its tuberculosis eradication efforts. Furthermore, in an effort to implement its tuberculosis eradication program, Mexico's Secretariat of Agriculture, Livestock, Rural Development, Fisheries, and Food (SAGARPA) conducts an annual review of testing procedures in Mexico. The eradication program has been successful to the point where there has been a reduction in the prevalence of tuberculosis in cattle in certain regions of Mexico.

Permit Requirement

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) should hold SAGARPA accountable for the accuracy of certificates of origin issued in Mexico for cattle intended for export, and that APHIS should work with SAGARPA to ensure that certificates of origin are not endorsed by SAGARPA for cattle that originate from Mexican States that do not meet minimum standards equivalent to those for the "accreditation preparatory" classification in the United States. The commenter expressed concern that the process for disease risk classification of cattle in Mexico may be unreliable.

Mexican authorities have demonstrated that certificates of origin are issued in many Mexican States according to an assurance program equivalent to that applied in the United States. Under this program, all certificates of origin must be signed by an accredited veterinarian and endorsed by SAGARPA. APHIS and SAGARPA have been working together in an effort to identify and control the movement of cattle from Mexican States and regions that are at high risk of containing tuberculosis-infected animals to reduce the likelihood that these animals will be moved into the United States or into States in Mexico at lower risk of containing tuberculosis infected animals.

However, not all Mexican States have adopted and are implementing an eradication program. Therefore, APHIS is in the process of developing rulemaking that would create tuberculosis risk classifications for foreign regions that are equivalent to the domestic risk classifications that have been established in the United States. The requirements for importing cattle from a particular foreign region would be based on the level of tuberculosis risk in that region, as indicated by its risk classification.

In the meantime, we are removing § 93.424(a)(3), which waives the requirement of an import permit for cattle imported from Mexico. Importers of cattle from Mexico will be subject to the regulations in § 93.404, which require importers of cattle to first apply for and obtain from APHIS an import permit. On the application, the importer must include information regarding the type, number, and identification of the animals to be imported, and information on the origin, intended date and location of arrival, routes of travel, and destination of the animals.

As provided for in § 93.404(a)(3), an application for permit to import cattle may be denied because of:

- Communicable disease conditions in the area or region of origin, or in a region where the shipment has been or will be held or through which the shipment has been or will be transported;
- Deficiencies in the regulatory programs for the control or eradication of animal diseases and the unavailability of veterinary services in the region of origin or in a region where the cattle have been or will be held or through which the catfle have been or will be transported;
- The importer's failure to provide satisfactory evidence concerning the origin, history, and health status of the ruminants;
- The lack of satisfactory information necessary to determine that the importation will not be likely to transmit any communicable disease to livestock or poultry of the United States; or
- Any other circumstances which the Administrator believes require such denial to prevent the dissemination of any communicable disease of livestock or poultry into the United States.
- We are including Mexico among the countries for which a permit is needed to import cattle into the United States because we agree with the commenter that enough variation exists in the risk of importation of different types of cattle from different areas of Mexico to warrant an examination by APHIS of each individual request for importation.

Certification Requirements and Definitions of Whole Herd Test and Herd of Origin

Two commenters expressed concern that the interim rule did not include provisions that would enable APHIS to learn the full tuberculosis history of cattle to be imported and the herds they came from. One commenter recommended that, to be considered part of a herd, cattle should be required to be on common ground for at least 12 months, rather than 4 months as provided for in the interim rule. The commenter suggested that the 4-month provision might enable the assembly of a herd from multiple sources whose tuberculosis status is likely to be unknown, and allow the export of the animals before enough time passes to ensure the cattle are not infected. Another commenter suggested that *whole herd test*, as used in the regulations, be defined to include the testing of breeding cattle, to preclude such a test being administered to a group of feeder cattle but not their dams.

We agree with the commenters that it is important to know the tuberculosis history of the herds from which a group of cattle is assembled, and to be able to trace back the tuberculosis history of any animal intended for export to the United States far enough to ensure that the animal is not infected with the disease. To help ensure that this information accompanies cattle that are imported into the United States, we are making several changes in this interim rule as discussed below.

Under § 93.406(a)(2)(i) of the April 2001 interim rule, we required, among other things, that steers and spayed heifers intended for importation originate from a herd that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of their exportation to the United States. In § 93.406(a)(2)(iii) of that interim rule, we required, among other things, that sexually intact cattle not from an accredited herd also originate from a herd that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States.

In § 93.400 of the April 2001 interim rule, we defined *whole herd test* as an official tuberculin test of all cattle in a herd that are 6 months of age or older, and of all cattle in the herd that are less than 6 months of age and were not born into the herd, except for certain cattle less than 6 months of age that met certain criteria in the definition. In the interim rule, *herd* was defined, in part, as "any group of one or more animals maintained for at least 4 months on common ground." Therefore, according to the definitions in the interim rule, a "whole herd test" could be a test of a group of cattle that had been together for as little as 4 months.

To address the commenters' concerns that such a test might not give an adequate picture of the tuberculosis history of cattle intended for importation into the United States, in this interim rule we are requiring that the cattle described in § 93.406(a)(2)(i) and (iii) be accompanied by certification that the herd in which the cattle were born and raised has tested negative to a whole herd test. In the definitions in § 93.400, we are adding the term *herd of origin* to mean the herd within which an individual animal was born and raised and that was maintained on common ground for at least 4 months. To accommodate additions to the herd of origin, we are including in the definition of *herd of origin* certain language that was included in the April 2002 interim rule's definition of *herd*, but that, in this interim rule, we are removing from the definition of *herd*, as explained below. We are providing in the definition of *herd of origin* that, for a group of one or more animals to qualify as a herd of origin for the purposes of § 93.406, animals may be added to the herd during or after the 4-month qualifying period only if they: (1) Originated from a tuberculosis-free herd; or (2) originated from an accredited herd or originated from a herd of origin that tested negative to a whole herd test, and the individual cattle to be added to the herd also tested negative to any additional individual tests for tuberculosis required by the Administrator.

The herd of origin testing results must be included on the same import certificate already required under § 93.406(a). The certificate must be issued by a salaried veterinary officer of the national government of the region of origin, or, if the animals are exported from Mexico, either be such a certificate or one that is issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico.

We are also amending the definition of *whole herd test* to make it clear that the herd tested in a whole herd test is a herd of origin. Additionally, we are amending the definition of *herd* by removing the condition that the animals have been together for at least 4 months (as well as the language discussed above regarding additions to the herd during or after the 4-month qualifying period). The 4-month qualifying provision was included in the initial interim rule to increase the validity of the whole herd test of the herd from which the cattle originated. However, under this interim rule, we can better ensure that cattle to be imported into the United States are not infected with tuberculosis, even if they are exported as part of a herd that has been together for less than 4 months, by requiring negative tuberculosis results to a whole herd test of the herd in which the cattle were born and raised (the herd of origin).

To give us further information upon which to evaluate a request to import cattle, we are amending § 93.404(a), which describes, among other things, the process for applying for an import permit. Under the existing regulations, an application to import ruminants must include the region of origin of the animals. In this interim rule, we are adding the requirement that the application for an import permit include the address of, or other means of identifying, the premises of the herd of origin, including the State or its equivalent, the municipality or nearest city, and the specific location of the premises, or an equivalent method, approved by the Administrator, of identifying the location of the premises. This same information will be required regarding any other premises where the animals were held prior to export.

Definition of Official Tuberculin Test

One commenter observed that the wording of the definition of *official tuberculin test* in the April 2001 interim rule suggests that the test may be administered and reported by a non-veterinarian as long as he or she is a salaried official of the national government of the exporting region. The commenter recommended that the definition of *official tuberculin test* be revised to provide that the test is one that is administered and reported either by a veterinarian accredited by, or a salaried veterinarian of, the State or Federal government of the exporting region, rather than simply by a salaried official of the government of the exporting region. The commenter was particularly concerned that the official tuberculin test of Mexican cattle be administered and reported by a veterinarian accredited by SAGARPA or a salaried veterinarian of SAGARPA.

We agree that the change recommended by the commenter is appropriate and are revising the definition of *official tuberculin test* to provide that such a test is administered and reported by a full-time salaried veterinary officer of the national government of the region of origin, or administered and reported by a veterinarian designated or accredited by the national government of the region of origin and endorsed by a full-time salaried veterinary officer of the national government of the region of origin, representing that the veterinarian issuing the certificate was authorized to do so.

Miscellaneous

Additionally, we are adding language to § 93.406(c) to clarify that, under the existing regulations in § 93.427(a), cattle and other ruminants from Mexico may be detained at the port of entry for inspection, testing, disinfection, and dipping.

Emergency Action

This rulemaking is necessary on an emergency basis to help us better ensure that imported cattle are free of tuberculosis, thereby protecting against the spread of tuberculosis within the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This interim rule amends the animal import regulations to require that an import permit be obtained for the importation of cattle from Mexico; to require certification regarding the tuberculosis history of the herds from which a group of cattle is assembled for export to the United States; to require information regarding each premises where cattle intended for export to the United States have resided; and to add a definition for *herd of origin* and revise

the definitions of *herd, official tuberculin test,* and *whole herd test.* This action is necessary to help us better ensure that imported cattle are free of tuberculosis, thereby protecting against the spread of tuberculosis within the United States.

This rule will produce substantial benefits for the U.S. livestock industry, as well as for individual livestock producers, both large and small, since it will help prevent, at little cost, the importation of tuberculosis-infected livestock into the United States, and will also enhance international trade in livestock. This action is not expected to result in an increase in cattle imports into the United States, since the rule, by requiring additional negative testing, is more restrictive than the current regulations.

The United States is a net importer of live cattle. From 1998 to 2000, almost all live animal imports into the United States were from Canada (about 53 percent) and Mexico (about 47 percent). In 2000 alone, the United States imported 2,191,019 head of cattle and calves, almost all of which were from Canada (968,435 head) and Mexico (1,222,569 head), valued at $1,152 million. Thus, between 1998 and 2000, U.S. live cattle trade essentially has been trade with Canada and Mexico, the U.S. partners to the North American Free Trade Agreement.

Over 99 percent of the imported animals were not for breeding. Almost half of all live animals imported to the United States were shipped for immediate slaughter; the remaining half were sent to designated feedlots. Nearly 98.3 percent of slaughter animals were from Canada, while about 92 percent of feeder animals were from Mexico. Of the total number of animals imported from Mexico in 2000, feeder and slaughter animal imports accounted for over 99 percent of the imports.

This interim rule does not change the import requirements for cattle imported from Canada. This situation is being evaluated separately.

However, slaughter and/or feeder cattle entering the United States from Mexico, where tuberculosis is a continuing problem, will be subject to the requirements of this interim rule, as will such cattle from any other country wishing to export to the United States. Breeding animals from any source other than Canada will continue to be tested for tuberculosis and other diseases at the port of entry and held either for 72 hours (if from Mexico) or for 30 days (if from any other country) until test results are known. Those animals will either be rejected entry or allowed entry depending upon the test results.

This rule is more restrictive than the current regulations and will produce economic benefits by preventing an incursion of tuberculosis into the United States and accelerating the eradication of the disease in this country. Counteracting the spread of disease from even one infected animal could prove very costly and cause serious economic damage to the livestock industry. The main effect of this rulemaking will be to prevent an incursion of tuberculosis into the United States, thus helping to avoid potentially serious economic damage to the U.S. cattle industry.

As this action simply introduces an additional precautionary requirement, it is not expected to result in an increase in the supply or cost of cattle imports into the United States. Any unlikely shortfall of supply could easily be met by domestic sources, without significantly affecting either producer or consumer price. It is not anticipated that any U.S. entities (importers, members of the public, or cattle producers) will experience significant economic effects as a result of this action. Foreign producers will cover any costs of additional testing and are unlikely to pass those costs along to importers and consumers due to the need to remain economically competitive in the U.S. livestock market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0224 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 00–102–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–102–2 and send your comments within 60 days of publication of this rule.

Under this interim rule, exporters of cattle from Mexico must apply for a permit to import cattle. Prior to this interim rule, certain cattle from Mexico were exempted from the requirement for an import permit. Exporters of cattle to the United States from countries for which an application for an import permit was already required under § 93.404 must add information to that application regarding the specific location of each premises that cattle to be imported into the United States have been on. Additionally, we are requiring certification regarding the tuberculosis history of the herds from which a group of cattle is assembled for export to the United States. This information is necessary to allow APHIS to determine if importation of the cattle should be allowed, or under what conditions, based on the disease situation in the areas in which the cattle have resided.

We are soliciting comments from the public, as well as from affected agencies, concerning our information and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Brokers and exporters of cattle to the United States, and accredited veterinarians or other veterinary authorities who issue export documentation for Mexico's Secretariat of Agriculture, Livestock, Rural Development, Fisheries, and Food.

Estimated annual number of respondents: 100.

Estimated annual number of responses per respondent: 75.

Estimated annual number of responses: 7,500.

Estimated total annual burden on respondents: 15,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.400 is amended as follows:

■ a. By revising the definitions of *herd, official tuberculin test,* and *whole herd test* to read as set forth below.

■ b. By adding, in alphabetical order, a definition of *herd of origin* to read as set forth below.

§ 93.400 Definitions.

* * * * *

Herd. Any group of one or more animals maintained on common ground; or two or more groups of animals under common ownership or supervision on two or more premises that are geographically separated, but among which there is an interchange or movement of animals.

Herd of origin. The herd within which an individual animal was born and raised and that was maintained on common ground for at least 4 months. For a group of one or more animals to qualify as a herd of origin for the purposes of § 93.406, animals may be added to the herd during or after the 4-month qualifying period only if they:

(1) Originated from a tuberculosis-free herd; or

(2) Originated from an accredited herd or originated from a herd of origin that tested negative to a whole herd test, and the individual cattle to be added to the herd also tested negative to any additional individual tests for tuberculosis required by the Administrator.

* * * * *

Official tuberculin test. A test for bovine tuberculosis that is approved by the Administrator as equivalent to the international standard test described in the Manual of Standards for Diagnostic Tests and Vaccines, Office International des Episodes, and that is administered and reported by a full-time salaried veterinary officer of the national government of the region of origin, or administered and reported by a veterinarian designated or accredited by the national government of the region of origin and endorsed by a full-time salaried veterinary officer of the national government of the region of origin, representing that the veterinarian issuing the certificate was authorized to do so.

* * * * *

Whole herd test. An official tuberculin test of all cattle in a herd of origin that are 6 months of age or older, and of all cattle in the herd of origin that are less than 6 months of age and were not born into the herd of origin, except those cattle that are less than 6 months of age and:

(1) Were born in and originated from a tuberculosis-free herd; or

(2) Were born in and originated from an accredited herd or originated from a herd of origin that has tested negative to a whole herd test, and the individual cattle have tested negative to any additional individual tests for tuberculosis required by the Administrator.

* * * * *

§ 93.404 [Amended]

■ 3. In § 93.404, paragraph (a)(1), the second sentence is amended as follows:

■ a. By adding, immediately after the words "the region of origin;" the following phrase: "for cattle, the address of or other means of identifying the premises of the herd of origin and any other premises where the cattle resided prior to export, including the State or its equivalent, the municipality or nearest city, and the specific location of the premises, or an equivalent method, approved by the Administrator, of identifying the location of the premises;".

■ b. By revising the OMB citation at the end of the section to read as follows: "[Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0224]".

■ 4. Section 93.406 is amended as follows:

■ a. By revising paragraphs (a)(2)(i) and (a)(2)(iii) to read as set forth below.

■ b. In paragraph (c), by adding the words "or § 93.427" after the citation "§ 93.411".

§ 93.406 Diagnostic tests.

(a) * * *

(2) *Tuberculosis.*

(i) For steers and spayed heifers, the cattle originated from a herd of origin that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States, and the animals each tested negative to an additional official tuberculin test conducted within 60 days prior to the date of exportation to the United States, and any individual cattle that had been added to the herd tested negative to any individual tests for tuberculosis required by the Administrator; or

* * * * *

(iii) For sexually intact cattle that are not from an accredited herd, the cattle originated from a herd of origin that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States, and the animals each tested negative to one additional official tuberculin test conducted no more than 6 months and no less than 60 days prior to the date of exportation to the United States, and any individual cattle that had been added to the herd tested negative to any individual tests for tuberculosis required by the Administrator, except that the additional test is not required if the animals are exported within 6 months of when the herd of origin tested negative to a whole herd test.

* * * * *

§ 93.424 [Amended]

■ 5. Section 93.424 is amended as follows:

■ a. In paragraph (a)(1), the word "or" is added immediately after the semicolon.

■ b. In paragraph (a)(2), the word "; or" is removed and a period is added in its place.

■ c. Paragraph (a)(3) is removed.

Done in Washington, DC, this 10th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–15113 Filed 6–13–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH08

Medical Use of Byproduct Material: Clarifying and Minor Amendments; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of July 7, 2003, for the direct final rule that was published in the **Federal Register** of April 21, 2003, (68 FR 19321). This direct final rule amended the NRC's regulations to clarify certain sections of Part 35, correct the title for the National Institute of Standards and Technology, and eliminate a restriction regarding training for ophthalmic use of strontium-90.

DATES: The effective date of July 7, 2003 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6233 (e-mail: *ant@nrc.gov*).

SUPPLEMENTARY INFORMATION: On April 21, 2003, (68 FR 19321), the NRC published a direct final rule amending its regulations in 10 CFR part 35. This direct final rule clarified: the definitions of authorized users, authorized medical physicists, authorized nuclear pharmacists, and radiation safety officers; the notification requirements if the patient is in a medical emergency or dies; and the recordkeeping requirements for calibration of brachytherapy sources. In addition, the amendments corrected the title for the National Institute of Standards and Technology; clarified that prior to October 24, 2004, individuals who meet the training and experience requirements in Subpart J may undertake responsibilities specified in certain sections in Subparts B and D–H; and eliminated a restriction that training for ophthalmic use of strontium-90 can only be conducted in medical institutions. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on July 7, 2003. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 10th day of June, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–15122 Filed 6–13–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–15311; Airspace Docket No. 03–ASO–6]

Amendment of Class D, E4, E5 Airspace; Elizabeth City, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D, E4 and E5 airspace at Elizabeth City, NC. The name of the airport has changed from Elizabeth City CGAS/Municipal Airport to Elizabeth City CGAS/Regional Airport and the geographic position coordinated of the airport have changed.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The name of the airport has changed from Elizabeth City CGAS/Municipal Airport to Elizabeth City CGAS/Regional Airport and the geographic position coordinated of the airport have changed. Therefore, the descriptions of the Class D, E4 and E5 airspace at Elizabeth City, NC, must be amended to reflect these changes. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on the users of the airspace in the vicinity of the Elizabeth City CGAS/Regional Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Designations for Class D Airspace, Class E Airspace Areas Designated as an Extension to Class D or Class E Surface Area and Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth are published in paragraphs 5000, 6004 and 6005 respectively, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D, E4 and E5 airspace at Elizabeth City, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Elizabeth City, NC [Revised]

Elizabeth City CGAS/Regional Airport, NC
(lat. 36°15′38″ N, long. 76°10′29″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of Elizabeth City CGAS/Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO NC E4 Elizabeth City, NC [Revised]

Elizabeth City CGAS/Regional Airport, NC
(Lat. 36°15′38″ N, long. 76°10′29″ W)
Elizabeth City VOR/DME
(Lat. 36°15′27″ N, long. 76°10′32″ W)
Woodville NDB
(Lat. 36°15′47″ N, long. 76°15′52″ W)

That airspace extending upward from the surface within 1.6 miles each side of Elizabeth City VOR/DME 189° radial, extending from the 4.1-mile radius of Elizabeth City CGAS/Regional Airport to 9.5 miles south of the VOR/DME; within 3.3 miles each side of Elizabeth City VOR/DME 357° radial, extending from the 4.1-mile radius of Elizabeth City CGAS/Regional Airport to 7 miles north of the VOR/DME; within 1.2 miles each side of the 079° bearing from the Woodville NDB, extending from 4.1-mile radius of the airport to the NDB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO NC ET Elizabeth City, NC [Revised]

Elizabeth City CGAS/Regional Airport, NC
(Lat. 36°15′38″ N, long. 76°10′29″ W)
Elizabeth City VOR/DME
(Lat. 36°15′27″ N, long. 76°10′32″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Elizabeth City CGAS/Regional Airport and within 8 miles east and 4 miles west of Elizabeth City VOR/DME 189° radial, extending form the VOR/DME to 9.5 miles south of the VOR/DME.

* * * * *

Issued in College Park, Georgia, on June 9, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–15143 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15360; Airspace Docket No. 03–ASO–7]

Amendment of Class E5 Airspace; Tuscaloosa, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E5 airspace at Tuscaloosa, AL. The name of the VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aid serving the Tuscaloosa Municipal Airport has changed from Tuscaloosa VORTAC to Crimson VORTAC.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The name of the VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aid serving the Tuscaloosa Municipal Airport has changed from Tuscaloosa VORTAC to Crimson VORTAC. Therefore, the description of the Class E5 airspace at Tuscaloosa, AL, must be amended to reflect this change. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on the users of the airspace in the vicinity of the Tuscaloosa Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Designations for Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth are published in paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Tuscaloosa, AL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO AL E5 Tuscaloosa, AL [Revised]

Tuscaloosa Municipal Airport, AL
(Lat. 33°13′14″ N, long. 87°36′41″ W)
Crimson VORTAC
(Lat. 33°15′32″ N, long. 87°32′13″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tuscaloosa Municipal airport and within 2.4 miles each side of Crimson VORTAC 058° radial, extending from the 7 mile radius to 7 miles northeast of the VORTAC.

* * * * *

Issued in College Park, Georgia, on June 9, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–15142 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30373; Amdt. No. 3062]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 16, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPS, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on June 6, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35. [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows: * * *

. . . Effective upon publication

FDC date	State	City	Airport	FDC number	Subject
05/22/03	HI	KAILUA-KONA	KONA INTL AT KEAHOLE	3/3944	LOC RWY 17, AMDT 6A
05/22/03	NY	PLATTSBURGH	PLATTSBURGH INTL	3/3956	ILS RWY 17, AMDT 1A
05/22/03	NY	PLATTSBURGH	PLATTSBURGH INTL	3/3957	VOR/DME RWY 35, ORIG
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3967	ILS RWY 5, AMDT 24D
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3968	ILS RWY 23, AMDT 6D
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3969	VOR/DME RWY 5, AMDT 4B
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3970	VOR/DME RWY 32, AMDT 4C
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3971	VOR RWY 23, AMDT 8B
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3972	RNAV (GPS) RWY 23, ORIG–A
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3973	RNAV (GPS) RWY 14, ORIG
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3974	RNAV (GPS) RWY 32, ORIG
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3975	VOR/DME RWY 14, AMDT 2C
05/22/03	VA	NORFOLK	NORFOLK INTL	3/3976	NDB RWY 5, ORIG–B
05/23/03	OK	STILLWATER	STILLWATER REGIONAL	3/4008	VOR/DME RWY 35, ORIG–B
05/28/03	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	3/4072	CONVERGING ILS RWY 17R, AMDT 7
05/28/03	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	3/4073	CONVERGING ILS RWY 35C, AMDT 5
05/28/03	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	3/4074	CONVERGING ILS RWY 35L, AMDT 2A
05/28/03	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	3/4075	CONVERGING ILS RWY 36L, AMDT 1
05/28/03	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	3/4114	CONVERGING ILS RWY 13R, AMDT 5A
05/28/03	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	3/4115	CONVERGING ILS RWY 31R, AMDT 6
05/29/03	IA	MUSCATINE	MUSCATINE MUNI	3/4172	VOR RWY 24, ORIG
05/29/03	IA	MUSCATINE	MUSCATINE MUNI	3/4173	VOR RWY 6, ORIG
05/29/03	IA	MUSCATINE	MUSCATINE MUNI	3/4175	GPS RWY 6, ORIG
06/02/03	IA	MUSCATINE	MUSCATINE MUNI	3/4177	GPS RWY 24, AMDT 2
06/02/03	NE	NORFOLK	KARL STEFAN MEMORIAL	3/4263	RNAV (GPS) RWY 13, ORIG
05/30/03	TN	CLARKSVILLE	OUTLAW FIELD	3/4195	VOR RWY 35, AMDT 15D

[FR Doc. 03–14990 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30372; Amdt. No. 3061]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 16, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers and aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that *good cause exists for making some* SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 6, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33, § 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs identified as follows:

Effective July 10, 2003

Cloverdale, CA, Cloverdale Muni, RNAV (GPS) RWY 32, Orig
Chicago/Aurora, IL, Aurora Mini, ILS RWY 9, Amdt 2
Hilton Head Island, SC, Hilton Head, VOR/DME–A, Amdt 10
Hilton Head Island, SC, Hilton Head, RNAV (GPS) RWY 3, Orig
Hilton Head Island, SC, Hilton Head, RNAV (GPS) RWY 21, Orig
Hilton Head Island, SC, Hilton Head, GPS RWY 21, Orig, CANCELLED
Hilton Head Island, SC, Hilton Head, VOR/DME RNAV OR GPS RWY 3, Amdt 4B, CANCELLED
Hilton Head Island, SC, Hilton Head, VOR/DME RNAV or GPS RWY 21, Amdt 4C, CANCELLED
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 13, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 17, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 35, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 31, Orig
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 13, Orig, CANCELLED
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 17, Orig, CANCELLED
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 31, Orig–A, CANCELLED
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 35, Orig–A, Cancelled
Rockport, TX, Aransas County, RNAV (GPS) RWY 14, Amdt 1

Effective August 07, 2003

Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 32L, Amdt 1
McKinney, TX, McKinney Muni, ILS RWY 17, Amdt 2
Madison, WI, Dane County Regional-Truax Field, VOR RWY 32, Orig

Effective September 04, 2003

Vidalia, GA, Vidalia Muni, NDB RWY 24, Amdt 3
Vidalia, GA, Vidalia Muni, LOC RWY 24, Amdt 3
Bardstown, KY, Samuels Field, VOR/DME–A, Orig
Bardstown, KY, Samuels Field, VOR/DME RWY 2, Amdt 3A, CANCELLED
Corvallis, OR, Corvallis Muni, NDB RWY 17, Amdt 2
Florence, SC, Florence Regional, VOR or TACAN–A, Amdt 5

The FAA published the following procedures in Docket No. 30369; Amdt. No. 3059 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 105, page 32634; dated Monday, June 2, 2003) under sections 97.23 and 97.33 effective July 10, 2003 are hereby rescinded:

Window Rock, AZ, Window Rock, VOR/DME–A, Orig–C
Window Rock, AZ, Window Rock, RNAV (GPS)–B, Orig
Window Rock, AZ, Window Rock, RNAV (GPS) RWY 2, Orig
Window Rock, AZ, Window Rock, VOR/DME RNAV OR GPS RWY 2, Amdt 1A, CANCELLED

The FAA published the following procedures in Docket No. 30365; Amdt. No. 3055 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 87, Page 23891; dated Tuesday, May 6, 2003) under sections 97.23 and 97.33 effective July 10, 2003 are hereby rescinded:

Mitchellville, MD, Freeway, VOR RWY 36, Orig–B
Mitchellville, MD, Freeway, RNAV (GPS) RWY 18, Orig
Mitchellville, MD, Freeway, RNAV (GPS) RWY 36, Orig

The FAA published the following procedures in Docket No. 30369; Amdt. No. 3059 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 105, Page 32635; dated Monday, June 2, 2003) under sections 97.23; 97.29 and 97.33 effective July 10, 2003 which are hereby corrected to read as follows:

Pedricktown, NJ, Spitfire Aerodrome, RNAV (GPS) RWY 7, Orig
Pedricktown, NJ, Spitfire Aerodrome, RNAV (GPS) RWY 25, Orig
Providence, RI, Theodore Francis Green State, VOR/DME RWY 23, Amdt 6E
Providence, RI, Theodore Francis Green State, ILS RWY 5, Amdt 18
Providence, RI, Theodore Francis Green State, ILS RWY 23, Amdt 5
Providence, RI, Theodore Francis Green State, RNAV (GPS) Y RWY 5, Orig
Providence, RI, Theodore Francis Green State, RNAV (GPS) Z RWY 5, Orig
Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 23, Orig

The FAA published the following procedures in Docket No. 30369; Amdt. No. 3059 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 105, Page 13622; dated Monday June 2, 2003) under section 97.33 effective July 10, 2003 which are hereby rescinded; The procedures published on May 15, 2003 remain in effect.

Babelthuap Island, PS, Babelthuap/Koror, RNAV (GPS) RWY 9, Orig
Babelthuap Island, PS, Babelthuap/Koror, RNAV (GPS)RWY 27, Orig
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 9, AMDT 1B (CANCELLED)
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 27, AMDT 1B (CANCELLED)

The FAA published the following procedures in Docket No. 30369; Amdt. No. 3059 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 105, Page 32635; dated Monday, June 2, 2003) under sections 97.23; 97.29 and 97.33 effective July 10, 2003 which are hereby corrected to read as follows:

Durant, OK, Eaker Field, VOR/DME RWY 35, Orig
Durant, OK, Eaker Field, NDB RWY 35, Amdt 5

The FAA published the following procedures in Docket No. 30365; Amdt. No. 3055 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 87, Page 23891; dated Tuesday, May 6, 2003) under sections 97.23; 97.25; 97.29; 97.31; 97.33 and 97.35 listed with an effective date of June 12, 2003 which are hereby corrected to be effective on July 10, 2003:

Payson, AZ, Payson, RNAV (GPS)–A, Amdt 1
Chino, CA, Chino, ILS RWY 26R, Amdt 6
Inyokern, CA, Inyokern, RNAV (GPS) Y RWY 02, Orig
Inyokern, CA, Inyokern, RNAV (GPS) Z RWY 02, Orig
Hayden, CO, Yampa Valley, RNAV (GPS) Z RWY 10, Orig
Hayden, CO, Yampa Valley, RNAV (GPS) Y RWY 10, Orig
Hayden, CO, Yampa Valley, RNAV (GPS) RWY 28, Orig
Hayden, CO, Yampa Valley, GPS C, Orig, CANCELLED
Hayden, CO, Yampa Valley, GPS D, Orig, CANCELLED
Lamar, CO, Lamar Muni, RNAV (GPS) RWY 8, Orig
Lamar, CO, Lamar Muni, RNAV (GPS) RWY 18, Orig
Lamar, CO, Lamar Muni, RNAV (GPS) RWY 26, Orig
Lamar, CO, Lamar Muni, RNAV (GPS) RWY 36, Orig
Lamar, CO, Lamar Muni, GPS RWY 18, Orig-A, CANCELLED
Lamar, CO, Lamar Muni, GPS RWY 36, Amdt 1A, CANCELLED
Zephyrhills, FL, Zephyrhills Muni, NDB RWY 18, Orig

Zephyrhills, FL, Zephyrhills Muni, NDB RWY 22, Orig
Zephyrhills, FL, Zephyrhills Muni, NDB RWY 36, Orig
Rochelle, IL, Rochelle Muni Airport-Koritz Field, VOR–A, Amdt 8
Rochelle, IL, Rochelle Muni Airport-Koritz Field, RNAV (GPS) RWY 7, Orig
Rochelle, IL, Rochelle Muni Airport-Koritz Field, RNAV (GPS) RWY 25, Orig
Rayville, LA, John H. Hooks Jr Memorial, RNAV (GPS) RWY 36, Orig
Rayville, LA, John H. Hooks Jr Memorial, GPS RWY 36, Orig, CANCELLED
Mitchellville, MD, Freeway, VOR RWY 36, Orig-B
Mitchellville, MD, Freeway, RNAV (GPS) RWY 18, Orig
Mitchellville, MD, Freeway, RNAV (GPS) RWY 36, Orig
Ridgely, MD, Ridgely Airpark, RNAV (GPS) RWY 12, Orig
Ridgely, MD, Ridgely Airpark, RNAV (GSP) RWY 30, Orig
Bay City, MI, James Clements Muni, VOR–A, Amdt 12
Cavalier, ND, Cavalier Muni, RNAV (GPS) RWY 34, Orig
Fairmont, NE, Fairmont State Airfield, NDB RWY 17, Amdt 1
Fairmont, NE, Fairmont State Airfield, NDB RWY 35, Amdt 2
Fairmont, NE, Fairmont State Airfield, GPS RWY 35, Orig, CANCELLED
Fairmont, NE, Fairmont State Airfield, RNAV (GPS) RWY 17, Orig
Fairmont, NE, Fairmont State Airfield, RNAV (GPS) RWY 35, Orig
West Milford, NJ, Greenwood Lake, RNAV (GPS) RWY 6, Orig
West Milford, NJ, Greenwood Lake, GPS RWY 6, Orig, CANCELLED
Lake Placid, NY, Lake Placid, RNAV (GPS) RWY 14, Orig
Lake Placid, NY, Lake Placid, RNAV (GPS)–A, Orig
Ticonderoga, NY, Ticonderoga Muni, RNAV (GPS) RWY 2, Orig
Ticonderoga, NY, Ticonderoga Muni, RNAV (GPS) RWY 20, Orig
Ticonderoga, NY, Ticonderoga Muni, GPS RWY 2, Orig, CANCELLED
Ticonderoga, NY, Ticonderoga Muni, GPS RWY 20, Orig, CANCELLED
West Union, OH, Alexander Salamon, NDG RWY 23, Amdt 4
West Union, OH, Alexander Salamon, RNAV (GPS) RWY 5, Orig
West Union, OH, Alexander Salamon, RNAV (GPS) RWY 23, Orig
Fayetteville, TN, Fayetteville Muni, SDF RWY 20, Amdt 3
Fayetteville, TN, Fayetteville Muni, NDB RWY 20, Amdt 4
Brenham, TX, Brenham Muni, RNAV (GPS) RWY 16, Orig
Brenham, TX, Brenham Muni, RNAV (GPS) RWY 34, Orig
Brenham, TX, Brenham Muni, GPS RWY 16, Orig-A, CANCELLED
Brenham, TX, Brenham Muni, GPS RWY 34, Orig-A, CANCELLED
Rockport, TX, Aransas County, RNAV (GPS) RWY 14, Amdt 1
Rocksprings, TX, Edwards County, VOR RWY 14, Amdt 4
Rocksprings, TX, Edwards County, RNAV (GPS) RWY 14, Orig
Richmond/Ashland, VA, Hanover County Muni, VOR RWY 16, Amdt 2

[FR Doc. 03–14991 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1118; MM Docket No. 01–143; RM–10153]

Radio Broadcasting Services; Fishers, Indianapolis and Noblesville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of INDY LICO, Inc., licensee of Stations WGRL(FM), Noblesville, Indiana, and WGLD(FM), Indianapolis, Indiana, reallots Channel 230A from Noblesville, Indiana, to Fishers, Indiana, as the community's first local transmission service, and modifies Station WGRL(FM)'s license to reflect the change of community. It also reallots Channel 283B from Indianapolis to Noblesville, Indiana, to retain the community's first local transmission service and modifies Station WGLD(FM)'s license to reflect the change of community. An amendment filed by petitioner requesting an alternate site for Channel 230A at Fishers that would be short-spaced to Station WQKC(FM) at Seymour, also proposing to substitute Channel 230A for 229B at Seymour, reallot Channel 230A from Seymour to Sellersburg, Indiana, and modify Station WQKC's license to reflect the change of community, is dismissed and considered in a new docket simultaneously. Channel 230A is reallotted from Noblesville to Fishers at Station WGRL(FM)'s licensed site 7.1 kilometers (4.4 miles) north of the community at coordinates 40–00–55 NL, and 85–58–58 WL. Channel 283B is reallotted from Indianapolis to Noblesville at WGLD(FM)'s licensed site 26.9 kilometers (16.7 miles) southwest of the community at coordinates 39–50–25 NL and 86–10–34 WL.

DATES: Effective July 14, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 01–143, adopted May 28, 2003, and released May 30, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Fishers, Channel 230A, by removing Channel 283B at Indianapolis, and by removing Channel 230A and adding Channel 283B at Noblesville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–15071 Filed 6–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1845; MM Docket No. 01–78; RM–10080]

Radio Broadcasting Services; Bosque Farms and Grants, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Educational Media Foundation, downgrades Channel 288C1 to Channel 288C2 at Grants, reallots Channel 288C2 from Grants to Bosque Farms, New Mexico, and modifies Station KQLV(FM)'s license accordingly. We also allot Channel 244C3 at Grant, New Mexico, as the community's third local FM transmission service. Channel can be reallotted to Bosque Farms in compliance with the Commission minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) southwest to accommodate petitioner's requested site. The coordinates for Channel 288C2 at Bosque Farms are 34–47–55 North Latitude and 106–48–59 West Longitude. Likewise, Channel 244C3 can be allotted to Grants without the imposition of a site restriction. The coordinates for Channel 244C3 at Grants are 35–09–08 North Latitude and 107–50–33 West Longitude. *See* 66 FR 178844, April 4, 2001. At the request of Christian Country Network, Inc., we dismiss its counterproposal.

DATES: Effective July 14, 2003. A filing window for Channel 244C3 at Grants, New Mexico, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–78, adopted May 28, 2003, and released May 30, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 288C2 at Bosque Farms, by removing Channel 288C1 at Grants, and by adding Channel 244C3 at Grants.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–15069 Filed 6–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1844; MB Docket No. 03–52, RM–10657; MB Docket No. 03–53, RM–10658; MB Docket No. 03–54, RM–10659]

Radio Broadcasting Services; Dalhart, Kermit, and Leakey, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants three proposals that allot new channels to Dalhart, Kermit, and Leakey, Texas. The Audio Division, at the request of Linda Crawford, allots Channel 261C at Dalhart, Texas, as the community's second FM commercial aural transmission service. *See* 68 FR 12024, March 13, 2003. Channel 261C can be allotted to Dalhart in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.6 kilometers (24 miles) northwest to avoid a short-spacing to the license site of Station KOMX, Channel 262C2, Pampa, Texas. The reference coordinates for Channel 261C at Dalhart are 36–14–36 North Latitude and 102–52–36 West Longitude. Filing windows for Channel 261C at Dalhart, Texas, Channel 229A at Kermit, Texas, and Channel 257A at Leakey, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* SUPPLEMENTARY INFORMATION, *infra*.

DATES: Effective July 14, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–52, 03–53, 03–54, adopted May 28, 2003, and released May 30, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Audio Division, at the request of Al Boyd, allots Channel 229A at Kermit, Texas, as the community's second FM commercial aural transmission service. *See* 68 FR 12024, March 13, 2003. Channel 229A can be allotted to Kermit in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 229A at Kermit are 31–51–27 North Latitude and 103–05–32 West Longitude. Although concurrence has been requested for Channel 229A at Kermit, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Operation with the facilities specified for Kermit herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Audio Division, at the request of Katherine Pyeatt, allots Channel 257A at Leakey, Texas, as the community's fifth local aural transmission service. *See* 68 FR 12024, March 13, 2003. Channel 257A can be allotted to Leakey in

compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7.1 miles) west of Leakey, Texas. The reference coordinates for Channel 257A at Leakey are 29–44–41 North Latitude and 99–52–40 West Longitude. Although concurrence has been requested for Channel 257A at Leakey, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Operation with the facilities specified for Leakey herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, for the reasons set out in the preamble, 47 CFR Part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 261C at Dalhart; by adding Channel 229A at Kermit; and by adding Channel 257A at Leakey.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–15068 Filed 6–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1843; MB Docket No. 03–21, RM–10632, RM–10696]

Radio Broadcasting Services; Eastpoint and Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Moira L. Ritch, allots Channel 270C3 to Port St. Joe, FL, as the community's second local FM transmission service. *See* 68 FR 7964, February 19, 2003. Channel 270C3 can be allotted to Port St. Joe in compliance with the Commission's minimum distance separation requirements with a site restriction 2.2 kilometers(1.4 miles) south to avoid short-spacing to the application site of Station WWAV, Channel 271C2, Santa Rosa, Florida and the license site of Station WBGE, Channel 270A, Bainbridge, Georgia. The reference coordinates for Channel 270C3 at Port St. Joe are 29–47–45 North Latitude and 85–17–27 West Longitude. In response to a counterproposal filed by Richard L. Plessinger, Sr., the Audio Division allots Channel 283A to Eastpoint, FL, as that community's first local aural transmission service. Channel 283A can be allotted to Eastpoint in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 283A at Eastpoint are 29–44–11 North Latitude and 84–52–42 West Longitude. Filing windows for Channel 270C3 at Port St. Joe, FL and Channel 283A at Eastpoint, FL, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective July 14, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–21, adopted May 28, 2003, and released May 30, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, for the reasons set out in the preamble, 47 CFR Part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Eastpoint, Channel 283A and by adding Channel 270C3 at Port St. Joe.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–15067 iled 6–13–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST–2000–7639 & OST–2000–7640]

RIN 2105–AC89

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the Department of Transportation's (DOT or Department) regulations for its Disadvantaged Business Enterprise (DBE) program. It makes several changes to the DBE program, concerning such subjects as uniform application and reporting forms; implementing a memorandum of understanding (MOU) with the Small Business Administration (SBA); substantive amendments to provisions concerning personal net worth, retainage, size standard, proof of ethnicity, confidentiality, proof of economic disadvantage, DBE credit for trucking firms, and eligibility of firms owned by Alaska Native Corporations (ANCs); and clarifications concerning multi-year project goals and the use of the new North American Industrial Classification System ("NAICS"). In addition, this document addresses comments received in response to both an interim final rule (IFR) issued in November 2000 and a notice of proposed rulemaking (NPRM) issued in May 2001 (RIN 2105–AC88).

DATES: This final rule is effective July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), *bob.ashby@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Electronic Access: An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Group Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. You can also view and download this document by going to the web page of the Department's Docket Management System at: *http://dms.dot.gov/*. On that page, click on "search." On the next page, type in the four-digit docket number shown on the first page of this document. Then click on "search."

Background

On February 2, 1999, the Department published a final rule revising its Disadvantaged Business Enterprise (DBE) program. The new regulations (49 CFR part 26) replaced 49 CFR part 23, except for the airport concessions regulations. Airport concessions are being discussed in a separate rule. The NPRM on airport concessions was issued December 12, 2002 (67 FR 76327). Its final rule is pending. In drafting the 1999 final rule, the Department considered many sources, including the results of a government-wide review of affirmative action programs, requirements set forth in the Supreme Court's decision in *Adarand* v. *Pena* (515 U.S. 200 (1995)), extensive Congressional debate during the reauthorization of the DBE program, and over 900 comments. Because of the enormity of the 1999 revisions, there were several requirements, such as the establishment of a uniform certification form, that were reserved for a later date. Additionally, after administering the program since 1999 it is evident that clarification of some provisions and revisions to other provisions would be useful.

I. Interim Final Rule Regarding Threshold Requirements and Other Changes

The Department published an IFR in the **Federal Register** on November 15, 2000 (65 FR 68949). The IFR addressed threshold requirements for Federal Transit Administration recipients and Federal Aviation Administration recipients to establish DBE programs and submit overall goals. In addition, the IFR corrected and clarified misleading language in 49 CFR part 26. The IFR also provided examples of ways to collect information required for bidders lists, and clarified that in order to verify whether a DBE firm actually performed the work they were committed to, both commitments and attainments must be tracked and reported. Finally, the IFR corrected potentially misleading language regarding evidence that must be considered when setting overall goals. The Department received only four comments on this IFR that are addressed below.

A. Substantive Changes

DBE Programs

Section 26.21(a)(2) of the rule states that Federal Transit Administration (FTA) recipients who receive $250,000 or more in a fiscal year in various forms of FTA assistance must have a DBE program. Similarly, subsection (a)(3) requires Federal Aviation Administration (FAA) recipients who receive grants of $250,000 or more in a fiscal year for airport planning and development to have a DBE program. The IFR changed the threshold to $250,000 in contracting opportunities. The change requires FTA recipients who project awarding more than $250,000 in prime contracts in a Federal fiscal year from FTA assistance to have a DBE program. Similarly, FAA recipients who project awarding more than $250,000 in prime contracts in a fiscal year from grants for airport planning and development are required to submit a plan. Prime contracts include contracts for goods as well as contracts for services.

The Department made these changes to decrease the administrative burden on transit authorities and small airports. Many of these transit authorities and small airports receive more than $250,000 in FTA or FAA funds, but have only a small amount of funding available for actual contracting opportunities. For example, FAA grants funding for land acquisition projects. While many of these grants exceed $250,000, the value of contracting opportunities covered by the DBE program (*e.g.*, real estate appraisal and survey) frequently is well below $250,000. The major portion of grant funds is generally for the land purchase itself, which is not a "DOT-assisted contract" under the definition of § 26.5.

We only received two comments on this provision, both supporting the change. It was suggested, however, that DOT monitor the number of recipients and Federal contracts affected by this change to ensure that the purpose of the DBE program is not compromised. We believe that this change will only affect a small number of our recipients and monitoring the way in which recipients carry out provisions of the rule is a normal function of FTA and FAA.

One commenter requested that we extend the $250,000 threshold to transit vehicle manufacturers (TVMs). We do not believe that any TVMs would benefit from the $250,000 threshold. The cost of just one vehicle would exceed $250,000; therefore, any change would be meaningless.

Therefore, we are adopting the provisions of the IFR without change. FTA and FAA recipients who reasonably anticipate awarding $250,000 or less in prime contracts in a fiscal year are not required to submit a DBE plan. This change affects new recipients or recipients who do not have a DBE program. The rule also reduces burdens on recipients who already have DBE programs. If such a recipient anticipates awarding $250,000 or less in prime contracts it does not have to submit a DBE overall goal for that year.

Goal Setting

Section 26.45 requires recipients to submit new goals on August 1 of each year. The IFR revised this section to exempt FTA or FAA recipients with existing DBE programs from setting updated overall goals when they do not project awarding prime contracts exceeding $250,000 (excluding vehicle transit purchases) in the year in which the updated goal would apply.

Under this provision, if a recipient is administering a DBE program, but is an FAA or FTA recipient who anticipates awarding $250,000 or less in prime contracts in a Federal fiscal year, the recipient is not required to develop overall goals for that fiscal year. The recipient's existing DBE program must remain in effect, however, even though they are not required to develop goals. For example, the recipient is still required to perform certification functions such as processing applications and obtaining no-change affidavits. If the recipient expects to award prime contracts exceeding $250,000 in the following fiscal year, it must timely publish the proposed goal and submit the goal to the applicable DOT Operating Administration by August 1. Although not required, a FAA or FTA recipient who anticipates awarding $250,000 or less in prime contracts may submit a goal for that fiscal year. If a recipient chooses to

submit a goal, however, it must meet all the requirements set forth in § 26.45. Of course, all recipients must still seek to meet the objectives of § 26.1 of this part.

There were no substantive comments on this section; therefore, we are not making any changes to this provision.

B. Technical Changes

Clarification Concerning Bidders Lists

Section 26.11(c) requires recipients to create and maintain a bidders list containing information about DBE and non-DBE contractors and subcontractors who seek work on a recipient's Federally-assisted contracts. The Department had received a number of questions regarding the appropriate method to collect the required information. Recipients had also expressed concern with collecting the annual gross receipts of firms, saying that firms sometimes have been reluctant to share this information.

In discussing this requirement in the DBE final rule, the Department recognized the difficulty in identifying subcontractors, particularly non-DBEs and all subcontractors that were unsuccessful in their attempts to obtain contracts. Consequently, the Department did not impose any procedural requirements for how the data are collected. The Department still believes that a recipient's data collection process should remain flexible. The IFR amended § 26.11(c) to emphasize the purpose of the bidders list and provide examples of ways in which recipients may choose to collect the required data.

The IFR amended § 26.11(c)(1) to state that the purpose of maintaining a bidders list is to provide the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to perform work under a recipient's Federally-assisted contracts for use in setting overall goals. The IFR also added language stating that a recipient may collect the required data from all bidders, before or after the bid due date. They may also choose to conduct a survey that will result in a statistically sound estimate of the universe comprised of DBE and non-DBE contractors and subcontractors who seek to perform work under the recipient's Federally-assisted contracts. Additionally, we clarified that the data need not come from the same source. For example, a recipient may collect name and address information from all bidders while conducting a survey with respect to age and gross receipts information. The Department continues to believe that the approach should remain flexible so that recipients can choose the least burdensome and intrusive method.

With regard to a firm's annual gross receipts, the IFR amended the language in § 26.11(c) to clarify that recipients are not required to collect exact dollar figures from the bidders. Recipients may ask a firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; etc.) rather than requesting an exact figure from the firms. We note that this information on the financial size of a firm, as well as information collected about the firm's age, should be helpful to recipients in formulating narrowly tailored overall goals.

A few commenters stated that they do not use a firm's gross receipts or a firm's age in calculating their goals and therefore collecting this information should be optional. We believe that this information is a valuable way to measure the relative availability of ready, willing, and able DBEs, and we encourage recipients to utilize this in setting their goals. Use of this information will help recipients to ensure that their goal setting process is narrowly tailored. However, although this information is not required in setting goals, it is information that the Department is asked to provide periodically to Congress. Consequently, we will continue to require recipients to collect a firm's gross receipts and age for DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts. This portion of the IFR is also being retained without change.

Clarification Concerning Monitoring and Counting DBE Participation

Section 26.37(b) requires recipients to have a mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs. The language in the final rule states that recipients must provide for a running tally of actual DBE attainments. The preamble to the rule states, "Under the final rule, recipients would keep a running tally of the extent to which, on each contract, performance had matched promises." Verifying whether a DBE actually performed the work they were committed to necessarily requires the recipient to track both commitments and attainments.

The IFR reworded the language in § 26.37(b) to state that a recipient's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. In addition, it added a new paragraph (c) to clarify that a recipient's mechanism for providing a running tally of actual DBE attainments must include a means of comparing the attainments to commitments. It also clarified that both awards or commitments and attainments must be contained in a recipient's reports of DBE participation to the Department.

The few comments we received on this section questioned whether commitments and attainments could be reported together in a meaningful way without being misleading. We recognize that in many instances the awards and commitments reported will not correspond to the attainments reported on the same form. For example, if a contract is awarded to a DBE in August 2001, the award would be reflected in the report for that period, but the contract likely would not be completed for many years. Therefore, the actual achievements section in that report could not reflect the achievements on that contract. The Uniform Reporting Form in Section II of this document contains two separate sections in the form. The first section reflects contracts awarded or committed during the reporting period. The second section reflects actual payments on contracts completed during the reporting period. It is essentially a "snap-shot" of a recipient's progress towards the participation of DBEs in its DBE program, and is not a determinative factor as to whether or not DBE goals are being met.

One commenter requested that we provide guidance on how to track actual participation. The Department believes that a recipient's data collection process should remain flexible, and as such we are reluctant to tell recipients how to collect the information. As an example, many recipients track actual participation by obtaining certified statements from the prime contractor and then verifying the information with the DBEs.

The IFR also deleted and revised repetitive and misleading language. Section 26.37(b) requires the mechanism providing for a running tally of actual DBE attainments to include a provision ensuring that the DBE participation is credited toward overall or contract goals only when payments actually are made to DBE firms. Because this requirement was already stated in § 26.55(h), we have removed it from § 26.37(b). Furthermore, we believe that the wording of § 26.55(h) was confusing; therefore, we revised it. The point of the revised language is to emphasize that actual payment of committed funds to DBEs is a key element in determining whether a prime contractor has met its contract obligations.

Clarification Concerning Goal Setting

In setting overall goals, step two requires that recipients examine all evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure. Section 26.45(d)(1) specifies information that must be considered when adjusting the base figure. Section 26.45(d)(2) lists additional information to consider, but uses the language "you may also consider." This permissive language may be misleading. A narrowly tailored program requires that all relevant information be considered. The IFR clarified that if the information is available, then it must be considered. Therefore, to avoid misleading language, we changed the wording in § 26.45(d)(2) to read, "If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete." There were no comments on this provision; therefore, we are not making any changes to this provision.

II. Notice of Proposed Rulemaking Regarding Memorandum of Understanding With the Small Business Administration, Uniform Forms, and Other Provisions

There are three different matters addressed in this section. Part A addresses uniform forms. In the 1999 final rule, the Department stated that it would develop a uniform reporting form and a standard DOT application form for DBE eligibility. The Department did not want to delay the issuance of the 1999 final rule, so it reserved the date on which the uniform form requirements would go into effect. This document addresses both of these forms. Part B addresses the implementation of a Memorandum of Understanding (MOU) between the DOT and the Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs and DOT's DBE program. Part C addresses substantive changes to several provisions of part 26, including personal net worth, retainage, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

A. Forms

Uniform Reporting Form

In the February 1999 rule, the Department adopted the suggestion of having a single, uniform, nationwide form that all recipients must use to report to the DOT its awards or commitments and payments. We published a proposed format in the NPRM. We received over eighty comments concerning the format and content of the proposed uniform reporting form, all of which were considered and addressed in drafting the final form. Several versions of the form were generated to account for the various comments and suggestions provided, and the Department believes that the final form compiles the necessary information needed by the Department to safeguard the program's integrity and ensure the goals of the program are met. The Final Form and its instructions are in Appendix B of this document.

Many commenters made suggestions about the format and style of the reporting form. The basic formatting remains the same as in the NPRM because of its brevity and its capacity to capture the required information sought by the Department in a single page. One particular goal was to minimize the burden on recipients in compiling the information, as well as reducing the amount of paperwork required. Some terms and phrasing used in the form were changed to be consistent with that used in the current final rule.

The Instructions Sheet that accompanies the reporting form explains more fully what is required in each field on the form, and instructs recipients on how to derive specific numbers and percentages that are required to be provided. It is essential that recipients completing this form consult the Instructions Sheet.

One commenter questioned the distinction between race conscious and race neutral goals. These concepts are explained in some detail in part 26, and this rulemaking does not change any of the concepts in the 1999 final rule that established part 26. Another commenter requested clarification as to the category of "Other" in the ethnicity breakdown portion of the form. Firms may qualify as DBEs on a case-by-case, individual basis, even though their owners are not members of a group presumed to be disadvantaged (*e.g.*, a firm owned by a white male who makes an individual showing of disadvantage). The "Other" category would be used to report this type of scenario. We also added new category for "Non-Minority Women" to the final form to account for women-owned DBEs participating in the program, and to guard against the potential for double counting women-owned DBEs where the female owner is also a minority. As a result, the category "Caucasian" was removed from the final form.

Many commenters were concerned that the "Awards or Commitments this Reporting Period" section did not match up with the later section on "Actual Payments on Contracts Completed This Reporting Period." All dollar amounts are to reflect only the Federal share of such contracts. The Department realizes that many awards or commitments last over an extended period of time, and therefore will be likely to extend over multiple reporting periods. The Departments intends that these sections would not match up and that the respective numbers would most likely be different.

The purpose of the Actual Payments section is to capture a "snap shot" of the present reporting period as concerns monies actually paid to DBEs, as opposed to monies that are only committed or awarded to DBEs but have not necessarily been paid yet. This data will provide a more accurate picture of the level of DBE participation that is completed at any given time. The new categories added to these sections will depict more fully the level of DBE participation. More importantly, it should be stressed that while several commenters noted that the tracking of such information is not currently done, it is crucial that recipients maintain records of committed DBE goals and actual payments by contract because this data allows recipients (and the Department) to determine the recipient's actual success in meeting contract and overall DBE goals. Failure to track such data would defeat the purpose of goal-setting and undermine the integrity of the program.

We received twenty-eight comments regarding the reporting frequency. The Department currently has authority to require quarterly reporting. While the FHWA and the FTA do require quarterly reporting, the FAA requires only annual reporting. Not surprisingly, most of the comments objecting to semi-annual reporting came from airport authorities, while many State DOTs favored semi-annual reporting. Although our goal is uniformity we also want to decrease our recipients' burdens. Therefore, all recipients are required to use the standard reporting form. Recipients of funds from the FHWA and FTA will be required to report semi-annually, but FAA recipients will continue to report annually.

Reports are due to a recipient's operating administration (OA) on June 1 and December 1 each year. The June 1 report should include information from October 1 through March 31. The December 1 report should include information from April 1 through September 30. We believe that these dates will assist recipients in setting goals, which are due by August 1 each year. A couple of commenters requested

alternative reporting deadlines for recipients that use local fiscal years or calendar years. This will be permitted on a case-by-case basis if approved by the concerned OA.

The form will be made available electronically in PDF format, but at this time recipients cannot submit the forms electronically. The reporting form must be submitted to the OA from which the recipient received Federal funds. For example, a recipient of Federal Highway funds must submit a report to the FHWA. If a recipient received funds from more than one OA, it must submit a report to each OA. TVMs will continue to report to the recipient and not DOT directly.

Finally, recipients are required to retain information relating to basic program data for three years.

Uniform Certification Application Form

In the February 1999 final rule the Department said that it planned to create a single, uniform, nationwide form that all recipients must use without modification for DBE eligibility. We published a proposed format in the NPRM. We received over eighty-eight comments concerning the format and content of the proposed uniform application, all of which were considered and addressed in drafting the final form. Several changes were made to the proposed form that the Department believes makes the form more streamlined and user-friendly, yet comprehensive enough to supply recipients with the necessary information to make determinations as to applicants' qualifications for the DBE program. The Final Form is in Appendix F of this document.

Many commenters made suggestions about the format and style of the application. These suggestions were considered and incorporated into the final form to the extent possible. Much of the basic formatting remains the same because the goal was to keep the form manageable, easy to read, and easy to follow for applicants who must fill out the form, while simultaneously being accessible and practical for the multitude of recipients required to accept the form. Our major concern was keeping the application within a reasonable limit, regarding both length and content, in order to prevent the form from becoming too unwieldy and burdensome.

Other commenters posed questions or sought clarification of certain terms used in the application or of the applicability of certain sections of the application to specific groups or types of contractors and businesses. These questions and queries are addressed in both the form and in its accompanying Instructions Sheet. The form itself uses simplified language and the Instructions Sheet explains more fully the type of information or documents sought in each section of the application.

Although recipients must use the uniform application form without modification, we recognize that some recipients have additional statutory and/or regulatory requirements. Therefore, recipients, with the written consent of the cognizant OA, may (1) supplement the uniform application form with a one to two page attachment containing the additional information collection requirements, and (2) require applicants to submit additional supporting documents not already listed in or required by the uniform application. Additionally, with written consent of the OA, a recipient may translate the forms into a second language (*e.g.*, Spanish or Chinese) to assist their applicants. We reiterate that the form should be streamlined, however, and that additional information should be sought during the on-site review process rather than during the application process.

B. Memorandum of Understanding

There has been some confusion as to the scope of the Memorandum of Understanding (MOU) between the Small Business Administration (SBA) and the DOT. While the intent of the MOU is to streamline the certification process for firms who apply for the SBA's 8(a) BD or SDB programs and the DOT's DBE program, absolute reciprocity is impossible. The programs share many common requirements, but there are some significant differences. Therefore, we are clarifying that the MOU does not alter any program requirements; applicant firms must meet the program requirements for which they are applying. For example, an SBA-certified firm applying for DBE certification must meet the DOT statutory gross receipts cap, currently set at $17,420,000 (65 FR 52470 (August 29, 2000)). An SBA-certified firm must also undergo an on-site review before receiving DBE certification.

Because the SBA is not required to issue regulations prior to implementing the MOU, it has already established procedures to implement the agreement. If a DBE firm contacts the SBA requesting to be certified for SBA's Small and Disadvantaged Business program, the SBA would follow procedures similar to those set forth in this document.

Some commenters supported the MOU and the proposed regulations without change. Others did not object to the MOU in its entirety, but rather focused on a few main issues. One of the primary issues was the degree of reciprocity. Under this rule, recipients must accept a firm's application package submitted to the SBA in lieu of requiring the applicant firm to fill out the recipient's own application. The certifying agency may ask the applicant firm for additional information and an on-site review will be required. If the SBA conducted an on-site review, the DOT recipient may rely on SBA's report in lieu of conducting its own on-site review. Several commenters mentioned the importance of conducting their own on-site review because the certifying agency can actually see the firm and can ask additional questions. We agree that the on-site review is important, and that is why the recipient may accept the SBA's report of the on-site review, but is not required to do so.

Under the 1999 final rule, a recipient receiving an application from an SBA-certified firm had three choices. It could (1) accept the SBA certification decision, subject to the recipient's own on-site review; (2) use the firm's SBA application package in lieu of requiring completion of the recipient's own application form (the recipient would still have to complete an on-site review), but make its own decision; or (3) disregard the SBA materials and require the recipient to undergo the recipient's full application process from scratch. The MOU, as implemented by this rule, removes the third option. Under today's final rule, recipients will have to choose one of the first two options when an SBA-certified firm files an application.

If the recipient chooses the second option, it should be aware of one important constraint on its discretion. If the SBA has looked at an application package and determined that a firm is a small business owned and controlled by socially and economically disadvantaged persons, it would not be appropriate for the DOT recipient to disagree with the SBA's conclusion in the absence of additional information that leads to a different conclusion. That is, the recipient could not make a different decision based solely on a judgment of the same exact information on which SBA based its decision. Doing so would be contrary to the language and intent of the MOU. However, if the DOT recipient (typically in the course of the on-site review) discovers additional information from which it could reasonably conclude that the SBA-certified firm is not an eligible DBE, it could decline to certify the firm.

In any case, § 26.83(k) requires a recipient to make a decision within ninety days of receiving all the required

information, including any additional information requested, whether it is from the applicant or the SBA.

This issue that appears to have caused the most concern is the requirement that recipients copy and transmit to the SBA a copy of the applicant firm's application package when a DOT-certified firm applies to the SBA for certification. A majority of the commenters argued that the copy requirement would place an administrative and financial burden on recipients. That is why we are allowing recipients to charge a reasonable fee (*e.g.*, comparable to what would be charged for a Freedom of Information Act or open records law request) for the photocopying to defray some of the costs. A few commenters suggested that it would be more of a burden to collect the fees. Therefore, whether to impose copying and transmittal fees will be left entirely up to the recipient. We do not believe that there will be a large demand from DBE-certified firms requesting SBA certification, so we do not believe that this provision will have a significant economic effect. The Department will monitor the situation and will make future alterations as needed.

A few commenters questioned the definition of "application package." Two commenters stated that it would be easier to copy and transmit the entire file rather than the actual application. That way there would be no need for the SBA to request additional information from the recipient. We agree. By "application package" we mean the application and any information relied upon in making the certification decision.

Several commenters also addressed the time limits prescribed in the NPRM. Some claimed that the time limits were too short, while others said that they are too long. We believe that while an expedited process would be desirable, lack of resources will make shorter deadlines unworkable. We believe that the time frames set forth in the NPRM are reasonable. Therefore, recipients are required to forward the application package to the SBA within thirty days after the firm's request. If additional information is requested, it must be transmitted within forty-five days after receipt of the request. In implementing this provision, we intend to provide some flexibility during the first several months as recipients adjust to the requirement. Again, the Department will monitor the situation and make changes if warranted. There is some concern that some application packages are outdated and unreliable. We agree that transmitting irrelevant and outdated information would be wasteful; however, if an applicant firm has a current, valid certification, and then all of the information relied upon for that certification may be relevant.

There were several comments regarding the notification requirement. If a recipient denies certification to a firm certified by the SBA, or if it decertifies a firm it knows to be certified by the SBA, it is required to notify the SBA in writing. The notification must include the reason for denial. Two commenters believe that the denial/decertification letter is sufficient notification to the SBA, and we agree. A recipient may simply send a copy of the denial or decertification letter to the SBA. One commenter asked how it would know whether the firm is SBA certified. Typically, an applicant will submit this information in an application package or decertification proceeding. A recipient could also querry an on-line database of firms the SBA has certified at *http://pro-net.sba.gov*.

C. Additional Changes

Personal Net Worth

Section 26.67 requires each individual whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth (PNW) with appropriate supporting documentation. The Department received a number of questions about what documentation is appropriate for recipients to require in ascertaining the PNW of owners of DBE firms. In the preamble to the final rule correction (64 FR 34569 (June 28, 1999)), the Department recommended using the SBA's form as a model. The SBA requires completion of a two-page form, supported by two years of personal and business tax returns. The Department wanted to remain flexible while encouraging recipients to use forms that are not unduly lengthy, burdensome, or intrusive. The Department did not require recipients to use the SBA form verbatim but encouraged them to use a form of similar length and content, including collecting and retaining two years of an individuals' personal and business tax returns. The Department has not found anything more appropriate than the SBA form, however. In the interest of uniformity, this final rule will mandate use of the SBA PNW form in conjunction with the new uniform application form. A copy is included in Appendix F.

The final rule explicitly requires that personal financial information be kept confidential. Nevertheless, the Department has continued to receive comments concerning the intrusiveness of collecting personal tax returns. In the 2001 NPRM, the Department proposed an alternative option with regard to the necessary supporting documentation to prove PNW in order to address these concerns. The proposal still called for recipients to require individuals whose ownership and control are relied upon for DBE certification to certify that he or she has a PNW not exceeding $750,000 by allowing applicants to submit a signed, notarized statement of PNW with appropriate documentation. In the alternative, the proposed option was to allow the applicant to submit a signed, notarized statement from a certified public accountant (CPA) attesting that the CPA had examined his or her PNW pursuant to § 26.67(a)(2)(iii) and determined that his or her PNW does not exceed $750,000. This option was intended to eliminate the need for the applicant to provide personal income tax information to the DOT recipient as supporting documentation for purposes of proving PNW.

The Department received numerous comments concerning the proposed alternative documentation for establishing an applicant's PNW. Many commenters supported the proposed option of allowing applicants to submit a CPA's affidavit as to PNW instead of filing personal income tax information. A majority of the commenters in favor of the proposal highlighted the fact that such an option would be less intrusive and would protect the privacy and confidentiality interests of applicants in their personal economic and financial information. Furthermore, some commenters noted that this option would alleviate the burden of the application process on applicants and would reduce the amount of paperwork associated with the DBE program, thereby facilitating the entire process. One commenter also felt that CPAs are better situated to evaluate financial statements because of their academic and professional training.

A roughly equal number of commenters felt quite differently about the issue. An overwhelming majority of recipients opposed the proposal to allow the submission of a CPA's affidavit in lieu of an individual applicant's personal income tax return or other such documentation in order to prove PNW. Many commenters felt that it was very important for the recipients themselves to verify the PNW of each applicant, and that to allow a simple affidavit of a CPA would unduly inhibit their ability to do so, and would prevent the recipients from closely tracking the eligibility of applicants through their

own independent assessment. Moreover, a number of commenters strongly maintained that by requiring applicants to submit personal income tax information, rather than merely a CPA's affidavit, recipients could better safeguard the integrity of the DBE program because they would be able to certify applicants' eligibility to the Department with unqualified certainty, having done the eligibility determination as to PNW themselves. Of particular concern to those commenters opposed to the CPA affidavit was the fact that it could not be guaranteed that the various CPAs utilized by applicants would be familiar with the technical aspects of the DBE program, and that such CPAs would only, and could only, certify the PNW of applicants based on the information provided to them, which would not be available to the recipients if an affidavit were allowed to supplant the current requirement of actual documentation. This, they speculated, could lead to potential misinformation and, as a consequence, various forms of disclaimers and waivers by the CPAs in order to shield them from liability based on an applicant's supply of faulty or incomplete information. Accordingly, a majority of commenters opposed were concerned that this proposed alternative, while appearing more efficient, would open the door to, and increase the potential for, fraud and abuse by reducing the level of scrutiny with which a recipient could exercise over the applications submitted and in making the ultimate eligibility determinations.

The Department is clearly concerned with maintaining the integrity of the program. Central to the narrow tailoring of the DBE program is the PNW requirement, and as such there is a great need to ensure that every measure is taken to qualify applicants who are truly socially and economically disadvantaged within the meaning of the statutes governing the DBE program and as intended by Congress. Thus, a thorough eligibility determination process that is not overly burdensome is required. Having been persuaded by the recipients' comments opposing the CPA option on grounds of maintaining program integrity, the Department has decided not to adopt this proposal. Therefore, individual applicants are required to submit their personal income tax information to DOT recipients so that the recipients themselves can make unqualified and accurate determinations of applicants' eligibility under the DBE program.

It should be emphasized that the privacy and confidentiality concerns raised by many of the commenters does not go unheeded. The final rule, as it has existed since 1999, explicitly requires that the personal financial information of applicants be kept strictly confidential. This confidentiality requirement is not taken lightly, and cannot and will not be compromised. We note that the regulation has been amended previously to prohibit the release by recipients of applicants' PNW-related personal financial information, even in the face of State freedom of information or open records laws.

We understand the justifiable privacy concerns associated with collecting personal tax returns; nevertheless, it is incumbent upon the Department to safeguard the integrity of the program. Providing the recipients with the necessary means and information to determine the eligibility of applicants to participate in the DBE program is critical to accomplishing this end, and such determinations must be unqualified and verified. This, we believe, is necessary to ensure that the DBE program is indeed narrowly tailored, so as to comply with *Adarand* and its progeny.

The 2001 NPRM went further in its proposed changes to § 26.67 as to the calculation of an applicant's PNW. The proposed change addressed vested pension plans, Individual Retirement Accounts, 401(k) accounts, and other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences. We proposed two options: (1) That PNW should include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time; and/or (2) to exclude such assets altogether from the PNW calculation.

As with the PNW proposal, the public comments received regarding retirement assets were sharply divided. Some commenters suggested that either method would be acceptable. One commenter offered a variation on these two proposed methods of calculating PNW—having applicants list their accounts and like assets, but not actually including them in the PNW calculation unless they are accessed. Another commenter suggested only counting such assets at the point they become vested.

A substantial number of other commenters opposed the inclusion of pension plans and other retirement assets in the PNW calculation, arguing that only liquid assets should be included, and because such assets are not available without penalty they should not be counted. These commenters also voiced the concern that calculating the penalty (*i.e.*, present value minus taxes and interest penalties if withdrawn) would be too problematic and burdensome on small business owners and recipients. It would also be difficult to verify. Others suggested that retirement assets have no bearing on whether a particular DBE has the present ability to do the required work within the program, and therefore should be excluded from any PNW calculation. To include such assets in the PNW calculation, some commenters contended, would be to penalize DBEs for investing wisely.

A similarly substantial number of commenters, mostly recipients, strongly urged the inclusion of pension plans and other retirement assets in the PNW calculation. Many supporters of the inclusion of such assets stressed that to exclude them would go against generally accepted accounting practices. One commenter stated that the proposal of counting the assets and then taking into account the consequent liability is fairer than simply counting the asset in whole. Other commenters suggested that it is important to include these assets in the PNW calculation because it would prevent applicants from diverting funds to such accounts in order to meet the PNW requirement, and thereby preclude any possibility of fraud or abuse. One commenter stated that retirement assets are plainly assets, and therefore should be included in any accounting of PNW, taking appropriate account of penalties and present value.

Although retirement assets may not be readily available as sources of financing for business operations, they are part of a person's overall wealth. While we understand that it may be difficult to calculate the assets, we must maintain the integrity of the program and ensure that the calculation reflects the individual's true wealth. To exclude these assets would be misleading and could compromise the integrity of the program. Therefore, we are continuing to require that the present value of assets be counted. Recipients should count only the present value of the retirement savings or investment device toward the personal net worth calculation. That is, the recipient needs to determine how much the asset is actually worth today, not what its face value is or what the individual's return on it may be at some point in the future. In making this determination, the recipient would subtract the interest or tax penalties the individual would incur if he or she withdrew the assets today.

Retainage

As the Department noted in the preamble to the February 1999 final rule, delays in payment have long been one of the most significant barriers to the competitiveness, and in some cases the viability, of small subcontractors. One of the delays in payment which subcontractors have been most concerned about is the payment of retainage. Subcontractors have told us they often finish their work on a contract months or years before the end of the project on which the prime contractor is working, but the prime contractor does not pay them fully until after the recipient has paid retainage to the prime contractor at the end of the entire project. To help surmount this barrier, the 1999 final rule requires prime contractors to pay retainage to subcontractors promptly after the subcontractors satisfactorily complete their work.

Many states and other recipients have responded creatively to this provision, taking such measures as making incremental payments to prime contractors or eliminating retainage altogether. Where recipients have not taken such measures, however, prime contractors have complained that the requirement to pay subcontractors fully before the recipient pays retainage to the prime contractor is a financial hardship on prime contractors.

In order to address the prime contractors' concerns without diminishing the benefit of the existing provision to subcontractors, the Department proposed three approaches: (1) A recipient could eliminate retainage entirely, neither retaining funds from prime contractors nor permitting prime contractors to hold retainage from subcontractors; (2) a recipient could decide not to retain funds from prime contractors, but give prime contractors discretion to hold retainage from subcontractors (the recipient would require prime contractors to pay subcontractors in full after satisfactory completion of the subcontractor's work); or (3) the recipient could hold retainage from prime contractors but make incremental inspections and approvals of the prime contractor's work at various stages of the project (the recipient would pay the prime contractor the portion of the retainage based on these approvals), and the prime contractor, in turn, would be required to promptly pay all retainage owed to the subcontractor for satisfactory completion of the approved work.

We received eighty-four comments on the issue of retainage. Several commenters favored the proposed changes, with most agreeing that options (1) and (3) are best, so long as they would not conflict with state law. A majority of commenters favored the proposed changes with modifications. Several commenters noted the difficulty on prime contracts in implementing the three options when it may be difficult to evaluate the quality of each subcontractor's work in situations where the result of the subcontractor's work may not be known until other work is performed on top of it. In twenty-two letters submitted, option (3) was pointed out as the best because commenters said, of the need for prime contractors to have the flexibility to hold retainage until the state accepts the portion of the work performed by the subcontractor. Another commenter recommended a fourth option: all retainage amounts must be returned within fifteen business days of satisfactory completion of the work, regardless of whether the prime contractor was paid.

Several commenters requested a definition of "satisfactory completion." For purposes of this provision, we have defined satisfactory completion of a subcontractor's work as when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is considered satisfactorily completed.

Twenty-three commenters disagreed entirely with the proposed changes, including eleven State DOTs. Many of these commenters were concerned that one or more of the options could conflict with state laws, or force recipients into a "cookie cutter" solution. Others found option (3) unworkable, costly, or in need of a phase-in period for implementation. A few commenters recommended the complete elimination of retainage. They pointed to the root causes of difficulty in recouping retainage—such as inspector delays and inefficiency—that lead to the contractors being unduly penalized.

The Department wants recipients to have flexibility in their implementation of retainage. The Department believes that it is best to implement solutions that minimize difficulties for both subcontractors and prime contractors. Current § 26.29 addresses the difficulties caused by retainage for subcontractors, but does so in a way that prime contractors were concerned shifted too much of the burden to them. The purpose of the amendments to § 26.29 is to mitigate the problems raised by prime contractors while retaining the benefits of the section to subcontractors. The Department also believes that recipients should have flexibility in their implementation of this section. For these reasons, we are adopting the proposed amendments and permitting recipients to choose which of the three options to use. Whichever option the recipient chooses, it must apply it uniformly to all contracts. We are defining "prompt" as no later than thirty days. Based on our experience in program review thirty days was the most common length of time suggested by recipients. The Department believes that this is a sensible amount of time for payment of retainage.

Size Standard

One of the purposes of the DBE rule is to make it possible for small firms to grow. This includes the opportunity for subcontractors to become able to compete as prime contractors. To be able to perform prime contracts, companies often need to be larger and have more resources than they had as subcontractors. Frequently, firms attempting to grow will perform both prime contracts and subcontracts. This may create a dilemma for DBE firms in some instances. In order to work as prime contractors, firms may need to grow beyond the limits of the SBA size standards applicable to their subcontracting field. If they do, then recipients may decertify the companies because they no longer qualify as small businesses. A number of firms have expressed concern that this situation penalizes success and impedes achievement—an important objective of the DBE program.

We have issued guidance stating that recipients should not totally decertify a firm because it exceeds the size standard for one or more of its activities. Under § 26.65(a), if a firm meets the size standard for one type of work (*e.g.*, as a general contractor), it should continue to be certified and receive DBE credit for that type of work, even if it has exceeded the size standard for another type of work (*e.g.*, as a specialty subcontractor). When its specific section exceeds particular size standards, the firm will not remain eligible and receive DBE credit for this type of activity, but will retain its certification for its other areas that remain DBE eligible. It is important for recipients to make these distinctions, as it is not appropriate for a recipient to decline to certify a firm for all purposes when the firm meets SBA size standards with respect to some of its activities. However, recipients must be careful to award DBE credit to a firm

only in those areas in which it does meet size standards.

The Department sought comment on whether any modifications of the rule to address further the situations of firms that work as both prime contractors and subcontractors. There was no proposed language offered, but instead used recently issued guidance to shape the issue. Ten commenters favored changes with some modification or variation. One comment noted that the proposal raises concerns that DBEs who graduate from one type of work area are devising creative approaches to restructure their companies so they can remain in the DBE program. Another commenter favored change, but wanted to increase the certification gross receipts cap to $25,000,000. The gross receipts cap is statutory, and the Department's discretion to raise it is limited to making adjustments for inflation.

Some commenters may have believed that the guidance language was a proposed change, but it was not. The major objections from those commenters opposed are that the change would be confusing and create tracking problems for the recipients. Several commenters noted questions that would be raised by the changes, including how often size standards should be checked, how it should be measured, and by whom. We recommend that size determinations be reviewed by the unified certification agency that conducted the most recent certification, and that the certifications be reviewed every three years. As such, we are not making any changes to the provision.

Evidence of Group Membership

Section 26.67 requires that recipients rebuttably presume that members of groups specified in the regulation are disadvantaged. Recipients are further required to obtain a signed, notarized statement of disadvantage from all persons whose membership in a disadvantaged group is relied upon for DBE certification. The current regulation also allows recipients to request additional proof of ethnicity. Several commenters indicated that a signed, notarized statement of ethnicity is sufficient. Other commenters felt that additional proof is necessary, however, and that they should be permitted to request additional proof rather than relying on a checked box on a form. We agree that recipients should continue to have the flexibility to require proof of ethnicity. We caution recipients, however, to apply these standards uniformly.

In particular, recipients should avoid making members of a particular ethnic group routinely meet a higher level of proof than members of other groups. For example, many recipients accept a driver's license or a birth certificate as adequate proof of group membership. These forms of identification always indicate gender and sometimes may indicate the race of the holder. They often do not designate, however, whether an individual is Hispanic or Native American. In some instances, members of these groups have been required to provide several additional types of proof of ethnicity simply because their driver's license did not indicate their particular group membership.

The Department does not object to recipients' requirements that applicants document group membership. If a recipient chooses to require proof then it should do so uniformly; by requiring at least one piece of evidence from each applicant. A driver's license or a birth certificate may be adequate forms of proof of group membership. In cases where the required proof does not indicate specific races, however, such as Hispanic or Native American, the applicant only should be required to provide the same level of proof as members of other groups. For example, if a birth certificate is adequate for one group, then a single piece of evidence (but not multiple pieces of evidence) may be required from members of other groups. Such single pieces of evidence might include naturalization papers; Indian tribal roll cards; tribal voter registration certificate; a letter from a community group, educational institution, religious leader, or government agency stating that the individual is a member of the claimed group; or, a letter from the individual setting forth specific reasons for believing himself/herself to be a member of the designated group. If a recipient has a reasonable basis for doubting the validity of the asserted group membership of an applicant, then it is appropriate for the recipient to collect additional information. In such a case, the recipient must inform the applicant, in writing, of the reasons for seeking additional documentary evidence. It is our expectation that requiring a written record justifying the need for additional information will help to reduce the number of unnecessary requests.

Confidentiality

In the NPRM we proposed amending the confidentiality section of the regulation to parallel the existing, tighter confidentiality provision of § 26.67 concerning personal net worth information. We received twenty-three comments on this section, all of which at least in part supported the proposed change. Therefore, recipients may not release confidential business information under any circumstance without the submitter's written consent. This proposal has the effect of extending to all confidential business information the protection previously given to PNW-related personal financial information.

Two commenters asked about UCPs and the issue of several people having access to the applicant's confidential information. Section 26.101 requires that all recipients be bound by the regulations in part 26. So while it may be necessary for confidential information to be shared among several UCP participants in the certification process, no one may release the confidential information to an outside party without the submitter's consent. Part 26 specifically intends to preempt disclosure under state or local law, so a recipient may not release this information even under local and State FOIA laws. For information that is not considered or deemed confidential business information, the recipient must comply with State freedom of information or open records laws.

Recipients may continue to report data in formats that do not reveal the submitter's name. For example, § 26.11 requires that recipients keep and maintain information on DBE and non-DBE contractors' and subcontractors' annual gross receipts of the firm. There are a variety of methods by which recipients can keep and maintain confidential information private. For example, each applicant could be assigned a case number, and all confidential matters that might be needed by different resources could refer to the case number, with only a specific entity in possession of the master list for certification purposes.

Economic Disadvantage

The majority of commenters on this section supported removing paragraph (B)(2) under "Economic Disadvantage" in Appendix E to part 26, "Individual Determinations of Social and Economic Disadvantage." This paragraph requires that in the case of applications by individuals to be considered socially and economically disadvantaged on an individual basis; the applicant submit personal financial information about his or her spouse. Because it is inconsistent with the way the Department's personal net worth provisions under § 26.67 work in the case of applicants who are members of a group presumed to be economically and socially disadvantaged, we are deleting it.

The primary result of this change is that the Department no longer requires spouses to complete PNW forms in addition to the applicant, even in cases of individual requests to be considered as disadvantaged (the Department never has permitted the routine collection of spousal information in other contexts). We are preserving, however, the ability for recipients to request relevant information from spouses on a case-by-case basis when the recipient has a specific reason to look into the spouse's finances. For example, when there has been a transfer of assets to the spouse within the previous two years, it is appropriate to collect certain information about the spouse, because assets transferred to the spouse are attributed to the applicant for purposes of calculating PNW. We also recognize that the recipients will want to be able to investigate a spouse's finances in situations where the recipient suspects the applicant is fraudulently transferring assets over to his/her spouse in order to qualify as a disadvantaged individual or when there is an affiliation relationship between the applicant's business and a spouse's business.

Credit for Trucking Firms

The issue of how to count DBE credit for trucking operations, which was debated vigorously among commenters to the 1999 final rule, has continued to be controversial. The SNPRM that led to the 1999 final rule proposed that to be performing a commercially useful function (CUF), a DBE trucking firm had to own fifty percent of the trucks it used in connection with a contract. A number of comments said that this requirement was out of step with industry practice, which commonly involves companies leasing trucks from owner-operators and other sources for purposes of a project. The final rule provided that a DBE need not provide all the trucks on a contract to receive credit for transportation services, but it must control the trucking operations for which it seeks credit. It must have at least one truck and driver of its own, but it can lease trucks owned by others, both DBEs and non-DBEs, including owner-operators. For work done with its own trucks and drivers, and for work done with DBE lessees, the firm receives credit for all transportation services provided. For work done with non-DBE lessees, the firm gets credit only for the fees or commissions it receives for arranging the transportation services, because the services themselves are being performed by non-DBEs.

In the years since the publication of the final rule, the Department has received communications from a number of state DOTs, trucking companies, and other parties saying that the portion of the rule limiting credit for trucks leased from non-DBE firms reduced opportunities for DBE trucking companies and did not take into account sufficiently the important role of leasing in the trucking industry. In response, the Department asked in the preamble to the May 2001 NPRM whether the rule should expand the credit available for DBE truck leasing (*e.g.*, by counting credit for twice the number of trucks a DBE owned, so that a DBE that owned one truck used on a contract and leased another from a non-DBE firm would get credit for two trucks).

Commenters to the NPRM were divided on the issue. Eleven commenters preferred to leave the current rule in place, citing administrative simplicity and prevention of abuse as their major reasons. Five commenters endorsed the example suggested in the NPRM preamble of permitting credit for twice the number of trucks a DBE owns, and six others suggested variations on that example (*e.g.*, authorizing credit for three times the number of trucks owned by the DBE). Some commenters emphasized the need for safeguards to ward off potential abuse of the provision. Twenty-three commenters favored permitting credit for all leased trucks used by a DBE on a contract, subject to certain safeguards (*e.g.*, for trucks on long-term leases, the DBE firm is responsible for supervision and control of all trucks on the contract).

The principle that DBE participation should be counted only for work performed with a DBE firm's own forces is an important one that the Department's DBE program follows consistently. For example, when a DBE firm subcontracts part of its work to a non-DBE firm, the subcontracted portion does not count toward DBE goals, as per § 26.55(a)(3). The Department's existing counting provision for trucking services was explicitly designed to be consistent with this principle (64 FR 5116 (Feb. 2, 1999)). Allowing credit for unlimited use of non-DBE leased trucks could also lead to program abuses and reduce DBE contracting opportunities for DBEs in other types of work.

At the same time, the Department is aware that flexibility in administering the DBE program is important to recipients and contractors, and we are sensitive to the concerns of trucking companies that opportunities may have been reduced under the 1999 final rule. In light of these factors, the Department has granted program waivers to two states, Indiana and Wisconsin, permitting credit for leased trucks for twice the number of trucks owned by DBE trucking firms on a contract. The Department believes that this approach reasonably accommodates many of the concerns commenters expressed with respect to reduced DBE trucking participation while not departing from the Department's principle of counting DBE credit only for work performed by DBE firms themselves.

Consequently, the Department, in this final rule, will adopt the following approach. Recipients may count for DBE credit the dollar volume attributable to no more than twice the number of trucks on a contract owned by a DBE firm or leased from another DBE firm, but is not required to do so. For example, if DBE Firm X owned two trucks, leased two others from another DBE firm, and leased six others from a non-DBE firm, the DBE credit authorized for Firm X's participation would be equivalent to the dollar volume of work attributable to eight trucks (four trucks owned by or leased from DBEs, multiplied by two). DBE credit for the remaining two non-DBE trucks leased for the contract would be limited to the fees or commissions received by the DBE firm pertaining to those two trucks.

The final rule permits, but does not require, recipients to count credit in this manner. That is, a recipient could choose to continue the counting provisions its DBE program adopted to comply with the 1999 final rule. If a recipient chooses to modify its counting provisions to count the additional credit for non-DBE lessees permitted by today's amendment, it must do so via a change to its DBE program approved by the cognizant FHWA, FTA, or FAA office. The OA approval is necessary to ensure the appropriate safeguards are taken by the recipients to prevent fraud.

III. Alaska Native Corporations

In § 26.73(h) of the current DBE rule, the Department codified its interpretation of former 49 CFR part 23 that ANC-owned firms, as well as firms owned by Indian tribes and Native Hawaiian Organizations, must meet the DBE rule's eligibility standards concerning size and control. In the preamble to the February 1999 final rule (64 FR 5121 (Feb. 2, 1999)), the Department explained why it did not believe that 43 U.S.C. 1626(e), a provision of the Alaska Native Claims Settlement Act (ANCSA), mandated different treatment for ANC-owned firms in the DOT DBE program. The Department continues to believe that the legal and policy reasoning behind this provision was sound. However, an

amendment to Public Law 107–117 "making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes," has superceded the application of § 26.73(h) to ANC-owned firms.

Section 702 of Public Law 107–117 amended 43 U.S.C. 1626(e), a provision of the Alaska Native Claims Settlement Act, to say that:

> Any entity (*i.e.*, a subsidiary, partnership, or joint venture of an ANC) that satisfies subsection (e)(2) of this section (which establishes ownership and control criteria for ANC-related entities) that has been certified under section 8 of Public Law 85–536 (*i.e.*, is certified by the Small Business Administration under the 8(a) or small disadvantaged business programs) is a Disadvantaged Business Enterprise for the purposes of Public Law 105–178 (*i.e.*, TEA–21).

Based on the above language, an entity meeting criteria to be an ANC-owned firm must be certified as a DBE, even if it does not meet size, ownership, and control criteria otherwise applicable to DBEs. For example, an ANC-related entity could exceed SBA small business size standards or have its daily business operations controlled by a non-disadvantaged individual and still be certified if it met the section 702 criteria.

Consequently, the Department is deleting references to ANC-related entities from § 26.73(h) and creating a new § 26.73(i). The new paragraph sets forth certification criteria for ANC-related entities consistent with 43 U.S.C. 1626(e). Because these certification criteria differ from those applicable to all other DBE applicants, recipients would not use the new DOT Uniform Application Form for ANC-related entities. Recipients instead would collect (and applicants would have to provide) sufficient documentation that an ANC-related entity meets the new criteria including information sufficient to allow the recipients to administer their DBE programs with respect to ANC-related entities. If an ANC-related entity did not meet all the requirements (*e.g.*, it had not been certified by SBA), then its certification would continue to be processed under § 26.73(h), in the same manner as Indian Tribal firms.

The statutory requirement to treat ANC-owned entities differently from all other applicants for certification in the DBE program, because of the reference in section 702 to TEA–21, on its face applies only to firms seeking work on FTA- and FHWA-assisted contracts. The statute does not apply to firms seeking work on FAA-assisted contracts. To avoid confusion and unnecessary administrative complexity, however, in this rule the Department is applying the altered certification requirements for ANC-related entities to all parts of the DBE program, including FAA-assisted contracts and concessions.

IV. Clarification Regarding Multi-Year Projects and Other Revisions

Multi-Year Projects

A recipient of DOT funds—FAA, FTA, or FHWA—may set an overall project goal for a particular project. Typically, such a goal would be used for a large multi-year project. The recipient's overall project goal for the project would be separate from the recipient's annual overall goal for the rest of its DOT-assisted contracting activities. The recipient's submission of the overall project goal would have to meet the same requirements as for any other overall goal (§ 26.45(f)(3)), specifically including a breakout of the participation anticipated through race neutral and race conscious means. DOT would review the goal submission just as it does in other cases. This change to the regulation would apply to all such projects the option for a project goal currently available to design-build contracts.

With respect to its other DOT-assisted contracting activities, the recipient would also submit its regular annual overall goal for review. In doing so the recipient, in calculating the annual overall goal for a given fiscal year, would not consider funds or contracting opportunities attributable to the project covered by the separate project goal. For example, suppose a recipient will expend $150 million on Project X in Years 1–3. The recipient will also expend $40 million on other projects in each year during the same period. The recipient could submit a single project overall goal for Project X, based on the $150 million to be expended over the life of the project. The recipient would also submit an overall goal each year for its other DOT-assisted contracting activities in Year 1, Year 2, and Year 3, based on the $40 million the recipient was expending in each of those years.

An overall project goal can be used for a multi-modal project. For example, suppose FHWA Recipient W and FTA Recipient Z are cooperating on a project, which involves the total expenditure of $500 million. Recipients W and Z can submit jointly a single overall project goal for the project. W and Z would also each submit regular annual overall goals for their other activities during the time that the project was under way.

Many large projects with which it could be useful to establish an overall project goal include design-build contracts. In such a case, the overall project goal would serve as the goal for the master contractor. The master contractor would then proceed to establish contract goals for the subcontracts it is letting at a level appropriate to meet the race conscious portion of the project overall goal.

Currently, part 26 explicitly authorizes the use of project goals in FAA and FTA projects. While nothing in the rule precludes the use of project goals in FHWA projects, the rule does not explicitly mention FHWA projects in this context. It is the Department's view, however, that recipients of funds from all three operating administrations can make use of project goals.

Clarification Concerning Primary Industry Classification

Section 26.5 of the DBE final rule defined primary industrial classification as the four-digit Standard Industrial Classification (SIC) code designation defined in 13 CFR part 121 by the Small Business Administration. In the final rule we further stated that as the North American Industrial Classification System (NAICS) replaces the SIC system, reference to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. We would like to take this opportunity to remind recipients that effective October 1, 2000, the Small Business Administration is no longer using the SIC system for its small business standards. The SBA published a final rule on May 15, 2000, adopting small business size standards based on the NAICS (65 FR 30840). The new table of small business size standards that accompanied the rule contained errors, so the SBA published a replacement table in the **Federal Register** on September 5, 2001 (65 Fed. Reg. 53533). Therefore, the term "Standard Industrial Classification" and the acronym "SIC" will be replaced with "North American Industrial Classification System" and the acronym "NAICS" throughout the text of the regulation. Although this change was not included in the Interim Final Rule, the change is editorial in nature and does not require notice and comment.

The SBA rule on NAICS standards can be obtained through the Internet at: *http://www.sba.gov/size/*. Further information about NAICS, including a table matching SIC codes to NAICS codes, is available on the U.S. Bureau of Census' Web page at: *http://census.gov/epcd/www/naics.html. The North American Industry Classification Manual— United States, 1997* is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553–6847; or via the Internet at: *http://www.ntis.gov/product/naics.htm*.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Provisions

This rule is not a significant regulation under either Executive Order 12866 or DOT Regulatory Policies and Provisions. The rule will not impose any new costs on recipients or contractors. It simply would make administrative adjustments concerning existing provisions and assist contractors by implementing the SBA-DOT MOU. It would also reduce burdens on contractors and recipients through the use of new uniform forms.

Regulatory Flexibility Act Analysis

The Department certifies that this rule will not have significant economic effects on a substantial number of small entities. While the rule affects small entities, it does not have a significant economic impact on anyone.

Paperwork Reduction Act

This rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (the PRA, 44 U.S.C. 3507(d)), the Department will submit these requirements to the Office of Information And Regulatory Affairs of the Office of Management and Budget for review.

As noted elsewhere in this preamble, the Department adopted the suggestion of having one standard reporting form in the February 2, 1999, DBE final rule. The Uniform Semi-Annual Report of DBE Awards or Commitments and Achievements form is contained in Appendix B. At the present time, the Department has an information collection item approved under the Paperwork Reduction Act. This is for a quarterly DBE data report from recipients to DOT (OMB No. 2105–0510). This approval expired July 31, 2001. Because the reporting requirement has been reduced to semi-annually, the burden has been reduced.

Firms applying for DBE certification must provide information to recipients to allow them to review the firm's continuing eligibility. The 1999 DBE final rule also called for a single, uniform, nationwide certification application form. Part 26 requires firms applying for DBE certification to provide information to recipients to allow them to make eligibility decisions. Currently, an applicant firm may be required to fill out different applications for FAA, FHWA and FTA recipients. The Department believes that requiring one uniform application will reduce the paperwork burden. The Uniform Certification Application form is contained in Appendix F.

This rule provides forms for the Unified Certification Program for recipients. UCP certifying agencies are responsible for maintaining a directory of certified DBE firms. Instead of the hundreds that used to be required, now only 52 consolidated directories will exist. Additionally, recipients must submit DBE programs to be approved by the Department, including calculations of overall goals. As they complete this requirement, recipients may temporarily expend more hours than in the past on information-related tasks.

Federalism

The Department has determined that this final rule will not have Federalism impacts sufficient to warrant preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant-programs—transportation, Mass transportation, Minority businesses, Reporting and recordkeeping-requirements.

Issued this 4th day of June, 2003, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

■ For the reasons set forth in the preamble, the Department amends 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 1. The authority citation for 49 CFR part 26 continues to read as follows:

Authority: 23 U.S.C. 324; 41 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Pub. L. 105–178, Sec. 1101(b), 112 Stat. 107, 113.

■ 2. In 49 CFR part 26, the term "Standard Industrial Classification" is revised to read "North American Industrial Classification System" wherever it occurs. The acronym "SIC" is revised to read "NAICS" wherever it occurs.

■ 3. Amend § 26.5 by adding, in alphabetical order among the existing definitions, a definition of "DOT/SBA MOU Memorandum of Understanding or MOU" after "DOT-assisted contract and a definition of "SBA certified firm" after "Small Business Administration", and by revising the definition of "Primary industry classification", to read as follows:

§ 26.5 What do the terms in this part mean?

* * * * *

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

* * * * *

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553–6847; or via the Internet at: *http://www.ntis.gov/product/naics.htm*.

* * * * *

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

* * * * *

■ 4. Revise § 26.29 to read as follows:

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime

contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

■ 5. In § 26.37, revise paragraph (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

* * * * *

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

* * * * *

■ 6–7. In § 26.55, revise paragraphs (d)(5) and (h) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(d) * * *.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

* * * * *

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

■ 8. Revise § 26.61(c) to read as follows:

§ 26.61 How are burdens of proof allocated in the certification process?

* * * * *

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (*see* § 26.67).

* * * * *

■ 9. Revise § 26.63(a) to read as follows:

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

* * * * *

■ 10–11. Revise § 26.67(a)(2) and remove and reserve paragraph (c) as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(1) * * *

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

* * * * *

■ 12. Amend § 26.73 by revising paragraph (h), and adding a new paragraph (i), to read as follows:

§ 26.73 What are other rules affecting certification?

* * * * *

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendents of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

■ 13. Amend § 26.83 by revising paragraphs (c)(7) introductory text and (c)(7)(i) to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(c) * * *

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

* * * * *

■ 14. Add a new § 26.84, to read as follows:

§ 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (*see* § 26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

■ 15. Redesignate § 26.85 as § 26.86. Within the redesignated § 26.86, redesignate paragraphs (b) and (c) as paragraphs (c) and (d) and add a new paragraph (b) to read as follows:

§ 26.86 What rules govern recipients' denials of initial requests for certification?

* * * * *

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

* * * * *

■ 16. Add a new § 26.85, to read as follows:

§ 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (*e.g.*, the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

■ 17. Amend § 26.87 by redesignating paragraphs (h) through (j) as paragraphs (i) through (k) and by adding a new paragraph (h) to read as follows:

§ 26.87 What procedure does a recipient use to remove a DBE's eligibility?

* * * * *

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

* * * * *

■ 18. Amend § 26.89 by revising paragraphs (a)(1) and (f)(7)to read as follows:

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

* * * * *

(f) * * *

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

* * * * *

■ 19. In § 26.109, revise paragraph (a)(2) to read as follows:

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) * * *

(1) * * *

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

■ 20. In Appendix B, revise the heading and add a form reading as follows:

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

BILLING CODE 4910-62-P

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.

6. Name of the recipient.

7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.

8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.

8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.

8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs though the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.

8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(H) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(H) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.

12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.

12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.

12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.

12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.

12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.

13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contacts (i.e. those with no race conscious measures).

14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

15. Name of the Authorized Representative preparing this form.

16. Signature of the Authorized Representative.

17. Phone number of the Authorized Representative.

18. Fax number of the Authorized Representative.

****Submit your completed report to your Regional or Division Office.**

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please refer to the Instructions sheet for directions on filling out this form

1 Submitted to (check only one) [ ] FHWA [ ] FAA [ ] FTA--Vendor Number _____

2 AIP Numbers (FAA Recipients Only)

3 Federal fiscal year in which reporting period falls FY _____ 4 Date This Report Submitted

5 Reporting Period [ ] Report due June 1 (for period Oct 1-Mar 31) [ ] Report due Dec 1 (for period April 1-Sept 30)
[ ] FAA Annual Report

6 Name of Recipient

7 Annual DBE Goal(s) Race Conscious Goal _____% Race Neutral Goal _____% OVERALL Goal _____%

AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during this reporting period)	A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs /Race Conscious (dollars)	F Total to DBEs/Race Conscious (number)	G Total to DBEs/Race Neutral (dollars)	H Total to DBEs/Race Neutral (number)	I Percentage of total dollars to DBEs
8 Prime contracts awarded this period									
9 Subcontracts awarded/committed this period									
TOTAL	[redacted]								

DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER	A Black American	B Hispanic American	C Native American	D Subcont. Asian American	E Asian-Pacific American	F Non-Minority Women	G Other (i.e., not of any other group listed here)	H TOTALS (for this reporting period only)	I Year-End TOTALS
10 Total Number of Contracts (Prime and Sub)									
11 Total Dollar Value									

ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A Number of Prime Contracts Completed	B Total Dollar Value of Prime Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percentage of Total DBE Participation
12 Race Conscious					
13 Race Neutral			[redacted]		
14 Totals					

15 Submitted by (Print Name of Authorized Representative)

16 Signature of Authorized Representative

17 Phone Number

18 Fax Number

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please refer to the Instructions sheet for directions on filling out this form

1. Submitted to (check only one):	[ ] FHWA	[ ] FAA	[ ] FTA--Vendor Number
2. AIP Numbers (FAA Recipients Only):			
3. Federal fiscal year in which reporting period falls:	FY _____	4. Date This Report Submitted:	
5. Reporting Period	[ ] Report due June 1 (for period Oct. 1-Mar. 31)	[ ] Report due Dec. 1 (for period April 1-Sept. 30)	
	[ ] FAA Annual Report		
6. Name of Recipient:			
7. Annual DBE Goal(s):	Race Conscious Goal _____%	Race Neutral Goal _____%	OVERALL Goal _____%

AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during this reporting period)	A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs /Race Conscious (dollars)	F Total to DBEs/Race Conscious (number)	G Total to DBEs/Race Neutral (dollars)	H Total to DBEs/Race Neutral (number)	I Percentage of total dollars to DBEs
8. Prime contracts awarded this period									
9. Subcontracts awarded/committed this period									
TOTAL									

DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER	A Black American	B Hispanic American	C Native American	D Subcont. Asian American	E Asian-Pacific American	F Non-Minority Women	G Other (i.e., not of any other group listed here)	H TOTALS (for this reporting period only)	I Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)									
11. Total Dollar Value									

ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A Number of Prime Contracts Completed	B Total Dollar Value of Prime Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percentage of Total DBE Participation
12. Race Conscious					
13. Race Neutral					
14. Totals					

15. Submitted by (Print Name of Authorized Representative)	16. Signature of Authorized Representative
17. Phone Number:	18. Fax Number:

■ 21. In Appendix E, under Economic Disadvantage, remove and reserve section (B)(2).

■ 22. Add a new Appendix F to read as follows:

Appendix F to Part 26—Uniform Certification Application Form

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

(1) State the name and title of the person who will serve as your firm's primary contact under this application.
(2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) State the primary phone number of your firm.
(4) State a secondary phone number, if any.
(5) State your firm's fax number, if any.
(6) State your firm's or your contact person's email address.
(7) State your firm's website address, if any.
(8) State the street address of your firm (i.e., the physical location of its offices – not a post office box address).
(9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

(1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
(2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
(3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
(4) State the date on which you and/or each other owner took ownership of the firm.
(5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

(7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.
(8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
(9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
(10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
(2) Check the appropriate box that indicates whether at present, or at any time in the past:
  (a) Your firm has been a subsidiary of any other firm;
  (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
  (c) Your firm has owned any percentage of any other firm; and
  (d) Your firm has had any subsidiaries of its own.
(3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

(1) Give the name of the owner.
(2) State his/her title or position within your firm.
(3) Give his/her home phone number.
(4) State his/her home (street) address.
(5) Check the appropriate box that indicates this owner's gender.
(6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
(7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
(8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

(1) State the number of years during which this owner has been an owner of your firm.
(2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
(3) State the percentage of total ownership control of your firm that this owner possesses.
(4) State the familial relationship of this owner to each other owner of your firm.
(5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
(6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.
(7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

(1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
(2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
(3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

(1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
(2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
(3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
(4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
(5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
(6) Office management;
(7) Marketing and sales;
(8) Purchasing of major equipment;
(9) Signing company checks (for any purpose); and
(10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
(11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
(12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

C. Indicate your firm's inventory in the following categories:

(1) Equipment
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.

(2) Vehicles
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.

(3) Office Space
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.

(4) Storage Space
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

D. Does your firm rely on any other firm for management functions or employee payroll?
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial Information
(1) Banking Information
(a) State the name of your firm's bank.
(b) State the main phone number of your firm's bank branch.
(c) State the address of your firm's bank branch.
(2) Bonding Information
(a) State your firm's Binder Number.
(b) State the name of your firm's bond agent and/or broker.
(c) State your agent's/broker's phone number.
(d) State your agent's/broker's address.
(e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. List current licenses/permits held by any owner or employee of your firm.
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. List the three largest contracts completed by your firm in the past three years, if any.
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. List the three largest active jobs on which your firm is currently working.
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AFFIDAVIT & SIGNATURE
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**
- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed $17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**
If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.
NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**
- U.S. DOT – http://osdbuweb.dot.gov/business/dbe/index.html (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – http://www.ntis.gov/naics (provides a listing of NAICS codes) and http://www.sba.gov/size/indextableofsize.html (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? *(If Yes, check appropriate box(es))*	❑ DBE	Name of certifying agency: Has your firm's state UCP conducted an on-site visit? ❑ Yes, on ___/___/___ State: _____ ❑ No
	❑ 8(a) ❑ SDB	⊗ **STOP!** If you checked either the 8(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

❑ Yes, on ___/___/___ ❑ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:	
(3) Phone #:	(4) Other Phone #:		(5) Fax #:
(6) E-mail:	(7) Website *(if have one)*:		
(8) Street address of firm *(No P.O. Box)*:	City:	County/Parish:	State: Zip:
(9) Mailing address of firm *(if different)*:	City:	County/Parish:	State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID *(if any)*:
(3) This firm was established on ___/___/___	(4) I/We have owned this firm since: ___/___/___
(5) Method of acquisition *(check all that apply)*: ❑ Started new business ❑ Bought existing business ❑ Inherited business ❑ Secured concession ❑ Merger or consolidation ❑ Other *(explain)*	
(6) Is your firm "for profit"? ❑ Yes ❑ No	⊗ **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm *(check all that apply)*:
- ❑ Sole Proprietorship
- ❑ Partnership
- ❑ Corporation
- ❑ Limited Liability Partnership
- ❑ Limited Liability Corporation
- ❑ Joint Venture
- ❑ Other, Describe:

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
❑ Yes ❑ No
If Yes, explain:

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years:
Year _____ Total receipts $ _____
Year _____ Total receipts $ _____
Year _____ Total receipts $ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
❑ Yes ❑ No

If Yes, identify: Other Firm's name: _____
Explain nature of shared facilities:

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? ❑ Yes ❑ No
	(b) consisted of a partnership in which one or more of the partners are other firms? ❑ Yes ❑ No
	(c) owned any percentage of any other firm? ❑ Yes ❑ No
	(d) had any subsidiaries? ❑ Yes ❑ No
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ❑ Yes ❑ No	

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each *(attach extra sheets, if needed)*:

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ❑ Yes ❑ No
If Yes, then list *(attach extra sheets, if needed)*:

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(If more than one owner, attach separate sheets for each additional owner)*:

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address *(street and number)*:	City:	State: Zip:
(5) Gender: ❑ Male ❑ Female	(6) Ethnic group membership *(Check all that apply)*: ❑ Black ❑ Hispanic ❑ Native American ❑ Asian Pacific ❑ Subcontinent Asian ❑ Other (*specify*) _____	
(7) U.S. Citizen: ❑ Yes ❑ No		
(8) Lawfully Admitted Permanent Resident: ❑ Yes ❑ No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	$
(4) Familial relationship to other owners:		Real Estate	$
		Equipment	$
		Other	$

(5) Shares of Stock: Number Percentage Class Date acquired Method Acquired

(6) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: Function/Title:

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)? ❑ Yes ❑ No

If Yes, identify: Name of Business: _____ Function/Title: _____
Nature of Business Relationship:

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? *(Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)*

(2) Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
If Yes, explain (*attach additional sheets if needed*):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors *(If additional space is required, attach a separate sheet)*:

		Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)					
	(b)					
	(c)					
	(d)					
	(e)					
(2) Board of Directors	(a)					
	(b)					
	(c)					
	(d)					
	(e)					

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify for each: Person: _____ Title: _____
Business: Function:

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)? ❑ Yes ❑ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship:

B. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet)*:

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (*responsibility for acquisition of lines of credit, surety bonding, supplies, etc.*)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify for each: Person: _____ Title: _____
Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)?
❑ Yes ❑ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship:

C. Indicate your firm's inventory in the following categories (*attach additional sheets if needed*):

(1) Equipment

	Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)				
(b)				
(c)				

(2) Vehicles

	Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)				
(b)				
(c)				

(3) Office Space

	Street Address	Owned or Leased?	Current Value of Property or Lease
(a)			
(b)			

(4) Storage Space

	Street Address	Owned or Leased?	Current Value of Property or Lease
(a)			
(b)			

D. Does your firm rely on any other firm for management functions or employee payroll? ❑ Yes ❑ No

If Yes, explain:

E. Financial Information

(1) **Banking Information**:
(a) Name of bank: _____ (b) Phone No: ( ) _____
(c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information**: If you have bonding capacity, identify: (a) Binder No: _____
(b) Name of agent/broker _____ (c) Phone No: ( ) _____
(d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
(e) Bonding limit: Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (*attach additional sheets if needed*):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (*e.g., contractor, engineer, architect, etc.)(attach additional sheets if needed*):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- ❑ Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ❑ Personal Financial Statement (form available with this application)
- ❑ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ❑ *Your firm's tax returns (gross receipts) and all related schedules for the past three years*
- ❑ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- ❑ Your firm's signed loan agreements, security agreements, and bonding forms
- ❑ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ❑ List of equipment leased and signed lease agreements
- ❑ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ❑ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ❑ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- ❑ All relevant licenses, license renewal forms, permits, and haul authority forms
- ❑ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ❑ Bank authorization and signatory cards
- ❑ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ❑ Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- ❑ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ❑ Official Articles of Incorporation (*signed by the state official*)
- ❑ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ❑ Shareholders' Agreement
- ❑ Minutes of all stockholders and board of directors meetings
- ❑ Corporate by-laws and any amendments
- ❑ Corporate bank resolution and bank signature cards
- ❑ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- ❑ Documented proof of ownership of the company
- ❑ Insurance agreements for each truck owned or operated by your firm
- ❑ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ❑ List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- ❑ Proof of warehouse ownership or lease
- ❑ List of product lines carried
- ❑ List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application. I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian- Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed $750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

[FR Doc. 03–14989 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

Pipeline Safety: Alternative Mitigation Measures for Required Repairs Delayed by a Need To Obtain Permits

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interpretation.

SUMMARY: Congress directed the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) to revise its pipeline safety regulations, if necessary, to allow operators to take alternative mitigation measures while they seek governmental permits required for repairs. As RSPA/OPS interprets the pipeline safety regulations, they already allow such measures. Revising the regulations is not necessary.

DATES: Effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov*

SUPPLEMENTARY INFORMATION: The Pipeline Safety Improvement Act of 2002 amended the Federal pipeline safety laws to require that the Secretary of Transportation revise pipeline safety regulations, as needed, to allow operators to implement alternative mitigation measures if repairs to pipelines cannot be completed within specified time frames. Specifically, 49 U.S.C. section 60133 provides, in part:

(d) INTERIM OPERATIONAL ALTERNATIVES.

(1) IN GENERAL * * * subject to the limitations in paragraph (2), the Secretary of Transportation shall revise the regulations of the Department, to the extent necessary, to permit a pipeline operator subject to time periods for repair specified by rule by the Secretary to implement alternative mitigation measures until all applicable permits have been granted.

(2) LIMITATIONS. "The regulations issued by the Secretary pursuant to this subsection shall not allow an operator to implement alternative mitigation measures pursuant to paragraph (1) unless—

(A) Allowing the operator to implement such measures would be consistent with the protection of human health, public safety, and the environment;

(B) The operator, with respect to a particular repair project, has applied for and is pursuing diligently and in good faith all required Federal, State, and local permits to carry out the project; and

(C) The proposed alternative mitigation measures are not incompatible with pipeline safety.

RSPA/OPS has reviewed the existing pipeline safety regulations and determined that no changes to these regulations are necessary to implement this provision. As explained below, RSPA/OPS interprets existing pipeline repair requirements to allow for alternative mitigative measures while an operator has applied for and is waiting for a permit in order to effectuate a repair.

General pipeline facility repair requirements in 49 CFR 192.703 (for natural gas pipelines) and 49 CFR 195.401 (for hazardous liquid pipelines) require repair of conditions that are "unsafe" or "could adversely affect the safe operation of [the] pipeline system," but do not specify a time period in which the required repairs must be made. These provisions, instead, require an operator to take actions necessary to assure the pipeline is safe and to take these actions "within a reasonable time." Thus, for the non immediate hazard conditions, a reasonable repair time allows for an operator to obtain the Federal, state or local permits necessary to make a repair. RSPA/OPS expects an operator to exercise diligence in obtaining the necessary permits by being able to demonstrate that it has applied for the applicable permit and is taking all necessary steps for the permit to be processed and granted. In this interim period until the permit is granted, an operator is allowed to take alternative actions to mitigate the condition, as long as the actions are compatible with pipeline safety.

The reasonable time provision does not apply to an immediate hazard condition. If circumstances associated with a particular pipeline problem are such that safety is immediately in jeopardy, then immediate action is appropriate and delay would be inconsistent with the protection of human health, public safety, and the environment.

The only current regulation that specifies time periods for pipeline repairs is the recently promulgated integrity management rule for hazardous liquid pipelines, 49 CFR 195.452. The remediation requirements of this regulation require an operator to remediate defects meeting certain criteria immediately or within 60 or 180 days, depending on the defect's severity. This regulation further provides for an operator to take alternative mitigation measures if it cannot make the repair within the specified period for any reason, including being unable to obtain required permits. Specifically, 49 CFR 195.452 (h)(3) provides in part:

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure.

Thus, if an operator must obtain a permit to carry out a repair for the operator's integrity management program, and cannot obtain the permit and make the repair within the 60- or 180-day period, an operator may either reduce operating pressure as an interim mitigative measure or, if it determines that pressure reduction is impracticable, submit a notification to RSPA/OPS explaining how it will ensure safety in the interim period, and then continue operation until the permit is granted and the repair made. An operator must complete the repairs in a time frame that does not jeopardize safety or environmental protection. Again, if the specified time period cannot be met because the operator is waiting for a permit to be granted, RSPA/OPS expects an operator to show it has applied for the permit and is taking all necessary steps for the permit to be processed and granted.

RSPA/OPS recently proposed integrity management remediation requirements for natural gas transmission pipelines (*see* 68 FR 4278; Jan. 28, 2003). Similar to the remediation requirements for hazardous liquid integrity programs, until a repair is made, the proposed regulation would allow continued operation with a reduction in operating pressure or notification to RSPA/OPS, if pressure reduction is impracticable. Under the proposal, an operator would be able to implement alternative mitigative measures while it has applied for and is waiting for the permit to be granted.

RSPA/OPS discussed the need for additional requirements including alternative mitigative measures with its advisory committees, the Technical Hazardous Liquid Pipeline Safety Standards Committee and the Technical Pipeline Safety Standards Committee, at a joint meeting held on March 26, 2003. The Committees agreed that the existing allowance for pressure reduction or case-by-case definition of alternative measures, via operator notification to RSPA/OPS, represents viable alternative measures, and that additional rulemaking to add alternatives was not needed.

Because RSPA/OPS interprets its pipeline repair requirements as allowing for interim alternative mitigation measures while an operator is diligently pursuing the granting of a permit, no further regulatory action is necessary.

Issued in Washington, DC, on June 10, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–15084 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 112502C]

RIN 0648–AQ18

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on March 7, 2003, for the Pacific Coast groundfish fishery.

DATES: Effective June 15, 2003.

FOR FURTHER INFORMATION CONTACT: Becky Renko (NMFS, Northwest Region), 206–526–6140.

SUPPLEMENTARY INFORMATION: The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003. The final rule for March 1 - December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182) and was amended at 68 FR 18166 on April 15, 2003, and at 68 FR 23901, on May 6, 2003.

The final rule contained errors in the whiting allocation amounts listed in footnote d/ of Table 1a and in section IV. under B., Limited Entry Fishery, paragraph 3 that are being corrected. This document corrects the typographical errors in the non-tribal whiting allocations.

Correction

In the rule FR Doc. 03–51665, in the issue of Friday, March 7, 2003 (68 FR 11182) make the following corrections:

1. On page 11193, Tables 1a and 1b, are corrected to read as follows:

BILLING CODE 3510–22–S

Table 1a. 2003 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (Oys), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch)	Allocations total catch			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	841					841	651	284	230	81.0	54	19.0
Pacific Cod	3,200		c/			3,200	3,200	3,200	--	--	--	--
Pacific Whiting d/	188,000					188,000	148,200	121,200	--	--	--	--
Sablefish e/ (north of 36°)	8,209				--	8,209	6,500	5,767	5,225	90.6	542	9.4
Sablefish f/ (south of 36°)	--				441	441	294	294	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,318	--	--	--	--
English sole	2,000		1,100			3,100	na	-	-	-	-	-
Petrale sole h/	1,262		500	800	200	2,762	na	-	-	-	-	-
Arrowtooth flounder	5,800					5,800	na	-	-	-	-	-
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	-	-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	689			--		689	377	374	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,871					3,871	832	781	757	97.0	23	3.0
Canary m/	272					272	44	23	20	87.7	2.8	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			198		198	≤20	14	8	52.7	6	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	3,146			c/		3,146	3,146	2,717	2,492	91.7	226	8.3
Shortspine thornyhead r/ north of 34°27'	1,004					1,004	955	941	939	99.7	3	0.27
Longspine thornyhead s/ north of 36°	2,461				--	2,461	2,461	2,434	--	--	--	--
south of 36° t/	--				390	390	195	195	--	--	--	--
Cowcod u/	c/			19	--	19	2.4	0	--	--	--	--
	c/			--	5	5	2.4	0	--	--	--	--
Darkblotched v/	205					205	172	170		--	170	-
Yelloweye w/	52					52	22	9.5	--	--	--	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)				OY (Total catch)	Commercial OY (Total Catch	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Total Catch		Limited Entry		Open Access	
				Conception			Mt	%	Mt	%
Minor Rockfish North x/	4,795			--	4,795	2,292	2,102	91.7	190	8.3
Minor Rockfish South y/	--			3,506	3,506	1,401	780	55.7	621	44.3
Remaining Rockfish	2,727			854	--	--	--	-	--	--
bank z/		c/		350	350	--	--	--	--	--
black aa/	615		500		1,115	--	--	--	--	--
blackgill bb/		c/		75	343	--	--	--	--	--
bocaccio - north		8			318	--	--	--	--	--
chilipepper-north		32			32	--	--	--	--	--
redstripe		576		c/	576	--	--	--	--	--
sharpchin		307		45	352	--	--	--	--	--
silvergrey		38		c/	38	--	--	--	--	--
splitnose		242		c/	242	--	--	--	--	--
yellowmouth		99		c/	99	--	--	--	--	--
yellowtail-south		116			116	--	--	--	--	--
Other rockfish cc/	2,068			2,652	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	14,700	na	--	--	--	-
				2,000						

Table 1b. 2003 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recreational Estimate	Commercial OY for minor rockfish and HG for depth sub-groups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North x/	4,794	3,056	750	2,292	2,102	91.7	190	8.3
Nearshore		928	740	188				
Shelf		968	10	954				
Slope		1,160	0	1,156				
Minor Rockfish South y/	3,506	1,894	493	1,401	780	55.7	621	44.3
Nearshore		541	433	108				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A stock assessment that included parts of Canadian waters was done in 2000 and updated for 2001. Following the assessment, lingcod was believed to be at 15 percent of its unfished biomass coastwide. The U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total biomass for that area. The ABC of 841 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 651 mt is based on a rebuilding plan with a 60 percent probability of rebuilding the stock to Bmsy by the year 2009 (Tmax). The total catch OY is reduced by 355 mt for the amount that is estimated to be taken by the recreational fishery, 3 mt for the amount estimated to be taken during research fishing, 4.3 mt for the amount estimated to be taken in non-groundfish fisheries, and by 5.2 mt for the amount estimated to be taken in the tribal fishery, resulting in a commercial OY of 284 mt. The open access total catch allocation is 54 mt (19 percent of the commercial OY) and the open access landed catch value is 43 mt. The limited entry total catch allocation is 230 mt and the landed catch value is 184 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are estimated to land about 5.2 mt of lingcod in 2003, but do not have a specific allocation at this time.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial OY of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific whiting - The most recent stock assessment was prepared in 2002, at which time the whiting stock was believed to be below 25 percent of its unfished biomass. Whiting was declared overfished on April 15, 2002 (67 FR 18117). The U.S.-Canada ABC of 235,000 mt is based on the 2002 assessment results with the application of an Fmsy

proxy harvest rate of 45%. In estimating the current biomass, NMFS used a medium level recruitment assumption of a recent (1999) large year class. The U.S. ABC of 188,000 mt is 80 percent of the coastwide ABC. The U.S. whiting OY is 148,200 mt which is 80percent of the coastwide OY (185,325 mt) and is based on the application of the 40-10 harvest rate policy. The total catch OY is further reduced by 25,000 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 121,200 mt. The commercial OY is allocated between the sectors with 42 percent (50,904 mt) going to the shore-based sector, 34 percent (41,208 mt) going to the catcher/processor sector, and 24 percent (29,088 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N. lat. - NMFS did a new sablefish assessment in 2001 for the area north of Point Conception (34°27'N lat.) and updated it for 2002. Following the assessment update, sablefish north of 34° 27'N lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (8,459 mt) is based on environmentally driven projections with the Fmsy proxy of F45%. The ABC for the management area north of 36° N. lat. is 8,209 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N. lat.is 6,500 mt and is 97.04 percent of the OY from the surveyed area with a risk averse precautionary adjustment. The total catch OY is reduced by 10 percent (650 mt) for the tribal set aside, by 11.1 mt for compensation to vessels that conducted resource surveys, 53.0 mt for the amount estimated to be taken as research catch, and 18.5 mt for the amount estimated to be taken in non-groundfish fisheries. The remainder (5,767 mt) is the commercial total catch OY. The open access allocation is 9.4 percent of the commercial OY, resulting in an open access total catch OY of 542 mt. The limited entry total catch OY is 5,225 mt. The limited entry total catch OY is further divided with 58 percent (3,031 mt) allocated to the trawl fishery and 42 percent (2,194 mt) allocated to the non-trawl fishery. To provide for bycatch in the at-sea whiting fishery 15 mt of the limited entry trawl allocation will be set aside. Discard rates will be applied as follows: 21 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. Landed catch OYs are 2,364 mt for limited entry trawl, excluding the at-sea whiting fishery, 2,019 mt for limited entry fixed gear, 499 mt for open access, and 631 mt for the tribal fisheries.

f/ Sablefish south of 36° N. lat. - The ABC of 441 mt is the sum of 250 mt (2.96 percent of the ABC from the 2002 survey based assessment update) and 191 mt (based on historical landings). The total catch OY (294 mt) is the sum of 198 mt (2.96 percent of the OY from the 2002 update of the survey based assessment with a risk averse precautionary adjustment) and 96 mt (that portion of the ABC based on historical landings which was reduced by 50 percent to address uncertainty, due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 271 mt.

g/ Dover sole north of 34° 27'N lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 62.4 mt for compensation to vessels that conducted resource surveys, 58 mt for the amount estimated to be taken as research catch, and 2 mt for estimated catch in non-groundfish fisheries resulting in commercial OY of 7,318 mt. Discards are assumed to be 5 percent, resulting in a landed catch OY of 7,006 mt.

h/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was declared overfished on March 3, 1999. The ABC (689 mt) was projected from the 2000 assessment which was updated for 2001 and is based on an Fmsy proxy of F50%. The OY (377 mt) is based on a 70 percent probability of

rebuilding the stock to Bmsy by the year 2041 (Tmax). The OY is reduced by 3 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 374 mt. The landed catch value is 314 mt, and is based on a discard rate of 16 percent.

k/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and was believed to be at 24 percent of its unfished biomass. Widow rockfish was declared overfished on January 11, 2001 (66 FR 2338). The ABC (3,871 mt) is based on a F50% Fmsy proxy. The OY (832 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2039 (Tmax). The OY is reduced by 5 mt for the amount estimated to be taken as recreational catch, 1.5 mt for the amount estimated to be taken during research fishing, 0.4 mt for the amount estimated to be taken in non-groundfish fisheries, and 45 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 781 mt. The commercial OY is divided with open access receiving 3 percent (23 mt) and limited entry receiving 97 percent (757 mt). The limited entry landed catch equivalent for the open access fishery is 20 mt. The limited entry allocation is reduced by 182 mt for anticipated bycatch in the at-sea whiting fishery and an additional 30 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 488 mt. Tribal vessels are estimated to land about 45 mt of widow rockfish in 2003, but do not have a specific allocation at this time.

m/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A new assessment was completed in 2002 for canary rockfish and the stock is believed to be at 8 percent of its unfished biomass coastwide. The coastwide ABC of 272 mt is based on a Fmsy proxy of F50%. The coastwide OY of 44 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to Bmsy by the year 2076 (Tmax). The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 1 mt for the amount estimated to be taken during research fishing, 2.3 mt for the amount estimated to be taken during the tribal fisheries, and 2.5 for the amount estimated to be taken in non-groundfish fisheries, resulting in a commercial OY of 23 mt. For 2003, the total catch OY has been divided with 61 percent going to the commercial fisheries and 39 percent going to the recreational fisheries. The commercial OY is divided with open access receiving 12.3 percent (2.8 mt) and limited entry receiving 87.7 percent (20 mt). The landed catch value for the open access fishery is 2.3 mt. The limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 14 mt, which is based on a discard rate of 16 percent. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.3 mt of canary rockfish in 2003, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of F50% Fmsy proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which co-occur with bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Open access is allocated 44.3 percent (879 mt) of the commercial OY and limited entry is allocated 55.7 percent (1,106 mt) of the commercial OY. The assumed discard is 16 percent, resulting in a open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt.

o/ Bocaccio rockfish was assessed in 2002 and is believed to be at 3.6 percent of its unfished biomass. Bocaccio rockfish was declared overfished on March 3, 1999. The ABC of 198 mt is based on a F50% Fmsy proxy. The OY of ≤20 mt is based on a sustainabitiy analysis with >80 percent probability of no further decline in spawning biomass. The OY is reduced by 0.2 mt for the amount estimated to be taken during research fishing, and 5 mt for the amount estimated to be taken in the recreational

fishery, resulting in a 14 mt commercial OY. The open access is allocated 44.3 percent (6 mt) of the commercial OY and limited entry is allocated 55.7 percent (8 mt) of the commercial OY. Boccacio retention will not be permitted in 2003. The OY will be used to accommodate discards of bocaccio rockfish resulting from incidental take in fisheries for co-occurring species.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish - Following the 2000 stock assessment, yellowtail rockfish was believed to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with the Fmsy Proxy of F50%. The OY (3,146 mt) was set equal to the ABC. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 8 mt for the amount estimated to be taken during research fishing, 5.8 mt for the amount taken in non-groundfish
fisheries, and 400 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 2,717 mt. The open access allocation (226 mt) is 8.3 percent of the commercial OY. The limited entry allocation (2,492 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 300 mt is subtracted from the limited entry landed catch allocation. An additional 100 mt is deducted for the shore-based whiting fishery. The remainder (2,092 mt) is further reduced by 16 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 1,773 mt. The open access landed catch equivalent is 189 mt. Tribal vessels are estimated to land about 400 mt of yellowtail rockfish in 2003, but do not have a specific allocation at this time.

r/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34° 27'N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy. The OY is reduced by 9 mt for the amount estimated to be taken during research fishing, by 1.6 mt for compensation to vessels that conducted resource surveys, and 3.0 mt for the amount estimated to be taken in the tribal fisheries, resulting in commercial OY of 941 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (939 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value (751 mt). There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 3 mt of shortspine thornyhead in 2003, but do not have a specific allocation at this time.

s/ Longspine thornyhead is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at a F50%. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 8.9 mt for compensation to vessels that conducted resource surveys, by 18 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 2,434 mt. To derive the landed catch equivalent of 2,020 mt, the limited entry allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34° 27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, (195 mt). There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on the rebuilding plan which has a 55 percent probability of rebuilding the stock to Bmsy by the year 2099 (Tmax). Cowcod retention will not be permitted in 2003. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

v/ Darkblotched rockfish was assessed in 2000 and was believed to be at 22 percent of its unfished biomass. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The ABC is projected to be 205 mt and is based on an Fmsy proxy of F50%. The OY of 172 mt is based on the rebuilding plan, which has a 80 percent probability of rebuilding the stock to Bmsy by the year 2047 (Tmax). For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry landed catch OY. The landed catch value for the remaining limited entry fisheries is 132 mt. The landed catch values are based on a discard rate of 20 percent.

w/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 52 mt coastwide ABC is based on an Fmsy proxy of F50%. The OY of 22 mt is based on a revised rebuilding analysis (August 2002) with a 50 percent probability of rebuilding to Bmsy by the year 2050 (Tmid). The OY is reduced by 7.7 mt for the amount estimated to be taken in the recreational fishery, 0.6 mt for the amount estimated to be taken during research fishing, 0.8 mt for the amount taken in non-groundfish fisheries, and 3 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 9.5 mt. Tribal vessels are estimated to land about 3 mt of yelloweye rockfish in 2003, but do not have a specific allocation at this time.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY (3,056 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish; other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 750 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,292 mt. Open access is allocated 8.3 percent (190 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,102 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish. Tribal vessels are estimated to land about 14 mt of minor rockfish (10 mt of shelf rockfish, and 4 mt of slope rockfish) in 2003, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish", which includes species that do not have quantifiable assessments. The ABC (3,556 mt) is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 493 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,401 mt. Open access is allocated 44.3 percent (621 mt) of the commercial OY and limited entry is allocated 55.7 percent (780 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish.

z/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish -- the ABC (1,115 mt) is based on a 2000 assessment, and is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards

the minor rockfish OY in the north.

bb/ Blackgill rockfish is believed to be at 51 percent of its unfished biomass. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

2. On page 11222, in column 2, section IV, under B., Limited Entry Fishery, paragraph 3 (a)(i) and (3)(a)(ii) are revised to read as follows:

IV NMFS Actions

* * * * *

(B) Limited Entry Fishery

* * * * *

(3) * * *

(a) * * *

(i) Catcher/processor sector 41,208 mt (24 percent); and

(ii) Mothership sector–29,088 mt (34 percent).

* * * * *

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–15155 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 115
Monday, June 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–80]

Union of Concerned Scientists and Mothers for Peace; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission has received and requests comments on a petition for rulemaking filed by the Union of Concerned Scientists and the San Luis Obispo Mothers for Peace (MFP). The petition was docketed on May 2, 2003, and has been assigned Docket No. PRM–50–80. The petitioners request that the NRC amend its regulations to require nuclear power plant owners to formally evaluate whether proposed changes, tests, and experiments cause protection against radiological sabotage to be decreased, and to require licensees to formally evaluate specified intentional or accidental aerial hazards and make necessary changes to ensure that the plant can reach and maintain safe shutdown.

DATES: Submit comments by September 2, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include "PRM–50–80" in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *mtl@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petitioners

The Union of Concerned Scientists (UCS) describes itself as a nonprofit partnership of scientists and citizens who combine rigorous scientific analysis, innovative policy development, and effective citizen advocacy to achieve practical environmental solutions. Before September 11, 2001, UCS states that it was an active participant in a series of public meetings conducted by the NRC with its external stakeholders regarding security regulations and implementing procedures for nuclear power plant reactors and their spent fuel. UCS states that although NRC closed its doors to them and other non-industry, public stakeholders regarding security matters after September 11, 2001, it continues to articulate potential problems and recommend solutions in other public arenas.

San Luis Obispo Mothers for Peace (MFP) states that it advocates safety and protection of the environment against the dangers of the Diablo Canyon Nuclear Power Plant (DCNPP). MFP states that it has been the foremost DCNPP watchdog group, and is a nationally respected voice on nuclear safety issues. MFP requests that the Commission suspend the licensing proceedings for an Independent Spent Fuel Storage Installation at the DCNPP while it is considering this petition. MFP believes suspension is necessary because consideration of the petition has the potential to bring about a significant redefinition of the fundamental design requirements that are considered adequate to protect independent spent fuel facilities against radiological sabotage.

Background

Discussion of the Petition

The petitioners state that 10 CFR 50.59, changes, tests, and experiments, first promulgated in 1962 and last amended in 2001, contains requirements for the process through which plant owners can modify their facilities and procedures without prior NRC approval. The petitioners characterize the objective of 10 CFR 50.59 as ensuring that plant owners evaluate proposed changes to facilities and procedures for their effects on the licensing basis of the plant and obtain prior NRC approval for changes having a potential impact (as defined in § 50.59 (c)(2)(i)-(viii)) on the basis for issuing the plant's operating license.

In practice, the petitioners note that § 50.59 typically involves a three-tiered review of proposed changes to a nuclear

power plant or its procedures. The first tier screens the proposed changes against the criteria in § 50.59 (c)(2)(i)-(viii). If at least one criterion might be invoked by the proposed changes, the second tier provides for a more rigorous evaluation. However, if the proposed changes do not invoke any of the criteria at tier one and if the evaluation determines that none of the criteria are invoked at tier two, the change can be made at the owner's discretion. Otherwise, the third tier requires that NRC approve the change in advance, the change be revised so that none of the criteria are invoked, or the change must be abandoned.

The petitioners state that 10 CFR 73.55, requires plant owners to establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to public health and safety. The petitioners state that the physical protection system shall be designed to protect against the design basis threat (DBT) of radiological sabotage as stated in § 73.1(a)(1)(i)-(iii). The petitioners note that the DBT is being revised in light of the events on September 11, 2001, but currently specifies protection against a determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment that include: (A) Well-trained (including military training and skills) dedicated individuals, (B) inside threat and assistance from a knowledgeable individual (an employee) who may provide information, facilitate entrance and exit, disable alarms and communications, or participate in a violent attack, (C) suitable weapons, including hand-held automatic weapons with silencers and long range capability, (D) hand-carried equipment and explosives to be used for destroying reactor, facility, transporter, or container integrity features of the safeguards system, and (E) a four wheel drive land vehicle used as a bomb, or for transporting personnel, and their equipment to the proximity of vital areas.

The physical protection system features elements such as perimeter fences, locked doors, access controls, intrusion detection systems, and armed responders. The petitioners note that 10 CFR 50.54(p) compared to 10 CFR 50.59 permits plant owners to change their physical protection equipment and procedures without prior NRC approval as long as the changes do not decrease their effectiveness. The petitioners state that in practice, a security evaluation process determines if a proposed change to physical protection equipment or procedures can be made with NRC's approval, or cannot be made.

The petitioners state that U.S. nuclear power plants were designed and licensed to provide reasonable assurance that an accidental aircraft crash would not adversely harm public health and safety. The petitioners state that the process involved a mathematical exercise to determine the likelihood that an errant aircraft could damage vital part(s) of the plant by impact. The petitioners state further that the inputs to the number-crunching were the proximity of the nuclear power plant to aircraft flight paths, the amenity of the site to aircraft crashes, and any spatial parameters (*e.g.* vital plant areas being shielded by non-vital areas that the aircraft could destroy without consequence).

The petitioners state that nuclear power plants were also designed and licensed to provide reasonable assurance that an accidental fire within the facility would not adversely harm public health and safety, but note that a very serious fire at the Browns Ferry nuclear plant showed that the original regulation and associated implementing procedures were insufficient. The petitioners have included a detailed history of the fire at the Browns Ferry nuclear plant and a presentation of the formal structured approach by the owner of the plant. The petitioners state that while the initial regulations attempted to provide adequate protection, the Browns Ferry fire demonstrated regulatory deficiencies and caused a more formal, structured approach. The petitioners assert that U.S. nuclear power plants are protected from aerial hazards by pre-September 11 and pre-Browns Ferry fire regulations that rely in large part on the low probability of an aircraft impacting the site.

The petitioners state that the requested changes to 10 CFR part 50 for aerial hazards are analogous to the regulations promulgated by the NRC to rectify the fire protection regulation shortcomings exposed by the Browns Ferry fire (*i.e.*, the addition of 10 CFR 50.48 and Appendix R to 10 CFR part 50).

The MFP also requests that the NRC suspend licensing proceedings on the Diablo Canyon Independent Spent Fuel Storage Installation until the issues presented in the petition are resolved. The petitioners believe the proposed amendments would provide better protection to Independent Spent Fuel Facilities (ISFSIs) against radiological sabotage. In an order dated May 16, 2003, the Commission denied the petitioner's request. *Pacific Gas and Electric Company* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI–03–04.

Proposed Amendments

The petitioners request the following amendment:

Revise 10 CFR 50.54(p) and 10 CFR 50.59 to require plant owners to formally evaluate whether proposed changes, tests, and experiments cause protection against radiological sabotage to be decreased and, if so, that such actions only be conducted with prior NRC approval.

Revise 10 CFR part 50 to require that plant owners formally evaluate their facilities against specified aerial hazards and make changes as necessary to provide reasonable assurance that the ability of the facility to reach and maintain safe shutdown would not be compromised by an aerial assault, whether accidental or intentional.

Rationale for the Changes

Safety and Security Evaluation Integration

The petitioners state that 10 CFR 50.59 requires plant owners to evaluate proposed changes, tests, and experiments and to obtain prior NRC approval for those having more than minimal adverse impact on the licensing basis, and that 10 CFR 50.54(p) requires plant owners to evaluate proposed changes to their physical protection equipment and procedures and to obtain prior NRC approval for those that decrease effectiveness.

The petitioners believe that the current safety and security change control regulations have minimal overlap, and note that a proposed modification to the decay heat removal system typically does not involve a formal evaluation of whether it makes radiological sabotage easier unless it directly affects a piece of physical protection equipment or the response capability of an armed guard. The petitioners state that many changes, tests, and experiments have no effect, direct or indirect, on nuclear plant security, but some may, particularly those involving short-term and temporary applications.

According to the petitioners, degraded conditions and off-normal configurations are often deemed acceptable from a safety evaluation perspective because of the low probability that an initiating event occurs during the brief period of the impairment. The petitioners state that initiating events like pipe breaks, earthquakes, etc. are low probability events assumed to occur randomly such that the chances of the initiating event happening during any short time period are a mere fraction of an already small number.

The petitioners state further that the same impairment, judged from a radiological sabotage perspective, may be unacceptable because the initiating event for sabotage is not random. According to the petitioners, saboteurs can cause actions to happen precisely at the time of the impairment. Thus, the chances of an initiating event occurring, instead of being reduced to a mere fraction of a small number, increase towards 100 percent. The petitioners state that the NRC's design basis threat is supposed to consider both an act of malice perpetuated by an insider acting alone and an act by an insider aided by several outsiders. The petitioners believe that, as long as one or more insiders remain part of the design basis threat, it is reasonable to assume that sabotage will be timed to coincide with the plant configuration being most, or at least more, vulnerable.

Therefore, the petitioners believe it is imperative to evaluate proposed changes, tests, and experiments from both a safety and a security perspective. They note that a security perspective will not necessarily prevent proposed actions from being performed; but in the case of short-term or temporary applications, the security perspective review might flag a heightened vulnerability to radiological sabotage but accept it based on having compensatory measures put in place. The petitioners offer that compensatory measures might entail posting armed guards around the in-service safety widget while the redundant safety widget is removed from service for extended maintenance.

The petitioners believe without the regulatory change sought by this petition to integrate the safety evaluations performed under 10 CFR 50.59 with the security evaluation performed under 10 CFR 50.54(p), changes, tests, and experiments may continue to occur at U.S. nuclear power plants with proper consideration of safety implications, but with insufficient consideration of their security implications. The petitioners believe the regulatory changes sought by this petition would not necessarily prevent the changes, tests, and experiments from happening. The petitioners assert the requested regulatory changes would, in all likelihood—

(1) Allow many changes, tests, and experiments to proceed as planned;

(2) Require some changes, tests, and experiments to proceed with compensatory measures in place to offset the radiological sabotage risk;

(3) Require very few changes, tests, and experiments to be approved by the NRC because they decrease the effectiveness of physical protection equipment and/or procedures; and

(4) Prevent a very small number of changes, tests, and experiments on the grounds of undue risk from radiological sabotage.

Aerial Hazards

The petitioners state that none of the 103 nuclear power plants operating in the United States at the time were designed to withstand suicide attacks from the air as we tragically experienced on September 11, 2001. This vulnerability prompted the Federal Aviation Agency (FAA) to establish no-fly zones around nuclear plants in the Fall of 2001. The petitioners assert this response was largely symbolic since FAA sanctions would probably not deter a suicide bomber, but it marked an implicit concession by the Federal Government that nuclear plants were vulnerable to air assault. The petitioners state further that nuclear plant owners would like the public to believe their facilities are hardened structures virtually immune to attack from the air due to the thick reinforced concrete walls of plant structures.[1]

Petitioners do not agree with this rationale, asserting that the thick reinforced walls do not surround all vital parts of a nuclear power plant. They note that one study of aircraft hazards, jointly prepared by the owners of two similar nuclear power plants more than 20 years ago, concluded "The control building is the only single building which, if hit, could lead to core melt." [2] The petitioners state the control buildings at every nuclear plant in the U.S. are located outside the robust structures described by the industry, and therefore offers that the nuclear industry's proclamations about the robustness of thick, reinforced walls may be accurate, but they fail to tell the entire story. The petitioners state that the incompleteness of industry's position is further evidenced by the fire hazards analyses required by NRC's regulations. The petitioners state that NRC did not restrict the scope of the fire hazards analyses to only those areas within the reactor containment structure, but that the regulations recognize the reality that reactor core damage can result from fires outside the reactor containment structure. The petitioners state that security tests conducted since 1991 under the NRC's Operational Safeguards Readiness Evaluation (OSRE) program also detail why the nuclear industry's current assurances are incomplete. Each OSRE, according to the petitioners involved force-on-force exercises with a small group of mock intruders going up against the facility's armed responders. The petitioners included the following quote from the testimony presented to Congress last year by the NRC individual responsible for the OSRE program.

Eighty-one OSREs have been conducted to date. At 37 of them, the expert NRC team identified a significant weakness; significant being defined as the adversary team simulating sabotaging a target set, which would lead to core damage and in many cases, to a probable radioactive release.[3]

The petitioners state that the "target set," attacked and defended by the adversary team and the security force respectively during the force-on-force exercises is defined by the NRC as follows:

> A target set is a minimum combination of equipment or operator actions which, if prevented from performing its intended safety function or prevented from being accomplished, would result in core damage.[4]

The petitioners state that target sets vary from plant to plant and generally involve more than a single pump, a single valve, or a single wall (however thick and reinforced). The petitioners note that the Nuclear Energy Institute (NEI) issued guidance to assist plant owners in developing their target sets.

[1] NEI Report dated December 2002, "Deterring Terrorism: Aircraft Crash Impact Analyses Demonstrated Nuclear Power Plant's Structural Strength."

[2] Report from Spring 1982 by the Power Authority of the State of New York and the Consolidated Edison Company of New York, "Indian Point Probabilistic Safety Study," Section 7.6.2, "Aircraft Hazards Analysis."

[3] Testimony on April 11, 2002, by David N. Orrik, Reactor Security Specialist, Office of Nuclear Security and Incident Response, Nuclear Regulatory Commission, before the U.S. House Subcommittee on Oversight and Investigations, "A Review of Enhanced Security Requirements at NRC Licensed Facilities."

[4] NRC memo dated November 17, 2000, from Glenn M. Tracy, Chief, Operator Licensing, Human Factors and Plant Support Branch, to John R. White, Chief, Radiation Safety and Safeguards Branch, Region I; Kenneth P. Barr, Chief, Plant Support Branch, Region II; James R. Creed, Team Leader, Safeguards Staff, Region III; and Gail M. Good, Chief, Plant Support Branch, Region IV, "Conduct, Agenda, and Rules of Engagement for Operational Safeguards Response Evaluations," page 4.

NEI described the process for determining target sets as follows:

> Analysis identifies target sets that, if all targets within a target set are destroyed, could lead to significant core damage. Using these target sets provides a basis for evaluating the protective strategy and assessing the significance of issues based on the risk involved.[5]

The petitioners included a table provided by NEI that illustrates ten (10) sample target sets. See Table A–1, *Sample Target Sets* (reproduced below). The table shows that reactor core damage can be prevented if cooling water is supplied from any one of four possible sources listed: Normal (high pressure supply), safety backup (emergency high pressure supply), another safety back-up (low pressure supply), and an additional back-up (alternate low pressure supply). In these sample target sets, each cooling water supply can be disabled by any one of five ways: (1) Power from the pump motor can be interrupted;

(2) Control for the pump and/or valves upstream and downstream of the pump can be lost;

(3) The pathway from a water source to the pump can be eliminated;

(4) The pathway from the pump to the reactor vessel can be eliminated; and

(5) The location of the pump itself can be rendered unusable such as by fire.

The petitioners state that NEI reported only one of the four ways of cooling the reactor need to survive the attack:

> Each target set is developed to provide assurance that, if any element is protected, public health and safety will not be endangered by a significant radiological release.[6]

The petitioners state that in 37 of the 81 OSREs conducted, the security forces were unable to successfully defend even one element of the target set from simulated ground assaults. The petitioners included names and details of several power plants that had failures.

The petitioners state that sample target sets illustrate the conclusions reached more than 20 years ago about the control building being an Achilles heel. The petitioners note that Target Set 6 in the table shows that knocking out the control element for all four water supplies can result in core damage.

TABLE A–1.—SAMPLE TARGET SETS

Structures, sys, & comps.	1	2	3	4	5	6	7	8	9	10
High Pressure Supply:										
Power					X			X		
Control	X	X				X				
Suction				X						X
Discharge			X						X	
Location							X			
Emergency HP supply:										
Power	X				X			X		
Control		X				X				
Suction				X						X
Discharge			X						X	
Location							X			
Low Pressure supply:										
Power	X									
Control				X		X				
Suction		X			X			X		X
Discharge			X							
Location							X		X	
Alternate LP supply:										
Power	X				X					
Control				X		X				
Suction		X						X		X
Discharge			X							
Location							X		X	

The petitioners state that an aircraft hitting the control building may destroy the control elements for all four water supplies, and much more.

The petitioners believe these target sets should be used to evaluate nuclear power plants for destruction caused by postulated aircraft impact and subsequent fire. According to the petitioners, this aircraft hazard evaluation approach mirrors the approach taken for in-plant fire hazards. The petitioners believe the fire hazards analyses conducted by plant owners are 'living documents' in that proposed changes to plant procedures and proposed modifications to plant structures must be formally reviewed against to verify that protection against fires will not be lessened.

The petitioners assert the way to ensure adequate protection of nuclear plants from aerial threats would be to replicate the fire hazards analysis process.[7] The petitioners believe the NRC should define, as part of its design basis threat, the size and nature of an aerial threat that the plant must be protected against. As a minimum, according to the petitioners, it would seem to include general aviation aircraft since the post-September 11, airport security measures generally overlook general aviation. The petitioners state the aerial threat may also entail explosives delivered via mortars and other means (*e.g.*, rocket propelled grenades) as deemed appropriate by the NRC. The petitioners assert that if the aerial hazards evaluation determines that all targets within a target set are likely to be disabled, at least three options are available to the plant's owner to remedy the vulnerability:

(1) Other equipment outside of and not affected by the impact zone could be added to the target set. Using the sample target sets, a fifth makeup water supply system could be added if it were outside the impact zone and could adequately cool the reactor core.

(2) Protection in place for at least one of the targets within the existing target set could be provided. Using Target Set 9 from the sample target sets, if an aircraft impact at the location of the low pressure supply system and the alternate low pressure supply system potentially caused collateral damage to the discharge pathway for the emergency high pressure supply system, it might be possible to install a shield wall or screen to protect the exposed pathway.

(3) Affected portions of a system could be relocated to a safe place outside the impact zone. Using Target Set 5 from the sample target sets, if the only part of the Emergency High Pressure Supply System within the impact zone was the power cable for the pump, that power cable could be rerouted.

The petitioners believe that while an aerial hazards analysis established adequate protection, for those that may not be at nuclear power plants, it would also provide the means to ensure that future changes to plant structures and procedures do not compromise that protection.

Conclusion

The petitioners believe that the proposed changes to 10 CFR 50.59 and 10 CFR 50.54(p) integrate the safety and security evaluations performed for proposed changes to plant safety equipment and procedures, thereby providing better protection against radiological sabotage. Also, the petitioners believe the proposed changes to part 50 provide a formal, structured approach for managing the risk from aerial hazards comparable to the regulatory approach already adopted for managing the risk from fire hazards. The petitioners state that if September 11, 2001, featured one of the hijacked aircraft hitting a U.S. nuclear power plant, the formal, structured approach being sought by this petition would have been undertaken as a necessary step to prevent another event. The petitioners state that if these changes are good measures to prevent recurrence, they represent even better measures to prevent occurrence in the first place.

[5] Nuclear Energy Institute draft report dated October 2000, "Safeguards Performance Assessment Program."

[6] Nuclear Energy Institute draft report dated October 2000, "Safeguards Performance Assessment Program."

[7] While the existing fire hazards analyses will be useful input to the aircraft hazards analyses, they do not eliminate the need for further study for two reasons: (1) The fire hazards analyses assumed that the postulated fire would be confined to a single room, whereas the aircraft impact and resulting fire(s) may affect multiple rooms, and (2) many rooms were summarily accepted as-is by the fire hazards analyses due to insufficient combustibles being present to sustain a fire—assumptions invalidated by the large amount of fuel carried by aircraft. The fire hazards analyses will expedite the aircraft hazards analyses by defining the equipment needed to cool the reactor if the room is hit. If that equipment could also be disabled by an aircraft impacting the room, action will be required to eliminate that vulnerability.

Dated at Rockville, Maryland, this 10th day of June, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary for the Commission.

[FR Doc. 03–15123 Filed 6–13–03; 8:45 am]

BILLING CODE 7590–01–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 03–10]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chap. II

[Docket No. R–1151]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chap. III

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chap. V

[No. 2003–20]

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The OCC, Board, FDIC, and OTS ("we" or "the Agencies") are beginning a review of our regulations to reduce burden imposed on insured depository institutions, as required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. We have categorized our regulations for the purpose of the review and propose to publish 12 categories of regulations for review between now and 2006. The categories, and the regulations that the Agencies consider to be part of those categories, are detailed below. This review presents a significant opportunity to consider the possibilities for burden reduction among groups of similar regulations. We welcome comment on the categories, the order of review, and all other aspects of the project in order to maximize its effectiveness.

Today, we are publishing our first in a series of public releases, comprising three of the categories—"Applications and Reporting," "Powers and Activities," and "International Operations"—for public comment so as to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on insured depository institutions. Since we will publish a series of releases containing requests for comment on the remaining categories, it is not recommended that burden reduction comments be submitted now for any regulations in other categories.

DATES: Written comments must be received no later than September 15, 2003.

ADDRESSES: Due to delays in paper mail delivery in the Washington area, commenters may prefer to submit their comments by alternate means. Comments should be directed to:

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 03–10. Comments will be available for public inspection and photocopying at the same location. You can make an appointment to inspect the comments by calling (202) 874–5043. *Facsimiles:* Send facsimile transmissions to FAX Number (202) 874–4448. *E-mail:* Send e-mails to *regs.comments@occ.treas.gov.*

Board: Comments should refer to Docket No. R–1151 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov.* Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays in accordance with the Board's Rules Regarding Availability of Information, 12 CFR part 261.

FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. *Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. You also may

electronically mail comments to *comments@fdic.gov*. Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No.2003–20. *Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–20. *Facsimiles:* Send facsimile transmissions to FAX Number (202) 906—6518, Attention: No. 2003–20. *E-Mail:* Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2003–20 and include your name and telephone number. *Availability of Comments:* OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the material you would like to inspect to assist us in serving you.)

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E St., SW., Washington, DC 20219.

Board: Patricia A. Robinson, Senior Counsel, Legal Division, (202) 452–3005; Michael J. O'Rourke, Counsel, Legal Division, (202) 452–3288; David G. Adkins, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–5259; Federal Reserve Board, 20th St. and Constitution Ave., NW., Washington, DC 20551.

FDIC: Claude A. Rollin, Special Assistant to the Vice Chairman, (202) 898–8741; Steven D. Fritts, Associate Director, Division of Supervision and Consumer Protection, (202) 898–3723; Ruth R. Amberg, Senior Counsel, Legal Division, (202) 898–3736; Thomas Nixon, Senior Attorney, Legal Division, (202) 898–8766; Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, DC 20429.

OTS: Robyn Dennis, Manager, Thrift Policy, Supervision Policy (202) 906–5751; Karen Osterloh, Special Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6639; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, Sept. 30, 1996) (EGRPRA), as part of an effort to minimize unnecessary government regulation consistent with safety and soundness, consumer protection, and other public policy goals. Under section 2222, 12 U.S.C. 3311, the Agencies,[1] jointly or individually, must categorize regulations by type, such as "consumer regulations" or "safety and soundness" regulations. Once we have established the categories, we must provide notice and ask for public comment on them. In particular, section 2222 requires that we ask the public to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome. The Agencies must issue these publications for comment at regular intervals such that all of the Agencies' categories of regulations are published for such comment within a 10 year cycle. The first publication cycle will end in September 2006. The EGRPRA review supplements and complements the reviews of regulations that the Agencies conduct under other laws and their internal policies.

Section 2222 requires a two-part regulatory response. First, the Agencies must publish in the **Federal Register** a summary of the comments received, identifying the significant issues raised and discussing those issues. Second, the Agencies must "eliminate unnecessary regulations to the extent that such action is appropriate." The Agencies may prepare the regulatory response individually or jointly.

Section 2222 further requires the FFIEC to submit a report to the Congress within 30 days after the Agencies publish the comment summary and discussion in the **Federal Register**. This report must summarize any significant issues raised by the public comments and the relative merits of those issues. The report also must analyze whether the appropriate Federal banking agency involved is able to address the regulatory burdens associated with the issues by regulation, or whether the burdens must be addressed by legislation.

II. The EGRPRA Review's Special Focus

The regulatory review required by section 2222 provides a significant opportunity for the public and the Agencies to step back and look at groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the 'forest' of regulations will, we hope, offer a new perspective in identifying opportunities to reduce regulatory burden. Of course, reducing regulatory burden must be consistent with ensuring the continued safety and soundness of insured depository institutions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with our statutory mandates, many of which currently require certain regulations. One of the significant aspects of the EGRPRA review program is the recognition that effective burden reduction in certain areas may require legislative change. We will be soliciting comment on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements, and statutory mandates. This will be a key aspect of the FFIEC report to the Congress.[2]

The combination of considering the relationship of regulatory and statutory change on regulatory burden with the section 2222 requirement for grouping regulations by type provides the possibility for particularly effective burden reduction. It may be possible to identify statutes and regulations that share similar goals or complementary methods such that the regulatory requirements could be combined and overlapping requirements could be eliminated. For example, it may be possible to combine certain types of applications to eliminate duplication.

The EGRPRA review will complement the review to reduce burden and to increase uniformity of regulations among the Agencies, pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, Sept. 23, 1994, 12 U.S.C. 4803) (CDRI). The Agencies' section 2222 review will continue to try to eliminate inconsistencies among their regulations, although complete uniformity is not possible in light of differences in the types of regulated entities and the statutes that apply to them.

The EGRPRA review can also significantly contribute to the Agencies' ongoing efforts to reduce regulatory burden. For example, since 1979, a formally adopted Federal Reserve policy has required the Board to review each of its regulations at least once every five years with a view toward eliminating, simplifying, or otherwise easing the burden of each regulation.[3] The FDIC has a similar requirement, described in its policy "Development and Review of FDIC Regulations and Policies."[4] *See also:* FDIC Chairman Powell's initiative "Reducing Regulatory Burden" at *http://www.fdic.gov*. Under OCC policy in effect since the OCC undertook a comprehensive review of all of its regulations to reduce regulatory burden in the mid-1990s, the agency's regulation-writing process has sought to eliminate "regulatory requirements that are not necessary to ensure the safety and soundness of national banks, to support consumers' access to financial services, or to accomplish other aspects of the OCC's regulatory mission."[5] *See also*, "Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Independent Community Bankers of America, Orlando, Florida, March 4, 2003" at *http://www.occ.treas.gov/ftp/release/2003–17a.pdf*. Since the early 1990s OTS has worked to reduce regulatory burden through various regulatory review projects as well as Thrift Financial Report changes and revisions to Applications forms. OTS strives to produce risk-focused, efficient, and proactive regulations. OTS also, whenever possible, tailors its regulations to risks posed by particular institutions and writes its regulations and guidance in plain language.

Further, the Agencies address the issue of regulatory burden every time they propose and adopt a rule. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and internal agency policies, the Agencies examine each rulemaking to minimize the burdens it might impose on the industry and consider various alternatives.[6]

The Agencies also will use both the EGRPRA review and the individual reviews to identify and reduce burdens on small institutions. More than half of insured depository institutions are small—having $150 million in assets or less—as defined by the Small Business Administration. We are particularly concerned about burden on small institutions. When a new regulation is created or an old regulation is changed, small institutions must devote a large percentage of their staffs' time to review the regulation to determine if and how it will affect them. Compliance with a regulation also can take large amounts of time that cannot be devoted to serving customers or business planning. In a large institution, ensuring regulatory compliance can take many more hours; however, those hours make up a much smaller percentage of the institution's resources. In situations where a regulation is aimed at an activity engaged in primarily by large institutions, the compliance burden on small institutions can outweigh its benefit.

Section 610 of the Regulatory Flexibility Act imposes a continuing requirement on agencies to review regulations that may have a significant economic impact on a substantial number of small entities, within 10 years after a final rulemaking is published. Although not all of the Agencies' rules must be reviewed pursuant to section 610, the Agencies are undertaking to review rules to the extent possible under the section 610 review criteria because of the importance of burden reduction to the many small institutions we regulate.

III. The Agencies' Proposed Plan

The Agencies must categorize their regulations by type. Section 2222 gives us authority to determine categories, and suggests two possible categories: "consumer regulations" and "safety and soundness." The Agencies have regulations on more than 100 subjects covering a wide variety of topics from capital maintenance to the privacy of consumer financial information. Some of these regulations have been issued jointly and are as uniform as possible. Others were issued separately by the Agencies but implement common statutes or policies. These rules are listed as interagency rules to facilitate comparisons. Some regulations are issued by a single agency but are applicable to all types of insured institutions, such as the Board's Equal Credit Opportunity regulation or the FDIC's Deposit Insurance regulation. Other regulations are issued by a single agency and have more limited applicability. These rules are listed under the name of the issuing agency.

The Agencies propose to seek public comment on 12 categories of their regulations that impose burden on insured institutions between now and 2006.[7] The categories, in alphabetical order, are: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. We believe that these categories are logical groupings that are not so broad that the number of regulations presented in any one category would overwhelm potential commenters. The categories also reflect recognized areas of industry interest and specialization, or are particularly critical to the health of the banking system. We recognize that our regulations could be categorized in other ways and welcome recommendations about the categories and the regulations placed within them.

Although joint publication is not required by section 2222, the Agencies believe that joint publication of the regulation categories for public comment will be the most effective method for achieving EGRPRA's burden reduction goals. Joint publication and review also will help maintain the uniformity of regulations among the Agencies where possible. We are publishing three categories of rules for burden reduction comment today and plan to publish the remaining nine categories in roughly semiannual intervals, with 90-day comment periods for categories under review, throughout

---

[1] The National Credit Union Administration (NCUA) has participated in the EGRPRA planning process and will separately issue a request for comment. Since the Federal Financial Institutions Examination Council (FFIEC) has not issued regulations that impose burden on insured institutions, we have not separately captioned the FFIEC in this notice.

[2] Institutions are also subject to regulations issued by other non-banking agencies, such as rules issued by the Department of Housing and Urban Development (under Real Estate Settlement Procedures Act of 1974) and by the Department of the Treasury (under the Bank Secrecy Act including rules required by the USA PATRIOT Act). The rules of these other agencies are beyond the scope of the EGRPRA review and the Agencies' jurisdictions. To the extent the Agencies receive comments raising significant issues regarding these related rules, however, we intend to identify the issues in the Report to Congress and will also notify the related agencies of the substance of the relevant comments.

[3] Board Statement of Policy Regarding Expanded Rulemaking Procedures, 44 FR 3957, Jan. 19, 1979.

[4] FDIC Law, Regulations and Related Acts, pp. 5057–5058.

[5] OCC Bulletin 97–8 (January 7, 1997). Moreover, the OCC recognizes that a "one-size-fits-all" approach to regulation can be ineffective and burdensome, and tailors its regulations accordingly, taking into account factors such as the size of an institution. *Id.*

[6] The OCC and OTS also review regulations pursuant to Executive Order 12866 and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

[7] Consistent with section 2222's focus on reducing burden on insured institutions, the Agencies' EGRPRA review will not involve their internal organizational or operational regulations to the extent that those regulations impose no, or minimal, burden on insured institutions.

the review period. We welcome recommendations on grouping the remaining categories and the order in which to publish them.

After the conclusion of the comment period for each EGRPRA review notice published in the **Federal Register**, the Agencies will review the comments we have received and decide whether further action is appropriate with respect to the categories of regulations included in that notice. That decision will be made by the Agencies jointly in the case of rules that we have issued jointly. Any rulemaking to amend or revise those rules would similarly be undertaken jointly and the public will be provided with an opportunity to comment on any proposed amendment. This interagency rulemaking process will not, however, include rules issued by only one agency. Comments that address specific provisions of such a regulation will be carefully reviewed and incorporated in the detailed review of the relevant regulation conducted by the agency issuing the rule. Each agency will separately determine whether amendments to its own rules are appropriate in light of comments submitted during the EGRPRA review and, if so, will separately initiate rulemakings to modify its rules. Consistent with the spirit of CDRI, however, where individual agency rules implement common statutory or supervisory policies, the Agencies will work jointly to achieve uniformity.

The Agencies have prepared three charts to assist public understanding of the organization of our section 2222 review. Chart A presents the three categories of regulations about which we are requesting burden reduction recommendations starting today. Chart B identifies regulations affecting United States (U.S.) branches, agencies, and representative offices of foreign banks, while Chart C presents the remaining nine categories on which we will seek comment. The categories in each of the charts are shown in numbered and shaded horizontal bands. In each, the left column divides the categories into more specific subject matter areas. The remaining columns are headed by the different types of financial institutions (*e.g.*, national banks, etc. * * *).

Generally, by reading down a column, a particular type of institution may identify the citation of the rule that applies to it. When one agency's regulation applies to institutions for which it is not the primary regulator, the citation for the subject is repeated across the columns.[8] Interagency regulations are listed first, followed by regulations issued by the OCC, Board, FDIC, and OTS.

Foreign banks. Foreign banks operate in the U.S. both directly, through branches and agencies, and indirectly, through bank and nonbank subsidiaries. The U.S. operations of foreign banks as a whole do not fit neatly into the categories of Charts A and C. Consequently, Chart B supplements the International Operations category of Chart A by identifying the major regulations that apply only to U.S. branches, agencies, or representative offices of foreign banks. We have also footnoted the "Holding Company" column of Chart A to include foreign banks. (If a foreign bank operates a branch, agency or subsidiary commercial lending company in the U.S., it is subject to the Bank Holding Company Act as if it were a bank holding company.)[9]

IV. Request for Burden Reduction Recommendations About the First Three Categories of Regulations: "Applications and Reporting," "Powers and Activities," and "International Operations"

The Agencies are asking the public to identify and comment upon areas of regulations within three categories—"Applications and Reporting," "Powers and Activities," and "International Operations"—that impose outdated, unnecessary, or unduly burdensome regulatory requirements on insured depository institutions. It is not necessary for the public to provide burden reduction recommendations about categories of rules other than these three categories at this time since we will publish the remaining categories before the end of the first review cycle in 2006. Comments that cite particular provisions or language, and provide reasons why such provisions should be changed, would be most helpful to the Agencies' review efforts. Suggested alternative provisions or language, where appropriate, would also be helpful. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change.

Specific issues for commenters to consider. While all comments related to any aspect of section 2222 are welcome, the Agencies specifically invite comment on the following issues:

- *Need for statutory change.* Do the statutes impose unnecessary requirements? Are any of the statutory requirements underlying these categories imposing redundant, conflicting or otherwise unduly burdensome regulatory requirements?
- *Need and purpose of the regulations.* Do the regulations in these categories fulfill current needs? Have industry or other circumstances changed since a regulation was written such that the regulation is no longer necessary? Have there been shifts within the industry or consumer actions that suggest a re-focus of the underlying regulations? Do any of the regulations in these categories impose burdens not required by their authorizing statutes?
- *Overarching approaches / flexibility of the regulatory standards.* Generally, is there a different approach to regulating that the Agencies could use that would achieve statutory goals while imposing less burden? Do any of the regulations in these categories or the statutes underlying them impose unnecessarily inflexible requirements?
- *Effect of the regulations on competition.* Do any of the regulations in these categories or the statutes underlying them create competitive disadvantages for one part of the financial services industry compared to another?
- *Reporting, recordkeeping and disclosure requirements.* Do any of the regulations in these categories or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? Which, if any, of these requirements could be fulfilled electronically to reduce their burden?
- *Consistency and redundancy.* Do any of the regulations in these categories impose inconsistent or redundant regulatory requirements that are not warranted by the circumstances?
- *Clarity.* Are the regulations in these categories and the underlying statutes drafted in clear and easily understood language? Are there specific regulations or underlying statutes that need clarification?
- *Burden on small insured institutions.* The Agencies have a particular interest in minimizing burden on small insured institutions (those with assets of $150 million or less). The Agencies solicit comment on whether any regulations within these categories should be continued without change, or amended or rescinded in order to minimize any significant economic impact the regulations may have on a substantial number of small insured institutions.

[8] The charts have been provided as a convenience for the reader and should not be treated as a comprehensive listing of all rules applicable to a particular institution.

[9] There are a number of regulations that apply to branch or agency operations because of the type of activity in which the office engages rather than because it is a branch or agency. These regulations govern such areas as consumer protection, customer privacy, and securities regulation. Foreign banks may wish to comment on these regulations at such time as they are published for comment.

BILLING CODE 4810-33, 6210-01, 6714-01, 6720-01-P

V. Charts[1]

Chart A. Regulations about which Burden Reduction Recommendations Are Requested Currently

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[2] --- Thrift
1. Applications and Reporting					
Interagency Regulations					
Bank Merger Act	12 CFR 5.33	12 CFR 262.3 (application processing and notice provisions only)	12 CFR 303.60	12 CFR 563.22 (also includes bulk asset transfers and thrift-to-bank conversions)	
Change in Bank Control	12 CFR 5.50	12 CFR Part 225, Subpart E [Reg. Y]	12 CFR 303.80, 308.110- 118	12 CFR Part 574 (includes control under the Savings and Loan Holding Company Act); See also: 12 CFR 563.181 (Change of Control of Mutual Savings Associations)	12 CFR Part 225, Subpart E [Reg. Y] --- 12 CFR Part 574 (control under the Savings and Loan Holding Company Act)

[1] The Agencies have attempted to make these charts as user friendly as possible. Inevitably, some oversimplification may have occurred. The Agencies have developed these charts solely to facilitate the comment process.

[2] Foreign banking organizations that conduct banking operations in the U.S., either directly through branches and agencies or indirectly through U.S. bank subsidiaries or commercial lending company subsidiaries, generally are subject to the same regulatory regime as domestic bank holding companies.

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
1. Applications and Reporting (continued)					
Interagency Regulations (continued)					
Notice of Addition or Change of Directors	12 CFR 5.51	12 CFR Part 225, Subpart H [Reg. Y]	12 CFR Part 303, Subpart F	12 CFR Part 563, Subpart H; See also: 12 CFR 563.183 (Change of Officer or Director After a Change in Control)	12 CFR Part 225, Subpart H [Reg. Y] --- 12 CFR Part 563, Subpart H; See also 12 CFR 563.183 (Change of Officer or Director After a Change in Control)
OCC Regulations					
Rules, Policies, and Procedures for Corporate Activities	12 CFR Part 5 (Generally)				
Board Regulations					
Holding Companies – Formations, Acquisitions and Nonbanking Activities					12 CFR Part 225, Subparts A, B, C, D, and I, App. C [Reg. Y]; 12 CFR 262.3
State Member Banks		12 CFR Part 208, Subparts A, B, and G [Reg. H]; 12 CFR Part 209 [Reg. I]; 12 CFR 262.3			
FDIC Regulations					
Call Reports and Other Forms, Instructions and Reports	12 CFR Part 304 (excluding 304.3(d))	12 CFR Part 304 (excluding 304.3(d))	12 CFR Part 304		
Deposit Insurance Filing Procedures	12 CFR Part 303, Subpart B	12 CFR Part 303, Subpart B	12 CFR Part 303, Subpart B	12 CFR Part 303, Subpart B	

V. Charts[1]

Chart A. Regulations about which Burden Reduction Recommendations Are Requested Currently

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[2] --- Thrift
1. Applications and Reporting					
Interagency Regulations					
Bank Merger Act	12 CFR 5.33	12 CFR 262.3 (application processing and notice provisions only)	12 CFR 303.60	12 CFR 563.22 (also includes bulk asset transfers and thrift-to-bank conversions)	
Change in Bank Control	12 CFR 5.50	12 CFR Part 225, Subpart E [Reg. Y]	12 CFR 303.80, 308.110- 118	12 CFR Part 574 (includes control under the Savings and Loan Holding Company Act); See also: 12 CFR 563.181 (Change of Control of Mutual Savings Associations)	12 CFR Part 225, Subpart E [Reg. Y] --- 12 CFR Part 574 (control under the Savings and Loan Holding Company Act)

[1] The Agencies have attempted to make these charts as user friendly as possible. Inevitably, some oversimplification may have occurred. The Agencies have developed these charts solely to facilitate the comment process.

[2] Foreign banking organizations that conduct banking operations in the U.S., either directly through branches and agencies or indirectly through U.S. bank subsidiaries or commercial lending company subsidiaries, generally are subject to the same regulatory regime as domestic bank holding companies.

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
1. Applications and Reporting (continued)					
Interagency Regulations (continued)					
Notice of Addition or Change of Directors	12 CFR 5.51	12 CFR Part 225, Subpart H [Reg. Y]	12 CFR Part 303, Subpart F	12 CFR Part 563, Subpart H; See also: 12 CFR 563.183 (Change of Officer or Director After a Change in Control)	12 CFR Part 225, Subpart H [Reg. Y] --- 12 CFR Part 563, Subpart H; See also 12 CFR 563.183 (Change of Officer or Director After a Change in Control)
OCC Regulations					
Rules, Policies, and Procedures for Corporate Activities	12 CFR Part 5 (Generally)				
Board Regulations					
Holding Companies – Formations, Acquisitions and Nonbanking Activities					12 CFR Part 225, Subparts A, B, C, D, and I, App. C [Reg. Y]; 12 CFR 262.3
State Member Banks		12 CFR Part 208, Subparts A, B, and G [Reg. H]; 12 CFR Part 209 [Reg. I]; 12 CFR 262.3			
FDIC Regulations					
Call Reports and Other Forms, Instructions and Reports	12 CFR Part 304 (excluding 304.3(d))	12 CFR Part 304 (excluding 304.3(d))	12 CFR Part 304		
Deposit Insurance Filing Procedures	12 CFR Part 303, Subpart B	12 CFR Part 303, Subpart B	12 CFR Part 303, Subpart B	12 CFR Part 303, Subpart B	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
1. Applications and Reporting (continued)					
FDIC Regulations (continued)					
Extension of Corporate Powers – General Character of Business			12 CFR 333.1-.2		
Filing Procedures and Delegations of Authority			12 CFR Part 303		
Mutual-to-stock conversion			12 CFR Part 303, Subparts H and I; 12 CFR 333.4		
OTS Regulations					
Application Processing Procedures				12 CFR Part 516 (Additional OTS application and notice requirements are associated with specific regulations included elsewhere on this list. E.g., fiduciary powers applications, 12 CFR Part 550; subsidiary activities, 12 CFR Part 559)	--- 12 CFR Part 516 (Additional OTS application and notice requirements are associated with specific regulations included elsewhere on this list. E.g., holding company applications 12 CFR Parts 574, 575, 584)
Capital Distributions				12 CFR Part 563, Subpart E	
Federal Mutual Savings Associations – Incorporation, Organization and Conversion; or Merger, Dissolution, Reorganization and Conversion				12 CFR Parts 543, 546	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
1. Applications and Reporting (continued)					
OTS Regulations (continued)					
Federal Stock Savings Associations–Incorporation, Organization and Conversion				12 CFR Part 552	
Mutual to Stock Conversions				12 CFR Part 563b	
Offices				12 CFR 545.92-.96	
Regulatory Reporting Standards; Other Reporting Requirements; and Recordkeeping				12 CFR Part 562; 12 CFR 563.170; 12 CFR 563.180	--- 12 CFR Part 562; 12 CFR 563.180(b); 12 CFR 563.170
2. Powers and Activities					
OCC Regulations					
Bank Activities and Operations	12 CFR Part 7, Subparts A, D, and E				
Community Development Corporations, Community Development Projects, and Other Public Welfare Investments	12 CFR Part 24				
Debt Cancellation Contracts and Debt Suspension Agreements	12 CFR Part 37				
Fiduciary Activities of National Banks	12 CFR Part 9				
Investment in Bank Premises	12 CFR 5.37				
Investment Securities	12 CFR Part 1	12 CFR Part 1			
Leasing	12 CFR Part 23				
Real Estate Lending	12 CFR Part 34, Subparts A and B				
Sales of Credit Life Insurance	12 CFR Part 2				

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
2. Powers and Activities (continued)					
Board Regulations					
Bank Holding Companies and Financial Holding Companies					12 CFR Part 225, Subparts A, B, C, F, I, and J [Reg. Y] ---
State Member Banks		12 CFR Part 208, Subparts A, B, and G [Reg. H]			
FDIC Regulations					
Activities of Insured State Banks		12 CFR Part 362, Subpart A; 12 CFR Part 303, Subpart G	12 CFR Part 362, Subparts A, B, and E; 12 CFR Part 303, Subpart G		
Activities of Insured State Savings Associations				12 CFR Part 362, Subparts C and D; 12 CFR Part 303, Subpart H	
OTS Regulations					
Deposits				12 CFR Parts 557, 561 (definitions)	
Electronic Operations				12 CFR Part 555	
Fiduciary Powers of Savings Associations				12 CFR Part 550	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
2. Powers and Activities (continued)					
OTS Regulations (continued)					
General				12 CFR Part 545; See also: provisions on chartering, organization and bylaws at 12 CFR Part 552 (Federal Stock Savings Associations); 12 CFR Parts 543, 544, 546 (Federal Mutual Savings Associations)	
Lending and Investment				12 CFR Part 560	
Mutual Holding Companies					--- 12 CFR Part 575
Preemption of State Due-On-Sale Laws (Implementation of Garn-St Germain)	12 CFR Part 591	12 CFR Part 591	12 CFR Part 591	12 CFR Part 591	12 CFR Part 591 --- 12 CFR Part 591
Preemption of State Usury Laws (Implementation of DIDMCA)	12 CFR Part 590	12 CFR Part 590	12 CFR Part 590	12 CFR Part 590	12 CFR Part 590 --- 12 CFR Part 590
Savings and Loan Holding Companies					--- 12 CFR Parts 583, 584

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
2. Powers and Activities (continued)					
OTS Regulations (continued)					
Subordinate Organizations				12 CFR Part 559	
3. International Operations[3]					
Interagency Regulations					
International Lending Supervision	12 CFR Part 28, Subpart C	12 CFR Part 211, Subpart D [Reg. K]	12 CFR Part 347, Subpart C		12 CFR Part 211, Subpart D [Reg. K]
OCC Regulations					
Foreign Operations of National Banks	12 CFR Part 28, Subpart A				
Board Regulations					
International Operations of U.S. Banking Organizations	12 CFR 211.1-.4, 211.8-.13 [Reg. K, Subpart A]	12 CFR 211.8-.13 [Reg. K, Subpart A]			12 CFR 211.1-.4, 211.8-.13 [Reg. K, Subpart A]
Edge and Agreement Corporations	12 CFR 211.5-.7 [Reg. K, Subpart A]	12 CFR 211.5-.7 [Reg. K, Subpart A]			12 CFR 211.5-.7 [Reg. K, Subpart A]
Foreign Banking Organizations					12 CFR Part 211, Subpart B [Reg. K]
Export Trading Companies					12 CFR Part 211, Subpart C [Reg. K]
FDIC Regulations					
Foreign Branching and Investment by Insured State Nonmember Banks			12 CFR Part 347, Subpart A; 12 CFR Part 303, Subpart J		

[3] Regulations applicable solely to U.S. branches and agencies of foreign banks are addressed in Chart B.

Chart B. U.S. Branches, Agencies, and Representative Offices of Foreign Banks

Subject	Federal Branches and Agencies	State Branches, Agencies, and Representative Offices	Federal and State Insured Branches
OCC Regulations			
12 CFR Part 28, Subpart B	x		
Board Regulations			
12 CFR Part 211, Subpart B	x (except for 12 CFR 211.28-.29)	x	x
FDIC Regulations			
12 CFR Part 347, Subpart B			x
12 CFR Part 303, Subpart J			x

Chart C. Categories and Regulations about which the Agencies Will Seek Comment Later

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[4] --- Thrift
1. Banking Operations					
Interagency Regulations					
Prohibition of Payment of Interest on Demand Deposits	12 CFR Part 217 [Reg. Q]	12 CFR Part 217 [Reg. Q]	12 CFR Part 329	12 CFR 561.16	
OCC Regulations					
Assessment of Fees	12 CFR Part 8				
Bank Operations	12 CFR Part 7, Subpart C				
Board Regulations					
Availability of Funds and Collection of Checks	12 CFR Part 229 [Reg. CC]	12 CFR Part 229 [Reg. CC]	12 CFR Part 229 [Reg. CC]	12 CFR Part 229 [Reg. CC]	
Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire	12 CFR Part 210 [Reg. J]	12 CFR Part 210 [Reg. J]	12 CFR Part 210 [Reg. J]	12 CFR Part 210 [Reg. J]	
Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records	12 CFR Part 219 [Reg. S]	12 CFR Part 219 [Reg. S]	12 CFR Part 219 [Reg. S]	12 CFR Part 219 [Reg. S]	
Reserve Requirements of Depository Institutions	12 CFR Part 204 [Reg. D]	12 CFR Part 204 [Reg. D]	12 CFR Part 204 [Reg. D]	12 CFR Part 204 [Reg. D]	
The Payment System Risk Reduction Policy	Federal Reserve Regulatory Service 9-1000	Federal Reserve Regulatory Service 9-1000	Federal Reserve Regulatory Service 9-1000	Federal Reserve Regulatory Service 9-1000	

[4] Foreign banking organizations that conduct banking operations in the U.S., either directly through branches and agencies or indirectly through U.S. bank subsidiaries or commercial lending company subsidiaries, generally are subject to the same regulatory regime as domestic bank holding companies.

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
1. Banking Operations (continued)					
FDIC Regulations					
Assessments	12 CFR Part 327	12 CFR Part 327	12 CFR Part 327	12 CFR Part 327	
Assessment of Fees upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund	12 CFR Part 312	12 CFR Part 312	12 CFR Part 312	12 CFR Part 312	
Determination of Economically Depressed Regions				12 CFR Part 357	
OTS Regulations					
Assessments and Fees				12 CFR Part 502	--- 12 CFR Part 502
2. Capital					
Interagency Regulations					
Prompt Corrective Action	12 CFR Part 6	12 CFR Part 208, Subpart D [Reg. H]; 12 CFR 263.201-.205	12 CFR Part 325, Subpart B	12 CFR Part 565	12 CFR 208.44(i); 12 CFR 263.201-.202, .205 --- 12 CFR 565.5(i); 12 CFR 565.7; 12 CFR 565.10
Risk-Based and Leverage Capital Adequacy Standards	12 CFR Part 3	12 CFR 208.4; 12 CFR Part 208, App. A, B, and E [Reg. H]; 12 CFR Part 263, Subpart E	12 CFR Part 325, Subpart A and all Appendices	12 CFR Part 567; 12 CFR 563.81	12 CFR Part 225, App. A, B, D, and E [Reg. Y]; 12 CFR Part 263, Subpart E ---

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
2. Capital (continued)					
OCC Regulations					
Changes in Permanent Capital; Subordinated Debt as Capital	12 CFR 5.46-.47				
3. Community Reinvestment Act[5]					
Interagency Regulations					
Community Reinvestment Act	12 CFR Part 25	12 CFR Part 228 [Reg. BB]	12 CFR Part 345	12 CFR Part 563e	12 CFR 228.29 --- 12 CFR 563e.29
Disclosure and Reporting of CRA-Related Agreements	12 CFR Part 35	12 CFR Part 207 [Reg. G]	12 CFR Part 346	12 CFR Part 533	12 CFR Part 207 [Reg. G] --- 12 CFR Part 533
4. Consumer Protection					
Interagency Regulations					
Consumer Protection in Sales of Insurance	12 CFR Part 14	12 CFR Part 208, Subpart H [Reg. H]	12 CFR Part 343	12 CFR Part 536	
Fair Housing	12 CFR Part 27		12 CFR Part 338	12 CFR Part 528 (including other nondiscrimination requirements)	
Loans in Identified Flood Hazard Areas	12 CFR Part 22	12 CFR 208.25 [Reg. H]	12 CFR Part 339	12 CFR Part 572	
Privacy of Consumer Financial Information	12 CFR Part 40	12 CFR Part 216 [Reg. P]	12 CFR Part 332	12 CFR Part 573	12 CFR Part 216 [Reg. P] ---

[5] Community development regulations are being published for comment as part of the Powers and Activities category.

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
4. Consumer Protection (continued)					
Interagency Regulations (continued)					
Prohibition Against Use of Interstate Branches Primarily for Deposit Production	12 CFR Part 25, Subpart E	12 CFR 208.7 [Reg. H]	12 CFR Part 369		12 CFR 208.7 [Reg. H] ---
Safeguarding Customer Information	12 CFR Part 30, App. B	12 CFR Part 208, App. D-2 [Reg. H]	12 CFR Part 364, App. B	12 CFR Part 570, App. B	12 CFR 225.4(h); 12 CFR Part 225, App. F ---
Unfair or Deceptive Acts or Practices	12 CFR Part 227 [Reg. AA]	12 CFR Part 227 [Reg. AA]	12 CFR Part 227 [Reg. AA]	12 CFR Part 535	
Board Regulations					
Consumer Leasing	12 CFR Part 213 [Reg. M]	12 CFR Part 213 [Reg. M]	12 CFR Part 213 [Reg. M]	12 CFR Part 213 [Reg. M]	12 CFR Part 213 [Reg. M] --- 12 CFR Part 213 [Reg. M]
Electronic Fund Transfers	12 CFR Part 205 [Reg. E]	12 CFR Part 205 [Reg. E]	12 CFR Part 205 [Reg. E]	12 CFR Part 205 [Reg. E]	
Equal Credit Opportunity	12 CFR Part 202 [Reg. B]	12 CFR Part 202 [Reg. B]	12 CFR Part 202 [Reg. B]	12 CFR Part 202 [Reg. B]	12 CFR Part 202 [Reg. B] --- 12 CFR Part 202 [Reg. B]
Home Mortgage Disclosure Act	12 CFR Part 203 [Reg. C]	12 CFR Part 203 [Reg. C]	12 CFR Part 203 [Reg. C]	12 CFR Part 203 [Reg. C]	12 CFR Part 203 [Reg. C] --- 12 CFR Part 203 [Reg. C]

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
4. Consumer Protection (continued)					
Board Regulations (continued)					
Truth in Lending	12 CFR Part 226 [Reg. Z]	12 CFR Part 226 [Reg. Z]	12 CFR Part 226 [Reg. Z]	12 CFR Part 226 [Reg. Z]	12 CFR Part 226 [Reg. Z] --- 12 CFR Part 226 [Reg. Z]
Truth in Savings	12 CFR Part 230 [Reg. DD]	12 CFR Part 230 [Reg. DD]	12 CFR Part 230 [Reg. DD]	12 CFR Part 230 [Reg. DD]	
FDIC Regulations					
Advertisement of Membership	12 CFR Part 328	12 CFR Part 328	12 CFR Part 328	12 CFR Part 328	
Deposit Insurance Coverage	12 CFR Part 330	12 CFR Part 330	12 CFR Part 330	12 CFR Part 330	
Notification of Changes of Insured Status	12 CFR Part 307	12 CFR Part 307	12 CFR Part 307		
OTS Regulations					
Advertising				12 CFR 563.27	
Tying Restriction Exception				12 CFR 563.36	--- 12 CFR 563.36
5. Directors, Officers and Employees					
Interagency Regulations					
Disclosure of Financial Information	12 CFR Part 18		12 CFR Part 350		
Golden Parachute and Indemnification Programs	12 CFR Part 359	12 CFR Part 359	12 CFR Part 359	12 CFR Part 359; See also: 12 CFR 545.121	12 CFR Part 359 --- 12 CFR Part 359

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
5. Directors, Officers and Employees (continued)					
Interagency Regulations (continued)					
Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements	12 CFR Part 31	12 CFR Part 215 [Reg. O]	12 CFR 337.3; 12 CFR Part 349	12 CFR 563.43	
Management Official Interlocks	12 CFR Part 26	12 CFR Part 212 [Reg. L]	12 CFR Part 348	12 CFR Part 563f	12 CFR Part 212 [Reg. L] --- 12 CFR Part 563f
OCC Regulations					
Bank Activities and Operations – Corporate Practices	12 CFR Part 7, Subpart B				
OTS Regulations					
Board of Directors Composition				12 CFR 563.33	
Bond Coverage				12 CFR 563.190-.191	
Employment Contracts, Compensation, Pension Plans				12 CFR 563.39; 12 CFR 563.47; 12 CFR 563.161	
Restrictions on Transactions with Officers, Directors, and Others				12 CFR 560.130; 12 CFR 563.200-.201	--- 12 CFR 563.200-.201
6. Money Laundering					
Interagency Regulations					
Bank Secrecy Act Compliance	12 CFR Part 21, Subpart C	12 CFR 208.63 [Reg. H]	12 CFR Part 326, Subpart B	12 CFR 563.177	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
6. Money Laundering (continued)					
Interagency Regulations (continued)					
Reports of Crimes or Suspected Crimes	12 CFR Part 21, Subpart B	12 CFR 208.62-.63 [Reg. H]	12 CFR Part 353	12 CFR 563.180(d)	12 CFR 225.4(f) ---
7. Rules of Procedure					
Interagency Regulations					
Uniform Rules of Practice and Procedure	12 CFR Part 19	12 CFR Part 263	12 CFR Part 308	12 CFR Part 509	12 CFR Part 263 --- 12 CFR Part 509
OCC Regulations					
Voluntary Liquidation	12 CFR 5.48				
FDIC Regulations					
Resolution and Receivership Rules	12 CFR Part 360	12 CFR Part 360	12 CFR Part 360	12 CFR Part 360	
Restrictions on Sale of Assets by the Federal Deposit Insurance Corporation	12 CFR Part 340	12 CFR Part 340	12 CFR Part 340	12 CFR Part 340	
OTS Regulations					
Investigative Proceedings and Formal Examinations				12 CFR Part 512	--- 12 CFR Part 512
Possession by Conservators and Receivers for Federal and State Savings Associations				12 CFR Part 558	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
7. Rules of Procedure (continued)					
OTS Regulations (continued)					
Removals, Suspensions and Prohibitions Where a Crime is Charged or Proven				12 CFR Part 508	--- 12 CFR Part 508
8. Safety and Soundness					
Interagency Regulations					
Appraisal Standards for Federally Related Transactions	12 CFR Part 34, Subpart C	12 CFR 208.50 [Reg. H]; 12 CFR Part 225, Subpart G [Reg. Y]	12 CFR Part 323	12 CFR Part 564	12 CFR Part 225, Subpart G [Reg. Y] ---
Frequency of Safety and Soundness Examination	12 CFR 4.6-.7	12 CFR 208.64	12 CFR 337.12	12 CFR 563.171 (See also: 12 CFR 563.170)	
Lending Limits	12 CFR Part 32	12 CFR Part 215, Subpart A		12 CFR 560.93	
Real Estate Lending Standards	12 CFR Part 34, Subpart D	12 CFR Part 208, Subpart E and App. C [Reg. H]	12 CFR Part 365	12 CFR 560.100,; 12 CFR 563.101	
Security Devices and Procedures	12 CFR Part 21, Subpart A	12 CFR 208.61 [Reg. H]	12 CFR Part 326, Subpart A	12 CFR Part 568	
Standards for Safety and Soundness	12 CFR Part 30	12 CFR Part 208, App. D-1 [Reg. H]	12 CFR Part 364	12 CFR Part 570	
Transactions with Affiliates	12 CFR Part 223 [Reg. W]; 12 CFR Part 31	12 CFR Part 223 [Reg. W]		12 CFR 563.41	
OCC Regulations					
Other Real Estate Owned	12 CFR Part 34, Subpart E				

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
8. Safety and Soundness (continued)					
Board Regulations					
Extensions of Credit by Federal Reserve Banks	12 CFR Part 201 [Reg. A]	12 CFR Part 201 [Reg. A]	12 CFR Part 201 [Reg. A]	12 CFR Part 201 [Reg. A]	
Limitations on Interbank Liabilities	12 CFR Part 206 [Reg. F]	12 CFR Part 206 [Reg. F]	12 CFR Part 206 [Reg. F]	12 CFR Part 206 [Reg. F]	
FDIC Regulations					
Annual Independent Audits and Reporting Requirements	12 CFR Part 363	12 CFR Part 363	12 CFR Part 363	12 CFR Part 363; See also: OTS, 12 CFR 562.4	
Unsafe and Unsound Banking Practices (Standby Letters of Credit and Brokered Deposits)			12 CFR 337.2; 12 CFR 337.6		
OTS Regulations					
Audits of Savings Associations and Savings Association Holding Companies				12 CFR 562.4, See also: FDIC, 12 CFR Part 363	--- 12 CFR 562.4
Financial Management Policies				12 CFR Part 563, Subpart F	--- 12 CFR 563.170
Lending and Investment – Additional Safety and Soundness Limitations				12 CFR Part 560	
9. Securities					
Interagency Regulations					
Banks as Registered Clearing Agencies	12 CFR 19.135	12 CFR 208.32-33 [Reg. H]	12 CFR Part 308, Subpart S		

BILLING CODE 4810-33; 6210-01; 6714-01; 6720-01-C

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank --- Thrift
9. Securities (continued)					
Interagency Regulations (continued)					
Banks as Securities Transfer Agents	12 CFR 9.20	12 CFR 208.31 [Reg. H]	12 CFR Part 341		
Government Securities Sales Practices	12 CFR Part 13	12 CFR 208.37 [Reg. H]	12 CFR Part 368		
Recordkeeping and Confirmation of Securities Transactions Effected by Banks	12 CFR Part 12	12 CFR 208.34 [Reg. H]	12 CFR Part 344	12 CFR Part 551	
Reporting Requirements for Reported Securities Under the Securities Exchange Act of 1934	12 CFR Part 11	12 CFR 208.36 [Reg. H]	12 CFR Part 335	12 CFR Part 563d	
Securities Offerings	12 CFR Part 16			12 CFR Part 563g	
OCC Regulations					
Municipal Securities Dealer Activities of Banks	12 CFR Part 10				
Board Regulations					
Credit by Banks and Persons Other than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U] --- 12 CFR Part 221 [Reg. U]
OTS Regulations					
Accounting Requirements/Financial Statements				12 CFR Part 563c	
Proxies				12 CFR Part 569	
Rules on the Issuance and Sale of Institution Securities				12 CFR 563.5; 12 CFR Part 563, Subpart C	

Dated: June 3, 2003.
John D. Hawke, Jr.,
Comptroller of the Currency.
By order of the Board of Governors of the Federal Reserve System, June 9, 2003.
Jennifer J. Johnson,
Secretary of the Board.
By order of the Board of Directors.
Federal Deposit Insurance Corporation.
Dated in Washington, DC, this 10 day of June, 2003.
Robert E. Feldman,
Executive Secretary.
Dated: May 29, 2003.
James E. Gilleran,
Director, Office of Thrift Supervision.
[FR Doc. 03–15088 Filed 6–13–03; 8:45 am]
BILLING CODE 4810–33, 6210–01, 6714–01, 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM249; Special Conditions No. 25–03–05–SC]

Special Conditions: Embraer Model ERJ–170 Series Airplanes; Electronic Flight Controls (Command Signal Integrity)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with electronic flight control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for this and other novel or unusual design features of Embraer Model 170 series airplanes.

DATES: Comments must be received on or before July 16, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM249, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM249. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; e-mail *tom.groves@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–170 series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Embraer Model ERJ–170 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model ERJ–170 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The ERJ–170 airplane will use fly-by-wire (FBW) technology as a means of sending command and control signals to the control surface actuators of the rudder, rudder trim, elevator, spoilers, horizontal stabilizer, and auto speedbrake. The ailerons will be controlled by a traditional cable linkage to the hydraulic actuators.

The ERJ–170 FBW flight control systems provide two modes of operation, direct and normal. Direct mode provides an analog link between pilot commands and control surfaces. In direct mode, flight control transducers send signals to Actuator Control Electronics units (ACE). The ACE sends analog command and control signals to the Power Control Units (PCU), which move the control surface actuators of the rudder, rudder trim, elevator, spoilers, horizontal stabilizer, and auto speedbrake.

In normal mode, the rudder, elevator and spoiler command-to-surface gain schedules are tailored to particular flight conditions to provide improved control characteristics. These gains are calculated digitally in the Flight Control Module (FCM) and supplement the direct mode commands provided by the ACEs.

In the ERJ–170 FBW design being presented, command and control of the airplane's aerodynamic control surfaces will be achieved by electronic interfaces. These interfaces involve not only direct commands to the PCU but all the necessary feedback sensor signals. A successful demonstration of signal integrity must include all the elements which contribute to the command and control signals to the control surface closed loop system (CSCL). The CSCL may include the following:

(1) The computing components and wiring;

(2) The input components, such as column position sensors;

(3) Feedback components, such as control surface position, inertial reference, and air data sensors; and,

(4) Actuation components and their structural mounting components.

A system evaluation that includes all the inputs to and elements of the CSCL in an integrated environment (including signals that could disturb the system) is necessary to ensure appropriate system robustness throughout the flight envelope.

For the purpose of this proposed special condition, the control surface closed loop system does not include pilot input to the flight control system. Pilot in the loop control inputs and the associated handling requirements are adequately covered by existing regulations, including regulations in subpart B as well as §§ 25.671 and 25.672.

The signal paths within the control surface closed loop system can be susceptible to interference from electromagnetic and electrostatic sources within the integrated systems environment of the aircraft as well as external causes, such as HIRF and lightning (not considered in this special condition), which could modify the command and control signals.

The effects of interference sources within the system may include, but are not restricted to, the following:

- Loss of data bits,
- Unwanted transients in the power supply source,
- Disruption of normal computer operations,
- Misbehavior of signals by parallel computers (*e.g.*, redundancy management),
- Adverse effects caused by transport lag, and
- Any other cause that may alter the command and control signals.

For those reasons, special design measures and laboratory tests intended to validate these designs will be required to demonstrate the integrity of the FBW Flight Controls System to a level of safety equivalent to that which is achieved with traditional hydromechanical designs.

The regulations which primarily address hydromechanical flight control systems, (*i.e.*, 14 CFR 25.671 and 25.672) do not specifically require that command and control signals remain unaltered from internal or external interference. Traditional designs feature steel cables and pushrods as means to move surface actuators which are hydraulically powered. These designs are not likely to be affected by spurious electromagnetic and computer induced signals, as are the FBW designs.

Similar special conditions have been issued previously for other airplanes that utilize FBW flight control systems, such as the Airbus A320 series, Airbus A330/340 series, and most recently, the Boeing 777 series.

The special conditions applied to the Boeing 777 series include a requirement for changes in mode of flight critical control systems. This requirement was intended to ensure a minimum level of availability for normal mode flight control. For the Boeing 777 series, the FAA did not consider § 25.1309(b) adequate for that purpose.

In the ERJ–170 FBW flight control system, normal mode consists of a simple analog control signal augmented by limited authority digitally computed signals. Direct mode consists of only the analog signal. The FAA believes that the existing 14 CFR 25.1309(b) provides a suitable requirement for assessing the effect and frequency of FBW flight control system mode changes or lost functionality for the ERJ–170 series, and thus the specific requirement included with the Boeing 777 series special conditions was not included in these proposed special conditions.

In addition to the specific difference noted above, a number of smaller changes were made to the Boeing 777 series special condition to create these proposed special conditions. These additional changes were made to improve readability and to define with greater precision the intended scope of some of the paragraphs through use of consistent and defined terminology.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ–170 series airplanes. Should Embraer apply later for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model ERJ–170 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer Model ERJ–170 series airplanes.

Electronic Flight Controls (Command Signal Integrity)

In addition to compliance with §§ 25.671 and 25.672, the following requirements must be met:

(a) It must be shown that either the FBW flight control system signals cannot be altered unintentionally or that altered signal characteristics would meet the following criteria:

(1) Stable gain and phase margins are maintained for all control surface closed loop systems. Pilot control inputs (pilot in the loop) are excluded from this requirement.

(2) Sufficient pitch, roll, and yaw control power is available to provide control for continued safe flight and

landing, considering all the FBW flight control system signal malfunctions that are not extremely improbable.

(3) The effect of spurious signals on the systems which are included in the control surface loop must not result in unacceptable transients or degradation of the airplane's performance. Specifically, signals that would cause a significant uncommanded motion of a control surface actuator must be readily detected and deactivated, or the surface motion must be arrested by other means in a satisfactory manner. Small amplitude residual system oscillations may be acceptable.

(b) It must be demonstrated that the output from the control surface closed loop system does not result in uncommanded, sustained oscillations of flight control surfaces. The effects of minor instabilities may be acceptable, provided that they are thoroughly investigated, documented, and understood.

Issued in Renton, Washington, on June 6, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15140 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Petition Requesting Amendment to Child-Resistance Testing Pass/Fail Criterion for Unit Dose Packaging (Petition No. PP 03–1)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of petition.

SUMMARY: The current regulatory definition of a child-resistance test failure for unit dose, *i.e.*, non-reclosable packaging under the Poison Prevention Packaging Act (PPPA), is a child gaining access to the number of individual unit doses that constitute the amount that "may cause serious personal injury or serious illness" or more than eight individual unit doses, whichever is less. The Commission has received a petition (Petition No. PP 03–1) requesting that the Commission amend that requirement to eliminate the first criterion related to the toxicity of the substance to be packaged and define a unit dose packaging failure to be a child gaining access to more than eight individual unit doses. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by August 15, 2003.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov*. Comments should be captioned "Petition PP 03–1, Petition for Amendment of the Child-Resistance Testing Requirements for Unit Dose Packaging." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC Web site at *http://www.cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; e-mail: *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION: By letter of March 17, 2003, and supplemental information provided by letter of May 5, 2003, the Healthcare Compliance Packaging Council (HCPC) requests a change to the Commission's regulatory requirements under the PPPA for testing the ability of unit dose child-resistant, *i.e.*, "special" packaging to resist attempts by children to open it. The HCPC request addresses the portion of the requirements defining a testing failure for unit dose packaging. Unit dose packaging is non-reclosable packaging typically including a limited number of tablets (usually one or two) per unit, *e.g.*, blister, strip or pouch packaging.

The HCPC members include companies involved in the manufacture of pharmaceutical-grade plastic films, aluminum, and paperboard used to produce unit dose blister and strip packaging, as well as manufacturers of machinery used to create unit dose formats. HCPC corporate members include firms that provide packaging services to the pharmaceutical manufacturers on a contract basis, as well as companies that purchase bulk quantities of drug products from pharmaceutical manufacturers and re-package those products into unit dose and other formats for use by hospitals, clinics, and other similar facilities.[1]

The child resistance testing requirements were promulgated under authority of the PPPA. The testing requirements are the mechanism for assessing the ability of a particular form of "special packaging" to resist attempts by children to gain access to its contents. The definition of a child-resistance test failure for unit dose packaging is a child gaining access to the number of individual unit doses that constitute the amount that may cause "serious personal injury or serious illness" or more than eight individual unit doses, whichever is less.[2]

The HCPC's specific request is as follows. "The definition of test failure for unit dose packaging should be an objective standard, *i.e.*, 'any child who opens or gains access to more than 8 individual units during the full 10 minutes of testing.'" The HCPC asserts that "unit dose packaging is inherently safer than cap-and-vial closures" and that "the current regulation creates a disincentive for pharmaceutical manufacturers and packagers to use safer unit dose packaging."[3]

The HCPC request has been docketed as petition number PP 03–1. The Commission is particularly interested in receiving comments on the petition from: (1) Consumers; (2) dispensing physicians; (3) poison control centers; (4) pharmaceutical manufacturers; (5) chain drug store, government, independent, and hospital pharmacies; and (6) drug repackagers, wholesalers and distributors.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition is available on the CPSC World Wide Web site at *http://www.cpsc.gov*. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: June 10, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–15064 Filed 6–13–03; 8:45 am]

BILLING CODE 6355–01–P

[1] March 17, 2003 HCPC letter at 3.

[2] 16 CFR 1700.20(a)(2)(ii).

[3] March 17, 2003 HCPC letter at 3–5.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CCGD09–03–224]

RIN 1625–AA97

Safety Zone; Harley Davidson Motor Company 100th Anniversary Fireworks, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone inside Milwaukee Harbor for the Harley Davidson 100th Anniversary Fireworks celebration. This action is necessary to ensure the safety of life and property in the immediate vicinity of the fireworks launch platform during this event. This action is intended to restrict vessel traffic south of Milwaukee Harbor.

DATES: Comments and related material must reach the Coast Guard on or before July 10, 2003.

ADDRESSES: You may mail comments and related material to the Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Marine Safety Office Milwaukee maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–03–224], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This safety zone is necessary to safeguard the public from the hazards associated with fireworks displays in Milwaukee Harbor, Milwaukee, Wisconsin. Based on recent accidents that have occurred in other Captain of the Port Zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to safety and property.

The combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling in to the water could easily result in serious injuries or fatalities.

Establishing safety zones by notice and comment rulemaking gives the public an opportunity to comment on the proposed zones and provides better notice than promulgating temporary final rules.

Discussion of Proposed Rule

The Coast Guard is proposing a safety zone in outer Milwaukee Harbor, Milwaukee, Wisconsin. The Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit, moor or anchor in a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule would be in effect for only one hour on the day of the event. Vessel traffic can safely pass outside of the proposed safety zone during the event. Although the safety zone for the event will encompass the entire navigation channel, traffic would be allowed to pass through the safety zone with permission of the Captain of the Port Milwaukee, or his designated on scene Patrol Commander.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*see* **ADDRESSES**).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5, Department of Homeland Security Delegation No. 0170.

2. From 10 p.m. on August 31, 2003 through 11 p.m. on September 1, 2003 a new temporary § 165.T09–224 is added to read as follows:

§ 165.T09–224 Safety Zone; Waters of Milwaukee Harbor, Milwaukee, Wisconsin

(a) *Location.* The following area is a safety zone:

(1) The safety zone will encompass all waters and adjacent shoreline bounded by the arc of a circle with a 1680 foot radius with its center in approximate position 43°02.16′ N, 087°53.18′ W, located in Milwaukee Harbor. These coordinates are based upon North American Datum 1983.

(2) [Reserved]

(b) *Enforcement period.* This section is effective from 10 p.m. on August 31, 2003 through 11 p.m. on September 1, 2003. This section will be enforced on August 31 from 10 p.m. through 11 p.m. In the event of inclement weather this section will be enforced on September 1, 2003 between the same times. The Coast Guard Captain of the Port Milwaukee or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The "duly appointed representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Milwaukee, Wisconsin to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (414) 747–7155 during working hours. Vessels assisting in the enforcement of the safety zone may be contacted on VHF-FM channels 16 or 21A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) Coast Guard Group Milwaukee will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restriction imposed.

Dated: June 9, 2003.

Virginia J. Kammer,

Lieutenant Commander, U.S. Coast Guard. Acting Captain of the Port Milwaukee.

[FR Doc. 03–15093 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1122; MB Docket No. 03–98; RM–10688]

Radio Broadcasting Services; Sellersburg and Seymour, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of INDY LICO, Inc., licensee of Station WGRL(FM), Channel 230A, Noblesville, Indiana, and S.C.I. Broadcasting, Inc., licensee of Station WQKC(FM), Channel 229B, Seymour, Indiana, requesting substitution of Channel 230A for Channel 229B at Seymour, Indiana, and the reallotment of Channel 230A from Seymour to Sellersburg, Indiana, as the community's first local transmission service, and the modification of the license for Station WQKC(FM) to reflect the changes. This petition was originally filed as an amended proposal in MM Docket 01–143 which was terminated. Channel 230A can be allotted to Sellersburg at a site 11.5 kilometers (7.1 miles) south of the community at coordinates 38–17–41 NL and 85–45–07 WL.

DATES: Comments must be filed on or before July 21, 2003, and reply comments on or before August 5, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Mark N. Lipp, Esq., J. Thomas Nolan, Esq., Vinson & Elkins L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008 (Counsel to Petitioners).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–98, adopted May 28, 2003, and released May 30, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Sellersburg, Channel 230A and removing Seymour, Channel 229B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–15070 Filed 6–13–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 115
Monday, June 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 5, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 60 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DEPARTMENT OF AGRICULTURE

Office of the Chief Information Officer

[Docket No.]

Notice of Request for Approval of Information Collection

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Office of the Chief Information Officer's (OCIO) intention to request approval to collect information from attendees of six farm shows for the eGovernment Marketing and Grower Relations Assessment. The study will collect information from voluntary participants in six farm show events.

DATES: Comments on this notice must be received within 60 days of publication in the **Federal Register** to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information regarding this notice should be directed to William Cosgrove, SCI Program Manager, eGovernment Program, OCIO–SCI, U.S. Department of Agriculture, 1400 Independence Ave., SW., South Building, Room 4105–S Washington, DC 20250–3700; 202–720–8650. Submit electronic comments to *Bill.Cosgrove@usda.gov*.

SUPPLEMENTARY INFORMATION: *Title:* FY2003 and FY2004 Farm Shows Marketing and Grower Relations Assessment.

OMB Number: 0503–NEW.

Expiration Date of Approval: Three years from date of issuance.

Type of Request: Approval of a new information collection.

Abstract: This project represents an important step in analyzing—from the perspective of a core USDA customer group—the software, accessibility, formats, user-friendliness, security safeguards, and other aspects of USDA eGovernment applications in effectively meeting business requirements.

In carrying out the overall mission, OCIO seeks approval of information gathering activities that will provide key information about the impact of the eGovernment program on its key constituents: farmers, growers, and producers. It will also elucidate the programs current limitations and future challenges. The efforts aim to determine the principle causes of farmer use or non-use of eGovernment applications to date and provide guidance about future eGovernment functionality desired by farmers.

Working with OCIO, a contractor will be attending various farm shows in Illinois, Missouri, Texas, Georgia, California, and Nevada to gather feedback on current USDA eGovernment efforts. At each show, the contractor will set up a marketing booth and solicit volunteers to provide feedback through a two-page questionnaire. Participation is entirely voluntary and participants can choose to answer none of, some of, or all questions in the survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: The audience at these shows will be farmers, growers, and producers.

Estimated Number of Respondents: 3,000 (total of all shows).

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden of Respondents: 1,500 Hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William Cosgrove, SCI Program Manager, eGovernment Program, OCIO–SCI, U.S. Department of Agriculture, 1400 Independence Ave., SW., South Building, Room 4105–S Washington, DC 20250–3700; 202–720–8650.

Submit electronic comments to *Bill.Cosgrove@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

William Cosgrove.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–15060 Filed 6–13–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–022–1]

Availability of a Draft Pest Risk Analysis for the Importation of Hass Avocado Fruit From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public of the availability of a draft pest risk analysis that has been prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation of Hass avocados from Mexico into the entire United States and during all months of the year. We are making this draft pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–022–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–022–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–022–1" on the subject line.

You may read any comments that we receive on the draft pest risk analysis in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Ron A. Sequeira, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2663.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering amending the fruits and vegetables regulations in 7 CFR 319.56–2ff to allow the importation of Hass avocados from Mexico into the entire United States and during all months of the year. Fresh Hass variety avocados from Michoacan, Mexico, may currently be imported for distribution into 31 States and the District of Columbia between October 15 and April 15 under a systems approach for mitigating pest risk. The draft pest risk analysis entitled, "Importation of 'Hass' Avocado Fruit (*Persea americana*) from Mexico" (May 2003), considers the pest risks associated with the possible expansion of this program to allow importation of these avocados into all 50 States and the District of Columbia and throughout the year. We are making the draft pest risk analysis available to the public for review and comment.

You may view the draft pest risk analysis on the Internet at *http://www.aphis.usda.gov/ppq/pra/*, or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice). You may also request a copy of the document from the person listed under the **FOR FURTHER INFORMATION CONTACT**.

This notice solicits public comments on the draft pest risk analysis. We will also be making the draft pest risk analysis available for public comment again during the comment period for any proposed rule related to the importation of Hass avocados from Mexico.

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 11th day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–15212 Filed 6–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Information Collection; Collection of Market Prices

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Commodity Credit Corporation (CCC) is seeking comments from all interested individuals and organizations on a new information collection needed by the CCC to establish market values for wheat, feed grains, soybeans, minor oilseeds, and pulses.

DATES: Comments on this notice must be received on or before August 15, 2003, to be assured consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Shirlene Engle, USDA, Farm Service Agency, Warehouse and Inventory Division, Program Development Branch, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553; e-mail: *Shirlene.Engle@wdc.usda.gov*. Comments may be faxed to (202) 690–3123.

FURTHER INFORMATION CONTACT: Shirlene Engle, Program Specialist, Storage Contract Branch, (202) 720–7397.

SUPPLEMENTARY INFORMATION:

Title: Collection of Market Prices.

OMB Control Number: 0560–New.

Type of Request: New information collection.

Abstract: The information collected will allow CCC merchandisers to collect electronically, or by telephone, daily sales and purchase prices from grain terminals to establish Posted County Prices (PCP's) for the Marketing Assistance Loan Program (MAL), which is operated by the Farm Service Agency (FSA) under the Farm Security and Rural Investment Act of 2002. CCC's authority to collect this information is the Commodity Credit Corporation Charter Act (15 U.S.C. 714, *et seq.*). Posted County Prices provide an estimate of market prices at the county level and are the prices at which program participants may redeem grain pledged as collateral for marketing assistance loans. The information collected is also used in constructing bid acceptance criteria for the purchase and sale of CCC-owned bulk grain such as wheat, corn, rice, soybean, and

soybean meal for export donation programs.

To the extent this information collection is associated with the MAL, the collection is exempt from the requirements of the PRA by section 1601 of the 2002 Act (7 U.S.C. 7991). However, to the extent the information collection is associated with other uses, it is not exempt and, because the collection burden for those other uses is the same as for MAL uses, the request for approval covers the entire collection.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .25 hours per response.

Respondents: Warehouse operators.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 240.

Estimated Total Annual Burden on Respondents: 1,800 hours.

Comment is invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (3) enhancing the quality, utility, and clarity of the information collected; and (4) minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed in Washington, DC, on June 6, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–15075 Filed 6–13–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino and Tonto National Forests, AZ; Fossil Creek Area Planning EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Coconino and Tonto National Forests are developing an EIS to analyze the effects of proposed management changes within the Fossil Creek area. This EIS and planning process would result in the development and implementation of new management areas, standards, and guidelines within both forests' management plans.

The Fossil Creek planning area lies within the administrative boundaries of the Coconino and Tonto National Forests (NFs) in Coconino, Gila, and Yavapai Counties in central Arizona. On the Coconino NF, the planning area includes the Fossil Springs Wilderness, Fossil Creek Botanical area and portions of the Hackberry and Boulder Canyon Inventoried Roadless Areas. The Tonto NF portion contains the proposed Fossil Creek State Natural area and a segment of the Mazatzal Wilderness.

DATES: Comments concerning the scope of the analysis must be received by July 8, 2003. The Forest Service expects to complete the draft environmental impact statement by late summer 2003, and the final environmental impact statement by February 2004.

ADDRESSES: To provide comments or to obtain further information please contact: Judy Adams, Red Rock Ranger District, P.O. Box 300, Sedona, AZ 86339, or e-mail comments to *jadams05@fs.fed.us*. Comments or information requests can also be made by fax at 928.203.7539. Information on this project may be obtained on the Coconino National Forest Web site at *http://www.fs.fed.us/r3/coconino/*.

FOR FURTHER INFORMATION CONTACT: Judy Adams, Coconino National Forest (see contact information above).

SUPPLEMENTARY INFORMATION: Fossil Creek is one of Arizona's rare perennial streams, flowing from Fossil Springs southwest to the Verde River. The neighboring landscape is rich in unique resources, including native fish and wildlife, cultural resources, designated wilderness areas, abundant riparian vegetation, and crystal clear spring waters. With the anticipated decommissioning of the Childs/Irving power plants and the restoration of full flows to Fossil Creek, travertine mineral deposits are expected to recreate a unique system of pools and waterfalls, resulting in new and varied fish and wildlife habitat, more diverse vegetation and increased scenic quality. These travertine forming mineral deposits occur in only two other locations in Arizona, making this a rare and important resource.

Purpose and Need for Action

The purpose of this planning effort is to initiate management changes within the Fossil Creek area. These changes will be designed to address several issues, including the need for additional protection of Fossil Creek's uncommon resources, an increasing public demand for high quality water based recreation and the anticipated decommissioning of the Childs/Irving power plant facilities. The decommissioning of the power plants will return full, natural flows to the entire length of Fossil Creek.

Recent Forest Service inventories of conditions along Fossil Creek show high recreation pressures affecting streamside soils, plants, and archaeological resources. An important purpose of management changes is to restore and protect these sensitive and unique areas, while continuing to offer access to outdoor recreation opportunities.

The Coconino and Tonto National Forest Land and Resource Management Plans (Forest Plans) provide general goals, objectives, standards, and guidelines for various management areas, land allocations, and activities designated in the planning area. This planning effort is expected to result in an amendment to both Forest Plans, creating congruity in management direction and incorporating appropriate new direction.

Proposed Action

The action proposed by the Coconino and Tonto National Forests consists of making management changes within the Fossil Creek area. These changes would result in amendments to both Forest Plans, and would establish new standards and guidelines and new and/or modified management areas. Meeting these goals would facilitate the recovery and protection of riparian vegetation, stream channel characteristics, wildlife and fish habitat, soils, and cultural values, while still providing a variety of recreational experiences.

Possible Alternatives

The following are preliminary management alternatives that have been developed in response to preliminary significant issues derived from both the public and the agency. These preliminary alternatives will be further refined as the analysis process progresses. Additional alternatives may be developed if necessary to respond to new information.

Several management actions are similar for all alternatives, excluding the no action alternative. In all instances, the majority of Forest Road (FR) 708 would remain open to public vehicle access at the current level of maintenance. FR's 9206W and 9248C would be closed and restored (decommissioned). Camping and campfires would be permitted downstream of the existing Irving power plant facility in locations consistent with resource needs. Sanitation facilities would be installed in the Middle Fossil and/or Irving areas. Most alternatives would include creation of a creek side trail linking the Middle Fossil area with the FR 708 bridge. The Recreation Opportunity Spectrum (ROS) would attempt to preserve a semi-primitive character along Fossil Creek, with as few signs of development and management presence as possible. In the Middle Fossil Creek area, the ROS would allow for developments such as vault toilets, information signs, trails, and traffic barriers, with frequent management presence.

The following preliminary alternatives are currently under consideration:

1. *Alternative A (Proposed Action)*—Alternative A would attempt to strike a balance between recreational needs and resource protection. A road access system would be created in the Middle Fossil Creek area to help facilitate parking and creek access in some locations. The Flume Road and trail would be closed, and the footbridge removed. Camping and campfires would be prohibited from Fossil Springs to Irving. A portion of Management Area (MA) 11 (Verde Valley) on the Coconino NF would be identified as MA 12 (Riparian).

2. *Alternative B*—Under this alternative, management within the Fossil Creek area would continue under existing direction and regulation. No new actions would be taken, and no changes to existing Forest Plan direction would be made.

3. *Alternative C*—Alternative C would emphasize the needs and desires of camping and recreation. The Flume trail would be maintained, with the footbridge removed. Dispersed camping and campfires would be permitted in the Middle Fossil area. Designated dispersed camping would be permitted at Irving, along the Flume trail and at Fossil Springs, although no campfires would be allowed. Management area changes would be as in the Proposed Action (Alternative A).

4. *Alternative D*—Management direction in Alternative D would be more restrictive than other alternatives in terms of access for recreation. FR 708 would not remain open in its entirety—the portion of the road between the Deadmans Mesa Road and the parking area just north of Irving (Flume trail parking area) would be closed. This stretch (approximately 3 miles) would be converted to a non-motorized trail. A creekside trail linking the Middle Fossil area with the FR 708 bridge would not be created. The Flume Road and trail would be closed and revegetated (decommissioned). No camping or campfires would be permitted from Fossil Springs down to and including Irving. Camping and campfires would be allowed in designated areas downstreams of Irving, with parking limited to along FR 708. A special closure area would be established between Irving and the Fossil Springs dam for wildlife and riparian protection. A new Fossil Creek Conservation MA would be created, and a recommendation made to Congress for a minor expansion of the Fossil Springs Wilderness.

5. *Alternative E*—Management directives in this alternative would emphasize day use of the Fossil Creek area. FR 502E would be narrowed and converted to a motorized trail. The Flume Road and trail would remain in use. The footbridge would remain. Camping and campfires would not be allowed from and including Fossil Springs, downstream to and including the Irving housing area. A new Fossil Creek Conservation MA would be created, incorporating the Fossil Springs Botanical area (Coconino NF) and the proposed State Natural Area (Tonto NF).

Responsible Official

The Coconino and Tonto National Forest Supervisors will be the officials responsible for making management decisions, non-significant Forest Plan Amendments, and recommendations to Congress via the Forest Plan Amendments for special designations if needed.

Nature of Decision To Be Made

Within this analysis and planning process, programmatic decisions will be made for the Fossil Creek Planning Area. The scope of these decisions includes the development of Forest Plan desired conditions, standards and guidelines that would provide for the protection and enhancement of fish and wildlife habitat, riparian values, scenic values, and historic and cultural values. These conditions, standards, and guidelines will also determine the character, type, and location of recreation opportunities, roads, trails, and facilities. Site-specific decisions will be made concerning road and trail management.

There will be one environmental analysis documented in an EIS. These amendments are considered to be non-significant Forest Plan Amendments, affecting only a minor portion of either involved national forest.

Scoping Process

In October 2002, the Forest Service sent out a scoping letter and a description of the proposed action for the Fossil Creek planning process. This letter was followed by a public open house in Pine, Arizona in December 2002, and a question and answer session with interested groups in Phoenix, Arizona in January 2003. News releases and articles requesting comments have been published as well. In response to these efforts and the information provided, the Forest Service has thus far received approximately 57 letters and over 330 substantive comments concerning this analysis.

Preliminary Issues

The issues and concerns voiced in comment letters and other communications, along with those expressed at public meetings, have been taken into consideration in the identification of significant issues and in the development of the preliminary alternatives described above.

Primary Issue

Despite the considerable amount of agreement regarding protection of the natural and cultural values associated with Fossil Creek, there remains disagreement as to the amount, type, and location of recreation access and restrictions needed. Some believe that current levels and locations of access should be left unchanged, including all roads and trails, and that there should be no camping or campfire restrictions. Others believe that access should be substantially reduced to best meet resource protection goals, specifically suggesting a reduction in access along the riparian corridor.

Sub-Issues

- Proposed camping and campfire restrictions and trail/road closures limit the public's use of the area more than necessary to protect resources.
- Camping, trails, and vehicle access could result in impacts to soil, water, cultural resources, wildlife, vegetation, and travertine.
- Location of access and use, including roads and trails, could impact natural and cultural values and recreation opportunities.

Comments Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. Please provide

additional comment on the proposed action or any of the possible alternatives so that any revisions or additions to these alternatives may be considered.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal, and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: June 10, 2003.

Nora B. Rasure,

Forest Supervisor, Coconino National Forest.

[FR Doc. 03–15092 Filed 6–13–03; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The U.S. Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on June 25, 2003, at the Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. The Board will consider: a staff update on current investigations, review a bulletin on the dangers of nitrogen asphyxiation; review the status of recommendations made in prior CSB investigations; discuss the possibility of future hazard studies; hear a status report on the CSB redesign of its web site; discuss the reactives roundtable meeting held on June 10, 2003; and finally, review and possibly vote on the agency's revised five-year Strategic Plan.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others. For an update on the status of all outstanding recommendations, go to the CSB Web site at *http://www.csb.gov*.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the relevant issues and factors.

The meeting is open to the public. Please notify the CSB if a translator or interpreter is needed 5 business days prior to the public meeting. For more information, please contact Dan Horowitz at 202–261–7613.

Christopher W. Warner,

General Counsel.

[FR Doc. 03–15276 Filed 6–12–03; 2:36 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1278]

Grant of Authority for Subzone Status, Hyundai Motor Manufacturing Alabama, LLC (Motor Vehicles), Montgomery, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Montgomery Area Chamber of Commerce, grantee of Foreign-Trade Zone 222, has made application for authority to establish special-purpose subzone status at the motor vehicle manufacturing plant of Hyundai Motor Manufacturing Alabama, LLC, located in Montgomery, Alabama (FTZ Docket 55–2002, filed 11–27–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 72914, 12–9–2003);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the motor vehicle manufacturing plant of Hyundai Motor Manufacturing Alabama, LLC, located in Montgomery, Alabama (Subzone 222A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 29th day of May 2003.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–15151 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–2003]

Foreign-Trade Zone 43—Battle Creek, MI; Application for Subzone, Perrigo Company (Pharmaceutical Products), Allegan and Muskegon Counties, MI; Correction

The **Federal Register** notice (68 FR 27985–27986, 5/22/2003) describing the application by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting special-purpose subzone status for the pharmaceutical manufacturing and distribution facilities of Perrigo Company (Perrigo) at locations in Allegan and Muskegon Counties, Michigan, is corrected as follows:

Paragraph 6 should read "The closing period for their receipt is July 21, 2003."

Dated: June 6, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–15152 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews, rescission of administrative review in part, and determination not to revoke order in part.

SUMMARY: On February 7, 2003, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, and Singapore. On March 10, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on ball bearings from Japan (68 FR 11357) (*Preliminary Results for Japan*). The period of review (POR) is May 1, 2001, through April 30, 2002. We invited interested parties to comment on the preliminary results. At the request of certain parties, we held hearings for Germany-specific issues on April 2, 2003, and for Japan-specific issues on April 22, 2003. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Reviews

The products covered by these reviews are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a listing of scope determinations which pertain to the orders, *see* the Scope Determinations Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated April 1, 2002, and hereby adopted by this notice. The Scope Memorandum is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, in the General Issues record (A–100–001) for the 01/02 reviews.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of these proceedings remain dispositive.

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of the

DATES: June 16, 2003.

FOR FURTHER INFORMATION: Please contact the appropriate case analysts for the various respondent firms, as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

France

Minoo Hatten (SNR Roulements), Dunyako Ahmadu (SKF), Mark Ross, or Richard Rimlinger.

Germany

Dunyako Ahmadu (FAG), Sochieta Moth (SKF), Catherine Cartsos (Paul Mueller), Jeffrey Frank (Torrington), Mark Ross, or Richard Rimlinger.

Italy

Fred Aziz (FAG), Janis Kalnins (SKF), Mark Ross, or Richard Rimlinger.

Japan

Thomas Schauer (Koyo), Lyn Johnson (NTN), David Dirstine (NPBS), Dmitry Vladimirov (Sapporo), Kristin Case (NSK), Mark Ross, or Richard Rimlinger.

Singapore

Yang Jin Chun (NMB/Pelmec) or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (ball bearings) from France, Germany, Italy, and Singapore (68 FR 6404) (*Preliminary Results for France, et al*).

orders on ball bearings are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Laurie Parkhill, Acting Deputy Assistant Secretary, to Jeffrey May, Acting Assistant Secretary, dated June 9, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. This Decision Memo, which is a public document, is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home-market sales that failed the cost-of-production test for the following firms for these final results of reviews:

Country	Company
France	SNR Roulements and SKF.
Germany	FAG, Paul Mueller, and SKF.
Italy	FAG and SKF.
Japan	Koyo, NTN, NPBS, and NSK.
Singapore	NMB/Pelmec.

Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information by the submission due date or in the form and manner requested by the Department, significantly impedes a proceeding under the Act, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information that is necessary to the determination but not meeting all of the established requirements only if the information is submitted by the established deadline, the information can be verified, the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the established requirements with respect to the information, and the information can be used without undue difficulties.

Koyo's affiliates knew or had reason to know that their sales of ball bearings were destined for the United States, but Koyo did not report these sales in its original questionnaire response. Moreover, in a supplemental questionnaire dated January 31, 2003, we asked Koyo to "explain whether any of your affiliated resellers * * * sold ball bearings to distributors but had knowledge at the time of sale that the bearings were destined to the United States," and, if so, to "report all such sales as U.S. sales and all expenses associated with such sales at this time." Koyo's response was that neither Koyo nor its affiliates knew or had reason to know at the time of sale that these ball bearings were destined to the United States, but the administrative record demonstrates otherwise. Therefore, we find that Koyo significantly impeded this proceeding by not reporting these sales and associated expenses as we requested. Because of Koyo's non-response to our inquiry, we do not have the data we need to calculate a margin on these U.S. sales. Therefore, we find it appropriate to rely on the facts available in order to establish a duty margin for the sales in question. Please see the Koyo Final Results Analysis Memorandum dated June 6, 2003 (Koyo Final Memo), for a complete description of the facts of this case. (Section 777(b)(1)(A) of the Act prohibits us from disclosing the proprietary business information demonstrating that the affiliated resellers knew or had reason to know at the time of sale that these ball bearings were destined to the United States in this notice.)

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Because Koyo and its affiliates knew or had reason to know that the ultimate destination of their sales of ball bearings was the United States but did not report these sales in the response to our supplemental questionnaire, we have determined that Koyo has not acted to the best of its ability in reporting these sales. Therefore, we find it appropriate to use an adverse inference in establishing the antidumping margin applicable for these sales. As adverse facts available, we calculated the margins for these sales using a rate of 73.55 percent, which is the margin we calculated for Koyo in the less-than-fair-value investigation (*see Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof from Japan*, 54 FR 20904–20905 (May 15, 1989)) and which we were able to corroborate. Because section 777(b)(1)(A) of the Act prohibits us from discussing the business proprietary information we used in our corroboration of this rate in this notice, please see the Koyo Final Memo for a complete description of our corroboration methodology.

We also find that SKF France did not provide information we requested at verification, thus significantly impeding this proceeding we requested in our January 24, 2003, verification outline, which we issued to SKF France ten days prior to the verification, that SKF France "have at hand all company records and worksheets used in responding to the questionnaire and supplemental requests." In it we also stated that we would "review the computer programs [SKF France] used to identify the sales for reporting and explain the underlying methodology used to compile the home-market sales quantity and value reported in [SKF France's] submissions."

In addition, the verification outline indicated that, "[i]f your client is not prepared to support or explain a response item at the appropriate time, then we will move on to another topic. If, due to time constraints, returning to that item is not possible, we may consider the item unverified. Furthermore, if information requested for verification is not supplied, or is unverified, pursuant to section 776(a) of the Tariff Act (the Act), we may use facts otherwise available in reaching the applicable determination."

At verification, however, SKF France was unprepared to segregate sales of Sarma (an affiliated company within the SKF France entity) product by market, class, or kind of merchandise. Since SKF France did not provide the necessary information during the verification in the form and manner we requested, we find it appropriate to use partial facts available under section 776(a)(2) of the Act.

We find it appropriate to apply adverse partial facts available also to SKF France because SKF France did not act to the best of its ability by not providing information we requested. We issued our verification outline to SKF France in a timely manner. SKF France selected Paris as the verification site and notified us only at the verification that the information that we requested was unavailable in Paris but was located at St. Vallier, France. *See Verification of SKF France's Ball Bearings and Parts Thereof from France and Sarma's Home-Market and Export Price Sales Data* dated March 7, 2003. SKF France explained to us that the requested information at its Sarma facility could not be transported to Paris for the purpose of verification. SKF France had ample opportunity to notify us in advance so we could plan a visit to these two locations for a further verification but it did not do so.

Section 776(b) of the Act provides that the Department may use as adverse facts available information derived from the petition, a final determination in an antidumping investigation, any previous review, or any other information placed on the record. The statute does not provide a clear obligation or preference for relying on a particular source in choosing information to use as adverse facts available, but the Department may use as facts available a final determination in an less-than-fair-value proceeding even if the less-than-fair-value determination is based on the best information available (BIA). *See Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Administrative Review*, 62 FR 18396, 18402 (April 15, 1997), and *Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 48181, 48183 (September 9, 1998).

For SKF France, we used the highest rate from a prior segment of the hearing, 66.42 percent, and applied it exclusively to Sarma's U.S. sales as adverse facts available. This rate was calculated for SKF France in the less-than-fair-value investigation. *See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof from France*, 54 FR 20902 (May 15, 1989). In this case, we were able to corroborate the 66.42 percent margin. Because section 777(b)(1)(A) of the Act prohibits us from discussing the business proprietary information we used in our corroboration of this rate in this notice, please see the SKF France Final Results Analysis Memorandum dated June 6, 2003, for a complete description of our corroboration methodology.

Other Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain firms. We have corrected programming and clerical errors in the preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in the relevant sections of the Decision Memo, which is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html* and is on file in the CRU, Room B–099.

Final Results of the Reviews

We determine that the following percentage weighted-average margins on ball bearings exist for the period of May 1, 2001, through April 30, 2002:

Company	Margin (percent)
FRANCE	
SNR Roulements	3.52
SKF	10.08
GERMANY	
FAG	1.45
Torrington	70.41
Paul Mueller	0.19
SKF	3.38
ITALY	
FAG	2.87
SKF	5.08
JAPAN	
Koyo	4.98
NTN	4.51
NPBS	4.21
Sapporo	5.97
NSK, Ltd.	2.68
SINGAPORE	
NMB/Pelmec	1.62

Rescission of the Review in Part

In the *Preliminary Results for Japan*, we stated our intent to rescind the administrative reviews we initiated of Jiro Okayama, Eisho Trading Co., Ltd., and Phoenix International Corporation (collectively "Japanese trading companies") with respect to ball bearings from Japan. *See* 68 FR at 11357–58. We hereby affirm our preliminary findings regarding this matter and we are rescinding the reviews with respect to these Japanese trading companies in these final results.

We are also rescinding the administrative review we initiated of Taisei Industries, Ltd. (Taisei). Since the preliminary results, Taisei has supplied information to the Department supporting its claim that its suppliers had knowledge at the time of sale to Taisei that their ball bearings were destined for exportation to the United States. Subsequently, we find that Taisei is not the proper party to review with respect to the sales in question. Therefore, we are also rescinding the administrative review with respect to sales made by Taisei.

The discussion of issues and comments pertaining to these trading companies is contained in the "Resellers" section of the Decision Memo, which is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html* and is on file in the CRU, Room B–009.

Revocation of Order in Part

In the *Preliminary Results for France*, et al, we stated our intent to revoke the order on ball bearings from Germany in part with respect to Paul Mueller. *See* 68 FR at 6405–06. We find that, because Paul Mueller did not sell ball bearings to the United States in commercial quantities during the first period for which we conducted an administrative review (1998–1999), the regulatory requirement for revocation has not been satisfied. *See* 19 CFR 351.222(d)(1). Accordingly, we reverse our preliminary intent to revoke the order in part with respect to Paul Mueller and are not revoking the antidumping duty order in part with respect to Paul Mueller in these final results of review.

The discussion of issues and comments pertaining to our decision not to revoke is contained in the "Revocation" section of the Decision Memo, which is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html* and is on file in the CRU, Room B–009.

Assessment Rate

The Department will determine, and the U.S. Bureau of Customs and Border Protection (Customs), formerly known as the U.S. Customs Service, shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-specific assessment rate or value for subject merchandise.

a. Export Price

With respect to export-price (EP) sales, we divided the total dumping margins (calculated as the difference between normal value and the EP) for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's/customer's entries under the relevant order during the review period.

b. Constructed Export Price

For constructed export-price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each

importer. We will direct Customs to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. *See* 19 CFR 351.212(b)(1).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value of that company's sales of merchandise during the review period subject to each order.

To derive a single deposit rate for each respondent, we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of ball bearings entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and, therefore, *de minimis*, the Department will not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France*, et al: *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993). These "All Others" rates are the "All Others" rates from the relevant LTFV investigation.

These deposits requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 9, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Model Matching
2. Margin-Calculation Methodology
3. CV Profit
4. Price Adjustments
   - A. Direct and Indirect Selling Expenses
   - B. Discounts and Rebates
   - C. CEP Profit
5. Level of Trade
6. Sample Sales, Prototype Sales, and Sales Outside the Ordinary Course of Trade
7. Movement Expenses
8. Cost Issues
9. Miscellaneous
   - A. Facts Available
   - B. Separate Assessment Rates
   - C. Revocation
   - D. Arm's-Length Test
   - E. Resellers

[FR Doc. 03–15148 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Certain Cut-to-Length Carbon Steel Plate From Ukraine; Final Results of Administrative Review of the Suspension Agreement and Determination Not To Terminate

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of the Administrative Review of the Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine and Determination Not to Terminate.

SUMMARY: On December 9, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the suspension agreement on certain cut-to-length carbon steel plate from Ukraine (the Agreement). *See Notice of Preliminary Results of the Administrative Review of the Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 67 FR 72916 (December 9, 2002) (*Preliminary Results*). The merchandise covered by this administrative review is certain cut-to-length carbon steel plate as described in the "Scope of the Review" section of this **Federal Register** notice. The period of review (POR) is November 1, 2000 through October 31, 2001. In these final results, we have determined that Azovstal Iron and Steel Works (Azovstal), Ilyich Iron and Steel Works (Ilyich), and the Government of Ukraine (collectively, respondents) have complied with the terms of the Agreement. However, we are not terminating the Agreement or the underlying investigation, pursuant to section 351.222(b)(1)(i)(B) of the Department's regulations, because the continued maintenance of the Agreement is necessary to offset dumping.

EFFECTIVE DATE: June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department conducted verification on March 13, 2003, through March 26, 2003. We verified the GOU's responses at the offices of the Ministry of Economy in Kiev, Ukraine on March 13 and 14, 2003; the Department's verifiers then traveled to Mariupol and Donetsk, Ukraine to verify the information submitted by Ilyich and Azovstal from March 17 through 20, 2003. Finally, the Department verified relevant information pertaining to sales made by Azovstal through an affiliated trading company, Leman Commodities. This last portion of the verification took place at Leman's sales offices in Donetsk, Ukraine on March 21, 2003, and at Leman's corporate headquarters in Geneva, Switzerland on March 24 and 25, 2003. We issued the verification report on May 2, 2003.

We invited parties to comment on our *Preliminary Results*. We received a case brief from Azovstal and Ilyich on May 13, 2003. Petitioners, Bethlehem Steel Corporation and United States Steel Corporation, filed their rebuttal brief on May 19, 2003.

Scope of Review

The products covered by this agreement include hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

Analysis of Comments Received

All issues raised in the case and rebuttals briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated June 6, 2003, which is hereby adopted by this notice. Azovstal and Ilyich submitted a single comment requesting termination of the Agreement and the suspended antidumping investigation. Parties can find a complete discussion of termination of the Agreement and the underlying investigation and the corresponding recommendations in the public Decision Memorandum which is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

For the reasons described in the Decision Memorandum, the Department has determined not to terminate the Agreement or underlying investigation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: June 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–15150 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–862]

Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Finn at (202) 482–0065 or Michele Mire at (202) 482–4711, AD/CVD Enforcement Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that high and ultra-high voltage ceramic station post insulators (HVSPs) from Japan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on January 21, 2003.[1] *See Notice of Initiation of Antidumping Duty Investigation: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 4169 (January 28, 2003) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On February 13, 2003, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of HVSPs. *See Certain*

[1] The petitioners in this investigation are Lapp Insulator Company LLC (Lapp), Newell Porcelain Co., Inc. (Newell), Victor Insulators, Inc. (Victor), and the IUE Industrial Division of the Communications Workers of America, the union representing employees of Lapp (collectively, the petitioners).

Ceramic Station Post Insulators from Japan, 68 FR 9723 (February 28, 2003).

On February 3, 2003, and February 28, 2003, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. Petitioners provided comments on February 10, 2003, February 14, 2003, February 24, 2003, and March 18, 2003. Respondent, NGK Insulators, Ltd. (NGK), provided comments on February 10, 2003, February 14, 2003, February 21, 2003, and March 18, 2003.

On February 28, 2003, the Department issued a complete antidumping duty questionnaire to NGK.[2] NGK submitted its Section A questionnaire response on April 4, 2003. On April 11, 2003, the Department requested that NGK report one additional product characteristic, cantilever strength, in its Sections B and C questionnaire responses. On April 18, 2003, NGK withdrew from the antidumping duty investigation and requested that the Department return its Section A questionnaire response. On May 9, 2003, the Department removed the proprietary version of NGK's original Section A questionnaire response from the official record and returned it to NGK. The Department sent a letter to NGK certifying the removal and destruction of all proprietary copies of NGK's Section A questionnaire response. The Department retained the public version of NGK's Section A questionnaire response as part of the public record.

Period of Investigation

The period of investigation (POI) is October 1, 2001, through September 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the date of the filing of the petition (i.e., December 31, 2002).

Scope of Investigation

The scope of this investigation covers station post insulators manufactured of porcelain, of standard strength, high strength, or extra-high strength,[3] solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kV Basic Impulse Insulation Level (BIL) and above), including, but not limited to, those manufactured to meet the following American National Standards Institute, Inc. (ANSI) standard class specifications: T.R.-286, T.R.-287, T.R.-288, T.R.-289, T.R.-291, T.R.-295, T.R.-304, T.R.-308, T.R.-312, T.R.-316, T.R.-362 and T.R.-391. Subject merchandise is classifiable under subheading 8546.20.0060 of the Harmonized Tariff Schedule of the United States (HTSUS) Annotated. While the HTSUS subheading is provided for convenience and customs purposes, the written description above remains dispositive as to the scope of the investigation.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On April 18, 2003, NGK notified the Department that it did not intend to participate further in the Department's investigation and requested the return of all of its business proprietary information. NGK was notified by the Department that failure to submit the requested information by the date specified could result in use of the FA, as required by section 776(a)(2)(B) of the Act and section 351.308 of the Department's regulations. *See* letters from the Department to respondent dated February 28, 2003, March 20, 2003, April 1, 2003, and April 16, 2003.

As described above, NGK withdrew its response to Section A of the Department's questionnaire, and chose not to respond to Sections B and C. Because NGK withheld information requested by the Department essential to the calculation of dumping margins, we have applied FA to calculate the dumping margin pursuant to section 776(a)(2) of the Act.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). As a general matter, it is reasonable for the Department to assume that NGK possessed the records necessary for the Department to complete its investigation. Therefore, by withdrawing some of the information the Department requested, and declining to submit the remainder of the requested information, NGK failed to cooperate to the best of its ability. As NGK failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In this case, we have used the dumping margin alleged in the petition as AFA.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103–316 at 870 (1994), and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In order to determine the probative value of the petition margin, we examined evidence supporting the calculation of the antidumping duty margin in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See AD Investigation Checklist*, dated January 21, 2003 (*Initiation Checklist*) for a discussion of the margin calculation in the petition (public version is on file in Import Administration's Central Record Unit (CRU) of the Department of Commerce, Room B-099). In addition, in accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the constructed export price (CEP) and normal value (NV) calculations on which the margin in the petition was based.

Constructed Export Price

With respect to the margin in the petition, CEP was based on two price quotes for NGK merchandise during the POI. The petitioners calculated net U.S. price by deducting from the starting price U.S. sales commissions, inventory carrying costs, U.S. warehousing expenses, U.S. imputed credit expenses, foreign inland freight, ocean freight, U.S. customs duty and fees, U.S. inland freight, U.S. indirect selling expenses, and an amount for CEP profit. *See Initiation Checklist.*

With regard to the CEP contained in the petition, the Department has no information from the respondent and is aware of no other independent sources of information that would enable us to further corroborate the CEP. *See Initiation Checklist.* Notably, the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(d). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance, the Department need not prove that the facts available are the best alternative information." Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with section 776(c) of the Act, we consider the CEP based on the petition to be corroborated to the extent practicable for purposes of this preliminary determination.

Normal Value

The petitioners calculated NV based on home market price quotes that were obtained through foreign market research. These prices quotes, which were made during the POI, are for subject merchandise of the same grade as that of the merchandise for which the U.S. price quotes for CEP were obtained. *See Initiation Checklist.* With regard to the NV contained in the petition, as with the CEP contained in the petition, the Department has no information from the respondent and is aware of no other independent sources of information that would enable us to further corroborate NV.

Accordingly, in selecting AFA with respect to NGK, the Department applied the petition dumping margin of 105.8 percent.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-price dumping margin, there are no other estimated margins available with which to create the "all others" rate. Therefore, we applied the petition margin of 105.8 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 22163 (May 3, 2001).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to suspend liquidation of all imports of HVSPs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the BCBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated below. These suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/Exporter	Weighted-Average Percent Margin
NGK Insulators, Ltd.	105.8 percent
All Others	105.8 percent

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination is the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of HVSPs from Japan, case briefs must be submitted no later than 30 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calendar days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

[3] Station post insulators are manufactured in various styles and sizes, and are classified primarily according to the voltage they are designed to withstand. Under the governing industry standard issued by the Institute of Electrical and Electronic Engineers (IEEE), the voltage spectrum is divided into three broad classes: "medium" voltage (*i.e.*, less than or equal to 69 kilovolts), "high" voltage (*i.e.*, from 115 to 230 kilovolts), and "extra-high" or "ultra-high" voltage (*i.e.*, greater than 230 kilovolts).

provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of HVSPs from Japan no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: June 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–15149 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Surveys To Support the Inadequate Interoperability Cost Analysis of the U.S. Capital Facilities Industry

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 15, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to the attention of Phyllis Boyd, National Institute of Standards and Technology, 100 Bureau Drive, Stop 3220, Gaithersburg, MD, 20899–32210, (301) 975–4062. In addition, written comments may be sent via e-mail to *phyllis.boyd@nist.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a nonregulatory agency of the Department of Commerce, proposes to conduct a number of surveys of the U.S. capital facilities industry, a sector of the U.S. construction and facilities management industry. The surveys, to be administered to capital facilities architects, general contractors, engineers, suppliers, software developers, and owner-operators, will be designed to gather quantitative data. This data will be used to calculate the efficiency loss, in dollars, of inadequate electronic interoperability in the capital facilities supply chain and in capital facilities life cycle management. Each aforementioned stakeholder group will be administered a unique survey tailored to their activities in the design, construction, and operation of capital facilities. The surveys will collect data on respondents' capital facilities projects, business processes involving the exchange of electronic and paper-based communication, information technology investments, and the amount of labor involved in managing information flows internally and externally. Respondents will also be offered the opportunity to freely comment on the extent to which interoperability issues impact their businesses and operations. The surveys will be voluntary and confidential. At no time will the data collected be disclosed to any third parties.

II. Method of Collection

NIST will collect this information through an Internet survey housed on a Web site using 128-bit encryption. Respondents will create their own unique user IDs and passwords. If respondents indicate that they are available for further comment or for clarifying responses, they may be contacted via telephone or e-mail.

III. Data

OMB Number: None.
Form Numbers: None.
Type of Review: Regular Submission.
Affected Public: Individuals or households; business or for-profit organizations.
Estimated Number of Respondents: 225.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Respondent Burden Hours: 113.
Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15073 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060203A]

Endangered Species; File No. 1438

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Thane Wibbels, Department of Biology, University of Alabama at Birmingham, Birmingham, AL 35294–1170, has applied in due form for a permit to take Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 16, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301) 713–1401 or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to utilize tangle net methodology combined with observational surveys from boats to study sea turtles in the estuarine systems of Alabama state waters from Grand Bay to Perdido Bay. The purpose of the research is to provide a basic understanding of the abundance, location, and movement of sea turtles within these estuarine ecosystems. This research will help resource managers develop optimal management strategies for these estuaries in order to conserve and protect sea turtles and their habitat. The applicant proposes to take 30 Kemp's ridley, 30 loggerhead, and 30 green sea turtles annually. Turtles would be captured with a 9.9 inch (25 cm) mesh tangle net that is 731.7 feet (223 m) long by 19.7 feet (6 m) deep. Turtles would be measured, weighed, flipper tagged, blood sampled and released. A subset of five loggerhead and five Kemp's ridley sea turtles would be tagged with a sonic or satellite transmitter. The requested duration of this permit is 5 years.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: June 10, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15154 Filed 6–13–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m., Wednesday, June 18, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–15226 Filed 6–12–03; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 20, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–15227 Filed 6–12–03; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 27, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–15228 Filed 6–12–03; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, July 3, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–15229 Filed 6–12–03; 11:08 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m. Friday, July 11, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–15230 Filed 6–12–03; 11:08 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, July 18, 2003

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 03–15231 Filed 6–12–03; 11:08 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, July 25, 2003.
PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 03–15232 Filed 6–12–03; 11:08 am]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request— Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.
ACTION: Notice.

SUMMARY: In the **Federal Register** of April 1, 2003 (68 FR 15707), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211). No comments were received in response to that notice. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information without change for a period of three years from the date of approval.

The Consumer Product Safety Improvement Act of 1990 (Pub. L. 101–608, 104 Stat. 3110) requires all automatic residential garage door openers manufactured after January 1, 1993, to comply with the entrapment protection requirements of UL Standard 325 that were in effect on January 1, 1992. In 1992, the Commission codified the entrapment protection provisions of UL Standard 325 in effect on January 1, 1992, as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211, Subpart A. Certification regulations implementing the standard require manufacturers, importers and private labelers of garage door operators subject to the standard to test their products for compliance with the standard, and to maintain records of that testing. Those regulations are codified at 16 CFR part 1211, Subparts B and C.

The Commission uses the records of testing and other information required by the certification regulations to determine that automatic residential garage door operators subject to the standard comply with its requirements. The Commission also uses this information to obtain corrective actions if garage door operators fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211.

Type of request: Approval of a collection of information.

General description of respondents: Manufacturers, importers, and private labelers of automatic residential garage door operators.

Estimated number of respondents: 22.

Estimated average number of hours per respondent: 40 per year.

Estimated number of hours for all respondents: 880 per year.

Estimated cost of collection for all respondents: $37,224.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 16, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for reinstatement of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671.

Dated: June 6, 2003.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.
[FR Doc. 03–15062 Filed 6–13–03; 8:45 am]
BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.
ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 15, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Cleveland, DFAS–G/CL, ATTN: Ms. Sharon Winn, 1240 East Ninth Street, Cleveland, Oh 44199–2055.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, Please write to the above address, or call Ms. Sharon Winn, 216–522–5396.

Title, Associated Form, and OMB Number: Trustee Report, DD Form 2826, OMB License 0730–0012.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services. Pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals.

Annual Burden Hours: 300 hours.

Number of Respondents: 600.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of government funds and member's benefits.

June 3, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–15035 Filed 6–13–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.
ACTION: Notice

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including have through the use of automated collection techniques or other forms of information technology.

DATES: August 15, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Finance and Accounting Service—Cleveland, DFAS–G/CL, ATTN: Ms. Sharon Winn, 1240 East Ninth Street, Cleveland, OH 44199–2055.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Sharon Winn, (216) 522–5396.

Title, Associated Form, and OMB Number: Application for Trusteeship, DD Form 2827, OMB License 0730–0013.

Needs and Uses: This form is used to apply for appointment of trusteeship for a mentally incompetent member of the uniformed services. Pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals.

Annual Burden Hours: 18.75 hours.

Number of Respondents: 75.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

Dated: June 3, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–15036 Filed 6–12–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096]

Federal Acquisition Regulation; Information Collection; Patents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).
ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0096).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning patents. This OMB clearance currently expires on September 30, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 15, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection

with performing a Government contract above a dollar value of $25,000 (sections 27.202–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.204–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Number of Respondents: 30.
Responses Per Respondent: 1.
Total Responses: 30.
Average Burden Hours Per Response: .5.
Total Burden Hours: 15.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: June 6, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–15079 Filed 6–13–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Federal Acquisition Regulation; Information Collection; Cost Accounting Standards Administration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0129).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning cost accounting standards administration. This OMB clearance expires on September 30, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 15, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Acquisition Policy Division, GSA, 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

Number of Respondents: 644.
Responses Per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours Per Response: 200.85.
Total Burden Hours: 293,643.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: June 9, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–15080 Filed 6–13–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATES: Upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Dale R. Collins, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060–6219, (703) 767–1039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Earl Newman, Assistant Director, Operations, DCAA, Chairperson.

Mr. Robert DiMucci, Assistant Director, Policy and Plans, DCAA, member.

TBA, General Counsel, DCAA, member.

Regional Performance Review Board

Mr. William Serafine, Regional Director, Western Region, DCAA, Chairperson.

Mr. Michael Steen, Regional Director, Eastern Region, DCAA, member.

Mr. Edward Nelson, Deputy Regional Director, Central Region, DCAA, member.

Dated: June 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–15037 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Preparation of a Final Supplemental Environmental Impact Statement for the Airborne Laser program

AGENCY: Missile Defense Agency, DoD.

ACTION: Notice of availability.

SUMMARY: The Missile Defense Agency (MDA) announces the availability of a Final Supplemental Environmental Impact Statement (FSEIS) for the Airborne Laser (ABL) Program. This FSEIS supplements the Final Environmental Impact Statement (FEIS) for the Program Definition and Risk Reduction Phase of the ABL test program, completed in April 1997. The FSEIS analyzes proposed ABL Program test activities at test ranges associated with Kirtland Air Force Base (AFB) and White Sands Missile Range (WSMR)/ Holloman AFB, New Mexico; and Edwards AFB (EAFB) and Vandenberg AFB (VAFB), California. The FSEIS has been prepared in accordance with the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321, *et seq.*), and the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508). The ABL is a laser weapon system installed on a Boeing 747–400F aircraft capable of operating for extended periods of time. Up to two such aircraft would be developed for testing purposes.

DATES: Comments must be received by July 16, 2003.

ADDRESSES: to obtain a copy of the FSEIS please write to: Mr. Charles J. Brown, Environmental Coordinator, Project Execution Division, Headquarters, Air Force Center for Environmental Excellence, 3207 Sidney Brooks Road, Building 532, Brooks AFB, TX 78235–5363 or a copy of it can also be accessed at *http://www.afcee.brooks.af.mil/ec/eiap/eis/abl/ABL_F-SEIS_Apr_03.pdf.*

Individuals or organizations may provide comments on the FSEIS by sending written comments to: Ms. Pamelia Bain, Director, Legislative Affairs, Missile Defense Agency, 7100 Defense Pentagon, Washington, DC 20301–7100.

FOR FURTHER INFORMATION CONTACT: Mr. Crate J. Spears, (703) 697–4123.

SUPPLEMENTARY INFORMATION: The ABL weapon system would include four lasers:

- Active Ranging System (ARS) Laser: a small carbon dioxide laser used to begin tracking a target,
- Track Illuminator Laser (TILL): a solid state laser used to provide detailed tracking of a target,
- Beacon Illuminator Laser (BILL): a solid state laser used to measure atmospheric distortion, and
- High-Energy Laser (HEL): the Chemical Oxygen-Iodine Laser (COIL) used to destroy a target.

An additional laser, a surrogate for the High-Energy Laser (SHEL), would be used during testing in place of the HEL. The SHEL is a low-power solid-state laser that would be used in both ground- and flight-testing. The ABL also would include Infrared Search and Track (IRST) sensors, passive infrared devices used to identify a heat source.

The 1997 ABL FEIS analyzed use of a COIL HEL on an aircraft to destroy ballistic missiles in the boost phase. The Record of Decision (ROD) for the FEIS documented the Air Force's decision to proceed with ABL home base activities at EAFB, diagnostic test activities over WSMR, and expanded area test activities at VAFB and the adjacent Point Mugu Naval Air Warfare Center, California. Since completion of the FEIS, specific proposed test activities have been identified and additional information made available about the proposed testing that warranted preparation of a Supplemental Environmental Impact Statement (SEIS).

Dated: June 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense,

[FR Doc. 03–15034 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: July 17, 2003, from 8 a.m. to 5 p.m., and July 18, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Peabody Court Hotel, 612 Cathedral Street, Baltimore, Maryland 21201.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, the Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make a oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than June 23, 2003.

Dated: June 4, 2003.

Patricia L. Toppings,

Alternate OSF Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–15041 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board 2003 Summer Study will meet in closed session on August 4–15, 2003, at the Beckman Center, Irvine, CA. At this meeting, the Defense Science Board will discuss interim findings and recommendations resulting from two ongoing Task Force activities: DoD Roles and Missions in Homeland Security, and Future Strategic Strike Forces.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will develop recommendations regarding: The definition of "Homeland Security" and the specific roles and missions DoD will be responsible for accomplishing; the prioritized goals for these DoD roles and missions in a national security emergency; the DoD strategy and plans for the employment of National Guard and Reserve forces capabilities to participate in Homeland Security and also respond to warfighting demands overseas; the known and many unknown vulnerabilities to DoD force projection and how projection issues and responsibilities will be addressed in

the larger context of Homeland Security; and the classes of technologies and systems that DoD should have the lead in developing and fielding which have applications for homeland security as well.

The Board will also review and develop recommendations regarding: The assessed future strategic strike force needs of the Department of Defense; the estimated systems life of the current nuclear strike forces; the future need for nuclear strike forces; a strategy for the evolution of the current nuclear force capability; promising non-nuclear strike systems with such capabilities and consequence that should be coherently planned and directed with strategic nuclear forces; and new concepts and approaches, to include hypersonics, for the application of these strategic nuclear and non-nuclear forces that address the future strategic environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that the meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: June 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–15039 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting cancellation.

SUMMARY: The Defense Science Board Task Force on Integrated Fire Support in the Battlespace meetings scheduled for June 4–5, 2003, and July 9–10, 2003, as announced in the **Federal Register** (68 FR 20123, April 24, 2003), are hereby cancelled.

Dated: June 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–15038 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Enabling Joint Force Capabilities will tentatively meet in closed session on July 1, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task force will review the current state of assigned responsibilities and accountability for joint capabilities to quickly bring combat forces together and focus them on joint objectives across a wide spectrum of possible contingencies and will help identify unfilled needs and areas where assigned responsibility and accountability calls for further clarification and/or organizational arrangements.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will identify specific characteristics and examples of organizations that could be capable of accepting responsibility and accountability for delivering the capability with needed responsiveness, and will recommend further steps to strengthen the joint structure ability to quickly integrate service-provided force capabilities into effective joint forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that the Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: June 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–15040 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The Office of the Inspector General, DoD, is deleting two systems of records notices and amending three systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 16, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

CIG–02

SYSTEM NAME:

Applicant Records (February 22, 1993, 58 FR 10213).

Reason: These records are being maintained under the Office of Personnel Management Government-Wide Privacy Act systems of records notices. Therefore, the Inspector General, DoD is deleting its system of records notice.

CIG–12

SYSTEM NAME:

Drug Free Workplace Records (February 22, 1993, 58 FR 10213).

Reason: These records are being maintained under the Office of Personnel Management Government-Wide Privacy Act systems of records notices. Therefore, the Inspector General, DoD is deleting its system of records notice.

Amendment

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files (April 3, 2003, 68 FR16264).

Changes

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Freedom of Information and Privacy Act Office, Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

* * * * *

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files.

SYSTEM LOCATION:

Freedom of Information and Privacy Act Office, Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, as amended; DoD 5400.11–R, Department of Defense Privacy Program; 5 U.S.C. 552, The Freedom of Information Act, as amended; and DoD 5400.7–R, DoD Freedom of Information Act Program.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be provided to other Federal agencies and state and local agencies when it is necessary to coordinate responses or denials.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name, subject matter, date of document, and request number.

SAFEGUARDS:

Records are stored in locked security containers accessible only to authorized personnel.

RETENTION AND DISPOSAL:

FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 or when no longer needed to support office business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Freedom of Information Act and Privacy Act Office, Office of Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Office of Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Office of Communications and Congressional Liaison, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individuals on whom records are maintained and official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other'' systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those 'other'' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

CIG–13

SYSTEM NAME:

Travel and Transportation System (February 22, 58 FR 10213).

* * * * *

Changes:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Travel Branch, Administrative Services Division, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

* * * * *

PURPOSE(S):

Delete '(including Blanket Travel Orders)'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained in a active status for the current fiscal year. Records are destroyed after six years after the period of the account.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Travel Branch, Administrative Services Division, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

* * * * *

CIG–13

SYSTEM NAME:

Travel and Transportation System.

SYSTEM LOCATION:

Chief, Travel Branch, Administrative Services Division, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former Office of the Inspector General employees who participate or who are eligible to participate in OIG Temporary Duty (TDY) and Permanent Change of Station (PCS) Travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of name, Social Security Number, title, grade and series/rank of employee, and travel order number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 57, Travel, Transportation, and Subsistence; DoD Directive 4500.9–R, Defense Transportation Regulation, Parts I–VI of the Joint Federal Travel Regulation Volume I and the Joint Travel Regulation, Volume II; DoD Directive 5106.1, Inspector General of the Department of Defense (IG, DOD); DoD Instruction 4500.42, DoD Passenger Transportation Reservation and Ticketing Services; OIG Instruction 5400.42, IG Travel and Transportation Program; OIG Manual 4500.42, OIG Travel Manual; and E.O. 9397 (SSN).

PURPOSE(S):

Information in this system will be used to issue travel orders for TDY and PCS travel; to track travel performed in accordance with budgetary requirements; and to track travel vouchers submitted for reimbursement of travel; and to alert authorities to any discrepancies in travel performed by OIG employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in an automated file server and automated records on computer disks.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number or travel order number.

SAFEGUARDS:

The system is accessible only by authorized personnel on a need-to-know basis. Access to the automated file server is by assigned password restricted to only those individuals requiring access to the system module in connection with their official duties. Access to the area is through a cipher locked room with the code provided only on a need-to-know basis. Computer disks and paper records are stored in locked file cabinets residing in a monitored area which is locked after normal business hours.

RETENTION AND DISPOSAL:

Records are maintained in an active status for the current fiscal year. Records are destroyed after six years after the period of the account.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Travel Branch, Administrative Services Division, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain their full name, Social Security Number, current home address and telephone number, and if authorizing someone to represent them, a statement to that effect.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name of the individual, non-duty mailing address and daytime telephone number, and if authorizing someone to represent them, a statement to that effect.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data is obtained directly from the individual on Inspector General Form 7750.50–4, Request for Temporary Duty Travel Form; Request for Permanent change of Station Form; and computer tape of the OIG Personnel Listing.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CIG–17

SYSTEM NAME:

Voluntary Leave Transfer Program Records (December 1, 1998, 63 FR 66128).

Changes

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, and the status of that hardship.'

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade and pay level, leave balances, number of hours donated, the name of the designated recipient.

* * * * *

PURPOSE(S):

Delete first sentence and replace with 'The file is used in managing the Office of the Inspector General, Department of Defense, Voluntary Leave Transfer Program.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

* * * * *

CIG–17

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, and the status of that hardship.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 *et seq.*, Leave; 5 CFR part 630, Absence and Leave; IG Instruction 1424.630, Leave Administration Policy and Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in managing the Office of the Inspector General, Department of Defense, Voluntary Leave Transfer Program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(a)(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness; where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Privacy Act Officer at the address above.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 and may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CIG 18

SYSTEM NAME:

Grievance Records (February 16, 1999, 64 FR 7632).

Changes

* * * * *

SYSTEM LOCATION:

Records are maintained in the Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

* * * * *

CIG 18

SYSTEM NAME:

Grievance Records (February 16, 1999, 64 FR 7632).

SYSTEM LOCATION:

Records are maintained by the personnel office of the Office of the Inspector General, DoD, Personnel and Security Directorate, Employee Relations Division, 400 Army Navy Drive, Suite 512, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Inspector General, Department of Defense employees who have submitted grievances in accordance with 5 CFR Part 771, DoD Directive 1400.25–M Subchapter 771 and DoD Inspector General Instruction 1400.5.

CATEGORIES OF RECORDS IN THE SYSTEM:

The case files contain all documents related to grievances including reports of interviews and hearings, examiner's findings and recommendations, copy of the original and final decision, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2302, Prohibited personnel practices; 5 U.S.C. 7121, Grievance procedures; 5 CFR part 771; DoD 1400.25–M, Subchapter 771, Administrative Grievance System; DoD Inspector General Instruction 1400.5; and E.O. 9397 (SSN).

PURPOSE(S):

The information will be used by the Inspector General, Department of Defense to control and process grievances; to investigate the allegations; conduct interviews; and render the final decision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(a)(b)(3) as follows:

To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

To provide information to officials of labor organization reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matter affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper form.

RETRIEVABILITY:

Records are retrieved by names of the individuals on whom the records are maintained.

SAFEGUARDS:

Records are maintained in locked metal file cabinets, to which only OIG, DoD authorized personnel have access.

RETENTION AND DISPOSAL:

Records are destroyed four years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests for information should include the full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Privacy Act Officer, Freedom of Information Act/ Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests for information should include the full name.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 and may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual on whom the record is maintained; by testimony of witnesses; by Agency officials; or from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–15045 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, *Per Diem*, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas *per diem* rates.

SUMMARY: The *Per Diem*, Travel and Transportation Allowance Committee is publishing Civilian Personnel *Per Diem* Bulletin Number 231. This bulletin lists revisions in the *per diem* rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 231 is being published in the **Federal Register** to assure that travelers are paid *per diem* at the most current rates.

EFFECTIVE DATE: June 1, 2003.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in *pier diem* rates prescribed by the *Per Diem* Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel *Per Diem* Bulletin Number 230. Distribution of Civilian Personnel *Per Diem* Bulletins by mail was discontinued. *Per Diem* Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in *per diem* to agencies and establishments outside the Department of Defense. For more information or questions about *per diem* rates, please contact your local travel office. The text of the Bulletin follows:

Dated: June 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 231 ARE REVISED RATES FOR ISLE OF HAWAII: OTHER; ISLE OF HAWAII: HILO; KURE, HAWAII IS NO LONGER LISTED AND A CHANGE TO THE SEASONAL DATES FOR SEWARD AND SITKA-MT. EDGECOMB, ALASKA.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
BARROW	159	95	254	05/01/2002
BETHEL	129	66	195	05/01/2002
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	99	63	162	05/01/2002
CORDOVA	90	48	138	04/01/2003
CRAIG	100	53	153	04/01/2003
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	79	60	139	04/01/2003
DENALI NATIONAL PARK				
06/01 - 08/31	115	41	156	04/01/2003
09/01 - 05/31	80	38	118	04/01/2003
DILLINGHAM	95	69	164	05/01/2002
DUTCH HARBOR-UNALASKA	120	86	206	04/01/2003
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
ELMENDORF AFB				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
FAIRBANKS				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	79	60	139	04/01/2003
FT. RICHARDSON				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
FT. WAINWRIGHT				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	115	41	156	04/01/2003
09/01 - 05/31	80	38	118	04/01/2003
HOMER				
05/15 - 09/15	109	72	181	04/01/2003
09/16 - 05/14	76	68	144	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
JUNEAU	99	75	174	04/01/2003
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	110	83	193	04/01/2003
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	179	81	260	04/01/2003
KETCHIKAN				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	100	53	153	04/01/2003
KODIAK	90	83	173	04/01/2003
KOTZEBUE				
05/01 - 08/31	141	91	232	04/01/2003
09/01 - 04/30	125	89	214	04/01/2003
KULIS AGS				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
MCCARTHY	179	81	260	04/01/2003
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
NOME	115	91	206	04/01/2003
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/01 - 09/30	189	67	256	06/01/2003
10/01 - 04/30	79	56	135	06/01/2003
SITKA-MT. EDGECUMBE				
05/01 - 09/30	110	81	191	06/01/2003
10/01 - 04/30	99	80	179	06/01/2003
SKAGWAY				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
SPRUCE CAPE	90	83	173	04/01/2003
ST. GEORGE	105	55	160	05/01/2003
TALKEETNA	100	89	189	07/01/2002
TANANA	115	91	206	04/01/2003
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	81	76	157	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	60	74	134	04/01/2003
UMIAT	150	98	248	04/01/2003
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	139	91	230	04/01/2003
10/02 - 04/30	79	86	165	04/01/2003
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	99	68	167	04/01/2003
WRANGELL				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	76	211	09/01/2002
HAWAII				
CAMP H M SMITH	112	82	194	05/01/2003
EASTPAC NAVAL COMP TELE AREA	112	82	194	05/01/2003
FT. DERUSSEY	112	82	194	05/01/2003
FT. SHAFTER	112	82	194	05/01/2003
HICKAM AFB	112	82	194	05/01/2003
HONOLULU (INCL NAV & MC RES CTR)	112	82	194	05/01/2003
ISLE OF HAWAII: HILO	100	80	180	06/01/2003
ISLE OF HAWAII: OTHER	150	79	229	06/01/2003
ISLE OF KAUAI	158	88	246	05/01/2003
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	82	194	05/01/2003
KEKAHA PACIFIC MISSILE RANGE FAC	158	88	246	05/01/2003
KILAUEA MILITARY CAMP	100	80	180	06/01/2003
LANAI	395	138	533	05/01/2003
LUALUALEI NAVAL MAGAZINE	112	82	194	05/01/2003
MCB HAWAII	112	82	194	05/01/2003
MOLOKAI	101	98	199	05/01/2003
NAS BARBERS POINT	112	82	194	05/01/2003
PEARL HARBOR [INCL ALL MILITARY]	112	82	194	05/01/2003
SCHOFIELD BARRACKS	112	82	194	05/01/2003
WHEELER ARMY AIRFIELD	112	82	194	05/01/2003
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	10/01/2002
SAIPAN	150	88	238	10/01/2002
TINIAN	85	71	156	10/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 03–15042 Filed 6–13–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending six systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: 'This proposed action will be effective without further notice on July 16, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 5, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG J

SYSTEM NAME:

Air Force Blood Program (June 11, 1997, 62 FR 31793).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG J

SYSTEM NAME:

Air Force Blood Program.

SYSTEM LOCATION:

Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military personnel, dependents of military personnel, government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Emergency blood donor list, donor record cards, and a roster/list by blood type and Rh factor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 262, Regulation of biological products, as implemented by Air Force Instruction 44–105, The Air Force Blood Program.

PURPOSE(S):

Used by Air Force medical centers, hospitals and clinics to control, coordinate and process request for blood donors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in card files.

RETRIEVABILITY:

Retrieved by name. Rosters/lists are filed chronologically.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by commanders of medical centers, hospitals and clinics. Records are stored in security file containers/cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Donor record cards are retained in office files for seven years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Surgeon General, Headquarters United States Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Surgeon General, Headquarters United States Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Documents prepared by the Air Force.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG L

SYSTEM NAME:

Medical Treatment Facility Tumor Registry (June 11, 1997, 62 FR 31793).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG L

SYSTEM NAME:

Medical Treatment Facility Tumor Registry.

SYSTEM LOCATION:

Air Force medical centers, hospitals, and clinics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who were diagnosed as having or were treated for cancer in an armed forces medical treatment facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain summaries of treatment provided cancer patients, to include tumor board evaluations, comprehensive chronological summaries of care rendered, a locator system, suspense files for required follow-up treatment and/or evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 55, Medical and Dental Care.

PURPOSE(S):

Used by the military departments for clinical and statistical analysis of designated medical and dental cases, their treatment and results. The files serve as the repository of clinical information relating to individuals evaluated and/or treated in Air Force medical facilities. It is used to conduct statistical analysis and to provide clinical information to other federal medical services, scientific institutions and qualified members of the medical and dental professions (information identifiable by name is released only with permission of the patient). Information is used by the medical facilities to promote education programs and to develop statistics designed to be used as a basis for developing improved diagnostic and therapeutic standards. Used by the individual physician or scientist to develop and write professional papers, and is used by hospital tumor registries to update their case records as to status and quality of survival of individual patients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be provided to other hospital tumor registries, physicians, scientific institutions.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, on computer and computer paper printouts, roll microfilm or microfiche.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and controlled by computer system software.

RETENTION AND DISPOSAL:

Records located at medical facilities are retained in the office files until inactivation of the tumor board or the facility, then forwarded to facility assuming patient responsibility.

SYSTEM MANAGER(S) AND ADDRESS:

Commanders of armed forces medical facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Commanders of armed forces medical facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests must include full name, Social Security Number of sponsor, accession number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commanders of armed forces medical facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG R

SYSTEM NAME:

Reporting of Medical Conditions of Public Health and Military Significance (March 23, 2001, 66 FR 16188).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG R

SYSTEM NAME:

Reporting of Medical Conditions of Public Health and Military Significance.

SYSTEM LOCATION:

Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory, 2601 West Gate Road, Suite 114, Brooks City-Base, TX 78235–5241, medical centers, hospitals and clinics, medical aid stations, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force members and their dependents, civilian Air Force employees, retired Air Force members and their dependents, Air Force Reserve and Air National Guard personnel and foreign national Air Force employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address, home phone, date of birth, and records relating to communicable diseases, occupational illnesses, animal bites.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; 29 CFR part 1960, Occupational Illness/Injury Reporting Guidelines for Federal Agencies; Air Force Instruction 48–105, Surveillance, Prevention, and Control of Diseases and Conditions of Public Health or Military Significance; and E.O. 9397 (SSN).

PURPOSE(S):

Records from this system of records will be used for ongoing public health surveillance, which is the systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice within the Air Force.

Primary users include appropriate Air Force activity/installation preventive medicine and public health personnel and their major command and Air Force counterparts. Records are used and reviewed by health care personnel in the performance of their duties.

Health care personnel include military and civilian personnel assigned to the Air Force facility where the records are maintained. Students participating in a USAF training program may also use and review records as part of their training program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the officials and employees of the National Research Council and the Department of Veterans Affairs in cooperative studies of the natural history of disease and epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, and other public health and welfare programs.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in machine readable form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, reportable event, location, or any combination of these.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened. Except when under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Local retention may vary, but will be no less than 5 years after the fiscal year to which the records relate. After that time, records may be destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks City-Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks City-Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should contain the full name and signature of the requester.

Requests in person must be made during normal office duty hours Monday through Friday, excluding national and/or local holidays.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks City-Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should contain the full name and signature of the requester.

Requests in person must be made during normal office duty hours Monday through Friday, excluding national and/or local holidays.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from DOD and Air Force employees involved in the surveillance, prevention, control, and reporting of diseases and conditions of public health or military significance.

Database is compiled using information from personnel, medical, and casualty records, investigative reports, and environmental sampling data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG S

SYSTEM NAME:

Alcohol and Drug Abuse Prevention and Treatment Program (December 23, 1999, 64 FR 72072).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG S

SYSTEM NAME:

Alcohol and Drug Abuse Prevention and Treatment Program.

SYSTEM LOCATION:

At servicing Air Force installation Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel and dependents, Air Force civilian employees, and Air Force Reserve personnel, who are enrolled in the Alcohol and Drug Abuse Prevention and Treatment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

As a minimum, the file contains referral information, evaluative materials, diagnostic assessment, treatment plan, counseling case notes, treatment summary, and automated data base, documenting entry and participation in the Air Force ADAPT Program, to include: date and means of identification and substance of abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–2, Confidentiality of Patient Records; Air Force Instruction 44–121, Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program; Air Force Instruction 36–810, Substance Abuse Prevention and Control; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used to process members in the ADAPT Program; to develop a treatment plan; to assist medical providers in decisions for program disposition; to document progress for individuals enrolled in the ADAPT program; and to prepare recurring reports.

Disclosure within the Air Force is limited to those individuals who need the records in connection with programs relating to abuse treatment, rehabilitation, research, health, and assignment to duty. Only persons authorized by 42 U.S.C. 290dd–2 may review, handle or have access to the file.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to Air Force members.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD "Blanket Routine Uses" do not apply to these types records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most

such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computer and on computer output products.

RETRIEVABILITY:

Retrieved by name, by Social Security Number, by other identification number or system identifier.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored and secured in lockable receptacles and are controlled by personnel screening. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Destroy 5 years after the end of the calendar year the case is closed or when a minor child reaches 23 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program Manager, Air Force Medical Operations Agency, (AFMOA/SGOC), 5203 Leesburg Pike, Suite 702, Falls Church VA 22041–3410; and ADAPT Program Mangers in the office of the command surgeon at major command headquarters; and ADAPT Program Managers at Air Force installations. Official mailing addresses are published as appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquires to the ADAPT Program Manager at the servicing Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests to determine existence of a file should include full name, grade, and unit of assignment. Personal visit proof of identify requires full name and possession of Department of Defense Armed Forces Identification Card; or driver's license and personal recognition of ADAPT staff member.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address requests to the ADAPT Program Manager servicing AF installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37'132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, personnel records, individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG T

SYSTEM NAME:

Suicide Event Surveillance System (SESS) (April 13, 2001, 66 FR 19145).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG T

SYSTEM NAME:

Suicide Event Surveillance System (SESS).

SYSTEM LOCATION:

Defense Enterprise Computing Center, Defense Information Systems Agency Detachment San Antonio, Building 200, 450 Duncan Drive, San Antonio, TX 78241–5940, on behalf of the Air Force Medical Support Agency (AFMSA/SGMID), 2510 Kennedy Circle, Suite 208, Brooks City-Base, TX 78235–5123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty, retired, reserve and guard personnel; Air Force civilians; dependents; and any DoD military or civilian personnel that are treated at an Air Force medical treatment facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Type of suicide event (completed and nonfatal suicide events), event details, psychological, social, behavioral, relationship, economic and other information, including name, Social Security Number, date of birth, gender, race/ethnic group, marital status, rank, military service, military status, job title, duty Air Force specialty code, permanent duty station, the major command of the permanent duty station, temporary duty station (if applicable), use of military helping services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; 29 CFR part 1960, Occupational Illness/Injury Reporting Guidelines for Federal Agencies; Air Force Instruction 48–105, Surveillance, Prevention, and Control of Diseases and Conditions of Public Health or Military Significance; and E.O. 9397 (SSN).

PURPOSE(S):

Records from this data system will be used for direct reporting of suicide events and ongoing public health surveillance, which is the systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, evaluation and prevention within the Air Force. Primary users include authorized Air Force activity/installation mental health personnel, their major command and Air Force counterparts, and Headquarters Air Force Office of Special Investigations (AFOSI), Death Investigations Section personnel. Records are created and revised by mental health and AFOSI personnel in the performance of their duties.

Mental health personnel include military and/or civilian staff assigned to the mental health department of the Air Force medical treatment facility where the medical and/or mental health records are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Statistical summary data with no identifiers may be provided to federal, state and local governments for public health surveillance and research.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Authorized users retrieve records by case identification number which is Social Security Number, plus year, month, day of event date.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly authorized. When under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Force Health Protection and Surveillance Branch, Air Force Institute for Environment, Safety and Occupational Health Risk Analysis, 2513 Kennedy Circle, Brooks City-Base, TX 78235–5123.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Chief, Force Health Protection and Surveillance Branch, Air Force Institute for Environment, Safety and Occupational Health Risk Analysis, 2513 Kennedy Circle, Brooks City-Base, TX 78235–5123.

Written requests should contain the full name, Social Security Number, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Force Health Protection and Surveillance Branch, Air Force Institute for Environment, Safety and Occupational Health Risk Analysis, 2513 Kennedy Circle, Brooks City-Base, TX 78235–5123.

Written requests should contain the full name, Social Security Number, and signature of the requester.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from DOD and Air Force employees and compiled using information from personnel, medical, and casualty records, investigative reports, and environmental sampling data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF TRANSCOM A

SYSTEM NAME:

Joint Medical Evacuation System (TRAC²ES) (February 26, 2002, 67 FR 8789).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually-identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF TRANSCOM A

SYSTEM NAME:

Joint Medical Evacuation System (TRAC²ES).

SYSTEM LOCATION:

United States Transportation Command, Global Patient Movement Requirements Center, Building 505, Rimkus Drive, Room 100, Scott AFB, IL 62225–5049, and Department of Defense medical treatment facilities, evacuation units and medical regulating offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, Air National Guard, Army National Guard, Reserve components of the Air Force, Army, Marine Corps, Coast Guard, Public Health Services or National Oceanic and Atmospheric Administration who have been called to Federal Service, and retired personnel of all seven uniformed services as well as their family members, employees of any agency of the U.S. Government including non-appropriated fund and Army and Air Force Exchange Service employees, Air Reserve technicians performing duties as civil servants, and family members (dependents) who reside overseas and whose civil service personnel sponsor is stationed overseas requiring transfer to another medical treatment at the request of U.S. Government medical treatment facilities through Patient Movement Requirements Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

TRAC²ES contains information reported by the transferring medical facility which includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, home address of patient

and/or duty station, and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. 2641, Transportation of Certain Veterans on DoD Aeromedical Evacuation Aircraft; DoD Directive 5154.6, Armed Services Medical Regulating; DoD Instruction 6000.11, Patient Movement; and E.O. 9397 (SSN).

PURPOSE:

Information collected is used to determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify medical treatment facilities of the transfer; to notify evacuation units and medical regulating offices; to evaluate the effectiveness of reported information; to establish the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To civilian hospitals for medical reference to ensure proper care is provided.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic back-up tape storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly authorized. When under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software, or in locked file cabinets, locked desk drawers, or locked offices. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Medical records of active duty U.S. military members are maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to National Personnel Records Center (NPRC), St. Louis MO or other designated depository, such as Commandant, U.S. Coast Guard for that agency's personnel, to appropriate Department of Veterans Affairs Regional Office if a VA claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retire to NPRC or other designated depository. At NPRC records for military personnel are retained for 50 years after date of last document, for all others 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

System Administrator, United States Transportation Command, Global Patient Movement Requirements Center, Building 505, Rimkus Drive, Room 100, Scott AFB, IL 62225–5049.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to Chief, Patient Administration of the Military Treatment Facility where treatment was provided.

Individuals requesting information should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals requesting information should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number. Forward request to Chief, Patient Administration of the Military Treatment Facility where treatment was provided.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Transferring and receiving treatment facilities, medical regulating offices, evacuation offices, agencies and commands relevant to the patient transfer, and from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–15044 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Alter Systems of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alterations (1) add a new purpose where information will be collected on individuals who are involved in incidents of domestic violence. The reporting and maintenance of such information is mandated by Public Law 106–65, section 594, as codified at 10 U.S.C. 1562, and (2) adds a new routine use to permit release of information to the FBI for the purposes of identifying individuals for whom access to a biological agent or toxin would violate the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188.

DATES: This action will be effective without further notice on July 16, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 29, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 5, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS) (May 31, 2002, 67 FR 38073).

Changes:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.*, Victims Rights and Restitution Act; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub.L. 107–188; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To provide a single central facility within the Department of Defense (DoD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; statistical information required by DoD under the Victim's Rights and Restitution Act; information required for the DoD database on domestic violence incidents; and to enhance DoD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace 'To the Department of Justice' with 'To the Department of Justice, or any of its components to which authority has been delegated:'

Under the Justice's Routine Use, add a new subparagraph (3) to read as follows: '(3) To compile information on those individuals for whom access to a biological agent or toxin would violate the law so that such information can be included in a database which may be used to determine whether individuals are disqualified from accessing such agents or toxins.'

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with 'The DLA rules for accessing records and appealing initial agency access determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

The rules for contesting contents are contained in DoD Manual 7730.47–M, Manual for Defense Incident-Based Reporting System, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221. Requests for amendment will be forwarded to the DoD Component which supplied the contested information for adjudication under the Privacy Act rules published by that Component.'

* * * * *

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS).

SYSTEM LOCATION:

Primary Location: Naval Postgraduate School Computer center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization, but which results in referral to trial by court-martial, imposition of nonjudicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide.

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed

criminal incidents in violation of law or regulation.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (Note: includes both current and former members who recently have been convicted by a courts-martial, given nonjudicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (Note: includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial; or have been convicted in any court of a misdemeanor crime of domestic violence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled by law enforcement authorities (*e.g.*, Pentagon Force Protective Agency, military and civilian police, military criminal investigation services or commands); DoD organizations and military commands; Legal and judicial authority (*e.g.*, Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (*e.g.*, the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (*e.g.*, administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (*e.g.*, Social Security Number, date of birth, *etc.*), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.*, Victims Rights and Restitution Act; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

PURPOSE(S):

To provide a single central facility within the Department of Defense (DoD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; statistical information required by DoD under the Victim's Rights and Restitution Act; information required for the DoD database on domestic violence incidents; and to enhance DoD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) only as follows:

To the Department of Justice, or any of its components to which authority has been delegated:

(1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies.

(2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufactures or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm.

(3) To compile information on those individuals for whom access to a biological agent or toxin would violate the law so that such information can be included in a database which may be used to determine whether individuals are disqualified from accessing such agents or toxins.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of record system notices do not apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, incident number, or any other data element contained in system.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

The master file is retained permanently. Input and source records are destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Output products (electronic or paper) are destroyed when no longer needed for operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and appealing initial agency access determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

The rules for contesting contents are contained in DoD Manual 7730.47–M, Manual for Defense Incident-Based Reporting System, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221. Requests for amendment will be forwarded to the DoD Component which supplied the contested information for adjudication under the Privacy Act rules published by that Component.

RECORD SOURCE CATEGORIES:

The military services (includes the U.S. Coast Guard) and Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–15046 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend and Delete Records Systems.

SUMMARY: The Department of the Navy is amending one system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), and deleting one system of records notice.

DATES: The amendment will be effective on July 16, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records system being amended is set forth below, as amended, published in its entirety.

Dated: May 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements (May 9, 2003, 68 FR 24959).

REASON:

These records are now being maintained under the Office of Government Ethics government-wide Privacy Act systems of records notices OGE/GOVT–1, entitled 'Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records' and OGE/GOVT–2, entitled 'Executive Branch Confidential Financial Disclosure Reports'.

Amendment

N01640–1

SYSTEM NAME:

Individual Correctional Records (May 9, 2003, 68 FR 24959).

Changes

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400.'

* * * * *

N01640–1

SYSTEM NAME:

Individual Correctional Records.

SYSTEM LOCATION:

United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members confined in a naval facility as a result of or pending trial by courts-martial; military members sentenced to three days bread and water or diminished rations; and military members awarded correctional custody to be served in a correctional custody unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to the administration of individual prisoners in the Department of the Navy confinement and correctional custody facilities—courts martial orders; release orders; confinement orders; medical examiners' reports; requests and receipts for health and comfort supplies; reports and recommendations relative to disciplinary actions; clothing and equipment records; mail and visiting lists and records; personal history records; individual prisoner utilization records; requests for interview; initial

interview; spot reports; prisoner identification records; parolee agreements; inspection record of prisoner in segregation; personal funds records; valuables and property record; daily report of prisoners received and released; admission classification summary; social history; clemency recommendations and actions; parole recommendations and actions; restoration recommendations and actions; psychiatric, psychological, and sociological reports; certificate of parole; certificate of release from parole; requests to transfer prisoners; records showing name, grade, Social Security Number, sex, education, sentence, offense(s), sentence computation, organization, ethnic group, discharge awarded, length of unauthorized absence, number and type of prior punishments, length of service, and type release; reports showing legal status, offense charged, and length of time confined. Names, addresses, and telephone numbers of victims/witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951; 42 U.S.C. 10601 *et seq.*, Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole; and to notify victims/witnesses of crime of release related activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local law enforcement and investigative agencies for investigation and possible criminal prosecution, civil court actions or regulatory order.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

To confinement/correctional system agencies for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty, and parole actions; verifications concerning military offenders or military criminal records, employment records and social histories.

To victims and witnesses of crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer data base is password protected.

RETENTION AND DISPOSAL:

Two years after a prisoner is released or transferred from a brig or expiration of parole, prisoner records are transferred to the appropriate Federal Records Center.

Federal Records Center Atlanta, 1557 St. Joseph Avenue, East Point, GA 30344 has records from ashore brigs under the area coordination of the Commander, U.S. Atlantic Fleet; Commander, U.S. Naval Forces Europe; Commander, Naval Education and Training, afloat brig on Atlantic Fleet ships, and Naval Consolidated Brig, Charleston.

Federal Records Center Los Angeles, 2400 Avila Road, P.O. Box 6719, Laguna Niegel, CA 92607–6719 has records for ashore brigs under the area consideration of the Commander, U.S. Pacific Fleet; afloat brigs on Pacific Fleet ships; and Naval Consolidated Brig, Miramar.

Records of prisoners accompany their transfer to other facilities.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Commander, Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400 and Commandant of the Marine Corps (Code POS–40), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

RECORD HOLDERS:

United States Naval Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers-84), 5720 Integrity Drive, Millington, TN 38055–8400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Naval Brig or United States Marine Corps Brig where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400.

Requests should include full name and Social Security Number and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Naval Brig or United States Marine Corps Brig where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers-84), 5720 Integrity Drive, Millington, TN 38055–8400.

Requests should include full name and Social Security Number and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records; military financial and medical records; military and civilian investigative and law enforcement agencies; courts-martial proceedings; records of non-judicial

administrative proceedings; United States military commanders; staff members and cadre supply information relative to service member's conduct or duty performance; and other individuals or organizations which may supply information relevant to the purpose for which this system was designed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 03–15047 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Navy is amending nine systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on July 16, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N03461–2

SYSTEM NAME:

POW Follow-up Program (March 2, 1994, 59 FR 9965).

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

N03461–2

SYSTEM NAME:

POW Follow-up Program.

SYSTEM LOCATION:

Naval Aerospace Medical Institute, Special Studies Department (25), Naval Air Station, Pensacola, FL 32508–1047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners of War (POWs) from 1974 to present; matched comparison group consisting of former aviators; some spouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records; X-rays; dental and somatotype photographs; newspaper clippings; research questionnaires, Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To research the effects of the captivity experience on the man and his family and for recommending changes in training and improved health care delivery services, as well as for professional publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files consist of file folders, magnetic and video tapes, key-punched IBM cards, computer tapes, microfiche and microfilm.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

All files in this system are protected by limited, controlled access, locked doors and class 6 security cabinets. Only professional and/or research staff with appropriate security clearances are given access to files.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Head, POW Data Analysis Division, Naval Aerospace Medical Institute, Naval Air Station, Pensacola, FL 32508–1047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 25, Naval Air Station, Pensacola, FL 32508–1047.

Individual should provide full name, military or civilian status, POW status, security clearance, and service affiliation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 25, Naval Air Station, Pensacola, FL 32508–1047.

Individual should provide full name, military or civilian status, POW status, security clearance, and service affiliation.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal interviews with returned POWs and families of POW/MIA/KIA/hostages/civilian POWs; newspapers and periodicals; Department of the Army; Bureau of Medicine and Surgery; and Marine Corps Headquarters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–1

SYSTEM NAME:

Medical Department Professional/ Technical Personnel Development (February 22, 1993, 58 FR 10789).

Changes

* * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * * *

N06150–1

SYSTEM NAME:

Medical Department Professional/ Technical Personnel Development.

SYSTEM LOCATION:

Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; individual's duty station or reserve unit (see Directory of the Department of the Navy Mailing Addresses); Military Sealift Command, Navy Department, Washington, DC 20390; National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, Missouri 63132; National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118; Bureau of Medicine and Surgery managed education and training activities; various colleges and universities affiliated with BUMED managed education and training activities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy (military and civilian) health care personnel; applicants to student status in Navy Aerospace Medicine, Navy Aerospace Physiology and Navy Aerospace Experimental Psychology; Navy (military and civilian) personnel qualified as divers or involved in other professional/specialty/technical training; Navy (military and civilian) personnel exposed to occupational/environmental hazards; distinguished/noted civilian physicians employed by the Navy in capacity of lecturer/consultant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records, including demographic, medical, and personal data, records of disciplinary, administrative, and credentialing, and punitive actions, curricula vitae of both active-duty and civilian lecturers/consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 CFR part 20, Standards for Protection Against Radiation; and E.O. 9397 (SSN).

PURPOSE(S):

To manage the Bureau of Medicine and Surgery's management of health care personnel, including education and training activities; procurement; assignments planning; professional/specialty/technical training; credentialing; promotional decisions; career development planning; evaluation of candidates for position of lecturer/consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information of adverse actions, including administrative or disciplinary actions or revocations of health care providers' clinical credentials may be disseminated to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored in card files and folders in filing cabinets.

RETRIEVABILITY:

Manual records retrieved by full name, Social Security Number, file numbers, program title or locator card.

Automated records retrieved by key to any data field.

SAFEGUARDS:

Records maintained in monitored or controlled access rooms or areas; public access to the records is not permitted; computer hardware is located in supervised areas; access is controlled by password or other user code system; utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in the performance of their duties. Buildings/rooms locked outside regular working hours.

RETENTION AND DISPOSAL:

Medical Department personnel professional development and training records; Headquarters, BUMED records—retained at BUMED for duration of member's service, then retired to NPRC, St. Louis for 10 year retention; COMNAVMEDCON field activities—retained 5 years, then destroyed.

Radiation exposure records; personnel exceeding exposure limits—retained at BUMED 50 years, then destroyed; all others—retained 5 years, then destroyed.

Surgical support team records; Headquarters, BUMED—destroyed upon termination of active duty service; BUMED field activities—destroyed upon termination of duty at the Medical Department facility.

Curricular vitae of lecturers/consultants—destroyed upon termination of status at the Medical Department facility.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118; Commanding Officers of naval activities, ships and stations.

NOTIFICATION PROCEDURE:

Offices where requester may visit to obtain information of records pertaining to the individual: Potomac Annex, 23rd and E Streets, NW., Washington, DC 20372–5120; Navy medical centers and hospitals; other Navy health care facilities; and BUMED managed education and training facilities.

The individual should present proof of identification such as an I.D. Card, driver's license, or other type of identification bearing signature and photograph.

Written requests may be addressed as follows:

Active duty Navy members or civilian employees presently working for the Navy should address requests to the Commanding Officer of the Facility or ship where they are stationed or employed.

Former members of the Navy should address requests to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

Former civilian employees of the Navy should address requests to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

All written requests should contain full name, rank, Social Security Number, file number (if any) and designator.

RECORD ACCESS PROCEDURES:

Offices where requester may visit to obtain information of records pertaining to the individual: Potomac Annex, 23rd and E Streets, NW., Washington, DC 20372–5120; Navy medical centers and hospitals; other Navy health care facilities; and BUMED managed education and training facilities.

The individual should present proof of identification such as an I.D. Card, driver's license, or other type of identification bearing signature and photograph.

WRITTEN REQUESTS MAY BE ADDRESSED AS FOLLOWS:

Active duty Navy members or civilian employees presently working for the Navy should address requests to the Commanding Officer of the Facility or ship where they are stationed or employed.

Former members of the Navy should address requests to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

Former civilian employees of the Navy should address requests to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

All written requests should contain full name, rank, Social Security Number, file number (if any) and designator.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military headquarters, offices and commands; education institutions at training hospitals; boards, colleges and associations of professional licensure and medical specialties; personnel records; information submitted by the individual; automated system interface.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–2

SYSTEM NAME:

Health Care Record System (May 22, 1996, 61 FR 25637).

Changes

* * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * * *

N06150–2

SYSTEM NAME:

Health Care Record System.

SYSTEM LOCATION:

Military outpatient health (medical and dental) records of active duty individuals are retained at the member's medical or dental treatment facility. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Military outpatient health (medical and dental) records of current reservists are retained by the member's command. Military outpatient health (medical and dental) records of retired and separated individuals are retained at the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10905 El Monte,

Overland Park, KS 66211–1408; Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; or Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

Inpatient health records are retained at the originating naval medical treatment facility (official mailing addresses are published as an appendix to the Navy's compilation of system of records notices); Department of Veterans Affairs Hospitals; other medical treatment facilities such as PRIMUS; National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, MO 63118–4199; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408; Medical Director, American Red Cross, Washington, DC 20226; Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; or Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

Outpatient health (medical and dental) treatment records of civilians are retained at the originating naval medical or dental treatment facility (official mailing addresses are published as an appendix to the Navy's compilation of system of records notices); Department of Veterans Affairs Hospitals; other medical treatment facilities such as PRIMUS; National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199; Medical Director, American Red Cross, Washington, DC 20226; Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; or Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel, other military personnel, dependents, retired and separated military personnel and dependents, civilian employees, Red Cross personnel, foreign personnel, VA beneficiaries, humanitarian patients, and all other individuals who receive treatment at a Navy medical or dental treatment facility. All commercial insurance carriers with whom the Department of the Navy has filed a claim under the Third Party Payers Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Outpatient and inpatient health (medical and dental) records contain forms documenting care and treatment. These records contain patient and sponsor demographic data.

Secondary health records contain forms documenting care and treatment at specific departments or clinics.

Subsidiary health records contain information from individual health records and supporting documentation. Examples are: X-ray files; electrocephalogram tracing files; laboratory or secondary treatment record with supporting documentation or they may be based on the files; pharmacy files, social work case files; alcohol rehabilitation files; psychiatric or psychology case files, including psychology files documenting the clinical psychological evaluation of individuals for suitability for certain assignments; nursing care plans; medication and treatment cards, stat/daily orders; patient intake and output forms; ward reports; day books; nursing service reports; pathology and clinical laboratory reports; tumor registries; autopsy reports; laboratory information system (LABIS); blood transfusion reaction records; blood donor and blood donor center records; pharmacy records, surgery records, and vision records and reports; communicable disease case files, statistics, and reports; occupational health, industrial, and environmental control records, statistics, and reports, including data concerning periodic and total lifetime accumulated exposure to occupational/environmental hazards; emergency room and sick call logs; family advocacy case files, statistics, reports, and registers; psychiatric workload statistics and unit evaluations; gynecology malignancy data, etc.

Aviation physical examinations and evaluation case files contain medical records documenting fitness for admission or retention in aviation programs.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting suitability for assignment as Embassy Guards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1095, Collection from Third Party Payers Act; 10 U.S.C. 5131 (as amended); 10 U.S.C. 5132; 44 U.S.C. 3101; 10 CFR part 20, Standards for Protection Against Radiation; and E.O. 9397 (SSN).

PURPOSE(S):

This system is used by officials, employees and contractors of the Department of the Navy (and members of the National Red Cross in naval medical treatment facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps members; physical and psychological qualifications and suitability of candidates for various programs; personnel assignment; law enforcement; dental readiness; claims and appeals before the Council of Personnel Boards and the Board for Correction of Naval Records; member's physical fitness for continued naval service; litigation involving medical care; performance of research studies and compilation of statistical data; implementation of preventive medicine programs and occupational health surveillance programs; implementation of communicable disease control programs; and management of the Bureau of Medicine and Surgery's Radiation program and to report data concerning individual's exposure to radiation.

This system is also used for the initiation and processing, including litigation, of affirmative claims against potential third party payers.

This system is used by officials and employees of other components of the Department of Defense in the performance of their official duties relating to the health and medical treatment of those individuals covered by this record system; physical and psychological qualifications and suitability of candidates for various programs; and the performance of research studies and the compilation of medical data.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to Navy and Marine Corps members.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to public health and welfare, communicable disease control, preventive medicine, child and spouse abuse prevention and public safety.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

To spouses of service members (including reservists) who are infected with the Human Immunodeficiency Virus. This release will be limited to HIV positivity information. Procedures for informing spouses will be published by the Director, Naval Medicine and must be used.

To military and civilian health care providers to further the medical care and treatment of the patient.

To release radiation data per 10 CFR part 20.

To third parties in those cases where the Government is seeking reimbursement under the Third Party Payers Act.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization, or government agency, as necessary.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd–2, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary, secondary, and subsidiary medical health records are stored in file folders, microform, on magnetic tape, personal computers, machine listings, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Military health (medical and dental) treatment records are filed and maintained by the last four digits of the military member's Social Security Number, the member's last name, or the member's Social Security Number. A locator case file cross-references the patient's name with the location of his/her record.

Inpatient (clinical) health records are filed and maintained by the last four digits of the sponsor's Social Security Number or a register number. A manual or automatic register of patients is kept at each Navy medical treatment facility. The location of the file can be determined by a seven-digit register number or the patient's name.

Outpatient (medical and dental) health records are filed and maintained by the sponsor's Social Security Number or date of birth, relationship to the sponsor, and name. A locator file cross-references the patient's name with the location of his/her record.

Treatment records retired to a Federal Records Center prior to 1971 are retrieved by the name and service number or file number. After that date, records are retrieved by name and Social Security Number.

Aviation medical records are filed and maintained by Social Security Number and name.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting fitness for assignment as Embassy Guards and are filed and maintained by Social Security Number and name. Subsidiary health care records may or may not be identified by patient identifier. When they are, they may be retrieved by name and Social Security Number.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specific monitored or controlled access rooms or areas; public access is not permitted. Computer terminals are located in supervised areas. Access is controlled by password or other user code system. Utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in providing further medical care or in support of administrative/clerical functions. Records are controlled by a charge-out system to clinical and other authorized personnel.

RETENTION AND DISPOSAL

Health care records are retained, retired, and disposed of in accordance with Secretary of the Navy Instruction 5215.5 (Disposal of Navy Marine Corps Records) and Bureau of Medicine and Surgery Instruction 6150.1 (Health Care Treatment Records). Specifics are given below:

Military health (medical and dental) records are transferred with the member upon permanent change of duty station to his/her new duty station. These records are retired to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; and Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408.

Inpatient health records are transferred to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100 or to the National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199, two years after the calendar year of the last date of treatment.

Outpatient health records of civilians are transferred to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100 or to the National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199, two years after the calendar year of the last date of treatment.

X-ray files are retained on-site and destroyed three years after the last x-ray in the file. Asbestos x-rays are retained on site indefinitely.

Secondary health records may be retained separate from the health record. A notation is made in the health record that these records exist and where they are being kept. When the health record is retired or the patient transfers, these records should be entered in the health record.

Aviation medical records are retained at the activity and destroyed when 30 years old.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files containing medical records documenting fitness for assignment as Embassy Guards are retained at the activity and destroyed after 50 years.

Clinical psychology case files documenting suitability for special assignment will be retained at the originating medical treatment facility and destroyed when 50 years old.

Radiation exposure records for personnel are maintained indefinitely in the health record, and in a centralized exposure registry held by the Navy Environmental Health Center Detachment, Naval Dosimetry Center, Bethesda, MD 20889–5614.

SYSTEM MANAGER(S) AND ADDRESS:

Service medical (health and dental) records for active and reserve, Navy and Marine Corps: Chief, Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; Commanding Officers, Naval Activities, Ships and Stations; and, Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Inpatient and outpatient treatment records: Chief, Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; Commanding Officers and Officers-in-Charge of naval medical treatment facilities; and, Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Active duty Navy and Marine Corps personnel and drilling members of the Navy and Marine Corps Reserves seeking to determine whether this system of records contains information about themselves should address written inquiries to the originating medical or dental treatment facility. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Inactive Naval Reservists should address requests for information to the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800. Marine Reservists should address requests for information to Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408. Former members who have no further reserve or active duty obligations should address requests for information to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

All written requests should contain the full name and Social Security Number of the individual, his/her signature, and in those cases where his/her period of service ended before 1971, his/her service or file number. In requesting records for personnel who served before 1964, information provided to the National Personnel Records Center should also include date and place of birth and dates of periods of active Naval service.

Records may be requested in person. Proof of identification will consist of the Armed Forces Identification Card or by other types of identification bearing picture and signature.

Requests for inpatient records within two years of inpatient stay should be addressed to the Commanding Officer of the hospital where the individual was treated.

Requests for inpatient records after two years after inpatient stay should be addressed to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199 or to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

Requests for subsidiary medical records should be addressed to the Commanding Officer of medical or dental center where treatment was received.

The following data should be provided: Full name, Social Security Number, status, date(s) of treatment or period of hospitalization, address at time of medical treatment, and service number.

Full name, date, and place of birth, I.D. card or driver's license, or other identification to sufficiently identify the individual with the medical records held by the treatment facility must be presented.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this system of records should address written inquiries to the medical or dental treatment facility where treatment was received or to the officials listed under 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports from attending and previous physicians and other medical personnel regarding the results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-rays, and special studies conducted to provide health care to the individual or to determine the individual's physical and dental qualification.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–3

SYSTEM NAME:

Naval Health/Dental Research Center Data File (February 22, 1993, 58 FR 10793).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

N06150–3

SYSTEM NAME:

Naval Health/Dental Research Center Data File.

SYSTEM LOCATION:

Naval Medical Research and Development Command, Naval Medical Research Institute and/or Naval Dental Research Institute to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

For medical: Navy and Marine Corps personnel on active duty since 1960 to date. Civilians taking part in Operation Deep Freeze, 1964 to date.

For dental: Navy and Marine Corps personnel on active duty since 1967 to date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of information from official medical/dental and personnel records, results of dental examinations conducted by staff research scientists, as well as information dealing with biographical, attitudes, and questions relating to medical and dental health patterns during active service or prior to active duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013 and E.O. 9397 (SSN).

PURPOSE(S):

To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy and Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained on magnetic tape, flexible and hard disks, paper files, punch cards and optically marked cards.

RETRIEVABILITY:

Retrievability is by Social Security Number or service number as appropriate for military and former military personnel. Civilians are by name only.

SAFEGUARDS:

Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain I.D. numbers that can be matched to Social Security Number's on code sheets maintained by research personnel.

RETENTION AND DISPOSAL:

Research records are permanent. They are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Navy and Marine Corps personnel and former serving members must provide a Social Security Number or service number as appropriate, give the branch of service, and years of active duty. Civilians in Operation Deep Freeze must identify themselves by full name and the year in which they wintered over.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Navy and Marine Corps personnel and former serving members must provide a Social Security Number or service number as appropriate, give the branch of service, and years of active duty. Civilians in Operation Deep Freeze must identify themselves by full name and the year in which they wintered over.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is derived from (a) Medical Treatment Record Systems, including medical, dental, health records, inpatient treatment records and outpatient treatment records, (b) Personnel Records System and Personnel Rehabilitation Support System, (c) Enlisted Master File, (d) information provided by the members themselves on a volunteer basis in response to specific research questionnaires and forms, and (e) information provided by the members' peers and superiors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–4

SYSTEM NAME:

DoD Birth Defects Registry (December 1, 2000, 65 FR 75258).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

N06150–4

SYSTEM NAME:

DoD Birth Defects Registry.

SYSTEM LOCATION:

Naval Health Research Center, Emerging Illness Division, P.O. Box 85122, San Diego, CA 92186–5122.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD beneficiary infants born in both military and civilian medical facilities beginning October 1, 1993, and their parents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data and health data potentially related to a birth defect.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; E.O. 9397 (SSN); and OASD/HA Policy for National Surveillance for Birth Defects Among Department of Defense (DoD) Health Care Beneficiaries Clinical Policy 99–006 dated November 17, 1998.

PURPOSE(S):

To determine those birth defects that are most common within this population; to provide information regarding increases, if any, in the incidence of specific malformations; to compare rates stratified by beneficiary status (military or dependent) and among active-duty personnel, by occupation; to identify geographical or military service-related areas of reproductive concern for cluster analysis; to identify any correlation of rates of defects with changing trends in cultural, social, and environmental factors; and to provide a data repository that future investigators and policy makers might use to study militarily important birth defects hypotheses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Social Security Administration (SSA) for considering individual claims for benefits for which SSA is responsible.

To the Department of Veterans Affairs (DVA) for considering individual claims for benefits for which that DVA is responsible, and for use in scientific, medical and other analysis regarding reproductive outcomes research associated with military service.

To the Department of Health and Human Services, Centers for Disease Control and Prevention and state birth defect registries for use in scientific, medical and other analysis regarding reproductive outcomes research associated with military service.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized and paper records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on a need-to-know basis only. Computerized information is password protected and maintained is a locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are destroyed when three years old or discontinuance of function, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300.

System manager: Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records contained in this system of records should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–5

SYSTEM NAME:

Millennium Cohort Study (August 17, 2001, 66 FR 43237).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

N06150–5

SYSTEM NAME:

Millennium Cohort Study.

SYSTEM LOCATION:

Naval Health Research Center, Emerging Illness Division, P.O. Box 85122, San Diego CA 92186–5122.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

An initial probability-based, cross-sectional sample of 100,000 U.S. Armed Forces personnel (active duty Army, Navy, Marine Corps, and Coast Guard and reserve/National Guard), as of October 2000, that will be followed prospectively by postal surveys every 3 years over a 21-year period. The initial sample of 100,000 persons will be comprised of 30,000 individuals who have been deployed to Southwest Asia, Bosnia, or Kosovo since August 1997, and 70,000 individuals who have not been deployed to these conflicts. In October 2004 and October 2007, a random sample of 20,000 new Armed Forces personnel will be added to the cohort. The total of 140,000 individuals will be followed until the year 2022.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data, such as name, Social Security Number, rank, grade, gender, military occupational specialty. Health data, such as self-reported medical conditions and symptoms, smoking and drinking behaviors. Validated instruments will be incorporated to capture self-assessed physical and mental functional status (Short Form-36 Veterans), psychosocial assessment (Patient Health Questionnaire), and posttraumatic stress disorder (Patient Checklist-17).

Information obtained from the survey responses will be supplemented with deployment, occupational, vaccination, and healthcare utilization data) related to individual health status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN); DoD Protocol Number 32227; Sec 743, National Defense Authorization Act for Fiscal Year 1999; Sec 735, National Defense Appropriations Act for Fiscal Year 2001; Defense Technology Objective MD.25 Deployed Force Health Protection: Predicting Warfighter Resilience.

PURPOSE(S):

To create a probability-based, cross sectional database of selected veterans who have, or have not, deployed overseas so that various longitudinal health and research studies may be conducted over a 21 year period. The database will be used:

a. To systematically collect population-based demographic and health data to evaluate the health of Armed Forces personnel throughout their careers and after leaving service.

b. To evaluate the impact of operational deployments on various measures of health over time including medically unexplained symptoms and chronic diseases such as cancer, heart disease and diabetes.

c. To serve as a foundation upon which other routinely captured medical and deployment data may be added to answer future questions regarding the health risks of operational deployment, occupations, and general service in the Armed Forces.

d. To examine characteristics of service in the Armed Forces associated with common clinician-diagnosed diseases and with scores on several standardized self-reported health inventories for physical and psychological functional status.

e. To provide a data repository and available representative Armed Forces cohort that future investigators and policy makers might use to study important aspects of service in the Armed Forces including disease outcomes among a Armed Forces cohort.

In addition to revealing changes in veterans' health status over time, the Millennium Cohort Study will serve as a data repository, providing a solid foundation upon which additional epidemiological studies may be constructed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 522a(b)(3):

To the Department of Veterans Affairs (DVA) for (1) considering individual claims for benefits for which that DVA is responsible; and (2) for use in scientific, medical and other analysis regarding health outcomes research associated with military service.

To the Department of Health and Human Services, Centers for Disease Control and Prevention for use in scientific, medical and other analysis regarding health outcome research associated with military service.

Note: All disclosures to the DVA and HHS must have prior approval of the Naval Health Research Center Institutional Review Board and a Memorandum of Understanding must be entered into to ensure the right and obligations of the signatories are clear. Access to data (1) is provided on need-to-know basis only; (2) must adhere to the rule of minimization in that only information necessary to accomplish the purpose for which the disclosure is being made is releasable; and (3) must follow strict guidelines established in the data sharing agreement.

To the Social Security Administration (SSA) for considering individual claims for benefits for which that SSA is responsible.

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases; electronic records are stored on magnetic media.

RETRIEVABILITY:

Records are retrieved by military service member's name and Social Security Number.

SAFEGUARDS:

Access to areas where records are maintained is limited to authorized personnel. Access control devices protect areas during working hours and intrusion alarm devices during non-duty hours. Access to data is provided on need-to-know basis only. Password or other user code controls access to data.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the retention and disposition schedule for these records, treat then as permanent.

SYSTEM MANAGER(S) AND ADDRESS;

Policy Official: Commanding Officer, Naval Health Research Center, Box 85122, San Diego, CA 92186–5122.

Record Holder: Senior Investigator, The Millennium Cohort Study, Naval Health Research Center, Emerging Illness Division, P.O. Box 85122, San Diego, CA 92186–5122

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Senior Investigator, The Millennium Cohort Study, Naval Health Research Center, Emerging Illness Division, P.O. Box 85122, San Diego, CA 92186–5122.

The request should contain the service member's name and Social Security Number and must be signed by the service member requesting the information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Senior Investigator, The

Millennium Cohort Study, Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego, CA 92186–5122.

The request should contain the service member's name and Social Security Number and must be signed by the service member requesting the information.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual participant survey instruments; Composite Health Care *System; Corporate Executive* Information Systems; Defense Manpower Data Center; Defense Enrollment Eligibility Reporting System; Civilian Health and Medical Program of the Uniformed Services; survey research instruments and health research records at Naval Medical Center, San Diego; and individual physical exams and biological specimens.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06320–1

SYSTEM NAME:

Health Care Accounts and Insurance Information (February 22, 1993, 58 FR 10794).

Changes

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

N06320–1

SYSTEM NAME:

Health Care Accounts and Insurance Information.

SYSTEM LOCATION:

Primary System is located at the Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300.

Decentralized Segments are located at the Naval Hospitals and Medical Clinics which provide services or perform work giving rise to such accounts receivable. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual receiving health care treatment or examination services funded by the Navy Medical Department. Coverage also includes sponsors and other persons responsible for the debts of such persons. All commercial insurance carriers with whom the Department of the Navy has filed a claim under the Third Party Payers Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and Social Security Number, sponsor's Social Security Number, if applicable, pay grade, branch of service of service, duty station address, account number, activity performing service, patient's insurance information, civilian employer, patient category, time and dates of service, units of service, physicians' and hospitals' statements of service a total charges for treatment including interest, administrative and penalty charges, payment receipts, admission documents, correspondence relating to collection attempts to ascertain eligibility status, patient category, and third party insurer liability, records of payment received and outstanding balances, letter reports of uncollectible accounts receivable, records suspending or terminating collection action or effecting compromise settlement agreements, and requests for recovery of CHAMPUS funds and substantiating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 191–195, 227, and 952 (also known as the Federal Claims Collection Act of 1966); 10 U.S.C. 1078–1079 and 1095; 37 U.S.C. 702, 705, and 1007; E.O. 9397 (SSN); and, 10 U.S.C. 1095, Collection From Third Party Payers Act.

PURPOSE(S):

To identify and facilitate payment of amounts owed the U.S. Users of the information include Bureau of Medicine and Surgery personnel who are directly involved in processing payments or billings of patient accounts. The information is used to determine amounts owed, methods to be employed to effect recovery, whether or not the claim can be compromised or collection action thereon terminated or suspended.

To determine amounts owed by third party health insurers, and to collect charges for utility bills and other miscellaneous items. File may be forwarded to the Naval Criminal Investigative Service for investigation or to any component of DOD, as needed, in the performance of their duties related to same.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To third parties in those cases where the Government is seeking reimbursement under the Third Party Payers Act.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored on index cards (3x5) in card files and in file folders and reading files.

RETRIEVABILITY:

Automated records are retrieved by either a query or a request for a standard report. Data may be indexed by any data element although the primary search keys are name and Social Security Number. Paper records are filed alphabetically by last name of debtor.

SAFEGUARDS:

Access to the automated system requires user account number and password sign on. Access to the paper records and/or terminals are limited to authorized personnel that are properly screened and trained. Office space where records and/or terminals are located is locked after official working hours.

RETENTION AND DISPOSAL:

Records are retained in active file until collection action has been completed, compromised, suspended, or terminated. They are held in inactive file until statute of limitations has run and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300, and Commanding Officers of Medical Treatment Facilities. Official mailing addresses are published as an appendix to Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300 or to the Commanding Officer of the Medical Treatment Facility where treatment was received. Requests should provide the full name of the patient and sponsor, the military or dependency status of the patient and sponsor, and the location and approximate dates of treatment or examination. Driver's license and/or military I.D. card will be considered adequate proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300 or to the Commanding Officer of the Medical Treatment Facility where treatment was received. Requests should provide the full name of the patient and sponsor, the military or dependency status of the patient and sponsor, and the location and approximate dates of treatment or examination. Driver's license and/or military I.D. card will be considered adequate proof of identity.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Automated patient administration system records produced at Medical Treatment Facilities include but are not limited to Inpatient Admission/ Disposition Records, NAVMEDCOM 6300/5; Report of Treatment Furnished Pay, Patients-Hospitalization/Outpatient Treatment Furnished, DOD 7/7A, Part A/B. Other-record source categories are: OCHAMPUS, Denver; U.S. Postal Service; Military Locator Service; State Departments of Motor Vehicles; any component of the DOD; the Department of Justice, the General Accounting Office, retail credit associations, financial institutions, current or previous employers, educational institutions, trade associations, automated system interfaces, local law enforcement agencies, the Department of Health and Human Services, the Internal Revenue Service, and the Office of Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06320–3

SYSTEM NAME:

Quality Assurance/Risk Management (February 22, 1993, 58 FR 10797).

Changes:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

N06320–3

SYSTEM NAME:

Quality Assurance/Risk Management.

SYSTEM LOCATION:

Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5300; health care treatment facilities. Official mailing addresses are published as an appendix to the Navy's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval Military health care providers including active duty, reserve, retired, and separated personnel; Naval civilian health care providers including government employees, volunteers, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Credentialing records including Individual Credentials Files, Clinical Activity Files, Clinical Performance Profiles, Performance Appraisal Reports and other records including administrative and disciplinary proceedings; records of current and past employment and/or assignment, current and past clinical privileges, qualifications and performance, peer review records, Internal Review records, statements of physical and mental health.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1102 and 5132; and E.O. 9397 (SSN).

PURPOSE(S):

This system relates to the Bureau of Medicine and Surgery's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of are provided to patients; investigate analyze, and report accidents, injuries, and other incidents which may be related to patient care or safety; to identify health care providers with known or suspected deficiencies or impairments which may affect patient care or safety or be the subject of professional negligence claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

With the exception of the subject of a quality assurance act, the identify of any person receiving health care services from the Department of Defense of the identify of any other person associated with the department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Medical quality assurance record (10 U.S.C. 1102) described herein may not be made available to any person under the Freedom of Information Act (5 U.S.C. 552).

QUALITY ASSURANCE RECORDS MAY BE DISCLOSED:

To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, or Department of Defense Health care facilities.

To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

To a governmental board or agency or to a professional health care society of organization, is such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is a or was a member of an employee of the Department of Defense.

To a hospital, medical care center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institutions.

To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record of testimony be provided for a purpose authorized by law.

In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in the above paragraph, but only with respect to the subject of such proceeding.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on hard copy forms in filing cabinets.

RETRIEVABILITY:

Records are retrieved by full name or Social Security Number of health care provider, or other alpha/numeric identifier.

SAFEGUARDS:

Files are monitored during normal working hours by authorized personnel and the room or the files are locked at all other times.

RETENTION AND DISPOSAL:

Records are retained at the command to which the health care provider is assigned and are transferred to the provider's new command upon transfer. When health care providers leave the health care system, the Individual Credentials Files are ordinarily retained at a provider's last command for 10 years and then destroyed. If the provider's Individual Credentials File contains a permanent adverse privileging action or an investigation of criminal misconduct, the original is forwarded to BUMED for the 10 year retention period and then permanently archived. Performance Appraisal Reports and associated documents are retained at each command to which a provider is assigned for 10 years after the provider leaves the facility and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5300. Commanding officers or Officers in charge of Navy Medical Department health care treatment facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the naval medical facility where the treatment was received or to the Chief, Bureau of Medicine and Surgery. Requests should contain the full name, Social Security Number, and signature of the individual. The individual may also visit BUMED or the health care treatment facility. Visitors must possess proof of identification such as I.D. card, driver's license, or other identification showing name and a recent photograph of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the naval medical facility where the treatment was received or to the Chief, Bureau of Medicine and Surgery. Requests should contain the full name, Social Security Number, and signature of the individual. The individual may also visit BUMED or the health care treatment facility. Visitors must possess proof of identification such as I.D. card, driver's license, or other identification showing name and a recent photograph of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Incident reports relating to patients, staff, and other personnel documenting accidents, injuries, and other incidents, together with supportive correspondence and statements including statistical display and summaries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06320–4

SYSTEM NAME:

Blood Donor Files (September 9, 1996, 61 FR 47483).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note**: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

N06320–4

SYSTEM NAME:

Blood Donor Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel donating blood or seeking replacement of blood.

CATEGORIES OF RECORDS IN THE SYSTEM:

Blood donation and blood replacement requirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 21 U.S.C. 600–799; and E.O. 9397 (SSN).

PURPOSE(S):

To record emergency blood requests by blood type, identify donors, replace blood provided to cover individuals, and to meet regulatory requirements imposed by the Food and Drug Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized and paper records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on a need-to-know basis only. Computerized information is password protected and maintained is a locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are destroyed when three years old or discontinuance of function, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300.

System manager: Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records contained in this system of records should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–15048 Filed 6–13–03; 8:45 am]

BILLING CODE 5001–08–U

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Thursday, June 26, 2003. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: an update on development of the Commission's new comprehensive plan, including a proposed resolution for implementation of the proposed Basin Plan and assessments by the states of how their current programs align with the proposed Basin Plan; a presentation by Janet Bowers of the Chester County Water Resources Authority on Watersheds, the Chester County watersheds management plan; an update on development of the TMDLs for PCBs in the Delaware Estuary; a report on formation of the PCB TMDL Implementation Advisory Committee ("IAC"), including proposed revision of Resolution No. 2001–11 authorizing formation of the IAC; a report of the Monitoring Advisory Committee; and a proposal to adopt a revised grade classification and compensation system and amend the Administrative Manual: By-Laws, Management and Personnel.

The subjects of the public hearing to be held during the 1 p.m. business

meeting include, in addition to the dockets listed below, a proposed resolution to revise the Commission's fee schedule for the review of projects under Section 3.8 and Article 10 of the Delaware River Basin Compact and institute fees for docket transfers.

1. *Exelon Generating Co., LLC D–69–210 CP, Final (Revision 11).* A demonstration mine pool withdrawal project to supply up to 519 million gallons per 30 days (17.3 mgd) of augmentation flow to tributaries of the Schuylkill River for downstream withdrawal directly from the main stem Schuylkill River. Exelon proposes to modify its operations to establish criteria for utilization of mine pool water for periodic augmentation of the East Norwegian Creek, a tributary of the Schuylkill River, in accordance with an existing Pennsylvania Department of Environmental Protection National Pollutant Discharge Elimination System permit. The water will be pumped from the Wadesville Mine Pool on properties of the Reading Anthracite Company located in New Castle and Norwegian Townships and St. Clair Borough, Schuylkill County, Pennsylvania. Exelon Generating Co., LLC proposes to withdraw from the augmented flow of the Schuylkill River at its Limerick Generating Station (LGS) in Limerick Township, Montgomery County, Pennsylvania, approximately 72 river miles downstream of the augmentation source. The water will be used as an alternate source of cooling water make-up for the LGS nuclear powered generation facility. The withdrawal from the Schuylkill River at the LGS site is to proceed during times when natural low flow or temperature conditions in the Schuylkill River otherwise restrict Exelon from withdrawal, provided that augmentation of the flow precedes the withdrawal. The revised operations are projected to maintain a flow regime during withdrawal equivalent to the natural flow regime without the augmentation and withdrawal. The project is designed both to provide an alternate source of water to the LGS and to improve the water quality of mine pool drainage.

2. *Borough of Westville D–79–86 CP Renewal.* A ground water withdrawal renewal project to decrease withdrawal from 37.5 mg/30 days to 28.5 mg/30 days of water to the applicant's public water distribution system from Wells Nos. 4, 5 and 6 in the Potomac-Raritan-Magothy (PRM) aquifer. The project is located in Westville Borough, Gloucester County, New Jersey.

3. *FiberMark North America, Inc. D–82–31 Renewal 3.* A ground water withdrawal renewal project to increase withdrawal from 2.4 mg/30 days to 2.85 mg/30 days to supply the applicant's paper manufacturing facility from existing Well No. 1, and return non-contact cooling water to ground water via injection Well No. 2 in the Tohickon Creek Watershed. The project is located in Quakertown Borough, Bucks County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Town of Newton D–90–111 CP Renewal.* A ground water withdrawal renewal project to continue withdrawal of 10.85 mg/30 days to supply the applicant's public water distribution system from existing Well No. PW–1 in the Kittatinny formation. The project is located in the Paulin's Kill Watershed in the Town of Newton, Sussex County, New Jersey.

5. *South Whitehall Township Authority D–91–82 CP Renewal.* A ground water withdrawal renewal project to continue withdrawal of 60 mg/30 days to supply the applicant's water distribution system from existing Wells Nos. 1, 2, 3, 5, 6, 9, 10, 11, 13, and 14 in the Cedar Creek and Jordan Creek Watersheds. The project is located in South Whitehall Township, Lehigh County, Pennsylvania.

6. *Borough of Orwigsburg D–92–05 CP Renewal.* A ground water withdrawal renewal project to continue withdrawal of 11.6 mg/30 days to supply the applicant's public water supply system from existing Wells Nos. 1, 2, 3, and 4 in the Mahannon Creek Watershed. The project is located in Orwigsburg Borough, Schuylkill County, Pennsylvania.

7. *Mantua Township Municipal Utilities Authority D–2000–04 CP.* A ground water withdrawal renewal project to supply up to 57 mg/30 days of water to the applicant's public water distribution system from existing Wells Nos. 2–8 in the Potomac-Raritan-Magothy and the Mt. Laurel-Wenonah Aquifers. Commission approval on September 19, 1996 was limited to 10 years and will expire unless renewed. The applicant requests that the total withdrawal from all wells be increased from 47 mg/30 days to 57 mg/30 days. The project is located in Mantua Township, Gloucester County, New Jersey.

8. *Upper Hanover Municipal Authority D–2001–61 CP.* A project to expand a 0.02 mgd STP to process 0.15 mgd while maintaining tertiary level of treatment. The project will continue to serve the predominantly residential area of Upper Hanover Township, Montgomery County, Pennsylvania, where the STP is located off the intersection of Frey and Buck Roads. STP effluent will be discharged to Macoby Creek in the Perkiomen Creek Watershed through the existing outfall.

9. *Thornbury Township D–2003–04 CP.* A project to expand a 0.12 million gallons per day Sewage Treatment Plant (STP) to process 0.18 mgd, while continuing to provide secondary treatment via an extended aeration activated sludge treatment process. The STP is located between Thornton and Cheyney Roads in Thornbury Township, Delaware County, Pennsylvania and will continue to serve the predominantly residential customers in that municipality. STP effluent will continue to be discharged to the non-tidal portion of Chester Creek via the existing force main.

10. *Upper Saucon Sewage Treatment Authority D–2003–05 CP.* A project to rerate a 2.0 million gallon per day (mgd) sewage treatment plant (STP) to process 2.5 mgd, while continuing to provide advanced secondary level of treatment via the A/O Process. The project is located just southwest of the intersection of Old Bethlehem Pike and Pennsylvania Route 78 in Upper Saucon Township, Lehigh County, Pennsylvania. The project will continue to serve the predominantly residential population of Coopersburg Borough and Upper Saucon Township. No new treatment facilities are proposed, and the plant will continue to discharge to Saucon Creek in the Lehigh River Watershed via the existing outfall.

11. *City of Bordentown D–2003–11 CP.* A ground water withdrawal project to provide up to 31.97 million gallons per 30 days of water to the applicant's public water supply system from New Well No. 5 and to retain the total combined allocation of 90 mg/30 days from all wells, Wells 1, 2, 3, and 5 (proposed). Well No. 5 is screened in the Raritan Formation and is located in the Crosswicks Creek Watershed in Hamilton Township, Mercer County, New Jersey. All wells will continue to serve the applicant's existing service area of the City of Bordentown, the Township of Bordentown, and via bulk water sale, the Borough of Fieldsboro, all in Burlington County, New Jersey.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the May 8, 2003 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution amending Resolution No. 2001–11 concerning a TMDL Implementation Advisory Committee ("IAC"); a resolution adopting a revised grade classification and compensation system and amending the Administrative Manual: By-Laws, Management and Personnel; and a resolution providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year 2003–2004, commencing July 1, 2003.

Draft dockets scheduled for public hearing on June 26, 2003 are posted on the Commission's Web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: June 9, 2003.

Christopher M. Roberts,

Public Information Officer.

[FR Doc. 03–15117 Filed 6–13–03; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Elementary and Secondary Education Act; Unsafe School Choice Option; Final Deadlines for Implementation

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final deadlines for implementation.

SUMMARY: The Deputy Under Secretary for Safe and Drug-Free Schools establishes deadline dates for implementation of the Unsafe School Choice Option (USCO) requirements, under section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. This notice establishes deadlines by which each State must identify persistently dangerous schools, as well as offer students attending a persistently dangerous school and students who are victims of a violent criminal offense while on school property the opportunity to transfer to a safe school.

The notice of final deadlines for implementation is effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kristen Hayes, U.S. Department of Education, 400 Maryland Ave., SW., Room 3E340, Washington, DC 20202–6123. Telephone: (202) 708–9431. Or via Internet: *Kristen.Hayes@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: These final deadlines implement the Unsafe School Choice Option (USCO), section 9532 of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110), enacted January 8, 2002.

On April 7, 2003, the Deputy Under Secretary published a notice of proposed deadlines for final implementation (notice of proposed deadlines) for this provision in the **Federal Register** (68 FR 16789).

In the notice of proposed deadlines, the Deputy Under Secretary proposed two deadlines for timely implementation of the USCO provision. The notice of proposed deadlines proposed (1) requiring each State to identify those schools that meet its definition of a persistently dangerous school by July 1, 2003, and each July 1st thereafter; and (2) requiring each State to allow students attending a persistently dangerous public elementary or secondary school and students who are victims of a violent criminal offense the opportunity to transfer to a safe school by the start of the 2003–2004 school year and each start of the school year thereafter.

This notice of final deadlines for implementation contains significant changes that are fully explained in the Analysis of Comments and Changes elsewhere in this notice.

Analysis of Comments and Changes

In response to the Deputy Under Secretary's invitation to comment in the notice of proposed deadlines, 13 parties submitted comments. Six of the commenters addressed the issue of the deadlines proposed in the notice of proposed deadlines. Following is an analysis of the comments and changes the Department has made in the deadlines since publication of the notice of proposed deadlines.

We group major issues according to subject. Generally, we do not address technical and other minor changes. We also do not address suggested changes that the law does not authorize the Secretary to make.

Deadline for Identifying Persistently Dangerous Schools

Comments: Six commenters requested the July 1, 2003 and each July 1st thereafter deadline for labeling schools persistently dangerous be reconsidered. Four commenters proposed deadlines between July 15 and August 15; one commenter proposed a flexible timeframe of July 1–September 30, and the other commenter felt that the July 1 deadline was too soon, but did not propose a specific date.

Some of these commenters objected to the July 1st deadline because they believed it would not provide States with a sufficient amount of time to collect and analyze the most recent school year's data by July 1st. Others contended that the deadline might force a State to omit its most recent school year's data in identifying persistently dangerous schools, and therefore not recognize improvements in the school's environment that were made in the most recent school year.

Discussion: We agree that the July 1 implementation date could have had a negative impact on the States' ability to utilize the most recent school year's data in identifying persistently dangerous schools. It could also have been difficult for some States to complete analysis of the data by July 1.

Changes: In response to these comments, the Deputy Under Secretary establishes a final deadline requiring each State to identify schools that meet its definition of a persistently dangerous school in sufficient time to permit local educational agencies (LEAs) to offer students in schools identified as persistently dangerous the option to transfer to a safe school at least 14 calendar days before the start of the 2003–2004 school year, and each school year thereafter.

Deadline for Offering Students Opportunity To Transfer

Comments: We received three comments pertaining to the proposed start of school year deadline for transferring students who attend a persistently dangerous school or students who are victims of a violent criminal offense to transfer to a safe school. Two commenters stated that this deadline was feasible. One commenter proposed the effective date of student transfers be changed to October 1st of each year, at the earliest, to allow

schools and parents sufficient time to prepare and respond to the requirements of the USCO provision.

Discussion: We believe a deadline for offering the transfer option to students attending a persistently dangerous school must appropriately balance the concerns of the States and local educational agencies with the needs of the individual students attending a persistently dangerous school or who are the victims of a violent criminal offense at school. Notification of the option to transfer to a safe school at the start of the school year would result in students not being able to transfer to a safe school until after the school year has begun. We believe that the benefits of having students transfer in advance of the school year include greater continuity and an easier transition for the students.

Changes: The Deputy Under Secretary establishes a deadline requiring each LEA to offer students who attend persistently dangerous schools the opportunity to transfer to a safe school at least 14 calendar days before the start of the 2003–2004 school year. This deadline will also apply in each school year thereafter. The Deputy Under Secretary also establishes a deadline requiring each local educational agency to offer students who are victims of violent criminal offenses while at school or on school grounds the opportunity to transfer to a safe school beginning at the start of the 2003–2004 school year. This deadline will also apply in each school year thereafter.

Final Deadlines

The Deputy Under Secretary establishes a final deadline requiring each State to identify schools that meet its definition of a persistently dangerous school in sufficient time to permit LEAs to offer students in schools identified as persistently dangerous the option to transfer to a safe school at least 14 calendar days before the start of the 2003–2004 school year. This deadline will also apply in each school year thereafter.

The Deputy Under Secretary establishes a final deadline requiring each LEA to offer students who attend persistently dangerous schools the opportunity to transfer to a safe school at least 14 calendar days before the start of the 2003–2004 school year. This deadline will also apply in each school year thereafter. The Deputy Under Secretary also establishes a deadline requiring each LEA to offer students who are victims of violent criminal offenses while at school or on school grounds the opportunity to transfer to a safe school beginning at the start of the 2003–2004 school year. This deadline will also apply in each school year thereafter.

We recognize that the start of the school year will vary from LEA to LEA. The opportunity to transfer provided by USCO must be offered to affected students at least 14 calendar days before the start of the school year in their LEA. Changes to this policy, consistent with statutory requirements and these deadlines, may be made as needed by the State.

Waiver of Delayed Effective Date

Under the Administrative Procedures Act (5 U.S.C. 553), the Secretary generally establishes an effective date for regulations 30 days after the final notice appears in the **Federal Register**. Due to the changes postponing the implementation dates in this notice of final implementation, and the seriousness of attending a persistently dangerous school or being a victim of a violent criminal offense, the Secretary waives the delayed effective date for good cause under 5 U.S.C. 533(d)(3).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

Program Authority: 20 U.S.C. 7912.

Dated: June 11, 2003.

Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–15156 Filed 6–13–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 31, 2003, 9 a.m. to 6 p.m.; and Friday, August 1, 2003, 9 a.m. to 12 noon.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to complete action on the charge related to exploring the possibility of using fusion energy for non-electric applications. In addition, the Committee will be given a charge on Fusion Science and Engineering Workforce Development and the organization of the panel for dealing with that charge and perhaps some preliminary thoughts on which directions to pursue would be explored at this meeting.

Tentative Agenda:

Thursday, July 31, 2003

- Office of Fusion Energy Sciences Perspective
- Report from the Panel on non-Electric Applications
- Discussion of the Report
- Presentation of a Scientific Paper TBD
- Public Comments

Friday, August 1, 2003

- Discussion of Workforce Development Charge
- Status of International Thermonuclear Experimental Reactor (ITER) Activities
- Planning for Next Meeting

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–15106 Filed 6–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: July 17, 2003, 8 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Crystal Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: John Ferrell, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Development of recommendations to the Biomass R&D Board on the future direction for federal biomass research and development activities, and methods for facilitating consultations and partnerships among Federal and State agencies, agricultural producers, industry, consumers, the research community, and other interested groups.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact John Ferrell at (202) 586–7766 or *Bioenergy@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-Chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-Chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days of the meeting at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–15107 Filed 6–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: July 10, 2003 from 8:30 am to 5 pm, and July 11, 2003 from 8:30 am to 4 pm.

ADDRESSES: Lawrence Berkeley National Laboratory, One Cyclotron Road, Berkeley, CA 94720, 510–495–2892.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Communications and Outreach Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- EERE Programmatic Update
- Lawrence Berkeley National Laboratory (LBNL) Program Discussion and Tour of LBNL facility
- Regional Office Update

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 10, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–15108 Filed 6–13–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7513–3]

EPA National Advisory Council for Environmental Policy and Technology Notification of Public Advisory Committee Teleconference Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Monday, July 7, 2003, from 3 p.m. to 4:30 p.m. Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individual listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. A subset of NACEPT is organized as the Report on the Environment (ROE) Workgroup.

Purpose of Meeting: The NACEPT Council will review and comment on the draft advice letter developed by the NACEPT Report on the Environment Workgroup. The Council was asked by EPA's Office of Environmental Information and the Office of Research and Development to provide perspective and input on the types of questions and issues that should be highlighted during the national dialogue meetings that EPA will schedule following the release of EPA's Draft Report on the Environment.

Availability of Review Materials: If you wish to receive a copy of the draft advice letter from the NACEPT ROE Workgroup, please contact Ms. Altieri at (202) 233–0061.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Sonia Altieri, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0061 or via email at *altieri.sonia@epa.gov*.

The agenda will be available to the public upon request. Written comments for NACEPT's consideration should be submitted no later than Wednesday, July 2, 2003.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our website (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Altieri at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 11, 2003.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 03–15125 Filed 6–13–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board of Directors

TIME AND DATE: The meeting of the Board of Directors is scheduled to begin at 10a.m. on Wednesday, June 18, 2003.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Proposed Rule Regarding Acquired Member Assets. The rule would revise the Acquired Member Assets (AMA) regulation (12 CFR part 955) to create less prescriptive AMA requirements, to provide each Federal Home Loan Bank (Bank) with greater responsibility for designing and managing its AMA program, subject to ongoing supervisory review, and to codify a Bank's authority to acquire as AMA certain instruments that represent an interest in loans that individually could qualify as AMA.

Interim Final Rule Regarding the Privacy Act and the Freedom of Information Act

The revised Privacy Act regulation (12 CFR part 913) is written in a "user-friendly" format using plain language and, where appropriate, a question-and-answer format and reflects a reassignment of responsibility and authority for running the Federal Housing Finance Board's Privacy Act program to the Office of General Counsel. The rule also amends the Freedom of Information Act fee schedule (12 CFR 910.9) to take into account increased salary and operational costs.

Final Rule Updating the Description of the Federal Housing Finance Board's Organization and Functions

The rule revises the regulation describing the agency's general organization and functions to reflect the current structure and assignment of responsibilities (12 CFR part 905).

Appointment of Director—Federal Home Loan Bank of Topeka

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) requires the Federal Housing Finance Board to appoint public interest directors to the boards of directors of the Federal Home Loan Banks.

Designation of Community Interest Director—Federal Home Loan Bank of Cincinnati

Section 7(a) of the Federal Home Loan Bank Act (12 U.S.C. 1427(a)) requires at least two public interest directors appointed by the Federal Housing Finance Board to the board of directors of each Federal Home Loan Bank to be community interest directors, that is, from organizations with more than a two-year history of representing consumer or community interests on banking services, credit needs, housing or financial consumer protections.

2003 Designation of Federal Home Loan Bank Directorships

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) requires the Federal Housing Finance Board annually to designate directorships for the election of Federal Home Loan Bank directors.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov*.

Dated: June 10, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–15193 Filed 6–11–03; 4:49 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission; 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Steven R. Blust,

Chairman.

The Members of the Performance Review Board Are:

1. Joseph E. Brennan, Commissioner
2. Harold J. Creel, Jr., Commissioner
3. Rebecca F. Dye, Commissioner
4. Delmond J.H. Won, Commissioner
5. Norman D. Kline, Chief Administrative Law Judge
6. Frederick M. Dolan, Jr., Administrative Law Judge
7. Michael A. Rosas, Administrative Law Judge
8. Bryant L. VanBrakle, Secretary
9. Bruce A. Dombrowski, Executive Director
10. Florence A. Carr, Director, Bureau of Trade Analysis
11. Vern W. Hill, Director, Bureau of Enforcement
12. Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing
13. Austin L. Schmitt, Deputy Executive Director

[FR Doc. 03–15081 Filed 6–13–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 30, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Boulevard Financial, LP, Tuscola, Illinois; to acquire outstanding shares of TNB Bancorp, Inc., Tuscola, Illinois, and thereby indirectly acquire Tuscola National Bank, Tuscola, Illinois.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Stanley Alan Judd; Fairbury, Nebraska; to acquire control of Washington 1st Banco, Inc., Washington, Kansas, and thereby indirectly acquire voting shares of The First National Bank of Washington, Washington, Kansas.

Board of Governors of the Federal Reserve System, June 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–15033 Filed 6–13–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Alapaha Holding Company, Alapaha, Georgia; to become a bank holding company by acquiring 100 percent of Bank of Alapaha, Alapaha, Georgia.

2. Community Banks of Georgia, Inc., Jasper, Georgia; to become a bank holding company by acquiring 100 percent of the outstanding shares of Community Bank of Pickens County, Jasper, Georgia.

3. Traditions Bancshares, Inc., Cullman, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Traditions Bank (In Organization), Cullman, Alabama.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Marquette Financial Companies, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Valley Bancorp, Inc., Phoenix, Arizona, and thereby indirectly acquire Valley Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, June 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–15032 Filed 6–13–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 2003.

A. Federal Reserve Bank of Atlanta. (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. *GB&T Bancshares, Inc.*, Gainesville, Georgia; to merge with Baldwin Bancshares, Inc., Milledgeville, Georgia, and thereby indirectly acquire First National Bank of the South, Milledgeville, Georgia.

Board of Governors of the Federal Reserve System, June 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–15110 Filed 6–13–03; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Cancellation of Medical Standard Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Standard Form 521, Medical Record—Dental is cancelled. The SF 603A, Medical Record—Dental Continuation will replace the SF 521 because the Federal medical community no longer uses it.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective June 16, 2003.

Dated: June 9, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–15109 Filed 6–13–03; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

[2003–N03]

GSA Discontinues Printing and Distribution of the Catalog of Federal Domestic Assistance

AGENCY: Office of Governmentwide Policy; Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: For years, GSA has published a printed version of the Catalog of Federal Domestic Assistance (CFDA or Catalog), as required by legislation dating to 1977 and 1983. That same legislation allowed GSA to distribute free copies of the printed Catalog to designated recipients. In fiscal year 2003, we distributed nearly 10,000 paper copies of the Catalog at no cost to the recipients.

Current legislation, however, authorizes GSA to determine in what form to prepare and publish the Catalog. Consistent with the Administration's Electronic-Government initiatives, the Government Paperwork Elimination Act, and a move to a paper free environment, GSA will now disseminate the Catalog electronically through the CFDA Web site on the Internet. As a result, effective immediately, GSA will no longer print and distribute free copies of the Catalog.

The Internet and GSA's free CFDA Web site at *http://www.cfda.gov* will be the primary means of disseminating the Catalog. In addition to what is already there, the Web site will soon contain a version of the Catalog that, when printed by any user, will have the same layout as the printed document that the Government Printing Office (GPO) has provided.

Furthermore, GPO recently indicated that it will continue printing and selling the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or you may reach GPO's on-line bookstore at *http://bookstore.gpo.gov*.

DATES: This notice is effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Hospodar, CFDA Team Leader, General Services Administration, by phone at (202) 208–4052.

Dated: June 10, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 03–15103 Filed 6–13–03; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; 2003 National Survey of Older Americans Act Participants

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information within 30 days of the publication of this notice.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: *Cynthia.Bauer@aoa.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

With the 2003 National Surveys of Older Americans Act Participants, the Administration on Aging continues its initiative, started with the Performance Outcomes Measures Project (POMP), to develop and test performance outcome measures for Older Americans Act programs. Surveys to be conducted in 2003 will test consumer assessment instruments at the national and state level for nutrition, transportation, homemaker, information and assistance and caregiver services.

AoA estimates the burden of this collection of information as follows: Area Agency on Aging—Number of Respondents: 120; Number of Responses per Respondent: one; Average Burden per Response: 2 hours; Area Agency on Aging Burden: 240 hours—National Survey—Number of Respondents: 5040; Number of Responses per Respondent: one; Average Burden per Response: .5 hours; National Survey Burden: 2,520 hours—State Surveys—Number of Respondents: 5600; Number of Responses per Respondent: one; Average Burden per Response: .5 hours; State Survey Burden: 2,800 hours—Total Burden—5,560 hours.

Dated: June 3, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–15061 Filed 6–13–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0050]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Investigational Device Exemptions Reports and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by July 16, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational Device Exemptions Reports and Records—21 CFR Part 812 (OMB Control Number 0910–0078)—Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The Food and Drug Administration Modernization Act of 1997 added section 520(g)(6) to the act and permitted changes to be made either to the investigational device or to the clinical protocol without FDA approval of an investigational device exemption (IDE) supplement.

An IDE allows a device, which would otherwise be subject to provisions of the act, such as premarket notification or premarket approval, to be used in investigations involving human subjects. The safety and effectiveness of the device involving human subjects is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards.

To do this, the regulation provides for different levels of regulatory control depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, ones that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements.

The regulation also includes provisions for treatment IDEs. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available.

Section 812.10 allows the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety.

Sections 812.20, 812.25, and 812.27 consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant-risk device investigations. Section 812.20 lists the data requirements for the original IDE application; § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in this original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety and for FDA to make a determination to approve the IDE.

Once FDA approves an IDE application, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation, which affects the scientific soundness of the study or the rights, safety, or welfare of the subjects, is required to submit a request for the change to FDA. Under § 812.150, a sponsor is required to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to assure protection of human subjects and to allow review of the study's progress.

Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interests of the public health. Section

812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device, and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study; records of receipt, use or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required to maintain records, including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, investigational review board (IRB) information, and statement on the extent that good manufacturing practices will be followed.

The most likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

In the **Federal Register** of March 12, 2003 (68 FR 11868), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.10	1	1	1	1	1
812.20, 812.25, and 812.27	600	0.5	300	80	24,000
812.35 and 812.150 (significant)	600	7	4,200	6	25,200
812.150 (nonsignificant)	600	0.017	10	6	60
812.36(c)	6	1	6	120	720
812.36(f)	6	2	12	20	240
Total					50,221

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
812.140 Original	600	0.5	300	10	3,000
Supplemental	600	7	4,200	1	4,200
Nonsignificant	600	1	600	6	3,600
Total					10,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. Reporting

Section 812.10 estimates are based on the fact that FDA has received very few, if any, waiver requests in the past, and estimates that very few will be submitted in the future. Therefore, FDA estimates a minimal burden to account for waiver requests.

Sections 812.20, 812.25, and 812.27 estimates are based on the average of IDEs submitted from fiscal years 1995 through 2002. FDA estimates the annual reporting burden for one IDE original application to be approximately 80 hours and the annual reporting burden for one IDE supplement to be approximately 6 hours.

Sections 812.35 and 812.150 estimates are based on the average of IDE supplements submitted from fiscal years 1995 through 2002 for significant risk device studies. FDA estimates the annual reporting burden for one IDE supplement to be approximately 6 hours.

The reporting burden for nonsignificant risk device studies (§ 812.150) is negligible. Nonsignificant risk device studies are not reported to FDA unless a problem is reported such as, an unanticipated adverse device reaction, failure to obtain informed consent, withdrawal of IRB approval, or a recall of a device. In the past, an average of 10 incidences or less annually have been reported to FDA.

Section 812.36(c) and (f) estimates are based on FDA's experience with the treatment use of drugs and knowledge of the types of devices that may meet the treatment use criteria. FDA estimates that an average of six treatment use applications will be submitted each year. FDA estimates that it will take approximately 120 hours to prepare a treatment IDE and the total annual burden for preparing applications will be 720 hours. FDA also estimates that it will take approximately 20 hours to prepare a semiannual report, resulting in a total annual burden of 240 hours for annual reports.

III. Recordkeeping

Section 812.40 estimates are based on conversations with manufacturers, industry trade association groups, and businesses over the last 3 years. For significant risk device investigations, FDA has estimated that the recordkeeping burden for preparing an original IDE submission averages 10 hours for each original IDE submission. Similarly, through the same conversations previously mentioned, FDA has estimated recordkeeping for each supplement requires 1 hour. The recordkeeping burden for nonsignificant risk device investigations is difficult to estimate because nonsignificant risk device investigations are not required to be submitted to FDA. The IDE staff estimates that the number of recordkeepers for nonsignificant risk device investigations is equal to the number for active significant risk device investigations. The recordkeeping burden, however, is reduced for device nonsignificant risk studies. It is estimated that 600 recordkeepers will spend 6 hours each in maintaining these records.

Dated: June 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15059 Filed 6–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0201]

Minimizing Medication Errors—Methods for Evaluating Proprietary Names for Their Confusion Potential; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 30, 2003 (68 FR 32529). The document announced a public meeting to explore current methods being used to evaluate proprietary drug names to reduce medication errors due to similarity in drug names. The document published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–13591, appearing on page 32529 in the **Federal Register** of Friday, May 30, 2003, the following corrections are made:

1. On page 32530, in the first column, under "**FOR FURTHER INFORMATION CONTACT**", in the second paragraph, "202–835–3533" is corrected to read "202–572–7751".

2. On page 32530, in the third column, the first full sentence is corrected to read "Speakers who wish to participate in the open public meeting must register by June 13, 2003."

3. On page 32530, in the third column, under section III, the first sentence is corrected to read "To speak at the meeting, you must preregister by June 13, 2003."

Dated: June 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15058 Filed 6–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 17, 2003, from 8 a.m. to 6 p.m., and on July 18, 2003, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn Select, 8120 Wisconsin Ave., Bethesda, MD, 301–652–2000.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 17, 2003, the committee will discuss the safety of bovine bone gelatin in oral and topical drugs, food and cosmetics. The committee will then discuss bovine spongiform encephalopathy in Canada and potential implications for FDA-regulated products. In the afternoon, the committee will hear presentations on transmissible spongiform encephalopathies (TSEs) and decontamination of medical equipment and facilities. On Friday, July 18, 2003, the committee will discuss designing, interpreting, and validating studies to evaluate reprocessing methods for removing TSE contamination from medical devices. In the afternoon, the committee will discuss methods to decontaminate facilities and equipment used to prepare human cellular and tissue products, and human blood products, including plasma derivatives, to reduce the theoretical risk of transmitting TSE agents.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 10, 2003. Oral presentations from the public will be scheduled between approximately 11:35 a.m. and 11:55 a.m., and 1:55 p.m. and 2:25 p.m. on July 17, 2003; and between approximately 9:50 a.m. and 10:20 a.m., and 1:30 p.m. and 2 p.m. on July 18, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 11, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an

indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Sheila D. Langford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 9, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–15105 Filed 6–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: July 10, 2003, 5 p.m.–7 p.m.; July 11, 2003, 8:30 a.m.–5 p.m.; July 12, 2003, 9 a.m.–5:30 p.m.; July 13, 2003, 8 a.m.–10:30 a.m.

Place: Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005, (202) 232–7000.

Status: The meeting will be open to the public.

Agenda: The agenda will focus on meeting with Agency management to determine the desired areas of recommendations for the Council to address in the upcoming year. The Council will also review the new National Health Service Corps Legislation to discuss possible areas of recommendations. Agenda items and times are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: June 9, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–15104 Filed 6–13–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Evaluation of the NIDCD Partnership Program OMB # 0925–0479

SUMMARY: In compliance with the requirement of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Evaluation of the NIDCD Partnership Program. *Type of Information Collection Request:* REVISION. *Need and Use of Information Collection:* The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are under represented in the science and health professional field. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) Reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. This survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists. *Frequency of Response:* One. *Affected Public:* Individuals. *Type of Respondent:* Partnership Program Participants and Applicants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 51; *Estimated Number of Responses per Respondent:* 2; *Average Burden Hours Per Response:* .50; and *Estimated Total Annual Burden Hours Requested:* 18. The total annualized cost to respondents is estimated at: $288. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

(**Note:** The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.)

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
New Program Participants	7	2	.50	3.5
Past Program Participants	14	2	.50	7
Program Applicants	30	1	.25	7.5
Total	51			18

Request For Comments

Written and/or suggestions from the public and affected agencies are invited on one or more of the following points (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mrs. Kay C. Johnson-Graham, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–402–6415 or E-mail your request, including your address to: *kay_johnson@ms.nidcd.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 3, 2003.

W. David Kerr,

Executive Officer, NIDCD National Institutes of Health.

[FR Doc. 03–15138 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel. Sequencing Technology 2.

Date: June 18, 2003.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15130 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Database Review.

Date: July 2, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Building 31, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15135 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Adolescent Literacy RFA.

Date: July 10–11, 2003.

Time: 8:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15131 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITV Doctoral Applications.

Date: June 18, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15132 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Ways to Improve Hospital Care for Older People.

Date: June 23–24, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Chicago O'Hare, 5550 N. River Rd, Rosemont, IL 60018.

Contact Person: Arthur d. Schaerdel, DVM, the Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9669.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15133 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–NICHD–2003–13—Web Based Data Coordinating Center.

Date: July 6–8, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15134 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculokeletal and Skin Diseases Special Emphasis Panel, Review of Developmental Grants.

Date: June 27, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, One Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4974.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 9, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15136 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SRA Conflict SEP for MDCN2.

Date: June 16, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Oral Biology and Medicine Subcommittee 1.

Date: June 17–18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSX 02M:SAT and SB Member Conflict.

Date: June 18, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: June 19, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1, CDF–2 (40): Ivem National Resource.

Date: June 19–21, 2003.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Hotel, 8651 Spectrum Blvd., San Diego, CA 92123.

Contact Person: Ramesh K. Navak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Monkeypox Virus Pathogenesis.

Date: June 23, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of "Cancer-Associated Mutants of DNA Polymerase beta".

Date: June 25, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Brain Disorders Study Section (DBD).

Date: June 26–27, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology.

Date: June 27, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Washington-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Predoctoral Fellowships for Minority Students & Students with Disabilities.

Date: June 27, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ALTX 4 Member Conflict.

Date: June 27, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Plasmodium Biology.

Date: June 27, 2003.

Time: 4:15 p.m. to 6:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: June 29–July 1, 2003.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Targets for Cancer Drug Discovery.

Date: July 29–July 1, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: June 30–July 1, 2003.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower, 1127 Connecticut Ave., NW., Washington, DC 20036.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict.

Date: June 30, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F10 (20): Fellowships, Pathophysiology.

Date: June 30–July 1, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB 51R Improvements in Imaging Methods & Technologies: RFA EB03–007.

Date: June 30–July 1, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Small Business and Technology Applications.

Date: June 30–July 1, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Study Section.

Date: June 30–July 2, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Embassy Row Hotel, 2100 Massachusetts Avenue, Washington, DC.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–L (10)B Drug Delivery & Drug Discovery SBIR/STTR Panel.

Date: June 30–July 1, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Steroids and Neurons.

Date: June 30, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Perception Study Section.

Date: June 30, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Room 5172 MSC 7844, Bethesda MD 20892, 301–435–1247, *steinmem@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS T: 10B: Small Business: Endocrinology, Metabolism, Nutrition, & Reproductive Sciences.

Date: June 30–July 1, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 2003

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15137 Filed 6–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1469–DR]

Illinois; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1469–DR), dated May 15, 2003, and related determinations.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 15, 2003:

Union County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15100 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Meade County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15100 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15101 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1471–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1471–DR), dated June 3, 2003, and related determinations.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 3, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms, flooding, mud and rock slides, and tornadoes on May 4–27, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Charles M. Butler, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Anderson, Boyd, Breckenridge, Boyle, Bullitt, Caldwell, Carter, Crittenden, Elliott, Fleming, Garrard, Grayson, Greenup, Hardin, Hart, Henderson, Hopkins, Jefferson, Jessamine, Larue, Lewis, Lawrence, Mason, McLean, Meade, Mercer, Nelson, Rowan, Union, Washington, Webster, and Woodford Counties for Individual Assistance.

Ballard, Boyd, Breathitt, Calloway, Carter, Crittenden, Estill, Fleming, Greenup, Hart, Henderson, Hopkins, Lewis, Livingston, McLean, Mercer, Nicholas, Owsley, Perry and Rowan Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15095 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1463-DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Dent, Gasconade, Iron, Monroe, and Phelps Counties for Individual Assistance.

Crawford County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15099 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Gasconade County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15102 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1467–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1467–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2003:

Livingston, Madison, Orleans, Otsego, and Schenectady Counties for Public Assistance.

Seneca County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15097 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1465–DR]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1465–DR), dated May 10, 2003, and related determinations.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 2003:

Cherokee, Creek, Okmulgee, and Seminole Counties for Individual Assistance.

Garvin and Nowata Counties for Individual Assistance and Public Assistance.

Beaver and Cimarron Counties for Public Assistance.

Delaware, Muskogee, Pontotoc, Roger Mills, Texas, and Washington Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15098 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), FEMA, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: July 28, 2003

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: July 28, 2003, 2–4 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before July 21, 2003. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: June 10, 2003.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 03–15094 Filed 6–13–03; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Request to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Bureau of Indian Affairs (BIA) for a Certificate of Degree of Indian or Alaska Native Blood (CDIB) has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 25). The BIA is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before July 16, 2003.

ADDRESSES: Written comments should be sent directly to the Desk Officer for the Department of the Interior, by facsimile at (202) 395–5806 or you may send an e-mail to: *Ruth_Solomon@omb.eop.gov.*

Send a copy of your comments to Duane Bird Bear, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection may be obtained by contacting Carolyn Newman, 202–513–7641.

SUPPLEMENTARY INFORMATION: No comments on the workload burden or the form itself (OMB Control No. 1076–0153) were received during or before the close of the public comment period on April 21, 2003, as requested in the Notice published in the **Federal Register** (68 FR 7800) on February 18, 2003. Comments were received but they concerned substantive requirements for descendants of members of federally recognized Indian tribes but who were not themselves enrolled members of the tribe. This issue will be addressed during rule revision.

Abstract

The purpose of this collection is to assist in determining the eligibility of individuals for various programs and services available to American Indians and Alaska Natives. This part specifies the requirements for the documentation of degree of Indian blood and uniform standards by which we may issue, amend, or invalidate a Certificate of Degree of Indian or Alaska Native Blood. Disclosure of information may be given to the Department of the Interior and the Department of Justice when required for litigation or anticipated litigation. Notification of inquiries or access must be addressed to the appropriate Regional Director, Bureau of Indian Affairs.

We have adjusted the estimated number of respondents and the burden based on historical trend and for these reasons: (1) The number of federally recognized tribes has remained stable, (2) the number of requests for the CDIB form, usually issued once, has decreased and (3) the BIA field offices and agencies have reduced the number of CDIB forms, processed pending the issuance of a final rule.

Submission of this information is voluntary. However, not providing information may result in a determination that an individual is not eligible to receive program services based upon his/her status as an American Indian or Alaska Native. The information to be collected includes: certificates of birth and death, probate determinations, court orders, affidavits, Federal or tribal census records and Social Security records.

Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration. Please note: comments, names, addresses of commentators are available for public review during regular business hours. If you wish us to withhold any information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. You may request copies of the information collection forms and our submission to OMB from the person listed in **FOR FURTHER INFORMATION CONTACT** section.

Title: Request for Certificate of Degree of Indian or Alaska Native Blood, 25 CFR part 70.

OMB Control number: 1076–0153.

Description of respondents: Individual Indians who may be eligible to receive program services based upon their status and/or degree of Indian or Alaska Native blood.

Frequency: All information and documentation is to be collected once from each requester.

Estimated completion time: The reporting and record keeping burden for this collection of information is estimated to average 1.5 hours for each response for an estimated 154,200 requests per year or 231,300 hours, including the time for reviewing instructions, searching existing data sources and gathering needed data. In addition, 2,400 appeals are expected annually at 2.5 hours per appeal, which adds 6000 hours of burden. Thus, the estimated total annual reporting and record keeping burden for this entire collection is estimated to be 237,300 hours.

Total annual burden: 237,300 hours.

Estimated non-hour cost: There are no costs to consider, except postage and the cost of duplicating the original application form, because verification of the information is already available for other reasons.

Dated: June 6, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–15147 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–4J–P 1

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–034–03–1220–DA]

Environmental Statements; Notice of Intent; Grand Staircase-Escalante National Monument, UT

AGENCY: Department of the Interior, Bureau of Land Management, Grand Staircase-Escalante National Monument, Utah.

ACTION: Notice of Intent to consider a proposed plan amendment and prepare an Environmental Assessment (EA) for the Grand Staircase-Escalante National Monument (GSENM) to allow consideration of toilet facilities at designated campsites in the Frontcountry and Passage Zones and to consider additional designated campsites beyond that currently allowed in the management plan. The Monument includes public lands in Garfield and Kane counties, Utah.

SUMMARY: Pursuant to the Bureau of Land Management (BLM) Planning Regulations (43 CFR part 1600) this notice advises the public that the BLM, GSENM is considering amending the GSENM Management Plan as it pertains to the installation of toilet facilities at designated campsites in the Frontcountry and Passage Zones and the number of designated campsites allowed in the Frontcountry and Passage Zones. Plan Decisions FAC–10 and FAC–15 state that toilet facilities will not be provided at designated campsites in the Frontcountry and Passage Zones. With increased visitor use, human waste has become a concern at some of the sites being considered for designation as primitive campsites. Language used in Plan Decision FAC–16 for the Outback Zone states in part that toilet facilities could be considered for protection of resources in limited cases where other tools to protect resources are ineffective. The plan amendment proposes to adopt this same language for the Frontcountry and Passage Zones so that toilet facilities could be considered at designated campsites for the protection of resources in these zones as well. Plan Decisions FAC–10 and FAC–15 limit the number of sites that can be designated for primitive camping to 10 in the Frontcountry Zone and 25 in the Passage Zone. Visitor use has exceeded expectations when the plan was developed and additional primitive campsites are needed to meet the public demand. The plan amendment proposes to allow additional primitive campsites to be designated in the Frontcountry and Passage Zones with no specific number of sites identified. Additional site specific analysis as required by the National Environmental Policy Act (NEPA) would be prepared for campsite designation.

DATES: This notice initiates a 30-day public scoping period. If you have information, data, or concerns related to the potential impacts of the proposed plan amendments, have comments on the planning criteria, or suggestions for alternatives, please submit them to the address below. Scoping comments must be received at the address below within 30 days of the date this notice is published in the **Federal Register**.

ADDRESSES: Written scoping comments should be sent to: Monument Manager, Grand Staircase-Escalante National Monument, 190 East Center Street, Kanab, Utah 84741. Planning documents and letters received, including names and street addresses of respondents, will be available for public review at the GSENM Office in Kanab, Utah during regular business hours (8 a.m. to 5 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety and may be published as part of the EA. If you are not currently on our mailing list and wish to receive a copy of future planning documents, please send your name and address to the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, Assistant Monument Manager Visitor Services, 435–644–4312, or Dave Hunsaker, Monument Manager, 435–644–4330.

SUPPLEMENTARY INFORMATION: The BLM is preparing an EA to analyze the impacts of designating primitive campsites as required by the GSENM Management Plan. This EA will also be used to address the potential impacts of the proposed plan amendments as described above. The BLM has contracted with a third party, IHI Environmental of Salt Lake City, Utah to prepare the EA. The BLM has identified the following planning criteria, which will guide development of the amendment:

1. The proposed plan amendment and environmental analysis will be

completed in compliance with the Federal Land Policy and Management Act (FLPMA), NEPA, and all other applicable laws.

2. The proposed plan amendment and environmental analysis will be developed using an interdisciplinary approach (*e.g.*, a team approach using a variety of skills and perspectives such as biologists, archaeologists, etc.) with input from interested public, State and local governments, and other Federal agencies.

3. Analysis and decisions in the proposed plan amendment and environmental analysis apply only to this action and will provide for the balance of long term sustainability with short-term uses.

Dated: May 5, 2003.

Sally Wisely,

State Director.

[FR Doc. 03–15056 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–03–1610–DO]

Notice of Intent To Revise the Kemmerer Resource Management Plan and Prepare an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to revise the Kemmerer Resource Management Plan (RMP) and prepare an associated Environmental Impact Statement (EIS); solicitation of public comments on resource issues and preliminary planning criteria; and call for coal resource information and other resource information for the Kemmerer planning area, Wyoming.

SUMMARY: This document (1) provides notice that the Bureau of Land Management (BLM) intends to prepare a revised RMP with an associated EIS; (2) solicits public comments regarding resource issues and preliminary planning criteria; and, (3) solicits resource information for coal and other resources for the Kemmerer planning area. The planning area encompasses approximately 1,422,000 acres of public land and is located in Lincoln, Sweetwater, and Uinta Counties, Wyoming.

DATES: This notice initiates the public scoping process. The BLM can best utilize public comments and resource information submissions submitted within 60 days of publication of this notice in the **Federal Register**.

ADDRESSES: Please send written comments and resource information submissions via mail to the BLM, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101; or electronically to *krmp_wymail@blm.gov*. Members of the public may examine documents pertinent to this proposal in the Kemmerer Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Kemmerer Field Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, please state this prominently at the beginning of your written comment. The BLM will honor such requests to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to the RMP mailing list, contact Tom Davis at the above mentioned address or by telephone at (307) 828–4500, or electronically to *krmp_wymail@blm.gov*.

SUPPLEMENTARY INFORMATION: The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national interests. The public scoping process will help identify planning issues and planning criteria, including an evaluation of the existing RMP in the context of the needs and interests of the public and provide opportunities for commenting on documents published throughout the RMP revision process.

1. Preliminary Issues

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. These issues represent the BLM's knowledge to date on the existing issues and concerns with the current RMP. The major issue themes that may be addressed in the planning effort include:

A. Energy and mineral resource exploration and development;

B. Access to and transportation on BLM lands;

C. Recreation and Off-Highway Vehicle (OHV) management;

D. Wildlife habitat and management of crucial habitat and migration corridors;

E. Management and cumulative effect of land uses and human activities on Threatened, Endangered, Candidate, and Sensitive species and their habitats;

F. Vegetation, including impacts of invasive species;

G. Management of cultural and paleontological resources, including National Historic Trails;

H. Land ownership adjustments;

I. Fire management;

J. Livestock grazing;

K. Visual Resource Management;

L. Potential establishment of special management areas; and,

M. Air and water quality.

2. Categorization of Issues

After gathering public comments on what issues the RMP should address, the BLM will place suggested issues in one of three categories: issues to be resolved in the RMP revision, issues resolved through policy or administrative action, and issues beyond the scope of the RMP revision. Rationale will be provided in the RMP for issues to be resolved through policy or administrative action and issues beyond the scope of the RMP.

3. Preliminary Planning Criteria

The BLM identified the following preliminary planning criteria to guide resolution of the issues considered in the planning effort (the BLM may revise these criteria during the planning process or in response to public comment):

A. The revised RMP will recognize the existence of valid existing rights.

B. The decisions in the revised RMP will cover BLM-administered public lands, including split-estate lands where the subsurface minerals are severed from the surface right, and the BLM has legal jurisdiction over one or the other.

C. The BLM will use a collaborative and multi-jurisdictional approach to determine the desired future condition of public lands.

D. The BLM will strive to ensure that its management decisions are complimentary to other planning jurisdictions and adjoining properties, within the boundaries described by law and regulation.

E. The environmental analysis will consider a reasonable range of alternatives that focus on the relative values of resources and respond to the issues. Management prescriptions will reflect multiple use resource principles.

F. The BLM will use current scientific information, research, new technologies, and the results of resource assessments, monitoring, and coordination to determine appropriate local and regional management strategies that will enhance or restore impaired ecosystems.

G. Revised RMP decisions will comply with all applicable laws, regulations, policy, and guidance.

4. Call for Coal Resource Information and Other Resource Information

Parties interested in coal leasing and development should provide coal resource data for their area(s) of interest. Identification of interests in future coal leasing, substantiated with adequate coal resource data, allows the BLM to address development potential during the RMP revision process and helps avoid unnecessary work, delays, or RMP amendments.

Proprietary data marked as confidential may be submitted in response to this call for coal resource information and other resource information. Please submit all proprietary information submissions to the Kemmerer Field Manager at the address listed above. The BLM will treat submissions marked as "Confidential" in accordance with the laws and regulations governing the confidentiality of such information.

In addition to coal resource data, the BLM seeks resource information and data for other public land values (*e.g.*, air quality, archaeology, fire/fuels, fisheries, forestry, geologic hazards, lands and realty, oil and gas (including coalbed methane), paleontology, rangeland management, recreation, trona, water quality, and wildlife.

5. Public Participation

The BLM will announce public meetings and comment periods through one or more of the following: Local news media, newsletters, and the Kemmerer Field Office Web site, *http://www.wy.blm.gov/kfo/info.htm*, at least 15 days prior to the event. Meetings will tentatively be held in the fall of 2003 in Evanston, Green River, and Kemmerer, Wyoming. The minutes and list of attendees for each meeting will be available to the public and open for 30 days so that attendees may clarify the views they expressed. The BLM will also provide additional opportunities for public participation throughout the RMP revision process.

Dated: April 29, 2003.

Robert A. Bennett,

State Director.

[FR Doc. 03–15057 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on July 10, 2003, at the BLM National Training Center, 9828 North 31st Avenue in Phoenix, Arizona. It will begin at 9:30 a.m. and conclude at 4 p.m. The agenda items to be covered include: Review of the May 7–8, 2002 meeting minutes; BLM State Director's Update on Statewide Issues; Updates on Sustaining Working Landscape Initiative, Wilderness Handbook Revisions, Arizona Land Tenure Adjustment Strategy, Land and Water Conservation Fund Acquisitions; RAC Questions on Written Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on July 10, 2003, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Michael Taylor,

Acting Arizona State Director.

[FR Doc. 03–15090 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO530–1430–ES; COC–63839]

Notice of Realty Action: Proposed Classification of Public Lands for Recreation and Public Purposes Lease in Rio Grande County, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Rio Grande County, Colorado, has been examined and found suitable for classification for lease to the Town of South Fork, Colorado under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) The Town of South Fork proposes to use the land for recreation purposes. Publication of this notice will initiate public review, consultation and collaboration for this classification action.

New Mexico Principal Meridian, Colorado

T.40 N., R. 3 E.,
Sec. 26, metes and bounds tract in lot 1 and the NW¼SW¼;
Sec. 27, metes and bounds tract in lot 9 and the NE¼4NE¼.

The total amount of public land affected by this classification comprises approximately 62 acres.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. If an application to lease the lands has not been filed within18 months following the publication of this notice in the **Federal Register**, this segregation will automatically expire, and the public lands classified in this notice will return to their former status without further action by the authorized officer.

SUPPLEMENTARY INFORMATION: The Town of South Fork proposes to construct, operate and maintain recreation facilities on the above-described land. The land is not needed for Federal purposes. Leasing this public land parcel is consistent with the San Luis Resource Management Plan (December 1985) and would be in the public interest. The lease if issued, would be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior; detailed information concerning this action is available for review at the Del Norte Field Office, Bureau of Land Management, 13308 West Highway 160, Del Norte, Colorado, or by calling William Miller (719–852–6219).

Classification Comments: Interested parties may submit comments involving the suitability of the land for recreation purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreation purposes.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease or classification of the land to the Field Manager, Del Norte Field Office, Bureau of Land Management, 13308 West Highway 160, Del Norte, Colorado 81132. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: April 10, 2003.

Randall Burgess,

Del Norte Field Manager.

[FR Doc. 03–15049 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC–54563; CO–520–1430–EU]

Notice of Intent to Amend the San Luis Resource Management Plan; and Notice of Realty Action for the Baxter Public Land Sale, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the San Luis Resource Management Plan; and notice of realty action, direct sale of public land in Saguache County, Colorado.

SUMMARY: The Bureau of Land Management (BLM), Saguache Field Office (SFO) announces its intent to prepare an amendment to a Resource Management Plan (RMP), pursuant to the BLM planning regulations in 43 CFR 1600. The amendment would consider whether or not a 28.63 acre public land parcel currently included in the SFO's non-sale zone is suitable for direct sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), as amended, to resolve an occupancy trespass.

The following land would be sold at no less than the appraised fair market value:

New Mexico Principal Meridian, Colorado

T. 44 N., R. 7 E.,
Sec. 13: lot 1,
Sec. 24: lot 1, 2
Containing 28.63 acres.

The parcel will be offered by direct sale, without mineral rights, to John Baxter. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or 270 days from publication of this notice, whichever occurs first. Detailed information concerning this sale, including dates, price, patent reservations; sale procedures, etc. will be available upon request.

DATES: Interested parties may submit written comments to the Field Office Manager at the address listed below. Comments will be accepted for 45 days after the date this notice is published in the **Federal Register**.

ADDRESSES: If you wish to comment, request additional information or request to be put on the mailing list, you may do so by any of several methods. You may mail or hand-deliver your comments or requests to: Field Manager, Bureau of Land Management, Saguache Field Office, 46525 Hwy 114, Saguache, CO 81149; 719–655–2547. Comments, including names and addresses of respondents, will be available for public review at the Bureau of Land Management, Saguache Field Office, 46525 Hwy 114, Saguache, CO during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Tom Goodwin, Field Manager, or Bill Miller, Realty Specialist, at the address and phone number listed above.

SUPPLEMENTARY INFORMATION: The RMP provides for three land ownership adjustment zones—disposal, retention, and exchange. Of these three zones, sale of public land is limited to those lands identified in the disposal zone. The proposed amendment would make public land located within the non-sale zone available for direct sale to resolve an occupancy trespass.

A legal notice describing the proposed planning action will be placed in the local newspaper. This notice will also be sent to the Governor of Colorado, Saguache County Commissioners, adjacent landowners, and potentially affected members of the public. The analysis of this action will be done by an interdisciplinary team. The analysis and plan amendment are scheduled for completion in June 2003.

Date Issued: April 14, 2003.

Tom Goodwin,

Saguache Field Manager.

[FR Doc. 03–15050 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–021–1430–EQ; MTM–74913]

Notice of Realty Action; Noncompetitive Lease in Big Horn County, MT

AGENCY: Bureau of Land Management, Miles City Field Office, Interior.

ACTION: Notice.

SUMMARY: The following described land has been examined and identified as suitable for leasing under section 302 of the Federal Land Policy and Management Act (43 U.S.C. 1732) at not less than fair market value:

Principal Meridian

Big Horn County

T. 8 S., R. 39 E.,
Sec. 23, S½S½SW¼NW¼.
Containing 10.00 acres.

DATES: Interested parties may submit comments on or before July 31, 2003.

ADDRESSES: Written comments should be sent to Miles City Field Office, Bureau of Land Management, 111 Garryowen Road, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Bureau.

FOR FURTHER INFORMATION CONTACT: Pam Wall, Miles City Field Office, Miles City, Montana 59301, telephone 406–233–2846.

SUPPLEMENTARY INFORMATION: The purpose of this proposed lease is to authorize the use of public land for topsoil stripping, removal of overburden, highwall crest, catch bench, and dragline sidebench to provide maximum coal recovery from Spring Creek Coal Company's coal lease MTM–069782. The catch bench and dragline sidebench will serve multiple purposes, which include but are not limited to, drainage ditches, light vehicle access, and haul truck haulage. The total disturbed area would be approximately 3.5 acres. The subject land would be offered noncompetitively to Spring Creek Coal Company as an amendment to their existing Land Use Lease MTM–74913 for stockpiling of topsoil and overburden, construction of a haul road, and for drainage control, as the land is adjacent to the Spring Creek coal mine operation. The proposed lease amendment will provide authorized surface use of the public land. The lease amendment will be subject to the terms and conditions of the existing lease.

The application will be accepted for this lease amendment at the address listed above at the end of the 45 day comment period for this notice. The application will be subject to reimbursement of costs in accordance with the provisions of 43 CFR 2920.6. The land will be leased at fair market value as determined by appraisal. The application must include a reference to this notice and a complete description of the proposed project.

Public Comment Procedures: Please submit your comments on issues related to the proposed action, in writing, according to the **ADDRESSES** section above. Comments on the proposed action should be specific, should be confined to issues pertinent to the proposed action, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the Miles City Field Office address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: April 28, 2003.

David McIlnay,

Field Office Manager.

[FR Doc. 03–15052 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–07–1230–00: 8371]

Proposed Supplementary Rules for the BLM-Managed Shoreline of Lake Havasu, the Parker Strip Recreation Area, and the Craggy Wash Area, in Mohave and La Paz Counties, AZ and in San Bernardino County, CA

AGENCY: Lake Havasu Field Office, Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This notice contains proposed revised supplementary rules for the BLM-managed shoreline of Lake Havasu, a manmade lake on the Colorado River located in Arizona and California, including the boat-access campsites; revised supplementary rules for the Parker Strip Recreation Area, located along the Colorado River downstream from Lake Havasu; and new supplementary rules for the Craggy Wash area, located north of the Lake Havasu City Municipal Airport (AZ). These supplementary rules are part of the implementation of the ongoing management of the Lake Havasu Shoreline Program. The revised supplementary rules would replace existing rules for the Parker Strip Recreation Area and for the Crossroads and Empire Landing Campgrounds. Heavy visitation during the fall, winter and spring makes new supplementary rules for Craggy Wash necessary. The supplementary rules will help reduce conflicts among a wide variety of multiple users.

DATES: You should submit your comments by July 16, 2003. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

FOR FURTHER INFORMATION CONTACT: Mike Henderson, Assistant Field Manager, or Bryan Pittman, Field Staff Law Enforcement Ranger, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (928) 505–1200.

SUPPLEMENTARY INFORMATION:

I. Comment Procedure
II. Background
III. Discussion of Supplementary Rules
IV. Procedural Matters

I. Comment Procedure

A. How Do I Comment on the Proposed Supplementary Rules?

If you wish to comment, you may submit your comments by any one of several methods.

You may mail comments to Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

You may deliver comments to Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

You may comment via email to *lhfo_az@blm.gov*. If you do not receive a confirmation that we have received your electronic message, contact us directly at (928) 505–1200.

Please submit your comments on issues related to the proposed supplementary rules, in writing or in email, according to the section above. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any change you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives or comments delivered to an address other than those listed above.

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed, by mail or personal delivery, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available to public inspection in their entirety.

II. Background

The supplementary rules for the Lake Havasu Shoreline areas are part of the ongoing management of the Lake Havasu Shoreline Program. The program, initiated in 1997, manages the shoreline riparian area. It includes the pre-existing shoreline campsites as Federal fee recreation sites under the authorities described in 36 CFR part 71. The sites had been developed as designated fee sites by the Arizona State Parks Department while these lands were under a lease administered by the Bureau of Land Management. The lease was voluntarily terminated, leaving the sites to return to the jurisdiction of BLM.

The primary purpose of the Lake Havasu Shoreline Program is to provide areas for boating, camping and day use. The recreation sites, designated as camp or day use sites, are in most cases the traditional use areas of boat camping visitors. Arizona State Parks selected designated sites using criteria based on visitor use patterns, availability of shoreline access, and a need to establish sanitation facilities along heavily used shoreline areas. This program was established to accommodate the increasing demand for boat accessible site safety and property, to provide natural resource protection through improved management of the camping use and the riparian area. The designation of fee campsites assures that specific locations are available for such use year after year.

The Parker Strip Recreation Area is a heavily used area that contains campgrounds, day use areas, boat ramps, picnic areas, concession operated resorts, and a National Backcountry Byway. Authority for the designation of fee campsites is contained in Title 43, Code of Federal Regulations, Part 8360, Subpart 8365, Sections 2 and 2–3. Authority for the payment of fees is in 36 CFR, Subpart 71. Authority for including this program in the Fee Demonstration Pilot Program was contained in the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) and the FY 1996 Appropriations Act (Public Law 104–134).

The Craggy Wash area is located north of the Lake Havasu City Municipal Airport and east of State Route 95. It is a heavily used dispersed camping area during the cooler part of the year. The area is also frequented by target shooters, off road vehicle operators, sightseers, bicyclists and hikers. More than 300 people may be present at the same time on frequent occasions.

III. Discussion of Supplementary Rules

The proposed supplementary rules for Lake Havasu Shoreline would supersede Rules for Lake Havasu Shoreline, published on May 21, 1998 (63 FR 27995). The shoreline supplementary rules would apply to the BLM-managed lands located within 1,000 linear feet of the high water mark (450 foot elevation line) of Lake Havasu, located in Mohave and La Paz counties, Arizona and in San Bernardino County, California. These rules also apply to the portions of Lake Havasu located within 500 linear feet of designated campsites, day use sites, boat ramps, fishing docks, boat docks and swimming beaches. Included in this are the following currently designated campsites listed generally from North to South:

Bluebird 1, 2
Wren Cove 1,2,3
Mallard Cove 1;2,3,4,5,6
Teal Point 1,2
Widgeon Key 1,2,4
Road Runner 2,3,4
Solitude Cove
Balance Rock Cove
Friendly Island 1,2,3,4
Goose Bay 1,2
Pilot Rock 1,2,3
Steamboat Cove 1,2,3,4
Buzzard Cove
Eagle Cove
Eagle Point
Ewe Camp
Rachel's Camp
Burned Camp
Linda's Camp
Sand Isle 1,2,3,4
Standard Wash 1,2,3,4,5,6
Echo Cove 1,2,3,4
Coyote Cove 1,2
BLM 1,2
Whyte's Retreat 1,2
Rocky Landing 1,2,3,4
Satellite Cove 1,2,3
Hum Hum Cove 1,2
Cove of the Little Foxes
Disneyland 1,2,3,4
Gnat Keys 1,2,3,4
Hi Isle 2,4,5,6,7,8,10,11,12,14,15
Big Horn 1,3,4
Bass Bay 1,2
Larned Landing 1,2,3,4,5
Bill Williams 1,2,3,4,5

The proposed supplementary rules for the Parker Strip Recreation Area would supercede Rules for Parker Strip Recreation Area, published on October 12, 1995 (60 FR 53194), and rules for Empire Landing and Crossroads Campgrounds, published on May 18, 1998 (63 FR 27316). The Parker Strip rules apply to the Parker Strip Recreation Area, which is defined as follows:

Gila and Salt River Meridian, Arizona

T11N, R18W, Sec. 15, 16, 22, 28 and 34.
T10N, R18W, Sec. 5 (W½, NW¼, SW¼), Sec. 6, Sec. 7, Lots 1–4, (NE¼, N½, SE¼, SW¼, SE¼), Sec. 18 (Lot 1, NW¼, NE¼).
T10N, R19W, Sec. 12, Sec. 13 (N½, N½ N½, SW¼, NE¼, NW¼, SE¼, NE¼, N½, SE¼, NW¼, SW¼, NW¼, W½, SW¼), Sec. 14, 22 and 23, Section 24 (W½, NW¼).

San Bernardino Meridian, California

T2N, R27E, all.
T2N, R26E, Sec. 1, 11–15, 21–27 and 34–36.
T1N, R26E, Sec. 2,3, 10 and 11.

The proposed supplementary rules for Craggy Wash dispersed camping area would be new, made necessary by heavy visitation during the fall, winter and spring. The Craggy Wash area is defined as public lands located with the following legal description.

T14N, R20W, sec. 4 (N½), sec. 3 (N½), sec. 2 (N½).
T15N, R20W, sec. 33, 34, 35, 36.

BLM has developed the shoreline, Parker Strip, and Craggy Wash supplementary rules to manage continued multiple use of the sites. These rules will be available in the Lake Havasu Field Office and BLM will post them at the sites affected. Most of the shoreline supplementary rules that follow were first published in 1998. We have expanded the area of applicability to include all of the BLM-managed shoreline of Lake Havasu in Arizona and California. The previous supplementary rules applicable to the lake shoreline were limited to the areas in the vicinity of the shoreline campsites. The term "recreation site" includes any developed campsite or day use site or similar recreational development. The supplementary rules that follow also apply to the surface of Lake Havasu located within 500 linear feet of designated campsites. Acts occurring in that portion of the lake have a direct impact on, and connection with, public safety and resource protection of the campsite areas.

IV. Procedural Matters

The principal author of these supplementary rules is Bryan Pittman, Field Staff Law Enforcement Ranger, BLM Lake Havasu Field Office.

Regulatory Planning and Review (E.O. 12866)

These supplementary rules are not significant and are not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These supplementary rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) These supplementary rules do not raise novel legal or policy issues.

The supplementary rules will not affect legal commercial activity, but merely contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that these supplementary rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The supplementary rules will not affect legal commercial activity, but will govern conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. These supplementary rules:

Do not have an annual effect on the economy of $100 million or more. (See the discussion under Regulatory Planning and Review, above.)

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. See the discussion above under Regulatory Flexibility Act.

Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The supplementary rules do not have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules have no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the supplementary rules do not have significant takings implications. The enforcement provision in the proposed supplementary rules does not include any language requiring or authorizing forfeiture of personal property or any property rights. E.O. 12630 addresses concerns based on the Fifth Amendment dealing with private property taken for public use without compensation. The land covered by the supplementary rules is public land managed by the Bureau of Land Management; therefore no private property is affected. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, BLM finds that the proposed supplementary rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The supplementary rules do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules do not preempt state law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with Executive Order 13175, we have found that this final rule would not include policies that have tribal implications. The supplementary rules would not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

These supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Does the supplementary rules contain technical language or jargon that interferes with its clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rules? What else could we do to make the supplementary rules easier to understand?

If you have any comments on how we could make these supplementary rules easier to understand, in addition to sending the original to the address shown above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov*.

Under the authority of 43 U.S.C. 1733a and 43 CFR 8360.0–7, BLM proposes the following supplementary rules.

Dated: May 19, 2003.

Elaine Y. Zielinski,

State Director, Bureau of Land Management, Arizona.

Supplementary Rules for Lake Havasu Shoreline Area

1. You must purchase a permit in order to use a designated recreation site, including occupying a site for any use exceeding 20 minutes.

2. You must not moor any watercraft or floating platform at a recreation site or offshore in the vicinity or cove of any such site for more than 20 minutes without purchasing a permit. The fee for a use permit will be in accordance with the fee schedule, requirements, and procedures that BLM established under the Recreation Fee Demonstration Pilot Program, and are payable in U.S. funds only.

3. You must present the appropriate use permit upon demand to any authorized BLM official inspecting the site. If you are away from the campsite,

the permit must be visibly displayed in accordance with posted instructions, or in the manner directed by a BLM official.

4. You must not reassign or transfer your permit to another individual or group and/or campsite(s).

5. Any authorized BLM official may revoke your permit, without reimbursement, if you violate any BLM rule or regulation. If BLM revokes your permit, you must remove all personal property and leave the recreation site within one hour of notice.

6. A recreation site is considered occupied after you have paid the appropriate permit fee, you have taken possession of the site by placing personal property at the site, and the permit is displayed in accordance with written instructions or as directed by a BLM official. You must not occupy a site in violation of instructions from a BLM official, or when there is reason to believe that the unit is properly occupied by another person or persons.

7. Except for authorized Federal, state or local personnel, during the commission of their duties, a permitted site cannot be occupied by other visitors without the consent of the permittee.

8. You must not occupy a site designated as "day use" between sunset and sunrise.

9. A single vessel and its occupants may not occupy more than one site.

10. During the hours of 10 p.m. to 6 a.m., in accordance with applicable state time zone standards, you must maintain quiet within normal hearing range of the designated recreation sites.

11. You must not cut or collect any firewood, including dead and down wood and all other vegetative material.

12. You must not moor vessels to vegetation, signs, shade ramadas, tables, grills or fire rings, toilets, trash receptacles, or other objects or structures not designed for such use.

13. You must not beach or moor a vessel in excess of posted time limits.

14. You must not discharge or use firearms or projectile weapons inside or within a half mile of any occupied recreation site.

15. You must not discharge or possess any fireworks.

16. You must keep the site free of litter and trash during the period of occupancy. You must remove all personal property, and the site must be clean, upon your departure.

17. You must keep pets on a leash no longer than six (6) feet.

18. You must not leave pets unattended, and you must remove pet waste from the site or dispose of it in available trash receptacles.

19. You must not violate any provisions of boating laws as described in Title 5, Chapter 3, of the Arizona Revised Statutes or in the California Harbors and Navigation Code (as applicable).

20. Possession of alcoholic beverages by a person under the age of 21 years is prohibited.

21. Consumption of alcoholic beverages by a person under the age of 21 years is prohibited in the portions of the affected area that are located within Arizona.

22. You must not possess glass beverage containers on land or in the water. You may possess glass beverage containers only within the confines of a vessel.

23. Reserving recreation sites in any manner, including leaving personal property unattended overnight, is prohibited.

24. Recreation sites used for camping activities must be occupied overnight by the permittee.

25. You must not leave personal property unattended for more than 24 hours. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m)).

Supplementary Rules for the Parker Strip Recreation Area

Rules number 1, 3, 4, 5, 6, 7, 8, 15, 16, 20, 21, 23, 24 and 25 of the Lake Havasu Shoreline Supplementary Rules also apply to the Parker Strip Recreation Area. In addition, the following rules apply to the Parker Strip Recreation Area.

26. You must not park or operate vehicles in violation of posted restrictions.

27. Except in designated OHV Open areas, you must operate vehicles only on maintained roads and routes.

28. Vehicles operated between Parker Dam Road and the Colorado River in California must be legal for highway operation. You may operate non-highway legal golf carts in this area only within concession resorts and facilities, and within BLM-managed campgrounds.

29. Within one-half mile of Parker Dam Road, you may camp only in designated campsites.

30. Disorderly conduct is prohibited.

31. You must not discharge or use firearms in California within one mile of Parker Dam Road. In Arizona, you must not discharge or use firearms within the Parker Strip Recreation Area.

32. In BLM-managed campgrounds, no more than eight persons may occupy a single campsite.

Supplementary Rules for Craggy Wash

From October 1 through April 30 of each year, the following supplementary rules are in effect:

1. You must maintain your campsite free of trash and litter.

2. You must not discharge a firearm for the purpose of target practice or plinking. You may engage in legitimate hunting activities.

3. You must not operate a motor vehicle at a speed greater than 15 mph.

4. You must maintain quiet within hearing range of any other person or camp unit between 10 p.m. and 6 a.m. You must not operate a generator during these hours.

5. You must not collect firewood, including any dead and down wood, or any other vegetative material.

6. You must restrain a pet with a leash not longer than six (6) feet.

7. You must not leave a pet unattended.

8. You must not possess or discharge fireworks.

9. You must not leave personal property unattended for more than 24 hours.

Penalties

The authority for these supplementary rules is provided in 43 CFR 8365.1–6. Persons who violate these rules are subject to arrest, and upon conviction may be fined up to $100,000 and/or imprisoned for not more than 12 months, as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581.

[FR Doc. 03–15053 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–072–1220–HB]

Notice of Proposed Supplementary Rules for Fee Collection Sites Within the Area Managed by the Butte Field Office; Montana

AGENCY: Bureau of Land Management, Butte Field Office, Montana, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) Butte Field Office is proposing supplementary rules in order to regulate fee collection at sites administered under the Land and Water Conservation Fund (43 U.S.C. 4601). The supplementary rules are necessary to help ensure that the public makes proper payment for recreational use of public lands facilities.

DATES: You should submit your comments on or before July 16, 2003. In developing final rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may hand-deliver comments or mail comments on the proposed rules to Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, Montana 59701. You may also comment via the Internet to: *MT_Butte_FO@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Brad Rixford, Outdoor Recreation Planner, 106 N. Parkmont, Butte, Monana 59701, 406–533–7600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Please submit your comments on issues related to the proposed rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the Butte Office address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) or management agreement and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules to require payment of camping fees and display of tickets for use of certain recreational lands in Montana. These rules are designed to ensure proper payment for use of public land facilities. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the "Public comment procedure" section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules for fee payment for recreational use of certain public lands. The supplementary rules have no effect on business-commercial or industrial-use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one state, Montana, and do not address jurisdictional issues involving the state government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: May 7, 2003.

A. Jerry Meredith,

Acting State Director, Bureau of Land Management, Montana State Office.

Supplementary Rules for Fee Collection at Land and Water Conservation Fund Sites

Under 43 CFR 8365 and 16 U.S.C. 4601–6a(e), the Bureau of Land Management will enforce the following rules on public land at Holter Lake, Holter Dam, Log Gulch, Departure Point, Devil's Elbow, Clark's Bay and Divide Recreation Sites. You must follow these rules:

Sec. 1 Fee Requirements

a. You must pay the posted day use or camping fee.

b. You must display your fee payment receipt at your campsite or on your vehicle.

Sec. 2 Penalties

On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8365.1–6 and U.S.C. 4601–6a(e) any person who violates any of these supplementary rules within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $100. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

[FR Doc. 03–15054 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–100–1220–AF]

Proposed Supplementary Rules for the Lower Blackfoot River Corridor; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules for recreation use of public lands along the Blackfoot River and McNamara Road, Missoula County, Montana.

SUMMARY: This notice proposes supplementary rules incorporating restrictions on recreation use on public lands located within one quarter mile on either side of the Blackfoot River and/or McNamara Road extending from Johnsrud Park upstream for approximately 10 miles. The proposed supplementary rules are necessary to address resource protection needs identified in the Lower Blackfoot Corridor Environmental Assessment, MT–100–00–02.

DATES: You should submit your comments by July 16, 2003. In developing final rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may mail or deliver comments on the proposed supplementary rules to Field Manager, Bureau of Land Management, Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804. You may also comment by internet e-mail at the following address: *MT_Missoula_FO@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804, (406) 329–3914.

SUPPLEMENTARY INFORMATION:

I. Comment Procedure
II. Background
III. Discussion of Supplementary Rules
IV. Procedural Matters

I. Comment Procedure

A. How Do I Comment on the Proposed Supplementary Rules?

If you wish to comment, you may submit your comments by any one of several methods.

You may mail comments to Field Manager, Bureau of Land Management, Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804.

You may deliver comments to the Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804.

You may comment via email to *MT_Missoula_FO@blm.gov.* If you do not receive a confirmation that we have received your electronic message, contact us directly at (406) 329–3914.

Please submit your comments on issues related to the proposed supplementary rules, in writing or in email, to any of these addresses. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any change you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives or comments delivered to an address other than those listed above.

B. May I Review Comments Submitted By Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES:** Mail or personal delivery" during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available to public inspection in their entirety.

II. Background

The Blackfoot River Recreation Corridor is a multi-cooperative partnership consisting of private landowners, Montana Department of Fish, Wildlife and Parks, and BLM. This partnership was established in the 1970s to provide protection of natural resources and private property and to provide public safety along 26 miles of free flowing Blackfoot River.

In its June 1997 Lower Blackfoot River Assembled Land Exchange Environmental Assessment (MT–074–07–06), the BLM stated that "recreation along the Blackfoot River would continue to be managed under the existing Blackfoot River Recreation Corridor Landowner's Agreement."

In 1998, BLM began acquiring land within the corridor. BLM now manages approximately 12,000 acres of land upstream from Johnsrud Park.

Since 1999, BLM has managed this area under an interim restriction order under 43 CFR 8364.1(d). This order contains prohibited acts related to camping, motor vehicle use, public safety, and resource protection.

In 2001, BLM completed the Lower Blackfoot Corridor Environmental Assessment. You may obtain the Environmental Assessment, upon which these supplementary rules are based, from the Missoula Field Office.

The lands affected by these rules are public lands in Missoula County, Montana, in the following sections:

T. 14 N., R. 15 W.,
Secs. 18 and 19.
T. 13 N., R. 16 W.,
Secs. 4, 5, and 6.
T. 14 N., R. 16 W.,
Secs. 13 and 14, 20 to 29, inclusive, 32 and 33.

III. Discussion of Supplementary Rules

Implementing these supplementary rules will establish consistency with the existing Montana Department of Fish, Wildlife and Parks' Blackfoot River Recreation Corridor rules. The proposed supplementary rules are consistent with the interim restriction order and are supported by the Lower Blackfoot Corridor Environmental Assessment MT–100–00–02.

BLM is proposing these supplementary rules under the authority of 43 CFR 8365.1–6.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules would not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor would they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Montana. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the "Public comment procedure" section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules would have no effect on business—commercial or industrial—use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor would these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules would do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules would affect land in only one state, Montana, and do not address jurisdictional issues involving the state government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these proposed supplementary rules do not include policies that have tribal implications. The supplementary rules contain only rules of conduct for recreational use of certain public lands managed by BLM.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the authority of 43 CFR 8365.1–6, BLM proposes the following supplementary rules on public lands of the Blackfoot River Corridor ¼ mile on either side of the Blackfoot River and/or McNamara Road.

Dated: May 7, 2003.

A. Jerry Meredith,

Acting State Director Bureau of Land Management, Montana State Office.

Supplementary Rules for the Blackfoot River Corridor ¼ Mile on Either Side of the Blackfoot River or McNamara Road, or Both

Sec. 1 Prohibited Acts.

On public lands in secs. 18 and 19, T. 14 N., R. 15 W., secs. 4, 5, and 6, T. 13 N., R. 16 W., and secs. 13 and 14, 20 to 29, inclusive, 32 and 33, T. 14 N., R. 16 W., Principal Meridian, Montana, that are within ¼ mile on either side of the Blackfoot River or McNamara Road, or both, you must not:

a. Camp outside of designated sites or areas.

b. Light or maintain a fire except in designated areas or established by government fire rings.

c. Operate a motor vehicle off a designated trail, road, or route.

d. Collect firewood for other than on-site use. You may burn only dead and down wood.

e. Discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish, Wildlife and Parks), or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints, etc.

f. Use a firework.

g. Violate a posted regulation pertaining to the protection of natural resources or public safety.

h. Occupy or camp at an area longer than 7 days during any 30-day period.

Sec. 2 Exemptions From the Supplementary Rules.

Persons who are exempt from these supplementary rules include any Federal, state, or local officer, and members of any organized search and rescue team or firefighting force in performance of an official duty. BLM employees on official administrative business, and any person authorized by the BLM.

Sec. 3 Penalties.

On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

[FR Doc. 03–15055 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–130–03–1220–DU]

Notice of Intent To Amend the Grand Junction Resource Management Plan for the North Fruita Desert Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Grand Junction Resource Management Plan for the North Fruita Desert Area.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Field Office, is proposing to amend the Grand Junction Resource Management Plan (1987) to develop and design a travel system for the North Fruita Desert Area. The planning area includes 72,656 acres of public land located in Mesa County north of the town of Fruita, Colorado. The North Fruita Desert planning process was initiated in August 2000 and an *ad hoc* public committee was chartered under the Northwest Colorado Resource Advisory Committee to help provide feedback to BLM staff. It was originally thought that desired management actions identified in the planning process could be carried out on an activity-level plan within the existing guidance of the Grand Junction Resource Management Plan (RMP). However, it has since been determined that a plan amendment would be needed to consider the input of the *ad hoc* public committee and to alter RMP allocations.

DATES: This notice initiates the public scoping process. The public is invited to submit comments throughout the development of the Draft Amendment/EA. All future public meetings will be announced through the local news media, newsletters, and other media at least 15 days prior to the event. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment upon the issuance of the BLM Draft Amendment/EA.

ADDRESSES: Written comments should be sent to Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO, 81506. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Philip Gezon, Supervisory Outdoor Recreation Planner, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506; (970) 244–3031; *pgezon@blm.gov*.

SUPPLEMENTARY INFORMATION: The Grand Junction Field Office has and will continue to consult, communicate and cooperate with local landowners, recreationists, the Northwest Colorado Resource Advisory Committee, the *ad hoc* committee, the city of Fruita, and other affected interest groups and individuals to develop and design a travel system for the North Fruita Desert Area. BLM will use an interdisciplinary approach to develop the plan amendment and environmental assessment in order to consider all identified resource issues and concerns. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, transportation planning, range conservation, wildlife, fisheries, law enforcement, oil and gas, geology, geology, soils and hazardous materials.

Dated: May 6, 2003.

Catherine Robertson,

Field Manager.

[FR Doc. 03–15051 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The TWG will conduct the following public meeting:

Phoenix, Arizona—June 30 to July 1, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to address the FY 2003 and FY 2004 budgets and re-prioritize work as needed, discuss Ad Hoc Committee on What's In/Out of the AMP Report, and discuss Humpback Chub Ad Hoc Group ongoing work, Oracle database, basin hydrology, environmental compliance, and other administrative and resource issues pertaining to the AMP.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov*.

Dated: June 9, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–15091 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0119

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for the Abandoned Mine Land Contractor Information form.

DATES: Comments on the proposed information collection must be received by August 15, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or at the e-mail address supplied above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for review and approval. This collection is found in the Applicant/Violator System (AVS) handbook and is approved by AML contractors to ensure compliance with 30 CFR 874.16.

OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection

of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: AML Contractor Information Form.

OMB Control Number: 1029–0119.

Summary: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSM's automated AVS and the contractor must be eligible under the regulations implementing section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. This form provides a tool for OSM and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Bureau Form Number: None.

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and tribal regulatory authorities.

Total Annual Responses: 360.

Total Annual Burden Hours: 456.

Dated: June 10, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–15072 Filed 6–13–03; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–3]

Certain Brake Drums and Rotors From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) (the Act).

SUMMARY: Following receipt of a petition, as amended, on June 6, 2003, on behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers, the Commission instituted investigation No. TA–421–3, *Certain Brake Drums and Rotors from China*, under section 421(b) of the Act to determine whether certain brake drums and rotors [1] from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

[1] Brake drums and rotors are defined as brake drums and rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums and rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half."

Finished brake drums and rotors are those that are ready for sale and installation without any further operations. Semifinished drums are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished drums are those which have undergone some grinding or turning.

These brake drums and rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, DaimlerChrysler, Honda, Toyota, Volvo). Brake drums and rotors covered in this investigation are not certified by OEM producers of vehicles sold in the Untied States. The scope also includes composite brake drums that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

The imported products are provided for in subheading 8708.39.50 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to §206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing

The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on July 18, 2003, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 11, 2003. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 15, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is July 14, 2003. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is July 22, 2003. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before July 22, 2003. Parties may submit final comments on market disruption on July 31, 2003 and on remedy on August 8, 2003. Final comments shall contain no more than ten (10) double spaced and single sided pages of textual material. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of § 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with § 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy

Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing briefs, posthearing briefs, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

By order of the Commission.

Issued: June 11, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–15157 Filed 6–13–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–415]

U.S. Trade and Investment With Sub-Saharan Africa

AGENCY: International Trade Commission.

ACTION: Notice of preparation of fourth report and opportunity to submit information and comments.

EFFECTIVE DATE: June 10, 2003.

SUMMARY: Following receipt on March 12, 2000, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–415, U.S. Trade and Investment with Sub-Saharan Africa, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of preparing a series of five annual reports. This is the fourth report in the series, and the Commission plans to transmit this fourth report to the USTR by December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie-Ann Agama, Office of Economics (202–205–3220), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects of the investigation. The media should contact Margaret O'Laughlin, Office of External Relations (202-l819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary, 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov*.

Background

The USTR requested that the Commission prepare a series of annual reports for five years containing the following information:

1. For the last five years (and the latest quarter available), data on U.S. merchandise trade and services trade with sub-Saharan Africa (SSA), including statistics by country, by major sectors, and by the top 25 commodities.

2. A summary of U.S. and total foreign direct investment and portfolio investment in sub-Saharan Africa.

3. Statistical information on U.S. imports from sub-Saharan Africa under the AGOA and GSP programs by country and by major product categories/commodities; and information on AGOA-related investment.

4. Updates on regional integration in sub-Saharan Africa including statistics on U.S. trade with major regional groupings (ECOWAS, WAEMU, COMESA, SADC, SACU, EAC, IGAD, IOC and CEMAC) and, where applicable, information on each group's tariff structure.

5. A description of major U.S. trade capacity-building initiatives related to SSA, a summary of multilateral and U.S. bilateral assistance to the countries of sub-Saharan Africa, and a description of major non-U.S. trade preference programs for countries in SSA.

6. Sector profiles for sub-Saharan Africa, including information on trade, investment, industry and policy developments, by major sector. The six sector profiles in this investigation include: agricultural, fisheries and forest products; chemicals; petroleum and energy-related products; minerals and metals; textiles and apparel; and transportation equipment.

7. Country-by-country profiles on each of the 48 countries in sub-Saharan Africa, including information on major trading partners, by country. Summary of the trade, services, and investment climates in each of the countries of sub-Saharan Africa, including a description of the basic tariff structure (*e.g.*, the average tariff rate and the average agricultural tariff rate), as well as significant impediments to trade, such as import bans.

The 48 countries of sub-Saharan Africa covered in this investigation include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, São Tomé and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

The USTR requested that the Commission provide its first report by December 10, 2000, and annually for a period of 4 years thereafter. The second report in the series was delivered to USTR on December 10, 2001 and the third report was delivered on December 10, 2002. The Commission expects to deliver the fourth report by December 10, 2003.

Written Submissions

The Commission does not plan to hold a public hearing in connection with this fourth report. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). The Commission may include such confidential business information in the report it sends to USTR. The Commission's rules do not authorize filing of submissions with the Secretary

by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). All written submissions must conform with the provisions of § 201.8 of the Commission's rules of practice and procedure (19 CFR 201.8). All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than July 28, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: June 11, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–15158 Filed 6–13–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Wednesday, June 18, 2003.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Consideration of amended interim rules for District of Columbia offenders on Supervised Release.
4. Consideration of final rules regarding the elimination of certain voting and notice procedures for Federal offenders, and the revision of a rule on determining the type of revocation hearing for a Federal parolee.
5. Discussion on proposal to amend 28 CFR 2.12(a) to permit earlier initial hearings in cases of parole ineligibility greater than 10 years.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: June 11, 2003.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–15213 Filed 6–12–03; 10:01 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

[SGA 03–14]

Office of Disability Employment Policy; Center for Faith-Based and Community Initiatives; Intermediary Grants for Mentoring Youth With Disabilities

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of availability of funds; solicitation for grant applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding. (SGA 03–14).

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP), in collaboration with DOL's Center for Faith-Based and Community Initiatives (CFBCI or Center), announces the availability of approximately $450,000 to award three competitive grants funded up to $150,000 to eligible intermediary organizations that have demonstrated an ability to assist faith-based and community organizations, particularly smaller organizations, in promoting positive employment and transition outcomes for youth with disabilities through mentoring activities. The activities conducted must be consistent with effective practices and may include but are not limited to adult and peer mentoring, e-mentoring, tutoring, job-shadowing, service learning, leadership development, and youth development.

In achieving the grant purposes, the intermediary is expected to sub-award a substantial portion of its award to eligible local faith-based and community organizations. Grant funds may be used for activities that establish, implement, or support a mentoring program for youth with disabilities between the ages of 16 and 24, which may include:

1. Hiring of mentoring coordinators and support staff;
2. Recruitment, screening, and training of mentors;
3. Recruitment and assessment of mentees;
4. Reimbursement to schools, if appropriate, for the use of school materials or supplies to be used in carrying out the mentoring program;
5. Purchase of materials or supplies to be used in carrying out the mentoring program;
6. Dissemination of outreach materials; and
7. Evaluation of the mentoring program using scientifically-based methods.

These grants are for a one-year period at full funding and may be renewed for a period of up to four additional years depending upon the availability of funds and the efficacy of the project activities. *See also* Parts IV, IX.

The results of this initiative will support ODEP's strategic goals of: (1) Promoting policies to increase demand for employees with disabilities; and (2) promoting policies to increase the capabilities of the workforce development system to provide meaningful and effective services to youth with disabilities.

DATES: Applications will be accepted commencing on June 16, 2003. The closing date for receipt of applications under this announcement is July 28, 2003. Applications must be received by 4:45 p.m. (ET) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–14, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Telefascimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact DOL via the Federal Relay Service, (800) 877–8339. This announcement will also be published on the Internet on ODEP's online Home Page at: *http://www2.dol.gov/odep*. Award notifications will also be published on the ODEP Homepage.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it: (a) Is determined that its late receipt was caused by DOL error; (b) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

3. *Hand-Delivered Proposals.* It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:45 p.m., ET, at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Part II. Authority

Omnibus Appropriations Resolution, 2003, Pub. L. 1087; Consolidated Appropriations Act, 2001, Pub. L. 106–554, 29 U.S.C. 557b.

Part III. Background

ODEP's mission is to provide leadership to increase employment opportunities for adults and youth with disabilities through expanded access to training, education, employment supports, assistive technology, integrated employment, entrepreneurial development, and small business opportunities. Through partnerships with both public and private sector employers and with regional and local agencies, ODEP also fosters the creation of employment opportunities by increasing awareness of the benefits of employing people with disabilities and disseminating information on effective employment strategies.

The CFBCI seeks to create effective partnerships between faith-based and community-based organizations and DOL at the Federal, state, and local levels. The purpose of these partnerships is to bring faith-based and community organizations, which are often in closest touch with the people and problems that are the focus of Federal social policy efforts, into DOL's employment and training programs.

The CFBCI coordinates a comprehensive departmental effort to incorporate faith-based and other community-based organizations into DOL programs and initiatives. CFBCI supports the creation of initiatives and programs within DOL that utilize the strengths of faith-based and community organizations to better address the needs of underprivileged populations. The Center directs national outreach efforts to educate faith-based and other community organizations about the opportunities for partnership with local One-Stop Career Centers, State and Local Workforce Investment Boards, State Workforce Agencies, and the U.S. Department of Labor. CFBCI also works in conjunction with DOL agencies to remove barriers to the participation of faith-based and community organizations in Federal programs, including, but not limited to, the reform of regulations, procurement and other internal policies and practices, and outreach activities.

This SGA reflects a collaborative effort between ODEP and CFBCI born out of their commitment to promoting positive employment and transition outcomes for youth with disabilities through mentoring. There is solid evidence that effective mentoring programs can change the direction of the life of a youth with a disability, improve academic performance, and help the youth develop skills, knowledge, and motivation to successfully transition from high school to adult life. (Moccia, Schumaker, Hazel, Vernon, & Deshler, 1989; Rhodes, Grossman, & Resch, 2000). Accordingly, this grant program supports the objectives of both President Bush's New Freedom Initiative and the Leave No Child Behind Act of 2001, Pub. L.107–110.

Mentoring is defined generally as a sustained, close, developmental relationship between an older, more experienced individual and a younger person with the goal of building character and promoting positive, healthy youth development. In mentoring arrangements, adults or experienced peers serve as advisors and role models, working with youth one-on one or in groups. Electronic mentoring, also called e-mentoring, uses a combination of e-mail and face-to-face meetings to facilitate mentoring relationships between young people and adults. Mentoring relationships provide valuable support to youth, not only in offering academic and career guidance, but also in building leadership and interpersonal skills and problem-solving skills. Mentoring can also connect youth with important employer contacts, thereby opening doors for networking and future employment.

The purpose of this grant program is to help build the capacity and knowledge of faith-based and community organizations to better meet the needs of young people with disabilities through mentoring. This will be accomplished through the funding of intermediary organizations that have demonstrated expertise in working with and providing technical assistance to local faith-based and community organizations in a variety of areas including, but not limited to: effectively operating and managing their programs; accessing governmental and private funding sources; developing and training staff; expanding the types and reach of services in their communities; and replicating promising and effective practices. The funded intermediary will also issue sub-awards to local faith-based and community organizations for start-up, operations, or expansion of mentoring programs for youth with disabilities as detailed previously in the Summary Section of this SGA.

This SGA is for the Intermediary Grants for Mentoring Youth with Disabilities Initiative. This grant program is consistent with the objectives of the President's New Freedom Initiative.

Part IV. Funding Availability and Period of Performance

ODEP anticipates awarding three competitive grants funded up to

$150,000 each year to eligible intermediary organizations that have demonstrated an ability to assist faith-based and community organizations, particularly smaller organizations, in promoting positive employment and transition outcomes for youth with disabilities through mentoring activities. The period of performance will be one year from the date of execution of the grant documents by DOL. ODEP may elect to extend these grants on a yearly basis for up to four additional years based on the availability of government funds and acceptable performance.

Part V. Eligible Applicants and Required Partnerships

Eligible Applicants: Under this competition, eligible "intermediaries" are defined as non-profit, community, and/or faith-based organizations with existing connections within the community, and a demonstrated ability to connect smaller faith and community-based organizations and the people they serve to youth services funded under the Workforce Investment Act of 1998 (Public Law 105–220, 29 U.S.C. 2801 *et seq.*) (WIA) and to other youth services available in their local communities. These intermediary organizations must possess strong financial and grant management skills, and the ability to mentor smaller organizations to increase their capacity to fully participate in the youth service delivery provider network.

Partnerships: Applicants must establish strong linkages with the Local Workforce Investment Board (WIB) in the area to be served by the activities of the grant. The Local WIB can assist the intermediary in connecting to the One-Stop system and other community-based youth service providers receiving WIA funding. It is ODEP's belief that the intermediary and its sub-awardees can complement, augment, and supplement the services currently provided through WIA, and leverage WIA funded resources to assist them in carrying out some of their grant activities, *e.g.*, recruitment of youth with disabilities.

Grant recipients will broker partnerships with employers, the workforce development system, school systems, disability service providers, non-profit organizations, and other faith-based and community organizations to provide mentoring experiences for youth with disabilities. Among other partners, grantees will be required to collaborate with employer organizations such as the Chamber of Commerce and the state Business Leadership Network where one exists. In addition, grantees will be required to utilize broad strategies for recruiting adult and peer mentors, including outreach to other faith-based and community organizations, employer organizations and employers, and organizations representing youth with disabilities such as centers for independent living, the state's Youth Leadership Forum, and state members of the National Youth Leadership Network. In addition, applicants are to work in partnership with other disability-related public and private organizations. Partners may include:

- State/local public agencies such as Special Education;
- Vocational Rehabilitation;
- State Councils for Independent Living;
- Local Centers for Independent Living (CILs);
- State mental health agencies, state mental retardation and Developmental Disability Councils;
- Temporary Assistance for Needy Families (TANF) agencies; and
- Private, non-profit organizations such as disability advocacy and provider organizations, as well as federally funded disability grant entities, including faith-based entities.

Eligible Sub-Awardees and Allowable Activities

For purposes of this announcement, the intermediary may issue sub-awards to community or faith-based organizations that:

1. Have social services as a major part of their mission;
2. Are headquartered in the local community to which they provide these services;
3. Have a total annual operating budget of $300,000 or less, or
4. Have 6 or fewer full-time equivalent employees.

Except as specifically provided, DOL/ODEP's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions be conducted, as practical, to provide open and free competition. These circulars are applicable to awards made by the intermediary to sub-awardees under the terms of this grant solicitation. If a proposal identifies a specific entity to provide the services, the DOL/ODEP's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

The "$300,000 or less" budget includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses. For purposes of this announcement local affiliates of national social service organizations are not eligible for a sub-grant award.

Legal Rules That Apply to Faith-Based Organizations That Receive Government Funds

The government is prohibited from directly funding religious activity.[1] These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients.

Nonetheless, participation by faith-based organizations in this grant program is highly encouraged. Consistent with the Free Exercise Clause and the Free Speech Clause of the Constitution, faith-based organizations are eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression, or religious character. See Equal Protection of the Laws for Faith-based and Community Organizations, Exec. Order No. 13279 (December 12, 2002).

Part VI. Format Requirements for Grant Application

General Requirements: Applicants must submit one (1) paper copy with an original signature and two (2) additional paper copies of the signed proposal. To aid with the review of applications, DOL also encourages Applicants to submit an electronic copy of their proposal on a disc or CD using Microsoft Word. Applicants who do not provide an electronic copy *will not* be penalized. The Application Narrative must be double-spaced with standard margins on 8½ x 11 papers, and be presented on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout. A font size of at least twelve (12) pitch is required throughout. Applications that fail to meet these requirements will be considered non-responsive.

The three required sections of the application are:

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Attachments, not to exceed 15 pages)

Mandatory requirements for each section are provided below. Applications that fail to meet the stated mandatory requirements of each section will be considered non-responsive.

Mandatory Application Requirements

- *Section I. Project Financial Plan (Budget)* (The Project Financial Plan will not count against the application page limits.) Section I of the application must include the following three required parts:

(1) Completed "SF 424—Application for Federal Assistance" (See Appendix A of this SGA for required form)

(2) Completed "SF–424A—Budget Information Form" by line item for all costs required to implement the project design effectively. (See Appendix B of this SGA for required forms.)

(3) Budget Narrative and Justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

The application must include one SF–424 with the original signatures of the legal entity applying for grant funding and 2 additional copies. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, Section 18 (29 U.S.C. 1611), an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, or loan. (*See 2 U.S.C. 1611; 26 U.S.C. 501(c)(4).)* For item 10 of the SF–424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.720.

The Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with grant funds. Grantees must support the travel and associated costs with sending at least one representative to the annual ODEP Policy Conference for Grantees, to be held in Washington, DC, at a time and place to be determined. Grantees must comply with the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97, and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF 424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

- *Section II. Executive Summary—Project Synopsis* (The Executive Summary is limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout). Each application shall include a project synopsis that identifies the following:

(1) The name of the applicant;

(2) The type of organization the applicant represents, the additional consortium partners and the type of organization they represent;

(3) The amount of funds requested;

(4) The planned period of performance;

(5) An overview of the applicant's plan for building the capacity and knowledge of faith-based and community organizations to better meet the needs of young people with disabilities through mentoring; and

(6) An overview of the applicant's plan for sustaining grant activities being conducted by sub-awardees once Federal funding ceases.

- *Section III. Project Narrative* (The Project Narrative plus attachments are limited to no more than fifteen (15) single-sided, numbered 8½ x 11 inch pages, double-spaced with standard one-inch margins (top, bottom, and sides)). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

Note: The Financial Plan, the Executive Summary, and the Appendices are not included in the fifteen (15)-page limit]. The substantive requirements for the project narrative are described below under Part VII—Statement of Work.

Part VII. Government Requirements/ Statement of Work (Project Narrative)

The Project Narrative, or Section III of the grant application represents the applicant's plans to address the previously documented unmet need to provide mentoring services to young people with disabilities in the community. ODEP expects that the intermediary and its sub-awardees will complement, augment, supplement, and leverage services currently provided through the WIA-assisted youth service delivery system in carrying out grant activities.

The intermediary will assist the sub-awardees, as appropriate, in administrative tasks so that sub-awardees can focus primarily on providing mentoring services to their service population(s). ODEP expects that the intermediary's staff will provide mentoring and technical assistance to build the smaller organizations' capacity to be permanent contributors to the youth service provider network and to compete successfully for future Federal, state and local grants.

The Project Narrative/Statement of Work must include and will be weighed as follows:

1. The applicant's Performance History with Grants Management and Service to People with Disabilities (20 points);
2. A description of the proposed plan and activities of the intermediary and its sub-awardees (45 points); and
3. An enumeration of evaluation criteria, measure(s), outcomes and reporting and tracking mechanisms for both intermediary and sub-awardees (35 points).

Letters of Commitment: Applicants can include letters of support if they provide specific commitments. Such letters can increase an applicant's score under criterion 2 by showing that the commitments in the text of the proposal are serious. Form letters will not be considered.

1. Performance History With Grants Management and Service to People With Disabilities (20 points)

The applicant must provide a statement of its performance history

[1] The term "direct" funding is used to described funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In this SGA, the term "direct" has the former meaning.

with the management of resources under governmental grants-in-aid programs. DOL will evaluate applications based on the scope, strength, and "record of achievement" which will be demonstrated by responses to the following requirements:

(1) Relevant history of the applicant in managing resources through grant awards from Federal Departments (particularly those from the Departments of Labor, Education, Housing and Urban Development, and Health and Human Services), state governments, or units of local governments;

(2) Recent involvement of the intermediary as a partner or provider in the One-Stop delivery system for employment and training services. Describe any current working relationship with the local Workforce Investment Board(s) or steps taken to develop this relationship for the current grant application

(3) Demonstrated history of networking with, educating, training, and mobilizing faith-based and community organizations and their members. (**Note:** Include past experience in developing other organizations' capacity for social service delivery, managing grants, conducting information campaigns, and providing technical assistance); and

(4) Demonstrated experience in networking with and providing services to people with disabilities.

In evaluating the quality of the applicant's performance history and management of resources, ODEP may consider the applicant's experience, knowledge and staff skills relevant to addressing the goals of this SGA in the context of ODEP's priorities.

2. Description of the Proposed Plan and Activities of the Intermediary and Its Sub-Awardees (45 points)

This section of the narrative should provide the applicant's detailed strategy for increasing the capacity and capability of faith-based and community organizations to provide effective mentoring services to young people with disabilities. The work plan must clearly illustrate how the project will be completed, and identify what services will be delivered. The narrative should explain the scope of the proposed project, and detail how the project will be carried out. The sections that should be included in the narrative for this section include:

- A Timeline
- A Description of the Mentoring Activities to be Conducted and the Respective Roles and Responsibilities of Community and Faith-Based Organizations and the Grantee.
- A Description of the Approach That Will Be Used for Seeking Applications From and Making Sub-awards to Community and Faith-Based Organizations.
- A Strategy for Coordinating Grant Activities with WIA-Assisted Youth Activities, the One-Stop Center(s), and Other Federal Disability-Related Grant Activities.
- A Strategy for Conducting Outreach to Employers and to the Disability Community.
- A Strategy for Leveraging Available Funding Sources to Support Grant Activities and Plan for Ensuring Sustainability Once Federal Funding Ceases.
- A Plan for Working with Sub-awardees to Develop Outcome Measures and to Evaluate the Activities Supported by the Sub-awards Made with Federal Funds Under This Announcement.

The Timeline

The applicant must provide a timeline for all discrete projects and activities to be undertaken.

A Description of the Mentoring Activities To Be Conducted and the Respective Roles and Responsibilities of Community and Faith-Based Organizations and the Grantee

This section of the narrative should provide the following information:

(1) A description of how the applicant will work with community and faith-based partner organizations in carrying out grant-related mentoring activities, including those activities that will be solicited through sub-awards. The specific functions/roles and responsibilities of these partner organizations within the grant design should be included as well as an explanation of the types of administrative and management functions which will be performed by the grantee.

(2) The young people expected to be served by the mentoring program, how they will be recruited, and the benefits or results expected;

(3) The method that will be used to recruit, screen, and train prospective mentors and to match mentors with mentees;

(4) An explanation of how technology will be used in carrying out grant activities; and

(5) A listing of key positions required to carry out the project as proposed, the key individuals proposed to fill the positions, and a detailed description of the kind of work these individuals will perform within the project. The application should provide evidence of the staffs' skill, knowledge, and experience in carrying out these types of activities, and describe their relevant training.

A Description of the Approach That Will Be Used for Seeking Applications From and Making Sub-Awards to Community and Faith-Based Organizations

In this section, the applicant should provide a description of the outreach activities it will engage in to identify potential faith and community-based organizations to act as partners in carrying out grant activities and the methodology that will be used for making sub-awards.

Strategy for Coordinating Grant Activities with WIA-Assisted Youth Activities, the One-Stop Center(s), and Other Federal Disability-Related Grant Activities

In this section, the applicant should explain how grant activities will be coordinated with the local One-Stop Center and other WIA-assisted youth activities in the target area(s) and with other disability related grant initiatives from DOL, the Department of Education (ED), the Department of Health & Human Services (HHS), the Social Security Administration (SSA), the Department of Housing & Urban Development (HUD), and other Federal partners.

Strategy for Conducting Outreach to Employers and to the Disability Community

In this section, the applicant should identify the strategy that will be used in developing relationships with and the support of area employers and the disability community, and explain how the views and perspectives of these partners were taken into account in developing this grant proposal.

Plan for Working With Sub-Awardees To Develop Outcome Measures and To Evaluate the Activities Supported by the Sub-Awards Made With Federal Funds Under This Announcement

In this section, the applicant should describe how it will work with sub-awardees to develop outcome measures and to evaluate grant-related activities conducted as a result of sub-awards.

Strategy for Leveraging Available Funding Sources To Support Grant Activities and Plan for Ensuring Sustainability Once Federal Funding Ceases

In this section of the narrative, the applicant should identify additional Federal, state, and/or local funds and resources that will be used to support the overall objectives of the grant, and articulate a plan for ensuring the sustainability of grant activities being performed by sub-awardees once Federal funding ceases. ODEP will evaluate the proposed plan and activities against the following criteria:

(a) The extent to which the outreach and identification of organizations eligible for sub-grant awards appears appropriate, reasonable and achievable within the initial months of the grant period;

(b) The extent to which the application process that will be used in making sub-awards is straightforward, fiscally responsible, and not overly burdensome;

(c) The extent to which the proposed plan is likely to produce positive transition outcomes for young people with disabilities;

(d) The extent to which partnerships with outside entities and funding from additional Federal, state and/or local resources will be effectively leveraged and utilized in carrying out grant activities;

(e) The demonstrated capability of the applicant to effectively implement the proposed project;

(f) The quality of the plan for ensuring sustainability of grant activities being performed by sub-awardees once Federal funding ceases;

(g) The extent to which employers and the education, workforce, and disability communities have actively participated or will participate in the design and implementation of the proposed project;

(h) The qualifications, including relevant training and experiences of key project personnel;

(i) The quality of the plan to recruit mentors and mentees;

(j) The quality of the training that will be provided to mentors; and

(k) The quality of the mechanism that will be used to match youth with mentors.

3. Review Process and Evaluation Criteria, Measure(s), Outcomes and Reporting/Tracking Mechanisms for Both Intermediary and Sub-awardees (35 points)

This section of the narrative should summarize the intermediary's evaluation criteria to thoughtfully examine progress towards project goals and objectives.

Through this grant ODEP and CFBCI seek the following objectives:

- A positive measurable impact on transition outcomes of young people with disabilities in those target areas who receive grant-related mentoring services.
- A significant increase in the number of faith-based and community organizations capable of providing quality mentoring services to young people with disabilities and capable of effectively sustaining mentoring programs for youth with disabilities through a variety of funding sources (*e.g.*, Federal; state; local governments, private charitable organizations and foundations); and
- The narrative should specifically and carefully define how the intermediary and its sub-awardees will determine success consistent with the above objectives for all the proposed activities. The narrative should identify an overall goal as to the number of mentees to be served under the grant, and should identify the positive transition outcomes expected. Positive transition outcomes may include placement and retention in employment, completion of educational certification, graduation, skills attainment, enrollment in post-secondary education, etc. In addition, the applicant should provide an explanation as to how the applicant will work with its sub-awardees to establish interim goals necessary to meet the aforementioned goal and objectives. This section of the narrative should also address the "methods of evaluation" that will be used by the intermediary to determine the success of the technical assistance efforts provided to the intermediary's sub-awardees (including program development) as well as the success of the mentoring efforts. In addition, this section of the narrative should outline the strategy for documenting and reporting the activities undertaken during the life of the grant for ODEP and CFBCI's future use in working with other intermediaries.

ODEP will evaluate the narrative against the following criteria to determine whether the goals and objectives, and the plans and procedures proposed for achieving them, are innovative, worthwhile, and realistic.

(a) Do the objectives reflect the measurable outcomes of the proposed work? (**Note:** The objectives must be tangible, specific, concrete, measurable, and achievable over the life of the grant.)

(b) Are the methods and activities to achieve the objectives adequately described? (**Note:** These should be consistent with the timeline required in criterion 2, and present the order and the date of completion (month or quarter) for the accomplishment of the intermediary and sub-awardees' tasks.)

(c) How will the planned work lead to the outcomes anticipated during the life of the grant? Are the tasks that will be accomplished with the available resources thoroughly and cogently outlined? (**Note:** Early in the planning process, applicants should list the tasks that will have to be completed to meet the goals of the project. They can then break these into smaller tasks and lay them out in a schedule over the grant time period. This will provide a chance to consider what personnel, materials, and other resources will be needed to carry out the tasks.)

(d) Is there evidence presented that the accomplishments and structures established during the period of grant performance can be sustained beyond the life of the grant?

Part VIII. Monitoring and Reporting

Monitoring: ODEP is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the terms of the grant award document. The Department staff, or their designees may conduct on-site project reviews periodically. Reviews will focus on timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives:

Reporting: Grantees will be required to submit quarterly financial and narrative progress reports as prescribed by OMB Circular A–102 and A–110, as codified by 29 CFR parts 97 and 95 respectively.

(1) A Quarterly Report will be required within thirty (30) days of the end of each quarter beginning ninety days from the award of the grant and is estimated to take five hours to prepare on average. The form for the Quarterly Report will be provided by ODEP. ODEP will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

(2) Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269—Financial Status Report (FSR).

(3) A Final Project Report, including an assessment of project performance and outcomes achieved will be required and is estimated to take twenty hours to complete. This report will be submitted

in hard copy and on electronic disk using a format and following instructions that will be provided by ODEP. A draft of the final report is due to the ODEP thirty (30) days before the termination of the grant. The final report is due to ODEP sixty (60) days following the termination of the grant.

ODEP may arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant post secondary and employment data, and to provide access to personnel, as specified by the evaluator(s), under the direction of ODEP. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation. Grantees must agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL and other relevant Federal agencies, as appropriate. Finally, Grantees must agree to actively utilize the programs sponsored by the ODEP, including the Job Accommodation Network, (*http://www.jan.wvu.edu*), and the Employer Assistance Referral Network (*http://www.earnworks.com*).

Part IX. Review Process and Evaluation Criteria

All applications will be reviewed for compliance with the requirements of this notice. ODEP, CFBCI and other Federal agency staff are expected to serve on the technical panel(s) that will review all applications against the criteria listed below. ODEP also may utilize representatives from faith-based and community organizations and others with policy expertise with faith-based and community initiatives that have no relation to grant applicants to broaden the perspective of review panels. The panel recommendations are advisory in nature and not binding on the Grant Officer. The grant officer will fully consider the panel recommendations, but take into account other factors to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of Work. The grant officer may consider any information that comes to his or her attention and may elect to award grants either with or without discussion with the applicant. In situations without discussions, an award will be based on the applicant's signature on the SF 424, which constitutes a binding offer. The Grant Officer will make final award decisions based on what is most advantageous to the Government, considering factors such as:

Panel findings;

Geographic distribution of the competitive applications; and

Availability of funds.

X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grants awarded under this SGA shall be subject to the following as applicable:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts, and Other Agreements.
- 29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

- State and Local Government—OMB Circular A–87
- Nonprofit Organizations—OMB Circular A–122
- Profit-Making Commercial Firms—48 CFR part 31

Profit will *not* be considered an allowable cost in any case.

C. Grant Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)
- 29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et. seq.*)
- 29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938).

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC, this 10th day of June, 2003.

Lawrence J. Kuss,

Grant Officer.

Appendix A: Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

Appendix D. Survey on Ensuring Equal Opportunity

BILLING CODE 4510–13–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, State, and zip code*):	Name and telephone number of person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (*EIN*): ☐☐–☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other(*specify*): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*Cities, Counties, States, etc.*):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ 00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ 00	
c. State	$ 00	
d. Local	$ 00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ 00	
f. Program Income	$ 00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ 0 00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Appendix A

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
		$	$	$	$ 0.00
a. Personnel					0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*		0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*		$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income		$	$	$	$ 0.00

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

Appendix C

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

Survey on Ensuring Equal Opportunity

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Appendix D

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c) (3) statuses is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1225-0083. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–15114 Filed 6–13–03; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[SGA 03–16]

Innovative State Alignment Grants for Improving Transition Outcomes for Youth With Disabilities Through the Use of Intermediaries

AGENCY: Office of Disability Employment Policy, U.S. Department of Labor.

ACTION: Notice of availability of funds; solicitation for grant applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding. (SGA 03–16).

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of $3 million to award up to 6 competitive grants in the amount of approximately $500,000. Eligible applicants include State Workforce Investment Boards or the functional equivalent State entities. Indian and Native American tribal entities, or consortia of tribes, are also eligible to apply.

The purpose of this grant initiative is to:

1. Help States conduct resource mapping [1] to assess their youth service delivery infrastructure in light of evidence-based transition operating principles [2];

2. Develop, implement, and evaluate a cross-agency multi-year State plan to improve transition outcomes for youth with disabilities through blending and/or braiding [3] of Federal, State, and community resources and the use of local intermediary organizations;

3. Conduct local pilot demonstrations to determine how, through community partnerships, intermediary organizations can best be used to ensure that youth with disabilities obtain transition services consistent with evidence-based transition operating principles, and the impact of such intermediaries on improving transition outcomes for youth with disabilities; and

4. Demonstrate, through leveraging Federal, State and local public sector resources, concrete evidence of the likelihood of sustainability of grant objectives within the State.

These grants are for a one-year period and may be renewed for a period of up to four additional years depending upon the availability of funds and the efficacy of the project activities. *See also* parts IV and IX.

In meeting grant objectives, it is expected that the grantee will sub-award a substantial portion of its award to intermediary organizations. For purposes of this SGA, an intermediary organization is defined as an agent that:

- Convenes local leadership and broker relationships with multiple partners across multiple funding streams;
- Brings together workforce development systems, vocational rehabilitation providers, businesses, labor unions, educational institutions, social service organizations, transportation entities, health providers, and other Federal, State, and community resources which youth with disabilities need to transition to employment successfully.

Possible intermediaries include, but are not limited to, community-based non-profit organizations, faith-based and community organizations, employer organizations, community colleges, community rehabilitation programs, etc.

By connecting schools and other youth-serving institutions with workplaces and other available Federal, State, and community resources, the intermediaries will create a forum for building a system that better meets the needs of all interested stakeholders. In addition, intermediary organizations can assist the state in assessing and evaluating the performance and impact of its efforts related to these grant activities, and in providing necessary information and training in areas such as benefits planning, universal access, reasonable accommodation, mental health, housing, transportation, health maintenance (including Medicare and Medicaid), and other self-sufficiency issues.

DATES: Applications will be accepted commencing on June 16, 2003. The closing date for receipt of applications under this announcement is July 28, 2003. Applications must be received by 4:45 p.m. (e.t.) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–16, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Telefascimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339. This announcement will also be published on the Internet on ODEP's online home page at: *http://www2.dol.gov/odep*. Award notifications will also be published on the ODEP home page.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it (a) is determined that its late receipt was caused by DOL error; (b) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped or otherwise placed

[1] "Resource mapping" refers to a methodology that has been used by the Federal government, State agencies, local entities, and community-based organizations, among others, to link and align resource use with organizational goals, strategies, and expected outcomes. It is known by a multitude of names including asset mapping, asset analysis, and environment scans, and can involve a variety of different data collection strategies depending on what is being studied. For purposes of this SGA, the term "resource mapping" refers to the identification of available assets and resources within the States' youth service delivery infrastructure and an evaluation as to whether and/or to what extent that system is currently serving youth with disabilities consistent with the evidence-based operative principles discussed previously.

[2] "Evidence based transition operating principles" is a term defined, for purposes of this SGA, in part III.

[3] For purposes of this SGA, the term "blended funding" is used to describe mechanisms that pool dollars from multiple sources and make them in some ways indistinguishable. "Braided funding" utilizes similar mechanisms, but the funding streams remain visible and are used in common to produce greater strength, efficiency, and/or effectiveness.

impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

3. *Hand-Delivered Proposals.* It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:45 p.m., e.t., at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Part II. Authority

Omnibus Appropriations Resolution, 2003, Pub. L. 1087; Consolidated Appropriations Act, 2001, Pub. L. 106–554, 29 U.S.C. 557b.

Part III. Background

Young people with disabilities experience significant challenges in making a successful transition to adult life. According to the U.S. Department of Education, national high school graduation rates (*e.g.*, diplomas, GED, alternative certificates) for students with disabilities lag considerably below that of youth without disabilities. Nearly nine-tenths or 88% of students without disabilities graduate as compared to only 62% of those with disabilities.[4] Moreover, students with disabilities experience a school drop out rate that is three times greater than that for youth without disabilities—31% vs. 11%. Youth with emotional disabilities experience an even higher drop out rate of 54%.

It is estimated that only one-third of young people with disabilities who need job training receive it. Young people with disabilities also have significantly lower rates of participation in post-secondary education. Finally, the Social Security Administration has found that many young people with disabilities entering the Supplementary Security Income (SSI)/Social Security Disability Insurance (SSDI) rolls are likely to remain on the program rolls for their entire lives.

As reflected in President George W. Bush's New Freedom Initiative, DOL's strategic goals and the Leave No Child Behind Act of 2001 (Pub. L.107–110), young people with disabilities should have the opportunity to make a smooth transition from school to work and/or post-secondary education, to engage in meaningful employment, to live within their communities, and to contribute as productive citizens to society. Over the last 10 years, a number of Federal laws and policies have been implemented to facilitate access to transition planning activities, employment, and community living for youth with disabilities including the Individuals with Disabilities Education Act of 1975, as amended (IDEA); the Rehabilitation Act, as amended; the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act) (Pub. L.101–392); the School-to-Work Opportunities Act of 1994 (Pub. L. 103–329); the Workforce Investment Act of 1998 (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*); and the Leave No Child Behind Act.

Among the most significant pieces of Federal legislation for youth with disabilities is IDEA, which focuses on supports and services for infants, preschoolers, school-aged children, and youth. Transition planning and services were included as new, but key, components in the 1990 reauthorization of IDEA. Under IDEA, "transition services" are defined in part as "a coordinated set of activities for a student with a disability that (A) is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." 20 U.S.C. 1401(30). Under IDEA, as reauthorized in 1997, a statement of transition service needs must be included in the student's Individualized Education Plan (IEP) beginning at age 14.

By age 16, or younger if appropriate, the IEP must include a statement of needed transition services that describes related services and community experiences necessary for the student to engage in meaningful employment and/or post-secondary education and successful community living. Transition services must be based upon the individual student's preferences, interests, and needs, and include:

- Instruction;
- Related services;
- Community experiences;
- Development of employment and other post-school adult living objectives, and
- Acquisition of daily living skills, including functional vocational evaluation when appropriate.

The school system is responsible for ensuring that each youth receives all needed transition services. As discussed below, however, multiple agencies such as vocational rehabilitation agencies need to be involved in transition to ensure success.

The *Rehabilitation Act, as amended in 1998*, also includes a number of provisions that impact the transition planning process. Because it uses the same definition of transition as IDEA, and requires that rehabilitation and education agencies undertake actions to facilitate transition, the Rehabilitation Act promotes coordination of transition and rehabilitation. Premised on consumer involvement, the Rehabilitation Act requires that an Individualized Plan for Employment (IPE), which identifies a vocational goal and all the services needed to achieve that goal, be developed in coordination with the IPE. After the student has been determined eligible, transition services may be provided based upon the individual student's needs including no-cost services such as career guidance and counseling and unpaid on the job training, as well as "purchased" services such as assistive technology assessment and devices and supported employment.

The Perkins Act also provides Federal assistance for vocational education programs in both secondary and post-secondary settings. The provisions of the Perkins Act state that schools will assist "special populations" (which includes students with disabilities) to enter vocational education programs and will assist students with disabilities in fulfilling the transitional services requirement of IDEA.

The School-to-Work Opportunities Act of 1994, which sunset in October of 2001, paved the way for a new approach to learning and employment in America. Jointly administered by the United States Departments of Education and Labor, School-to-Work brought together parents, teachers, and business leaders to create courses to prepare students both academically and practically for the world of work. The intent of the School-to-Work Opportunities Act of 1994 was to provide a national framework and venture capital to allow all states to create a universal statewide transition system that offered all young Americans access to performance-based training; this training aimed to enable them to earn portable credentials, prepare them for their first jobs in high-skill, high-wage careers, and increase their opportunities for further education.

Programs funded under the School-to-Work Opportunities Act were required to integrate work-based and school-based learning components as well as "connecting activities" to match students with work-based learning opportunities through partnerships with schools, employers and other community partners. The school-based learning component centered on the student's career major and his/her ability to meet "the same challenging academic standards established for all students in their state." Work-based learning, which included work experience, workplace mentoring, and instruction in "general workplace competencies" was intended to give practical meaning to academic concepts and to transform traditional instruction into learning experiences. Connecting activities were intended to connect the school- and work-based learning components and included such activities as matching students with work-based learning positions, providing technical assistance to employers in designing work-based learning, and linking school-to-work activities with employer and industry strategies for upgrading skills.

The WIA, which superceded the Job Training Partnership Act (Pub. L. 102–367), provides a variety of work preparation programs to assist youth with disabilities in achieving their career ambitions. One of the most significant reforms under WIA section 129(c) (29 U.S.C. 2854(c)), is the consolidation of the year-round youth program and the summer youth program into a single formula-based funding stream. Under WIA, each local workforce investment area must have a year-round youth services strategy that incorporates summer youth employment opportunities as one of ten required program elements (WIA section 129(c)(2), 20 CFR 664.410). The 10 program elements reflect successful youth development approaches and focus on the following four key themes:

1. Improving educational achievement (including such elements as tutoring, study skills training, instruction leading to secondary school completion, dropout prevention strategies, and alternative secondary school offerings);
2. Preparing for and succeeding in employment (including summer employment opportunities, paid and unpaid work experience, and occupational skills training);
3. Supporting youth (including supportive services needs, providing adult mentoring, follow-up services, and comprehensive guidance and counseling); and
4. Offering services intended to develop the potential of young people as citizens and leaders (including leadership development opportunities).[5]

The No Child Left Behind Act of 2001, signed by President Bush on January 8, 2002, is a landmark in education reform designed to improve student achievement and change the culture of America's schools. The Act demands stronger accountability for results for all students, including those who are economically disadvantaged, from racial and ethnic minority groups, have disabilities, or have limited English proficiency. In addition, it provides for greater flexibility for states, school districts and schools in the use of Federal funds, more choices for parents of children from disadvantaged backgrounds, and an emphasis on teaching methods that have been demonstrated to work. The Act also places an increased emphasis on reading, especially for young children, enhancing the quality of our nation's teachers, and ensuring that all children in America's schools learn English.

Increasing the number of youth making a successful transition to work is integral to accomplishing the employment-related objectives of President Bush's New Freedom Initiative and is one of the U.S. Department of Labor's top priorities. A review of effective practices that span education, employment and training, youth development, and disability shows that in order to transition successfully *all* youth need the following evidence-based transition operating principles in place:

1. Access to high quality standards-based education regardless of the setting;
2. Information about career options;
3. Exposure to the world of work;
4. Opportunities to develop social, civic, and leadership skills;
5. Strong connections to caring adults;
6. Access to safe places to interact with their peers, and
7. Support services to allow them to become independent adults.

With regard to these evidence-based transition operating principles, research specifically indicates that academic and career-technical education for youth should be based on state and/or industry standards, and that youth should have access to a varied and balanced set of learning strategies appropriate for the individual. Research further reflects that in order to help youth make informed choices, they should undergo a career assessment that includes, but is not limited to, interest inventories, and formal and informal vocational assessments. Moreover, they should be exposed to job skills training and career opportunities that provide a living wage, be provided with information about education, entry requirements and income potential, and be provided structured support to post-secondary education and other life-long learning opportunities. In addition, youth with disabilities must be provided with information needed to understand the relationships between appropriate benefits planning and career choices, to learn to identify and access disability-related support and accommodations needed for the workplace and community living, and how best to communicate their disability-related support and accommodation needs to prospective employers and service providers.

Research further reflects that to transition to adulthood successfully all youth should be exposed to a range of work-based exploration experiences such as site visits, community service, job shadowing, and paid and unpaid internships. In providing such experiences for youth with disabilities, mechanisms must be in place to ensure that they learn how to request, locate, and secure the supports and accommodations they need at the workplace.

To foster leadership development, youth should be provided with exposure to role models through a variety of means, including mentoring activities designed to establish strong relationships with adults through formal and informal settings, as well as peer-to-peer mentoring opportunities. In addition, all youth should be provided skills training in self-advocacy and conflict resolution, and be exposed to personal leadership and youth development opportunities including community service. In the case of youth with disabilities, they should be exposed to mentors and role models with and without disabilities, and receive training about disability culture.

[4] U.S. Department of Education, National Center on Education Statistics, The Condition of Education 2000 in Brief, Jeanne H. Nathanson NCES 2001–045, Washington, DC; U.S. Government Printing Office, 2001 U.S. Department of Education, Office of Special Education and Rehabilitation Services, Twenty-second Annual Report to Congress on the Implementation of the Individuals with Disabilities Act, Washington, DC, U.S. Government Printing Office, 2000.

[5] It should be noted that the evidence-based operating principles central to this grant align closely with the four key themes for serving youth under WIA.

Support services, which youth need to transition successfully, may include mental and physical health services, transportation, and tutoring, as well as post-program supports through structured arrangements with post-secondary institutions and adult-serving agencies. In the case of youth with disabilities there may be a need for additional support services including, but not limited to, access to and acquisition of assistive technology, benefits counseling, independent living centers and other consumer-driven community-based support service agencies, and personal assistance services, including readers, interpreters, and other personal assistance services.

Unfortunately, access to transition services consistent with these evidence-based transition operating principles is frequently hampered by the fact that the workforce development and education systems, and the linked income support, health, housing, assistive technology, social service, and transportation service systems, are driven by:

- Differing institutional missions, each with distinctive funding parameters and fiscal incentives;
- Multiple funding streams with substantial variations in expected outcomes;
- Traditions;
- Capacities of the institutions and staff, and
- Many other factors that separate rather than promote a transparent and internally/externally logical system that assists young people to become productive members of our society.

To address this situation, states need to help local communities and service providers find ways to more effectively organize, support, and work with—and through—a wide array of institutions, organizations and family support networks to better meet the transition-related needs of young people with disabilities. If the transition outcomes of youth with disabilities are to improve, businesses, labor unions, educational institutions, social service agencies, transportation providers, health service organizations, and other community providers must work together and Federal, state, and local community resources must be leveraged effectively.

To promote the integration of the aforementioned evidence-based transition operating principles into local transition service delivery, and in recognition that intermediary organizations can play a key, convening role in effectuating systems change, ODEP is funding these Innovative State Alignment Grants to address this need. This SGA is designed to help states to:

- Conduct resource-mapping to assess their youth service delivery infrastructure in light of the evidence-based transition operating principles discussed above;
- Develop, implement, and evaluate a cross-agency multi-year state plan to improve transition outcomes for youth with disabilities through blending and/or braiding of Federal, state, and community resources and the use of local intermediary organizations, and
- Conduct local pilot demonstrations to determine:
- How intermediary organizations can best be used to ensure that youth with disabilities obtain transition services consistent with the evidence-based transition operating principles, and
- The impact those intermediaries have on improving transition outcomes for youth with disabilities.

All grant-related activities are to be evaluated consistent with the framework set forth in Pro-Bank [6] and specific outcomes are to be measured based on data already being collected from multiple service sectors (*e.g.*, workforce development, education, etc).

In order to conduct the local pilot demonstrations required under the grant, the grantee is expected to sub-award a substantial portion of its award to fund local intermediary organizations that have demonstrated expertise and experience in enlisting the active support and participation of key stakeholders, including education entities, the workforce development system, businesses, organized labor, and local faith-based and community organizations. These activities include, but are not limited to, effectively operating and managing their programs, accessing governmental and private funding sources, developing and training staff, expanding the types and reach of services in their communities, and replicating promising and effective practices. Grant funds issued through these sub-awards may be used to support a wide range of local intermediary activities that help to ensure positive transition outcomes for youth with disabilities between the ages of 14 and 24. Allowable activities include, but are not limited to:

- Convening key stakeholders to establish community-wide partnerships committed to preparing young people with disabilities for employment and/or further educational training and/or independent living;
- Supporting peer learning and leadership opportunities;
- Providing necessary information and training in areas such as benefits planning, universal access, reasonable accommodation, mental health, housing, transportation, health maintenance (including Medicare and Medicaid), and other self-sufficiency issues;
- Evaluating transition programs using evidence-based methods as set forth in Pro-Bank;
- Organizing and participating in strategic alliances with business groups and organizations;
- Integrating school and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and post-secondary education;
- Systematically integrating existing local education and training programs and resources with related Federal, State, and local programs to address effectively the learning and employment needs of youth with disabilities;
- Providing staff development to teachers, employers, mentors, counselors, community rehabilitation agency personnel, One-Stop staff, and others critical to successful transition outcomes.

Through these grant activities and associated technical assistance provided by the National Collaborative on Workforce and Disability for Youth (NCWD/Youth) (*see www.ncwd-youth.info*), which ODEP funds, ODEP anticipates effectuating systemic change that will lead to improved transition results for youth with disabilities. Projects are required to collaborate with the NCWD/Youth as a condition of the grant to ensure that the strategies and techniques developed as a result of these grant activities can serve as models for other states' systems of youth service delivery.

Part IV. Funding Availability and Period of Performance

ODEP anticipates awarding up to 6 grants in the amount of $500,000, totaling $3 million. The grants will be for a one-year period of performance and may be renewed annually up to four additional option years for a total of five years at full funding depending upon the availability of funds and the efficacy of the grant activities, established by independent reviews conducted by the Department of Labor or its designee.

Proposals must include budgetary information for a five-year period. It is anticipated that in the first three quarters of the first funding year, grantees will be conducting the youth service infrastructure assessment (resource mapping), developing the cross-agency state plan, designing local demonstrations, and making the sub-awards to intermediaries necessary to implement the plan. The demonstration-related activities will be carried out in subsequently funded years.

Part V. Eligible Applicants

Eligible applicants include State Workforce Investment Boards or the state's functionally equivalent entities. Indian and Native American tribal entities, or consortia of tribes, may apply for Innovative State Alignment Grants for Improving Transition Outcomes for Youth with Disabilities through the Use of Intermediaries. These grants would involve coordination of youth services and enhancements for people with disabilities in a specific Indian community or covering multiple tribal entities that may cut across multiple States and/or workforce investment areas. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government-to-government relationship between the Federal and tribal governments.

Part VI. Format Requirements for Grant Application

General Requirements: Applicants must submit one (1) copy with an original signature and 2 additional copies of their proposal. To aid with the review of applications, DOL also encourages Applicants to submit an electronic copy of their proposal on a disc or CD using Microsoft Word. Applicants who do not provide an electronic copy *will not* be penalized. The Application Narrative must be double-spaced with standard margins on 8½ x 11 papers, and be presented on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout. A font size of at least twelve (12) pitch is required throughout. Applications that fail to meet these requirements will be considered non-responsive.

The three required sections of the application are:

Section I—Project Financial Plan;
Section II—Executive Summary—Project Synopsis;
Section III—Project Narrative (including Attachments, not to exceed 40 pages).

Mandatory requirements for each section are provided as follows in this application package. Applications that fail to meet the stated mandatory requirements of each section will be considered non-responsive.

Mandatory Application Requirements

- *Section I. Project Financial Plan (Budget)* (The Project Financial Plan will not count against the application page limits.) Section I of the application must include the following three required parts:

(1) Completed "SF 424—Application for Federal Assistance" (*See* Appendix A of this SGA for required form).

(2) Completed "SF–424A—Budget Information Form" by line item for all costs required to implement the project design effectively. (*See* Appendix B of this SGA for required forms).

(3) Budget Narrative and Justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

The application must include one SF–424 with the original signatures of the legal entity applying for grant funding and 2 additional copies. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, section 18 (29 U.S.C. 1611), an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, or loan. (*See* 2 U.S.C. 1611; 26 U.S.C. 501(c)(4).) For item 10 of the SF–424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.720.

The Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with grant funds. Grantees must provide for the travel and associated costs of sending at least one representative to the annual ODEP Policy Conference for Grantees, to be held in Washington, DC at a time and place to be determined. Grantees must comply with the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97, and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF 424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

- *Section II. Executive Summary—Project Synopsis* (The Executive Summary is limited to no more than three single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout.) Each application shall include a project synopsis that identifies the following:

(1) The name of the applicant;

(2) The planned period of performance;

(3) The actions already undertaken by the state to address transition outcomes for youth with disabilities;

(4) An overview of the applicant's plan for using resource mapping to assess the state's existing youth service infrastructure, including existing intermediary organizations, to determine whether and/or to what extent it is currently serving youth with disabilities consistent with the evidence-based operative principles discussed previously and the criteria established in Pro-Bank;

(5) A statement of the applicant's strategy for obtaining and sustaining collaboration and coordination among and between Federal, State, and local agencies needed to finance transition services for youth with disabilities through the blending and braiding of resources, and for developing initial common performance measures;

(6) An overview of how the applicant will develop and use local demonstration projects to address any gaps revealed in the statewide youth infrastructure assessment, and a general statement of how local model demonstrations will be conducted to determine how intermediaries can best be used to ensure that transition services consistent with the aforementioned operating principles are incorporated into the State and local systems of service delivery; and

(7) The ways in which the proposal is coordinated with other disability-related

[6] Utilizing the Congressionally recognized Malcolm Baldrige Quality Award criteria for continuous improvement, as well as research conducted by PEPNet, the Workforce Excellence Network (WEN), the National Center on Secondary Education and Transition (NCSET), and the Center for the Study and Advancement of Disability Policy (CSADP), the National Collaborative on Workforce and Disability for Youth (NCWD/Youth) developed the Pro-Bank framework. The framework consists of eight categories by which an organization can assess its operations; products and services in terms of the aforementioned evidence-based transition operating principles for providing effective transition services to youth with disabilities. Pro-Bank information may be found at: *http://www.ncwd-youth.info/promising_Practices/index.html—using guide.*

grant initiatives from DOL, the Department of Education, the Department of Health and Human Services (HHS), the Social Security Administration (SSA), the Department of Housing and Urban Development (HUD) and other Federal partners.

• *Section III. Project Narrative* (The Project Narrative plus attachments are limited to no more than forty (40) 8½ x 11 pages, double-spaced with standard one-inch margins (top, bottom, and sides), and be presented on single-sided, numbered pages. **Note:** The Financial Plan, the Executive Summary, and the Appendices are not included in the forty (40)—page limit.) The substantive requirements for the project narrative are described below under part VII—Statement of Work.

All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

Part VII. Government Requirements/ Statement of Work (Project Narrative)

The *Project Narrative*, or *Section III of the grant application*, should provide complete information on how the applicant will address the following Department of Labor strategic goal priorities to ensure a Prepared Workforce:

(1) Increasing the availability of skills training, employment opportunities, and career advancement for persons with disabilities.

(2) Increasing the number of youth making a successful transition to work or who enter further training or educational programs.

Proposals will be rated based upon the quality of the applicant's response in addressing the four criteria described below in terms of a comprehensive strategic approach that incorporates the Department's priorities noted above. The four criteria (Statement of Need, Comprehensive Service Strategy, Sustainability, and Management and Outcomes) must be addressed and the applicant's accomplishments or status with regard to each item provided.

The Department, however, does not expect the applicant to incorporate every item listed as part of their strategy and proposal design. The Department recognizes that the needs and requirements of each state may be different, and therefore, some of the options identified may be more relevant than others in a particular state.

1. Statement of Need (10 points)

The purpose of the Statement of Need criteria is to establish the overall status of disability issues relating to youth in the applicant's state; to identify strengths and deficiencies to be addressed by the applicant's proposal; to identify the overall scope of proposal objectives and design; and to present the applicant's need for grant resources. These criteria will be rated based upon the applicant's identified needs and proposed approaches to addressing these needs in the context of the Department's priorities.

For proposals targeted to a specific Indian community or covering multiple tribal entities which may cut across multiple states and/or local areas, describe the overall approach of the project, and identify the inadequacies and deficiencies of the service delivery to the applicable community, and how the project expects to address these.

The narrative in this section should:

(1) Describe the potential contribution of the proposed project to increasing the quality and coordination of transition services available in the state;

(2) Describe the overall status and actions taken to date within the state related to addressing the transition needs of youth with disabilities;

(3) Describe how intermediary organizations are currently being used in the youth service delivery infrastructure and provide an overview of the youth service provider organizations operative within the state;

(4) Describe any significant deficiencies in the state or local workforce investment system, in the educational system, in the vocational rehabilitation system and in the provision of employment-related supports such as housing, health care, and transportation that present barriers to employment for young people with disabilities and explain what will be accomplished under this grant to address them;

(5) Identify the percentage of young people with disabilities in the state overall; the percentage receiving Social Security Disability Insurance (SSDI), Social Security Income (SSI), and Medicaid and Medicare benefits; and the percentage receiving special education, vocational rehabilitation, mental health, and WIA-funded services;

(6) Identify the most recent state graduation rates for young people with disabilities in the state, as well as the overall graduation rate;

(7) Describe the number of young people with disabilities expected to be served within the state, and the importance or magnitude of the results that are likely to be attained by the proposed project; and

(8) Identify additional state and/or local funds and resources that will be used to support and sustain the overall objectives of the grant;

(9) Identify networks of faith-based and community organizations that will be utilized in the service delivery system.

In *evaluating* the quality of the proposal narrative, ODEP will consider the applicant's needs identified and proposed approaches to addressing the needs in the context of ODEP's priorities.

2. Comprehensive Service Strategy (35 points)

The purpose of the Comprehensive Service Strategy criterion is to identify the approach the applicant is proposing to:

• Conduct resource mapping to assess the state's current youth service infrastructure in light of the evidence-based transition operating principles and the categories outlined in the Pro-Bank framework;

• Develop, implement, and evaluate a cross-agency multi-year state plan to improve transition outcomes for youth with disabilities through blending and/or braiding of Federal, state, and community resources and the use of local intermediary organizations;

• Conduct pilot demonstrations to determine:

• How intermediary organizations can best be used to ensure, through cross-agency partnerships, that youth with disabilities obtain transition services consistent with the evidence-based operating principles, and

• The impact those intermediaries have on improving transition outcomes for youth with disabilities.

In general, this requires extensive linkages, knowledge and understanding of the Pro-Bank framework and resource mapping, as well as applicable resources that address multiple disability issues and barriers to education and employment that are commonly experienced by young persons with disabilities.

A. *Staff Capacity*—The applicant must identify how it will ensure that trained staff knowledgeable about the state's youth serving infrastructure and of the complexities of coordinating the services and supports needed for youth with disabilities to transition successfully are available to conduct the activities required under this grant. Accordingly, the application should:

(1) List key positions required to carry out the project as proposed, the key individuals proposed to fill the positions, and a detailed description of the kind of work these individuals will perform within the project;

(2) Provide evidence of the staff's skill, knowledge and experience in carrying out these types of activities, and describe their relevant training (resumes must be included in the Appendices);

(3) Describe the specific experience the key personnel have in serving young people with disabilities, in addressing specific barriers to employment, and in implementing and administering project plans similar to that in the proposed grant project; and

(4) Describe how ongoing technical assistance and staff development will be provided.

B. *Proposed Design*—In addressing the proposed design element of the Statement of Work, the applicant should:

(1) Describe the project partnerships in detail, and the commitment (including resource commitment) of the partners to the proposed project.

(2) Discuss how the applicant will ensure the participation and cooperation of the following stakeholders in both designing and implementing of the improved state youth service infrastructure:

a. State departments of Labor, Education, and Vocational Rehabilitation, Governors' Committees on Employment of People with Disabilities, State Councils for Independent Living, Mental Health Agencies, Mental Retardation and Developmental Disability Councils, and Temporary Assistance for Needy Families (TANF) Agencies;

b. Local WIA youth services providers, Jobs Corps representatives, public housing and transportation authorities, local One Stop centers and other community partners (*e.g.*, area disability organizations, Centers for Independent Living, faith-based and community organizations);

c. Employers and their professional networks such as Business Leadership Networks (BLNs) that have been established in approximately 30 states, Chambers of Commerce, and other employer trade associations; and

d. Youth with disabilities, their families, the state's Youth Leadership Forum (where one has been established), and state members of the National Youth Leadership Network.

(3) Discuss how the applicant will work with Federal agencies and programs as needed to blend the Federal services with the improved state youth service infrastructure. Federal agencies and programs may include the Department of Health and Human Services' Maternal and Child Health Bureau, Children with Special Health Care Needs Program, Center for Medicare & Medicaid Services, Substance Abuse and Mental Health Services Administration, and Administration on Developmental Disabilities; Social Security Administration; and the Department of Education's Office of Special Education and Rehabilitative Services;

(4) Describe how the statewide assessment of the existing youth service infrastructure using resource mapping will be conducted and how its results will be used to redirect services, and blend and braid resources across multiple funding streams that may have diverse performance measures and data collection systems;

(5) Describe the process that will be used in making sub-awards to intermediaries, and the types of functions intermediaries will play in grant-related activities;

(6) Explain how model demonstrations will be conducted, and how such demonstrations will be used in conjunction with the results of the statewide assessment to develop a replicable framework for using intermediaries to provide transition services that result in improved outcomes for youth with disabilities;

(7) Explain how the activities proposed will lead to better coordination of available resources, better service delivery, and ultimately more youth with disabilities obtaining jobs, job training, and post-secondary education;

(8) Identify and explain the benefits or results expected from the grant activities proposed; and

(9) Explain how technology will be used in carrying out grant activities (*e.g.*, tracking outcomes, data collection, e-mentoring, web-based trainings, assistive technology, etc.)

In *evaluating* the quality of the proposed project design, ODEP will consider the following factors;

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs and the quality of the applicant's plans regarding project partnerships and intermediary organization utilization;

(c) The extent to which experienced and trained staff will direct the key activities of the grant;

(d) The extent to which the design of the proposed project provides procedures and approaches for collaboration and coordination with key agencies and organizations and identification of critical roles;

(e) The extent to which the design of the proposed project provides clear understanding and integration of the Pro-bank framework and resource mapping;

(f) The extent to which the proposed project will be coordinated, including demonstrated support and commitment from key organizations, employers, and agencies;

(g) The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities;

3. Sustainability (30 points)

The purpose of the Sustainability criterion is to identify strategies for ensuring that activities funded under the grant will continue once Federal funding ceases. Resources and partnerships are an integral element of the project, as they support and strengthen the quality of the technical skills training provided and contribute materially toward sustainability. Sustainability must be an objective built into the project design and ongoing operation of the project.

Projects funded under this SGA will be judged on their demonstrated ability to leverage a combination of Federal, State, and local public sector resources, as well as private and local non-profit sector resources for purposes of sustainability. Accordingly, in this section the applicant should enumerate these resources, describe any specific existing contractual commitments, and provide concrete evidence of the likelihood of continued support after the grant period.

Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period. The Department considers detailed commitments for specific new activities as more important than promises of in-kind supports in showing sustained support for the project. Grants recently received from another agency can be discussed in the proposal, but the applicant should be precise about which activities precede this grant and which will occur because of this grant.

In *evaluating* the quality of the plan for sustainability, the Department considers the following factors to be of particular importance:

(a) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

(b) The likelihood that use of the Pro-Bank framework will serve as a basis for continuous improvement of the state's youth service infrastructure;

(c) The likelihood of the applicant successfully securing state ownership and participation in these projects when these grant funds cease; and

(d) The extent to which partnerships with outside entities (including public and private disability and faith-based and community organizations) and funding from additional Federal, State, and/or local resources will be effectively leveraged and utilized in continuing activities after the expiration of the grant.

Letter from the Governor. A letter from the Governor or functionally equivalent entity reflecting support of the applicant's proposal will be viewed favorably. If a letter from the Governor is not feasible, the application may include a letter from the head of an appropriate State agency.

Other Letters of Commitment. Applicants may also include letters of support from other relevant State agencies if they provide specific commitments regarding the application to this solicitation. Such letters can increase an applicant's score by showing that the commitments in the text of the proposal are grounded with actual commitments. Form letters will be considered non-responsive.

4. Management and Outcomes (25 points)

The purpose of the Management and Outcomes criterion is to determine whether the applicant has developed an adequate management plan to effectively carry out the objectives and scope of the proposed project on time and within budget, to describe the predicted outcomes resulting from activities funded under this SGA, and to identify how the results of the evaluation(s) conducted using the Pro-Bank framework and data already being collected from multiple service sectors (*e.g.*, workforce development, education, etc.) will be used to determine success.

Applicants should provide a detailed management plan that identifies the critical activities, time frames and responsibilities for effectively implementing the project, including the evaluation process for assuring successful implementation of grant objectives. A description should be provided of the plan to use data already being collected across services sectors to identify the demographic characteristics of youth with disabilities served in the applicant's state as a result of grant activities, as well as to identify the types of activities being conducted, and to determine program outcomes (*e.g.*, post-secondary education, employment, independent living, etc.). This data is then to be compared with comparable data on students with and without disabilities not participating in the grant project(s).

In addition, applicants should outline the strategy for documenting and reporting the activities undertaken during the life of the grant for ODEP's future use in working with other grantees and constituencies.

In *evaluating* the management and outcome criteria, the Department considers the following factors to be of particular importance:

(1) The extent to which the goals, objectives, and outcomes to be achieved are clearly specified and measurable;

(2) The extent to which the design of the proposed project features innovative methods for developing new sites and/or strengthening existing sites;

(3) The extent to which the proposal incorporates the cross-agency, multi-year state plan in part VII, Government Requirements/Statement of Work, section 2, Comprehensive Service Strategy;

(4) The extent to which the proposed budget and narrative justification are adequate to support the proposed project;

(5) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project;

(6) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

(7) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(8) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

(9) The extent to which the evaluation will provide information to other programs about effective strategies suitable for replication or testing in other settings;

(10) The extent to which the methods of evaluation measure, in both quantitative and qualitative terms, program results and satisfaction of people with disabilities;

(11) The extent to which the management plan for project implementation is likely to achieve the objectives on time and within budget;

(12) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

(13) The extent to which the time commitments of the state director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Part VIII. Monitoring and Reporting

Monitoring: Department shall be responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the terms of the grant award document. Applicants should assume that Department staff, or their designees, will conduct on-site project reviews periodically. Reviews will focus on timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives. Innovative State Alignment Grants for Improving Transition Outcomes may be subject to other additional reviews at the discretion of the Department.

Reporting: Grantees will be required to submit quarterly financial and narrative performance reports under the Innovative State Alignment Grants for Improving Transition Outcomes program as prescribed by OMB Circular A–102 and A–110, as codified by 29 CFR parts 97.

(1) A Quarterly Report will be required within thirty (30) days of the end of each quarter beginning ninety days from the award of the grant and is estimated to take five hours to prepare on average. The form for the Quarterly Report will be provided by ODEP. ODEP will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

(2) Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269—Financial Status Report (FSR).

(3) A Final Project Report, including an assessment of project performance and outcomes achieved will be required and is estimated to take twenty hours to complete. This report will be submitted in hard copy and on electronic disk using a format and following instructions that will be provided by ODEP. A draft of the final report is due to the ODEP thirty (30) days before the termination of the grant. The final report is due to ODEP sixty (60) days following the termination of the grant.

The Department has established priorities for FY 2003 as noted in the introduction of part VII—Government Requirements/Statement of Work. Innovative State Alignment Grants for Improving Transition Outcomes grantees will be expected to support these priorities.

ODEP may arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant post secondary and employment data, and to provide access to personnel, as specified by the evaluator(s), under the direction of ODEP. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation. Grantees must also agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL and other relevant Federal agencies, as appropriate. Finally, Grantees must agree to actively utilize the programs sponsored by the ODEP, including the Job Accommodation Network, (*http://www.jan.wvu.edu*), and the Employer Assistance Referral Network (*http://www.earnworks.com*).

Part IX. Review Process and Evaluation Criteria

All applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed in this SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Department may elect to award grants either with or without discussion with the applicant. In situations without discussions, an award will be based on the applicant's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

Panel findings; Geographic distribution of the competitive applications and the currently existing Youth Innovative Grants (NAPA and San Diego, CA; Kapolei, HI; Chicago, IL; Greenfield, IN; Wheaton, MD; Detroit, MI; Bloomington, MN; Jackson, MS; New York, NY; Oklahoma City, OK; Portland, OR; Philadelphia, PA; Falls Church, VA; and Seattle, WA); and Availability of funds.

Part X. Administration Provisions

I. A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grants awarded under this SGA shall be subject to the following as applicable:

- 29 CFR part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations.
- 29 CFR part 96— Audit Requirements for Grants, Contracts, and Other Agreements.
- 29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

II. B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following Federal cost principles as applicable:

- State and Local Government—OMB Circular A–87.
- Nonprofit Organizations—OMB Circular A–122.
- Profit-Making Commercial Firms—48 CFR part 31.

Profit will *not* be considered an allowable cost in any case.

III. C. Grant Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of title VI of the Civil Rights Act of 1964.
- 29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794).
- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*).

Signed in Washington, DC this 10th day of June, 2003.

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

Appendix D. Survey on Ensuring Equal Opportunity

BILLING CODE 4510–CX–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State, and zip code):	Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other(specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT

Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Appendix A

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

Authorized for Local Reproduction

Previous Edition Usable

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

Appendix C

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

Survey on Ensuring Equal Opportunity

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c) (3) statuses is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1225-0083. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–15115 Filed 6–13–03; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Occupatinal Safety and Health Administration

[Docket No. ICR 1218–0209 2002]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information regarding occupational injuries and illnesses has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Joseph J. DuBois, Directorate of Evaluation and Analysis, Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1875.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 27, 2002 (66 FR 55034–55035), the Agency announced its intent to request an extension of approval for the OSHA Data Collection System. This data collection will request occupational injury and illness data and employment and hours worked data from selected employers in the following Standard Industrial Classifications (SICs):

15–17 Construction
20–39 Manufaturing
0181 Ornamental Floriculture and Nursery Products
0182 Food Crops Grown Under Cover
0211 Beef Cattle Feedlots
0212 Beef Cattle, Except Feedlots
0213 Hogs
0214 Sheep and Goats
0219 General Livestock, Except Dairy and Poultry
0241 Dairy Farms
0251 Broiler, Fryer, and Roaster Chickens
0252 Chicken Eggs
0253 Turkey and Turkey Eggs
0254 Poultry Hatcheries
0259 Poultry and Eggs, NEC
0291 General Farms, Primarily Livestock and Animal Specialties
0782 Lawn and Garden Services (North Carolina only)
0783 Ornamental Shrub and Tree Services
4212 Local Trucking Without Storage
4213 Trucking, Except Local
4214 Local Trucking With Storage
4215 Courier Services, Except Air
4221 Farm Product Warehousing and Storage
4222 Refrigerated Warehousing and Storage
4225 General Warehousing and Storage
4226 Special Warehousing and Storage, NEC
4231 Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation
4311 United States Postal Service
4491 Marine Cargo Handling
4492 Towing and Tugboat Services
4493 Marinas
4499 Water Transportation Services, NEC
4512 Air Transportation, Scheduled
4513 Air Courier Services
4581 Airports, Flying Fields, & Airport Terminal Services
4783 Packing and Crating
4952 Sewerage Systems (California only)
4953 Refuse Systems
4959 Sanitary Services, NEC (California only)
5012 Automobiles and Other Motor Vehicles
5013 Motor Vehicles Supplies and New Parts
5014 Tires and Tubes
5015 Motor Vehicle Parts, Used
5031 Lumber, Plywood, Millwork, and Wood Panels
5032 Brick, Stone, and Related Construction Materials
5033 Roofing, Siding and Insulation Materials
5039 Construction Materials, NEC
5051 Metal Service Centers and Offices
5052 Coal and Other Minerals and Ores
5093 Scrap and Waste Materials
5141 Groceries, General Line
5142 Packaged Frozen Food Products
5143 Dairy Products, Except Dried or Canned
5144 Poultry and Poultry Products
5145 Confectionery
5146 Fish and Seafoods
5147 Meats and Meat Products
5148 Fresh Fruit and Vegetables
5149 Groceries and Related Products, NEC
5181 Beer and Ale
5182 Wine and Distilled Alcoholic Beverages
5211 Lumber and Other Building Materials Dealers
5311 Department Stores (Pilot collection)
5411 Grocery Stores (Maryland only)
8051 Skilled Nursing Care Facilities
8052 Intermediate Care Facilities
8059 Nursing and Personal Care Facilities, NEC
8062 General Medical and Surgical Hospitals (Pilot collection)
8063 Psychiatric Hospitals (Pilot collection)
8069 Specialty Hospitals, Except Psychiatric (Pilot collection)

In addition, OSHA will collect data from establishments that were visited by OSHA after October 1, 1997 and are required to maintain the OSHA Log. Information will also be collected from Public Sector establishments in certain State Plan States.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218–0209. The approval expires 04/30/2004. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: June 10, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–15116 Filed 6–13–03; 8:45 am]
BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027–MLA–6 and ASLBP No. 03–812–03–MLA]

Sequoyah Fuels Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Sequoyah Fuels Corporation, Gore, Oklahoma, (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns requests for hearing submitted (1) on May 14, 2002, by the State of Oklahoma; and (2) on May 15, 2003, by the Cherokee Nation and Mr. Ed Henshaw. The requests were filed in response to an April 8, 2003, notice of receipt of an amendment request from Sequoyah Fuels Corporation to address clean up and reclamation at its Gore, Oklahoma facility site, and of opportunity for a hearing, which was published in the **Federal Register** on April 15, 2003 (68 FR 18268).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Alan S. Rosenthal, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 9th day of June 2003.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–15124 Filed 6–13–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Potential Impact of Debris Blockage on Emergency Sump Recirculation at Pressurized-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin (BL) 2003–01 to all holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. The bulletin informs PWR licensees of the results of NRC-sponsored research which identified the potential susceptibility of recirculation sump screens to debris blockage in the event of a high-energy line break requiring recirculation operation of the emergency core cooling system (ECCS) or containment spray system (CSS), and of the potential for debris blockage of flowpaths necessary for system recirculation operation and containment drainage. In light of these potentially adverse effects of debris blockage, the bulletin requests that licensees confirm their compliance with section 50.46(b)(5) of Title 10 of the Code of Federal Regulations (10 CFR 50.46(b)(5)) concerning long term ECCS performance, and other existing applicable regulatory requirements, or describe any compensatory measures implemented to reduce the potential risk due to post-accident debris blockage as evaluations to determine compliance proceed.

DATES: The bulletin was issued on June 9, 2003.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Ralph Architzel, at 301–415–2804, John Lehning, at 301–415–3285, or John Lamb, at 301–415–1446.

SUPPLEMENTARY INFORMATION: Bulletin 2003–01 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession No. for the bulletin is ML031600259.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of June 2003.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–15121 Filed 6–13–03; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 16, 2003:

A closed meeting will be held on Tuesday, June 17, 2003 at 2 p.m.

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, June 17, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 11, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–15192 Filed 6–11–03; 4:47 pm]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48004; File No. SR–Amex–2003–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to the Elimination of the 10-Second Interval at Which Persons May Enter Auto-Ex Eligible Orders for Exchange-Traded Funds

June 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16,

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.[3] On June 3, 2003, Amex submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex seeks to eliminate the 10-second "speed bump" on the entry of Auto-Ex eligible orders for Exchange-Traded Funds ("ETFs") and Trust-Issued Receipts ("TIRs"), while allowing it to be reinstated if conditions warrant its reintroduction. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 19, 2001, the Commission approved the Exchange's proposal to permit the automatic execution of orders for Exchange Traded Funds ("ETFs") on a six-month pilot program basis.[5] The Exchange most recently extended the pilot for an additional six months on December 4, 2002.[6] As part of the most recent extension of the Auto-Ex for ETFs pilot, the Exchange reduced from 30 to 10 seconds, the interval at which member firms could enter orders on the same side of the market for any account in which the same person is directly or indirectly interested. The Exchange now proposes to eliminate the 10-second "speed bump" for all ETFs. The Exchange also proposes to amend Amex Rule 128A to clarify that Auto-Ex for ETFs applies to both ETFs and TIRs.

The Exchange's rules currently provide that Auto-Ex eligible orders on the same side of the market in an ETF for any account in which the same person is directly or indirectly interested may only be entered at intervals of 10 seconds or more. According to the Exchange, order flow providers have objected to this interval since it requires them to block their customers from entering any Auto-Ex eligible orders on the same side of the market in the Exchange's order routing systems for the affected security within 10 seconds. The Exchange, accordingly, is proposing to eliminate the speed bump in ETFs and TIRs while allowing it to be reinstated on a temporary basis if conditions warrant its reintroduction.

The Exchange states that the Auto-Ex Enhancements Committee ("Committee"), upon the request of a specialist, would review a request to reinstate the 10-second speed bump. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association and the Floor Brokers Association. According to the Exchange, this Committee currently reviews requests to change various Auto-Ex parameters. (*See* Commentaries .02 and .04 to Amex Rule 128A.) The Exchange would give members and member organizations ten business days notice prior to reintroducing the 10-second speed bump to allow them to implement internal procedures to comply with this requirement. The Exchange would notify members and member organizations of the reintroduction of the 10-second speed bump through Amex Notices, which are distributed on the Exchange Floor and posted on the Exchange's "Amex Trader" Web site.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change will facilitate the use of Auto-Ex by order flow providers by eliminating a compliance burden on them. Finally, the Exchange asserts that the proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in "locked-in" trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] *See* letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission dated May 6, 2003 ("Amendment No. 1").

[4] *See* letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission dated June 2, 2003 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001), (SR–Amex–2001–29).

[6] *See* Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003), (SR–Amex–2002–99).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–28 and should be submitted by July 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 03–15111 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48005; File No. SR–DTC–2002–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Enhancements to the Elective Dividend Service

June 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 22, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change enables foreign participants to receive dividend, interest, or principal payments in foreign currency directly from foreign issuers through DTC's Direct Payment Option ("DPO") of its Elective Dividend Service ("EDS") for DTC-eligible securities issued by foreign issuers that were not initially issued with the option of payment in either U.S. or foreign currency.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Currently, DTC offers its participants the option of receiving a dividend, interest, or principal payment either in foreign currency (outside of DTC) or in U.S. dollars (within DTC) when the foreign currency option is included in the initial offering terms of the DTC-eligible issue.[3] For DTC-eligible securities issued by foreign issuers that are not initially issued with the option of payment in either U.S. or foreign currency, the issuer must arrange for payment to DTC in U.S. dollars through a U.S. transfer or paying agent. In order for a non-U.S. DTC participant that is organized and resides in the same foreign jurisdiction as the issuer to receive payment in its home country and in its home currency, it must withdraw the securities from DTC and arrange for processing of the foreign currency payment directly with the paying agent. In order to once again achieve the benefits of immobilization of the security after the payment is made, the participant must then redeposit the certificate after payment has been made.

DTC believes that the physical movement of certificates solely to achieve payment in the currency of the foreign jurisdiction where the issuer and payee both reside presents to DTC participants various inefficiencies, cost, and risk such as the inefficiencies of handling physical securities and the associated risk of loss and the risk of currency fluctuation.

Under DTC's new rule, in order for an issue to be eligible for the DPO option (1) the issuer and transfer agent must agree to the arrangement (since the option has not been established at initial issuance) and (2) the issuer must certify that the income generated by the security is not U.S.-source income; in order to assure U.S. withholding tax requirements do not apply. Once an issue is eligible for the DPO option, the participant must elect to receive foreign currency directly from the issuer via DTC's EDS system, as is the case with issues that are currently eligible for foreign currency options established at initial instances. Similarly, the election will include the payment instructions to the issuer and payment/transfer agent to enable them to make payment directly to the non-U.S. participant outside of DTC.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[4] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by further immobilizing securities certificates and eliminating the need for customers to withdraw and redeposit physical securities in order to achieve payment outside of DTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC's participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] This service was first introduced in 1991. Securities Exchange Act Release No. 29144 (Apr. 30, 1991), 56 FR 21182 (May 7, 1991).

[4] 15 U.S.C. 78q–1.

of the Act and Securities Exchange Act Rule 19b–4(f)(4) because the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in DTC's custody or control and does not significantly affect the respective rights or obligations of DTC or the persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2002–16. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–2002–16 and should be submitted within July 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15086 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48007; File No. SR–DTC–2003–07]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Establish a Transaction Look-Ahead Process

June 10, 2003.

I. Introduction

On April 9, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2003–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 28, 2003.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to establish a transaction look-ahead process ("Look-Ahead") which will reduce transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap.[3]

DTC's system controls prevent the processing of a transaction (*i.e.*, cause the transaction to recycle) when the deliverer has insufficient position or insufficient collateral, the receiver has insufficient collateral, or the processing of the transaction would cause the receiver's net debit cap to be breached. For purposes of these controls, each transaction is assessed individually without regard to offsetting transactions that might resolve any system control issue presented by the initial transaction itself.

In principle, a long series of back-to-back transactions could be blocked as a result of the first transaction failing. For example, if a transaction fails because of insufficient position, insufficient collateral, or breaching of the net debit cap, then a second transaction could fail because it is dependent on the first delivery to establish the necessary securities position, then a third could fail, and so on. This does in fact occur quite often in the money market instrument ("MMI") market because of the large values involved when issuing/paying agents sell new commercial paper to broker-dealers who then make deliveries to custodians, who in turn have maturities of commercial paper awaiting acceptance by the issuing/paying agents.

DTC plans to introduce Look-Ahead in June. Look-Ahead will reduce transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap. Look-Ahead will identify receive transactions pending due to a net debit cap insufficiency and will link them to offsetting delivery transactions in the same security pending for a quantity deficiency. DTC will calculate the net effect of the offsetting transactions on the three participants involved, and if the net of the transactions results in positive risk management controls in all three accounts, the transactions will be completed. Initially, this capability will be available only for muni and corporate bonds, including MMIs where it is expected to have the widest application.

As a result of Look-Ahead, the number of recycling transactions should be reduced which could also reduce the need for intraday funding by participants. Participants will not be required to make systemic changes and can continue to process their deliveries as they do today.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[4] The Commission finds that DTC's proposed rule change is consistent with this requirement because by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap, the proposed rule change should reduce the number of blocked transactions at DTC which will promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47709 (April 21, 2003), 68 FR 22432.

[3] The net debit cap, based upon the activity of the participant, is the maximum amount a participant may owe for transactions. Currently, the maximum allowable net debit cap is $1.8 billion per participant.

[4] 15 U.S.C. 78q–1(b)(3)(F).

It Is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2003–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 03–15112 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48006; File No. SR–FICC–2003–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Fixed Income Clearing Corporation Relating to Intrabank Clearing for the GCF Repo Service

June 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on March 31, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by FICC.[2] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow FICC to shift its GCF Repo service from an interbank service to an intrabank one.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since its introduction in 1998, the GCF Repo service of the Government Securities Division of FICC has grown in participation, volume, and importance to become a significant financing vehicle alternative to delivery-versus-payment and tri-party repos. However, attendant to its success have been certain payments system risk issues that arise from the interbank funds settlements related to the service.

In order to allow for sufficient time to identify, study, and implement satisfactory solutions to these issues, FICC is shifting the GCF Repo service from an interbank service to an intrabank one. This means that only those GCF Repo participants that clear within the same clearing bank will be permitted to trade GCF Repos with one another. FICC intends to return the GCF Repo service to interbank status as soon as it is able to resolve the attendant payments system risk issues.[4]

Members of FICC's Government Securities Division have been notified of this change via Important Notice and have been given sufficient time to switch to intrabank service.

The proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it because it will allow FICC time to identify and implement a solution to the payment system risk issues that arise from settling GCF Repo transactions in an interbank environment.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comment received by FICC.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposal, which allows FICC to shift to intrabank clearing for its GCF Repo service, is consistent with Section 17A(b)(3)(F) because it should help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Allowing FICC to move to intrabank clearing for GCF Repo transactions will permit FICC to continue to offer the GCF Repo service to its participants so they will continue to have uninterrupted access to liquidity pools within their clearing banks while providing FICC time to devise a solution to reduce the risks arising from the interbank funds settlement aspect of the service when offered as an interbank service.

FICC has requested that its proposed rule change be approved prior to the thirtieth day of the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because such approval will allow FICC to immediately stop the risk associated with interbank funds settlements while still offering the GCF Repo service to its members on an intrabank basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–FICC–2003–04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of FICC's proposed rule change is available at the Commission's Public Reference Section or through FICC.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] FICC will file a proposed rule change to return to interbank clearing for its GCF.

[5] 15 U.S.C. 78q–1.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC. All submissions should refer to File No. SR–FICC–2003–04 and should be submitted by July 7, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15085 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48003; File No. SR–Phlx–2003–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Its Rule 452, Limitation on Members' Trading Because of Customers' Orders

June 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 29, 2003, the Phlx filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, has been filed by Phlx under Rule 19b–4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 452, Limitations on Members' Trading Because of Customers' Orders, to permit members and member organizations to trade along with some of their customers in limited circumstances so long as the order is not for the account of an individual investor and the customer has given express permission for the transaction. The proposed rule change, as amended, also adds additional language regarding the applicability of Phlx Rule 452's limitation on trading, and adds a number of additional exceptions to that rule.

The text of the proposed rule change, as amended, is below. Proposed additions are in italics and proposed deletions are in [brackets].

* * * * *

Rule 452. Limitations on Members' Trading Because of Customers' Orders

(a) [No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, or the firm of which he is a partner or any partner of such firm, is directly or indirectly interested, while such member personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to sell such security in the unit of trading for a customer.] *Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) on the Exchange any security listed or traded on the Exchange for any account in which such member or member organization or any associated person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer order to buy (sell) such security which could be executed at the same price.*

(b) [No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to sell such security in the unit of trading for a customer.] *A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:*

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer order is for 10,000 shares or more;

(2) the member or member organization is creating a bona fide hedge ("hedge") and (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the size of the hedge is commensurate with the risk it offsets; (iii) the risk to be offset is the result of a position acquired in the course of facilitating a customer order; and (iv) the customer order is for 10,000 shares or more;

(3) the member or member organization is modifying an existing hedge and (i) the size of the hedge, as modified, remains commensurate with the risk it offsets; (ii) the hedge was created to offset a position acquired in the course of facilitating a customer order; and (iii) the customer order is for 10,000 shares or more; or

(4) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transaction, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

[Exceptions]

(c) The provisions of this Rule *452* shall not apply *to*:

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers[, or];

(2) any purchase or sale of any security [, delivery of which is to be upon a day other than the day of delivery provided] *upon terms for delivery other than those specified* in such unexecuted market or limited price order;

(3) transactions by a member or member organization acting in the capacity of a specialist or market maker in a security listed or traded on the Exchange otherwise than on the Exchange; and

(4) transactions made to correct bona fide errors.

Supplementary Material:

.01 [A member who issues a commitment to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.] *A member or member organization or employee thereof responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.*

.02 This Rule 452 shall apply to any agency or proprietary transaction effected on the Exchange if such transaction ("Exchange transaction") is part of a group of related transactions that together have the effects prohibited by this Rule, regardless whether (i) one or more of the other related transactions were effected on other market centers; or (ii) the Exchange transaction by itself had such effects.

.03 This Rule 452 shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.04 For purposes of paragraph (b) above, the term "account of an individual investor" shall mean an account covered by section 11(a)(1)(E) of the Securities Exchange Act of 1934. For purposes of paragraph (b)(1) above, the term "proprietary facilitation account" shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) and (b)(4) above, the terms "bona fide hedge", "bona fide arbitrage" and "risk arbitrage" shall have the meaning ascribed to such terms in Securities Exchange Act Release No. 15533, January 29, 1979. All transactions effected pursuant to paragraph (b)(4) above must be recorded in an arbitrage account.

.05 For purposes of paragraph (b)(2) above, a hedge will be deemed to be "clearly related" if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. A member shall mark all memoranda of orders to identify each transaction creating or modifying a hedge as permitted under this Rule 452.

.06 A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule 452.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rule 452, which provides limitations on members' trading because of customer orders. The proposed revision would bring the rule into conformity with New York Stock Exchange, Inc. ("NYSE") Rule 92, which was recently approved by the Commission.[5] The proposed revision to Phlx Rule 452 would clarify the obligations of Exchange members regarding proprietary trading in instances where they or their member organization hold customer orders at the same or inferior prices.

In 1994, the NYSE proposed changes to NYSE Rule 92.[6] According to the Phlx, these changes were meant to address various issues regarding an NYSE-member organization's trading when it was in possession of customer orders, including a member organization's regional specialist operations, block trading, arbitrage activity and hedge activity. The Commission approved the changes to NYSE Rule 92 in 2001.[7] The revision would conform Phlx Rule 452 to NYSE Rule 92:[8]

Currently, sections (a) and (b) of Phlx Rule 452 contain the general prohibitions against trading ahead of customer market orders and customer limit orders, respectively. As revised, section (a) contains the general prohibitions against trading ahead of both customer market and limit orders.

The Exchange proposes to revise section (b) to create four exceptions to the general rule that may apply when the customer is not an individual investor and the customer knowingly consents: (1) Liquidation of a position held in a proprietary facilitation account so long as the customer's order is for 10,000 shares or more; (2) creation of a bona fide hedge under specified conditions; (3) modification of a bona fide hedge under certain conditions; and (4) engaging in bona fide arbitrage or risk arbitrage in an arbitrage account.

Section (c) currently contains two exceptions to the general rule; it does not apply: (i) To orders under 100 shares and (ii) when a customer order settles under different delivery terms than the proprietary order. As proposed, revised section (c) retains these two exceptions and adds the following two more: (1) It does not apply to transactions of a member organization's specialist unit on another exchange; and (2) it does not apply when transactions are made to correct bona fide errors.

Finally, the Supplementary Material currently contains a clarification that outbound Intermarket Trading System

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated May 28, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted technical corrections to the rule text and clarified that the applicability of Phlx Rule 452(a)(1) is limited to orders on the Exchange for securities listed or traded on the Exchange.

[4] 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 29, 2003, the date Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[5] *See* Securities Exchange Act Release No. 44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (SR–NYSE–94–34).

[6] *See* Securities Exchange Act Release No. 35139 (December 22, 1994), 60 FR 156 (January 3, 1995) (SR–NYSE–94–34).

[7] *See* note 5 *supra*.

[8] The Phlx had previously filed a proposed rule change, including several amendments, to conform Phlx Rule 452 to NYSE Rule 92, which was withdrawn in March, 2002. *See* Securities Exchange Act Release No. 37628 (September 3, 1996), 61 FR 47537 (September 9, 1996) (SR–Phlx–96–37).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

("ITS")[9] commitments are considered to be initiated from the Phlx floor. The Phlx retains the ITS clarification in Supplementary Material .06, and adds the following: (1) A Phlx member or member organization or employee thereof responsible for entering proprietary orders is presumed to have knowledge of any customer order held by the member organization unless the proper information barriers are in place; (2) this rule applies to series of transactions even if some of the transactions do not take place on the Phlx; (3) that a member on the Floor may only execute a proprietary order ahead in time of a customer order, to the extent that his member organization is permitted (*i.e.*, if the member organization is prohibited, then so is the member on the floor); (4) definitions of certain terms in the rule; and (5) procedures for utilizing the hedge exemption to the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5) of the Act[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Phlx represents that the proposed rule change, as amended, balances fundamental investor protections with the requirements of evolving trading practices involving institutional investors and member firm proprietary trading operations. The limited types of transactions it would permit should promote just and equitable principles of trade. Many of these proprietary transactions should add liquidity to the market and help investors receive efficient execution of their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

[9] *See* Phlx Rule 2001, Intermarket Trading System. The ITS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* 15 U.S.C. 78k–1 and 17 CFR 240.11Aa3–2.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Consequently, because Phlx believes the foregoing rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4 thereunder.[15]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change, as amended, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–32 and should be submitted by July 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15087 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

RIN 3245–AE96

Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of proposed policy directive.

SUMMARY: This document proposes revisions to the Small Business Technology Transfer (STTR) Program Policy Directive. The purpose of the Policy Directive is to provide guidance to participating Federal agencies for the general conduct of the STTR Program. This proposed Policy Directive reflects statutory amendments to the program. In addition, SBA proposes amendments to streamline and enhance the program.

DATES: Public comments on this proposed Policy Directive must be received on or before July 16, 2003.

ADDRESSES: Address all comments concerning this proposed Policy Directive to Maurice Swinton, Assistant Administrator for Technology, Office of Technology, Office of Government Contracting/Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or via email to *technology@sba.gov*.

FOR FURTHER INFORMATION CONTACT: Maurice Swinton, Assistant Administrator for the Office of Technology, at (202) 205–6450. You may also e-mail *technology@sba.gov*.

SUPPLEMENTARY INFORMATION: In 1992, Congress enacted the Small Business Technology Transfer Act of 1992 (STTR Act), Pub. L. 102–564 (codified at 15 U.S.C. 638). The STTR Act established the Small Business Technology Transfer Program (STTR Program) as a pilot program that requires Federal agencies with extramural budgets for research or research and development (R/R&D) in excess of $1 billion per fiscal year to enter into funding agreements with small business concerns (SBCs) that engage in a collaborative relationship with a research institution. The purpose of the STTR Program is to stimulate a partnership of ideas and technologies between innovative SBCs and research institutions. The program assists the small business and research communities by developing commercially-viable technologies. The STTR Program is a phased process, uniform throughout the Federal government, of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions.

The STTR Act requires the U.S. Small Business Administration (SBA) to "issue a policy directive for the general conduct of the STTR Programs within the Federal government." 15 U.S.C. 638(p)(1). SBA published its first STTR Policy Directive in 1993 (58 FR 42607–42620, Aug. 10, 1993).

Congress has since amended the STTR Act, most recently with the enactment of the Small Business Technology Transfer Program Reauthorization Act of 2001 (Reauthorization Act), Pub. L. 107–50. The Reauthorization Act extends the STTR Program through September 30, 2009, and changes its status from a pilot program to a permanent one. In addition, the Reauthorization Act: clarifies STTR data rights pertaining to STTR Phase I, II, and III awards (*see* proposed Policy Directive, sections 4(c)(2), 8(b) and App. I, Instructions, section 5(d)(1)(iii)); requires the establishment of an STTR Program Government-accessible and a public-accessible database (*see* proposed Policy Directive, section 11(e)); requires participating agencies, beginning October 1, 2003, to increase the amount of their extramural budget to be reserved for the STTR Program from 0.15 percent to 0.3 percent (*see* proposed Policy Directive, section 2(d)); permits agencies, beginning October 1, 2003, to increase the dollar value of STTR Phase II awards from $500,000 to $750,000 (*see* proposed Policy Directive, section 7(i)(1)); and permits agencies to approve a shorter or longer duration of time for award performance, where appropriate for a particular project (*see* proposed Policy Directive, section 7(h)).

The Reauthorization Act also requires SBA to report to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business on the STTR Programs of the Federal agencies and to specifically address the number of proposals received from, and the number and total amount of awards to, Historically Underutilized Business Zones (HUBZones) SBCs under the STTR Program. Further, the Reauthorization Act requires agencies to implement an outreach program to research institutions and SBCs for the purpose of enhancing its STTR Program, in conjunction with any such outreach done for purposes of the SBIR Program. The proposed Policy Directive addresses these requirements in sections 10(b)(5) and 9(a)(15), respectively.

In addition, the Reauthorization Act requires SBA to promulgate regulations establishing a single model agreement that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. SBA notes that it plans to issue proposed regulations implementing a model agreement for the STTR Program in the near future. The Reauthorization Act requires agencies to adopt this model agreement. This requirement is noted in the proposed Policy Directive at section 9(a)(13).

Further, the Reauthorization Act amends the Federal and State Technology Partnership (FAST) Program to require the Administrator and the Small Business Innovation Research (SBIR) Program Managers to consider whether proposals submitted address the needs of SBCs owned and controlled by women, SBCs owned and controlled by minorities, and located in areas that have historically not participated in the SBIR and STTR Programs. SBA notes that section 12 of the SBIR Policy Directive (67 FR 60072, September 24, 2002) (also available at *http://www.sba.gov/sbir/indexsbir-sttr.html*) establishes guidance for the FAST Program as does the FAST Program Announcement, which can be found at *http://www.sba.gov/sbir/indexprograms.html*. Further, the Reauthorization Act requires SBA to promulgate regulations establishing standards for the consideration of proposals under FAST, including the standards previously listed. SBA is currently drafting these regulations. These regulations are being drafted and are not addressed in this proposed Policy Directive. However, it will be addressed in a separate rulemaking.

As previously discussed, SBA proposes amendments to the Policy Directive that address the Reauthorization Act's amendments. Further, SBA proposes several changes in this Policy Directive to simplify and enhance the program. For example, SBA has organized the proposed Policy Directive into 11 self-explanatory sections: (1) Purpose; (2) Summary of Legislative Provisions; (3) Definitions; (4) Competitively Phased Structure of the Program; (5) Program Solicitation Process; (6) Eligibility and Application (Proposal) Requirements; (7) STTR Funding Process; (8) Terms of Agreement Under STTR Awards; (9) Responsibilities of STTR Participating Agencies and Departments; (10) Annual Report to SBA; and (11) Responsibilities of SBA. Two appendices are also included: (1) Instructions for STTR Program Solicitation Preparation; and (2) Tech-Net Data Fields for Public Database. In addition, SBA proposes the following substantive changes.

Section-by-Section Analysis

Section 1 of the Policy Directive sets forth the purpose of the program. SBA made only minor changes to this section.

Section 2 of the Policy Directive is a summary of legislative provisions. SBA proposes to set forth the Reauthorization Act's amendments, which are described in detail above. In addition, SBA proposes changes to address the use of the government-wide point of entry (GPE) for synopses of business opportunities. GPE has recently replaced the *Commerce Business Daily* as a means of synopses for business opportunities. The GPE, located at *http://www.fedbizopps.gov*, is the single point where government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, no agency must issue its solicitation for at least 15 days from the date of the publication of the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

Section 3 of the proposed Policy Directive sets forth definitions pertinent to the program. SBA proposes several new definitions.

SBA proposes to define the term "essentially equivalent work" to occur when substantially the same research is proposed for funding in more than one application or to more than one agency, or a research objective and design for accomplishing an objective are the same or closely related in two or more proposals. SBA understands that STTR Participants often submit duplicate proposals to more than one agency. However, the proposed Policy Directive precludes agencies from funding

essentially equivalent work in the STTR Program.

In addition, SBA proposes to define the term "feasibility" because it is used when discussing Phase I of the program. Specifically, the purpose of Phase I is to determine the scientific and technical merit and feasibility of a proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II. SBA proposes to define "feasibility" to mean the practical extent to which a project can be performed successfully.

SBA also proposes a definition for the term "innovation" because the term is used throughout the Policy Directive. SBA proposes "innovation" to mean something new or improved, having marketable potential, including (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.

SBA proposes to define the term "intellectual property" to incorporate all of the separate and distinct types of intangible property, such as patents and trademarks. The proposed definition would also specifically include STTR technical data and all types of intangible assets either proposed or generated by an SBC as a result of its participation in the STTR Program. SBA proposes this definition because the term is used throughout the Policy Directive and is important to SBCs in terms of their rights in intellectual property developed pursuant to the STTR Program.

SBA proposes to define the term "joint venture" to mean an association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. Further, for purposes of the STTR Program, a joint venture would be viewed as a business entity in determining power to control its management and would be eligible under the STTR Program provided that the entity created is small and each concern that is part of the joint venture qualifies as a SBC. SBA proposes this definition of joint venture because it is consistent with the definition of joint venture in the Federal Acquisition Regulations (FAR) and is appropriate for the program.

SBA proposes to define the terms "outcomes" and "outputs" because SBCs will report on such measures when describing their Phase II awards. This information will be utilized in the government's Tech-Net database to help SBA and the Federal agencies assess the STTR Program. SBA proposes to define "outcomes" as the measures of long-term, eventual, program impact and the term "output" as the measures of near-term program impact.

SBA proposes to define the term "principal investigator/project manager" as the individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement. The principal investigator/project manager is a key person to the project and the Policy Directive sets forth several requirements for this person, *i.e.*, they must be identified in the proposal and may have employment with the SBC or collaborative research partner at the time of award and during the period of performance.

SBA proposes to define the term "prototype" to mean a model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices. The term "prototype" is used in the definition of R/R&D, which provides that R/R&D includes a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

SBA proposes revising the definition of "research institution." Currently, the definition provides that the institution must meet the requirements of a United States research organization. In the proposed definition, SBA further clarifies this requirement to mean that it must have a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor. SBA proposes this definition because SBCs have always been required to meet these requirements to receive the benefits of this program, and thus the same should apply to research institutions receiving STTR benefits.

SBA adds definitions for the terms "STTR Technical Data" and "STTR Technical Data Rights" and deletes the term "data rights." SBA proposes these definitions because the Reauthorization Act requires SBA to clarify data rights under the program. In addition, SBA has received many inquires from SBCs concerning what data is actually protected under the STTR Program, and what rights business concerns have regarding their STTR developed technologies. The proposed definition defines "STTR Technical Data" to include all data generated during the performance of an STTR award. The proposed definition defines "STTR Technical Data rights" as those rights obtained in data generated during the performance of any STTR Phase I, II, or III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.

Section 4 of the proposed Policy Directive sets forth information pertaining to Phases I, II and III of the STTR Program. SBA has amended the Policy Directive to state, at section 4(a)(2), that "proposals will be evaluated on a competitive basis and that agencies must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. The Policy Directive also allows agencies to consider program balance or critical agency requirements.

In section 4(b), SBA proposes a provision relating to novation and successor-in-interests for Phase II. Specifically, the proposed provision would allow STTR awardees in Phase I, including those identified via a novated or successor in interest agreement, to participate in Phases II and III. SBA proposes this change because it understands that many agencies already allow this to occur and agrees with the concept. However, SBA is also proposing to permit agencies "to require the original awardee to relinquish its rights and interests in an STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the STTR Program for that project." In addition, all applicants and their proposed personnel and key supporting staff, must meet the eligibility and scientific and technical qualifications attendant to the STTR Program. Furthermore, SBA notes that it amends section 6(a)(4) to permit agencies to approve a change in principal investigator. Finally, although novated funding agreements are discussed in the proposed Policy Directive in the context of Phase II, the same applies to situations involving Phase I and III awards.

SBA proposes several amendments to the Policy Directive, set forth in section 4(c), which clarify the scope of Phase III. It is SBA's understanding that many agencies do not treat Phase III awards as STTR awards. Therefore, SBA proposes to further define a Phase III award as one that derives from, extends, or logically concludes efforts performed under prior STTR funding agreements, but is funded by sources other than the STTR Program. In addition, SBA proposes to clarify that a Phase III award is by its nature an STTR award and therefore the awardee must be accorded STTR data rights. In addition, SBA proposes to clarify that even if a competition is held, if the awardee was a Phase II STTR awardee and the contract is for work that derives from, extends, or logically concludes that concern's work, the contract has STTR Phase III status and must provide for STTR data rights.

SBA proposes amending section 4(c)(1)(i) of the Policy Directive to clarify the issue of the practical impact a Phase III designation would have in cases where no Federal funding is expended. SBA has proposed a revision that would explain that the guidance in this Policy Directive regarding STTR Phase III pertains to non-STTR federally-funded work described and does not address the nature of private agreements the STTR firm may make in the commercialization of its technology.

SBA has proposed clarification in the Policy Directive (at section 4(c)(2)), which provides that an agency official may determine, using the criteria set forth in the Policy Directive as guidance, whether a contract or agreement is a Phase III award. SBA understands that it is currently not clear whether such officials have his authority.

In section 4(c)(3), SBA proposes clarification of whether and when a Justification and Approval (J&A) should be issued during Phase III. SBA believes that a procuring agency may restrict competition under the STTR Program to small businesses or a small business (if that is all that can perform the award) and is not required by statute to prepare a J&A. Consequently, SBA proposes that a J&A is not required to fund an STTR Phase III project, but if an agency wishes to prepare one, "it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302–5, that the project is a STTR Phase III award that is derived from, extends, or logically concludes efforts performed under prior STTR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2)."

Further, in section 4(c)(6), SBA proposes clarification that the small business size limits for Phase I and Phase II awards do not apply to Phase III awards. SBA believes that the intent of Congress and purpose of the program is that STTR firms should be encouraged, in Phase III, to develop and expand business applications of their STTR research with the desired outcome that new employment and income are generated. The purpose of Phase III is to commercialize the innovation and help the SBC grow. Restricting Phase III to only SBCs might hinder the growth of STTR participants.

Section 5 of the proposed Policy Directive provides guidance on the program solicitation process and section 6 sets forth the eligibility and application requirements. SBA did not propose substantive changes to these sections.

Section 7 of the proposed Policy Directive outlines the SBIR funding process. The Reauthorization Act requires SBA to amend the Policy Directive and provide that beginning with Fiscal year 2004, agencies may approve a shorter or longer duration of time for award performance, where appropriate for a particular project. SBA's Policy Directive has always provided flexibility to the participating agencies and therefore the proposed Policy Directive still provides for this policy at section 7(h).

In section 7(i), SBA proposes a clarification to identify $100,000 in Phase I and $500,000 in Phase II as award amounts that generally may not be exceeded. SBA proposes that agencies may exceed these dollar levels where appropriate for a particular project, but must provide justification to SBA for doing so. SBA believes that this is consistent with the statute and legislative history and that flexibility is necessary to achieve success in projects that most likely would not be successful otherwise, such as drug discovery.

In that same section, SBA also proposes addressing a change made by the Reauthorization Act, which provides that beginning October 1, 2003, a Phase II award may not generally exceed $750,000.

Section 8 of the proposed Policy Directive sets forth the terms of agreement under STTR awards. The Reauthorization Act specifically requires SBA to clarify the rights in data that apply in Phases I, II, and III. Thus, in section 8(b), SBA proposes clarification that agencies are required by statute to protect STTR data rights developed from Phases I, II, and III awards, including subcontracts to such awards, for a period of at least 4 years from the last deliverable under that award. In addition, SBA proposes a provision that agencies can not condition a Phase III award on a concern giving up its STTR data rights. Likewise, the proposed Policy Directive clarifies that STTR data rights can not be negotiated or diminished by the funding agency. Further, the proposed Policy Directive prohibits the negotiation for STTR data rights before awarding an STTR funding agreement. SBA proposes that negotiations with the STTR awardee regarding intellectual property rights must be via a separate agreement, made without pressure or coercion by the agency or any other party.

SBA added clarifying sentences to section 8(b)(2) of the Policy Directive that state: "For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than 4 years. The government retains a royalty-free license for government use of any technical data delivered under an STTR award, whether patented or not. This section does not apply to program evaluation."

SBA also proposes clarifying that any data developed under a Phase III funding agreement must be protected by STTR data rights. Any data developed under Phase I, II, or III continues to be protected for a period of at least 4 years from delivery of the last deliverable under that award. The Policy Directive clarifies that although agencies are released from obligation to protect STTR data upon expiration of the protection period, any such data that is also protected and referenced under a subsequent STTR award agreement must remain protected through the protection period of that subsequent STTR award agreement. For example, if a Phase III award that is issued within the Phase II data rights protection period refers to and protects the data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period.

Section 9 of the proposed Policy Directive outlines the responsibilities of SBIR Participating Agencies and Departments. In section 9(a)(5), SBA proposes that agencies must collect and maintain information from awardees and provide it to SBA so that SBA may develop and maintain the Technology Resources Network (Tech-Net) Database, which is described in detail in section 11(e) of this proposed Policy Directive. The Tech-Net Database is a requirement of the Reauthorization Act.

In section 9(a)(11), SBA also proposes that agencies must report those instances where a follow-on award with non-STTR funds was issued to a concern other than the STTR awardee that developed the technology to be pursued under the follow-on award. The statute and legislative history evidence

that the intent of the program is to help small businesses grow through commercialization in Phase III. Therefore, when agencies make follow-on awards to a concern other than the one that received the Phase I and II award, this should be reported to Congress.

The Reauthorization Act amended the STTR Program to require that agencies adopt the model agreement developed by SBA for allocating intellectual property between STTR awardees and research institutions to carry out follow-on research, development or commercialization. SBA proposes this requirement in the Policy Directive at section 9(a)(13).

The Small Business Act requires that agencies develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that Federally-funded research and development centers that participate in STTR agreements are free from organizational conflicts of interests relative to the STTR Program; do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and use outside peer review as appropriate. SBA proposes these requirements in the proposed Policy Directive at section 9(a)(14).

The Reauthorization Act amended the STTR Program to require agencies to implement an outreach program to research institutions and SBCs in conjunction with any such outreach done for purposes of the SBIR Program to increase participation in and enhance the STTR Program. SBA has set forth this requirement in the proposed Policy Directive at section 9(a)(15).

In section 9(c)(2), SBA proposes to preclude agencies from allowing the funding agreement to include a provision subcontracting any portion of the STTR award back to the issuing agency or to any other Federal governmental unit. This mirrors a similar provision for the SBIR program that has been in effect since 1997. SBA believes that this restriction is necessary to avoid real and apparent conflicts of interest in STTR proposal evaluation and selection. SBA notes that this proposal will not restrict the use of Federal laboratory facilities by STTR awardees for STTR project work. It may only prohibit the use of STTR award funds to pay for Federal laboratory resources. In addition, SBA proposes a case-by-case waiver to this provision.

Section 10 of the proposed Policy Directive addresses each participating agency's annual report to SBA. The proposed Policy Directive outlines the substance of the report, and explains when it is due and to whom. The Reauthorization Act amended the STTR Program to require that agencies identify, for both Phase I and Phase II, the number of proposals received from, and the number and total amount of awards to, HUBZone SBCs. HUBZones are specifically defined as areas of high unemployment and low income. Therefore, these locations would benefit economically from technology growth in the community. In addition, Congress believes that tracking awards to these businesses will aid in evaluating the FAST Program. The proposed Policy Directive addresses this requirement at section 10(b)(5).

Section 11 of the proposed Policy Directive addresses SBA's responsibilities. Section 11(e) contains several proposals addressing the Reauthorization Act's Tech-Net Databases. The SBA's Office of Technology, as functional program manager for the STTR and the SBIR Programs, is required to collect and report to the Congress information regarding awards made to SBCs by each Federal agency participating in these programs. SBA will maintain two databases to meet this requirement.

SBA proposes a public Tech-Net Database that is a searchable, up-to-date, electronic database, which includes information on each SBC that has received an STTR or SBIR Phase I or Phase II award from a Federal agency. Specifically, it will include a description of the Phase I or II award; identification of any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made; and information regarding mentors and mentoring networks.

In addition, the Reauthorization Act specifically requires information pertaining to: whether the SBC or the research institution initiated their collaboration on the project; whether the SBC or the research institution originated any technology relating to the project; the length of time it took to negotiate any licensing agreement between the SBC and the research institution; and the percentage allocated between the SBC and the research institution of the proceeds from commercialization, marketing, or sale of technology resulting from the project. The collection of this information is set forth in section 11(e)(9)(v) of the proposed Policy Directive.

SBA also proposes a government Tech-Net Database that SBA, in consultation with the Federal agencies participating in the STTR and the SBIR Programs, will develop and maintain. The purpose of the government Tech-Net Database is to maintain information useful for evaluating the program. SBA proposes that for each Phase II award, the database contains: information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award; information on additional investment from any source, other than Phase I or Phase II STTR or SBIR awards, to further the research and development conducted under each Phase II award; and any other information received in connection with the award that the Administrator, in conjunction with the STTR Program Managers of the participating agencies, considers relevant and appropriate. Pursuant to an amendment made by the Reauthorization Act, SBA also proposes a paragraph stating that information provided to this government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 and shall not be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

SBA proposes revisions to its "Instructions for STTR Program Solicitation Preparation," which are set forth in Appendix I. Currently, the Policy Directive requires that for both Phase I and Phase II, the R/R&D work must be performed in the United States. SBA proposes that based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is not available in the United States, agencies may allow that particular portion of the R/R&D work to be performed or obtained in a country outside of the United States. The proposal requires approval by the funding agreement officer for such specific conditions to be in writing.

Finally, SBA proposes to list the data fields for the public Tech-Net Database in Appendix II.

Paperwork Reduction Act

SBA has determined that this rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. Specifically, the Reauthorization Act amended the Small Business Act to require the creation of a public and Government database on the SBIR and STTR Programs. According to the statute, the public database will include the name, size, location and an identifying number of each SBC that has received a Phase I or II STTR award from a Federal agency; a description of each Phase I or II award received by that SBC, including an abstract, the name of the Federal agency making the award, and the date and amount of the award; the identification of any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made; and information regarding mentors and mentoring networks.

For purposes of the STTR Program, the public database will also include: Whether the SBC or research institution initiated the collaboration; whether the SBC or research institution originated any technology relating to the STTR project; the length of time it took to negotiate any licensing agreement between the SBC and research institution; and how the proceeds from commercialization, marketing, or sale of technology resulting from each STTR project were allocated between the SBC and research institution. In addition, the Small Business Act now requires the creation of a government database that will contain the following information for each Phase II award: Information on revenue from the sale of new products or services resulting from the research conducted under the award; information on additional investment from any source, other than Phase I or II STTR awards, to further the research and development conducted under the award; and any other information received in connection with the award that the Administrator and STTR Program managers consider relevant and appropriate. The government database will also include narrative information that a SBC receiving a Phase II award voluntarily submits to further describe the outputs and outcomes of its awards and for each applicant that does not receive a Phase II award, the name, size and location of the applicant, an abstract of the project and the Federal agency to which the application was made. Finally, the government database may also include any other data collected by or available to any Federal agency that such agency considers useful for SBIR program evaluation purposes.

In response to this statutory requirement, in section 9(a)(6), the Policy Directive proposes that Federal agencies to collect or maintain this information from awardees and provide it to SBA. In addition, as required by the statute, the Policy Directive proposes that a SBC receiving a Phase II award to update information in the database concerning that award. Further, as also required by statute, the SBC receiving a Phase II award shall be requested to voluntarily update such information annually for a period of five years.

Thus, the Policy Directive outlines the information SBA is required to collect from the STTR agencies, who in turn collect some of this data from Phase I and II awardees (some of the data is already available to the agencies). Although the statute requires the collection of certain information from the agencies and STTR Phase I and II awardees, it also provides discretion to collect data SBA and the agencies deem relevant. SBA is currently in the process of developing the Tech-Net databases, which will house this information, and determining what information not prescribed specifically by statute may be relevant to the program.

SBA welcomes comments on this proposed Policy Directive and will revise the Policy Directive as necessary to improve the general conduct of the STTR Program based upon comments received. Specifically, we request comments on two sections of the proposed Policy Directive implementing the new statute: (1) The requirement in section 11(e)(9)(v) for certain additional data to the STTR public-accessible database regarding the SBC and its cooperative research institution, and (2) the requirement in section 11(e)(11)(iii) that information provided to the STTR government-accessible database is privileged, confidential, and not subject to the Freedom of Information Act.

Title: Technology Resources Network (Tech-Net) (No SBA Form Number).

Summary: The Tech-Net database is a searchable, up-to-date, electronic database that includes the name, size, location, funding agreement number and identification number assigned by the Administrator of each Small Business Concern (SBC) that has received an STTR Phase I or Phase II award from a Federal agency. A description of each STTR Phase I or Phase II award received by the SBC including an abstract of the project funded by the award, excluding any proprietary information so identified by the awardee, the Federal agency making the award and the date and amount of the award. An identification of any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made, and information regarding mentors and mentoring networks, as required in the Federal and State Technology (FAST) Partnership Program established under section 35(d) of the Act and described on the SBA's Internet site at *http://www.sba.gov/sbir/indexfast.html*. With respect to assistance under the STTR Program (as required under section 9(k)(1) of the Act) the database will also contain information on whether the SBC or the research institution initiated their collaboration on each assisted STTR project; whether the SBC or the research institution originated any technology relating to the assisted STTR project; the length of time it took to negotiate any licensing agreement between the SBC and the research institution under each assisted STTR project, and the percentage allocated between the SBC and the research institution of the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project. Furthermore, the SBA, in consultation with the Federal agencies participating in the STTR Program, has developed and maintains a secure database that contains for each Phase II award, information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award; information on additional investment from any source, other than Phase I or Phase II STTR or SBIR awards, to further the research and development conducted under each Phase II award; and any other information received in connection with the award that the Administrator, in conjunction with the STTR Program managers of the participating agencies, considers relevant and appropriate.

Need and Purpose: The database information will be used solely for program evaluation purposes by the Federal government or, in accordance with the Policy Directive issued by SBA, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal government covering the use of the database. This collection of information pertains to the creation of a public and a government database for the STTR Program, as required by Pub. L. 107–50. SBA has determined that this law imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. The continued need to have current information on the STTR awards will have a tremendous impact on the periodic program evaluation. Therefore, voluntary update by the SBC on all completed STTR Phase II awards for a period of five years will assist the Federal government in maintaining current and accurate information on each award, as well as any other data collected by or available to any Federal agency that such agency considers useful for STTR Program evaluation purposes.

Description of Respondents: All SBCs receiving a STTR Phase I or II award as outlined in Pub. L. 107–50, which states that any small business receiving a STTR award from any of the participating STTR Federal agencies

must be included in the database data collection effort.

SBA estimates the burden of this collection of information as follows:

(i) Approximately 300 concerns receive STTR Phase I and II awards each year. Each concern will be asked to complete the survey and voluntarily update such information annually for a period of 5 years.

(ii) SBA estimates that each respondent will require approximately .5 hour to complete the survey, for a total annual hour burden of 150 (300 times .5 equals 150).

(iii) The estimated annualized cost to respondents for the hour burden for collection of information should not be large as the information requested is kept in the ordinary course of business. A financial officer of the small business concern will likely input this information. SBA has assumed that the officer's pay is equal to a GS–14, step 1 in the Washington, DC area, which makes $37.50/hour. Assuming this survey takes .5 hours to complete, then the estimated annualized cost to respondents is $18.75 ($37.50 times .5 equals $18.75).

(iv) The total annual estimated cost includes the data that will be collected for the Government database.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's responsibilities and functions under the STTR Program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of Proposed Policy Directive; Small Business Technology Transfer Program

To: The Small Business Technology Transfer Program Directors.

Subject: Small Business Technology Transfer Program Reauthorization Act of 2001—Amendments to the Small Business Technology Transfer (STTR) Program.

1. *Purpose.* Section 9(p) of the Small Business Act (15 U.S.C. 638) (as amended by Public Law 107–50) requires the Administrator of the U.S. Small Business Administration (SBA) to modify its Small Business Technology Transfer (STTR) Program Policy Directive, issued for the general conduct of the STTR Program.

2. *Authority.* This Policy Directive is issued pursuant to 15 U.S.C. 638(p).

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulations may need to be modified to conform to the requirements of the Reauthorization Act and the final Policy Directive. SBA's Administrator or designee must review and concur with any regulatory provisions that pertain to areas of SBA responsibility. SBA's Office of Technology coordinates such regulatory actions.

4. *Personnel Concerned.* This Policy Directive serves as guidance for all Federal government personnel who are involved in the administration of the STTR Program, issuance and management of funding agreements or contracts pursuant to the STTR Program, and the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Technology, Office of Government Contracting, Office of Government Contracting and Business Development.

6. *Date.* A final Policy Directive will be effective when published in the **Federal Register**.

Fred C. Armendariz,

Associate Deputy Administrator, Government Contracting/Business Development, Small Business Administration.

Hector V. Barreto,

Administrator, Small Business Administration.

Small Business Technology Transfer (STTR) Program; Draft Policy Directive

Contents

Section

1. *Purpose*
2. *Summary of Legislative Provisions*
3. *Definitions*
4. *Competitively Phased Structure of the Program*
5. *Program Solicitation Process*
6. *Eligibility and Application (Proposal) Requirements*
7. *STTR Funding Process*
8. *Terms of Agreement under STTR Awards*
9. *Responsibilities of STTR Participating Agencies and Departments*
10. *Annual Report to the Small Business Administration*
11. *Responsibilities of SBA*

Appendix I: Instructions for STTR Program Solicitation Preparation

Appendix II: Tech-Net Data Fields for Public Database

1. Purpose

(a) Section 9(p) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an STTR Program Policy Directive for the general conduct of the STTR Program within the Federal government.

(b) This Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the STTR Program. Additional or modified instructions may be issued by the SBA as a result of public comment or experience.

(c) The purpose of the STTR Program is to stimulate a partnership of ideas and technologies between innovative small business concerns (SBCs) and research institutions through Federally-funded research or research and development (R/R&D). By providing awards to SBCs for cooperative R/R&D efforts with research institutions, the STTR Program assists the small business and research communities by commercializing innovative technologies.

(d) Federal agencies participating in the STTR Program (STTR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the STTR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the STTR Program.

2. Summary of Legislative Provisions

(a) The Small Business Technology Transfer Program Reauthorization Act of 2001, Public Law 107–50, amended section 9 of the Act (15 U.S.C. 638).

(1) The amendments:

(i) Continue the STTR Program through September 30, 2009;

(ii) Clarify data rights pertaining to STTR Phase I, Phase II, and Federally-funded Phase III awards.

(iii) Establish databases—one for the public and one for government use—to collect and maintain in a common format information that is necessary to assist SBCs and assess the STTR Program.

(b) Each Federal agency with an extramural budget for R/R&D in excess of $1,000,000,000 must participate in the STTR Program.

(c) The statutory requirements establish a uniform, simplified process for the operation of the STTR Program while allowing the STTR agencies flexibility in the operation of their individual STTR Program. This Policy Directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program.

(d) Each STTR agency must establish an STTR Program by reserving, through September 30, 2003, not less than 0.15 percent of its extramural budget, and beginning October 1, 2003, reserving not less than 0.3 percent of such budget, for awards to SBCs for cooperative R/R&D through the following uniform, three-phase process:

(1) Phases I and II: These phases help STTR agencies meet R/R&D and commercialization objectives through funding agreements.

(2) Phase III. This phase, where appropriate, helps Federal agencies participating in the STTR Program by:

(i) Providing Federal agencies the benefits of commercial applications derived from the cooperative conduct of Government-funded R/R&D which stimulates technological innovation and enhances the national return on investment from R/R&D,

(ii) Providing STTR awardees access to the Federal market through non-STTR funding agreements; and

(iii) Providing STTR awardees access to private sector markets to stimulate economic growth and create jobs.

(e) The Act directs each STTR agency to report annually to SBA. The Act also requires SBA to obtain annual reports and monitor each agency's STTR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

(f) The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 *et seq.*) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 *et seq.*) must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of section 8(e) of the Small Business Act apply to STTR agencies using contracts as a STTR funding agreement:

(1) Any Federal executive agency intending to solicit a proposal to contract for property or services valued above $25,000 must transmit a notice of the impending solicitation to the government-wide point of entry (GPE) for access by interested sources. *See* FAR 5.201. The GPE, located at *http://www.fedbizopps.gov*, is the single point where government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, no agency must issue its solicitation for at least 15 days from the date of the publication of the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

(2) The contracting officer must generally make available through the GPE those solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. *See* FAR 5.102.

(3) Any executive agency awarding a contract for property or services valued at more than $25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. *See* FAR 5.301.

(4) The following are exemptions from the notice publication requirements:

(i) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(ii) The STTR Phase II award process is exempt.

(iii) The STTR Phase III award process is exempt.

3. Definitions

(a) *Act.* The Small Business Act (15 U.S.C. 631 *et seq.*), as amended.

(b) *Applicant.* The organizational entity that, at the time of award, will qualify as a SBC and that submits a contract proposal or a grant application for a funding agreement under the STTR Program.

(c) *Affiliate.* This term has the same meaning as set forth in 13 CFR part 121—Small Business Size Regulations, § 121.103, What is affiliation?

(d) *Awardee.* The organizational entity receiving an STTR Phase I, Phase II, or Phase III award.

(e) *Commercialization.* The process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to government or commercial markets.

(f) *Cooperative Agreement.* A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.

(g) *Cooperative Research and Development.* R/R&D conducted jointly by a SBC and a research institution in which not less than 40 percent of the work is performed by the SBC, and not less than 30 percent of the work is performed by the single, partnering research institution.

(h) *Essentially Equivalent Work.* This occurs when (1) substantially the same research is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency; (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

(i) *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through government-owned, government-operated facilities. For the Agency for International Development, the "extramural budget" must not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the "extramural budget" must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.

(j) *Feasibility.* The practical extent to which a project can be performed successfully.

(k) *Federal Agency.* An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102, except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, Section 3.4(f), or its successor orders.

(l) *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal government.

(m) *Funding Agreement Officer.* A contracting officer, a grants officer, or a cooperative agreement officer.

(n) *Grant.* A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.

(o) *Innovation.* Something new or improved, having marketable potential, including (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.

(p) *Intellectual Property.* The separate and distinct types of intangible property that are referred to collectively as "intellectual property," including but not limited to: patents, trademarks, copyrights, trade secrets, STTR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either proposed or generated by an SBC as a result of its participation in the STTR Program.

(q) *Joint Venture.* An association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(r) *Outcomes.* The measures of long-term, eventual, program impact.

(s) *Outputs.* The measures of near-term program impact.

(t) *Principal Investigator/Project Manager.* The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

(u) *Program Solicitation.* A formal solicitation for proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests. Announcements in the **Federal Register** or the GPE are not considered an STTR Program solicitation.

(v) *Prototype.* A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(w) *Research or Research and Development (R/R&D).* Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(x) *Research Institution.* One that has a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor, and is:

(1) A non-profit institution as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980 (that is, an organization that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual) and includes non-profit medical and surgical hospitals; or

(2) A Federally-funded R&D center as identified by the National Science Foundation in accordance with the government-wide Federal Acquisition Regulation issued in accordance with section 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto).

(y) *Small Business Concern.* A concern that, on the date of award for both Phase I and Phase II funding agreements:

(1) Is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;

(2) Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;

(3) Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(4) Has, including its affiliates, not more than 500 employees.

(z) *Socially and Economically Disadvantaged SBC. See* 13 CFR part 124—8(A) Business Development/Small Disadvantaged Business Status Determinations, §§ 124.103 (Who is socially disadvantaged?) and 124.104 (Who is economically disadvantaged?).

(aa) *STTR Participants.* Business concerns that have received STTR awards or that have submitted STTR proposals/applications.

(bb) *STTR Technical Data.* All data generated during the performance of an STTR award.

(cc) *STTR Technical Data Rights.* The rights an SBC obtains in data generated during the performance of any STTR Phase I, Phase II, or Phase III award that an awardee delivers to the government during or upon completion of a Federally-funded project, and to which the government receives a license.

(dd) *Subcontract.* Any agreement, other than one involving an employer-employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.

(ee) *United States.* The 50 states, the territories and possessions of the Federal government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(ff) *Women-Owned SBC.* A SBC that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The STTR Program is a phased process, uniform throughout the Federal government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of the following three phases:

(a) *Phase I.* Phase I involves a solicitation of contract proposals or grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.

(1) Several different proposed solutions to a given problem may be funded.

(2) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate STTR proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance or critical agency requirements.

(3) Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.

(b) *Phase II.* The object of Phase II is to continue the R/R&D effort from the completed Phase I. Only STTR awardees in Phase I are eligible to participate in Phases II and III. This includes those awardees identified via a "novated" or "successor in interest" or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the STTR Program for that project.

(1) Funding shall be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the STTR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The government is not obligated to fund any specific Phase II proposal.

(2) The STTR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, government applications, or government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

(i) The SBC's record of successfully commercializing STTR or other research;

(ii) The existence of Phase II funding commitments from private sector or other non-STTR funding sources;

(iii) The existence of Phase III, follow-on commitments for the subject of the research; and

(iv) Other indicators of commercial potential of the idea.

(c) *Phase III.* STTR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior STTR funding agreements, but is funded by sources other than the STTR Program. Phase III work is typically oriented towards commercialization of STTR research or technology.

(1) Each of the following types of activity constitutes STTR Phase III work:

(i) Commercial application of STTR-funded R/R&D financed by non-Federal sources of capital (**Note:** The guidance in this Policy Directive regarding STTR Phase III pertains to the non-STTR federally-funded work described in (ii) and (iii) below. It does not address the nature of private agreements the STTR firm may make in the commercialization of its technology.);

(ii) STTR-derived products or services intended for use by the Federal government, funded by non-STTR sources of Federal funding;

(iii) Continuation of R/R&D that has been competitively selected using peer review or scientific review criteria, funded by non-STTR Federal funding sources.

(2) A Phase III award is, by its nature, an STTR award, has STTR status, and must be accorded STTR data rights. (*See* section 8(b)(2) regarding the protection period for data rights.) If an STTR awardee wins a competition for work that derives from, extends, or logically concludes that firm's work under a prior STTR funding agreement, then the funding agreement for the new, competed, work must have all STTR Phase III status and data rights. A Federal agency may enter into a Phase III STTR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III STTR agreement at any time with a Phase I awardee. An agency official may determine, using the criteria set forth in the Directive as guidance, whether a contract or agreement is a Phase III award.

(3) The competition for STTR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to fund an STTR Phase III project is not required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III STTR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302–5, that the project is a STTR Phase III award that is derived from, extends, or logically concludes efforts performed under prior STTR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2).

(4) The Phase III work may be for products, production, services, R/R&D, or any combination thereof.

(5) There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award.

(6) The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

(7) For Phase III, Congress intends that agencies or their government-owned, contractor-operated facilities, Federally-funded research and development centers, or government prime contractors that pursue R/R&D or production developed under the STTR Program, give preference, including sole source awards, to the awardee that developed the technology. In fact, the Act requires reporting to SBA of all instances in which the agency pursues research, development, or production of a technology developed by an STTR awardee, with a concern other than the one that developed the STTR technology. (*See* section 4(c)(8) immediately below for agency notification to SBA prior to award of such a funding agreement and section 9(a)(11) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.

(8) For Phase III, agencies, their government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services or any combination thereof of a technology developed by an STTR awardee of that agency, with an entity other than that STTR awardee, must notify SBA in writing prior to such an award. This notice requirement also applies to technologies of STTR awardees with STTR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee. This notification must include, at a minimum: (a) The reasons why the follow-on award with the STTR awardee is not practicable; (b) the identity of the

entity with which the agency intends to make an award to perform research, development, or production; and (c) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the contracting officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the contracting officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The contracting officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The contracting officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination.

5. Program Solicitation Process

(a) At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R/R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.

(b) The Act requires issuance of STTR (Phase I) Program solicitations in accordance with a Master Schedule coordinated between SBA and the STTR agency. The SBA office responsible for coordination is: Office of Technology, Office of Government Contracting, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. Phone: (202) 205–6450. Fax: (202) 205–7754. Email: *technology@sba.gov*. Internet site: *http://www.sba.gov/sbir*.

(c) For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one STTR project. SBA's coordination of agency schedules minimizes the bunching of proposed release and closing dates. Participating agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

(d) *Master Schedule.* SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet Web sites of agency solicitations. Agencies must post on their Internet Web sites the following information regarding each program solicitation:

(1) The list of topics upon which R/R&D proposals will be sought.

(2) Agency address, phone number, or email address from which STTR Program solicitations can be requested or obtained, especially through electronic means.

(3) Names, addresses, and phone numbers of agency contact points where STTR-related inquiries may be directed.

(4) Release date(s) of program solicitation(s).

(5) Closing date(s) for receipt of proposals.

(6) Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.

(e) On or before August 1, each agency representative must notify SBA in writing or by e-mail of its proposed program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions.

(f) For those agencies that use both general topic and more specific subtopic designations in their STTR solicitations, the topic data should accurately describe the research solicited. For example, rather than just announcing topic information characterized as "Chemistry" or "Aerodynamics," the STTR agency should summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

(g) *Simplified, Standardized, and Timely STTR Program Solicitations.*

(1) The Act requires "* * * simplified, standardized and timely STTR solicitations" and for STTR agencies to use a "uniform process" minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal government solicitation format and requirements. STTR Program solicitations must be prepared according to Appendix I.

(2) Agencies must provide SBA's Office of Technology with two hard copies or an e-mail version of each solicitation and any modifications no later than the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation.

(3) SBA does not intend that the STTR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the STTR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

(a) *Eligibility Requirements:*

(1) To receive STTR funds, each awardee of a STTR Phase I or Phase II award must qualify as an SBC.

(2) For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering research institution.

(3) For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement officer must approve each such specific condition in writing.

(4) For both Phase I and Phase II, the principal investigator can be with the SBC or the collaborative partner at the time of award and during the conduct of the proposed project. An SBC may replace the principal investigator on an STTR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the STTR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(b) *Proposal Requirements:*

(1) *Commercialization Plan.* A succinct commercialization plan must be included with each proposal for an STTR Phase II award moving toward commercialization. Elements of a commercialization plan may include the following:

(i) *Company information:* Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.

(ii) *Customer and Competition:* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market:* Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.

(iv) *Intellectual Property:* Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.

(v) *Financing:* Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring:* Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership Centers, or other assistance providers.

(2) *Data Collection:* Each Phase II applicant will be required to provide information to the Tech-Net Database System (*http://technet.sba.gov*). *See* Appendix I, section 3(c), "Data Collection Requirement," for additional information.

7. STTR Funding Process

Because the Act requires a "simplified, standardized funding process," specific attention must be given to the following areas of STTR Program administration:

(a) *Timely Receipt and Review of Proposals.*

(1) Participating agencies must establish appropriate dates and formats for review of proposals.

(i) All activities related to Phase I proposal reviews must normally be completed and awards made within 6 months from the closing date of the program solicitation. However, agencies may extend that period up to 12 months based on agency needs.

(ii) Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However, agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees, accomplish proposal reviews expeditiously, and proceed with Phase II awards. While recognizing that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(iii) STTR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. To the extent feasible, more than one agency should not fund "essentially equivalent work" under the STTR or other Federal programs. For this purpose, the standardized program solicitation requires applicants to indicate the name and address of the agencies to which essentially equivalent work proposals were made, or anticipated to be made, and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal government awards. To assist in avoiding duplicate funding, each agency must provide to SBA and to each STTR agency a listing of Phase I and Phase II awardees, their complete address, and the title of each STTR project. This information should be distributed no later than release of the funding agreement award information to the public.

(b) *Review of STTR Proposals.* SBA encourages STTR agencies to use their routine review processes for STTR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, "peer" reviews external to the agency are authorized by the Act. SBA cautions STTR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized STTR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.

(c) *Selection of Awardees.* Normally, STTR agencies must establish a proposal review cycle wherein successful and unsuccessful applicants will be notified of final award decisions within 6 months of the agency's Phase I proposal closing date. However, agencies may extend that period up to 12 months based on agency needs.

(1) The standardized STTR Program solicitation must:

(i) Advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.

(ii) Advise applicants of the proposal evaluation criteria for Phase I and Phase II.

(2) The STTR agency and each Phase I awardee considered for a Phase II award must arrange to manage Phase II proposal submissions, reviews, and selections.

(d) *Management of the STTR Project.* The SBC, and not the single, partnering research institution, is to provide satisfactory evidence that it will exercise management direction and control of the performance of the STTR funding agreement. Regardless of the proportion of the work or funding allocated to each of the performers under the funding agreement, the SBC is to be the primary party with overall responsibility for performance of the project. All agreements between the SBC and the research institution cooperating in the STTR funding agreement, or any business plans reflecting agreements and responsibilities between the parties during performance of STTR Phase I or Phase II funding agreement, or for the commercialization of the resulting technology, should reflect the controlling position of the SBC.

(e) *Cost Sharing.* Cost sharing can serve the mutual interests of the STTR agencies and certain STTR awardees by assuring the efficient use of available resources. However, cost sharing on STTR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized STTR Program solicitation (Appendix I) will provide information to prospective STTR applicants concerning cost sharing.

(f) *Payment Schedules and Cost Principles.*

(1) STTR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under STTR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.

(2) All STTR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the STTR agencies. At the time of award, agencies shall inform each STTR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(g) *Funding Agreement Types and Fee or Profit.* Statutory requirements for uniformity and standardization require consistency in application of STTR Program provisions among STTR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to STTR Programs in the agencies. The following instructions meet all of these requirements:

(1) *Funding Agreement.* The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301–6308.

(2) *Fee or Profit.* Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on STTR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(h) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make the largest possible number of STTR awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance normally should not exceed 1 year. However, agencies may provide a longer performance period where appropriate for a particular project. Beginning with FY 2004, agencies may approve a shorter or longer period of time, when appropriate for a particular project.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project. Beginning with FY 2004, agencies may approve a shorter or longer period of time, when appropriate for a particular project.

(i) *Dollar Value of Awards.*

(1) Generally, a Phase I award may not exceed $100,000 and a Phase II award may not exceed $500,000. Beginning October 1, 2003, a Phase II award may not generally exceed $750,000. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations. There is no dollar level associated with Phase III STTR awards.

(2) An awarding agency may exceed those award values where appropriate for a particular project. After award of any funding agreement exceeding $100,000 for Phase I or $500,000 for Phase II ($750,000 beginning October 1, 2003), the agency's STTR representative must provide SBA with written justification of such action. This justification must be submitted with the agency's Annual Report data. Similar justification is required for any modification of a funding agreement that would bring the cumulative dollar amount to a total in excess of the amounts set forth above.

8. Terms of Agreement Under STTR Awards

(a) *Proprietary Information Contained in Proposals.* The standardized STTR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the STTR Program, from disclosure.

(b) *Rights in Data Developed Under STTR Funding Agreement.* The Act provides for "retention by an SBC of the rights to data generated by the concern in the performance of an STTR award."

(1) Each agency must refrain from disclosing STTR technical data to outside the government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.

(2) STTR agencies must protect from disclosure and non-governmental use all STTR technical data developed from work performed under an STTR funding agreement for a period of not less than 4 years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded STTR Phase III) unless, subject to (b)(3) of this section, the agency obtains permission to disclose such STTR technical data from the awardee or STTR applicant. Agencies are released from obligation to protect STTR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent STTR award must remain protected through the protection period of that subsequent STTR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The government retains a royalty-free license for government use of any technical data delivered under an STTR award, whether patented or not. This section does not apply to program evaluation.

(3) STTR technical data rights apply to all STTR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the STTR Program, as described in Section 4 of this Policy Directive. The scope and extent of the STTR technical data rights applicable to Federally-funded Phase III awards is identical to the STTR data rights applicable to Phases I and II STTR awards. The data rights protection period lapses only: (i) upon expiration of the protection period applicable to the STTR award, or (ii) by agreement between the awardee and the agency.

(4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as STTR data rights clauses into all STTR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an STTR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an STTR Phase III award conditional on data rights. If the STTR awardee wishes to transfer its STTR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its STTR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an STTR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that STTR Phase III award. Such a bilateral data rights agreement must be entered into only after the STTR Phase III award, which includes the appropriate STTR data rights clause, has been signed. SBA must immediately report to the Congress any attempt or action by an agency to condition an STTR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

(c) *Allocation of Rights.*

(1) An SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, allocating intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. The SBC must submit this agreement to the awarding agency upon request—either with the proposal or any time thereafter. The SBC must certify in all proposals that the agreement is satisfactory to the SBC.

(2) The awarding agency may accept an existing agreement between the two parties if the SBC certifies its satisfaction with the agreement, and such agreement does not conflict with the interests of the Government. Each agency participating in the STTR Program shall provide a model agreement to be used as guidance by the SBC in the development of an agreement with the research institution. The model agreement should direct the parties to, at a minimum:

(i) State specifically the degree of responsibility, and ownership of any product, process, or other invention or innovation resulting from the cooperative research. The degree of responsibility shall include responsibility for expenses and liability, and the degree of ownership shall also include the specific rights to revenues and profits.

(ii) State which party may obtain United States or foreign patents or otherwise protect any inventions resulting from the cooperative research.

(iii) State which party has the right to any continuation of research, including non-STTR follow-on awards.

The Government will not normally be a party to any agreement between the SBC and the research institution. Nothing in the agreement is to conflict with any provisions setting forth the respective rights of the United States and the SBC with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(3) Pursuant to the Act, SBA will establish a single model agreement for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. Written comments from affected Federal agencies, SBCs, research institutions, and other interested parties will be solicited in the development of the model agreement. Each agency participating in the STTR Program will adopt the agreement developed by SBA as the agency's model agreement.

(d) *Title Transfer of Agency Provided Property.* Under the Act, the Government may transfer title to equipment provided by the STTR agency to the awardee where such transfer would be more cost effective than recovery of the property.

(e) *Continued Use of Government Equipment.* The Act directs that an agency allow an STTR awardee participating in the third phase of the STTR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the STTR Program.

(f) *Grant Authority.* The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(g) *Conflicts of Interest.* SBA cautions STTR agencies that awards made to SBCs owned by or employing current or previous Federal government employees may create conflicts of interest in violation of FAR part 3 and the Ethics in Government Act of 1978, as amended. Each STTR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(h) *American-made Equipment and Products.* Congress intends that the awardee of a funding agreement under the STTR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each STTR agency must provide to each awardee a notice of this requirement.

9. Responsibilities of STTR Participating Agencies and Departments

(a) The Act requires each agency participating in the STTR Program to:

(1) Unilaterally determine the categories of projects to be included in its STTR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(i) The National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or

(ii) The Secretary of Defense in accordance with 10 U.S.C. 2522.

(2) Release STTR solicitations in accordance with the SBA master schedule.

(3) Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.

(4) Require a succinct commercialization plan with each proposal submitted for a Phase II award.

(5) Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in section 11(e) of this Policy Directive.

(6) Administer its own STTR funding agreements or delegate such administration to another agency.

(7) Include provisions in each STTR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(8) Ensure that the rights in data developed under each Federally-funded STTR Phase I, Phase II, and Phase III award are protected properly.

(9) Make payments to awardees of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(10) Provide an annual report on the STTR Program to SBA. *See* section 10 of this Policy Directive.

(11) Report at least annually to SBA's Office of Technology all instances in which an agency pursued research,

development, production, or any such combination of a technology developed by an SBC using an award made under the STTR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-STTR Program funding agreement with that concern. The report shall include, at a minimum:

(i) The reasons why the follow-on funding agreement with the concern was not practicable;

(ii) The identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) A description of the type of funding agreement under which the research, development, or production was obtained.

(12) Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its STTR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

(13) Adopt the model agreement to be developed by SBA for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

(14) Develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that Federally-funded research and development centers that participate in STTR agreements:

(i) Are free from organizational conflicts of interests relative to the STTR Program;

(ii) Do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(iii) Use outside peer review as appropriate.

(15) Implement an outreach program to research institutions and SBCs for the purpose of enhancing its STTR Program, in conjunction with any such outreach done for purposes of the Small Business Innovation Research (SBIR) Program.

(b) Interagency actions.

(1) *Joint funding.* An STTR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.

(2) *Phase II awards.* An STTR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. The Phase I and Phase II agencies should document their files appropriately, providing clear rationale for the transfer of the Phase II proposal to, and award by, the funding Federal agency.

(3) *Timely notification of awards.* In order to avoid duplicate funding of an STTR project, agencies shall promptly search the Tech-Net Database System for awards for essentially equivalent work. Discussion among agencies receiving similar proposals is strongly encouraged before an STTR award is made.

(4) *Participation by women-owned SBCs and socially and economically disadvantaged SBCs in the STTR Program.* In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies must conduct outreach efforts to find and place innovative women-owned SBCs and socially and economically disadvantaged SBCs in the STTR Program information system. These SBCs will be required to compete for STTR awards on the same basis as all other SBCs. However, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned SBCs and socially and economically disadvantaged SBCs to participate in the STTR Program.

(c) Limitation of participation and use of funds.

(1) An agency must not use any of its STTR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses, or, in the case of a SBC or a research institution, costs associated with employee salaries and other associated expenses, including administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the Federal Acquisition Regulation).

(2) A Federal agency must not issue an STTR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal government agency, or to other units of the Federal government. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:

(i) An explanation of why the STTR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-Federal facilities or personnel capable of supporting the research effort.

(ii) Why the Agency will not and can not fund the use of the Federal facility or personnel for the STTR project with non-STTR money.

(iii) The concurrence of the SBC's chief business official to use the Federal facility or personnel.

(3) No agency, at its own discretion, may unilaterally cease participation in the STTR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of STTR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the STTR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual *Budget of the United States Government* and National Science Foundation breakdowns of total R/R&D obligations as published in the *Federal Funds for Research and Development.* Any withdrawal of an STTR Federal participating agency from the STTR Program will be accomplished in a standardized and orderly manner in compliance with these statutorily mandated procedures.

(4) Federal agencies not otherwise qualified for the STTR Program may participate on a voluntary basis. Federal agencies seeking to participate in the STTR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.

(5) Agencies may not make available, for the purpose of meeting the required percentage of expenditure on SBCs for the STTR Program (see section 2(d) of this Policy Directive) an amount of its extramural budget for basic research that exceeds those percentages.

(6) Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an STTR Program shall not be considered to meet any portion of the percentage requirements of section 2(d) set forth in this Policy Directive.

10. Annual Report to the Small Business Administration

The Act requires a "simplified, standardized and timely annual report" from the STTR agencies. The following paragraphs explain more about this requirement, including the due date, the kinds of information to be included, and the number of copies to be submitted to SBA.

(a) *Annual Report Due Date and Number of Copies.* Reporting must be on an annual basis and will be for the period ending September 30 of each fiscal year. A single, hard copy report is due to SBA by March 15 of each year. For example, the report for FY 2002 (October 1, 2001–September 30, 2002) must be submitted to SBA by March 15, 2003. SBA encourages agencies to submit their annual report before the March 15 due date. The report should be sent to the address noted in section 5(b). However, if agencies choose to send an electronic version, it should be sent to *technology@sba.gov.*

(b) *Annual Report Content.*

(1) Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual *Budget of the United States Government.*

(2) STTR Program total fiscal year dollars derived by applying the statutory percentum to the agency's extramural R/R&D total obligations.

(3) STTR Program fiscal year dollars obligated through STTR Program funding agreements for Phase I and Phase II.

(4) Number of topics and subtopics contained in each program solicitation.

(5) Number of proposals received by the agency for each topic and subtopic in each program solicitation. Identify the number of proposals received from, and the number and total amount of awards to HUBZone SBCs.

(6) For both Phase I and Phase II, the awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify women-owned SBCs, economically and socially disadvantaged SBCs, HUBZone SBCs, and Phase II awardees with follow-on funding commitments.

(7) Justification for the award of any funding agreement exceeding $100,000 for Phase I or $500,000 for Phase II ($750,000 beginning October 1, 2003).

(8) The number of awardees for whom the Phase I process exceeded 6 months starting from the closing date of the STTR solicitation to award of the funding agreement.

(9) For an agency Phase III award using non-STTR Federal funds to continue a Phase II project, the agency must provide the name, address, project title, and dollar amount obligated.

(10) Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and dollar amount of award. Information must be collected quarterly but updated in the agency's annual report.

(11) If applicable, report the number of National Critical Technology topic or subtopic funding agreements issued, including an identification of the specific critical technology topics, and the percentage by number and dollar amount of the agency's total STTR awards to such National Critical Technologies topics.

(12) Report all instances in which an agency pursued R/R&D, services, production, or any such combination of a technology developed by an STTR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-STTR funds with that concern. *See* section 9(a)(11) for minimum reporting requirements.

11. Responsibilities of SBA

(a) SBA's Office of Technology will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the STTR agencies.

(b) SBA will request this information in June of each year. The data received will be submitted to each of the participating Federal agencies and will also be published in the September issue of the STTR Pre-Solicitation Announcement.

(c) Examples of STTR Areas to be Monitored by SBA.

(1) *STTR Funding Allocations.* The magnitude and source of each STTR agency's annual allocation reserved for STTR awards are critical to the success of the STTR Program. The Act defines the STTR effort (R/R&D), the source of the funds for financing the STTR Program (extramural budget), and the percentage of such funds to be reserved for the STTR Program (0.15 percent through 2003, 0.3 percent thereafter). The Act requires that SBA monitor these annual allocations.

(2) *STTR Program Solicitation and Award Status.* The accomplishment of scheduled STTR events, such as STTR Program solicitation release and the issuance of funding agreements is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the STTR Program. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific STTR project or funding agreement.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Agency Rules and Regulations.* It is essential that no policy, rule, regulation, or interpretation be promulgated by the STTR agencies that are inconsistent with the Act or this Policy Directive. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- or interagency STTR Program implementation.

(d) SBA develops, participates in, and, when appropriate and feasible, sponsors seminars for innovative women-owned SBCs and socially and economically disadvantaged SBCs to inform them of the STTR Program and Federal and commercial assistance and services available for STTR Program participants.

(e) Standardized Collection of Data—"Technology Resources Access Network" (Tech-Net) Database System Overview.

(1) SBA's Office of Technology, as functional program manager for the STTR and the SBIR Programs, is required to collect and report to the Congress, information regarding awards made to SBCs by each Federal agency participating in these programs.

(2) The Office of Technology maintains an internal database of awards and uses the system to report on technology and demographical statistics regarding the STTR and the SBIR Programs. The system also stores the 200-word technical abstract for each STTR and SBIR award that is prepared by the awardee summarizing the research effort that has been supported by the Federal Government. The system also provides the Office of Technology with the ability to perform keyword searches in many areas, including any part of the name, address, and technical abstract of the awardee. The system produces many reports that are used in the conduct of audits performed by the General Accounting Office (GAO) and to expose potential duplication of research and development efforts funded by the STTR agencies.

(3) The Office of Technology, in a joint effort with SBA's Office of the Chief Information Officer, has redesigned the Office of Technology's internal awards database system to operate on the Internet. The Internet system is titled the "Technology Resources Access Network," or Tech-Net.

(4) Tech-Net offers a vast array of user-friendly capabilities, and is accessible by the public at no charge. Tech-Net allows for the online submission of STTR/SBIR awards data

from all STTR agencies. Tech-Net also allows any end-user to perform keyword searches and create formatted reports of STTR/SBIR awards information. Tech-Net will allow for potential research partners to view research and development efforts that are ongoing in the STTR and the SBIR Programs, increasing the investment opportunities of the STTR/SBIR SBCs in the high tech arena. Tech-Net serves as an excellent marketing tool for the small, high tech business community, allowing investors to view first-hand the technical capabilities of STTR/SBIR awardees. This will ultimately produce investments, partnerships, and strategic alliances resulting in commercialization of STTR/SBIR research.

(5) Tech-Net also houses legislatively mandated information on all STTR and SBIR awards, as well as confidential outcome and output information that will be relevant to measuring the effectiveness and success of the programs.

(6) Awardees can update their information and add project commercialization and sales data with user names and passwords. Username and passwords will be assigned only to awardees to provide access to their respective awards information maintained in the Tech-Net system. Award and commercialization data maintained in the Tech-Net database can be changed only by the awardee, SBA, or the awarding STTR /SBIR Federal agency.

(7) Project commercialization and sales data can only be viewed by Congress, the General Accounting Office (GAO), agencies participating in the STTR and the SBIR Programs, Office of Management and Budget (OMB), Office of Science and Technology Policy (OSTP), Office of Federal Procurement Policy (OFPP), and other authorized persons (for example, authorized contractors) who are subject to a use and nondisclosure agreement with the Federal government covering the use of the database.

(8) To use the Tech-Net database system, visit the Web site *http://tech-net.sba.gov*. Online help is available.

(9) *Public Tech-Net Database (See Appendix II for Data Fields).* The public Tech-Net database is a searchable, up-to-date, electronic database that includes:

(i) The name, size, location, funding agreement number, and identification number assigned by the Administrator of each SBC that has received an STTR or SBIR Phase I or Phase II award from a Federal agency;

(ii) A description of each STTR or SBIR Phase I or Phase II award received by the SBC including:

(A) An abstract of the project funded by the award, excluding any proprietary information so identified by the awardee;

(B) The Federal agency making the award; and

(C) The date and amount of the award.

(iii) An identification of any business concern or subsidiary established for the commercial application of a product or service for which an STTR or SBIR award is made; and

(iv) Information regarding mentors and Mentoring networks, as required in the Federal and State Technology (FAST) Partnership Program established under section 35(d) of the Act and described on the SBA's Internet site at *http://www.sba.gov/sbir/indexfast.html*.

(v) With respect to assistance under the STTR Program (as required under section 9(k)(1) of the Act):

(A) Whether the SBC or the research institution initiated their collaboration on each assisted STTR project;

(B) Whether the SBC or the research institution originated any technology relating to the assisted STTR project;

(C) The length of time it took to negotiate any licensing agreement between the SBC and the research institution under each assisted STTR project; and

(D) The percentage allocated between the SBC and the research institution of the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project.

(10) *Government Tech-Net Database.* SBA, in consultation with the Federal agencies participating in the STTR and the SBIR Programs, develops and maintains a secure database that:

(i) Contains, for each Phase II award:

(A) Information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(B) Information on additional investment from any source, other than Phase I or Phase II STTR or SBIR awards, to further the research and development conducted under each Phase II award; and

(C) Any other information received in connection with the award that the Administrator, in conjunction with the STTR Program managers of the participating agencies, considers relevant and appropriate;

(ii) Includes any narrative information that a Phase II awardee voluntarily submits to further describe the outputs and outcomes of its awards;

(iii) Includes for each applicant that does not receive a Phase I or Phase II award: (A) The name, size, location, and identifying number assigned by SBA, and identification number assigned by SBA; (B) an abstract of the project; and (C) the Federal agency to which the application was made;

(iv) Includes any other data collected by or available to any Federal agency that such agency considers to be useful for STTR Program evaluation; and

(v) Is available for use solely for program evaluation purposes by the Federal government or, in accordance with Policy Directives issued by SBA, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal government covering the use of the database.

(11) *Data Collection for Government Tech-Net Database.*

(i) Each SBC applying for a Phase II award is required to update the appropriate information in the Tech-Net database for any of its prior Phase II awards. In meeting this requirement, the SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(ii) Each Phase II awardee is required to update the appropriate information in the Tech-Net database on that award upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the Tech-Net database annually thereafter for a minimum period of 5 years.

(iii) Pursuant to 15 U.S.C. 638(k)(4), information provided to the government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

(iv) SBA will minimize the data reporting requirements of SBCs, make updating available electronically, and provide standardized procedures.

Appendix I: Instructions for STTR Program Solicitation Preparation

1. General

Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) requires "* * * simplified, standardized and timely STTR solicitations" and for STTR agencies to utilize a "uniform process" minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal government solicitation formats and requirements. STTR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

2. Limitation in Size of Solicitation

In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire STTR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standard operating procedures and statutory requirements of the participating Federal agencies.

3. Format

STTR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed:

1. Program Description;
2. Definitions;
3. Proposal Preparation Instructions and Requirements;
4. Method of Selection and Evaluation Criteria;
5. Considerations;
6. Submission of Proposals;
7. Scientific and Technical Information Sources;
8. Submission Forms and Certifications;
9. Research Topics.

4. Cover Sheet

The cover sheet of an STTR Program solicitation must clearly identify the solicitation as a STTR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

Instructions for Preparation of STTR Program Solicitation; Sections 1 through 9

1. Program Description

(a) Summarize in narrative form the invitation to submit proposals and the objectives of the STTR Program.

(b) Describe in narrative form the agency's STTR Program, including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.

(c) Describe program eligibility, as follows:

Eligibility. Each concern submitting a proposal must qualify as a SBC for R/R&D purposes at the time of award. The SBC will submit a proposal for "cooperative research and development" with a non-profit "research institution" (terms as defined in this Policy Directive). Also, for both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is not available in the United States, agencies may allow that particular portion of the research or R&D work to be performed or obtained in a country outside of the United States: Approval by the funding agreement officer for each such specific condition must be in writing. Phase II proposals may be submitted only by Phase I awardees.

(d) List the name, address and telephone number of agency contacts for general information on the STTR Program solicitation.

2. Definitions

Whenever terms are used that are unique to the STTR Program, a specific STTR solicitation or a portion of a solicitation, they will be defined in a separate section entitled "Definitions." At a minimum, the definitions of "R/R&D," "cooperative research and development," "funding agreement," "research institution," "SBC," "STTR technical data," "STTR technical data rights," "subcontract, " and "women-owned SBC," as stated in this Policy Directive, must be included.

3. Proposal Preparation Instructions and Requirements

The purpose of this section is to inform the applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants, particularly to firms that may not have previous Government experience, in improving the quality and acceptance of proposals.

(a) *Limitations on Length of Proposal.* Include at least the following information:

(1) STTR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8½" × 11"; 21.6 cm × 27.9 cm) and should conform to the standard formatting instructions. Margins should be 2.5 cm and the type at least 10 point font.

An SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, as discussed in section 8(c) of this Policy Directive. While an agency may require this agreement to be submitted at the time of the proposal (or at a later date), it is not considered to be part of the proposal and is not subject to the page limitation.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) *Proposal Cover Sheet.* Every applicant is required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

(1) Agency and Solicitation Number or Year.

(2) Topic Number or Letter.

(3) Subtopic Number or Letter.

(4) Topic Area.

(5) Project Title.

(6) Name and Complete Address of Firm.

(7) Small Business Certifications (by statement or checkbox) as follows:

(a) "The above concern certifies that it is an SBC and meets the definition as stated in this solicitation or that it will meet that definition at time of award."

(b) "The above concern certifies that at least 40 percent of the work under this project will be performed by the SBC and at least 30 percent of the work under this project will be performed by the research institution."

(8) Socially and Economically Disadvantaged SBC Certification (by statement or checkbox) as follows:

"The above concern certifies that it ___does___ does not qualify as a socially and economically disadvantaged SBC as defined in this solicitation."

(9) Women-owned SBC Certification (by statement or checkbox) as follows:

"The above concern certifies that it does___does not qualify as a women-owned SBC as defined in this solicitation."

(10) An information statement regarding duplicate research as follows:

"The applicant and/or Principal Investigator ___has ___has not submitted proposals for essentially equivalent work under other Federal program solicitations or ___has ___has not received other Federal awards for essentially equivalent work." (Identify proposals/awards in Section 3(e)10. "Similar Proposals and Awards.")

(11) Disclosure permission (by statement or checkbox), such as follows, may be included at the discretion of the funding

"Will you permit the Government to disclose the title and technical abstract page of your proposed project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information? Yes___ No___"

(12) Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(13) Signature of Principal Investigator or Project Manager and that individual's typed name, title, address, telephone number, and date of signature.

(14) Legend for proprietary information as described in the "Considerations" section of this program solicitation if appropriate. May also be noted by asterisks in the margins on proposal pages.

(c) *Data Collection Requirement.* (1) Each Phase II applicant is required to provide information for the Tech-Net Database System (*http://technet.sba.gov*). The following are examples of the data to be entered by applicants into Tech-Net:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award.

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the Tech-Net database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II awardee is required to update the appropriate information on the award in the Tech-Net database upon completion of the last deliverable under the

funding agreement and is requested to voluntarily update the information in the Tech-Net database annually thereafter for a minimum period of 5 years.

(d) *Abstract or Summary.* Applicants will be required to include a one-page project summary of the proposed R/R&D including at least the following:

(1) Name and address of SBC.

(2) Name and title of principal investigator or project manager.

(3) Agency name, solicitation number, solicitation topic, and subtopic.

(4) Title of project.

(5) Technical abstract limited to two hundred words.

(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) *Technical Content.* STTR Program solicitations must require as a minimum the following to be included in proposals submitted thereunder:

(1) *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

(2) *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(3) *Phase I Work Plan.* Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.

(4) *Related R/R&D.* Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.

(5) *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

(6) *Relationship with Future R/R&D.*

(i) State the anticipated results of the proposed approach if the project is successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

(8) *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.

(9) *Potential Post Applications.* Briefly describe:

(i) Whether and by what means the proposed project appears to have potential commercial application.

(ii) Whether and by what means the proposed project appears to have potential use by the Federal government.

(10) *Similar Proposals or Awards.* Warning—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the agencies to which proposals were submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of principal investigator or project manager for each proposal submitted or award received.

(f) *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

4. Method of Selection and Evaluation Criteria

(a) *Standard Statement.* Essentially the following statement must be included in all STTR Program solicitations:

"All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic."

(b) *Evaluation Criteria.*

(1) The STTR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:

(i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

(ii) The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

(iii) The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

(iv) Qualifications of the proposed principal/key investigators, supporting staff, and consultants.

(v) Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(A) The SBC's record of commercializing STTR or other research,

(B) The existence of second phase funding commitments from private sector or non-STTR funding sources,

(C) The existence of third phase follow-on commitments for the subject of the research, and,

(D) The presence of other indicators of the commercial potential of the idea.

(2) The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the "Method of Selection" section of STTR Program solicitations.

(c) *Peer Review.* The program solicitation must indicate if the STTR agency contemplates that as a part of the STTR proposal evaluation, it will use external peer review.

(d) *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. Considerations

This section must include, as a minimum, the following information:

(a) *Awards.* Indicate the estimated number and type of awards anticipated under the particular STTR Program solicitation in question, including:

(i) Approximate number of Phase I awards expected to be made.

(ii) Type of funding agreement, that is, contract, grant or cooperative agreement.

(iii) Whether fee or profit will be allowed.

(iv) Cost basis of funding agreement, for example, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

(v) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

(c) *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

(d) *Innovations, Inventions and Patents.*

(1) *Limited Rights Information and Data.*

(i) *Proprietary Information.* Essentially the following statement must be included in all STTR solicitations:

"Information contained in unsuccessful proposals will remain the property of the applicant. The government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term "confidential proprietary information" and the following legend must appear on the title page of the proposal:

"These data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages__of this proposal." Any other legend may be unacceptable to the government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The government will limit dissemination of such information to within official channels."

(ii) *Alternative To Minimize Proprietary Information.*

Agencies may elect to instruct applicants to:

(A) Limit proprietary information to only that absolutely essential to their proposal.

(B) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

(iii) *Rights in Data Developed Under STTR Funding Agreements.* Agencies should insert essentially the following statement in their STTR Program solicitations to notify SBCs of the necessity to mark STTR technical data before delivering it to the Agency:

"To preserve the STTR data rights of the awardee, the legend (or statements) used in the STTR Data Rights clause included in the STTR award must be affixed to any submissions of technical data developed under that STTR award. If no Data Rights clause is included in the STTR award, the following legend, at a minimum, should be affixed to any data submissions under that award.

These STTR data are furnished with STTR rights under Funding Agreement No. __ (and subcontract No. __ if appropriate), Awardee Name _____, Address, Expiration Period of STTR Data Rights ____. The government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for (choose four (4) or five (5) years). After expiration of the (4-or 5-year period), the government has a royalty-free license to use, and to authorize others to use on its behalf, these data for government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent STTR award shall remain protected through the protection period of that subsequent STTR award. Reproductions of these data or software must include this legend."

(iv) *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example:

"With prior written permission of the funding agreement officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal government and requires that each publication contain an appropriate acknowledgement and disclaimer statement."

(v) *Patents.* Include an appropriate statement concerning patents. For example:

"Small business concerns normally may retain the principal worldwide patent rights to any invention developed with government support. The government receives a royalty-free license for Federal government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention for a minimum 4-year period (that may be extended by subsequent STTR funding agreements) to allow the awardee a reasonable time to pursue a patent."

(vi) *Invention Reporting.* Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

"STTR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax."

Note: Some agencies provide electronic reporting of inventions through the NIH Edison Invention Reporting System (Edison System). Use of the Edison System satisfies all invention reporting requirements mandated by 37 CFR part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, *http://www.iedison.gov*, to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

(e) *Cost-Sharing.* Include a statement essentially as follows:

"Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal."

(f) *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the STTR Program solicitation.

(g) *Joint Ventures or Limited Partnerships.* Include essentially the following language:

"Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation."

(h) *Research and Analytical Work.* Include essentially the following statement:

(1) "For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering research institution, as defined in this solicitation."

(i) *Awardee Commitments.* To meet the legislative requirement that STTR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in STTR funding agreements must not be included in full or by reference in STTR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from STTR Program solicitations. Essentially, the following statement must be included in the "Considerations" section of STTR Program solicitations:

"Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request."

(j) *Summary Statements.* The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.

(1) *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

(2) *Inspection.* Work performed under the funding agreement is subject to government inspection and evaluation at all times.

(3) *Examination of Records.* The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving transactions related to this funding agreement.

(4) *Default.* The government may terminate the funding agreement if the contractor fails to perform the work contracted.

(5) *Termination for Convenience.* The funding agreement may be terminated at any time by the government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

(6) *Disputes.* Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.

(7) *Contract Work Hours.* The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).

(8) *Equal Opportunity.* The awardee will not discriminate against any employee or

applicant for employment because of race, color, religion, sex, or national origin.

(9) *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.

(10) *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

(11) *Officials Not To Benefit.* No government official must benefit personally from the STTR funding agreement.

(12) *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bonafide employees or commercial agencies maintained by the awardee for the purpose of securing business.

(13) *Gratuities.* The funding agreement may be terminated by the government if any gratuities have been offered to any representative of the government to secure the award.

(14) *Patent Infringement.* The awardee shall report each notice or claim of patent infringement based on the performance of the funding agreement.

(15) *American Made Equipment and Products.* When purchasing equipment or a product under the STTR funding agreement, purchase only American-made items whenever possible.

(k) *Additional Information.* Information pertinent to an understanding of the administration requirements of STTR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under "Additional Information" in STTR Program solicitations:

(1) This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting STTR funding agreement, the terms of the funding agreement are controlling.

(2) Before award of an STTR funding agreement, the government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

(3) The government is not responsible for any monies expended by the applicant before award of any funding agreement.

(4) This program solicitation is not an offer by the government and does not obligate the government to make any specific number of awards. Also, awards under the STTR Program are contingent upon the availability of funds.

(5) The STTR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the STTR Program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this STTR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

6. Submission of Proposals

(a) This section must clearly specify the closing date on which all proposals are due to be received.

(b) This section must specify the number of copies of the proposal that are to be submitted.

(c) This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) *Packaging.* All copies of a proposal should be sent in the same package.

7. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled "Scientific and Technical Information Sources."

8. Research Topics

Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the STTR Program.

9. Submission Forms and Certifications

Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

This section may also include certifying forms required by legislation, regulation or standard operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

Appendix II: Tech-Net Data Fields for Public Database

The following are the data fields for the Public Tech-Net Database described in section 11(e)(9) of this Policy Directive.

(a) For All Agency STTR/SBIR Annual Data Submissions to the SBA.

Field name	Type	Width	Description
Program Identification	Numeric	1	STTR/SBIR Award Program Identifier* (see below).
Company	Char	80	Company Name*.
Street1	Char	80	Street Address 1*.
Street2	Char	80	Street Address 2.
City	Char	40	City*.
State	Char	2	State*.
Zip	Numeric	5	Zip*.
Zip4	Numeric	4	Zip + 4.
Minority Code	Numeric	1	Minority code indicator 0=yes 1=no*.
Women	Numeric	1	Women-owned company indicator 0=yes 1=no*.
Contact First	Char	40	Company Official contact first name.
Contact Last	Char	40	Contact last name.
Contact Middle Init	Char	1	Contact middle initial.
Contact Title	Char	40	Contact Official title.
Contact Phone	Char	10	Contact Official phone.
Contact Email Address	Char	50	Contact email address.
Employees	Numeric	5	Number of employees.
Agency Code	Numeric	2	Awarding agency name (ex. DOD)* (see below).
Branch	Number	1	Awarding DOD branch name (ex. Navy) (see below).
Phase	Numeric	1	Phase number 1 or 2*.
Award Year	Numeric	4	Phase award year*.

Field name	Type	Width	Description
Award Amount	Numeric	10	Phase award amount*.
PI First	Char	40	Principal Investigator First Name*.
PI Last	Char	40	Principal Investigator Last Name*.
PI Middle Init	Char	1	Principal Investigator middle initial.
PI Title	Char	40	Principal Investigator Title.
PI Phone	Char	10	Principal Investigator phone.
PI Email Address	Char	50	Principal Investigator email address.
Topic Code	Char	15	Agency Solicitation Topic Number*.
RI TYPE	Numeric	1	Type of research institution (see below).
RI Name	Char	80	Research institution.
RI Street 1	Char	80	Research institution address.
RI Street 2	Char	80	Research institution address.
RI City	Char	40	Research institution city.
RI State	Char	2	Research institution State.
RI Zip	Numeric	5	Research institution Zip.
RI Zip4	Numeric	4	Research institution Zip + 4.
RI Official First	Char	40	Research institution Official First Name.
RI Official Last	Char	40	Research institution Official Last Name.
RI Official Initial	Char	1	Research institution Official Middle Initial.
RI Official Phone	Char	10	
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
TIN/EIN	Char	10	Taxpayer/Employer Identification number*. Prefix with 1 for EIN 2 for Social Security Number.
Contract/Grant Number	Char	20	Agency award contract/grant number.
Solicitation Number	Char	20	Solicitation Number.
Solicitation Year	Numeric	4	Year of the Solicitation.
Project Initiator	Char	1	Initiator of STTR collaborative effort.
Technology Used (Y/N)	Char	1	SBC or RI originate any technology used in the STTR project.
Time to establish license agreement (months).	Numeric	2	Time duration to establish any STTR license agreement.
STTR Proceeds Distribution to SBC (%)	Numeric	3	Allocation of proceeds from sale of STTR technology.
STTR Proceeds Distribution to RI (%)	Numeric	3	Allocation of proceeds from sale of STTR technology.
From this point each data element should be sent as a separate file			
TITLE	Char	800	Title of research project*.
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
Abstract	Char	1500	Technical abstract (500 words).
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
Abstract SeqNmb	Numeric	1	
Results	Char	1000	—Project anticipated results.
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
COMMENTS	Char	1000	—Project comments.
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
Industry Share Amount	Numeric	10	ATP Program Cost Share Amount.
Cost Share Tracking #	Char	20	ATP Cost Share Tracking Number.

Note: Those fields denoted with an asterisk are deemed mandatory in all agency submissions. It is understood that all agencies will not have data for each data field listed above. Each agency must ensure that data submissions to the SBA include all of the data fields above, even if they are empty.

Code Research Institution Types

1 Nonprofit college or university
2 Domestic nonprofit research organization
3 Federally funded research and development center (FFDRC)

(b) Codes

(1) *Program Identification Code*

0 STTR (Small Business Technology Transfer)
1 SBIR (Small Business Innovation Research)
2 ATP (Advanced Technology Program)

(2) *Agency Codes*

1 DOD (Department of Defense)
2 DOE (Department of Energy)
3 NASA (National Aeronautics and Space Administration)
4 HHS (Health and Human Services)
5 NSF (National Science Foundation)
6 DOT (Department of Transportation)
7 EPA (Environmental Protection Agency)
8 ED (Department of Education)
9 DOA (Department of Agriculture)
10 DOC (Department of Commerce)
11 NIST (National Institute of Standards and Technology)

(3) *Branch Codes*

1 AF (Department of the Air Force)
2 ARMY (Department of the Army)
3 MDA (Missile Defense Agency)
4 DARP (Defense Advanced Research Projects Agency)
5 DSWA (Defense Special Weapons Agency)

6 NAVY (Department of the Navy)
7 OSD (Office of the Secretary of Defense)
8 SOCO (Special Operations Command)
9 NIMA (National Imaging and Mapping Agency)

(4) If any new codes, please advise the Office of Technology.

[FR Doc. 03–14635 Filed 6–13–03; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 6, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15359.
Date Filed: June 4, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 302, PTC2 ME–AFR 0110 dated 4 June 2003, TC2 Middle East-Africa, Special Passenger Amending Resolution 010p from Qatar, Intended effective date: 15 June 2003.

Docket Number: OST–2003–15383.
Date Filed: June 6, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 301, PTC3 0650 dated 6 June 2003, Resolution 078ee—PEX Fares from Korea (Rep. of) to South East Asia, Intended effective date: 1 September 2003.

FOR FURTHER INFORMATION CONTACT: Andrea M. Jenkins, Telephone: (202) 366–0271.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 03–15082 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application 03–10–C–00–MDW To Impose a Passenger Facility Charge (PFC) at Chicago Midway International Airport, Chicago, IL and Use PFC Revenue at Gary/Chicago Airport, Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago Midway International Airport and use the revenue from a PFC at Gary/Chicago Airport under the provisions of the 49 U.S.C.. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 16, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner, City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago Midway International Airport and use the revenue at Gary/Chicago Airport under the provisions of 49 U.S.C. 40017 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 3, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 2040.
Proposed charge expiration date: February 1, 2040.
Total estimated PFC revenue: $1,550,00.
Brief description of proposed projects: Expand Passenger Terminal, Hangar Ramp Construction.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois, on June 9, 2003.

Barbara J. Jordan,
Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.
[FR Doc. 03–15145 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Proposed Policy Statement No. ANE–2002–33.15–R0]

Policy for 14 CFR 33.15, Materials

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for 14 CFR 33.15, Materials.

DATES: Comments must be received by August 1, 2003.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail *timoleon.mouzakis@faa.gov*, telephone: (781) 238–7114; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policy.

Background

The FAA, in cooperation with industry, has developed a mult-faceted strategy to improve the safety of high-energy rotors. This strategy includes improving the ultrasonic (UT) billet inspection of titanium (Ti) alloys used in fan disks and other critical rotating engine hardware. The proposed policy would establish minimum safety standards for the UT billet inspection of Ti material used in the manufacturing of engine rotating components. The proposed policy would not establish new requirements.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on June 9, 2003.

Francis A. Favara,
Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.
[FR Doc. 03–15144 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Development of Voluntary Consensus Standards for Electrical System Wiring Practices on Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice; request for comments.

SUMMARY: This notice requests comments on voluntary consensus standards for electrical system wiring practices on general aviation small airplanes. In addition, the FAA requests comments from nongovernmental standards developing organizations (SDO) on their interest in developing such standards. This information will help the FAA determine the types of markets best suited to develop these standards for possible inclusion in the maintenance programs for general aviation small airplanes.

ADDRESSES: Barry Ballenger, Aerospace Engineer, FAA, Small Airplane Directorate, Continued Operational Safety Branch, ACE–113, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4152; fax (816) 329–4149; e-mail *barry.ballenger@faa.gov.*

FOR FURTHER INFORMATION CONTACT: If you need added information, you may contact the person listed under the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to respond to this notice by giving answers to the questions in the notice. Please ensure your reply gives your organization's name, address, and contact information. The FAA is particularly interested in comments from persons actively involved in voluntary standards development or are considering setting up a program for developing voluntary standards for electrical system wiring practices on general aviation small airplanes.

You may send your response to the person listed under the **ADDRESSES** section of this notice no later than August 15, 2003. The FAA will accept and consider all comments.

You should not send proprietary information by e-mail. If you believe any portion of the information you send is entitled to treatment as proprietary, you must claim confidentiality under 49 CFR part 7 for each portion. This claim must be made at the time the information is sent to the FAA. You should clearly mark all comments containing proprietary information.

Background

The National Technology Transfer and Advancement Act of 1995 encourages cooperative research and development efforts between the public and private sectors to bring technology and industrial innovations to the marketplace. With this in mind, the FAA seeks to gather information about how active standards developing organizations (SDO) are in determining standards for electrical system wiring practices on general aviation small airplanes. The FAA also wants to know the expertise available in this area. The FAA is especially interested in working with nongovernmental SDOs to promote development of voluntary consensus standards for these airplanes and get their comments on whether FAA should adopt these standards.

Information Requested

In addition to any general comments from interested parties, FAA specifically requests the following information from responding SDOs:

1. Does the organization develop standards for specific business or industry sectors (namely, automotive, aviation, and so forth) or does it develop standards in all areas?

2. Does the organization work under the American National Standards Institute (ANSI) procedures, or does it have other written procedures it uses for standards development? If available, please provide a copy.

3. Does the organization have, or plan to have, standards development that focus on, or that integrate the design, installation, maintenance, inspection, repair, and modification criteria of electrical systems as part of the scope of the standard(s)?

These standards would address cleaning procedures, wire and cable identification, wire and cable damage limits, installation clamping and routing methods, repair and replacement practices, inspection methods, and any other item that would provide a consistent way to ensure the continued airworthiness of installed electrical systems on small general aviation airplanes. In addition, the standards would act as a method of compliance to FAA certification and maintenance regulations for manufacturers, maintenance organizations, modifiers, third-party vendors, and any other interested party responsible for the design, modification, and maintenance of small general aviation airplanes.

4. Does the organization do product certification? If yes, what kind of products are generally involved?

5. Does the organization typically engage in product attribute development as well as standards development? If so; what kinds of products are generally involved?

6. Do members of government departments or agencies take part in the organization's standards development activities? If so, are there any members from regulatory agencies or departments?

7. Has the organization done any assessment of the market needs for electrical system wiring practices on small airplanes? If so, and the information is available, what is your assessment of categories and market sectors where the interest is likely to be high for electrical system wiring practices on small airplanes related standards?

Issued in Kansas City, Missouri, on June 6, 2003.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.
[FR Doc. 03–15141 Filed 6–13–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–2000–7363, FMCSA–2001–8398, FMCSA–2001–9258]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 35 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

DATES: This decision is effective June 26, 2003. Comments from interested persons should be submitted by July 14, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 35 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 35 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Gary A. Barrett
Ivan L. Beal
Johnny A. Beutler
Daniel R. Brewer
Brett L. Condon
Mark W. Coulson
Thomas W. Craig
Myron D. Dixon
Terry W. Dooley
George A. Hoffman, III
Alfred C. Jenkins
Donald L. Jensen
Daryl A. Jester
Robert L. Joiner, Jr.
James P. Jones
Loras G. Knebel
Larry J. Lang
Dennis D. Lesperance
Earnest W. Lewis
John W. Locke
Herman G. Lovell
Robert C. Lueders
Ronald L. Maynard
Gene L. Miller
Larry T. Morrison
James H. Oppliger
Richard S. Rehbein
David E. Sanders
Richard C. Simms
David B. Speller
Royal H. Stephens
Lynn D. Veach
Kevin L. Wickard
Charles M. Wilkins
Michael C. Wines

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 35 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226, 64 FR 16517, 66 FR 17994, 65 FR 45817, 65 FR 77066, 65 FR 78256, 66 FR 16311, 66 FR 17743, 66 FR 33990). Each of these 35 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 14, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: June 10, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–15146 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15386]

Notice of Receipt of Petition for Decision that Nonconforming 2001 Ducati Monster 600 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Ducati Monster 600 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 Ducati Monster 600 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 16, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 2001 Ducati Monster 600 motorcycles are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 2001 Ducati Monster 600 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. 2001 Ducati Monster 600 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Ducati Monster 600 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Ducati Monster 600 motorcycles are identical to their U.S. counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of compliant front amber reflectors and rear red reflectors.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard and inspection to assure compliance with rim marking requirements. Rims that do not comply with the rim marking requirements must be replaced with compliant rims.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer/odometer calibrated in miles per hour.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400

Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–15083 Filed 6–13–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34353 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Petition for Partial Revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the trackage rights described in STB Finance Docket No. 34353 [1] to permit the trackage rights to: (1) Expire on or about June 22, 2003, for northbound trains; and (2) expire on or about October 16, 2003, for southbound trains, in accordance with the agreement of the parties.

DATES: This action is effective on June 20, 2003. Petitions to reopen must be filed by July 7, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34353 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā–2–Dā Legal Copy Service, Suite 405, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at "*http://WWW.STB.DOT.GOV.*"

Decided: June 9, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14975 Filed 6–13–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On May 9, 2003, the Union Pacific Railroad Company (UP) filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over a BNSF line of railroad between BNSF milepost 42.9 near Paola, KS, and BNSF milepost 633.0 near Joe Jct., TX, a distance of approximately 428.2 miles. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34353 (STB served May 29, 2003). The trackage rights operations under the exemption were scheduled to begin May 16, 2003.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–156 (Sub–No. 23X)]

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company—Abandonment Exemption—in Albany County, NY

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company (D&H), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 9.14± mile portion of railroad known as the Albany Main or the Voorheesville Running Track, between milepost 10.94± and milepost 1.8± in Albany County, NY. The line traverses United States Postal Service Zip Codes 12202, 12207, 12054, and 12186.

D&H has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be, and has been, rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 16, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 26, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 7, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Diane P. Gerth, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

D&H has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 20, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), D&H shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by D&H's filing of a notice of consummation by June 16, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 9, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14974 Filed 6–13–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each of OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 201X)]

Union Pacific Railroad Company—Abandonment Exemption—In Franklin County, IA

On May 27, 2003, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 7.84-mile line of railroad, in the western portion of the Bristow Subdivision, extending from milepost 318.66, near Hampton, to milepost 326.50, near Coulter, in Franklin County, IA. The line traverses United States Postal Service Zip Codes 50431 and 50441 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 12, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 7, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 201X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before July 7, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: June 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–15118 Filed 6–13–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices, Treasury: Study of the Potential Effects of Acts of Terrorism on the Availability of Other Lines of Insurance

SUMMARY: The terrorism insurance legislation enacted on November 26, 2002, requires the Secretary of the Treasury (Treasury), after consultation with the National Association of Insurance Commissioners (NAIC), representatives of the insurance industry, and other experts in the insurance field, to conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines, and to submit a report to the Congress on the results of the study by August 26, 2003. To assist in the study, the Treasury is soliciting comments on the questions listed below.

DATES: Comments must be received by July 5, 2003.

ADDRESSES: Send comments by e-mail to *Otherlinesstudy@do.treas.gov*, or by mail to Lucy Huffman, Office of Microeconomic Analysis, U.S. Treasury Department, 1500 Pennsylvania Avenue, Washington, DC 20220. Please include your name, affiliation, address, e-mail address (if applicable), and telephone number. All submissions should be captioned "Comments on Study of Other Lines".

FOR FURTHER INFORMATION CONTACT: Lucy Huffman, Project Manager, Office of Microeconomic Analysis, 202–622–0198; or John Worth, Director, Office of Microeconomic Analysis, 202–622–2683.

SUPPLEMENTARY INFORMATION: Section 103(i) of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (Act) requires the Treasury, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, to conduct a study of "the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines". The Treasury is directed to submit a report to the Congress on the results of the study not later than 9 months after the date of enactment of the Act.

To assist in the study, Treasury is soliciting comment in response to the following questions, including empirical data in support of such comments where appropriate and available.

I. Exposure of Insurance Lines Not Covered Under Section 102(6) of the Act to Acts of Terrorism Defined in Section 102(1) of the Act

1.1 What lines of insurance would not be likely to experience potentially significant reductions in availability as a result of the occurrence of future acts of terrorism or the risk of acts of terrorism?

1.2 What lines of insurance would be likely to experience potentially significant reductions in availability as a result of the occurrence of future acts of terrorism or the risk of acts of terrorism?

1.3 What are the attributes of those lines cited in 1.2 that could lead to potentially significant reductions in availability? For example, are there unavoidable concentrations of risk? Is there a particular exposure to certain types of acts of terrorism?

1.4 What is the market structure of those lines of insurance cited in 1.2? In your answer, please describe, as quantitatively as you can, the degree of competition in the markets for those lines, the net premiums to surplus ratios for companies in those lines, and other measures of market structure that you believe are relevant; and compare them to the insurance industry average. What is the distribution of market share (highly concentrated among a few entities, broadly distributed, other)? What types of insurers hold the majority of the market share (local, regional, national, other)?

1.5 What is the current capacity of insurers in those lines cited in 1.2 to bear the risk of acts of terrorism, individually and as affiliates of other companies with support from them?

1.6 Compared to the condition of reinsurance and alternative markets before the attack of September 11, 2001, what is the availability and affordability of reinsurance or of alternatives sources of protection, for insurers offering coverage in lines cited in 1.2? What is the degree to which those insurers can mitigate their exposure through other means? Are there additional loss control programs or mitigation measures that could be undertaken?

1:7 What is the Federal and State regulatory structure applicable to those lines of insurance cited in 1.2? In particular please describe whether exclusions are allowed and for what risks.

II. Current Insurance Availability Conditions

2.1 Please describe current insurance availability conditions in as much detail as possible for customers of the lines cited in 1.2. If there is reduced availability of a particular line of insurance for some customers, please indicate the line and describe the reduced availability as quantitatively as possible, including, to the extent you can, which customers have been significantly affected, by type and location. Please indicate whether such customers have access to alternative sources of insurance, including the cost and availability of these alternative sources, or whether the customers are not covered.

2.2 What is the impact on community and regional economies and well being, and the national economy of such reduced availability and affordability for those customers?

III. Impact of Potential Future Acts of Terrorism

In this section we solicit comment on the effect of potential future acts of terrorism—single events or aggregation of several events across locale or across a time period—that could cause significant and extended disruptions in availability of insurance lines cited in 1.2.

3.1 In order to facilitate our analysis, please set out the consequences of potential future acts of terrorism for each line of insurance cited in 1.2 within the following broad dimensions:

(1) The relative concentration of the insurance industry exposed to the loss (including the following categories: (a) Loss broadly distributed—share of loss is equivalent to market share; (b) concentration of loss among many small companies—share of loss is greater than market share for large number of small companies and less than market share among market leaders; (c) concentration of loss among market leaders—share of loss is greater than market share for large companies and less than market share among small companies; (d) other distributions deemed of interest); and

(2) the size of the loss (including the following categories: net present value of losses of approximately the following sizes: $5 billion, $15 billion, $30 billion, $60 billion or larger).

Within each "cell" identified by a single concentration and loss category, please describe as specifically as possible:

- Impact on financial capacity of insurers in the line (*e.g.*, as reduction in share of large local, regional or national market), whether and how many insolvencies might be the result, the extent to which state guarantee funds might be affected, any systemic impact on the insurance industry; and the length of time over which the industry might be able to recover.
- Scope of any significant reduction in availability of coverage in the line, including length of time over which coverage is reduced and numbers of customers or subsets of customers potentially affected.
- Scope of impact on the economies and well being of the communities in which the reductions in availability take place, the associated regions, and the national economy. Please be specific as to how the impact is transmitted from the affected community to the regional and national economy.

If you do not believe this format allows you to adequately answer the question, please alter as needed. Please note that descriptions of scenarios of individual events are not likely to be as helpful as broad aggregates.

3.2 If not already identified in the matrix above, please describe the class of events with the "worst" impact for the line of insurance affected, indicating the concentration and the size of the event (or aggregate of events).

3.3 Please describe, to the extent possible, the likelihood of the events included in the matrix above.

3.4 Please indicate whether you believe that the severity and likelihood of these events as you have described them is accurately reflected in current insurance availability conditions. Please be as specific as possible, including citing instances from your answers to questions 2.1–2.4.

Dated: June 6, 2003.

Mark Warshawsky,

Acting Assistant Secretary for Economic Policy.

[FR Doc. 03–15074 Filed 6–13–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4626

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4626, Alternative Minimum Tax—Corporations.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Alternative Minimum Tax—Corporations.

OMB Number: 1545–0175.

Form Number: 4626.

Abstract: Form 4626 is used by corporations to calculate their alternative minimum tax under section 55 of the Internal Revenue Code. The IRS uses the information on the form to determine whether the tax has been computed correctly.

Current Actions: The form was overhauled to reduce its size. Low usage lines were eliminated (former lines 2g, 2p, and 2q) to reduce the form from 2 pages to 1. The adjustment and preference items was "unindented" so we could eliminate a subtotal line. Also former line 8–a was eliminated, total carry forward line (page 2). Further, a Note at the top of the form to alert taxpayers that if they qualify as a small corporation under explained on the form.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60,000

Estimated Time Per Respondent: 43 hr., 17 min.

Estimated Total Annual Burden Hours: 2,923,800

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15159 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8853

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8853, Archer MSAs and Long-Term Care Insurance Contracts.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Archer MSAs and Long-Term Care Insurance Contracts.

OMB Number: 1545–1561.

Form Number: 8853.

Abstract: This form is used by individuals to report general information about their Archer medical savings accounts (MSAs), to figure their MSA deductions, and to figure their taxable distributions from MSAs. The form is also used to report taxable payments from long-term care (LTC) contracts.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 56,000.

Estimated Time Per Respondent: 1 hour, 47 minutes.

Estimated Total Annual Burden Hours: 100,795.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15160 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–T, Exempt Organization Business Income Tax Return.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Exempt Organization Business Income Tax Return.

OMB Number: 1545–0687.

Form Number: 990–T.

Abstract: Form 990–T is used to report and compute the unrelated business income tax imposed on exempt organizations by Internal Revenue Code section 511 and the proxy tax imposed by Code section 6033(e). The form provides the IRS with the information necessary to determine that the tax has been properly computed.

Current Actions: The following changes are being considered:

A. Because of section 501 of the Tax Relief Extension Act of 1999 (Pub. L. 106–170), beginning in tax year 2000 the aggregate amounts of credits allowed under Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart A of the Internal Revenue Code, will offset both a corporation's regular tax liability and its minimum tax. Because of this law change, Line 42 (alternative minimum tax) is relocated to Line 38. The other lines are being renumbered to reflect this change.

B. Schedule F of Form 990–T was used to compute the amount of specific payments (interest, annuity, royalty, or rent) that met the binding contract exception of Public Law 105–34, section 1041(b)(2) and are included on line 8. The binding contract exception, in effect on June 8, 1997, expires as of August 4, 2000. Therefore, Schedule F is being deleted as it is no longer needed.

Type of Review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 37,103.

Estimated Time Per Respondent: 138 hours., 3 minutes.

Estimated Total Annual Burden Hours: 5,122,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15161 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–ES, 1040–ES (NR), and 1040–ES (Espanol)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning 1040–ES, Estimated Tax for Individuals, 1040–ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, and 1040–ES (Espanol), Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre el Empleo De Empleados Domesticos—Puerto Rico.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* 1040–ES, Estimated Tax for Individuals, 1040–ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, and 1040–ES (Espanol), Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre el Empleo De Empleados Domesticos—Puerto Rico.

OMB Number: 1545–0087.

Form Number: 1040–ES, 1040–ES (NR), and 1040–ES (Espanol).

Abstract: Form 1040–ES is used by U.S citizens and resident aliens to make estimated tax payment of income (and self-employment) tax due in excess of tax withheld. Form 1040–ES(NR) is used by nonresident aliens to pay any income tax due in excess of tax withheld. Form 1040–ES (Espanol) is printed in Spanish for use in Puerto Rico and includes payment vouchers for payment of self-employment tax on a current basis.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 40,991,991.

Estimated Time Per Response: 2 hours, 18 minutes.

Estimated Total Annual Burden Hours: 94,591,282.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15162 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000–28, Coal Exports.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Coal Exports.

OMB Number: 1545–1690.

Notice Number: Notice 2000–28.

Abstract: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15163 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–IC–DISC, Schedules K and P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

OMB Number: 1545–0938.

Form Numbers: 1120–IC–DISC, Schedules K and P.

Abstract: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 190 hours, 10 minutes.

Estimated Total Annual Burden Hours: 228,212.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15164 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8633

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8633, Application to Participate in the IRS e-file Program.

DATES: Written comments should be received on or before August 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application to Participate in the IRS e-file Program.

OMB Number: 1545–0991.

Form Number: 8633.

Abstract: Form 8633 is used by tax preparers, electronic return collectors, software firms, service bureaus and electronic transmitters as an application to participate in the electronic filing program covering individual income tax returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15165 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

DATES: Written comments should be received on or before August 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

OMB Number: 1545–0976.

Form Number: 990–W.

Abstract: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions and business or other for-profit organizations.

Estimated Number of Respondents: 27,265.

Estimated Time Per Respondent: 14 hours, 12 minutes.

Estimated Total Annual Burden Hours: 387,392.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15166 Filed 6–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 16, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0265."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0265" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Counseling, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: A veteran or dependent may use VA Form 28–8832 to apply for counseling services. Vocational Rehabilitation and Counseling will use the information on the form to quickly assess an applicant's probable entitlement to counseling, to call up

further records if necessary, and to contact the applicant to schedule a counseling appointment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 1, 2003, at page 15798.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: June 5, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–15076 Filed 6–13–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (VA Home Loan Guaranty Program Evaluation)]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Office of Policy and Planning (OPPA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 16, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–NEW (Pension and Parents DIC Participants)".

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–NEW (Pension and Parents DIC Participants)".

SUPPLEMENTARY INFORMATION:

Title: VA Home Loan Guaranty Program Evaluation. (OMB Control No. 2900—NEW (VA Home Loan Guaranty Program Evaluation).)

Type of Review: New collection.

Abstract: The purpose of these surveys is to provide information for an evaluation that assesses the effectiveness and efficiency of VA Home Loan Guaranty Program for assisting eligible veterans and active duty military personnel to purchase, construct, repair, or improve a dwelling that they will own and occupy as their home; and to assess the adequacy, efficiency, and effectiveness of the Specially Adapted Housing Grant Program. These surveys will assist VA with the improvement of program operations and development of policy positions to support the needs and requirements of the veteran population.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 1, 2003, at pages 15797–15798.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 1,141 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,281.

Dated: June 5, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–15077 Filed 6–13–03; 8:45 am]

BILLING CODE 8320–01–P

Reader Aids

Federal Register

Vol. 68, No. 115

Monday, June 16, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10
34775–35148	11
35149–35264	12
35265–35524	13
35525–35782	16

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339
7684 34775

Executive Orders:
13159 (See Notice of June 10, 2003) 35149

Administrative Orders:
Notices:
Notice of June 10, 2003 35149
Presidential Determinations:
No. 2003-24 of May 29, 2003 35525
No. 2003-25 of May 29, 2003 35526

4 CFR

81 33831

5 CFR

230 35265
301 35265
316 35265
333 35265
337 35265
410 35265
831 35270
842 35270
1600 35492
1601 35492
1603 35492
1604 35492
1605 35492
1606 35492
1640 35492
1645 35492
1650 35492
1651 35492
1653 35492
1655 35492
1690 35492

7 CFR

2 35256
319 34517
457 34261
723 34777
800 ..... 32623, 35490
802 34519
1400 33341
1464 34777

Proposed Rules:
810 33408
1951 35321
3560 32872
3565 34552
4284 35321

8 CFR

1 35273
103 35273
212 35151
239 35273
287 35273

9 CFR

82 34779
93 35529
113 35282
430 34208

Proposed Rules:
93 33028

10 CFR

35 35534
72 33611
73 33611
765 32955

Proposed Rules:
50 35585

12 CFR

37 35283
615 ..... 33347, 33617
703 32958
742 32958
1700 32627

Proposed Rules:
Ch. I 35589
Ch. II 35589
Ch. III 35589
Ch. V 35589

13 CFR

121 ..... 33348, 35285

Proposed Rules:
121 ..... 33412, 35334

14 CFR

25 ..... 33834, 33836, 35285
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787, 35152, 35155, 35157, 35160, 35163, 35286
71 ..... 32633, 33231, 33360, 33361, 33579, 33623, 35287, 35288, 35534, 35535
91 35524
95 34522
97 ..... 32633, 33536, 35538
401 35289
404 35289
413 35289
1260 35290

Proposed Rules:
25 ..... 33659, 35335, 45612

36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849, 35186
71 ..... 33426, 33427, 34340

15 CFR

742 34526
744 34192
745 34526
772 34192
774 34526

Proposed Rules:

930 34851

16 CFR

Proposed Rules:

1500 35191
1700 35614

17 CFR

1 34790
30 33623
40 33623

18 CFR

201 34795

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

20 CFR

Proposed Rules:

220 34341

21 CFR

165 34272
201 32979
310 ..... 33362, 34273
347 ..... 33362, 35290
349 32981
350 34273
352 33362
369 34273
510 ..... 33381, 34293
520 ..... 34533, 34795
522 ..... 33856, 34533, 34796
524 33381
558 34534
601 34796
878 32983
888 32635
1308 35293

Proposed Rules:

201 33429
343 33429
347 35346

24 CFR

Proposed Rules:

1000 34344

25 CFR

170 33625
309 35164

26 CFR

1 ..... 33381, 34293, 34797
31 34797
301 33857
602 ..... 34293, 34797

Proposed Rules:

1 ..... 34344, 34874, 34875
14a 34344
25 34875
31 34875
53 34875
55 34875
156 34875
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:

7 32698
25 32698

28 CFR

5 33629
571 ..... 34299, 34301
802 32985

29 CFR

1910 32637
1926 35172
4022 35294
4044 35294

Proposed Rules:

1910 ..... 33887, 34036
1915 34036
1926 34036

30 CFR

Proposed Rules:

906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196

33 CFR

100 ..... 32639, 32641
117 ..... 32643, 34302, 34303, 34535, 34799, 34800, 34801, 35296
165 ..... 32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803, 35172

Proposed Rules:

117 34877
165 ..... 33894, 33896, 34370, 35615

36 CFR

215 33582
230 34309
242 33402
251 35117
1253 33404

38 CFR

1 35297
3 34539
13 34539
21 ..... 34319, 34326, 35177
61 34332

Proposed Rules:

20 33040

39 CFR

111 ..... 33858, 34805

40 CFR

51 33764
52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821
62 ..... 34332, 35181, 35299
180 ..... 33876, 34825, 35303
261 32645
271 ..... 34334, 34829
439 34831
712 34832
725 35315

Proposed Rules:

Ch. I 33898
51 32802
52 ..... 33041, 33042, 33043, 33665, 33898, 33899, 34560
62 ..... 35191, 35348
82 33284
146 33902
180 35349
194 33429

42 CFR

412 ..... 34122, 34494

Proposed Rules:

412 ..... 33579, 34492
413 ..... 33579, 34492, 34768

43 CFR

4 33794
3800 32656
4100 33794
5000 33794

44 CFR

64 32657
65 ..... 32659, 32660
67 ..... 32664, 32669
206 34545

Proposed Rules:

67 ..... 32699, 32717

46 CFR

221 33405

47 CFR

2 ..... 32676, 33020, 33640, 34336
21 34547
25 ..... 33640, 34336
52 34547
73 ..... 32676, 33654, 35540, 35541, 35542
74 ..... 32676, 34336
78 34336
80 32676
87 32676
90 32676
95 32676
97 ..... 32676, 33020

Proposed Rules:

1 34560
2 ..... 33043, 33666
15 32720
21 34560
25 33666
64 32720
73 ..... 33431, 33668, 33669, 35617
74 34560
101 34560

48 CFR

2 33231
32 33231
52 33231
252 33026

Proposed Rules:

15 33330
31 33326
52 33326
204 34879
206 33057

49 CFR

1 ..... 34548, 35183
26 35542
107 32679
171 32679
173 32679
177 32679
180 32679
192 35574
195 35574
375 35064
377 35064
567 33655
571 ..... 33655, 34838
574 33655
575 ..... 33655, 35184
579 ..... 35132, 35145
597 33655

Proposed Rules:

171 34880
172 34880
173 34880
271 35354

50 CFR

17 34710
100 33402
635 35185
648 33882
660 32680
679 34550

Proposed Rules:

16 33431
17 ..... 33058, 33234, 34569
402 33806
648 33432
660 ..... 33670, 35354, 35575

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 16, 2003

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Tuberculosis testing; cattle from Mexico; published 6-16-03

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources and Gulf of Mexico reef fish; published 5-15-03

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; correction; published 6-16-03

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Wisconsin; published 4-17-03

Hazardous waste program authorizations:

Texas; published 4-15-03

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arkansas and Louisiana; published 5-22-03

Texas; published 5-23-03

Television broadcasting:

Noncommercial educational broadcast station applicants; comparative standards reexamination; motion for stay of low power television auction; published 5-15-03

GENERAL SERVICES ADMINISTRATION

Federal travel:

Travel expenses payment from non-Federal source; published 3-17-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; published 6-10-03

Louisiana; published 5-27-03

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

FHA programs; introduction:

FHA single family appraiser roster; appraiser qualifications for placement; published 5-16-03

NUCLEAR REGULATORY COMMISSION

Domestic licensing proceedings and issuance of orders; practice rules:

Official records; availability; published 4-17-03

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Nonmanufacturer rule; waivers—

Overhead fiber optic groundwire and ancillary hardware components; published 6-13-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pilatus Aircraft Ltd.; published 5-2-03

Standard instrument approach procedures; published 6-16-03

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Hazardous liquid transportation—

Required repairs delayed by need to obtain permit; alternative mitigation measures; published 6-16-03

TREASURY DEPARTMENT

Comptroller of the Currency

Debt cancellation contracts and debt suspension agreements; national bank standards; published 9-19-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Grapes grown in—

California; comments due by 6-23-03; published 4-22-03 [FR 03-09843]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Pistachio nuts, in shell and shelled; grade standards; comments due by 6-23-03; published 5-23-03 [FR 03-12805]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Tuberculosis in cattle and bison—

State and area classifications; comments due by 6-24-03; published 4-25-03 [FR 03-10242]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Support activities:

Technical service provider assistance; comments due by 6-23-03; published 3-24-03 [FR 03-06668]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Pacific Coast groundfish; fishing capacity reduction program; comments due by 6-27-03; published 5-28-03 [FR 03-13274]

Marine mammals:

Incidental taking—

San Nicolas Island, CA; missile launch operations; pinnipeds; comments due by 6-23-03; published 5-9-03 [FR 03-11613]

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:

Patent statute; changes to implement 2002 inter partes reexamination and other technical amendments; comments due by 6-27-03; published 4-28-03 [FR 03-10412]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Acceptance of gifts; comments due by 6-23-03; published 4-22-03 [FR 03-09937]

Organization, functions, and authority delegations:

Agency seal; comments due by 6-23-03; published 4-22-03 [FR 03-09936]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Vermont; comments due by 6-23-03; published 5-22-03 [FR 03-12863]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Vermont; comments due by 6-23-03; published 5-22-03 [FR 03-12864]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

West Virginia; comments due by 6-26-03; published 5-27-03 [FR 03-13176]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

West Virginia; comments due by 6-26-03; published 5-27-03 [FR 03-13177]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

New Hampshire; comments due by 6-27-03; published 5-28-03 [FR 03-13174]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

New Hampshire; comments due by 6-27-03; published 5-28-03 [FR 03-13175]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12612]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12613]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12614]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12615]

ENVIRONMENTAL PROTECTION AGENCY

Toxic substances:
Preliminary assessment information reporting—
Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl), etc.; comments due by 6-25-03; published 6-11-03 [FR 03-14749]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Telecommunications Act of 1996; implementation—
Pay telephone reclassification and compensation provisions; comments due by 6-23-03; published 6-2-03 [FR 03-13722]

Radio stations; table of assignments:
California; comments due by 6-26-03; published 5-22-03 [FR 03-12793]

FEDERAL TRADE COMMISSION

Alternative fuels and alternative fueled vehicles; labeling requirements; comments due by 6-23-03; published 5-8-03 [FR 03-11391]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
Billing privileges; establishment and maintenance requirements; comments due by 6-24-03; published 4-25-03 [FR 03-09943]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc.; comments due by 6-27-03; published 4-28-03 [FR 03-10301]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
St. Croix, U.S. Virgin Islands; security zone; comments due by 6-27-03; published 4-28-03 [FR 03-10293]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Critical habitat designations—
Cactus ferruginous pygmy-owl; Arizona distinct population segment; comments due by 6-27-03; published 4-28-03 [FR 03-10531]
Coastal California gnatcatcher; comments due by 6-23-03; published 4-24-03 [FR 03-09435]
Mussels in Mobile River Basin, AL; comments due by 6-24-03; published 3-26-03 [FR 03-06903]
San Diego fairy shrimp; comments due by 6-23-03; published 4-22-03 [FR 03-09434]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

NUCLEAR REGULATORY COMMISSION

Nuclear equipment and material; export and import:
Major nuclear reactor components; general import license; comments due by 6-27-03; published 5-28-03 [FR 03-13217]

NUCLEAR REGULATORY COMMISSION

Nuclear equipment and material; export and import:
Major nuclear reactor components; general import license; comments due by 6-27-03; published 5-28-03 [FR 03-13216]

SMALL BUSINESS ADMINISTRATION

Small business size standards:
Nonmanufacturer rule; waivers—
Other ordnance and accessories manufacturing; comments due by 6-25-03; published 6-13-03 [FR 03-14851]
Small arms manufacturing; comments due by 6-25-03; published 6-13-03 [FR 03-14850]
Size for Multiple Award Schedule and other multiple award contract purposes and 8(a) business development/small disadvantaged business status determinations; comments due by 6-24-03; published 4-25-03 [FR 03-10286]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Aircraft operations; noise limitations; comments due by 6-23-03; published 3-24-03 [FR 03-06918]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airspace:
Construction or alteration in vicinity of private residence of President of United States; comments due by 6-23-03; published 4-22-03 [FR 03-09886]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 6-23-03; published 5-23-03 [FR 03-12836]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 6-23-03; published 4-23-03 [FR 03-09691]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 6-24-03; published 4-25-03 [FR 03-10115]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Bombardier; comments due by 6-23-03; published 5-23-03 [FR 03-12964]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Consolidated, Consolidated Vultee, and Convair; comments due by 6-23-03; published 4-22-03 [FR 03-09861]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
de Havilland; comments due by 6-23-03; published 4-16-03 [FR 03-09304]
Dornier; comments due by 6-23-03; published 5-15-03 [FR 03-12112]
Dowty Aerospace Propellers; comments due by 6-27-03; published 4-28-03 [FR 03-10334]
Eurocopter France; comments due by 6-23-03; published 4-22-03 [FR 03-09864]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
McDonnell Douglas; comments due by 6-24-03; published 4-25-03 [FR 03-09981]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Pratt & Whitney; comments due by 6-23-03; published 4-23-03 [FR 03-09984]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 6-25-03; published 5-9-03 [FR 03-11645]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E5 airspace; comments due by 6-23-03; published 5-22-03 [FR 03-12818]

TREASURY DEPARTMENT

Comptroller of the Currency

International banking activities:
Foreign banks seeking to establish Federal branches and agencies in U.S.; approval procedures; comments due by 6-23-03; published 4-23-03 [FR 03-09733]

TREASURY DEPARTMENT

Fiscal Service

Checks drawn on U.S. Treasury; indorsement and payment; comments due by 6-23-03; published 4-23-03 [FR 03-09998]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks lacking Federal functional regulator; customer identification programs; comments due by 6-23-03; published 5-9-03 [FR 03-11015]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:
Flavored malt beverages; comments due by 6-23-03; published 3-24-03 [FR 03-06855]
Labeling and advertising; organic claims; comments due by 6-23-03; published 5-9-03 [FR 03-11609]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1]Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–050–00015–6)	23.00	Jan. 1, 2003
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–050–00018–1)	29.00	[4]Jan. 1, 2003
1940–1949	(869–050–00019–9)	47.00	Jan. 1, 2003
1950–1999	(869–050–00020–2)	45.00	Jan. 1, 2003
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
1–199	(869–050–00023–7)	58.00	Jan. 1, 2003
200–End	(869–050–00024–5)	56.00	Jan. 1, 2003
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–050–00027–0)	44.00	Jan. 1, 2003
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Jan. 1, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
*200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
*170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
*500–599	(869–050–00065–2)	47.00	Apr. 1, 2003
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
*0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
*700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
*§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
*§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
*300–499	(869–050–00095–4)	61.00	Apr. 1, 2003
500–599	(869–050–00096–2)	12.00	[5]Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43–end	(869–048–00099–2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[6]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[6]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

——— **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
——— **Federal Register Index** (FRUS) $30 per year.

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**	A renewal notice will be sent approximately 90 days **before the shown date.**
AFR SMITH212J DEC97 R 1 JOHN SMITH 212 MAIN STREET FORESTVILLE MD 20704	AFRDO SMITH212J DEC97 R 1 JOHN SMITH 212 MAIN STREET FORESTVILLE MD 20704

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

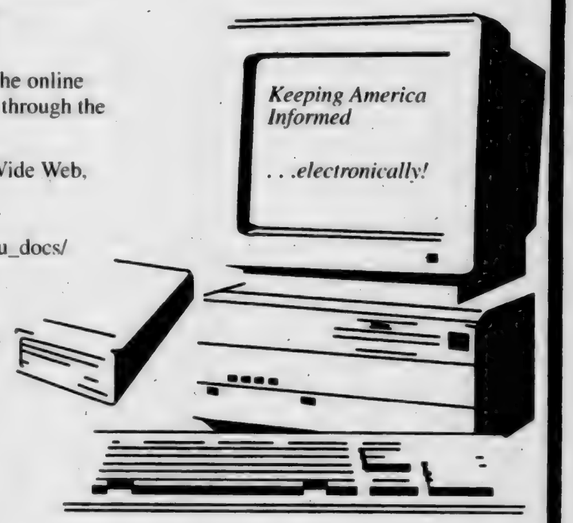
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

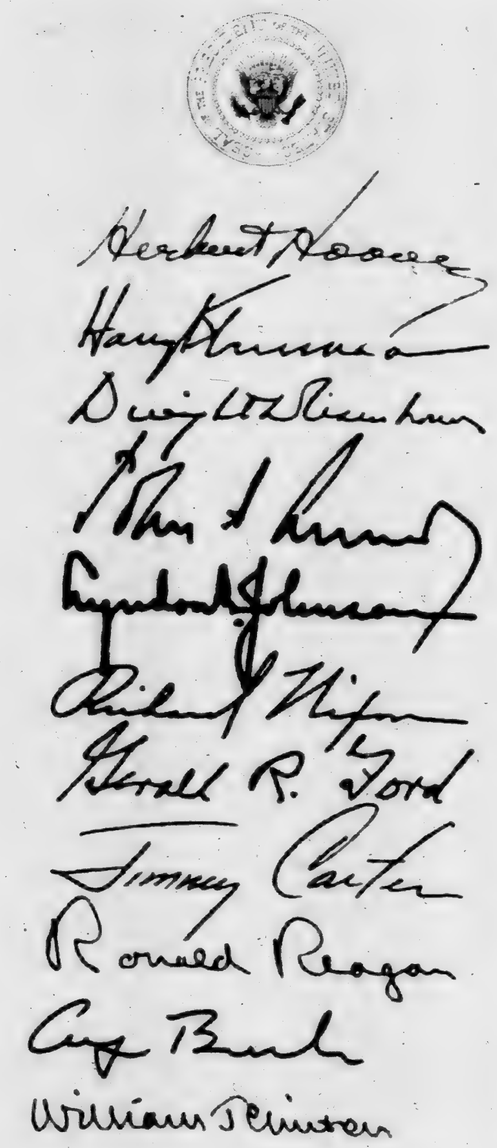
To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	$51.00
1993 (Book II)	$51.00
1994 (Book I)	$56.00
1994 (Book II)	$52.00
1995 (Book I)	$60.00
1995 (Book II)	$65.00
1996 (Book I)	$66.00
1996 (Book II)	$72.00
1997 (Book I)	$69.00
1997 (Book II)	$78.00
1998 (Book I)	$74.00
1998 (Book II)	$75.00
1999 (Book I)	$71.00
1999 (Book II)	$75.00
2000–2001 (Book I)	$68.50
2000–2001 (Book II)	$63.00
2000–2001 (Book III)	$75.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.


The
UNITED STATES
GOVERNMENT MANUAL
2002 2003

$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
1
1
5
JE
16
003
MI

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

6–17–03 Tuesday
Vol. 68 No. 116 June 17, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6–17–03 Tuesday
Vol. 68 No. 116 June 17, 2003

Pages 35783–36444

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register
Vol. 68, No. 116
Tuesday, June 17, 2003

Agricultural Marketing Service
PROPOSED RULES
Soybean promotion and research order:
United Soybean Board; membership adjustment, 35825–35826

Agricultural Research Service
NOTICES
Meetings:
Food safety research, education, and extension programs; stakeholders input; listening session, 35841–35843

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Cooperative State Research, Education, and Extension Service
See Federal Crop Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35838–35841

Antitrust Division
NOTICES
National cooperative research notifications:
IMS Global Learning Consortium, Inc., 35913
Semiconductor Test Consortium, Inc., 35913

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Bioterrorism, bacterial and fungal agents; public health preparedness and response; applied research partnerships, 35891–35892
Human immunodeficiency virus (HIV)—
Perinatal HIV Prevention in the US: National Organizations Working Toward Elimination, 35892–35894
Submission for OMB review; comment request, 35894–35897

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act:
Systems of records, 35897–35901

Coast Guard
RULES
Merchant marine officers and seamen:
Licensing and manning for officers of towing vehicles, 35801–35818

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35848–35849
Privacy Act:
Systems of records, 35849–35855

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Philippines, 35869–35870

Commodity Futures Trading Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35870–35871

Cooperative State Research, Education, and Extension Service
NOTICES
Meetings:
Food safety research, education, and extension programs; stakeholders input; listening session, 35841–35843

Customs and Border Protection Bureau
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Key Custom's Brokerage, Inc. et al, 35907
McCracken, Robert J. et al., 35907–35908
Nogueras, Anthony, et al., 35908
Vaccaro, Peter et al., 35908

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
AccuStandard, Inc., 35913–35915
American Radiolabeled Chemicals, Inc., 35915
Applied Science Labs, Inc., 35915
Cedarburg Pharmaceuticals, LLS, 35915–35916
Cerilliant Corp., 35916–35917
Lipomed, Inc., 35917–35918
Mallinckrodit, Inc., 35918–35919
National Center for Natural Products Research-NIDA MProject University of Mississippi, 35919
Norac Co., Inc., 35919
OraSure Technologies, Inc., 35919

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
On-board diagnostic regulations, 35792–35801
Air quality implementation plans; approval and promulgation; various States:
Colorado; correction, 35790–35791
Organization, functions, and authority delegations:
Address change for submission of certain reports; Region VII, 35792
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
On-board diagnostic regulations, 35830–35832
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Kendall New Century Development, IL, 35882
Massachusetts, 35881–35882
Committees; establishment, renewal, termination, etc.:
Science Advisory Board, 35883–35884

Reports and guidance documents; availability, etc.:
Community involvement in supplemental environmental projects, 35884–35888

Federal Aviation Administration
RULES
Class E5 airspace
Correction, 35947
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 35826–35828
NOTICES
Passenger facility charges; applications, etc.:
Arcata Airport, CA, et al., 35939–35941

Federal Communications Commission
RULES
Radio broadcasting:
Navigation devices; commercial availability, 35818–35822
PROPOSED RULES
Radio broadcasting:
Navigation devices; commercial availability, 35833–35837

Federal Crop Insurance Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Outreach and Assistance Partnership Program, 35843–35848

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
American Samoa, 35908–35909
Arkansas, 35909
Mississippi, 35909–35910
Tennessee, 35910

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ameren Energy Generating Company, et al., 35873–35874
Tractebel Property Management, Inc., et al., 35874–35875
Environmental statements; notice of intent:
Cheyenne Plains Gas Pipeline Co. et al., 35875–35877
Columbia Gas Transmission Corp., 35877–35879
Hydroelectric applications, 35879–35881
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 35871
Columbia Gulf Transmission Co., 35871
Eastern Shore Natural Gas Co., 35871
Great Lakes Gas Transmission L.P., 35872
Overthrust Pipeline Co., 35872
Public Utilities Commission of the State of California, 35872

Federal Labor Relations Authority
NOTICES
Unfair labor practice proceeding; amicus curiae submissions, 35888–35889

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Various plants from Oahu, HI, 35949–36406
NOTICES
Environmental statements; notice of intent:
California; Trinity River Mainstem Fishery Restoration Program, 35910–35912

Realty actions; sales, leases, etc.:
San Bernard National Wildlife Refuge, TX; Noble Energy, Inc. pipeline right-of-way permit, 35912

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Prescription Drug User Fee Act; reviewable units for fast track products; draft guidance, 35901–35903
Prescription Drug User Fee Act; scientific feedback and interactions during development of fast track products; draft guidance, 35903

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 35855–35856
Georgia
Inflation Systems, Inc., 35856
Ohio, 35856–35857
Washington
Inflation Systems, Inc., 35857

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
State assistance expeditures; Federal financial participation (2003-2004 FY), 35889–35890

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35904
Grants and cooperative agreements; availability, etc.:
Maternal and Child Health Federal Set-Aside Program; Sickle Cell Disease and Newborn Screening Program, 35904–35907

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary grant programs (SuperNOFA); technical correction, 36425–36444

Industry and Security Bureau
RULES
Export administration regulations:
Encryption clarifications and revisions, 35783–35787

Interior Department
See Fish and Wildlife Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Excise taxes:
Communication services; distance sensitivity, 35828–35829
NOTICES
Meetings:
Taxpayer Advocacy Panels, 35945–35946

International Trade Commission
NOTICES
Import investigations:
Nework interface cards and access points for use in direct sequence spread spectrum wireless local area networks and products containing same, 35912–35913

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Labor Department
See Mine Safety and Health Administration

Mine Safety and Health Administration
RULES
Independent laboratories and non-MSHA product safety standards; testing and evaluation; alternate requirements, 36407–36423

National Aeronautics and Space Administration
NOTICES
Meetings:
Space Science Advisory Committee, 35920

National Archives and Records Administration
PROPOSED RULES
NARA facilities:
Exhibition Hall; hours of operation, 35829

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Lisoni & Lisoni, Attorneys at Law, et al.; petition denied, 35941–35944

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 35822–35824
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35857–35858
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Islander East Pipeline Co., L.L.C., 35858–35859
Permits:
Marine mammals, 35859–35860
Reports and guidance documents; availability, etc.:
Coastal and Estuarine Land Conservation Program, 35860–35869

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 35920–35921

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Teledyne Brown Engineering, Inc., 35921
Meetings; Sunshine Act, 35921–35922

Postal Service
NOTICES
Postal programs:
In-Person Proofing at Post Offices program, 35922–35923

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
California; Trinity River Mainstem Fishery Restoration Program, 35910–35912

Research and Special Programs Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35944–35945

Securities and Exchange Commission
RULES
Securities:
Administrative proceedings, 35787–35790
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 35923–35925
Government Securities Clearing Corp., 35925–35926
National Association of Securities Dealers, Inc., 35926–35933
Philadelphia Stock Exchange, Inc., 35933–35937

Small Business Administration
NOTICES
Disaster loan areas:
American Samoa, 35937
Florida, 35937
Mississippi, 35937
Missouri, 35937
Oklahoma, 35937–35938

Social Security Administration
NOTICES
Organization, functions, and authority delegations:
Office of Earnings, Enumeration and Administrative Systems, 35938–35939

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Alabama Gulf Coast Railway LLC, 35945

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 35949–36406

Part III
Labor Department, Mine Safety and Health Administration, 36407–36423

Part IV
Housing and Urban Development Department, 36425–36444

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
1220 35825

14 CFR
71 35947
Proposed Rules:
39 35826

15 CFR
734 35783
740 35783
742 35783
748 35783
770 35783
774 35783

17 CFR
201 35787

26 CFR
Proposed Rules:
49 35828

30 CFR
6 36408
7 36408
18 36408
19 36408
20 36408
22 36408
23 36408
27 36408
33 36408
35 36408
36 36408

36 CFR
Proposed Rules:
1280 35829

40 CFR
52 35790
60 35792
61 35792
62 35792
63 35792
86 35792
Proposed Rules:
86 35830

46 CFR
10 35801
15 35801

47 CFR
76 35818
Proposed Rules:
76 35833

50 CFR
17 35950
635 35822

Rules and Regulations

Federal Register
Vol. 68, No. 116
Tuesday, June 17, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, 742, 748, 770, and 774

[Docket No. 030529136–3136–01]

RIN 0694–AC78

Export Administration Regulations: Encryption Clarifications and Revisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to clarify when encryption commodities and software may be given *de minimis* treatment, when short-range wireless devices incorporating encryption may be given mass market or retail treatment, and to provide guidance on when exporters are required to submit encryption review requests. It also expands the authorizations according to which travelers departing the United States may take encryption for their personal use, and clarifies that specially designed medical equipment and software are not controlled as encryption or "information security" items under the EAR. Finally this rule implements changes to the Wassenaar Arrangement List of dual-use items (agreed upon in the September 2002 meeting and finalized in December 2002) that eliminate from Export Control Classification Number (ECCN) 5A002 certain types of "Personalized smart cards" and equipment specially designed and limited to controlling access to copyright protected data.

EFFECTIVE DATE: June 17, 2003.

FOR FURTHER INFORMATION CONTACT: Norman LaCroix, Acting Director, Information Technology Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–4439.

SUPPLEMENTARY INFORMATION

Background

This rule amends § 734.4(b) to clarify the *de minimis* eligibility of encryption items controlled for National Security ("NS") or Anti-Terrorism ("AT") reasons under the Export Administration Regulations (EAR), subject to the applicable notification or review requirements described in § 740.13(e) and § 742.15(b). As with other encryption items no longer subject to "EI" controls (such as items classified under Export Control Classification Numbers (ECCNs) 5A992, 5D992 or 5E992), this rule clarifies that ECCN 5D002 encryption source code that would be considered publicly available under § 734.3(b)(3) of the EAR (and the corresponding object code) is eligible for *de minimis* treatment once exporters have complied with the applicable notification requirement that releases such ECCN 5D002 software from "EI" controls.

This rule also updates License Exception BAG and the Related Control notes to ECCN 5A002 relative to the Wassenaar Arrangement List of dual-use items, and in several sections of the EAR clarifies existing instructions related to encryption commodities and software pre-loaded onto laptops, handheld devices, computers or other equipment. This rule also adds a "checklist" on encryption and other "information security" functions to Supplement 5 to part 742 of the EAR, to help exporters more fully consider and identify controlled encryption and "information security" components within their products, when making classification decisions and assessing whether an encryption review by BIS is required.

Consistent with the standing export control agreement among Wassenaar Arrangement member nations, this rule also adds a *nota bene* ("NB") immediately following Note 1 in Category 5 part II that clarifies that commodities and software specially designed for medical end-use that incorporate encryption items listed in Category 5 part II are not controlled by Category 5, part II of the Commerce Control List. This rule thus clarifies that a commodity or software product that is specially designed for medical end-use is classified as EAR99, even if the medical product incorporates another product, part or component that would otherwise be classified as 5A002, 5D002, 5A992 or 5D992.

This rule expands the scope of License Exception BAG by allowing U.S. citizens or permanent resident aliens of the United States to export encryption commodities and software for their personal use to any destination except Country Group E:1. Persons other than U.S. citizens or permanent resident aliens of the United States (except nationals of countries listed in Country Group E:1 of Supplement No. 1 to part 740 who are not U.S. citizens or permanent resident aliens of the United States) may also take such commodities and software as accompanying baggage for their personal use to any destination except Country Group E:1. This rule updates the provisions in 740.14(d) for "unaccompanied baggage" by permitting shipments of personal use encryption commodities and software subject to "EI" controls to the same destinations that are permitted for CB, MT, NS and NP controlled items.

In the Related Control notes to ECCN 5A002, the previous restriction to "one-time" copy control of copyright protected audio/video data has been removed. Likewise, as is now the case for such playback audio/video data, software that is subject to the EAR but not specified on the Commerce Control List (*i.e.*, items that are classified as EAR99) remains classified EAR99 when copy protected. Lastly, Related Control note (a) is amended and divided into two sub-paragraphs.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the notice of August 14, 2002 (67 FR 53721, August 16, 2002), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply, with a collection of information subject to the requirements of the

Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation and on proposals to further update the encryption provisions of the EAR are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 740 and 748

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 742, 770, and 774

Exports, Foreign trade.

■ Accordingly, parts 734, 740, 742, 748, 770, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 734—[AMENDED]

■ 1. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 2. Section 734.4 is amended by revising paragraph (b) to read as follows:

§ 734.4 De minimis U.S. content.

(a) * * *

(b) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin items controlled for "EI" reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No. 1 to part 774 the EAR). However, exporters may, as part of an encryption review request, ask that software controlled for EI reasons under ECCN 5D002 and eligible for export under the "retail" or "source code" provisions of license exception ENC, and parts and components controlled under ECCN 5A002, be made eligible for *de minimis* treatment. The review of *de minimis* eligibility will take U.S. national security interests into account. Other encryption items controlled for NS or AT reasons under ECCNs 5D002, 5A992, 5D992, and 5E992 are not eligible for *de minimis* treatment, unless exporters have complied with the applicable notification or review requirements described in § 740.13(e), § 742.15(b)(1), and § 742.15(b)(2) of the EAR. Encryption items controlled by ECCN 5A992, 5D992, or 5E992 and described in § 742.15(b)(3) of the EAR are not subject to these notification or review requirements.

* * * * *

PART 740—[AMENDED]

■ 3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 4. Section 740.9 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(2) * * *

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use by the exporter or employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible tools of trade may include, but are not limited to, such equipment and software as is necessary to commission or service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The tools of trade must remain under the effective control of the exporter or the exporter's employee (*see* part 772 of the EAR for a definition of "effective control"). All tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2 (*see* Supplement No.1 to part 740) or Sudan. For exports under this License Exception of laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, refer to item interpretation 13 in § 770.2 of the EAR.

* * * * *

5. Section 740.14 is amended by revising "items" in the last sentence of paragraph (b)(4) to read "commodities and software" and by revising paragraphs (d) and (f) to read as follows:

§ 740.14 Baggage (BAG).

* * * * *

(d) *Special provision: unaccompanied baggage.* Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked "BAGGAGE." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), encryption items (EI) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS, EI or NP may not be exported under this License Exception as unaccompanied baggage to Country Groups D:1, D:2, D:3, D:4, or E:1. (*See* Supplement No. 1 of this part).

* * * * *

(f) *Special provisions: encryption commodities and software subject to EI controls on the Commerce Control List.* (1) A U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) may use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(2) A person other than a U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) (except a national of a country listed in Country Group E:1 of Supplement No. 1 of this part who is not a U.S. citizen or permanent resident alien of the United States) may also use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

■ 6. Section 740.17 is amended by revising paragraph (b)(3)(iii)(H) to read as follows:

§ 740.17 Encryption Commodities and Software (ENC).

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(H) Short-range wireless components and software that do not qualify as mass market. Commodities and software that would not otherwise be controlled under Category 5 (telecommunications and "information security") of the Commerce Control List, but which are controlled under ECCN 5A002 or 5D002 only because they incorporate components or software that provide short-range wireless encryption functions (*e.g.*, with an operating range typically not exceeding 100 meters), may be exported or reexported under the retail provisions of License Exception ENC, without review or reporting.

* * * * *

PART 742—[AMENDED]

■ 7. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 8. Section 742.15 is amended by revising the first two sentences of paragraph (b) (1), and revising paragraph (b)(3)(ii) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) * * *

(1) *Notification requirement for specified encryption items.* You may export or reexport encryption items controlled under ECCN 5A992, 5D992 or 5E992 and identified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section to most destinations without a license (NLR: No License Required), provided that you have submitted to BIS, by the time of export, the information described in paragraphs (a) through (e) of Supplement No. 6 of this part. For notifications submitted under paragraph (b)(1)(i) of this section, you must also provide specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). * * *

* * * * *

(3) * * *

(ii) *Mass market short-range wireless commodities or software.* Mass market commodities or software that would not otherwise be controlled under Category 5 (telecommunications and "information security") of the Commerce Control List, but which are controlled under ECCN 5A992 or 5D992 only because they incorporate components or software that provide short-range wireless encryption functions (*e.g.*, wireless products with an operating range typically not exceeding 100 meters).

* * * * *

■ 9. Part 742 is amended by adding a new Supplement No. 5 to read as follows:

SUPPLEMENT NO. 5 TO PART 742—CHECKLIST ON ENCRYPTION AND OTHER "INFORMATION SECURITY" FUNCTIONS

1. Does your product perform "cryptography", or otherwise contain any parts or components that are capable of performing any of the following "information security" functions? (Mark with an "X" all that apply)

a. ___ encryption
b. ___ decryption only (no encryption)
c. ___ key management/public key infrastructure (PKI)
d. ___ authentication (*e.g.*, password protection, digital signatures)
e. ___ copy protection
f. ___ anti-virus protection
g. ___ other (please explain) : _____
h. ___ NONE/NOT APPLICABLE

2. For items with encryption, decryption and/or key management functions (1.a, 1.b, 1.c above):

a. What symmetric algorithms and key lengths (*e.g.*, 56-bit DES, 112/168-bit Triple-DES, 128/256-bit AES/Rijndael) are implemented or supported?

b. What asymmetric algorithms and key lengths (*e.g.*, 512-bit RSA/Diffie-Hellman, 1024/2048-bit RSA/Diffie-Hellman) are implemented or supported?

c. What encryption protocols (*e.g.*, SSL, SSH, IPSEC or PKCS standards) are implemented or supported?

d. What type of data is encrypted?

3. For products that contain an "encryption component", can this encryption component be easily used by another product, or else accessed/re-transferred by the end-user for cryptographic use?

PART 748—[AMENDED]

■ 10. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 11. Section 748.3 is amended by adding a sentence to the end of paragraph (a), and revising (d) to read as follows:

§ 748.3 Classification requests, advisory opinions, and encryption review requests.

(a) *Introduction.* * * * A review of the questions provided in Supplement No. 5 to part 742 of the EAR may assist in determining whether you must submit an encryption review request (see paragraph (d) of this section) for your particular item.

* * * * *

(d) *Review requests for encryption items.* A Department of Commerce review of encryption items transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date may be required to determine eligibility under License Exception ENC or for release from "EI" controls. Refer to Supplement No. 5 to part 742 of the EAR for questions that provide initial guidance in determining whether you must submit an encryption review request for your item. Refer to Supplement No. 6 to part 742 of the EAR for a complete list of technical information that is required for encryption review requests. Refer

also to § 742.15(b) of the EAR for instructions regarding mass market encryption commodities and software. Refer to § 740.17 of the EAR for the provisions of License Exception ENC.

■ 12. Part 748, Supplement No. 1 is amended by revising the paragraph labeled "Block 5" to read as follows:

SUPPLEMENT NO. 1 TO PART 748–BIS–748P, BIS–748P–A; ITEM APPENDIX, AND BIS–748P–B; END USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

* * * * *

Block 5: Type of Application. *Export.* If the items are located within the United States, and you wish to export those items, mark the Box labeled "Export" with an (X). *Reexport.* If the items are located outside the United States, mark the Box labeled "Reexport" with an (X). *Classification.* If you are requesting BIS to classify your item against the Commerce Control List (CCL), mark the Box labeled "Classification Request" with an (X). *Encryption Review.* If you are requesting encryption review under License Exception ENC (§ 740.17 of the EAR) or "mass market" encryption provisions (§ 742.15(b)(2) of the EAR), mark the Box labeled "Classification Request" with an (X). *Special Comprehensive License.* If you are submitting a Special Comprehensive License application in accordance with the procedures described in part 752 of the EAR, mark the Box labeled "Special Comprehensive License" with an (X).

* * * * *

■ 13. Part 748, Supplement No. 2 is amended by adding a new paragraph (r) immediately following paragraph (q) and reading as follows:

SUPPLEMENT NO. 2 TO PART 748—UNIQUE LICENSE APPLICATION REQUIREMENTS

* * * * *

(r) *Encryption review requests.* Enter, in Block 9 (Special Purpose) of the BIS–748P, "License Exception ENC" if you are submitting an encryption review request for License Exception ENC (§ 740.17 of the EAR) or "mass market encryption" if you are submitting an encryption review request under the mass market encryption provisions (§ 742.15(b)(2) of the EAR). If you seek an encryption review for another reason, enter "encryption—other".

PART 770—[AMENDED]

■ 14. The authority citation for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 15. Section 770.2 is amended by revising paragraph (m) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(m) *Interpretation 13: Encryption commodities and software controlled for EI reasons.* Encryption commodities and software controlled for EI reasons under ECCNs 5A002 and 5D002 may be pre-loaded on a laptop, handheld device or other computer or equipment and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. This provision replaces the personal use exemption of the International Traffic and Arms Regulations (ITAR) that existed for such software prior to December 30, 1996. Neither License Exception TMP nor License Exception BAG contains a reporting requirement. Like other "information security" "software", components, "electronic assemblies" or modules, the control status of encryption commodities and software is determined in Category 5, part 2 even if they are bundled, commingled or incorporated in a computer or other equipment. However, commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not controlled in Category 5, part 2. *See* Note 1 to Category 5, part 2 ("Information Security") of Supplement No. 1 to Part 774 (the Commerce Control List) of the EAR.

* * * * *

PART 774—[AMENDED]

Supplement No. 1 to Part 774 (The Commerce Control List)—[Amended]

■ 16. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 17. Supplement No. 1 to Part 774 (Commerce Control List), Category 5—Telecommunications and "Information Security", following the heading II—"INFORMATION SECURITY" is amended by adding a new Nota Bene ("N.B.") immediately following Note 1, and amending Export Control Classification Number (ECCN) 5A002 by revising the *Related Controls* paragraph of the List of Items Controlled section as set forth below:

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

* * * * *

Category 5—Telecommunications and "Information Security"

* * * * *

Part II. "Information Security"

Note 1: * * *

N.B. to Note 1: Commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not classified in any ECCN in Category 5, part 2.

* * * * *

A. SYSTEMS, EQUIPMENT AND COMPONENTS

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows (*see* List of Items Controlled), and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit * * *

Related Controls: See also 5A992. This entry does not control: (a) "Personalized smart cards": (1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note; or (2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within. Note that if a "personalized smart card" has multiple functions, the control status of each function is assessed individually; (b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers; (c) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption; (d) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following: (1) Execution of copy-protected "software"; (2) Access to any of the following: (a) Copy-protected contents stored on read-only media; *or* (b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or* (3) Copying control of copyright protected audio/video data; (e) Cryptographic equipment specially designed and limited for banking use or money transactions; (f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications. These items are controlled under ECCN 5A992.

Related Definitions: * * *
Items: * * *

Dated: June 10, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–15189 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–8240; 34–48018; 35–27686; 39–2408; IA–2137; IC–26074; File No. S7–04–03]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its Rules of Practice to formalize new policies designed to improve the timeliness of its administrative proceedings. The changes include specifying in all orders instituting proceedings a maximum time period for completion by an administrative law judge of the initial decision in the proceeding, establishing policies disfavoring requests that would delay proceedings once instituted and creating time limits for the negotiation and submission of offers of settlement to the Commission. The Commission has taken additional steps to reduce delay in its internal deliberations on appeals from hearing officer's initial decisions and from final determinations of self-regulatory organizations and, accordingly amends current guidelines for issuance of Commission opinions.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Scot E. Draeger, Counsel to Commissioner Campos at (202) 942–0500. Margaret H. McFarland, Deputy Secretary, or J. Lynn Taylor, Assistant Secretary, at (202) 942–7070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 161, 230, 360, 450, and 900 of its Rules of Practice [17 CFR 201.161, 201.230, 201.360, 201.450, and 201.900].

I. Discussion

The Commission adopted, after notice and comment (Release No. 33–8190 (February 12, 2003) 68 FR 8137 (February 19, 2003), comprehensive revisions to its Rules of Practice that became effective on July 24, 1995. These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report. The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

Promoting the timely adjudication and disposition of administrative proceedings was one of the principal goals of this project. While many of the rule amendments were designed to improve efficiency and timeliness, the Commission as part of this project did not impose firm deadlines for completion of the proceedings. Instead it included, as Rule 900, a series of non-binding goals for the completion of each step in the administrative process. Rule 900 included a ten-month guideline for completion of the hearing and issuance of the initial decision by the administrative law judge and it contained an eleven-month target for completion of deliberations by the Commission when it reviews appeals of administrative law judges' initial decisions and appeals of determinations of the securities self-regulatory organizations. In the seven years since the adoption of these non-binding targets, the Commission and its administrative law judges have generally failed to meet these goals.

Based upon this experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines. Because there is a wide variation in the subject matter, complexity and urgency of administrative proceedings, the Commission believes that a "one-size-fits-all" approach to timely disposition is not feasible. Instead the Commission is adopting procedures in which it will specify, in the order instituting proceedings, a deadline for completion of the hearing process and the issuance of an initial decision. In every non-settled administrative proceeding, the Commission's Order Instituting Proceedings will specify the maximum time for completion of the hearing and issuance of the initial decision. This deadline will be either 120, 210, or 300 days, in the Commission's discretion, after consideration of the type of proceeding, the complexity of the matter, and its urgency. Certain commenters expressed concern that setting one time period with only an outside deadline for the issuance of an initial decision by the hearing officer would create an irresistible incentive for the hearing officer to set very short timelines for the litigants to prepare for hearing and for post hearing briefing, and to reserve the majority of the overall time period for the hearing officer to draft the initial decision.[1] In response to this concern, the Commission has provided in Rule 360(a)(2), that each of these periods is further broken down into three parts to ensure fairness to both the litigants and the administrative law judges by providing sufficient time: (1) For the litigants and the judge to prepare for hearing, (2) for the litigants to obtain the transcript and prepare briefs, and (3) for the administrative law judge to prepare an initial decision.

As provided in Rule 360(a)(3), if during the proceeding the presiding hearing officer were to decide that the proceeding could not be concluded in the time specified, the hearing officer could request an extension of the stated deadline. To obtain an extension, the hearing officer would first consult with the Chief Administrative Law Judge (ALJ). If the Chief ALJ concurs in the need for an extension, the Chief ALJ would file a motion with the Commission on behalf of the hearing officer explaining why circumstances require an extension and specifying the length of the extension. An extension could be granted by the Commission, in its discretion, on the basis of the motion filed by the Chief ALJ. Parties to the proceeding would be provided copies of the motion and could separately or jointly file in support of or in opposition to the request. Any such motion by the Chief ALJ would have to be filed no later than thirty days prior to the expiration of the time period specified in the order instituting proceedings.

To complement this new procedure, the Commission has amended Rule 161 to make explicit a policy of strongly disfavoring extensions, postponements or adjournments except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. This amendment to Rule 161 effects a

[1] See comments on the Section of Business Law of the American Bar Association at 3.

significant change in administrative cease-and-desist proceedings. Section 21C(b) of the Securities Exchange Act of 1934 (and parallel provisions in the other Federal securities laws) requires that the notice instituting proceedings "shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served." Under current practice, parties routinely request extensions of the 60-day deadline, and the hearing officers routinely grant such requests. To the extent that the Commission has chosen a timeline under which the hearing would occur beyond the statutory 60-day deadline, the amendment exempts these requests from the policy of strongly disfavoring such requests, absent a strong showing of substantial prejudice. This would typically be the case under both the 300-day and 210-day timelines articulated in new Rule 360(a)(2).

We requested comment on the impact of the proposed changes to the scheduling of cease and desist proceeding hearings. The Commission received very few comments on the proposal. However, most of the comments were supportive.[2] Certain commenters did express concern that respondents will have less time to meet the charges against them.[3] In response to this concern, the Commission has amended Rule 230(d) to provide for earlier production of the Commission staff's investigative record.

In addition to the adopted amendments to the Commission's Rules of Practice, the Commission has provided guidance to its staff that they should not seek or support extensions or stays not consistent with the standards set forth above. Similarly, staff have been instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process. These procedures are consistent with those described in Rule 161(c)(2). Under that rule, if the Commission staff and one or more respondents in the proceeding file a joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon: (1) The settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with Rule 240, and (2) within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration. If the parties fail to meet either of these deadlines, or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue.

Because unnecessary delays may result from multiple "agreements in principle" that do not result in an actual signed offer, this procedure will be limited. In the circumstance where (1) a hearing officer has granted a stay because the parties have "agreed in principle to a settlement," (2) the agreement in principle does not result in the submission of a signed settlement offer in conformance with Rule 240 within 15 business days of the stay, and (3) the stay lapses, the ALJ will not be required to grant another stay related to the settlement process until both parties have notified the ALJ in writing that a signed settlement offer has been prepared, received by the enforcement staff, and will be submitted to the Commission.

Finally, the Commission recognizes that it too must shoulder responsibility for delays in its appellate review process. In fact, some comment letters suggested that delay in the Commission's appellate review is a more significant problem than delay in the hearing process. Accordingly, during the past year, the Commission has changed certain internal processes to reduce delay in its deliberations and substantially reduce the time taken to complete its appellate review duties. Accordingly, the Commission has amended Rule 900, reducing the guideline for issuance of Commission opinions from eleven months to seven months from the date of an appeal.

As part of this initiative to expedite appellate review, the Commission has amended Rule 450 to provide that opening briefs must be filed within 30 days of the date of a briefing schedule order rather than the current 40 days.

Any and all deadlines and timelines established by these amendments to the Commission's Rules of Practice confer no substantive rights on respondents.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission previously determined that it would be useful to publish the proposed rule changes for notice and comment before adoption. The Commission has considered all comments received.

III. Statutory Basis and Text of Amendment

These rule amendments are adopted pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Securities Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78o(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12.

■ 2. Section 201.161 is amended by:
■ a. Revising the phrase "paragraph (b)" in paragraph (a) to read "paragraphs (b) and (c)";
■ b. Revising the introductory text of paragraph (b) and paragraph (b)(1);
■ c. Redesignating paragraph (b)(2) as paragraph (c)(1); and
■ d. Adding new paragraph (b)(2) and paragraph (c)(2).

The revisions and additions read as follows:

§ 201.161 Extensions of time, postponements and adjournments.

* * * * *

(b) *Considerations in determining whether to extend time limits or grant postponements, adjournments and extensions.* (1) In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. In determining whether to grant any requests, the Commission or hearing officer shall consider, in addition to any other relevant factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request;

(iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and

(v) Any other such matters as justice may require.

(2) To the extent that the Commission has chosen a timeline under which the hearing would occur beyond the statutory 60-day deadline, this policy of strongly disfavoring requests for postponement will not apply to a request by a respondent to postpone commencement of a cease and desist proceeding hearing beyond the statutory 60-day period.

(c)(1) * * *

(2) *Stay pending Commission consideration of offers of settlement.* (i) If the Commission staff and one or more respondents in the proceeding file a joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon:

(A) The settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with § 201.240; and

(B) Within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration.

(ii) If the parties fail to meet either of these deadlines or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue. In the circumstance where:

(A) A hearing officer has granted a stay because the parties have "agreed in principle to a settlement;"

(B) The agreement in principle does not materialize into a signed settlement offer within 15 business days of the stay; and

(C) The stay lapses, the hearing officer will not be required to grant another stay related to the settlement process until both parties have notified the hearing officer in writing that a signed settlement offer has been prepared, received by the Commission's staff, and will be submitted to the Commission.

(iii) The granting of any stay pursuant to this paragraph (c) shall not affect any deadline set pursuant to § 201.360.

■ 3. Section 201.230 is amended by revising the phrase "14 days after the respondent files an answer" to "7 days after service of the order instituting proceedings" in the first sentence of paragraph (d).

■ 4. Section 201.360 is amended by:
■ a. Redesignating paragraph (a) as paragraph (a)(1); and
■ b. Adding paragraphs (a)(2) and (a)(3).

The additions read as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* In the order instituting proceedings, the Commission will specify a time period in which the hearing officer's initial decision must be filed with the Secretary. In the Commission's discretion, after consideration of the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors, this time period will be either 120, 210 or 300 days from the date of service of the order. Under the 300-day timeline, the hearing officer shall issue an order providing that there shall be approximately 4 months from the order instituting the proceeding to the hearing, approximately 2 months for the parties to obtain the transcript and submit briefs, and approximately 4 months after briefing for the hearing officer to issue an initial decision. Under the 210-day timeline, the hearing officer shall issue an order providing that there shall be approximately 2½ months from the order instituting the proceeding to the hearing, approximately 2 months for the parties to review the transcript and submit briefs, and approximately 2½ months after briefing for the hearing officer to issue an initial decision. Under the 120-day timeline, the hearing officer shall issue an order providing that there shall be approximately 1 month from the order instituting the proceeding to the hearing, approximately 2 months for the parties to review the transcript and submit briefs, and approximately 1 month after briefing for the hearing officer to issue an initial decision. These deadlines confer no substantive rights on respondents.

(3) *Motion for extension.* In the event that the hearing officer presiding over the proceeding determines that it will not be possible to issue the initial decision within the specified period of time, the hearing officer should consult with the Chief Administrative Law Judge. Following such consultation, the Chief Administrative Law Judge may determine, in his or her discretion, to submit a motion to the Commission requesting an extension of the time period for filing the initial decision. This motion must be filed no later than 30 days prior to the expiration of the time specified in the order for issuance of an initial decision. The motion will be served upon all parties in the proceeding, who may file with the Commission statements in support of or in opposition to the motion. If the Commission determines that additional time is necessary or appropriate in the public interest, the Commission shall issue an order extending the time period for filing the initial decision.

* * * * *

■ 5. Section 201.450 is amended by revising the phrase "within 40 days" to read "within 30 days" in the second sentence of paragraph (a).

■ 6. Section 201.900 is amended by:
■ a. Removing paragraph (a)(1)(i);
■ b. Redesignating paragraphs (a)(1)(ii) through (a)(1)(iv) as paragraphs (a)(1)(i) through (a)(1)(iii); and
■ c. Revising newly redesignated paragraph (a)(1)(iii).

The revision reads as follows:

§ 210.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(a) * * *

(1) * * *

(iii) Ordinarily, a decision by the Commission with respect to an appeal from the initial decision of a hearing officer, a review of a determination by

---

[2] See comments of NASD and Mary L. Schapiro at 2 ("NASD staff believes that the proposed deadlines contained in the Release are an appropriate mechanism to focus the parties and ALJs on achieving timely resolution of cases."). See also comments of Barbara Mortensen and John Polanskey, two individual investors who wrote separately to support the proposal. ("Please move toward all rule changes that will improve the timeliness of your administrative proceedings * * *." Polanskey at 1.)

[3] See comments of Corporation, Finance, and Securities Law Section, District of Columbia Bar at 1, 4–8. See also comments of the Section of Business Law of the American Bar Association at 3.

a self-regulatory organization, or a remand of a prior Commission decision by a court of appeals should be issued within seven months from the date the petition for review, application for review, or mandate of the court is filed, unless the Commission determines that the matter presents unusual complicating circumstances, in which case a decision by the Commission on the matter may be issued within 11 months from the date the petition for review, application for review, or mandate of the court is filed. The Commission retains discretion to take additional time to dispose of an appeal from the initial decision of a hearing officer, a review of a determination by a self-regulatory organization, or a remand of a prior Commission decision by a court of appeals when the Commission determines that extraordinary facts and circumstances of the matter so require. The deadlines in § 201.900 confer no substantive rights on the parties.

* * * * *

Dated: June 11, 2003.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–15262 Filed 6–16–03; 8:45 am]

BILLING CODE 8010–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NOS. CO–001–0052, CO–001–0032, CO9–3–5603; FRL–7503–4]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; State Implementation Plan Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: When EPA approved the Denver-Boulder metropolitan carbon monoxide (CO) area redesignation to attainment, maintenance plan and amendments to Colorado's Regulation No. 11, "Motor Vehicle Emissions Inspection Program," on December 14, 2001, we inadvertently removed the appendices to Regulation No. 11 from the State Implementation Plan (SIP). When EPA approved the Colorado Springs carbon monoxide area redesignation to attainment and maintenance plan on April 25, 1999, we inadvertently failed to indicate that a control measure had been removed from the SIP. Finally, when EPA approved revisions to the Colorado Ozone SIP along with amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds," on May 30, 1995, we inadvertently submitted extraneous pages for incorporation by reference into the SIP and referenced incorrect state rules. EPA is correcting these errors with this document.

DATES: This rule is effective on July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used it means the EPA.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

A. Correction to ***Federal Register*** *Document Published on December 14, 2001 (66 FR 64751)*

When we approved the Denver-Boulder metropolitan carbon monoxide (CO) area redesignation to attainment, maintenance plan and amendments to Colorado's Regulation No. 11, "Motor Vehicle Emissions Inspection Program," on December 14, 2001 (66 FR 64751), we inadvertently removed the appendices to Regulation No. 11. Specifically, we approved Regulation No. 11 at 40 CFR 52.320(c)(96)(i)(A) and indicated that Regulation No. 11, part A, part B, part C, part D, part E and part F, effective March 1, 2000, superseded and replaced all earlier versions of the Regulation. However, on March 10, 1997 (62 FR 10690), we approved revisions to Regulation No. 11, including Appendices A and B (*see* 40 CFR 52.320(c)(80)). The December 14, 2001, approval should not have superseded and replaced Appendices A and B of Regulation No. 11 approved on March 10, 1997, because the December 14, 2001, approved version of Regulation No. 11 did not contain revisions to Appendices A and B. Therefore, we are correcting the introductory text of 40 CFR 52.320(c)(96) to indicate that the version of Regulation No. 11 being approved supersedes and replaces all earlier versions of Regulation No. 11 except for Appendices A and B to Regulation No. 11 as approved at 40 CFR 52.320(c)(80).

B. Correction to ***Federal Register*** *Document Published on April 25, 1999 (64 FR 46279)*

On April 25, 1999 (64 FR 46279), we approved the Colorado Springs carbon monoxide area redesignation to attainment and maintenance plan. In the notice approving that plan we chronicled the history of **Federal Register** actions that had been completed for the Colorado Springs carbon monoxide area. Among other things we indicated that we approved the Clean Air Campaign into the SIP on May 30, 1989 (54 FR 22893), because of its underlying benefits for the area (*see* our April 25, 1999, document, 64 FR 46281, right column). However, in our April 25, 1999, document, we failed to mention that the maintenance plan being approved removes the Clean Air Campaign from the SIP. Therefore, we are correcting 40 CFR 52.349(c) to indicate that the Clean Air Campaign, approved at 40 CFR 52.320(c)(43)(i)(A), has been removed from the SIP.

C. Correction to ***Federal Register*** *Document Published on May 30, 1995 (60 FR 28055)*

When we approved revisions to the Colorado Ozone State Implementation Plan (SIP) along with amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds," on May 30, 1995 (60 FR 28055), we inadvertently submitted extraneous pages for incorporation by reference into the SIP. Therefore, we are correcting this error by resubmitting the incorporation by reference material in 40 CFR 52.320(c)(70)(i)(A) to the Air and Radiation Docket and Information Center and the Office of the Federal Register. Additionally, the regulatory text in 40 CFR 52.320(c)(70)(i)(A) incorrectly referenced two state rules. The reference to "7.IX.N." and "7.IX.O." should have been "7.IX.M." and "7.IX.N." We are correcting the references to the state rules. This correction only impacts our May 30, 1995, approval and does not supersede subsequent actions on Regulation No. 7 that have been approved since May 30, 1995.

II. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the December 14, 2001, rule approving the Denver-Boulder metropolitan carbon monoxide (CO) area redesignation to attainment, maintenance plan and amendments to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program," the August 25, 1999, rule approving the Colorado Springs carbon monoxide area redesignation to attainment and maintenance plan, and the May 30, 1995, rule approving the Colorado Ozone State Implementation Plan (SIP) along with amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds."

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 17, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the identification of plan for Colorado is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[CORRECTED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended in paragraph (c)(70)(i)(A) by revising "7.IX.N." to read "7.IX.M" and "7.IX.O." to read "7.IX.N." and by revising the introductory text of (c)(96) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(96) On May 10, 2000, the Governor of Colorado submitted SIP revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program" that supersede and replace all earlier versions of the Regulation (except Appendices A and B of Regulation No. 11 as approved in paragraph (c)(80)) and make several changes to the motor vehicle inspection and maintenance requirements including the implementation of a remote sensing device (RSD) program for the Denver metropolitan area. On May 10, 2000, the Governor also submitted SIP revisions to Colorado's Regulation No. 13 : "Oxygenated Fuels Program" that supersede and replace all earlier versions of the Regulation and modify the oxygenated fuel requirements for the Denver metropolitan area.

* * * * *

■ 3. Section 52.349 is amended by revising paragraph (c) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(c) Revisions to the Colorado State Implementation Plan, Carbon Monoxide Redesignation Request and Maintenance Plan for Colorado Springs, as adopted by the Colorado Air Quality Control Commission on January 15, 1998, State effective March 30, 1998, and submitted by the Governor on August 19, 1998. The Maintenance Plan removes the Clean Air Campaign from the SIP. The Clean Air Campaign was approved into the SIP at 40 CFR 52.320(c)(43)(i)(A).

* * * * *

[FR Doc. 03–13715 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 62, and 63

[FRL–7513–8]

Change of Address for Submission of Certain Reports; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document announces a technical amendment revising the address for submittal of certain air pollution control documents to EPA Region VII and Iowa and Kansas.

DATES: This document is effective June 17, 2003.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; (913) 551–7603; or by E-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA is correcting addresses for Region VII and the states of Iowa and Kansas in 40 CFR parts 60, 61, 62, and 63. Certain provisions of these regulations require the submittal of reports, applications, and other documents to the EPA regional office and to the state air agencies. This technical amendment updates and corrects the mailing addresses for Region VII and the states of Iowa and Kansas.

List of Subjects in 40 CFR Parts 60, 61, 62, and 63

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 8, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Section 60.4 is amended by revising the address for Region VII in paragraph (a) and paragraphs (b)(Q) and (b)(R) to read as follows:

§ 60.4 Address.

(a) * * *

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air, RCRA, and Toxics Division, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101.

* * * * *

(b) * * *

(Q) State of Iowa: Iowa Department of Natural Resources, Environmental Protection Division, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, IA 50322.

(R) State of Kansas: Kansas Department of Health and Environment, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, KS 66612–1366.

* * * * *

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Section 61.04 is amended by revising the address for Region VII in paragraph (a) and paragraphs (b)(Q) and (b)(R) to read as follows:

§ 61.04 Address.

(a) * * *

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air, RCRA, and Toxics Division, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101.

* * * * *

(b) * * *

(Q) State of Iowa: Iowa Department of Natural Resources, Environmental Protection Division, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, IA 50322.

(R) State of Kansas: Kansas Department of Health and Environment, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, KS 66612–1366.

* * * * *

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Section 62.10 is amended by revising the entry for Region VII to read as follows:

§ 62.10 Submission to Administrator.

* * * * *

Region and jurisdiction covered	Address
* * * * *	
VII—Iowa, Kansas, Missouri, Nebraska	Air, RCRA, and Toxics Division, 901 N. 5th Street, Kansas City, KS 66101.
* * * * *	

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Section 63.13 is amended by revising the address for Region VII in paragraph (a) to read as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air, RCRA, and Toxics Division, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101.

* * * * *

[FR Doc. 03–15257 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7492–6]

RIN 2060–AJ77

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-Board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium Duty Passenger Vehicles, Complete Heavy Duty Vehicles and Engines Intended for Use in Heavy Duty Vehicles Weighing 14,000 Pounds GVWR or Less; Extension of Acceptance of California OBD II Requirements

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend and revise certain requirements associated with the Federal on-board diagnostic (OBD) system regulations. EPA previously promulgated an OBD rulemaking on December 22, 1998 (63 FR 70681) which indefinitely extended the provision allowing compliance with California OBD II requirements to satisfy federal OBD requirements. The California Air Resources Board (CARB) has recently revised their OBD II requirements and, accordingly, today's rulemaking promulgates appropriate revisions to Federal OBD regulations including: an update to the acceptable version of the California OBD II regulations that allows compliance with California OBD II regulations to satisfy Federal OBD regulations; inclusion of relevant sections pertaining to California OBD II catalyst monitoring requirements when accepting manufacturers' demonstration of compliance with California OBD II; an update of the incorporation by reference of standardized practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to incorporate recently published versions, while also incorporating by reference a new standardized protocol developed by the International Organization for Standardization (ISO) and establishing a future date by which this protocol will be the only acceptable protocol; and a technical amendment to the optional chassis certification requirements for heavy-duty (HD) vehicles weighing 14,000 pounds GVWR or less. OBD systems in general provide substantial benefits to the environment by diagnosing and alerting operators, vehicle inspection and maintenance (I/M) personnel, and service providers of deterioration or malfunction of emission related control systems.

DATES: This direct final rule becomes effective August 18, 2003 without further notice, unless we receive adverse comments by July 17, 2003 or we receive a request for a public hearing by July 2, 2003. Should EPA receive any adverse comments on this direct final rule, we will publish a subsequent action in the **Federal Register** withdrawing an amendment, paragraph, or section of this final rule. The incorporation by reference of certain publications listed in the rule is approved August 18, 2003.

ADDRESSES: All comments and materials relevant to today's action should be submitted to Public Docket No. A–2002–20 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building,1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2. A request for hearing should be made to the person noted in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arvon L. Mitcham, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734–214–4522, or Internet e-mail at "*mitcham.arvon@epa.gov.*"

SUPPLEMENTARY INFORMATION: EPA is publishing this direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments are filed. This rule will be effective on August 18, 2003 without further notice unless we receive adverse comment by July 17, 2003 or a request for a public hearing by July 2, 2003. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Regulated Entities

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines.

Category	Examples of regulated entities	NAICS Codes[a]	SIC Codes[b]
Industry	New motor vehicle and engine manufacturers	33611, 336112, 336120	3711

[a] North American Industry Classification System (NAICS) Code.
[b] Standard Industrial Classification (SIC) System Code. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in §§ 86.005–17, 86.1806–04, and 86.1806–05 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Electronic Availability
II. Introduction and Background
III. Requirements of the Direct Final Rule
A. Update of Provision for Acceptance of California Air Resources Board (CARB) OBD II as Satisfying Federal OBD Requirements
B. Inclusion of California OBD II Catalyst Monitoring Requirements in Federal OBD Regulations when Accepting California OBD II Compliance
C. Technical Amendment to the Optional Chassis Certification Requirements for Heavy-duty (HD) less than 14,000 pounds GVWR
D. Applicability
E. Update of Materials Incorporated by Reference
IV. Cost Effectiveness
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

J. Congressional Review Act

I. Electronic Availability

Today's action is available electronically on the day of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's direct final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/.* (Either select a desired date or use the Search feature.)

II. Introduction and Background

On February 19, 1993, pursuant to Clean Air Act (CAA) section 202(m), 42 U.S.C. 7521(m), EPA published a final rulemaking (58 FR 9468) requiring manufacturers of light-duty vehicles (LDVs) and light-duty trucks (LDTs) to install on-board diagnostic (OBD) systems on such vehicles beginning with the 1994 model year. The regulations promulgated in that final rulemaking require that manufacturers install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the technician in diagnosis and repair.

Additionally, this original OBD regulation provided an allowance for manufacturers to satisfy federal OBD requirements through the 1998 model year by installing OBD systems satisfying the California OBD II requirements pertaining to those model years. On December 22, 1998 (63 FR 70681), EPA revised the federal OBD regulations such that the allowance of compliance with the California OBD II regulations (excluding anti-tampering provisions) extended indefinitely, rather than applying only through the 1998 model year. In addition, EPA updated the allowed version of the California OBD II regulations to the most recently published version, at that time, CARB Mail-Out #97–24 (December 9, 1997).

California has recently issued revisions to their OBD II requirements as described in CARB Mail-Out MSCD #02–11 (internet posting date October 7, 2002) and Attachment II, Modifications to Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II), Section 1968.2, Title 13, California Code of Regulations. In today's action, EPA is revising the federal OBD regulations to update the allowed version of the California OBD II regulations to the most recently issued version noted above, such that the allowance of compliance with the California OBD II regulations (with the exclusion of certain provisions as noted below) continues to be accepted. EPA is making this revision, and continuing to allow manufacturers to demonstrate compliance with California's OBD regulations, to encourage broader OBD development and calibration efforts. EPA believes that the benefits of a robust OBD program outweigh the benefits of the unique requirements of the federal OBD regulations. EPA also believes, as was noted in an August 30, 1996 final rule (61 FR 45898), that the California OBD II program fully meets the requirements of the Clean Air Act (CAA) and fulfills the intent of the federal OBD program.

Today's action also updates the incorporation by reference of standardized practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to recently published versions. EPA believes that by including these standardized practices in our regulations we ensure continuity and uniformity in the design of OBD II systems, which was mandated in section 202(m)(4) of the CAA. As a result, changes and updates to these standardized practices must be recognized by revising our regulations to incorporate by reference the latest versions of these documents.

Today's action also incorporates a new, optional standardized communication protocol, ISO 15765–4.3:2001, December 14, 2001, "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems", that can be used by manufacturers to design OBD systems. The standardized communication protocols provide a uniform language structure that facilitates compatibility between OBD II equipped vehicles and OBD II-related equipment. Manufacturers are planning to implement this new protocol on vehicles as early as the 2004 MY. In addition, EPA is requiring that commencing in the 2008 model year the only allowable protocol will be this new communication protocol, ISO 15765–4.3. With the 2008 model year, the other, currently-accepted protocols: SAE J1850, ISO 9141–2 and ISO 14230–4; will no longer be accepted and all manufacturers must implement OBD systems using only ISO 15765–4.3.

III. Requirements of the Direct Final Rule

Following are the provisions promulgated by this direct final rulemaking.

A. Update of Provision for Acceptance of California Air Resources Board (CARB) OBD II as Satisfying Federal OBD Requirements

EPA is revising the existing provisions that allow indefinite optional compliance with the California OBD II requirements, excluding the California OBD II anti-tampering provisions, as satisfying federal OBD. Although the existing allowances continue indefinitely, the referenced CARB mail-out (and corresponding regulation) has been revised by California and is thus outdated. Thus, rather than the currently allowed CARB Mail-Out #97–24 (December 9, 1997), the allowed version will be CARB's recently updated version contained in CARB Mail-Out MSCD #02–11 (internet posting date October 7, 2002) and Attachment II, Modifications to Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II), Section 1968.2, Title 13, California Code of Regulations. EPA recognizes that CARB may continue to make minor modifications to 13 CCR section 1968.2 before its full implementation. However, EPA believes it appropriate to revise its regulations at this time to reference the most recent version of CARB's requirements and EPA anticipates it will make the appropriate updated references by technical amendment or other appropriate rulemaking. Before such updated references occur, EPA believes that any changes made by CARB in its regulations would be minor and therefore the manufacturers will be able to utilize EPA's existing deficiency provisions in the rare circumstances where those CARB requirements that EPA references by today's action are more stringent than the OBD requirements met by the manufacturer under revised CARB regulations. Thus by today's rulemaking EPA is amending paragraph (j) as found respectively in 40 CFR 86.005–17 and 86.1806–05, to reflect CARB's most recent version of the OBD II requirements. In addition, because EPA's Tier 2 requirements commence in model year 2004, EPA is adding a new section (86.1806–04) to reflect the OBD requirements applicable to LDVs, LDTs, and MDPVs for model year 2004, including an optional compliance provision to CARB's recent OBD II requirements.

It should be noted, for purposes of EPA's regulations (where the vehicle is certified to federal emission standards), manufacturers choosing the California OBD II demonstration option need not comply with portions of that regulation pertaining to vehicles certified to certain emission standards under California's Low Emission Vehicle Program (LEV I or LEV II), Title 13 CCR section 1961, as those standards are not federal emission standards. By operation of CARB's OBD II regulations, a manufacturer's demonstration of compliance with California OBD II, where the vehicle is certified to federal emission standards, requires a manufacturer to correlate their malfunction thresholds to the applicable federal emission standards, not California standards (see 13 CCR section 1968.2(c)(19) and (20)). Additionally, manufacturers choosing the California OBD II demonstration option need not comply with 13 CCR section 1968.2(e)(4.2.2)(C) which requires evaporative system leak detection monitoring down to a 0.02 inch diameter orifice and represents a level of stringency beyond that required for federal OBD compliance. In lieu of this requirement, EPA will continue its current requirement as found at 40 CFR 86.005–17(b)(4), 40 CFR 86.1806–01(b)(4) and 40 CFR 86.1806–05 (b)(4) that requires evaporative system leak detection monitoring of a 0.040 inch diameter orifice and is clarified by today's rulemaking. As with EPA's current OBD regulations, manufacturers choosing the California OBD II demonstration option need not comply with 13 CCR section 1968.2(d)(1.4) which contains the anti-tampering provisions of the California OBD II regulations. In today's rulemaking EPA also clarifies that demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent such provisions apply to verification of proper alignment between the camshaft and crankshaft, only applies to vehicles equipped with variable valve timing. The requirement in 13 CCR 1968.2(e)(16.2.1)(C) regarding circuit continuity and rationality malfunctions is applicable to all vehicles. Also, as with EPA's current OBD regulations, the deficiency fine provisions of 13 CCR section 1968.2(i) do not apply. Therefore, as a continuation of EPA's current requirements, the deficiency provisions at 40 CFR 86.005–17(i), 86.1806–01(i), and 1806–05(i) remain applicable and are clarified by today's rulemaking.

B. Inclusion of California OBD II Catalyst Monitoring Requirements in Federal OBD Regulations When Accepting California OBD II Compliance

In EPA's rulemaking for heavy-duty engine and vehicle standards (65 FR 59896, October 6, 2000) (2004 HD Rule), EPA established new OBD system requirements for heavy-duty vehicles and engines, including aftertreatment monitoring requirements for all diesel-engine vehicles weighing 14,000 pounds GVWR or less regardless of whether the manufacturers demonstrated compliance with the Federal OBD requirements or with California's OBD requirements. Therefore, when accepting California OBD systems, it became necessary to exclude the particular section in the California OBD II regulations related to catalyst monitoring (Title 13, California Code of Regulations (CCR) 1968.1(b)(1.1.2)) because this regulation did not include requirements for aftertreatment of diesel-engines or complete vehicles. In California's recent OBD II revisions as described in CARB Mail-Out MSCD #02–11 (internet posting date October 7, 2002) and Attachment II, Modifications to Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II), Section 1968.2, Title 13, California Code of Regulations, provisions for aftertreatment monitoring on all diesel-engine vehicles weighing 14,000 pounds GVWR or less are included. As a result, it is no longer necessary to exclude Title 13, CCR 1968.1(b)(1.1.2) related to aftertreatment monitoring requirements when accepting California OBD II compliance. Thus, today's action removes the language requiring compliance with the federal aftertreatment requirements if demonstrating optional compliance with California's OBD requirements.

C. Technical Amendment to the Optional Chassis Certification Requirements for Heavy-duty (HD) Less Than 14,000 Pounds GVWR

In another final rule that revised EPA's heavy duty engine and vehicle standards and highway diesel fuel sulfur requirements beginning in the 2007 model year (66 FR 5002, January 18, 2001) (2007 HD Rule), we provided an option for manufacturers of HD diesel vehicles weighing 14,000 pounds GVWR or less to chassis certify to the HD vehicle standards (40 CFR Subpart S, 86.1863–07 for chassis certification). In § 86.1863–07(b), we state that diesel vehicles certified under this chassis certification option are subject to the OBD requirements of 40 CFR 86.005–17, which is the section in subpart A containing the OBD requirements for engines. However, for chassis certification, we should have referenced 40 CFR 86.1806–05 of subpart S, which contains the chassis OBD requirements. This correction is consistent with the Agency's original intent as expressed in the preamble to the 2007 HD Rule at 66 FR 5002, at 5043. Therefore, today's action revises the language in 40 CFR 86.1863–07 (b) for optional chassis certification of diesel engines such that chassis OBD requirements in 40 CFR 86.1806–05 of subpart S are referenced.

D. Applicability

Today's revisions to: update the acceptable version of the California OBD II regulations; include California OBD II catalyst monitoring requirements when accepting CARB OBD II compliance, update the incorporation by reference of standardized practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO); incorporate by reference a new standardized protocol developed by the International Organization for Standardization (ISO) and establish a future date by which this protocol will be the only acceptable protocol; and amend the optional chassis certification requirements for heavy-duty (HD) vehicle weighing 14,000 pounds GVWR or less, apply to all 2004 and later model year light-duty vehicles, light-duty trucks, medium duty passenger vehicles, heavy-duty vehicles and otto-cycle engines intended for vehicles weighing less than 14,000 pounds GVWR where the manufacturer chooses to comply with Option 1 or 2 according to 40 CFR 86.005–01(c)(1) or (c)(2), and all 2005 and later model year heavy-duty diesel engines intended for vehicles weighing less than 14,000 pounds GVWR subject to the phase-in schedule for heavy-duty vehicles and engine OBD compliance in 40 CFR 86.005–17(k) and 86.1806–05(l).

E. Update of Materials Incorporated by Reference

Today's action includes the adoption of ISO 15765–4.3 (December 14, 2001): "Road Vehicles—Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems," as an acceptable protocol for standardized on-board to off-board communications and is incorporated by reference in today's regulatory language. This standardized procedure contains a more up-to-date communication protocol than that contained in SAE

J1850/ISO 9141–2 and ISO 14230–4 which will remain referenced in the table at 40 CFR 86.1(b)(5). By today's action EPA is clarifying that ISO 14230–4 is acceptable for vehicles being certified today as well as vehicles certified through the 2007 model year. Adoption of ISO 15765–4.3 is also acceptable, in addition to ISO 14230–4, to all 2004 and later model year light-duty vehicles, light-duty trucks, medium duty passenger vehicles, heavy-duty vehicles and otto-cycle engines intended for vehicles weighing less than 14,000 pounds GVWR where the manufacturer chooses to comply with Option 1 or 2 according to 40 CFR 86.005–01(c)(1) or (c)(2), and all 2005 and later model year heavy-duty diesel engines intended for vehicles weighing less than 14,000 pounds GVWR. Beginning in the 2008 and later model year, ISO 15765–4.3 will be the only acceptable protocol used for standardized on-board to off-board communications. Thus a new entry is added to the table at § 86.1(b)(5) for ISO 15765–4.3 and is incorporated by reference into §§ 86.005–17, 86.1806–04, and 86.1806–05 and ISO 14230–4 contains new part 86 regulatory references (§§ 86.1806–01 and 86.1806–04) incorporated by reference.

Today's action also updates the incorporation by reference of several SAE standardized practices. Specifically, procedures J1850, J1962, J1979, and J2012. The existing references to these four SAE procedures within the table at § 86.1(b)(2) remain in effect along with the other SAE procedures already referenced in the table. The four SAE procedures noted here have been updated and thus shall apply beginning in model year 2004. Thus new entries are added to incorporate the updated J1850, J1962, J1979, and J2012 and are incorporated by reference into §§ 86.005–17, 86.1806–04, and 86.1806–05. In addition, today's action also incorporates SAE J1930 and SAEJ1978 into the table found in § 86.1(b)(2). These new SAE procedures are incorporated by reference into §§ 86.005–17, 86.1806–04, and 86.1806–05. Lastly, the references to SAE J1939–11, J1939–13, J1939–21, J1939–71, J1931–73, and J1931–81 are modified to reflect that such procedures are applicable to all 2004 and later model year light-duty vehicles, light-duty trucks and medium-duty passenger vehicles and thus incorporate by reference the new regulatory provision at § 86.1806–04.

IV. Cost Effectiveness

This rulemaking alters an existing provision by allowing optional compliance with the most recently "revised" California OBD II requirements for the purposes of demonstrating compliance with federal OBD requirements. EPA believes that today's regulation will provide cost savings by eliminating the need to incur significant recalibration and/or retesting costs and efforts associated with having two sets of OBD regulations with which to comply. Because this rulemaking alters an existing provision that provides regulatory relief by means of optional compliance methods, and since most of the industry currently complies with the California OBD II requirements under our provisions for optional compliance and because industry may thus minimize resource requirements, EPA believes that continued cost savings will be achieved. No adverse environmental consequences are anticipated as EPA expects manufacturers with vehicles complying with the new California OBD II requirements, and which also seek anything but a California-only federal certificate, will have OBD systems calibrated to federal Tier 2 standards and thus will be as environmentally protective as systems calibrated to federal Tier 1 standards.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action."

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The modifications noted above do not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemakings (58 FR 9468, February 19, 1993; and 59 FR 38372, July 28, 1994).

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. After considering the economic impacts of today's direct final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) Those businesses meeting the definition provided by the Small Business Administration (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rulemaking will provide regulatory relief to both large and small volume automobile and heavy-duty vehicle and engine manufacturers by maintaining consistency with California OBDII requirements. This rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile and heavy-duty truck and engine manufacturers. *See United Distribution Companies v.* FERC, 88 F. 3rd 1005, 1170 (D.C. Cir. 1996). Most manufacturers have thus far chosen to reduce their costs by producing vehicle OBD systems to California specifications, thereby avoiding the necessity of developing significantly different OBD calibrations meeting the existing federal specifications for the non-California markets. Today's continuation of the optional compliance option to California's OBDII requirements continues this cost reduction.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consult with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule updates provisions of an earlier rule that adopted national standards relating to OBD systems and the ability of manufacturers to demonstrate federal compliance based on demonstration of compliance with California OBD II regulations. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle emission control system requirements in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document.

This rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the federal level and imposes compliance obligations on private industry. Accordingly, the requirements of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children and Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not

concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 18, 2003.

Statutory and Legal Authority

Statutory authority for today's final rule comes from the Clean Air Act, 42 U.S.C. 7401 et seq., in particular, section 202(m) of the Act (42 U.S.C. 7521(m)).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Incorporation by reference, Motor vehicle pollution, On-board diagnostics

Dated: April 25, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, part 86 of title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 86.1 is amended as follows:

■ a. In the table to paragraph (b)(2) by adding the following entries to the end of the table.

■ b. In paragraph (b)(5) by revising the table.

The revisions and additions read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(2) * * *

Document No. and name	40 CFR part 86 reference
* * * * *	* * * * *
SAE J1850, Class B Data Communication Network Interface. (Revised, May 2001)	86.005–17; 86.1806–04; 86.1806–05
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms—Equivalent to ISO/TR 15031–2: April 30, 2002. (Revised, April 2002).	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–11, Physical Layer—250K bits/s, Shielded Twisted Pair. (Revised, October 1999)	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–13, Off-Board Diagnostic Connector. (July 1999)	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–21, Data Link Layer. (Revised, April 2001)	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–31, Network Layer. (Revised, December 1997)	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–71, Vehicle Application Layer—J1939–71 (through 1999). (Revised, August 2002)	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–73, Application Layer-Diagnostics. (Revised, June 2001)	86.005–17; 86.1806–04; 86.1806–05
SAE J1939–81, Recommended Practice for Serial Control and Communications Vehicle Network Part 81—Network Management. (July 1997).	86.005–17; 86.1806–04; —86.1806–05
SAE J1962, Diagnostic Connector—Equivalent to ISO/DIS 15031–3:December 14, 2001. (Revised, April 2002).	86.005–17;86.1806–04; 86.1806–05
SAE J1978, OBD II Scan Tool—Equivalent to ISO/DIS 15031–4; December 14, 2001. (Revised, April 2002).	86.005–17;86.1806–04; 86.1806–05
SAE J1979, E/E Diagnostic Test Modes—Equivalent to ISO/DIS 15031–5: April 30, 2002. (Revised, April 2002).	86.099–17;86.005–17; 86.1806–01; 86.1806–04; 86.1806–05
SAE J2012, Diagnostic Trouble Code Definitions—Equivalent to ISO/DIS 15031–6: April 30, 2002. (Revised, April 2002,).	86.005–17; 86.1806–04; 86.1806–05

* * * * *

(5) * * *

Document No. and name	40 CFR part 86 reference
ISO 9141–2, February 1, 1994, Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information.	86.099–17; 86.1806–01; 86.1806–04; 86.005–17; 86.1806–05
ISO 14230–4:2000(E) "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000).	86.099–17; 86.1806–01; 86.1806–04; 86.005–17; 86.1806–05

Document No. and name	40 CFR part 86 reference
ISO 15765–4.3:2001, December 14, 2001, Road Vehicles—Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems.	86.005–17; 86.1806–04; 86.1806–05

■ 3. Section 86.005–17 is amended by revising paragraphs (h) and (j) to read as follows:

§ 86.005–17 On-board diagnostics.

* * * * *

(h) Reference materials. The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference, see § 86.1:

(1) SAE material. Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (Revised, May 2001) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or check sums.

(ii) Basic diagnostic data (as specified in § 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 "E/E Diagnostic Test Modes—Equivalent to ISO/DIS 15031–5: April 30, 2002", (Revised, April 2002).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Diagnostic Trouble Code Definitions—Equivalent to ISO/DIS 15031–6: April 30, 2002", (Revised, April 2002).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector—Equivalent to ISO/DIS 15031–3: December 14, 2001" (Revised, April 2002).

(v) All acronyms, definitions and abbreviations shall be formatted according to SAE J1930 "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms" Equivalent to ISO/TR 15031–2: April 30, 2002", (Revised, April 2002).

(vi) All equipment used to interface, extract and display OBD-related information shall meet SAE J1978 "OBD II Scan Tool" Equivalent to ISO 15031–4: December 14, 2001", (Revised, April 2002).

(vii) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) ISO materials. Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1, 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4:2000(E) "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000) may also be used as an alternative to SAE J1850.

(iii) ISO 15765–4.3:2001 "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems", (December 14, 2001) may also be used as an alternative to SAE J1850.

(3) Beginning with the 2008 model year and beyond, ISO 15765–4.3:2001 "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems", (December 14, 2001) shall be the only acceptable protocol used for standardized on-board to off-board communications. At this time, all other standardized on-board to off-board communications protocols: SAE J1850 "Class B Data Communication Network Interface," (Revised, May 2001) in paragraph (h)(1)(i) of this section, ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1, 1994) in paragraph (h)(2)(i) of this section, and ISO 14230–4 "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000) in paragraph (h)(2)(ii) of this section will no longer be accepted.

* * * * *

(j) California OBDII compliance option. For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified pursuant to CARB Mail-Out MSCD #02–11 (internet posting date October 7, 2002), shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

■ 4. A new § 86.1806–04 is added to subpart S to read as follows:

§ 86.1806–04 On-board diagnostics.

This § 86.1806–04 includes text that specifies requirements that differ from § 86.1806–01. Where a paragraph in § 86.1806–01 is identical and applicable to § 86.1806–04 this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1806–01."

(a)–(g). [Reserved]. For guidance see § 86.1806–01.

(h) Reference materials. The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference, see § 86.1:

(1) SAE material. (i) SAE J1850 "Class B Data Communication Network Interface," (Revised, May 2001) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE

J1979 "E/E Diagnostic Test Modes—Equivalent to ISO/DIS 15031–5:April 30, 2002", (Revised, April 2002).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Diagnostic Trouble Code Definitions—Equivalent to ISO/DIS 15031–6:April 30, 2002", (Revised, April 2002).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector—Equivalent to ISO/DIS 15031–3:December 14, 2001" (Revised, April 2002).

(v) All acronyms, definitions and abbreviations shall be formatted according to SAE J1930 "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms" Equivalent to ISO/TR 15031–2:April 30, 2002", (Revised, April 2002).

(vi) All equipment used to interface, extract and display OBD-related information shall meet SAE J1978 "OBD II Scan Tool" Equivalent to ISO 15031–4:December 14, 2001", (Revised, April 2002).

(vii) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) ISO materials. Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1, 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4:2000(E) "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000) may also be used as an alternative to SAE J1850.

(iii) ISO 15765–4.3:2001 "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems", (December 14, 2001) may also be used as an alternative to SAE J1850.

(i) [Reserved]. For guidance see § 86.1806–01.

(j) *California OBDII compliance option.* For light-duty vehicles and light-duty trucks, demonstration of compliance with California OBD II requirements (Title 13 California Code § 1968.2 (13 CCR 1968.2)), as modified pursuant to CARB Mail-Out MSCD #02–11 (internet posting date October 7, 2002), shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of 13 CCR 1968.2(i) does not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

(k) [Reserved]. For guidance see § 86.1806–01.

■ 5. Section 86.1806–05 is amended by revising paragraphs (h) and (J) to read as follows:

§ 86.1806–05 On-board diagnostics.

* * * * *

(h) Reference materials. The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference, see § 86.1:

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (Revised, May 2001) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 "E/E Diagnostic Test Modes—Equivalent to ISO/DIS 15031–5:April 30, 2002", (Revised, April 2002).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Diagnostic Trouble Code Definitions—Equivalent to ISO/DIS 15031–6: April 30, 2002", (Revised, April 2002).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector—Equivalent to ISO/DIS 15031–3:December 14, 2001" (Revised, April 2002).

(v) All acronyms, definitions and abbreviations shall be formatted according to SAE J1930 "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronym" Equivalent to ISO/TR 15031–2:April 30, 2002", (Revised, April 2002).

(vi) All equipment used to interface, extract and display OBD-related information shall meet SAE J1978 "OBD II Scan Tool" Equivalent to ISO 15031–4:December 14, 2001", (Revised, April 2002).

(vii) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) ISO materials. Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1, 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4:2000(E) "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000) may also be used as an alternative to SAE J1850.

(iii) ISO 15765–4.3:2001 "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems", (December 14, 2001) may also be used as an alternative to SAE J1850.

(3) Beginning with the 2008 model year and beyond, ISO 15765–4.3:2001 "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems", (December 14, 2001) will be the only shall be the only acceptable protocol used for standardized on-board to off-board communications. At this time, all other standardized on-board to off-board communications protocols: SAE J1850 "Class B Data Communication Network Interface," (Revised, May 2001) in paragraph (h)(1)(i), ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1, 1994) in (h)(2)(i), and ISO 14230–4 "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000) in paragraph (h)(2)(ii) of this section will no longer be accepted

* * * * *

(j) *California OBDII compliance option.* For light-duty vehicles, light-duty trucks, and heavy-duty vehicles weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code § 1968.2 (13 CCR 1968.2)), as modified pursuant to CARB Mail-Out MSCD #02–11 (internet posting date October 7, 2002), shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of 13 CCR 1968.2(i) does not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

■ 6. Section 86.1863–07 is amended by revising paragraphs (a) and (b) to read as follows:

§ 86.1863–07 Optional chassis certification for diesel vehicles.

(a) A manufacturer may optionally certify heavy-duty diesel vehicles weighing 14,000 pounds GVWR or less, to the standards specified in § 86.1816–08. Such vehicles must meet all requirements of Subpart S of this part that are applicable to Otto-cycle vehicles, except for evaporative, refueling, and OBD requirements where the diesel specific OBD requirements would apply.

(b) For OBD, diesel vehicles optionally certified under this section are subject to the OBD requirements of § 86.1806–05.

* * * * *

[FR Doc. 03–14569 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10 and 15

[USCG 1999–6224]

RIN 1625–AA15

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends the rules on licensing and manning for officers of towing vessels. It makes final, minor revisions in response to comments to the several interim rules that preceded it. It will help mariners obtain the appropriate licenses and so it will increase the competence of mariners and the safety of navigation.

DATES: This final rule is effective September 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG 1999–6224 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Luke Harden, Office of Operating and Environmental Standards (G-MSO), Coast Guard, telephone 202–267–0229. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 19, 1999, we published a first interim rule with request for comments (64 FR 63213). It established updates to the licensing and manning for officers of towing vessels and the qualifications of those officers. We had chosen an interim rule to provide the towing industry further opportunity for comment; to answer comments received on the Supplemental Notice of Proposed Rulemaking (SNPRM) (62 FR 55548 (October 27, 1997)); to address concerns received at public meetings; and to provide the public an opportunity to respond to changes reflected in the SNPRM. On October 27, 2000, we published a second interim rule (65 FR 64388), which delayed the implementation of the first interim rule until May 21, 2001. Delaying the rule gave us the opportunity and time to clarify this rule through a third interim rule, which we published on April 26, 2001 (66 FR 20931), and to issue guidelines implementing it.

This final rule constitutes an essential part of a comprehensive initiative to improve navigational safety for towing vessels. (Although the Coast Guard shifted from the Department of Transportation to the Department Of Homeland Security on March 1, 2003, by authority of subsection 103(c) of the Homeland-Security Act of 2002 (Pub. L. 107–296), the current Secretary shares the judgment of the former that this rulemaking constitutes such an essential part.) You can glean the full background of the final rule from the preambles to the notice of proposed rulemaking (NPRM) (61 FR 31332 (June 19, 1996)); to the SNPRM; and to the first and third interim rules (64 FR 63213 (November 19, 1999) and 66 FR 20931 (April 26, 2001), respectively). The following are separate sections on Discussion of Comments for those two interim rules.

We now list and discuss comments from the first interim rule, treated together in groups by alphabetical order of topics:

Discussion of Comments on Interim Rule of November 19, 1999, Advancement Gap

Three comments stated that the interim rule would greatly disrupt the towing industry since steersmen's licenses would not be issued for 18 months and masters' licenses for 48 months after the effective date. The Coast Guard acknowledges a reduction in the number of mariners initially licensed as masters; however, we disagree that a gap will last 48 months. Further, in the third interim rule and in this final rule, we have also reduced these impacts by allowing unlicensed mariners with service on towing vessels before May 21, 2001, to seek licenses under the rules in place before that date.

Apprentice Mate (Steersman)

One comment asked whether we consider an apprentice mate (steersman) to be an officer of a towing vessel. As we stated in previous preambles, we do not.

One comment supported the concept of a steersman license, but recommended reducing the service time from 12 months to 6 months. Even

though some apprentice mates (steersmen) may be able to meet these requirements within 6 months in specific locations, this final rule sets the minimum requirements that apply to all apprentice mates (steersmen), in all locations.

One comment asked that the Coast Guard grandfather time spent in training for steersmen before the implementation date. The Coast Guard sees this as a reasonable request, and has already taken the appropriate action to accommodate it.

One comment suggested reducing the training time for intra-coastal canals, noting that towing on the Western Rivers may require 12 months training but that training on the Intra-Coastal Waterway does not require so much training. It is the Coast Guard's opinion that reducing training would be inconsistent with the spirit and intent of this rule: to ensure its appropriateness to all mariners in all locations.

Assessment

One comment asked whether direct supervision by a licensed master or mate (pilot) required that officer to be physically present. Yes, it means physically present and more directly supervising the apprentice mate (steersman).

One comment stated that it would take significant work to establish the guidance, standards, and procedures necessary to effect an orderly transition to the new system. The Coast Guard recognizes this issue and agrees. We published the second interim rule delaying implementation just so we could develop such guidance, which is available in the form of Navigation and Vessel Inspection Circular (NVIC) 4–01.

Assistance Towing

Two comments recommended limiting the length of disabled vessels to not more than 100 feet for assistance towing. It is beyond the scope of this final rule to redefine "assistance towing".

One comment stated that the definition of a "disabled vessel," which excludes a barge or any other vessel not regularly operated under its own power, would cause a hardship on the assistance-towing industry and would eliminate the exemptions on marine-assistance vessels. The comment also recommended a limit on the size of small work-barges used in assistance towing. The Coast Guard disagrees; 46 U.S.C. 8904(b) lays down a specific requirement for us to license those persons involved in towing disabled vessels for consideration. Rules already cover the towing of vessels that are not disabled, and barges are not disabled vessels unless they cannot be used for their intended purpose.

One comment suggested that the rule let the Captain of the Port (COTP) grant exemptions to the towing rules applied to assistance-towing vessels. The COTPs already have this authority in emergencies. It would be inconsistent with extant Federal rules, which for good reason prohibit the practice of the towing of a vessel that is not disabled by an individual licensed for assistance towing.

One comment stated that assistance-towing time should count toward a license as master of towing vessels. The crediting of assistance towing or other service, except as noted in 46 CFR 10.466, toward a license as master or mate (pilot) of towing vessels for commercial towing, has never been contemplated in this rulemaking or discussed in previous forms of this rule.

One comment stated that assistance towing comprises assisting not only pleasure vessels but also commercial vessels and non-self-propelled barges. The Coast Guard agrees that assistance towing is limited to assisting disabled vessels. A disabled vessel can be a commercial vessel; however, the test in this case is whether such a vessel is disabled and is in need of assistance.

One comment stated that the rules on licensure in towing are inappropriate for the work done by the assistance-towing industry. This rule does not revise the rules that apply to assistance towing, it merely clarifies the definition of "disabled vessel".

Companies' Responsibility

One comment stated that companies should have to reply to requests for service letters. 46 CFR 10.211 requires the documenting of sea service. This final rule provides another method for mariners' own documenting through a Towing Officers' Assessment Record (TOAR).

One comment read 46 CFR 10.464(f) and 10.465(f) to require that all companies ensure 30 days of observation and training for new hires before releasing them to work under the authority of their licenses as members of the wheelhouse complement. The Coast Guard agrees.

Two comments believed it is the responsibility of companies, only, to make sure that mariners are competent. The Coast Guard disagrees; the responsibility is also incumbent upon the Coast Guard as well as, in the first instance, upon the mariner himself or herself.

One comment asked whether companies should ensure that their vessels are under the direction and control of persons with appropriate experience on the water. The answer to this question is yes, as required under 46 CFR 15.401.

Consistency

One comment asked how the Coast Guard intends to ensure that the training and evaluation of mariners are consistent. The Coast Guard establishes the minimum acceptable standards for assessment, training, and courses. This arrangement allows industry the freedom to develop programs within a wide spectrum, while maintaining at least these standards.

Cost

One comment suggested that the Coast Guard actively and personally solicit the views of smaller towing companies rather than those of the larger companies. That was the purpose of two of the interim rules—to receive comments from all interested parties.

One comment stated that the nominal cost neglects both the loss of licensed mariners who are unwilling to submit to the stringent regimen of this final rule through early retirement and the training of replacements. The Coast Guard disagrees with the comment since current towing-vessel operators are grandfathered and need only meet minimal added requirements.

Definitions

Four comments stated that the definition of "disabled vessel" is unduly restrictive to the assistance-towing industry, because it excludes the towing of a barge or any other vessel not regularly operated under its own power of any length, and voids our rules' own exemption for marine-assistance vessels. We disagree, as we stated in our response to the third comment under "Assistance Towing". Furthermore, our rules do not provide an exemption for assistance-towing vessels; rather, they cover assistance-towing endorsements under a specific rule, 46 CFR 10.482. And, finally, the definition was developed in concert with Congressional staff members, assistance-towing companies, and the U.S. Coast Guard.

One comment asked whether the term "Western Rivers" should apply to pilots of towing vessels. The term applies as intended. Inland routes include Great Lakes and Western Rivers.

Demonstration of Proficiency

Three comments disagreed with a requirement of check rides for persons already doing the job (licensed commercial towing). The Coast Guard agrees in part. Only those mariners who fail to provide documentation of proficiency, and those who have had their licenses suspended, will need to demonstrate proficiency.

Two comments questioned the duration of the demonstration of proficiency: Whether the demonstration would be a short-term evaluation or conducted over the full period of training. It is the Coast Guard's opinion that the demonstration should extend over the full period of training; except that, in the case of a mariner returning from the suspension of his or her license, that demonstration may be short-term.

One comment sought clarification on what documentation of proficiency the Regional Examination Centers (RECs) would require before license renewal, and on the meaning of "current license". The Coast Guard clarified this issue in NVIC 4–01. The "current license" mentioned in the preamble refers to the license the mariner held before May 21, 2001.

One comment stated that the check-ride requirement for license renewal might unfairly affect a small business without a Designated Examiner (DE) and might result in increased expense. The Coast Guard disagrees. Check rides are necessary only when a mariner lacks other documentation of training and service at renewal. Although this requirement may affect businesses, the process of developing DEs should allow every company, regardless of size, to have a DE.

One comment asked whether the decision requiring a check ride at the time of renewal would belong to a license evaluator instead of a higher authority. The evaluator should be the person best able to identify whether there is sufficient information within an application package. Although a check ride is available for the REC to use, this process is only for those cases when the mariner is unable to furnish documentary evidence that he or she obtained training and service during the preceding licensed period.

One comment identified a need for objectives and assessment criteria for the DE to use when conducting check rides. The Coast Guard agrees. The objectives should be based upon the TOAR published in NVIC 4–01. The assessment criteria are before the Towing Safety Advisory Committee (TSAC) and will become available in the **Federal Register**.

Designated Examiner (DE)

Three comments stated that the term "designated examiner" (DE) needs further clarification in regard to qualifications and expectations. The term and what it entails are fully explained in NVICs 4–01 and 6–97.

One comment stated that any process for developing DEs must be smooth and that the requirements must use common sense. The commenter also suggested that the process contemplated by this rulemaking draws too much from the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), as amended, and is inconsistent with towing on inland rivers and the Western Rivers. There is no compelling rationale to remove the requirement; however, the Coast Guard eased the process for obtaining the letter of designation as a DE, which it describes in NVIC 4–01.

One comment stated that qualifications for DEs are a point of controversy in the offshore industry, and that the towing industry should expect similar controversy. With or without controversy, the Coast Guard must ensure that DEs are adequately trained and qualified.

One comment asked that the final rule clearly reflect that the same person may both instruct and evaluate a candidate. There is nothing in this rule or previous rules prohibiting a person from both instructing and evaluating a candidate.

One comment asked whether any liability attaches to the DE for his or her recommendations. If evidence exists demonstrating that the DE is not ensuring the proficiency of the candidates, the Coast Guard may withdraw his or her designation. The DE is able to determine only that a candidate is competent at the time of assessment.

One comment stated that mariners, who are already overworked and in short supply, would face an added workload by participating in the program for Qualified Instructors (QIs) and DEs. The commenter also stated that mariners who are retired, disabled, or otherwise inactive, even if not holding licenses, should be eligible to be QIs and DEs. The Coast Guard disagrees. The process establishes that a mariner must hold a valid license to become a DE. If a mariner holding a license chooses to become a DE, he or she may do so; however, he or she must still comply with the watch-hour requirements of 46 CFR 15.705.

One comment stated that the rule overlooks the fact that a DE should expect payment for his services. The commenter also stated that an employer could use coercion to gain a favorable evaluation, "while the threat of a Coast Guard subpoena could cause stress, anxiety, and embarrassment for the Designated Examiner." There are numerous ways a DE could receive payment. Coercion could occur, but we don't believe it is a substantial concern. Although our authority to issue subpoenas might intimidate some, there are too many personalities involved to determine why or when, or to prevent coercion in all cases.

One comment asked why the Coast Guard does not see a DE's administering check rides for his employer as a conflict of interest. Our opinion is that no conflict of interest arises since it is in both the employer's and the DE's best interest to ensure that a mariner receiving certification can safely complete his or her duties.

One comment stated that maritime educators and marine-membership organizations need leeway to effectively deal with rehabilitating mariners and returning them to service. The comment asked whether the Coast Guard had fully considered that a mariner returning from a suspension of a license might be unemployed and not have access to a vessel for his or her testing, and whether the Coast Guard would let a mariner get a job, return to work, and then arrange for his or her check ride. Our rules state that no mariner may return to work in a position requiring a license if his or her license is suspended; yet nothing in those rules or this rule limits his or her ability to work in an unlicensed position.

Equivalents

One comment asked whether tonnage restrictions contained in 46 CFR 15.910 would persist. No. The tonnage restrictions that existed in § 15.910 until May 21, 2001, no longer exist, since this final rule effectively removes the equivalent provision on licensure.

General

Two comments stated that the most critical challenge is implementing the final rule. They suggested that the best way to meet the challenge is through an ongoing consultative process involving the industry, the Coast Guard, and licensed operators. The Coast Guard agrees with this comment and has been working with the TSAC on implementing the rule.

One comment stated that the rule should differentiate between licenses for towing on oceans and near-coastal waters and those for towing on inland waters and Western Rivers, since these two methods of towing are extremely different. That was the rule's main intent—to separate the types of towing. The TOARs fit the methods of towing in the areas of operation and the routes sought.

One comment asked whether mariners currently operating towing vessels would have to obtain towing-vessel endorsements after the final rule became effective but before their licenses expired. No, they would not need the endorsement until their first renewal after the rule became effective.

One comment suggested that the rule allow a mariner to obtain a towing-vessel endorsement on a license as master of steam and motor vessels of not more than 200 gross register tons (GRT). This would allow a mariner to operate towing vessels after only 12 months of sea service. The Coast Guard disagrees. This rule seeks to improve safety through increased service and training. Acceptance of this suggestion would result in decreasing the level of service and training throughout the fleet.

One comment questioned the phrase "oceans (domestic trade)." This phrase persists from the current rules. This is due, in part, to restricting operators of uninspected towing vessels (OUTVs) to *domestic trade only*.

One comment stated that the changes are superficial because they merely codify standard practice. The Coast Guard disagrees. Many companies still lack established training programs.

One comment stated that pilots should not have to be trained just to be in the good graces of a company. The purpose of this rule is to increase safety on towing vessels, not to influence personnel management within a company.

One comment asked whether 46 CFR 15.910 contradicts 46 CFR 15.610. No, it does not. Section 15.910 removes the provision on equivalents in the rules effective before May 21, 2001, and restates the manning requirements in § 15.610.

One comment raised three questions about 100-ton licenses: whether mariners holding such licenses and operating towing vessels could continue that service, whether other mariners could undertake that service, and whether the license would show tonnage under the International Tonnage Convention (ITC). Mariners legally operating towing vessels could continue operating them under the current restrictions of their licenses. Mariners without experience operating towing vessels before May 21, 2001, even if they hold licenses authorizing service on vessels of less than 200 GRT, could not get towing endorsements, unless they went through the training outlined in the rules. If mariners want their licenses to show tonnage under the ITC, we will place GT (gross tons) instead of GRT on their licenses.

One comment recommended that we use Table 10.910–2, instead of the list in § 10.465(g), to ensure the adequacy of approved training courses. We agree and will institute that change.

One comment asked whether waters specified by 33 CFR 89.25 are inland waters rather than Western Rivers. Yes, 33 CFR 89.25 prescribes inland rules 9(a)(ii), 14(d), and 15(b) for specific, named waterways. By contrast, 46 CFR 10.103 identifies inland waters in general (with reference to the Boundary Lines described elsewhere).

One comment asked about the scope of limited exams in 46 CFR 10.418(b) and 10.426(a)(2). These exams remain the same as those in place before May 21, 2001.

One comment asked about the scope of the exam for apprentice mate (steersman). It is the same as the scope of the exam required for OUTVs before May 21, 2001. (*See* Table 46 CFR 10.910, columns 11 and 12.)

One comment asked which exam a mariner takes when moving from mate of inspected steam vessels (not more than 200 GRT) to mate of towing vessels. Moving between these vessel types as described is impermissible under this rule.

One comment opposed the two-watch system for offshore towing vessels. The Coast Guard acknowledges the comment, but notes that this standard is statutory and is not the subject of this or any other regulatory process.

One comment wanted the Department of Transportation to clamp down on employers who knowingly hire, and entrust their vessels to, unlicensed personnel. (We take this comment to apply with equal force to the Department of Homeland Security, or DHS.) The Coast Guard and DHS need the assistance of all hands in the industry, both corporate and private, to identify such wrongdoing for appropriate investigation.

One comment questioned "time-and-a-half" as it affects straight 12-hour shifts. This issue is a matter of policy and sometimes of collective-bargaining agreements but not a subject of this rule.

One comment wanted to see passenger-vessel combinations, of any type, operated by masters of inspected vessels of appropriate route and tonnage, and passenger-carrying tug-barge combinations, operated by masters of towboats or of passenger barges at the owners' option. The Coast Guard agrees, and has provided guidance to the local Officers in Charge, Marine Inspection, by way of Navigation and Vessel Inspection Circular (NVIC) 4–01, when determining the manning of such vessels.

Grandfathering of Licenses

Five comments asked whether the final rule would affect licensed routes. We do not intend to remove any routes currently on any license. Each mariner would keep any routes he or she holds on his or her license.

Two comments asked for a clearer definition of "recent towing service." The Coast Guard will accept (and expect) evidence of service on towing vessels within the last 90 days, before it will confer the initial towing-vessel endorsement.

One comment suggested that the TSAC determine the procedures for grandfathering mariners. The Coast Guard disagrees, as we established the grandfathering of mariners in the third interim rule.

One comment recommended that the final rule allow the grandfathering of persons licensed as masters of vessels of 100 GRT, mates of vessels of 200 GRT, or first-class pilots whose licenses were issued before the effective date. The Coast Guard disagrees, and maintains that a towing endorsement requires towing experience.

One comment suggested grandfathering persons with current licenses endorsed for assistance towing. The Coast Guard disagrees for the reasons set forth in the fourth paragraph under "Assistance Towing".

One comment asked whether a mariner grandfathered as a master of towing vessels could work on an integrated tug and barge (ITB). Yes, that mariner could work on any towing vessel unless his or her license held a limit or a route inconsistent with the operation of the ITB.

Harbor Assist

One comment asked how the license for master (harbor assist) would fit in ports where several different types of towing take place. That license has been merged with the license for master (limited local area) by this rulemaking.

One comment requested that the Coast Guard adjust the service time for master (harbor assist) by reducing the time to 36 months, which would become possible if it reduced the service time for apprentice mate from 30 months to 18 months. Again, the Coast Guard has combined this master's license with the license for master (limited local area) and removed the license as mate (pilot) of towing vessels (limited). The total service time already stands at 36 months.

Inland Waters: Definition

Two comments stated that altering the definition of "inland waters" potentially reaches every license-holder. We have revised the definition to reach only masters and mates (pilots) of towing vessels on the Western Rivers.

One comment stated that inland waters currently comprise the Gulf Intracoastal Waterway and Western Rivers, and that separating those two would create work for the mariner. The Coast Guard agrees; however by request of industry and the public during the comment periods on the NPRM and the SNPRM, the two were separated, and will remain distinct.

One comment stated that the interim rule would affect all mariners with ocean and near-coastal routes when they entered waters designated as Western Rivers. The Coast Guard agrees, but the rule would not affect currently licensed mariners able to document service on the Western Rivers. In this final rule we have taken further action to mitigate the effects.

Integrated Tugs and Barges

Two comments expressed concern that the Coast Guard has neither shown the rationale for changing the manning of ITBs being used as passenger vessels nor shown that the masters of such vessels have different criteria to consider in operating the vessels. The comments asked the Coast Guard to withdraw the portion of the rules that apply to ITBs involving passenger vessels. The Coast Guard acknowledges the comments. This final rule does not change the rules on the manning of inspected passenger vessels; this responsibility still resides with the local OCMI. NVIC 4–01 provides specific information and non-binding guidance to assist the OCMI in determining the manning of towing vessels.

One comment stated that the interim rule imposes added requirements on personnel holding unlimited licenses for masters and mates on Great Lakes with pilotage, and is a needless burden. The Coast Guard deems this burden minor, whether to those with towing experience on the Great Lakes or to those with unlimited licenses.

One comment stated that the rule does not consider the nature of ITBs and their similarity to standard vessels, and that changing the rule would bar, from operating ITBs, those masters currently operating vessels before their conversion to ITBs. The Coast Guard disagrees. Mariners with licenses for vessels greater than 200 GRT may operate such vessels once they have completed 30 days of familiarization and their TOARs. Further, this situation is rare and would be best for the local OCMI to handle case by case.

One comment stated that the preamble said ITBs must be operated by mariners who hold towing-vessel licenses. This rule establishes a wholly independent process for obtaining such licenses and vacates the practice of allowing a superior license to subsume the "lesser included authority". The Coast Guard, through this rule, recognizes the special skills required to operate towing vessels and requires a training program for mariners to achieve those skills.

License Evaluations

One comment stated that every evaluator should go through training at Yorktown, Virginia, and that this training should be available to maritime educators. Like the towing industry, the Coast Guard runs on-the-job training for its own evaluators, similar to those for private-sector evaluators under the TOAR program. The training of marine educators is not part of this rulemaking.

License Renewals

Two comments stated that the renewal process should let the employer submit a letter attesting to the competence of a mariner, instead of practical demonstration or a TOAR. The Coast Guard agrees. The letter would need to meet the requirements of 46 CFR 10.211 and contain specific information about the mariner's competence, completed training, drills conducted, and so forth. The intent is to document competence and training over time, and to provide alternative methods for documenting them.

One comment stated that mariners who document service on their license, without incurring administrative action against the license, should be able to renew the license without completing practical demonstrations before DEs. The Coast Guard agrees. The primary purpose of the TOAR is assessing mariners' service between apprentice mate (steersman) and mate (pilot) of towing vessels, or between other adjacent points in their career, as required by these rules.

Limited Local Area

One comment asked whether a geographically limited license had to be renewed where it was issued. The answer is "yes", since a limited license is issued to a mariner who does not meet all of the requirements for a "full" or non-limited license. A geographically limited license is issued at the discretion of the cognizant OCMI if, in the opinion of that OCMI, the mariner possesses the skills, knowledge, and experience to safely operate within the restrictions of the license. Because this determination requires local knowledge of a particular geographic area, and because conditions in that area may change, we feel the cognizant OCMI should have the opportunity to re-evaluate the candidate when the license is renewed. Geographically limited licenses, whether original or renewal, are best considered and issued by the REC for the area in which the mariner will operate.

One comment stated that 46 CFR 10.464–3 requires enough total service to adversely affect the availability of properly licensed operators of harbor tugs now and for the coming years, as well as impose a significant impact on small entities. The intent of this rule is to increase the training and experience (indicated by service) of mariners operating towing vessels; however, we have reduced the total service required for harbor assist towing vessels and are streamlining the process.

Outer Continental Shelf, Activities

Two comments asked whether the Coast Guard would continue to exempt towing vessels involved in activities on the Outer Continental Shelf from these rules. The Coast Guard notes that 46 U.S.C. 8905(b) remains in effect, and is beyond the scope of this rulemaking.

Pilot vs. Mate

One comment asked why the definition of "pilot of towing vessels" is limited to Inland routes. During the development of this project, the Western Rivers towing industry did not like using the term "mate", a term commonly used to indicate a deckhand rather than an officer in charge of navigating the towing vessel. The definition of the term "pilot of towing vessels" is limited to operating only on inland routes to avoid the confusion with first-class pilot and various state pilot licenses.

One comment asked whether the choice of the title of a mate (pilot) license, as appropriate, would belong to the mariner and also whether any nation-wide guidance would be forthcoming. Yes, the choice would belong to the mariner, although such guidance would state that personnel of RECs should ensure that the mariner understands that changing the title of the license might result in extra fees. The guidance appears in NVIC 4–01.

Public Meetings

Five comments sought public meetings at various locations so affected mariners could provide further comments, including the need for a general meeting on the Upper Mississippi River and another to discuss

recency of towing service. The Coast Guard deemed that mariners have had adequate opportunity for comment during the five public meetings previously held. In addition, the Coast Guard has conducted public outreach on all issues throughout the towing industry since the publication of the first interim rule.

Recency

One comment received showed concern about the loss of licensed routes if a mariner is unable to show recency on a segment of a waterway. There is nothing in this final rule that would remove routes from a license for failure to maintain recency.

One comment asked about the recency requirement for towing service at the time of renewal. This rule has not changed this requirement. A mariner would have to show recency of service on towing vessels and ongoing training at time of renewal.

Regional Examination Centers (RECs)

Three comments stated that this rule, as proposed, would significantly increase the workload at RECs. The Coast Guard acknowledges that it would increase the workload; however, the increased workload is acceptable for the expected gains from this rule.

Responsibility of the Master

Two comments disagreed that the master should be responsible for what occurs when he or she is not on watch. The Coast Guard partly agrees, and points to the SNPRM's preamble, where the issue is discussed. A master is not responsible for the negligence or misconduct of the mate (pilot) of towing vessels on watch.

Route Endorsements

Two comments stated it was unclear whether there would be a Great Lakes inland route and a Western Rivers route. Yes, there will be distinct Great Lakes inland and Western Rivers routes.

One comment sought clarification on the application of route-observation days for the towing endorsements on licenses for vessels over 200 GRT, as those days affect pilotage rules. This rulemaking does not address or revise the pilotage rules. The route-observation days in this rulemaking are specific to observation on a towing vessel while a candidate completes a TOAR.

One comment stated that a towing endorsement on a license over 200 GRT should be based on 30 days of total observation and be inclusive of all subordinate routes without necessitating service on each route. The Coast Guard agrees; however, throughout this rulemaking, the towing industry has emphasized the need to ensure that officers are familiar with the Western Rivers. That route will not be included without 90 days of observation on it.

One comment recommended consolidating two routes—the Western Rivers and the Great Lakes inland—and authorizing those licensed for the latter to operate on the Western Rivers. The Coast Guard acknowledges the comment, but the recommendation is not consistent with either the majority of input received on this issue or with the sounder policy on it.

One comment stated that the requirement of 90 days observation and training for Western Rivers would make it extremely difficult to obtain the proper endorsement for a mariner sailing on periodic ocean voyages but entering Western Rivers. The Coast Guard agrees, and maintains that this endorsement should be based on observation and training on Western Rivers, and not based on convenience. However, a process has been created for such a mariner to obtain an endorsement only for the Lower Mississippi River.

One comment asked whether there would be a fee for removing the restricted endorsement issued under 46 CFR 10.466(b). Yes, there will be a fee imposed under 46 CFR 10.109, since removal constitutes another transaction at a REC.

One comment agrees that geographic endorsements are a good idea, but recommends allowing a company to post a licensed mariner for a reasonable time without the cost of training the mariner. The Coast Guard disagrees. Having a mariner unfamiliar with a waterway operate the vessel, as distinct from having him or her train aboard it under supervision, does not make sense, even if he or she holds a license. A mariner must hold a license endorsed for the appropriate route to operate the vessel. A mariner may also, after completing an exam, hold a restricted endorsement for mate (pilot) of towing vessels and, after completing 90 days of service on the new route, have that route added to his or her license.

Sea-Going Tows

One comment stated that we should distinguish between oceans and near-coastal routes only in the exam, and, in the exam, only on such topics as celestial navigation. The Coast Guard disagrees. The two routes differ in two important respects: the practical assessment of mariners on STCW, and firefighting. This has not changed the exam requirements for the two routes.

Sea Service

Two comments urged that a mariner should be able to make a statement concerning his or her service in regard to his or her experience. For the first renewal after May 21, 2001, there should be some evidence, within the file on the license, describing where a mariner has completed towing service. The Coast Guard would need documentary evidence, provided by the mariner, if nothing existed within the file for certain routes.

One comment asked about the minimum towing service required for renewal within the 12 months of service. The towing service required for renewal remains the same except for added training.

One comment asked how seasonal operators' time would count for vessels visiting multiple limited construction areas over 12 months of service. Service time would count the same as it does under current practices.

One comment argued that, unless an uninspected towing vessel has a separate engine department, all the service should count toward engine or deck, as requested by the mariner. This rule does not modify the treatment of service, whether deck or engineering. Service will continue to count—or not—according to rule and policy.

One comment asked that we identify the civil penalties that apply to violations of these particular rules by either the company or the mariner. The commenter also asked where all current civil-penalty cites pertaining to violations of 46 CFR part 10 are compiled and available for public viewing. A list of these cites is available from: Commandant (G–LMI), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Actual cases may be requested from the Coast Guard under the Freedom of Information Act (FOIA). Specify cases under 46 U.S.C. 8906 and 46 CFR 15.610.

One comment stated that a company's withholding records would now become critically important to the mariner because these records, now, not only would cover service but also might cover training. The Coast Guard agrees. That is why the TOAR provides another method for documenting training and competency, as well as service.

Simulators

One comment requested that simulators be one method of demonstrating proficiency under 46 CFR 10.209(c)(6)(i). The Coast Guard agrees and notes that full mission simulators, approved by the National Maritime Center, would meet the intent of the paragraph, within this final rule.

One comment stated that using a simulator would be an expensive way for an unemployed mariner, after a suspension of license, to demonstrate proficiency. The Coast Guard agrees; however, this rule provides many ways to demonstrate proficiency, of which using a simulator is just one.

One comment asked why tonnage calculated under the ITC does not figure in the rule. There is no clear conversion between ITC and domestic tonnage, for licensing. We hold vessels of 200 GRT equivalent to those of 500 GT (ITC).

STCW Endorsements

One comment asked whether we would charge a user's fee for an STCW endorsement. No, the Coast Guard does not intend to charge user fees. Please see Table 10.109 of this title.

Tables

One comment stated that Figure 10.403 does not include licenses for Offshore Supply Vessels. This rule applies only to OUTVs. It revises Figure 10.403 only as necessary for them.

One comment discovered errors in the footnotes to the tables: "COTP" in place of "OCMI", and "Training" in place of "Towing". The Coast Guard appreciates the comment and has corrected the errors.

One comment asked whether an exam exists for each route referred to in the footnote regarding routes. Yes, the exams for routes are those where differences arise for "Rules of the Road", such as changes to the International Regulations for Preventing Collisions at Sea, or to navigational requirements, such as a requirement of celestial navigation.

Tonnage Restrictions

Two comments argued that we should strike the use of tonnage or any other limiting criteria as they apply to the licenses for officers of towing vessels. The Coast Guard agrees, with the exception of "inspected vessels"—defined by tonnage—whose officers must meet requirements on licenses, experience, and training beyond the normal requirements for towing vessels.

One comment insisted that tonnage limits on towing-vessel licenses are not appropriate and were not recommended by the TSAC. The third interim rule provided tonnage limitations for those mariners operating towing vessels under the equivalence provision existing before May 21, 2001. That interim rule continues to limit those mariners to the tonnage listed on the face of their license, if it was 200 GRT or less. This rule maintains this provision.

Two comments likewise challenged 46 CFR 10.464(d) and 10.465(b) in the first interim rule regarding the placement of tonnage limits on licenses for oceans and near-coastal waters. The Coast Guard agrees, and has revised those paragraphs by removing the reference to such limits.

Towing Officers' Assessment Record (TOAR)

Two comments stated that there is no reason why a Training Record Book (TRB) for the STCW cannot serve in place of the TOAR, as long as the TRB contains all the information required by the TOAR. The Coast Guard agrees. The use of a TRB will be permissible as long as the mariner accounts for any differences between the TOAR and the TRB, and documents the training beyond the TRB.

One comment stated that the TSAC should draft the NVIC and the TOAR for this rule to ensure uniformity. The TSAC was involved in the process and developed the TOAR incorporated in NVIC 4–01. The TSAC may be likewise involved with the next NVIC.

One comment requested that no mariner's photo appear in the TOAR. The Coast Guard disagrees. It is necessary for both the Coast Guard and the DE to be able to identify the mariner holding the TOAR. The photograph provides the most efficient method of this identification.

One comment asked whether the Coast Guard plans to tell the RECs, but not the mariners, what assessment records to maintain for renewal. The TOAR is not necessary for those mariners first renewing their license between May 21, 2001, and May 21, 2006.

One comment asked where a mariner can obtain a TOAR. An example accompanies NVIC 4–01, which is available on the Internet at *www.uscg.mil/hq/g-m/nvic/4–01/n4–01.pdf.*

One comment asked whether, since 95 percent of mariners affected choose to maintain TOARs, it would not be sensible for the Coast Guard to promote uniformity by making the necessary forms available free of charge. The Coast Guard is publishing an example in NVIC 4–01, which mariners may print from the Internet and use.

One comment stated that the interim rule is not clear whether the TOAR is going to be required at the first renewal after implementation. The TOAR will not be required for those mariners currently operating towing vessels.

One comment stated that the interim rule fails to provide sufficient details regarding the assessment records—including specific objectives and criteria on which to base assessments. NVIC 4–01 provides the details not covered in the rule.

Towing Vessel Limited

One comment asked whether the limit of 200 GRT covers all routes. No, the limit of 200 GRT covers routes over limited local areas.

Training Requirements

One comment recommended that the Coast Guard create the position of course evaluator, who could rule that a course meets a defined minimum standard and approve the course; otherwise, the Coast Guard needs to streamline the process. The Coast Guard agrees, and has course evaluators assigned at the National Maritime Center.

One comment sought clarification on the applicability of the requirement for masters and mates in 46 CFR 10.205(g)(2) to have training in firefighting when they serve on towing vessels over 200 GRT. The comment declared that that requirement would exceed the current one for OUTVs. A requirement for training in firefighting existed for OUTVs operating on oceans routes before May 21, 2001. Another, similar requirement persists in 46 CFR 10.205(g)(3) for certain masters and mates (pilots) of towing vessels. As the comment observed, § 10.205(g)(3) addresses this training. That paragraph expressly notes that its requirement applies only to masters and mates (pilots) of towing vessels in ocean service. However, its requirement would apply to officers of towing vessels if they were operating vessels of over 200 GRT in near-coastal service as well, by virtue of the rules implementing the STCW.

One comment stated that the requirements in 46 CFR 10.465(g), effective on May 21, 2001, for an approved training course go beyond those that are the subject of exams in Table 10.910–2. The commenter added that requirements must be consistent. The Coast Guard disagrees. The approved training course replaces completion of the TOAR, not the exam. All apprentice mates (steersmen) will have taken the exam, and may then choose either to take the approved training course or to complete their TOARs.

One comment alleged that the interim rule presents a problem: That few, if any, towboat operators have received formal training in firefighting. The

comment further alleged that there is good reason to require such training for licensed officers of towing vessels. The Coast Guard agrees in part. Officers who would receive ocean endorsements on their licenses must receive such training.

Transition Period

One comment recommended language to grandfather candidates who anticipate completing training within three months of the interim rule's effective date. The Coast Guard accepts this recommendation.

Western Rivers

One comment stated that the 90-day requirement would make it extremely difficult for a mariner, entering the Western Rivers on periodic ocean voyages, to obtain the proper endorsement. The Coast Guard agrees; and maintains that that endorsement should be based on observation and training on Western Rivers, and not based on convenience. However, a process has been created in this final rule to allow a mariner operating periodically on the Western Rivers to obtain an endorsement for the "pilotage waters of the Lower Mississippi River", in less than the 90 days required for a Western Rivers endorsement.

One comment asked whether adding an endorsement for Western Rivers to an existing license would entail an exam. No, all that would be necessary would be proof of service.

One comment saw no need for the Coast Guard to start issuing endorsements for the Western Rivers again. We disagree: the desirability of issuing licenses for the Western Rivers arises precisely from the responses to the SNPRM.

One comment asked what the differences are between the Western Rivers and other rivers. Unlike other waterways, the Western Rivers have huge tows operating on them.

Comments Beyond the Scope of the Rulemaking

There were four comments beyond the scope of this rulemaking. We will not discuss them here.

Comments Specific to the Third Interim Rule

We will, however, discuss here comments on the third interim rule (66 FR 20931 (April 26, 2001)), in alphabetical order. There were seven of them, in three letters.

Definition of Disabled Vessel

One comment challenged our decision not to change the definition of "disabled vessel" in 46 CFR 10.103 of the third interim rule. The comment stated that, unchanged, the definition would not clarify confusion caused, and not lessen the burdens imposed, by that rule. The commenter added that the definition would leave a "tremendous burden on a large number of marine assistance firms," and be "unduly restrictive because towing a barge or any other vessel not regularly operated under its own power of any length" would void the exemption for marine-assistance vessels. The Coast Guard reiterates that such towing very well should void the exemption. The rule for assistance towing established this license precisely for those mariners providing assistance to pleasure vessels. The rule also addressed head-on both the towing of barges and inter-marina towing, both of which the Coast Guard had found inconsistent with the intent of Congress.

License Stipulations

Two comments expressed concern over the stipulation that the license for officers of towing vessels would not authorize foreign voyages, or even domestic voyages, of towing vessels over 200 GT. The Coast Guard agrees with this concern and, in this final rule, allows mariners licensed under this rule to operate all towing vessels of less than 300 GRT on domestic voyages on oceans and near-coastal waters, and, if they satisfy international requirements, on foreign voyages.

Service on Lower Mississippi River

Two comments suggested that mariners seeking authority to operate on the Lower Mississippi River, above mile 304.1, have to obtain endorsements for Western Rivers by completing the TOAR for those Rivers—but equally that those mariners with endorsements for oceans, near-coastal service, or Great Lakes inland service seeking to operate below mile 304.1 should not have either to obtain the endorsement or to complete the TOAR. The Coast Guard agrees. However, we have chosen to use, instead of mile 304.1, mile 234, which is already established by rule as pilotage waters.

Single Track for Licensing

Two comments stated there should be a single track for licensing, to meet the unique needs of coastal harbor tugs, inland fleet boats, and other craft of such limited operations. They urged us to combine the tracks for "harbor assist" and "limited local area" in a single "limited" licensing-progression: Apprentice mate or steersman (limited) and master (limited). The Coast Guard agrees, and has combined the tracks in this final rule.

Comments Received Outside of the Comment Period

After the comment period closed, on July 25, 2001, the American Waterways Operators (AWO) and other towing-industry representatives identified an apparent inconsistency in the third interim rule. In that rule, mariners who began service and training on towing vessels before May 21, 2001, could continue training under the process in place then and obtain the license as master of towing vessels by May 21, 2004. After May 21, 2004, the requirements of this rule must be met. The apparent inconsistency arises in that such mariners are not also able to obtain the license as mate (pilot) of towing vessels.

In the development of that rule, the Coast Guard determined that the predominant licensing transaction for towing vessels was the obtaining of a license as an OUTV. That license corresponded directly to one as master of towing vessels. The license that corresponded to one as mate (pilot) of towing vessels was the 2nd-class operator's license—a license rarely issued even before May 21, 2001. Because of this rarity, the third interim rule did not include a provision to allow a mariner to obtain a license as mate (pilot) of towing vessels following the requirement for the 2nd-class operator's license. The Coast Guard agrees that an inconsistency exists and, in this final rule, allows a mariner to obtain the license as mate (pilot) of towing vessels, until November 21, 2003, using the process for a 2nd-class operator's license. This provides a more gradual implementation of this rule, as well as aligns the treatment of the licenses for master and mate (pilot) of towing vessels.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS)(44 FR 11040 (February 26, 1979)).

There were no comments on this section in response to the third interim rule (66 FR 20931 (April 26, 2001)), though the rule did invite comments.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Assessment

This rule will amend the licensing and manning for officers of towing vessels by making minor revisions to the third interim rule. This rule will help mariners obtain the appropriate licenses for such officers.

This rule makes changes or updates of technical information and reflects comments to both the first interim rule (64 FR 63213 (November 19, 1999)) and the third interim rule. These changes or updates will not impose any new costs on the towing industry.

There are around 5,400 documented towing vessels in the United States. We presented estimates of the aggregate costs of this set of rulemakings in the third interim rule. Below are the estimates as presented there.

The annual costs—including costs for new entrants into the industry and monetary costs due to industry's paperwork burden—of compliance total $1,310,644. The 10-year present value of cost to industry, from 2001 up to 2010, discounted at 7 percent to 2000, totals $9,205,414.

The annual costs to the Federal Government comprise the time and resources of the Coast Guard to review the documentation of ongoing training and drills such as TOARs for serving mariners, as well as the service records, applications, and check-ride results of entering mariners. We estimated the total costs to the Government at $70,464 a year. The 10-year present value of these costs, discounted at 7 percent to 2000, totals $494,910.

We estimate that the 10-year present value, discounted at 7 percent to 2000, of costs to industry and Government are $9,700,324.

Benefits to Industry

This final rule will improve navigational safety for towing vessels and will clarify the requirements for obtaining appropriate licenses imposed by the amendments of the third interim rule. It will combine the licenses for "harbor assist" and "limited local area" into a single progression toward a limited license: Apprentice mate (steersman) (limited) and master (limited) for consistency.

This rule will also provide mariners with flexibility when seeking authority for service on the Lower Mississippi River, and when seeking to operate uninspected towing vessels on domestic voyages as long as they meet international requirements on foreign voyages.

We presented estimates of the aggregate benefits of this set of rulemakings in the third interim rule. Below are the estimates as presented there.

The annual benefits from preventing deaths range from $2,430,000 to $5,130,000, while those from preventing property damage range from $1,158,987 to $2,546,694. The 10-year present value of total benefits ranges from $25,207,543 to $53,917,886. Therefore, the 10-year benefit-cost ratio of this rule ranges from 2.60 to 5.56 with the average being 4.08.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. (It does not include individual mariners.) This final rule will not impose any new costs on the towing industry beyond the costs imposed by the intermim rule(s).

There are 1,252 small businesses operating towing vessels, and none will suffer under this rule. We previously presented for public comment the effect of the set of rulemakings on small entities. We received no comments regarding that effect.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rulemaking so that they could better evaluate its effects on them and participate in it. We have consistently provided small entities a point of contact for assistance in understanding this rule. We have also completed a number of outreach activities that provided small entities added opportunities to seek clarification on the rule (from the project officer).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The first and third interim rules did call for a collection of information. As required by 44 U.S.C. 3507(d), we submitted a copy of those rules to the OMB for its review of the collection of information. The OMB has approved the collection for two parts. The part numbers are 46 CFR parts 10 and 15, and the corresponding approval number is OMB Control Number 2115–0623, which expires on May 31, 2004.

You need not respond to a collection of information unless it displays a currently valid Control Number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this final rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859 (March 15, 1988)).

Reform of Civil Justice

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This final rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If we had identified tribal implications during the comment period, we would have undertaken appropriate consultations with the affected Indian tribal officials.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs of the OMB as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this final rule and concluded that, under section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244 (July 23, 2002)), this rule is categorically excluded from further environmental documentation. Under section 6(a), this exclusion is appropriate for rules that are "editorial or procedural, such as those updating addresses or establishing application procedures." A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10 and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

■ 1. Revise the authority citation for part 10 to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Department of Homeland Security Delegation 0170. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 10.403, revise Figure 10.403 to read as shown:

§ 10.403 Structure of deck licenses.

* * * * *

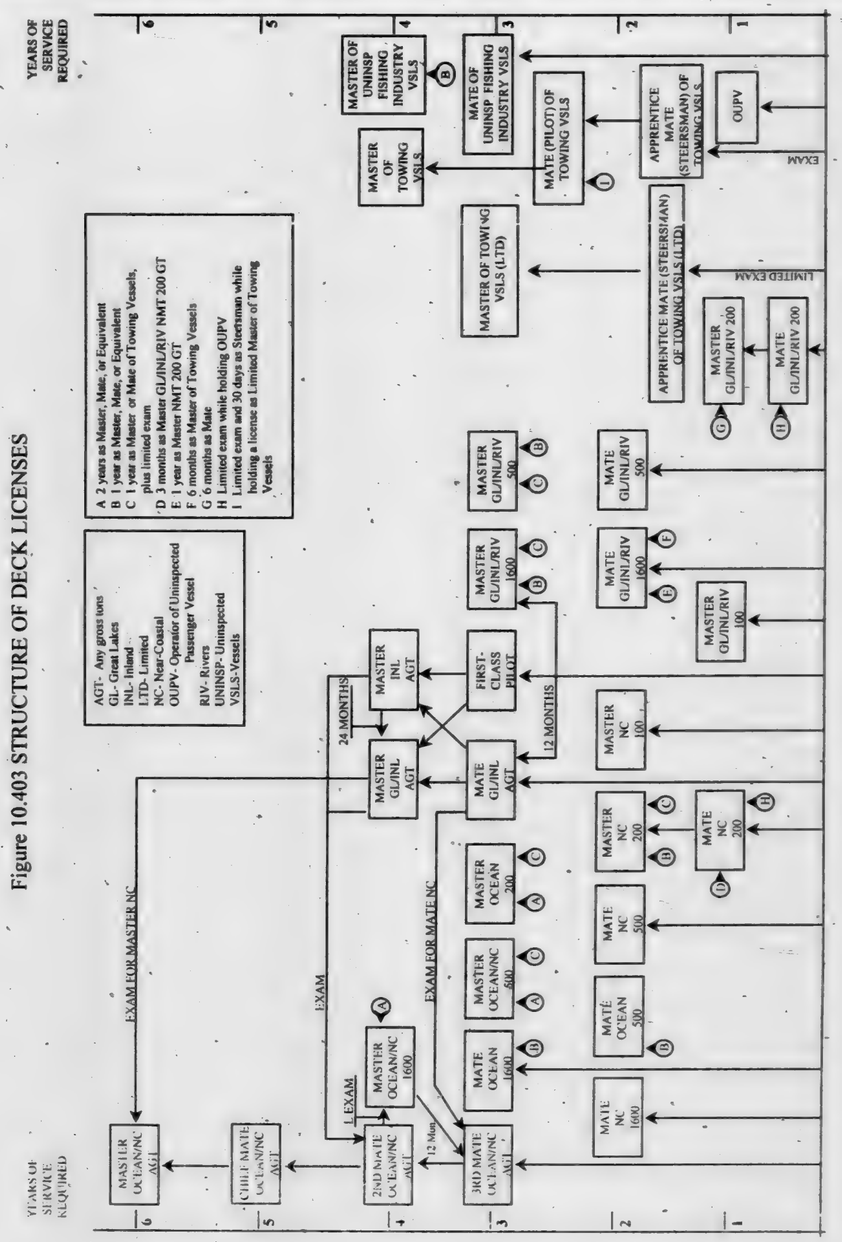


Figure 10.403 STRUCTURE OF DECK LICENSES

■ 3. In § 10.463—

■ a. Remove paragraphs (a), (b)(2), and (b)(7);

■ b. Redesignate the introductory language of paragraph (b) and paragraphs (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(8), (c), and (d) as the introductory language of paragraph (a) and as paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (b), and (c), respectively; and

■ c. In newly redesignated paragraph (b) remove the words "not restricted to harbor assist and".

■ 4. In § 10.464—

■ a. Remove paragraph (b) and remove Table 10.464–3;

■ b. Redesignate paragraphs (c), (d), (e), (f), (g), (g)(1), (g)(2), (g)(2)(i), (g)(2)(ii), (h), (h)(1), (h)(1)(i), (h)(1)(ii), (h)(1)(iii), (h)(2), (h)(2)(i), and (h)(2)(ii) as paragraphs (b), (c), (d), (e), (f)(1), (f)(2), (f)(2)(i), (f)(2)(ii), (g), (g)(1), (g)(1)(i), (g)(1)(ii), (g)(1)(ii), (g)(2), (g)(2)(i), and (g)(2)(ii), respectively;

■ c. In newly redesignated paragraph (f)(2)(ii), remove the last sentence; and

■ d. Revise paragraph (a), revise Table 10.464–1, revise newly redesignated paragraph (b), revise Table 10.464–2, and add new paragraph (f)(3) to read as follows:

§ 10.464 Requirements for licenses as master of towing vessels.

(a) If you would like to obtain a license as master of towing vessels endorsed with a route listed in column 1 of Table 10.464–1, then you must complete the service requirements indicated in columns 2 through 5. You may serve on the subordinate routes listed in column 6, without further endorsement.

TABLE 10.464-1--REQUIREMENTS FOR LICENSE AS MASTER OF TOWING VESSELS[1]

1 ROUTE ENDORSED	2 TOTAL SERVICE[2]	3 TOS[3] ON T/V AS MATE (PILOT)	4 TOS[3] ON T/V AS MATE (PILOT) NOT AS HARBOR ASSIST	5 TOS[3] ON PARTICULAR ROUTE	6 SUB-ORDINATE ROUTE AUTHORIZED
(1) OCEANS (O)	48	18 of 48	12 of 18	3 of 18	NC, GL-I,
(2) NEAR-COASTAL (NC)	48	18 of 48	12 of 18	3 of 18	GL-I,
(3) GREAT LAKES-INLAND (GL-I)	48	18 of 48	12 of 18	3 of 18	
(4) WESTERN RIVERS (WR)	48	18 of 48	12 of 18	3 of 18	

1 If you hold a license as master of towing vessels you may have an endorsement--as mate (pilot) of towing vessels for a route superior to your current route on which you have no operating experience--placed on your license after passing an examination for that additional route. After you complete 90 days of experience and complete a TOAR on that route, we will add it to your license as master of towing vessels and remove the one for mate (pilot) of towing vessels.
2 Service is in months.
3 TOS is time of service.

(b) If you would like to obtain a license as master of towing vessels (limited), then you must complete the requirements listed in columns 2 through 5 of Table 10.464–2.

TABLE 10.464-2--REQUIREMENTS FOR LICENSE AS MASTER OF TOWING VESSELS (LIMITED)

1 ROUTE ENDORSEMENT	2 TOTAL SERVICE[1]	3 TOS[2] ON T/V AS LIMITED APPRENTICE MATE (STEERSMAN)	4 TOAR[3] OR AN APPROVED COURSE	5 TOS[2] ON PARTICULAR ROUTE
LIMITED LOCAL AREA (LLA)	36	18 of 36	YES	3 of 18

1 Service is in months.
2 TOS is time of service.
3 Towing Officers' Assessment Record

(f) * * *

(3) Your license does not need a towing endorsement if you hold a TOAR or complete a TOAR.

* * * * *

■ 5. In § 10.465—

■ a. In paragraph (a) remove the words "harbor assist or", remove Table 10.465–2 and remove paragraph (d);

■ b. Redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and

■ c. Revise Table 10.465–1, revise newly redesignated paragraph (e) and add new paragraph (f) to read as follows:

§ 10.465 Requirements for licenses as mate (pilot) of towing vessels.

* * * * *

TABLE 10.465-1--REQUIREMENTS FOR LICENSE AS MATE (PILOT[1]) OF TOWING VESSELS

1 ROUTE ENDORSED	2 TOTAL SERVICE[2]	3 TOS[3] ON T/V AS APPRENTICE MATE (STEERSMAN)	4 TOS[3] ON PARTICULAR ROUTE	5 TOAR[4] OR AN APPROVED COURSE	6 30 DAYS OF OBSERVATION AND TRAINING WHILE HOLDING MASTER (LIMITED) AND PASS A LIMITED EXAMINATION	7 SUBORDINATE ROUTE AUTHORIZED
(1) OCEANS (O)	30	12 of 30	3 of 12	YES	YES	NC, GL-I
(2) NEAR-COASTAL (NC)	30	12 of 30	3 of 12	YES	YES	GL-I,
(3) GREAT LAKES-INLAND (GL-I)	30	12 of 30	3 of 12	YES	YES	
(5) WESTERN RIVERS (WR)	30	12 of 30	3 of 12	YES	NO (90 days service required)	

1 For all inland routes, as well as Western Rivers, the license as pilot of towing vessels is equivalent to that as mate of towing vessels. All qualifications and equivalencies are the same.
2 Service is in months unless otherwise indicated
3 TOS is time of service.
4 TOAR is Towing Officers' Assessment Record.

* * * * *

(e) An approved training course for mate (pilot) of towing vessels must include formal instruction and practical demonstration of proficiency either on board a towing vessel or at a shoreside training facility before a designated examiner, and must cover the material (dependent upon route) required by § 10.910–2 for apprentice mate (steersman), towing vessels on ocean and near coastal routes; apprentice mate (steersman), towing vessels on Great Lakes and inland routes; or, steersman, towing vessels on Western Rivers routes.

(f) If you began your service or training before May 21, 2001, you may

receive a license as mate of towing vessels if before November 21, 2003, you complete the examination required by § 10.903(a)(18)(i) and meet the requirements in either paragraph (f)(1)(i) or (f)(1)(ii) of this section:

(1) You must have served at least 18 months on deck, including 12 months on towing vessels. This service must have included—

(i) At least 3 months of training or duty in the wheelhouse of towing vessels, and 3 months of service in each particular geographic area for which you seek endorsement on the license; and

(ii) At least 6 months on towing vessels while holding a merchant mariner's document endorsed as able seaman unlimited, able seaman limited, or able seaman special, including 3 months in each particular geographic area for which you seek an endorsement; and either—

(A) Two months of training or duty in the wheelhouse; or

(B) One month of training or duty in the wheelhouse combined with completion of a course of training as towboat operator approved by the Commanding Officer, National Maritime Center, under subpart C of this part.

6. In § 10.466, revise Table 10.466–1 to read as follows:

§ 10.466 Requirements for licenses as apprentice mate (steersman) of towing vessels.

* * * * *

TABLE 10.466-1--REQUIREMENTS FOR LICENSE AS APPRENTICE MATE (STEERSMAN) OF TOWING VESSELS

1 LICENSE TYPE	2 ROUTE ENDORSED	3 TOTAL SERVICE[1]	4 TOS[2] ON T/V	5 TOS[2] ON PARTICULAR ROUTE	6 PASS EXAMINATION[3]
(1) APPRENTICE MATE (STEERSMAN)	OCEANS (O)	18	12 of 18	3 of 18	YES
	NEAR-COASTAL (NC)	18	12 of 18	3 of 18	YES
	GREAT LAKES-INLAND (GL-I)	18	12 of 18	3 of 18	YES
	WESTERN RIVERS (WR)	18	12 of 18	3 of 18	YES
(2) APPRENTICE MATE (STEERSMAN) (LIMITED)[4]	NOT APPLICABLE	18	12 of 18	3 of 18	YES

1 Service is in months.
2 TOS is time of service.
3 The examination for apprentice mate is specified in subpart I of this part. The examination for apprentice mate (limited) is a limited examination.
4 For all inland routes, as well as Western Rivers, the license as steersman is equivalent to that as apprentice mate. All qualifications and equivalencies are the same.

* * * * *

■ 7. In § 10.903—

■ a. Remove paragraph (a)(18)(ii) and redesignate paragraph (a)(18)(iii) as paragraph (a)(18)(ii);

■ b. Redesignate paragraphs (c)(7) through (c)(18) as paragraphs (c)(8) through (c)(19), respectively; and

■ c. Add paragraph (c)(7) to read as follows:

§ 10.903 Licenses requiring examinations.

(c) * * *

* * * * *

(7) Master or mate of towing vessels of over 200 gross tons, oceans and near-coastal.

* * * * *

PART 15—MANNING REQUIREMENTS

■ 8. Revise the authority citation for part 15 to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, and 9102; and Department of Homeland Security Delegation 0170.

■ 9. In § 15.610—

■ a. In paragraph (b)(1)(ii) following the words "of towing vessels" remove the words "(Harbor assist) or"; and

■ b. Add paragraph (d) to read as follows:

§ 15.610 Master and mate (pilot) of towing vessels.

* * * * *

(d) Any towing vessel operating in the pilotage waters of the Lower Mississippi River must be under the control of an officer who holds a first-class pilot's license or endorsement for that route, or meets the requirements of either paragraph (d)(1) or paragraph (d)(2) of this section as applicable:

(1) To operate a towing vessel with tank barges, or a tow of barges carrying hazardous materials regulated under part N or O of this subchapter, an officer in charge of the towing vessel must have completed 12 round trips over this route as an observer, with at least 3 of those trips during hours of darkness, and at least 1 round trip of the 12 within the last 5 years.

(2) To operate a towing vessel without barges, or a tow of uninspected barges, an officer in charge of the towing vessel must have completed at least four round trips over this route as an observer, with at least one of those trips during hours of darkness, and at least one round trip of the 12 within the last 5 years.

Dated: April 14, 2003.

Paul J. Pluta,

Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–15225 Filed 6–16–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–80; FCC 03–89]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to extend the January 1, 2005 ban on integrated navigation devices until July 1, 2006. This extension is needed since the state of the navigation devices market will be significantly impacted by ongoing industry negotiations for a bidirectional specification for digital cable receivers and products, rendering compliance with the existing January 1, 2005 ban impracticable. This action is taken pursuant to Section 629 of the Communications Act which directs the Commission to adopt regulations to assure the commercial availability of navigation devices equipment used by consumers to access services from multichannel video programming distributors.

DATES: Effective July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Mort, 202–418–1043.

SUPPLEMENTARY INFORMATION:

1. In the Order and Further Notice of Proposed Rulemaking adopted April 14, 2003 and released April 25, 2003, we amend the Commission's Rules to extend the January 1, 2005 ban on integrated navigation devices until July 1, 2006. A synopsis of the Order follows.

Synopsis of the Order

2. Section 629 of the Communications Act directs the Commission to adopt regulations to assure the commercial availability of navigation devices equipment used by consumers to access services from multichannel video programming distributors ("MVPDs"). Pursuant to this directive, the Commission issued the Report and Order in the above-captioned proceeding establishing, inter alia, a January 1, 2005, deadline for MVPDs to cease deploying new navigation devices that perform both conditional access functions and other functions in a single integrated device. The Commission adopted the requirement to separate the conditional access function from the basic navigation device (the "host device") in order to permit unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. The Commission later issued a Further Notice of Proposed Rulemaking and Declaratory Ruling ("Further Notice and Declaratory Ruling"), 65 FR 58255, September 28, 2000, that sought comment on the effectiveness of the Commission's navigation device rules, including the 2005 prohibition on integrated devices.

3. Since Section 629 and the Commission's rules were adopted, the cable and consumer electronics industries have made, and continue to make, significant progress in the development of technical standards in this area. However, the commercial market for navigation devices used in conjunction with the distribution of digital video programming remains in its infancy. In an effort to spur the transition to digital television, the cable and consumer electronics industry recently reached a Memorandum of Understanding ("MOU") on a cable compatibility standard for a unidirectional digital cable television receiver with host device functionality, as well as other unidirectional digital cable products. This standard would allow consumers to directly attach their DTV receivers to cable systems using a point of deployment ("POD") module and receive one-way cable television services without the need for an external navigation device. The Commission issued a Further Notice of Proposed Rulemaking ("FNPRM"), 68 FR 2278, January 16, 2003, seeking public comment on the MOU issued in the above-captioned proceeding and in the Compatibility Between Cable Systems and Consumer Electronics Equipment proceeding.

4. In its earlier Further Notice and Declaratory Ruling, the Commission had already sought comment, inter alia, on whether the 2005 date for the phase-out of integrated boxes remains appropriate, on what, if any, incentives the requirement creates for the development of a commercial retail market for navigation devices, and on the economic impacts and costs associated with the requirement. In response, the cable industry and set-top box manufacturers generally urged that the 2005 deadline should be eliminated in favor of the continued offering of integrated navigation devices for rent to consumers. Other equipment manufacturing and retail interests urged that the date should be advanced to ensure the timely development of a retail market in host devices. Given the equipment ordering and manufacturing cycles involved, it is necessary at this point to provide guidance as to the Commission's expectations with respect to the 2005 date. Other issues raised in the Further Notice and Declaratory Ruling will be addressed separately at a later time.

5. Commission action in response to the FNPRM could have a significant impact upon the development of a commercial market in separate host devices. In addition, the cable and consumer electronic industries are in the midst of negotiations on specifications for bidirectional digital cable receivers and products which would permit the receipt of advanced cable television services by direct connection to cable systems. This ongoing process, which we are hopeful will produce results in the near term, could impact the development of technical specifications relating to host devices and POD modules. In light of the ongoing notice and comment cycle relating to the FNPRM, the evolving nature of technical specifications relating to navigation devices, and the imminent business ordering and manufacturing cycles facing MVPDs and consumer electronics manufacturers in anticipation of the pending 2005 prohibition, we hereby extend the deadline concerning the prohibition on integrated devices until July 1, 2006.

6. This eighteen month extension should provide adequate time for the parties to complete their ongoing negotiations and for the Commission to make a more knowledgeable decision as to any further changes in the compliance date. By January 1, 2005, the Commission shall complete a reassessment of the state of the navigation devices market and determine whether the designated time frame remains appropriate or whether the ban on integrated devices will no longer be necessary. In the interim, the cable and consumer electronics industries are requested to provide the Commission with status reports on their negotiations on specifications for bidirectional digital cable receivers and products at 90, 180 and 270 day intervals following release of this Order. Following submission of the last status report to the Commission, the public shall have thirty days to submit comments on the status reports and whether any further changes in the phase-out date for integrated devices are warranted.

7. Based upon the record in the above-captioned proceeding and ongoing industry developments, we have concluded that a limited deferral of the date is consistent with the ultimate objectives of this proceeding and our statutory directive to act "in consultation with appropriate industry standard-setting organizations." We are not persuaded at this point to eliminate the prohibition on integrated devices since future developments in both the marketplace and ongoing industry negotiations may yet dictate a need for this requirement in order to achieve the objectives of Section 629. However, the conclusion of the unidirectional MOU, as well as the ongoing negotiations towards a bidirectional agreement, do reflect progress towards the development of a retail market for consumer electronics equipment with navigation device functionality. As such, we do not believe that advancing the prohibition date, as previously suggested by a number of equipment manufacturing and retail interests, is necessary to further these objectives or would provide sufficient lead time for ordering and manufacturing prior to completion of the next phase of the standardization process.

8. *Authority.* This document is issued pursuant to authority contained in Sections 4(i), 303(r), and 629 of the Communications Act of 1934, as amended.

9. *Accessibility Information.* Accessible formats of this Order (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

10. *Paperwork Reduction Act of 1995 Analysis.* This Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13.

11. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Order. The FRFA is set forth further.

12. Accordingly, part 76 of the Commission's rules, set forth in Title 47 of the Code of Federal Regulations, is amended.

Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Further Notice of Proposed Rulemaking and Declaratory Ruling ("Further Notice and Declaratory Ruling") The Commission sought written public comment on the proposals in the Further Notice and Declaratory Ruling, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

15. *Need for, and Objectives of, the Order.* Section 629 of the Communications Act of 1934, as amended, requires the Commission to develop rules to assure competitive availability of navigation devices used in conjunction with services provided by multichannel video programming distributors ("MVPDs"). The statutory objective of Section 629 is to assure that navigation devices used by consumers to access a particular MVPD's programming are available to consumers from manufacturers, retailers and other vendors not affiliated with that MVPD. To this end, the Commission adopted a January 1, 2005, deadline for MVPDs to cease deploying new navigation devices that perform both conditional access functions and other functions in a single integrated device. Requiring MVPDs to separate the conditional access function from the basic navigation device (the "host device") was intended to permit unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. In the Further Notice and Declaratory Ruling, the Commission indicated that it would reassess the need for the 2005 separation deadline in light of the evolving marketplace for navigation devices. In response, the cable industry and set-top box manufacturers generally urged that the 2005 deadline should be eliminated in favor of the continued offering of integrated navigation devices for rent to consumers. Other equipment manufacturing and retail interests urged that the date should be advanced to ensure the timely development of a retail market in host devices. Since the Further Notice and Declaratory Ruling was issued, the cable and consumer electronics industries have reached a Memorandum of Understanding ("MOU") on a cable compatibility standard for a unidirectional digital cable television receiver with host device functionality, as well as other unidirectional digital cable products. This standard, which is the subject of a pending Further Notice of Proposed Rulemaking ("FNPRM"), would allow consumers to directly attach their DTV receivers to cable systems using a point of deployment ("POD") module and receive one-way cable television services without the need for an external navigation device. The cable and consumer electronic industries are also in the midst of negotiations on specifications for bidirectional digital cable receivers and products which would permit the receipt of advanced cable television services by direct connection to cable systems. This ongoing process, which may produce results in the near term, could impact the development of technical specifications relating to host devices and POD modules. In light of the ongoing notice and comment cycle relating to the FNPRM, the evolving

nature of technical specifications relating to navigation devices, and the imminent business ordering and manufacturing cycles facing MVPDs and consumer electronics manufacturers in anticipation of the pending 2005 prohibition, the present Order extends the prohibition on integrated devices until July 1, 2006. This limited deferral of the prohibition date is consistent with the ultimate objectives of this proceeding and our statutory directive to act "in consultation with appropriate industry standard-setting organizations."

16. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

17. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

18. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

19. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by our action.

20. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

21. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

22. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

23. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

24. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of this analysis, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

25. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

26. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

27. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

28. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

29. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

30. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees

and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

31. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* The amended rule does not impose any additional reporting or recordkeeping requirements. To the extent that compliance may require the manufacture and purchase of non-integrated host devices by multichannel video programming distributors ("MVPDs") by July 1, 2006, the present action does not impose any new requirements on consumer electronics equipment manufacturers or MVPDs, but rather extends the existing compliance date by eighteen months. We believe that the resulting impact on small entities is favorable to the extent that it provides them with additional time to come into compliance with the prohibition on integrated devices.

32. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. To the extent that compliance with the amended prohibition deadline may require the manufacture and purchase of non-integrated host devices by multichannel video programming distributors ("MVPDs") by July 1, 2006, the present action does not impose any new requirements on consumer electronics equipment manufacturers or MVPDs, but rather extends the existing compliance date by eighteen months. We believe that the resulting impact on small entities is favorable to the extent that it provides them with additional time to come into compliance with the prohibition on integrated devices. When the original prohibition deadline was adopted, we noted, inter alia, that Section 629 includes provisions which may lessen compliance impact on small entities, including Section 629(c), which specifies that the Commission shall waive its implementing regulations when necessary for an MVPD to develop new or improved services, and Section 629(e), which requires the Commission to sunset its implementing rules when certain conditions are met.

34. *Report to Congress:* The Commission will send a copy of the Order ("Order"), including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons stated in the preamble, The Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76— MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 217, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.1204 is amended by revising paragraph (a)(1) to read as follows:

§ 76.1204 Availability of equipment performing conditional access or security functions.

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. Commencing on July 1, 2006, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

* * * * *

[FR Doc. 03–15187 Filed 6–16–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 061103B]

Atlantic Highly Migratory Species; Bluefin Tuna Catch Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of Angling and General Category Retention Limits

SUMMARY: NMFS adjusts the daily retention limit for the Angling and General category fisheries for Atlantic bluefin tuna (BFT) for the 2003 fishing year that began June 1, 2003, and ends May 31, 2004. Vessels permitted in the Atlantic Highly Migratory Species (HMS) Angling and the Atlantic HMS Charter/Headboat categories are eligible to land BFT under the BFT Angling category quotas. Vessels permitted in the Atlantic tunas General category and Atlantic HMS Charter/Headboat categories are eligible to land BFT under the BFT General category quotas. The seasonal adjustments to the daily retention limit for each BFT size class are specified in the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this document. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest in each category.

DATES: Effective June 15 through October 31, 2003, the daily recreational retention limit for vessels fishing under the Angling category quota in all areas is one BFT per person, measuring 27 to less than 73 inches (69 to less than 185 cm) curved fork length, with a maximum limit of six BFT per vessel. Effective August 15 through October 31, 2003, the daily recreational retention limit for headboats in all areas is one BFT per passenger (not including Captain and crew), measuring 27 to less than 73 inches (69 to less than 185 cm) curved fork length, with a maximum of 35 BFT per vessel. This limit applies to all headboats defined as a vessel that possess an Atlantic HMS Charter/Headboat permit and that are inspected and licenced by the Coast Guard to carry more than six passengers. Effective November 1, 2003 through May 31, 2004, the daily recreational retention limit is one large school, or small medium BFT, measuring 47 to less than 73 inches (119 to less than 185 cm) curved fork length, per vessel for all vessels fishing under the Angling category quota in all areas.

Effective June 15, 2003 through August 31, 2003, the General category daily retention limit in all areas will be adjusted to two large medium or giant BFT, measuring 73 inches (185 cm) or larger, for all vessels fishing under the General category quota.

FOR FURTHER INFORMATION CONTACT: Brad McHale, (978) 281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation fo Atlantic Tunas (ICCAT) among various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a).

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for BFT and allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or the per boat limit to a per angler limit. Size class categories of BFT are defined as follows: school size BFT measure 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL); large school BFT measure 47 to less than 59 inches (119 to less than 150 cm) CFL; small medium BFT measure 59 to less than 73 inches (150 to less than 185 cm) CFL; large medium BFT measure 73 to less than 81 inches (185 to less than 206 cm) CFL; and giant BFT measure 81 inches or greater (206 cm or greater) CFL.

Angling Category Retention Limit

A recommendation of ICCAT requires that NMFS limit the catch of school BFT to no more than eight percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999).

The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the eight percent landings limit is not exceeded over the applicable 4–consecutive-year period. The 2003 fishing year is the first year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes.

Regulations at 50 CFR 635.23(b) restrict vessels fishing under the BFT Angling category quota to one BFT per vessel per day, which may be from the school, large school, or small medium category and, in addition, one large medium or giant BFT per vessel per year. This retention limit is subject to adjustment to provide for maximum utilization of the quota and enhanced fishing opportunities over the range of the recreational fisheries.

In 2002, NMFS increased the Angling category daily retention limit to four school, large school, or small medium BFT from June 15 through October 31, which is when recreational-sized BFT are on the fishing grounds, and then reduced it to one large school, or small medium BFT for November 1, 2002 through May 31, 2003 (67 FR 39869, June 11, 2002). The 2002 fishing year ended on May 31, 2003, and there is quota carry-over in the Angling category. Because of the large amount of quota available this year in the Angling category (over 499.2 metric tons (mt), 231 of which is carry-over from 2002) NMFS has determined that it is appropriate to adjust the recreational retention limit.

Since June 1, 2003, the retention limit of one school, large school or small medium as specified at 50 CFR 635.23(b) has been in effect. Effective June 15 through October 31, 2003, NMFS adjusts the daily retention limit for all areas to one BFT per person with a maximum of six BFT per vessel, in any combination of the school, large school, or small medium size classes. This limit applies to all vessels permitted in the Atlantic HMS Angling category and to vessels permitted in the Atlantic HMS Charter/Headboat category.

Headboat Retention Limit

Over the last several years NMFS has also received comments that a recreational retention limit of three or four BFT per vessel per day does not provide reasonable fishing opportunities for headboats, which may carry up to 40 passengers on a tuna fishing trip. Headboats are defined as vessels that posses an Atlantic HMS Charter/Headboat category permit and that are inspected and licenced by the Coast Guard to carry more than six passengers. Headboat operators have requested a modified retention limit for their vessels that recognizes the high numbers of passengers they carry. On December 18, 2002, NMFS published a final rule that clarified the procedures to set differential BFT retention limits to provide equitable fishing opportunities for all types of fishing vessels (67 FR 77434). As noted above, the 2002 season closed on May 31, 2003, and there is quota carry-over from 2002. Because of the large amount of quota available this year in the Angling category (over 499.2 metric tons (mt), 231 mt of which is carry-over from 2002), NMFS has determined that it is appropriate to implement an alternative retention limit for headboats.

Effective August 15, 2003, which is when headboats normally target BFT, the daily recreational retention limit for headboats in all areas will be one BFT per passenger (not including Captain and crew), measuring 27 to less than 73 inches curved fork length, with a maximum of 35 BFT per vessel. This limit applies to all headboats defined as vessels that possess an Atlantic HMS Charter/Headboat permit and that are inspected and licenced by the Coast Guard to carry more than six passengers.

Monitoring and Reporting

From November 1, 2003, through May 31, 2004, the daily retention limit for all vessels fishing under the Angling category quota is one large school or small medium BFT per vessel. Regardless of the length of the trip, no more than a single day's allowable catch may be possessed or retained.

NMFS selected the daily retention limits and the duration of the daily retention limit adjustments after examining past catch and effort rates and the available quota for the 2003 fishing year. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Atlantic HMS Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888)872–8862; or the Internet (www.nmfspermits.com); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

General Category Retention Limits

Based on current and historical General category landings rates in the June through August time-period, it is highly unlikely that the June through August subquota will be filled in the remaining fishing days, which would result in unused quota being added to the September subquota. During the 2001 and 2002 fishing years, 156 mt and 182 mt were carried over from the June through August to the September time-period subquotas, respectively. Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on restricted fishing days) to a maximum of three per vessel to allow for maximum utilization of the BFT quota. Based on a review of dealer reports, current and historical daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit in the General category is necessary in order to provide an opportunity to harvest the June through August subquota in its designated time period. Therefore, effective June 15 through August 31, 2003, the first quota subperiod, NMFS adjusts the daily retention limit to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization of the June through August subquota (specified under § 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Fishery Management Plan for Atlantic tunas, swordfish, and sharks (HMS FMP).

Classification

This action is taken under 50 CFR 635.23 (a)(4) and (b)(3). This action is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–15287 Filed 6–12–03; 3:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 116

Tuesday, June 17, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–03–03]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the last time the Board was reapportioned in 2000. These adjustments are required by the Soybean Promotion and Research Order (Order). The results of the adjustments would be an additional member for Maryland and Michigan. New York would no longer be part of the Eastern Region unit. The State has sufficient soybean production to qualify as a separate State unit with one representative on the Board. New Jersey would be merged into the Eastern Region unit. The State no longer has sufficient soybean production to be a separate State unit. As a result of these changes, the total Board membership would increase from 62 members to 64 members. These changes to the Board would be effective with the Secretary's 2004 appointments.

DATES: Written comments on this proposed rule must be received by August 18, 2003.

ADDRESSES: Send two copies of comments to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, Room 2638–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251. Comments may also be sent by e-mail to *soybeancomments@usda.gov* or by fax to 202/720–1125. State that your comment refers to Docket No. LS–03–03. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays or on the Internet at *www.ams.usda.gov/lsg/mpb/rp-soy.htm*.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Agricultural Marketing Specialist, Marketing Programs Branch on 202/720–1115, fax 202/720–1125, or by e-mail at *marlene.betts@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this proposed rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department of Agriculture (USDA) would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

The Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it merely adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2000. As such, these changes will not have an impact on those persons subject to the program. There are an estimated 600,813 soybean producers who pay assessments and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320), which implements the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements and recordkeeping requirements contained in the Order have been previously approved by OMB under OMB control number 0581–0093.

Background and Proposed Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of domestic soybean producers.

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its March 2003 meeting the Board decided not to recommend

any changes to the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

Current representation on the Board (62), and the number of geographical units (30), have been based on average production levels for the years 1995–1999 (excluding crops in years that production was the highest and that production was the lowest) as reported by USDA's National Agricultural Statistics Service (NASS).

Proposed representation on the Board (64) is based on average production levels for the years 1998–2002 (excluding crops in years that production was the highest and that production was the lowest) as reported by NASS.

The results of the reapportionment based on the 1998–2002 production levels would be an additional member for Maryland and Michigan. New York would no longer be part of the Eastern Region unit because the State has sufficient soybean production to qualify as a separate State unit with one representative on the Board. New Jersey would lose its only member because the State no longer has sufficient soybean production to be a separate State unit. It is proposed that New Jersey merge with the Eastern Region unit, and be represented on the Board by the Eastern Region's representative. There are no adjustments to the other States or regions.

The number of geographical units would remain at 30. This proposed rule would adjust representation on the Board as follows:

State	1998–2002 Average production level (bushels)	Current representation	Proposed representation
Maryland	16,568,000	1	2
Michigan	74,797,000	2	3
New York	4,503,000	0	1
New Jersey	2,882,000	1	0

Board adjustment as proposed by this rulemaking would be effective with the 2004 nominations and appointments.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. In § 1220.201, the table in paragraph (a) is revised to read as follows:

§ 1220.201 Membership of board.

(a) * * *

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
South Dakota	3
Kansas	3
Michigan	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
North Dakota	2
Wisconsin	2
Maryland	2
Virginia	1
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
New York	1
Eastern Region (New Jersey, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: June 11, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15270 Filed 6–16–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PT6A–60A and PT6A–65B Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) PT6A–60A and PT6A–65B turboprop engines. This proposed AD would require replacing Woodward propeller governor assemblies, part number (P/N) 8210–212H. This proposed AD is prompted by six incidents during airplane acceptance flight testing where directional control of the airplane was difficult to maintain during landing. The actions specified in this proposed AD are intended to prevent loss of directional control and damage to the airplane.

DATES: We must receive any comments on this proposed AD by August 18, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–09–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may get the service information identified in this proposed AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–09–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC PT6A–60A and PT6A–65B turbofan engines. Transport Canada advises the FAA that there have been six reports from the airplane manufacturer that it was difficult to maintain directional control of the airplane during landing. These events were reported to have occurred during airplane acceptance flight testing. Certain governors that incorporate propeller control units (PCUs) with thicker O-rings on the Beta valve shafts of the PCUs may not set the appropriate ground idle blade angle when the airplane lands. If this happens on one engine only, a substantial and unexpected asymmetric thrust condition will occur.

The introduction of a thicker O-ring on the Beta valve shaft of the PCU addressed a nuisance oil leakage issue. A side effect of fitting this thicker O-ring is that a slightly higher input force is required to move the Beta valve to the ground idle position. On the installations using the PT6A–60A and PT6A–65B engines, the airframe installations have a solenoid system that relies on the force of an internal spring within the Beta valve to move the valve to the ground idle command position. The force of this spring is insufficient to overcome the increased friction of the thicker O-ring and ensure that the valve consistently and promptly moves to the ground idle position. As a result, the pilot may experience directional control problems during landing. There have been no reports of in-service incidents to date. The actions specified in this proposed AD are intended to prevent loss of directional control and damage to the airplane.

This proposed AD is not applicable to engine models operating with the Woodward propeller governor, P/N 8210–212J, since they operate with a push-pull rod mechanism to move the Beta valve. That arrangement provides ample force to overcome the O-ring's frictional resistance.

Relevant Service Information

PWC has issued Service Bulletin (SB) PT6A–72–13354, dated July 6, 2001. That SB provides information for the removal, replacement, or modification of Woodward propeller governor assembly, P/N 8210–212H. Transport Canada classified this SB as mandatory and issued airworthiness directive CF–2002–02, dated January 15, 2002, in order to ensure the airworthiness of these PWC engines in Canada.

Differences Between This Proposed AD and the Manufacturer's Service Information

Although the SB recommends the removal, replacement or modification of Woodward propeller governor assemblies, P/N 8210–212H, when the engine is disassembled and access is available to the necessary subassembly (*i.e.* module, accessories, components, or build groups), this proposed AD would require compliance at the next access or within six months after the effective date of this AD, whichever occurs first.

FAA's Determination and Requirements of the Proposed AD

These PT6A–60A and PT6A–65B engine models, manufactured in Canada, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept us informed of the situation described above. We have examined Transport Canada's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacing Woodward propeller governor assemblies, P/N 8210–212H.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 73 Pratt & Whitney Canada PT6A–60A and PT6A–65B turboprop engines of the affected design in the worldwide fleet. We estimate that 70 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 2 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $24,228 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $1,704,360. PWC has informed the FAA that it may provide the parts and labor to the operators at no cost, thereby substantially reducing the cost impact of this proposed rule.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–09–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt and Whitney Canada: Docket No. 2003–NE–09–AD.

Comments Due Date: (a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 18, 2003.

Affected ADs: (b) None.

Applicability: (c) This AD is applicable to Pratt & Whitney Canada (PWC) PT6A–60A and PT6A–65B turboprop engines that have Woodward propeller governor assemblies, part number, (P/N) 8210–212H, installed. These engines are installed on, but not limited to, Raytheon Super Beech King Air 300/350 and Raytheon Beech 1900/1900C airplanes.

Unsafe Condition: (d) This AD was prompted by six incidents during airplane acceptance flight testing, whereby directional control of the airplane was difficult to maintain during landing. The actions specified in this AD are intended to prevent loss of directional control and damage to the airplane.

Compliance: (e) Compliance with this AD is required as indicated, unless already done.

Removal of Woodward Propeller Governor Assemblies

(f) Replace Woodward propeller governor assemblies, P/N 8210–212H, at the next access to the governor or within six months after the effective date of this AD, whichever occurs earlier. Information on replacing the Woodward propeller governor assembly can be found in Pratt & Whitney Canada Service Bulletin PT6A–72–13354, dated July 6, 2001.

(g) After the effective date of this AD, do not install any Woodward propeller governor assembly, P/N 8210–212H, on any engine.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(i) None

Related Information

(j) The subject of this AD is addressed in Transport Canada airworthiness directive CF–2002–02, dated January 15, 2002.

Issued in Burlington, Massachusetts, on June 9, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–15224 Filed 6–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[REG–141097–02]

RIN 1545–BB18

Excise Taxes; Communications Services, Distance Sensitivity; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the definition of toll telephone service for purposes of the communications excise tax.

DATES: The public hearing is being held on September 10, 2003, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by July 15, 2003.

ADDRESSES: The public hearing is being held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:RU (REG–141097–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–141097–02), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cynthia McGreevy (202) 622–3130; concerning submissions, LaNita Van Dyke (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–141097–02) that was published in the

Federal Register on Tuesday, April 1, 2003 (68 FR 15690).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing that submitted written comments by June 30, 2003, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies).

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–15283 Filed 6–16–03; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AB22

NARA Facilities; Hours of Operation for the Exhibition Hall

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration proposes to modify the extended hours that the Exhibition Hall in the National Archives Building in Washington, DC, is open from April 1 through the Friday before Memorial Day. The Exhibition Hall would close at 7 p.m. instead of 9 p.m. during this period. We are proposing to limit the extended hours during this period to be more cost-effective and because this is when attendance is the lightest. NARA's Exhibition Hall would still have the longest hours of any Washington museum on the National Mall. The proposed change does not affect the research room hours stated in part 1253 in any manner. This proposed rule affects the public.

DATES: Comments are due by August 18, 2003.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. Electronic comments may be submitted through Regulations.gov. You may also comment via e-mail to *comments@nara.gov.* Please see the **SUPPLEMENTARY INFORMATION** section of the preamble for additional information on e-mail submissions.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: NARA's Exhibition Hall, which contains the Declaration of Independence, the Constitution, and other exhibits, is closed for renovation. When it reopens, we are proposing to close it at 7 p.m. instead of 9 p.m., from April 1 through the Friday before Memorial Day. Before renovation, the Exhibition Hall closed at 9 p.m. during this period. The closing times for the remainder of the months is unchanged. The Exhibition Hall opens at 10 a.m. the entire year and this also remains unchanged.

On September 18, 2003, the first phase of the new National Archives Experience, the rededicated "Rotunda for the Charters of Freedom", opens to the general public. Over the course of the year that follows, three additional galleries and a new theater will open as well. There will be additional costs for providing security, maintenance, and visitor services as public spaces are expanded more than three-fold.

Building occupation during the extended hours of 7 p.m. to 9 p.m. is not typically as heavy as during daytime hours, particularly in the spring when all other museums on the National Mall close at 5:30 p.m. Given increased costs of operation, a careful review was made of whether it was prudent to keep the extended hours.

A distinction was made between the period from April 1 to Memorial Day weekend, and the period from Memorial Day weekend to Labor Day, because during the latter period we have more family visitors and some Mall museums have extended evening hours.

This proposed rule does not affect the research room hours at the National Archives Building in Washington, DC, stated in part 1253.

If you submit comments via e-mail, please submit the comments within the body of your email message or attachment avoiding the use of any form of encryption. Please also include "Attn: 3095–AB22" and your name and return address in your e-mail message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–837–2902.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend part 1280 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

1. The authority citation for part 1280 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Revise § 1280.62 to read as follows:

§ 1280.62 When is the Exhibition Hall open?

(a) The Exhibition Hall is open to the public during the following hours:

(1) The day after Labor Day through March 31, hours are 10 a.m. to 5:30 p.m.

(2) April 1 through the Friday before Memorial Day, hours are 10 a.m. to 7 p.m.

(3) Memorial Day weekend through Labor Day, hours are 10 a.m. to 9 p.m.

(b) The Archivist of the United States reserves the authority to close the Exhibition Hall to the public at any time for special events or other purposes. The building is closed on December 25.

Dated: June 10, 2003.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 03–15190 Filed 6–16–03; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7492–7]

RIN 2060–AJ77

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-Board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium-Duty Passenger Vehicles, Complete Heavy-Duty Vehicles and Engines Intended for Use in Heavy-Duty Vehicles Weighing 14,000 Pounds GVWR or Less; Extension of Acceptance of California OBD II Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to amend and revise certain requirements associated with the federal on-board diagnostic (OBD) system regulations. EPA previously promulgated an OBD rulemaking on December 22, 1998 (63 FR 70681), which indefinitely extended the provision allowing compliance with California OBD II requirements to satisfy federal OBD requirements. The California Air Resources Board (CARB) has recently revised their OBD II requirements. Accordingly, today's action proposes appropriate revisions to federal OBD regulations including: updating the reference to the allowed version of the California OBD II regulations to the most recently adopted version such that compliance with the recently revised California OBD II requirements will satisfy certain federal OBD requirements; allowing compliance with California OBD II catalyst monitoring requirements; updating the incorporation by reference of several recommended practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to incorporate recently published versions, while also incorporating by reference a new standardized protocol developed by the International Organization for Standardization (ISO) and establishing a future date by which this protocol will be the only acceptable protocol; and issuing a technical amendment to the optional heavy-duty (HD) vehicle weighing 14,000 pounds GVWR or less chassis certification requirements. OBD systems in general provide substantial benefits to the environment by diagnosing and alerting operators, vehicle inspection and maintenance (I/M) personnel, and service providers to deterioration or malfunction of emission control related systems.

DATES: Written comments must be received by July 17, 2003, and requests for a public hearing must be received by July 2, 2003. If EPA receives a request for a public hearing then the hearing will take place on July 17, 2003, and the written comment period will then close on September 2, 2003. By July 14, 2003, any person who plans to attend the hearing should call Arvon Mitcham at (734) 214–4522 to learn if the hearing will be held. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, NW., Washington, DC.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A–2002–20 at EPA's Air and Radiation Docket and Information Center (Air Docket) at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Arvon Mitcham, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Certification and Compliance Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4522, e-mail *mitcham.arvon@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns proposed amendments and revisions to EPA's OBD regulations. In the "Rules and Regulations" section of today's **Federal Register**, we are approving these amendments and revisions as a direct final rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on August 18, 2003, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Regulated Entities

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines.

Category	Examples of regulated entities	NAICS codes[a]	SIC codes[b]
Industry	New motor vehicle and engine manufacturers	33611, 336112, 336120	3711

[a] North American Industry Classification System (NAICS) Code.
[b] Standard Industrial Classification (SIC) System Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.005–17 and § 86.1806–05 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/*. (Either select a desired date or use the Search feature.)

On-board diagnostics home page: *http://www.epa.gov/otaq/obd.htm*.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Statutory and Executive Order Reviews:

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a "significant regulatory action."

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The modifications noted above do not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemakings (58 FR 9468, February 19, 1993; and 59 FR 38372, July 28, 1994).

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare an initial regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) Those businesses meeting the definition provided by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, EPA determines that this action will not have a significant economic impact on a substantial number of small entities. This rulemaking will provide regulatory relief to both large and small volume automobile and heavy-duty vehicle and engine manufacturers by maintaining consistency with California OBDII requirements. This rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile and heavy-duty truck and engine manufacturers. *See United Distribution Companies* v. *FERC*, 88 F. 3rd 1005, 1170 (D.C. Cir. 1996). Most manufacturers have thus far chosen to reduce their costs by producing vehicle OBD systems to California specifications, thereby avoiding the necessity of developing significantly different OBD calibrations meeting the existing federal specifications for the non-California markets. Today's continuation of the optional compliance option to California's OBDII requirements continues this cost reduction.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates for State, local, or tribal governments as defined by the provisions of title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposal will significantly or uniquely affect small governments.

We have determined that this proposed rule does not contain a Federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule updates provisions of an earlier rule that adopted national standards relating to OBD systems and the ability of manufacturers to demonstrate Federal compliance based on demonstration of compliance with California OBD II regulations. The requirements of the rule will be enforced by the Federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule would not uniquely affect the communities of American Indian tribal governments since the motor vehicle fuel and other related requirements for private businesses in today's rule have national applicability. Furthermore, today's proposed rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document.

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the federal level and imposes compliance obligations and options on private industry. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this proposed rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's proposed rule.

Statutory and Legal Authority

Statutory authority for today's proposed rule comes from the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202(m) of the Act (42 U.S.C. 7521(m)).

List of Subjects in 40 CFR Part 86

Environmental protection, Incorporation by reference, Administrative practice and procedure, Motor vehicle pollution, On-board diagnostics.

Dated: April 25, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–14570 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–80; FCC 03–89]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking reassessing the retail market for navigation devices and the need for the upcoming July 1, 2006 ban on integrated navigation devices. This reassessment is needed to determine whether the July 1, 2006 ban on integrated navigation devices remains appropriate or is no longer necessary as a result of ongoing industry negotiations for a bidirectional specification for digital cable receivers and products. This rulemaking is initiated pursuant to Section 629 of the Communications Act which directs the Commission to adopt regulations to assure the commercial availability of navigation devices equipment used by consumers to access services from multichannel video programming distributors.

DATES: Comments due February 19, 2004; reply comments are due March 10, 2004. Written comments by the public on the proposed information collections are due February 19, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before August 18, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing information, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Mort, 202–418–1043 or *smort@fcc.gov*. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*, or at 202–418–0217, and to Kim A. Johson, OMB Desk Officer, Room 102236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order and Further Notice of Proposed Rulemaking ("FNPRM"), FCC 03–89, adopted April 14, 2003; released April 25, 2003. The full text of the Commission's FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW., Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb*.

Paperwork Reduction Act

The FNPRM portion of this document contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in the FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due August 18, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition to filing comments with the Secretary, a copy of any PRA comments on the information collections contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 215.

Estimated Time per Response: 10 minutes to 40 hours.

Frequency of Response: Quarterly and semi-annual reporting requirements; Third party disclosure.

Total Annual Burden: 3,384 hours.

Total Annual Costs: $33,450.

1. *Needs and Uses:* The FNPRM initiates a reassessment of the state of the navigation devices market by the Commission prior to January 1, 2005. Pursuant to this reassessment, the Commission shall determine whether the July 1, 2006 ban on integrated navigation devices remains appropriate or whether the ban will no longer be necessary. The state of the navigation devices market will be significantly impacted by ongoing negotiations between the cable and consumer electronics industries for a bidirectional specification for digital cable receivers and products. As a result, the cable and consumer electronics industries are requested to provide the Commission with status reports on these negotiations at 90, 180 and 270 day intervals following release of this FNPRM.

Synopsis of the Further Notice of Proposed Rulemaking

2. The Commission initiated its Commercial Availability of Navigation Devices proceeding by notice of proposed rulemaking in CS Docket No. 97–80 (FCC 97–53), 62 FR 10011, March 5, 1997. This action was taken pursuant to Section 629 of the Communications Act which directs the Commission to adopt regulations to assure the commercial availability of navigation devices equipment used by consumers to access services from multichannel video programming distributors ("MVPDs"). Pursuant to this directive, the Commission issued the Report and Order in the above-captioned proceeding establishing, inter alia, a January 1, 2005, deadline for MVPDs to cease deploying new navigation devices that perform both conditional access functions and other functions in a single integrated device. The Commission adopted the requirement to separate the conditional access function from the basic navigation device (the "host device") in order to permit unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. The Commission later issued a Further Notice of Proposed Rulemaking and Declaratory Ruling ("Further Notice and Declaratory Ruling") (FCC 00–341), 65 FR 58255, September 28, 2000, that sought comment on the effectiveness of the Commission's navigation device

rules, including the 2005 prohibition on integrated devices.

3. Since Section 629 and the Commission's rules were adopted, the cable and consumer electronics industries have made, and continue to make, significant progress in the development of technical standards in this area. However, the commercial market for navigation devices used in conjunction with the distribution of digital video programming remains in its infancy. In an effort to spur the transition to digital television, the cable and consumer electronics industry recently reached a Memorandum of Understanding ("MOU") on a cable compatibility standard for a unidirectional digital cable television receiver with host device functionality, as well as other unidirectional digital cable products. This standard would allow consumers to directly attach their DTV receivers to cable systems using a point of deployment ("POD") module and receive one-way cable television services without the need for an external navigation device. The Commission issued a Further Notice of Proposed Rulemaking ("MOU FNPRM") seeking public comment on the MOU issued in the above-captioned proceeding and in the Compatibility Between Cable Systems and Consumer Electronics Equipment proceeding.

4. In its earlier Further Notice and Declaratory Ruling, the Commission had already sought comment, inter alia, on whether the 2005 date for the phase-out of integrated boxes remains appropriate, on what, if any, incentives the requirement creates for the development of a commercial retail market for navigation devices, and on the economic impacts and costs associated with the requirement. In response, the cable industry and set-top box manufacturers generally urged that the 2005 deadline should be eliminated in favor of the continued offering of integrated navigation devices for rent to consumers. Other equipment manufacturing and retail interests urged that the date should be advanced to ensure the timely development of a retail market in host devices. Given the equipment ordering and manufacturing cycles involved, it is necessary at this point to provide guidance as to the Commission's expectations with respect to the 2005 date. Other issues raised in the Further Notice and Declaratory Ruling will be addressed separately at a later time.

5. Commission action in response to the MOU FNPRM could have a significant impact upon the development of a commercial market in separate host devices. In addition, the cable and consumer electronic industries are in the midst of negotiations on specifications for bidirectional digital cable receivers and products which would permit the receipt of advanced cable television services by direct connection to cable systems. This ongoing process, which we are hopeful will produce results in the near term, could impact the development of technical specifications relating to host devices and POD modules. In light of the ongoing notice and comment cycle relating to the MOU FNPRM, the evolving nature of technical specifications relating to navigation devices, and the imminent business ordering and manufacturing cycles facing MVPDs and consumer electronics manufacturers in anticipation of the pending 2005 prohibition, we hereby extend the deadline concerning the prohibition on integrated devices until July 1, 2006.

6. This eighteen month extension should provide adequate time for the parties to complete their ongoing negotiations and for the Commission to make a more knowledgeable decision as to any further changes in the compliance date. By January 1, 2005, the Commission shall complete a reassessment of the state of the navigation devices market and determine whether the designated time frame remains appropriate or whether the ban on integrated devices will no longer be necessary. In the interim, the cable and consumer electronics industries are requested to provide the Commission with status reports on their negotiations on specifications for bidirectional digital cable receivers and products at 90, 180 and 270 day intervals following release of this Order. Following submission of the last status report to the Commission, the public shall have thirty days to submit comments on the status reports and whether any further changes in the phase-out date for integrated devices are warranted.

7. Based upon the record in the above-captioned proceeding and ongoing industry developments, we have concluded that a limited deferral of the date is consistent with the ultimate objectives of this proceeding and our statutory directive to act "in consultation with appropriate industry standard-setting organizations." We are not persuaded at this point to eliminate the prohibition on integrated devices since future developments in both the marketplace and ongoing industry negotiations may yet dictate a need for this requirement in order to achieve the objectives of Section 629. However, the conclusion of the unidirectional MOU, as well as the ongoing negotiations towards a bidirectional agreement, do reflect progress towards the development of a retail market for consumer electronics equipment with navigation device functionality. As such, we do not believe that advancing the prohibition date, as previously suggested by a number of equipment manufacturing and retail interests, is necessary to further these objectives or would provide sufficient lead time for ordering and manufacturing prior to completion of the next phase of the standardization process.

8. *Authority.* This FNPRM is issued pursuant to authority contained in Sections 4(i), 303(r), and 629 of the Communications Act of 1934, as amended.

9. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

10. *Accessibility Information.* Accessible formats of this FNPRM (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

11. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 19, 2004, and reply comments on or before March 10, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

13. *Paperwork Reduction Act of 1995 Analysis.* This FNPRM contains modified information collection(s) subject to the PRA. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

14. Written comments by the public on the proposed information collection(s) are due August 18, 2003. Written comments must be submitted by the public, Office of Management and Budget and other interested parties on the proposed information collection(s) on or before August 18, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

15. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this FNPRM. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Order and Further Notice of Proposed Rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in paragraph 10–11. The Commission will send a copy of this entire, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

17. *Need for, and Objectives of, the Proposed Rules.* In this FNPRM, we extend our review of the development of the commercial availability of navigation devices in light of ongoing industry negotiations which may affect the technical specifications relating to navigation devices. Our objective is to seek comment on the appropriateness of the new July 1, 2006 ban on integrated devices based upon the status of these negotiations. This objective is commensurate with our statutory directive in Section 629 of the Communications Act of 1934, as amended, to act "in consultation with appropriate industry standard-setting organizations" to assure the commercial availability of navigation devices used in conjunction with services provided by multichannel video programming distributors ("MVPDs").

18. *Legal Basis.* The authority for this proposed rulemaking is contained in Sections 4(i), 303(r), and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 549.

19. *Description and Estimate of the Number of Small Entities To Which Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

20. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

21. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by

the decisions and rules proposed in this Order and FNPRM.

22. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

24. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

25. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

26. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

27. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

28. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

29. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

30. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

31. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

32. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

33. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* At this time, it is not expected that the proposed actions will require any additional recordkeeping or compliance requirements. We seek comment on whether others perceive a need for recordkeeping.

34. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

35. We have sought comment on the appropriateness of the July 1, 2006 prohibition on integrated navigation devices in light of, inter alia, ongoing developments regarding this industry. As a part of this effort, we wish to consider and examine the effect of changing or eliminating the prohibition deadline on small entities. We welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

36. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–15188 Filed 6–16–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 116
Tuesday, June 17, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 12, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: McGovern-Dole International Food for Education and Child Nutrition Program.

OMB Control Number: 0551–NEW.

Summary of Collection: The Farm Security and Rural Investment Act of 2002 requires reporting on food aid programs, including the new McGovern-Dole International Food for Education and Child Nutrition program (Food for Education). This program will provide agricultural commodities and financial and technical assistance, to carry out educational programs for food and nutrition in foreign countries. Although the number of report requirements vary in accordance with circumstances, reports will be received from the Cooperating Sponsor every six months during the active life of the agreements. Reporting will be required until all commodities have been distributed, cash outlays expended, and/or the funds generated from the sales of the donated commodities have been disbursed. Information is necessary to satisfy statutory requirements and to assure that public resources are properly used.

Need and Use of the Information: The Foreign Agricultural Service (FAS) will collect from cooperating sponsors a Plan of Operation (*i.e.*, program proposal) and budget, which will be used to determine eligibility for participation. FAS will also collect information that describes the organizational capacity to develop, implement, monitor, and report on school feeding and child nutrition programs. Without the information, it would difficult for FAS to determine the accountability and compliance of the Cooperating Sponsors.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 156.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Semi-annually.

Total Burden Hours: 11,607.

Animal and Plant Health Inspection Service

Title: Horse Protection Regulations (9 CFR part 11).

OMB Control Number: 0579–0056.

Summary of Collection: 9 CFR part 11, Regulations, implement the Horse Protection Act of 1970 (Pub. L. 91–540), as amended July 13, 1976 (Pub. L. 94–360), and are authorized under Section 9 of the Act. The Horse Protection Legislation was enacted to prevent showing, exhibiting, selling, or auctioning of "sore" horses, and certain transportation of sore horses in connection therewith at horse shows, horse exhibitions, horse sales, and horse auctions. A sore horse is a horse that has received pain-provoking practices that cause the horse to have an accentuated, high stepping gait. Sored horses cannot be entered in an event by any person, including trainers, riders, or owners. Management of shows, sales, exhibitions, or auctions must identify sored horses to prevent their participation under the act.

Need and Use of the Information: APHSI will collect information at specified intervals from Horse Industry Organizations (HIO) and show managements. HIOs must maintain an acceptable Designated Qualified Person program and recordkeeping system as outlined in the regulations. Information provided by the HIOs through designated qualified persons allows APHIS to monitor whether enforcement of the Horse Protection Act, its regulations, and certifying programs are effective.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1.514.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Monthly; Annually.

Total Burden Hours: 2,357.

Food and Nutrition Service

Title: Negative Quality Control Review Schedule; Status of Sample Selection and Completion.

OMB Control Number: 0584–0034.

Summary of Collection: The legislative basis for the operation of the quality control system is provided by section 16 of the Food Stamp Act of 1977. State agencies are required to perform Quality Control (QC) reviews for the Food Stamp Program (FSP). As part of the Performance Reporting System, each State agency is required to provide a systemic means of determining the accuracy of household eligibility and measuring the extent to which households receive the food stamp allotment to which they are entitled. Section 275.21(a) requires State agencies to submit reports to enable the Food and Nutrition Service (FNS) to monitor their compliance with Program requirements relative to the Quality Control Review System. FNS will collect information using forms FNS–245 Negative Case Action Review Schedule and FNS–248 Status of Sample Selection and Completion.

Need and Use of the Information: FNS will collect information to record data in negative case reviews. FNS will also measure program operations and determination of a State's eligibility for enhanced administrative funding and to monitor the progress of sample selection and completion. If the information were not collected, it would delay the awarding of monetary incentives in which the negative error rate played a role.

Description of Respondents: State, Local, or Tribal Government; Federal Government; Individuals or households.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly; Annually.

Total Burden Hours: 123,374.

Food and Nutrition Service

Title: USDA National Hunger Clearinghouse Database Form.

OMB Control Number: 0584–0474.

Summary of Collection: The Food and Nutrition Service (FNS) is interested in maintaining and further developing an information clearinghouse (named "USDA National Hunger Clearinghouse") for groups that assist low-income individuals and communities concerning nutrition assistance programs or other assistance. Section 26 of the National School Lunch Act, which was added to the Act by Section 123 Pub. L. 102–448 on November 2, 1994 (Appendix A), mandated that FNS enter into a 4 year contract with a non governmental organization to develop and maintain a national information clearinghouse of grassroots organizations working on hunger, food, nutrition, and other agricultural issues, including food recovery. This legislation was further amended on October 13, 1998 by section 112 of Pub. L. 105–336 to extend and increase funding for the clearinghouse (for fiscal years 1999 through 2003). The USDA National Hunger Clearinghouse uses state-of-the art computer and telecommunications technologies to connect the target audience, sharing information on effective program models, pending legislation and rule makings, surplus and emergency food distribution networks, and USDA programs and policies.

Need and Use of the Information: FNS will collect information to provide a resource for groups that assist low-income individuals or communities regarding nutrition assistance program or other assistance. The information provided by the Clearinghouse database enables these groups to do a better job of assisting the target audience.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Farms.

Number of Respondents: 1,750.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 146.

Forest Service

Title: Public land use and Values.

OMB Control Number: 0596-New.

Summary of Collection: As part of a continuing research effort to develop and evaluate alternative approaches and methods for obtaining and incorporating public input into land and resource management decision, this information collection will focus mainly on people and their use of public lands. The information collection will include three aspects of public preferences, which are: (1) Objectives (comprised of values and desired outcomes) and preferences related to public land and management, (2) land attributes and people's behaviors and perceived consequences that can be linked to policy and management alternatives (in particular, measurable indicators of changes caused or prevented by policy and management actions), (3) identification of how people evaluate measured indicators of policy and management outcomes and consequences. The Forest Service (FS) will collect information using a survey that will be administered primarily by mail, some telephone contact and some in-person contact.

Need and Use of the Information: The information collected will also help managers and planners broaden and deepen their understanding of the public perceptions of various land management practices and impacts of those practices. Without the information reliable data would not be available on how the public feels about various management policies and means for accomplishing those policies on public lands.

Description of Respondents: Individuals or households.

Number of Respondents: 8,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,000.

Grain Inspection, Packers and Stockyard Administration

Title: Survey of Customers of the Official Grain Inspection and Weighing System.

OMB Control Number: 0580–0018.

Summary of Collection: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorizes the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, Grain Inspection, Packers and Stockyard Administration (GIPSA's) Federal Grain Inspection Service (FGIS) offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high-quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities.

Need and Use of the Information: FGIS will collect information using a survey to determine where and to what extent services are satisfactory, and can be improved. The information will be shared with other managers and program leaders who will be responsible for making any necessary improvements at the office/agency, program, and project level.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,874.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 313.

Rural Utilities Service

Title: 7 CFR 1744–C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Summary of Collection: Section 201 of the Rural Electrification Act (RE Act) of 1936 authorizes the Administrator of the Rural Utilities Service (RUS) to make loans for the purpose of providing telephone service to the widest practicable number of rural subscribers. A borrower requesting loan advances must submit RUS Form 481, "*Financial Requirement Statement*" and a description of the advances. A borrower must submit upon request copies of backup documentation relating to the transactions. The information is used to determine what projects the contracts listed on the form relate to. Within a reasonable amount of time, funds are advanced to the borrower for the

purposes specified in the statement of purposes.

Need and Use of the Information: The Form 481 is used by RUS to record and control transactions in the construction fund. RUS will collect information and verify that the funds advanced are related directly to loan purposes. If the information were not collected, RUS would not have any control over how loan funds are spent or a record of the balance to be advanced.

Description of Respondents: Business or other for-profit.

Number of Respondents: 645.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,893.

Rural Utilities Service

Title: 7 CFR Part 1703–H, Deferments of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572–0097.

Summary of Collection: Subsection (b) of section 12 of the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912), a Rural Utilities Service (RUS) electric or telephone borrower may defer the payment of principal and interest on any insured or direct loan made under the RE Act invest the deferred amounts in rural development projects. The Deferment program is used to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses.

Need and Use of the Information: RUS will collect information to determine eligibility; purposes for which the deferment amount will be utilized; the term of the deferment the borrower will receive; the cost of the total project and degree of participation in the financing from other sources; verification that the purposes will not violate limitations established in 7 CFR 1703–H. If the information were not collected, RUS would be unable to determine eligibility for a project.

Description of Respondents: Not-for-profit; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 35.

Rural Utilities Service

Title: 7 CFR part 1775, Technical Assistance Program.

OMB Control Number: 0572–0112.

Summary of Collection: Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, authorizes Rural Utilities Service (RUS) to make loans and grants to public agencies, American Indian tribes, and nonprofit corporations. The loans and grants fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Nonprofit organizations receive Technical Assistance and Training (TAT) and Solid Waste Management (SMM) grants to help small rural communities or areas identify and solve problems relating to community drinking water, wastewater, or solid waste disposal systems. The technical assistance is intended to improve the management and operation of the systems and reduce or eliminate pollution of water resources.

Need and Use of the Information: RUS will collect information to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility and improper use of funds.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 95.

Frequency of Responses: Reporting: On occasion; Quarterly; Monthly.

Total Burden Hours: 4,986.

Forest Service

Title: Recreation Fee Permit Envelope.

OMB Control Number: 0596–0106.

Summary of Collection: The Land and Water Conservation Fund Act of 1965, section 4(b), and Forest Service regulations at Title 36, Code of Federal Regulations (CFR), § 291.2 authorize the collection of fees at some of the National Forest and Grassland recreation sites. Every year millions of people visit National Forest System recreations sites. At some of these sites, the public is required to pay a fee to use the site. Fees are charged to help cover the costs of operating and maintaining fee sites, areas, and facilities such as campgrounds. The Forest Service (FS) used the Recreation Fee Permit Envelope for collection of these fees. The fee envelope is also used as a tool to collect information from visitors who will assist the FS in improving its facilities and services for future visitors.

Need and use of the Information: FS will collect information to be used for two purposes; First, the information pertaining to the fee (site number, length of stay, amount paid, etc.) will be used to verify the visitor has complied with the fee requirements. Second, visitors will be given the opportunity to provide comments about their visit, the condition of the facilities, and how the FS can improve services to the public. If a visitor elects not to complete the information related to the fee, there will be no way to verify they have paid the required fee.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 400,000.

Frequency of Responses: Reporting: Other (per visit).

Total Burden Hours: 20,000.

National Appeals Division

Title: National Appeals Division Customer Service Survey

OMB Control Number: 0503–NEW.

Summary of Collection: The National Appeals Division (NAD) proposes to conduct a customer service survey by mail pursuant to Executive Order No. 12862. The Secretary of Agriculture established NAD on October 20, 1994, by Secretary's Memorandum 1010–1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The Act consolidated the appellate functions and staff of several USDA Agencies and provided for independent hearings and reviews of adverse decisions of Agencies within USDA. Hearing Officers conduct evidentiary hearings on adverse decisions or, when the appellant requests they review the Agency's record of the adverse decision without a hearing. Although NAD maintains a database to track appeal requests, the database contains only information necessary to process the appeal request, such as the name, address, filing results etc. NAD will collect information using a survey.

Need and Use of the Information: NAD will collect information to gauge the appellant's preference for face-to-face hearings, telephone hearings or record reviews, perception of the fairness of the appeal process, how the hearing was conducted, how impartial was the proceeding, appellant treatment, timeliness, and how understandable the final determination. NAD managers to set Customer Service Standards, and make adjustments and improvements to NAD processes, including type of appeal and clarity of NAD notices and determinations, will use the results of the annual survey.

Description of Respondents: Farms; Individuals or households; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1176.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 294.

Natural Resources Conservation Service

Title: Long Term Contracting.

OMB Control Number: 0578–0013.

Summary of Collection: The Long term Contracting regulations at 7 CFR part 630, and the Conservation program regulations at 7 CFR parts (12, 610, 622; 624, 631, 632, 633, 634, 636, 701, 702, 752, 1410, 1465, 1466, 1467 and 1491) set forth the basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term conservation program contracts with technical assistance under the various programs. These programs authorize federal technical and financial cost sharing assistance for conservation treatment with eligible land users. The financial assistance is based on a conservation plan that is made a part of an agreement or contract for a period of no less than one year. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment.

Need and Use of the Information: Natural Resource and Conservation Service (NRCS) will collect information on cost sharing and technical assistance, making land use changes and install measure to conserve, develop and utilize soil, water, and related natural resources on participants land. NRCS uses the information to ensure the proper utilization of program funds, including application for participation, easement acquisition, contract implementation, conservation planning, and application for payment.

Description of Respondents: Individuals or households; Farms; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 383,312.

Frequency of Responses: Reporting; Annually, Other.

Total Burden Hours: 755,152.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–15271 Filed 6–16–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service, Cooperative State Research, Education, and Extension Service

Solicitation of Input From Stakeholders on Research, Education and Extension Programs Related to Food Safety Administered by the Cooperative State Research, Education, and Extension Service and the Agricultural Research Service

AGENCIES: Cooperative State Research, Education, and Extension Service and Agricultural Research Service, USDA.

ACTION: Notice of stakeholders' listening session on food safety research priorities.

SUMMARY: Section 102(b) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612) requires the Cooperative State Research, Education, and Extension Service (CSREES) and the Agricultural Research Service (ARS) in establishing priorities for agricultural research, extension, and education activities conducted or funded by CSREES and ARS to solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education. As part of the Agencies' ongoing stakeholder input processes, CSREES and ARS are soliciting input and comments on the top food safety research priorities of partners and stakeholders. As part of this effort, CSREES and ARS are planning to conduct a "Stakeholders' Listening Session on Food Safety Research Priorities" in Denver, Colorado.

Dates and Addresses: The listening session will be held on Monday, June 30, 2003, from 8:30 a.m. to 5 p.m. at the Radisson Hotel Denver Stapleton Plaza; 3333 Quebec Street; Denver, CO 80207. Attendees must make their own hotel arrangements.

To aid participants in scheduling their attendance, the following schedule is anticipated for the listening session:
8:30 a.m.–9 a.m. Introductory Remarks and Background.
9 a.m.–12 p.m. Scheduled 5-Minute Comment Periods.
1 p.m.–5 p.m. Scheduled 5-Minute Comment Periods.

Persons interested in submitting comments but unable to attend should submit written presentations to be received by 5 p.m. e.d.t. July 14, 2003. Send written presentations to Dr. Pat Kendall at the address below.

FOR FURTHER INFORMATION CONTACT: All those intending to attend and make oral presentations at this meeting are required to pre-register. A List of Participants, including all those who have pre-registered, will be available at the Listening Session. Participants may pre-register by contacting Dr. Pat Kendall at (970) 491–7334, by fax at (970) 491–7252 or by e-mail to *foodnutr@coop.ext.colostate.edu* or by registering on line at *www.cahs.colostate.edu/fshn/foodsafety/*.

SUPPLEMENTARY INFORMATION:

Purpose of This Listening Session

The purpose of this Listening Session is to allow CSREES and ARS partners and stakeholders an opportunity to identify up to five food safety research priorities requiring increased attention over the next five years. All oral presentations should follow the following format:

(1) Provide a clear description of up to five food safety priorities;

(2) Describe the current state of affairs for each priority; and

(3) Indicate where the organization/agency would like to be in five years in regard to each priority.

ARS and CSREES are seeking comments on research priorities related to food safety topics in meat and poultry and fresh fruits and vegetables. Comments are solicited on such subjects including, but not limited to, pre- and post-harvest pathogen reduction, mycotoxins, residues, poisonous plants, good manufacturing practices, worker education and antibiotic resistance. The food safety research priorities identified by partners and stakeholders will provide valuable input for USDA food safety agencies. National Program Leaders from CSREES and ARS will conduct a series of follow-up meetings to develop national and agency-wide strategies for working with partners and stakeholders to help them achieve their 5-year food safety research goals.

Making Reservations To Attend This Listening Session

When making a reservation for a 5-minute oral comment period, participants should provide a title for their presentation. More time may be available in the comment session, depending on the number of people wishing to make a presentation. Reservations will be confirmed on a first-come, first-served basis. The final 30 minutes of the Listening Session will be reserved for unscheduled participants wishing to make 5-minute presentations. Participants who require a sign language interpreter or other special accommodations should contact Dr. Pat Kendall as directed above.

All those making oral presentations at the meeting are required to submit the text of their written presentations. Those unable to attend the meeting may also submit written presentations. Written presentations will be accepted through July 14, 2003. Written presentations may be submitted for the record by e-mailing them to *foodnutr@coop.ext.colostate.edu* or by mailing them to: CSREES/ARS Listening Session; c/o Dr. Pat Kendall; Colorado State University; Department of Food Science and Human Nutrition–1571; Fort Collins, CO 80523–1571. Please provide three copies of the written presentations. Presentations also may be faxed to Dr. Kendall at (970) 491–7252.

Information gathered from the Listening Session will be available for review on the CSREES Web page (*http://www.reeusda.gov*).

Background on Listening Sessions and CSREES Programs

Section 102(b) of AREERA (7 U.S.C. 7612) requires that CSREES and ARS, in establishing priorities for agricultural research, extension, and education activities conducted or funded by CSREES and ARS, solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education. As part of this ongoing effort, CSREES and ARS conduct listening sessions to solicit input and comments on the effectiveness of the existing agricultural research, education and extension programs administered by CSREES and ARS in meeting current and future challenges in the food and agricultural sciences.

Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), 7 U.S.C. 3101, specifies that the purposes of agricultural research, extension, and education are to (1) enhance the competitiveness of the United States agriculture and food industry in an increasingly competitive world environment; (2) increase the long-term productivity of the United States agriculture and food industry while maintaining and enhancing the natural resource base on which rural America and the United States agricultural economy depend; (3) develop new uses and new products for agricultural commodities, such as alternative fuels, and develop new crops; (4) support agricultural research and extension to promote economic opportunity in rural communities and to meet the increasing demand for information and technology transfer throughout the United States agriculture industry; (5) improve risk management in the United States agriculture industry; (6) improve the safe production and processing of, and adding of value to, United States food and fiber resources using methods that maintain the balance between yield and environmental soundness; (7) support higher education in agriculture to give the next generation of Americans the knowledge, technology, and applications necessary to enhance the competitiveness of United States agriculture; and (8) maintain an adequate, nutritious, and safe supply of food to meet human nutritional needs and requirements.

Section 1404 of NARETPA, 7 U.S.C. 3103, defines "Food and Agricultural Sciences" as meaning basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, including activities relating to the following: (1) Animal health, production, and well-being, (2) plant health and production, (3) animal and plant germplasm collection and preservation, (4) aquaculture, (5) food safety, (6) soil and water conservation and improvement, (7) forestry, horticulture, and range management, (8) nutritional sciences and promotion, (9) farm enhancement, including financial management, input efficiency, and profitability, (10) home economics, (11) rural human ecology, (12) youth development and agricultural education, including 4–H clubs, (13) expansion of domestic and international markets for agricultural commodities and products, including agricultural trade barrier identification and analysis, (14) information management and technology transfer related to agriculture, (15) biotechnology related to agriculture, and (16) the processing, distributing, marketing, and utilization of food and agricultural products.

CSREES currently supports agricultural research, extension and education activities through a broad array of programs which includes both formula funded and competitively awarded grant programs. The formula funded programs include the agricultural research programs authorized under the Hatch Act (7 U.S.C. 361a *et seq.*) for the State Agricultural Experiment Stations; section 1445 of NARETPA (7 U.S.C. 3222) for the 1890 Land-Grant Institutions including Tuskegee University, and West Virginia State College; the McIntire-Stennis Cooperative Forestry Act (16 U.S.C. 582a *et seq.*); and section 1433 of NARETPA (7 U.S.C. 3195) for the Animal Health and Disease Research program. The agricultural extension programs are funded under section 3 of the Smith-Lever Act (7 U.S.C. 343) for the cooperative extension services at the 1862 Land-Grant Institutions; section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) for targeted, national programs; and section 1444 of NARETPA (7 U.S.C. 3221) for the 1890 Land-Grant Institutions including Tuskegee University, and West Virginia State College. Section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) authorizes funding for the 1994 Institutions to strengthen their teaching programs in food and agricultural sciences.

The CSREES competitive grant programs include the National Research Initiative authorized under section 2(b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i); the Initiative for Future Agriculture and Food Systems authorized under section 401 of AREERA (7 U.S.C. 7621); the Integrated Research, Education, and Extension Competitive Grants Program authorized under section 406 of AREERA (7 U.S.C. 7626); the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program authorized under section 1417(b)(6) of NARETPA (7 U.S.C. 3152(b)(6)); the Higher Education Challenge Grants Program authorized under section 1417(b)(1) of NARETPA (7 U.S.C. 3152(b)(1)); the Secondary Agriculture Education Challenge Grants Program authorized under section 1417(j) of NARETPA (7 U.S.C. 3152(j)); and the Hispanic-Serving Institutions Education Grants Program authorized under section 1455 of NAREPTA (7 U.S.C. 3241). In addition, sections 535 and 536 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) authorize competitive capacity building and research grant programs for the 1994 Institutions. Further information about CSREES grant programs is available through the CSREES Web page at *http://www.reeusda.gov* as the above list of CSREES grant programs is not exhaustive.

A majority of the agricultural research, extension, and education activities funded by CSREES are conducted through the 1862 Land-Grant Institutions which were established under the First Morrill Act (7 U.S.C. 301 *et seq.*); the 1890 Land-Grant Institutions under the Second Morrill Act (7 U.S.C. 321 *et seq.*); and the 1994 Institutions under the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

The Agricultural Research Service (ARS) is the in-house research agency of the U.S. Department of Agriculture (USDA). Authority for ARS research is derived from the Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201), which established the Department of Agriculture. The scope of USDA's agricultural research programs has been expanded and extended many times since the Department was first created. Today ARS has a workforce of approximately 8,000 employees including 2,000 scientists representing a wide range of disciplines. ARS conducts 1,200 research projects at over 100 locations across the country and at four overseas laboratories. The National Agricultural Library and the National Arboretum are also part of ARS.

ARS conducts research to develop and transfer solutions to agricultural problems of high national priority and provides information access and dissemination to (1) Ensure high-quality, safe food and other agricultural products, (2) assess the nutritional needs of americans, (3) sustain a competitive agricultural economy, (4) enhance the natural resource base and the environment, and (5) provide economic opportunities for rural citizens, communities, and society as a whole.

To achieve these objectives, ARS research projects are divided into National Programs. Currently, ARS research is organized into 22 National Programs which are described in detail on the ARS Web site at *http://www.nps.ars.usda.gov/*. ARS also works to ensure the timely transfer of new knowledge and technologies to potential users. ARS seeks to broaden public understanding of the value of agriculture and agricultural research to ensure the continued primacy of the U.S. agriculture in the 21st century. Program direction related specifically to food safety programs can be found at *http://www.nps.ars.usda.gov/programs/programs.htm?NPNUMBER=108*.

Done in Washington, DC, this 11th day of June, 2003.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–15275 Filed 6–16–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Applications (RFA): Community Outreach and Assistance Partnership Program

ACTION: Announcement of availability of funds and request for applications for the Community Outreach and Assistance Partnership Program.

SUMMARY: In accordance with section 522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of up to approximately $3.5 million in fiscal year (FY) 2003 for collaborative outreach and assistance programs for women, limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers, who produce agricultural commodities covered by the noninsured crop disaster assistance program (7 U.S.C. 7333); specialty crops; and under served commodities (For purposes of this announcement, these commodities are collectively referred to as "Priority Commodities"). Awards under this program will be made on a competitive basis for projects of up to one year. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project. This announcement lists the information needed to submit an application under this program.

Closing Dates: The closing date and time for receipt of applications under this RFA is 5 p.m. Eastern Time on August 1, 2003. Applications received after the deadline will not be evaluated by the technical review panel.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Marie Buchanan, National Outreach Program Manager, Telephone (202) 690–2686, Facsimile (202) 690–1518, E-mail: *Marie.Buchanan@usda.gov*. You may also obtain additional information regarding this announcement from the RMA Web site at *http://www.rma.usda.gov*. Applicants may download an application package for the community outreach and assistance partnership program from the Risk Management Agency (RMA) Web site at: *http://www.rma.usda.gov*. Applicants may also request an application package from: Marie Buchanan, USDA'RMA, Community Outreach and Assistance Program, 1400 Independence Avenue, SW., Room 6709, Stop 0805, Washington, DC 20250–0805. Telephone (202) 690–2686, Facsimile (202) 690–1518, E-mail: *Marie.Buchanan@usda.gov*.

Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA. The applicable address for such submissions is: USDA–RMA, Community Outreach and Assistance Programs, c/o Marie Buchanan, 1400 Independence Avenue SW., Room 6709, Stop 0805, Washington, DC 20250–0805.

Completed and signed application packages sent via the U.S. Postal Service must also be sent to the above address. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C, chapter 25), the collection of information requirements contained in this announcement have been approved under OMB Document Nos. 0348–0043, 0348–0044, and 0348–0046 and 0348–0040.

The Catalog of Federal Domestic Assistance Number for these programs is 10.450.

SUPPLEMENTARY INFORMATION: This announcement consists of six parts:

Part I. General Information
- A. Legislative Authority
- B. Background
- C. Project Goal
- D. Purpose
- E Definition of Priority Commodities

Part II. Eligibility/Funding
- A. Eligible Applicants
- B. Non-financial Benefits
- C. Project Period
- D. Availability of Funds and Amounts

Part III. Program Description
- A. Recipient Activities
- B. RMA Activities
- C. Other Activities

Part IV—Preparation of an Application
- A. Program Application Materials
- B. Content of Applications
- C. Submission of Applications
- D. Acknowledgement of Applications

Part V—Review Process
- A. General
- B. Evaluation Criteria and Weights
- C. Confidentiality

Part VI—Additional Information
- A. Requirement to Use Program Logo
- B. Requirement to Provide Project Information to an RMA representative
- C. Private Crop Insurance Organizations and Potential Conflicts of Interest
- D. Access to Panel Review Information
- E. Notification of Partnership Agreement Awards
- F. Confidential Aspects of Proposals and Awards
- G. Reporting Requirements
- H. Audit Requirements
- I. Prohibitions and Requirements with Regard to Lobbying
- J. Applicable OMB Circulars

Part I—Information for the Community Outreach and Assistance Partnership Program

A. General Information

1. Authority

This program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act).

2. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's four strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, a priority is to be given to producers of Priority Commodities (as specified in subsection 5 of this section).

3. Project Goal

The goal of this program is to ensure that " * * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools."

4. Purpose

The purpose of the Community Outreach and Assistance Partnership Program is to ensure that women, limited resource, socially disadvantaged, and other traditionally underserved producers of priority commodities are provided information and training necessary to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.

Each partnership agreement awarded through this program will provide the applicant with funds, guidance, and the substantial involvement of RMA to carry out an outreach and assistance program for producers in a specific geographical area.

5. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

• *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

• *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

• *Underserved commodities.* This group includes: (a) commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage produced by women, limited resource, socially disadvantaged, or beginning farmers and ranchers.

A project is considered as giving priority to Priority Commodities if the majority of the outreach and educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

Part II— Eligibility/Funding

1. Eligible Applicants

Eligible applicants include educational institutions, community based organizations, associations of farmers, ranchers and other nonprofit organizations with demonstrated capabilities in developing and implementing risk management and other marketing options for priority commodities. Individuals are not eligible applicants. Applicants are encouraged to form partnerships with other entities that complement, enhance and/or increase the effectiveness and efficiency of the proposed project.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

2. Non-financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program).

3. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

4. Availability of Funds and Amounts

The amount of funds available in FY 2003 for support of partnership agreement awards under this program is up to approximately $3.5 million. There is no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. Applicants awarded a partnership agreement for an amount that is less than the amount requested will be required to modify their application to conform to the reduced amount before execution of the partnership agreement. No maximum or minimum funding levels have been established for individual projects or geographic locations. It is expected that the awards will be made approximately 60 days after the application deadline. All awards will be made and agreements completed no later than September 30, 2003.

Those applicants awarded partnership agreements require a match of ten (10) percent of the award amount. The applicant's contribution must be from non-federal funds and can be cash or in-kind.

Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent, or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the partnership application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this partnership agreement;
7. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

Part III—Program Description

In conducting activities to achieve the purpose and goal of this program, the award recipient will be responsible for the activities listed under paragraph 1 of this part. FCIC, working through RMA, will be substantially involved in the activities listed under paragraph 2.

1. Recipient Activities

Award recipients will be required to perform the following activities:

• Finalize an outreach delivery plan that will accomplish the purpose of this program. The plan must describe the manner in which various tasks for the project will be completed, the dates by which each task will be completed, and the partners that will have responsibility for each task. Task milestones must be listed so as to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project. (**Note:** All partnership agreements resulting from this announcement will include delivery plans in a table format. The table can be obtained from the RMA Web site at: *http://www.rma.usda.gov.* All applicants are strongly encouraged to refer to this table when preparing a delivery plan and to use this format as part of the application narrative.)

• Assemble risk management instructional materials appropriate for targeted audience to be used in delivering education and information. This will include: (a) Gathering existing instructional materials that meet the needs of agricultural producers of agricultural commodities; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.

• Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers of the training and informational opportunities being offered.

• Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals. This will include organizing and delivering outreach and educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management.

• Document all outreach and educational activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA representative to evaluate all educational activities and advise RMA as to the effectiveness of activities.

2. RMA Activities

RMA will be responsible for the following activities:

• Review and approve in advance the recipient's project delivery plan.

• Collaborate with the recipient in assembling risk management materials for producers. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other risk management publications that have been prepared by RMA; (d) advising the applicant on the materials available over the internet through the AgRisk Education Library; (e) advising the applicant on technical issues related to crop insurance instructional materials; and (f) advising the applicant on the use of the standardized design and layout formats to be used on program materials.

• Collaborate with the recipient on a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.

• Collaborate with the recipient on the delivery of education to agricultural producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all producer and agribusiness educational delivery plans; (b) advising the applicant on technical issues related to the delivery of crop insurance education and information; and (c) assisting the applicant in informing crop insurance professionals about educational plans and scheduled meetings.

• Reviewing and approving recipient's documentation of risk management educational and outreach activities.

3. Other Activities

In addition to the specific, required activities listed above, the applicant may suggest other outreach activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners. The applicant must also identify specific ways in which RMA could have substantial involvement in the proposed outreach activity.

Part IV—Preparation of an Application

A. Program Application Materials

Program application materials under this announcement may be downloaded from the RMA Web site at: *http://www.rma.usda.gov.* Applicants may also request application materials from: Marie Buchanan, Telephone (202) 690–2686, Facsimile (202) 690–1518, E-mail: *Marie.Buchanan@usda.gov.*

B. Content of Applications

A complete and valid application package must include an original, two paper copies, and one electronic copy (Microsoft Word format preferred) of the application package on diskette or compact disc and must include the following:

1. Applicants must specify whether their application is a new, renewal, or resubmitted application and provide the required information in accordance with the following:

2. New Applications—This is a project application that has not been preciously submitted to the RMA Outreach Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in this RFA.

3. Renewal Applications—This is a project proposal that requests additional funding for a project beyond the period that was approved in an original or amended award. Applications for renewed funding must contain the same information as required for new applications, and additionally must contain a Progress Report. Renewal applications must be received by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

4. Resubmitted Applications—This is a proposal that was previously submitted to the RMA Outreach office, but was not funded. Resubmitted proposals must be reviewed by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

5. A completed and signed OMB Standard Form 424, "Application for Federal Assistance."

6. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs." Indirect costs allowed for projects submitted under this announcement will be limited to 10 percent of the total direct cost of the partnership or cooperative agreement.

7. A budget and detailed narrative in support of the budget that shows all funding sources and itemized costs for each line item contained in the SF–424A. All budget categories must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the SF–424A. There must be a detailed breakdown of all costs, including indirect costs. Include budget notes on each budget line item detailing how each line item was derived. Also provide a brief narrative description of any costs that may require explanation (*i.e.*, why specific costs may be higher than market costs). Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act, the applicable Federal cost principles, and are not prohibited under any other Federal statute. Salaries of project personnel should be requested in proportion to the effort that they would devote to the project.

8. A completed and signed OMB Standard Form 424–B—"Assurances, Non-constructive Programs."

9. A "Statement of Non-financial Benefits." (Refer to Part I.B.2 "Non-financial Benefits")

10. A narrative title page. This single page can provide: (a) The name of the project; (b) the name of the program; (c) the geographic area and target audience for which the project will be directed; (d) the organization submitting the application; (e) a listing of project partners; (f) a brief project summary; and (g) information needed to contact the project's leader, including an e-mail address.

11. A written narrative (limited to fifteen single-sided pages) that describes the outreach project in detail, including the program delivery plan. The narrative should provide reviewers with sufficient information to effectively evaluate the merits of the application under the criteria contained in Part V. In preparing narratives, applicants are strongly encouraged to carefully review and understand the specific features and authorities governing the specific program for which funds are being requested, as described in this announcement. The narrative should include the circumstances giving rise to the proposed activity; a clear, concise statement of the objectives; the steps necessary to implement the program to attain the objectives; an evaluation plan for the activities; and a management and work plan that describes how the activities will be managed by the applicant. Also, all partnerships resulting from this announcement will have delivery plans that are prepared using a specific table format. The delivery plan should identify each objective and the key tasks to achieve the objective, the entity responsible for the task, the completion date, the task location, and RMA's role. A sample table format is available from the RMA Web site *http://www.rma.usda.gov* or can be provided by RMA upon request. Applicants are strongly encouraged to refer to this table when preparing a delivery plan and to use this table format in that portion of the application narrative that addresses the delivery plan. The table can be attached as an Appendix to the narrative.

12. An appendix containing exhibits that the applicant believes will directly support the information provided in the narrative. (Optional)

13. A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities."

14. A completed and signed AD–1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary Covered Transactions."

15. A completed and signed AD–1049, "Certification Regarding Drug-Free Workplace."

C. Submission of Applications

1. An original and two paper copies of the completed and signed application, and one electronic copy (Microsoft Word format preferred) on diskette or compact disc must be submitted in one package at the time of initial submission.

2. All applications must be received by the deadline. Applications that do not meet all the requirements in this announcement are considered as late applications. Late or incomplete applications will not be considered and will be returned to the applicant.

3. Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline only if they are received in the mailroom at the address stated above for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. The address must appear on the envelope or package containing the application with the note "Attention: Community Outreach and Assistance Partnership Program."

Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated above for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington D.C. area now requires.

4. RMA cannot accommodate transmissions of applications by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

5. The deadline for receipt of an application is 5 p.m. Eastern Time on August 1, 2003. The application deadline is firm as to date and hour and applies to submission of the original application and two copies.

D. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact Marie Buchanan at (202) 690–2686.

Part V—Review Process

A. General

Each application will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration.

Second, a review panel will consider the merits of all applications that meet the requirements in the announcement. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. Reviewers will be drawn from USDA, other federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding. The panel will examine and score applications based on the "Evaluation Criteria and Weights" contained in this paragraph B of this part.

Applications will be evaluated and scored in each of the four criteria listed below. The panel will be looking for the specific elements listed with each criterion when evaluating the applications and scoring them. For each application, panel members will assign a point value up to the maximum for each criterion. After all reviewers have evaluated and scored each of the applications, the scores for the entire panel will be averaged to determine an application's final score.

After assigning points upon those criteria, applications will be listed in initial rank order and presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement. Applications will then be funded in final rank order until all available funds have been expended. Applicants must score 50 points or more during the first round to be considered for funding. Unused remaining funds from the first round of competition will be allocated to the second round of competition. Unless the applicant withdraws their proposal, eligible, but unfunded, proposals from the first competition will be considered in the second competition, with or without a revision by the applicant.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the programs described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under this announcement is sufficiently similar to a project that has been funded or has been recommended to be funded under another FCIC or RMA education or outreach program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

Applications will be evaluated according to the following criteria:

1. Project Management—Maximum 20 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist women, limited resource, socially disadvantaged and other traditionally underserved producers. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to, personnel who have experience in directing agricultural programs or providing outreach programs that benefit producers will receive higher rankings.

2. Collaborative Partnering—Maximum 50 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of other agencies, grower organizations, agribusiness professionals, and agricultural leaders to enhance the quality and effectiveness of the program. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad and diverse group of farmers and ranchers will be reached; and (c) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are women; limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers.

3. Delivery Plan—Maximum 15 Points

The applicant must demonstrate that its program delivery plan is clear and specific. For each of the applicant's responsibilities contained in the description of the program, the applicant must demonstrate that it can identify specific tasks and provide reasonable time lines that further the purpose of this program. Applicants will obtain a higher score to the extent that the tasks of the project are specific, measurable, and reasonable, have specific time frames for completion, and relate directly to the required activities and program objectives described in this announcement. For guidance on a delivery plan format, applicants are encouraged to refer to the table in the appendix of this notice.

4. Project Benefits—Maximum 15 Points

The applicant must demonstrate that the project benefits to women, limited resource, socially disadvantaged and other traditionally underserved producers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the project; (b) justify the estimates with clear specifics related to the delivery plan; (c) identify the actions producers will likely be able to take as a result of the project; and (d) identify specific measures for evaluating the success of the project. Reviewers' scoring will be based on the scope and reasonableness of the applicants' estimates of producers reached through the project, clear descriptions of specific expected project benefits for producers, and well-constructed plans for measuring the project's effectiveness.

5. Diversity—Maximum 20 Points

Applicant must identify the geographic areas to be served. After applications have been evaluated and awarded points under the first four criteria, applications that promote the broadest geographic diversity will receive the highest score.

C. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members

will be made available. However, panelists will not be identified with the review of any particular application.

Part VI—Additional Information

A. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

B. Requirement To Provide Project Information to an RMA-selected Contractor

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its education programs by providing documentation of outreach activities and related information to any contractor selected by RMA for program evaluation purposes.

C. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under either of the two educational programs described in this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Such entities will also not be allowed the receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

D. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

E. Notification of Partnership Agreement Awards

Following approval by the awarding official of RMA of the applications selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into a partnership agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project.

The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year. RMA will then extend to award recipients, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice. Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, scored low or were duplicative.

F. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

G. Reporting Requirements

Applicants awarded partnership agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

H. Audit Requirements

Applicants awarded partnership agreements are subject to audit.

I. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available from Marie Buchanan at the above stated address and telephone number.

J. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–15205 Filed 6–16–03; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

[I.D. 061203C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tortugas Access Permits.

Form Number(s): None.

OMB Approval Number: 0648–0418.

Type of Request: Regular submission.

Burden Hours: 8.

Number of Respondents: 31.

Average Hours Per Response: 10 minutes for an application; 2 minutes for a notification; and 90 minutes for an appeal.

Needs and Uses: Persons must obtain a permit in order to gain access to the Tortugas ecological reserve. Permit holders must notify NOAA by radio no less than 30 minutes and no more than 6 hours before entering the reserve, and when leaving it. Permit actions may be appealed The purposes of the access permit and notifications are to (1) protect this unique deepwater coral reef and (2) facilitate the enforcement of the no-take regulations in this remote area. Applications and notifications are made by phone. Appeals must be in writing.

Affected Public: Business or other for-profit organizations; individuals or households; not-for-profit institutions; and State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15295 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket Number: 030520131–3131–01]

Privacy Act of 1974; Altered System of Records

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Commerce (Department) is issuing notice of our intent to amend the system of records entitled Commerce Department System 2, "Accounts Receivable," to add to this system records compiled in conjunction with new pronouncements issued by federal authoritative agencies for debt collection. We invite public comment on the proposed changes in this publication.

DATES: *Comment Date:* To be considered, written comments must be submitted on or before July 17, 2003.

Effective Date: Unless comments are received, the amendments will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to Deputy Chief Financial Officer, Office of Financial Management, U. S. Department of Commerce, Room 6827, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lisa Casias at 202–482–1207.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, OMB Circular A–129 (Revised) and the Departments of Treasury/Justice Federal Claims Collections Standards (Final Rule), the Department has completed a review of its Privacy Act systems of records notices for the purpose of debt collection. In addition, other minor administrative updates are being amended to the system location, categories of records, routine uses, storage, retrievability, notification procedure, and records access procedures.

Commerce/Dept–2

SYSTEM LOCATION:

Delete: a. through g.

Add:

(1) For Office of the Secretary (OS), which includes Gifts & Bequests Fund, Salaries & Expense Fund, and Working Capital Fund:

a. NIST, 100 Bureau Drive, Building 101, Room C29, Gaithersburg, MD 20899

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(2) For Bureau of the Census (Census):

a. U.S. Census Bureau, 4700 Silverhill Road, Federal Building #3, Rooms 3280/3565, Washington, DC 20233

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(3) For Bureau of Industry and Security (BIS) (formerly called the Bureau of Export Administration (BXA)):

a. NOAA, 20020 Century Boulevard, Stations 3333/3505, Germantown, MD 20874

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(4) For Economic and Statistics Administration/Bureau of Economic Analysis (ESA/BEA):

a. NIST, 100 Bureau Drive, Building 101, Room C29, Gaithersburg, MD 20899

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(5) For Economic Development Administration (EDA):

a. EDA, Accounting Division, Herbert C. Hoover Building, Room 7215, 14th & Constitution Avenue, NW., Washington, DC 20230

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(6) For Emergency Loan Guarantee Program, Oil & Gas/Steel (ELGP):

a. NIST, 100 Bureau Drive, Building 101, Room C29, Gaithersburg, MD 20899

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(7) For International Trade Administration (ITA):

a. National Business Center, P&S Mail Stop 2760, 7301 W. Mansfield Avenue, Lakewood, CO 80235–2230

b. National Archives, Bldg. 48, Denver Federal Center, P.O. Box 25307, Denver, CO, 80225

(8) For Minority Business Development Agency (MBDA):

a. NIST, 100 Bureau Drive, Building 101, Room C29, Gaithersburg, MD 20899

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(9) For National Institute of Standards and Technology (NIST):

a. NIST, 100 Bureau Drive, Room A822, Gaithersburg, MD 20899

b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001

(10) For National Oceanic and Atmospheric Administration (NOAA):
a. NOAA, 20020 Century Boulevard, Stations 3333/3505, Germantown, MD 20874
b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001
(11) For National Telecommunications & Information Administration (NTIA):
a. NIST, 100 Bureau Drive, Building 101, Room C29, Gaithersburg, MD 20899
b. Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001
(12) For National Technical Information Service (NTIS):
a. NTIS, 5285 Port Royal Road, Room 1021, Springfield, VA 22161
(13) For U.S. Patent and Trademark Office (PTO):
a. U.S. Patent and Trademark Office, 2011 Crystal Drive, Suite 802, Arlington, VA 22202
b. U.S. Patent and Trademark Office Franconia Warehouse (Files Repository), 6808 Loisdale Road, Springfield, VA 22150–1910

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete: current paragraph
Add: Individuals who owe debts to the Department or one of its offices or bureaus.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete: current paragraph
Add:
Debt records containing information about the debtor(s), the type of debt, the governmental entity to which the debt is owed, and the debt collection tools utilized to collect the debt. The records may contain identifying information, such as name(s) and taxpayer identifying number (*i.e.*, social security number or employer identification number); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. Debts include loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, and other amounts of money or property owed to the Department or one of its offices or bureaus. The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date the debt originated, the amount of the delinquency or default, the date of delinquency or default, basis for the debt, amounts accrued for interest, penalties, and administrative costs, and payments on the account; (b) Actions taken to collect or resolve the debt, such as copies of demand letters or invoices, documents or information required for the referral of accounts to collection agencies or for litigation, and collectors' notes regarding telephone or other communications related to the collection or resolution of the debt; and (c) The Departmental office or bureau that is collecting or owed the debt, and the name, telephone number, and address of the Departmental office or bureau contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete: current paragraph
Add:
28 U.S.C. 3101–3105, Debt Collection Act of 1982 (Pub. L. 97–365); 26 U.S.C. 6402(d); and 31 U.S.C. 3711.

ADD THIS SECTION:

PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the Department or one of its offices or bureaus. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, requesting repayment of the debt by telephone or in writing, offset, levy, administrative wage garnishment, reporting to credit bureaus, referral to collection agencies or for litigation, and other collection or resolution methods authorized or required by law. The information also is maintained for the purpose of providing collection information about the debt to the agency collecting the debt, to provide statistical information on debt collection operations, and for the purpose of testing and developing enhancements to the computer systems which contain the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed as follows:

(1) In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

(2) A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(3) A record from this system of records may be disclosed to a Federal, state, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

(5) A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

(6) A record in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(7) A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

(8) A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

(9) A record in this system may be transferred to the Office of Personnel Management: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

(10) A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

(11) Any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to;
(i) Request for repayment by telephone or in writing;
(ii) Negotiation of voluntary repayment or compromise agreements;
(iii) Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;
(iv) Referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation;
(v) Administrative and court-ordered wage garnishment;
(vi) Debt sales;
(vii) Publication of names and identities of delinquent debtors in the media or other appropriate places; and
(viii) Any other debt collection method authorized by law;

b. To conduct computerized comparisons to locate Federal payments to be made to debtors;

c. To conduct computerized comparisons to locate employers of, or obtain taxpayer identifying numbers or other information about, an individual for debt collection purposes;

d. To collect a debt owed to the Department or one of its offices or bureaus through the offset of payments made by states, territories, commonwealths, or the District of Columbia;

e. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties;

f. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States;

g. To develop, enhance and/or test database, matching, communications, or other computerized systems which facilitate debt collection processes; or

h. For any other appropriate debt collection purpose.

(12) The Department of Defense, the U.S. Postal Service, or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals receiving Federal payments including, but not limited to, salaries, wages, and benefits, which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures;

(13) The Department of Justice for the purpose of litigation to enforce collection of a delinquent debt or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on a debt;

(14) Any individual or other entity who receives Federal payments as a joint payee with a debtor for the purpose of providing notice of, and information about, offsets from such Federal payments; and

(15) Any individual or entity:

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:
(i) Administrative and court-ordered wage garnishment;
(ii) Report information to commercial credit bureaus;
(iii) Conduct asset searches;
(iv) Publish names and identities of delinquent debtors in the media or other appropriate places; or
(v) Debt sales;

b. For the purpose of denying financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the Department or one of its offices or bureaus; or

c. For any other appropriate debt collection purpose.

ADD THIS SECTION:

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete: current paragraph
Add: Records are maintained in computer processible storage media, such as computer hard drives, magnetic disc, tape; in file folders; and on paper lists and forms.

RETRIEVABILITY:

Delete: current paragraph.
Add: Records are retrieved by various combinations of name, taxpayer identifying number (*i.e.*, social security number or employer identification number), or debt account number.

SAFEGUARDS:

Delete: current paragraph.
Add: All officials access the system of records on a need-to-know basis only, as authorized by the system manager. Procedural and physical safeguards are utilized, such as accountability, receipt records, and specialized communications security. Access to computerized records is limited, through use of passwords, and other internal mechanisms, to those whose official duties require access. Hard-copy records are held in file cabinets, with access limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; files are locked up during non-working hours.

RETENTION AND DISPOSAL:

Delete: current paragraph.
Add: Hard-copy records and electronic records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Departmental directives and comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Delete: current paragraph.

Add:

(1) For Office of the Secretary (OS), which includes Gifts & Bequests Fund, Salaries & Expense Fund, and Working Capital Fund:

a. Chief, Financial Operations Division, NIST, 100 Bureau Drive, Mail Stop 3750, Building 101, Room A738, Gaithersburg, MD 20899

(2) For Bureau of the Census (Census):

a. Chief, Reimbursable Section, Finance Division, U.S. Census Bureau, 4700 Silverhill Road, Federal Building #3, Room 3565, Washington, DC 20233

(3) For Bureau of Industry and Security (BIS) (formerly called the Bureau of Export Administration (BXA)):

a. Chief, Receivables Branch, NOAA, 20020 Century Boulevard, Room 3418, Germantown, MD 20874

(4) For Economic and Statistics Administration/Bureau of Economic Analysis (ESA/BEA):

a. Chief, Financial Operations Division, NIST, 100 Bureau Drive, Mail Stop 3750, Building 101, Room A738, Gaithersburg, MD 20899

(5) For Economic Development Administration (EDA):

a. Director, Accounting Division, EDA, Herbert C. Hoover Building, Room 7215, 14th & Constitution Avenue, NW., Washington, DC 20230

(6) For Emergency Loan Guarantee Program, Oil & Gas/Steel (ELGP):

a. Chief, Financial Operations Division, NIST, 100 Bureau Drive, Mail Stop 3750, Building 101, Room A738, Gaithersburg, MD 20899

(7) For International Trade Administration (ITA):

a. Supervisor Accountant, National Business Center, P&S Mail Stop 2760, 7301 W. Mansfield Avenue, Lakewood, CO 80235–2230

(8) For Minority Business Development Agency (MBDA):

a. Chief, Financial Operations Division, NIST, 100 Bureau Drive, Mail Stop 3750, Building 101, Room A738, Gaithersburg, MD 20899

(9) For National Institute of Standards and Technology (NIST):

a. Supervisor, Accounts Receivable Group, NIST, 100 Bureau Drive, Mail Stop 3751, Gaithersburg, MD 20899–3751

(10) For National Oceanic and Atmospheric Administration (NOAA):

a. Chief, Receivables Branch, NOAA, 20020 Century Boulevard, Room 3418, Germantown, MD 20874

(11) For National Telecommunications & Information Administration (NTIA):

a. Chief, Financial Operations Division, NIST, 100 Bureau Drive, Mail Stop 3750, Building 101, Room A738, Gaithersburg, MD 20899

(12) For National Technical Information Service (NTIS):

a. Supervisory Accountant, NTIS, 5285 Port Royal Road, Room 1021, Springfield, VA 22161

(13) For U.S. Patent and Trademark Office (PTO):

a. Director, Office of Finance, U.S. Patent and Trademark Office, 2011 Crystal Drive, Suite 802, Arlington, VA 22202

ADD:

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the System Managers at the addresses listed in the section above. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Department or one of its offices or bureaus maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Delete: current paragraph.

Add: Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access or contesting records should write to the System Managers listed above. All individuals are urged to examine the rules of the Department as published in 15 CFR part 4 b, concerning requirements of the Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

Delete: current paragraph.

Add: See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Delete: current paragraph.

Add: Information in this system is provided by the individual on whom the record is maintained, the Departmental office or bureau to which the debt is owed, Federal employing agencies and other entities that employ the individual, Federal agencies issuing payments, collection agencies, locator and asset search companies, credit bureaus, Federal agencies furnishing identifying information and/or address of debtor information, or from public documents.

ADD:

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 10, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 03–15207 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–BV–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 030520130–3130–01]

Privacy Act Altered System of Records

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of amendment of Privacy Act System of Records, Commerce/Department system 18: employees personnel files not covered by notices of other agencies and request for comments.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), the Department of Commerce (Department) is issuing notice of our intent to amend the system of records entitled Commerce Department System 18, "Employees Personnel Files Not Covered By Notices of Other Agencies." This amendment adds to this system those records compiled in conjunction with requesting, approving, denying and/or providing reasonable accommodation under the requirements of E.O. 13164, 7/26/00. We invite public comment on the proposed changes in this publication.

DATES: *Comment Date:* To be considered, written comments must be submitted on or before July 17, 2003.

Effective Date: Unless comments are received, the amendments will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to Brenda Dolan, U. S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW., Washington, DC 20230, 202–482–4115.

FOR FURTHER INFORMATION CONTACT: Brenda Brittain at 202–482–8183.

SUPPLEMENTARY INFORMATION: On July 26, 2000, Executive Order 13164, which stipulated that Federal agencies must issue written procedures for providing reasonable accommodation to employees, was promulgated. This amendment adds to the subject system those files containing records compiled in accordance with the E.O. 13164 and the Department policy guidance. Department guidance establishes procedures to implement requirements for the reasonable accommodation issued by the Equal Employment Opportunity Commission in October 2000. In addition, other minor administrative updates are being amended to the system location, categories of records, routine uses, storage, retrievability, notification procedure, and records access procedures.

Commerce/Dept–18

SYSTEM NAME:

Employees Personnel Files Not Covered by Notices of Other Agencies-COMMERCE/DEPT–18.

SYSTEM LOCATION:

a. For all Departmental employees: Departmental Office of Human Resources Management, Room 5001, U.S. Department of Commerce, Washington, DC 20230 (for automated records and for selected records relating to Senior Executive Service and Departmental Honor Awards).

b. For employees of Departmental Offices, Office of Human Resource Services, Room 5005, U.S. Department of Commerce, Washington, DC 20230.

c. For employees of the Bureau of the Census: Human Resources Division, Bureau of the Census, Federal Building 3, Room 3260, Suitland, Maryland 20233.

d. For employees of International Trade Administration, National Telecommunications and Information Administration, Minority Business Development Agency, Economic Development Administration, Bureau of Industry and Security, and Bureau of Economic Analysis: Human Resources Management, International Trade Administration, Room 3512, U.S. Department of Commerce, Washington, DC 20230.

e. For employees of National Institute of Standards and Technology, Technology Administration and National Technical Information Service: Human Resources Management Division, National Institute of Standards and Technology, Administration Building, Room A–123, Gaithersburg, Maryland 20899–3550.

f. For employees of National Oceanic and Atmospheric Administration: Human Resources Management Office, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th Floor, Silver Spring, Maryland 20910, and the following Administrative Support Centers:

DOC/NOAA/Eastern Administrative Support Center, Norfolk Federal Building, 200 Granby Street, Room 815, Norfolk, Virginia 23510; DOC/NOAA/Mountain Administrative Support Center, 325 Broadway, Room GB109, Boulder, Colorado 80305–3328; DOC/NOAA/Western Administrative Support Center, Operations, 7600 Sand Point Way, NE., Seattle, Washington 98115–6349; and DOC/NOAA/Central Administrative Support Center, Federal Building, 601 E. 12th Street, Room 1737, Kansas City, Missouri 64106.

g. For employees of U.S. Patent and Trademark Office, Office of Human Resources, U.S. Patent and Trademark Office, U.S. Department of Commerce, Suite 707, 2011 Crystal Drive, Arlington, Virginia 22202.

h. For employees of Office of Inspector General, Human Resources Management Division, Room 7713, U.S. Department of Commerce, Washington, DC.

i. For employees of U.S. Foreign and Commercial Service, Office of Foreign Service Human Resources, Room 3227, U.S. Department of Commerce, Washington, DC 20230.

j. For Bureau of the Census' National Processing Center, Human Resources Branch, U.S. Department of Commerce, National Processing Center, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132.

k. For political appointees in the Department of Commerce, Office of White House Liaison, U.S. Department of Commerce, Room 5835, Washington, DC 20230

l. For any Department employee: The immediate office of the employee's supervisor(s).

m. For any reasonable accommodation reports (CD 575): The Office of Civil Rights, U.S. Department of Commerce, Room 6003, Washington, DC 20230

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants, Current and Former Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All personnel records in the Department which are subject to the Privacy Act but are not covered in the notices of systems of records published by other agencies with influence upon personnel management in the Department, such as the Office of Personnel Management, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of State or Department of Labor. The records of this system may include, but are not limited to: The individual's name; birth date; home and emergency addresses and telephone numbers; personnel actions; qualifications; training; employment history; awards; counseling; reprimands; work assignments; injuries; travel; outside employment; employee development records; incentive awards; employee relations; grievance records; medical records; work-related injury or illness claims; career management program ship personnel; employee overseas assignment(s); minority group statistics program; work performance and appraisal records, including supervisory records; re-employment and priority placement program; executive assignments and merit pay actions; merit assignment programs; retirements; within-grade denials (reconsideration files); reasonable accommodation report (CD 575); automated employee information system; and U.S. Foreign and Commercial Service employee personnel and security information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following, with all revisions and amendments: 5 U.S.C. 301; 44 U.S.C. 3101; E.O. 12107, E.O. 13164.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed as follows:

(1) In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

(2) A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(3) A record from this system of records may be disclosed to a Federal, state, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

(5) A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

(6) A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

(7) A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

(8) A record in this system may be disclosed to the Office of Personnel Management: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

(9) A record from this system of records may be disclosed to the Administrator, General Services Administration (GSA), or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

(10) A record in this system of records may be disclosed to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

(11) A record in this system of records may be disclosed to officials of the Office of Personnel Management, Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission, the Department of State, or the Department of Labor when requested in performance of their authorized duties.

(12) A record in this system of records may be disclosed in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

(13) A record in this system of records may be disclosed to officials or labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(14) A record in this system of records may be disclosed to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718).

(15) A record in this system of records may be disclosed to Senior State Department officials at U.S. Embassies, including the Ambassador, Deputy Chief of Mission, Administrative Counselor and Human Resource Officers, for matters relating to employment or security issues pertaining to Department of Commerce employees working in U.S. Embassies or facilities overseas.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer processible storage media, such as computer hard drives, magnetic disc, tape; in file folders; and on paper lists and forms.

RETRIEVABILITY:

Records are retrieved by various combinations of name, taxpayer identifying number (*i.e.*, social security number or employer identification number), or debt account number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises or secured computers with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

All records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Departmental directives and comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Same as listed under System Location.

NOTIFICATION PROCEDURE:

For Bureau of Economic Analysis records at locations a and d, information may be obtained from: Chief, Management and Organization Branch, Bureau of Economic Analysis, Tower Building, 1401 K Street, NW., Washington, DC 20230;

For National Telecommunications and Information Administration records at locations a and d, information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, DC 20230; For National Technical Information Service records at locations a and e, information may be obtained from: Privacy Officer, National Technical Information Service, U.S. Department of Commerce, Washington, DC 20230;

For Minority Business Development Agency records at locations a and d, information may be obtained from: Privacy Officer, Office of Chief Counsel, Minority Business Development Agency, U.S. Department of Commerce, Washington, DC 20230;

For all other records at locations a and b, information may be obtained from Departmental Privacy Act Officer, Office of Executive Assistance Management, U.S. Department of Commerce, Washington, DC 20230;

For records at location c, information may be obtained from Associate Director for Finance and Administration, Bureau of the Census, Federal Building 3, Washington, DC 20230;

For records at location d, information may be obtained from Privacy Act Officer, Office of Management and Systems, International Trade Administration, Room 4001B, U.S. Department of Commerce, Washington, DC 20230;

For records at location e, information may be obtained from: Chief, Management and Organization Division, Room A525, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–3220;

For records at location f, information may be obtained from: Director, Human Resources Management Offices, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th Floor, Silver Spring, Maryland 20910;

For records at location g, information may be obtained from: Chief Financial Officer and Chief Administrative Officer, U.S. Patent and Trademark Office, Washington, DC 20231;

For records at location h, information may be obtained from: Personnel Management Division, Economic Development Administration, Room 7089, U.S. Department of Commerce, Washington, DC 20230;

For Bureau of Industry and Security records at location d, information may be obtained from: Director, Office of Planning, Evaluation and Management, and various Director's offices, Room 6883, U.S. Department of Commerce, Washington, DC 20230;

For Technology Administration records at location e, information may be obtained from: Human Resources Management Division, National Institute of Standards and Technology, Administration Building, Room A–123, Gaithersburg, Maryland 20899–3550;

For records at location k, information may be obtained from: Privacy Officer for employee's unit.

For records at location l, information may be obtained from: Privacy Officer for employee's operating unit.

Requester should provide name, social security number, and time or organization unit of employment pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

For records at location h, information may be obtained from: Personnel Management Division, Economic Development Administration, Room 7089, U.S. Department of Commerce, Washington, DC.

For records at location i, information may be obtained from: Office of Foreign Service Human Resources, Room 3227, U.S. Department of Commerce, Washington, DC 20230.

For records at location j, information may be obtained from: Human Resources Branch, U.S. Department of Commerce, National Processing Center, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132.

For records at location m, information may be obtained from Departmental Privacy Act Officer, Office of Executive Assistance Management, U.S. Department of Commerce, Washington, DC 20230.

RECORD ACCESS PROCEDURES:

Request from individuals should be addressed to: same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR part 4b. Use address in notification section.

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information; others involved in reference of the individual; physicians; employee's supervisor; for grievance records information is also provided by the testimony of witnesses, by agency officials, and from related correspondence from organizations or persons.

Dated: June 10, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 03–15208 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–2003]

Foreign-Trade Zone 50—Long Beach, California, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Long Beach, grantee of Foreign-Trade Zone 50, requesting authority to expand FTZ 50 in the Long Beach, California, area, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 9, 2003.

FTZ 50 was approved on September 14, 1979 (Board Order 147, 44 FR 55919, 9/28/79) and expanded on April 2, 1985 (Board Order 298, 50 FR 15205, 4/17/85), on March 25, 1987 (Board Order 341, 52 FR 10393, 4/1/87), on December 19, 1990 (Board Order 494, 55 FR 53581, 12/31/90), on July 17, 1996 (Board Order 833, 61 FR 42832, 8/19/96), and on January 16, 2001 (Board Order 1141, 66 FR 8378, 1/31/01). The general-purpose zone currently consists of seven sites (2,204 acres) in the Long Beach area: Site 1 (12 acres)—Parcel 1–A (8 acres) located at 909 East Colon Street, Wilmington, and Parcel 1–B (4 acres) located at 22941 South Wilmington Avenue, Carson; *Site 2* (1,844 acres)—California Commerce Center, Ontario; Site 3 (109 acres)—92 acres within the Inter-City Commuter Station Redevelopment area in Santa Ana and 17 acres at two warehouse facilities located at 3000/3100 Segerstrom Avenue and 2900/2930 South Fairview Street in Santa Ana; *Site 4* (175 acres)—within the 2,300-acre San Bernardino International Airport and Trade Center complex in San Bernardino; *Site 5* (11 acres)—Parcel 1 (6 acres) located at 1101 W. McKinley Avenue within the Fairplex Center in Pomona and Parcel 2 (5 acres) located at 10501–10509 East Valley Boulevard at Pacific Place in El Monte; Site 6 (50 acres)—former General Dynamics/Hughes site, north of Mission Boulevard between Humane Way and Dudley Street, Pomona; and, *Site 7* (3 acres—2 sites)—a 1-acre site extending along San Marino Avenue and bounded on the north and south by Broadway and Clary Avenues and a 2-acre site at Santa Anita and Junipero Serra Streets in San Gabriel.

The applicant is now requesting authority to expand existing Site 2 by adding an additional 143 acres within the California Commerce Center in Ontario. This increases the total acreage at this site to 1,987 acres. The site will provide public warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W,

1099 14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is August 18, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 1, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce, Export Assistance Center, 2940 Inland Empire Boulevard, Suite 121, Ontario, CA 91764.

Dated: June 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–15290 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2003]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Status; Inflation Systems, Inc., Facilities (Automotive Airbag Inflators); LaGrange, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the automotive airbag inflator manufacturing facilities of Inflation Systems, Inc. (ISI) (a subsidiary of Takata Corporation, of Tokyo, Japan) located in LaGrange, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 9, 2003.

The proposed subzone would include two ISI facilities located about 60 miles southwest of Atlanta: Site 1 (138 acres/130,000 sq. ft.)—manufacturing plant located at 200 Piedmont Circle, LaGrange (Troup County), Georgia; and, Site 2 (5 acres/25,000 sq. ft.)—warehouse located within the Gordon Commercial Park at 118 Gordon Commercial Drive, LaGrange. The facilities (400 employees) are used to produce automotive airbag inflators for export and the domestic market. The manufacturing plant has capacity to produce about six and a half million inflators annually. Components purchased from abroad (representing about 10% of finished inflator value) include: bases, caps, flanges, disks, bodies, closures, and connectors classified under HTSUS 8708.99.8080, and filters (duty rate range: free—2.5%).

FTZ procedures would exempt ISI from Customs duty payments on the foreign components used in export production. On its domestic sales and exports to NAFTA countries, ISI would be able to defer duty payment on the foreign components used in production until the finished inflators are formally entered for consumption. No duties would be paid on foreign components of inflators that are transferred in-bond to auto assembly plants with subzone status. The application indicates that subzone status would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the BBoard.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is August 18, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 1, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 900, 285 Peachtree Center Avenue, Atlanta, Georgia 30308.

Dated: June 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–15289 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–2003]

Foreign-Trade Zone 151—Findlay, OH; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Findlay Hancock Chamber of Commerce (FHCOC), grantee of Foreign-Trade Zone 151, requesting authority to expand its zone in Findlay, Ohio, within the Toledo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 10, 2003.

FTZ 151 was approved on July 6, 1988 (Board Order 389, 53 FR 27058, 7/18/88) and expanded on February 10, 1999 (Board Order 1023, 64 FR 8542, 2/22/99). The general-purpose zone currently consists of two sites (921 acres) in Findlay (Hancock County): *Site 1* (820 acres)—Tall Timbers Industrial Center located at the intersection of State Route 12 and County Road 95; and, *Site 2* (101 acres, 2 parcels)—Ball Metal Container Group general-purpose warehouse facility located at 12340 Township Road 99 East and a warehouse facility located on County Road 95 (expires 6/30/2004). In a separate pending application (FTZ Doc. 13–03), the grantee has requested an indefinite extension of authority for Site 2.

The applicant is now requesting authority to expand the zone to include an additional site: *Proposed Site 3* (373 acres) within the 398-acre Ottawa Industrial Park, located at the intersection of Williamstown Street and Sugarmill Drive in Ottawa (Putnam County). The site will provide public warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is August 18, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 1, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Findlay/Hancock County Chamber of Commerce, 123 E. Main Cross Street, Findlay, Ohio 45840.

Dated: June 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–15291 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 25–2003]

Foreign-Trade Zone 203—Moses Lake, WA; Application for Subzone Status; Inflation Systems, Inc., Plant (Automotive Airbag Inflators and Propellant); Moses Lake, WA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Moses Lake Public Corporation, grantee of FTZ 203, requesting special-purpose subzone status for the automotive airbag inflator and propellant manufacturing plant of Inflation Systems, Inc. (ISI) (a subsidiary of Takata Corporation, of Tokyo, Japan) located in Moses Lake, Washington. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 9, 2003.

The ISI plant (125 acres/234,000 sq. ft.) is located at 9138 Randolph Road NE in Moses Lake (Grant County), Washington. The facility (300 employees) is used to produce automotive airbag inflators and related propellant for export and the domestic market. The plant has capacity to produce about four and half million inflators and three million pounds of propellant annually. Propellants ISI manufactures include 3110, 2004, 128T classified under HTSUS 3602.00.00 (duty free). Components and chemical inputs purchased from abroad (representing between 10–72% of finished inflator and propellant value) include: bases, caps, flanges, disks, bodies, closures, and connectors classified under HTSUS 8708.99.8080, filters, strontium nitrate, 5AT, K5AT, BHT, and DNPH (duty rate range: free—6.5%).

FTZ procedures would exempt ISI from Customs duty payments on the foreign components and chemicals used in export production. On its domestic sales and exports to NAFTA countries, ISI would be able to choose the duty rates that apply to finished propellant (duty free) and airbag inflators (2.5%) for the foreign inputs noted above that have higher rates. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is August 18, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 1, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the Bureau of Customs and Border Protection Office, Grant County International Airport, 7810 Andrews Street NE., Moses Lake, Washington 98837.

Dated: June 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–15288 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061203A]

Proposed Information Collection; Comment Request; Subsistence Fishery for Pacific Halibut in Waters off Alaska, Registration and Gear Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 18, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden at 907–586–7228 or at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission seeks renewal of collection-of-information requirements that are part of the program for the Pacific halibut subsistence fishery. The program includes requirements for registration to participate in the fishery, and the marking of certain types of gear used in this fishery. The registration requirement is intended to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. The gear-marking requirement aids in enforcement and in actions related to gear damage or loss.

II. Method of Collection

The registration information may be submitted by an individual or as a list of multiple individuals from an Alaska Native tribe. Submissions may be made by mail, FAX, e-mail or on-line.

III. Data

OMB Number: 0648–0460.

Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households, and not-for-profit institutions.
Estimated Number of Respondents: 4,658.
Estimated Time Per Response: 10 minutes for a subsistence halibut registration; and 15 minutes for subsistence halibut gear marking.
Estimated Total Annual Burden Hours: 1,167.
Estimated Total Annual Cost to Public: $16,816.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15293 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061203B]

Proposed Information Collection; Comment Request; Subsistence Fishery for Pacific Halibut in Waters off Alaska, Annual Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 18, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden at 907–586–7228 or at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This survey is part of a subsistence Pacific halibut program that is intended to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. The annual survey would be voluntarily submitted to NOAA to report Pacific halibut catch for the prior year. The catch reports will be used to help track the impacts of the program.

II. Method of Collection

The annual survey may be submitted by mail, FAX, e-mail or by individual post-season interviews.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households, and not-for-profit institutions.
Estimated Number of Respondents: 8,900.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 4,450.
Estimated Total Annual Cost to Public: $8,900.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15294 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of remand and stay of appeal proceedings; reopening of public comment period.

SUMMARY: This notice: (1) Announces a remand of Islander East's administrative appeal (Consistency Appeal of Islander East Pipeline Company, L.L.C.) to the Connecticut Department of Environmental Protection; (2) announces a suspension in processing Islander East's administrative appeal by the Department of Commerce, for a period ending no later than July 31, 2003; (3) reopens the period for the public to comment on Islander East's administrative appeal; and (4) provides information about procedural aspects of the appeal that are affected by the remand and stay of appeal proceedings.

DATES: The remand of the appeal to the Connecticut Department of Environmental Protection will extend for a period ending no later than July 31, 2003. The stay of appeal proceedings by the Department of Commerce will run through a period ending no later than July 31, 2003. The public comment period will now close on July 31, 2003, but will be extended assuming processing of the appeal resumes. The Federal agency comment period will be extended to run through July 31, 2003, and will be further extended after the appeal has recommenced.

ADDRESSES: All e-mail comments on issues relevant to the Secretary of Commerce's (Secretary) decision in this appeal may be submitted to *Islander East.comments@noaa.gov*. Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR FURTHER INFORMATION CONTACT: Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via e-mail at *GCOS.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION:

I. Remand and Stay

In November 2002, the Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Department of Commerce (Department), pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce override the State of Connecticut's (State) objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North haven, Connecticut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effect on the natural resources or land and water uses of Connecticut's coastal zone.

In March 2003, and then in early May 2003, the Department granted, and then extended, a stay of proceedings for this appeal, as jointly requested by the parties. Subsequently, on May 15, 2003, Islander East requested the Department of Commerce to: (1) Continue the stay then in place regarding the Department's proceeding of the appeal; and (2) remand the proceeding to the Connecticut Department of Environmental Protection. The remand would allow the State to reconsider its October 2002 objection to the proposed pipeline project, based on new information submitted by Islander East. The new information primarily involves changes proposed to minimize adverse environmental impacts to Long Island Sound that may result from construction of the proposed pipeline. The changes are intended to address concerns which were a basis for the State's objection to the project.

The State of Connecticut advised the Department on May 23, 2003, that it did not object to a remand; nor did it object to the period of the remand ending no later than July 31, 2003, as proposed by Islander East. On June 2, 2003, the Department granted the requested remand and stay pursuant to 15 CFR 930.129(d).

II. Public Comments

During the remand and stay, the public may continue to submit comments to the Department of Commerce (*see* address section above) on issues to be considered if the appeal recommences. A summary of the grounds for which Islander East requested an override of the State's objection appears in the **Federal Register** at 68 FR 3513. The public comment period, which was announced in this same issue of the **Federal Register** as ending on May 8, 2003, is reopened through July 31, 2003. Comments received after May 8, 2003, but before the publication of this notice, will be considered to be timely filed.

III. Other Procedural Matters

This portion of the **Federal Register** notice provides information concerning other procedural aspects of the Islander East appeal that are affected by the remand and stay. The Federal agency comment period will be reopened and letters announcing this action will be sent to agencies whose views were previously solicited but not yet received. If the Department resumes processing the appeal, both the public and federal agency comment periods will be further extended in order to provide an adequate opportunity to consider the State of Connecticut's brief. (The State's brief had been due on March 24, 2003. As announced previously, the State's brief is now due 45 days after the appeal has recommenced.) **Note:** the additional time for comments, to be provided if the appeal recommences, will not be commensurate with the length of the stays. This is a change to advice contained in a **Federal Register** notice announcing the stay granted on March 17, 2003 (*see* 68 FR 14401), and reflects the ongoing nature of the stay. The stay requested at the time we provided our earlier advice is far shorter than the overall length of the stay as subsequently extended.

The scheduling of a public hearing on the appeal will continue to be delayed until after processing of the appeal resumes, consistent with the earlier request of Islander East and the State.

A summary of relevant issues as well as additional background on the appeal appears in a January 24, 2003, **Federal Register** announcement, 68 FR 3513, a copy of which can be found at the Department of Commerce CZMA appeals Web site *www.ogc.doc.gov/czma.htm*. The Web site also provides access to documents from the appeal record and general information concerning the appeal process.

Questions about the stay for the Islander East appeal may be sent to NOAA via e-mail (*GCOS.inquiries@noaa.gov*) or made by telephone (301 713–2967, extension 186).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: June 11, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–15206 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060303B]

Marine Mammals; File No. 550–1712

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Bernd Wursig, Ph.D., Professor and Director of the Institute of Marine Life Sciences, Texas A&M University, 4700 Avenue U, Building 303, Galveston, TX 77551, has applied in due form for a five-year permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 17, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The proposed research is a continuation of behavioral ecology studies of bottlenose dolphins in the Gulf of Mexico along the Texas and Louisiana coastline. The applicant is specifically requesting to take bottlenose dolphins by close approach for photo-id, behavioral observation and biopsy sampling. Proposed takes include 1,000 individuals for photo-identification and behavioral observation annually and 250 takes of juveniles/adults by biopsy sampling over the course of the Permit. Calves would not be biopsy sampled.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15296 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030530140–3140–01; I.D. 060903D]

Final Guidance for the Coastal and Estuarine Land Conservation Program

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Commerce

SUMMARY: Notice is hereby given of the availability of Final Guidelines for the Coastal and Estuarine Land Conservation Program (CELCP). The Fiscal Year 2002 Appropriations Act for the Departments of Commerce, Justice and State directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program "for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses," giving priority to lands which can be effectively managed and protected and which have significant ecological value. The law further directed the Secretary to issue guidelines for this program delineating the criteria for grant awards and to distribute funds in consultation with the States' Coastal Zone Managers' or Governors' designated representatives based on demonstrated need and ability to successfully leverage funds.

These guidelines: outline a planning process for states to identify the conservation needs and priorities within each state; provide the information necessary for eligible coastal states to develop land conservation plans and nominate projects to a national competitive selection process; and delineate the criteria for grant awards.

The Final Guidance for the Coastal and Estuarine Land Conservation Program, published below, can also be found on NOAA's website at *http://www.ocrm.nos.noaa.gov/landconservation.html* or may be obtained upon request via the contact information listed below.

FOR FURTHER INFORMATION CONTACT: Elaine Vaudreuil, NOAA's Ocean Service, Office of Ocean and Coastal Resource Management, 1305 East-West Highway (N/ORM), Silver Spring, MD 20910; tel. 301–713–3155, extension 103; e-mail: *Elaine.Vaudreuil@noaa.gov*.

SUPPLEMENTARY INFORMATION: (1) Program Authorities: Specific authority for this Announcement is found in 16 U.S.C. 1456d. (2) Federal Domestic Assistance Catalog Number 11.419 Coastal Zone Management Program Administration

Response to Comments

NOAA made the draft guidelines available for a 30–day public comment period and received 20 sets of comments. The comments ask NOAA to:

- clarify which elements of the guidelines would apply to earmarks versus competitive grants;
- be flexible throughout the grant process to account for the nature of real estate transactions and private, willing seller landowners;
- enable local governments or watershed organizations to apply directly to the national competitive process;
- make non-governmental organizations eligible to apply for grants and hold title to land;
- clarify that the definition of "acquisition" includes other conservation options, such as the purchase of conservation easements;
- clarify that all land secured through CELCP be held in public ownership and provide conservation in perpetuity;
- clarify the relevance of the term "Project Areas" and how it differs from "priority areas", and "types of land≥;
- include timelines or deadlines, as well as instructions for applying for funds, such as the anticipated number of grants and their amounts, in order to solicit meaningful project applications;
- clarify eligibility and the application process for planning funds;
- seek the lead agency's approval before making direct grants to other state agencies or local governments;
- lower the percentage of required non-federal match; clarify whether planning funds require non-federal match;
- clarify a waiver of match for U.S. insular areas for projects up to $200,000, in accordance with 48 U.S.C. 1469a(d);
- exercise its discretion to waive the match for underserved communities in specific circumstances, such as areas without public access;
- clarify whether the 5 percent limit on administrative costs refers to state, Federal, or combined program administration, and address state indirect costs that are incurred for grant administration;
- extend the 2–year period for land stewardship costs to a 5–year period and limit costs to 5 percent of the total grant award;
- make land acquisition the only eligible use of funds under the CELCP, and not program administration and stewardship costs, but rather allow these costs as state match contributions;

- enable states to use lands anywhere in the states' coastal zone as match, rather than lands in "...the vicinity of the property...or in the same project area ..";
- not require that lands used as match also contain deed restrictions similar to the land directly acquired under this program;
- prohibit "the acquisition of land for active recreation such as sports facilities, playgrounds or like uses.≥;
- address how pre-existing uses would be handled;
- not make too onerous the requirement for "a strategy for long-term stewardship" for each project, but rather ensure that the restrictions on future use of the property noted in 2.6(a) of the guidance are included as part of the land transaction;
- give greater recognition in the national ranking and selection criteria to: inter-state cooperation in developing state plans; to priorities within National Estuary Program comprehensive plans; and to projects within project areas that have higher population densities or urbanized areas;
- clarify whether an "assessment of priority land conservation needs", as described in section 1.3 is included among plan components at section 3.1;
- base the project identification process on scientific assessments of habitat needs;
- allow plans developed through other planning and public review processes, such as approved coastal management programs or watershed conservation plans, to be "adopted" or "recognized" by the state for purposes of a state's CELC Plan;
- add restoration plans to the types of plans to be considered in developing CELC plans;
- remove the criterion in section 3.1.b that requires projects to establish or help to "establish conservation corridors and/or linkages" as an overriding national project selection criteria;
- clarify that the "letter of intent" reflects an expectation of continuing negotiations leading to a purchase agreement;
- emphasize negotiation with willing sellers, and avoid projects that require condemnation;
- ask applications to note adjacent land uses on the project location map;
- clarify which standards are to be used for appraisals;
- allow cost estimates at the project application stage and not limit project applications to properties with letters of intent or contracts;
- reappoint and reconstitute the national peer review panel annually and identify alternates to ensure that conflicts of interest can be addressed without delay;
- ensure geographic representation of coastal regions on the peer review panel and in the distribution of project funds;
- allow eligible entities to apply for grants for projects that have already closed during the prior year;
- administer CELC grants efficiently, recognizing that states must act on a timely basis to take advantage of conservation opportunities;
- clarify how resources will be allocated to each state on an annual basis, eg. through a formula based on shoreline mileage; and
- consider that requiring "...maps of "project areas" that identify the State's priority areas..." is too specific for planning purposes and may cause concern.

In response to these comments, in the final guidelines, NOAA has:

- added language to clarify which elements of the guidelines apply to earmarks versus competitive grants;
- provided more flexibility regarding when certain documents must be submitted and with regard to reimbursement of land acquisition costs in certain cases;
- clarified that the term "acquisition" includes the purchase of conservation easements;
- clarified that easements would be held in public ownership, as well as donated lands that are counted toward the non-federal match;
- revised the definition of "project areas" to clarify its meaning and relationship to other terms, and not intended to identify specific properties.
- clarified that the state's lead agency is eligible to apply for planning funds;
- clarified that NOAA will consult with the state's lead agency prior to making direct grants to other state agencies or local governments;
- clarified a waiver of match for U.S. insular areas for projects up to $200,000, in accordance with 48 U.S.C. 1469a(d);
- addressed state indirect costs incurred for grant administration;
- extended to 3–years the period for initial land stewardship and limited the costs to 5 percent of the grant award;
- made the acquisition of land for active recreation such as sports facilities, playgrounds or similar uses ineligible for use of CELCP funds and inconsistent activities under section 2.6;
- clarified that state CELC plans identify the need for conservation through acquisition;
- clarified that plans developed through other planning and public review processes, such as approved coastal management programs or watershed conservation plans, may be incorporated into a CELC plan;
- added restoration plans to the types of plans that may be considered in developing a CELC plan;
- clarified the nature of the documentation needed to prove an owner's willingness to sell;
- included identification of adjacent land uses on the project location map;
- added clarification regarding the budget justification and documentation required in the project application,, including standards for appraisals, and some flexibility regarding projects that must go to settlement before a grant award is issued;
- clarified that NOAA will reconstitute the peer review panel annually and identify possible alternates; and
- removed the criterion for conservation corridors from the list of national criteria, as it is not listed in statute with the other criteria.

Statutory language requires 100 percent match of CELCP funds and distribution of funds in consultation with the States' Coastal Zone Manager or the Governors' designated representative. Coastal states are encouraged to work with other state, interstate, and local governments, with input from non-governmental organizations, to identify and nominate projects that advance the state's conservation priorities. No discretion is provided to NOAA by statute to waive the match for planning grants or for underserved communities.

Unless otherwise provided by law, lands (or interests therein) acquired with Federal funds under the CELCP will be held by a public entity. Federal regulations that govern matching funds generally presume a connection between the land to be acquired and the land used as match, and that deed restrictions would apply to properties counted as match as they would to property acquired through a cash contribution of the non-federal share.

Like the Forest Legacy Program, after which the CELCP was modeled, eligible states are to develop a plan in order to participate in the competitive program. NOAA encourages states that have existing plans that directly address land conservation priorities for portions of its coastal area to make use of, or even incorporate, those existing plans, if applicable, in a CELC plan. The program's project ranking criteria will address whether projects meet the national criteria and are included within a state CELC plan.

NOAA will publish deadlines and guidance for project applications in its annual request for proposals. NOAA

will make every effort to make the grants process efficient, and will strive for geographic distribution of project funds to the extent possible in a merit-based competitive process.

Final Guidelines

1. General Information

1.1 Authority and Purpose for the Program

The Department of Commerce, Justice, and State Appropriations Act of 2002 (Public Law 107–77), directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program "for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses," giving priority to lands which can be effectively managed and protected and that have significant ecological value. The law further directed the Secretary to issue guidelines for this program delineating the criteria for grant awards and to distribute funds in consultation with the States' Coastal Zone Managers' or Governors' designated representatives based on demonstrated need and ability to successfully leverage funds. Grants funded under this program shall require a 100–percent match from other sources. The authority for this program is codified at 16 U.S.C. 1456d.

The National Oceanic and Atmospheric Administration will work with the coastal states and territories through formal relationships established through its role in implementing the Coastal Zone Management Act of 1972, as amended (16 USC 1451 *et seq.*) (CZMA), to carry out this program. The CZMA highlights the importance of coastal and estuarine areas and contains policies related to the ecological, conservation, recreational, and aesthetic values of coastal areas.

1.2. Purpose of the Guidelines

These guidelines establish the eligibility, procedural, and programmatic requirements for participation in the Coastal and Estuarine Land Conservation Program (CELCP), authorized by the FY 2002 Appropriations Act. As required by the Act, these guidelines delineate the criteria for all financial assistance awards under the CELCP. These guidelines outline a three-stage process for competitive funding under the program: development of a state coastal and estuarine land conservation plan; a process for identifying and ranking qualified projects within the state and nominating them to a national competitive selection process annually; and a process for conducting peer review and selection of projects at the national level. State participation in this program is voluntary. Coastal states that choose to participate in the CELCP, including eligible project applicants, shall use the guidelines when developing state conservation plans, proposing or soliciting land acquisition projects, applying for funds, and carrying out selected projects under this program.

1.3 Definition of Terms

Appropriations Act or Act. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (P.L. 107–77).

CELCP. The Coastal and Estuarine Land Conservation Program established by these guidelines pursuant to the Act.

Coastal and Estuarine Areas. Those areas within a coastal state that are: part of the state's coastal zone, as designated in the state's federally approved coastal management program under the CZMA or within the state's coastal watershed boundary as described in NOAA's Coastal Zone Boundary Review (October 1992). The coastal watershed boundary is defined: for estuarine drainage areas by the inland boundary of those 8–digit USGS hydrologic cataloguing units that contain the head of tide, and; for the Great Lakes region or those portions of watersheds along the marine coast that drain directly to marine waters by those cataloguing units that are located adjacent to the coast.

Coastal and Estuarine Land Conservation Plan or CELC Plan. A plan, to be developed by each coastal state in order to participate in the program, that provides an assessment of priority land conservation needs and clear guidance for nominating and selecting land conservation projects within the state.

Coastal State(s). As defined in section 304(4) of the Coastal Zone Management Act (16 USC section 1453(4)), "coastal state(s)" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

CZMA. The Coastal Zone Management Act of 1972, as amended (16 USC 1451 *et seq.*).

Land Acquisition. Acquisition of real property, or interests therein, by fee title, lease, easement, or any other method consistent with applicable State law or regulation.

NERR or Reserve. A National Estuarine Research Reserve designated pursuant to section 315 of the CZMA.

NOAA. The National Oceanic and Atmospheric Administration, within the Department of Commerce.

OCRM. The Office of Ocean and Coastal Resource Management, within the NOAA National Ocean Service.

Project Areas. Discrete areas to be identified within a CELC Plan that describe the state's priority areas for conservation based on national and state criteria, representing the values to be protected through the program and areas threatened by conversion. Project areas may consist, for example, of: geographic areas or habitat types identified by a state coastal management plan as areas of concern; significant areas within other coastal, estuarine, or watershed management plan(s) that may be priority areas for conservation; or areas that provide linkages or corridors among conservation areas within a geographical area.

Secretary. The Secretary of Commerce.

State lead agency. The agency or entity responsible for coordinating the establishment and implementation of the CELCP at the state level. The lead agency will be presumed to be the lead agency designated for implementing the state's coastal management program, as approved pursuant to the CZMA, unless otherwise designated by the Governor. If a state's coastal management program does not wish to assume the lead role, the Governor may designate as the lead agency another state agency with authority to plan, acquire or manage land for conservation purposes.

2. Eligibility Requirements

2.1 Who May Participate in the CELCP

Coastal states with approved coastal zone management plans or National Estuarine Research Reserves are eligible to participate in the CELCP. State participation is voluntary, and states may choose to participate by developing a Coastal and Estuarine Conservation Plan for approval by NOAA. The state lead agency will be responsible for coordinating the establishment and implementation of the CELCP at the state level.

2.2 Who May Submit a Project Application to the Competitive Process

Eligible coastal states that have submitted, and received approval of, a Coastal and Estuarine Land Conservation Plan, may submit proposals to NOAA for federal funding under this program, provided that appropriated funds are available for competitive awards. The state lead agency may solicit, and include in their application, project proposals from additional state agencies, or local governments as defined at 15 CFR 24.3, or entities eligible for assistance under section 306A(e) of the CZMA (16 USC 1455a(e)), provided that each has the authority to acquire and manage land for conservation purposes.

The state lead agency will be responsible for: soliciting projects that are consistent with priorities outlined in the state's plan, reviewing them for completeness, prioritizing them according to state criteria, and nominating projects to the national selection process. States are encouraged to submit proposals from multiple agencies as a consolidated package to NOAA. The state will also be responsible for ensuring that allocated funds are used for the purposes of and in a manner consistent with this program.

2.3 Qualifying Projects

To be eligible for funding under the CELCP, a project must:

- be located in a coastal or estuarine area included within a state's approved coastal and estuarine land conservation (CELC) plan and meet the national criteria described in section 3.1.b.;
- match Federal CELCP funds with non-federal funds at a ratio of 1:1;
- be held in public ownership (fee simple or conservation easements) and provide conservation in perpetuity; and
- provide for access to the general public or other public benefit, as appropriate and consistent with resource protection.

2.4 Who May Receive Funds and Hold Title to Land

NOAA may make financial assistance awards to eligible coastal states, including the state's lead agency for implementing the CELCP, the state's coastal management program or its National Estuarine Research Reserve(s). The recipient may in turn allocate grants or make sub-awards to other state agencies, local governments as defined at 15 CFR 24.3, or entities eligible for assistance under section 306A(e) of the CZMA (16 USC 1455a(e)) to carry out approved projects. NOAA may, at its discretion and in consultation with the applicable coastal state, make grants directly to any of these eligible entities in order to expedite completion of an approved project. The recipient, or other appropriate public agency designated by the recipient, will hold title to the land, or interests in land, in perpetuity. NOAA will not make grants under the CELCP to non-governmental organizations unless otherwise directed by Congress.

2.5 Uses of CELCP Funds

The purpose of funding under the CELCP is to protect important coastal and estuarine areas with significant values or that are threatened by conversion, and that can be effectively managed. NOAA has outlined the following uses of CELCP funding that are consistent with these purposes, as well as some that are not considered to be consistent.

a. Eligible uses. CELCP funds may be used for the following purposes:

1. State Planning

- Development of CELC plans to carry out this program. Each eligible state's lead agency may receive up to a total of $50,000 for this purpose, which must be matched with non-federal funds at a ratio of 1:1 through cash and/or in-kind contributions.

2. Program Administration

- Administration of the program, including such direct or indirect costs as salaries and benefits of staff directly involved in program planning, implementation, project review, etc., that shall not exceed 5 percent of the amount appropriated to the Secretary each year. If a state proposes indirect costs as part of an application, the total dollar amount of the proposed indirect costs must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency.

3. Acquisition Projects

- Acquisition of properties or interests in properties from willing sellers, provided that the terms and conditions will ensure that the property will be administered for conservation in perpetuity, including direct expenses relating to the acquisition of lands and interests in lands acquired under the authority of the CELCP; and
- Certain initial costs for land stewardship, not to exceed 5 percent of the award and not to exceed 3 years or the duration of award period, to allow for signage, public safety, or other stewardship purposes.

b. Ineligible uses. The Federal share of CELCP funds may not be used for the following purposes:

- Funding long-term operations, maintenance, and management of the land;
- Construction of buildings, boat launching facilities, docks or piers, shoreline armoring, or other facilities;
- Research;
- Acquisition of lands, or interests in lands, that completely restrict access to specific persons (e.g. non-residents of a community);
- Acquisition of lands, or interests in lands, to comply with mandatory or compensatory mitigation for recent or pending habitat losses resulting from the actions of agencies, organizations, companies or individuals;
- The sole or primary purpose of enforcing fish, wildlife, or other regulations, except when necessary for the accomplishment of approved project purposes; and
- Acquisition of land for active recreation, such as sports facilities, water parks, playgrounds, or similar uses.

Some of these purposes are allowable under the non-federal matching share. Refer to section 2.7(b), Source of Matching Funds, for additional information.

2.6 Ownership, Use and Long-term Stewardship

a. The title of property or interests in property will be held in perpetuity by the grant recipient or other appropriate public agency designated by the recipient. As a condition of any grant award, NOAA will require that the recipient, or the designated public agency, register and furnish to NOAA a lien, covenant, or other appropriate notice of record to advise that the property has been acquired or improved in whole or in part with Federal financial assistance funds (pursuant to 15 CFR 24.31) and assurances that the land will be held for conservation in perpetuity. The terms and conditions specified in conservation easements must also be consistent with the purposes of the CELCP.

b. In general, lands acquired with CELCP funds will allow access to the general public. However, access may be limited or controlled in an equitable manner for resource protection, public safety, or for other reasonable cause. User fees should not be charged to access lands acquired through this program. However, if user fees are charged, they should comply with any applicable state standards for user fees. In such cases, all income or other revenues derived from the fees shall be used for the maintenance or management of the property.

c. The property shall be managed in a manner that is consistent with the purposes for which it was entered into the program and shall not convert to other uses. As a condition of the grant award, a strategy for long-term stewardship must be developed for each

project that identifies the entity(ies) responsible for ongoing stewardship, including financial or staff support, and monitoring of conservation easements or ongoing activities to ensure that they are consistent with long-term conservation.

Activities that may be considered to be consistent with conservation purposes include: resource protection; restoration and enhancement, such as vegetative erosion control or restoration of natural water flow to the area; recreational activities, such as: hiking, hunting, and fishing; access for swimming, canoeing, kayaking; and research and educational activities. Construction of facilities on a minor scale, such as restrooms or boardwalks, to facilitate these activities and/or for the purpose of minimizing harm to coastal resources due to public access and recreation may be allowed depending on the proposed use of the property and the site environment.

Activities that are considered to be inconsistent include: active agricultural or aquaculture production; shoreline armoring or other hard erosion control structures; construction or expansion of roads, buildings or facilities except as noted above, or such facilities for active recreation as sports facilities, water parks, playgrounds, or similar uses.

d. Non-governmental organizations, corporations, or individuals may participate in the acquisition and long-term stewardship of lands through this program, except as provided under sections 2.2 and 2.4 of these guidelines.

e. Leasing or renting of the property or interest in property acquired through the CELCP to a third party is prohibited unless specifically authorized by NOAA. The recipient agrees that any authorized arrangement for leasing or renting property involved in the project must be: consistent with the authorized general and special purpose of the award; for adequate consideration; and consistent with applicable Department of Commerce requirements concerning, but not limited to, nondiscrimination and environmental compliance. All income or other revenues derived from an approved lease or rent arrangement shall be used to maintain or manage the property.

f. Pre-existing uses on the property must be identified as part of the project application. NOAA will review such uses for potential impacts and to determine whether they are consistent with the purposes of the CELCP. Applicants may wish to consider protecting land that contains pre-existing uses through a conservation easement, rather than through fee simple acquisition. If a project is approved with pre-existing uses, such uses may not be expanded or converted to other uses without prior approval of NOAA.

g. If the property or interest in the land acquired with CELCP funds is sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes for which it was acquired without prior approval of NOAA, the recipient must return to NOAA the full amount of the Federal share of funds for re-distribution in the CELCP grant process. In some cases, at the recipient's request, NOAA may approve the disposition of the property and issue instructions to sell the property. In such cases, the correct value to be returned will be calculated by applying the Federal share of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling expenses.

2.7. Cost-sharing requirements

a. Matching requirement. Federal funds awarded under this program shall be matched with funds from non-federal sources on a 1:1 basis. The coastal state is responsible for ensuring that the full amount of the matching requirement is provided, particularly when the non-federal share includes contributions from other agencies, groups or individuals. Notwithstanding any other provision herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive the requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

b. Source of matching funds. The non-federal share of funding may be derived from state, local, non-governmental or private sources in the form of cash or the value of non-monetary or in-kind contributions, such as the value of donated lands or interests therein, or services such as on-site remediation, restoration, enhancement, or donated labor and supplies, provided that the in-kind contributions are necessary and reasonable to accomplish the objectives of the project. Such in-kind contributions must be identified in the project application, completed within the financial assistance award period, and documented as part of the completed project. Any land used as match must be located within the vicinity of the property being acquired, in the same project area identified in the state's plan, or be substantially related in terms of conservation values or objectives, and must meet the eligibility criteria, ownership and stewardship conditions described in sections 2.3 through 2.6. The value of land used as match must be documented with the grant application, and must reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. (*http://www.usdoj.gov/enrd/land-ack/*).

No funds or in-kind contributions from Federal or non-federal sources, including the value of donated lands or services, that have been previously used to satisfy the matching requirements of this program or that have been or will be counted or used to satisfy another Federal grant, can be counted toward the non-federal matching share. Unless otherwise provided by law, the value of property or interests in property that were acquired with Federal funding may not be used as non-federal match.

See 15 CFR 24.24 Matching or Cost-Sharing (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for determining the value of in-kind contributions.

c. Banked match. States may apply the value of land or in-kind services accrued up to 3 years prior to submission of the grant application toward the non-federal share of funding. Such "banked match" is subject to the same terms described under section 2.7.b. above.

3. State Coastal and Estuarine Land Conservation Plans

3.1 Development of CELC Plan

In order to qualify to receive funds under this program, a coastal state must develop and submit to NOAA for approval, a Coastal and Estuarine Land Conservation Plan that provides an assessment of priority conservation needs and clear guidance for nominating and selecting land conservation projects within the state. State plans will be developed and submitted by the state lead agency, in conjunction with: the state's coastal management program (if different from the lead agency); any NERRs in that state; any other state or Federal agencies involved in coastal land acquisition, conservation, or management in the state; and other interested parties.

Plans are intended to be fairly simple and concise, and may make use of work that has already been done in the state or region, such as regional, state or local watershed protection, restoration or land conservation plans. A state may incorporate existing plans, or portions thereof, by reference into a CELC plan. States are encouraged to consider

conservation needs on a multi-state or regional scale, and to work with neighboring states where appropriate for the conservation of coastal and estuarine resources within the region. State plans must be developed through a public process, which would include a public scoping process and comment period. If a state CELC plan incorporates existing plans, or elements thereof, that were developed and vetted through a public review process, the state may choose to seek comment on whether those plans or elements should be incorporated into the CELC plan, rather than seeking comment on the substance of those plans or elements.

a. State CELC plans must include the following information:

- A map or description of the geographic extent of coastal and estuarine areas within the state, as defined for the purposes of the CELCP;
- A description of the types of lands or values to be protected through the program and the need for conservation through acquisition;
- Identification of "project areas" that represent the state's priority areas for conservation, including areas threatened by conversion, based on state and national criteria (listed below) for the program;
- A description of existing plans, or elements thereof, that are incorporated into this plan;
- A list of state or local agencies, or types of agencies, that are eligible to hold title to property acquired through the CELCP;
- A description of the state's process for reviewing and prioritizing qualified proposals for nomination to the national selection process. The vetting process should, at a minimum, involve representatives from the state's coastal zone management program, NERR(s), and any other agencies or entities that the state considers appropriate; and
- A description of public involvement and interagency coordination that occurred during the development of the plan.

b. State plans must address the following national criteria for projects and project areas as they relate to the purpose of the CELCP:

- Protects important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses;
- Gives priority to lands which can be effectively managed and protected and that have significant ecological value;
- Directly advances the goals, objectives, or implementation of the state's coastal management plan or program, NERR management plans approved under the CZMA, national objectives of the CZMA, or a regional or state watershed protection plan involving coastal states with approved coastal management plans; and
- Is consistent with the state's approved coastal management program.

3.2 Approval of Plans

The Assistant Administrator for Ocean Services and Coastal Zone Management or his/her designee, shall be the approving official for plans submitted to NOAA under this program. Upon approval of its plan, a state will be eligible to receive competitive funding under the CELCP.

3.3 Update of Plans

States must update their CELC plans at least once every 5 years to reflect changes that have taken place within the state or region and submit the updated plans to OCRM.

4. Application, Review and Ranking Process

4.1 State Nomination and Selection Process

a. Solicitation of Projects. Based on notification from NOAA of the availability of funding to implement this program in any given year, states with approved CELC plans may notify and solicit project applications from qualified entities. States may, at their discretion, focus their annual project solicitation toward specific priorities or areas identified in their approved CELC plan.

Based on the requirements of the state's solicitation for project applications, eligible applicants should submit proposals to the state's lead agency. A project proposal that includes several separate and distinct phases may be submitted in phases, but any succeeding phases must compete against other proposals in the year submitted.

b. State Review and Prioritization

i. Proposal acceptance. The state lead agency determines whether a proposal should be accepted for consideration on the basis that it is complete and eligible under the criteria identified in section 2. If the application is incomplete, the lead agency may provide an opportunity for applicants to submit any information that is missing.

ii. Proposal review and ranking. The state lead agency reviews and prioritizes project applications through the process described in its CELC plan. Projects should be ranked according to the degree to which it meets the state's CELC plan. A list of prioritized projects is then submitted to NOAA for consideration at the national level.

4.2. Information Required in Project Applications to NOAA

Applications submitted to NOAA for the national competitive process must contain the following:

a. A completed and signed Project Application Checklist (Appendix B). The checklist addresses some of the information requested in items b. through f., below. NOAA may modify this checklist as needed to effectively implement the project application and selection process;

b. Project Description. A statement that describes:

- The nature of the project, including acreage and types of habitats or land values to be protected, the legal rights to be acquired (i.e., fee title or easement), how the funds (Federal and non-federal) will be used, and conversion threats to the property, as well as a description of these same characteristics for any property that will be used as match;
- How the proposed project meets the state and national criteria and its expected benefits in terms of coastal and estuarine land conservation;
- Any pre-existing uses of the property, the nature of those uses, and whether those uses will continue after acquisition;
- Discrete benchmarks for completing the project within a specified time period. These benchmarks should indicate whether the project is "ready to go," has any deadlines associated with it, and whether the project is likely to be completed within the award period;
- The types of activities that would be allowed to take place on the land and a strategy for long-term stewardship, including support for long-term operations, such as maintenance or enforcement against illegal uses; and
- Whether this project has been submitted in application for other sources of Federal funding, and if so, which Federal program(s) and year(s).

c. Project Location. Two maps, as follows:

- A map of the state or coastal county showing the general location of the project;
- A map of the project site, which shows the location and extent of the proposed acquisition, and its relationship to significant natural features (slope, wetlands, dunes, floodplains, access points, etc.), as well as adjacent land uses.

d. Project Budget and Justification of Proposed Costs/Appraisal.

The project budget must include a breakdown of the following costs, as applicable, by category -- salary, fringe benefits, travel, equipment, supplies, contractual, construction, other. (Note: Use of Standard Form 424A is suggested as it provides a model template for this information, and will be required in the grant application package for all projects that are selected for funding.) The total budget must reflect the 1:1 match required by statute. For information on what may be counted as the non-federal matching share, refer to section 2.7. Applicants wishing approval of pre-award costs should include such a request in their application to NOAA and identify the costs, the time period in which they occurred, and a justification for their need as associated with the project. For information regarding pre-award costs, refer to section 5.1.b.

The negotiated price of the property, or interest in property, should be based on the fair market value determined by an independent appraisal conducted by a state-approved appraiser. Before funds can be disbursed to the grant recipient for purchase of a property, or interest in property, using CELCP funds, the applicant must obtain and submit the appraisal to NOAA (refer to section 4.4.b.) Independent appraisals must reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition, (*http://www.usdoj.gov/enrd/land-ack/*).

If an appraisal has been completed at the time of application and the applicant wishes to pursue the acquisition at a price above the appraised value, the applicant will need to demonstrate reasonable effort to negotiate at the appraised value and submit written justification for the higher price based on reasonableness, prudence, public interest, additional or updated appraisals, estimated condemnation/trial costs, and/or valuation.

If an appraisal is not available at the time the project application is submitted, the applicant may submit a good-faith estimate of the cost for the project based on market value or agreement with the willing seller. However, if the project is selected for funding, the amount of the grant cannot exceed the estimated cost in the project application. An appraisal will be required at the time the applicant submits a formal grant application to NOAA (refer to section 5.4). If the appraised value is higher than the estimated cost, the applicant will be required to make up the difference, and if that is not possible, the project may have to be withdrawn or terminated.

e. Certification of Compliance with Federal Laws, Regulations and Policies. As part of the project application checklist (attached as Appendix B), the applicant must answer questions that will enable NOAA to determine whether a project may have an adverse impact and whether additional information may be required to satisfy the requirements of applicable Federal laws, regulations, or policies. If an Environmental Assessment or Environmental Impact Statement has been prepared for the project, attach a copy with the application. States will be responsible for ensuring that any project applications submitted to NOAA are consistent with the state's approved coastal management program and any applicable NERR Management Plans. Refer to section 6.0, which describes the applicability of requirements under Federal laws, regulations and policies.

f. Documentation of Willingness or Intent to Sell. The applicant must submit documentation that the current owner is a willing participant in a process of negotiation for possible sale of property, or interests in property, for conservation purposes and that the landowner has been advised of the applicability of Public Law 91–646, Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (refer to section 6.8). This documentation may be in the form of a letter of willingness or intent, option letter, contract, or other similar form. If not submitted with the project application, it will be required with the grant application to NOAA.

4.3 National Ranking and Selection Process

NOAA will conduct a peer review process to prioritize and select among all projects nominated by states through their competitive process as follows:

a. Peer review and ranking process. A national peer review panel that consists of at least six members will review each project nominated by a state. Membership of the panel will be made up of at least one representative from each of the following: NOAA, another Federal land conservation program, the state coastal resource management community, estuarine reserve community, and two from the non-governmental sector (i.e., industry, conservation community). Each member will rank projects according to the degree to which they meet national criteria and submit individual rankings to NOAA. No member may have a vested interest or stand to benefit from any of the proposed projects. Membership of the panel may be reconstituted annually, and NOAA may identify alternates in the event that substitutions are needed.

b. Ranking criteria. Projects will be reviewed and prioritized according to the degree to which they meet the national criteria described in section 3.1b. NOAA will establish weighting factors for these criteria, in consultation with the coastal states, and will provide these ranking criteria to the states with its notification of availability of funding. Within these criteria, NOAA may also consider the availability of support for long-term management and stewardship, and success in leveraging other sources of funding. All ranking factors will be described in the annual notification.

c. Selection of approved projects. The Assistant Administrator for Ocean Services and Coastal Zone Management or his/her designee will serve as the selecting official for projects, based on the national rankings as well as availability of funds. In selecting projects, NOAA may consider geographic distribution of projects, as well as other factors deemed necessary to select among similarly-ranked projects, as described in the annual notification. The selecting official may maintain and select from a contingency list, in the event that any approved projects fall through or are completed below the planned cost.

4.4 Grant Application to NOAA - Selected Projects

NOAA will notify each state of projects that have been selected through the competitive process. For each of these projects, the state must submit the following materials, which, when combined with the original project application, will complete the application for Federal financial assistance. States are encouraged to consolidate multiple projects into one application, with each project as a separate task, particularly for projects that will be awarded to local governments. NOAA may, at its discretion and in consultation with the relevant coastal state, agree with the state to accept an application from, and make a grant directly to, an agency other than the lead agency in order to expedite the completion of an approved projects that will be implemented by that other agency.

Grant application materials. The following materials must be submitted to NOAA, in order to complete the application for Federal financial assistance:

a. Standard forms for Federal financial assistance. These forms can be found at the NOAA Grants Management Web site (*http://www.rdc.noaa.gov/grants/*) along with detailed application instructions.

- Application for Federal Assistance (Standard Form 424);
- Budget Information (Standard Form 424A);
- Statement of Assurances (Standard Form 424B);
- Certifications Regarding Debarment, Suspension, Drug-Free Workplace and Lobbying (CD–511)

b. Appraisal. If an appraisal was not previously submitted as part of the project application described in section 4.2, it must be submitted with the grant application. Refer to section 4.2 for guidelines regarding the appraisal.

c. Title opinion for the land(s) that will be purchased. The opinion should identify the current owner from which the land will be purchased, and whether there are any easements or other encumbrances on the land to be acquired. If there are easements or encumbrances, the applicant's attorney should specify the nature of these and certify that they would not interfere with the purposes for which the land is being acquired. A sample title opinion can be found at Appendix C.

5. Acceptance and Use of Funds

5.1 Allowable Costs

a. Cost principles. Allowable grant costs are limited to costs necessary and reasonable to achieve the approved objectives of the grant and be consistent with general cost principles for grants awarded by Federal agencies, as contained in the Office of Management and Budget (OMB) Circular A–87 "Cost Principals for State, Local, and Indian Tribal Governments," which will be incorporated into the grant award. A copy of OMB Circular A–87 can be found at *http://www.whitehouse.gov/omb/grants/*.

b. Pre-award costs. If an applicant incurs costs before the effective date of the grant, they do so at their own risk. Pre-award costs cannot be reimbursed except as approved by NOAA, although they may be counted as match. When approved, pre-award costs may include such costs as those necessary for conducting: environmental assessments, including risk assessments; feasibility surveys; appraisals; title searches or opinions; or preparation of documents needed to satisfy Federal legal requirements, such as the National Environmental Policy Act. In some cases, with prior approval from NOAA, the cost of the land acquisition (fee simple or easement) may be reimbursed as a pre-award cost if the acquisition occurred between the date the project was recommended for funding through the competitive selection process ("selected") and the date that the grant award was approved by NOAA.

5.2 Expenditure of Funds

a. Availability of funds. Once a grant agreement has been signed, a recipient may draw funds, as needed, toward completion of the project, in accordance with 15 CFR 24.21 Payment.

b. Timetable for expenditure of funds. The standard financial assistance award period is 18 months, and may be extended an additional 18 months if circumstances warrant, but may not exceed 3 years. Awards may also be closed out early if the project is completed in less time.

c. Unexpended funds. Any funds not expended within the grant period shall be de-obligated and revert to NOAA for redistribution through the CELCP process, including projects that fall through.

d. Projects that exceed planned costs. All requests for additional Federal funding for approved CELC projects must be submitted to the review process along with new grants.

e. Funds from the CELCP may be supplemented with funding from other Federal or non-federal sources, subject to any conditions that may apply to the expenditure of funds from such sources.

f. Amending a proposal. Any amendments to a proposal or request to reallocate funding within a grant proposal must be approved by NOAA. In general, if negotiations on a selected project fall through, the applicant cannot substitute an alternate site.

g. Performance reports. The state lead agency, and/or any other agency that received a financial assistance award directly from NOAA, is responsible for submitting to NOAA semi-annual reports documenting progress toward completion of each project, and a final report documenting completion of the projects and all terms and conditions of the award.

5.3 Conditions on Use of Funds

All CELCP financial assistance awards will contain the following special award conditions and/or other applicable requirements for the Department of Commerce described in the **Federal Register**, October 1, 2001 (66 FR 49917), as amended October 30, 2002 (67 FR 66109):

- In the event there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which these funds were granted, or if NOAA determines that the property is no longer used for the purpose for which it was acquired, the recipient shall reimburse NOAA or its successor agencies for the Federal funds received for the project, subject to "use" and "disposition" instructions from NOAA or its successor agencies.
- Federal funds for this project will not be transferred to the recipient for the acquisition of land or interest(s) in land until the recipient has submitted the following to NOAA for review and approval: a completed and signed project checklist; appraisals of land made by a qualified independent appraiser and performed in accordance with Federal or state appraisal standards; evidence of title insurance or an opinion of title and a copy of the real estate contract for each parcel; and a map indicating the tract boundaries for the property or portion of property being acquired.
- Deeds for real property acquired with Federal funds provided through this award shall contain substantially the following provision:

"This property has been acquired with funds from a Federal financial assistance award. Title of the property conveyed by this deed shall vest in the [recipient of the award or other appropriate public agency designated by the recipient] subject to the condition that the property shall be managed for conservation purposes, consistent with the purposes for which it was entered into the CELCP, and shall not convert to other uses. In the event that the property is sold, exchanged, or converts to other uses, NOAA shall consult with the recipient before deciding to exercise any of the rights regarding disposition of the property and reimbursement of the Federal Government."

- Upon completion of all real estate closings, the recipient shall submit to NOAA/OCRM copies of the closing documents.
- The recipient shall cause to be erected and maintained at the site of any project, a permanent sign or plaque, satisfactory to NOAA, that identifies the project and indicates that the project has been funded under the Coastal and Estuarine Land Conservation Program by NOAA, in conjunction with the coastal state and/or National Estuarine Research Reserve or other partner.

5.4 Information the Recipient Must Retain on File

A grant recipient is expected to retain the following information for at least 3 years after a grant has been closed by NOAA at the end of the award period:

- A copy of the grant application, including project proposal, submitted to NOAA;
- Site location maps;

- Title opinion or certification;
- Appraisal;
- State Historic Preservation Officer's clearance; and
- Copies of any notices or determinations that pertain to compliance or consistency with Federal requirements.

6. Applicability of Other Federal Requirements

The approval of plans under this program and award of financial assistance are Federal activities subject to authorities such as the National Environmental Policy Act, Endangered Species Act, and the Federal consistency provisions of the CZMA. Before awarding funds, NOAA is responsible for ensuring that projects comply with these and other relevant authorities. A checklist, provided as part of the project application, will be used to determine whether additional information may be required to satisfy these requirements for any project.

6.1 National Flood Insurance Program (NFIP)

The NFIP prohibits the use of funds for acquisition or construction of buildings in special flood hazard areas in communities that are not participating in the Flood Insurance Program, as identified in the NFIP's Community Status Book. Construction of buildings is not an eligible use of CELCP funds. A community is not precluded from proposing projects within the floodplain for conservation purposes.

6.2 Coastal Barriers Resource Act (CoBRA)

In order to receive Federal funds, all proposed projects located on undeveloped coastal barriers designated in the CoBRA system must be consistent with the purposes of minimizing: the loss of human life; wasteful Federal expenditures; and damage to fish, wildlife, and other natural resources. For projects in these areas, the Office of Coastal and Resource Management (OCRM) must consult with the regional office of the U.S. Fish and Wildlife Service (USFWS) and allow 30 days for them to determine whether the project is consistent with CoBRA. Because OCRM defers to their opinion in these cases, some projects or grant awards may be conditioned pending the results of the consultation process. Early coordination by the applicant with the USFWS is advisable.

6.3 Endangered Species Act

An applicant shall indicate whether it believes that a proposed project may affect threatened or endangered species or critical habitat as defined by the Endangered Species Act (ESA), and shall state the basis for its conclusion. If a proposed project may have minor and temporary effects, OCRM will informally consult with the relevant Federal agency either the USFWS or NOAA's National Marine Fisheries Service (NMFS). If a proposed project may significantly affect threatened or endangered species or critical habitat, OCRM will consult with the applicant regarding further steps that may need to be taken. If the applicant still wants to proceed, OCRM will enter into formal consultation with the USFWS or NMFS, pursuant to section 7 of the ESA. OCRM will not approve a proposed project that the USFWS or NMFS has determined will adversely and significantly affect threatened or endangered species or critical habitat.

6.4 National Environmental Policy Act (NEPA)

These guidelines are administrative and financial in nature, and therefore are considered a categorical exclusion under NEPA. Subsequent actions concerning the approval of CELC plans, or acquisition, restoration, or enhancement of properties may require further analysis on a programmatic or case-by-case basis to determine compliance with NEPA. As part of the application for each project, applicants must complete an environmental compliance checklist that will be used to determine whether additional information or an Environmental Assessment or Environmental Impact Statement is needed.

6.5 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Act requires that Federal agencies consult with NMFS regarding any action authorized, funded, or undertaken that may adversely affect essential fish habitat (EFH) for federally managed fish. Consultation is generally initiated when a Federal agency notifies NMFS of an action that may adversely affect EFH, and provides NMFS with an assessment of the action. In response, NMFS provides Conservation Recommendations to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. Federal agencies must provide a detailed response in writing to NMFS that includes proposed measures for avoiding, mitigating, or offsetting the impact of the proposed activity on EFH. If the Federal agency chooses not to adopt NMFS' EFH Conservation Recommendations, it must provide an explanation. EFH consultation and coordination should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes. Consultation procedures are outlined at 50 CFR 600.920.

6.6 National Historic Preservation Act

Under the provisions of Section 106 of the National Historic Preservation Act of 1966, the Secretary of the Interior has compiled a national register of sites and buildings of significant importance to America's history. Before submitting an application, the applicant must determine whether land acquisitions or other grant-supported activities will affect a property listed on the national register. If so, the applicant must obtain clearance from the appropriate State Historic Preservation Office before submitting the application.

6.7 Americans with Disabilities Act (ADA)

As a general rule, no qualified individual with a disability shall be subject to discrimination or be excluded from participation or benefits of the services, programs, or activities of a public entity. The ADA does not address issues of handicapped accessibility for outdoor recreation projects and public access projects that are needed to reduce harm to natural resources. Each project shall be handicapped accessible to the extent that conditions allow. Any construction associated with projects that provide for recreation, using funds other than CELCP, shall be handicapped accessible unless the construction of a handicapped accessible structure would damage coastal resources. Requirements for handicapped accessibility for the ADA are based on 42 U.S.C. 12101 et. seq., and the U.S. Architectural and Transportation Barriers Compliance Board.

6.8 Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970

This Act, Public Law 91–646, as amended, (42 U.S.C. 4601 *et. seq.*) requires certain assurances for projects conducted by a state agency or its agent that involve the acquisition and/or modernization of real property or cause the displacement of persons, businesses, or farm operations. Because CELCP only supports acquisition of property or interests in property from willing sellers, it is not anticipated that this program will result in any displacements. In cases of displacement, Public Law 91–646 requires that applicants ensure that fair and reasonable relocation payments and advisory services will be provided to any displaced persons and that safe, decent, and sanitary replacement dwellings will be available to such persons within a reasonable period of time prior to displacement. The state agency must be guided by the real property acquisition policies of the Act, and the property owners must be paid or reimbursed for necessary expenses as specified in the Act. The Act provides for an exemption to the appraisal, review and certification rules for "voluntary transactions" that meet the conditions specified at 49 C.F.R. 24.101(a)(1), including written notification to the owner that the agency will not acquire the property in the event negotiations fail to result in an amicable agreement. Department of Commerce regulations implementing the Act can be found at 15 CFR part 11.

6.9 Environmental Justice

Consistent with the President's Executive Order on Environmental Justice (Feb. 11, 1994) and the Department of Commerce's Environmental Justice Strategy, applicants shall ensure that their CELCP projects will not have disproportionately high and adverse human health or environmental effects on minority or low income populations.

6.10 Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce has published in the **Federal Register**, October 1, 2001 (66 FR 49917), as amended October 30, 2002 (67 FR 66109), a set of requirements that are applicable to all Federal financial assistance awards issued by the Department. These will be addressed as Special Award Conditions on financial assistance awards.

7. Classification

7.1 Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553 (a) (2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

7.2 Executive Order 12866

These draft guidelines do not constitute a "significant regulatory action" as defined by Executive Order 12866 because: (1) they will not have an annual effect on the economy of $100 million or more , or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) they will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) they will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) they will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

7.3 Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by OMB. The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. The information to be collected under these guidelines through conservation plans, the project application, checklist, and grant application materials has been approved by OMB under control number 0648–0459.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: June 11, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–15292 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

June 12, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward, swing, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). *Also see* 67 FR 63632, published on October 15, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 12, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber

apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on June 18, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	2,905,952 dozen.
331pt./631pt. [2]	2,783,927 dozen pairs.
333/334	484,624 dozen of which not more than 70,327 dozen shall be in Category 333.
335	318,668 dozen.
336	1,327,661 dozen.
338/339	3,685,690 dozen.
340/640	1,574,799 dozen.
341/641	1,363,330 dozen.
342/642	1,021,729 dozen.
345	331,194 dozen.
347/348	3,641,678 dozen.
351/651	1,061,115 dozen.
352/652	4,167,271 dozen.
359–C/659–C [3]	1,011,205 kilograms.
361	3,287,514 numbers.
369–S [4]	554,061 kilograms.
433	3,897 dozen.
443	48,956 numbers.
445/446	35,450 dozen.
447	9,856 dozen.
611	6,133,175 square meters.
633	87,610 dozen.
634	889,118 dozen.
635	426,602 dozen.
636	2,725,731 dozen.
638/639	3,043,469 dozen.
643	1,263,285 numbers.
645/646	1,212,768 dozen.
647/648	1,846,540 dozen.
659–H [5]	2,015,424 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–15272 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0017, Market Surveys

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before August 18, 2003.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX (202) 418–5527; e-mail: *j__payne@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 section 3506(c)(2)(A), requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Market Surveys, OMB Control No. 3038–0017—Extension

Under Commission rule 21.02, upon call by the Commission, information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers must be furnished. This rule is designated to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 7.

The Commission estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 21.02	400	Annually	400	1.75	700

Dated: June 11, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–15204 Filed 6–16–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–493–001]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

June 10, 2003.

Take notice that on June 4, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Original Sheet No. 503.01, with a proposed effective date of July 1, 2003.

Columbia states that on May 30, 2003, it submitted a filing in Docket No. RP03–493 that proposed revisions to Columbia's Tariff. Columbia states that the instant filing seeks to correct a pagination error by withdrawing Original Sheet No. 503A from the May 30 filing, and replacing it with Original Sheet No. 503.01.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Protest Date:* June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15178 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–087]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

June 10, 2003.

Take notice that on June 5, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS–1 Service Agreement No. 75839 between Columbia Gulf Transmission Company and EnergyUSA–TPC dated June 3, 2003

In addition, Columbia Gulf tendered for filing the following revised tariff sheet to its FERC Gas Tariff Second Revised Volume No. 1 with a proposed effective date of June 6, 2003:

Twelfth Revised Sheet No. 316

Columbia Gulf states that transportation service is to commence June 6, 2003 and end July 31, 2003 under the agreement.

Columbia Gulf further states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date:* June 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15179 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP03–80–000]

Eastern Shore Natural Gas Company; Notice of Site Visit

June 10, 2003.

On June 24, 2003, the staff of the Office of Energy Projects and representatives of Eastern Shore Natural Gas Company (Eastern Shore) will conduct a site visit of the proposed 2003–2005 System Expansion Project in New Castle County, Delaware, and Chester County, Pennsylvania.

All interested parties may attend. Those planning to attend must provide their own transportation. Interested parties can meet staff at 8:30 a.m. on June 24, 2003, in the parking lot at the Wawa, located at the intersection of MD Route 279 (Elkton Rd.) and MD Route 277 (Fletchwood Rd.) in Cecil County, Maryland, near the Maryland-Delaware border. This is approximately 1 mile east of I–95 Exit 109.

For further information, please contact the Office of External Affairs at (202) 502–6088 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15171 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–329–004]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

June 10, 2003.

Take notice that on June 5, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, proposed to be effective June 1, 2003.

Great Lakes states that these tariff sheets are being filed in compliance with the Commission's May 6, 2003 Order on Compliance Filings relative to Order Nos. 637, 587–G, and 587–L in Docket Nos. RP00–329–002 and RP00–329–003 (May 6 Order), wherein the Commission accepted Great Lakes' proposed revisions, with some modifications. Great Lakes states that it was directed to file revised tariff sheets within thirty (30) days of the May 6 Order consistent with the modifications set forth in that Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15177 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–87–001]

Overthrust Pipeline Company; Notice of Tariff Filing

June 10, 2003.

Take notice that on June 5, 2003, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 1, with an effective date of January 1, 2003.

Overthrust states that this filing is being made in compliance with the Commission's Order issued May 20, 2003 (May 20 Order), in Docket No. CP03–87–000.

Overthrust states that in the May 20 Order, the Commission granted Overthrust's request to abandon service and cancel its FERC Gas Tariff, Original Volume No. 1 effective January 1, 2003. Overthrust further states that the May 20 Order was conditioned upon Overthrust filing tariff sheets in compliance with part 154 of the Commission's Regulations within 15 days of the May 20 Order.

Overthrust states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah and Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: June 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15172 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–241–000]

Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy Gas, L.P. and El Paso Merchant Energy Company; Notice Regarding Release Information

June 10, 2003.

On May 9, 2003, in Docket No. RP00–241–000, the Commission issued an Order Directing the Release of Information, which released all privileged or protected information in the record. 103 FERC ¶ 61,154. Take notice that several of the documents released have been classified as "non-internet public" and, although publicly available, will not be available on the internet. These public files are accessible to a requester by mail or in person through the Public Reference Room. You may examine and copy documents from the Commission's public files at the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday. You may also request public documents from the Public Reference Room by mail, by fax at (202) 502–8317, or by e-mail at *public.reference@ferc.gov*. All document requests must be in writing. As provided in the Commission's regulations at 18 CFR 388.109(a)(4), the charge for documents is 20 cents per page.

This notice is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15176 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–53–003, *et al.*]

Ameren Energy Generating Company, *et al.*; Electric Rate and Corporate Filings

June 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ameren Energy Generating Company, and Union Electric Company, d/b/a Ameren UE

[Docket No. EC03–53–003]

Take notice that on June 4, 2003, Ameren Energy Generating Company and Union Electric Company d/b/a AmerenUE (AmerenUE), (collectively *Applicants*) tendered for filing with the Federal Energy Regulatory Commission (Commission) compliance filing containing the accounting entries and related details as required by Section 33.5 of the Commission's regulations in compliance with the Commission's order of May 5, 2003 in this docket. Ameren Energy Generating Co., 103 FERC 61,128 (2003) (May 5 Order).

Applicants state that copies of this filing were served on the affected state commissions and all parties included on the Commission's official service list established in the proceeding.

Comment Date: June 25, 2003.

2. Covanta Hennepin Energy Resource Co., Limited Partnership

[Docket No. EC03–95–000]

Take notice that on June 5, 2003, Covanta Hennepin Energy Resource Co., Limited Partnership (Hennepin Energy) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer a jurisdictional facility. Hennepin Energy requests authority to transfer its interest in a long-term power purchase agreement with Northern States Power Company to Hennepin County, Minnesota.

Comment Date: June 26, 2003.

3. NRG Energy Center Paxton, Inc.

[Docket No. ER00–2313–001]

Take notice that on June 6, 2003, NRG Energy Center Paxton, Inc., tendered for filing a triennial review in compliance with the Commission's Order in Docket No. ER00–2313–000.

Comment Date: June 27, 2003.

4. Arizona Public Service Company

[Docket No. ER03–889–001]

El Paso Electric Company
Public Service Company of New Mexico
Southern California Edison Company

Take notice that on June 6, 2003, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company tendered for filing a correction to El Paso Electric Company's designation number associated with the Service Agreement for the Interconnection and Operating Agreement related to the interconnection of the RUDD Transmission Line to the ANPP High Voltage Switchyard.

Comment Date: June 27, 2003.

5. White Pine Copper Refinery, Inc.

[Docket No. ER03–895–001]

Take notice that on June 6, 2003, White Pine Copper Refinery, Inc. (White Pine) tendered for filing with the Commission an amendment to their May 30, 2003 filing, requesting that the Commission accept, on a limited and temporary basis, White Pine's FERC Electric Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. White Pine states that the amended filing makes minor revisions to, and provides clarification of, discrete aspects of the May 30, 2003 filing.

Comment Date: June 27, 2003.

6. Portland General Electric Company

[Docket No. ER03–928–000]

Take notice that on June 5, 2003, Portland General Electric Company (PGE) tendered for filing an executed Facility Interconnection and Operation Agreement between PGE and SP Newsprint Co., (SP Newsprint).

PGE requests a waiver of the Commission's 60-day notice requirement and an effective date of May 12, 2003. PGE also states that a copy of the filing was served upon SP Newsprint and the Oregon Public Utility Commission.

Comment Date: June 26, 2003.

7. NRG Energy Center Paxton, Inc.

[Docket No. ER03–933–000]

Take notice that on June 6, 2003, NRG Energy Center Paxton, Inc., (Paxton) filed under section 205 of the Federal Power Act, Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), and Commission Order No. 614, a request that the Commission (1) accept for filing a revised market-based rate tariff; (2) waive any obligation to submit a red-lined version of the currently effective tariff; and (3) grant any waivers necessary to make the revised tariff sheets effective on June 30, 2003. Paxton states that the proposed tariff revisions merely seek to properly update the name of the entity, as well as designate, update and conform the tariff to a format like those that the Commission has approved for Paxton's affiliates.

Comment Date: June 27, 2003.

8. Florida Power Corporation

[Docket No. ER03–934–000]

Take notice that on June 6, 2003, Florida Power Corporation (FPC), tendered for filing revisions to a service agreement between FPC and the City of Quincy, Florida. FPC requests that the revisions become effective on January 1, 2003.

FPC states that copies of the filing were served upon the Florida Public Service Commission and the City of Quincy, Florida.

Comment Date: June 27, 2003.

9. Florida Power Corporation

[Docket No. ER03–935–000]

Take notice that on June 6, 2003, Florida Power Corporation (FPC), tendered for filing revisions to Rate Schedule No.124, pursuant to which FPC provides to the City of Williston, Florida electric power and energy at wholesale. FPC requests that the revisions become effective on January 1, 2003.

FPC states that copies of the filing were served upon the Florida Public Service Commission and the City of Williston, Florida.

Comment Date: June 27, 2003.

10. Florida Power Corporation

[Docket No. ER03–936–000]

Take notice that on June 6, 2003, Florida Power Corporation (FPC), tendered for filing revisions to Rate Schedule No. 126, an agreement for the sale of electric power and energy at wholesale by FPC to the City of Chattahoochee, Florida. FPC requests that the revisions become effective on January 1, 2003.

FPC states that copies of the filing were served upon the Florida Public Service Commission and the City of Chattahoochee, Florida.

Comment Date: June 27, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15267 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–73–000, *et al.*]

Tractebel Property Management, Inc., *et al.*; Electric Rate and Corporate Filings

June 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tractebel Property Management, Inc.

[Docket No. EG03–73–000]

Take notice that on June 5, 2003, Tractebel Property Management, Inc. (TPMI), a Delaware corporation with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

TPMI states that it will provide operating and maintenance services to a 350–MW power generation facility located in Ennis, Texas (the Facility). The Facility will generate electricity that will be sold into the wholesale power market of the Electric Reliability Council of Texas.

Comment Date: June 26, 2003.

2. California Independent System Operator Corporation

[Docket No. ER01–836–004]

Take notice that on June 5, 2003, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's May 6, 2003 Order issued in Docket No. ER01–836–000, 103 FERC ¶ 61,132.

The ISO states that it has also served copies of this filing upon all entities that are on the official service list for the docket.

Comment Date: June 26, 2003.

3. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and, NRG Power Marketing Inc.

[Docket No. ER03–563–008]

Take notice that on June 4, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC (collectively Applicants) and NRG Power Marketing Inc., tendered for filing Second Revised Cost of Service Agreements among each of the Applicants, NRG Power Marketing Inc., as agent for each Applicant, and ISO New England Inc.

Applicants state that the purpose of the filing is to permit Applicants to recover certain costs and expenses they incur in connection with escrow and trust agreements entered into pursuant to the Commission's Orders, issued March 25 and April 25, 2003 in Docket No. ER03–563–000. Applicants state that they have provided a copy of this filing to ISO–NE on the date of filing and to each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: June 25, 2003.

4. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and NRG Power Marketing Inc.

[Docket No. ER03–563–009]

Take notice that on June 5, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC (collectively Applicants) and NRG Power Marketing Inc., tendered an Errata Filing to their Compliance filing submitted on May 28, 2003 in Docket No. ER03–563–006.

Applicants states that they have provided a copy of this filing to ISO-NE, provided courtesy copies to potentially affected state regulatory authorities, and served copies of the filing to each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: June 26, 2003.

5. Maxim Energy Partners, LLC

[Docket No. ER03–827–001]

Take notice that on June 5, 2003, Maxim Energy Partners, LLC (Maxim) filed an amendment to its application for market-based rates as a power marketer originally filed on May 6, 2003. Maxim states that the amendment pertains to the request for market-based rate authority for ancillary services. Included in this supplement is a new rate schedule to reflect said changes.

Comment Date: June 26, 2003.

6. New York State Electric & Gas Corporation

[Docket No. ER03–927–000]

Take notice that on June 5, 2003, New York State Electric & Gas Corporation (NYSE) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) Rule, 18 CFR 35.15, a cancellation of the Service Agreements for Network Integrated Transmission Service and the accompanying Network Operating Agreements. NYSEG requests that the Notice of Cancellation be deemed effective as of July 1, 2003 for the following Service Agreements:

Purchaser	Number[1]
Bath Electric, Gas & Water Systems	100
Village of Endicott	101
Village of Groton	102
Village of Hamilton	103
Village of Rouses Point	104
Village of Sherburne	105
Village of Silver Springs	106
Village of Castile	107
Village of Greene	108

[1] Service Agreement Number.

NYSEG states that copies of the Notice of Cancellation have been served on the customers receiving service under the Service Agreements For Network Integrated Transmission Service and Network Operating Agreements, New York Municipal Power Agency and the New York State Public Service Commission.

Comment Date: June 26, 2003.

7. Sunlaw Energy Partners I, L.P.

[Docket No. ER03–929–000]

Take notice that on June 4, 2003, Sunlaw Energy Partners I, L.P. filed a Notice of Cancellation of Rate Schedule FERC No. 1, Revision 1, and gave notice that it no longer seeks to maintain exempt wholesale generator status.

Comment Date: June 25, 2003.

8. Northeast Utilities Service Company

[Docket No. ER03–930–000]

Take notice that on June 5, 2003, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Select Energy, Inc., submitted pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's regulations a rate schedule modification for sales of electricity to the City of Chicopee, Massachusetts (Chicopee).

NUSCO states that a copy of this filing has been mailed to Chicopee and the regulatory commission for the Commonwealth of Massachusetts. NUSCO requests that the rate schedule modification become effective on March 1, 2003.

Comment Date: June 26, 2003.

9. DTE East China, LLC

DTE Energy Trading, Inc.

[Docket No. ER03–931–000]

Take notice that on June 5, 2003, DTE East China, LLC (DTE East China) and DTE Energy Trading, Inc. (DTE Energy Trading) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an application (Application) for authorization by DTE East China to make sales of capacity and energy at market-based rates for resale outside of the Michigan Electric Coordinated Systems (MECS) control area; to reassign transmission capacity; to waive certain of the Commission's regulations promulgated under the FPA; and to grant certain blanket approvals under other such regulations. The Application also seeks acceptance for filing of conforming changes to the Rate Schedule FERC No. 1 of DTE Energy Trading to permit DTE East China to make sales of power at market-based rates to DTE Energy Trading for resale outside of the MECS control area.

Comment Date: June 26, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15268 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–302–000CP03–303–000, CP03–304–000PF03–1–000 and CP03–301–000]

Cheyenne Plains Gas Pipeline Company, Colorado Interstate Gas Company; Notice of Status Change of Environmental Review and Expiration of Scoping Period for the Proposed Cheyenne Plains Pipeline Project

June 10, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Cheyenne Plains Gas Pipeline Company's (CPG) project in various counties of Colorado and Kansas.[1] The purpose of this Notice is to give interested stakeholders a final opportunity to submit comments on the Cheyenne Plains Pipeline Project as we[2] conclude the scoping period for this project and begin writing the draft Environmental Impact Statement (EIS).

On March 14, 2003, the Commission issued a Notice of Pre-Filing Environmental Review and Scoping for the Cheyenne Plains Pipeline Project under Docket No. PF03–1–000.[3] That notice announced that the FERC staff was initiating its National Environmental Policy Act (NEPA) review process on CPG's project prior to receipt of a formal application. The purpose of the NEPA Pre-filing Process is to involve landowners, government entities, and other interested parties early in the project planning and to address their issues before an application is filed with the FERC.

The EIS will discuss the environmental impacts of CPG's proposal, which involves the construction and operation of about 387 miles of natural gas pipeline and eight meter stations in Colorado and Kansas. Approximately 13 miles of the pipeline would be located on the Pawnee National Grassland in Weld County, Colorado. Colorado Interstate Gas Company (CIG) has filed a companion application that would add one new "jumper" compressor unit (at 2,443 horsepower) at its existing Cheyenne Compressor Station, which CIG states is necessary to deliver gas on the new Cheyenne Plains system.

The FERC will use the EIS in its decision-making process to determine whether the project is in the public convenience and necessity. The U.S. Department of Agriculture (USDA) Forest Service, Pawnee National Grassland will use the EIS in its decision-making process to determine whether or not to issue a Right-of-Way for occupancy of National Grassland System lands affected by the pipeline project. A general project location map is shown in appendix 1.[4] [5]

[1] On May 20, 2003, in Docket No. CP03–302–000, CPG's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

[3] The Notice of Pre-Filing Environmental Review and Scoping for this project can be viewed on the Commission's Internet Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to page 7 of this notice.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch (*see* previous footnote). Copies of the appendices were sent to all those receiving this notice in the mail.

[5] Requests for detailed maps of the facilities closest to your mailing area/property should be made to the project sponsor. Call or e-mail: Mr.

Continued

Similar to the March 14, 2003 notice, this Notice is being mailed to: Landowners whose properties are currently within a 200-foot-wide corridor centered on the proposed route; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

If you are an affected landowner, you should have already been contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company will seek to negotiate a mutually acceptable easement agreement. However, if the project is certificated by the Commission, that approval conveys with it the right of eminent domain. At that time, if easement negotiations have failed to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with applicable state laws in Colorado and Kansas.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CPG provided to affected landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to address issues and concerns the public may have about a proposed action. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues.

For the Cheyenne Plains Pipeline Project, the scoping process began in February 2003 when the El Paso Corporation Western Pipelines Group/CPG[6] held open houses at six locations along the proposed pipeline route to provide an opportunity for the public to learn about the proposed facilities and ask questions and express concerns about the project. During the same time frame, the FERC staff held agency scoping meetings in the project area. The U.S. Department of Agriculture, Forest Service, Pawnee National Grassland; National Park Service, Long Distance Trails Office; U.S. Fish and Wildlife Service; U.S. Army Corps of Engineers; Colorado and Kansas State Historic Preservation Offices; Colorado Division of Wildlife; and Kansas Department of Wildlife and Parks participated in these agency scoping meetings. The FERC staff attended the open houses and agency scoping meetings to hear verbal comments and concerns and subsequently issued the March 14, 2003 notice requesting written comments and concerns about the project.

By this notice, we are requesting additional comments from you. Specifically, we are seeking new issues that were not identified during the pre-filing period. To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5. We are also asking governmental agencies, including those which are participating agencies in the Commission's NEPA Pre-filing Process, to express their interest in becoming cooperating agencies for the preparation of the EIS. If you are an agency with jurisdiction and/or special expertise with respect to environmental issues in the project area and would like to request cooperating agency status, please file a written request by following the instructions for filing comments described in the public participation section. Cooperating agencies will be given special consideration for reviewing preliminary documents and requesting information from the project sponsors and their contractors. To date, only the USDA Forest Service, Pawnee National Grassland has agreed to be a cooperating agency in the preparation of the EIS.

Our independent analysis of the project-related impacts will be included in a draft EIS. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; local libraries and newspapers; other interested parties; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. In addition, we will consider all comments on the final EIS before we make our recommendations to the Commission:

Currently Identified Environmental Issues

In the March 14, 2003 notice, we listed several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information. Other issues that were raised by agencies and the public during the NEPA pre-filing process include construction or operation impacts on:

- Actively cultivated cropland and actively used grazing land;
- Crop irrigation systems;
- Federally listed endangered or threatened species;
- The Pawnee National Grassland;
- The Santa Fe Trail (listed on the National Register of Historic Places);
- Unmarked graves;
- Drought-plagued vegetation that is susceptible to wildfires; and
- Areas proposed for future use or development.

Copies of comment letters already filed with the Commission can be examined by following the instructions for using our FERRIS link at the end of this notice.

Public Participation

As described in the March 14, 2003 notice, you can make a difference by providing us with your specific comments or concerns about the project. If you provided comments to us during the pre-filing period, you do not need to resubmit them. For those who will submit comments for the first time, you should focus the comments on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be.

Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket Nos. CP03–302–000 and PF03–1–000 on the original and both copies;

David Anderson, Manager—Land Department, El Paso Corporation, (877) 598–5263, *david.r.anderson@elpaso.com*. Be as specific as you can about the location(s) of your area(s) of interest.

[6] The original sponsor of the Cheyenne Plains Pipeline Project was El Paso Corporation Western Pipelines Group (El Paso). El Paso's subsidiary, CPG, has taken over the role as project sponsor.

- Label one copy of your comments for the attention of DG2E, Gas Branch 1, (PJ–11.1, Room 62–49); and
- Mail your comments so that they will be received in Washington, DC on or before July 10, 2003. This is also the deadline for receipt of comments from the March 14, 2003 notice.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Retention Form included in appendix 3. Anyone who returned a similar form in response to the March 14, 2003 notice, does not need to return the form again. If you did not return the form in response to either this notice or the March 14, 2003 notice, you will be taken off the mailing list.

The transcripts from CPG's open house meetings are available for public review in the PF-docket. Because the Commission received only a few written comments on the project in response to the March 14 notice, the Commission staff will not hold additional public scoping meetings at this time. However, we will conduct public meetings in the project area to receive comments on the draft EIS after it is issued.

Becoming an Intervenor

Also discussed in the March 14, 2003 notice is the Commission's intervention process. As an "intervenor" you can play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214; *see* appendix 2).[7] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the "FERRIS" link, select "General Search" from the FERRIS menu, enter the selected date range and "Docket Number" (*i.e.*, PF03–1–000 and CP03–302–000), and follow the instructions. Searches may also be done using the phrase "Cheyenne Plains" in the "Text Search" field. For assistance with access to FERRIS, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15170 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

[7] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–300–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Laurel Storage Field Pipeline Abandonment and Request for Comments on Environmental Issues

June 10, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Laurel Storage Field Pipeline Abandonment proposed by Columbia Gas Transmission Corporation (Columbia) in Hocking County, Ohio.[1] Columbia proposes to abandon in place approximately 1.3 miles of 12-inch-diameter pipeline that is no longer in use. The one storage well that was connected to the pipe segment proposed for abandonment was connected to a short crossover line built in 2002 pursuant to Columbia's Blanket Certificate. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Columbia wants to abandon certain facilities in Hocking County, Ohio. Columbia seeks authority to abandon:

- Approximately 1.3 miles of 12-inch-diameter pipeline, in place;
- Remove three service tap risers from previously relocated residential taps;
- Remove the road casing and carrier pipe segment under State Route 374; and
- Cut and cap each end of the abandoned pipe segment.

The general location of the project facilities is shown in appendix 1.[2]

[1] Columbia's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Abandonment of the proposed facilities would require disturbance of about 0.02 acre of land. Three small dig-outs (4 × 4 × 4 feet each) are proposed to remove risers from previously relocated residential taps. The road casing and carrier pipe segment under and across State Route 374 would be removed, requiring two disturbance areas of 40 × 10 × 4 feet and 15 × 10 × 4 feet. The line would be cut and capped at each end of the abandonment, requiring two disturbance areas of 10 × 10 × 10 feet each. The 0.02 acre of land would be restored and allowed to revert to its former use. Columbia does not propose to abandon the right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- land use
- Water resources and fisheries
- cultural resources
- Vegetation and wildlife
- air quality and noise
- Endangered and threatened species
- Public safety

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

- Wetlands
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–300–000.
- Mail your comments so that they will be received in Washington, DC on or before July 10, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Wb site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified right-of-way grantors. By this notice we are also asking governmental agencies to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–15169 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI03–3–000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

June 10, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Declaration of Intention.

b. *Docket No*: DI03–3–000.

c. *Date Filed:* May 23, 2003.

d. *Applicant:* Board of Public Works, Borough of Park Ridge, New Jersey.

e. *Name of Project:* Borough of Park Ridge Hydroelectric Project.

f. *Location:* The Borough of Park Ridge Hydroelectric Project would be located on Pascack Brook at the existing Mill Pond Dam in the Borough of Park Ridge in Bergen County, New Jersey. The project will not occupy Federal land.

g. *Filed Pursuant to*: Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. William Beattie, Director of Operations, Borough of Park Ridge, 53 Park Avenue, Park Ridge, NJ 07656, telephone (201) 391–2129, FAX (201) 391–7130.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or E-mail address: *diane.murray@ferc.gov.*

j. *Deadline for filing comments and/or motions*: July 18, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*

Please include the docket number (DI03–3–000) on any comments or motions filed.

k. *Description of Project*: The proposed Borough of Park Ridge Hydroelectric Project would consist of: (1) An existing reservoir with a normal storage capacity of 22 acre-feet and a surface area of about 7 acres; (2) an 18-foot-high dam consisting of two concrete overflow spillways and an emergency spillway, including a long earthen section; (3) a powerhouse containing one generating unit, with a total rated capacity of 15 kW; and (4) appurtenant facilities. The project will not be connected to the local utility or any other power company.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application*: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15173 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

June 10, 2003.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing*: Notice of Intent to File an Application for New License.

b. *Project No*: 946.

c. *Date filed*: April 28, 2003.

d. *Submitted By*: Hyrum City, UT.

e. *Name of Project:* Hyrum City Hydroelectric Project.

f. *Location:* The project is located on the Blacksmith Fork River, near the the City of Hyrum, Cache County, Utah, on

Cache National Forest lands and private in-holdings.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from Guy McBride, Electric Power Superintendent, Hyrum City Offices, 83 West Main, Hyrum, UT 84319, (435) 245–6033.

i. *FERC Contact:* Gaylord Hoisington, 202–502–6032. *Gaylord.Hoisington@ferc.gov*.

j. *Expiration Date of Current License*: April 30, 2008.

k. *Project Description*: The project includes an earth-filled diversion dam containing a concrete spillway 35 feet wide, a concrete penstock inlet with trash racks, a concrete block powerhouse housing a 400-kilowatt turbine generator, and 100 feet of underground transmission lines.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 946. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 28, 2006.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15174 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 9, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Stuyvesant Falls Hydro Corporation (SFHC) filed the application for Project No. 12438–000 on February 3 and clarified Exhibit 1 on March 5, 2003.

Intermountain Hydro Resources (Intermountain) filed the application for Project No.12439–000 on February 3 and supplemented Exhibits 1 and 4 on April 14 and 28, 2003, respectively.

SFHC also filed the application for Project No.12438–001 on February 4, clarified Exhibit 1 on March 5, and verified its application on March 13, 2003.

c. Name of the project is Stuyvesant Falls Hydroelectric Project. Each application is for a proposed redevelopment of the previously licensed Project No. 2696. The project would be located on Kinderhook Creek in Columbia County, New York. It would not occupy federal or tribal lands.

d. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a—825r.

e. *Applicants Contacts*: For SFHC: Mr. James A Besha, Stuyvesant Falls Hydro Corporation, c/o Albany Engineering Corporation, 447 New Karner Road, Albany, NY 12205, (518) 456–7712. For Intermountain: Mr. Douglas A. Spaulding, Spaulding Consultants, 1433 Utica Avenue South, Suite 162, Minneapolis, MN 55416, (952) 544–8133.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects*: The project proposed by SFHC would be operated in a run-of-river mode and would utilize existing project works consisting of: (1) A 240-foot-long, 13-foot-high masonry gravity dam, (2) a reservoir with a surface area of 46 acres at spillway crest elevation 174.3 feet, (3) a gated intake structure, (4) two 2,860-foot-long, 7.5-foot-diameter steel pipelines, (5) a 25-foot-diameter surge tank, (6) two 200-foot-long, 7.5-foot-diameter steel penstocks, (7) a powerhouse containing a 2.8 megawatt (MW) generating unit, (8) 40-foot-long, 34.5-kilovolt primary leads connecting to an existing substation, and (9) appurtenant facilities. SFHC proposes to repair or replace sections of the two 2,860-foot pipelines and add: (1) A 35-kilowatt (kW) minimum flow generating unit at the dam, (2) a 3.6-MW generating unit, and (3) a 440-kW minimum flow generating unit in the powerhouse. The SFHC project would have an average annual generation of 16.5 gigawatt hours.

The project proposed by Intermountain would be operated in a run-of-river mode and would utilize the existing project works described above. Intermountain proposes to study the feasibility of repairing the two pipelines or replacing them with a single 10-foot-diameter pipeline. Intermountain does not propose to add capacity to the project.

i. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, here P–12438 or P–12439, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item e. above.

j. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

k. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

l. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15175 Filed 6–16–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7514–2]

Prevention of Significant Deterioration (PSD) Program; Massachusetts; Notice of Ending of Delegation Agreement Between EPA and Massachusetts Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: This notice announces that effective March 3, 2003, the Massachusetts Department of Environmental Protection (DEP) ended its agreement with EPA to implement the Prevention of Significant Deterioration (PSD) program. Therefore, effective that date, EPA is the implementing authority for the PSD program in Massachusetts. This notice explains the consequences of this change for owners and operators of sources that have PSD permits or that will need such permits in the future.

DATES: Massachusetts' decision to end the agreement between the State and EPA that allowed DEP to implement the Federal PSD program became effective on March 3, 2003.

ADDRESSES: Copies of the documents relevant to Massachusetts PSD program delegation are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA during normal business hours.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, EPA Region I, (617) 918–1652, or send email to *Mccahill.Brendan@epa.gov*.

SUPPLEMENTARY INFORMATION: By letter dated February 27, 2003, the DEP has notified the Regional Administrator of EPA New England that the DEP will not accept authority for the implementation of the amended PSD program and is ending its June 30, 1982, agreement with EPA to assume responsibility for implementing the Federal PSD regulations (1982 Agreement).

On December 31, 2002, EPA published in the **Federal Register** revisions to the Federal PSD regulations (67 FR 80186). A final rule revising the Federal portions of implementation plans in 40 CFR part 52 to include the revisions to the Federal PSD regulations was published in the **Federal Register** on March 10, 2003. Both of these actions were effective on March 3, 2003.

The letter from the DEP explained that the DEP will no longer implement the Federal PSD program as of March 3, 2003. Consequently, as of March 3, 2003, sources of air pollution located in Massachusetts that are subject to the Federal PSD program must apply for and receive a PSD permit from EPA New England before beginning actual construction. Developers planning projects in Massachusetts that are expected to increase air pollution should refer to 40 CFR 52.21 or contact Brendan McCahill (*see* "FOR FURTHER INFORMATION CONTACT" above) at the EPA New England office for information regarding program applicability and permit application requirements.

Please note that the DEP's air permitting requirements under 310 CMR 7.02 are not affected by the state's decision to end the 1982 Agreement. The DEP interprets its regulations as

requiring PSD project applicants to apply for a 310 CMR 7.02 Plan Approval. For the convenience of the project applicants and to reduce duplicative efforts, EPA New England will coordinate closely with the DEP on the application process and the development of permit requirements. When preparing PSD application submissions for EPA New England, we will work with applicants to develop the appropriate information that meets both the Federal PSD and State permitting requirements. For information regarding the application of the State permitting rules, please contact Donald Squires at Donald.Squires@state.ma.us or refer to the DEP's Web site at *http://www.state.ma.us/dep/bwp/daqc/aqforms.htm*.

The 1982 Agreement also gave the DEP lead responsibility for "preliminary enforcement" of all PSD permits issued by EPA before 1982 and for all future PSD permits issued by the DEP. Preliminary enforcement included activities such as inspection, compliance testing, information requirements and identification of violations. The DEP has identified the following facilities that are currently operating under a PSD permit issued by EPA or the DEP:

Stony Brook Energy Center (formally the Massachusetts Municipal Wholesale Electric Company);
Fall River Sewage Sludge Incinerator;
FlexCon Company;
Norton Company;
Natick Paperboard;
Covanta Haverhill (formally the Haverhill Resource Recovery Facility);
Wheelabrator North Andover (formally NESWC Resource Recovery Facility);
SEMASS Partnership (formally Rochester Resource Recovery Facility);
Berkshire Power LLC;
ANP Bellingham;
Bellingham Cogeneration;
ANP Blackstone;
Millennium Power Partners LP;
Mirant—Kendall LLC;
Cabot Power Corporation;
Exelon Mystic LLC (formally Sithe Mystic Development LLC);
General Electric;
SEMASS Partnership (formally SEMASS RRF);
Masspower Cogeneration;
Exelon Fore River Development;
Lowell Cogeneration;
Wheelabrator Milbury;
ECO Springfield LLC.

With the DEP's decision to end the 1982 Agreement, the DEP no longer has preliminary enforcement authority for the PSD program. EPA will conduct these activities. Therefore, as of March 3, 2003, the facilities listed above must now submit to EPA all emission data reports used to show compliance with a PSD permit limit. These facilities may already be submitting some of this data to EPA pursuant to Federal 40 CFR part 60 New Source Performance Standards, 40 CFR part 72 and 75 Acid Rain regulations or other Federal programs. Thus, for some pollutants, there would be no change in reporting.

As noted previously, the ending of the 1982 Agreement has no impact on obligations under Massachusetts law in general and Plan Approvals under 310 CMR 7.02 in particular. Therefore, the change in reporting for purposes of the PSD program does not change any requirement to submit to the DEP any emission report used to show compliance with any applicable 310 CMR 7.02 Plan Approval.

Dated: June 4, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–15256 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL217–1;FRL–7513–7]

Notice of Prevention of Significant Deterioration (PSD); Final Determination for Kendall New Century Development, Plano, Kendall County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that on April 29, 2003, the Environmental Appeals Board (EAB) of the United States Environmental Protection Agency (EPA) dismissed a petition for review of certain conditions of a permit issued by the Illinois Environmental Protection Agency (IEPA) pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations.

DATES: The effective date for the Board's decision is April 29, 2003. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of today's date.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address by calling to arrange a visit: IEPA, Bureau of Air, 1021 North Grand Avenue East, Springfield, Illinois 62702, at (217) 782–3397.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras (AR–18J), EPA Region 5, 77 W. Jackson Boulevard., Chicago, Illinois, 60604 at (312) 886–0671.

SUPPLEMENTARY INFORMATION: On January 14, 2000, IEPA issued a PSD permit to Kendall New Century Development (Kendall). However, Kendall did not begin construction of the facility within the 18-month period allowed by the PSD regulations. Shortly before the construction period expired, on June 28, 2001, Kendall submitted an application for extension of the PSD permit for an additional 18-month period. IEPA required Kendall to submit a new Best Available Control Technology (BACT) demonstration and air quality impact analysis, and it reviewed the application as if it were a new PSD permit. IEPA issued the new PSD permit on November 27, 2002 (PSD permit number 093801AAN).

On January 7, 2003, the EAB received an undated petition filed by Verena Owen, asking the EAB to review a PSD determination by IEPA. Ms. Owen argues (1) that the carbon monoxide (CO) BACT limit of 25 parts per million on a dry volume basis (ppmdv) is too high (she contends it should be as low as 7.4 ppmdv); (2) that IEPA improperly eliminated use of a catalyst as BACT for CO; (3) that the CO BACT limit should take into account the size and magnitude of this facility; and (4) that IEPA should have processed the permit as a request for an extension of Kendall's previous PSD permit, rather than as a new permit application.

On April 29, 2003, the EAB denied the petition for review on the grounds that: (1) The reasons stated in general terms in IEPA's response to comments are not clearly erroneous nor otherwise warrant review; (2) the issues were not raised during the public comment period; and (3) the plaintiff had not shown clear error in IEPA's decision.

Dated: June 6, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–15258 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7513–6]

Science Advisory Board, Request for Nominations for Experts for the Panel on the EPA's Report on the Environment (ROE)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB, Board) announces the formation of a new SAB Panel on the EPA's Report on the Environment, and is soliciting nominations for members of the panel.

DATES: Nominations should be submitted by July 8, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the Form for *Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *www.epa.gov/sab*. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Dr. James Rowe, Designated Federal Officer (DFO) as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. James Rowe, Designated Federal Officer, EPA Science Advisory Board by telephone/voice mail at (202) 564–6488, by fax at (202) 501–0323; or via email at *rowe.james@epa.gov*. Dr. Rowe can also be reached via mail at U.S. EPA Science Advisory Board (1400A), Washington DC 20460. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Summary: The SAB is announcing the formation of a new Panel to provide advice to the Agency on the EPA's Report on the Environment (ROE). The ROE is a report which seeks to address the status of and trends in environmental conditions and their impacts on human health and the nation's natural resources. The SAB is soliciting nominations to establish the membership of this new Panel.

This Panel is being formed to provide advice to the Agency, as part of the EPA SAB mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA regulations.

The Board is a chartered Federal Advisory Committee, which reports directly to the Administrator. Members of the Panel will provide advice to the Agency, through the SAB's Executive Committee. The Panel will comply with the provisions of FACA and all appropriate SAB procedural policies, including the SAB process for panel formation described in the *EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary* (EPA-SAB-EC-COM–002–003), *http://www.epa.gov/sab/pdf/ecm02003.pdf*.

This project is intended as a six month advisory effort which may be repeated yearly to revise the ROE as needed or requested; the background for the effort and the charge to the Panel is described below.

Background: The Agency is seeking the SAB's advice in the development of the Agency's Report on the Environment. EPA's "Environmental Indicators Initiative" will improve the Agency's ability to report on the status of and trends in environmental conditions and their impacts on human health and the nation's natural resources. Background materials are provided on the EPA Web site at *http://www.epa.gov/indicators*. Using available data and indicators, EPA and its partners are drafting a "Report on the Environment" (ROE) that will address many of the public's frequently-asked questions and document the progress that the United States is making in meeting our national environmental and health protection goals. The ROE will:

(1) Describe current national environmental trends using existing data and indicators;

(2) Identify data gaps and research needs;

(3) Discuss the challenges government and our partners face in filling those gaps; and

(4) Be accompanied by supporting technical information.

The report consists of two parts, a technical document and a summary or synthesis document designed for general public review. The report covers five "theme" areas':

(1) *Cleaner Air:* Impacts of indoor air quality on human health and of outdoor air quality on health and ecosystems.

(2) *Purer Water:* Drinking water, recreational water use, the condition of the nation's water resources, and the living resources sustained by them.

(3) *Better Protected Land:* Land use and activities that affect the condition of the American landscape, including information on agricultural practices, Integrated Pesticide Management, waste management, emergency response and preparedness, and recycling.

(4) *Human Health:* Trends in diseases, human exposure to environmental pollutants, and diseases thought to be related to environmental pollution.

(5) *Ecological Condition:* A look at our living and natural resources, current pressures or stressors on those resources, and a look at their sustainability into the future.

A final chapter discusses key challenges and proposed partnerships and "next steps" to address those challenges.

Charge to the Panel: The specific details of the charge remain to be finalized, however, in general, the SAB Review Panel is requested to: (1) Assess the adequacy of the report in defining the purpose, scope and value to public health of the report, (2) consider the adequacy of the technical content of the five theme areas with regard to completeness of the technical data used to identify and establish the environmental indicators and their relevance to the area of concern, and, (3) evaluate appropriateness of the conclusions/future directions identified. The review will occur in two stages, with a review of the technical chapters of the report, and a review of the Synthesis chapter of the report. The reviews will be held in Washington, DC with the first meeting tentatively planned for September, 2003.

SAB Request for Nominations: The EPA requests nominations of individuals who are highly regarded national level experts with one or more of the following disciplines necessary to address the charge:

(a) Epidemiology of environmental pollutants
(b) Human exposure to environmental pollutants
(c) Human health risk assessment of environmental pollutants
(d) Natural resources management
(e) Whole ecosystems research
(f) Ecological risk assessment
(g) Ecosystems sustainability
(h) Environmental indicators
(i) Water resources management
(j) Land use management
(k) Waste management
(l) Emergency response and preparedness
(m) Air quality

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to add expertise to the Panel in the areas of expertise described above. Individuals may self-nominate. Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the*

EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *www.epa.gov/sab*. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, and who has any questions concerning any aspects of the nomination process may contact Dr. James Rowe as indicated above in this FR notice. Nominations should be submitted in time to arrive no later than July 17, 2003.

The EPA Science Advisory Board will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for Panel.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*. Subcommittee members will likely be asked to attend to attend at least two public face-to-face meetings and several public conference call meetings over the anticipated course of the advisory activity.

Dated: June 10, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–15259 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7513–4]

Interim Guidance for Community Involvement in Supplemental Environmental Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Enforcement and Compliance Assurance (OECA) is noticing an interim guidance document entitled, "Interim Guidance for Community Involvement in Supplemental Environmental Protects." This document is intended to encourage EPA personnel to involve communities in supplemental environmental projects. EPA solicited public comments on a draft of this guidance on June 30, 2000 (65 FR 40639). The public comment period lasted sixty (60) days. EPA received five (5) comments on the draft guidance. The response to these comments follows below.

ADDRESSES: Copies of the interim guidance can be obtained by writing the Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC–G–2000–055, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by contacting the office via email at *docket.oeca@epa.gov*.

FOR FURTHER INFORMATION CONTACT: For further information contact Melissa Raack, 202–564–7039 or Beth Cavalier, 202–564–3271, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: *raack.melissa @epa.gov, cavalier.beth@epa.gov*. The interim guidance can also be found at *http://www.epa.gov/compliance/resources/policies/civil/seps/sepcomm2003-intrm.pdf*.

Response to Comments: Today, the United States Environmental Protection Agency (EPA) or (Agency) is issuing an interim guidance entitled "Interim Guidance for Community Involvement in Supplemental Environmental Projects." This interim guidance is designed to provide information to EPA staff on involving communities in the selection and implementation of Supplemental Environmental Projects ("SEPs"), in appropriate cases. The Agency has decided to issue this guidance as "interim" in order to evaluate its effectiveness in involving communities in SEP selection and implementation, and to assess the establishment of SEP libraries. This interim guidance is effective immediately upon publication.

On June 30, 2000, EPA published a draft of the guidance in the **Federal Register** (65 FR 40639) and allowed 60 days for public comment. The comment period closed on August 29, 2000. EPA received five comments. With one exception (discussed below), the comments on the draft guidance were generally favorable. Several commenters stated they believed the guidance could better define the meaning of the term "communities." They also suggested that EPA clarify the guidance to provide that EPA should consult with the community adversely affected by the environmental violation, in addition to consulting community officials. These commenters suggested that the Agency should weigh input from the affected community more heavily than input from community officials or others in communities not directly affected by the violation. The Agency has clarified the guidance to indicate that EPA staff should give particular attention to input from communities affected by the violation that is the subject of the enforcement settlement.

A few commenters suggested that EPA should not accept SEPs from defendants who are unwilling to seek community input on potential SEPs. While the Agency agrees that the possibility of substantial penalties should provide an incentive for defendants to settle with EPA, the Agency will continue to enter into some settlements that include SEPs where the community has not been involved in the SEPs selection. This is because the Agency has placed a high priority on including SEPs in settlements. While the Agency has provided incentives for defendants to agree to involve the community in that process, such as informing defendants of the positive results of community input and considering a defendant's efforts in seeking community input on potential SEPs as a factor in determining the SEP mitigation percentage, nevertheless, some defendants may remain reluctant to involve the community. In addition, timetables, such as court-ordered deadlines, may not permit community involvement. EPA may decide in some cases that a settlement with a SEP—even if not obtained with community involvement—is better than a settlement without a SEP. In some circumstances, EPA may elect to involve the community without the participation of the defendant. Every settlement and every defendant is unique, and EPA must take many factors into consideration when negotiating a settlement.

One commenter proposed that EPA not use the term "SEP Bank" because it is confusing. The commenter suggested the term "SEP Library" instead, which conveys more clearly what the term means, *i.e.*, a collection of ideas for possible SEP projects. The Agency agrees with this comment, and has revised the guidance accordingly.

Another commenter stated that the draft guidance places too much emphasis on the limitations on community participation and not enough emphasis on empowering communities. As an example of the limitations, the commenter noted that the guidance suggests that, in some instances, "it may be desirable to delay the community involvement until after the consent decree is entered." (65 FR 40641). The commenter was concerned that this may result in a final settlement document that does not take into account the needs of the affected community. In addition, the commenter believed that the Miscellaneous Receipts Act (31 U.S.C. 3302) ("MRA"),[1] may impede efforts to "assign penalties to SEPs" once the decree is entered, and in effect, preclude communities from shaping the SEP. The Agency agrees that including communities as early in the process as possible, given the circumstances of a particular case, is desirable, and the guidance certainly does not suggest restricting community participation to circumstances where the consent decree has already been signed. Moreover, EPA does not intend to suggest that penalty money could be converted to a SEP based on comments received during the public comment period. Rather, the consent decree between EPA and the defendant must define the type, scope and costs of the project, as discussed in the SEP policy. The Agency believes that in some instances, given the timing of settlement negotiations within the context of litigation deadlines, a defendant and EPA may reach agreement on the SEP, but may not be able to finalize all details of the SEP before entry of the consent decree. In these circumstances, the Agency still believes community involvement after the consent decree is entered will help ensure the successful implementation of the SEP.

With respect to the commenter's statement concerning the MRA, the Agency's SEP policy has been designed to ensure compliance with the MRA. All monetary penalties assessed against violators are deposited into the Treasury. An acceptable SEP is a mitigating factor that EPA may consider in deciding whether to settle a matter and what the terms of such a settlement are. SEPs are not substitutes for monetary penalties. Another commenter stated that the Agency should not wait, as it currently does, to include a community in SEP proposal/selection until after it has identified a violation, conducted an investigation, and filed a lawsuit. This commenter also stated that the Agency should work first with communities to identify opportunities for projects, then work such projects into settlements, instead of selecting the best approach for a specific case at hand. The Agency believes both approaches are meritorious and the guidance allows EPA a significant degree of flexibility. However, in no event will the desirability of a community SEP affect the Agency's decision to pursue an enforcement action. The guidance attempts to remain as flexible as possible with respect to all aspects of community involvement. The differences in cases and communities will dictate the particular approach that will work best for a specific case. In addition, the defendant must be willing to undertake a SEP; EPA cannot mandate that a SEP be part of a settlement. As such, EPA needs to ensure that the defendant is willing to conduct a SEP, to include the community in the SEP process, and to abide by Agency and court-ordered deadlines. However, the Agency does agree that working with communities to identify potential SEPs is a good way to expedite the SEP element of the settlement process and to include SEPs that are important to the affected community. The Agency believes that a SEP library is an excellent vehicle for collecting potential projects. Several Regional offices have already begun to collect ideas for SEPs from communities, and the interim guidance encourages Agency enforcement staff to consider development of SEP libraries.

The commenter also raised concerns that the draft guidance may discourage some SEPs because they are too "resource intensive" with respect to EPA oversight. Although the Agency seeks SEPs with the maximum favorable environmental impact, the Agency must also consider its resource limitations and balance those limitations against the benefits of the proposed SEP when deciding whether or not to agree to a particular SEP.

One commenter proposed a SEP idea for its community but did not comment on the draft guidance. EPA has forwarded the comment to the appropriate regional office for evaluation and possible inclusion in a regional SEP library.

One commenter stated that the Agency should retain its existing approach to community input. The commenter suggested that the draft guidance created the presumption that communities would be involved in the earliest stages in most enforcement proceedings and act as a "third party" to the settlement. Although the commenter claimed that including communities in the SEP suggestion/selection process would create a substantial disincentive for companies to conduct SEPs, the commenter did not include any support for this claim, nor did it include any further details on the "substantial disincentive" the commenter envisioned.

EPA disagrees with these comments. First, the guidance makes clear that there is no formula for determining whether or not community involvement in SEP selection is appropriate and it does not dictate the level or timing of any such involvement. The guidance does not impose any requirements or

[1] The MRA, 31 U.S.C. 3302(b), requires that money received for the use of the United States be deposited into the Treasury as soon as practicable unless the Federal agency receiving the money has statutory authority to use the funds differently.

obligations on EPA, defendants, or the community. Rather, the guidance identifies a number of factors for EPA staff to consider in evaluating what is appropriate in any given case. Second, the Agency believes that there are substantial benefits for defendants who involve affected communities in SEP selection. One particularly important incentive is that, under the SEP policy, a defendant's inclusion of community input into a SEP may be considered as a factor supporting increased penalty mitigation. The interim guidance encourages enforcement staff to consider giving more credit to a defendant who agrees to implement a SEP where there has been a commitment to include affected communities into the SEP selection. As to the commenter's suggestion that including a community will unreasonably delay resolution of enforcement actions, the Agency does not believe that this will be a significant problem. The Agency can set milestones and objectives for community involvement that are consistent with litigation deadlines. There will be times when inclusion of a SEP, or community involvement in the SEP process, in a particular settlement is not appropriate, specifically where deadlines or other circumstances do not make inclusion of a project or community involvement possible, even if the community supports a particular project. Lastly, because EPA (and the Department of Justice (DOJ) in judicial actions) is the final decision maker on SEP selection, the Agency can ensure that all legal requirements are met.

The same commenter noted that DOJ and EPA already have opportunities to seek community/public input on cases, *e.g.*, pursuant to DOJ's provision for public comment on consent decrees under 28 CFR 50.7. While this is one opportunity for input, it occurs after the parties have signed a consent decree, which is late in the enforcement process. As stated in the interim guidance, the Agency would like to remain flexible, and where appropriate, include community involvement in selecting or implementing SEPs that address the needs and concerns of all involved: the Agency, the defendant, and the affected community.

The commenter also noted that the revised Consolidated Rules of Practice ("CROP"), 64 FR 40138 (July 23, 1999)[2], did not include modifications to the "settlement process." The Agency did not include such provisions because it is not requiring community involvement. The Agency encourages community involvement where appropriate and possible, and is issuing this guidance to provide helpful information to EPA staff to facilitate community involvement. The guidance specifically notes that there will be situations in which community involvement is not appropriate. This guidance is not intended to alter any current administrative or judicial settlement process requirements. Furthermore, the guidance is not intended to and does not alter statutory requirements for public participation in settlements, or change DOJ requirements for public comment on settlements. Finally, both the defendant and the Agency must agree to enter into a SEP as part of a settlement. If the defendant does not agree to a SEP, the settlement will not include a SEP.

The commenter also expressed concern about public participation as it relates to the finality of settlements. The Agency believes that if an affected community is involved in the selection of a SEP that is included in the final settlement, the community will be less likely to submit an adverse comment on the settlement as a whole.

In addition, this commenter also stated that by asking a defendant to "actively participate" in reaching out to communities, the Agency may, in effect, indirectly or directly supplement Agency outreach activities for which Congress has provided funding. The commenter specifically raised concerns about the MRA. The Agency has not sought nor has Congress specifically appropriated money for SEP outreach activities. Moreover, EPA carefully considered the MRA when designing the SEP Policy. The SEP Policy includes specific "Legal Guidelines" intended to preclude improper augmentation of EPA's appropriations. *See* section C., item 5., of the May 1, 1998, SEP Policy. Nevertheless, EPA has clarified in the final guidance that should any costs be incurred when conducting community outreach, each party must bear its own costs throughout the settlement process in any enforcement action, including those which involve SEPs. Finally, a number of commenters suggested editorial, non-substantive comments on the guidance. The Agency has made these changes in the final guidance, where appropriate.

[2] The CROP are procedural rules for the administrative assessment of civil penalties, issuance of compliance or corrective action orders, and the revocation, termination or suspension of permits, under most environmental statutes.

Interim Guidance on Community Involvement in Supplemental Environmental Projects

Introduction

In its Supplemental Environmental Projects Policy (SEP Policy) of May 1, 1998, EPA included a section on community involvement[3]. Seeking community involvement in a SEP, especially from the community directly affected by the facility's violations, can have a number of benefits. It can promote environmental justice, enhance community awareness of EPA's enforcement activities, and improve relations between the community and the violating facility.

While community involvement is not possible or appropriate in all settlements involving SEPs, in many cases community involvement may be a valuable part of SEP consideration without adversely affecting the enforcement process. This document encourages EPA staff to include community involvement in settlements, where appropriate, and to strive to meet the community involvement goals of the SEP Policy. In addition, this interim guidance suggests resources that may be utilized to foster community involvement.

This interim guidance recognizes that not every settlement can include a SEP, or a SEP that is proposed or favored by community members. SEPs are projects undertaken voluntarily by defendants[4], and not all defendants are interested in performing SEPs. Defendants may not be willing to solicit input from the community, or may not be receptive to community input. Further, final approval of all SEPs rests with EPA,[5]

[3] The SEP Policy allows EPA to consider a defendant's or respondent's willingness to perform an environmentally beneficial project when setting an appropriate penalty to settle an enforcement action. The purpose of a SEP is to secure significant environmental or public health protection improvements beyond those achieved by bringing the defendant into compliance. The SEP must be a new project, where EPA has the opportunity to shape the scope of the project before it is implemented, and the defendant must not be otherwise legally required to do the work. Community participation in SEP consideration is just one of the factors considered in valuing a SEP. This summary of the SEP Policy should not be considered a full summary of the SEP requirements and persons interested in such requirements should consult EPA's Final SEP Policy, available at 63 FR 24796 (May 5, 1998), or *http://www.epa.gov/compliance/resources/policies/civil/seps/index.html*.

[4] SEPs can only be obtained in settlement agreements, not imposed by a court or administrative tribunal. Under the MRA, 31 U.S.C. 3302(b), all court-or administratively-imposed penalties must be paid to the treasury. Only in settlement, before a penalty is imposed, can a penalty be mitigated by a SEP.

[5] Throughout this interim guidance, the term "EPA," when used in the context of a judicial enforcement action, also includes the Department of Justice.

must review project proposals to ensure consistency with the SEP Policy and the law. A proposed project may not be able to be approved because it may not have the required nexus to the underlying violation, or may violate other legal requirements. Also, if different community groups support different SEP projects, some part of the community is likely to be disappointed no matter what the outcome of the SEP consideration process might be. Finally, court imposed deadlines on the parties may not allow for community input into the SEP selection.

Nevertheless, EPA believes that community involvement is an important factor that should be considered along with other factors surrounding the particular facts of a potential settlement, such as quick response to environmental threats, timely resolution of enforcement actions, and using limited resources effectively to achieve the maximum benefit for human health and the environment. This guidance encourages Regions to think creatively about how to engage communities, particularly communities affected by the facility's violations, even though direct community participation will not be possible in every case that includes a SEP. For example, Regions can consider setting up a SEP library to solicit community project ideas outside of the context of a particular enforcement action so that community project ideas are available to draw from in appropriate cases. Also, settlements can be structured to provide for community input on implementation of the SEP, even if participation in SEP consideration itself is not feasible.

Building trust between EPA and communities is the foundation of effective community involvement in the SEP consideration process. Even where community outreach does not result in a community-supported or proposed SEP being included in a settlement, effective community outreach can help increase the community's confidence in the process and may encourage the community to work with EPA in the future.

Including communities, when possible, in the consideration of SEPs, may benefit the defendant[6] the community, the environment, and EPA. First, because SEPs help to protect the environment and public health, and can redress environmental harm, involving communities in SEP consideration enables EPA and the defendant to focus on the particular environmental priorities and concerns of a community, which is especially important if several different SEPs are being considered. The community also can be a valuable source of SEP ideas, including ideas that result in creative or innovative SEPs that might not otherwise have been considered.

Furthermore, pursuant to the SEP Policy, a defendant's participation and inclusion of public input into a SEP is one of the factors EPA uses to determine the degree to which penalty mitigation is appropriate in a particular case. (SEP Policy, p. 16). Enforcement staff should consider giving a defendant who conducts outreach to communities in development of an acceptable SEP proposal, a greater mitigation percentage for a SEP than a defendant who does not conduct such outreach. Defendants may also benefit from community involvement because it can result in better relationships with the community.

Given the wide range of settlement scenarios, types of violations and communities, there is not standard formal to determine when community involvement in the consideration of a SEP is appropriate. There are a number of factors that may help EPA staff determine whether or not community involvement may be appropriate in a particular case. Generally these factors may include:

1. The parameters surrounding the specifics of each case, *e.g.*, court-ordered deadlines, imminent and substantial endangerment situations;

2. The willingness of the defendant to conduct a SEP, and a willingness to solicit and respond in a meaningful way to community input;

3. The impact of the violations on the community, especially the community most directly affected by the facility's violations;

4. The level of interest of the community in the facility and the potential SEP; and

5. The amount of the proposed penalty and the settlement amount that is likely to be mitigated by the SEP.

An excellent way to include communities in SEPs is to establish a "SEP library." A SEP library is an inventory of potential SEPs that can be consulted in individual cases where the defendant requests assistance in identifying appropriate SEPs. Several EPA Regional offices have established SEP libraries; others are considering development of a SEP library. A SEP library can include specific projects identified as priorities by communities, non-governmental organizations and others. SEP libraries can be developed from project ideas obtained from the affected community through town meetings, publications, the internet, or public hearings. Collecting ideas for possible SEPs for inclusion in a SEP library can happen at any time. Therefore, the enforcement action in which a SEP may ultimately be selected from the SEP library will be unknown at the time the potential SEP is placed into the library. Therefore, inclusion of SEP in the SEP library does not ensure that a project will be chosen and/or implemented in any particular settlement.

Finally, SEPs are developed in the context of settlement negotiations. As such, confidentiality between the government and the defendant is essential to the exchange of ideas and exploration of settlement options. Because of this, EPA must consider how to provide information to the public to facilitate its involvement in SEP consideration and development without undermining the confidentiality of settlement negotiations. Much of the information developed by the government may be privileged and therefore not appropriate for release to the public. In addition, a defendant may provide information to the government that must be kept confidential. For example, a defendant may provide confidential business information ("CBI") to EPA. CBI, by law, cannot be provided to the public. [7] Thus, each case will have limits on what information EPA can make available to the public. In judicial cases, DOJ will also retain authority to determine what information can be released to the community.

EPA believes that community involvement in SEPs is an important goal, and is committed to involving communities in the consideration of SEPs. This interim guidance is intended to encourage enforcement staff to consider community involvement in SEPs, and to help effectuate the best possible SEPs in the settlement of enforcement cases in a manner that promotes mutual trust and confidence, and builds positive relationships between the community and the Agency.

John Peter Suarez,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

This document is interim guidance intended for use of the EPA personnel and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States,

[6] "Defendant," when used herein, includes defendants in civil judical actions and respondents in EPA administrative actions.

[7] *See* 40 CFR part 2, subpart B.

its agencies, its officers, or any person. This interim guidance is not intended to supercede any statutory or regulatory requirements, or EPA policy. Any inconsistencies between this interim guidance and any statute, regulation, or policy should be resolved in favor of the statutory or regulatory requirement, or policy document, at issue.

Appendix A

Resources for Identifying Communities

Below are some suggested resources within and outside of EPA that may be useful in targeting community outreach efforts.

Suggested Internal Sources

1. Community involvement coordinators at EPA's Office of Emergency and Remedial Response Community Involvement and Outreach Center;
2. Headquarters offices, including: Office of Environmental Justice, American Indian Environmental Office, Federal Facilities Enforcement;
3. Colleagues in other media programs or regions;
4. Regional offices or coordinators who handle community involvement, environmental justice, tribal issues, or community-based environmental problems.

Suggested External Sources

1. State, local or tribal governments;
2. Education or spiritual organizations;
3. Other Federal agencies
4. Neighborhood organizations or groups, and individuals in neighborhoods closest to the defendant's facility;
5. Community activists;
6. Environmental and environmental justice organizations and groups;
7. Local unions, business groups, and civic groups;
8. The defendant or other members of the regulated community (*e.g.*, trade associations);
9. Local newspapers, radio, television, local Internet sites.

Appendix B

Community Outreach Techniques

- This list is intended to provide a library of options available for use in conducting community outreach, and is not intended to suggest that all of these techniques be used in any given case.

1. *Interview:* Face to face or telephone discussions with community members provide information about local concerns and issues. A significant time commitment may be required to gather feedback representative of the community;
2. *Small Group Meeting:* Convening community members in a local meeting place stimulates dialogue, generates information, and may build rapport among participants;
3. *Focus Group Meeting:* Focus group participants are convened by a trained facilitator to provide answers to specific questions. The direct approach is an efficient information gathering tool if participants represent a cross-section of the community.
4. *Public Meeting:* Public meetings are useful for hearing what people have to say about current issues and engaging community members in the process. At public meetings, EPA should focus on active listening and learning from the public.
5. *Public Availability Session/Open House:* A public availability session is a less structured alternative to a public meeting that provides everyone an opportunity to ask questions, express concerns, react to what is being proposed, and make suggestions. Typically, a public official announces she or he will be available at a convenient time and place where community members can talk informally.
6. *Public Notice:* Public notices in the print media or on radio and television are a relatively inexpensive way to publicize community participation opportunities. In addition to the mainstream media, minority publications, church bulletins and other such vehicles offered by local organizations can reach a more diverse audience.
7. *Workshop:* Workshops are participatory seminars to educate small groups of citizens on particular site issues.
8. *Site Tour:* Site tours can familiarize citizens, the media and local officials with the nature or environmental concerns affecting a community near a specific site. Tours may result in better communication among the community, facility and Agency.
9. *Information Repository:* An information repository is a project file containing timely information on site-specific activities and accurate detailed and current data about a site or enforcement action. Project files are typically kept at convenient public locations, *e.g.*, libraries, and publicized through various media.

[FR Doc. 03–15260 Filed 6–16–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. AT–CA–01–0093]

Notice of Opportunity to Submit Amicus Curiae Briefs in an Unfair Labor Practice Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority has been asked to modify its standard for determining whether an agency has a statutory obligation to notify and bargain with a union regarding changes in conditions of employment that are substantively negotiable.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on a significant issue in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute). The issue concerns whether the Authority should modify its standard for determining whether an agency has a statutory obligation to notify and bargain with a union regarding changes in conditions of employment that are substantively negotiable.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Case Control Office by 5 p.m. on Thursday, July 17, 2003. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

FORMAT: All briefs shall be captioned "*Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina,* Case No. AT–CA–01–0093." Parties must submit five copies, one of which must contain an original signature, of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c).

The designated representatives in *Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina,* Case No. AT–CA–01–0093, are John J. Barrett, Agency Representative, Social Security Administration, 6401 Security Boulevard, Room G–H–10, West High Rise Building, Baltimore, MD 21235–6401; J. E. Van Slate, Union Representative, AALJ, IFPTE, c/o Social Security Administration, Office of Hearings and Appeals, 200 Meeting Street, Suite 202, Charleston, SC 29401; Tameka West, Counsel for the General Counsel, Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303–1270.

ADDRESSES: Mail or deliver briefs to Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K St. NW., Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: The case presenting the issue on which amicus briefs are being solicited is before the Authority on exceptions to a recommended decision and order of an Administrative Law Judge (Judge) resolving unfair labor practice allegations.

A. Summary of Current Authority Precedent

To assist interested persons in responding, the Authority offers the following summary of current Authority precedent. The cases cited below are not intended as a complete description of Authority precedent in this area, and amici are encouraged to address any federal or private sector precedent deemed applicable.

Under section 7116(a)(1) and (5) of the Statute, prior to implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice of the change and the opportunity to bargain over those aspects of the change that are within the duty to bargain. *U.S. Army Corps of Eng'rs, Memphis Dist.*, 53 FLRA 79, 81 (1997). Where an agency institutes a change in a condition of employment and the change is itself negotiable, the extent of the impact of the change on unit employees has not been a factor or element in the analysis of whether an agency is obligated to bargain. *92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash.*, 50 FLRA 701, 704 (1995). Conversely, where the substance of a change is not itself negotiable, an agency must nonetheless give the exclusive representative an opportunity to bargain over the impact and implementation of the change, provided that the change has more than a *de minimis* effect on unit employees' conditions of employment. *AFGE, Local 940*, 52 *FLRA* 1429, 1436 (1997).

B. The Judge's Decision

The Judge found that the agency violated section 7116(a)(1) and (5) of the Statute by refusing to bargain with the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (Union) over the Agency's reduction in the number of reserved parking spaces for the Administrative Law Judges (ALJs) from 6 to 2. Relying on Authority precedent, the Judge found that providing all 6 ALJs at its Charleston location with reserved, assigned parking was a condition of employment, and that the Agency was obligated to give the Union notice and an opportunity to negotiate the substance of any proposed change of this established condition of employment. In addition, the Judge stated that since the issue of employee parking is substantively negotiable, it was unnecessary to decide whether the impact of the change was more than *de minimis*. However, the Judge noted that if the agency were only obligated to bargain over impact and implementation, "there might be grave doubt that the impact was more than *de minimis*." Judge's Decision at 12. The Judge found that the record did not show any difficulty by employees finding non-reserved parking in the building after the change was implemented. As a remedy, the Judge recommended that the agency restore the *status quo ante* by providing 6 reserved parking spaces to the ALJs.

C. Agency's Exceptions

The Agency filed exceptions, contending in part that the Authority should apply the *de minimis* doctrine that has been used for impact and implementation bargaining to changes that are substantively negotiable. The Agency asserts that the Authority adopted the *de minimis* doctrine in line with the mandate of section 7101 of the Statute that the Statute should be interpreted consistent with the requirement of an effective and efficient Government, and that this same mandate should apply to substantive as well as impact and implementation bargaining.

D. General Counsel's Opposition

The General Counsel requests the Authority to reject the Agency's request to apply the *de minimis* standard to substantively negotiable issues, such as the one in this case. The General Counsel maintains that the Judge's decision is consistent with Authority precedent addressing changes in parking as substantively negotiable.

E. Questions on Which Briefs are Solicited

Since the issue raised by the Agency in this case is likely to be of concern to the federal sector labor-management relations community in general, the Authority finds it appropriate to provide for the filing of amicus briefs addressing the following questions:

What standard should the Authority apply in determining an agency's statutory obligation to bargain when an agency institutes changes in conditions of employment that are substantively negotiable? Why? Should the Authority eliminate the distinction between substantively negotiable changes, where the *de minimis* standard has not been applied, and changes that are not substantively negotiable, where the *de minimis* standard has been applied? Why?

For the Authority.

Dated: June 12, 2003.

Gail D. Reinhart,

Director, Case Control Office.

[FR Doc. 03–15273 Filed 6–16–03; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Temporary Increase of Federal Matching Shares for Medicaid for the Last 2 Calendar Quarters of Fiscal Year 2003 and the First 3 Quarters of Fiscal Year 2004

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The revised Medicaid "Federal Medical Assistance Percentages" (FMAP) for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004 have been calculated pursuant to Title IV of the Jobs and Growth Tax Relief Reconciliation Act of 2003. These revised Federal Medical Assistance Percentages replace the percentages previously published for the applicable quarters during Fiscal Year 2003 (**Federal Register**, November 30, 2001) and Fiscal Year 2004 (**Federal Register**, November 15, 2002). This notice announces the revised Federal Medical Assistance Percentages that we will use in determining the amount of Federal matching for State medical assistance (Medicaid) expenditures under Title XIX, effective only for the 2 calendar quarters from April 1 through September 30, 2003, and the 3 quarters from October 1, 2003 through June 30, 2004. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Programs under Title XIX of the Act exist in each jurisdiction. The percentages in this notice apply to State expenditures for most medical services only for the last 2 quarters of Fiscal Year 2003 and the first 3 quarters of Fiscal Year 2004.

Federal Medical Assistance Percentages are normally used to determine the amount of Federal matching for State expenditures for assistance payments for certain social services including Temporary Assistance for Needy Families (TANF) Contingency Funds, the federal share of Child Support Enforcement collections, Child Care Mandatory and Matching Funds for the Child Care and

Development Fund, Foster Care Title IV–E Maintenance payments, and Adoption Assistance payments, and State medical and medical insurance expenditures for Medicaid and the State Children's Health Insurance Program (SCHIP). However, the temporary increases in the Federal Medical Assistance Percentages under the Jobs and Growth Tax Relief Reconciliation Act of 2003 affect only Medicaid medical expenditure payments under Title XIX. The percentages in this notice do not apply to disproportionate share hospital payments, payments under Title IV or XXI of the Act, or any payments under Title XIX that are based on the enhanced FMAP described in section 2105(b) of such Act. In addition, the statute provides separately for Federal matching of administrative costs, which is not affected by the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Section 401 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 provides for a temporary increase of the Medicaid FMAP. The provisions permit a maintenance of Fiscal Year 2002 FMAP for the last 2 calendar quarters of Fiscal Year 2003 for a State whose 2003 FMAP as calculated pursuant to section 1905(b) of the Act is less than its 2002 FMAP, and a maintenance of Fiscal Year 2003 FMAP for the first 3 calendar quarters of Fiscal Year 2004 for a State whose 2004 FMAP as calculated pursuant to section 1905(b) of the Act is less than its 2003 FMAP. In addition, after adjusting FMAP due to the maintenance of the 2002 or 2003 FMAP where applicable, each State is eligible to receive a 2.95 percentage point increase for each of the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004.

There are conditions that a State must meet in order to receive the 2.95 percentage point FMAP increase for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004. Eligibility under its Medicaid State plan (including any waiver under title XIX of the Social Security Act or under section 1115 of the Act) can be no more restrictive than the eligibility under such plan or waiver as in effect on September 2, 2003. If any State has restricted eligibility under its Medicaid State plan (including any waiver under title XIX of the Social Security Act or under section 1115 of the Act) after September 2, 2003, it will become eligible for the 2.95 percentage point increase in its FMAP in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility in effect on September 2, 2003. These rules do not affect States' flexibility with respect to benefits offered under their Medicaid State plan (including any waiver under title XIX of the Social Security Act or under section 1115 of the Act).

In addition, in order to receive the 2.95 percentage point FMAP increase, in the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan, the State cannot require that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004, than the percentage that was required by the State under such plan on April 1, 2003.

In addition to the increases in FMAP, Title IV of the Jobs and Growth Tax Relief Reconciliation Act of 2003 increases the amounts of Medicaid payments to territories pursuant to section 1108 of the Social Security Act by 5.90 percent of such amounts, for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 also provides $10 billion for other temporary state fiscal relief payments based on population. These payments are under the jurisdiction of the Secretary of the Treasury, and are not reflected in the Federal Medical Assistance Percentages.

EFFECTIVE DATES: The percentages listed will be effective only for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004.

FOR FURTHER INFORMATION CONTACT: Adelle Simmons or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 442E, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program No. 93.778: Medical Assistance Program)

Dated: June 12, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

REVISED FEDERAL MEDICAL ASSISTANCE PERCENTAGE (TITLE IV OF JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003)

[Temporary Increase in Medicaid FMAP for the last 2 Quarters of FY 2003 and First 3 Quarters of FY 2004]

	2003 Qtrs	2004 Qtrs
Alabama	73.55	73.70
Alaska	61.22	61.34
American Samoa	52.95	52.95
Arizona	70.20	70.21
Arkansas	77.23	77.62
California	54.35	52.95
Colorado	52.95	52.95
Connecticut	52.95	52.95
Delaware	52.95	52.95
District of Columbia	72.95	72.95
Florida	61.78	61.88
Georgia	62.55	62.55
Guam	52.95	52.95
Hawaii	61.72	61.85
Idaho	73.97	73.91
Illinois	52.95	52.95
Indiana	64.99	65.27
Iowa	66.45	66.88
Kansas	63.15	63.77
Kentucky	72.89	73.04
Louisiana	74.23	74.58
Maine	69.53	69.17
Maryland	52.95	52.95
Massachusetts	52.95	52.95
Michigan	59.31	58.84
Minnesota	52.95	52.95
Mississippi	79.57	80.03
Missouri	64.18	64.42
Montana	75.91	75.91
Nebraska	62.50	62.84
Nevada	55.34	57.88
New Hampshire	52.95	52.95
New Jersey	52.95	52.95
New Mexico	77.51	77.80
New York	52.95	52.95
North Carolina	65.51	65.80
North Dakota	72.82	71.31
Northern Mariana Islands	52.95	52.95
Ohio	61.78	62.18
Oklahoma	73.51	73.51
Oregon	63.11	63.76
Pennsylvania	57.64	57.71
Puerto Rico	52.95	52.95
Rhode Island	58.35	58.98
South Carolina	72.76	72.81
South Dakota	68.88	68.62
Tennessee	67.54	67.54
Texas	63.12	63.17
Utah	74.19	74.67
Vermont	66.01	65.36
Virgin Islands	52.95	52.95
Virginia	54.40	53.48
Washington	53.32	52.95
West Virginia	78.22	78.14
Wisconsin	61.52	61.38
Wyoming	64.92	64.27

[FR Doc. 03–15274 Filed 6–13–03; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Division of Bacterial and Mycotic Diseases (in the National Center for Infectious Disease, Centers for Disease Control and Prevention) is seeking to explore possible partnerships in applied research to improve public health preparedness and response to bioterrorism associated with use of bacterial and fungal agents. The Division of Bacterial and Mycotic Diseases (DBMD) through its component Branches has lead CDC technical responsibility for a number of Category A, B and C bioterrorism agents and their associated toxins (Bacillus anthracis, Clostridium botulinum, Brucella sps., Burkholderia sps., Staphylococcus entertoxin B, other food- or waterborne bacterial pathogens, and other bacterial agents). DBMD uses epidemiologic, laboratory, clinical, and biostatistical sciences to control and prevent bacterial and mycotic infectious disease. The division conducts applied research in a variety of settings, and translates the findings of this research into public health practice.

The division works in partnership with a variety of public, academic, and for-profit and not-for-profit private sector organizations to achieve public health goals.

Broad categories of bioterrorism-related research of interest to the DBMD include:

1. Rapid evaluation of powder, food, water, and other potential vehicles for presence of bioterrorism agents, and their associated toxins;

2. Epidemiologic investigation of suspected and confirmed bioterrorism events;

3. Pre-, during, and post-bioterrorism event surveillance;

4. Diagnosis of suspect and confirmed bioterrorism-related illness;

5. Treatment of suspect and confirmed bioterrorism-related illness;

6. Post-exposure prophylaxis for prevention of bioterrorism-related illness among exposed persons;

7. Remediation of health risks in environments contaminated or potentially contaminated as a result of BT events.

DBMD is currently involved in a number of bioterrorism-related research activities including, but not limited to:

1. Development and revision of agent- (and toxin-) specific National Bioterrorism Response Plans;

2. Anthrax vaccines;

3. Immunotherapy for anthrax and botulism;

4. Anthrax diagnostics;

5. Antimicrobial susceptibility testing;

6. Epidemiologic and clinical research;

7. Building representative stain collections;

8. Molecular subtyping (and electronic networks for sharing associated data);

9. Identification of virulence factors;

10. Methods for rapid detection of foodborne agents in food and water;

11. Evaluation of unexplained deaths and critical illnesses.

Because CRADA's are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. Responses will be accepted through one year after publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Technical

Bradley Perkins, MD, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mail stop C–09, Atlanta, GA 30333. Telephone (404) 639–4721, E-Mail at *BPerkins@CDC.GOV*.

Business

Lisa Blake-DiSpigna, Technology Development Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton R. NE., Mail stop E–51, Atlanta, GA 30333. Telephone (404) 498–3262, E-Mail at *LCBS3@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

DBMD is seeking to identify organizations that are interested in a partnership for the common goal of improving the Nation's preparedness and ability to respond to bioterrorism based on mutually agreed rule and principles. Partnerships may be based on existing products—systems or tests, development of new products—systems or tests, evaluation of specific issues, communications strategies, or other exchange of knowledge. Partnerships must be constructed in a way that does not create a real or perceived conflict of interest for CDC, the Department of Health and Human Services, or the Federal Government. DBMD will not engage in partnerships which benefit a partner but provide no clear benefit to the Nation's preparedness and ability to respond to bioterrorism.

Respondents should provide evidence of expertise in the conduct of research that focuses on accomplishments and current capabilities, with supporting documentation (*e.g.*, publications, certifications, resumes, etc.), along with qualifications for the principal investigator who would be involved in the CRADA. A proposed research plan outline should be included with sufficient detail to allow for its merit to be judged on the criteria below. Respondents selected for a CRADA will develop the final research plan in collaboration with CDC.

The key criteria by which CDC will judge a potential partnership are whether:

(1) The partnership leads to significant gains in the Nation's preparedness and ability to respond to bioterrorism.

(2) These gains are worth the effort involved in establishing and maintaining the partnership.

With respect to Government Intellectual Property (IP) rights to any invention not made solely by a CRADA partner's employees for which a patent or other IP application is filed, CDC has the authority to grant to the CRADA partner an exclusive option to elect an exclusive or nonexclusive commercialization license. This option does not apply to inventions conceived prior to the effective date of a CRADA that are reduced to practice under the CRADA, if prior to that reduction to practice, CDC has filed a patent application on the invention and has licensed it or offered to licensed it to a third party. The terms of the license will fairly reflect the nature of the invention, the relative contributions of the Parties to the invention and the CRADA , the risks incurred by the CRADA partner and the costs of subsequent research and development needed to bring the invention to the marketplace. The field of use of the license will be commensurate with the scope of the research plan.

This CRADA(s) is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502, as amended.

Projects that involve the collection of information from 10 or more individuals may be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Responses are preferred in electronic format and can be e-mailed to the attention of Michael J. Detmer at *MDetmer@cdc.gov*. Mailed responses can be sent to the following address: Michael J. Detmer, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE., Mail stop C–09, Atlanta, GA 30333.

Dated: June 11, 2003.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 03–15218 Filed 6–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03094]

Perinatal HIV Prevention in the United States: National Organizations Working Toward Elimination; Notice of Availability of Funds

Application Deadline: August 1, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317K(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b (k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for "Perinatal HIV Prevention in the United States: National Organizations Working Toward Elimination." This program addresses the "Healthy People 2010" focus area(s) of HIV and Maternal, Infant and Child Health.

The purpose of this program is to: (1) Develop, provide and disseminate technical assistance and other educational and training materials needed to improve perinatal HIV prevention efforts nationally; (2) promote the integration of: universal voluntary HIV testing into prenatal care across the United States, rapid HIV testing for women with unknown HIV status in labor, and offering repeat HIV testing to women at risk for seroconversion during pregnancy; and (3) foster the exchange of information, ideas and experiences of perinatal HIV prevention among maternal and child health providers, HIV care providers and consumers.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP): (1) Reduce the number of new HIV infections; (2) increase the proportion of HIV-infected people who know they are infected; (3) increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services; and (4) strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

C. Eligible Applicants

Applications may be submitted by national organizations having demonstrated experience providing needs assessments, capacity building, curricula, and training about prevention of mother to child transmission of HIV (PMTCT) for consumers and health care workers, including: Pediatricians, obstetricians, family practitioners, nurses, nurse-midwives, nurse practitioners, counselors, health educators, PMTCT program managers, and other health care providers. These national organizations may be:

- Public nonprofit organizations
- Private nonprofit organizations
- Faith-based organizations

This program is limited to national organizations that have the capability to serve the broadest U.S. audiences by supporting national efforts to assure consistent messages in training and education.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $700,000 is available in FY 2003, to fund approximately three to four awards. It is expected that the average award will be $175,000, ranging from $50,000 to $225,000. It is expected that the awards will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds from this cooperative agreement should not be used for major purchase of equipment or construction. Requests for equipment such as computers and Liquid Crystal Display (LCD) Projectors for training require detailed justification.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Funding preference will be given to national organizations with prior experience providing training to health care providers regarding: (1) Incorporation of PMTCT into health care provider education; (2) offering of universal voluntary HIV testing to pregnant women as a routine part of prenatal care; (3) implementation of voluntary rapid HIV testing programs in labor and delivery settings; and (4) to national organizations that have developed and disseminated patient educational materials on HIV, perinatal HIV and its prevention.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Provide training and technical assistance to programs and health care providers in sharing and applying knowledge and expertise regarding HIV prevention and perinatal transmission. Specifically, disseminate educational materials, and provide training and technical assistance on approaches to help providers achieve high rates of prenatal HIV testing by using recommended HIV screening practices including opt-out strategies, offering rapid HIV testing for women in labor who present with undocumented HIV status and linking HIV-at risk and HIV-infected women and their infants to comprehensive medical and social services.

b. Sponsor a variety of forums for presentation of information on HIV perinatal reduction (*i.e.*, policies, programs, materials, and other technical information) and other public health information related to HIV prevention and pregnancy among Maternal and Child Health (MCH) populations.

c. Collaborate with other funded national organizations and the CDC, Division of HIV/AIDS and other Centers, Institutes, and Offices (CIOs) within CDC which address HIV prevention relevant to MCH populations, to assess needs and provide technical assistance.

d. Participate in an annual CDC-sponsored meeting on perinatal HIV prevention.

2. CDC Activities

a. Facilitate and assist in the development of training materials and curricula, administrative tools and policy manuals.

b. Participate in defining the scope of perinatal HIV transmission and other prevention needs relevant to MCH populations, and provide information and technical assistance in meeting those needs.

c. Work with each awardee to facilitate and support collaboration among funded national organizations as well as CDC-funded perinatal HIV prevention and surveillance programs.

d. Provide a synthesis of known best practices and interventions regarding prevention of perinatal transmission of HIV for all pregnant women, including women with little or no prenatal care and unknown HIV status at labor and delivery.

e. Collaborate in the development of forums that focus on perinatal HIV transmission and other public health information that relates to HIV prevention among maternal-child health populations.

f. Assist in the evaluation of perinatal HIV prevention education, training, and materials.

g. Collaborate in the presentation and publication of evaluation findings.

h. Conduct site visits to monitor progress of the programs.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 18 pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of:

1. Abstract (not to exceed one page): An executive summary of your program covered under this announcement.

2. Program Plan (Not to exceed 17 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely. The program plan should address activities to be conducted over the entire four-year budget period.

3. *Budget:* Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address:

The application must be received by 4 p.m. Eastern Time August 1, 2003. Submit the application to: Technical Information Management-PA# 03094, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement regarding educational material and training on perinatal HIV prevention. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. *Scope of Plan (30 points):* a succinct statement of the intent and desired outcome(s) of the project and clearly stated and measurable outcome objectives to be achieved by the project. These objectives must be quantifiable in terms of outputs and time frame for achievement. The statement of intent and outcome objectives should address the purpose of the cooperative agreement, which is to: (1) Develop, provide and disseminate technical assistance and other educational and training materials needed to improve perinatal HIV prevention efforts nationally; (2) promote the integration of universal voluntary HIV testing into prenatal care across the United States, rapid HIV testing for women with unknown HIV status in labor, and offering repeat HIV testing to women at risk for seroconversion during pregnancy; and (3) foster the exchange of information, ideas and experiences of perinatal HIV prevention among maternal and child health providers, HIV care providers and consumers.

2. *Personnel and Staffing (30 points):* the qualifications and experience of key personnel, other professional staff and support staff available to carry out the perinatal HIV prevention activities.

3. *Methods (25 points):* Clear statement of approach and activities required to achieve the stated perinatal HIV prevention outcome objectives. The relationship between activities and objectives must be explicitly demonstrated. Description of activities must include a delineation of resources required, identification of the personnel

who will perform the work, and a management plan with description of the systems and procedures which will be used to manage the progress, budget and operations of the project.

4. *Evaluation (15 points):* Detailed plans for evaluating the degree to which the program achieves the purpose of the cooperative agreement (as listed in the purpose section, and above in the description of the scope of plan.) Measures must be objective and quantitative and must measure the intended outcome. The submission of these measures shall be a data element to be submitted with, or incorporated into the semiannual progress reports.

5. *Budget (reviewed, but not scored):* There is an upper limit of $250,000. An application submitted with a budget over $250,000, will be reviewed and, if awarded, only partially funded. The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–21 Small, Minority, and Women-Owned Business

AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Carlos Smiley, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2722, E-mail address: *anx3@cdc.gov*.

For program technical assistance, contact: Margaret A. Lampe, RN, Project Officer, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333, Telephone: 404–639–5189, E-mail address: *m1ampe@cdc.gov*.

Dated: June 7, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–15217 Filed 6–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–78]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Delayed symptoms associated with the convalescent period of a dengue infection.—New—National Center for Infectious Diseases (NCID)—Centers for Disease Control and Prevention (CDC). Dengue is a vector-borne febrile disease of the tropics transmitted most often by the mosquito *Aedes aegypti*. Symptoms of the acute disease include fever, headache, rash, retro-orbital pain, myalgias, arthralgias, vomiting, abdominal pain and hemorrhagic manifestations.

Many symptoms are mentioned in the medical literature as associated with the convalescent period (three-eight weeks) after dengue infection, including depression, dementia, loss of sensation, paralysis of lower and upper extremities and larynx, epilepsy, tremors, manic psychosis, amnesia, loss of visual acuity, hair loss, and peeling of skin. No epidemiologic study has been conducted to define the timing, frequency, and risk factors for these symptoms. The objective of this study is to examine the incidence and characteristics of mental health disorders and other delayed complications associated with dengue infection and convalescence. The study will be conducted in Puerto Rico, where dengue is endemic and causes severe sporadic epidemics. Laboratory positive confirmed cases of dengue, laboratory negative suspected dengue cases, and neighborhood controls will be prospectively enrolled in the study. Person-to-person interviews with adults (age 18 years or greater), will be conducted and information will be collected regarding symptoms experienced during the convalescent phase of the infection. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Laboratory positive confirmed dengue	200	2	60/60	400
Dengue negative control	200	2	60/60	400
Neighborhood control	200	2	60/60	400
Total				1200

Dated: June 10, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–15214 Filed 6–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–47–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

A Research Program to Develop Optimal NIOSH Alerts in Farming (OMB No. 0920–0501)—REVISION—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote "safety and health at work for all people through research and prevention." Alerts are some of the primary publications by which NIOSH communicates health and safety recommendations to at-risk workers. Each Alert is mailed to workers affected by a particular health or safety hazard and contains information about the nature of the hazard, as well as recommendations for avoiding or controlling it. Despite the important role of Alerts in conveying health and safety information to workers, these publications have not been routinely pretested and evaluated for effectiveness. Therefore, it is important to continue research that examines the degree to which the NIOSH Alerts produce risk awareness, as well as comprehension, acceptance and use of the recommended health and safety measures.

The OMB-approved project, "A Research Program to Develop Optimal NIOSH Alerts in Farming" (0920–0501), applied theoretical advances in communication research to the development of NIOSH Alerts to ensure maximal effectiveness in conveying health and safety information to workers. This project applied psychology and communication theories to experimentally manipulate features of the NIOSH Alerts and examine the effects of these manipulations on the effectiveness of the Alert. To design these theory-based Alerts, the concepts of goal attainment imagery and risk imagery were applied. Goal attainment imagery asks the readers to imagine themselves carrying out the safety recommendations provided in the Alert, while risk imagery asks the readers to imagine themselves in a high risk situation where the safety recommendations are not followed.

Field research from the project, which applied these two types of imagery, has shown that farmers who received an Alert containing goal attainment imagery found the Alert easier to visualize, stronger, more convincing and more attention getting than a standard Alert. Farmers who received an Alert with goal attainment imagery reported heightened perceptions of risk awareness and more positive attitudes toward engaging in safety recommendations. In addition, they reported that they would be more likely to pass the information on to other farmers. No differences were found between farmers who received Alerts containing risk imagery and farmers who received a standard Alert. Therefore, goal attainment imagery seemed to have the strongest effect when included in the Alerts.

The original OMB-approved protocol proposed that a national mail-out survey would be conducted in order to test the generalizability of the data collected in the field. Farmers would receive an experimental (high imagery) or a standard version of an Alert along with a survey to complete and return to NIOSH. However, based on results from similar projects, we have learned that mail surveys generate low response rates. We propose changing the data collection format from a mail survey to a telephone survey. Farmers would receive an experimental version of the Alert and then be contacted approximately two weeks later to complete a telephone survey.

This change to the data collection format would serve three purposes. It is expected that the response rate for the telephone survey would be considerably higher than the response rate for the mail survey. Also, surveying a national sample of farmers would allow us to generalize the results to the broader population of farmers. Finally, the distribution of the experimental Alerts is similar to the way in which NIOSH Alerts are distributed to at risk workers and would present an opportunity to test the effectiveness of this distribution method. The annual burden for this data collection is 133 hours.

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Farmers	460	1	20/60

Dated: June 11, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–15215 Filed 6–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–48–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

The National Tobacco Control Program (NTCP) Chronicle Progress Reporting System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Tobacco use is the single most preventable cause of death and disease in the United States. Most people begin using tobacco in early adolescence. Tobacco use causes more than 430,000 deaths annually in the nation and costs approximately $50–70 billion in medical expenses alone. The Centers for Disease Control and Prevention's (CDC) Office on Smoking and Health (OSH) provides funding to health departments of states and territories to develop, implement and evaluate comprehensive Tobacco Control Programs (TCPs) based on CDC guidelines provided in Best Practices for Comprehensive Tobacco Control Programs-August 1999 (Atlanta, GA, HHS). TCPs are population-based, public health programs that design, implement and evaluate public health prevention and control strategies to reduce disease, disability and death related to tobacco use and to reach those communities most impacted by the burden of tobacco use (*e.g.*, racial/ethnic populations, rural dwellers, and the economically disadvantaged). Support for these programs is a cornerstone of the OSH's strategy for reducing the burden of tobacco use throughout the nation. CDC, Office on Smoking and Health is authorized under sections 301 and 317(k) of the Public Health Service Act (42 U.S.C. section 241 and 247b(k)).

As outlined in 45 CFR subtitle A, § 92.40, funding recipients are required to submit twice yearly progress reports to CDC. These reports are used by both the Procurement and Grants Office (PGO) to monitor program compliance, and by OSH managers and Project Officers (POs) to identify training and technical assistance needs; monitor compliance with cooperative agreement requirements; evaluate the progress made in achieving national and program-specific goals; and respond to inquiries regarding program activities and effectiveness. Funding recipients currently have a wide latitude in the content of the information they report with some recipients providing extensive and detailed programmatic information and others providing minimal detail regarding TCP operations. Historically, information has been collected and transmitted via hard-copy paper document. The manual reporting system significantly impacts the OSH's staff ability to accomplish its responsibilities resulting from providing TCP funds, particularly with respect to compiling, summarizing and reporting aggregate TCP program information.

In responding to the federal government's E-Government initiative, the proposed change in progress report collection methodology is driven by OSH's development of an electronic progress reporting system to collect state TCP information. The proposed reporting system will utilize a more formal, systematic method of collecting information that has historically been requested from individual TCPs and will standardize the content of this information. This will facilitate OSH staff's ability to fulfill its obligations under the cooperative agreements; to monitor, evaluate and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of OSH's National Tobacco Control Program (NTCP). It will also support OSH's broader mission of reducing the burden of tobacco use by enabling OSH staff to more effectively identify the strengths and weaknesses of individual TCPs; to identify the strength of national movement toward reaching the goals specified in Healthy People 2010; and to disseminate information related to successful public health interventions implemented by these organizations to prevent and control the burden of tobacco use. The OSH anticipates that the state burden of providing hard-copy reports will be reduced with the introduction of the web-based progress reporting system. It is assumed that states will experience a learning curve in using this application, and the reported burden will be reduced once they have familiarized themselves with this system. The annual burden for this data collection is 612 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
States and DC	51	2	6

Dated: June 11, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–15216 Filed 6–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the "MLN Registration and Product Ordering System (MLNR-POS)," HHS/CMS/CMM No. 09–70–0542. The primary purpose of the system of records is to provide CMS with greater efficiency in MLNR-POS product fulfillment and improve management of MLNR-POS educational product inventory. This system will also provide CMS with an automated registration system that will allow health care providers to register for CMS educational programs and order CMS educational products. If in the event that CMS becomes an accredited provider of continuing education credits, this system will provide CMS with the ability to track awarded continuing education credits as required by the accrediting organizations.

Information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and support litigation involving the agency.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section, below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 23, 2003. In any event, we will not disclose any information under a routine use until forty (40) calendar days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.-3:00 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Mary Case, Division of Provider Information Planning and Development (DPIPD), CMS, Mail Stop C4–10–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System of Records

Title IV of the Benefits Improvement Protection Act of 2000 (Pub. L. 106–554, Appendix F)

Title IV of the Balanced Budget Act of 1997 Sections 1816(a) and 1842 (a) (3) of the Social Security Act

B. Background

Studies have shown that providers are very interested in obtaining information that will help them improve their billing procedures and improve patient care. These studies have also shown that providers are limited on the amount of time they can spend away from their practice to attend conferences and sort though the multitude of correspondence that they receive on a daily basis. Distance learning is an educational avenue that physicians find an appealing alternative. Studies have shown that health care providers better utilize educational products that provide continuing education credits.

This registration and product ordering system will allow health care providers to register for computer/web-based training courses, satellite broadcasts and train-the-trainer sessions. The system will also allow learners to order provider educational materials.

CMS is considering applying to become an accredited provider of continuing education. If accredited, CMS will use this system to track continuing education credit information as required by the accrediting organizations.

According to Donna S. Queeney in the American Society for Training and Development Handbook, Fourth Edition, "continuing professional education often is used as a component of credentialing with the intention that it will help practitioners keep knowledge, skills and performance abilities current." Ms. Queeney also states "required continuing education must be accessible to practitioners regardless of their work schedules, geographic locations, or other mitigating factors. The solo practitioner in a rural area needs ready access to continuing education just as much as the group practitioner in a major metropolitan area."

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The MLNR-POS database will collect and store the health care provider's first and last name, mailing address, provider type, facility type, telephone number, fax number and email address. If CMS becomes an accredited provider of continuing education credits, this system may also contain social security number, provider number, UPIN number or contractor ID number.

This information will be used by CMS and CMS contractors to confirm registration and report aggregate data and allow health care providers to retrieve their own educational information.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release MLNR-POS information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with MLNR-POS information and identifiers. Non-identifiable data includes individual records with MLNR-POS information and masked identifiers or MLNR-POS information with identifiers stripped out of the file.

CMS will only disclose the minimum personal data necessary to achieve the purpose of the MLNR-POS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data are being collected; *e.g.*, tracking, reporting and accounting the disclosures made from all CMS systems of records as permitted by the Privacy Act and HIPAA.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would, in fact, accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually, identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities That May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MLNR-POS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. CMS proposes to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreedto represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 **Federal Register** 82462 as amended by 66 **Federal Register** 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

IV. Safeguards

The MLNR–POS will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (*e.g.*, tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Index Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management Circular #10; HHS AIS Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of MLNR–POS data. MLNR–POS information is submitted to CMS through standard systems. CMS will use a variety of onsite and offsite edits and audits to increase the accuracy of MLNR–POS data.

CMS will take precautionary measures (*see* item IV., above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: May 23, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0542

SYSTEM NAME:

MLN Registration and Product Ordering System, (MLNR–POS), HHS/CMS/CMM.

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain the health care provider's first and last name, mailing address, provider type, facility type, telephone number, fax numbers and e-mail address. The data submission by the health care provider is voluntary. This system may collect social security number, provider number, UPIN number or contractor ID number.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will contain the health care provider's first and last name, mailing address, provider type, facility type, telephone number, fax numbers and e-mail address. The data submission by the health care provider is voluntary. This system may collect social security number, provider number, UPIN number or contractor ID number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Benefits Improvement Protection Act of 2000 (Pub. L. 106–554, Appendix F) Title IV of the Balanced Budget Act of 1997 Sections 1816(a) and 1842(a)(3) of the Social Security Act

PURPOSE(S):

The primary purpose of the system of records is to provide CMS with greater efficiency in MLNR–POS product fulfillment and improve management of MLNR–POS educational product inventory. This system will also provide CMS with an automated registration system that will allow health care providers to register for CMS educational programs and order CMS educational products. If in the event that CMS becomes an accredited provider of continuing education credits, this system will provide CMS with the ability to track awarded continuing education credits as required by the accrediting organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MLNR–POS Registration and Product Ordering System without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' (HHS) regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreedto represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and magnetic media.

RETRIEVABILITY:

The health care provider, through their self-identified user ID and password can retrieve their own records. Those with database administrative access may also access the database information.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established CMS, Privacy Act and HIPAA retention guidelines. CMS will conduct periodic reviews to determine if these records are historical and should be placed in permanent files after established retention periods and administrative needs of CMS have elapsed.

The records are maintained online in the system for 8 years. After an 8-year period, the records are transferred to an inactive file and destroyed 2 months later.

Note: The Department of Justice issued a directive in 1992 prohibiting the destruction of Medicare claims/administrative records. Therefore, all Medicare claims-related/ administrative data will be retained until the freeze is lifted."

SYSTEM MANAGER(S) AND ADDRESS:

Director, Provider Communications Group (PCG), Center for Medicare Management, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager, who will require the system name, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of correspondence and control number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and

reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Data submission is voluntary and is self reported by the health care provider.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–15120 Filed 6–16–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0229]

Draft Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of the development of certain Fast Track drug and biological products. Applicants are being asked to apply to participate in the Pilot 2 program.

DATES: Submit written comments on the draft guidance by August 1, 2003. General comments on agency guidance documents are welcome at any time. Submit written or electronic comments on the collection of information by August 15, 2003.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist either office in processing your request. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidances.

Submit written comments on the draft guidance and on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance and the collection of information to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: John Jenkins, Center for Drug Evaluation and Research (HFD–020), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3937, or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." In conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA), FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement.

Under this CMA pilot program, Pilot 2, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to participate in Pilot 2. Pilot 2 is an exploratory program that will allow FDA to evaluate the impact of frequent scientific feedback and interactions with applicants during the investigational new drug application (IND) phase. Under the pilot program, a maximum of one Fast Track product per review division in CDER and CBER will be selected to participate. This guidance provides information regarding the selection of participant applications for Pilot 2, the formation of agreements between FDA and applicants on the IND communication process, and other procedural aspects of Pilot 2. The FDA will begin accepting applications for participation in Pilot 2 on October 1, 2003.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments on the draft guidance and the information collection. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques and other forms of information technology, when appropriate.

Title: Draft guidance for industry "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA.

Description: FDA is issuing a draft guidance on the implementation of a pilot program to provide selected applicants of Fast Track drugs or biologics with frequent scientific feedback and interactions during the IND development phase. The draft guidance describes the criteria, procedures, and the application process to participate in Pilot 2.

The draft guidance describes one collection of information: Applicants who would like to participate in Pilot 2 must submit an application (Pilot 2 application) containing certain information outlined in the draft guidance. The purpose of the Pilot 2 application is for the applicants to describe how their designated Fast Track product would benefit from enhanced communications between the FDA and the applicant during the product development process.

Section 312.23 (21 CFR 312.23) of the FDA regulations states that information provided to the agency as part of an IND must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs. FDA Form 1571 has a valid OMB control number: OMB Control No. 0910–0014, which expires January 31, 2006.

In the draft guidance document, CDER and CBER ask that a Pilot 2 application be submitted as an amendment to the application for the underlying product under the requirements of § 312.23; therefore, Pilot 2 applications should be submitted to the agency in triplicate with Form FDA 1571. The agency recommends that a Pilot 2 application be submitted in this manner for two reasons: (1) To ensure that each Pilot 2 application is kept in the administrative file with the entire underlying application and (2) to ensure that pertinent information about the Pilot 2 application is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on activities.

Under the draft guidance, the agency asks applicants to include the following information in the Pilot 2 application:

- Cover letter prominently labeled "Pilot 2 application;"
- IND number;
- Date of Fast Track designation;
- Date of the end-of-phase 1 meeting, or equivalent meeting, and summary of the outcome;
- A timeline of milestones from the drug or biological product development program, including projected date of new drug application/biologic licensing applications submission;
- Overview of the proposed product development program for a specified disease and indication(s), providing information about each of the review disciplines (e.g., continuous marketing applications, pharmacology/toxicology, clinical, clinical pharmacology and biopharmaceutics);
- Rationale for interest in participating in Pilot 2, specifying the ways in which development of the subject drug or biological product would be improved by frequent scientific feedback and interactions with FDA and the potential for such communication to benefit public health by improving the efficiency of the product development program; and
- Draft agreement for proposed feedback and interactions with FDA.

This information will be used by the agency to determine which Fast Track products are eligible for participation in Pilot 2.

Description of Respondents: An applicant for a drug or biological product that has been designated as Fast Track under section 112 of the FDA Modernization Act (21 U.S.C. 356).

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden[1] for the submission of a Pilot 2 application under the guidance. Participation in this pilot program will be voluntary.

Based on the number of approvals for Fast Track designations and data collected from the review divisions and offices within CDER and CBER, FDA estimates that in fiscal year (FY) 2002, 109 drug product applications and 46 biological products had Fast Track designation. FDA anticipates that approximately 85 drug product applicants (respondents) and approximately 29 biological product applicants (respondents) will submit at least one Pilot 2 application. Based on information collected from offices within CDER and CBER, the agency further anticipates that the total responses, i.e., the total number of applications received for Pilot 2, will be 90 for drug products and 35 for biological products. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted in a Pilot 2 application in accordance with the draft guidance, is estimated to be approximately 80 hours. Based on FDA's experience, we expect it will take respondents this amount of time to obtain and draft the information to be submitted with a Pilot 2 application. Therefore, the agency estimates that applicants will use approximately 10,000 hours to complete the Pilot 2 applications.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Pilot 2 application	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
CDER	85	1.06	90	80	7,200
CBER	29	1.20	35	80	2,800
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

[1] The burden estimate is for the application period because this is a pilot program and limited in duration.

IV. Electronic Access

Persons with access to the Internet can obtain the guidance at *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: June 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15168 Filed 6–12–03; 11:36 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0228]

Draft Guidance for Industry on Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under PDUFA." This is one in a series of guidance documents that FDA agreed to draft and implement in conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA). Pilot 1 will enable certain applicants to receive early feedback on portions of their applications. Pilot 1 will also evaluate the benefits and costs of providing applicants early feedback.

DATES: Submit written or electronic comments on the draft guidance by August 1, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self addressed adhesive label to assist either office in processing your request. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Jenkins, Center for Drug Evaluation and Research (HFD–020), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3937, or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under PDUFA." In conjunction with the June 2002 reauthorization of PDUFA, FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement.

Under this CMA pilot program, Pilot 1, applicants submitting new drug applications (NDAs) or biological licensing applications (BLAs) for products that have been designated as Fast Track drug or biological products (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) may be eligible to submit portions of their marketing applications (reviewable units) in advance of the complete marketing application. FDA has agreed to complete reviews of reviewable units within a specified time and to provide early feedback for the presubmissions in the form of discipline review letters.

This draft guidance provides information on how the agency will implement Pilot 1. The draft guidance describes Pilot 1 as an exploratory program that will allow FDA to evaluate the added value, costs, and impact of early review and feedback on parts of applications (reviewable units) in advance of submission of the complete application.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the implementation of the Pilot 1 program for reviewable units of certain Fast Track drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for a reviewable unit (a predefined portion of an NDA or BLA that may be submitted prior to submission of a complete NDA/BLA) is already covered by the collection of information for NDAs and BLAs (21 CFR 314.50 and 601.2). This notice merely provides applicants an opportunity to submit already required information in advance of the complete NDA or BLA.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB approved the information collection for an application to market a new drug and assigned it OMB control number 0910–0001 (expires March 31, 2005). OMB also approved the information collection for an application to market a biologic product and assigned it OMB control number 0910–0338 (expires March 31, 2005).

IV. Electronic Access

Persons with access to the Internet can obtain the guidance at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/cber/guidelines.htm*.

Dated: June 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15167 Filed 6–16–03; 11:36 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR, Subpart H) (OMB No. 0915–0099)—Extension

The regulation known as "Federal Right of Recovery and Waiver of Recovery," provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility under Title VI and/or XVI is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Facilities are required to provide written notice to the Federal Government when such a change occurs; and to provide copies of sales contracts, lease agreements, estimates of current assets and liabilities, value of equipment, expected value of land on the new owner's books and remaining depreciation for all fixed assets involved in the transactions, and other information and documents pertinent to the change of status.

Regulation	Number of respondents	Responses per respondent	Hours per respoonse	Total burden hours
124.704(b) and 707	20	1	3	60

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: June 10, 2003.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–15238 Filed 6–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[Announcement Number: HRSA–03–098]

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Sickle Cell Disease and Newborn Screening Programs (CFDA #93.110)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $3.71 million in fiscal year (FY) 2003 funds is available to fund (1) one cooperative agreement with an established sickle cell disease (SCD) organization with a national scope to institute a project coordinating center, and (2) up to 16 grants for community-based SCD projects to enhance the Sickle Cell Disease and Newborn Screening program through provision of outreach and counseling efforts. Eligibility is open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b). Awards will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)), *i.e.*, Special Projects of Regional and National Significance (SPRANS). Funds for these awards were appropriated under Public Law 108–7, the "Consolidated Appropriation Resolution, 2003." Up to $750,000 in FY 2003 funds is available for one cooperative agreement and up to $2.96 million in FY 2003 funds is available for 16 or less community-based grants. Estimated amount for each community-based grant award is $185,000. The project period for the awards will be for two years. Funding beyond the first year is dependent upon the availability of appropriated funds for the sickle cell newborn screening program in FY 2004 and grantee satisfactory performance.

DATES: Applicants for this program are requested to notify the Maternal and Child Health Bureau (MCHB) of their intent to apply by June 25, 2003. Please note that "notice of intent to submit an application" will be used as a mechanism to deliver technical assistance and to assist in the planning of the objective review; it is not a requirement of the application process. Notification can be made in one of three ways: telephone: Carrie Diener at 301–443–1080; email *cdiener@hrsa.gov;* mail, MCHB, HRSA; Division for Children with Special Health Care Needs, Parklawn Building, Room 18–20; 5600 Fishers Lane; Rockville, MD 20857. The deadline for receipt of applications is July 21, 2003. Applications will be considered "on time" if they are either received on or before the deadline date or postmarked on or before the deadline date. The projected award date is September 30, 2003.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning June 16, 2003, or register on-line at: *http://www.hrsa.gov/*, or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number 93.110 and the title, "Sickle Cell Disease and Newborn Screening Program," when requesting application materials. The CFDA is a Government-wide compendium of enumerated Federal programs, projects, services, and activities that provide assistance. All applications should be mailed or delivered to: Grants Management Officer (MCHB), HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg MD; Telephone: 1–877–HRSA–123 (477–2123); E-mail: *hrsagac@hrsa.gov.*

HRSA expects to begin accepting grant applications on-line on July 14, 2003. The automated application process should be faster, easier and better for applicants and for HRSA. We encourage you to take advantage of this new option. Check http://www.hrsa.gov/grants to see which HRSA programs are accepting on-line applications.

FOR FURTHER INFORMATION CONTACT: Michele A. Lloyd-Puryear, M.D., Ph.D., 301–443–1080, email: *mpuryear@hrsa.gov* (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Jacquelyn Whitaker, 301–443–1440; email, *jwhitaker@hrsa.gov* (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Sickle cell disease (SCD) is an inherited red blood cell condition characterized primarily by chronic anemia and periodic episodes of pain. In affected individuals, the abnormal red blood cells break easily and clog blood vessels to block blood flow to organs and tissues. This process results in anemia, periodic pain episodes, and ultimately can damage tissues and vital organs and lead to increased infections and early death. In the United States, most cases of SCD occur among people of African ancestries. People of Mediterranean, Middle Eastern, and Indian background are also affected. It is estimated that more than 2 million Americans have the sickle cell trait and over 70,000 have the disease. Annually, approximately 1,000 newborns are identified with the disease through state newborn screening programs.

Early diagnosis of SCD is critical so that children who have the condition can receive proper interventions. Newborn screening for SCD followed by parental health education, enrollment in comprehensive care, initiation of penicillin prophylaxis and anti-pneumococcal vaccination within the first two months of life can prevent death from severe infections.

The Federal MCHB has long recognized the significance of SCD. In the mid 1960s, MCHB developed and disseminated SCD educational materials nationally. Following passage of the National Sickle Cell Anemia Control Act in 1972, MCHB, with initial funding from the National Institutes of Health (NIH), provided support for community-based sickle cell clinics to conduct testing, counseling, and education. In the mid 1980s, the Federal MCHB supported the development and implementation of State newborn screening programs for SCD. By 1990, 30 States and jurisdictions had implemented programs with direct Federal support. Although most States and jurisdictions currently have Statewide screening programs, a 1987 Consensus Development Conference on Newborn Screening for Sickle Cell and Other Hemoglobinopathies recommendation for universal screening has not been realized.

In FY 2002, MCHB funded 15 community-based grants and one cooperative agreement through its Sickle Cell Disease and Newborn Screening Program. These one-year community-based awards were established to enhance follow-up services for infants who screen positive for SCD or sickle cell trait and support community-based efforts to provide SCD-related education and counseling. For FY 2003, similar awards will be made for this purpose.

All State SCD screening programs include a follow-up component. Some, however, fall short of the guidelines recommended by the Council of Regional Networks for Genetic Services (CORN). There are infants with SCD who do not enter into appropriate programs of comprehensive care and do not receive the requisite interventions. Further, follow-up of infants with sickle cell trait or who are carriers is sub-optimal. While the benefit of carrier notification leads to increased knowledge for the affected infant's family, problems of misunderstanding (infant with the trait perceived as defective), stigmatization, and issues of paternity can also result from carrier notification. It is thus imperative that trait notification and counseling be undertaken with sensitivity and accuracy. In many State SCD programs, parents are notified of the carrier infant's abnormal test results but are left on their own to seek education, genetic counseling, and testing. Many parents do not receive counseling and testing. The educational component of the SCD program is just as important as the follow-up. Patients and families need to remain well informed and be empowered as active participants in service delivery. State SCD programs need to enlist partners in this effort, including primary care providers, subspecialists, and community-based support organizations. In some communities, the staff of the community-based organization can make the initial contact with the affected family and maintain subsequent contact and provide support and education.

Authorization

Section 501(a)(2) of the Social Security Act (42 U.S.C. 701(a)(2)).

Purpose

The purpose of the Sickle Cell Disease and Newborn Screening Program is to support the comprehensive care for newborns diagnosed with SCD or trait and their families, relying on partnerships among the State Title V and newborn screening programs, community-based SCD organizations, comprehensive SCD treatment centers, and community-based primary care professionals. Specifically, the program will enhance the follow-up component of State SCD screening programs and support community-based efforts that provide hemoglobinopathy counseling, SCD-related education, and support services.

Project 1—Through a cooperative agreement, a national SCD organization will partner with families, community-based SCD organizations, health care professionals, State agencies including State Title V and newborn screening programs, and MCHB and its National Newborn Screening and Genetics Resource Center (NNSGRC.) It will serve as a national SCD coordinating center, to coordinate the implementation of the community-based SCD projects funded by this initiative and provide a community forum to identify and prioritize issues of importance to the SCD community.

Project 2 " The grant funded community-based SCD projects will rely on partnerships between the community-based SCD organizations, State Title V and newborn screening programs, comprehensive sickle cell treatment centers, and community-based primary care professionals to provide support including counseling and education to infants screened positive for SCD and trait and their families; as well as participate in a cooperative relationship with the

national coordinating center and fellow grantees funded by this initiative as a collaborative effort to collect and share information and to standardize SCD education and counseling activities, and implement a model program of SCD carrier follow-up to include notification, extended family testing, counseling and education of affected individuals and families.

Eligibility

Under SPRANS project grant regulations at 42 CFR 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants and the cooperative agreement covered by this announcement. Under the President's initiative, community-based and faith-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are urged to consider this initiative.

Project 1: National Coordinating Center

Funding Level/Project Period

Up to $750,000 in FY 2003 will be used to fund the national coordinating center through a cooperative agreement. The project period for the award will be for two years. Funding beyond the first year is dependent upon the availability of appropriated funds for the sickle cell newborn screening program in FY 2004 and grantee satisfactory performance.

The Federal Role

The funding for the national SCD coordinating center will be in the form of a cooperative agreement, in which substantial participation on the project of MCHB staff is anticipated during the performance period. Under the terms of this cooperative agreement, in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Participation in meetings conducted during the period of the cooperative agreement;

(2) Ongoing review of activities and procedures to be established and implemented for accomplishing the scope of work;

(3) Review of project information prior to dissemination;

(4) Review of information presented on project activities;

(5) Assistance with the establishment of contacts with Federal and State agencies, MCHB grant projects, including the NNSGRC, and other contacts that may be relevant to the project's mission, and referral, as necessary, to these entities.

(6) Provision of information resources.

Funding Priority and Preference

Funding priority for the cooperative agreement will be given to applicants meeting the following:

• The applicant is an established SCD organization with a national scope that clearly demonstrates expertise and national capacity for addressing issues relevant to SCD patients and their families and in which community-based programs play an integral role in its mission.

The applicant will be given a 5-point favorable adjustment to the ranking score assigned to that application if the funding priority is met (score is based on a 100 point scale with a maximum adjustment of 5 points).

Funding preference will be applied to FY 2002 funded grantees in the Sickle Cell Newborn Screening Program. Preference will only be given to those applicants who rank above the 20th percentile of applications recommended for approval by the Objective Review Group.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures.

Cooperative agreement applications will be reviewed using the following HRSA criteria:

1. The proposed activities, if well executed, are capable of attaining project objectives.

2. The project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.

3. The method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

4. In so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

5. The estimated costs to the government of the project are reasonable considering the level and complexity of activity and the anticipated results.

6. The project personnel are well qualified by training and/or experience for the support sought, and the applicant organization has adequate facilities and manpower.

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, in addition to those referenced above. Also, to the extent that regulatory review criteria generally applicable to all Title V programs (at 42 CFR part 51a) are relevant to this specific project, such factors will be taken into account.

Project 2: Community-based SCD Organizations

Funding Level/Project Period

Up to $ 2.96 million in FY 2003 will be used to fund up to 16 community-based grants within the program. Estimated amount for each community-based grant award is $185,000. The project period for the awards will be for two years. Funding beyond the first year is dependent upon the availability of appropriated funds for the sickle cell newborn screening program in FY 2004 and grantee satisfactory performance. Grantees will be expected to work cooperatively with the national coordinating center described in this announcement.

Funding Priorities and Preference

Funding priority for community-based grants will be given to applicants meeting the following:

(1) A collaborative relationship with the State Title V and newborn screening program, a local comprehensive SCD treatment center, and a community-based SCD organization;

(2) The applicant is a local, community-based SCD organization with no less than 10 cumulative years experience in providing outreach services to persons and families affected by SCD; and in addition, in providing education and counseling to parents of infants determined by the newborn screening program to have SCD or be carriers of sickle cell or other abnormal hemoglobins.

(3) The applicant can document experience within the past year that:

a. Provides outreach services, education and counseling to parents of infants determined by the newborn screening program to have SCD or be carriers of sickle cell or other abnormal hemoglobins; and

b. Partners with the State Title V and newborn screening program(s), and a local comprehensive sickle cell treatment center or a local community-based SCD organization.

An applicant will be given a 5-point favorable adjustment to the ranking score assigned to that application for each funding priority that is met (score is based on a 100 point scale with a maximum adjustment of 15 points). In order to assure equitable distribution of awards in terms of geography, there is a maximum of 2 awards per State.

Funding preference will be applied to FY 2002 funded grantees in the Sickle Cell Newborn Screening Program. Preference will only be given to those applicants who rank above the 20th percentile of applications recommended for approval by the Objective Review Group.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures.

Applications for community-based grants will be evaluated using the following criteria:

1. The proposed activities, if well executed, are capable of attaining project objectives.

2. The project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.

3. The method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

4. The estimated costs to the government of the project are reasonable considering the level and complexity of activity and the anticipated results.

5. The project personnel are well qualified by training and/or experience for the support sought, and the applicant organization has adequate facilities and manpower.

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, in addition to those referenced above. Also, to the extent that regulatory review criteria generally applicable to all Title V programs (at 42 CFR part 51a) are relevant to this specific project, such factors will be taken into account.

Paperwork Reduction Act

OMB approval for any data collection in connection with this cooperative agreement will be sought, as required under the Paperwork Reduction Act of 1995.

Public Health System Reporting Requirements

The second component (Community-based Sickle Cell Disease organizations—Project 2) of this program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: May 22, 2003.

Stephen R. Smith,

Executive Assistant to the Administrator.

[FR Doc. 03–15183 Filed 6–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice:

Name	License No.	Issuing port
Key Custom's Brokerage, Inc	14890	Seattle.
A.W. Fenton Company, Inc	00021	Cleveland.

Dated: June 10, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations."

[FR Doc. 03–15241 Filed 6–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Robert J. McCracken	03346	Detroit.
Emilio E. Ruiz	04434	Miami.
Sig M. Glukstad	03864	Miami.
Mary Kay Angel	21807	Houston.
Robert E. Mullins	04130	San Francisco.

Dated: June 10, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–15243 Filed 6–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Anthony Nogueras	28–01–MP8	San Francisco.
Freight Solutions International	LLC28–01–MQ6	San Francisco.
Rulewave, Inc, LLC	96–2101–1	Houston.
Jeanette Larbardini CHB	98–007	Houston.
W.R. Zanes & Co., of LA, Inc.	96–2101–2	Houston.
XL Brokers International, Inc.	97–003	Houston.
USF Worldwide, Inc.	09549	San Francisco.
Mildred L. Vavao	28–02–AQF	San Francisco.

Dated: June 10, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–15244 Filed 6–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

Name	License No.	Issuing port
Peter Vaccaro	07980	Champlain.
Peter Vaccaro	07451	Detroit.
Philip W. Hughes	05631	Seattle.

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: June 10, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–15242 Filed 6–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1473–DR]

American Samoa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA–1473–DR), dated June 6, 2003, and related determinations.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 6, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of American Samoa, resulting from heavy rainfall, flooding, landslides, and mudslides on May 19–21, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the Territory of American Samoa. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Territory of American Samoa to have been affected adversely by this declared major disaster:

The Island of Tutuila for Individual Assistance and Public Assistance.

All islands within the Territory of American Samoa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15248 Filed 6–16–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1472–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1472–DR), dated June 6, 2003, and related determinations.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 6, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms, tornadoes, and flooding on May 2, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized, when warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, direct Federal assistance, and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Sandra Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Chicot, Cleburne, Conway, Craighead, Cross, Independence, Jackson, Madison, Newton, Perry, Poinsett, St. Francis, Van Buren, White, and Woodruff Counties for Public Assistance.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15247 Filed 6–16–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1459–DR]

Mississippi; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

State of Mississippi (FEMA–1459–DR), dated April 24, 2003, and related determinations.

EFFECTIVE DATE: June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 24, 2003:

Jefferson Davis County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15245 Filed 6–16–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1464–DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 2003:

Blount, Jefferson, and Sevier Counties for Individual Assistance.
Cocke County for Individual Assistance (already designated for Public Assistance.)
Campbell and White Counties for Public Assistance.
Macon, Morgan, and Sumner Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15246 Filed 6–16–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bureau of Reclamation

Revised Purpose for Trinity River Mainstem Fishery Restoration Program

AGENCY: Fish and Wildlife Service and Bureau of Reclamation, Interior.

ACTION: Supplemental notice of intent to prepare a Supplemental Environmental Impact Statement/Supplemental Draft Environmental Impact Report (SEIS/SDEIR).

SUMMARY: The Fish and Wildlife Service (FWS) and the Bureau of Reclamation (Reclamation), along with the Hoopa Valley Tribe and Trinity County, California, are preparing a Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SDEIR) for the Trinity River Mainstem Fishery Restoration Program (Program). The purpose of the Program has been revised to be consistent with recent court findings on the Program.

DATES: Two scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the SEIS/SDEIR. The meeting dates are:

- Tuesday, July 8, 2003, 3:30 p.m. to 6:30 p.m., Redding, California.
- Thursday, July 10, 2003, 7 p.m. to 9 p.m., Hoopa, California.

ADDRESSES: Scoping meetings will be held at:

- Redding at the Holiday Inn, 1900 Hilltop Drive, Redding, CA 96002.
- Hoopa at Neighborhood Facilities Recreation Center, Highway 96, Hoopa, CA.

Written comments on the scope of the SEIS/SDEIR should be sent by July 18, 2003 to Mr. Russell Smith, Bureau of Reclamation, Shasta Dam Office, 16349 Shasta Dam Boulevard, Shasta Lake, CA 96019; telephone: 530–275–1554; fax 530–275–2441. Comments received after this date will be considered but may not be included in the resulting SEIS/SDEIR scoping report. Comments received in response to the March 25, 2002 Notice of Intent will remain under consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Smith at the above address or by telephone at 530–275–1554.

SUPPLEMENTARY INFORMATION:

Previously, a Notice of Intent (NOI) was published in the **Federal Register** (67 FR 13647, Mar. 25, 2002) for preparing the SEIS/SEIR with a stated purpose of analyzing the effects of two biological opinions associated with the Program issued on October 12, 2000, one by the FWS and the other by the National Marine Fisheries Service of the Department of Commerce (NMFS), on Central Valley Project (CVP) operations and the effects of the Program on energy generation within the context of the state of deregulation and supply uncertainty for electricity within California. This NOI replaces the previous NOI and presents a purpose consistent with recent court findings on the Program.

A final environmental impact statement/environmental impact report (EIS/EIR) on the Program was issued in November 2000, and a Record of Decision (ROD) was executed on December 19, 2000. Central Valley water and power interests filed suit seeking to enjoin implementation of the ROD. On March 22, 2001, the court issued a Memorandum Decision and Order enjoining the Federal defendants from implementing certain flow related aspects of the ROD. *Westlands Water District* v. *United States Department of the Interior*, CIV–F–00–7124–OWW/DLB. In its Memorandum Decision and Order, the court found that the effects of reasonable and prudent measures in the two biological opinions as well as the effects on power in light of the California energy crisis were not adequately analyzed in the EIS/EIR. The lead agencies published a NOI on March 25, 2002, announcing plans to produce the SEIS/SEIR and soliciting public input and comment on the process. A scoping meeting was held in Redding, California on May 9, 2002. On December 10; 2002, the court released a Memorandum Decision and Order regarding Cross-motions for Summary Judgment. That memorandum provided detailed direction regarding the preparation of the SEIS/SEIR that was not available for the previous scoping effort, including direction on the purpose statement for the SEIS/SEIR, alternatives to be considered in the SEIS/SEIR, and a timeline for completion of the SEIS/SEIR, although an appeal is pending. The Federal agencies have decided that the purposes of the National Environmental Policy Act (NEPA) will be furthered by preparing to address these issues in the SEIS/SEIR and are soliciting public input and comment on this process.

The primary objective of the Program is to meet Federal trust responsibilities for tribal fishery resources and restore the fisheries in the Trinity River basin to the level that existed prior to the construction of the Trinity River Division (TRD) of the CVP. These actions are authorized by the Act of August 12, 1955, 69 Stat. 719; the Trinity River Basin Fish and Wildlife Management Act, Pub. L. 98–541 (1984), as amended, and the Central Valley Project Improvement Act, Pub. L. 102–575, Title XXXIV (1992) (CVPIA). The FWS and Reclamation are the Federal co-leads for purposes of complying with NEPA, along with the Hoopa Valley Tribe which is also acting in a co-lead capacity. Trinity County functions as the state lead agency for purposes of complying with the California Environmental Quality Act (CEQA).

The purpose for the November 2000 EIS/EIR was to restore and maintain the natural production of anadromous fish on the Trinity River mainstem downstream of Lewiston Dam. The purpose of the SEIS/SEIR has been amended, consistent with court orders on the Program.

The revised purpose for the SEIS/SEIR is to restore and maintain the natural production of anadromous fish in the Trinity River basin downstream of Lewiston Dam, including fishery restoration to pre-TRD levels, and to meet the U.S. Government's tribal trust obligations. Secondary consideration is given to: (a) Meeting the other restoration goals of the Act of October 24, 1984, Pub. L. 98–541, as amended, and (b) Achieving a reasonable balance among competing demands for use of CVP water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

The SEIS/SEIR will update information on alternatives described in the October 2000 EIS/EIR. These alternatives include: Existing Conditions, No Action, Mechanical Restoration, Percent Inflow (modified to address the court's concerns), Flow Evaluation, and Maximum Flow. It is anticipated that two additional alternatives will also be evaluated; a 70 Percent Inflow Alternative and a Lower Flow Alternative that seeks to use lesser amounts of water in conjunction with non-flow related restoration actions.

In 1980, the FWS completed an EIS which estimated fish population reductions of 60 to 80 percent since completion of the TRD and estimated the loss of fishery habitats in the Trinity River to be 80 to 90 percent. The 1980 EIS concluded that insufficient streamflows represented the most critical limiting factor for the restoration of the fishery. Based on this EIS, the Secretary issued a decision in 1981 which increased flows on an interim basis and directed the completion of a scientific study to assess the instream flows and other measures needed to restore the Trinity River fishery.

In 1983, an EIS on the Trinity River Basin Fish and Wildlife Management Program was prepared by the FWS (U.S. Fish and Wildlife Service, 1983). The environmental document analyzed habitat restoration actions, watershed rehabilitation, and improvements to the Trinity River Salmon and Steelhead Hatchery (TRSSH). The EIS clarified that the hatchery's purpose was to mitigate for the loss of the 109 miles of habitat upstream of Lewiston Dam; whereas, the restoration and rehabilitation projects were explicitly designed to increase natural fish production below the dam.

In 1984, the Trinity River Basin Fish and Wildlife Management Act (Pub. L. 98–541) was enacted. It formalized the existence of the Trinity River Basin Fish and Wildlife Task Force (Task Force), and directed the Secretary of the Interior (Secretary) to implement measures to restore fish and wildlife habitat in the Trinity River Basin. The Task Force was directed at implementation of a fish and wildlife management program "to restore natural fish and wildlife populations to levels approximating those which existed immediately prior to the construction of the Trinity Division." In 1996, Congress reauthorized and amended the original Trinity River Basin Fish and Wildlife Management Act (Pub. L. 104–143). The 1996 amendments clarified that "restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration * * *."

In 1992, Congress passed the CVPIA (Pub. L. 102–575, Title XXXIV) in order to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley, including the Trinity River Basin. Specifically, the CVPIA provides at section 3406(b)(23) that "[i]n order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe and meet the fishery restoration goals of Public Law 98–541," the Secretary is directed to complete the Trinity River Flow Evaluation Study (TRFES) initiated pursuant to the 1981 secretarial directive to develop recommendations "based on the best available scientific data, regarding permanent instream fishery flow requirements and TRD operating criteria and procedures for the restoration and maintenance of the Trinity River fishery." The CVPIA also specifically provided for the Secretary to consult with the Hoopa Valley Tribe on the TRFES and, upon the Tribe's concurrence, to implement the restoration recommendations accordingly.

The FWS and the Hoopa Valley Tribe completed the Flow Study in June 1999. The draft EIS/EIR for the Trinity River Mainstem Fishery Restoration Program (TRMFRP) was prepared by the FWS, Reclamation, Trinity County, and the Hoopa Valley Tribe, and was completed in June 1999. The final EIS/EIR was completed in November 2000. A ROD selecting the alternative to be implemented for the TRMFRP was signed by the Secretary, with the concurrence of the Hoopa Valley Tribe, pursuant to section 3406(b)(23) of the CVPIA, and issued in December 2000. However, the EIR was not certified by Trinity County and it is not a finalized document under CEQA.

Subsequent to execution of the ROD, water and power interests in the Central Valley of California amended a previously filed lawsuit against the Federal agencies materially involved in either the decision making process for the ROD or the associated Endangered Species Act approvals for the TRMFRP (Reclamation, FWS, and NMFS), in Federal district court. Plaintiffs sought, and were granted a preliminary

injunction for implementation of certain flow-related aspects of the ROD. The terms of the injunction limit the increase in flows in the Trinity River which may be implemented in the ROD, but allow the Secretary to proceed with all other activities approved by the ROD. *Westlands Water District* v. *United States Department of the Interior*, CIVF–00–7124–OWW/DLB (E.D. Calif., filed May 3, 2001).

On February 20, 2003, the court entered final judgment in the case, finding that the ROD for the Program, issued on December 10, 2000, and the associated biological opinions issued by FWS and NMFS, were unlawful in part. The court found that the ROD was in violation of NEPA in that it had an improperly framed purpose statement and the range of alternatives was inadequate. The biological opinions were found to exceed the agencies' authority under the ESA in that they required major modifications to operations of the CVP. Although the issue was not before the court, nor briefed by any of the parties, the court also found the government in breach of its general and specific Federal trust obligations to the Hoopa Valley and Yurok Tribes, as set out under CVPIA section 3406(b)(23) and related statutes. The case is now on appeal.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: June 11, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region, Bureau of Reclamation.

Dated: June 11, 2003.

Mary Ellen Mueller,

Fisheries Supervisor, California and Nevada Operations Office, Fish and Wildlife Service.

[FR Doc. 03–15219 Filed 6–16–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Natural Gas Pipeline Right-of-Way Permit Application Crossing the San Bernard National Wildlife Refuge in Brazoria County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and wildlife Service (Service) advises the public that Noble Energy, Inc., of Houston, Texas, has submitted an application to install a 4-inch nominal pipeline for transportation of natural gas across a portion of the San Bernard National Wildlife Refuge, Brazoria County, Texas, which would start from their well located outside of the refuge land. The proposed pipeline to convey the product from the well to tie in to an existing Texas Eastern Transmission (TET) gathering line is located 4,311 feet northwest of the surface location. Of the 4.311 feet, approximately 3,800 feet will traverse refuge lands. Noble plans to construct the pipeline by use of subsurface boring methodology 5 feet to 20 feet below the surface of the land. Noble plans to bore northwesterly a distance from the wellhead to a 70-foot by 75-foot temporary construction staging area, located at GPS coordinates X=3,116474.60 and Y=501,502.22 (NAD 27 Datum) on refuge property; then turning more northwesterly, will bore the remaining distance to the existing TET gathering line located at GPS coordinates X=3,115,926.41 and Y=503,009.25 (NAD 27 Datum). A second 75-foot by 75-foot temporary construction staging area is proposed at the site for the pipeline tap and interconnect. At the interconnect point, approximately 25 feet from the centerline of the TET pipeline, a 30-foot by 30-foot extended use location, meter/valve facility, is proposed to be installed and fenced. An Environmental Analysis and Cultural Resources Review has been prepared and is on file.

This notice informs the public that the Service will be proceeding with the processing of the application, the compatibility determination and the approval processing which includes the preparation of the terms and conditions of the permit.

DATES: Written comments should be received on or before July 17, 2003 to receive consideration by the Service.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, Division of Realty, Attention: Lena V. Marie, P.O. Box 1306, Albuquerque, New Mexico 87103–1306, telephone number 505–248–7411 or FAX 505–248–6803

SUPPLEMENTARY INFORMATION: The Refuge Manager for the San Bernard National Wildlife Refuge has approved the route of the pipeline.

Right-of-way applications for pipelines are to be filed in accordance with Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.), as amended by the Act of November 16, 1973, (37 Stat. 576, Public Law 93–153).

Dated: May 21, 2003.

Pat A. Langley,

Regional Director.

[FR Doc. 03–15269 Filed 6–16–03; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–455]

In the Matter of Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same: Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 9, 2001, based on a complaint filed by Proxim, Inc. ("Proxim") against 14 respondents. Three companies subsequently intervened, including Agere Systems Inc. ("Agere"). In its complaint, Proxim contended that respondents" accused products infringed the patent claims in issue because they contained either semiconductors made by intervenor Agere ("the Agere parties") or by respondent Intersil Corp. ("the Intersil parties").

On September 25, 2002, the Commission determined not to review an ID by the then presiding ALJ terminating the investigation as to the Agere parties on the basis of a settlement agreement. Only the Intersil parties then remained in the investigation.

On March 17, 2003, Proxim and Intersil entered into a settlement agreement. On May 5, 2003, Proxim and the Intersil parties filed a joint motion to terminate the investigation on the basis of the settlement agreement. The Commission investigative attorney supported the joint motion.

On May 15, 2003, the current presiding ALJ issued the subject ID (Order No. 106) granting the joint motion of Proxim and the Intersil parties to terminate the investigation on the basis of a settlement agreement. No party filed a petition to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR § 210.42).

Issued: June 11, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–15250 Filed 6–16–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on May 27, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Artesia Technologies, Rockville, MD has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on March 5, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2003 (68 FR 15004).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–15181 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on May 27, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Advantest Corporation, Tokyo, JAPAN; Intel Corporation, Chandler, AZ; and Motorola, Inc., Austin, TX. The nature and objectives of the venture are to administer the development, support and promotion of the specifications of Open Semiconductor Test Architecture ("OPENSTAR"), a testing standard which defines a flexible testing platform for complex logic devices for use in the semiconductor and automated test equipment industries. The mission of Semiconductor Test Consortium, Inc. is to support the development and long-term success of OPENSTAR, including the delivery of technical and economic performance sustainability, open architecture, and multi-vendor interoperability at both the hardware and software levels. Semiconductor Test Consortium, Inc. shall achieve this mission by developing and promoting its open architecture specifications as industry-wide standards, issuing design guidelines relating to its specifications, presenting activities that promote the use of the specifications, and providing for the licensing or publication of the specifications on reasonable and non-discriminatory terms to both members and non-members alike.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–15182 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6181), AccuStandard, Inc., 125 Market Street, New Haven, Connecticut 06513, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma hydroxybutyric acid (2010)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391)	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392)	I
4-Methyl-2, 5-dimethoxyamphetamine (7395)	I
2, 5-Dimethoxyamphetamine (7396)	I
3, 4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402)	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404)	I
3, 4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
1-[1-(2-Thienyl) cyclohexyl]pipendine (7470)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make reference standards.

No comments or objections have been received. DEA has considered the factors in title 21, United States code, section 823(a) and determined that the registration of AccuStandard, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated AccuStandard, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted

Dated: June 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15203led 6ndash;16ndash;03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003, (68 FR 6182), American Radiolabeled Chemicals, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	schedule
Gamma hydroxybutyric acid (2010).	I
Lysergic acid diethylamide (7315).	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Oxycodone (9143)	II
Thebaine (9333)	II
Benzoylecgonine (9180)	II
Meperidine (9230)	II
Metazocine (9240)	II
Morphine (9300)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of American Radiolabeled Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15194 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 20, 2002, and published in the **Federal Register** on August 29, 2002, (67 FR 55430), Applied Science Labs, Inc., A Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import these controlled substances for the manufacture of reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Applied Science Labs, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Applied Science Labs, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15196 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 5, 2003, and published in the **Federal Register** on February 12, 2003, (68 FR 7147), Cedarburg Pharmaceuticals, LLS 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Cedarburg Pharmaceuticals, LLC, to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cedarburg Pharmaceuticals, LLC, to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15197 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6182), Cerrilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma hydroxybutyric acid (2010)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinoas (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-e,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylendioxyamphetamine (7402)	I
3,4-Methylendioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	II
Benzylmorphine (9052)	II
Codeine-N-oxide (9053)	II
Dihydromorphine (9145)	II
Heroin (9200)	I
Hydromorphinol (9301)	II
Methyldihydromorphine (9304)	II
Morphine-N-oxide (9307)	II
Normorphine (9313)	II
Pholcodine (9314)	II
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Cerrilliant Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cerrilliant Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15202 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6183), Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acide diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7307)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamie (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextrophrpoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Lipomed, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lipomed, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15200 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 11, 2003, and published in the **Federal Register** on April 2, 2003, (68 FR 16090), Mallinckrodt, Inc., Mallinckrodit & Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15199 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6184), National Center for Natural Products Research–NIDA MProject University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marijuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm will cultivate marijuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of National Center for Natural Products Research-NIDA MProject University of Mississippi to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated National Center for Natural Products research-NIDA MProject University of Mississippi to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15201 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003, (68 FR 6184), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk tetrahydrocannabinols for formulation into pharmaceutical products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Norac Company, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Norac Company, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15195 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27,2003, and published in the **Federal Register** on February 6, 2003, (68 FR 6185), OraSure Technologies, Inc., 1745 Eaton Avenue, Bethlehem, Pennsylvania 18018, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphamethadol (9605)	I
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to bulk manufacture the listed controlled substances to be used in-house to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of OraSure Technologies, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated OraSure Technologies, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 4, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–15198 Filed 6–16–03; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–069)]

NASA Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Tuesday, July 1, 2003, 8:30 a.m. to 5 p.m., and Wednesday, July 2, 2003, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–3H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Hashima Hasan, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0692.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Theme Scientist Update
—James Webb Space Telescope Update
—Space Interferometry Mission Update
—Origins Technology Update
—Education and Public Outreach Update

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. Hashima Hasan via e-mail at *hhasan@nasa.gov* or by telephone at 202/358–0692. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–15185 Filed 6–16–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–070)]

NASA Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Tuesday, July 1, 2003, 8:30 a.m. to 5:30 p.m.; and Wednesday, July 2, 2003, 8 a.m. to 4 p.m..

ADDRESSES: National Aeronautics and Space Administration, Rooms 3H46 and 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Hertz, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0986.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Astronomy and Physics Programs
—Beyond Einstein Initiative
—Interagency Coordination
—Explorer Program
—Science Performance Metrics
—Recent Mission Reviews

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. Paul Hertz via e-mail at *paul.hertz@nasa.gov* or by telephone at 202/358–0986. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–15186 Filed 6–16–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field support camps with emergency provisions for the Expedition Vessels, Professor Molchanov, Professor Multanovksiy, and M/V Orlova for the 2003–2004 season and the two following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 17, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of expeditions to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) for approximately two to four hours at a time. On each zodiac landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley, Falkland Islands, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency where passengers are forced to spend nights on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Pat Shaw, Quark Expeditions, Inc., 980 Post Road, Darien, CT 06820.

Location: Antarctic Peninsula Area.

Dates: November 1, 2003 to March 31, 2006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–15180 Filed 6–16–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–08681]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for Amendment of Materials License No. 29–00055–14, Teledyne Brown Engineering, Inc., Westwood, NJ

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Teledyne Brown Engineering, Inc. for Materials License No. 29–00055–14, to authorize release of its facility in Westwood, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's 103 Woodland Avenue, Westwood, New Jersey facility for unrestricted use. Teledyne has been authorized by NRC from 1968 to present to store and re-package low-level radioactive wastes at the site. In 2002, Teledyne ceased operations with licensed materials at the 103 Woodland Avenue, Westwood, New Jersey site, and requested that NRC release the facility for unrestricted use and terminate the license. Teledyne has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Teledyne's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031610071 and ML030520338 (package)). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Betsy Ullrich, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 10th day of June, 2003.

For the Nuclear Regulatory Commission:

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–15249 Filed 6–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of June 16, 23, 30, July 7, 14, 21, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of June 16, 2003.

There are no meetings scheduled for the Week of June 16, 2003.

Week of June 23, 2003—Tentative

There are no meetings scheduled for the Week of June 23, 2003.

Week of June 30, 2003—Tentative

Tuesday, July 1, 2003

10 a.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

Week of July 7, 2003—Tentative

There are no meetings scheduled for the Week of July 7, 2003.

Week of July 14, 2003—Tentative

There are no meetings scheduled for the Week of July 14, 2003.

Week of July 21, 2003—Tentative

There are no meetings scheduled for the Week of July 21, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 4–0 on June 11 and 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Sequoyah Fuels Corp. (Gore, Oklahoma Site) Presiding Officer's Certified Questions" be held on June 13, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: June 12, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–15347 Filed 6–13–03; 11:53 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

In-Person Proofing at Post Offices (IPP) Program

AGENCY: U.S. Postal Service.

ACTION: Notice.

SUMMARY: The USPS is announcing the availability of an In-Person Proofing at Post Offices (IPP) Program to support the activities of U.S. Certificate Authorities and government organizations.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Chuck Chamberlain at 703–292–4172, or Brad Reck at 703–292–3530

SUPPLEMENTARY INFORMATION: In recent years, a number of new federal statutes have sought to preserve the ability of the public and private sectors to use the efficiency of the internet to rapidly exchange time sensitive communications while assuring that people receiving and sending messages are in fact who they say they are. A number of top quality private sector businesses have mastered the technology around the use of secure digital signatures, yielding a greater demand for improved identity verification for individuals seeking to use digital signatures.

This need for improved "online identity" creates a unique service opportunity for the Postal Service to provide value to the public, leverage our retail network and enable internet communications to enjoy a new level of security and reliability. Numerous organizations have approached the U.S. Postal Service to conduct In-Person Proofing (IPP) of customers nationwide for physically authenticating an individual's identification at a post office before the organization issues a digital signature certificate to the individual.

IPP supports efficient, affordable, trusted communications through the use of identification verification at Post Offices, incorporation of process enhancements required by the Postal Service, active management of the IPP program by the USPS, and use of a First Class U.S. Mail piece to verify physical addresses of applicants. We believe that IPP conducted at local post offices will create a new broad based capability for the Nation that promotes improved public trust and greater efficiency in the electronic delivery of a wide range of services. These efforts support achieving the goals of the Government Paperwork Elimination Act of 1998, Electronic Signature in Global and National Commerce Act of 2000, Health Insurance Portability and Accountability Act of 1996, Sarbanes-Oxley Act of 2002, and Gramm-Leach-Bliley Act of 1999 and numerous Presidential Directives on eGovernment.

The following is a brief description of how IPP would work. An organization can establish a relationship with a qualified U.S. Certificate Authority to integrate digital signing with improved identity verification into an online application. Any individual desiring to use digital certificates that include USPS IPP will complete an application online. The online system will verify the individual's identity via commercial data base checking. The system will then produce a standard Postal Service form to be printed out at the "applicant's" personal computer. The individual requesting the service will present this form to a participating post office where the "In Person Proofing" process is conducted. After successful completion of the IPP event, the CA will notify the applicant to download their digital certificate. For clarity, the steps in the IPP process are outlined below.

1.0 DESCRIPTION

1.1 Purpose

IPP is a postal program to improve the public key infrastructure of the Nation. The public key infrastructure has emerged as an accepted infrastructure component for protecting and facilitating the electronic communications of the Nation.

2.0 BASIC STANDARDS

2.1 Eligibility

For a Certificate Authority (CA) to use IPP, the CA must incorporate the U.S. Postal Service In-Person Proofing Policy into their Certificate Policy. Conformance to the Postal policy includes:

1. Use of a Patriot Act compliant database vetting process to gain initial assurance of an applicant's identity before sending the applicant to the Postal Office for IPP.
2. Perform a verification of the applicant's physical residential address via First Class U.S. Mail with an "Address Correction Requested" and "Do Not Forward" endorsement.
3. Restrict the expiration date of an IPP based Digital Certificate such that it does not surpass the expiration of the 4 year validity period of an IPP verification event. A new IPP event will be required every 4 years.
4. Facilitate IPP processing by using standard forms and barcodes as directed by the USPS and exchanging of information as necessary for the efficient operation of IPP. This includes:

A. Using the standard ID Verification Form (IDVF),

B. Maintaining a secure repository of IDVF forms,

C. Providing access to IDVF forms and customer account information as necessary for investigative purposes by USPS Inspection Service and the USPS Office of Inspector General,

D. Submitting the processes and operations of the CA to security audits and compliance reviews as required by the USPS, and

E. Restricting the generation of unique barcodes for each IPP event to those expressly permitted by the USPS.

5. Operate the CA to enable the broadest practical use of IPP based digital certificates. This includes:

A. Issuing, at a minimum, a daily Certificate Revocation List to better allow users to rely upon the certificates,

B. Passing an external CA audit in accordance with industry best practices such as "AICPA/CICA WebTrust Program for Certificate Authorities",

C. Achieving interoperability with the Federal Bridge for Certificate Authorities, and

D. Incorporating a new common object identifier (USPS registered OID) for IPP based digital certificates.

6. Successfully enter into an agreement with the USPS that includes standard pricing, service level commitments, IPP Policy compliance, liability and service termination provisions, as well as such other terms and conditions as may be included.

2.2 Minimum Volume

IPP transactions are to be purchased in pre-paid blocks of 10,000 transactions by either the CA or a government customer on behalf of the CA.

2.3 Labeling

Each digital certificate must contain the statement "ID Verified by the U.S. Postal Service" within the certificate profile to let any user or relying party know that:

- The issuer of the digital certificate authority operates in compliance with IPP Policy, and
- The holder of the credential did physically appear before a postal employee and had their hardcopy identification successfully verified.

Applications should interrogate the digital certificate presented during an electronic process to confirm the presence of a new common object identifier (USPS registered OID) for IPP based digital certificates.

3.0 AVAILABILITY

IPP is available at an initial level of up to 200 post offices promptly following the execution of the first activation agreement. Market demand for IPP, in conjunction with operational assessments, will determine the expansion schedule beyond initial deployment locations.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–15211 Filed 6–16–03; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48014; File No. SR–CHX–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Execution of Limit Orders for OTC Securities

June 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 28, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 37(a)(3), which governs, among other things, the execution of limit orders in a CHX specialist's book. Specifically, the CHX seeks to add a provision that would permit a CHX specialist to enable a functionality that would automatically execute designated limit orders for Nasdaq/NM ("OTC") securities, following dissemination of a locking or crossing quotation in that security by one or more designated OTC market centers. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.[6]

Chicago Stock Exchange Rules

Article XX—Regular Trading Sessions

* * * * *

Precedence of Bids at Same Price

Rule 16. *Subject to Article XX, Rule 37(b),* [W]where bids are made at the same price, the priority and precedence shall be determined as follows:

(a) When a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence over [on] the next sale at that price, up to the number of shares of stock specified in the bid, irrespective of the number of shares of stock specified in such bid.

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37. (a) Guaranteed Executions. The Exchange's Guaranteed Execution System (the BEST System) shall be available, during the Primary Trading Session and the Post Primary Trading Session, to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and NASDAQ/NM Securities. System orders shall be executed pursuant to the following requirements:

1. No change to text.
2. No change to text.
3. [Dual Trading System] *Execution of* Agency Limit Orders.

Subject to Interpretation and Policy .10 ("Exempted Trade-Throughs"), all agency limit orders in Dual Trading System issues will be filled under the following circumstances:

(a) Exhaustion of primary market bid or offer. When the bid or offering at the limit price has been exhausted in the primary market (as defined in the CTA plan), agency limit orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market;

(b) Price penetration in primary market. When there has been a price penetration of the limit in the primary market, agency limit orders that have resided in the specialist's book for a period of 0–15 seconds (as designated by the specialist) prior to the primary market print will be filled at the limit price; [and]

(c) Primary market trading at the limit price. When the issue is trading at the limit price on the primary market, agency limit orders will be filled at the limit price unless it can be demonstrated that such orders would not have been executed if they had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill; and

(d) Block size trade-through in another market. In instances where a block trade on the Exchange or other market against which orders are being protected takes place outside the current Exchange quotation, all effective bids or offers limited to the block price or better will be executed at the more favorable block price rather than at the limit price of the affected orders. A specialist may elect to provide automatic execution of designated limit orders at the block price or better when a "block size" (as defined in Article XX, Rule 40, Interpretation and Policy .05) trade-through is executed on the primary market.

A specialist may elect automatic execution of such agency limit orders on an issue-by-issue basis.

In the case of Nasdaq/NM securities, a CHX specialist may elect, on an issue-by-issue basis, to engage a functionality that will automatically execute designated resting agency limit orders (or portions of such orders) at the limit price, up to the size of the Limit Order Auto Execution Threshold, when the Designated Market quotation locks or crosses the limit price. For purposes of this provision, (i) "Limit Order Auto Execution Threshold" means an aggregate number of shares designated by the CHX specialist, on an issue-by-issue basis, that may be executed automatically at the limit price; and (ii) "Designated Market" means the market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] The CHX provided the Commission with written notice of its intent to file the proposed rule change on March 2, 2002. The proposed rule change will become operative on June 1, 2003.

[6] The CHX inadvertently neglected to underscore a word in the proposed rule text when it filed this proposed rule change. With the CHX's permission, the Commission corrected the omission, so that the proposed rule text as printed in this notice accurately reflects the CHX's intentions. May 22, 2003 telephone conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission.

center designated by the CHX specialist, and approved by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to permit a CHX specialist to enable a functionality that would automatically execute designated limit orders for OTC securities, following dissemination of a locking or crossing quotation in that security by one or more designated OTC market centers.

Under existing CHX rules relating to listed securities, limit orders that are resident in the CHX specialist's book are entitled to a fill at the limit price if a price penetration (*i.e.*, a trade-through) or certain other conditions occur in the primary market.[7] Although there is not an analogous trade-through rule in the OTC market, and therefore no analogous limit order protection provisions currently set forth in the CHX rules, certain CHX specialists desire to provide such protections in instances where one or more designated OTC market centers disseminate a quotation that locks or crosses the CHX specialist's quotation.[8]

Accordingly, a subcommittee of the CHX OTC Committee undertook to evaluate the issue, and to design a functionality that, if enabled by a CHX specialist, would automatically execute certain resting limit orders for OTC securities. The proposed rule change, which was discussed extensively by the CHX OTC Committee and other member committees, would permit a CHX specialist to enable such a functionality on a voluntary basis. The functionality would automatically execute designated resting limit orders, if the designated OTC markets lock or cross the CHX quotation.[9] The type of orders and the total number of shares to be executed automatically would be designated by the CHX specialist; orders not eligible for automatic execution would remain in the specialist's book and would be eligible for manual execution.[10]

The CHX believes that the proposed rule change will be welcomed by its order-sending firms, as it will provide for protection of certain limit orders on a voluntary basis in the OTC market, which currently does not require that such protections be afforded limit orders. Indeed, the CHX believes that the proposed rule change, which could dramatically increase the number of limit orders executed automatically on the CHX (which currently does not have a rule requiring automatic execution of limit orders for OTC securities based on conditions in other market centers), is to the material benefit of the investing public. The CHX believes that the proposed rule change constitutes a reasoned approach to offering execution guarantees in an evolving OTC market, and anticipates that many of its OTC specialists will elect to enable the functionality contemplated by the proposed rule change.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[11] In particular, the CHX believes the proposal is consistent with section 6(b)(5) of the Act [12] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b-4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549√0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR-CHX-2003-05 and should be submitted by July 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-15266 Filed 6-16-03; 8:45 am]

BILLING CODE 8010-01-P

---

[7] *See* CHX Article XX, Rule 37(a)(3). The limit order would be filled on the CHX at the limit price regardless of whether the CHX specialist was able to obtain recourse via the Intermarket Trading System ("ITS") administrative process following the trade-through.

[8] A designated market's bid (offer) will lock the CHX specialist's quote if it equals the CHX specialist's offer (bid). A designated market's bid (offer) will cross the CHX specialist's quote if it penetrates the CHX specialist's offer (bid). The CHX will consider a designated market to have locked or crossed a CHX specialist's quote each time that it moves from an unlocked/uncrossed state to a locked or crossed state. For example, if a designated market crosses a CHX specialist's offer at 52 with a 53 bid, it will not again cross the CHX's, for purposes of this rule, if the designated market continues to cross the CHX's offer with a bid of 54.

[9] Because there is no primary market for over-the-counter securities, the CHX has not simply designated the "primary market" as the market that would trigger limit order protection on the CHX. Instead, this rule would allow CHX specialists to identify the designated market, with the approval of the Exchange, on an issue-by-issue basis. Initially, all CHX specialists have identified the "Designated Market" as the Nasdaq Stock Market. If all CHX specialists make a different or additional designation for all securities traded on the Exchange, the Exchange will notify its order-sending firms of those Exchange-wide changes and file those changes with the Commission as an interpretation of an existing rule pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1) thereunder. If, however, CHX specialists respond to the fragmentation in the market by identifying different designated markets for different securities, the Exchange will file, pursuant to Rule 19b-4(f)(1), a new interpretation confirming that specialists have identified different designated markets in different securities for purposes of this voluntary designation, but will not list all of those different designations.

[10] In addition to permitting the new functionality described above, the proposed rule change provides for a modification of the CHX rule governing priority of same-priced orders. This modification contemplates that, on an issue-by-issue basis, specialists could designate certain same-priced orders as eligible for automatic execution, while other orders might not be so designated, thus automatically executing some orders out of traditional time-price priority sequence.

For instance, if a specialist designates all limit orders in an issue under 10,000 shares as eligible for possible auto-execution under this rule, those orders of 10,000 shares or more would not be eligible for automatic execution and thus would remain in the specialist's book, eligible for manual execution, even though a smaller order at the same price that was received at a later time would be eligible for automatic execution (up to the size of the Limit Order Auto Execution Threshold).

Because the CHX specialist is not obligated (under CHX rules, the Act or any other governing rules) to execute OTC limit orders based on conditions in other OTC market centers, rendering engagement of this proposed functionality strictly voluntary, the Exchange believes that it is appropriate for a CHX specialist to condition automatic execution in a manner that could, based on issue-by-issue designations of certain types of orders, modify the precedence of same-priced orders.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(6).

[15] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48016; File No. SR-GSCC-2002-11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Reduce the Permitted Use of Letters of Credit to Twenty-Five Percent of a Member's Required Clearing Fund Deposit

June 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 10, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on April 1, 2003, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is seeking to reduce the permitted use of letters of credit ("LCs") to twenty-five percent of a member's required clearing fund deposit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

One of GSCC's most important risk management tools is its maintenance of clearing fund collateral. Clearing fund is comprised of cash, certain netting-eligible securities, and eligible LCs. The purposes served by the clearing fund are (1) to have on deposit from each netting member assets sufficient to satisfy any losses that may be incurred by GSCC as the result of the default by the member and the resultant close-out of that member's settlement positions and (2) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

The subject of the proposed rule change is the LC component of the clearing fund. Currently, GSCC's rules permit up to 70 percent of a member's required clearing fund deposit to be in the form of LCs. Although GSCC believes that it will always receive funds from the presentment of an LC for payment, GSCC has recognized that in a period of market crisis there is the potential that GSCC might not receive the funds on a timely basis. To ensure that GSCC can always meet its liquidity needs on a timely basis in the unlikely event of a member default and in a period of market crisis, GSCC is proposing to reduce the permitted use of LCs to 25 percent of a member's required clearing fund deposit. Thus, the minimum level of cash and securities required to be maintained on deposit would increase from 30 percent to 75 percent of a member's required clearing fund deposit.[3]

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [4] and the rules and regulations thereunder applicable to GSCC because it will protect GSCC and its members by ensuring that GSCC has adequate liquidity resources.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

---

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] The proposed LC requirement will not affect the requirement that certain non-US GSCC members post additional collateral in the form of LCs to protect GSCC against legal risk presented by the insolvency laws in their home countries. These members will not be required to increase the amount of their deposit that is in the form of cash and securities from 30 percent to 75 percent of their required clearing fund deposit.

[4] 15 U.S.C. 78q-1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR-GSCC–2002–11 and should be submitted by July 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15264 Filed 6–16–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48015; File No. SR–NASD–2003–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.

June 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission. On April 17, 2003, NASD submitted Amendment No. 1 to the proposed rule change to correct certain typographical errors in the proposed rule text.[4] On April 28, 2003, NASD submitted Amendment No. 2 to the proposed rule change to correct certain typographical errors in the proposed rule text.[5] On June 6, 2003, NASD submitted Amendment No. 3 to the proposed rule change to revise the proposed rule text.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 17, 2003.

[5] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 28, 2003.

[6] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 6, 2003. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on June 6, 2003, the date the NASD filed Amendment No. 3. *See* 15 U.S.C. 78s(b)(3)(C).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc. ("NASD Regulation") to streamline the nomination and election processes governing District Committees and District Nominating Committees, modernize communication procedures, and improve the consistency among the Committees across all districts. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

ARTICLE VIII

DISTRICT COMMITTEES AND DISTRICT NOMINATING COMMITTEES

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for districts within the United States to assist NASD Regulation in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and the Rules of the Association. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. *Subject to the limitation set forth in the immediately preceding sentence, the authorized number of members of a District Committee shall be determined from time to time by the Board; provided, however, that no decrease in the authorized number of members of a District Committee shall shorten the term of office of any member thereof.* Each District Committee member shall: *(1)* Be employed [in the office of]*by* an NASD member eligible to vote in the district *for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Committee.* [A District Committee shall determine the number of its members to be elected each year.] Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with the Rules of the Association. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor[, in such manner as they deem appropriate,] to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of the NASD[,] *and* NASD Regulation[, and Nasdaq] in order to foster NASD members' interest and cooperation.

(b) A member of a District Committee may resign at any time upon giving notice to the District Director. Any such resignation shall take effect upon receipt of such Notice or at any later time specified therein, provided that Notice of resignation at a later date may be made immediately effective at the discretion of the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s). The acceptance of such resignation shall not be necessary to make such resignation effective.

(c) [(b)] In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal within seven days after the vote. [The member's position shall be filled pursuant to Section 8.4.]A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Committee.

(d) In the event of a vacancy in a District Committee resulting from death, resignation, removal, or other cause, the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) shall determine whether such vacancy shall be filled prior to the next regularly scheduled election of District Committee members. In the event the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines that a vacancy on a District Committee should be filled, the vacancy shall be filled pursuant to Section 8.4.

Term of Office of District Committee Members

Sec. 8.3 Each regularly elected member of a District Committee shall hold office for a *"full term"* [of three years] *which is the later of three years* or until a successor is elected and qualified. *Notwithstanding the term of office for a regularly elected member, such member's term shall terminate sooner upon the member's* [, or until]death, resignation, or removal. [A member of a District Committee may not serve more than two consecutive terms.]*There is no limit on the number of terms that may be served by a member of a District Committee, provided, that no more than two terms may be served consecutively. The word "term" as used for the purpose of this Section shall mean either a full term for a regularly elected member or a "partial term" which is a term served by a member appointed to fill a vacancy on the District Committee created by the termination of a regularly elected member's office prior to the expiration of the full term.*

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee [caused by the departure of a Committee member] prior to the expiration of the member's term of office, *and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.2(d), that such vacancy should be filled, or in the event of a newly created membership on a District Committee by virtue of an increase in the authorized number of members thereof,* the District Committee shall appoint by majority vote a representative of an NASD member eligible *pursuant to Section 8.2(a)* [to vote in the district]to fill the vacancy *or newly created membership.* The appointment *by the District Committee* shall be effective until the next regularly scheduled election [occurs], *and until such member's successor is elected and qualified.* Following the *next regularly scheduled* election, *in the event of a vacancy,* the newly elected Committee member shall serve only the duration of the departed Committee member's term, *and in the event of a newly created membership, the newly elected Committee member shall serve only the duration of the term for such class of membership.*

Meetings of District Committees

Sec. 8.5 Meetings of a District Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as [each District Committee] *the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s)* in [its] *his or her* discretion may determine *in consultation with the Chair of the District Committee.* A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority *present* at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. *Any or all members of a District Committee may participate in any such meeting by means of conference telephone or other communications equipment by means of which all participants can communicate with each other, and such participation shall constitute presence in person at the meeting.* Action by a District Committee may be taken by *consent in writing or by electronic transmission in lieu of a meeting* [mail, telephonic, or telegraphic vote], in which case any action taken by a majority of the Committee shall constitute the action of the Committee. [Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee.]

Election of District Officers

Sec. 8.6 *At or following its last regularly scheduled meeting of the calendar year,* [Following the annual election of members of the District Committees pursuant to this Article] each District Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws[, and shall prescribe their powers and duties].

Advisory Council

Sec. 8.7 (a) The Chairs of the District Committees, elected pursuant to Section 8.6, *together with the Chair of the Market Regulation Committee* shall constitute an Advisory Council to the Board.

(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.

Expenses of District Committees

Sec. 8.8 Funds to meet the regular expenses of each District Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each *District Nominating Committee* member [of a District Nominating Committee] shall: *(1)* be employed [in the office of/*by* an NASD member eligible to vote in the district *for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Nominating Committee*, but shall not be a member of the District Committee. A *majority of the members of the* District Nominating Committee shall include [a majority of] persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board[, and shall include at least one current or former Director or Governor].

(b) A member of a District Nominating Committee may resign at any time upon giving Notice to the District Director. Any such resignation shall take effect upon receipt of such Notice or at any later time specified therein, provided that notice of resignation at a later date may be made immediately effective at the discretion of the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s). The acceptance of such resignation shall not be necessary to make such resignation effective.

(c) [(b)] In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. [The member's position shall be filled pursuant to Section 8.11.] The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

(d) In the event of a vacancy in a District Nominating Committee resulting from death, resignation, removal, or other cause, the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) shall determine whether such vacancy shall be filled prior to the next regularly scheduled election of District Nominating Committee members. In the event the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines that a vacancy on a District Nominating Committee should be filled, the vacancy shall be filled pursuant to Section 8.11.

Term of Office of District Nominating Committee Members

Sec. 8.10 Each regularly elected member of a District Nominating Committee shall hold office for a *"full* term*"* [of one year] *which is the later of one year* [and] *or* until a successor is elected and qualified. *Notwithstanding the term of office for a regularly elected member, such member's term shall terminate sooner upon the member's* [, or until]death, resignation, or removal. [A member of a District Nominating Committee may not serve more than two consecutive terms.]*There is no limit on the number of terms that may be served by a member of a District Nominating Committee, provided, that no more than two terms may be served consecutively. The word "term" as used for the purpose of this Section shall mean either a full term for a regularly elected member or a "partial term" which is a term served by a member appointed to fill a vacancy on the District Nominating Committee created by the termination of a regularly elected member's office prior to the expiration of the full term.*

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee [caused by the departure of a Committee member] prior to the expiration of the member's term of office, *and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.9(d), that such vacancy should be filled, or in the event of a newly created membership on a District Nominating Committee by virtue of an increase in the authorized number of members thereof,* the District Nominating Committee shall appoint by majority vote a representative of an NASD member eligible *pursuant to Section 8.9(a)* [to vote in the district]to fill the vacancy *or newly created membership*. The appointment shall be effective until the next regularly scheduled election [occurs] pursuant to this Article, *and until such member's successor is elected and qualified.*

Meetings of District Nominating Committees

Sec. 8.12 Meetings of a District Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as [each District Nominating Committee] *the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s)* in [its] *his or her* discretion may determine *in consultation with the Chair of the District Nominating Committee.* A quorum of a District Nominating Committee shall consist of a majority of its members, and any action taken by a majority [of the entire Committee]*present* at any meeting *at which a quorum is present*, except as otherwise provided in these By-Laws, shall constitute the action of the *District Nominating* Committee. *Any or all members of a District Nominating Committee may participate in any such meeting by means of conference telephone or other communications equipment by means of which all participants can communicate with each other, and such participation shall constitute presence in person at the meeting.* Action by a District Nominating Committee may be taken by *consent in writing or by electronic transmission in lieu of a meeting* [mail, telephonic, or telegraphic vote], in which case any action taken by a majority of the *District Nominating* Committee shall constitute the action of the *District Nominating* Committee. [Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee].[.]

Election of District Nominating Committee Officers

Sec. 8.13 Following the annual election of members of the District Nominating Committees pursuant to this Article, each District Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws[, and shall prescribe their powers and duties].

Expenses of District Nominating Committees

Sec. 8.14 Funds to meet the regular expenses of each District Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to [Chair] *District Nominating Committee*

Sec. 8.15 On or before [May 1]*June 1* of each year, the Secretary of NASD Regulation shall *give a Notice* [send a written notice] to [the Chair of] each District Nominating Committee *member and each District Director* [and each District Committee] identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The *Notice* [notice] shall describe election procedures for filling the offices.

Solicitation of Candidates *and Secretary's Notice to NASD Members*

Sec. 8.16 *The Secretary of NASD Regulation shall give a Notice of the upcoming election to NASD members and the Executive Representatives of NASD members describing the election procedures and stating that NASD members may submit names of candidates for consideration to the District Director.* NASD Regulation staff shall provide the District Nominating Committee with a description of the NASD membership in the district. The District Nominating Committee shall identify and solicit candidates to nominate for *election to* [the vacancies on] the District Committee and the District Nominating Committee. [The District Nominating Committee Chair shall send a written notice of the upcoming election to the Executive Representative and each branch office of the NASD members in the district and request that such NASD members submit names of candidates to the District Nominating Committee or the District Director for consideration.]

[Secretary's Notice to NASD Members]

[Sec. 8.17 The Secretary of NASD Regulation shall send a written notice to NASD members in the district describing the election procedures.]

District Nominating Committee Slate

Sec. 8.17 [Sec. 8.18] (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD Regulation staff and shall nominate a slate of candidates for the election. The slate shall include one [or more] candidate[s] for each *position on the District Committee and the District Nominating Committee subject to election at the next annual election* [vacancy]. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and [all] *various* classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself *on the District Committee* [unless the District Nominating Committee first takes appropriate action by a written ballot of the entire NASD membership within the district to ascertain that such nomination is acceptable to a majority of the NASD members in the district,] unless the incumbent member of the District Committee is serving pursuant to the provisions of Section 8.4 *or is serving a term pursuant to the provisions of Section 8.2 and reelection would not cause the incumbent member to violate the provisions of Section 8.3.* A District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves.

[Certification] *Notification* of Nomination

Sec. 8.18 [Sec. 8.19] The *District Director, acting on behalf of the* District Nominating Committee, shall *give a Notice to the Secretary of NASD Regulation of* [certify to the District Committee] each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. [Within five calendar days after the certification, the District Committee shall send to the Executive Representatives of NASD members in the district a copy of the certification.] *On or before October 1 of each year, the Secretary of NASD Regulation shall give a Notice of the nominated candidates to the Executive Representatives of NASD members and the District Committee.*

Uncontested Election

Sec. 8.19 If the District Nominating Committee nominates one candidate for each position on the District Committee and the District Nominating Committee subject to election at the next annual election and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected.

Designation of Additional Candidates

Sec. 8.20 If an officer, director, or employee of an NASD member who meets the qualifications of Section 8.2 *or 8.9, as applicable,* is not nominated by the District Nominating Committee and wants to be considered for *election to* [a vacancy on] the District Committee or the District Nominating Committee, he or she shall *deliver* [send] a written notice to the District Director within 14 calendar days after the *Secretary of NASD Regulation gives the Notice of nominated candidates* [the mailing date of the certification to the Executive Representatives] pursuant to Section 8.18[9]. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 8.21 (a) The Secretary of NASD Regulation shall provide a list of all NASD members eligible to vote in the district, *their mailing addresses*, and their Executive Representatives to the additional candidate *promptly* [immediately] following receipt of the additional candidate's *timely* notice by the District Director.

(b) An NASD member that has its principal office[,] *and/or* one or more registered branch offices[, or its

principal office and one or more registered branch offices] in the district shall be eligible to cast one vote through the NASD member's Executive Representative for each *position on the District Committee and the District Nominating Committee* [vacancy] to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.22 An additional candidate shall be nominated if a petition signed by at least ten percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of the mailing of the list to the additional candidate pursuant to Section 8.21. Only an Executive Representative may sign a petition on behalf of an NASD member.

[Uncontested Election]

[Sec. 8.23 If the District Nominating Committee nominates one candidate for each vacancy and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board.]

Notice of Contested Election

Sec. 8.23 [Sec. 8.24] If [the District Nominating Committee nominates more than one candidate for vacancy, or if] an additional candidate is nominated pursuant to Section 8.22, the election shall be considered a contested election. The *Secretary of NASD Regulation shall give a Notice* [District Committee shall send a notice] to the Executive Representatives of the NASD members eligible to vote in the district announcing the names of the candidates and the office to which each candidate is nominated and describing contested election procedures.

Administrative Support

Sec. 8.24 [Sec. 8.25] The District Office shall provide administrative support to all candidates by sending, *by electronic transmission*, to NASD members eligible to vote in the district up to two *distributions* [mailings] of materials prepared by the candidates. [NASD Regulation shall pay the postage for the mailings.] If a candidate wants such *distributions* [mailings] sent, the candidate shall prepare such material on the candidate's personal stationery *and make the material available to NASD Regulation in electronic format.* The material shall state that it represents the opinion of the candidate. [The candidate shall provide a copy of the material for each member of the NASD in the district.] Candidates nominated by the District Nominating Committee may identify themselves as such in their materials. Any candidate *also* may send [additional] mailings at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, and NASD Regulation staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.25 [Sec. 8.26] With the assistance of the Secretary of NASD Regulation and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.22 and the office to which each candidate is nominated. The ballot shall list *separately, in alphabetical order*, the candidates [in alphabetical order and shall identify the candidates] nominated by the District Nominating Committee *and the additional candidates nominated pursuant to Section 8.22.* The *Secretary of NASD Regulation* [District Nominating Committee] shall send a ballot to the Executive Representative of each NASD member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than [30]20 and no more than [45]*30* days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.26 [Sec. 8.27] Eligibility to vote in a district election shall be based on the NASD's membership records as of a date selected by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible to vote in the district, *their mailing addresses*, and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned as Undelivered

Sec. 8.27 [Sec. 8.28] The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.28 [Sec. 8.29] After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.25[6]. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to [the district office] *a location within the district agreed to between the Independent Agent and the Secretary of NASD Regulation* all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of NASD Regulation pursuant to Section 8.26[7]. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 8.29 [Sec. 8.30] The Independent Agent shall set aside a ballot if: (a) the ballot is received from an NASD member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 8.26[7], and the Secretary of the NASD has not received proper notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) if two or more properly executed ballots are received from an NASD member eligible to vote in the district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.30 [Sec. 8.31] The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

(a) The ballot is not signed by the Executive Representative (unless Section 8.*29* [30] applies);

(b) a vote is not indicated on the ballot; or

(c) the ballot indicates votes for more candidates than there are *positions on the District Committee or District Nominating Committee subject to election in the election* [vacancies for an office].

[Certification of] Election *Results*

Sec. *8.31* [Sec. 8.32] Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee or *District Nominating Committee* receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of *positions* [vacancies] on the District Committee *or District Nominating Committee subject to election in the election.* [The candidates for the office of member of the District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Nominating Committee.] In the event of a tie, there shall be a run-off election. *The Secretary of NASD Regulation shall notify the Board of the election results.* [Each District Committee shall send a written certification of the election results to the Board.] The *notification* [certification] shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.32 [Sec. 8.33] The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Definitions

Sec. 8.33 (a) When used in Article VIII of these By-Laws, the term "Notice" means a notice in writing or by electronic transmission and the term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) For purposes of this Article VIII, any notice by NASD Regulation, the Secretary of NASD Regulation, or the District Director given by electronic transmission shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the person entitled to notice has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the person entitled to notice has consented to receive notice; (3) if by a posting on an electronic network when the person entitled to notice has consented to receive notice in this manner, together with separate notice to the person entitled to notice of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission when the person entitled to notice has consented to receive notice in this manner, when directed to the person entitled to notice. For purposes of this Article VIII, if mailed, any such notice by NASD Regulation, the Secretary of NASD Regulation, or the District Director shall be deemed given when deposited in the United States mail, postage prepaid, directed to the person entitled to notice at such person's address as it appears on the records of NASD Regulation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article VIII of NASD Regulation By-Laws ("By-Laws") sets forth provisions relating to the operation of District Committees and District Nominating Committees (collectively, "Committees"), including specifically, provisions regarding Committee meetings, vacancies and elections. Under Article VIII, the role of the District Committee members includes serving as panelists in disciplinary proceedings in accordance with NASD Rules, recommending policy and rule changes to the Board, educating members in their district, and selecting members of the regional District Committee and District Nominating Committees in a manner consistent with Article VIII of the By-Laws. The role of the District Nominating Committee includes nominating candidates to serve on the District Committee and District Nominating Committee for that region.

Currently, there are 11 District Committees, divided by geographic region. Based on the experience of NASD Regulation staff in working with the Committees since that time, and the current practices of the Committees, NASD is proposing a series of amendments to modernize and clarify the Article VIII provisions. NASD represents that the proposed changes are designed to streamline the nomination and election processes by, among other things, centralizing the communication procedures in the Corporate Secretary's Office of NASD Regulation, revising the nomination and election timeline, and modernizing the methods of communication by permitting electronic delivery of documents. In addition, NASD represents that the proposed

amendments would improve coordination and consistency among the Committees across the districts, modify the procedures to fill vacancies, and provide for more administrative flexibility. The key proposed amendments are discussed below.

Section 8.2 (Composition of District Committees) and Section 8.9 (Composition of District Nominating Committees)

Create Consistency in Size of Committee. Currently, Section 8.2(a) provides that each District Committee will determine how many members to elect each year. To create more consistency in District Committee sizes across districts, the proposed amendments would allow the Board of Directors of NASD ("Board") to determine the size of each Committee.

Establish Qualifications to Serve on Committee. Currently, Section 8.2 and Section 8.9 provide that each Committee member must be employed by an NASD member eligible to vote in such district. NASD believes that the proposed amendments would clarify additional qualifications necessary to serve as a member of a Committee. The proposed amendments provide that a member must: (1) be employed by an NASD member eligible to vote in the district for District Committee elections; and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a Committee. NASD believes the additional qualifications will ensure that Committee members have a significant connection to the district in which they serve.

Eliminate Requirement in Section 8.9 that One District Nominating Committee Member be a Current or Former Director. The proposed amendments would eliminate the current requirement contained in Section 8.9 that at least one member of the District Nominating Committee be a current or former Director or Governor. Based on the experience of NASD Regulation staff, it has become increasingly difficult to satisfy this composition requirement.

Section 8.3 (Term of Office of District Committee Member) and Section 8.10 (Term of Office of District Nominating Committee Member)

Clarify Term of Office. Currently, Section 8.3 and Section 8.10 provide that Committee members may not serve more than two consecutive terms. The proposed amendments to these provisions would clarify that there is no limit on the number of terms that a Committee member may serve, provided that a member may not serve more than two consecutive terms. The word "term" would be defined to include either a full term (three years for District Committees or one year for District Nominating Committees) or any partial term where a member is appointed to fill a vacancy. NASD believes that this would allow for greater member participation in the Committees over time.

Section 8.4 (Filling of Vacancies on District Committee) and Section 8.9 (Filling of Vacancies for District Nominating Committees)

Streamline Process for Filling Vacancies. Proposed new Sections 8.2(b) and (d) and Sections 8.9(b) and (d) would clarify that Committee members may formally resign from their positions by serving a notice to the Chair. In addition, the proposed new provisions provide a process for filling vacancies. Under the proposed amendments, the Executive Vice President, Regulatory Policy and Programs, the Executive Vice President, Member Regulation or their respective designee(s) would be authorized to determine whether a vacancy created on the Committee needs to be filled. In some instances there may not be a need to fill a vacancy immediately—for example, when there is no scheduled meeting between the time of the vacancy and the next regularly scheduled election. If a determination were to be made to fill a vacancy, or if a new position were to be created by an increase in Committee size, the Committee would fill such vacancy by a majority vote of a quorum present at a meeting as currently prescribed by Sections 8.4 (District Committee) and 8.11 (District Nominating Committee).

Section 8.5 (Meetings of District Committee) and Section 8.12 (Meetings of District Nominating Committees)

Coordinate Procedures for Meetings. Currently, Section 8.5 and Section 8.12 provide that each Committee will determine the time, place, and procedures for each meeting. NASD represents that the proposed amendments would simplify and better coordinate Committee meetings across districts by authorizing the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s), to determine the times, places and procedures for Committee meetings in consultation with the Chair of each Committee. In addition, NASD represents that the proposed amendments would clarify that an individual may attend a meeting either in person or by telephone and that action taken by telephonic vote will not require written confirmation.

Section 8.6 (Election of District Officers) and Section 8.13 (Election of District Nominating Committees)

Eliminate Requirement to Designate Function of Committee Officers. Currently Section 8.6 and Section 8.13 require that the Committees prescribe the powers and duties of its elected officers. The Committees have not found it necessary to perform this function. The proposed amendments would eliminate this requirement.

Section 8.7 (Advisory Council)

Members of Advisory Council. The proposed amendments would clarify that the Chair of the Market Regulation Committee of NASD is a member of the Advisory Council to the Board.

General Amendments to Allow Electronic Communications

Several Sections in Article VIII require parties to provide notice or other communications to Committee members or NASD Regulation. The proposed amendments would provide that where provisions in Article VIII call for notice and other communications to be given either among Committee members, or between Committees and NASD Regulation staff, the requirement may be satisfied by electronic means, provided that the person entitled to notice consents to receive notice in this manner. Specifically, the proposed amendments would add new Section 8.33 which defines the term "Notice" as used in Article VIII to mean a notice in writing or by electronic transmission. In proposed Section 8.23, the Secretary of NASD Regulation may provide notice by electronic transmission to Executive Representatives of NASD members announcing names of candidates, the offices for which they are nominated, and the procedures for contested elections, if the need arises. Additionally, in proposed Section 8.24, NASD staff and District Offices would provide administrative support to all candidates by sending electronically up to two distributions prepared by the candidates to NASD members eligible to vote.

General Amendments to Centralize Procedures for Nominations and Elections

In general, the amendments would create a more streamlined and flexible election process, conform the By-Laws language with current practice, and allow the Secretary of NASD Regulation to play a more centralized role in the election process. For example, the proposed amendments would provide that the Secretary of NASD Regulation would perform many of the notification and other communication functions currently performed by other parties, such as notifying NASD members of upcoming elections, requesting submission of candidates, notifying NASD members of the candidates nominated by the District Nominating Committee, notifying NASD members in the event of a contested election, and notifying the Board of election results.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed changes to Article VIII of the By-Laws of NASD Regulation are designed to accomplish these ends by streamlining the procedures for operation of the District Committees and District Nominating Committees. NASD believes the proposed rule change, as amended, will streamline the nomination and election processes governing the Committees, modernize communication procedures, and improve the consistency among the Committees across all districts.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has been filed by NASD as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act,[8] and NASD represents that the proposed rule change, as amended, does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. In accordance with Rule 19b–4(f)(6)(iii),[9] NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, and the proposed rule change will become operative 30 days after the date of the filing.

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act.[10] At any time within 60 days of the filing of the proposed rule change,[11] the Commission may summarily abrogate this proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–55 and should be submitted by July 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15265 Filed 6–16–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78o-3(b)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] *See* note 6, *supra.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48013; File No. SR–PHLX–2002–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1, 2, and 3 by the Philadelphia Stock Exchange, Inc. to Initiate a Pilot Program that Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading under $20

June 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2002, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The PHLX filed Amendments No. 1, 2, and 3 to the proposal on March 17, 2003,[3] June 6, 2003,[4] and June 10, 2003,[5] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended, through June 5, 2004.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to initiate a pilot program ("Pilot Program") that will allow the Exchange to list options on selected stocks trading below $20 at one-point intervals. The text of the proposed rule change appears below. Additions are in *italics*; deletions are in brackets.

Series of Options Open for Trading

Rule 1012. (a)—(d) No change.

Commentary:

.01 to .04 No change.

.05 (a) The interval of strike prices of series of options on individual stocks [will] *may* be:

(i) $1 or greater ("$1 strike prices") provided the strike price is $20 or less,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] Amendment No. 2 replaces Amendment No. 1 in its entirety.

[5] *See* letter from Jurij Trypupenko, PHLX, to Nancy Sanow, Senior Special Counsel, Office of Market Supervision, Commission, dated June 9, 2003 ("Amendment No. 3"). Amendment No. 3 indicates that the proposal expires on June 5, 2004.

but not less than $3. The listing of $1 strike prices shall be limited to options classes overlying no more than 5 individual stocks (the "$1 Pilot") as specifically designated by the Exchange. The Exchange may list $1 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $1 Pilot under their respective rules.

To be eligible for inclusion into the $1 Pilot, an underlying stock must close below $20 in its primary market on the previous trading day.

After a stock is added to the $1 Pilot, the Exchange may list $1 strike prices from $3 to $20 that are no more than $5 from the closing price of the underlying on the preceding day. For example, if the underlying stock closes at $13, the Exchange may list strike prices from $8 to $18.

The Exchange may not list series with $1 intervals within $0.50 of an existing $2.50 strike price (e.g., $12.50, $17.50) in the same series. Additionally, the Exchange may not list long-term option series ("LEAPS®") at $1 strike price intervals for any option class selected for the $1 Pilot.

A stock shall remain in the $1 Pilot until otherwise designated by the Exchange. The $1 Pilot shall expire on June 5, 2004;

(ii) $2.50 or greater where the strike price is $25 or less[,]; *provided, however, that the Exchange may not list $2.50 intervals below $20 (e.g., $12.50, $17.50) for any class included within the $1 Pilot if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart;*

(iii) $5[.00] or greater where the strike price is greater than $25 but less than $200[.]; and

(iv) $10 or greater where the strike price is $200 or more, except as provided in paragraph (b) below.

The interval of strike prices of series of options on Exchange-Traded Fund Shares will be $1 or greater where the strike price is [less than]$200 or less.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PHLX proposes to amend PHLX Rule 1012, "Series of Options Open for Trading," to implement the Pilot Program, which will operate for a pilot period ending on June 5, 2004. The Pilot Program will allow the PHLX to list a finite number of options at $1.00 strike price intervals pursuant to the Pilot Program. Specifically, the proposal will allow the PHLX to originally list as many as five options at $1.00 strike price intervals within certain parameters specified in the proposed rule, and to multiply list options classes at $1.00 strike price intervals where those classes were specifically designated by other securities exchanges that employ a similar $1.00 strikes pilot program under their rules.

PHLX Rule 1012 establishes guidelines regarding the addition of strike prices for series of options. Currently, the PHLX may list options at $2.50 intervals where the strike price is $25.00 or less, at $5.00 intervals where the strike price is greater than $25.00 but less than $200.00, and at $10.00 intervals when the strike price is $200.00 or more.[6] The PHLX notes that over the past two years, prices of stocks in general have dropped, with many listings suffering precipitous declines. As a result, there has been a proliferation of stocks trading below $20.00, and the PHLX lists options on more than 390 such stocks, including Ford Motor Company, Cisco Systems, Inc., Sun Microsystems, Inc., Corning, Inc., Motorola, Inc., Nextel Communications, Inc., AOL Time Warner, Inc., and Walt Disney Company. According to the PHLX, these stocks trading below $20.00 are among the most widely held and actively traded equities listed on the New York Stock Exchange, Inc., the American Stock Exchange LLC, and Nasdaq, and the options overlying these stocks also trade actively.

The PHLX notes that when a stock underlying an option trades at lower prices, it requires a larger percentage gain in the price of the stock for the option to become in-the-money. For example, when a stock trades at $6.00 and a potential investor wants to buy out-of-the-money call options, he or she will have to buy the calls at a $7.50 strike price. At these pricing levels, the stock would need to achieve a 25% price gain before reaching at-the-money status. Such a 25% or higher gain in the underlying stock is particularly significant in light of the substantially lessened degree of volatility in many stocks and options in the past several months. As a result, the PHLX believes that there is a disincentive for investors to use options on these lowest-tier stocks to manage risk. Additionally, with the recent increase in the number of stocks trading below $20.00, PHLX member firms have expressed a strong desire to list additional strike prices on these stocks in order to provide their customers with greater flexibility in achieving their investment strategies. The PHLX believes that the proposed Pilot Program would give investors an opportunity to more closely and effectively tailor their options investments to the price of the underlying stock and at the same time would allow the PHLX to take advantage of competitive opportunities to list options at $1.00 strike prices pursuant to the terms of the Pilot Program.

Moreover, the PHLX believes that implementing the Pilot Program is decidedly pro-competitive. The PHLX believes, and has consistently maintained, that its ability to list options is a significant, and indispensable, component of competition that should not be circumscribed. The PHLX believes that it, like the other options exchanges, should be able to list $1.00 strike price intervals (pursuant to the terms of the Pilot Program) for the issues that it believes are commercially feasible or desirable. The PHLX maintains that, as history has frequently borne out, yesterday's lowest-performing options, particularly those in the lowest priced trading bracket (*i.e.*, the lowest priced stocks), could well become tomorrow's most desirable options.

For these reasons, the PHLX proposes to implement the Pilot Program, as described below.

Options Eligible for the Pilot Program

The Pilot Program would allow the Exchange to list $1.00 strike prices on equity options overlying up to five individual stocks provided that the strike prices are $20.00 or less, but not less than $3.00. The appropriate Exchange committee will determine which underlying stocks will be included in the Pilot Program. A class becomes eligible for inclusion in the Pilot Program when the underlying stock price closes below $20.00 in the primary market on the previous trading day. Underlying stocks trading under $20.00 that are not a part of the Pilot Program will continue to be eligible for trading at $2.50 and $5.00 intervals.

Although the PHLX may select up to five securities to be included in the Pilot Program, the Exchange would not be precluded from also listing options on other stocks at $1.00 strike price intervals if other options exchanges list those series pursuant to their respective $1.00 strike price pilot programs.

The Exchange will not list $1.00 strike price intervals on LEAPS pursuant to the Pilot Program.

Adding $1.00 Strike Price Intervals

The procedures for adding $2.50 or $5.00 strikes are contained in Exchange Rule 1012, Commentary .05, which will be amended to allow the addition of $1.00 strike price intervals.[7] Under the proposed Pilot Program, the closing price of the underlying stock will serve as the reference point for determining which $1.00 strike prices the Exchange may open for trading.

To minimize unnecessary proliferation of series, the PHLX will only list $1.00 strike prices within a range of $5.00 greater or $5.00 less than the closing price of the underlying stock on the primary market on the day before selection by the Exchange. No strike prices will be added outside the $5.00 range. For example, if the underlying trades at $6.00, the PHLX could list $1.00 strikes from $3.00 to $11.00. The Exchange believes that this proposed range-format will significantly restrict the number of series that may be added at any one time.

As noted above, PHLX Rule 1012, Commentary .05, currently allows the PHLX to list strike prices with $2.50 intervals when an underlying stock trades below $25.00. For this reason, several options have $7.50, $12.50, and $17.50 strike price intervals. To further avoid the proliferation of series, the PHLX does not intend to list $1.00 strike prices at levels that "bracket," that is, are on either side of, existing $2.50 intervals (*e.g.*, $7.00 and $8.00 strikes around a $7.50 strike). Accordingly, in this situation, there must be more than $0.50 between any two strike prices. Thus, if the underlying stock closed at $5.00, the Pilot Program would permit the Exchange to list options with $1.00 strike price intervals from $3.00 to $10.00, if nothing was trading already at $5.00 and $7.50 strike prices, or $1.00 strike price intervals at $3.00, $4.00, $6.00, $9.00 and $10.00, if options were already trading at $5.00 and $7.50 strike prices. When the $2.50 intervals are "phased-out," as described below, the PHLX will introduce $1.00 intervals that "bracket" the phased-out price. For example, when the $7.50 series expires, the PHLX will replace it by issuing a new month with $7.00 and $8.00 intervals.

Phasing-Out $2.50 Strike Price Intervals

Once an option becomes part of the Pilot Program, the Exchange will begin the process of phasing-out existing $2.50 intervals overlying the same stock in favor of $1.00 intervals. To phase out the $2.50 intervals, the Exchange initially will delist those $2.50 series for which there is no open interest. Subsequently, the Exchange will no longer add new expiration months at $2.50 intervals below $20.00 when the existing months expire. This process will effectively phase-out the remaining $2.50 intervals as the farthest-out months expire.

Adding Expiration Months

PHLX Rule 1012 generally allows the Exchange to make available for trading four expiration months for each initial listing of an option. Upon expiration of the near-term month, the Exchange may list an additional expiration month. Under the Pilot Program, if the underlying closed at or above $20.00 on Expiration Friday, the PHLX would not list an additional month for a $1.00 strike series until the stock again closed below $20.00 in the primary market on the day before selection for listing.

Deleting $1.00 Strike Price Intervals

At any time, the Exchange may cease listing $1.00 strike prices on existing series by submitting a Cessation Notice to the Options Clearing Corporation ("OCC").[8] As discussed above, if the underlying closed at or above $20.00 on Expiration Friday, the Exchange would not list any additional months with $1.00 strike prices until the stock subsequently closed below $20.00 on the primary market on the day prior to the Exchange listing the option. If the underlying stock does not subsequently close below $20.00, thereby precluding the listing of additional $1.00 strike prices and months, the existing $1.00 series would eventually expire. When the near-term month is the only series available for trading in the Pilot Program, the Exchange may submit a Cessation Notice to OCC. Upon submission of that notice, the listing would no longer count towards the five listings that are allowed the Exchange pursuant to the Pilot Program, thereby allowing the PHLX to list classes on an additional stock. Once the Exchange submits the Cessation Notice, it would not list any additional months for trading with strikes below $20.00 within the Pilot Program unless the underlying once closed below $20.00, as required by the Pilot Program.[9]

Options Price Reporting Authority ("OPRA") Capacity

The Exchange believes that, according to OPRA figures, there is sufficient capacity to accommodate the Exchange's proposed Pilot Program. The PHLX believes that there is significant excess system capacity at this time: on a daily basis, the options exchanges are using an average of less than 7,000 messages per second ("mps") during peak periods, which is less than 25% of the total system capacity of 32,000 mps.[10] To date, the exchanges have yet to exceed 11,000 mps for any extended period of time.[11] Thus, the PHLX believes that implementing the Pilot Program should not have any significant negative impact on OPRA system capacity.

---

[6] *See* PHLX Rule 1012, Commentary .05. *See also* PHLX Rule 1012, Commentary .05(b), which establishes guidelines for listing $2.50 strikes for a set number of classes trading between $25.00 and $50.00.

[7] PHLX Rule 1012(a)(iii) permits the Exchange to add a new option series "as the market price of the underlying stock or Exchange-Traded Fund Share or the underlying foreign currency, as the case may be, moves substantially from the initial exercise price or prices." Moreover, PHLX Rule 1010 provides that where exceptional circumstances have caused an underlying security not to comply with the Exchange's maintenance requirements, "the Exchange may, in the interest of maintaining a fair and orderly market for the protection of investors, determine to open additional series of option contracts on the class covering that underlying security."

[8] The reasons for submitting a Cessation Notice include: expiration of available $1.00 strikes (*i.e.*, the underlying stock price on the primary market remains above $20.00); series proliferation concerns; and delisting because of, among other things, low price, merger, or takeover. In any event, the PHLX would continue to have the ability to cease trading series that become inactive and have no open interest, with prior notice to its members).

[9] If the underlying stock trades below $20.00 after submission of the Cessation Notice by the PHLX, the Exchange could list $1.00 strike prices again provided it included the class as one of the five classes permitted under the Pilot Program.

[10] Securities Industry Automation Corporation ("SIAC"), which administers and services the network for OPRA, estimates that as much as 6,000 mps of the total system capacity will be used to send best bid and offer ("BBO") messages when the BBO feed becomes operational. *See* Securities Exchange Act Release No. 47231 (January 22, 2003), 68 FR 4258 (January 28, 2003) (publication of notice of File No. SR-OPRA–2002–01). *See also* Securities Exchange Act Release No. 47231 (January 22, 2003), 68 FR 4258 (January 28, 2003) (order approving File No. SR–OPRA–2002–01).

[11] On November 6, 2002, the OPRA five-minute message peak was 8,203 mps. On November 13, 2002, the one-minute peak was 10,091 mps.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)[12] of the Act in general and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade. According to the PHLX, the proposal would achieve this by allowing the listing of $1 strike price intervals, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX–2002–55 and should be submitted by July 8, 2003.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than $3 but less than $20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that the PHLX monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the PHLX's proposal on a pilot basis. In the event that PHLX proposes to extend the Pilot Program beyond June 5, 2004, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal.[16] The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the PHLX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PHLX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PHLX addressed them; (6) any complaints that the PHLX received during the operation of the Pilot Program and how the PHLX addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The PHLX's Pilot Program is identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved.[17] Notice of the CBOE Pilot was published for comment [18] and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the proposal raises no issues of regulatory concern and that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,[19] to approve the PHLX's proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–PHLX–2002–55) and Amendment Nos. 1, 2, and 3 thereto are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission expects the PHLX to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the PHLX wishes to extend, expand, or seek permanent approval of the Pilot Program.

[17] See Securities Exchange Act Release No. 47991 (June 5, 2003) (order approving File No. SR–CBOE–2001–60).

[18] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

[19] 15 U.S.C. 78f(b)(5) and 78s(b).

[20] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15263 Filed 6–16–03; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3509]

Territory of American Samoa

As a result of the President's major disaster declaration on June 6, 2003, I find that the Island of Tutuila located within the Territory Of American Samoa constitutes a disaster area due to damages caused by heavy rainfall, flooding, landslides, and mudslides occurring on May 19, 2003 and continuing through May 21, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 5, 2003 and for economic injury until the close of business on March 8, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350906 and for economic injury the number is 9V8000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 9, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–15233 Filed 6–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3507]

State of Florida

Broward County and the contiguous counties of Collier, Hendry, Miami-Dade and Palm Beach in the State of Florida constitute a disaster area as a result of heavy rains and flooding beginning on May 27 and continuing through May 29, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 4, 2003 and for economic injury may be filed until the close of business on March 5, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350706 and for economic injury is 9V7400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 5, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–15237 Filed 6–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3492]

State of Mississippi; (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 6, 2003, the above numbered declaration is hereby amended to include Jefferson Davis County as a disaster area due to damages caused by severe storms, tornadoes and flooding beginning on April 6 and continuing through April 25, 2003.

All counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 23, 2003, and for economic injury the deadline is January 26, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 10, 2003.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–15234 Filed 6–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri; (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 3, 2003, the above numbered declaration is hereby amended to include Crawford, Dent, Gasconade, Iron, Monroe and Phelps Counties in the State of Missouri as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing through May 30, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Reynolds and Shannon Counties in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 5, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–15235 Filed 6–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3499]

State of Oklahoma; Amendment #3

In accordance with a notice received from the Department of Homeland

Security—Federal Emergency Management Agency, effective June 3, 2003, the above numbered declaration is hereby amended to include Cherokee, Creek, Garvin, Nowata, Okmulgee and Seminole Counties in the State of Oklahoma as disaster areas due to damages caused by severe storms and tornadoes occurring on May 8, 2003 and continuing through May 30, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adair, Carter, Craig, Delaware, Hughes, Mayes, McIntosh, Murray, Muskogee, Pawnee, Rogers, Sequoyah, Tulsa, Wagoner and Washington in the State of Oklahoma; and Labette and Montgomery in the State of Kansas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 9, 2003, and for economic injury the deadline is February 10, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 5, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–15236 Filed 6–16–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Subchapter S4S, the Office of Earnings, Enumeration and Administrative Systems, is being amended to reflect the establishment of a new division, the retitling of a division, and the abolishment of a staff. The new material and changes are as follows:

Section S4S.10 *The Office of Earnings, Enumeration and Administrative Systems*—(Organization):

Delete:

C. 1. The Independent Verification and Validation Staff (S4S–1).

Retitle:

G. The Division of Enumeration and Exchanges (S4SE) to: "The Division of Enumeration and Verifications (S4SE)."

Establish:

J. The Division of Technology Services and Exchanges (S4SJ).

Section S4S.20 *The Office of Earnings, Enumeration and Administrative Systems*—(Functions):

Paragraph C, Delete the words: "technology leadership," after the words "administrative staff assistance," and before the words "planning and customer relations support".

Delete:

C. 1. In its entirety.

Delete the first sentence from D, paragraph #6. Replace the first sentence of paragraph #6 with the following: "Plans and conducts unit and system-wide functional validation tests of newly developed systems and modifications to existing systems against user defined requirements and performance criteria."

Delete the first sentence from E, paragraph #5. Replace the first sentence of paragraph #5 with the following: "Plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user defined requirements and performance criteria."

Delete the first sentence from F, paragraph #4. Replace the first sentence of paragraph #4 with the following: "Plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user defined requirements and performance criteria.

Retitle:

G. The Division of Enumeration and Exchanges (S4SE). to: "The Division of Enumeration and Verifications (S4SE)," Paragraph #1, Replace the words: "data exchanges." at the end of the paragraph with the words "SSN verifications." Paragraph #2. Replace the words: "data exchange." at the end of the first sentence with the words "SSN verifications." Paragraph #4, delete the first sentence. Replace the first sentence of paragraph #4 with the following: "Plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user defined requirements and performance criteria."

Delete the first sentence from H, paragraph #4. Replace the first sentence of paragraph #4 with the following: "Plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user defined requirements and performance criteria."

Delete the first sentence from I, paragraph #4. Replace the first sentence of paragraph #4 with the following: "Plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user defined requirements and performance criteria."

Add:

J. The Division of Technology Services and Exchanges (S4SJ).

1. Designs, develops and implements new or redesigned software to meet SSA's automated data processing needs in the broad area of data exchanges.
2. Performs requirements analyses, defining SSA-approved user needs and requirements for automated data processing services for data exchanges. Evaluates legislative proposals, regulations and policy changes and reports on the impact on existing processes and systems. Evaluates the need to develop new software.
3. Develops design specifications and software programs to satisfy user needs as defined in requirements documentation.
4. Plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications.
5. Develops and maintains a comprehensive, updated and integrated set of system documentation, requirements specifications and validation tests of systems changes against user requirements and performance criteria. Certifies that changes are in conformance with specifications for assigned areas of responsibility.
6. Provides technical support of end-users and developers in the use of commercial reporting software. Directs the development of support procedures to monitor user problem resolution and the implementation of software upgrades.
7. Provides technical direction to OEEAS developers in web design and development activities, and in the design of user interfaces. Researches and applies user-centered interface design techniques and serves as the OEEAS expert on usability and human-computer interface issues. Serves as the focal point within OEEAS for the oversight and integration of web-based information delivery and presentation mechanisms for OEEAS applications.
8. Performs and coordinates studies, and researches software and hardware solutions to overarching OEEAS technical issues. Provides high-level analytical expertise for a variety of complex assignments of OEEAS and enterprise-wide scope, such as the technical assessment of proposed IT investments for alignment with and support of SSA's strategic plan, and advance planning for implementation of major new systems integration initiatives.

Dated: May 21, 2003.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 03–15184 Filed 6–16–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approval and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2003, there were six applications approved. This notice also includes information on three applications, approved on April 2003, inadvertently left off the April 2003 notice. Additional, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public agency: Country of Humboldt, Arcata, California.

Application number: 03–06–C–00–ACV.

Application type: Impose and use a PFC.

PFC level: $4.50.

Total PFC revenue approved in this decision: $503,000.

Earliest charge effective date: July 1, 2003.

Estimated charge expiration date: August 1, 2005.

Class of air carriers not required to collect PFC'S: None.

Brief description of project approved for collection at Arcata Airport (ACV) and use at Kneeland Airport: Master plan update.

Brief description of projects approved for collection Act ACV and use at ACV:

Letz Avenue bluff repair.

Terminal and access gate lock system, video surveillance equipment, security structure.

General aviation ramp.

Equipment purchase—runway/taxiway sweeper.

Replace visual glide slope indicator with precision approach path indicator.

Brief description of project approved for collection at ACV and use at Rohnerville Airport, Murray Field, Garberville Airport, and Dinsmore Airport:

Master plan update.

Brief description of disapproved project:

Purchase pilot weather data super-unicom equipment.

Determination: this project is not eligible in accordance with paragraph 570 of FAA Order 5100.38B, Airport Improvement Program Handbook (May 31, 2003). Therefore, the project does not met the requirements of § 158.15(b).

Decision date: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Long Beach, California.

Application number: 03–02–C–00–LGB.

Application type: Impose and use a PFC.

PFC level: $3.00.

Total PFC revenue approved in this decision: $30,306,984.

Earliest charge effective date: August 1, 2003.

Estimated charge expiration date: October 1, 2009.

Class of air carriers not required to collect PFC'S: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined the proposed class accounts for less than 1 percent of the total annual enplanements at Long Beach Municipal (Daugherty Field).

Brief description of projects approved for collection and use:

Rehabilitation of runway 12/30.

Rehabilitation of taxiways D, A, and B.

Installation of airfield lighting.

Relocation of service road.

Rehabilitation of taxiways D, F, J, and C.

Construction of apron.

Rehabilitation of access road.

Airport security—security system upgrade.

Installation of terminal signs and flight information display system.

Aircraft rescue and firefighting vehicles.

Decision date: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ruben Cabalbag, Western Pacific Region Airports Division, (310) 725–3630.

Public agency: Port of Oakland, Oakland, California.

Application number: 03–12–C–00–OAK.

Application type: Impose and use a PFC.

PFC level: $4.50.

Total PFC revenue approved in this decision: $7,600,000.

Earliest charge effective date: December 1, 2003.

Estimated charge expiration date: March 1, 2004.

Class of air carriers not required to collect PFC'S: Nonscheduled/on-demand air carriers filling FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Oakland International Airport.

Brief description of project approved for collection and use: Additional security expenditures.

Decision date: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public agency: New Hanover County Airport Authority, Wilmington, North Carolina.

Application number: 03–04–C–00–ILM.

Application type: Impose and use a PFC.

PFC level: $4.50.

Total PFC revenue approved in this decision: $12,785,647.

Earliest charge effective date: April 1, 2007.

Estimated charge expiration date: April 1, 2018.

Class of air carriers not required to collect PFC'S:
Non-scheduled/on-demand air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Wilmington International Airport.
Brief description of projects approved for collection and use:
Terminal renovations.
Construct new customs facility.
Master plan update.
Runway 35 clearing.
PFC administrative cost.
Paving program.
Land acquisition.
Airfield retention pond.
De-icing retention system.
Brief description of project partially approved for collection and use:
instrument landing system.
Determination: The application requested the planning, design, and installation of a Category I instrument landing system on each end of runway 6/24. However, the FAA has a budgeted project to install an instrument landing system on one end of runway 6/24 funded with Federal Facilities and Equipment program funds. Therefore, this project is limited to the installation of an instrument landing system on the opposite end of the runway from the Facilities and Equipment program installation.
Decision Date: May 7, 2003.
FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Atlanta Airports District Office, (404) 305–7148.
Public agency: Erie Municipal Airport Authority, Erie, Pennsylvania.
Application number: 03–03–C–00–ERI.
Application type: Impose and use a PFC.
PFC level: $4.50.
Total PFC revenue approved in this decision: $1,001,183.
Earliest charge effective date: August 1, 2003.
Estimated charge expiration date: January 1, 2005.
Class of air carriers not required to collect PFC's: None.
Brief description of projects approved for collection and use:
Master plan phases I and II.
Site security phase II.
Command vehicle.
Environmental assessment for master plan.
Airfield access road.
Acquire Orchard Park mobile home estate.
Replace high intensity runway lighting system.
Snow removal vehicle.
Public safety vehicle.
9/11 security costs.
Environmental assessment for runway 6/24 extension.
Construct two new passenger loading bridges.
Aircraft rescue and firefighting vehicle (pumper).
Acquire runway friction tester vehicle.
PFC administrative fee.
Brief description of projects approved for collection:
Acquire land, runway 6/24 extension.
Design of runway 6/24 extension.
Snow removal equipment (Oshkosh blower).
Brief description of disapproved project: Improve/rehabilitate terminal.
Determination: The public agency did not provide sufficient description or justification for this project. Therefore, the FAA disapproved the project as not meeting the requirements of § 158.15.
Decision date: May 13, 2003.
FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.
Public agency: Hillsborough County Aviation Authority, Tampa, Florida.
Application number: 03–06–C–00–TPA.
Application type: Impose and use a PFC.
PFC level: $4.50.
Total PFC revenue approved in this decision: $298,155,400.
Earliest charge effective date: August 1, 2006.
Estimated charge expiration date: September 1, 2013.
Class of air carriers not required to collect PFC'S: On-demand air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tampa International Airport.
Brief description of projects approved for collection and use.
Airside B demolition and apron reconstruction.
Airside C development program.
Engine run-up enclosure, taxiway and ramp.
Outbound baggage handling system and security enhancements.
Decision date: May 16, 2003.
FOR FURTHER INFORMATION CONTACT: Vernon P. Rupinta, Orlando Airports District Office, (407) 812–6331, extension 24.
Public agency: San Diego Regional Airport Authority, San Diego, California.
Application number: 03–03–C–00–SAN.
Application type: Impose and use a PFC.
PFC level: $4.50.
Total PFC revenue approved in this decision: $83,075,730.
Earliest charge effective date: August 1, 2003.
Estimated charge expiration date: March 1, 2006.
Class of air carriers not required to collect PFC's: Air taxis.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Diego International Airport.
Brief description of projects approved for collection and use at a $4.50 PFC level:
Replace aircraft rescue and firefighting vehicle.
Taxiway improvements.
Runway safety area improvements.
Commuter terminal apron improvements.
Sound attenuation and noise monitoring equipment.
Airport security improvements.
Terminal improvements.
Brief description of projects approved for collection and use at a $3.00 PFC level:
Environmental study.
Airport access improvements.
Infrastructure data management system.
Brief description of disapproved project: Environmental remediation.
Determination: This project is not eligible in accordance with paragraph 406s of FAA Order 5100.38B, Airport Improvement Program Handbook, (May 31, 2002). Therefore, this project does not meet the requirements of § 158.15(b).
Decision date: May 20, 2003.
FOR FURTHER INFORMATION CONTACT: John Milligan, Western Pacific Region Airports Division, (310) 725–3621.
Public agency: County of Outagamie, Appleton, Wisconsin.
Application number: 03–05–C–00–ATW.
Application type: Impose and use a PFC.
PFC level: $3.00.
Total PFC revenue approved in this decision: $318,170.
Earliest charge effective date: March 1, 2008.
Estimated charge expiration date: October 1, 2008.

Class of air carriers not required to collect PFC's: None.
Brief description of projects approved for collection and use: Acquire snow removal equipment.
Decision date: May 23, 2003.
FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.
Public agency: County of Montrose, Montrose, Colorado.
Application number: 03–02–C–00–MTJ.
Application type: Impose and use a PFC.
PFC level: $4.50.
Total PFC revenue approved in this decision: $821,694.
Earliest charge effective date: August 1, 2003.
Estimated charge expiration date: October 1, 2011.
Class of air carriers not required to collect PFC'S: None.
Brief description of projects approved for collection and use:
Construct a portion of taxiway A.
Rehabilitate taxiway B and a portion of the general aviation apron.
Construct aircraft rescue and firefighting/snow removal equipment building.
Rehabilitate a portion of general aviation apron.
Rehabilitate a portion of general aviation apron and runway 13/31.
Extend runway 17 safety area.
Decision date: May 30, 2003.
FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Amendments to PFC Approvals

Amendment number city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–02–C–01–SDF, Louisville, KY.	03/18/03	$16,398,940	$15,678,940	06/01/18	04/01/18
98–03–C–03–DCA, Arlington, VA.	03/27/03	46,823,287	53,846,780	11/01/03	02/01/04
93–01–C–04–DCA, Arlington, VA.	04/22/03	166,739,069	166,410,356	04/01/02	04/01/02
00–04–C–01–TUL, Tulsa, OK.	04/25/03	13,500,000	17,900,000	07/01/03	07/01/04
*97–04–C–02–LAX, Los Angeles, CA.	04/28/03	440,000,000	700,000,000	01/01/04	12/01/05
*96–01–C–01–HIB, Hibbing, MN.	04/29/03	338,299	338,299	10/01/04	05/01/06
96–02–C–02–IND, Indianapolis, IN.	05/21/03	21,275,922	11,869,241	04/01/02	10/01/01

(NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Los Angeles, CA and Hibbing, MN, this change is effective on July 1, 2003.)

Issued in Washington, DC. on June 11, 2003.
Jaime Duran,
Acting Manager, Financial Analysis and Passenger Facility Charge Branch.
[FR Doc. 03–15297 Filed 6–16–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Tire Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.
ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, by Lisoni & Lisoni, Attorneys at Law, and the Law Offices of Steven E. Weinberger, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety in Firestone Steeltex light truck radial tires. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP02–011.
FOR FURTHER INFORMATION CONTACT: Mr. Gregory Magno, Safety Defects Engineer, Vehicle Control Division, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0139.
SUPPLEMENTARY INFORMATION:

Petition Analysis—DP02–011

Introduction

On September 29, 2000, the Office of Defects Investigation (ODI) initiated a Preliminary Evaluation (PE00–040) of Firestone Steeltex tires manufactured by Bridgestone/Firestone, Inc. (Firestone), based on 169 Vehicle Owners Questionnaires (VOQ), 167 of which were received in August and September of 2000.[1] Eight crashes involving twelve injuries and two deaths related to separation of the tread and top belt from the tire carcass (tread separation) were alleged at that time. Under investigation in that PE were all Firestone Steeltex Radial R4S, R4S II, and A/T tires manufactured since 1990.
ODI closed PE00–040 on April 9, 2002, based upon low failure rates, noting that Steeltex tire lines are used in very severe tire applications (*e.g.*, motorhomes, commercial trucks, full-sized passenger vans, sport-utility vehicles, and pickup trucks). At the time ODI closed the investigation, it was aware of 872 relevant VOQs and 39 vehicle crashes, 24 of which involved an injury or death. These resulted in eight deaths and 40 injuries.
Subsequent to the closing of PE00–040, the Petitioners requested that the National Highway Traffic Safety Administration (NHTSA) reopen its Steeltex tire investigation.[2] According to the Petitioners, a reopening was warranted based on an overwhelming number of complaints that had been filed on the subject tires. ODI initiated a technical review (DP02–011) of the Petition in accordance with 49 CFR part 552 on November 26, 2002. To support this review, ODI requested that the Petitioners furnish additional documentation to substantiate their allegations. Since that time, the

[1] References to VOQs herein include all consumer complaints registered in the ODI complaint database.

[2] Specifically, on November 15, 2002, ODI received a document entitled "A Petition to The National Highway Traffic Safety Administration . . . Subject: Investigation of Defects Present in Bridgestone/Firestone Steeltex tires (models: R4S, R4SII, A/T)" (Petition). After reviewing the document, ODI construed it as a request to reopen PE00–040. The Petition was co-submitted by Lisoni & Lisoni, Attorneys at Law and the Law Offices of Steven E. Weinberger, both in Pasadena, CA (Petitioners). The Petitioners represent plaintiffs Roger Littell, Louann Pleasant, and all others similarly situated in a class action lawsuit against Bridgestone/Firestone, filed on August 12, 2002, in the Superior Court of California for Riverside County.

Petitioners have supplied ODI with 44 separate submissions numbering over 6,000 pages, the most recent of which arrived on June 5, 2003.

The subject Steeltex tires are large light truck radials that are produced as both original equipment and replacement tires. Firestone produced approximately 39 million of these tires in three different lines (R4S, R4S II, and A/T), 12 different sizes, and 3 different load ranges. Most of the subject tires are in the highest load range for light vehicles (≤ 10,000 lb Gross Vehicle Weight Rating) Load Range E (LRE). The original equipment tires have been used on Ford and General Motors vehicles, as well as by a wide range of motorhome manufacturers.

In general, light truck radial tires are constructed with thicker gauges of rubber and heavier steel belts and are designed to hold significantly greater inflation pressures than passenger tires. These tires are more sensitive to impact damage and to variations in speed, load, and inflation pressure than passenger tires.

After reviewing information submitted in support of the Petition and analyzing additional complaint and claims information obtained from Firestone, ODI has decided to deny the request to reopen the Steeltex investigation. This decision is based on the fact that an enormous population of tires is at issue whose failure rate is lower than that of peer tires used in similar applications and has changed little since PE00–040 was closed. ODI has not identified a defect trend in any of the tires in question.

Petitioners' Allegations

The Petitioners have made numerous allegations in 44 separate submissions including over 6,000 pages of materials. These allegations include:

1. That there were 2,972 VOQs in ODI's database (as accessed via the NHTSA public Web site) as of November 2002, most of which existed when ODI closed PE00–040 but were not considered during the investigation;
2. That additional complaints gathered by the Petitioners strongly suggest a safety defect trend; and
3. That all Steeltex tires contain a safety-related defect that could lead to a catastrophic tread separation.

ODI Analysis of Petitioners' Allegations

First Allegation: VOQs in NHTSA's Web site Not Noted in Closing of PE00–040

The Petitioners allege that they identified 2,972 VOQs on the subject tires on NHTSA's Web site in October 2002. They further allege that most of these VOQs existed at the time that PE00–040 was closed. More recently, they have been quoted in the media as claiming that as of May 2003, the NHTSA Web site contained 4,000 records concerning "Steeltex-related accidents."[3]

The Petitioners provided hard copy summaries of the 2,972 VOQs they identified. A review of these VOQs, however, demonstrates that a majority are duplicate records. In addition, a significant number do not involve the Steeltex tires at issue. For instance, the Petitioners included VOQs that pertain to tires such as Firestone 721 tires and Steeltex ASR tires last produced in 1992, as well as VOQs reporting issues unrelated to tread separation, such as wear and vibration. Also included in their submissions were VOQs that do not pertain to tires at all (*e.g.*, complaints about vehicle stalling and brake malfunction).

ODI has conducted a thorough review of its complaint database to assess the Petitioners' claims. This review found that as of April 2002, when PE00–040 was closed, the database contained 930 VOQs related to a Steeltex tire failure. These include complaints about tires that were properly identified as Steeltex models or contained the word "Steeltex," or all reasonable misspellings of the word, in the complaint description field. About 60% of these (550) cited tread separations. The numbers of VOQs alleging crashes, injuries, and deaths from tread separation failures are consistent with those reported in PE00–040.

Furthermore, ODI's review determined that as of November 2002, when the petition was submitted, the database contained 1,118 unique VOQs relating to Steeltex tire failures, less than 40% of the total asserted by the Petitioner. Of these, 672 alleged tread separations. Finally, as of May 2003, the ODI database contained 1,163 unique VOQs relating to Steeltex tire failures, 701 of which allege tread separation. These include 24 injury crashes for all tire failure modes, resulting in a total of six (6) deaths and 46 injuries. Tread separation was alleged as the failure mode in 14 of these crashes, which were responsible for all of the deaths and 30 of the injuries.

In summary, the Petitioners overstated the number of relevant VOQs received by ODI when PE00–040 was closed, when the petition was submitted, and in May 2003. Many of these discrepancies are apparently due to the Petitioners' inclusion of duplicate complaints, complaints that do not involve the tires at issue, and complaints that do not allege a tire failure.

Second Allegation: The Number of VOQs and the Number of Additional Complaints Establishes a Safety Defect Trend

The Petitioners characterize the VOQs in the ODI database and a purported 7,000 additional complaints that they have collected as evidence of a safety defect trend. This material has been furnished to ODI in 44 different submissions throughout the petition analysis period. Their submissions contain a mixture of consumer complaints, subrogation claims, police accident reports, and court filings.

The Petitioners have attributed most of their purported 7,000 complaints to certain unidentified insurance companies in the United States who have added their policyholders to the Petitioners' class action lawsuit. However, the Petitioners have stated that the majority of these remain anonymous, and therefore have not furnished details concerning these allegations to ODI. Instead, they furnished an Internet listing of 1,150 insurance companies. In view of the incomplete nature of this information, we have been unable to evaluate these complaints. Subsequently, the Petitioners submitted some insurance claim information from companies that have responded to their solicitations. In the cases reviewed by ODI, the events described are those in which the companies chose not to pursue a subrogation claim against Firestone. In one case, a submitted claim pertained to a non-subject Firehawk R4S tire.

Of those reports and complaints that ODI was able to examine, many were merely completed copies of the Petitioner's Class Action Initial Claim forms. Other "complaints" consist of excerpts from Internet chat room discussions and what appear to be handwritten notes of names and telephone numbers. In addition, the content of many of the "complaints" was of questionable value, and included complaints concerning dissatisfaction over the wear or ride of the subject tires and complaints pertaining to tires not at issue. Of note, many of these complaints originated from consumers whose claims for reimbursement had been denied by Firestone. After excluding VOQ summaries and duplicate records, ODI was able to identify 560 complaints. These included 161 complaints alleging a Steeltex tire failure, of which 99 alleged a tread separation.

[3] Rubber & Plastics News, *Lawyer: Document Shows BFS Skimped on Steeltex*, May 12, 2003.

ODI has monitored its VOQ database since the closing of PE00–040. This review has shown that over time, the monthly rate of Steeltex VOQs received by ODI has continually declined since the initial three-month peak that led to the opening of PE00–040. We note that the Petitioners have consistently overstated the contents of the ODI database by applying over-broad search criteria and then failing to properly identify relevant VOQs.

In order to obtain more relevant data, ODI contacted Firestone for its claims data, which it provided irrespective of whether the claim was paid. Firestone also provided warranty, personal injury, and lawsuit data through the end of 2002. ODI's analysis of this data is described in the Firestone Data section of this report.

Third Allegation: All Steeltex Tires Are Defective

The Petitioners allege that all of the subject Steeltex tires contain a safety-related defect. As evidence of this they have cited expert examination of some failed tires, information from an anonymous source regarding a Firestone cost reduction program, and alleged similarities between the Steeltex tires and the Wilderness AT tires, some of which were previously recalled by Firestone.

One of the Petitioners' consultants examined failed tires from a model year 1999 Class C motorhome belonging to the lead plaintiff in the class action lawsuit. This vehicle experienced tread separations on four of its six original tires over a one-year period. All were Steeltex R4S LT225/75R16 E tires manufactured at Firestone's Decatur, Illinois plant in 1998. The consultant identified the presence of brassy cords in the steel belts of the failed tires as evidence that they were improperly manufactured. The Petitioners provided a dissected exemplar tire from the same vehicle for ODI's examination, citing evidence of brassy cords and belt edge separation.

ODI did observe some evidence of brassy cords and localized belt edge separation in the tire presented by the Petitioners. However, ODI notes that some degree of brassy cords is not necessarily evidence of a rubber-wire adhesion defect. Moreover, the presence of moderate belt edge separation is not unusual in a steel belted radial tire that has been removed from service, and must be evaluated in the context of the tire use conditions and remaining tread. It is noteworthy that ODI's extensive investigation of the Firestone ATX and Wilderness AT tires did not find any evidence of a rubber-wire adhesion defect in those tires. The failure mechanism in the ATX and Wilderness AT tires was a cohesive failure (fatigue crack growth) through the rubber between the steel belts.[4]

In a letter dated April 26, 2003, the Petitioners submitted a copy of an anonymous letter to ODI with documents attached relating to a Firestone cost reduction initiative known as C95 that was launched in 1994 or 1995. The letter states that the intent of C95 was to obtain cost reductions without sacrificing performance and quality but that over time a negative effect on quality became evident in the warranty data. According to the letter, warranty rates of 0.5% or higher in individual tires (by factory and product code) should be cause for serious concern.

ODI has reviewed the anonymous letter and attached C95 documents submitted by the Petitioners. The second attachment is a 17-page document listing a number of changes to consider for corporate-wide implementation. The document does not relate specifically to the Steeltex tires. Firestone has stated that most of the items on the list were never implemented. While the changes that were considered include some items that could affect tire durability, the document is not in and of itself proof of a tire defect. The effect of the changes that were implemented in the Steeltex tires can ultimately be measured only by failure-related data. To that extent, ODI agrees with the author of the anonymous letter that such an analysis must be done separately on specific products and assembly plants. The only data that allow that type of analysis are the Firestone adjustments and claims.

ODI's analysis of Firestone's tread separation warranty adjustment data found that collectively the Steeltex tire tread separation adjustment rate is 0.04%. ODI also analyzed over 250 different combinations of individual tire product codes, plants, and production years and identified only one population of tires with a tread separation adjustment rate greater than 0.5%—the level of concern advanced in the anonymous letter.[5] The adjustment rate for this tire was 0.56% for tires produced in 1993, fell to 0.09% in 1994, and remained below 0.1% through 2002 production. The majority of subject Steeltex tires analyzed by ODI have tread separation adjustment rates that are less than 0.1%. Only a few tires have rates that are above 0.25%—half of the 0.5% figure mentioned above.

The Petitioners have alleged to ODI that the subject Steeltex tires are similar in construction and failure mechanism to the Wilderness AT tires investigated by ODI in EA00–023. The Petitioners have not identified any specific aspects of the designs that are similar. Moreover, the Wilderness AT tires are passenger tires designed for light-duty passenger car/truck operation, whereas the subject Steeltex light truck radial tires are designed for the greater rigors of use on heavier pickup trucks, SUVs, and vans. As noted above, there was no evidence of rubber-wire adhesion failures in the Wilderness AT tires that were recalled. Furthermore, ODI notes that belt-leaving belt tread separations may occur in any steel-belted radial tire and that the available data indicate that the risk of such failures is greater in light truck radial tires than in passenger tires.

Firestone Data

ODI reviewed thousands of Firestone property damage claims and found that between the closing of PE00–040 and the present, the subject tire tread separation claim rate grew from 28 to 31 claims per million tires produced (ppm).[6] Steeltex LRE claim rates for tread separation grew from 38 to 40 ppm. The four largest LRE tire sizes are associated with the majority of the property damage claims and 85% (28/33) of crashes involving injuries or deaths where the tire size could be identified.

With one exception, all crashes involving an injury fall within the 1997–1999 production years of this group of LRE tires.[7] Three tire populations within this group are associated with all fatal crashes occurring in the last five years: The R4S II LT245/75R16 E manufactured in Cuernavaca, Mexico and the A/T LT265/75R16 E and A/T LT265/75R16 D, both manufactured in Joliette, Quebec. However, a close examination of the frequencies and trends of the adjustment and claims data for these populations do not show evidence of

[4] More specifics concerning the tread separations examined in that investigation may be found in the EA00–023 Initial Determination Report.

[5] Tires with annual production volumes less than 10,000 tires were not included in this analysis because of the lack of statistical significance in the data and the absence of any injury crashes involving such tires.

[6] This figure is based on paid claims. Firestone furnished records of both paid and unpaid claims to ODI. Claims are not paid if the tire cannot be identified, was repaired improperly, shows obvious signs of abuse (*e.g.* run underinflated, impact breaks), or were found to be misapplied.

[7] A Decatur Steeltex Radial R4S LT235/85R16 E tire manufactured in 1993 was involved in a March 1996 fatal rollover of a large passenger van. Closer examination of this tire population showed no sign of a defect trend.

defect trends. The adjustment and claims rates are low in comparison to peer tires, and the incidence of injury crashes do not reflect a trend for any specific tire.

ODI analyzed all available data relating to the Decatur Steeltex R4S LT225/75R16 E tire installed on the lead plaintiff's motorhome. These tires were manufactured from 1995–1999 and were used as original equipment on some Ford full-size pick-up trucks and vans and sold as replacement tires. The tires were also frequently installed on Class C motorhomes on which overloading of an axle or specific wheel position is not unusual, which can contribute to tire failures. The warranty rates for these tires have been less than 0.1% from 1997 through 1999, and were never greater than 0.3%. There have been only two injury crashes associated with tread separations in these tires, both involving full-sized vans, and no fatalities.

As noted in PE00–040, the adjustment and claims tread separation rates for the subject tires are lower than those observed in peer LRE tires. This is true of the total population of subject tires, as well as individual tires analyzed by product code and assembly plant.

Discussion

The subject Steeltex tires, as defined in the Petition, represent an immense population of 39 million tires, manufactured over twelve years, and a wide variety of different tire line, size, load range, and plant combinations. The numbers of tread separation failures in those tires are functions of the large volume produced and the more severe service conditions associated with light truck radial tires, especially in the LRE category. Within this universe of experience, ODI identified a total of 54 crashes involving injury, resulting in 106 injuries and 13 deaths. Tread separation was alleged as the failure mode in 41 of these crashes, which were responsible for all of the deaths and 90 of the injuries.

These failures are distributed among a variety of different tires and assembly plants. About half of these incidents involve tires manufactured at the Joliette assembly plant, which is consistent with the number of subject tires produced there. Firestone's examination of some of the tires involved in these events has identified evidence of under-inflation, impact break, shoulder damage, un-repaired punctures, and improper repair. In addition, some of the tires that were sold as replacement tires were misapplied. While ODI has not been able to independently examine these tires, we note that the facts related to the causes of many of these events are in dispute.

ODI has monitored its VOQ database since it closed PE00–040, to identify Steeltex complaints and any related injury reports. In general, ODI has seen a continued decline in the rate of complaints received since October 2000, despite the publicity related to the Petition and associated class action lawsuit.

To better analyze specific tire lines of interest, ODI examined property damage claim and warranty adjustment data furnished by Firestone. These data are both the largest bodies of failure data and the only data available that contain the specific tire identification information necessary to conduct detailed analyses by tire line and assembly plant. The overall Steeltex claims rate rose from 28 to 31 ppm between the closing of PE00–040 and the present, while the overall adjustment rate remained constant at 0.04%. Some individual tire populations had higher rates of adjustments and claims; however, none were as high as those of the competitor LRE tires examined by ODI.

ODI examined the material submitted by the Petitioners in an effort to identify tire failures and crashes involving injury that could indicate the presence of a safety-related defect trend. Within this material, there were reports of 115 additional tire failures beyond those considered in PE00–040. These included three injury crashes, which led to four (4) injuries. Therefore, the fundamental statistics concerning the performance of the subject tires have changed little since PE00–040 was closed.

Conclusion

Based on ODI's analysis of information submitted in support of the Petition and additional complaint and claims information received since the closing of PE00–040, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject Steeltex tires at the conclusion of the investigation requested in the Petition. The statistics concerning the performance of these tires have changed little since the closing of PE00–040 and no specific defect trend has been identified. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, ODI has decided to deny the petition to reopen the Steeltex investigation. ODI will continue to monitor the performance of these tires for any signs that a defect trend may be developing.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: June 11, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–15191 Filed 6–16–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2003–14307 (Notice No. 03–8)]

Notice of Information Collection Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of information collection approval.

SUMMARY: This notice announces Office of Management and Budget approval of information collection requests (ICRs), for OMB No. 2137–0559, "Rail Carriers and Tank Car Tank Requirements"; and OMB No. 2137–0051, "Rulemaking, Exemption, and Preemption Requirements." These information collections have been extended until May 31, 2006.

DATES: The expiration date for these ICRs is May 31, 2006.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval of the following ICRs:

OMB Control Number: 2137–0559.

Title: Rail Carriers and Tank Car Tank Requirements.

OMB Control Number: 2137–0051.

Title: Rulemaking, Exemption, and Preemption Requirements.

These information collection approvals expire on May 31, 2006.

Issued in Washington, DC on June 12, 2003.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 03–15279 Filed 6–16–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34323]

Alabama Gulf Coast Railway LLC—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Alabama Gulf Coast Railway LLC (AGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) approximately 288.43 miles of rail line in Alabama and Mississippi. AGR proposes to: (1) Purchase BNSF's rail line between milepost 654.005 near Whitbury, MS, and milepost 776.1 near Gulf, AL, a distance of 122.095 miles; (2) lease BNSF's rail line between milepost 649.3 near Columbus, MS, and milepost 654.005 near Whitbury, MS, a distance of 4.705 miles; (3) acquire overhead trackage rights over BNSF's rail line between Amory, MS Yard, milepost 612.32, and Columbus, MS, milepost 649.3, a distance of 36.98 miles; (4) acquire by assignment BNSF's trackage rights over Norfolk Southern Railway Company (NS) line between Kimbrough, AL, and Mobile, AL (TASAD Switch), a distance of about 102.55 miles; [1] (5) lease BNSF's rail line between milepost 851.4 near M&T Chemical, AL, and milepost 873.5 at Mobile, AL; and (6) sublease certain facilities of the Terminal Railway Alabama State Docks. BNSF will retain overhead trackage rights on the rail lines that are purchased by AGR and trackage rights on the rail lines that are leased and subleased to AGR.

Because AGR's projected annual revenues will exceed $5 million, AGR certified to the Board on March 11, 2003, that, on that date, it had posted the required notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e).

AGR states that it intends to consummate the transaction on or after June 1, 2003, which is more than 60 days after it certified to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34323, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Ball Janik LLP, 1445 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: June 9, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14976 Filed 6–16–03; 8:45 am]

BILLING CODE 4915–00–P

[1] NS's predecessor Southern Railway Company granted BNSF's predecessor, the Burlington Northern Railroad Company, the above-described trackage rights. *See Burlington Northern Railroad Company-Trackage Rights Exemption—Southern Railway Company,* ICC Finance Docket No. 30739 (ICC served Nov. 5, 1985); and *Burlington Northern Railroad Company—Trackage Rights Exemption—Southern Railway Company,* ICC Finance Docket No. 30739 (Sub–No. 1) (ICC served May 5, 1994).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, July 16, 2003 from 2 p.m. EDT to 3 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 11, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15285 Filed 6–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, July 22, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1

Taxpayer Advocacy Panel will be held Tuesday, July 22, 2003 from 1 p.m. EDT to 2 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 11, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15286 Filed 6–16–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 116

Tuesday, June 17, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14266; Airspace Docket No. 03-ASO-1]

Establishment of Class E5 Airspace; Tunica, MS

Correction

In rule document 03–12817 beginning on page 28128 in the issue of Friday, May 23, 2003, make the following correction:

On page 28128, in the third column, the subject heading is corrected as set forth above.

[FR Doc. C3–12817 Filed 6–16–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 17, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designations or Nondesignations of Critical Habitat for 101 Plant Species From the Island of Oahu, HI; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI24

Endangered and Threatened Wildlife and Plants; Final Designations or Nondesignations of Critical Habitat for 101 Plant Species From the Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 99 of the 101 species known historically from the Hawaiian island of Oahu. A total of approximately 22,274 hectares (ha) (55,040 acres (ac)) of land on Oahu fall within the boundaries of the 303 critical habitat units designated for the 99 species. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. This rule also determines that designating critical habitat would not be prudent for two species (*Cyrtandra crenata* and *Pritchardia kaalae*). We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on July 17, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, PO Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of scarce conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation rather than biology, forces decisions to be made before complete scientific information is available, consumes enormous agency resources that would otherwise be applied to actions of much greater conservation benefit, and imposes huge social and economic costs. The Service believes that rational public policy demands serious attention to this issue in order to allow our limited resources to be applied to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. [Sidle (1987. Env. Manage.11(4):429–437) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."] Currently, only 306 species or 25% of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

With a budget consistently inadequate to fund all of the petition review, listing, and critical habitat designation duties required of us by statute, we have in the past prioritized our efforts and focused our limited resources on adding species in need of protection to the lists of threatened or endangered species. We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

In the List of Endangered and Threatened Plants (50 CFR 17.12(h)), there are 101 plant species that, at the time of listing, were reported from the island of Oahu and are at issue in this final rule. These species and their distribution by island are identified in Table 1 in the **Federal Register** notice proposing this critical habitat designation (67 FR 37107–37272; chart page 37108).

Fifty-seven of these species are endemic to the island of Oahu, while 44 species are reported from one or more other islands, as well as Oahu. Each of these species is described in more detail below in the section "Discussion of Plant Taxa." Although we considered designating critical habitat on Oahu for each of the 101 plant species, for the reasons described below, the final designation includes critical habitat for 99 of 101 plant species. We have designated critical habitat on other islands (Kauai, Niihau, Maui, and Molokai) for species that are also reported from Oahu. Critical habitat may be designated for the species that are also reported from the island of Hawaii in a subsequent rulemaking.

The Island of Oahu

The island of Oahu was formed from the remnants of two large shield volcanoes, the younger Koolau volcano to the east and the older Waianae volcano to the west (60 FR 51398; Service 1995a, 1996b). Their original shield volcano shape has been lost as a result of extensive erosion, and today these volcanoes are called mountains or ranges and consist of long, narrow ridges. The Koolau Mountains were built by eruptions that took place primarily along a northwest-trending rift zone and formed a range now approximately 60 kilometers (km) (37 miles (mi)) long (Service 1996b). Median annual rainfall for the Koolau Mountains varies from 100 to 710 centimeters (cm) (40 to 280 inches (in)), most of which is received at higher elevations along the entire length of the windward (northeastern) side (Service 1996b).

The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 32 km (20 mi) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (MacDonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains and receive much less rainfall, except for Mt. Kaala, the highest point on Oahu at an elevation of 1,225 meters (m) (4,020 feet (ft)) (Wagner *et al.* 1999). The median annual rainfall for the Waianae Mountains varies from 51 to 190 cm (20 to 75 in), with only the small summit area of Mt. Kaala receiving the highest amount (Service 1995a).

Discussion of the Plant Taxa

Species Endemic to Oahu

Abutilon sandwicense (No common name (NCN))

Abutilon sandwicense, a member of the mallow family (Malvaceae) and a short-lived perennial, is a shrub that grows to 3 m (5 ft) tall and is covered with short glandular hairs. This species is distinguished from others in the genus by the green or reddish-brown tipped petals that extend beyond the sepals (Bates 1999).

Abutilon sandwicense has been observed flowering in winter and spring. By summer, most plants have flowered, and the fruits have usually dried up by fall. Fruit capsules develop within six weeks. Although seedlings are often initially abundant, few plants appear to survive to maturity for unknown reasons (56 FR 55770). Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors.

Historically, *Abutilon sandwicense* was known from nearly the entire length of the Waianae Mountains, from Makaleha Valley to Nanakuli Valley. This species is now known from Huliwai Gulch, Kaawa Gulch, Kaimuhole Gulch, Palikea Gulch, Makaha Valley, Makaha-Waianae Kai Ridge, Makaleha Valley, Manuwai Gulch, Halona subdistrict, Mikilua subdistrict, Alaiheihe Gulch, and Nanakuli Valley on Federal, State, private, city, and county lands. The 30 known occurrences contain an estimated 253 to 263 individuals (Bates 1999; Hawaii Heritage Program (HINHP) Database 2001).

Abutilon sandwicense typically grows on steep slopes or gulches in dry to mesic lowland forest between 149 and 875 m (489 and 2,870 ft) elevation. Associated native species include *Antidesma pulvinatum* (hame), *Diospyros sandwicensis* (lama), *Elaeocarpus bifidus* (kalia), *Eugenia reinwardtiana* (nioi), *Hibiscus arnottianus* (kokio keokeo), *Metrosideros polymorpha* (ohia), *Myrsine lanaiensis* (kolea), *Nestegis sandwicensis* (olopua), *Pipturus albidus* (mamaki), *Pisonia* sp. (papala kepau), *Pittosporum* sp. (hoawa), *Pleomele* sp. (hala pepe), *Psydrax odorata* (alahee), *Rauvolfia sandwicensis* (hao), *Reynoldsia sandwicensis* (ohe), and *Sapindus oahuensis* (lonomea) (Bates 1999; HINHP Database 2001; Environmental Division of the U.S. Army (EDA), *in litt.* 2001).

The major threats to *Abutilon sandwicense* are competition from the nonnative plant species *Ageratina riparia* (hamakua pamakani), *Aleurites moluccana* (kukui), *Clidemia hirta* (Koster's curse), *Ficus microcarpa* (Chinese banyan), *Grevillea robusta* (silk oak), *Hyptis pectinata* (Comb hyptis), *Ipomoea* sp. (morning glory), *Kalanchoe pinnata* (air plant), *Leucaena leucocephala* (koa haole), *Melia azedarach* (chinaberry), *Melinis minutiflora* (molasses grass), *Montanoa hibiscifolia* (tree daisy), *Oplismenus hirtellus* (basketgrass), *Panicum maximum* (Guinea grass), *Passiflora suberosa* (huehue haole), *Pimenta dioica* (allspice), *Psidium cattleianum* (strawberry guava), *Psidium guajava* (guava), *Rivina humilis* (coral berry), *Schinus terebinthifolius* (Christmasberry), *Syzygium cumini* (Java plum), and/or *Toona ciliata* (Australian red cedar); fire; damage from the black twig borer (*Xylosandrus compactus*) and Chinese rose beetle (*Adoretus sinicus*); habitat degradation and/or destruction by feral pigs (*Sus scrofa*) and goats (*Capra hircus*); and trampling by feral cattle (*Bos taurus*) (Service 1998b; 56 FR 55770).

Alsinidendron obovatum (NCN)

Alsinidendron obovatum, a member of the pink family (Caryophyllaceae) and a short-lived perennial, is a branching subshrub growing to 3 ft (1 m) tall with thick, somewhat fleshy leaves. This species and *Alsinidendron trinerve* can be distinguished from other members of the genus by their shrubby habit and fleshy purple sepals surrounding the capsule. This species differs from *A. trinerve* in having a more crowded inflorescence (flowering part of plant) with shorter peduncles (flower stalks) and sepals with a rounded tip (Wagner *et al.* 1999).

Alsinidendron obovatum generally flowers after about two years of growth. Plants flower and fruit year round, but flowering is usually heavier in winter and spring depending on the level of precipitation. Plants survive three to six years, unless there are drought conditions. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (56 FR 55770).

Historically, *Alsinidendron oboyatum* was known from the northern and southern ends of the Waianae Range. This species remains in Keawapilau

Gulch, Kahanakaiki Gulch, Makaleha, Kapuna Gulch, and Pahole Gulch on Federal and State lands. The 6 known occurrences contain about 8 to 10 individuals (EDA Database 2001; HINHP Database 2001; Wagner *et al.* 1999).

Alsinidendron obovatum typically grows on ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* between 476 and 943 m (1,561 and 3,093 ft) elevation. Associated native species include *Alyxia oliviformis* (maile), *Antidesma platyphyllum* (hame), *Bidens torta* (kookoolau), *Cibotium chamissoi* (hapuu), *Coprosma sp.* (pilo), *Hedyotis terminalis* (manono), *Ilex anomala* (kawau), *Machaerina* sp. (uki), *Peperomia* sp. (ala ala wai nui), *Perrottetia sandwicensis* (olomea), *Pipturus* sp. (mamaki), *Psydrax odorata*, or the endangered *Cyanea longiflora* (haha) (HINHP Database 2001; EDA, in litt. 2001).

The major threats to *Alsinidendron obovatum* are competition from the aggressive nonnative plant species *Blechnum appendiculatum* (NCN), *Clidemia hirta*, *Grevillea robusta*, *Melinus minutiflora*, *Paspalum conjugatum* (Hilo grass), *Psidium cattleianum*, *Rubus argutus* (prickly Florida blackberry), *Schinus terebinthifolius*, and/or *Stachytarpheta dichotoma* (owi); habitat degradation by feral pigs; trampling by humans; rockslides; and the small number of occurrences and individuals, which make the species highly vulnerable to extinction from random environmental events (Service 1998b; 56 FR 55770).

Alsinidendron trinerve (NCN)

Alsinidendron trinerve, a member of the pink family (Caryophyllaceae) and a short-lived perennial, is very similar in appearance to *A. obovatum* but differs in that it has a more open inflorescence with peduncles more than 2 cm (0.8 in) long and sepals with an acute tip (Wagner *et al.* 1999).

Alsinidendron trinerve flowers and fruits throughout the year with the possible exception of fall (56 FR 55770). Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors.

Historically, *Alsinidendron trinerve* was known from the north-central and southern Waianae Mountains. This species is known to be in Makaleha Gulch, on Mt. Kaala and Puu Kalena on Federal and State lands. The 13 known occurrences total between 18 and 34 individuals (EDA Database 2001; HINHP Database 2001).

Alsinidendron trinerve typically grows on slopes in wet forest or the wetter portions of diverse mesic forest dominated by *Metrosideros polymorpha* and *Ilex anomala* or *Metrosideros polymorpha* montane wet forest between 833 and 1,233 m (2,732 and 4,044 ft) elevation. Associated native species include *Broussaisia arguta* (kanawao), *Coprosma ochracea* (pilo), *Diplazium sandwichianum* (hoio), *Gunnera* sp. (apeape), *Hedyotis* sp. (NCN), *Machaerina* sp., *Nothoperanema rubiginosa*, *Peperomia* sp., *Perrottetia sandwicensis*, *Phyllostegia* sp. (NCN), *Pipturus albidus*, or *Vaccinium* sp. (ohelo) (HINHP Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

The major threats to *Alsinidendron trinerve* are competition from the aggressive nonnative plant species *Buddleia asiatica* (butterfly bush), *Clidemia hirta*, *Kalanchoe pinnata*, and *Rubus argutus*; habitat degradation by feral pigs; trampling by humans along trails; and the small number of extant individuals, which makes the species highly vulnerable to extinction from random environmental events (Service 1998b; 56 FR 55770).

Chamaesyce celastroides var. *kaenana* (Akoko)

Chamaesyce celastroides var. *kaenana*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is a low-growing or upright shrub to 5 ft (1.5 m) tall with milky sap. Its leaves fall off during the dry season, are mostly hairless, and are arranged in two opposite rows along the stem. This species is distinguished from other members of the genus in the area in which it grows in that it is a woody shrub rather than an herb or small subshrub (Koutnik and Huft 1999).

Chamaesyce celastroides var. *kaenana* has been observed flowering and fruiting throughout the year, probably in response to precipitation. Fruits mature in three to four weeks and plants live from five to 10 years. No additional information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (56 FR 55770).

Historically, *Chamaesyce celastroides* var. *kaenana* was known from the northwestern end of the Waianae Mountains as well as from one collection from the southeastern end of the Koolau Mountains. This taxon remains at Kaena Point, Keawaula, Alau Gulch, Waianae Kai, and Kahanahaiki on State land and land under Federal jurisdiction. The 15 known occurrences contain 569 individuals (HINHP Database 2001; Koutnik and Huft 1999).

Chamaesyce celastroides var. *kaenana* typically grows in coastal dry shrubland on windward talus slopes, leeward rocky cliffs, open grassy slopes, or on vegetated cliff faces between sea level and 862 m (0 and 2,827 ft) elevation. Associated native species include *Artemisia australis* (ahinahina), *Boerhavia* sp. (alena), *Chamaesyce celastroides* var. *amplectans* (akoko), *Dodonaea viscosa* (aalii), *Gossypium tomentosum* (mao), *Heteropogon contortus* (pili grass), *Jacquemontia ovalifolia* ssp. *sandwicensis* (pauohiiaka), *Lipochaeta lobata* (nehe), *Myoporum sandwicense* (naio), *Plumbago zeylanica* (iliee), *Psilotum nudum* (moa), *Psydrax odorata*, *Santalum* sp. (iliahi), *Sida fallax* (ilima), or *Waltheria indica* (uhaloa) (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Chamaesyce celastroides* var. *kaenana* are competition from the nonnative plant species *Acacia confusa* (Formosan koa), *Grevillea robusta*, *Hyptis pectinata*, *Leucaena leucocephala*, *Melinis repens* (natal redtop), *Panicum maximum*, *Pluchea carolinensis* (sourbush), and/or *Schinus terebinthifolius*; fire; and effects of recreational activities (Service 1998b; 56 FR 5577).

Chamaesyce deppeana (Akoko)

Chamaesyce deppeana, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is an erect subshrub up to 1.2 m (4 ft) tall with fuzzy branches. This species is distinguished from others in the genus by the following combination of characters: Leaves arranged in two rows on opposite sides of the branches, leaves glabrous, leaf apex notched, leaf margin toothed, and cyathia (flower cluster) width (Koutnik and Huft 1999).

Chamaesyce deppeana has been observed in flower in May and September. No further information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Chamaesyce deppeana* was known only from southern Oahu. Because the few collections that were made were collected prior to the 20th century, it was thought to be extinct. In 1986, Joel Lau and Sam Gon of The Nature Conservancy of Hawaii (TNCH) rediscovered *C. deppeana* on State land in the southern Koolau Mountains of Oahu in Nuuanu Pali Wayside State Park near the Pali Lookout, a popular tourist attraction. About 50 individuals grow near there (HINHP Database 2001; Koutnik and Huft 1999).

The habitat of the only known occurrence of *Chamaesyce deppeana* is windward-facing ridge crests, cliff faces, and mixed native cliffs with such plant species as *Bidens sandvicensis* (kookoolau) or *Metrosideros polymorpha* between 274 and 661 m (899 and 2,168 ft) elevation (HINHP Database 2001).

The major threats to the single known occurrence of *Chamaesyce deppeana* are competition for water, space, light, and nutrients with the nonnative plant species *Casuarina equisetifolia* (common ironwood), *Paspalum conjugatum*, and *Schinus terebinthifolius*; and extinction due to naturally caused events because of the limited number of individuals and restricted range. Fire and impact by humans threaten the species as well (HINHP Database 2001; Service 1998b; 59 FR 14482).

Chamaesyce herbstii (Akoko)

Chamaesyce herbstii, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is a small tree ranging from 3 to 8 m (10 to 26 ft) tall with thin, leathery leaves arranged in pairs on the same plane. This species is distinguished from others in the genus by the length of the flowering stalk and the color of the angular fruits (Koutnik and Huft 1999).

Chamaesyce herbstii has been observed in flower year-round in January, May, July, September, and October. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Chamaesyce herbstii* was known from scattered occurrences in the northern and central Waianae Mountains on the island of Oahu. Currently, this species is known from 4 occurrences with between 162 and 164 individuals in the central and northern Waianae Mountains, South Ekahanui Gulch, Pahole (Kukuiula) Gulch, Kapuna Gulch, and West Makaleha-Central Makaleha. These occurrences are found on private and State lands (Geographic Decision Systems International (GDSI) 2001; HINHP Database 2001).

Chamaesyce herbstii typically grows in shaded gulch bottoms and slopes in mesic *Acacia koa-Metrosideros polymorpha* lowland forests or diverse mesic forests at elevations between 435 and 886 m (1,427 and 2,906 ft). Associated plant species include *Antidesma platyphyllum*, *Coprosma* sp., *Diplazium sandwichianum*, *Hedyotis* sp., *Hibiscus arnottianus* var. *arnottianus* (kokio keokeo), *Melicope* sp. (alani), *Morinda trimera* (noni), *Pipturus albidus*, *Pouteria sandwicensis* (alaa), *Pteralyxia* sp. (kaulu), *Urera glabra* (opuhe), or *Xylosma* sp. (maua) (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Chamaesyce herbstii* are habitat degradation and/or destruction by feral pigs; competition with nonnative plant species such as *Clidemia hirta*, *Grevillea robusta*, *Passiflora suberosa*, *Psidium cattleianum*, and *Schinus terebinthifolius*; potential fire; a risk of extinction from naturally occurring events (such as hurricanes) and/or reduced reproductive vigor due to the small number of remaining occurrences (HINHP Database 2001; Service 1998b; 61 FR 53089).

Chamaesyce kuwaleana (Akoko)

Chamaesyce kuwaleana, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is an erect shrub 20 to 90 cm (8 to 36 in) tall with leaves arranged in two rows along the stem. This species is distinguished from other species of the genus in its habitat by its stalked, oval to rounded leaves with untoothed margins and by the bent stalk supporting the small fruit capsule (Koutnik and Huft 1999).

Chamaesyce kuwaleana bears fruit in spring and early summer and has usually finished fruiting by fall. No further information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (56 FR 55770).

Historically, *Chamaesyce kuwaleana* was known from the central Waianae Mountains and Moku Manu Island off the eastern coast of Oahu. This species is currently known only from Kauaopuu Peak, Mauna Kuwale, Waianae Kai-Lualualei Ridge, Puu Kailio, and Kauaopuu in the Waianae Mountains, on Federal and State lands. The 5 occurrences contain around 2,000 individuals (GDSI 2001; HINHP Database 2001; Koutnik and Huft 1999).

Chamaesyce kuwaleana typically grows in thin guano soil on basaltic rock, on arid, exposed volcanic cliffs, on dry or mesic rocky ridges, or on sparsely vegetated slopes between sea level and 596 m (0 to 1,955 ft) elevation. Associated native species include *Artemisia* sp. (hinahina), *Bidens* sp. (kookoolau), *Carex* sp. (NCN), *Chamaesyce* sp. (akoko), *Dodonaea viscosa*, *Heteropogon contortus*, *Plectranthus parviflorus* (ala ala wai nui), *Schiedea* sp. (NCN), or *Sida fallax* (HINHP Database 2001; Koutnik and Huft 1999; Service 1998b).

The major threats to *Chamaesyce kuwaleana* are competition from the nonnative plant species *Cenchrus ciliaris* (buffelgrass), *Kalanchoe pinnata*, *Leucaena leucocephala*, *Melinis repens*, *Opuntia* sp. (prickly pear), and *Schinus terebinthifolius*; fire; two-spotted leafhoppers (*Saphonia rufofascia*); and the small number of occurrences, which makes the species highly vulnerable to extinction from random environmental events (HINHP Database 2001; Service 1998b; 56 FR 55770).

Chamaesyce rockii (Akoko)

Chamaesyce rockii, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is usually a compact shrub or sometimes a small tree typically ranging from 0.5 to 2 m (1.6 to 6.6 ft) tall, but in protected sites it has been known to reach 4 m (13 ft) in height. This species differs from others in the genus in that it has large, red, capsular fruit (Koutnik and Huft 1999).

Chamaesyce rockii has been observed fruiting in February. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Chamaesyce rockii was known historically from scattered occurrences along the Koolau Mountains on the island of Oahu. Today, 20 occurrences are located in Waikakalaua Gulch, Kaukonahua-Kahana summit area, Punaluu-Kaluanui, Peahinaia Trail Laie-Kaipapau-Kawai Nui junction area, Puu Keahiakahoe, Halawa Trail, summit ridge between Aiea Ridge Trail and Waimano Trail, Ewa Forest Reserve, Halemano Gulch, Kawaiiki-Opaeula Ridge, Puu Kainapuaa, Kawai Iki Stream, Maakua Gulch, and Kaipapau-Loloa Ridge, on State, Federal, and private lands. Currently the total number of plants is estimated to be between 641 and 773 (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Chamaesyce rockii typically grows on gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* (uluhe) forest and shrubland between 208 and 871 m (682 and 2,857 ft) in elevation. Associated plant species include *Bidens* sp., *Antidesma platyphyllum*, *Broussaisia arguta*, *Cibotium* sp. (hapuu), *Coprosma longifolia* (pilo), *Diplopterygium pinnatum* (uluhe lau nui), *Dubautia laxa* (naenae pua melemele), *Hedyotis terminalis*, *Machaerina* sp., *Melicope* spp., *Myrsine juddii* (kolea), *Psychotria* spp. (kopiko), and *Wikstroemia* sp. (akia) (HINHP Database 2001).

The primary threats to *Chamaesyce rockii* are habitat degradation and/or destruction by feral pigs; trail clearing;

potential impacts from military activities; and competition with nonnative plant species such as *Clidemia hirta, Leptospermum scoparium* (tea tree), *Paspalum conjugatum, Psidium cattleianum,* and *Pterolepis glomerata* (NCN) (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyanea acuminata (Haha)

Cyanea acuminata, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub 0.3 to 2 m (1 to 6.6 ft) tall with inversely lance-shaped to narrowly egg-shaped or elliptic leaves. This species is distinguished from others in this endemic Hawaiian genus by the color of the petals and fruit and the length of the calyx (the outer of two series of floral leaves) lobes, flowering stalk, and leaf stalks (Lammers 1999).

Cyanea acuminata has been observed fruiting in February and November. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Cyanea acuminata* was known from 31 scattered occurrences in the Koolau Mountains of Oahu. Currently, fewer than 200 plants are known from 20 occurrences on private, city, county, State, and Federal lands on Puu o Kona, near South Kaukonahua Stream, in Halemano Gulch, Kawai Iki Gulch, near Poamoho Stream, on Schofield-Waikane Trail, Helemano-Punaluu summit ridge, Konahuanui, in Kamana Nui Valley, Pukele, in Makaua Gulch, on Niu-Waimanalo summit ridge, Waahila Ridge, Kaipapau, Puu Keahia Kahoe, Kaala, Kaluanui, Pia Gulch, Makaleha, and Maakua Gulch (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Cyanea acuminata typically grows on slopes, ridges, or stream banks between 216 and 1,208 m (708 and 3,962 ft) elevation. The plants are found in *Metrosideros polymorpha-Dicranopteris linearis, Acacia koa-M. polymorpha* wet or mesic forest or shrubland, or *Diospyros sandwicensis-M. polymorpha* lowland mesic forest with one or more of the following associated native species: *Antidesma* sp. (hame), *Broussaisia argutas, Chamaesyce* sp., *Charpentiera* sp. (papala), *Cyrtandra* spp. (hai wale), *Diplazium sandwichianum, Dryopteris sandwicensis* (palapalaia), *Dubautia laxa, Freycinetia arborea* (ieie), *Hibiscus* sp. (aloalo), *Hedyotis* sp., *Ilex anomala, Labordia* sp. (kamakahala), *Machaerina* sp., *Melicope* spp., *Perrottetia sandwicensis, Phyllostegia* sp., *Pipturus albidus, Pisonia* sp., *Psychotria* sp., *Sadleria* sp. (amau), *Syzygium sandwicensis, Touchardia latifolia* (olona), or *Wikstroemia* sp. (ohia ha) (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea acuminata* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; potential predation by rats (*Rattus rattus*); competition with the nonnative plant species *Ageratina adenophora* (Maui pamakani), *Aleurites moluccana, Clidemia hirta, Cordyline fruticosa* (ti), *Dioscorea* sp. (yam), *Erigeron karvinskianus* (daisy fleabane), *Musa* sp. (banana), *Passiflora suberosa, Rubus argutus,* and *Schinus terebinthifolius*; a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyanea crispa (NCN)

Cyanea crispa, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with leaves clustered at the ends of succulent stems. It is distinguished from other species in this endemic Hawaiian genus by its leaf shape, distinct calyx lobes, and the length of the flowers and stalks of flower clusters (Lammers 1999).

Cyanea crispa was observed in flower in April 1930. It was more recently observed fruiting in June and September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b; 59 FR 14482).

Historically, *Cyanea crispa* was known from scattered locations throughout the upper elevations of the Koolau Mountains of Oahu from Kaipapau Valley to Waialae Iki Ridge. This species is now known from Federal, State, city, county, and private lands in Hidden Valley, Palolo Valley, Kapakahi Gulch, Moanalua Valley, Wailupe, Koolau Summit Trail, Kawaipapa Gulch, Maakua Gulch, Kaipapa Gulch, Maunawili, and Pia Valley. There are a total of 11 occurrences containing a total of 56 individual plants (EDA Database 2001; HINHP Database 2001).

Cyanea crispa is found in habitats ranging from steep, open mesic forests to gentle slopes or moist gullies of closed wet forests and stream banks, at elevations between 56 and 959 m (184 and 3,146 ft). Associated native plant species include *Antidesma platyphylla, Boehmeria grandis* (akolea), *Broussaisia argutus, Christella cyatheoides* (kikawaio), *Cibotium chamissoi, Cyrtandra* spp., *Diospyros* sp. (lama), *Dubautia* sp. (naenae), *Metrosideros polymorpha, Perrottetia sandwicensis, Pipturus albidus, Pisonia umbellifera* (papala kepau), *Psychotria* sp., or *Touchardia latifolia* (HINHP Database 2001; Service 1998b).

The major threats to *Cyanea crispa* are habitat alteration and predation by feral pigs; competition with the nonnative plant species *Arthrostemma ciliatum* (NCN), *Clidemia hirta, Psidium cattleianum, Psidium guajava, Pterolepis glomerata, Rubus rosifolius* (thimbleberry), *Schinus terebinthifolius, Setaria palmifolia* (palm grass), and *Zingiber zerumbet* (awapuhi); and extinction due to naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals, their limited gene pool, and restricted distribution (Service 1998b; 59 FR 14482).

Cyanea grimesiana ssp. *obatae* (Haha)

Cyanea grimesiana ssp. *obatae*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a shrub, usually unbranched, growing from 1 to 3.2 m (3.3 to 10.5 ft) tall with wide, deeply lobed leaves. This subspecies can be distinguished from the other two by its short, narrow calyx lobes that are not fused or overlapping (Lammers 1999).

Cyanea grimesiana ssp. *obatae* flowers and fruits year round, depending on rainfall. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (59 FR 32932).

Historically, *Cyanea grimesiana* ssp. *obatae* was known from the southern Waianae Mountains from Puu Hapapa to Kaaikukai. This taxon is known to be extant in Kaluaa Gulch, Ekahanui Gulch, North Palawai Gulch, and Pahole Gulch. The occurrences are on State and private lands. A total of 8 occurrences are known that contain 16 individuals (GDSI 2000; HINHP Database 2001; Lammers 1999).

Cyanea grimesiana ssp. *obatae* typically grows on steep, moist, shaded slopes in diverse mesic to wet lowland forests between 404 and 1,075 m (1,325 and 3,528 ft) elevation. Associated native species include *Acacia koa, Antidesma platyphyllum, Chamaesyce* sp., *Charpentiera obovata* (papala), *Cibotium chamissoi, Claoxylon sandwicense* (poola), *Coprosma* sp., *Cyanea membranacea* (haha), *Cyrtandra waianaeensis* (hahala), *Diplazium sandwichianum, Dryopteris unidentata* (akole), *Dubautia* sp., *Freycinetia arborea, Hedyotis acuminata* (au), *Hedyotis terminalis, Metrosideros polymorpha, Myrsine lessertiana* (kolea lau nui), *Nothocestrum* sp. (aiea), *Perrottetia sandwicensis, Pipturus albidus, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi* (kopiko), *Rumex* sp. (sorrel), *Selaginella arbuscula* (lepelepe a moa), and *Streblus pendulinus* (aiai) (HINHP Database 2001; Lammers 1999; EDA, *in litt.* 2001).

The major threats to *Cyanea grimesiana* ssp. *obatae* are habitat degradation by feral pigs; competition from nonnative plant species such as *Ageratina riparia, Aleurites moluccana, Blechnum appendiculatum, Buddleia asiatica, Clidemia hirta, Christella parasitica* (NCN), *Lantana camara* (lantana), *Morella faya* (firetree), *Paspalum conjugatum, Passiflora suberosa, Psidium cattleianum, Rubus rosifolius, Schinus terebinthifolius, Setaria palmifolia,* and *Toona ciliata*; predation of seeds or fruits by introduced slugs; and extinction caused by naturally occurring events and/or reduced reproductive vigor due to the small number of extant individuals (HINHP Database 2001; Service 1998b; 59 FR 32932).

Cyanea humboltiana (Haha)

Cyanea humboltiana, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub 1 to 2 m (3.2 to 6.6 ft) tall with woody stems and inversely egg-shaped to broadly elliptic leaves. The leaf edges are hardened and have shallow, ascending, rounded teeth. This species differs from others in this endemic Hawaiian genus by the downward bending flowering stalk and the length of the flowering stalk (Lammers 1999).

Cyanea humboltiana has been observed in flower from September through January. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Cyanea humboltiana was known historically from 17 occurrences from the central portion to the southern end of the Koolau Mountains of Oahu. Currently, between 133 and 239 plants are known from 9 occurrences at Konahuanui summit, Moanalua-Kaneohe summit, Wailupe summit, Poamoho Trail, Opaeula Gulch, Maakua Gulch, Kaluanui, and Lulumahu Gulch. These occurrences are on Federal, private, State, city, and county lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Cyanea humboltiana is usually found in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland between 261 and 959 m (856 and 3,146 ft) elevation. Associated native plant species include *Acacia koa, Bobea elatior* (ahakea), *Broussaisia arguta, Cibotium chamissoi, Dubautia laxa, Hedyotis terminalis, Ilex anomala, Machaerina angustifolia* (uki), *Melicope* sp., *Phyllostegia* sp., *Psychotria mariniana* (kopiko), *Sadleria* sp., *Scaevola mollis* (naupaka kuahiwi), *Syzygium sandwicensis, Wikstroemia* sp., and ferns (HINHP Database 2001).

The major threats to *Cyanea humboltiana* are habitat degradation and/or destruction by feral pigs; potential predation by rats; competition with the nonnative plant species *Axonopus fissifolius* (narrow-leaved carpet grass), *Clidemia hirta, Erigeron karvinskianus, Psidium cattleianum,* and *Pterolepis glomerata,* and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining occurrences. The Konahuanui summit occurrence is also threatened by trampling by hikers (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyanea koolauensis (Haha)

Cyanea koolauensis, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub 1 to 1.5 m (3.5 to 5 ft) tall with woody stems and linear to narrowly elliptic leaves with a whitish underside. The leaf edges are hardened with shallow, ascending, rounded teeth. *Cyanea koolauensis* is distinguished from other species in this endemic Hawaiian genus by the leaf shape and width; the whitish green lower leaf surface; and the lengths of the leaf stalks, calyx lobes, and hypanthium (base of flower) (Lammers 1999).

Cyanea koolauensis has been observed in flower and fruit during the months of May through August. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Cyanea koolauensis was known historically from 27 scattered occurrences throughout the Koolau Mountains on Oahu. Currently, 42 occurrences totaling fewer than 80 plants are known from the Waimea-Malaekahana Ridge to Hawaii Loa Ridge in the Koolau Mountains. These occurrences are on private, city, county, State, and Federal lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Cyanea koolauensis is usually found on slopes, stream banks, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest or shrubland at elevations between 163 and 959 m (535 and 3,146 ft). Associated native plant species include *Acacia koa, Antidesma platyphyllum, Bidens* sp., *Bobea elatior, Broussaisia arguta, Cibotium* sp., *Diplopterygium pinnatum, Dubautia* sp., *Hedyotis* sp., *Machaerina* sp., *Melicope* sp., *Pittosporum* sp., *Pritchardia martii* (loulu hiwa), *Psychotria mariniana, Sadleria* sp., *Scaevola* sp. (naupaka), *Syzygium sandwicensis,* or *Wikstroemia* sp. (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea koolauensis* are habitat destruction by feral pigs; potential impacts from military activities; trail clearing; potential predation by rats; competition with the aggressive nonnative plant species *Clidemia hirta, Heliocarpus popayanensis* (moho), *Psidium cattleianum,* and *Pterolepis glomerata;* trampling by hikers; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyanea longiflora (Haha)

Cyanea longiflora, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub 1 to 3 m (3.5 to 10 ft) long with woody stems and elliptic or inversely lance-shaped leaves. Mature leaves have smooth or hardened leaf edges with shallow, ascending, rounded teeth. *Cyanea longiflora* differs from others in this endemic Hawaiian genus by the fused calyx lobes (Lammers 1999).

Cyanea longiflora has been observed in flower in February, April, and May and in fruit in August. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Cyanea longiflora was known historically from five occurrences in the Waianae Mountains and six occurrences in the Koolau Mountains of Oahu. Currently, 4 occurrences with less than 217 individuals of this species are known on State, Federal, city, county, and private lands on Makaha-Waianae Kai Ridge, Makaha Valley, Kapuna Gulch, and Pahole Gulch in the Waianae Mountains (GDSI 2001; HINHP Database 2001; Service 1998b).

Cyanea longiflora is usually found on steep slopes, bases of cliffs, or ridge

crests in mesic *Acacia koa-Metrosideros polymorpha* lowland forest usually between 221 and 1,191 m (725 and 3,906 ft) elevation. Associated native plant species include *Antidesma* sp., *Cibotium* sp., *Coprosma* sp., *Dicranopteris linearis, Psychotria* sp., *Schiedea* sp., or *Syzygium sandwicensis* (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea longiflora* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; potential predation by rats; competition with the nonnative plant species *Psidium cattleianum* and *Rubus arguta*; potential fire; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining, widely dispersed occurrences (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyanea pinnatifida (Haha)

Cyanea pinnatifida, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a shrub, usually unbranched, growing from 0.8 to 3.0 m (2.6 to 10 ft) tall, with deeply lobed leaves. This species differs from other members of the genus on Oahu by its leaves, which are deeply cut into two to six lobes per side. The only other member of the genus on Oahu with lobed leaves has 9 to 12 lobes per side (Lammers 1999).

Cyanea pinnatifida has been observed flowering in August. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Cyanea pinnatifida* was known from the central Waianae Mountains. The last known wild individual died in August 2001 (HINHP Database 2001; Lammers 1999; Trae Menard, TNCH, pers. comm., 2001). Currently, this species is known only from individuals under propagation at the University of Hawaii's Lyon Arboretum and the National Tropical Botanical Garden (G. Koob, pers. comm., 2002).

Cyanea pinnatifida typically grows on steep, wet, rocky slopes in diverse mesic forest between 450 and 881 m (1,476 and 2,890 ft) elevation. Associated native plant species include *Canavalia* sp. (awikiwiki), *Diplazium sandwichianum, Pipturus albidus, Pisonia sandwicensis* (aulu), *Pisonia umbellifera, Psychotria* sp., *Strongylodon ruber* (nunuiiwi), and native ferns (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea pinnatifida* are competition from the nonnative plant species *Aleurites moluccana, Blechnum appendiculatum, Clidemia hirta, Passiflora suberosa, Psidium cattleianum, Psidium guajava*, and *Toona ciliata*; habitat degradation by feral pigs; predation by slugs; and trampling by humans on or near trails (Service 1998b; 56 FR 55770).

Cyanea st-johnii (Haha)

Cyanea st-johnii, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with a woody stem 30 to 60 cm (12 to 24 in) long and lance-shaped to inversely lance-shaped leaves. The leaf edges are thickened, are smoothly toothed, and curl under. This species is distinguished from others in this endemic Hawaiian genus by the length of the leaves, the distinctly curled leaf margins, and the petal color (Lammers 1999).

Cyanea st-johnii has been observed in flower in July through September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Cyanea st-johnii was known historically from 11 occurrences in the central and southern Koolau Mountains of Oahu. Currently, 57 plants are known from 7 occurrences at Waimano Trail summit to Aiea Trail summit, the summit ridge crest between Manana and Kipapa Trails, between the summit of Aiea and Halawa trails, Summit Trail south of Poamoho Cabin, and Wailupe-Waimanalo summit ridge. These occurrences are found on city, county, private, and State lands, as well as lands under Federal jurisdiction (GDSI Database 2000; HINHP Database 2001).

Cyanea st-johnii typically grows on wet, windswept slopes and ridges between 415 and 959 m (1,361 and 3,146 ft) elevation in *Metrosideros polymorpha* mixed lowland shrubland or *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. Associated native plant species include *Alyxia oliviformis, Antidesma* sp., *Bidens macrocarpa* (kookoolau), *Broussaisia arguta, Chamaesyce olusiifolia* (akoko), *Cibotium* sp., *Dubautia laxa, Freycinetia arborea, Hedyotis* sp., *Labordia* sp., *Machaerina angustifolia, Melicope* sp., *Psychotria* sp., *Sadleria pallida* (amau), *Scaevola mollis*, or *Syzygium sandwicensis* (HINHP Database 2001).

The major threats to *Cyanea st-johnii* are habitat degradation and/or destruction by feral pigs; potential predation by rats; predation by slugs and snails; competition with the nonnative plant species *Andropogon virginicus* (broomsedge), *Axonopus fissifolius, Clidemia hirta*, and *Sacciolepis indica* (Glenwood grass); and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining occurrences and individuals. The plants between the summit of Aiea and Halawa Trail are also threatened by trampling by hikers (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyanea superba (NCN)

Cyanea superba, of member the bellflower family (Campanulaceae) and a short-lived perennial, is morphologically very different from its closest relatives. It grows to 6 m (20 ft) tall and has a terminal rosette of large leaves; each rosette is 50 to 100 cm long (20 to 40 in) and 10 to 20 cm (4 to 8 in) wide atop a single, unbranched trunk (Lammers 1999).

The flowering season of *Cyanea superba* varies from year to year depending on precipitation. It ranges from late August to early October. Generally, flowering is at its peak in early to mid-September. Fruits have been known to mature in two to five months, depending on climatic conditions (Service 1998b). Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors.

Historically, *Cyanea superba* was collected from the gulches of Makaleha on Mt. Kaala in the Waianae Mountains of Oahu. Currently, there are no natural occurrences and an outplanted population of 140 individuals on State and Federal lands in the Waianae Mountains (EDA Database 2001; GDSI 2001; HINHP Database 2001; Service 1998b; K. Kawela, pers. comm., 2003, M. Keir, pers. comm., 2001).

Cyanea superba grows in the understory on sloping terrain on well drained rocky substrate within mesic forest between 232 and 872 m (761 and 2,860 ft) in elevation with one or more of the following associated native species: *Diospyros* sp., *Hedyotis terminalis, Metrosideros polymorpha, Nestegis sandwicensis, Pisonia brunoniana* (papala kepau), *Psychotria* sp., and *Xylosma* sp. (HINHP Database 2001).

The major threats to *Cyanea superba* are degradation of its habitat due to competition with the nonnative plant species *Aleurites moluccana, Melinis minutiflora, Psidium cattleianum*, and *Schinus terebinthifolius*; wildfires generated in the nearby military firing range; habitat degradation by feral pigs;

a restricted range that makes it vulnerable to any local environmental disturbance or single incident that could destroy a significant percentage of the known individuals; and the limited gene pool that may depress reproductive vigor (HINHP Database 2001; Service 1998b; 56 FR 46235).

Cyanea truncata (Haha)

Cyanea truncata, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched or sparsely branched shrub covered with small sharp prickles. Its oval leaves are wider above the middle and lined with hardened teeth along the margins. *Cyanea truncata* is distinguished from other members of this genus by the length of the flower cluster stalk and the size of the flowers and flower lobes (Lammers 1999).

Cyanea truncata was observed in flower in December 1919 and November 1980, the last time the species was observed at that population before feral pigs extirpated it. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b; 59 FR 14482).

Historically, *Cyanea truncata* was known from Punaluu, Waikane, and Waiahole in the northern Koolau Mountains of Oahu. Two occurrences are currently known to exist in Hanaimoa Gulch on State and private lands (GDSI 2001; HINHP Database 2001).

Cyanea truncata typically grows on windward slopes and stream banks in mesic to wet forests at elevations between 54 and 705 m (177 and 2,312 ft). Associated native plant species include *Cibotium chamissoi, Cyrtandra calpidicarpa* (haiwale), *Cyrtandra laxiflora* (haiwale), *Cyrtandra propinqua* (haiwale), *Diospyros sandwicensis, Hibiscus arnottianus, Metrosideros polymorpha, Neraudia melastomifolia* (maaloa), *Pipturus albidus*, or *Pisonia umbellifera* (HINHP Database 2001; Lammers 1999; Service 1998b).

The major threats to *Cyanea truncata* are habitat degradation and predation by feral pigs; competition with the invasive nonnative plant species *Christella parasitica, Clidemia hirta, Cordyline fruticosa, Oplismenus hirtellus*, and *Psidium cattleianum*; predation by rats and slugs; and extinction due to naturally caused events and/or reduced reproductive vigor due to the small number of remaining individuals (Service 1998b; 59 FR 14482).

Cyrtandra crenata (Haiwale)

Cyrtandra crenata, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a shrub 1 to 2 m (3 to 7 ft) tall with few branches and leaves arranged in whorls of three, which are tufted at the end of branches. *Cyrtandra crenata* is distinguished from other species in the genus by the combination of its three-leaf arrangement, bilaterally symmetrical calyx, and brownish, hemispherical glands (Wagner *et al.* 1999).

Cyrtandra crenata has been observed in flower in June. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b; 59 FR 14482).

Historically, *Cyrtandra crenata* was known from Waikane Valley along the Waikane-Schofield Trail in the Koolau Mountains and was last observed in 1947 (HINHP Database 2001).

Cyrtandra crenata typically grows on steep slopes, in ravines, or gulches in mesic to wet forests between elevations of 328 and 779 m (1,076 and 2,555 ft) with associated native plant species such as *Dicranopteris linearis, Machaerina angustifolia*, and *Metrosideros polymorpha* (HINHP Database 2001; Service 1998b; Wagner *et al.* 1999).

The primary threat to *Cyrtandra crenata* is extinction due to naturally caused events and/or reduced reproductive vigor due to the species' restricted range. No individuals are known to be extant at this time (Service 1998b; 59 FR 14482).

Cyrtandra dentata (Haiwale)

Cyrtandra dentata, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a sparingly branched shrub ranging from 1.5 to 5 m (5 to 16 ft) tall with papery textured leaves. This species is distinguished from others in the genus by the number and arrangement of the flowers, the length of the bracts and flower stalks, and the shape of the leaves (Wagner *et al.* 1999).

Cyrtandra dentata has been observed in flower and fruit in May and November. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Cyrtandra dentata was historically known from six occurrences in the Waianae Mountains and three occurrences in the Koolau Mountains of Oahu. Currently, this species is found only in Pahole Gulch, Kapuna Valley, Ekahanui Gulch, Keawapilau Gulch, Kahanahaiki, Kawai Iki Gulch, Opaeula Stream, and Makaleha Valley on Federal, State, city, and county lands (within TNCH's Honouliuli Preserve). The 11 known occurrences total 136 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Cyrtandra dentata typically grows in gulches, slopes, stream banks, or ravines in mesic or wet forest with associated native plant species such as *Acacia koa, Metrosideros polymorpha, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pouteria sandwicensis, Syzygium sandwicensis*, or *Urera glabra*; at elevations between 255 and 953 m (836 and 3,126 ft) (HINHP Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

The major threats to *Cyrtandra dentata* are competition with the nonnative plant species *Aleurites moluccana, Belchnum appendiculatum, Christella parasitica, Clidemia hirta, Psidium cattleianum, Psidium guajava*, and *Schinus terebinthifolius*; potential predation by rats; potential fire; and a risk of extinction from naturally occurring events (such as landslides/hurricanes/flooding) and/or reduced reproductive vigor due to the small number of extant occurrences and individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyrtandra polyantha (Haiwale)

Cyrtandra polyantha, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is an unbranched or few-branched shrub 1 to 3 m (3 to 10 ft) in height with leathery, elliptic, unequal leaves. *Cyrtandra polyantha* is distinguished from other species in the genus by the texture and hairiness of the leaf surfaces and the length, shape, and degree of cleft of the calyx. This species differs from *C. crenata* by the lack of short-stalked glands and by its leathery leaves, opposite leaf arrangement, and radially symmetrical calyx (Wagner *et al.* 1999).

Nothing is known about the flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors for *Cyrtandra polyantha* (Service 1998b).

Historically, *Cyrtandra polyantha* was known from the Kalihi region and from Kulepeamoa Ridge above Niu Valley on the leeward (southwest) side of the southern Koolau Mountains. Currently, one occurrence with three individuals is extant on the summit ridge between Kuliouou and Waimanalo on State and private lands (HINHP Database 2001).

Cyrtandra polyantha grows on ridges in *Metrosideros polymorpha* mesic or

wet forests at elevations between 331 and 762 m (1,086 and 2,499 ft). *Cyrtandra polyantha* probably grows in association with *Broussaisia arguta, Coprosma foliosa* (pilo), *Dicranopteris linearis, Machaerina angustifolia,* and *Psychotria* sp. (HINHP Database 2001; Service 1998b).

The primary threats to *Cyrtandra polyantha* are habitat degradation by feral pigs; competition with the invasive plant species *Ageratina adenophora, Clidemia hirta, Erigeron karvinskianus,* and *Melinus minutiflora;* extinction due to naturally caused events and/or reduced reproductive vigor due to the small number of remaining individuals and their restricted distribution (HINHP Database 2001; Service 1998b; 59 FR 14482).

Cyrtandra subumbellata (Haiwale)

Cyrtandra submumbellata, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a shrub 2 to 3 m (6.6 to 10 ft) tall. Papery in texture, the leaves are almost circular to egg-shaped. It is distinguished from other species in the genus by its leaf shape and texture, the number of flowers per cluster, and the length of bracts, flower stem, calyx lobes, floral tube, and styles (Wagner *et al.* 1999).

Cyrtandra submumbellata has been observed in fruit in September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Cyrtandra submumbellata* was known from the Koolau Mountains of Oahu. Currently, there are 5 occurrences containing 12 individuals in the central Koolau Mountains at Schofield-Waikane Trail, Puu Ohulehule, and in Kaukonahua drainage on Federal, private, and State lands (EDA Database 2001; HINHP Database 2001).

Cyrtandra submumbellata typically grows on moist, forested slopes or gulch bottoms dominated by *Metrosideros polymorpha* or in mixed *Metrosideros polymorpha-Dicranopteris linearis-Acacia koa* wet forests between 345 and 790 m (1,132 and 2,591 ft) elevation. Associated native plant species include *Boehmeria grandis, Broussaisia arguta, Dryopteris* sp. (palapalai), and *Machaerina* sp. (HINHP Database 2001; Service 1998b; Wagner *et al.* 1999).

The primary threats to *Cyrtandra submumbellata* are competition with the nonnative plant species *Clidemia hirta,* impacts from military activities, predation by rats, fire, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant occurrences and individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Cyrtandra viridiflora (Haiwale)

Cyrtandra viridiflora, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a small shrub 0.5 to 2 m (1.6 to 6.6 ft) tall. This species is distinguished from others in the genus by the leaves, which are thick, fleshy, heart-shaped, and densely hairy on both surfaces (Wagner *et al.* 1999).

Cyrtandra viridiflora has been observed in flower and fruit from May through September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Cyrtandra viridiflora* was known from scattered occurrences in the Koolau Mountains on the island of Oahu. Fifty-two plants are known from 23 occurrences at Puu Kainapuaa, Maakua-Kaipapau Ridge, Kawai Nui Drainage, Opaeula Gulch, and Kawai Nui-Laie Divide (GDSI 2001: HINHP Database 2001).

Cyrtandra viridiflora is usually found on wind-blown ridge tops in cloud-covered wet forest or shrubland at elevations between 443 and 867 m (1,453 and 2,844 ft). Associated native plant species include *Broussaisia arguta, Cheirodendron platyphyllum* (olapa), *Dicranopteris linearis, Diplopterygium pinnatum, Dubautia* sp., *Freycinetia arborea, Hedyotis* sp., *Ilex anomala, Machaerina* sp., *Melicope* sp., *Metrosideros polymorpha, Metrosideros rugosa* (lehua papa), *Psychotria* sp., or *Syzygium sandwicensis* (HINHP Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

The major threats to *Cyrtandra viridiflora* are habitat degradation or destruction by feral pigs, impacts from military activities, predation by rats, competition with the nonnative plant species *Clidemia hirta* and *Psidium cattleianum,* and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining occurrences and individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Delissea subcordata (Oha)

Delissea subcordata, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a branched or unbranched shrub 1 to 3 m (3.5 to 10 ft) tall. This species is distinguished from others in this endemic Hawaiian genus by the shape and size of the leaves, the length of the calyx lobes and corolla, and the hairless condition of the anthers (Lammers 1999).

Fertile plants of *Delissea subcordata* have been observed in July. An examination of herbarium specimens shows that this plant flowers throughout the year. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Delissea subcordata* was known from scattered occurrences in the Waianae and Koolau Mountains of Oahu. A specimen collected by Mann and Brigham in the 1860s and labeled from the island of Kauai is believed to have been mislabeled. *Delissea subcordata* is now known from 21 occurrences at South Huliwai Gulch, Palikea Gulch, Kaluaa Gulch, South Mohiakea Gulch, Kahanahaiki Valley, Kapuhi Gulch, South Ekahanui Gulch, Waikoekoe Gulch, Pahole Gulch, Kaawa Gulch, North Palawai Gulch, Kealia land section, Kapuna Gulch, Keawapilau Gulch, North Huliwai Gulch, Kuaokala, and Kolekole. This species is found on private, Federal, and State lands. The total number of plants is estimated to be fewer than 70 (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Delissea subcordata typically grows on moderate to steep gulch slopes in mixed mesic forests between 162 and 1,025 m (531 and 3,362 ft) elevation. Associated native plant species include *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Bobea* sp. (ahakea), *Chamaesyce multiformis* (akoko), *Charpentiera obovata, Claoxylon sandwicense, Diospyros hillebrandii* (lama), *Diospyros sandwicensis, Hedyotis acuminata, Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Pisonia* sp., *Pouteria sandwicensis, Psychotria hathewayi, Psydrax odorata,* or *Streblus pendulinus* (HINHP Database 2001; Service 1998b).

The major threats to *Delissea subcordata* are habitat degradation and/or destruction by pigs and goats; impacts from military activities, including road construction and housing development; predation by rats and slugs; competition with the nonnative plant species *Blechnum appendiculatum, Clidemia hirta, Grevillea robusta, Lantana camara, Melinus minutiflora, Oplismenus hirtellus, Passiflora suberosa, Pimenta dioica, Psidium cattleianum, Schinus terebinthifolius, Syzygium cumini,* and *Toona ciliata;* fire; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Diellia falcata (NCN)

Diellia falcata, in the polypody family (Polypodiaceae) and a short-lived perennial fern, grows from a rhizome (underground stem) 1 to 5 cm (0.4 to 2 in) long and 0.5 to 2 cm (0.2 to 0.8 in) in diameter. The rhizome is covered with small black or maroon scales. This species is distinguished from others in the genus by the color and texture of its leaf stalk, the venation pattern of its fronds, the color of its scales, its rounded and reduced lower pinnae (leaflets), and its separate sori (spore clusters) arranged on marginal projections (Service 1998b; Wagner 1952).

Diellia falcata hybridizes with *Diellia unisora.* It has been observed with fronds bearing sori (spores) year-round. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Diellia falcata* was known from almost the entire length of the Waianae Mountains, from Manini Gulch to Palehua Iki, as well as from the Koolau Mountains of Oahu, from Kaipapau Valley to Aiea Gulch. This species remains in Waieli Gulch, Ekahanui Gulch, Makaleha Valley, Makaha Valley, Palikea Gulch, Makua Valley, Kaimuhole Gulch, Kuaokala-Manini Gulch, Pahole Gulch, Puu Ku Makalii, Kapuna Gulch, Mohiakea Gulch, Waianae Kai, Pualii Gulch, Napepeiauolelo Gulch, Kahanahaiki Valley, Nanakuli-Lualualei Ridge, Makua, Kamaileunu Ridge, Kaluaa Gulch, and Huliwai Gulch on Federal, State, city, county, and private lands. The 30 known occurrences contain fewer than 6,000 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Diellia falcata is a terrestrial fern that typically grows in deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest between 224 and 953 m (735 and 3,126 ft) elevation. Associated native species include *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Asplenium kaulfussii* (kuau), *Carex meyenii* (NCN), *Charpentiera* sp., *Claoxylon sandwicense, Coprosma foliosa, Diospyros hillebrandii, Diplazium sandwichianum, Doodia kunthiana* (okupukupu), *Dryopteris unidentata, Elaeocarpus bifidus, Freycinetia arborea, Hedyotis terminalis, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Nephrolepis exaltata* (kupukupu), *Nestegis sandwicensis, Nothocestrum* sp., *Pipturus* sp., *Pisonia sandwicensis, Pouteria sandwicensis, Psychotria* sp., *Psydrax odorata, Sapindus oahuensis, Selaginella arbuscula, Sophora chrysophylla* (mamane), or *Xylosma* sp. (HINHP Database 2001).

The major threats to *Diellia falcata* are habitat degradation by feral goats and pigs; competition from the nonnative plant species *Aleurites moluccana, Ageratina riparia, Blechnum appendiculatum, Christella parasitica, Clidemia hirta, Grevillea robusta, Heliocarpus popayanensis, Kalanchoe pinnata, Lantana camara, Melinus minutiflora, Paspalum conjugatum, Passiflora ligularis* (sweet granadilla), *Passiflora suberosa, Pimenta dioica, Psidium cattleianum, Psidium guajava, Rubus argutus, Schefflera actinophylla* (octopus tree), *Schinus terebinthifolius, Syzygium cumini,* and *Toona ciliata;* and fire (HINHP Database 2001; Service 1998b; 56 FR 55770).

Diellia unisora (NCN)

Diellia unisora, a short-lived perennial in the polypody fern family (Polypodiaceae), grows from a slender, erect rhizome to reach 0.5 to 3 cm (0.2 to 1.2 in) in height and 0.5 to 1 cm (0.2 to 0.4 in) in diameter. The rhizome is covered with the bases of the leaf stalks and a few small black scales. This species is distinguished from others in the genus by a rhizome completely covered by the persisting bases of the leaf stalks and few, very small scales; by sori mostly confined to the upper pinnae margins; and by delicate fronds gradually and symmetrically narrowing toward the apex (Wagner 1952).

Diellia unisora hybridizes with *Diellia falcata.* Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Diellia unisora* was known from steep, grassy, rocky slopes on the western side of the Waianae Mountains of Oahu. This species is known to be extant in the southern Waianae Mountains at South Ekahanui Gulch, Palawai Gulch, and the Pualii-Napepeiauolelo Ridge. The 4 known occurrences, which are on State and private lands, contain fewer than 800 individuals (GDSI 2001; HINHP Database 2001).

Diellia unisora is a terrestrial fern that typically grows on moderate to steep slopes or gulch bottoms in deep shade or open understory, mesic forest between 382 and 953 m (1,253 and 3,126 ft) elevation. Associated native species include *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Bidens torta, Carex meyenii, Chamaesyce multiformis, Coprosma* sp., *Dodonaea viscosa, Doryopteris unidentata, Eragrostis grandis* (lovegrass), *Hedyotis schlechtendahliana* (kopa), *Hedyotis terminalis, Metrosideros polymorpha, Myrsine lessertiana, Rumex* sp., *Psychotria* sp., or *Selaginella arbuscula* (HINHP Database 2001; 59 FR 32932).

The major threats to *Diellia unisora* are habitat degradation by feral pigs and competition from the nonnative plant species *Ageratina riparia, Blechnum appendiculatum, Clidemia hirta, Melinis minutiflora, Passiflora suberosa, Psidium cattleianum, Schefflera actinophylla,* and *Schinus terebinthifolius* (HINHP Database 2001; 59 FR 32932).

Dubautia herbstobatae (Naenae)

Dubautia herbstobatae, a member of the aster family (Asteraceae) and a short-lived perennial, is a small, spreading shrub to 50 cm (20 in) tall. *Dubautia herbstobatae* is distinguished from other species on Oahu in this endemic genus by the outer bracts of the flower heads being fused, forming a cup surrounding the florets, and by one large vein showing in each leaf (Carr 1999).

Dubautia herbstobatae is likely outcrossing and possibly self-incompatible (*i.e.,* pollen from the same plant will not produce seed). Flowering usually occurs in May and June. Pollination is almost certainly achieved by insect activity, and fruit dispersal is probably quite localized (Service 1998b). Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors.

Dubautia herbstobatae is known to be extant in 12 occurrences in the northern Waianae Mountains, on Ohikilolo and Kamaileunu Ridges, Keaau, and Waianae Kai on State lands and land under Federal jurisdiction. Fewer than 100 individuals are known from these locations (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Dubautia herbstobatae typically grows on rock outcrops, ridges, moderate slopes, or vertical cliffs in dry or mesic shrubland at elevations between 266 and 978 m (872 and 3,208 ft). Associated native species include *Artemisia australis, Bidens torta, Carex meyenii, Chamaesyce celastroides* (akoko), *Dodonaea viscosa, Eragrostis variabilis* (kawelu), *Metrosideros polymorpha,* and *Schiedea mannii* (NCN) (HINHP Database 2001; 56 FR 55770; EDA, *in litt.* 2001).

The major threats to *Dubautia herbstobatae* are habitat degradation by

feral goats and pigs; competition from the nonnative plant species *Ageratina riparia, Bromus mollis* (soft chess), *Grevillea robusta, Leucaena leucocephala, Melinis minutiflora, Melinis repens,* and *Schinus terebinthifolis;* fire; visitation and possible trampling by humans; and a risk of extinction from naturally occurring events due to the small number of remaining individuals (56 FR 55770).

Eragrostis fosbergii (Fosberg's love grass)

Eragrostis fosbergii, a member of the grass family (Poaceae), is a short-lived perennial species with stout, tufted culms (stems), which are 61 to 102 cm (24 to 40 in) long and usually arise from an abruptly bent woody base. This species is distinguished from others in the genus by its stiffly ascending flowering stalk and the long hairs on the margins of the glumes (floral bracts) and occasionally on the margins of the lemmas (floral bracts) (O'Connor 1999).

No information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Eragrostis fosbergii* was known only from the Waianae Mountains of Oahu, from the slopes of Mount Kaala, and in Waianae Kai and its associated ridges. Only four individuals are known to remain in Waianae Kai and on Kumaipo Trail in four occurrences on Federal and State lands (GDSI 2001; HINHP Database 2001).

Eragrostis fosbergii typically grows on ridge crests or moderate slopes in dry and mesic forests between 578 and 941 m (1,896 and 3,086 ft) elevation. Associated native plant species include *Acacia koa, Alyxia oliviformis, Bidens* sp., *Chamaesyce* sp., *Dodonaea viscosa, Doodia* sp. (oku pukupulauii), *Eragrostis grandis, Melicope* sp., *Metrosideros polymorpha, Nephrolepis exaltata, Psydrax odorata,* or *Sphenomeris* sp. (palaa) (HINHP Database 2001; 61 FR 53089).

The major threats to *Eragrostis fosbergii* are degradation of habitat by feral pigs and goats; competition with nonnative plant species such as *Grevillea robusta, Psidium cattleianum,* and *Schinus terebinthifolis;* trampling by hikers; hybridization with *Eragrostis grandis;* and a threat of extinction from random environmental events and/or reduced reproductive vigor due to the small number of remaining occurrences and individuals (HINHP Database 2001; Service 1998b; G. Koob, pers. comm., 2001).

Gardenia mannii (Nanu)

Gardenia mannii, a short-lived perennial member of the coffee family (Rubiaceae), is a tree 5 to 15 m (16 to 50 ft) tall. This species is distinguished from others in the genus by the shape and number of the calyx spurs (Wagner *et al.* 1999).

Gardenia mannii has been observed in flower and fruit in June and September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Gardenia mannii* was known from 7 widely scattered occurrences in the Waianae Mountains and 39 occurrences distributed along almost the entire length of the Koolau Mountains of Oahu. Currently, there are 49 occurrences of *Gardenia mannii* at Haleauau Gulch, Peahinaia Ridge, Kaunala Gulch and Kaunala-Waimea Ridge, Castle Trail, Halawa Valley and Halawa-Kalauao Ridge, Moanalua Valley, Makaua-Kahana Ridge, Poamoho and Halemano Gulches, Kaluaa and Maunauna Gulches, Waimano Trail, Kawailoa Trail, Puu Hapapa and Waieli Gulch, Wiliwilinui Ridge, Koloa Stream, Waialae Nui-Kapakahi Ridge, Manaiki Valley, Laie Trail, Malaekahana-Waimea Summit Ridge, Haleauau Gulch, Schofield-Waikane Trail, Kaukonahua Gulch, Kapakahi Gulch, Manana Trail, Peahinaia Trail and Opaeula Stream, Kamana Nui Stream, Pukele, Hanaimoa Gulch, Papali Gulch, Kawai Nui, and Kaipapau Gulch. The 49 extant occurrences are on private, State, and Federal lands. The existing occurrences total between 69 and 80 plants (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Gardenia mannii is usually found on moderate to moderately steep gulch slopes, ridge crests, in gulch bottoms, and on stream banks in mesic or wet forests between 82 and 1,050 m (269 and 3,444 ft) in elevation. Associated native plant species include *Acacia koa, Alyxia oliviformis, Antidesma platyphyllum, Bobea* sp., *Boehmeria grandis, Broussaisia arguta, Cheirodendron* sp. (NCN), *Cibotium* sp., *Coprosma foliosa, Dicranopteris linearis, Elaeocarpus* sp., *Freycinetia arborea, Hedyotis acuminata, Ilex anomala, Melicope* sp., *Metrosideros polymorpha, Perottetia sandwicensis, Pipturus* sp., *Pisonia* sp., *Pouteria sandwicensis, Psychotria mariniana, Syzygium sandwicensis,* and *Thelypteris* sp. (HINHP Database 2001).

The major threats to *Gardenia mannii* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with nonnative plant species such as *Clidemia hirta, Leptospermum scoparium, Passiflora suberosa, Psidium cattleianum, Psidium guajava, Rubus argutus,* and *Toona ciliata;* fire; and risk of extinction from random environmental events and/or reduced reproductive vigor due to the widely dispersed, small number of remaining individuals. The Kapakahi Gulch occurrence is also threatened by the black twig borer (HINHP Database 2001; Service 1998b; 61 FR 53089).

Hedyotis degeneri (NCN)

Hedyotis degeneri, a short-lived perennial member of the coffee family (Rubiaceae), is a prostrate shrub with four-sided stems and peeling, corky bark. This species can be distinguished from others in the genus on Oahu by its low-growing habit, the peeling corky layers on older stems, and the short, crowded, leafy shoots growing in the leaf axils; two varieties within the species are recognized: *Hedyotis degeneri* var. *coprosmifolia* and *Hedyotis degeneri* var. *degeneri* (Wagner *et al.* 1999).

This species has been observed in flower in June, July, and November, and in fruit in July. No further information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Hedyotis degeneri* is known from Mt. Kaala in the northern Waianae Mountains. Variety *coprosmifolia* has not been collected since the 1980s, and no current occurrences are known. Four occurrences, totaling 60 individuals, of variety *degeneri* are known from Makaleha, Pahole Gulch, Kahanahaiki, and Alaiheihe Gulch on Federal, State, city, and county lands (GDSI 2001; HINHP Database 2001; Wagner *et al.* 1999).

Hedyotis degeneri typically grows on ridge crests in diverse mesic forest between 349 and 1,083 m (1,145 and 3,552 ft) elevation. Associated native species include *Alyxia oliviformis, Carex meyenii Chamaesyce multiformis, Cocculus* sp. (huehue), *Dicranopteris linearis, Diospyros sandwicensis, Dodonaea viscosa, Gahnia* sp. (NCN), *Hedyotis terminalis, Leptecophylla tameiameiae* (pukiawe), *Lobelia yuccoides* (panaunau), *Lysimachia hillebrandii* (kolokolo kuahiwi), *Metrosideros polymorpha, Pleomele* sp., *Psychotria hathewayi, Psydrax odorata,* or *Wikstroemia oahuensis* (akia) (HINHP Database 2001).

The major threats to *Hedyotis degeneri* are habitat destruction by feral pigs; competition from the nonnative plant species *Ageratina adenophora, Blechnum appendiculatum, Clidemia hirta, Grevillea robusta, Melinis minutiflora, Psidium cattleianum, Psidium guajava, Rubus argutus, Schinus terebinthifolius,* and *Toona ciliata;* and a threat of extinction from random environmental events and/or decreased reproductive vigor due to the small number of extant individuals and occurrences (HINHP Database 2001).

Hedyotis parvula (NCN)

Hedyotis parvula, a short-lived perennial member of the coffee family (Rubiaceae), is a small, many-branched shrub, either upright or sprawling, with stems usually no more than 30 cm (1 ft) in length. Closely spaced, overlapping leaves that are uniform in size along the stem distinguish this species from other members of the genus on Oahu (Wagner *et al.* 1999).

Hedyotis parvula has been observed flowering in both winter and summer. The plant is found in dry areas and flowering may be induced by rain. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Hedyotis parvula* was known from the central and southern Waianae Mountains, from Makaleha Valley to Nanakuli Valley. Currently, this species is known from five locations on Federal, State, city, and county lands at Makaleha Ridge, Makua-Keaau Ridge, Lualualei-Nananakuli Ridge, Ohikilolo Ridge, and Halona. Seven occurrences totaling between 116 and 131 individuals are known (EDA Database 2001; GDSI 2001; HINHP Database 2001; Wagner *et al.* 1999).

Hedyotis parvula typically grows on and at the base of cliff faces, rock outcrops, and ledges in mesic habitat at elevations between 331 and 1,160 m (1,086 and 3,805 ft). Associated native species include *Bidens* sp., *Carex* sp., *Chamaesyce* sp., *Dodonaea viscosa, Eragrostis* sp. (kawelu), *Metrosideros polymorpha, Metrosideros tremuloides* (lehua ahihi), *Plectranthus parviflorus, Psydrax odorata,* or *Rumex* sp. (HINHP Database 2001; Wagner *et al.* 1999; 56 FR 55770).

The major threats to *Hedyotis parvula* are habitat degradation by feral goats and pigs; competition from the nonnative plant species *Ageratina riparia, Melinis minutiflora, Morella faya,* and *Schinus terebinthifolius;* and a threat of extinction from random environmental events and/or decreased reproductive vigor due to the small number of individuals and occurrences (HINHP Database 2001; 56 FR 55770).

Labordia cyrtandrae (Kamakahala)

Labordia cyrtandrae, a short-lived perennial member of the logania family (Loganiaceae), is a shrub 0.7 to 2 m (2.3 to 6.6 ft) tall. This species is distinguished from others in the genus by its fleshy, hairy, cylindrical stem that flattens upon drying, the shape and length of the floral bracts, and the length of the corolla tube and lobes (Wagner *et al.* 1999).

Labordia cyrtandrae has been observed flowering from May through June, fruiting from July through August, and is sporadically fertile year-round. The flowers are functionally unisexual, and male and female flowers are on separate plants. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Labordia cyrtandrae* was known from both the Waianae and Koolau Mountains of Oahu. In the Koolau Mountains, this species extended from Kawailoa Trail to Waialae Iki, almost the entire length of the mountain range. This species currently is known only from 20 individuals in 10 occurrences in Haleauau Gulch, Mohiakea Gulch, Kaala, and Makaleha. These occurrences are on State, city, county, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Labordia cyrtandrae typically grows in shady gulches, slopes, and glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha, Diplopterygium pinnatum,* and/or *Acacia koa* between the elevations of 212 and 1,233 m (695 and 4,044 ft). Associated native plant species include *Antidesma* sp., *Artemisia australis, Bideris torta, Boehmeria grandis, Broussaisia arguta, Chamaesyce* sp., *Coprosma* sp., *Cyrtandra* sp., *Dicranopteris linearis, Diplazium sandwichianum, Dubautia plantaginea* (naenae), *Lysimachia hillebrandii, Peperomia membranacea* (ala ala wai nui), *Perrottetia sandwicensis, Phyllostegia* sp., *Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., or *Rumex* sp. (HINHP Database 2001; Service 1998b).

The major threats to *Labordia cyrtandrae* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with the nonnative plant species *Axonopus fissifolius, Clidemia hirta, Juncus planifolius* (NCN), *Psidium cattleianum, Rubus argutus, Setaria parviflora* (yellow foxtail), and *Schinus terebinthifolius;* fire; and risk of extinction from random environmental events and/or reduced reproductive vigor due to the small number of remaining individuals and occurrences (HINHP Database 2001; Service 1998b).

Lepidium arbuscula (Anaunau)

Lepidium arbuscula, a short-lived perennial member of the mustard family (Brassicaceae), is a gnarled shrub 0.6 to 1.2 m (2 to 4 ft) tall. The species is distinguished from others in the genus by its height (Wagner *et al.* 1999).

Lepidium arbuscula has been observed in flower in February. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Lepidium arbuscula* was known from 10 occurrences in the Waianae Mountains on Oahu. Currently, there are a total of approximately 1,000 individuals known from 12 occurrences on Federal, State, city, and county lands at Kamaileunu Ridge, Lualualei-Nanakuli Ridge, Kapuhi Gulch, northwest of Puu Kaua, Manini Gulch, Mohiakea Gulch, Ohikilolo Ridge, Makua-Keaau Ridge, the ridge between the Paahoa and Halona subdistricts, northwest of Puu Ku Makalii, and Halona subdistrict (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Lepidium arbuscula generally grows on exposed ridge tops and cliff faces in mesic and dry vegetation communities between 131 and 978 m (430 and 3,208 ft) elevation. This species is typically associated with native plant species such as *Artemisia australis, Bidens* sp., *Carex meyenii, Carex wahuensis* (NCN), *Chamaesyce multiformis, Dodonaea viscosa, Dryopteris unidentata, Dubautia* sp., *Eragrostis* sp., *Leptecophylla tameiameiae, Lysimachia hillebrandii, Metrosideros polymorpha, Peperomia* sp., *Psydrax odorata, Rumex albescens* (huahuako), *Schiedea ligustrina* (NCN), *Sida fallax,* or *Sophora chrysophylla* (HINHP Database 2001; Service 1998b).

The primary threats to *Lepidium arbuscula* are habitat degradation and/or destruction by feral goats, potential impacts from military activities, competition with nonnative plants, and fire. The occurrence at the head of Kapuhi Gulch is also threatened by its proximity to a road (HINHP Database 2001; 61 FR 53089).

Lipochaeta lobata var. *leptophylla* (Nehe)

Lipochaeta lobata var. *leptophylla*, a member of the aster family (Asteraceae),

is a low, somewhat woody, short-lived perennial herb with arched or nearly prostrate stems that may be up to 150 cm (59 in) long. Aside from being a coastal species, this species is the only member of its genus on Oahu with four-parted disk florets. This variety has narrower leaves, spaced more closely along the stem, than those of *Lipochaeta lobata* var. *lobata*, the only other variety of the species (Wagner *et al.* 1999).

Flowering of *Lipochaeta lobata* var. *leptophylla* is probably rain-induced. Occurrences may consist of fewer distinct individuals than it appears because many plants are connected underground by the roots and are probably clones. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Lipochaeta lobata* var. *leptophylla* was known from the southern Waianae Mountains of Oahu, from Kolekole Pass to Lualualei. Currently, there are a total of 147 individuals found in 4 occurrences on State, Federal, city, and county lands at Lualualei-Nanakuli Ridge, Kauhiuhi, Puu Hapapa, Mikilua, and Kamaileunu Ridge, (EDA Database 2001; GDSI 2001; HINHP Database 2001; Wagner *et al.* 1999).

Lipochaeta lobata var. *leptophylla* typically grows on cliffs, ridges, and slopes in dry or mesic shrubland at elevations between 256 and 978 m (840 and 3,208 ft). Associated native species include *Artemisia australis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Dodonaea viscosa, Eragrostis* sp., *Melanthera tenuis* (nehe), *Peperomia* sp., *Psydrax odorata*, and *Stenogyne* sp. (NCN) (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Lipochaeta lobata* var. *leptophylla* include competition from nonnative plant species such as *Ageratina adenophora, Ageratina riparia, Erigeron karvinskianus, Grevillea robusta, Kalanchoe pinnata, Lantana camara, Leucaena leucocephala, Melinis minutiflora, Passiflora suberosa*, and *Schinus terebinthifolius;* habitat degradation by feral pigs and goats; fire; and a threat of extinction from random environmental events and/or decreased reproductive vigor due to the small number of individuals and occurrences (HINHP Database 2001).

Lipochaeta tenuifolia (Nehe)

Lipochaeta tenuifolia, a member of the aster family (Asteraceae), is a low growing, somewhat woody, short-lived perennial herb with short, more or less erect branches. Its five-parted disk florets and its deeply cut, stalkless leaves separate this species from other members of the genus (Wagner *et al.* 1999).

Lipochaeta tenuifolia has been observed flowering in April. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Lipochaeta tenuifolia occurs in the northern half of the Waianae Mountains of Oahu, from Kaluakauila Gulch to Kamaileunu Ridge and east to Mt. Kaala, and northwest, southwest, southeast, and north of Puu Ku Makalii on State, Federal, city, and county lands. The 41 known occurrences contain between 759 and 1,174 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Lipochaeta tenuifolia typically grows on ridgetops and bluffs in open areas, protected pockets of dry to mesic forests and shrublands, and forests dominated by Diospyros sandwicensis at elevations between 67 and 978 m (220 and 3,208 ft). Associated native species include *Artemisia australis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Dodonaea viscosa, Doryopteris* sp. (kumu niu), *Dubautia* sp., *Eragrostis* sp., *Myoporum sandwicense, Osteomeles anthyllidifolia* (ulei), *Psydrax odorata, Reynoldsia sandwicensis, Rumex* sp., *Santalum* sp., *Sapindus oahuensis*, or *Schiedea* sp. (HINHP Database 2001; Wagner *et al.* 1999).

The major threats to *Lipochaeta tenuifolia* are habitat degradation by feral goats and pigs; competition for light and space from nonnative plant species including *Ageratina riparia, Aleurites moluccana, Blechnum appendiculatum, Coffea arabica* (coffee), *Grevillea robusta, Hyptis pectinata, Lantana camara, Leucaena leucocephala, Melinis minutiflora, Panicum maximum, Psidium cattleianum, Rivina humilis, Schinus terebinithifolius*, or *Toona ciliata;* and fire (HINHP Database 2001; 56 FR 55770).

Lobelia gaudichaudii ssp. *koolauensis* (NCN)

Lobelia gaudichaudii ssp. *koolauensis*, a short-lived perennial member of the bellflower family (Campanulaceae), is an unbranched, woody shrub 0.3 to 1 m (1 to 3.5 ft) tall. The species is distinguished from others in the genus by the length of the stem, the length and color of the corolla, the leaf width, the length of the floral bracts, and the length of the calyx lobes. The subspecies *koolauensis* is distinguished by the greenish or yellowish white petals and the branched flowering stalks (Lammers 1990; 61 FR 53089).

Lobelia gaudichaudii ssp. *koolauensis* has been observed in flower in September and in fruit in December. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Lobelia gaudichaudii* ssp. *koolauensis* was known from only two occurrences in the central Koolau Mountains on Oahu. Currently, this subspecies is known from five occurrences in the central Koolau Mountains, on Federal, State, and private lands at Waimano-Waiawa Ridge, Waimano, the plateau above Sacred Falls, and Kaukonahua Gulch. The total number of plants is estimated to be fewer than 270 (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Lobelia gaudichaudii ssp. *koolauensis* typically grows on moderate to steep slopes in *Metrosideros polymorpha* lowland wet shrublands and bogs at elevations between 383 and 867 m (1,256 and 2,844 ft). Associated native plant species include *Bidens* sp., *Broussaisia arguta, Cibotium* sp., *Dicanthelium koolauense* (NCN), *Isachne distichophylla* (ohe), *Machaerina angustifolia, Melicope* sp., *Sadleria pallida, Scaevola* sp., or *Vaccinium dentatum* (ohelo) (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Lobelia gaudichaudii* ssp. *koolauensis* are habitat degradation and/or destruction by feral pigs; competition with the nonnative plant species *Axonopus fissifolius, Clidemia hirta, Pterolepis glomerata*, and *Sacciolepis indica;* trampling by hikers; landslides; and risk of extinction from random environmental events and/or reduced reproductive vigor of the few remaining individuals (HINHP Database 2001; 61 FR 53089).

Lobelia monostachya (NCN)

Lobelia monostachya, a short-lived perennial member of the bellflower family (Campanulaceae), is a prostrate woody shrub with stems 15 to 25 cm (6 to 10 in) long. The species is distinguished from others in the genus by its narrow, linear leaves without stalks and its short pink flowers (Lammers 1999).

This species has been observed in flower in May and June. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Lobelia monostachya* was known only from the Koolau Mountains and had not been seen since its original discovery in the 1800s in Niu Valley, and in the 1920s in Manoa Valley. In 1994, Joel Lau discovered one individual in a previously unknown location in Wailupe Valley on State and private lands. Currently, one occurrence with a total of three plants is known (GDSI 2001; HINHP Database 2001).

Lobelia monostachya occurs on steep, sparsely vegetated cliffs in mesic shrubland between 44 and 614 m (144 and 2,014 ft) elevation. Associated native plant species include *Artemisia australis, Carex meyenii, Eragrostis* sp., or *Psilotum nudum* (HINHP Database 2001).

The major threats to *Lobelia monostachya* are predation by rats; competition with the nonnative plants *Ageratum riparia, Kalanchoe pinnata, Melinis minutiflora*, and *Schinus terebinthifolius;* and risk of extinction from random environmental events and/or reduced reproductive vigor due to the low number of individuals in the only known occurrence (HINHP Database 2001; 61 FR 53089).

Lobelia oahuensis (NCN)

Lobelia oahuensis, a short-lived perennial member of the bellflower family (Campanulaceae), is a stout, erect, unbranched shrub 1 to 3 m (3 to 10 ft) tall. *Lobelia oahuensis* differs from other members of the genus in having the following combination of characters: Erect stems 1 to 3 m (3 to 10 ft) long, dense rosettes of leaves at the end of stems, lower leaf surfaces covered with coarse grayish or greenish hairs, and flowers 42 to 45 millimeters (mm) (1.7 to 1.8 in) long (Lammers 1999).

This species has been observed in flower during November. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Lobelia oahuensis* was known from Kahana Ridge, Kipapa Gulch, and the southeastern Koolau Mountains of Oahu. The 12 current occurrences totaling 42 individuals are located on private, State, and Federal lands. These occurrences are on Mt. Olympus, Konahuanui summit, Waikakalaua-Waikane Ridge, Puu o Kona, the summit area between Aiea and Halawa Valley, Puu Keahiakahoe and the summit ridge south of Puu Keahiakahoe, Waialae Nui-Waimanalo and Kapakahi-Waimanalo, Puu Kalena, and Eleao (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Lobelia oahuensis grows on steep slopes between elevations of 415 and 959 m (1,361 and 3,146 ft) on summit cliffs in cloudswept wet forests or in lowland wet shrubland that is frequently exposed to heavy wind and rain. Associated native plant species include *Bidens* sp., *Broussaisia arguta, Cheirodendron trigynum* (olapa), *Cibotium* sp., *Dicranopteris linearis, Dubautia laxa, Freycinetia arborea, Hedyotis* sp., *Labordia hosakana* (kamakahala), *Lycopodiella cernua* (wawae iole), *Machaerina angustifolia, Melicope* sp., *Metrosideros polymorpha, Peperomia* sp., *Phyllostegia* sp., *Sadleria squarrosa* (apuu), *Scaevola* sp., *Syzygium sandwicensis, Vaccinium* sp., or *Wikstroemia* sp. (HINHP Database 2001; Lammers 1999; Service 1998b).

The primary threats to *Lobelia oahuensis* are competition with the nonnative plant species *Clidemia hirta, Erigeron karvinskianus, Paspalum conjugatum, Rubus argutus*, and *Rubus rosifolius*, and habitat degradation by feral pigs (HINHP Database 2001).

Melicope lydgatei (Alani)

Melicope lydgatei, a long-lived perennial member of the citrus family (Rutaceae), is a small shrub that has leaves arranged oppositely or in threes. The species' leaf arrangement, the amount of fusion of the fruit sections, and the hairless exocarp (outermost layer of the fruit wall) and endocarp (innermost layer) distinguish it from other species in the genus (Wagner *et al.* 1999).

This species has been observed in flower in May and in fruit from June to July. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Melicope lydgatei was formerly known throughout the Koolau Mountains of Oahu from Hauula to Kahana, Kipapa Gulch to Waimano, and Kalihi Valley to Wailupe Valley. Eighteen occurrences remain within its historical range on State and private lands along Poamoho Trail, Peahinaia Trail, and Manana Trail (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Melicope lydgatei typically grows in association with *Acacia koa, Bobea elatior, Dicranopteris linearis, Metrosideros polymorpha, Psychotria* sp., or *Syzygium sandwicensis* on ridges in mesic and wet forests at elevations between 349 and 671 m (1,145 and 2,201 ft) (HINHP Database 2001; Service 1998b; EDA, *in litt.* 2001).

The primary threat to *Melicope lydgatei* is a threat of extinction due to random environmental events and/or reduced reproductive vigor because of the small number of occurrences remaining (59 FR 14482).

Melicope saint-johnii (Alani)

Melicope saint-johnii, a long-lived perennial member of the rue family (Rutaceae), is a slender tree 3 to 6 m (10 to 20 ft) tall. This species is distinguished from others in the genus by the combination of the hairless exocarp, hairy endocarp, densely hairy petals, and sparsely hairy to smooth sepals (Stone *et al.* 1999).

No information exists on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Melicope saint-johnii* was known from both the Waianae and Koolau Mountains at Makaha to Mauna Kapu in the Waianae Mountains and Papali Gulch in Hauula, Manoa-Aihualama, Wailupe, and Niu Valley in the Koolau Mountains. Today 6 occurrences of this species are found on Federal and private lands from the region between Puu Kaua and Puu Kanehoa to Mauna Kapu in the southern Waianae Mountains, with a total of fewer than 170 individuals (GDSI 2001; HINHP Database 2001).

Melicope saint-johnii typically grows on mesic forested ridges and gulch bottoms between the elevation of 240 and 953 m (787 and 3,126 ft). Associated native plant species include *Alyxia oliviformis, Artemisia australis, Bidens torta, Carex wahuensis, Coprosma longifolia, Eragrostis* sp., *Hedyotis schlechtendahliana, Labordia kaalae* (kamakahala), *Lysimachia hillebrandii, Metrosideros polymorpha, Panicum beechyi* (panic grass), *Pipturus albidus, Pittosporum* sp., *Pleomele halapepe* (hala pepe), *Psychotria hathewayi*, or *Rumex albescens* (HINHP Database 2001).

The primary threats to *Melicope saint-johnii* are habitat degradation and/or destruction by feral goats and pigs; potential predation by the black twig borer; potential fire; competition with nonnative plant species such as *Ageratina adenophora, Ageratina riparia, Clidemia hirta, Grevillea robusta, Lantana camara, Melinis minutiflora, Morella faya, Passiflora suberosa, Passiflora* sp., *Psidium cattleianum*, and *Schinus terebinthifolius;* and risk of extinction due to naturally occurring events and/or reduced reproductive vigor because of the few individuals remaining and their restricted distribution (HINHP

Database 2001; Service 1998b; 61 FR 53089).

Myrsine juddii (Kolea)

Myrsine juddii, short-lived perennial a member of the myrsine family (Myrsinaceae), is a many branched shrub ranging from 1 to 2 m (3.5 to 6.6 ft) tall. This species is distinguished from others in the genus by the hairiness of the lower leaf surface and the shape of the leaf base. In addition, the hairy leaves distinguish this species from all other species of *Myrsine* on Oahu (Wagner *et al.* 1999).

Myrsine juddii has been reported from only three occurrences in the central Koolau Mountains: the North Kaukonahua-Kahana Summit divide, Peahinaia Trail, and Puu Kainapuaa to Poamoho Trail. These occurrences are found on State and Federal lands. The total number of individuals is thought to be around 5,000 (GDSI 2001; HINHP Database 2001).

Myrsine juddii typically grows on ridge crests and gulch slopes in wet forests and shrublands dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* at elevations between 384 and 867 m (1,260 and 2,844 ft). Associated native plant species include *Cheirodendron platyphyllum, Cheirodendron trigynum, Machaerina* sp., *Melicope clusiifolia* (kolokolo mokihana), *Psychotria mariniana*, and *Syzygium sandwicensis* (GDSI 2001; HINHP Database 2001; Service 1998b; 61 FR 53089; EDA, *in litt.* 2001).

The primary threats to *Myrsine juddii* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with nonnative plant species such as *Clidemia hirta* and *Psidium cattleianum;* and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant occurrences (HINHP Database 2001; Service 1998b; 61 FR 53089).

Neraudia angulata (NCN)

Neraudia angulata, a short-lived perennial member of the nettle family (Urticaceae), is an erect shrub up to 3 m (10 ft) tall. This species is distinguished from other species in its genus by the conspicuously angled, ridged, fleshy calyx in the female flower. There are two varieties, *N. angulata* var. *angulata* and *N. angulata* var. *dentata*, that differ in the types of leaf hairs on the lower surface of the leaves and the type of leaf margin (Wagner *et al.* 1999).

Neraudia angulata flowers and fruits from early spring to summer. Fruits mature in about one month. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Neraudia angulata* was known from almost the entire length of the Waianae Mountains, from Kaluakauila Gulch nearly to Puu Manawahua. This species is currently known from Kaluakauila Gulch along Makua-Keaau Ridge to Makaha-Waianae Kai Ridge, on Federal, State, city, county, and private lands. The 27 known occurrences are estimated to comprise approximately 51 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Neraudia angulata var. *angulata* typically grows on slopes, ledges, or gulches in lowland mesic or dry forest between 189 and 978 m (620 and 3,208 ft) elevation. Associated native plant species include *Artemisia australis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Dodonaea viscosa, Hibiscus* sp., *Nestegis sandwicensis, Pisonia sandwicensis, Psydrax odorata*, or *Sida fallax*. *Neraudia angulata* var. *dentata* typically grows on cliffs, rock embankments, gulches, and slopes in mesic or dry forests between 110 and 978 m (361 and 3,208 ft) elevation. Associated native plant species include *Alyxia oliviformis, Antidesma pulvinatum, Artemisia australis, Bidens torta, Canavalia* sp., *Carex* sp., *Charpentiera* sp., *Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Eragrostis* sp., *Hibiscus* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Pisonia* sp., *Psydrax odorata, Rauvolfia sandwicensis, Sapindus oahuensis, Sida fallax*, or *Streblus pendulinus* (HINHP Database 2001; Service 1998b; 56 FR 55770; EDA, *in litt.* 2001).

The major threats to *Neraudia angulata* var. *angulata* are habitat degradation by feral goats and pigs; potential impacts from military activities; competition from the nonnative plant species *Ageratina riparia, Melinis minutiflora, Passiflora* sp., *Psidium cattleianum*, and *Schinus terebinthifolius;* fire; and a risk of extinction from naturally occurring events due to the small number of extant individuals. The major threats to *Neraudia angulata* var. *dentata* are habitat degradation by feral pigs and goats; fire; competition with the nonnative plant species *Ageratina adenophora, Ageratina riparia, Aleurites moluccana, Blechnum appendiculatum, Erigeron karvinskianus, Leucaena leucocephala, Melinis* sp., *Montanoa hibiscifolia, Oplismenus hirtellus, Passiflora suberosa, Pimenta dioica, Psidium guajava, Schefflera actinophylla, Schinus terebinthifolius, Syzygium cumini*, and *Tecoma castanifolia* (yellow elder); and a risk of extinction from naturally occurring events due to the small number of extant individuals (HINHP Database 2001; Service 1998b; 56 FR 55770).

Phyllostegia hirsuta (NCN)

Phyllostegia hirsuta, a short-lived perennial member of the mint family (Lamiaceae), is an erect subshrub or vine with stems densely covered with coarse or stiff hairs. This species is distinguished from others in the genus by the texture, hairiness, size of the leaves, and the length of the upper bracts (Wagner *et al.* 1999).

Phyllostegia hirsuta has been observed in flower in February and in fruit in June. Cultivated material flowered in July. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Phyllostegia hirsuta* was known from widespread locations in the Waianae and Koolau Mountains on Oahu. Currently, this species is found in 26 occurrences with a total of between 214 and 227 individuals from the ridge between Makaha and Waianae Kai to the south fork of North Palawai Gulch in the Waianae Mountains and from Kawainui Gulch in Kawailoa Training Area to south Kaukonahua drainage in the Koolau Mountains. These occurrences are on Federal, State, city, county, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Phyllostegia hirsuta is usually found on steep, shaded slopes, cliffs, ridges, gullies, and stream banks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* between 195 and 1,202 m (640 and 3,943 ft) elevation. Associated native plant species include *Antidesma platyphyllum, Astelia* sp. (painiu), *Brousaissia arguta, Chamaesyce multiformis, Cibotium* sp., *Claoxylon sandwicense, Clermontia kekeana* (oha wai), *Coprosma longifolia, Cyanea membranacea, Cyrtandra waianaeensis, Diplazium sandwichianum, Dryopteris unidentata, Dubautia laxa, Dubautia sherffiana* (naenae), *Elaeocarpus bifidus, Freycinetia arborea, Hedyotis schlechtendahliana, Hedyotis terminalis, Hibiscus* sp., *Ilex anomala, Labordia kaalae, Liparis hawaiiensis* (awapuhiakanaloa), *Lysimachia hillebrandii, Machaerina angustifolia, Melicope* sp., *Myrsine lessertiana, Myrsine sandwicensis* (kolea lau nui), *Neraudia* sp. (NCN), *Nothocestrum* sp., *Perottetia sandwicensis, Phyllostegia grandiflora* (kapana), *Pipturus* sp., *Pisonia* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Rumex albescens, Scaevola gaudichaudiana* (naupaka kuahiwi), *Streblus pendulinus, Zanthoxylum kauaense* (ae), or native ferns (HINHP Database 2001; Service 1998b; 61 FR 53089).

The primary threats to *Phyllostegia hirsuta* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; rockslides; predation by rats; and competition with *Adiantum raddianum, Athyrium* sp. (NCN), *Axonopus fissifolius, Blechnum appendiculatum, Buddleia asiatica, Clidemia hirta, Drymaria cordata* (pipili), *Lantana camara, Melinis minutiflora, Passiflora suberosa, Paspalum conjugatum, Physalis peruviana* (poha), *Pimenta dioica, Psidium cattleianum, Rubus argutus, Rubus rosifolius*, or *Schinus terebinthifolius* (HINHP Database 2001).

Phyllostegia kaalaensis (NCN)

Phyllostegia kaalaensis, a member of the mint family (Lamiaceae), is a short-lived perennial herb. The egg-shaped leaves are 5 to 13 cm (2 to 5 in) long. The species is distinguished from others of the genus by the spreading, pointed teeth on the leaf edges and by the hairs along the margins of the calyx and bracts (Wagner *et al.* 1999).

No information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Phyllostegia kaalaensis was formerly known from only six scattered locations in the Waianae Mountains of Oahu. Currently, this species is known from 7 occurrences containing a total of fewer than 45 plants, in Waianae Kai, Pahole Gulch, central Ekahanui Gulch, Ekahanui Gulch, and Palikea Gulch. These occurrences are on State and private lands (GDSI 2001; HINHP Database 2001).

Phyllostegia kaalaensis is found on gulch slopes and bottoms and on almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest between 374 and 796 m (1,227 and 2,611 ft) elevation. Associated native plant species include *Antidesma platyphyllum, Claoxylon sandwicense, Diplazium sandwichianum, Freycinetia arborea, Hibiscus* sp., *Myrsine lanaiensis, Myrsine lessertiana, Neraudia melastomifolia, Pipturus albidus, Pouteria sandwicensis, Psychotria hathewayi, Streblus pendulinus*, or *Urera glabra* (HINHP Database 2001).

The major threats to *Phyllostegia kaalaensis* are habitat degradation and/or destruction by feral pigs and goats; fire; trail clearing; competition with the nonnative plant species *Ageratina adenophora, Aleurites moluccana, Blechnum appendiculatum, Buddleia asiatica, Christella parasitica, Clidemia hirta, Cordyline fruticosa, Lantana camara, Oplismenus hirtellus, Passiflora edulis* (passion fruit), *Passiflora ligularis, Passiflora suberosa, Psidium cattleianum, Psidium guajava, Rubus rosifolius, Schinus terebinthifolius*, and *Toona ciliata;* and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of occurrences and individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Pritchardia kaalae (Loulu)

Pritchardia kaalae, a long-lived perennial member of the palm family (Arecaceae), is a single-stemmed palm up to 5 m (16 ft) tall. The waxy, hairless leaves are thin and papery or thick and leathery. Sometimes small points, dots, or linear, rusty scales are scattered on the lower leaf surface. *Pritchardia kaalae* is distinguished from other members of the genus by the hairless or scaly leaves (Read and Hodel 1999).

Pritchardia kaalae plants have been observed in fruit in April, August, and October and may fruit throughout the year. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Pritchardia kaalae* was known from scattered occurrences in the central and north-central Waianae Mountains of Oahu. Currently, 6 occurrences are known from Manuwai Gulch, East Makaleha, Kaumokunui Gulch, Waianae Kai-Haleauau summit divide, Makua-Keaau Ridge and Makaha Valley, totaling about 200 individuals. These occurrences are located on Federal, State, city, and county lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Pritchardia kaalae is typically found on steep slopes and gulches in mesic forest or shrubland between elevations of 421 and 1,123 m (1,381 and 3,683 ft). Associated native plant species include *Bidens* sp., *Dodonaea viscosa, Dubautia* sp., *Eragrostis* sp., *Metrosideros polymorpha, Metrosideros tremuloides, Myrsine* sp., *Pipturus* sp., or *Tetraplasandra* sp. (ohe ohe) (HINHP Database 2001; Service 1998b; 61 FR 53089; EDA, *in litt.* 2001).

Major threats to *Pritchardia kaalae* are habitat degradation by feral pigs and goats; fruit predation by rats; potential impacts from military activities; competition with the nonnative plant species *Ageratina adenophora, Rubus argutus*, and *Schinus terebinthifolius;* potential fire; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of occurrences (HINHP Database 2001; Service 1998b; 61 FR 53089).

Sanicula mariversa (NCN)

Sanicula mariversa, a short-lived perennial member of the parsley family (Apiaceae), is an upright herb, 40 to 70 cm (16 to 28 in) tall, that produces a caudex (a single branched stem from a sturdy base) growing just beneath the surface of the soil. The larger size of the plant and basal leaves, the color of the flower petals, and the hooked prickles on the fruit separate this species from others of the genus in Hawaii (Constance and Affolter 1999).

Sanicula mariversa is known to flower from February through May, and fruits can be found until August. Dry fruits remain on the plant for a long time and may persist beyond August. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Sanicula mariversa* was known from the central Waianae Mountains from Makua-Keaau Ridge to Kaluaa-Lualualei Summit Ridge. This species is now extant on Ohikilolo Ridge, Keaau-Makaha Ridge, Kamaileunu Ridge, and northwest of Puu Kanehoa on Federal, State, city, and county lands. The 4 known occurrences contain approximately 170 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Sanicula mariversa typically grows on well-drained, dry slopes and rock faces in mesic shrublands and open grassy areas at elevations between 582 and 978 m (1,909 and 3,208 ft). Associated native species include *Bidens torta, Carex meyenii, Doryopteris* sp., *Eragrostis* sp., *Metrosideros polymorpha*, or *Metrosideros tremuloides* (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Sanicula mariversa* are habitat degradation by feral goats; fire; erosion; competition from the nonnative plant species *Ageratina riparia, Erigeron karvinskianus, Melinus minutiflora, Schinus terebinthifolius*, and

Stachytarpheta dichotoma; trampling by humans on or near trails; and the risk of extinction due to the small number of occurrences (HINHP Database 2001; Service 1998b; 56 FR 55770).

Schiedea kaalae (NCN)

Schiedea kaalae, a short-lived perennial member of the pink family (Caryophyllaceae), has a short woody caudex less than 20 cm (8 in) long. This species can be distinguished from other members of its genus by its very short stems and its thick leaves with one conspicuous vein (Wagner *et al.* 1999).

This plant has been observed in flower from March through June. Based on field and greenhouse observations, *Schiedea kaalae* has bisexual flowers. A series of experimental self-pollinations, within-population crosses, and crosses among occurrences has demonstrated that *Schiedea kaalae* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among progeny, with potentially deleterious consequences for the long-term persistence of this species. Consistent with the evidence for inbreeding depression, *Schiedea kaalae* appears to be an out-crossing species. Under greenhouse conditions, flowers do not set seed unless hand-pollinated. In the field, this species was observed being visited by the introduced syrphid fly, *Simosyrphus grandicornis*. The fly did not appear to be foraging for nectar but may have been feeding on pollen. Individuals of *Schiedea kaalae* appear to be long-lived, but there is no evidence of regeneration from seed under field conditions. Seedlings of *Schiedea kaalae*, like those of other *Schiedea* species in mesic or wet sites, are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea*, a mesic forest species from Kauai. In contrast, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because dry areas have fewer nonnative predators. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b; Weller and Sakai, unpublished data).

Historically, *Schiedea kaalae* was known from the north-central and south-central Waianae Mountains and the northern Koolau Mountains of Oahu. This species remains on State and private lands at Pahole Gulch, Kaluaa Gulch, Puu Kaua, Palawai Gulch, Maakua Gulch, Huliwai Gulch, and Makaua Stream. The 7 known occurrences contain only 49 individuals (GDSI 2001; HINHP Database 2001).

Schiedea kaalae typically grows in deep shade on steep slopes, cliffs, and stream banks in diverse mesic and wet forests at elevations between 64 and 869 m (210 and 2,850 ft). Associated native species include *Alyxia oliviformis, Athyrium arnottii* (hoio), *Athyrium sandwichianum, Boehmeria grandis, Charpentiera sp., Claoxylon sandwicense, Cyrtandra calpidicarpa, Cyrtandra laxiflora, Diospyros hillebrandii, Dryopteris unidentata, Freycinetia arborea, Hedyotis acuminata, Nothocestrum longifolium* (aiea), *Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi, Selaginella arbuscula*, or *Xylosma hawaiiense* (maua) (HINHP Database 2001; Service 1998b).

The major threats to *Schiedea kaalae* are habitat degradation by feral pigs and goats; competition from the nonnative plant species *Ageratina adenophora, Ageratina riparia, Blechnum appendiculatum, Christella parasitica, Clidemia hirta, Cordyline fruticosa, Melinus minutiflora, Morella faya, Oplismenus hirtellus, Passiflora suberosa, Psidium cattleianum, Psidium guajava, Rubus rosifolius*, and *Schinus terebinthifolius;* fire; predation by introduced slugs and snails; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b).

Schiedea kealiae (Ma oli oli)

Schiedea kealiae, a short-lived perennial member of the pink family (Caryophyllaceae), is a subshrub with weakly ascending to sprawling stems that form loose clumps. The species is distinguished from others of this endemic Hawaiian genus by the length of the sepals and nectaries and by the stalkless glands found only on the flowering stalk (Wagner *et al.* 1999).

Schiedea kealiae has been observed in flower in December. A series of self-pollinations, within-population crosses, and crosses among occurrences has demonstrated that many related *Schiedea* species experience moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among progeny, with potentially deleterious consequences for the long-term persistence of the species. Individuals of *Schiedea kealiae* appear to be long-lived; however, there is no evidence of regeneration from seed under field conditions. Seedlings of *Schiedea* species occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea*, a mesic forest species from Kauai. In contrast, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because dry areas have fewer nonnative predators. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b; Weller and Sakai, unpublished data).

Historically, *Schiedea kealiae* was known from the northern Waianae Mountains and one collection from the Palikea area, near the southern end of the same mountain range. Currently, 4 occurrences totaling between 265 and 315 plants are located on the cliffs above Dillingham Airfield and Camp Erdman and at Kaena Point at the northern end of the Waianae Mountains. These occurrences are on private and State lands, as well as State lands under Federal jurisdiction (Army 2001b; GDSI 2001; HINHP Database 2001).

Schiedea kealiae is usually found on steep slopes and cliff faces and bases in dry remnant *Erythrina sandwicensis* forest at elevations between 46 and 341 m (151 and 1,118 ft). Associated native plant species include *Bidens* sp., *Hibiscus arnottianus, Lepidium bidentatum* (anaunau), *Lipochaeta remyi* (nehe), *Myoporum sandwicense, Plumbago zeylanica, Psydrax odorata, Sicyos* sp. (anunu), or *Sida fallax* (HINHP Database 2001).

The major threats to *Schiedea kealiae* are competition with the nonnative plant species *Leucaena leucocephala, Panicum maximum*, and *Schinus terebinthifolius;* predation by introduced slugs and snails; lack of a pollinator; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing occurrences. The Kaena Point occurrence is additionally threatened by naturally occurring rock slides and fire (HINHP Database 2001; Service 1998b; 61 FR 53089).

Silene perlmanii (NCN)

Silene perlmanii, a member of the pink family (Caryophyllaceae), is a short-lived perennial plant with stems that are woody at the base. It usually is much branched from the base and often forms clumps. It is the only species of the genus on Oahu and can be distinguished from other *Silene* species by its white petals and a calyx that is more than 19 mm (0.7 in) long and densely covered with short hairs (Wagner *et al.* 1999).

Silene perlmanii flowers in the spring, depending on climatic conditions. Flowers last for one day. Fruits develop in a few weeks. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Silene perlmanii was discovered in the 1980s and was known from a few individuals in two occurrences in the southern Waianae Mountains on Federal and privately owned lands. The occurrences were about 1.6 km (1 mi) apart at Palikea and Palawai Gulch. Since December of 1997, no individuals are known to be extant in the wild. Currently, this species is known only from individuals under propagation at the National Tropical Botanical Garden (G. Koob, pers. comm. 2002; GDSI 2001; HINHP Database 2001; Service 1998b; 56 FR 55770).

Silene perlmanii typically grew on steep rocky slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest at elevations between 493 and 919 m (1,617 and 3,014 ft) (HINHP Database 2001; Service 1998b; 56 FR 55770).

The major threats to *Silene perlmanii* are competition from the nonnative plant species *Ageratina adenophora, Erigeron karvinskianus, Melinis minutiflora, Morella faya, Passiflora suberosa*, and *Schinus terebinthifolius;* habitat degradation by feral pigs; and the risk of extinction from naturally occurring events and reduced reproductive vigor due to the small number of individuals believed to be extinct (HINHP Database 2001; Service 1998b; 56 FR 55770).

Stenogyne kanehoana (NCN)

Stenogyne kanehoana is a climbing vine in the mint family (Lamiaceae) with stems weakly four-angled, hairy, and 1 to 2 m (3 to 6 ft) long. *Stenogyne kanehoana* is distinguished from the only other member of the genus occurring on Oahu, *S. kaalae*, primarily by the size and color of its flowers. The flowers of *S. kanehoana* are large, white to yellow, and tipped in pink, while those of *S. kaalae* are small and deep purple (Weller and Sakai 1999).

Stenogyne kanehoana generally flowers from February through March, but flowering depends on precipitation, and flowers have been noted from January to as late as April. Fruits mature within six weeks. The lifespan of this species appears to be about seven to 12 years. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Stenogyne kanehoana was known from the east ridge of Puu Kanehoa in the Waianae Mountains, near the summit of the ridge connecting Puu Kanehoa with Puu Hapapa to the north and Puu Kaua to the south, a distance totaling approximately 2.8 km (1.7 mi). This population consisting of two plants near the summit of Puu Kanehoa on privately owned land was found dead recently. An additional occurrence in Kaluaa Gulch was discovered in 2000 by Joan Yoshioka of TNCH. This occurrence consists of one to six individual plants and is located on privately owned land (GDSI 2001; HINHP Database 2001; Service 1998b; 57 FR 20592).

The remnant occurrence of *Stenogyne kanehoana* is found in lowland mesic forest between 559 and 1,168 m (1,834 and 3,831 ft) elevation. Associated native plant species include *Acacia koa, Alyxia oliviformis, Bidens* sp., *Chamaesyce* sp., *Cibotium* sp., *Freycinetia arborea, Metrosideros polymorpha, Psychotria* sp., or *Scaevola* sp. (HINHP Database 2001).

The major threats to *Stenogyne kanehoana* are habitat degradation and competition for space, water, light, and nutrients by the nonnative species *Clidemia hirta, Paspalum conjugatum, Passiflora suberosa, Psidium cattleianum*, and *Schinus terebinthifolius*. The extremely small number of individual plants and their restricted distribution increases the potential for extinction from naturally occurring events. Other potential threats that have been suggested include fire and deforestation, but, at present, these probably are not serious threats to the species. Habitat degradation by feral pigs, predation by the two spotted leafhopper, and trampling by hikers are also thought to be threats to this species (HINHP Database 2001; Service 1998b; 57 FR 20592).

Tetramolopium filiforme (NCN)

Tetramolopium filiforme, a short-lived perennial member of the aster family (Asteraceae), is a dwarf shrub from 5 to 15 cm (2 to 6 in) tall with complexly branched stems. This species is distinguished from the other extant species on Oahu by its separate male and female flowers both on the same plant and its inflorescence of one to four heads (Lowrey 1999).

In cultivation, *Tetramolopium filiforme* germinates in about three weeks. Fifteen weeks after germination, the plants are approximately 9 cm (3.5 in) high and produce their first buds. The first blossoms are noted about 18 weeks after germination. During growth, an inflorescence forms at the apex of each shoot while new shoots develop laterally. *Tetramolopium filiforme* is relatively short-lived, usually living fewer than five years. In the wild, it usually flowers in the late winter or spring but flowering can also be induced by heavy rainfall. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Tetramolopium filiforme* was known from the northern Waianae Mountains, from Ohikilolo Ridge, Keaau Valley, and Makaha Valley. This species remains in Keaau Valley, Kahanahaiki Valley, Makua-Keaau Ridge, Lualualei, Waianae Kai, and Puu Kawiwi on Federal, State, city, and county lands. The 21 known occurrences are estimated to contain approximately 253 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Tetramolopium filiforme typically grows on dry cliff faces and ridges in dry and mesic forests at elevations of 247 to 978 m (810 to 3,208 ft). Associated native species include *Artemisia australis, Bidens torta, Carex meyenii, Dodonaea viscosa, Peperomia tetraphylla* (ala ala wai nui), *Schiedea* sp., or *Sida fallax* (HINHP Database 2001).

The major threats to *Tetramolopium filiforme* are habitat degradation by feral goats; competition from the nonnative plant species *Acacia confusa, Ageratina riparia, Erigeron karvinskianus, Kalanchoe pinnata, Lantana camara, Leucaena leucocephala, Melinis minutiflora, Melinis repens*, and *Schinus terebinthifolius;* fire; potential impacts from military activities; trampling or collection by humans on or near trails; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining occurrences (HINHP Database 2001; Service 1998b).

Tetraplasandra gymnocarpa (Oheohe)

Tetraplasandra gymnocarpa, a long-lived perennial member of the ginseng family (Araliaceae), is a tree 2.5 to 10 m (8 to 33 ft) tall with 7 to 21 leathery, oval to elliptic leaflets per leaf. *Tetraplasandra gymnocarpa* is distinguished from all other species in the genus in that its ovary appears placed fully above the base of the flower (Lowrey 1999).

This species has been observed in flower in November 1991 and in fruit in May, September, and November. Little else is known about its flowering cycles,

pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Tetraplasandra gymnocarpa was historically known from Punaluu, Waikakalaua Gulch, Mount Olympus, and the region between Niu and Wailupe, all in the Koolau Mountains of Oahu. This species was also sighted in the Waianae Range at Palikea in 1954. Currently, 30 occurrences are scattered along the summit ridges of the Koolau Mountains from the region of Paumalu at the northern extreme to Kuliouou and Waimanalo at the southeasternmost point, on Federal, State, city, and county lands. Fewer than 100 individuals are known (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Tetraplasandra gymnocarpa is typically found on windswept summit ridges, on slopes, or in gullies in wet or sometimes mesic lowland forests and shrublands between elevations of 93 and 959 m (305 and 3,146 ft). Associated native plant species include *Acacia koa, Antidesma platyphyllum, Bidens* sp., *Bobea elatior, Broussaisia arguta, Cheirodendron* sp., *Cibotium chamissoi, Cibotium* spp., *Cyanea humboltiana, Dicranopteris linearis, Diplopterygium pinnatum, Dubautia laxa, Freycinetia arborea, Hedyotis fosbergii* (manono), *Hedyotis terminalis, Labordia* sp., *Lobelia hypoleuca* (kuhiaikamoowahie), *Machaerina angustifolia, Melicope* spp., *Metrosideros polymorpha, Myrsine fosbergii* (kolea), *Pouteria sandwicensis, Psychotria* spp., *Sadleria* spp., *Syzygium sandwicensis, Tetraplasandra oahuensis* (ohe mauka), or *Wikstroemia* sp. (HINHP Database 2001; Service 1998b; 59 FR 14482).

The major threats to *Tetraplasandra gymnocarpa* are competition with the nonnative plant species *Aleurites moluccana, Araucaria columnaris* (Norfolk Island pine), *Ardisia elliptica* (shoebutton ardisia), *Axonopus fissifolius, Clidemia hirta, Erigeron karvinskianus, Eucalyptus* sp. (gum tree), *Paspalum conjugatum, Psidium cattleianum, Pterolepis glomerata, Sacciolepis indica, and Setaria palmifolia;* the two-spotted leafhopper; habitat degradation by feral pigs; and reduced reproductive vigor due to the species' limited gene pool as a consequence of the small number of extant individuals (HINHP Database 2001; Service 1998b; 59 FR 14482).

Trematolobelia singularis (NCN)

Trematolobelia singularis, a short-lived perennial member of the bellflower family (Campanulaceae), is an unbranched shrub with stems 0.6 to 1.5 m (2 to 5 ft) long. This species differs from others of this endemic Hawaiian genus by the unbranched, erect flowering stalk (Lammers 1999).

This species has been observed in flower in October and has wind dispersed seeds. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Trematolobelia singularis has been reported only from the southern Koolau Mountains. Approximately 165 plants are known from 3 occurrences at Moanalua-Tripler Ridge summit to Puu Keahiakahoe, Konahuanui, and Puu Lanipo. These occurrences are found on State and private lands (GDSI 2001; HINHP Database 2001).

This species usually grows on steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland from 545 to 953 m (1,788 to 3,126 ft) elevation. Associated native plant species include *Broussaisia arguta, Cibotium* sp., *Dubautia laxa, Eugenia* sp. (nioi), *Melicope* sp., *Sadleria* sp., or *Wikstroemia* sp. (HINHP Database 2001; Service 1998b; 61 FR 53089).

The major threats to *Trematolobelia singularis* are habitat degradation by feral pigs, potential predation by rats and slugs, competition with the aggressive nonnative plant species *Clidemia hirta*, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant occurrences (HINHP Database 2001; Service 1998b; 61 FR 53089).

Urera kaalae (Opuhe)

Urera kaalae, a long-lived perennial member of the nettle family (Urticaceae), is a small tree or shrub 3 to 7 m (10 to 23 ft) tall. This species can be distinguished from the other Hawaiian species of the genus by its heart-shaped leaves (Wagner *et al.* 1999).

Urera kaalae has been observed flowering in the spring. It is difficult to predict when seeds will be produced and they are often sterile. This may be an indication of pollinator limitation. The plants are fast-growing. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Urera kaalae* was known from the central to southern windward Waianae Mountains, from Waianae Uka to Kupehau Gulch. This species now occurs only in North and South Ekahanui, Pualii Gulch, Halona Gulch, Kaluaa Gulch, North and South Palawai, Puu Hapapa, Napepeiauolelo Gulch, and Waianae Kai on Federal, State, and private lands. The 12 known occurrences contain approximately 41 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Urera kaalae typically grows on slopes and in gulches in diverse mesic forest at elevations of 439 to 1,074 m (1,440 to 3,523 ft). Associated native species include *Alyxia oliviformis, Antidesma platyphyllum, Asplenium kaulfusii, Athyrium* sp., *Canavalia* sp., *Charpentiera* sp., *Chamaesyce* sp., *Claoxylon sandwicense, Diospyros hillebrandii, Doryopteris* sp., *Freycinetia arborea, Hedyotis acuminata, Hibiscus* sp., *Nestegis sandwicensis, Pipturus albidus, Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Senna gaudichaudii* (kolomona), *Streblus pendulinus, Urera glabra*, or *Xylosma hawaiiense* (HINHP Database 2001; Service 1998b; Wagner *et al.* 1999; 61 FR 53089).

The major threats to *Urera kaalae* are habitat degradation by feral pigs; competition from the nonnative plant species *Buddleia asiatica, Christella parasitica; Clidemia hirta, Heliocarpus popayaensis, Melinis minutiflora, Morella faya, Passiflora suberosa, Pimenta dioica, Psidium cattleianum, Psidium guajava, Rubus rosifolius*, and *Schinus terebinthifolius;* fire; rockslides; and a risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

Viola chamissoniana ssp. chamissoniana (Pamakani)

Viola chamissoniana ssp. *chamissoniana*, a short-lived perennial member of the violet family (Violaceae), is a branched shrub up to 90 cm (3 ft) tall. This subspecies can be distinguished from the other members of the genus in the Waianae Mountains by the small size of its leaves (Wagner *et al.* 1999).

Viola chamissoniana ssp. *chamissoniana* has been observed in fruit and flower in April, August, and October. No further information is available on flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Viola chamissoniana* ssp. *chamissoniana* was known from the central and southern Waianae Mountains and Makaleha Valley. This taxon now occurs on Kamaileunu Ridge, Palikea Ridge (between Nanakuli and Lualualei), Puu Hapapa, Makua-Keaau Ridge, Halona, and Puu Kumakalii on Federal, State, city, and county lands. The 15 known occurrences contain 59 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Viola chamissoniana ssp. *chamissoniana* typically grows on dry cliffs, rocky ledges, and steep slopes in mesic shrubland and cliff vegetation at elevations of 414 to 1,149 m (1,358 to 3,769 ft). Associated native species include *Artemisia australis, Bidens torta, Carex meyenii, Chamaesyce* sp., *Dodonaea viscosa, Dubautia* sp., *Eragrostis* sp., *Leptecophylla tameiameiae, Lipochaeta tenuis, Metrosideros polymorpha, Peperomia* sp., *Rumex* sp., *Schiedea* sp., or *Sida fallax* (HINHP Database 2001; Service 1998b; 56 FR 55770).

The major threats to *Viola chamissoniana* ssp. *chamissoniana* are habitat degradation by feral goats and pigs; competition from the nonnative plant species *Ageratina adenophora, Ageratina riparia, Erigeron karvinskianus, Melinis minutiflora, Morella faya, and Schinus terebinthifolius;* fire; landslides; and a risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b; 56 FR 55770).

Viola oahuensis (NCN)

Viola oahuensis, a short-lived perennial member of the violet family (Violaceae), is usually an erect, unbranched subshrub 6 to 40 cm (2.4 to 16 in) tall. This species is distinguished from other Hawaiian members of the genus by the shape of the stipules (leaf bracts), the length of the leaf stalks, and the length and papery texture of the leaves (Wagner *et al.* 1999).

Viola oahuensis has been observed flowering in August and September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Viola oahuensis* was known from 17 occurrences in the Koolau Mountains of Oahu, scattered over about a 37 km (23 mi) distance from Puu Kainapuaa to Palolo. The 18 extant occurrences, which total fewer than 200 individuals, are now found from the Kawainui-Koloa summit divide to the Waimalu-Koolaupoko divide on Federal, State, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Viola oahuensis is generally found on exposed, windswept ridges of moderate to steep slope in wet *Metrosideros polymorpha-Dicranopteris linearis* shrublands and *Metrosideros polymorpha* mixed montane bogs in the cloud zone from 415 to 959 m (1,361 to 3,146 ft) elevation. This species typically grows among wind-stunted *Antidesma* sp., *Bidens macrocarpa, Broussaisia arguta, Cibotium* sp., *Dubautia laxa, Hedyotis terminalis, Labordia* sp., *Machaerina* sp., *Melicope* sp., *Sadleria* sp., *Syzygium sandwicensis, Vaccinium* sp., or *Wikstroemia* sp. (HINHP Database 2001; Service 1998b; 61 FR 53089).

The primary threats to *Viola oahuensis* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with the nonnative plants *Axonopus fissifolius, Clidemia hirta, Paspalum conjugatum, Psidium cattleianum*, and *Pterolepis* sp. (NCN); and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of occurrences (HINHP Database 2001; Service 1998b; 61 FR 53089).

Multi-Island Species

Adenophorus periens (Pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendent, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and by the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat, which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons in the habitats where this species is found, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available (Linney 1989).

Historically, *Adenophorus periens* was known from Kauai, the Koolau Mountains of Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. This species is no longer extant on the island of Oahu. It was collected in 1909 on the west ridge of Palolo Crater and the west ridge of Palolo Valley (HINHP Database 2001).

Adenophorus periens grows epiphytically on trees in Metrosideros *polymorpha* and *Metrosideros rugosa* wet forests between 309 and 867 m (1,014 and 2,844 ft) elevation. Associated native plant species include *Cheirodendron* spp., *Cibotium* sp., *Dicranopteris linearis, Hedyotis terminalis, Machaerina angustifolia*, or *Syzygium sandwicensis* (HINHP Database 2001).

Nothing is known of the threats to *Adenophorus periens* on Oahu because the species was last collected there in 1909 (Service 1999; 59 FR 56333).

Alectryon macrococcus (Mahoe)

Alectryon macrococcus, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. On leaves of young *A. macrococcus* var. *macrococcus* plants, the underside of the leaf has dense brown hairs. *Alectryon macrococcus* var. *auwahiensis* is only found on the island of Maui. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in) or more in diameter (Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of this species. Flowering cycles, pollination vectors, seed dispersal agents, and specific environmental requirements are unknown (Service 1997).

Currently and historically, *Alectryon macrococcus* var. *macrococcus* occurs on Kauai, Oahu, Molokai, and Maui. On Oahu, there are a total of 82 occurrences containing around 300 individuals. These occurrences are found in Kapuna Gulch, Huliwai Gulch, Kaluaa Gulch, Ekahanui Gulch, Manuwai Gulch, Mohiakea Gulch, Makua Valley, Puu Ku Makalii, Nanakuli-Lualualei Ridge, Palikea Gulch, Makaha, Pahole Gulch, Makaleha Valley, Waianae Kai, Waieli Gulch, Kaluakauila Gulch, Kaaua Gulch, Puu Hapapa, Mikilua subdistrict, Kaaawa Gulch, and Napepeiauolelo

Gulch on Federal, State, city, county, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

Alectryon macrococcus var. *macrococcus* grows on slopes or ridges, or in gulches, within mesic lowland forests between elevations of 367 and 941 m (1,204 and 3,086 ft). Associated native plant species include *Alyxia oliviformis, Antidesma platyphyllum, Canavalia* sp., *Charpentiera* sp., *Claoxylon sandwicense, Diospyros hillebrandii, Diospyros sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Hibiscus arnottianus, Metrosideros polymorpha, Myrsine lanaiensis, Neraudia* sp., *Nestegis sandwicensis, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi, Psydrax odorata, Streblus pendulinus*, or *Xylosma* sp. (HINHP Database 2001).

The threats to *Alectryon macrococcus* var. *macrococcus* on Oahu are habitat degradation by feral goats and pigs; competition with the nonnative plant species *Aleurites moluccana, Blechnum appendiculatum, Buddleia asiatica, Christella parasitica, Clidemia hirta, Heliocarpos popayanensis, Lanatana camara, Melinus minutiflora, Oplismenus hirtellus, Passiflora suberosa, Pennisetum clandestinum* (kikuyu grass), *Psidium cattleianum, Psidium guajava, Rubus rosifolius, Schinus terebinthifolius, Syzygium cumini*, and *Toona ciliata*; damage from the black twig borer; seed predation by rats, mice (*Mus domesticus*), and insects; fire; depressed reproductive vigor; loss of pollinators; and, due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance, which could easily be catastrophic (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a member of the morning-glory family (Convolvulaceae) and a short-lived perennial, is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, the Waianae Mountains of Oahu, Molokai, Maui, and the island of Hawaii. Currently, this species is extant on Kauai, Oahu, Lanai, Maui, and Hawaii. There are 18 total occurrences on Oahu, containing a total of fewer than 100 plants. These occurrences are found in Niu Valley, Makaleha Valley, Makua-Keaau Ridge, Wailupe, Waialae Nui-Kapakahi Ridge and Kapakahi Gulch, Kaluakauila Gulch, Keawaula, Hawaii Loa Ridge and Kului Gulch, Nanakuli Valley, Kuaokala, Halona, Waialae Iki, Kapuna Gulch, Mikilua, Waianae Kai, and Alaiheihe Gulch on Federal, State, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Bonamia menziesii is found on Oahu on steep slopes or level ground in dry or mesic forest in open or closed canopy at elevations between 31 and 809 m (102 and 2,654 ft). Associated native species include *Acacia koa, Alyxia oliviformis, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis terminalis, Leptecophylla tameiameiae, Melicope* sp., *Metrosideros polymorpha, Myoporum sandwicense, Nestegis sandwicensis, Pisonia* sp., *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis, Sapindus oahuensis, Sicyos* sp., *Sida fallax*, or *Waltheria indica* (HINHP Database 2001; Service 1999).

The primary threats to *Bonamia menziesii* on Oahu are habitat degradation and possible predation by wild and feral pigs, goats, and cattle; competition with the nonnative plant species *Aleurites moluccana, Grevillea robusta, Hyptis pectinata, Kalanchoe pinnata, Lantana camara, Leucaena leucocephala, Melia azedarach, Montanoa hibiscifolia, Panicum maximum, Passiflora suberosa, Pennisetum setaceum* (fountain grass), *Pimenta dioica, Psidium cattleianum, Rivina humilis, Schinus terebinthifolius, Syzygium cumini*, and *Toona ciliata*; fire; and nonnative insect (*Physomerus grossipes*); and potential impacts from military activities (HINHP Database 2001; Service 1999; 59 FR 56333).

Cenchrus agrimonioides (Kamanomano)

Cenchrus agrimonioides, a member of the grass family (Poaceae) and a short-lived perennial, has leaf blades that are flat or folded and that have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides*. They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Conner 1999).

Little is known about the life history of *Cenchrus agrimonioides*. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors, except that this species has been observed to produce fruit year-round (Service 1999; 65 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from the Waianae Mountains of Oahu, Lanai, Maui, and an undocumented account from the island of Hawaii. *Cenchrus agrimonioides* var. *laysanensis* was historically and currently only known from the Northwest Hawaiian Islands. Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui; on Oahu from a total of 7 occurrences containing between 113 and 118 individuals. These occurrences are found in Pahole Gulch, on Makaha-Waianae Kai Ridge, in or near Kahanahaiki Gulch, in east Makaleha, Puu Kaua, Huliwai Gulch, and in Pualii drainage, on Federal, State, city, county, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Cenchrus agrimonioides var. *agrimonioides* on Oahu is usually found on dry upper slopes or ridges in lowland mixed mesic forest at elevations between 357 and 890 m (1,171 and 2,919 ft). Associated native plant species include *Acacia koa, Alyxia oliviformis, Bobea* sp., *Carex wahuensis, Chamaesyce multiformis, Coprosma foliosa, Diospyros sandwicensis, Eragrostis variabilis, Gahnia beecheyi* (NCN), *Leptecophylla tameiameiae, Metrosideros polymorpha, Nestegis sandwicensis, Psydrax odorata*, or *Psychotria* sp. (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* on Oahu are habitat degradation and/or destruction by feral pigs; competition with the nonnative plant species *Ageratina riparia, Blechnum appendiculatum, Casuarina* sp., *Clidemia hirta, Grevillea robusta, Paspalum conjugatum, Passiflora suberosa, Psidium cattleianum, Rubus argutus*, and *Schinus terebinthifolius*; trampling and fire from military activities; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2001; Service 1999; 61 FR 53108).

Centaurium sebaeoides (Awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Occurrences are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (56 FR 55770).

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui. Currently on Oahu, 2 occurrences of this species remain with a total of between 60 and 80 individuals at Kaena Point and Koko Head on State, city, and county lands (HINHP Database 2001; Service 1999; Wagner *et al.* 1999).

Centaurium sebaeoides typically grows in volcanic or clay soils or on cliffs in arid coastal areas or on coral plains below 368 m (1,207 ft) elevation. Associated native species include *Artemisia* sp., *Bidens* sp., *Jacquemontia ovalifolia, Lipochaeta succulenta* (nehe), or *Lysimachia* sp. (kolokolo kuahiwi) (HINHP Database 2001; Wagner *et al.* 1999; 56 FR 55770).

The major threats to *Centaurium sebaeoides* on Oahu are habitat degradation by feral goats and cattle, competition from the nonnative plant species *Leucaena leucocephala*, trampling by humans on or near trails, fire, and a risk of extinction from naturally occurring events due to the small number of existing occurrences and individuals (56 FR 55770; Service 1999).

Colubrina oppositifolia (Kauila)

Colubrina oppositifolia, a member of the buckthorn family (Rhamnaceae) and a long-lived perennial, is a tree with extremely hard red wood. This species is readily distinguished from the other species in Hawaii by its opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

Colubrina oppositifolia has been observed in flower during January, June, September, and December and in fruit during January, June, and September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (HINHP Database 2001).

Historically and currently, *Colubrina oppositifolia* was known from Oahu, Maui, and the island of Hawaii. Currently, there is a total of 5 occurrences containing 61 individuals on Oahu. These occurrences are found in Kaumokunui Gulch, Makaleha Valley, and Manuwai Gulch on State and private lands (GDSI 2001; HINHP Database 2001).

Colubrina oppositifolia is found in lowland dry and mesic forests dominated by *Diospyros sandwicensis* at elevations between 277 and 761 m (909 and 2,496 ft). Associated native species include *Alyxia oliviformis, Nestegis sandwicensis, Psydrax odorata, Reynoldsia sandwicensis*, or *Sapindus oahuensis* (HINHP Database 2001).

The threats to this species on Oahu are habitat destruction by feral pigs and goats; competition with the nonnative plant species *Aleurites moluccana, Lantana camara, Pennisetum setaceum, Psidium cattleianum, Schinus terebinthifolius*, and *Syzygium cumini*; damage from the black twig borer and Chinese rose beetle; fire; potential impacts from military activities; and a risk of extinction from naturally occurring events due to the small number of existing occurrences and individuals (HINHP Database 2001; Service 1996c; 59 FR 10305).

Ctenitis squamigera (Pauoa)

Ctenitis squamigera, a short-lived member of the woodfern family (Aspleniaceae), has a rhizome creeping above the ground that is densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors for *Ctenitis squamigera* (Service 1998a).

Historically, *Ctenitis squamigera* was recorded from Kauai, the Koolau and Waianae Mountains of Oahu, Molokai, Maui, and the island of Hawaii. This species is currently extant on Oahu, Molokai, Lanai, and Maui. Currently on Oahu, 8 occurrences with more than 80 individuals are found in Makaleha Valley, Kaaawa Gulch, Makua Valley, and Waianae Kai Forest Reserve on Federal, State, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Ctenitis squamigera is found on gentle to steep slopes in *Metrosideros polymorpha-Diospyros sandwicensis* mesic forest and diverse mesic forest at elevations of 387 to 923 m (1,269 to 3,027 ft). Associated native plant taxa include *Alyxia oliviformis, Carex meyenii, Diospyros hillebrandii, Dodonaea viscosa, Doodia kunthiana, Dryopteris unidentata, Freycinetia arborea, Hibiscus* sp., *Myrsine sp., Nestegis sandwicensis, Pisonia* sp., *Pouteria sandwicensis, Psychotria* sp., *Psydrax odorata*, or *Xylosma* sp. (HINHP Database 2001).

The primary threats to *Ctenitis squamigera* on Oahu are habitat degradation by feral pigs and goats; competition with the nonnative plant species *Ageratina riparia, Aleurites moluccana, Blechnum appendiculatum, Clidemia hirta, Psidium cattleianum, Psidium guajava, Schinus terebinthifolius, Syzygium cumini*, and *Toona ciliata*; fire; and decreased reproductive vigor and a risk of extinction caused by naturally occurring events due to the small number of existing occurrences (HINHP Database 2001; Service 1998; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana* (Haha)

Cyanea grimesiana ssp. *grimesiana*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Currently and historically, *Cyanea grimesiana* ssp. *grimesiana* is known from the Waianae and Koolau Mountains on Oahu, Molokai, Lanai, and Maui. On Oahu, there are seven occurrences known from Palikea Gulch, North Haleauau Gulch, Pahole Natural Area Reserve (NAR), Pia Gulch, Kului Gulch, and in Waialae Iki-Kapakahi on Federal, State, city, county, and private lands containing a total of nine individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Cyanea grimesiana ssp. *grimesiana* is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *M. polymorpha* and *Acacia koa*, or on rocky or steep slopes of stream banks, at elevations between 114 and 746 m (374 and 2,447 ft). Associated native plant species include *Alyxia oliviformis, Antidesma* sp., *Bobea* sp., *Clermontia persicaefolia* (oha wai), *Coprosma* sp., *Cyanea angustifolia* (haha), *Dicranopteris linearis, Diplazium sandwichianum, Joinvillea* sp. (ohe), *Melicope* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., *Syzygium sandwicensis*, or *Xylosma* sp. (Service 1999; 61 FR 53108).

The threats to *Cyanea grimesiana* ssp. *grimesiana* on Oahu are habitat degradation and/or destruction caused by wild and feral goats and pigs; competition with the nonnative plant species *Clidemia hirta, Psidium cattleianum*, and *Toona ciliata;* random naturally occurring events creating a risk of extinction due to the small number of existing individuals; fire; trampling by hikers and/or military activities; landslides; and predation by rats and various species of slugs (Service 1999; 61 FR 53108).

Cyperus trachysanthos (Puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived, perennial, grass-like plant with a short rhizome. The stems are densely tufted, obtusely triangular in cross-section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes, and the length of the stems (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos*. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1999).

Historically, *Cyperus trachysanthos* was known from Niihau, Kauai, scattered locations on Oahu, Molokai, and Lanai. This species is now extant on Niihau, Kauai, and Oahu. On Oahu, it is known from Kaena Point NAR, nearby Manini Gulch, Diamond Head, Makapuu, Queens Beach, and the Kawainui Marsh area, on Federal, State, and private lands. There are 6 occurrences with a total of 40 individuals on Oahu (HINHP Database 2001; Service 1999).

Cyperus trachysanthos is usually found in seasonally wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on seepy flats, coastal cliffs, or talus slopes at elevations between 6 and 194 m (609 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (HINHP Database 2001; Koyama 1999; Service 1999; 61 FR 53108).

The threats to *Cyperus trachysanthos* on Oahu are a risk of extinction from naturally-occurring events due to the small number of occurrences; competition with nonnative plant species; habitat degradation by feral goats; fire; habitat disturbance by off-road vehicles; pumping of wetlands for flood and mosquito control; modifications to the wetland topography; mowing; herbicide application; and run-off from nearby Hawaii Army National Guard (HIARNG) activities such as the cleaning of vehicles, dumping of paints or thinners, or the use of pesticides (Service 1999; 61 FR 53108).

Diellia erecta (Aspenium-leaved diellia)

Diellia erecta, a member of the spleenwort family (Aspleniaceae) and a short-lived perennial, is a fern that grows in tufts of three to nine lance shaped fronds that emerge from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having larger brown or dark gray scales, fused or separate sori along both margins of the pinna, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known from Kauai, the Koolau Mountains on Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, Maui, Oahu, and Hawaii. On Oahu, it is known from a single occurrence containing at least 20 plants on Hawaii Loa Ridge on State and private lands (GDSI 2001; HINHP Database 2001).

Diellia erecta is found on moderate to steep gulch slopes or sparsely vegetated rock faces in mesic forest at elevations between 118 and 550 m (387 and 1,804 ft). Associated native plant species include *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Myrsine* sp., *Psychotria* sp., *Psydrax odorata, Sapindus oahuensis, Syzygium sandwicensis*, or *Wikstroemia* sp. (HINHP Database 2001; Service 1999).

The major threats to *Diellia erecta* on Oahu are habitat degradation by pigs; competition with nonnative plant species, including *Blechnum appendiculatum, Clidemia hirta, Cordyline fruticosa* (ti), *Oplismenus hirtellus, Phymatosorus grossus* (lauae), *Psidium cattleianum, Schefflera actinophylla*, and *Schinus terebinthifolius;* and random naturally-occurring events causing extinction and/or reduced reproductive vigor due to the small number of occurrences and existing individuals (HINHP Database 2001; Service 1999; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors for *Diplazium molokaiense* are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found at Makaleha and Schofield Barracks on Oahu, Kauai, Molokai, Lanai, and Maui. However, within the last 20 years, only one occurrence of one individual has been recorded from East Maui. This species was last collected on Oahu in 1945 from Kolekole Pass to Kaala (HINHP Database 2001).

Diplazium molokaiense on Oahu was found on steep, rocky, wooded gulch walls in wet forests from 618 to 1,202 m (2,027 to 3,943 ft) elevation (HINHP Database 2001).

Nothing is known of the threats to *Diplazium molokaiense* because this species was last collected there in 1945.

Eugenia koolauensis (Nioi)

Eugenia koolauensis, a long-lived perennial member of the myrtle family (Myrtaceae), is a small tree or shrub between 2 and 7 m (7 and 23 ft) tall with branch tips covered with dense brown hairs. *Eugenia koolauensis* is one of two species in the genus that are native to Hawaii. It differs from the other species in having leaves that are densely hairy on the lower surface and leaf margins that curve under the leaves (Wagner *et al.* 1999).

This species has been observed in flower from February to December. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Eugenia koolauensis was historically known from Molokai and from Kaipapau Valley, Hanaimoa and Kahawainui Gulches, and a gully southeast of Kahuku on Oahu. Currently, this species is only found on Oahu in 12 occurrences on Federal, State, and private lands in Hanaimoa, Papali, Kaleleiki, Aimuu, Kaunala, Pahipahialua, Oio, and Palikea Gulches. A total of fewer than 70 individuals occur on Oahu (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Eugenia koolauensis is found on gentle to steep slopes or ridges in mesic or dry forests dominated by *Metrosideros polymorpha* or *Diospyros* sp. from 57 to 437 m (187 to 1,433 ft) in elevation. Other associated native plant species include *Alyxia oliviformis, Bobea elatior, Carex meyenii, Dicranopteris linearis, Leptecophylla tameiameiae, Myrsine lessertiana, Nestegis sandwicensis, Pleomele halapepe, Pouteria sandwicensis, Psydrax odorata*, or *Rauvolfia sandwicensis* (HINHP Database 2001; Service 1998b).

The major threats to *Eugenia koolauensis* on Oahu are habitat degradation by feral pigs; competition with nonnative plant species such as *Acacia confusa, Aleurites moluccana, Araucaria columnaris, Ardisia elliptica, Casuarina equisetifolia, Clidemia hirta, Cordyline fruticosa, Eucalyptus* sp., *Grevillea robusta, Hyptis pectinata, Lantana camara, Melia azedarach, Oplismenus hirtellus, Panicum maximum, Passiflora laurifolia* (yellow granadilla), *Passiflora suberosa, Psidium cattleianum, Schinus terebinthifolius, Syzygium cumini*, and *Toona ciliata;* and the limited numbers of this species, which make it vulnerable to extinction due to naturally caused events and reduced reproductive vigor (HINHP Database 2001; 59 FR 14482).

Euphorbia haeleeleana (Akoko)

Euphorbia haeleeleana, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is a dioecious (female and male flowers on separate plants) tree 3 to 14 m (10 to 46 ft) tall. This species is distinguished from others in the genus in that it is a tree and by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleeleana* bear only male or female flowers and must be cross-pollinated from a different tree to produce viable seed. This species sets fruit between August and October. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1999; Wagner *et al.* 1999).

Euphorbia haeleeleana is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu. On Oahu, 8 occurrences of approximately 134 individuals are known from Keawaula Gulch, Kahanahaiki Valley, Kaumokunui-Kaumokuiki Ridge, and Alaieihe Gulch on Federal, State, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Euphorbia haeleeleana on Oahu is usually found in dry forest that is often dominated by *Diospyros* sp. at elevations between 156 and 586 m (512 and 1,922 ft). Associated native plant species include *Dodonaea viscosa, Erythrina sandwicensis, Pleomele* sp., *Psydrax odorata, Reynoldsia sandwicensis*, or *Sapindus oahuensis* (HINHP Database 2001).

The main threats to *Euphorbia haeleeleana* on Oahu are habitat degradation and/or destruction by wild and feral goats and pigs; predation by rats; fire; potential impacts from military activities; and competition with the nonnative plant species *Aleurites moluccana, Caesalpinia decapetala* (wait-a-bit), *Coffea arabica, Digitaria insularis* (sourgrass), *Ficus microcarpa, Grevillea robusta, Hyptis pectinata, Kalanchoe pinnata, Lantana camara, Leucaena leucocephala, Melia azedarach, Melinus minutiflora, Panicum maximum, Passiflora suberosa, Psidium cattleianum, Rivina humilis, Schinus terenbinthifolius, Syzygium cumini*, and *Toona ciliata* (HINHP Database 2001).

Flueggea neowawraea (Mehamehame)

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae) and a long-lived perennial, is a large dioecious tree up to 30 m (100 ft) tall with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from similar Hawaiian species in the family by its hairless, whitish lower leaf surfaces and round fruits (Hayden 1999; Service 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers and must be cross-pollinated from a different tree to produce viable seed. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Hayden 1999; Service 1999).

Historically, *Flueggea neowawraea* was known from Oahu, Kauai, Maui, Molokai, and the island of Hawaii. Currently, it is known from Kauai, Oahu, Maui, and Hawaii. On Oahu, *Flueggea neowawraea* is known from 23 occurrences with a total of approximately 31 individuals on Federal, State, city, county, and private lands at Makua Valley, Makaha, Alaiheihe Gulch, Kaluaa Gulch, Makaleha Valley, Ekahanui Gulch, Pahole Gulch, Keaau Valley, Kahanahaiki Valley, Kaaawa Gulch, Waianae Kai, Palikea Gulch, Manuwai Gulch, Mohiakea Gulch, Kauhiuhi, Mikilua, and Lualualei (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Flueggea neowawraea occurs on gulch slopes or ridge crests, or near streams, in dry or mesic forest at elevations of 323 to 1,006 m (1,059 to 3,300 ft). Associated native plant species include *Alyxia oliviformis, Antidesma platyphyllum, Antidesma pulvinatum, Bobea* sp., *Chamaesyce herbstii, Chamaesyce multiformis, Charpentiera* sp., *Claoxylon sandwicensis, Diospyros hillebrandii, Diospyros sandwicense, Erythrina sandwicensis, Hedyotis terminalis, Hibiscus arnottianus, Metrosideros polymorpha, Morinda trimera (noni), Myoporum sandwicense, Myrsine* sp., *Nestegis sandwicensis, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pittosporum* sp., *Pleomele* sp., *Psydrax odorata, Pteralyxia* sp., *Rauvolfia sandwicensis, Sapindus oahuensis*, and *Streblus pendulina* (Hayden 1999; HINHP Database 2001).

The primary threat to the continued existence of *Flueggea neowawraea* on Oahu is the black twig borer, which has affected all known *Flueggea neowawraea* plants. Other major threats include habitat degradation by feral pigs and goats; competition with the nonnative plant species *Ageratina riparia, Aleurites moluccana, Blechnum appendiculatum, Clidemia hirta, Ficus macrophylla, Ficus microcarpa, Grevillea robusta, Kalanchoe pinnata, Lantana camara, Melinis minutiflora, Paspalum conjugatum, Passiflora suberosa, Psidium* spp., *Rivina* sp., *Schinus terebinthifolius, Syzygium cumini*, and *Toona ciliata;* fire; predation by the Chinese rose beetle; the small occurrence size with its limited gene pool and depressed reproductive vigor, compounded by a requirement for cross-pollination because the species is dioecious; potential impacts from military activities; and predation of the fruit by rats (HINHP Database 2001; Service 1999).

Gouania meyenii (NCN)

Gouania meyenii, a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is an erect to spreading shrub. It is distinguished from the two other Hawaiian members of its genus by its lack of tendrils on flowering branches, the lack of teeth on the leaves, and the hairiness of the fruits (Wagner *et al.* 1999).

Gouania meyenii flowers from March to May. Seed capsules develop in about six to eight weeks. Plants appear to live about 10 to 18 years in the wild. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Gouania meyenii* was known from central and southern areas of Oahu's Waianae Mountains, from Kamaileunu Ridge to Honouliuli and from Diamond Head. Currently, this species is found on Oahu and Kauai. On Oahu, it is found on Makaha-Waianae Kai Ridge on State, private, city, and county lands. The 4 known occurrences on Oahu contain an estimated 63 individuals (GDSI 2001; HINHP Database 2001; Wagner *et al.* 1999).

Gouania meyenii typically grows on moderate to steep slopes in dry shrubland or mesic lowland forest at elevations of 17 to 930 m (56 to 3,050 ft). Associated native plant species include *Alyxia oliviformis, Bidens* sp., *Canavalia* sp., *Carex meyenii, Chamaesyce* sp., *Charpentiera* sp., *Diospyros sandwicensis, Diospyros* sp., *Dodonaea viscosa, Dryopteris unidentata, Dubautia sherffiana, Eragrostis* sp., *Hedyotis* sp., *Hibiscus* sp., *Lysimachia* sp., *Melicope* sp., *Myrsine* sp. (kolea), *Nestegis sandwicensis, Pisonia* sp., *Psychotria* sp., *Psydrax odorata, Sapindus oahuensis, Schiedea* sp., *Senna gaudichaudii, Sida fallax*, or *Sophora chrysophylla* (HINHP Database 2001).

The major threats to *Gouania meyenii* on Oahu are competition from the nonnative plant species *Grevillea robusta, Kalanchoe pinnata, Lantana camara, Leucaena leucocephala, Melinis minutiflora, Oplismenus hirtellus, Pimenta dioica, Psidium cattleianum, Psidium guajava*, and *Schinus terebinthifolius;* fire; habitat degradation by feral pigs and goats; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining occurrences and individuals (HINHP Database 2001).

Gouania vitifolia (NCN)

Gouania vitifolia, a short-lived member of the buckthorn family (Rhamnaceae), is a climbing shrub or woody vine with tendrils. The species is the only Hawaiian member of the genus with tendrils and toothed leaf margins (Wagner *et al.* 1999).

Gouania vitifolia flowers from March to May. Seed capsules develop in about six to eight weeks. Plants appear to live about 10 to 18 years in the wild. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Gouania vitifolia* was known from Maui, the island of Hawaii, and the northwestern portion of the Waianae Mountains in Makaleha, Keaau, and Waianae Kai Valleys on Oahu. Currently, this species is extant on Oahu and Hawaii. It is known from 2 occurrences on Oahu on State and private lands, located at Waianae Kai and Keaau Valley, totaling 44 individuals (GDSI 2001; HINHP Database 2001; Wagner *et al.* 1999).

Gouania vitifolia typically grows on the sides of ridges and gulches in dry to mesic forests at elevations of 39 to 978 m (128 to 3,208 ft). Associated native plant species include *Bidens* sp., *Carex meyenii, Chamaesyce* sp., *Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis* sp., *Hibiscus arnottianus, Melicope* sp., *Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Urera glabra* (Service 1998b).

The major threats to *Gouania vitifolia* are competition from the nonnative plant species *Aleurites moluccana, Buddleia asiatica, Cordyline fruticosa, Hyptis pectinata, Lantana camara, Leucaena leucocephala, Melinis minutiflora, Oplismenus hirtellus, Panicum* sp. (panic grass), *Passiflora edulis, Passiflora ligularis, Passiflora suberosa, Psidium cattleianum, Rubus argutus, Schinus terebinthifolius* and *Toona ciliata;* habitat destruction by feral pigs; and a threat of random extinction and reduced reproductive vigor due to the small number of extant individuals (HINHP Database 2001; 59 FR 32932).

Hedyotis coriacea (Kioele)

Hedyotis coriacea, a short-lived member of the coffee family (Rubiaceae), is a small shrub with leathery leaves that are generally elliptic to oblong in shape. This species is distinguished from others of the genus by its small, triangular calyx lobes that do not enlarge in fruit, by capsules that are longer than wide, and by flower buds that are square in cross-section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Hedyotis coriacea* was known from the Waianae and Koolau Mountains on Oahu and the island of Hawaii. Currently, this species is extant on Maui and Hawaii. This species was last collected on Oahu in the 1800s (HINHP Database 2001).

Hedyotis coriacea is found on steep, rocky slopes in dry to mesic Dodonaea viscosa dominated shrublands or forests at elevations of 57 to 836 m (187 to 2,742 ft). Associated native species include *Alyxia oliviformis, Leptecophylla tameiameiae*, or *Metrosideros polymorpha* (HINHP Database 2001; 57 FR 20772).

Nothing is known of the threats to *Hedyotis coriacea* on Oahu because the species was last collected there in the 1800s (Service 1997; 57 FR 20772).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived member of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: Erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species has been observed in flower from April through June and fruit during March and June. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Molokai, Lanai, and scattered occurrences throughout the Koolau Mountains, Oahu, from Koolauloa and Pupukea at its northern extreme to Konahuanui at the southern end. This species is now known from Oahu, Molokai, and Maui. On Oahu, there are 36 occurrences containing between 86 and 93 individuals on private, city, county, State, and Federal lands at a few disjunct locations upslope of Kahuku, Laie, and Malaekahana; along Poamoho Trail above Poamoho Stream; along Waikane-Schofield Trail near the ridge summit; and at Kipapa Gulch, on Halawa Ridge, Waimanalo-Niu divide, Kainawaanui, Kaukonahua Gulch, Maakua-Kaipapau Ridge, Kapakahi Gulch, Halemano-Opaeula Ridge, Kawailoa Trail, Kaimananui Gulch, and upper Palolo Valley to Niu Valley (EDA Database 2001; GDSI 2001; HINHP Database 2001; Service 1998b).

Hesperomannia arborescens on Oahu is found in association with *Acacia koa, Antidesma platyphyllum, Bobea elatior, Broussaisia arguta, Cheirodendron* sp., *Cibotium* sp., *Coprosma* sp., *Dicranopteris linearis, Dubautia* sp., *Hedyotis terminalis, Hibiscus arnottianus, Labordia sessilis (kamakahala), Machaerina angustifolia, Melicope* sp., *Metrosideros polymorpha, Myrsine* sp., *Nestegis sandwicensis, Perottetia sandwicensis, Pipturus* sp., *Psychotria mariniana, Scaevola gaudichaudiana, Scaevola glabra (ohe naupaka), Syzygium sandwicensis, Tetraplasandra oahuensis, and Wikstroemia* sp. It typically grows on steep slopes, ridge tops, and gulches in lowland wet forests and occasionally in shrublands between 110 and 1,147 m (361 and 3,762 ft) in elevation (HINHP Database 2001; Service 1998b; Wagner *et al.* 1999).

The major threats to *Hesperomannia arborescens* are habitat degradation by feral pigs and goats; competition with the nonnative plant species *Axonopus fissifolius, Clidemia hirta, Leptospermum scoparium*, and *Psidium cattleianum;* fire; impact by humans; and a risk of extinction due to random environmental events or reduced reproductive vigor due to this species' limited numbers (HINHP Database 2001; 59 FR 14482)

Hesperomannia arbuscula (NCN)

Hesperomannia arbuscula, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

Hesperomannia arbuscula usually flowers in the spring depending on precipitation. Seeds mature in about six weeks and trees live for about 10 to 15 years. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Hesperomannia arbuscula* was known from the central and southern Waianae Mountains, from Makaleha to Puu Kanehoa on Oahu, and from West Maui. This species is currently known to be extant on the Makaha-Waianae Kai Ridge and in Kaluaa and Kapuna Gulches on Oahu and on West Maui. The 6 known occurrences on Oahu contain between 90 and 92 individuals on State, private, city, and county lands (GDSI 2001; HINHP Database 2001).

Hesperomannia arbuscula on Oahu typically grows on slopes and ridges in dry to wet forest dominated by *Acacia koa* and *Metrosideros polymorpha* at elevations of 370 to 1,053 m (1,214 to 3,454 ft). Associated native species include *Alyxia oliviformis, Antidesma* sp., *Bidens* sp., *Bobea elatior*, the endangered *Cyanea longiflora, Diospyros hillebrandii, Freycinetia arborea, Hedyotis terminalis, Hibiscus* sp., *Psychotria* sp., and *Syzygium sandwicensis* (HINHP Database 2001; Service 1998b; Wagner *et al.* 1999).

The major threats to *Hesperomannia arbuscula* on Oahu are habitat degradation by feral pigs; competition from the nonnative plant species *Clidemia hirta, Lantana camara, Psidium cattleianum, Rubus argutus*, and *Schinus terebinthifolius;* trampling by humans; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining occurrences and individuals (HINHP Database 2001; 56 FR 55770).

Hibiscus brackenridgei (Mao hau hele)

Hibiscus brackenridgei, a short-lived perennial member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: Yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptical scar.

Three subspecies of *Hibiscus brackenridgei* are now recognized: *brackenridgei, molokaiana*, and *mokuleianus*. When we listed this species in 1994, only two subspecies, *brackenridgei* and *mokuleianus*, were recognized. Subsequently we became aware of Wilson's (1993) taxonomic treatment of this group, in which *H. brackenridgei* ssp. *molokaiana* was recognized as distinct from *H. brackenridgei* ssp. *brackenridgei*. Wilson's (1993) treatment is cited in the supplement in the revised edition of the *Manual of the Flowering Plants of Hawaii* as the basis for recognizing *H. brackenridgei* ssp. *molokaiana*. We will address this name change in a future **Federal Register** notice (Bates 1999; HINHP Database 2000; Wagner *et al.* 1999; Wilson 1993).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be related to day length. Little else is known about the life history of this plant. Little elsé is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1999).

This species was historically known from Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. *Hibiscus brackenridgei* ssp. *mokuleianus* is currently known from Oahu, Lanai, Maui, and Hawaii; it may possibly occur on Kauai. On Oahu, there are a total of fewer than 206 individual plants in 5 occurrences at Kaumokunui, Kawaiu, Palikea, Kihakapu, and Kaimuhole Gulches on State and private lands. *Hibiscus brackenridgei* ssp. *molokaiana* is currently known from Oahu. There are a total of five individual plants in one occurrence in Makua Valley on land under Federal jurisdiction (GDSI 2001; HINHP Database 2001; Joel Lau, pers. comm., 2001).

Hibiscus brackenridgei ssp. *mokuleianus* on Oahu occurs on slopes, cliffs, and arid ledges in lowland dry forest and shrubland from 24 to 490 m (79 to 1,607 ft) in elevation. Associated native plant species include *Bidens amplectans* (kookoolau), *Chamaesyce* sp., *Diospyros hillebrandii, Dodonaea viscosa, Doryopteris* sp., *Erythrina sandwicensis, Heteropogon contortus, Hibiscus brackenridgei* ssp. *molokaiana, Lepidium bidentatum, Melanthera remyi, Pleomele halapepe, Psydrax odorata, Reynoldsia sandwicensis, Sida fallax*, or *Waltheria indica*. *Hibiscus brackenridgei* ssp. *molokaiana* occurs in dry shrublands between 23 and 580 m (75 to 1,902 ft) elevation. Associated native plant species include *Dodonaea viscosa, Doryopteris* sp., *Heteropogon contortus, Sida fallax*, and *Waltheria indica* (GDSI Database 2001; HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Hibiscus brackenridgei* ssp. *mokuleianus* on Oahu are habitat degradation and possible predation by pigs, goats, cattle, and rats; competition with the nonnative plant species *Ageratum conyzoides* (maile honohono), *Aleurites moluccana, Caesalpinia decapetala, Coffea arabica, Grevillea robusta, Hyptis pectinata, Leucaena leucocephala, Melia azedarach, Neonotonia wightii* (NCN), *Panicum maximum, Passiflora edulis, Passiflora suberosa, Schinus terebinthifolius, Spathodea campanulata* (African tulip tree);

Syzygium cumini, and *Toona ciliata;* road construction; fire; and susceptibility to extinction caused by random environmental events or reduced reproductive vigor due to a limited number of occurrences and individuals. The primary threats to *Hibiscus brackenridgei* ssp. *molokaiana* are habitat degradation and possible predation by pigs and goats; competition with the nonnative plant species *Ageratum conyzoides, Leucaena leucocephala*, and *Panicum maximum;* fire; predation by the Chinese rose beetle; and susceptibility to extinction caused by random environmental events or reduced reproductive vigor due to the single occurrence and limited number of individuals (HINHP Database 2001; 59 FR 56333).

Isodendrion laurifolium (Aupaka)

Isodendrion laurifolium, a short-lived perennial member of the violet family (Violaceae), is a slender, erect shrub with few branches. The species is distinguished from others in the genus by its leathery, oblong-elliptic, narrowly elliptic, lance-shaped leaves (Wagner *et al.* 1999).

Little is known about the flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of this species (Service 1999).

Historically, *Isodendrion laurifolium* was known from Kauai and the Waianae and Koolau mountains of Oahu. Currently, this species is found on Kauai and Oahu. On Oahu, there are a total of between 22 and 23 individuals found in 5 occurrences on State, private, city, and county lands in Makaha in the Waianae Mountains, East Makaleha Valley, Waianae Kai, Kaawa Gulch, and Kaumokunui Gulch (GDSI 2001; HINHP Database 2001).

Isodendrion laurifolium on Oahu is usually found between 90 and 959 m (295 and 3,146 ft) elevation on gulch slopes, in ravines, and on ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha, Eugenia reinwardtiana*, or *Diospyros sandwicensis* with one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma platyphyllum, Antidesma pulvinatum, Carex wahuensis, Charpentiera tomentosa* (papala), *Doodia* sp., *Dryopteris unidentata, Hedyotis terminalis, Hibiscus arnottianus, Nestegis sandwicensis, Pisonia* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis, Sapindus* sp. (soapberry), *Smilax melastomifolia* (hoi kuahiwi), or *Xylosma hawaiiense* (HINHP Database 2001; Service 1999).

The primary threats to *Isodendrion laurifolium* on Oahu are habitat degradation by feral goats and pigs; competition with the nonnative plant species *Aleurites moluccana, Cordyline fruticosa, Grevillea robusta, Psidium cattleianum, Schinus terebinthifolius*, and *Toona ciliata;* and a potential threat from military activities (HINHP Database 2001; 61 FR 53108).

Isodendrion longifolium (Aupaka)

Isodendrion longifolium, a member of the violet family (Violaceae), is a slender, erect shrub. The hairless, leathery, lance-shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of this species (Service 1999).

Historically and currently, *Isodendrion longifolium* is known from scattered locations on Kauai and the Waianae Mountains on Oahu. There is a total of 30 individual plants on Oahu in 7 occurrences on Federal, State, and private lands in Palikea Gulch, Kaawa Gulch, Makaua Gulch, and Kaukonahua Stream (EDA Database 2001; HINHP Database 2001).

Isodendrion longifolium on Oahu is found on steep slopes and stream banks in mixed mesic or lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest, usually between 363 and 964 m (1,191 and 3,162 ft) elevation. Associated native plant species include *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Bobea brevipes* (ahakea lau lii), *Carex* sp., *Cyanea* sp. (haha), *Cyrtandra* sp., *Hedyotis terminalis, Isachne pallens* (NCN), *Melicope* sp., *Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., *Pouteria sandwicensis, Psychotria* sp., *Psydrax odorata, Selaginella arbuscula*, or *Syzygium sandwicensis* (HINHP Database 2001; Service 1999).

The major threats to *Isodendrion longifolium* on Oahu are habitat degradation or destruction by feral goats and pigs; competition with the nonnative plants *Ageratina riparia, Clidemia hirta, Oplismenus hirtellus, Paspalum conjugatum, Psidium cattleianum*, and *Thelypteris parasitica;* and a risk of extinction from naturally occurring events due to the small number of occurrences and individuals. The Palikea Gulch occurrence is also potentially threatened by fire (HINHP Database 2001; 61 FR 53108).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial member of the violet family (Violaceae), is a small, branched shrub. The species is distinguished from others in the genus by its smaller, green-yellow flowers and by its hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1996c).

Isodendrion pyrifolium was known historically from Oahu's central Waianae mountains, Maui, Hawaii, Niihau, Molokai, and Lanai. Currently, this species is found only on the island of Hawaii. This species was last collected on Oahu in the late 1800s (HINHP Database 2001).

Isodendrion pyrifolium was found on Oahu on bare rocky hills and in wooded ravines in dry shrublands at low elevations from 363 to 964 m (1,191 to 3,162 ft) (HINHP Database 2001; Wagner *et al.* 1999).

Nothing is known of the threats to *Isodendrion pyrifolium* on Oahu because it was last collected there in the 1800s.

Lobelia niihauensis (NCN)

Lobelia niihauensis, a short-lived perennial member of the bellflower family (Campanulaceae), is a small, branched shrub. This species is distinguished from others in the genus by its leaves lacking or nearly lacking leaf stalks, the width of the leaf, and length of the magenta-colored flowers (56 FR 55770).

Lobelia niihauensis flowers in late summer and early fall. Fruits mature four to six weeks later. Plants are known to live as long as 20 years. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Lobelia niihauensis* was known from the Waianae Mountains of Oahu (Uluhulu Gulch to Nanakuli Valley), Kauai, and Niihau. It is now known to be extant only on Kauai and Oahu. On Oahu, this species remains on Ohikilolo Ridge, Kaimokuiki-Manuwai Ridge, Kamaileunu Ridge, Mt. Kaala, Makaha-Waianae Kai, Makua Military Reservation, Nanakuli, South Mohiakea Gulch, east of Puu Kalena, Kahanahaiki Valley, between Puu Hapapa and Puu Kanehoa, Puu Kailio, between Kolekole Pass and Puu Hapapa, North of Palikea, Puu Kaua-Kauhiuhi-Pahoa-Halona subdistricts, and Lualualei Naval Magazine in 40 occurrences containing between 362 and 397 individual plants on Federal, State, city, and county lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Lobelia niihauensis on Oahu typically grows on exposed mesic or dry cliffs and ledges, at elevations from 339 to 926 m (1,112 to 3,037 ft). Associated native plant species include *Artemisia* sp., *Bidens* sp., *Carex meyenii, Dodonaea viscosa, Doryopteris* sp., *Eragrostis* sp., *Leptecophylla tameiameiae, Lipochaeta tenuis, Osteomeles anthyllidifolia, Plectranthus parviflorus, Schiedea mannii*, or *Sida fallax* (HINHP Database 2001; 56 FR 55770).

On Oahu, the major threats to *Lobelia niihauensis* are habitat degradation and predation by feral goats, rats, and slugs; fire; potential impacts from military activities; and competition from the nonnative plant species *Acacia confusa, Ageratina riparia, Erigeron karvinskianus, Ficus microcarpa, Grevillea robusta, Kalanchoe pinnata, Lantana camara, Leucaena leucocephala, Melinis minutiflora, Melinis repens*, and *Schinus terebinthifolius* (HINHP Database 2001; 56 FR 55770).

Lysimachia filifolia (NCN)

Lysimachia filifolia, a short-lived perennial member of the primrose family (Primulaceae), is a small shrub 15 to 50 cm (0.5 to 1.6 ft) tall. This species is distinguished from other members of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Service 1995b; Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia filifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

Historically, *Lysimachia filifolia* was known only from Kauai. This species is now known from Oahu and Kauai. On Oahu, there is one occurrence containing a total of 50 individuals, on the slopes of Waiahole Valley in the Koolau Mountains on State land (GDSI 2001; HINHP Database 2001).

On Oahu, *Lysimachia filifolia* typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations of 65 to 798 m (213 to 2,617 ft). Associated plants include mosses, ferns, liverworts, and *Pilea peploides* (NCN) (HINHP Database 2001; Service 1995b; Wagner *et al.* 1999).

The major threat to *Lysimachia filifolia* on Oahu is competition with the nonnative plant species *Ageratina riparia, Blechnum appendiculatum, Cordyline fruticosa, Pluchea* sp. (sourbush), and *Schefflera actinophylla*. Additionally, individuals of the species are vulnerable to rock slides. Because only one occurrence of *Lysimachia filifolia* exists on each of only two islands, the species is threatened by extinction due to naturally caused events (HINHP Database 2001; 59 FR 09304).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with a woody root system covered with brown scales. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems. The two subspecies (*Mariscus pennatiformis* ssp. *pennatiformis* and *Mariscus pennatiformis* ssp. *bryanii*) are distinguished by the length and width of spikelets, shape and length of fruits, and color, length, and width of glumes.

Subsequent to the final rule listing this species in 1994, we became aware of Tucker's (1994) treatment of this genus reclassifying it to *Cyperus*. Tucker's (1994) treatment is cited in the supplement in the revised edition of the *Manual of the Flowering Plants of Hawaii* as the basis for recognizing *Mariscus* as *Cyperus*. We will address this name change in a future **Federal Register** notice (Service 1999; Wagner *et al.* 1999).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown for *Mariscus pennatiformis* ssp. *pennatiformis* (Service 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu (Waianae Mountains on a ridge above Makaha Valley), East Maui, the island of Hawaii, and Laysan Island in the Northwestern Hawaiian Islands. *Mariscus pennatiformis* ssp. *bryanii* is known from Laysan. Only one occurrence of *Mariscus pennatiformis* ssp. *pennatiformis* has been seen in the last 70 years on the main Hawaiian islands, in Keanae Valley on Maui in the 1970s (HINHP Database 2001).

Mariscus pennatiformis typically grows in mesic and wet *Metrosideros polymorpha* forest and *Metrosideros polymorpha-Acacia koa* forest at elevations between 424 and 1,032 m (1,391 and 3,385 ft). The associated native plant species on Oahu are unknown (J. Lau, *in litt.* 2001).

No threat information is available for *Mariscus pennatiformis* on Oahu.

Marsilea villosa (Ihiihi)

Marsilea villosa, a short-lived perennial member of the marsilea family (Marsileaceae), is an aquatic to semiaquatic fern similar in appearance to a four-leaved clover that requires periodic flooding to complete its life cycle. The species is the only member of the genus native to Hawaii and is closely related to *Marsilea vestita* of the western coast of the United States (Service 1996a).

Sexual reproduction of *Marsilea villosa* is initiated through the production of a hard sporocarp (a structure in or on which spores are produced) borne on the rhizome of a leaf pair node. The young sporocarp is covered with rust-colored hairs that are lost as the sporocarp matures. The sporocarp will mature only if the soil dries below threshold levels for leaf growth. The sporocarp remains in the soil for an extended period of time and must be scarified before it will open. It is not known how the sporocarp is scarified in *Marsilea villosa*, but bacterial action is thought to erode the wall of the sporocarp to the point that water can be absorbed and force the sporocarp to open, as in other *Marsilea* species (Service 1996a).

Marsilea villosa was historically known from Oahu, Molokai, and Niihau. Currently, it is found on Oahu and Molokai. There are five occurrences on Oahu with an unknown number of individuals at Koko Head, on Lualualei Naval Reservation, and at Kealakipapa on Federal, city, county, and private lands (GDSI 2001; HINHP Database 2001; Service 1996a).

Marsilea villosa typically grows in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, or lowland grasslands at elevations between 424 and 1,032 m (1,391 and 3,385 ft). Associated native plant species include *Sida fallax* (HINHP Database 2001).

The main reason for the decline of *Marsilea villosa* on Oahu is habitat destruction and the destruction of natural hydrology; many of the areas where it formerly occurred are now sugar cane fields, industrial parks, housing developments, and pastures. The greatest immediate threats to the survival of this species are encroachment and competition from naturalized, nonnative plants such as

Bidens pilosa, *Cynodon dactylon* (Bermuda grass), *Panicum maximum*, and *Prosopis pallida* (kiawe); habitat disturbance by off-road vehicles or by grazing cattle; continued development and habitat degradation; fire; small occurrence size; and fragmentation, trampling, and other impacts from humans and introduced mammals (HINHP Database 2001; 57 FR 27863).

Melicope pallida (Alani)

Melicope pallida, a long-lived perennial member of the citrus family (Rutaceae), is a tree with grayish white hairs and black, resinous new growth. The species differs from other members of the genus by the resinous new growth, leaves folded and in clusters of three, and fruits with separate carpels (Stone *et al.* 1999).

Little is known about the life history of *Melicope pallida*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

Melicope pallida is currently and historically known from Kauai and Oahu. On Oahu, it is currently known from the Waianae Mountains within TNCH's privately owned Honouliuli Preserve on State and private lands. There is a single occurrence with a single individual (GDSI 2001; HINHP Database 2001).

Melicope pallida usually grows on steep rock faces in lowland dry or mesic forests at elevations of 234 to 841 m (768 to 2,758 ft). Associated native plant species include the endangered *Abutilon sandwicense*, *Acacia koa*, *Alyxia oliviformis*, *Bobea elatior*, *Cibotium* sp., *Dryopteris sp.* (NCN), *Metrosideros polymorpha*, *Pipturus albidus*, *Psychotria mariniana*, *Sapindus oahuensis*, *Syzygium sandwicensis*, *Tetraplasandra* sp., *Wikstroemia oahuensis*, or *Xylosma hawaiiense* (HINHP Database 2001; 59 FR 09304).

The major threat to *Melicope pallida* on Oahu is competition from nonnative plants, especially *Andropogon virginicus*, *Clidemia hirta*, *Psidium cattleianum*, *Pterolepis glomerata*, and *Toona ciliata*. A potential threat to *M. pallida* is the black twig borer, which is known to occur in areas where this species grows and to feed on members of the genus *Melicope*. Additional threats to *M. pallida* are fire, habitat degradation by feral pigs, and a high risk of extinction due to naturally caused events and/or reduced reproductive vigor due to the solitary existing individual on Oahu (HINHP Database 2001; 59 FR 09304).

Nototrichium humile (Kului)

Nototrichium humile, a short-lived perennial member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 1.5 m (5 ft) long. This species is distinguished from the only other species in the genus by the size and hairiness of its inflorescence (Wagner *et al.* 1999).

Nototrichium humile is found on and at the base of rock cliffs and talus slopes in areas in partial shade. Plants have been observed flowering after heavy rain, but flowering is generally heaviest in the spring and summer. Fruits mature a few weeks after flowering. In cultivation, this species is known to live for more than a decade (Service 1998b). Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors.

Historically and currently, *Nototrichium humile* is known from Oahu and Maui. Currently, on Oahu, it is found in Kapuhi Gulch, Pahole Gulch, Kealia, Kahanahaiki, Kaluakauila Gulch, along Makua-Keaau Ridge to Makaha-Waianae Kai Ridge, and Nanakuli, where it occurs on Federal, State, city, county, and private lands. There are a total of 25 occurrences containing between 775 and 995 individuals on Oahu (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Nototrichium humile typically grows at elevations of 185 to 806 m (607 to 2,644 ft) on cliff faces, gulches, stream banks, or steep slopes in dry or mesic forests often dominated by *Sapindus oahuensis* or *Diospyros sandwicensis*. Associated native species include the endangered species *Abutilon sandwicense*, *Alyxia oliviformis*, *Antidesma pulvinatum*, *Artemisia australis*, *Bidens cervicata* (kookoolau), *Canavalia* sp., *Carex wahuensis*, *Charpentiera* sp., *Dodonaea viscosa*, *Elaeocarpus bifidus*, *Erythrina sandwicensis*, *Eugenia reinwartiana*, *Hibiscus* sp., *Melanthera tenuis*, *Metrosideros polymorpha*, *Myoporum sandwicense*, *Myrsine lanaiensis*, *Nestegis sandwicensis*, *Peperomia* sp., *Pisonia umbellifera*, *Pleomele* sp., *Pouteria sandwicensis*, *Psydrax odorata*, *Rauvolfia sandwicensis*, *Reynoldsia sandwicensis*, *Sicyos* sp., *Stenogyne* sp., *Streblus pendulinus*, or *Syzygium sandwicensis*, (HINHP Database 2001; Service 1998b; 56 FR 55770).

On Oahu, the major threats to *Nototrichium humile* are habitat degradation by feral goats and pigs; potential impacts of military activities; competition from the nonnative plant species *Adiantum hispidulum*, *Ageratina adenophora*, *Aleurites moluccana*, *Blechnum appendiculatum*, *Buddleia asiatica*, *Caesalpinia decapetala*, *Coffea arabica*, *Cordyline fruticosa*, *Ficus microphylla*, *Grevillea robusta*, *Hyptis pectinata*, *Kalanchoe pinnata*, *Lantana camara*, *Leucaena leucocephala*, *Melia azedarach*, *Melinis minutiflora*, *Montanoa hibiscifolia*, *Oplismenus hirtellus*, *Panicum maximum*, *Passiflora suberosa*, *Pimenta dioica*, *Psidium cattleianum*, *Psidium guajava*, *Rivina humilis*, *Schefflera actinophylla*, *Schinus terebinthifolius*, *Spathodea campanulata*, *Syzygium cumini*, *Triumfetta semitriloba* (Sacramento bur), and *Toona ciliata*; road building and maintenance; and fire (HINHP Database 2001; Service 1998b; 56 FR 55770).

Peucedanum sandwicense (Makou)

Peucedanum sandwicense, a short-lived perennial and a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus on the Hawaiian Islands (Constance and Affolter 1999).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown for this species (Service 1995b).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to Oahu. On Oahu, there are a total of 4 occurrences containing 51 individual plants on State, city, and county lands in Keaau Valley, Puu Kawiwi, Waianae Kai, and Kamaileunu Ridge (GDSI 2001; HINHP Database 2001).

Peucedanum sandwicense grows on cliffs, slopes, and ridges in *Metrosideros polymorpha* lowland mesic forest between 395 and 977 m (1,296 and 3,205 ft) elevation and is associated with native species such as *Artemisia australis*, *Carex meyenii*, *Dianella sandwicensis*, *Dodonaea viscosa*, *Eragrostis* sp., *Lepidium bidentatum* var. *o-waihiense*, *Melanthera integrifolia* (nehe), *Osteomeles anthyllidifolia*, *Peperomia remyi* (alaala wai nui), *Pittosporum halophilum* (hoawa), *Plechranthus parviflorus*, *Plumbago zeylanica*, *Portulaca lutea* (ihi), *Reynoldsia sandwicensis*, *Santalum ellipticum* (iliahialoe), *Scaevola sericea* (naupaka kahakai), *Schiedea globosa* (NCN), *Senna gaudichaudii*, and *Sida fallax* (Constance and Affolter 1999; HINHP Database 2001; Service 1995b).

Threats to *Peucedanum sandwicense* on Oahu are habitat degradation by feral goats and pigs and competition with the nonnative plant species *Kalanchoe pinnata*, *Lantana camara*, *Melinis minutiflora*, and *Schinus terebinthifolius* (HINHP Database 2001).

Phlegmariurus nutans (Wawaeiole)

Phlegmariurus nutans is an erect or pendulous herbaceous epiphyte in the clubmoss family (Lycopodiaceae). This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, simple or forking fruiting spikes, and larger and stiffer leaves (59 FR 14482).

This species has been observed fertile, with spores, in May and December. No other information is available on reproductive cycles, dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Phlegmariurus nutans* was known from the island of Kauai and from scattered locations in the Koolau Mountains of Oahu, bounded by Kaluanui Valley to the north, Paalaa to the west, and Mount Tantalus to the south. This species is now known only from Oahu in 3 occurrences containing seven individual plants on Federal and State lands in Kaukonahua Gulch, Kahana, and Kaipapau Gulch (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Phlegmariurus nutans on Oahu grows on tree trunks, usually on open ridges, forested slopes, and cliffs in *Metrosideros polymorpha*-dominated wet forests and shrublands and occasionally mesic forests between 227 and 846 m (745 and 2,775 ft) in elevation. Associated native plant species include *Antidesma platyphyllum*, *Broussaisia arguta*, *Cyrtandra laxiflora*, *Dicranopteris linearis*, *Elaphoglossum* sp. (ekaha), *Hedyotis terminalis*, *Hibiscus* sp., *Machaerina angustifolia*, *Psychotria mariniana*, *Syzygium sandwicensis*, or *Wikstroemia oahuensis* (HINHP Database 2001; Service 1998b; EDA, *in litt.* 2001).

The primary threat to *Phlegmariurus nutans* on Oahu is susceptibility to extinction from naturally caused events and decreased reproductive vigor because of the small number of remaining individuals and limited distribution of the species. Additional threats to *Phlegmariurus nutans* are habitat degradation by feral pigs; floods; and the nonnative plants *Clidemia hirta*, *Paspalum conjugatum*, *Psidium cattleianum*, and *Sacciolepis indica* (HINHP Database 2001).

Phyllostegia mollis (NCN)

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1999).

Individual *Phyllostegia mollis* plants live for approximately five years. The species is known to flower in late winter and spring. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1998b).

Historically, *Phyllostegia mollis* was known from Molokai, Maui, and Oahu from the central and southern Waianae Mountains, Mt. Kaala to Honouliuli, and Makiki in the Koolau Mountains. Currently, this species is only known from Oahu and Maui. On Oahu, this species remains only in Kaluaa Gulch, Palawai Gulch, Puu Kumakalii, Mohiakea Gulch, Huliwai Gulch, Waieli Gulch, and Pualii Gulch on Federal and private lands. The 5 occurrences contain between 85 and 105 individuals (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Phyllostegia mollis typically grows on steep slopes and in gulches in diverse mesic to wet forests at elevations of 519 to 928 m (1,702 to 3,044 ft). Associated native plant species include *Acacia koa*, *Alyxia oliviformis*, *Antidesma platyphyllum*, *Carex meyenii*, *Chamaesyce multiformis*, *Claoxylon sandwicense*, *Diospyros hillebrandii*, *Dryopteris unidentata*, *Metrosideros polymorpha*, *Myrsine* sp., *Pipturus alba*, *Pisonia umbellifera*, *Pouteria sandwicensis*; *Psychotria hathewayi*, or *Urera glabra* (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Phyllostegia mollis* are competition from the nonnative plant species *Ageratina adenophora*, *Blechnum appendiculatum*, *Christella parasitica*, *Clidemia hirta*, *Heliocarpus popayanensis*, *Kalanchoe pinnata*, *Passiflora suberosa*, *Psidium cattleianum*, *Rubus rosifolius*, and *Schinus terebinthifolius*; rockslides; habitat degradation and predation by feral pigs and goats; and the small number of extant occurrences, which makes the species vulnerable to extinction and/or reduced reproductive vigor (HINHP Database 2001).

Phyllostegia parviflora (NCN)

Phyllostegia parviflora, a member of the mint family (Lamiaceae), is a perennial herb. The species is distinguished from others of the genus by the shape of the leaves and the length of the leaf stalks and lower corolla. The varieties of this species are differentiated by hairs on the inflorescence and leaves and by the branching of the inflorescence.

At the time of listing of this species in 1996, only two varieties were recognized, *Phyllostegia parviflora* var. *glabriuscula* and *P. parviflora* var. *parviflora*. Subsequently we became aware of Wagner *et al.*'s (1999) taxonomic treatment of this group in which *P. parviflora* var. *lydgatei* was recognized. This treatment is cited in the supplement in the revised edition of the *Manual of the Flowering Plants of Hawaii* (Wagner *et al.* 1999) as the basis for recognizing *P. parviflora* var. *lydgatei*. This name change will be addressed in a future **Federal Register** notice.

Historically, *Phyllostegia parviflora* was known from the islands of Oahu, Hawaii, and Maui. This species is now known only from six occurrences on Oahu. *Phyllostegia parviflora* var. *glabriuscula* was only known from the island of Hawaii on private land and has not been observed since the 1800s. *Phyllostegia parviflora* var. *parviflora* is now known from only 30 plants on the east side of Puu Pauao, on State and Federal lands. *Phyllostegia parviflora* var. *lydgatei* is known from only four plants in North Pualii Gulch on private land (GDSI 2001; HINHP Database 2001).

Phyllostegia parviflora var. *lydgatei* is typically found on moderate to steep slopes in mesic forest from 555 to 881 m (1,820 to 2,890 ft) elevation. Native vegetation associated with *Phyllostegia parviflora* var. *lydgatei* includes *Antidesma platyphyllum*, *Chamaesyce multiformis*, *Claoxylon sandwicense*, *Coprosma foliosa*, *Dryopteris unidentata*, *Myrsine lessertiana*, *Pipturus albidus*, *Pouteria sandwicensis*, *Selaginella arbuscula*, or *Xylosma hawaiiense*. *Phyllostegia parviflora* var. *parviflora* is typically found in *Metrosideros polymorpha* mixed lowland wet forest from 232 to 867 m (761 to 2,844 ft) elevation. Native vegetation associated with *Phyllostegia parviflora* var. *parviflora* includes *Antidesma* sp., *Broussaisia arguta*, *Cheirodendron* sp., *Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis*, *Melicope* sp., *Phyllostegia glabra* (NCN), *Pipturus* sp., *Pritchardia* sp., *Syzygium sandwicensis*, *Tetraplasandra* sp., or

Touchardia latifolia (HINHP Database 2001).

The major threats to *Phyllostegia parviflora* var. *lydgatei* are habitat degradation and/or destruction by feral pigs; landslides or rockslides; competition with the nonnative plant species *Ageratina adenophora, Christella parasitica, Passiflora suberosa, Psidium cattleianum, Rivina humilis, Rubus rosifolius,* and *Schinus terebinthifolius;* and a risk of extinction and/or reduced reproductive vigor due to the small number of remaining individuals and occurrences. The major threats to *Phyllostegia parviflora* var. *parviflora* on Oahu are competition with the nonnative plant species *Ageratina* sp. and *Clidemia hirta;* and extinction and/or reduced reproductive vigor due to the small number of remaining individuals in each respective occurrence (HINHP Database 2001; Service 1999; 61 FR 53108).

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, vars. *anomala, laxiflora, longibracteata,* and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Individuals have been observed in fruit from April through September. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1999).

Plantago princeps was historically found on Kauai, Oahu, Molokai, Hawaii, and Maui. It is no longer extant on the island of Hawaii. *Plantago princeps* var. *longibracteata* was known from Kauai and Oahu, but there are currently no remaining Oahu populations. The 11 extant occurrences of var. *princeps* on Oahu consist of between 130 and 180 individuals on Federal, State, city, county, and private lands at Palawai Gulch, Ekahanui Gulch, Nanakuli-Lualualei Ridge, Makua-Makaha Ridge, Mohiakea Gulch, and Pahole Gulch (EDA Database 2001; GDSI 2001; HINHP Database 2001).

On Oahu, *Plantago princeps* var. *longibracteata* was typically found on the sides of waterfalls and wet rock faces between 64 and 835 m (210 and 2,739 ft) elevation. Associated native plant species included *Bidens* sp., *Coprosma granadensis* (makole), *Eugenia* sp., *Lobelia gaudichaudii* (NCN), *Metrosideros rugosa,* or *Scaevola glabra*. *Plantago princeps* var. *princeps* is typically found on slopes and ledges in *Metrosideros polymorpha* lowland mesic forests and shrublands between 110 and 1,064 m (361 to 3,490 ft) elevation. Associated native plant species include *Artemisia australis, Bidens* sp., *Chamaesyce* sp., *Dubautia plantaginea, Eragrostis* sp., *Lysimachia* sp., *Pilea peploides,* and *Viola* sp. (pamakani) (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Plantago princeps* var. *longibracteata* on Oahu were predation and habitat degradation by feral pigs and goats and competition with various nonnative plant species. The primary threats to *Plantago princeps* var. *princeps* are rockslides and competition with the nonnative plant species *Erigeron karvinskianus, Melinis minutiflora,* and *Schinus terebinthifolius* (HINHP Database 2001; Service 1999; 59 FR 56333).

Platanthera holochila (NCN)

Platanthera holochila, a short-lived perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance- to egg-shaped, and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs on the Hawaiian Islands (Wagner *et al.* 1999). It is distinguished from other Hawaiian orchids by its underground tubers that lack roots at the nodes or pseudobulbs and by the shape and length of its dorsal sepal.

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown for this species (Service 1999).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, it is extant on Kauai, Molokai, and Maui. This species was last collected on Oahu in 1938 in the area from Puu Kainapuaa to Kawainui-Kaipapau summit ridge and Kipapa Gulch (HINHP Database 2001).

On Oahu, *Platanthera holochila* was found in *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *M. polymorpha* mixed shrubland between 447 and 867 m (1,466 and 2,844 ft) elevation. Associated native plant species included *Broussaisia arguta, Cibotium* sp., *Clermontia* sp. (oha wai), *Coprosma* sp., *Dubautia* sp., *Gahnia* sp., *Leptecophylla tameiameiae, Luzula hawaiiensis* (wood rush), *Lycopodiella cernua, Lythrum maritimum* (pukamole), *Polypodium pellucidum* (ae), *Sadleria* sp., *Scaevola* sp., *Vaccinium reticulatum,* and *Wikstroemia* sp. (akia) (Service 1999; 61 FR 53108).

The major threats to *Platanthera holochila* are habitat degradation and destruction by ungulates such as cattle and feral pigs, predation by slugs, competition with alien plants, over collection, and the small number of occurrences and individuals, which make the species highly vulnerable to extinction from random environmental events and reduced reproductive vigor (Service 1999).

Pteris lidgatei (NCN)

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It can be distinguished from other species of *Pteris* on the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner 1949; Wagner and Wagner 1992).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown for this species (Service 1998a).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and Maui. Currently, this species is known from Oahu and Maui. Nine occurrences with approximately 13 individuals occur on Oahu on Federal, State, and private lands Kaluanui, Kawainui drainage, Kaukonahua Gulch, Kawai Iki Stream, Waimano Stream, and Waimano Gulch (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Pteris lidgatei on Oahu grows on steep stream banks and cliffs around 75 m (246 ft) elevation in wet *Metrosideros polymorpha-Dicranopteris linearis* forest with Asplenium sp. (NCN), *Broussaisia arguta, Cibotium chamissoi, Cyrtandra* sp., *Dicranopteris linearis, Diplopterygium pinnatum, Doodia lyonii* (NCN), *Dryopteris sandwicensis, Elaphoglossum crassifolium* (ekaha), *Isachne pallens, Machaerina angustifolia, Sadleria squarrosa, Selaginella arbuscula,* or *Sphenomeris chinensis* (palaa) (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Pteris lidgatei* on Oahu are competition with the nonnative plant species *Ageratina riparia, Christella parasitica, Clidemia hirta, Paspalum conjugatum, Psidium cattleianum, Pterolepis glomerata,* and *Sacciolepis indica;* habitat destruction by feral pigs; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001).

Sanicula purpurea (NCN)

Sanicula purpurea, a short-lived member of the parsley family (Apiaceae), is a stout herb, 8 to 36 cm (3 to 14 in) tall, arising from a massive perennial stem. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of *Sanicula purpurea* are unknown (Service 1999).

Historically and currently, *Sanicula purpurea* is known from Oahu and Maui. On Oahu, 5 occurrences totaling approximately 21 individuals are currently known from Kaukonahua-Kahana divide, Helemano-Punaluu divide, the summit between Aiea and Waimano, and North Kaukonahue-Punaluu on Federal, State, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Sanicula purpurea on Oahu typically grows in open *Metrosideros polymorpha* mixed montane bogs and windswept shrublands within the cloud zone between 415 and 959 m (1,361 and 3,146 ft) elevation. Associated native plant species include *Bidens* sp., *Cheirodendron* sp., *Dicanthelium koolauense, Gahnia beechyi, Leptecophylla tameiameiae, Lycopodium* sp., *Machaerina angustifolia, Plantago pachyphylla* (laukahi kuahiwi), *Sadleria pallida,* or *Vaccinium* sp. (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Sanicula purpurea* on Oahu are habitat degradation by feral pigs, a risk of extinction due to random environmental events and/or reduced reproductive vigor due to the small number of existing occurrences, and competition with the nonnative plant species *Axonopus fissifolius* and *Clidemia hirta* (HINHP Database 2001; Service 1999; 61 FR 53108).

Schiedea hookeri (NCN)

Schiedea hookeri, a member of the pink family (Caryophyllaceae), is a sprawling or clumped, long-lived, perennial herb. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence and by the size of the capsules (Wagner *et al.* 1999).

Based on field and greenhouse observations, *Schiedea hookeri* has bisexual flowers. Mature fruits have been observed in June and August. A series of experimental self-pollinations, within-population crosses, and crosses among populations has demonstrated that *S. hookeri* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among progeny, with potentially deleterious consequences for the long-term persistence of this species. *Schiedea hookeri* appears to be an out-crossing species. Under greenhouse conditions, flowers do not set seed unless hand-pollinated. In the field, the species is presumed to be pollinated by insects, although none have been observed (a related species, *S. lydgatei* on Molokai, is apparently pollinated by native, night-flying moths). Individuals of *S. hookeri* appear to be long-lived, but there is no evidence of reproduction from seed under field conditions. Seedlings of *Schiedea* species occurring in mesic or wet sites are apparently consumed by introduced slugs and snails. In contrast, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because the drier sites have fewer nonnative predators. *Schiedea hookeri* differs considerably through its range in potential for clonal growth. Plants from Kaluakauila Gulch are upright and show little potential for clonal spread. In contrast, clonal growth has been detected for individuals at Kaluaa Gulch, where the growth form is decumbent and plants apparently root at the nodes (HINHP Database 2001; Service 1999; Weller and Sakai, unpublished data). No further information is available on flowering cycles, seed dispersal agents, longevity, specific environmental requirements, or limiting factors.

Historically, *Schiedea hookeri* was known from the Waianae Mountains of Oahu and a single fragmentary collection from Maui that may represent a different species. Currently, this species is known from 17 occurrences on Oahu containing between 328 and 378 individuals in East Makaleha, Makaha-Waianae Kai Ridge, Kaluakauila Gulch, between Kalaulula and Kanewai Streams, Kaluaa Gulch, north of Puu Ku Makalii, Waianae Kai, Makua-Makaha Ridge, between Kolekole Pass and Puu Hapapa, southwest of Puu Kaua, Palikea Gulch, Makaha, Kamaileunu Ridge, and Kahanahaiki on Federal, State, city, county, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001; Service 1999).

Schiedea hookeri is usually found on slopes, cliffs and cliff bases, rock walls, and ledges in diverse mesic or dry lowland forest, often dominated by *Metrosideros polymorpha, Diospyros sandwicensis,* or *Diospyros hillebrandii,* and at elevations between 208 and 978 m (682 and 3,208 ft). Associated plant species include *Acacia koa, Alyxia oliviformis, Antidesma pulvinatum, Artemisia australis, Bidens torta, Carex meyenii, Carex wahuensis, Charpentiera tomentosa, Dodonaea viscosa, Elaeocarpus bifidus, Eragrostis grandis, Hibiscus* sp., *Leptecophylla tameiameiae, Melanthera tenuis, Pisonia sandwicensis, Pouteria sandwicensis, Psydrax odorata, Sida fallax,* or *Stenogyne* sp. (Service 1999).

The primary threats to *Schiedea hookeri* are habitat degradation and/or destruction by feral goats and pigs; competition with the nonnative plant species *Adiantum hispidulum, Ageratina adenophora, Ageratina riparia, Aleurites moluccana, Blechnum appendiculatum, Christella parasitica, Clidemia hirta, Cordyline fruticosa, Grevillea robusta, Heliocarpus popayanensis, Hyptis pectinata, Kalanchoe pinnata, Lantana camara, Melia azedarach, Melinis minutiflora, Panicum maximum, Passiflora suberosa, Pimenta dioica, Psidium cattleianum, Psidium guajava, Schinus terebinthifolius, Syzygium cumini,* and *Toona ciliata;* and predation by introduced slugs and snails. The Kaluakauila Gulch occurrence is also potentially threatened by fire and military activities (Service 1999).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a long-lived perennial member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Flowers and fruits of *Schiedea nuttallii* are abundant in the wet season but can be found throughout the year. Plants located close to the Makua rim on Oahu have been under observation for 10 years, and they appear to be long-lived. Based on field and greenhouse observations, the species has bisexual flowers. *Schiedea nuttallii* appears to be an out-crossing species. Under greenhouse conditions, plants fail to set seed unless hand-pollinated, suggesting that this species requires insects for pollination. Seedlings of *Schiedea*

occurring in mesic or wet sites are apparently consumed by introduced slugs and snails. In contrast, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because there are fewer nonnative predators in drier sites. Other information about reproductive cycles, longevity, specific environmental requirements, and limiting factors is unknown (Service 1999).

Historically *Schiedea nuttallii* was known from scattered locations on Kauai, Oahu, Molokai, and Maui. Currently, it occurs on Kauai, Oahu, and Molokai. On Oahu, 7 occurrences with 49 individuals are found on Pahole-Makua Ridge, Pahole-Kahanahaiki Ridge, Ekahanui Gulch, Kahanahaiki Valley, and Pahole Gulch, on Federal, State, and private lands (EDA Database 2001; GDSI 2001; HINHP Database 2001; Service 1999).

Schiedea nuttallii on Oahu typically grows on steep rock walls and forested slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest and *Metrosideros polymorpha-Dodonaea viscosa* forest at elevations between 436 and 1,185 m (1,430 and 3,887 ft). Associated native plant species include *Alyxia oliviformis, Antidesma platyphyllum, Bidens torta, Cibotium chamissoi, Coprosma* sp., the endangered *Cyanea longiflora, Hedyotis terminalis, Ilex anomala, Machaerina* sp., *Peperomia* sp., *Perrottetia sandwicensis, Pipturus* sp., or *Psydrax odorata* (HINHP Database 2001; EDA, *in litt.*, 2001).

Schiedea nuttalii on Oahu is seriously threatened by competition with the nonnative plant species *Andropogon virginicus, Clidemia hirta, Grevillea robusta, Melinis minutiflora, Paspalum conjugatum,* and *Psidium cattleianum;* predation by the black twig borer, slugs, and snails; habitat degradation by feral pigs; and a risk of extinction from naturally occurring events (*e.g.*, landslides) and/or reduced reproductive vigor due to the small number of individuals (HINHP Database 2001; Service 1999; 61 FR 53108).

Sesbania tomentosa (Ohai)

Sesbania tomentosa, a short-lived perennial member of the pea family (Fabaceae), is typically a sprawling shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets that are usually sparsely to densely covered with silky hairs. The flowers are a salmon color tinged with yellow, orange-red, scarlet, or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* has been studied by David Hopper, University of Hawaii. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that occurrences at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai. On Oahu, *Sesbania tomentosa* is known from 3 occurrences of 54 to 55 wild and approximately 200 outplanted individuals on State-owned land within the Kaena Point NAR and from Keawaula on State and private lands (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

On Oahu, *Sesbania tomentosa* is found on cliff faces, broken basalt, and sand dunes with rock outcrops in *Scaevola sericea* coastal dry shrubland and *Sporobolus virginicus* (aki aki) mixed grasslands between sea level and 152 m (0 and 499 ft) elevation. Associated native plant species include *Heliotropium anomalum* (ahinahina), *Jacquemontia ovalifolia* ssp. *sandwicensis, Melanthera* sp., *Myoporum sandwicense,* or *Sida fallax* (HINHP Database 2001; Service 1999).

The primary threats to *Sesbania tomentosa* on Oahu are competition with the nonnative plant species *Lantana camara* and *Leucaena leucocephala;* lack of adequate pollination; seed predation by rats, mice, and, potentially, nonnative insects; fire; trampling by hikers, motorcycles, and all-terrain vehicles; and a risk of extinction from naturally occurring events (*e.g.* tsunami) and/or reduced reproductive vigor due to the small number of occurrences and individuals (HINHP Database 2001; Service 1999; 59 FR 56333).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family, is an upright, short-lived perennial with stems 15 to 50 cm (6 to 20 in) long, which are woody at the base. The flowers are white with deeply-lobed, clawed petals. This species is distinguished from other Hawaiian members of the genus by its erect stem, terminal inflorescence, and length of the calyx, clawed petals, and carpophore (ovary structure) (Wagner *et al.* 1999).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors for *Silene lanceolata* are unknown (Service1996d).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently extant on Molokai, Oahu, and Hawaii. On Oahu, there are 4 occurrences with 62 individuals located in Koiahi Gulch and Waianae Kai on Federal and State lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

On Oahu, *Silene lanceolata* grows on cliff faces and ledges of gullies in dry to mesic shrubland and cliff communities at elevations of about 351 to 978 m (1,151 to 3,208 ft). Associated native plant species include *Artemisia australis, Bidens* sp., *Carex* sp., *Chamaesyce* sp., *Dodonaea viscosa, Lysimachia* sp., *Osteomeles anthyllidifolia, Schiedea mannii,* or the endangered *Tetramolopium filiforme* (HINHP Database 2001).

The threats to *Silene lanceolata* on Oahu are habitat destruction by feral goats and pigs; wildfires; and competition with the nonnative plant species *Ageratina riparia, Erigeron karvinskianus, Lantana camara, Melinis minutiflora, Melinis repens,* and *Schinus terebinthifolius* (HINHP Database 2001; Service 1996d; 57 FR 46325).

Solanum sandwicense (Popolo aiakeakua)

Solanum sandwicense, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches, and the oval leaves usually have up to four lobes along the margins. This short-lived perennial species differs from other members of the genus by having dense hairs on young plant parts, a greater height, and lacking prickles (Symon 1999).

Little is known about the life history of Solanum sandwicense. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

Historically, *Solanum sandwicense* was known from both Oahu and Kauai. This species was last seen on Oahu in 2000. Currently, this species is only known from Kauai (GDSI Database 2001; HINHP Database 2001; Service 1995b; 59 FR 09304; 65 FR 66808; J. Yoshioka, TNCH, pers. comm., 2000).

Solanum sandwicense was found on Oahu on talus slopes and in streambeds in open, sunny areas at elevations between 131 and 1,006 m (430 and 3,300 ft). Associated native plant species included *Pisonia* sp. or *Psychotria* sp. (HINHP Database 2001; Service 1995b; 59 FR 09304).

The major threats to occurrences of *Solanum sandwicense* on Oahu were habitat degradation by feral pigs; competition with the nonnative plant species *Passiflora suberosa, Psidium* sp., and *Schinus terebinthifolius;* fire; landslides; and a risk of extinction from naturally occurring events and reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2001; Service 1995b; 59 FR 09304).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a nonsucculent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of this species are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. It is currently known from Molokai and Maui as well as the above four islands. On Oahu, there are 6 known occurrences totaling between 110 and 910 individuals, on Makua-Keaau Ridge and near the entrance of Diamond Head on State, Federal, city, and county lands (EDA Database 2001; GDSI 2001; HINHP Database 2001).

Spermolepis hawaiiensis on Oahu typically grows on steep to vertical cliffs or at the base of cliffs and ridges in coastal dry cliff vegetation at elevations of 25 to 839 m (82 to 2,752 ft). Associated native plant species include *Artemisia australis, Bidens* sp., *Dodonaea viscosa, Doryopteris* sp., *Heteropogon contortus, Santalum ellipticum,* or *Waltheria indica* (HINHP Database 2001; EDA, *in litt.*, 2001).

The primary threats to *Spermolepis hawaiiensis* on Oahu are habitat degradation by feral goats; competition with nonnative plant species such as *Lantana camara, Melinis minutiflora,* and various grasses; and habitat destruction and death of plants due to erosion, landslides, and rock slides resulting from natural weathering (HINHP Database 2001; Service 1999; 59 FR 56333).

Tetramolopium lepidotum ssp. lepidotum (NCN)

Tetramolopium lepidotum ssp. *lepidotum*, a short-lived perennial member of the aster family (Asteraceae), is an erect shrub 12 to 36 cm (4.7 to 14 in) tall, branching near the ends of the stems. Leaves are lance-shaped and wider at the leaf tip. This taxon can be distinguished from the other extant species on Oahu by its bisexual disk flowers and its inflorescence of 6 to 12 heads (Lowrey 1999).

Tetramolopium lepidotum ssp. *lepidotum* produces flowers and fruit from April through July. Little else is known about its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors (Service 1995b; 59 FR 09304).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from Lanai and nearly the entire length of the Waianae Mountains, from Makua Valley to Cachexia Ridge, on Oahu. It is now known only from Oahu. A total of 5 occurrences of approximately 15 individual plants are currently known from Federal, State, and private lands on Mauna Kapu, Ekahanui-Lualualei summit, Waianae Kai, and Puu Hapapa. TNCH has outplanted three individuals in a fenced exclosure within Honouliuli Preserve. These plants have since died, yet two healthy individuals have sprouted near the exclosure (EDA Database 2001; GDSI 2001; HINHP 2001; Lowrey 1999; Service 1998b; 56 FR 55770).

Tetramolopium lepidotum ssp. *lepidotum* typically grows on grassy ridge tops, slopes, or cliffs in windblown dry forests at elevations of 330 to 1,157 m (1,082 to 3,795 ft). Associated native species include *Bidens* sp., *Carex wahuensis, Eragrostis* sp., or *Metrosideros polymorpha* (HINHP Database 2001).

The major threats to *Tetramolopium lepidotum* ssp. *lepidotum* on Oahu are competition from the nonnative plant species *Andropogon virginicus, Melinis minutiflora,* and *Schinus terebinthifolius;* habitat degradation and predation by feral goats and pigs; fire; and a risk of extinction and/or reduced reproductive vigor due to the small number of occurrences and individuals (HINHP Database 2001; Service 1998b; 56 FR 55770).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets that vary in shape from round to linear. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods that may or may not be slightly inflated (Geesink *et al.* 1999).

Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of this species are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. Currently, *V. o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known occurrences on Oahu. The last collection on Oahu was made in 1938 on the Mokulua Islets and North Islet (HINHP Database 2001).

Vigna o-wahuensis on Oahu occurred on open dry fossil reef, climbing over shrubs and grasses on limestone deposit, and on fairly steep slopes from sea level to 609 m (0 to 1,998 ft) in elevation. The associated native plant species on Oahu are unknown (HINHP Database 2001).

Nothing is known of the threats for *Vigna o-wahuensis* on Oahu (Service 1999).

A summary of occurrences and landownership for the 101 plant species reported from the island of Oahu is given in Table 1.

TABLE 1.—SUMMARY OF EXISTING OCCURRENCES ON OAHU, AND LANDOWNERSHIP FOR 101 SPECIES REPORTED FROM OAHU

Species	Number of current occurrences	Landownership/Jurisdiction		
		Federal	State	Private
Abutilon sandwicense	30	X[2,6]	X	X
Adenophorus periens	0			
Alectryon macrococcus	82	X[1,2,6]	X	X
Alsinidendron obovatum	6	X[1]	X	
Alsinidendron trinerve	13	X[2]	X	
Bonamia menziesii	18	X[1,6]	X	X
Cenchrus agrimonioides	7	X[1,2]	X	X
Centaurium sebaeoides	2		X	X
Chamaesyce celastroides var. *kaenana*	15	X[1]	X	
Chamaesye deppeana	1		X	
Chamaesyce herbstii	4		X	X
Chamaesyce kuwaleana	5	X[6]	X	
Chamaesyce rockii	20	X[2,3,8]	X	X
Colubrina oppositifolia	5		X	X
Ctenitis squamigera	8	X[1,2]	X	X
Cyanea acuminata	20	X[2,3,8]	X	X
Cyanea crispa	11	X[3]	X	X
Cyanea grimesiana ssp. *grimesiana*	7	X[2]	X	X
Cyanea grimesiana ssp.*obatae*	8		X	X
Cyanea humboltiana	9	X[3,8]	X	X
Cyanea koolauensis	42	X[2,3,4,8]	X	X
Cyanea longiflora	4		X	X
Cyanea pinnatifida	0			
Cyanea st.-johnii	7	X[3]	X	X
Cyanea superba	0			
Cyanea truncata	2		X	X
Cyperus trachysanthos	6	X[7]	X	
Cyrtandra crenata	0			
Cyrtandra dentata	11	X[1,3]	X	
Cyrtandra polyantha	1		X	X
Cyrtandra subumbellata	5	X[2,8]	X	X
Cyrtandra viridiflora	23	X[3,8]	X	X
Delissea subcorata	21	X[1,2]	X	X
Diellia erecta	1		X	X
Diellia falcata	30	X[1,2,6]	X	X
Diellia unisora	4		X	X
Diplazium molokaiense	0			
Dubautia herbstobatae	12	X[1]	X	
Eragrostis fosbergii	4	X[2]	X	
Eugenia koolauensis	12	X[3,4]	X	X
Euphorbia haeleeleana	8	X[1]	X	X
Flueggea neowawraea	23	X[1,2,6]	X	X
Gardenia mannii	49	X[2,3,4,8]	X	X
Gouania meyenii	4		X	X
Gouania vitifolia	2		X	X
Hedyotis coriacea	0			
Hedyotis degeneri	4	X[1]	X	
Hedyotis parvula	7	X[1,6]	X	
Hesperomannia arborescens	36	X[3,4,8]	X	X
Hesperomannia arbuscula	6		X	X
Hibiscus brackenridgei	6	X[1,6]	X	X
Isodendrion laurifolium	5		X	X
Isodendrion longifolium	7	X[2]	X	X
Isodendrion pyrifolium	0			
Labordia cyrtandrae	9		X	X
Lepidium arbuscula	12	X[1,2,6]	X	
Lipochaeta lobata var. *leptophylla*	4	X[2,6]	X	
Lipochaeta tenuifolia	41	X[1,2,6]	X	
Lobelia gaudichaudii ssp. *koolauensis*	5	X[2,3,8]	X	X
Lobelia monostachya	1		X	X
Lobelia niihauensis	40	X[1,2,6]	X	
Lobelia oahuensis	12	X[1,2,3,8]	X	X
Lysimachia filifolia	1		X	
Mariscus pennatiformis	0			
Marsilea villosa	5	X[6]	X	X
Melicope lydgatei	18	X[3]	X	X
Melicope pallida	1		X	X
Melicope saint-johnii	6	X[6]		X
Myrsine juddii	3	X[3]	X	

TABLE 1.—SUMMARY OF EXISTING OCCURRENCES ON OAHU, AND LANDOWNERSHIP FOR 101 SPECIES REPORTED FROM OAHU—Continued

Species	Number of current occurrences	Landownership/Jurisdiction		
		Federal	State	Private
Neraudia angulata	27	X[1,2,6]	X	
Nototrichium humile	25	X[1,2,6]	X	X
Peucedanum sandwicense	4		X	
Phlegmariurus nutans	3	X[2,3,8]	X	
Phyllostegia hirsuta	26	X[2,3,6,8]	X	X
Phyllostegia kaalaensis	7		X	X
Phyllostegia mollis	5	X[2]	X	
Phyllostegia parviflora	6	X[3]	X	X
Plantago princeps	11	X[1,2,3,6,8]	X	X
Platanthera holochila	0			
Pritchardia kaalae	8	X[1,2]	X	
Pteris lidgatei	9	X[2,3,8]	X	X
Sanicula mariversa	4	X[1,6]	X	
Sanicula purpurea	5	X[2,3,8]	X	X
Schiedea hookeri	17	X[1,2,6]	X	X
Schiedea kaalae	7		X	X
Schiedea kealiae	4	X[5]	X	X
Schiedea nuttallii	7	X[1,2]	X	X
Sesbania tomentosa	3		X	X
Silene lanceolata	4	X[1]	X	
Silene perlmanii	0			
Solanum sandwicense	0			
Spermolepis hawaiiensis	6	X[1]	X	
Stenogyne kanehoana	1			X
Tetramolopium filiforme	21	X[1,6]	X	
Tetramolopium lepidotum ssp. *lepidotum*	5	X[2,6]	X	X
Tetraplasandra gymnocarpa	30	X[2,3,4,8]	X	X
Trematolobelia singularis	3		X	X
Urera kaalae	12	X[2,6]	X	X
Vigna o-wahuensis	0			
Viola chamissoniana ssp. *chamissoniana*	15	X[1,2,6]	X	
Viola oahuensis	18	X[2,3,8]	X	X

[1] Makua Military Reservation
[2] Schofield Barracks Military Reservation/Schofield Barracks East Range
[3] Kawailoa Training Area
[4] Kahuku Training Area
[5] Dillingham Military Reservation
[6] Naval Magazine Pearl Harbor Lualualei Branch and Naval Computer and Telecommunication Area Master Station Pacific Transmitting Facility at Lualualei
[7] Hawaii Army National Guard
[8] Oahu Forest National Wildlife Refuge

Previous Federal Action

On May 28, 2002, we published the court-ordered proposed critical habitat designations for the 101 plant species from Oahu (67 FR 37108). In that proposed rule (beginning on page 37147), we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. We now provide updated information on the actions that we have completed since the proposed critical habitat designation. In Table 2, we list the final critical habitat designations or nondesignations previously completed for 41 of the 101 plant species from Oahu, which also occur on other islands.

TABLE 2.—SUMMARY OF PREVIOUS FINAL CRITICAL HABITAT ACTIONS FOR THE 101 PLANT SPECIES FROM OAHU

Species	Final critical habitat designation or nondesignation	
	Date(s)	Federal Register
Adenophorus periens	02/27/03	68 FR 9116
	05/18/03	68 FR 12982
Alectryon macrococcus	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Bonamia menziesii	02/27/03	68 FR 9116
	05/14/03	68 FR 25934
Cenchrus agrimonioides	05/14/03	68 FR 25934
Centaurium sebaeoides	02/27/03	68 FR 9116
	03/18/03	68 FR 12982

TABLE 2.—SUMMARY OF PREVIOUS FINAL CRITICAL HABITAT ACTIONS FOR THE 101 PLANT SPECIES FROM OAHU—Continued

Species	Final critical habitat designation or nondesignation	
	Date(s)	Federal Register
Colubrina oppositifolia	05/14/03	68 FR 25934
Ctenitis squamigera	05/14/03	68 FR 25934
	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Cyanea grimesiana ssp. *grimesiana*	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Cyperus trachysanthos	02/27/03	68 FR 9116
Diellia erecta	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Diplazium molokaiense	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Eugenia koolauensis	03/18/03	68 FR 12982
Euphorbia haeleeleana	02/27/03	68 FR 9116
Flueggea neowawraea	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Gouania meyenii	02/27/03	68 FR 9116
Gouania vitifolia	05/14/03	68 FR 25934
Hedyotis coriacea	05/14/03	68 FR 25934
Hesperomannia arborescens	03/18/03	68 FR 12982
Hesperomannia arbuscula	05/14/03	68 FR 25934
Hibiscus brackenridgei	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Isodendrion laurifolium	02/27/03	68 FR 9116
Isodendrion longifolium	02/27/03	68 FR 9116
Isodendrion pyrifolium	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Lobelia niihauensis	02/27/03	68 FR 9116
Lysimachia filifolia	02/27/03	68 FR 9116
Mariscus pennatiformis	02/27/03	68 FR 9116
	05/14/03	68 FR 25934
	05/22/03	68 FR 25934
Melicope pallida	02/27/03	68 FR 9116
Nototrichium humile	05/14/03	68 FR 25934
Peucedanum sandwicense	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Phlegmariurus nutans	02/27/03	68 FR 9116
Phyllostegia mollis	05/14/03	68 FR 25934
Plantago princeps	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Platanthera holochila	02/27/03	68 FR 9116
	05/14/03	68 FR 25934
Pteris lidgatei	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Sanicula purpurea	05/14/03	68 FR 25934
Schiedea nuttallii	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
Sesbania tomentosa	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
	05/22/03	68 FR 28054
Silene lanceolata	03/18/03	68 FR 12982
Solanum sandwicense	02/27/03	68 FR 9116
Spermolepis hawaiiensis	02/27/03	68 FR 9116
	03/18/03	68 FR 12982
	05/14/03	68 FR 25934
Vigna o-wahuensis	05/14/03	68 FR 25934

For many of 101 plant species from Oahu, the issue of whether critical habitat would be prudent was discussed in previous proposals and incorporated into the May 28 proposal (see 65 FR 79192; 65 FR 83158; 67 FR 3939; 67 FR 15856; 67 FR 9806; 67 FR 16492; 67 FR 36968; 67 FR 37108). In the May 28, 2002 proposed rule, we proposed that critical habitat designation was not prudent for *Cyrtandra crenata* because it had not been seen recently in the wild, and no genetic material of the species was known to exist. We also proposed that critical habitat designation was not prudent for *Pritchardia kaalae*, because it would likely increase the threat from vandalism or collection of the species. Critical habitat for the remaining 99 (*Abutilon sandwicense, Adenophorus periens, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope lydgatei, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Pelea lydgatei, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Silene perlmanii, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*) of the 101 plant species was proposed on approximately 45,067 ha (111,364 ac) of land on the island of Oahu (67 FR 37108).

The publication of the proposed rule opened a 60-day public comment period, which closed on July 29, 2002. On July 11, 2002, we submitted joint stipulations to the U.S. District Court with Earthjustice requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On August 26, 2002, we published a notice (67 FR 54766) reopening the public comment period until September 30, 2002, on the proposal to designate critical habitat for plants from Oahu. On October 10, 2002, we published a notice (67 FR 63066) announcing the reopening of the comment period until November 30, 2002 and announcing a public hearing. On October 15, 2002, we held a public information meeting at the McCoy Pavilion, Honolulu, Oahu. On October 17, 2002, we held a public information meeting at Nanakuli High School, Nanakuli, Oahu. On November 19, 2002, we held a public hearing at the Ala Moana Hotel, Honolulu, Oahu. On December 26, 2002, we published a notice (67 FR 78763) announcing the availability of the draft economic analysis and reopening the comment period until January 27, 2003.

In the final rule designating critical habitat for plants on Lanai, published in the **Federal Register** on January 9, 2003 (68 FR 1220), we indicated that critical habitat was prudent for the following 17 multi-island species that also occur on Oahu: *Adenophorus periens, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*. In the final rule designating critical habitat for plants on Kauai and Niihau, published on February 27, 2003 (68 FR 9116), we indicated that critical habitat was prudent for the following 16 multi-island species that are also found on Oahu: *Alectryon macrococcus, Euphorbia haeleeleana, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Isodendrion longifolium, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope pallida, Peucedanum sandwicense, Phlegmariurus nutans, Plantago princeps, Platanthera holochila, Schiedea nuttallii*, and *Solanum sandwicense*. In the final rule designating critical habitat for plants on Molokai (68 FR 12982), we indicated that critical habitat was prudent for the following four multi-island species that are also found on Oahu: *Eugenia koolauensis, Isodendrion pyrifolium, Marsilea villosa, Phyllostegia mollis*, and *Pteris lidgatei*. In the final rule designating critical habitat for plants on Maui and Kahoolawe, published on May 14, 2003 (68 FR 25934) we indicated that critical habitat was prudent for the following eight multi-island species that are also found on Oahu: *Colubrina oppositifolia, Gouania vitifolia, Hedyotis coriacea, Hesperomannia arbuscula, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia parviflora, Sanicula purpurea*, and *Schiedea hookeri*. In the final rule designating critical habitat for plants in the Northwestern Hawaiian Island, published on May 22, 2003 (68 FR 28054) we indicated that critical habitat was prudent for the following two multi-island species that are also found on Oahu: *Mariscus pennatiformis* and *Sesbania tomentosa*.

Summary of Comments and Recommendations

We received a total of seven oral and 694 written comments during the four comment periods. These included responses from 7 State offices, 13 local agencies, and 36 private organizations or individuals. Of the written comments, we received approximately 638 letters by electronic mail or coupon/postcard that stated general support for the proposed critical habitat

designations but that did not provide substantive comments. Of the other 56 comments, 12 supported the proposed designation, 31 were opposed to it, and 13 provided information or declined to oppose or support the designation. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Oahu plants. Similar comments were grouped into six general issues relating specifically to the proposed critical habitat designations and the draft economic analysis on the proposed determinations. These are addressed in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 17 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region, or the principles of conservation biology. We received comments from eight. All eight generally supported our methodology and conclusion, but none expressed a position for or against the designation of critical habitat. Comments received from the peer reviewers are summarized in the following section and were considered in developing the final rule.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One commenter stated that the proposal designates areas that are not essential to the species.

Our Response: In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our method of designating critical habitat for Oahu plants was based on scientifically sound data, assumptions, and analysis. The comments of the peer reviewers were taken into consideration in the development of this final designation. The majority of our peer reviewers support our methodology. Changes in this final rule that decrease the boundaries of some units are based on additional information received during the public comment periods. The changes in boundaries reflected in this final rule are based on additional information regarding the lack of primary constituent elements or additional information regarding the degradation of some of the proposed critical habitat areas and low probability of restoration that affect the areas' essentiality to the species. Areas that were inadvertently included in the proposed unit and found to be nonessential have also been removed from the final designation.

(2) *Comment:* One commenter stated that the broad brush of primary constituent elements has resulted in the proposed designation of large amounts of State land with little companion scientific effort to identify limiting factors or management actions needed. Another commenter stated that the critical habitat designations are based on guesswork.

Our Response: The Act requires us to use the best scientific and commercial information available in undertaking species listing and recovery actions, including the designation of critical habitat as set forth in this rule. In this final rule, we concluded that some areas were not essential for the conservation of the Oahu plant species, based on newly available information concerning status of the species in specific areas and level of habitat degradation. Several of the units proposed as critical habitat have been excluded because they are not essential for the conservation of the species. These excluded units are nonessential because either they lack the species' primary constituent elements or other habitat exists for these species that has more primary constituent elements and/or is less degraded. See the "Summary of Changes from the Revised Proposed Rule" section.

The magnitude of additional research and investigations required to determine limiting factors and specific management actions needed for each species at each location is beyond the scope of critical habitat designation. The Act requires us to designate critical habitat on the basis of the best scientific and commercial data available. Based on the information available at the time the proposal was prepared and taking into consideration additional information received during the public comment periods on the proposal and draft economic analysis, we believe we have designated scientifically appropriate areas for the conservation of these species.

(3) *Comment:* The Army requested exclusion of grass-dominated portions of Makua Military Reservation and exclusion of grass-dominated habitat and forested areas dominated by nonnative plants (*e.g. Eucalyptus* sp. and *Schinus terebinthifolius*) at Schofield Barracks.

Our Response: These areas were excluded from the final critical habitat designation because they do not contain the primary constituent elements necessary for the conservation of the Oahu plant species.

(4) *Comment:* One commenter did not believe that the Service has demonstrated that designating this large an area, absent any active management by the Federal government, can lead to the recovery of the identified species.

Our Response: We agree that active management is a necessary part of achieving recovery for these species and that the ultimate purpose of critical habitat is to contribute to the conservation of listed species. This can be best be achieved by cooperation between the Service and other partners. A critical habitat designation alone will not lead to the recovery of these species. Recovery of the species will require the cooperation of Federal and non-Federal land managers to manage lands in a manner that is compatible with species' recovery. We have numerous programs for assisting landowners with management for the conservation of these species.

(5) *Comment:* One peer reviewer indicated that the general goal of establishing at least 8 to 10 viable populations for each species may not apply to some rare, localized island endemics that likely never had 8 to 10 populations throughout their evolutionary history.

Our Response: Fewer than eight populations are being designated for some very restricted species for which adequate habitat does not exist, and which were likely always rare, since they are very narrow endemics (*Alsinidendron trinerve, Chamescyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Cyanea pinnatifida, Cyrtandra polyantha, Cyrtandra subumbellata, Diellia unisora, Dubautia herbstobatae, Eragrostis fosbergii, Lipochaeta tenuifolia, Lobelia monostachya, Melicope saint-johnii, Sanicula mariversa, Schiedea kealiae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme,* and *Trematalobelia singularis*). The recovery plan for some more well understood species may also have different recovery objectives (*Marsilea villosa*), and the designation reflects these differences. However, in general, the recovery objectives found in recovery plans for these species state that 8 to 10 viable populations are required for recovery of each species. Establishing and conserving 8 to 10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as fires and nonnative plant invasions (Hawaii and Pacific Plant Recovery Committee (HPPRCC) 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give most species a reasonable likelihood of long-term survival and recovery, based on currently available information. Each recovery plan states that these recovery goals will be revised as more specific information becomes available for each species.

(6) *Comment:* One peer reviewer commented that we should be wary of making propagation or reintroduction decisions based on the preservation of interpopulational genetic diversity. Observed or measurable genetic diversity is always at neutral loci, which gives absolutely no indication of differences in relative fitness. Another peer reviewer asked if the consequences of small, isolated populations on genetic drift or inbreeding have been addressed, *e.g.*, through occasional gene flow.

Our Response: Many of the species have been reduced to such low numbers that the recovery plans identify propagation and reintroduction as a key step. While we do not have direct evidence for most species to indicate that reduced reproductive vigor or inbreeding are problems, we believe they should be considered, based on current conservation biology theory and practice. This is particularly important to consider when developing a propagation and reintroduction program, to ensure that recovery efforts do not cause or exacerbate genetic issues. While measures of genetic diversity do not directly measure relative fitness, it is reasonable to assume that the two are correlated. The issue of gene flow and genetic drift will be addressed through research actions identified as needed in the recovery plans.

(7) *Comment:* The proposal failed to contain the total of historically known listed plants, and therefore failed to propose critical habitat for all listed plants Statewide. About 10 percent of the historically known listed endangered plant species from the Hawaiian Islands are missing from the proposals. The following Oahu plants are listed as endangered, but not included in proposed critical habitat designations: *Abutilon menziesii, Achyranthes splendens* var. *rotundata, Caesalpinia kavaiensis, Chamaesyce skottsbergii* var. *skottsbergii, Panicum fauriei* var. *carteri, Scaevola coriacea,* and *Scheidea adamantis*. It is unclear why critical habitat was not discussed with respect to *Abutilon menziesii, Achyranthes splendens* var. *rotundata, Caesalpinia kavaiensis, Chamaesyce skottsbergii* var. *skottsbergii,* and *Gardenia brighamii*. For example, the recovery plan for *G. brighamii* specifically calls for the establishment of three populations on Oahu. This is a serious concern since the proposed rule states "the U.S. Fish and Wildlife Service proposes critical habitat for 99 of the 101 plant species known historically from the island of Oahu that are listed under the ESA." This statement is incorrect. The above-mentioned species are found on Oahu, they are listed under the ESA, and they are not addressed in the proposed rule.

Our Response: We have corrected the statement cited above in this final rule. The following species were not part of the 1998 court order and subsequent stipulations, and therefore were not included in this rulemaking: *Abutilon menziesii, Achyranthes rotundata* (currently *Achyranthes splendens* var. *rotundata*), *Euphorbia skottsbergii* var. *kalaeloana, Gardenia brighamii, Mezoneuron kavaiense* (currently *Caesalpinia kavaiensis*), *Scaevola coriacea,* and *Scheidea adamantis*. Critical habitat for these species will be considered if funding and resources become available. In addition, critical habitat has already been designated for *Panicum carteri* (currently *Panicum fauriei* var. *carteri*) on the island of Mokolii (48 FR 46328).

(8) *Comment:* One peer reviewer expressed concern that the Service may remove areas from designation if the landowner provides sufficient assurance that the land is adequately managed for a particular species. The Service cannot lawfully exclude areas from critical habitat based on a finding that they are adequately managed or protected. Critical habitat should be determined independent of the management situation. Another peer reviewer stated that none of the lands should be excluded from proposed critical habitat because of their existing land management.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. If an area is covered by a plan that meets our management criteria, we believe it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not considered to be in need of special management or protection. For a detailed explanation of this evaluation see the "*Analysis of Managed Lands Under Section 3(5)(A)*" section below. However, to the extent that special management considerations and protection may be required for any of these areas and they, therefore, would meet the definition of critical habitat according to section 3(5)(A)(i), they are also properly excluded from designation under section 4(b)(2) of the Act (see *Analysis of Impacts under Section 4(b)(2)*).

(9) *Comment:* One peer reviewer and many commenters stated that focusing conservation efforts on the most pristine, least degraded sites is a logical, efficient, and cost-effective strategy whenever possible. Unfortunately, for many of the listed plant species, there is simply not enough suitable habitat remaining. Another peer reviewer stated that, in general, as much habitat should be protected as possible. Many peer reviewers were optimistic about the potential for degraded areas to be restored. One peer reviewer commented that populations could be established in the most degraded habitat if sufficient funds and person hours are dedicated toward follow-up maintenance after restoration. Another commenter stated that there is only a nominal possibility that the endangered native plants would survive in highly degraded areas and areas dominated by nonnative plants that are proposed as critical habitat. Yet another commenter stated that designations in degraded habitats are unrealistic and could waste resources on impractical restoration efforts. The commenter went on to suggest that low elevation areas may not be adequately represented; therefore it is important that the proposal not be trimmed back in any lower elevation areas. Another peer reviewer stated that the Service should designate lowland areas for potential future restoration and population recovery efforts.

Our Response: We agree that recovery of a species is more likely in designated critical habitat in the least degraded areas containing the primary constituent elements. To this end, several units have been excluded for some species, as sufficient numbers of alternative critical habitat units are available in less degraded areas. However, for some species, especially those only known from low elevation areas, only degraded

habitat remains. Therefore, some units still contain degraded habitat, but we believe that these areas can be restored if the landowner is supportive and resources are made available.

(10) *Comment:* One peer reviewer questioned why some areas designated as essential habitat by the HPPRCC are not included in the proposed critical habitat.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to use the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. The HPPRCC used a different set of criteria to select the areas they deemed to be essential plant habitat. They selected habitat for all endangered, threatened, proposed, and candidate species. Some of these species were not included in the selection of critical habitat. Therefore, the essential plant habitat and critical habitat areas will not completely overlap.

(11) *Comment:* One peer reviewer recommended additional consultations with academic and professional experts. Some reviewers stated that no assessment of the quality of any of the data sources is provided, and no information is given as to how data sources of varying qualities were weighted in making delineations of critical habitat or how decisions were made as to what to rely on in the absence of rigorous assessments of relative quality. These commenters agreed with the Service's statement that "lack of detailed scientific data makes it impossible for us to develop a quantitative model." Lack of knowledge means that the proposed critical habitat designation is based only on the general habitat features of the areas in which the plants currently occur. While this approach may be expedient, it has resulted in designations based on best-guess estimations, rather than on science or the realities of plant recovery. The Service needs to give greater weight to scientific or commercial data that is empirical and has been field tested or verified, and the Service needs to allow peer review by a panel of unbiased scientists. One reviewer stated that the scientific basis for critical habitat designation is weak. Other commenters felt that the data on which the proposed critical habitat is based are 30 years old and may need updating.

Our Response: In an expansion of our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of 19 appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our methodology for designation of critical habitat for Oahu plants was based on scientifically sound data, assumptions, and analysis. The comments of the peer reviewers were taken into consideration in the development of this final designation. The majority of peer reviewers support our methodology. We also met with field botanists from the Hawaii Natural Heritage Program, the Department of Land and Natural Resources, the Hawaii Army National Guard, and the Department of the Army. All data and information on species status received in preparation of this rule were weighted equally and considered to come from reliable sources. Where discrepancies existed between different data sources, the most current data were used.

New information indicated that some of the areas identified as essential habitat in the "Recovery Plan for Multi Island Plants" (USFWS 1999) do not contain the primary constituent elements necessary for the conservation of any of the 99 plant species included in this final designation. The essential plant habitat maps take into consideration all listed endangered plants on Oahu, as well as species of concern. We agree that additional time would be beneficial for the preparation of these final rules and the collection of more scientific information, but we are required under the court-approved stipulation to finalize this designation by April 30, 2003, using the best information currently available. If provided with new information, we may propose revisions in the critical habitat designation in the future.

(12) *Comment:* Some reviewers commented that deletion of significant portions of any of the proposed critical habitat units is likely to prevent the recovery of, and lead to the extinction of, listed species. Smaller units present real management challenges and may be so small that their ecological integrity and the viability of listed plants cannot be maintained.

Our Response: In this final rule, we concluded that many areas were not essential for the conservation of the Oahu plant species, based on information received during the public comment periods concerning the status of the species in specific areas and degree of habitat degradation. Several units or portions of units proposed as critical habitat have been excluded because they are not essential for the conservation of the species. These excluded units or portions of units are not essential because they either lack the species' primary constituent elements or other areas exist that provide for the conservation of the species. See the "Summary of Changes from the Proposed Rule" section.

We realize that smaller areas will most likely require more management to maintain the plant populations and their habitat, but in many cases they are the only areas with the primary constituent elements needed by each species. We concur with the importance of protecting the ecosystems on which these species depend, as stated in purpose of the Act (section 2(b)), and of managing areas large enough to maintain and expand populations. We considered the importance of this, as well as the location of primary constituent elements, when delineating the boundaries of critical habitat for these final designations of critical habitat. We included areas that provide the biological and other processes essential for the conservation of the species. We acknowledge the potential negative impacts of edge effects on small habitat fragments. However, these species' primary constituent elements are found only within the areas that were designated critical habitat, and expanding the designated critical habitats would add areas that lack the primary constituent elements. All of the changes from the proposed critical habitat are based on the best available information and information received during comment periods and are based on biological issues, not political or social issues. If new information becomes available indicating that the existing critical habitat designations are not essential for the conservation of the species and/or that other areas are, we may propose new designations for those species at that time.

(13) *Comment:* A peer reviewer stated that the absence of native pollinators may demographically doom populations of facultative and obligate out-crossing species. The same peer reviewer commented that relationships among breeding systems (out-crossing or selfing), effective population size, levels of genetic exchange, and spatial distribution need to be considered.

Our Response: We agree; however, this information is unknown for the majority of the 99 plant species on Oahu for which we are designating critical habitat. If new information becomes available, we will reevaluate critical habitat based on the new information for that species at that time.

Issue 2: Effects of Designation

(14) *Comment:* A strongly preferred approach is to encourage the establishment of voluntary partnerships with landowners to bring about the desired species conservation.

Our Response: We realize that designation of critical habitat alone will not achieve recovery. Many threatened and endangered species occur on private lands and we recognize the importance of conservation actions by private landowners. Cooperation from private landowners is an important element of our conservation efforts, and we have had considerable success in developing partnerships with large and small landowners, government agencies, and non-governmental organizations for conservation activities on Oahu, elsewhere in the State of Hawaii, and throughout the Nation. We also recognize the importance of partnerships with other Federal and State agencies and land managers.

We administer several programs aimed at providing incentives for landowners to conserve endangered and threatened species on their lands; one of these incentives is the Endangered Species Landowner Incentive Program, which was first funded by Congress in fiscal year 1999. Under this program, we provide technical assistance and funding to landowners for carrying out conservation actions on their lands. In the first year alone, 145 proposals totaling $21.1 million competed for $5 million in grant money. Additional information on our landowner incentive programs may be found on our Web site *(http://endangered.fws.gov/landowner/index.html)*. In addition, we have excluded areas under 4(b)(2) of the Act from the final designation of critical habitat on several islands because landowners have developed voluntary partnerships to manage the resources on their lands. We believe that the benefits of excluding these areas outweigh the benefits of including these areas in a final critical habitat designation.

(15) *Comment:* One peer reviewer stated that it is both prudent and necessary to designate critical habitat for these rare species. This provides the needed long-term management stability that allows government agencies and private organizations to cooperate and concentrate on recovery efforts. It may provide additional incentives for securing funding to research and recover populations. Designation of critical habitat also provides for additional protection of habitat that is unoccupied by a particular species, therefore allowing for future reintroduction of the species. In the absence of critical habitat protection, much of the currently unoccupied habitat will continue to be destroyed by nonnative plants and animals, urban sprawl, and other development. On the other hand, one commenter stated that if site-specific locality information will have to be published in the final rule for every species, then the potential harm (from trespassing and theft of the species) far outweighs any potential benefit from designating critical habitat. Another commenter failed to see how imposing the proposed designation of critical habitat on privately owned, privately managed lands with no Federal nexus can lead to the recovery of the identified species.

Our Response: See **SUPPLEMENTARY INFORMATION** above.

(16) *Comment:* One commenter stated that all species should be offered protection, but they cannot support protection for some and not for others. They are concerned about the nonnative animals, whose fate would be decided by agencies that consider them invasive and kill them. The current interpretation of critical habitat allows the Federal government and its partners to utilize any methodology they wish in dealing with feral animals with impunity, although such methods may be cruel and environmentally unsound.

Our Response: The designation of critical habitat does not give the Federal government and its partners the authority to utilize any methodology they wish in dealing with feral animals. Any potential animal control program would be subject to all applicable State, Federal, and local laws. Also, critical habitat does not allow or enable the Federal government to control feral animals on non-Federal land. Such decisions will still be made by the landowner and are not regulated by critical habitat.

(17) *Comment:* The designation of critical habitat in areas actively used by the 25th Infantry Division (Light Infantry) for national defense purposes will adversely affect the Army's ability to carry out its essential mission. Training is essential to maintain specific proficiencies that are critical to wartime performance. Designating the proposed areas as critical habitat would have a negative effect on the Army's ability to carry out its national defense mission as well as to undergo the proposed transformation of its forces in the State of Hawaii. Designations of critical habitat will negatively impact the missions of the United States Marine Corps units who rely on the Army lands for their training. The skills learned at Makua and Schofield Barracks are critical to our Marines' ability to perform all manner of combat operations, because the natural and physical attributes of the training areas mirror battlefield conditions found in other nations in the Pacific region and are found nowhere else in the United States. The Army has a comprehensive conservation program that provides better accountability and management of endangered plant species than the speculative benefit of critical habitat. The Army's natural resource programs provide sufficient management of rare plants, negating the need for critical habitat designation. For example, the Makua Implementation Plan details the actions required to stabilize 28 plant taxa and the Oahu tree snail. Further, the Army has worked with the Service to develop Integrated Natural Resource Management Plans (INRMPs) for its installations on Oahu.

Our Response: We have removed Makua Military Reservation, Schofield Barracks, Schofield Barracks East Range, Kahuku Training Area, Kawailoa Training Area, and Dillingham Military Reservation from final critical habitat designation because the benefits of excluding these lands under 3(5)(A) and 4(b)(2) outweigh the benefits of including these lands in a final designation (see *"Analysis of Impacts Under Section 4(b)(2): Other Impacts"*). We agree that the Army has implemented a comprehensive program of endangered species management on its lands under the INRMP process and appreciate the amount of financial and manpower resources they have provided for this effort. Army cooperation and support will be required to prevent the extinction and promote the recovery of all of the listed species on this island due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation.

(18) *Comment:* One landowner was concerned that their past cooperative efforts were not considered in this designation. In particular, this landowner had conveyed to the Service the southern portion of the Oahu Forest National Wildlife Refuge. In conveying the southern portion of the refuge to the Service, the landowner understood that a primary motivation for and purpose of the conveyance was to protect the native forest and certain native plant species therein, and therefore, the parties worked together to include certain lands in the conveyance. By its proposed rules, the Service appears to ignore or fails to consider this process, with the result being that the conveyance is treated as if it occurred in a vacuum.

Our Response: As summarized in the "Summary of Changes to the Proposed

Rule" section, the lands referred to in this comment were excluded from critical habitat designation because the primary constituent elements for the plant species proposed in this area are not present (former Oahu L unit).

(19) *Comment:* The draft economic analysis states that if a landowner needs a Federal permit or receives Federal funding for a specific activity, the Federal agency issuing the permit or dispersing the funds would consult with the Service to determine how the action may affect the designated critical habitat. The commenter questioned what is meant by the term "consult." The nature of the consultation could result in control over whether the Federal government conducts its proposed action on those lands or not, thereby controlling the land to the extent that the private landowner could or could not do business with the Federal government. What would the consultation result in when a proposed Federal action is benign compared to the activities not affected by critical habitat designation, such as, grazing, farming, hunting, or recreational use?

Our Response: Under section 7 of the Act, all Federal agencies must consult with the Service to insure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. If the Service finds that the proposed actions are likely to jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat, we suggest reasonable and prudent alternatives that would allow the Federal agency to implement their proposed action without such adverse consequences.

Every consultation is unique, and it is impossible to comment on what the results of a future consultation will be without details of the proposed activity and the status of the species and its critical habitat at the time of the consultation. However, the consultation is focused on the direct and indirect effects of the proposed Federal action on the species or critical habitat and on effects of activities that be interrelated or interdependent. If the effects of the action, when added to the environmental baseline in the project area, would not destroy or adversely modify critical habitat or jeopardize the species, the project could proceed without modification.

Issue 3: Site-Specific Biological Comments

(20) *Comment:* One landowner stated that, based on the methodology used and the fact that many areas are not occupied by any listed species in the 7,500 acres in units I and M that they own, and which are either within the agricultural district and in agricultural use or which are in the conservation district and developed for and in active use for telecommunications, these lands should be excluded.

Our Response: Based on comments received from field experts, these areas were removed from the final critical habitat designation because either they do not contain the primary constituent elements necessary for the conservation of these species or there are less degraded areas on Oahu that provide habitat essential for the conservation of these species.

(21) *Comment:* One landowner indicated that the boundary of a particular proposed critical habitat area runs through a small eucalyptus grove that is used quite extensively for educational purposes. By moving the boundary line in this location as requested in a map supplied by the landowner, there would be no impact upon existing operations (cattle ranching or otherwise).

Our Response: This area was removed from the final critical habitat designation because it does not contain the primary constituent elements necessary for the conservation of the species in this area.

(22) *Comment:* Two commenters were unclear how water source and distribution facilities in Unit L and other units in which the Waiahole Ditch is included will be affected if additional irrigation water is allocated for delivery to the central Oahu isthmus. They also expressed concern that routine ditch operations and maintenance may become problematic, especially if a section 7 consultation becomes necessary. Another commenter stated that the proposed rule identifies the alteration of watersheds and water diversion as activities that could trigger section 7 consultation if there is Federal involvement. If the ability to divert or take water from these sources or systems is restricted or limited, the impact would affect all lands served by such water sources or systems. In some cases, these water systems are very extensive and therefore the impacts could be quite substantial and far-reaching.

Our Response: Water infrastructure, including ditch irrigation systems, are considered manmade features and therefore are not critical habitat. As such, their operation and maintenance are not likely to be subject to the critical habitat provisions of section 7 because these features and structures normally do not affect critical habitat.

(23) *Comment:* One peer reviewer commented that Unit L could be potentially expanded to include valley corridors linking the unit at its northern end to lowland/coastal habitats, thus allowing for an elevational gradient to be protected. These areas include the Hauula Beach Park area and the Kawailoa area. Similarly, a corridor linking Unit L with Unit O would also provide additional protected potential habitat. Extending Unit L at its extreme southeastern tip to include remaining ridge top habitat and possibly providing an elevational corridor with Unit X may also prove beneficial.

Our Response: We believe that the area we have designated meets the recovery goals of 8 to 10 populations for these 99 plant species. Areas outside of the designated critical habitat may be important for the conservation of the species; however, at this time, we do not believe that they are essential to the conservation of these species.

(24) *Comment:* The Navy believes that the designation of critical habitat is redundant and subjects their Federal installations to unnecessary burdens when applied to species whose protection is addressed and managed under an installation's INRMP. Naval Magazine Pearl Harbor is the largest ammunition storage and ordnance operation in Hawaii. Consistent with this mission, large areas of land and water are constrained by the need for safety buffers. Naval Computer and Telecommunication Area Master Station Pacific (NCTAMS PAC) is the largest communications station in the world, and its mission is to provide communications for command and control to all naval commands ashore and afloat in the Pacific and to a wide variety of Army, Marine Corps, Coast Guard, and Air Force commands. The existing and future national defense operations to be conducted in these areas may present incompatibilities with species preservation.

Our Response: We have reviewed the 2001 INRMP for Navy lands on Oahu. It is currently not adequate to outweigh the benefit of including these areas in a final designation (See "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*"). It does not include specific information on the conservation of the listed species found on Navy lands or information about conservation of unoccupied habitat for species historically known from the area. As far as we are aware, this INRMP has not yet been updated to address management needs of these species. We look forward to working with the Navy in developing management for these areas that is compatible with species recovery.

We have removed some portions of the units on Navy lands, based on additional information received during the comment periods and visits to the base. We determined these areas to be nonessential because of the lack of primary constituent elements or because there are other places for these species that have more primary constituent elements and/or are less degraded. See the "Summary of Changes from the Proposed Rule" section for the justification for each unit's changes.

Issue 4: Species-Specific Biological Comments

(25) *Comment:* There are only three occurrences of the identified species on Damon Estate's land, all three located in the very back of Moanalua Valley, nearly 1.5 miles from the makai (directional term in the Hawaiian language that means towards the ocean) boundary of the proposed critical habitat designation. The landowner does not believe that the Service has established that these reported occurrences, some of them decades old, justify the designation of nearly 1,500 acres, much of which is highly altered from its original native vegetation.

Our Response: This area is currently occupied by eight species (*Chamaesyce rockii, Cyanea acuminata, Cyanea humboltiana, Gardenia mannii, Lobelia oahuensis, Tetraplasandra gymnocarpa, Trematolobelia singularis,* and *Viola oahuensis*) and contains habitat essential to the conservation of seven species (*Cyanea crispa, Cyanea humboltiana, Lobelia oahuensis, Sanicula purpurea, Tetraplasandra gymnocarpa, Trematolobelia singularis,* and *Viola oahuensis*). Therefore, we could not remove this area from final critical habitat designation. Although this area is highly altered, information provided by botanists both in compiling the proposed rule and during the public periods indicates that the area contains the habitat elements essential for the conservation of the above mentioned plant species. This area is located within the following critical habitat units: Oahu 20—*Cyanea crispa*—b, Oahu 20—*Cyanea humboltiana*—d, Oahu 20—*Lobelia oahuensis*—a, Oahu 20—*Sanicula purpurea*—a, Oahu 20—*Tetraplasandra gymnocarpa*—b, Oahu 20—*Trematolobelia singularis*—b, and Oahu 20—*Viola oahuensis*—a.

(26) *Comment:* Two commenters stated that failure to designate critical habitat for *Cyrtandra crenata*, as long as this species remains on the endangered species list, denies it the habitat protection that Congress intended. The Service's conclusion in 67 FR 37155 that *Cyrtandra crenata* would not benefit from critical habitat designation is based on a faulty interpretation of the Endangered Species Act to designate critical habitat "to the maximum extent prudent." Another commenter added that given the vast areas on Oahu yet to be surveyed or inventoried, there is no valid basis for the Service to assume that *Cyrtandra crenata* is extinct. The mere fact that this plant has not been seen on Oahu recently does not justify the Service's refusal to protect its critical habitat, as it is common for field biologists to rediscover plant species that have not been seen for decades. The recent discovery of *Asplenium fragile* var. *insulare* (on Maui) and *Phyllostegia waimeae* (on Kauai) are cases in point. Several other commenters stated that the final rule should extend critical habitat protection to *Cyrtandra crenata*.

Our Response: At the present time, we do not believe it would be beneficial to designate critical habitat for this species. It was last observed in the wild in 1947, and we do not know of any genetic material in cultivation. In addition, we are unable to identify the physical and biological features essential for the conservation of this species or any exact location in the wild essential to the conservation of this species. Until the species is rediscovered, we are unable to identify habitat that is essential to its conservation due to lack of information in the historical record. Therefore, no change is made to our not prudent determination here. If this species is rediscovered, we may propose critical habitat for the species at that time.

(27) *Comment:* Several commenters stated that the final rule should extend critical habitat protection to the loulu palm, *Pritchardia kaalae*. As recently as 1999, the Service found that proposed live-fire training at Makua Military Reservation threatened *Pritchardia kaalae* with extinction. This species needs critical habitat protection from military and other threats if it is to have any chance of increasing its numbers and range from the six populations remaining in the wild. In contrast, the Service's claim that designation, which would identify primarily unoccupied habitat and increase threats to the species, is pure speculation.

Our Response: Since the listings of the three *Pritchardia* species on Kauai and Niihau as endangered, and prior to our proposed rules for the designation of critical habitat, we received information verifying vandalism and collection threats to *Pritchardia* throughout the Hawaiian Islands. This information is included in the proposed rules. No additional information was provided during the comment periods demonstrating that the threats to the *Pritchardia* species on any Hawaiian Island from vandalism or collection would not be increased if critical habitat was designated. We still believe that the benefits of designating critical habitat do not outweigh the potential threats from vandalism and collection of any species of *Pritchardia*. Makua Military Reservation has been removed from critical habitat designation under 4(b)(2) of the Act because the benefits of excluding the area outweigh the benefits of including the area in the final designation (See "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

(28) *Comment:* In the **Federal Register** notice of May 28, 2002 (FR 37108), Table 1 indicates that it includes 101 plants. In fact, the table appears to include 102 plants. Should *Colubrina squamigera* be included? It is neither a listed species nor a candidate species.

Our Response: Table 1 should contain 101 plant species from the island of Oahu listed under the Act for which critical habitat designations are being proposed. The inclusion of *Colubrina squamigera* was the result of a typographical error. No such plant species is historically or currently known.

(29) *Comment:* Coastal habitats may not be well represented in proposed critical habitat. For example, there are few sand dune areas with seasonal pools included in the critical habitat proposal, which will limit the ability to establish multiple populations of several species.

Our Response: The final critical habitat designations published for all Hawaiian Islands except the island of Hawaii, the critical habitat proposed for the island of Hawaii, and habitat located within adequately managed lands provide the habitat necessary for the conservation of 8 to 10 populations of each of the coastal plant species in this rule. Although habitat outside of these areas may be important for the recovery of one or more of these species, it is not essential to their conservation. The best existing habitat for 8 to 10 populations of each of the coastal plant species has been captured in the final critical habitat designation.

(30) *Comment:* One peer reviewer proposes expanding the critical habitat designation to include more (or all) of the conservation district lands in the southeastern Koolau Mountains for the benefit of the southern Koolau endemic species, *Cyanea grimesiana, Lipochaeta lobata,* and *Trematolobelia singularis.*

Our Response: Although we agree that this habitat may be important to the recovery of these species, it has not been identified as essential to the conservation of these species. The Service has identified habitat for 8 populations of *Cyanea grimesiana* elsewhere on Oahu and habitat for 10 populations of *Lipochaeta lobata*. In addition, the Service identified enough habitat for six populations of *Trematolobelia singularis*. Although this does not reach the goal of 8 to 10 populations listed in the recovery plan for this species, the Service did not have sufficient information on the habitat suggested by the commenter to determine that it is essential to the conservation of the species.

(31) *Comment:* One peer reviewer commented that any and all suitable habitat in the geographic ranges of the following species should be protected because of potential seed banks and impending climatic changes that could render existing sites unsuitable: *Alsinidendron trinerve, Dubautia herbstobatae, Hedyotis degeneri* var. *degeneri*, and *Scheidea kealiae*.

Our Response: We have designated all habitat considered to be essential for the conservation of *Alsinidendron trinerve* (habitat for seven populations), *Dubautia herbstobatae* (habitat for six populations), *Hedyotis degeneri* var. *degeneri* (habitat for nine populations), and *Schiedea kealiae* (habitat for four populations). The only areas not included in the final designation of critical habitat for these species were those areas that do not contain the primary constituent elements necessary for the conservation of these species.

Issue 5: Mapping and Primary Constituent Elements

(32) *Comment:* The State Department of Transportation (DOT) stated that the proposed designations near State routes would restrict the design, maintenance, and construction of highways. In particular, Units A and I may impact Route 93 (Farrington Highway), Unit L may impact Interstate Highway H–3, and Unit W may impact Route 72 (Kalanianaole Highway). The DOT recommends that buffer zones on each side of the State highway right-of-way should be excluded from critical habitat. The buffer zones should be based on topography and be a minimum of 100 feet in width. The map of proposed critical habitat units that shows Interstate Highway H–3 ending in the middle of Unit L should be corrected.

Our Response: The DOT's comments did not identify any planned widening or other significant improvement project within these units. Rather, their concerns focused on the impact to routine repair and maintenance. Operation and maintenance of existing manmade features and structures adjacent to critical habitat are not likely to affect critical habitat and therefore are not likely to be subject to section 7 consultation. Because the areas identified in the proposed rule are essential to the conservation of several of the plant species on Oahu, they are included within the final designation. The land area located over the Interstate Highway H–3 tunnel is essential for the conservation of 7 of the 99 Oahu plant species (*Cyanea crispa, Cyanea st.-johnii, Lobelia oahuensis, Lysimachia filifolia, Sanicula purpurea, Tetraplasandra gymnocarpa*, and *Viola oahuensis*) and is included in the final designated critical habitat.

(33) *Comment:* Several commenters suggested that roads and trails be excluded from critical habitat.

Our Response: Existing manmade features and structures within the boundaries of the mapped units, such as buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications equipment towers and associated structures and electrical power transmission lines and distribution and communication facilities and regularly maintained associated rights-of-way and access ways; radars; telemetry antennas; missile launch sites; arboreta and gardens, heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain, and are not likely to develop, primary constituent elements and are specifically excluded from designation under this rule. Therefore, unless a Federal action related to such features or structures indirectly affects nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat.

(34) *Comment:* One commenter expressed concern over proposed critical habitat designation of approximately 800 acres of land in Unit I, which has been in cultivation for over 50 years.

Our Response: This area was removed from the final designation because it does not contain the primary constituent elements necessary for the recovery of any of the 99 plant species on Oahu.

(35) *Comment:* The configuration of units will be difficult to identify on the ground and will have irregular boundaries. These boundaries will complicate management and increase the risk of fragmentation and edge effects on populations within units.

Our Response: We realize that these areas have irregular boundaries, but in many cases they are the only areas with the primary constituent elements needed for each species. We included areas that provide the biological and other processes that are essential for the conservation of the species. We acknowledge the potential negative impacts of edge effects on small habitat fragments. However, these species' primary constituent elements are found only within the areas that were designated as critical habitat, and making them larger would add areas that lack the primary constituent elements and that are not essential to conservation of the species. All of the changes in critical habitat from the proposal are based on the best available information received during comment periods. If new information becomes available indicating the existing critical habitat designations are not essential for the conservation of the species or that other areas are, we may propose new designations for those species at that time.

(36) *Comment:* One commenter believed that the Service considered most of the key elements required for assigning areas crucial for the persistence of plant species; however, one element that appears to have been overlooked and that requires serious consideration in designating critical habitat is the presence of appropriate pollinators for species that do not self-pollinate, or feasible and sustainable alternatives to key pollinators that may be absent.

Our Response: We agree; however, this information is unknown for the majority of these plant species. As new information becomes available, we may reevaluate the critical habitat designations as necessary.

(37) *Comment:* One commenter stated that it appears that a portion of unit M is in the Urban District.

Our Response: This area was removed from the final designation because it does not contain the primary constituent elements necessary for the conservation of Sesbania tomentosa or Centaurium sebaeoides.

(38) *Comment:* The large scale maps of the designated critical habitat make it impossible to determine the exact boundaries of the critical habitat. This, in turn, makes it impossible to be precise in commenting on economic impacts.

Our Response: The maps in the **Federal Register** provide the general location and shape of critical habitat and are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat; the maps do not constitute the definition of the boundaries of a critical habitat (50 CFR 17.94). The legal descriptions are the definition of the boundaries of critical habitat, are readily plotted, are transferable to a variety of mapping formats, and were made available electronically upon request for use with GIS programs. Unit boundaries were defined by giving the coordinates in UTM Zone 5 with units in meters using North American Datum of 1983 (NAD83). These coordinates can be used to determine boundaries with some accuracy. At the public hearing, the maps were expanded to wall-size to assist the public in better understanding the proposed critical habitat. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed critical habitat.

Issue 6: Policy and Regulations

(39) *Comment:* Two commenters stated that the Service's suggestion that current management efforts can render otherwise "critical" habitat no longer "critical" illegally reads into section 3(5) of the Act an additional, unstated requirement that habitat cannot be "critical" unless the Service finds it needs more management or protection than it currently receives.

Our Response: Please refer to the response to comment 8.

(40) *Comment:* The proposal violated the commerce clause and exceeds the constitutional limits of the Service's delegated authority. The listed species are not interstate; they exist only in Hawaii and do not cross State lines.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to apply the protections of the Act to species that occur within a single State. A number of court cases have specifically addressed this issue. The *National Association of Homebuilders* v. *Babbitt*, 130 F. 3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct, 2340 (1998), involved a challenge to application of Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one State. The court held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition. Similar conclusions have been reached in other cases, see *Gibbs* v. *Babbitt*, No. 99–1218 (4th Cir. 2000) and *Rancho Viejo* v. *Norton*, No. 01–5373 (D.C. Cir. 2003).

(41) *Comment:* One commenter disagreed with the Service's approach of proposing critical habitat designations in advance of any economic analysis. Another commenter stated that economic analysis must be completed before critical habitat can be prudently designated.

Our Response: We agree that the economic analysis must be completed before critical habitat can be designated, and we do so in all cases, including this regulation. The Service must first decide upon a specific area, or set of areas, to propose as critical habitat before the economic analysis of the proposal can begin. In cases such as this rulemaking, where we are under a court-ordered deadline to make a decision by a fixed date, we frequently issue the critical habitat proposal for public comment while the economic analysis is still being prepared, so as to maximize the time available for the public to review and comment on the proposal. When the economic analysis is prepared, it is also issued for public comment. The critical habitat proposal and the economic analysis are then revised as appropriate based on information received during the public comment period, and the economic and other relevant impacts of the proposal are evaluated, along with the available biological information, in making the final critical habitat determination.

(42) *Comment:* One commenter stated that the Service must exclude an area from critical habitat if that area is not "essential" to conservation of the species and if the cost-benefit analysis indicates that it is better to exclude the area. Absent proper completion of the procedure for designation of critical habitat outside the geographic area currently occupied by the species, when such areas are essential for the conservation of the species, "there is no evidence that Congress intended to allow the USFWS to regulate any parcel of land that is merely capable of supporting a protected species" (*Arizona Cattle Growers Association* v. *USFWS*, 273 F. 3d 1229 (9th Cir. 2001)).

Our Response: As explained in the Methods section of the proposed rule (67 FR 37108) and this final rule, and in accordance with the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that are essential for the conservation of these 99 Oahu plant species, not simply those areas that are capable of supporting the species. This information included the known locations; site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 99 species; discussions with botanical experts; recommendations from the HPPRCC; and public comments (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; J. Lau *et al.*, pers. comm., 2001). The cost of designating these areas as critical habitat was determined in the draft economic analysis and the addendum to the draft economic analysis. Neither the draft economic analysis nor the addendum found that the financial benefit of excluding these areas was so great that it outweighs the non-financial benefit of including these areas in a final critical habitat designation.

(43) *Comment:* The draft economic analysis concedes that State law protects "habitats" of endangered species and therefore protects federally designated critical habitat, including unoccupied habitat. Thus, designation is not necessary because State law already protects the habitat. In addition, Federal environmental impact analyses provide additional protection for federally listed species.

Our Response: As discussed above in "Previous Federal Action," we were ordered by U.S. District Court (Haw.) to publish proposed and final critical habitat designations or nondesignations for 255 Hawaiian plant species (*Conservation Council for Hawaii* v. *Babbitt*, 1998, 1999, 2000). In addition, under section 4(a)(3) of the Act, we are required to designate critical habitat for a species at the time it is federally listed as an endangered or threatened species, and on the basis of the best scientific data available and after taking into consideration the economic impact, and

any other relevant impact, of specifying an area as critical habitat (section 4(b)(2)). Further, see response to comment 42.

Issue 7: Economic Issues

(44) *Comment:* The Army believes that the direct and indirect costs and the anticipated costs of project modification, as they relate to military activities, are not adequately considered.

Our Response: Chapter VI, Section 3.q. of the DEA presented estimates of section 7 costs associated with activities in 10 separate areas on Oahu that are under the control of the U.S. military. During public comment, the U.S. Army stated that the cost-estimates for consultations and for possible project modifications on their installations were too low. The addendum revisits the sections of the analysis addressing Army installations and provides revised cost-estimates based upon further discussions with the Service and additional information gathered since completion of the DEA, including the Oahu Training Areas Integrated Natural Resources Management Plan 2002–2006 (OTA INRMP).

However, based on the considerations given in "Analysis of Impacts Under Section 4(b)(2)" and consistent with the direction provided in this section of the Act, we have determined that the benefits of excluding lands under jurisdiction of the U.S. Army on Oahu outweigh the benefits of including them as critical habitat for 76 species of listed plants. Therefore, these lands have been excluded from the critical habitat designations in this final rulemaking.

(45) *Comment:* The DEA does not indicate that the designation of critical habitat will generate any "new" money. It does show that increased regulation due to designation of critical habitat will increase economic risks, drive down profits, and drive away potential investors, thereby reducing "new" money entering Hawaii.

Our Response: The DEA states that a portion of the expenditures on conservation management by the Service, NRCS, and the military could be "new" money. Based on State multipliers, each additional $1 million of new money spent in Hawaii would generate approximately $1.8 million in direct and indirect sales in Hawaii and would support approximately 22 direct and indirect jobs in Hawaii (DEA, Chapter VI, Section 7.f.).

Regarding development projects and "new" investment money that could be lost, the DEA noted in Chapter VI, Section 4.h. that: "Over the next 10 years, the number of affected (development) projects is expected to be small because most of the proposed critical habitat units are: (1) In mountainous areas that are unsuitable for development due to difficult access and terrain, and (2) within the State Conservation District where land-use controls severely limit development." The development projects that were addressed in Chapter VI of the DEA included: (1) Communications facilities (Sections 3.e. and 4.d.), (2) residential development (Section 3.o.), and (3) a private landfill (Sections 3.p. and 4.e.). The intended designation does not include the large communications complexes at Palehua and Koko Head, urban land suitable for residential development, or the site for the proposed landfill. Only a few of the smaller communications complexes remain in the intended designation. Because of the small footprints of communications towers and for other reasons, the analysis does not anticipate costly project modifications (Section 3.p.). Thus, the analysis anticipates no significant loss of "new" money.

(46) *Comment:* The DEA argues that because critical habitat is mandated by law, it must therefore have economic value. The alleged benefits of species preservation are not economic at all.

Our Response: As noted in Chapter VI, Section 6.a. of the DEA, "[m]any economic studies have demonstrated benefits associated with the conservation and recovery of endangered and threatened species and their ecosystems.

The DEA continues, "However, the additional economic benefits of conservation and recovery that would be attributable to the designation of critical habitat are difficult to estimate because of the scarcity of (1) scientific studies on the magnitude of the recovery and ecosystem changes resulting from the critical habitat designation, and (2) economic studies on the per-unit value of many of the changes. * * * And while some economic studies have been done on the per-unit value of some of these changes, studies have not been done for most."

The DEA concludes, "As a result, it is not possible, given the information that is currently available, to estimate the value of many of the benefits that could be ascribed to critical habitat designation."

(47) *Comment:* The DEA dismisses the "worst-case" impacts and does not consider the major adverse impacts from secondary effects or indirect costs. Indirect costs are not considered in the bottom line analysis of the cost of designating critical habitat.

Our Response: Chapter VI, Section 4 of the DEA and Section 5 of the Addendum discuss various indirect costs that can result from the critical habitat designation. These indirect costs are not "worst-case" estimates. Instead, most of them are conditioned upon actions and decisions by the State, the county, investors, etc. Because critical habitat has a limited history in Hawaii, and other States have environmental laws that differ from Hawaii's laws, uncertainty exists regarding the outcome of these actions and decisions.

Also, these indirect impacts are not dismissed. Rather, they receive the same importance that direct costs receive. The reason the indirect costs are not summed is that many of them should be weighted by the probability of occurrence, but information is not available to determine these probabilities beyond a subjective estimate. As indicated in the DEA, several of the probabilities are "small." In the case of property values, a loss is expected, but uncertainty exists over the magnitude of this loss.

(48) *Comment:* One commenter stated that the DEA lacks a thorough benefits analysis. Multiple commenters stated that the DEA ignored the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. Another commenter noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. Although the DEA makes general observations of the benefits associated with designating critical habitat, it makes no attempt to quantify these acknowledged benefits. The Service must use the tools available, such as a University of Hawaii Secretariat for Conservation Biology study that estimated the value of ecosystem services, to determine the benefits of critical habitat. On the other hand, one commenter stated that the DEA overestimates economic benefits, and many of the alleged benefits are entirely speculative, unquantifiable, or lack any commercial value.

Our Response: Chapter VI, Sections 6 and 7 of the DEA discussed potential direct and indirect benefits that can result from the proposed designation, including those addressed in the above comment. However, the DEA also indicated that these benefits are not quantified due to lack of information on the value of the environmental benefits that would be attributable specifically to the critical habitat designations (*i.e.*, the benefits over and above those that will occur due to other existing protections, and over and above the benefits from other conservation projects). Specifically, there is a lack of (1) scientific studies regarding ecosystem changes due to critical habitat, and (2) economic studies on the per-unit value of many of the changes.

The 1999 analysis by University of Hawaii (UH) economists on the total value of environmental services provided by Oahu's Koolau Mountains was in fact used in the DEA as a resource document for concepts, for identifying documents that report the original research on certain subjects, and for illustrating the economic value of an assumed incremental increase in environmental services.

However, as noted in the DEA, estimating the total value of the ecosystem services provided by the Koolau Mountains is a difficult task, requiring some assumptions that are open to challenge, including estimates of the magnitude of the environmental services provided by the Koolau Mountains and estimates of the per-unit value of each service. Also, the UH study does not address all of the benefits of the Koolau Mountains or any of the benefits of the Waianae Mountains.

More to the point, the UH study has limited applicability for valuing the benefits of the intended designation for the 99 Oahu plant species. Since the purpose of the UH study was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu, it does not address the value of the more limited benefits provided by the intended critical habitat for the 99 Oahu plant species. Specifically, the UH study provides no estimates of the changes in biological and/or environmental conditions resulting from changes in land management due to critical habitat designation.

In any case, the DEA reported that the value of the ecosystem services provided by the Koolaus is very large. Since the intended designation covers nearly all of the Koolau Mountains, as well as parts of the Waianae Mountains, and since some project modifications can affect large portions of the mountains, even a very small percentage improvement to ecosystem services can translate into large economic benefits.

In summary, the discussion presented in the DEA on the biological and environmental benefits of critical habitat designation provides an overview of potential benefits, but we did not intend for it to provide a complete quantitative analysis of the benefits. Instead, we believe that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.

(49) *Comment:* Treating "better siting of projects by developers so as to avoid costly project delays" as an economic benefit is circular. The costly project delays result from regulations. They could be avoided by not imposing the regulations in the first place.

Our Response: As noted in Chapter VI, Section 6.c. of the DEA, the benefit applies to proposed units or portions of units that the Service regards as occupied. Even without critical habitat, developers must consult with the Service on projects that have Federal involvement and that affect listed species. By knowing the critical habitat boundaries, and if developers have the flexibility, they can site projects outside the boundaries, thereby avoiding certain issues related to threatened and endangered species. But even if there is no flexibility in siting a project, it can still be helpful to developers to know the boundaries of a critical habitat unit. If a project is located outside the unit boundaries, then the developer can proceed with project planning with less risk of facing issues related to critical habitat. On the other hand, if a project is located inside a critical habitat boundary and there is Federal involvement, then the developer and action agency could enter into informal consultations with the Service before proceeding with detailed site plans. Since the discussion applies only to areas that are occupied and would be subject to regulation with or without critical habitat, the logic for the benefit to developers is not circular.

(50) *Comment:* The DEA fails to adequately address the economic value represented by the time, money, and energy that the people of Hawaii invest in the conservation of native Hawaiian plants, including the ethnobotanical value of these plants to the culture of native Hawaiians.

Our Response: Chapter VI, Sections 6 and 7 of the DEA discussed the benefits of critical habitat. While the time, money and energy that the people of Hawaii invest in the conservation of native plants could function as an indicator for residents' "willingness to pay" to protect these species, this information has not been gathered or analyzed comprehensively, and, given the scope of the economic analysis, no primary economic research was conducted. Moreover, as noted in the DEA, even if this information were available, the economic value of these benefits attributable to critical habitat designation would still be difficult to estimate because of the scarcity of (1) scientific studies on the magnitude of the recovery and ecosystem changes resulting from the critical habitat designation, and (2) economic studies on the per-unit value of many of the changes.

(51) *Comment:* The analysis used in the DEA for Oahu is not consistent with the analysis used in the DEA for the island of Hawaii. The Service should use a consistent methodology in all of its economic analyses.

Our Response: This specific comment objected to differences in the methodology used to estimate direct economic costs related to Army activities and the fact that the estimated costs were much lower for Oahu. The economic analysis for both Oahu and the Big Island (island of Hawaii) used the same methodology. But the direct costs were lower for Oahu because of: (1) Differences in the extent of the overlap between the proposed designations and the Army installations on Oahu versus the installation on the Big Island; (2) differences in the planned military uses of land in the proposed designations; and (3) differences in information available to the analysts regarding project modifications. The addendum revisits the direct costs associated with Army activities and revises them based on updated information.

(52) *Comment:* One private landowner states that designated critical habitat affects over half of his land holdings and will result in impacts to land value, extraordinary levels of governance, and long-term economic impacts.

Our Response: For grazing land in critical habitat, the DEA addressed the possible direct section 7 costs for ranching activities (DEA, Chapter VI, Section 3.h), the indirect impacts of critical habitat on State and county development approvals (DEA, Chapter VI, Section 4.h.), and the possible loss of property value (DEA, Chapter VI, Section 4.i). Because the intended critical habitat would cover less grazing land than the proposed critical habitat, the addendum revisited the possible direct section 7 costs on ranching activities and the potential loss of property value (Sections 4.e and 5.g, respectively). For about 2,070 acres of privately owned agricultural land in the intended critical habitat, the analysis found that the loss in property value would be a small to moderate fraction of $18.6 million.

(53) *Comment:* The DEA ignores the topic of subsistence gathering.

Our Response: The DEA did not address the potential indirect impact of the proposed critical habitat designation on subsistence activities for three reasons. First, subsistence activity is less extensive, and less important economically, on Oahu than it is on the other islands. This reflects the fact that Oahu has a comparatively large and diverse economy. Second, much of the subsistence hunting that does take place on Oahu is also recreational hunting, which is addressed in the DEA. Third, the DEA did not expect critical habitat to affect subsistence activities and the subsistence lifestyle.

Nevertheless, in response to the comment, the addendum addresses subsistence activities. The analysis found that it is unlikely that new or additional restrictions on access and prohibitions on subsistence will result from critical habitat designation. This assessment is partly based on the Hawaii State Constitution, which protects traditional subsistence activities. The analysis estimates that it is more likely that restrictions (if any) will occur in small, localized areas that have significant biological importance, *i.e.*, areas containing populations of the plants. However, because of the strong stewardship and conservation values associated with those who practice subsistence activities, combined with the cultural tradition of protecting environmentally sensitive areas, subsistence activities are likely to be consistent with any conservation restrictions in localized areas. Thus, the analysis anticipates no significant impact on subsistence activities as a result of the intended designation.

(54) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Land Use Law. Critical habitat could result in downzoning under State law. Hawaii Revised Statutes (HRS) § 205–2(e) states that conservation districts shall include areas necessary for conserving endangered species. HRS § 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission (LUC) might initiate such changes, or they might be forced by citizen lawsuits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, reduce market value, and make the land unmortgageable. Although the Service acknowledges that there could be substantial indirect costs relating to redistricting of land to the Conservation District, several commentators disagreed with the characterization of these costs as unlikely. The DEA fails to consider additional third-party lawsuits to force redistricting of lands into the conservation district.

Our Response: Chapter VI, Section 4.g. of the DEA and Section 5.e. of the addendum discuss possible costs associated with redistricting land in critical habitat. Most of the land in the urban district and much of the land in the agricultural district initially proposed for designation are removed in the intended designation. As indicated in Section 5.e. of the addendum, the intended designation includes (1) approximately 3,319 acres of agricultural land, of which 2,070 acres are privately owned; and (2) approximately 0.6 acre of urban land, of which about 0.2 acre is privately owned. Under a worst-case scenario, where all land in the agricultural district is redistricted to Conservation, the reduction in land values would be approximately $18.6 million.

As discussed more fully in Chapter VI, Section 4.g. of the DEA and Section 5.e. of the addendum, agency-initiated and court-ordered redistricting of some of the privately owned land is reasonably foreseeable (moderate to high probability). Further, this analysis judges the probability that all of the parcels will be redistricted to be very low to low. Tables ES–1 and VI–3 in the DEA characterized the risk of redistricting all of the parcels in the proposed designation as "undetermined," not as "unlikely." To more accurately reflect the analysis, this analysis changes the probability to "very low to low." But even if land is not redistricted, the DEA and the addendum noted that the State may seek agreements with landowners to protect the habitats of listed species in order to retain existing district designations.

The DEA recognized that a real or perceived risk of redistricting can cause a loss of land value that continues until the uncertainty is resolved by (1) the passage of time that reveals the extent of redistricting due to critical habitat, or (2) possibly a State court decision on issues raised by critical habitat designation. Over the long-term, a permanent loss of land value (if any) would depend on how the uncertainty is resolved.

(55) *Comment:* The Service has failed to mention the Federal court ruling on the *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service*, which requires consideration of the impact of listing as well as the impact of designating an area as critical habitat.

Our Response: The DEA and the addendum considered the economic impacts of section 7 consultations related to critical habitat even if they are attributable coextensively to the listed status of the species. In addition, the DEA and the addendum examined the indirect costs of critical habitat designation, *e.g.*, the relationship between critical habitat designation and a State or local statute.

(56) *Comment:* Any activity that could degrade critical habitat, including activities that are not subject to section 7 consultation, could be seen as an "injury" to (and therefore, under State law, a "taking" of) an endangered plant species under the State of Hawaii's endangered species law (Chapter 195D). It is important that this receive due consideration in evaluating the proposed critical habitat designations (for example, in completing the economic analysis) and that the Service explain to what extent it has considered the potential interplay between the Federal Endangered Species Act and Hawaii's endangered species laws.

Our Response: Chapter VI, Sections 4.b. and 4.f of the DEA and Section 5.d. of the addendum discuss possible indirect costs resulting from the interplay of the Federal Endangered Species Act and Hawaii State law (*e.g.*, court-ordered mandates to manage private lands for conservation of the plants or to reduce game-mammal populations that harm plants or their habitats). Both the DEA and the addendum considered the economic impacts of section 7 consultations related to critical habitat even if they are attributable coextensively to the listed status of the species. In addition, the DEA and the addendum examined any indirect costs of critical habitat designation. However, the impacts are not attributable to critical habitat designation when the listing of a species prompts action at the State or local level. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not occur as a result of critical habitat designations. There are no take prohibitions associated with the plants' critical habitat.

(57) *Comment:* Several commenters stated the following: The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Oahu. If the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property.

Our Response: Chapter VI, Section 4.g. of the DEA and Section 5.e. of the addendum address costs involved in redistricting lands from the Agricultural District to the Conservation District. About 3,319 acres of the intended designation are in the agricultural district, 2,070 acres of which are privately owned. In the event that all of these lands are redistricted to the conservation district, the loss in land value would be approximately $18.6 million.

However, as discussed more fully in Chapter VI, Section 4.g. of the DEA and Section 5.e. of the addendum, agency-initiated and court-ordered redistricting of some of the privately owned land is reasonably foreseeable (moderate to high probability). But more to the point, any redistricting of land to Conservation, and any corresponding loss of economically beneficial use, would be decided by the LUC and the courts, not the Service, based on an array of State statutory factors. As such, the Federal government would not have taken private property.

(58) *Comment:* Several commenters stated the following: While the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land, this fails to address the breadth of Federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. These requirements also extend to State agencies requiring Federal funds or approvals.

Our Response: As discussed in Chapter V, Section 2.b. of the DEA, not every single project, land use, and activity that has a Federal involvement has historically been subject to section 7 consultation with the Service (*e.g.*, a federally guaranteed mortgage). Thus, the analysis was confined to those projects, land uses, and activities that are, in practice, likely to be subject to consultation. The analysis based this assessment on a review of past consultations, current practices, and the professional judgments of Service staff and other Federal agency staff.

(59) *Comment:* Several commenters stated the following: The impact of the proposed designations under State law is potentially more extensive than under Federal law since the Act contains at least general criteria for determining when alteration of critical habitat constitutes "destruction or adverse modification." The lack of analogous provisions under State law lends itself to a much broader interpretation of what activities might be considered injurious to the species (and therefore prohibited). One commenter asked if, to the extent that the Service has considered the potential interplay between the Act and State statutes, whether the Service is aware of any circumstances where similar issues have been raised under other State conservation statutes when critical habitat was designated. Another commenter noted, however, that because Hawaii's land use laws are uniquely onerous, precedent from other States is of little value. The current wave of proposals to designate critical habitat are the first time that the Act has been applied to significant areas of private land in Hawaii. Consequently, even prior experience in Hawaii is of little relevance.

Our Response: The DEA and the addendum discuss costs resulting from the interplay of the Endangered Species Act and Hawaii State law in the sections on Indirect Costs. The uncertainties regarding the occurrence of many indirect costs and their magnitudes reflect the lack of extensive experience in Hawaii with critical habitat.

(60) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS § 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in Hawaii Administrative Rule 11–200–12 apply. One of these criteria is that an action is significant if it "substantially affects a rare, threatened or endangered species or its habitat." This will result in costly procedural requirements and delays. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be "significant." In addition, multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. Special Management Area permits administered by the City & County of Honolulu, as required by Hawaii's Coastal Zone Management Act, will be harder to obtain, will result in delays, will cause a decline in property values, and might make it impossible to develop. This economic impact disappears because the DEA's bottom line erroneously counts only so-called "direct" costs of consultation. The Service has taken the position in other States that it has a right to intervene in local land use proceedings if they affect endangered species on private property, as evidenced by the Service's petition to the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. That the Service does not address these activities in the DEA is a fundamental error of the analysis.

Our Response: Chapter VI, Section 4.h. of the DEA discussed additional State and county environmental review that would be required for projects in critical habitat. However, as mentioned in the addendum, even with the added State and county environmental review, the intended designation will have little or no practical effect on residential, resort, commercial, or industrial development because the analysis anticipates that no such development will occur in the intended critical habitat. Reasons for this are: (1) Most of the intended critical habitat is in mountainous areas that are unsuitable for development due to difficult access and terrain; (2) approximately 96 percent of the intended designation is in the State Conservation District where existing land-use controls severely limit development; (3) almost all of the remaining agricultural land in the intended designation is in areas that are not subject to development pressure because of steep slopes and little or no nearby infrastructure; (4) the small amount of land in the urban district (0.6 acre) is on steep slopes that cannot support development; and (5) all of the land intended for critical habitat designation that is in the Special Management Area is also within the conservation district.

(61) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS § 174C–2 states that "adequate provision shall be made for protection of fish and wildlife". HRS § 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Since landowners might depend on water pumped from other watersheds, these effects can be far-reaching. It is impossible to tell from the descriptions in the proposal whether any water diversions will have to be reduced as a result of listing and critical habitat designation. It is unfair to dismiss costly but vital sources of energy and inexpensive irrigation water while maintaining the highest level of effort to

protect primary constituent elements for species that do not physically reside in the area but might somehow be transported. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use. At minimum, portions of specific parcels that include water sources or water systems should be removed.

Our Response: Existing irrigation ditch systems and potable water systems are manmade features that to not contain the primary constituent elements for the plants. Because the Service does not include these manmade features in critical habitat designations, the intended designation will not affect the operation and maintenance of irrigation and potable water systems (DEA, Chapter II, Section 4).

Regarding new stream diversions, Chapter VI, Section 3.j. of the DEA stated that it is highly unlikely that new or expanded ditch systems would be proposed or approved within the proposed designation because it would directly or indirectly reduce stream flow, which is a major environmental concern. But if a stream diversion were to be proposed, critical habitat designation might result in an expanded biological assessment, project delays, project modifications, and an increased probability of denial (DEA, Chapter VI, Section 4.f.). Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities may directly or indirectly destroy or adversely modify critical habitat. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values. However, without more specific information on the scope and location of a future (and currently unplanned) stream diversion project, it is not possible to estimate the potential indirect costs.

(62) *Comment:* Any water diversion in, or upstream of, critical habitat will be challenged by people who oppose all diversions on principle. They will contend that diverting water from endangered plants risk driving them to extinction. Opponents of diversions could use the critical habitat designations to invent a colorable argument sufficient to delay and confuse water use decisions.

Our Response: See the response to the previous comment (61).

(63) *Comment:* The DEA fails to recognize that the indirect costs to private landowners to investigate the implications of critical habitat on their lands are sunk costs associated with the designation process.

Our Response: Chapter VI, Section 4.k. of the DEA indicated that landowners might want to learn how the designation may affect (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. The cost-estimate to investigate the implications of critical habitat was $80,000 to $400,000.

Section 5.g of the addendum revised the estimate to reflect the reduction in the number of potentially affected landowners as a result of the intended modifications to the critical habitat. The revised estimate ranges between $26,500 and $227,500. For completeness, the estimate includes expenditures made during the designation process (*i.e.*, sunk costs) and expenditures that will be made after the final designation.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) We published 303 single species critical habitat units for 99 plant species on the island of Oahu. As proposed, units were identified for multiple species. Delineation of critical habitat for each individual species will assist landowners, Federal agencies, and the Service in focusing and streamlining section 7 consultations.

(2) We changed the scientific names for the following species associated with the listed species found in the "**SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa*" section: *Athyrium sandwichianum* changed to *Diplazium sandwichianum* for *Alsinidendron trinerve, Cyanea acuminata,* and *Diellia falcata; Athyrium arnottii* changed to *Diplazium arnottii* for *Schiedea kaaclae; Blechnum occidentale* changed to *Blechnum appendiculatum* in the discussions of *Alectryon macrococcus, Alsinidendron obovatum, Cenchrus agrimonioides; Ctenitis squamigera, Cyanea grimesiana* ssp. *obatae, Cyanea pinnatifida, Cyrtandra dentata, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Flueggea neowawraea, Hedyotis degeneri, Lipochaeta tenuifolia, Lysimachia filifolia, Neraudia angulata, Nototrichium humile, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Schiedea kaalae,* and *Schiedea hookeri; Bryophyllum* sp. changed to *Kalanchoe* sp. for *Lipochaeta tenuifolia; Glycine wightii* changed to *Neonotonia wightii* for *Hibiscus brackenridgei; Lipochaeta* sp. changed to *Melanthera* sp. for *Sesbania tomentosa; Lipochaeta integrifolia* changed to *Melanthera integrifolia* for *Peucedanum sandwicense; Lipochaeta remyi* changed to *Melanthera remyi* in the discussions of *Hibiscus brackenridgei* and *Schiedea kealiae; Lipochaeta tenuis* changed to *Melanthera tenuis* in the discussions of *Lipochaeta lobata* var. *leptophylla, Nototrichium humile,* and *Schiedea hookeri; Lycopodium* sp. changed to *Lycopodium cernua* for *Lobelia oahuensis; Lycopodium cernuum* changed to *Lycopodium cernua* for *Platanthera holochila; Morinda sandwicensis* changed to *Morinda trimera* for *Flueggea neowawraea; Myrica faya* changed to *Morella faya* in the discussions of *Cyanea grimesiana* ssp. *obatae, Hedyotis parvula, Melicope saint-johnii, Schiedea kaalae, Silene perlmanii, Urera kaalae,* and *Viola chamissoniana* ssp. *chamissoniana; Phymatosorus scolopendria* changed to *Phymatosorus grossus* for *Diellia erecta; Pluchea symphytifolia* changed to *Pluchea carolinensis* for *Chamaesyce celastroides* var. *kaenana; Setaria gracilis* changed to *Setaria parviflora* for *Labordia cyrtandrae; Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* in the discussions of *Bonamia menziesii, Cenchrus agriminiodes, Eugenia koolauensis, Hedyotis coriacea, Hedyotis degeneri, Lepidium arbuscula, Lobelia niihauensis, Platanthera holochila, Sanicula purpurea, Schiedea hookeri,* and *Viola chamissoniana* ssp. *chamissoniana; Thelypteris cyatheoides* changed to *Christella cyatheoides* in the discussion of *Cyanea crispa; Thelypteris parasitica* changed to *Christella parasitica* in the discussions of *Alectryon macrococcus, Cyanea grimesiana* ssp. *obatae, Cyanea truncata, Cyrtandra dentata, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Pteris lidgatei, Schiedea kaalae, Schiedea hookeri,* and *Urera kaalae; Thelypteris sandwicensis* changed to *Dryopteris sandwicensis* in the discussions of *Cyanea acuminata, Cyrtandra subumbellata,* and *Pteris lidgatei;* and *Sphenomeris chusana* changed to *Sphenomeris chinensis* for *Pteris lidgatei.*

(3) In order to avoid confusion regarding the number of location occurrences for each species (that do not necessarily each represent a viable population) and the number of recovery populations (8 to 10 with 100, 300, or 500 reproducing individuals), we changed the word "population" to "occurrence" where appropriate and updated the number of occurrences and/or individuals for the following species found in the "**SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa*" section and "Table 1.—Summary of existing occurrences on Oahu, and landownership for 101 species reported from Oahu": *Abutilon sandwicense* changed from 16 populations to 30 occurrences; *Alectryon macrococcus* changed from 34 populations to 82 occurrences; *Alsinidendron obovatum* changed from 5 populations to 6 occurrences; *Alsinidendron trinerve* changed from 3 populations to 13 occurrences; *Bonamia menziesii* changed from 16 populations to 18 occurrences; *Cenchrus agrimonioides* changed from 8 populations to 7 occurrences; *Centaurium sebaeoides* changed from 3 populations to 2 occurrences; *Chamaesyce celastroides* var. *kaenana* changed from 13 populations to 15 occurrences; *Chamaesyce kuwaleana* changed from 4 populations to 5 occurrences; *Chamaesyce rockii* changed from 16 populations to 20 occurrences; *Ctenitis squamigera* changed from 4 populations to 8 occurrences; *Cyanea acuminata* changed from 22 populations to 20 occurrences; *Cyanea grimesiana* ssp. *grimesiana* changed from 6 populations to 7 occurrences; *Cyanea grimesiana* ssp. *obatae* changed from 6 populations to 8 occurrences; *Cyanea humboltiana* changed from 8 populations to 9 occurrences; *Cyanea koolauensis* changed from 25 populations to 42 occurrences; *Cyanea st.-johnii* changed from 6 populations to 7 occurrences; *Cyrtandra dentata* changed from 8 populations to 11 occurrences; *Cyrtandra subumbellata* changed from 2 populations to 5 occurrences; *Cyrtandra viridiflora* changed from 8 populations to 23 occurrences; *Delissea subcordata* changed from 18 populations to 21 occurrences; *Diellia falcata* changed from 29 populations to 30 occurrences; *Dubautia herbstobatae* changed from 4 populations to 12 occurrences; *Eugenia koolauensis* changed from 10 populations to 12 occurrences; *Euphorbia haeleeleana* changed from 6 populations to 8 occurrences; *Flueggea neowawraea* changed from 19 populations to 23 occurrences; *Gardenia mannii* changed from 31 populations to 49 occurrences; *Gouania meyenii* changed from 3 populations to 4 occurrences; *Hedyotis degeneri* changed from 5 populations to 4 occurrences; *Hedyotis parvula* changed from 5 populations to 7 occurrences; *Hesperomannia arborescens* changed from 23 populations to 36 occurrences; *Isodendrion longifolium* changed from 4 populations to 7 occurrences; *Lepidium arbuscula* changed from 10 populations to 12 occurrences; *Lipochaeta lobata* var. *leptophylla* changed from 5 populations to 4 occurrences; *Lipochaeta tenuifolia* changed from 12 populations to 41 occurrences; *Lobelia gaudichaudii* ssp. *koolauensis* changed from 4 populations to 5 occurrences; *Lobelia niihauensis* changed from 21 populations to 40 occurrences; *Lobelia oahuensis* changed from 10 populations to 12 occurrences; *Marsilea villosa* changed from 4 populations to 5 occurrences; *Melicope lydgatei* changed from 4 populations to 18 occurrences; *Melicope saint-johnii* changed from 5 populations to 6 occurrences; *Neraudia angulata* changed from 5 populations to 27 occurrences; *Nototrichium humile* changed from 21 populations to 25 occurrences; *Phlegmariurus nutans* changed from 5 populations to 3 occurrences; *Phyllostegia hirsuta* changed from 23 populations to 26 occurrences; *Phyllostegia kaalaensis* changed from 4 populations to 7 occurrences; *Phyllostegia mollis* changed from 8 populations to 5 occurrences; *Phyllostegia parviflora* changed from 2 populations to 6 occurrences; *Plantago princeps* changed from 6 populations to 11 occurrences; *Pteris lidgatei* changed from 5 populations to 9 occurrences; *Sanicula purpurea* changed from 4 populations to 5 occurrences; *Schiedea kaalae* changed from 8 populations to 7 occurrences; *Schiedea nuttallii* changed from 5 populations to 7 occurrences; *Silene lanceolata* changed from 2 populations to 4 occurrences; *Spermolepis hawaiiensis* changed from 2 populations to 6 occurrences; *Tetramolopium filiforme* changed from 6 populations to 21 occurrences; *Tetramolopium lepidotum* ssp. *lepidotum* changed from 4 populations to 5 occurrences; *Tetraplasandra gymnocarpa* changed from 20 populations to 30 occurrences; *Urera kaalae* changed from 11 populations to 12 occurrences; *Viola chamissoniana* ssp. *chamissoniana* changed from 5 populations to 15 occurrences; and *Viola oahuensis* changed from 9 populations to 18 occurrences.

(4) We revised the list of excluded, manmade features in the "*Criteria Used to Identify Critical Habitat*" and § 17.99(i) to include additional features based on information received during the public comment periods. We added other water system features including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells to aquaducts; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; towers and associated structures to telecommunications equipment; other archaelogical sites to heiaus (indigenous places of worship or shrines); and electrical power transmission lines and distribution and communication facilities and regularly maintained associated rights-of-way and access ways.

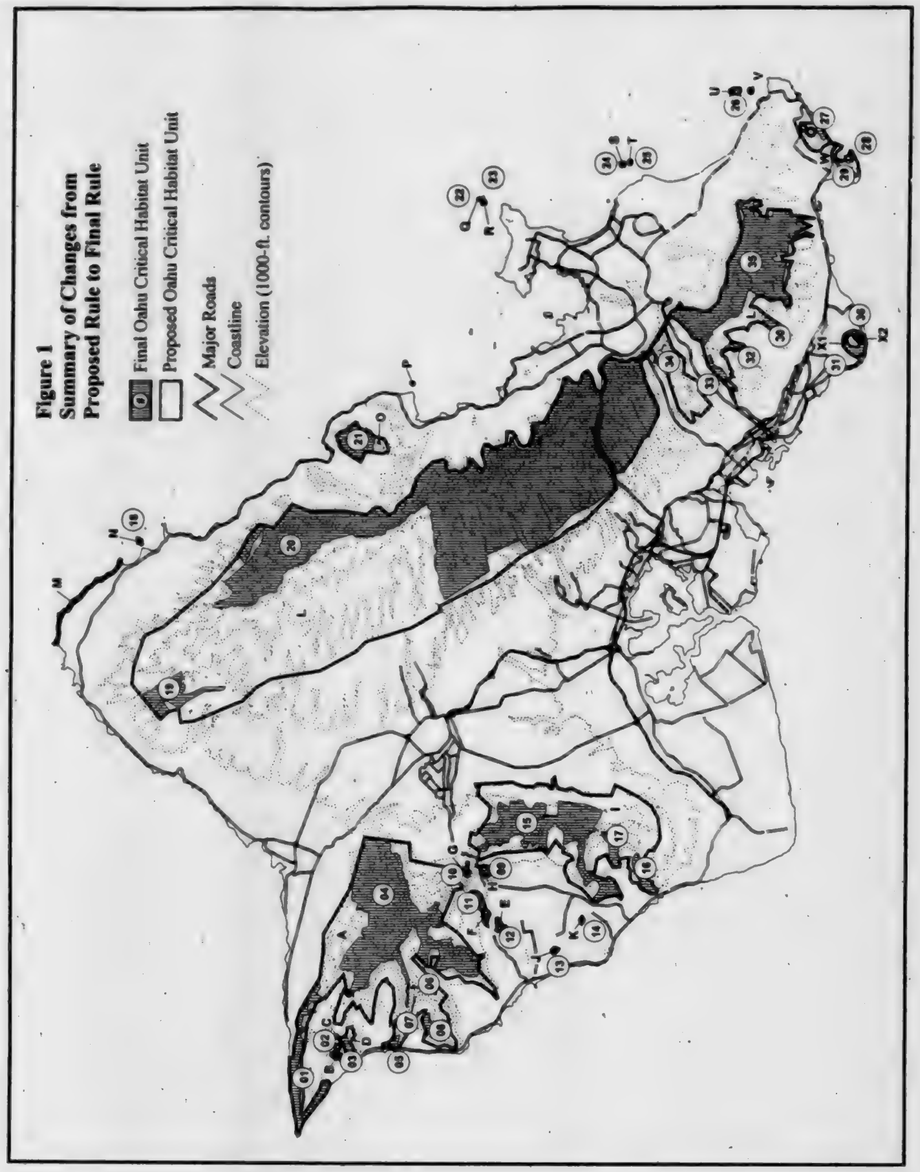
(5) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question.

(6) Based on information received during the public comment periods, we updated the elevation ranges in § 17.99(j) "*Plants on the island of Oahu: Constituent elements*".

(7) All Army lands were excluded under 3(5)(A) and 4(b)(2) of the Act because we believe the benefit of excluding these lands outweigh the benefits of including these lands in the final designation (See "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

A brief summary of the modifications made to each unit is given below (see also Figure 1).

BILLING CODE 4310-55-U



Oahu A

This unit was proposed as critical habitat for 65 species: *Abutilon sandwicense, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce herbstii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea grimesiana* ssp. *obatae, Cyanea longiflora, Cyanea superba, Cyperus trachysanthos, Cyrtandra dentata, Delissea subcordata, Diellia falcata, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia niihauensis, Mariscus pennatiformis, Melicope pallida, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Plantago princeps, Sanicula mariversa, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Urera kaalae, Vigna o-wahuense*, and *Viola chamissoniana* ssp. *chamissoniana*.

We excluded the proposed critical habitat on Army lands at Makua Military Reservation for *Alsinidendron obovatum, Diellia falcata, Dubautia herbstobatae, Flueggea neowawraea, Gouania meyenii, Hedyotis parvula, Lepidium arbuscula, Lipochaeta tenuifolia, Lobelia niihauensis, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Schiedea hookeri, Silene lanceolata, Tetramolopium filiforme, and Viola chamissoniana* ssp. *chamissoniana* and at Schofield Barracks for *Alsinidendron trinerve, Cyanea acuminata, Cyanea grimesiana* ssp. *obatae, Gardenia mannii, Labordia cyrtandrae, Phyllostegia hirsuta, Phyllostegia mollis, Solanum sandwicense, Stenogyne kanehoana, Tetramolopium filiforme, Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana* because the benefits of excluding these areas outweigh the benefits of including these areas as critical habitat (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

In addition, modifications were made to this unit to exclude areas that do not contain the primary constituent elements of *Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Ctenitis squamigera, Euphorbia haeleeleana, Flueggea neowawraea, Gouania meyenii, Gouania vitifolia, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Lobelia niihauensis, Phyllostegia mollis, Plantago princeps, Schiedea hookeri, Schiedea nuttallii, Spermolepis hawaiiensis*, and *Vigna o-wahuense*, all multi-island species. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these 21 species, locations on other islands have been designated as critical habitat (*i.e.*, locations on Kauai, Molokai, Maui, and/or Kahoolawe), other locations on Oahu are being designated as critical habitat in this rule; and/or other locations have been proposed for designation on the island of Hawaii. In addition, some essential areas were excluded under 4(b)(2) because active management of the area by the landowner outweighed the benefits of including that area as critical habitat. Modifications were also made to this unit to exclude areas that do not contain the primary constituent elements of *Abutilon sandwicense, Alsinidendron obovatum, Chamaesyce herbstii, Cyanea grimesiana* ssp. *obatae, Cyanea longiflora, Cyanea superba, Cyrtandra dentata, Delissea subcordata, Diellia falcata, Gardenia mannii, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Neraudia angulata, Phyllostegia hirsuta, Schiedea kealiae, Tetramolopium filiforme*, and *Viola chamissoniana* ssp. *chamissoniana*, all Oahu-endemic species. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these 20 species; other locations on Oahu are either being designated as critical habitat in this rule, or areas were excluded under 4(b)(2) in this rule because active management of the area by the landowner outweighed the benefits of including that area as critical habitat.

The area designated as critical habitat for the following 29 Oahu-endemic species provides habitat within their historical ranges for one population each of *Cyanea acuminata* and *Eragrostis fosbergii;* two populations of *Diellia falcata, Lipochaeta lobata* var. *leptophylla, Phyllostegia hirsuta, Schiedea kaalae, Tetramolopium filiforme*, and *Urera kaalae;* three populations of *Cyanea grimesiana* ssp. *obatae* and *Cyrtandra dentata;* four populations of *Alsinidendron trinerve, Chamaesyce celastroides* var. *kaenana, Delissea subcordata, Dubautia herbstobatae, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta tenuifolia, Sanicula mariversa*, and *Schiedea kealiae;* five populations of *Chamaesyce herbstii, Cyanea longiflora*, and *Viola chamissoniana* ssp. *chamissoniana;* six populations of *Alsinidendron obovatum, Cyanea superba*, and *Neraudia angulata;* seven populations of *Abutilon sandwicense;* and nine populations of *Hedyotis degeneri* and *Phyllostegia kaalaensis*.

The area designated as critical habitat for the following 33 multi-island species provides habitat within their historical ranges for one population each of *Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Ctenitis squamigera, Cyperus trachysanthos, Diplazium molokaiense, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gouania meyenii, Hesperomannia arborescens, Isodendrion pyrifolium, Lobelia niihauensis, Peucedanum sandwicense, Plantago princeps, Sesbania tomentosa, Silene lanceolata, Solanum sandwicense, Spermolepis hawaiiensis*, and *Vigna o-wahuense;* three populations of *Colubrina oppositifolia, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion longifolium, Melicope pallida, and Tetramolopium lepidotum* ssp. *lepidotum;* four populations of *Mariscus pennatiformis* and *Schiedea nuttallii;* five populations of *Cenchrus agrimonioides, Isodendrion laurifolium, Nototrichium humile*, and *Schiedea hookeri;* and six populations of *Gouania vitifolia*.

These modifications resulted in the reduction from 8,503 ha (21,013 ac) to 3,921 ha (9,689 ac). This unit was renamed Oahu 4—*Abutilon sandwicense*—a, Oahu 4—*Abutilon sandwicense*—b, Oahu 4—*Abutilon sandwicense*—c, Oahu 4—*Alectryon macrococcus*—a, Oahu 4—*Alsinidendron obovatum*—a, Oahu 4—*Alsinidendron obovatum*—b, Oahu 4—*Alsinidendron trinerve*—a, Oahu 4—*Bonamia menziesii*—c, Oahu 4—*Cenchrus agrimonioides*—a, Oahu 4—*Cenchrus agrimonioides*—b, Oahu 1—*Centaurium sebaeoides*—a, Oahu 1—*Chamaesyce celastroides* var. *kaenana*—a, Oahu 4—*Chamaesyce celastroides* var. *kaenana*—c, Oahu 5—*Chamaesyce celastroides* var. *kaenana*—d, Oahu 4—*Chamaesyce herbstii*—a, Oahu 4—*Colubrina oppositifolia*—a, Oahu 15—*Ctenitis squamigera*—a, Oahu 4—*Cyanea acuminata*—a, Oahu 4—*Cyanea grimesiana* ssp. *obatae*—a, Oahu 4—*Cyanea longiflora*—a, Oahu 4—*Cyanea longiflora*—b, Oahu 4—*Cyanea superba*—a, Oahu 4—*Cyanea superba*—b, Oahu 4—*Cyanea superba*—c, Oahu 1—*Cyperus trachysanthos*—a, Oahu 4—*Cyrtandra dentata*—a, Oahu 4—*Delissea subcordata*—a, Oahu 4—*Diellia falcata*—a, Oahu 4—*Diellia falcata*—b, Oahu 4—*Diplazium molokaiense*—a,

Oahu 4—*Dubautia herbstobatae*—a, Oahu 4—*Dubautia herbstobatae*—b, Oahu 7—*Dubautia herbstobatae*—c, Oahu 4—*Eragrostis fosbergii*—a, Oahu 4—*Eugenia koolauensis*—a, Oahu 4—*Euphorbia haeleeleana*—b, Oahu 4—*Flueggea neowawraea*—a, Oahu 4—*Gouania meyenii*—a, Oahu 4—*Gouania meyenii*—b, Oahu 5—*Gouania vitifolia*—c, Oahu 4—*Gouania vitifolia*—d, Oahu 4—*Gouania vitifolia*—e, Oahu 4—*Gouania vitifolia*—f, Oahu 4—*Gouania vitifolia*—g, Oahu 8—*Gouania vitifolia*—h, Oahu 4—*Hedyotis degeneri*—a, Oahu 4—*Hedyotis degeneri*—b, Oahu 4—*Hedyotis parvula*—a, Oahu 4—*Hesperomannia arborescens*—a, Oahu 4—*Hesperomannia arbuscula*—a, Oahu 4—*Hesperomannia arbuscula*—b, Oahu 1—*Hibiscus brackenridgei*—a, Oahu 4—*Hibiscus brackenridgei*—b, Oahu 5—*Hibiscus brackenridgei*—c, Oahu 4—*Isodendrion laurifolium*—a, Oahu 4—*Isodendrion laurifolium*—b, Oahu 4—*Isodendrion longifolium*—a, Oahu 5—*Isodendrion pyrifolium*—a, Oahu 4—*Labordia cyrtandrae*—a, Oahu 4—*Lepidium arbuscula*—a, Oahu 4—*Lipochaeta lobata* var. *leptophylla*—a, Oahu 4—*Lipochaeta tenuifolia*—c, Oahu 4—*Lipochaeta tenuifolia*—d, Oahu 4—*Lipochaeta tenuifolia*—e, Oahu 4—*Lobelia niihauensisa*, Oahu 4—*Mariscus pennatiformis*—a, Oahu 4—*Mariscus pennatiformis*—b, Oahu 4—*Melicope pallida*—a, Oahu 4—*Neraudia angulata*—b, Oahu 4—*Neraudia angulata*—c, Oahu 4—*Neraudia angulata*—d, Oahu 4—*Neraudia angulata*—e, Oahu 4—*Nototrichium humile*—b, Oahu 4—*Nototrichium humile*—c, Oahu 4—*Nototrichium humile*—d, Oahu 4—*Peucedanum sandwicense*—a, Oahu 4—*Phyllostegia hirsuta*—a, Oahu 4—*Phyllostegia kaalaensis*—a, Oahu 4—*Phyllostegia kaalaensis*—b, Oahu 4—*Phyllostegia kaalaensis*—c, Oahu 4—*Phyllostegia kaalaensis*—d, Oahu 4—*Phyllostegia kaalaensis*—e, Oahu Oahu 4—*Plantago princeps*—a, Oahu 4—*Plantago princeps*—b, Oahu 4—*Sanicula mariversa*—a, Oahu 4—*Sanicula mariversa*—b, Oahu 4—*Sanicula mariversa*—c, Oahu 6—*Sanicula mariversa*—d, Oahu 4—*Schiedea hookeri*—b, Oahu 4—*Schiedea hookeri*—c, Oahu 4—*Schiedea hookeri*—d, Oahu 4—*Schiedea kaalae*—a, Oahu 1—*Schiedea kealiae*—a, Oahu 4—*Schiedea nuttallii*—a, Oahu 1—*Sesbania tomentosa*—a, Oahu 4—*Silene lanceolata*—a, Oahu 4—*Solanum sandwicense*—a, Oahu 5—*Spermolepis hawaiiensis*—a, Oahu 4—*Tetramolopium filiforme*—a, Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—a, Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—b, Oahu 4—*Urera kaalae*—a, Oahu 4—*Urera kaalae*—b, Oahu 1—*Vigna o-wahuensis*—a, Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—a, Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b, and Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c.

Oahu B

This unit was proposed as critical habitat for seven species: *Bonamia menziesii, Euphorbia haeleeleana, Gouania vitifolia, Hibiscus brackenridgei, Isodendrion pyrifolium, Neraudia angulata,* and *Nototrichium humile.* We excluded the proposed critical habitat for *Euphorbia haeleeleana, Hibiscus brackenridgei, Isodendrion pyrifolium,* and *Nototrichium humile,* all multi-island species. This area is not essential for the conservation of these four species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to their conservation, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of these species. In addition, there are 10 other locations in historical ranges of these four species on Oahu and other islands that provide habitat for these species and that are either designated as critical habitat in this rule on Oahu, have been previously designated on Kauai, Molokai, and/or Maui, are found in areas on Oahu or other islands that are excluded under 4(b)(2) of the Act because active management of the area by the landowner outweighed the benefits of including that area as critical habitat, or have been proposed for designation on the island of Hawaii.

We excluded the proposed critical habitat for *Neraudia angulata,* a species endemic to Oahu. This area is not essential for the conservation of *Neraudia angulata* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *N. angulata,* and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are 10 other locations in its historical range on Oahu that provide habitat for this species and that are either designated as critical habitat in this rule or are found in areas excluded under 4(b)(2) of the Act (Makua Military Reservation) because active management of the unit by the landowner outweighed the benefits of including it as critical habitat.

The area designated as critical habitat for the following multi-island species provides habitat within their historical ranges for one population each of *Bonamia menziesii* and *Gouania vitifolia.*

These modifications resulted in the reduction from 34 ha (83 ac) to 23 ha (58 ac). This unit was renamed Oahu 2—*Bonamia menziesii*—a and Oahu 2—*Gouania vitifolia*—a.

Oahu C

This unit was proposed as critical habitat for one species: *Bonamia menziesii,* a multi-island species. This area is not essential for the conservation of *Bonamia menziesii* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *B. menziesii,* and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are 10 other locations in its historical range on Oahu and other islands that provide habitat for this species and that are either designated as critical habitat in this rule, are found in an area managed for the species on Lanai, have been designated on Kauai or Maui, or have been proposed for designation on the island of Hawaii. Exclusion of this area from critical habitat for *Bonamia menziesii* resulted in the complete removal of this unit (14 ha (35 ac)) from the final designation.

Oahu D

This unit was proposed as critical habitat for nine species: *Bonamia menziesii, Chamesyce celastroides* var. *kaenana, Euphorbia haeleeleana, Gouania vitifolia, Hibiscus brackenridgei, Isodendrion pyrifolium, Neraudia angulata, Nototrichium humile,* and *Schiedea hookeri.* We excluded the proposed critical habitat for *Hibiscus brackenridgei* and *Isodendrion pyrifolium,* both multi-island species. This area is not essential for the conservation of *Hibiscus brackenridgei* and *Isodendrion pyrifolium* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the two species' conservation, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of these species. In addition, there are 10 other locations for *Isodendrion pyrifolium* and at least 9 other locations for *Hibiscus brackenridgei* in their historical ranges on Oahu and other islands that provide habitat for these species and that are either designated as critical habitat in this rule, are found in an area managed for the species on Lanai, have been designated on Molokai and Maui, or have been proposed for designation on the island of Hawaii.

The area designated as critical habitat for the following Oahu endemic species provides habitat within their historical ranges for one population each of *Chamesyce celastroides* var. *kaenana* and *Neraudia angulata.* The area designated as critical habitat for the following multi-island species provides habitat within their historical ranges for one population each of *Bonamia menziesii, Euphorbia haeleeleana, Gouania vitifolia, Nototrichium humile,* and *Schiedea hookeri.*

These modifications resulted in the reduction from 110 ha (271 ac) to 67 ha (164 ac). This unit was renamed Oahu 3—*Bonamia menziesii*—b, Oahu 3—*Chamaesyce celastroides* var. *kaenana*—b, Oahu 3—*Euphorbia haeleeleana*—a, Oahu 3—*Gouania vitifolia*—b, Oahu 3—*Neraudia angulata*—a, Oahu 3—*Nototrichium humile*—a, and Oahu 3—*Schiedea hookeri*—a.

Oahu E

This unit was proposed as critical habitat for one species: *Chamaesyce kuwaleana.* Modifications were made to this unit to exclude small areas that do not contain the primary constituent elements of *C. kuwaleana.* The area designated as critical habitat for *C. kuwaleana* provides habitat within its historical range for one population. These modifications resulted in the slight reduction from 94 ha (38 ac) to 93 ha (37 ac). The unit was renamed Oahu 12—*Chamaesyce kuwaleana*—c.

Oahu F

This unit was proposed as critical habitat for two species: *Chamaesyce kuwaleana* and *Isodendrion pyrifolium.* We excluded the proposed critical habitat for *I. pyrifolium,* a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Isodendrion pyrifolium,* and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are 10 other locations in its historical range on Oahu and other islands that provide habitat for this species and that are either designated as critical habitat in this rule, are found in an area managed for the species on Lanai, have been designated on Molokai and Maui, or have been proposed for designation on the island of Hawaii. The area designated as critical habitat for *Chamaesyce kuwaleana* provides habitat within its historical range for one population. This modification resulted in the reduction from 81 ha (200 ac) to 53 ha (131 ac). This unit was renamed Oahu 11—*Chamaesyce kuwaleana*—b.

Oahu G

This unit was proposed as critical habitat for two species: *Tetramolopium filiforme* and *Viola chamissoniana* ssp. *chamissoniana.* We excluded the proposed critical habitat for *Tetramolopium filiforme* on Army lands at Schofield Barracks because the benefits of excluding this area outweigh the benefits of including this area (see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"). The area designated as critical habitat for *Viola chamissoniana* ssp. *chamissoniana* provides habitat within its historical range for one population. This modification resulted in the reduction from 16 ha (40 ac) to 6 ha (15 ac). This unit was renamed Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d.

Oahu H

This unit was proposed as critical habitat for *Chamaesyce kuwaleana.* The area designated as critical habitat for *Chamaesyce kuwaleana* provides habitat within its historical range for one population. No modifications were made to the acreage of this unit, which was renamed Oahu 9—*Chamaesyce kuwaleana*—a.

Oahu I

This unit was proposed as critical habitat for 42 species: *Abutilon sandwicense, Alectryon macrococcus, Alsinidendron obovatum, Bonamia menziesii, Cenchrus agrimonioides, Chamaesyce herbstii, Chamaesyce kuwaleana, Cyanea grimesiana* ssp. *obatae, Cyanea pinnatifida, Cyrtandra dentata, Delissea subcordata, Diellia falcata, Diellia unisora, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Hedyotis coriacea, Hedyotis parvula, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion pyrifolium, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lobelia niihauensis, Melicope pallida, Melicope saint-johnii, Neraudia angulata, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Sanicula mariversa, Schiedea hookeri, Schiedea kaalae, Schiedea nuttallii, Silene perlmanii, Solanum sandwicense, Stenogyne kanehoana, Tetramolopium lepidotum* ssp. *lepidotum, Urera kaalae,* and *Viola chamissoniana* ssp. *chamissoniana.* We excluded the proposed critical habitat on Army lands at Schofield Barracks for *Cyanea grimesiana* ssp. *obatae, Gardenia mannii, Phyllostegia hirsuta, Phyllostegia mollis, Solanum sandwicense, Stenogyne kanehoana, Urera kaalae,* and *Viola chamissoniana* ssp. *chamissoniana* because the benefits of excluding this area outweigh the benefits of including this area (see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"). We also excluded the proposed critical habitat for *Cyrtandra dentata, Flueggea neowawraea,* and *Hibiscus brackenridgei.* This area is not essential for the conservation of these three species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these three species, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of these species. In addition, there are at least 8 other locations for *Cyrtandra dentata,* and at least 10 other locations for *Flueggea neowawraea* and *Hibiscus brackenridgei,* in their historical ranges on Oahu and other islands that provide habitat for these species and that are either designated as critical habitat in this rule; are found on lands managed for the species on Lanai or Oahu's Army lands; have been designated on Kauai, Molokai, and Maui; or have been proposed for designation on the island of Hawaii.

Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for *Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides,* and *Tetramolopium lepidotum* ssp. *lepidotum,* all multi-island species. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these 21 species, other locations either have been designated as critical habitat on Kauai, Molokai, Maui, and/or Kahoolawe; were excluded under 4(b)(2) on one or more of the Hawaiian islands because active management of an area by the landowner outweighed the benefits of including that area as critical habitat;

are being designated as critical habitat in this rule; and/or have been proposed for designation on the island of Hawaii. Modifications were also made to this unit to exclude areas that do not contain the primary constituent elements for *Abutilon sandwicense, Chamaesyce herbstii, Cyanea pinnatifida, Diellia falcata, Diellia unisora, Melicope saint-johnii, Neraudia angulata, Phyllostegia hirsuta,* and *Urera kaalae,* all Oahu-endemic species. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these 20 species, other locations on Oahu are either being designated as critical habitat in this rule or were excluded under 4(b)(2) in this rule because active management of an area by the landowner outweighed the benefits of including that area as critical habitat.

The area designated as critical habitat for the following 24 Oahu-endemic species provides habitat within their historical ranges for one population each of *Alsinidendron obovatum, Neraudia angulata,* and *Phyllostegia kaalaensis;* two populations each of *Chamaesyce herbstii, Chamaesyce kuwaleana, Gardenia mannii, Gouania meyenii, Sanicula mariversa,* and *Viola chamissoniana* ssp. *chamissoniana;* three populations each of *Abutilon sandwicense, Cyanea grimesiana* ssp. *obatae, Hedyotis parvula, Lepidium arbuscula, Melicope saint-johnii, Phyllostegia hirsuta,* and *Stenogyne kanehoana;* four populations each of *Cyanea pinnatifida, Delissea subcordata, Schiedea kaalae,* and *Urera kaalae;* six populations each of *Diellia unisora* and *Silene perlmanii;* seven populations of *Diellia falcata;* and eight populations of *Lipochaeta lobata* var. *leptophylla.*

The area designated as critical habitat for the following 15 multi-island species provides habitat within their historical ranges for one population each of *Alectryon macrococcus, Bonamia menziesii, Hedyotis coriacea, Lobelia niihauensis,* and *Plantago princeps;* two populations each of *Hesperomannia arbuscula, Isodendrion pyrifolium, Schiedea hookeri, Schiedea nuttallii,* and *Solanum sandwicense;* three populations each of *Cenchrus agrimonioides, Melicope pallida, Phyllostegia mollis,* and *Phyllostegia parviflora;* and five populations of *Tetramolopium lepidotum* ssp. *lepidotum.*

This modification resulted in the reduction from 5,109 ha (12,623 ac) to 1,917 ha (4,736 ac). This unit was renamed Oahu 15—*Abutilon sandwicense*—d, Oahu 15—*Abutilon sandwicense*—e, Oahu 17—*Abutilon sandwicense*—f, Oahu 15—*Alectryon macrococcus*—b, Oahu 15—*Alsinidendron obovatum*—c, Oahu 17—*Bonamia menziesii*—d, Oahu 15—*Cenchrus agrimonioides*—c, Oahu 15—*Cenchrus agrimonioides*—d, Oahu 15—*Chamaesyce herbstii*—b, Oahu 15—*Chamaesyce herbstii*—c, Oahu 15—*Chamaesyce kuwaleana*—d, Oahu 15—*Cyanea grimesiana* ssp. *obatae*—b, Oahu 15—*Cyanea grimesiana* ssp. *obatae*—c, Oahu 15—*Cyanea grimesiana* ssp. *obatae*—d, Oahu 15—*Cyanea pinnatifida*—a, Oahu 15—*Cyanea pinnatifida*—b, Oahu 15—*Cyanea pinnatifida*—c, Oahu 15—*Delissea subcordata*—b, Oahu 15—*Delissea subcordata*—c, Oahu 15—*Delissea subcordata*—d, Oahu 15—*Diellia falcata*—c, Oahu 15—*Diellia falcata*—d, Oahu 15—*Diellia unisora*—a, Oahu 15—*Gardenia mannii*—a, Oahu 15—*Gouania meyenii*—c, Oahu 15—*Hedyotis coriacea*—a, Oahu 4—*Hedyotis parvula*—b, Oahu 15—*Hedyotis parvula*—c, Oahu 15—*Hedyotis parvula*—d, Oahu 15—*Hesperomannia arbuscula*—c, Oahu 15—*Hesperomannia arbuscula*—d, Oahu 15—*Hesperomannia arbuscula*—e, Oahu 16—*Isodendrion pyrifolium*—b, Oahu 17—*Isodendrion pyrifolium*—c, Oahu 15—*Lepidium arbuscula*—b, Oahu 15—*Lepidium arbuscula*—c, Oahu 15—*Lipochaeta lobata* var. *leptophylla*—b, Oahu 17—*Lobelia niihauensis*—b, Oahu 15—*Melicope pallida*—b, Oahu 15—*Melicope pallida*—c, Oahu 15—*Melicope pallida*—d, Oahu 15—*Melicope pallida*—e, Oahu 15—*Melicope saint-johnii*—a, Oahu 15—*Melicope saint-johnii*—b, Oahu 15—*Neraudia angulata*—f, Oahu 15—*Phyllostegia hirsuta*—b, Oahu 15—*Phyllostegia hirsuta*—c, Oahu 15—*Phyllostegia kaalaensis*—f, Oahu 15—*Phyllostegia mollis*—a, Oahu 15—*Phyllostegia mollis*—b, Oahu 15—*Phyllostegia parviflora*—a, Oahu 15—*Phyllostegia parviflora*—b, Oahu 15—*Phyllostegia parviflora*—c, Oahu 15—*Plantago princeps*—c, Oahu 15—*Sanicula mariversa*—e, Oahu 15—*Sanicula mariversa*—f, Oahu 15—*Schiedea hookeri*—e, Oahu 15—*Schiedea hookeri*—f, Oahu 15—*Schiedea hookeri*—g, Oahu 15—*Schiedea kaalae*—b, Oahu 15—*Schiedea kaalae*—c, Oahu 15—*Schiedea kaalae*—d, Oahu 15—*Schiedea nuttallii*—b, Oahu 15—*Schiedea nuttallii*—c, Oahu 15—*Silene perlmanii*—a, Oahu 15—*Silene perlmanii*—b, Oahu 15—*Silene perlmanii*—c, Oahu 15—*Silene perlmanii*—d, Oahu 15—*Solanum sandwicense*—b, Oahu 15—*Solanum sandwicense*—c, Oahu 15—*Stenogyne kanehoana*—a, Oahu 15—*Stenogyne kanehoana*—c, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—c, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—f, Oahu 15—*Urera kaalae*—c, Oahu 15—*Urera kaalae*—d, Oahu 15—*Urera kaalae*—e, Oahu 15—*Urera kaalae*—f, Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—e, and Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—f.

Oahu J

This unit was proposed as critical habitat for *Marsilea villosa.* The area designated as critical habitat for *Marsilea villosa* provides habitat within its historical range for one population. No modifications were made to the acreage of this unit, which was renamed Oahu 13—*Marsilea villosa*—a.

Oahu K

This unit was proposed as critical habitat for *Marsilea villosa.* The area designated as critical habitat for *Marsilea villosa* provides habitat within its historical range for one population. No modifications were made to the acreage of this unit, which was renamed Oahu 14—*Marsilea villosa*—b.

Oahu L

This unit was proposed as critical habitat for 45 species: *Adenophorus periens, Bonamia menziesii, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Eugenia koolauensis, Gardenia mannii, Hedyotis coriacea, Hesperomannia arborescens, Isodendrion laurifolium, Isodendrion longifolium, Labordia cyrtandrae, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia oahuensis, Lysimachia filifolia, Melicope lydgatei, Myrsine juddii, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula purpurea, Schiedea kaalae, Solanum sandwicense, Tetraplasandra gymnocarpa, Trematolobelia singularis,* and *Viola oahuensis.* We excluded the proposed critical habitat on Army lands at Schofield Barracks East Range for *Cyanea acuminata, Cyrtandra viridiflora, Gardenia mannii, Hesperomannia arborescens, Myrsine juddii, Phlegmariurus nutans,* and *Viola oahuensis;* at Kahuku Training Area for *Cyanea longiflora* and *Eugenia koolauensis;* and at Kawailoa Training Area for *Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea st.-johnii, Cyrtandra dentata, Cyrtandra viridiflora, Gardenia mannii, Hesperomannia arborescens, Labordia cyrtandrae, Lobelia gaudichaudii* ssp. *koolauensis, Melicope lydgatei, Myrsine juddii, Phlegmariurus nutans, Phyllostegia hirsuta, Pteris lidgatei, Sanicula purpurea, Tetraplasandra gymnocarpa,* and *Viola oahuensis* because the benefits of excluding this area outweigh the benefits of including this area (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*"). We excluded the proposed critical habitat for *Solanum sandwicense,* a multi-island species. This area is not essential for the conservation of this species, because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. sandwicense,* and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are 10 other locations in its historical range on Oahu and Kauai that provide habitat for this species, which are either designated as critical habitat in this rule, in an area excluded under 4(b)(2) of the Act because active management of the area by the landowner outweighed the benefits of including that area as critical habitat (Schofield Barracks), or have been designated on Kauai.

Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Adenophorus periens, Bonamia menziesii, Cyanea grimesiana* ssp. *grimesiana, Diellia erecta, Eugenia koolauensis,* and *Hesperomannia arborescens,* all multi-island species. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these six species, other locations either have been designated as critical habitat on Kauai, Molokai, Maui, and/or Kahoolawe; were excluded under 4(b)(2) on Oahu, Lanai, and Maui because active management of an area by the landowner outweighed the benefits of including that area as critical habitat; are being designated as critical habitat in this rule; and/or have been proposed for designation on the island of Hawaii. Modifications were also made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea st.-johnii, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Gardenia mannii, Labordia cyrtandrae, Lobelia monostachya, Lobelia oahuensis, Melicope lydgatei, Phyllostegia hirsuta,* and *Viola oahuensis,* all island-endemic species. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these 19 species, other locations on Oahu are either being designated as critical habitat in this rule or were excluded under 4(b)(2) in this rule because active management of an area by the landowner outweighed the benefits of including that area as critical habitat.

The area designated as critical habitat for the following 27 Oahu-endemic species provides habitat within their historical ranges for two populations each of *Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Cyanea superba, Delissea subcordata, Gardenia mannii,* and *Phyllostegia hirsuta;* three populations each of *Cyanea longiflora,* and *Schiedea kaalae;* four populations of *Cyanea acuminata;* five populations each of *Chamaesyce rockii, Cyrtandra polyantha,* and *Cyrtandra viridiflora;* six populations each of *Labordia cyrtandrae, Melicope lydgatei, Myrsine juddii,* and *Trematolobelia singularis;* seven populations each of *Cyanea crispa, Cyanea koolauensis, Cyrtandra subumbellata, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya,* and *Tetraplasandra gymnocarpa;* eight populations of *Cyanea humboltiana;* nine populations each of *Cyanea st.-johnii* and *Cyanea truncata;* and 10 populations each of *Lobelia oahuensis* and *Viola oahuensis.*

The area designated as critical habitat for the following 16 multi-island species provides habitat within their historical ranges for one population each of *Adenophorus periens, Bonamia menziesii, Diellia erecta, Hedyotis coriacea, Isodendrion laurifolium, Isodendrion longifolium,* and *Plantago princeps;* two populations each of *Hesperomannia arborescens* and *Platanthera holochila;* three populations each of *Cyanea grimesiana* ssp. *grimesiana* and *Pteris lidgatei;* four populations each of *Eugenia koolauensis* and *Sanicula purpurea;* five populations of *Phlegmariurus nutans;* and six populations each of *Lysimachia filifolia* and *Phyllostegia parviflora.*

This modification resulted in the reduction from 30,068 ha (74,301 ac) to 15,727 ha (38,863 ac). This unit was renamed Oahu 20—*Adenophorus periens*—a, Oahu 35—*Bonamia menziesii*—e, Oahu 35—*Chamaesyce celastroides* var. *kaenana*—e, Oahu 20—*Chamaesyce deppeana*—a, Oahu 25—*Chamaesyce deppeana*—b, Oahu 20—*Chamaesyce rockii*—a, Oahu 20—*Chamaesyce rockii*—b, Oahu 20—*Chamaesyce rockii*—c, Oahu 20—*Cyanea acuminata*—b, Oahu 20—*Cyanea crispa*—a, Oahu 20—*Cyanea crispa*—b, Oahu 35—*Cyanea crispa*—c, Oahu 20—*Cyanea grimesiana* ssp. *grimesiana*—a, Oahu 35—*Cyanea grimesiana* ssp. *grimesiana*—b, Oahu 19—*Cyanea grimesiana* ssp. *grimesiana*—c, Oahu 20—*Cyanea humboltiana*—a, Oahu 20—*Cyanea humboltiana*—b, Oahu 20—*Cyanea humboltiana*—c, Oahu 20—*Cyanea humboltiana*—d, Oahu 35—*Cyanea humboltiana*—e, Oahu 20—*Cyanea koolauensis*—a, Oahu 20—*Cyanea koolauensis*—b, Oahu 35—*Cyanea koolauensis*—c, Oahu 35—*Cyanea koolauensis*—d, Oahu 19—*Cyanea longiflora*—c, Oahu 20—*Cyanea st.-johnii*—a, Oahu 35—*Cyanea st.-johnii*—b, Oahu 35—*Cyanea superba*—d, Oahu 20—*Cyanea truncata*—a, Oahu 35—*Cyrtandra polyantha*—a, Oahu 20—*Cyrtandra subumbellata*—a, Oahu 20—*Cyrtandra subumbellata*—b, Oahu 20—*Cyrtandra viridiflora*—a, Oahu 35—*Delissea subcordata*—e, Oahu 35—*Delissea subcordata*—f, Oahu 35—*Diellia erecta*—a, Oahu 19—*Eugenia koolauensis*—b, Oahu 20—*Eugenia koolauensis*—c, Oahu 20—*Gardenia mannii*—b, Oahu 20—*Gardenia mannii*—c, Oahu 35—*Hedyotis coriacea*—b, Oahu 20—*Hesperomannia arborescens*—b, Oahu 35—*Isodendrion laurifolium*—c, Oahu 20—*Isodendrion longifolium*—b, Oahu 20—*Labordia cyrtandrae*—b, Oahu 20—*Labordia cyrtandrae*—c, Oahu 20—*Lobelia gaudichaudii* ssp. *koolauensis*—a, Oahu 30—*Lobelia monostachya*—a, Oahu 32—*Lobelia monostachya*—b, Oahu 33—*Lobelia monostachya*—c, Oahu 25—*Lobelia monostachya*—d, Oahu 20—*Lobelia oahuensis*—a, Oahu 35—*Lobelia oahuensis*—b, Oahu 20—*Lysimachia filifolia*—a, Oahu 20—*Melicope lydgatei*—a, Oahu 20—*Myrsine juddii*—a, Oahu 20—*Phlegmariurus nutans*—a, Oahu 20—*Phyllostegia hirsuta*—d, Oahu 20—*Phyllostegia parviflora*—d, Oahu 20—*Plantago princeps*—d, Oahu 20—

Plantago princeps—e, Oahu 20—*Platanthera holochila*—a, Oahu 20—*Platanthera holochila*—b, Oahu 20—*Pteris lidgatei*—a, Oahu 20—*Pteris lidgatei*—b, Oahu 20—*Pteris lidgatei*—c, Oahu 20—*Sanicula purpurea*—a, Oahu 20—*Schiedea kaalae*—e, Oahu 20—*Tetraplasandra gymnocarpa*—a, Oahu 20—*Tetraplasandra gymnocarpa*—b, Oahu 20—*Tetraplasandra gymnocarpa*—c, Oahu 20—*Tetraplasandra gymnocarpa*—d, Oahu 35—*Tetraplasandra gymnocarpa*—e, Oahu 35—*Tetraplasandra gymnocarpa*—f, Oahu 20—*Trematolobelia singularis*—a, Oahu 20—*Trematolobelia singularis*—b, Oahu 34—*Trematolobelia singularis*—c, Oahu 35—*Trematolobelia singularis*—d, Oahu 35—*Trematolobelia singularis*—e, Oahu 20—*Viola oahuensis*—a, and Oahu 20—*Viola oahuensis*—b.

Oahu M

This unit was proposed as critical habitat for *Sesbania tomentosa*. We excluded the proposed critical habitat for this multi-island species. This area is not essential for the conservation of *S. tomentosa* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species, which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the removal of this 100 ha (246 ac) unit from the final designation.

Oahu N

This unit was proposed as critical habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa*. We excluded the proposed critical habitat for *Centaurium sebaeoides*, a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *C. sebaeoides*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species, which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the removal of this entire unit (2 ha (3 ac)) from the final designation.

Oahu O

This unit was proposed as critical habitat for three species: *Cyanea crispa*, *Cyanea truncata*, and *Schiedea kaalae*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Cyanea crispa* and *Cyanea truncata*, both endemic to Oahu. The area designated as critical habitat for the three Oahu-endemic species provides habitat within their historical ranges for one population each of *Cyanea crispa*, *Cyanea truncata*, and *Schiedea kaalae*. In order to meet the recovery goal of 8 to 10 populations within the historical range of each of these three species, other locations on Oahu are being designated as critical habitat in this rule. Modifications to this unit resulted in the reduction from 431 ha (1,066 ac) to 312 ha (772 ac). This unit was renamed Oahu 21—*Cyanea crispa*—c, Oahu 21—*Cyanea truncata*—b, and Oahu 21—*Schiedea kaalae*—f.

Oahu P

This unit was proposed as critical habitat for *Sesbania tomentosa*. We excluded the proposed critical habitat for this multi-island species. This area is not essential for the conservation of *S. tomentosa* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Sesbania tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, and Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii.

Oahu Q

This unit was proposed as critical habitat for two species: *Chamaesyce kuwaleana* and *Sesbania tomentosa*. We excluded the proposed critical habitat for *Sesbania tomentosa*, a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species, which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, and Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. The area designated as critical habitat for the Oahu-endemic, *Chamaesyce kuwaleana*, provides habitat within its historical range for one population. No modifications were made to the acreage of this unit, which was renamed Oahu 22—*Chamaesyce kuwaleana*—e.

Oahu R

This unit was proposed as critical habitat for two species: *Chamaesyce kuwaleana* and *Sesbania tomentosa*. We excluded the proposed critical habitat for Sesbania tomentosa, a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species, which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, and Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. The area designated as critical habitat for the Oahu-endemic, *Chamaesyce kuwaleana*, provides

habitat within its historical range for one population. No modifications were made to the acreage of this unit, which was renamed Oahu 23—*Chamaesyce kuwaleana*—f.

Oahu S

This unit was proposed as critical habitat for two species: *Sesbania tomentosa* and *Vigna o-wahuensis*. We excluded the proposed critical habitat for *Sesbania tomentosa*, a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, and Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. The area designated as critical habitat for the multi-island species, *Vigna o-wahuensis*, provides habitat within its historical range for one population. No modifications were made to the acreage of this unit, which renamed Oahu 24—*Vigna o-wahuensis*—b.

Oahu T

This unit was proposed as critical habitat for two species: *Sesbania tomentosa* and *Vigna o-wahuensis*. We excluded the proposed critical habitat for *Sesbania tomentosa*, a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, and Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. The area designated as critical habitat for the multi-island species, *Vigna o-wahuensis*, and Oahu endemic, *Chamaesyce kuwaleana*, provides habitat within their historical ranges for one population of each. No modifications were made to the acreage of this unit, which was renamed Oahu 26—*Chamaesyce kuwaleana*—g and Oahu 26—*Vigna o-wahuensis*—d.

Oahu V

This unit was proposed as critical habitat for one species: *Sesbania tomentosa*. We excluded the proposed critical habitat for *Sesbania tomentosa*, a multi-island species. This area is not essential for the conservation of this species because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *S. tomentosa*, and is less likely to contain the primary constituent elements long-term because it is not currently managed for conservation of this species. In addition, there are at least 10 other locations in its historical range on Oahu and other islands that provide habitat for this species which are either designated as critical habitat in this rule; have been designated on Kauai, Molokai, and Maui, and the Northwestern Hawaiian Islands; or have been proposed for designation on the island of Hawaii. Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the removal of this entire unit (4 ha (10 ac)) from the final designation.

Oahu W

This unit was proposed as critical habitat for three species: *Centaurium sebaeoides*, *Cyperus trachysanthos*, and *Marsilea villosa*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Centaurium sebaeoides*, a multi-island species. The area designated as critical habitat for the three multi-island species, *Centaurium sebaeoides*, *Cyperus trachysanthos*, and *Marsilea villosa*, provides habitat within their historical ranges for one population of each. Modifications to this unit resulted in the reduction from 340 ha (840 ac) to 43 ha (106 ac). This unit was renamed Oahu 27—*Centaurium sebaeoides*—b, Oahu 28—*Cyperus trachysanthos*—b, Oahu 29—*Cyperus trachysnthos*—c, Oahu 28—*Marsilea villosa*—c, and Oahu 29—*Marsilea villosa*—d.

Oahu X1

This unit was proposed as critical habitat for two multi-island species: *Gouania meyenii* and *Spermolepis hawaiiensis*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Gouania meyenii* and *Spermolepis hawaiiensis*. The area designated as critical habitat for *Gouania meyenii* and *Spermolepis hawaiiensis* provides habitat within their historical ranges for one population of each. These modifications resulted in the reduction from 117 ha (290 ac) to 116 ha (286 ac). This unit was renamed Oahu 31—*Gouania meyenii*—d and Oahu 31—*Spermolepis hawaiiensis*—b.

Oahu X2

This unit was proposed as critical habitat for two multi-island species: *Cyperus trachysanthos* and *Marsilea villosa*. Modifications were made to this unit to exclude small areas that do not contain the primary constituent elements essential to the conservation of *Cyperus trachysanthos* and *Marsilea villosa*. The area designated as critical habitat for *Cyperus trachysanthos* and *Marsilea villosa* provides habitat within their historical ranges for one population of each. This modification resulted in the reduction from 8 ha (21 ac) to 6 ha (15 ac). This unit was renamed Oahu 36—*Cyperus trachysanthos*—d and Oahu 36—*Marsilea villosa*—e.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The relationship between a species' survival and its recovery has been a source of confusion for some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding, the court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of species.

In order to be included in a critical habitat designation, areas within the geographical range of the species at the time of listing must contain the physical or biological features essential to the conservation of the species or, for an area outside the geographical area occupied by the species at the time of listing, the area itself must be essential to the conservation of the species (16 U.S.C. 1532(5)(A)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species, or we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas that have features and habitat characteristics that are necessary to sustain the species. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may be determined to be necessary for the recovery of the species.

A. Prudency

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. One species, *Cyrtandra crenata*, a Oahu endemic species, is no longer extant in the wild. *Cyrtandra crenata* was last seen in the wild in 1947 (HINHP Database 2001). In addition, this species is not known to be in storage or under propagation. Under these circumstances, we have determined that designation of critical habitat for *Cyrtandra crenata* is not prudent because such designation would be of no benefit to this species. If this species is relocated, we may revise this final determination to incorporate or address new information as it becomes available (*See* 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 100 plant species could be vulnerable to unrestricted collection, vandalism, or disturbance. We examined the evidence currently available for each of these species and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for one species of *Pritchardia*, the native palm. At the time of listing, we determined that designation of critical habitat was not prudent for *Pritchardia kaalae* because it would increase the degree of threat from vandalism or collecting and would provide no benefit (61 FR 53108). Since then, we have received information on the commercial trade in palms conducted through the Internet (Grant Canterbury, Service, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *Pritchardia kaalae*. In light of this information, we believe that designation of critical habitat would likely increase the threat from vandalism or collection to this species of *Pritchardia* on Oahu. These plants are easy to identify, and they are attractive to collectors of rare palms, either for their personal use or to trade or sell for personal gain (Johnson 1996). We believe that the evidence shows that *Pritchardia kaalae* may be attractive to such collectors. The final listing rule for this species contained only general information on its distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make *Pritchardia kaalae* more vulnerable to incidents of vandalism or collection and, therefore, contribute to its decline and make recovery more difficult (61 FR 53089).

For *Pritchardia kaalae*, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we determine that designation of critical habitat for *Pritchardia kaalae* is not prudent.

In the final rule designating critical habitat for plants on Lanai, published on January 9, 2003 (68 FR 1220), we explained why we believe that critical habitat was prudent for the following 17 multi-island species that also occur on Oahu: *Adenophorus periens, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*. In the final rule designating critical habitat for plants on Kauai and Niihau, published on February 27, 2003 (68 FR 9116), we explained why that critical habitat was prudent for the following 16 multi-island species that are also found on Oahu: *Alectryon macrococcus, Euphorbia haeleeleana, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Isodendrion longifolium, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope pallida, Peucedanum sandwicense, Phlegmariurus nutans, Plantago princeps, Platanthera holochila, Schiedea nuttallii*, and *Solanum sandwicense*. In the final rule designating critical habitat for plants on Molokai, published on March 19, 2003 (68 FR 12982), we indicated why that critical habitat was prudent for the following four multi-island species that are also found on Oahu: *Eugenia koolauensis, Marsilea villosa, Phyllostegia mollis*, and *Pteris lidgatei*. In the final rule designating critical habitat for plants on Maui and Kahoolawe, published on May 14, 2003 (68 FR 25934) we indicated why we believe that critical habitat was prudent for the following eight multi-island species that are also found on Oahu: *Colubrina oppositifolia, Gouania vitifolia, Hedyotis coriacea, Hesperomannia arbuscula, Nototrichium humile, Phyllostegia parviflora, Sanicula purpurea*, and *Schiedea hookeri*.

We examined the potential threats and benefits for the other 54 taxa and have not; at this time, found specific evidence of taking, vandalism, collection, or trade of these taxa or of similarly situated species. Consequently, while we remain concerned that these activities could potentially threaten these 54 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity. None of these threats would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits of designation of critical habitat for these 54 species include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and 4) preventing people from causing inadvertent harm to the species.

In the case of these 54 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that is likely to destroy or adversely affect critical habitat. Thirty-seven of these species are reported on or near Federal lands (see Table 1), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, designation of critical habitat is prudent for these 54 plant species: *Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia falcata, Diellia unisora, Dubautia herbstobatae, Eragrostis fosbergii,*

Gardenia mannii, Hedyotis degeneri, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia oahuensis, Melicope lydgatei, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Phyllostegia hirsuta, Phyllostegia kaalaensis, Sanicula mariversa, Schiedea kaalae, Schiedea kealiae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis* because the potential benefits of critical habitat designation outweigh the potential threats.

B. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Abutilon sandwicense, Adenophorus periens, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope lydgatei, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Silene perlmanii, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*. This information included the known locations; site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these 99 species; the May 28, 2002, proposal; information received during the public comment periods and public hearings; recent biological surveys and reports; our recovery plans for these species; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (*see* also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; 67 FR 37108).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species and species of concern), while we have only delineated areas that are essential for the conservation of the 99 listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Abutilon sandwicense, Adenophorus periens, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope lydgatei, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Silene perlmanii, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis* is described in the "*Background*" section of this final rule.

All areas designated as critical habitat are within the historical range of the 99 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the 99 species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.*, *mesic Metrosideros polymorpha* forest), associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, gulches, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the "**SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa*" section above, constitute the primary constituent elements for these species on the island of Oahu.

D. Criteria Used To Identify Critical Habitat

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (National Research Council 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). However, based on the best information available at this time, including information on which the listing of and recovery plans for these species were based, we have concluded that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species.

For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species biology and ecology (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for the annual. (Please note that there are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed.) To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

Marsilea villosa, a short-lived perennial aquatic fern, was historically known from six populations on three different islands, Molokai, Oahu, and Niihau. This species is now extant only on Oahu and Molokai. Delisting objectives for this species include protection and stabilization of at least six (rather than 8 to 10) geographically distinct, self-sustaining populations (either three on Oahu and three on Molokai or three on Oahu, two on Molokai, and one on Niihau), stable or increasing population sizes, no active management needed, and self-maintenance of each population through two successive floods resulting in sexual reproduction. Delisting objectives for *Marsilea villosa* do not include a specific number of mature individuals per population because of its clonal nature, as it is extremely difficult to distinguish between individuals in clonal plant species (Service 1996a).

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes or tsunamis, which could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology

literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.*1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.*1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

Many aspects of a species' life history are typically considered to determine guidelines for its interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from a single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species; 300 mature, reproducing individuals per population for short-lived perennial species; and 500 mature, reproducing individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of population viability analysis models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of nonnative plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1998; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and conservation, based on currently available information.

In summary, the long-term survival and conservation of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it is essential to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the 99 plant species as discussed in the individual unit descriptions.

Our approach to delineating critical habitat units was applied in the following manner:

1. Critical habitat was proposed and has been designated on an island by island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

2. We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

3. We designed critical habitat units to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. We created polygons by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

We then evaluated the resulting shape files (delineating historic elevational range and potentially suitable habitat). We refined elevation ranges, and we avoided areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements). We then considered the resulting shape files for each species to define all suitable habitat on the island, including occupied and unoccupied habitat.

We further evaluated these shape files of suitable habitat. We used several factors to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives, as described above and in recovery plans for each of the species, to determine if the number of populations and population size requirements needed for conservation would be available within the suitable habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were included as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996). We further refined the resulting critical habitat units by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 99 plant species for which critical habitat was proposed on May 28, 2002. We used geographic features (ridge lines, valleys, streams, coastlines, etc.) or manmade features (roads or obvious land use) that created an obvious boundary for a unit as unit area boundaries.

Following publication of the proposed critical habitat rules, some of which were revised, for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we reevaluated proposed critical habitat. State-wide, for each species using the applicable recovery guidelines (generally 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennial species; 300 mature, reproducing individuals per population for short-lived perennial species; and 500 mature, reproducing individuals per population for annual species) to determine if we had inadvertently proposed for designation too much or too little habitat to meet the essential recovery goals (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999).

Based on comments and information we received during the comment periods, we assessed the proposed critical habitat in order to ascertain which areas contained the highest quality habitat, had the highest likelihood of species conservation, were geographically distributed within the species' historical range, and were located a sufficient distance from each other such that populations of a single species are unlikely to be impacted by a single catastrophic event. We ranked areas of the proposed critical habitat by the quality of the primary constituent elements (*e.g.*, intact native plant communities, predominance of associated native plants versus nonnative plants), potential as a conservation area (*e.g.*, whether the land is zoned for conservation or whether the landowner is already participating in plant conservation actions), and current or expected management of known threats (*e.g.*, ungulate control; weed control; nonnative insect, slug, and snail control). Of these most essential areas, we selected adequate area to provide for 8 to 10 populations distributed among the islands of each species' historical range.

Areas that contain high quality primary constituent elements and conservation potential (*e.g.*, are zoned for conservation and have ongoing or expected threat abatement actions) were ranked the most essential. This ranking process also included determining which habitats were representative of the historic geographical and ecological distributions of the species (see "Primary Constituent Elements"). Of the proposed critical habitat for a species, areas that were not ranked most essential and that may provide habitat for populations above the recovery goal of 8 to 10 populations were determined not essential for the conservation of the species and were excluded from the final designation. Areas that were excluded because the benefits of exclusion outweigh the benefits of inclusion under 4(b)(2) of the Act are included in the total count of habitat for 8 to 10 populations.

In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 99 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas from the maps. Existing manmade features and structures within the boundaries of the mapped areas, such as buildings; roads; aqueducts and other water system features, including, but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic overlooks; remote helicopter landing sites; existing fences; telecommunications towers and associated structures and equipment; electrical power transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements and are therefore excluded from critical habitat designation under the terms of this regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species, we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the essential habitat on Oahu to provide for the recovery of these 99 species.

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation and special management needs of the 99 plant species, and are based on the best scientific and commercial information available (as described above). We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us

to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

Descriptions of Critical Habitat Units

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 3. The approximate final critical habitat area (ha (ac)), essential area, and excluded area, are shown in Table 4.

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, OAHU, CITY AND COUNTY OF HONOLULU, HAWAII [1]

Unit name	State/local	Private	Federal	Total
Oahu 4—*Abutilon sandwicense*—a	453 ha (1,120 ac)	151 ha (372 ac)		604 ha (1,492 ac)
Oahu 4—*Abutilon sandwicense*—b	26 ha (65 ac)			26 ha (65 ac)
Oahu 4—*Abutilon sandwicense*—c	41 ha (102 ac)			41 ha (102 ac)
Oahu 15—*Abutilon sandwicense*—d			49 ha (121 ac)	49 ha (121 ac)
Oahu 15—*Abutilon sandwicense*—e	1 ha (2 ac)		32 ha (80 ac)	33 ha (81 ac)
Oahu 17—*Abutilon sandwicense*—f	30 ha (74 ac)			30 ha (74 ac)
Oahu 20—*Adenophorus periens*—a	606 ha (1,500 ac)	105 ha (259 ac)		711 ha (1,759 ac)
Oahu 4—*Alectryon macrococcus*—a	23 ha (58 ac)			23 ha (58 ac)
Oahu 15—*Alectryon macrococcus*—b		112 ha (278 ac)		112 ha (278 ac)
Oahu 4—*Alsinidendron obovatum*—a	176 ha (436 ac)			176 ha (436 ac)
Oahu 4—*Alsinidendron obovatum*—b	25 ha (62 ac)			25 ha (62 ac)
Oahu 15—*Alsinidendron obovatum*—c	1 ha (2 ac)	31 ha (75 ac)		32 ha (76 ac)
Oahu 4—*Alsinidendron trinerve*—a	60 ha (149 ac)			60 ha (149 ac)
Oahu 2—*Bonamia menziesii*—a	21 ha (51 ac)			21 ha (51 ac)
Oahu 3—*Bonamia menziesii*—b	42 ha (104 ac)			42 ha (104 ac)
Oahu 4—*Bonamia menziesii*—c	3 ha (8 ac)	91 ha (225 ac)		94 ha (233 ac)
Oahu 17—*Bonamia menziesii*—d	77 ha (191 ac)			77 ha (191 ac)
Oahu 35—*Bonamia menziesii*—e	121 ha (300 ac)	253 ha (624 ac)		374 ha (924 ac)
Oahu 4—*Cenchrus agrimonioides*—a	529 ha (1,306 ac)			529 ha (1,306 ac)
Oahu 4—*Cenchrus agrimonioides*—b	40 ha (99 ac)			40 ha (99 ac)
Oahu 15—*Cenchrus agrimonioides*—c		200 ha (495 ac)		200 ha (495 ac)
Oahu 15—*Cenchrus agrimonioides*—d		117 ha (290 ac)		117 ha (290 ac)
Oahu 1—*Centaurium sebaeoides*—a	61 ha (149 ac)	<1 ha (<1 ac)	<1 ha (<1 ac)	61 ha (149 ac)
Oahu 27—*Centaurium sebaeoides*—b	30 ha (74 ac)			30 ha (74 ac)
Oahu 1—*Chamaesyce celastroides* var. *kaenana*—a.	233 ha (571 ac)			233 ha (571 ac)
Oahu 3—*Chamaesyce celastroides* var. *kaenana*—b.	4 ha (11 ac)			4 ha (11 ac)
Oahu 4—*Chamaesyce celastroides* var. *kaenana*—c.	43 ha (107 ac)			43 ha (107 ac)
Oahu 5—*Chamaesyce celastroides* var. *kaenana*—d.	32 ha (80 ac)	4 ha (9 ac)		36 ha (89 ac)
Oahu 35—*Chamaesyce celastroides* var. *kaenana*—e.	1 ha (2 ac)	237 ha (585 ac)		238 ha (587 ac)
Oahu 20—*Chamaesyce deppeana*—a	3 ha (8 ac)	14 ha (33 ac)		17 ha (41 ac)
Oahu 35—*Chamaesyce deppeana*—b	16 ha (40 ac)	2 ha (6 ac)		18 ha (46 ac)
Oahu 4—*Chamaesyce herbstii*—a	429 ha (1,059 ac)			429 ha (1,059 ac)
Oahu 15—*Chamaesyce herbstii*—b		47 ha (116 ac)		47 ha (116 ac)
Oahu 15—*Chamaesyce herbstii*—c		21 ha (53 ac)		21 ha (53 ac)
Oahu 9—*Chamaesyce kuwaleana*—a			27 ha (68 ac)	27 ha (68 ac)
Oahu 11—*Chamaesyce kuwaleana*—b	19 ha (47 ac)		34 ha (83 ac)	53 ha (130 ac)
Oahu 12—*Chamaesyce kuwaleana*—c	37 ha (92 ac)			37 ha (92 ac)
Oahu 15—*Chamaesyce kuwaleana*—d	117 ha (288 ac)	67 ha (166 ac)		184 ha (454 ac)
Oahu 22—*Chamaesyce kuwaleana*—e	1 ha (3 ac)			1 ha (3 ac)
Oahu 23—*Chamaesyce kuwaleana*—f	6 ha (15 ac)			6 ha (15 ac)
Oahu 26—*Chamaesyce kuwaleana*—g	26 ha (63 ac)			26 ha (63 ac)
Oahu 20—*Chamaesyce rockii*—a	612 ha (1,512 ac)	214 ha (527 ac)		826 ha (2,039 ac)
Oahu 20—*Chamaesyce rockii*—b	8 ha (20 ac)	25 ha (63 ac)	164 ha (405 ac)	197 ha (488 ac)
Oahu 20—*Chamaesyce rockii*—c	85 ha (210 ac)	173 ha (429 ac)		258 ha (639 ac)
Oahu 4—*Colubrina oppositifolia*—a	766 ha (1,894 ac)	16 ha (41 ac)		782 ha (1,935 ac)
Oahu 4—*Ctenitis squamigera*—a	120 ha (297 ac)			120 ha (297 ac)
Oahu 4—*Cyanea acuminata*—a	82 ha (205 ac)			82 ha (205 ac)
Oahu 20—*Cyanea acuminata*—b	916 ha (2,260 ac)	1,022 ha (2,525 ac)	585 ha (1,446 ac)	2,522 ha (6,231 ac)
Oahu 20—*Cyanea crispa*—a	958 ha (2,367 ac)	873 ha (2,158 ac)		1,831 ha (4,525 ac)
Oahu 20—*Cyanea crispa*—b	597 ha (1,475 ac)	3,243 ha (8,010 ha)	20 ha (49 ac)	3,860 ha (9,534c)
Oahu 21—*Cyanea crispa*—c	114 ha (282 ac)	188 ha (465 ac)		302 ha (747 ac)
Oahu 35—*Cyanea crispa*—d	1,041 ha (2,573 ac)	295 ha (728 ac)		1,336 ha (3,301 ac)
Oahu 20—*Cyanea grimesiana* ssp. *grimesiana*—a.	342 ha (845 ac)	2,292 ha (5,661 ac)		2,634 ha (6,506 ac)
Oahu 35—*Cyanea grimesiana* ssp. *grimesiana*—b.	149 ha (367 ac)	181 ha (447 ac)		330 ha (814 ac)
Oahu 4—*Cyanea grimesiana* ssp. *obatae*—a	523 ha (1,289 ac)			523 ha (1,289 ac)
Oahu 15—*Cyanea grimesiana* ssp. *obatae*—b.	1 ha (1 ac)	184 ha (454 ac)	<1 ha (<1 ac)	185 ha (455 ac)
Oahu 15—*Cyanea grimesiana* ssp. *obatae*—c.		34 ha (84 ac)		34 ha (84 ac)
Oahu 15—*Cyanea grimesiana* ssp. *obatae*—d.	<1 ha (1 ac)	83 ha (204 ac)		83 ha (205 ac)
Oahu 20—*Cyanea humboltiana*—a	398 ha (982 ac)	105 ha (259 ac)		503 ha (1,241 ac)
Oahu 20—*Cyanea humboltiana*—b	24 ha (61 ac)	103 ha (254 ac)		127 ha (315 ac)
Oahu 20—*Cyanea humboltiana*—c	88 ha (219 ac)	212 ha (522 ac)		300 ha (741 ac)
Oahu 20—*Cyanea humboltiana*—d	20 ha (48 ac)	137 ha (340 ac)	3 ha (5 ac)	160 ha (393 ac)
Oahu 35—*Cyanea humboltiana*—e	493 ha (1,221 ac)	45 ha (110 ac)		538 ha (1,331 ac)
Oahu 20—*Cyanea koolauensis*—a	94 ha (233 ac)	374 ha (924 ac)		468 ha (1,157 ac)
Oahu 20—*Cyanea koolauensis*—b	68 ha (170 ac)	254 ha (629 ac)		322 ha (799 ac)
Oahu 35—*Cyanea koolauensis*—c	209 ha (517 ac)			209 ha (517 ac)
Oahu 35—*Cyanea koolauensis*—d	181 ha (448 ac)	131 ha (322 ac)		312 ha (770 ac)
Oahu 4—*Cyanea longiflora*—a	362 ha (894 ac)			362 ha (894 ac)
Oahu 4—*Cyanea longiflora*—b	61 ha (150 ac)			61 ha (150 ac)
Oahu 19—*Cyanea longiflora*—c	243 ha (602 ac)	81 ha (199 ac)		324 ha (801 ac)
Oahu 15—*Cyanea pinnatifida*—a		154 ha (380 ac)		154 ha (380 ac)
Oahu 15—*Cyanea pinnatifida*—b		42 ha (104 ac)		42 ha (104 ac)
Oahu 15—*Cyanea pinnatifida*—c	<1 ha (<1 ac)	129 ha (318 ac)		129 ha (318 ac)
Oahu 20—*Cyanea st.-johnii*—a	240 ha (593 ac)	414 ha (1,023 ac)	43 ha (107 ac)	697 ha (1,723 ac)
Oahu 35—*Cyanea st.-johnii*—b	123 ha (305 ha)	12 ha (29 ac)		135 ha (334 ac)
Oahu 4—*Cyanea superba*—a	303 ha (747 ac)			303 ha (747 ac)
Oahu 4—*Cyanea superba*—b	115 ha (286 ac)			115 ha (286 ac)
Oahu 4—*Cyanea superba*—c	183 ha (453 ac)	1 ha (3 ac)		184 ha (456 ac)
Oahu 35—*Cyanea superba*—d	170 ha (420 ac)	111 ha (277 ac)		281 ha (697 ac)
Oahu 20—*Cyanea truncata*—a	900 ha (2,226 ac)	1,129 ha (2,793 ac)		2,029 ha (5,019 ac)
Oahu 21—*Cyanea truncata*—b	59 ha (146 ac)	151 ha (374 ac)		210 ha (520 ac)
Oahu 1—*Cyperus trachysanthos*—a	78 ha (194 ac)			78 ha (194 ac)
Oahu 28—*Cyperus trachysanthos*—b	8 ha (20 ac)			8 ha (20 ac)
Oahu 29—*Cyperus trachysanthos*—c	4 ha (10 ac)			4 ha (10 ac)
Oahu 36—*Cyperus trachysanthos*—d	5 ha (13 ac)			5 ha (13 ac)
Oahu 4—*Cyrtandra dentata*—a	307 ha (758 ac)			307 ha (758 ac)
Oahu 35—*Cyrtandra polyantha*—a	112 ha (277 ac)	78 ha (192 ac)		190 ha (469 ac)
Oahu 20—*Cyrtandra subumbellata*—a	589 ha (1,455 ac)	240 ha (593 ac)		829 ha (2,048 ac)
Oahu 20—*Cyrtandra subumbellata*—b			67 ha (167 ac)	67 ha (167 ac)
Oahu 20—*Cyrtandra viridiflora*—a	505 ha (1,247 ac)	206 ha (509 ac)	71 ha (176 ac)	782 ha (1,932 ac)
Oahu 4—*Delissea subcordata*—a	762 ha (1,879 ac)	2 ha (6 ac)		764 ha (1,885 ac)
Oahu 15—*Delissea subcordata*—b		220 ha (545 ac)		220 ha (545 ac)
Oahu 15—*Delissea subcordata*—c		32 ha (78 ac)		32 ha (78 ac)
Oahu 15—*Delissea subcordata*—d		81 ha (200 ac)		81 ha (200 ac)
Oahu 35—*Delissea subcordata*—e	88 ha (217 ac)	204 ha (504 ac)		292 ha (721 ac)
Oahu 35—*Delissea subcordata*—f	1 ha (3 ac)	128 ha (314 ac)		129 ha (317 ac)
Oahu 35—*Diellia erecta*—a	173 ha (430 ac)	120 ha (301 ac)		293 ha (731 ha)
Oahu 4—*Diellia falcata*—a	59 ha (148 ac)			59 ha (148 ac)
Oahu 4—*Diellia falcata*—b	22 ha (54 ac)			22 ha (54 ac)
Oahu 15—*Diellia falcata*—c	23 ha (58 ac)	314 ha (776 ac)	4 ha (10 ac)	341 ha (844 ac)
Oahu 15—*Diellia falcata*—d	7 ha (17 ac)	170 ha (419 ac)	<1 ha (<1 ac)	178 ha (437 ac)
Oahu 15—*Diellia unisora*—a	68 ha (167 ac)	253 ha (626 ac)	41 ha (101 ac)	362 ha (894 ac)
Oahu 4—*Diplazium molokaiense*—a	139 ha (340 ac)			139 ha (340 ac)
Oahu 4—*Dubautia herbstobatae*—a	12 ha (29 ac)			12 ha (29 ac)
Oahu 4—*Dubautia herbstobatae*—b	76 ha (191 ac)	<1 ha (<1 ac)		76 ha (191 ac)
Oahu 7—*Dubautia herbstobatae*—c	3 ha (7 ac)			3 ha (7 ac)
Oahu 4—*Eragrostis fosbergii*—a	81 ha (199 ac)			81 ha (199 ac)
Oahu 4—*Eugenia koolauensis*—a	114 ha (280 ac)			114 ha (280 ac)
Oahu 19—*Eugenia koolauensis*—b	38 ha (94 ac)	111 ha (275 ac)		149 ha (369 ac)
Oahu 20—*Eugenia koolauensis*—c	71 ha (176 ac)	51 ha (127 ac)		122 ha (303 ac)
Oahu 3—*Euphorbia haeleeleana*—a	14 ha (38 ac)			14 ha (38 ac)
Oahu 4—*Euphorbia haeleeleana*—b	94 ha (233 ac)	262 ha (648 ac)		356 ha (881 ac)
Oahu 4—*Flueggea neowawraea*—a	845 ha (2,087 ac)			845 ha (2,087 ac)
Oahu 15—*Gardenia mannii*—a		266 ha (658 ac)		266 ha (658 ac)
Oahu 20—*Gardenia mannii*—b		206 ha (510 ac)		206 ha (510 ac)
Oahu 20—*Gardenia mannii*—c			1,311 ha (3,239 ac)	1,311 ha (3,239 ac)
Oahu 4—*Gouania meyenii*—a	47 ha (118 ac)			47 ha (118 ac)
Oahu 4—*Gouania meyenii*—b	39 ha (96 ac)			39 ha (96 ac)
Oahu 15—*Gouania meyenii*—c	2 ha (6 ac)	206 ha (509 ac)	<1 ha (<1 ac)	208 ha (515 ac)
Oahu 31—*Gouania meyenii*—d	116 ha (286 ac)			116 ha (286 ac)
Oahu 2—*Gouania vitifolia*—a	20 ha (49 ac)			20 ha (49 ac)
Oahu 3—*Gouania vitifolia*—b	48 ha (120 ac)			48 ha(120 ac)
Oahu 5—*Gouania vitifolia*—c	176 ha (434 ac)	20 ha (48 ac)		196 ha (482 ac)
Oahu 4—*Gouania vitifolia*—d	85 ha (208 ac)			85 ha (208 ac)
Oahu 4—*Gouania vitifolia*—e	102 ha (252 ac)			102 ha (252 ac)

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, OAHU, CITY AND COUNTY OF HONOLULU, HAWAII [1]—Continued

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, OAHU, CITY AND COUNTY OF HONOLULU, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Oahu 4—*Gouania vitifolia*—f	27 ha (67 ac)			27 ha (67 ac)
Oahu 4—*Gouania vitifolia*—g	17 ha (42 ac)	<1 ha (1 ac)		17 ha (43 ac)
Oahu 8—*Gouania vitifolia*—h	41 ha (101 ac)	23 ha (57 ac)		64 ha (158 ac)
Oahu 15—*Hedyotis coriacea*—a		185 ha (458 ac)		185 ha (458 ac)
Oahu 35—*Hedyotis coriacea*—b	9 ha (22 ac)	155 ha (382 ac)		164 ha (404 ac)
Oahu 4—*Hedyotis degeneri*—a	917 ha (2,265 ac)			917 ha (2,265 ac)
Oahu 4—*Hedyotis degeneri*—b	12 ha (29 ac)			12 ha (29 ac)
Oahu 4—*Hedyotis parvula*—a	387 ha (956 ac)			387 ha (956 ac)
Oahu 15—*Hedyotis parvula*—b			8 ha (19 ac)	8 ha (19 ac)
Oahu 15—*Hedyotis parvula*—c	42 ha (105 ac)	22 ha (54 ac)	31 ha (77 ac)	95 ha (236 ac)
Oahu 15—*Hedyotis parvula*—d	20 ha (48 ac)		30 ha (74 ac)	50 ha (122 ac)
Oahu 4—*Hesperomannia arborescens*—a	122 ha (301 ac)	3 ha (7 ac)		125 ha (308 ac)
Oahu 20—*Hesperomannia arborescens*—b	405 ha (1,001 ac)	184 ha (455 ac)		589 ha (1,456 ac)
Oahu 4—*Hesperomannia arbuscula*—a	597 ha (1,472 ac)			597 ha (1,472 ac)
Oahu 4—*Hesperomannia arbuscula*—b	32 ha (78 ac)			32 ha (78 ac)
Oahu 15—*Hesperomannia arbuscula*—c	2 ha (4 ac)	161 ha (398 ac)	<1 ha (<1 ac)	163 ha (402 ac)
Oahu 15—*Hesperomannia arbuscula*—d	2 ha (4 ac)	23 ha (56 ac)		25 ha (60 ac)
Oahu 15—*Hesperomannia arbuscula*—e	3 ha (5 ac)	67 ha (167 ac)		70 ha (172 ac)
Oahu 1—*Hibiscus brackenridgei*—a	20 ha (49 ac)	58 ha (144 ac)		78 ha (193 ac)
Oahu 4—*Hibiscus brackenridgei*—b	75 ha (185 ac)	485 ha (1,200 ac)		560 ha (1,385 ac)
Oahu 5—*Hibiscus brackenridgei*—c	23 ha (56 ac)	<1 ha (<1 ac)		23 ha (56 ac)
Oahu 4—*Isodendrion laurifolium*—a	616 ha (1,524)			616 ha (1,524 ac)
Oahu 4—*Isodendrion laurifolium*—b	62 ha (154 ac)			62 ha (154 ac)
Oahu 35—*Isodendrion laurifolium*—c	109 ha (270 ac)	168 ha (414 ac)		277 ha (684 ac)
Oahu 4—*Isodendrion longifolium*—a	529 ha (1,306 ac)	23 ha (57 ac)		552 ha (1,363 ac)
Oahu 20—*Isodendrion longifolium*—b			162 ha (399 ac)	162 ha (399 ac)
Oahu 5—*Isodendrion pyrifolium*—a	29 ha (71 ac)	1 ha (3 ac)		30 ha (74 ac)
Oahu 16—*Isodendrion pyrifolium*—b	129 ha (317 ac)	1 ha (1 ac)		130 ha (318 ac)
Oahu 17—*Isodendrion pyrifolium*—c	73 ha (181 ac)			73 ha (181 ac)
Oahu 4—*Labordia cyrtandrae*—a	161 ha (397 ac)			161 ha (397 ac)
Oahu 20—*Labordia cyrtandrae*—b	472 ha (1,168 ac)	123 ha (305 ac)		595 ha (1,473 ac)
Oahu 20—*Labordia cyrtandrae*—c	205 ha (508 ac)	412 ha (1,017 ac)		617 ha (1,525 ac)
Oahu 4—*Lepidium arbuscula*—a	330 ha (813 ac)			330 ha (813 ac)
Oahu 15—*Lepidium arbuscula*—b	38 ha (94 ac)	6 ha (16 ac)	74 ha (183 ac)	118 ha (293 ac)
Oahu 15—*Lepidium arbuscula*—c	38 ha (93 ac)		61 ha (151 ha)	99 ha (244 ac)
Oahu 4—*Lipochaeta lobata* var. *leptophylla*—a.	139 ha (345 ac)			139 ha (345 ac)
Oahu 15—*Lipochaeta lobata* var. *leptophylla*—b.	207 ha (514 ac)	53 ha (131 ac)	274 ha (676 ac)	534 ha (1,321 ac)
Oahu 4—*Lipochaeta tenuifolia*—a	23 ha (57 ac)			23 ha (57 ac)
Oahu 4—*Lipochaeta tenuifolia*—b	66 ha (167 ac)			66 ha (167 ac)
Oahu 4—*Lipochaeta tenuifolia*—c	118 ha (292 ac)			118 ha (292 ac)
Oahu 20—*Lobelia guadichaudii* ssp. *koolauensis*—a.	371 ha (915 ac)	458 ha (1,132 ac)	97 ha (241 ac)	926 ha (2,288 ac)
Oahu 30—*Lobelia monostachya*—a	48 ha (118 ac)	11 ha (32 ac)		59 ha (150 ac)
Oahu 22—*Lobelia monostachya*—b	1 ha 2 (ac)	46 ha (113 ac)		47 ha (115 ac)
Oahu 33—*Lobelia monostachya*—c	70 ha (173 ac)	<1 ha (1 ac)		70 ha (174 ac)
Oahu 35—*Lobelia monostachya*—d	123 ha (303 ac)	367 ha (906 ac)	3 ha (8 ac)	493 ha (1,217 ac)
Oahu 4—*Lobelia niihauensis*—a	44 ha (108 ac)			44 ha (108 ac)
Oahu 17—*Lobelia niihauensis*—b	41 ha (102 ac)			41 ha (102 ac)
Oahu 20—*Lobelia oahuensis*—a	204 ha (504 ac)	240 ha (593 ac)	46 ha (114 ac)	490 ha (1,211 ac)
Oahu 35—*Lobelia oahuensis*—b	139 ha (342 ac)	13 ha (32 ac)		152 ha (374 ac)
Oahu 20—*Lysimachia filifolia*—a	992 ha (2,450 ac)	512 ha (1,263 ac)	8 ha (21 ac)	1,512 ha (3,734 ac)
Oahu 4—*Mariscus pennatiformis*—a	166 ha (410 ac)			166 ha (410 ac)
Oahu 4—*Mariscus pennatiformis*—b	171 ha (421 ac)			171 ha (421 ac)
Oahu 13—*Marsilea villosa*—a			10 ha (25 ac)	10 ha (25 ac)
Oahu 14—*Marsilea villosa*—b			7 ha (18 ac)	7 ha (18 ac)
Oahu 28—*Marsilea villosa*—c	7 ha (18 ac)			7 ha (18 ac)
Oahu 29—*Marsilea villosa*—d	5 ha (11 ac)			5 ha (11 ac)
Oahu 36—*Marsilea villosa*—e	6 ha (14 ac)			6 ha (14 ac)
Oahu 20—*Melicope lydgatei*—a	351 ha (864 ac)	2,613 ha (6,458 ac)	535 ha (1,323 ac)	3,499 ha (8,645 ac)
Oahu 4—*Melicope pallida*—a	846 ha (2,089 ac)	9 ha (21 ac)		855 ha (2,110 ac)
Oahu 15—*Melicope pallida*—b		174 ha (431 ac)		174 ha (431 ac)
Oahu 15—*Melicope pallida*—c	2 ha (5 ac)		27 ha (66 ac)	29 ha (71 ac)
Oahu 15—*Melicope pallida*—d	10 ha (25 ac)		10 ha (26 ac)	20 ha (51 ac)
Oahu 15—*Melicope pallida*—e		243 ha (602 ac)		243 ha (602 ac)
Oahu 15—*Melicope saint-johnii*—a	2 ha (6 ac)	242 ha (598 ac)	<1 ha (<1 ac)	244 ha (604 ac)
Oahu 15—*Melicope saint-johnii*—b	28 ha (69 ac)	149 ha (368 ac)	37 ha (92 ac)	214 ha (529 ac)
Oahu 20—*Myrsine juddii*—a	386 ha (954 ac)	291 ha (719 ac)	273 ha (674 ac)	950 ha (2,347 ac)
Oahu 3—*Neraudia angulata*—a	39 ha (97 ac)			39 ha (97 ac)
Oahu 4—*Neraudia angulata*—b	83 ha (205 ac)	7 ha (17 ac)		90 ha (222 ac)

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, OAHU, CITY AND COUNTY OF HONOLULU, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Oahu 4—*Neraudia angulata*—c	298 ha (736 ac)			298 ha (736 ac)
Oahu 4—*Neraudia angulata*—d	33 ha (81 ac)			33 ha (81 ac)
Oahu 4—*Neraudia angulata*—e	40 ha (98 ac)			40 ha (98 ac)
Oahu 15—*Neraudia angulata*—f	17 ha (44 ac)		66 ha (163 ac)	83 ha (207 ac)
Oahu 3—*Nototrichium humile*—a	20 ha (51 ac)			20 ha (51 ac)
Oahu 4—*Nototrichium humile*—b	168 ha (416 ac)	61 ha (152 ac)		229 ha (568 ac)
Oahu 4—*Nototrichium humile*—c	55 ha (138 ac)	181 ha (448 ac)		236 ha (586 ac)
Oahu 4—*Nototrichium humile*—d	30 ha (75 ac)			30 ha (75 ac)
Oahu 4—*Peucedanum sandwicense*—a	76 ha (186 ac)			76 ha (186 ac)
Oahu 20—*Phlegmariurus nutans*—a	713 ha (1,762 ac)	514 ha (1,269 ac)	398 ha (983 ac)	1,625 ha (4,014 ac)
Oahu 4—*Phyllostegia hirsuta*—a	113 ha (282 ac)			113 ha (282 ac)
Oahu 15—*Phyllostegia hirsuta*—b	1 ha (2 ac)	130 ha (322 ac)	<1 ha (<1 ac)	131 ha (324 ac)
Oahu 15—*Phyllostegia hirsuta*—c		69 ha (171 ac)		69 ha (171 ac)
Oahu 20—*Phyllostegia hirsuta*—d	719 ha (1,777 ac)	285 ha (706 ac)		1,004 ha (2,483 ac)
Oahu 4—*Phyllostegia kaalaensis*—a	57 ha (141 ac)			57 ha (141 ac)
Oahu 4—*Phyllostegia kaalaensis*—b	589 ha (1,456 ac)			589 ha (1,456 ac)
Oahu 4—*Phyllostegia kaalaensis*—c	119 ha (295 ac)	3 ha (9 ac)		122 ha (304 ac)
Oahu 4—*Phyllostegia kaalaensis*—d	28 ha (69 ac)			28 ha (69 ac)
Oahu 4—Phyllostegia kaalaensis—e	16 ha (39 ac)			16 ha (39 ac)
Oahu 15—*Phyllostegia kaalaensis*—f		30 ha (74 ac)		30 ha (74 ac)
Oahu 15—*Phyllostegia mollis*—a		152 ha (376 ac)		152 ha (376 ac)
Oahu 15—*Phyllostegia mollis*—b		85 ha (210 ac)		85 ha (210 ac)
Oahu 15—*Phyllostegia parviflora*—a		70 ha (173 ac)		70 ha (173 ac)
Oahu 15—*Phyllostegia parviflora*—b		21 ha (51 ac)		21 ha (51 ac)
Oahu 15—*Phyllostegia parviflora*—c		69 ha (171 ac)		69 ha (171 ac)
Oahu 20—*Phyllostegia parviflora*—d	806 ha (1,992 ac)	436 ha (1,078 ac)	188 ha (463 ac)	1,430 ha (3,533 ac)
Oahu 4—*Plantago princeps*—a	15 ha (37 ac)			15 ha (37 ac)
Oahu 4—*Plantago princeps*—b	52 ha (131 ac)			52 ha (131 ac)
Oahu 15—*Plantago princeps*—c		63 ha (157 ac)		63 ha (157 ac)
Oahu 20—*Plantago princeps*—d	99 ha (246 ac)	733 ha (1,810 ac)	160 ha (394 ac)	992 ha (2,450 ac)
Oahu 20—*Plantago princeps*—e	194 ha (477 ac)	103 ha (252 ac)		297 ha (729 ac)
Oahu 20—*Platanthera holochila*—a		35 ha (86 ac)		35 ha (86 ac)
Oahu 20—*Platanthera holochila*—b	<1 ha (<1 ac)	4 ha (9 ac)	161 ha (397 ac)	165 ha (407 ac)
Oahu 20—*Pteris lidgatei*—a	847 ha (2,091 ac)	386 ha (953 ac)		1,233 ha (3,044 ac)
Oahu 20—*Pteris lidgatei*—b	153 ha (377 ac)	25 ha (61 ac)	111 ha (273 ac)	289 ha (711 ac)
Oahu 20—*Pteris lidgatei*—c	267 ha (660 ac)	577 ha (1,424 ac)		844 ha (2,084 ac)
Oahu 4—*Sanicula mariversa*—a	7 ha (17 ac)			7 ha (17 ac)
Oahu 4—*Sanicula mariversa*—b	6 ha (15 ac)			6 ha (15 ac)
Oahu 4—*Sanicula mariversa*—c	25 ha (61 ac)			25 ha (61 ac)
Oahu 6—*Sanicula mariversa*—d	3 ha (8 ac)			3 ha (8 ac)
Oahu 15—*Sanicula mariversa*—e		14 ha (34 ac)		14 ha (34 ac)
Oahu 15—*Sanicula mariversa*—f	19 ha (46 ac)	20 ha (49 ac)		39 ha (95 ac)
Oahu 20—*Sanicula purpurea*—a	366 ha (903 ac)	289 ha (715 ac)	46 ha (114 ac)	701 ha (1,732 ac)
Oahu 3—*Schiedea hookeri*—a	22 ha (56 ac)			22 ha (56 ac)
Oahu 4—*Schiedea hookeri*—b	710 ha (1,755 ac)			710 ha (1,755 ac)
Oahu 4—*Schiedea hookeri*—c	248 ha (612 ac)			248 ha (612 ac)
Oahu 4—*Schiedea hookeri*—d	31 ha (78 ac)			31 ha (78 ac)
Oahu 15—*Schiedea hookeri*—e			14 ha (34 ac)	14 ha (34 ac)
Oahu 15—*Schiedea hookeri*—f		10 ha (25 ac)		10 ha (25 ac)
Oahu 15—*Schiedea hookeri*—g	33 ha (81 ac)	<1 ha (<1 ac)	50 ha (123 ac)	83 ha (204 ac)
Oahu 4—*Schiedea kaalae*—a	426 ha (1,051 ac)			426 ha (1,051 ac)
Oahu 15—*Schiedea kaalae*—b		134 ha (331 ac)		134 ha (331 ac)
Oahu 15—*Schiedea kaalae*—c		22 ha (53 ac)		22 ha (53 ac)
Oahu 15—*Schiedea kaalae*—d		39 ha (97 ac)		39 ha (97 ac)
Oahu 20—*Schiedea kaalae*—e	371 ha (915 ac)	8 ha (19 ac)		379 ha (934 ac)
Oahu 21—*Schiedea kaalae*—f	6 ha (15 ac)	99 ha (245 ac)		105 ha (260 ac)
Oahu 1—*Schiedea kealiae*—a	145 ha (357 ac)	49 ha (121 ac)		194 ha (478 ac)
Oahu 4—*Schiedea nuttallii*—a	527 ha (1,304 ac)			527 ha (1,304 ac)
Oahu 15—*Schiedea nuttallii*—b	1 ha (1 ac)	140 ha (346 ac)		141 ha (347 ac)
Oahu 15—*Schiedea nuttallii*—c		41 ha (102 ac)		41 ha (102 ac)
Oahu 1—*Sesbania tomentosa*—a	101 ha (250 ac)	<1 ha (<1 ac)	<1 ha (<1 ac)	101 ha (250 ac)
Oahu 18—*Sesbania tomentosa*—b	5 ha (12 ac)			5 ha (12 ac)
Oahu 4—*Silene lanceolata*—a	113 ha (281 ac)			113 ha (281 ac)
Oahu 15—*Silene perlmanii*—a	29 ha (73 ac)		36 ha (89 ac)	65 ha (162 ac)
Oahu 15—*Silene perlmanii*—b		5 ha (12 ac)		5 ha (12 ac)
Oahu 15—*Silene perlmanii*—c	18 ha (46 ac)		31 ha (78 ac)	49 ha (124 ac)
Oahu 15—*Silene perlmanii*—d		52 ha (130 ac)		52 ha (130 ac)
Oahu 4—*Solanum sandwicense*—a	104 ha (258 ac)			104 ha (258 ac)
Oahu 15—*Solanum sandwicense*—b	<1 ha (<1 ac)	146 ha (361 ac)		146 ha (361 ac)
Oahu 15—*Solanum sandwicense*—c	<1 ha (<1 ac)	78 ha (192 ac)		78 ha (192 ac)
Oahu 5—*Spermolepis hawaiiensis*—a	20 ha (51 ac)	1 ha (2 ac)		21 ha (53 ac)

TABLE 3.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, OAHU, CITY AND COUNTY OF HONOLULU, HAWAII [1]—Continued

Unit name	State/local	Private	Federal	Total
Oahu 31—*Spermolepis hawaiiensis*—b	116 ha (286 ac)			116 ha (286 ac)
Oahu 15—*Stenogyne kanehoana*—a	1 ha (2 ac)	138 ha (342 ac)	1 ha (3 ac)	140 ha (347 ac)
Oahu 15—*Stenogyne kanehoana*—b	1 ha (2 ac)	42 ha (105 ac)		43 ha (107 ac)
Oahu 4—*Tetramolopium filiforme*—a	111 ha (273 ac)			111 ha (273 ac)
Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—a.	167 ha (413 ac)			167 ha (413 ac)
Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—b.	23 ha (56 ac)			23 ha (56 ac)
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—c.			11 ha (28 ac)	11 ha (28 ac)
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d.	34 ha (84 ac)	12 ha (29 ac)	48 ha (120 ac)	94 ha (233 ac)
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e.	<1 ha (1 ac)	1 ha (2 ac)		1 ha (3 ac)
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—f.	37 ha (92 ac)	182 ha (450 ac)	40 ha (99 ac)	259 ha (641 ac)
Oahu 20—*Tetraplasandra gymnocarpa*—a	454 ha (1,122 ac)	3 ha (7 ac)		457 ha (1,129 ac)
Oahu 20—*Tetraplasandra gymnocarpa*—b	71 ha (175 ac)	32 ha (79 ac)	132 ha (327 ac)	235 ha (581 ac)
Oahu 20—*Tetraplasandra gymnocarpa*—c	119 ha (295 ac)	292 ha (723 ac)		411 ha (1,018 ac)
Oahu 20—*Tetraplasandra gymnocarpa*—d	121 ha (299 ac)	231 ha (571 ac)	10 ha (24 ac)	362 ha (894 ac)
Oahu 35—*Tetraplasandra gymnocarpa*—e	152 ha (377 ac)			152 ha (377 ac)
Oahu 35—*Tetraplasnadra gymnocarpa*—f	131 ha (323 ac)	82 ha (205 ac)		213 ha (528 ac)
Oahu 20—*Trematolobelia singularis*—a	58 ha (147 ac)	27 ha (69 ac)	1 ha (3 ac)	86 ha (219 ac)
Oahu 20—*Trematolobelia singularis*—b	1 ha (3 ac)	9 ha (22 ac)	<1 ha (1 ac)	10 ha (26 ac)
Oahu 34—*Trematolobelia singularis*—c	<1 ha (1 ac)	2 ha (4 ac)		2 ha (5 ac)
Oahu 35—*Trematolobelia singularis*—d	13 ha (33 ac)			13 ha (33 ac)
Oahu 35—*Trematolobelia singularis*—e	23 ha (56 ac)	3 ha (8 ac)		26 ha (64 ac)
Oahu 4—*Urera kaalae*—a	53 ha (133 ac)			53 ha (133 ac)
Oahu 4—*Urera kaalae*—b	17 ha (43 ac)			17 ha (43 ac)
Oahu 15—*Urera kaalae*—c		224 ha (555 ac)	<1 ha (<1 ac)	224 ha (555 ac)
Oahu 15—*Urera kaalae*—d		35 ha (87 ac)		35 ha (87 ac)
Oahu 15—*Urera kaalae*—e	13 ha (31 ac)		38 ha (94 ac)	51 ha (125 ac)
Oahu 15—*Urera kaalae*—f	2 ha (5 ac)	80 ha (197 ac)		82 ha (202 ac)
Oahu 1—*Vigna o-wahuensis*—a	180 ha (447 ac)			180 ha (447 ac)
Oahu 24—*Vigna o-wahuensis*—b	4 ha (12 ac)			4 ha (12 ac)
Oahu 25—*Vigna o-wahuensis*—c	4 ha (9 ac)			4 ha (9 ac)
Oahu 26—*Vigna o-wahuensis*—d	26 ha (63 ac)			26 ha (63 ac)
Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—a.	199 ha (491 ac)			199 ha (491 ac)
Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b.	10 ha (25 ac)			10 ha (25 ac)
Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c.	22 ha (55 ac)			22 ha (55 ac)
Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d.			6 ha (15 ac)	6 ha (15 ac)
Oahu15—*Viola chamissoniana* ssp. *chamissoniana*—e.			13 ha (31 ac)	13 ha (31 ac)
Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—f.		11 ha (28 ac)	18 ha (44 ac)	29 ha (72 ac)
Oahu 20—*Viola oahuensis*—a	402 ha (994 ac)	373 ha (923 ac)	125 ha (308 ac)	900 ha (2,225 ac)
Oahu 35—*Viola oahuensis*—b	74 ha (186 ac)			74 ha (186 ac)
Grand Total *	9,035 ha (22,326 ac)	10,985 ha (27,143 ac)	2,254 ha (5,571 ac)	2,274 ha (55,040 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.
* Totals take into consideration overlapping individual species units.

TABLE 4.—APPROXIMATE FINAL CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA

Area considered essential	33,179 ha 81,987 ac
Area not included because of species management or protection/Area excluded under4(b)(2).	10,905 ha 26,946 ac
Final Critical Habitat	22,274 ha 55,040 ac

Critical habitat includes habitat for these 99 species primarily in the upland portions of Oahu, as well as some coastal and off-shore lands. Lands designated as critical habitat have been divided into a total of 304 units. A brief description of each unit is presented below.

Oahu 4—*Abutilon sandwicense*—a

This unit is critical habitat for *Abutilon sandwicense* and is 604 ha (1,492 ac) on State (Mokuleia Forest Reserve and Kaala NAR) and private land, containing a portion of Dupont Trail. This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *Abutilon sandwicense* and is currently occupied by 56 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or gulches in dry to mesic lowland forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Abutilon sandwicense*—b

This unit is critical habitat for *Abutilon sandwicense* and is 26 ha (65 ac) on State land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Abutilon sandwicense* and is currently occupied by 40 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or gulches in dry to mesic lowland forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Abutilon sandwicense*—c

This unit is critical habitat for *Abutilon sandwicense* and is 41 ha (102 ac) on State land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Abutilon sandwicense* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or gulches in dry to mesic lowland forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Abutilon sandwicense*—d

This unit is critical habitat for *Abutilon sandwicense* and is 49 ha (121 ac) on Federal land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Abutilon sandwicense* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or gulches in dry to mesic lowland forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Abutilon sandwicense*—e

This unit is critical habitat for *Abutilon sandwicense* and is 33 ha (81 ac) on State and Federal land (Lualualei Naval Reservation). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Abutilon sandwicense* and is currently occupied by 7 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or gulches in dry to mesic lowland forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 17—*Abutilon sandwicense*—f

This unit is critical habitat for *Abutilon sandwicense* and is 30 ha (74 ac) on State land (Nanakuli Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Abutilon sandwicense* and is currently occupied by 115 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or gulches in dry to mesic lowland forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Adenophorus periens*—a

This unit is critical habitat for *Adenophorus periens* and is 711 ha (1,759 ac) on State (Kaipapau Forest Reserve, Hauula Forest Reserve, Sacred Falls State Park , and Kahana Valley State Park) and private land. This unit contains portions of the Summit Trail and Puu Pauao Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is essential to the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, tree trunks in *Metrosideros polymorpha* or *Metrosideros rugosa* wet forests. This unit is geographically separated from critical habitat designated on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Alectryon macrococcus*—a

This is critical habitat for *Alectryon macrococcus* and is 23 ha (58 ac) on State land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Alectryon macrococcus* and is currently occupied by 78 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, ridges, or gulches within mesic lowland forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui for

this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Alectryon macrococcus*—b

This is critical habitat for *Alectryon macrococcus* and is 112 ha (278 ac) on private (Honouliuli Preserve) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Alectryon macrococcus* and is currently occupied by 83 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is essential for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, ridges, or gulches within mesic lowland forests. This unit provides for one population within this multi-island species' historical range on Oahu that is geographically separated from critical habitat designated on Oahu and other islands for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Alsinidendron obovatum*—a

This is critical habitat for *Alsinidendron obovatum* and is 176 ha (436 ac) on State land (Mokuleia Forest Reserve and Pahole NAR). This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron obovatum* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* and *Metrosideros polymorpha*. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Alsinidendron obovatum*—b

This is critical habitat for *Alsinidendron obovatum* and is 25 ha (62 ac) on State land (Waianae Kai Forest Reserve). This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron obovatum* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* and *Metrosideros polymorpha*. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Alsinidendron obovatum*—c

This is critical habitat for *Alsinidendron obovatum* and is 32 ha (76 ac) on Federal and State land (Nanakuli Forest Reserve), containing a portion of Palikea Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron obovatum* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* and *Metrosideros polymorpha*. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Alsinidendron trinerve*—a

This unit is critical habitat for *Alsinidedron trinerve* and is 60 ha (149 ac) on State land (Mokuleia Forest Reserve, Waianae Kai Forest Reserve, and Kaala NAR), containing a portion of Kaala Summit. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Alsinidedron trinerve* and is currently occupied by 10 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in wet forest or the wetter portions of diverse mesic forest dominated by *Metrosideros polymorpha* or *Ilex anomala* and *Metrosideros polymorpha* montane wet forest. We do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species. However, we have identified habitat for an additional three populations on Army lands at Schofield Barracks Military Reservation (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 2—*Bonamia menziesii*—a

This unit is critical habitat for *Bonamia menziesii* and is 21 ha (51 ac) on State land (Kaena Point State Park). This unit, in combination with unit Oahu 3—*Bonamia menziesii*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or level ground in dry or mesic forest in open or closed canopy. This unit, together with unit Oahu 3—*Bonamia menziesii*—b, is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 3—*Bonamia menziesii*—b

This unit is critical habitat for *Bonamia menziesii* and is 42 ha (104 ac) on State land (Kaena Point State Park and Kuaokala Forest Reserve). This unit, in combination with unit Oahu 2—*Bonamia menziesii*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied by 18 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or level ground in dry or mesic forest in open or closed canopy. This unit, together with units Oahu 2—*Bonamia menziesii*—a, is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Bonamia menziesii*—c

This unit is critical habitat for *Bonamia menziesii* and is 94 ha (233 ac) on State (Mokuleia Forest Reserve) and private land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied by 5 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or level ground in dry or mesic forest in open or closed canopy. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 17—*Bonamia menziesii*—d

This unit is critical habitat for *Bonamia menziesii* and is 77 ha (191 ac) on State land (Nanakuli Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or level ground in dry or mesic forest in open or closed canopy. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 35—*Bonamia menziesii*—e

This unit is critical habitat for *Bonamia menziesii* and is 374 ha (924 ac) on State (Honolulu Watershed Forest Reserve) and private land. This unit contains a portion of Kulepiamoa Ridge and Laulaupoe Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied by 5 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or level ground in dry or mesic forest in open or closed canopy. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Cenchrus agrimonioides*—a

This unit is critical habitat for *Cenchrus agrimonioides* and is 529 ha (1,306 ac) on State land (Mokuleia Forest Reserve, and Pahole and Kaala NAR). This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Cenchrus agrimonioides* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry ridges or upper slopes or ridges in lowland mixed mesic forest. It provides habitat for the westernmost range of the species. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Cenchrus agrimonioides*—b

This unit is critical habitat for *Cenchrus agrimonioides* and is 40 ha (99 ac) on State land (Waianae Kai Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cenchrus agrimonioides* and is currently occupied by 9 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry ridges or upper slopes or ridges in lowland mixed mesic forest. It provides habitat for the westernmost range of the species. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Cenchrus agrimonioides*—c

This unit is critical habitat for *Cenchrus agrimonioides* and is 200 ha (495 ac) on private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cenchrus agrimonioides* and is currently occupied by 45 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry ridges or upper slopes or ridges in lowland mixed mesic forest. It provides habitat for the westernmost range of the species. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Cenchrus agrimonioides*—d

This unit is critical habitat for *Cenchrus agrimonioides* and is 117 ha (290 ac) on private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cenchrus agrimonioides*

and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry ridges or upper slopes or ridges in lowland mixed mesic forest. It provides habitat for the westernmost range of the species. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 1—*Centaurium sebaeoides*—a

This unit is critical habitat for *Centaurium sebaeoides* and is 61 ha (149 ac) on State (Kaena Point NAR), private, and Federal land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Centaurium sebaeoides* and is currently occupied by one plant. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, volcanic or clay soils or cliffs in arid coastal areas or on coral plains. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 27—*Centaurium sebaeoides*—b

This unit is critical habitat for *Centaurium sebaeoides* and is 30 ha (74 ac) on State land, containing a portion of the eastern flank of Koko Head Crater. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Centaurium sebaeoides* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, volcanic or clay soils or cliffs in arid coastal areas or on coral plains. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 1—*Chamaesyce celastroides* var. *kaenana*—a

This unit is critical habitat for *Chamaesyce celastroides* var. *kaenana* and is 233 ha (571 ac) on State land (Kaena Point State Park). This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce celastroides* and is currently occupied by 543 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward talus slopes, leeward rocky cliffs, open grassy slopes, or vegetated cliff faces in coastal dry shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 3—*Chamaesyce celastroides* var. *kaenana*—b

This unit is critical habitat for *Chamaesyce celastroides* var. *kaenana* and is 4 ha (11 ac) on State land (Kaena Point State Park and Kuaokala Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce celastroides* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward talus slopes, leeward rocky cliffs, open grassy slopes, or vegetated cliff faces in coastal dry shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Chamaesyce celastroides* var. *kaenana*—c

This unit is critical habitat for *Chamaesyce celastroides* var. *kaenana* and is 43 ha (107 ac) on State land (Waianae Kai Forest Reserve). This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce celastroides* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward talus slopes, leeward rocky cliffs, open grassy slopes, or vegetated cliff faces in coastal dry shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 5—*Chamaesyce celastroides* var. *kaenana*—d

This unit is critical habitat for *Chamaesyce celastroides* var. *kaenana* and is 36 ha (89 ac) on State and private land, containing a portion of Ohikilolo Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce celastroides* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded gulch bottoms and slopes in mesic *Acacia koa-Metrosideros polymorpha* lowland forests or diverse mesic forests. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Chamaesyce deppeana*—a

This unit is critical habitat for *Chamaesyce deppeana* and is 17 ha (41 ac) on State and private land, containing a portion of the Wilson Tunnel. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce deppeana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward-facing ridge crests, cliff faces, and mixed native cliffs. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Chamaesyce celastroides* var. *kaenana*—e

This unit is critical habitat for *Chamaesyce celastroides* var. *kaenana* and is 238 ha (587 ac) on State and private land. This unit contains a portion of Hawaii Loa Ridge, Kupaua Valley, Kuleplamoa Ridge, and Pia Valley. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce celastroides* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward talus slopes, leeward rocky cliffs, open grassy slopes, or vegetated cliff faces in coastal dry shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Chamaesyce deppeana*—a

This unit is critical habitat for *Chamaesyce deppeana* and is 17 ha (41 ac) on State and private land, containing a portion of the Wilson Tunnel. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce deppeana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward-facing ridge crests, cliff faces, and mixed native cliffs. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Chamaesyce deppeana*—b

This unit is critical habitat for *Chamaesyce deppeana* and is 18 ha (46 ac) on State (Honolulu Watershed Forest Reserve) and private land, containing a portion of Nuuanu Pali. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce deppeana* and is currently occupied by 50 individuals. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward-facing ridge crests, cliff faces, and mixed native cliffs. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Chamaesyce herbstii*—a

This unit is critical habitat for *Chamaesyce herbstii* and is 429 ha (1,059 ac) on State land (Mokuleia Forest Reserve and Pahole NAR). This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce herbstii* and is currently occupied by 60 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded gulch bottoms and slopes in mesic *Acacia koa-Metrosideros polymorpha* lowland forests or diverse mesic forests. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Chamaesyce herbstii*—b

This unit is critical habitat for *Chamaesyce herbstii* and is 47 ha (116 ac) on private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce herbstii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded gulch bottoms and slopes in mesic *Acacia koa-Metrosideros polymorpha* lowland forests or diverse mesic forests. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Chamaesyce herbstii*—c

This unit is critical habitat for *Chamaesyce herbstii* and is 21 ha (53 ac) on private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce herbstii* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shaded gulch bottoms and slopes in mesic *Acacia koa-Metrosideros polymorpha* lowland forests or diverse mesic forests. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 9—*Chamaesyce kuwaleana*—a

This unit is critical habitat for *Chamaesyce kuwaleana* and is 27 ha (53 ac) on Federal land (Lualualei Naval Reservation), containing a portion of Mauna Kuwale. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce*

kuwaleana and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 11—*Chamaesyce kuwaleana*—b

This unit is critical habitat for *Chamaesyce kuwaleana* and is 53 ha (130 ac) on Federal (Lualualei Naval Reservation) and State land (Waianae Kai Forest Reserve), containing a portion of Kauaopuu Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce kuwaleana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 12—*Chamaesyce kuwaleana*—c

This unit is critical habitat for *Chamaesyce kuwaleana* and is 37 ha (92 ac) on State land, containing a portion of Puu Kailio. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce kuwaleana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Chamaesyce kuwaleana*—d

This unit is critical habitat for *Chamaesyce kuwaleana* and is 184 ha (454 ac) on State and private land, containing a portion of Puu Heleakala. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce kuwaleana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 22—*Chamaesyce kuwaleana*—e

This unit is critical habitat for *Chamaesyce kuwaleana* and is 1 ha (3 ac) on State land (Moku Manu Island State Seabird Sanctuary). This unit, in combination with unit Oahu 23—*Chamaesyce kuwaleana*—f, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce kuwaleana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. This unit, together with unit 23—*Chamaesyce kuwaleana*—f, provides for one population within this island-endemic species' historical range on Oahu. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 23—*Chamaesyce kuwaleana*—f

This unit is critical habitat for *Chamaesyce kuwaleana* and is 6 ha (15 ac) on State land (Moku Manu Island State Seabird Sanctuary). This unit, in combination with unit Oahu 22—*Chamaesyce kuwaleana*—e, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce kuwaleana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. This unit, together with unit 22—*Chamaesyce kuwaleana*—e, provides for one population within this island-endemic species' historical range on Oahu. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species., this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 26—*Chamaesyce kuwaleana*—g

This unit is critical habitat for *Chamaesyce kuwaleana* and is 26 ha (63 ac) on State land (Manana Island State Seabird Sanctuary), containing a portion of Manana Island. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce kuwaleana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other six units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Chamaesyce rockii*—a

This unit is critical habitat for *Chamaesyce rockii* and is 826 ha (2,039 ac) on Federal (Oahu Forest National Wildlife Refuge), private, and State land (Kaipapau Forest Reserve, Hauula Forest Reserve, Sacred Falls State Park, Kahana Valley State Park, and Ewa Forest Reserve). This unit contains a portion of Puu Kainapuaa, Koolau Summit Trail, Puu Pauao, and Puu Kaaumakua. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce rockii* and is currently occupied by 563 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present populations. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest and shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Chamaesyce rockii*—b

This unit is critical habitat for *Chamaesyce rockii* and is 197 ha (487 ac) on private and State land (Kahana Valley State Park), containing Puu Kaaumakua. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce rockii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest and shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Chamaesyce rockii*—c

This unit is critical habitat for *Chamaesyce rockii* and is 258 ha (639 ac) on State (Ewa Forest Reserve) and private land, containing a portion of Eleao Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce rockii* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest and shrubland. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Colubrina oppositifolia*—a

This unit is critical habitat for *Colubrina oppositifolia* and is 782 ha (1,935 ac) on private and State land (Mokuleia Forest Reserve and Kaala and Pahole NARs), containing a portion of Dupont Trail. This unit provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived *Colubrina oppositifolia* and is currently occupied by 53 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry or mesic forests dominated by *Diospyros sandwicensis*. It provides habitat for the westernmost range of the species. This unit provides is geographically separated from critical habitat designated on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Ctenitis squamigera*—a

This unit is critical habitat for *Ctenitis squamigera* and is 120 ha (297 ac) on State land (Mokuleia Forest Reserve and Kaala NAR), containing a portion of Dupont Trail. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Colubrina oppositifolia* and is currently occupied by 12 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle to steep slopes in *Metrosideros polymorpha-Diospyros sandwicensis* mesic forest or diverse mesic forest. This unit is geographically separated from critical habitat designated on Kauai, Maui, and Molokai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Cyanea acuminata*—a

This unit is critical habitat for *Cyanea acuminata* and is 82 ha (205 ac) on State land (Mokuleia Forest Reserve, Kaala NAR, and Waianae Kai Forest Reserve). This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea acuminata* and is currently occupied by 20 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, ridges, or stream banks in *Metrosideros polymorpha-Dicranopteris linearis* or *Acacia koa-Metrosideros polymorpha* wet or mesic forest or shrubland, or *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea acuminata*—b

This unit is critical habitat for *Cyanea acuminata* and is 2,522 ha (6,231 ac) on private and State land (Hauula Forest Reserve, Sacred Falls State Park, Kahana Valley State Park, Kaipapau Forest Reserve, and Waiahole Forest Reserve). This unit contains a portion of Castle Trail, Koolau Summit Trail, Puu Pauao, Puu Kaaumakua, Kipapa Trail, and Eleao Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea acuminata* and is currently occupied by 30 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, ridges, or stream banks in *Metrosideros polymorpha-Dicranopteris linearis* or *Acacia koa-Metrosideros polymorpha* wet or mesic forest or shrubland, or *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea crispa*—a

This unit is critical habitat for *Cyanea crispa* and is 1,831 ha (4,525 ac) on private and State land (Hauula Forest Reserve, Sacred Falls State Park, and Kaipapau Forest Reserve). This unit contains Sacred Falls and a portion of Castle Trail. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea crispa* and is currently occupied by 11 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, moist gullies, or stream banks in open mesic forests or closed wet forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea crispa*—b

This unit is critical habitat for *Cyanea crispa* and is 3,860 ha (9,529 ac) on private, Federal, and State land (Waiahole Forest Reserve, Kaneohe Forest Reserve, Keaiwa Heiau State Recreation Area, and Fort Shafter). This unit contains a portion of Aiea Loop Trail, Halawa Trail, Luluku Tunnel, Puu Kahuauli, Puu Kawipoo, Puu Keahiakahoe, and Puu Uau. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea crispa* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, moist gullies, or stream banks in open mesic forests or closed wet forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 21—*Cyanea crispa*—c

This unit is critical habitat for *Cyanea crispa* and is 302 ha (747 ac) on private and State land (Kahana Valley State Park), containing a portion of Hidden Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea crispa* and is currently occupied by 13 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, moist gullies, or stream banks in open mesic forests or closed wet forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Cyanea crispa*—d

This unit is critical habitat for *Cyanea crispa* and is 1,336 ha (3,301 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit contains a portion of Kaau Crater, Kainawaaunui Summit, Konahuanui Summit, Manoa Falls, Manoa Tunnel, Mount Olympus, Palikea Summit, Puu Lanipo, and Waaloa Spring. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea crispa* and is currently occupied by 27 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, moist gullies, or stream banks in open mesic forests or closed wet forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea grimesiana* ssp. *grimesiana*—a

This unit is critical habitat for *Cyanea grimesiana* ssp. *grimesiana* and is 2,634 ha (6,506 ac) on State (Ewa Forest Reserve and Keaiwa Heiau State Recreation Area) and private land. This unit contains a portion of Aiea Loop Trail, Puu Kawipoo, Puu Uau, and Waimano Trail. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *grimesiana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky or steep slopes of stream banks in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*. It provides habitat for the westernmost range of the species. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 35—*Cyanea grimesiana* ssp. *grimesiana*—b

This unit is critical habitat for *Cyanea grimesiana* ssp. *grimesiana* and is 330 ha (814 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *grimesiana* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky or steep slopes of stream banks in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*. It provides habitat for the westernmost range of the species. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Cyanea grimesiana* ssp. *obatae*—a

This unit is critical habitat for *Cyanea grimesiana* ssp. *obatae* and is 523 ha (1,289 ac) on State land (Mokuleia Forest Reserve and Pahole NAR). This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *obatae* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, moist, shaded slopes in diverse mesic to wet lowland forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Cyanea grimesiana* ssp. *obatae*—b

This unit is critical habitat for *Cyanea grimesiana* ssp. *obatae* and is 185 ha (455 ac) on State, private, and Federal land (Lualualei Naval Reservation). This unit contains a portion of Puu Hapapa and Puu kanehoa. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *obatae* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, moist, shaded slopes in diverse mesic to wet lowland forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Cyanea grimesiana* ssp. *obatae*—c

This unit is critical habitat for *Cyanea grimesiana* ssp. *obatae* and is 34 ha (84 ac) on private land (Honouliuli Preserve). This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *obatae* and is currently occupied by three individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, moist, shaded slopes in diverse mesic to wet lowland forests. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Cyanea grimesiana* ssp. *obatae*—d

This unit is critical habitat for *Cyanea grimesiana* ssp. *obatae* and is 83 ha (205 ac) on State and private land (Honouliuli Preserve), containing the Palikea Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea grimesiana* ssp. *obatae* and is currently occupied by 5 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, moist, shaded slopes in diverse mesic to wet lowland forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea humboltiana*—a

This unit is critical habitat for *Cyanea humboltiana* and is 503 ha (1,241 ac) on private and State land (Hauula Forest Reserve, Sacred Falls State Park, and Kaipapau Forest Reserve), containing a portion of the Koolau Summit Trail. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea humboltiana* and is currently occupied by 9 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea humboltiana*—b

This unit is critical habitat for *Cyanea humboltiana* and is 127 ha (315 ac) on private and State land (Ewa Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea humboltiana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea humboltiana*—c

This unit is critical habitat for *Cyanea humboltiana* and is 300 ha (741 ac) on private and State land (Waiahole Forest Reserve), containing a portion of Puu Kawipoo. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea humboltiana* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea humboltiana*—d

This unit is critical habitat for *Cyanea humboltiana* and is 160 ha (393 ac) on private, Federal, and State land (Kaneohe Forest Reserve), containing a portion of Puu Keahiakahoe. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea humboltiana* and is currently occupied by one plant. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Cyanea humboltiana*—e

This unit is critical habitat for *Cyanea humboltiana* and is 538 ha (1,331 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit contains a portion of Kainawaaunui Summit, Konahuanui Summit, Manoa Falls, Mount Olympus, Palikea Summit, and Puu Lanipo. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea humboltiana* and is currently occupied by 21 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea koolauensis*—a

This unit is critical habitat for *Cyanea koolauensis* and is 468 ha (1,157 ac) on private and State land (Sacred Falls State Park, Kaipapau Forest Reserve, and Kahuku Forest Reserve). This unit contains a portion of Kawailoa Trail, Puu Kainapuaa, and Koolau Summit Trail. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyaned koolauensis* and is currently occupied by 46 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea koolauensis*—b

This unit is critical habitat for *Cyanea koolauensis* and is 322 ha (799 ac) on private and State land (Ewa Forest Reserve and Waiahole Forest Reserve), containing a portion of Eleao Summit. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea koolauensis* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, stream banks, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest or shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Cyanea koolauensis*—c

This unit is critical habitat for *Cyanea koolauensis* and is 209 ha (517 ac) on State land (Honolulu Watershed Forest Reserve). This unit contains a portion of Konahuanui Summit and Manoa Falls. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea koolauensis* and is currently occupied by 10 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, stream banks, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest or shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Cyanea koolauensis*—d

This unit is critical habitat for *Cyanea koolauensis* and is 312 ha (770 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit contains a portion of Kaau Crater, Kainawaaunui Summit, Palikea Summit, and Puu Lanipo. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea koolauensis* and is currently occupied by seven individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes, stream banks, and

ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest or shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Cyanea longiflora*—a

This unit is critical habitat for *Cyanea longiflora* and is 362 ha (894 ac) on State land (Mokuleia Forest Reserve and Pahole Kaala NARs). This unit contains a portion of Kamaohanui Summit. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea longiflora* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, bases of cliffs, or ridge crests in mesic *Acacia koa-Metrosideros polymorpha* lowland forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Cyanea longiflora*—b

This unit is critical habitat for *Cyanea longiflora* and is 61 ha (150 ac) on State land (Waianae Kai Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea longiflora* and is currently occupied by 15 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, bases of cliffs, or ridge crests in mesic *Acacia koa-Metrosideros polymorpha* lowland forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 19—*Cyanea longiflora*—c

This unit is critical habitat for *Cyanea longiflora* and is 324 ha (801 ac) on private and State land (Pupukea-Paumalu Forest Reserve). This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea longiflora* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, bases of cliffs, or ridge crests in mesic *Acacia koa-Metrosideros polymorpha* lowland forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Cyanea pinnatifida*—a

This unit is critical habitat for *Cyanea pinnatifida* and is 154 ha (380 ac) on private land (Honouliuli Preserve). This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea pinnatifida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, wet, rocky slopes in diverse mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Cyanea pinnatifida*—b

This unit is critical habitat for *Cyanea pinnatifida* and is 42 ha (104 ac) on private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea pinnatifida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, wet, rocky slopes in diverse mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Cyanea pinnatifida*—c

This unit is critical habitat for *Cyanea pinnatifida* and is 129 ha (318 ac) on State and private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea pinnatifida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, wet, rocky slopes in diverse mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea st.-johnii*—a

This unit is critical habitat for *Cyanea st.-johnii* and is 697 ha (1,723 ac) on private, Federal (Oahu Forest National Wildlife Refuge), and State land (Hauula Forest Reserve, Sacred Falls State Park, Kahana Valley State Park, and Waiahole Forest Reserve). This unit contains a portion of Eleao Summit, Puu Kaaumakua Summit, and Puu Pauao Summit. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea st.-johnii* and is currently occupied by 44 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, windswept slopes and

ridges in *Metrosideros polymorpha* mixed lowland shrubland or *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Cyanea st.-johnii*—b

This unit is critical habitat for *Cyanea st.-johnii* and is 135 ha (334 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit contains a portion of Kainawaaunui Summit, Konahuanui Summit, Mount Olympus, Palikea Summit, and Puu Lanipo Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea st.-johnii* and is currently occupied by 12 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, windswept slopes and ridges in *Metrosideros polymorpha* mixed lowland shrubland or *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Cyanea superba*—a

This unit is critical habitat for *Cyanea superba* and is 303 ha (747 ac) on State land (Mokuleia Forest Reserve and Pahole NAR). This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea superba* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sloping terrain on well drained rocky substrate within mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Cyanea superba*—b

This unit is critical habitat for *Cyanea superba* and is 115 ha (286 ac) on State land (Mokuleia Forest Reserve and Pahole NAR). This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea superba* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sloping terrain on well drained rocky substrate within mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Cyanea superba*—c

This unit is critical habitat for *Cyanea superba* and is 184 ha (456 ac) on private and State land (Mokuleia Forest Reserve and Kaala NAR). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea superba* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sloping terrain on well drained rocky substrate within mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Cyanea superba*—d

This unit is critical habitat for *Cyanea superba* and is 281 ha (697 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea superba* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward slopes and stream banks in mesic to wet forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyanea truncata*—a

This unit is critical habitat for *Cyanea truncata* and is 2,029 ha (5,019 ac) on private and State land (Sacred Falls State Park, Kaipapau Forest Reserve, Hauula Forest Reserve, Kahana Valley State Park, and Waiahole Forest Reserve). This unit contains a portion of Castle Trail, Puu Pauao, Sacred Falls, Sacred Falls Trail, and Waiahole Ditch Tunnel. This unit provides habitat for 9 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea truncata* and is currently occupied by one plant. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward slopes and stream banks in mesic to wet forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 21—*Cyanea truncata*—b

This unit is critical habitat for *Cyanea truncata* and is 210 ha (520 ac) on private and State land (Kahana Valley State Park), containing a portion of Hidden Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea truncata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, windward slopes and stream banks in mesic to wet forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species,

in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 1—*Cyperus trachysanthos*—a

This unit is critical habitat for *Cyperus trachysanthos* and is 78 ha (194 ac) on State land, containing a portion of Kaena Point. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyperus trachysanthos* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonally wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on seepy flats, coastal cliffs, or talus slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Niihau for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 28—*Cyperus trachysanthos*—b

This unit is critical habitat for *Cyperus trachysanthos* and is 8 ha (20 ac) on State land, containing a portion of Nonoula Crater. This unit, in combination with unit Oahu 29—*Cyperus trachysanthos*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyperus trachysanthos* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonally wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on seepy flats, coastal cliffs, or talus slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Niihau for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 29—*Cyperus trachysanthos*—c

This unit is critical habitat for *Cyperus trachysanthos* and is 4 ha (10 ac) on State land, containing a portion of Ihelhelauakea Crater. This unit, in combination with unit Oahu 28—*Cyperus trachysanthos*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyperus trachysanthos* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonally wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on seepy flats, coastal cliffs, or talus slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Niihau for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 36—*Cyperus trachysanthos*—d

This unit is critical habitat for *Cyperus trachysanthos* and is 5 ha (13 ac) on State land (Diamond Head State Park), containing a portion of Diamond Head. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyperus trachysanthos* and is currently occupied by 40 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonally wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on seepy flats, coastal cliffs, or talus slopes. This unit is geographically separated from Army lands at Kawailoa Training Area that provide habitat for five populations of this species, in order to avoid all populations from being destroyed by one naturally occurring catastrophic event (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 35—*Cyrtandra polyantha*—a

This unit is critical habitat for *Cyrtandra polyantha* and is 190 ha (469 ac) on private and State land (Honolulu Watershed Forest Reserve and Kuliouou Forest Reserve), containing a portion of Puu o Kona. This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra polyantha* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches, slopes, stream banks, or ravines in mesic or wet forest. This unit is geographically separated from Army lands at Kawailoa Training Area that provide habitat for five populations of this species, in order to avoid all populations from being destroyed by one naturally occurring catastrophic event (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 35—*Cyrtandra polyantha*—a

This unit is critical habitat for *Cyrtandra polyantha* and is 190 ha (469 ac) on private and State land (Honolulu Watershed Forest Reserve and Kuliouou Forest Reserve), containing a portion of Puu o Kona. This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra polyantha* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges in *Metrosideros polymorpha* mesic or wet forests. We do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species.

Oahu 20—*Cyrtandra subumbellata*—a

This unit is critical habitat for *Cyrtandra subumbellata* and is 829 ha (1,457 ac) on private and State land (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, and Ewa Forest Reserve), containing a portion of Castle Trail, Puu Kaaumakua, and Puu Pauao. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra subumbellata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist slopes or gulch bottoms in wet forest dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha-Dicranopteris linearis-Acacia koa*. Although we do not believe that enough

Oahu 37—*Cyrtandra dentata*—a

This unit is critical habitat for *Cyrtandra dentata* and is 307 ha (758 ac) on State land (Mokuleia Forest Reserve and Pahole NAR. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra dentata* and is currently occupied by 20 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered

habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyrtandra subumbellata*—b

This unit is critical habitat for *Cyrtandra subumbellata* and is 67 ha (167 ac) on State land. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra subumbellata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist slopes or gulch bottoms in wet forest dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha-Dicranopteris linearis-Acacia koa*. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Cyrtandra viridiflora*—a

This unit is critical habitat for *Cyrtandra viridiflora* and is 782 ha (1,932 ac) on private and State land (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, and Ewa Forest Reserve). This unit contains Puu Kaaumakua, Puu Pauao, and portions of the Koolau Summit Trail. This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra viridiflora* and is currently occupied by 33 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist slopes or gulch bottoms in wet forest dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha-Dicranopteris linearis-Acacia koa*.

Oahu 4—*Delissea subcordata*—a

This unit is critical habitat for *Delissea subcordata* and is 764 ha (1,885 ac) on private and State land (Mokuleia Forest Reserve and Pahole and Kaala NARs). This unit contains no named natural features. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea subcordata* and is currently occupied by 4 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes in mixed mesic forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Delissea subcordata*—b

This unit is critical habitat for *Delissea subcordata* and is 220 ha (545 ac) on private land (Honouliuli Preserve). This unit, in combination with unit Oahu 15—*Delissea subcordata*—c, provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea subcordata* and is currently occupied by 9 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes in mixed mesic forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Delissea subcordata*—c

This unit is critical habitat for *Delissea subcordata* and is 32 ha (78 ac) on private land (Honouliuli Preserve). This unit, in combination with unit Oahu 15—*Delissea subcordata*—b, provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea subcordata* and is currently occupied by 3 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes in mixed mesic forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Delissea subcordata*—d

This unit is critical habitat for *Delissea subcordata* and is 81 ha (200 ac) on private land (Honouliuli Preserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Delissea subcordata* and is currently occupied by 3 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes in mixed mesic forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Delissea subcordata*—e

This unit is critical habitat for *Delissea subcordata* and is 292 ha (721 ac) on private and State land (Honouliuli Preserve), containing a portion of Mauumae Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Delissea subcordata* and is currently unoccupied. This unit is essential to the conservation of the species because it includes habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes in mixed mesic forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Delissea subcordata*—f

This unit is critical habitat for *Delissea subcordata* and is 129 ha (317 ac) on State and private land. This unit contains a portion of Kulepiamoa Ridge, Pia Valley, and Kupaua Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Delissea subcordata* and is currently unoccupied. This unit is essential to the conservation of the species because it includes habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes in mixed mesic forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Diellia erecta*—a

This unit is critical habitat for *Diellia erecta* and is 293 ha (731 ac) on private and State land (Honolulu Watershed Forest Reserve). This unit contains a portion of Kulepiamoa Ridge and Laulaupoe Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diellia erecta* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep gulch slopes or sparsely vegetated rock faces in mesic forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Diellia falcata*—a

This unit is critical habitat for *Diellia falcata* and is 59 ha (148 ac) on State land (Pahole NAR and Mokuleia Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diellia falcata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Diellia falcata*—b

This unit is critical habitat for *Diellia falcata* and is 22 ha (54 ac) on State land (Pahole NAR and Mokuleia Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diellia falcata* and is currently occupied by 20 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Diellia falcata*—c

This unit is critical habitat for *Diellia falcata* and is 341 ha (844 ac) on State, Federal (Lualualei Naval Reservation), and private land (Honouliuli Preserve). This unit contains a portion of Puu Hapapa, Puu Kanehoa, and Puu Kaua. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Diellia falcata* and is currently occupied by 297 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Diellia falcata*—d

This unit is critical habitat for *Diellia falcata* and is 178 ha (437 ac) on State, Federal (Lualualei Naval Reservation), and private land (Honouliuli Preserve), containing a portion of Palikea Summit. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Diellia falcata* and is currently occupied by 1,230 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and habitat that is necessary to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Diellia unisora*—a

This unit is critical habitat for *Diellia unisora* and is 362 ha (894 ac) on State, Federal (Lualualei Naval Reservation), and private land (Honouliuli Preserve). This unit contains a portion of Palikea Summit, Laikea Trail, Pohakea Pass, Puu Kanehoa, and Puu Kaua. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Diellia unisora* and is currently occupied by 697 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the establishment of additional populations. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes or gulch bottoms in deep shade or open understory in mesic forest. We do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, but this unit is large enough that one naturally occurring

catastrophic event is unlikely to destroy habitat for all six populations.

Oahu 4—*Diplazium molokaiense*—a

This unit is critical habitat for *Diplazium molokaiense* and is 139 ha (340 ac) on State land (Mokuleia Forest Reserve, Kaala NAR, and Waianae Kai Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diplazium molokaiense* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky, wooded gulch walls in wet forests. This unit is geographically separated from critical habitat designated on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Dubautia herbstobatae*—a

This unit is critical habitat for *Dubautia herbstobatae* and is 12 ha (29 ac) on State land (Makua Keauu Forest Reserve). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Dubautia herbstobatae* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock outcrops, ridges, moderate slopes, or vertical cliffs in dry or mesic shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is geographically separated from Army lands at Makua Military Reservation that provide habitat for two populations of this species (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 4—*Dubautia herbstobatae*—b

This unit is critical habitat for *Dubautia herbstobatae* and is 76 ha (191 ac) on private and State land (Waianae Kai Forest Reserve), containing a portion of Puu Kawiwi Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Dubautia herbstobatae* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock outcrops, ridges, moderate slopes, or vertical cliffs in dry or mesic shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is geographically separated from Army lands at Makua Military Reservation that provide habitat for two populations of this species (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 7—*Dubautia herbstobatae*—c

This unit is critical habitat for *Dubautia herbstobatae* and is 3 ha (7 ac) on State land (Makua Keauu Forest Reserve). This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Dubautia herbstobatae* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock outcrops, ridges, moderate slopes, or vertical cliffs in dry or mesic shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is geographically separated from Army lands at Makua Military Reservation that provide habitat for two populations of this species (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 4—*Eragrostis fosbergii*—a

This unit is critical habitat for *Eragrostis fosbergii* and is 81 ha (199 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features: This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Eragrostis fosbergii* and is currently occupied by 6 plants. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge crests or moderate slopes in dry or mesic forests. We do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species.

Oahu 4—*Eugenia koolauensis*—a

This unit is critical habitat for *Eugenia koolauensis* and is 114 ha (280 ac) on State land, containing a portion of Kaukonahua Stream. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Eugenia koolauensis* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle to steep slopes or ridges in mesic or dry forests dominated by *Metrosideros polymorpha* or *Diospyros* sp. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 19—*Eugenia koolauensis*—b

This unit is critical habitat for *Eugenia koolauensis* and is 149 ha (369 ac) on private and State (Pupukea-Paumalu Forest Reserve) land, containing a portion of Mount Kawela. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Eugenia koolauensis* and is currently occupied by 8 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle to steep slopes or ridges in mesic or dry forests dominated by *Metrosideros polymorhpha* or *Diospyros* sp. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Eugenia koolauensis*—c

This unit is critical habitat for *Eugenia koolauensis* and is 122 ha (303 ac) on private and State (Hauula Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Eugenia koolauensis* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle to steep slopes or ridges in mesic or dry forests dominated by *Metrosideros polymorhpha* or *Diospyros* sp. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 3—*Euphorbia haeleeleana*—a

This unit is critical habitat for *Euphorbia haeleeleana* and is 14 ha (38 ac) on State (Kaena State Park, Kuaokala Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Euphorbia haeleeleana* and is currently occupied by 50 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest dominated by *Diospyros* sp. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Euphorbia haeleeleana*—b

This unit is critical habitat for *Euphorbia haeleeleana* and is 356 ha (881 ac) on private and State (Mokuleia Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Euphorbia haeleeleana* and is currently occupied by 49 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest dominated by Diospyros sp. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Flueggea neowawraea*—a

This unit is critical habitat for *Flueggea neowawraea* and is 845 ha (2,087 ac) on State (Mokuleia Forest Reserve and Pahole and Kaala NARs) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently occupied by 10 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, ridge crests, or areas near streams in dry or mesic forest. This unit is geographically separated from critical habitat designated on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Gardenia mannii*—a

This unit is critical habitat for *Gardenia mannii* and is 266 ha (658 ac) on private (Honouliuli Preserve) land, containing Honouliuli Contour Trail. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Gardenia mannii* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to moderately steep gulch slopes, ridge crests, gulch bottoms, and stream banks in mesic or wet forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. This unit is also geographically separated from Army lands at Schofield Barracks and Kawailoa that provide habitat for six populations of this species.

Oahu 20—*Gardenia mannii*—b

This unit is critical habitat for *Gardenia mannii* and is 206 ha (510 ac) on private land, containing Kaluakauila Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gardenia mannii* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to moderately steep gulch slopes, ridge crests, gulch bottoms, and stream banks in mesic or wet forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. This unit is also geographically separated from Army lands at Schofield Barracks and Kawailoa that provide habitat for six populations of this species.

Oahu 20—*Gardenia mannii*—c

This unit is critical habitat for *Gardenia mannii* and is 1,311 ha (3,239 ac) on private land, containing a portion of Puu Kamana. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gardenia mannii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to moderately steep gulch slopes, ridge crests, gulch bottoms, and stream banks in mesic or wet forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. This unit is also geographically separated from Army lands at Schofield Barracks and Kawailoa that provide habitat for six populations of this species.

Oahu 4—*Gouania meyenii*—a

This unit is critical habitat for *Gouania meyenii* and is 47 ha (118 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently occupied by 62 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes in dry shrubland or mesic lowland forest. This unit is geographically separated from the other units designated on Oahu and Kauai as critical habitat for this multi-island species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Gouania meyenii*—b

This unit is critical habitat for *Gouania meyenii* and is 39 ha (96 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes in dry shrubland or mesic lowland forest. This unit is geographically separated from the other units designated on Oahu and Kauai as critical habitat for this multi-island species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Gouania meyenii*—c

This unit is critical habitat for *Gouania meyenii* and is 208 ha (515 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) land, containing a portion of Puu Hapapa and Puu Kanehoa. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes in dry shrubland or mesic lowland forest. This unit is geographically separated from the other units designated on Oahu and Kauai as critical habitat for this multi-island species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 31—*Gouania meyenii*—d

This unit is critical habitat for *Gouania meyenii* and is 116 ha (286 ac) on State (Diamond Head State Park) land, containing a portion of Kuilei Cliffs. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes in dry shrubland or mesic lowland forest. This unit is geographically separated from the other units designated on Oahu and Kauai as critical habitat for this multi-island species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 2—*Gouania vitifolia*—a

This unit is critical habitat for *Gouania vitifolia* and is 20 ha (49 ac) on State (Kaena Point State Park and Kuaokala Forest Reserve) land. This unit contains no named natural features. This unit, along with Oahu 3—*Gouania vitifolia*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 3—*Gouania vitifolia*—b

This unit is critical habitat for *Gouania vitifolia* and is 48 ha (120 ac) on State (Kuaokala Forest Reserve) land. This unit contains no named natural features. This unit, along with Oahu 2—*Gouania vitifolia*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Gouania vitifolia*—c

This unit is critical habitat for *Gouania vitifolia* and is 196 ha (482 ac) on private and State (Mokuleia Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Gouania vitifolia*—d

This unit is critical habitat for *Gouania vitifolia* and is 85 ha (208 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Gouania vitifolia*—e

This unit is critical habitat for *Gouania vitifolia* and is 102 ha (252 ac) on State land in the Waianae Kai area. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Gouania vitifolia*—f

This unit is critical habitat for *Gouania vitifolia* and is 27 ha (67 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 5—*Gouania vitifolia*—g

This unit is critical habitat for *Gouania vitifolia* and is 17 ha (43 ac) on private and State land in the Waianae Kai area. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 8—*Gouania vitifolia*—h

This unit is critical habitat for *Gouania vitifolia* and is 64 ha (158 ac) on private and State (Makua Keaau Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania vitifolia* and is currently occupied by 45 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges or gulches in dry to mesic forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Hedyotis coriacea*—a

This unit is critical habitat for *Hedyotis coriacea* and is 185 ha (458 ac) on private (Honouliuli Preserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis coriacea* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky slopes in dry to mesic *Dodonaea viscosa* dominated shrublands or forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 35—*Hedyotis coriacea*—b

This unit is critical habitat for *Hedyotis coriacea* and is 164 ha (404 ac) on State and private land, containing a portion of Kulepiamoa Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis coriacea* and is currently unoccupied. This unit is essential to the conservation of the species because it supports

habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky slopes in dry to mesic *Dodonaea viscosa* dominated shrublands or forests. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Hedyotis degeneri*—a

This unit is critical habitat for *Hedyotis degeneri* and is 917 ha (2,265 ac) on State (Mokuleia Forest Reserve and Kaala and Pahole NARs) land. This unit contains no named natural features. This unit provides habitat for 8 populations of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis degeneri* and is currently occupied by 201 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge crests in diverse mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is extensive enough that one catastrophic event would be unlikely to affect habitat for all eight populations.

Oahu 4—*Hedyotis degeneri*—b

This unit is critical habitat for *Hedyotis degeneri* and is 12 ha (29 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis degeneri* and is currently occupied by 6 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge crests in diverse mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Hedyotis parvula*—a

This unit is critical habitat for *Hedyotis parvula* and is 387 ha (956 ac) on State (Mokuleia Forest Reserve and Kaala NAR) land and contains a portion of Dupont Trail and Kamaohanui Summit. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis parvula* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces or their bases, rock outcrops, or ledges in mesic habitat. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Hedyotis parvula*—b

This unit is critical habitat for *Hedyotis parvula* and is 8 ha (19 ac) on State land, containing a portion of Puu Hapapa. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis parvula* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces or their bases, rock outcrops, or ledges in mesic habitat. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Hedyotis parvula*—c

This unit is critical habitat for *Hedyotis parvula* and is 95 ha (236 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) land, containing a portion of Puu Kaua and Puu Kanehoa. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis parvula* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces or their bases, rock outcrops, or ledges in mesic habitat. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Hedyotis parvula*—d

This unit is critical habitat for *Hedyotis parvula* and is 50 ha (122 ac) on State and Federal (Lualualei Naval Reservation) land, containing a portion of Palikea Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis parvula* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces or their bases, rock outcrops, or ledges in mesic habitat. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Hesperomannia arborescens*—a

This unit is critical habitat for *Hesperomannia arborescens* and is 125 ha (308 ac) on private and State (Kaala NAR) land, containing a portion of Kamaohanui Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arborescens* and is currently occupied by 5 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, ridge tops, or gulches in lowland wet forests or shrublands. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Hesperomannia arborescens*—b

This unit is critical habitat for *Hesperomannia arborescens* and is 589 ha (1,456 ac) on private and State (Hauula Forest Reserve, Sacred Falls State Park, and Kaipapau Forest Reserve) land, containing a portion of Sacred Falls. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arborescens* and is currently occupied by 24 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, ridge tops, or gulches in lowland wet forests or shrublands. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Hesperomannia arbuscula*—a

This unit is critical habitat for *Hesperomannia arbuscula* and is 597 ha (1,472 ac) on State (Mokuleia Forest Reserve and Pahole and Kaala NARs) land. This unit contains no named natural features. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arbuscula* and is currently occupied by 13 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Hesperomannia arbuscula*—b

This unit is critical habitat for *Hesperomannia arbuscula* and is 32 ha (78 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arbuscula* and is currently occupied by 70 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Hesperomannia arbuscula*—c

This unit is critical habitat for *Hesperomannia arbuscula* and is 163 ha (402 ac) on Federal, State, and private (Honouliuli Preserve) land, containing a portion of Puu Kanehoa. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arbuscula* and is currently occupied by 7 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Hesperomannia arbuscula*—d

This unit is critical habitat for *Hesperomannia arbuscula* and is 25 ha (60 ac) on State and private (Honouliuli Preserve) land, containing a portion of Puu Kaua. This unit, in combination with Oahu 15—*Hesperomannia arbuscula*—e, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arbuscula* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Hesperomannia arbuscula*—e

This unit is critical habitat for *Hesperomannia arbuscula* and is 70 ha (172 ac) on State and private (Honouliuli Preserve) land, containing a portion of Palikea Summit and Palikea Trail. This unit, in combination with Oahu 15—*Hesperomannia arbuscula*—d, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hesperomannia arbuscula* and is currently occupied by 12 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 1—*Hibiscus brackenridgei*—a

This unit is critical habitat for *Hibiscus brackenridgei* and is 78 ha (193 ac) on State and private land, containing a portion of Peacock Flat Trail. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hibiscus brackenridgei* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for *Hibiscus brackenridgei* ssp. *mokuleianus* include, but are not limited to, slopes, cliffs, or arid ledges in lowland dry forest or shrubland. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Hibiscus brackenridgei*—b

This unit is critical habitat for *Hibiscus brackenridgei* and is 560 ha (1,385 ac) on private and State (Mokuleia Forest Reserve) land, containing a portion of Puu Iki. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hibiscus brackenridgei* and is currently occupied by 158 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for *Hibiscus brackenridgei* ssp. *mokuleianus* include, but are not limited to, slopes, cliffs, or arid ledges in lowland dry forest or shrubland. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 5—*Hibiscus brackenridgei*—c

This unit is critical habitat for *Hibiscus brackenridgei* and is 23 ha (56 ac) on State and private land in the Waianae Kai area. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Hibiscus brackenridgei* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for *Hibiscus brackenridgei* ssp. *molokaiana* include, but are not limited to, dry shrublands. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Isodendrion laurifolium*—a

This unit is critical habitat for *Isodendrion laurifolium* and is 616 ha (1,524 ac) on State (Mokuleai Forest Reserve and Pahole and Kaala NARs) land, containing a portion of Dupont Trail. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion laurifolium* and is currently occupied by 19 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, ravines, or ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha, Acacia koa, Eugenia reinwardtiana,* or *Diospyros sandwicensis.* This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Isodendrion laurifolium*—b

This unit is critical habitat for *Isodendrion laurifolium* and is 62 ha (154 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion laurifolium* and is currently occupied by 46 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, ravines, or ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha, Acacia koa, Eugenia reinwardtiana,* or *Diospyros sandwicensis.* This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 35—*Isodendrion laurifolium*—c

This unit is critical habitat for *Isodendrion laurifolium* and is 277 ha (684 ac) on private and State (Honolulu Watershed Forest Reserve) land, containing a portion of Laulaupoe Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion laurifolium* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulch slopes, ravines, or ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha, Acacia koa, Eugenia reinwardtiana,* or *Diospyros sandwicensis.* This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Isodendrion longifolium*—a

This unit is critical habitat for *Isodendrion longifolium* and is 552 ha (1,363 ac) on private and State (Mokuleia Forest Reserve and Kaala NAR) land, containing a portion of Dupont Trail. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently occupied by 40 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or stream banks in mixed mesic or lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Isodendrion longifolium*—b

This unit is critical habitat for *Isodendrion longifolium* and is 162 ha (399 ac) on private land. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes or stream banks in mixed mesic or lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 5—*Isodendrion pyrifolium*—a

This unit is critical habitat for *Isodendrion pyrifolium* and is 30 ha (74 ac) on State and private land in the Waianae Kai area. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion pyrifolium* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare, rocky hills or wooded ravines in dry shrublands. This unit provides is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 16—*Isodendrion pyrifolium*—b

This unit is critical habitat for *Isodendrion pyrifolium* and is 130 ha (318 ac) on private and State (Nanakuli Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion pyrifolium* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare, rocky hills or wooded ravines in dry shrublands. This unit provides is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 17—*Isodendrion pyrifolium*—c

This unit is critical habitat for *Isodendrion pyrifolium* and is 73 ha (181 ac) on State (Nanakuli Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion pyrifolium* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare, rocky hills or wooded ravines in dry shrublands. This unit provides is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Labordia cyrtandrae*—a

This unit is critical habitat for *Labordia cyrtandrae* and is 161 ha (397 ac) on State (Mokuleia Forest Reserve, Kaala NAR, and Waianae Kai Forest Reserve) land, containing a portion of Kamaohanui Summit. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Labordia cyrtandrae* and is currently occupied by 17 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady gulches, slopes, or glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha, Diplopterygium pinnatum,* and/or *Acacia koa.* This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Labordia cyrtandrae*—b

This unit is critical habitat for *Labordia cyrtandrae* and is 595 ha (1,473 ac) on private and State (Hauula Forest Reserve, Sacred Falls State Park, and Kaipapau Forest Reserve) land, containing a portion of the Koolau Summit Trail. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Labordia cyrtandrae* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady gulches, slopes, or glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha, Diplopterygium pinnatum,* and/or *Acacia koa.* This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Labordia cyrtandrae*—c

This unit is critical habitat for *Labordia cyrtandrae* and is 617 ha (1,525 ac) on private and State (Waiahole Forest Reserve and Ewa Forest Reserve) land, containing a portion of Eleao, Nanaikaalaea, and Ulimakoli Summits. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Labordia cyrtandrae* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an

extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady gulches, slopes, or glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha, Diplopterygium pinnatum,* and/or *Acacia koa.* This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Lepidium arbuscula*—a

This unit is critical habitat for *Lepidium arbuscula* and is 330 ha (813 ac) on State (Waianae Kai Forest Reserve) land, containing a portion of Kamaileunu Ridge, Puu Kawiwi, and Puu Kepauala. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Lepidium arbuscula* and is currently occupied by 51 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed ridge tops and cliff faces in mesic and dry vegetation communities. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Lepidium arbuscula*—b

This unit is critical habitat for *Lepidium arbuscula* and is 118 ha (293 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) land, containing a portion of Puu Kaua. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Lepidium arbuscula* and is currently occupied by 150 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed ridge tops and cliff faces in mesic and dry vegetation communities. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Lipochaeta lobata* var. *leptophylla*—b

This unit is critical habitat for *Lipochaeta lobata* var. *leptophylla* and is 534 ha (1,321 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) land, containing a portion of Palikea Summit, Pohakea Pass, Puu Hapapa, Puu Kanehoa, and Puu Kaua. This unit provides habitat for 8 populations of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta lobata* var. *leptophylla* and is currently occupied by 144 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs, ridges, or slopes in dry or mesic shrubland. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Lipochaeta tenuifolia*—a

This unit is critical habitat for *Lipochaeta tenuifolia* and is 23 ha (57 ac) on State (Makua Keaau Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta tenuifolia* and is currently occupied by 50 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge tops or bluffs in open areas or protected pockets of dry to mesic forest or shrublands. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is separated from Army lands at Makua Military Reservation that provide habitat for one population of this species.

Oahu 4—*Lipochaeta tenuifolia*—b

This unit is critical habitat for *Lipochaeta tenuifolia* and is 66 ha (167 ac) on State (Kaala NAR) land. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta tenuifolia* and is currently occupied by 100 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge tops or bluffs in open areas or protected pockets of dry to mesic forest or shrublands. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is separated from Army lands at Makua Military Reservation that provide habitat for one population of this species.

Oahu 4—*Lipochaeta tenuifolia*—c

This unit is critical habitat for *Lipochaeta tenuifolia* and is 118 ha (292 ac) on State (Waianae Kai Forest Reserve) land. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta tenuifolia* and is currently occupied by 150 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge tops or bluffs in open areas or protected pockets of dry to mesic forest or shrublands. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is separated from Army lands at Makua Military Reservation that provide habitat for one population of this species.

Oahu 20—*Lobelia gaudichaudii* ssp. *koolauensis*—a

This unit is critical habitat for *Lobelia gaudichaudii* ssp. *koolauensis* and is 926 ha (2,287 ac) on private and State (Oahu Forest National Wildlife Refuge, Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, Ewa Forest Reserve, and Waiahole Forest Reserve) land, containing a portion of Eleao, Puu Kaaumakua, and Puu Pauao Summits, and the Koolau Summit Trail. This unit provides habitat for 7 populations of 300 mature, reproducing individuals of the short-lived perennial *Lobelia gaudichaudii* ssp. *koolauensis* and is currently occupied by 247 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moderate to steep slopes in *Metrosideros polymorpha* lowland wet shrublands or bogs. This unit is extensive and is geographically separated from Army lands at Kawailoa Training Area that provide habitat for two populations of this species (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*"). It is therefore unlikely that all populations would be destroyed by one naturally occurring catastrophic event.

Oahu 30—*Lobelia monostachya*—a

This unit is critical habitat for *Lobelia monostachya* and is 59 ha (150 ac) on private and State (Honolulu Watershed Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Lobelia monostachya* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, sparsely vegetated cliffs in mesic shrubland. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 32—*Lobelia monostachya*—b

This unit is critical habitat for *Lobelia monostachya* and is 47 ha (115 ac) on private and State (Honolulu Watershed Forest Reserve) land, containing a portion of Kulepiamoa, Mauumae, and Wiliwilinui Ridges. This unit provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *Lobelia monostachya* and is currently occupied by 3 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, sparsely vegetated cliffs in mesic shrubland. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 33—*Lobelia monostachya*—c

This unit is critical habitat for *Lobelia monostachya* and is 70 ha (174 ac) on private and State (Honolulu Watershed Forest Reserve and Waahila Ridge State Park) land, containing a portion of Waahila Ridge. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Lobelia monostachya* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, sparsely vegetated cliffs in mesic shrubland. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Lobelia monostachya*—d

This unit is critical habitat for *Lobelia monostachya* and is 493 ha (1,217 ac) on private, Federal, and State (Honolulu Watershed Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Lobelia monostachya* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, sparsely vegetated cliffs in mesic shrubland. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Lobelia niihauensis*—a

This unit is critical habitat for *Lobelia niihauensis* and is 44 ha (108 ac) on State (Waianae Kai Forest Reserve) land, containing a portion of Puu Kawiwi. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Lobelia niihauensis* and is currently occupied by 14 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed mesic or dry cliffs or ledges. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 17—*Lobelia niihauensis*—b

This unit is critical habitat for *Lobelia niihauensis* and is 41 ha (102 ac) on State (Nanakuli Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Lobelia niihauensis* and is currently occupied by 37 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed mesic or dry cliffs or ledges. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Lobelia oahuensis*—a

This unit is critical habitat for *Lobelia oahuensis* and is 493 ha (1,218 ac) on private, Federal, and State (Oahu Forest National Wildlife Refuge, Kahana Valley State Park, Ewa Forest Reserve, and Waiahole Forest Reserve) land, containing a portion of Puu Pauao, and Eleao, Puu Kaaumakua, Puu Kahuauli, and Puu Keahiakahoe Summits. This unit provides habitat for 7 populations of 300 mature, reproducing individuals of the short-lived perennial *Lobelia oahuensis* and is currently occupied by 13 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes on summit cliffs in cloudswept wet forests or in lowland wet shrublands that are frequently exposed to heavy wind and rain. This unit is rather extensive and is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Lobelia oahuensis*—b

This unit is critical habitat for *Lobelia oahuensis* and is 152 ha (374 ac) on private and State (Honolulu Watershed Forest Reserve and Kuliouou Forest Reserve) land, containing a portion of Kaiawaaunui, Konahuanui, and Palike Summits, Mount Olympus, and Puu o Kona. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Lobelia oahuensis* and is currently occupied by 38 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes on summit cliffs in cloudswept wet forests or in lowland wet shrublands that are frequently exposed to heavy wind and rain. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Lysimachia filifolia*—a

This unit is critical habitat for *Lysimachia filifolia* and is 1,512 ha (3,734 ac) on private, Federal, and State (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, Waiahole Forest Reserve, and Kaneohe Forest Reserve) land, containing a portion of Castle Trail, Keaahala Spring, Nanaikaalaea Summit, Nuuanu Pali, Puu Kaaumakua, Puu Kahuauli, Puu Keahiakahoe, Puu Pauao, Sacred Falls, Waiahole Ditch, and the Luluku Tunnels. This unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Lysimachia filifolia* and is currently occupied by 160 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams. This unit is geographically separated from critical habitat designated on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Mariscus pennatiformis*—a

This unit is critical habitat for *Mariscus pennatiformis* and is 166 ha (410 ac) on State (Pahole NAR and Mokuleia Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Mariscus pennatiformis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic and wet *Metrosideros polymorpha* forest and *Metrosideros polymorpha-Acacia koa* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Maui, and the Northwestern Hawaiian Islands for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Mariscus pennatiformis*—b

This unit is critical habitat for *Mariscus pennatiformis* and is 171 ha (421 ac) on State (Mokuleia Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Mariscus pennatiformis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic and wet *Metrosideros polymorpha* forest and *Metrosideros polymorpha-Acacia koa* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Maui, and the Northwestern Hawaiian Islands for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 13—*Marsilea villosa*—a

This unit is critical habitat for *Marsilea villosa* and is 10 ha (25 ac) on Federal (Lualualei Naval Reservation) land. This unit contains no named natural features. This unit provides habitat for one population of an unknown number of mature, reproducing individuals of the annual *Marsilea villosa* and is currently occupied by 50 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 14—*Marsilea villosa*—b

This unit is critical habitat for *Marsilea villosa* and is 7 ha (18 ac) on State (Lualualei Naval Reservation) land. This unit contains no named natural features. This unit provides habitat for one population of an unknown number of mature, reproducing individuals of the annual *Marsilea villosa* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 28—*Marsilea villosa*—c

This unit is critical habitat for *Marsilea villosa* and is 7 ha (18 ac) on State land, containing a portion of the flanks of Koko Head Crater. This unit, in combination with unit Oahu 29—*Marsilea villosa*—d, provides habitat for one population of an unknown number of mature, reproducing individuals of the annual *Marsilea villosa* and is currently occupied by 10 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 29—*Marsilea villosa*—d

This unit is critical habitat for *Marsilea villosa* and is 5 ha (11 ac) on State land, containing a portion of the flanks of Koko Head Crater. This unit, in combination with unit Oahu 28—*Marsilea villosa*—c, provides habitat for one population of an unknown number of mature, reproducing individuals of the annual *Marsilea villosa* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 36—*Marsilea villosa*—e

This unit is critical habitat for *Marsilea villosa* and is 6 ha (14 ac) on State (Diamond Head State Park) land. This unit contains no named natural features. This unit provides habitat for one population of an unknown number of mature, reproducing individuals of the annual *Marsilea villosa* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Melicope lydgatei*—a

This unit is critical habitat for *Melicope lydgatei* and is 3,499 ha (8,645 ac) on private and State (Ewa Forest Reserve and Keaiwa Heiau State Park) land, containing a portion of Puu Uau, and Aiea, Kipapa, and Waimano Trails.

This unit provides habitat for 6 populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope lydgatei* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges in mesic or wet forests. This unit is geographically separated from Army lands at Kawailoa Training Area that provide habitat for five populations of this species, in order to avoid all populations from being destroyed by one naturally occurring catastrophic event (*see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"*).

Oahu 4—*Melicope pallida*—a

This unit is critical habitat for *Melicope pallida* and is 855 ha (2,110 ac) on private and State (Mokuleia Forest Reserve and Kaala and Pahole NARs) land, containing a portion of Dupont Trail. This unit provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland dry or mesic forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Melicope pallida*—b

This unit is critical habitat for *Melicope pallida* and is 174 ha (431 ac) on private (Honouliuli Preserve) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland dry or mesic forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Melicope pallida*—c

This unit is critical habitat for *Melicope pallida* and is 29 ha (71 ac) on Federal (Lualualei Naval Reservation) and State land. This unit contains no named natural features. This unit, in combination with unit Oahu 15—*Melicope pallida*—d, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland dry or mesic forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Melicope pallida*—d

This unit is critical habitat for *Melicope pallida* and is 20 ha (51 ac) on State and Federal (Lualualei Naval Reservation) land. This unit, in combination with unit Oahu 15—*Melicope pallida*—c, contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland dry or mesic forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Melicope pallida*—e

This unit is critical habitat for *Melicope pallida* and is 243 ha (602 ac) on private (Honouliuli Preserve) land. This unit contains no named natural features. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland dry or mesic forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Melicope saint-johnii*—a

This unit is critical habitat for *Melicope saint-johnii* and is 244 ha (604 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) land, containing a portion of Puu Hapapa, Puu Kanehoa, and Puu Kaua. This unit provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope saint-johnii* and is currently occupied by 4 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges or gulch bottoms in mesic forest. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Melicope saint-johnii*—b

This unit is critical habitat for *Melicope saint-johnii* and is 214 ha (529 ac) on Federal (Lualualei Naval Reservation), State (Nanakuli Forest Reserve), and private (Honouliuli Preserve) land, containing a portion of Palikea Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope saint-johnii* and is currently occupied by 161 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges or gulch bottoms in mesic forest. Although we do not believe that enough critical habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Myrsine juddii*—a

This unit is critical habitat for *Myrsine juddii* and is 950 ha (2,347 ac) on private and State (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, and Ewa Forest Reserve) land, containing the Koolau Summit Trail. This unit provides habitat for 6 populations of 100 mature, reproducing individuals of the long-lived perennial *Myrsine juddii* and is currently occupied by 5,000 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridge crests or gulch slopes in wet forests or shrublands dominated by *Metrosideros polymorpha* or a mixture of Metrosideros polymorpha and *Dicranopteris linearis*. This unit is extensive and is geographically separated from Army lands at Kawailoa and Schofield Barracks that provide habitat for four populations of this species (see *"Analysis of Impacts Under Section 4(b)(2): Other Impacts"*). It is therefore unlikely that all populations would be destroyed by one naturally occurring catastrophic event.

Oahu 3—*Neraudia angulata*—a

This unit is critical habitat for *Neraudia angulata* and is 39 ha (97 ac) on State (Kaena Point State Park and Kuaokala Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Neraudia angulata* and is currently occupied by 2 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *angulata* include, but are not limited to, slopes, ledges, or gulches in lowland mesic or dry forest. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *dentata* include, but are not limited to, cliffs, rock embankments, gulches, or slopes in mesic or dry forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species and from habitat for three populations on Army lands at Makua Military Reservation, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Neraudia angulata*—b

This unit is critical habitat for *Neraudia angulata* and is 90 ha (222 ac) on private and State (Mokuleia Forest Reserve and Pahole NAR) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Neraudia angulata* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *angulata* include, but are not limited to, slopes, ledges, or gulches in lowland mesic or dry forest. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *dentata* include, but are not limited to, cliffs, rock embankments, gulches, or slopes in mesic or dry forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species and from habitat for three populations on Army lands at Makua Military Reservation, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Neraudia angulata*—c

This unit is critical habitat for *Neraudia angulata* and is 298 ha (736 ac) on State land in the Waianae Kai area. This unit contains no named natural features. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Neraudia angulata* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals The habitat features contained in this unit that are essential for *Neraudia angulata* var. *angulata* include, but are not limited to, slopes, ledges, or gulches in lowland mesic or dry forest. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *dentata* include, but are not limited to, cliffs, rock embankments, gulches, or slopes in mesic or dry forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species and from habitat for three populations on Army lands at Makua Military Reservation, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Neraudia angulata*—d

This unit is critical habitat for *Neraudia angulata* and is 33 ha (81 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Neraudia angulata* and is currently occupied by one individual. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *angulata* include, but are not limited to, slopes, ledges, or gulches in lowland mesic or dry forest. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *dentata* include, but are not limited to, cliffs, rock embankments, gulches, or slopes in mesic or dry forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species and from habitat for three populations on Army lands at Makua Military Reservation, in order to avoid all

recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Neraudia angulata*—e

This unit is critical habitat for *Neraudia angulata* and is 40 ha (98 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Neraudia angulata* and is currently occupied by 40 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *angulata* include, but are not limited to, slopes, ledges, or gulches in lowland mesic or dry forest. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *dentata* include, but are not limited to, cliffs, rock embankments, gulches, or slopes in mesic or dry forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species and from habitat for three populations on Army lands at Makua Military Reservation, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Neraudia angulata*—f

This unit is critical habitat for *Neraudia angulata* and is 83 ha (207 ac) on Federal (Lualualei Naval Reservation) and State land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Neraudia angulata* and is currently occupied by 5 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *angulata* include, but are not limited to, slopes, ledges, or gulches in lowland mesic or dry forest. The habitat features contained in this unit that are essential for *Neraudia angulata* var. *dentata* include, but are not limited to, cliffs, rock embankments, gulches, or slopes in mesic or dry forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally occurring catastrophic event.

Oahu 3—*Notptrichium humile*—a

This unit is critical habitat for *Nototrichium humile* and is 20 ha (51 ac) on State (Kaena Point State Park and Kuaokala Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Nototrichium humile* and is currently occupied by 900 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces, gulches, stream banks, or steep slopes in dry or mesic forest often dominated by *Sapindus oahunensis* or *Diopsyros sandwicensis*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Nototrichium humile*—b

This unit is critical habitat for *Nototrichlum humile* and is 229 ha (568 ac) on private and State (Pahole NAR and Mokuleia Forest Reserve) land, containing a portion of Mokuleia Trail. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Nototrichium humile* and is currently occupied by 10 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces, gulches, stream banks, or steep slopes in dry or mesic forest often dominated by *Sapindus oahunensis* or *Diopsyros sandwicensis*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Nototrichium humile*—c

This unit is critical habitat for *Nototrichium humile* and is 236 ha (586 ac) on private and State (Mokuleia Forest Reserve and Kaala NAR) land. This unit contains no named natural features. This unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Nototrichium humile* and is currently occupied by 54 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces, gulches, stream banks, or steep slopes in dry or mesic forest often dominated by *Sapindus oahunensis* or *Diopsyros sandwicensis*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Nototrichium humile*—d

This unit is critical habitat for *Nototrichium humile* and is 30 ha (75 ac) on State (Waianae Kai Forest Reserve) land. This unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Nototrichium humile* and is currently occupied by 215 individuals. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff faces, gulches, stream banks, or steep slopes in dry or mesic forest often dominated by *Sapindus oahunensis* or *Diopsyros sandwicensis*. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Peucedanum sandwicense*—a

This unit is critical habitat for *Peucedanum sandwicense* and is 76 ha (186 ac) on State (Waianae Kai Forest Reserve) lands, containing Puu Kawiwi. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently occupied by 34 individuals. The unit is important to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Peucedanum sandwicense* include, but are not limited to, cliffs, slopes, or ridges in *Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from critical habitat designated on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Phlegmariurus nutans*—a

This unit is critical habitat for *Phlegmariurus nutans* and is 1,624 ha (4,014 ac) on State (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, and Ewa Forest Reserve), and private lands. Natural features found in this unit include Castle Trail, Puu Kaaumakua, and Puu Pauao. The unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *Phlegmariurus nutans* and is currently occupied by contains 5 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is important for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phlegmariurus nutans* include, but are not limited to, tree trunks on open ridges, forested slopes, or cliffs in *Metrosideros polymorpha*-dominated wet forests, on cliffs, in shrublands, or in mesic forests. This unit is geographically separated from critical habitat designated on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Phyllostegia hirsuta*—a

This unit is critical habitat for *Phyllostegia hirsuta* and is 113 ha (282 ac) on State (Mokuleia Forest Reserve, Kaala NAR, and Waianae Kai Forest Reserve) lands. There are no named natural features in this unit. This unit contains 4 individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia hirsuta*. The unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia hirsuta* include, but are not limited to, steep, shaded slopes, cliffs, ridges, gullies, or stream banks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia hirsuta*—b

This unit is critical habitat for *Phyllostegia hirsuta* and is 131 ha (324 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) lands, containing Puu Hapapa and Puu Kanehoa. This unit it currently occupied by 50 individuals and provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia hirsuta*. The unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia hirsuta* include, but are not limited to, steep, shaded slopes, cliffs, ridges, gullies, or stream banks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia hirsuta*—c

This unit is critical habitat for *Phyllostegia hirsuta* and is 69 ha (171 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit is currently occupied by 2 individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia hirsuta*. The unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia hirsuta* include, but are not limited to, steep, shaded slopes, cliffs, ridges, gullies, or stream banks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Phyllostegia hirsuta*—d

This unit is critical habitat for *Phyllostegia hirsuta* and is 1,004 ha (2,483 ac) on State (Hauula Forest Reserve, Sacred Falls State Park, and Kaipapau Forest Reserve) and private lands, containing the Koolau Summit Trail. This unit is occupied by 39 individuals and provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia hirsuta*. The unit is essential to species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia hirsuta* include, but are not limited to, steep, shaded slopes, cliffs, ridges, gullies, or stream banks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Phyllostegia kaalaensis*—a

This unit is critical habitat for *Phyllostegia kaalaensis* and is 57 ha (141 ac) on State (Pahole NAR and Mokuleia Forest Reserve) lands. There are no named natural features in this unit. This unit is occupied by 21 individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia kaalaensis*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently

considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia kaalaensis* include, but are not limited to, gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Phyllostegia kaalaensis*—b

This unit is critical habitat for *Phyllostegia kaalaensis* and is 589 ha (1,456 ac) on State (Pahole and Kaala NARs and Mokuleia Forest Reserve) lands and contains Dupont Trail. This unit currently occupied by an unknown number of individuals and provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia kaalaensis*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia kaalaensis* include, but are not limited to, gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Phyllostegia kaalaensis*—c

This unit is critical habitat for *Phyllostegia kaalaensis* and is 122 ha (304 ac) on State (Kaala NAR, Mokuleia Forest Reserve) and private lands. There are no named natural features in this unit. The unit is currently occupied by 10 individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia kaalaensis*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia kaalaensis* include, but are not limited to, gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Phyllostegia kaalaensis*—d

This unit is critical habitat for *Phyllostegia kaalaensis* and is 28 ha (69 ac) on State (Waianae Kai Forest Reserve) lands containing Waianae Kai. This unit, combined with Oahu 4—*Phyllostegia kaalaensis*—e, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia kaalaensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Phyllostegia kaalaensis* include, but are not limited to, gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Phyllostegia kaalaensis*—e

This unit is critical habitat for *Phyllostegia kaalaensis* and is 16 ha (39 ac) on State (Waianae Kai Forest Reserve) lands containing Waianae Kai. This unit is currently occupied by 8 individuals and, combined with Oahu 4—*Phyllostegia kaalaensis*—d, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia kaalaensis*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia kaalaensis* include, but are not limited to, gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia kaalaensis*—f

This unit is critical habitat for *Phyllostegia kaalaensis* and is 30 ha (74 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia kaalaensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is important to the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Phyllostegia kaalaensis* include, but are not limited to, gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia mollis*—a

This unit is critical habitat for *Phyllostegia mollis* and is 152 ha (376 ac) on private (Honouliuli Preserve) lands containing Puu Kanehoa. The unit is currently occupied by 7 individuals and provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia mollis*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia hirsuta* include, but are not limited to, steep slopes or gulches in diverse mesic to wet forests. This unit is geographically separated from other critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia mollis*—b

This unit is critical habitat for *Phyllostegia mollis* and is 85 ha (210 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit is currently occupied by 7 individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia mollis*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia hirsuta* include, but are not limited to, steep slopes or gulches in diverse mesic to wet forests. This unit is geographically separated from other critical habitat designated elsewhere on Oahu and on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15–*Phyllostegia parviflora*—a

This unit is critical habitat for *Phyllostegia parviflora* var. *lydgatei* and is 70 ha (173 ac) on private (Honouliuli Preserve) lands. This unit contains no named natural features. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia parviflora* var. *lydgatei* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Phyllostegia parviflora* var. *lydgatei* include, but are not limited to, moderate to steep slopes in mesic forests. This unit is geographically separated from other critical habitat designated on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia parviflora*—b

This unit is critical habitat for *Phyllostegia parviflora* var. *lydgatei* and is 21 ha (51 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit is occupied by unknown number of individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia parviflora* var. *lydgatei*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia parviflora* var. *lydgatei* include, but are not limited to, moderate to steep slopes in mesic forests. This unit is geographically separated from other critical habitat designated on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Phyllostegia parviflora*—c

This unit is critical habitat for *Phyllostegia parviflora* var. *lydgatei* and is 69 ha (171 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit is occupied by 50 individuals and provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia parviflora* var. *lydgatei*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia parviflora* var. *lydgatei* include, but are not limited to, moderate to steep slopes in mesic forests. This unit is geographically separated from other critical habitat designated on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Phyllostegia parviflora*—d

This unit is critical habitat for *Phyllostegia parviflora* var. *parviflora* and is 1,430 ha (3,534 ac) on State (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, Ewa Forest Reserve) and private lands, containing Castle Trail, Puu Kaaumakua, Puu Pauao, and the Koolau Summit Trail. The unit is occupied by 30 individuals and provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia parviflora* var. *parviflora*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Phyllostegia parviflora* var. *parviflora* include, but are not limited to, *Metrosideros polymorpha* mixed lowland wet forest. This unit is geographically separated from other critical habitat designated on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Plantago princeps*—a

This unit is critical habitat for *Plantago princeps* var. *longibracteata* and is 15 ha (37 ac) on State lands. There are no named natural features in this unit. The unit, is occupied by 2 individuals and, in combination with Oahu 4—*Plantago princeps*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* var. *longibracteata*. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Plantago princeps* var. *longibracteata* include, but are not limited to, sides of waterfalls or wet rock faces. This unit is geographically separated from other critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Plantago princeps*—b

This unit is critical habitat for *Plantago princeps* var. *longibracteata* and is 52 ha (131 ac) on State (Mokuleia Forest Reserve and Pahole Natural Area Preserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 4—*Plantago princeps*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* var. *longibracteata* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Plantago princeps* var. *longibracteata* include, but are not limited to, sides of waterfalls or wet rock faces. This unit is geographically separated from other critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Plantago princeps*—c

This unit is critical habitat for *Plantago princeps* var. *longibracteata* and is 63 ha (157 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* var. *longibracteata* and is currently occupied by 8 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Plantago princeps* var. *longibracteata* include, but are not limited to, sides of waterfalls or wet rock faces. This unit is

geographically separated from other critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Plantago princeps*—d

This unit is critical habitat for *Plantago princeps* var. *princeps* and is 992 ha (2,450 ac) on Federal (Oahu Forest National Wildlife Refuge), State (Ewa Forest Reserve, Waiahole Forest Reserve), and private lands, containing Eleao Summit and Kipapa Trail. The unit, in combination with Oahu 20—*Plantago princeps*—e, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* var. *princeps* and is currently occupied by 2 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Plantago princeps* var. *princeps* include, but are not limited to, slopes or ledges in *Metrosideros polymorpha* lowland mesic forests or shrublands. This unit is geographically separated from other critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Plantago princeps*—e

This unit is critical habitat for *Plantago princeps* var. princeps and is 297 ha (729 ac) on State (Waiahole Forest Reserve) and private lands, containing Nanaikaalaea Summit, Ulimakoli Summit, and Waiahole Ditch Tunnel. The unit, in combination with Oahu 20—*Plantago princeps*—d, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* var. *princeps* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Plantago princeps* var. *princeps* include, but are not limited to, slopes or ledges in *Metrosideros polymorpha* lowland mesic forests or shrublands. This unit is geographically separated from other critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Platanthera holochila*—a

This unit is critical habitat for *Platanthera holochila* and is 35 ha (86 ac) on private lands in the Koolau Mountains. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Platanthera holochila* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Platanthera holochila* include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed shrubland. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Platanthera holochila*—b

This unit is critical habitat for *Platanthera holochila* and is 165 ha (407 ac) on Federal (Oahu Forest National Wildlife Refuge) and State (Ewa Forest Reserve and Keaiwa Heiau State Park) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Platanthera holochila* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Platanthera holochila* include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed shrubland. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Pteris lidgatei*—a

This unit is critical habitat for *Pteris lidgatei* and is 1,233 ha (3,044 ac) on State (Hauula Forest Reserve, Sacred Falls State Park and Kaipapau Forest Reserve) and private lands, containing the Castle Trail, Sacred Falls, and the Koolau Summit Trail. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Pteris lidgatei* and is occupied by 2 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Pteris lidgatei* include, but are not limited to, steep stream banks or cliffs in wet *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Pteris lidgatei*—b

This unit is critical habitat for *Pteris lidgatei* and is 289 ha (711 ac) on State (Kahana Valley State Park) and private lands, containing Puu Kaaumakua. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Pteris lidgatei* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Pteris lidgatei* include, but are not limited to, steep stream banks or cliffs in wet *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Pteris lidgatei*—c

This unit is critical habitat for *Pteris lidgatei* and is 844 ha (2,084 ac) on State (Ewa and Waiahole Forest Reserves) and private lands, containing Eleao and Nanaikaalaea Summits. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Pteris lidgatei* and is occupied by 4 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Pteris lidgatei* include, but are not limited to, steep stream banks or cliffs in wet *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is

geographically separated from critical habitat designated elsewhere on Oahu and on Molokai and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—Sanicula mariversa—a

This unit is critical habitat for *Sanicula mariversa* and is 7 ha (17 ac) on State (Makua Keauu Forest Reserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 6—*Sanicula mariversa*—d, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sanicula mariversa* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Sanicula mariversa* include, but are not limited to, well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other five units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Sanicula mariversa*—b

This unit is critical habitat for *Sanicula mariversa* and is 6 ha (15 ac) on State (Kaala NAR) lands, containing Kamaohanui Summit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sanicula mariversa* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Sanicula mariversa* include, but are not limited to, well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other five units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Sanicula mariversa*—c

This unit is critical habitat for *Sanicula mariversa* and is 25 ha (61 ac) on State (Waianae Kai Forest Reserve) lands, containing Puu Kawiwi and Puu Kepauala. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Sanicula mariversa* and is occupied by 2 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Sanicula mariversa* include, but are not limited to, well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other five units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 6—*Sanicula mariversa*—d

This unit is critical habitat for *Sanicula mariversa* and is 3 ha (8 ac) on State (Makua Keauu Forest Reserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 6—*Sanicula mariversa*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sanicula mariversa* and is occupied by 30 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Sanicula mariversa* include, but are not limited to, well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other five units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Sanicula mariversa*—e

This unit is critical habitat for *Sanicula mariversa* and is 14 ha (34 ac) on private (Honouliui Preserve) lands, containing Puu Hapapa. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sanicula mariversa* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Sanicula mariversa* include, but are not limited to, well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other five units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Sanicula mariversa*—f

This unit is critical habitat for *Sanicula mariversa* and is 39 ha (95 ac) on State and private (Honouliui Preserve) lands, containing Puu Kanehoa and Puu Kaua. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sanicula mariversa* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Sanicula mariversa* include, but are not limited to, well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other five units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Sanicula purpurea*—a

This unit is critical habitat for *Sanicula purpurea* and is 704 ha (1,739 ac) on Federal (Oahu Forest National Wildlife Refuge), State (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, Ewa Forest Reserve, Waiahole Forest Reserve), and private lands, containing Eleao Summit, Puu Kaaumakua, Puu Kahuauli, Puu

Keahiakahoe, Puu Pauao and Koolau Summit Trail. The unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Sanicula purpurea* and is occupied by 6 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Sanicula purpurea* include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs or windswept shrublands within the cloud zone. This unit is geographically separated from critical habitat designated on Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 3—*Schiedea hookeri*—a

This unit is critical habitat for *Schiedea hookeri* and is 22 ha (56 ac) on State (Kaena Point State Park and Kuaokala Forest Reserve) lands. No named natural features are found within this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* is occupied by 10 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Schiedea hookeri*—b

This unit is critical habitat for *Schiedea hookeri* and is 710 ha (1,755 ac) on State (Mokuleia Forest Reserve and Pahole and Kaala NARs) lands, containing Dupont Trail. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* and is occupied by 3 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Schiedea hookeri*—c

This unit is critical habitat for *Schiedea hookeri* and is 248 ha (612 ac) on State (Waianae Kai Forest Reserve) lands, containing Kamaileunu Ridge and Puu Kawiwi. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* and is occupied by 57 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present populations, which are currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Schiedea hookeri*—d

This unit is critical habitat for *Schiedea hookeri* and is 31 ha (78 ac) on State (Waianae Kai Forest Reserve) lands. No named natural features are found within this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* and is occupied by 50 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea hookeri*—e

This unit is critical habitat for *Schiedea hookeri* and is 14 ha (34 ac) on Federal lands (Lualualei Naval Reservation). There are no named natural features in this unit. The unit, in combination with Oahu 15—*Schiedea hookeri*—f, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* and is occupied by 10 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea hookeri*—f

This unit is critical habitat for *Schiedea hookeri* and is 10 ha (25 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 15—*Schiedea hookeri*—e, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* and is occupied by at 63 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all

recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea hookeri*—g

This unit is critical habitat for *Schiedea hookeri* and is 83 ha (204 ac) on Federal (Lualualei Naval Reservation), State, and private lands, containing Puu Kaua. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea hookeri* and is occupied by 42 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Schiedea hookeri* include, but are not limited to, slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest, often with *Diospyros hillebrandii, Diospyros sandwicensis*, or *Metrosideros polymorpha*. This unit is geographically separated from critical habitat designated elsewhere on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Schiedea kaalae*—a

This unit is critical habitat for *Schiedea kaalae* and is 426 ha (1,051 ac) on State (Pahole NAR and Mokuleia Forest Reserve) lands. There are no named natural features in this unit. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kaalae* and is occupied by 2 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered to be nonviable. The habitat features contained in this unit that are essential to *Schiedea kaalae* include, but are not limited to, steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Schiedea kaalae*—b

This unit is critical habitat for *Schiedea kaalae* and is 134 ha (331 ac) on private (Honouliuli Preserve) lands, containing Puu Kanehoa. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kaalae* and is occupied by 8 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered to be nonviable. The habitat features contained in this unit that are essential to *Schiedea kaalae* include, but are not limited to, steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea kaalae*—c

This unit is critical habitat for *Schiedea kaalae* and is 22 ha (53 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kaalae* and is occupied by 13 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered to be nonviable. The habitat features contained in this unit that are essential to *Schiedea kaalae* include, but are not limited to, steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea kaalae*—d

This unit is critical habitat for *Schiedea kaalae* and is 39 ha (97 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kaalae* and is occupied by one individual. This unit is essential to the species' conservation because it supports occupied habitat that is important for the expansion of the present population, which is currently considered to be nonviable. The habitat features contained in this unit that are essential to *Schiedea kaalae* include, but are not limited to, steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Schiedea kaalae*—e

This unit is critical habitat for *Schiedea kaalae* and is 379 ha (934 ac) on State (Hanuula Forest Reserve, Sacred Falls State Park and Kaipapau Forest Reserve) and private lands, containing Sacred Falls. The unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kaalae* and is occupied by 15 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered to be nonviable. The habitat features contained in this unit that are essential to *Schiedea kaalae* include, but are not limited to, steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 21—*Schiedea kaalae*—f

This unit is critical habitat for *Schiedea kaalae* and is 105 ha (206 ac) on State (Kahana Valley State Park) and private lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kaalae* and is occupied by one individual. This unit is essential to the species' conservation because it supports occupied habitat that is important for the expansion of the present population, which is currently considered to be nonviable. The habitat features contained in this unit that are essential to *Schiedea kaalae* include, but are not limited to, steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 1—*Schiedea kealiae*—a

This unit is critical habitat for *Schiedea kealiae* and is 193 ha (477 ac) on State (Kaena Point State Park and

Kuaokala Forest Reserve) and private lands, containing Alei Pali, Haili Gulch, Mahoe Pali, Manini Pali, Nihoa Gulch, Peacock Flat Trail, Puu Pueo, and Uluhulu Gulch. The unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kealiae* and is occupied by 320 individuals. This unit is essential to the species' conservation because it supports occupied habitat that is important for the establishment of additional populations. The habitat features contained in this unit that are essential to *Schiedea kealiae* include, but are not limited to, steep slopes and cliff faces in dry remnant *Erythrina sandwicensis* forest. We do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species.

Oahu 4—*Schiedea nuttallii*—a

This unit is critical habitat for *Schiedea nuttallii* and is 527 ha (1,304 ac) on State (Mokuleia Forest Reserve and Pahole and Kaala NARs) lands. There are no named natural features in this unit. The unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea nuttallii* and is occupied by 370 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population. The habitat features contained in this unit that are essential to *Schiedea nuttallii* include, but are not limited to, rock walls, forested slopes, or steep walls in *Acacia koa-Metrosideros polymorpha* lowland mesic forest or *Metrosideros polymorpha-Dodonaea viscosa* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Molokai in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea nuttallii*—b

This unit is critical habitat for *Schiedea nuttallii* and is 141 ha (347 ac) on State and private (Honouliuli Preserve) lands, containing Puu Kanehoa. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea nuttallii* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Schiedea nuttallii* include, but are not limited to, rock walls, forested slopes, or steep walls in *Acacia koa-Metrosideros polymorpha* lowland mesic forest or *Metrosideros polymorpha-Dodonaea viscosa* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Molokai in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 1—*Sesbania tomentosa*—a

This unit is critical habitat for *Sesbania tomentosa* and is 101 ha (250 ac) on Federal, State (Kaena Point State Park and Kaena Point NAR), and private lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is occupied by 53 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Sesbania tomentosa* include, but are not limited to, cliff faces, broken basalt, or sand dunes with rock outcrops in *Scaevola sericea* coastal dry shrubland or *Sporobolus virginicus* mixed grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, Maui, and the Northwestern Hawaiian Island in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Schiedea nuttallii*—c

This unit is critical habitat for *Schiedea nuttallii* and is 41 ha (102 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea nuttallii* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Schiedea nuttallii* include, but are not limited to, rock walls, forested slopes, or steep walls in *Acacia koa-Metrosideros polymorpha* lowland mesic forest or *Metrosideros polymorpha-Dodonaea viscosa* forest. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai and Molokai in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 18—*Sesbania tomentosa*—b

This unit is critical habitat for *Sesbania tomentosa* and is 5 ha (12 ac) on State (Mokualula State Seabird Sanctuary) lands that contain Mokualula Island. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Sesbania tomentosa* include, but are not limited to, cliff faces, broken basalt, or sand dunes with rock outcrops in *Scaevola sericea* coastal dry shrubland or *Sporobolus virginicus* mixed grasslands. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, Maui, and the Northwestern Hawaiian Island in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Silene lanceolata*—a

This unit is critical habitat for *Silene lanceolata* and is 113 ha (281 ac) on State (Waianae Kai Forest Reserve) lands, containing Puu Kawiwi. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Silene lanceolata* and is occupied by 12 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered to be not viable. The habitat features contained in this unit that are essential to *Silene lanceolata* include, but are not limited to, cliff faces or ledges of gullies in dry to mesic shrubland or cliff communities. This unit is geographically separated from critical habitat designated on Molokai in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Silene perlmanii*—a

This unit is critical habitat for *Silene perlmanii* and is 65 ha (162 ac) on Federal (Lualualei Naval Reservation) and State lands, containing Puu Kawiwi. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Silene perlmanii* and is occupied by at 12 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Silene perlmanii* include, but are not limited to, steep rocky slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Silene perlmanii*—b

This unit is critical habitat for *Silene perlmanii* and is 5 ha (12 ac) on private (Honouluili Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Silene perlmanii* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Silene perlmanii* include, but are not limited to, steep rocky slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Silene perlmanii*—c

This unit is critical habitat for *Silene perlmanii* and is 49 ha (124 ac) on State and private lands in the Waianae Mountains. There are no named natural features in this unit. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Silene perlmanii* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Silene perlmanii* include, but are not limited to, steep rocky slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Silene perlmanii*—d

This unit is critical habitat for *Silene perlmanii* and is 52 ha (130 ac) on private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Silene perlmanii* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Silene perlmanii* include, but are not limited to, steep rocky slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other three units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 4—*Solanum sandwicense*—a

This unit is critical habitat for *Solanum sandwicense* and is 104 ha (258 ac) on State (Pahole NAR and Mokuleia Forest Reseve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Solanum sandwicense* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Solanum sandwicense* include, but are not limited to, talus slopes or streambeds in open, sunny areas. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Solanum sandwicense*—b

This unit is critical habitat for *Solanum sandwicense* and is 146 ha (361 ac) on State and private (Honouliuli Preserve) lands, containing Puu Kanehoa. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Solanum sandwicense* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Solanum sandwicense* include, but are not limited to, talus slopes or streambeds in open, sunny areas. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Solanum sandwicense*—c

This unit is critical habitat for *Solanum sandwicense* and is 78 ha (192 ac) on State and private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Solanum sandwicense* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Solanum sandwicense* include, but are not limited to, talus slopes or streambeds in open, sunny areas. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 5—*Spermolepis hawaiiensis*—a

This unit is critical habitat for *Spermolepis hawaiiensis* and is 21 ha (53 ac) on State and private lands, containing Kaneana Cave. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Spermolepis hawaiiensis* and is occupied by 32 individuals. This unit is essential to the

species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Spermolepis hawaiiensis* include, but are not limited to, steep or vertical cliffs or the base of cliffs or ridges in coastal dry cliff vegetation. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 31—*Spermolepis hawaiiensis*—b

This unit is critical habitat for *Spermolepis hawaiiensis* and is 116 ha (286 ac) on State (Diamond Head State Park) lands, containing Kuilei Cliffs. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Spermolepis hawaiiensis* and is occupied by 10 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Spermolepis hawaiiensis* include, but are not limited to, steep or vertical cliffs or the base of cliffs or ridges in coastal dry cliff vegetation. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Kauai, Molokai, and Maui for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Stenogyne kanehoana*—a

This unit is critical habitat for *Stenogyne kanehoana* and is 140 ha (347 ac) on Federal (Lualualei Naval Reservation), State, and private lands (Honouliuli Preserve), containing Puu Hapapa and Puu Kanehoa. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Stenogyne kanehoana* and is occupied by 6 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Stenogyne kanehoana* include, but are not limited to, lowland mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is geographically separated from Army lands at Schofield Barracks that provide habitat for two populations of this species.

Oahu 15—*Stenogyne kanehoana*—b

This unit is critical habitat for *Stenogyne kanehoana* and is 43 ha (107 ac) on State and private (Honouliuli Preserve) lands, containing the Palikea Summit and the Laikea Trail. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Stenogyne kanehoana* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Stenogyne kanehoana* include, but are not limited to, lowland mesic forest. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. In addition, this unit is geographically separated from Army lands at Schofield Barracks that provide habitat for two populations of this species.

Oahu 4—*Tetramolopium filiforme*—a

This unit is critical habitat for *Tetramolopium filiforme* and is 111 ha (273 ac) on State (Waianae Kai Forest Reserve) lands, containing Puu Kawiwi. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium filiforme* and is occupied by one individual. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present populations, which is currently considered nonviable, and the establishment of one additional population. The habitat features contained in this unit that are essential to *Tetramolopium filiforme* include, but are not limited to, dry cliff faces or ridges in dry or mesic forests. We do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species. However, this unit is geographically separated from Army lands at Makua and Schofield that provide habitat for four populations of this species, in order to avoid all populations being destroyed by one naturally occurring catastrophic event (see "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*").

Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—a

This unit is critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* and is 167 ha (413 ac) on State (Kaala NAR, Mokuleia Forest Reserve) lands, containing Kamaohanui Summit. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium lepidotum* ssp. *lepidotum* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Tetramolopium lepidotum* ssp. *lepidotum* include, but are not limited to, grassy ridgetops, slopes, or cliffs in windblown dry forests. This unit is geographically separated from the other five units designated as critical habitat on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—b

This unit is critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* and is 23 ha (56 ac) on State (Waianae Kai Forest Reserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium lepidotum* ssp. *lepidotum* and is occupied by 8 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Tetramolopium lepidotum* ssp. *lepidotum* include, but are not limited to, grassy ridgetops, slopes, or cliffs in windblown dry forests. This unit is geographically separated from the other five units designated as critical habitat on Oahu for this species in order

to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—c

This unit is critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* and is 11 ha (28 ac) on Federal lands (Lualualei Naval Reservation), containing Puu Hapapa. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium lepidotum* ssp. *lepidotum* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Tetramolopium lepidotum* ssp. *lepidotum* include, but are not limited to, grassy ridgetops, slopes, or cliffs in windblown dry forests. This unit is geographically separated from the other five units designated as critical habitat on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d

This unit is critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* and is 94 ha (233 ac) on Federal (Lualualei Naval Reservation), State, and private (Honouliuli Preserve) lands, containing Puu Kanehoa. The unit, in combination with Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e, provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium lepidotum* ssp. *lepidotum* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Tetramolopium lepidotum* ssp. *lepidotum* include, but are not limited to, grassy ridgetops, slopes, or cliffs in windblown dry forests. This unit is geographically separated from the other five units designated as critical habitat on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e

This unit is critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* and is 1 ha (3 ac) on State and private (Honouliuli Preserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d, provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium lepidotum* ssp. *lepidotum*. It is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Tetramolopium lepidotum* ssp. *lepidotum* include, but are not limited to, grassy ridgetops, slopes, or cliffs in windblown dry forests. This unit is geographically separated from the other five units designated as critical habitat on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—f

This unit is critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* and is 259 ha (641 ac) on Federal (Lualualei Naval Reservation), State, and private lands, containing Palikea Summit. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Tetramolopium lepidotum* ssp. *lepidotum* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Tetramolopium lepidotum* ssp. *lepidotum* include, but are not limited to, grassy ridgetops, slopes, or cliffs in windblown dry forests. This unit is geographically separated from the other five units designated as critical habitat on Oahu for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Tetraplasandra gymnocarpa*—a

This unit is critical habitat for *Tetraplasandra gymnocarpa* and is 457 ha (1,129 ac) on State (Sacred Falls State Park, Hauula Forest Reserve, and Kaipapau Forest Reserve) and private lands, containing the Koolau Summit Trail. The unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Tetraplasandra gymnocarpa* and is occupied by 24 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Tetraplasandra gymnocarpa* include, but are not limited to, windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Tetraplasandra gymnocarpa*—b

This unit is critical habitat for *Tetraplasandra gymnocarpa* and is 235 ha (581 ac) on State (Kahana Valley State Park), and private lands, containing Puu Kaaumakua. The unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Tetraplasandra gymnocarpa* and is occupied by 5 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Tetraplasandra gymnocarpa* include, but are not limited to, windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Tetraplasandra gymnocarpa*—c

This unit is critical habitat for *Tetraplasandra gymnocarpa* and is 411 ha (1,018 ac) on State (Waiahole Forest Reserve and Ewa Forest Reserve) and private lands, containing Eleao Summit. The unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Tetraplasandra gymnocarpa* and is occupied by 2 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently

considered nonviable. The habitat features contained in this unit that are essential to *Tetraplasandra gymnocarpa* include, but are not limited to, windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Tetraplasandra gymnocarpa*—d

This unit is critical habitat for *Tetraplasandra gymnocarpa* and is 362 ha (894 ac) on Federal, State (Waiahole Forest Reserve and Kaneohe Forest Reserve), and private lands, containing Puu Kahualuli and Puu Keahiakahoe. The unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Tetraplasandra gymnocarpa* and is occupied by 28 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Tetraplasandra gymnocarpa* include, but are not limited to, windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 35—*Tetraplasandra gymnocarpa*—e

This unit is critical habitat for *Tetraplasandra gymnocarpa* and is 152 ha (377 ac) on State (Honolulu Watershed Forest Reserve) lands, containing Konahuanui Summit. The unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Tetraplasandra gymnocarpa* and is occupied by 5 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Tetraplasandra gymnocarpa* include, but are not limited to, windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Tetraplasnadra gymnocarpa*—f

This unit is critical habitat for *Tetraplasandra gymnocarpa* and is 213 ha (528 ac) on State (Honolulu Watershed Forest Reserve) and private lands. There are no named natural features in this unit. The unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Tetraplasandra gymnocarpa* and is occupied by 15 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Tetraplasandra gymnocarpa* include, but are not limited to, windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Trematolobelia singularis*—a

This unit is critical habitat for *Trematolobelia singularis* and is 86 ha (219 ac) on Federal, State (Waiahole Forest Reserve and Ewa Forest Reserve), and private lands, containing Eleao Summit. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Trematolobelia singularis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Trematolobelia singularis* include, but are not limited to, steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 20—*Trematolobelia singularis*—b

This unit is critical habitat for *Trematolobelia singularis* and is 10 ha (26 ac) on Federal, State, and private lands, containing Puu Keahiakahoe. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Trematolobelia singularis* and is occupied by 50 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Trematolobelia singularis* include, but are not limited to, steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 34—*Trematolobelia singularis*—c

This unit is critical habitat for *Trematolobelia singularis* and is 2 ha (5 ac) on State (Honolulu Watershed Forest Reserve) and private lands, containing Kainawaaunui Summit, Mount Olympus, Palikea Summit, and Puu Lanipo. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Trematolobelia singularis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Trematolobelia singularis* include, but are not limited to, steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Trematolobelia singularis*—d

This unit is critical habitat for *Trematolobelia singularis* and is 13 ha (33 ac) on State lands, containing Puu Lanihuli. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Trematolobelia singularis* and is occupied by 100 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Trematolobelia singularis* include, but are not limited to, steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 35—*Trematolobelia singularis*—e

This unit is critical habitat for *Trematolobelia singularis* and is 26 ha (64 ac) on State (Honolulu Watershed Forest Reserve) and private lands, containing Konahuanui Summit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Trematolobelia singularis* and is occupied by 15 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Trematolobelia singularis* include, but are not limited to, steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland. Although we do not believe that enough habitat currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Oahu 15—*Urera kaalae*—c

This unit is critical habitat for *Urera kaalae* and is 224 ha (555 ac) on Federal (Lualualei Naval Reservation) and private (Honouliuli Preserve) lands, containing Puu Hapapa and Puu Kanehoa. The unit provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Urera kaalae* and is occupied by 4 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Urera kaalae* include, but are not limited to, slopes or gulches in diverse mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Urera kaalae*—a

This unit is critical habitat for *Urera kaalae* and is 53 ha (133 ac) on State (Waianae Kai Forest Reserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 4—*Urera kaalae*—b, provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Urera kaalae* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Urera kaalae* include, but are not limited to, slopes or gulches in diverse mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Urera kaalae*—b

This unit is critical habitat for *Urera kaalae* and is 17 ha (43 ac) on State (Honolulu Watershed Forest Reserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 4—*Urera kaalae*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Urera kaalae* and is occupied by 3 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Urera kaalae* include, but are not limited to, slopes or gulches in diverse mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Urera kaalae*—d

This unit is critical habitat for *Urera kaalae* and is 35 ha (87 ac) on private (Honoliuli Preserve) lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Urera kaalae* and is occupied by 7 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Urera kaalae* include, but are not limited to, slopes or gulches in diverse mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Urera kaalae*—e

This unit is critical habitat for *Urera kaalae* and is 51 ha (125 ac) on Federal (Lualualei Naval Reservation) and State lands. There are no named natural features in this unit. The unit, in combination with Oahu 15—*Urera kaalae*—f, provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Urera kaalae* and is occupied by 6 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Urera kaalae* include, but are not limited to, slopes or gulches in diverse mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being

destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Urera kaalae*—f

This unit is critical habitat for *Urera kaalae* and is 82 ha (202 ac) on State and private (Honouliuli Preserve) lands, containing Palikea Summit. The unit, in combination with Oahu 15—*Urera kaalae*—e, provides habitat for 2 populations of 300 mature, reproducing individuals of the short-lived perennial *Urera kaalae* and is occupied by 31 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Urera kaalae* include, but are not limited to, slopes or gulches in diverse mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 1—*Vigna o-wahuensis*—a

This unit is critical habitat for *Vigna o-wahuensis* and is 180 ha (447 ac) on State (Kaena Point State Park) lands, containing Alau Gulch, Alei Pali, Nihoa Gulch, Puu Pueo, and Uluhulu Gulch. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Vigna o-wahuensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Vigna o-wahuensis* include, but are not limited to, open dry fossil reef, with shrubs or grasses or fairly steep slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui and Kahoolawe for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 24—*Vigna o-wahuensis*—b

This unit is critical habitat for *Vigna o-wahuensis* and is 4 ha (12 ac) on State (Mokulua Island State Seabird Sactuary) lands, containing the Mokulua Islands. The unit, in combination with Oahu 25—*Vigna o-wahuensis*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Vigna o-wahuensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Vigna o-wahuensis* include, but are not limited to, open dry fossil reef with shrubs or grasses or fairly steep slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui and Kahoolawe for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 25—*Vigna o-wahuensis*—c

This unit is critical habitat for *Vigna o-wahuensis* and is 4 ha (9 ac) on State (Mokulua Island State Seabird Sactuary) lands, containing the Mokulua Islands. The unit, in combination with Oahu 24—*Vigna o-wahuensis*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Vigna o-wahuensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Vigna o-wahuensis* include, but are not limited to, open dry fossil reef with shrubs or grasses or fairly steep slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui and Kahoolawe for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 26—*Vigna o-wahuensis*—d

This unit is critical habitat for *Vigna o-wahuensis* and is 26 ha (63 ac) on State (Manana Island State Seabird Sanctuary) lands, containing Manana Island. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Vigna o-wahuensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Vigna o-wahuensis* include, but are not limited to, open dry fossil reef with shrubs or grasses or fairly steep slopes. This unit is geographically separated from critical habitat designated elsewhere on Oahu and on Maui and Kahoolawe for this species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—a

This unit is critical habitat for *Viola chamissoniana* ssp. *chamissoniana* and is 199 ha (491 ac) on State (Kaala NAR and Mokuleia Forest Reserve) lands. There are no named natural features in this unit. The unit provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *Viola chamissoniana* ssp. *chamissoniana* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Viola chamissoniana* ssp. *chamissoniana* include, but are not limited to, dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b

This unit is critical habitat for *Viola chamissoniana* ssp. *chamissoniana* and is 10 ha (25 ac) on State (Waianae Kai Forest Reserve) lands. There are no named natural features in this unit. The unit, in combination with Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Viola chamissoniana* ssp. *chamissoniana* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Viola chamissoniana* ssp. *chamissoniana* include, but are not limited to, dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c

This unit is critical habitat for *Viola chamissoniana* ssp. *chamissoniana* and is 22 ha (55 ac) on State (Waianae Kai Forest Reserve) lands, containing Puu Kawiwi. The unit, in combination with Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Viola chamissoniana* ssp. *chamissoniana* and is occupied by 5 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Viola chamissoniana* ssp. *chamissoniana* include, but are not limited to, dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d

This unit is critical habitat for *Viola chamissoniana* ssp. *chamissoniana* and is 6 ha (15 ac) on Federal lands (Lualualei Naval Reservation). There are no named natural features in this unit. The unit, in combination with Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—e, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Viola chamissoniana* ssp. *chamissoniana* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Viola chamissoniana* ssp. *chamissoniana* include, but are not limited to, dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—e

This unit is critical habitat for *Viola chamissoniana* ssp. *chamissoniana* and is 13 ha (31 ac) on Federal lands (Lualualei Naval Reservation). There are no named natural features in this unit. The unit, in combination with Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Viola chamissoniana* ssp. *chamissoniana* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Viola chamissoniana* ssp. *chamissoniana* include, but are not limited to, dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—f

This unit is critical habitat for *Viola chamissoniana* ssp. *chamissoniana* and is 29 ha (72 ac) on Federal (Lualualei Naval Reservation) and private lands. There are no named natural features in this unit. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Viola chamissoniana* ssp. *chamissoniana* and is occupied by 3 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Viola chamissoniana* ssp. *chamissoniana* include, but are not limited to, dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 20—*Viola oahuensis*—a

This unit is critical habitat for *Viola oahuensis* and is 903 ha (2,232 ac) on Federal (Oahu Forest National Wildlife Refuge), State (Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, Ewa Forest Reserve, and Waiahole Forest Reserve), and private lands, containing Eleao Summit, Puu Kahuauli, Puu Keahiakahoe, Puu Pauao, and the Koolau Summit Trail. The unit provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *Viola oahuensis* and is occupied by 67 individuals. This unit is essential to the species' conservation because it supports an extant colony and includes habitat that is necessary for the expansion of the present population, which is currently considered nonviable. The habitat features contained in this unit that are essential to *Viola oahuensis* include, but are not limited to, exposed, windswept ridges of moderate to steep slope in wet *Metrosideros polymorpha-Dicranopteris linearis* shrublands or *Metrosideros polymorpha* mixed montane bogs in the cloud zone. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Oahu 35—*Viola oahuensis*—b

This unit is critical habitat for *Viola oahuensis* and is 74 ha (186 ac) on State (Honolulu Watershed Forest Reserve) lands, containing Konahuanui Summit and Mount Olympus. The unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Viola oahuensis* and is currently unoccupied. This unit is essential to the species' conservation because it supports habitat that is necessary for the establishment of additional populations on Oahu in order to reach recovery goals. The habitat features contained in this unit that are essential to *Viola oahuensis* include, but are not limited to, exposed, windswept ridges of moderate to steep slope in wet *Metrosideros polymorpha-Dicranopteris linearis* shrublands or *Metrosideros polymorpha* mixed montane bogs in the cloud zone. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species in order to avoid all recovery populations being destroyed by one naturally-occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals,

organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of one or more of the 99 plant species from Oahu will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC) will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(7) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Analysis of Managed Lands Under Section 3(5)(A)

The need for "special management considerations or protections" of the essential habitat features (primary constituent elements) included in a designation is required by the definition of critical habitat in section 3(5)(A) of the Act. If the primary constituent elements are being adequately managed then they do not need "special management considerations or protections." Adequate management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it (1) provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not considered to be in need of special management or protection.

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 99 plant species were examined to determine the adequacy of special management considerations or protection and, consequently, whether such areas meet the definition of critical habitat under section 3(5)(A). We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. We reviewed all biological information received during the public comment periods, public meeting, and public hearing. When clarification was required on the information provided to us, we followed up with a telephone contact. We also met with staff from the Oahu District DOFAW office to discuss management activities they are conducting on Oahu.

In determining whether a management plan or agreement provides adequate management or protection, we first consider whether that plan provides a conservation benefit to the species. We considered the following threats and associated recommended management actions:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive nonnative plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include nonnative grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, cattle, and pigs); direct and indirect effects of nonnative plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and nonnative insect pollinators for food, and predation of native insect pollinators by nonnative hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment, continue to be negatively affected by fruit- and flower-eating pests such as nonnative arthropods, mollusks, and rats, and photosynthesis and water transport are affected by nonnative insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include nonnative plant invasions altering wildfire regimes; feral ungulates carry weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of nonnative plants; and numerous nonnative insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; Smith 1985; Tunison *et al.* 1992);

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of nonnative species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of these plants. These actions are described in our recovery plans for these 99 species (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992).

In general, taking all of the above recommended management actions into account, the following management actions are important in providing a conservation benefit to the species: Feral ungulate control; wildfire management; nonnative plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). On a case-by-case basis, these actions may rise to different levels of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants.

As shown in Table 2, the 99 species of plants are found on Federal, State, and private lands on the island of Oahu. Information received in response to our public notices; meetings with Oahu District DOFAW staff; the May 28, 2002, proposal; public comment periods; and the November 19, 2002, public hearing; as well as information in our files, indicated that there is limited ongoing conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the lands in question do not require special management or protection.

The following discussion analyzes current management plans that provide a conservation benefit to the species on lands under U.S. Army jurisdiction to assess whether they meet the Service's requirements for adequate management or protection.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and

priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. Bases that have completed and approved INRMPs that adequately address the needs of the species may not meet the definition of critical habitat discussed above, because they may not require special management or protection. We would not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species, (2) there must be assurances that the conservation management strategies will be implemented, and (3) there must be assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

Lands Under U.S. Army Jurisdiction

The Army has six installations under its jurisdiction on Oahu: Dillingham Military Reservation (DMR), Kawailoa Training Area (KLOA), Kahuku Training Area (KTA), Makua Military Reservation (MMR), Schofield Barracks Military Reservation (SBMR), and Schofield Barracks East Range (SBER). All of these lands are administered by the Army Garrison, Hawaii, for various types of routine military training. The Army has completed an INRMP (Army 2002), an Ecosystem Management Plan (Army 1998), and an Endangered Species Management Plan (Research Corporation of Hawaii (RCUH) 1998) for all of the Oahu training areas. These plans encompass management actions that will benefit all 76 listed plant species for which critical habitat has been proposed on these Army lands. They have a completed Wildland Fire Management Plan (WFMP) for MMR (Army 2000) and a draft plan which includes the other five installations (Army 2003). The goal of the WFMP is to reduce the threat of wildfire which adversely affects threatened and endangered species on all six installations. The Army also provides monthly and annual summary reports (Col. W.E. Ryan III, Army, *in litt.* 2000–2002; Col. F.A. Quintana, Army, *in litt.* 2002–2003) regarding the natural resources management projects performed under the Ecosystems Management Program for all six installations (RCUH 1998, 1999, 2000, 2001 and 2002). These reports provide information on management actions which have been implemented and which of these have proven beneficial to populations of listed species.

The INRMP describes specific actions for each installation, including anticipated implementation schedules. It includes hundreds of ongoing and proposed actions within the time frame of the INRMP designed to address the variety of threats faced by these plant species at appropriate scales: Species-specific, small areas, watersheds, and installation-wide. Examples of management activities directed towards the conservation of listed plants and their habitat include: (1) Field surveys to identify new populations of threatened and endangered plant species in previously unsurveyed areas and areas of suitable habitat; (2) development of a web-based system for a rare plant database; (3) establishment of a GIS database to store data to be used to monitor threatened and endangered plant species; (4) maintenance a GIS database updated with results of field surveys; (5) determining effects of military actions on threatened and endangered plants species through monitoring known populations of threatened and endangered plant species; (6) evaluation and determination of plant propagation needs and storage facilities; (7) identification of research needs regarding pollination biology and establishment of a GIS database to store data to be used to monitor threatened and endangered plant species; (8) propagation and outplanting of threatened and endangered plant species; and (9) creation of a full-time horticulturist position to identify and implement management actions for threatened and endangered plant species (Army 2002).

The list of ongoing and proposed actions detailed in the INRMP focuses management activities into the areas of wildfire management, nonmilitary human land use, feral ungulate control, invasive plant control, and other nonnative species control. As an example, some of the management actions that address feral ungulate control include: (1) The establishment and evaluation of permanent ungulate monitoring transects; (2) development and establishment of a GIS database to maintain these transect data; (3) implementation of ungulate control measures as necessary in areas where there are populations or occurrences of threatened and endangered species; (4) evaluation of ungulate control efforts to determine if permanent management units are required; and (5) monitoring and maintenance of existing fenced units. In addition, management actions for control of nonnative plant species include: (1) The control and eradication of nonnative incipient plant species, particularly in areas where threatened and endangered species occur; (2) control of widespread nonnative plant species where they threaten native plant communities; and (3) establishment of a GIS database for nonnative plant location data, and updating nonnative plant location maps to track and prioritize control efforts (Army 2002).

The comprehensive list of ongoing and proposed management activities detailed in the INRMP addresses each of the management actions detailed above that the Service considers are important in providing a conservation benefit to the species, therefore, the plan provides a conservation benefit to the species.

In terms of providing assurances that the management plant will be implemented, the INRMP provides implementation schedules and identifies funding needs for each installation through the year 2006. Examples of those programs identified for funding include the Endangered Species Management, Biodiversity and Ecosystem Integrity, Watershed Management, Conservation Education and Outreach, and Pest Management. The Army has committed to increased funding for their wildland fire program to ensure proactive fire management that will benefit threatened and endangered plant species through increased protection of habitat on their lands. They have also committed to continued funding of actions that benefit habitat restoration, species stabilization, and threat abatement (Anderson, *in litt.* 2003).

The plan does provide assurances that the conservation effort will be effective. The Army will fund and engage in activities that have been demonstrated to benefit threatened and endangered species (*e.g.*, ungulate and invasive weed control). In addition to the extensive monitoring provisions contained in the INRMP and provided by the reporting procedures, the Army has agreed to amend their existing INRMP to include additional monitoring of federally listed plants and their habitat at all of their Oahu installations to determine the success of identified management activities. Based upon this information, activities will be revised to provide for the optimum conservation benefit to the listed plant species and their habitat (Col. David L. Anderson, Army, *in litt.* 2003). Thus, the Army will monitor the effectiveness of its management actions and modify them, as necessary, to ensure their effectiveness.

As all three criteria above have been met, the Service has determined that lands on the island of Oahu which fall under U.S. Army jurisdiction do not meet the definition of critical habitat in the Act. According to the Service's published recovery plans, the major extinction threats to Oahu plants involve the persistent and expanding presence of alien species and their associated impacts. In general, for most of these species there is less relative concern associated with Federal activities or proposed development. Recovery of these listed species will require active management such as plant propagation and reintroduction, management of fire risk, alien species removal, and ungulate and rat management. Failure to implement these management measures, all of which require active intervention and participation, virtually assures the extinction of these species. The Army is carrying out many of these actions on their lands, in some cases to a degree that surpasses that of other Federal, State, and private landowners in Hawaii. We are, therefore, not designating critical habitat on these lands. Should the status of these commitments change, the Service will reconsider whether these lands meet the definition of critical habitat. If the definition is met, we have the authority to propose to amend critical habitat to include identified areas at that time (50 CFR section 424.14(g)). Although these areas are removed from the final critical habitat designation, the number of populations that habitat on these installations provides is applied toward the overall conservation goal of 8 to10 populations for each species because these lands will be managed under the INRMP consistent with recovery goals.

Analysis of Impacts Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation on May 28, 2002, a draft economic analysis was prepared to estimate the potential direct and indirect economic impacts associated with the designation, in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on December 26, 2002 (67 FR 78763). Following the close of the comment period, an addendum was completed that incorporated public comments on the draft analysis and made other changes as necessary. These changes were primarily the result of modifications made to the proposed critical habitat designation based on biological information received during the comment periods. Together, the draft economic analysis and the addendum constitute our final economic analysis.

Our economic analysis evaluated the potential direct and indirect economic impacts associated with the proposed critical habitat designation for the 99 plant species from the island of Oahu over the next 10 years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits not directly related to operation of the Act. Examples of indirect impacts include potential effects to property values, redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat including potential effects on property values and potential indirect costs resulting from the loss of hunting opportunities and the interaction of State and local laws; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

The analysis in the DEA incorporated two baselines: one that addressed the impact of the proposed critical habitat designation that may be attributable coextensively to the listing of the species, and one that addressed the incremental impact of the proposed designation.

The Addendum utilizes only the first of the two baselines. Because of the uncertainty about the benefits and economic costs resulting solely from critical habitat designations, the Service believes that it is reasonable to estimate the economic impacts of a designation utilizing this single baseline. It is important to note that the inclusion of impacts attributable coextensively to the listing does not convert the economic analysis into a tool to be used in deciding whether or not a species should be added to the Federal list of threatened and endangered species.

The final economic analysis estimates that, over the next 10 years, the designation (co-extensive with the listing in some instances) may result in potential direct economic effects from implementation of section 7 ranging from approximately $8.3 million to $20.3 million in quantifiable costs. This is an increase from the range of $1.1 to $2.4 million in the draft economic analysis. The increase is primarily due to revised estimates associated with section 7 consultations on Army lands. All other direct costs stay the same or decrease, due primarily to the exclusion of proposed units Oahu C, Oahu M, Oahu P, and Oahu V from final designation and the significant reduction in size to proposed units Oahu A, Oahu G, Oahu L, and Oahu W because they lacked the primary constituent elements or were not essential to the conservation of the species. Overall, the largest portion of this estimate includes Army lands that were proposed as critical habitat but have been removed from the final designation. Therefore, the direct cost of designating critical habitat for these 99 plant species will be far less than this estimate.

While our final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for 99 plant species on Oahu, the reported costs are often unquantifiable and discussed in qualitative terms. In general, most of the potential indirect effects are thought to have a low probability of occurrence. The final economic analysis concludes the probability that some land within the Urban and Agricultural Districts would be redistricted to Conservation is considered moderate to high. However,

the analysis concludes it is unlikely that all lands within the Urban and Agricultural Districts would be redistricted to Conservation. In addition, such redistricting is not expected to have a significant economic impact because the land most likely converted to the Conservation District are those with a high value for conservation and low economic value (*i.e.*, not suitable for development). The final economic analysis also discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are available for inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Other than the Army lands discussed below, no critical habitat units in the proposed rule were excluded or modified due to a determination that the benefits of excluding the lands, taking into account the economic and other relevant impacts, exceeded the benefits of specifying them as critical habitat.

Other Impacts

As described in the "Analysis of Managed Lands Under Section 3(5)(A)" section above, based on our evaluation of the adequacy of special management and protection that is provided in the Army's Final Integrated Natural Resources Management Plan (INRMP) for Oahu Training Areas (Department of the Army 2002) for the plant species addressed in this proposal which are found on Army lands, in accordance with section 3(5)(A)(i) of the Act, we have not included the Army's Dillingham Military Reservation (DMR), Kawailoa Training Area (KLOA), Kahuku Training Area (KTA), Makua Military Reservation (MMR), Schofield Barracks Military Reservation (SBMR), and Schofield Barracks East Range (SBER), in this final designation of critical habitat. However, to the extent that special management considerations and protection may be required for these areas and they, therefore, would meet the definition of critical habitat according to section 3(5)(A)(i), they are properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

As explained below, we believe the benefits of designating critical habitat for the 76 species listed above at DMR, KLOA, KTA, MMR, SBMR, and SBER are relatively low and outweighed by the benefits of excluding these areas from critical habitat. We also have concerns that a critical habitat designation may negatively impact the Army's ability to effectively carry out a recently proposed training and equipment conversion program on Oahu and otherwise adversely impact national security.

The Army's DMR, KLOA, KTA, MMR, SBMR, and SBER are occupied habitat for 53 species and unoccupied habitat for 23 species, as referenced above. A total of 10,905 hectares (26,946 acres) are excluded from final critical habitat; of this total, 6,208 hectares (15,340 acres) are considered occupied by one or more listed species, while 4,697 hectares (11,606 acres) are considered unoccupied. The unoccupied habitat is located in the northern portion of the Koolau Mountains.

According to our published recovery plans, recovery of these 76 species will require reproducing, self-sustaining populations located in a geographic array across the landscape, with population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). The highest priority recovery tasks include proactive management such as plant propagation and reintroduction, fire control, nonnative species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, increases the likelihood that species will go extinct or not recover. The Army is undertaking many of these types of conservation actions on their lands on Oahu as part of the implementation of the INRMP for Oahu Training Areas. These activities, which are described in more detail in the "Analysis of Managed Lands Under Section 3(5)(A)" section, require substantial financial obligations by the Army and cooperation with other agencies, landowners, and local residents.

The following analysis describes the likely positive and negative impacts of a critical habitat designation on Army lands compared to the likely positive and negative impacts of a critical habitat exclusion of those lands. The Service paid particular attention to the following issues: To what extent a critical habitat designation would confer additional regulatory, educational, and social benefits; and to what extent would critical habitat interfere with the Army's ongoing proactive conservation actions.

(1) Benefits of Designating U.S. Army Lands as Critical Habitat

The six Army Oahu installations contain habitat essential to the conservation of the 76 species listed above. The primary regulatory benefit provided by a critical habitat designation on Army lands is the requirement under section 7 of the Act that any actions authorized, funded, or carried out by the Army would not destroy or adversely modify any critical habitat, which includes an evaluation on the effects of the action on recovery of the species. Most of the Army areas are occupied by listed species and thus section 7 consultation would already be required. However, since areas without listed species present or without a critical habitat designation do not always receive section 7 evaluation (*e.g.*, see 50 CFR 402.12, biological assessments are based on a list of species present in the action area), a critical habitat designation in unoccupied areas may provide additional regulatory benefits.

The net benefit of this aspect of critical habitat, however, has been significantly minimized by the Army's commitment to coordinate with the Service on any of its activities that may adversely affect areas whether occupied or unoccupied by listed species that are considered essential to their conservation (*i.e.*, proposed as critical habitat) (Anderson, *in litt.*, March 20, 2003). In fact, for the current consultation at the six Oahu installations, the Army is evaluating impacts of its ongoing and future training activities on habitat considered essential to the conservation, including habitat unoccupied by listed species.

Moreover, the section 7 mandate to avoid destroying critical habitat does not extend to requiring plant reintroductions or other proactive conservation measures (*e.g.*, ungulate control, etc.) considered essential to the conservation of the species. As discussed above, the major threat to these species is the persistent and expanding presence of alien species. Failure to implement proactive management measures such as alien species removal and ungulate and rat management, as well as management of fire risk and plant propagation and reintroduction, may result in extinction of these species even with a critical habitat designation. These actions are, however, included in the Army's INRMP for Oahu Training Areas and will provide tangible benefits that will reduce the likelihood of extinction and increase the chances of recovery.

Another potential benefit of a critical habitat designation on these Army lands is the education of the Army and the general public concerning the conservation value of these lands. While we believe these educational benefits are important for the conservation of these species, we believe it has already been achieved through the Army's INRMP (for example most of the INRMP's biologically sensitive areas overlap with proposed critical habitat), publication of the proposed critical habitat rule, the many public and interagency meetings that have been held to discuss the proposal, and discussion contained in this final rule.

In sum, the Army will manage for the conservation of all of these species through their INRMP process; this management will confer significant conservation benefits to the species that would not necessarily result from the section 7 consultation process. In addition, the Army has agreed to coordinate with the Service on any actions that may affect essential habitat areas (whether occupied or unoccupied by the listed species) even if these areas are not designated as final critical habitat. Taken together, these two management commitments by the Army lead the Service to conclude that any additional, incremental regulatory benefits provided by a final critical habitat designation on Army lands would be relatively small.

(2) Benefits of Excluding U.S. Army Lands from Critical Habitat

When evaluating the potential negative impacts of a critical habitat designation and the potential benefits of excluding Army lands from final critical habitat, the Service considered whether critical habitat designation would affect Army's military mission on its Oahu installations and adversely impact national security.

As noted above, these plants will need actions that proactively remove existing threats and that include propagation and reintroduction into unoccupied areas if they are to recover. Neither section 7 consultations nor a critical habitat designation would necessarily result in the implementation of actions needed for recovery of these species.

The Army is engaged in or has committed to engage in a wide variety of proactive conservation management activities that are set out in the "Analysis of Managed Lands Under Section 3(5)(A)" section of this rule.

The Service also considered whether a final critical habitat designation would negatively impact the Army's military mission and thus national security. Overall, the Service believes it has been able to work closely and in a positive collaborative fashion with the Army to minimize potential negative impacts to the Army's military training activities as a consequence of Endangered Species Act regulation.

However, the 25th Infantry Division (Light) based on Oahu has recently been selected to participate in the experimental "Transformation" of its force to a lighter, rapid response force known as a Stryker Brigade Combat Team.

The Army has stated that a final critical habitat designation may lead to disruption to training and a delay of construction of required training facilities if the Army has to consult on the impacts to newly designated critical habitat. The active training areas allow the troops to attain skills to respond to enemy fire quickly and accurately and to train in offensive operations. The natural and physical attributes of the training areas in Hawaii realistically mirror the battlefield conditions found in other nations in the Pacific region. As these training conditions are not found anywhere else in the continental United States, the Army states that it is imperative that the utilization of the military training installations in Hawaii not be impeded by additional requirements associated with section 7 consultations on critical habitat designations.

(3) The Benefits of Excluding Army Lands from Critical Habitat Outweigh the Benefits of Inclusion

Based on the above considerations, and in accordance with section 4(b)(2) of the Act, we have determined that the benefits of excluding the Army's Oahu training areas from critical habitat due to adverse impacts to national security and other relevant factors, as set forth above, outweigh the benefits of including these lands in critical habitat for the 76 species listed above. We acknowledge that the benefits for either inclusion or exclusion of Army lands appear to be relatively limited. Therefore, we have carefully weighed the relative benefits of each option.

Although these areas within Army lands are removed from the final critical habitat designation, the Service still considers them essential to the conservation of these species. The number of populations that the habitat on these installations provides is applied towards the overall recovery goal of 8 to 10 populations for each species (see discussion below), and it is anticipated that these lands will be managed under the Army's INRMP for Oahu Training Areas consistent with the conservation goals for these species.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

For both the 44 endemic and the 32 multi-island species, it is the Service's conclusion that the Army's mission and management plans (*e.g.*, INRMP) will provide more net conservation benefits than would be provided if these areas were designated as critical habitat. These management plans, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Oahu and increase their likelihood of recovery. Further, the majority of these areas are already occupied by 53 of the 76 species and thereby benefit from the section 7 protections of the Act. The Army has agreed to coordinate with the Service on any actions that may adversely affect habitat in remaining unoccupied areas that are essential to the conservation of these species. The exclusion of these areas will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement discretionary conservation activities as the Army has done.

In addition, critical habitat is being designated on other areas of Oahu for all 44 of the endemic species, and critical habitat has been designated elsewhere on Oahu, and/or designated or proposed on other islands, for the remaining 32 multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In sum, the above analysis concludes that the exclusion of these lands will not cause extinction and should in fact improve the chances of recovery for all 76 species.

Lands Under U.S. Navy Jurisdiction

The U.S. Navy (Navy) manages several areas which contain proposed critical habitat: Naval Magazine Pearl Harbor Lualualei Branch and Naval Computer and Telecommunication Area Master Station Pacific Transmitting Facility at Lualualei. The following discussion explains why portions of these Navy areas are included in final critical habitat.

The U.S. Navy owns or leases much of Lualualei Valley, which is operated as a naval magazine and transmitting facility. One listed species, *Marsilea villosa*, occurs on land at the Naval Computer and Telecommunications

Area Master Station Pacific Radio Transmitting Facility at Lualualei. The Navy regularly mows this area, which benefits the species by keeping the grasses from taking over the habitat (HINHP Database 2001; Navy 2001a; Navy 2001c). Twenty-three species, *Abutilon sandwicense, Alectryon macrococcus, Bonamia menziesii, Chamaesyce kuwaleana, Diellia falcata, Flueggea neowawraea, Hedyotis parvula, Lepidium arbuscula, Lipochaeta lobata, Lipochaeta tenuifolia, Lobelia niihauensis, Marsilea villosa, Melicope saint-johnii, Neraudia angulata, Nototrichium humile, Phyllostegia hirsuta, Plantago princeps, Sanicula mariversa, Schiedea hookeri, Tetramolopium filiforme, Tetramolopium lepidotum, Urera kaalae,* and *Viola chamissoniana* ssp. *chamissoniana,* are reported from lands at the Naval Magazine Pearl Harbor Lualualei Branch (HINHP Database 2001; Navy 2001b; Navy 2001d). One fenced exclosure at the Halona management area has been erected to protect *Abutilon sandwicense* from feral ungulates, and another exclosure at Puu Hapapa protects *Abutilon sandwicense, Bonamia menziesii, Fleuggea neowawraea, Lipochaeta lobata* var. *leptophylla,* and *Nototrichium humile* from browsing by feral ungulates. Other management actions include some monitoring of rare plants, surveying for rare plants, and controlling some invasive plants in rare plant habitats (The Traverse Group 1988; Navy 1997, 2001a, 2001b; Navy 2001c; Navy 2001d).

The Service conducted an analysis for U.S. Navy lands similar to that described above for Army lands. We were not able to exclude Navy lands from final critical habitat for the following reasons:

- The Navy's INRMP fails to address 17 of the 20 listed species for which critical habitat has been proposed on Navy lands. Therefore, absent explicit beneficial management plans for these species, and absent a reasonable likelihood that such plans for these species will be funded and implemented in the future, the Service cannot identify compelling conservation benefits that temper the regulatory benefits of a critical habitat designation on these Navy lands.
- Since the time critical habitat was first proposed on Navy lands, the Service has worked closely with Navy staff to scientifically refine the proposed critical habitat. The changes from the proposed critical habitat to final critical habitat reflect our attempt to ensure that we have included on those lands that contain features essential to the species or, if unoccupied, are themselves essential to the conservation of the species. In doing so, we have also been able to minimize the potential for negative impacts to military activities. Therefore, at this time we cannot identify any relevant negative impacts to the Navy's military mission as a consequence of this critical habitat designation.

In conclusion, the Service believes that it is necessary to include these Navy lands in final critical habitat when the above factors are considered. The Navy is an important partner of the Service and, as described above, is carrying out some conservation activities on Oahu for some of these listed plant species. The current Navy management practices for the areas that are designated as critical habitat, including mowing and fire suppression, are consistent with the conservation of the listed plants and maintenance of their habitat. For example, Navy mowing has benefitted listed species by keeping grasses from taking over their habitat. Similarly, Navy fire management practices, such as restricting access, can further the conservation of listed plants. Although some areas on Navy lands are included in the final critical habitat designation, the Service will consider amending this critical habitat designation if new information becomes available regarding potential impacts to military readiness, or if there is a change in Navy INRMP planning and implementation that was not previously considered and that addresses the conservation needs of these species. For one listed species, *Marsilea villosa,* occurs on land at the Naval Computer and Telecommunications Area Master Station Pacific Radio Transmitting Facility at Lualualei. The Navy regularly mows this area, which benefits the species by keeping the grasses from taking over the habitat (HINHP Database 2001; Navy 2001a; Navy 2001c).

Taxonomic Changes

At the time we listed *Hibiscus brackenridgei, Phyllostegia parviflora,* and *Mariscus pennatiformis,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listings for these three species, we became aware of new taxonomic treatments for these species. Also, the recently published book *Hawaii's Ferns and Fern Allies* (Palmer 2003) has changed the family name for *Ctenitis squamigera* (from Aspleniaceae to Dryopteridaceae). Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Oahu before we can prepare and publish a notice of taxonomic changes for these four species. We will prepare a taxonomic change notice for these four species after we have published the final critical habitat designations on Oahu.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (draft economic analysis and addendum), we are certifying that the critical habitat designation for 99 Oahu plant species will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation.

Federal courts and Congress have indicated that an RFA/SBREFA analysis may be limited to entities directly subject to the requirements of the regulation (Service 2002). As such, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agriculfural businesses with annual sales less than $750,000. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Honolulu County is not a small governmental jurisdiction because its population was 876,156 in 2000. Although certain State agencies, such as DLNR, Department of Agriculture (DOA), and Department of Transportation (DOT), may be affected by the critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.,* 249 U.S. App. D.C. 64, 773 F.2d 327 (1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.,* 175 F.3d 1027, 336 U.S.App.D.C. 16 (D.C.Cir., May 14, 1999)).

The primary projects and activities that might be affected by the designation that could affect small entities include ranching operations and conservation projects. Based on our draft economic analysis and addendum, there were 100 cattle livestock operations in Honolulu County in 2000. The combined cattle sales of all of these operations in 2000 was about $556,000 (State Department of Agriculture 2002). Since this implies average annual cattle sales per business of $9,267, it is likely that all or almost all of the Honolulu County cattle operations meet the definition of a small business (annual sales less than $750,000). Thus, our draft economic analysis concluded that the proposed critical habitat designation might affect a half dozen out of 100 (or 12 percent) of the small businesses in the cattle industry in Honolulu County.

The actual impacts of the final rule will be even smaller. The final rule designates less land used for ranching as critical habitat. In turn, both the number of affected ranches and the number of Section 7 consultations involving ranching will be lower. As discussed in the addendum, the final designation could have a negative impact on about three ranches (about three percent of the total ranches on Oahu). These estimates were based on the proposed designations. However, this final rule designates 22,767 hectares (56,258 acres) less than had been proposed, or a 49 percent reduction.

These conclusions are supported by the history of consultations on Oahu. Since these 99 plant species were listed (between 1991 and 1996), we have conducted 2 formal consultations and 24 informal consultations, in addition to consultations on Federal grants to State wildlife programs that do not affect small entities. The two formal consultations were conducted on behalf of the Army, for review of the "Biological Assessment for Programmatic Section 7 Consultation on Routine Military Training at Makua Military Reservation, and Makua Endangered Species Mitigation Plan." Thirty-nine of the 99 species, *Alectryon macrococcus, Abutilon sandwicense, Alsinidendron obovatum, Bonamia menziesii, Cenchrus agrimonioides, Chamaesyce celastroides* var. *kaenana, Chamesyce herbstii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea longiflora, Cyanea superba, Cyrtandra dentata, Delissea subcordata, Diellia falcata, Dubautia herbstobatae, Euphorbia haeleeleana, Flueggea neowawraea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arbuscula, Hibiscus brackenridgei, Lepidium arbuscula, Lipochaeta tenuifolia, Lobelia niihauensis, Lobelia oahuensis, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Phyllostegia kaalaensis, Plantago princeps, Sanicula mariversa, Schiedea hookeri, Schiedea kaalae, Schiedea nuttallii, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium filiforme,* and *Viola chamissoniana* ssp. *chamissoniana,* were reported from the action area. We conducted 24 informal consultations with the Army, U.S. Air Force, Navy, FAA, Department of Transportation, U.S. Coast Guard, Department of Land and Natural Resources Division of State Parks, Hawaii Army National Guard, U.S. Department of Agriculture's Animal and Plant Health Inspection Service, and U.S. Department of Energy.

None of these consultations affected or concerned small entities. We have determined that the State of Hawaii and Honolulu County are not small entities. The Army, Navy, NRCS, Corps, FCC, Department of Transportation, Environmental Protection Agency, FAA, FEMA, Dole Food Company, local television stations, and cellular, paging, and wireless services are not small entities. In 21 of the 24 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. We initiated formal consultation for the remaining three. For both formal consultations, we found that routine military training at Makua Military Reservation, which included an indepth list of conservation measures the Army would carry out in the action area, was not likely to jeopardize listed species.

For these reasons, we are certifying that the designation of critical habitat

for *Abutilon sandwicense, Adenophorus periens, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope lydgatei, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Silene perlmanii, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis and the final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy production supply and distribution facilities because no significant energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for the 99 plant species will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) For the reasons described in our economic analysis, this rule will not produce a Federal mandate on State or local governments or the private sector that may result in the expenditure of $100 million or greater in any year. Therefore, a statement pursuant to 2 U.S.C. 1532 is not required.

(b) This rule will not "significantly or uniquely" affect small governments, so a Small Government Agency Plan is not required. Small governments will not be directly affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the 99 species from Oahu in a takings implications assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effect and does not impose substantial direct compliance costs on State and local governments. In addition, this regulation is required by statute. *See* 16 U.S.C. 1533(a)(3). Therefore, a Federalism assessment is not required.

This rule imposes no regulatory requirements unless an agency is seeking Federal funding or authorization. In addition, for the reasons contained in the economic analysis, this rule will not have substantial direct compliance costs on State and local governments.

In fact, the designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur. Nevertheless, keeping with Department of the Interior policy, we requested information from appropriate State and local officials in Hawaii.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of 99 plant species from Oahu.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 99 plant species. Therefore, designation of critical habitat for these 99 species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The authors of this final rule are staff of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h), the List of Endangered and Threatened Plants, as set forth below:

■ a. Under the table's heading FLOWERING PLANTS, by revising the entries for *Abutilon sandwicense, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope lydgatei, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Peucedanum sandwicense, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Silene perlmanii, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis* to read as follows; and

■ b. Under the table's heading FERNS AND ALLIES, by revising the entries for *Adenophorus periens, Ctenitis squamigera, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Marsilea villosa, Phlegmariurus nutans*, and *Pteris lidgatei* to read as follows.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Abutilon sandwicense.	None	U.S.A. (HI)	Malvaceae	E	448	17.99(i)	NA
Alectryon macrococcus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.99(a)(1), (c), (e)(1), and (i).	NA
Alsinidendron obovatum.	None	U.S.A. (HI)	Caryophyllaceae	E	448	17.99(i)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Alsinidendron trinerve.	None	U.S.A. (HI)	Caryophyllaceae	E	448	17.99(i)	NA
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.99(a)(1), (e)(1), and (i).	NA
Cenchrus agrimonioides.	Kamanomano	U.S.A. (HI)	Poaceae	E	592	17.99(e)(1) and (i).	NA
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.99(a)(1), (c), (e)(1), and (i).	NA
Chamaesyce celastroides var. *kaenana.*	Akoko	U.S.A. (HI)	Euphorbiaceae	E	448	17.99(i)	NA
Chamaesyce deppeana.	Akoko	U.S.A. (HI)	Euphorbiaceae	E	536	17.99(i)	NA
Chamaesyce herbstii	Akoko	U.S.A. (HI)	Euphorbiaceae	E	591	17.99(i)	NA
Chamaesyce kuwaleana.	Akoko	U.S.A. (HI)	Euphorbiaceae	E	448	17.99(i)	NA
Chamaesyce rockii	Akoko	U.S.A. (HI)	Euphorbiaceae	E	591	17.99(i)	NA
Colubrina oppositifolia.	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.99(e)(1) and (i).	NA
Cyanea acuminata	HaHa	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Cyanea (=*Rollandia*) *crispa.*	None	U.S.A. (HI)	Campanulaceae	E	536	17.99(i)	NA
Cyanea grimesiana ssp. *grimesiana.*	HaHa	U.S.A. (HI)	Campanulaceae	E	592	17.99(c), (e)(1), and (i).	NA
Cyanea grimesiana ssp. *obatae.*	HaHa	U.S.A. (HI)	Campanulaceae	E	541	17.99(i)	NA
Cyanea humboltiana	HaHa	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Cyanea koolauensis	HaHa	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Cyanea longiflora	HaHa	U.S.A (HI)	Campanulaceae	E	591	17.99(i)	NA
Cyanea pinnatifida	HaHa	U.S.A. (HI)	Campanulaceae	E	448	17.99(i)	NA
Cyanea st.-johnii	HaHa	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Cyanea superba	None	U.S.A. (HI)	Campanulaceae	E	434	17.99(i)	NA
Cyanea truncata	Haha	U.S.A. (HI)	Campanulaceae	E	536	17.99(i)	NA
Cyperus trachysanthos.	Puukaa	U.S.A. (HI)	Cyperaceae	E	592	17.99(a)(1) and (i).	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Cyrtandra dentata	Haiwale	U.S.A. (HI)	Gesneriaceae	E	591	17.99(i)	NA
Cyrtandra polyantha	Haiwale	U.S.A. (HI)	Gesneriaceae	E	536	17.99(i)	NA
Cyrtandra subumbellata.	Haiwale	U.S.A. (HI)	Gesneriaceae	E	591	17.99(i)	NA
Cyrtandra viridiflora	Haiwale	U.S.A. (HI)	Gesneriaceae	E	591	17.99(i)	NA
Delissea subcordata	Oha	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Dubautia herbstobatae.	Naenae	U.S.A. (HI)	Asteraceae	E	448	17.99(i)	NA
Eragrostis fosbergii	Fosberg's love grass.	U.S.A. (HI)	Poaceae	E	591	17.99(i)	NA
Eugenia koolauensis	Nioi	U.S.A. (HI)	Myrtaceae	E	536	17.99(c) and (i).	NA
Euphorbia haeleeleana.	Akoko	U.S.A. (HI)	Euphorbiaceae	E	592	17.99(a)(1) and (i).	NA
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.99(a)(1), (c), (e)(1), and (i).	NA
Gardenia mannii	Nanu	U.S.A. (HI)	Rubiaceae	E	591	17.99(i)	NA
Gouania meyenii	None	U.S.A. (HI)	Rhamnaceae	E	448	17.99(a)(1) and (i).	NA
Gouania vitifolia	None	U.S.A. (HI)	Rhamnaceae	E	541	17.99(e)(1) and (i).	NA
Hedyotis coriacea	Kioele	U.S.A. (HI)	Rubiaceae	E	467	17.99(e)(1) and (i).	NA
Hedyotis degeneri	None	U.S.A. (HI)	Rubiaceae	E	448	17.99(i)	NA
Hedyotis parvula	None	U.S.A. (HI)	Rubiaceae	E	448	17.99(i)	NA
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae	E	536	17.99(c) and (i).	NA
Hesperomannia arbuscula.	None	U.S.A. (HI)	Asteraceae	E	448	17.99(e)(1) and (i).	NA
Hibiscus brackenridgei.	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.99(c), (e)(1), and (i).	NA
Isodendrion laurifolium.	Aupaka	U.S.A. (HI)	Violaceae	E	592	17.99(a)(1) and (i).	NA
Isodendrion longifolium.	Aupaka	U.S.A. (HI)	Violaceae	T	592	17.99(a)(1) and (i).	NA
Isodendrion pyrifolium.	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.99(c), (e)(1), and (i).	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Labordia cyrtandrae	Kamakahala	U.S.A. (HI)	Loganiaceae	E	591	17.99(i)	NA
Lepidium arbuscula	Anaunau	U.S.A. (HI)	Brassicaceae	E	591	17.99(i)	NA
Lipochaeta lobata var. *leptophylla.*	Nehe	U.S.A. (HI)	Asteraceae	E	448	17.99(i)	NA
Lipochaeta tenuifolia	Nehe	U.S.A. (HI)	Asteraceae	E	448	17.99(i)	NA
Lobelia gaudichaudii ssp. *koolauensis.*	None	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Lobelia monostachya	None	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Lobelia niihauensis	None	U.S.A. (HI)	Campanulaceae	E	448	17.99(i)	NA
Lobelia oahuensis	None	U.S.A. (HI)	Campanulaceae	E	536	17.99(i)	NA
Lysimachia filifolia	None	U.S.A. (HI)	Primulaceae	E	530	17.99(a)(1) and (i).	NA
Mariscus pennatiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.99(a)(1), (e)(1), (g), and (i).	NA
Melicope lydgatei	Alani	U.S.A. (HI)	Rutaceae	E	536	17.99(i)	NA
Melicope pallida	Alani	U.S.A. (HI)	Rutaceae	E	530	17.99(a)(1) and (i).	NA
Melicope saint-johnii	Alani	U.S.A. (HI)	Rutaceae	E	591	17.99(i)	NA
Myrsine juddii	Kolea	U.S.A. (HI)	Myrsinaceae	E	591	17.99(i)	NA
Neraudia angulata	None	U.S.A. (HI)	Urticaceae	E	448	17.99(i)	NA
Nototrichium humile	Kului	U.S.A. (HI)	Amaranthaceae	E	448	17.99(e)(1) and (i).	NA
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	T	530	17.99(a)(1), (c), (e)(1), and (i).	NA
Phyllostegia hirsuta	None	U.S.A. (HI)	Lamiaceae	E	591	17.99(i)	NA
Phyllostegia kaalaensis.	None	U.S.A. (HI)	Lamiaceae	E	591	17.99(i)	NA
Phyllostegia mollis	None	U.S.A. (HI)	Lamiaceae	E	448	17.99(e)(1) and (i).	NA
Phyllostegia parviflora.	None	U.S.A. (HI)	Lamiaceae	E	592	17.99(i)	NA
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.99(a)(1), (c), (e)(1), and (i).	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.99(a)(1), (e)(1), and (i).	NA
Sanicula mariversa	None	U.S.A. (HI)	Apiaceae	E	448	17.99(i)	NA
Sanicula purpurea	None	U.S.A. (HI)	Apiaceae	E	592	17.99(e)(1) and (i).	NA
Schiedea hookeri	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.99(i)	NA
Schiedea kaalae	None	U.S.A. (HI)	Caryophyllaceae	E	448	17.99(i)	NA
Schiedea kealiae	Maolioli	U.S.A. (HI)	Caryophyllaceae	E	591	17.99(i)	NA
Schiedea nuttallii	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.99(a)(1), (c), and (i).	NA
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1), (c), (e)(1), (g), and (i).	NA
Silene lanceolata	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.99(c) and (i).	NA
Silene perlmanii	None	U.S.A. (HI)	Caryophyllaceae	E	448	17.99(i)	NA
Solanum sandwicense.	Aiakeakua, popolo	U.S.A. (HI)	Solanaceae	E	530	17.99(a)(1) and (i).	NA
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.99(a)(1), (c), (e)(1), and (i).	NA
Stenogyne kanehoana.	None	U.S.A. (HI)	Lamiaceae	E	466	17.99(i)	NA
Tetramolopium filiforme.	None	U.S.A. (HI)	Asteraceae	E	448	17.99(i)	NA
Tetramolopium lepidotum ssp. *lepidotum.*	None	U.S.A. (HI)	Asteraceae	E	448	17.99(i)	NA
Tetraplasandra gymnocarpa.	Oheohe	U.S.A. (HI)	Araliaceae	E	536	17.99(i)	NA
Trematolobelia singularis.	None	U.S.A. (HI)	Campanulaceae	E	591	17.99(i)	NA
Urera kaalae	Opuhe	U.S.A. (HI)	Urticaceae	E	448	17.99(i)	NA
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	17.99(e)(1) and (i).	NA
Viola chamissoniana ssp. *chamissoniana.*	Pamakani	U.S.A. (HI)	Violaceae	E	448	17.99(i)	NA
Viola oahuensis	None	U.S.A. (HI)	Violaceae	E	591	17.99(i)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
.	.	.	.	.	.	.	.
FERNS AND ALLIES							
Adenophorus periens	Pendent kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.99(a)(1), (c), and (i).	NA
.	.	.	.	.	.	.	.
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1), (c), (e)(1), and (i).	NA
.	.	.	.	.	.	.	.
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.99(a)(1), (c), (e)(1), and (i).	NA
Diellia falcata	None	U.S.A. (HI)	Aspleniaceae	E	448	17.99(i)	NA
.	.	.	.	.	.	.	.
Diellia unisora	None	U.S.A. (HI)	Aspleniaceae	E	541	17.99(i)	NA
Diplazium molokaiense.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1), (c), (e)(1), and (i).	NA
.	.	.	.	.	.	.	.
Marsilea villosa	Ihiihi	U.S.A. (HI)	Marsileaceae	E	474	17.99(i)	NA
Phlegmariurus nutans.	Wawaeiole	U.S.A. (HI)	Lycopodiaceae	E	536	17.99(a)(1) and (i).	NA
.	.	.	.	.	.	.	.
Pteris lidgatei	None	U.S.A. (HI)	Adiantaceae	E	553	17.99(c), (e)(1), and (i).	NA
.	.	.	.	.	.	.	.

■ 3. Amend § 17.99 as set forth below:
■ a. By revising the section heading to read as follows; and
■ b. By adding new paragraphs (i) and (j) to read as follows.

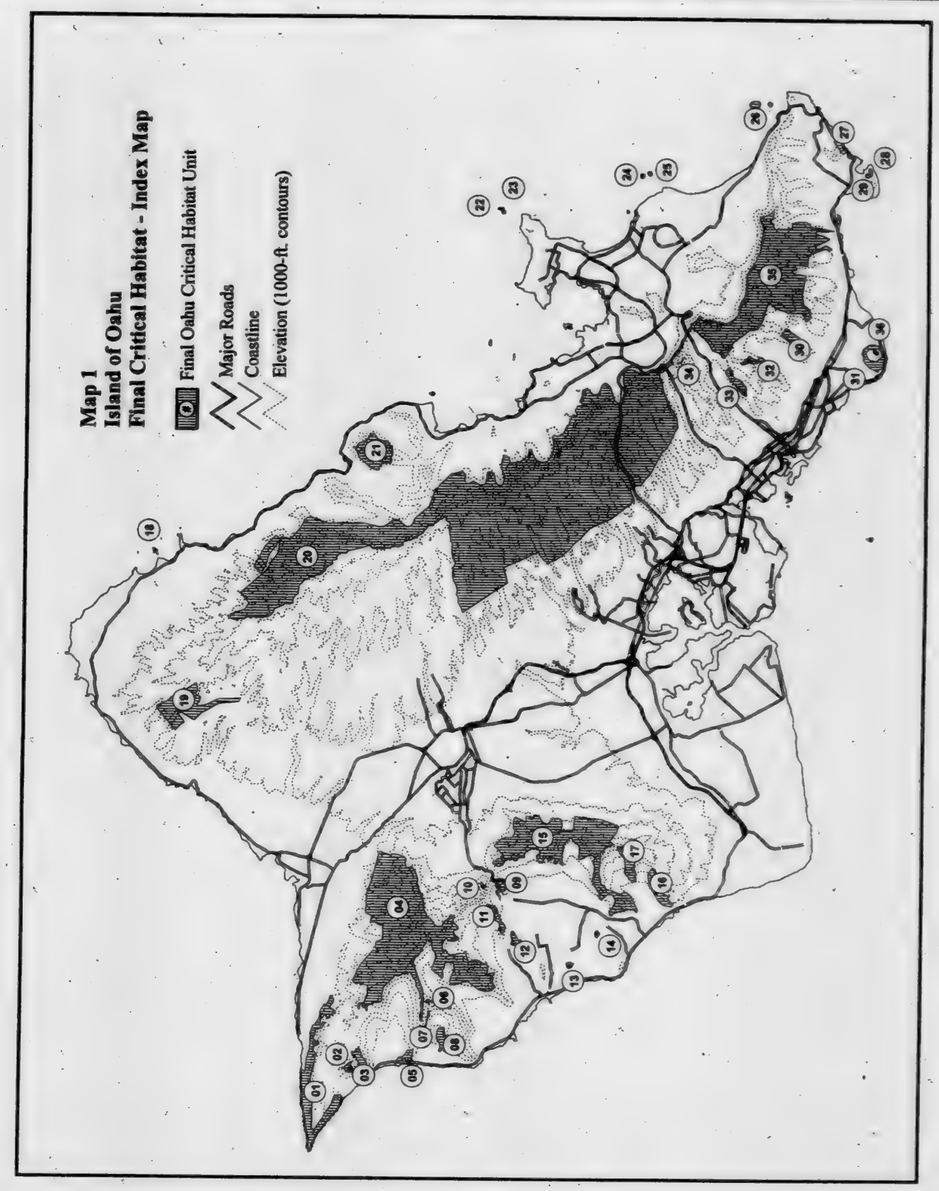
§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, and Oahu, HI, and on the Northwest Hawaiian Islands.

* * * * *

(i) *Maps and critical habitat unit descriptions for the island of Oahu, HI.* The following paragraphs contain the legal descriptions of the critical habitat units designated for the Hawaiian island of Oahu. Existing manmade features and structures within the boundaries of the mapped units, such as buildings; roads; aqueducts and other water system features, including but not limited to, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications equipment towers and associated structures, electrical power transmission and distribution lines, communication facilities and regularly maintained associated rights-of-way and access ways; radars; telemetry antennas; missile launch sites; arboreta and gardens, heiau (indigenous places of worship or shrines), and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraph (j) of this section and therefore are not included in the critical habitat designations. Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 317 critical habitat units designated on the island of Oahu.

(1) **Note:** Map 1—Index map follows:

BILLING CODE 4310–55–U



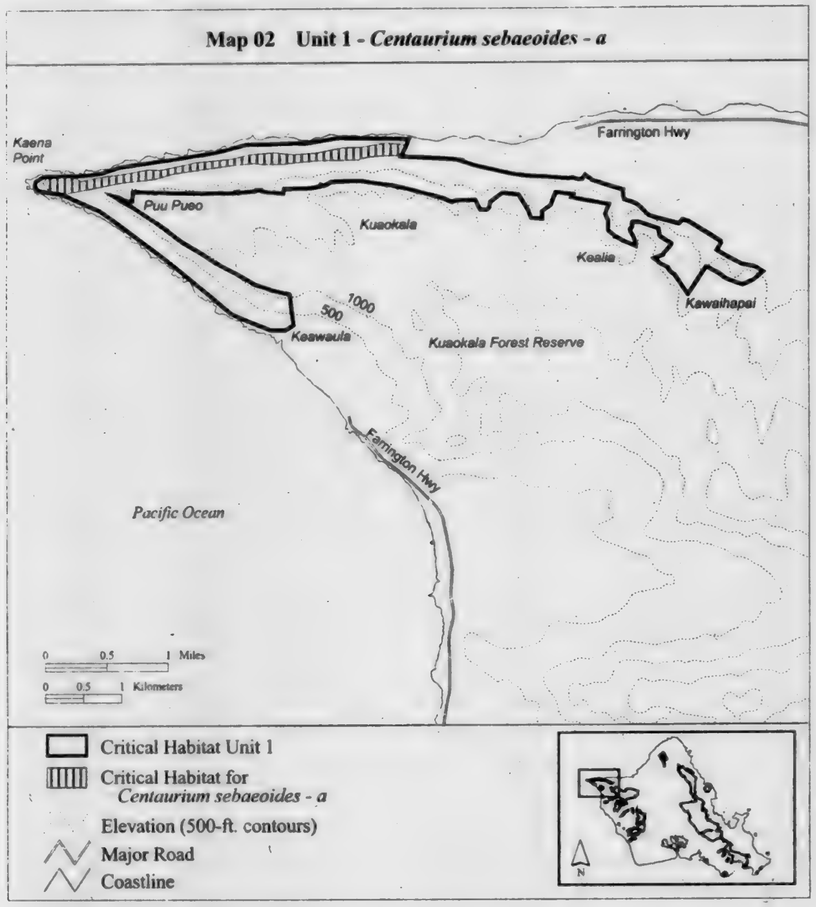
(2) Oahu 1—*Centaurium sebaeoides*—a (61 ha; 151 ac)

(i) Unit consists of the following 41 boundary points: Start at 575051, 2385984; 575168, 2385907; 575381, 2385957; 575728, 2386002; 576060, 2386059; 576211, 2386052; 576675, 2386146; 577140, 2386190; 577385, 2386247; 577692, 2386272; 577943, 2386247; 578245, 2386266; 578596, 2386335; 578835, 2386341; 579136, 2386391; 579331, 2386379; 579418, 2386363; 579365, 2386234; 579326, 2386224; 579284, 2386229; 579083,

2386225; 578934, 2386215; 578812, 2386182; 578812, 2386173; 578242, 2386164; 577779, 2386117; 577527, 2386117; 577448, 2386136; 577102, 2386103; 576728, 2386052; 576378, 2386005; 576135, 2385935; 575699, 2385884; 575419, 2385832; 575157, 2385789; 574970, 2385752; 574806, 2385766; 574722, 2385822; 574666, 2385892; 574727, 2385962; 574813, 2385980; return to starting point.

(ii) **Note:** Map 2 follows:

Map 02 Unit 1 - *Centaurium sebaeoides - a*

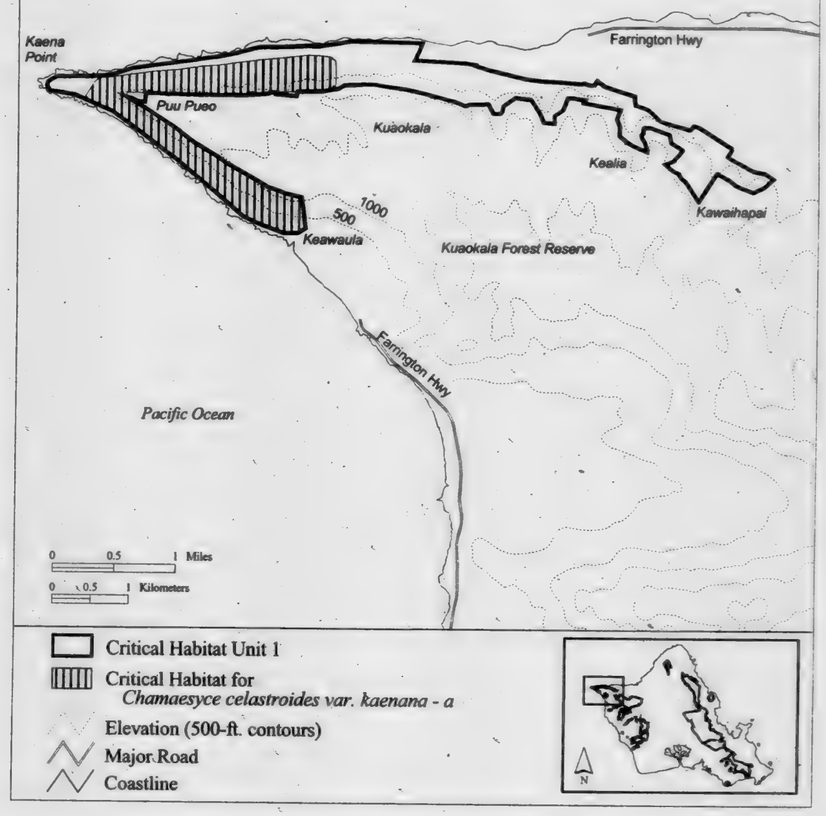


(3) Oahu 1—*Chamaesyce celastroides* var. *kaenana*—a (231 ha; 571 ac)

(i) Unit consists of the following 51 boundary points: Start at 576308, 2385257; 576310, 2385255; 576482, 2385122; 576596, 2385060; 576780, 2384950; 576915, 2384849; 577201, 2384696; 577456, 2384543; 577457, 2384543; 577566, 2384511; 577687, 2384461; 577875, 2384421; 577897, 2384415; 577947, 2384017; 577842, 2383950; 577659, 2383950; 577365, 2384061; 577132, 2384164; 576278, 2384884; 575413, 2385523; 575412, 2385523; 575247, 2385596; 575153, 2385648; 575059, 2385726; 575131, 2385837; 575170, 2385898; 575237, 2385959; 575392, 2385976; 575949, 2386049; 576293, 2386077; 576565, 2386121; 576787, 2386138; 577037, 2386171; 577343, 2386210; 577704, 2386249; 577970, 2386277; 578126, 2386271; 578265, 2386255; 578320, 2386199; 578331, 2386071; 578326, 2385899; 578293, 2385827; 578155, 2385804; 577627, 2385796; 576867, 2385746; 576360, 2385755; 575731, 2385777; 575614, 2385777; 575581, 2385727; 575692, 2385660; 575835, 2385580; return to starting point.

(ii) **Note:** Map 3 follows:

Map 03 Unit 1 - *Chamaesyce celastroides var. kaenana - a*

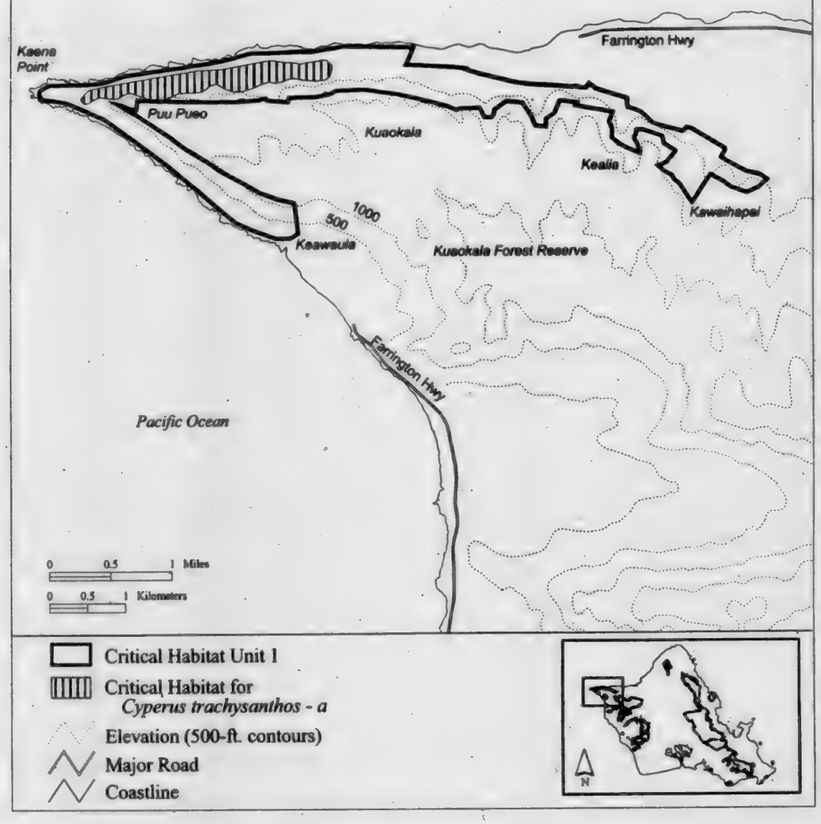


(4) Oahu 1—*Cyperus trachysanthos*—a (78 ha; 193 ac)

(i) Unit consists of the following 56 boundary points: Start at 575111, 2385777; 575104, 2385794; 575138, 2385842; 575212, 2385916; 575474, 2385967; 576015, 2386059; 576440, 2386124; 576662, 2386160; 576954, 2386170; 577298, 2386235; 577591, 2386291; 577777, 2386257; 577916, 2386253; 577974, 2386238; 578056, 2386253; 578228, 2386278; 578229, 2386286; 578316, 2386286; 578383, 2386219; 578383, 2386161; 578364, 2386074; 578302, 2386026; 578206, 2386022; 578205, 2386017; 578022, 2386026; 577902, 2386050; 577835, 2386045; 577738, 2386012; 577652, 2385993; 577570, 2386007; 577469, 2385973; 577363, 2385930; 577204, 2385882; 577112, 2385882; 577002, 2385920; 576891, 2385983; 576804, 2385964; 576771, 2385935; 576703, 2385887; 576650, 2385877; 576501, 2385867; 576385, 2385863; 576313, 2385824; 576241, 2385790; 576150, 2385752; 575996, 2385786; 575866, 2385838; 575754, 2385872; 575672, 2385853; 575619, 2385810; 575547, 2385795; 575451, 2385805; 575349, 2385818; 575268, 2385780; 575215, 2385741; 575157, 2385730; return to starting point.

(ii) **Note:** Map 4 follows:

Map 04 Unit 1 - *Cyperus trachysanthos - a*

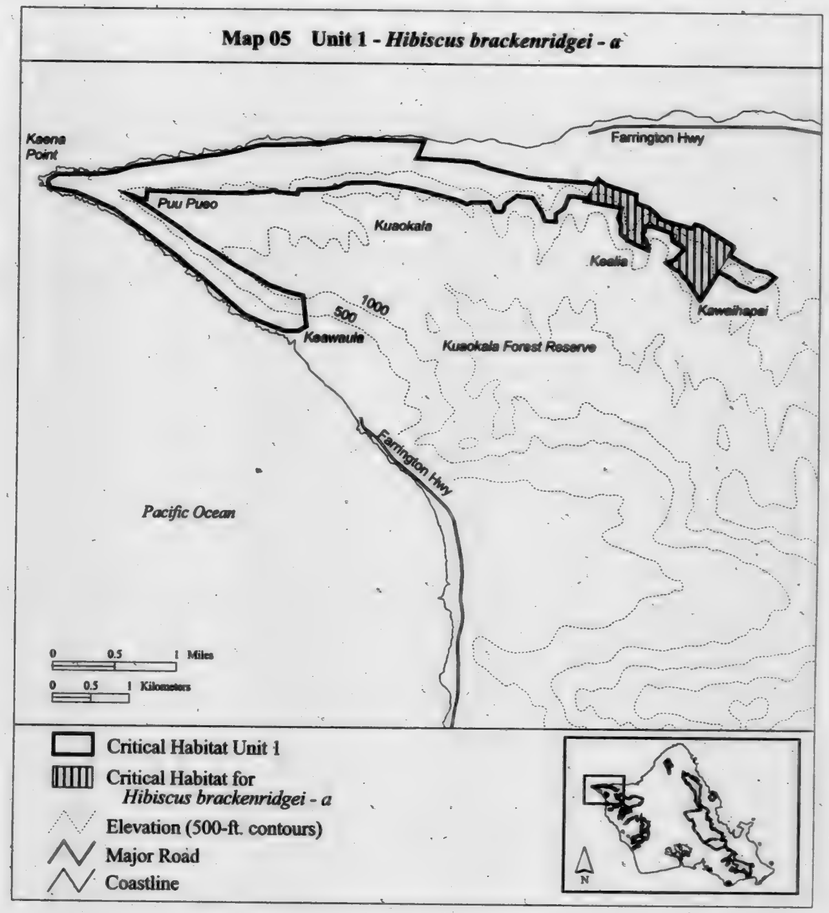


(5) Oahu 1—*Hibiscus brackenridgei*—a (78 ha; 193 ac)

(i) Unit consists of the following 89 boundary points: Start at 582235, 2385764; 582235, 2385703; 582245, 2385655; 582239, 2385640; 582361, 2385607; 582365, 2385614; 582376, 2385611; 582406, 2385591; 582466, 2385542; 582534, 2385473; 582530, 2385467; 582583, 2385397; 582622, 2385387; 582697, 2385368; 582698, 2385368; 582771, 2385349; 582837, 2385333; 582969, 2385301; 583028, 2385287; 583040, 2385330; 583050, 2385369; 583082, 2385357; 583521, 2385089; 583077, 2384390; 582908, 2384650; 582852, 2384698; 582818, 2384756; 582818, 2384757; 582738, 2384795; 582634, 2384882; 582757, 2384928; 582765, 2384950; 582790, 2384982; 582816, 2385003; 582835, 2385024; 582849, 2385043; 582861, 2385069; 582859, 2385082; 582842, 2385102; 582842, 2385127; 582830, 2385134; 582818, 2385138; 582801, 2385156; 582777, 2385158; 582758, 2385154; 582747, 2385186; 582750, 2385199; 582765, 2385221; 582764, 2385241; 582725, 2385262; 582711, 2385280; 582648, 2385284; 582600, 2385323; 582564, 2385342; 582544, 2385348; 582504, 2385341; 582466, 2385365; 582444, 2385398; 582407, 2385408; 582368, 2385363; 582325, 2385320; 582322, 2385255; 582331, 2385214; 582361, 2385178; 582377, 2385126; 582395, 2385086; 582398, 2385049; 582397, 2385046; 582219, 2385118; 582126, 2385175; 582038, 2385247; 582055, 2385587; 581567, 2385679; 581565, 2385680; 581743, 2385970; 581764, 2385946; 581812, 2385925; 581815, 2385913; 581815, 2385912; 581825, 2385902; 581826, 2385901; 581834, 2385899; 581833, 2385898; 581835, 2385886; 581903, 2385869; 581908, 2385875; 582076, 2385822; 582074, 2385807; 582080, 2385801; return to starting point.

(ii) **Note:** Map 5 follows:

Map 05 Unit 1 - *Hibiscus brackenridgei - a*



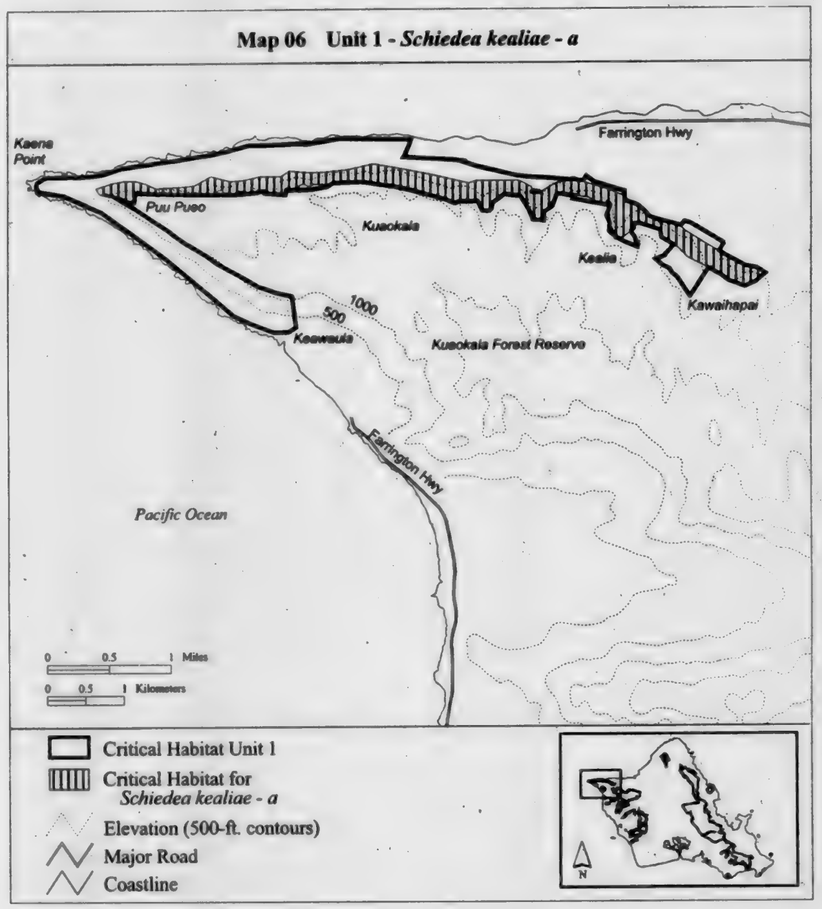
(6) Oahu 1—*Schiedea kealiae*—a (193 ha; 477 ac)

(i) Area consists of the following 138 boundary points: Start at 582365, 2385614; 582376, 2385611; 582406, 2385591; 582466, 2385542; 582534, 2385473; 582530, 2385467; 582583, 2385397; 582622, 2385387; 582697, 2385368; 582698, 2385368; 582771, 2385349; 582837, 2385333; 582969, 2385301; 582970, 2385301; 583021, 2385255; 583270, 2385092; 583519, 2384945; 583786, 2384799; 583958, 2384765; 584061, 2384696; 583941, 2384592; 583795, 2384523; 583571, 2384600; 583476, 2384678; 583287, 2384782; 583055, 2384902; 582917, 2385040; 582711, 2385169; 582694, 2385264; 582444, 2385350; 582350, 2385281; 582221, 2385169; 582126, 2385169; 582040, 2385367; 582003, 2385463; 582059, 2385623; 581885, 2385625; 581766, 2385701; 581470, 2385733; 581363, 2385753; 581292, 2385582; 581180, 2385504; 581180, 2385401; 581043, 2385410; 580993, 2385527; 580876, 2385719; 580742, 2385732; 580671, 2385739; 580587, 2385684; 580505, 2385625; 580495, 2385553; 580475, 2385529; 580380, 2385529; 580313, 2385654; 580235, 2385648; 580148, 2385650; 580071, 2385650; 580011, 2385624; 579890, 2385675; 579718, 2385727; 579460, 2385787; 579228, 2385839; 579039, 2385865; 578841, 2385899; 578703, 2385899; 578439, 2385890; 578359, 2385838; 578331, 2385837; 578270, 2385867; 578185, 2385874; 578150, 2385855; 578104, 2385853; 578068, 2385878; 578011, 2385870; 577970, 2385822; 577909, 2385815; 577831, 2385831; 577818, 2385744; 577543, 2385765; 577529, 2385794; 577493, 2385800; 577450, 2385768; 577228, 2385755; 577224, 2385793; 577196, 2385796; 577178, 2385750; 577021, 2385746; 576991, 2385803; 576939, 2385805; 576897, 2385750; 576337, 2385757; 576119, 2385765; 575852, 2385776; 575844, 2385705; 575830, 2385704; 575829, 2385702; 575833, 2385655; 575753, 2385658; 575667, 2385701; 575384, 2385766; 575344, 2385828; 575555, 2385899; 575712, 2385925; 575847, 2385925; 575972, 2385894; 576115,

2385830; 576442, 2385848; 576631, 2385865; 576837, 2385977; 577095, 2385916; 577259, 2385925; 577482, 2385977; 577757, 2385977; 577869, 2386045; 578093, 2386028; 578291, 2386028; 578609, 2386054; 578961, 2386131; 579314, 2386071; 579727, 2385994; 580200, 2385882; 580303, 2385916; 580578, 2385916; 580862, 2385916; 581025, 2385831; 581025, 2385763; 581146, 2385763; 581266, 2385831; 581387, 2385892; 581447, 2385892; 581571, 2385935; 582039, 2385788; 582235, 2385711; 582235, 2385703; 582245, 2385655; 582239, 2385640; 582361, 2385607; return to starting point.

(ii) **Note:** Map 6 follows:

Map 06 Unit 1 - *Schiedea kealiae - a*



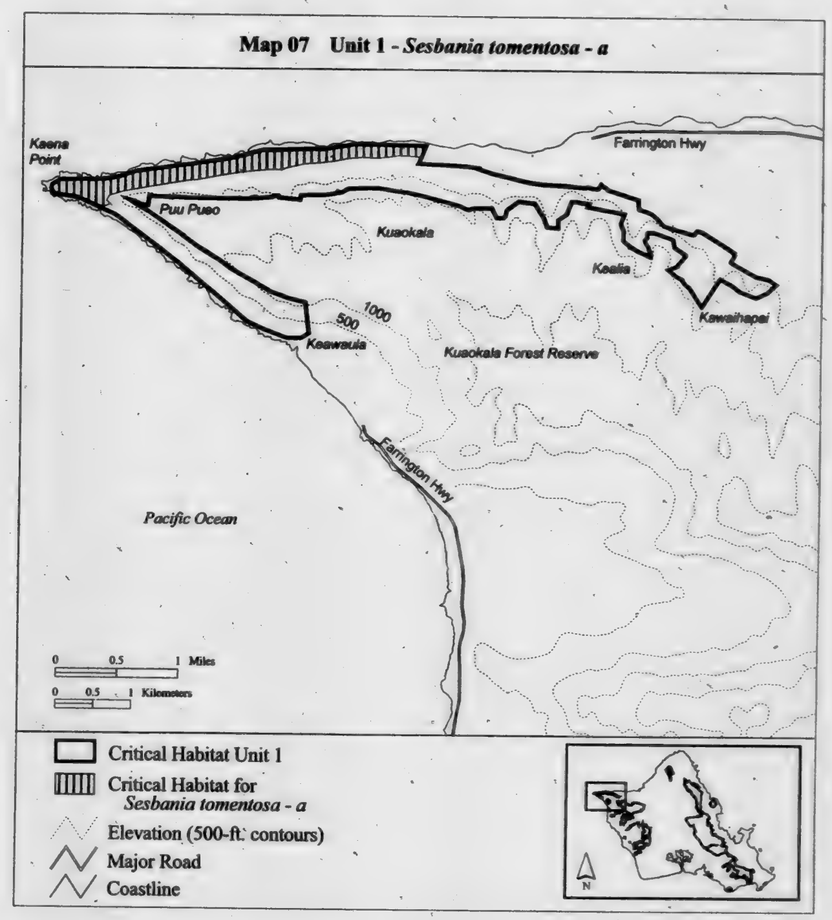
(7) Oahu 1—*Sesbania tomentosa*—a (101 ha; 250 ac)

(i) Unit consists of the following 70 boundary points: Start at 574558, 2385864; 574569, 2385910; 574683, 2385977; 574741, 2385979; 574788, 2385979; 574998, 2385979; 575206, 2385987; 575263, 2385988; 575282, 2385993; 575451, 2386022; 575668, 2386087; 575699, 2386094; 576319, 2386183; 576376, 2386186; 576495, 2386204; 576637, 2386230; 576767, 2386248; 576923, 2386277; 576926, 2386277; 576928, 2386275; 576929, 2386275; 576980, 2386288; 577035, 2386298; 577098, 2386318; 577139, 2386329; 577140, 2386329; 577141, 2386331; 577151, 2386335; 577321, 2386378; 577336, 2386381; 577539, 2386380; 577539, 2386381; 577540, 2386381; 577540, 2386382; 577979, 2386400; 578097, 2386392; 578439, 2386448; 578534, 2386462; 579452, 2386445; 579394, 2386306; 579354, 2386308; 579179, 2386315; 579092, 2386315; 578836, 2386286; 578783, 2386286; 578606, 2386293; 578434, 2386274; 578294, 2386249; 578107, 2386224; 577860, 2386199; 577676, 2386162; 577589, 2386131; 577590, 2386124; 577571, 2386125; 577561, 2386121; 577561, 2386125; 577412, 2386128; 577050, 2386092; 576800,

2386052; 576463, 2385983; 576365, 2385980; 575843, 2385893; 575502, 2385827; 575324, 2385776; 575292, 2385710; 575339, 2385664; 575295, 2385646; 575203, 2385616; 574908, 2385748; 574601, 2385795; return to starting point.

(ii) **Note:** Map 7 follows:

Map 07 Unit 1 - *Sesbania tomentosa - a*

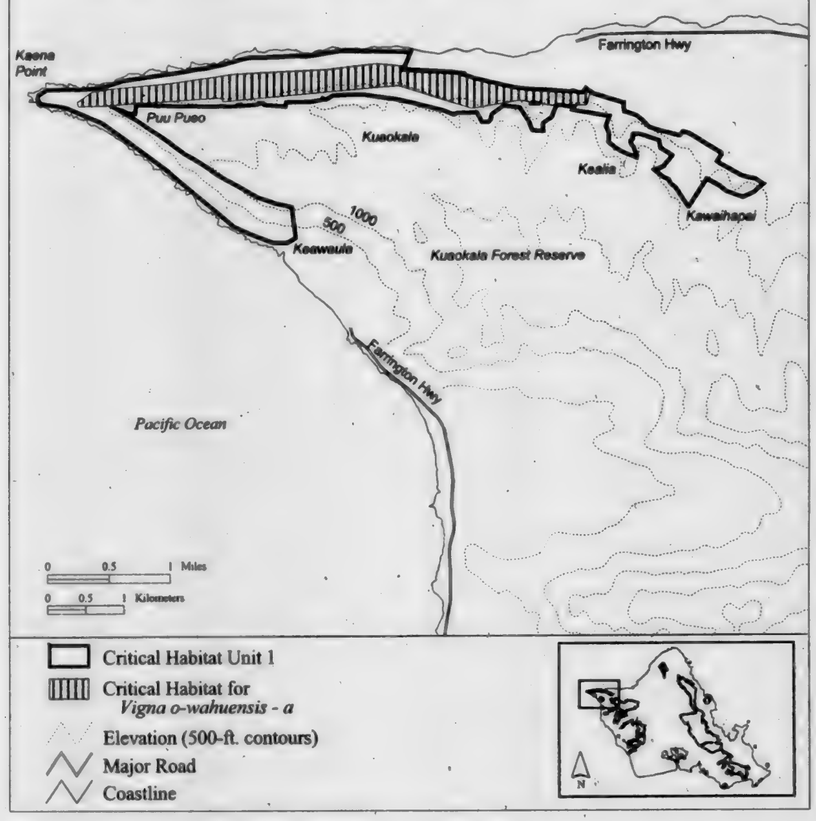


(8) Oahu 1—*Vigna o-wahuensis*—a (181 ha; 448 ac)

(i) Unit consists of the following 31 boundary points: Start at 575092, 2385751; 575081, 2385809; 575265, 2385942; 575531, 2385987; 576306, 2386058; 577144, 2386172; 578381, 2386223; 579003, 2386292; 579376, 2386260; 579359, 2386220; 579359, 2386219; 579360, 2386219; 579360, 2386218; 579361, 2386218; 580020, 2386181; 580139, 2386165; 580137, 2386157; 580278, 2386108; 580792, 2385988; 581014, 2385956; 581268, 2385944; 581636, 2385913; 581801, 2385913; 581750, 2385741; 581268, 2385741; 580873, 2385809; 580253, 2385706; 579290, 2386015; 576993, 2385810; 576984, 2385861; 575400, 2385757; return to starting point.

(ii) **Note:** Map 8 follows:

Map 08 Unit 1 - *Vigna o-wahuensis - a*

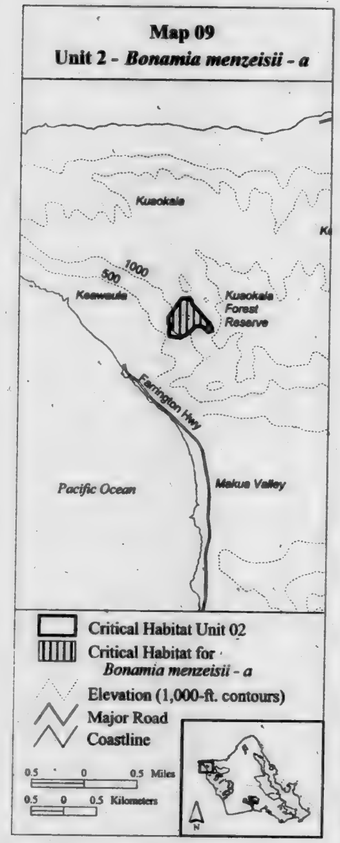


(9) Oahu 2—*Bonamia menziesii*—a (21 ha; 51 ac)

(i) Unit consists of the following 21 boundary points: Start at 579334, 2383456; 579333, 2383554; 579526, 2383824; 579661, 2383800; 579690, 2383768; 579693, 2383749; 579693, 2383748; 579792, 2383655; 579844, 2383597; 579988, 2383419; 579988, 2383385; 579968, 2383366; 579925, 2383371; 579833, 2383424; 579771, 2383438; 579703, 2383400; 579670, 2383342; 579588, 2383284; 579477, 2383294; 579395, 2383356; 579367, 2383424; return to starting point.

(ii) **Note:** Map 9 follows:

Map 09
Unit 2 - *Bonamia menzeisii - a*

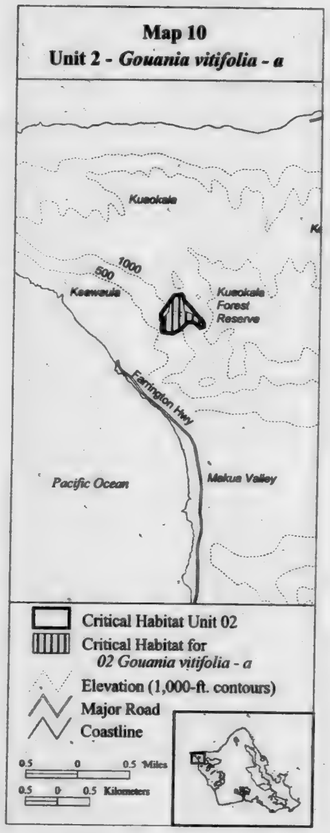


(10) Oahu 2—*Gouania vitifolia*—a (20 ha; 49 ac)

(i) Unit consists of the following 29 boundary points: Start at 579610, 2383845; 579650, 2383848; 579684, 2383810; 579684, 2383807; 579684, 2383736; 579684, 2383672; 579693, 2383598; 579800, 2383560; 579963, 2383474; 580001, 2383409; 580006, 2383353; 579941, 2383336; 579898, 2383379; 579842, 2383422; 579760, 2383426; 579704, 2383375; 579649, 2383319; 579580, 2383271; 579515, 2383241; 579352, 2383263; 579339, 2383310; 579343, 2383379; 579383, 2383499; 579443, 2383573; 579460, 2383641; 579469, 2383702; 579482, 2383736; 579503, 2383795; 579534, 2383838; return to starting point.

(ii) **Note:** Map 10 follows:

Map 10
Unit 2 - *Gouania vitifolia - a*



(11) Oahu 3—*Bonamia menziesii*—b (42 ha; 104 ac)

(i) Unit consists of the following 35 boundary points: Start at 579371, 2382797; 579436, 2382825; 579544, 2382850; 579623, 2382881; 579630, 2382883; 579645, 2382884; 579886, 2382879; 580161, 2382995; 580267, 2383024; 580298, 2383084; 580303, 2383086; 580304, 2383086; 580304, 2383087; 580304, 2383088; 580303, 2383095; 580306, 2383101; 580290, 2383172; 580359, 2383241; 580504, 2383303; 580566, 2383265; 580542, 2383178; 580504, 2383106; 580523, 2382971; 580393, 2382812; 580344, 2382744; 580214, 2382657; 580200, 2382575; 580137, 2382527; 580079, 2382532; 579993, 2382474; 579872, 2382460; 579769, 2382469; 579763, 2382471; 579592, 2382571; 579366, 2382744; return to starting point.

(ii) **Note:** Map 11 follows:

Map 11
Unit 3 - *Bonamia menzeisii - b*

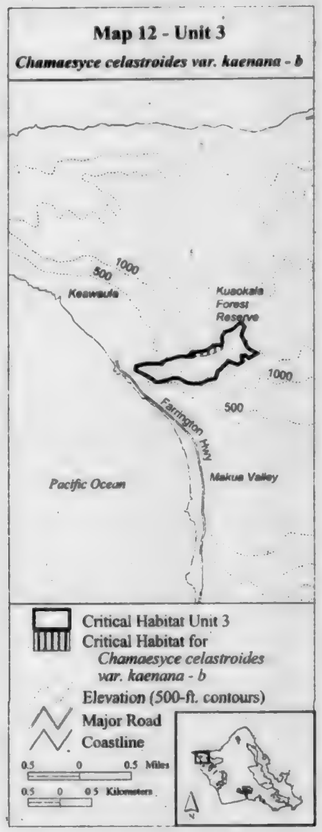


(12) Oahu 3—*Chamaesyce celastroides* var. *kaenana*—b (4 ha; 11 ac)

(i) Unit consists of the following 20 boundary points: Start at 579828, 2382953; 579860, 2382962; 579931, 2382959; 580028, 2382975; 580069, 2382994; 580111, 2383020; 580161, 2383047; 580238, 2383068; 580259, 2383068; 580304, 2383043; 580308,

2383004; 580285, 2382981; 580243, 2382969; 580166, 2382930; 580057, 2382895; 579931, 2382878; 579857, 2382888; 579796, 2382907; 579815, 2382923; 579823, 2382946; return to starting point.

(ii) **Note:** Map 12 follows:



(13) Oahu 3—*Euphorbia haeleeleana*—a (15 ha; 37 ac)

(i) Unit consists of the following 67 boundary points: Start at 580326, 2382991; 580322, 2383035; 580313, 2383069; 580310, 2383096; 580312, 2383132; 580323, 2383169; 580360, 2383211; 580417, 2383248; 580464, 2383276; 580516, 2383287; 580559, 2383266; 580564, 2383251; 580546, 2383221; 580522, 2383183; 580490, 2383164; 580454, 2383149; 580419, 2383145; 580393, 2383120; 580393, 2383077; 580406, 2383031; 580409, 2382985; 580422, 2382939; 580407, 2382899; 580365, 2382870; 580322, 2382845; 580267, 2382852; 580241, 2382852; 580202, 2382842; 580161, 2382847; 580152, 2382821; 580166, 2382787; 580174, 2382763; 580147, 2382744; 580118, 2382744; 580095, 2382727; 580073, 2382677; 580047, 2382666; 580005, 2382663; 579971, 2382672; 579925, 2382689; 579891, 2382690; 579846, 2382692; 579777, 2382718; 579718, 2382747; 579667, 2382769; 579623, 2382795; 579573, 2382802; 579548, 2382821; 579550, 2382828; 579557, 2382839; 579597, 2382844; 579681, 2382847; 579726, 2382858; 579772, 2382862; 579828, 2382868; 579872, 2382878; 579935, 2382868; 579964, 2382850; 580008, 2382836; 580034, 2382829; 580048, 2382839; 580053, 2382855; 580066, 2382884; 580094, 2382917; 580131, 2382934; 580231, 2382955; 580294, 2382975; return to starting point.

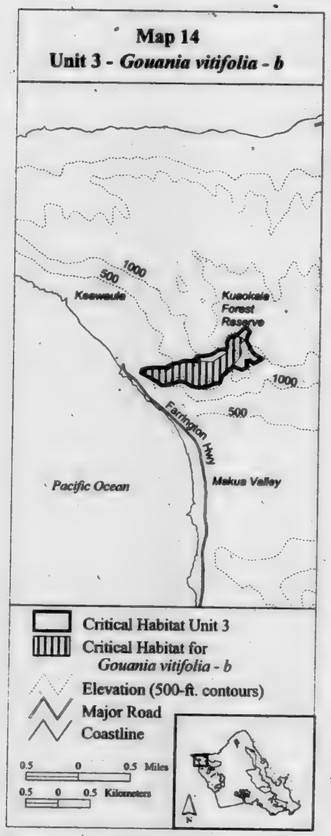
(ii) **Note:** Map 13 follows:



(14) Oahu 3—*Gouania vitifolia*—b (49 ha; 121 ac)

(i) Unit consists of the following 54 boundary points: Start at 580193, 2382540; 580147, 2382527; 580079, 2382519; 580044, 2382497; 579950, 2382459; 579881, 2382463; 579756, 2382502; 579653, 2382545; 579541, 2382553; 579451, 2382519; 579335, 2382489; 579270, 2382493; 579231, 2382532; 579115, 2382600; 579038, 2382639; 578960, 2382682; 578969, 2382730; 579038, 2382760; 579128, 2382773; 579253, 2382768; 579356, 2382768; 579455, 2382807; 579519, 2382828; 579614, 2382871; 579709, 2382871; 579859, 2382876; 580001, 2382871; 580083, 2382871; 580165, 2382927; 580298, 2383009; 580303, 2383086; 580304, 2383086; 580304, 2383087; 580304, 2383088; 580303, 2383094; 580307, 2383155; 580324, 2383211; 580371, 2383246; 580470, 2383263; 580526, 2383250; 580569, 2383211; 580500, 2383147; 580505, 2383104; 580526, 2383039; 580517, 2382970; 580453, 2382876; 580371, 2382811; 580302, 2382751; 580255, 2382708; 580229, 2382635; 580196, 2382544; 580195, 2382544; 580195, 2382543; 580194, 2382543; return to starting point.

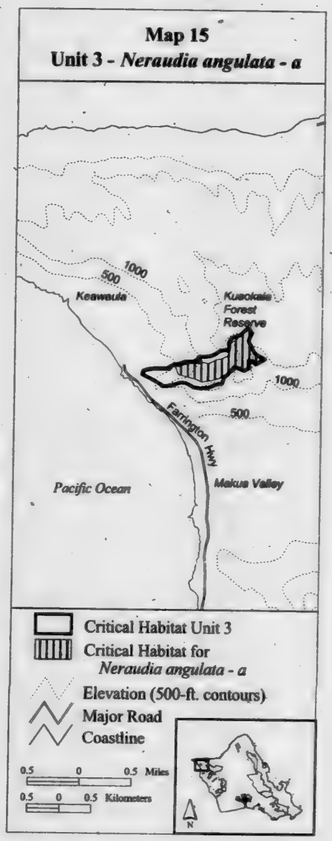
(ii) **Note:** Map 14 follows:



(15) Oahu 3—*Neraudia angulata*—a (39 ha; 98 ac)

(i) Unit consists of the following 52 boundary points: Start at 580537, 2382749; 580366, 2382818; 580282, 2382681; 580238, 2382660; 580091, 2382603; 580004, 2382584; 579879, 2382569; 579829, 2382591; 579784, 2382609; 579516, 2382681; 579463, 2382801; 579522, 2382810; 579632, 2382847; 579785, 2382860; 579904, 2382869; 579948, 2382857; 579998, 2382857; 580038, 2382875; 580110, 2382916; 580163, 2382925; 580204, 2382938; 580279, 2382972; 580314, 2383035; 580317, 2383119; 580317, 2383154; 580360, 2383194; 580401, 2383222; 580470, 2383301; 580555, 2383380; 580572, 2383390; 580608, 2383398; 580643, 2383357; 580653, 2383344; 580646, 2383327; 580623, 2383279; 580607, 2383228; 580600, 2383211; 580600, 2383210; 580600, 2383209; 580617, 2383205; 580695, 2383029; 580739, 2382994; 580852, 2382929; 580845, 2382924; 580718, 2382852; 580660, 2382901; 580632, 2382899; 580606, 2382898; 580606, 2382894; 580609, 2382810; 580623, 2382799; 580595, 2382784; return to starting point.

(ii) **Note:** Map 15 follows:



(16) Oahu 3—*Nototrichium humile*—a (21 ha; 51 ac)

(i) Unit consists of the following 58 boundary points: Start at 580322, 2383229; 580383, 2383263; 580458, 2383302; 580500, 2383306; 580555, 2383298; 580559, 2383275; 580557, 2383245; 580527, 2383226; 580494, 2383200; 580456, 2383192; 580423, 2383170; 580379, 2383157; 580361, 2383115; 580379, 2383082; 580427, 2383050; 580440, 2383016; 580448, 2382967; 580436, 2382930; 580411, 2382904; 580356, 2382875; 580328, 2382861; 580281, 2382833; 580277, 2382813; 580281, 2382750; 580265, 2382695; 580218, 2382650; 580160, 2382628; 580091, 2382628; 580010, 2382634; 579947, 2382642; 579922, 2382662; 579890, 2382677; 579853, 2382687; 579792, 2382717; 579691, 2382762; 579644, 2382794; 579561, 2382819; 579561, 2382843; 579581, 2382861; 579617, 2382879; 579628, 2382882; 579768, 2382880; 579863, 2382888; 579924, 2382880; 580020, 2382873; 580066, 2382904; 580174, 2382951; 580227, 2382953; 580281, 2382965; 580302, 2382995; 580302, 2383046; 580303, 2383086; 580304, 2383086; 580304, 2383087; 580304, 2383088; 580303, 2383093; 580304, 2383147; 580308, 2383210; return to starting point.

(ii) **Note:** Map 16 follows:



(17) Oahu 3—*Schiedea hookeri*—a (22 ha; 55 ac)

(i) Unit consists of the following 29 boundary points: Start at 580264, 2382989; 580304, 2383047; 580326, 2383118; 580326, 2383171; 580340, 2383251; 580415, 2383282; 580526, 2383322; 580592, 2383299; 580552, 2383224; 580446, 2383149; 580446, 2383104; 580499, 2383038; 580495, 2382994; 580495, 2382940; 580459, 2382870; 580397, 2382839; 580282, 2382808; 580247, 2382701; 580184, 2382630; 580100, 2382613; 579932, 2382639; 579843, 2382701; 579648, 2382772; 579613, 2382816; 579697, 2382852; 579839, 2382861; 579963, 2382861; 580074, 2382883; 580171, 2382971; return to starting point.

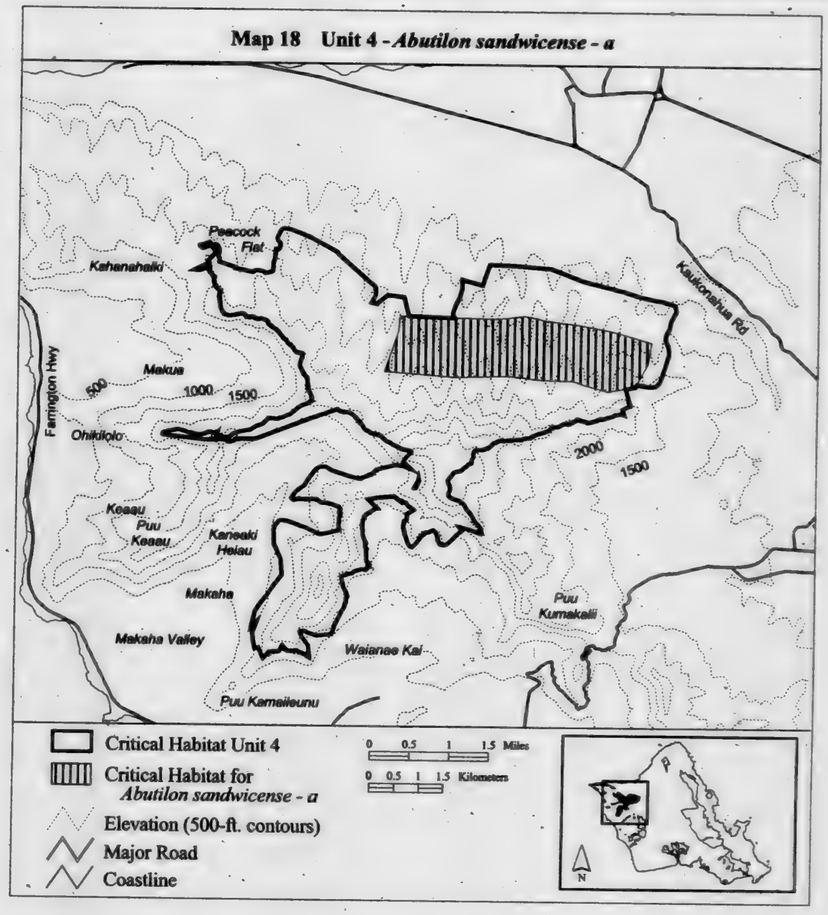
(ii) **Note:** Map 17 follows:



(18) Oahu 4—*Abutilon sandwicense*—a (617 ha; 1,492 ac)

(i) Unit consists of the following 25 boundary points; Start at 587021, 2380442; 587295, 2381250; 587320, 2381565; 589332, 2381513; 589879, 2381584; 590161, 2381525; 590284, 2381494; 590979, 2381406; 591581, 2381305; 591815, 2381256; 592481, 2381064; 592408, 2380627; 592166, 2380161; 591586, 2380069; 591071, 2380209; 590944, 2380253; 590851, 2380280; 590618, 2380280; 590310, 2380289; 590051, 2380311; 589743, 2380355; 589745, 2380336; 589576, 2380372; 588446, 2380333; 587034, 2380442; return to starting point.

(ii) **Note:** Map 18 follows:

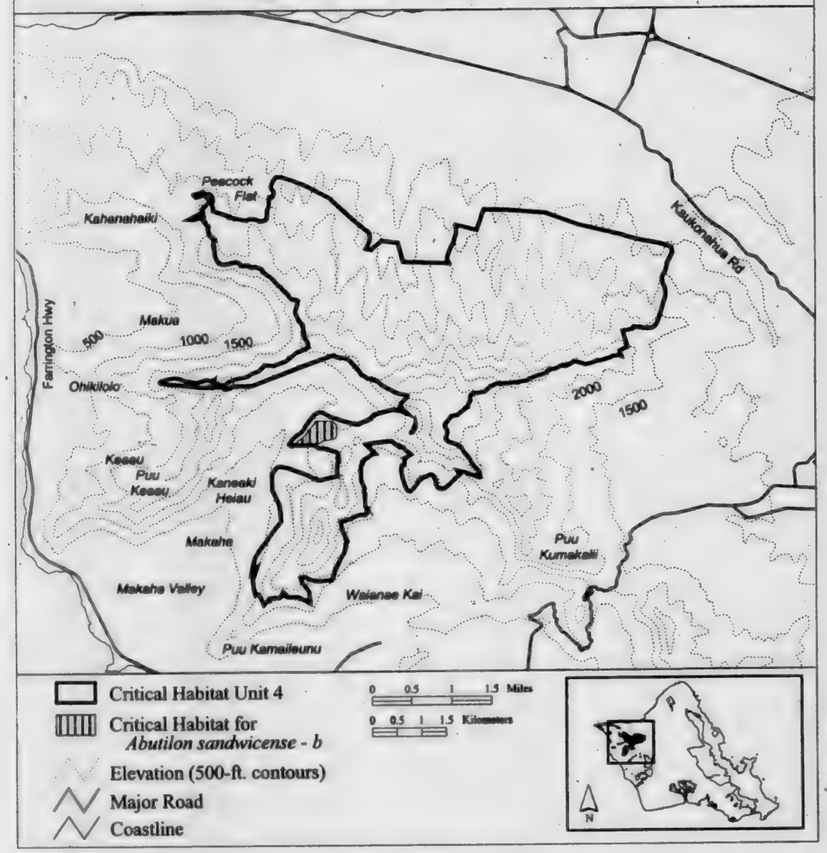


(19) Oahu 4—*Abutilon sandwicense*—b (26 ha; 65 ac)

(i) Unit consists of the following 21 boundary points: Start at 585770, 2377843; 585514, 2377812; 585309, 2377812; 585302, 2377855; 585352, 2377905; 585502, 2378018; 585513, 2378023; 585503, 2378027; 585585, 2378144; 585675, 2378254; 585726, 2378312; 585921, 2378312; 586058, 2378297; 586124, 2378234; 586128, 2378117; 586128, 2378007; 586101, 2377945; 586050, 2377925; 585968, 2377914; 585837, 2377895; 585819, 2377855; return to starting point.

(ii) **Note:** Map 19 follows:

Map 19 Unit 4 - *Abutilon sandwicense - b*

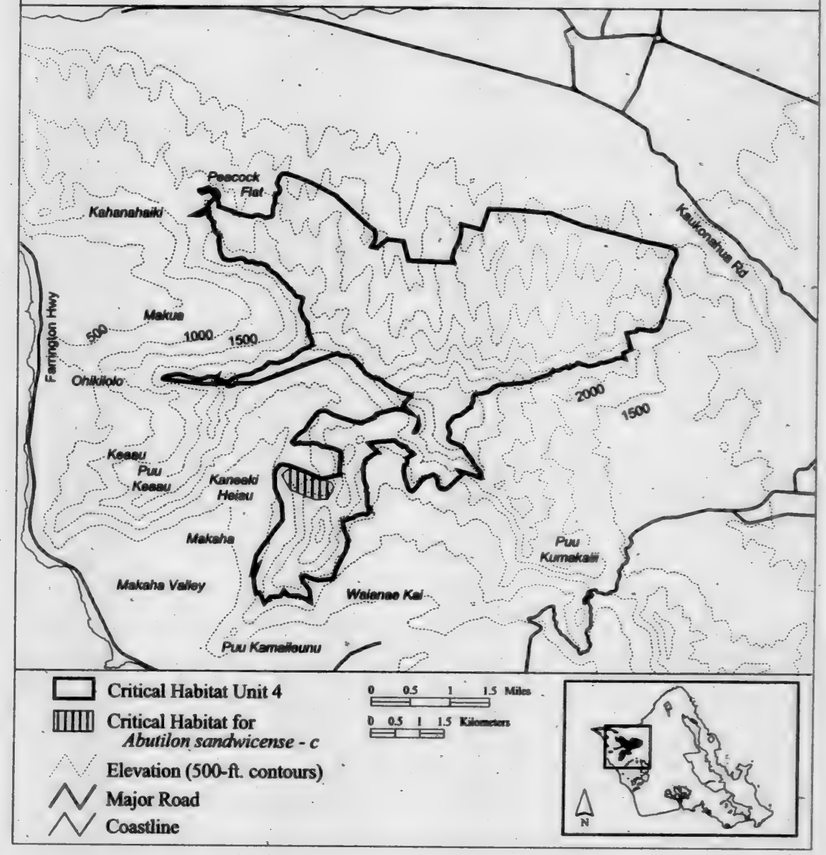


(20) Oahu 4—*Abutilon sandwicense*—c (41 ha; 102 ac)

(i) Unit consists of the following 13 boundary points: Start at 584947, 2377163; 585056, 2377267; 585189, 2377317; 585523, 2377179; 585815, 2377075; 585970, 2377021; 586011, 2376941; 586000, 2376834; 585894, 2376679; 585790, 2376674; 585652, 2376670; 585444, 2376741; 585135, 2376865; return to starting point.

(ii) **Note:** Map 20 follows:

Map 20 Unit 4 - *Abutilon sandwicense - c*

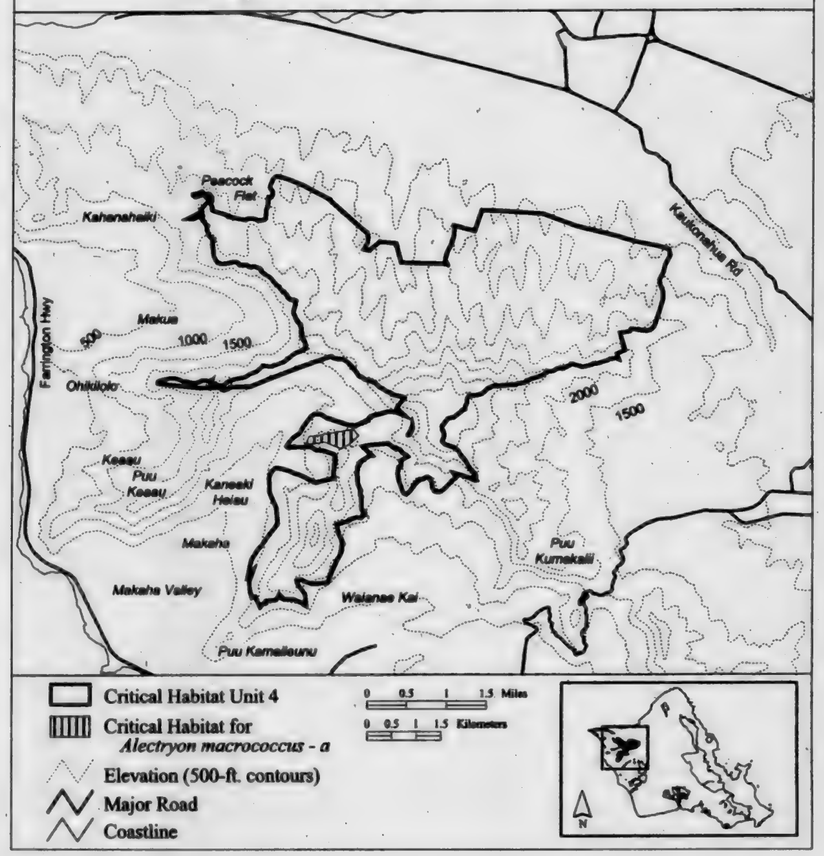


(21) Oahu 4—*Alectryon macrococcus*—a (23 ha; 58 ac)

(i) Unit consists of the following 11 boundary points: Start at 585550, 2377860; 585633, 2378026; 585845, 2378046; 586046, 2378091; 586234, 2378115; 586538, 2378174; 586652, 2378034; 586437, 2377855; 586289, 2377772; 585951, 2377906; 585637, 2377869; return to starting point.

(ii) **Note:** Map 21 follows:

Map 21 Unit 4 - *Alectryon macrococcus - a*

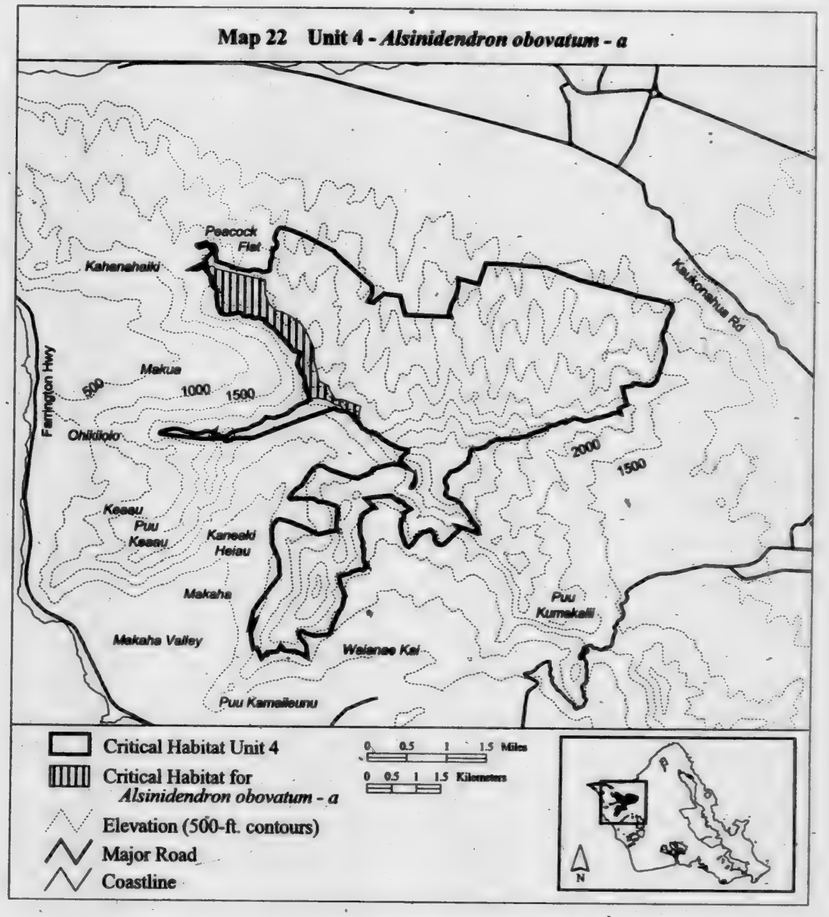


(22) Oahu 4—*Alsinidendron obovatum*—a (176 ha; 435 ac)

(i) Unit consists of the following 74 boundary points: Start at 584301, 2381528; 584276, 2381533; 584200, 2381533; 584168, 2381552; 584167, 2381553; 584150, 2381572; 584130, 2381584; 584129, 2381584; 584104, 2381586; 584065, 2381583; 584024, 2381575; 583997, 2381574; 583936, 2381555; 583934, 2381555; 583897, 2381549; 583890, 2381547; 583758, 2381567; 583747, 2381571; 583744, 2381574; 583679, 2381692; 583645, 2381923; 583660, 2382029; 583547, 2382173; 583547, 2382317; 583445, 2382468; 583526, 2382533; 583573, 2382527; 583625, 2382480; 584375, 2382308; 584634, 2382266; 584637, 2381962; 584681, 2381851; 584707, 2381777; 584869, 2381626; 584974, 2381615; 585148, 2381528; 585352, 2381394; 585415, 2381313; 585514, 2381138; 585630, 2380889; 585648, 2380581; 585694, 2380470; 585751, 2380215; 585885, 2380133; 585885, 2380132; 585887, 2380133; 585949, 2380115; 585967, 2380042; 586095, 2379844; 586223, 2379842; 586612, 2379713; 586570, 2379480; 586280, 2379613; 586221, 2379703; 586082, 2379747; 585944, 2379824; 585787, 2379865; 585584, 2379862; 585528, 2379995; 585464, 2380301; 585339, 2380521; 585359, 2380809; 585275, 2380813; 585134, 2380949; 585024, 2381070; 584865, 2381245; 584659, 2381371; 584615, 2381487; 584427, 2381499; 584329, 2381521; 584325, 2381523; 584324, 2381523; 584310, 2381528; 584309, 2381528; return to starting point.

(ii) **Note:** Map 22 follows:

Map 22 Unit 4 - *Alsinidendron obovatum - a*

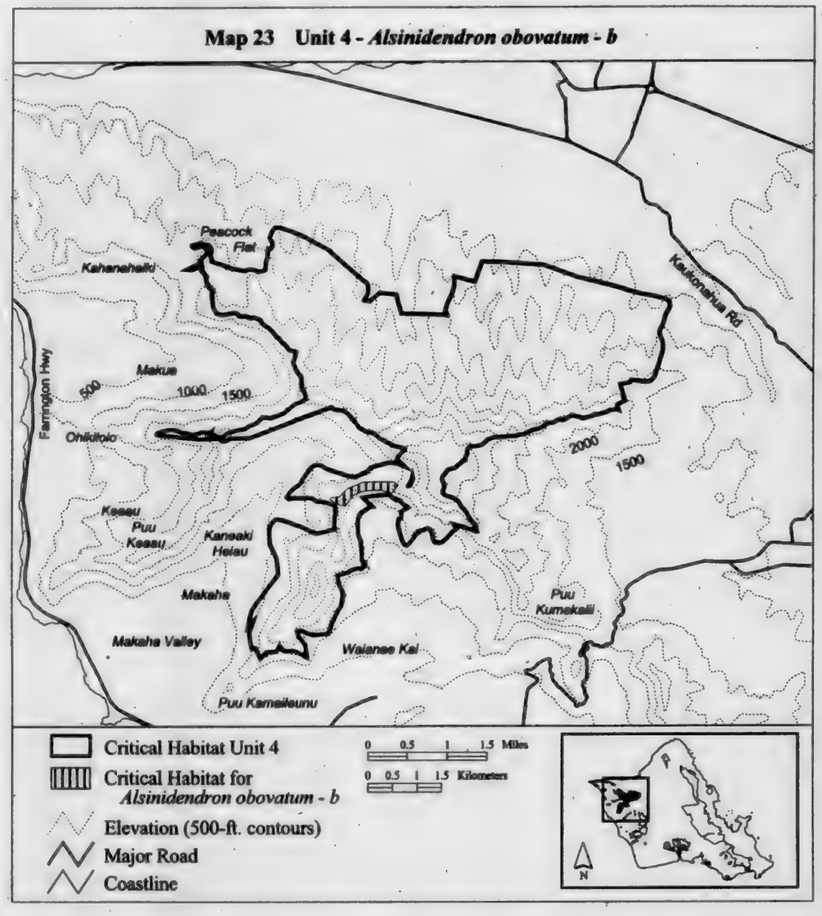


(23) Oahu 4—*Alsinidendron obovatum*—b (25 ha; 62 ac)

(i) Unit consists of the following 15 boundary points: Start at 587357, 2378140; 587448, 2378072; 587324, 2377899; 587184, 2377944; 587092, 2377970; 586908, 2377966; 586707, 2377940; 586523, 2377861; 586365, 2377651; 586207, 2377681; 586050, 2377786; 586076, 2377826; 586251, 2377839; 586413, 2378001; 586751, 2378133; return to starting point.

(ii) **Note:** Map 23 follows:

Map 23 Unit 4 - *Alsinidendron obovatum - b*

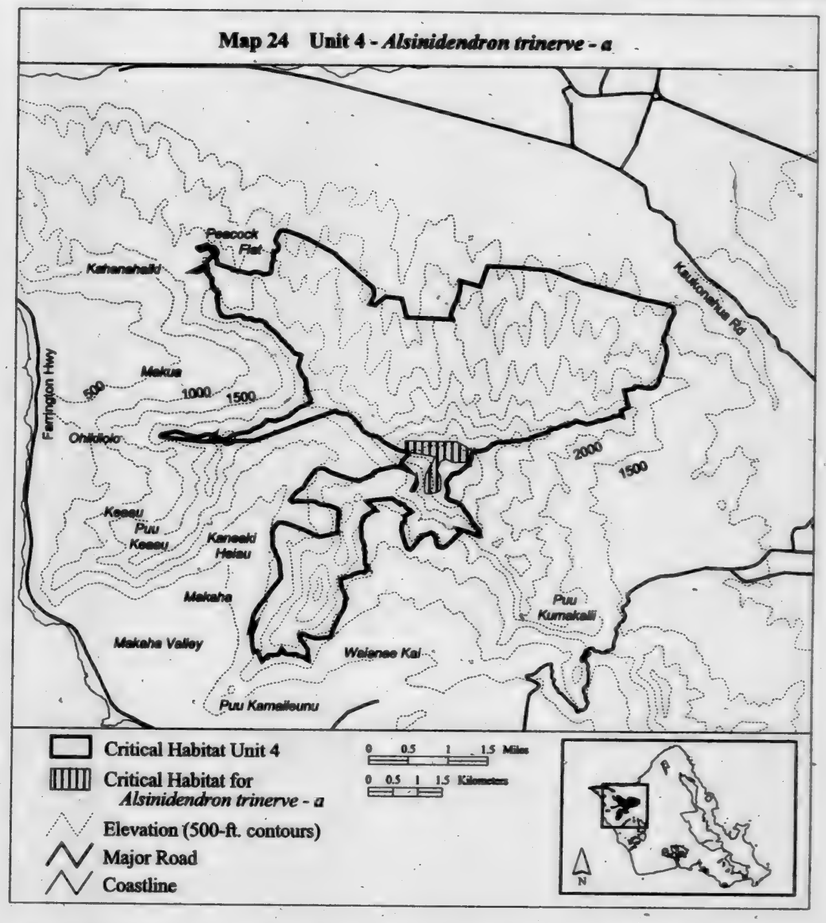


(24) Oahu 4—*Alsinidendron trinerve*—a (60 ha; 149 ac)

(i) Area consists of the following 40 boundary points: Start at 588752, 2378628; 588489, 2378617; 588334, 2378694; 588233, 2378647; 588153, 2378468; 588202, 2378374; 588233, 2378276; 588229, 2378073; 588222, 2378078; 588219, 2378044; 588144, 2378012; 588014, 2377985; 587916, 2377994; 587902, 2378173; 587902, 2378177; 587924, 2378356; 587992, 2378504; 588072, 2378629; 588108, 2378741; 587501, 2378835; 587501, 2379053; 588336, 2379045; 588528, 2379045; 588681, 2378969; 588828, 2378880; 588897, 2378847; 588887, 2378841; 588887, 2378840; 588862, 2378802; 588851, 2378772; 588851, 2378763; 588851, 2378746; 588855, 2378710; 588838, 2378677; 588825, 2378656; 588815, 2378615; 588815, 2378614; 588814, 2378597; 588767, 2378640; 588765, 2378640; return to starting point.

(ii) **Note:** Map 24 follows:

Map 24 Unit 4 - *Alsinidendron trinerve - a*

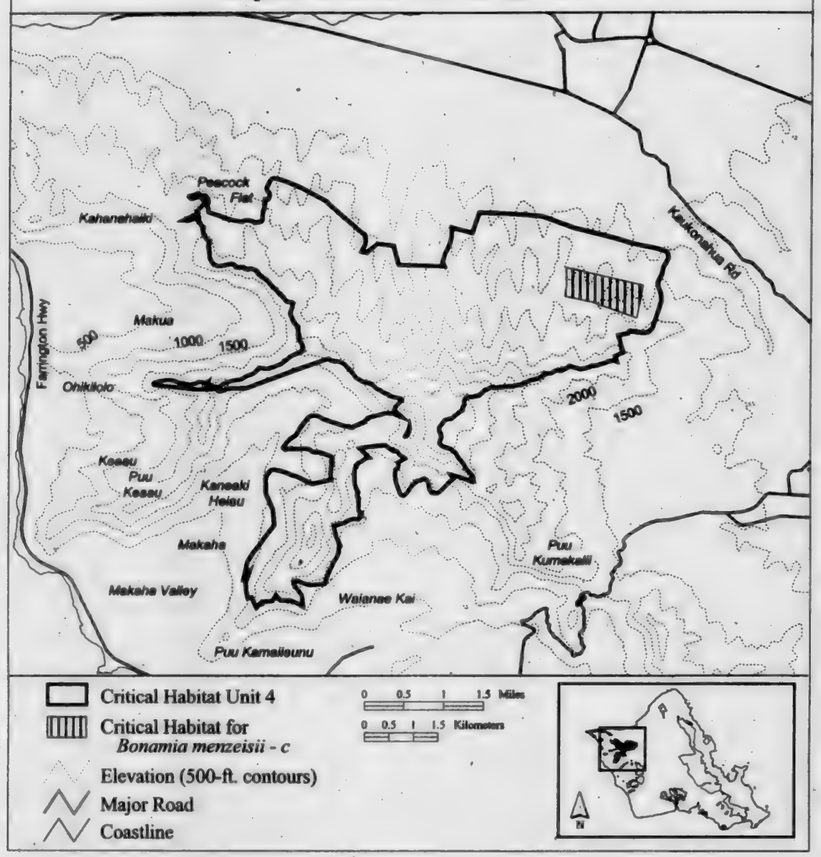


(25) Oahu 4—*Bonamia menziesii*—c (94 ha; 232 ac)

(i) Unit consists of the following 6 boundary points: Start at 592338, 2380469; 591431, 2380805; 590871, 2380923; 590910, 2381148; 590905, 2381506; 592466, 2381148; return to starting point.

(ii) **Note:** Map 25 follows:

Map 25 Unit 4 - *Bonamia menzeisii* - c

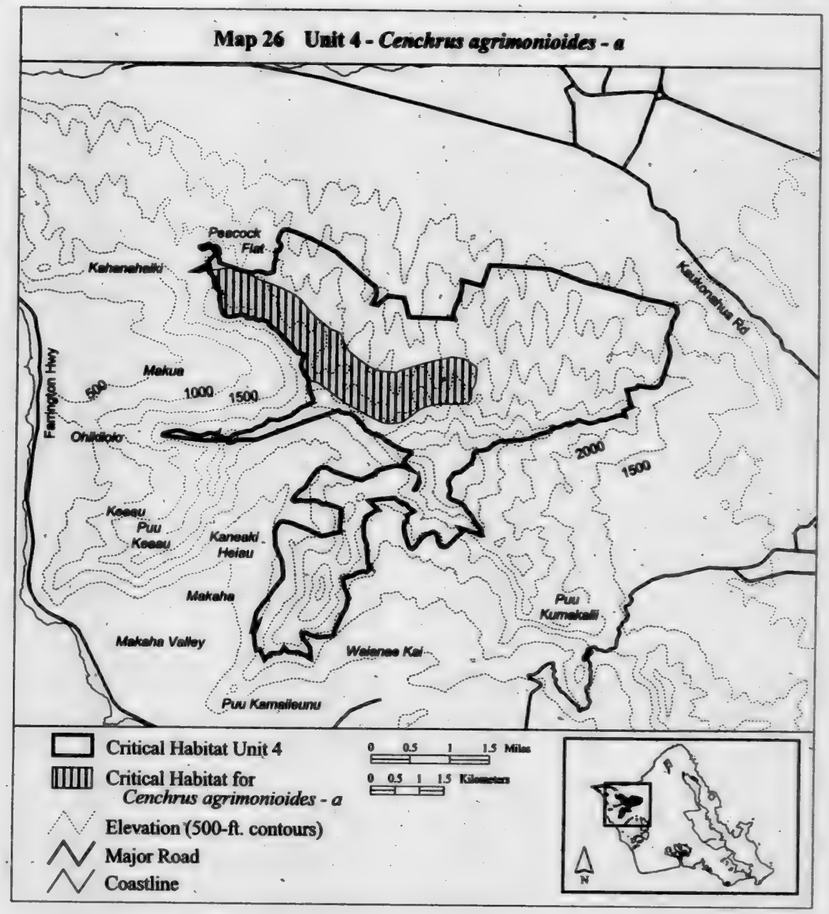


(26) Oahu 4—*Cenchrus agrimonioides*—a (529 ha; 1,306 ac)

(i) Unit consists of the following 80 boundary points: Start at 584380, 2381495; 584309, 2381544; 584196, 2381530; 584133, 2381606; 584005, 2381571; 583859, 2381553; 583750, 2381576; 583661, 2381729; 583665, 2382023; 583590, 2382108; 583548, 2382313; 583444, 2382478; 583845, 2382532; 583983, 2382483; 584310, 2382381; 584391, 2382319; 584901, 2382133; 585166, 2382001; 585317, 2381881; 585494, 2381655; 585649, 2381496; 585884, 2381318; 586097, 2381239; 586168, 2381079; 586162, 2381175; 586171, 2381058; 586289, 2380863; 586469, 2380706; 586684, 2380553; 586871, 2380472; 587093, 2380442; 587276, 2380438; 587334, 2380476; 587793, 2380622; 588077, 2380690; 588398, 2380767; 588651, 2380725; 588834, 2380606; 588896, 2380541; 588880, 2380231; 588800, 2380078; 588788, 2379921; 588712, 2379826; 588482, 2379822; 588260, 2379822; 588088, 2379810; 587881, 2379753; 587725, 2379680; 587593, 2379577; 587479, 2379489; 587406, 2379428; 587287, 2379401; 587130, 2379389; 587016, 2379397; 586817, 2379489; 586606, 2379600; 586605, 2379606; 586243, 2379810; 585639, 2380229; 585613, 2380224; 585480, 2380264; 585418, 2380357; 585368, 2380447; 585302, 2380567; 585354, 2380735; 585352, 2380808; 585224, 2380843; 585126, 2380959; 585063, 2380995; 585033, 2381030; 585027, 2381040; 585011, 2381059; 585004, 2381064; 584970, 2381105; 584845, 2381251; 584687, 2381354; 584639, 2381441; 584496, 2381498; 584403, 2381483; 584383, 2381494; return to starting point.

(ii) **Note:** Map 26 follows:

Map 26 Unit 4 - *Cenchrus agrimonioides* - a

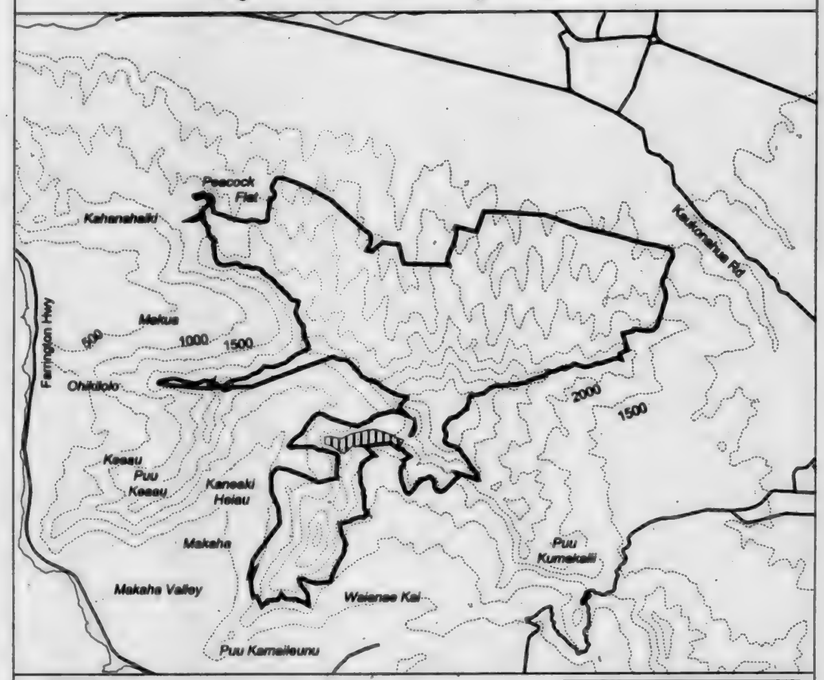


(27) Oahu 4—*Cenchrus agrimonioides*—b (40 ha; 99 ac)

(i) Unit consists of the following 23 boundary points: Start at 585892, 2378006; 585994, 2378031; 586109, 2378000; 586254, 2377981; 586430, 2378084; 586652, 2378126; 586778, 2378153; 586924, 2378161; 587115, 2378107; 587291, 2378046; 587356, 2378004; 587511, 2377943; 587402, 2377764; 587254, 2377883; 586893, 2377844; 586663, 2377808; 586470, 2377840; 586296, 2377671; 586162, 2377751; 586055, 2377824; 585921, 2377862; 585902, 2377863; 585897, 2377973; return to starting point.

(ii) **Note:** Map 27 follows:

Map 27 Unit 4 - *Cenchrus agrimonioides - b*

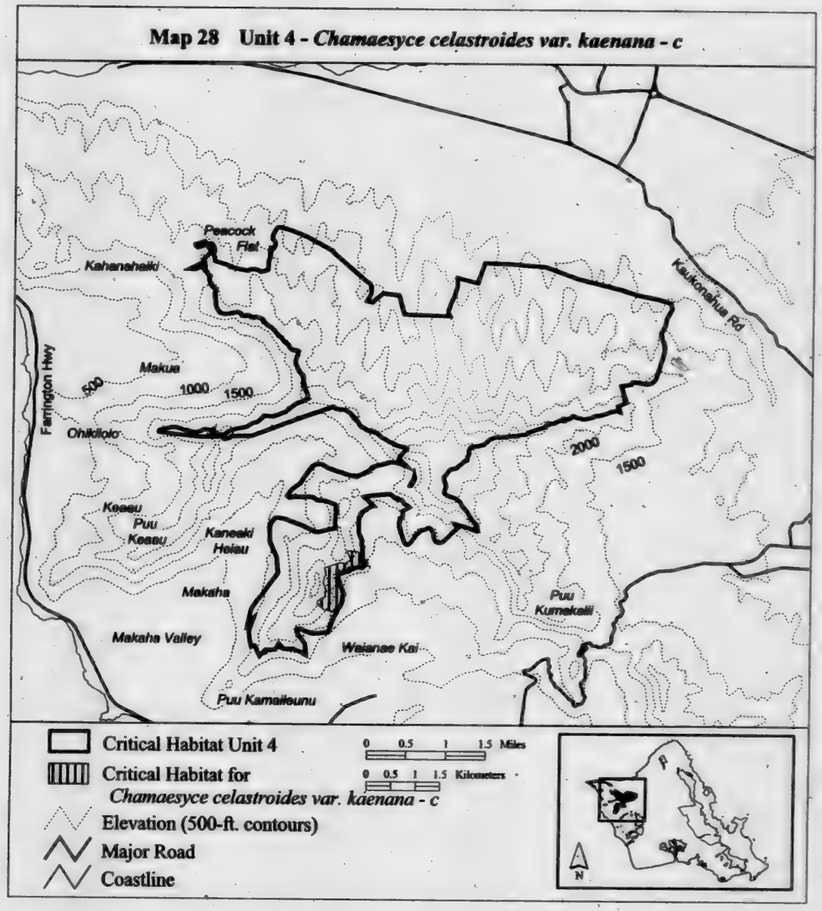


(28) Oahu 4—*Chamaesyce celastroides* var. *kaenana*—c (43 ha; 106 ac)

(i) Unit consists of the following 92 boundary points: Start at 586651, 2376680; 586644, 2376585; 586662, 2376562; 586667, 2376542; 586680, 2376519; 586696, 2376493; 586724, 2376470; 586726, 2376435; 586706, 2376405; 586669, 2376382; 586630, 2376383; 586563, 2376392; 586533, 2376380; 586508, 2376373; 586466, 2376373; 586443, 2376383; 586410, 2376382; 586403, 2376346; 586403, 2376327; 586364, 2376295; 586313, 2376302; 586251, 2376288; 586192, 2376262; 586184, 2376253; 586182, 2376218; 586178, 2376179; 586155, 2376159; 586182, 2376126; 586212, 2376096; 586237, 2376071; 586242, 2376022; 586270, 2375970; 586277, 2375925; 586291, 2375896; 586327, 2375856; 586343, 2375826; 586335, 2375810; 586302, 2375782; 586302, 2375752; 586309, 2375725; 586298, 2375700; 586281, 2375681; 586286, 2375646; 586277, 2375614; 586253, 2375556; 586226, 2375533; 586161, 2375490; 586104, 2375475; 586129, 2375453; 585970, 2375490; 585915, 2375515; 585884, 2375547; 585799, 2375607; 585799, 2375676; 585815, 2375693; 585841, 2375704; 585864, 2375723; 585878, 2375752; 585935, 2375768; 585960, 2375778; 585961, 2375806; 585960, 2375824; 585938, 2375854; 585965, 2375866; 585981, 2375888; 585970, 2375907; 585958, 2375933; 585926, 2376030; 585910, 2376082; 585935, 2376119; 585926, 2376156; 585935, 2376172; 585958, 2376221; 585951, 2376263; 585942, 2376308; 585937, 2376368; 586021, 2376392; 586166, 2376447; 586251, 2376479; 586302, 2376470; 586360, 2376466; 586406, 2376489; 586448, 2376512; 586459, 2376535; 586438, 2376601; 586415, 2376652; 586388, 2376699; 586388, 2376724; 586461, 2376724; 586537, 2376714; 586572, 2376710; 586623, 2376698; return to starting point.

(ii) **Note:** Map 28 follows:

Map 28 Unit 4 - *Chamaesyce celastroides var. kaenana - c*



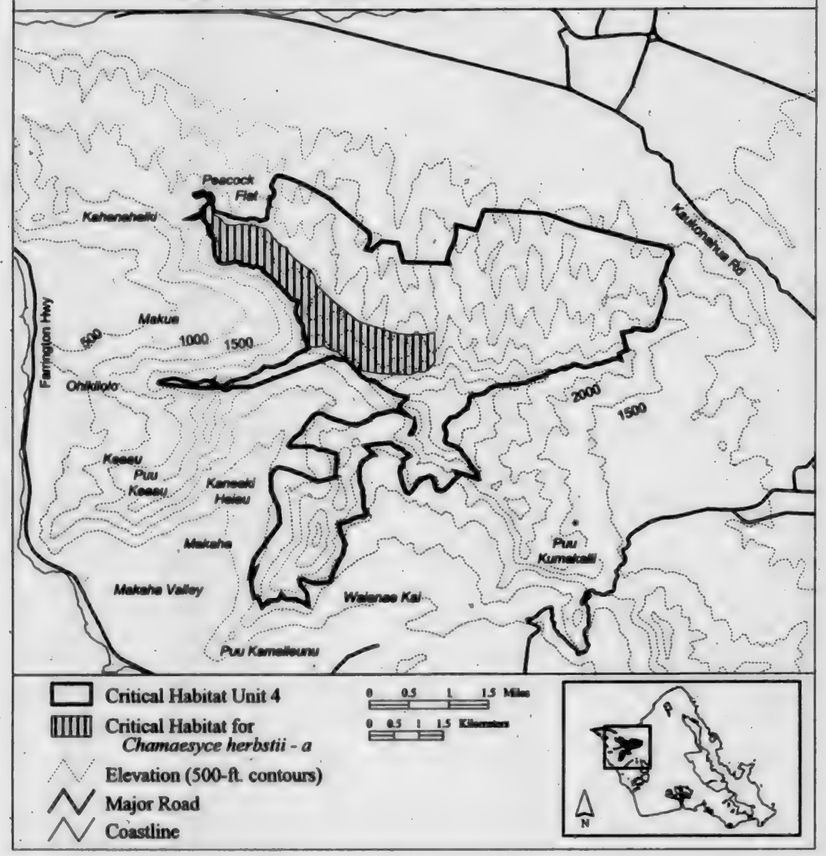
(29) Oahu 4—*Chamaesyce herbstii*—a (429 ha; 159 ac)

(i) Unit consists of the following 138 boundary points: Start at 583503, 2382342; 583526, 2382341; 583439, 2382511; 583414, 2382604; 583400, 2382650; 583402, 2382658; 583548, 2382823; 583450, 2382963; 583283, 2382906; 583228, 2382952; 583228, 2382973; 583336, 2382995; 583416, 2383033; 583475, 2382968; 583545, 2382989; 583567, 2382984; 583615, 2382909; 583626, 2382833; 583610, 2382785; 583594, 2382753; 583626, 2382704; 583626, 2382656; 583615, 2382564; 583734, 2382500; 583798, 2382440; 583863, 2382349; 583992, 2382327; 584046, 2382327; 584191, 2382354; 584397, 2382322; 584709, 2382257; 584779, 2382188; 584865, 2382064; 584903, 2382037; 584913, 2381999; 585043, 2381908; 585134, 2381865; 585177, 2381762; 585290, 2381644; 585425, 2381536; 585618, 2381396; 585710, 2381273; 585710, 2381176; 585753, 2381090; 585791, 2381066; 586087, 2380777; 586572, 2380389; 586597, 2380385; 586588, 2380370; 587339, 2380124; 587577, 2380104; 587951, 2380104; 588137, 2380136; 588137, 2380089; 588137, 2379981; 588137, 2379900; 588148, 2379825; 588148, 2379749; 588136, 2379529; 588072, 2379437; 587948, 2379340; 587899, 2379330; 587792, 2379346; 587652, 2379273; 587015, 2379301; 586634, 2379377; 586153, 2379776; 586086, 2379776; 585962, 2379836; 585897, 2379895; 585817, 2379862; 585704, 2379852; 585567, 2379876; 585549, 2379925; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585530, 2379977; 585483, 2380072; 585475, 2380117; 585474, 2380125; 585474, 2380128; 585472, 2380137; 585471, 2380141; 585460, 2380200; 585470, 2380286; 585383, 2380376; 585375, 2380388; 585365, 2380405; 585342, 2380472; 585303, 2380562; 585321, 2380656; 585324, 2380666; 585354, 2380756; 585347, 2380782; 585348, 2380789; 585348, 2380790; 585344, 2380798; 585344, 2380799; 585341, 2380800; 585340, 2380806; 585339, 2380804; 585215, 2380832; 585126,

2380952; 584993, 2381079; 584873, 2381226; 584724, 2381332; 584654, 2381380; 584630, 2381442; 584504, 2381496; 584422, 2381483; 584333, 2381519; 584325, 2381523; 584324, 2381523; 584317, 2381526; 584298, 2381533; 584261, 2381516; 584201, 2381520; 584133, 2381595; 584041, 2381579; 583935, 2381560; 583809, 2381569; 583723, 2381622; 583658, 2381762; 583655, 2381883; 583645, 2381972; 583657, 2382042; 583554, 2382141; 583527, 2382291; 583550, 2382324; 583523, 2382333; 583523, 2382334; 583522, 2382334; 583517, 2382336; 583508, 2382339; return to starting point.

(ii) **Note:** Map 29 follows:

Map 29 Unit 4 - *Map 29 - 04 Chamaesyce herbstii - a*

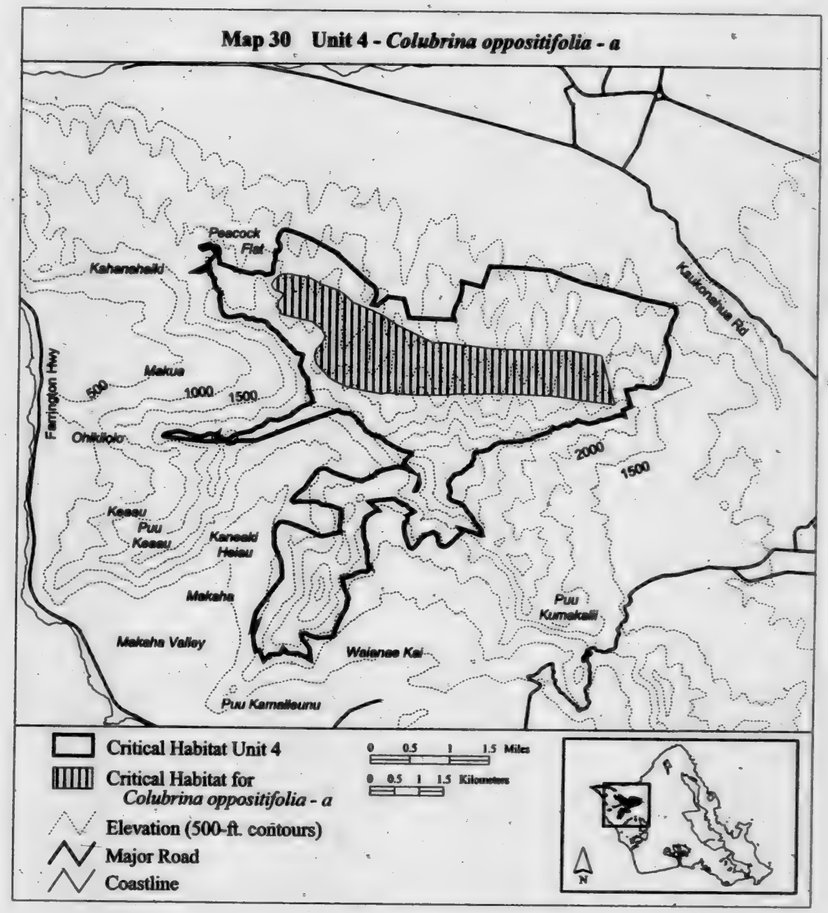


(30) Oahu 4—*Colubrina oppositifolia*—a (783 ha; 1,935 ac)

(i) Unit consists of the following 58 boundary points: Start at 588008, 2381069; 588057, 2381074; 588245, 2381074; 588704, 2381020; 589182, 2380963; 589495, 2380938; 590771, 2380923; 591455, 2380827; 591742, 2379816; 590859, 2379924; 590856, 2379925; 590854, 2379936; 590431, 2379992; 589977, 2380011; 589432, 2380031; 588699, 2380021; 588491, 2380021; 588192, 2379992; 587883, 2379987; 587661, 2379987; 587047, 2380034; 587048, 2380026; 586956, 2380011; 586559, 2380084; 586255, 2380156; 586047, 2380238; 585907, 2380320; 585773, 2380460; 585624, 2380620; 585590, 2380760; 585624, 2380909; 585744, 2381049; 585807, 2381170; 585735, 2381320; 585532, 2381474; 585218, 2381547; 584909, 2381619; 584875, 2381701; 584827, 2381745; 584837, 2381860; 584924, 2381976; 584948, 2382020; 584895, 2382063; 584793, 2382092; 584730, 2382140; 584701, 2382227; 584764, 2382329; 584899, 2382435; 585054, 2382445; 585237, 2382411; 585469, 2382367; 585706, 2382247; 586068, 2382107; 586270, 2381962; 586353, 2381875; 586779, 2381699; 587016, 2381581; 587278, 2381406; return to starting point.

(ii) **Note:** Map 30 follows:

Map 30 Unit 4 - *Colubrina oppositifolia - a*

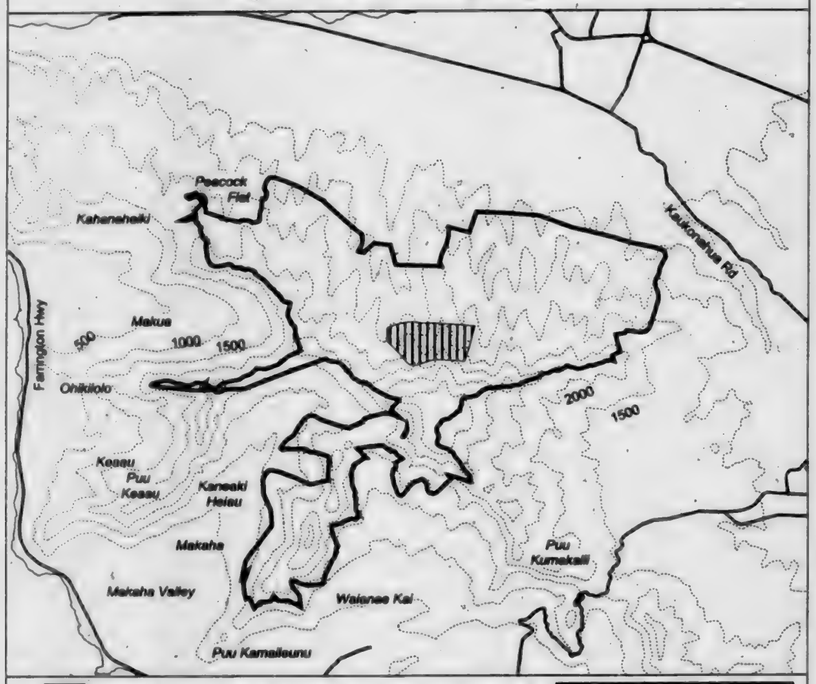


(31) Oahu 4—*Ctenitis squamigera*—a (120 ha; 298 ac)

(i) Unit consists of the following 22 boundary points: Start at 588909, 2379603; 588766, 2379609; 588486, 2379632; 588342, 2379636; 588233, 2379618; 588055, 2379564; 587942, 2379523; 587815, 2379523; 587752, 2379573; 587549, 2379813; 587345, 2380007; 587345, 2380130; 587341, 2380284; 587504, 2380347; 587726, 2380397; 587907, 2380406; 588016, 2380383; 588396, 2380370; 588613, 2380356; 588885, 2380333; 589113, 2380315; 589032, 2379960; return to starting point.

(ii) **Note:** Map 31 follows:

Map 31 Unit 4 - *Ctenitis squamigera* - a

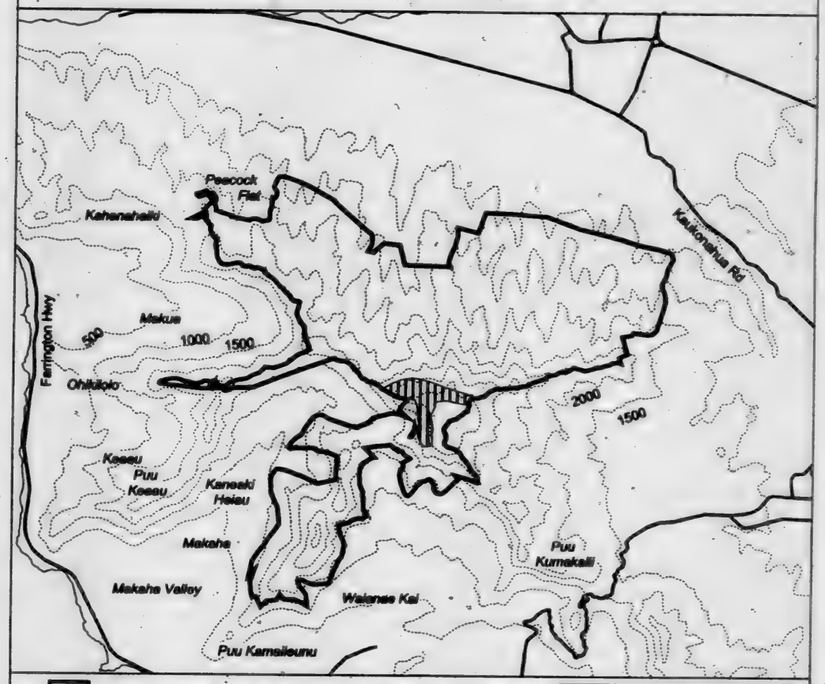


(32) Oahu 4—*Cyanea acuminata*—a (83 ha; 205 ac)

(i) Unit consists of the following 64 boundary points: Start at 588849, 2378698; 588770, 2378723; 588704, 2378726; 588538, 2378764; 588421, 2378792; 588320, 2378789; 588186, 2378769; 588157, 2378735; 588154, 2378666; 588120, 2378592; 588085, 2378517; 588062, 2378488; 588079, 2378402; 588091, 2378339; 588111, 2378245; 588111, 2378176; 588085, 2378090; 588102, 2378038; 588105, 2377972; 588105, 2377921; 588079, 2377875; 588071, 2377872; 588014, 2377866; 587936, 2377866; 587882, 2377912; 587830, 2377995; 587810, 2378079; 587804, 2378147; 587804, 2378216; 587830, 2378316; 587816, 2378388; 587799, 2378500; 587804, 2378594; 587790, 2378695; 587736, 2378798; 587675, 2378815; 587584, 2378835; 587437, 2378844; 587372, 2378861; 587311, 2378898; 587225, 2378941; 587154, 2378981; 587111, 2379036; 587108, 2379047; 587283, 2379145; 587472, 2379222; 587687, 2379257; 587856, 2379228; 588097, 2379168; 588340, 2379070; 588581, 2378999; 588879, 2378910; 588987, 2378856; 588910, 2378852; 588910, 2378851; 588899, 2378848; 588898, 2378848; 588887, 2378841; 588887, 2378840; 588862, 2378802; 588851, 2378772; 588851, 2378763; 588851, 2378746; 588855, 2378710; return to starting point.

(ii) Note: Map 32 follows:

Map 32 Unit 4 - *Cyanea acuminata* - a

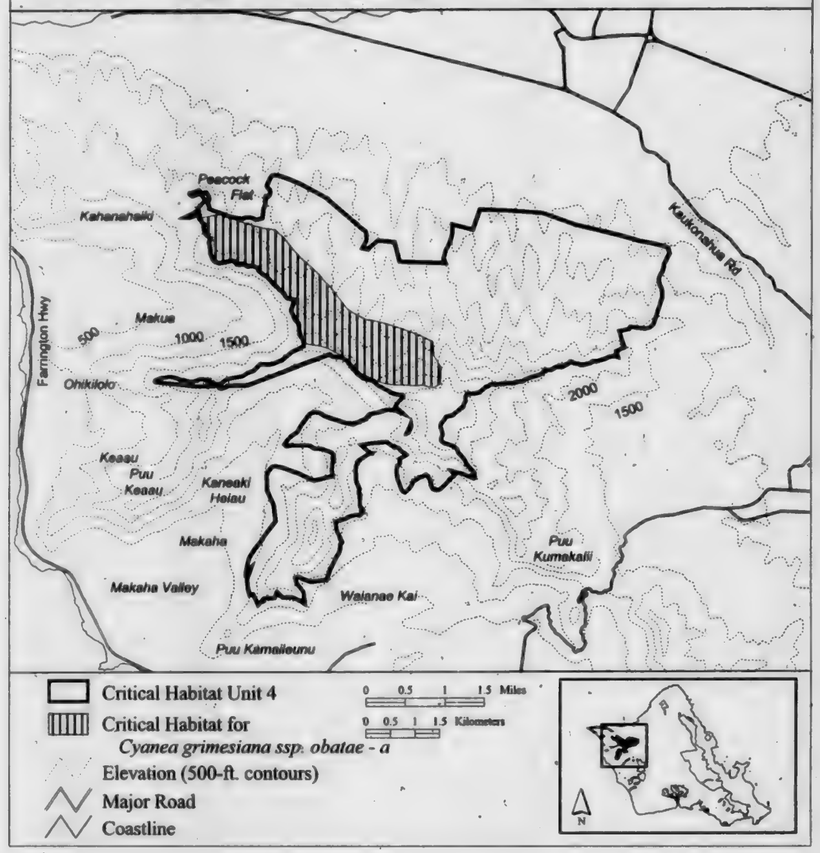


(33) Oahu 4—*Cyanea grimesiana* ssp. *obatae*—a (522 ha; 1,291 ac)

(i) Unit consists of the following 102 boundary points: Start at 584251, 2381509; 584192, 2381525; 584170, 2381549; 584167, 2381553; 584150, 2381572; 584148, 2381573; 584141, 2381581; 584117, 2381595; 583876, 2381561; 583789, 2381568; 583745, 2381584; 583733, 2381605; 583700, 2381659; 583663, 2381752; 583647, 2381925; 583667, 2382028; 583560, 2382137; 583530, 2382267; 583557, 2382327; 583487, 2382367; 583487, 2382400; 583454, 2382430; 583451, 2382446; 583505, 2382460; 583690, 2382504; 583864, 2382531; 584038, 2382468; 584255, 2382393; 584421, 2382326; 584745, 2382247; 584970, 2382204; 585143, 2382054; 585301, 2381856; 585475, 2381651; 585648, 2381505; 585857, 2381316; 586011, 2381138; 586134, 2381024; 586124, 2381013; 586441, 2380602; 586583, 2380511; 586836, 2380381; 587002, 2380353; 587250, 2380290; 587554, 2380188; 587893, 2380065; 588177, 2379919; 588201, 2379631; 588350, 2379387; 588346, 2379296; 588338, 2379063; 588204, 2378976; 588097, 2378996; 587975, 2379035; 587841, 2379020; 587604, 2379035; 587411, 2379035; 587218, 2379059; 587008, 2379134; 586724, 2379276; 586535, 2379469; 586365, 2379608; 586073, 2379769; 585884, 2379832; 585659, 2379860; 585562, 2379890; 585549, 2379924; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585478, 2380107; 585457, 2380302; 585395, 2380362; 585299, 2380563; 585336, 2380704; 585338, 2380712; 585339, 2380712; 585340, 2380721; 585345, 2380739; 585346, 2380751; 585346, 2380754; 585346, 2380756; 585350, 2380801; 585223, 2380827; 585174, 2380878; 585167, 2380888; 585157, 2380904; 585146, 2380918; 585118, 2380959; 585065, 2380985; 585023, 2381051; 584965, 2381104; 584807, 2381274; 584709, 2381333; 584646, 2381382; 584631, 2381444; 584500, 2381495; 584452, 2381482; 584301, 2381534; return to starting point.

(ii) **Note:** Map 33 follows:

Map 33 Unit 4 - *Cyanea grimesiana ssp. obatae - a*

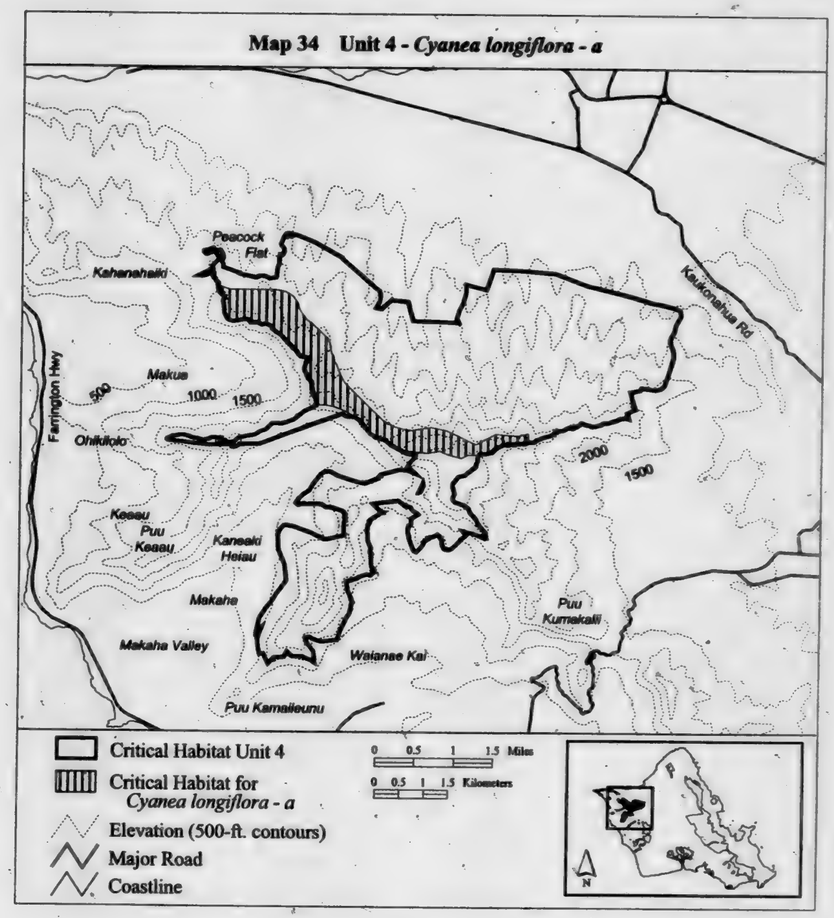


(34) Oahu 4—*Cyanea longiflora*+—a (362 ha; 896 ac)

(i) Unit consists of the following 163 boundary points: Start at 589322, 2379008; 589227, 2379030; 589144, 2378934; 588984, 2378856; 588910, 2378852; 588910, 2378851; 588899, 2378848; 588898, 2378848; 588887, 2378841; 588887, 2378840; 588866, 2378808; 588853, 2378830; 588638, 2378825; 588557, 2378780; 588549, 2378779; 588522, 2378764; 588468, 2378783; 588294, 2378820; 588097, 2378901; 588099, 2378909; 588092, 2378911; 588079, 2378910; 587994, 2378891; 587795, 2378868; 587551, 2378882; 587485, 2378896; 587399, 2378901; 587322, 2378929; 587266, 2378941; 587232, 2378962; 587081, 2379017; 586980, 2379113; 586772, 2379174; 586781, 2379184; 586778, 2379185; 586637, 2379321; 586447, 2379529; 586294, 2379624; 586135, 2379719; 585918, 2379796; 585737, 2379832; 585556, 2379836; 585574, 2379901; 585531, 2379987; 585481, 2380116; 585466, 2380282; 585337, 2380490; 585308, 2380573; 585327, 2380678; 585338, 2380712; 585339, 2380712; 585344, 2380738; 585346, 2380754; 585345, 2380767; 585345, 2380777; 585347, 2380785; 585348, 2380789; 585348, 2380790; 585352, 2380813; 585215, 2380831; 585132, 2380968; 585086, 2380996; 585028, 2381065; 584964, 2381101; 584881, 2381216; 584729, 2381329; 584626, 2381453; 584497, 2381510; 584462, 2381482; 584344, 2381514; 584325, 2381523; 584324, 2381523; 584310, 2381528; 584309, 2381528; 584295, 2381527; 584259, 2381537; 584134, 2381603; 584046, 2381591; 583951, 2381568; 583888, 2381564; 583811, 2381577; 583728, 2381611; 583670, 2381715; 583652, 2381855; 583660, 2382042; 583584, 2382099; 583545, 2382178; 583530, 2382274; 583616, 2382242; 583770, 2382188; 583933, 2382192; 584155, 2382192; 584490, 2382188; 584676, 2382188; 584911, 2382156; 585065, 2382052; 585141, 2381944; 585178, 2381835; 585254, 2381699; 585340, 2381577; 585435, 2381519; 585630, 2381329; 585770, 2381193; 585806, 2381121; 585833, 2381017; 585847, 2380890; 585888, 2380845; 585910, 2380736; 585955, 2380664; 586023, 2380469; 586133, 2380279; 586136, 2380279; 586407, 2380013; 586900, 2379542; 587025, 2379450; 587040, 2379467; 587126, 2379412; 587224, 2379382; 587447, 2379321; 587646, 2379357; 587816, 2379378; 587895, 2379391; 588218, 2379331; 588742, 2379076; 588826, 2379041; 589211, 2379253; 589214, 2379255; 589215, 2379255; 589224, 2379260; 589280, 2379255; 589300, 2379255; 589347, 2379249; 589636, 2379223; 589701, 2379230; 589887, 2379275; 589886, 2379260; 589892, 2379260; 589892, 2379189; 589892, 2379098; 589882, 2379095; 589882, 2379089; 589881, 2379089; 589839, 2379075; 589839, 2379074; 589806, 2379068; 589790, 2379069; 589787, 2379069; 589747, 2379069; 589705, 2379066; 589675, 2379063; 589616, 2379059; 589604, 2379058; 589557, 2379052; 589519, 2379042; 589496, 2379035; 589462, 2379034; 589441, 2379042; 589424, 2379047; 589391, 2379048; 589370, 2379041; 589369, 2379041; 589348, 2379025; 589324, 2379009; return to starting point.

(ii) **Note:** Map 34 follows:

Map 34 Unit 4 - *Cyanea longiflora - a*



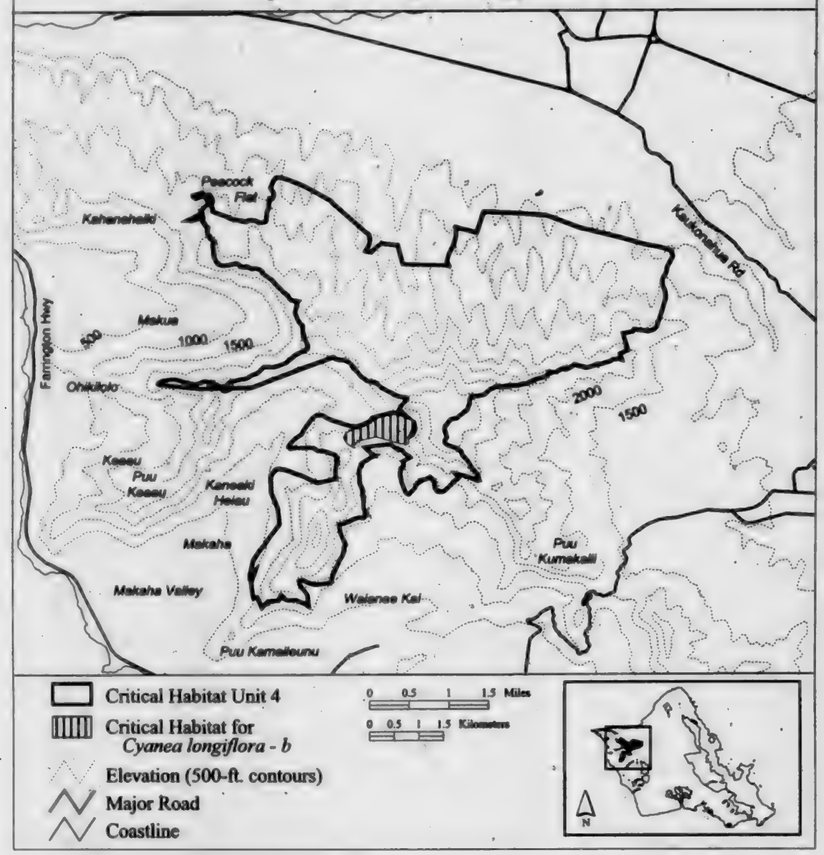
(35) Oahu 4—*Cyanea longiflora*—b (61 ha; 150 ac)

(i) Unit consists of the following 24 boundary points: Start at 586477, 2377825; 586452, 2377842; 586384, 2377878; 586334, 2377946; 586298, 2378018; 586330, 2378113; 586610, 2378253; 586813, 2378347; 586800, 2378330; 586827, 2378353; 586882, 2378430; 587085, 2378484; 587257, 2378529; 587429, 2378511; 587659, 2378421; 587718, 2378371; 587759,

2378299; 587727, 2378199; 587655, 2378068; 587610, 2377973; 587610, 2377887; 587449, 2377887; 586953, 2378038; 586608, 2377955; return to starting point.

(ii) **Note:** Map 35 follows:

Map 35 Unit 4 - *Cyanea longiflora - b*



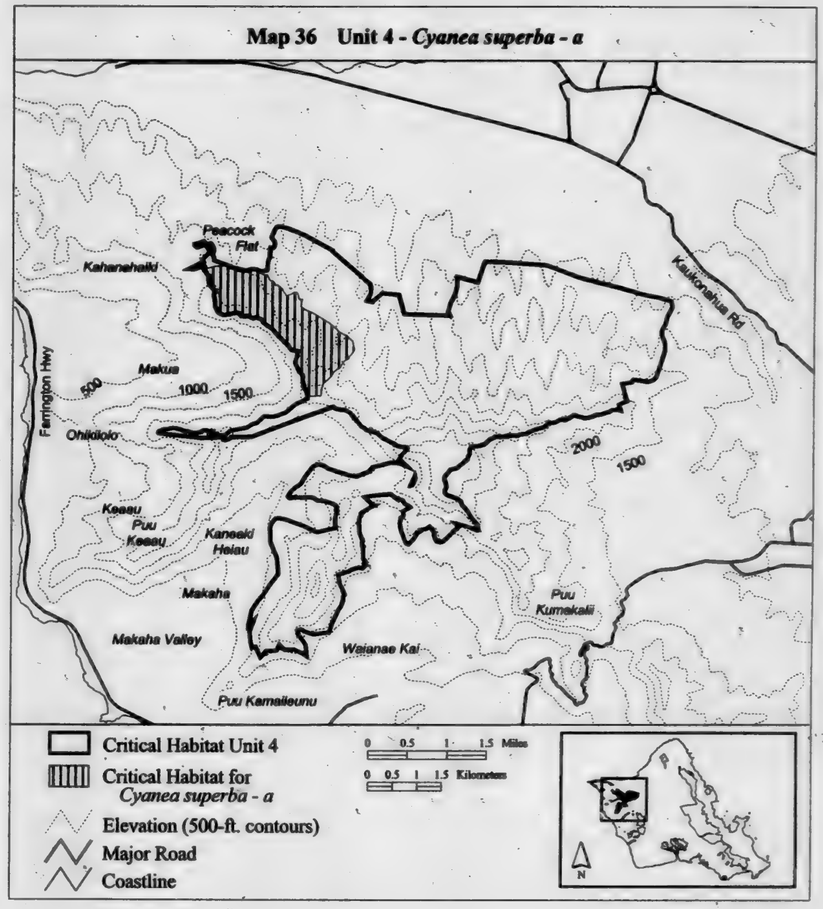
(36) Oahu 4—*Cyanea superba*—a (302 ha; 747 ac)

(i) Unit consists of the following 142 boundary points: Start at 583837, 2381543; 583777, 2381576; 583739, 2381579; 583731, 2381587; 583731, 2381589; 583658, 2381724; 583662, 2381803; 583646, 2381892; 583638, 2381956; 583650, 2381985; 583658, 2382035; 583567, 2382120; 583523, 2382284; 583540, 2382309; 583544, 2382321; 583480, 2382363; 583480, 2382413; 583434, 2382429; 583434, 2382473; 583434, 2382474; 583642, 2382522; 583867, 2382536; 584015, 2382467; 584112, 2382425; 584164, 2382418; 584268, 2382405; 584352, 2382460; 584393, 2382474; 584490, 2382463; 584552, 2382432; 584617, 2382373; 584631, 2382363; 584687, 2382353; 584718, 2382349; 584745, 2382297; 584766, 2382246; 584814, 2382239; 584832, 2382225; 584870, 2382177; 584880, 2382142; 584922, 2382156; 584977, 2382111; 585017, 2382080; 585022, 2382069; 585179, 2382021; 585084, 2381969; 585111, 2381938; 585129, 2381938; 585167, 2381952; 585212, 2381969; 585281, 2382017; 585326, 2382011; 585353, 2381955; 585357, 2381883; 585391, 2381855; 585433, 2381862; 585412, 2381779; 585409, 2381727; 585436, 2381703; 585464, 2381683; 585462, 2381673; 585661, 2381576; 585844, 2381475; 585999, 2381368; 586120, 2381258; 586210, 2381178; 586338, 2381120; 586462, 2381009; 586497, 2380847; 586486, 2380809; 586462, 2380757; 586393, 2380691; 586386, 2380643; 586310, 2380595; 586248, 2380522; 586213, 2381753; 586127,

2381705; 586086, 2380367; 586051, 2380294; 585971, 2380217; 585926, 2380170; 585870, 2380121; 585843, 2380028; 585836, 2379883; 585791, 2379883; 585587, 2379869; 585538, 2379948; 585531, 2379962; 585531, 2379963; 585523, 2379982; 585522, 2379982; 585518, 2379989; 585515, 2379997; 585500, 2380019; 585475, 2380122; 585474, 2380125; 585474, 2380128; 585472, 2380135; 585461, 2380273; 585440, 2380319; 585405, 2380348; 585366, 2381717; 585320, 2380510; 585299, 2380563; 585334, 2380698; 585338, 2380712; 585339, 2380712; 585342, 2380729; 585347, 2380750; 585347, 2380785; 585348, 2380789; 585348, 2380790; 585347, 2380792; 585347, 2380802; 585212, 2380834; 585116, 2380960; 585069, 2380992; 585025, 2381174; 584900, 2381178; 584809, 2381270; 584709, 2381331; 584646, 2381394; 584629, 2381439; 584609, 2381458; 584546, 2381479; 584484, 2381495; 584447, 2381479; 584418, 2381479; 584387, 2381500; 584349, 2381516; 584326, 2381533; 584295, 2381535; 584250, 2381516; 584202, 2381527; 584180, 2381542; 584177, 2381551; 584140, 2381589; 584073, 2381589; 583961, 2381562; 583916, 2381554; 583853, 2381551; 583839, 2381543; return to starting point.

(ii) **Note:** Map 36 follows:

Map 36 Unit 4 - *Cyanea superba - a*



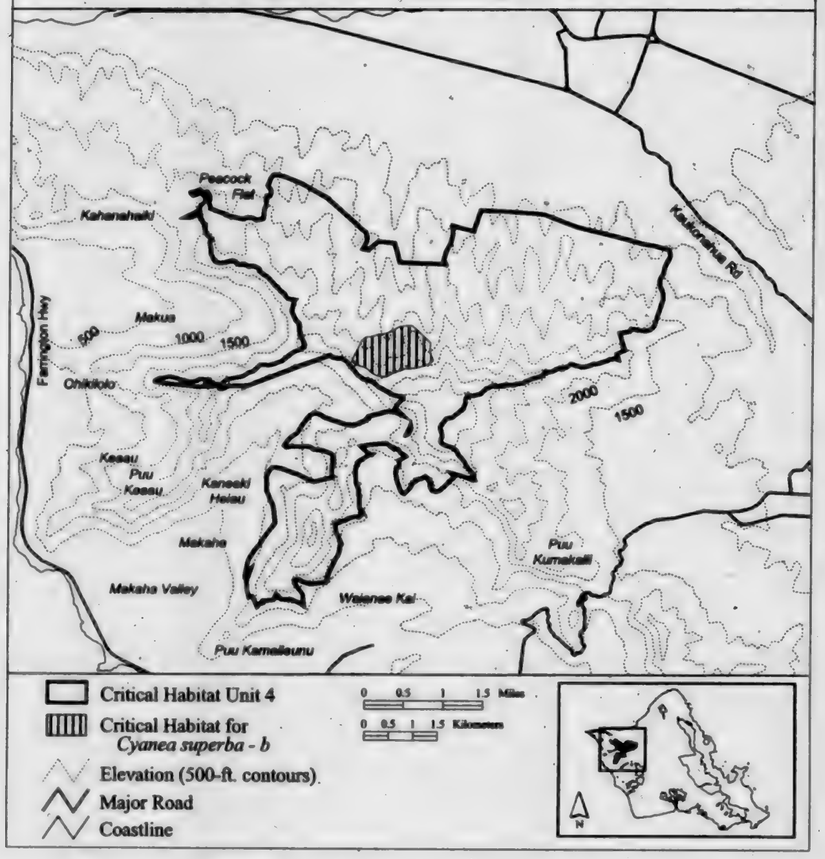
(37) Oahu 4—*Cyanea superba*—b (116 ha; 286 ac)

(i) Unit consists of the following 36 boundary points: Start at 587772, 2380274; 588060, 2379997; 588137, 2379927; 588144, 2379905; 588122, 2379765; 588141, 2379680; 588174, 2379610; 588189, 2379551; 588092, 2379477; 587911, 2379415; 587741, 2379393; 587627, 2379389; 587505, 2379341; 587424, 2379315; 587369, 2379297; 587232, 2379216; 587041, 2379249; 586926, 2379308; 586871, 2379370; 586797, 2379411; 586639, 2379459; 586532, 2379536; 586565,

2379636; 586639, 2379776; 586709, 2379898; 586731, 2379961; 586824, 2380031; 586879, 2380049; 586942, 2380049; 587082, 2380086; 587186, 2380101; 587285, 2380123; 587326, 2380156; 587411, 2380193; 587503, 2380244; 587639, 2380267; return to starting point.

(ii) **Note:** Map 37 follows:

Map 37 Unit 4 - *Cyanea superba - b*

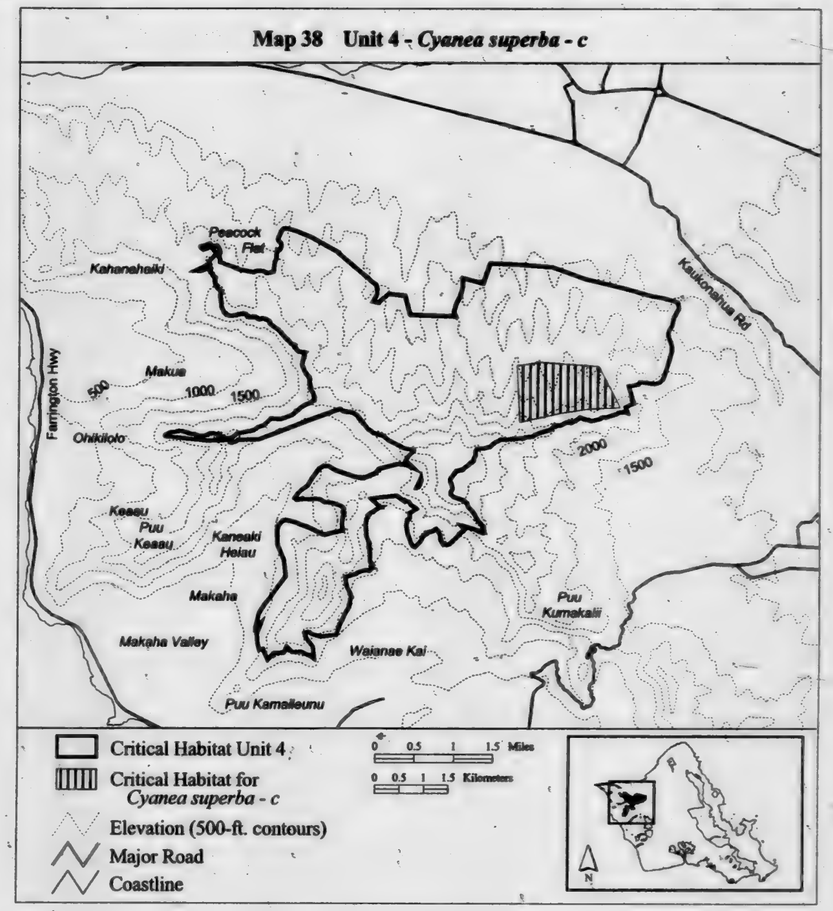


(38) Oahu 4—*Cyanea superba*—c (184 ha; 455 ac)

(i) Unit consists of the following 7 boundary points: Start at 589757, 2379400; 589699, 2380542; 590166, 2380613; 591361, 2380532; 591790, 2379700; 591135, 2379667; 590578, 2379579; return to starting point.

(ii) **Note:** Map 38 follows:

Map 38 Unit 4 - *Cyanea superba - c*



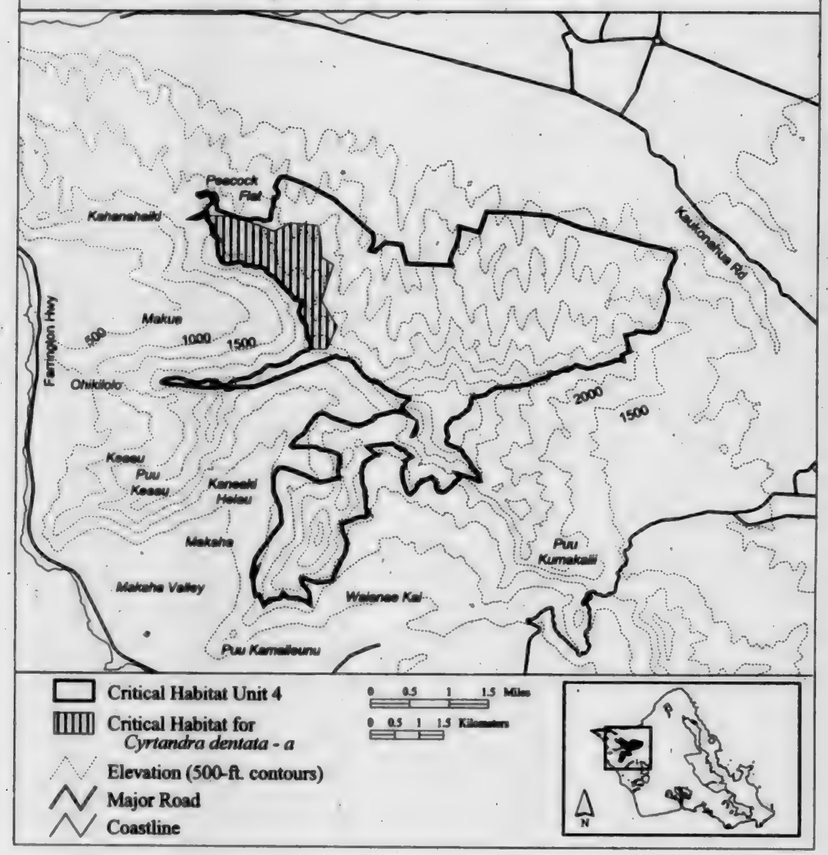
(39) Oahu 4—*Cyrtandra dentata*—a (306 ha; 757 ac)

(i) Unit consists of the following 208 boundary points: Start at 584020, 2381575; 583738, 2381581; 583730, 2381588; 583709, 2381612; 583707, 2381614; 583694, 2381639; 583685, 2381655; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381774; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382045; 583626, 2382059; 583625, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583523, 2382239; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; 583498, 2382345; 583497, 2382345; 583486, 2382351; 583477, 2382362; 583474, 2382370; 583475, 2382383; 583475, 2382397; 583474, 2382404; 583474, 2382405; 583469, 2382411; 583468, 2382411; 583457, 2382416; 583443, 2382421; 583435, 2382424; 583430, 2382430; 583429, 2382440; 583431, 2382460; 583433, 2382477; 583433, 2382478; 583431, 2382497; 583428, 2382521; 583969, 2382511; 584493, 2382321; 584788, 2382210; 585130, 2382381; 585675, 2382326; 585742, 2382055; 585760, 2381692; 586008, 2381531; 585763, 2380810; 586087, 2380293; 585882, 2379812; 585591, 2379807; 585555, 2379900; 585548, 2379922; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585546, 2379929; 585545, 2379931; 585539,

2379943; 585531, 2379963; 585523, 2379982; 585476, 2380102; 585476, 2380103; 585474, 2380125; 585474, 2380128; 585472, 2380137; 585468, 2380149; 585465, 2380160; 585461, 2380173; 585457, 2380185; 585456, 2380203; 585456, 2380223; 585459, 2380252; 585459, 2380269; 585456, 2380281; 585451, 2380295; 585443, 2380310; 585430, 2380325; 585430, 2380326; 585408, 2380344; 585393, 2380361; 585375, 2380388; 585364, 2380407; 585353, 2380428; 585342, 2380452; 585330, 2380478; 585322, 2380497; 585318, 2380512; 585308, 2380533; 585299, 2380553; 585297, 2380570; 585300, 2380580; 585303, 2380592; 585309, 2380613; 585315, 2380636; 585320, 2380654; 585379, 2380773; 585345, 2380796; 585344, 2380798; 585344, 2380799; 585338, 2380802; 585335, 2380803; 585130, 2380939; 585119, 2380952; 585119, 2380953; 585107, 2380982; 585106, 2380963; 585097, 2380967; 585034, 2381029; 585027, 2381040; 585011, 2381059; 584993, 2381074; 584993, 2381075; 584973, 2381090; 584971, 2381091; 584909, 2381153; 584905, 2381157; 584891, 2381175; 584867, 2381205; 584852, 2381221; 584844, 2381230; 584813, 2381261; 584796, 2381273; 584778, 2381284; 584774, 2381287; 584771, 2381289; 584718, 2381341; 584638, 2381397; 584636, 2381408; 584633, 2381420; 584628, 2381430; 584618, 2381442; 584617, 2381442; 584601, 2381452; 584581, 2381462; 584562, 2381467; 584539, 2381475; 584519, 2381483; 584494, 2381489; 584478, 2381486; 584461, 2381479; 584387, 2381491; 584383, 2381494; 584357, 2381507; 584350, 2381511; 584325, 2381523; 584324, 2381523; 584310, 2381528; 584309, 2381528; 584291, 2381527; 584290, 2381527; 584281, 2381521; 584275, 2381516; 584266, 2381511; 584260, 2381512; 584167, 2381553; 584150, 2381572; 584130, 2381584; 584129, 2381584; 584104, 2381586; 584065, 2381583; 584021, 2381575; return to starting point.

(ii) **Note:** Map 39 follows:

Map 39 Unit 4 - *Cyrtandra dentata - a*

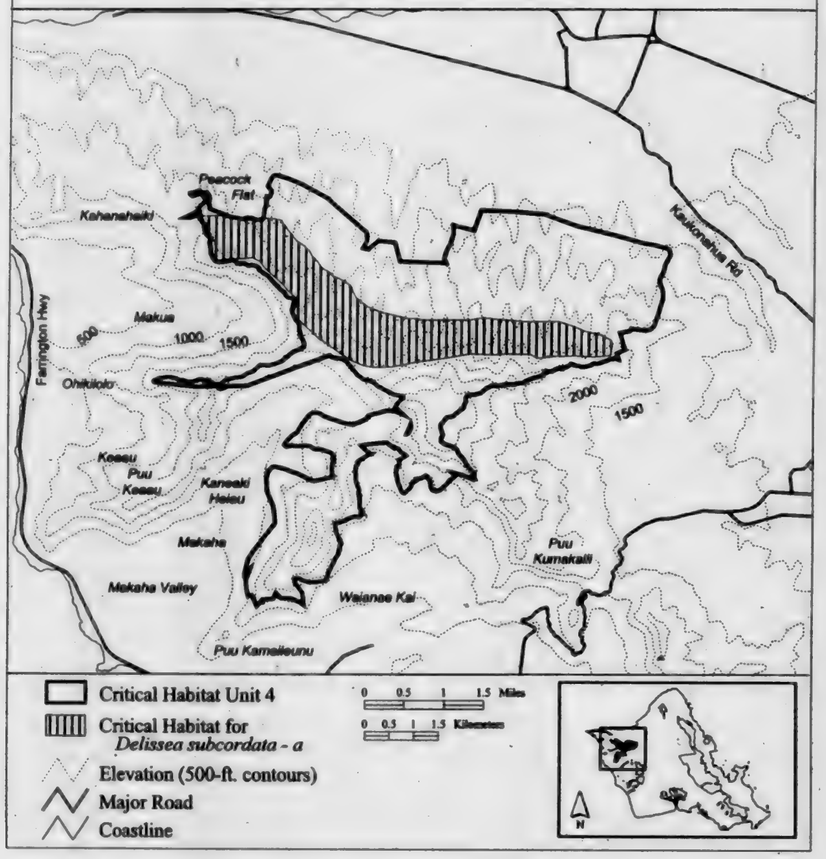


(40) Oahu 4—*Delissea subcordata*—a (763 ha; 1,887 ac)

(i) Unit consists of the following 169 boundary points: Start at 585089, 2382409; 585090, 2382377; 585381, 2382000; 585498, 2381921; 585544, 2381879; 585651, 2381776; 585704, 2381680; 585829, 2381548; 585893, 2381445; 586067, 2381331; 586131, 2381264; 586262, 2381214; 586430, 2381114; 586518, 2381036; 586524, 2380998; 586623, 2380811; 586860, 2380636; 587154, 2380527; 587552, 2380437; 587670, 2380401; 587841, 2380404; 587950, 2380380; 588168, 2380376; 588504, 2380385; 588518, 2380385; 588684, 2380385; 588935, 2380385; 589191, 2380423; 589521, 2380390; 589966, 2380357; 590137, 2380342; 590715, 2380357; 591046, 2380243; 591241, 2380167; 591582, 2380082; 591804, 2379973; 591809, 2379855; 591780, 2379675; 591681, 2379656; 591430, 2379637; 591056, 2379651; 590810, 2379646; 590667, 2379646; 590298, 2379608; 590156, 2379679; 589701, 2379694; 589578, 2379689; 589464, 2379675; 589147, 2379679; 588923, 2379692; 588518, 2379622; 588234, 2379585; 587925, 2379537; 587868, 2379523; 587792, 2379518; 587636, 2379480; 587352, 2379424; 586987, 2379414; 586774, 2379452; 586442, 2379599; 586149, 2379798; 585912, 2379968; 585913, 2379978; 585907, 2379963; 585505, 2380319; 585513, 2380319; 585405, 2380393; 585348, 2380460; 585330, 2380538; 585415, 2380698; 585406, 2380748; 585359, 2380830; 585224, 2380972; 585100, 2381114; 585100, 2381117; 584986, 2381217; 584775, 2381402; 584654, 2381559; 584498, 2381633; 584352, 2381619; 584217, 2381619; 583982, 2381609; 583901, 2381598; 583773, 2381573; 583732, 2381587; 583730, 2381588; 583709, 2381612; 583707, 2381614; 583694, 2381639; 583685, 2381655; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382175; 583640, 2382175; 583626, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; 583498, 2382345; 583497, 2382345; 583486, 2382351; 583477, 2382362; 583474, 2382370; 583475, 2382383; 583475, 2382397; 583474, 2382404; 583474, 2382405; 583469, 2382411; 583468, 2382411; 583457, 2382416; 583443, 2382421; 583435, 2382424; 583430, 2382430; 583429, 2382440; 583431, 2382460; 583433, 2382477; 583433, 2382478; 583432, 2382490; 583506, 2382508; 583805, 2382519; 584043, 2382487; 584403, 2382423; 584513, 2382409; 584616, 2382423; 584769, 2382455; 584936, 2382441; return to starting point.

(ii) **Note:** Map 40 follows:

Map 40 Unit 4 - *Delissea subcordata - a*

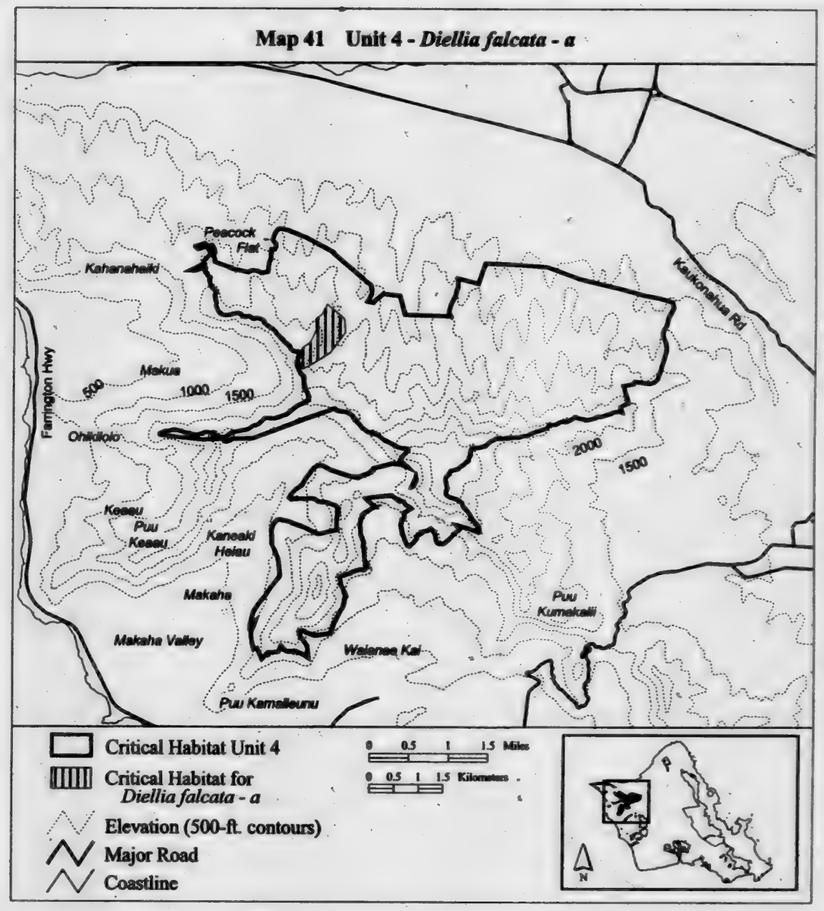


(41) Oahu 4—*Diellia falcata*—a (60 ha; 147 ac)

(i) Unit consists of the following 21 boundary points: Start at 585421, 2380455; 585383, 2380524; 585356, 2380641; 585411, 2380778; 585389, 2380782; 585417, 2380883; 585579, 2380991; 585706, 2381244; 585697, 2381470; 585824, 2381570; 585926, 2381770; 585950, 2381757; 585979, 2381715; 585978, 2381713; 586014, 2381706; 586260, 2381493; 586273, 2381458; 586277, 2381451; 586294, 2381199; 585995, 2380792; 585643, 2380575; return to starting point.

(ii) **Note:** Map 41 follows:

Map 41 Unit 4 - *Diellia falcata - a*

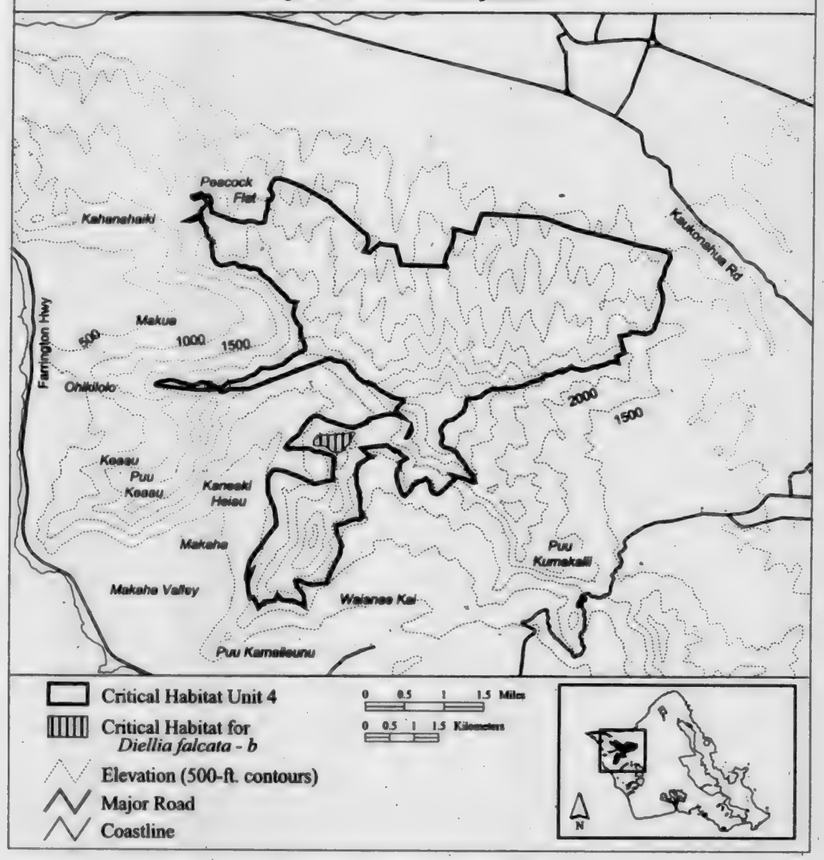


(42) Oahu 4—*Diellia falcata*—b (22 ha; 54 ac)

(i) Unit consists of the following 18 boundary points: Start at 585820, 2378037; 585847, 2378081; 586055, 2378092; 586289, 2378108; 586398, 2378114; 586562, 2378152; 586595, 2378119; 586546, 2378043; 586464, 2377906; 586349, 2377781; 586306, 2377743; 586218, 2377721; 586104, 2377764; 585984, 2377863; 585836, 2377873; 585733, 2377884; 585733, 2377961; 585798, 2378059; return to starting point.

(ii) **Note:** Map 42 follows:

Map 42 Unit 4 - *Diellia falcata - b*

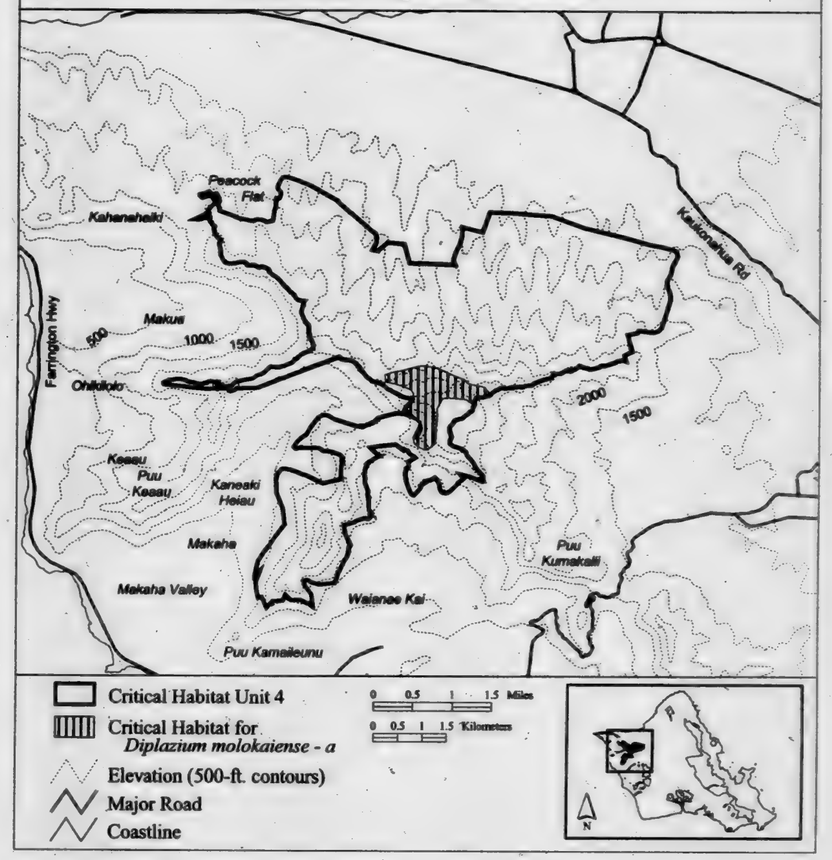


(43) Oahu 4—*Diplazium molokaiense*—a (138 ha; 340 ac)

(i) Unit consists of the following 63 boundary points: Start at 588852, 2378704; 588669, 2378805; 588490, 2378830; 588311, 2378838; 588207, 2378826; 588141, 2378709; 588091, 2378605; 588091, 2378489; 588099, 2378389; 588070, 2378227; 588066, 2378019; 588037, 2377894; 587972, 2377824; 587897, 2377786; 587845, 2377777; 587712, 2377827; 587625, 2377911; 587608, 2377977; 587692, 2378073; 587754, 2378202; 587721, 2378327; 587579, 2378456; 587496, 2378530; 587425, 2378601; 587467, 2378676; 587575, 2378780; 587600, 2378863; 587608, 2378930; 587550, 2379009; 587367, 2379079; 587201, 2379125; 587038, 2379167; 587022, 2379213; 587013, 2379304; 587155, 2379350; 587400, 2379404; 587633, 2379466; 587758, 2379491; 587887, 2379479; 588066, 2379446; 588195, 2379400; 588457, 2379283; 588640, 2379208; 588723, 2379134; 588831, 2379104; 589002, 2379075; 589064, 2379050; 589135, 2378959; 589135, 2378882; 589123, 2378879; 589060, 2378862; 589009, 2378857; 588910, 2378852; 588910, 2378851; 588899, 2378848; 588898, 2378848; 588887, 2378841; 588887, 2378840; 588862, 2378802; 588851, 2378772; 588851, 2378763; 588851, 2378746; 588855, 2378710; return to starting point.

(ii) **Note:** Map 43 follows:

Map 43 Unit 4 - *Diplazium molokaiense - a*

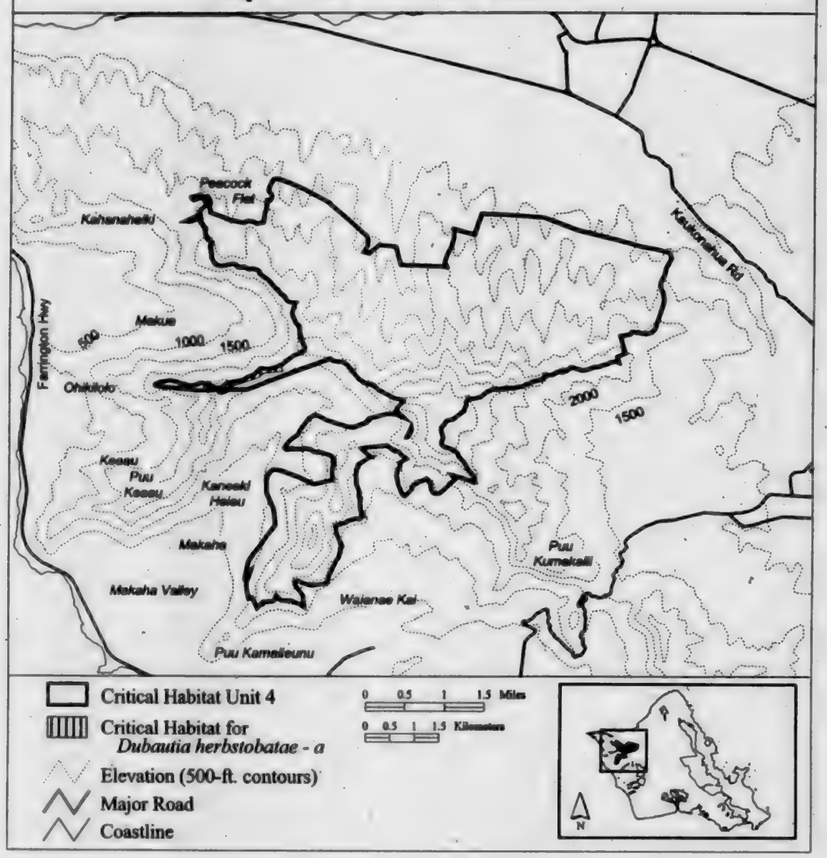


(44) Oahu 4—*Dubautia herbstobatae*—a (12 ha; 29 ac)

(i) Unit consists of the following 30 boundary points: Start at 585068, 2379524; 585080, 2379506; 585126, 2379404; 584736, 2379361; 584661, 2379278; 584406, 2379187; 584106, 2379096; 583936, 2379044; 583909, 2379048; 583909, 2379076; 583899, 2379083; 583947, 2379131; 583977, 2379150; 584086, 2379180; 584226, 2379210; 584256, 2379210; 584326, 2379230; 584327, 2379230; 584417, 2379290; 584526, 2379330; 584527, 2379330; 584557, 2379350; 584657, 2379450; 584667, 2379460; 584836, 2379450; 584866, 2379450; 584867, 2379450; 584906, 2379470; 584936, 2379470; 584937, 2379470; return to starting point.

(ii) **Note:** Map 44 follows:

Map 44 Unit 4 - *Dubautia herbstobatae - a*

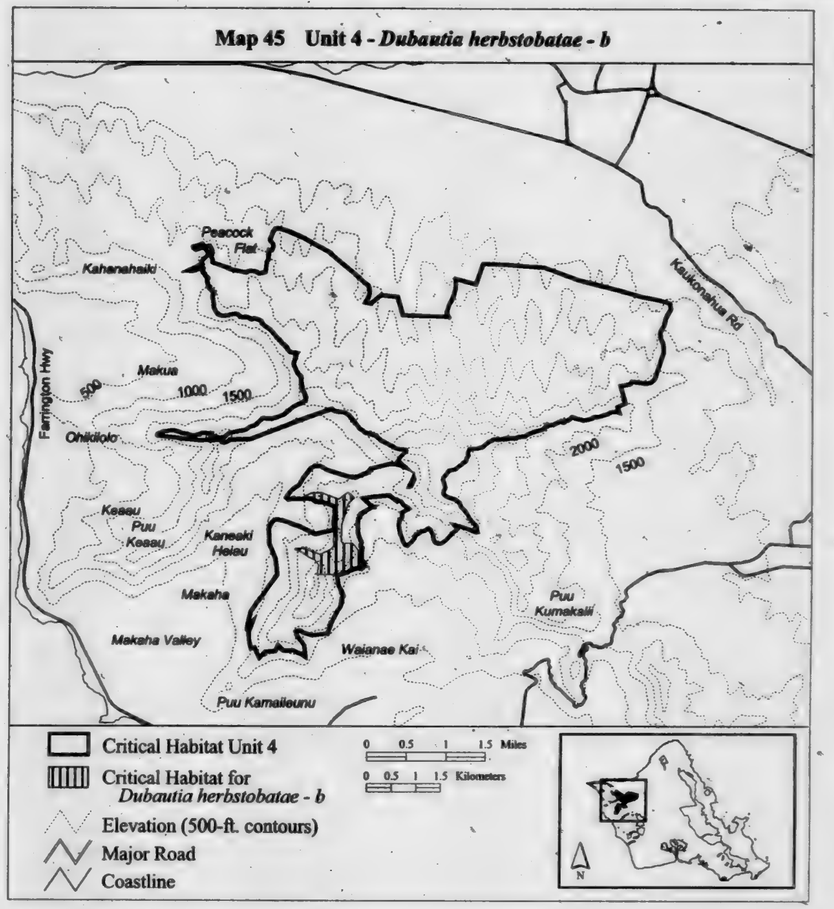


(45) Oahu 4—*Dubautia herbstobatae*—b (77 ha; 190 ac)

(i) Unit consists of the following 35 boundary points: Start at 586413, 2377940; 586540, 2377836; 586415, 2377693; 586296, 2377282; 586288, 2376942; 586343, 2376878; 586377, 2376897; 586514, 2376901; 586627, 2376764; 586675, 2376521; 586749, 2376437; 586505, 2376404; 586426, 2376297; 586148, 2376252; 585803, 2376258; 585833, 2376452; 585749, 2376553; 585646, 2376609; 585450, 2376733; 585354, 2376763; 585361, 2376789; 585529, 2376789; 585862, 2376670; 586066, 2376763; 586138, 2376846; 586128, 2376969; 586145, 2377104; 586133, 2377283; 586144, 2377443; 586202, 2377576; 586102, 2377698; 585538, 2377868; 585699, 2377929; 585886, 2377929; 586246, 2377799; return to starting point.

(ii) **Note:** Map 45 follows:

Map 45 Unit 4 - *Dubautia herbstobatae - b*

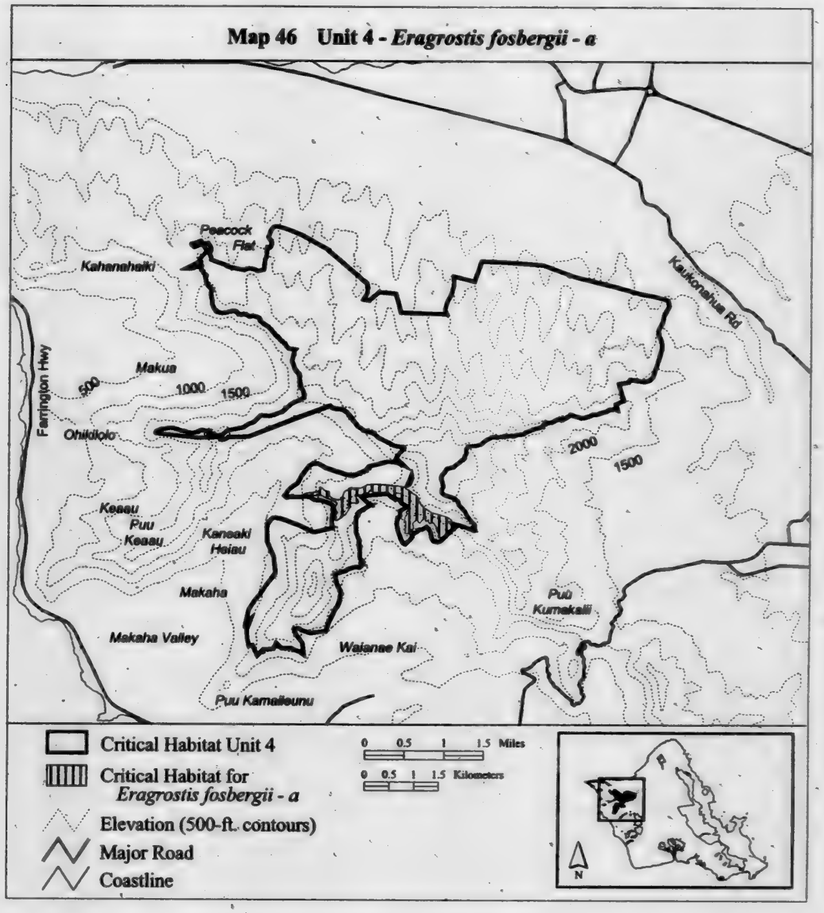


(46) Oahu 4—*Eragrostis fosbergii*—a (81 ha; 199 ac)

(i) Unit consists of the following 219 boundary points: Start at 586573, 2377994; 586653, 2377994; 586691, 2377987; 586747, 2378005; 586782, 2378016; 586811, 2378015; 586774, 2378020; 586836, 2378053; 586919, 2378070; 587065, 2378070; 587207, 2378064; 587332, 2378050; 587490, 2378035; 587605, 2378023; 587629, 2377978; 587677, 2377964; 587733, 2377922; 587784, 2377877; 587819, 2377865; 587864, 2377809; 587885, 2377738; 587935, 2377666; 587997, 2377601; 588084, 2377539; 588158, 2377494; 588293, 2377456; 588479, 2377399; 588563, 2377350; 588569, 2377252; 588569, 2377240; 588563, 2377191; 588559, 2377135; 588546, 2377121; 588525, 2377106; 588476, 2377103; 588456, 2377072; 588428, 2377047; 588396, 2377013; 588338, 2376982; 588294, 2376983; 588289, 2377024; 588291, 2377065; 588278, 2377088; 588263, 2377129; 588252, 2377191; 588234, 2377235; 588213, 2377250; 588195, 2377283; 588165, 2377289; 588132, 2377281; 588113, 2377276; 588098, 2377294; 588090, 2377325; 588090, 2377348; 588060, 2377332; 588036, 2377323; 588026, 2377341; 588038, 2377395; 588036, 2377415; 588008, 2377392; 587997, 2377364; 587969, 2377343; 587951, 2377328; 587931, 2377305; 587925, 2377287; 587895, 2377289; 587879, 2377327; 587866, 2377348; 587833, 2377340; 587813, 2377315; 587794, 2377299; 587769, 2377274; 587776, 2377243; 587781, 2377207; 587791, 2377176; 587779, 2377160; 587753, 2377145; 587738, 2377127; 587728, 2377111; 587697, 2377083; 587673, 2377060; 587645, 2377060; 587629, 2377072; 587611, 2377111; 587612, 2377137; 587624, 2377180; 587632, 2377225; 587635, 2377253; 587620, 2377279; 587643, 2377302; 587609, 2377337; 587604, 2377384; 587635, 2377425; 587663, 2377459; 587637, 2377497; 587643, 2377520; 587678, 2377541; 587673, 2377554; 587674, 2377580; 587671, 2377580; 587626, 2377640; 587531, 2377693; 587492, 2377759; 587424, 2377773; 587394,

2377815; 587323, 2377818; 587302, 2377836; 587285, 2377871; 587249, 2377886; 587190, 2377889; 587083, 2377907; 586993, 2377898; 586904, 2377943; 586885, 2377936; 586889, 2377920; 586865, 2377903; 586837, 2377893; 586787, 2377884; 586747, 2377865; 586699, 2377853; 586677, 2377853; 586643, 2377837; 586615, 2377817; 586629, 2377782; 586659, 2377746; 586667, 2377705; 586658, 2377679; 586648, 2377671; 586605, 2377684; 586572, 2377686; 586548, 2377687; 586530, 2377687; 586503, 2377667; 586497, 2377647; 586511, 2377606; 586500, 2377587; 586485, 2377569; 586473, 2377550; 586450, 2377517; 586425, 2377475; 586415, 2377454; 586369, 2377427; 586313, 2377382; 586283, 2377360; 586243, 2377325; 586214, 2377331; 586192, 2377360; 586198, 2377394; 586208, 2377414; 586208, 2377432; 586228, 2377451; 586241, 2377465; 586241, 2377491; 586230, 2377507; 586219, 2377534; 586216, 2377552; 586185, 2377572; 586182, 2377588; 586200, 2377616; 586228, 2377641; 586238, 2377678; 586190, 2377707; 586134, 2377745; 586086, 2377767; 586007, 2377791; 585967, 2377813; 585938, 2377839; 585892, 2377847; 585817, 2377839; 585817, 2377843; 585794, 2377839; 585748, 2377839; 585684, 2377847; 585660, 2377847; 585627, 2377844; 585588, 2377844; 585566, 2377844; 585561, 2377852; 585572, 2377860; 585606, 2377881; 585649, 2377892; 585686, 2377892; 585737, 2377904; 585796, 2377909; 585842, 2377914; 585821, 2377904; 585821, 2377901; 585852, 2377904; 585880, 2377944; 585890, 2377967; 585880, 2378007; 585888, 2378010; 585917, 2377999; 585949, 2377981; 585962, 2377959; 585981, 2377946; 586002, 2377928; 586029, 2377930; 586061, 2377922; 586082, 2377916; 586082, 2377882; 586083, 2377837; 586115, 2377801; 586161, 2377774; 586206, 2377764; 586246, 2377751; 586270, 2377746; 586326, 2377775; 586343, 2377813; 586364, 2377852; 586367, 2377873; 586378, 2377904; 586391, 2377919; 586415, 2377933; 586441, 2377946; 586473, 2377972; 586484, 2377986; 586506, 2377999; 586538, 2377999; return to starting point.

(ii) **Note:** Map 46 follows:

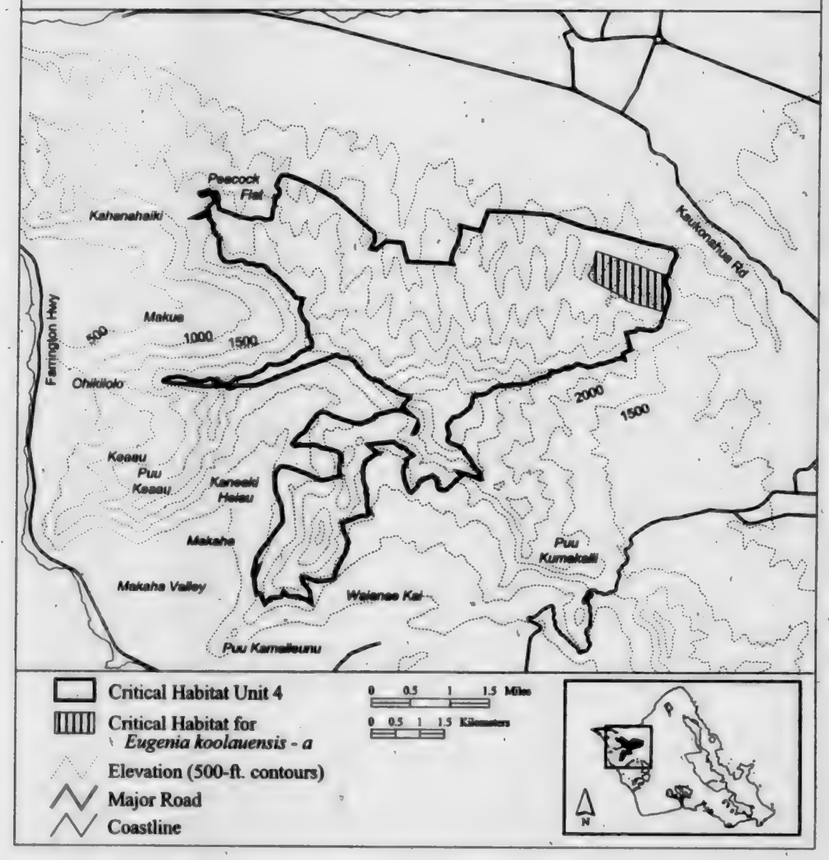


(47) Oahu 4—*Eugenia koolauensis*—a (113 ha; 280 ac)

(i) Unit consists of the following 23 boundary points: Start at 591255, 2381198; 591189, 2381301; 591255, 2381419; 591312, 2381558; 591307, 2381625; 591358, 2381794; 591610, 2381717; 591883, 2381620; 592196, 2381522; 592459, 2381414; 592623, 2381362; 592757, 2381326; 592772, 2381126; 592803, 2381018; 592829, 2380930; 592829, 2380822; 592793, 2380714; 592685, 2380571; 592505, 2380637; 592402; 2380658; 592227, 2380699; 592001, 2380771; 591790, 2380915; return to starting point.

(ii) **Note:** Map 47 follows:

Map 47 Unit 4 - *Eugenia koolauensis - a*

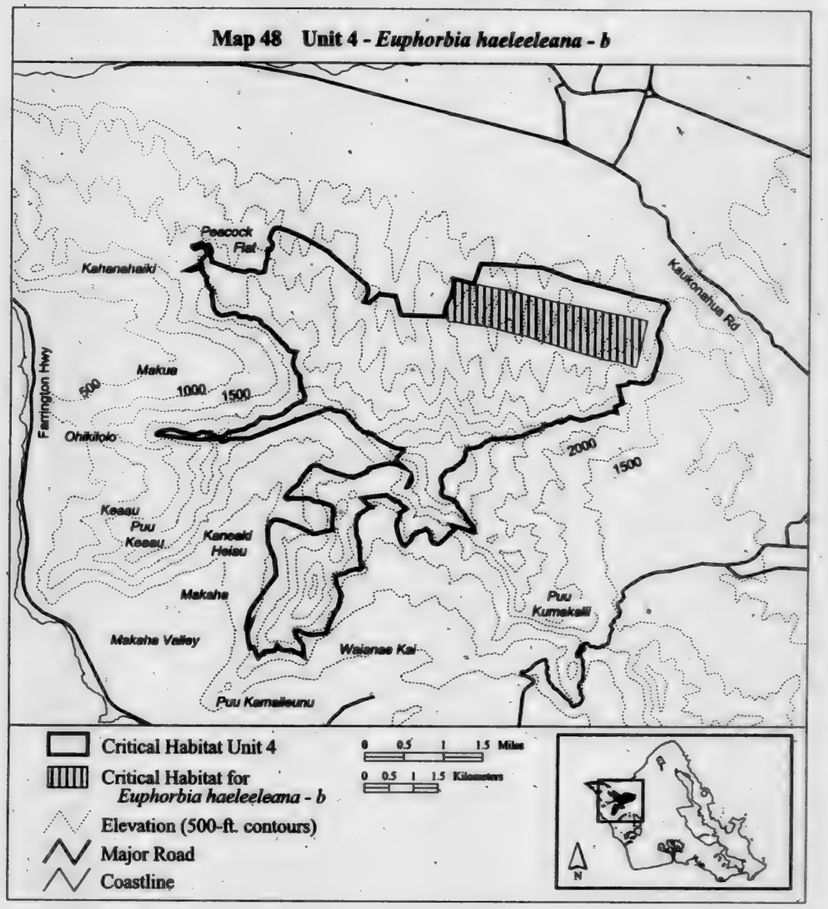


(48) Oahu 4—*Euphorbia haeleeleana*—b (357 ha; 881 ac)

(i) Unit consists of the following 33 boundary points: Start at 589099, 2382193; 589372, 2382136; 589555, 2382097; 589794, 2382058; 590632, 2381854; 591432, 2381701; 591836, 2381610; 592280, 2381523; 592557, 2381462; 592334, 2380514; 592288, 2380528; 591980, 2380619; 591814, 2380645; 591697, 2380658; 591406, 2380745; 591049, 2380836; 590645, 2380958; 590267, 2381067; 590080, 2381136; 589906, 2381158; 589638, 2381236; 589368, 2381315; 589274, 2381335; 589020, 2381362; 588860, 2381384; 588642, 2381428; 588481, 2381436; 588399, 2381615; 588442, 2381784; 588529, 2381962; 588581, 2382136; 588577, 2382315; 589091, 2382181; return to starting point.

(ii) **Note:** Map 48 follows:

Map 48 Unit 4 - *Euphorbia haeleeleana - b*



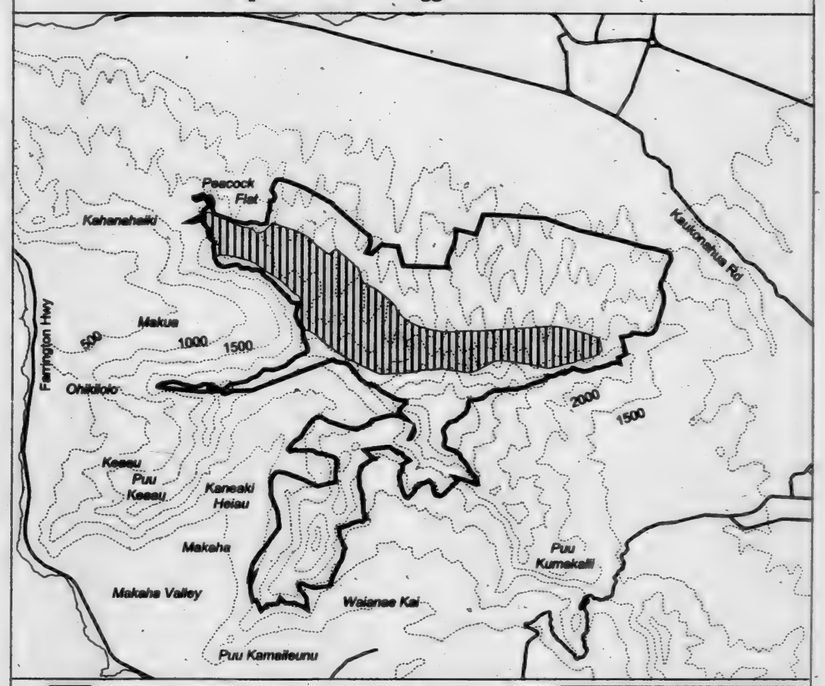
(49) Oahu 4—*Flueggea neowawraea*—a (845 ha; 2,087 ac)

(i) Unit consists of the following 242 boundary points: Start at 585312, 2380625; 585349, 2380698; 585367, 2380769; 585403, 2380875; 585367, 2380946; 585291, 2381001; 585286, 2380984; 585176, 2381087; 585013, 2381250; 584871, 2381356; 584708, 2381452; 584531, 2381568; 584478, 2381621; 584340, 2381671; 584163, 2381717; 584022, 2381752; 583891, 2381777; 583746, 2381777; 583657, 2381716; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382045; 583626, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; 583498, 2382345; 583486, 2382351; 583477, 2382362; 583474, 2382370; 583475, 2382383; 583475, 2382397; 583474, 2382404; 583474, 2382405; 583469, 2382411; 583468, 2382411; 583457, 2382416; 583443, 2382421; 583435, 2382424; 583430, 2382430; 583429, 2382440; 583431, 2382460; 583433, 2382477; 583433, 2382478; 583431, 2382497; 583427, 2382525; 583427, 2382526; 583422, 2382540; 583419, 2382560; 583417, 2382581; 583417, 2382582; 583412, 2382595; 583411, 2382596; 583405, 2382599; 583404, 2382599; 583403, 2382599; 583403, 2382598; 583396, 2382592; 583396, 2382591; 583382, 2382561; 583360, 2382532; 583351, 2382522; 583336,

2382510; 583315, 2382498; 583295, 2382485; 583281, 2382481; 583265, 2382474; 583249, 2382467; 583232, 2382466; 583216, 2382464; 583204, 2382463; 583193, 2382461; 583179, 2382464; 583159, 2382468; 583158, 2382468; 583138, 2382470; 583125, 2382472; 583122, 2382472; 583519, 2382674; 583934, 2382535; 583948, 2382499; 583931, 2382503; 584036, 2382432; 584213, 2382372; 584266, 2382361; 584345, 2382340; 584433, 2382308; 584461, 2382280; 584476, 2382248; 584596, 2382241; 584681, 2382301; 584755, 2382368; 584822, 2382457; 584865, 2382453; 584893, 2382449; 584907, 2382421; 585028, 2382379; 585158, 2382333; 585296, 2382290; 585548, 2382156; 585604, 2382099; 585725, 2381982; 585976, 2381802; 586121, 2381904; 586281, 2381794; 586580, 2381520; 586680, 2381222; 586921, 2381108; 587200, 2380896; 587225, 2380870; 587227, 2380873; 587358, 2380734; 587358, 2380731; 587359, 2380730; 587358, 2380728; 587358, 2380692; 587431, 2380608; 587468, 2380566; 587468, 2380565; 587494, 2380535; 587643, 2380425; 587873, 2380330; 588120, 2380259; 588322, 2380224; 588541, 2380224; 588789, 2380241; 589069, 2380248; 590508, 2380344; 590692, 2380337; 590915, 2380294; 591116, 2380231; 591244, 2380195; 591453, 2380118; 591516, 2380089; 591548, 2379990; 591552, 2379934; 591573, 2379863; 591534, 2379799; 591424, 2379735; 591318, 2379704; 591106, 2379658; 591003, 2379612; 590801, 2379573; 590667, 2379527; 590483, 2379495; 590341, 2379520; 590111, 2379573; 589881, 2379604; 589683, 2379626; 589496, 2379643; 589379, 2379629; 589184, 2379523; 588979, 2379424; 588887, 2379410; 588777, 2379410; 588675, 2379424; 588487, 2379456; 588328, 2379481; 588148, 2379463; 588045, 2379463; 587882, 2379449; 587744, 2379420; 587624, 2379396; 587394, 2379392; 587263, 2379382; 587051, 2379371; 586874, 2379442; 586691, 2379530; 586686, 2379523; 586496, 2379625; 586364, 2379689; 586368, 2379694; 586366, 2379695; 586364, 2379693; 586162, 2379796; 586099, 2379859; 585932, 2379976; 585837, 2380054; 585745, 2380146; 585589, 2380245; 585456, 2380281; 585451, 2380295; 585443, 2380310; 585430, 2380325; 585430, 2380326; 585408, 2380344; 585393, 2380361; 585375, 2380388; 585364, 2380407; 585353, 2380428; 585342, 2380452; 585330, 2380478; 585322, 2380497; 585318, 2380512; 585308, 2380533; 585299, 2380553; 585297, 2380570; 585300, 2380580; 585303, 2380592; 585309, 2380613; return to starting point.

(ii) **Note:** Map 49 follows:

Map 49 Unit 4 - *Flueggea neowawraea - a*

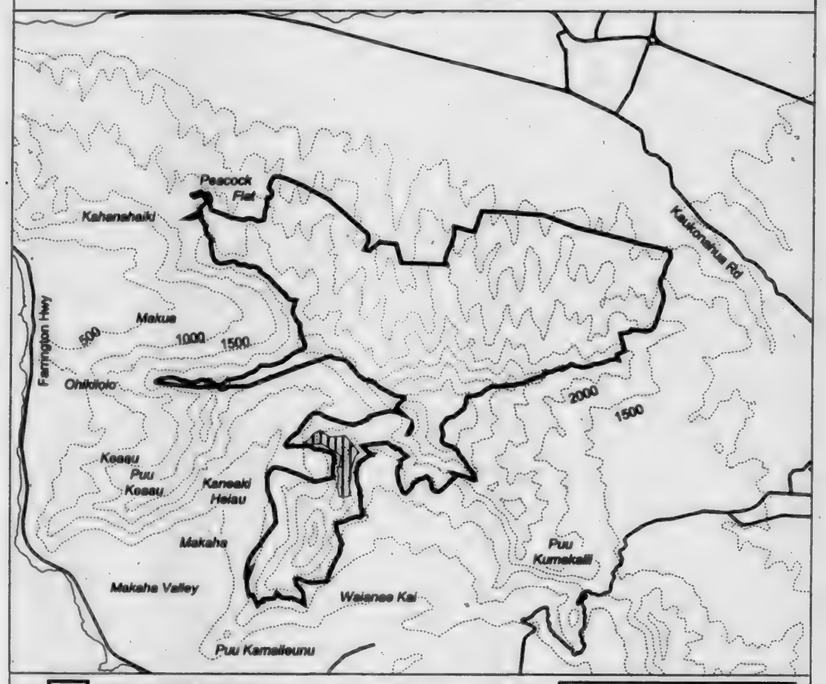


(50) Oahu 4—*Gouania meyenii*—a (48 ha; 118 ac)

(i) Unit consists of the following 27 boundary points: Start at 585998, 2378034; 586072, 2377992; 586303, 2378011; 586383, 2378023; 586678, 2377679; 586598, 2377619; 586542, 2377467; 586505, 2377324; 586505, 2377158; 586469, 2377029; 586496, 2376830; 586445, 2376780; 586270, 2376780; 586256, 2376853; 586220, 2377015; 586256, 2377222; 586224, 2377314; 586279, 2377439; 586289, 2377577; 586293, 2377628; 585924, 2377854; 585533, 2377854; 585556, 2377882; 585662, 2377942; 585726, 2378034; 585837, 2378108; 585929, 2378075; return to starting point.

(ii) **Note:** Map 50 follows:

Map 50 Unit 4 - *Gouania meyenii - a*

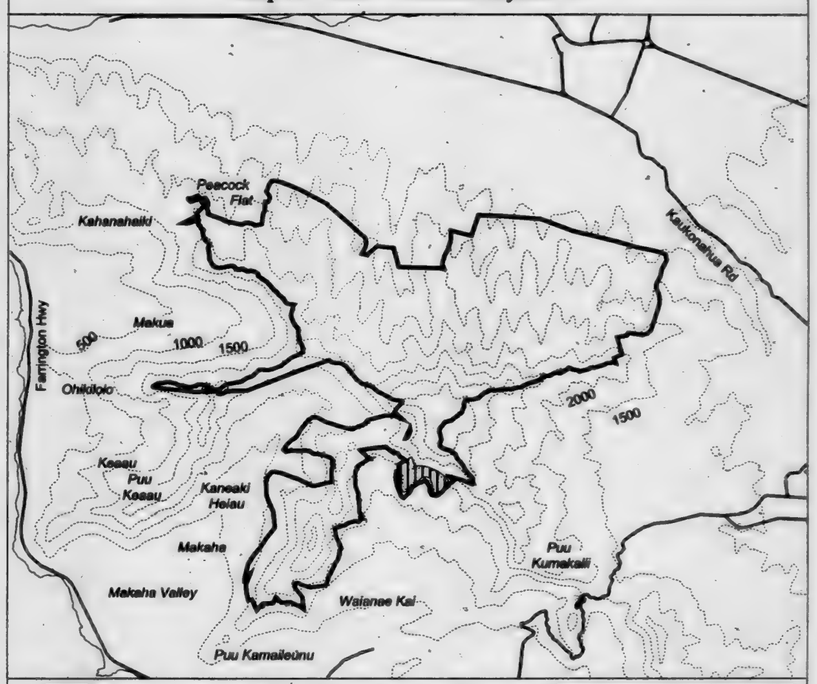


(51) Oahu 4—*Gouania meyenii*—b (39 ha; 96 ac)

(i) Unit consists of the following 28 boundary points: Start at 587782, 2377881; 587796, 2377628; 587833, 2377517; 587902, 2377499; 588022, 2377499; 588119, 2377471; 588313, 2377388; 588497, 2377268; 588530, 2377195; 588433, 2377056; 588364, 2376969; 588276, 2376936; 588221, 2376964; 588207, 2377047; 588193, 2377149; 588147, 2377255; 588068, 2377287; 587972, 2377245; 587879, 2377144; 587773, 2377075; 587709, 2376996; 587603, 2376964; 587575, 2377024; 587534, 2377125; 587511, 2377227; 587506, 2377319; 587515, 2377513; 587507, 2377531; return to starting point.

(ii) **Note:** Map 51 follows:

Map 51 Unit 4 - *Gouania meyenii - b*

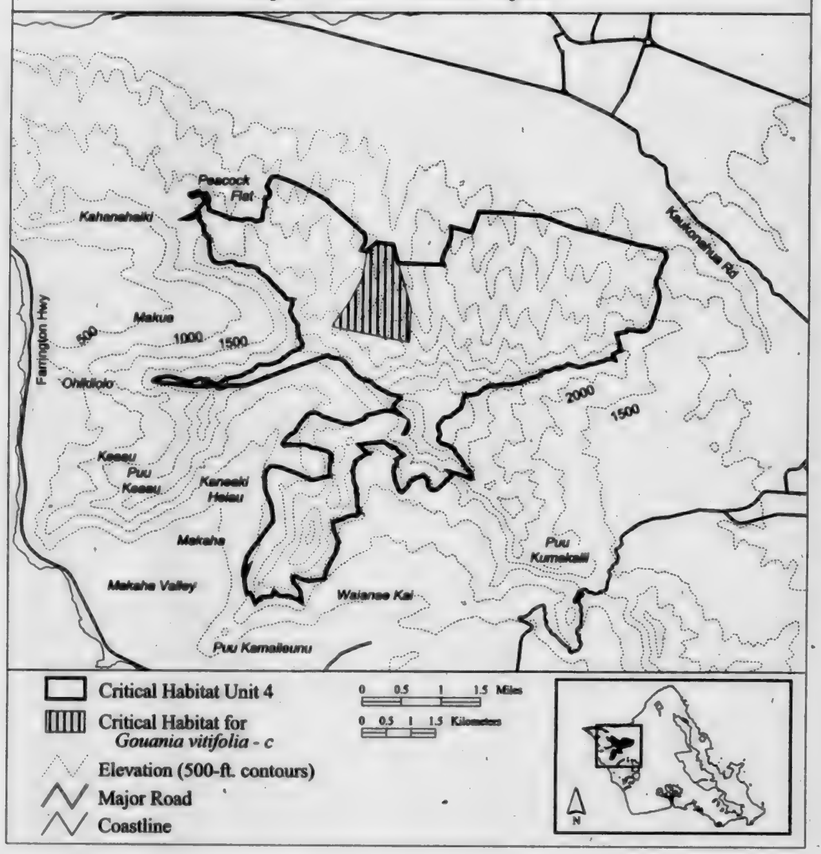


(52) Oahu 4—*Gouania vitifolia*—c (195 ha; 483 ac)

(i) Unit consists of the following 8 boundary points: Start at 587752, 2379934; 586159, 2380248; 586533, 2380789; 586779, 2381256; 586867, 2381827; 587064, 2381994; 587393, 2381955; 587777, 2380637; return to starting point.

(ii) **Note:** Map 52 follows:

Map 52 Unit 4 - *Gouania vitifolia* - c

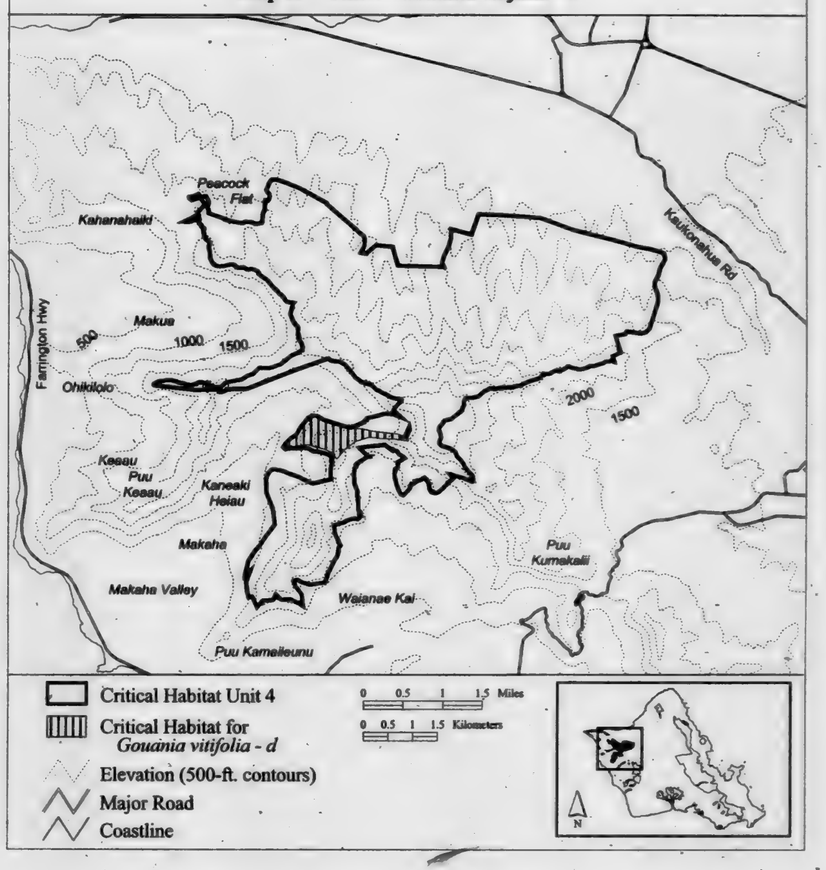


(53) Oahu 4—*Gouania vitifolia*—d (84 ha; 208 ac)

(i) Unit consists of the following 36 boundary points: Start at 586265, 2377593; 586264, 2377598; 586208, 2377667; 586135, 2377736; 586019, 2377792; 585834, 2377839; 585666, 2377882; 585550, 2377860; 585387, 2377843; 585206, 2377792; 585159, 2377830; 585236, 2377934; 585326, 2378020; 585421, 2378084; 585511, 2378235; 585602, 2378355; 585670, 2378437; 585752, 2378484; 585842, 2378480; 585873, 2378475; 585984, 2378402; 586230, 2378321; 586415, 2378265; 586582, 2378230; 586883, 2378192; 586957, 2378166; 587335, 2378123; 587490, 2378106; 587628, 2378058; 587705, 2378024; 587719, 2377966; 587435, 2378001; 587170, 2378013; 586936, 2378033; 586647, 2377957; 586421, 2377784; return to starting point.

(ii) **Note:** Map 53 follows:

Map 53 Unit 4 - *Gouania vitifolia* - d

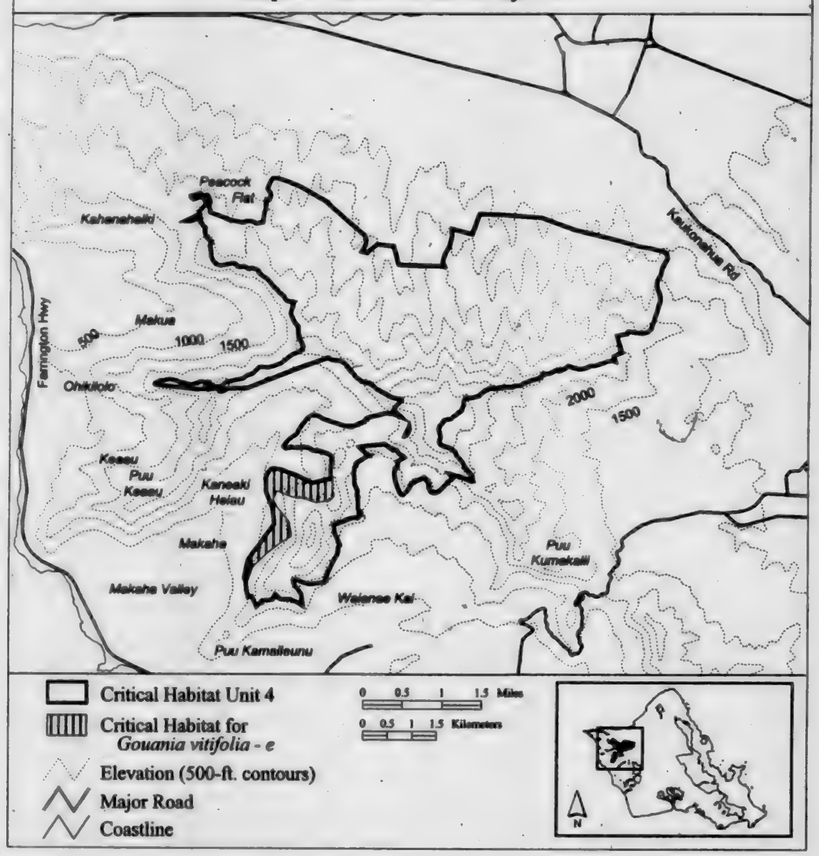


(54) Oahu 4—*Gouania vitifolia*—e (102 ha; 252 ac)

(i) Unit consists of the following 41 boundary points: Start at 585510, 2377208; 585756, 2377090; 586178, 2377178; 586178, 2377052; 586178, 2376914; 586190, 2376916; 586204, 2376890; 586213, 2376815; 586127, 2376725; 585844, 2376688; 585624, 2376763; 585329, 2376813; 585104, 2376927; 584958, 2376744; 585052, 2376581; 585285, 2376292; 585341, 2376015; 585102, 2375858; 584857, 2375669; 584562, 2375374; 584380, 2375182; 584380, 2375189; 584453, 2375499; 584578, 2375705; 584681, 2375822; 584794, 2376001; 584985, 2376248; 584956, 2376578; 584816, 2376896; 584814, 2377043; 584802, 2377164; 584836, 2377263; 584875, 2377327; 584926, 2377374; 584991, 2377379; 585042, 2377361; 585081, 2377361; 585167, 2377340; 585257, 2377301; 585382, 2377258; 585393, 2377255; return to starting point.

(ii) **Note:** Map 54 follows:

Map 54 Unit 4 - *Gouania vitifolia* - *e*

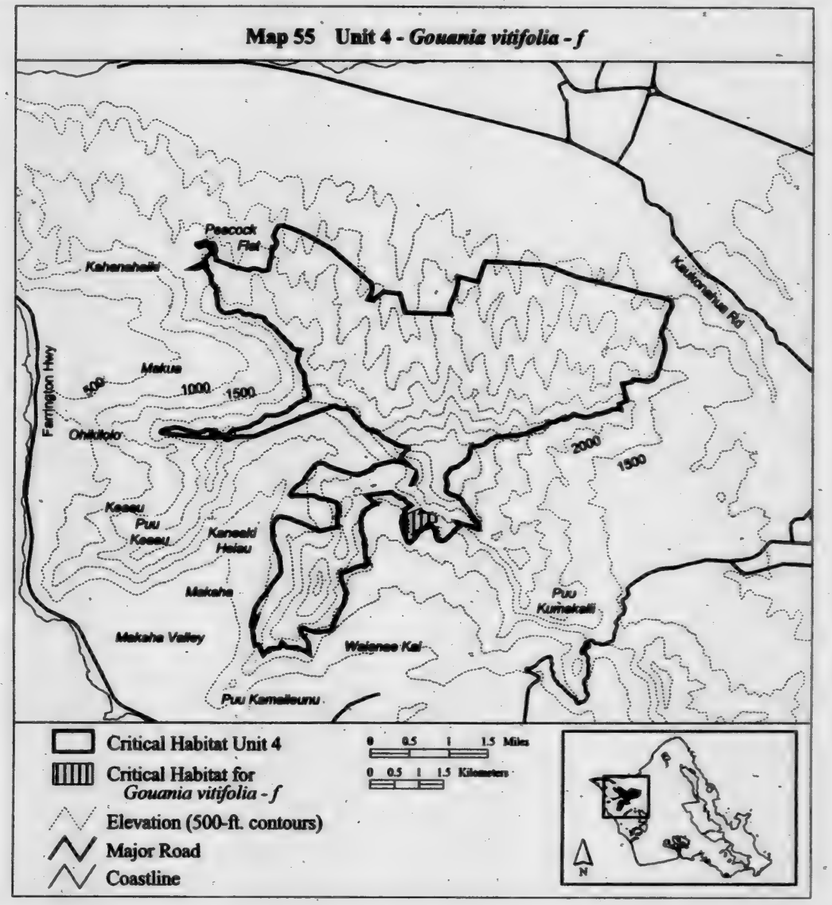


(55) Oahu 4—*Gouania vitifolia*—f (27 ha; 67 ac)

(i) Unit consists of the following 25 boundary points: Start at 587841, 2377556; 587873, 2377508; 587963, 2377465; 588066, 2377439; 588131, 2377413; 588170, 2377374; 588170, 2377336; 588157, 2377271; 588058, 2377275; 587963, 2377245; 587903, 2377168; 587873, 2377121; 587791, 2377060; 587757, 2377000; 587701, 2376931; 587675, 2376897; 587619, 2376850; 587580, 2376862; 587554, 2376906; 587503, 2377026; 587477, 2377090; 587455, 2377189; 587443, 2377271; 587460, 2377366; 587455, 2377389; return to starting point.

(ii) **Note:** Map 55 follows:

Map 55 Unit 4 - *Gouania vitifolia* - *f*

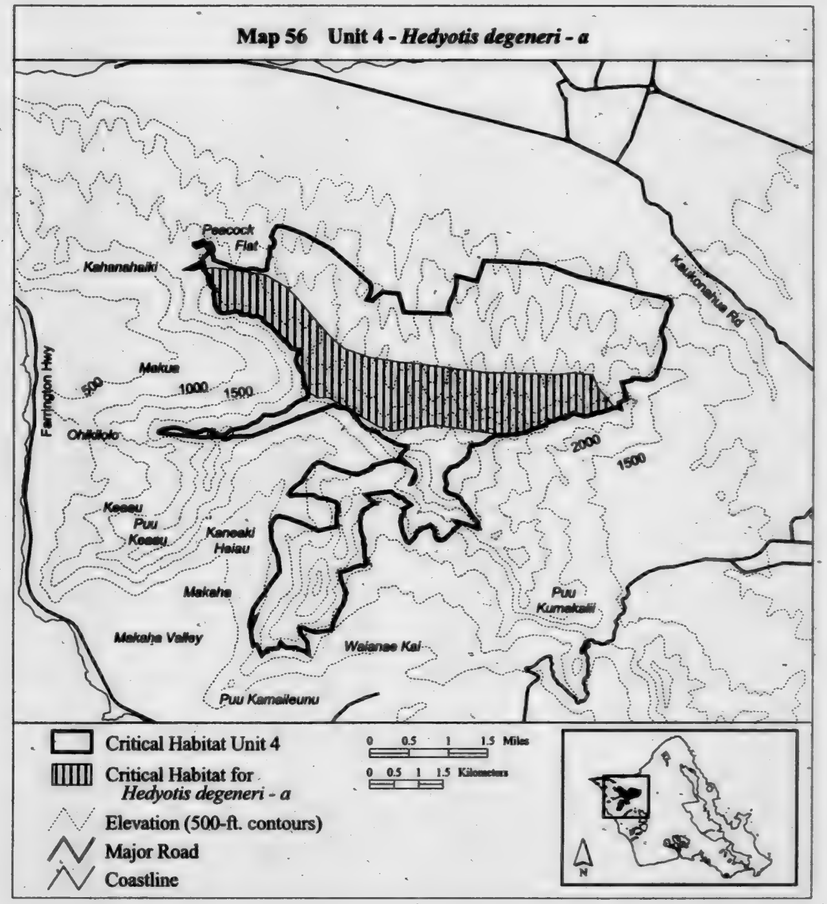


(56) Oahu 4—*Hedyotis degeneri*—a (917 ha; 2,265 ac)

(i) Unit consists of the following 334 boundary points: Start at 590035, 2379115; 589518, 2379058; 588672, 2379188; 588616, 2379195; 588356, 2379231; 588192, 2379252; 587212, 2379139; 587072, 2379208; 587008, 2379219; 586848, 2379307; 586668, 2379411; 586497, 2379514; 586155, 2379713; 586096, 2379735; 585983, 2379807; 585725, 2379807; 585661, 2379871; 585619, 2379878; 585550, 2379846; 585558, 2379891; 585558, 2379892; 585557, 2379892; 585548, 2379922; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585546, 2379929; 585545, 2379931; 585539, 2379943; 585531, 2379963; 585523, 2379982; 585522, 2379982; 585511, 2380001; 585498, 2380021; 585488, 2380040; 585483, 2380053; 585478, 2380071; 585475, 2380089; 585476, 2380103; 585474, 2380125; 585474, 2380128; 585472, 2380137; 585468, 2380149; 585465, 2380160; 585461, 2380173; 585457, 2380185; 585456, 2380203; 585456, 2380223; 585459, 2380252; 585459, 2380269; 585456, 2380281; 585451, 2380295; 585443, 2380310; 585430, 2380325; 585430, 2380326; 585408, 2380344; 585393, 2380361; 585375, 2380388; 585364, 2380407; 585353, 2380428; 585342, 2380452; 585330, 2380478; 585326, 2380488; 585324, 2380511; 585336, 2380611; 585384, 2380711; 585358, 2380763; 585345, 2380771; 585345, 2380779; 585348, 2380789; 585348, 2380790; 585344, 2380798; 585344, 2380799; 585338, 2380802; 585329, 2380804; 585328, 2380804; 585308, 2380806; 585281, 2380810; 585257, 2380825; 585168, 2380904; 585156, 2380911; 585140, 2380929; 585134, 2380934; 585119, 2380952; 585119, 2380953; 585107, 2380962; 585106, 2380963; 585095, 2380967; 585046, 2381011; 585039, 2381021; 585027, 2381040; 585011, 2381059; 584993, 2381074; 584973, 2381090; 584954, 2381104; 584939, 2381117; 584923, 2381137; 584905, 2381157; 584891, 2381175; 584867, 2381205; 584852, 2381221; 584844, 2381230; 584843, 2381230; 584813,

2381261; 584799, 2381271; 584665, 2381437; 584613, 2381445; 584601, 2381452; 584600, 2381452; 584581, 2381462; 584562, 2381467; 584539, 2381475; 584519, 2381483; 584494, 2381489; 584478, 2381486; 584457, 2381478; 584441, 2381471; 584426, 2381472; 584425, 2381472; 584415, 2381477; 584406, 2381482; 584401, 2381483; 584383, 2381494; 584357, 2381507; 584350, 2381511; 584325, 2381523; 584324, 2381523; 584310, 2381528; 584309, 2381528; 584291, 2381527; 584290, 2381527; 584281, 2381521; 584275, 2381516; 584266, 2381511; 584252, 2381510; 584252, 2381509; 584242, 2381507; 584170, 2381548; 584167, 2381553; 584150, 2381572; 584130, 2381584; 584129, 2381584; 584104, 2381586; 584065, 2381583; 584021, 2381575; 583992, 2381567; 583957, 2381557; 583934, 2381555; 583897, 2381549; 583869, 2381541; 583842, 2381542; 583813, 2381547; 583780, 2381558; 583747, 2381571; 583730, 2381588; 583709, 2381612; 583707, 2381614; 583694, 2381639; 583685, 2381655; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382045; 583626, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; 583498, 2382345; 583486, 2382351; 583477, 2382362; 583474, 2382370; 583475, 2382383; 583475, 2382397; 583474, 2382404; 583474, 2382405; 583469, 2382411; 583468, 2382411; 583457, 2382416; 583443, 2382421; 583435, 2382424; 583430, 2382430; 583429, 2382440; 583430, 2382451; 583476, 2382463; 583596, 2382491; 583784, 2382467; 583865, 2382453; 584016, 2382441; 584696, 2382335; 584904, 2382209; 584933, 2382195; 585141, 2382071; 585220, 2381983; 585281, 2381926; 585773, 2381317; 586002, 2381061; 586045, 2381031; 586285, 2380827; 586281, 2380825; 586763, 2380651; 586775, 2380649; 587289, 2380560; 587297, 2380559; 587311, 2380556; 587447, 2380533; 587787, 2380509; 588274, 2381740; 588341, 2381739; 588487, 2381710; 588601, 2380394; 588977, 2380351; 589125, 2380331; 590233, 2380296; 590319, 2380295; 591767, 2380291; 590674, 2380291; 590693, 2380291; 591035, 2380323; 591035, 2380306; 591364, 2380283; 591476, 2380022; 591831, 2379597; 591830, 2379598; 591791, 2379602; 591790, 2379602; 591766, 2379598; 591765, 2379598; 591752, 2379591; 591751, 2379591; 591619, 2379557; 591485, 2379499; 591461, 2379506; 591460, 2379506; 591443, 2379503; 591431, 2379499; 591420, 2379498; 591419, 2379498; 591417, 2379488; 591404, 2379487; 591390, 2379469; 591280, 2379446; 591259, 2379439; 591242, 2379438; 591198, 2379429; 591193, 2379430; 591164, 2379441; 591138, 2379451; 591113, 2379458; 591069, 2379465; 591039, 2379476; 590996, 2379497; 590996, 2379498; 590995, 2379498; 590982, 2379496; 590981, 2379496; 590981, 2379495; 590970, 2379488; 590969, 2379488; 590943, 2379463; 590908, 2379443; 590883, 2379429; 590832, 2379413; 590808, 2379409; 590790, 2379408; 590721, 2379404; 590699, 2379398; 590669, 2379385; 590668, 2379384; 590630, 2379354; 590593, 2379338; 590572, 2379336; 590525, 2379340; 590514, 2379339; 591779, 2379340; 591778, 2379340; 591762, 2379334; 591744, 2379312; 590415, 2379277; 590373, 2379247; 590347, 2379233; 590321, 2379227; 590285, 2379219; 590191, 2379191; 590084, 2379149; 590076, 2379145; 590067, 2379142; 590066, 2379141; 590039, 2379117; return to starting point.

(ii) **Note:** Map 56 follows:

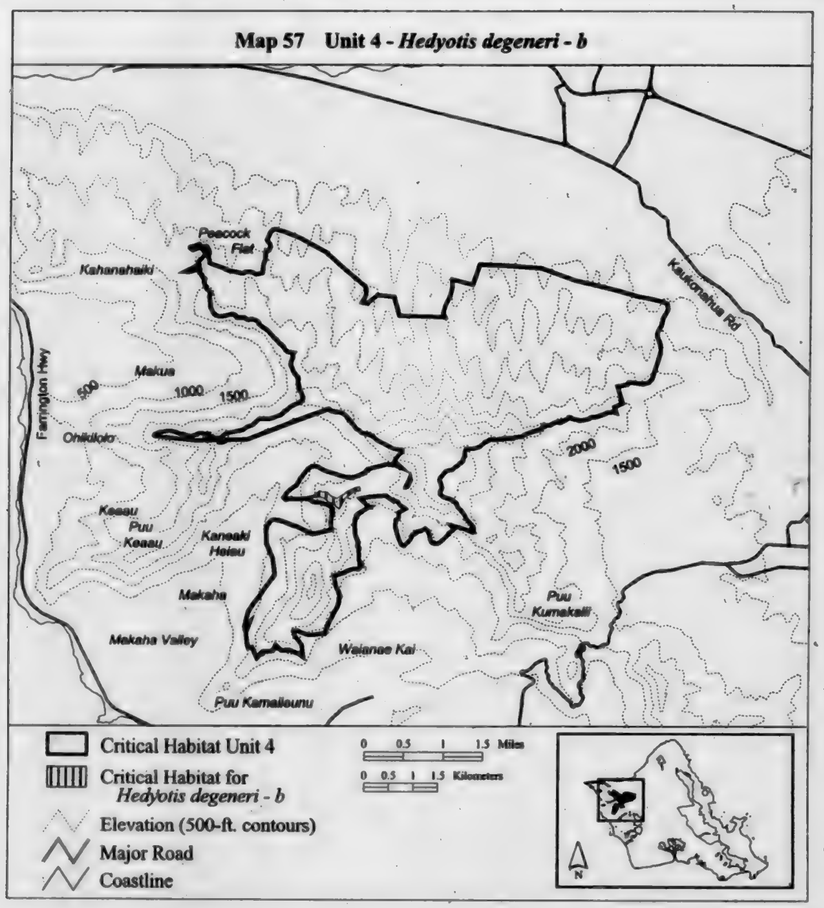


(57) Oahu 4—*Hedyotis degeneri*—b (12 ha; 29 ac)

(i) Unit consists of the following 31 boundary points: Start at 586352, 2377675; 586332, 2377658; 586305, 2377602; 586273, 2377640; 586200, 2377699; 586086, 2377748; 586007, 2377816; 585902, 2377857; 585796, 2377842; 585700, 2377836; 585650, 2377839; 585653, 2377857; 585720, 2377868; 585787, 2377883; 585875, 2377947; 585919, 2377971; 585963, 2377944; 586027, 2377944; 586083, 2377927; 586098, 2377900; 586162, 2377851; 586264, 2377816; 586370, 2377886; 586469, 2377962; 586630, 2378038; 586717, 2378053; 586729, 2377984; 586680, 2377973; 586585, 2377946; 586434, 2377833; 586354, 2377700; return to starting point.

(ii) **Note:** Map 57 follows:

Map 57 Unit 4 - *Hedyotis degeneri - b*

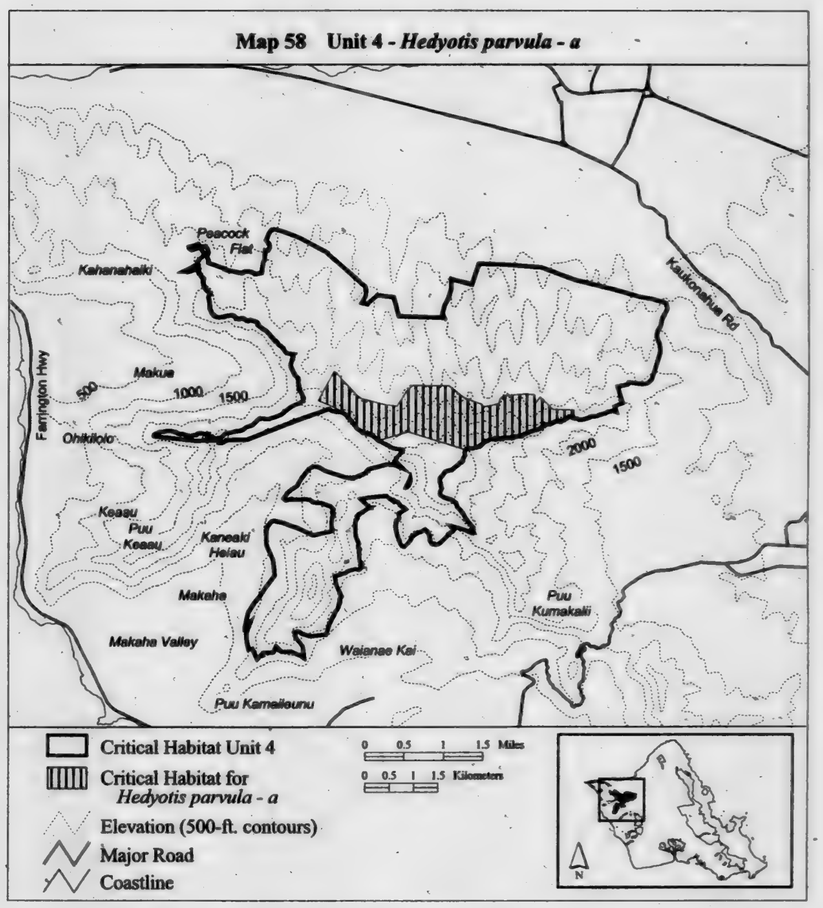


(58) Oahu 4—*Hedyotis parvula*—a (387 ha; 958 ac)

(i) Unit consists of the following 111 boundary points: Start at 589524, 2379043; 589477, 2379034; 589462, 2379034; 589441, 2379042; 589424, 2379047; 589391, 2379048; 589370, 2379041; 589369, 2379041; 589348, 2379025; 589324, 2379009; 589303, 2379003; 589286, 2379001; 589285, 2379001; 589276, 2378998; 589275, 2378998; 589271, 2378994; 589223, 2378985; 589021, 2378858; 589009, 2378857; 588910, 2378852; 588910, 2378851; 588899, 2378848; 588898, 2378848; 588887, 2378841; 588887, 2378840; 588872, 2378818; 588702, 2378884; 587699, 2379193; 587159, 2379038; 587048, 2379065; 587045, 2379095; 586904, 2379179; 586764, 2379173; 586676, 2379263; 586542, 2379397; 586421, 2379532; 586176, 2379699; 585874, 2379837; 585860, 2379838; 585956, 2380034; 586191, 2380443; 586309, 2380325; 586324, 2380341; 586311, 2380311; 586706, 2379887; 587036, 2379801; 587201, 2379758; 587471, 2379718; 587658, 2380020; 587784, 2380156; 587949, 2380153; 588167, 2380149; 588534, 2380143; 588706, 2380004; 588703, 2379964; 588722, 2379990; 588846, 2379891; 589200, 2379754; 589203, 2379694; 589300, 2379716; 589311, 2379711; 589328, 2379722; 589550, 2379771; 589567, 2379874; 589674, 2379941; 590079, 2379973; 590273, 2379963; 590283, 2379771; 590394, 2379904; 590646, 2379643; 591073, 2379636; 591075, 2379464; 591069, 2379465; 591039, 2379476; 590996, 2379497; 590996, 2379498; 590995, 2379498; 590982, 2379496; 590981, 2379496; 590981, 2379495; 590970, 2379488; 590969, 2379488; 590943, 2379463; 590908, 2379443; 590896, 2379436; 590874, 2379427; 590832, 2379413; 590808, 2379409; 590790, 2379408; 590721, 2379404; 590699, 2379398; 590669, 2379385; 590668, 2379384; 590630, 2379354; 590593, 2379338; 590572, 2379336; 590525, 2379340; 590514, 2379339; 590479, 2379340; 590478, 2379340; 590462, 2379334; 590444, 2379312; 590415, 2379277; 590373, 2379247; 590347, 2379233; 590321, 2379227; 590285, 2379219; 590191, 2379191; 590099, 2379155; 589590, 2379056; 589557, 2379052; return to starting point.

(ii) **Note:** Map 58 follows:

Map 58 Unit 4 - *Hedyotis parvula - a*

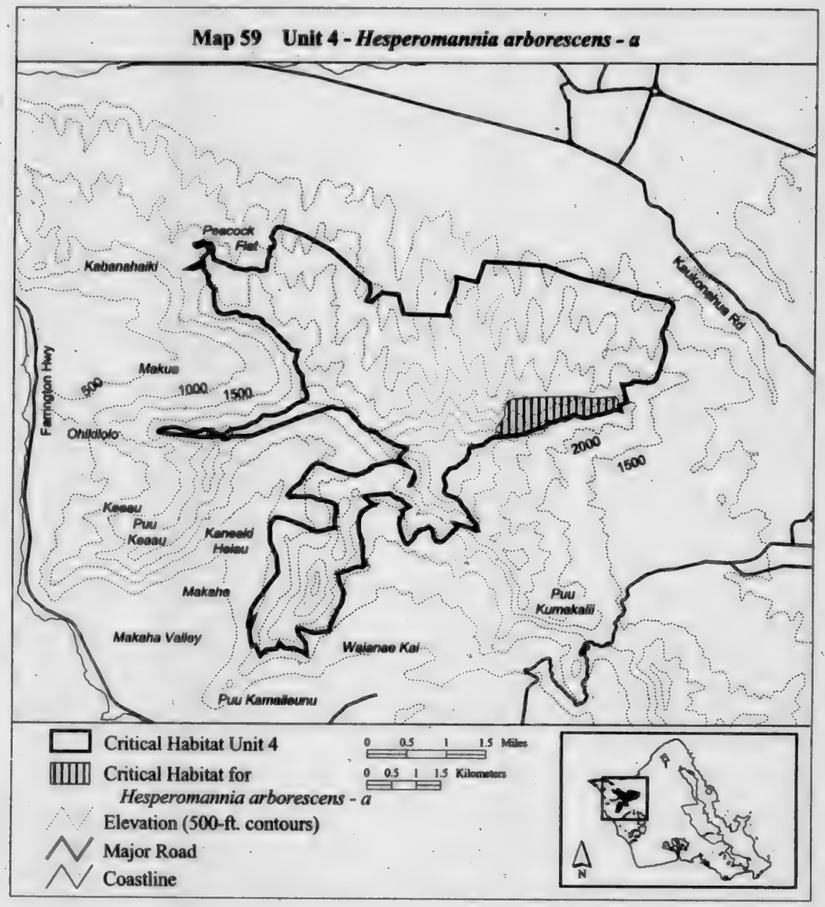


(59) Oahu 4—*Hesperomannia arborescens*—a (125 ha; 308 ac)

(i) Unit consists of the following 82 boundary points: Start at 591935, 2379592; 591870, 2379614; 591821, 2379599; 591791, 2379602; 591790, 2379602; 591766, 2379598; 591765, 2379598; 591740, 2379584; 591709, 2379566; 591635, 2379543; 591613, 2379538; 591582, 2379527; 591581, 2379526; 591567, 2379517; 591504, 2379497; 591500, 2379496; 591496, 2379496; 591461, 2379506; 591460, 2379506; 591443, 2379503; 591431, 2379499; 591420, 2379498; 591419, 2379498; 591404, 2379488; 591404, 2379487; 591395, 2379475; 591235, 2379445; 591091, 2379479; 591026, 2379482; 590996, 2379497; 590996, 2379498; 590995, 2379498; 590982, 2379496; 590981, 2379496; 590981, 2379495; 590970, 2379488; 590969, 2379488; 590943, 2379463; 590908, 2379443; 590883, 2379429; 590832, 2379413; 590808, 2379409; 590790, 2379408; 590721, 2379404; 590699, 2379398; 590698, 2379398; 590669, 2379385; 590668, 2379384; 590641, 2379362; 590534, 2379339; 590525, 2379340; 590514, 2379339; 590479, 2379340; 590478, 2379340; 590462, 2379334; 590444, 2379312; 590415, 2379277; 590396, 2379264; 590308, 2379227; 590232, 2379203; 590191, 2379191; 590187, 2379189; 590056, 2379149; 589821, 2379079; 589613, 2379066; 589594, 2379063; 589406, 2379168; 589408, 2379201; 589491, 2379323; 589582, 2379471; 589578, 2379631; 589630, 2379784; 589747, 2379845; 589991, 2379862; 590282, 2379879; 590739, 2379888; 591022, 2379897; 591330, 2379866; 591565, 2379871; 591800, 2379892; 591878,

2379858; 591896, 2379718; return to starting point.

(ii) **Note:** Map 59 follows:



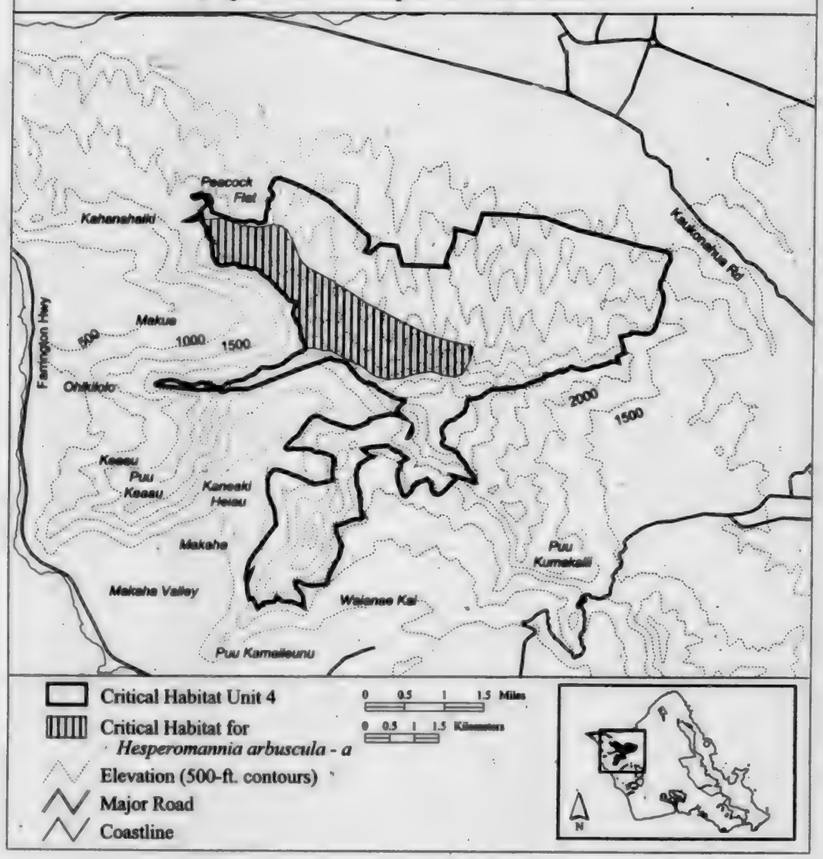
(60) Oahu 4—*Hesperomannia arbuscula*—a (596 ha; 1,472 ac)

(i) Unit consists of the following 289 boundary points: Start at 583882, 2381544; 583799, 2381556; 583764, 2381564; 583747, 2381571; 583730, 2381588; 583709, 2381612; 583707, 2381614; 583694, 2381639; 583685, 2381655; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382045; 583626, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583523, 2382239; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; 583498, 2382345; 583497, 2382345; 583486, 2382351; 583477, 2382362; 583474, 2382370; 583475, 2382383; 583475, 2382397; 583474, 2382417; 583474, 2382405; 583469, 2382411; 583468, 2382411; 583457, 2382416; 583443, 2382421; 583435, 2382424; 583430, 2382430; 583429, 2382440; 583430, 2382455; 583530, 2382499; 583719, 2382510; 583836, 2382521; 583970, 2382474; 584145, 2382415; 584247, 2382364; 584328, 2382361; 584536, 2382332; 584605,

2382332; 584700, 2382353; 584802, 2382379; 584893, 2382397; 585046, 2382364; 585105, 2382317; 585166, 2382284; 585261, 2382091; 585407, 2381723; 585483, 2381614; 585582, 2381519; 585800, 2381399; 586026, 2381275; 586114, 2381231; 586157, 2381184; 586363, 2381060; 586369, 2381064; 586802, 2380776; 587167, 2380586; 587495, 2380415; 587717, 2380306; 587957, 2380186; 588030, 2380175; 588030, 2380165; 588198, 2380098; 588318, 2380062; 588573, 2379993; 588781, 2379945; 588886, 2379923; 588955, 2379880; 588955, 2379792; 588918, 2379690; 588916, 2379614; 588853, 2379479; 588758, 2379348; 588612, 2379286; 588361, 2379318; 588193, 2379370; 588087, 2379391; 588007, 2379374; 588007, 2379373; 588003, 2379372; 587989, 2379370; 587989, 2379371; 587902, 2379359; 587690, 2379311; 587556, 2379264; 587271, 2379235; 587035, 2379271; 586892, 2379348; 586783, 2379435; 586688, 2379512; 586550, 2379559; 586437, 2379614; 586280, 2379697; 586098, 2379788; 585985, 2379810; 585898, 2379803; 585876, 2379829; 585716, 2379850; 585588, 2379850; 585557, 2379890; 585558, 2379891; 585558, 2379892; 585557, 2379892; 585548, 2379922; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585546, 2379929; 585545, 2379931; 585539, 2379943; 585531, 2379963; 585523, 2379982; 585522, 2379982; 585511, 2380001; 585509, 2380004; 585504, 2380029; 585480, 2380063; 585478, 2380071; 585475, 2380089; 585476, 2380103; 585474, 2380125; 585474, 2380128; 585472, 2380137; 585468, 2380149; 585465, 2380160; 585461, 2380173; 585457, 2380185; 585456, 2380203; 585456, 2380223; 585459, 2380252; 585459, 2380269; 585456, 2380281; 585451, 2380295; 585443, 2380310; 585430, 2380325; 585430, 2380326; 585408, 2380344; 585400, 2380353; 585402, 2380382; 585445, 2380413; 585391, 2380375; 585350, 2380434; 585342, 2380452; 585330, 2380478; 585322, 2380497; 585318, 2380512; 585308, 2380533; 585299, 2380553; 585297, 2380570; 585300, 2380580; 585303, 2380592; 585309, 2380613; 585312, 2380624; 585355, 2380732; 585356, 2380787; 585348, 2380789; 585348, 2380790; 585344, 2380798; 585344, 2380799; 585338, 2380802; 585329, 2380804; 585328, 2380804; 585308, 2380806; 585279, 2380811; 585252, 2380816; 585222, 2380825; 585208, 2380833; 585194, 2380847; 585183, 2380863; 585167, 2380888; 585157, 2380904; 585138, 2380929; 585119, 2380952; 585119, 2380953; 585107, 2380962; 585106, 2380963; 585034, 2381030; 585027, 2381040; 585011, 2381059; 584993, 2381074; 584993, 2381075; 584973, 2381090; 584955, 2381103; 584937, 2381120; 584923, 2381137; 584905, 2381157; 584891, 2381175; 584867, 2381205; 584852, 2381221; 584844, 2381230; 584843, 2381230; 584813, 2381261; 584796, 2381273; 584778, 2381284; 584774, 2381287; 584751, 2381303; 584728, 2381318; 584715, 2381325; 584706, 2381333; 584641, 2381428; 584624, 2381434; 584618, 2381442; 584617, 2381442; 584601, 2381452; 584581, 2381462; 584562, 2381467; 584539, 2381475; 584519, 2381483; 584494, 2381489; 584478, 2381486; 584461, 2381479; 584415, 2381486; 584386, 2381492; 584383, 2381494; 584357, 2381507; 584350, 2381511; 584325, 2381523; 584324, 2381523; 584310, 2381528; 584309, 2381528; 584291, 2381527; 584290, 2381527; 584281, 2381521; 584275, 2381516; 584273, 2381515; 584269, 2381515; 584174, 2381559; 584160, 2381560; 584150, 2381572; 584130, 2381584; 584129, 2381584; 584104, 2381586; 584065, 2381583; 584021, 2381575; 583992, 2381567; 583957, 2381557; 583934, 2381555; 583897, 2381549; return to starting point.

(ii) **Note:** Map 60 follows:

Map 60 Unit 4 - *Hesperomannia arbuscula - a*

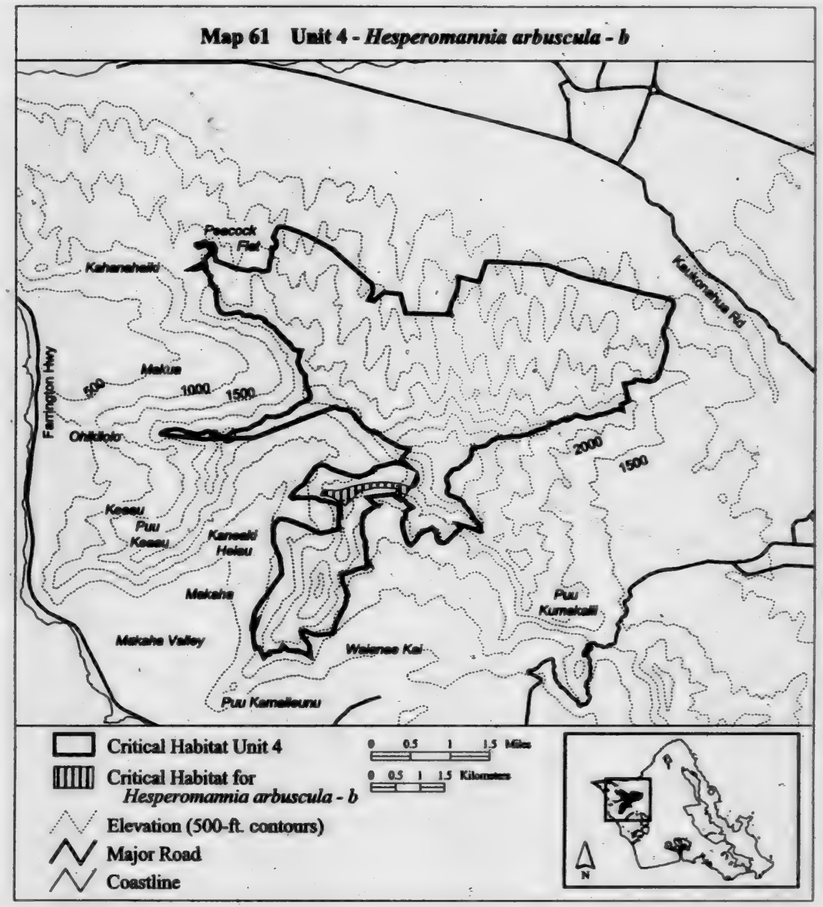


(61) Oahu 4—*Hesperomannia arbuscula*—b (31 ha; 78 ac)

(i) Unit consists of the following 35 boundary points: Start at 585893, 2377968; 586006, 2377974; 586069, 2377958; 586208, 2377978; 586416, 2378047; 586624, 2378090; 586810, 2378123; 586965, 2378130; 587150, 2378130; 587336, 2378110; 587498, 2378077; 587620, 2378030; 587622, 2378022; 587460, 2377788; 587277, 2377877; 587356, 2378000; 587078, 2378018; 586882, 2378021; 586704, 2377975; 586578, 2377945; 586471, 2377850; 586396, 2377759; 586327, 2377703; 586274, 2377650; 586237, 2377680; 586168, 2377720; 586098, 2377766; 586046, 2377796; 585966, 2377839; 585910, 2377855; 585847, 2377852; 585788, 2377855; 585778, 2377865; 585801, 2377911; 585864, 2377981; return to starting point.

(ii) **Note:** Map 61 follows:

Map 61 Unit 4 - *Hesperomannia arbuscula - b*

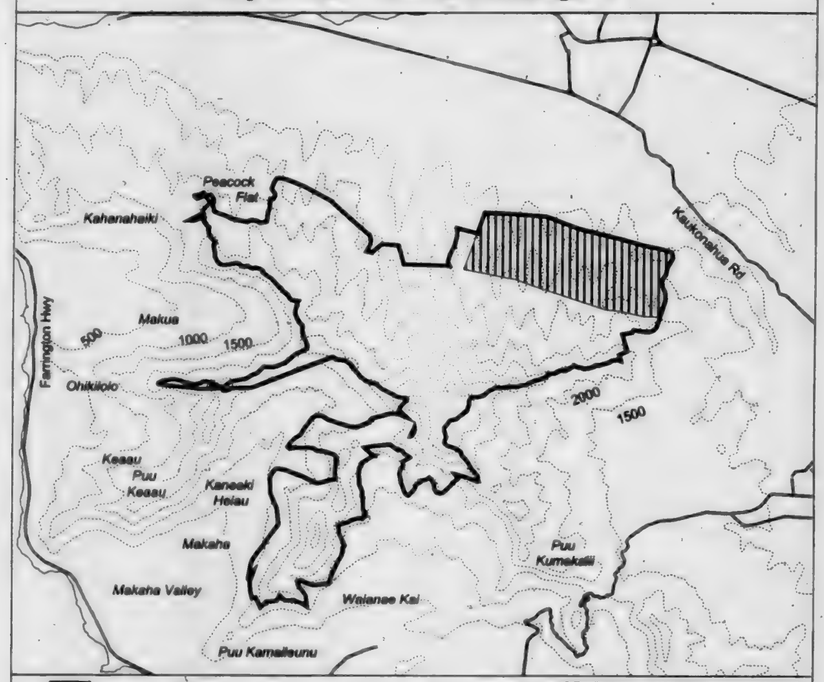


(62) Oahu 4—*Hibiscus brackenridgei*—b (560 ha; 1,385 ac)

(i) Unit consists of the following 35 *boundary points: Start at 590390*, 2382551; 591054, 2382306; 591908, 2382094; 592162, 2382021; 592395, 2381959; 592679, 2381908; 592850, 2381861; 592959, 2381825; 592985, 2381706; 592917, 2381592; 592871, 2381504; 592845, 2381364; 592788, 2381266; 592762, 2381188; 592757, 2381116; 592819, 2381017; 592840, 2380924; 592840, 2380826; 592793, 2380717; 592731, 2380650; 592695, 2380562; 592705, 2380520; 592679, 2380479; 592596, 2380489; 592389, 2380495; 592219, 2380531; 591908, 2380598; 591618, 2380639; 591380, 2380707; 590226, 2381090; 589766, 2381250; 589585, 2381276; 588725, 2381459; 589141, 2382625; 589622, 2382606; return to starting point.

(ii) **Note:** Map 62 follows:

Map 62 Unit 4 - *Hibiscus brackenridgei - b*

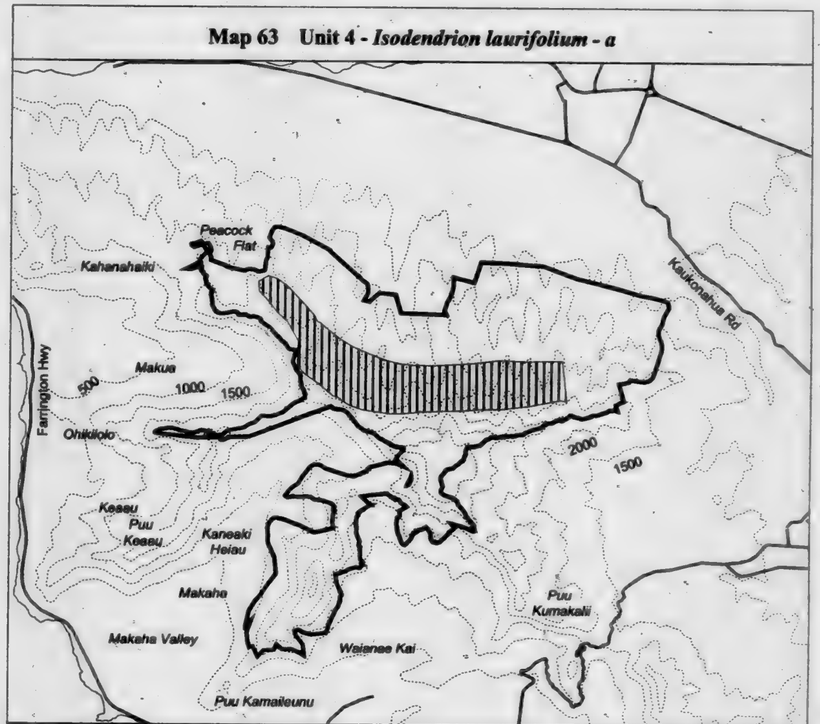


(63) Oahu 4—*Isodendrion laurifolium*—a (617 ha; 1,524 ac)

(i) Unit consists of the following 54 boundary points: Start at 586829, 2380741; 587186, 2380602; 587492, 2380524; 587782, 2380496; 588189, 2380491; 588963, 2380535; 589515, 2380602; 590027, 2380585; 590807, 2380591; 590891, 2379772; 590779, 2379788; 590445, 2379738; 590172, 2379677; 589854, 2379644; 589620, 2379616; 589408, 2379605; 589163, 2379610; 588728, 2379577; 588300, 2379566; 587959, 2379554; 587541, 2379515; 587268, 2379521; 586934, 2379566; 586716, 2379599; 586449, 2379694; 586276, 2379794; 586280, 2379814; 586137, 2379866; 585947, 2380006; 585830, 2380112; 585708, 2380201; 585546, 2380307; 585396, 2380474; 585385, 2380708; 585402, 2380981; 585302, 2381154; 585179, 2381382; 584973, 2381583; 584795, 2381811; 584594, 2382029; 584589, 2382213; 584789, 2382330; 584962, 2382280; 585073, 2382201; 585179, 2382129; 585307, 2381990; 585469, 2381817; 585625, 2381639; 585731, 2381505; 585798, 2381382; 585848, 2381366; 585965, 2381260; 586249, 2381037; 586489, 2380892; return to starting point.

(ii) **Note:** Map 63 follows:

Map 63 Unit 4 - *Isodendrion laurifolium - a*

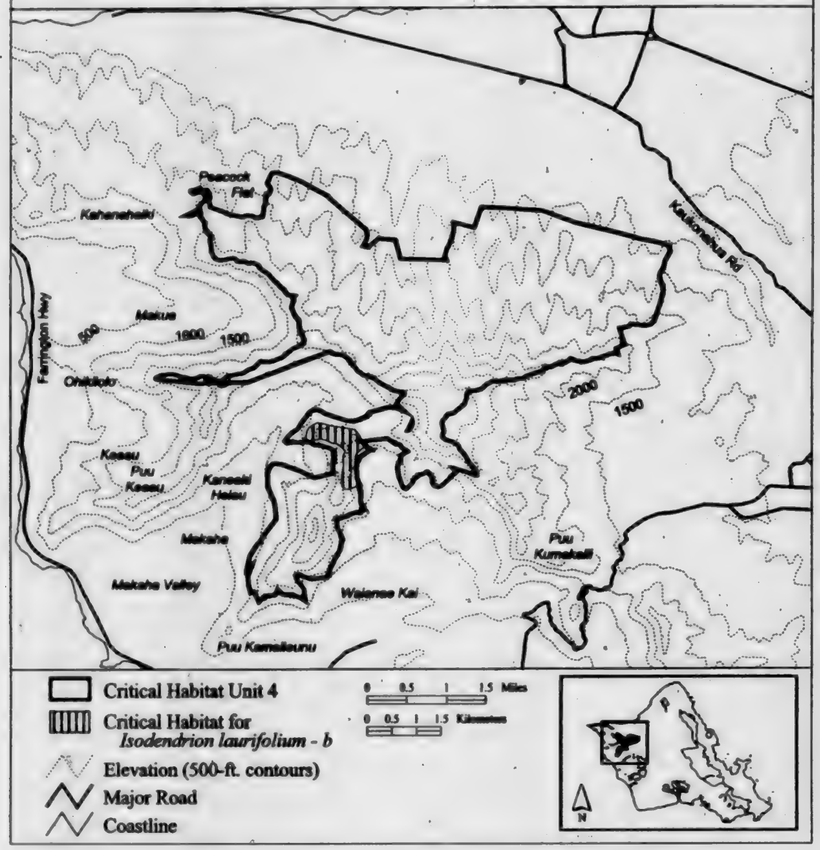


(64) Oahu 4—*Isodendrion laurifolium*—b (62 ha; 154 ac)

(i) Unit consists of the following 43 boundary points: Start at 586591, 2378074; 586586, 2378057; 586673, 2377968; 586668, 2377967; 586669, 2377967; 586771, 2377694; 586772, 2377693; 586771, 2377693; 586772, 2377690; 586750, 2377686; 586684, 2377637; 586618, 2377556; 586598, 2377498; 586591, 2377359; 586626, 2377192; 586622, 2377072; 586637, 2376972; 586637, 2376914; 586571, 2376879; 586479, 2376848; 586401, 2376848; 586331, 2376898; 586316, 2377018; 586328, 2377169; 586355, 2377339; 586339, 2377529; 586399, 2377621; 586326, 2377693; 586326, 2377694; 586235, 2377769; 586138, 2377784; 586014, 2377846; 585875, 2377885; 585782, 2377854; 585662, 2377827; 585573, 2377904; 585597, 2377935; 585612, 2378036; 585658, 2378121; 585743, 2378171; 585836, 2378217; 585948, 2378198; 586088, 2378152; return to starting point.

(ii) **Note:** Map 64 follows:

Map 64 Unit 4 - *Isodendrion laurifolium - b*

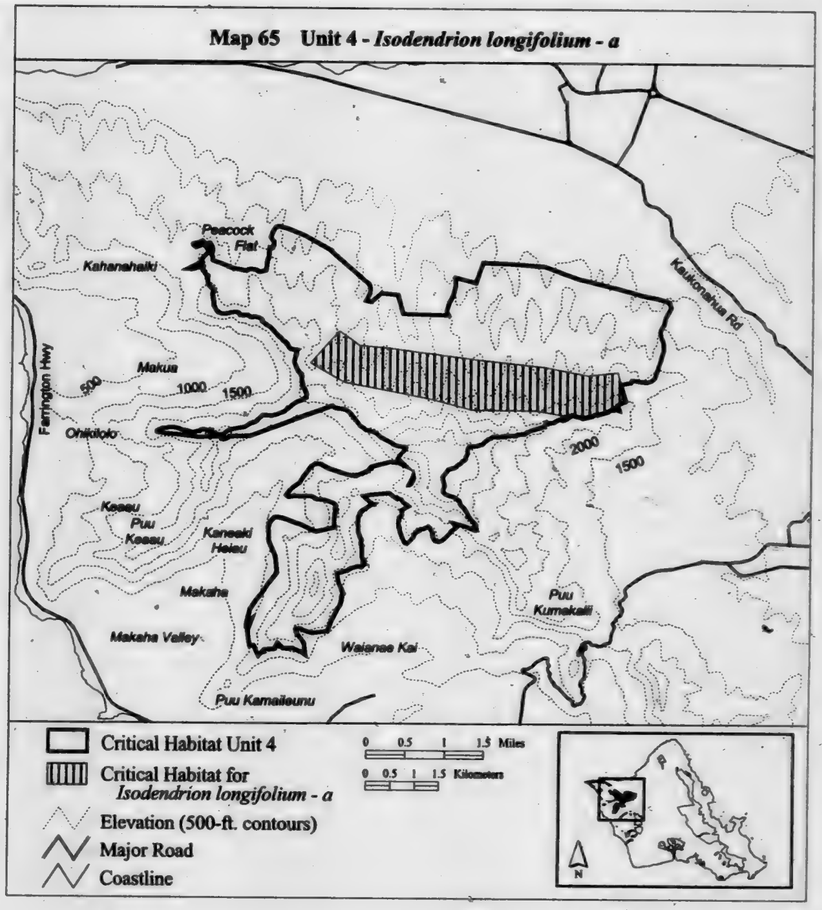


(65) Oahu 4—*Isodendrion longifolium*—a (552 ha; 1,363 ac)

(i) Unit consists of the following 18 boundary points: Start at 585636, 2380541; 586214, 2381188; 586627, 2380899; 587191, 2380857; 589008, 2380623; 590425, 2380472; 591292, 2380307; 591898, 2380376; 592063, 2379784; 591609, 2379563; 591251, 2379481; 590987, 2379504; 590755, 2379495; 590246, 2379577; 588938, 2379591; 588086, 2379811; 586764, 2380059; 586323, 2380142; return to starting point.

(ii) **Note:** Map 65 follows:

Map 65 Unit 4 - *Isodendrion longifolium - a*



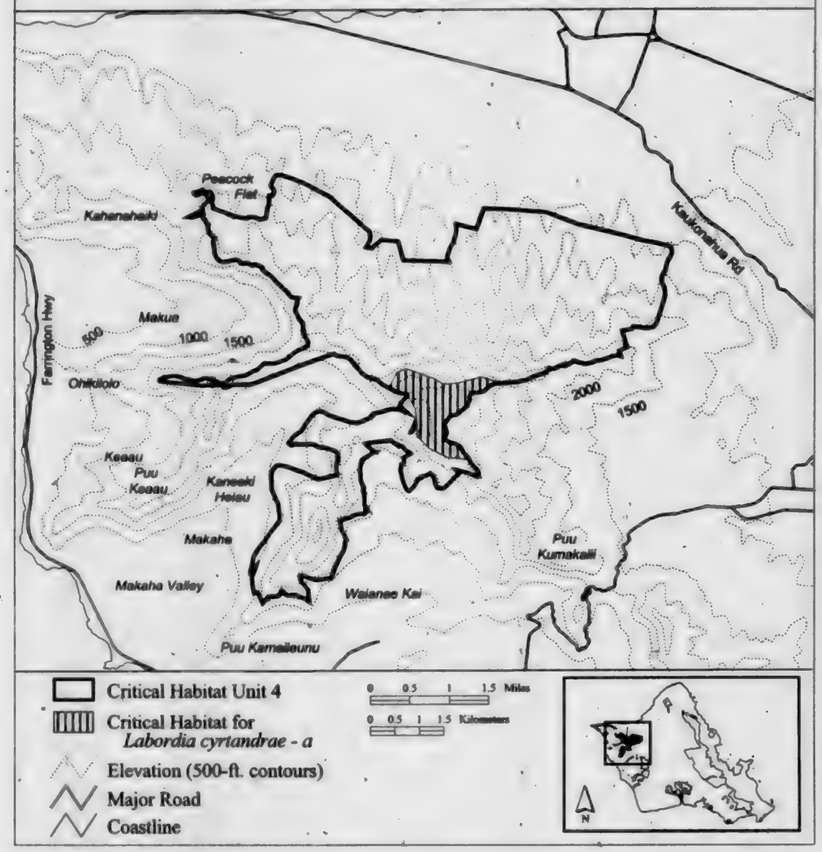
(66) Oahu 4—*Labordia cyrtandrae*—a (161 ha; 397 ac)

(i) Area consists of the following 114 boundary points: Start at 588702, 2378502; 588659, 2378471; 588616, 2378430; 588583, 2378413; 588562, 2378406; 588530, 2378399; 588483, 2378388; 588466, 2378385; 588465, 2378385; 588458, 2378380; 588394, 2378294; 588360, 2378255; 588348, 2378235; 588348, 2378234; 588343, 2378210; 588343, 2378187; 588343, 2378186; 588348, 2378161; 588348, 2378160; 588372, 2378097; 588383, 2378041; 588383, 2378026; 588379, 2378003; 588362, 2377972; 588350, 2377942; 588350, 2377941; 588352, 2377924; 588352, 2377923; 588360, 2377904; 588361, 2377903; 588368, 2377893; 588406, 2377863; 588407, 2377863; 588443, 2377848; 588444, 2377848; 588503, 2377826; 588587, 2377797; 588594, 2377793; 588594, 2377792; 588605, 2377788; 588624, 2377778; 588662, 2377749; 588673, 2377733; 588684, 2377709; 588691, 2377689; 588691, 2377688; 588708, 2377657; 588735, 2377626; 588736, 2377625; 588762, 2377601; 588787, 2377570; 588816, 2377534; 588841, 2377494; 588810, 2377480; 588752, 2377488; 588394, 2377535; 588024, 2377726; 587797, 2377965; 587750, 2378526; 587571, 2378836; 587213, 2378967; 587368, 2379265; 587559, 2379349; 588119, 2379146; 588322, 2379027; 588621, 2379051; 589098, 2379170; 589451, 2379064; 589446, 2379060; 589427, 2379046; 589424, 2379047; 589391, 2379048; 589370, 2379041; 589369, 2379041; 589348, 2379025; 589324, 2379009; 589303, 2379003; 589286, 2379001; 589285, 2379001; 589276, 2378998; 589275, 2378998; 589245, 2378974; 589217, 2378943; 589164, 2378898; 589149, 2378886; 589123, 2378879; 589060, 2378862; 589009, 2378857; 588910, 2378852; 588910, 2378851; 588899, 2378848; 588898, 2378848; 588887, 2378841; 588887, 2378840; 588862, 2378802; 588851, 2378772; 588851, 2378763; 588851, 2378746; 588855, 2378710; 588838, 2378677; 588825, 2378656; 588815, 2378615; 588815, 2378614; 588814, 2378597; 588767, 2378640; 588765, 2378640; 588695,

2378577; 588695, 2378576; 588694, 2378576; 588675, 2378552; 588667, 2378540; 588667, 2378538; 588686, 2378515; 588686, 2378514; return to starting point.

(ii) **Note:** Map 66 follows:

Map 66 Unit 4 - *Labordia cyrtandrae - a*

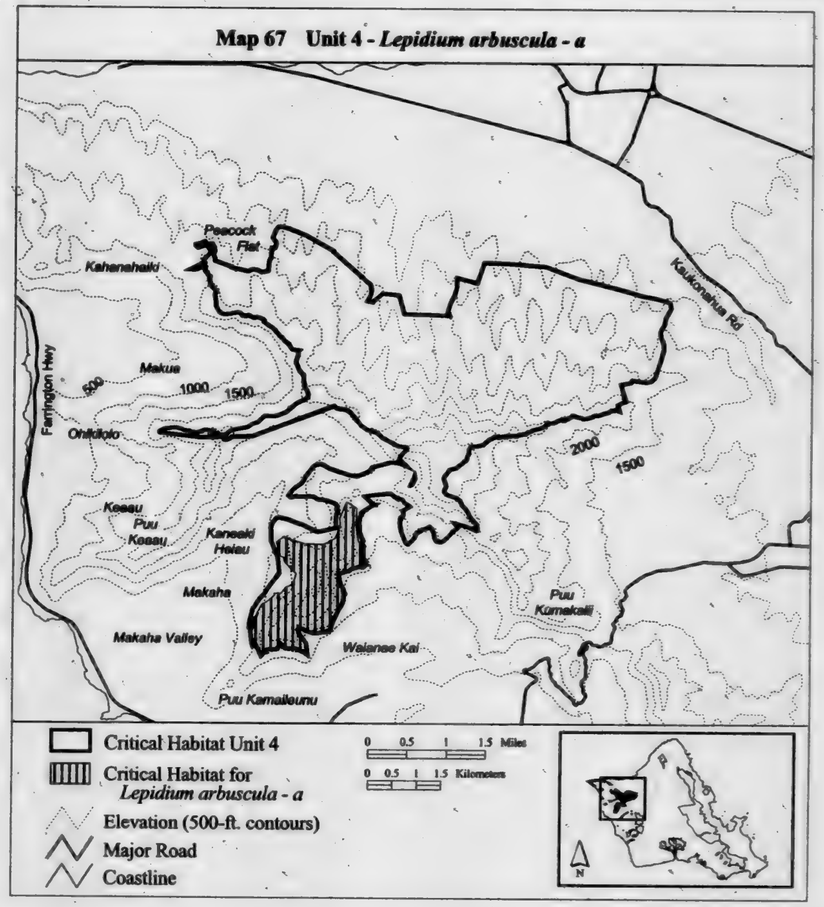


(67) Oahu 4—*Lepidium arbuscula*—a (329 ha; 813 ac)

(i) Unit consists of the following 59 boundary points: Start at 586225, 2377240; 586216, 2377374; 586354, 2377705; 586562, 2377571; 586551, 2377255; 586596, 2376916; 586697, 2376755; 586711, 2376435; 586714, 2376433; 586693, 2376424; 586634, 2376388; 586634, 2376389; 586454, 2376338; 586201, 2376249; 586302, 2375690; 586018, 2375108; 585683, 2375026; 585530, 2375075; 585368, 2375194; 585411, 2374997; 585551, 2374818; 585578, 2374579; 585526, 2374607; 585510, 2374636; 585509, 2374637; 585467, 2374638; 585325, 2374713; 585128, 2374699; 585020, 2374810; 584964, 2374691; 584752, 2374684; 584633, 2374546; 584531, 2374770; 584459, 2374749; 584427, 2374883; 584408, 2375073; 584493, 2375310; 584635, 2375594; 584777, 2375689; 584901, 2375803; 584881, 2375836; 585037, 2375840; 585035, 2375843; 585138, 2375964; 585193, 2375992; 585198, 2375992; 585198, 2375994; 585270, 2376030; 585337, 2376239; 585100, 2376476; 585072, 2376573; 585003, 2376595; 584927, 2376885; 585083, 2376990; 585195, 2376934; 585508, 2376845; 585899, 2376841; 586115, 2376952; 586157, 2377037; return to starting point.

(ii) **Note:** Map 67 follows:

Map 67 Unit 4 - *Lepidium arbuscula - a*

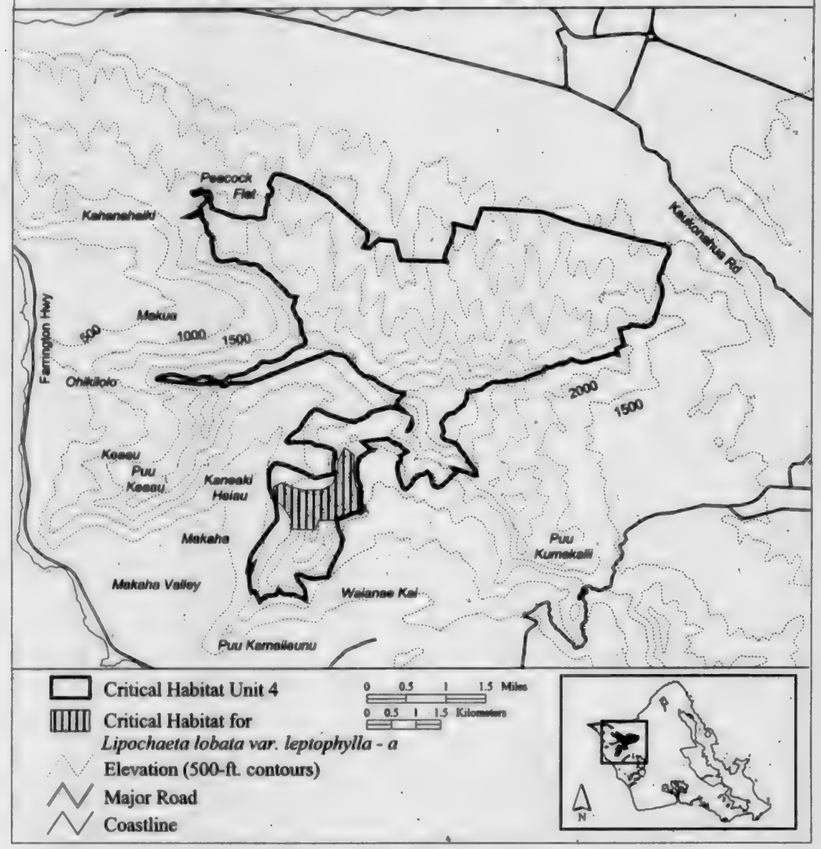


(68) Oahu 4—*Lipochaeta lobata* var. *leptophylla*—a (139 ha; 344 ac)

(i) Unit consists of the following 23 boundary points: Start at 586225, 2377399; 586356, 2377699; 586563, 2377545; 586548, 2377345; 586548, 2377199; 586594, 2376915; 586702, 2376738; 586702, 2376422; 586187, 2376230; 585840, 2376222; 585779, 2376030; 585271, 2376038; 585289, 2376232; 585094, 2376499; 585056, 2376568; 584986, 2376584; 584909, 2376907; 585079, 2376992; 585240, 2376922; 585525, 2376838; 585910, 2376845; 586117, 2376953; 586225, 2377253; return to starting point.

(ii) **Note:** Map 68 follows:

Map 68 Unit 4 - *Lipochaeta lobata var. leptophylla - a*

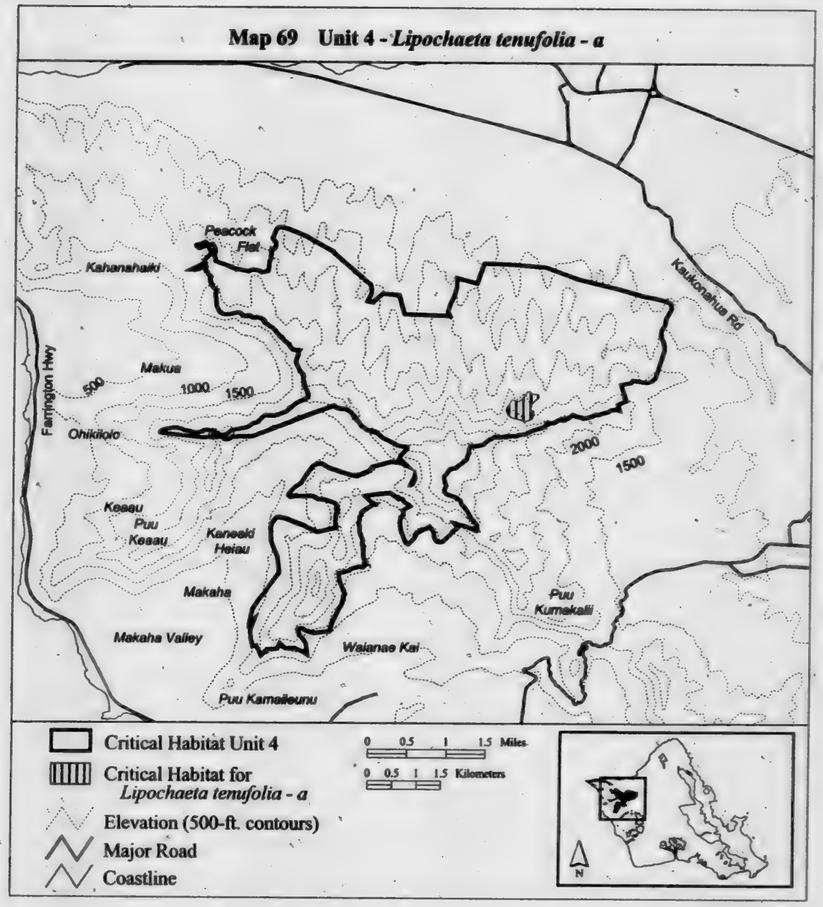


(69) Oahu 4—*Lipochaeta tenuifolia*—a (23 ha; 57 ac)

(i) Unit consists of the following 32 boundary points: Start at 590120, 2379962; 590149, 2379920; 590199, 2379920; 590266, 2379920; 590282, 2379874; 590282, 2379849; 590241, 2379812; 590179, 2379750; 590133, 2379692; 590125, 2379629; 590125, 2379596; 590174, 2379559; 590179, 2379513; 590145, 2379422; 590120, 2379401; 589996, 2379359; 589929, 2379388; 589850, 2379413; 589755, 2379426; 589713, 2379451; 589684, 2379463; 589643, 2379521; 589622, 2379584; 589630, 2379633; 589676, 2379700; 589705, 2379750; 589738, 2379795; 589825, 2379775; 589879, 2379762; 589958, 2379829; 590004, 2379899; 590071, 2379974; return to starting point.

(ii) **Note:** Map 69 follows:

Map 69 Unit 4 - *Lipochaeta tenufolia - a*



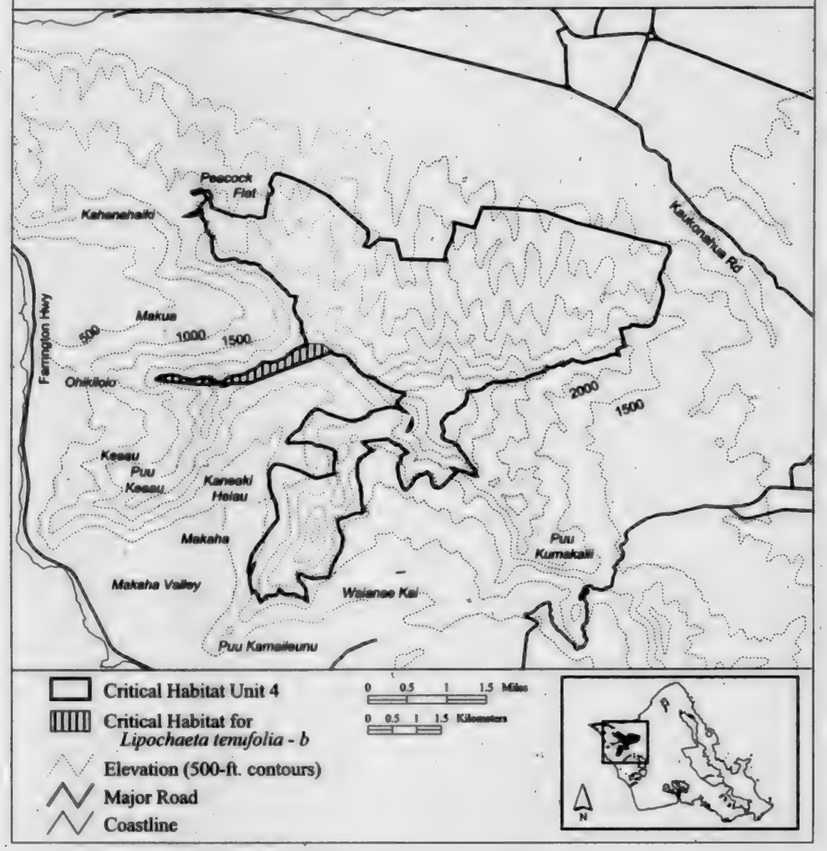
(70) Oahu 4—*Lipochaeta tenuifolia*—b (67 ha; 166 ac)

(i) Unit consists of the following 109 boundary points: Start at 585469, 2379778; 585483, 2379787; 585584, 2379839; 585909, 2379825; 586116, 2379671; 585534, 2379466; 584413, 2379036; 583371, 2379010; 582537, 2379101; 582523, 2379101; 582515, 2379109; 582526, 2379139; 582546, 2379144; 582547, 2379144; 582564, 2379150; 582564, 2379151; 582581, 2379157; 582597, 2379168; 582617, 2379177; 582636, 2379181; 582645, 2379183; 582656, 2379186; 582691, 2379191; 582710, 2379193; 582711, 2379193; 582744, 2379201; 582784, 2379205; 582809, 2379208; 582836, 2379208; 582861, 2379206; 582900, 2379202; 582936, 2379193; 582962, 2379185; 582982, 2379177; 583001, 2379166; 583017, 2379157; 583018, 2379156; 583040, 2379150; 583041, 2379150; 583062, 2379147; 583082, 2379147; 583108, 2379146; 583127, 2379141; 583141, 2379136; 583154, 2379131; 583179, 2379122; 583180, 2379122; 583211, 2379117; 583238, 2379112; 583261, 2379110; 583287, 2379111; 583322, 2379118; 583349, 2379124; 583371, 2379128; 583383, 2379131; 583383, 2379132; 583400, 2379142; 583418, 2379154; 583435, 2379162; 583448, 2379164; 583469, 2379167; 583485, 2379166; 583506, 2379162; 583534, 2379155; 583557, 2379148; 583558, 2379148; 583595, 2379145; 583614, 2379141; 583615, 2379141; 583629, 2379145; 583616, 2379115; 583606, 2379089; 583606, 2379088; 583606, 2379087; 583607, 2379087; 583608, 2379087; 583666, 2379100; 583695, 2379080; 583725, 2379070; 583726, 2379070; 583796, 2379060; 583876, 2379060; 583877, 2379060; 583877, 2379061; 583947, 2379131; 583977, 2379150; 584086, 2379180; 584226, 2379210; 584256, 2379210; 584326, 2379230; 584327, 2379230; 584417, 2379290; 584526, 2379330; 584527, 2379330; 584557, 2379350; 584657, 2379450; 584667, 2379460; 584836, 2379450; 584866, 2379450; 584867, 2379450; 584906, 2379470; 584936, 2379470; 584937, 2379470; 585107, 2379540; 585217, 2379630; 585297, 2379700; 585357,

2379740; 585456, 2379770; 585457, 2379770; return to starting point.

(ii) **Note:** Map 70 follows:

Map 70 Unit 4 - *Lipochaeta tenufolia - b*

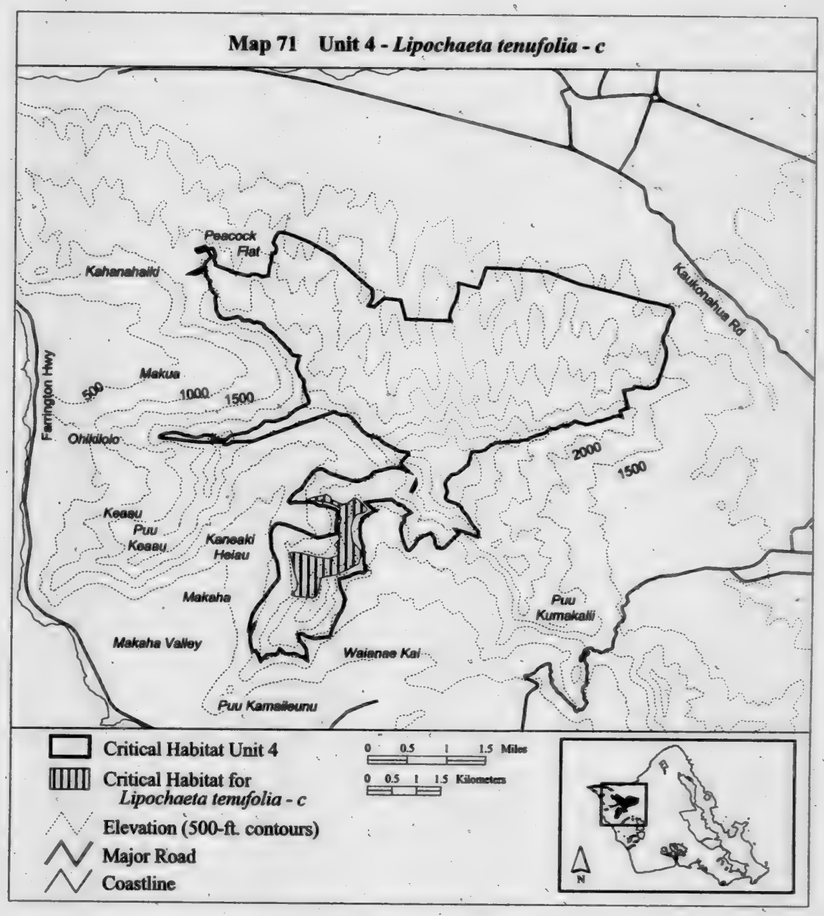


(71) Oahu 4—*Lipochaeta tenuifolia*—c (118 ha; 293 ac)

(i) Unit consists of the following 91 boundary points: Start at 585520, 2377857; 585626, 2377904; 585688, 2377923; 585760, 2377926; 585878, 2377957; 585925, 2377973; 586009, 2377932; 586030, 2377867; 586114, 2377836; 586202, 2377789; 586279, 2377773; 586351, 2377792; 586410, 2377839; 586460, 2377873; 586522, 2377898; 586575, 2377867; 586644, 2377801; 586737, 2377721; 586762, 2377661; 586737, 2377624; 586665, 2377602; 586553, 2377565; 586476, 2377468; 586435, 2377310; 586441, 2377163; 586469, 2377017; 586544, 2376942; 586641, 2376824; 586647, 2376715; 586616, 2376637; 586603, 2376569; 586376, 2376435; 586155, 2376332; 585946, 2376292; 585844, 2376264; 585816, 2376133; 585785, 2375981; 585788, 2375981; 585782, 2375967; 585781, 2375962; 585753, 2375890; 585710, 2375865; 585579, 2375868; 585448, 2375875; 585321, 2375881; 585274, 2375890; 585259, 2375909; 585262, 2375946; 585290, 2375968; 585343, 2376012; 585364, 2376096; 585364, 2376155; 585376, 2376121; 585336, 2376248; 585274, 2376485; 585237, 2376665; 585206, 2376756; 585218, 2376793; 585287, 2376799; 585448, 2376777; 585710, 2376712; 585981, 2376665; 586058, 2376690; 586171, 2376724; 586183, 2376768; 586177, 2376843; 586161, 2376896; 586105, 2376945; 586127, 2376973; 586167, 2377020; 586208, 2377064; 586205, 2377148; 586177, 2377241; 586143, 2377266; 586130, 2377310; 586139, 2377350; 586211, 2377406; 586239, 2377447; 586230, 2377509; 586205, 2377518; 586143, 2377543; 586143, 2377559; 586164, 2377593; 586205, 2377640; 586205, 2377689; 586161, 2377730; 586099, 2377767; 585974, 2377811; 585862, 2377829; 585747, 2377842; 585539, 2377833; return to starting point.

(ii) **Note:** Map 71 follows:

Map 71 Unit 4 - *Lipochaeta tenufolia - c*

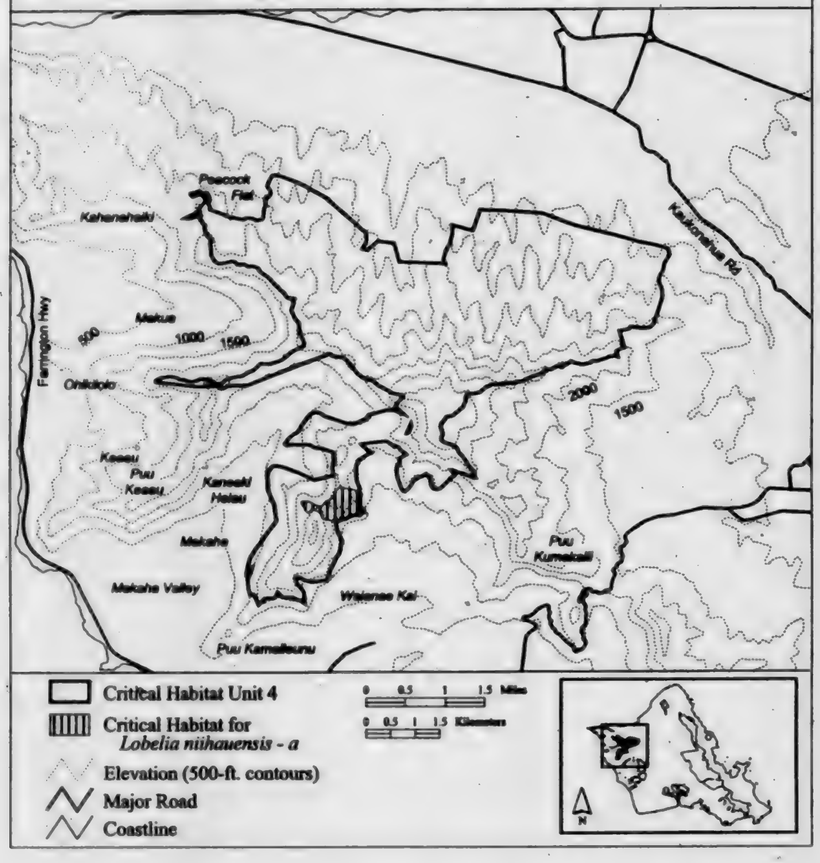


(72) Oahu 4—*Lobelia niihauensis*—a (44 ha; 108 ac)

(i) Unit consists of the following 40 boundary points: Start at 585508, 2376654; 585626, 2376661; 585701, 2376636; 585802, 2376586; 585905, 2376557; 585934, 2376575; 586016, 2376675; 586091, 2376696; 586156, 2376757; 586174, 2376804; 586199, 2376865; 586267, 2376926; 586295, 2376943; 586353, 2376936; 586399, 2376922; 586510, 2376911; 586618, 2376875; 586657, 2376714; 586618, 2376646; 586678, 2376550; 586696, 2376475; 586653, 2376432; 586542, 2376385; 586453, 2376339; 586328, 2376278; 586220, 2376267; 586045, 2376278; 585934, 2376313; 585912, 2376367; 585873, 2376432; 585823, 2376467; 585748, 2376492; 585701, 2376475; 585683, 2376449; 585655, 2376407; 585637, 2376424; 585587, 2376464; 585565, 2376528; 585522, 2376586; 585501, 2376621; return to starting point.

(ii) **Note:** Map 72 follows:

Map 72 Unit 4 - *Lobelia niihauensis - a*



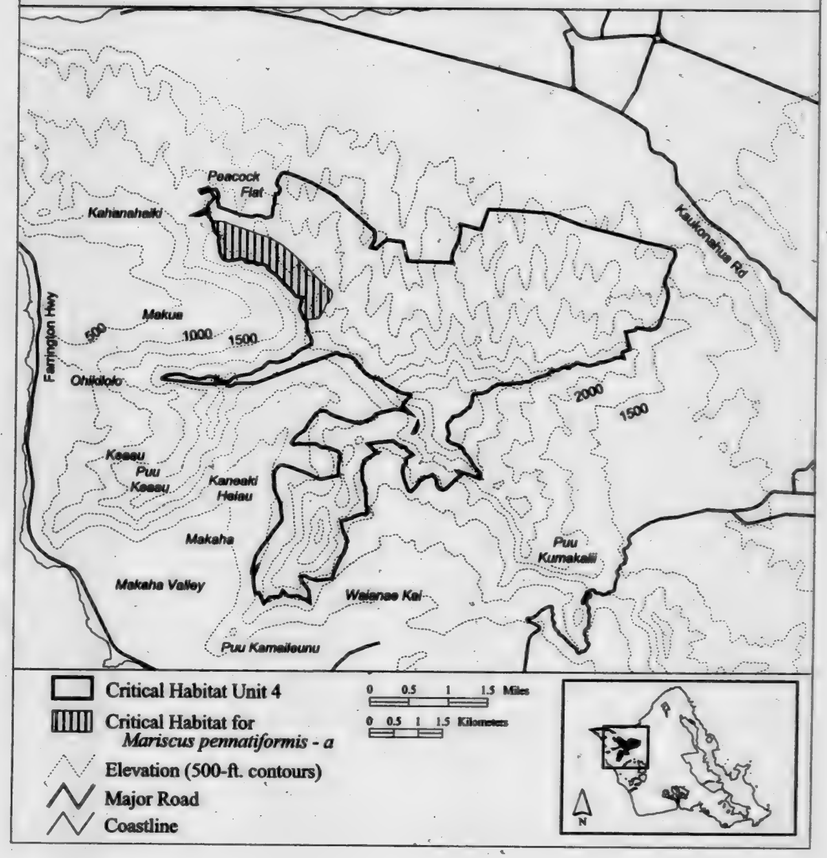
(73) Oahu 4—*Mariscus pennatiformis*—a (166 ha; 410 ac)

(i) Unit consists of the following 182 boundary points: Start at 583501, 2382343; 583539, 2382348; 583749, 2382330; 583883, 2382277; 584242, 2382158; 584464, 2382083; 584692, 2382012; 584946, 2381862; 585122, 2381716; 585294, 2381563; 585526, 2381335; 585687, 2381185; 585796, 2381069; 585949, 2380950; 585968, 2380878; 585960, 2380800; 585915, 2380703; 585855, 2380673; 585822, 2380590; 585781, 2380471; 585705, 2380366; 585604, 2380355; 585529, 2380347; 585405, 2380347; 585393, 2380361; 585375, 2380388; 585364, 2380407; 585353, 2380428; 585342, 2380452; 585330, 2380478; 585322, 2380497; 585318, 2380512; 585308, 2380533; 585299, 2380553; 585297, 2380570; 585300, 2380580; 585303, 2380592; 585309, 2380613; 585315, 2380636; 585327, 2380677; 585338, 2380712; 585339, 2380712; 585344, 2380738; 585346, 2380754; 585345, 2380767; 585345, 2380779; 585348, 2380789; 585348, 2380790; 585344, 2380798; 585344, 2380799; 585338, 2380802; 585329, 2380804; 585328, 2380804; 585308, 2380806; 585279, 2380811; 585245, 2380818; 585228, 2380821; 585208, 2380833; 585194, 2380847; 585183, 2380863; 585183, 2380864; 585167, 2380888; 585157, 2380904; 585138, 2380929; 585119, 2380952; 585119, 2380953; 585107, 2380962; 585106, 2380963; 585094, 2380968; 585078, 2380975; 585067, 2380980; 585061, 2380987; 585053, 2381000; 585039, 2381021; 585027, 2381040; 585011, 2381059; 584993, 2381074; 584993, 2381075; 584973, 2381090; 584954, 2381104; 584939, 2381117; 584923, 2381137; 584905, 2381157; 584891, 2381175; 584867, 2381205; 584852, 2381221; 584844, 2381230; 584843, 2381230; 584813, 2381261; 584796, 2381273; 584778, 2381284; 584774, 2381287; 584751, 2381303; 584728, 2381318; 584708, 2381329; 584690, 2381345; 584690, 2381346; 584676, 2381356; 584656, 2381369; 584654, 2381370; 584643, 2381382; 584639, 2381394; 584636, 2381408; 584633, 2381420; 584628, 2381430; 584618, 2381442; 584617,

2381442; 584601, 2381452; 584581, 2381462; 584562, 2381467; 584539, 2381475; 584519, 2381483; 584494, 2381489; 584485, 2381487; 584388, 2381533; 584179, 2381574; 584145, 2381575; 584130, 2381584; 584129, 2381584; 584104, 2381586; 584065, 2381583; 584038, 2381578; 584037, 2381578; 583831, 2381548; 583790, 2381574; 583729, 2381589; 583709, 2381612; 583707, 2381614; 583694, 2381639; 583685, 2381655; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382175; 583626, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583523, 2382239; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; return to starting point.

(ii) **Note:** Map 73 follows:

Map 73 Unit 4 - *Mariscus pennatiformis - a*

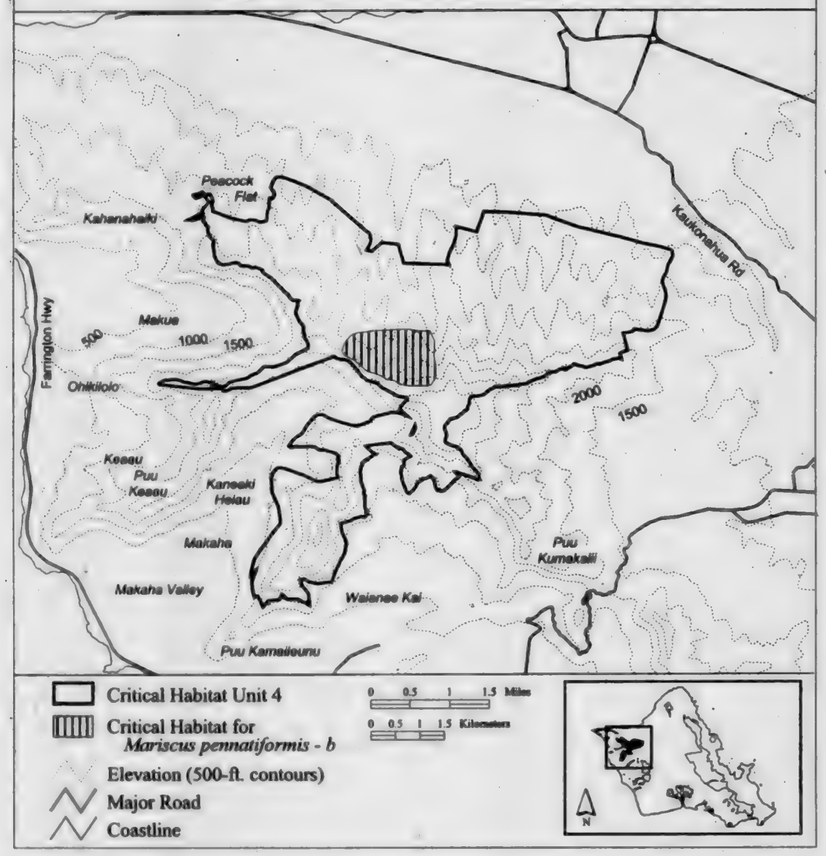


(74) Oahu 4—*Mariscus pennatiformis*—b (170 ha; 421 ac)

(i) Unit consists of the following 35 boundary points: Start at 588047, 2380182; 588144, 2379979; 588144, 2379793; 588131, 2379665; 588157, 2379510; 588165, 2379390; 588165, 2379280; 588165, 2379231; 588134, 2379169; 588090, 2379090; 587997, 2379063; 587874, 2379063; 587732, 2379068; 587617, 2379059; 587436, 2379094; 587325, 2379169; 587179, 2379192; 587029, 2379276; 586874, 2379329; 586799, 2379342; 586764, 2379364; 586653, 2379452; 586503, 2379581; 586286, 2379678; 586242, 2379771; 586308, 2379948; 586428, 2380089; 586557, 2380147; 586721, 2380160; 586889, 2380186; 587127, 2380200; 587295, 2380208; 587508, 2380222; 587614, 2380222; 587817, 2380178; return to starting point.

(ii) **Note:** Map 74 follows:

Map 74 Unit 4 - *Mariscus pennatiformis - b*

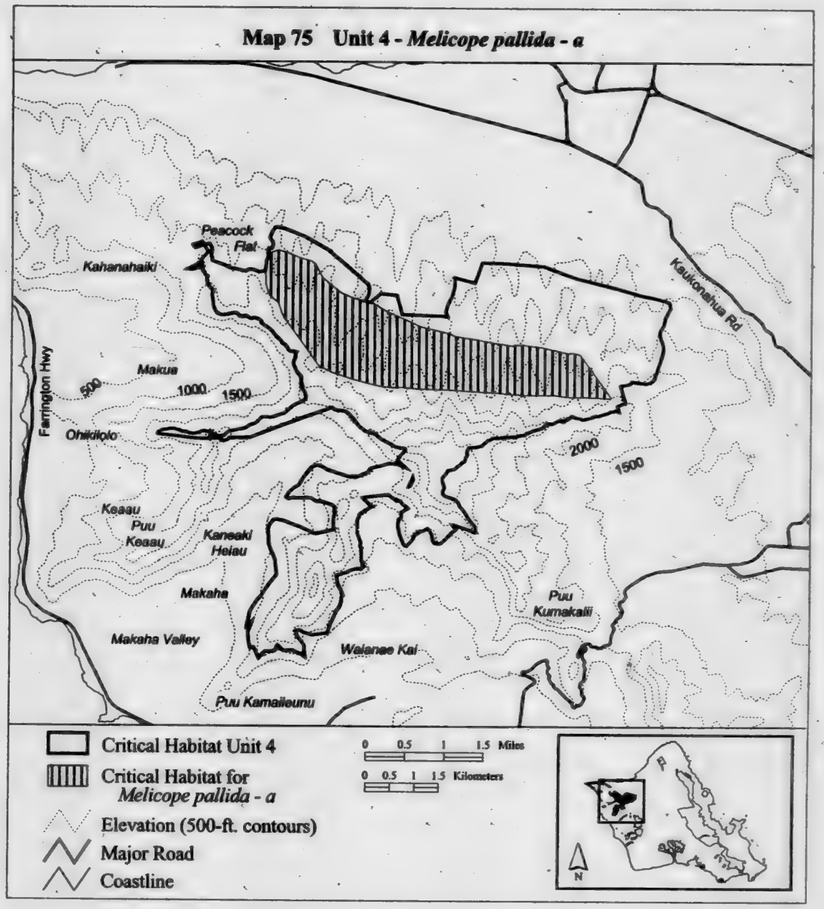


(75) Oahu 4—*Melicope pallida*—a (854 ha; 2,111 ac)

(i) Unit consists of the following 60 boundary points: Start at 589777, 2380936; 589797, 2380951; 589984, 2380951; 590370, 2380907; 590625, 2380855; 590896, 2380791; 591007, 2380799; 591152, 2380764; 591657, 2380042; 591778, 2379883; 591708, 2379867; 591489, 2379879; 590896, 2379887; 590645, 2379923; 590318, 2379927; 589996, 2379927; 589850, 2379946; 589851, 2379932; 589475, 2379972; 589084, 2379988; 588459, 2380033; 587823, 2380056; 587497, 2380083; 587377, 2380073; 587131, 2380093; 586901, 2380138; 586520, 2380233; 586079, 2380388; 585871, 2380488; 585869, 2380479; 585809, 2380534; 585548, 2380889; 585238, 2381315; 585107, 2381481; 585052, 2381586; 584977, 2381806; 584872, 2381891; 584777, 2381997; 584726, 2382157; 584716, 2382428; 584736, 2382653; 584812, 2382818; 584992, 2382873; 585177, 2382808; 585443, 2382708; 585653, 2382648; 585734, 2382583; 585794, 2382473; 585889, 2382302; 586009, 2382202; 586281, 2381985; 586535, 2381886; 586896, 2381796; 587227, 2381611; 587617, 2381441; 587888, 2381320; 588459, 2381180; 588619, 2381120; 589010, 2381065; 589376, 2381000; return to starting point.

(ii) **Note:** Map 75 follows:

Map 75 Unit 4 - *Melicope pallida - a*

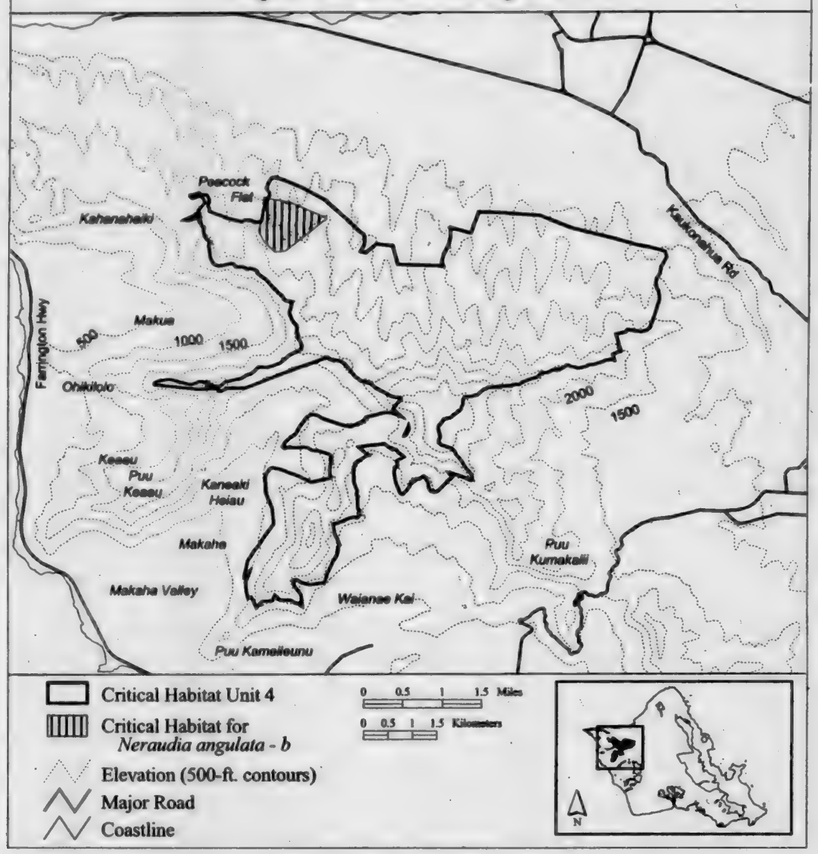


(76) Oahu 4—*Neraudia angulata*—b (90 ha; 222 ac)

(i) Unit consists of the following 8 boundary points: Start at 584778, 2382903; 585296, 2382829; 586055, 2382495; 585203, 2381848; 585000, 2381829; 584778, 2382033; 584648, 2382255; 584740, 2382533; return to starting point.

(ii) **Note:** Map 76 follows:

Map 76 Unit 4 - *Neraudia angulata - b*

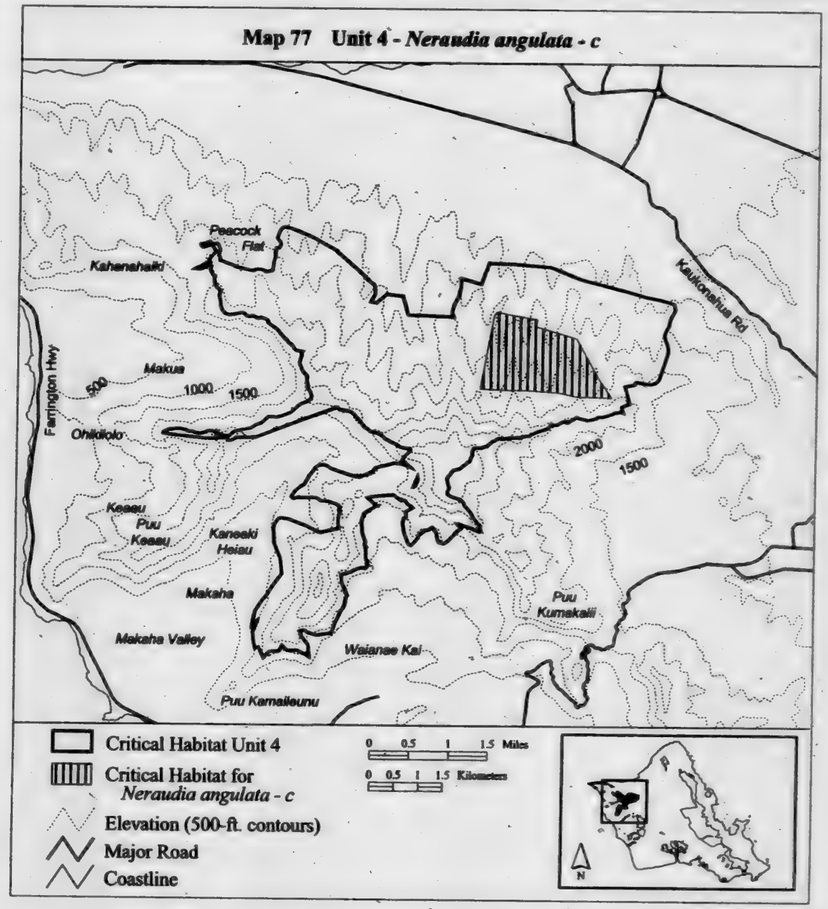


(77) Oahu 4—*Neraudia angulata*—c (298 ha; 736 ac)

(i) Unit consists of the following 14 boundary points: Start at 590133, 2381342; 590967, 2381106; 591416, 2380304; 591694, 2379888; 590985, 2379908; 590605, 2379986; 590337, 2380011; 589953, 2380039; 589541, 2380039; 588997, 2380062; 589266, 2381566; 589328, 2381633; 589651, 2381572; 590151, 2381490; return to starting point.

(ii) **Note:** Map 77 follows:

Map 77 Unit 4 - *Neraudia angulata - c*

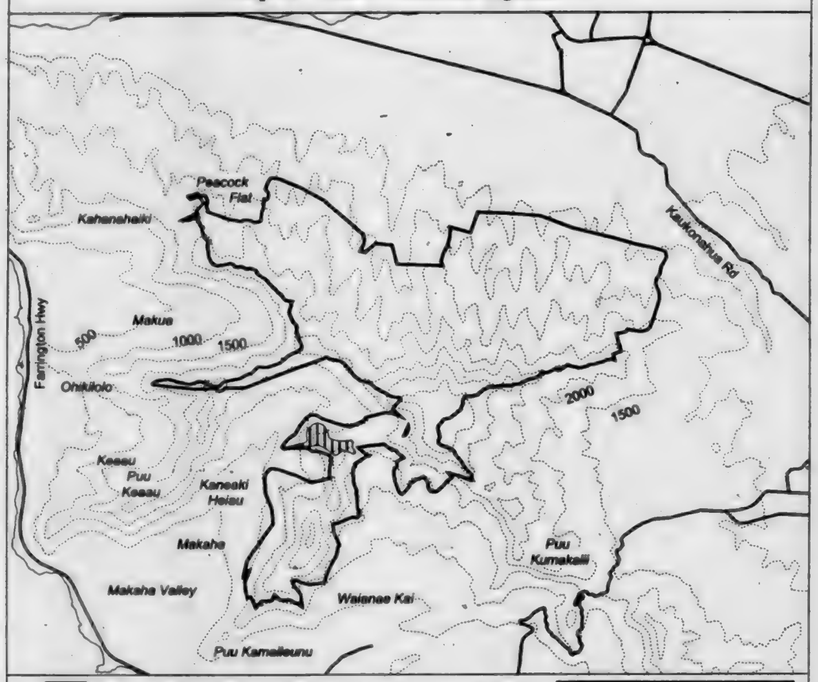


(78) Oahu 4—*Neraudia angulata*—d (33 ha; 81 ac)

(i) Unit consists of the following 54 boundary points: Start at 586062, 2378210; 586099, 2378126; 586119, 2378071; 586119, 2378029; 586159, 2377987; 586297, 2377953; 586383, 2377948; 586497, 2377955; 586574, 2377955; 586606, 2377950; 586606, 2377911; 586603, 2377854; 586603, 2377812; 586628, 2377790; 586653, 2377760; 586668, 2377728; 586660, 2377693; 586618, 2377681; 586569, 2377711; 586502, 2377740; 586421, 2377765; 586381, 2377738; 586339, 2377711; 586299, 2377676; 586255, 2377659; 586215, 2377676; 586159, 2377721; 586104, 2377760; 586067, 2377792; 586170, 2377800; 585986, 2377834; 585941, 2377856; 585865, 2377866; 585795, 2377859; 585736, 2377844; 585627, 2377849; 585504, 2377854; 585368, 2377827; 585321, 2377834; 585333, 2377856; 585373, 2377859; 585511, 2377889; 585623, 2377921; 585672, 2377938; 585677, 2377982; 585667, 2378019; 585657, 2378104; 585657, 2378103; 585682, 2378170; 585724, 2378225; 585793, 2378279; 585889, 2378321; 585954, 2378299; 586030, 2378259; return to starting point.

(ii) **Note:** Map 78 follows:

Map 78 Unit 4 - *Neraudia angulata* - d

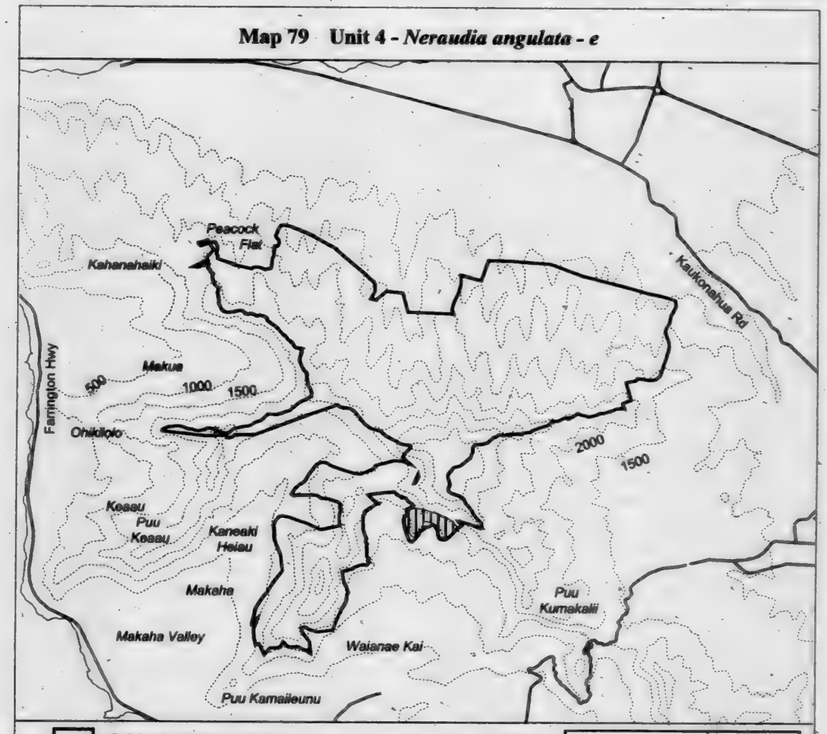


(79) Oahu 4—*Neraudia angulata*—e (40 ha; 98 ac)

(i) Unit consists of the following 36 boundary points: Start at 587733, 2377543; 587811, 2377534; 587910, 2377510; 587991, 2377480; 588125, 2377444; 588215, 2377414; 588302, 2377369; 588425, 2377291; 588473, 2377235; 588539, 2377142; 588500, 2377073; 588041, 2376971; 588335, 2376914; 588275, 2376893; 588194, 2376911; 588152, 2376980; 588137, 2377091; 588080, 2377181; 587991, 2377253; 587925, 2377271; 587847, 2377265; 587841, 2377196; 587832, 2377127; 587781, 2377104; 587727, 2376971; 587670, 2376950; 587625, 2376968; 587574, 2377022; 587508, 2377103; 587475, 2377262; 587475, 2377315; 587493, 2377375; 587520, 2377441; 587547, 2377480; 587592, 2377525; 587673, 2377552; return to starting point.

(ii) **Note:** Map 79 follows:

Map 79 Unit 4 - *Neraudia angulata* - e

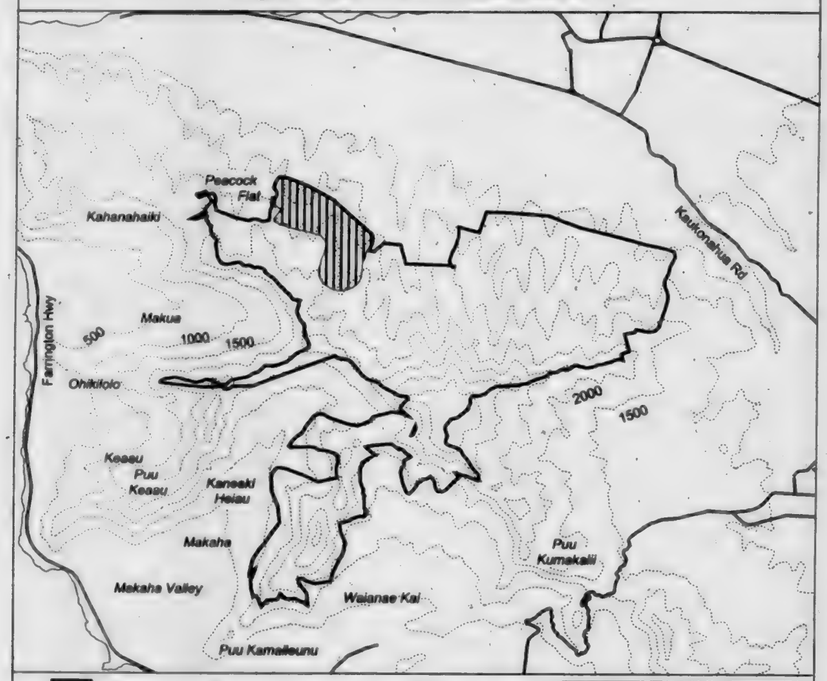


(80) Oahu 4—*Nototrichium humile*—b (230 ha; 568 ac)

(i) Unit consists of the following 60 boundary points: Start at 586045, 2382855; 586039, 2382820; 586045, 2382834; 586658, 2382294; 586720, 2382235; 586802, 2382184; 586833, 2382084; 586826, 2381980; 586761, 2381863; 586692, 2381770; 586672, 2381688; 586627, 2381574; 586613, 2381419; 586606, 2381330; 586589, 2381251; 586558, 2381192; 586437, 2381085; 586307, 2381023; 586159, 2381010; 586052, 2381030; 585973, 2381058; 585859, 2381137; 585773, 2381237; 585732, 2381333; 585721, 2381406; 585759, 2381536; 585783, 2381629; 585835, 2381746; 585866, 2381870; 585866, 2381994; 585842, 2382049; 585769, 2382137; 585756, 2382142; 585518, 2382211; 585257, 2382266; 584961, 2382349; 584809, 2382424; 584809, 2382462; 584830, 2382504; 584899, 2382583; 584933, 2382617; 584950, 2382652; 584950, 2382672; 584919, 2382693; 584875, 2382721; 584830, 2382741; 584809, 2382793; 584809, 2382844; 584840, 2382910; 584871, 2382975; 584864, 2383037; 584823, 2383068; 584802, 2383113; 584813, 2383154; 584857, 2383264; 584906, 2383326; 584974, 2383330; 585119, 2383295; 585257, 2383244; 585508, 2383141; return to starting point.

(ii) **Note:** Map 80 follows:

Map 80 Unit 4 - *Nototrichium humile* - *b*

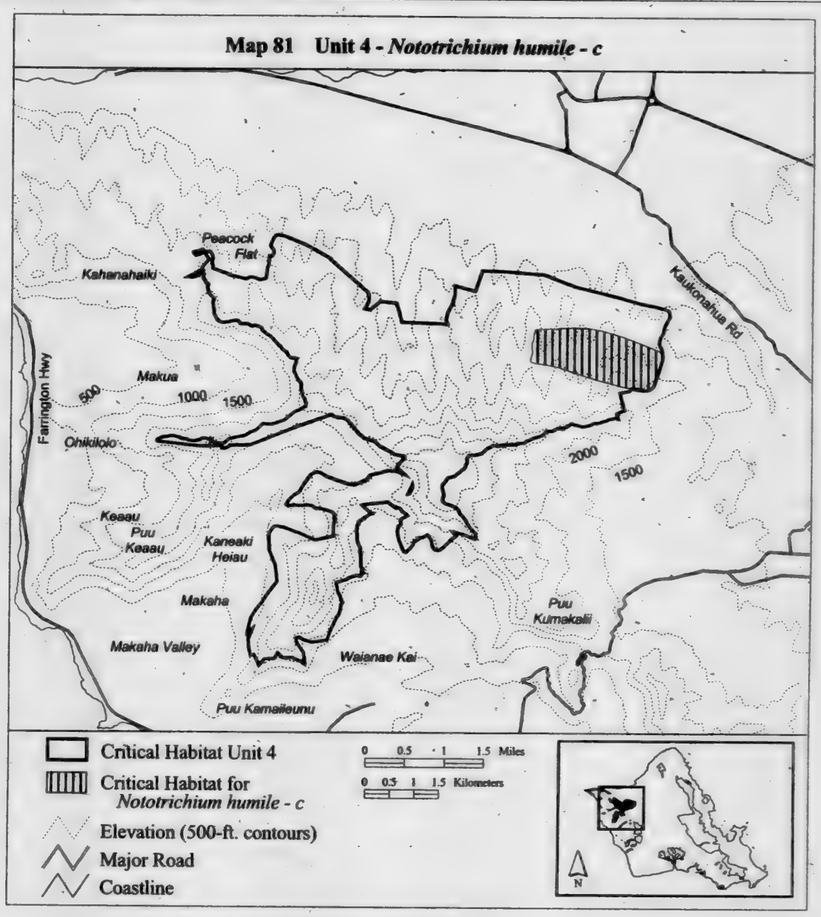


(81) Oahu 4—*Nototrichium humile*—c (237 ha; 586 ac)

(i) Unit consists of the following 29 boundary points: Start at 590280, 2381435; 591017, 2381472; 591362, 2381456; 591601, 2381407; 591990, 2381289; 592541, 2381079; 592785, 2380977; 592829, 2380868; 592829, 2380803; 592776, 2380617; 592683, 2380333; 592655, 2380260; 592582, 2380195; 592485, 2380175; 592351, 2380187; 592087, 2380232; 591844, 2380300; 591471, 2380398; 591102, 2380519; 590693, 2380657; 590555, 2380677; 590227, 2380722; 590138, 2380750; 590134, 2380815; 590166, 2380937; 590154, 2381139; 590190, 2381221; 590207, 2381322; 590235, 2381423; return to starting point.

(ii) **Note:** Map 81 follows:

Map 81 Unit 4 - *Nototrichium humile* - *c*

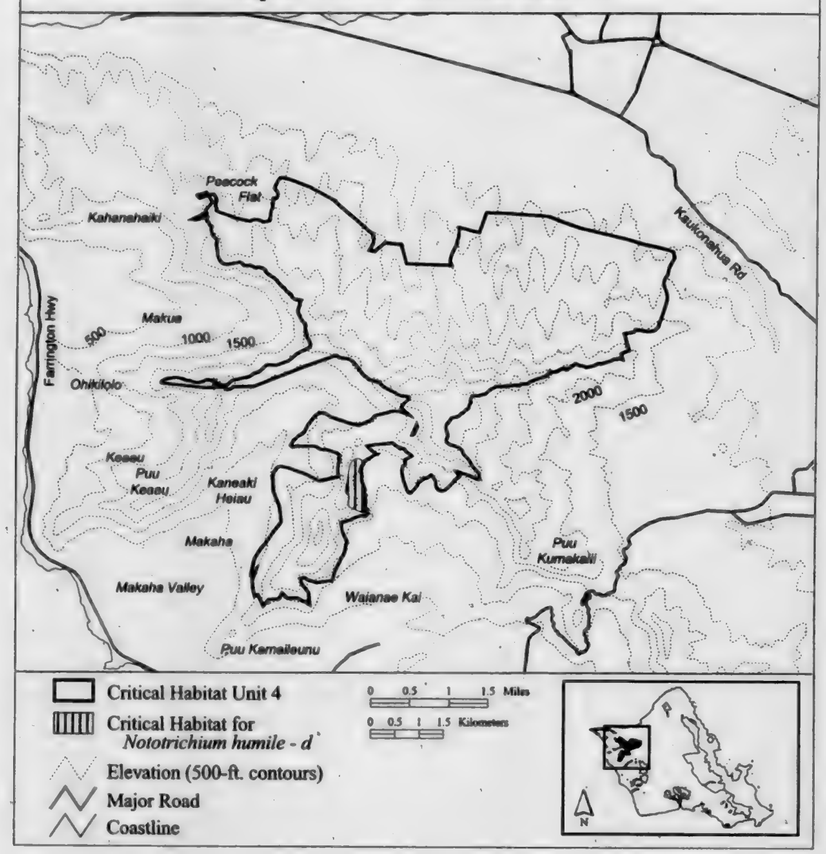


(82) Oahu 4—*Nototrichium humile*—d (30 ha; 75 ac)

(i) Unit consists of the following 62 boundary points: Start at 586425, 2377484; 586427, 2377501; 586520, 2377552; 586563, 2377551; 586598, 2377533; 586651, 2377487; 586658, 2377456; 586656, 2377428; 586593, 2377382; 586567, 2377321; 586581, 2377258; 586602, 2377207; 586616, 2377142; 586623, 2377093; 586669, 2376975; 586688, 2376938; 586693, 2376910; 586688, 2376891; 586679, 2376875; 586674, 2376860; 586676, 2376835; 586700, 2376824; 586712, 2376800; 586700, 2376763; 586690, 2376753; 586677, 2376744; 586679, 2376696; 586667, 2376665; 586653, 2376651; 586646, 2376614; 586653, 2376575; 586653, 2376544; 586653, 2376511; 586663, 2376498; 586688, 2376481; 586712, 2376454; 586712, 2376442; 586686, 2376439; 586635, 2376453; 586563, 2376482; 586477, 2376518; 586379, 2376561; 586367, 2376581; 586353, 2376609; 586339, 2376626; 586342, 2376658; 586358, 2376709; 586372, 2376744; 586367, 2376795; 586355, 2376812; 586327, 2376826; 586309, 2376845; 586295, 2376863; 586288, 2376886; 586292, 2376905; 586295, 2376940; 586316, 2377031; 586337, 2377100; 586337, 2377159; 586348, 2377258; 586374, 2377389; 586404, 2377456; return to starting point.

(ii) **Note:** Map 82 follows:

Map 82 Unit 4 - *Nototrichium humile - d*

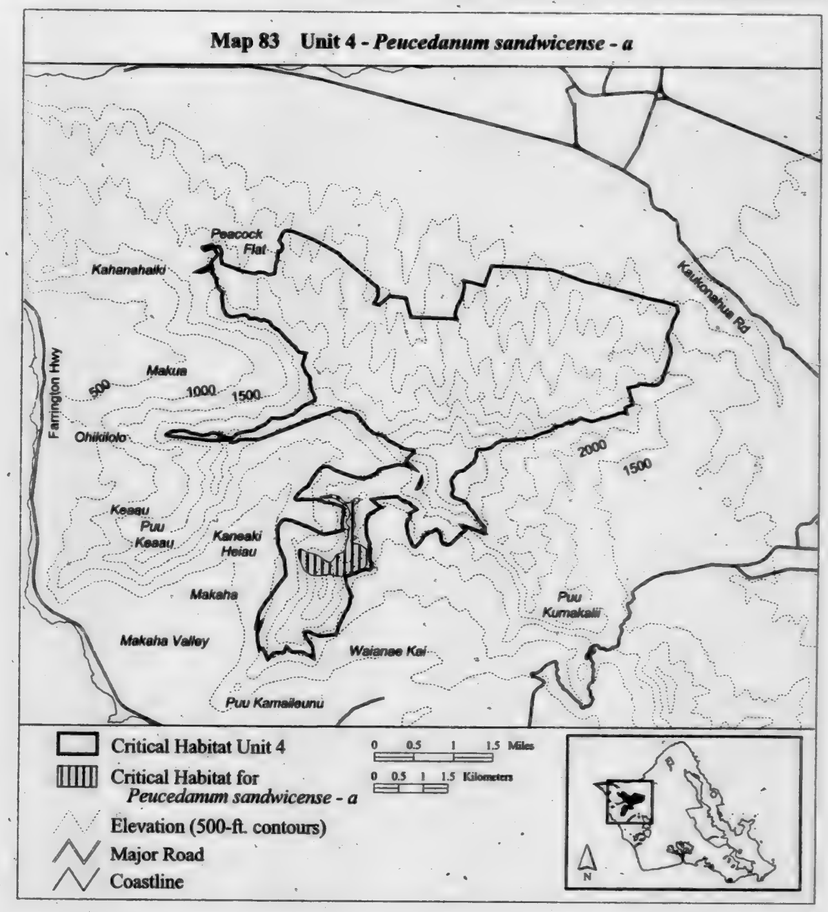


(83) Oahu 4—*Peucedanum sandwicense*—a (75 ha; 186 ac)

(i) Unit consists of the following 100 boundary points: Start at 585425, 2376724; 585534, 2376705; 585646, 2376668; 585722, 2376612; 585771, 2376573; 585821, 2376550; 585890, 2376523; 585926, 2376540; 585969, 2376596; 585999, 2376645; 586035, 2376695; 586137, 2376718; 586200, 2376784; 586206, 2376860; 586216, 2376932; 586253, 2377015; 586256, 2377127; 586266, 2377186; 586274, 2377236; 586243, 2377278; 586203, 2377338; 586236, 2377367; 586266, 2377427; 586286, 2377509; 586266, 2377582; 586239, 2377654; 586140, 2377737; 586012, 2377816; 585910, 2377852; 585831, 2377846; 585758, 2377842; 585712, 2377852; 585682, 2377872; 585831, 2377888; 585887, 2377905; 585926, 2377911; 586012, 2377888; 586071, 2377869; 586121, 2377806; 586157, 2377780; 586223, 2377747; 586279, 2377743; 586335, 2377773; 586371, 2377816; 586421, 2377846; 586477, 2377836; 586487, 2377819; 586474, 2377789; 586454, 2377760; 586431, 2377743; 586398, 2377727; 586378, 2377681; 586342, 2377641; 586365, 2377559; 586365, 2377529; 586371, 2377417; 586378, 2377358; 586404, 2377302; 586404, 2377265; 586404, 2377259; 586399, 2377257; 586368, 2377212; 586348, 2377163; 586345, 2377074; 586414, 2377054; 586431, 2377038; 586424, 2377021; 586388, 2376992; 586342, 2376972; 586335, 2376942; 586394, 2376912; 586464, 2376903; 586520, 2376883; 586602, 2376820; 586645, 2376790; 586645, 2376734; 586642, 2376639; 586642, 2376556; 586642, 2376474; 586609, 2376418; 586546, 2376375; 586450, 2376355; 586352, 2376299; 586312, 2376266; 586193, 2376246; 586045, 2376240; 585893, 2376273; 585847, 2376273; 585778, 2376260; 585590, 2376243; 585511, 2376256; 585425, 2376306; 585362, 2376368; 585326, 2376434; 585280, 2376550; 585250, 2376629; 585240, 2376698; 585240, 2376764; 585273, 2376790; 585313, 2376790; return to starting point.

(ii) **Note:** Map 83 follows:

Map 83 Unit 4 - *Peucedanum sandwicense - a*

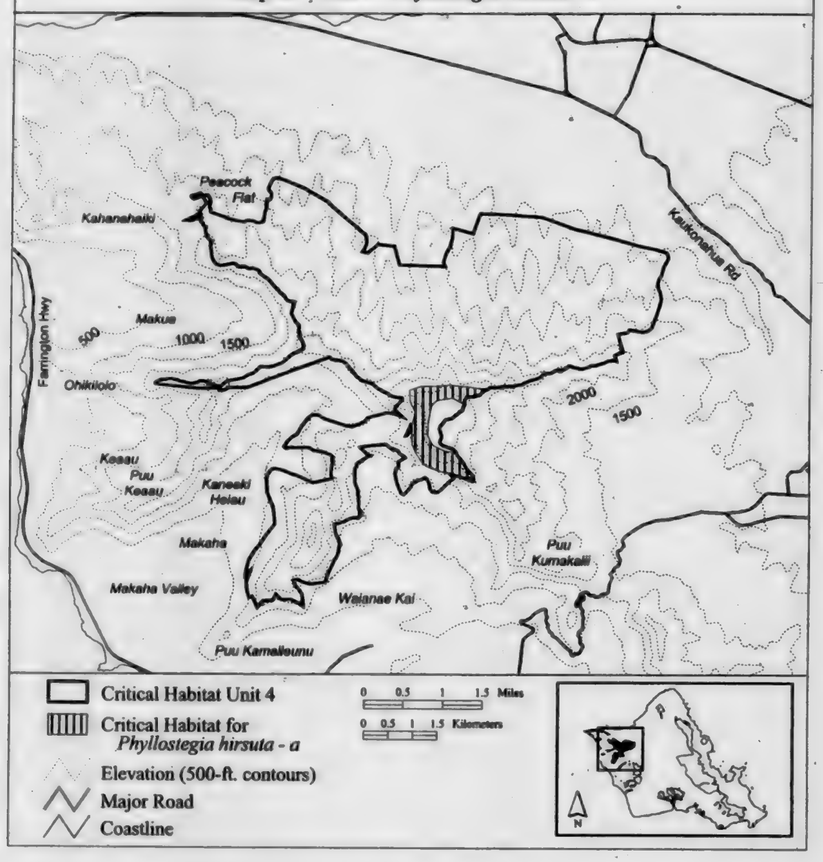


(84) Oahu 4—*Phyllostegia hirsuta*—a (114 ha; 282 ac)

(i) Unit consists of the following 75 boundary points: Start at 588849, 2378699; 588837, 2378713; 588731, 2378766; 588729, 2378762; 588606, 2378831; 588478, 2378811; 588296, 2378786; 588179, 2378678; 588110, 2378315; 588105, 2378060; 588218, 2377868; 588463, 2377750; 588677, 2377723; 588684, 2377709; 588691, 2377689; 588691, 2377688; 588708, 2377657; 588735, 2377626; 588736, 2377625; 588762, 2377601; 588787, 2377570; 588816, 2377534; 588848, 2377484; 588857, 2377459; 588858, 2377458; 588877, 2377428; 588894, 2377402; 588911, 2377378; 588912, 2377378; 589020, 2377256; 589028, 2377236; 589171, 2377144; 589039, 2377141; 589026, 2377130; 588768, 2377229; 588439, 2377308; 588125, 2377421; 587997, 2377514; 587864, 2377696; 587791, 2377873; 587791, 2378138; 587791, 2378285; 587845, 2378487; 587845, 2378561; 587741, 2378747; 587732, 2378978; 587958, 2379062; 588360, 2379076; 588542, 2379091; 588860, 2379052; 588866, 2379066; 589269, 2379008; 589288, 2379001; 589286, 2379001; 589285, 2379001; 589276, 2378998; 589275, 2378998; 589245, 2378974; 589217, 2378943; 589164, 2378898; 589149, 2378886; 589123, 2378879; 589060, 2378862; 589009, 2378857; 588910, 2378852; 588910, 2378851; 588899, 2378848; 588898, 2378848; 588887, 2378841; 588887, 2378840; 588862, 2378802; 588851, 2378772; 588851, 2378763; 588851, 2378746; 588855, 2378710; return to starting point.

(ii) **Note:** Map 84 follows:

Map 84 Unit 4 - *Phyllostegia hirsuta - a*

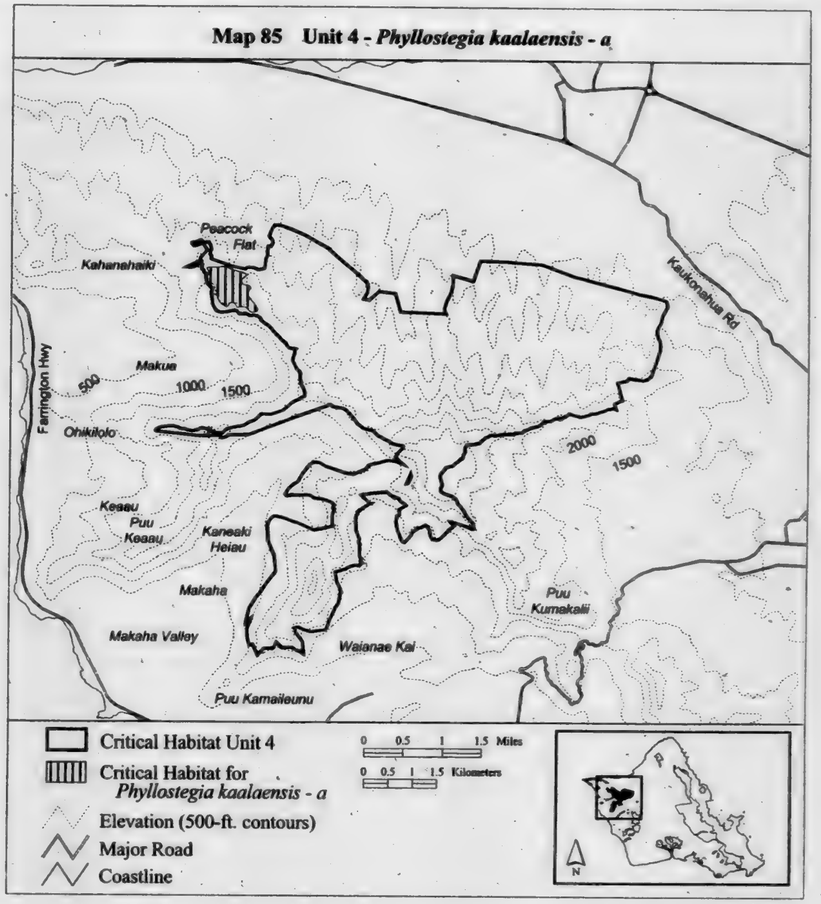


(85) Oahu 4—*Phyllostegia kaalaensis*—a (57 ha; 141 ac)

(i) Unit consists of the following 79 boundary points: Start at 583531, 2382445; 583582, 2382469; 583735, 2382475; 583912, 2382492; 584051, 2382414; 584180, 2382380; 584235, 2382373; 584358, 2382316; 584293, 2382251; 584242, 2382203; 584245, 2382149; 584289, 2382118; 584378, 2382101; 584415, 2382077; 584436, 2382170; 584388, 2381986; 584371, 2381928; 584381, 2381877; 584439, 2381805; 584510, 2381724; 584572, 2381629; 584561, 2381574; 584504, 2381554; 584436, 2381550; 584371, 2381612; 584327, 2381649; 584276, 2381666; 584225, 2381663; 584153, 2381642; 584129, 2381707; 584085, 2381741; 584024, 2381741; 583993, 2381720; 583976, 2381676; 583959, 2381663; 583925, 2381663; 583895, 2381690; 583864, 2381703; 583827, 2381731; 583800, 2381765; 583772, 2381816; 583762, 2381884; 583687, 2381921; 583629, 2381945; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382045; 583626, 2382059; 583625, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583523, 2382239; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382317; 583544, 2382316; 583592, 2382339; 583582, 2382377; return to starting point.

(ii) **Note:** Map 85 follows:

Map 85 Unit 4 - *Phyllostegia kaalaensis - a*

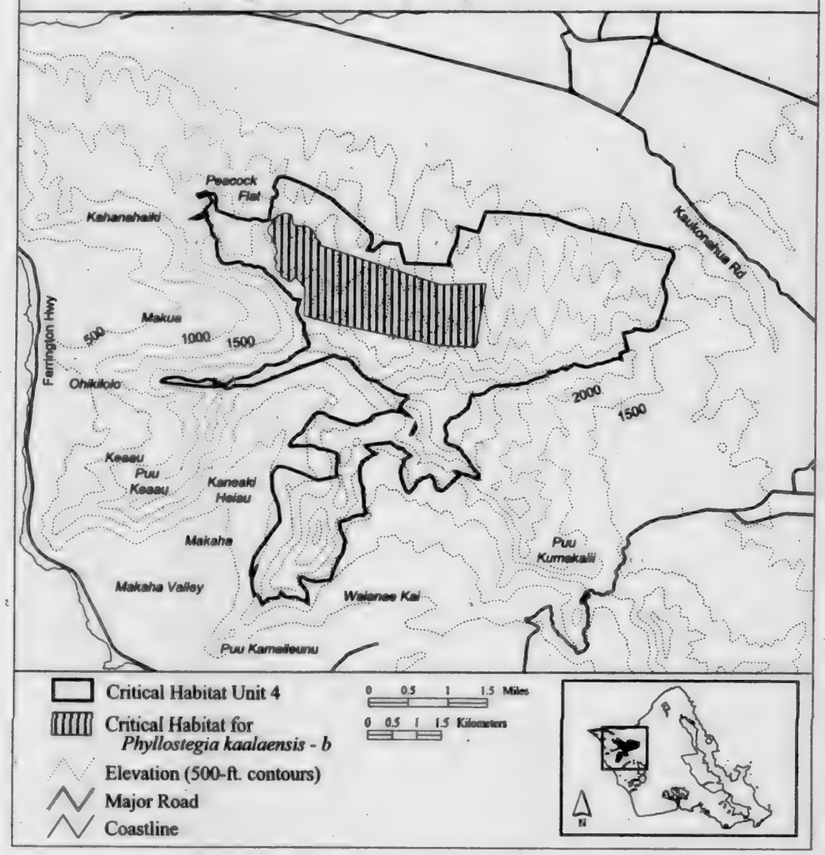


(86) Oahu 4—*Phyllostegia kaalaensis*—b (589 ha; 1,455 ac)

(i) Unit consists of the following 58 boundary points: Start at 585195, 2382431; 585205, 2382373; 585239, 2382339; 585396, 2382316; 585467, 2382316; 585538, 2382299; 585613, 2382234; 585657, 2382142; 585688, 2382081; 585766, 2381992; 585778, 2381927; 588229, 2381124; 589161, 2381146; 588965, 2379889; 588943, 2379824; 588164, 2379867; 585976, 2380322; 585455, 2380474; 585471, 2381065; 585447, 2381088; 585402, 2381112; 585385, 2381142; 585375, 2381176; 585331, 2381200; 585304, 2381244; 585260, 2381251; 585222, 2381248; 585202, 2381203; 585151, 2381173; 585107, 2381197; 585062, 2381244; 585001, 2381265; 584960, 2381305; 584960, 2381363; 584909, 2381390; 584858, 2381431; 584851, 2381516; 584889, 2381571; 584845, 2381598; 584817, 2381652; 584841, 2381707; 584882, 2381758; 584882, 2381809; 584848, 2381904; 584865, 2381965; 584766, 2382006; 584766, 2382091; 584749, 2382128; 584702, 2382173; 584685, 2382241; 584702, 2382292; 584766, 2382370; 584773, 2382438; 584838, 2382489; 584919, 2382530; 585025, 2382581; 585083, 2382581; 585175, 2382540; return to starting point.

(ii) **Note:** Map 86 follows:

Map 86 Unit 4 - *Phyllostegia kaalaensis - b*

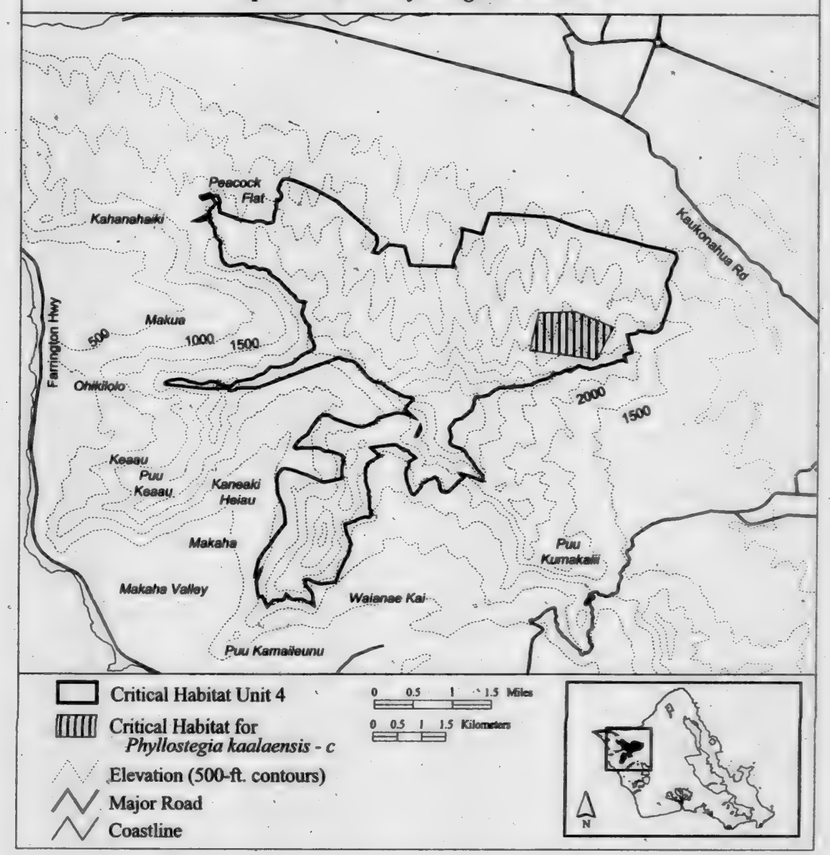


(87) Oahu 4—Phyllostegia kaalaensis—c (123 ha; 317 ac)

(i) Unit consists of the following 6 boundary points: Start at 589983, 2379802; 590157, 2380582; 590915, 2380104; 591695, 2380279; 591348, 2379629; 590157, 2379781; return to starting point.

(ii) **Note:** Map 87 follows:

Map 87 Unit 4 - *Phyllostegia kaalaensis - c*

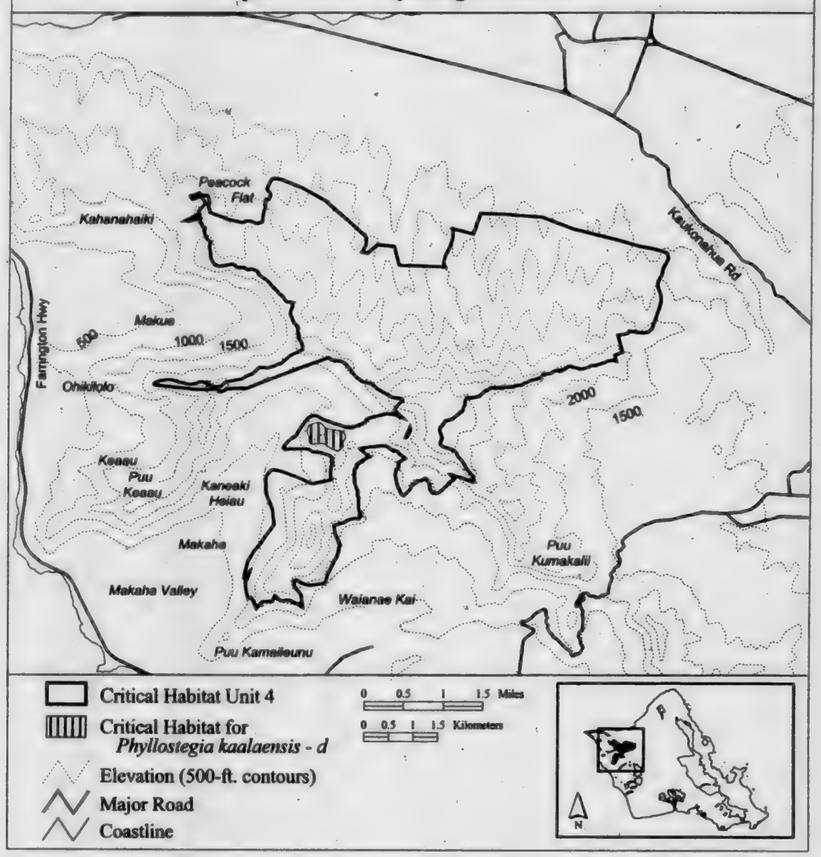


(88) Oahu 4—*Phyllostegia kaalaensis*—d (28 ha; 69 ac)

(i) Unit consists of the following 24 boundary points: Start at 586029, 2378224; 586338, 2378174; 586402, 2378136; 586433, 2378075; 586437, 2378026; 586410, 2377988; 586372, 2377946; 586391, 2377851; 586364, 2377824; 586292, 2377767; 586151, 2377809; 586105, 2377847; 586037, 2377893; 585972, 2377931; 585843, 2377908; 585744, 2377912; 585698, 2377946; 585694, 2378052; 585668, 2378121; 585652, 2378201; 585691, 2378273; 585789, 2378323; 585896, 2378353; 585961, 2378315; return to starting point.

(ii) **Note:** Map 88 follows:

Map 88 Unit 4 - *Phyllostegia kaalaensis - d*

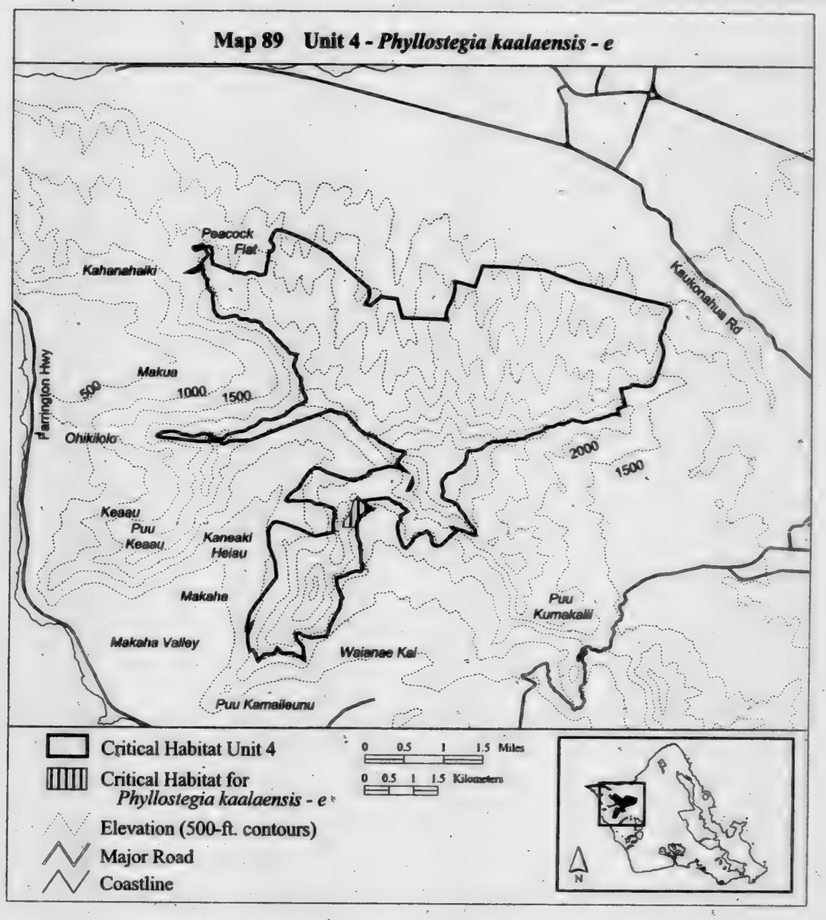


(89) Oahu 4—*Phyllostegia kaalaensis*—e (16 ha; 39 ac)

(i) Unit consists of the following 20 boundary points: Start at 586900, 2377643; 586901, 2377642; 586889, 2377636; 586880, 2377632; 586685, 2377514; 586685, 2377503; 586677, 2377497; 586668, 2377496; 586612, 2377415; 586592, 2377326; 586593, 2377324; 586590, 2377318; 586579, 2377274; 586326, 2377285; 586348, 2377411; 586438, 2377509; 586507, 2377643; 586540, 2377810; 586637, 2377900; 586905, 2377647; return to starting point.

(ii) **Note:** Map 89 follows:

Map 89 Unit 4 - *Phyllostegia kaalaensis - e*

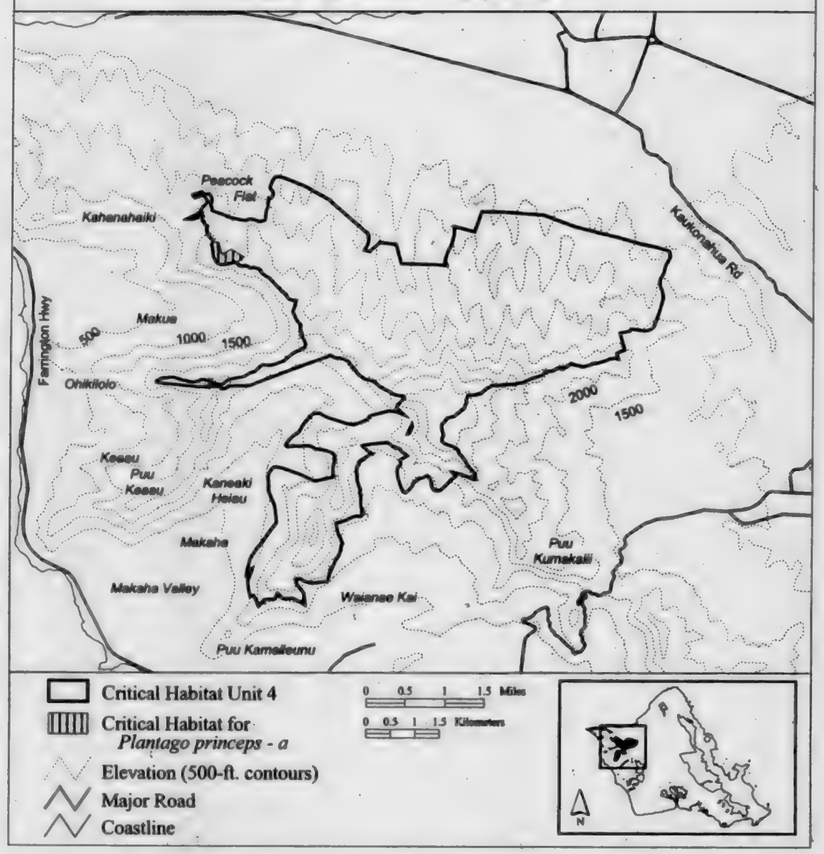


(90) Oahu 4—*Plantago princeps*—a (15 ha; 37 ac)

(i) Unit consists of the following 33 boundary points: Start at 583649, 2382009; 583774, 2381990; 583830, 2381756; 584042, 2381856; 584265, 2381711; 584242, 2381633; 584075, 2381589; 583819, 2381566; 583676, 2381676; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381774; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381930; 583629, 2381945; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; return to starting point.

(ii) **Note:** Map 90 follows:

Map 90 Unit 4 - *Plantago princeps - a*

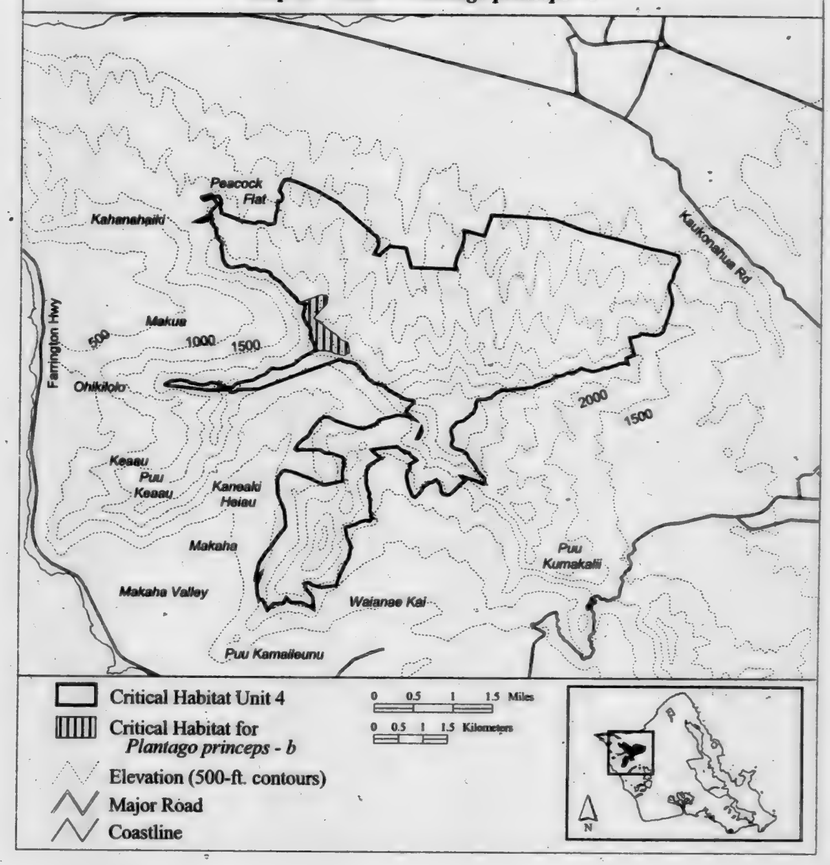


(91) Oahu 4—*Plantago princeps*—b (53 ha; 130 ac)

(i) Unit consists of the following 103 boundary points: Start at 585306, 2380537; 585297, 2380570; 585300, 2380580; 585303, 2380592; 585309, 2380613; 585315, 2380636; 585327, 2380677; 585338, 2380712; 585339, 2380712; 585344, 2380738; 585346, 2380754; 585345, 2380767; 585345, 2380779; 585348, 2380789; 585348, 2380790; 585344, 2380798; 585344, 2380799; 585338, 2380802; 585329, 2380804; 585328, 2380804; 585308, 2380806; 585279, 2380811; 585245, 2380818; 585228, 2380821; 585222, 2380825; 585222, 2380826; 585273, 2380841; 585474, 2380914; 585671, 2380987; 585774, 2380979; 585798, 2380918; 585786, 2380806; 585636, 2380648; 585535, 2380529; 585522, 2380526; 585525, 2380496; 585675, 2380429; 585698, 2380393; 585835, 2380275; 585966, 2380171; 586081, 2380063; 586216, 2379998; 586255, 2379886; 586259, 2379805; 586166, 2379736; 585997, 2379759; 585835, 2379824; 585685, 2379836; 585615, 2379836; 585621, 2379827; 585482, 2379787; 585547, 2379830; 585547, 2379831; 585548, 2379831; 585558, 2379891; 585558, 2379892; 585557, 2379892; 585548, 2379922; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585546, 2379929; 585545, 2379931; 585539, 2379943; 585531, 2379963; 585523, 2379982; 585522, 2379982; 585511, 2380001; 585498, 2380021; 585488, 2380040; 585483, 2380053; 585478, 2380071; 585475, 2380089; 585476, 2380103; 585474, 2380125; 585474, 2380128; 585472, 2380137; 585468, 2380149; 585465, 2380160; 585461, 2380173; 585457, 2380185; 585456, 2380203; 585456, 2380223; 585459, 2380252; 585459, 2380269; 585456, 2380281; 585451, 2380295; 585443, 2380310; 585430, 2380325; 585430, 2380326; 585408, 2380344; 585393, 2380361; 585375, 2380388; 585364, 2380407; 585353, 2380428; 585342, 2380452; 585330, 2380478; 585322, 2381797; 585318, 2380512; 585308, 2380533; return to starting point.

(ii) **Note:** Map 91 follows:

Map 91 Unit 4 - *Plantago princeps - b*

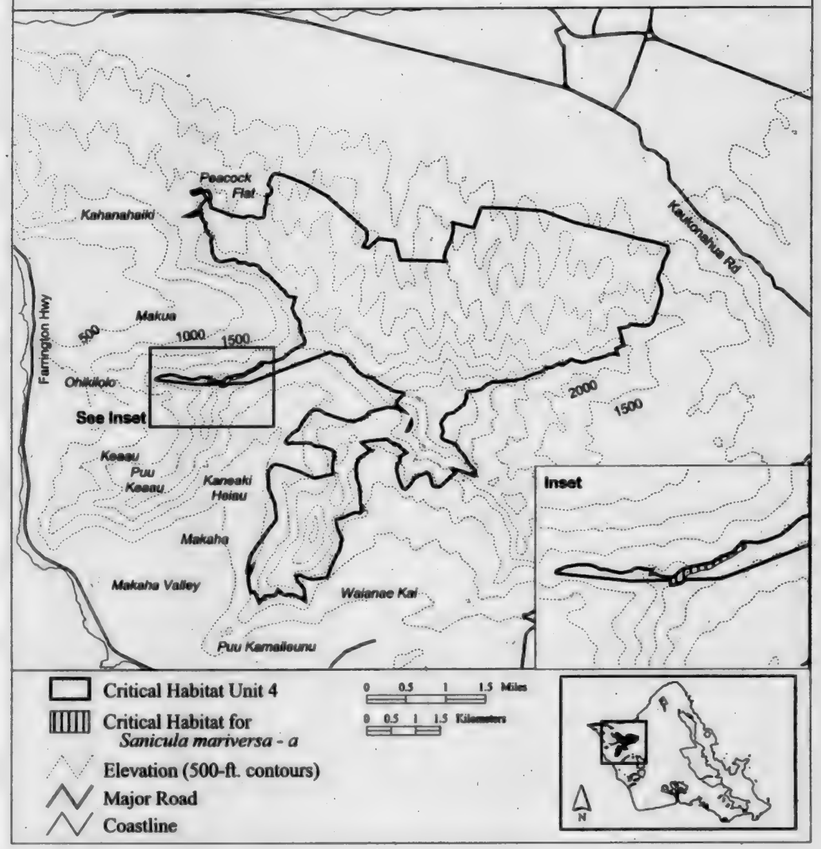


(92) Oahu 4—*Sanicula mariversa*—a (7 ha; 17 ac)

(i) Unit consists of the following 41 boundary points: Start at 584679, 2379459; 584686, 2379451; 584711, 2379404; 584703, 2379389; 584671, 2379369; 584614, 2379339; 584561, 2379299; 584536, 2379282; 584467, 2379252; 584407, 2379220; 584349, 2379185; 584305, 2379157; 584272, 2379145; 584188, 2379132; 584133, 2379110; 584043, 2379088; 584011, 2379043; 583988, 2379005; 583966, 2378990; 583936, 2378985; 583876, 2378960; 583839, 2378973; 583836, 2378998; 583835, 2379022; 583854, 2379060; 583876, 2379060; 583877, 2379061; 583947, 2379131; 583977, 2379150; 584086, 2379180; 584226, 2379210; 584256, 2379210; 584326, 2379230; 584327, 2379230; 584417, 2379290; 584526, 2379330; 584527, 2379330; 584557, 2379350; 584657, 2379450; 584667, 2379460; return to starting point.

(ii) **Note:** Map 92 follows:

Map 92 Unit 4 - *Sanicula mariversa - a*

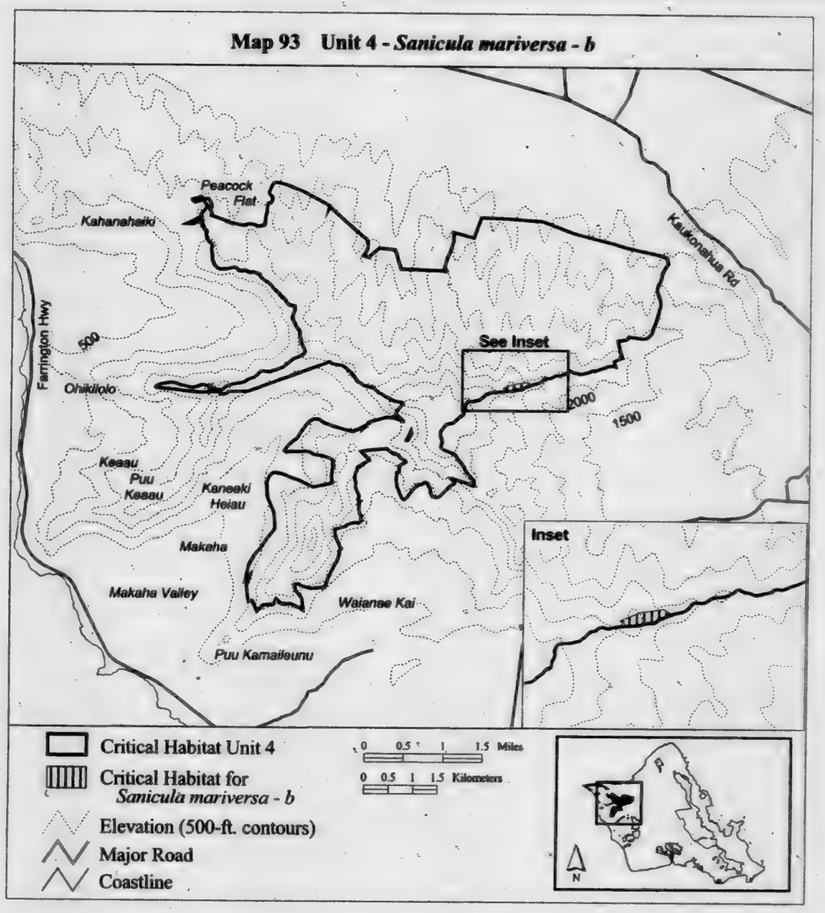


(93) Oahu 4—*Sanicula mariversa*—b (6 ha; 15 ac)

(i) Unit consists of the following 23 boundary points: Start at 589618, 2379132; 589854, 2379223; 590128, 2379259; 590218, 2379199; 590191, 2379191; 590084, 2379149; 590076, 2379145; 590067, 2379142; 590066, 2379141; 590039, 2379117; 590020, 2379104; 590012, 2379101; 589944, 2379099; 589907, 2379095; 589906, 2379095; 589881, 2379089; 589839, 2379075; 589839, 2379074; 589806, 2379068; 589790, 2379069; 589787, 2379069; 589747, 2379069; 589709, 2379066; return to starting point.

(ii) **Note:** Map 93 follows:

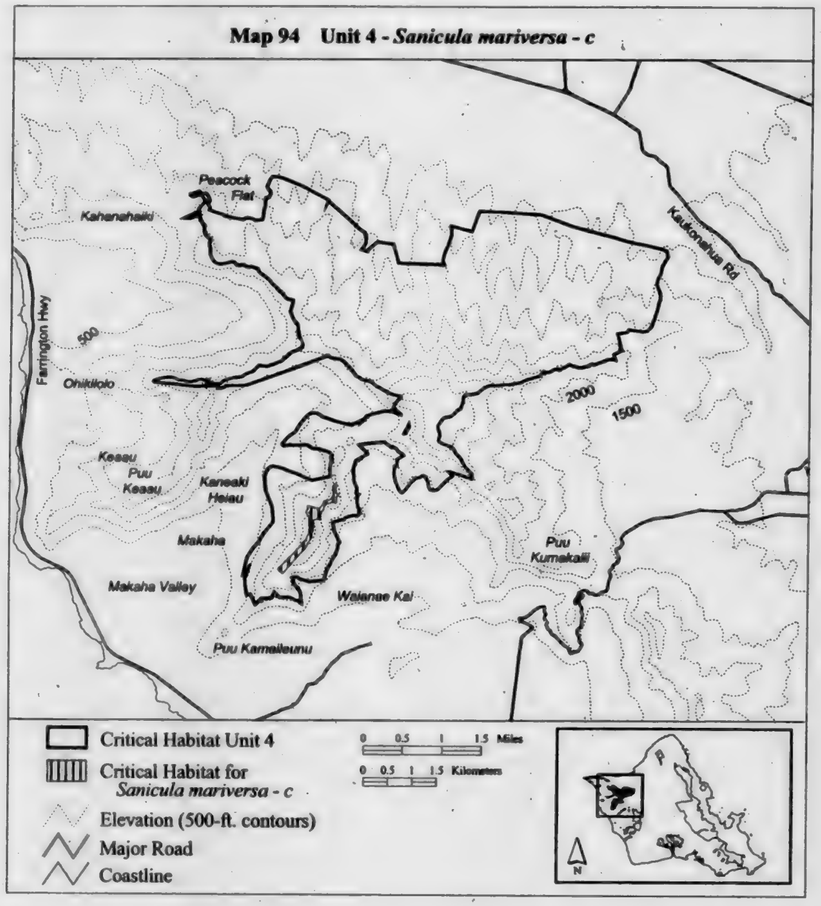
Map 93 Unit 4 - *Sanicula mariversa - b*



(94) Oahu 4—*Sanicula mariversa*—c (25 ha; 61 ac)

(i) Unit consists of the following 88 boundary points: Start at 586207, 2376926; 586193, 2376956; 586223, 2377006; 586254, 2377017; 586277, 2377004; 586255, 2376972; 586259, 2376901; 586261, 2376860; 586261, 2376842; 586298, 2376818; 586316, 2376808; 586300, 2376783; 586275, 2376759; 586272, 2376738; 586272, 2376692; 586273, 2376654; 586268, 2376631; 586241, 2376652; 586200, 2376659; 586162, 2376649; 586136, 2376633; 586082, 2376633; 586039, 2376593; 586011, 2376533; 586005, 2376472; 585975, 2376466; 585966, 2376447; 585962, 2376420; 585936, 2376400; 585928, 2376382; 585928, 2376361; 585944, 2376343; 585948, 2376325; 585948, 2376300; 585939, 2376293; 585914, 2376293; 585878, 2376298; 585855, 2376298; 585819, 2376282; 585805, 2376250; 585807, 2376209; 585800, 2376163; 585798, 2376102; 585791, 2376045; 585773, 2376004; 585766, 2375966; 585777, 2375927; 585746, 2375871; 585712, 2375825; 585700, 2375789; 585648, 2375707; 585601, 2375655; 585181, 2375180; 585083, 2375264; 585553, 2375761; 585592, 2375809; 585632, 2375845; 585664, 2375896; 585673, 2375941; 585719, 2376014; 585721, 2376068; 585726, 2376111; 585723, 2376172; 585721, 2376216; 585714, 2376259; 585718, 2376332; 585700, 2376370; 585669, 2376415; 585648, 2376438; 585664, 2376484; 585687, 2376509; 585680, 2376558; 585671, 2376575; 585685, 2376579; 585723, 2376577; 585791, 2376558; 585848, 2376541; 585911, 2376525; 585937, 2376531; 585984, 2376591; 586007, 2376665; 586028, 2376683; 586082, 2376686; 586136, 2376699; 586166, 2376711; 586182, 2376751; 586200, 2376777; 586209, 2376817; return to starting point.

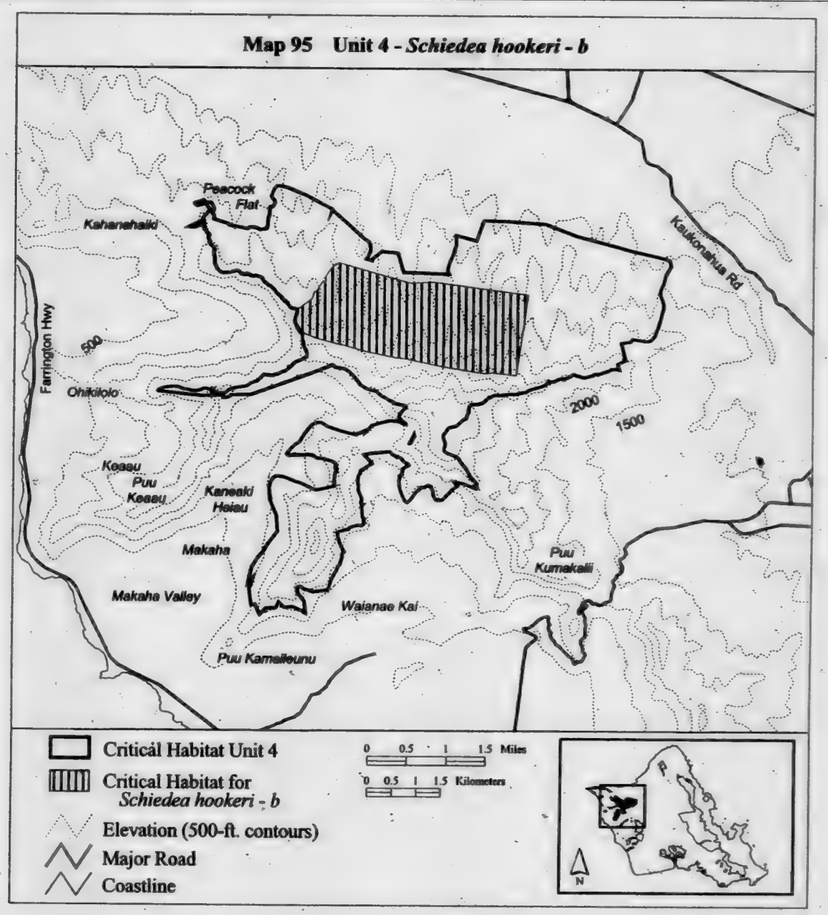
(ii) **Note:** Map 94 follows:



(95) Oahu 4—*Schiedea hookeri*—b (711 ha; 1,756 ac)

(i) Unit consists of the following 37 boundary points: Start at 585348, 2380789; 585645, 2381015; 585688, 2381163; 585739, 2381171; 585894, 2381417; 585985, 2381572; 586082, 2381691; 586191, 2381756; 586314, 2381731; 587656, 2381348; 587656, 2381345; 588119, 2381369; 590050, 2381108; 589819, 2379466; 589452, 2379514; 589308, 2379532; 589228, 2379500; 589029, 2379532; 588401, 2379630; 587999, 2379702; 587612, 2379785; 587612, 2379793; 587384, 2379814; 586747, 2379937; 586309, 2380060; 586081, 2380114; 585767, 2380205; 585499, 2380313; 585383, 2380444; 585318, 2380559; 585331, 2380689; 585338, 2380712; 585339, 2380712; 585344, 2380738; 585346, 2380754; 585345, 2380767; 585345, 2380779; return to starting point.

(ii) **Note:** Map 95 follows:



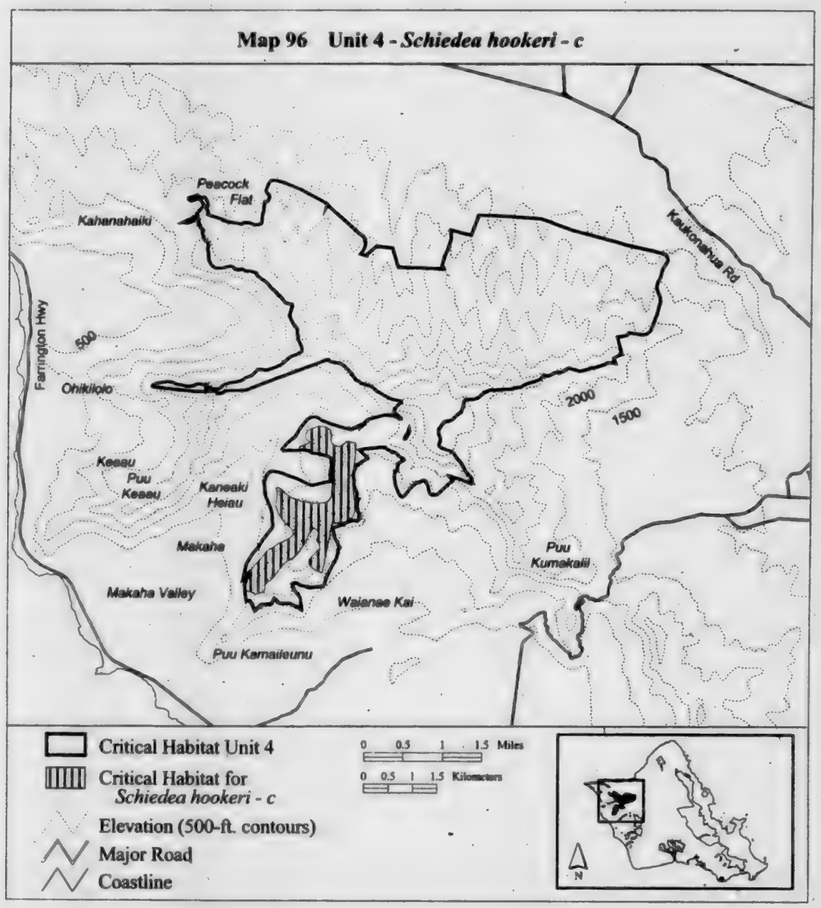
(96) Oahu 4—*Schiedea hookeri*—c (247 ha; 612 ac)

(i) Unit consists of the following 109 boundary points: Start at 586341, 2377892; 586395, 2377926; 586472, 2377998; 586539, 2377993; 586654, 2377965; 586664, 2377897; 586654, 2377768; 586640, 2377566; 586621, 2377369; 586597, 2377138; 586606, 2376989; 586635, 2376797; 586683, 2376692; 586659, 2376572; 586611, 2376451; 586568, 2376418; 586462, 2376351; 586204, 2376318; 586175, 2376255; 585995, 2375312; 585867, 2375366; 585760, 2375443; 585723, 2375506; 585727, 2375589; 585800, 2375669; 585900, 2375779; 585936, 2375813; 585930, 2375906; 585870, 2375979; 585900, 2376066; 585903, 2376149; 585860, 2376212; 585797, 2376231; 585767, 2376169; 585717, 2376116; 585693, 2376033; 585660, 2375953; 585567, 2375799; 585497, 2375719; 585403, 2375623; 585290, 2375553; 585213, 2375496; 585120, 2375363; 585044, 2375283; 584960, 2375173; 584867, 2375116; 584830, 2375070; 584837, 2375006; 584817, 2374953; 584764, 2374923; 584647, 2374886; 584554, 2374933; 584477, 2374946; 584427, 2375016; 584467, 2375153; 584524, 2375320; 584634, 2375486; 584794, 2375649; 584894, 2375779; 584984, 2375823; 585097, 2375906; 585283, 2375989; 585403, 2376086; 585383, 2376189; 585287, 2376292; 585174, 2376389; 585100, 2376502; 585037, 2376662; 585064, 2376869; 585067, 2376959; 585047, 2377042; 585097, 2377175; 585170, 2376985; 585227, 2376932; 585362, 2376832; 585396, 2376821; 585549, 2376768; 585790, 2376716; 585939, 2376730; 586073, 2376740; 586145, 2376807; 586174, 2376884; 586174, 2376965; 586184, 2377081; 586184, 2377263; 586193, 2377417; 586236, 2377600; 586107, 2377672; 585914, 2377734; 585770, 2377748; 585680, 2377807; 585653, 2377810; 585498, 2377832; 585520, 2377883; 585631, 2377934; 585700, 2377952; 585717, 2377986; 585661, 2378033; 585627, 2378089; 585653, 2378166; 585708, 2378230; 585807, 2378264; 585897, 2378303; 586051, 2378286; 586141, 2378217; 586167, 2378106; 586145,

2378012; 586179, 2377943; 586239, 2377909; return to starting point.

(ii) **Note:** Map 96 follows:

Map 96 Unit 4 - *Schiedea hookeri* - c

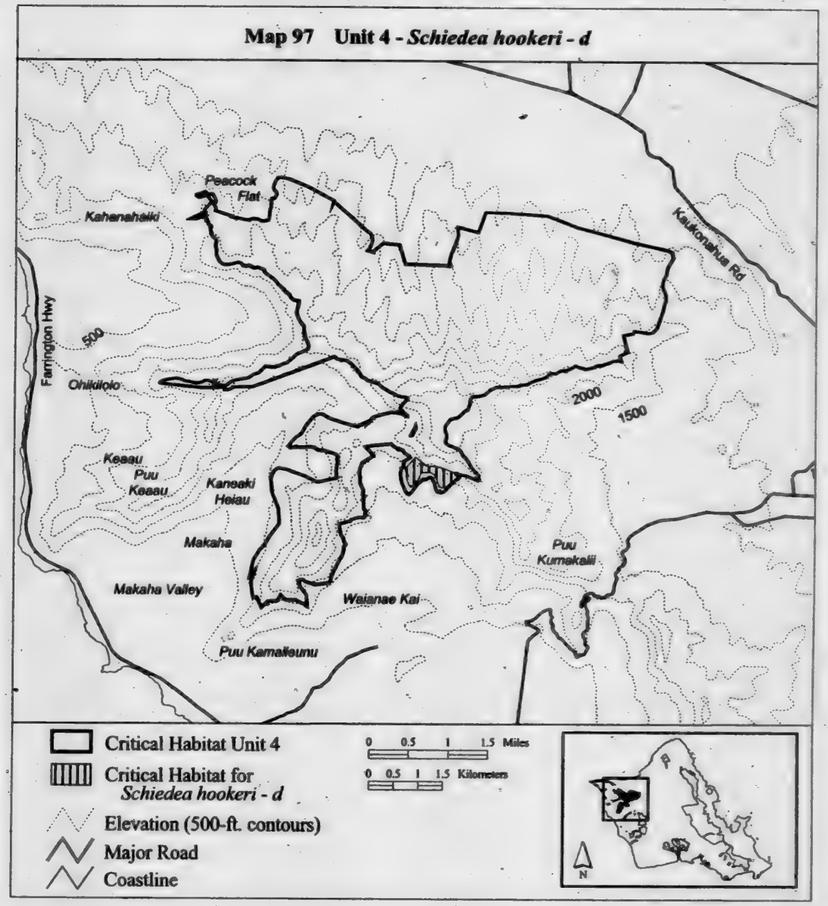


(97) Oahu 4—*Schiedea hookeri*—d (31 ha; 78 ac)

(i) Unit consists of the following 25 boundary points: Start at 587754, 2377619; 587985, 2377441; 588235, 2377417; 588403, 2377355; 588566, 2377283; 588643, 2377196; 588614, 2377167; 588470, 2377095; 588427, 2377047; 588355, 2376994; 588288, 2376985; 588230, 2377033; 588172, 2377162; 588163, 2377220; 588095, 2377292; 587990, 2377302; 587870, 2377297; 587826, 2377196; 587788, 2377105; 587740, 2377047; 587653, 2376994; 587596, 2377066; 587577, 2377177; 587562, 2377283; 587543, 2377379; return to starting point.

(ii) **Note:** Map 97 follows:

Map 97 Unit 4 - *Schiedea hookeri* - d

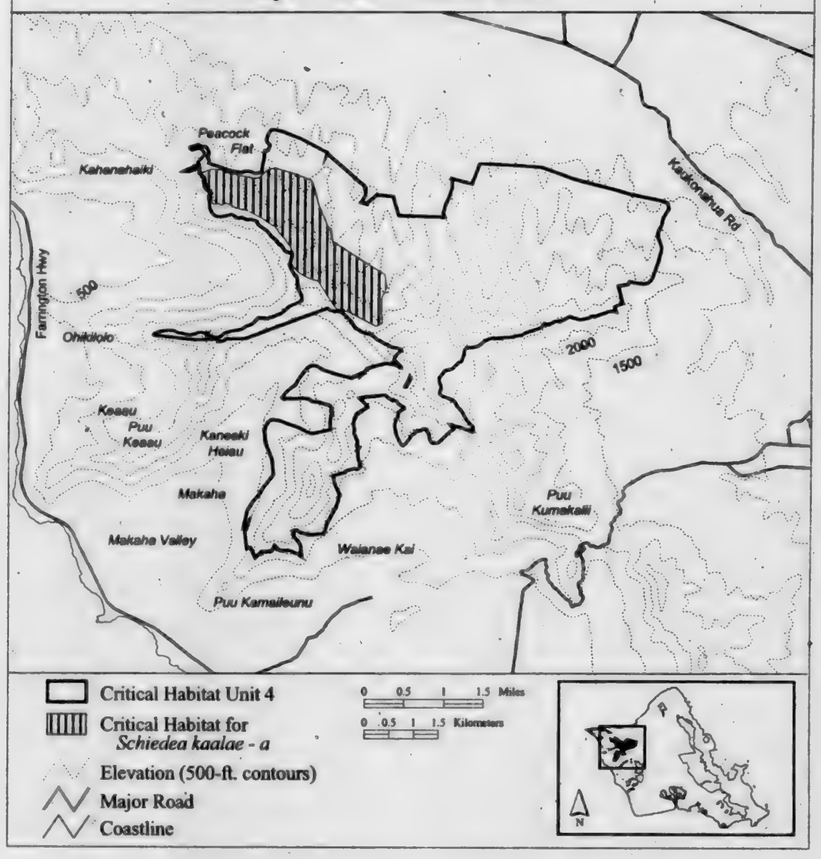


(98) Oahu 4—*Schiedea kaalae*—a (425 ha; 151 ac)

(i) Unit consists of the following 77 boundary points: Start at 585318, 2380589; 585359, 2380791; 585317, 2380901; 585201, 2381075; 585118, 2381169; 585045, 2381260; 584989, 2381336; 584997, 2381334; 584903, 2381389; 584744, 2381502; 584542, 2381618; 584429, 2381669; 584252, 2381704; 584107, 2381768; 584010, 2381816; 583957, 2381814; 583919, 2381792; 583898, 2381781; 583852, 2381806; 583817, 2381816; 583774, 2381800; 583742, 2381795; 583702, 2381846; 583688, 2381956; 583691, 2382045; 583643, 2382066; 583616, 2382109; 583586, 2382157; 583573, 2382233; 583565, 2382308; 583551, 2382361; 583514, 2382383; 583484, 2382437; 583562, 2382464; 583651, 2382496; 583766, 2382504; 583903, 2382493; 583967, 2382455; 584029, 2382429; 584239, 2382394; 584403, 2382353; 584543, 2382327; 584645, 2382327; 584683, 2382348; 584739, 2382399; 584830, 2382482; 584887, 2382512; 585005, 2382536; 585351, 2382429; 585717, 2382289; 585716, 2382286; 585752, 2382241; 585768, 2382198; 585824, 2382023; 585886, 2381779; 585980, 2381556; 586066, 2381360; 586117, 2381263; 586160, 2381102; 586187, 2381003; 586185, 2380994; 586194, 2381018; 587237, 2380368; 587270, 2380095; 587173, 2379878; 587172, 2379589; 587188, 2379357; 587068, 2379293; 586522, 2379581; 586266, 2379646; 585873, 2380239; 585834, 2380237; 585753, 2380262; 585675, 2380288; 585603, 2380334; 585495, 2380404; 585383, 2380509; return to starting point.

(ii) **Note:** Map 98 follows:

Map 98 Unit 4 - *Schiedea kaalae - a*

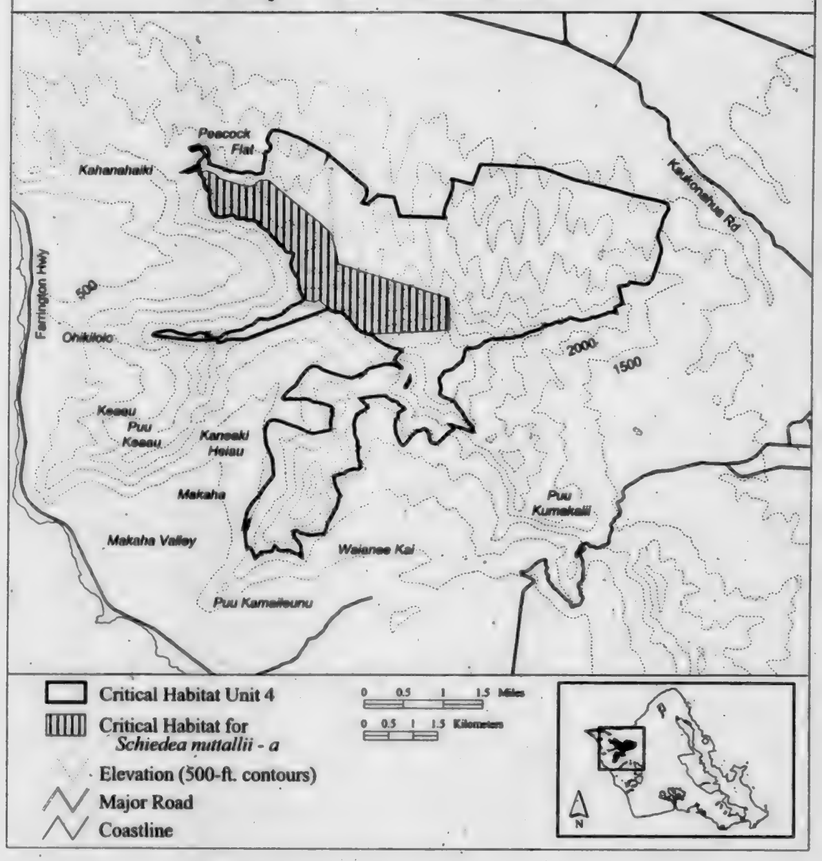


(99) Oahu 4—*Schiedea nuttallii*—a (527 ha; 1,303 ac)

(i) Unit consists of the following 248 boundary points: Start at 583882, 2381544; 583879, 2381544; 583760, 2381566; 583747, 2381571; 583730, 2381588; 583709, 2381612; 583707, 2381614; 583694, 2381639; 583685, 2381655; 583672, 2381685; 583659, 2381711; 583652, 2381731; 583651, 2381742; 583651, 2381757; 583651, 2381773; 583651, 2381789; 583651, 2381805; 583651, 2381806; 583649, 2381820; 583644, 2381847; 583642, 2381874; 583639, 2381896; 583638, 2381897; 583634, 2381907; 583631, 2381919; 583629, 2381934; 583630, 2381951; 583633, 2381969; 583638, 2381979; 583645, 2381993; 583645, 2381994; 583649, 2382013; 583649, 2382018; 583648, 2382029; 583647, 2382030; 583641, 2382045; 583640, 2382045; 583626, 2382059; 583610, 2382073; 583590, 2382091; 583570, 2382107; 583561, 2382120; 583552, 2382135; 583546, 2382153; 583536, 2382180; 583529, 2382214; 583523, 2382238; 583518, 2382254; 583517, 2382264; 583517, 2382276; 583518, 2382287; 583521, 2382299; 583528, 2382305; 583535, 2382312; 583535, 2382313; 583535, 2382319; 583531, 2382326; 583523, 2382334; 583522, 2382334; 583511, 2382337; 583498, 2382345; 583497, 2382345; 583486, 2382351; 583477, 2382362; 583474, 2382370; 583475, 2382383; 583475, 2382397; 583474, 2382404; 583474, 2382405; 583469, 2382411; 583468, 2382411; 583457, 2382416; 583443, 2382421; 583435, 2382424; 583430, 2382430; 583429, 2382440; 583430, 2382454; 583564, 2382494; 583605, 2382494; 583766, 2382417; 583833, 2382339; 583972, 2382293; 584282, 2382190; 584463, 2382159; 584546, 2382190; 584670, 2382298; 584825, 2382303; 585042, 2382122; 585408, 2381813; 585857, 2381456; 586121, 2381203; 586229, 2380760; 586265, 2380574; 586263, 2380570; 586271, 2380579; 588524, 2379889; 588546, 2379230; 588163, 2379202; 586906, 2379133; 586653, 2379250; 586421, 2379576; 586132, 2379620; 585877, 2379851; 585856, 2379830; 585789, 2379804; 585567, 2379851; 585554, 2379870; 585558, 2379891; 585558, 2379892; 585557, 2379892; 585548, 2379922; 585550, 2379928; 585550, 2379929; 585549, 2379929; 585549, 2379930; 585548, 2379930; 585547, 2379930; 585546, 2379929; 585545, 2379931; 585539, 2379943; 585531, 2379963; 585523, 2379982; 585522, 2379982; 585511, 2380001; 585498, 2380021; 585488, 2380040; 585483, 2380053; 585478, 2380071; 585475, 2380089; 585476, 2380103; 585474, 2380125; 585474, 2380128; 585472, 2380137; 585468, 2380149; 585465, 2380159; 585474, 2380228; 585469, 2380290; 585446, 2380303; 585443, 2380310; 585430, 2380325; 585430, 2380326; 585418, 2380335; 585393, 2380361; 585375, 2380388; 585364, 2380407; 585353, 2380428; 585342, 2380452; 585330, 2380478; 585322, 2381797; 585318, 2380512; 585308, 2380533; 585305, 2380540; 585309, 2380616; 585315, 2380636; 585327, 2380677; 585338, 2380712; 585339, 2380712; 585344, 2380738; 585346, 2380754; 585345, 2380767; 585345, 2380779; 585348, 2380789; 585348, 2380790; 585344, 2380798; 585344, 2380799; 585338, 2380802; 585329, 2380804; 585328, 2380804; 585308, 2380806; 585279, 2380811; 585245, 2380818; 585233, 2380820; 585181, 2380867; 585167, 2380888; 585157, 2380904; 585138, 2380929; 585119, 2380952; 585119, 2380953; 585107, 2380962; 585106, 2380963; 585094, 2380968; 585078, 2380975; 585067, 2380980; 585061, 2380987; 585053, 2381000; 585039, 2381021; 585027, 2381040; 585011, 2381059; 584993, 2381074; 584993, 2381075; 584973, 2381090; 584954, 2381104; 584939, 2381117; 584923, 2381137; 584905, 2381157; 584891, 2381175; 584867, 2381205; 584852, 2381221; 584844, 2381230; 584843, 2381230; 584813, 2381261; 584796, 2381273; 584778, 2381284; 584774, 2381287; 584751, 2381303; 584728, 2381318; 584708, 2381329; 584693, 2381342; 584638, 2381399; 584636, 2381408; 584633, 2381420; 584628, 2381430; 584618, 2381442; 584617, 2381442; 584601, 2381452; 584581, 2381462; 584562, 2381467; 584539, 2381475; 584519, 2381483; 584494, 2381489; 584478, 2381486; 584462, 2381479; 584401, 2381484; 584383, 2381494; 584357, 2381507; 584350, 2381511; 584325, 2381523; 584324, 2381523; 584310, 2381528; 584309, 2381528; 584291, 2381527; 584290, 2381527; 584281, 2381521; 584275, 2381516; 584266, 2381511; 584260, 2381511; 584181, 2381531; 584167, 2381553; 584150, 2381572; 584130, 2381584; 584129, 2381584; 584104, 2381586; 584065, 2381583; 584021, 2381575; 583992, 2381567; 583957, 2381557; 583934, 2381555; 583897, 2381549; return to starting point.

(ii) **Note:** Map 99 follows:

Map 99 Unit 4 - *Schiedea nuttallii - a*

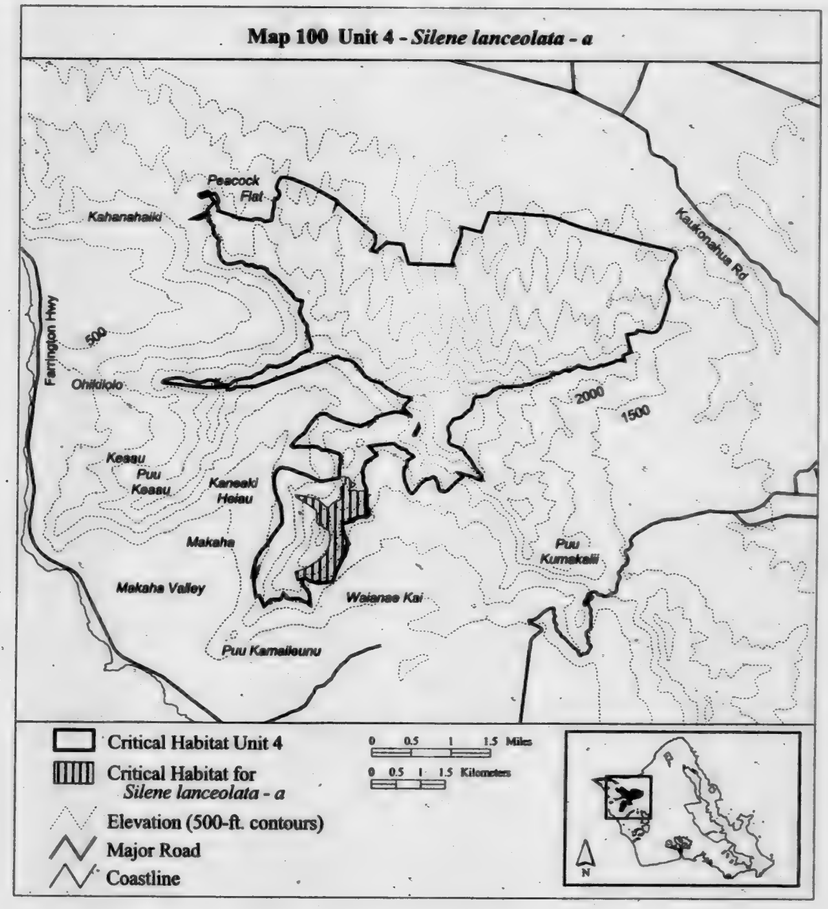


(100) Oahu 4—*Silene lanceolata*—a (113 ha; 280 ac)

(i) Unit consists of the following 70 boundary points: Start at 585235, 2376822; 585462, 2376783; 585696, 2376727; 585781, 2376649; 585867, 2376571; 585916, 2376560; 585987, 2376620; 586016, 2376666; 586090, 2376680; 586157, 2376709; 586179, 2376805; 586182, 2376876; 586154, 2376950; 586164, 2376975; 586242, 2377032; 586267, 2377099; 586264, 2377163; 586321, 2377180; 586349, 2377141; 586395, 2377071; 586430, 2377067; 586462, 2377039; 586427, 2376996; 586342, 2376957; 586345, 2376918; 586395, 2376900; 586416, 2376911; 586448, 2376922; 586505, 2376897; 586562, 2376904; 586594, 2376904; 586657, 2376904; 586661, 2376851; 586682, 2376819; 586718, 2376798; 586657, 2376755; 586657, 2376712; 586633, 2376631; 586650, 2376585; 586668, 2376532; 586714, 2376489; 586735, 2376450; 586735, 2376404; 586696, 2376365; 586579, 2376400; 586519, 2376383; 586477, 2376376; 586413, 2376344; 586402, 2376308; 586186, 2376269; 586179, 2376162; 586312, 2375895; 586186, 2375546; 586127, 2375360; 586029, 2375074; 586003, 2375053; 585710, 2375018; 585450, 2375122; 585302, 2375070; 585257, 2375248; 585502, 2375327; 585800, 2375531; 585889, 2375650; 585963, 2375910; 585941, 2376095; 585673, 2376266; 585696, 2376326; 585666, 2376512; 585450, 2376653; 585264, 2376764; return to starting point.

(ii) **Note:** Map 100 follows:

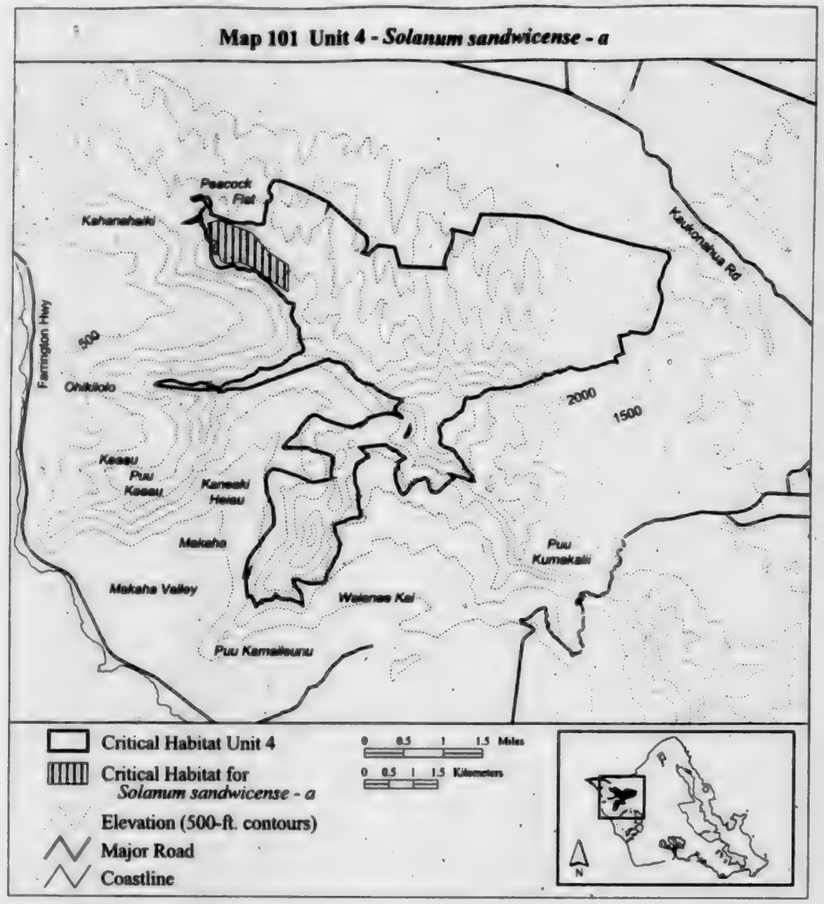
Map 100 Unit 4 - *Silene lanceolata - a*



(101) Oahu 4—*Solanum sandwicense*—a (105 ha; 258 ac)

(i) Unit consists of the following 16 boundary points: Start at 583559, 2382457; 583792, 2382513; 584478, 2382255; 584821, 2381863; 585232, 2381588; 585232, 2381049; 584471, 2381551; 584245, 2381655; 583969, 2381631; 583841, 2381680; 583810, 2381814; 583718, 2381808; 583675, 2381925; 583767, 2382072; 583590, 2382151; 583608, 2382317; return to starting point.

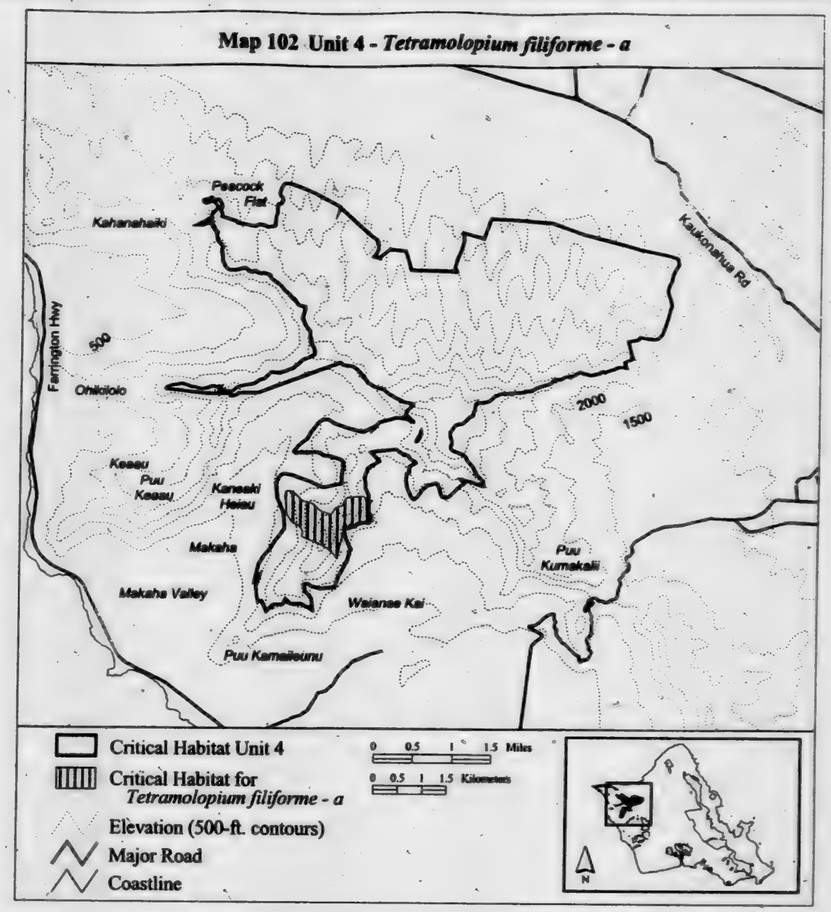
(ii) **Note:** Map 101 follows:



(102) Oahu 4—*Tetramolopium filiforme*—a (110 ha; 273 ac)

(i) Unit consists of the following 61 boundary points: Start at 585056, 2377021; 585144, 2376990; 585223, 2376941; 585273, 2376888; 585315, 2376838; 585364, 2376800; 585444, 2376781; 585535, 2376762; 585611, 2376705; 585664, 2376652; 585710, 2376622; 585748, 2376591; 585816, 2376576; 585870, 2376553; 585900, 2376530; 585949, 2376561; 585984, 2376614; 586014, 2376663; 586090, 2376694; 586151, 2376709; 586185, 2376770; 586216, 2376861; 586269, 2376888; 586360, 2376895; 586428, 2376899; 586497, 2376903; 586588, 2376907; 586638, 2376842; 586645, 2376781; 586664, 2376720; 586657, 2376675; 586657, 2376637; 586679, 2376584; 586717, 2376538; 586755, 2376508; 586717, 2376447; 586687, 2376409; 586615, 2376382; 586562, 2376363; 586451, 2376374; 586432, 2376336; 586193, 2376280; 586185, 2376207; 586052, 2375626; 585995, 2375721; 585911, 2375800; 585843, 2375854; 585767, 2375899; 585762, 2375889; 585758, 2375912; 585332, 2376097; 585349, 2376150; 585349, 2376207; 585311, 2376264; 585265, 2376317; 585136, 2376378; 585026, 2376527; 585007, 2376656; 584999, 2376770; 584980, 2376907; 584999, 2376998; return to starting point.

(ii) **Note:** Map 102 follows:



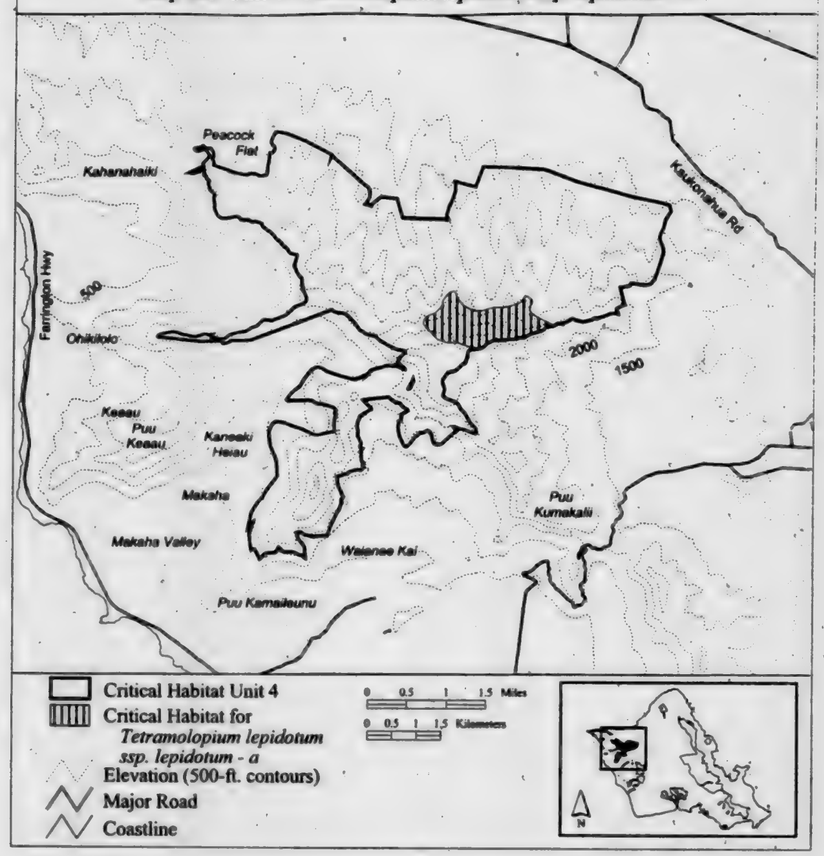
(103) Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—a (167 ha; 413 ac)

(i) Unit consists of the following 107 boundary points: Start at 588571, 2380048; 588609, 2379981; 588651, 2379880; 588730, 2379784; 588859, 2379700; 589002, 2379650; 589153, 2379658; 589270, 2379692; 589408, 2379717; 589559, 2379717; 589718, 2379746; 589890, 2379805; 589962, 2379847; 590016, 2379947; 590079, 2379935; 590125, 2379897; 590171, 2379851; 590163, 2379792; 590129, 2379733; 590117, 2379658; 590142, 2379612; 590255, 2379536; 590351, 2379478; 590448, 2379448; 590506, 2379419; 590586, 2379365; 590607, 2379344; 590593, 2379338; 590572, 2379336; 590525, 2379340; 590514, 2379339; 590479, 2379340; 590478, 2379340; 590462, 2379334; 590444, 2379312; 590415, 2379277; 590373, 2379247; 590347, 2379233; 590321, 2379227; 590285, 2379219; 590191, 2379191; 590084, 2379149; 590076, 2379145; 590067, 2379142; 590066, 2379141; 590039, 2379117; 590020, 2379104; 590012, 2379101; 589944, 2379099; 589907, 2379095; 589906, 2379095; 589881, 2379089; 589839, 2379075; 589839, 2379074; 589806, 2379068; 589790, 2379069; 589787, 2379069; 589747, 2379069; 589705, 2379066; 589675, 2379063; 589616, 2379059; 589604, 2379058; 589557, 2379052; 589519, 2379042; 589496, 2379035; 589462, 2379034; 589441, 2379042; 589424, 2379047; 589391, 2379048; 589370, 2379041; 589369, 2379041; 589348, 2379025; 589324, 2379009; 589303, 2379003; 589286, 2379001; 589285, 2379001; 589276, 2378998; 589275, 2378998; 589245, 2378974; 589244, 2378974; 589217, 2378943; 589164, 2378898; 589149, 2378886; 589123, 2378879; 589095, 2378872; 588960, 2378899; 588847, 2378916; 588775, 2378950; 588679, 2378979; 588620, 2378992; 588524, 2378992; 588432, 2378992; 588348, 2379017; 588256, 2379059; 588176, 2379130; 588084, 2379235; 587992, 2379318; 587950, 2379386; 587962, 2379461; 588008, 2379515; 588080, 2379562; 588190, 2379603; 588269, 2379683; 588328, 2379767; 588340,

2379847; 588408, 2379935; 588491, 2380023; return to starting point.

(ii) **Note:** Map 103 follows:

Map 103 Unit 4 - *Tetramolopium lepidotum ssp. lepidotum - a*

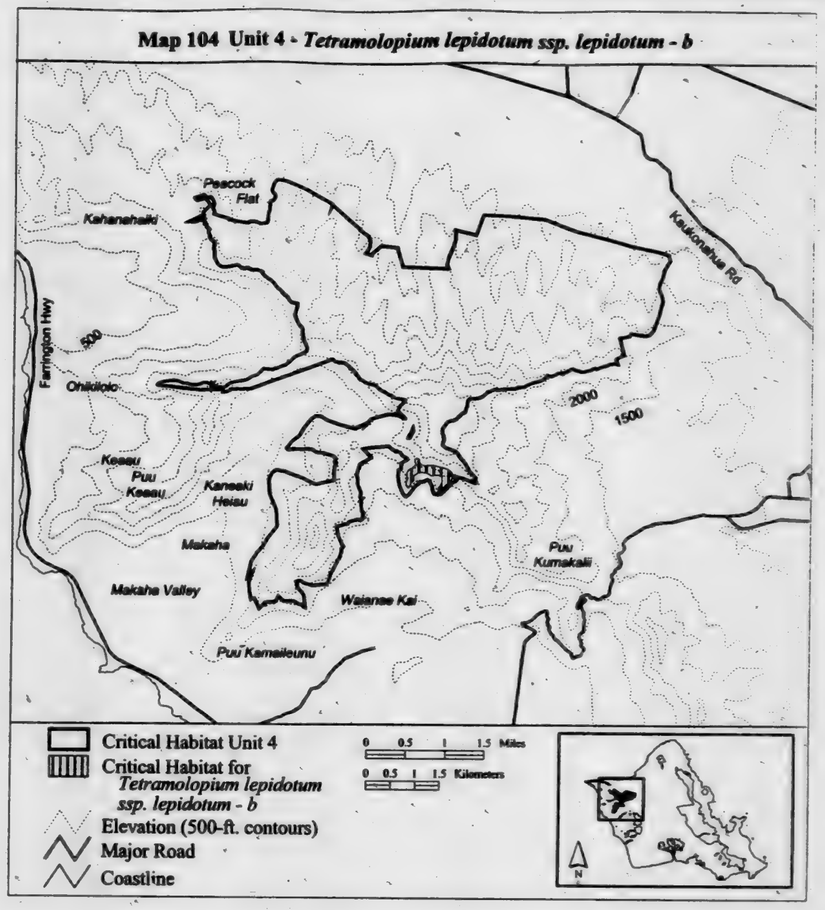


(104) Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—b (23 ha; 56 ac)

(i) Unit consists of the following 66 boundary points: Start at 587816, 2377513; 587792, 2377572; 587790, 2377601; 587795, 2377624; 587819, 2377630; 587851, 2377630; 587871, 2377624; 587880, 2377589; 587880, 2377548; 587912, 2377519; 587945, 2377490; 588021, 2377481; 588094, 2377490; 588167, 2377490; 588269, 2377469; 588360, 2377446; 588465, 2377408; 588541, 2377349; 588550, 2377305; 588553, 2377253; 588544, 2377215; 588526, 2377162; 588494, 2377118; 588430, 2377092; 588398, 2377045; 588354, 2377007; 588322, 2376955; 588290, 2376955; 588275, 2376981; 588275, 2377007; 588278, 2377034; 588307, 2377072; 588342, 2377145; 588342, 2377183; 588348, 2377232; 588342, 2377256; 588301, 2377285; 588243, 2377291; 588173, 2377285; 588129, 2377279; 588100, 2377300; 588029, 2377341; 587947, 2377343; 587880, 2377343; 587790, 2377297; 587763, 2377247; 587775, 2377186; 587740, 2377156; 587702, 2377115; 587696, 2377074; 587667, 2377045; 587632, 2377057; 587617, 2377083; 587614, 2377115; 587614, 2377148; 587629, 2377183; 587646, 2377206; 587649, 2377235; 587632, 2377253; 587629, 2377273; 587629, 2377297; 587629, 2377314; 587629, 2377341; 587655, 2377376; 587699, 2377417; 587746, 2377440; return to starting point.

(ii) **Note:** Map 104 follows:

Map 104 Unit 4 - *Tetramolopium lepidotum ssp. lepidotum - b*

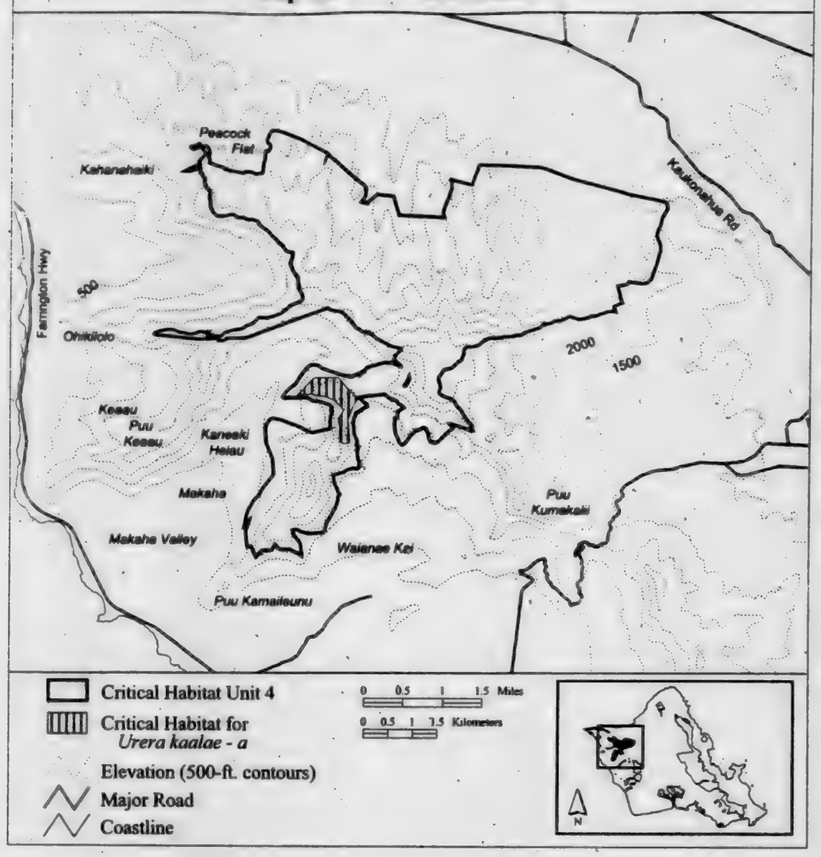


(105) Oahu 4—*Urera kaalae*—a (54 ha; 133 ac)

(i) Unit consists of the following 31 boundary points: Start at 585458, 2377846; 585812, 2378215; 586314, 2378215; 586485, 2378006; 586713, 2377795; 586580, 2377592; 586584, 2377579; 586581, 2377578; 586501, 2377367; 586539, 2376893; 586461, 2376877; 586391, 2376882; 586345, 2376923; 586333, 2376996; 586330, 2377057; 586333, 2377159; 586333, 2377211; 586316, 2377276; 586298, 2377354; 586336, 2377407; 586383, 2377482; 586397, 2377546; 586383, 2377590; 586333, 2377651; 586257, 2377718; 586220, 2377753; 586147, 2377794; 586042, 2377838; 585908, 2377849; 585826, 2377858; 585739, 2377890; return to starting point.

(ii) **Note:** Map 105 follows:

Map 105 Unit 4 - *Urera kaalae - a*

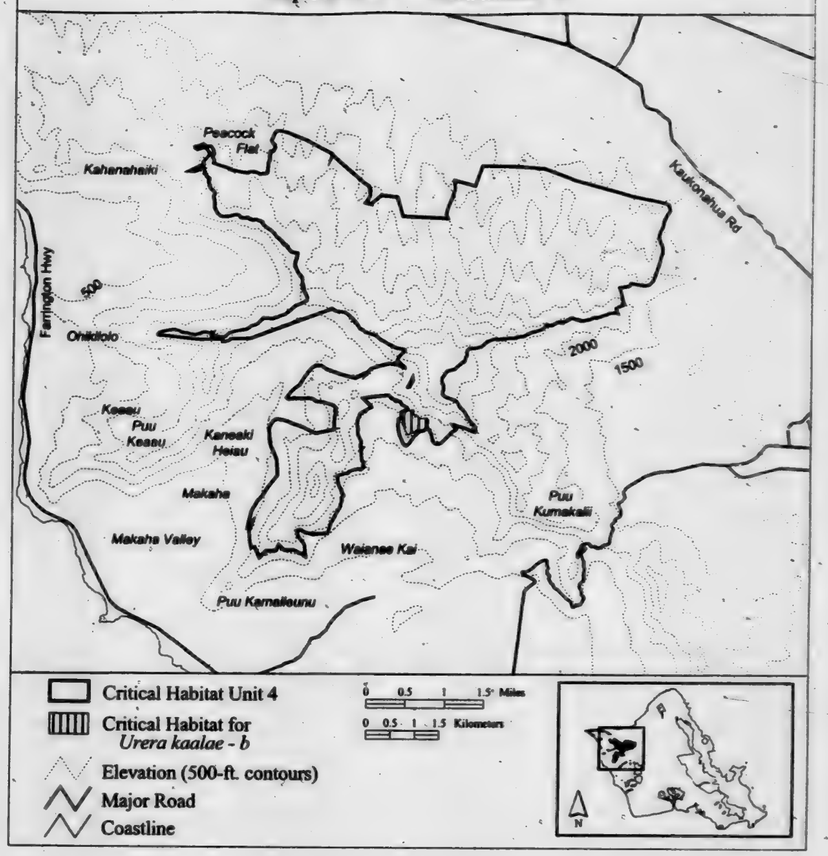


(106) Oahu 4—*Urera kaalae*—b (17 ha; 43 ac)

(i) Unit consists of the following 19 boundary points: Start at 587770, 2377591; 587772, 2377573; 587772, 2377497; 587839, 2377453; 587894, 2377418; 587949, 2377404; 588028, 2377418; 588048, 2377418; 588066, 2377395; 588077, 2377363; 588074, 2377316; 588072, 2377217; 588022, 2377191; 587970, 2377156; 587819, 2377145; 587817, 2377146; 587650, 2377076; 587531, 2377302; 587609, 2377557; return to starting point.

(ii) **Note:** Map 106 follows:

Map 106 Unit 4 - *Urera kaalae - b*

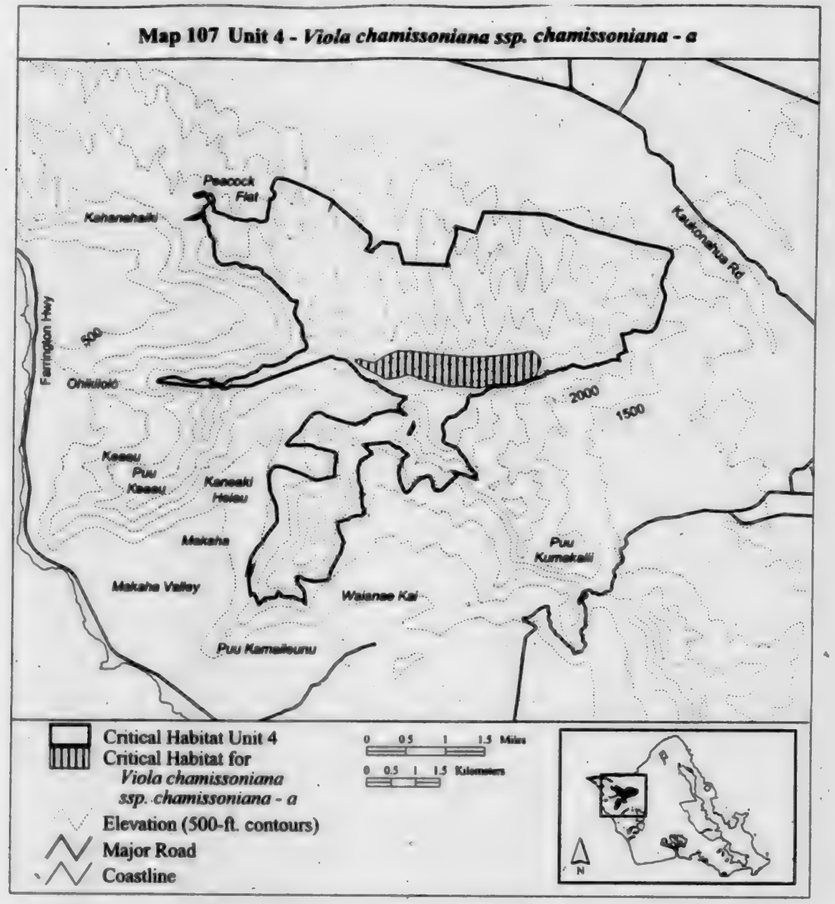


(107) Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—a (199 ha; 491 ac)

(i) Unit consists of the following 41 boundary points: Start at 590207, 2379196; 590092, 2379192; 589906, 2379127; 589750, 2379084; 589624, 2379079; 589290, 2379071; 589228, 2379052; 589230, 2379049; 589091, 2379014; 588770, 2379040; 588489, 2379036; 588276, 2379092; 588003, 2379153; 587743, 2379257; 587613, 2379279; 587501, 2379235; 587323, 2379201; 587215, 2379183; 587124, 2379214; 586963, 2379305; 586686, 2379448; 586543, 2379552; 586625, 2379612; 586799, 2379552; 586937, 2379530; 587158, 2379673; 587411, 2379781; 587701, 2379773; 588377, 2379703; 588887, 2379652; 588883, 2379660; 589178, 2379660; 589503, 2379690; 589888, 2379725; 590170, 2379781; 590265, 2379712; 590317, 2379638; 590339, 2379504; 590287, 2379404; 590244, 2379266; 590219, 2379199; return to starting point.

(ii) **Note:** Map 107 follows:

Map 107 Unit 4 - *Viola chamissoniana ssp. chamissoniana - a*

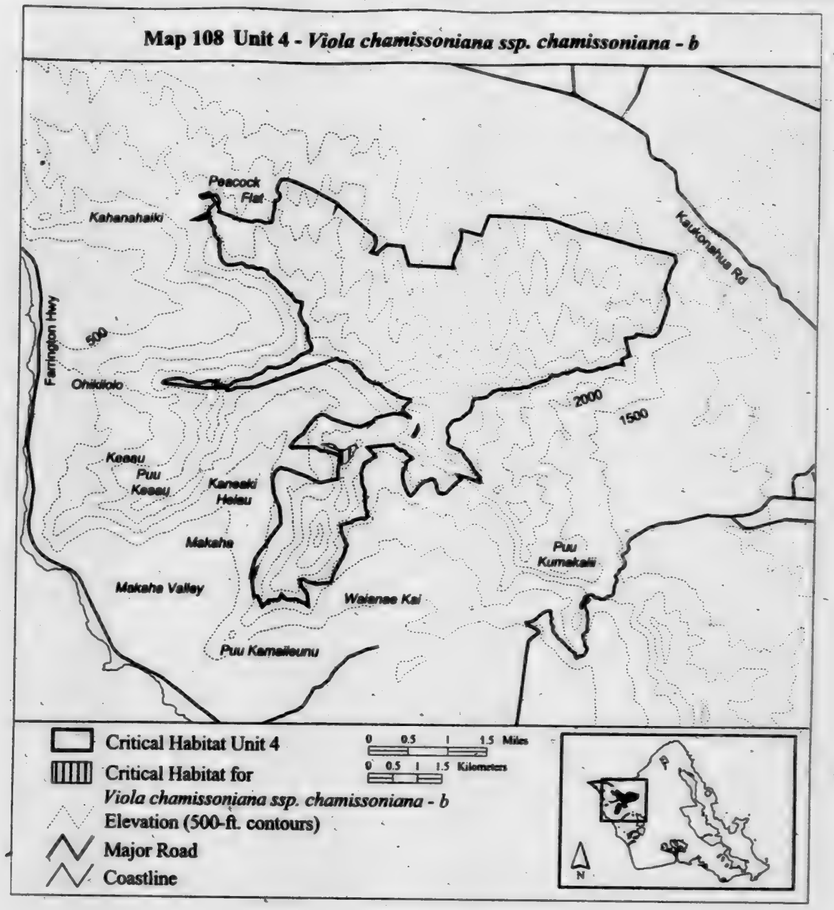


(108) Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b (10 ha; 24 ac)

(i) Unit consists of the following 20 boundary points: Start at 585778, 2377867; 585813, 2377876; 585957, 2377886; 586055, 2377865; 586137, 2377773; 586287, 2377778; 586364, 2377840; 586494, 2377870; 586508, 2377829; 586425, 2377655; 586369, 2377577; 586292, 2377485; 586194, 2377485; 586173, 2377567; 586173, 2377649; 586167, 2377655; 586169, 2377657; 586142, 2377745; 586008, 2377805; 585868, 2377854; return to starting point.

(ii) **Note:** Map 108 follows:

Map 108 Unit 4 - *Viola chamissoniana ssp. chamissoniana - b*

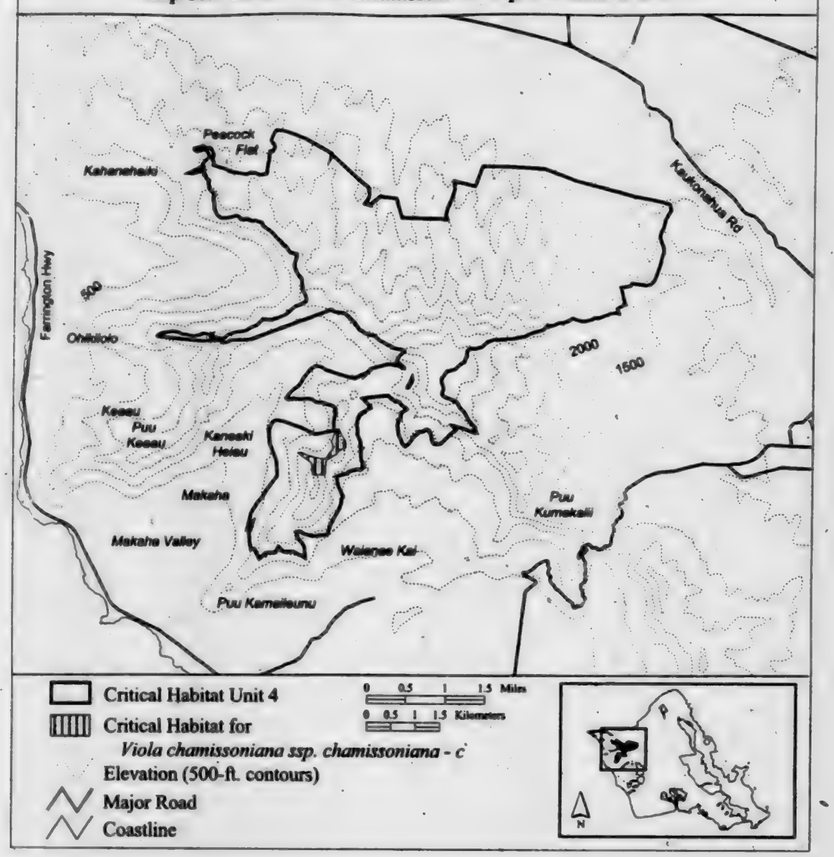


(109) Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c (22 ha; 55 ac)

(i) Unit consists of the following 30 boundary points: Start at 585428, 2376708; 585474, 2376708; 585695, 2376636; 585880, 2376595; 585983, 2376600; 586009, 2376652; 586086, 2376749; 586122, 2376796; 586117, 2376873; 586096, 2376940; 586117, 2377007; 586158, 2377109; 586209, 2377161; 586240, 2377202; 586297, 2377094; 586384, 2376935; 586385, 2376934; 586388, 2376821; 586297, 2376788; 586233, 2376758; 586205, 2376688; 586122, 2376652; 585995, 2376564; 585996, 2376563; 585980, 2376564; 585968, 2376266; 585932, 2376276; 585708, 2376276; 585683, 2376512; 585423, 2376699; return to starting point.

(ii) **Note:** Map 109 follows:

Map 109 Unit 4 - *Viola chamissoniana ssp. chamissoniana - c*

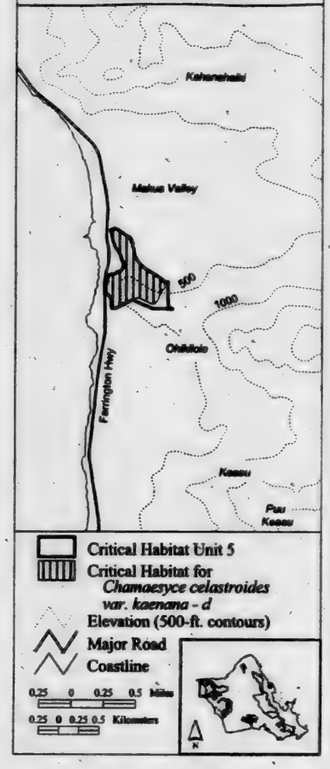


(110) Oahu 5—*Chamaesyce celastroides* var. *kaenana*—d (36 ha; 89 ac)

(i) Unit consists of the following 64 boundary points: Start at 580244, 2380495; 580287, 2380408; 580327, 2380329; 580333, 2380242; 580358, 2380198; 580391, 2380157; 580428, 2380124; 580482, 2380078; 580579, 2380022; 580685, 2379948; 580712, 2379892; 580712, 2379846; 580685, 2379815; 580652, 2379749; 580629, 2379697; 580604, 2379664; 580571, 2379639; 580521, 2379658; 580476, 2379680; 580426, 2379705; 580383, 2379724; 580329, 2379707; 580277, 2379680; 580217, 2379645; 580146, 2379612; 580097, 2379591; 580057, 2379587; 580051, 2379597; 580039, 2379624; 580047, 2379660; 580045, 2379689; 580026, 2379734; 579991, 2379776; 579971, 2379800; 579964, 2379818; 579966, 2379854; 580001, 2379917; 579995, 2379954; 580008, 2380000; 580028, 2380012; 580039, 2380016; 580094, 2380022; 580111, 2380039; 580165, 2380060; 580192, 2380103; 580194, 2380117; 580195, 2380118; 580196, 2380118; 580196, 2380119; 580196, 2380120; 580195, 2380123; 580198, 2380149; 580171, 2380198; 580159, 2380252; 580121, 2380315; 580100, 2380335; 580084, 2380370; 580084, 2380377; 580068, 2380433; 580055, 2380491; 580034, 2380557; 580070, 2380584; 580085, 2380590; 580235, 2380500; return to starting point.

(ii) **Note:** Map 110 follows:

Map 110
Unit 5 - *Chamaesyce celastroides var. kaenana - d*

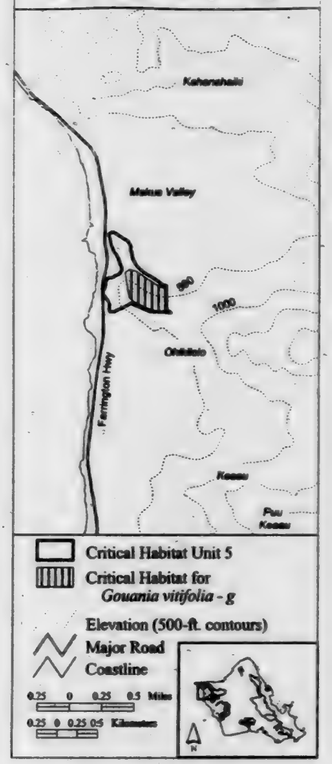


(111) Oahu 5—*Gouania vitifolia*—g (17 ha; 43 ac)

(i) Unit consists of the following 17 boundary points: Start at 580804, 2379587; 580691, 2379587; 580594, 2379609; 580481, 2379652; 580347, 2379722; 580287, 2379772; 580267, 2379896; 580239, 2380076; 580293, 2380120; 580373, 2380099; 580621, 2379932; 580754, 2379874; 580754, 2379672; 580764, 2379612; 580764, 2379611; 580765, 2379611; 580765, 2379610; return to starting point.

(ii) **Note:** Map 111 follows:

Map 111
Unit 5 - *Gouania vitifolia - g*

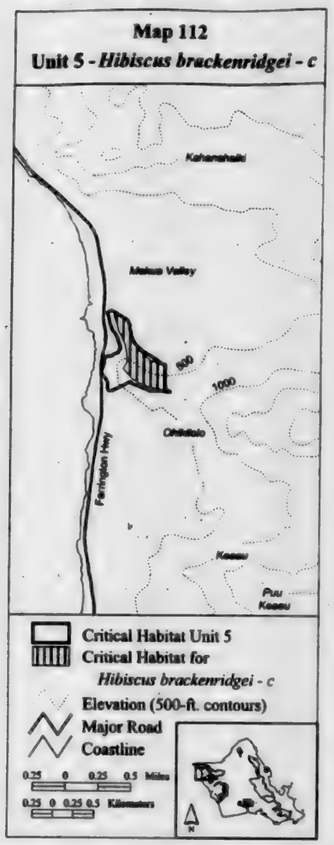


(112) Oahu 5—*Hibiscus brackenridgei*—c (23 ha; 56 ac)

(i) Unit consists of the following 46 boundary points: Start at 580785, 2379598; 580771, 2379599; 580645, 2379613; 580529, 2379645; 580415, 2379693; 580337, 2379752; 580298, 2379795; 580259, 2379844; 580235, 2379868; 580282, 2379943; 580277, 2380051; 580258, 2380152; 580259, 2380154; 580257, 2380160; 580247, 2380183; 580233, 2380213; 580225, 2380244; 580211, 2380280; 580189, 2380305; 580172, 2380341; 580162, 2380387; 580143, 2380450; 580128, 2380489; 580116, 2380538; 580128, 2380562; 580133, 2380562; 580235, 2380500; 580275, 2380478; 580296, 2380443; 580315, 2380399; 580310, 2380368; 580310, 2380324; 580332, 2380266; 580373, 2380169; 580427, 2380101; 580497, 2380026; 580577, 2379958; 580628, 2379950; 580742, 2379921; 580754, 2379920; 580754,

2379892; 580754, 2379672; 580764, 2379612; 580764, 2379611; 580765, 2379611; 580765, 2379610; return to starting point.

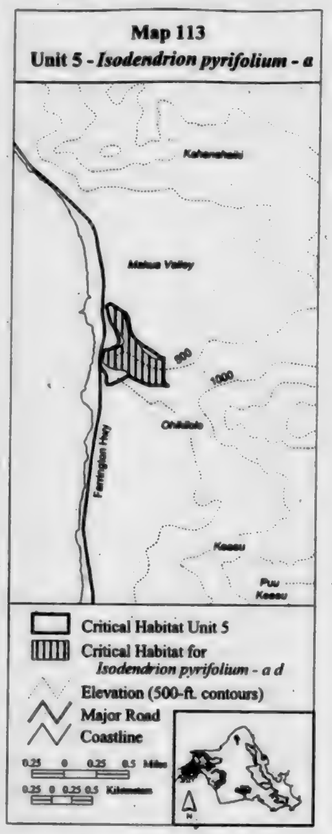
(ii) **Note:** Map 112 follows:



(113) Oahu 5—*Isodendrion pyrifolium*—a (30 ha; 75 ac)

(i) Unit consists of the following 38 boundary points: Start at 580262, 2380485; 580295, 2380309; 580312, 2380241; 580357, 2380192; 580436, 2380092; 580491, 2380011; 580610, 2379917; 580736, 2379889; 580754, 2379855; 580754, 2379672; 580764, 2379612; 580764, 2379611; 580765, 2379611; 580765, 2379610; 580815, 2379580; 580816, 2379580; 580822, 2379580; 580823, 2379577; 580789, 2379577; 580703, 2379591; 580563, 2379590; 580345, 2379682; 580321, 2379713; 580274, 2379760; 580151, 2379777; 580070, 2379798; 580002, 2379858; 580002, 2379900; 580024, 2379999; 580168, 2380028; 580259, 2380098; 580261, 2380130; 580193, 2380245; 580143, 2380312; 580138, 2380504; 580121, 2380555; 580130, 2380564; 580235, 2380500; return to starting point.

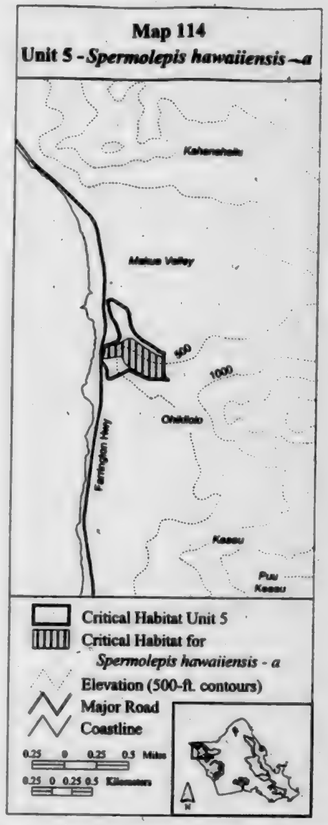
(ii) **Note:** Map 113 follows:



(114) Oahu 5—*Spermolepis hawaiiensis*—a (21 ha; 53 ac)

(i) Unit consists of the following 33 boundary points: Start at 580773, 2379589; 580678, 2379591; 580628, 2379591; 580552, 2379607; 580502, 2379632; 580411, 2379679; 580326, 2379733; 580282, 2379761; 580254, 2379796; 580244, 2379827; 580219, 2379868; 580158, 2379862; 580027, 2379836; 579983, 2379836; 579986, 2379884; 579996, 2379921; 580018, 2379978; 580103, 2380009; 580178, 2380019; 580238, 2380063; 580304, 2380100; 580348, 2380103; 580426, 2380047; 580489, 2380000; 580577, 2379940; 580646, 2379899; 580754, 2379857; 580754, 2379672; 580764, 2379612; 580764, 2379611; 580765, 2379611; 580765, 2379610; 580781, 2379601; return to starting point.

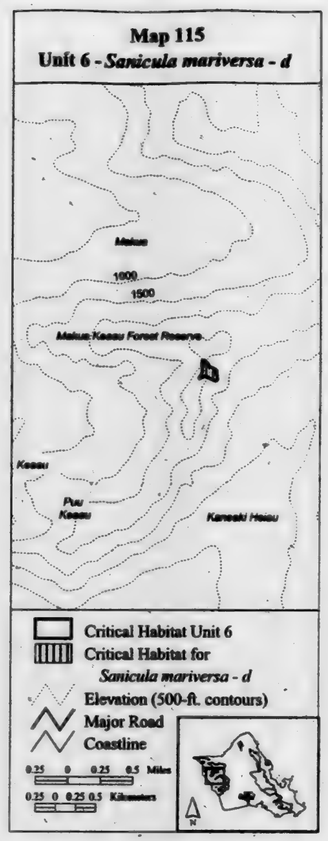
(ii) **Note:** Map 114 follows:



(115) Oahu 6—*Sanicula mariversa*—d (3 ha; 8 ac)

(i) Unit consists of the following 24 boundary points: Start at 583697, 2378888; 583747, 2378848; 583761, 2378823; 583779, 2378796; 583806, 2378789; 583834, 2378776; 583859, 2378754; 583859, 2378731; 583859, 2378704; 583869, 2378684; 583869, 2378664; 583871, 2378634; 583846, 2378622; 583804, 2378639; 583764, 2378662; 583712, 2378681; 583689, 2378674; 583649, 2378652; 583647, 2378662; 583667, 2378691; 583679, 2378734; 583682, 2378786; 583682, 2378826; 583682, 2378858; return to starting point.

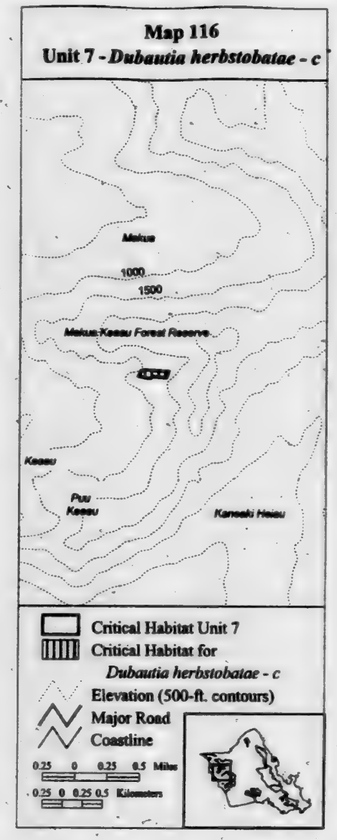
(ii) **Note:** Map 115 follows:



(116) Oahu 7—*Dubautia herbstobatae*—c (3 ha; 7 ac)

(i) Unit consists of the following 7 boundary points: Start at 582848, 2378716; 583079, 2378700; 583176, 2378698; 583153, 2378621; 582980, 2378631; 582949, 2378607; 582806, 2378636; return to starting point.

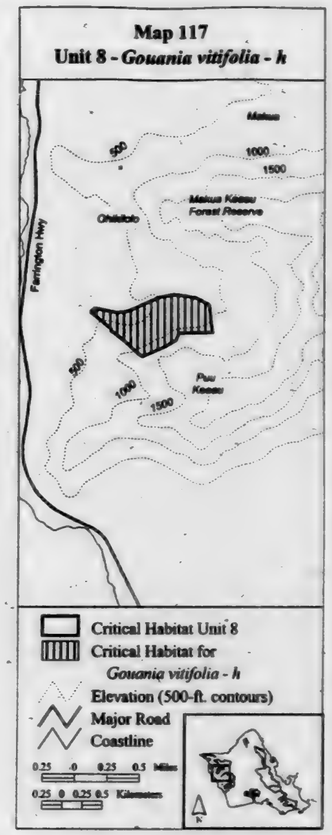
(ii) **Note:** Map 116 follows:



(117) Oahu 8—*Gouania vitifolia*—h (64 ha; 158 ac)

(i) Unit consists of the following 28 boundary points: Start at 580654, 2377938; 580709, 2377984; 580806, 2377963; 580926, 2377936; 580985, 2377929; 581093, 2377939; 581094, 2377939; 581095, 2377939; 581101, 2377941; 581175, 2377970; 581257, 2378005; 581291, 2378025; 581512, 2378121; 581530, 2378125; 581689, 2378150; 581847, 2378136; 581960, 2378115; 582134, 2378030; 582172, 2377688; 581756, 2377679; 581718, 2377589; 581587, 2377509; 581302, 2377381; 581231, 2377433; 581120, 2377540; 580943, 2377683; 580914, 2377696; 580911, 2377730; return to starting point.

(ii) **Note:** Map 117 follows:

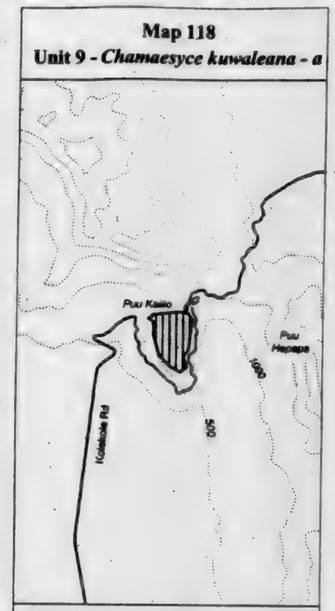


(118) Oahu 9—*Chamaesyce kuwaleana*—a (27 ha; 68 ac)

(i) Unit consists of the following 16 boundary points: Start at 590764, 2374474; 590702, 2374527; 590756, 2374577; 591092, 2374605; 591194, 2374586; 591246, 2374509; 591192, 2374128; 591132, 2374054; 591132, 2374053; 591178, 2373922; 591094, 2373855; 590958, 2373934; 590827, 2374078; 590765, 2374307; 590764, 2374472; 590764, 2374473; return to starting point.

(ii) **Note:** Map 118 follows:

Map 118
Unit 9 - *Chamaesyce kuwaleana - a*

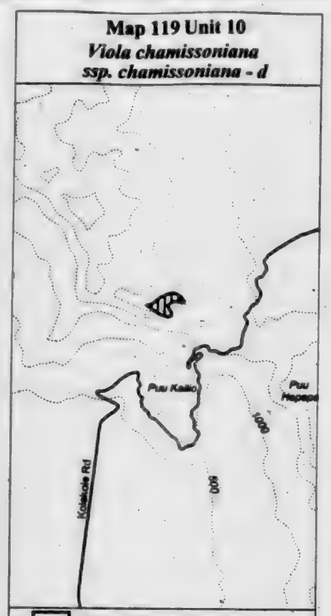


(119) Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d (6 ha; 15 ac)

(i) Unit consists of the following 28 boundary points: Start at 591102, 2375422; 591028, 2375433; 590980, 2375431; 590964, 2375433; 590963, 2375433; 590960, 2375430; 590957, 2375430; 590894, 2375384; 590898, 2375364; 590897, 2375363; 590896, 2375362; 590896, 2375361; 590899, 2375358; 590902, 2375343; 590932, 2375301; 590935, 2375249; 590891, 2375236; 590801, 2375263; 590758, 2375290; 590631, 2375381; 590696, 2375399; 590697, 2375399; 590727, 2375419; 590807, 2375489; 590906, 2375529; 590965, 2375539; 590985, 2375529; 591044, 2375499; return to starting point.

(ii) **Note:** Map 119 follows:

Map 119 Unit 10
Viola chamissoniana ssp. chamissoniana - d

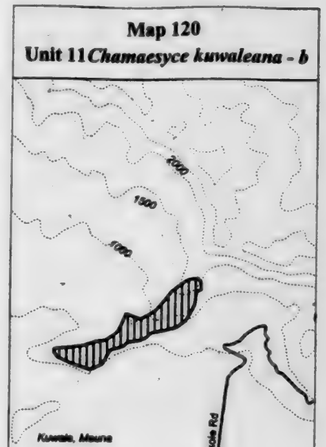


(120) Oahu 11—*Chamaesyce kuwaleana*—b (53 ha; 131 ac)

(i) Unit consists of the following 50 boundary points: Start at 589731, 2375043; 589731, 2374988; 589675, 2374965; 589652, 2374797; 589587, 2374675; 589540, 2374596; 589423, 2374516; 589292, 2374479; 589213, 2374465; 589114, 2374446; 589077, 2374409; 589030, 2374376; 588946, 2374343; 588820, 2374329; 588764, 2374278; 588684, 2374254; 588605, 2374231; 588549, 2374138; 588523, 2374090; 588506, 2374059; 588407, 2374010; 588348, 2373988; 588254, 2374016; 588133, 2374053; 588048, 2374091; 587941, 2374142; 587904, 2374198; 587904, 2374236; 587950, 2374250; 588095, 2374264; 588273, 2374287; 588418, 2374334; 588539, 2374348; 588661, 2374427; 588712, 2374484; 588712, 2374502; 588740, 2374558; 588792, 2374666; 588815, 2374666; 588890, 2374642; 588974, 2374614; 589068, 2374656; 589161, 2374717; 589255, 2374825; 589367, 2374965; 589456, 2375035; 589554, 2375105; 589629, 2375124; 589689, 2375129; 589725, 2375086; return to starting point.

(ii) **Note:** Map 120 follows:

Map 120
Unit 11 *Chamaesyce kuwaleana - b*



(121) Oahu 12—*Chamaesyce kuwaleana*—c (37 ha; 93 ac)

(i) Unit consists of the following 17 boundary points: Start at 587305, 2373616; 587489, 2373551; 587490, 2373551; 587822, 2373609; 588064, 2373606; 588091, 2373489; 587546, 2373163; 587545, 2373163; 587545, 2373162; 587573, 2373017; 586913, 2372661; 586822, 2372689; 587344, 2373134; 587344, 2373135; 587341, 2373263; 587341, 2373264; 587235, 2373485; return to starting point.

(ii) **Note:** Map 121 follows:

Map 121
Unit 12 *Chamaesyce kuwaleana - c*

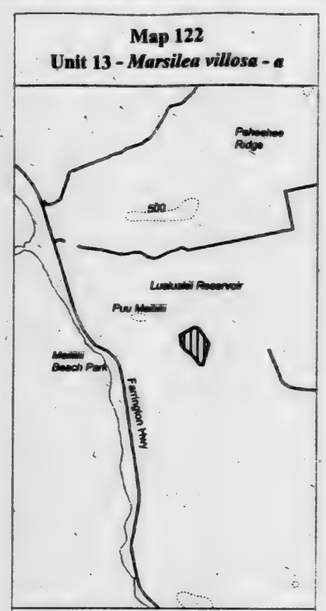


(122) Oahu 13—*Marsilea villosa*—a (10 ha; 25 ac)

(i) Unit consists of the following 9 boundary points: Start at 586020, 2369827; 585930, 2369901; 585879, 2369959; 585861, 2370075; 586047, 2370179; 586104, 2370158; 586226, 2369973; 586147, 2369710; 586105, 2369714; return to starting point.

(ii) **Note:** Map 122 follows:

Map 122
Unit 13 - *Marsilea villosa - a*

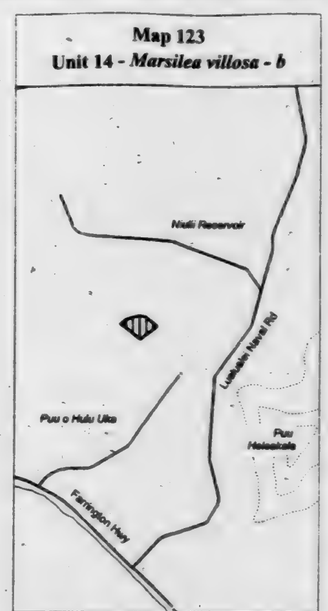


(123) Oahu 14—*Marsilea villosa*—b (7 ha; 18 ac)

(i) Unit consists of the following 7 boundary points: Start at 588190, 2368272; 587975, 2368116; 587738, 2368302; 587785, 2368349; 587880, 2368388; 587969, 2368406; 588040, 2368389; return to starting point.

(ii) **Note:** Map 123 follows:

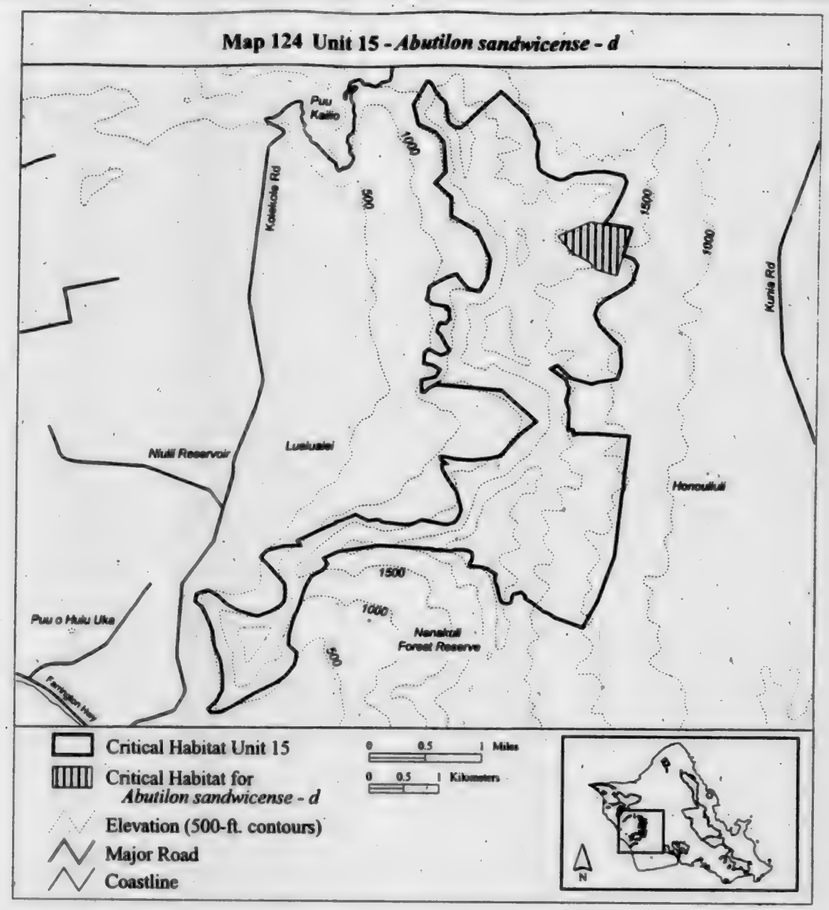
Map 123
Unit 14 - *Marsilea villosa - b*



(124) Oahu 15—*Abutilon sandwicense*—d (49 ha; 121 ac)

(i) Unit consists of the following 11 boundary points: Start at 595071, 2372102; 595052, 2372104; 594771, 2372182; 594673, 2372285; 594450, 2372410; 594399, 2372438; 594400, 2372447; 594222, 2372665; 594678, 2372866; 595230, 2372788; 595275, 2372773; return to starting point.

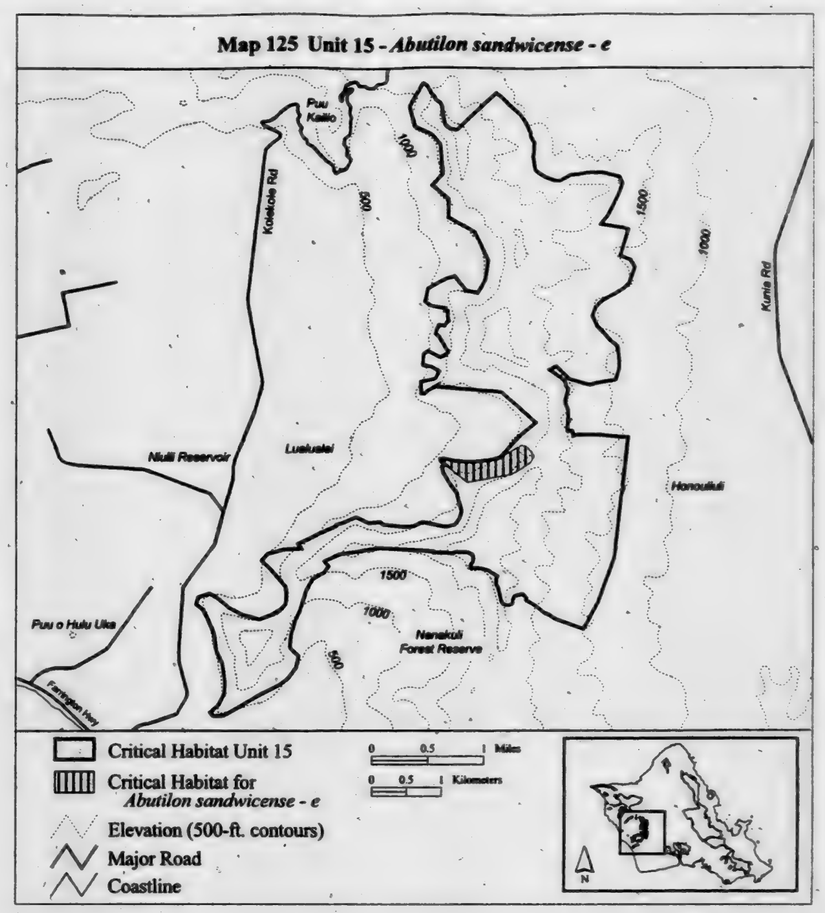
(ii) **Note:** Map 124 follows:



(125) Oahu 15—*Abutilon sandwicense*—e (33 ha; 81 ac)

(i) Unit consists of the following 16 boundary points: Start at 592582, 2369476; 592646, 2369487; 592785, 2369454; 593030, 2369435; 593278, 2369457; 593436, 2369499; 593620, 2369600; 593748, 2369668; 593812, 2369653; 593891, 2369574; 593929, 2369514; 593880, 2369431; 593741, 2369333; 593598, 2369252; 592970, 2369140; 592588, 2369449; return to starting point.

(ii) **Note:** Map 125 follows:

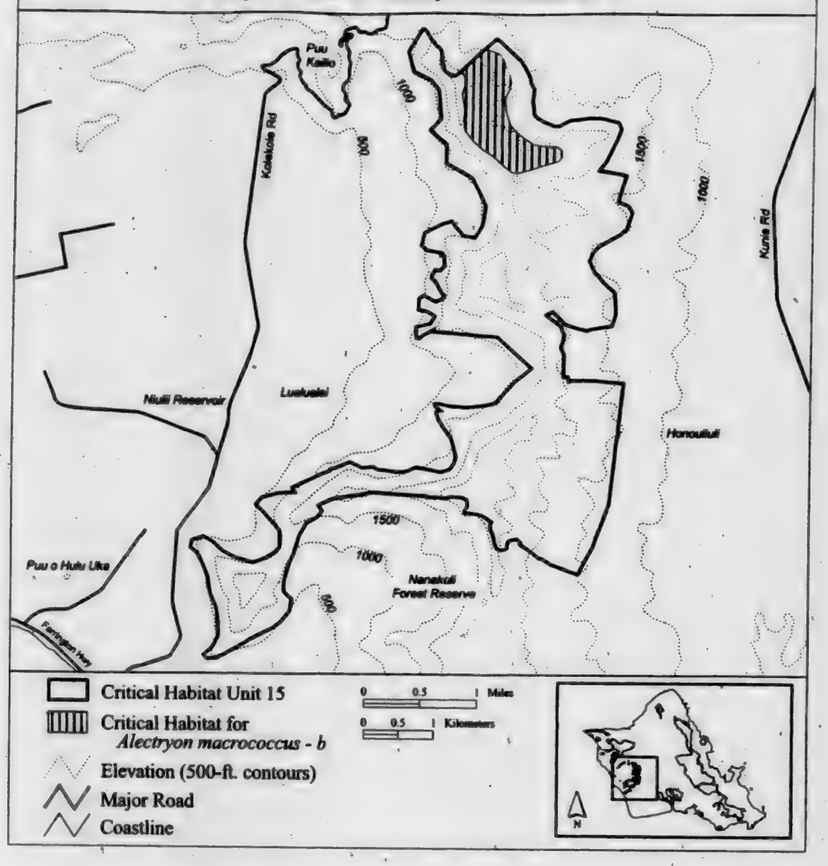


(126) Oahu 15—*Alectryon macrococcus*—b (112 ha; 278 ac)

(i) Unit consists of the following 45 boundary points: Start at 593221, 2374560; 593235, 2374556; 593343, 2374523; 593436, 2374483; 593475, 2374432; 593513, 2374340; 593574, 2374201; 593597, 2374102; 593577, 2374005; 593517, 2373864; 593533, 2373685; 593559, 2373602; 593597, 2373487; 593704, 2373370; 593817, 2373291; 593921, 2373215; 593923, 2373216; 594013, 2373194; 594092, 2373185; 594170, 2373185; 594266, 2373174; 594326, 2373130; 594333, 2373081; 594337, 2373029; 594297, 2372971; 593825, 2372840; 593697, 2372803; 593678, 2372808; 593619, 2372819; 593555, 2372874; 593497, 2372923; 593407, 2373011; 593336, 2373064; 593191, 2373152; 593065, 2373275; 592946, 2373412; 592933, 2373511; 592940, 2373661; 592933, 2373751; 592907, 2373870; 592905, 2373936; 592940, 2374033; 592938, 2374122; 592933, 2374163; 592875, 2374236; return to starting point.

(ii) **Note:** Map 126 follows:

Map 126 Unit 15 - *Alectryon macrococcus* - b

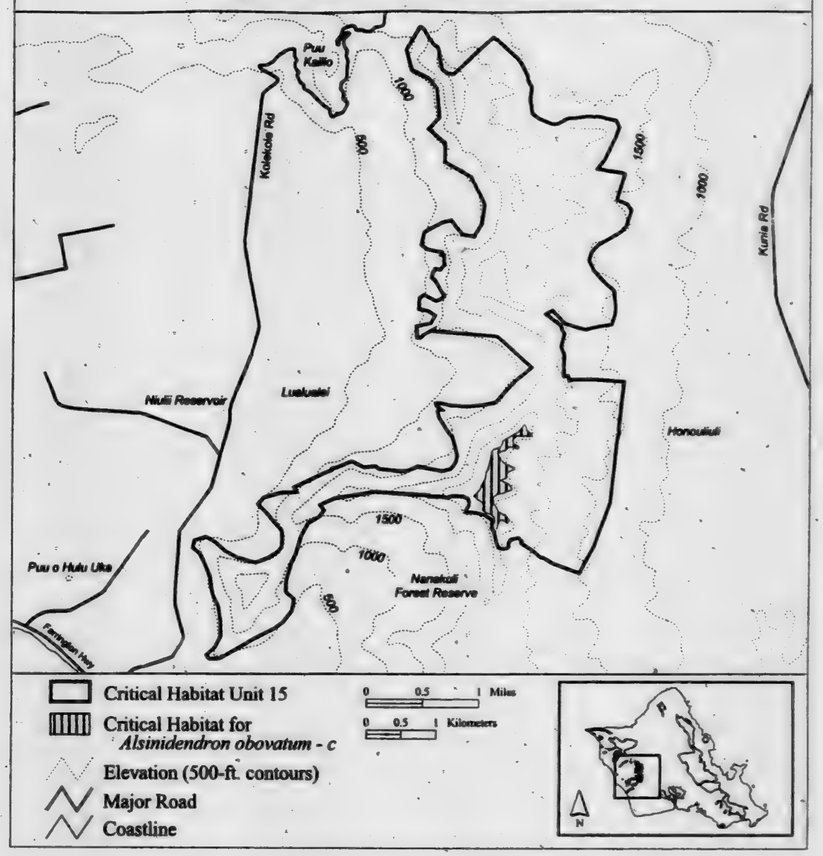


(127) Oahu 15—*Alsinidendron obovatum*—c (31 ha; 77 ac)

(i) Unit consists of the following 86 boundary points: Start at 593377, 2368762; 593383, 2368765; 593371, 2368765; 593408, 2368817; 593498, 2368851; 593529, 2368892; 593535, 2368933; 593628, 2368992; 593748, 2369057; 593800, 2369105; 593845, 2369174; 593876, 2369139; 593876, 2369098; 593906, 2369064; 593951, 2369019; 593944, 2369009; 593869, 2369009; 593831, 2369009; 593731, 2369009; 593683, 2368957; 593680, 2368944; 593690, 2368896; 593742, 2368878; 593766, 2368847; 593762, 2368834; 593735, 2368834; 593635, 2368854; 593573, 2368803; 593529, 2368799; 593484, 2368768; 593464, 2368768; 593487, 2368727; 593518, 2368669; 593553, 2368631; 593611, 2368593; 593666, 2368573; 593711, 2368555; 593697, 2368531; 593632, 2368504; 593597, 2368480; 593587, 2368452; 593604, 2368432; 593597, 2368418; 593532, 2368390; 593515, 2368377; 593621, 2368329; 593642, 2368308; 593666, 2368270; 593663, 2368246; 593587, 2368219; 593532, 2368195; 593467, 2368188; 593408, 2368153; 593408, 2368095; 593412, 2368054; 593436, 2368023; 593456, 2367985; 593474, 2367940; 593525, 2367909; 593577, 2367892; 593597, 2367858; 593639, 2367813; 593608, 2367765; 593587, 2367796; 593542, 2367820; 593501, 2367813; 593470, 2367731; 593456, 2367683; 593436, 2367641; 593419, 2367683; 593405, 2367748; 593429, 2367796; 593415, 2367858; 593371, 2367903; 593312, 2367920; 593250, 2367958; 593264, 2368026; 593247, 2368078; 593178, 2368122; 593137, 2368164; 593212, 2368253; 593247, 2368322; 593288, 2368411; 593305, 2368504; 593322, 2368518; 593357, 2368655; return to starting point.

(ii) **Note:** Map 127 follows:

Map 127 Unit 15 - *Alsinidendron obovatum* - c

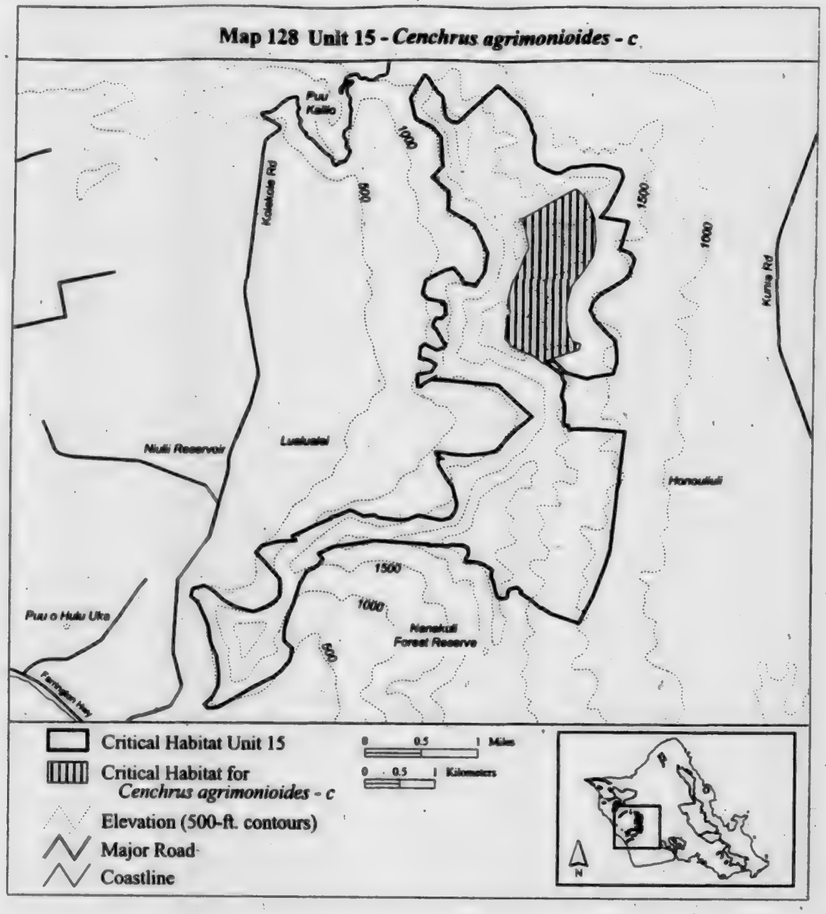


(128) Oahu 15—*Cenchrus agrimonioides*—c (200 ha; 495 ac)

(i) Unit consists of the following 40 boundary points: Start at 594510, 2373238; 594554, 2373214; 594677, 2373079; 594734, 2372964; 594788, 2372811; 594788, 2372810; 594796, 2372788; 594789, 2372787; 594807, 2372505; 594780, 2372283; 594685, 2372122; 594482, 2371850; 594424, 2371613; 594421, 2371368; 594463, 2371177; 594516, 2371089; 594627, 2371047; 594608, 2370974; 594455, 2370924; 594245, 2370844; 594153, 2370809; 594103, 2370764; 593969, 2370871; 593659, 2371005; 593552, 2371119; 593559, 2371250; 593579, 2371430; 593621, 2371492; 593586, 2371587; 593582, 2371683; 593648, 2371928; 593724, 2372081; 593793, 2372261; 593858, 2372402; 593789, 2372739; 593794, 2372740; 593762, 2372781; 593715, 2372815; 593771, 2372828; 594191, 2373064; return to starting point.

(ii) **Note:** Map 128 follows:

Map 128 Unit 15 - *Cenchrus agrimonioides - c*

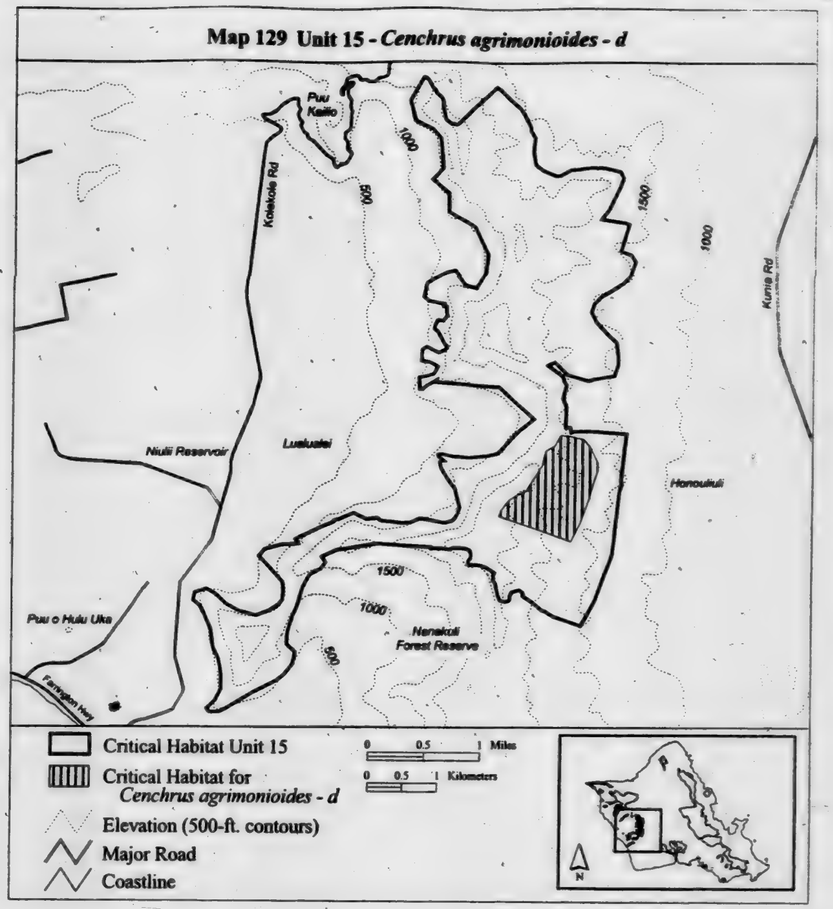


(129) Oahu 15—*Cenchrus agrimonioides*—d (117 ha; 290 ac)

(i) Unit consists of the following 20 boundary points: Start at 594341, 2369756; 594462, 2369749; 594672, 2369699; 594756, 2369602; 594869, 2369372; 594866, 2369258; 594816, 2369114; 594742, 2368834; 594619, 2368503; 594494, 2368251; 594139, 2368381; 593465, 2368603; 593489, 2368680; 593610, 2368830; 593716, 2368897; 593850, 2368961; 593934, 2369098; 594076, 2369327; 594127, 2369535; 594254, 2369615; return to starting point.

(ii) **Note:** Map 129 follows:

Map 129 Unit 15 - *Cenchrus agrimonioides - d*

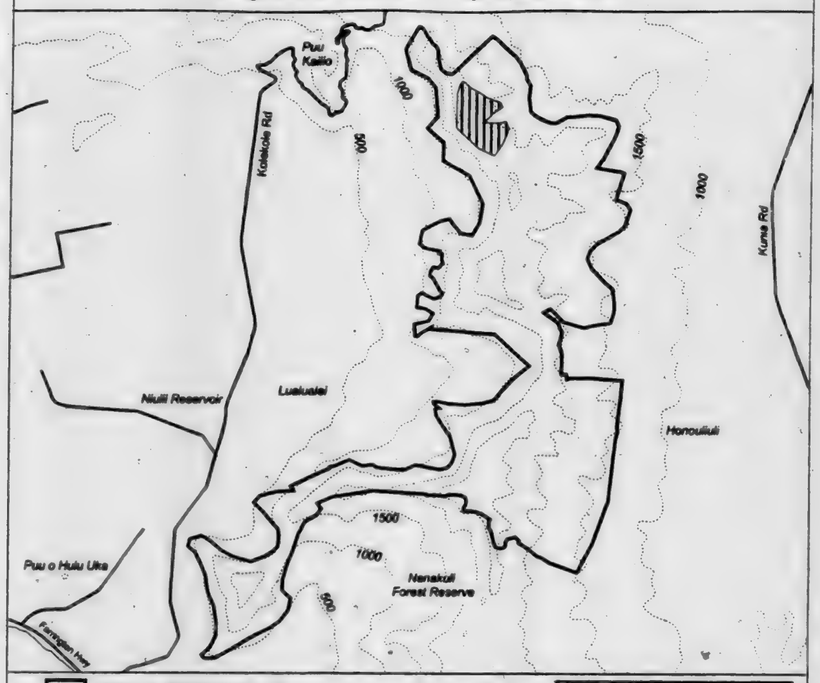


(130) Oahu 15—*Chamaesyce herbstii*—b (47 ha; 116 ac)

(i) Unit consists of the following 22 boundary points: Start at 592991, 2374069; 593075, 2373990; 593219, 2373906; 593336, 2373831; 593504, 2373766; 593540, 2373702; 593404, 2373617; 593362, 2373569; 593307, 2373526; 593259, 2373490; 593512, 2373484; 593591, 2373502; 593625, 2373411; 593593, 2373313; 593523, 2373150; 593434, 2373024; 593412, 2373027; 593193, 2373124; 592880, 2373418; 592886, 2373893; 592921, 2374014; 592953, 2374078; return to starting point.

(ii) **Note:** Map 130 follows:

Map 130 Unit 15 - *Chamaesyce herbstii - b*

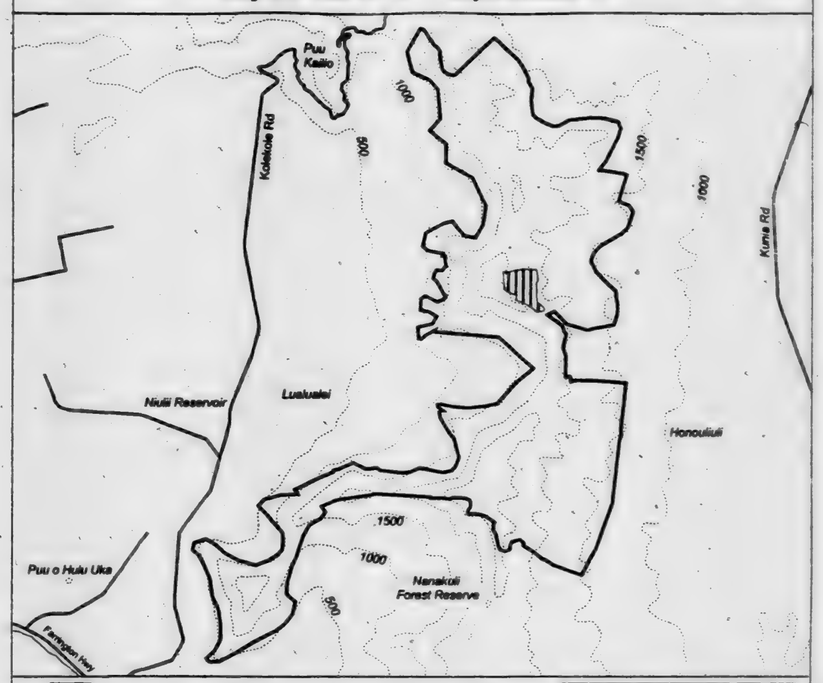


(131) Oahu 15—*Chamaesyce herbstii*—c (21 ha; 53 ac)

(i) Unit consists of the following 26 boundary points: Start at 593994, 2371231; 593987, 2371233; 593999, 2370955; 594083, 2370881; 594111, 2370848; 594083, 2370820; 593999, 2370815; 593910, 2370881; 593840, 2370923; 593770, 2370955; 593691, 2370979; 593709, 2371043; 593708, 2371048; 593714, 2371049; 593709, 2371049; 593672, 2371063; 593579, 2371100; 593532, 2371133; 593523, 2371165; 593512, 2371386; 593581, 2371372; 593644, 2371395; 593807, 2371422; 593989, 2371417; 593999, 2371357; 594013, 2371263; return to starting point.

(ii) **Note:** Map 131 follows:

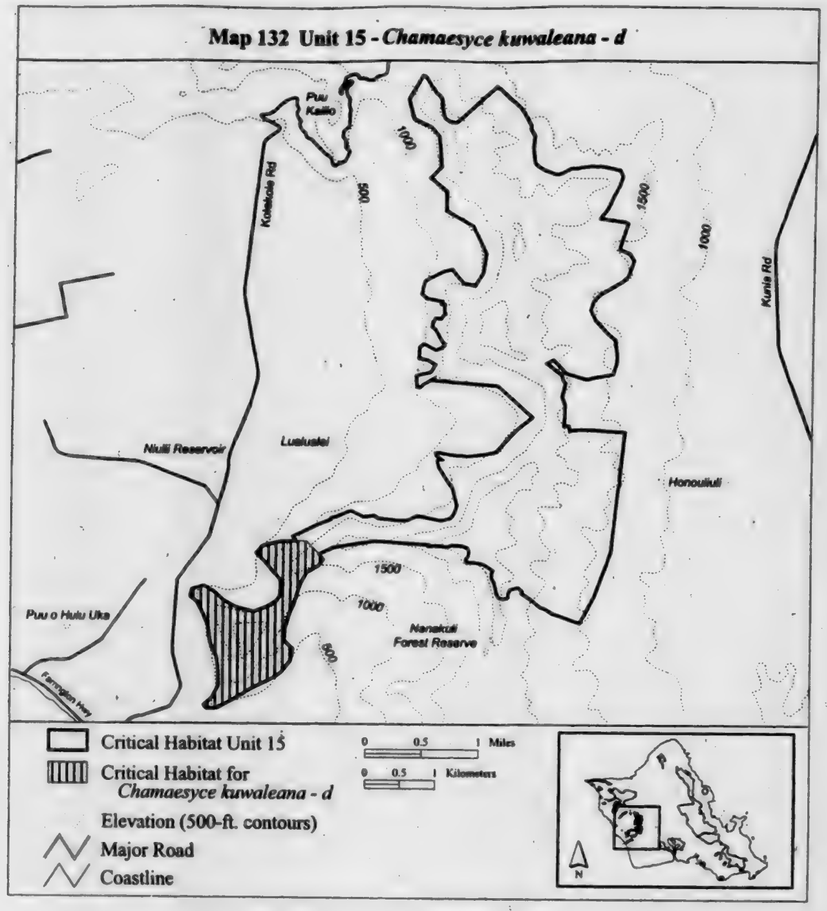
Map 131 Unit 15 - *Chamaesyce herbstii - c*



(132) Oahu 15—*Chamaesyce kuwaleana*—d (184 ha; 454 ac)

(i) Unit consists of the following 59 boundary points: Start at 590890, 2367845; 590753, 2367768; 590663, 2367594; 590573, 2367305; 590515, 2367177; 590444, 2366939; 590438, 2366792; 590436, 2366785; 590436, 2366784; 590437, 2366784; 590457, 2366768; 590560, 2366676; 590528, 2366509; 590399, 2366348; 590265, 2366252; 589963, 2366098; 589738, 2365969; 589494, 2365828; 589348, 2365822; 589335, 2365828; 589301, 2365873; 589423, 2365982; 589506, 2366143; 589506, 2366167; 589507, 2366167; 589507, 2366168; 589506, 2366172; 589506, 2366342; 589474, 2366560; 589384, 2366753; 589352, 2366997; 589256, 2367209; 589192, 2367331; 589095, 2367408; 589121, 2367511; 589288, 2367569; 589429, 2367485; 589564, 2367363; 589751, 2367260; 590001, 2367190; 590181, 2367260; 590309, 2367344; 590374, 2367415; 590380, 2367530; 590374, 2367665; 590265, 2367781; 590155, 2367916; 590033, 2368038; 590117, 2368134; 590342, 2368198; 590605, 2368211; 590746, 2368211; 590900, 2368063; 590984, 2367954; 590913, 2367858; 590904, 2367853; 590903, 2367853; 590903, 2367854; 590902, 2367853; return to starting point.

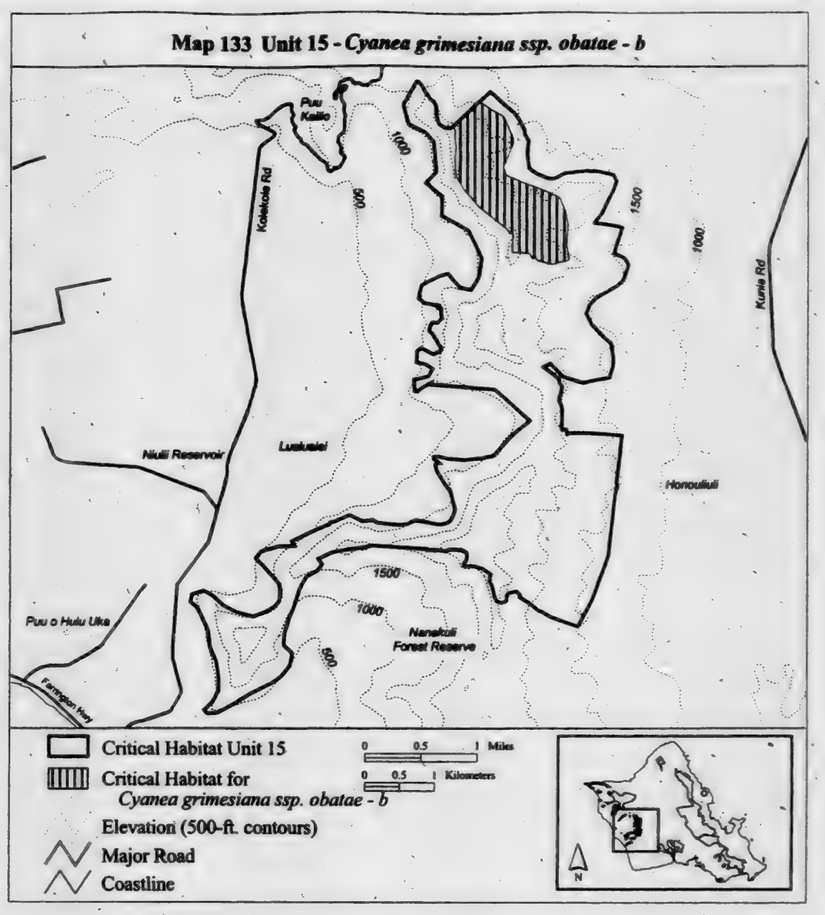
(ii) **Note:** Map 132 follows:



(133) Oahu 15—*Cyanea grimesiana* ssp. *obatae*—b (184 ha; 455 ac)

(i) Unit consists of the following 45 boundary points: Start at 593238, 2374575; 593285, 2374543; 593404, 2374463; 593535, 2374388; 593586, 2374348; 593713, 2374039; 593713, 2373948; 593602, 2373707; 593571, 2373639; 593598, 2373556; 593626, 2373520; 593856, 2373421; 594066, 2373334; 594316, 2373223; 594375, 2373183; 594462, 2372997; 594490, 2372815; 594474, 2372517; 594502, 2372346; 594506, 2372307; 594482, 2372295; 594415, 2372283; 594351, 2372276; 594304, 2372248; 594232, 2372248; 594157, 2372272; 594070, 2372292; 594025, 2372329; 593991, 2372327; 593947, 2372395; 593820, 2372407; 593705, 2372407; 593693, 2372498; 593713, 2372569; 593713, 2372668; 593626, 2372759; 593487, 2372870; 593222, 2373076; 593008, 2373318; 592885, 2373532; 592881, 2373762; 592897, 2373921; 592881, 2374028; 592881, 2374158; 592851, 2374213; return to starting point.

(ii) **Note:** Map 133 follows:

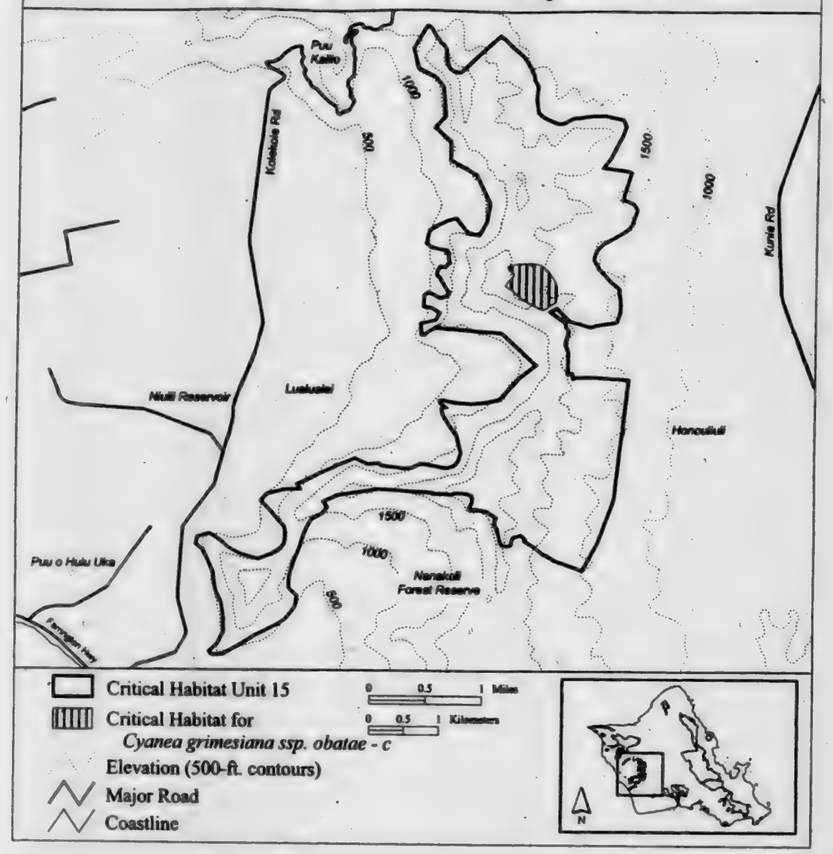


(134) Oahu 15—*Cyanea grimesiana* ssp. *obatae*—c (34 ha; 84 ac)

(i) Unit consists of the following 22 boundary points: Start at 593638, 2371452; 593884, 2371463; 593999, 2371443; 594106, 2371360; 594205, 2371221; 594240, 2371126; 594236, 2371019; 594224, 2370900; 594141, 2370860; 594094, 2370817; 594034, 2370793; 593884, 2370868; 593725, 2370959; 593618, 2371046; 593499, 2371146; 593539, 2371197; 593575, 2371233; 593614, 2371276; 593618, 2371308; 593586, 2371345; 593551, 2371372; 593531, 2371412; return to starting point.

(ii) **Note:** Map 134 follows:

Map 134 Unit 15 - *Cyanea grimesiana ssp. obatae* - c

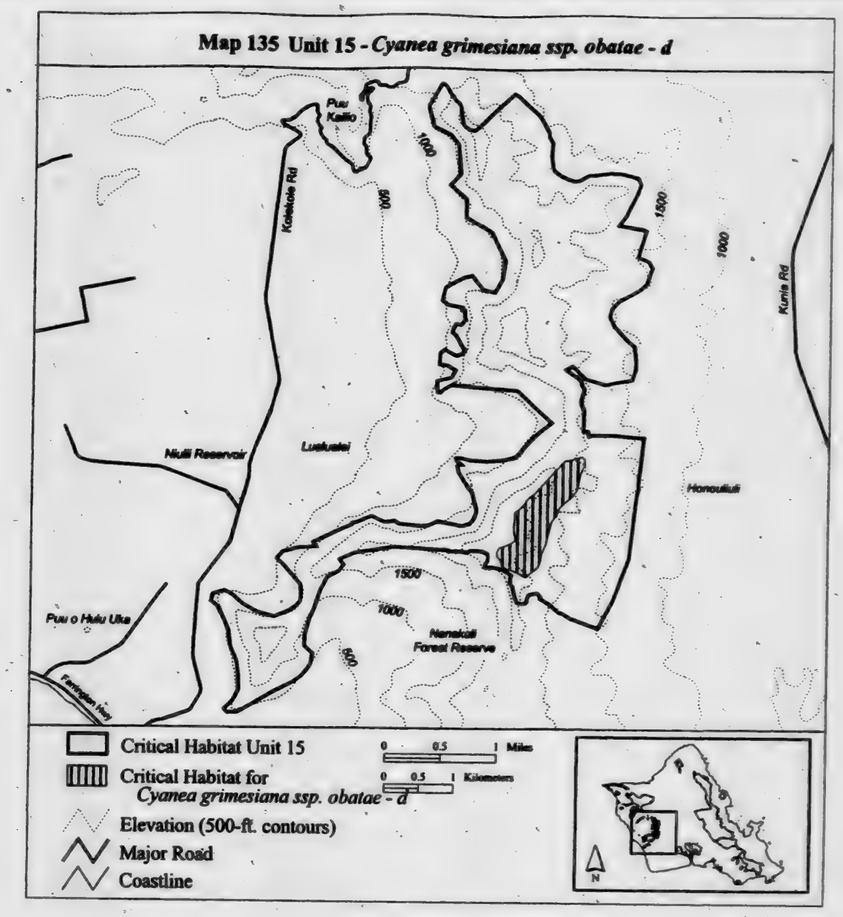


(135) Oahu 15—*Cyanea grimesiana* ssp. *obatae*—d (83 ha; 205 ac)

(i) Unit consists of the following 42 boundary points: Start at 594150, 2369456; 594262, 2369473; 594391, 2369508; 594429, 2369478; 594425, 2369388; 594395, 2369323; 594373, 2369259; 594348, 2369135; 594322, 2369023; 594270, 2368950; 594168, 2368860; 594073, 2368766; 594043, 2368672; 593962, 2368577; 593923, 2368423; 593889, 2368252; 593825, 2368114; 593812, 2368016; 593773, 2367926; 593662, 2367836; 593610, 2367784; 593482, 2367853; 593396, 2367887; 593345, 2367892; 593259, 2367952; 593255, 2367986; 593242, 2368037; 593195, 2368084; 593190, 2368136; 593229, 2368209; 593323, 2368243; 593405, 2368277; 593456, 2368316; 593430, 2368414; 593422, 2368509; 593430, 2368547; 593435, 2368629; 593439, 2368697; 593486, 2368736; 593572, 2368809; 593619, 2368899; 593709, 2368967; return to starting point.

(ii) **Note:** Map 135 follows:

Map 135 Unit 15 - *Cyanea grimesiana ssp. obatae* - d

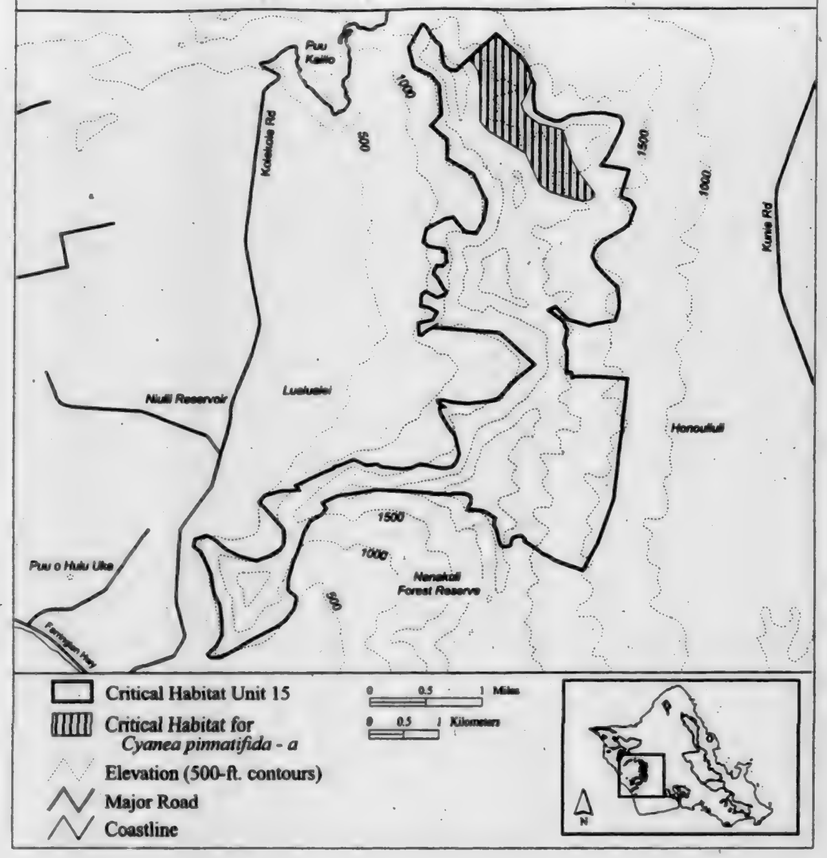


(136) Oahu 15—*Cyanea pinnatifida*—a (154 ha; 380 ac)

(i) Unit consists of the following 41 boundary points: Start at 593385, 2374713; 593425, 2374682; 593429, 2374682; 593577, 2374542; 593721, 2374415; 593793, 2374314; 593874, 2374157; 593882, 2374030; 593819, 2373852; 593747, 2373721; 593776, 2373624; 593865, 2373531; 594009, 2373433; 594132, 2373404; 594318, 2373349; 594377, 2373226; 594381, 2373150; 594428, 2373061; 594462, 2372926; 594546, 2372768; 594648, 2372624; 594745, 2372497; 594796, 2372421; 594733, 2372345; 594678, 2372332; 594585, 2372332; 594504, 2372349; 594339, 2372401; 594149, 2372469; 594018, 2372570; 593903, 2372820; 593810, 2373027; 593599, 2373154; 593290, 2373336; 593167, 2373467; 593163, 2373679; 593163, 2373967; 593133, 2374170; 593078, 2374259; 592993, 2374346; 593303, 2374636; return to starting point.

(ii) **Note:** Map 136 follows:

Map 136 Unit 15 - *Cyanea pinnatifida* - a

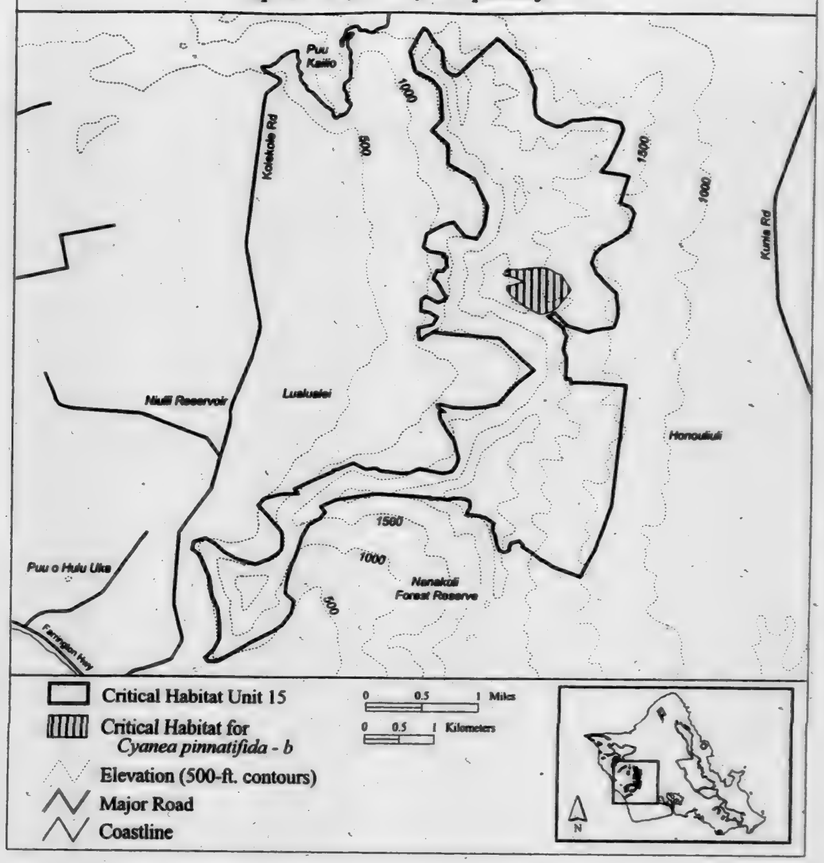


(137) Oahu 15—*Cyanea pinnatifida*—b (42 ha; 104 ac)

(i) Unit consists of the following 34 boundary points: Start at 594269, 2371382; 594330, 2371362; 594330, 2371348; 594458, 2371171; 594457, 2371170; 594458, 2371170; 594470, 2371145; 594394, 2371042; 594317, 2370945; 594269, 2370886; 594177, 2370831; 594049, 2370792; 593891, 2370864; 593690, 2370992; 593604, 2371076; 593568, 2371123; 593570, 2371123; 593565, 2371124; 593554, 2371189; 593769, 2371254; 593758, 2371277; 593646, 2371322; 593557, 2371344; 593520, 2371366; 593526, 2371411; 593573, 2371436; 593646, 2371433; 593707, 2371427; 593738, 2371430; 593874, 2371449; 593971, 2371460; 594063, 2371457; 594127, 2371451; 594205, 2371418; return to starting point.

(ii) **Note:** Map 137 follows:

Map 137 Unit 15 - *Cyanea pinnatifida* - b

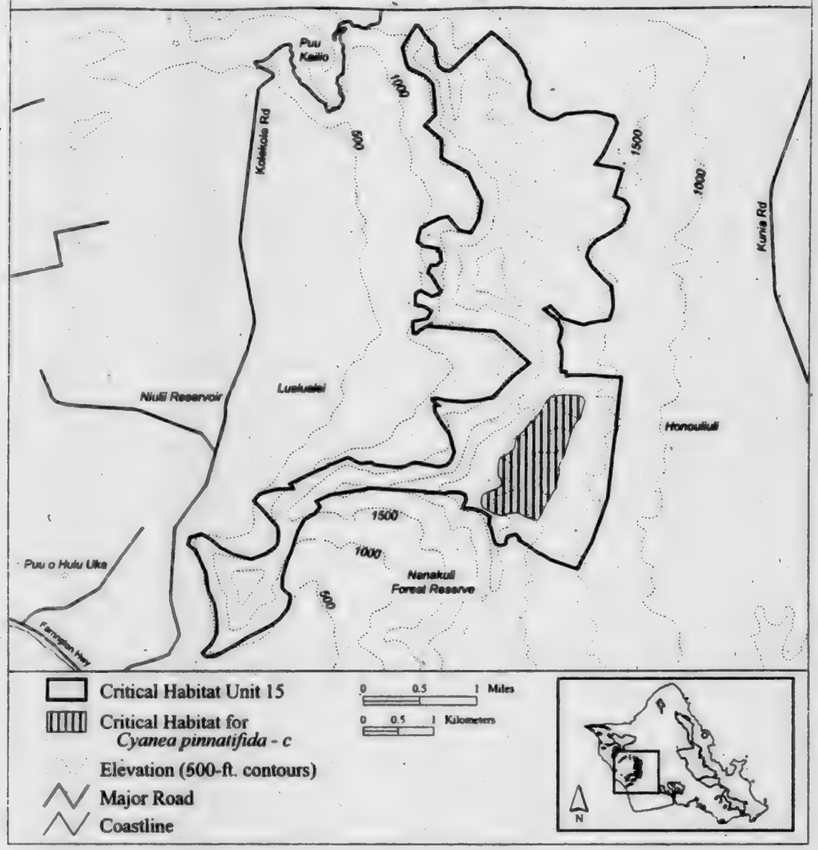


(138) Oahu 15—*Cyanea pinnatifida*—c (129 ha; 318 ac)

(i) Unit consists of the following 55 boundary points: Start at 594158, 2369378; 594159, 2369378; 594186, 2369419; 594266, 2369517; 594347, 2369525; 594456, 2369531; 594639, 2369522, 594717, 2369497; 594753, 2369442; 594717, 2369347; 594673, 2369208; 594620, 2369133; 594564, 2369041; 594475, 2368746; 594447, 2368662; 594375, 2368512; 594383, 2368423; 594353, 2368326; 594344, 2368212; 594292, 2368155; 594077, 2367755; 594058, 2367761; 593899, 2367813; 593799, 2367869; 593660, 2367861; 593573, 2367825; 593462, 2367861; 593373, 2367903; 593295, 2367942; 593270, 2368003; 593276, 2368072; 593306, 2368125; 593379, 2368164; 593470, 2368195; 593548, 2368242; 593568, 2368287; 593554, 2368348; 593515, 2368390; 593512, 2368470; 593512, 2368545; 593532, 2368621; 593562, 2368651; 593657, 2368704; 593738, 2368765; 593749, 2368824; 593760, 2368907; 593829, 2368982; 593880, 2369027; 593927, 2369091; 593996, 2369166; 594033, 2369183; 594077, 2369250; 594124, 2369303; 594155, 2369372; 594156, 2369374; return to starting point.

(ii) **Note:** Map 138 follows:

Map 138 Unit 15 - *Cyanea pinnatifida* - c

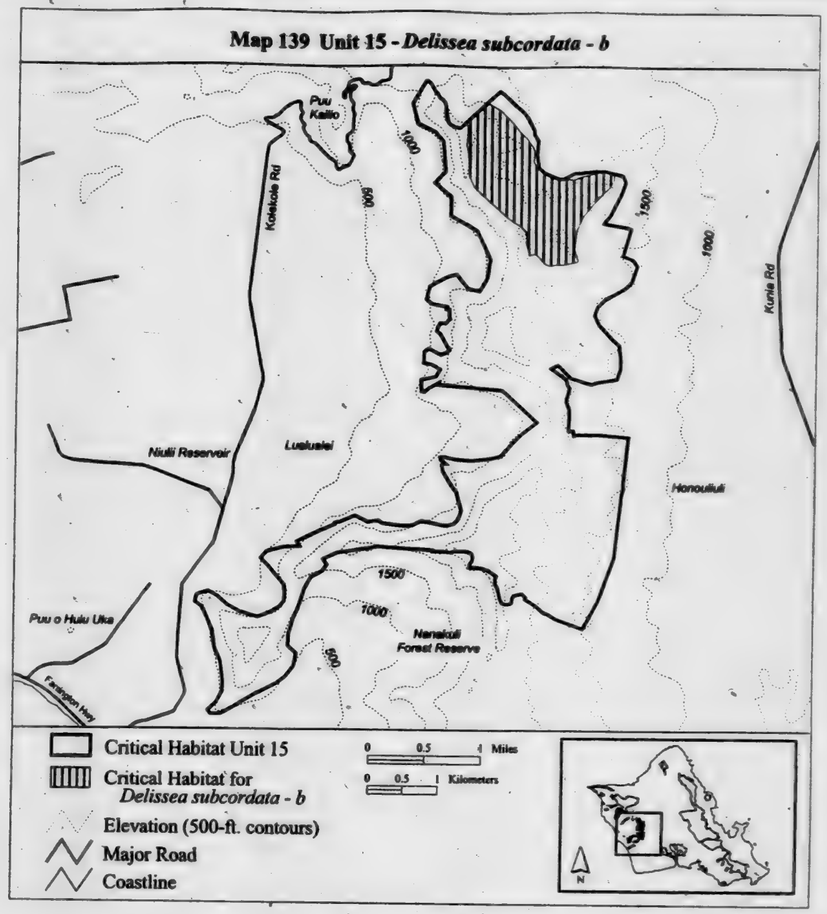


(139) Oahu 15—*Delissea subcordata*—(220 ha; 545ac)

(i) Unit consists of the following 58 boundary points: Start at 593234, 2374539; 593402, 2374434; 593503, 2374332; 593561, 2374272; 593700, 2374102; 593689, 2374102; 593761, 2374051; 593845, 2373930; 593879, 2373842; 593862, 2373713; 593923, 2373622; 594069, 2373534; 594211, 2373473; 594448, 2373456; 594553, 2373500; 594705, 2373537; 594864, 2373580; 594962, 2373566; 595017, 2373539; 595020, 2373455; 594959, 2373353; 594868, 2373272; 594732, 2373123; 594576, 2372940; 594485, 2372730; 594455, 2372473; 594485, 2372375; 594505, 2372317; 594495, 2372293; 594377, 2372270; 594309, 2372250; 594241, 2372247; 594191, 2372247; 594109, 2372230; 594042, 2372261; 593910, 2372410; 593818, 2372389; 593801, 2372454; 593767, 2372552; 593781, 2372636; 593767, 2372718; 593693, 2372799; 593537, 2372890; 593395, 2373026; 593266, 2373131; 593114, 2373269; 593016, 2373364; 592955, 2373486; 592945, 2373550; 592945, 2373635; 592931, 2373831; 592911, 2373930; 592924, 2374068; 592924, 2374143; 592924, 2374221; 592878, 2374238; 593146, 2374489; 593165, 2374499; return to starting point.

(ii) **Note:** Map 139 follows:

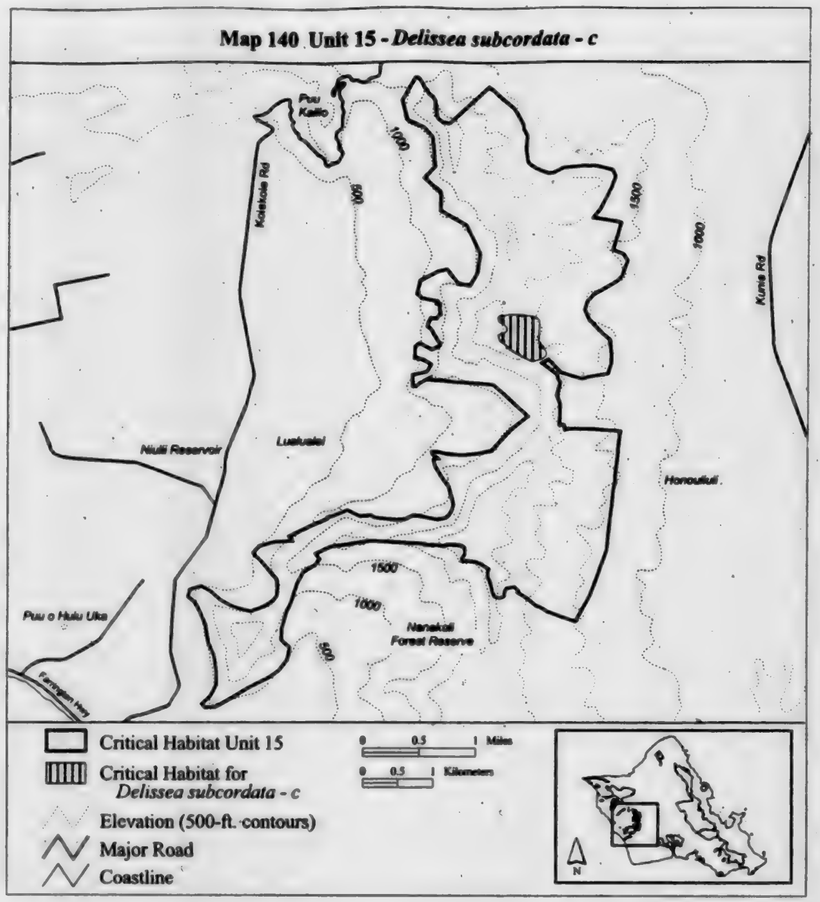
Map 139 Unit 15 - *Delissea subcordata* - b



(140) Oahu 15—*Delissea subcordata*—c (32 ha; 78ac)

(i) Unit consists of the following 23 boundary points: Start at 593547, 2371434; 593683, 2371458; 593893, 2371450; 594059, 2371423; 594113, 2371379; 594113, 2371278; 594106, 2371200; 594096, 2371081; 594160, 2371007; 594214, 2370916; 594214, 2370868; 594153, 2370824; 594014, 2370787; 593913, 2370834; 593737, 2370919; 593625, 2371017; 593547, 2371078; 593517, 2371163; 593642, 2371210; 593649, 2371271; 593605, 2371316; 593534, 2371363; 593517, 2371414; return to starting point.

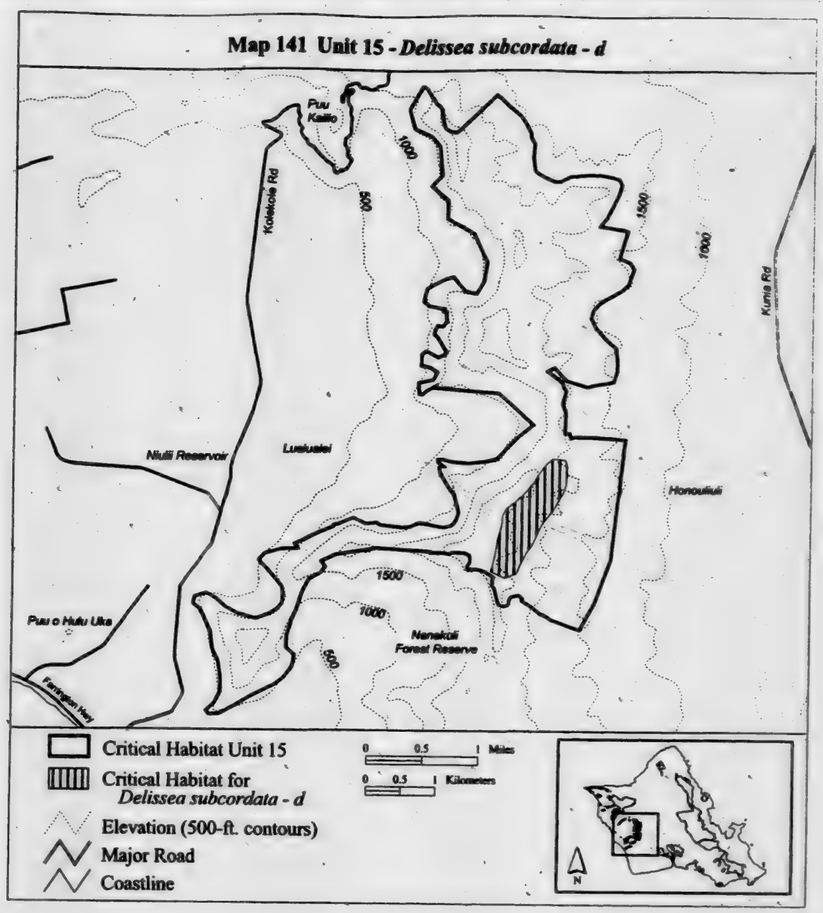
(ii) **Note:** Map 140 follows:



(141) Oahu 15—*Delissea subcordata*—d (81 ha; 200 ac)

(i) Unit consists of the following 27 boundary points: Start at 594143, 2369424; 594236, 2369495; 594412, 2369484; 594439, 2369409; 594442, 2369289; 594427, 2369132; 594371, 2368986; 594315, 2368885; 594248, 2368768; 594098, 2368581; 594019, 2368427; 593952, 2368266; 593873, 2368165; 593775, 2367978; 593730, 2367865; 593562, 2367805; 593360, 2367899; 593386, 2367989; 593427, 2368146; 593464, 2368360; 593513, 2368559; 593521, 2368679; 593569, 2368780; 593704, 2368881; 593880, 2369061; 593978, 2369173; 594045, 2369297; return to starting point.

(ii) **Note:** Map 141 follows:

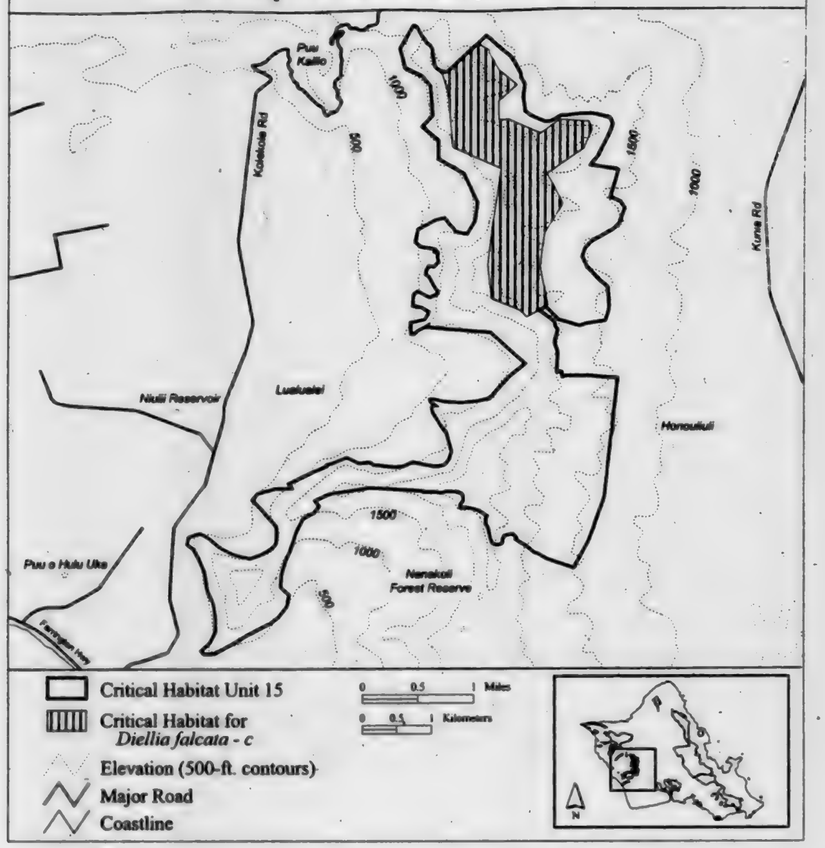


(142) Oahu 15—*Diellia falcata*—c (342 ha; 844 ac)

(i) Unit consists of the following 32 boundary points: Start at 593263, 2374599; 593436, 2374499; 593422, 2374474; 593572, 2374207; 593822, 2373998; 593561, 2373771; 593572, 2373507; 593715, 2373507; 594159, 2373305; 594437, 2373496; 594855, 2373462; 594892, 2373348; 594778, 2373081; 594254, 2372726; 594485, 2372300; 594221, 2371865; 594155, 2371391; 594272, 2370836; 593971, 2370676; 593868, 2370775; 593469, 2370939; 593411, 2371425; 593483, 2371995; 593604, 2372808; 592905, 2373115; 592834, 2373899; 592727, 2374190; 592765, 2374190; 592805, 2374172; 592806, 2374171; 592807, 2374171; 592807, 2374172; return to starting point.

(ii) **Note:** Map 142 follows:

Map 142 Unit 15 - *Diellia falcata* - c

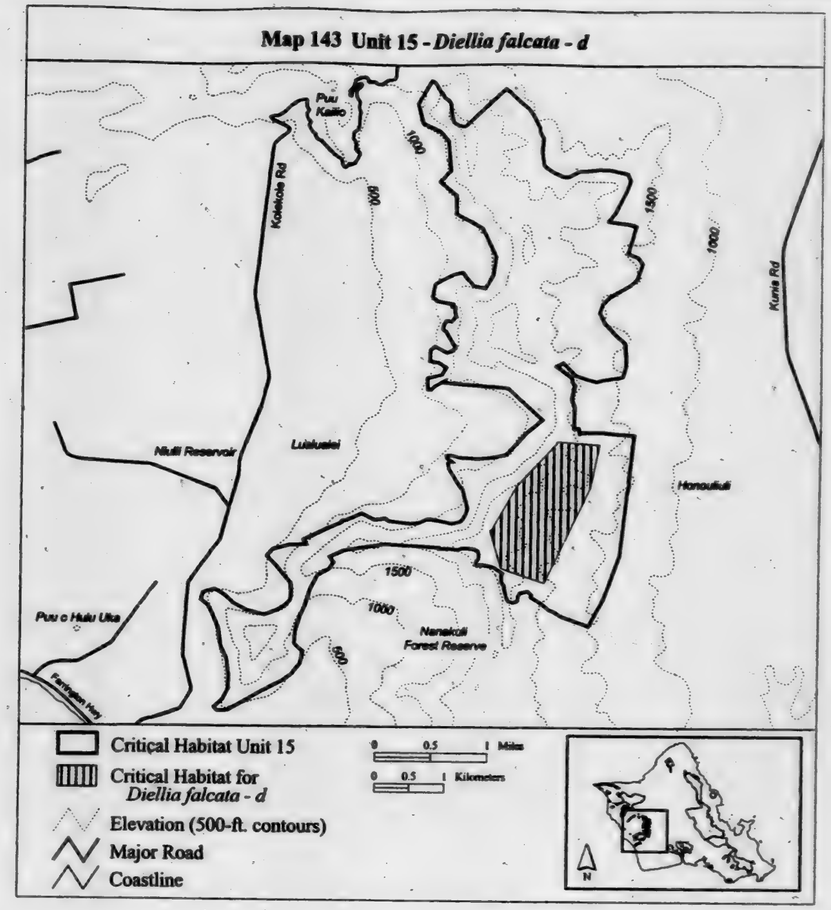


(143) Oahu 15—*Diellia falcata*—d (177 ha; 438 ac)

(i) Unit consists of the following 11 boundary points: Start at 594778, 2369648; 594642, 2369018; 594003, 2367683; 593587, 2367808; 593376, 2367886; 593222, 2368415; 593240, 2368417; 593589, 2369042; 594161, 2369659; 594168, 2369688; 594734, 2369651; return to starting point.

(ii) **Note:** Map 143 follows:

Map 143 Unit 15 - *Diellia falcata* - d

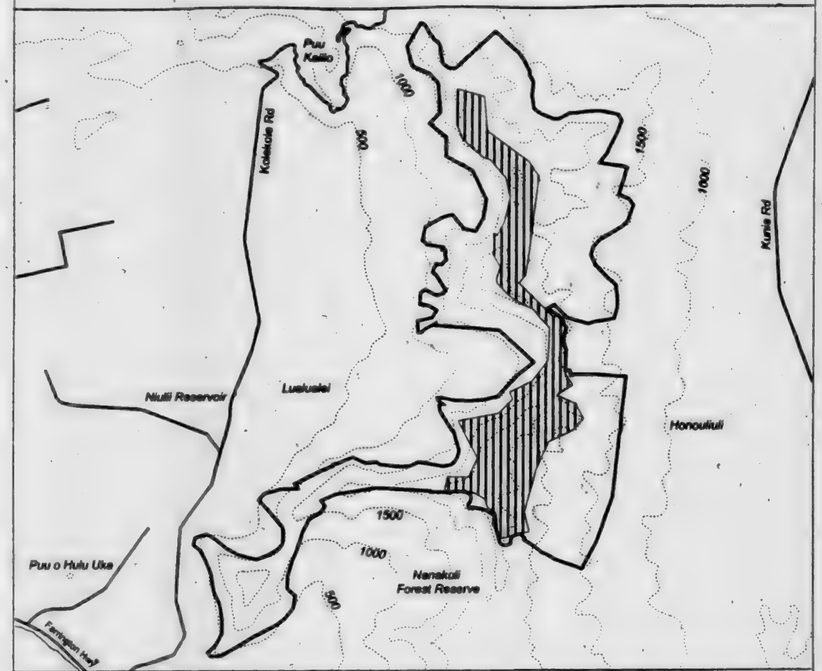


(144) Oahu 15—*Diellia unisora*—a (362 ha; 895 ac)

(i) Unit consists of the following 68 boundary points: Start at 592846, 2373892; 593232, 2373784; 593278, 2373295; 593871, 2372872; 594017, 2372653; 593879, 2371581; 593822, 2371230; 593736, 2371122; 594227, 2370646; 594300, 2370666; 594412, 2370491; 594362, 2370301; 594412, 2370171; 594402, 2369825; 594512, 2369665; 594287, 2369515; 594542, 2369395; 594552, 2369394; 594662, 2369179; 594517, 2369024; 594167, 2368864; 593976, 2368428; 593821, 2367853; 593827, 2367852; 593886, 2367592; 593462, 2367482; 593436, 2367597; 593426, 2367778; 593411, 2367858; 593300, 2367928; 593260, 2368053; 593105, 2368148; 592685, 2368173; 592723, 2368374; 592725, 2368368; 593025, 2368358; 593155, 2368629; 592880, 2369154; 593456, 2369254; 593651, 2369460; 593606, 2369554; 593611, 2369557; 593616, 2369563; 593761, 2369630; 593931, 2369720; 594152, 2370010; 594172, 2370481; 594041, 2370631; 593941, 2370756; 593671, 2370882; 593536, 2371002; 593421, 2371127; 593416, 2371197; 593466, 2371358; 593358, 2371548; 593381, 2371563; 593376, 2371839; 593421, 2371814; 593521, 2371984; 593611, 2372349; 593536, 2372645; 593325, 2372890; 593187, 2372944; 593188, 2372954; 593050, 2373067; 592928, 2373181; 592839, 2373384; 592839, 2373636; return to starting point.

(ii) **Note:** Map 144 follows:

Map 144 Unit 15 - *Diellia unisora - a*

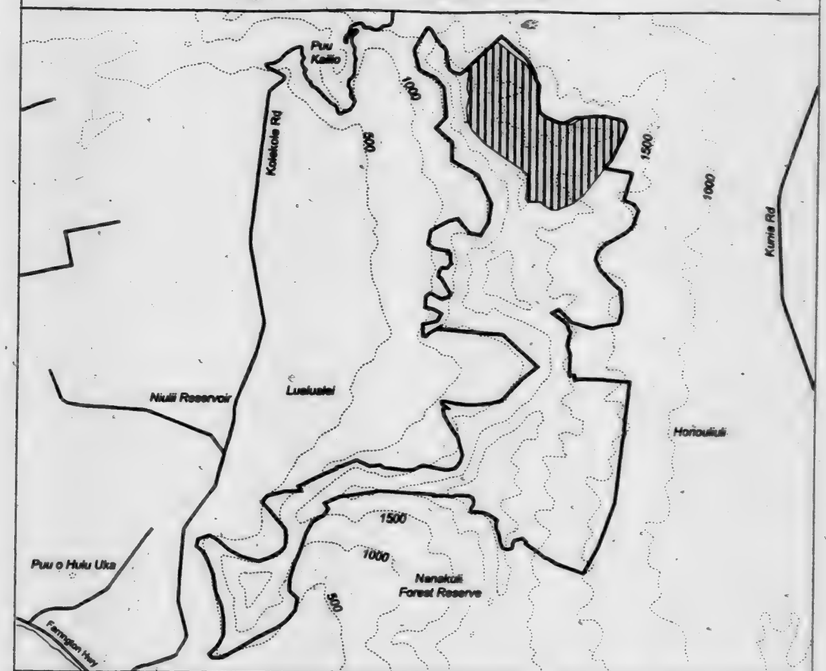


(145) Oahu 15—*Gardenia mannii*—a (266 ha; 658 ac)

(i) Unit consists of the following 44 boundary points: Start at 593315, 2374647; 593329, 2374638; 593423, 2374563; 593533, 2374468; 593718, 2374328; 593801, 2374230; 593892, 2374075; 593930, 2374003; 593911, 2373814; 593941, 2373625; 594017, 2373557; 594228, 2373470; 594387, 2373451; 594572, 2373561; 594761, 2373579; 595011, 2373549; 595143, 2373522; 595188, 2373431; 595147, 2373303; 594973, 2372963; 594894, 2372861; 594735, 2372653; 594580, 2372460; 594421, 2372331; 594190, 2372238; 594130, 2372238; 594020, 2372298; 593967, 2372359; 593797, 2372359; 593748, 2372397; 593771, 2372589; 593778, 2372733; 593695, 2372809; 593457, 2372975; 593177, 2373179; 592981, 2373376; 592916, 2373508; 592894, 2373697; 592939, 2373863; 592901, 2373973; 592916, 2374109; 592935, 2374211; 592897, 2374256; 593303, 2374636; return to starting point.

(ii) **Note:** Map 145 follows:

Map 145 Unit 15 - *Gardenia mannii - a*

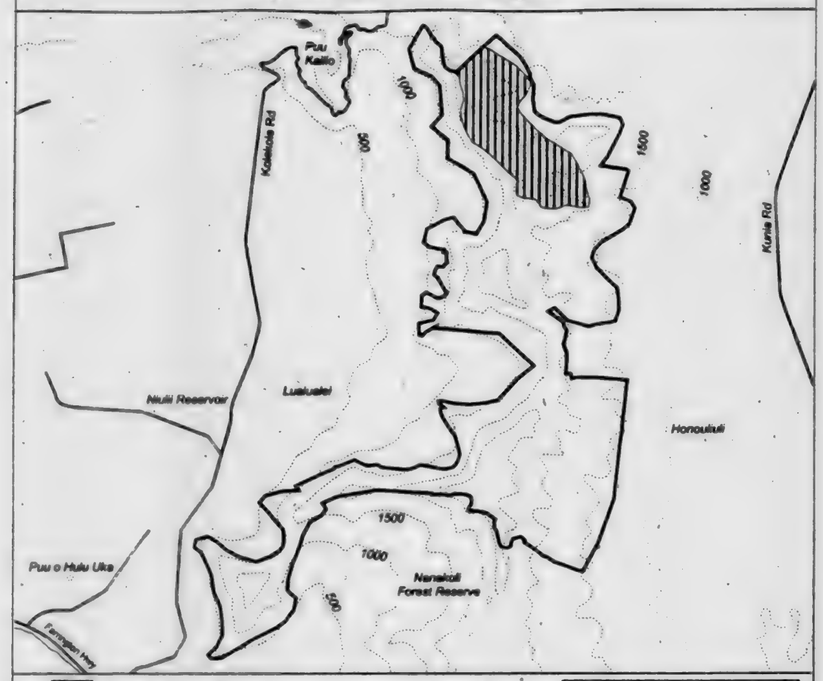


(146) Oahu 15—*Gouania meyenii*—c (209 ha; 515 ac)

(i) Unit consists of the following 60 boundary points: Start at 593204, 2374544; 593306, 2374506; 593425, 2374431; 593681, 2374277; 593800, 2374154; 593879, 2374063; 593891, 2374004; 593816, 2373866; 593721, 2373755; 593693, 2373680; 593768, 2373569; 593867, 2373467; 593997, 2373340; 594112, 2373242; 594258, 2373147; 594475, 2373005; 594618, 2372747; 594665, 2372620; 594681, 2372494; 594728, 2372371; 594712, 2372257; 594606, 2372241; 594499, 2372269; 594416, 2372285; 594329, 2372254; 594250, 2372230; 594155, 2372234; 594096, 2372246; 594037, 2372266; 594013, 2372309; 593966, 2372372; 593875, 2372380; 593768, 2372396; 593689, 2372432; 593685, 2372495; 593689, 2372558; 593697, 2372617; 593685, 2372661; 593579, 2372760; 593425, 2372898; 593290, 2373016; 593199, 2373091; 593045, 2373182; 592958, 2373317; 592907, 2373447; 592887, 2373526; 592879, 2373648; 592915, 2373767; 592903, 2373897; 592868, 2374004; 592852, 2374107; 592808, 2374150; 592754, 2374182; 592760, 2374190; 592765, 2374190; 592805, 2374172; 592805, 2374171; 592806, 2374171; 592807, 2374171; 592807, 2374172; return to starting point.

(ii) **Note:** Map 146 follows:

Map 146 Unit 15 - *Gouania meyenii* - c

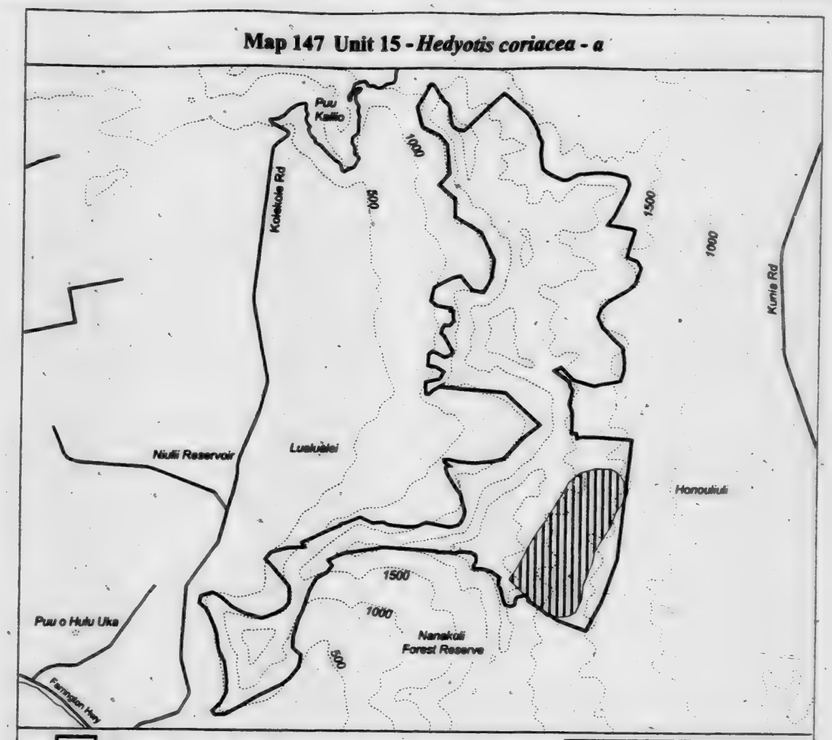


(147) Oahu 15—*Hedyotis coriacea*—a (185 ha; 458 ac)

(i) Unit consists of the following 31 boundary points: Start at 593537, 2367790; 593626, 2367910; 593688, 2368026; 593778, 2368187; 593849, 2368320; 593942, 2368481; 594054, 2368619; 594201, 2368864; 594268, 2368976; 594375, 2369168; 594535, 2369301; 594745, 2369364; 594977, 2369364; 595097, 2369292; 595164, 2369185; 595209, 2369052; 595151, 2368882; 595053, 2368740; 594977, 2368526; 594923, 2368450; 594807, 2368263; 594749, 2368173; 594723, 2368008; 594669, 2367888; 594602, 2367710; 594576, 2367505; 594495, 2367322; 594397, 2367264; 594237, 2367242; 594085, 2367282; 593907, 2367424; return to starting point.

(ii) **Note:** Map 147 follows:

Map 147 Unit 15 - *Hedyotis coriacea* - a

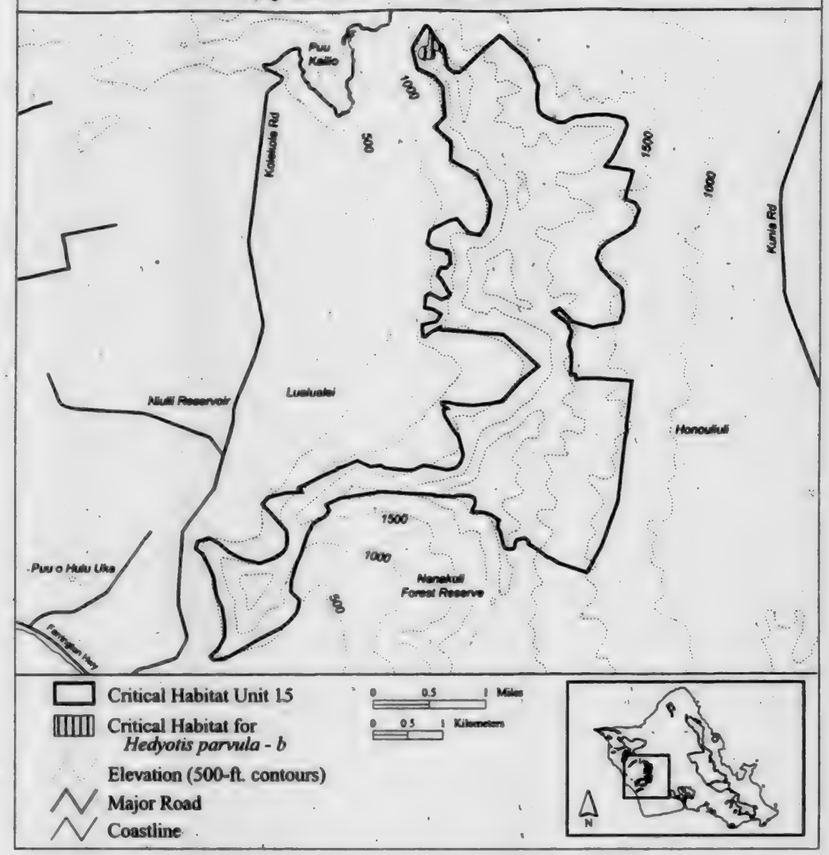


(148) Oahu 15—*Hedyotis parvula*—b (8 ha; 19 ac)

(i) Unit consists of the following 35 boundary points: Start at 592602, 2374407; 592530, 2374478; 592455, 2374495; 592457, 2374454; 592473, 2374402; 592457, 2374373; 592418, 2374363; 592384, 2374357; 592352, 2374359; 592313, 2374359; 592285, 2374349; 592248, 2374369; 592224, 2374406; 592224, 2374450; 592246, 2374499; 592277, 2374535; 592331, 2374545; 592370, 2374565; 592372, 2374594; 592362, 2374618; 592378, 2374653; 592378, 2374681; 592374, 2374701; 592374, 2374733; 592380, 2374756; 592404, 2374781; 592454, 2374691; 592484, 2374661; 592514, 2374601; 592514, 2374600; 592574, 2374561; 592594, 2374531; 592604, 2374492; 592604, 2374422; 592606, 2374409; return to starting point.

(ii) **Note:** Map 148 follows:

Map 148 Unit 15 - *Hedyotis parvula - b*

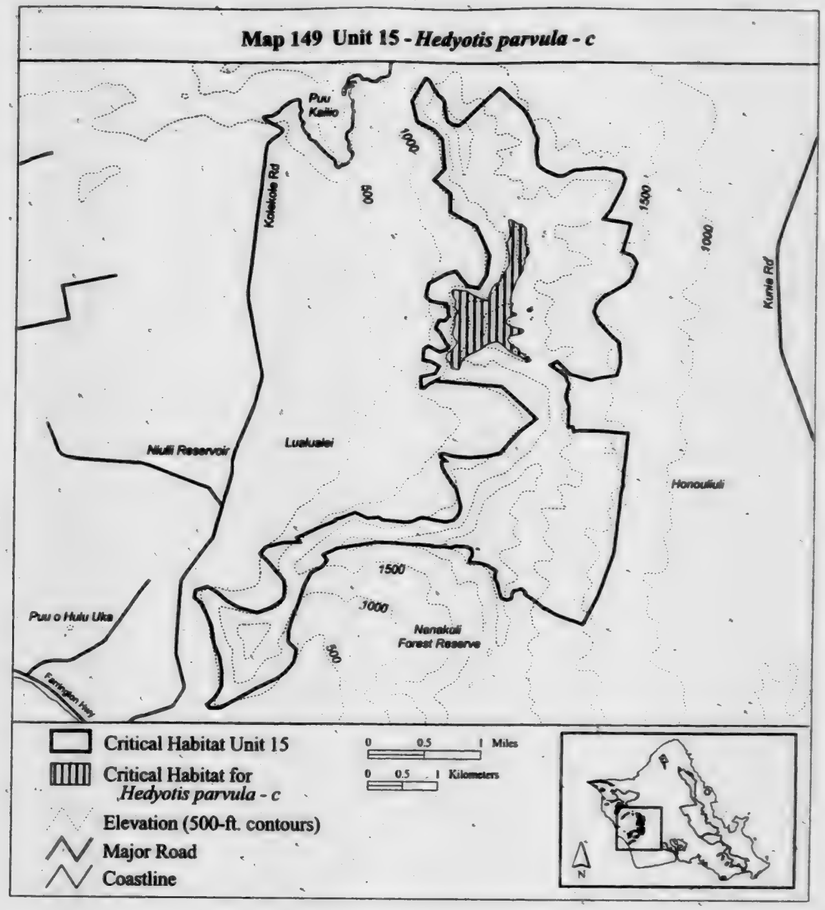


(149) Oahu 15—*Hedyotis parvula*—c (95 ha; 236 ac)

(i) Unit consists of the following 117 boundary points: Start at 593738, 2372184; 593738, 2372181; 593744, 2372130; 593648, 2371970; 593586, 2371810; 593572, 2371714; 593572, 2371678; 593603, 2371650; 593584, 2371594; 593581, 2371540; 593615, 2371521; 593654, 2371504; 593651, 2371487; 593575, 2371467; 593530, 2371442; 593508, 2371389; 593539, 2371344; 593612, 2371321; 593674, 2371300; 593733, 2371284; 593758, 2371258; 593738, 2371233; 593654, 2371210; 593564, 2371188; 593533, 2371146; 593542, 2371115; 593581, 2371070; 593845, 2371031; 593688, 2371003; 593713, 2370946; 593744, 2370938; 593783, 2370904; 593837, 2370865; 593865, 2370845; 593856, 2370825; 593831, 2370823; 593786, 2370848; 593702, 2370901; 593665, 2370910; 593564, 2370966; 593502, 2371022; 593449, 2371073; 593401, 2371104; 593364, 2371106; 593291, 2371087; 593224, 2371053; 593182, 2371019; 593086, 2370960; 593055, 2370944; 593024, 2370932; 592935, 2370884; 592887, 2370823; 592864, 2370752; 592839, 2370702; 592797, 2370707; 592724, 2370772; 592698, 2370817; 592662, 2370854; 592662, 2370884; 592682, 2370927; 592727, 2370974; 592777, 2371025; 592808, 2371073; 592805, 2371121; 592777, 2371154; 592752, 2371208; 592749, 2371255; 592769, 2371306; 592783, 2371362; 592777, 2371438; 592791, 2371477; 592816, 2371522; 592816, 2371551; 592777, 2371593; 592783, 2371626; 592791, 2371697; 592757, 2371742; 592727, 2371817; 592760, 2371846; 592831, 2371843; 592946, 2371830; 593030, 2371774; 593137, 2371729; 593196, 2371700; 593249, 2371698; 593261, 2371729; 593261, 2371762; 593311, 2371872; 593348, 2371928; 593390, 2371953; 593401, 2371954; 593502, 2372130; 593539, 2372201; 593544, 2372274; 593542, 2372341; 593527, 2372400; 593505, 2372510; 593525, 2372546; 593558, 2372617; 593550, 2372712; 593533, 2372785; 593525, 2372825; 593556, 2372833; 593595, 2372813; 593651, 2372782; 593730, 2372751; 593772, 2372715; 593783, 2372653; 593778, 2372605; 593764, 2372535; 593769, 2372487; 593794, 2372445; 593825, 2372392; 593806, 2372338; 593764, 2372279; 593769, 2372234; 593741, 2372187; return to starting point.

(ii) **Note:** Map 149 follows:

Map 149 Unit 15 - *Hedyotis parvula - c*

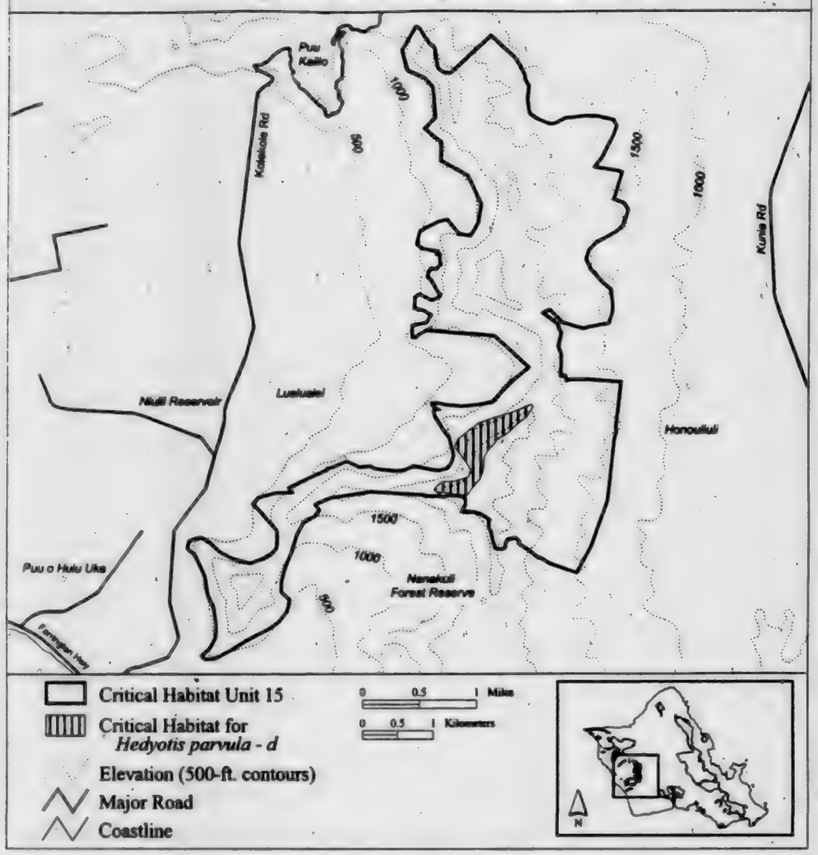


(150) Oahu 15—*Hedyotis parvula*—d (49 ha; 122 ac)

(i) Unit consists of the following 40 boundary points: Start at 593983, 2369454; 594001, 2369444; 594008, 2369410; 593966, 2369334; 593929, 2369269; 593825, 2369200; 593753, 2369138; 593716, 2369097; 593667, 2369049; 593602, 2369011; 593509, 2368960; 593472, 2368908; 593403, 2368829; 593365, 2368781; 593320, 2368705; 593317, 2368592; 593296, 2368492; 593252, 2368376; 593197, 2368324; 593121, 2368218; 593080, 2368166; 593018, 2368163; 592915, 2368169; 592785, 2368200; 592716, 2368200; 592668, 2368200; 592616, 2368238; 592640, 2368286; 592740, 2368355; 592901, 2368362; 593094, 2368417; 593145, 2368499; 593087, 2368599; 593015, 2368695; 592901, 2368850; 592949, 2368960; 593125, 2369094; 593248, 2369179; 593461, 2369255; 593709, 2369334; return to starting point.

(ii) **Note:** Map 150 follows:

Map 150 Unit 15 - *Hedyotis parvula - d*

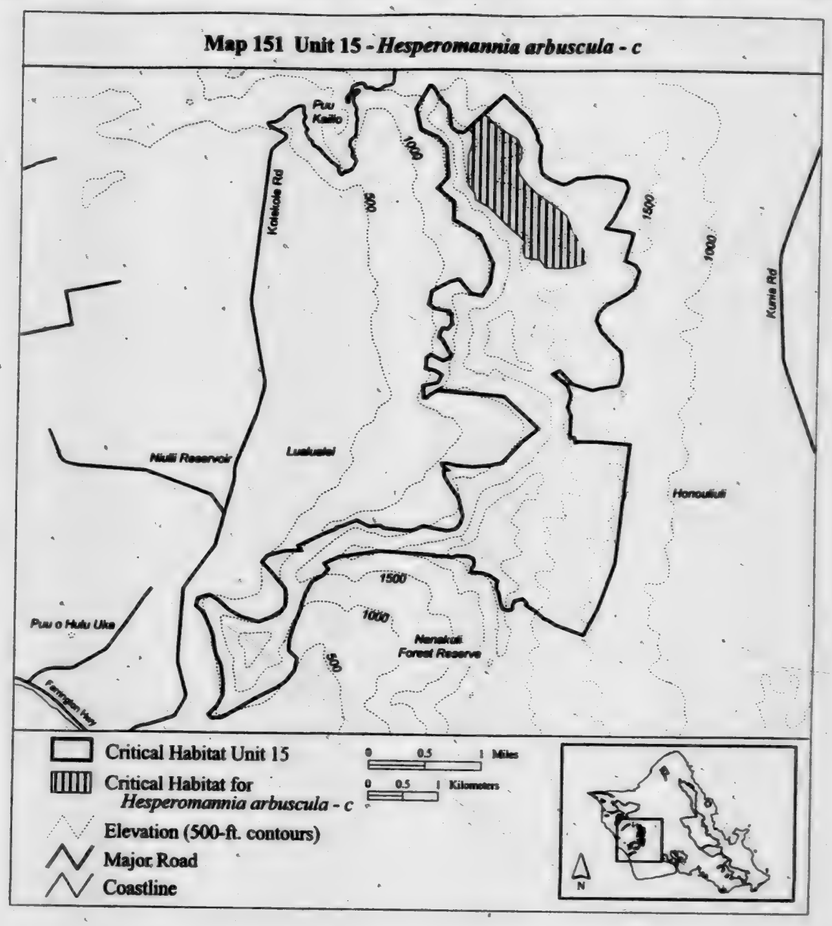


(151) Oahu 15—*Hesperomannia arbuscula*—c (163 ha; 402 ac)

(i) Unit consists of the following 39 boundary points: Start at 593101, 2374447; 593108, 2374441; 593272, 2374302; 593415, 2374202; 593591, 2374102; 593647, 2373974; 593647, 2373826; 593591, 2373719; 593619, 2373611; 593743, 2373463; 593879, 2373339; 594114, 2373168; 594302, 2373020; 594394, 2372784; 594521, 2372592; 594617, 2372420; 594581, 2372340; 594513, 2372316; 594370, 2372272; 594178, 2372269; 594014, 2372277; 593934, 2372381; 593715, 2372417; 593691, 2372501; 593691, 2372569; 593707, 2372657; 593595, 2372760; 593415, 2372904; 593240, 2373084; 593184, 2373140; 592996, 2373240; 592988, 2373339; 592900, 2373443; 592884, 2373603; 592884, 2373791; 592884, 2373854; 592940, 2374026; 592940, 2374170; 592880, 2374240; return to starting point.

(ii) **Note:** Map 151 follows:

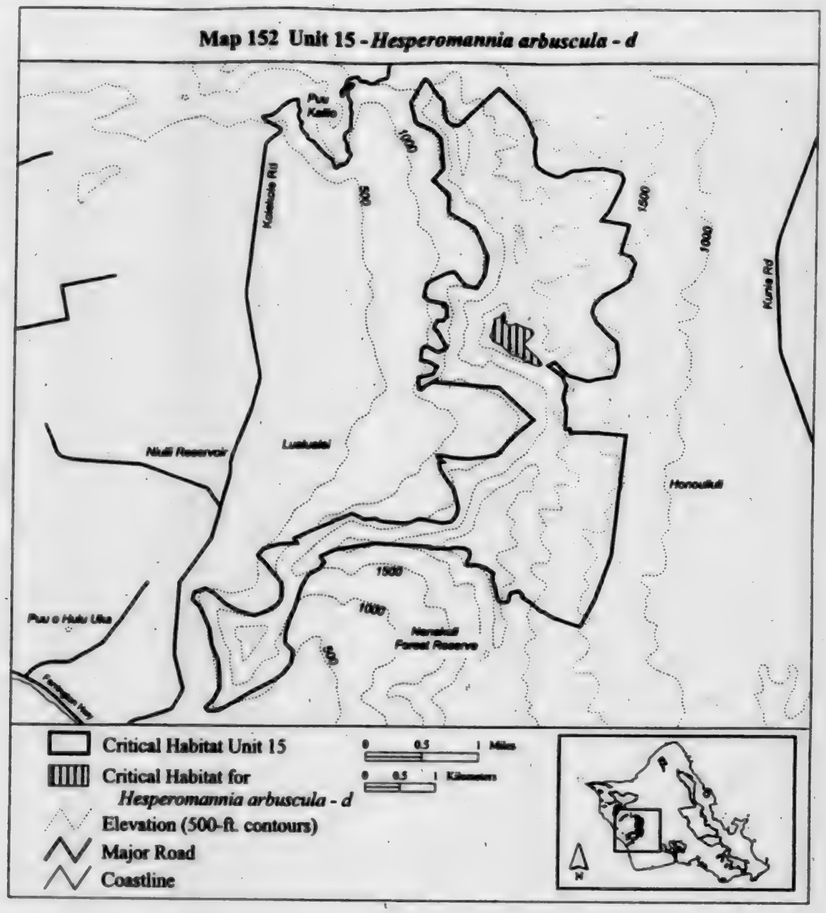
Map 151 Unit 15 - *Hesperomannia arbuscula - c*



(152) Oahu 15—*Hesperomannia arbuscula*—d (24 ha; 60 ac)

(i) Unit consists of the following 49 boundary points: Start at 593515, 2371533; 593527, 2371465; 593511, 2371414; 593534, 2371371; 593567, 2371348; 593636, 2371350; 593679, 2371364; 593763, 2371328; 593851, 2371297; 593905, 2371278; 593926, 2371251; 593930, 2371221; 593909, 2371176; 593859, 2371140; 593821, 2371090; 593796, 2371077; 593849, 2371009; 593934, 2370936; 593992, 2370881; 594043, 2370821; 594063, 2370779; 594040, 2370766; 594011, 2370762; 593968, 2370769; 593896, 2370802; 593813, 2370844; 593769, 2370869; 593713, 2370906; 593671, 2370911; 593619, 2370927; 593575, 2370971; 593517, 2371015; 593479, 2371059; 593444, 2371077; 593402, 2371096; 593362, 2371103; 593350, 2371132; 593337, 2371165; 593314, 2371182; 593321, 2371205; 593350, 2371240; 593350, 2371271; 593350, 2371297; 593354, 2371332; 593366, 2371363; 593371, 2371391; 593360, 2371431; 593389, 2371439; 593448, 2371462; return to starting point.

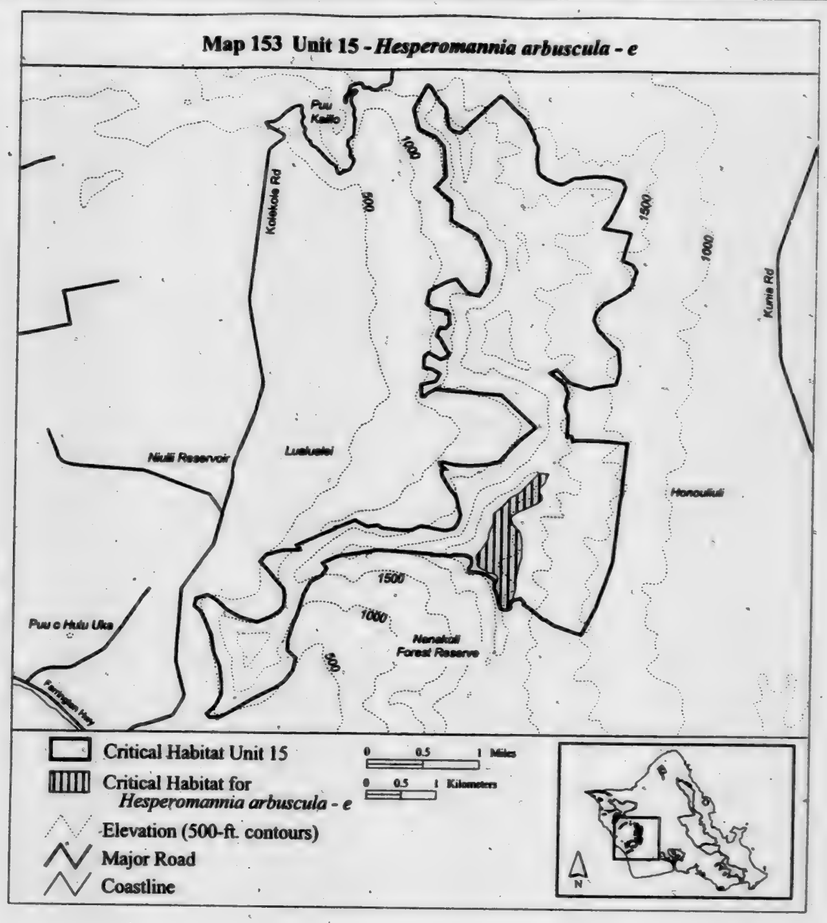
(ii) **Note:** Map 152 follows:



(153) Oahu 15—*Hesperomannia arbuscula*—e (70 ha; 172 ac)

(i) Unit consists of the following 61 boundary points: Start at 594011, 2369339; 594149, 2369329; 594118, 2369262; 594092, 2369198; 594045, 2369151; 594015, 2369114; 594015, 2369050; 594055, 2369007; 594051, 2368943; 593968, 2368886; 593834, 2368833; 593720, 2368786; 593649, 2368735; 593609, 2368682; 593639, 2368615; 593716, 2368531; 593740, 2368504; 593767, 2368400; 593773, 2368300; 593773, 2368136; 593736, 2368008; 593706, 2367881; 593700, 2367807; 593690, 2367677; 593666, 2367596; 593656, 2367533; 593626, 2367479; 593626, 2367429; 593606, 2367409; 593549, 2367395; 593489, 2367412; 593455, 2367482; 593442, 2367549; 593415, 2367647; 593381, 2367710; 593408, 2367754; 593435, 2367814; 593432, 2367878; 593375, 2367915; 593304, 2367921; 593271, 2367948; 593220, 2367968; 593157, 2368002; 593137, 2368029; 593153, 2368069; 593127, 2368112; 593127, 2368149; 593194, 2368233; 593271, 2368350; 593294, 2368400; 593301, 2368481; 593334, 2368565; 593358, 2368618; 593358, 2368746; 593432, 2368806; 593492, 2368849; 593556, 2368920; 593596, 2368970; 593733, 2369050; 593834, 2369164; 593921, 2369245; return to starting point.

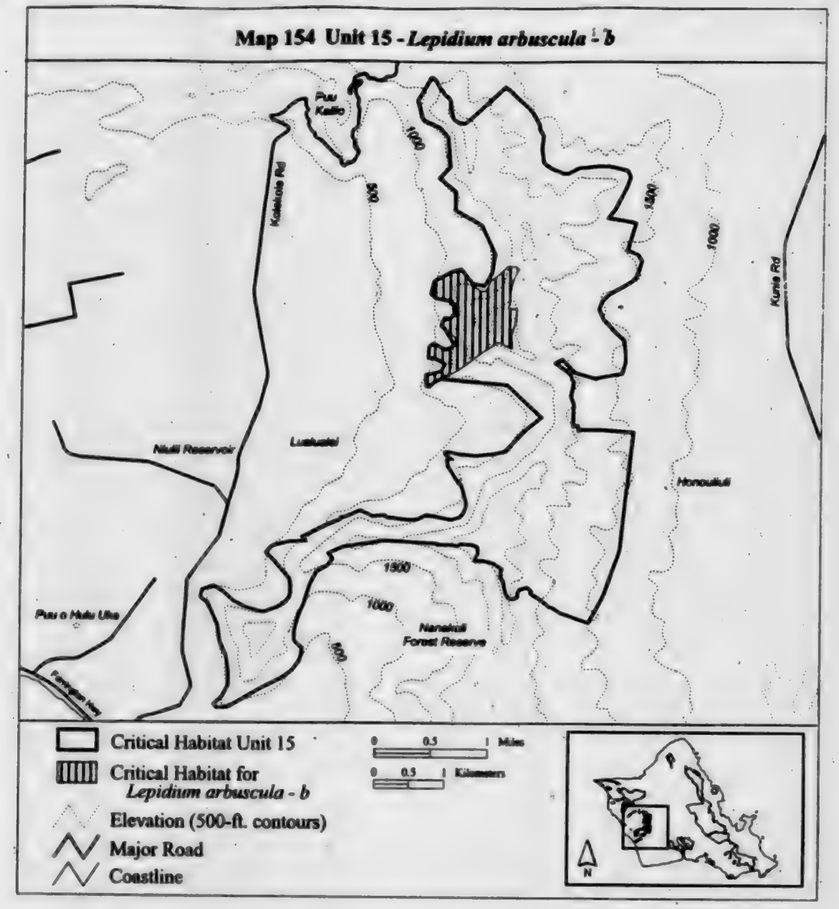
(ii) **Note:** Map 153 follows:



(154) Oahu 15—*Lepidium arbuscula*—b (119 ha; 293 ac)

(i) Unit consists of the following 53 boundary points: Start at 593447, 2372148; 593565, 2372148; 593608, 2372112; 593544, 2371984; 593505, 2371876; 593490, 2371744; 593490, 2371637; 593465, 2371547; 593585, 2371534; 593574, 2371368; 593504, 2371156; 593519, 2370975; 593331, 2371064; 593112, 2370931; 592749, 2370654; 592401, 2370473; 592348, 2370422; 592303, 2370423; 592298, 2370588; 592511, 2370640; 592568, 2370749; 592458, 2370816; 592333, 2370839; 592335, 2370994; 592399, 2371045; 592573, 2370950; 592711, 2371012; 592721, 2371121; 592630, 2371197; 592507, 2371287; 592529, 2371358; 592597, 2371374; 592711, 2371436; 592687, 2371512; 592687, 2371607; 592645, 2371609; 592655, 2371643; 592439, 2371683; 592357, 2371749; 592404, 2371930; 592511, 2371994; 592670, 2372075; 592791, 2372111; 592861, 2372016; 592921, 2371946; 592946, 2371910; 592954, 2371866; 593033, 2371823; 593068, 2371794; 593140, 2371794; 593183, 2371880; 593203, 2371941; 593316, 2372023; return to starting point.

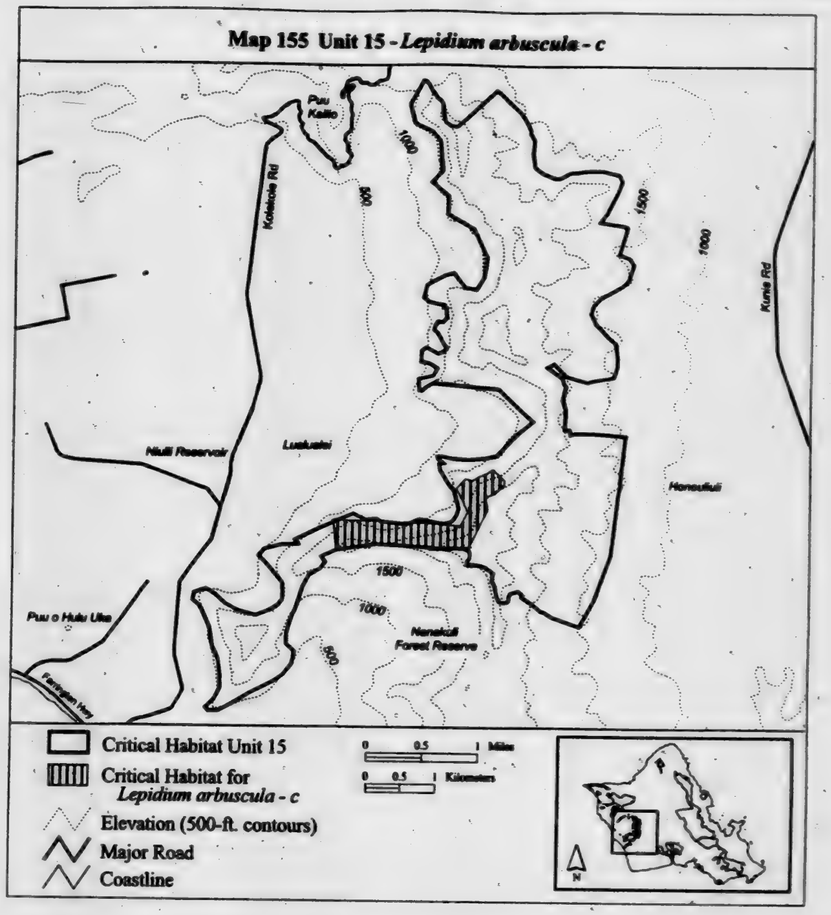
(ii) **Note:** Map 154 follows:



(155) Oahu 15—*Lepidium arbuscula*—c (99 ha; 245 ac)

(i) Unit consists of the following 25 boundary points: Start at 591090, 2368536; 591131, 2368549; 591714, 2368544; 592077, 2368508; 592367, 2368526; 592921, 2368481; 593026, 2368679; 592857, 2369023; 592994, 2369159; 593086, 2369134; 593198, 2369200; 593307, 2369244; 593378, 2369303; 593550, 2369145; 593547, 2369063; 593400, 2368937; 593278, 2368892; 593310, 2368706; 593058, 2368199; 593078, 2368178; 592491, 2368152; 592490, 2368151; 592491, 2368168; 591718, 2368217; 591140, 2368128; return to starting point.

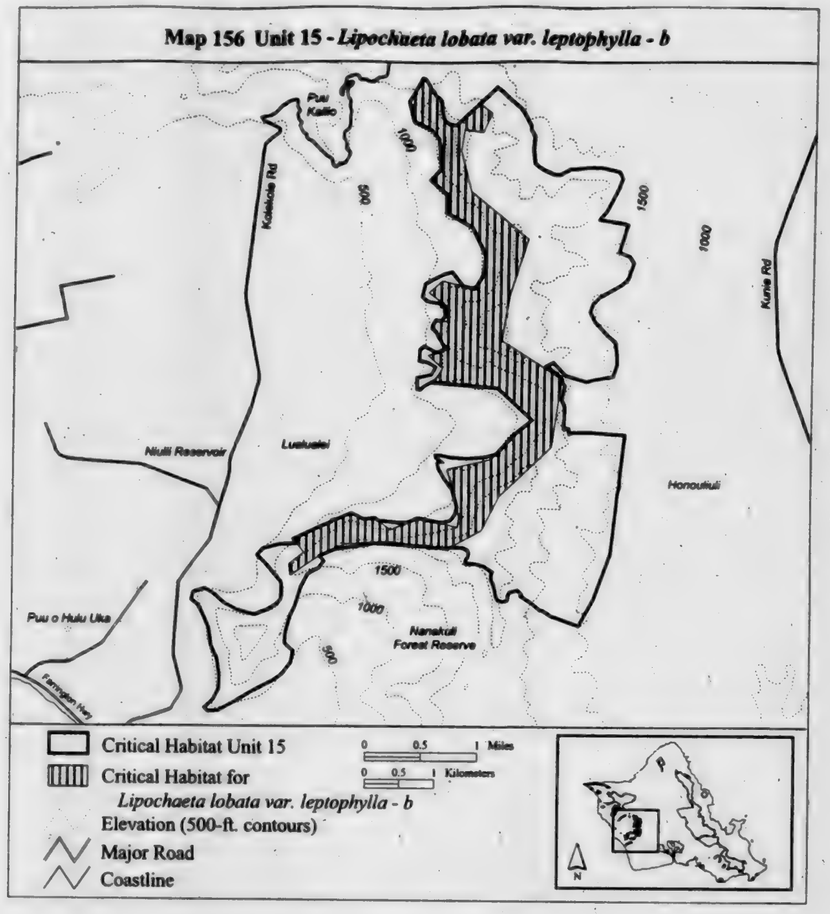
(ii) **Note:** Map 155 follows:



(156) Oahu 15—*Lipochaeta lobata* var. *leptophylla*—b (534 ha; 1,320 ac)

(i) Unit consists of the following 84 boundary points: Start at 593149, 2374492; 593322, 2374347; 593202, 2374077; 592932, 2374119; 592890, 2373813; 593040, 2373249; 593861, 2372568; 593616, 2371792; 593508, 2371124; 594371, 2370587; 594228, 2369606; 593493, 2368894; 593248, 2368404; 592759, 2368139; 591902, 2368241; 591290, 2368200; 590902, 2368016; 590508, 2367753; 590489, 2367907; 590699, 2368079; 590546, 2368270; 590910, 2368443; 591380, 2368646; 591561, 2368558; 591714, 2368577; 591944, 2368404; 592327, 2368577; 592633, 2368519; 592901, 2368443; 592920, 2368596; 592748, 2369285; 593361, 2369419; 593744, 2369821; 593954, 2369993; 593456, 2370453; 592537, 2370530; 592671, 2370740; 592461, 2370912; 592767, 2371008; 592671, 2371066; 592518, 2371315; 592557, 2371410; 592729, 2371391; 592729, 2371602; 592461, 2371812; 592652, 2371985; 593112, 2371871; 593227, 2372062; 593265, 2372330; 593073, 2372732; 592691, 2372943; 592691, 2373211; 592461, 2373402; 592614, 2373556; 592576, 2373977; 592461, 2374111; 592212, 2374226; 592135, 2374513; 592328, 2374840; 592345, 2374840; 592384, 2374811; 592404, 2374781; 592454, 2374691; 592484, 2374661; 592514, 2374601; 592514, 2374600; 592574, 2374561; 592594, 2374531; 592604, 2374492; 592604, 2374422; 592634, 2374282; 592634, 2374281; 592644, 2374251; 592664, 2374231; 592664, 2374230; 592724, 2374190; 592725, 2374190; 592726, 2374190; 592765, 2374190; 592805, 2374172; 592805, 2374171; 592806, 2374171; 592807, 2374171; 592807, 2374172; return to starting point.

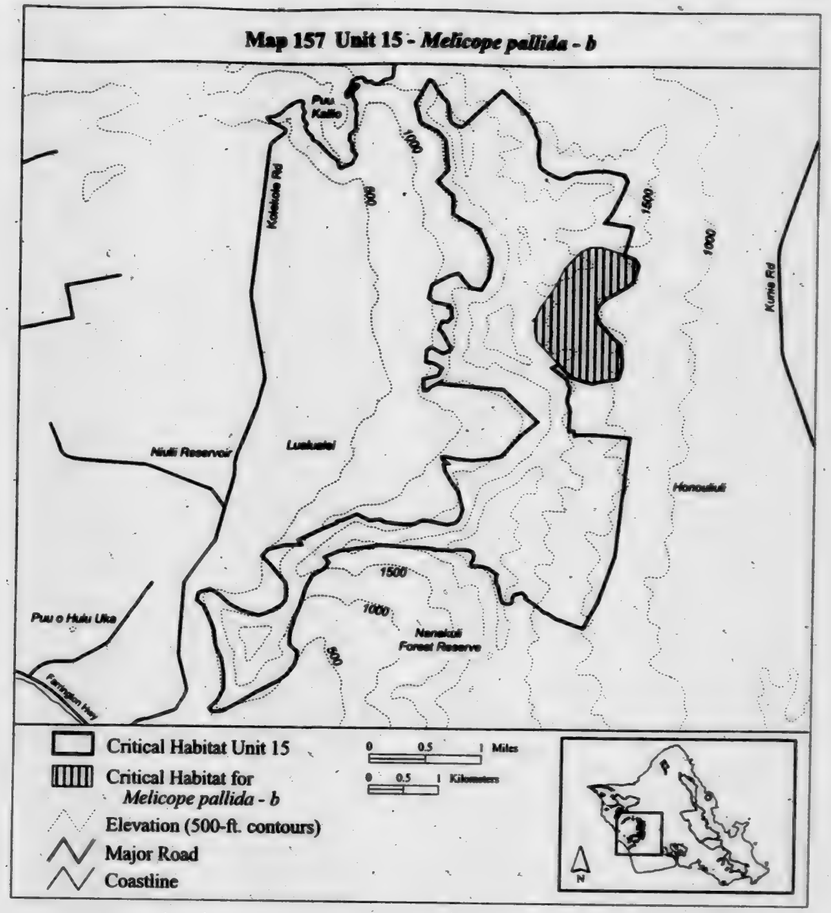
(ii) **Note:** Map 156 follows:



(157) Oahu 15—*Melicope pallida*—b (174 ha; 431 ac)

(i) Unit consists of the following 30 boundary points: Start at 593915, 2371158; 593885, 2371316; 593902, 2371460; 593968, 2371623; 594112, 2371815; 594204, 2371968; 594309, 2372178; 594405, 2372290; 594540, 2372426; 594680, 2372491; 594833, 2372491; 595130, 2372404; 595305, 2372330; 595371, 2372238; 595318, 2372089; 595292, 2372015; 595209, 2371932; 595069, 2371849; 594894, 2371748; 594794, 2371648; 594759, 2371530; 594820, 2371399; 595008, 2371202; 595122, 2371106; 595148, 2370901; 595148, 2370783; 595095, 2370625; 594811, 2370573; 594724, 2370547; 594422, 2370634; return to starting point.

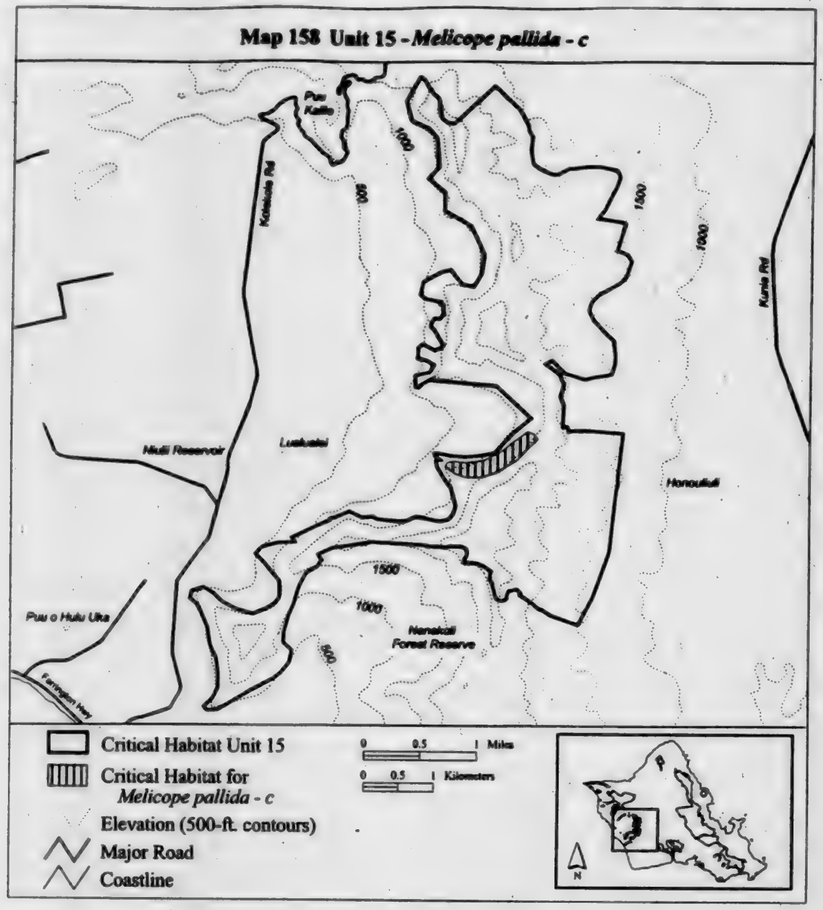
(ii) **Note:** Map 157 follows:



(158) Oahu 15—*Melicope pallida*—c (29 ha; 72 ac)

(i) Unit consists of the following 18 boundary points: Start at 592844, 2369370; 593026, 2369351; 593289, 2369381; 593556, 2369529; 593697, 2369648; 593797, 2369722; 593904, 2369803; 594001, 2369763; 594056, 2369696; 593934, 2369581; 593760, 2369392; 593604, 2369296; 593419, 2369192; 593245, 2369140; 593033, 2369140; 592885, 2369184; 592741, 2369288; 592763, 2369348; return to starting point.

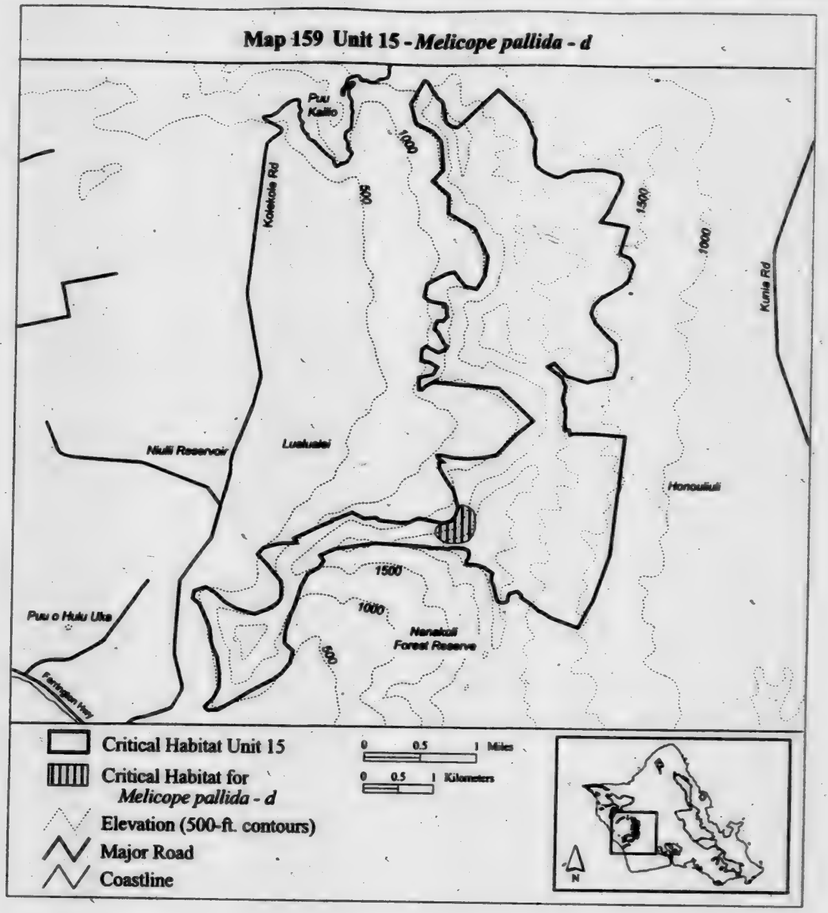
(ii) **Note:** Map 158 follows:



(159) Oahu 15—*Melicope pallida*—d (20 ha; 50 ac)

(i) Unit consists of the following 27 boundary points: Start at 593034, 2368745; 593076, 2368722; 593112, 2368689; 593130, 2368627; 593145, 2368522; 593138, 2368427; 593104, 2368340; 593057, 2368274; 592991, 2368244; 592892, 2368225; 592784, 2368227; 592748, 2368227; 592644, 2368269; 592602, 2368319; 592576, 2368352; 592576, 2368406; 592588, 2368448; 592611, 2368477; 592661, 2368503; 592732, 2368526; 592789, 2368540; 592829, 2368576; 592866, 2368639; 592881, 2368701; 592892, 2368745; 592932, 2368767; 592958, 2368772; return to starting point.

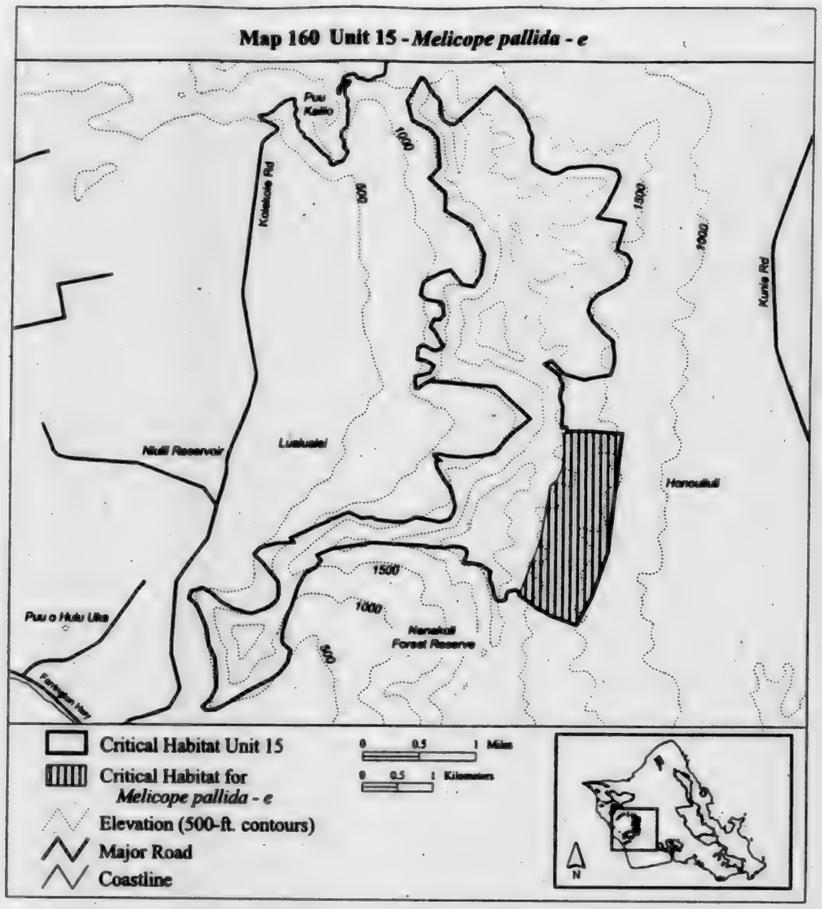
(ii) **Note:** Map 159 follows:



(160) Oahu 15—*Melicope pallida*—e (243 ha; 602 ac)

(i) Unit consists of the following 16 boundary points: Start at 594423, 2369292; 594438, 2369540; 594423, 2369777; 594527, 2369815; 594820, 2369815; 595271, 2369781; 595080, 2368083; 594844, 2367434; 594641, 2367062; 594256, 2367191; 593830, 2367465; 593813, 2367480; 594115, 2368259; 594242, 2369020; 594245, 2369025; 594338, 2369107; return to starting point.

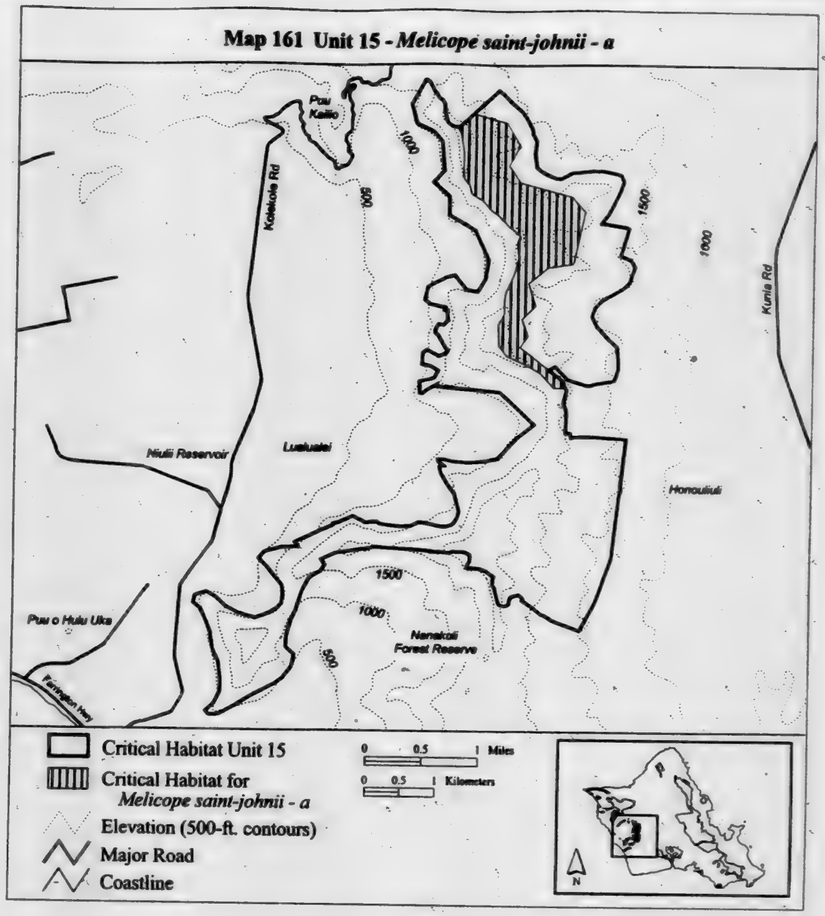
(ii) **Note:** Map 160 follows:



(161) Oahu 15—*Melicope saint-johnii*—a (244 ha; 604 ac)

(i) Unit consists of the following 59 boundary points: Start at 593044, 2374373; 593508, 2374248; 593702, 2373921; 593671, 2373883; 593545, 2373648; 593710, 2373413; 594455, 2373217; 594643, 2373004; 594488, 2372290; 594486, 2372290; 594478, 2372273; 594122, 2372225; 593844, 2371996; 593948, 2371674; 593953, 2371672; 593753, 2371488; 593844, 2371244; 593734, 2371085; 594352, 2370615; 594357, 2370618; 594377, 2370557; 594382, 2370517; 594227, 2370514; 594227, 2370520; 594022, 2370732; 593802, 2370850; 593548, 2370960; 593457, 2371077; 593432, 2371099; 593430, 2371115; 593416, 2371418; 593430, 2371418; 593434, 2371461; 593461, 2371469; 593499, 2371560; 593502, 2371727; 593510, 2371844; 593635, 2372121; 593696, 2372345; 593681, 2372557; 593719, 2372667; 593544, 2372800; 593400, 2372951; 593309, 2373012; 593173, 2373156; 593013, 2373247; 592972, 2373369; 592888, 2373460; 592884, 2373619; 592884, 2373824; 592847, 2374081; 592790, 2374178; 592805, 2374172; 592805, 2374171; 592806, 2374171; 592807, 2374171; 592807, 2374172; 593007, 2374359; 593038, 2374369; return to starting point.

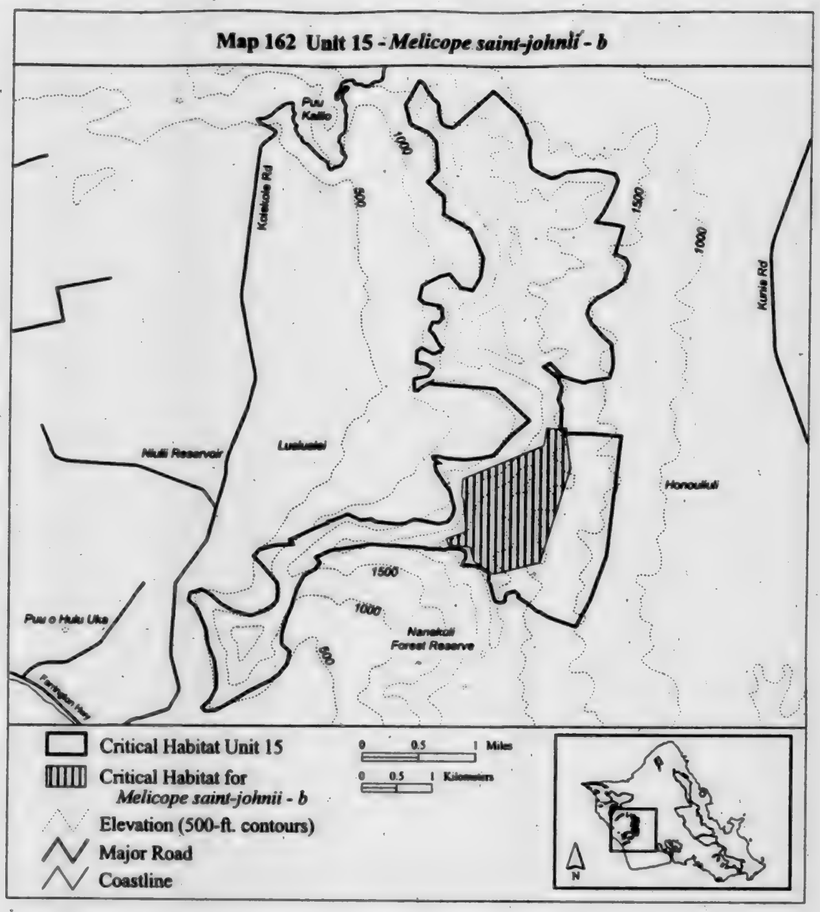
(ii) **Note:** Map 161 follows:



(162) Oahu 15—*Melicope saint-johnii*—b (214 ha; 529 ac)

(i) Unit consists of the following 17 boundary points: Start at 593451, 2367805; 593168, 2367990; 593120, 2368182; 592816, 2368208; 592780, 2368300; 593052, 2368401; 593052, 2368518; 593019, 2368854; 592993, 2368899; 593007, 2369154; 594161, 2369636; 594203, 2369883; 594473, 2369871; 594549, 2369326; 594554, 2369325; 594126, 2367970; 593462, 2367802; return to starting point.

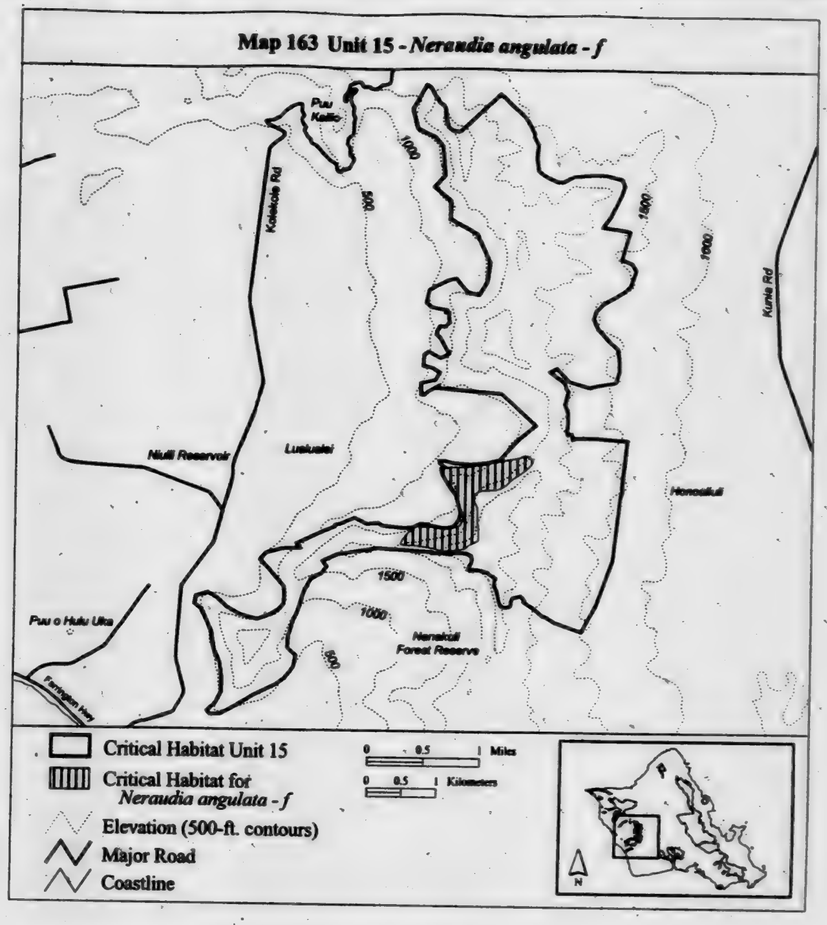
(ii) **Note:** Map 162 follows:



(163) Oahu 15—*Neraudia angulata*—f (84 ha; 207 ac)

(i) Unit consists of the following 50 boundary points: Start at 592634, 2369389; 592987, 2369396; 593220, 2369432; 593560, 2369500; 593732, 2369531; 593797, 2369561; 593873, 2369552; 593922, 2369478; 593886, 2369420; 593784, 2369328; 593631, 2369227; 593530, 2369132; 593471, 2369083; 593389, 2369058; 593232, 2369055; 593180, 2369046; 593110, 2369018; 593079, 2368960; 593085, 2368886; 593125, 2368816; 593131, 2368733; 593134, 2368613; 593149, 2368509; 593149, 2368402; 593149, 2368337; 593021, 2368270; 592956, 2368218; 592763, 2368187; 592646, 2368178; 592515, 2368215; 592355, 2368245; 592303, 2368248; 592263, 2368261; 592082, 2368258; 592039, 2368282; 592073, 2368353; 592146, 2368445; 592266, 2368531; 592530, 2368525; 592751, 2368506; 592886, 2368552; 592926, 2368656; 592919, 2368733; 592883, 2368801; 592849, 2368920; 592830, 2368978; 592784, 2369034; 592723, 2369116; 592625, 2369282; 592603, 2369371; return to starting point.

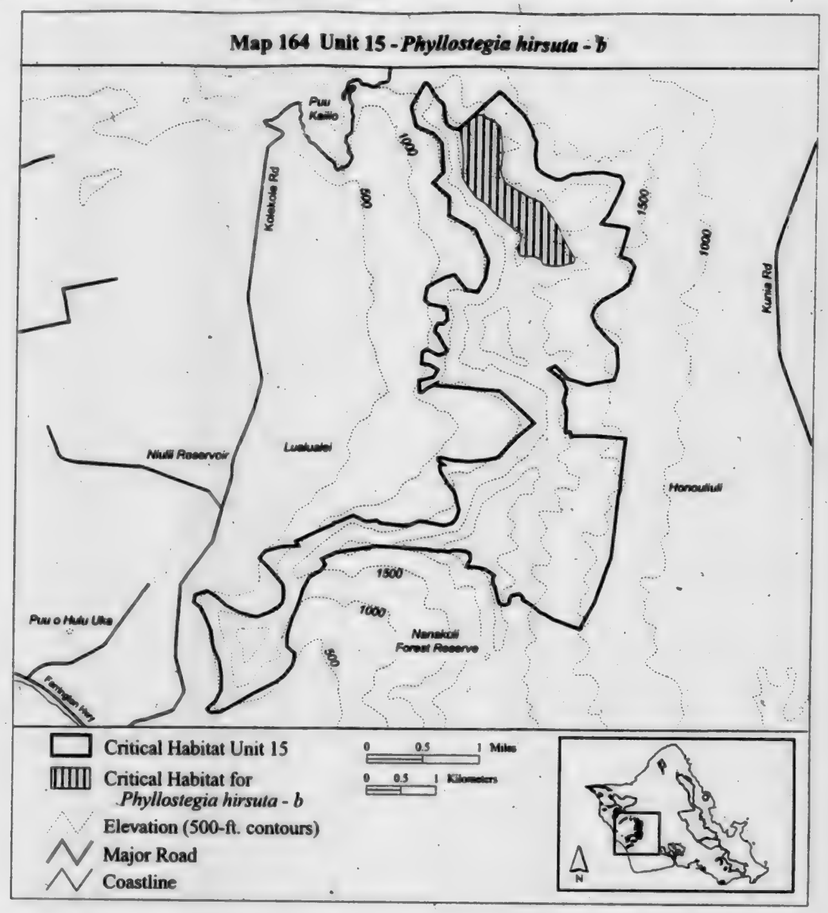
(ii) **Note:** Map 163 follows:



(164) Oahu 15—*Phyllostegia hirsuta*—b (131 ha; 323 ac)

(i) Unit consists of the following 53 boundary points: Start at 593031, 2374382; 593173, 2374381; 593174, 2374368; 593177, 2374368; 593331, 2374283; 593403, 2374220; 593416, 2374135; 593438, 2373950; 593444, 2373802; 593419, 2373604; 593435, 2373513; 593466, 2373450; 593491, 2373409; 593658, 2373311; 593815, 2373220; 594004, 2373145; 594067, 2373085; 594152, 2372953; 594255, 2372805; 594334, 2372639; 594438, 2372459; 594504, 2372358; 594504, 2372323; 594482, 2372292; 594397, 2372273; 594353, 2372254; 594265, 2372243; 594174, 2372240; 594086, 2372255; 594048, 2372274; 594007, 2372337; 593910, 2372381; 593812, 2372378; 593711, 2372390; 593671, 2372488; 593715, 2372570; 593733, 2372686; 593633, 2372749; 593488, 2372868; 593350, 2372981; 593205, 2373120; 593083, 2373195; 592957, 2373352; 592885, 2373465; 592882, 2373585; 592885, 2373764; 592872, 2373928; 592834, 2374148; 592784, 2374181; 592805, 2374172; 592806, 2374171; 592807, 2374171; 592807, 2374172; return to starting point.

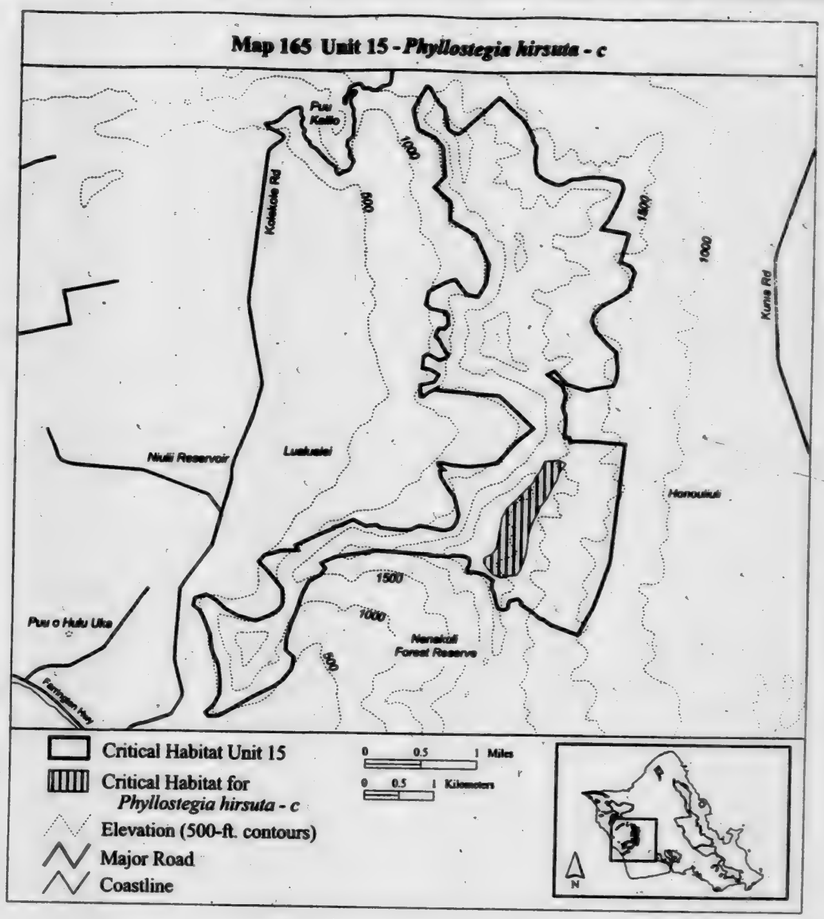
(ii) **Note:** Map 164 follows:



(165) Oahu 15—*Phyllostegia hirsuta*—c (69 ha; 171 ac)

(i) Unit consists of the following 38 boundary points: Start at 594054, 2369371; 594132, 2369522; 594326, 2369540; 594429, 2369492; 594328, 2369361; 594298, 2369245; 594248, 2369165; 594210, 2369079; 594162, 2368974; 594062, 2368848; 594031, 2368765; 593969, 2368657; 593906, 2368493; 593891, 2368300; 593876, 2368204; 593825, 2368041; 593795, 2367953; 593750, 2367890; 593659, 2367882; 593521, 2367855; 593403, 2367895; 593368, 2367928; 593310, 2367996; 593267, 2368061; 593264, 2368121; 593300, 2368149; 593368, 2368184; 593413, 2368219; 593448, 2368280; 593478, 2368461; 593501, 2368599; 593511, 2368692; 593591, 2368830; 593647, 2368886; 593732, 2368966; 593850, 2369097; 593956, 2369208; 593994, 2369293; return to starting point.

(ii) **Note:** Map 165 follows:

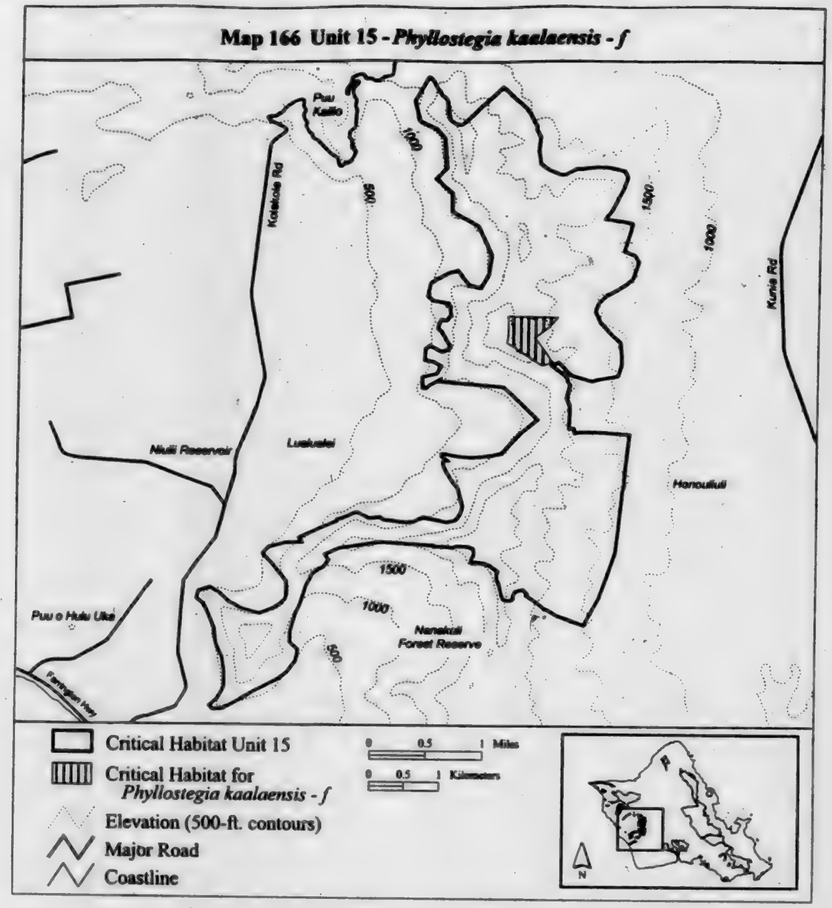


(166) Oahu 15—*Phyllostegia kaalaensis*—f (30 ha; 74 ac)

(i) Unit consists of the following 21 boundary points: Start at 593699, 2370957; 593696, 2370958; 593649, 2370988; 593650, 2370989; 593495, 2371087; 593508, 2371143; 593507, 2371145; 593509, 2371151; 593513, 2371169; 593510, 2371364; 593505, 2371383; 593510, 2371387; 593509, 2371460; 594222, 2371452; 594169, 2371394; 594166, 2371388; 594157, 2371381; 594109, 2371327; 593903, 2371160; 594159, 2370816; 594000, 2370766; return to starting point.

(ii) **Note:** Map 166 follows:

Map 166 Unit 15 - *Phyllostegia kaalaensis - f*

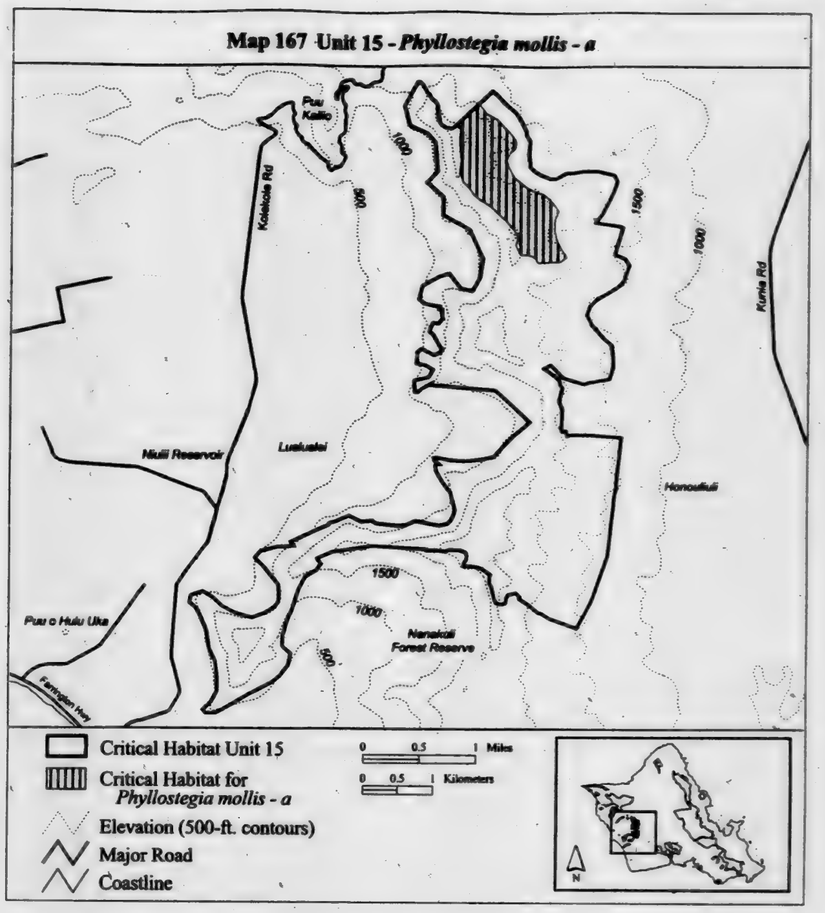


(167) Oahu 15—*Phyllostegia mollis*—a (152 ha; 376 ac)

(i) Unit consists of the following 56 boundary points: Start at 593194, 2374534; 593221, 2374505; 593297, 2374397; 593462, 2374312; 593547, 2374228; 593615, 2374156; 593711, 2374035; 593727, 2373975; 593719, 2373903; 593655, 2373842; 593603, 2373758; 593587, 2373718; 593615, 2373649; 593643, 2373601; 593711, 2373485; 593772, 2373432; 593872, 2373352; 593972, 2373300; 594125, 2373252; 594210, 2373183; 594290, 2373091; 594342, 2373011; 594286, 2372870; 594286, 2372713; 594322, 2372581; 594410, 2372419; 594459, 2372342; 594362, 2372278; 594262, 2372279; 594069, 2372271; 594045, 2372275; 594025, 2372307; 593997, 2372348; 593952, 2372372; 593896, 2372380; 593800, 2372384; 593772, 2372432; 593727, 2372520; 593755, 2372589; 593763, 2372645; 593703, 2372733; 593603, 2372858; 593514, 2372938; 593446, 2373007; 593354, 2373087; 593225, 2373167; 593125, 2373240; 593048, 2373340; 592976, 2373412; 592928, 2373529; 592928, 2373593; 592944, 2373714; 592928, 2373862; 592920, 2374063; 592936, 2374168; 592871, 2374232; return to starting point.

(ii) **Note:** Map 167 follows:

Map 167 Unit 15 - *Phyllostegia mollis - a*

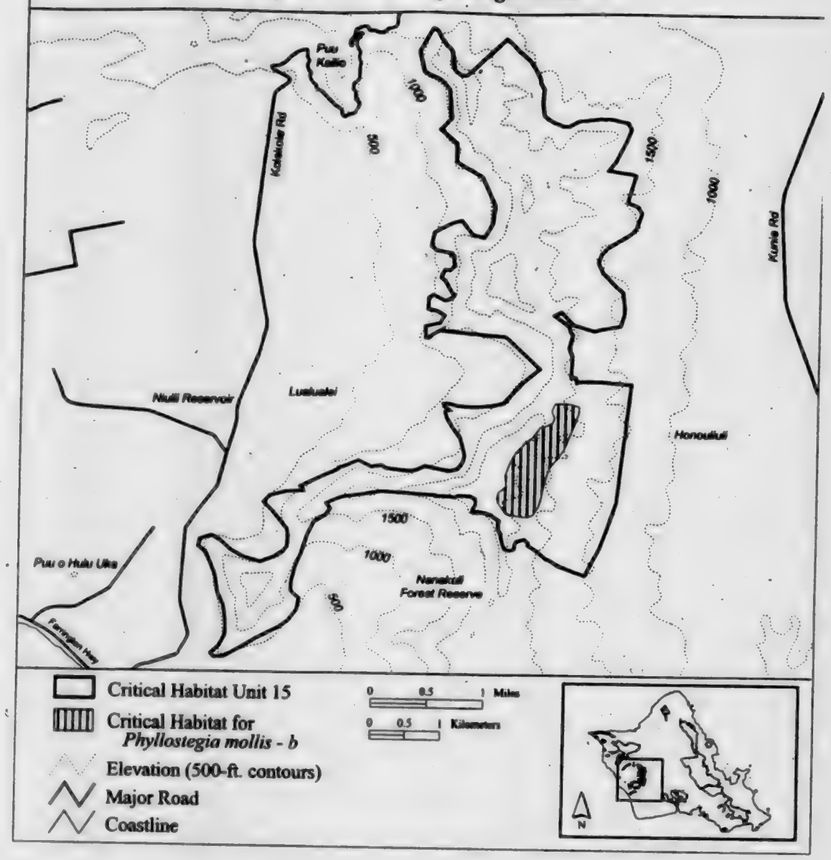


(168) Oahu 15—*Phyllostegia mollis*—b (85 ha; 210 ac)

(i) Unit consists of the following 42 boundary points: Start at 594134, 2369384; 594148, 2369422; 594165, 2369458; 594187, 2369496; 594246, 2369500; 594313, 2369503; 594422, 2369489; 594528, 2369461; 594528, 2369419; 594524, 2369345; 594482, 2369250; 594415, 2369071; 594366, 2368940; 594320, 2368831; 594229, 2368701; 594127, 2368592; 594084, 2368497; 594035, 2368328; 593993, 2368127; 593958, 2367997; 593887, 2367899; 593799, 2367867; 593662, 2367881; 593497, 2367913; 593440, 2367972; 593381, 2368067; 593370, 2368141; 593388, 2368215; 593458, 2368265; 593497, 2368303; 593483, 2368472; 593511, 2368550; 593553, 2368638; 593623, 2368771; 593701, 2368863; 593789, 2368947; 593870, 2369000; 593916, 2369071; 593965, 2369144; 594053, 2369176; 594148, 2369218; 594172, 2369292; return to starting point.

(ii) **Note:** Map 168 follows:

Map 168 Unit 15 - *Phyllostegia mollis* - *b*

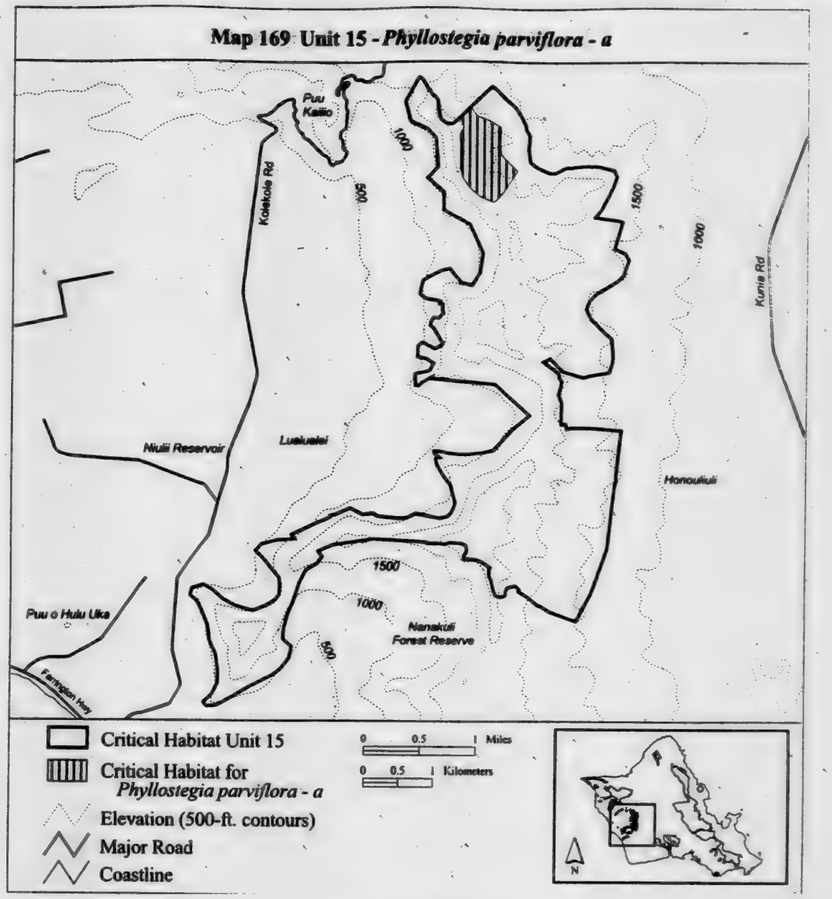


(169) Oahu 15—*Phyllostegia parviflora*—g (70 ha; 173 ac)

(i) Unit consists of the following 24 boundary points: Start at 593084, 2374431; 593099, 2374381; 593167, 2374293; 593344, 2374229; 593504, 2374137; 593508, 2374017; 593500, 2373876; 593512, 2373740; 593600, 2373640; 593752, 2373496; 593652, 2373340; 593564, 2373216; 593480, 2373112; 593420, 2373056; 593224, 2373140; 593067, 2373268; 592963, 2373400; 592927, 2373556; 592927, 2373744; 592927, 2373880; 592919, 2374013; 592971, 2374133; 592931, 2374261; 592909, 2374268; return to starting point.

(ii) **Note:** Map 169 follows:

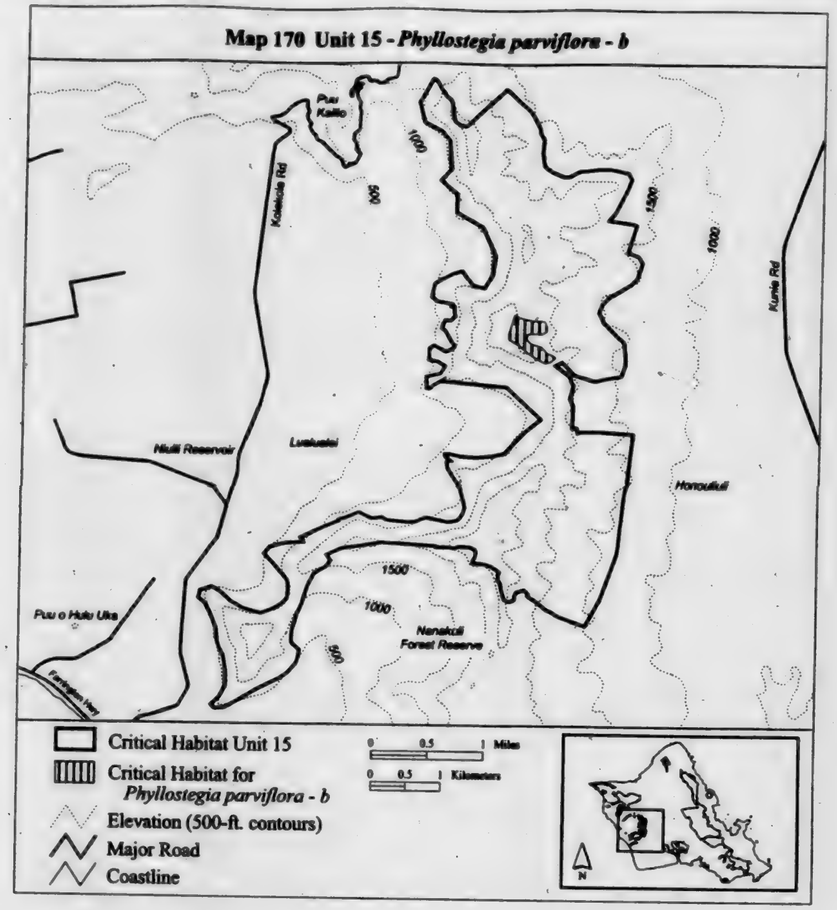
Map 169 Unit 15 - *Phyllostegia parviflora* - *a*



(170) Oahu 15—*Phyllostegia parviflora*—b (21 ha; 51 ac)

(i) Unit consists of the following 23 boundary points: Start at 593556, 2371486; 593640, 2371442; 593808, 2371405; 593984, 2371397; 594016, 2371325; 594016, 2371253; 593948, 2371209; 593860, 2371213; 593740, 2371209; 593728, 2371133; 593792, 2371077; 593944, 2371021; 594032, 2370932; 594092, 2370916; 594148, 2370880; 594124, 2370856; 594072, 2370828; 594000, 2370800; 593880, 2370856; 593740, 2370944; 593628, 2371041; 593472, 2371137; 593476, 2371209; return to starting point.

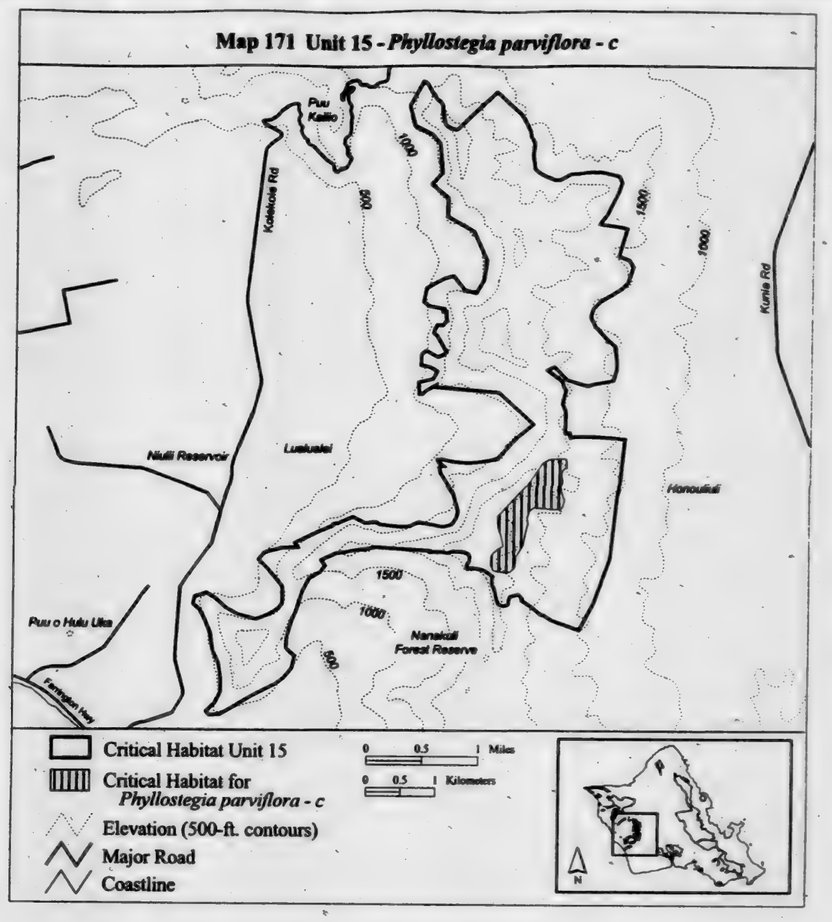
(ii) **Note:** Map 170 follows:



(171) Oahu 15—*Phyllostegia parviflora*—c (69 ha; 171 ac)

(i) Unit consists of the following 38 boundary points: Start at 594092, 2369443; 594192, 2369491; 594309, 2369499; 594421, 2369495; 594433, 2369443; 594429, 2369383; 594365, 2369319; 594357, 2369251; 594369, 2369199; 594369, 2369151; 594349, 2369087; 594377, 2369007; 594393, 2368946; 594413, 2368898; 594381, 2368790; 594349, 2368774; 594241, 2368770; 594108, 2368786; 593976, 2368790; 593912, 2368742; 593884, 2368642; 593892, 2368558; 593848, 2368394; 593824, 2368242; 593752, 2368138; 593720, 2368078; 593712, 2367937; 593640, 2367869; 593540, 2367869; 593408, 2367893; 593360, 2367981; 593376, 2368114; 593448, 2368182; 593540, 2368242; 593512, 2368370; 593472, 2368482; 593456, 2368662; 593880, 2369123; return to starting point.

(ii) **Note:** Map 171 follows:

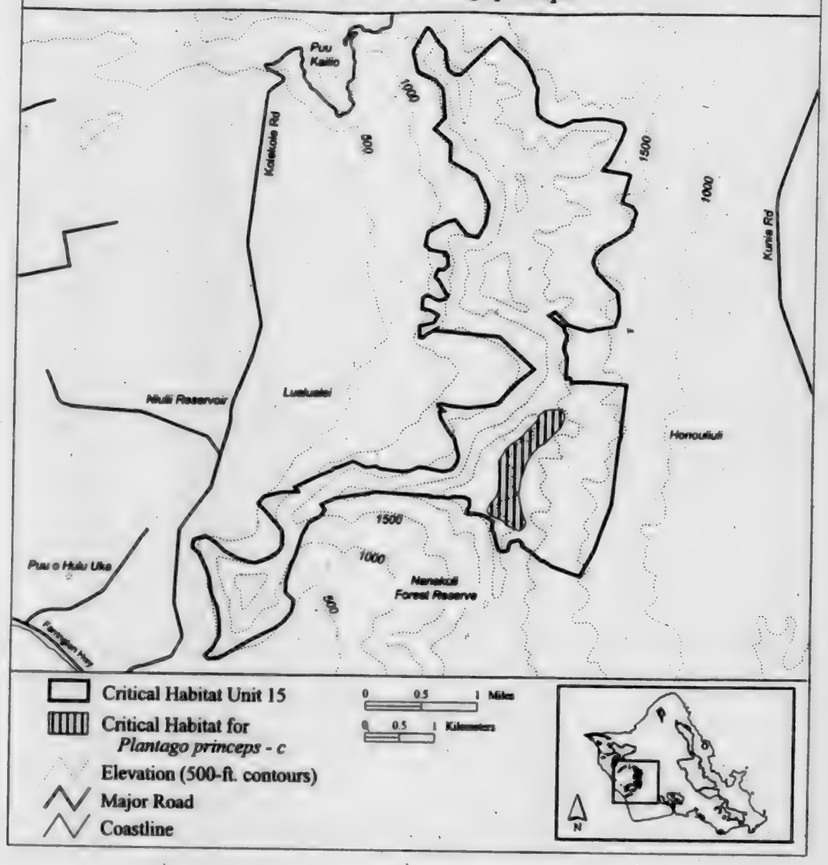


(172) Oahu 15—*Plantago princeps*—c (63 ha; 157 ac)

(i) Unit consists of the following 38 boundary points: Start at 594016, 2369273; 594037, 2369341; 594118, 2369400; 594198, 2369424; 594279, 2369424; 594344, 2369421; 594387, 2369363; 594393, 2369291; 594341, 2369162; 594232, 2369044; 594118, 2368933; 594025, 2368883; 593929, 2368763; 593861, 2368648; 593784, 2368419; 593756, 2368200; 593784, 2368036; 593818, 2367912; 593867, 2367816; 593846, 2367745; 593775, 2367689; 593682, 2367723; 593598, 2367764; 593543, 2367829; 593431, 2367872; 593354, 2367906; 593308, 2367968; 593351, 2368057; 593434, 2368166; 593478, 2368262; 593478, 2368364; 593475, 2368583; 593471, 2368673; 593533, 2368775; 593567, 2368828; 593642, 2368914; 593759, 2368995; 593858, 2369106; return to starting point.

(ii) **Note:** Map 172 follows:

Map 172 Unit 15 - *Plantago princeps* - *c*

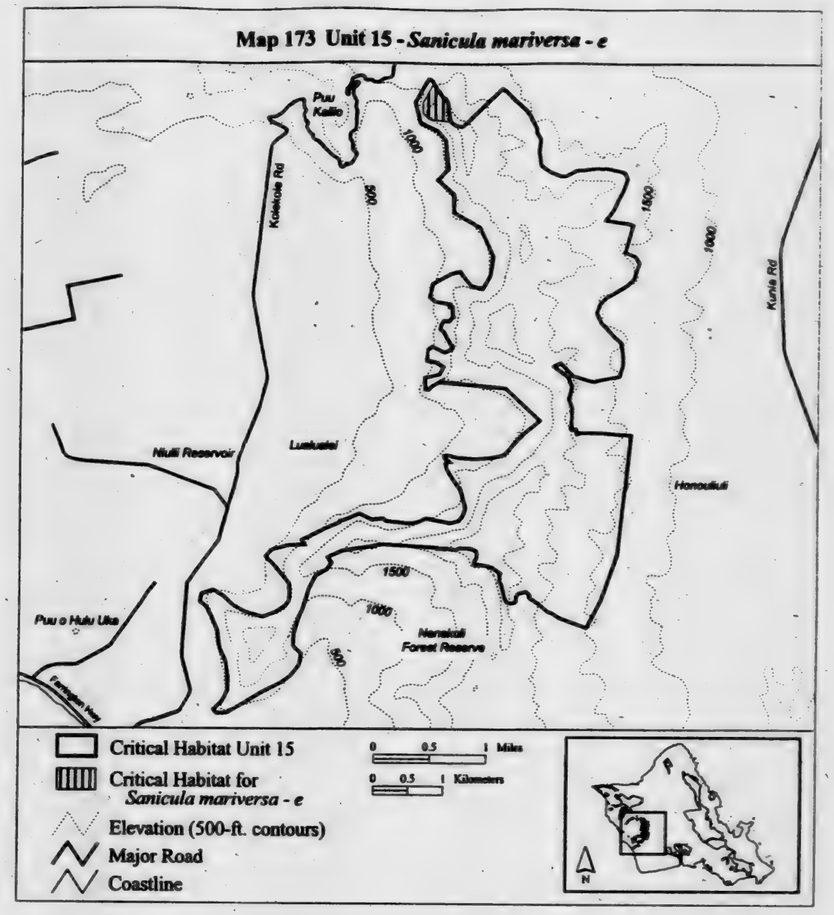


(173) Oahu 15—*Sanicula mariversa*—e (14 ha; 34 ac)

(i) Unit consists of the following 20 boundary points: Start at 592695, 2374210; 592604, 2374252; 592349, 2374270; 592240, 2374361; 592240, 2374507; 592403, 2374783; 592404, 2374781; 592454, 2374691; 592484, 2374661; 592514, 2374601; 592514, 2374600; 592574, 2374561; 592594, 2374531; 592604, 2374492; 592604, 2374422; 592634, 2374282; 592634, 2374281; 592644, 2374251; 592664, 2374231; 592664, 2374230; return to starting point.

(ii) **Note:** Map 173 follows:

Map 173 Unit 15 - *Sanicula mariversa* - *e*

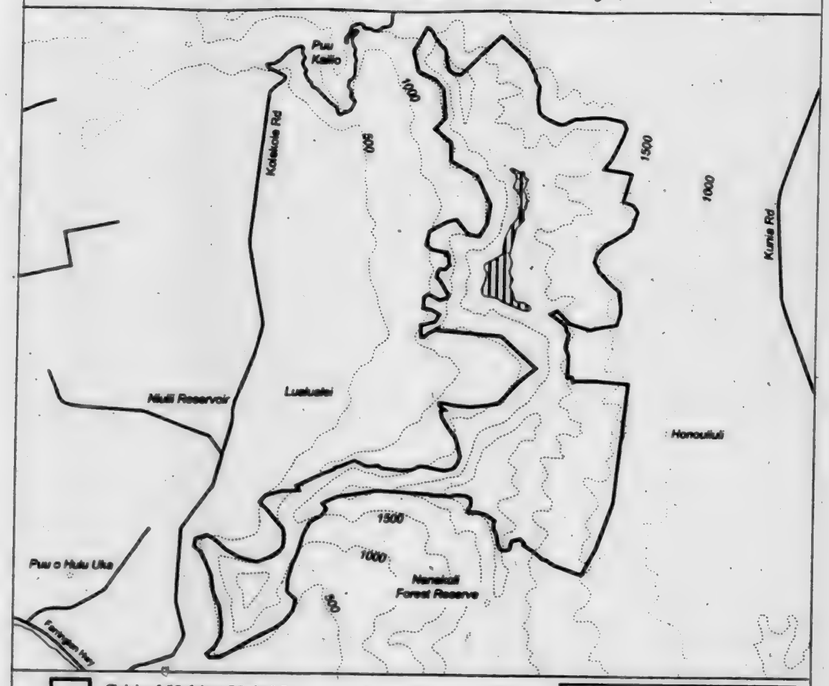


(174) Oahu 15—*Sanicula mariversa*—f (39 ha; 95 ac)

(i) Unit consists of the following 88 boundary points: Start at 593546, 2372831; 593574, 2372838; 593601, 2372826; 593637, 2372808; 593661, 2372788; 593706, 2372786; 593716, 2372799; 593736, 2372799; 593741, 2372781; 593743, 2372754; 593736, 2372736; 593745, 2372714; 593797, 2372686; 593797, 2372677; 593788, 2372657; 593770, 2372624; 593765, 2372606; 593754, 2372567; 593738, 2372527; 593752, 2372490; 593770, 2372472; 593770, 2372448; 593765, 2372430; 593788, 2372409; 593788, 2372385; 593779, 2372367; 593768, 2372346; 593774, 2372305; 593770, 2372269; 593741, 2372252; 593743, 2372202; 593743, 2372145; 593736, 2372130; 593757, 2372124; 593637, 2371983; 593551, 2371623; 593569, 2371575; 593587, 2371509; 593557, 2371388; 593569, 2371329; 593599, 2371272; 593563, 2371168; 593575, 2371141; 593608, 2371065; 593626, 2370993; 593664, 2370949; 593753, 2370940; 593818, 2370905; 593848, 2370875; 593859, 2370834; 593845, 2370819; 593771, 2370819; 593658, 2370866; 593478, 2370940; 593392, 2370996; 593297, 2371014; 593214, 2371020; 593179, 2371056; 593161, 2371121; 593188, 2371186; 593217, 2371260; 593235, 2371363; 593196, 2371426; 593193, 2371473; 593253, 2371515; 593380, 2371589; 593462, 2371639; 593465, 2371731; 593487, 2371858; 593561, 2372024; 593659, 2372143; 593661, 2372157; 593680, 2372252; 593706, 2372360; 593697, 2372385; 593697, 2372411; 593695, 2372429; 593686, 2372439; 593686, 2372477; 593655, 2372508; 593600, 2372556; 593587, 2372565; 593601, 2372610; 593628, 2372677; 593628, 2372702; 593616, 2372761; 593556, 2372804; 593546, 2372820; return to starting point.

(ii) **Note:** Map 174 follows:

Map 174 Unit 15 - *Sanicula mariversa - f*

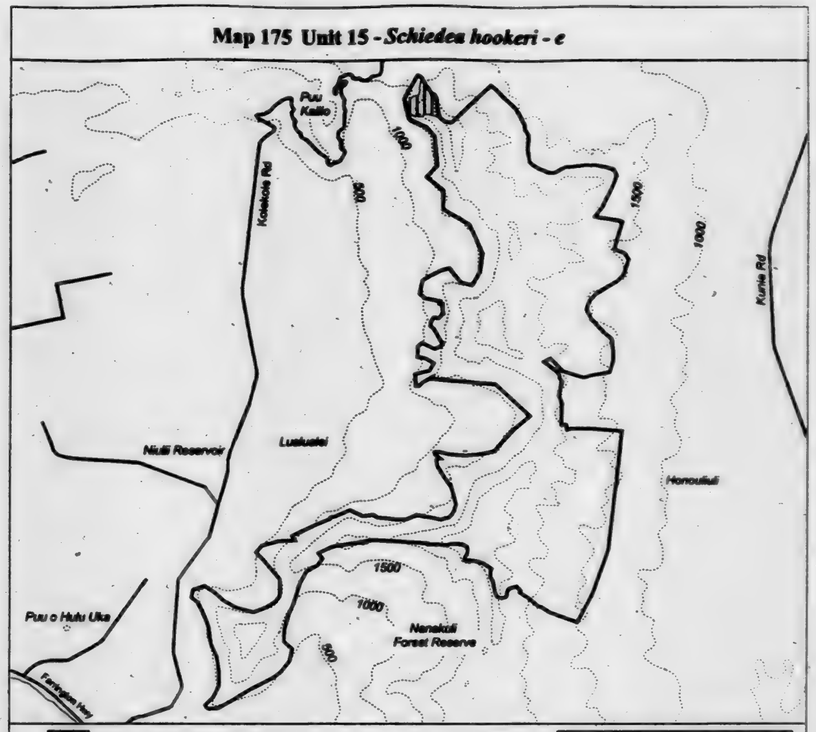


(175) Oahu 15—*Schiedea hookeri*—e (14 ha; 34 ac)

(i) Unit consists of the following 29 boundary points: Start at 592636, 2374256; 592600, 2374263; 592497, 2374291; 592427, 2374291; 592390, 2374263; 592295, 2374263; 592237, 2374288; 592207, 2374313; 592190, 2374366; 592195, 2374413; 592217, 2374505; 592265, 2374548; 592347, 2374563; 592357, 2374613; 592360, 2374690; 592367, 2374755; 592401, 2374785; 592404, 2374781; 592454, 2374691; 592484, 2374661; 592514, 2374601; 592514, 2374600; 592574, 2374561; 592594, 2374531; 592604, 2374492; 592604, 2374422; 592634, 2374282; 592634, 2374281; 592641, 2374259; return to starting point.

(ii) **Note:** Map 175 follows:

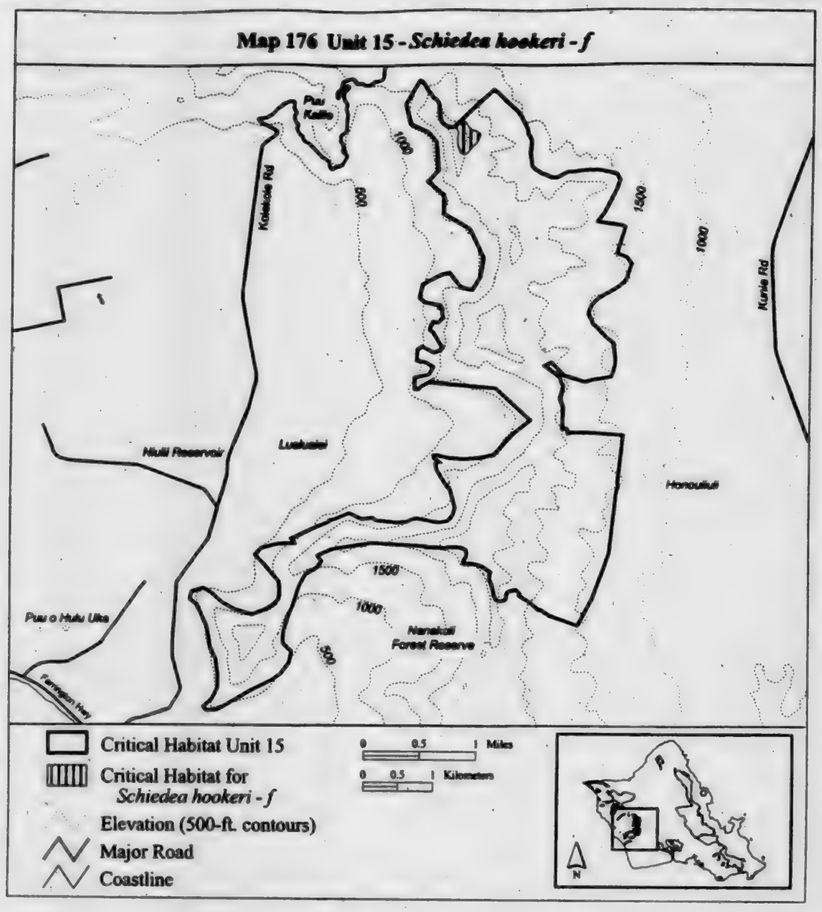
Map 175 Unit 15 - *Schiedea hookeri - e*



(176) Oahu 15—*Schiedea hookeri*—f (10 ha; 25 ac)

(i) Unit consists of the following 21 boundary points: Start at 592828, 2374186; 592930, 2374282; 592941, 2374283; 592999, 2374237; 593025, 2374195; 593073, 2374142; 593143, 2374125; 593188, 2374093; 593193, 2374058; 593169, 2373997; 593144, 2373950; 593081, 2373888; 593023, 2373812; 592974, 2373787; 592923, 2373813; 592896, 2373863; 592877, 2373923; 592870, 2374005; 592876, 2374066; 592887, 2374114; 592868, 2374150; return to starting point.

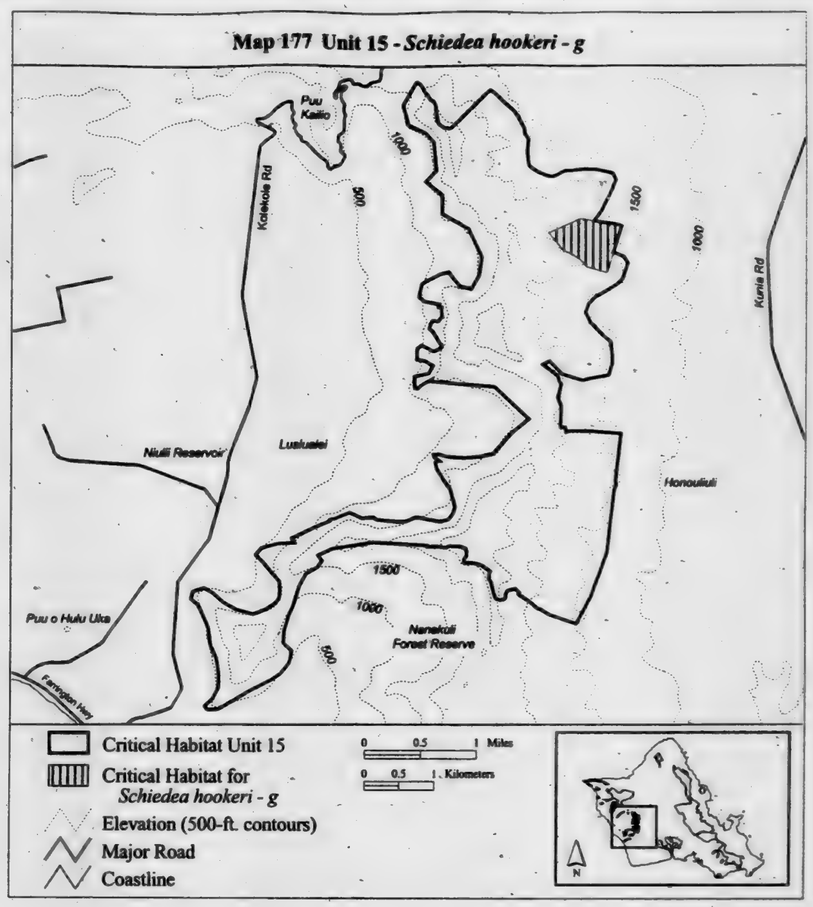
(ii) **Note:** Map 176 follows:



(177) Oahu 15—*Schiedea hookeri*—g (83 ha; 204 ac)

(i) Unit consists of the following 50 boundary points: Start at 593392, 2372040; 593458, 2372066; 593544, 2372037; 593584, 2372015; 593538, 2371923; 593524, 2371826; 593515, 2371729; 593510, 2371589; 593492, 2371512; 593430, 2371452; 593375, 2371426; 593367, 2371340; 593338, 2371257; 593295, 2371143; 593255, 2371034; 593161, 2370968; 593035, 2370917; 592927, 2370846; 592876, 2370774; 592830, 2370717; 592747, 2370663; 592721, 2370689; 592684, 2370757; 592607, 2370806; 592527, 2370848; 592530, 2370888; 592584, 2370934; 592661, 2370988; 592707, 2371048; 592681, 2371117; 592616, 2371214; 592573, 2371308; 592656, 2371348; 592687, 2371391; 592713, 2371460; 592764, 2371511; 592793, 2371560; 592756, 2371608; 592627, 2371654; 592570, 2371725; 592453, 2371805; 592530, 2371908; 592607, 2371959; 592684, 2371994; 592770, 2371939; 592910, 2371815; 593064, 2371778; 593121, 2371798; 593224, 2371883; 593287, 2371980; return to starting point.

(ii) **Note:** Map 177 follows:

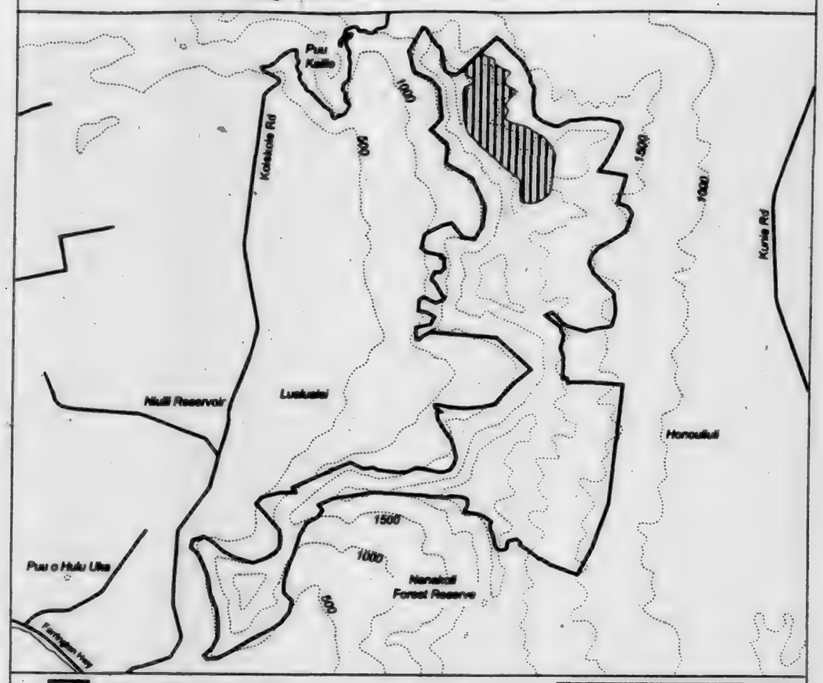


(178) Oahu 15—*Schiedea kaalae*—b (134 ha; 331 ac)

(i) Unit consists of the following 92 boundary points: Start at 593155, 2374498; 593197, 2374469; 593237, 2374448; 593260, 2374433; 593298, 2374434; 593349, 2374409; 593359, 2374380; 593356, 2374354; 593410, 2374316; 593474, 2374276; 593566, 2374246; 593587, 2374226; 593564, 2374188; 593532, 2374147; 593515, 2374109; 593514, 2374080; 593538, 2374043; 593550, 2374022; 593552, 2374019; 593553, 2374019; 593558, 2374019; 593580, 2374010; 593631, 2373992; 593621, 2373992; 593651, 2373980; 593667, 2373955; 593643, 2373929; 593588, 2373864; 593537, 2373789; 593523, 2373764; 593524, 2373745; 593549, 2373710; 593562, 2373680; 593552, 2373651; 593527, 2373602; 593531, 2373564; 593534, 2373551; 593593, 2373522; 593617, 2373497; 593618, 2373497; 593606, 2373516; 593837, 2373458; 593992, 2373364; 594073, 2373324; 594201, 2373169; 594259, 2373053; 594228, 2372875; 594210, 2372644; 594179, 2372515; 594081, 2372431; 593988, 2372395; 593908, 2372382; 593766, 2372408; 593766, 2372471; 593757, 2372542; 593761, 2372604; 593770, 2372657; 593761, 2372706; 593721, 2372742; 593592, 2372849; 593494, 2372915; 593383, 2373022; 593393, 2373030; 593327, 2373053; 593260, 2373115; 593172, 2373178; 593097, 2373261; 593010, 2373344; 592980, 2373386; 592951, 2373464; 592930, 2373616; 592925, 2373718; 592916, 2373835; 592916, 2373861; 592910, 2373919; 592931, 2373982; 592927, 2373982; 592933, 2374009; 592939, 2374018; 592983, 2374030; 592987, 2374030; 593030, 2374053; 593051, 2374081; 593053, 2374113; 593025, 2374136; 593001, 2374151; 592962, 2374170; 592949, 2374200; 592943, 2374227; 592931, 2374250; 592930, 2374262; 592918, 2374276; return to starting point.

(ii) **Note:** Map 178 follows:

Map 178 Unit 15 - *Schiedea kaalae* - b

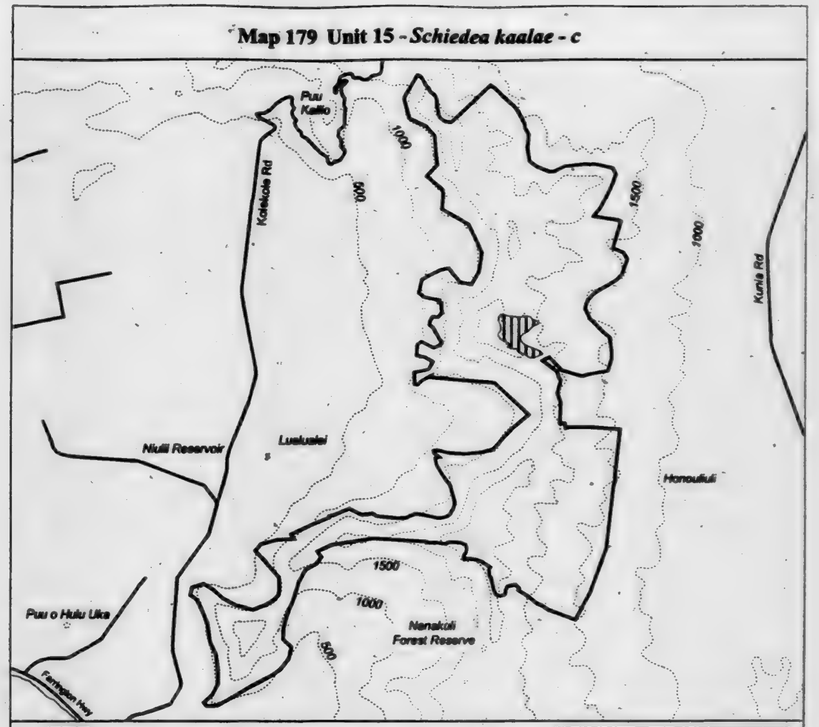


(179) Oahu 15—*Schiedea kaalae*—c (22 ha; 53 ac)

(i) Unit consists of the following 58 boundary points: Start at 594140, 2370857; 594018, 2370809; 593969, 2370810; 593929, 2370835; 593909, 2370861; 593885, 2370861; 593843, 2370873; 593800, 2370893; 593783, 2370921; 593765, 2370938; 593724, 2370940; 593672, 2370956; 593660, 2370978; 593658, 2370997; 593656, 2371025; 593641, 2371037; 593598, 2371051; 593549, 2371080; 593515, 2371111; 593501, 2371135; 593499, 2371158; 593516, 2371180; 593535, 2371190; 593543, 2371242; 593534, 2371288; 593499, 2371363; 593504, 2371360; 593504, 2371387; 593520, 2371421; 593542, 2371444; 593561, 2371442; 593592, 2371435; 593663, 2371418; 593696, 2371415; 593739, 2371413; 593779, 2371407; 593838, 2371407; 593904, 2371415; 593945, 2371417; 593976, 2371396; 593988, 2371370; 594016, 2371357; 594059, 2371348; 594087, 2371331; 594083, 2371312; 594066, 2371294; 594024, 2371277; 593984, 2371251; 593935, 2371193; 593855, 2371158; 593823, 2371100; 593823, 2371087; 593857, 2371024; 593926, 2370988; 593995, 2370954; 594080, 2370919; 594128, 2370899; 594149, 2370867; return to starting point.

(ii) **Note:** Map 179 follows:

Map 179 Unit 15 - *Schiedea kaalae* - c

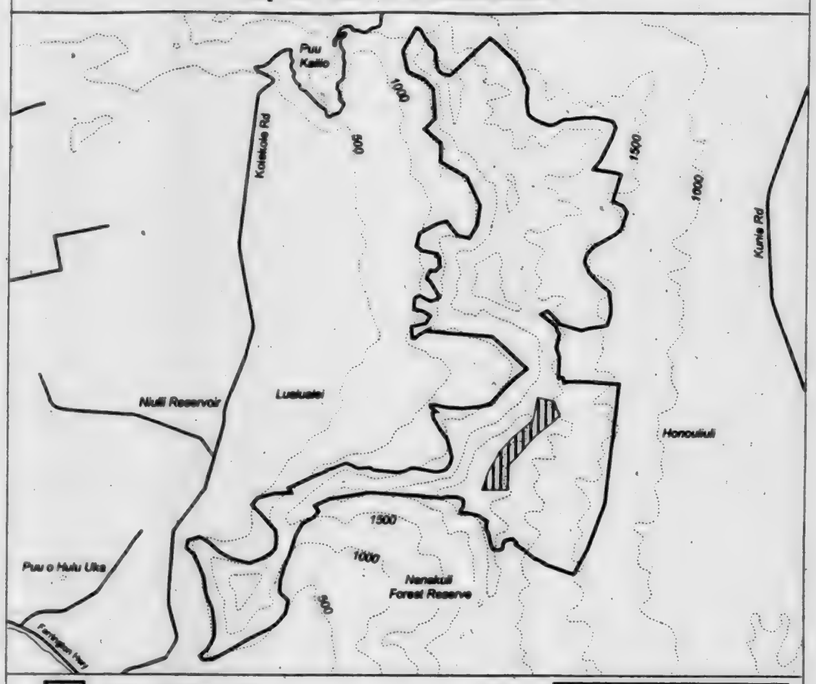


(180) Oahu 15—*Schiedea kaalae*—d (39 ha; 97 ac)

(i) Unit consists of the following 12 boundary points: Start at 594112, 2369585; 594345, 2369544; 594420, 2369336; 594320, 2369227; 594079, 2369036; 593713, 2368628; 593688, 2368262; 593330, 2368262; 593413, 2368512; 593571, 2368811; 593746, 2369003; 594045, 2369261; return to starting point.

(ii) **Note:** Map 180 follows:

Map 180 Unit 15 - *Schiedea kaalae* - d

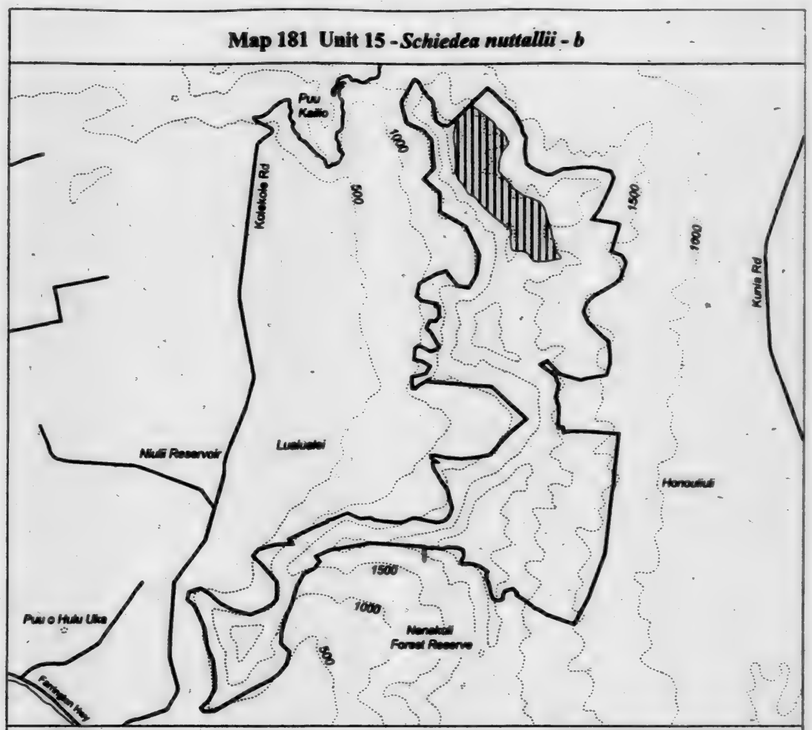


(181) Oahu 15—*Schiedea nuttallii*—b (141 ha; 347 ac)

(i) Unit consists of the following 53 boundary points: Start at 593145, 2374489; 593357, 2374332; 593477, 2374233; 593520, 2374152; 593601, 2374092; 593648, 2374020; 593678, 2373913; 593588, 2373793; 593554, 2373673; 593537, 2373519; 593610, 2373442; 593763, 2373267; 593896, 2373169; 594003, 2373135; 594131, 2373083; 594191, 2372994; 594229, 2372861; 594285, 2372694; 594306, 2372596; 594353, 2372399; 594392, 2372356; 594435, 2372304; 594422, 2372279; 594345, 2372275; 594242, 2372246; 594088, 2372237; 594037, 2372250; 593981, 2372314; 593947, 2372361; 593883, 2372391; 593763, 2372387; 593725, 2372412; 593716, 2372476; 593712, 2372545; 593708, 2372592; 593721, 2372690; 593639, 2372746; 593468, 2372878; 593336, 2372994; 593268, 2373071; 593199, 2373143; 593101, 2373199; 593028, 2373314; 592960, 2373395; 592921, 2373498; 592921, 2373673; 592917, 2373853; 592900, 2373960; 592900, 2374071; 592908, 2374144; 592926, 2374191; 592904, 2374246; 592904, 2374263; return to starting point.

(ii) **\Note:** Map 181 follows:

Map 181 Unit 15 - *Schiedea nuttallii* - b

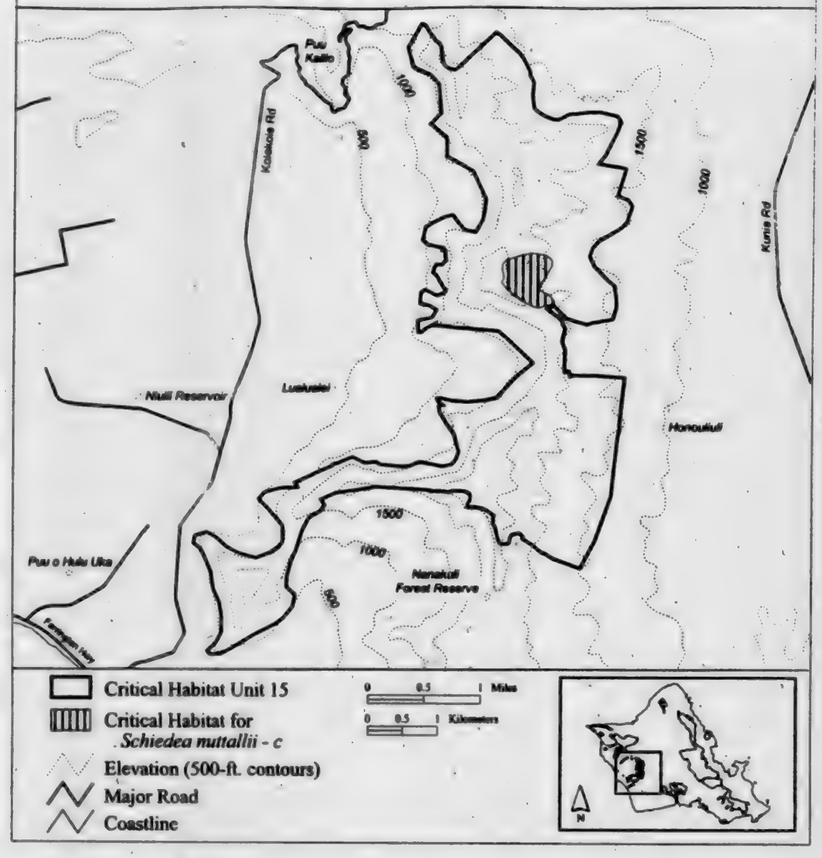


(182) Oahu 15—*Schiedea nuttallii*—c (41 ha; 102 ac)

(i) Unit consists of the following 30 boundary points: Start at 593505, 2371417; 593569, 2371478; 593661, 2371509; 593771, 2371547; 593929, 2371573; 594044, 2371566; 594137, 2371543; 594180, 2371508; 594217, 2371474; 594220, 2371393; 594174, 2371315; 594119, 2371211; 594067, 2371148; 594030, 2371056; 594076, 2371015; 594177, 2370963; 594235, 2370900; 594255, 2370854; 594223, 2370837; 594180, 2370822; 594111, 2370814; 594047, 2370779; 593987, 2370791; 593805, 2370871; 593710, 2370940; 593589, 2371033; 593491, 2371154; 593520, 2371200; 593520, 2371257; 593502, 2371339; return to starting point.

(ii) **Note:** Map 182 follows:

Map 182 Unit 15 - *Schiedea nuttallii* - c

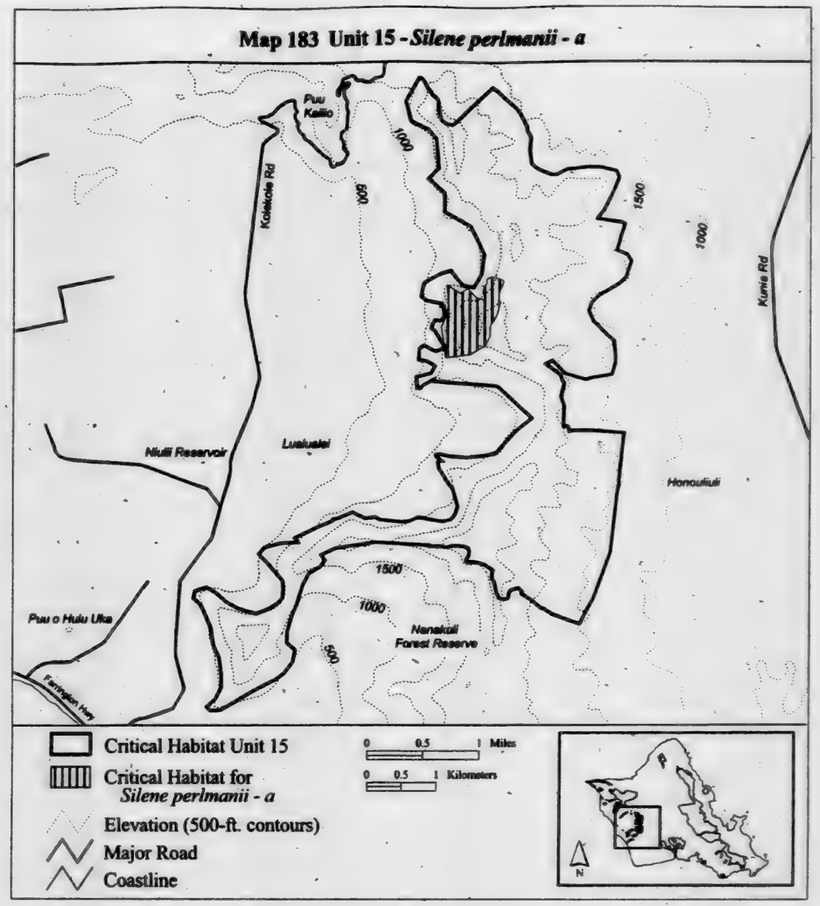


(183) Oahu 15—*Silene perlmanii*—a (65 ha; 162 ac)

(i) Unit consists of the following 50 boundary points: Start at 593271, 2371708; 593264, 2371736; 593259, 2371770; 593249, 2371796; 593252, 2371828; 593261, 2371847; 593266, 2371861; 593256, 2371887; 593283, 2371902; 593300, 2371921; 593299, 2371940; 593299, 2371979; 593324, 2372000; 593386, 2372020; 593443, 2372000; 593496, 2371990; 593534, 2371971; 593542, 2371950; 593542, 2371936; 593532, 2371924; 593527, 2371907; 593518, 2371887; 593506, 2371863; 593496, 2371844; 593487, 2371828; 593474, 2371784; 593472, 2371737; 593475, 2371694; 593489, 2371660; 593489, 2371639; 593477, 2371603; 593472, 2371572; 593460, 2371521; 593451, 2371492; 593436, 2371461; 593427, 2371444; 593419, 2371416; 593351, 2371318; 593347, 2371171; 593289, 2371041; 593074, 2370911; 592716, 2370866; 592649, 2371300; 592716, 2371488; 592760, 2371627; 592734, 2371905; 592926, 2371794; 593029, 2371861; 593153, 2371727; 593274, 2371691; return to starting point.

(ii) **Note:** Map 183 follows:

Map 183 Unit 15 - *Silene perlmanii* - a

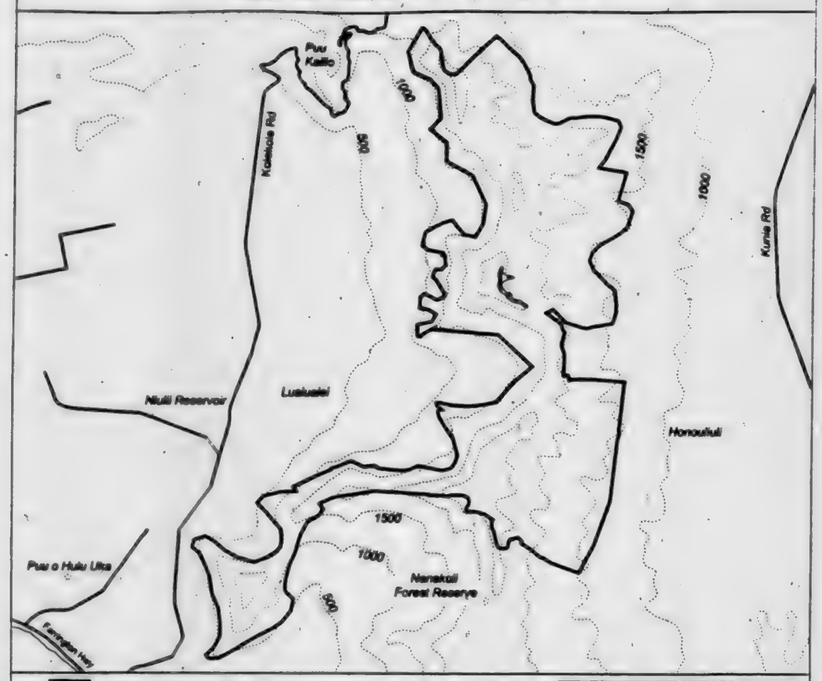


(184) Oahu 15—*Silene perlmanii*—b (5 ha; 12 ac)

(i) Unit consists of the following 53 boundary points: Start at 593517, 2371427; 593498, 2371382; 593504, 2371358; 593525, 2371344; 593570, 2371318; 593621, 2371309; 593669, 2371283; 593669, 2371271; 593649, 2371269; 593609, 2371257; 593559, 2371240; 593518, 2371216; 593494, 2371168; 593511, 2371122; 593544, 2371086; 593592, 2371048; 593644, 2371038; 593645, 2371017; 593649, 2370990; 593669, 2370967; 593705, 2370954; 593745, 2370947; 593772, 2370947; 593788, 2370926; 593824, 2370905; 593874, 2370871; 593872, 2370854; 593850, 2370837; 593832, 2370851; 593810, 2370868; 593791, 2370888; 593771, 2370902; 593726, 2370914; 593692, 2370923; 593647, 2370936; 593601, 2370964; 593578, 2370983; 593570, 2371005; 593565, 2371026; 593515, 2371051; 593474, 2371086; 593460, 2371118; 593438, 2371165; 593451, 2371206; 593463, 2371237; 593463, 2371259; 593463, 2371280; 593444, 2371297; 593441, 2371316; 593443, 2371348; 593460, 2371387; 593472, 2371418; 593496, 2371440; return to starting point.

(ii) **Note:** Map 184 follows:

Map 184 Unit 15 - *Silene perlmanii* - *b*

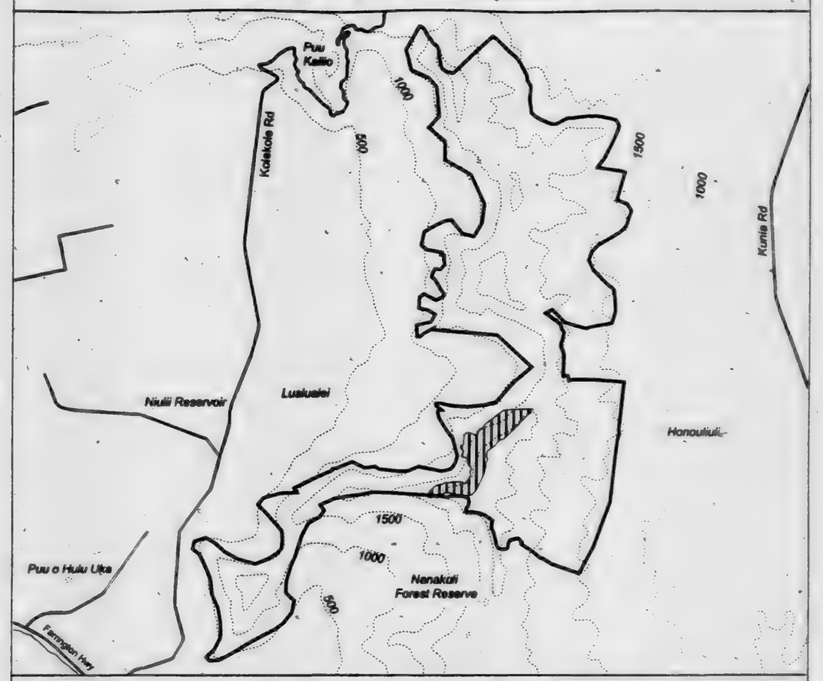


(185) Oahu 15—*Silene perlmanii*—c (50 ha; 124 ac)

(i) Unit consists of the following 84 boundary points: Start at 593209, 2369122; 593244, 2369132; 593296, 2369202; 593559, 2369391; 593796, 2369405; 593974, 2369402; 593563, 2368985; 593500, 2368964; 593468, 2368930; 593436, 2368888; 593385, 2368847; 593335, 2368813; 593316, 2368786; 593310, 2368732; 593320, 2368691; 593320, 2368659; 593296, 2368615; 593296, 2368574; 593276, 2368506; 593262, 2368431; 593215, 2368344; 593181, 2368281; 593157, 2368227; 593112, 2368184; 593064, 2368166; 593019, 2368162; 592969, 2368162; 592892, 2368168; 592813, 2368196; 592761, 2368206; 592712, 2368204; 592666, 2368186; 592603, 2368172; 592538, 2368184; 592486, 2368208; 592518, 2368245; 592563, 2368285; 592603, 2368307; 592639, 2368326; 592676, 2368326; 592716, 2368346; 592751, 2368348; 592773, 2368350; 592821, 2368356; 592892, 2368358; 592934, 2368364; 592967, 2368350; 593019, 2368336; 593031, 2368366; 593056, 2368405; 593074, 2368437; 593086, 2368457; 593076, 2368485; 593076, 2368504; 593096, 2368524; 593096, 2368560; 593060, 2368592; 593038, 2368625; 593044, 2368651; 593029, 2368669; 593038, 2368681; 593052, 2368700; 593029, 2368710; 592993, 2368710; 592971, 2368710; 592945, 2368726; 592961, 2368758; 592973, 2368780; 592985, 2368795; 592953, 2368823; 592936, 2368851; 592943, 2368885; 592977, 2368894; 592977, 2368910; 592977, 2368948; 592983, 2368993; 592989, 2369041; 593025, 2369063; 593058, 2369065; 593108, 2369055; 593145, 2369037; 593163, 2369037; 593179, 2369041; 593193, 2369094; return to starting point.

(ii) **Note:** Map 185 follows:

Map 185 Unit 15 - *Silene perlmanii* - *c*



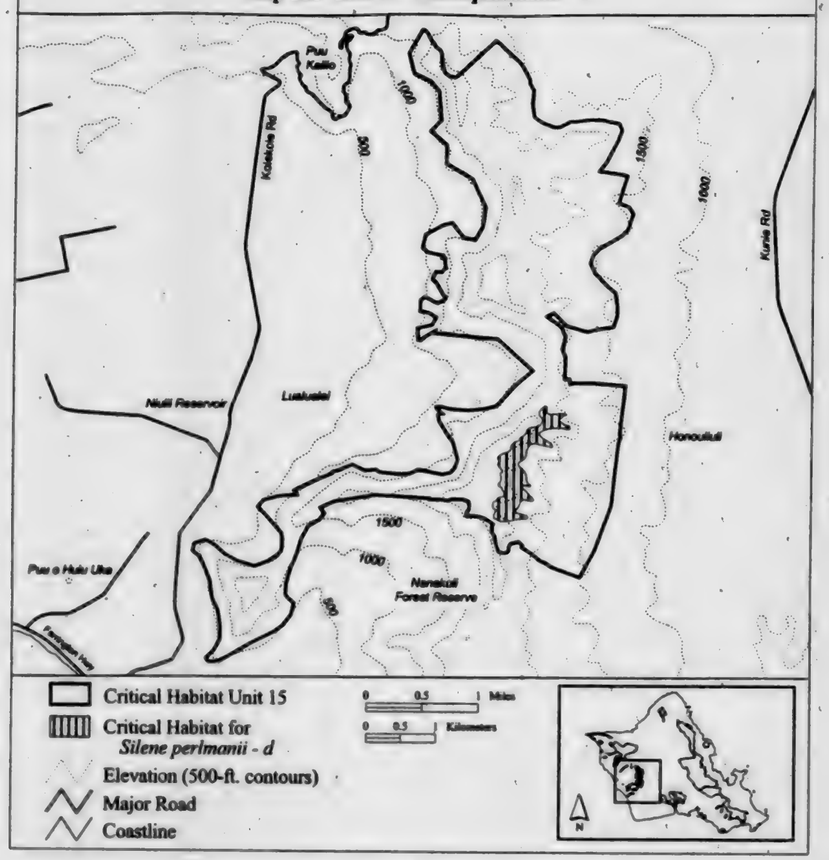
(186) Oahu 15—*Silene perlmanii*—d (52 ha; 130 ac)

(i) Unit consists of the following 143 boundary points: Start at 593997, 2368967; 593925, 2368950; 593880, 2368875; 593872, 2368831; 593866, 2368782; 593848, 2368750; 593810, 2368714; 593753, 2368675; 593763, 2368643; 593781, 2368617; 593816, 2368586; 593850, 2368546; 593866, 2368504; 593878, 2368427; 593896, 2368388; 593929, 2368362; 593931, 2368344; 593902, 2368340; 593846, 2368358; 593805, 2368348; 593816, 2368326; 593850, 2368291; 593894, 2368255; 593915, 2368223; 593959, 2368178; 593969, 2368146; 593953, 2368136; 593900, 2368142; 593836, 2368156; 593808, 2368146; 593783, 2368097; 593763, 2368051; 593727, 2368014; 593717, 2367986; 593747, 2367966; 593791, 2367956; 593826, 2367942; 593880, 2367932; 593896, 2367903; 593880, 2367893; 593785, 2367885; 593727, 2367879; 593660, 2367859; 593605, 2367853; 593514, 2367847; 593454, 2367881; 593413, 2367899; 593413, 2367934; 593428, 2367980; 593446, 2368010; 593401, 2368037; 593397, 2368077; 593403, 2368122; 593438, 2368132; 593456, 2368158; 593478, 2368174; 593506, 2368194; 593551, 2368194; 593563, 2368229; 593567, 2368261; 593529, 2368289; 593525, 2368322; 593476, 2368356; 593478, 2368374; 593500, 2368407; 593516, 2368425; 593516, 2368459; 593516, 2368489; 593502, 2368508; 593502, 2368528; 593533, 2368552; 593525, 2368574; 593502, 2368609; 593472, 2368641; 593478, 2368677; 593492, 2368708; 593470, 2368738; 593480, 2368774; 593512, 2368797; 593567, 2368825; 593611, 2368839; 593644, 2368863; 593656, 2368898; 593658, 2368938; 593702, 2368982; 593751, 2368997; 593771, 2369015; 593778, 2369030; 593775, 2369031; 593779, 2369035; 593781, 2369039; 593783, 2369038; 593818, 2369069; 593860, 2369110; 593878, 2369138; 593878, 2369156; 593919, 2369185; 593989, 2369197; 594056, 2369209; 594080, 2369247; 594099, 2369276; 594101, 2369308; 594082, 2369328; 594052, 2369356; 594044, 2369381; 594056, 2369413; 594109,

2369472; 594133, 2369494; 594157, 2369476; 594155, 2369443; 594151, 2369409; 594185, 2369379; 594240, 2369375; 594299, 2369377; 594347, 2369383; 594424, 2369377; 594383, 2369346; 594351, 2369320; 594329, 2369294; 594359, 2369263; 594400, 2369231; 594446, 2369217; 594478, 2369209; 594480, 2369187; 594483, 2369170; 594434, 2369170; 594386, 2369179; 594339, 2369179; 594305, 2369179; 594228, 2369183; 594189, 2369174; 594149, 2369162; 594111, 2369146; 594082, 2369138; 594052, 2369120; 594058, 2369077; 594113, 2369033; 594202, 2368978; 594224, 2368952; 594246, 2368914; 594226, 2368908; 594183, 2368918; 594113, 2368934; return to starting point.

(ii) **Note:** Map 186 follows:

Map 186 Unit 15 - *Silene perlmanii* - d

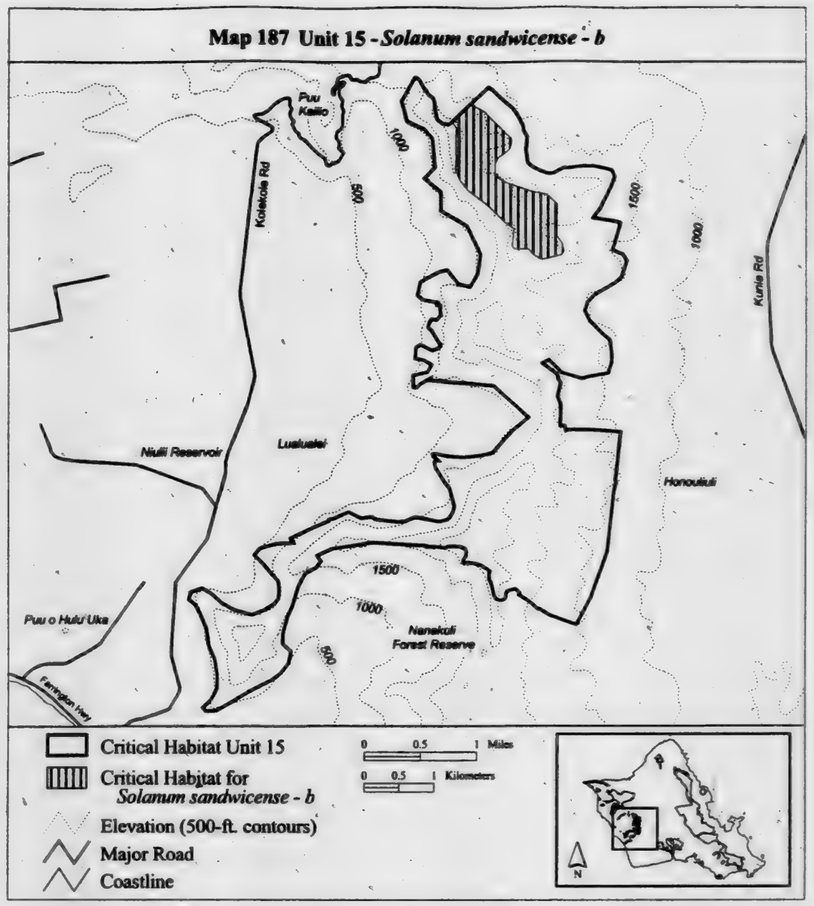


(187) Oahu 15—*Solanum sandwicense*—b (146 ha; 361 ac)

(i) Unit consists of the following 43 boundary points: Start at 593124, 2374469; 593130, 2374466; 593319, 2374367; 593704, 2373986; 593704, 2373909; 593670, 2373819; 593520, 2373703; 593477, 2373609; 593477, 2373480; 593550, 2373394; 593692, 2373322; 593889, 2373253; 594004, 2373206; 594184, 2373180; 594261, 2373120; 594356, 2373030; 594356, 2372910; 594351, 2372825; 594351, 2372705; 594351, 2372589; 594433, 2372481; 594454, 2372361; 594424, 2372318; 594223, 2372276; 594133, 2372255; 594039, 2372315; 593987, 2372358; 593953, 2372400; 593902, 2372405; 593747, 2372405; 593717, 2372447; 593726, 2372555; 593739, 2372696; 593614, 2372782; 593366, 2373022; 593237, 2373120; 593087, 2373232; 592972, 2373373; 592903, 2373531; 592916, 2373664; 592912, 2373960; 592925, 2374131; 592854, 2374216; return to starting point.

(ii) **Note:** Map 187 follows:

Map 187 Unit 15 - *Solanum sandwicense* - b

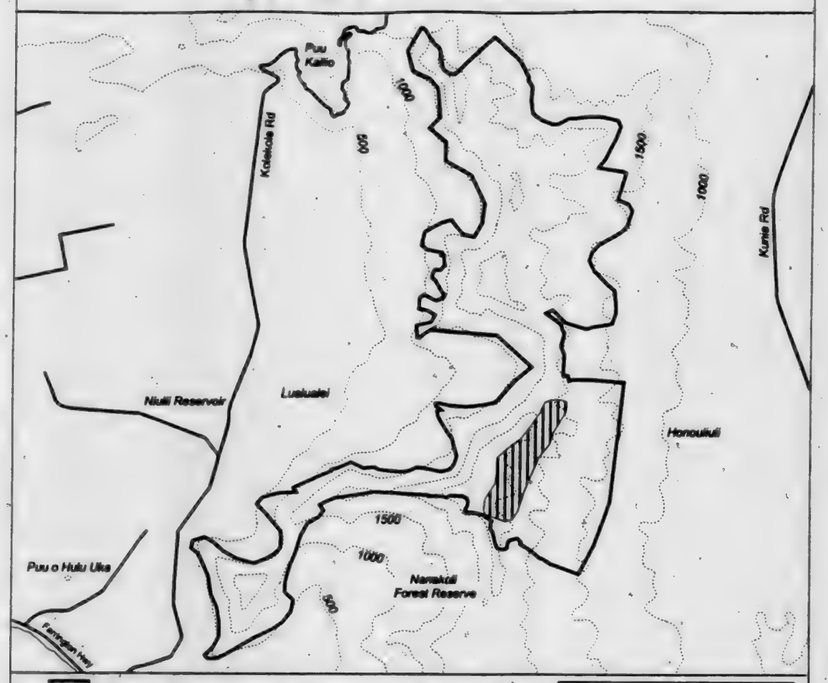


(188) Oahu 15—*Solanum sandwicense*—c (78 ha; 193 ac)

(i) Unit consists of the following 26 boundary points: Start at 593318, 2367895; 593284, 2367952; 593303, 2368105; 593442, 2368331; 593466, 2368474; 593466, 2368637; 593476, 2368709; 593667, 2368881; 593801, 2368972; 593931, 2369140; 594079, 2369346; 594146, 2369499; 594247, 2369538; 594381, 2369538; 594458, 2369504; 594448, 2369360; 594367, 2369217; 594266, 2369063; 594209, 2368896; 594060, 2368704; 593945, 2368431; 593859, 2368206; 593768, 2367933; 593696, 2367832; 593595, 2367799; 593495, 2367842; return to starting point.

(ii) **Note:** Map 188 follows:

Map 188 Unit 15 - *Solanum sandwicense* - c

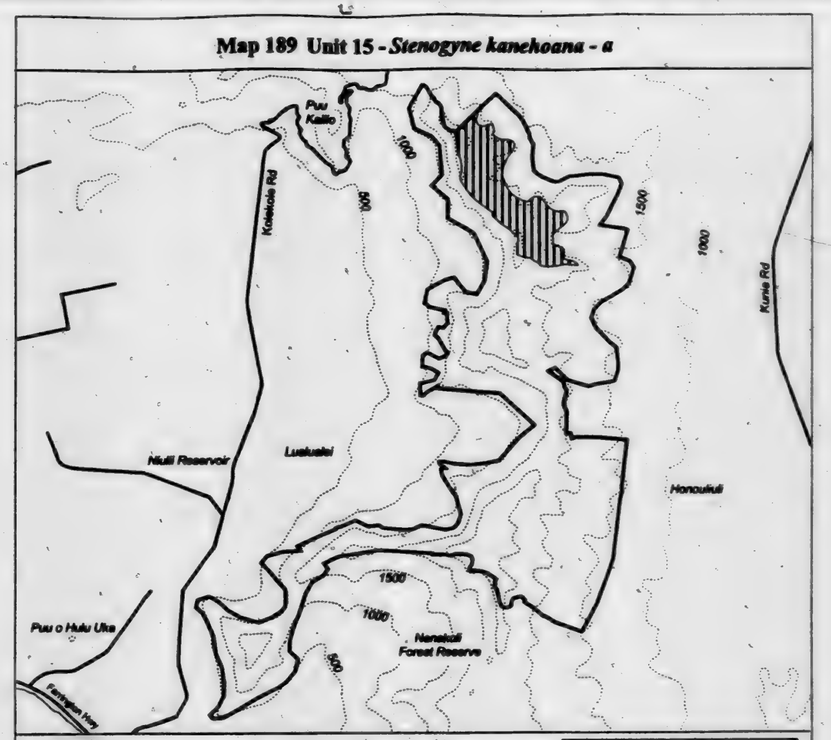


(189) Oahu 15—*Stenogyne kanehoana*—a (140 ha; 346 ac)

(i) Unit consists of the following 91 boundary points: Start at 593105, 2374451; 593128, 2374409; 593098, 2374338; 593128, 2374268; 593215, 2374248; 593282, 2374278; 593336, 2374291; 593353, 2374224; 593370, 2374187; 593360, 2374171; 593339, 2374154; 593371, 2374111; 593383, 2374110; 593443, 2374080; 593480, 2374073; 593558, 2374073; 593631, 2374047; 593665, 2374003; 593652, 2373949; 593548, 2373788; 593494, 2373671; 593480, 2373546; 593544, 2373392; 593605, 2373301; 593688, 2373241; 593776, 2373197; 593819, 2373181; 593863, 2373181; 593890, 2373214; 593930, 2373244; 594004, 2373258; 594048, 2373231; 594108, 2373150; 594165, 2373090; 594235, 2373050; 594293, 2373040; 594346, 2373046; 594390, 2373036; 594423, 2372963; 594423, 2372919; 594397, 2372872; 594296, 2372791; 594209, 2372721; 594209, 2372657; 594209, 2372580; 594266, 2372556; 594350, 2372513; 594370, 2372462; 594356, 2372402; 594373, 2372362; 594470, 2372341; 594544, 2372314; 594568, 2372277; 594544, 2372277; 594397, 2372290; 594266, 2372268; 594142, 2372258; 594041, 2372268; 594004, 2372311; 593940, 2372338; 593893, 2372379; 593756, 2372405; 593688, 2372432; 593692, 2372533; 593712, 2372640; 593709, 2372687; 593578, 2372795; 593480, 2372862; 593343, 2372983; 593343, 2373030; 593205, 2373117; 593115, 2373191; 593041, 2373254; 592953, 2373362; 592886, 2373466; 592873, 2373533; 592890, 2373620; 592890, 2373694; 592876, 2373775; 592843, 2373848; 592836, 2373926; 592836, 2373976; 592829, 2373996; 592829, 2374040; 592797, 2374134; 592796, 2374134; 592782, 2374182; 592805, 2374172; 592806, 2374171; 592807, 2374171; 592807, 2374172; return to starting point.

(ii) **Note:** Map 189 follows:

Map 189 Unit 15 - *Stenogyne kanehoana* - a

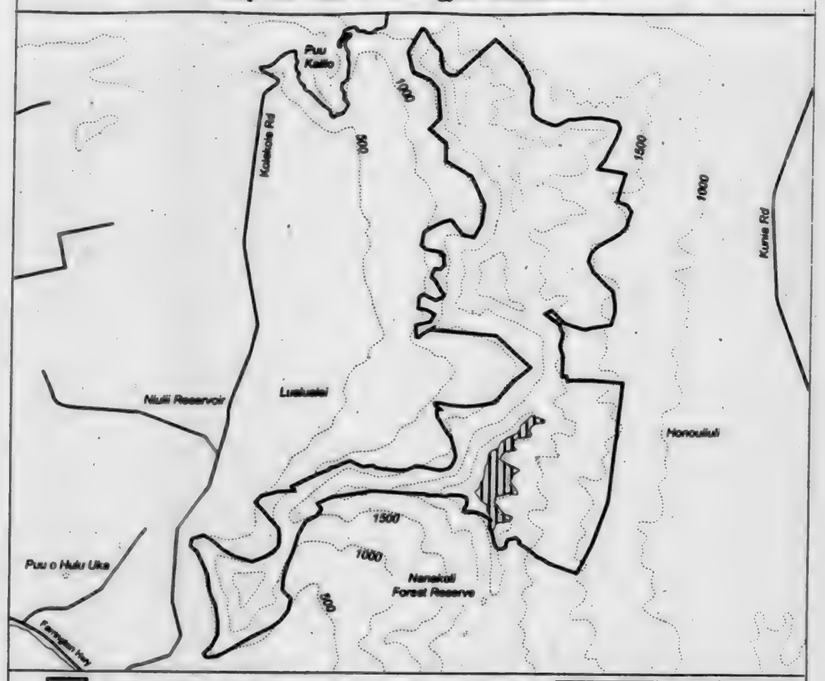


(190) Oahu 15—*Stenogyne kanehoana*—b (43 ha; 107 ac)

(i) Unit consists of the following 86 boundary points: Start at 593978, 2369319; 594027, 2369287; 594064, 2369287; 594165, 2369245; 594152, 2369211; 594096, 2369206; 594027, 2369197; 593967, 2369144; 593944, 2369098; 593976, 2369042; 593951, 2369014; 593909, 2369003; 593854, 2368998; 593775, 2368989; 593713, 2368936; 593701, 2368887; 593738, 2368846; 593761, 2368825; 593743, 2368809; 593604, 2368795; 593549, 2368737; 593524, 2368670; 593595, 2368631; 593671, 2368592; 593773, 2368543; 593803, 2368518; 593759, 2368486; 593704, 2368451; 593706, 2368412; 593678, 2368375; 593697, 2368326; 593743, 2368276; 593775, 2368227; 593787, 2368176; 593743, 2368176; 593660, 2368199; 593611, 2368176; 593503, 2368151; 593475, 2368146; 593454, 2368093; 593454, 2368059; 593510, 2368001; 593549, 2367948; 593595, 2367890; 593671, 2367869; 593715, 2367851; 593692, 2367814; 593627, 2367791; 593581, 2367775; 593514, 2367779; 593475, 2367742; 593461, 2367689; 593440, 2367664; 593392, 2367708; 593387, 2367761; 593408, 2367807; 593408, 2367842; 593380, 2367902; 593348, 2367936; 593346, 2368026; 593286, 2368066; 593249, 2368100; 593221, 2368144; 593173, 2368206; 593219, 2368246; 593251, 2368310; 593253, 2368345; 593286, 2368380; 593304, 2368446; 593311, 2368516; 593316, 2368571; 593327, 2368594; 593357, 2368640; 593357, 2368687; 593362, 2368735; 593371, 2368765; 593401, 2368793; 593431, 2368811; 593500, 2368846; 593514, 2368890; 593544, 2368934; 593641, 2368996; 593759, 2369051; 593810, 2369118; 593812, 2369164; 593925, 2369266; return to starting point.

(ii) **Note:** Map 190 follows:

Map 190 Unit 15 - *Stenogyne kanehoana - b*

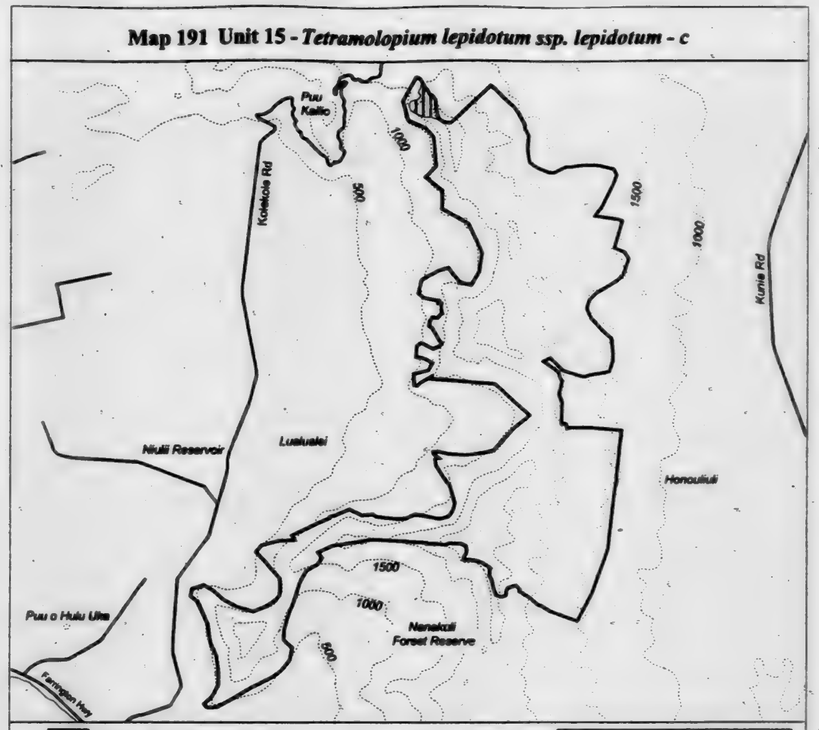


(191) Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—c (11 ha; 28 ac)

(i) Unit consists of the following 47 boundary points: Start at 592641, 2374247; 592622, 2374247; 592573, 2374250; 592556, 2374263; 592529, 2374272; 592492, 2374269; 592454, 2374269; 592428, 2374276; 592385, 2374295; 592356, 2374306; 592318, 2374329; 592292, 2374337; 592265, 2374361; 592249, 2374374; 592236, 2374388; 592227, 2374416; 592225, 2374439; 592225, 2374462; 592236, 2374481; 592258, 2374502; 592288, 2374511; 592315, 2374515; 592342, 2374524; 592360, 2374535; 592372, 2374549; 592382, 2374565; 592383, 2374586; 592379, 2374602; 592360, 2374624; 592366, 2374649; 592374, 2374670; 592386, 2374700; 592396, 2374725; 592402, 2374747; 592402, 2374768; 592404, 2374781; 592454, 2374691; 592484, 2374661; 592514, 2374601; 592514, 2374600; 592574, 2374561; 592594, 2374531; 592604, 2374492; 592604, 2374422; 592634, 2374282; 592634, 2374281; 592644, 2374251; return to starting point.

(ii) **Note:** Map 191 follows:

Map 191 Unit 15 - *Tetramolopium lepidotum ssp. lepidotum - c*



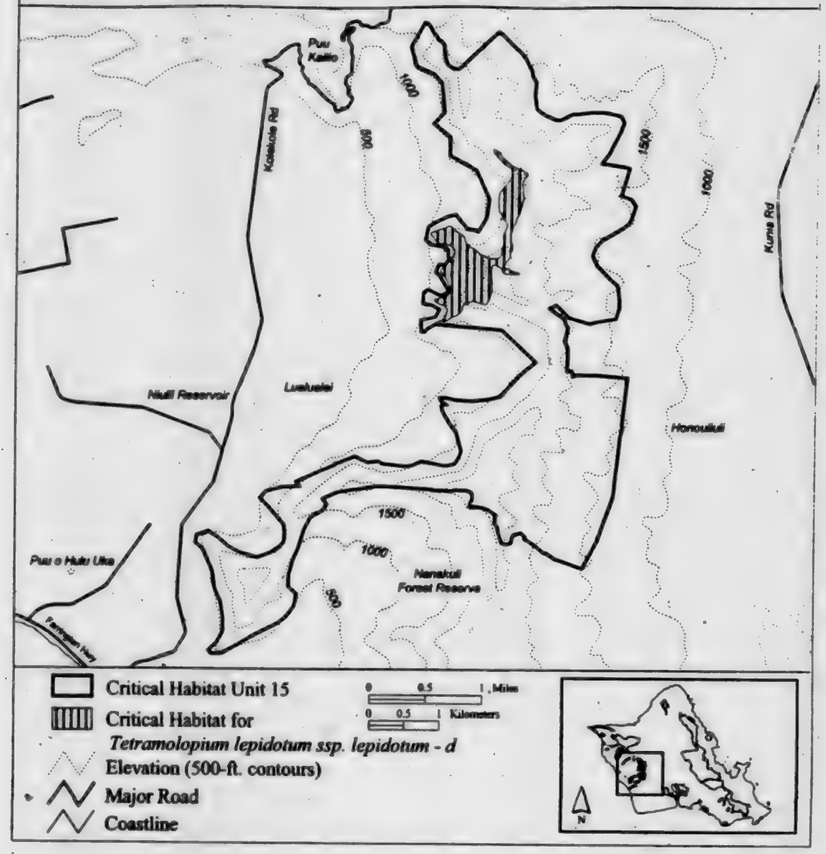
(192) Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d (94 ha; 232 ac)

(i) Unit consists of the following 190 boundary points: Start at 593324, 2373029; 593355, 2373021; 593385, 2373001; 593415, 2372982; 593421, 2372956; 593426, 2372942; 593439, 2372931; 593471, 2372897; 593507, 2372866; 593560, 2372829; 593598, 2372794; 593633, 2372775; 593650, 2372767; 593677, 2372755; 593696, 2372755; 593747, 2372732; 593782, 2372715; 593806, 2372699; 593815, 2372672; 593777, 2372631; 593747, 2372583; 593742, 2372540; 593753, 2372480; 593750, 2372429; 593760, 2372351; 593741, 2372273; 593722, 2372183; 593718, 2372168; 593719, 2372168; 593713, 2372144; 593706, 2372138; 593706, 2372137; 593700, 2372106; 593698, 2372106; 593698, 2372103; 593668, 2372056; 593653, 2372007; 593648, 2371975; 593623, 2371940; 593602, 2371902; 593590, 2371860; 593585, 2371843; 593583, 2371798; 593585, 2371738; 593587, 2371710; 593601, 2371678; 593599, 2371635; 593593, 2371595; 593572, 2371562; 593575, 2371540; 593574, 2371511; 593558, 2371489; 593528, 2371444; 593496, 2371398; 593483, 2371378; 593499, 2371352; 593536, 2371333; 593585, 2371320; 593623, 2371305; 593687, 2371281; 593704, 2371269; 593706, 2371259; 593687, 2371254; 593650, 2371262; 593610, 2371269; 593556, 2371269; 593518, 2371265; 593493, 2371278; 593471, 2371300; 593458, 2371339; 593436, 2371362; 593398, 2371387; 593359, 2371405; 593323, 2371392; 593309, 2371362; 593305, 2371256; 593315, 2371110; 593312, 2371110; 593319, 2371035; 593309, 2370992; 593286, 2370948; 593274, 2370884; 593239, 2370829; 593201, 2370825; 593139, 2370843; 593043, 2370874; 592935, 2370835; 592898, 2370802; 592898, 2370780; 592882, 2370737; 592851, 2370694; 592786, 2370655; 592745, 2370637; 592679, 2370592; 592636, 2370569; 592606, 2370569; 592626, 2370614; 592653, 2370649; 592683, 2370749; 592632, 2370806; 592581, 2370825; 592530, 2370853; 592493, 2370896; 592528, 2370905; 592630,

2370935; 592685, 2370954; 592720, 2371017; 592700, 2371103; 592649, 2371213; 592579, 2371303; 592589, 2371328; 592642, 2371407; 592696, 2371467; 592781, 2371551; 592779, 2371571; 592777, 2371614; 592751, 2371647; 592708, 2371679; 592632, 2371694; 592581, 2371692; 592534, 2371700; 592497, 2371745; 592469, 2371792; 592438, 2371816; 592440, 2371843; 592507, 2371865; 592573, 2371894; 592638, 2371908; 592687, 2371941; 592736, 2371931; 592759, 2371892; 592790, 2371872; 592824, 2371851; 592859, 2371830; 592890, 2371813; 592908, 2371793; 592925, 2371749; 592939, 2371704; 592963, 2371679; 593010, 2371649; 593059, 2371622; 593104, 2371583; 593147, 2371547; 593139, 2371545; 593185, 2371531; 593280, 2371494; 593329, 2371484; 593388, 2371486; 593423, 2371503; 593442, 2371533; 593450, 2371578; 593458, 2371614; 593477, 2371657; 593480, 2371695; 593479, 2371746; 593477, 2371805; 593488, 2371843; 593507, 2371892; 593520, 2371927; 593523, 2371953; 593523, 2371978; 593509, 2372011; 593471, 2372053; 593461, 2372083; 593459, 2372088; 593451, 2372114; 593441, 2372123; 593432, 2372134; 593433, 2372134; 593405, 2372169; 593401, 2372308; 593404, 2372377; 593417, 2372432; 593482, 2372494; 593533, 2372559; 593564, 2372604; 593585, 2372640; 593590, 2372677; 593591, 2372724; 593591, 2372761; 593556, 2372783; 593517, 2372801; 593466, 2372843; 593425, 2372885; 593394, 2372915; 593367, 2372942; 593355, 2372959; 593332, 2372974; 593326, 2372993; 593313, 2373029; return to starting point.

(ii) **Note:** Map 192 follows:

Map 192 Unit 15 - *Tetramolopium lepidotum ssp. lepidotum - d*

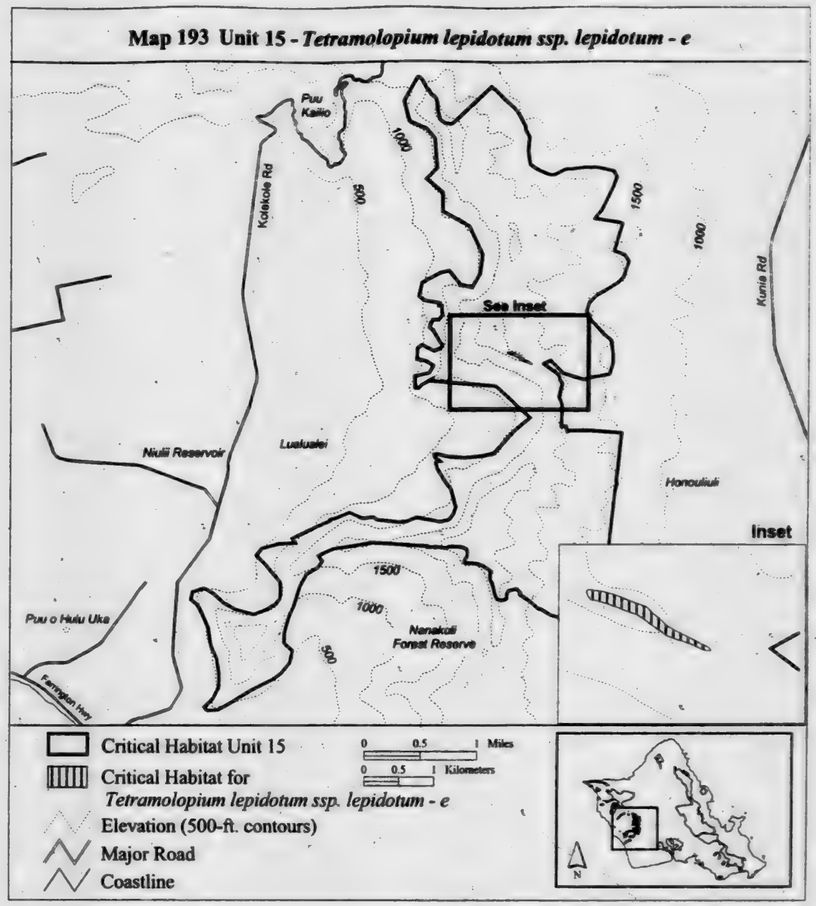


(193) Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e (1 ha; 2 ac)

(i) Unit consists of the following 32 boundary points: Start at 593625, 2370937; 593672, 2370931; 593706, 2370921; 593746, 2370906; 593792, 2370889; 593811, 2370871; 593828, 2370857; 593847, 2370838; 593878, 2370820; 593922, 2370798; 593952, 2370782; 593971, 2370774; 593977, 2370765; 593966, 2370765; 593952, 2370769; 593933, 2370777; 593919, 2370784; 593903, 2370789; 593884, 2370794; 593865, 2370802; 593851, 2370807; 593827, 2370824; 593802, 2370841; 593781, 2370858; 593764, 2370867; 593737, 2370877; 593713, 2370887; 593681, 2370898; 593652, 2370906; 593633, 2370909; 593622, 2370921; 593620, 2370933; return to starting point.

(ii) **Note:** Map 193 follows:

Map 193 Unit 15 - *Tetramolopium lepidotum ssp. lepidotum - e*



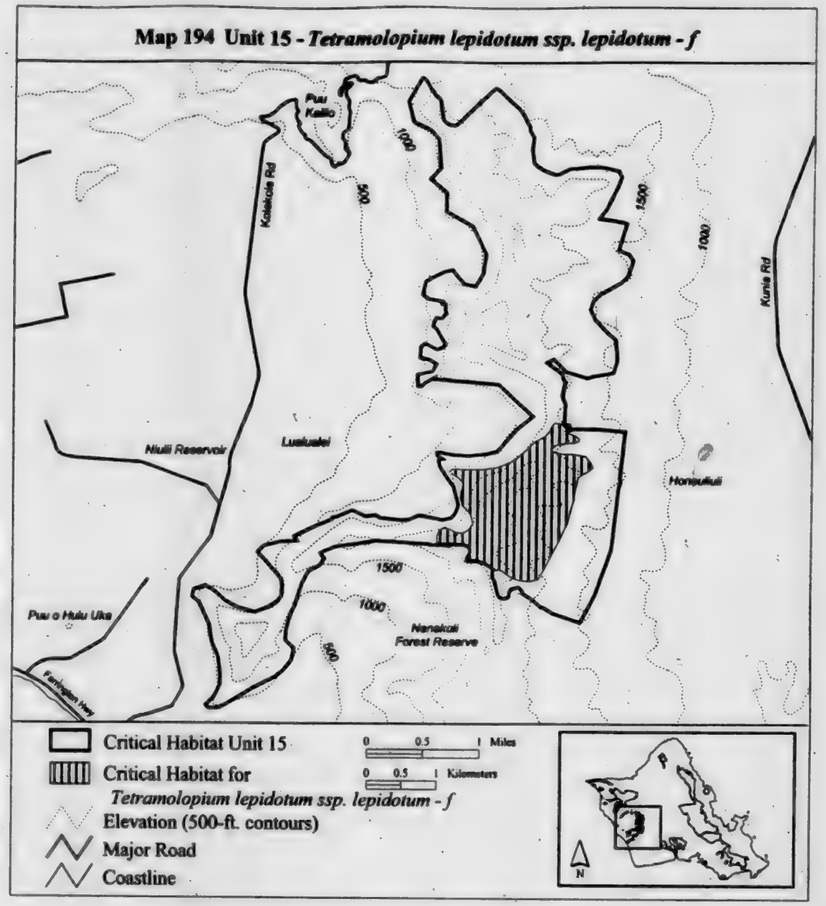
(194) Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—f (260 ha; 641 ac)

(i) Unit consists of the following 94 boundary points: Start at 594589, 2369071; 594601, 2369071; 594553, 2368922; 594541, 2368792; 594513, 2368696; 594447, 2368445; 594329, 2368194; 594169, 2367882; 594051, 2367677; 593936, 2367646; 593869, 2367646; 593773, 2367655; 593673, 2367689; 593582, 2367743; 593531, 2367785; 593482, 2367801; 593446, 2367794; 593444, 2367789; 593435, 2367797; 593381, 2367824; 593380, 2367824; 593379, 2367825; 593301, 2367885; 593201, 2367915; 593116, 2367928; 593029, 2367928; 593020, 2367955; 593029, 2367985; 593056, 2368018; 593059, 2368073; 593050, 2368127; 592986, 2368154; 592838, 2368182; 592751, 2368185; 592678, 2368175; 592611, 2368151; 592590, 2368194; 592590, 2368290; 592630, 2368363; 592699, 2368399; 592778, 2368378; 592838, 2368342; 592935, 2368321; 593008, 2368339; 593059,

2368393; 593098, 2368463; 593080, 2368544; 593071, 2368590; 593011, 2368659; 592944, 2368720; 592944, 2368756; 592920, 2368823; 592926, 2368913; 592948, 2368954; 592956, 2369031; 592941, 2369061; 592875, 2369125; 592811, 2369167; 592775, 2369213; 592802, 2369237; 592875, 2369237; 593038, 2369231; 593216, 2369234; 593452, 2369261; 593594, 2369322; 593730, 2369394; 593884, 2369536; 593975, 2369630; 594120, 2369709; 594187, 2369772; 594223, 2369845; 594262, 2369896; 594377, 2369887; 594426, 2369845; 594447, 2369778; 594474, 2369751; 594577, 2369715; 594622, 2369678; 594604, 2369645; 594541, 2369627; 594420, 2369621; 594290, 2369591; 594241, 2369557; 594220, 2369515; 594299, 2369476; 594392, 2369464; 594504, 2369464; 594601, 2369455; 594713, 2369427; 594770, 2369349; 594813, 2369267; 594770, 2369222; 594668, 2369170; 594628, 2369140; return to starting point.

(ii) **Note:** Map 194 follows:

Map 194 Unit 15 - *Tetramolopium lepidotum ssp. lepidotum - f*



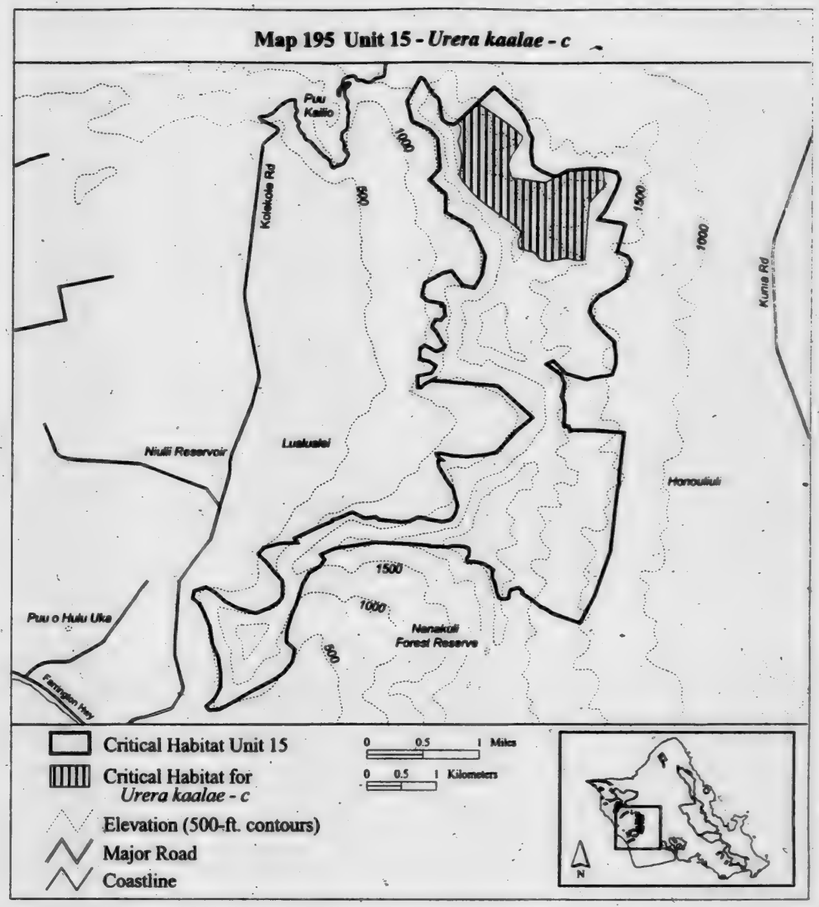
(195) Oahu 15—*Urera kaalae*—c (224 ha; 555 ac)

(i) Unit consists of the following 63 boundary points: Start at 593151, 2374494; 593315, 2374385; 593612, 2374173; 593793, 2374029; 593779, 2373964; 593731, 2373894; 593660, 2373784; 593609, 2373702; 593592, 2373648; 593592, 2373594; 593601, 2373538; 593629, 2373467; 593661, 2373423; 593652, 2373439; 594121, 2373373; 594460, 2373552; 594941, 2373564; 594974, 2373334; 594744, 2373091; 594696, 2372334; 594697, 2372333; 594697, 2372283; 594652, 2372257; 594541, 2372266; 594454, 2372294; 594400, 2372294; 594293, 2372267; 594231, 2372261; 594168, 2372241; 594126, 2372258; 594075, 2372267; 594030, 2372303; 593999, 2372354; 593948, 2372388; 593889, 2372397; 593812, 2372413; 593781, 2372425; 593756, 2372442; 593742, 2372467; 593742, 2372490; 593736,

2372521; 593736, 2372560; 593757, 2372587; 593781, 2372659; 593790, 2372662; 593663, 2372772; 593490, 2372897; 593202, 2373123; 593095, 2373213; 593019, 2373295; 592937, 2373388; 592889, 2373462; 592897, 2373535; 592908, 2373597; 592923, 2373668; 592914, 2373772; 592889, 2373866; 592866, 2373947; 592894, 2374029; 592908, 2374120; 592894, 2374162; 592860, 2374213; 592854, 2374216; return to starting point.

(ii) **Note:** Map 195 follows:

Map 195 Unit 15 - *Urera kaalae - c*

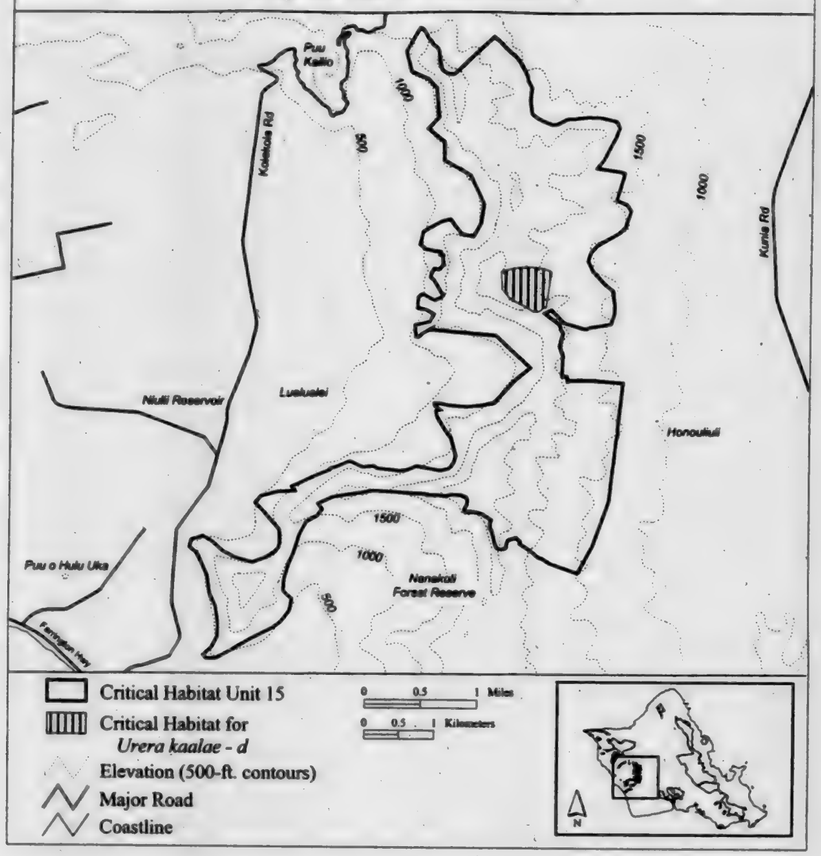


(196) Oahu 15—*Urera kaalae*—d (35 ha; 87 ac)

(i) Unit consists of the following 35 boundary points: Start at 594170, 2370879; 594172, 2370877; 594170, 2370855; 594166, 2370854; 594166, 2370853; 594164, 2370854; 594122, 2370843; 594090, 2370815; 594040, 2370789; 593996, 2370789; 593930, 2370827; 593852, 2370875; 593778, 2370907; 593716, 2370947; 593642, 2370999; 593602, 2371041; 593574, 2371067; 593558, 2371095; 593539, 2371118; 593531, 2371121; 593534, 2371173; 593519, 2371375; 593533, 2371375; 593552, 2371390; 593628, 2371404; 593716, 2371426; 593794, 2371431; 593876, 2371437; 593974, 2371435; 594036, 2371431; 594138, 2371415; 594190, 2371399; 594232, 2371385; 594246, 2371359; 594239, 2371354; return to starting point.

(ii) **Note:** Map 196 follows:

Map 196 Unit 15 - *Urera kaalae - d*

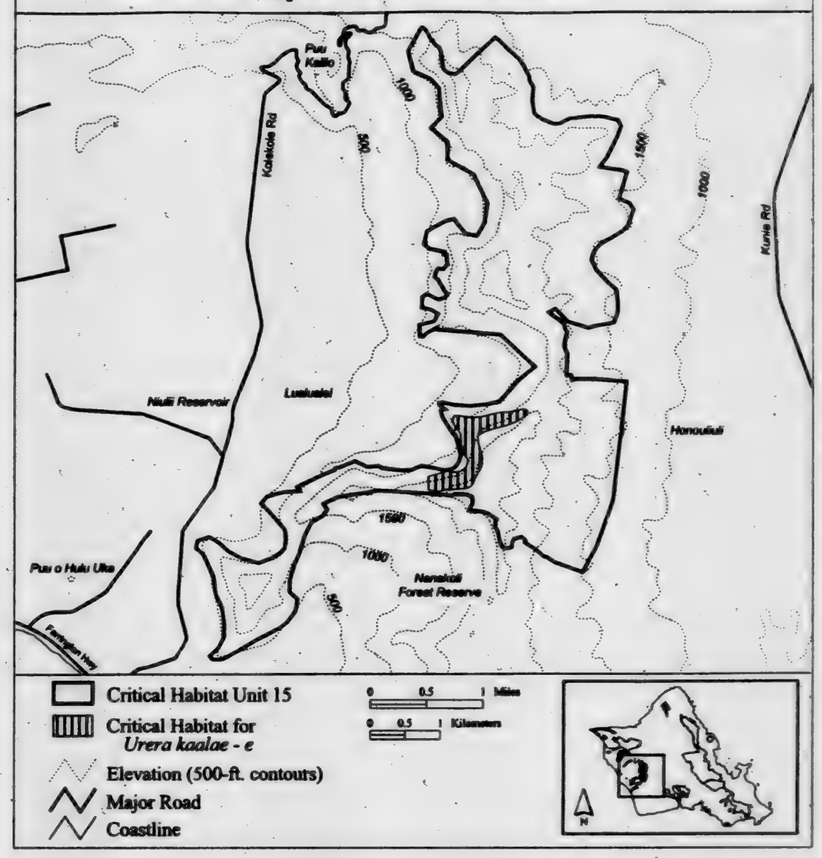


(197) Oahu 15—*Urera kaalae*—e (51 ha; 125 ac)

(i) Unit consists of the following 45 boundary points: Start at 592800, 2369299; 593043, 2369270; 593165, 2369274; 593420, 2369331; 593630, 2369355; 593788, 2369392; 593828, 2369376; 593845, 2369335; 593792, 2369270; 593687, 2369206; 593537, 2369149; 593367, 2369105; 593233, 2369068; 593136, 2369007; 593140, 2368926; 593161, 2368813; 593193, 2368696; 593189, 2368566; 593149, 2368485; 593088, 2368376; 593047, 2368283; 592979, 2368247; 592898, 2368239; 592744, 2368230; 592679, 2368230; 592566, 2368198; 592461, 2368222; 592426, 2368228; 592424, 2368417; 592713, 2368500; 592812, 2368483; 592900, 2368502; 592931, 2368518; 592969, 2368564; 592987, 2368616; 592989, 2368667; 592979, 2368688; 592926, 2368757; 592898, 2368821; 592885, 2368931; 592881, 2369036; 592849, 2369100; 592805, 2369141; 592784, 2369185; 592772, 2369226; return to starting point.

(ii) **Note:** Map 197 follows:

Map 197 Unit 15 - *Urera kaalae - e*

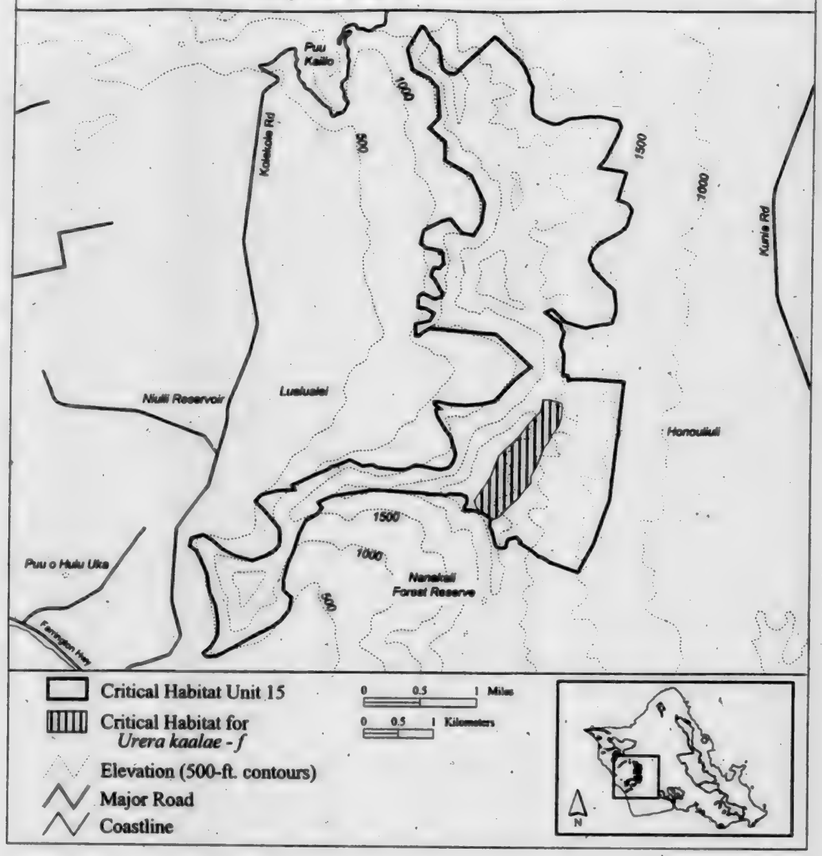


(198) Oahu 15—*Urera kaalae*—f (82 ha; 202 ac)

(i) Unit consists of the following 39 boundary points: Start at 594148, 2369525; 594213, 2369525; 594310, 2369497; 594395, 2369473; 594399, 2369392; 594387, 2369279; 594354, 2369153; 594302, 2369072; 594257, 2369015; 594213, 2368914; 594136, 2368809; 594083, 2368672; 594035, 2368550; 593966, 2368417; 593966, 2368324; 593909, 2368259; 593792, 2368105; 593675, 2368000; 593529, 2367854; 593448, 2367801; 593302, 2367874; 593242, 2367927; 593193, 2367967; 593165, 2368065; 593217, 2368150; 593314, 2368283; 593399, 2368425; 593448, 2368578; 593505, 2368716; 593622, 2368833; 593703, 2368906; 593764, 2368963; 593832, 2369044; 593901, 2369145; 594002, 2369262; 594079, 2369331; 594104, 2369396; 594120, 2369485; 594124, 2369521; return to starting point.

(ii) **Note:** Map 198 follows:

Map 198 Unit 15 - *Urera kaalae - f*

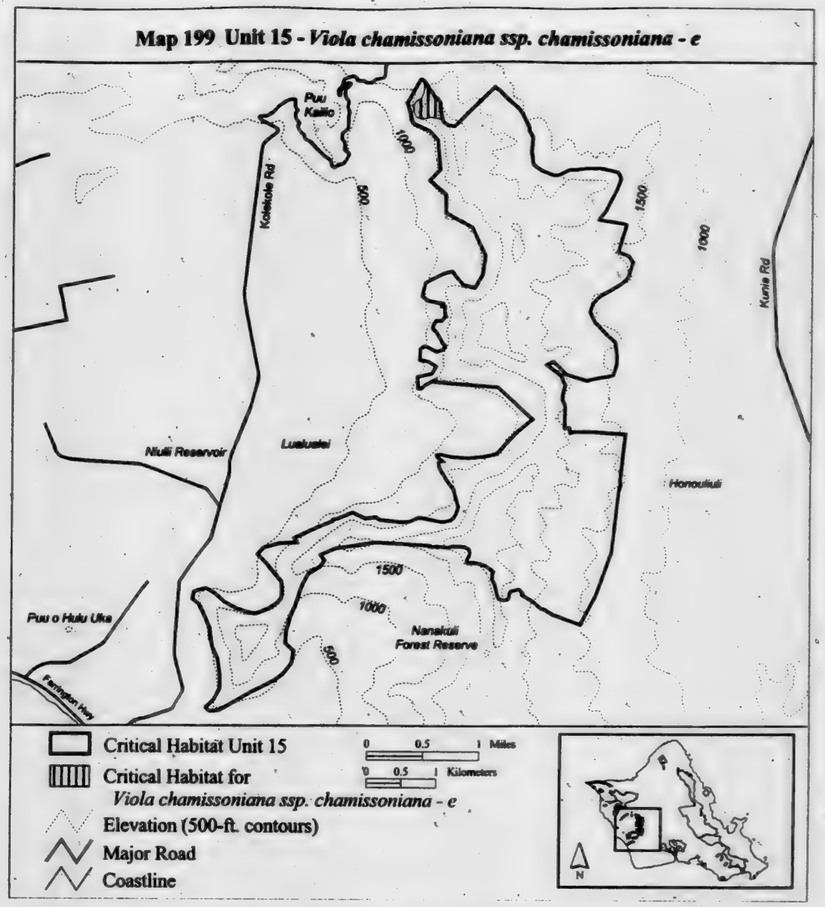


(199) Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—e (13 ha; 31 ac)

(i) Unit consists of the following 25 boundary points: Start at 592635, 2374276; 592624, 2374278; 592539, 2374292; 592462, 2374305; 592356, 2374278; 592262, 2374307; 592218, 2374388; 592214, 2374482; 592285, 2374553; 592331, 2374567; 592354, 2374630; 592379, 2374698; 592370, 2374786; 592391, 2374800; 592404, 2374781; 592454, 2374691; 592484, 2374661; 592514, 2374601; 592514, 2374600; 592574, 2374561; 592594, 2374531; 592604, 2374492; 592604, 2374422; 592634, 2374282; 592634, 2374281; return to starting point.

(ii) **Note:** Map 199 follows:

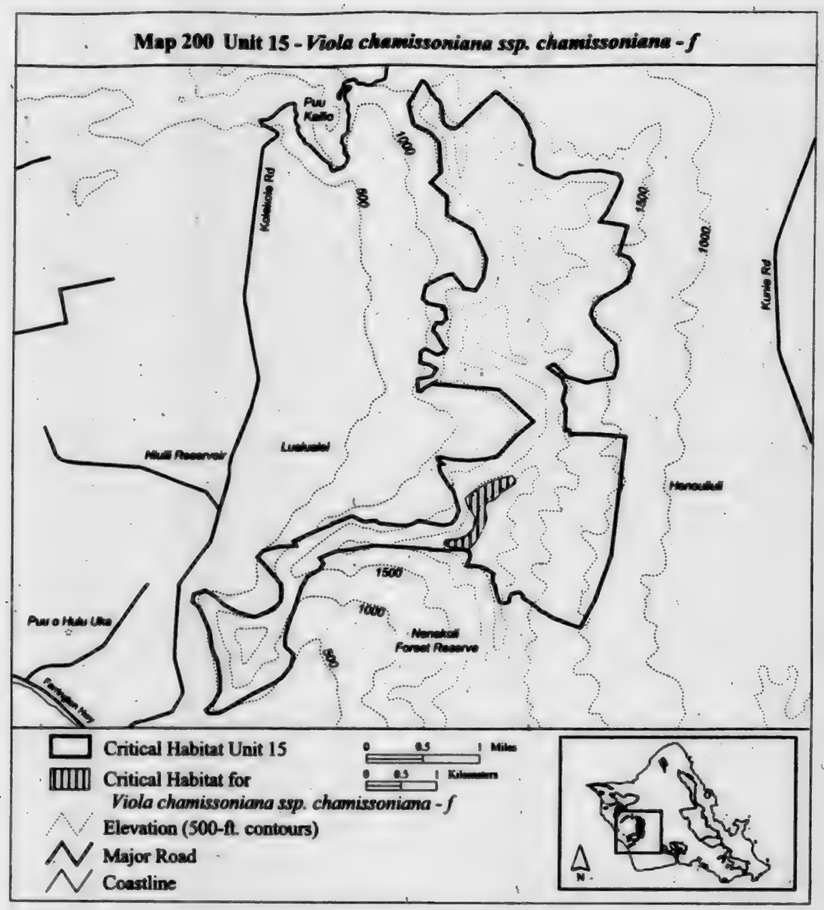
Map 199 Unit 15 - *Viola chamissoniana ssp. chamissoniana - e*



(200) Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—f (29 ha; 72 ac)

(i) Unit consists of the following 36 boundary points: Start at 593654, 2369223; 593680, 2369196; 593696, 2369173; 593696, 2369118; 593632, 2369068; 593572, 2369025; 593497, 2368977; 593467, 2368931; 593397, 2368874; 593305, 2368844; 593269, 2368785; 593269, 2368742; 593278, 2368694; 593292, 2368621; 593257, 2368493; 593203, 2368370; 593136, 2368267; 593043, 2368167; 592874, 2368187; 592760, 2368199; 592689, 2368242; 592689, 2368267; 592714, 2368301; 592817, 2368313; 592917, 2368322; 593009, 2368367; 593061, 2368427; 593107, 2368466; 593116, 2368543; 593134, 2368621; 593095, 2368676; 593013, 2368803; 592986, 2368904; 593098, 2368995; 593280, 2369105; 593410, 2369162; return to starting point.

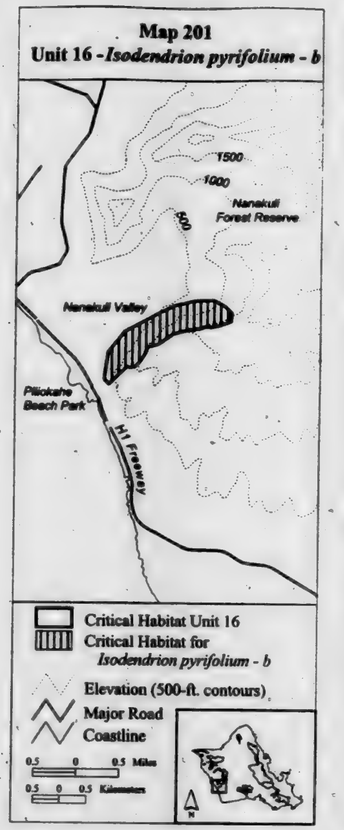
(ii) **Note:** Map 200 follows:



(201) Oahu 16—*Isodendrion pyrifolium*—b (129 ha; 319 ac)

(i) Unit consists of the following 27 boundary points: Start at 589674, 2363678; 589752, 2364203; 590044, 2364573; 590689, 2364934; 590964, 2365071; 591394, 2365166; 591712, 2365175; 591919, 2365063; 592048, 2364934; 592031, 2364779; 591841, 2364702; 591661, 2364667; 591575, 2364684; 591436, 2364630; 591377, 2364641; 591346, 2364612; 591265, 2364624; 590956, 2364547; 590672, 2364349; 590483, 2364289; 590427, 2364155; 590381, 2364088; 590344, 2364028; 590236, 2363915; 590142, 2363906; 590096, 2363919; 589769, 2363592; return to starting point.

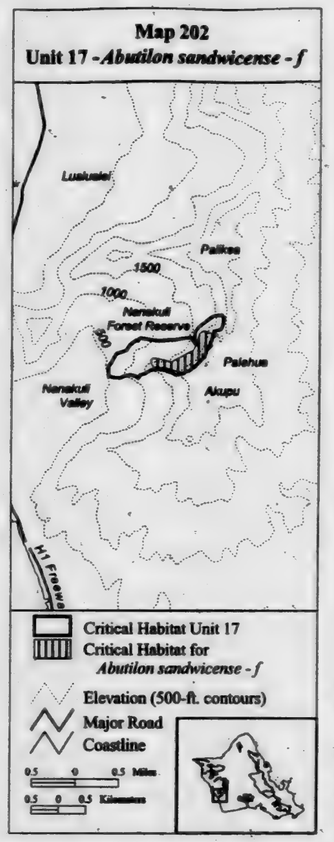
(ii) **Note:** Map 201 follows:



(202) Oahu 17—*Abutilon sandwicense*—f (30 ha; 74 ac)

(i) Unit consists of the following 35 boundary points: Start at 592994, 2366343; 592976, 2366353; 592994, 2366336; 593014, 2366317; 592998, 2366299; 592891, 2366183; 592730, 2366057; 592556, 2366026; 592434, 2366070; 592410, 2366082; 592411, 2366067; 592292, 2366117; 592150, 2366120; 592089, 2366117; 592037, 2366172; 592025, 2366265; 592072, 2366291; 592156, 2366282; 592272, 2366253; 592402, 2366227; 592815, 2366444; 592814, 2366444; 592869, 2366563; 592895, 2366650; 592924, 2366746; 592999, 2366801; 593089, 2366775; 593150, 2366749; 593167, 2366705; 593157, 2366664; 593144, 2366609; 593098, 2366549; 593089, 2366526; 593054, 2366433; 593025, 2366325; return to starting point.

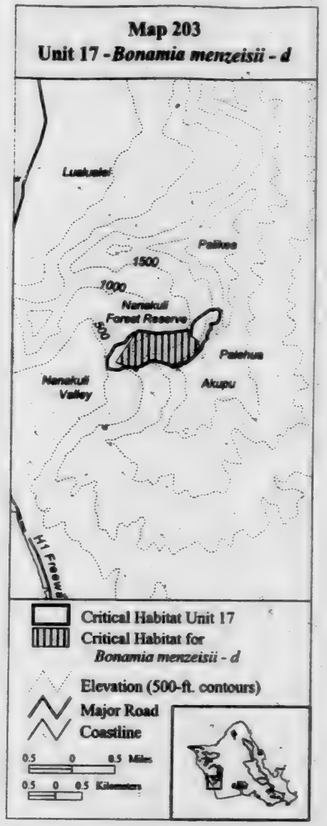
(ii) **Note:** Map 202 follows:



(203) Oahu 17—*Bonamia menziesii*—d (77 ha; 191 ac)

(i) Unit consists of the following 17 boundary points: Start at 591812, 2366666; 592269, 2366597; 592755, 2366681; 592869, 2366536; 592937, 2366491; 592983, 2366354; 592922, 2366301; 592854, 2366149; 592580, 2366042; 592390, 2366027; 592124, 2366118; 591828, 2365981; 591790, 2365921; 591743, 2365955; 591626, 2365984; 591501, 2366027; 591402, 2366065; return to starting point.

(ii) **Note:** Map 203 follows:



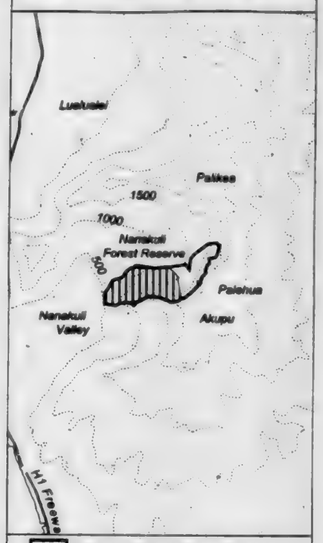
(204) Oahu 17—*Isodendrion pyrifolium*—c (73 ha; 181 ac)

(i) Unit consists of the following 22 boundary points: Start at 591235, 2365957; 591239, 2366138; 591300, 2366224; 591386, 2366378; 591566, 2366439; 591626, 2366525; 591738, 2366619; 591962, 2366602; 592194, 2366611; 592375, 2366636; 592452, 2366619; 592598, 2366482; 592676, 2366052; 592624, 2366000; 592478, 2365983; 592383, 2366052; 592031, 2366103; 591910, 2366000; 591669,

2365991; 591529, 2365960; 591455, 2365921; 591308, 2365932; return to starting point.

(ii) **Note:** Map 204 follows:

Map 204
Unit 17 - *Isodendrion pyrifolium* - c

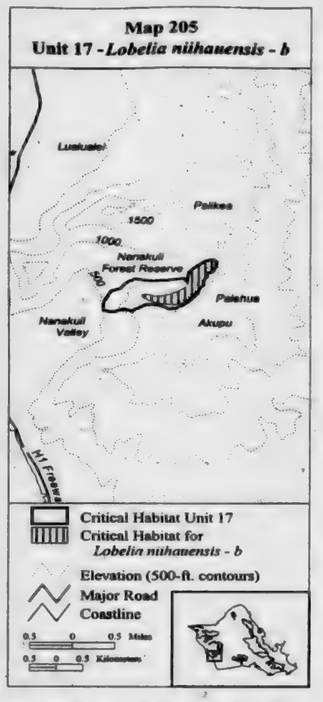


(205) Oahu 17—*Lobelia niihauensis*—b (41 ha; 102 ac)

(i) Unit consists of the following 48 boundary points: Start at 592843, 2366793; 592908, 2366869; 592974, 2366924; 593065, 2366996; 593127, 2367041; 593182, 2367075; 593337, 2367089; 593376, 2367046; 593376, 2367000; 593359, 2366917; 593323, 2366838; 593307, 2366815; 593193, 2366797; 593208, 2366729; 593203, 2366707; 593187, 2366695; 593187, 2366685; 593167, 2366671; 593128, 2366644; 593113, 2366633; 593111, 2366632; 593108, 2366630; 593137, 2366522; 593041, 2366425; 593003, 2366356; 592993, 2366345; 592939, 2366286; 592865, 2366205; 592776, 2366134; 592669, 2366095; 592545, 2366081; 592385, 2366091; 592258, 2366105; 592182, 2366138; 592101, 2366174; 592048, 2366208; 591991, 2366236; 591972, 2366272; 592007, 2366301; 592074, 2366298; 592208, 2366265; 592323, 2366270; 592466, 2366291; 592621, 2366353; 592719, 2366413; 592798, 2366475; 592822, 2366523; 592835, 2366686; return to starting point.

(ii) **Note:** Map 205 follows:

Map 205
Unit 17 - *Lobelia niihauensis* - b



(206) Oahu 18—*Sesbania tomentosa*—b (5 ha; 12 ac)

(i) Unit consists of the following 117 boundary points: Start at 611637, 2395945; 611637, 2395929; 611616, 2395921; 611615, 2395920; 611614, 2395917; 611607, 2395917; 611580, 2395908; 611568, 2395898; 611548, 2395879; 611547, 2395879; 611541, 2395867; 611531, 2395852; 611526, 2395843; 611526, 2395842; 611525, 2395838; 611516, 2395820; 611515, 2395820; 611515, 2395819; 611515, 2395816; 611514, 2395815; 611513, 2395815; 611513, 2395814; 611513, 2395812; 611503, 2395782; 611494, 2395764; 611485, 2395755; 611473, 2395746; 611461, 2395745; 611455, 2395746; 611442, 2395756; 611436, 2395770; 611426, 2395795; 611425, 2395796; 611418, 2395802; 611417, 2395802; 611396, 2395803; 611373, 2395803; 611357, 2395799; 611335, 2395788; 611334, 2395788; 611326, 2395777; 611297, 2395742; 611285, 2395734; 611274, 2395729; 611254, 2395726; 611244, 2395728; 611235, 2395735; 611232, 2395741; 611232, 2395751; 611241, 2395762; 611259, 2395772; 611264, 2395778; 611264, 2395779; 611263, 2395786; 611269, 2395793; 611283, 2395803; 611338, 2395824; 611363, 2395837; 611366, 2395843; 611373, 2395846; 611374, 2395846; 611388, 2395856; 611389, 2395857; 611400, 2395879; 611407, 2395896; 611408, 2395897; 611408, 2395907; 611412, 2395912; 611412, 2395913; 611413, 2395928; 611413, 2395929; 611412, 2395930; 611411, 2395935; 611411, 2395936; 611405, 2395947; 611404, 2395948; 611399, 2395953; 611398, 2395953; 611384, 2395959; 611383, 2395959; 611355, 2395966; 611331, 2395970; 611330, 2395972; 611330, 2395978; 611337, 2395983; 611350, 2395982; 611365, 2395984; 611396, 2395977; 611419, 2395970; 611438, 2395969; 611439, 2395969; 611452, 2395973; 611453, 2395973; 611466, 2395982; 611477, 2395986; 611492, 2395990; 611493, 2395990; 611504, 2395995; 611504, 2395996; 611506, 2395998; 611510, 2396001; 611525, 2396016; 611537, 2396021; 611607, 2396032; 611622, 2396032; 611629, 2396030; 611631, 2396025; 611630, 2396005; 611624, 2395990; 611624, 2395989; 611625, 2395973; 611625, 2395972; 611627, 2395969; 611630, 2395961; 611633, 2395953; 611633, 2395952; 611635, 2395949; return to starting point.

(ii) **Note:** Map 206 follows:

Map 206
Unit 18 - *Sesbania tomentosa* - b

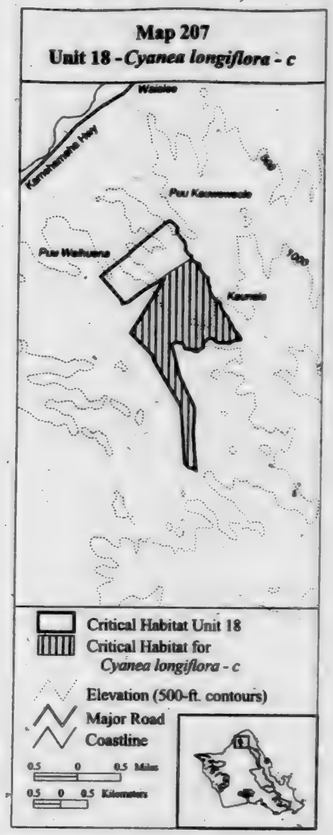


(207) Oahu 19—*Cyanea longiflora*—c (324 ha; 801 ac)

(i) Unit consists of the following 202 boundary points: Start at 603332, 2393228; 603224, 2393213; 603164, 2393200; 603163, 2393200; 603142, 2393184; 603108, 2393154; 603094, 2393152; 603083, 2393152; 603072, 2393157; 603054, 2393168; 603053, 2393169; 603021, 2393169; 602988, 2393169; 602983, 2393171; 602982, 2393172; 602982, 2393171; 602952, 2393170; 602918, 2393162; 602897, 2393161; 602869, 2393169; 602816, 2393190; 602806, 2393196; 602781, 2393232; 602780, 2393232; 602758, 2393252; 602757, 2393252; 602739, 2393260; 602738, 2393260; 602711, 2393260; 602662, 2393250; 602641, 2393240; 602635, 2393232; 602634, 2393232; 602624, 2393209; 602616, 2393201; 602579, 2393186; 602578, 2393186; 602578, 2393185; 602567, 2393167; 602567, 2393166; 602564, 2393147; 602554, 2393122; 602554, 2393121; 602556, 2393090; 602549, 2393075; 602492, 2393031; 602478, 2393024; 602477, 2393024; 602477, 2393023; 602467, 2393006; 602445, 2392990; 602419, 2392980; 602394, 2392979; 602382, 2392983; 602341, 2393005; 602325, 2393016; 602322, 2393020; 602321, 2393021; 602289, 2393025; 602244, 2393025; 602190, 2393036; 602171, 2393049; 602155, 2393069; 602138, 2393109; 602127, 2393127; 602126, 2393127; 602118, 2393136; 602118, 2393137; 602094, 2393149; 602093, 2393149; 602071, 2393152; 602048, 2393154; 602026, 2393164; 602013, 2393171; 602012, 2393171; 601992, 2393174; 601980, 2393173; 601979, 2393173; 601924, 2393139; 601898, 2393113; 601898, 2393112; 601897, 2393112; 601897, 2393111; 601907, 2393068; 601978, 2392805; 602085, 2392443; 602110, 2392392; 602148, 2392315; 602150, 2392310; 602186, 2392236; 602370, 2391859; 602391, 2391819; 602383, 2391680; 602368, 2391295; 602366, 2391244; 602439, 2390510; 602435, 2390510; 602412, 2390526; 602382, 2390544; 602370, 2390550; 602369, 2390550; 602314, 2390563; 602299, 2390568; 602284, 2390576; 602227, 2390632; 602226, 2390633; 602204, 2390649; 602106, 2391826; 601550, 2392745; 601471, 2392922; 601043, 2393341; 601032, 2393359; 601715, 2394477; 601720, 2394541; 602274, 2394909; 602311, 2394883; 602318, 2394874; 602318, 2394873; 602338, 2394854; 602339, 2394854; 602344, 2394852; 602375, 2394834; 602415, 2394825; 602444, 2394812; 602454, 2394803; 602460, 2394785; 602461, 2394763; 602463, 2394753; 602467, 2394734; 602482, 2394683; 602499, 2394652; 602500, 2394652; 602520, 2394623; 602547, 2394585; 602564, 2394566; 602565, 2394566; 602606, 2394536; 602607, 2394536; 602621, 2394530; 602638, 2394521; 602641, 2394514; 602641, 2394513; 602642, 2394513; 602645, 2394510; 602645, 2394489; 602642, 2394462; 602636, 2394450; 602636, 2394449; 602632, 2394427; 602632, 2394426; 602640, 2394398; 602640, 2394397; 602674, 2394348; 602678, 2394329; 602673, 2394297; 602677, 2394247; 602677, 2394246; 602687, 2394224; 602704, 2394204; 602768, 2394098; 602768, 2394097; 602769, 2394097; 602793, 2394068; 602793, 2394067; 602794, 2394067; 602801, 2394063; 602827, 2394049; 602828, 2394049; 602844, 2394045; 602871, 2394032; 602887, 2394018; 602900, 2394002; 602916, 2393968; 602910, 2393929; 602910, 2393912; 602910, 2393911; 602933, 2393881; 602988, 2393800; 603003, 2393780; 603040, 2393735; 603041, 2393735; 603051, 2393726; 603070, 2393696; 603083, 2393654; 603104, 2393614; 603105, 2393614; 603125, 2393588; 603155, 2393538; 603167, 2393516; 603193, 2393448; 603201, 2393431; 603201, 2393430; 603202, 2393430; 603213, 2393417; 603232, 2393392; 603233, 2393391; 603242, 2393389; 603275, 2393357; 603287, 2393339; 603325, 2393282; 603333, 2393261; 603332, 2393229; return to starting point.

(ii) **Note:** Map 207 follows:

Map 207
Unit 18 - *Cyanea longiflora* - c

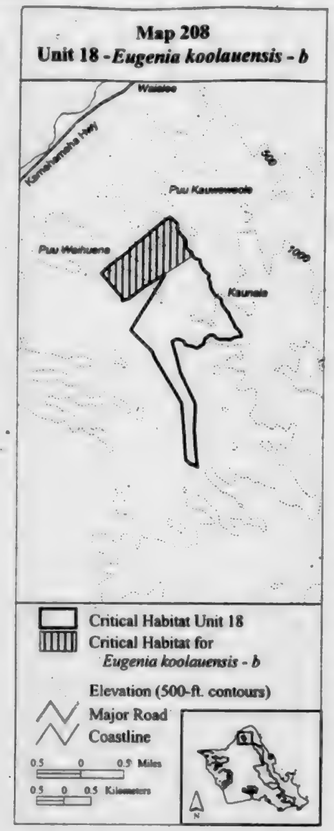


(208) Oahu 19—*Eugenia koolauensis*—b (150 ha; 371 ac)

(i) Unit consists of the following 56 boundary points: Start at 600799, 2394083; 600408, 2394520; 600561, 2394661; 600963, 2394982; 601045, 2395072; 601721, 2395631; 601756, 2395655; 601822, 2395697; 601906,

2395628; 601960, 2395579; 601990, 2395546; 601990, 2395525; 601973, 2395502; 601972, 2395501; 601966, 2395486; 601966, 2395485; 601965, 2395470; 601965, 2395469; 601970, 2395453; 601970, 2395452; 601978, 2395439; 601979, 2395439; 601982, 2395435; 602044, 2395359; 602081, 2395304; 602121, 2395260; 602130, 2395252; 602146, 2395229; 602160, 2395198; 602167, 2395166; 602167, 2395141; 602163, 2395125; 602156, 2395114; 602155, 2395114; 602155, 2395113; 602152, 2395099; 602152, 2395098; 602152, 2395097; 602174, 2395061; 602175, 2395061; 602213, 2395027; 602220, 2395021; 602219, 2395012; 602220, 2395011; 602282, 2394972; 602287, 2394960; 602292, 2394915; 602292, 2394914; 602302, 2394895; 602293, 2394888; 602107, 2394761; 601575, 2394420; 601284, 2394239; 600993, 2394008; 600858, 2393961; 600831, 2394050; return to starting point.

(ii) **Note:** Map 208 follows:



(209) Oahu 20—*Adenophorus periens*—a (712 ha; 1,758 ac)

(i) Unit consists of the following 450 boundary points: Start at 609139, 2387002; 609180, 2387197; 609315, 2387390; 609551, 2387406; 609696, 2387428; 609933, 2387428; 610245, 2387401; 610530, 2387353; 610777, 2387261; 611143, 2387127; 611520, 2386933; 611756, 2386783; 611832, 2386702; 611939, 2386481; 611993, 2386266; 612041, 2386089; 612160, 2385949; 612246, 2385852; 612310, 2385707; 612386, 2385546; 612407, 2385347; 612412, 2385196; 612444, 2385120; 612450, 2385121; 612447, 2385113; 612456, 2385094; 612440, 2385093; 612337, 2384814; 612300, 2384696; 612300, 2384615; 612273, 2384427; 612273, 2384292; 612213, 2384153; 612278, 2383916; 612326, 2383679; 612262, 2383518; 612203, 2383432; 612144, 2383319; 612084, 2383179; 612084, 2383002; 612084, 2382915; 612031, 2382738; 611945, 2382636; 611912, 2382561; 611864, 2382485; 611848, 2382302; 611826, 2382163; 611842, 2381894; 611794, 2381893; 611815, 2381549; 611869, 2381469; 611961, 2381184; 612095, 2380925; 612257, 2380710; 612262, 2380630; 612316, 2380527; 612369, 2380371; 612407, 2380280; 612558, 2379947; 612638, 2379785; 612719, 2379656; 612961, 2379409; 613139, 2379210; 613241, 2379108; 613257, 2379016; 613219, 2378925; 613148, 2378858; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612388, 2379852; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879,

2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610440, 2385363; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; return to starting point.

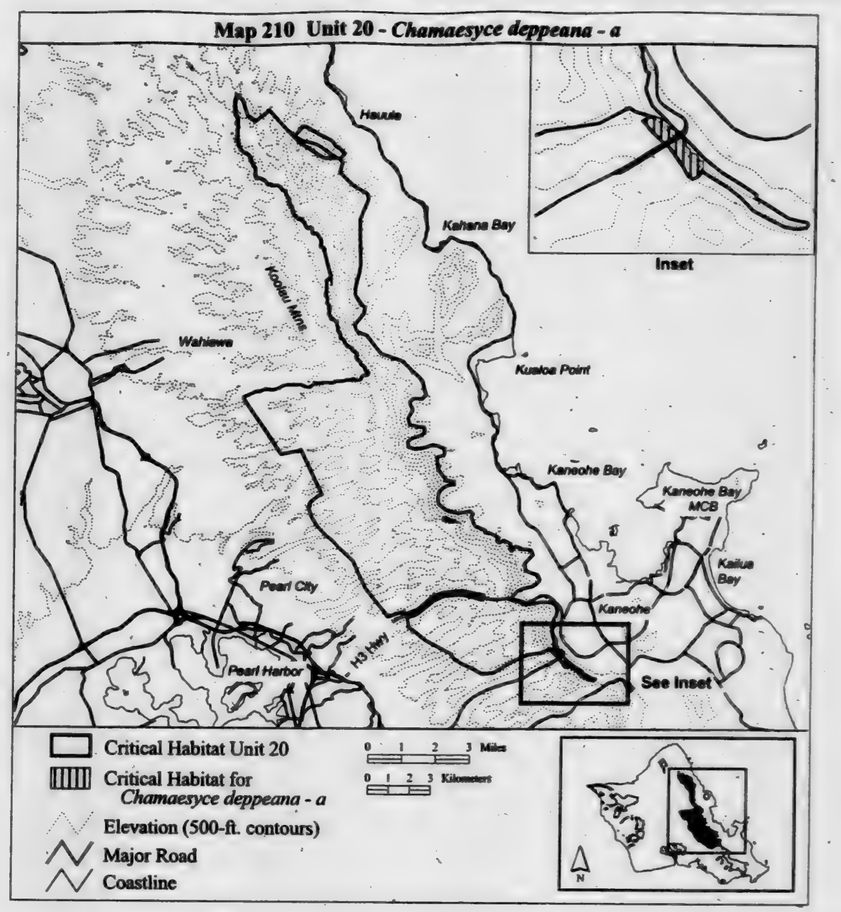
(ii) **Note:** Map 209 follows:



(210) Oahu 20—*Chamaesyce deppeana*—a (18 ha; 44 ac)

(i) Unit consists of the following 48 boundary points: Start at 622671, 2364767; 622720, 2364796; 622771, 2364821; 622817, 2364830; 622857, 2364807; 622899, 2364799; 622920, 2364796; 622942, 2364771; 622976, 2364700; 623023, 2364673; 623074, 2364653; 623094, 2364624; 623117, 2364592; 623151, 2364556; 623191, 2364531; 623196, 2364502; 623209, 2364466; 623214, 2364453; 623249, 2364431; 623254, 2364408; 623279, 2364384; 623312, 2364381; 623335, 2364375; 623352, 2364359; 623368, 2364310; 623381, 2364298; 623413, 2364298; 623420, 2364281; 623420, 2364240; 623420, 2364209; 623400, 2364155; 623364, 2364105; 623319, 2364081; 623279, 2364081; 623249, 2364097; 623241, 2364108; 623241, 2364109; 623241, 2364110; 623241, 2364111; 623228, 2364125; 623207, 2364153; 623173, 2364222; 623101, 2364323; 623047, 2364388; 622978, 2364471; 622920, 2364518; 622804, 2364622; 622791, 2364629; return to starting point.

(ii) **Note:** Map 210 follows:

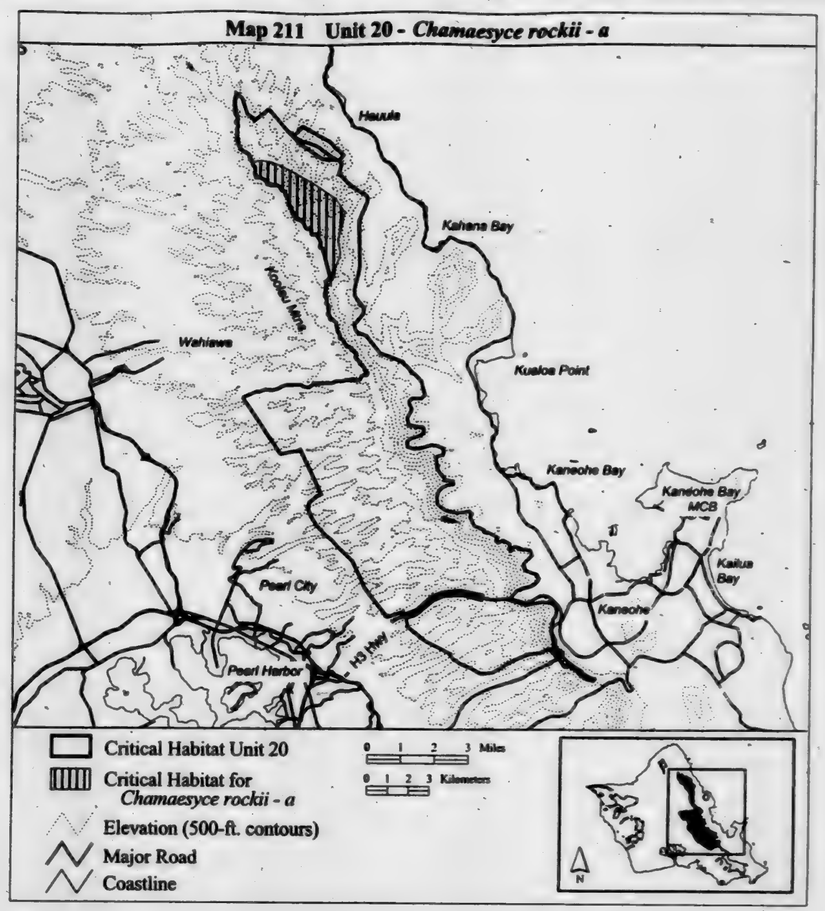


(211) Oahu 20—*Chamaesyce rockii*—a (825 ha; 2,039 ac)

(i) Unit consists of the following 363 boundary points: Start at 608102, 2388099; 608104, 2388099; 608430, 2388155; 608627, 2388161; 608627, 2388154; 608941, 2388106; 609416, 2387958; 610001, 2387662; 611153, 2387052; 612132, 2386418; 612559, 2385801; 612588, 2385802; 612563, 2385697; 612496, 2385537; 612490, 2385426; 612496, 2385346; 612471, 2385235; 612366, 2384841; 612262, 2384483; 612280, 2384317; 612348, 2384058; 612385, 2383775; 612274, 2383461; 612163, 2383215; 612108, 2383005; 612120, 2382814; 612021, 2382543; 611923, 2382389; 611812, 2382260; 611752, 2382233; 611766, 2381817; 611781, 2381470; 611731, 2381430; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611702, 2381866; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422,

2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609322, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; return to starting point.

(ii) **Note:** Map 211 follows:

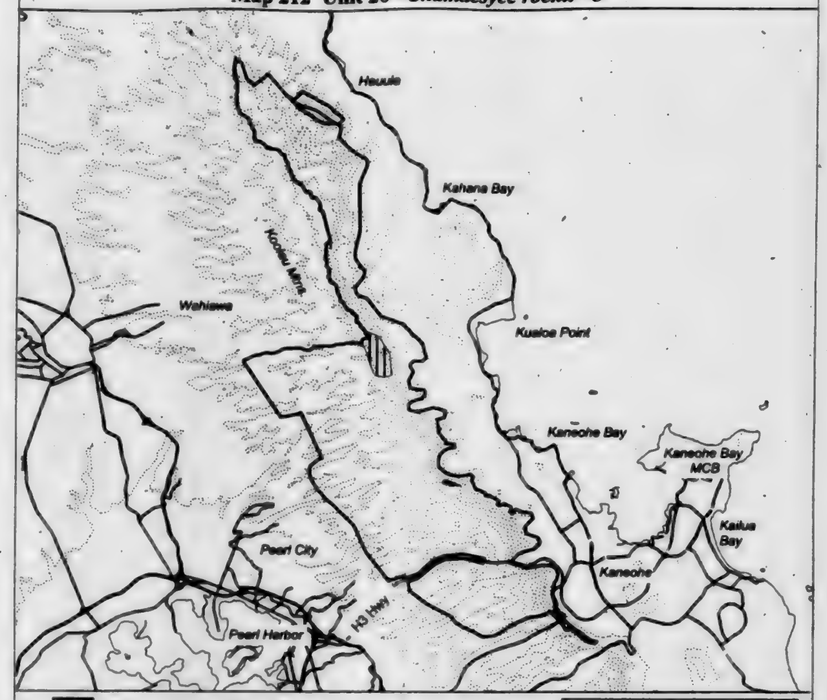


(212) Oahu 20—*Chamaesyce rockii*—b (197 ha; 487 ac)

(i) Unit consists of the following 49 boundary points: Start at 613058, 2377772; 613083, 2377776; 613146, 2377768; 613220, 2377736; 613266, 2377726; 613342, 2377738; 613361, 2377750; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; 613555, 2377986; 613676, 2377976; 613697, 2377987; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613754, 2378093; 613750, 2378096; 613719, 2378107; 613693, 2378145; 613608, 2378209; 613592, 2378229; 613742, 2378300; 613892, 2378229; 614077, 2378166; 614294, 2378060; 614314, 2377969; 614803, 2377164; 614811, 2376545; 614906, 2376292; 614870, 2376202; 614712, 2376131; 614412, 2376111; 614235, 2376135; 614014, 2376257; 613919, 2376438; 613663, 2377259; 613529, 2377598; 613024, 2377732; 613011, 2377758; 613040, 2377760; return to starting point.

(ii) **Note:** Map 212 follows:

Map 212 Unit 20 - *Chamaesyce rockii - b*

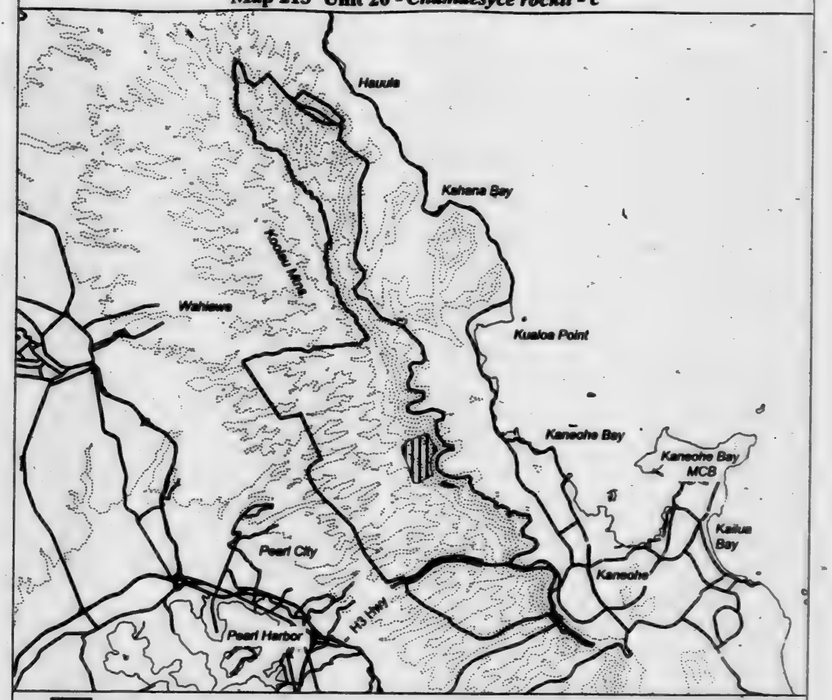


(213) Oahu 20—*Chamaesyce rockii*—c (258 ha; 639 ac)

(i) Unit consists of the following 24 boundary points: Start at 616808, 2373189; 616937, 2372986; 617094, 2372792; 617131, 2372718; 616965, 2372533; 616836, 2372311; 616817, 2372043; 616836, 2371794; 616963, 2371582; 616212, 2371122; 616003, 2371142; 615865, 2371461; 615736, 2371941; 615496, 2372468; 615422, 2372690; 615413, 2372893; 615625, 2373078; 615810, 2373180; 616106, 2373309; 616457, 2373448; 616623, 2373503; 616697, 2373457; 616752, 2373448; 616752, 2373337; return to starting point.

(ii) **Note:** Map 213 follows:

Map 213 Unit 20 - *Chamaesyce rockii - c*

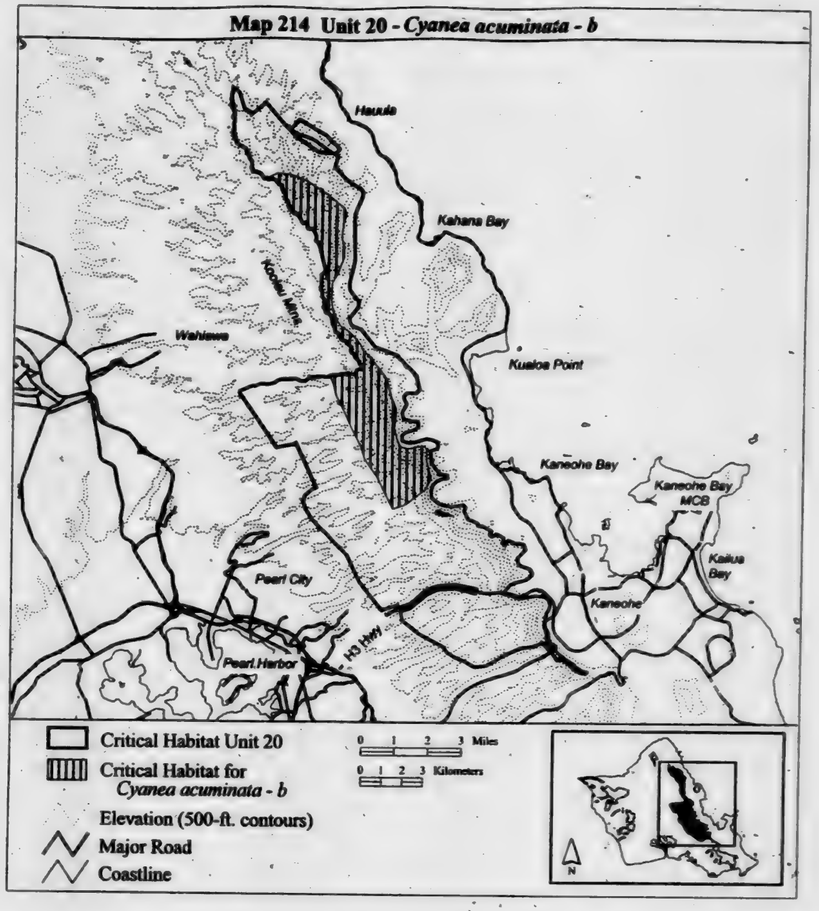


(214) Oahu 20—*Cyanea acuminata*—b (2,522 ha; 6,231 ac)

(i) Unit consists of the following 537 boundary: Start at 612247, 2377695; 612255, 2377697; 612402, 2377690; 612402, 2377689; 612403, 2377685; 612432, 2377673; 612468, 2377676; 612482, 2377684; 612483, 2377688; 612505, 2377688; 612575, 2377698; 612596, 2377708; 612604, 2377703; 612630, 2377702; 612668, 2377720; 612688, 2377749; 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100;

613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609097, 2386989; 609123, 2387120; 609493, 2387295; 610141, 2387223; 610912, 2386955; 611467, 2386606; 612012, 2386246; 612444, 2385917; 612742, 2385701; 612825, 2385516; 612876, 2385382; 612701, 2384755; 612660, 2384313; 612814, 2383830; 612783, 2383285; 612598, 2382802; 612485, 2382504; 612228, 2382092; 612197, 2381352; 612228, 2380972; 612333, 2380571; 612372, 2380571; 612475, 2380345; 612681, 2380026; 613112, 2379748; 613472, 2379378; 613647, 2379142; 613719, 2378915; 614038, 2378638; 614336, 2378299; 614675, 2377877; 614901, 2377548; 615045, 2377013; 615128, 2376684; 615241, 2376458; 615374, 2376109; 615374, 2375728; 615354, 2375471; 615302, 2375111; 615385, 2374782; 615494, 2374431; 615498, 2374433; 615662, 2374248; 615786, 2374207; 616032, 2374176; 616258, 2374227; 616495, 2374258; 616773, 2374279; 616865, 2374145; 616865, 2373898; 616865, 2373579; 616947, 2373250; 617019, 2373035; 617081, 2372880; 617081, 2372675; 616958, 2372428; 616855, 2372214; 615893, 2371500; 615279, 2371259; 615220, 2371369; 614768, 2372233; 614490, 2372808; 613853, 2373682; 613871, 2373690; 613709, 2374196; 613256, 2375091; 612866, 2375944; 612496, 2376674; 612310, 2377312; 612177, 2377626; 612247, 2377687; return to starting point.

(ii) **Note:** Map 214 follows:

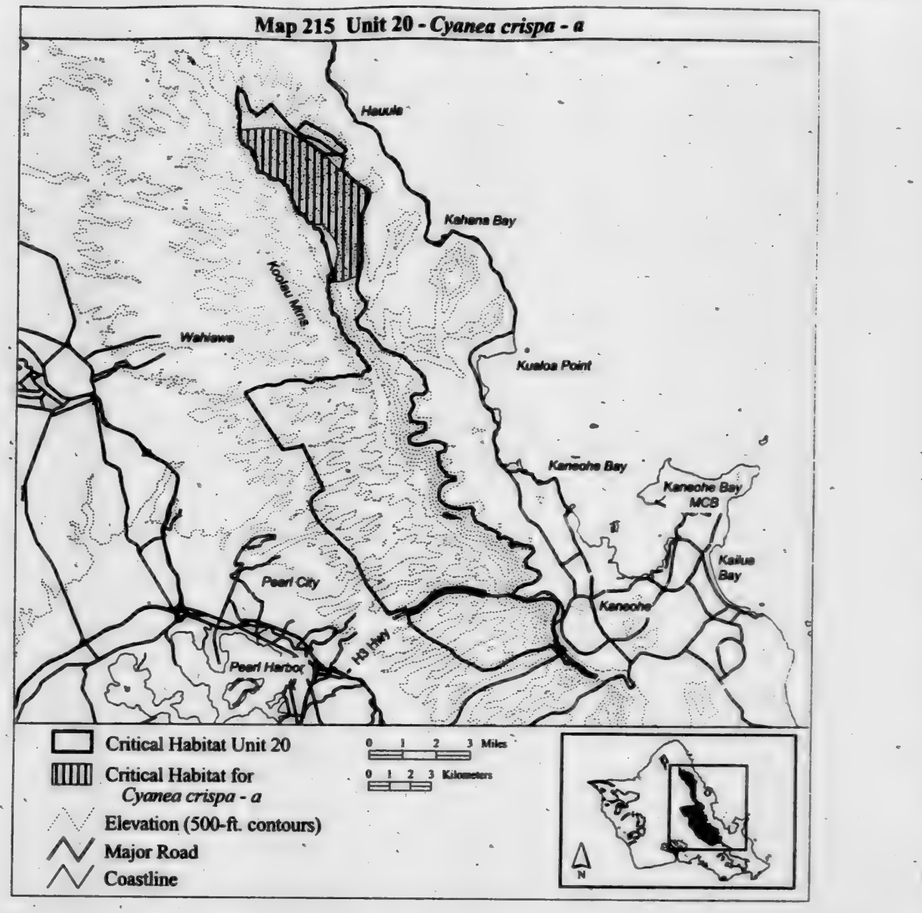


(215) Oahu 20—*Cyanea crispa*—a (1,831 ha; 4,525 ac)

(i) Unit consists of the following 326 boundary points: Start at 607399, 2389315; 608317, 2389401; 608490, 2389389; 608490, 2389387; 608704, 2389418; 608998, 2389418; 609459, 2389349; 609794, 2389211; 610458, 2388905; 610724, 2388690; 610978, 2388578; 611675, 2388051; 611900, 2387826; 612915, 2386959; 612933, 2386966; 613504, 2386561; 613647, 2386386; 613617, 2386176; 613441, 2385755; 613242, 2385368; 613234, 2385195; 613204, 2384658; 613279, 2383989; 613298, 2383575; 613298, 2383305; 613250, 2383066; 613234, 2382844; 613147, 2382562; 613073, 2382491; 612466, 2382243; 611823, 2382158; 612178, 2383560; 612031, 2384175; 611415, 2384914; 610979, 2384884; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496,

2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608975, 2387069; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; 607974, 2388406; 607974, 2388407; 607972, 2388420; 607965, 2388446; 607964, 2388447; 607956, 2388457; 607956, 2388458; 607898, 2388494; 607897, 2388494; 607887, 2388497; 607865, 2388499; 607855, 2388502; 607821, 2388528; 607809, 2388537; 607808, 2388537; 607783, 2388550; 607782, 2388550; 607736, 2388557; 607719, 2388559; 607692, 2388571; 607666, 2388594; 607654, 2388609; 607653, 2388609; 607613, 2388646; 607567, 2388681; 607550, 2388690; 607540, 2388696; 607534, 2388706; 607532, 2388717; 607534, 2388752; 607534, 2388761; 607534, 2388762; 607514, 2388795; 607461, 2388853; 607451, 2388878; 607448, 2388911; 607450, 2388923; 607446, 2388944; 607426, 2388990; 607425, 2389020; 607427, 2389043; 607427, 2389044; 607417, 2389071; 607411, 2389083; 607404, 2389108; 607378, 2389157; 607359, 2389185; 607358, 2389186; 607353, 2389189; 607357, 2389208; 607364, 2389224; 607376, 2389239; 607389, 2389258; 607389, 2389259; 607394, 2389273; 607399, 2389307; 607400, 2389308; return to starting point.

(ii) **Note:** Map 215 follows:



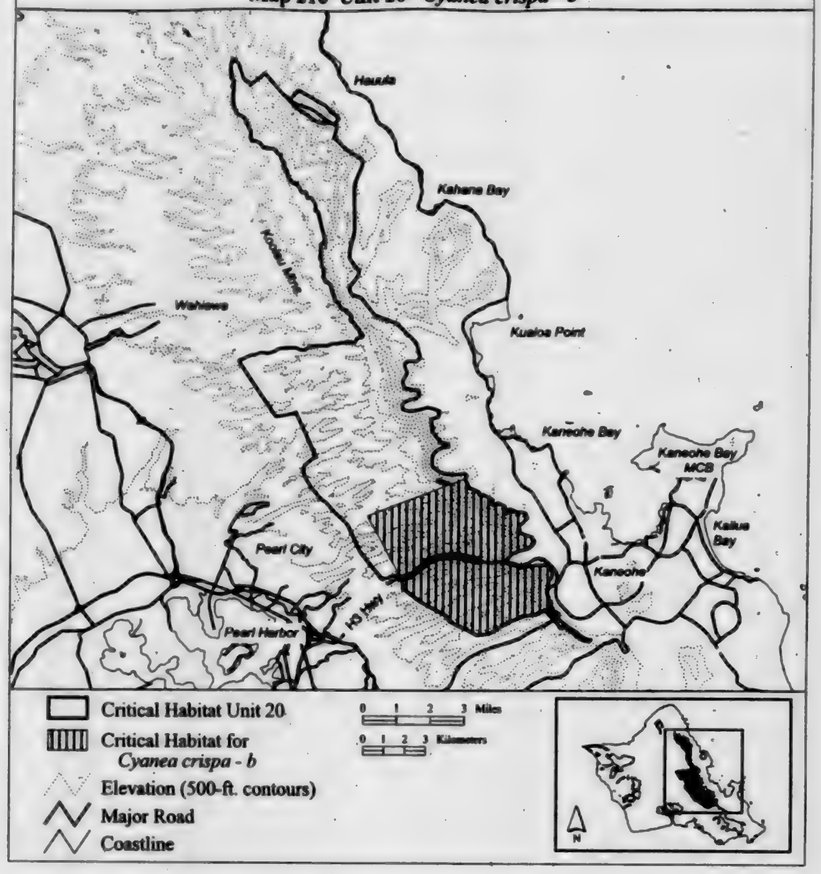
(216) Oahu 20—*Cyanea crispa*—b (3,874 ha; 9,572 ac)

(i) Unit consists of the following 120 boundary points: Start at 618290, 2364233; 618037, 2364397; 617997, 2364397; 617770, 2364713; 617769, 2364714; 618591, 2365312; 616219, 2365594; 615789, 2365919; 615699, 2366341; 616026, 2366454; 616159, 2366492; 616880, 2367092; 616979, 2367172; 617017, 2367191; 617469, 2367394; 618307, 2367463; 618509, 2367419; 619283, 2367245; 619284, 2367245; 619285, 2367245; 619285, 2367246; 619351, 2367450; 619351, 2367451; 619351, 2367452; 619350, 2367452; 619340, 2367454; 619344, 2367466; 618301, 2367677; 617421, 2367598; 616993, 2367420; 616871, 2367371; 616186, 2366751; 615512, 2366486; 615556, 2366713; 614049, 2369433; 618671, 2371225; 618900, 2370776; 619118, 2370706; 619372, 2370572; 619374, 2370484; 619525, 2370441; 619565, 2370469; 620035, 2370220; 619958, 2370126; 619950, 2370045; 620054, 2369969; 620264, 2370098; 620591, 2369924; 620603, 2369796; 620565, 2369678; 620681, 2369614; 620750, 2369721; 620836, 2369794; 620837, 2369794; 620893, 2369780; 621068, 2369721; 621103, 2369654; 621177, 2369662; 621259, 2369628; 621340, 2369662; 621443, 2369636; 621570, 2369603; 621648, 2369368; 621266, 2368963; 621265, 2368962; 621265, 2368961; 621321, 2368668; 621322, 2368667; 621347, 2368657; 621526, 2368567; 621638, 2368535; 621883, 2368432; 621958, 2368318; 621999, 2368255; 621955, 2368124; 621842, 2368014; 621694, 2367904; 621659, 2367893; 621142, 2367756; 620978, 2367684; 620961, 2367679; 620604, 2367260; 620603, 2367260; 620603, 2367259; 620604, 2367258; 621050, 2367138; 621075, 2367114; 621379, 2367024; 621510, 2367014; 621830, 2367079; 622145, 2367158; 622360, 2367124; 622607, 2367101; 622785, 2366983; 622809, 2366966; 622866, 2366712; 622789, 2366441; 622688, 2366317; 622686, 2366200; 622657, 2366174; 622641, 2366065; 622641, 2365926; 622595, 2365765; 622595, 2365764; 622658,

2365627; 622664, 2365546; 622731, 2365278; 622707, 2365156; 622707, 2365155; 622708, 2365153; 622641, 2365005; 622145, 2364750; 621489, 2364647; 620825, 2364374; 619887, 2363809; 619327, 2363736; 619306, 2363734; 619289, 2363742; 618843, 2364003; 618621, 2364070; return to starting point.

(ii) **Note:** Map 216 follows:

Map 216 Unit 20 - *Cyanea crispa - b*

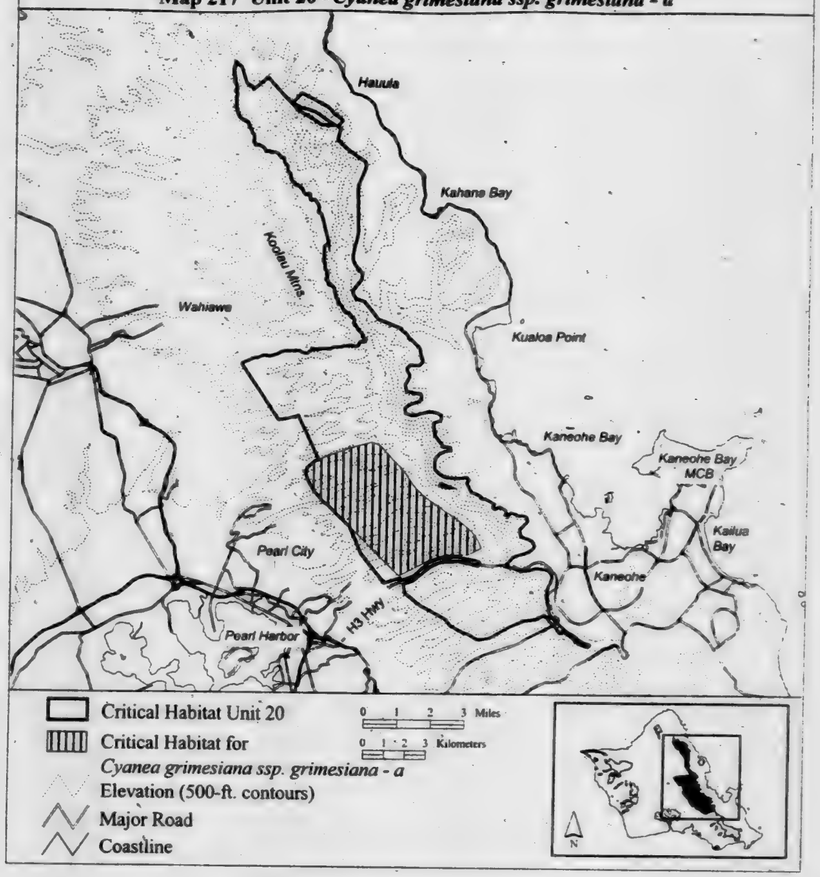


(217) Oahu 20—*Cyanea grimesiana* ssp. *grimesiana*—a (2,634 ha; 6,506 ac)

(i) Unit consists of the following 38 boundary points: Start at 615490, 2366752; 612398, 2369695; 612094, 2370041; 611819, 2370260; 611368, 2370754; 611085, 2371205; 610944, 2371614; 611022, 2371876; 611396, 2372179; 611946, 2372426; 612560, 2372652; 613209, 2372878; 613703, 2373012; 614077, 2373117; 614331, 2373061; 614557, 2372906; 614910, 2372539; 615136, 2372264; 615481, 2371939; 615799, 2371565; 615800, 2371529; 616088, 2371135; 616300, 2370873; 616582, 2370598; 616942, 2370344; 617358, 2370062; 617535, 2369928; 618156, 2369490; 618692, 2369067; 618996, 2368827; 618981, 2368819; 619052, 2368735; 619186, 2368559; 619327, 2368319; 619423, 2368067; 618778, 2367765; 617647, 2367736; 616951, 2367504; return to starting point.

(ii) **Note:** Map 217 follows:

Map 217 Unit 20 - *Cyanea grimesiana ssp. grimesiana - a*

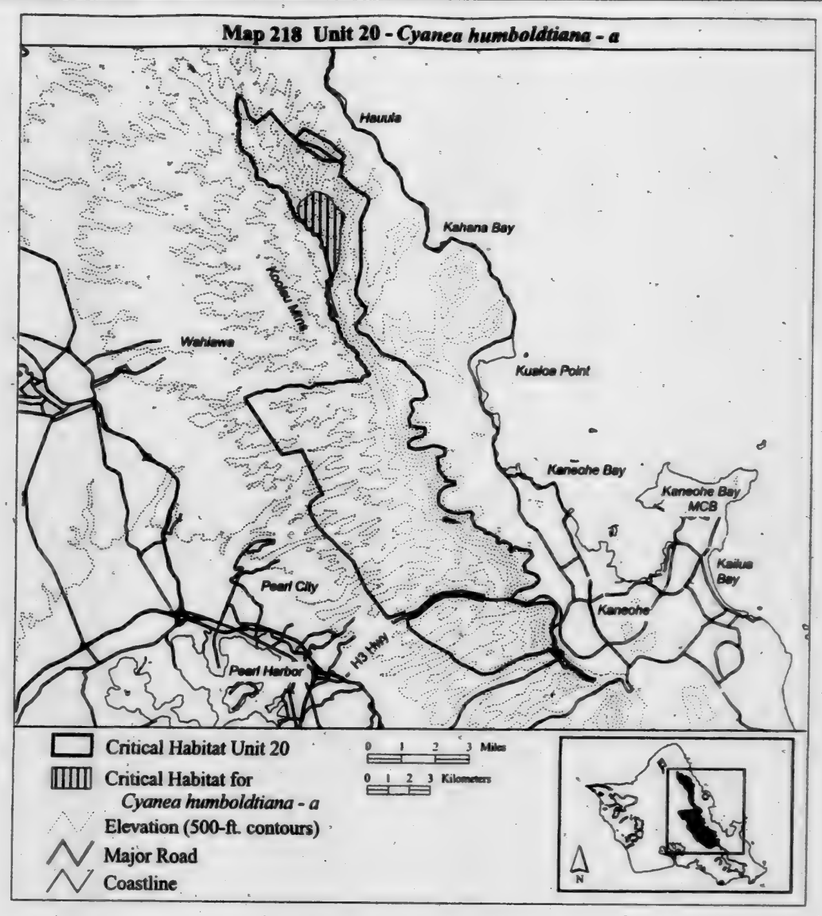


(218) Oahu 20—*Cyanea humboltiana*—a (502 ha; 1,242 ac)

(i) Unit consists of the following 228 boundary points: Start at 610424, 2385362; 610216, 2385979; 610366, 2386247; 611070, 2386825; 611542, 2386672; 611670, 2386629; 611770, 2386563; 611851, 2386477; 611913, 2386372; 611956, 2386253; 612013, 2386148; 612085, 2386096; 612147, 2386005; 612290, 2385881; 612418, 2385800; 612518, 2385719; 612523, 2385648; 612485, 2385529; 612418, 2385324; 612409, 2385100; 612332, 2384972; 612309, 2384867; 612342, 2384781; 612313, 2384571; 612299, 2384309; 612297, 2384309; 612271, 2383706; 612129, 2383015; 611899, 2382437; 611847, 2382271; 611842, 2382013; 611885, 2381742; 611928, 2381561; 611999, 2381404; 612042, 2381266; 612037, 2381266; 612227, 2380774; 611926, 2380827; 611882, 2380835; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611702, 2381866; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700,

2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610440, 2385363; return to starting point.

(ii) **Note:** Map 218 follows:

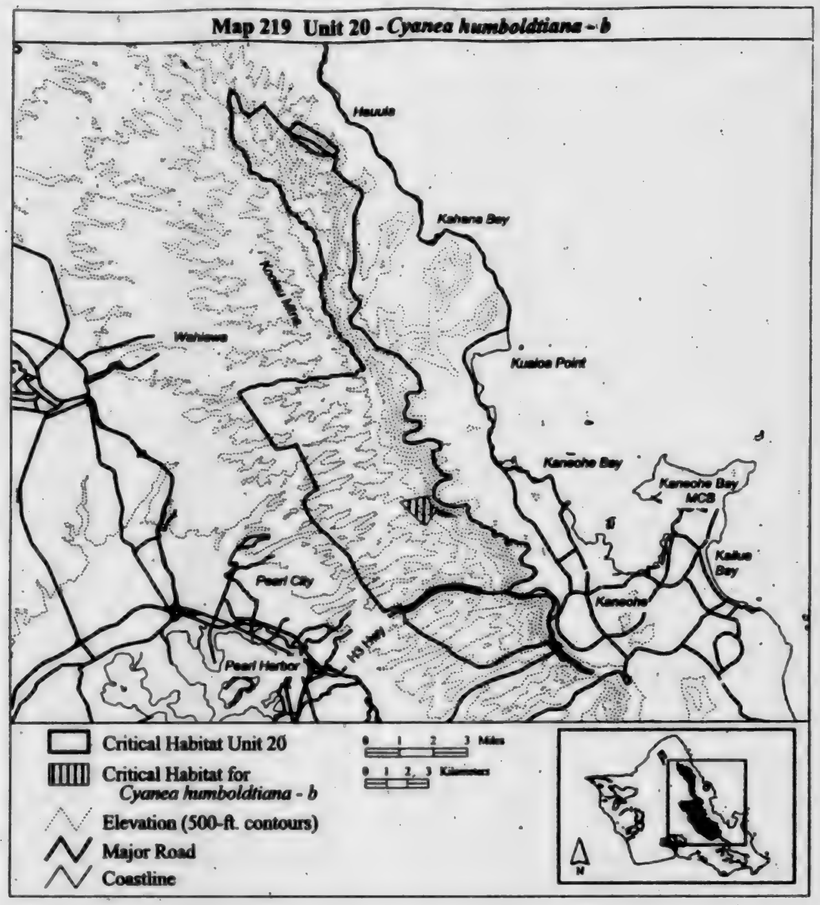


(219) Oahu 20—*Cyanea humboltiana*—b (127 ha; 315 ac)

(i) Unit consists of the following 8 boundary points: Start at 615466, 2371631; 616875, 2371919; 616875, 2371746; 617062, 2371401; 617350, 2371271; 617235, 2371214; 616746, 2370524; 616358, 2370797; return to starting point.

(ii) **Note:** Map 219 follows:

Map 219 Unit 20 - *Cyanea humboldtiana* - *b*

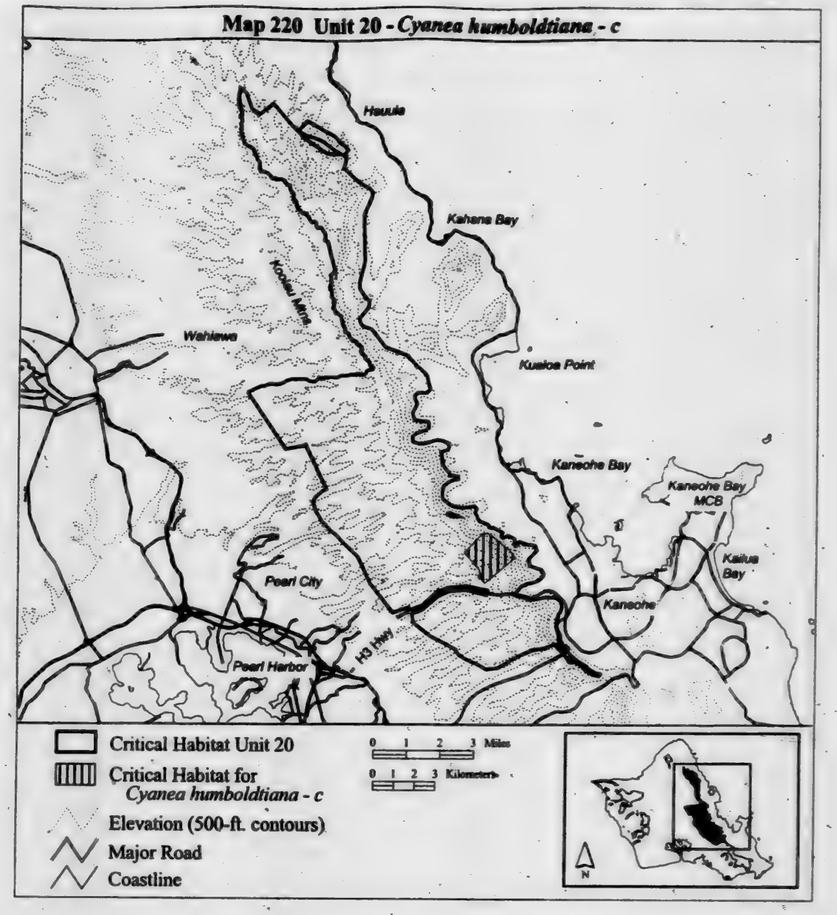


(220) Oahu—*Cyanea humboltiana*—c (299 ha; 740 ac)

(i) Unit consists of the following 10 boundary points: Start at 618213, 2369258; 619090, 2370193; 619421, 2370150; 619895, 2369776; 620269, 2369431; 620312, 2369445; 620629, 2369042; 619176, 2367791; 619018, 2368050; 618932, 2368438; return to starting point.

(ii) **Note:** Map 220 follows:

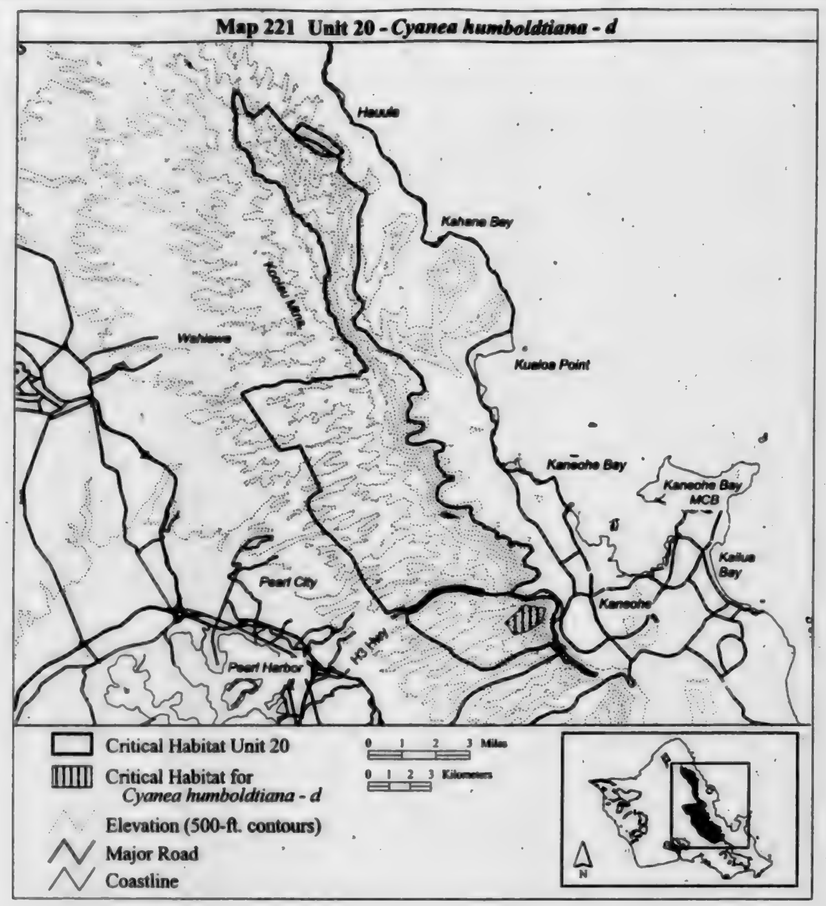
Map 220 Unit 20 - *Cyanea humboldtiana* - *c*



(221) Oahu—*Cyanea humboltiana*—d (159 ha; 393 ac)

(i) Unit consists of the following 12 boundary points: Start at 620384, 2365922; 621334, 2366799; 621549, 2366727; 621923, 2366654; 622081, 2366668; 622168, 2366668; 622311, 2366596; 622081, 2365949; 621434, 2365548; 620830, 2365375; 620701, 2365533; 620543, 2365792; return to starting point.

(ii) **Note:** Map 221 follows:



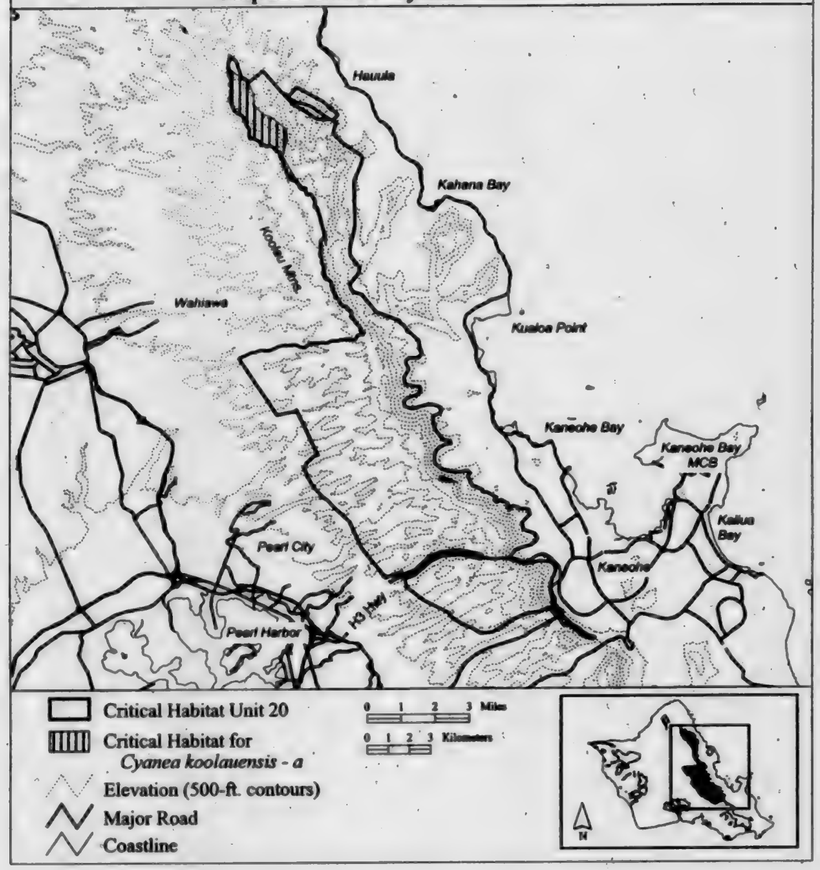
(222) Oahu—*Cyanea koolauensis*—a (468 ha; 1,158 ac)

(i) Unit consists of the following 417 boundary points: Start at 607259, 2390761; 607620, 2390452; 608141, 2390155; 608439, 2389559; 608513, 2388964; 608959, 2388518; 609183, 2388443; 609227, 2388443; 610028, 2387823; 610076, 2387327; 610083, 2387317; 609877, 2386574; 609867, 2386564; 610409, 2385617; 610403, 2385612; 610841, 2385019; 610826, 2384951; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858,

2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; 607974, 2388406; 607974, 2388407; 607972, 2388420; 607965, 2388446; 607964, 2388447; 607956, 2388457; 607956, 2388458; 607898, 2388494; 607897, 2388494; 607887, 2388497; 607865, 2388499; 607855, 2388502; 607821, 2388528; 607809, 2388537; 607808, 2388537; 607783, 2388550; 607782, 2388550; 607736, 2388557; 607719, 2388559; 607692, 2388571; 607666, 2388594; 607654, 2388609; 607653, 2388609; 607613, 2388646; 607567, 2388681; 607550, 2388690; 607540, 2388696; 607534, 2388706; 607532, 2388717; 607534, 2388752; 607534, 2388761; 607534, 2388762; 607514, 2388795; 607461, 2388853; 607451, 2388878; 607448, 2388911; 607450, 2388923; 607446, 2388944; 607426, 2388990; 607425, 2389020; 607427, 2389043; 607427, 2389044; 607417, 2389071; 607411, 2389083; 607404, 2389108; 607378, 2389157; 607359, 2389185; 607358, 2389186; 607353, 2389189; 607357, 2389208; 607364, 2389224; 607376, 2389239; 607389, 2389258; 607389, 2389259; 607394, 2389273; 607399, 2389307; 607400, 2389308; 607399, 2389308; 607397, 2389348; 607395, 2389372; 607394, 2389386; 607393, 2389394; 607394, 2389406; 607393, 2389417; 607393, 2389426; 607393, 2389431; 607396, 2389437; 607406, 2389450; 607412, 2389462; 607414, 2389476; 607414, 2389477; 607407, 2389492; 607407, 2389493; 607406, 2389493; 607399, 2389498; 607391, 2389503; 607387, 2389514; 607387, 2389518; 607386, 2389528; 607384, 2389548; 607384, 2389549; 607371, 2389581; 607369, 2389599; 607385, 2389636; 607406, 2389684; 607426, 2389734; 607434, 2389770; 607432, 2389795; 607432, 2389796; 607420, 2389826; 607409, 2389850; 607411, 2389869; 607411, 2389870; 607405, 2389887; 607404, 2389887; 607404, 2389888; 607379, 2389900; 607356, 2389911; 607349, 2389914; 607342, 2389918; 607333, 2389926; 607328, 2389936; 607326, 2389947; 607329, 2389962; 607336, 2389972; 607346, 2389983; 607357, 2389993; 607367, 2389999; 607380, 2390009; 607391, 2390014; 607403, 2390020; 607403, 2390021; 607414, 2390032; 607424, 2390046; 607424, 2390047; 607430, 2390064; 607430, 2390065; 607434, 2390084; 607434, 2390085; 607433, 2390100; 607433, 2390101; 607428, 2390118; 607428, 2390119; 607419, 2390135; 607409, 2390145; 607400, 2390154; 607394, 2390162; 607392, 2390167; 607390, 2390179; 607389, 2390182; 607381, 2390212; 607375, 2390258; 607374, 2390279; 607374, 2390280; 607373, 2390281; 607356, 2390292; 607344, 2390301; 607342, 2390305; 607340, 2390316; 607340, 2390317; 607335, 2390330; 607334, 2390330; 607329, 2390335; 607318, 2390344; 607310, 2390354; 607301, 2390366; 607291, 2390380; 607285, 2390388; 607284, 2390398; 607288, 2390414; 607293, 2390428; 607300, 2390440; 607306, 2390450; 607306, 2390451; 607312, 2390461; 607316, 2390467; 607316, 2390468; 607319, 2390483; 607317, 2390493; 607315, 2390509; 607310, 2390525; 607305, 2390543; 607301, 2390562; 607296, 2390582; 607294, 2390602; 607294, 2390620; 607295, 2390636; 607297, 2390651; 607295, 2390665; 607295, 2390666; 607291, 2390680; 607285, 2390699; 607284, 2390699; 607275, 2390711; 607274, 2390711; 607265, 2390720; 607261, 2390731; 607261, 2390744; 607258, 2390760; return to starting point.

(ii) **Note:** Map 222 follows:

Map 222 Unit 20 - *Cyanea koolauensis - a*

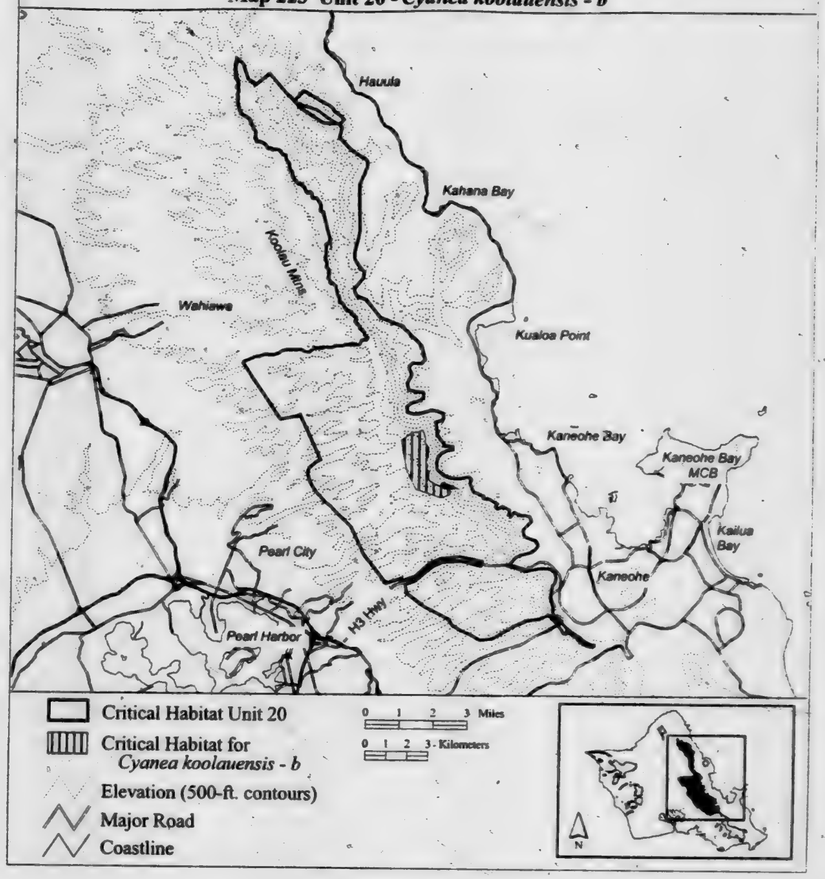


(223) Oahu 20—*Cyanea koolauensis*—b (323 ha; 799 ac)

(i) Unit consists of the following 27 boundary points: Start at 615702, 2371729; 615731, 2371775; 615655, 2371857; 615426, 2373195; 615942, 2373592; 616024, 2373566; 616250, 2373608; 616405, 2373693; 616476, 2373594; 616561, 2373354; 616561, 2373072; 616716, 2372874; 616730, 2372719; 616674, 2372352; 616575, 2372196; 616709, 2371996; 616624, 2371850; 616765, 2371726; 616744, 2371589; 616744, 2371321; 617154, 2371109; 617493, 2370954; 617687, 2370912; 617848, 2370771; 617757, 2370634; 617338, 2370493; 616146, 2370893; return to starting point.

(ii) **Note:** Map 223 follows:

Map 223 Unit 20 - *Cyanea koolauensis - b*

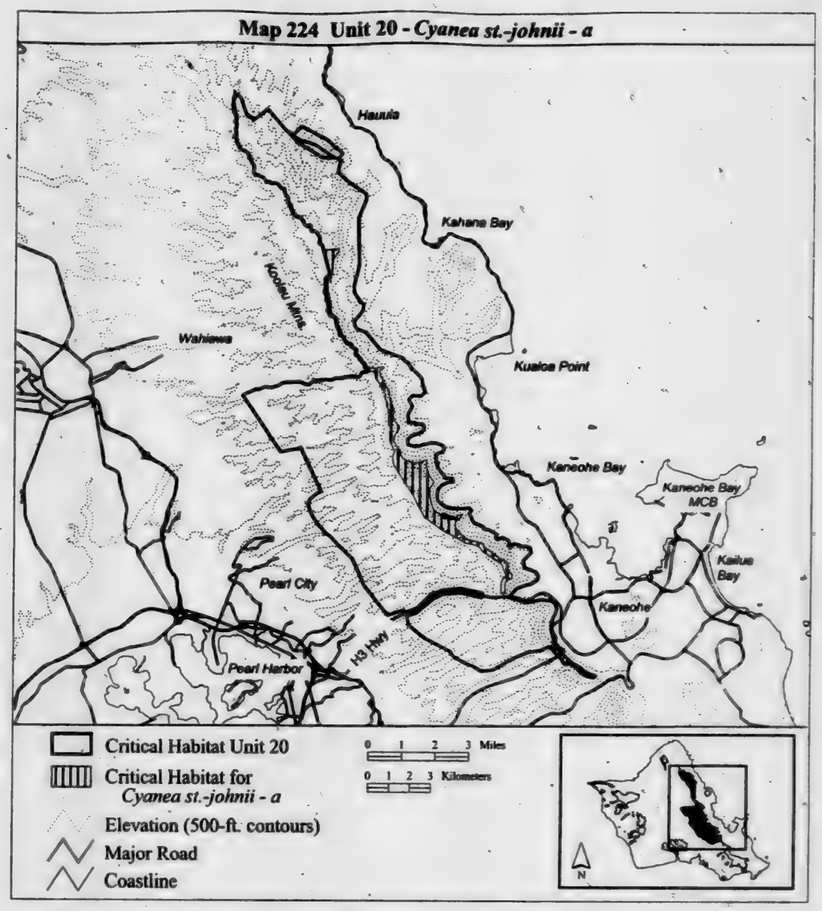


(224) Oahu 20—*Cyanea st.-johnii*—a (697 ha; 1,723 ac)

(i) Unit consists of the following 515 boundary points: Start at 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218.

2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611606, 2383790; 612319, 2383876; 612319, 2383684; 612177, 2383493; 612048, 2383282; 612072, 2383079; 612041, 2382924; 612054, 2382757; 612011, 2382615; 611881, 2382492; 611794, 2382281; 611831, 2381800; 611844, 2381759; 611883, 2381550; 611920, 2381366; 611974, 2381248; 611974, 2381121; 611957, 2381044; 612013, 2380847; 612043, 2380766; 612167, 2380685; 612227, 2380637; 612305, 2380583; 612311, 2380532; 612293, 2380399; 612329, 2380291; 612362, 2380186; 612449, 2380029; 612497, 2379948; 612522, 2379813; 612555, 2379765; 612651, 2379690; 612675, 2379587; 612744, 2379497; 612876, 2379410; 612991, 2379365; 613051, 2379263; 613096, 2379178; 613192, 2379118; 613237, 2379103; 613285, 2379046; 613258, 2378974; 613264, 2378974; 613252, 2378905; 613279, 2378818; 613330, 2378763; 613403, 2378709; 613460, 2378640; 613532, 2378520; 613679, 2378379; 613721, 2378294; 613733, 2378243; 613860, 2378171; 614070, 2378150; 614157, 2378153; 614244, 2378186; 614314, 2378189; 614359, 2378204; 614443, 2378231; 614512, 2378219; 614542, 2378201; 614527, 2378162; 614467, 2378126; 614374, 2378087; 614314, 2378030; 614320, 2377973; 614344, 2377943; 614356, 2377858; 614356, 2377777; 614389, 2377726; 614452, 2377651; 614509, 2377531; 614596, 2377398; 614686, 2377239; 614762, 2377179; 614786, 2377016; 614777, 2376918; 614789, 2376917; 614795, 2376797; 614801, 2376710; 614855, 2376608; 614861, 2376523; 614891, 2376418; 614957, 2376325; 614993, 2376229; 615011, 2376126; 615026, 2375991; 615014, 2375943; 614984, 2375886; 614993, 2375826; 615026, 2375754; 615053, 2375645; 615129, 2375510; 615225, 2375396; 615306, 2375294; 615201, 2375170; 615122, 2375071; 615047, 2374942; 615023, 2374870; 615011, 2374806; 615017, 2374737; 615053, 2374644; 615104, 2374548; 615180, 2374437; 615288, 2374256; 615303, 2374175; 615339, 2374049; 615432, 2373892; 615537, 2373796; 615700, 2373739; 615931, 2373697; 616082, 2373673; 616220, 2373682; 616319, 2373706; 616400, 2373736; 616473, 2373778; 616563, 2373799; 616581, 2373775; 616593, 2373700; 616593, 2373646; 616578, 2373562; 616593, 2373486; 616617, 2373366; 616656, 2373300; 616680, 2373234; 616680, 2373162; 616713, 2373108; 616722, 2373041; 616764, 2372999; 616767, 2372999; 616839, 2372933; 616891, 2372864; 616939, 2372801; 616963, 2372717; 616936, 2372644; 616833, 2372536; 616773, 2372410; 616749, 2372233; 616758, 2372082; 616773, 2371935; 616812, 2371803; 616830, 2371718; 616860, 2371640; 616903, 2371532; 616924, 2371436; 616996, 2371358; 617113, 2371264; 617187, 2371212; 617366, 2371114; 617465, 2371066; 617570, 2371042; 617735, 2371006; 617832, 2371003; 617958, 2371006; 618045, 2371024; 618090, 2371054; 618126, 2371087; 618217, 2371138; 618301, 2371171; 618304, 2371135; 618283, 2371072; 618174, 2370964; 618093, 2370888; 618024, 2370777; 618015, 2370651; 618018, 2370564; 618063, 2370489; 618123, 2370404; 618183, 2370332; 618229, 2370266; 618376, 2370122; 618550, 2370010; 618809, 2369950; 619068, 2369884; 619152, 2369863; 619153, 2369862; 619155, 2369861; 619190, 2369844; 619233, 2369823; 619232, 2369822; 619305, 2369785; 619362, 2369728; 619407, 2369674; 619504, 2369544; 619537, 2369544; 619678, 2369457; 619849, 2369322; 619964, 2369229; 620222, 2369042; 620409, 2368964; 620514, 2368904; 620528, 2368813; 620524, 2368812; 620529, 2368782; 620529, 2368505; 620759, 2368329; 620759, 2368126; 620651, 2368146; 620563, 2368085; 620495, 2368072; 620427, 2367950; 620421, 2367768; 620421, 2367754; 620434, 2367450; 620218, 2367436; 620218, 2367734; 620231, 2367815; 620238, 2367984; 620285, 2368085; 620488, 2368295; 620427, 2368356; 620387, 2368457; 620312, 2368579; 620306, 2368654; 620299, 2368701; 620256, 2368766; 620162, 2368850; 620063, 2368937; 620003, 2368961; 619858, 2369045; 619708, 2369181; 619504, 2369310; 619335, 2369406; 619293, 2369445; 619278, 2369490; 619203, 2369580; 619154, 2369626; 619084, 2369686; 619074, 2369695; 619063, 2369697; 618991, 2369709; 618992, 2369710; 618770, 2369752; 618505, 2369812; 618361, 2369893; 618211, 2369986; 618200, 2370000; 618057, 2370054; 617376, 2370435; 616571, 2370993; 616536, 2370993; 616468, 2371125; 616182, 2371624; 615965, 2372069; 615583, 2372682; 615302, 2373118; 615020, 2373603; 614961, 2373916; 615044, 2374217; 615011, 2374283; 614948, 2374431; 614870, 2374599; 614819, 2374755; 614819, 2374861; 614816, 2374861; 614810, 2374936; 614828, 2375020; 614861, 2375104; 614852, 2375185; 614861, 2375303; 614825, 2375375; 614765, 2375465; 614762, 2375564; 614762, 2375687; 614756, 2375832; 614777, 2375979; 614762, 2376138; 614723, 2376259; 614641, 2376349; 614641, 2376391; 614641, 2376550; 614617, 2376653; 614590, 2376791; 614602, 2376929; 614602, 2376932; 614530, 2377068; 614482, 2377179; 614434, 2377242; 614365, 2377350; 614323, 2377431; 614211, 2377594; 614115, 2377753; 614115, 2377816; 614088, 2377922; 614031, 2378000; 613935, 2378000; 613833, 2377985; 613763, 2378008; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; return to starting point.

(ii) **Note:** Map 224 follows:

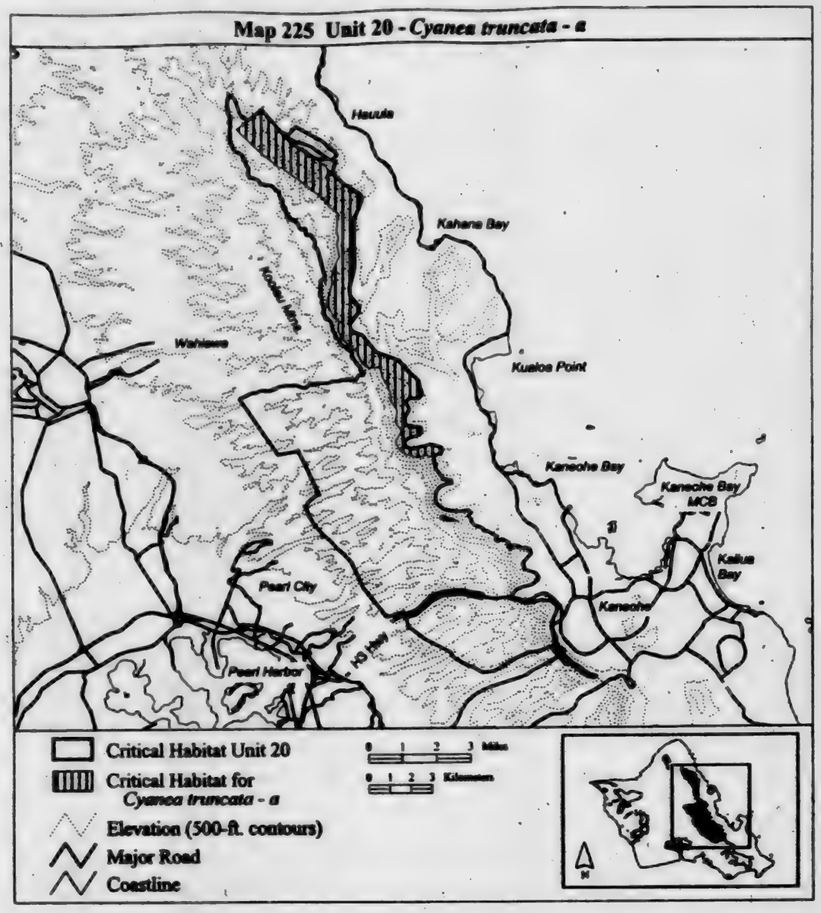


(225) Oahu 20—*Cyanea truncata*—a (2,031 ha; 5,020 ac)

(i) Unit consists of the following 164 boundary points: Start at 613602, 2386551; 613659, 2386389; 613631, 2386210; 613273, 2385353; 613273, 2385352; 613274, 2385331; 613268, 2385140; 613280, 2384981; 613312, 2383180; 613250, 2382818; 613195, 2382609; 613088, 2382144; 613082, 2381829; 613080, 2381820; 613080, 2381819; 613080, 2381818; 613087, 2381810; 613208, 2381606; 613344, 2381440; 613533, 2381229; 613545, 2381214; 613505, 2380936; 613087, 2380405; 613087, 2380404; 613089, 2380400; 613115, 2380198; 613237, 2380056; 613239, 2380052; 613240, 2380051; 613646, 2379898; 614360, 2379039; 614361, 2379039; 615437, 2378644; 615510, 2378505; 615637, 2378424; 615841, 2378182; 616058, 2377995; 616346, 2377691; 616360, 2377561; 616377, 2377455; 616437, 2377260; 616441, 2377261; 616504, 2377029; 616326, 2376847; 615911, 2376866; 615753, 2376724; 615753, 2376601; 615853, 2376412; 615876, 2376331; 615830, 2376217; 615657, 2375913; 615739, 2375583; 616002, 2375545; 616017, 2375521; 616413, 2375487; 616454, 2375432; 616454, 2375239; 616289, 2375088; 615849, 2374937; 615671, 2374785; 615684, 2374538; 615946, 2374455; 616023, 2374455; 616049, 2374426; 616159, 2374455; 616248, 2374455; 616439, 2374528; 616726, 2374601; 616815, 2374624; 617102, 2374594; 617234, 2374550; 617314, 2374524; 617376, 2374469; 617417, 2374318; 617399, 2374230; 617371, 2374191; 617349, 2374168; 616881, 2374029; 616743, 2374112; 616317, 2374015; 615712, 2374125; 615423, 2374373; 615244, 2374758; 615423, 2375102; 615506, 2375280; 615437, 2375432; 615285,

2375569; 615230, 2375789; 615285, 2376119; 615313, 2376298; 615024, 2376669; 614997, 2376876; 615008, 2376903; 615004, 2376902; 615004, 2377060; 615012, 2377060; 614982, 2377187; 614914, 2377340; 614783, 2377557; 614642, 2377825; 614574, 2378084; 614549, 2378258; 614426, 2378318; 614251, 2378322; 614034, 2378297; 613920, 2378322; 613822, 2378390; 613724, 2378496; 613603, 2378652; 613593, 2378644; 613400, 2379102; 613148, 2379328; 612882, 2379547; 612663, 2379793; 612550, 2380098; 612544, 2380510; 612504, 2380603; 612338, 2380690; 612112, 2381181; 612005, 2381507; 612035, 2381508; 612032, 2381533; 612065, 2381752; 612152, 2381899; 612238, 2382324; 612225, 2382682; 612311, 2383041; 612457, 2383320; 612603, 2383626; 612477, 2384230; 612510, 2384449; 612524, 2384602; 612477, 2384755; 612492, 2384755; 612444, 2384881; 612484, 2385393; 612550, 2385652; 612371, 2385824; 612105, 2386004; 611959, 2386210; 611640, 2386522; 610743, 2387233; 610272, 2387538; 609900, 2387837; 609904, 2387847; 609747, 2387864; 608963, 2388475; 608611, 2388774; 607704, 2389609; 608907, 2390579; 609714, 2389657; 610232, 2389126; 610338, 2389006; 611095, 2388548; 611693, 2388143; 611952, 2387903; 612284, 2387567; 612284, 2387566; 612285, 2387565; 612291, 2387560; 612457, 2387392; 612749, 2387140; 612955, 2386960; 613489, 2386638; return to starting point.

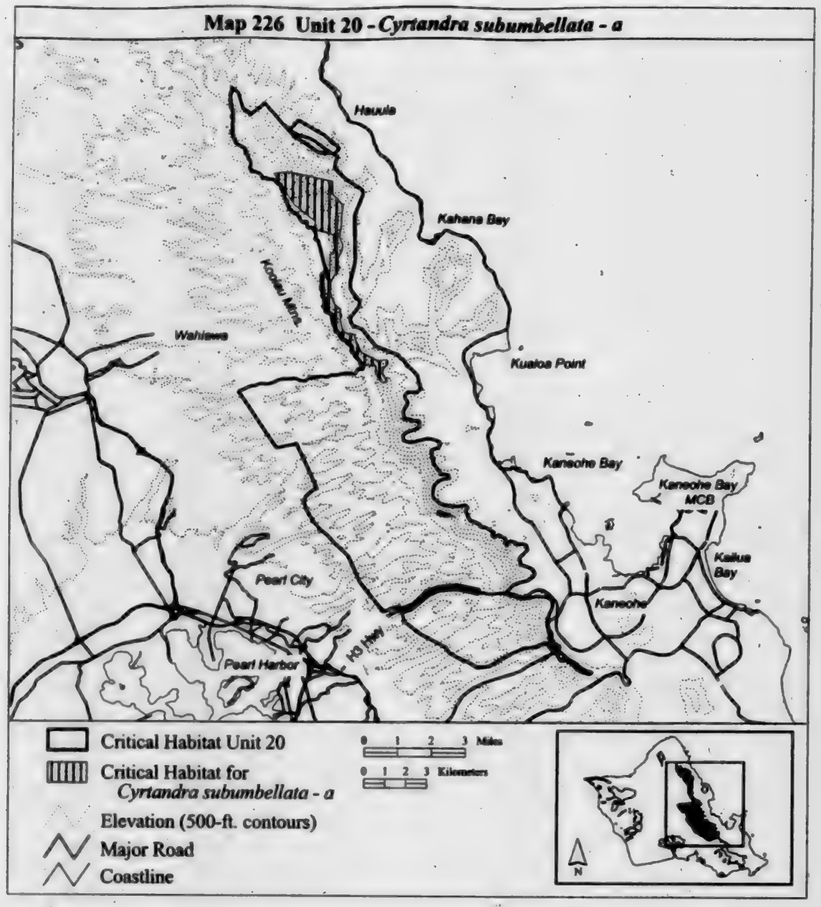
(ii) **Note:** Map 225 follows:



(226) Oahu 20—*Cyrtandra subumbellata*—a (830 ha; 2,050 ac)

(i) Unit consists of the following 166 boundary points: Start at 610061, 2387358; 610074, 2387344; 612191, 2386940; 612201, 2386326; 612707, 2385810; 612654, 2385392; 612653, 2385389; 612646, 2385275; 612642, 2385124; 612646, 2384946; 612642, 2384870; 612638, 2384783; 612612, 2384688; 612600, 2384564; 612585, 2384291; 612604, 2384128; 612634, 2384037; 612702, 2383897; 612706, 2383784; 612691, 2383663; 612627, 2383458; 612490, 2383243; 612479, 2383242; 612483, 2383042; 612498, 2382947; 612517, 2382800; 612502, 2382671; 612426, 2382550; 612335, 2382448; 612267, 2382361; 612188, 2382232; 612150, 2382099; 612127, 2381956; 612123, 2381634; 612165, 2381445; 612226, 2381301; 612328, 2381089; 612438, 2380960; 612547, 2380854; 612623, 2380794; 612627, 2380684; 612634, 2380597; 612661, 2380585; 612691, 2380521; 612691, 2380445; 612638, 2380366; 612623, 2380309; 612653, 2380169; 612684, 2380044; 612718, 2379942; 612767, 2379851; 612805, 2379794; 612858, 2379726; 612907, 2379696; 613005, 2379685; 613092, 2379669; 613187, 2379662; 613263, 2379632; 613319, 2379545; 613346, 2379442; 613384, 2379336; 613448, 2379223; 613501, 2379109; 613505, 2379044; 613577, 2378882; 613713, 2378742; 613993, 2378602; 614266, 2378454; 614425, 2378386; 614534, 2378371; 614674, 2378405; 614765, 2378435; 614815, 2378435; 614868, 2378428; 614902, 2378401; 614902, 2378356; 614902, 2378269; 614879, 2378182; 614799, 2378095; 614720, 2378008; 614671, 2377917; 614674, 2377845; 614682, 2377754; 614720, 2377667; 614780, 2377569; 614856, 2377463; 614898, 2377395; 614875, 2377364; 614849, 2377349; 614777, 2377311; 614678, 2377304; 614640, 2377342; 614572, 2377417; 614478, 2377554; 614413, 2377641; 614338, 2377766; 614341, 2377883; 614349, 2378019; 614349, 2378114; 614311, 2378136; 614186, 2378148; 614046, 2378159; 613861, 2378178; 613755, 2378216; 613641, 2378371; 613554, 2378492; 613509, 2378507; 613441, 2378636; 613255, 2378854; 613244, 2378848; 613248, 2378863; 613248, 2378864; 613278, 2378965; 613248, 2379064; 613149, 2379177; 613047, 2379242; 613001, 2379325; 612865, 2379393; 612759, 2379465; 612695, 2379594; 612596, 2379753; 612562, 2379783; 612517, 2379828; 612468, 2379881; 612468, 2379968; 612362, 2380116; 612294, 2380309; 612309, 2380434; 612309, 2380555; 612256, 2380608; 612123, 2380710; 612051, 2380790; 612044, 2380790; 611998, 2380900; 612006, 2381002; 611968, 2381142; 611874, 2381346; 611851, 2381566; 611858, 2381774; 611832, 2381910; 611802, 2382096; 611805, 2382277; 611813, 2382330; 611855, 2382440; 611998, 2382573; 612112, 2382705; 612101, 2382891; 612089, 2383008; 612112, 2383140; 612130, 2383239; 612127, 2383239; 612116, 2383299; 612138, 2383405; 612244, 2383492; 612335, 2383651; 612335, 2383765; 612305, 2383954; 612252, 2384136; 612286, 2384272; 612313, 2384344; 611321, 2384616; 611381, 2384995; 610379, 2385786; 610036, 2386268; 610037, 2386293; 609373, 2387267; return to starting point.

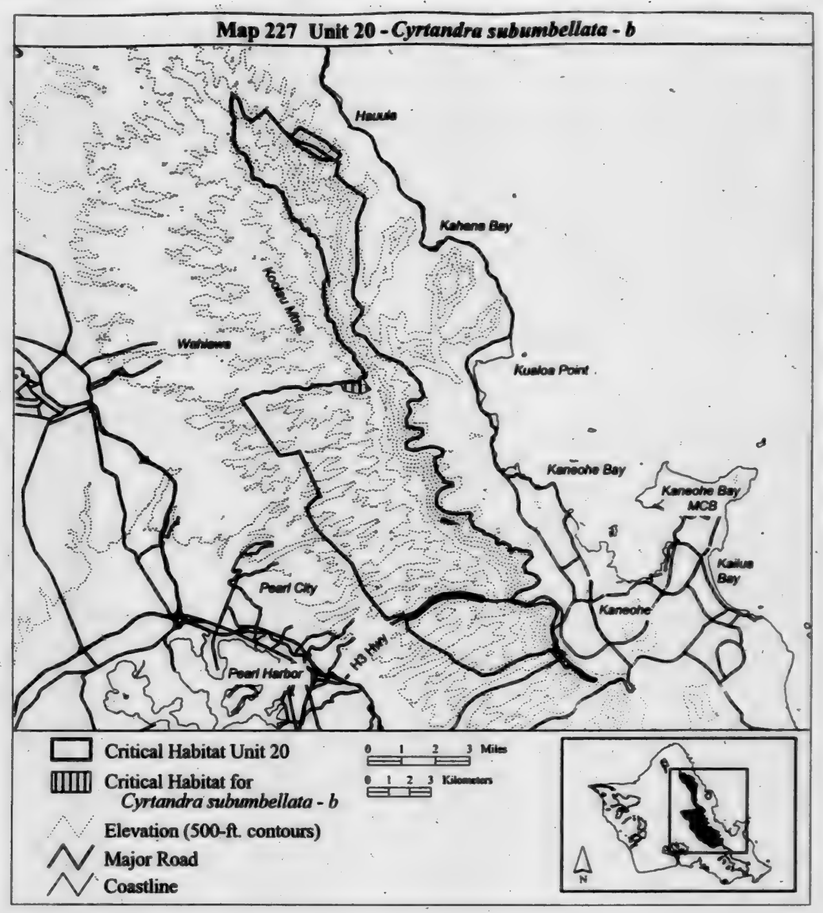
(ii) **Note:** Map 226 follows:



(227) Oahu 20—*Cyrtandra subumbellata*—b (67 ha; 167 ac)

(i) Unit consists of the following 40 boundary points: Start at 612671, 2377303; 612526, 2377691; 612575, 2377698; 612576, 2377698; 612596, 2377708; 612604, 2377703; 612630, 2377702; 612668, 2377720; 612688, 2377749; 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613544, 2377969; 613986, 2377373; 613635, 2377208; 613308, 2377183; 612870, 2377274; return to starting point.

(ii) **Note:** Map 227 follows:



(228) Oahu 20—*Cyrtandra viridiflora*—a (782 ha; 1,932 ac)

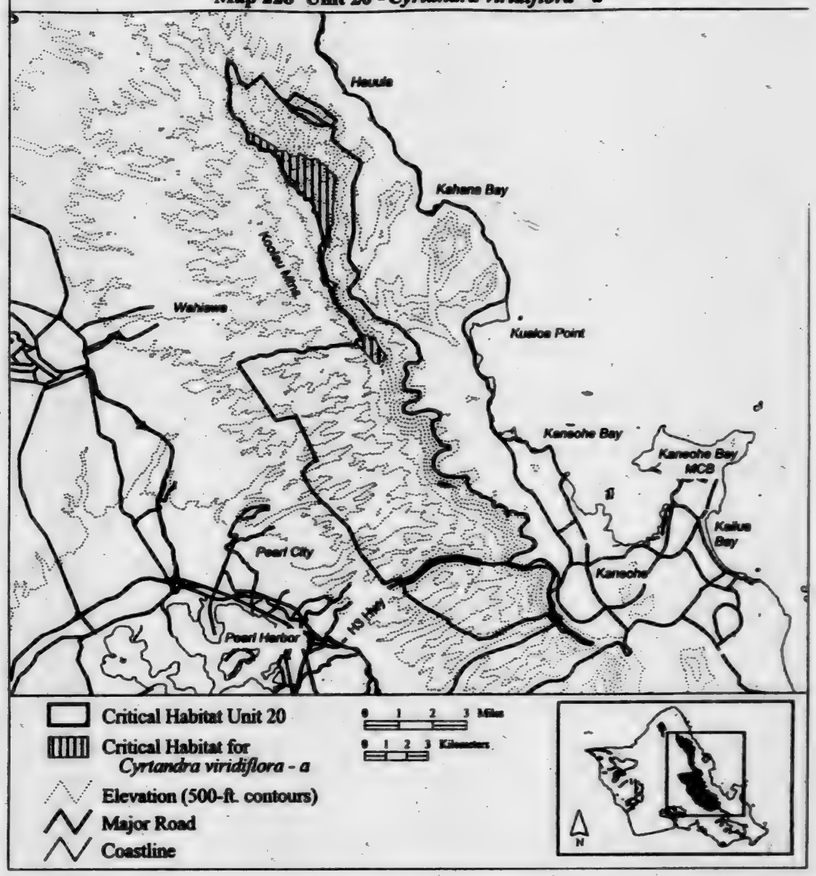
(i) Unit consists of the following 517 boundary points: Start at 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613711, 2378118; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386,

2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610825, 2384951; 610590, 2385486; 610034, 2385898; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608236, 2387874; 608519, 2387842; 608527, 2387829; 608529, 2387826; 608531, 2387827; 609623, 2387185; 609716, 2386981; 610090, 2387020; 610286, 2386745; 610680, 2386745; 610684, 2386799; 610857, 2386830; 610857, 2386824; 610975, 2386824; 611132, 2386607; 611289, 2386568; 611486, 2386627; 611489, 2386638; 611798, 2386378; 611798, 2386379; 611800, 2386372; 611801, 2386371; 611801, 2386372; 612019, 2386288; 612115, 2386037; 612351, 2385899; 612454, 2385841; 612532, 2385647; 612489, 2385585; 612391, 2385349; 612391, 2385034; 612332, 2384857; 612390, 2384704; 612301, 2384256; 612322, 2383968; 612322, 2383520; 612322, 2383461; 612194, 2383461; 612194, 2383225; 612174, 2382969; 612214, 2382851; 612214, 2382753; 612115, 2382635; 612174, 2382399; 612037, 2382477; 611958, 2382399; 611958, 2382300; 611879, 2382104; 611873, 2381627; 611997, 2381297; 612076, 2381002; 612165, 2380842; 612166, 2380830; 612173, 2380827; 612174, 2380825; 612177, 2380826; 612489, 2380708; 612489, 2380530; 612391, 2380314; 612430, 2380157; 612391, 2380019; 612489, 2380019; 612548, 2379862; 612664, 2379648; 613047, 2379270; 613270, 2379091; 613355, 2378810; 613751, 2378218; 614289, 2378090; 614502, 2377694; 614779, 2377295; 614837, 2377041; 614349,

2376831; 613456, 2377841; 613460, 2377881; 613497, 2377929; 613554, 2377977; return to starting point.

(ii) **Note:** Map 228 follows:

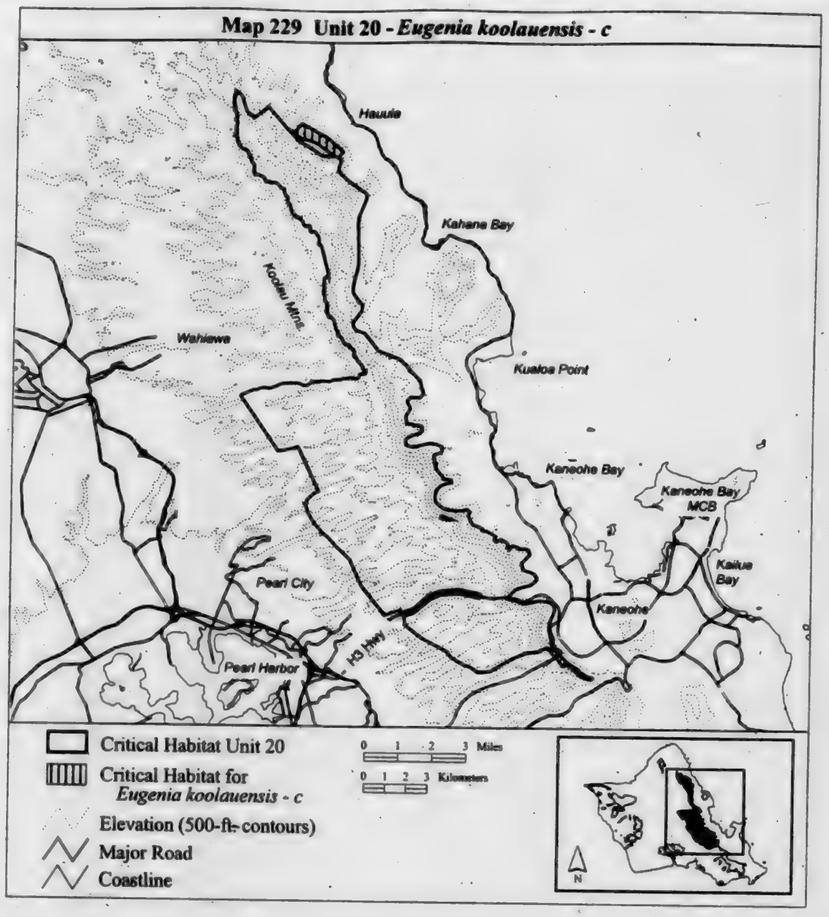
Map 228 Unit 20 - *Cyrtandra viridiflora - a*



(229) Oahu 20—*Eugenia koolauensis*—c (122 ha; 302 ac)

(i) Unit consists of the following 36 boundary points: Start at 611208, 2389430; 611266, 2389383; 611444, 2389300; 611596, 2389220; 611731, 2389154; 611780, 2389128; 611947, 2388975; 611980, 2388930; 612046, 2388843; 612180, 2388738; 612269, 2388680; 612483, 2388484; 612482, 2388480; 612415, 2388361; 612328, 2388285; 612260, 2388187; 612169, 2388237; 612024, 2388350; 611904, 2388419; 611745, 2388520; 611498, 2388687; 611339, 2388803; 611125, 2388923; 610817, 2389017; 610610, 2389071; 610476, 2389111; 610189, 2389274; 610106, 2389336; 610200, 2389448; 610287, 2389514; 610320, 2389543; 610334, 2389594; 610403, 2389630; 610447, 2389724; 610483, 2389780; 610536, 2389785; return to starting point.

(ii) **Note:** Map 229 follows:

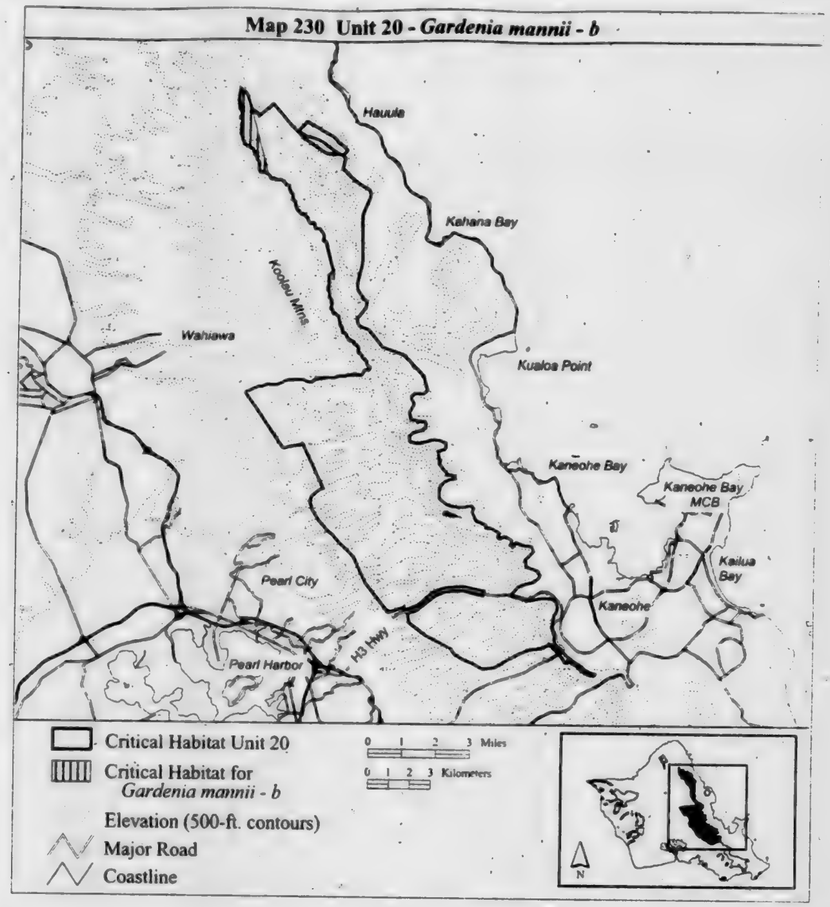


(230) Oahu 20—*Gardenia mannii*—b (206 ha; 510 ac)

(i) Unit consists of the following 302 boundary points: Start at 607315, 2391304; 607614, 2391084; 607875, 2390295; 608495, 2388072; 608540, 2387990; 608535, 2387978; 608688, 2387309; 608637, 2387285; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; 607974, 2388406; 607974, 2388407; 607972, 2388420; 607965, 2388446; 607964, 2388447; 607956, 2388457; 607956, 2388458; 607898, 2388494; 607897, 2388494; 607887, 2388497; 607865, 2388499; 607855, 2388502; 607821, 2388528; 607809, 2388537; 607808, 2388537; 607783, 2388550; 607782, 2388550; 607736, 2388557; 607735, 2388557; 607719, 2388559; 607692,

2388571; 607666, 2388594; 607654, 2388609; 607653, 2388609; 607613, 2388646; 607567, 2388681; 607550, 2388690; 607540, 2388696; 607534, 2388706; 607532, 2388717; 607534, 2388752; 607534, 2388761; 607534, 2388762; 607514, 2388795; 607461, 2388853; 607451, 2388878; 607448, 2388911; 607450, 2388923; 607446, 2388944; 607426, 2388990; 607425, 2389020; 607427, 2389043; 607427, 2389044; 607417, 2389071; 607411, 2389083; 607404, 2389108; 607378, 2389157; 607359, 2389185; 607358, 2389186; 607353, 2389189; 607357, 2389208; 607364, 2389224; 607376, 2389239; 607389, 2389258; 607389, 2389259; 607394, 2389273; 607399, 2389307; 607400, 2389308; 607399, 2389308; 607397, 2389348; 607395, 2389372; 607394, 2389386; 607393, 2389394; 607394, 2389406; 607393, 2389417; 607393, 2389426; 607393, 2389431; 607396, 2389437; 607406, 2389450; 607412, 2389462; 607414, 2389476; 607414, 2389477; 607407, 2389492; 607407, 2389493; 607406, 2389493; 607399, 2389498; 607391, 2389503; 607387, 2389514; 607387, 2389518; 607386, 2389528; 607384, 2389548; 607384, 2389549; 607371, 2389581; 607369, 2389599; 607385, 2389636; 607406, 2389684; 607426, 2389734; 607434, 2389770; 607432, 2389795; 607432, 2389796; 607420, 2389826; 607409, 2389850; 607411, 2389869; 607411, 2389870; 607405, 2389887; 607404, 2389887; 607404, 2389888; 607379, 2389900; 607356, 2389911; 607349, 2389914; 607342, 2389918; 607333, 2389926; 607328, 2389936; 607326, 2389947; 607329, 2389962; 607336, 2389972; 607346, 2389983; 607357, 2389993; 607367, 2389999; 607380, 2390009; 607391, 2390014; 607403, 2390020; 607403, 2390021; 607414, 2390032; 607424, 2390046; 607424, 2390047; 607430, 2390064; 607430, 2390065; 607434, 2390084; 607434, 2390085; 607433, 2390100; 607433, 2390101; 607428, 2390118; 607428, 2390119; 607419, 2390135; 607409, 2390145; 607400, 2390154; 607394, 2390162; 607392, 2390167; 607390, 2390179; 607389, 2390182; 607381, 2390212; 607375, 2390258; 607374, 2390279; 607374, 2390280; 607373, 2390281; 607356, 2390292; 607344, 2390301; 607342, 2390305; 607340, 2390316; 607340, 2390317; 607335, 2390330; 607334, 2390330; 607329, 2390335; 607318, 2390344; 607310, 2390354; 607301, 2390366; 607291, 2390380; 607285, 2390388; 607284, 2390398; 607288, 2390414; 607293, 2390428; 607300, 2390440; 607306, 2390450; 607306, 2390451; 607312, 2390461; 607316, 2390467; 607316, 2390468; 607319, 2390483; 607317, 2390493; 607315, 2390509; 607310, 2390525; 607305, 2390543; 607301, 2390562; 607296, 2390582; 607294, 2390602; 607294, 2390620; 607295, 2390636; 607297, 2390651; 607295, 2390665; 607295, 2390666; 607291, 2390680; 607285, 2390699; 607284, 2390699; 607275, 2390711; 607274, 2390711; 607265, 2390720; 607261, 2390731; 607261, 2390744; 607258, 2390760; 607266, 2390773; 607273, 2390789; 607280, 2390802; 607283, 2390814; 607283, 2390815; 607279, 2390828; 607275, 2390842; 607270, 2390855; 607265, 2390869; 607263, 2390883; 607260, 2390899; 607259, 2390914; 607260, 2390927; 607261, 2390939; 607265, 2390951; 607268, 2390959; 607268, 2390960; 607269, 2390971; 607271, 2390983; 607271, 2390997; 607270, 2391013; 607270, 2391025; 607278, 2391038; 607286, 2391053; 607292, 2391065; 607297, 2391078; 607302, 2391095; 607307, 2391111; 607312, 2391127; 607312, 2391128; 607315, 2391144; 607319, 2391156; 607322, 2391172; 607325, 2391188; 607325, 2391203; 607324, 2391216; 607324, 2391229; 607324, 2391243; 607323, 2391259; 607322, 2391271; 607321, 2391284; 607317, 2391297; return to starting point.

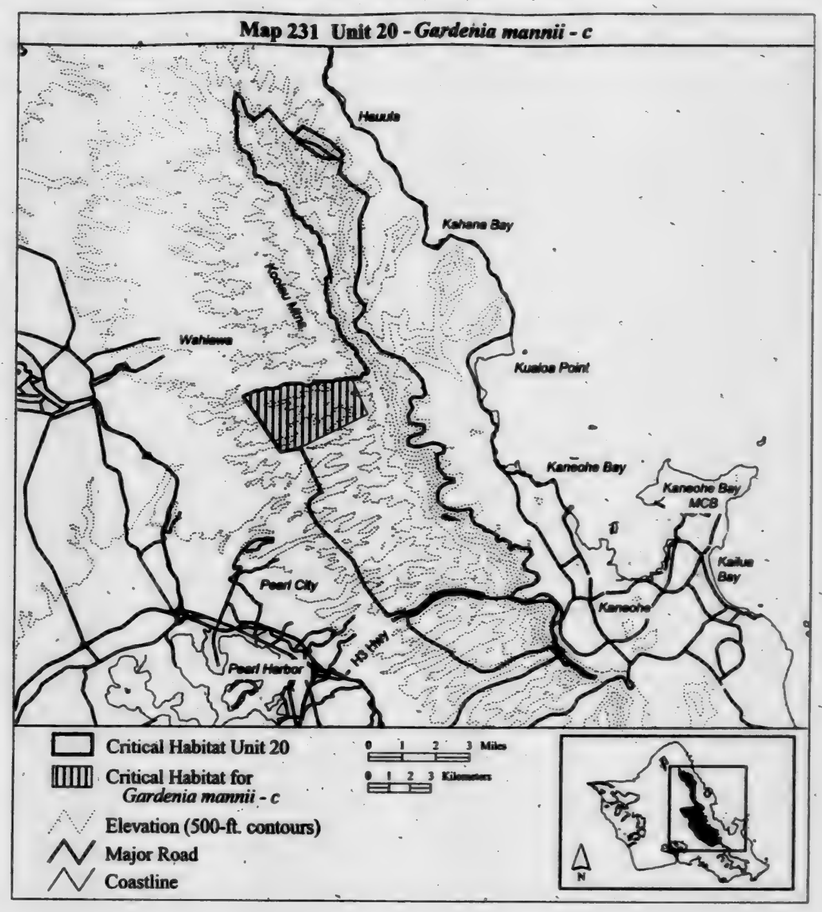
(ii) **Note:** Map 230 follows:



(231) Oahu 20—*Gardenia mannii*—c (1,311 ha; 3,239 ac)

(i) Unit consists of the following 70 boundary points: Start at 610084, 2377493; 610560, 2377510; 610747, 2377396; 610965, 2377385; 611183, 2377541; 611328, 2377562; 611806, 2377593; 612055, 2377562; 612081, 2377577; 612103, 2377583; 612103, 2377584; 612166, 2377617; 612168, 2377619; 612169, 2377619; 612210, 2377654; 612263, 2377686; 612414, 2377680; 612432, 2377673; 612468, 2377676; 612472, 2377678; 612533, 2377676; 612613, 2377702; 612630, 2377702; 612668, 2377720; 612669, 2377721; 612720, 2377738; 612793, 2377718; 612845, 2377739; 612853, 2377742; 612870, 2377747; 612960, 2377754; 613728, 2375972; 610456, 2374325; 609627, 2374155; 607793, 2376879; 607838, 2376897; 607901, 2376922; 607901, 2376921; 607907, 2376916; 607913, 2376915; 607935, 2376919; 607956, 2376931; 607962, 2376938; 607962, 2376945; 608077, 2376990; 608090, 2376996; 608098, 2376990; 608118, 2376996; 608134, 2377006; 608141, 2377013; 608141, 2377021; 608440, 2377167; 608565, 2377136; 608700, 2377209; 608866, 2377271; 609188, 2377229; 609224, 2377240; 609224, 2377239; 609234, 2377232; 609243, 2377236; 609245, 2377246; 609500, 2377323; 609656, 2377416; 609843, 2377489; 609967, 2377489; 610035, 2377491; 610041, 2377483; 610051, 2377480; 610079, 2377484; 610084, 2377489; return to starting point.

(ii) **Note:** Map 231 follows:

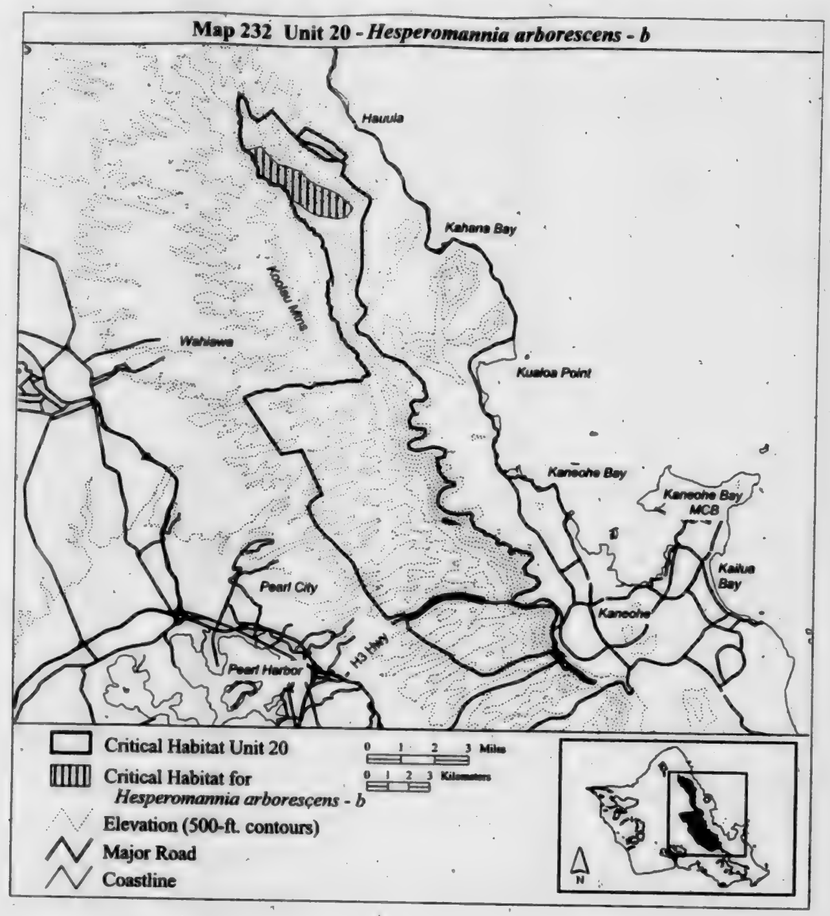


(232) Oahu 20—*Hesperomannia arborescens*—b (590 ha; 1,457 ac)

(i) Unit consists of the following 187 boundary points: Start at 609226, 2388010; 609538, 2387950; 609766, 2387880; 610114, 2387759; 610304, 2387704; 610480, 2387518; 610619, 2387365; 610800, 2387217; 611092, 2387073; 611417, 2386957; 611798, 2386818; 612081, 2386678; 612401, 2386414; 612749, 2386112; 612800, 2386052; 612744, 2385862; 612544, 2385616; 612349, 2385540; 612125, 2385498; 611748, 2385522; 611214, 2385619; 610899, 2385710; 610601, 2385862; 610340, 2386080; 610097, 2386238; 609924, 2386325; 609905, 2386410; 609865, 2386375; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609322, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299,

2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; 607974, 2388406; 607974, 2388407; 607972, 2388420; 607965, 2388446; 607964, 2388447; 607956, 2388457; 607956, 2388458; 607898, 2388494; 607897, 2388494; 607887, 2388497; 607865, 2388499; 607855, 2388502; 607821, 2388528; 607809, 2388537; 607808, 2388537; 607783, 2388550; 607782, 2388550; 607736, 2388557; 607719, 2388559; 607692, 2388571; 607666, 2388594; 607654, 2388609; 607653, 2388609; 607650, 2388612; 608396, 2388827; 608778, 2388404; return to starting point.

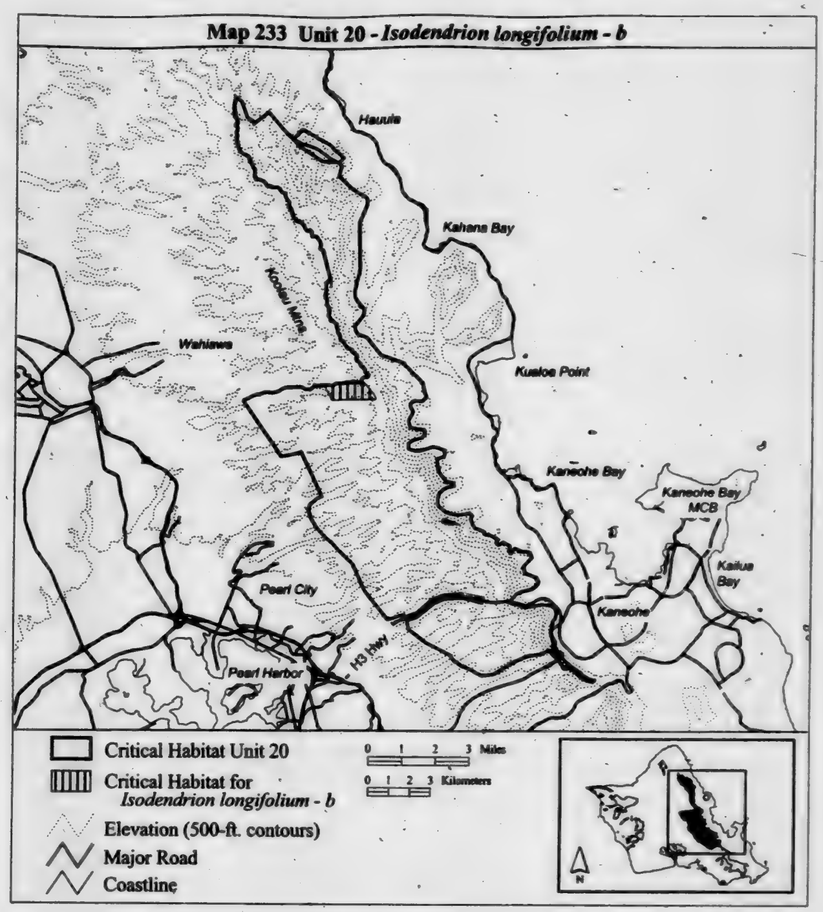
(ii) **Note:** Map 232 follows:



(233) Oahu 20—*Isodendrion longifolium*—b (162 ha; 399 ac)

(i) Unit consists of the following 73 boundary points: Start at 613455, 2377836; 613487, 2377807; 613820, 2377415; 614019, 2377187; 614101, 2377012; 614098, 2376925; 612988, 2376944; 612008, 2376886; 611978, 2376959; 611656, 2377538; 611616, 2377608; 611620, 2377608; 611632, 2377597; 611636, 2377596; 611663, 2377589; 611666, 2377588; 611685, 2377589; 611731, 2377598; 611739, 2377608; 611845, 2377608; 612012, 2377589; 612011, 2377588; 612012, 2377584; 612038, 2377574; 612066, 2377574; 612069, 2377574; 612103, 2377583; 612103, 2377584; 612166, 2377617; 612168, 2377619; 612169, 2377619; 612247, 2377687; 612247, 2377695; 612255, 2377697; 612402, 2377690; 612402, 2377689; 612403, 2377685; 612432, 2377673; 612468, 2377676; 612482, 2377684; 612483, 2377688; 612505, 2377688; 612575, 2377698; 612576, 2377698; 612596, 2377708; 612604, 2377703; 612630, 2377702; 612668, 2377720; 612688, 2377749; 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; return to starting point.

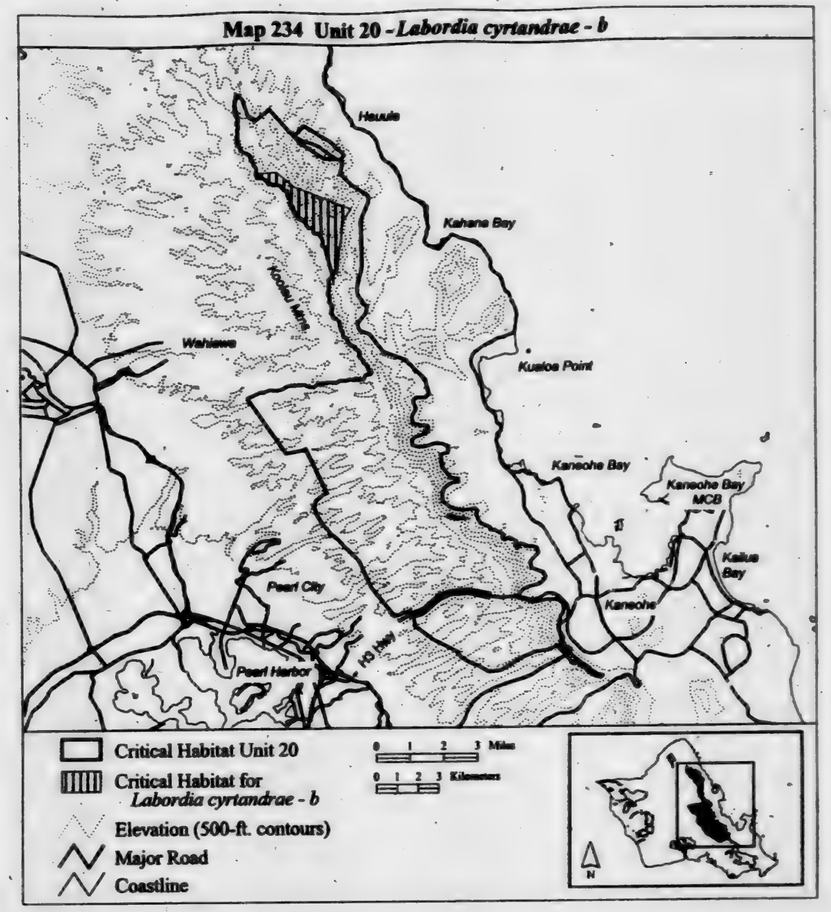
(ii) **Note:** Map 233 follows:



(234) Oahu 20—*Labordia cyrtandrae*—b (595 ha; 1,471 ac)

(i) Unit consists of the following 254 boundary points: Start at 608229, 2387567; 609230, 2387634; 610071, 2386913; 612807, 2385912; 612446, 2385365; 612366, 2384991; 612326, 2384471; 612219, 2383924; 612113, 2382763; 611821, 2382957; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608975, 2387069; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; return to starting point.

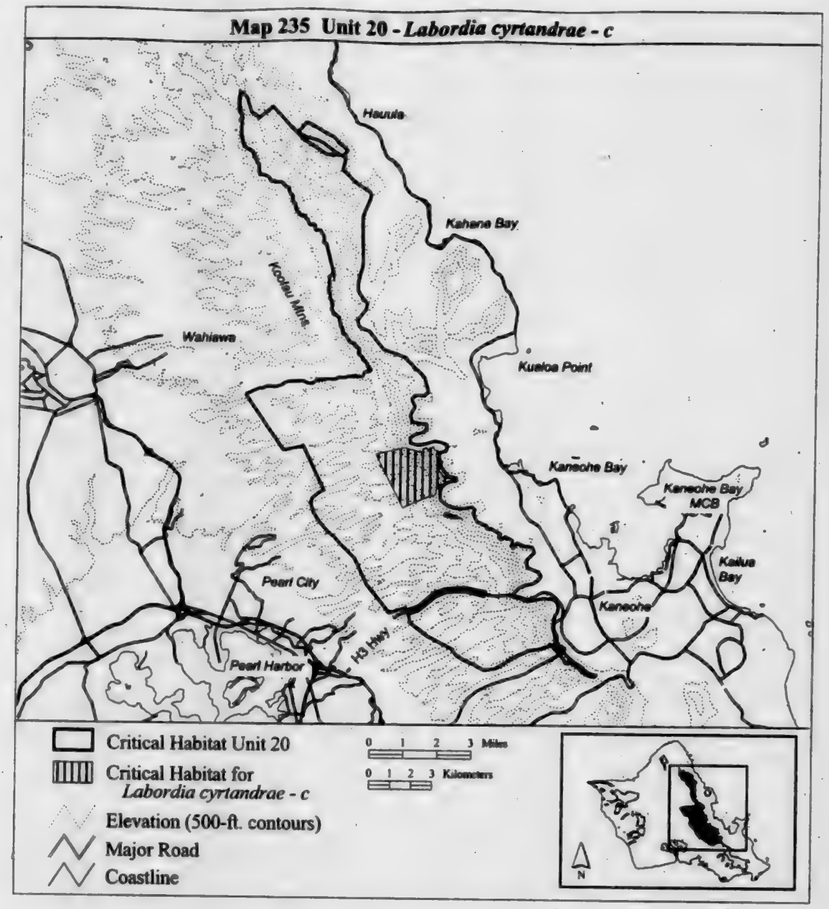
(ii) **Note:** Map 234 follows:



(235) Oahu 20—*Labordia cyrtandrae*—c (618 ha; 1,526 ac)

(i) Unit consists of the following 27 boundary points: Start at 614062, 2373984; 615409, 2374312; 615975, 2374135; 616187, 2374082; 616434, 2374312; 616522, 2374206; 616787, 2374365; 616840, 2374188; 616999, 2374206; 616893, 2373940; 616999, 2373728; 616999, 2373622; 617159, 2373640; 617088, 2373446; 617070, 2373251; 617282, 2372986; 617583, 2372898; 617883, 2372810; 617883, 2372757; 617477, 2372704; 617353, 2372615; 617106, 2372562; 617176, 2372386; 616929, 2372350; 616911, 2372067; 616452, 2371908; 615356, 2371420; return to starting point.

(ii) **Note:** Map 235 follows:



(236) Oahu 20—*Lobelia gaudichaudii* ssp. *koolauensis*—a (926 ha; 2,287 ac)

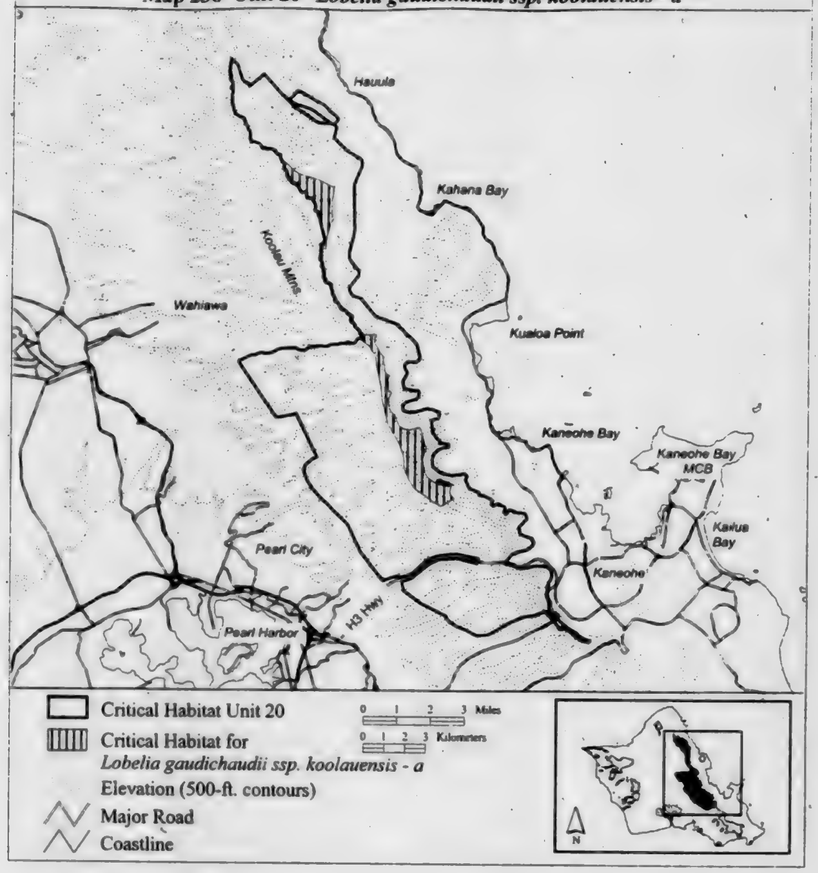
(i) Unit consists of the following 591 boundary points: Start at 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211,

2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611856, 2381258; 611855, 2381265; 611849, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611703, 2381866; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609879, 2386356; 609968, 2386361; 610112, 2386252; 610236, 2386124; 610409, 2385980; 610408, 2385974; 610597, 2385842; 611059, 2385710; 611518, 2385592; 611893, 2385399; 612310, 2385223; 612285, 2385033; 612246, 2384831; 612221, 2384600; 612214, 2384321; 612211, 2384061; 612240, 2383853; 612288, 2383737; 612288, 2383673; 612221, 2383554; 612124, 2383397; 612067, 2383147; 612015, 2382929; 611938, 2382618; 611826, 2382432; 611781, 2382294; 611759, 2382162; 611768, 2381999; 611762, 2381816; 611772, 2381707; 611820, 2381604; 611826, 2381521; 611824, 2381521; 611825, 2381511; 611826, 2381511; 611838, 2381480; 611858, 2381434; 611855, 2381434; 611893, 2381334; 611919, 2381187; 611925, 2381071; 611916, 2380940; 611942, 2380911; 611977, 2380853; 612019, 2380747; 612153, 2380670; 612285, 2380584; 612282, 2380414; 612282, 2380298; 612333, 2380176; 612381, 2380083; 612455, 2379913; 612490, 2379820; 612596, 2379686; 612689, 2379560; 612849, 2379403; 612917, 2379349; 612962, 2379349; 613003, 2379278; 613055, 2379236; 613084, 2379188; 613170, 2379153; 613295, 2379095; 613286, 2379018; 613273, 2378903; 613273, 2378832; 613347, 2378749; 613388, 2378675; 613427, 2378608; 613459, 2378534; 613526, 2378467; 613600, 2378406; 613658, 2378357; 613677, 2378290; 613703, 2378232; 613769, 2378191; 613918, 2378165; 614117, 2378149; 614396, 2378171; 614399, 2378123; 614364, 2378056; 614315, 2378014; 614309, 2377963; 614315, 2377899; 614319, 2377854; 614312, 2377780; 614389, 2377642; 614508, 2377459; 614511, 2377382; 614529, 2377312; 614530, 2377315; 614588, 2377254; 614694, 2377196; 614742, 2377126; 614755, 2377045; 614729, 2376949; 614723, 2376856; 614752, 2376750; 614810, 2376648; 614790, 2376494; 614813, 2376378; 614880, 2376291; 615015, 2376170; 614951, 2376032; 614951, 2375929; 614989, 2375791; 614989, 2375704; 614960, 2375621; 615028, 2375493; 615114, 2375390; 615134, 2375319; 615079, 2375236; 615024, 2375156; 614992, 2375021; 614987, 2375021; 615008, 2374845; 615037, 2374633; 615146, 2374444; 615259, 2374328; 615397, 2374049; 615454, 2373914; 615499, 2373789; 615579, 2373728; 615692, 2373664; 615836, 2373626; 616009, 2373610; 616173, 2373638; 616330, 2373693; 616481, 2373722; 616555, 2373654; 616600, 2373452; 616635, 2373289; 616638, 2373193; 616705, 2373074; 616718, 2372920; 616725, 2372917; 616754, 2372843; 616818, 2372750; 616779, 2372577; 616709,

2372416; 616648, 2372192; 616664, 2371970; 616712, 2371720; 616747, 2371637; 616754, 2371534; 616792, 2371495; 616805, 2371418; 616885, 2371316; 617071, 2371181; 617043, 2371159; 617087, 2371181; 617209, 2371072; 617312, 2371027; 617482, 2370976; 617710, 2370912; 617912, 2370886; 618021, 2370912; 617998, 2370799; 617973, 2370649; 617966, 2370539; 618030, 2370453; 618107, 2370366; 618162, 2370302; 617716, 2370026; 617674, 2369978; 617523, 2369940; 617334, 2370068; 617068, 2370212; 616827, 2370386; 616542, 2370597; 616359, 2370713; 616298, 2370774; 616279, 2370774; 616205, 2370831; 616096, 2371053; 615961, 2371265; 615887, 2371454; 615798, 2371653; 615743, 2371832; 615743, 2372044; 615721, 2372253; 615701, 2372407; 615644, 2372602; 615567, 2372840; 615143, 2373613; 615170, 2373601; 615153, 2373613; 615057, 2373738; 614925, 2374017; 614851, 2374325; 614681, 2375024; 614699, 2375025; 614617, 2375647; 614537, 2376022; 614450, 2376439; 614386, 2376859; 614364, 2377058; 614290, 2377251; 614238, 2377321; 614168, 2377430; 614110, 2377552; 614043, 2377629; 613947, 2377700; 613831, 2377796; 613661, 2377921; 613570, 2377986; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; return to starting point.

(ii) **Note:** Map 236 follows:

Map 236 Unit 20 - *Lobelia gaudichaudii ssp. koolauensis - a*

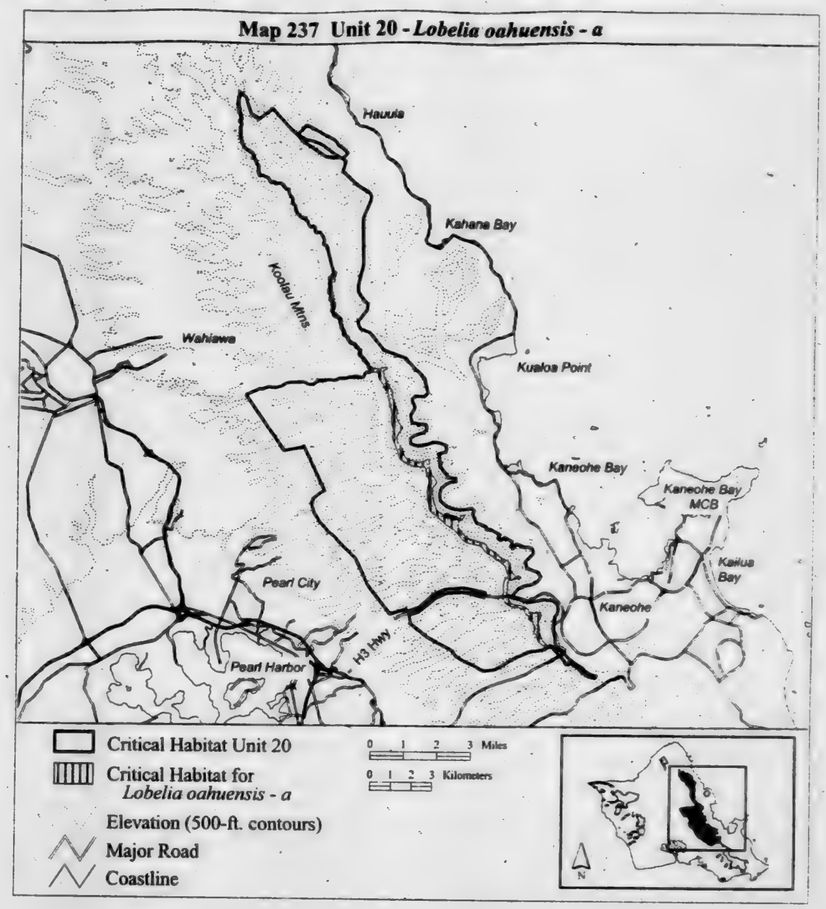


(237) Oahu 20—*Lobelia oahuensis*—a (493 ha; 1,218 ac)

(i) Unit consists of the following 649 boundary points: Start at 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613711, 2378118; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612929, 2379297; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612375, 2379970; 612367, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611867, 2382777; 611937, 2382801; 612022, 2382759; 612039, 2382714; 612019, 2382660; 611974, 2382584; 611886, 2382499; 611838, 2382423; 611793, 2382296; 611799, 2382154; 611810, 2382058; 611810, 2381931; 611821, 2381832; 611844, 2381759; 611883, 2381550; 611920, 2381366; 611974, 2381248; 611974, 2381121; 611957, 2381044; 611960, 2380979; 611880, 2380970; 611968, 2380977; 612013, 2380847; 612043, 2380766; 612167, 2380685; 612227, 2380637; 612305, 2380583; 612311, 2380532; 612293, 2380399; 612329, 2380291; 612362, 2380186; 612449, 2380029; 612497, 2379948; 612522, 2379813; 612555, 2379765; 612651, 2379690; 612675, 2379587; 612744, 2379497; 612876, 2379410; 612991, 2379365; 613051, 2379263; 613096, 2379178; 613192, 2379118; 613237, 2379103; 613285, 2379046; 613258, 2378974; 613264, 2378974; 613252, 2378905; 613279, 2378818; 613330, 2378763; 613403, 2378709; 613460, 2378640; 613532, 2378520; 613679, 2378379; 613721, 2378294; 613733, 2378243; 613860, 2378171; 614070, 2378150; 614157, 2378153; 614244, 2378186; 614314, 2378189; 614359, 2378204; 614443, 2378231; 614512, 2378219; 614542, 2378201; 614527, 2378162; 614467, 2378126; 614374, 2378087; 614314, 2378030; 614320, 2377973; 614344, 2377943; 614356, 2377858; 614356, 2377777; 614389, 2377726; 614452, 2377651; 614509, 2377531; 614596, 2377398; 614686, 2377239; 614762, 2377179; 614786, 2377016; 614777, 2376918; 614789, 2376917; 614795, 2376797; 614801, 2376710; 614855, 2376608; 614861, 2376523; 614891, 2376418; 614957, 2376325; 614993, 2376229; 615011, 2376126; 615026, 2375991; 615014, 2375943; 614984, 2375886; 614993, 2375826; 615026, 2375754; 615053, 2375645; 615129, 2375510; 615225, 2375396; 615306, 2375294; 615201, 2375170; 615122, 2375071; 615047, 2374942; 615023, 2374870; 615011, 2374806; 615017, 2374737; 615053, 2374644; 615104, 2374548; 615180, 2374437; 615288, 2374256; 615303, 2374175; 615339, 2374049; 615432, 2373892; 615537, 2373796; 615700, 2373739; 615931, 2373697; 616082, 2373673; 616220, 2373682; 616319, 2373706; 616400, 2373736; 616473, 2373778; 616563, 2373799; 616581, 2373775; 616593, 2373700; 616593, 2373646; 616578, 2373562; 616593, 2373486; 616617, 2373366; 616656, 2373300; 616680, 2373234; 616680, 2373162; 616713, 2373108; 616722, 2373041; 616764, 2372999; 616767, 2372999; 616839, 2372933; 616891, 2372864; 616939, 2372801; 616963, 2372717; 616936, 2372644; 616833, 2372536; 616773, 2372410; 616749, 2372233; 616758, 2372082; 616773, 2371935; 616812, 2371803; 616830, 2371718; 616860, 2371640; 616903, 2371532; 616924, 2371436; 616996, 2371358; 617113, 2371264; 617187, 2371212; 617366, 2371114; 617465, 2371066; 617570, 2371042; 617735, 2371006; 617832, 2371003; 617958, 2371006; 618045, 2371024; 618090, 2371054; 618126, 2371087; 618217, 2371138; 618301, 2371171; 618304, 2371135; 618283, 2371072; 618174, 2370964; 618093, 2370888; 618024, 2370777; 618015, 2370651; 618018, 2370564; 618063, 2370489; 618123, 2370404; 618183, 2370332; 618229, 2370266; 618376, 2370122; 618550, 2370010; 618809, 2369950; 619068, 2369884; 619152, 2369863; 619153, 2369862; 619155,

2369861; 619190, 2369844; 619233, 2369823; 619232, 2369822; 619305, 2369785; 619362, 2369728; 619407, 2369674; 619504, 2369544; 619537, 2369544; 619678, 2369457; 619849, 2369322; 619964, 2369229; 620222, 2369042; 620409, 2368964; 620514, 2368904; 620529, 2368805; 620544, 2368678; 620547, 2368534; 620589, 2368450; 620658, 2368390; 620667, 2368390; 620748, 2368327; 620793, 2368260; 620911, 2368245; 620977, 2368251; 621052, 2368239; 621037, 2368185; 620962, 2368152; 620911, 2368140; 620787, 2368119; 620763, 2368110; 620715, 2368110; 620667, 2368110; 620589, 2368092; 620535, 2368077; 620484, 2368074; 620436, 2367990; 620430, 2367858; 620418, 2367725; 620427, 2367650; 620430, 2367548; 620412, 2367394; 620418, 2367247; 620466, 2367145; 620526, 2367043; 620613, 2366952; 620694, 2366913; 620833, 2366889; 620995, 2366877; 621109, 2366859; 621260, 2366805; 621356, 2366718; 621419, 2366649; 621440, 2366595; 621432, 2366595; 621434, 2366589; 621545, 2366534; 621626, 2366504; 621732, 2366503; 621843, 2366521; 621972, 2366558; 622035, 2366539; 622035, 2366449; 622020, 2366350; 621981, 2366209; 621909, 2366064; 621885, 2365986; 621912, 2365905; 621927, 2365839; 621942, 2365776; 621948, 2365671; 621939, 2365619; 621933, 2365568; 621972, 2365526; 622014, 2365463; 622038, 2365358; 622089, 2365250; 622180, 2365120; 622360, 2364985; 622381, 2364943; 622363, 2364925; 622273, 2364928; 622129, 2364994; 622023, 2365075; 621936, 2365153; 621882, 2365222; 621867, 2365346; 621825, 2365439; 621801, 2365481; 621720, 2365539; 621708, 2365584; 621747, 2365678; 621756, 2365782; 621732, 2365867; 621699, 2365933; 621644, 2365981; 621665, 2366041; 621696, 2366089; 621668, 2366095; 621542, 2366138; 621491, 2366171; 621434, 2366213; 621440, 2366252; 621488, 2366294; 621494, 2366342; 621452, 2366369; 621314, 2366456; 621254, 2366537; 621263, 2366604; 621276, 2366603; 621205, 2366661; 621061, 2366733; 620905, 2366781; 620721, 2366781; 620640, 2366796; 620433, 2366913; 620327, 2366970; 620285, 2367061; 620222, 2367187; 620192, 2367283; 620195, 2367373; 620231, 2367458; 620231, 2367521; 620225, 2367632; 620219, 2367785; 620240, 2367839; 620231, 2367924; 620264, 2368044; 620336, 2368134; 620409, 2368200; 620481, 2368278; 620469, 2368306; 620408, 2368378; 620406, 2368378; 620406, 2368380; 620403, 2368384; 620406, 2368384; 620406, 2368390; 620333, 2368534; 620306, 2368720; 620162, 2368850; 620063, 2368937; 620003, 2368961; 619858, 2369045; 619708, 2369181; 619504, 2369310; 619335, 2369406; 619293, 2369445; 619278, 2369490; 619203, 2369580; 619154, 2369626; 619084, 2369686; 619074, 2369695; 619063, 2369697; 618991, 2369709; 618992, 2369710; 618770, 2369752; 618505, 2369812; 618361, 2369893; 618211, 2369986; 618138, 2370077; 618021, 2370242; 617898, 2370338; 617835, 2370398; 617778, 2370455; 617600, 2370576; 617525, 2370615; 617402, 2370687; 617308, 2370798; 617188, 2370900; 617044, 2371027; 617050, 2371039; 616767, 2371237; 616683, 2371324; 616626, 2371436; 616599, 2371538; 616599, 2371655; 616557, 2371760; 616536, 2371815; 616506, 2371881; 616503, 2372034; 616503, 2372139; 616497, 2372199; 616500, 2372287; 616542, 2372389; 616542, 2372464; 616563, 2372560; 616593, 2372629; 616575, 2372762; 616572, 2372891; 616548, 2372969; 616494, 2373008; 616500, 2373008; 616458, 2373086; 616446, 2373195; 616452, 2373324; 616415, 2373372; 616364, 2373429; 616112, 2373444; 615814, 2373492; 615601, 2373556; 615360, 2373664; 615201, 2373787; 615116, 2373928; 615104, 2374055; 615068, 2374169; 615011, 2374283; 614948, 2374431; 614870, 2374599; 614819, 2374755; 614819, 2374861; 614816, 2374861; 614810, 2374936; 614828, 2375020; 614861, 2375104; 614852, 2375185; 614861, 2375303; 614825, 2375375; 614765, 2375465; 614762, 2375564; 614762, 2375687; 614756, 2375832; 614777, 2375979; 614762, 2376138; 614723, 2376259; 614641, 2376349; 614641, 2376391; 614641, 2376550; 614617, 2376653; 614590, 2376791; 614602, 2376929; 614602, 2376932; 614530, 2377068; 614482, 2377179; 614434, 2377242; 614365, 2377350; 614323, 2377431; 614211; 2377594; 614115, 2377753; 614115, 2377816; 614088, 2377922; 614031, 2378000; 613935, 2378000; 613833, 2377985; 613763, 2378008; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; return to starting point.

(ii) **Note:** Map 237 follows:

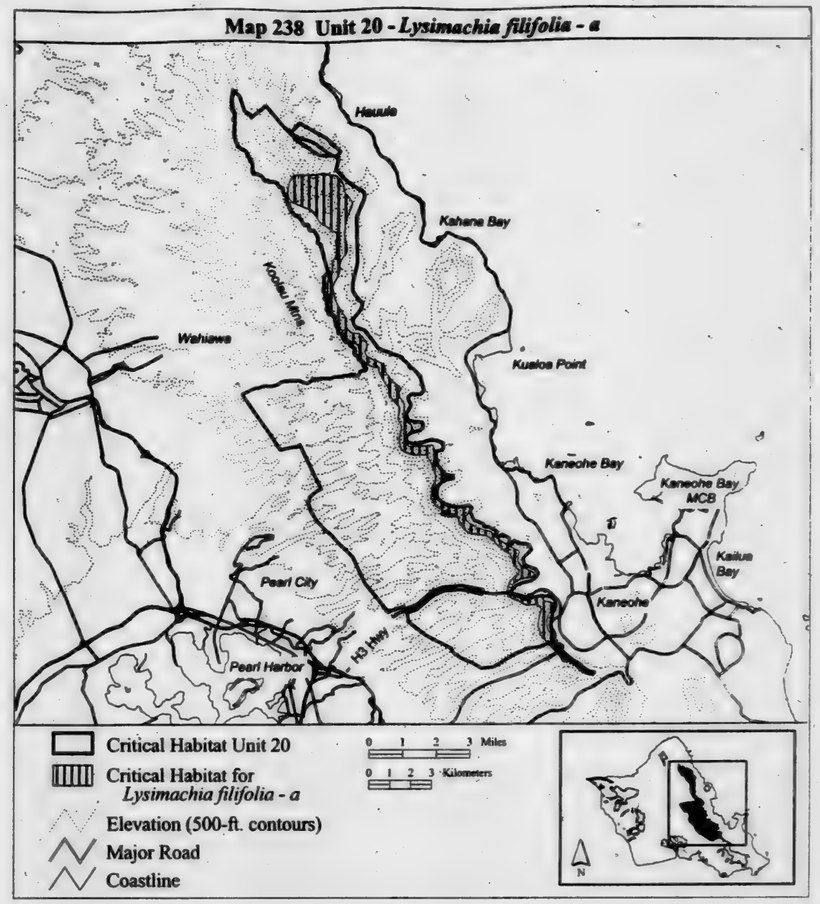


(238) Oahu 20—*Lysimachia filifolia*—a (1,514 ha; 3,741 ac)

(i) Unit consists of the following 333 boundary points: Start at 622547, 2364906; 622392, 2365018; 622231, 2365150; 622133, 2365305; 622037, 2365661; 622013, 2365661; 622019, 2365874; 622064, 2366138; 622093, 2366310; 622156, 2366460; 622128, 2366563; 622082, 2366649; 621950, 2366718; 621645, 2366708; 621496, 2366708; 621369, 2366748; 621214, 2366817; 621053, 2366892; 620818, 2366989; 620582, 2367122; 620553, 2367236; 620553, 2367363; 620542, 2367512; 620571, 2367673; 620663, 2367845; 620743, 2367966; 620898, 2368127; 621042, 2368236; 621082, 2368305; 621053, 2368409; 620910, 2368518; 620818, 2368690; 620720, 2369000; 620617, 2369178; 620462, 2369276; 620345, 2369363; 620061, 2369535; 619852, 2369805; 619545, 2370014; 619336, 2370051; 618992, 2370088; 618685, 2370149; 618414, 2370321; 618242, 2370567; 618193, 2370752; 618107, 2370924; 617996, 2370960; 617578, 2371133; 617050, 2371477; 616829, 2371821; 616902, 2372362; 617038, 2372718; 617025, 2373050; 616853, 2373505; 616607, 2373923; 616030, 2373911; 615648, 2374021; 615403, 2374181; 615317, 2374501; 615329, 2374771; 615403, 2375078; 615415, 2375324; 615267, 2375619; 615292, 2375841; 615317, 2376025; 615317, 2376234; 615009, 2376603; 615009, 2376620; 615004, 2376613; 614843, 2376808; 614825, 2377015; 614825, 2377136; 614670, 2377337; 614492, 2377664; 614372, 2377888; 614331, 2378038; 614349, 2378147; 614084, 2378170; 613740, 2378336; 613533, 2378572; 613401, 2378825; 613429, 2379003; 613326, 2379210; 613016, 2379371; 612780, 2379543; 612648, 2379727; 612487, 2379997; 612372, 2380152; 612372, 2380284; 612408, 2380419; 612389, 2380468; 612286, 2380594; 612039, 2380784; 611999, 2380916; 612033, 2381169; 611918, 2381508; 611855, 2381692; 611867, 2381829; 611872, 2381985; 611872, 2382180; 611930, 2382444; 611976, 2382576; 612102, 2382714; 612114, 2382789; 612114, 2382996; 612114, 2383174; 612160,

2383289; 612298, 2383444; 612315, 2383593; 612326, 2383817; 612303, 2384007; 612252, 2384169; 612246, 2384168; 612251, 2384174; 612240, 2384208; 612280, 2384215; 612320, 2384271; 612338, 2384392; 612309, 2384604; 612091, 2384714; 611803, 2384892; 611602, 2385012; 611464, 2385122; 611361, 2385311; 611200, 2385558; 610970, 2385719; 610482, 2385920; 610160, 2386070; 609988, 2386294; 609948, 2386569; 610011, 2386880; 610063, 2387104; 610246, 2387282; 610488, 2387345; 610942, 2387333; 611125, 2387333; 611390, 2387368; 611711, 2387420; 611987, 2387356; 612286, 2387310; 612510, 2387144; 612648, 2386874; 612671, 2386644; 612757, 2386454; 612947, 2386230; 613033, 2386098; 613062, 2385989; 612970, 2385679; 612884, 2385478; 612797, 2385294; 612728, 2385047; 612728, 2384783; 612682, 2384604; 612700, 2384426; 612746, 2384260; 612737, 2384258; 612780, 2384070; 612797, 2383817; 612797, 2383634; 612636, 2383421; 612499, 2383208; 612435, 2383013; 612441, 2382783; 612435, 2382622; 612372, 2382496; 612257, 2382260; 612125, 2382002; 612148, 2381784; 612234, 2381410; 612418, 2381014; 612579, 2380767; 612786, 2380474; 612779, 2380473; 612734, 2380198; 612780, 2380054; 612872, 2379888; 612993, 2379790; 613113, 2379744; 613268, 2379744; 613406, 2379721; 613590, 2379566; 613768, 2379290; 613768, 2379106; 613676, 2378905; 613757, 2378710; 614079, 2378526; 614360, 2378423; 614596, 2378250; 614636, 2378078; 614682, 2377888; 614814, 2377710; 614940, 2377492; 615193, 2377325; 615354, 2377210; 615394, 2377131; 615427, 2377131; 615304, 2376959; 615304, 2376750; 615489, 2376504; 615562, 2376295; 615562, 2376049; 615513, 2375853; 615599, 2375595; 615907, 2375324; 615943, 2375115; 615636, 2374808; 615538, 2374611; 615624, 2374451; 615808, 2374304; 616128, 2374304; 616546, 2374341; 616915, 2374402; 617050, 2374034; 617111, 2373505; 617296, 2373222; 617431, 2373075; 617517, 2372964; 617480, 2372718; 617185, 2372423; 617111, 2372153; 617124, 2371821; 617480, 2371538; 617714, 2371440; 618045, 2371415; 618377, 2371428; 618648, 2371489; 618771, 2371366; 618648, 2371145; 618476, 2370936; 618525, 2370776; 618660, 2370641; 619041, 2370420; 619508, 2370260; 619705, 2370211; 620012, 2369916; 620467, 2369633; 620811, 2369436; 620810, 2369436; 620933, 2369379; 621036, 2369345; 621082, 2369265; 621025, 2369104; 621013, 2368897; 621019, 2368788; 621088, 2368690; 621197, 2368592; 621312, 2368535; 621530, 2368403; 621737, 2368305; 621817, 2368201; 621771, 2368104; 621593, 2368041; 621341, 2368012; 621053, 2367926; 620835, 2367765; 620743, 2367604; 620743, 2367424; 620604, 2367260; 620603, 2367259; 620604, 2367258; 620865, 2367188; 621059, 2367041; 621398, 2366932; 621484, 2366920; 621691, 2366984; 621800, 2367063; 621978, 2367103; 622093, 2367103; 622151, 2367103; 622260, 2367023; 622271, 2366891; 622398, 2366868; 622593, 2366862; 622760, 2366759; 622765, 2366632; 622765, 2366581; 622639, 2366454; 622484, 2366224; 622421, 2365960; 622449, 2365662; 622467, 2365661; 622478, 2365541; 622576, 2365431; 622668, 2365391; 622745, 2365350; 622721, 2365226; 622702, 2365179; 622708, 2365159; 622707, 2365156; 622714, 2365138; 622737, 2365058; 622775, 2364977; 622782, 2364959; 622783, 2364959; 622946, 2364800; 623041, 2364696; 623146, 2364605; 623414, 2364344; 623432, 2364332; 623639, 2364167; 623880, 2364018; 623982, 2363952; 624084, 2363881; 624075, 2363840; 624185, 2363777; 624483, 2363599; 624661, 2363558; 624694, 2363558; 624716, 2363547; 624725, 2363518; 624702, 2363484; 624592, 2363467; 624437, 2363495; 624253, 2363576; 624041, 2363691; 623869, 2363863; 623736, 2363966; 623432, 2364156; 623328, 2364259; 623260, 2364323; 623179, 2364455; 623030, 2364610; 622926, 2364708; 622789, 2364820; 622726, 2364839; 622749, 2364824; 622714, 2364840; 622716, 2364842; 622576, 2364886; 622555, 2364901; 622550, 2364906; 622549, 2364907; 622548, 2364907; return to starting point.

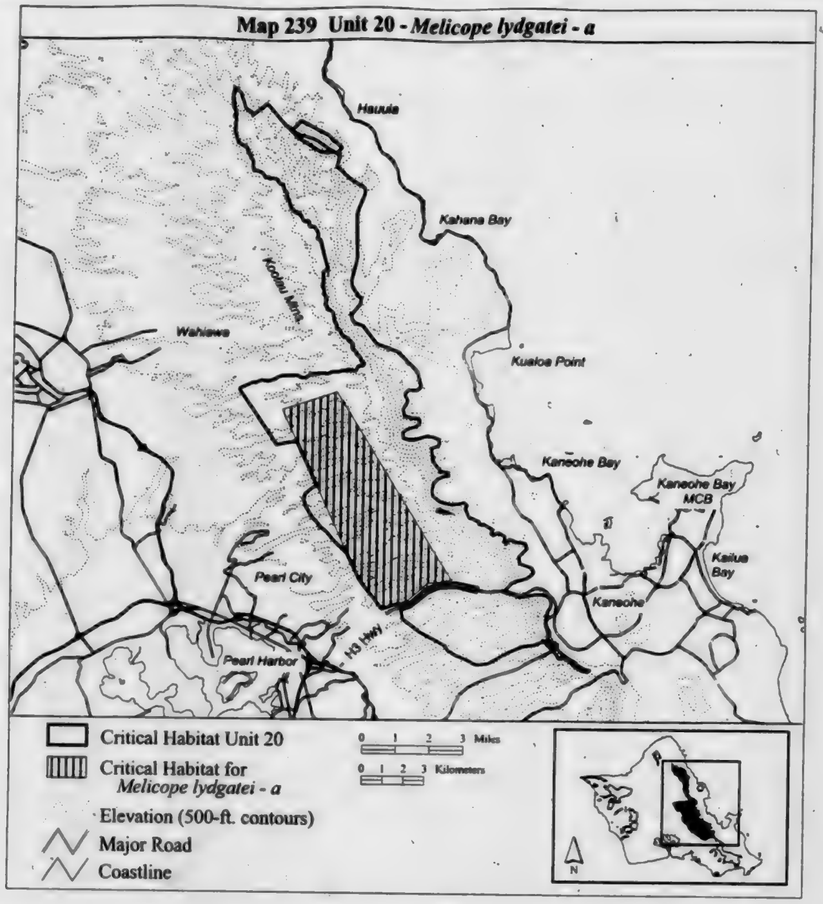
(ii) **Note:** Map 238 follows:



(239) Oahu 20—*Melicope lydgatei*—a (3,499 ha; 8,646 ac)

(i) Unit consists of the following 11 boundary points: Start at 610585, 2374351; 609877, 2375857; 612494, 2376750; 618121, 2367756; 616955, 2367642; 616046, 2366818; 614795, 2366392; 613686, 2367756; 610603, 2374312; 610601, 2374322; 610587, 2374351; return to starting point.

(ii) **Note:** Map 239 follows:



(240) Oahu 20—*Myrsine juddii*—a (949 ha; 2,346 ac)

(i) Unit consists of the following 637 boundary points: Start at 611505, 2377599; 611595, 2377608; 611620, 2377608; 611632, 2377597; 611636, 2377596; 611663, 2377589; 611666, 2377588; 611685, 2377589; 611731, 2377598; 611739, 2377608; 611845, 2377608; 612012, 2377589; 612011, 2377588; 612012, 2377584; 612038, 2377574; 612066, 2377574; 612069, 2377574; 612103, 2377583; 612103, 2377584; 612166, 2377617; 612168, 2377619; 612247, 2377687; 612247, 2377695; 612255, 2377697; 612402, 2377690; 612402, 2377689; 612403, 2377685; 612432, 2377673; 612468, 2377676; 612482, 2377684; 612483, 2377688; 612505, 2377688; 612575, 2377698; 612596, 2377708; 612604, 2377703; 612630, 2377702; 612668, 2377720; 612688, 2377749; 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613711, 2378118; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248,

2378749; 613247, 2378750; 613232, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386792; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608643, 2387281; 608604, 2387303; 608558,

2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; 607974, 2388406; 607974, 2388407; 607972, 2388420; 607965, 2388446; 607964, 2388447; 607956, 2388457; 607956, 2388458; 607898, 2388494; 607897, 2388494; 607887, 2388497; 607865, 2388499; 607857, 2388502; 607917, 2388542; 608246, 2388476; 609165, 2388148; 609953, 2387458; 610314, 2386966; 610117, 2386801; 610544, 2386670; 610905, 2386243; 611496, 2384897; 612252, 2383584; 612383, 2382500; 612055, 2381975; 612252, 2381581; 612252, 2381023; 612678, 2380826; 612514, 2380136; 612908, 2379512; 613138, 2379644; 613499, 2379118; 613434, 2378954; 613663, 2378691; 613828, 2378232; 614057, 2376853; 613893, 2376196; 613598, 2375999; 612843, 2376098; 613434, 2376459; 612613, 2376360; 613040, 2376754; 612350, 2376459; 611825, 2376951; 612449, 2377083; 613040, 2377411; 612383, 2377312; 611339, 2377581; 611385, 2377588; 611439, 2377593; 611444, 2377584; 611472, 2377585; 611503, 2377590; return to starting point.

(ii) **Note:** Map 240 follows:

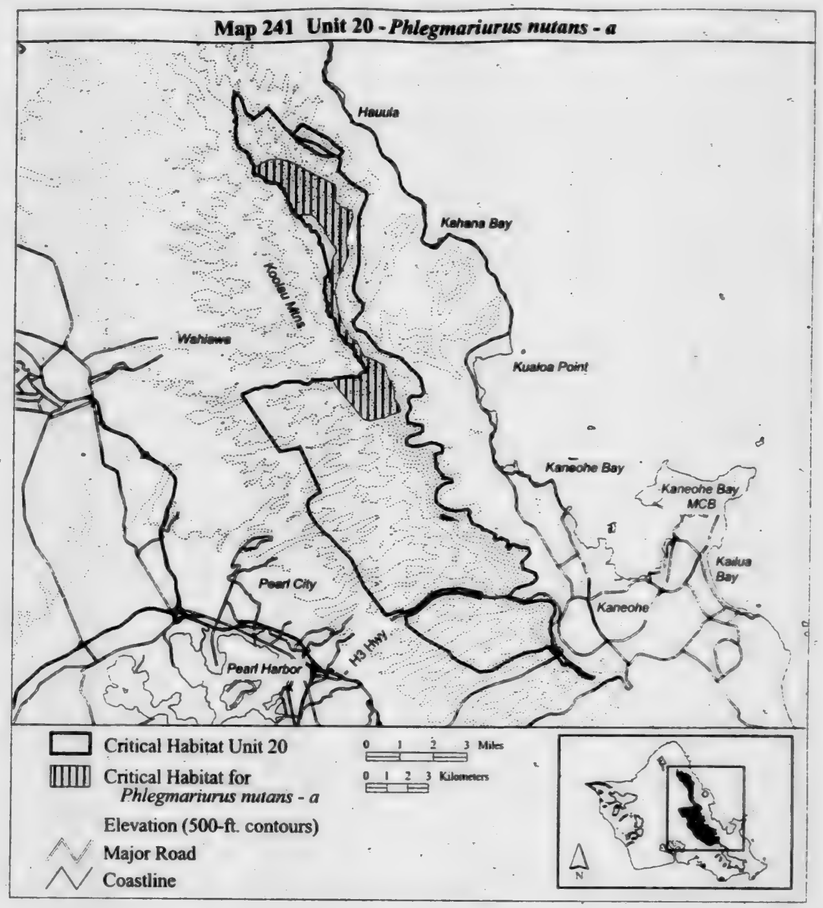


(241) Oahu 20—*Phlegmariurus nutans*—a (1,624 ha; 4,014 ac)

(i) Unit consists of the following 518 boundary points: Start at 612247, 2377695; 612255, 2377697; 612402, 2377690; 612402, 2377689; 612403, 2377685; 612432, 2377673; 612468, 2377676; 612482, 2377684; 612483, 2377688; 612505, 2377688; 612575, 2377698; 612596, 2377708; 612604, 2377703; 612630, 2377702; 612668, 2377720; 612688, 2377749; 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613711, 2378118; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185,

2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612388, 2379852; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611849, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611697, 2382339; 611722, 2382329; 611752, 2382479; 611931, 2382659; 612029, 2382853; 612029, 2383033; 612029, 2383265; 612074, 2383438; 612171, 2383602; 612231, 2383760; 612186, 2383909; 611976, 2384164; 611729, 2384584; 611624, 2384741; 611652, 2384737; 611227, 2385310; 611018, 2385490; 610538, 2385497; 610367, 2385372; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608274, 2387677; 608306, 2387729; 608673, 2387954; 608988, 2388096; 609475, 2388141; 610074, 2387984; 610396, 2387812; 610793, 2387602; 611355, 2387302; 611827, 2387093; 612066, 2386950; 612149, 2386845; 612164, 2386741; 612164, 2386613; 612164, 2386441; 612164, 2386276; 612186, 2386082; 612313, 2385992; 612433, 2385827; 612439, 2385780; 612456, 2385849; 612605, 2385782; 612710, 2385759; 612748, 2385700; 612965, 2385610; 612987, 2385340; 612890, 2385010; 612860, 2384823; 612755, 2384613; 612673, 2384329; 612695, 2384044; 612815, 2383685; 612815, 2383497; 612695, 2383318; 612576, 2382996; 612456, 2382726; 612321, 2382426; 612276, 2382209; 612164, 2381767; 612253, 2381453; 612291, 2381153; 612433, 2380719; 612486, 2380501; 612673, 2380134; 612815, 2379940; 612890, 2379775; 612987, 2379618; 613242, 2379498; 613362, 2379296; 613467, 2379071; 613542, 2378876; 613639, 2378749; 613954, 2378644; 613987, 2378588; 613976, 2378636; 614575, 2378337; 614613, 2378157; 614748, 2377790; 614845, 2377580; 614965, 2377423; 615025, 2377228; 615070, 2377034; 615070, 2376854; 615077, 2376741; 615220, 2376562; 615354, 2376352; 615392, 2376150; 615369, 2376105; 615070, 2375992; 614860, 2375933; 614673, 2375835; 614515, 2375820; 614313, 2375775; 614143, 2375726; 614103, 2375700; 613969, 2375655; 613789, 2375678; 613587, 2375738; 613070, 2376389; 612576, 2376966; 612306, 2377266; 612089, 2377580; 612103, 2377583; 612103, 2377584; 612166, 2377617; 612168, 2377619; 612247, 2377687; return to starting point.

(ii) **Note:** Map 241 follows:

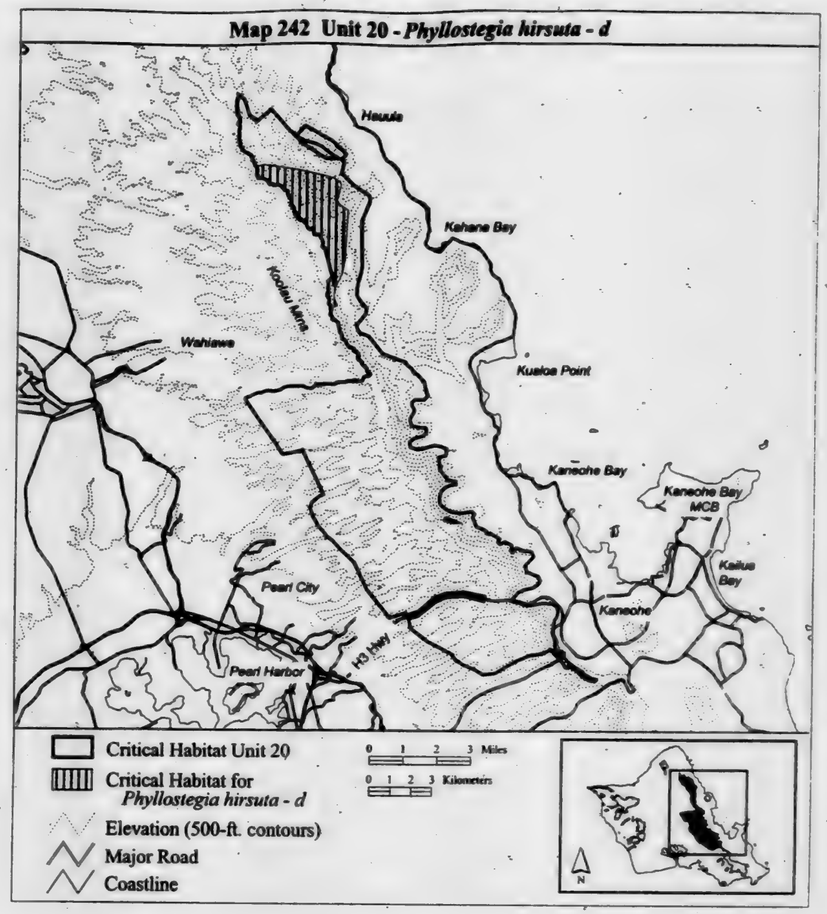


(242) Oahu 20—*Phyllostegia hirsuta*—d (1,005 ha; 2,483 ac)

(i) Unit consists of the following 365 boundary points: Start at 608181, 2387918; 608609, 2387992; 609066, 2387923; 609648, 2387838; 610294, 2387723; 610699, 2387638; 611287, 2387529; 611887, 2387381; 612047, 2387289; 612218, 2387158; 612275, 2387009; 612218, 2386810; 612138, 2386495; 612077, 2386335; 612081, 2386336; 612173, 2386170; 612258, 2386084; 612418, 2385987; 612561, 2385919; 612607, 2385873; 612607, 2385791; 612489, 2383611; 612441, 2383240; 612407, 2383075; 612333, 2382778; 612235, 2382526; 612127, 2382349; 612121, 2382349; 612098, 2382264; 612030, 2382069; 612001, 2381847; 611990, 2381692; 612041, 2381550; 612121, 2381395; 612156, 2381312; 611855, 2381263; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611726, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698,

2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; return to starting point.

(ii) **Note:** Map 242 follows:



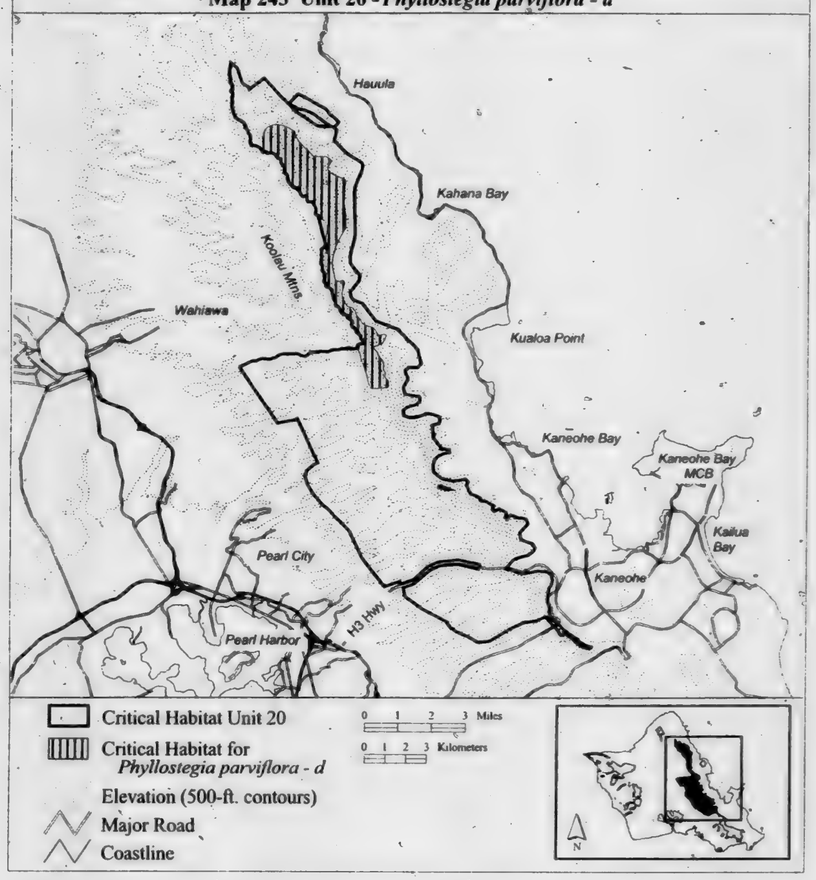
(243) Oahu 20—*Phyllostegia parviflora*—d (1,430 ha; 3,534 ac)

(i) Unit consists of the following 536 boundary points: Start at 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613431, 2378493; 613398, 2378533; 613361, 2378569; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613222, 2378762; 613169, 2378834; 613145, 2378878; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613085, 2379118; 613059, 2379138; 612974, 2379200; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612797, 2379345; 612790, 2379349; 612726, 2379413; 612686, 2379438; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612532, 2379701; 612524, 2379714; 612523, 2379714; 612518, 2379716; 612517, 2379716; 612495, 2379729; 612429, 2379748; 612396, 2379830; 612387, 2379922; 612386, 2379924; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262,

2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612148, 2380563; 612141, 2380574; 612075, 2380646; 612066, 2380651; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611999, 2380689; 611988, 2380695; 611930, 2380710; 611911, 2380727; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611853, 2380864; 611840, 2380904; 611842, 2380969; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611827, 2381184; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381285; 611848, 2381286; 611828, 2381312; 611794, 2381351; 611777, 2381381; 611739, 2381439; 611742, 2381488; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611694, 2381735; 611700, 2381745; 611700, 2381785; 611703, 2381785; 611703, 2381866; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611702, 2381934; 611699, 2382004; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382114; 611694, 2382127; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611697, 2382336; 611694, 2382371; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611896, 2382684; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611871, 2382764; 611901, 2382941; 611929, 2383224; 611969, 2383422; 611980, 2383541; 611969, 2383614; 611901, 2383750; 611856, 2383829; 611816, 2383835; 611686, 2383897; 611556, 2383970; 611552, 2383974; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611450, 2384080; 611426, 2384106; 611409, 2384168; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611426, 2384363; 611426, 2384372; 611412, 2384397; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611358, 2384501; 611349, 2384509; 611311, 2384568; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611093, 2384692; 611011, 2384723; 610994, 2384778; 610987, 2384811; 610985, 2384830; 610979, 2384903; 610978, 2384906; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610770, 2384942; 610725, 2385016; 610645, 2385136; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610583, 2385226; 610555, 2385265; 610518, 2385321; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610500, 2385348; 610499, 2385350; 610498, 2385350; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610308, 2385401; 610233, 2385503; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610192, 2385538; 610119, 2385602; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385656; 610091, 2385656; 610084, 2385675; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610046, 2385776; 610041, 2385791; 610026, 2385854; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609970, 2386018; 609931, 2386080; 609929, 2386085; 609928, 2386087; 609928, 2386238; 609908, 2386270; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609722, 2386625; 609724, 2386696; 609713, 2386702; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609616, 2386756; 609532, 2386803; 609526, 2386877; 609481, 2386956; 609315, 2387009; 609308, 2387012; 609295, 2387015; 609215, 2387041; 608972, 2387091; 608865, 2387182; 608848, 2387368; 608836, 2387668; 608859, 2387804; 608944, 2388098; 609130, 2388256; 609453, 2388364; 609832, 2388301; 610058, 2388217; 610340, 2388030; 610408, 2387793; 610663, 2387453; 610889, 2387216; 611109, 2387041; 611302, 2386848; 611737, 2386848; 611918, 2386837; 612065, 2386730; 612121, 2386645; 612116, 2386543; 612014, 2386362; 611974, 2386204; 612071, 2386113; 612218, 2386017; 612415, 2385910; 612755, 2385791; 612851, 2385701; 612777, 2385186; 612789, 2385050; 612777, 2384813; 612772, 2384655; 612868, 2384123; 612862, 2383479; 612613, 2383043; 612381, 2382563; 612240, 2382014; 612216, 2381821; 612218, 2381822; 612212, 2381787; 612206, 2381743; 612205, 2381743; 612209, 2381731; 612209, 2381729; 612211, 2381729; 612211, 2381694; 612237, 2381535; 612280, 2381361; 612332, 2381150; 612341, 2381048; 612387, 2380988; 612448, 2380938; 612573, 2380918; 612633, 2380918; 612726, 2380947; 612784, 2380941; 612796, 2380840; 612778, 2380730; 612741, 2380559; 612691, 2380388; 612709, 2380247; 612772, 2380044; 612842, 2379905; 612911, 2379798; 612958, 2379751; 613027, 2379714; 613088, 2379688; 613184, 2379662; 613244, 2379621; 613299, 2379558; 613325, 2379500; 613340, 2379407; 613404, 2379320; 613464, 2379228; 613557, 2379126; 613597, 2379060; 613679, 2378935; 613820, 2378851; 613994, 2378799; 614090, 2378782; 614217, 2378724; 614333, 2378585; 614376, 2378472; 614423, 2378414; 614483, 2378374; 614547, 2378368; 614654, 2378408; 614732, 2378434; 614776, 2378434; 614808, 2378382; 614796, 2378307; 614729, 2378139; 614640, 2377991; 614515, 2377962; 614469, 2377928; 614341, 2377879; 614226, 2377826; 614222, 2377826; 614223, 2377823; 614226, 2377824; 614232, 2377805; 614262, 2377747; 614260, 2377747; 614295, 2377693; 614365, 2377606; 614420, 2377496; 614469, 2377375; 614535, 2377297; 614640, 2377187; 614695, 2377059; 614709, 2376961; 614683, 2376868; 614698, 2376781; 614715, 2376718; 614779, 2376642; 614781, 2376599; 614776, 2376527; 614776, 2376408; 614863, 2376283; 614920, 2376237; 614952, 2376191; 614912, 2375919; 614576, 2375867; 614136, 2375846; 614072, 2375922; 613959, 2376147; 613887, 2376501; 613731, 2376972; 613618, 2377259; 613554, 2377540; 613484, 2377656; 613479, 2377656; 613466, 2377685; 613447, 2377709; 613498, 2377803; 613503, 2377803; 613531, 2377881; 613547, 2377971; 613554, 2377977; return to starting point.

(ii) **Note:** Map 243 follows:

Map 243 Unit 20 - *Phyllostegia parviflora - d*

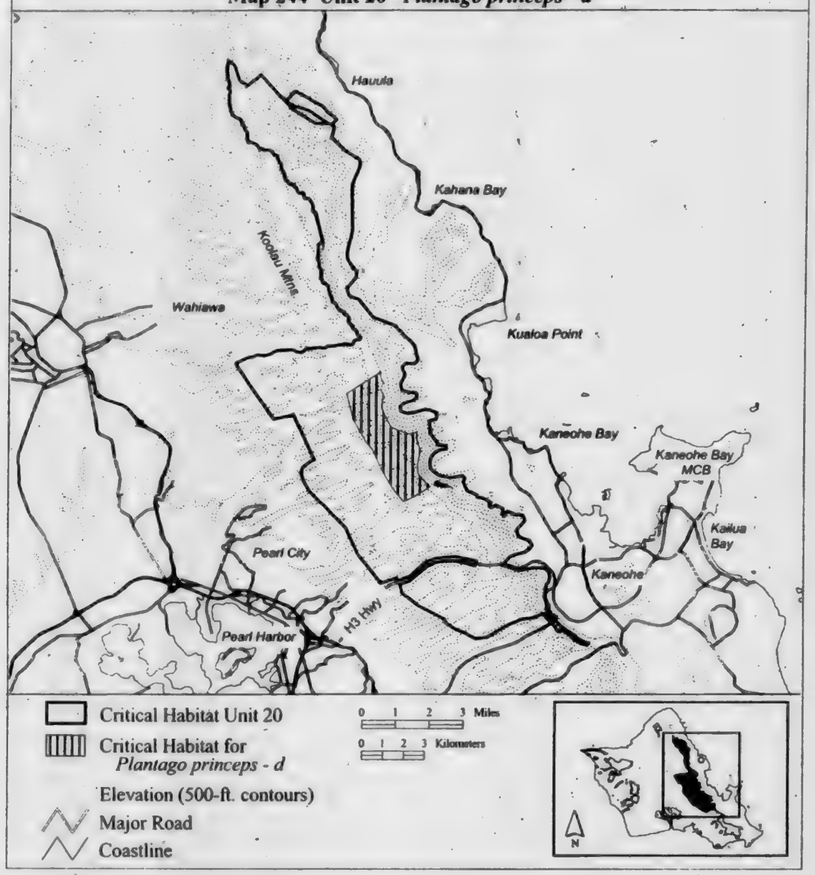


(244) Oahu 20—*Plantago princeps*—d (992 ha; 2,450 ac)

(i) Unit consists of the following 33 boundary points: Start at 615847, 2370245; 615284, 2370964; 614778, 2371801; 614350, 2372717; 614019, 2373116; 613434, 2374148; 613308, 2374586; 613142, 2375258; 613095, 2375422; 614663, 2376418; 614715, 2376331; 614709, 2376258; 614796, 2376057; 614807, 2376056; 614827, 2375891; 614720, 2375618; 614914, 2375248; 614797, 2375024; 614797, 2374683; 614914, 2374352; 615245, 2373788; 615635, 2373603; 616073, 2373466; 616453, 2373525; 616462, 2373252; 616492, 2373077; 616628, 2372765; 616647, 2372609; 616511, 2372025; 616531, 2371607; 616940, 2371110; 617144, 2370985; 616433, 2370522; return to starting point.

(ii) **Note:** Map 244 follows:

Map 244 Unit 20 - *Plantago princeps - d*

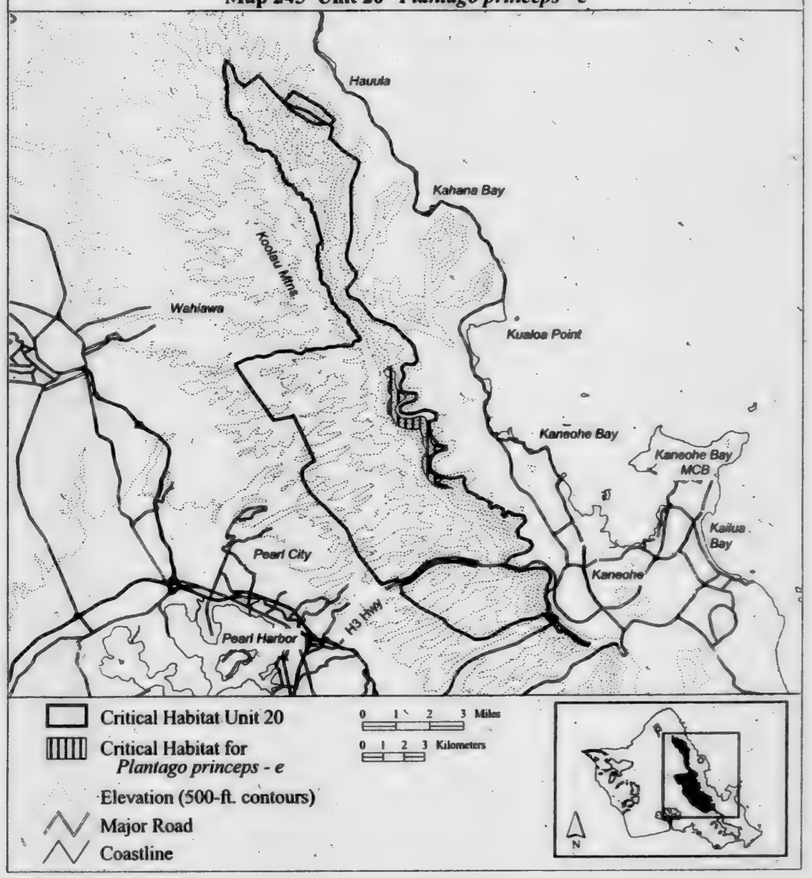


(245) Oahu 20—*Plantago princeps*—e (295 ha; 730 ac)

(i) Unit consists of the following 93 boundary points: Start at 617328, 2371105; 617214, 2371162; 616969, 2371396; 616855, 2371624; 616752, 2371886; 616730, 2372217; 616758, 2372348; 616832, 2372491; 616935, 2372656; 616941, 2372742; 616747, 2373067; 616781, 2373068; 616775, 2373158; 616775, 2373266; 616764, 2373386; 616724, 2373483; 616690, 2373597; 616593, 2373734; 616479, 2373745; 616217, 2373694; 615983, 2373711; 615783, 2373773; 615595, 2373887; 615447, 2373984; 615361, 2374104; 615310, 2374258; 615230, 2374355; 615173, 2374406; 615088, 2374537; 615076, 2374720; 615088, 2374839; 615076, 2374948; 615105, 2375073; 615190, 2375233; 615282, 2375301; 615265, 2375370; 615168, 2375455; 615099, 2375575; 615099, 2375672; 615082, 2375888; 615145, 2376054; 615196, 2376122; 615190, 2376208; 615111, 2376282; 614997, 2376327; 614900, 2376459; 614852, 2376538; 615243, 2376787; 615253, 2376726; 615250, 2376726; 615299, 2376601; 615390, 2376493; 615441, 2376379; 615413, 2376191; 615436, 2375911; 615487, 2375740; 615641, 2375575; 615829, 2375449; 615954, 2375358; 615943, 2375233; 615686, 2375056; 615481, 2374782; 615430, 2374674; 615504, 2374475; 615715, 2374275; 616057, 2374224; 616308, 2374230; 616479, 2374292; 616690, 2374355; 616866, 2374281; 616980, 2373950; 617089, 2373471; 617187, 2373089; 617203, 2373089; 617271, 2373004; 617482, 2372958; 617647, 2372947; 617790, 2372913; 617858, 2372901; 617853, 2372821; 617767, 2372776; 617590, 2372719; 617448, 2372639; 617311, 2372616; 617146, 2372525; 617003, 2372337; 616958, 2372189; 617003, 2371921; 617106, 2371687; 617220, 2371596; 617419, 2371465; 617602, 2371362; 617717, 2371359; return to starting point.

(ii) **Note:** Map 245 follows:

Map 245 Unit 20 - *Plantago princeps - e*

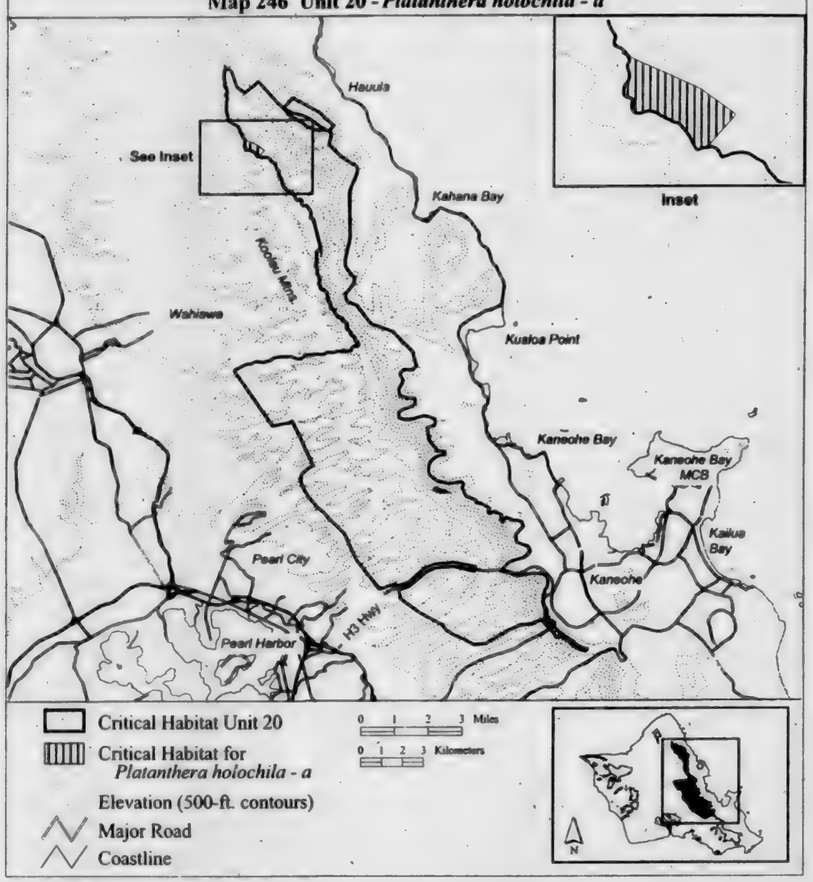


(246) Oahu 20—*Platanthera holochila*—a (35 ha; 86 ac)

(i) Unit consists of the following 64 boundary points: Start at 608249, 2387857; 608319, 2387816; 608894, 2387555; 609199, 2387341; 608944, 2387062; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608603, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; return to starting point.

(ii) **Note:** Map 246 follows:

Map 246 Unit 20 - *Platanthera holochila - a*

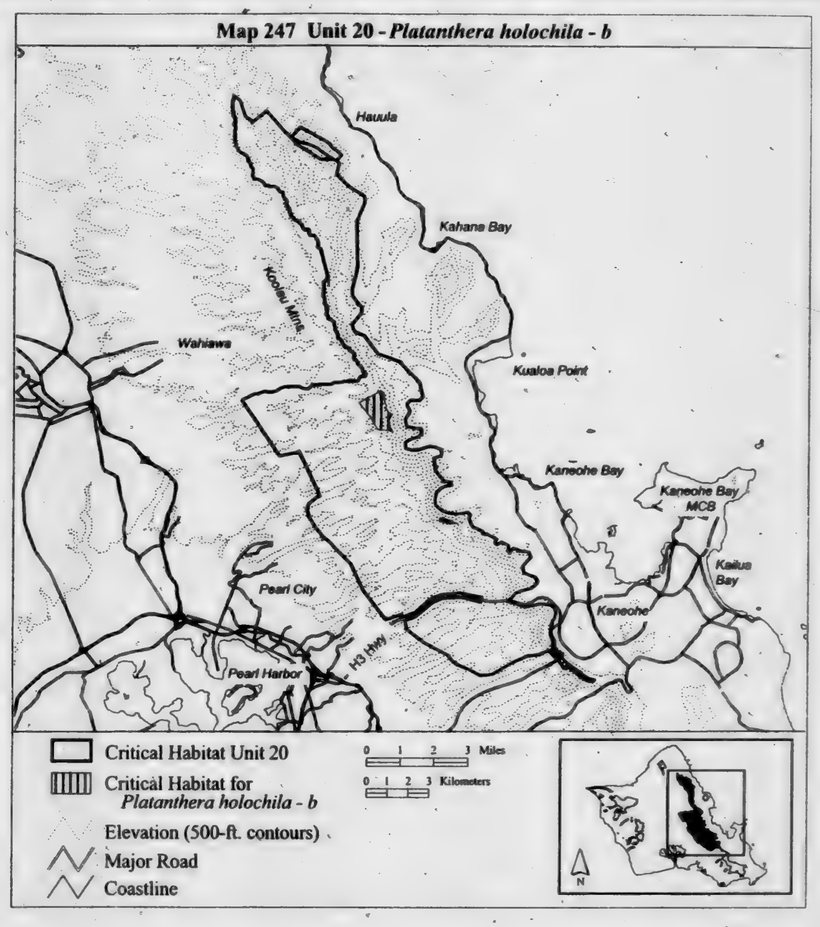


(247) Oahu 20—*Platanthera holochila*—b (165 ha; 407 ac)

(i) Unit consists of the following 15 boundary points: Start at 614492, 2377295; 614625, 2377208; 614686, 2376742; 614770, 2376592; 614740, 2376486; 614814, 2376331; 615019, 2376154; 614881, 2375865; 614931, 2375554; 615003, 2375471; 615053, 2375377; 614929, 2375380; 614354, 2375432; 613918, 2376130; 613435, 2376741; return to starting point.

(ii) **Note:** Map 247 follows:

Map 247 Unit 20 - *Platanthera holochila - b*

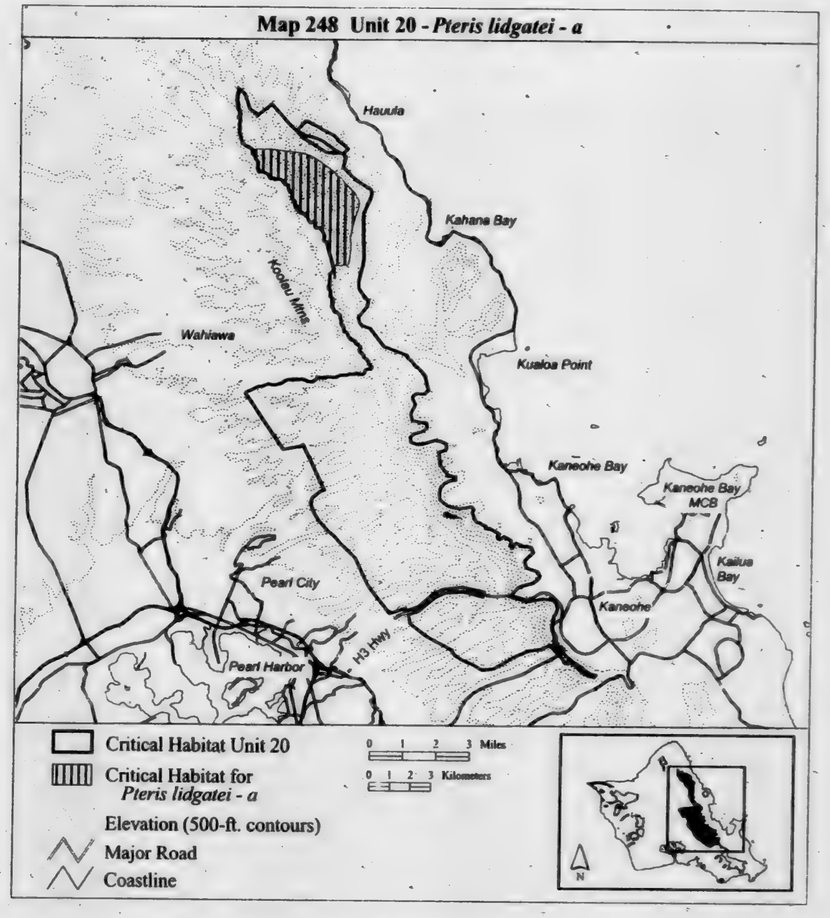


(248) Oahu 20—*Pteris lidgatei*—a (1,232 ha; 3,045 ac)

(i) Unit consists of the following 322 boundary points: Start at 607973, 2388394; 608211, 2388424; 608644, 2388424; 609046, 2388411; 609575, 2388347; 609945, 2388296; 610416, 2388239; 610824, 2388099; 611220, 2387844; 611583, 2387595; 611889, 2387334; 611946, 2387232; 612201, 2387104; 612278, 2386970; 612405, 2386817; 612679, 2386550; 612672, 2386543; 612686, 2386543; 612864, 2386352; 613011, 2386084; 613062, 2385823; 613004, 2385523; 612915, 2385294; 612832, 2384975; 612750, 2384688; 612730, 2384542; 612641, 2384216; 612686, 2383974; 612686, 2383624; 612616, 2383120; 612575, 2382918; 611844, 2382869; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692,

2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 609024, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608298, 2387473; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; return to starting point.

(ii) **Note:** Map 248 follows:



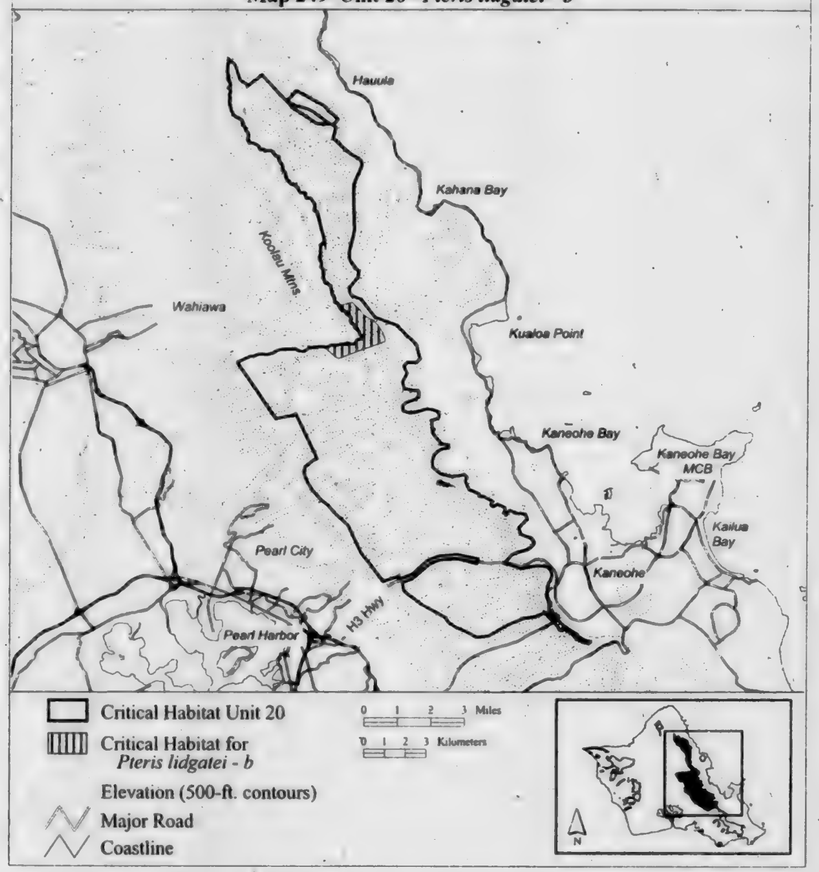
(249) Oahu 20—*Pteris lidgatei*—b (288 ha; 711 ac)

(i) Unit consists of the following 167 boundary points: Start at 612247, 2377695; 612255, 2377697; 612402, 2377690; 612402, 2377689; 612403, 2377685; 612432, 2377673; 612468, 2377676; 612482, 2377684; 612483, 2377688; 612505, 2377688; 612575, 2377698; 612576, 2377698; 612596, 2377708; 612604, 2377703; 612630, 2377702; 612668, 2377720; 612688, 2377749; 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613711, 2378118; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187,

2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 613252, 2379742; 613432, 2379563; 613629, 2379372; 613776, 2379155; 613980, 2379040; 614267, 2378881; 614452, 2378702; 614738, 2378301; 614721, 2378277; 614809, 2378014; 614830, 2377880; 612590, 2377032; 612412, 2377172; 611997, 2377529; 611892, 2377602; 612012, 2377589; 612011, 2377588; 612012, 2377584; 612038, 2377574; 612066, 2377574; 612069, 2377574; 612103, 2377583; 612103, 2377584; 612166, 2377617; 612168, 2377619; 612169, 2377619; 612247, 2377687; return to starting point.

(ii) **Note:** Map 249 follows:

Map 249 Unit 20 - *Pteris lidgatei* - b

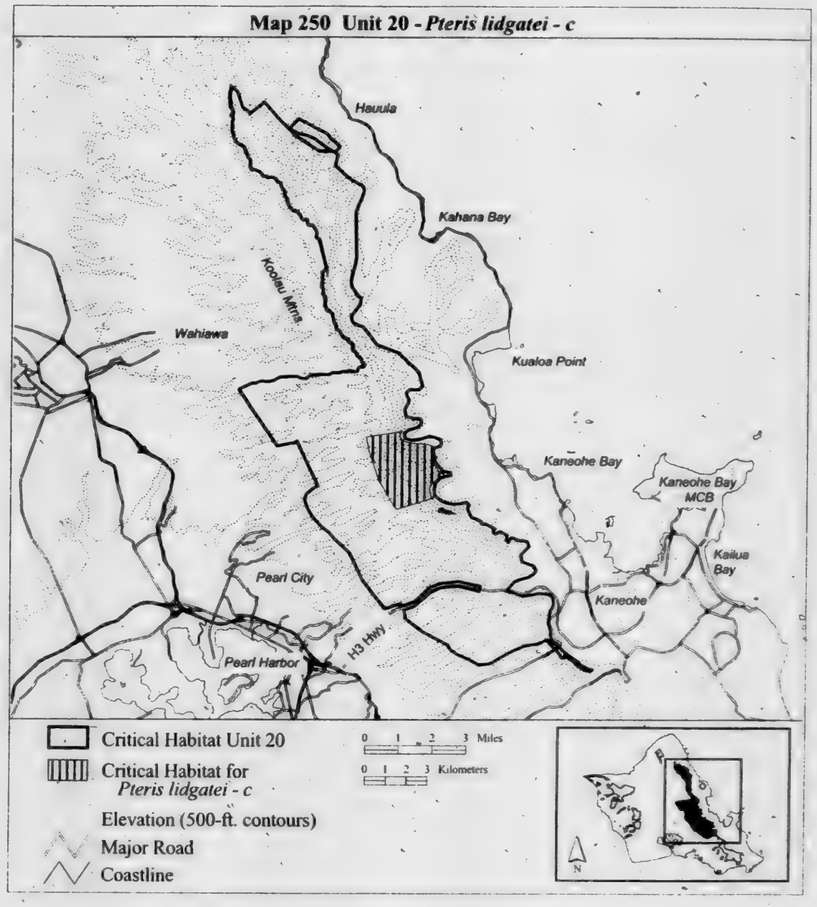


(250) Oahu 20—*Pteris lidgatei*—c (844 ha; 2,085 ac)

(i) Unit consists of the following 33 boundary points: Start at 615336, 2371138; 615108, 2371435; 614942, 2371722; 614713, 2372117; 614483, 2372506; 614006, 2373883; 613993, 2373883; 613891, 2374444; 613858, 2374602; 615567, 2374877; 615503, 2374814; 615452, 2374661; 615542, 2374482; 615777, 2374348; 616185, 2374285; 616370, 2374285; 616753, 2374253; 617006, 2374183; 617072, 2374055; 616989, 2373883; 616977, 2373883; 616995, 2373628; 617065, 2373341; 617205, 2373144; 617346, 2372959; 617620, 2372755; 617409, 2372697; 617199, 2372544; 616982, 2372353; 616880, 2372105; 616931, 2371837; 617072, 2371696; 615352, 2371166; return to starting point.

(ii) **Note:** Map 250 follows:

Map 250 Unit 20 - *Pteris lidgatei* - c



(251) Oahu 20—*Sanicula purpurea*—a (704 ha; 1,739 ac)

(i) Unit consists of the following 940 boundary points: Start at 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613269, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612945, 2379276; 612945, 2379277; 612929, 2379297; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495,

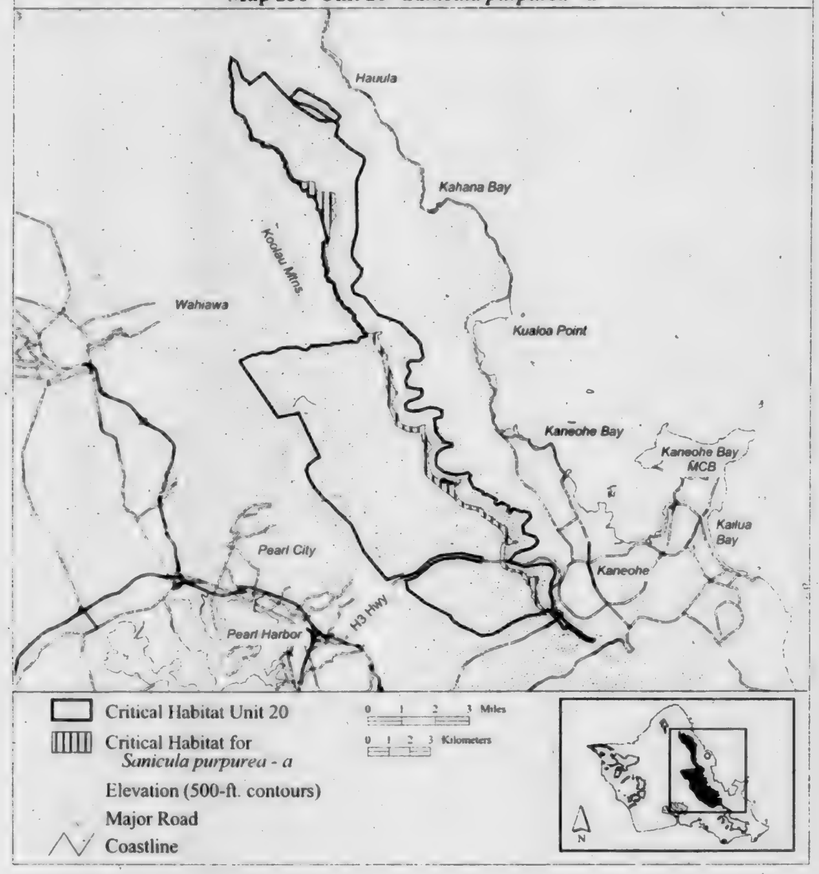
2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612379, 2379962; 612375, 2379970; 612367, 2379981; 612366, 2379982; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612046, 2380670; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611838, 2380961; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611748, 2381619; 611739, 2381669; 611736, 2381680; 611736, 2381681; 611727, 2381699; 611727, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611844, 2382605; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609439, 2386933; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387247; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387369; 608458, 2387369; 608435, 2387371; 608434, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608301, 2387459; 608299, 2387471; 608298, 2387472; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608263, 2387724; 608285, 2387724; 608332, 2387694; 608375, 2387633; 608388, 2387543; 608474, 2387445; 608706, 2387384; 608792, 2387333; 609002, 2387251; 609071, 2387200; 609243, 2387118; 609500, 2387002; 609578, 2386968; 609608, 2386899; 609597, 2386897; 609771, 2386732; 609835, 2386672; 609857, 2386612; 609861, 2386547; 610037, 2386315; 610050, 2386234; 610059, 2386139; 610059, 2386079; 610093, 2386071; 610149, 2385989; 610170, 2385882; 610205, 2385676; 610256, 2385628; 610295, 2385542; 610381, 2385474; 610716, 2385405; 610879, 2385345; 610990, 2385392; 611179, 2385392; 611282, 2385332; 611330,

2385233; 611347, 2385040; 611476, 2384941; 611652, 2384907; 611956, 2384864; 612085, 2384898; 612248, 2384830; 612253, 2384628; 612300, 2384413; 612218, 2384323; 612068, 2384211; 612072, 2384151; 612205, 2384044; 612291, 2383876; 612291, 2383692; 612197, 2383533; 612090, 2383391; 612047, 2383275; 612047, 2383177; 612025, 2383013; 612017, 2382885; 612017, 2382764; 612012, 2382764; 612022, 2382759; 612039, 2382714; 612019, 2382660; 611974, 2382584; 611886, 2382499; 611838, 2382423; 611793, 2382296; 611799, 2382154; 611810, 2382058; 611810, 2381931; 611821, 2381832; 611844, 2381759; 611883, 2381550; 611920, 2381366; 611974, 2381248; 611974, 2381121; 611957, 2381044; 611960, 2380979; 611880, 2380970; 611968, 2380977; 612013, 2380847; 612043, 2380766; 612167, 2380685; 612227, 2380637; 612305, 2380583; 612311, 2380532; 612293, 2380399; 612329, 2380291; 612362, 2380186; 612449, 2380029; 612497, 2379948; 612522, 2379813; 612555, 2379765; 612651, 2379690; 612675, 2379587; 612744, 2379497; 612876, 2379410; 612991, 2379365; 613051, 2379263; 613096, 2379178; 613192, 2379118; 613237, 2379103; 613285, 2379046; 613258, 2378974; 613264, 2378974; 613252, 2378905; 613279, 2378818; 613330, 2378763; 613403, 2378709; 613460, 2378640; 613532, 2378520; 613679, 2378379; 613721, 2378294; 613733, 2378243; 613860, 2378171; 614070, 2378150; 614157, 2378153; 614244, 2378186; 614314, 2378189; 614359, 2378204; 614443, 2378231; 614512, 2378219; 614542, 2378201; 614527, 2378162; 614467, 2378126; 614374, 2378087; 614314, 2378030; 614320, 2377973; 614344, 2377943; 614356, 2377858; 614356, 2377777; 614389, 2377726; 614452, 2377651; 614509, 2377531; 614596, 2377398; 614686, 2377239; 614762, 2377179; 614786, 2377016; 614777, 2376918; 614789, 2376917; 614795, 2376797; 614801, 2376710; 614855, 2376608; 614861, 2376523; 614891, 2376418; 614957, 2376325; 614993, 2376229; 615011, 2376126; 615026, 2375991; 615014, 2375943; 614984, 2375886; 614993, 2375826; 615026, 2375754; 615053, 2375645; 615129, 2375510; 615225, 2375396; 615306, 2375294; 615201, 2375170; 615122, 2375071; 615047, 2374942; 615023, 2374870; 615011, 2374806; 615017, 2374737; 615053, 2374644; 615104, 2374548; 615180, 2374437; 615288, 2374256; 615303, 2374175; 615339, 2374049; 615432, 2373892; 615537, 2373796; 615700, 2373739; 615931, 2373697; 616082, 2373673; 616220, 2373682; 616319, 2373706; 616400, 2373736; 616473, 2373778; 616563, 2373799; 616581, 2373775; 616593, 2373700; 616593, 2373646; 616578, 2373562; 616593, 2373486; 616617, 2373366; 616656, 2373300; 616680, 2373234; 616680, 2373162; 616713, 2373108; 616722, 2373041; 616764, 2372999; 616767, 2372999; 616839, 2372933; 616891, 2372864; 616939, 2372801; 616963, 2372717; 616936, 2372644; 616833, 2372536; 616773, 2372410; 616749, 2372233; 616758, 2372082; 616773, 2371935; 616812, 2371803; 616830, 2371718; 616860, 2371640; 616903, 2371532; 616924, 2371436; 616996, 2371358; 617113, 2371264; 617187, 2371212; 617366, 2371114; 617465, 2371066; 617570, 2371042; 617735, 2371006; 617832, 2371003; 617958, 2371006; 618045, 2371024; 618090, 2371054; 618126, 2371087; 618217, 2371138; 618301, 2371171; 618304, 2371135; 618283, 2371072; 618174, 2370964; 618093, 2370888; 618024, 2370777; 618015, 2370651; 618018, 2370564; 618063, 2370489; 618123, 2370404; 618183, 2370332; 618229, 2370266; 618376, 2370122; 618550, 2370010; 618809, 2369950; 619068, 2369884; 619152, 2369863; 619153, 2369862; 619155, 2369861; 619190, 2369844; 619233, 2369823; 619232, 2369822; 619305, 2369785; 619362, 2369728; 619407, 2369674; 619504, 2369544; 619537, 2369544; 619678, 2369457; 619849, 2369322; 619964, 2369229; 620222, 2369042; 620409, 2368964; 620514, 2368904; 620529, 2368805; 620544, 2368678; 620547, 2368534; 620589, 2368450; 620658, 2368390; 620667, 2368390; 620748, 2368327; 620793, 2368260; 620911, 2368245; 620977, 2368251; 621052, 2368239; 621037, 2368185; 620962, 2368152; 620911, 2368140; 620787, 2368119; 620763, 2368110; 620715, 2368110; 620667, 2368110; 620589, 2368092; 620535, 2368077; 620484, 2368074; 620436, 2367990; 620430, 2367858; 620418, 2367725; 620427, 2367650; 620430, 2367548; 620412, 2367394; 620418, 2367247; 620466, 2367145; 620526, 2367043; 620613, 2366952; 620694, 2366913; 620833, 2366889; 620995, 2366877; 621109, 2366859; 621260, 2366805; 621356, 2366718; 621419, 2366649; 621440, 2366595; 621432, 2366595; 621434, 2366589; 621545, 2366534; 621626, 2366504; 621732, 2366503; 621843, 2366521; 621972, 2366558; 622035, 2366539; 622035, 2366449; 622020, 2366350; 621981, 2366209; 621909, 2366064; 621885, 2365986; 621912, 2365905; 621927, 2365839; 621942, 2365776; 621948, 2365671; 621939, 2365619; 621933, 2365568; 621972, 2365526; 622014, 2365463; 622038, 2365358; 622089, 2365250; 622180, 2365120; 622360, 2364985; 622381, 2364943; 622363, 2364925; 622273, 2364928; 622129, 2364994; 622023, 2365075; 621936, 2365153; 621882, 2365222; 621867, 2365346; 621825, 2365439; 621801, 2365481; 621720, 2365539; 621708, 2365584; 621747, 2365678; 621756, 2365782; 621732, 2365867; 621699, 2365933; 621644, 2365981; 621665, 2366041; 621696, 2366089; 621668, 2366095; 621542, 2366138; 621491, 2366171; 621434, 2366213; 621440, 2366252; 621488, 2366294; 621494, 2366342; 621452, 2366369; 621314, 2366456; 621254, 2366537; 621263, 2366604; 621276, 2366603; 621205, 2366661; 621061, 2366733; 620905, 2366781; 620721, 2366781; 620640, 2366796; 620433, 2366913; 620327, 2366970; 620285, 2367061; 620222, 2367187; 620192, 2367283; 620195, 2367373; 620231, 2367458; 620231, 2367521; 620225, 2367632; 620219, 2367785; 620240, 2367839; 620231, 2367924; 620264, 2368044; 620336, 2368134; 620409, 2368200; 620481, 2368278; 620469, 2368306; 620408, 2368378; 620406, 2368378; 620406, 2368380; 620403, 2368384; 620406, 2368384; 620406, 2368390; 620333, 2368534; 620306, 2368720; 620162, 2368850; 620063, 2368937; 620003, 2368961; 619858, 2369045; 619708, 2369181; 619504, 2369310; 619335, 2369406; 619293, 2369445; 619278, 2369490; 619203, 2369580; 619154, 2369626; 619084, 2369686; 619074, 2369695; 619063, 2369697; 618991, 2369709; 618992, 2369710; 618770, 2369752; 618505, 2369812; 618361, 2369893; 618211, 2369986; 618138, 2370077; 618021, 2370242; 617898, 2370338; 617835, 2370398; 617778, 2370455; 617600, 2370576; 617525, 2370615; 617402, 2370687; 617308, 2370798; 617188, 2370900; 617044, 2371027; 617050, 2371039; 616767, 2371237; 616683, 2371324; 616626, 2371436; 616599, 2371538; 616599, 2371655; 616557, 2371760; 616536, 2371815; 616506, 2371881; 616503, 2372034; 616503, 2372139; 616497, 2372199; 616500, 2372287; 616542, 2372389; 616542, 2372464; 616563, 2372560; 616593, 2372629; 616575, 2372762; 616572, 2372891; 616548, 2372969; 616494, 2373008; 616500, 2373008; 616458, 2373086; 616446, 2373195; 616452, 2373324; 616415, 2373372; 616364, 2373429; 616112, 2373444; 615814, 2373492; 615601, 2373556; 615360, 2373664; 615201, 2373787; 615116, 2373928; 615104, 2374055; 615068, 2374169; 615011, 2374283; 614948,

2374431; 614870, 2374599; 614819, 2374755; 614819, 2374861; 614816, 2374861; 614810, 2374936; 614828, 2375020; 614861, 2375104; 614852, 2375185; 614861, 2375303; 614825, 2375375; 614765, 2375465; 614762, 2375564; 614762, 2375687; 614756, 2375832; 614777, 2375979; 614762, 2376138; 614723, 2376259; 614641, 2376349; 614641, 2376391; 614641, 2376550; 614617, 2376653; 614590, 2376791; 614602, 2376929; 614602, 2376932; 614530, 2377068; 614482, 2377179; 614434, 2377242; 614365, 2377350; 614323, 2377431; 614211, 2377594; 614115, 2377753; 614115, 2377816; 614088, 2377922; 614031, 2378000; 613935, 2378000; 613833, 2377985; 613763, 2378008; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; return to starting point.

(ii) **Note:** Map 251 follows:

Map 251 Unit 20 - *Sanicula purpurea* - a



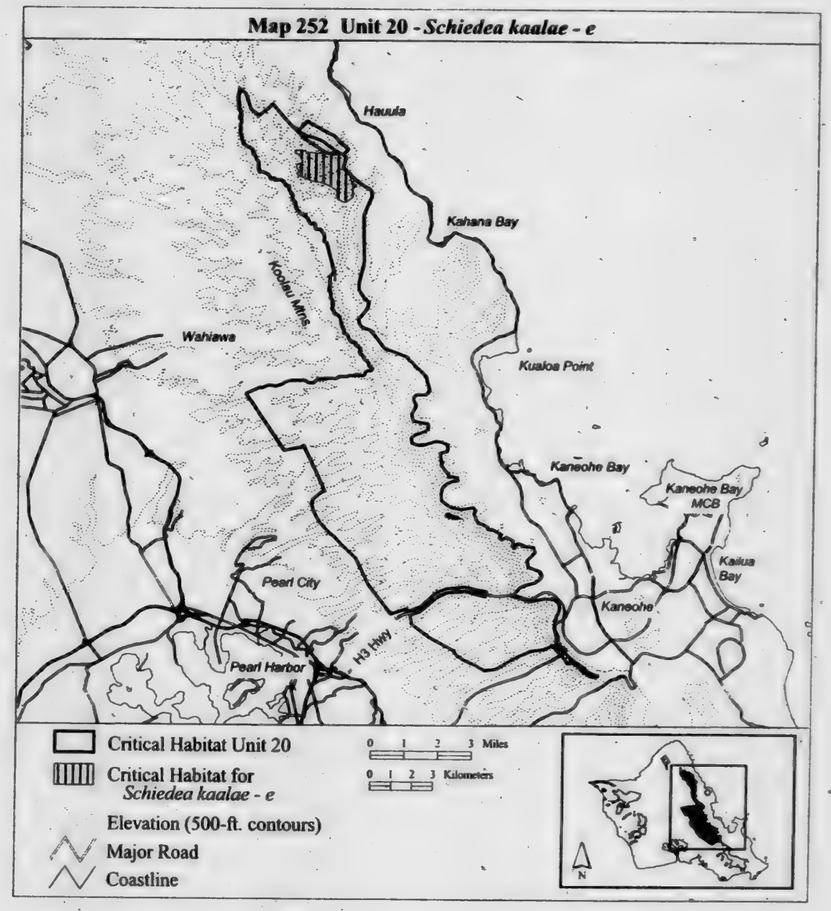
(252) Oahu 20—*Schiedea kaalae*—e (378 ha; 934 ac)

(i) Unit consists of the following 100 boundary points: Start at 610262, 2387162; 610252, 2387163; 610196, 2387181; 610159, 2387216; 610133, 2387242; 610063, 2387266; 610077, 2387301; 610149, 2387343; 610210, 2387403; 610168, 2387460; 610107, 2387518; 610058, 2387565; 610063, 2387719; 610159, 2387749; 610222, 2387768; 610273, 2387791; 610320, 2387824; 610336, 2387848; 610325, 2387892; 610299, 2387953; 610259, 2388006; 610259, 2388044; 610266, 2388112; 610252, 2388147; 610222, 2388182; 610178, 2388226; 610114, 2388238; 610000, 2388289; 609981, 2388301; 609999, 2388345; 610027, 2388381; 610054, 2388383; 610098, 2388387; 610124, 2388392; 610140, 2388423; 610168, 2388432; 610222, 2388437; 610278, 2388437; 610318, 2388437; 610348, 2388390; 610402, 2388369; 610446, 2388369; 610486, 2388355; 610504, 2388319; 610504, 2388322; 611095, 2388275; 611810,

2388272; 612073, 2388265; 612212, 2388258; 612267, 2388207; 612400, 2388103; 612399, 2388096; 612360, 2387934; 612330, 2387792; 612282, 2387600; 612285, 2387571; 612284, 2387567; 612284, 2387566; 612285, 2387565; 612286, 2387564; 612293, 2387485; 612424, 2387377; 612559, 2387286; 612603, 2387148; 612610, 2387155; 612620, 2387131; 612633, 2387027; 612677, 2386915; 612714, 2386885; 612785, 2386861; 612876, 2386831; 612910, 2386794; 612873, 2386740; 612789, 2386649; 612731, 2386564; 612731, 2386446; 612731, 2386338; 612731, 2386230; 612637, 2386146; 612542, 2386065; 612407, 2385981; 612313, 2385977; 612235, 2386008; 612127, 2386072; 612013, 2386132; 611965, 2386227; 611972, 2386311; 612002, 2386372; 612063, 2386480; 612009, 2386551; 612014, 2386556; 611965, 2386574; 611658, 2386733; 611486, 2386821; 611257, 2386902; 611071, 2386929; 610859, 2386949; 610680, 2387010; 610558, 2387054; 610437, 2387114; return to starting point.

(ii) **Note:** Map 252 follows:

Map 252 Unit 20 - *Schiedea kaalae* - e

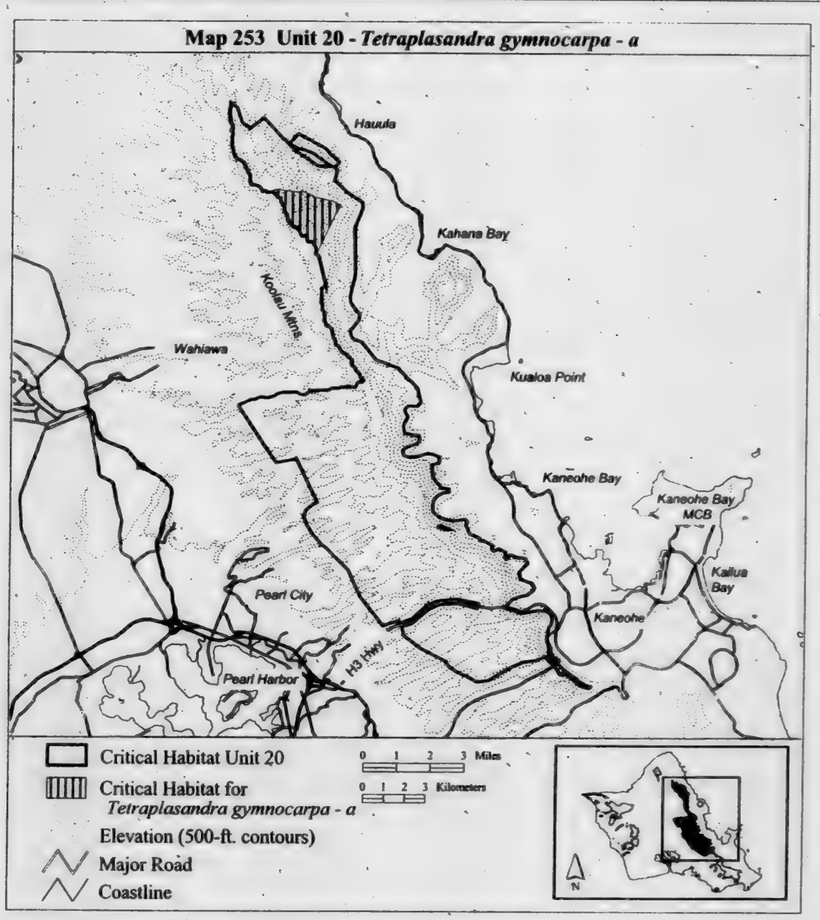


(253) Oahu 20—*Tetraplasandra gymnocarpa*—a (457 ha; 1,129 ac)

(i) Unit consists of the following 197 boundary points: Start at 609064, 2386997; 609513, 2387148; 610476, 2387018; 610552, 2386998; 610622, 2387041; 610795, 2387041; 611132, 2386909; 611289, 2386794; 611684, 2386695; 612203, 2386580; 612317, 2386517; 612583, 2386377; 612341, 2386005; 611418, 2384089; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611429, 2384357; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611374, 2384489; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257,

2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611191, 2384703; 611165, 2384698; 611119, 2384696; 611118, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611064, 2384681; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610973, 2384942; 610965, 2384959; 610965, 2384960; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610508, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610440, 2385363; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609797, 2386444; 609790, 2386450; 609769, 2386468; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609704, 2386738; 609693, 2386745; 609692, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609438, 2386934; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248, 2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; return to starting point.

(ii) **Note:** Map 253 follows:



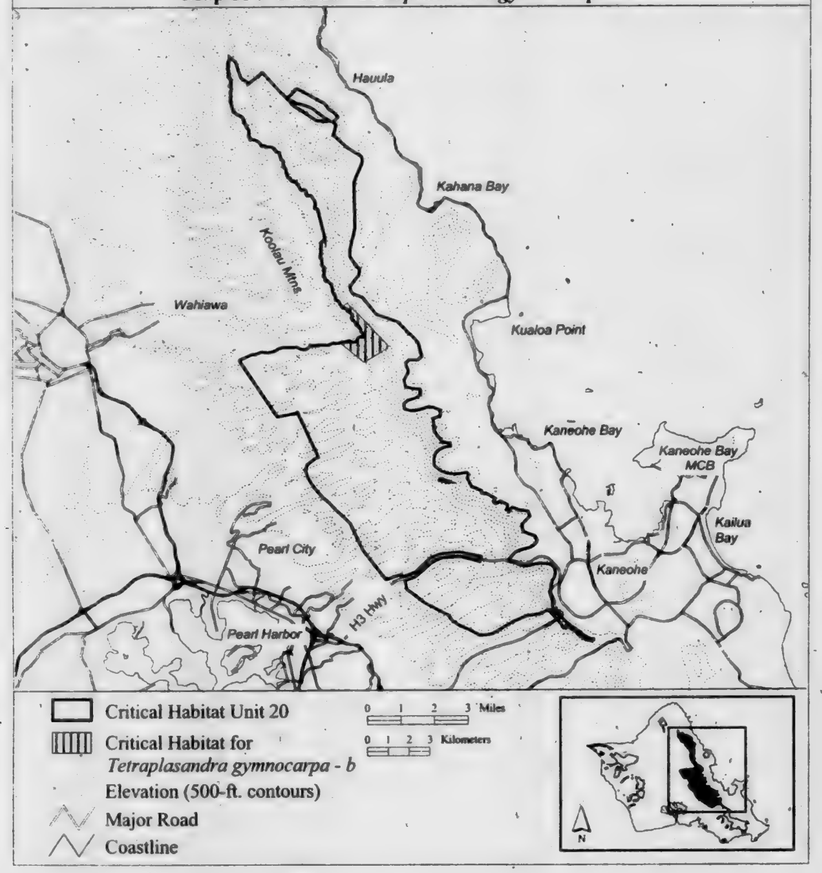
(254) Oahu 20—*Tetraplasandra gymnocarpa*—b (235 ha; 581 ac)

(i) Unit consists of the following 125 boundary points: Start at 612686, 2377751; 612705, 2377757; 612764, 2377738; 612765, 2377738; 612794, 2377742; 612814, 2377728; 612853, 2377742; 612870, 2377747; 613040, 2377760; 613059, 2377772; 613059, 2377774; 613085, 2377777; 613154, 2377768; 613224, 2377738; 613264, 2377728; 613265, 2377728; 613335, 2377738; 613336, 2377738; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613711, 2378118; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613568, 2378357; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613462, 2378464; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613247, 2378750; 613232, 2378759; 613231, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378860; 613145, 2378861; 613146, 2378862; 613145, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612945, 2379277; 612929,

2379297; 612928, 2379298; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612708, 2379419; 612945, 2379601; 614821, 2377667; 614879, 2377445; 613757, 2376749; 612632, 2377703; 612668, 2377720; 612688, 2377749; return to starting point.

(ii) **Note:** Map 254 follows:

Map 254 Unit 20 - *Tetraplasandra gymnocarpa - b*

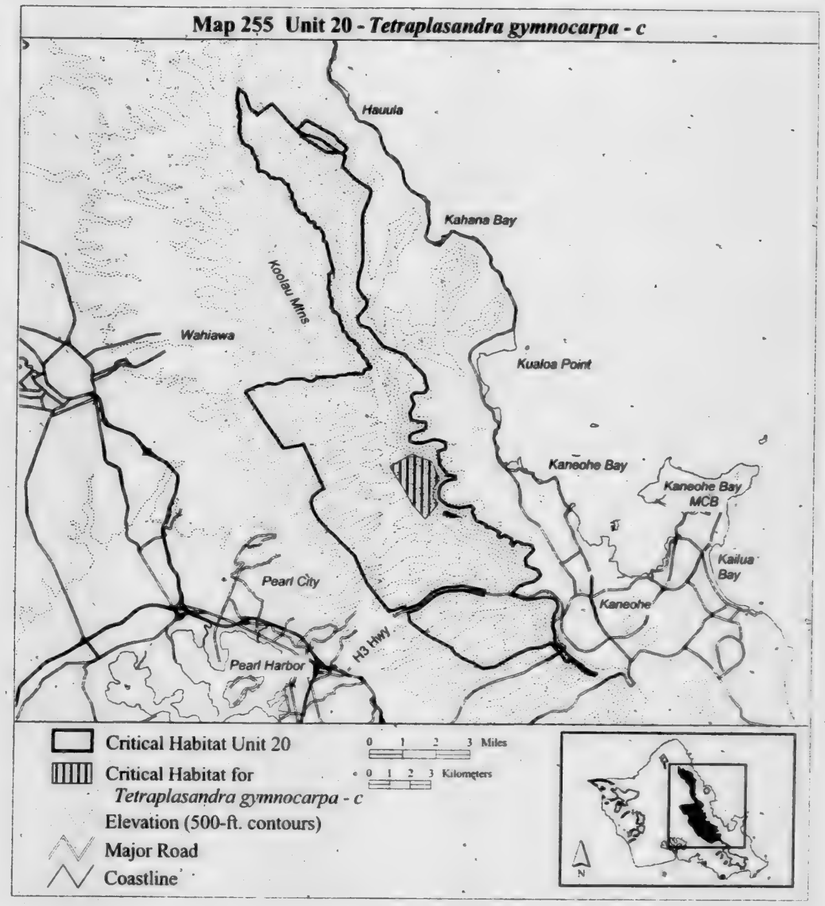


(255) Oahu 20—*Tetraplasandra gymnocarpa*—c (411 ha; 1,016 ac)

(i) Unit consists of the following 12 boundary points: Start at 614721, 2373348; 615833, 2373916; 616083, 2373791; 616741, 2373598; 617116, 2372803; 617082, 2372633; 616843, 2372292; 616855, 2371861; 617070, 2371555; 616446, 2370840; 615799, 2371623; 615300, 2372440; return to starting point.

(ii) **Note:** Map 255 follows:

Map 255 Unit 20 - *Tetraplasandra gymnocarpa - c*

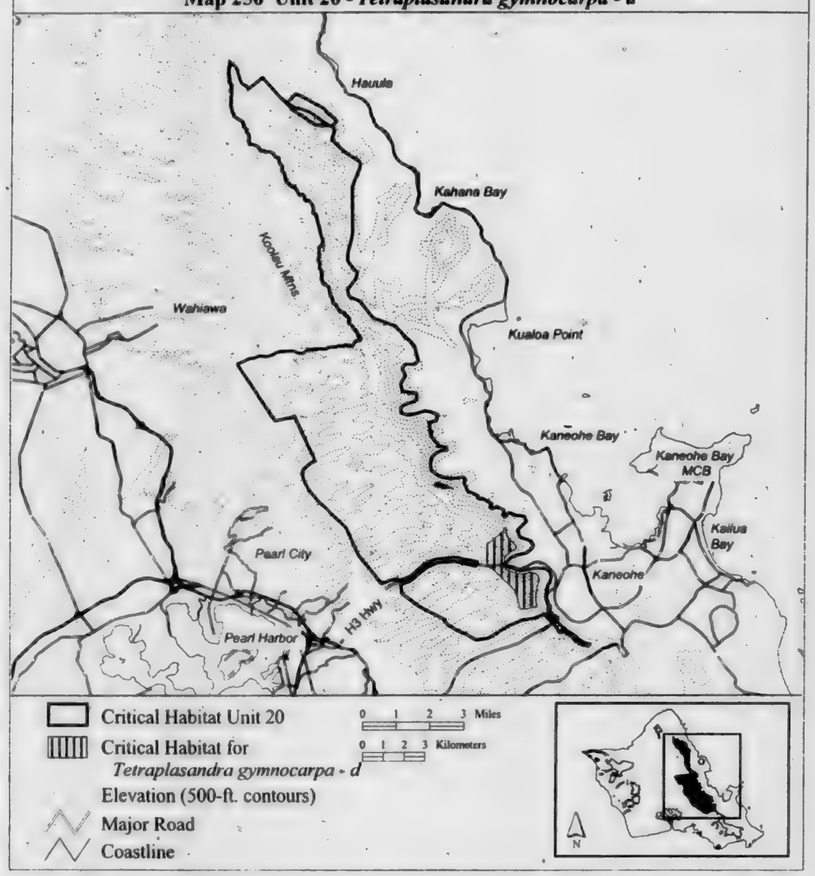


(256) Oahu 20—*Tetraplasandra gymnocarpa*—d (370 ha; 914 ac)

(i) Unit consists of the following 42 boundary points: Start at 621415, 2365210; 621377, 2365197; 621260, 2365702; 621215, 2365844; 621141, 2366079; 619831, 2367368; 619834, 2367413; 619826, 2367420; 619787, 2367457; 619819, 2368310; 619899, 2368379; 619896, 2368335; 620536, 2368845; 620712, 2369081; 620721, 2368747; 620937, 2368490; 621164, 2368253; 621205, 2368109; 620896, 2367965; 620670, 2367717; 620670, 2367338; 620604, 2367260; 620603, 2367260; 620603, 2367259; 620604, 2367258; 620682, 2367237; 620711, 2367069; 621226, 2366873; 621451, 2366857; 621905, 2366944; 621914, 2366941; 621926, 2366944; 621932, 2366935; 622173, 2366851; 622276, 2366759; 622317, 2366501; 622183, 2366264; 622122, 2365750; 622170, 2365369; 622180, 2365290; 621429, 2365165; 621416, 2365206; return to starting point.

(ii) **Note:** Map 256 follows:

Map 256 Unit 20 - *Tetraplasandra gymnocarpa - d*



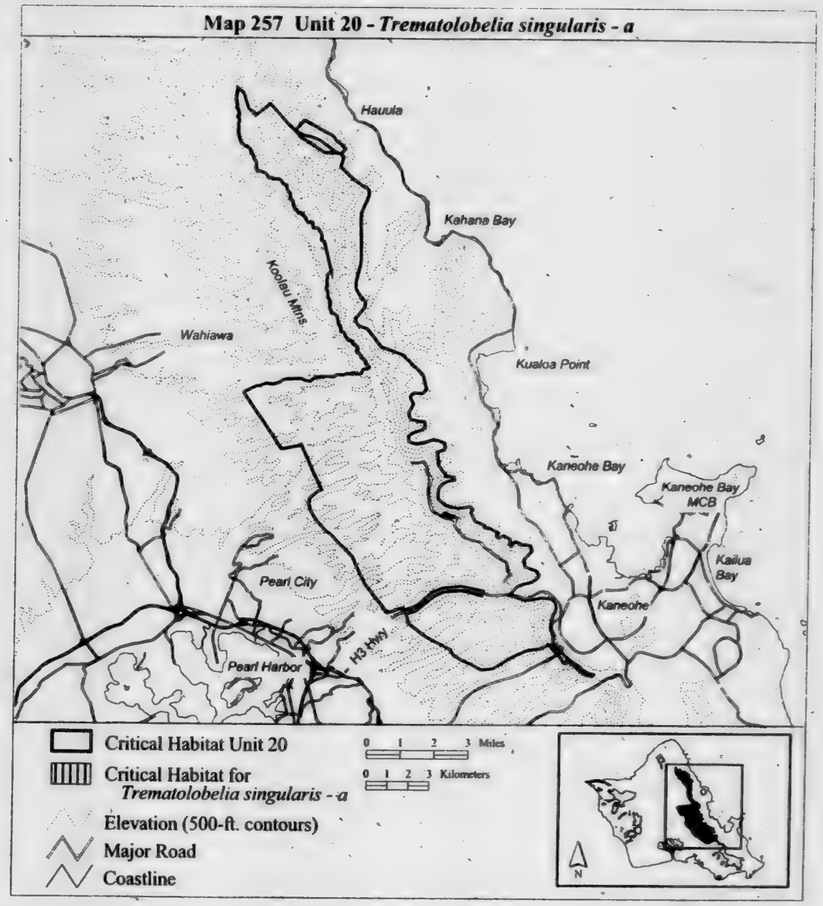
(257) Oahu 20—*Trematolobelia singularis*—a (88 ha; 217 ac)

(i) Unit consists of the following 173 boundary points: Start at 619374, 2369581; 619392, 2369559; 619441, 2369499; 619483, 2369472; 619551, 2369457; 619725, 2369358; 619888, 2369229; 620066, 2369093; 620195, 2369010; 620366, 2368938; 620453, 2368904; 620483, 2368794; 620502, 2368623; 620559, 2368456; 620624, 2368335; 620688, 2368271; 620684, 2368214; 620586, 2368153; 620479, 2368054; 620381, 2367956; 620362, 2367873; 620290, 2367865; 620260, 2367914; 620316, 2368001; 620381, 2368058; 620472, 2368187; 620552, 2368248; 620582, 2368282; 620536, 2368339; 620430, 2368437; 620430, 2368547; 620415, 2368684; 620423, 2368775; 620381, 2368839; 620298, 2368862; 620097, 2368972; 619953, 2369059; 619714, 2369248; 619539, 2369351; 619411, 2369430; 619377, 2369472; 619377, 2369458; 619289, 2369552; 619210, 2369659; 619134, 2369731; 619013, 2369783; 618837, 2369792; 618789, 2369792; 618637, 2369862; 618406, 2369919; 618243, 2370004; 618243, 2370068; 618197, 2370144; 618185, 2370171; 618137, 2370183; 618109, 2370220; 618079, 2370301; 617988, 2370408; 617906, 2370492; 617858, 2370556; 617858, 2370623; 617876, 2370687; 617897, 2370796; 617836, 2370808; 617773, 2370817; 617724, 2370838; 617648, 2370859; 617542, 2370859; 617451, 2370902; 617379, 2370941; 617218, 2371026; 617157, 2371064; 617151, 2371055; 617084, 2371122; 616985, 2371134; 616903, 2371185; 616812, 2371264; 616733, 2371359; 616713, 2371457; 616666, 2371619; 616638, 2371785; 616611, 2371942; 616583, 2372108; 616599, 2372266; 616638, 2372415; 616634, 2372423; 616631, 2372565; 616698, 2372672; 616678, 2372739; 616666, 2372806; 616654, 2372908; 616631, 2372964; 616567, 2372999; 616536, 2373078; 616489, 2373161; 616524, 2373236; 616532, 2373310; 616504, 2373381; 616469, 2373445; 616433, 2373496; 616410,

2373563; 616366, 2373579; 616351, 2373567; 616252, 2373543; 616122, 2373523; 615948, 2373519; 615842, 2373516; 615814, 2373594; 615864, 2373580; 615870, 2373618; 616047, 2373606; 616102, 2373606; 616185, 2373606; 616319, 2373634; 616390, 2373665; 616473, 2373638; 616536, 2373535; 616607, 2373405; 616607, 2373255; 616627, 2373137; 616717, 2373042; 616757, 2372960; 616820, 2372829; 616832, 2372707; 616796, 2372605; 616761, 2372522; 616761, 2372419; 616729, 2372348; 616705, 2372195; 616709, 2372096; 616721, 2371958; 616753, 2371836; 616769, 2371714; 616761, 2371674; 616796, 2371548; 616839, 2371473; 616875, 2371371; 616958, 2371280; 617045, 2371209; 617192, 2371133; 617194, 2371135; 617369, 2371041; 617509, 2370969; 617636, 2370923; 617697, 2370908; 617824, 2370908; 617958, 2370938; 618000, 2370956; 618058, 2370984; 618109, 2370993; 618128, 2370956; 618097, 2370929; 618058, 2370868; 618027, 2370799; 617988, 2370714; 617967, 2370641; 617973, 2370568; 618030, 2370492; 618076, 2370438; 618106, 2370408; 618161, 2370368; 618212, 2370256; 618337, 2370141; 618385, 2370065; 618431, 2370004; 618546, 2369956; 618737, 2369901; 618855, 2369874; 619068, 2369828; 619198, 2369792; 619313, 2369707; 619347, 2369643; 619374, 2369586; return to starting point.

(ii) **Note:** Map 257 follows:

Map 257 Unit 20 - *Trematolobelia singularis - a*



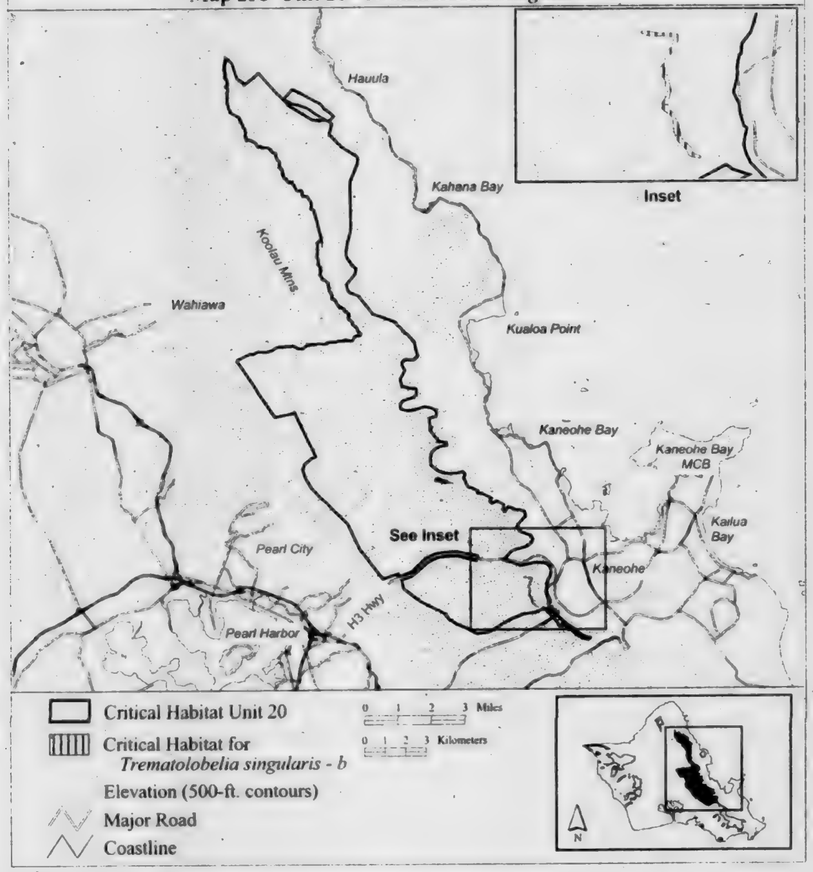
(258) Oahu 20—*Trematolobelia singularis*—b (10 ha; 25 ac)

(i) Unit consists of the following 104 boundary points: Start at 622202, 2365006; 622110, 2365022; 622077, 2365045; 622053, 2365096; 622025, 2365135; 621986, 2365171; 621931, 2365225; 621917, 2365275; 621904, 2365327; 621896, 2365404; 621891, 2365456; 621854, 2365504; 621801, 2365545; 621767, 2365584; 621767, 2365605; 621772, 2365640; 621790,

2365678; 621813, 2365705; 621835, 2365747; 621834, 2365781; 621835, 2365782; 621835, 2365784; 621832, 2365788; 621833, 2365788; 621823, 2365812; 621813, 2365837; 621804, 2365879; 621799, 2365908; 621779, 2365935; 621745, 2365973; 621740, 2365992; 621740, 2366025; 621751, 2366056; 621784, 2366087; 621807, 2366127; 621803, 2366169; 621799, 2366195; 621809, 2366216; 621840, 2366239; 621871, 2366276; 621890, 2366304; 621900, 2366327; 621907, 2366351; 621891, 2366388; 621840, 2366397; 621787, 2366406; 621706, 2366405; 621654, 2366406; 621584, 2366414; 621553, 2366429; 621531, 2366439; 621532, 2366457; 621565, 2366462; 621627, 2366456; 621683, 2366445; 621730, 2366436; 621801, 2366441; 621865, 2366434; 621930, 2366434; 621953, 2366420; 621956, 2366377; 621953, 2366337; 621928, 2366285; 621899, 2366237; 621880, 2366205; 621857, 2366169; 621860, 2366136; 621840, 2366101; 621815, 2366053; 621803, 2366028; 621798, 2366007; 621823, 2365964; 621846, 2365922; 621870, 2365794; 621871, 2365794; 621872, 2365783; 621874, 2365781; 621871, 2365770; 621870, 2365770; 621869, 2365768; 621857, 2365714; 621848, 2365669; 621834, 2365618; 621834, 2365594; 621849, 2365573; 621880, 2365543; 621914, 2365506; 621935, 2365444; 621959, 2365404; 621970, 2365335; 621981, 2365287; 621983, 2365253; 622011, 2365219; 622022, 2365197; 622057, 2365178; 622088, 2365146; 622107, 2365130; 622118, 2365084; 622130, 2365064; 622146, 2365054; 622172, 2365050; 622200, 2365037; 622217, 2365025; 622217, 2365011; return to starting point.

(ii) **Note:** Map 258 follows:

Map 258 Unit 20 - *Trematolobelia singularis - b*



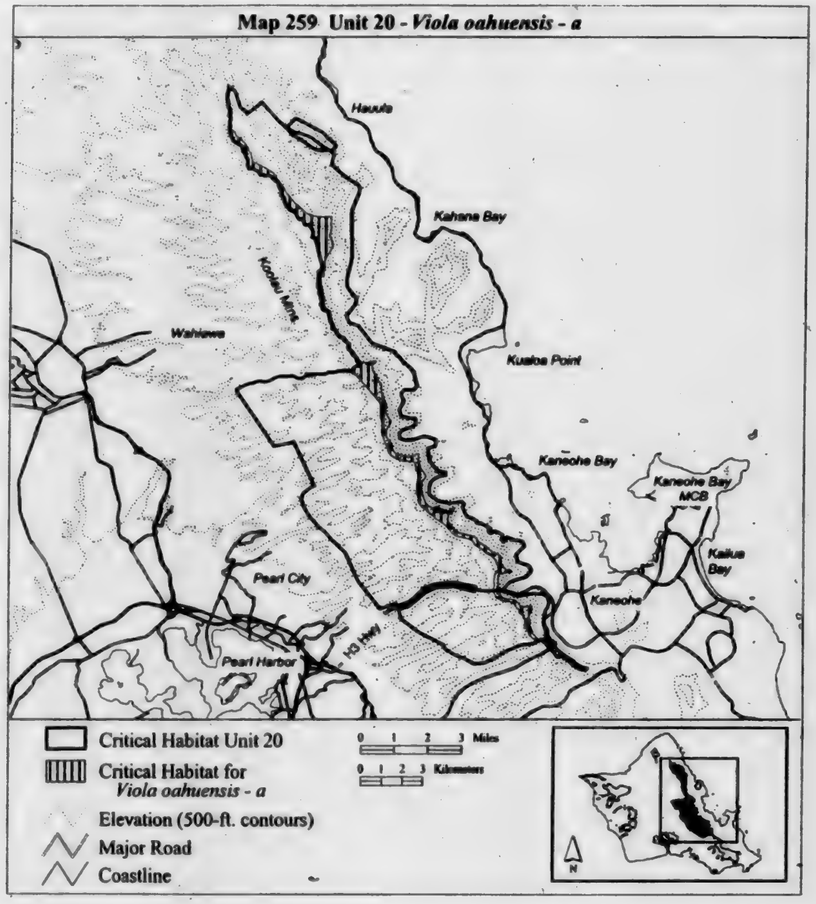
(259) Oahu 20—*Viola oahuensis*—a (903 ha; 2,232 ac)

(i) Unit consists of the following 1014 boundary points: Start at 613555, 2377987; 613674, 2377978; 613675, 2377978; 613694, 2377988; 613721, 2377976; 613733, 2377976; 613762, 2378001; 613771, 2378068; 613764, 2378090; 613757, 2378093; 613753, 2378093; 613751, 2378091; 613747, 2378094; 613746, 2378095; 613718, 2378106; 613711, 2378117; 613691, 2378143; 613660, 2378168; 613602, 2378212; 613593, 2378224; 613586, 2378238; 613583, 2378253; 613583, 2378292; 613583, 2378328; 613583, 2378329; 613568, 2378356; 613556, 2378372; 613524, 2378400; 613517, 2378408; 613476, 2378444; 613462, 2378463; 613447, 2378478; 613424, 2378499; 613386, 2378532; 613364, 2378562; 613346, 2378613; 613330, 2378641; 613265, 2378728; 613248, 2378749; 613232, 2378759; 613213, 2378764; 613199, 2378769; 613190, 2378778; 613172, 2378818; 613172, 2378819; 613152, 2378848; 613147, 2378859; 613147, 2378860; 613146, 2378860; 613145, 2378861; 613146, 2378862; 613144, 2378873; 613159, 2378951; 613185, 2378998; 613187, 2379004; 613187, 2379005; 613185, 2379019; 613185, 2379020; 613171, 2379040; 613142, 2379072; 613115, 2379100; 613099, 2379113; 613098, 2379113; 613063, 2379127; 612997, 2379166; 612978, 2379188; 612969, 2379215; 612963, 2379226; 612959, 2379247; 612959, 2379248; 612945, 2379276; 612929, 2379297; 612905, 2379314; 612876, 2379327; 612840, 2379337; 612770, 2379350; 612764, 2379355; 612758, 2379364; 612748, 2379389; 612748, 2379390; 612725, 2379410; 612700, 2379424; 612683, 2379441; 612663, 2379470; 612619, 2379529; 612600, 2379563; 612586, 2379618; 612573, 2379650; 612555, 2379679; 612517, 2379716; 612495, 2379729; 612412, 2379753; 612397, 2379761; 612387, 2379798; 612388, 2379851; 612386, 2379928; 612379, 2379961; 612375, 2379970; 612367, 2379981; 612366, 2379981; 612353, 2379991; 612328, 2380018; 612262, 2380145; 612255, 2380163; 612249, 2380199; 612248, 2380233; 612234, 2380304; 612226, 2380334; 612225, 2380334; 612224, 2380337; 612211, 2380367; 612213, 2380397; 612218, 2380419; 612218, 2380420; 612215, 2380452; 612212, 2380464; 612202, 2380506; 612202, 2380507; 612197, 2380516; 612177, 2380539; 612112, 2380593; 612086, 2380625; 612073, 2380644; 612046, 2380669; 612016, 2380686; 611992, 2380690; 611965, 2380687; 611955, 2380689; 611941, 2380693; 611927, 2380702; 611919, 2380710; 611905, 2380743; 611889, 2380825; 611889, 2380826; 611880, 2380839; 611856, 2380862; 611812, 2380892; 611799, 2380905; 611798, 2380918; 611800, 2380925; 611815, 2380943; 611838, 2380960; 611848, 2380980; 611851, 2381022; 611848, 2381067; 611853, 2381081; 611879, 2381118; 611879, 2381119; 611879, 2381131; 611879, 2381132; 611868, 2381149; 611858, 2381155; 611857, 2381155; 611847, 2381160; 611837, 2381167; 611828, 2381178; 611825, 2381193; 611830, 2381214; 611838, 2381223; 611854, 2381250; 611854, 2381251; 611856, 2381258; 611855, 2381265; 611855, 2381266; 611849, 2381285; 611848, 2381286; 611828, 2381312; 611784, 2381363; 611765, 2381383; 611734, 2381424; 611733, 2381424; 611730, 2381426; 611737, 2381446; 611745, 2381514; 611746, 2381550; 611748, 2381618; 611739, 2381669; 611736, 2381680; 611727, 2381699; 611727, 2381700; 611673, 2381758; 611666, 2381774; 611666, 2381794; 611670, 2381810; 611702, 2381865; 611712, 2381882; 611712, 2381883; 611712, 2381915; 611712, 2381916; 611710, 2381923; 611687, 2381955; 611687, 2381978; 611695, 2381990; 611702, 2382013; 611702, 2382014; 611700, 2382058; 611694, 2382120; 611695, 2382225; 611701, 2382278; 611701, 2382279; 611699, 2382320; 611695, 2382360; 611693, 2382433; 611692, 2382455; 611698, 2382473; 611744, 2382512; 611805, 2382557; 611831, 2382588; 611844, 2382604; 611850, 2382621; 611874, 2382653; 611896, 2382683; 611903, 2382704; 611903, 2382705; 611903, 2382706; 611902, 2382707; 611901, 2382707; 611900, 2382707; 611900, 2382706; 611899, 2382706; 611892, 2382686; 611891, 2382684; 611795, 2383056; 611597, 2383822; 611567, 2383939; 611567, 2383940; 611561, 2383949; 611537, 2384020; 611536, 2384020; 611525, 2384040; 611515, 2384051; 611495, 2384064; 611460, 2384078; 611430, 2384082; 611404, 2384097; 611396, 2384120; 611393, 2384150; 611397, 2384172; 611413, 2384204; 611422, 2384233; 611428, 2384263; 611435, 2384302; 611435, 2384321; 611429, 2384356; 611417, 2384382; 611394, 2384464; 611387, 2384476; 611374, 2384488; 611358, 2384501; 611334, 2384524; 611326, 2384536; 611302, 2384584; 611257, 2384667; 611256, 2384667; 611245, 2384680; 611244, 2384681; 611224, 2384695; 611223, 2384695; 611203, 2384703; 611202, 2384704; 611192, 2384704; 611165, 2384698; 611119, 2384696; 611082, 2384690; 611081, 2384690; 611065, 2384682; 611058, 2384675; 611046, 2384674; 611039, 2384675; 611028, 2384688; 611014, 2384713; 610994, 2384778; 610981, 2384838; 610976, 2384927; 610973, 2384941; 610965, 2384959; 610957, 2384969; 610957, 2384970; 610934, 2384987; 610933, 2384987; 610909, 2384993; 610908, 2384993; 610888, 2384986; 610839, 2384956; 610809, 2384945; 610780, 2384942; 610766, 2384942; 610749, 2384953; 610709, 2384995; 610692, 2385014; 610679, 2385041; 610630, 2385180; 610616, 2385205; 610606, 2385215; 610606, 2385216; 610598, 2385220; 610558, 2385236; 610543, 2385248; 610533, 2385266; 610516, 2385329; 610509, 2385341; 610509, 2385342; 610497, 2385351; 610496, 2385351; 610454, 2385362; 610440, 2385362; 610394, 2385362; 610370, 2385370; 610333, 2385392; 610292, 2385406; 610280, 2385413; 610261, 2385429; 610248, 2385449; 610237, 2385473; 610222, 2385512; 610222, 2385513; 610214, 2385522; 610206, 2385531; 610206, 2385532; 610187, 2385540; 610166, 2385544; 610134, 2385558; 610129, 2385561; 610122, 2385580; 610119, 2385604; 610119, 2385605; 610112, 2385620; 610111, 2385621; 610093, 2385637; 610078, 2385652; 610077, 2385659; 610090, 2385687; 610097, 2385698; 610098, 2385699; 610098, 2385700; 610097, 2385705; 610097, 2385706; 610081, 2385734; 610054, 2385762; 610039, 2385790; 610028, 2385816; 610024, 2385839; 610027, 2385873; 610035, 2385901; 610035, 2385902; 610035, 2385943; 610035, 2385944; 610029, 2385956; 610029, 2385957; 610003, 2385991; 609994, 2386004; 609993, 2386004; 609993, 2386005; 609971, 2386017; 609955, 2386025; 609948, 2386031; 609929, 2386085; 609909, 2386112; 609908, 2386113; 609898, 2386121; 609887, 2386134; 609883, 2386146; 609884, 2386168; 609879, 2386204; 609884, 2386223; 609905, 2386254; 609905, 2386255; 609909, 2386278; 609909, 2386279; 609907, 2386291; 609881, 2386354; 609880, 2386355; 609858, 2386384; 609834, 2386404; 609797, 2386443; 609790, 2386450; 609769, 2386466; 609748, 2386495; 609737, 2386524; 609719, 2386644; 609711, 2386719; 609711, 2386720; 609705, 2386737; 609704, 2386737; 609693, 2386745; 609595, 2386759; 609570, 2386766; 609560, 2386772; 609536, 2386797; 609481, 2386863; 609461, 2386894; 609449, 2386918; 609449, 2386919; 609439, 2386933; 609425, 2386943; 609379, 2386966; 609323, 2387005; 609308, 2387012; 609269, 2387020; 609248,

2387021; 609184, 2387014; 609134, 2387001; 609078, 2386982; 609074, 2386984; 609062, 2387000; 609048, 2387031; 609047, 2387032; 609025, 2387051; 608989, 2387068; 608988, 2387068; 608975, 2387068; 608974, 2387068; 608905, 2387055; 608862, 2387042; 608856, 2387043; 608849, 2387049; 608810, 2387121; 608794, 2387150; 608794, 2387151; 608776, 2387175; 608736, 2387223; 608719, 2387246; 608718, 2387246; 608693, 2387265; 608692, 2387265; 608643, 2387281; 608604, 2387303; 608603, 2387303; 608558, 2387325; 608497, 2387362; 608496, 2387362; 608459, 2387369; 608458, 2387369; 608435, 2387371; 608410, 2387366; 608377, 2387354; 608355, 2387351; 608336, 2387351; 608316, 2387358; 608308, 2387366; 608294, 2387395; 608292, 2387413; 608300, 2387459; 608299, 2387471; 608298, 2387472; 608289, 2387479; 608252, 2387489; 608234, 2387501; 608228, 2387506; 608223, 2387520; 608230, 2387572; 608232, 2387576; 608238, 2387590; 608252, 2387607; 608267, 2387627; 608267, 2387628; 608272, 2387642; 608275, 2387670; 608275, 2387671; 608273, 2387689; 608258, 2387739; 608257, 2387765; 608259, 2387774; 608270, 2387794; 608274, 2387812; 608274, 2387813; 608254, 2387851; 608254, 2387852; 608227, 2387885; 608190, 2387914; 608165, 2387924; 608146, 2387938; 608143, 2387944; 608141, 2387956; 608156, 2388000; 608156, 2388001; 608156, 2388002; 608152, 2388015; 608129, 2388052; 608116, 2388066; 608100, 2388105; 608092, 2388136; 608092, 2388137; 608082, 2388155; 608034, 2388210; 608029, 2388227; 608037, 2388262; 608037, 2388263; 608034, 2388274; 608017, 2388312; 608011, 2388328; 608011, 2388329; 607997, 2388340; 607987, 2388344; 607980, 2388349; 607975, 2388357; 607973, 2388367; 607974, 2388406; 607972, 2388420; 607965, 2388446; 607964, 2388447; 607956, 2388457; 607956, 2388458; 607898, 2388494; 607897, 2388494; 607887, 2388497; 607865, 2388499; 607855, 2388502; 607821, 2388528; 607809, 2388537; 607808, 2388537; 607783, 2388550; 607782, 2388550; 607736, 2388557; 607719, 2388559; 607692, 2388571; 607666, 2388594; 607654, 2388609; 607613, 2388646; 607567, 2388681; 607550, 2388690; 607540, 2388696; 607534, 2388706; 607532, 2388717; 607534, 2388752; 607534, 2388761; 607534, 2388762; 607514, 2388795; 607461, 2388853; 607451, 2388878; 607448, 2388911; 607450, 2388923; 607446, 2388944; 607426, 2388990; 607425, 2389020; 607427, 2389043; 607427, 2389044; 607417, 2389071; 607411, 2389083; 607404, 2389108; 607378, 2389157; 607359, 2389185; 607358, 2389186; 607353, 2389189; 607357, 2389208; 607364, 2389224; 607376, 2389239; 607387, 2389255; 607516, 2389193; 607603, 2389123; 607614, 2389126; 607684, 2388961; 607793, 2388845; 607972, 2388719; 608134, 2388550; 608218, 2388434; 608271, 2388339; 608359, 2388160; 608439, 2387978; 608443, 2387848; 608531, 2387711; 608512, 2387694; 608752, 2387578; 609096, 2387413; 609313, 2387265; 609507, 2387135; 609584, 2387016; 609622, 2386911; 609763, 2386749; 609945, 2386514; 609941, 2386511; 610061, 2386363; 610146, 2386187; 610314, 2385998; 610391, 2385892; 610472, 2385812; 610500, 2385770; 610637, 2385657; 610770, 2385534; 611019, 2385324; 611189, 2385214; 611538, 2385098; 611867, 2385077; 612227, 2385108; 612290, 2385013; 612290, 2384685; 612301, 2384494; 612301, 2384378; 612216, 2384219; 612258, 2384049; 612407, 2383795; 612354, 2383615; 612205, 2383372; 612078, 2383170; 612004, 2382969; 611994, 2382821; 611964, 2382788; 612022, 2382759; 612039, 2382714; 612019, 2382660; 611974, 2382584; 611886, 2382499; 611838, 2382423; 611793, 2382296; 611799, 2382154; 611810, 2382058; 611810, 2381931; 611821, 2381832; 611844, 2381759; 611883, 2381550; 611920, 2381366; 611974, 2381248; 611974, 2381121; 611957, 2381044; 611960, 2380979; 611880, 2380970; 611968, 2380977; 612013, 2380847; 612043, 2380766; 612167, 2380685; 612227, 2380637; 612305, 2380583; 612311, 2380532; 612293, 2380399; 612329, 2380291; 612362, 2380186; 612449, 2380029; 612497, 2379948; 612522, 2379813; 612555, 2379765; 612651, 2379690; 612675, 2379587; 612744, 2379497; 612876, 2379410; 612991, 2379365; 613051, 2379263; 613096, 2379178; 613192, 2379118; 613237, 2379103; 613285, 2379046; 613258, 2378974; 613264, 2378974; 613252, 2378905; 613279, 2378818; 613330, 2378763; 613403, 2378709; 613460, 2378640; 613532, 2378520; 613679, 2378379; 613721, 2378294; 613733, 2378243; 613860, 2378171; 614070, 2378150; 614157, 2378153; 614244, 2378186; 614314, 2378189; 614359, 2378204; 614443, 2378231; 614512, 2378219; 614542, 2378201; 614527, 2378162; 614467, 2378126; 614374, 2378087; 614314, 2378030; 614320, 2377973; 614344, 2377943; 614356, 2377858; 614356, 2377777; 614389, 2377726; 614452, 2377651; 614509, 2377531; 614596, 2377398; 614686, 2377239; 614762, 2377179; 614786, 2377016; 614777, 2376918; 614789, 2376917; 614795, 2376797; 614801, 2376710; 614855, 2376608; 614861, 2376523; 614891, 2376418; 614957, 2376325; 614993, 2376229; 615011, 2376126; 615026, 2375991; 615014, 2375943; 614984, 2375886; 614993, 2375826; 615026, 2375754; 615053, 2375645; 615129, 2375510; 615225, 2375396; 615306, 2375294; 615201, 2375170; 615122, 2375071; 615047, 2374942; 615023, 2374870; 615011, 2374806; 615017, 2374737; 615053, 2374644; 615104, 2374548; 615180, 2374437; 615288, 2374256; 615303, 2374175; 615339, 2374049; 615432, 2373892; 615537, 2373796; 615700, 2373739; 615931, 2373697; 616082, 2373673; 616220, 2373682; 616319, 2373706; 616400, 2373736; 616473, 2373778; 616563, 2373799; 616581, 2373775; 616593, 2373700; 616593, 2373646; 616578, 2373562; 616593, 2373486; 616617, 2373366; 616656, 2373300; 616680, 2373234; 616680, 2373162; 616713, 2373108; 616722, 2373041; 616764, 2372999; 616767, 2372999; 616839, 2372933; 616891, 2372864; 616939, 2372801; 616963, 2372717; 616936, 2372644; 616833, 2372536; 616773, 2372410; 616749, 2372233; 616758, 2372082; 616773, 2371935; 616812, 2371803; 616830, 2371718; 616860, 2371640; 616903, 2371532; 616924, 2371436; 616996, 2371358; 617113, 2371264; 617187, 2371212; 617366, 2371114; 617465, 2371066; 617570, 2371042; 617735, 2371006; 617832, 2371003; 617958, 2371006; 618045, 2371024; 618090, 2371054; 618126, 2371087; 618217, 2371138; 618301, 2371171; 618304, 2371135; 618283, 2371072; 618174, 2370964; 618093, 2370888; 618024, 2370777; 618015, 2370651; 618018, 2370564; 618063, 2370489; 618123, 2370404; 618183, 2370332; 618229, 2370266; 618376, 2370122; 618550, 2370010; 618809, 2369950; 619068, 2369884; 619153, 2369862; 619155, 2369861; 619190, 2369844; 619233, 2369823; 619232, 2369822; 619305, 2369785; 619362, 2369728; 619407, 2369674; 619504, 2369544; 619537, 2369544; 619678, 2369457; 619849, 2369322; 619964, 2369229; 620222, 2369042; 620409, 2368964; 620514, 2368904; 620529, 2368805; 620544, 2368678; 620547, 2368534; 620589, 2368450; 620658, 2368390; 620667, 2368390; 620748, 2368327; 620793, 2368260; 620911, 2368245; 620977, 2368251; 621052, 2368239; 621037, 2368185; 620962, 2368152; 620911, 2368140; 620787, 2368119; 620763, 2368110; 620715, 2368110; 620667, 2368110; 620589,

2368092; 620535, 2368077; 620484, 2368074; 620436, 2367990; 620430, 2367858; 620418, 2367725; 620427, 2367650; 620430, 2367548; 620412, 2367394; 620418, 2367247; 620466, 2367145; 620526, 2367043; 620613, 2366952; 620694, 2366913; 620833, 2366889; 620995, 2366877; 621109, 2366859; 621260, 2366805; 621356, 2366718; 621419, 2366649; 621440, 2366595; 621432, 2366595; 621434, 2366589; 621545, 2366534; 621626, 2366504; 621732, 2366503; 621843, 2366521; 621972, 2366558; 622035, 2366539; 622035, 2366449; 622020, 2366350; 621981, 2366209; 621909, 2366064; 621885, 2365986; 621912, 2365905; 621927, 2365839; 621942, 2365776; 621948, 2365671; 621939, 2365619; 621933, 2365568; 621972, 2365526; 622014, 2365463; 622038, 2365358; 622089, 2365250; 622180, 2365120; 622360, 2364985; 622381, 2364943; 622363, 2364925; 622273, 2364928; 622129, 2364994; 622023, 2365075; 621936, 2365153; 621882, 2365222; 621867, 2365346; 621825, 2365439; 621801, 2365481; 621720, 2365539; 621708, 2365584; 621747, 2365678; 621756, 2365782; 621732, 2365867; 621699, 2365933; 621644, 2365981; 621665, 2366041; 621696, 2366089; 621668, 2366095; 621542, 2366138; 621491, 2366171; 621434, 2366213; 621440, 2366252; 621488, 2366294; 621494, 2366342; 621452, 2366369; 621314, 2366456; 621254, 2366537; 621263, 2366604; 621276, 2366603; 621205, 2366661; 621061, 2366733; 620905, 2366781; 620721, 2366781; 620640, 2366796; 620433, 2366913; 620327, 2366970; 620285, 2367061; 620222, 2367187; 620192, 2367283; 620195, 2367373; 620231, 2367458; 620231, 2367521; 620225, 2367632; 620219, 2367785; 620240, 2367839; 620231, 2367924; 620264, 2368044; 620336, 2368134; 620409, 2368200; 620481, 2368278; 620469, 2368306; 620408, 2368378; 620406, 2368378; 620406, 2368380; 620403, 2368384; 620406, 2368384; 620406, 2368390; 620333, 2368534; 620306, 2368720; 620162, 2368850; 620063, 2368937; 620003, 2368961; 619858, 2369045; 619708, 2369181; 619504, 2369310; 619335, 2369406; 619293, 2369445; 619278, 2369490; 619203, 2369580; 619154, 2369626; 619084, 2369686; 619074, 2369695; 619063, 2369697; 618991, 2369709; 618992, 2369710; 618770, 2369752; 618505, 2369812; 618361, 2369893; 618211, 2369986; 618138, 2370077; 618021, 2370242; 617898, 2370338; 617835, 2370398; 617778, 2370455; 617600, 2370576; 617525, 2370615; 617402, 2370687; 617308, 2370798; 617188, 2370900; 617044, 2371027; 617050, 2371039; 616767, 2371237; 616683, 2371324; 616626, 2371436; 616599, 2371538; 616599, 2371655; 616557, 2371760; 616536, 2371815; 616506, 2371881; 616503, 2372034; 616503, 2372139; 616497, 2372199; 616500, 2372287; 616542, 2372389; 616542, 2372464; 616563, 2372560; 616593, 2372629; 616575, 2372762; 616572, 2372891; 616548, 2372969; 616494, 2373008; 616500, 2373008; 616458, 2373086; 616446, 2373195; 616452, 2373324; 616415, 2373372; 616364, 2373429; 616112, 2373444; 615814, 2373492; 615601, 2373556; 615360, 2373664; 615201, 2373787; 615116, 2373928; 615104, 2374055; 615068, 2374169; 615011, 2374283; 614948, 2374431; 614870, 2374599; 614819, 2374755; 614819, 2374861; 614816, 2374861; 614810, 2374936; 614828, 2375020; 614861, 2375104; 614852, 2375185; 614861, 2375303; 614825, 2375375; 614765, 2375465; 614762, 2375564; 614762, 2375687; 614756, 2375832; 614777, 2375979; 614762, 2376138; 614723, 2376259; 614641, 2376349; 614641, 2376355; 614133, 2376933; 613540, 2377579; 613339, 2377740; 613359, 2377752; 613368, 2377747; 613413, 2377754; 613415, 2377755; 613449, 2377784; 613454, 2377825; 613460, 2377881; 613497, 2377929; 613554, 2377977; return to starting point.

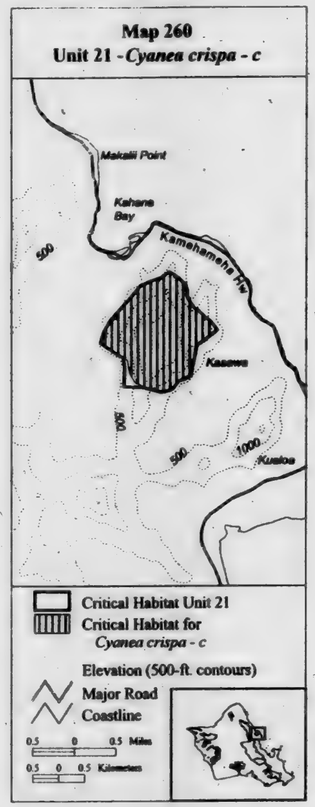
(ii) **Note:** Map 259 follows:



(260) Oahu 21—*Cyanea crispa*—c (302 ha; 747 ac)

(i) Unit consists of the following 37 boundary points: Start at 617933, 2381390; 617892, 2381379; 617719, 2381338; 617384, 2381422; 617189, 2381542; 617110, 2381673; 617049, 2381956; 616835, 2382068; 616529, 2382272; 616554, 2382383; 616601, 2382510; 616729, 2382733; 617094, 2383146; 617300, 2383383; 617491, 2383463; 617713, 2383542; 617872, 2383652; 618044, 2383540; 618179, 2383410; 618225, 2383312; 618225, 2383164; 618360, 2382964; 618495, 2382829; 618656, 2382717; 618767, 2382586; 618804, 2382523; 618721, 2382449; 618563, 2382347; 618378, 2382198; 618350, 2382032; 618304, 2381819; 618258, 2381661; 618119, 2381597; 617980, 2381477; 617937, 2381395; 617934, 2381393; 617933, 2381392; return to starting point.

(ii) **Note:** Map 260 follows:



(261) Oahu 21—*Cyanea truncata*—b (211 ha; 520 ac)

(i) Unit consists of the following 23 boundary points: Start at 618479, 2382785; 618362, 2382482; 618416, 2382209; 618407, 2382202; 618406, 2382201; 618288, 2381653; 618264, 2381637; 618183, 2381582; 618057, 2381548; 617941, 2381398; 617940, 2381397; 616992, 2381447; 616996, 2381713; 616996, 2381862; 616998, 2381875; 616998, 2381876; 616997, 2381877; 616993, 2381879; 616985, 2381888; 616911, 2382352; 617268, 2383028; 618143, 2383034; 618178, 2383039; return to starting point.

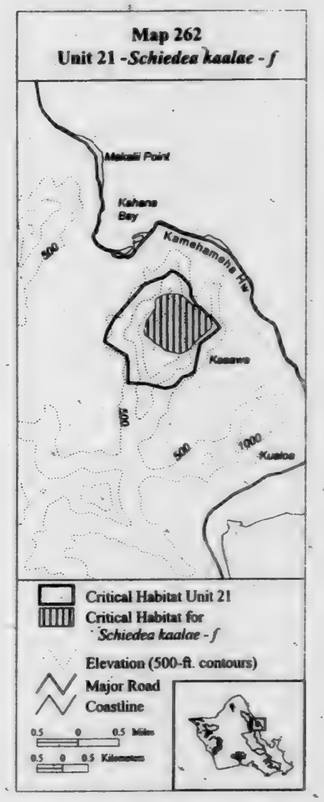
(ii) **Note:** Map 261 follows:



(262) Oahu 21—*Schiedea kaalae*—f (105 ha; 260 ac)

(i) Unit consists of the following 31 boundary points: Start at 617965, 2383203; 618037, 2383179; 618147, 2383102; 618264, 2382982; 618420, 2382928; 618471, 2382874; 618531, 2382829; 618614, 2382721; 618638, 2382581; 618620, 2382509; 618536, 2382443; 618387, 2382317; 618261, 2382195; 618189, 2382102; 618090, 2382057; 618004, 2382024; 617722, 2382091; 617650, 2382160; 617516, 2382246; 617429, 2382327; 617333, 2382396; 617312, 2382498; 617348, 2382579; 617357, 2382669; 617438, 2382781; 617495, 2382871; 617534, 2382931; 617531, 2383024; 617543, 2383114; 617701, 2383197; 617809, 2383206; return to starting point.

(ii) **Note:** Map 262 follows:

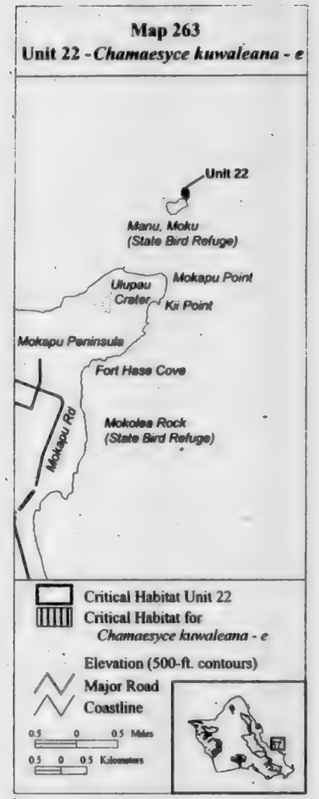


(263) Oahu 22—*Chamaesyce kuwaleana*—e (1 ha; 3 ac)

(i) Unit consists of the following 41 boundary points: Start at 632758, 2374821; 632752, 2374819; 632749, 2374820; 632735, 2374834; 632728, 2374841; 632710, 2374844; 632703, 2374848; 632695, 2374856; 632694, 2374865; 632682, 2374879; 632677, 2374886; 632677, 2374893; 632681,

2374899; 632688, 2374903; 632689, 2374903; 632695, 2374910; 632695, 2374911; 632696, 2374916; 632697, 2374917; 632696, 2374917; 632695, 2374920; 632691, 2374932; 632690, 2374948; 632694, 2374960; 632697, 2374967; 632707, 2374975; 632721, 2374981; 632736, 2374981; 632747, 2374977; 632756, 2374970; 632765, 2374955; 632774, 2374935; 632778, 2374927; 632779, 2374924; 632779, 2374923; 632781, 2374922; 632787, 2374905; 632787, 2374876; 632782, 2374856; 632774, 2374840; 632769, 2374833; return to starting point.

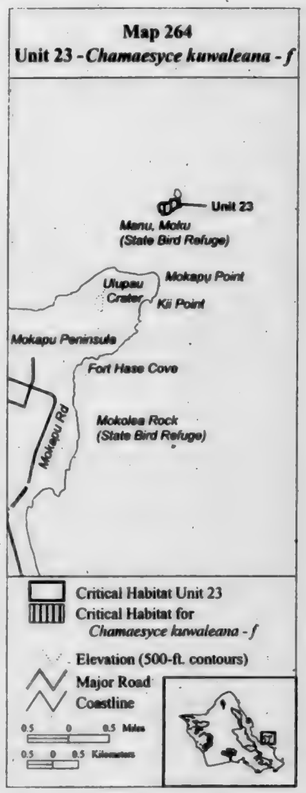
(ii) **Note:** Map 263 follows:



(264) Oahu 23—*Chamaesyce kuwaleana*—f (6 ha; 15 ac)

(i) Unit consists of the following 129 boundary points: Start at 632637, 2374611; 632629, 2374603; 632619, 2374595; 632608, 2374587; 632608, 2374586; 632597, 2374573; 632587, 2374562; 632581, 2374557; 632569, 2374552; 632562, 2374549; 632546, 2374546; 632534, 2374546; 632521, 2374547; 632507, 2374547; 632498, 2374546; 632497, 2374546; 632494, 2374543; 632486, 2374538; 632479, 2374535; 632475, 2374535; 632474, 2374536; 632473, 2374543; 632473, 2374550; 632470, 2374561; 632468, 2374569; 632468, 2374570; 632464, 2374575; 632464, 2374576; 632458, 2374582; 632451, 2374584; 632450, 2374584; 632442, 2374585; 632434, 2374589; 632428, 2374592; 632424, 2374597; 632420, 2374606; 632416, 2374616; 632412, 2374627; 632409, 2374637; 632406, 2374648; 632402, 2374660; 632399, 2374675; 632399, 2374685; 632399, 2374694; 632402, 2374698; 632411, 2374704; 632419, 2374712; 632427, 2374720; 632427, 2374721; 632433, 2374729; 632440, 2374734; 632444, 2374737; 632451, 2374740; 632459, 2374743; 632470, 2374743; 632481, 2374743; 632493, 2374748; 632499, 2374749; 632503, 2374748; 632510, 2374744; 632520, 2374741; 632529, 2374736; 632530, 2374736; 632539, 2374735; 632547, 2374735; 632548, 2374735; 632570, 2374745; 632579, 2374748; 632587, 2374751; 632595, 2374754; 632601, 2374757; 632606, 2374760; 632606, 2374761; 632610, 2374767; 632613, 2374772; 632615, 2374778; 632616, 2374786; 632616, 2374790; 632618, 2374793; 632620, 2374797; 632622, 2374799; 632627, 2374801; 632633, 2374802; 632644, 2374804; 632655, 2374805; 632668, 2374805; 632681, 2374803; 632694, 2374800; 632705, 2374797; 632721, 2374794; 632731, 2374790; 632732, 2374790; 632737, 2374791; 632738, 2374791; 632740, 2374792; 632743, 2374796; 632747, 2374797; 632752, 2374797; 632756, 2374795; 632760, 2374787; 632763, 2374778; 632763, 2374771; 632758, 2374768; 632750, 2374763; 632750, 2374762; 632749, 2374757; 632751, 2374749; 632755, 2374738; 632762, 2374727; 632770, 2374717; 632777, 2374707; 632783, 2374699; 632783, 2374690; 632781, 2374683; 632777, 2374679; 632767, 2374678; 632750, 2374674; 632738, 2374669; 632720, 2374663; 632694, 2374654; 632682, 2374650; 632681, 2374650; 632677, 2374646; 632677, 2374645; 632671, 2374638; 632668, 2374633; 632661, 2374628; 632641, 2374614; 632640, 2374614; return to starting point.

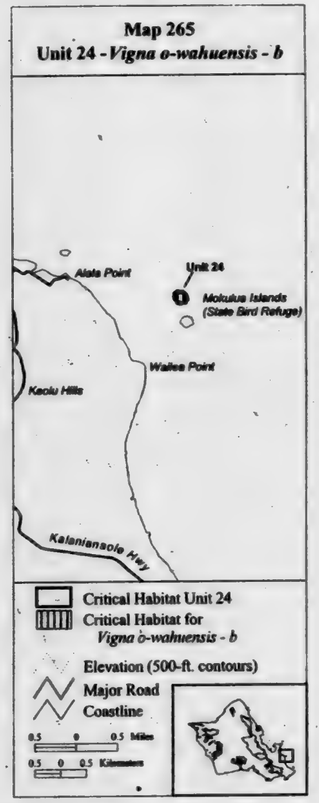
(ii) **Note:** Map 264 follows:



(265) Oahu 24—*Vigna o-wahuensis*—b (5 ha; 12 ac)

(i) Unit consists of the following 182 boundary points: Start at 634907, 2365956; 634895, 2365952; 634889, 2365949; 634884, 2365946; 634883, 2365946; 634879, 2365942; 634874, 2365938; 634871, 2365935; 634867, 2365934; 634863, 2365935; 634858, 2365937; 634857, 2365938; 634854, 2365938; 634853, 2365937; 634848, 2365936; 634844, 2365934; 634843, 2365935; 634842, 2365939; 634843, 2365942; 634843, 2365943; 634844, 2365947; 634846, 2365954; 634847, 2365960; 634847, 2365961; 634845, 2365964; 634845, 2365965; 634844, 2365965; 634838, 2365969; 634837, 2365969; 634836, 2365969; 634832, 2365968; 634831, 2365968; 634829, 2365966; 634828, 2365966; 634826, 2365963; 634823, 2365960; 634818, 2365954; 634812, 2365948; 634807, 2365947; 634802, 2365947; 634799, 2365947; 634796, 2365950; 634792, 2365956; 634788, 2365963; 634784, 2365969; 634784, 2365977; 634782, 2365983; 634782, 2365984; 634778, 2365989; 634778, 2365990; 634772, 2365995; 634762, 2366004; 634755, 2366010; 634749, 2366016; 634743, 2366023; 634741, 2366030; 634739, 2366040; 634738, 2366050; 634738, 2366057; 634737, 2366057; 634737, 2366068; 634737, 2366079; 634737, 2366088; 634740, 2366098; 634742, 2366104; 634742, 2366105; 634742, 2366109; 634742, 2366110; 634739, 2366114; 634738, 2366120; 634738, 2366126; 634738, 2366134; 634739, 2366140; 634741, 2366144; 634749, 2366150; 634763, 2366160; 634791, 2366178; 634795, 2366181; 634799, 2366182; 634803, 2366182; 634804, 2366182; 634806, 2366183; 634807, 2366184; 634807, 2366187; 634808, 2366189; 634809, 2366189; 634813, 2366189; 634815, 2366188; 634819, 2366186; 634821, 2366184; 634824, 2366178; 634827, 2366170; 634829, 2366160; 634831, 2366153; 634832, 2366148; 634832, 2366147; 634833, 2366147; 634844, 2366143; 634847, 2366142; 634851, 2366142; 634852, 2366142; 634852, 2366143; 634853, 2366144; 634855, 2366148; 634859, 2366154; 634862, 2366159; 634864, 2366164; 634869, 2366166; 634874, 2366169; 634881, 2366172; 634887, 2366175; 634893, 2366177; 634899, 2366177; 634902, 2366174; 634905, 2366171; 634906, 2366165; 634904, 2366158; 634902, 2366149; 634902, 2366144; 634902, 2366143; 634905, 2366141; 634906, 2366141; 634913, 2366142; 634921, 2366142; 634926, 2366144; 634929, 2366146; 634933, 2366148; 634936, 2366148; 634939, 2366144; 634942, 2366135; 634943, 2366135; 634946, 2366129; 634946, 2366128; 634950, 2366126; 634951, 2366126; 634957, 2366124; 634962, 2366119; 634968, 2366114; 634975, 2366105; 634981, 2366095; 634987, 2366083; 634993, 2366061; 634996, 2366050; 634999, 2366035; 634999, 2366024; 634998, 2366020; 634992, 2366018; 634985, 2366018; 634985, 2366019; 634984, 2366018; 634975, 2366017; 634963, 2366016; 634962, 2366016; 634960, 2366014; 634959, 2366014; 634959, 2366013; 634960, 2366011; 634960, 2366010; 634962, 2366006; 634965, 2366003; 634967, 2366000; 634969, 2365996; 634968, 2365990; 634965, 2365985; 634964, 2365985; 634963, 2365979; 634961, 2365974; 634961, 2365973; 634962, 2365965; 634963, 2365961; 634961, 2365960; 634956, 2365955; 634951, 2365953; 634942, 2365952; 634934, 2365951; 634930, 2365950; 634926, 2365949; 634922, 2365950; 634916, 2365953; 634911, 2365956; 634911, 2365957; 634910, 2365956; return to starting point.

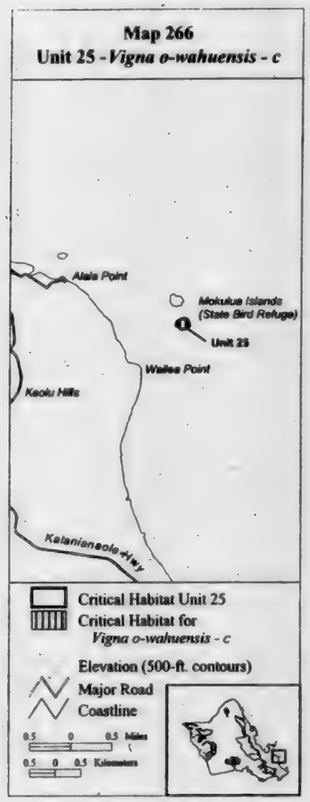
(ii) **Note:** Map 265 follows:



(266) Oahu 25—*Vigna o-wahuensis*—c (4 ha; 9 ac)

(i) Unit consists of the following 117 boundary points: Start at 635103, 2365593; 635104, 2365590; 635104, 2365589; 635105, 2365586; 635106, 2365574; 635107, 2365567; 635107, 2365566; 635108, 2365566; 635112, 2365561; 635116, 2365557; 635116, 2365552; 635111, 2365547; 635103, 2365543; 635091, 2365539; 635077, 2365535; 635065, 2365533; 635055, 2365530; 635054, 2365530; 635048, 2365523; 635042, 2365515; 635033, 2365507; 635028, 2365502; 635023, 2365498; 635015, 2365497; 635007, 2365497; 634993, 2365497; 634986, 2365497; 634986, 2365498; 634985, 2365497; 634980, 2365496; 634972, 2365497; 634958, 2365498; 634948, 2365500; 634938, 2365503; 634929, 2365511; 634921, 2365519; 634915, 2365529; 634914, 2365532; 634914, 2365533; 634906, 2365541; 634900, 2365548; 634893, 2365556; 634892, 2365557; 634887, 2365560; 634882, 2365562; 634876, 2365564; 634875, 2365565; 634875, 2365564; 634867, 2365564; 634861, 2365566; 634858, 2365567; 634857, 2365573; 634855, 2365579; 634854, 2365588; 634853, 2365592; 634856, 2365600; 634861, 2365606; 634862, 2365606; 634872, 2365624; 634887, 2365638; 634898, 2365648; 634898, 2365649; 634903, 2365654; 634910, 2365662; 634918, 2365671; 634928, 2365679; 634935, 2365684; 634944, 2365687; 634956, 2365691; 634967, 2365696; 634978, 2365699; 634990, 2365701; 634998, 2365698; 635005, 2365696; 635018, 2365695; 635027, 2365696; 635035, 2365698; 635037, 2365697; 635040, 2365694; 635041, 2365692; 635042, 2365688; 635041, 2365684; 635040, 2365681; 635039, 2365681; 635039, 2365678; 635039, 2365677; 635040, 2365675; 635040, 2365674; 635041, 2365674; 635046, 2365671; 635047, 2365671; 635054, 2365670; 635055, 2365670; 635062, 2365671; 635071, 2365671; 635078, 2365672; 635082, 2365672; 635084, 2365670; 635087, 2365666; 635087, 2365662; 635085, 2365658; 635085, 2365657; 635084, 2365652; 635083, 2365648; 635083, 2365647; 635086, 2365643; 635092, 2365637; 635099, 2365631; 635107, 2365625; 635110, 2365621; 635111, 2365616; 635110, 2365612; 635109, 2365608; 635104, 2365602; 635101, 2365599; 635101, 2365598; 635101, 2365597; return to starting point.

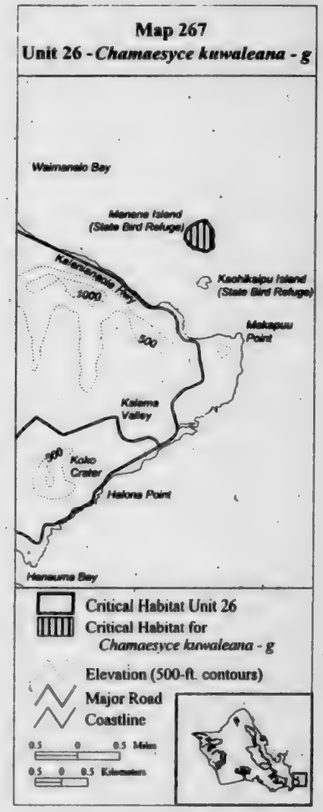
(ii) **Note:** Map 266 follows:



(267) Oahu 26—*Chamaesyce kuwaleana*—g (27 ha; 66 ac)

(i) Unit consists of the following 214 boundary points: Start at 639041, 2358964; 639029, 2358969; 639024, 2358973; 639019, 2358980; 639016, 2358988; 639015, 2358994; 639015, 2358998; 639014, 2359006; 639013, 2359012; 639012, 2359023; 639012, 2359024; 639009, 2359029; 639006, 2359034; 639005, 2359035; 639002, 2359038; 638998, 2359043; 638997, 2359043; 638992, 2359048; 638982, 2359054; 638972, 2359062; 638965, 2359067; 638959, 2359072; 638956, 2359077; 638955, 2359084; 638955, 2359090; 638959, 2359100; 638961, 2359105; 638962, 2359109; 638963, 2359116; 638964, 2359125; 638964, 2359139; 638966, 2359158; 638968, 2359166; 638972, 2359175; 638975, 2359185; 638980, 2359202; 638985, 2359213; 638990, 2359226; 638995, 2359239; 639003, 2359252; 639009, 2359267; 639016, 2359280; 639027, 2359291; 639035, 2359299; 639044, 2359307; 639057, 2359317; 639065, 2359323; 639076, 2359330; 639088, 2359336; 639107, 2359344; 639114, 2359349; 639122, 2359355; 639129, 2359360; 639137, 2359367; 639153, 2359376; 639167, 2359385; 639180, 2359392; 639190, 2359397; 639202, 2359404; 639210, 2359408; 639229, 2359417; 639241, 2359421; 639260, 2359429; 639278, 2359435; 639302, 2359444; 639312, 2359448; 639327, 2359452; 639337, 2359453; 639356, 2359453; 639369, 2359451; 639377, 2359449; 639383, 2359446; 639387, 2359442; 639391, 2359438; 639395, 2359434; 639396, 2359431; 639397, 2359426; 639398, 2359420; 639398, 2359416; 639399, 2359411; 639400, 2359407; 639400, 2359406; 639404, 2359403; 639413, 2359394; 639422, 2359387; 639430, 2359381; 639441, 2359370; 639450, 2359359; 639456, 2359350; 639463, 2359340; 639468, 2359332; 639474, 2359317; 639487, 2359300; 639495, 2359288; 639502, 2359276; 639510, 2359263; 639516, 2359251; 639520, 2359243; 639523, 2359239; 639525, 2359235; 639528, 2359229; 639531, 2359221; 639532, 2359216; 639533, 2359206; 639535, 2359193; 639536, 2359179; 639536, 2359168; 639539, 2359153; 639539, 2359142; 639540, 2359134; 639540, 2359129; 639540, 2359124; 639538, 2359112; 639536, 2359106; 639533, 2359100; 639529, 2359093; 639529, 2359092; 639526, 2359080; 639524, 2359071; 639524, 2359070; 639524, 2359056; 639523, 2359038; 639524, 2359025; 639526, 2359010; 639531, 2358995; 639534, 2358978; 639537, 2358968; 639540, 2358958; 639542, 2358950; 639543, 2358943; 639543, 2358938; 639543, 2358932; 639542, 2358923; 639539, 2358916; 639539, 2358915; 639537, 2358908; 639532, 2358898; 639526, 2358892; 639520, 2358887; 639508, 2358880; 639498, 2358876; 639487, 2358872; 639476, 2358867; 639468, 2358865; 639458, 2358860; 639450, 2358853; 639444, 2358848; 639439, 2358843; 639432, 2358837; 639426, 2358833; 639418, 2358829; 639409, 2358826; 639402, 2358822; 639395, 2358822; 639380, 2358822; 639370, 2358822; 639364, 2358824; 639355, 2358827; 639346, 2358832; 639335, 2358837; 639322, 2358842; 639309, 2358846; 639301, 2358849; 639293, 2358852; 639280, 2358856; 639265, 2358862; 639264, 2358862; 639253, 2358863; 639249, 2358866; 639241, 2358869; 639240, 2358869; 639236, 2358869; 639235, 2358869; 639230, 2358868; 639223, 2358867; 639220, 2358867; 639214, 2358867; 639211, 2358867; 639207, 2358872; 639201, 2358877; 639194, 2358884; 639186, 2358891; 639177, 2358898; 639172, 2358900; 639167, 2358901; 639166, 2358902; 639166, 2358901; 639162, 2358900; 639161, 2358900; 639158, 2358897; 639154, 2358895; 639154, 2358894; 639151, 2358891; 639148, 2358888; 639148, 2358887; 639144, 2358883; 639142, 2358881; 639137, 2358881; 639134, 2358881; 639130, 2358884; 639129, 2358886; 639124, 2358894; 639120, 2358902; 639117, 2358909; 639113, 2358915; 639106, 2358924; 639102, 2358929; 639095, 2358933; 639089, 2358936; 639082, 2358938; 639076, 2358941; 639069, 2358945; 639063, 2358948; 639058, 2358953; return to starting point.

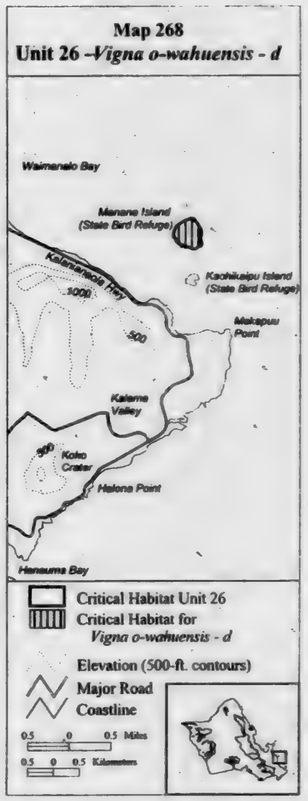
(ii) **Note:** Map 267 follows:



(268) Oahu 26—*Vigna o-wahuensis*—(27 ha; 66 ac)

(i) Unit consists of the following 214 boundary points: Start at 639041, 2358964; 639029, 2358969; 639024, 2358973; 639019, 2358980; 639016, 2358988; 639015, 2358994; 639015, 2358998; 639014, 2359006; 639013, 2359012; 639012, 2359023; 639012, 2359024; 639009, 2359029; 639006, 2359034; 639005, 2359035; 639002, 2359038; 638998, 2359043; 638997, 2359043; 638992, 2359048; 638982, 2359054; 638972, 2359062; 638965, 2359067; 638959, 2359072; 638956, 2359077; 638955, 2359084; 638955, 2359090; 638959, 2359100; 638961, 2359105; 638962, 2359109; 638963, 2359116; 638964, 2359125; 638964, 2359139; 638966, 2359158; 638968, 2359166; 638972, 2359175; 638975, 2359185; 638980, 2359202; 638985, 2359213; 638990, 2359226; 638995, 2359239; 639003, 2359252; 639009, 2359267; 639016, 2359280; 639027, 2359291; 639035, 2359299; 639044, 2359307; 639057, 2359317; 639065, 2359323; 639076, 2359330; 639088, 2359336; 639107, 2359344; 639114, 2359349; 639122, 2359355; 639129, 2359360; 639137, 2359367; 639153, 2359376; 639167, 2359385; 639180, 2359392; 639190, 2359397; 639202, 2359404; 639210, 2359408; 639229, 2359417; 639241, 2359421; 639260, 2359429; 639278, 2359435; 639302, 2359444; 639312, 2359448; 639327, 2359452; 639337, 2359453; 639356, 2359453; 639369, 2359451; 639377, 2359449; 639383, 2359446; 639387, 2359442; 639391, 2359438; 639395, 2359434; 639396, 2359431; 639397, 2359426; 639398, 2359420; 639398, 2359416; 639399, 2359411; 639400, 2359407; 639400, 2359406; 639404, 2359403; 639413, 2359394; 639422, 2359387; 639430, 2359381; 639441, 2359370; 639450, 2359359; 639456, 2359350; 639463, 2359340; 639468, 2359332; 639474, 2359317; 639487, 2359300; 639495, 2359288; 639502, 2359276; 639510, 2359263; 639516, 2359251; 639520, 2359243; 639523, 2359239; 639525, 2359235; 639528, 2359229; 639531, 2359221; 639532, 2359216; 639533, 2359206; 639535, 2359193; 639536, 2359179; 639536, 2359168; 639539, 2359153; 639539, 2359142; 639540, 2359134; 639540, 2359129; 639540, 2359124; 639538, 2359112; 639536, 2359106; 639533, 2359100; 639529, 2359093; 639529, 2359092; 639526, 2359080; 639524, 2359071; 639524, 2359070; 639524, 2359056; 639523, 2359038; 639524, 2359025; 639526, 2359010; 639531, 2358995; 639534, 2358978; 639537, 2358968; 639540, 2358958; 639542, 2358950; 639543, 2358943; 639543, 2358938; 639543, 2358932; 639542, 2358923; 639539, 2358916; 639539, 2358915; 639537, 2358908; 639532, 2358898; 639526, 2358892; 639520, 2358887; 639508, 2358880; 639498, 2358876; 639487, 2358872; 639476, 2358867; 639468, 2358865; 639458, 2358860; 639450, 2358853; 639444, 2358848; 639439, 2358843; 639432, 2358837; 639426, 2358833; 639418, 2358829; 639409, 2358826; 639402, 2358822; 639395, 2358822; 639380, 2358822; 639370, 2358822; 639364, 2358824; 639355, 2358827; 639346, 2358832; 639335, 2358837; 639322, 2358842; 639309, 2358846; 639301, 2358849; 639293, 2358852; 639280, 2358856; 639265, 2358862; 639264, 2358862; 639253, 2358863; 639249, 2358866; 639241, 2358869; 639240, 2358869; 639236, 2358869; 639235, 2358869; 639230, 2358868; 639223, 2358867; 639220, 2358867; 639214, 2358867; 639211, 2358867; 639207, 2358872; 639201, 2358877; 639194, 2358884; 639186, 2358891; 639177, 2358898; 639172, 2358900; 639167, 2358901; 639166, 2358902; 639166, 2358901; 639162, 2358900; 639161, 2358900; 639158, 2358897; 639154, 2358895; 639154, 2358894; 639151, 2358891; 639148, 2358888; 639148, 2358887; 639144, 2358883; 639142, 2358881; 639137, 2358881; 639134, 2358881; 639130, 2358884; 639129, 2358886; 639124, 2358894; 639120, 2358902; 639117, 2358909; 639113, 2358915; 639106, 2358924; 639102, 2358929; 639095, 2358933; 639089, 2358936; 639082, 2358938; 639076, 2358941; 639069, 2358945; 639063, 2358948; 639058, 2358953; return to starting point.

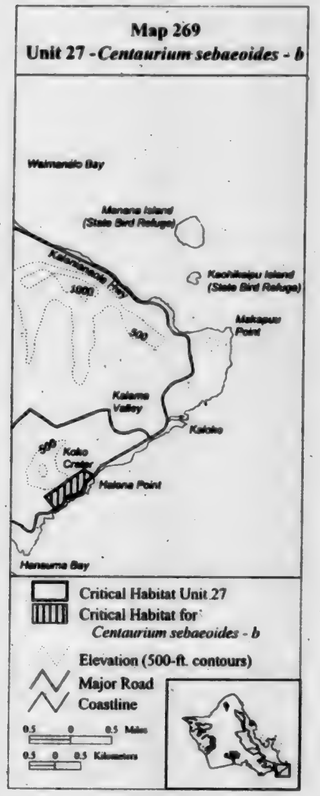
(ii) **Note:** Map 268 follows:



(269) Oahu 27—*Centaurium sebaeoides*—b (30 ha; 74 ac)

(i) Unit consists of the following 12 boundary points: Start at 636505, 2353431; 636303, 2353668; 637100, 2354241; 637297, 2354115; 637128, 2353956; 637052, 2353771; 636871, 2353692; 636811, 2353706; 636712, 2353621; 636657, 2353510; 636560, 2353454; 636508, 2353427; return to starting point.

(ii) **Note:** Map 269 follows:







(270) Oahu 28—*Cyperus trachysanthos*—b (8 ha; 20 ac)

(i) Unit consists of the following 23 boundary points: Start at 635001, 2351956; 635110, 2351995; 635197, 2352022; 635282, 2352041; 635351, 2352039; 635434, 2352026; 635460, 2351985; 635438, 2351945; 635432, 2351917; 635414, 2351893; 635382, 2351869; 635338, 2351841; 635288, 2351826; 635247, 2351815; 635219, 2351815; 635158, 2351822; 635101, 2351828; 635053, 2351832; 634997, 2351852; 634971, 2351876; 634951, 2351893; 634949, 2351906; 634966, 2351939; return to starting point.

(ii) **Note:** Map 270 follows:

(271) Oahu 28—*Marsilea villosa*—c (7 ha; 18 ac)

(i) Unit consists of the following 14 boundary points: Start at 635006, 2351930; 635107, 2351989; 635178, 2352022; 635269, 2352038; 635357, 2352041; 635428, 2352038; 635441, 2351986; 635409, 2351898; 635383, 2351852; 635308, 2351830; 635246, 2351817; 635129, 2351826; 635035, 2351859; 635012, 2351898; return to starting point.

(ii) **Note:** Map 271 follows:

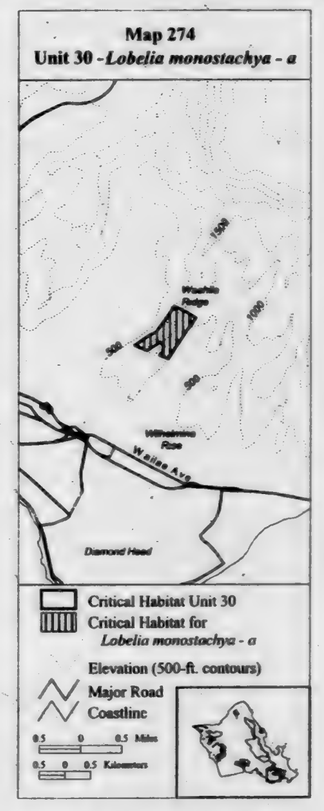
(272) Oahu 29—*Cyperus trachysanthos*—c (4 ha; 10 ac)

(i) Unit consists of the following 15 boundary points: Start at 634916, 2352187; 634932, 2352204; 634977, 2352241; 635034, 2352241; 635069, 2352232; 635108, 2352195; 635108, 2352137; 635086, 2352098; 635064, 2352067; 635021, 2352030; 634962, 2352004; 634921, 2352017; 634875, 2352043; 634873, 2352087; 634875, 2352135; return to starting point.

(ii) **Note:** Map 272 follows:







(273) Oahu 29—*Marsilea villosa*—d (5 ha; 11 ac)

(i) Unit consists of the following 13 boundary points: Start at 634980, 2352018; 634908, 2352018; 634873, 2352038; 634869, 2352090; 634886, 2352155; 634928, 2352207; 634999, 2352252; 635068, 2352236; 635116, 2352194; 635129, 2352152; 635123, 2352109; 635090, 2352064; 635035, 2352031; return to starting point.

(ii) **Note:** Map 273 follows:

(274) Oahu 30—*Lobelia monostachya*—a (60 ha; 148 ac)

(i) Unit consists of the following 27 boundary points: Start at 624168, 2356522; 624519, 2356753; 624644, 2356802; 624645, 2356802; 624645, 2356803; 624648, 2356804; 624902, 2357165; 625018, 2357329; 625039, 2357383; 625337, 2357226; 625511, 2357122; 625420, 2356986; 625323, 2356853; 624917, 2356242; 624907, 2356227; 624732, 2356309; 624741, 2356330; 624795, 2356390; 624800, 2356466; 624811, 2356492; 624811, 2356493; 624734, 2356593; 624734, 2356594; 624733, 2356594; 624732, 2356594; 624709, 2356578; 624454, 2356409; return to starting point.

(ii) **Note:** Map 274 follows:

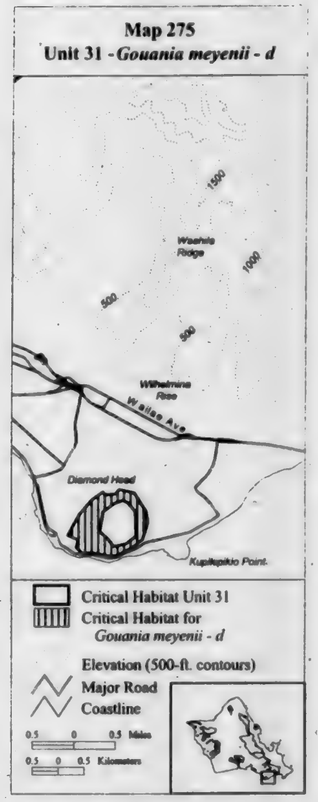
(275) Oahu 31—*Gouania meyenii*—d (116 ha; 286 ac)

(i) Unit consists of the following 22 boundary points: Start at 624109, 2351193; 624110, 2351193; 624344, 2351374; 624344, 2351375; 624322, 2351901; 624322, 2351902; 624173, 2352081; 624173, 2352082; 624049, 2352143; 624048, 2352143; 624047, 2352143; 623860, 2352077; 623615, 2351898; 623615, 2351897; 623614, 2351897; 623548, 2351462; 623548, 2351461; 623549, 2351460; 623733, 2351300; 623846, 2351144; 623846, 2351143; 623847, 2351143; return to starting point.

(ii) Excluding one area bounded by the following 22 points (59 ha, 146 ac): Start at 624110, 2351193; 624344, 2351374; 624344, 2351375; 624322, 2351901; 624322, 2351902; 624173, 2352081; 624173, 2352082; 624049, 2352143; 624048, 2352143; 624047, 2352143; 623860, 2352077; 623615, 2351898; 623615, 2351897; 623614,

2351897; 623548, 2351462; 623548, 2351461; 623549, 2351460; 623733, 2351300; 623846, 2351144; 623846, 2351143; 623847, 2351143; 624109, 2351193; return to starting point.

(iii) **Note:** Map 275 follows:

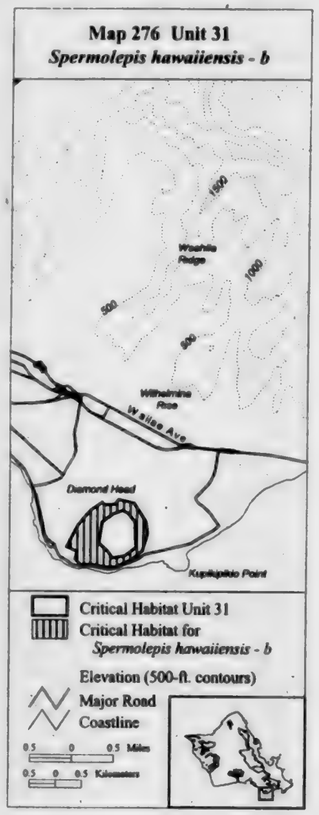


(276) Oahu 31—*Spermolepis hawaiiensis*—b (116 ha; 286 ac)

(i) Unit consists of the following 22 boundary points: Start at 624109, 2351193; 624110, 2351193; 624344, 2351374; 624344, 2351375; 624322, 2351901; 624322, 2351902; 624173, 2352081; 624173, 2352082; 624049, 2352143; 624048, 2352143; 624047, 2352143; 623860, 2352077; 623615, 2351898; 623615, 2351897; 623614, 2351897; 623548, 2351462; 623548, 2351461; 623549, 2351460; 623733, 2351300; 623846, 2351144; 623846, 2351143; 623847, 2351143; return to starting point.

(ii) Excluding one area bounded by the following 22 points (59ha, 146ac): Start at 624110, 2351193; 624344, 2351374; 624344, 2351375; 624322, 2351901; 624322, 2351902; 624173, 2352081; 624173, 2352082; 624049, 2352143; 624048, 2352143; 624047, 2352143; 623860, 2352077; 623615, 2351898; 623615, 2351897; 623614, 2351897; 623548, 2351462; 623548, 2351461; 623549, 2351460; 623733, 2351300; 623846, 2351144; 623846, 2351143; 623847, 2351143; 624109, 2351193; return to starting point.

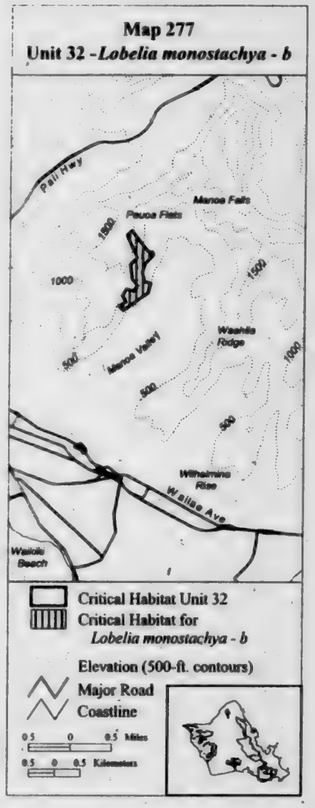
(iii) **Note:** Map 276 follows:



(277) Oahu 32—*Lobelia monostachya*—b (47 ha; 115 ac)

(i) Unit consists of the following 35 boundary points: Start at 623244, 2359774; 623355, 2359864; 623692, 2359434; 623717, 2359408; 623802, 2359404; 623814, 2359345; 623641, 2359143; 623578, 2358957; 623633, 2358768; 623759, 2358742; 623756, 2358730; 623701, 2358521; 623169, 2358151; 623083, 2358237; 623230, 2358329; 623230, 2358330; 623230, 2358331; 623154, 2358462; 623236, 2358610; 623388, 2358571; 623389, 2358571; 623390, 2358572; 623478, 2358682; 623478, 2358683; 623453, 2358712; 623368, 2358817; 623353, 2358925; 623325, 2359134; 623469, 2359270; 623469, 2359271; 623469, 2359272; 623466, 2359279; 623468, 2359282; 623359, 2359518; return to starting point.

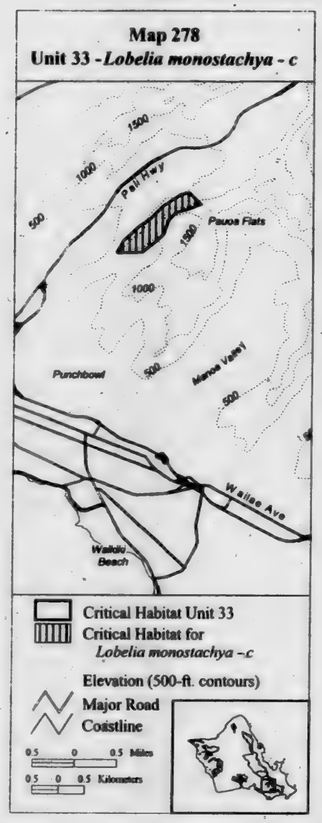
(ii) **Note:** Map 277 follows:



(278) Oahu 33—*Lobelia monostachya*—c (71 ha; 175 ac)

(i) Unit consists of the following 15 boundary points: Start at 621273, 2359524; 621269, 2359528; 621405, 2359780; 621744, 2360094; 621991, 2360258; 622260, 2360527; 622646, 2360763; 622811, 2360807; 623064, 2360560; 622811, 2360460; 622539, 2360384; 622376, 2360243; 622273, 2359934; 622138, 2359803; 621801, 2359537; return to starting point.

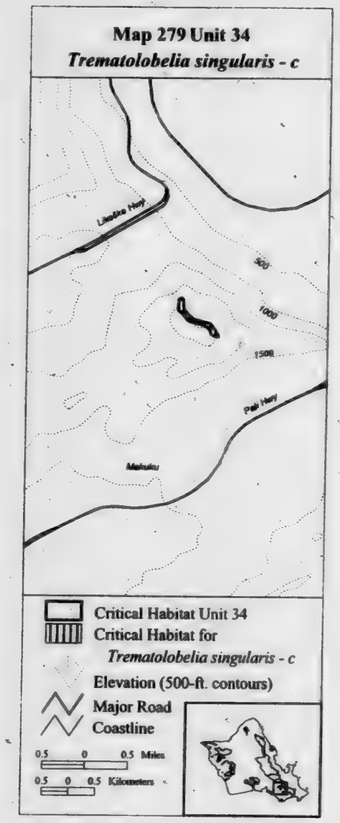
(ii) **Note:** Map 278 follows:



(279) Oahu 34—*Trematolobelia singularis*—c (2 ha; 5 ac)

(i) Unit consists of the following 32 boundary points: Start at 623343, 2363728; 623355, 2363728; 623364, 2363711; 623372, 2363677; 623371, 2363634; 623385, 2363607; 623414, 2363575; 623451, 2363542; 623476, 2363526; 623521, 2363513; 623563, 2363503; 623622, 2363488; 623649, 2363460; 623683, 2363405; 623700, 2363384; 623701, 2363365; 623686, 2363363; 623656, 2363376; 623636, 2363388; 623618, 2363424; 623600, 2363454; 623552, 2363477; 623493, 2363486; 623428, 2363505; 623409, 2363516; 623380, 2363554; 623357, 2363581; 623338, 2363598; 623319, 2363613; 623323, 2363648; 623326, 2363680; 623327, 2363707; return to starting point.

(ii) **Note:** Map 279 follows:

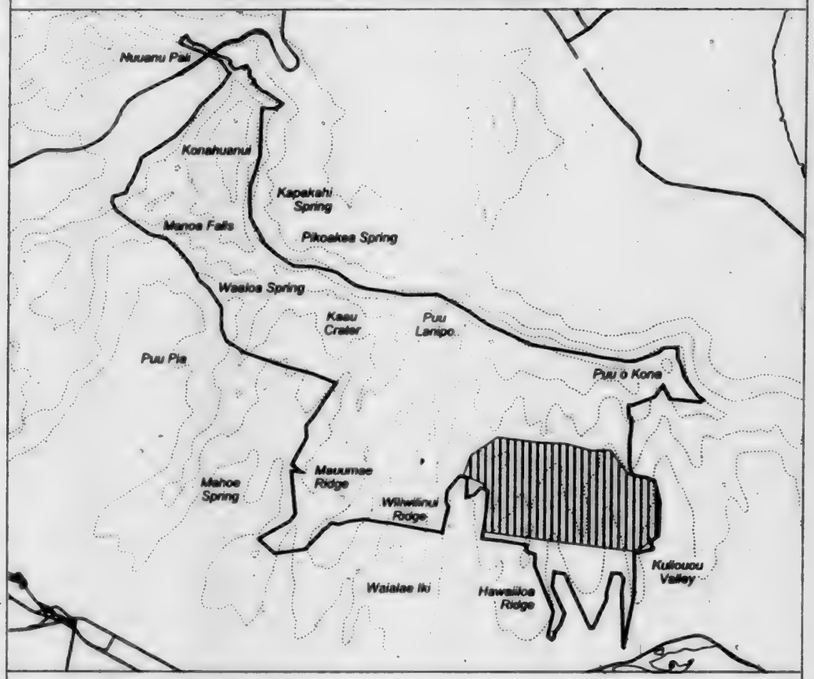


(280) Oahu 35—*Bonamia menziesii*—e (374 ha; 923 ac)

(i) Unit consists of the following 18 boundary points: Start at 629086, 2356780; 629201, 2357084; 629606, 2357366; 630257, 2357286; 630655, 2357272; 631038, 2357163; 631327, 2357170; 631609, 2356794; 631877, 2356751; 632000, 2356700; 632072, 2356404; 632058, 2355876; 631812, 2355681; 631674, 2355645; 630640, 2355768; 629404, 2355928; 629462, 2356549; 629375, 2356657; return to starting point.

(ii) **Note:** Map 280 follows:

Map 280 Unit 35 - *Bonamia menzeisii - e*

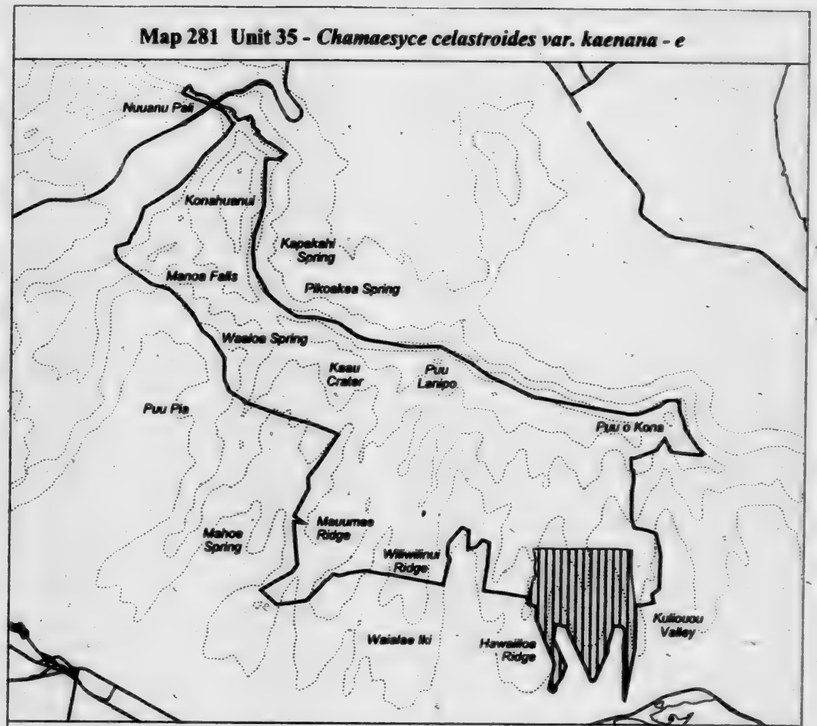


(281) Oahu 35—*Chamaesyce celastroides var. kaenana*—e (238 ha; 588 ac)

(i) Unit consists of the following 70 boundary points: Start at 630069, 2355613; 630055, 2355683; 630069, 2355782; 630115, 2355917; 630117, 2355972; 630168, 2356052; 630166, 2356126; 630151, 2356177; 630170, 2356314; 630142, 2356382; 630132, 2356461; 630142, 2356466; 630187, 2356468; 630387, 2356468; 630650, 2356466; 630903, 2356468; 631279, 2356468; 631394, 2356468; 631628, 2356449; 631621, 2356331; 631623, 2356148; 631638, 2355948; 631662, 2355818; 631694, 2355602; 631693, 2355601; 631693, 2355600; 631701, 2355280; 631697, 2354977; 631536, 2354177; 631533, 2354184; 631525, 2354596; 631529, 2354705; 631522, 2354734; 631518, 2354916; 631517, 2354919; 631511, 2355000; 631542, 2355222; 631516, 2355248; 631493, 2355297; 631363, 2355306; 631277, 2355000; 631285, 2354918; 631284, 2354916; 631283, 2354916; 631081, 2354472; 631034, 2354467; 630645, 2355292; 630645, 2355293; 630644, 2355293; 630484, 2355324; 630483, 2355324; 630482, 2355323; 630455, 2355102; 630455, 2355101; 630642, 2354688; 630575, 2354506; 630566, 2354490; 630493, 2354399; 630486, 2354322; 630453, 2354295; 630390, 2354343; 630473, 2354715; 630473, 2354716; 630187, 2355415; 630193, 2355589; 630102, 2355623; 630101, 2355624; 630101, 2355625; 630100, 2355625; 630099, 2355625; return to starting point.

(ii) **Note:** Map 281 follows:

Map 281 Unit 35 - *Chamaesyce celastroides var. kaenana - e*

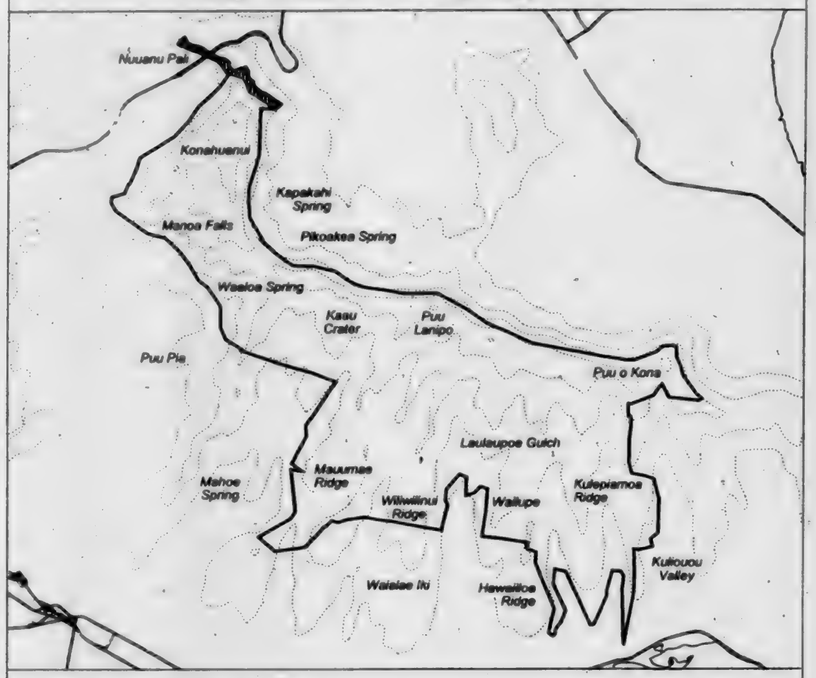


(282) Oahu 35—*Chamaesyce deppeana*—b (19 ha; 47 ac)

(i) Unit consists of the following 71 boundary points: Start at 624710, 2363371; 624704, 2363385; 624721, 2363406; 624754, 2363442; 624783, 2363468; 624809, 2363480; 624859, 2363397; 624925, 2363364; 624987, 2363347; 625052, 2363337; 625116, 2363295; 625176, 2363254; 625290, 2363182; 625335, 2363163; 625376, 2363161; 625417, 2363145; 625460, 2363118; 625486, 2363082; 625483, 2363045; 625510, 2363008; 625547, 2362971; 625588, 2362949; 625624, 2362933; 625650, 2362939; 625665, 2362968; 625690, 2362985; 625703, 2363013; 625729, 2363029; 625730, 2363028; 625777, 2362945; 625776, 2362902; 625784, 2362858; 625829, 2362823; 625853, 2362797; 625843, 2362776; 625853, 2362787; 625872, 2362725; 625896, 2362687; 625924, 2362659; 625955, 2362641; 625994, 2362628; 626024, 2362620; 626028, 2362620; 626279, 2362444; 626232, 2362397; 626194, 2362389; 626136, 2362372; 626088, 2362415; 626075, 2362435; 626062, 2362444; 625972, 2362510; 625888, 2362572; 625805, 2362613; 625771, 2362659; 625752, 2362715; 625733, 2362770; 625738, 2362766; 625724, 2362780; 625698, 2362830; 625671, 2362852; 625595, 2362871; 625540, 2362897; 625464, 2362918; 625438, 2362942; 625390, 2363018; 625328, 2363095; 625293, 2363123; 625231, 2363145; 625131, 2363190; 625004, 2363245; 624904, 2363282; return to starting point.

(ii) **Note:** Map 282 follows:

Map 282 Unit 35 - *Chamaesyce deppeana - b*



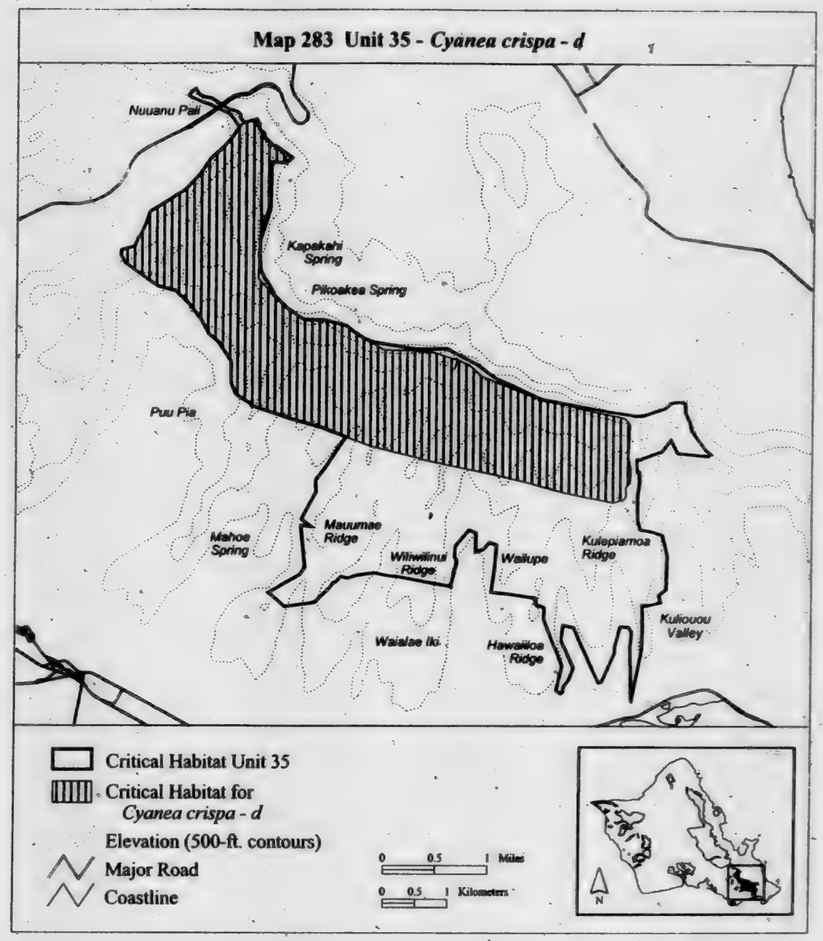
(283) Oahu 35—*Cyanea crispa*—d (1,336 ha; 3,301 ac)

(i) Unit consists of the following 98 boundary points: Start at 623944, 2361231; 623966, 2361243; 624062, 2361457; 624128, 2361633; 624397, 2361796; 624487, 2361853; 624497, 2361858; 624498, 2361858; 624502, 2361863; 624648, 2361955; 624873, 2362180; 625030, 2362416; 625040, 2362426; 625350, 2362723; 625502, 2362941; 625666, 2363011; 625734, 2362935; 625866, 2362736; 625998, 2362617; 626117, 2362524; 626170, 2362445; 626184, 2362366; 625959, 2362379; 625945, 2361955; 625945, 2361730; 625839, 2361465; 625800, 2361201; 625791, 2361007; 625783, 2360976; 625783, 2360975; 625789, 2360950; 625773, 2360605; 625998, 2360354; 626237, 2360115; 626475, 2359983; 626887, 2359949; 627102, 2359895; 627121, 2359883; 627282, 2359763; 627395, 2359699; 627408, 2359690; 627411, 2359689; 627473, 2359654; 627708, 2359529; 628098, 2359518; 628484, 2359486; 628840, 2359373; 628785, 2359224; 628843, 2359377; 629050, 2359268; 629218, 2359127; 629499, 2359010; 629714, 2358932; 629847, 2358866; 630108, 2358784; 630292, 2358725; 630510, 2358694; 630725, 2358631; 630998, 2358573; 631279, 2358518; 631412, 2358483; 631482, 2358393; 631478, 2358089; 631466, 2357898; 631506, 2357656; 631482, 2357496; 631431, 2357429; 631431, 2357293; 631412, 2357250; 631248, 2357195; 630826, 2357273; 630491, 2357343; 629874, 2357511; 629343, 2357636; 628949, 2357714; 628266, 2357862; 628269, 2357871; 627485, 2358059; 626771, 2358332; 626283, 2358472; 625686, 2358675; 625690, 2358695; 625455, 2358843; 625373, 2359027; 625376, 2359349; 625164, 2359653; 625032, 2359759; 624900, 2359996; 624754, 2360181; 624529, 2360406; 624245, 2360483; 623937, 2360701; 623750, 2360834; 623679, 2360963; 623691,

2361043; 623890, 2361096; 623891, 2361096; 623891, 2361097; return to starting point.

(ii) **Note:** Map 283 follows:

Map 283 Unit 35 - *Cyanea crispa - d*

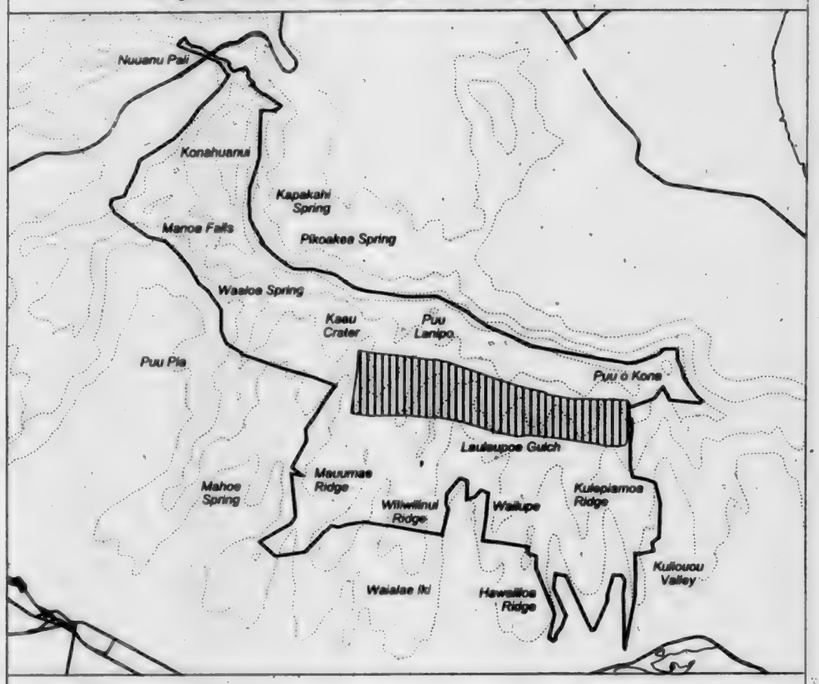


(284) Oahu 35—*Cyanea grimesiana* ssp. *grimesiana*—b (329 ha; 813 ac)

(i) Unit consists of the following 43 boundary points: Start at 627482, 2358725; 627502, 2358723; 627743, 2358682; 628029, 2358650; 628580, 2358576; 628682, 2358576; 628842, 2358539; 628841, 2358537; 629315, 2358380; 629642, 2358266; 629985, 2358159; 630320, 2358086; 630369, 2358045; 630745, 2357984; 631011, 2357980; 631198, 2357972; 631415, 2357968; 631582, 2357955; 631611, 2357898; 631595, 2357837; 631599, 2357682; 631587, 2357502; 631574, 2357371; 631542, 2357285; 631439, 2357265; 631223, 2357277; 631080, 2357310; 630888, 2357330; 630602, 2357379; 630214, 2357420; 630067, 2357432; 629900, 2357412; 629614, 2357473; 629078, 2357628; 628693, 2357706; 628690, 2357694; 628547, 2357698; 628241, 2357731; 627906, 2357732; 627645, 2357732; 627428, 2357760; 627367, 2357780; 627450, 2358384; return to starting point.

(ii) **Note:** Map 284 follows:

Map 284 Unit 35 - *Cyanea grimesiana ssp. grimesiana - b*

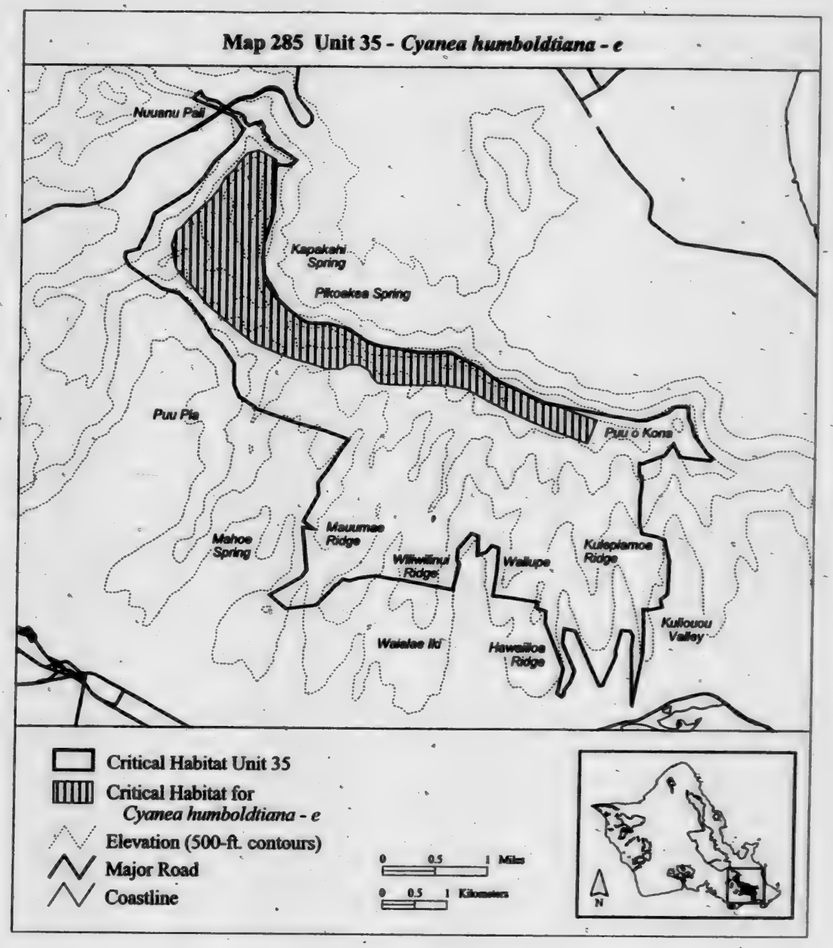


(285) Oahu 35—*Cyanea humboltiana*—e (539 ha; 1,333 ac)

(i) Unit consists of the following 96 boundary points: Start at 625951, 2361660; 625886, 2361457; 625799, 2361195; 625784, 2360979; 625783, 2360976; 625783, 2360975; 625784, 2360974; 625779, 2360900; 625799, 2360606; 625965, 2360402; 626198, 2360174; 626389, 2360033; 626480, 2359983; 626479, 2359983; 626675, 2359975; 626782, 2359975; 626986, 2359924; 627140, 2359829; 627393, 2359697; 627405, 2359693; 627408, 2359690; 627415, 2359689; 627568, 2359634; 627871, 2359597; 628136, 2359543; 628188, 2359542; 628197, 2359540; 628198, 2359540; 628255, 2359541; 628348, 2359539; 628418, 2359542; 628664, 2359545; 628664, 2359537; 628705, 2359530; 628764, 2359501; 629131, 2359305; 629261, 2359211; 629448, 2359086; 629801, 2358933; 630060, 2358809; 630083, 2358796; 630084, 2358796; 630088, 2358795; 630104, 2358787; 630273, 2358739; 630294, 2358740; 630929, 2358526; 630785, 2358154; 630110, 2358417; 629634, 2358615; 629593, 2358630; 629241, 2358804; 628925, 2358974; 628655, 2359024; 628655, 2359028; 628240, 2359032; 627767, 2359036; 627559, 2359057; 627468, 2359169; 627431, 2359244; 627285, 2359340; 627119, 2359352; 626999, 2359273; 626783, 2359277; 626546, 2359356; 626219, 2359447; 625982, 2359539; 625680, 2359657; 625675, 2359655; 625662, 2359664; 625654, 2359667; 625657, 2359669; 625351, 2359896; 625110, 2360116; 624957, 2360240; 624824, 2360394; 624674, 2360560; 624537, 2360693; 624454, 2360826; 624417, 2361017; 624392, 2361170; 624463, 2361382; 624546, 2361436; 624670, 2361573; 624795, 2361685; 624990, 2361855; 625102, 2362000; 625201, 2362179; 625347, 2362308; 625405, 2362407; 625550, 2362557; 625704, 2362598; 625870, 2362511; 625974, 2362449; 625970, 2362364; 625969, 2362363; return to starting point.

(ii) **Note:** Map 285 follows:

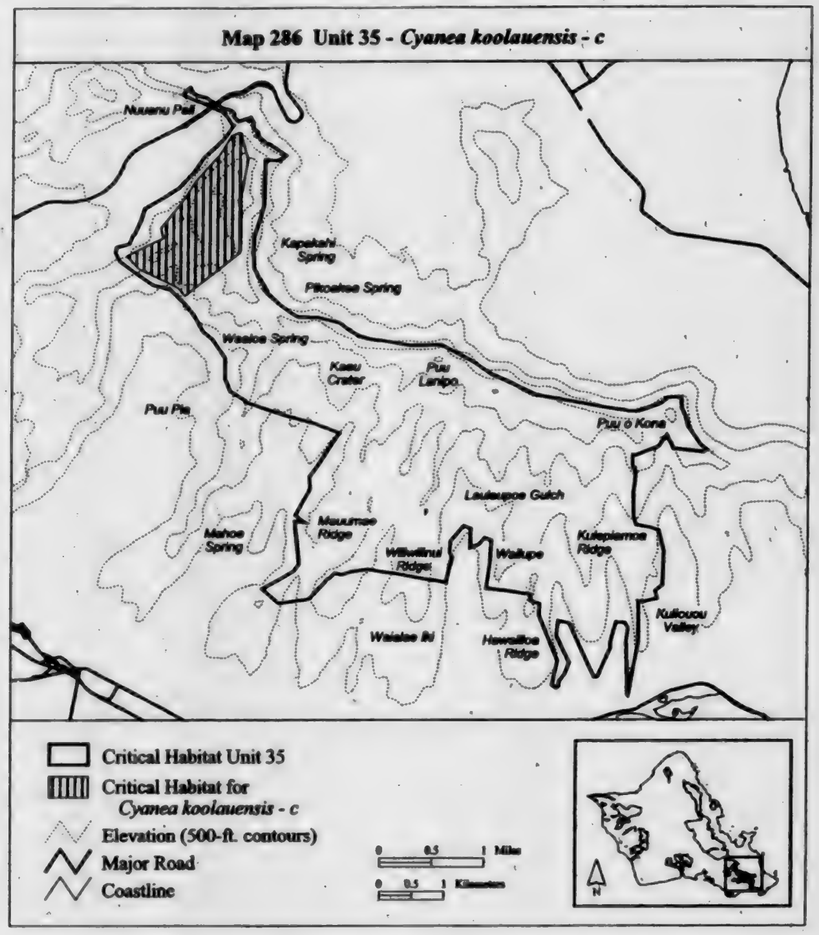
Map 285 Unit 35 - *Cyanea humboldtiana - e*



(286) Oahu 35—*Cyanea koolauensis*—c (209 ha; 517 ac)

(i) Unit consists of the following 16 boundary points: Start at 623850, 2360912; 624406, 2361184; 624371, 2361338; 624678, 2361692; 624891, 2362035; 625258, 2362438; 625459, 2362757; 625589, 2362792; 625695, 2362378; 625601, 2361834; 625601, 2361113; 625594, 2360964; 624749, 2360309; 624669, 2360404; 624595, 2360462; 624039, 2360722; return to starting point.

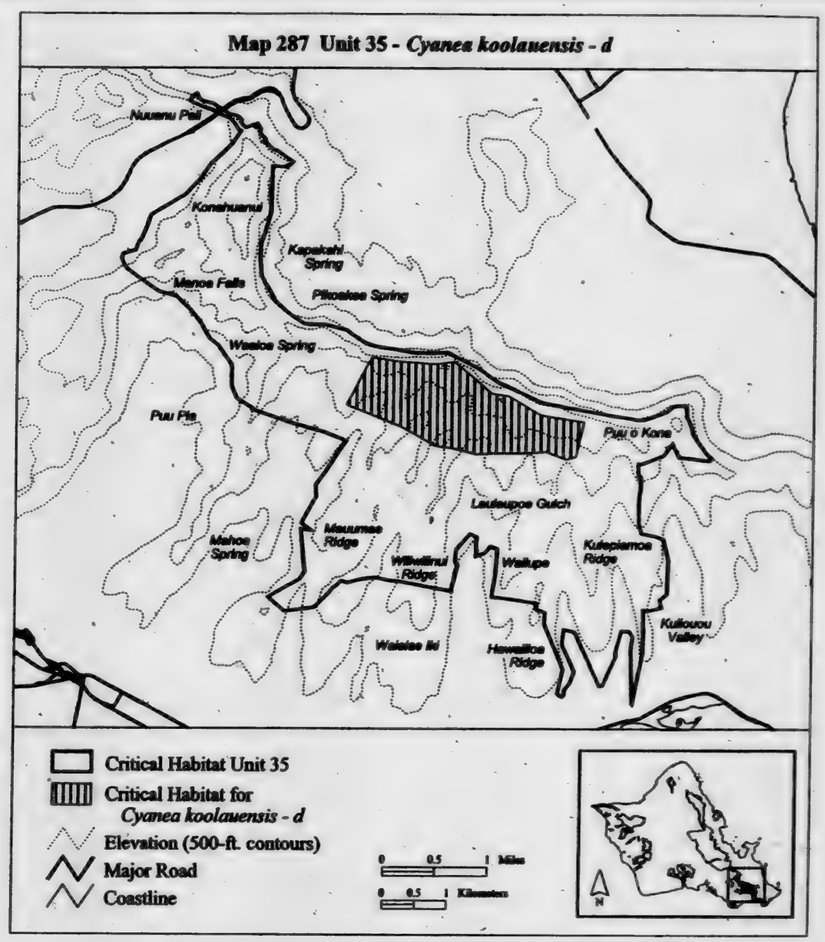
(ii) **Note:** Map 286 follows:



(287) Oahu 35—*Cyanea koolauensis*—d (312 ha; 770 ac)

(i) Unit consists of the following 18 boundary points: Start at 627127, 2358746; 627509, 2359475; 627960, 2359406; 628481, 2359371; 628776, 2359406; 629349, 2358920; 629609, 2358885; 630095, 2358590; 630755, 2358486; 630633, 2357965; 630494, 2357930; 630182, 2358035; 629835, 2358017; 629349, 2358017; 629123, 2358000; 628759, 2358087; 628498, 2358121; 627960, 2358416; return to starting point.

(ii) **Note:** Map 287 follows:



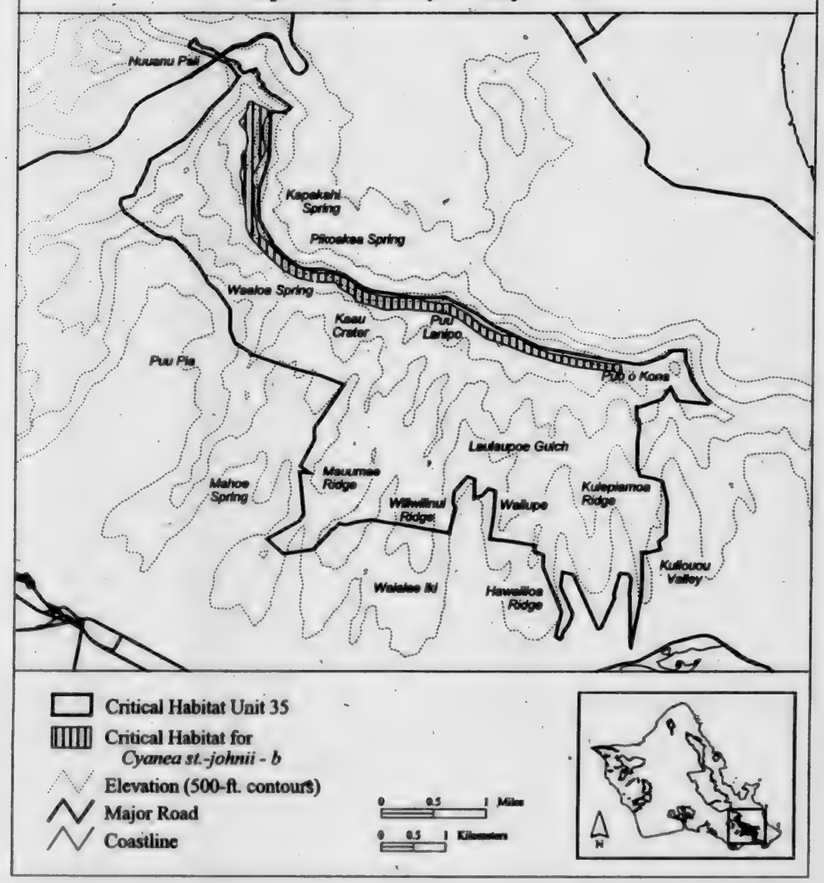
(288) Oahu 35—*Cyanea st.-johnii*—b (135 ha; 333 ac)

(i) Unit consists of the following 130 boundary points: Start at 631368, 2358369; 631225, 2358417; 630942, 2358443; 630644, 2358485; 630309, 2358568; 630157, 2358621; 629922, 2358689; 629644, 2358804; 629414, 2358882; 629294, 2358919; 629105, 2359045; 628875, 2359217; 628671, 2359301; 628498, 2359322; 628211, 2359343; 628211, 2359338; 628130, 2359359; 627971, 2359359; 627800, 2359353; 627739, 2359353; 627541, 2359413; 627345, 2359461; 627279, 2359509; 627240, 2359564; 627120, 2359633; 627042, 2359681; 626985, 2359765; 626894, 2359771; 626654, 2359774; 626368, 2359843; 626188, 2359951; 625986, 2360138; 625854, 2360255; 625791, 2360325; 625791, 2360324; 625782, 2360335; 625770, 2360348; 625770, 2360349; 625743, 2360381; 625674, 2360463; 625620, 2360580; 625604, 2360637; 625601, 2360766; 625589, 2360905; 625550, 2361094; 625550, 2361199; 625544, 2361295; 625517, 2361365; 625511, 2361434; 625535, 2361527; 625535, 2361575; 625529, 2361692; 625598, 2361783; 625617, 2361903; 625605, 2362059; 625604, 2362059; 625556, 2362125; 625505, 2362177; 625493, 2362228; 625532, 2362258; 625562, 2362309; 625607, 2362414; 625623, 2362519; 625662, 2362540; 625689, 2362525; 625755, 2362489; 625848, 2362450; 625929, 2362408; 625956, 2362378; 625935, 2362312; 625887, 2362264; 625875, 2362219; 625857, 2362161; 625854, 2362080; 625851, 2362080; 625857, 2361951; 625881, 2361867; 625896, 2361774; 625869, 2361698; 625830, 2361629; 625773, 2361539; 625737, 2361449; 625698, 2361392; 625701, 2361298; 625731, 2361220; 625728, 2361151; 625719, 2361061; 625722, 2361004; 625722, 2360947; 625737, 2360896; 625749, 2360781; 625764, 2360664; 625764, 2360607; 625788, 2360550; 625815,

2360502; 625815, 2360499; 625875, 2360436; 626007, 2360306; 626104, 2360210; 626209, 2360129; 626338, 2360033; 626437, 2359991; 626636, 2359930; 626708, 2359918; 626744, 2359906; 626786, 2359912; 626867, 2359912; 626973, 2359891; 627201, 2359801; 627324, 2359681; 627466, 2359615; 627721, 2359552; 628004, 2359530; 628189, 2359539; 628189, 2359542; 628191, 2359541; 628409, 2359474; 628618, 2359442; 628734, 2359448; 628922, 2359343; 629000, 2359296; 629210, 2359134; 629398, 2359034; 629534, 2358966; 629754, 2358945; 629932, 2358830; 630262, 2358684; 630670, 2358610; 631214, 2358526; 631349, 2358518; return to starting point.

(ii) **Note:** Map 288 follows:

Map 288 Unit 35 - *Cyanea st.-johnii - b*

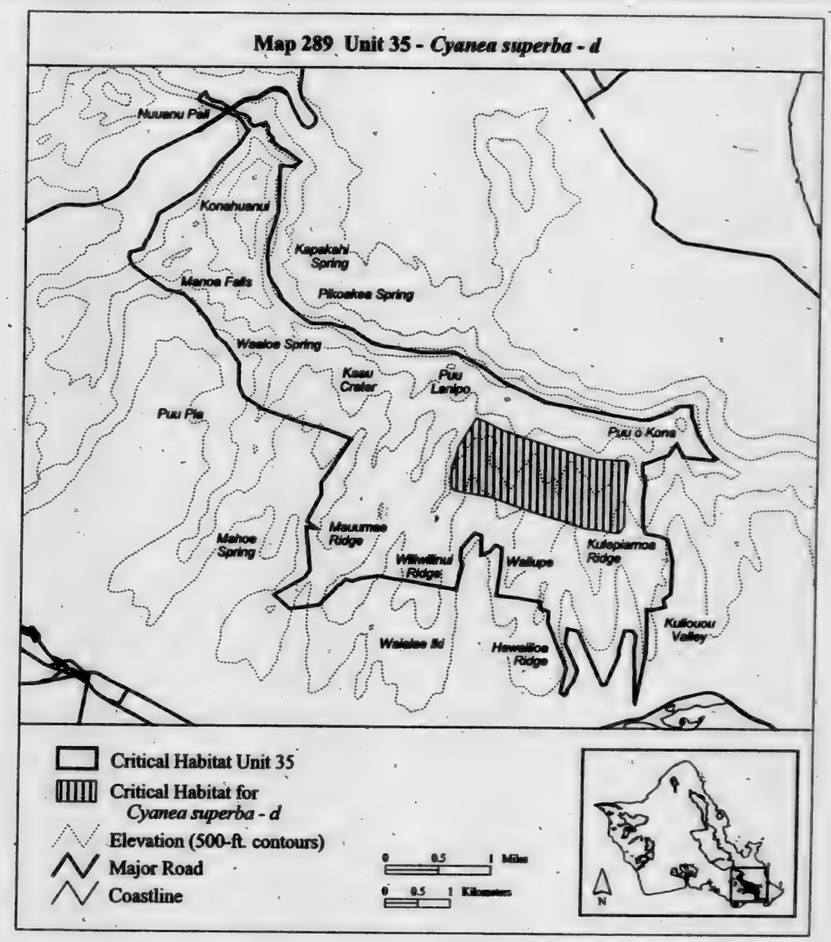


(289) Oahu 35—*Cyanea superba*—d (282 ha; 697 ac)

(i) Unit consists of the following 38 boundary points: Start at 629040, 2358537; 629196, 2358469; 629405, 2358358; 629686, 2358265; 629978, 2358173; 630357, 2358061; 630692, 2357969; 630926, 2357915; 631052, 2357911; 631241, 2357906; 631348, 2357901; 631387, 2357847; 631373, 2357799; 631363, 2357706; 631343, 2357517; 631329, 2357327; 631329, 2357114; 631329, 2356890; 631261, 2356798; 631169, 2356793; 631023, 2356822; 630911, 2356837; 630765, 2356846; 630561, 2356905; 630372, 2356968; 630109, 2357046; 629866, 2357118; 629536, 2357235; 629254, 2357332; 628943, 2357386; 628714, 2357425; 628666, 2357488; 628666, 2357585; 628666, 2357687; 628666, 2357770; 628695, 2357852; 628744, 2357979; 628763, 2358081; return to starting point.

(ii) **Note:** Map 289 follows:

Map 289 Unit 35 - *Cyanea superba - d*

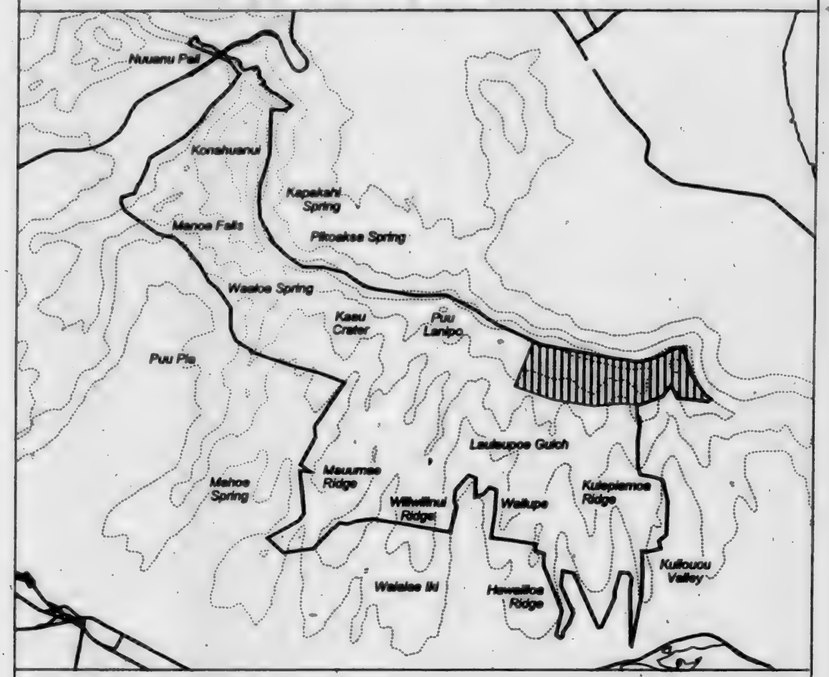


(290) Oahu 35—*Cyrtandra polyantha*—a (190 ha; 469 ac)

(i) Unit consists of the following 21 boundary points: Start at 632692, 2357913; 632214, 2357962; 632118, 2358162; 631987, 2357985; 631642, 2357861; 631352, 2357878; 630945, 2357838; 630320, 2357935; 629723, 2358144; 629995, 2358800; 630879, 2358635; 631175, 2358587; 631506, 2358538; 631537, 2358522; 631694, 2358524; 632037, 2358651; 632266, 2358737; 632397, 2358444; 632436, 2358300; 632639, 2358025; 632725, 2357947; return to starting point.

(ii) **Note:** Map 290 follows:

Map 290 Unit 35 - *Cyrtandra polyantha - a*

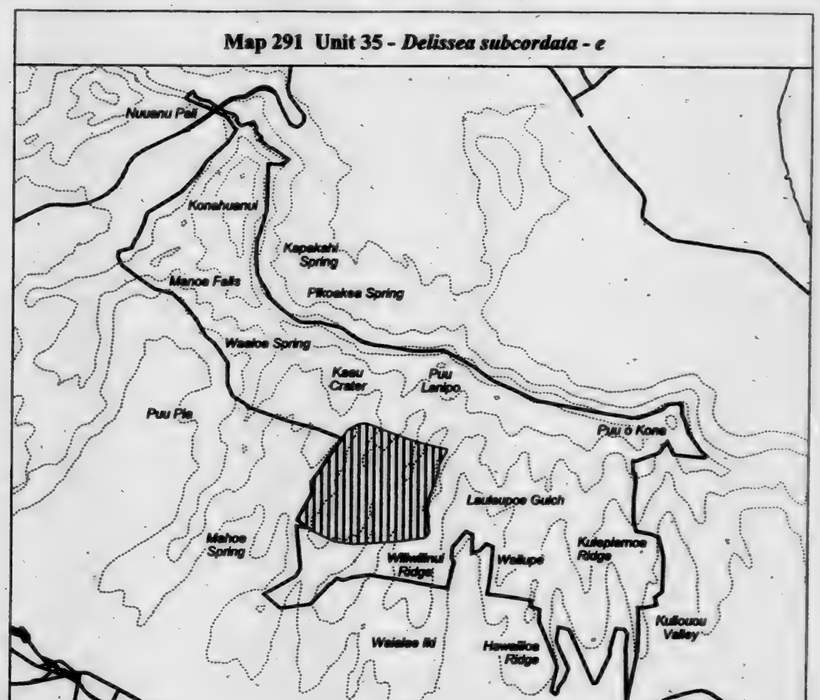


(291) Oahu 35—*Delissea subcordata*—e (292 ha; 721 ac)

(i) Unit consists of the following 25 boundary points: Start at 626664, 2357534; 626795, 2357704; 627029, 2358053; 627224, 2358336; 627392, 2358423; 627502, 2358427; 627630, 2358379; 627953, 2358255; 628276, 2358149; 628736, 2358038; 628729, 2357998; 628614, 2357777; 628604, 2357670; 628469, 2357323; 628440, 2357112; 628469, 2356746; 628407, 2356682; 627935, 2356616; 627308, 2356585; 627034, 2356621; 626808, 2356718; 626676, 2356789; 626455, 2356942; 626679, 2357357; 626679, 2357358; return to starting point.

(ii) **Note:** Map 291 follows:

Map 291 Unit 35 - *Delissea subcordata - e*

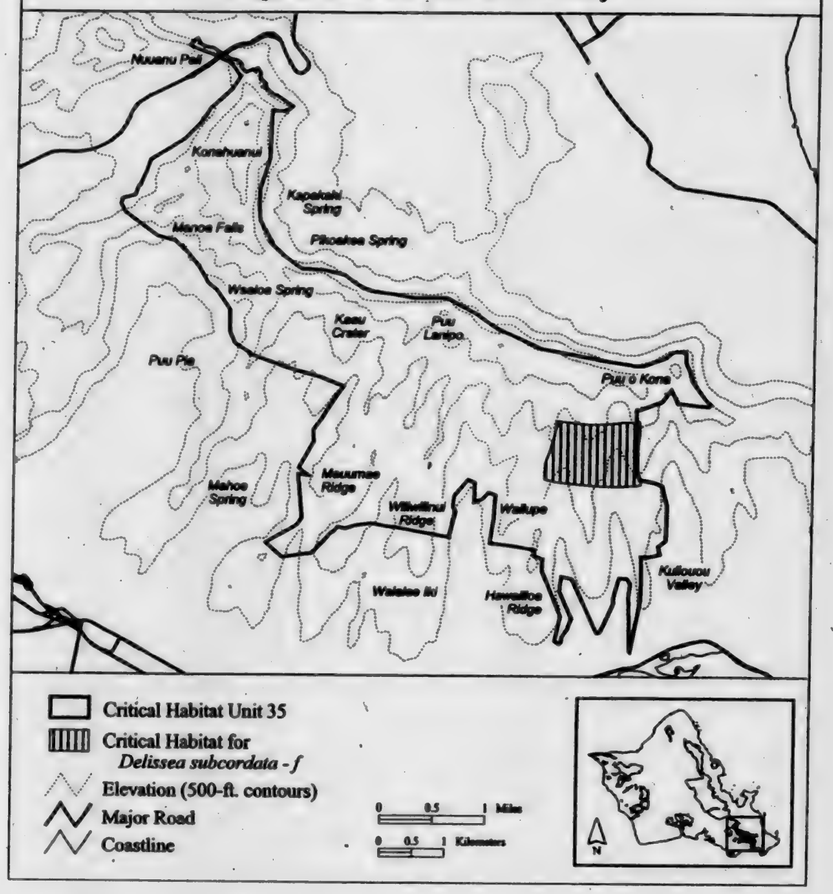


(292) Oahu 35—*Delissea subcordata*—f (129 ha; 318 ac)

(i) Unit consists of the following 25 boundary points: Start at 630377, 2357689; 630601, 2357663; 630893, 2357636; 631140, 2357641; 631405, 2357672; 631635, 2357672; 631639, 2357530; 631617, 2357300; 631617, 2357133; 631616, 2357125; 631616, 2357124; 631617, 2357123; 631617, 2357097; 631613, 2356938; 631666, 2356743; 631666, 2356712; 631604, 2356699; 631374, 2356686; 631105, 2356686; 630791, 2356704; 630406, 2356739; 630195, 2356788; 630204, 2357034; 630272, 2357217; 630397, 2357642; return to starting point.

(ii) **Note:** Map 292 follows:

Map 292 Unit 35 - *Delissea subcordata - f*

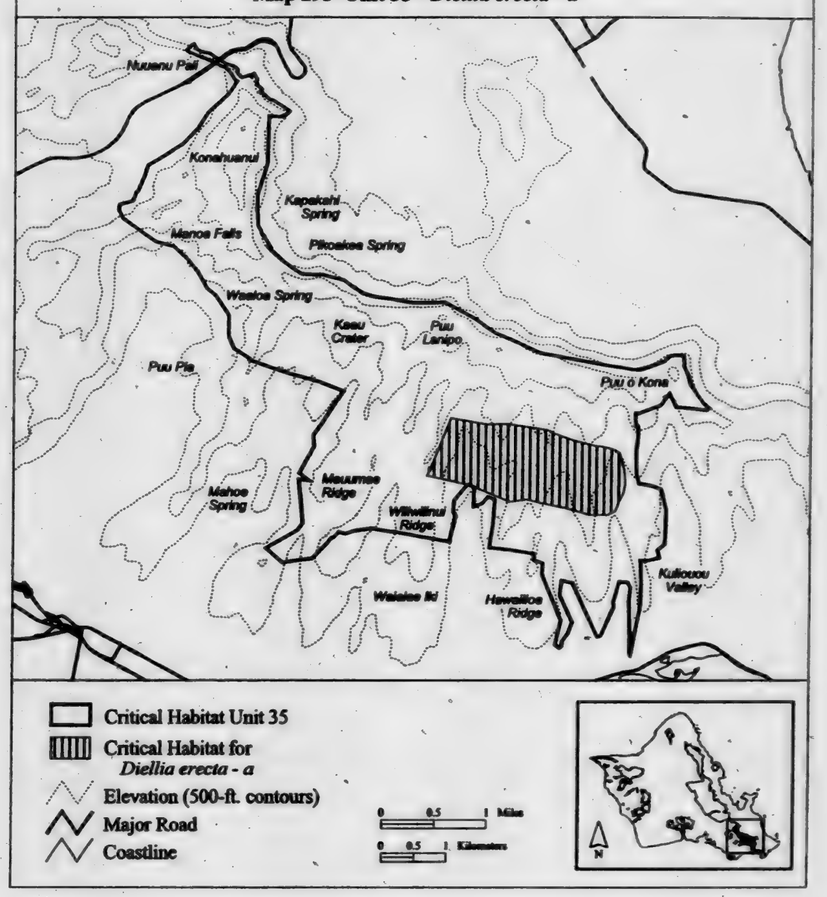


(293) Oahu 35—*Diellia erecta*—a (295 ha; 730 ac)

(i) Unit consists of the following 32 boundary points: Start at 629037, 2356776; 629036, 2356775; 629032, 2356777; 629030, 2356775; 628423, 2356903; 628417, 2356907; 628775, 2357794; 628842, 2357777; 629314, 2357699; 629642, 2357705; 629963, 2357653; 630249, 2357616; 630353, 2357564; 630664, 2357450; 630981, 2357372; 631080, 2357367; 631256, 2357320; 631355, 2357263; 631391, 2357118; 631433, 2356983; 631443, 2356765; 631417, 2356635; 631349, 2356511; 631298, 2356376; 631178, 2356319; 631043, 2356319; 630908, 2356319; 630540, 2356422; 630145, 2356505; 629943, 2356552; 629681, 2356520; 629147, 2356731; return to starting point.

(ii) **Note:** Map 293 follows:

Map 293 Unit 35 - *Diellia erecta - a*

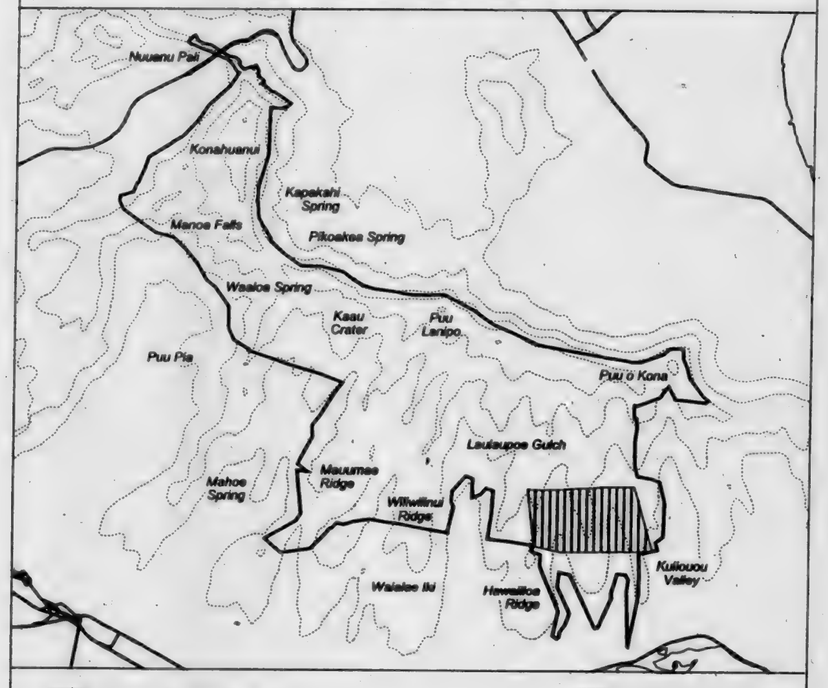


(294) Oahu 35—*Hedyotis coriacea*—b (163 ha; 403 ac)

(i) Unit consists of the following 13 boundary points: Start at 629982, 2356572; 630184, 2356567; 630523, 2356580; 630771, 2356596; 630972, 2356596; 631144, 2356617; 631391, 2356622; 631609, 2356622; 631611, 2356622; 631896, 2355651; 631866, 2355644; 630509, 2355630; 630091, 2355715; return to starting point.

(ii) **Note:** Map 294 follows:

Map 294 Unit 35 - *Hedyotis coriacea - b*

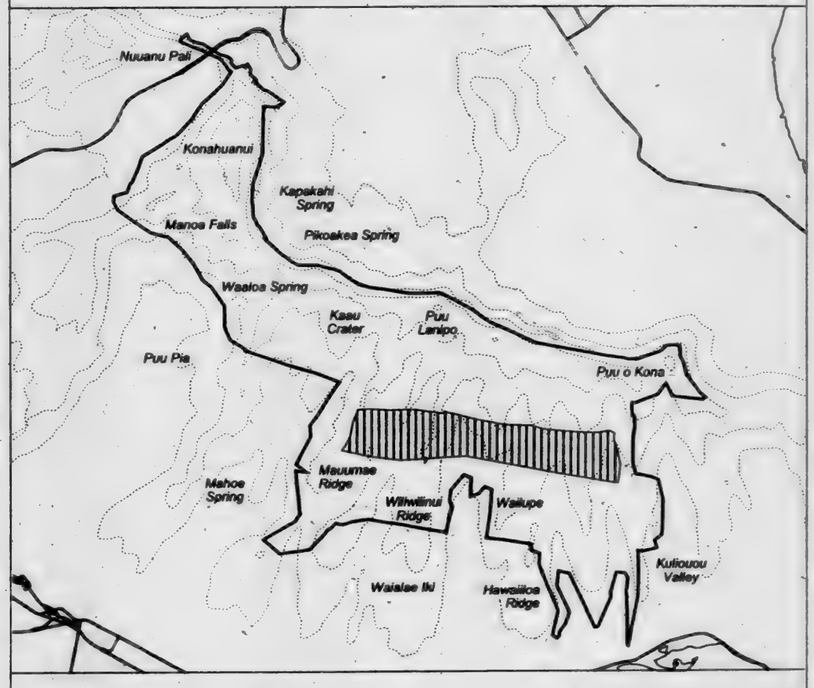


(295) Oahu 35—*Isodendrion laurifolium*—c (277 ha; 685 ac)

(i) Unit consists of the following 31 boundary points: Start at 628725, 2357745; 629204, 2357630; 629647, 2357539; 630066, 2357524; 630242, 2357463; 630696, 2357423; 630898, 2357413; 631089, 2357413; 631256, 2357443; 631336, 2357398; 631321, 2357302; 631377, 2357140; 631427, 2356914; 631397, 2356712; 631390, 2356646; 630446, 2356803; 629057, 2357055; 628070, 2356995; 627577, 2357056; 627161, 2357148; 627222, 2357227; 627293, 2357373; 627333, 2357585; 627409, 2357772; 627540, 2357782; 627691, 2357777; 627868, 2357767; 628201, 2357771; 6282611, 628553, 2357740; 628721, 2357717; return to starting point.

(ii) **Note:** Map 295 follows:

Map 295 Unit 35 - *Isodendrion laurifolium - c*

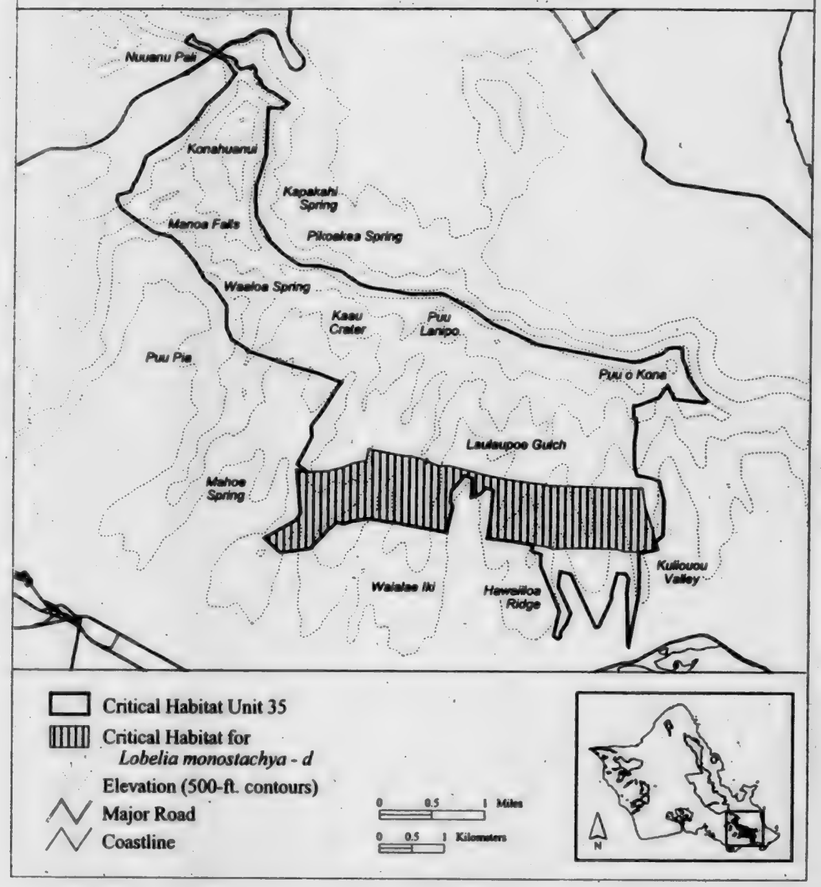


(296) Oahu 35—*Lobelia monostachya*—d (492 ha; 1,216 ac)

(i) Unit consists of the following 69 boundary points: Start at 628771, 2355914; 628330; 2355988; 627926, 2356061; 627899, 2356066; 627897, 2356061; 627827, 2356068; 627571, 2356120; 627329, 2356083; 627168, 2356034; 627070, 2356065; 627069, 2356065; 626983, 2355978; 626965, 2355973; 626932, 2355944; 626890, 2355885; 626668, 2355663; 626214, 2355601; 625964, 2355819; 626441, 2356092; 626441, 2356093; 626521, 2356196; 626521, 2356197; 626450, 2356847; 626599, 2356831; 626914, 2356839; 627171, 2356897; 627303, 2356956; 627519, 2357004; 627545, 2357180; 627996, 2357095; 628115, 2357076; 628205, 2357073; 628202, 2357063; 628341, 2357040; 628623, 2356927; 628796, 2356927; 629324, 2356786; 629687, 2356713; 629991, 2356676; 630266, 2356636; 630266, 2356629; 630905, 2356614; 631414, 2356592; 631733, 2356599; 631785, 2356317; 631898, 2355976; 631979, 2355672; 631786, 2355624; 631477, 2355638; 631352, 2355671; 631183, 2355675; 630849, 2355682; 630596, 2355679; 630365, 2355668; 630259, 2355709; 630259, 2355704; 629683, 2355793; 629380, 2355827; 629412, 2356050; 629470, 2356546; 629349, 2356595; 629262, 2356488; 629132, 2356446; 629144, 2356746; 629042, 2356789; 628826, 2356538; 628817, 2356371; 628855, 2356304; 628771, 2355955; return to starting point.

(ii) **Note:** Map 296 follows:

Map 296 Unit 35 - *Lobelia monostachya - d*



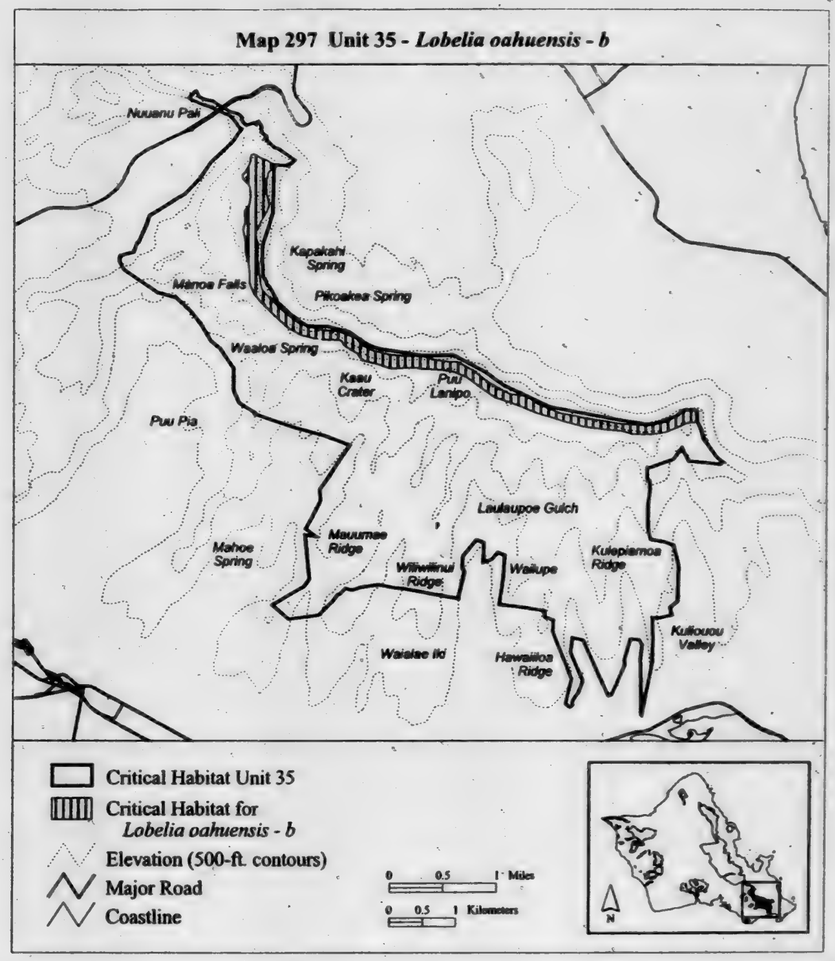
(297) Oahu 35—*Lobelia oahuensis*—b (151 ha; 373 ac)

(i) Unit consists of the following 140 boundary points: Start at 632026, 2358647; 632130, 2358731; 632266, 2358741; 632334, 2358725; 632340, 2358600; 632313, 2358547; 632193, 2358537; 631869, 2358401; 631670, 2358364; 631382, 2358364; 631225, 2358417; 630942, 2358443; 630644, 2358485; 630309, 2358568; 630157, 2358621; 629922, 2358689; 629644, 2358804; 629414, 2358882; 629294, 2358919; 629105, 2359045; 628875, 2359217; 628671, 2359301; 628498, 2359322; 628211, 2359343; 628211, 2359338; 628130, 2359359; 627971, 2359359; 627800, 2359353; 627739, 2359353; 627541, 2359413; 627345, 2359461; 627279, 2359509; 627240, 2359564; 627120, 2359633; 627042, 2359681; 626985, 2359765; 626894, 2359771; 626654, 2359774; 626368, 2359843; 626188, 2359951; 625986, 2360138; 625854, 2360255; 625791, 2360325; 625791, 2360324; 625782, 2360335; 625770, 2360348; 625770, 2360349; 625743, 2360381; 625674, 2360463; 625620, 2360580; 625604, 2360637; 625601, 2360766; 625589, 2360905; 625550, 2361094; 625550, 2361199; 625544, 2361295; 625517, 2361365; 625511, 2361434; 625535, 2361527; 625535, 2361575; 625529, 2361692; 625598, 2361783; 625617, 2361903; 625605, 2362059; 625604, 2362059; 625556, 2362125; 625505, 2362177; 625493, 2362228; 625532, 2362258; 625562, 2362309; 625607, 2362414; 625623, 2362519; 625662, 2362540; 625689, 2362525; 625755, 2362489; 625848, 2362450; 625929, 2362408; 625956, 2362378; 625935, 2362312; 625887, 2362264; 625875, 2362219; 625857, 2362161; 625854, 2362080; 625851, 2362080; 625857, 2361951; 625881, 2361867; 625896, 2361774; 625869, 2361698; 625830, 2361629; 625773, 2361539; 625737, 2361449; 625698, 2361392; 625701, 2361298; 625731, 2361220; 625728,

2361151; 625719, 2361061; 625722, 2361004; 625722, 2360947; 625737, 2360896; 625749, 2360781; 625764, 2360664; 625764, 2360607; 625788, 2360550; 625815, 2360502; 625815, 2360499; 625875, 2360436; 626007, 2360306; 626104, 2360210; 626209, 2360129; 626338, 2360033; 626437, 2359991; 626636, 2359930; 626708, 2359918; 626744, 2359906; 626786, 2359912; 626867, 2359912; 626973, 2359891; 627201, 2359801; 627324, 2359681; 627466, 2359615; 627721, 2359552; 628004, 2359530; 628189, 2359539; 628189, 2359542; 628191, 2359541; 628409, 2359474; 628618, 2359442; 628734, 2359448; 628922, 2359343; 629000, 2359296; 629210, 2359134; 629398, 2359034; 629534, 2358966; 629754, 2358945; 629932, 2358830; 630262, 2358684; 630670, 2358610; 631214, 2358526; 631607, 2358500; 631900, 2358563; return to starting point.

(ii) **Note:** Map 297 follows:

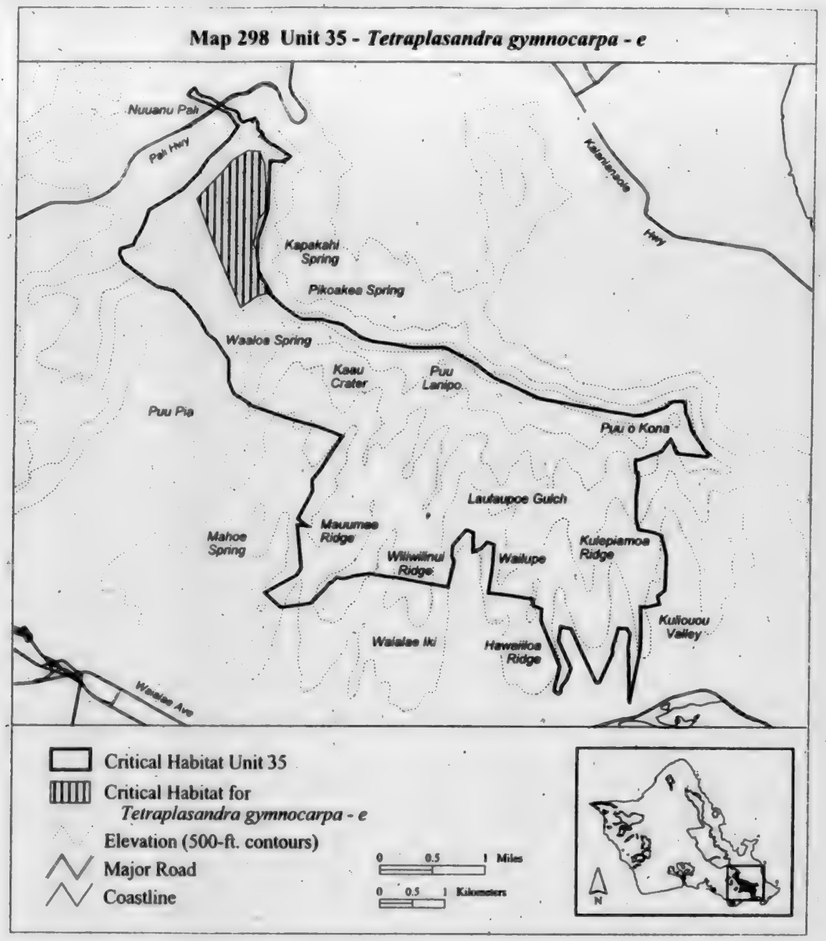
Map 297 Unit 35 - *Lobelia oahuensis - b*



(298) Oahu 35—*Tetraplasandra gymnocarpa*—e (152 ha; 376 ac)

(i) Unit consists of the following 26 boundary points: Start at 625799, 2360900; 625804, 2360726; 625853, 2360646; 625861, 2360607; 625862, 2360607; 625910, 2360553; 626000, 2360395; 625793, 2360330; 625546, 2360155; 625079, 2361221; 625083, 2361221; 624866, 2361796; 624857, 2361800; 624927, 2361880; 625243, 2362209; 625408, 2362394; 625639, 2362532; 625810, 2362519; 625889, 2362334; 625916, 2361992; 625909, 2361622; 625797, 2361484; 625731, 2361115;

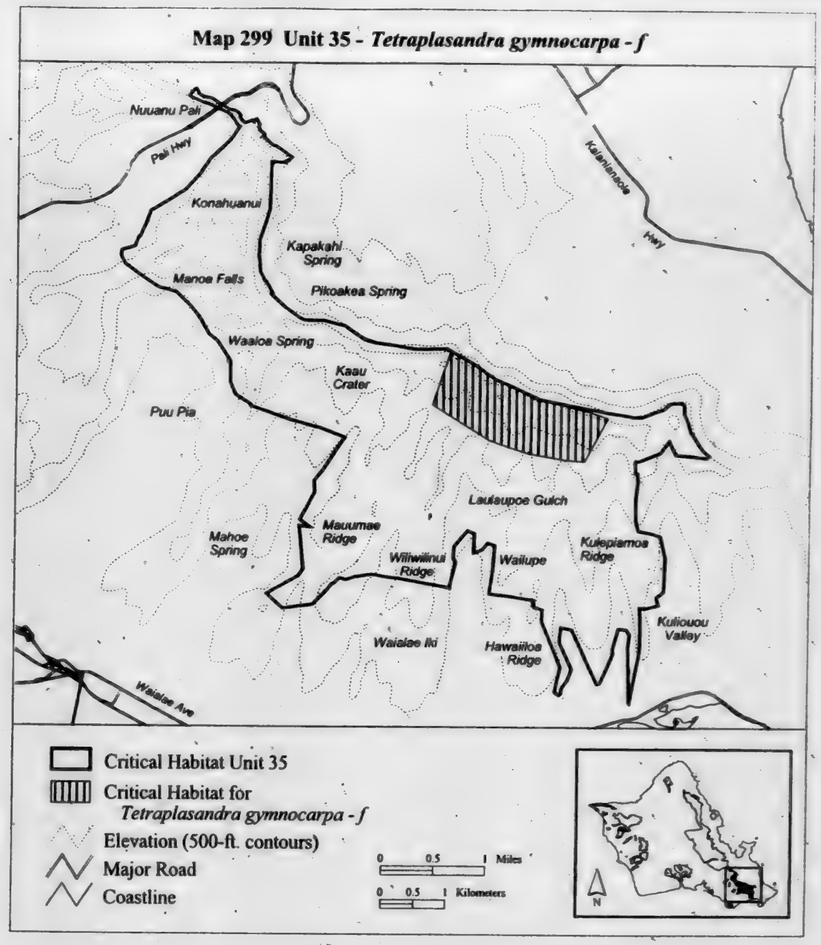
(ii) **Note:** Map 298 follows:



(299) Oahu 35—*Tetraplasnadra gymnocarpa*—f (214 ha; 528 ac)

(i) Unit consists of the following 12 boundary points: Start at 628462, 2358693; 628739, 2359501; 629145, 2359298; 629149, 2359295; 629426, 2359091; 630077, 2358784; 630872, 2358597; 631161, 2358501; 630812, 2357850; 630522, 2357874; 629956, 2357970; 629330, 2358163; return to starting point.

(ii) **Note:** Map 299 follows:

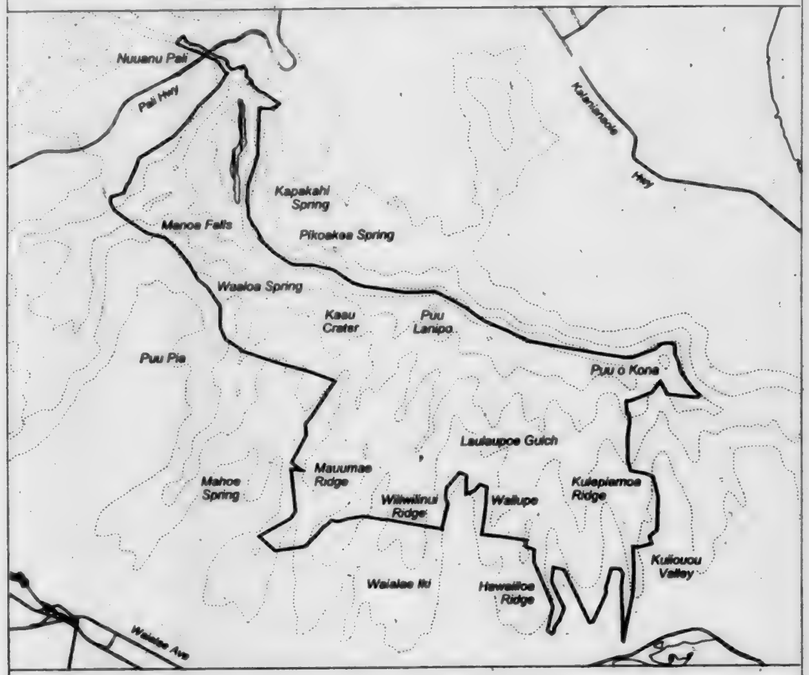


(300) Oahu 35—*Trematolobelia singularis*—d (14 ha; 33 ac)

(i) Unit consists of the following 52 boundary points: Start at 625675, 2362515; 625712, 2362499; 625712, 2362459; 625743, 2362418; 625743, 2362337; 625737, 2362257; 625750, 2362185; 625743, 2362126; 625759, 2362005; 625759, 2361924; 625778, 2361843; 625725, 2361759; 625690, 2361713; 625647, 2361644; 625641, 2361545; 625635, 2361458; 625635, 2361377; 625663, 2361327; 625669, 2361253; 625666, 2361153; 625672, 2361088; 625666, 2361057; 625666, 2360991; 625664, 2360972; 625659, 2360932; 625628, 2360932; 625600, 2360973; 625588, 2361019; 625603, 2361094; 625582, 2361122; 625579, 2361141; 625591, 2361212; 625597, 2361268; 625575, 2361299; 625544, 2361358; 625529, 2361427; 625526, 2361504; 625551, 2361554; 625566, 2361607; 625566, 2361682; 625569, 2361731; 625579, 2361747; 625625, 2361775; 625669, 2361849; 625684, 2361927; 625678, 2362005; 625663, 2362079; 625659, 2362157; 625659, 2362238; 625681, 2362341; 625653, 2362459; 625656, 2362521; return to starting point.

(ii) **Note:** Map 300 follows:

Map 300 Unit 35 - *Trematolobelia singularis - d*

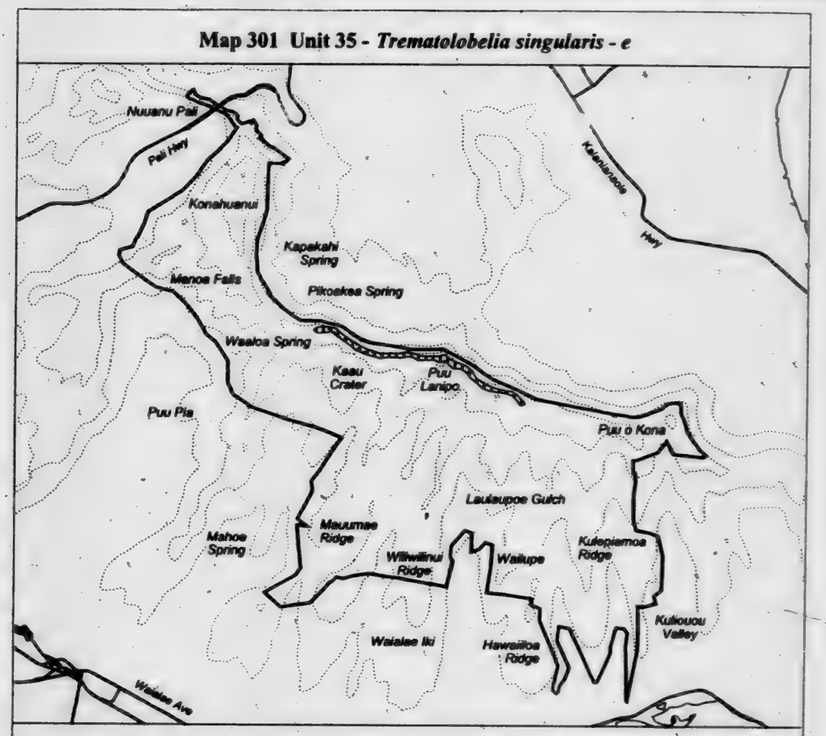


(301) Oahu 35—*Trematolobelia singularis*—e (14 ha; 33 ac)

(i) Unit consists of the following 52 boundary points: Start at 625675, 2362515; 625712, 2362499; 625712, 2362459; 625743, 2362418; 625743, 2362337; 625737, 2362257; 625750, 2362185; 625743, 2362126; 625759, 2362005; 625759, 2361924; 625778, 2361843; 625725, 2361759; 625690, 2361713; 625647, 2361644; 625641, 2361545; 625635, 2361458; 625635, 2361377; 625663, 2361327; 625669, 2361253; 625666, 2361153; 625672, 2361088; 625666, 2361057; 625666, 2360991; 625664, 2360972; 625659, 2360932; 625628, 2360932; 625600, 2360973; 625588, 2361019; 625603, 2361094; 625582, 2361122; 625579, 2361141; 625591, 2361212; 625597, 2361268; 625575, 2361299; 625544, 2361358; 625529, 2361427; 625526, 2361504; 625551, 2361554; 625566, 2361607; 625566, 2361682; 625569, 2361731; 625579, 2361747; 625625, 2361775; 625669, 2361849; 625684, 2361927; 625678, 2362005; 625663, 2362079; 625659, 2362157; 625659, 2362238; 625681, 2362341; 625653, 2362459; 625656, 2362521; return to starting point.

(ii) **Note:** Map 301 follows:

Map 301 Unit 35 - *Trematolobelia singularis - e*

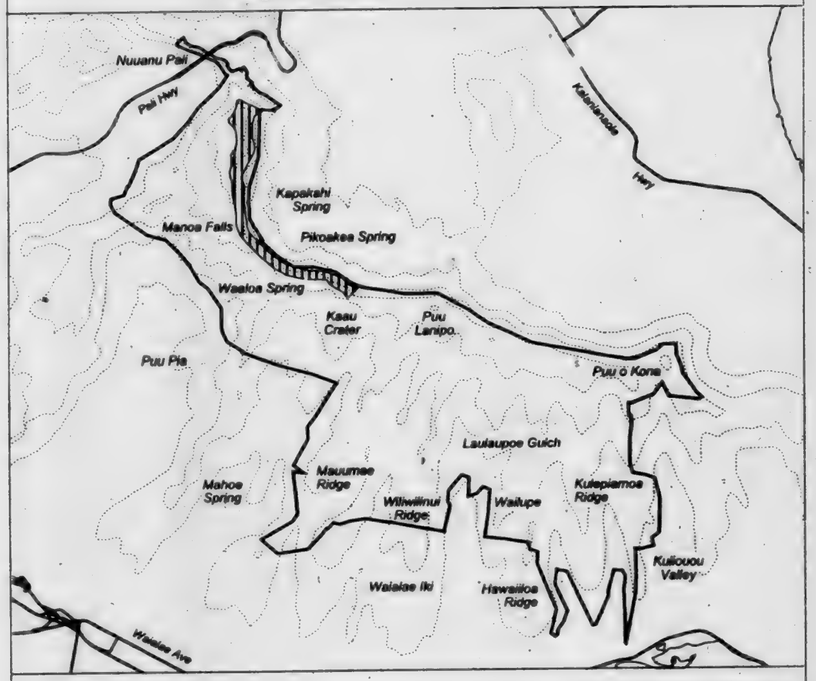


(302) Oahu 35—*Viola oahuensis*—b (75 ha; 186 ac)

(i) Unit consists of the following 90 boundary points: Start at 627315, 2359484; 627279, 2359509; 627240, 2359564; 627120, 2359633; 627042, 2359681; 626985, 2359765; 626894, 2359771; 626654, 2359774; 626368, 2359843; 626188, 2359951; 625986, 2360138; 625854, 2360255; 625791, 2360325; 625791, 2360324; 625782, 2360335; 625770, 2360348; 625770, 2360349; 625743, 2360381; 625674, 2360463; 625620, 2360580; 625604, 2360637; 625601, 2360766; 625589, 2360905; 625550, 2361094; 625550, 2361199; 625544, 2361295; 625517, 2361365; 625511, 2361434; 625535, 2361527; 625535, 2361575; 625529, 2361692; 625598, 2361783; 625617, 2361903; 625605, 2362059; 625604, 2362059; 625556, 2362125; 625505, 2362177; 625493, 2362228; 625532, 2362258; 625562, 2362309; 625607, 2362414; 625623, 2362519; 625662, 2362540; 625689, 2362525; 625755, 2362489; 625848, 2362450; 625929, 2362408; 625956, 2362378; 625935, 2362312; 625887, 2362264; 625875, 2362219; 625857, 2362161; 625854, 2362080; 625851, 2362080; 625857, 2361951; 625881, 2361867; 625896, 2361774; 625869, 2361698; 625830, 2361629; 625773, 2361539; 625737, 2361449; 625698, 2361392; 625701, 2361298; 625731, 2361220; 625728, 2361151; 625719, 2361061; 625722, 2361004; 625722, 2360947; 625737, 2360896; 625749, 2360781; 625764, 2360664; 625764, 2360607; 625788, 2360550; 625815, 2360502; 625815, 2360499; 625875, 2360436; 626007, 2360306; 626104, 2360210; 626209, 2360129; 626338, 2360033; 626437, 2359991; 626636, 2359930; 626708, 2359918; 626744, 2359906; 626786, 2359912; 626867, 2359912; 626973, 2359891; 627201, 2359801; 627324, 2359681; 627454, 2359620; return to starting point.

(ii) **Note:** Map 302 follows:

Map 302 Unit 35 - *Viola oahuensis - b*



(303) Oahu 36—*Cyperus trachysanthos*—d (5 ha; 13 ac)

(i) Unit consists of the following 12 boundary points: Start at 624088, 2351393; 624025, 2351406; 623980, 2351471; 623984, 2351554; 624095, 2351675; 624119, 2351675; 624179, 2351675; 624234, 2351635; 624272, 2351572; 624224, 2351497; 624161, 2351479; 624161, 2351478; return to starting point.

(ii) **Note:** Map 303 follows:

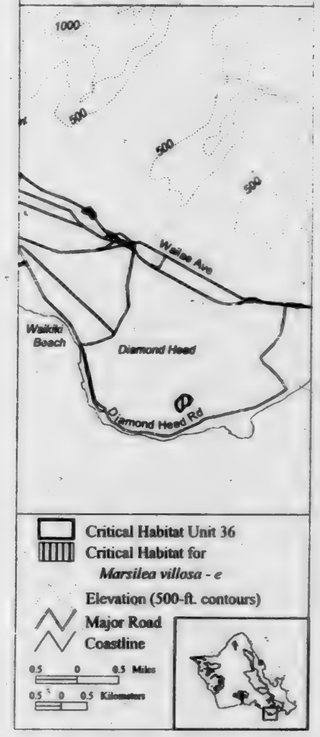
Map 303 Unit 36
Cyperus trachysanthos - d

(304) Oahu 36—*Marsilea villosa*—e (6 ha; 14 ac)

(i) Unit consists of the following 13 boundary points: Start at 624140, 2351695; 624165, 2351693; 624226, 2351679; 624288, 2351612; 624292, 2351603; 624224, 2351497; 624161, 2351479; 624161, 2351478; 624071, 2351374; 624013, 2351406; 624000, 2351487; 624000, 2351571; 624112, 2351693; return to starting point.

(ii) **Note:** Map 304 follows:

Map 304
Unit 36 *Marsilea villosa - e*



BILLING CODE 4310-55-C

(305) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU

Unit name	Species occupied	Species unoccupied
Oahu 4—*Abutilon sandwicense*—a	*Abutilon sandwicense.*	
Oahu 4—*Abutilon sandwicense*—b	*Abutilon sandwicense.*	
Oahu 4—*Abutilon sandwicense*—c	*Abutilon sandwicense.*	
Oahu 15—*Abutilon sandwicense*—d	*Abutilon sandwicense.*	
Oahu 15—*Abutilon sandwicense*—e	*Abutilon sandwicense.*	
Oahu 17—*Abutilon sandwicense*—f	*Abutilon sandwicense.*	
Oahu 20—*Adenophorus periens*—a		*Adenophorus periens.*
Oahu 4—*Alectryon macrococcus*—a	*Alectryon macrococcus.*	

(305) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU—Continued

Unit name	Species occupied	Species unoccupied
Oahu 15—*Alectryon macrococcus*—b	*Alectryon macrococcus.*	
Oahu 4—*Alsinidendron obovatum*—a	*Alsinidendron obovatum.*	
Oahu 4—*Alsinidendron obovatum*—b	*Alsinidendron obovatum*	*Alsinidendron obovatum.*
Oahu 15—*Alsinidendron obovatum*—c		*Alsinidendron obovatum.*
Oahu 4—*Alsinidendron trinerve*—a	*Alsinidendron trinerve.*	
Oahu 2—*Bonamia menziesii*—a	*Bonamia menziesii.*	
Oahu 3—*Bonamia menziesii*—b	*Bonamia menziesii.*	
Oahu 4—*Bonamia menziesii*—c	*Bonamia menziesii.*	
Oahu 17—*Bonamia menziesii*—d	*Bonamia menziesii.*	
Oahu 35—*Bonamia menziesiiz*—e	*Bonamia menziesii.*	
Oahu 4—*Canchrus agrimonioides*—a	*Cenchrus agrimonioides.*	
Oahu 4—*Cenchrus agrimonioides*—b	*Cenchrus agrimonioides.*	
Oahu 15—*Cenchrus agrimonioides*—c	*Cenchrus agrimonioides.*	
Oahu 15—*Cenchrus agrimonioides*—d	*Cenchrus agrimonioides.*	
Oahu 1—*Centaurium sebaeoides*—a		*Centaurium sebaeoides.*
Oahu 27—*Centaurium sebaeoides*—b		*Centaurium sebaeoides.*
Oahu 1—*Chamaesyce celastroides* var. *kaenana*—a	*Chamaesyce celastroides* var. *kaenana.*	
Oahu 3—*Chamaesyce celastroides* var. *kaenana*—b	*Chamaesyce celastroides* var. *kaenana*	
Oahu 4—*Chamaesyce celastroides* var. *kaenana*—c		*Chamaesyce celastroides* var. *kaenana.*
Oahu 5—*Chamaesyce celastroides* var. *kaenana*—d	*Chamaesyce celastroides* var. *kaenana.*	
Oahu 35—*Chamaesyce celastroides* var. *Kaenana*—e		*Chamaesyce celastroides* var. *kaenana.*
Oahu 20—*Chamaesyce deppeana*—a		*Chamaesyce deppeana.*
Oahu 35—*Chamaesyce deppeana*—b	*Chamaesyce deppeana.*	
Oahu 4—*Chamaesyce herbstii*—a	*Chamaesyce herbstii.*	
Oahu 15—*Chamaesyce herbstii*—b		*Chamaesyce herbstii.*
Oahu15—*Chamaesyce herbstii*—c	*Chamaesyce herbstii.*	
Oahu 9—*Chamaesyce kuwaleana*—a	*Chamaesyce kuwaleana.*	
Oahu 11—*Chamaesyce kuwaleana*—b	*Chamaesyce kuwaleana.*	
Oahu 12—*Chamaesyce kuwaleana*—c	*Chamaesyce kuwaleana.*	
Oahu 15—*Chamaesyce kuwaleana*—d		*Chamaesyce kuwaleana.*
Oahu 22—*Chamaesyce kuwaleana*—e		*Chamaesyce kuwaleana.*
Oahu 23—*Chamaesyce kuwaleana*—f		*Chamaesyce kuwaleana.*
Oahu 26—*Chamaesyce kuwaleana*—g		*Chamaesyce kuwaleana.*
Oahu 20—*Chamaesyce rockii*—a	*Chamaesyce rockii.*	
Oahu 20—*Chamaesyce rockii*—b		*Chamaesyce rockii.*
Oahu 20—*Chamaesyce rockii*—c	*Chamaesyce rockii.*	
Oahu 4—*Colubrina oppositifolia*—a	*Colubrina oppositifolia.*	
Oahu 4—*Ctenitis squamigera*—a	*Ctenitis squamigera.*	
Oahu 4—*Cyanea acuminata*—a	*Cyanea acuminata.*	
Oahu 20—*Cyanea acuminata*—b	*Cyanea acuminata.*	
Oahu 20—*Cyanea crispa*—a	*Cyanea crispa.*	
Oahu 20—*Cyanea crispa*—b		*Cyanea crispa.*
Oahu 21—*Cyanea crispa*—c	*Cyanea crispa.*	
Oahu 35—*Cyanea crispa*—d	*Cyanea crispa.*	
Oahu 20—*Cyanea grimesiana* ssp. *grimesiana*—a		*Cyanea grimesiana* ssp. *grimesiana.*
Oahu 35—*Cyanea grimesiana* ssp. *grimesiana*—b	*Cyanea grimesiana* ssp. *grimesiana.*	
Oahu 4—*Cyanea grimesiana* ssp. *obatae*—a	*Cyanea grimesiana* ssp. *obatae.*	
Oahu 15—*Cyanea grimesiana* ssp. *obatae*—b	*Cyanea grimesiana* ssp. *obatae.*	
Oahu 15—*Cyanea grimesiana* ssp. *obatae*—c	*Cyanea grimesiana* ssp. *obatae.*	
Oahu 15—*Cyanea grimesiana* ssp. *obatae*—d	*Cyanea grimesiana* ssp. *obatae.*	
Oahu 20—*Cyanea humboltiana*—a	*Cyanea humboltiana.*	
Oahu 20—*Cyanea humboltiana*—b		*Cyanea humboltiana.*
Oahu 20—*Cyanea humboltiana*—c		*Cyanea humboltiana.*
Oahu 20—*Cyanea humboltiana*—d	*Cyanea humboltiana.*	
Oahu 35—*Cyanea humboltiana*—e	*Cyanea humboltiana:*	
Oahu 20—*Cyanea koolauensis*—a	*Cyanea koolauensis.*	
Oahu 20—*Cyanea koolauensis*—b	*Cyanea koolauensis.*	
Oahu 35—*Cyanea koolauensis*—c	*Cyanea koolauensis.*	
Oahu 35—*Cyanea koolauensis*—d	*Cyanea koolauensis.*	
Oahu 4—*Cyanea longiflora*—a	*Cyanea longiflora.*	
Oahu 4—*Cyanea longiflora*—b	*Cyanea longiflora.*	
Oahu 19—*Cyanea longiflora*—c		*Cyanea longiflora.*
Oahu 15—*Cyanea pinnatifida*—a		*Cyanea pinnatifida.*
Oahu 15—*Cyanea pinnatifida*—b		*Cyanea pinnatifida.*
Oahu 15—*Cyanea pinnatifida*—c		*Cyanea pinnatifida.*
Oahu 20—*Cyanea st.-johnii*—a	*Cyanea st.-johnii.*	
Oahu 35—*Cyanea st.-johnii*—b	*Cyanea st.-johnii.*	
Oahu 4—*Cyanea superba*—a		*Cyanea superba.*
Oahu 4—*Cyanea superba*—b		*Cyanea superba.*
Oahu 4—*Cyanea superba*—c		*Cyanea superba.*
Oahu 35—*Cyanea superba*—d		*Cyanea superba.*

(305) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU—Continued

Unit name	Species occupied	Species unoccupied
Oahu 20—*Cyanea truncata*—a	*Cyanea truncata.*	
Oahu 21—*Cyanea truncata*—b	*Cyanea truncata.*	
Oahu 1—*Cyperus trachysanthos*—a	*Cyperus trachysanthos.*	
Oahu 28—*Cyperus trachysanthos*—b		*Cyperus trachysanthos.*
Oahu 29—*Cyperus trachysanthos*—c		*Cyperus trachysanthos.*
Oahu 36—*Cyperus trachysanthos*—d	*Cyperus trachysanthos.*	
Oahu 4—*Cyrtandra dentata*—a	*Cyrtandra dentata.*	
Oahu 35—*Cyrtandra polyantha*—a	*Cyrtandra polyantha.*	
Oahu 20—*Cyrtandra subumbellata*—a	*Cyrtandra subumbellata.*	
Oahu 20—*Cyrtandra subumbellata*—b		*Cyrtandra subumbellata.*
Oahu 20—*Cyrtandra viridiflora*—a	*Cyrtandra viridiflora.*	
Oahu 4—*Delissea subcordata*—a	*Delissea subcordata.*	
Oahu 15—*Delissea subcordata*—b	*Delissea subcordata.*	
Oahu 15—*Delissea subcordata*—c	*Delissea subcordata.*	
Oahu 15—*Delissea subcordata*—d	*Delissea subcordata.*	
Oahu 35—*Delissea subcordata*—e		*Delissea subcordata.*
Oahu 35—*Delissea subcordata*—f		*Delissea subcordata.*
Oahu 35—*Diellia erecta*—a	*Diellia erecta.*	
Oahu 4—*Diellia falcata*—a		*Diellia falcata.*
Oahu 4—*Diellia falcata*—b	*Diellia falcata.*	
Oahu 15—*Diellia falcata*—c	*Diellia falcata.*	
Oahu 15—*Diellia falcata*—d	*Diellia falcata.*	
Oahu 15—*Diellia unisora*—a	*Diellia unisora.*	
Oahu 4—*Diplazium molokaiense*—a		*Diplazium molokaiense.*
Oahu 4—*Dubautia herbstobatae*—a		*Dubautia herbstobatae.*
Oahu 4—*Dubautia herbstobatae*—b		*Dubautia herbstobatae.*
Oahu 7—*Dubautia herbstobatae*—c		*Dubautia herbstobatae.*
Oahu 4—*Eragrostis fosbergii*—a	*Eragrostis fosbergii.*	
Oahu 4—*Eugenia koolauensis*—a	*Eugenia koolauensis.*	
Oahu 19—*Eugenia koolauensis*—b	*Eugenia koolauensis.*	
Oahu 20—*Eugenia koolauensis*—c	*Eugenia koolauensis.*	
Oahu 3—*Euphorbia haeleeleana*—a	*Euphorbia haeleeleana.*	
Oahu 4—*Euphorbia haeleeleana*—b	*Euphorbia haeleeleana.*	
Oahu 4—*Flueggea neowawraea*—a	*Flueggea neowawraea.*	
Oahu 15—*Gardenia mannii*—a	*Gardenia mannii.*	
Oahu 20—*Gardenia mannii*—b	*Gardenia mannii.*	
Oahu 20—*Gardenia mannii*—c		*Gardenia mannii.*
Oahu 4—*Gouania meyenii*—a	*Gouania meyenii.*	
Oahu 4—*Gouania meyenii*—b	*Gouania meyenii.*	
Oahu 15—*Gouania meyenii*—c		*Gouania meyenii.*
Oahu 31—*Gouania meyenii*—d		*Gouania meyenii.*
Oahu 2—*Gouania vitifolia*—a		*Gouania vitifolia.*
Oahu 3—*Gouania vitifolia*—b		*Gouania vitifolia.*
Oahu 5—*Gouania vitifolia*—c		*Gouania vitifolia.*
Oahu 4—*Gouania vitifolia*—d		*Gouania vitifolia.*
Oahu 4—*Gouania vitifolia*—e		*Gouania vitifolia.*
Oahu 4—*Gouania vitifolia*—f	*Gouania vitifolia.*	
Oahu 4—*Gouania vitifolia*—g		*Gouania vitifolia.*
Oahu 8—*Gouania vitifolia*—h	*Gouania vitifolia.*	
Oahu 15—*Hedyotis coriacea*—a		*Hedyotis coriacea.*
Oahu 35—*Hedyotis coriacea*—b		*Hedyotis coriacea.*
Oahu 4—*Hedyotis degeneri*—a	*Hedyotis degeneri.*	
Oahu 4—*Hedyotis degeneri*—b	*Hedyotis degeneri.*	
Oahu 4—*Hedyotis parvula*—a	*Hedyotis parvula.*	
Oahu 15—*Hedyotis parvula*—b		*Hedyotis parvula.*
Oahu 15—*Hedyotis parvula*—c		*Hedyotis parvula.*
Oahu 15—*Hedyotis parvula*—d	*Hedyotis parvula.*	
Oahu 4—*Hesperomannia arborescens*—a	*Hesperomannia arborescens.*	
Oahu 20—*Hesperomannia arborescens*—b	Hesperomannia arborescens.	
Oahu 4—*Hesperomannia arbuscula*—a	*Hesperomannia arbuscula.*	
Oahu 4—*Hesperomannia arbuscula*—b	*Hesperomannia arbuscula.*	
Oahu 15—*Hesperomannia arbuscula*—c		*Hesperomannia arbuscula.*
Oahu 15—*Hesperomannia arbuscula*—d		*Hesperomannia arbuscula.*
Oahu 15—*Hesperomannia arbuscula*—e	*Hesperomannia arbuscula.*	
Oahu 1—*Hibiscus brackenridgei*—a	*Hibiscus brackenridgei.*	
Oahu 4—*Hibiscus brackenridgei*—b	*Hibiscus brackenridgei.*	
Oahu 5—*Hibiscus brackenridgei*—c	*Hibiscus brackenridgei.*	
Oahu 4—*Isodendrion laurifolium*—a	*Isodendrion laurifolium.*	
Oahu 4—*Isodendrion laurifolium*—b	*Isodendrion laurifolium.*	
Oahu 35—*Isodendrion laurifolium*—c		*Isodendrion laurifolium.*
Oahu 4—*Isodendrion longifolium*—a	*Isodendrion longifolium.*	
Oahu 20—*Isodendrion longifolium*—b		*Isodendrion longifolium.*

(305) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU—Continued

Unit name	Species occupied	Species unoccupied
Oahu 5—*Isodendrion pyrifolium*—a		*Isodendrion pyrifolium.*
Oahu 16—*Isodendrion pyrifolium*—b		*Isodendrion pyrifolium.*
Oahu 17—*Isodendrion pyrifolium*—c		*Isodendrion pyrifolium.*
Oahu 4—*Labordia cyrtandrae*—a	*Labordia cyrtandrae.*	
Oahu 20—*Labordia cyrtandrae*—b		*Labordia cyrtandrae.*
Oahu 20—*Labordia cyrtandrae*—c	*Labordia cyrtandrae.*	
Oahu 4—*Lepidium arbuscula*—a	*Lepidium arbuscula.*	
Oahu 15—*Lepidium arbuscula*—b	*Lepidium arbuscula.*	
Oahu 15—*Lepidium arbuscula*—c	*Lepidium arbuscula.*	
Oahu 4—*Lipochaeta lobata* var. *leptophylla*—a	*Lipochaeta lobata* var. *leptophylla.*	
Oahu 15—*Lipochaeta lobata* var. *leptophylla*—b	*Lipochaeta lobata* var. *leptophylla.*	
Oahu 4—*Lipochaeta tenuifolia*—a	*Lipochaeta tenuifolia.*	
Oahu 4—*Lipochaeta tenuifolia*—b	*Lipochaeta tenuifolia.*	
Oahu 4—*Lipochaeta tenuifolia*—c	*Lipochaeta tenuifolia.*	
Oahu 20—*Lobelia gaudichaudii* ssp. *koolauensis*—a	*Lobelia gaudichaudii* ssp. *koolauensis.*	
Oahu 30—*Lobelia monostachya*—a		*Lobelia monostachya.*
Oahu 22—*Lobelia monostachya*—b	*Lobelia monostachya.*	
Oahu 33—*Lobelia monostachya*—c		*Lobelia monostachya.*
Oahu 35—*Lobelia monostachya*—d		*Lobelia monostachya.*
Oahu 4—*Lobelia niihauensis*—a	*Lobelia niihauensis.*	
Oahu 17—*Lobelia niihauensis*—b	*Lobelia niihauensis.*	
Oahu 20—*Lobelia oahuensis*—a	*Lobelia oahuensis.*	
Oahu 35—*Lobelia oahuensis*—b	*Lobelia oahuensis.*	
Oahu 20—*Lysimachia filifolia*—a	*Lysimachia filifolia.*	
Oahu 4—*Mariscus pennatiformis*—a		*Mariscus pennatiformis.*
Oahu 4—*Mariscus pennatiformis*—b		*Mariscus1 pennatiformis.*
Oahu 13—*Marsilea villosa*—a	*Marsilea villosa.*	
Oahu 14—*Marsilea villosa*—b	*Marsilea villosa.*	
Oahu 28—*Marsilea villosa*—c	*Marsilea villosa.*	
Oahu 29—*Marsilea villosa*—d		*Marsilea villosa.*
Oahu 36—*Marsilea villosa*—e		*Marsilea villosa.*
Oahu 20—*Melicope lydgatei*—a	*Melicope lydgatei.*	
Oahu 4—*Melicope pallida*—a		*Melicope pallida.*
Oahu 15—*Melicope pallida*—b		*Melicope pallida.*
Oahu 15—*Melicope pallida*—c		*Melicope pallida.*
Oahu 15—*Melicope pallida*—d		*Melicope pallida.*
Oahu 15—*Melicope pallida*—e	*Melicope pallida.*	
Oahu 15—*Melicope saint-johnii*—a	*Melicope saint-johnii.*	
Oahu 15—*Melicope saint-johnii*—b	*Melicope saint-johnii.*	
Oahu 20—*Myrsine juddii*—a	*Myrsine juddii.*	
Oahu 3—*Neraudia angulata*—a	*Neraudia angulata.*	
Oahu 4—*Neraudia angulata*—b	*Neraudia angulata.*	
Oahu 4—*Neraudia angulata*—c		*Neraudia angulata.*
Oahu 4—*Neraudia angulata*—d	*Neraudia angulata.*	
Oahu 4—*Neraudia angulata*—e	*Neraudia angulata.*	
Oahu 15—*Neraudia angulata*—f	*Neraudia angulata.*	
Oahu 3—*Nototrichium humile*—a	*Nototrichium humile.*	
Oahu 4—*Nototrichium humile*—b	*Nototrichium humile.*	
Oahu 4—*Nototrichium humile*—c	*Nototrichium humile.*	
Oahu 4—*Nototrichium humile*—d	*Nototrichium humile.*	
Oahu 4—*Peucedanum sandwicense*—a	*Peucedanum sandwicense.*	
Oahu 20—*Phlegmariurus nutans*—a	*Phlegmariurus nutans.*	
Oahu 4—*Phyllostegia hirsuta*—a	*Phyllostegia hirsuta.*	
Oahu 15—*Phyllostegia hirsuta*—b	*Phyllostegia hirsuta.*	
Oahu 15—*Phyllostegia hirsuta*—c	*Phyllostegia hirsuta.*	
Oahu 20—*Phyllostegia hirsuta*—d	*Phyllostegia hirsuta.*	
Oahu 4—*Phyllostegia kaalaensis*—a	*Phyllostegia kaalaensis.*	
Oahu 4—*Phyllostegia kaalaensis*—b	*Phyllostegia kaalaensis.*	
Oahu 4—*Phyllostegia kaalaensis*—c	*Phyllostegia* kaalaensis.	
Oahu 4—*Phyllostegia kaalaensis*—d		*Phyllostegia kaalaensis.*
Oahu 4—*Phyllostegia kaalaensis*—e	*Phyllostegia kaalaensis.*	
Oahu 15—*Phyllostegia kaalaensis*—f	*Phyllostegia kaalaensis.*	
Oahu 15—*Phyllostegia mollis*—a	*Phyllostegia mollis.*	
Oahu 15—*Phyllostegia mollis*—b	*Phyllostegia mollis.*	
Oahu 15—*Phyllostegia parviflora*—a		*Phyllostegia parviflora.*
Oahu 15—*Phyllostegia parviflora*—b	*Phyllostegia parviflora.*	
Oahu 15—*Phyllostegia parviflora*—c	*Phyllostegia parviflora.*	
Oahu 20—*Phyllostegia parviflora*—d	*Phyllostegia parviflora.*	
Oahu 4—*Plantago princeps*—a	*Plantago princeps.*	
Oahu 4—*Plantago princeps*—b		*Plantago princeps.*
Oahu 15—*Plantago princeps*—c	*Plantago princeps.*	
Oahu 20—*Plantago princeps*—d	*Plantago princeps.*	

(305) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU—Continued

Unit name	Species occupied	Species unoccupied
Oahu 20—*Plantago princeps*—e		*Plantago princeps.*
Oahu 20—*Platanthera holochila*—a		*Platanthera holochila.*
Oahu 20—*Platanthera holochila*—b		*Platanthera holochila.*
Oahu 20—*Pteris lidgatei*—a	*Pteris lidgatei.*	
Oahu 20—*Pteris lidgatei*—b	*Pteris lidgatei.*	
Oahu 20—*Pteris lidgatei*—c	*Pteris lidgatei.*	
Oahu 4—*Sanicula mariversa*—a		*Sanicula mariversa.*
Oahu 4—*Sanicula mariversa*—b		*Sanicula mariversa.*
Oahu 4—*Sanicula mariversa*—c	*Sanicula mariversa.*	
Oahu 6—*Sanicula mariversa*—d	*Sanicula mariversa.*	
Oahu 15—*Sanicula mariversa*—e		*Sanicula mariversa.*
Oahu 15—*Sanicula mariversa*—f		*Sanicula mariversa.*
Oahu 20—*Sanicula purpurea*—a	*Sanicula purpurea.*	
Oahu 3—*Schiedea hookeri*—a	*Schiedea hookeri.*	
Oahu 4—*Schiedea hookeri*—b	*Schiedea hookeri.*	
Oahu 4—*Schiedea hookeri*—c	*Schiedea hookeri.*	
Oahu 4—*Schiedea hookeri*—d	*Schiedea hookeri.*	
Oahu 15—*Schiedea hookeri*—e	*Schiedea hookeri.*	
Oahu 15—*Schiedea hookeri*—f	*Schiedea hookeri.*	
Oahu 15—*Schiedea hookeri*—g	*Schiedea hookeri.*	
Oahu 4—*Schiedea kaalae*—a	*Schiedea kaalae.*	
Oahu 15—*Schiedea kaalae*—b	*Schiedea kaalae.*	
Oahu 15—*Schiedea kaalae*—c	*Schiedea kaalae.*	
Oahu 15—*Schiedea kaalae*—d	*Schiedea kaalae.*	
Oahu 20—*Schiedea kaalae*—e	*Schiedea kaalae.*	
Oahu 21—*Schiedea kaalae*—f	*Schiedea kaalae.*	
Oahu 1—*Schiedea kealiae*—a	*Schiedea kealiae.*	
Oahu 4—*Schiedea nuttallii*—a	*Schiedea nuttallii.*	
Oahu 15—*Schiedea nuttallii*—b		*Schiedea nuttallii.*
Oahu 15—*Schiedea nuttallii*—c		*Schiedea nuttallii.*
Oahu 1—*Sesbania tomentosa*—a	*Sesbania tomentosa.*	
Oahu 18—*Sesbania tomentosa*—b		*Sesbania tomentosa.*
Oahu 4—*Silene lanceolata*—a	*Silene lanceolata.*	
Oahu 15—*Silene perlmanii*—a		*Silene perlmanii.*
Oahu 15—*Silene perlmanii*—b		*Silene perlmanii.*
Oahu 15—*Silene perlmanii*—c		*Silene perlmanii.*
Oahu 15—*Silene perlmanii*—d		*Silene perlmanii.*
Oahu 4—*Solanum sandwicense*—a		*Solanum sandwicense.*
Oahu 15—*Solanum sandwicense*—b		*Solanum sandwicense.*
Oahu 15—*Solanum sandwicense*—c	*Solanum sandwicense.*	
Oahu 5—*Spermolepis hawaiiensis*—a	*Spermolepis hawaiiensis.*	
Oahu 31—*Spermolepis hawaiiensis*—b	*Spermolepis hawaiiensis.*	
Oahu 15—*Stenogyne kanehoana*—a	*Stenogyne kanehoana.*	
Oahu 15—*Stenogyne kanehoana*—b		*Stenogyne kanehoana.*
Oahu 4—*Tetramolopium filiforme*—a	*Tetramolopium filiforme.*	
Oahu 4—*Tetramolopium filiforme*—b	*Tetramolopium filiforme.*	
Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—a		*Tetramolopium lepidotum* ssp. *lepidotum.*
Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—b	*Tetramolopium lepidotum* ssp. *lepidotum.*	
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—c		*Tetramolopium lepidotum* ssp. *lepidotum.*
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d		*Tetramolopium lepidotum* ssp. *lepidotum.*
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e		*Tetramolopium lepidotum* ssp. *lepidotum.*
Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—f		*Tetramolopium lepidotum* ssp. *lepidotum.*
Oahu 20—*Tetraplasandra gymnocarpa*—a	*Tetraplasandra gymnocarpa.*	
Oahu 20—*Tetraplasandra gymnocarpa*—b	*Tetraplasandra gymnocarpa.*	
Oahu 20—*Tetraplasandra gymnocarpa*—c	*Tetraplasandra gymnocarpa.*	
Oahu 20—*Tetraplasandra gymnocarpa*—d	*Tetraplasandra gymnocarpa.*	
Oahu 35—*Tetraplasandra gymnocarpa*—e	*Tetraplasandra gymnocarpa.*	
Oahu 35—*Tetraplasandra gymnocarpa*—f	*Tetraplasandra gymnocarpa.*	
Oahu 20—*Trematolobelia singularis*—a		*Trematolobelia singularis.*
Oahu 20—*Trematolobelia singularis*—b	*Trematolobelia singularis.*	
Oahu 34—*Trematolobelia singularis*—c		*Trematolobelia singularis.*
Oahu 35—*Trematolobelia singularis*—d	*Trematolobelia singularis.*	
Oahu 35—*Trematolobelia singularis*—e	*Trematolobelia singularis.*	
Oahu 4—*Urera kaalae*—a		*Urera kaalae.*
Oahu 4—*Urera kaalae*—b	*Urera kaalae.*	
Oahu 15—*Urera kaalae*—c	*Urera kaalae.*	
Oahu 15—*Urera kaalae*—d	*Urera kaalae.*	
Oahu 15—*Urera kaalae*—e	*Urera kaalae.*	
Oahu 15—*Urera kaalae*—f	*Urera kaalae.*	
Oahu 1—*Vigna o-wahuensis*—a		*Vigna o-wahuensis.*
Oahu 24—*Vigna o-wahuensis*—b		*Vigna o-wahuensis*
Oahu 25—*Vigna o-wahuensis*—c		*Vigna o-wahuensis*

(305) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU—Continued

Unit name	Species occupied	Species unoccupied
Oahu 26—*Vigna o-wahuensis*—d		*Vigna o-wahuensis*
Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—a		*Viola chamissoniana* ssp. *chamissoniana.*
Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b		*Viola chamissoniana* ssp. *chamissoniana.*
Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c	*Viola chamissoniana* ssp. *chamissoniana.*	
Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d		*Viola chamissoniana* ssp. *chamissoniana.*
Oahu15—*Viola chamissoniana* ssp. *chamissoniana*—e		*Viola chamissoniana* ssp. *chamissoniana.*
Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—f	*Viola chamissoniana* ssp. *chamissoniana.*	
Oahu 20—*Viola Oahuensis*—a	*Viola Oahuensis.*	
Oahu 35—*Viola Oahuensis*—b		*Viola Oahuensis.*

(306) Critical habitat unit descriptions and maps, and a description of primary constituent elements, for Family Poacae: *Panicum faurei* var. *carteri* on the island of Oahu is provided in 50 CFR 17.96(a).

(j) *Plants on Oahu; Constituent elements.*

(1) *Flowering plants.*

Family Amaranthaceae: *Nototrichium humile* (kului)

Oahu 3—*Nototrichium humile*—a, Oahu 4—*Nototrichium humile*—b, Oahu 4—*Nototrichium humile*—c, and Oahu 4—*Nototrichium humile*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Nototrichium humile* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliff faces, gulches, stream banks, or steep slopes in dry or mesic forests often dominated by *Diospyros sandwicensis* or *Sapindus oahuensis* and containing one or more of the following associated native plant species: *Abutilon sandwicense, Alyxia oliviformis, Antidesma pulvinatum, Artemisia australis, Bidens cervicata, Canavalia* sp., *Carex wahuensis, Charpentiera* sp., *Dodonaea viscosa, Elaeocarpus bifidus, Erythrina sandwicensis, Eugenia reinwardtiana, Hibiscus* sp., *Melanthera tenuis, Metrosideros polymorpha, Myoporum sandwicense, Myrsine lanaiensis, Nestegis sandwicensis, Peperomia* sp., *Pisonia umbellifera, Pleomele* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sicyos* sp., *Stenogyne* sp., *Streblus pendulinus,* or *Syzygium sandwicensis;* and

(ii) Elevations between 185 and 806 m (607 and 2,644 ft).

Family Apiaceae: *Peucedanum sandwicense* (makou)

Oahu 4—*Peucedanum sandwicense*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Peucedanum sandwicense* on Oahu. Within this unit, currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs, slopes, or ridges in *Metrosideros polymorpha* lowland mesic forest containing one or more of the following associated native plant species: *Artemisia australis, Carex meyenii, Dianella sandwicensis, Dodonaea viscosa, Eragrostis* sp., *Lepidium bidentatum* var. *o-waihiense, Melanthera integrifolia, Osteomeles anthyllidifolia, Peperomia remyi, Pittosporum halophilum, Plechtranthus parviflorus, Plumbago zeylanica, Portulaca lutea, Reynoldsia sandwicensis, Santalum ellipticum, Scaevola sericea, Schiedea globosa, Senna gaudichaudii,* or *Sida fallax;* and

(ii) Elevations between 469 and 977 m (1,538 and 3,205 ft).

Family Apiaceae: *Sanicula mariversa* (NCN)

Oahu 4—*Sanicula mariversa*—a, Oahu 4—*Sanicula mariversa*—b, Oahu 4—*Sanicula mariversa*—c, Oahu 6—*Sanicula mariversa*—d, Oahu 15—*Sanicula mariversa*—e, and Oahu 15—*Sanicula mariversa*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Sanicula mariversa* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas and containing one or more of the following associated native plant species: *Bidens torta, Carex meyenii, Doryopteris* sp., *Eragrostis* sp., *Metrosideros polymorpha,* or *Metrosideros tremuloides;* and

(ii) Elevations between 475 and 1,025 m (1,558 and 3,362 ft).

Family Apiaceae: *Sanicula purpurea* (NCN)

Oahu 20—*Sanicula purpurea*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Sanicula purpurea* on Oahu. Within this unit, currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open *Metrosideros polymorpha* mixed montane bogs or windswept shrublands within the cloud zone containing one or more of the following associated native plant species: *Bidens* sp., *Cheirodendron* sp., *Dicanthelium koolauense, Gahnia beechyi, Leptecophylla tameiameiae, Lycopodium* sp., *Machaerina angustifolia, Plantago pachyphylla, Sadleria pallida,* or *Vaccinium* sp.; and

(ii) Elevations between 415 and 871 m (1,361 and 2,857 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Oahu 5—*Spermolepis hawaiiensis*—a and Oahu 31—*Spermolepis hawaiiensis*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep or vertical cliffs or the base of cliffs or ridges in coastal dry cliff vegetation containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Dodonaea viscosa, Doryopteris* sp., *Heteropogon contortus, Santalum ellipticum,* or *Waltheria indica;* and

(ii) Elevations between 25 to 306 m (82 to 1,004 ft).

Family Araliaceae: *Tetraplasandra gymnocarpa* (oheohe)

Oahu 20—*Tetraplasandra gymnocarpa*—a, Oahu 20—*Tetraplasandra gymnocarpa*—b, Oahu 20—*Tetraplasandra gymnocarpa*—c, Oahu 20—*Tetraplasandra gymnocarpa*—d, Oahu 35—*Tetraplasandra gymnocarpa*—e and Oahu 35—*Tetraplasandra gymnocarpa*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Tetraplasandra gymnocarpa* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands and containing one or more of the following associated native plant species: *Acacia koa, Antidesma platyphyllum, Bidens* sp., *Bobea elatior, Broussaisia arguta, Cheirodendron* sp., *Cibotium chamissoi, Cibotium* sp., *Cyanea humboltiana, Dicranopteris linearis, Diplopterygium pinnatum, Dubautia laxa, Freycinetia arborea, Hedyotis fosbergii, Hedyotis terminalis, Labordia* sp., *Lobelia hypoleuca, Machaerina angustifolia, Melicope* spp., *Metrosideros polymorpha, Myrsine fosbergii, Pouteria sandwicensis, Psychotria* spp., *Sadleria* sp., *Syzygium sandwicensis, Tetraplasandra oahuensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 93 and 959 m (305 and 3,146 ft).

Family Asteraceae: *Dubautia herbstobatae* (naenae)

Oahu 4—*Dubautia herbstobatae*—a, Oahu 4—*Dubautia herbstobatae*—b, and Oahu 7—*Dubautia herbstobatae*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Dubautia herbstobatae* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock outcrops, ridges, moderate slopes, or vertical cliffs in dry or mesic shrubland containing one or more of the following associated native plant species: *Artemisia australis, Bidens torta, Carex meyenii, Chamaesyce celastroides, Dodonaea viscosa, Eragrostis variabilis, Metrosideros polymorpha,* or *Schiedea mannii;* and

(ii) Elevations between 473 and 975 m (1,551 and 3,198 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Oahu 4—*Hesperomannia arborescens*—a and Oahu 20—*Hesperomannia arborescens*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Hesperomannia arborescens* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes, ridge tops, or gulches in lowland wet forests or shrublands and containing one or more of the following associated native plant species: *Acacia koa, Antidesma platyphyllum, Bobea elatior, Broussaisia arguta, Cheirodendron* sp., *Cibotium* sp., *Coprosma* sp., *Dicranopteris linearis, Dubautia* sp., *Hedyotis terminalis, Hibiscus arnottianus, Labordia sessilis, Machaerina angustifolia, Melicope* sp., *Metrosideros polymorpha, Myrsine* sp., *Nestegis sandwicensis, Perrottetia sandwicensis, Pipturus* sp., *Psychotria mariniana, Scaevola glabra, Scaevola gaudichaudiana, Syzygium sandwicensis, Tetraplasandra oahuensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 110 and 1,025 m (361 and 3,362 ft).

Family Asteraceae: *Hesperomannia arbuscula* (NCN)

Oahu 4—*Hesperomannia arbuscula*—a, Oahu 4—*Hesperomannia arbuscula*—b, Oahu 15—*Hesperomannia arbuscula*—c, Oahu 15—*Hesperomannia arbuscula*—d, and Oahu 15—*Hesperomannia arbuscula*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha* containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma* sp., *Bidens* sp., *Bobea elatior, Cyanea longiflora, Diospyros hillebrandii, Freycinetia arborea, Hedyotis terminalis, Hibiscus* sp., *Psychotria* sp., or *Syzygium sandwicensis;* and

(ii) Elevations between 370 and 1,053 m (1,214 and 3,454 ft).

Family Asteraceae: *Lipochaeta lobata* var. *leptophylla* (nehe)

Oahu 4—*Lipochaeta lobata* var. *leptophylla*—a and Oahu 15—*Lipochaeta lobata* var. *leptophylla*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Lipochaeta lobata* var. *leptophylla* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs, ridges, or slopes in dry or mesic shrubland containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Dodonaea viscosa, Eragrostis* sp., *Melanthera tenuis, Peperomia* sp., *Psydrax odorata,* or *Stenogyne* sp.; and

(ii) Elevations between 256 and 978 m (840 and 3,208 ft).

Family Asteraceae: *Lipochaeta tenuifolia* (nehe)

Oahu 4—*Lipochaeta tenuifolia*—a, Oahu 4—*Lipochaeta tenuifolia*—b, and Oahu 4—*Lipochaeta tenuifolia*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Lipochaeta tenuifolia* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridgetops or bluffs in open areas or protected pockets of dry to mesic forests or shrublands or forests dominated by *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Dodonaea viscosa, Doryopteris* sp., *Dubautia* sp., *Eragrostis* sp., *Myoporum sandwicense, Osteomeles anthyllidifolia, Psydrax odorata, Reynoldsia sandwicensis, Rumex* sp., *Sapindus oahuensis, Santalum* sp., or *Schiedea* sp.; and

(ii) Elevations between 110 and 978 m (361 and 3,208 ft).

Family Asteraceae: *Tetramolopium filiforme* (NCN)

Oahu 4—*Tetramolopium filiforme*—a and Oahu 4—*Tetramolopium filiforme*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Tetramolopium filiforme* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry cliff faces or ridges in dry or mesic forests containing one or more of the following associated native plant species: *Artemisia australis, Bidens torta, Carex meyenii, Dodonaea viscosa, Peperomia tetraphylla, Schiedea mannii, Schiedea* sp., or *Sida fallax;* and

(ii) Elevations between 352 and 978 m (1,155 and 3,208 ft).

Family Asteraceae: *Tetramolopium lepidotum* ssp. *lepidotum* (NCN)

Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—a, Oahu 4—*Tetramolopium lepidotum* ssp. *lepidotum*—b, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—c, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—d, Oahu 15—*Tetramolopium lepidotum* ssp. *lepidotum*—e, and Oahu 15—*Tetramolopium lepidotum* ssp.

lepidotum—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Grassy ridgetops, slopes, or cliffs in windblown dry forests and containing one or more of the following associated native plant species: *Bidens* sp., *Carex wahuensis, Eragrostis* sp., or *Metrosideros polymorpha;* and

(ii) Elevations between 330 to 1,157 m (1,082 to 3,795 ft).

Family Brassicaceae: *Lepidium arbuscula* (anaunau)

Oahu 4—*Lepidium arbuscula*—a, Oahu 15—*Lepidium arbuscula*—b, and Oahu 15—*Lepidium arbuscula*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Lepidium arbuscula* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed ridge tops and cliff faces in mesic and dry vegetation communities containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Carex meyenii, Carex wahuensis, Chamaesyce multiformis, Dodonaea viscosa, Dryopteris unidentata, Dubautia* sp., *Eragrostis* sp., *Leptecophylla tameiameiae, Lysimachia hillebrandii, Metrosideros polymorpha, Peperomia* sp., *Psydrax odorata, Rumex albescens, Schiedea ligustrina, Sida fallax,* or *Sophora chrysophylla;* and

(ii) Elevations between 246 and 978 m (430 and 3,208 ft).

Family Campanulaceae: *Cyanea acuminata* (haha)

Oahu 4—*Cyanea acuminata*—a and Oahu 20—*Cyanea acuminata*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea acuminata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes, ridges, or stream banks in *Metrosideros polymorpha-Dicranopteris linearis* or *Acacia koa-Metrosideros polymorpha* wet or mesic forest or shrubland, or *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest, and containing one or more of the following associated native plant species: *Antidesma* sp., *Broussaisia arguta, Chamaesyce* sp., *Charpentiera* sp., *Cyrtandra* spp., *Diplazium sandwichianum, Dryopteris sandwicensis, Dubautia laxa, Freycinetia arborea, Hedyotis centranthoides, Hedyotis* sp., *Hibiscus* sp., *Ilex anomala, Labordia* sp., *Machaerina* sp., *Melicope* spp., *Perrottetia sandwicensis, Phyllostegia* sp., *Pipturus albidus, Pisonia* sp., *Psychotria* sp., *Sadleria* sp., *Syzygium sandwicensis, Touchardia latifolia,* or *Wikstroemia* sp.; and

(ii) Elevations between 216 and 1,208 m (708 and 3,962 ft).

Family Campanulaceae: *Cyanea crispa* (NCN)

Oahu 20—*Cyanea crispa*—a, Oahu 20—*Cyanea crispa*—b, Oahu 21—*Cyanea crispa*—c, and Oahu 35—*Cyanea crispa*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea crispa* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes, moist gullies, or stream banks in open mesic forests or closed wet forests containing one or more of the following associated native plant species: *Antidesma platyphyllum, Boehmeria grandis, Broussaisia arguta, Christella cyatheoides, Cibotium chamissoi, Cyrtandra* spp., *Diospyros* sp., *Dubautia* sp., *Metrosideros polymorpha, Microsorum spectrum, Perrottetia sandwicensis, Pipturus albidus, Pisonia umbellifera, Psychotria* sp. or *Touchardia latifolia;* and

(ii) Elevations between 56 and 959 m (184 and 3,146 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Oahu 20—*Cyanea grimesiana* ssp. *grimesiana*—a and Oahu 35—*Cyanea grimesiana* ssp. *grimesiana*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky or steep slopes of stream banks in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa,* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma* sp., *Bobea* sp., *Clermontia persicifolia, Coprosma* sp., *Cyanea angustifolia, Dicranopteris linearis, Diplazium sandwichianum, Joinvillea* sp., *Melicope* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., *Syzygium sandwicensis,* or *Xylosma* sp.; and

(ii) Elevations between 114 and 746 m (374 and 2,447 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *obatae* (haha)

Oahu 4—*Cyanea grimesiana* ssp. *obatae*—a, Oahu 15—*Cyanea grimesiana* ssp. *obatae*—b, Oahu 15—*Cyanea grimesiana* ssp. *obatae*—c, and Oahu 15—*Cyanea grimesiana* ssp. *obatae*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea grimesiana* ssp. *obatae* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, moist, shaded slopes in diverse mesic to wet lowland forests containing one or more of the following associated native plant species: *Acacia koa, Antidesma platyphyllum, Chamaesyce* sp., *Charpentiera obovata, Cibotium chamissoi, Claoxylon sandwicense, Coprosma* sp., *Cyanea membranacea, Cyrtandra waianaeensis, Diplazium sandwichianum, Dryopteris unidentata, Dubautia* sp., *Freycinetia arborea, Hedyotis acuminata, Hedyotis terminalis, Metrosideros polymorpha, Myrsine lessertiana, Nothocestrum* sp., *Perrottetia sandwicensis, Pipturus albidus, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi, Rumex* sp., *Selaginella arbuscula,* or *Streblus pendulinus;* and

(ii) Elevations between 404 and 1,092 m (1,325 and 3,528 ft).

Family Campanulaceae: *Cyanea humboltiana* (haha)

Oahu 20—*Cyanea humboltiana*—a, Oahu 20—*Cyanea humboltiana*—b, Oahu 20—*Cyanea humboltiana*—c, Oahu 20—*Cyanea humboltiana*—d, and Oahu 35—*Cyanea humboltiana*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea humboltiana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland containing one or more of the following associated native plant species: *Acacia koa, Bobea elatior, Broussaisia arguta, Cibotium chamissoi, Dubautia laxa, Hedyotis terminalis, Ilex anomala, Machaerina angustifolia, Melicope* sp., *Phyllostegia* sp., *Psychotria mariniana, Sadleria* sp., *Scaevola mollis, Syzygium sandwicensis, Wikstroemia* sp., or native ferns; and

(ii) Elevations between 319 and 959 m (856 and 3,146 ft).

Family Campanulaceae: *Cyanea koolauensise* (haha)

Oahu 20—*Cyanea koolauensis*—a, Oahu 20—*Cyanea koolauensis*—b, Oahu 35—*Cyanea koolauensis*—c, and Oahu 35—*Cyanea koolauensis*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea koolauensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes, stream banks, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest or shrubland containing one or more of the following associated native plant species: *Acacia koa, Antidesma platyphyllum, Bidens* sp., *Bobea elatior, Broussaisia arguta, Cibotium* sp., *Diplopterygium pinnatum, Dubautia* sp., *Hedyotis* sp., *Machaerina* sp., *Melicope* sp., *Pittosporum* sp., *Pritchardia martii, Psychotria mariniana, Sadleria* sp., *Scaevola* sp., *Syzygium sandwicensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 280 and 959 m (535 and 3,146 ft).

Family Campanulaceae: *Cyanea longiflora* (haha)

Oahu 4—*Cyanea longiflora*—a, Oahu 4—*Cyanea longiflora*—b, and Oahu 19—*Cyanea longiflora*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea longiflora* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes, bases of cliffs, or ridge crests in mesic *Acacia koa-Metrosideros polymorpha* lowland forest containing one or more of the following associated native plant species: *Antidesma* sp., *Cibotium* sp., *Coprosma* sp., *Dicranopteris linearis, Psychotria* sp., *Schiedea* sp., or *Syzygium sandwicensis;* and

(ii) Elevations between 146 and 1,191 m (479 and 3,906 ft).

Family Campanulaceae: *Cyanea pinnatifida* (haha)

Oahu 15—*Cyanea pinnatifida*—a, Oahu 15—*Cyanea pinnatifida*—b, and Oahu 15—*Cyanea pinnatifida*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea pinnatifida* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, wet, rocky slopes in diverse mesic forest containing one or more of the following associated native plant species: *Canavalia* sp., *Diplazium sandwichianum, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Psychotria* sp., *Strongylodon ruber,* or native ferns; and

(ii) Elevations between 450 and 881 m (1,476 and 2,890 ft).

Family Campanulaceae: *Cyanea st.-johnii* (haha)

Oahu 20—*Cyanea st.-johnii*—a and Oahu 35—*Cyanea st.-johnii*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea st.-johnii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet, windswept slopes and ridges in *Metrosideros polymorpha* mixed lowland shrubland or *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland and containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma* sp., *Bidens macrocarpa, Broussaisia arguta, Chamaesyce clusiifolia, Cibotium* sp., *Dubautia laxa, Freycinetia arborea, Hedyotis* sp., *Labordia* sp., *Machaerina angustifolia, Melicope* sp., *Psychotria* sp., *Sadleria pallida, Scaevola mollis, or Syzygium sandwicensis;* and

(ii) Elevations between 461 and 959 m (1,512 and 3,146 ft).

Family Campanulaceae: *Cyanea superba* (NCN)

Oahu 4—*Cyanea superba*—a, Oahu 4—*Cyanea superba*—b, Oahu 4—*Cyanea superba*—c, and Oahu 35—*Cyanea superba*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea superba* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sloping terrain on a well drained rocky substrate within mesic forest containing one or more of the following associated native plant species: *Diospyros* sp., *Hedyotis terminalis, Metrosideros polymorpha, Nestegis sandwicensis, Pisonia brunoniana, Psychotria* sp., or *Xylosma* sp.; and

(ii) Elevations between 232 and 872 m (761 and 2,991 ft).

Family Campanulaceae: *Cyanea truncata* (haha)

Oahu 20—*Cyanea truncata*—a and Oahu 21—*Cyanea truncata*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyanea truncata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windward slopes and stream banks in mesic to wet forests containing one or more of the following associated native plant species: *Cibotium chamissoi, Cyrtandra calpidicarpa, Cyrtandra laxiflora, Cyrtandra propinqua, Diospyros sandwicensis, Hibiscus arnottianus, Metrosideros polymorpha, Neraudia melastomifolia, Pipturus albidus,* or *Pisonia umbellifera;* and

(ii) Elevations between 54 and 705 m (177 and 2,312 ft).

Family Campanulaceae: *Delissea subcordata* (oha)

Oahu 4—*Delissea subcordata*—a, Oahu 15—*Delissea subcordata*—b, Oahu 15—*Delissea subcordata*—c, Oahu 15—*Delissea subcordata*—d, Oahu 35—*Delissea subcordata*—e, and Oahu 35—*Delissea subcordata*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Delissea subcordata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to steep gulch slopes in mixed mesic forests containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Bobea* sp., *Claoxylon sandwicense, Chamaesyce multiformis, Charpentiera obovata, Diospyros hillebrandii, Diospyros sandwicensis, Hedyotis acuminata, Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Pisonia* sp., *Pouteria sandwicensis, Psychotria hathewayi, Psydrax odorata,* or *Streblus pendulinus;* and

(ii) Elevations between 179 and 928 m (587 and 3,044 ft).

Family Campanulaceae: *Lobelia gaudichaudii* ssp. *koolauensis* (NCN)

Oahu 20—*Lobelia gaudichaudii* ssp. *koolauensis*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Lobelia gaudichaudii* ssp. *koolauensis* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not

limited to, the habitat components provided by:

(i) Moderate to steep slopes in *Metrosideros polymorpha* lowland wet shrublands or bogs and containing one or more of the following associated native plant species: *Bidens* sp., *Broussaisia arguta, Cibotium* sp., *Dicanthelium koolauense, Isachne distichophylla, Machaerina angustifolia, Melicope* sp., *Sadleria pallida, Scaevola* sp., or *Vaccinium dentatum;* and

(ii) Elevations between 383 and 867 m (1,256 and 2,844 ft).

Family Campanulaceae: *Lobelia monostachya* (NCN)

Oahu 30—*Lobelia monostachya*—a, Oahu 22—*Lobelia monostachya*—b, Oahu 33—*Lobelia monostachya*—c, and Oahu 35—*Lobelia monostachya*—d, identified in the legal descriptions in paragraph (i) of this section, constitutes critical habitat for *Lobelia monostachya* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, sparsely vegetated cliffs in mesic shrubland containing one or more of the following associated native plant species: *Artemisia australis, Carex meyenii, Eragrostis* sp., or *Psilotum nudum;* and

(ii) Elevation between 79 and 592 m (259 to 1,942 ft).

Family Campanulaceae: *Lobelia niihauensis* (NCN)

Oahu 4—*Lobelia niihauensis*—a and Oahu 17—*Lobelia niihauensis*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Lobelia niihauensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed mesic or dry cliffs or ledges and containing one or more of the following associated native plant species: *Artemisia* sp., *Bidens* sp., *Carex meyenii, Dodonaea viscosa, Doryopteris* sp., *Eragrostis* sp., *Leptecophylla tameiameiae, Melanthera tenuis, Osteomeles anthyllidifolia, Plectranthus parviflorus, Schiedea mannii,* or *Sida fallax;* and

(ii) Elevations between 407 to 926 m (1,335 to 3,037 ft).

Family Campanulaceae: *Lobelia oahuensis* (NCN)

Oahu 20—*Lobelia oahuensis*—a and Oahu 35—*Lobelia oahuensis*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Lobelia oahuensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes on summit cliffs in cloudswept wet forests or in lowland wet shrubland that are frequently exposed to heavy wind and rain and containing one or more of the following associated native plant species: *Bidens* sp., *Broussaisia arguta, Cheirodendron trigynum, Cibotium* sp., *Dicranopteris linearis, Dubautia laxa, Freycinetia arborea, Hedyotis* sp., *Labordia hosakana, Lycopodium* sp., *Machaerina angustifolia, Melicope* sp., *Metrosideros polymorpha, Peperomia* sp., *Phyllostegia* sp., *Sadleria squarrosa, Scaevola* sp., *Syzygium sandwicensis, Vaccinium* sp., or *Wikstroemia* sp.; and

(ii) Elevations between 415 and 959 m (1,361 and 3,146 ft).

Family Campanulaceae: *Trematolobelia singularis* (NCN)

Oahu 20—*Trematolobelia singularis*—a, Oahu 20—*Trematolobelia singularis*—b, Oahu 34—*Trematolobelia singularis*—c, Oahu 35—*Trematolobelia singularis*—d, and Oahu 35—*Trematolobelia singularis*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Trematolobelia singularis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, windswept cliff faces or slopes in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet shrubland and containing one or more of the following associated native plant species: *Broussaisia arguta, Cibotium* sp., *Dubautia laxa, Eugenia* sp., *Melicope* sp., *Sadleria* sp., or *Wikstroemia* sp.; and

(ii) Elevations between 545 and 953 m (1,788 and 3,126 ft).

Family Caryophyllaceae: *Alsinidendron obovatum* (NCN)

Oahu 4—*Alsinidendron obovatum*—a, Oahu 4—*Alsinidendron obovatum*—b, and Oahu 15—*Alsinidendron obovatum*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Alsinidendron obovatum* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* and *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma platyphyllum, Bidens torta, Cibotium chamissoi, Coprosma* sp., *Cyanea longiflora, Hedyotis terminalis, Ilex anomala, Machaerina* sp., *Peperomia* sp., *Perrottetia sandwicensis, Pipturus* sp., or *Psydrax odorata;* and

(ii) Elevations between 477 and 943 m (1,565 and 3,093 ft).

Family Caryophyllaceae: *Alsinidendron trinerve* (NCN)

Oahu 4—*Alsinidendron trinerve*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Alsinidendron trinerve* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes in wet forest or the wetter portions of diverse mesic forest dominated by *Metrosideros polymorpha* or *Ilex anomala* and *Metrosideros polymorpha* montane wet forest and containing one or more of the following associated native plant species: *Broussaisia arguta, Coprosma ochracea, Diplazium sandwichianum, Gunnera* sp., *Hedyotis* sp., *Machaerina* sp., *Nothoperanema rubiginosa, Peperomia* sp., *Perrottetia sandwicensis, Phyllostegia* sp., *Pipturus albidus,* or *Vaccinium* sp.; and

(ii) Elevations between 833 and 1,233 m (2,732 and 4,044 ft).

Family Caryophyllaceae: *Schiedea hookeri* (NCN)

Oahu 3—*Schiedea hookeri*—a, Oahu 4—*Schiedea hookeri*—b, Oahu 4—*Schiedea hookeri*—c, Oahu 4—*Schiedea hookeri*—d, Oahu 15—*Schiedea hookeri*—e, Oahu 15—*Schiedea hookeri*—f, and Oahu 15—*Schiedea hookeri*—g, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Schiedea hookeri* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest often dominated by *Metrosideros polymorpha, Diospyros sandwicensis,* or *Diospyros hillebrandii,* and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma pulvinatum, Artemisia australis, Bidens torta, Carex meyenii, Carex wahuensis, Charpentiera tomentosa, Dodonaea viscosa, Elaeocarpus bifidus, Eragrostis grandis, Hibiscus* sp., *Leptecophylla tameiameiae, Melanthera tenuis, Pisonia sandwicensis, Pouteria sandwicensis, Psydrax odorata, Sida fallax,* or *Stenogyne* sp.; and

(ii) Elevations between 238 and 978 m (781 and 3,208 ft).

Family Caryophyllaceae: *Schiedea kaalae* (maolioli)

Oahu 4—*Schiedea kaalae*—a, Oahu 15—*Schiedea kaalae*—b, Oahu 15—*Schiedea kaalae*—c, Oahu 15—*Schiedea kaalae*—d, Oahu 20—*Schiedea kaalae*—e, and Oahu 21—*Schiedea kaalae*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Schiedea kaalae* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes, cliffs, stream banks, or deep shade in diverse mesic or wet forests and containing one or more of the following associated native plant species: *Alyxia oliviformis, Boehmeria grandis, Charpentiera* sp., *Claoxylon sandwicense, Cyrtandra calpidicarpa, Cyrtandra laxiflora, Diospyros hillebrandii, Diplazium arnottii, Diplazium sandwichianum, Dryopteris unidentata, Freycinetia arborea, Hedyotis acuminata, Nothocestrum longifolium, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi, Selaginella arbuscula,* or *Xylosma hawaiiense;* and

(ii) Elevations between 64 and 904 m (210 and 2,965 ft).

Family Caryophyllaceae: *Schiedea kealiae* (maolioli)

Oahu 1—*Schiedea kealiae*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Schiedea kealiae* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or cliff faces or bases in dry remnant *Erythrina sandwicensis* forest and containing one or more of the following associated native plant species: *Bidens* sp., *Hibiscus arnottianus, Lepidium bidentatum; Melanthera remyi, Myoporum sandwicense, Plumbago zeylanica, Psydrax odorata, Sicyos* sp., or *Sida fallax;* and

(ii) Elevations between 47 and 341 m (154 and 1,118 ft)

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Oahu 4—*Schiedea nuttallii*—a, Oahu 15—*Schiedea nuttallii*—b, and Oahu 15—*Schiedea nuttallii*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Schiedea nuttallii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock walls, forested slopes, or steep walls in *Acacia koa-Metrosideros polymorpha* lowland mesic forest or *Metrosideros polymorpha-Dodonaea viscosa* forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma platyphyllum, Bidens torta, Cibotium chamissoi, Coprosma* sp., *Cyanea longiflora, Hedyotis terminalis, Ilex anomala, Machaerina* sp., *Peperomia* sp., *Perrottetia sandwicensis, Pipturus* sp., or *Psydrax odorata;* and

(ii) Elevations between 408 and 1072 m (1,338 and 3,516 ft).

Family Caryophyllaceae: *Silene lanceolata* (NCN)

Oahu 4—*Silene lanceolata*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Silene lanceolata* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliff faces or ledges of gullies in dry to mesic shrubland or cliff communities and containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Carex* sp., *Chamaesyce* sp., *Dodonaea viscosa, Lysimachia* sp., *Osteomeles anthyllidifolia, Schiedea mannii,* or *Tetramolopium filiforme;* and

(ii) Elevations between 328 to 978 m (1,076 to 3,208 ft).

Family Caryophyllaceae: *Silene perlmanii* (NCN)

Oahu 15—*Silene perlmanii*—a, Oahu 15—*Silene perlmanii*—b, Oahu 15—*Silene perlmanii*—c, and Oahu 15—*Silene perlmanii*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Silene perlmanii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep rocky slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest; and

(ii) Elevations between 382 and 926 m (1,253 and 3,037 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Oahu 2—*Bonamia menziesii*—a, Oahu 3—*Bonamia menziesii*—b, Oahu 4—*Bonamia menziesii*—c, Oahu 17—*Bonamia menziesii*—d, and Oahu 35—*Bonamia menziesii*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Bonamia menziesii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or level ground in dry or mesic forest in open or closed canopy and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis terminalis, Leptecophylla tameiameiae, Melicope* sp., *Metrosideros polymorpha, Myoporum sandwicensis, Nestegis sandwicensis, Pisonia* sp., *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis, Sapindus oahuensis, Sicyos* sp., *Sida fallax,* or *Waltheria indica;* and

(ii) Elevations between 81 and 658 m (266 and 2,158 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Oahu 1—*Cyperus trachysanthos*—a, Oahu 28—*Cyperus trachysanthos*—b, Oahu 29—*Cyperus trachysanthos*—c, and Oahu 36—*Cyperus trachysanthos*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyperus trachysanthos* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mud flats, wet clay soil, seasonal ponds, wet cliff seeps on seepy flats, coastal cliffs, or talus slopes containing *Hibiscus tiliaceus;* and

(ii) Elevations between 6 and 194 m (20 and 636 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Oahu 4—*Mariscus pennatiformis*—a and Oahu 4—*Mariscus pennatiformis*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Mariscus pennatiformis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat

include, but are not limited to, the habitat components provided by:

(i) Mesic and wet *Metrosideros polymorpha* forest and *Metrosideros polymorpha-Acacia koa* forest; and

(ii) Elevations between 424 and 1,032 m (1,391 and 3,385 ft).

Family Euphorbiaceae: *Chamaesyce celastroides* var. *kaenana* (akoko)

Oahu 1—*Chamaesyce celastroides* var. *kaenana*—a, Oahu 3—*Chamaesyce celastroides* var. *kaenana*—b, Oahu 4—*Chamaesyce celastroides* var. *kaenana*—c, Oahu 5—*Chamaesyce celastroides* var. *kaenana*—d, and Oahu 35—*Chamaesyce celastroides* var. *kaenana*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Chamaesyce celastroides* var. *kaenana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windward talus slopes, leeward rocky cliffs, open grassy slopes, or vegetated cliff faces in coastal dry shrubland and containing one or more of the following associated native plant species: *Artemisia australis, Boerhavia* sp., *Chamaesyce celastroides* var. *amplectans, Dodonaea viscosa, Gossypium tomentosum, Heteropogon contortus, Jacquemontia ovalifolia* ssp. *sandwicensis, Lipochaeta lobata, Myoporum sandwicense, Plumbago zeylanica, Psilotum nudum, Psydrax odorata, Santalum freycinetianum, Sida fallax* or *Waltheria indica;* and

(ii) Elevations between 1 and 862 m (3 and 2,827 ft).

Family Euphorbiaceae: *Chamaesyce deppeana* (akoko)

Oahu 20—*Chamaesyce deppeana*—a and Oahu 35—*Chamaesyce deppeana*—b, identified in the legal description in paragraph (i) of this section, constitute critical habitat for *Chamaesyce deppeana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windward-facing ridge crests, cliff faces, and mixed native cliffs and containing one or more of the following associated native plant species: *Bidens sandvicensis* or *Metrosideros polymorpha;* and

(ii) Elevations from 274 to 661 m (899 to 2,168 ft).

Family Euphorbiaceae: *Chamaesyce herbstii* (akoko)

Oahu 4—*Chamaesyce herbstii*—a, Oahu 15—*Chamaesyce herbstii*—b, and Oahu15—*Chamaesyce herbstii*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Chamaesyce herbstii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shaded gulch bottoms and slopes in mesic *Acacia koa-Metrosideros polymorpha* lowland forests or diverse mesic forests and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Coprosma* sp., *Diplazium sandwichianum, Hedyotis* sp., *Hibiscus arnottianus* var. *arnottianus, Melicope* sp., *Morinda trimera, Pipturus albidus, Pouteria sandwicensis, Pteralyxia* sp., *Urera glabra,* or *Xylosma* sp.; and

(ii) Elevations between 433 and 928 m (1,420 and 3,044 ft).

Family Euphorbiaceae: *Chamaesyce kuwaleana* (akoko)

Oahu 9—*Chamaesyce kuwaleana*—a, Oahu 11—*Chamaesyce kuwaleana*—b, Oahu 12—*Chamaesyce kuwaleana*—c, Oahu 15—*Chamaesyce kuwaleana*—d, Oahu 22—*Chamaesyce kuwaleana*—e, Oahu 23—*Chamaesyce kuwaleana*—f, and Oahu 26—*Chamaesyce kuwaleana*—g, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Chamaesyce kuwaleana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Thin guano soil on basaltic rock; arid, exposed volcanic cliffs; dry or mesic rocky ridges; or sparsely vegetated slopes and containing one or more of the following associated native plant species: *Artemisia* sp., *Bidens* sp., *Carex* sp., *Chamaesyce* sp., *Dodonaea viscosa, Heteropogon contortus, Plectranthus parviflorus, Schiedea* sp., or *Sida fallax;* and

(ii) Elevations between 0 and 596 m (0 and 1,955 ft).

Family Euphorbiaceae: *Chamaesyce rockii* (akoko)

Oahu 20—*Chamaesyce rockii*—a, Oahu 20—*Chamaesyce rockii*—b, and Oahu 20—*Chamaesyce rockii*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Chamaesyce rockii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest and shrubland and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Bidens* sp., *Broussaisia arguta, Cibotium* sp., *Coprosma longifolia, Diplopterygium pinnatum, Dubautia laxa, Hedyotis terminalis, Machaerina* sp., *Melicope* spp., *Myrsine juddii, Psychotria fauriei, Psychotria* spp., or *Wikstroemia* sp.; and

(ii) Elevations between 208 and 867 m (682 and 2,844 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* (akoko)

Oahu 3—*Euphorbia haeleeleana*—a and Oahu 4—*Euphorbia haeleeleana*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Euphorbia haeleeleana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry forest dominated by *Diospyros* sp. and containing one or more of the following associated native plant species: *Dodonaea viscosa, Erythrina sandwicensis, Pleomele* sp., *Psydrax odorata, Reynoldsia sandwicensis,* or *Sapindus oahuensis;* and

(ii) Elevations between 156 and 526 m (512 and 1,725 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Oahu 4—*Flueggea neowawraea*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Flueggea neowawraea* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes, ridge crests, or near streams in dry or mesic forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma platyphyllum, Antidesma pulvinatum, Bobea* sp., *Chamaesyce herbstii, Chamaesyce multiformis, Charpentiera* sp., *Claoxylon sandwicense, Diospyros hillebrandii, Diospyros sandwicensis, Erythrina sandwicensis, Hedyotis terminalis, Hibiscus arnottianus, Metrosideros polymorpha, Morinda trimera, Myoporum sandwicense, Myrsine* sp., *Nestegis sandwicensis, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pittosporum* sp., *Pleomele* sp., *Psydrax odorata, Pteralyxia* sp., *Rauvolfia sandwicensis, Sapindus oahuensis,* or *Streblus pendulina;* and

(ii) Elevations between 335 to 1,006 m (1,099 to 3,300 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Oahu 1—*Sesbania tomentosa*—a and Oahu 18—*Sesbania tomentosa*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Sesbania tomentosa* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliff faces, broken basalt, or sand dunes with rock outcrops in *Scaevola sericea* coastal dry shrubland or *Sporobolus virginicus* mixed grasslands and containing one or more of the following associated native plant species: *Heliotropium* sp., *Jacquemontia ovalifolia* ssp. *sandwicensis, Melanthera* sp., *Myoporum sandwicense,* or *Sida fallax;* and

(ii) Elevations between sea level and 152 m (0 and 499 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Oahu 1—*Vigna o-wahuensis*—a, Oahu 24—*Vigna o-wahuensis*—b, Oahu 25—*Vigna o-wahuensis*—c, and Oahu 26—*Vigna o-wahuensis*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Vigna o-wahuensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open dry fossil reef, with shrubs or grasses or fairly steep slopes; and

(ii) Elevations between 0 and 301 m (0 and 987 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Oahu 1—*Centaurium sebaeoides*—a and Oahu 27—*Centaurium sebaeoides*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Centaurium sebaeoides* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Volcanic or clay soils or cliffs in arid coastal areas or on coral plains and containing one or more of the following associated native plant species: *Artemisia* sp., *Bidens* sp., *Jacquemontia ovalifolia* ssp. *sandwicensis, Lipochaeta succulenta,* or *Lysimachia* sp.; and

(ii) Elevations between 1 and 161 m (3 and 528 ft).

Family Gesneriaceae: *Cyrtandra dentata* (haiwale)

Oahu 4—*Cyrtandra dentata*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Cyrtandra dentata* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulches, slopes, stream banks, or ravines in mesic or wet forest and containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pouteria sandwicensis, Syzygium sandwicensis,* or *Urera glabra;* and

(ii) Elevations between 319 and 880 m (1,046 and 2,886 ft).

Family Gesneriaceae: *Cyrtandra polyantha* (haiwale)

Oahu 35—*Cyrtandra polyantha*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Cyrtandra polyantha* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridges of valleys in *Metrosideros polymorpha* mesic or wet forests and containing one or more of the following associated native plant species: *Broussaisia arguta, Coprosma foliosa, Dicranopteris linearis, Machaerina angustifolia,* or *Psychotria* sp.; and

(ii) Elevations between 312 and 783 m (1,023 and 2,568 ft).

Family Gesneriaceae: *Cyrtandra subumbellata* (haiwale)

Oahu 20—*Cyrtandra subumbellata*—a and Oahu 20—*Cyrtandra subumbellata*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cyrtandra subumbellata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moist slopes or gulch bottoms in wet forest dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha-Dicranopteris linearis-Acacia koa* and containing one or more of the following associated native plant species: *Boehmeria grandis, Broussaisia arguta, Machaerina* sp., or *Thelypteris* sp.; and

(ii) Elevations between 167 and 841 m (548 and 2,758 ft).

Family Gesneriaceae: *Cyrtandra viridiflora* (haiwale)

Oahu 20—*Cyrtandra viridiflora*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Cyrtandra viridiflora* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wind blown ridge tops in cloud-covered wet forest or shrubland and containing one or more of the following associated native plant species: *Broussaisia arguta, Cheirodendron platyphyllum, Dicranopteris linearis, Diplopterygium pinnatum, Dubautia* sp., *Freycinetia arborea, Hedyotis* sp., *Ilex anomala, Machaerina* sp., *Melicope* sp., *Metrosideros polymorpha, Metrosideros rugosa, Psychotria* sp., or *Syzygium sandwicensis;* and

(ii) Elevations between 443 and 867 m (1,453 and 2,844 ft).

Family Lamiaceae: *Phyllostegia hirsuta* (NCN)

Oahu 4—*Phyllostegia hirsuta*—a, Oahu 15—*Phyllostegia hirsuta*—b, Oahu 15—*Phyllostegia hirsuta*—c, and Oahu 20—*Phyllostegia hirsuta*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Phyllostegia hirsuta* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, shaded slopes, cliffs, ridges, gullies, or stream banks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Astelia* sp., *Broussaisia arguta, Chamaesyce multiformis, Cibotium* sp., *Claoxylon sandwicense, Clermontia kakeana, Coprosma longifolia, Cyanea membranacea, Cyrtandra waianaeensis, Diplazium sandwichianum, Dryopteris unidentata, Dubautia laxa, Dubautia sherffiana, Elaeocarpus bifidus, Freycinetia arborea, Hedyotis schlectendahliana, Hedyotis terminalis, Hibiscus* sp., *Ilex anomala, Labordia kaalae, Liparis hawaiiensis, Lysimachia hillebrandii, Machaerina angustifolia, Melicope* sp., *Myrsine lessertiana, Myrsine sandwicensis, Neraudia* sp., *Nothocestrum* sp., *Pêrrottetia sandwicensis, Phyllostegia grandiflora, Pipturus* sp., *Pisonia* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Rumex albescens, Scaevola*

gaudichaudiana, Streblus pendulinus, Zanthoxylum kauaense, or native ferns; and

(ii) Elevations between 195 and 1,202 m (640 and 3,943 ft).

Family Lamiaceae: *Phyllostegia kaalaensis* (NCN)

Oahu 4—*Phyllostegia kaalaensis*—a, Oahu 4—*Phyllostegia kaalaensis*—b, Oahu 4—*Phyllostegia kaalaensis*—c, Oahu 4—*Phyllostegia kaalaensis*—d, Oahu 4—*Phyllostegia kaalaensis*—e, and Oahu 15—*Phyllostegia kaalaensis*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Phyllostegia kaalaensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Claoxylon sandwicense, Diplazium sandwichianum, Freycinetia arborea, Hibiscus* sp., *Myrsine lanaiensis, Myrsine lessertiana, Neraudia melastomifolia, Pipturus albidus, Pouteria sandwicensis, Psychotria hathewayi, Streblus pendulinus*, or *Urera glabra*; and

(ii) Elevations between 248 and 878 m (813 and 2,880 ft).

Family Lamiaceae: *Phyllostegia mollis* (NCN)

Oahu 15—*Phyllostegia mollis*—a and Oahu 15—*Phyllostegia mollis*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Phyllostegia mollis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or gulches in diverse mesic to wet forests and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma platyphyllum, Carex meyenii, Chamaesyce multiformis, Claoxylon sandwicense, Diospyros hillebrandii, Dryopteris unidentata, Metrosideros polymorpha, Myrsine* sp., *Pipturus albidus, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi*, or *Urera glabra*; and

(ii) Elevations between 519 to 928 m (1,702 to 3,044 ft).

Family Lamiaceae: *Phyllostegia parviflora* (NCN)

Oahu 20—*Phyllostegia parviflora*—d, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Phyllostegia parviflora* var. *lydgatei* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to steep slopes in mesic forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Chamaesyce multiformis, Claoxylon sandwicense, Coprosma foliosa, Dryopteris unidentata, Myrsine lessertiana, Pipturus albidus, Pouteria sandwicensis, Selaginella arbuscula*, or *Xylosma hawaiiense*; and

(ii) Elevations between 529 to 881 m (1,800 to 2,890 ft).

Oahu 15—*Phyllostegia parviflora*—a, Oahu 15—*Phyllostegia parviflora*—b, and Oahu 15—*Phyllostegia parviflora*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Phyllostegia parviflora* var. *parviflora* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha* mixed lowland wet forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis, Melicope* sp., *Phyllostegia glabra, Pipturus* sp., *Pritchardia* sp., *Tetraplasandra* sp., *Touchardia latifolia*, or *Syzygium sandwicensis*; and

(ii) Elevations between 232 to 881 m (761 to 2,890 ft).

Family Lamiaceae: *Stenogyne kanehoana* (NCN)

Oahu 15—*Stenogyne kanehoana*—a and Oahu 15—*Stenogyne kanehoana*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Stenogyne kanehoana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland mesic forest and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Bidens* sp., *Chamaesyce* sp., *Cibotium* sp., *Freycinetia arborea, Metrosideros polymorpha, Psychotria* sp., or *Scaevola* sp.; and

(ii) Elevations between 559 and 1,168 m (1,834 and 3,831 ft).

Family Loganiaceae: *Labordia cyrtandrae* (kamakahala)

Oahu 4—*Labordia cyrtandrae*—a, Oahu 20—*Labordia cyrtandrae*—b, and Oahu 20—*Labordia cyrtandrae*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Labordia cyrtandrae* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shady gulches, slopes, or glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha, Diplopterygium pinnatum*, and/or *Acacia koa* and containing one or more of the following associated native plant species: *Antidesma* sp., *Artemisia australis, Bidens torta, Boehmeria grandis, Broussaisia arguta, Chamaesyce* sp., *Coprosma* sp., *Cyrtandra* sp., *Dicranopteris linearis, Diplazium sandwichianum, Dubautia plantaginea, Lysimachia hillebrandii, Peperomia membranacea, Perrottetia sandwicensis, Phyllostegia* sp., *Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., or *Rumex* sp.; and

(ii) Elevations between 232 and 1,233 m (761 and 4,044 ft).

Family Malvaceae: *Abutilon sandwicense* (NCN)

Oahu 4—*Abutilon sandwicense*—a, Oahu 4—*Abutilon sandwicense*—b, Oahu 4—*Abutilon sandwicense*—c, Oahu 15—*Abutilon sandwicense*—d, Oahu 15—*Abutilon sandwicense*—e, and Oahu 17—*Abutilon sandwicense*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Abutilon sandwicense* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or gulches in dry to mesic lowland forest and containing one or more of the following associated native plant species: *Antidesma pulvinatum, Diospyros sandwicensis, Elaeocarpus bifidus, Eugenia reinwardtiana, Hibiscus arnottianus, Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Pipturus albidus, Pisonia* sp., *Pittosporum* sp., *Pleomele* sp., *Psydrax odorata, Rauvolfia sandwicensis, Reynoldsia sandwicensis*, or *Sapindus oahuensis*; and

(ii) Elevations between 215 and 725 m (705 and 2,378 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

(i) Oahu 1—*Hibiscus brackenridgei*—a and Oahu 4—*Hibiscus brackenridgei*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Hibiscus brackenridgei* ssp. *mokuleianus* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(A) Slopes, cliffs, or arid ledges in lowland dry forest or shrubland and containing one or more of the following associated native plant species: *Bidens amplectens, Chamaesyce* sp., *Diospyros hillebrandii, Dodonaea viscosa, Doryopteris* sp., *Erythrina sandwicensis, Heteropogon contortus, Lepidium bidentatum, Melanthera remyi, Pleomele halapepe, Psydrax odorata, Reynoldsia sandwicensis, Sida fallax*, or *Waltheria indica*; and

(B) Elevations between 32 to 490 m (105 to 1,607 ft).

(ii) Oahu 5—*Hibiscus brackenridgei*—c, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Hibiscus brackenridgei* ssp. *molokaiana* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(A) Dry shrublands containing one or more of the following associated native plant species: *Doryopteris sp., Dodonaea viscosa, Heteropogon contortus, Sida fallax*, or *Waltheria indica*; and

(B) Elevations between 32 to 490 m (105 to 1,607 ft).

Family Myrsinaceae: *Myrsine juddii* (kolea)

Oahu 20—*Myrsine juddii*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Myrsine juddii* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridge crests or gulch slopes in wet forests or shrublands dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and containing one or more of the following associated native plant species: *Cheirodendron platyphyllum, Cheirodendron trigynum, Machaerina* sp., *Melicope clusiifolia, Psychotria mariniana*, or *Syzygium sandwicensis*; and

(ii) Elevations between 384 and 867 m (1,260 and 2,844 ft).

Family Myrtaceae: *Eugenia koolauensis* (nioi)

Oahu 4—*Eugenia koolauensis*—a, Oahu 19—*Eugenia koolauensis*—b, and Oahu 20—*Eugenia koolauensis*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Eugenia koolauensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle to steep slopes or ridges in mesic or dry forests dominated by *Metrosideros polymorpha* or *Diospyros* sp. and containing one or more of the following associated native plant species: *Alyxia oliviformis, Bobea elatior, Carex meyenii, Dicranopteris linearis, Leptecophylla tameiameiae, Myrsine lessertiana, Nestegis sandwicensis, Pleomele halapepe, Pouteria sandwicensis, Psydrax odorata*; or *Rauvolfia sandwicensis*; and

(ii) Elevations between 57 to 437 m (187 to 1,433 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Oahu 20—*Platanthera holochila*—a and Oahu 20—*Platanthera holochila*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Platanthera holochila* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed shrubland and containing one or more of the following associated native plant species: *Broussaisia arguta, Cibotium* sp., *Clermontia* sp., *Coprosma* sp., *Dubautia* sp., *Gahnia* sp., *Leptecophylla tameiameiae, Luzula hawaiiensis, Lycopodiella cernua, Lythrum maritimum, Polypodium pellucidum, Sadleria* sp., *Scaevola* sp., *Vaccinium reticulatum*, or *Wikstroemia* sp.; and

(ii) Elevations between 448 and 848 m (1,469 and 2,781 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

(i) Oahu 20—*Plantago princeps*—d and Oahu 20—*Plantago princeps*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Plantago princeps* var. *longibracteata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(A) Sides of waterfalls or wet rock faces and containing one or more of the following associated native plant species: *Bidens* sp., *Coprosma granadensis, Eugenia* sp., *Lobelia gaudichaudii, Metrosideros rugosa*, or *Scaevola glabra*; and

(B) Elevations between 211 and 885 m (692 and 2,903 ft).

(ii) Oahu 4—*Plantago princeps*—a, Oahu 4—*Plantago princeps*—b, and Oahu 15—*Plantago princeps*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Plantago princeps* var. *princeps* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(A) Slopes or ledges in *Metrosideros polymorpha* lowland mesic forests or shrublands and containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Chamaesyce* sp., *Dubautia plantaginea, Eragrostis* sp., *Lysimachia* sp., *Pilea peploides*, or *Viola* sp.; and

(B) Elevations between 110 and 1,064 m (361 and 3,490 ft).

Family Poaceae: *Cenchrus agrimonioides* (kamanomano)

Oahu 4—*Cenchrus agrimonioides*—a, Oahu 4—*Cenchrus agrimonioides*—b, Oahu 15—*Cenchrus agrimonioides*—c, and Oahu 15—*Cenchrus agrimonioides*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Cenchrus agrimonioides* var. *agrimonioides* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry ridges, upper slopes, or ridges in lowland mixed mesic forest and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Bobea* sp., *Carex wahuensis, Chamaesyce multiformis, Coprosma foliosa, Diospyros sandwicensis, Eragrostis variabilis, Gahnia beecheyi, Leptecophylla tameiameiae, Metrosideros polymorpha, Nestegis sandwicensis, Psychotria* sp., or *Psydrax odorata*; and

(ii) Elevations between 357 and 874 m (1,171 and 2,867 ft).

Family Poaceae: *Eragrostis fosbergii* (Fosberg's love grass)

Oahu 4—*Eragrostis fosbergii*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Eragrostis fosbergii* on Oahu. Within this unit, the currently known primary constituent elements of

critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridge crests or moderate slopes in dry or mesic forests and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Bidens* sp., *Chamaesyce* sp., *Dodonaea viscosa, Doodia* sp., *Eragrostis grandis, Melicope* sp., *Metrosideros polymorpha, Nephrolepis exaltata, Psydrax odorata,* or *Sphenomeris* sp.; and

(ii) Elevations between 578 and 941 m (1,896 and 3,086 ft).

Family Primulaceae: *Lysimachia filifolia* (NCN)

Oahu 20—*Lysimachia filifolia*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Lysimachia filifolia* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: Mosses, ferns, liverworts, or *Pilea peploides;* and

(ii) Elevations between 65 and 798 m (213 and 2,617 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (kauila)

Oahu 4—*Colubrina oppositifolia*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Colubrina oppositifolia* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry or mesic forests dominated by *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Nestegis sandwicensis, Psydrax odorata, Reynoldsia sandwicensis,* or *Sapindus oahuensis;* and

(ii) Elevations between 255 and 761 m (909 and 2,496 ft).

Family Rhamnaceae: *Gouania meyenii* (NCN)

Oahu 4—*Gouania meyenii*—a, Oahu 4—*Gouania meyenii*—b, Oahu 15—*Gouania meyenii*—c, and Oahu 31—*Gouania meyenii*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Gouania meyenii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to steep slopes in dry shrubland or mesic lowland forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Bidens* sp., *Canavalia* sp., *Carex meyenii, Chamaesyce* sp., *Charpentiera* sp., *Diospyros sandwicensis, Diospyros* sp., *Dodonaea viscosa, Dryopteris unidentata, Dubautia sherffiana, Eragrostis* sp., *Hedyotis* sp., *Hibiscus* sp., *Lysimachia* sp., *Melicope* sp., *Myrsine* sp., *Nestegis sandwicensis, Pisonia* sp., *Psychotria* sp., *Psydrax odorata, Sapindus oahuensis, Schiedea* sp., *Senna gaudichaudii, Sida fallax,* or *Sophora chrysophylla;* and

(ii) Elevations between 468 to 916 m (1,535 to 3,004 ft).

Family Rhamnaceae: *Gouania vitifoliae* (NCN)

Oahu 2—*Gouania vitifolia*—a, Oahu 3—*Gouania vitifolia*—b, Oahu 5—*Gouania vitifolia*—c, Oahu 4—*Gouania vitifolia*—d, Oahu 4—*Gouania vitifolia*—e, Oahu 4—*Gouania vitifolia*—f, Oahu 4—*Gouania vitifolia*—g, and Oahu 8—*Gouania vitifolia*—h, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Gouania vitifolia* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sides of ridges or gulches in dry to mesic forests and containing one or more of the following associated native plant species: *Bidens* sp., *Carex meyenii, Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis* sp., *Hibiscus arnottianus, Melicope* sp., *Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Urera glabra;* and

(ii) Elevations between 50 to 944 m (164 to 3,096 ft).

Family Rubiaceae: *Gardenia mannii* (nanu)

Oahu 15—*Gardenia mannii*—a, Oahu 20—*Gardenia mannii*—b, and Oahu 20—*Gardenia mannii*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Gardenia mannii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to moderately steep gulch slopes, ridge crests, gulch bottoms, and stream banks in mesic or wet forests and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma platyphyllum, Bobea* sp., *Boehmeria grandis, Broussaisia arguta, Cheirodendron* sp., *Cibotium* sp., *Coprosma foliosa, Dicranopteris linearis, Elaeocarpus* sp., *Freycinetia arborea, Hedyotis acuminata, Ilex anomala, Melicope* sp., *Metrosideros polymorpha, Perrottetia* sp., *Pipturus* sp., *Pisonia* sp., *Pouteria sandwicensis, Psychotria mariniana, Syzygium sandwicensis,* or *Thelypteris* sp.; and

(ii) Elevations between 239 and 1,050 m (784 and 3,444 ft).

Family Rubiaceae: *Hedyotis coriaceae* (kioele)

Oahu 15—*Hedyotis coriacea*—a and Oahu 35—*Hedyotis coriacea*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Hedyotis coriacea* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, rocky slopes in dry to mesic *Dodonaea viscosa* dominated shrublands or forests and containing one or more of the following associated native plant species: *Alyxia oliviformis, Leptecophylla tameiameiae,* or *Metrosideros polymorpha;* and

(ii) Elevations between 78 and 836 m (256 and 2,742 ft).

Family Rubiaceae: *Hedyotis degeneri* (NCN)

Oahu 4—*Hedyotis degeneri*—a and Oahu 4—*Hedyotis degeneri*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Hedyotis degeneri* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridge crests in diverse mesic forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Carex meyenii, Chamaesyce multiformis, Cocculus* sp., *Dicranopteris linearis, Diospyros sandwicensis, Dodonaea viscosa, Gahnia* sp., *Hedyotis terminalis, Leptecophylla tameiameiae, Lysimachia hillebrandii, Lobelia yuccoides, Metrosideros polymorpha, Pleomele* sp., *Psydrax odorata, Psychotria hathewayi,* or Wikstroemia oahuensis; and

(ii) Elevations between 360 and 1,083 m (1,181 and 3,552 ft).

Family Rubiaceae: *Hedyotis parvula* (NCN)

Oahu 4—*Hedyotis parvula*—a, Oahu 15—*Hedyotis parvula*—b, Oahu 15—*Hedyotis parvula*—c, and Oahu 15—*Hedyotis parvula*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for Hedyotis parvula on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliff faces or their bases, rock outcrops, or ledges in mesic habitat and containing one or more of the following associated native plant species: *Bidens* sp., *Carex* sp., *Chamaesyce* sp., *Dodonaea viscosa, Eragrostis* sp., *Metrosideros polymorpha, Metrosideros tremuloides, Plectranthus parviflorus, Psydrax odorata,* or *Rumex* sp.; and

(ii) Elevations between 427 and 1,165 m (1,401 and 3,821 ft).

Family Rutaceae: *Melicope lydgatei* (alani)

Oahu 20—*Melicope lydgatei*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for Melicope lydgatei on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridges in mesic or wet forests containing one or more of the following associated native plant species: *Acacia koa, Bobea elatior, Dicranopteris linearis, Metrosideros polymorpha, Psychotria* sp., or *Syzygium sandwicensis;* and

(ii) Elevations between 101 and 671 m (331 and 2,201 ft).

Family Rutaceae: *Melicope pallida* (alani)

Oahu 4—*Melicope pallida*—a, Oahu 15—*Melicope pallida*—b, Oahu 15—*Melicope pallida*—c, Oahu 15—*Melicope pallida*—d, and Oahu 15—*Melicope pallida*—e, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Melicope pallida* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep rock faces in lowland dry or mesic forests containing one or more of the following associated native plant species: *Abutilon sandwicense, Acacia koa, Alyxia oliviformis, Bobea elatior, Cibotium* sp., *Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Psychotria mariniana, Sapindus oahuensis, Syzygium sandwicensis, Tetraplasandra* sp., *Wikstroemia oahuensis,* or *Xylosma hawaiiense;* and

(ii) Elevations between 234 to 841 m (768 to 2,758 ft).

Family Rutaceae: *Melicope saint-johnii* (alani)

Oahu 15—*Melicope saint-johnii*—a and Oahu 15—*Melicope saint-johnii*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Melicope saint-johnii* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridges or gulch bottoms in mesic forest containing one or more of the following associated native plant species: *Alyxia oliviformis, Artemisia australis, Bidens torta, Carex wahuensis, Coprosma longifolia, Eragrostis* sp., *Hedyotis sehlechtendahliana, Labordia kaalae, Lysimachia hillebrandii, Metrosideros polymorpha, Panicum beechyi, Pittosporum* sp., *Pipturus albidus, Pleomele halapepe, Psychotria hathewayi,* or *Rumex albescens;* and

(ii) Elevations between 494 and 943 m (1,620 and 3,093 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Oahu 4—*Alectryon macrococcus*—a and Oahu 15—*Alectryon macrococcus*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Alectryon macrococcus* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes, ridges, or gulches within mesic lowland forests containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma platyphyllum, Canavalia* sp., *Charpentiera* sp., *Claoxylon sandwicense, Diospyros hillebrandii, Diospyros sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Hibiscus arnottianus, Metrosideros polymorpha, Myrsine lanaiensis, Neraudia* sp., *Nestegis sandwicensis, Pipturus albidus, Pisonia sandwicensis, Pisonia umbellifera, Pouteria sandwicensis, Psychotria hathewayi, Psydrax odorata, Streblus pendulinus,* or *Xylosma* sp.; and

(ii) Elevations between 476 and 820 m (1,561 and 2,690 ft).

Family Solanaceae: *Solanum sandwicense* (aiakeaakua, popolo)

Oahu 4—*Solanum sandwicense*—a, Oahu 15—*Solanum sandwicense*—b, and Oahu 15—*Solanum sandwicense*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Solanum sandwicense* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Talus slopes or streambeds in open, sunny areas containing one or more of the following associated native plant species: *Pisonia* sp. or *Psychotria* sp.; and

(ii) Elevations between 471 and 1,006 m (1,545 and 3,300 ft).

Family Urticaceae: *Neraudia angulata* (NCN)

(i) Oahu 3—*Neraudia angulata*—a, Oahu 4—*Neraudia angulata*—b, Oahu 4—*Neraudia angulata*—c, Oahu 4—*Neraudia angulata*—d, Oahu 4—*Neraudia angulata*—e, and Oahu 15—*Neraudia angulata*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Neraudia angulata* var. *angulata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(A) Slopes, ledges, or gulches in lowland mesic or dry forest containing one or more of the following associated native plant species: *Artemisia australis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Dodonaea viscosa, Hibiscus* sp., *Nestegis sandwicensis, Pisonia sandwicensis, Psydrax odorata,* or *Sida fallax;* and

(B) Elevations between 134 and 881 m (440 and 2,890 ft).

(ii) Oahu 3—*Neraudia angulata*—a, Oahu 4—*Neraudia angulata*—b, Oahu 4—*Neraudia angulata*—c, Oahu 4—*Neraudia angulata*—d, Oahu 4—*Neraudia angulata*—e, and Oahu 15—*Neraudia angulata*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Neraudia angulata* var. *dentata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(A) Cliffs, rock embankments, gulches, or slopes in mesic or dry forests containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma pulvinatum, Artemisia australis, Bidens torta,*

Canavalia sp., *Carex* sp., *Charpentiera* sp., *Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Eragrostis* sp., *Hibiscus* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Pisonia* sp., *Psydrax odorata, Rauvolfia sandwicensis, Sapindus oahuensis, Sida fallax*, or *Streblus pendulinus*; and

(B) Elevations between 134 and 881 m (440 and 2,890 ft).

Family Urticaceae: *Urera kaalae* (opuhe)

Oahu 4—*Urera kaalae*—a, Oahu 4—*Urera kaalae*—b, Oahu 15—*Urera kaalae*—c, Oahu 15—*Urera kaalae*—d, Oahu 15—*Urera kaalae*—e, and Oahu 15—*Urera kaalae*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Urera kaalae* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes or gulches in diverse mesic forest containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma platyphyllum, Asplenium kaulfusii, Athyrium* sp., *Canavalia* sp., *Chamaesyce* sp., *Charpentiera* sp., *Claoxylon sandwicense, Diospyros hillebrandii, Doryopteris* sp., *Freycinetia arborea, Hedyotis acuminata, Hibiscus* sp., *Nestegis sandwicensis, Pipturus albidus, Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Senna gaudichaudii, Streblus pendulinus, Urera glabra*, or *Xylosma hawaiiense*; and

(ii) Elevations between 439 and 995 m (1,440 and 3,264 ft).

Family Violaceae: *Isodendrion laurifolium (aupaka)*

Oahu 4—*Isodendrion laurifolium*—a, Oahu 4—*Isodendrion laurifolium*—b, and Oahu 35—*Isodendrion laurifolium*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Isodendrion laurifolium* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes, ravines, or ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha, Acacia koa, Eugenia reinwardtiana*, or *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Antidesma platyphyllum, Antidesma pulvinatum, Carex wahuensis, Charpentiera tomentosa, Doodia* sp., *Dryopteris unidentata, Hedyotis terminalis, Hibiscus arnottianus, Nestegis sandwicensis, Pisonia* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis, Sapindus* sp., *Smilax melastomifolia*, or *Xylosma hawaiiense*; and

(ii) Elevations between 180 and 959 m (590 and 3,146 ft).

Family Violaceae: *Isodendrion longifolium* (aupaka)

Oahu 4—*Isodendrion longifolium*—a and Oahu 20—*Isodendrion longifolium*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Isodendrion longifolium* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or stream banks in mixed mesic or lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Bobea brevipes, Carex* sp., *Cyanea* sp., *Cyrtandra* sp., *Hedyotis terminalis, Isachne pallens, Melicope* sp., *Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., *Pouteria sandwicensis, Psydrax odorata, Psychotria* sp., *Selaginella arbuscula*, or *Syzygium sandwicensis*; and

(ii) Elevations between 316 and 880 m (1,036 and 2,886 ft).

Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)

Oahu 5—*Isodendrion pyrifolium*—a, Oahu 16—*Isodendrion pyrifolium*—b, and Oahu 17—*Isodendrion pyrifolium*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Isodendrion pyrifolium* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by bare rocky hills or wooded ravines in dry shrublands from 37 to 692 m (121 to 2,270 ft).

Family Violaceae: *Viola chamissoniana* ssp. *chamissoniana* (pamakani)

Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—a, Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—b, Oahu 4—*Viola chamissoniana* ssp. *chamissoniana*—c, Oahu 10—*Viola chamissoniana* ssp. *chamissoniana*—d, Oahu 15—*Viola chamissoniana* ssp. *chamissoniana*—e, and Oahu15—*Viola chamissoniana* ssp. *chamissoniana*—f, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Viola chamissoniana* ssp. *chamissoniana* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation and containing one or more of the following associated native plant species: *Artemisia australis, Bidens torta, Carex meyenii, Chamaesyce* sp., *Dodonaea viscosa, Dubautia* sp., *Eragrostis* sp., *Leptecophylla tameiameiae, Melanthera tenuis, Metrosideros polymorpha, Peperomia* sp., *Rumex* sp., *Schiedea* sp., or *Sida fallax*; and

(ii) Elevations between 468 and 1,149 m (1,535 and 3,769 ft).

Family Violaceae: *Viola oahuensis* (NCN)

Oahu 20—*Viola oahuensis*—a and Oahu 35—*Viola oahuensis*—b, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Viola oahuensis* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed, windswept ridges of moderate to steep slope in wet *Metrosideros polymorpha-Dicranopteris linearis* shrublands or *Metrosideros polymorpha* mixed montane bogs in the cloud zone and containing one or more of the following associated native plant species: *Antidesma* sp., *Bidens macrocarpa, Broussaisia arguta, Cibotium* sp., *Dubautia laxa, Hedyotis terminalis, Labordia* sp., *Machaerina* sp., *Melicope* sp., *Sadleria* sp., *Syzygium sandwicensis, Vaccinium* sp., or *Wikstroemia* sp.; and

(ii) Elevations between 415 and 959 m (1,361 and 3,146 ft).

(2) *Ferns and allies.*

Family Adiantaceae: *Pteris lidgatei* (NCN)

Oahu 20—*Pteris lidgatei*—a, Oahu 20—*Pteris lidgatei*—b, and Oahu 20—*Pteris lidgatei*—c, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Pteris lidgatei* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep stream banks or cliffs in wet *Metrosideros polymorpha-Dicranopteris linearis* forest containing one or more of the following associated native plant species: *Asplenium* sp., *Broussaisia arguta, Cibotium chamissoi, Cyrtandra* sp., *Dicranopteris linearis, Diplopterygium pinnatum, Doodia lyonii, Dryopteris sandwicensis, Elaphoglossum crassifolium, Isachne pallens, Machaerina angustifolia, Sadleria* sp., *Sadleria squarrosa, Selaginella arbuscula*, or *Sphenomeris chinensis*; and

(ii) Elevations between 75 and 867 m (246 and 2,844 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Oahu 4—*Ctenitis squamigera*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Ctenitis squamigera* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle to steep slopes in *Metrosideros polymorpha-Diospyros sandwicensis* mesic forest or diverse mesic forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Carex meyenii, Diospyros hillebrandii, Dodonaea viscosa, Doodia kunthiana, Dryopteris unidentata, Freycinetia arborea, Hibiscus* sp., *Myrsine* sp., *Nestegis sandwicensis, Pisonia* sp., *Pouteria sandwicensis, Psychotria* sp., *Psydrax odorata*, or *Xylosma* sp.; and

(ii) Elevations between 413 to 923 m (1,355 to 3,027 ft).

Family Aspleniaceae: *Diellia erecta* (asplenium-leaved diellia)

Oahu 35—*Diellia erecta*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Diellia erecta* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to steep gulch slopes or sparsely vegetated rock faces in mesic forest containing one or more of the following associated native plant species: *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Myrsine* sp., *Psychotria* sp., *Psydrax odorata, Sapindus oahuensis, Syzygium sandwicensis*, or *Wikstroemia* sp.; and

(ii) Elevations between 150 and 550 m (492 and 1,804 ft).

Family Aspleniaceae: *Diellia falcata* (NCN)

Oahu 4—*Diellia falcata*—a, Oahu 4—*Diellia falcata*—b, Oahu 15—*Diellia falcata*—c, and Oahu 15—*Diellia falcata*—d, identified in the legal descriptions in paragraph (i) of this section, constitute critical habitat for *Diellia falcata* on Oahu. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Asplenium kaulfussii, Carex meyenii, Charpentiera* sp., *Claoxylon sandwicense, Coprosma foliosa, Diospyros hillebrandii, Diospyros sandwicensis, Diplazium sandwichianum, Doodia kunthiana, Dryopteris unidentata, Elaeocarpus bifidus, Freycinetia arborea, Hedyotis terminalis, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Nephrolepis exaltata, Nestegis sandwicensis, Nothocestrum* sp., *Pipturus* sp., *Pisonia sandwicensis, Pouteria sandwicensis, Psychotria* sp., *Psydrax odorata, Sapindus oahuensis, Selaginella arbuscula, Sophora chrysophylla*, or *Xylosma* sp.; and

(ii) Elevations between 394 and 932 m (1,292 and 3,057 ft).

Family Aspleniaceae: *Diellia unisora* (NCN)

Oahu 15—*Diellia unisora*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Diellia unisora* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate to steep slopes or gulch bottoms in deep shade or open understory in mesic forest and containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma* sp., *Bidens torta, Carex meyenii, Chamaesyce multiformis, Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Eragrostis grandis, Hedyotis schlechtendahliana, Hedyotis terminalis, Metrosideros polymorpha, Myrsine lessertiana, Psychotria* sp., *Rumex* sp., or *Selaginella arbuscula*; and

(ii) Elevations between 489 and 943 m (1,604 and 3,093 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Oahu 4—*Diplazium molokaiense*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Diplazium molokaiense* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Trees in *Metrosideros polymorpha* or *Metrosideros rugosa* wet forests containing one or more of the following associated native plant species: *Cheirodendron* spp., *Cibotium* sp. *Dicranopteris linearis, Hedyotis terminalis, Machaerina angustifolia*, or *Syzygium sandwicensis*; and

(ii) Elevations between 309 to 867 m (1,014 to 2,844 ft).

Family Lycopodiaceae: *Phlegmariurus nutans* (wawaeiole)

Oahu 20—*Phlegmariurus nutans*—a, identified in the legal description in paragraph (i) of this section, constitutes critical habitat for *Phlegmariurus nutans* on Oahu. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Tree trunks, open ridges, forested slopes, or cliffs in *Metrosideros polymorpha* dominated wet forests, cliffs, or shrublands or mesic forests and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Broussaisia arguta, Cyrtandra laxiflora, Dicranopteris linearis, Elaphoglossum* sp., *Hedyotis terminalis, Hibiscus* sp., *Machaerina angustifolia, Psychotria mariniana, Syzygium sandwicensis*, or *Wikstroemia oahuensis*; and

(ii) Elevations between 227 and 846 m (745 and 2,775).

Family Marsileaceae: *Marsilea villosa* (ihi ihi)

Oahu 13—*Marsilea villosa*—a, Oahu 14—*Marsilea villosa*—b, Oahu 28—*Marsilea villosa*—c, Oahu 29—*Marsilea villosa*—d, and Oahu 36—*Marsilea villosa*—e, identified in the legal description in paragraph (i) of this section, constitute critical habitat for *Marsilea villosa* on Oahu. Within these units, the currently known primary constituent elements of critical habitat

include, but are not limited to, the habitat components provided by:

(i) Cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, or lowland grasslands containing *Sida fallax*; and

(ii) Elevations between 1 and 89 m (3 and 292 ft).

Dated: April 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–11156 Filed 6–16–03; 8:45 am]

BILLING CODE 4310–55–U



Federal Register

Tuesday,
June 17, 2003

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 6, 7, 18, et al.
Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

RIN 1219–AA87

Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule establishes alternate requirements for testing and evaluation of products that MSHA approves for use in gassy underground mines. It is being published in response to comments received as the result of a 1994 proposed rule and an October 17, 2002, revised proposed rule on the same subject. It allows manufacturers of certain products, who seek MSHA approval under Title 30 of the Code of Federal Regulations (30 CFR), the option of using an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval which MSHA would normally perform so that such products can be used in gassy mines in the United States. Testing and evaluation as used in this final rule means testing, evaluation, or both. This final rule also permits manufacturers to have their products approved based on non-MSHA product safety standards. This will occur only after MSHA has determined that such standards are equivalent to its applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The final rule should increase the availability of a wider variety of mining products having enhanced safety features by reducing costs and broadening the market for mining equipment.

EFFECTIVE DATE: This regulation is effective August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols-marvin@msha.gov* (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (fax). You may obtain copies of the final rule in alternative formats by calling this number. The alternative formats available are either a large print version of the final rule or the final rule in an electronic file on computer disk. The final rule also is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION:

I. Background

From its creation by Congress in 1910, MSHA's predecessor, the Bureau of Mines, U.S. Department of the Interior, was responsible for the testing and evaluation of mining products. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is responsible for prescribing the technical design, construction, and the test requirements for certain products used in underground mines, and for testing and evaluating them for approval based on those requirements. These technical requirements are set forth in the Agency's approval regulations in 30 CFR parts 7 through 36.

MSHA's approval regulations govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use in underground mines. Each of these separate approval actions has specific application procedures and technical requirements for testing and evaluation. MSHA currently conducts the testing and evaluation of products for a fee paid by the applicant. Following MSHA approval, manufacturers must ensure that the product continues to conform to the technical requirements tested, evaluated, and approved by MSHA.

When MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package is reviewed to determine whether the product meets the technical requirements of the applicable provisions of 30 CFR parts 15 through 36. Each drawing and specification in the package is cross-checked against these requirements and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. After MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the approval requirements, unless the design obviates the need for testing. If the product passes the tests and meets all MSHA requirements, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an MSHA approval marking on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product as approved. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to an approved product that causes it to differ from the design or construction described in the original documentation approved by MSHA must be submitted to the Agency for approval prior to implementation of the change. If MSHA approves the change, the Agency issues an extension of approval or a notice of acceptance of the modified product to the manufacturer.

In the mid-1980s, the Agency reviewed its product approval program to determine whether it could be restructured to provide improved safety to miners without increasing cost to the applicant. That review resulted in the promulgation in 1988 of 30 CFR part 7, Testing by Applicant or Third-Party, which represented MSHA's first departure from its role of front-end prototype testing of products for approval, by substituting manufacturer or third-party testing of a limited number of products for the testing that previously had been conducted by MSHA.

The objectives of the program were to permit MSHA to redirect its resources to its post-approval product audit functions, as well as to the review of technological improvements in mining products. The Agency's shift in emphasis was intended to enhance the safety of products in mines by providing the mining community a greater assurance that approved products in mines continue to be manufactured as approved, by detecting any problems in manufactured products more effectively, and by enabling a more expeditious introduction of new technology.

Products selected as suitable for applicant or third-party testing under part 7 were those with characteristics which could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. Products whose testing results depend on the experience, judgement, and knowledge of the personnel executing the tests, such as testing a complex intrinsically safe circuit, were not included in the part 7 program.

Under part 7, all product testing is conducted according to MSHA-specified tests and procedures, using calibrated and accurate instruments. Moreover, the product testing is subject to Agency observation. Part 7 is not a self-certification program. The part 7 concept shifts only the testing of certain products to the applicant or a third party. The evaluation of the test results and the issuance of the approval remain the responsibility of the Agency. This final rule will not affect the testing aspects of part 7. Part 7, unlike the other approval parts, will continue to permit testing by the applicant or by third party laboratories that are not necessarily independent from the manufacturer.

In 1993, MSHA initiated a further review of its approval and certification activities, including its part 7 applicant or third-party testing program. Based on this review, the Agency reaffirmed the objectives of the part 7 concept to increase post-approval product audits and direct more resources to evaluation of safety and technological improvements in products for use underground. However, MSHA determined that while the part 7 program was a step in the right direction, the limited scope of that program did not free up sufficient resources to allow MSHA to fully redirect its efforts to meet those objectives. After considering how best to accomplish those goals, the Agency decided to initiate rulemaking to modify MSHA's approval program in two ways, which it did in 1994. Under a 1994 proposed rule titled "Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements," applicants seeking MSHA product approval would have been required to use independent laboratories recognized by the Occupational Safety and Health Administration (OSHA) under its Nationally-Recognized Testing Laboratories (NRTL) program for the required testing and evaluation. This would have been in place of MSHA testing and evaluation of products. As with the part 7 program, however, MSHA would have continued to verify that approval requirements were met and would have retained full responsibility for issuing the product approval. Thus, the 1994 proposed rule would not have constituted a self-certification program. Second, MSHA or appropriately recognized independent laboratories would have been permitted, upon an applicant's request, to test and evaluate a product for approval based on approval requirements other than the Agency's, as long as those requirements provided an equal or a greater degree of protection. This would have allowed MSHA to approve a product meeting the International Electrotechnical Commission's (IEC) approval standards, or some other approval requirements different from those specified in MSHA's regulations, provided that MSHA first had determined that those requirements were equivalent or could be modified to provide protection equivalent to that afforded by products tested and evaluated according to MSHA approval requirements. In this way, the Agency could have taken advantage of revisions to product safety standards developed by other countries or standards development organizations to address technological advances or improvements in product safety. Such an approach would have permitted the introduction of a wider variety of improved products into U.S. mines more quickly than if the Agency had to undertake rulemaking to address each technological advancement or improvement in product safety, capability, and performance.

A notice of proposed rulemaking (NPRM) for a new part 6 was published on November 30, 1994 (59 FR 61376). The NPRM comment period was extended to February 21, 1995 (60 FR 8209). A Public Hearing Notice was published on October 10, 1995 (60 FR 52640), scheduling a public hearing for November 15, 1995. That hearing was rescheduled to April 30, 1996. (61 FR 15743). The post-hearing comment period ended on May 31, 1996. (61 FR 15743). The 1996 proposed rule was not published as a final rule.

MSHA introduced a revised proposed rule in the **Federal Register** on October 17, 2002. This revised proposed rule offered applicants for MSHA product approval alternate requirements for testing and evaluation of products that MSHA approves for use in gassy underground mines. Based on comments from the public to the 1994 proposed rule, the revised proposed rule provided a number of revisions to the original proposed rule. The major changes in the revised proposed rule are outlined below.

First, the revised proposal would be voluntary. Manufacturers could choose to use independent laboratories to perform all or part of the testing and evaluation necessary for approval, or could elect to have MSHA perform the necessary testing and evaluation. Second, applicants would not have to use only independent laboratories that were National Recognized Testing Laboratories under OSHA's program, but could choose an independent laboratory recognized by other laboratory accreditation programs, such as that of the American National Standards Institute (ANSI) or the International Electrotechnical Commission (IEC). Third, only MSHA would conduct required post-approval product audits. Audits conducted by independent laboratories would not be required under the revised proposal. Fourth, only the MSHA mark would be required on MSHA-approved products, not both the MSHA and independent laboratory mark. Finally, the revised proposal would allow public input into the process of making equivalency determinations of non-MSHA product safety standards. MSHA would notify the public through publication in the **Federal Register** of MSHA's intent to review a particular non-MSHA standard for equivalency and provide an opportunity for public input on that issue.

However, like part 7, under both the 1994 proposed rule and the revised proposed rule, the review of any testing and evaluation performed by an independent laboratory and the issuance of the MSHA product approval would still remain the full responsibility of MSHA's Approval and Certification Center.

MSHA requested comments from the public (67 FR 64196). MSHA received two general comments regarding this revised proposed rule. The public comment period closed on December 31, 2002. MSHA held two public hearings. One was on January 7, 2003, in Denver, Colorado. The other hearing was held on January 9, 2003, in Washington, Pennsylvania. No comments or statements regarding the revised proposal were provided by any party at either of the public hearings. The post-hearing comment period closed on February 10, 2003.

II. Discussion of Final Rule

A. Introduction

Under this final rule, manufacturers seeking MSHA approval could choose to have their products tested and evaluated either by an independent laboratory or by MSHA. MSHA will be able to accept the independent laboratory's test and evaluation results in lieu of performing its own.

This final rule recognizes the industry's need to expedite the transfer of technology into the mining environment. This transfer should improve the health and safety of miners. The alternate program in this final rule will permit a manufacturer who has had a product tested and evaluated by an independent laboratory to submit the test reports and technical information to MSHA to obtain MSHA approval for the product.

MSHA is aware of certain instruments that are currently listed (approved) by independent laboratories for use in hazardous gas and dust atmospheres that may also be suitable for use in the

mine environment. These instruments include: Portable methane detectors, air sampling pumps, oxygen deficiency meters, air velocity meters, carbon monoxide detectors, hydrogen sulfide detectors, powered respirators and accessories, toxic gas detectors, portable two-way radios, laser surveying instruments, mine rescue communications systems, photometers, temperature sensing devices, personal audible and visual alarms, heat detection systems, voice amplifiers, position sensing devices, tape recorders, pressure sensing devices, data recording instruments, electrical diagnostic test instruments, sound level meters, sound level calibrators, audio dosimeters, and cable fault detectors.

MSHA has issued approvals for a number of instruments that were already listed (approved) by an independent laboratory at the time of application for MSHA approval. Examples of some of these instruments are: Motorola MT2000 and HT1000 Hand-held Radios; MSA Microgard Portable Alarm for warning of low levels of oxygen and high levels of methane; MSA Escort Elf Portable Pump for sampling of the mine atmosphere for dust; MSA Passport and Mini Series Personal Alarms for warning of high levels of toxic and combustible gases; Industrial Scientific Corporation Model SP402 Sampling Pump for remote monitoring of oxygen, toxic and combustible gases; and Industrial Scientific Corporation Model TMX410 Four-Gas Monitor for monitoring and warning of high levels of toxic and combustible gases and low levels of oxygen.

MSHA recognizes that there are many more products, including instruments, motors, explosion-proof enclosures, conveyor belts and hydraulic fluids, that are listed by independent laboratories that have not been submitted for MSHA approval. These products, used in other industries, can offer safety-related benefits to the mining industry and are considered potential candidates for the program that is created by this rule. By permitting acceptance of independent laboratory test and evaluation results, MSHA believes that some of these product manufacturers will be encouraged to submit their products for MSHA approval.

MSHA is also aware that many instruments and products have been listed (approved) by independent laboratories to Underwriter's Laboratories (UL) and Factory Mutual (FM) intrinsic safety standards for use in Class I (explosive gas-air mixtures) and Class II (explosive dust-air mixtures) atmospheres. Many of the same tests and design requirements that MSHA uses under its intrinsic safety regulations are also used in the UL and FM standards. Under this final rule, applicants seeking MSHA approval of instruments or other products for intrinsic safety purposes could submit the results of any independent laboratory's testing and evaluation for intrinsic safety to MSHA as part of their applications. If, after review, MSHA determined that the testing already conducted was performed properly, MSHA could accept the test results and will not have to repeat testing in cases where the tests were the same. This will reduce costs and the time spent by manufacturers to obtain MSHA approval. If the review raised questions or concerns about the validity of test and evaluations submitted, MSHA will need to perform repeat testing. MSHA, of course, will conduct additional testing and evaluation where the UL and FM intrinsic safety requirements were not the same as MSHA's.

Under this final rule, MSHA will retain its testing and evaluation capabilities, but will offer applicants the alternative of submitting independent laboratory test and evaluation results for MSHA approval. MSHA will have the authority to accept the test and evaluation results in lieu of conducting its own tests and evaluations. MSHA also will have the authority to conduct or to observe any additional or repeat test and evaluation to ensure compliance with the MSHA requirements.

This final rule will also permit manufacturers to request MSHA approval based on non-MSHA product safety standards. This will occur only after MSHA has determined that such standards are equivalent to its applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements.

No approvals will be issued under part 6. Instead, any approval issued based on part 6 provisions will continue to be approved under the applicable product approval parts. The necessary conforming language to those other approval parts is published in this **Federal Register** notice of final rulemaking.

In developing this final rule, MSHA has made every effort to address the comments received on the October 17, 2002, revised proposal. Two commenters submitted comments regarding the revised proposed rule.

One commenter expressed its support for the revised proposed rule indicating that "* * * the Revised Proposed Rule contained language which addressed all of our concerns." The commenter was in agreement with allowing manufacturers to utilize independent laboratory testing facilities while maintaining the test facility at MSHA. It agreed that requiring the use of OSHA's Nationally Recognized Testing Laboratories (NRTLs) which must conduct semi-annual audits was unnecessary since MSHA conducts its own audits. The commenter was also supportive of MSHA's proposal to approve equipment designed to non-MSHA product safety standards, particularly international standards, once MSHA has determined that they provide at least the same degree of protection, in their original or modified form, as MSHA's product approval requirements. The commenter indicated that the proposed provision on equivalency would assist in maintaining a single product line for use in multiple countries. This commenter also urged MSHA to "pursue working toward harmonizing with the world in regard to globalized standards," specifically suggesting that MSHA join the IECEx scheme that permits one global standard and allows member countries to accept the certification issued by other member countries.

The second commenter expressed its concern regarding the competency of independent laboratories when compared with that of MSHA's own testing and evaluation capabilities. It indicated that MSHA and its predecessors have almost a century of experience and developed knowledge regarding the evaluation of mining products. The commenter recognized that independent laboratories may have the appropriate expertise to test to MSHA requirements, but asserted that the lack of mining-specific knowledge would reduce the industry's confidence in the test and evaluation results. This commenter was further concerned about the potential for "institutional atrophy" that could occur within MSHA with the reduction in testing and evaluation experience. The commenter expressed concern with a potential conflict of interest that could result from an independent laboratory being hired by a manufacturer. The commenter expressed similar concerns that a laboratory could be influenced to "gloss over negative aspects of a mining product" in an effort to keep the manufacturer as a customer.

MSHA has carefully evaluated the concern expressed about accepting third party testing results. Under this final rule, before an independent laboratory's test and evaluation results will be considered, the manufacturer must provide evidence to MSHA that the laboratory is independent from outside influences and has been accredited by a laboratory accrediting organization to test to the particular standard. Test and evaluation results from an outside laboratory will be scrutinized by MSHA. The results, required by the final rule to be submitted to MSHA, will include the complete report which outlines the conduct of each test. The test and evaluation results will be used by MSHA to determine compliance with the applicable product approval requirements on which the MSHA approval is based. MSHA will have the option to require the independent laboratory to repeat or conduct additional tests if there is any reason to question the supplied test data. MSHA will also have the option of performing the repeat or additional tests. In addition, MSHA's post-approval product audit program will ensure that approved products are produced in compliance with all approval requirements.

The use of third party laboratories in the MSHA approval process has proven to be successful under 30 CFR, part 7, Testing by Applicant or Third Party. This regulation, which permits an applicant to submit their own test results or those from a third party, has been in place since 1988. There have been notably few instances of questionable laboratory test results of part 7 approved products in more than 14 years of experience with the regulation. The few cases dealt with the laboratory's lack of understanding of a particular test standard. In these cases, MSHA's oversight resulted in corrections to the laboratory's test process and the issues were resolved prior to any part 7 product approval.

For the reasons stated above, MSHA has no reason to anticipate problems with competency or conflict of interest associated with independent laboratory testing and evaluation.

B. Section-by-Section Discussion

The following portion of the preamble discusses each provision of the final part 6 rule. The text of the final rule is included at the end of the document.

§ 6.1 Purpose and Effective Date

This section explains that the purpose of this final rule is to establish an alternate program for testing and evaluation of products MSHA approves for use in gassy underground mines. It permits manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for approval. It also permits manufacturers to request to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA product safety standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as MSHA's requirements. No comments on the specific language in § 6.1 were received. Therefore, the final language remains unchanged from the revised proposed rule.

The provisions of this part apply to any application for approval or extension of approval filed under 30 CFR part 18, 19, 20, 22, 23, 27, 33, 35, or 36, and received by MSHA after the effective date of this rule. It will become effective 60 days after publication of the final rule in the **Federal Register**.

§ 6.2 Definitions

This section of the final rule defines and clarifies the key terms used in part 6.

Applicant. This term is used to describe an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. This term is used to describe a written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36. The definition is based on the existing definitions of "approval" in the parts specified above. It is expanded to include "certification" and "acceptance" because these terms are also used to denote MSHA approval.

Approval holder. This term is used to describe an applicant whose application for approval of a product under part 18, 19, 20, 22, 23, 27, 33, 35, or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standard. This term is used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36, or which in modified form, provide at least the same degree of protection.

Independent Laboratory. This term is used to describe a laboratory that: (1) has been recognized by a laboratory accrediting organization (*e.g.*, OSHA NRTL, American National Standards Institute (ANSI), International Electrotechnical Commission (IEC), etc.) to test and evaluate products to a product safety standard, and (2) is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. This term applies to the examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. This term is used to describe a document, or group of documents, that specify the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, include documents addressing the flammability properties of products.

No comments on the specific language of the proposed definitions in § 6.2 were received. Therefore, the language in each of the definitions in the final rule remains unchanged from the revised proposed rule.

§ 6.10 Use of Independent Laboratories

Under paragraph (a) of this section, manufacturers who seek approval of certain products will be permitted to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for MSHA product approval. This final rule does not require manufacturers to use independent laboratories. Instead, it gives manufacturers the option of having either MSHA or an independent laboratory do the testing and evaluation.

Also, under this final rule, if independent laboratories are used, applicants need to submit, as part of the approval application, four items set out in paragraphs (a)(1), (2), (3), and (4) of § 6.10. They include written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization; a complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements; identification of components or features of the product that are critical to the safety of the product; and all documentation, including drawings and specifications, which are required by the applicable approval part under this chapter.

The Agency determined that it is essential for the laboratories performing testing and evaluation to be recognized by a laboratory accrediting organization. These organizations determine the qualifications of laboratories. Several competent laboratory accrediting programs exist including, but not limited to, those operated by OSHA; the American National Standards Institute

(ANSI); and the International Electrotechnical Commission (IEC).

The Agency believes that there are two essential qualifications that laboratories must meet in order for MSHA and the mining community to have assurance that any product, tested and evaluated by third party laboratories, is safe for use in the mining environment. First, MSHA believes that the laboratory must be independent of commercial, financial, or other pressures that could influence the results of the testing and evaluation process. Independence of the testing laboratory from the manufacturer is essential, under this part 6, for MSHA and the mining public to have confidence in the results of testing and evaluation conducted outside the Agency's Approval and Certification Center. Unlike part 7, independence of the laboratories is required under part 6 due to the subjective nature of the tests and evaluations performed, and often require the use of engineering judgement. Second, MSHA needs some evidence that the laboratory is competent to test and evaluate to a particular product safety standard. This final rule permits MSHA to accept testing and evaluation performed by an independent laboratory provided that MSHA receives written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization.

MSHA recognizes that some foreign laboratories meet the criteria for independent laboratories. Therefore, a manufacturer could choose to use a foreign laboratory as long as it is free from commercial, financial and other pressures that could influence the testing and evaluation process and has been accredited by a recognized accrediting organization such as the IEC to perform testing and evaluation to MSHA's requirements. Guide 17025 of the International Organization for Standardization (ISO)/IEC "General requirements for the competence of testing and calibration laboratories" and ISO/IEC Guide 65 "General requirements for bodies operating product certification systems" are the main documents used both nationally and internationally by organizations which accredit laboratories. Moreover, the United States is a member of the World Trade Organization (WTO). The Technical Barriers to Trade Agreement applies to members of the WTO and requires members to ensure that technical regulations are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means that, under the agreement, standards could not be promulgated that discriminate between foreign and domestic manufacturers and laboratories.

MSHA emphasizes that it will continue to test and evaluate products at the manufacturers' request. It also needs to retain testing and evaluation capability for the purposes of post-approval product audits, accident investigations, and for purposes of technical assistance. In addition, as discussed later in § 6.20 of this final rule, MSHA will be evaluating other non-MSHA product safety standards to determine equivalency, increasing its testing and evaluation expertise.

The final rule allows the optional use of a wide network of independent laboratories, eliminating the concern about monopolies. It also provides manufacturers the option to have MSHA perform some or all of the testing and evaluation necessary for approval. MSHA believes that assessing other non-MSHA product safety standards' equivalency to MSHA's approval requirements and continuing its responsibility for product audits will maintain MSHA's expertise in mine equipment safety. Under this final rule, the Agency will continue to be involved in direct product testing and evaluation if manufacturers choose to submit their products to MSHA for testing and evaluation. No comments on the specific language in § 6.10(a) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (b) of this section requires that product testing and evaluation performed by independent laboratories for purposes of MSHA approval comply with MSHA product approval requirements. The final rule does not permit an independent laboratory to change a testing standard or any elements incorporated into the standard. This is due to the critical nature of the testing and evaluation of products to be used in a potentially hazardous underground mining environment. No comments on the specific language in § 6.10(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) of this section requires product testing to be conducted or witnessed by the independent laboratory's personnel. No comments on the specific language in § 6.10(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Under paragraph (d) of this section, MSHA will notify applicants, after the review of information required under paragraph (a), if additional information and testing will be required. The applicant will be required to provide the information. The applicant will have to supply any additional components necessary for testing and evaluation. Without a complete application, MSHA will be unable to initiate the technical review of the product.

After determining that an application package is complete, MSHA will initiate a technical review to ensure that the independent laboratory's testing and evaluation results were both reasonable and appropriate for the particular product. If the technical review of the package indicates deficiencies resulting from inadequate data, illogical or unreasonable testing or evaluation results, or the omission of required information, the applicant will be notified of the discrepancy and given a reasonable period of time to provide the needed information and correct the apparent deficiency. If MSHA determines that additional or repeat testing is required, the applicant will have to arrange for any additional or repeat tests and notify MSHA of the location, date and time of the test(s). MSHA could elect to observe additional testing conducted by an independent laboratory or MSHA could conduct the additional or repeat tests at the applicant's expense. The applicant will need to supply any additional components necessary for testing and evaluation. No comments on the specific language in § 6.10(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Following the administrative and technical reviews of the product approval package, MSHA will issue an approval, or a notice denying approval, to the applicant. A notice denying approval will state the reasons on which the denial is based. If an approval is issued, the approval holder will be authorized and required to place an MSHA mark on the product which signifies to the user of the product that it is approved for use in gassy underground mines. The product drawings and specifications, the independent laboratory's testing and evaluation results, and its statement of product compliance with the applicable approval requirements, as well as written evidence of the laboratory's independence and current recognition by an accrediting organization, will be retained in the approval file at MSHA's Approval and Certification Center.

The final rule does not require that manufacturers use the mark of the independent laboratory that tested and evaluated the product or its components. However, nothing in this final rule prohibits a manufacturer from using the mark of an independent laboratory if it chooses to do so, as long as it carries the MSHA mark as well.

Paragraph (e) requires that approval holders of products approved based on independent laboratory testing and evaluation make such products available for audit upon request by MSHA. This will not occur more than once a year, except for cause. Such an audit will be conducted at a mutually agreeable site at no cost to MSHA. This is to ensure that products bearing the MSHA marking meet the approval requirements and are manufactured in accordance with the approved drawings and specifications. Although MSHA will not specifically require manufacturers to adhere to audits required by independent laboratories, MSHA recognizes that most manufacturers who elect to have their products listed (approved) by independent laboratories generally accept those laboratories' audit requirements to maintain their listing.

MSHA will continue to conduct audits as part of its post-approval product audit program. MSHA conducts audits to ensure conformity with the technical requirements upon which the approval was based. Approved products to be audited by MSHA will be selected by the Agency as representative of those distributed for use in underground mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency will arrange to examine and evaluate it at a mutually agreed upon time and location and will permit the approval holder to observe audit-related tests. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval holder. The approval holder will be able to obtain the report resulting from such audits.

Product testing and evaluation performed by both foreign and domestic laboratories for purposes of MSHA approval will have to comply with MSHA product approval requirements. In this regard, under this final rule, MSHA will carefully review all product testing and evaluation reports submitted in support of product approval applications prior to an approval decision being made. This will ensure that such testing and evaluation has been performed in accordance with MSHA procedures and requirements. Finally, the manufacturer will be ultimately responsible for any product, under any of the approval parts covered, regardless of who performs the testing (*i.e.*, foreign or domestic independent laboratory or MSHA). Once the product is in the mines, the mine operator is required to maintain the product in approved condition.

This final rule provision for post-approval product audits will allow MSHA to more effectively determine whether products are, in fact, being manufactured as approved. MSHA, not the manufacturer, will select the product. MSHA also will continue to obtain approved products from sources other than the manufacturer. This approach is particularly useful for products that are "one of a kind" or of limited distribution. Because these products are not readily found at mine suppliers or distributors, they are difficult to locate without the assistance of the approval holder.

In determining which approved products will be subject to audit at any particular time, MSHA will consider a variety of factors such as, but not limited to, whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations could include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which more than one approved product will be required to be audited "for cause" from any one manufacturer in any one year. There are circumstances or causes, however, under which additional products for audit may be necessary to ascertain compliance with the technical requirements upon which an approval is based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, the approval holder will have to provide, at no cost to MSHA, additional approved products so the Agency could ensure that the approval holder is meeting its obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA will require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval holder recalling or retrofitting the approved product involved, and issuing notices of such action to users. Revocation of the approval by MSHA may result when discrepancies in approved products are not corrected. No comments on the specific language in § 6.10(e) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (f) requires approval holders to notify MSHA of all product defects they discover, once products are approved. A defect is a nonconformance with the MSHA approved design, including any drawings and specifications. There are varying degrees of significance of defects. It is MSHA's intent that all defects be reported to the Agency.

Because the use of products with defects could create hazards underground, immediate notification should be made by expedient means, such as by telephone, e-mail, or fax. The telephone notification should be followed-up in writing. The oral and written notification should include a description of the nature and extent of the problem. No comments on the specific language in § 6.10(f) were received. Therefore, the final language remains unchanged from the revised proposed rule.

§ 6.20 MSHA Acceptance of Equivalent Non-MSHA Product Safety Standards

Section 6.20(a) of this section states that MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they: (1) Provide at least the same degree of protection as MSHA's product approval requirements set forth for the product in other parts of this chapter; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements.

Non-MSHA product safety standards will be considered equivalent when MSHA determines that, in their original or modified form, they provide at least the same degree of protection as MSHA's product approval requirements in part 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter. No comments on the specific language in § 6.20(a) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (b) provides that MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. MSHA encourages public input in the equivalency process. It will solicit such

input through a **Federal Register** notice once it decides to evaluate a particular standard or group of standards for equivalency. Because MSHA is solely responsible for the approval of mining products under the Mine Act, MSHA will retain the ultimate decision on equivalency. No comments on the specific language in § 6.20(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) requires that MSHA publish a listing of all final equivalency determinations in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or will require modifications to demonstrate equivalency. If modifications are required, they will also be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination in the **Federal Register**. MSHA's Approval and Certification Center will provide complete equivalency determination reports upon request. No comments on the specific language in § 6.20(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (d) requires that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations in the **Federal Register**, applicants can seek MSHA product approval based on such non-MSHA product safety standards. No comments on the specific language in § 6.20(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

The Agency believes that this final rule will encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to "equivalent" standards, that provide at least the same degree of protection to miners as those in the various MSHA product approval regulations could achieve multiple objectives. These include metric conversion, greater compatibility with international standards, and a more competitive posture for U.S. products in the international market.

Section 6.20 provides that MSHA will determine which non-MSHA product safety standards, or groups of standards, are equivalent or can be modified to be equivalent. The decision to perform an equivalency evaluation will be based on MSHA's determination of the overall value of conducting the evaluation. It is MSHA's intention to base its decision on factors such as the number of potential applications for approval using a particular non-MSHA product safety standard, the number of potential products affected, and its knowledge of the standard and the potential for it being equivalent. MSHA began this process some time ago in order to compare its approval requirements to those of other organizations because of the increasing use of those non-MSHA product safety standards in international trade and because of requests from the public. The equivalency analysis will be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

MSHA's equivalency determinations will be based on the objectives of its product approval requirements and the hazards they were designed to address. Section 101(a)(9) of the Mine Act provides that no new standard can reduce the protection afforded miners by an existing standard. For this reason, MSHA must assure that any non-MSHA product safety standard provides at least the same degree of protection for the miners who may use the product approved under that standard. MSHA cannot accept product safety standards, domestic or international, without determining whether they are equivalent or whether some modifications to those product safety standards are needed to achieve the objectives of the existing MSHA product approval requirements. While certain standards, including those accepted by other mining agencies, may be equivalent, MSHA must make that determination on a standard-by-standard basis. It is MSHA's belief that certain product safety standards may well be equivalent without modifications; others may require modification. The Agency will do a systematic analysis first to make this determination.

MSHA's equivalency analysis will compare the subject product safety standards, whether domestic or international, and MSHA's applicable product approval requirements. Where they differ, each difference will be examined to assess its effect on overall safety, and the differences as a whole will be assessed. Where the differences do not impact the objectives of the MSHA requirements, MSHA will issue a determination that the standard is equivalent to MSHA's approval requirements. However, if certain design criteria or performance requirements fail to meet MSHA's objectives or could diminish the safety of the product in underground mines, MSHA will specify the modifications necessary to reconcile the differences between the two so that at least the same degree of protection is provided.

Under this final rule, when MSHA evaluates a product safety standard to determine equivalency, the Agency will be looking at the standard as a whole and whether it meets the objectives of MSHA's applicable product approval requirements. The Agency recognizes that some non-MSHA product safety standards may have more stringent provisions than MSHA's comparable approval requirements. However, it is not the Agency's intention to require more stringent protections where a non-MSHA product safety standard may afford them. MSHA intends to require modifications only where the non-MSHA standard does not provide equivalent protection. For manufacturers who choose to design products to more stringent standards, for purposes other than MSHA approval, this final rule provides the vehicle for them to obtain MSHA approval even if their products were not designed specifically to MSHA's approval requirements. It is not the Agency's intention to develop a "hybrid" regulation, choosing the most stringent requirements from both the MSHA requirements and non-MSHA standards. This final rule requires modifications to provide at least the same degree of protection as MSHA's product approval requirements.

After MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be modified to provide at least the same degree of protection, the applicant will be given the option of requesting that MSHA base its approval on the equivalent, non-MSHA product safety standard, instead of on MSHA's applicable product approval requirements. This option will benefit manufacturers by permitting them to design products to a single set of requirements for sale in multiple markets (domestic and international as well as mining and non-mining applications). This option will also benefit miners by encouraging a more rapid introduction of mining products embodying new technology with enhanced safety features.

Because this final rule permits approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design will incorporate the highest level of safety required by any of the intended market areas. For example, if the target areas include mining and non-mining markets, and the non-mining market has a product safety standard with more stringent approval requirements than MSHA for a specific product, MSHA could, at the request of the applicant, issue an approval based on the more stringent requirements. The approval documentation will state that the product fulfills both the applicable approval requirements in the non-mining standard and MSHA's approval requirements. In this case, the approved product sold in mining markets will provide a greater degree of protection than that specified by MSHA under existing requirements. Should the non-mining market have product safety standards which are, in some aspects, less stringent than those of MSHA, the applicant will be required to fulfill the non-mining standards' requirements and, in addition, all other requirements deemed necessary to ensure that the product provides at least the same degree of protection demanded by the MSHA approval requirements. In this situation, the approved product will exceed the safety requirements of the non-mining standard and meet those of MSHA. The same analysis will apply if the targeted areas were foreign and domestic markets.

In these situations, MSHA's approval documentation will show that the product had fulfilled the requirements of any non-MSHA product safety standard and those of MSHA. In the first instance, the product marketed in the non-mining application will embody a higher level of safety, while in the second instance it will embody equivalent safety. In no case will the product provide less protection than mandated by MSHA approval requirements.

The following example illustrates how MSHA will evaluate non-MSHA product safety standards to determine if they provide at least the same degree of protection as MSHA's product approval requirements. MSHA's approval regulation under 30 CFR part 18 requires explosion testing of explosion-proof enclosures using a methane-in-air mixture. The IEC explosion-proof enclosure standard (IEC 60079–1) requires the use of more sensitive test gases. That standard specifies the use of methane to determine "reference pressures" and uses a hydrogen/methane fuel mixture to test for flame propagation. The tests used in both MSHA requirements and the IEC standard produce higher pressures/temperatures than occur during normal operation.

One obvious difference in the two test protocols is MSHA's criterion to observe for the "discharge of flame" (hot glowing gases) during any of the tests. The IEC standard does not have this requirement. The reason for this difference is that MSHA tests enclosures "as manufactured" without any intentional gaps and, unlike the IEC, does not require flamepath gaps to be enlarged to the maximum specified by design. Therefore, during MSHA testing, flamepaths are not forced open to any appreciable amount, unless there are defects or weaknesses in the enclosure. This is important because MSHA's requirements do not contain provisions for regular prototype pressure testing to supplement the explosion tests, as do the IEC requirements. Such pressure testing is specifically designed to identify faulty products over a broader range of pressures than can be achieved by the MSHA explosion testing protocol.

Considering the above discussion, MSHA's explosion testing protocol, with combustible mixtures of methane as the test gas and using the discharge of flame as an additional criterion to flame propagation for test failure, sets a high evaluation standard for explosion-proof enclosures used on mining equipment in the U.S. However, testing is accomplished without introducing intentional flamepath flange gaps. In contrast, the IEC standard requires that tests be conducted with flamepath gaps intentionally enlarged to within 80% to 100% of the maximum specified design. Thus, the IEC test standard allows for luminous flame to pass, but with insufficient energy to ignite the surrounding atmosphere and uses a more easily ignitable test gas than methane. This concession is significant when flamepath gaps are purposely enlarged for testing. Such a practice could produce non-incendive luminous gas discharges during testing, which would be considered unacceptable under MSHA test protocols. MSHA has no evidence that such a non-incendive luminous gas discharge is unsafe. The MSHA requirement and the IEC standard could be considered equivalent because the MSHA requirement to observe no discharge of flame is offset by the IEC's use of a more easily ignitable test gas and intentional gap enlargement.

With all other factors equal, MSHA could consider the explosion test specified by IEC to be equivalent to the explosion test procedure followed by MSHA in fulfillment of 30 CFR 18.62. In this manner a single test could verify conformity to the test requirements of both product standards with no reduction of safety in either case.

This example highlights the methods that will be employed by MSHA when determining if a non-MSHA product safety standard provides at least the same degree of protection as MSHA's product approval requirements. In like fashion, other differences between MSHA requirements and the IEC standards will be analyzed to determine if they are equivalent or if modifications to the IEC standards will be required.

This same process will be applied to all non-MSHA product safety standards that will be evaluated for equivalency. For example, MSHA requires that a component in an intrinsically safe circuit be tested to determine that it will not overheat under fault conditions and ignite a layer of coal dust. UL requires the product to be marked with a maximum temperature rating (also called a "T-Code") or tested using a different ignitable dust or gas. MSHA will determine if the temperature rating is below the minimum ignition temperature of a coal dust layer or if the specified dust layer (*e.g.*, grain dust) used in the test has a lower ignition temperature than a coal dust layer currently used in MSHA tests. If equivalency could not be determined, MSHA will require an additional test using a layer of a specified type and size of coal dust to ensure at least the same degree of protection is provided.

MSHA anticipates that cost savings from use of equivalent non-MSHA product safety standards could reduce the manufacturer's unit cost by permitting more standardized construction (*i.e.*, single product line) and, thus, improve the manufacturer's competitive position. This, together with the need to provide products meeting the highest level of safety demanded by the market areas of interest, could encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In general, this final rule should provide increased opportunity for direct competition leading to improved safety and performance quality in mining products.

Under this final rule, manufacturers who apply for MSHA approval of their products can have MSHA base the approval on either MSHA approval requirements or the equivalent non-MSHA product safety standards. MSHA will retain the responsibility of approving or denying an application based on all information submitted in the application.

As is the case with existing MSHA approval regulations, this final rule will not discriminate between U.S. and foreign manufacturers. Any manufacturer, either domestic or

foreign, wishing to acquire an MSHA product approval will be able to take advantage of this "equivalency" program.

Further, this final rule will be consistent with the North American Free Trade Agreement (NAFTA) and the Agreement on Technical Barriers to Trade (TBT).

Equivalency Under Part 7

Under the final rule, an equivalency provision is provided in part 7 which will operate like the provision for equivalency in § 6.20.

Under this provision, § 7.2 will be amended by adding a definition of "equivalent non-MSHA product safety standards." This term is used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA technical requirements in the subparts of part 7. This definition is essentially the same as that in § 6.2 of part 6. No comments on the specific language in § 7.2 were received. Therefore, the final language remains unchanged from the revised proposed rule.

Section 7.10 MSHA Acceptance of Equivalent Non-MSHA Product Safety Standards

Section 7.10(a) is similar to § 6.20(a) and provides that MSHA will accept non-MSHA product safety standards, or group of standards, as equivalent after determining that they: (1) Provide at least the same degree of protection as MSHA's technical requirements for the products in other subparts of this part; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements. No comments on the specific language of § 7.10(a) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (b) of § 7.10 provides that MSHA publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. No comments on the specific language in § 7.10(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) of § 7.10 provides that MSHA publish a listing of all equivalency determinations for this part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or will require modifications to demonstrate equivalency. If modifications are required, they will also be included in this listing for part 7. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination in the **Federal Register**. MSHA's Approval and Certification Center will provide complete equivalency determination reports upon request. No comments on the specific language in § 7.10(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (d) of § 7.10 provides that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants can seek MSHA product approval based on such non-MSHA product safety standards. No comments on the specific language in § 7.10(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

MSHA is aware of some foreign and domestic non-MSHA product safety standards that could be used to test and evaluate products approved under the various subparts of part 7. These standards are used in other countries and other industries. Some of these non-MSHA product safety standards can provide at least the same degree of protection as MSHA requirements and can provide consistent, repeatable test results.

MSHA intends to operate its equivalency program under part 7, the same as previously described in the discussion of § 6.20 on equivalency.

III. Paperwork Reduction Act

This final rule will result in a total of approximately 29 burden hours and $654 dollars of related costs. A breakdown of the burden hours and related costs by provision and by applicant size can be found in Chapter VII of the Regulatory Economic Analysis (REA) supporting this final rule. The REA is located on our Web site at *http://www.msha.gov/regsinfo.htm*.

This rule contains no substantive changes to the paperwork requirements contained in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 which are currently approved under OMB Control Number 1219–0066. The paperwork requirements contained in § 6.10 have been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. Persons are not obligated to comply with them until approved by OMB.

Under § 6.10 applicants will have to provide information stated in paragraphs (a)(1) through (a)(4) for MSHA to accept testing and evaluation performed by an independent laboratory. Currently, applicants must submit only information requested in paragraph (a)(4). If applicants choose to use independent laboratories, information requested in paragraphs (a)(1) through (a)(3) will be needed because MSHA will no longer be performing all the testing and evaluation associated with the approval application. Providing the information under § 6.10(a)(1) through (a)(3) will result in a total of approximately 24 burden hours and $458 of associated costs.

Section 6.10(d) states that after review of the information required under paragraph (a)(1) through (a)(4), MSHA will notify the applicant if additional information and testing are required. If an independent laboratory conducts any additional or repeat testing, then the applicant will have to send the test results to MSHA. Sending any additional or repeat testing results to MSHA under § 6.10(d) will result in a total of 2 burden hours and $39 of associated costs.

Section 6.10(f) states that, once the product is approved, the approval holder will have to notify MSHA of all product defects of which the approval holder is aware. Notification is assumed to be in the form of a letter to MSHA. Notifying MSHA of product defects under § 6.10(f) will result in a total of 3 burden hours and $157 of associated costs.

IV. Executive Order 12866

A. Compliance Costs

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this final rule does not meet the criteria of an economically significant regulatory action pursuant to Executive Order 12866 section 3(f)(1) in that it will not have an effect on the economy of $100 million or otherwise have any material adverse effect. Although this final rule is not an economically significant action, MSHA has completed a REA in which the economic impact of the final rule is estimated. For a complete breakdown of the compliance costs for this final rule *see* chapter IV of the REA. The REA is summarized as follows.

The final rule will result in an annual net cost savings of about $1.5 million. Applicants seeking MSHA product approval employing 500 or fewer workers will realize a net cost savings of $0.66 million. Applicants employing more than 500 workers will realize a net cost savings of $0.86 million.

The net cost savings of $0.66 million, for applicants employing 500 or fewer workers, consists of cost savings of $0.68 million and compliance costs of $0.02 million. The net cost savings of $0.86 million, for applicants employing more than 500 workers, consists of cost savings of $0.88 million and compliance costs of $0.02 million.

B. Benefits

This final rule should encourage non-mining manufacturers with products that could be applicable to mining to apply for approvals. The modification of the approval process will expedite the introduction of technologically-advanced products into the mine, thus improving miner safety. Finally, the rule will reduce applicants' costs by eliminating repeat testing and evaluation and the need for multiple product lines. For a more complete discussion of the Benefits of this final rule, *see* chapter III of the REA.

V. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small entity and publishes that definition in the **Federal Register** for notice and comment.

For the mining industry, SBA defines "small" as a mine with 500 or fewer workers. In addition, most applicants (manufacturers) that file for an MSHA approval for their products operate in industries such as those involved in measurement, analysis, controlling instruments, photographic instruments, commercial and industrial lighting fixtures, and conveyors. SBA considers the small business size standard for such industries to be 500 or fewer employees. To ensure that this final rule conforms to the RFA, MSHA analyzed the economic impact of the final rule on small entities that are defined as those employing 500 or fewer workers.

A. Factual Basis for Certification

Based on its analysis, MSHA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the REA.

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the final rule does not include any Federal mandate that will result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal governments which manufacture products applicable to mining.

C. Executive Order 13132 (Federalism)

MSHA has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it will not have "federalism implications." The final rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." MSHA is not aware of any State or local governments which manufacture products applicable to mining.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effect of this final rule on children. The Agency has determined that the final rule will not have an adverse impact on children.

E. Executive Order 13175 (Indian Tribal Governments)

MSHA certifies that this final rule will not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any tribal governments which manufacture products applicable to mining.

F. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it will not involve implementation of a policy with takings implications.

G. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this final rule will not unduly burden the Federal court system. The final rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed this final rule for its energy impacts. MSHA has determined that this final rule will not have any adverse effects on energy supply, distribution, or use.

List of Subjects in 30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

Mine Safety and Health; Reporting and Recordkeeping Requirements, Research

Signed in Arlington, Virginia, this 9th day of June, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is amended as follows:

■ 1. Part 6 is added to read as follows:

PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON-MSHA PRODUCT SAFETY STANDARDS

Sec.

6.1 Purpose and effective date.
6.2 Definitions.
6.10 Use of independent laboratories.
6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

Authority: 30 U.S.C. 957.

§ 6.1 Purpose and effective date.

This part sets out alternate requirements for testing and evaluation of products MSHA approves for use in gassy underground mines. It permits manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval. It also permits manufacturers to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The provisions of this part may be used by applicants for product approval under parts 18, 19, 20, 22, 23, 27, 33, 35, and 36. This rule is effective August 18, 2003.

§ 6.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the assembly of a product and applies to MSHA for approval of that product.

Approval. A written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36. The definition is based on the existing definitions of "approval" in the parts specified above. It is expanded to include "certification" and "acceptance" because these terms also are used to denote MSHA approval.

Approval holder. An applicant whose application for approval of a product under part 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standards. A non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36, or which in modified form provide at least the same degree of protection.

Independent laboratory. A laboratory that:

(1) has been recognized by a laboratory accrediting organization to test and evaluate products to a product safety standard, and

(2) is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. The examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. A document, or group of documents, that specifies the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, includes documents addressing the flammability properties of products.

§ 6.10 Use of independent laboratories.

(a) MSHA will accept testing and evaluation performed by an independent laboratory for purposes of MSHA product approval provided that MSHA receives as part of the application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by the applicable part under this chapter.

(b) Product testing and evaluation performed by independent laboratories for purposes of MSHA approval must comply with the applicable MSHA product approval requirements.

(c) Product testing and evaluation must be conducted or witnessed by the laboratory's personnel.

(d) After review of the information required under paragraphs (a)(1) through (a)(4) of this section, MSHA will notify the applicant if additional information or testing is required. The applicant must provide this information, arrange any additional or repeat tests and notify MSHA of the location, date, and time of the test(s). MSHA may observe any additional testing conducted by an independent laboratory. Further, MSHA may decide to conduct the additional or repeated tests at the applicant's expense. The applicant must supply any additional components necessary for testing and evaluation.

(e) Upon request by MSHA, but not more than once a year, except for cause, approval holders of products approved based on independent laboratory testing and evaluation must make such products available for post-approval audit at a mutually agreeable site at no cost to MSHA.

(f) Once the product is approved, the approval holder must notify MSHA of all product defects of which they become aware.

§ 6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they:

(1) Provide at least the same degree of protection as MSHA's product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35 and 36 of this chapter; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

(c) A listing of all equivalency determinations will be published in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 7—TESTING BY APPLICANT OR THIRD PARTY

■ 2–3. The authority for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

■ 4. Amend § 7.2 by adding a new definition to read as follows:

§ 7.2 Definitions.

* * * * *

Equivalent non-MSHA product safety standards. A non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product technical requirements in the subparts of this part, or can be modified to provide at least the same degree of protection as those MSHA requirements.

* * * * *

■ 5. Amend subpart A by adding a new § 7.10 to read as follows:

§ 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they:

(1) Provide at least the same degree of protection as MSHA's applicable technical requirements for a product in the subparts of this part; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

(c) A listing of all equivalency determinations will be published in this part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 6. The authority for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 7. Amend § 18.6 by revising paragraph (a) to read as follows:

§ 18.6 Applications.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part.

(2) Where the applicant for approval has used an independent testing laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

(4) The application, all related documents, and all correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

* * * * *

■ 8. Amend § 18.15 by revising paragraph (a) to read as follows:

§ 18.15 Changes after approval or certification.

* * * * *

(a)(1) Application shall be made as for an original approval or letter of certification requesting that the existing approval or certification be extended to cover the proposed changes and shall be accompanied by drawings, specifications, and related information, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved or certified product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

(4) The application, all related documents, and all correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

* * * * *

PART 19—ELECTRIC CAP LAMPS

■ 9. The authority for part 19 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 10. Revise § 19.3 to read as follows:

§ 19.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation leading to approval of its lamp. This application, accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 11. Amend § 19.13 by revising paragraph (a) to read as follows:

§ 19.13 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

■ 12. The authority for part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 13. Revise § 20.3 to read as follows:

§ 20.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required under this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 14. Amend § 20.14 by revising paragraph (a) to read as follows:

§ 20.14 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 22—PORTABLE METHANE DETECTORS

■ 15. The authority for part 22 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 16. Revise § 22.4 to read as follows:

§ 22.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any methane detector, the manufacturer shall make application by letter for an investigation leading to approval of the detector. This application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 17. Section 22.11 is amended by revising paragraph (a) to read as follows:

§ 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer must write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 23—TELEPHONES AND SIGNALING DEVICES

■ 18. The authority for part 23 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 19. Revise § 23.3 to read as follows:

§ 23.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any telephone or signaling device, the manufacturer shall make application by letter for an investigation leading to approval of the device. This application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 20. Amend § 23.14 by revising paragraph (a) to read as follows:

§ 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing the changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 27—METHANE-MONITORING SYSTEMS

■ 21. The authority for part 27 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 22. Amend § 27.4 by revising paragraph (a) to read as follows:

§ 27.4 Applications.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application, accompanied by all drawings, specifications, descriptions, and related materials and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees. The application and all related matters and correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to the product approval requirements under this part.

* * * * *

■ 23. Amend 27.11 by revising paragraph (a) to read as follows:

§ 27.11 Extension of certification.

* * * * *

(a)(1) Application shall be made as for an original certification, requesting that the existing certification be extended to cover the proposed changes. The application shall include complete drawings, specifications, and related data, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

■ 24. The authority for part 33 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 25. Amend § 33.6 by revising paragraph (a) to read as follows:

§ 33.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application (except as otherwise provided in paragraph (e) of this section), accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all prescribed drawings, specifications, and all related materials. The application and all related matters and all correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

■ 26. Amend § 33.12 by revising paragraph (a) to read as follows:

§ 33.12 Changes after certification.

* * * * *

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

■ 27. The authority for part 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 28. Amend § 35.6 by revising paragraph (a) to read as follows:

§ 35.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

■ 29. Amend § 35.12 by revising paragraph (a) to read as follows:

§ 35.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

■ 30. The authority for part 36 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 31. Amend § 36.6 by revising paragraph (a) to read as follows:

§ 36.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

■ 32. Amend § 36.12 by revising paragraph (a) to read as follows:

§ 36.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

[FR Doc. 03–15006 Filed 6–16–03; 8:45 am]

BILLING CODE 4510–43–P

Federal Register

Tuesday,
June 17, 2003

Part IV

Department of Housing and Urban Development

Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs for Fiscal Year 2003; Technical Correction; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–C–2A]

Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs for Fiscal Year 2003; Technical Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Programs; technical correction.

SUMMARY: On April 25, 2003, HUD published its Fiscal Year 2003 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs. This document makes certain technical corrections to the General Section and the following programs: Assisted Living Conversion Program; Community Development Technical Assistance; Continuum of Care Homeless Assistance; Fair Housing Initiatives Program (FHIP); Healthy Homes Demonstration; Housing Counseling; Housing Opportunities for Persons with AIDS; Lead Hazard Control; Lead Outreach Grant Program; Resident Opportunities and Self-Sufficiency (ROSS); Rural Housing and Economic Development; Service Coordinators in Multifamily Housing; and Youthbuild.

This notice also extends the application due date for the ROSS for Homeownership Supportive Services to July 7, 2003.

DATES: The application due date for the ROSS Program for Homeownership Supportive Services is extended to July 7, 2003. All other application due dates remain as published in the **Federal Register** on April 25, 2003.

FOR FURTHER INFORMATION CONTACT: For the Programs listed in this notice, please contact the office or individual listed under the "For Further Information" heading in the individual program section of the SuperNOFA, published on April 25, 2003.

SUPPLEMENTARY INFORMATION: On April 25, 2003 (68 FR 21001), HUD published its Fiscal Year (FY) 2003 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs. The FY 2003 SuperNOFA announced approximately $2.3 billion in HUD program funds covering 43 funding opportunities within programs operated and administered by HUD offices.

Summary of Technical Corrections

Summaries of the technical corrections that will be made by this document are as follows. The page numbering shown in brackets identifies where the individual funding availability announcement that is being corrected can be found in the April 25, 2003, SuperNOFA.

General Section of SuperNOFA [Page 21002]

On page 21002, the "Addresses" paragraph is amended by removing the references to appendices and substituting the references to the correctly numbered appendices.

HUD amends the SuperNOFA Funding Chart, on page 21011, to include Catalog of Federal Domestic Assistance (CFDA) numbers for programs for which CFDA numbers were inadvertently transposed in the April 25, 2003, publication.

In the SuperNOFA Funding Chart on page 21015, HUD amends the application due date for the ROSS for Homeownership Supportive Services by extending the due date to July 7, 2003.

Paragraph (H) "Forms, Certifications, and Assurances," on page 21019, is amended to substitute the correct form number for HUD's Program Outcome Logic Model form (HUD–96010).

On page 21019, paragraph (K) "OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs" is amended to add an additional URL from which applicants may obtain Office of Management and Budget (OMB) circulars.

On pages 21066 and 21067, the form "Certification Regarding Debarment and Suspension" is removed.

Community Development Technical Assistance [Page 21083]

Paragraph I(A) of page 21085 is amended to change the application due date to June 4, 2003.

On page 21092, in paragraph VI(I) "Forms," the reference to the General Section of the SuperNOFA is corrected to read "Section V(H) of the General Section."

Fair Housing Initiatives Program (FHIP) [Page 21195]

Under "Eligible Activities," on pages 21199–21200, the language is amended to clarify the requirements under the Regional/Local/Community-Based Programs.

Under "Rating Factor 3: Soundness of Approach," on page 21208, the text is changed to clarify that four points under this subfactor will be given if the applicant is a grassroots faith-based or other community-based organization, or if the applicant proposes to partner or sub-contract with a grassroots, faith-based, or other community-based organization.

Housing Counseling Program [Page 21241]

In paragraph (A) under Rating Factor 1, on page 21247, the language is corrected to state that scoring will be based on the number of years of recent experience of project directors in addition to counselors. In addition, on page 21249, Rating Factor 1 is amended to instruct applicants to indicate the total dollar value of the resources the applicant was able to leverage in support of the housing counseling program, not including the applicant's HUD housing counseling grants (if applicable), for the period October 1, 2001, to September 30, 2002. (*See* page 21249.)

Paragraph 3 under Rating Factor 5, entitled "Submission Requirements for Factor 5," is amended to instruct applicants that they must submit a program evaluation plan using the Program Outcome Logic Model form (HUD–96010) that demonstrates how the applicant will measure program performance. (*See page* 21251.)

On page 21252, paragraph (1), under section VI. "Application Submission Requirements" is amended to exclude: Form HUD–424–CB, Grant Application Detailed Budget; Form HUD–424–CBW, Grant Application Detailed Budget Worksheet; and Form HUD–27061, Race and Ethnic Data Reporting Form.

Appendix B, on page 21254, is amended to substitute contact person E. Carolyn Hogans, (404) 331–5001, extension 2129, for Fellece Sawyer-Coleman.

Section 8 Homeownership Voucher-Housing Counseling Grant Program [Page 21261]

Paragraph (A) under Rating Factor 1, on page 21266, is amended to include a statement that scoring will be based on the number of years of recent experience of project directors in addition to counselors. In addition, on page 21267, Rating Factor 1 is amended to instruct applicants to indicate the total dollar value of the resources the applicant was able to leverage in support of the housing counseling program, not including the applicant's HUD housing counseling grants (if applicable), for the period October 1, 2001, to September 30, 2002.

Paragraph 3 under Rating Factor 5, on page 21269, is amended to instruct applicants that they must submit a program evaluation plan using the Program Outcome Logic Model form (HUD–96010) that demonstrates how the applicant will measure program performance.

On page 21271, paragraph (1) under section VI. "Application Submission Requirements," is amended to exclude: Form HUD–424–CB, Grant Application Detailed Budget; Form HUD–424–CBW, Grant Application Detailed Budget Worksheet; and Form HUD–27061, Race and Ethnic Data Reporting Form.

Appendix B is amended to substitute contact person E. Carolyn Hogans, (404) 331–5001, extension 2129, for Fellece Sawyer-Coleman. (*See* page 21272.)

Lead-Based Paint Hazard Control Grant Program [Page 21279]

On page 21282, middle column, paragraph (B)(4) is amended to state that prior to actual execution of the grant agreement, local and state applicants must enter into contractual relationships or other formal arrangements with grassroots, faith-based or other community-based organizations.

On page 21290, middle column, paragraph (4), entitled, "Lead Hazard Control Outreach and Community Private Sector Involvement," is amended to clarify that applicants that partner, fund, or subcontract with grassroots, faith-based, or other community-based organizations will receive one point under this subfactor.

In Rating Factor 4: Leveraging Resources, on page 21291, the language is amended to clarify that state and local government applicants must have a contractual or other formal relationship with a grassroots, faith-based, or other community-based organization.

In Appendix C, on page 21312, a new paragraph is inserted prior to "Required Forms" and subsequent to "Abstract Summary." The new paragraph, "Work Plan and Budget," applies to current grantees that are eligible to submit a Performance-Based Renewal Application.

Healthy Homes Demonstration Program [Page 21363]

Under Rating Factor 1: Capacity of the Applicant and Related Organizational Experience, on page 21369, the description of the rating factor requirements is corrected to explain that higher points will be received by applicants that are, or propose to partner, fund or sub-contract with grassroots organizations, including faith-based or other community-based nonprofits.

Lead Outreach Grant Program [Page 21399]

Under Rating Factor 1: Capacity of the Applicant and Related Organizational Experience, on page 21403, the language is amended to clarify requirements under this rating factor.

On page 21404, under Rating Factor 3: Soundness of Approach, the text is amended to instruct applicants that higher rating points will be received by applicants that include higher percentages of funding or sub-contracting for substantive work by grassroots organizations, including faith-based, or other community based, nonprofit organizations. In addition, on page 21405, paragraph (6) is amended to further clarify the requirements under Rating Factor 3.

Youthbuild Program [Page 21453]

On page 21455, under Additional Information, two references to the application due date are amended to clarify the due date and application submission processes.

In Appendix B, HUD removes the form entitled, "Line Item Budget for Federal Funds for the Rural Housing and Economic Development Program," which was inadvertently included in the Youthbuild NOFA at page 21476.

Rural Housing and Economic Development (RHED) [Page 21477]

On page 21480, in the definition of "A Firm Commitment," the earliest date that the letter of firm commitment may be dated is corrected from the date not earlier than the date of publication of the SuperNOFA to the date on which the SuperNOFA was made available for public inspection, April 17, 2003.

On page 21485, under Rating Factor 4 " Leveraging Resources, the list of available points, based on the ratio of leveraged to RHED funds, are amended to include 8 points for applicants that demonstrate evidence of 49–40 percent of requested HUD RHED funds. Consequently, the document is amended to state that 6 points are available for applicants that demonstrate 39–30 percent of requested HUD RHED funds, 4 points are available for applicants that demonstrate 29–20 percent of requested HUD RHED funds, 2 points are available for applicants that demonstrate 19–9 percent of requested HUD RHED funds, and 0 points will be awarded if less than 9 percent of HUD RHED requested funds are leveraged.

Resident Opportunities and Self-Sufficiency (ROSS) [Page 21507]

The application due date for the Homeownership Supportive Services category is July 7, 2003 (*see* page 21510). If you submitted an application for the Homeownership Supportive Services NOFA, you will be provided the opportunity to resubmit your application in accordance with the July 7, 2003, deadline date. The address for submission remains unchanged. In evaluating applications received for the Homeownership Supportive Services NOFA, HUD will consider the application with the latest date.

A new table is inserted that identifies the due dates, funding available, and application submission address.

On page 21509, a correction is made to clarify that resident organizations are not eligible for the Neighborhood Networks funding category. In addition, a clarification is made to explain that only PHAs, Tribes/TDHEs, and qualified nonprofits are eligible to apply for the Homeownership Supportive Services category.

On page 21510, the reference to Appendix B is corrected to refer to Appendix A. Also, on page 21510, the NOFA is corrected to reflect the application submission address. The correct address is: Grants Management Center, Mail Stop: (Insert Name of Program or Funding Category), 2001 Jefferson Davis Highway, Suite 703, Arlington, VA 22202.

In section III of the ROSS NOFA, Resident Services Delivery Models-Family, four corrections are made. On page 21515, paragraph (H)(3) concerning the need for Contract Administrators, the reference to "Section III" is corrected to "Section II." In addition, paragraph (H) in the middle column is changed to (I). On page 21516, in the paragraph entitled "Note," the reference to "Section VIII" is corrected to read "Section VII." In addition, on page 21517, under Rating Factor 3, paragraph (A) (1) "Specific Services and/or Activities" the reference to "Appendix B" is corrected to refer to "Appendix A." Finally, on page 21518, under Rating Factor 5, the reference to "consortium members" is changed to "partners."

In section IV of the ROSS NOFA, Resident Services Delivery Models-Elderly/Persons with Disabilities, five corrections are made. First, on page 21520, paragraph (H)(3) concerning need for Contract Administrators corrects the reference to "Section III" to "Section II." On page 21521, in the paragraph entitled "Note," the reference to "Section VIII" is corrected to refer to "Section VII." In addition, on page 21522, paragraph (A)(1), under Rating Factor 3, "Specific Services and/or Activities" corrects the reference from "Appendix B" to "Appendix A." In paragraph (A)(1)(b) of the same rating factor, the reference to "economic opportunity" is changed to "quality of life." Finally, on page 21524, under Rating Factor 5, reference to

"consortium members" is changed to "partners."

In section V of the ROSS NOFA, Homeownership Supportive Services, five corrections are made. First, on page 21524, in paragraph (C)(1)(a), the sentence that reads, "Nonprofit entities that have resident support or RAs/ROs are limited to $100,000 for each RA/RO" is corrected to read: "Nonprofit entities that have resident support or the support of RAs/ROs are limited to $100,000 for each RA/RO." Second, on page 21526, paragraph (H)(3), regarding need for Contract Administrators, the reference to "Section III" is corrected to refer to "Section II." On page 21527, in the paragraph entitled "Note", the reference to "Section VIII" is changed to refer to "Section VII." On page 21528, in paragraph (A)(1), under Rating Factor 3, the reference to "Appendix B" is changed to "Appendix A." Finally, on page 21529, the reference to "consortium members" is changed to "partners."

In section VI of the ROSS NOFA, Neighborhood Networks, several corrections are made. On page 21530, in paragraph (A), entitled "Program Description," reference to "Appendix B" is corrected to refer to "Appendix A." On page 21530, in paragraphs(C)(1) and (2), the sentences that read, "Nonprofit entities that have resident support or RAs/ROs are limited to $100,000 for each RA/RO" are changed to read: "Nonprofit entities that have resident support or the support of RAs/ROs are limited to $100,000 for each RA/RO." In addition, on page 21531, in paragraph (F)(17), "Administrative Costs," the sentence: "For existing NN centers, administrative costs must not exceed 10 percent of the total grant amount requested from HUD" is changed to read: "For both new and existing NN centers, administrative costs must not exceed 10 percent of the total grant amount requested from HUD."

In addition, in section VI, Neighborhood Networks, on page 21532, paragraph (H)(3) concerning need for Contract Administrators, the reference to "Section III" is corrected to refer to "Section II." On page 21532, paragraph (I)(3) regarding the work plan, the reference to "Appendix B" is corrected to be "Appendix A." In addition, on page 21533, in the paragraph entitled "Note", the reference to "Section VIII" is corrected to refer to "Section VII."

Also, in section VI, Neighborhood Networks, on page 21534, Rating Factor 2, the scores for each subfactor are changed to total the 15 points available for Rating Factor 2, as follows:

(1) Socioeconomic Profile (5 points).

(2) Local Training Program Information (3 points).

(3) Resource Documentation (3 points).

(4) Demonstrated Link Between Proposed Activities and Local Need (4 points).

In addition, in section VI, Neighborhood Networks, on page 21534, in the first paragraph under Rating Factor 3, the reference to "Appendix B" is changed to refer to "Appendix A." On page 21535, in Rating Factor 5, the reference to "consortium members" is changed to "partners." On page 21538, the paragraph entitled, "Unacceptable Applications" is amended to state, "Notification of rejection must state the basis for the decision."

Continuum of Care Homeless Assistance Programs [Page 21579]

On page 21589, the page limitation for Exhibit 1, the Continuum of Care Narrative, is amended to reflect a page limitation of 30 pages.

Housing Opportunities for Persons with AIDS (HOPWA) [Page 21739]

On page 21749, the application submission requirements for Part C of the HOPWA NOFA are amended to include the completion of the HOPWA Project Budget Form and statutory certifications form.

Appendix A, beginning at page 21760, is amended by inserting a form, "Permanent Supportive Housing Worksheet," which was inadvertently excluded from the April 25, 2003, publication.

Assisted Living Conversion Program [Page 21794]

On page 21795, the application due date is corrected to reflect a July 10, 2003, due date. In addition, on page 21795, the data listed in the chart, "Fiscal Year Allocation 2003 for the Assisted Living Conversion Program (ALCP) of Eligible Assisted Multifamily Projects" will be updated to reflect the accurate allocations. Also, on page 21805 under "Appendix A" and on page 21806 under "Appendix B," entitled, "HUD Field Office List for Mailing Assisted Living Conversion Program Application," the zip code for the HUD Minneapolis Office is corrected to read as 55402–4012.

Service Coordinators in Multifamily Housing Program [Page 21855]

In Appendix A, beginning in the third column on page 21861, the "HUD Field Office List for Mailing Service Coordinator Applications" is amended to include the corrected address and/or telephone information for HUD Field Offices in: Alaska, Arizona, Connecticut, Hawaii, Idaho, Minnesota, Montana, North Dakota, South Dakota, Wyoming, New York, Ohio, Cleveland, Ohio, Oregon, Puerto Rico, South Carolina, Texas, San Antonio, Texas, Utah, and Washington.

Accordingly, in the Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs for Fiscal Year 2003 (Docket No. FR–4800–N–01), beginning at 68 FR 21002, in the issue of April 25, 2003, the following corrections are made:

1. General Section of SuperNOFA, Beginning at Page 21002

On page 21002, in the third column in the paragraph titled "Addresses," the fourth and fifth sentences are amended as follows, "Addresses for field offices are listed in Appendix A–1 of the General Section of the SuperNOFA. For applications directed to the Office of Native American Programs Field Offices, please be sure to use the addresses provided in Appendix A–3."

On page 21011, in the first column of the "HUD 2003 SuperNOFA Funding Chart," under "Community Development," the cell labeled "McKinney-Vento Homeless Assistance Programs TA," is amended to remove CFDA No. 14.241 and insert the following CFDA numbers: CFDA No. 14.231, CFDA No. 14.235, CFDA No. 14.238.

On page 21011, in the first column of the "HUD 2003 SuperNOFA Funding Chart," under "Community Development," the cell labeled "HOPWA TA" is amended to remove CFDA No. 14.235 and insert the following CFDA number: CFDA No. 14.241.

On page 21015, in the first column of the "HUD 2003 SuperNOFA Funding Chart," in the third column "Application Due Date," in the row labeled, "ROSS for Homeownership Supportive Services," the date is amended by removing June 7, 2003, and substituting July 7, 2003.

A corrected "HUD 2003 SuperNOFA Funding Chart" that reflects these revisions reads as follows:

BILLING CODE 4210–32–P

HUD 2003 SuperNOFA Funding Chart (Technical Correction)

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room Number
Community Development $240.955 million			
Community Development Technical Assistance (TA)	**$22.9 million**		
HOME TA CFDA No. 14.239 OMB Approval No: 2506-0166	$8.3 million	June 4, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410 and a copy to the appropriate HUD Field Office
CHDO (HOME) TA CFDA No: 14.239 OMB Approval No: 2506-0166	$6 million	June 4, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410 and a copy to the appropriate HUD Field Office
McKinney-Vento Homeless Assistance Programs TA CFDA No: 14.231 CFDA No: 14.235 CFDA No: 14.238 OMB Approval No: 2506-0166	$6.6 million	June 4, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410 and a copy to the appropriate HUD Field Office
HOPWA TA CFDA No: 14.241 OMB Approval No: 2506-0133	$2 million	June 4, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410 and a copy to the appropriate HUD Field Office
University and College Programs	**$34.092million**		
Historically Black Colleges and Universities (HBCU) Program CFDA No. 14.520 OMB Approval No.: 2506-0122	$9.935 million	June 12, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410 and a copy to appropriate HUD Field Office
Hispanic-Serving Institutions Assisting Communities (HSIAC) Program CFDA No. 14.514 OMB Approval No.: 2528-0198	$7.046 million	June 12, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room Number
Alaska Native/Native Hawaiian Communities Program (AN/NHIAC) CFDA No. 14.515 OMB Approval No.: 2528-0206	$6.981 million	June 12, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Tribal Colleges and Universities Program (TCUP) CFDA No.: 14.519 OMB Approval No.:	$3.175 million	June 12, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Community Outreach Partnership Centers (COPC) CFDA No: 14.511 OMB Approval No: 2528-0180	$5 million	June 24, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
COPC Community Futures Demonstration CFDA No: 14.511 OMB Approval No: 2528-0180	$1.955 million	June 24, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Student Research and Study Programs	**$3.65 million**		
Early Doctoral Student Research Grant Program CFDA No.: 14.517 OMB Approval No.: 2528-0216	$150,000	May 27, 2003	Danya International Inc. Office of University Partnerships Clearinghouse 8737 Colesvillle Road Suite 1200 Silver Spring, MD 20910
Doctoral Dissertation Research Grant Program CFDA No.: 14.516 OMB Approval No.: 2528-0213	$400,000	May 27, 2003	Danya International Inc. Office of University Partnerships Clearinghouse 8737 Colesvillle Road Suite 1200 Silver Spring, MD 20910
Community Development Work Study Program CFDA No.: 14.512 OMB Approval No.: 2528-0175	$3.1 million	May 27, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Fair Housing Initiative Program	**$17.618 million**		
Fair Housing - Private Enforcement Initiative (PEI) CFDA No. 14.410 OMB Approval No.: 2539-0033	$10.2 million	June 5, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 5254 Washington, DC 20410

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room Number
Fair Housing Education and Outreach Imitative –(EOI) CFDA No.14.409 OMB Approval No.: 2539--0033	$5.318 million	June 5, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 5254 Washington, DC 20410
Fair Housing Organizations Initiative (FHOI) CFDA No. 14.413 OMB Approval No.: 2539-0033	$2.1 million	June 5, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 5254 Washington, DC 20410
Housing Counseling Programs	**$37.56 million**		
Housing Counseling – Local Housing Counseling Agencies (LHCA) CFDA No. 14.169 OMB Approval No.: 2502-0261	$12.45 million	June 25, 2003	Appropriate HUD Homeownership Center
Housing Counseling – National and Regional Intermediaries CFDA No. 14. 169 OMB Approval No.: 2502-0261	$18.16 million	June 25, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 9166 Washington, DC 20410
Housing Counseling – State Housing Finance Agencies (SHFA) CFDA No. 14. 169 OMB Approval No.: 2502-0261	$2 million	June 25, 2003	Appropriate HUD Homeownership Center
Housing Counseling – Colonias CFDA No. 14. 169 OMB Approval No.: 2502-0261	$250,000	June 25, 2003	Santa Ana Homeownership Center
Housing Counseling – Predatory Lending CFDA No. 14. 169 OMB Approval No.: 2502-0261	$2.7 million	June 25, 2003	Santa Ana Homeownership Center
Housing Counseling – Section 8 Homeownership CFDA No. 14. 169 OMB Approval No.: 2502-0261	$2 million	June 25, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 9266 Washington, DC 20410

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room Number
Healthy Homes and Lead Hazard Control Programs	**$125.135 million**		
Lead Hazard Control Program CFDA No.: 14.900 OMB Control No.: 2539-0015	$103 million	June 10, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room P3206 Washington, DC 20410
Healthy Homes and Lead-Technical Studies CFDA No.: 14.902 OMB Control No.: 2539-0010	$5 million	June 10, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room P3206 Washington, DC 20410
Healthy Homes Demonstration Program CFDA No.: 14.901 OMB Control No.: 2539-0015	$5 million	June 10, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room P3206 Washington, DC 20410
Lead Outreach Grant Program CFDA No: 14.904 OMB Control No	$2.2 million	June 10, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room P3206 Washington, DC 20410
Operation Lead Elimination Action Program CFDA No: 14.903 OMB Control No.	$9.935 million	June 10, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room P3206 Washington, DC 20410
Economic Development and Empowerment Programs $231.334 million			
Economic Development Programs	**$181.66 million**		
Brownfields Economic Development Initiative (BEDI) CFDA No.: 14.246 OMB Control No.:2506-0153	$29.5 million	July 16, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Self-Help Homeownership Opportunity Program (SHOP) CFDA No.: 14.247 OMB Control No.: N/A	$25.08 million	July 3, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Youthbuild CFDA No.: 14.243 OMB Approval No.: 2506-0142	$54.6 million	June 6, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room Number
Rural Housing and Economic Development CFDA No.: 14.250 OMB Approval No.: 2506-0169	$24.8 million	May 27, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410
Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program Coordinators CFDA No.: 14.855 & 14.85 OMB Approval No.: 2577-0198	$47.68 million	May 30, 2003	PIH Grants Management Center Mail Stop: Housing Choice Voucher Family Self-Sufficiency Program 2001 Jefferson Davis Hwy Suite 703 Arlington, VA 22202
Public Housing Resident Opportunity and Self-Sufficiency (ROSS)	**$49.674 million**		
ROSS for Resident Services Delivery Model-Elderly and Persons With Disabilities CFDA No.: 14.870 OMB Approval No.: 2577-0229	$9.30 million	June 11, 2003	PIH Grants Management Center Mail Stop: ROSS for Resident Services Delivery Model-Elderly 2001 Jefferson Davis Hwy Suite 703 Arlington, VA 22202
ROSS for Resident Services Delivery Model- Family CFDA No.: 14.870 OMB Approval No.: 2577-0229	$14.345 million	June 19, 2003	PIH Grants Management Center Mail Stop: ROSS for Resident Services Delivery Model- Family 2001 Jefferson Davis Hwy Suite 703 Arlington, VA 22202
ROSS for Neighborhood Networks CFDA No.: 14.870 OMB Approval No.: 2577-0229	$14.902 million	May 27, 2003	PIH Grants Management Center Mail Stop: ROSS for Neighborhood Networks 2001 Jefferson Davis Hwy Suite 703 Arlington, VA 22202
ROSS for Homeownership Supportive Services CFDA No.: 14.870 OMB Approval No.: 2577-0229	$11.127 million	July 7, 2003	PIH Grants Management Center Mail Stop: ROSS for Homeownership Supportive Services 2001 Jefferson Davis Hwy Suite 703 Arlington, VA 22202

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room Number
Targeted Housing and Homeless Assistance Programs $1.822 billion			
Continuum of Care Homeless Assistance Supportive Housing CFDA No. 14.235 Shelter Plus Care CFDA No. 14.238 Section 8 Moderate Rehabilitation SRO CFDA No. 14.249 OMB Approval No. 2506-0112	$1.06 billion	July 15, 2003	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7270 Washington, DC 20410 and two copies to the appropriate HUD Field Office
Housing Opportunities for Persons With AIDS (HOPWA) Renewal Permanent Supportive Housing Projects CDC Study New or Continuing Projects CFDA No.: 14.241 OMB Approval No.: 2506-0133	$28.8 million	June 17, 2003 (renewals) July 9, 2003 (others) July 9, 2003 (others)	HUD Headquarters Robert C. Weaver Building 451 7th ST SW Room 7251 Washington, DC 20410 and two copies to the appropriate HUD Field Office
Assisted Living Conversion Program for Eligible Multifamily Projects CFDA No.: 14.314 OMB Approval No.: 2502-0542	$64 million	July 10, 2003	Appropriate Multifamily Hub Office
Service Coordinators in Multifamily Housing CFDA No.: 14.191 OMB Approval No.: 2502-0447	$25 million	July 10, 2003	Appropriate HUD Multifamily Hub Office or Multifamily Program Center
Mainstream Housing Opportunities For Persons With Disabilities (Mainstream Program) CFDA No.: 14.871 OMB Approval No.: 2577-0169	$53.6 million	June 18, 2003	Grants Management Center Mail Stop: Mainstream Program 2001 Jefferson Davis Highway Suite 703 Arlington, VA 22202
Section 202 Supportive Housing for the Elderly CFDA No.: 14.157 OMB Approval No.: 2502-0267	$473.8 million	June 13, 2003	Appropriate HUD Multifamily Hub Office or Multifamily Program Center
Section 811 Supportive Housing for Persons With Disabilities CFDA No.: 14.181. OMB Approval No.: 2502-0462	$116.8 million	June 13, 2003	Appropriate HUD Multifamily Hub Office or Multifamily Program Center

BILLING CODE 4210–32–C

On page 21019, the bulleted list under paragraph (H) "Forms, Certifications, and Assurances" is amended by revising the last bullet on the list to read, "Program Outcome Logic Model form (HUD–96010)."

On page 21019, at the top of the third column within the paragraph (K) that begins in the middle column, the last sentence of the paragraph is amended to read as follows, "Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–3080 (this is not a toll-free number) or 1–800–877–8399 (TTY Federal Information Relay Service) or from HUD's Web site: *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* or *http://www.whitehouse.gov/omb/circulars/index.html*."

On pages 21066 and 21067, the form, HUD–2992 is removed.

2. Community Development Technical Assistance, Beginning at Page 21083

On page 21085, under paragraph 1.(A) "Application Due Date," the paragraph is amended to read as follows, "(A) Application Due Date. Applicants must submit completed applications on or before June 4, 2003, to the addresses shown below."

3. Fair Housing Initiatives Program (FHIP), beginning at page 21195

On page 21199, paragraph (b) "Eligible Activities," which begins at the bottom of the third column and continues to the first column of page 21200, is corrected to read as follows: "(b) Eligible Activities. The following are eligible activities for EOI: conducting educational symposia or other training; developing new and innovative fair housing activities or materials throughout your project area; providing outreach and information on fair housing through printed and electronic media; developing fair housing curricula, and providing outreach to persons with disabilities and/or their support organizations and service housing providers working with homeless activists or persons to determine if fair housing plays a part in the homeless situation, and the general public regarding the rights of persons with disabilities under the Act. When conducting your outreach activities, we also encourage the use of existing, fair housing materials; except that we require that you translate these existing materials in languages other than English. The applicants for the Regional/Local/Community-Based Programs who submit an application in conjunction with a grassroots faith-based, or other community-based organization must include in their application a letter of firm commitment from that grassroots faith-based, or other community based organization. This letter of firm commitment must: (1) Identify the grassroots, faith-based, or other community-based organization; (2) identify the activities/tasks to be undertaken by the grassroots faith-based, or other community-based organization under the project; and (3) be signed by the individual or organization with legal authority to make commitments for the organization. These components are described below:"

On page 21208, in the middle column, paragraph (a)(1)(v)(a) is corrected to read as follows: "(a) Four points under this subfactor if you are a grassroots faith-based, or other community-based organizations, or propose to partner or sub-contract with grassroots faith-based, or other community-based organizations."

4. Housing Counseling Program, Beginning at Page 21241

On page 21247, in the middle column under Rating Factor 1, the second paragraph under section (A) is amended to read as follows: "Specifically, for LHCAs, scoring will be based on the number of years of recent experience of project directors and recent housing counseling experience of counselors. For intermediaries and SHFAs, scoring will be based on: the number of years of recent experience of project directors and recent housing counseling experience of counselors in affiliates and branches; and the number of years, for key intermediary/SHFA personnel, of recent experience running a housing counseling program consisting of a network of multiple counseling agencies. Related experience, such as experience in mortgage lending, will also be considered, but will not be weighted as heavily as direct housing counseling or housing counseling program management experience."

On page 21249, in the first column, the second paragraph in section (B3) is amended to read as follows: "Provide all the information requested in Section B1 and B2 above, except outcomes, relevant to the non-HUD funded activities recorded on the form HUD–9902, submitted with this application. Indicate the total dollar value of the resources you were able to leverage in support of your housing counseling program, not including your HUD housing counseling grant(s) (if applicable), for the period October 1, 2001, to September 30, 2002."

On page 21251, in the middle column, the introductory paragraph to the subsection titled, "Submission Requirements for Factor 5" is amended to read as follows: "Submission Requirements for Factor 5. Applicants must submit an effective, quantifiable, outcome-oriented evaluation plan for measuring performance and determining that output and outcome goals have been met. You must submit a program evaluation plan, using the Program Outcome Logic Model form (HUD–96010), that demonstrates how you will measure your own program performance. Your Evaluation Plan should identify what you are going to measure, how you are going to measure it, and the steps you have in place to make adjustments to your work plan if performance targets are not met within established timeframes. Specifically, you plan must identify:'

On page 21252, in the third column, paragraph (1) under section VI., "Application Submission Requirements" is amended to read as

follows: "The standard forms, certifications, and assurances listed in Section V(H) of the General Section of the SuperNOFA (collectively, referred to as the "standard forms,") with the exception of the HUD–424–CB, Grant Application Detailed Budget; the HUD–424–CBW, Grant Application Detailed Budget Worksheet; and the HUD–27061, Race and Ethnic Data Reporting Form."

On page 21254, Appendix B, in the first column, the contact information for the Atlanta Homeownership Center is amended as follows: "Atlanta Homeownership Center, Ms. Gayle Knowlson, 40 Marietta Street, 8th Floor, Atlanta, GA, 30303–2806, Contact: E. Carolyn Hogans, (404) 331–5001, x2129."

5. Section 8 Homeownership Voucher—Housing Counseling Grant Program, Beginning at Page 21261

On page 21266, in the middle column under Rating Factor 1, the second paragraph under section (A) is amended to read as follows: "Specifically, for LHCAs, scoring will be based on the number of years of recent experience of project directors and recent housing counseling experience of counselors. For intermediaries and SHFAs, scoring will be based on: the number of years of recent experience of project directors and recent housing counseling experience of counselors in affiliates and branches; and the number of years, for key intermediary/SHFA personnel, of recent experience running a housing counseling program consisting of a network of multiple counseling agencies. Related experience, such as experience in mortgage lending, will also be considered, but will not be weighted as heavily as direct housing counseling or housing counseling program management experience."

On page 21267, in the third column, the second paragraph in section (E) is amended to read as follows: "Provide all the information requested in Section C and D above, except outcomes, relevant to the non-HUD funded activities recorded on the form HUD–9902, submitted with this application. Indicate the total dollar value of the resources you were able to leverage in support of your housing counseling program, not including your HUD housing counseling grant(s) (if applicable), for the period October 1, 2001, to September 30, 2002."

On page 21269, in the third column, the introductory paragraph to the subsection titled, "Submission Requirements for Factor 5" is amended to read as follows: "Submission Requirements for Factor 5. Applicants must submit an effective, quantifiable, outcome-oriented evaluation plan for measuring performance and determining the output and outcome goals have been met. You must submit a program evaluation plan, using the Program Outcome Logic Model form (HUD–96010), that demonstrates how you will measure your own program performance. Your Evaluation Plan should identify what you are going to measure, how you are going to measure it, and the steps you have in place to make adjustments to your work plan if performance targets are not met within established timeframes. Specifically, you plan must identify:"

On page 21271, in the first column, paragraph (1) is amended to read as follows: "The standard forms, certifications, and assurances listed in Section V(H) of the General Section of the SuperNOFA (collectively, referred to as the "standard forms,") with the exception of the HUD–424–CB, Grant Application Detailed Budget; the HUD–424–CBW, Grant Application Detailed Budget Worksheet; and the HUD–27061, Race and Ethnic Data Reporting Form."

On page 21272, Appendix B, in the first column, the contact information for the Atlanta Homeownership Center is amended as follows: "Atlanta Homeownership Center, Ms. Gayle Knowlson, 40 Marietta Street, 8th Floor, Atlanta, GA, 30303–2806, Contact: E. Carolyn Hogans, (404) 331–5001, x2129."

6. Lead-Based Paint Hazard Control Grant Program, Beginning at Page 21279

On page 21282, in the middle column, paragraph (B)(4) is corrected to read as follows: "(4) Contracts or other formal arrangements with nonprofit, grassroots, faith-based, or other community-based organizations. If selected for funding, local and state applicants must enter into contractual relationships or other formal arrangements with grassroots, faith-based, or other community-based organizations. Such relationships must be established prior to actual execution of the grant agreement. This requirement does not apply to Native American Tribes."

On page 21290, in the middle column, paragraph (4) is corrected to read as follows: "(4) Lead Hazard Control Outreach and Community Private Sector Involvement (6 points). Applicants are encouraged to solicit participation of grassroots, faith-based, or other community-based and private sector organizations to accomplish outreach and community involvement activities and to build long-term capacity to sustain accomplishments in the target area. Applicants that partner, fund, or subcontract with grassroots, faith-based, or other community-based organizations will receive one point in this subfactor. Your application must describe:"

On page 21291, in the first column, the first paragraph under Rating Factor 4: Leveraging Resources, is corrected to read as follows: "This factor addresses your ability to obtain other community and private sector resources that can be combined with HUD's program resources to achieve program objectives. In evaluating this factor, HUD will consider the extent to which you have established working partnerships with other entities to get additional resources or commitments to increase the effectiveness of the proposed program activities (*see* Appendix A of this NOFA for Sample Worksheet 7 (Match Funding) and Worksheet 8 (Grant Partners)). Resources may include cash or in-kind contributions of services, equipment, or supplies allocated to the proposed program. Resources may be provided by governmental entities, public or private organizations, and other entities partnering with you. Leveraging arrangements with rental property owners may have the benefits of increasing the efficiency of public lead hazard identification and control expenditures and creating a financial stake for rental property owners in the quality of lead hazard control work. Contractual or other formal relationships with grassroots, faith-based, or other community-based organizations are a requirement for state and local government applicants. Documentation of relationships with grassroots, faith-based, or community-based organizations must be provided in this application either in the form of signed agreements or commitment letters. This requirement does not apply to Native American Tribe applicants. You also may partner with other program funding recipients to coordinate the use of resources in your target area(s)."

On page 21312, in the third column, prior to the section titled, "Required Forms," and subsequent to the section titled, "Abstract Summary," the NOFA is amended by inserting the following section: "Work Plan and Budget. Current grantees that are eligible to submit a Performance-Based Renewal application and are successful applicants will have their current grant agreements modified to allow for an additional 36-month grant. Eligible current grantee applicants are required to submit the budget forms included in this NOFA and develop a work plan strategy with benchmark standards for conducting lead hazard control program activities. A work plan and budget should be developed for the 36-month period."

7. Rural Housing and Economic Development, Beginning at Page 21477

On page 21480, the last paragraph in the first column, and continuing into the middle column, is corrected to read as follows: "A Firm commitment means the agreement by which an applicant's partner agrees to perform an activity specified in the application and demonstrates the financial capacity to deliver the resources necessary to carry out the activity, and commits the resources to the activity either in cash or through in-kind contributions and is irrevocable, subject only to approval and receipt of a FY 2003 RHED grant. Each letter of commitment should include the organization's name, the applicant's name, the proposed program, the proposed total level of commitment and responsibilities as they relate to the proposed program. The commitment must be written on letterhead from the participating organization, must be signed by an official of the organization legally able to make commitments on behalf of the organization and dated not earlier than the date on which this NOFA was made available for public inspection (April 17, 2003). In documenting a firm commitment, the applicant's partner must:

On page 21485, in the third column, the numbered list in the first full paragraph is amended to read as follows:

(i) 50% or more of requested HUD RHED funds will receive 10 points;

(ii) 49–40% of requested HUD RHED funds will receive 8 points;

(iii) 39–30% of requested HUD RHED funds will receive 6 points;

(iv) 29–20% of requested HUD RHED funds will receive 4 points;

(v) 19–9% of requested HUD RHED funds will receive 2 points;

(vi) Less than 9% of HUD RHED funds requested will receive 0 points."

8. Healthy Homes Demonstration Program, Beginning at Page 21363

On page 21369, in the middle column, the first paragraph under Rating Factor 1: Capacity of the Applicant and Related Organizational Experience is corrected to read as follows: "This factor addresses your organizational capacity necessary to successfully implement your proposed activities in a timely manner. The rating of you or your staff includes any faith-based and other community-based organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project. Applicants that are, or propose to either partner, fund, or sub-contract with grassroots organizations, including faith-based or other community-based nonprofits, in conducting their work programs will receive higher rating points as specified in the Section II of the General Section of the SuperNOFA. In rating this factor, HUD will consider the four items listed below:"

9. Lead Outreach Grant Program, Beginning at Page 21399

On page 21403, in the third column, the first paragraph under Rating Factor 1: Capacity of the Applicant and Related Organizational Experience, is corrected to read as follows: "This factor addresses your organizational capacity necessary to successfully implement your proposed activities in a timely manner. The rating of you or your staff includes any grassroots organizations, including faith-based or other community-based non-profit organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project. For all of the descriptions of personnel and organizational qualifications and experience in this factor, more points will be given for more recent relevant experience of high quality with this kind of work, as documented below. Applicants who are funding or sub-contracting with grassroots organizations, including faith-based, or other community-based nonprofit organizations, in conducting their work programs should include the qualifications and experience of these organizations in responding to this rating factor. In rating this factor HUD will consider:"

On page 21404, in the third column, the last sentence of the first paragraph under Rating Factor 3: Soundness of Approach, is corrected to read as follows: "Applicants will receive higher rating points for approaches that include higher percentages of funding or sub-contracting for substantive work by grassroots organizations, including faith-based, or other community-based, nonprofit organizations."

On page 21405, in the first column, paragraph (6) is corrected to read as follows: "(6) Proposed involvement of grassroots organizations, including faith-based or other community-based, nonprofit organizations in the proposed activities. HUD strongly encourages you to substantively use grassroots organizations, including faith-based or other community-based, nonprofit organizations. (10 points)."

10. Youthbuild Program, Beginning at Page 21453

On page 21455, in the first column, the introductory paragraph under the section entitled, "Additional Information," is amended to read as follows: "If you are interested in applying for funding under this program, please carefully review the General Section of this SuperNOFA. Applications are due on or before June 6, 2003."

On page 21455, beginning in the first column, the first paragraph under 1. Application Due Date and Technical Assistance, is corrected to read as follows: "Application Due Date. Completed applications (one original and two copies) are due on or before June 6, 2003 at the address shown below."

On page 21476, HUD removes from Appendix B of the Youthbuild Program NOFA the form entitled, "Line Item Budget for Federal Funds for the Rural Housing and Economic Development Program" (HUD–40211).

11. Resident Opportunities and Self-Sufficiency (ROSS), Beginning at Page 21507

On page 21509, in the third column, the paragraph titled, "Eligible Applicants" is amended to read as follows: "Eligible Applicants. Eligible Applicants are Public Housing Agencies (PHAs), tribes/TDHEs, resident management corporations (RMCs), resident councils (RCs), resident organizations (ROs), Intermediary Resident Organizations (IROs), City-Wide Resident Organizations (CWROs), and nonprofits including grassroots, faith-based, and other community-based organizations that have resident support or the support of tribes. Tribes/TDHEs and resident organizations are not eligible for the Neighborhood Networks funding category. Resident Organizations are not eligible to apply for the Homeownership Supportive Services Category. The following chart summarizes the funding categories available under ROSS, eligible applicants, and applicant procedures."

On page 21509, in the middle column of the table, under "Eligibility" corresponding to the Homeownership Supportive Services program, the text is corrected to read as follows: "Only PHAs, Tribes/TDHEs, and qualified nonprofits are eligible to apply."

On page 21510, in the first column, under section 1. "Application Due Date, Required Forms, Security Procedures, Further Information and Technical Assistance Application Due Date," the paragraph titled, "Required Forms" is

corrected to read as follows: "Required Forms. In addition to the forms required in the General Section of the SuperNOFA, there are ROSS forms that are required. Please see Section VII and Appendix A of this NOFA for more information on form submission."

On page 21510, in the first column, under section 1. "Application Due Date, Required Forms, Security Procedures, Further Information and Technical Assistance Application Due Date," the paragraph titled, "Addresses" is corrected to read as follows: "Addresses. When submitting your application, you must refer to the program for which you are seeking funding and include the room number to ensure that your application is properly directed. The address to use for the GMC is the following: Grants Management Center, Mail Stop: (Insert Name of Program or Funding Category), 2001 Jefferson Davis Highway, Suite 703, Arlington, VA, 22202."

On page 21515, in the middle column, the last sentence in the paragraph (3) that begins at the bottom of the first column, is corrected to read as follows: "See the definition in Section II of Contract Administrator for more information."

On page 21515, in the middle column, paragraph (H), entitled, "Program Requirements" is corrected to read: "(I) Program Requirements."

On page 21516, in the first column, the "Note" is corrected to refer applicants to section VII., instead of section VIII. The amended "Note" now reads as follows: "**NOTE:** Applicants should carefully review each rating factor before writing a response. Applicants' narratives should be as descriptive as possible, ensuring that every requested item is addressed. Applicants should make sure to include all requested information, according to the instructions found in Section VII of this NOFA. This will help ensure a fair and accurate review of your application. Applications must not be longer than 30 narrative pages. Supporting documentation and certificates will not be counted towards the 30 page limit. However, applicants should make every effort to submit only what is necessary in terms of supporting documentation."

On page 21517, in the middle paragraph under Rating Factor 3, paragraph (A)(1) is amended to refer to Appendix A. The paragraph is corrected to read as follows: "(1) Specific Services and/or Activities (6 points). Your narrative must describe the specific services and activities you plan to offer and who will be responsible for each. You must also provide a work plan which will enumerate the specific services and activities and outcomes you expect. Please see a sample work plan in Appendix A. HUD will consider how well your proposed activities will:"

On page 21518, in the third column, under Rating Factor 5, the reference to "consortium members" is changed to "partners." The fourth paragraph in the third column is corrected to read as follows: "In order to satisfy the requirements for Factor 5, you must submit a work plan and a Logic Model that demonstrates how you will measure your own program performance. Your plan must identify the outcomes you expect to achieve or goals you hope to meet over the term of your proposed grant and benchmarks, outputs, and timeframes for accomplishing these goals. Your work plan must show how you will measure actual accomplishments against anticipated achievements. You must indicate how your plan will measure the performance of individual partners and affiliates, including the standards, data sources, and measurement methods, and the steps you have in place or how you plan to make adjustments if you begin to fall short of established benchmarks and timeframes."

On page 21520, in the middle column, paragraph (3) is amended to read as follows: "(3) All applicants except non-troubled PHAs and tribes/TDHEs are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the thirty-six (36) month duration of the grant term. Your grant award shall be contingent upon having a Partnership Agreement included in your application. The Contract Administrator must assure that the financial management system and procurement procedures that will be in place during the thirty-six (36) month grant term will fully comply with either 24 CFR part 84 or 85. Troubled PHAs are not eligible to be Contract Administrators. Grant writers who help applicants to prepare their ROSS applications are also ineligible to be Contract Administrators. *See* the definition in Section II of Contract Administrator for more information."

On page 21521, in the middle column, the paragraph "Note" is corrected to read as follows: "**NOTE:** Applicants should carefully review each rating factor before writing a response. Applicants' narratives should be as descriptive as possible, ensuring that every requested item is addressed. Applicants should make sure to include all requested information, according to the instructions found in Section VII of this NOFA. This will help ensure a fair and accurate review of your application. Applications must not be longer than 30 narrative pages. Supporting documentation and certificates will not be counted towards the 30-page limit. However, applicants should make every effort to submit only what is necessary in terms of supporting documentation."

On page 21522, in the third column, paragraph (A)(1) is corrected to read as follows: "(1) Specific Services and/or Activities (6 points). Your narrative must describe the specific services and activities you plan to offer and who will be responsible for each. You must also provide a work plan which will enumerate the specific services and activities and outcomes you expect. Please see a sample work plan in Appendix A. HUD will consider how well your proposed activities will: (a) Involve community partners in the delivery of services; and (b) Offer comprehensive services versus a small range of services geared toward enhancing quality of life for residents."

On page 21524, in the first column, the third full paragraph is corrected to read as follows: "In order to satisfy the requirements for Factor 5, you must submit a work plan and a Logic Model form (HUD–96010) that demonstrates how you will measure your own program performance. Your plan must identify the outcomes you expect to achieve or goals you hope to meet over the term of your proposed grant and benchmarks, outputs, and timeframes for accomplishing these goals. Your work plan must show how you will measure actual accomplishments against anticipated achievements. You must indicate how your plan will measure the performance of individual partners and affiliates, including the standards, data sources, and measurement methods, and the steps you have in place or how you plan to make adjustments if you begin to fall short of established benchmarks and timeframes."

On page 21524, in the third column, under paragraph (C)(1)(a), the last of the bulleted paragraphs is corrected to read as follows: "Nonprofit entities that have resident support or the support of RAs/ROs are limited to $100,000 for each RA/RO. A nonprofit may submit a single application for no more than three different RAs from the same PHA for a maximum grant award of $300,000. Nonprofits may submit more than one application provided they target residents of distinct PHAs."

On page 21526, in the first column, paragraph (3) is corrected to read as follows: "(3) All applicants except nontroubled PHAs and tribe/TDHEs are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the thirty-six (36) month duration of the grant term. Your grant award shall be contingent upon having a Partnership Agreement included in your application. The Contract Administrator must assure that the financial management system and procurement procedures that will be in place during the thirty-six (36) month grant term will fully comply with either 24 CFR part 84 or 85. Troubled PHAs are not eligible to be Contract Administrators. Grant writers who help applicants to prepare their ROSS applications are also ineligible to be Contract Administrators. See the definition in Section II of Contract Administrator for more information."

On page 21527, in the first column, the "Note" paragraph is corrected to read as follows: **NOTE:** Applicants should carefully review each rating factor before writing a response. Applicants' narratives should be as descriptive as possible, ensuring that every requested item is addressed. Applicants should make sure to include all requested information, according to the instructions found in Section VII of this NOFA. This will help ensure a fair and accurate review of your application. Applications must not be longer than 30 narrative pages. Supporting documentation and certificates will not be counted towards the 30 page limit. However, applicants should make every effort to submit only what is necessary in terms of supporting documentation."

On page 21528, in the middle column, paragraph (1) is corrected to read as follows: "(1) Specific Services and/or Activities (6 points). Your narrative must describe the specific services and activities you plan to offer and who will be responsible for each. You must also provide a work plan which will enumerate the specific services and activities and outcomes you expect. Please see a sample work plan in Appendix A. HUD will consider how well your proposed activities will:"

On page 21529, in the third column, the third paragraph is amended to read as follows: "In order to satisfy the requirements for Factor 5, you must submit a work plan and a Logic Model form (HUD–96010) that demonstrates how you will measure your own program performance. Your plan must identify the outcomes you expect to achieve or goals you hope to meet over the term of your proposed grant and benchmarks, outputs, and timeframes for accomplishing these goals. Your work plan must show how you will measure actual accomplishments against anticipated achievements. You must indicate how your plan will measure the performance of individual partners and affiliates, including the standards, data sources, and measurement methods, and the steps you have in place or how you plan to make adjustments if you begin to fall short of established benchmarks and timeframes. Applicants should also use the Logic Model form (HUD–96010) provided in the General Section of this SuperNOFA for reporting on how they will conduct performance measurement. You will be evaluated based on how comprehensively you propose to measure your program's outcomes."

On pages 21529–21530, paragraph (A) that begins on the bottom of the third column of page 21529 and continues to the first column of page 21530 is corrected to read as follows: "(A) Program Description. This funding category provides grants to PHAs and qualified nonprofit organizations to: (1) update, maintain and expand existing Neighborhood Networks/community technology centers; or (2) establish new Neighborhood Networks (NN) computer technology centers. NN centers provide computer and Internet access to public housing residents and offer a full range of supportive services. Applicants should submit proposals that will: Provide job training; reduce welfare dependency; promote economic self-sufficiency; increase the use of computer technology; expand educational opportunities for residents; develop access to health and nutrition information; and meet other needs of residents. All applicants must complete a Work Plan (see sample provided in Appendix A) covering the thirty-six (36) month grant term. Applicants' work plan and narrative must indicate how the centers will become self-sustaining after the grant term expires."

On page 21530, in the middle column, the last bulleted paragraph, prior to paragraph (2), is corrected to read as follows: "Nonprofit entities that have resident support or the support of RAs/ROs are limited to $100,000 for each RA/RO. A nonprofit may submit a single application for no more than three different RAs from the same PHA for a maximum grant award of $300,000. Nonprofits may submit more than one application provided they target residents of distinct PHAs."

On page 21530, in the middle column, the last bulleted paragraph, prior to paragraph (D), is corrected to read as follows: "Nonprofit entities that have resident support or the support of RAs/ROs are limited to $100,000 for each RA/RO. A nonprofit may submit a single application for no more than three different RAs from the same PHA for a maximum grant award of $300,000. Nonprofits may submit more than one application provided they target residents of distinct PHAs."

On page 21531, in the third column, paragraph (17) "Administrative Costs" is amended to read as follows: "(17) Administrative Costs. Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, salaries for resident employees hired as part of this grant program, quality assurance, local travel, and utilities. Nonprofit organizations only may use administrative funds to pay for rental of space. For both new and existing NN centers, administrative costs must not exceed 10 percent of the total grant amount requested from HUD."

On page 21532, in the first column, paragraph (3) is corrected to read as follows: "(3) All applicants except nontroubled PHAs are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the thirty-six (36) month duration of the grant term. Your grant award shall be contingent upon having a Partnership Agreement included in your application. The Contract Administrator must assure that the financial management system and procurement procedures that will be in place during the thirty-six (36) month grant term will fully comply with either 24 CFR part 84 or 85. Troubled PHAs are not eligible to be Contract Administrators. Grant writers who help applicants to prepare their ROSS applications are also ineligible to be Contract Administrators. *See* the definition in Section II of Contract Administrator for more information."

On page 21532, in the middle column, paragraph (I)(3) is corrected to read as follows: "(3) Applicants shall submit a work plan with their application (*see* Appendix A for a sample) which shall indicate level and type of expenditures over the three year grant term, contributions from partners, and efforts applicants will make to ensure the NN center will be sustainable once the grant term expires."

On page 21533, in the first column, the paragraph entitled, "Note" is corrected to read as follows: "**NOTE:** Applicants should carefully review each rating factor before writing a response. Applicants' narratives should be as descriptive as possible, ensuring that every requested item is addressed. Applicants should make sure to include all requested information, according to the instructions found in Section VII of this NOFA. This will help ensure a fair and accurate review of your application. Applications must not be longer than 30 narrative pages. Supporting documentation and certificates will not

be counted towards the 30 page limit. However, applicants should make every effort to submit only what is necessary in terms of supporting documentation."

On page 21534, in the first and middle columns, the scores for each subfactor (the text otherwise remains unchanged), are corrected to total the 15 points available for Rating Factor 2 as follows:

(1) Socioeconomic Profile (5 points).

(2) Local Training Program Information (3 points).

(3) Resource Documentation (3 points).

(4) Demonstrated Link Between Proposed Activities and Local Need (4 points).

On page 21534, in the middle column, the first paragraph under "Rating Factor 3 Soundness of Approach (30 Points)" is corrected as follows: "This factor addresses both the quality and cost-effectiveness of your proposed work plan. (A sample work plan is included in Appendix A.) Your work plan and supporting narrative must indicate a clear relationship between your proposed activities, the targeted population's needs, and the purpose of the program funding. Your activities must address HUD's policy priorities which relate to this program."

On page 21535, in the third column, the fourth paragraph is corrected to read as follows: "In order to satisfy the requirements for Factor 5, you must submit a work plan and a Logic Model form (HUD–96010) that demonstrates how you will measure your own program performance. Your plan must identify the outcomes you expect to achieve or goals you hope to meet over the term of your proposed grant and benchmarks, outputs, and timeframes for accomplishing these goals. Your work plan must show how you will measure actual accomplishments against anticipated achievements. You must indicate how your plan will measure the performance of individual partners and affiliates, including the standards, data sources, and measurement methods, and the steps you have in place or how you plan to make adjustments if you begin to fall short of established benchmarks and timeframes. Applicants should also use the Logic Model form (HUD–96010) provided in the General Section of this SuperNOFA for reporting on how they will conduct performance measurement. You will be evaluated based on how comprehensively you propose to measure your program's outcomes."

On page 21538, in the middle column, the paragraph titled, "Unacceptable Applications" is corrected to read as follows: "Unacceptable Applications. After the 14-day technical deficiency correction period, the Grants Management Center (GMC), or the DPONAP for tribal and TDHE applicants, will disapprove all applications that the GMC or DPONAP determines are not acceptable for processing. Notification of rejection must state the basis for the decision. The applicant may request a debriefing. Applicants requesting to be debriefed must send a written request to Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, DC 20024. For tribal and TDHE applicants, contact Deborah Lalancette, Director, Grants Management, DPONAP, 1999 Broadway, Suite 3390, Denver, CO 80202."

12. Continuum of Care Homeless Assistance Programs, Beginning at Page 21579

On page 21589, in the first column, in the third full paragraph, the first two sentences are amended by substituting the following sentences that reflect an increase in page limitation from 25 to 30 pages: "The application requires a description of the Continuum of Care system and the proposed project(s). To ensure that no applicant is afforded an advantage in the rating of the Continuum of Care element (described in Section V (A)(4) above), HUD is establishing a limitation of 30 pages, excluding required multiple page tables or charts but including any attachments, on the length of Exhibit 1 of any application submitted in response to this NOFA."

13. Housing Opportunities for Persons With AIDS (HOPWA), Beginning at Page 21739

On page 21749, in the middle column, section VII, entitled "Application" is amended by adding the following:

"(D) Budget. You must complete the HOPWA Project Budget Forms found in Appendix D of the Program Section of the SuperNOFA, which lists the amount of requested HOPWA funds designated for each type of HOPWA-eligible activity.

(E) Statutory Certifications. You must complete the statutory certifications as outlined in Part A, Section VI of this Program section."

Appendix A, beginning at page 21760, is amended by adding a new form, "Permanent Supportive Housing Worksheet."

BILLING CODE 4210–33–P

HOPWA Application
Part B – Forms

U.S. Department of Housing and Urban Development
Office of HIV/AIDS Housing

OMB Approval No. 2506-0133
Expiration Date: 11/31/2003

Permanent Supportive Housing Worksheet

Applicants seeking renewal under Part B of the HOPWA NOFA, must demonstrate that the HOPWA project supported by the prior HOPWA grant and continued through this renewal provides permanent supportive housing to eligible clients. Permanent supportive housing is defined in Part B, Section II of the HOPWA program NOFA. To meet this definition, you must document that at least 51 percent of the HOPWA program activity funds awarded to the grant you are seeking to renew provided direct permanent supportive housing assistance or provided supportive services to clients living in permanent housing you provided with resources other than HOPWA funds. Complete the following worksheet to determine if your project at least meets this 51 percent threshold.

INSTRUCTIONS

Part 1: Calculation of Funding

1. **HOPWA Project Funding – Funding amount of the original or amended HOPWA grant, which you seek to renew.**

   Column A - Original or Amended HOPWA Grant. In Column A, for HOPWA funds only, enter the total program activity costs requested and approved in the prior HOPWA grant. Please note, these costs do not include administrative or project outcome costs. Total Column A.

2. **Permanent Supportive Housing Funding – Percentage of funding dedicated to permanent supportive housing, as defined in the HOPWA NOFA.**

   Column B - HOPWA. In Column B, enter the amount of HOPWA funds from the prior HOPWA grant expended or pending use as approved in the grant that directly provide permanent supportive housing. HOPWA funds used for services or housing of clients in emergency, short-term, or transitional situations, may not be included (expect in relation to short-term rent, mortgage, or utility payments). For example, if part of the supportive services provided actually provides services in a short-term, transitional housing situation or to clients not receiving housing assistance, then only the amount of funds directly providing the permanent supportive housing may be used in the calculation.

Please note, HUD has determined that only the following activity categories allow expenditures that meet the definition of permanent supportive housing under your prior grant. You may only account for the percentage of funds that were expended or will be expended on permanent housing activities through:

- Acquisition
- Rehabilitation, repair, and conversion
- New construction
- Rental Assistance
- Short-term rent, mortgage, or utility payments
- Lease
- Operating Costs

- Supportive Services (for residents of permanent housing only)
- Other HUD approved permanent housing activities

Other HOPWA funded activities, like housing information or resource identification, do not meet the definition of permanent supportive housing. Total Column B.

Column C – Other Funding. If applicable, enter the amount of other funds that provide permanent supportive housing. Other funding resources must be documented in the prior HOPWA grant and documentation that such assistance will continue during the term of the renewal grant must be provided to HUD. Total Column C.

Eligible Activity	HOPWA Project Funding	Permanent Supportive Housing*	
	A. Original or Amended	B. HOPWA	C. Other
1. Acquisition	$	$	$
2. Rehabilitation, Repair, & Conversion	$	$	$
3. New Construction	$	$	$
4. Lease	$	$	$
5. Operating Costs	$	$	$
6. Supportive Services	$	$	$
7. Housing Information	$		
8. Technical Assist. & Resource Identification	$		
9. Rental Assistance	$	$	$
10. Short-term rent, mortgage, & Utility Payments	$	$	$
11. Other (name the type of alternative activity – must be approved in the prior HOPWA grant)	$		
12. Total	$	$	$

* Enter only the amounts of HOPWA or other resources that directly provide permanent supportive housing. You may not consider funds providing other types of housing assistance.

Part 2: Calculation

To determine if your project uses at least 51 percent of funding to provide permanent supportive housing, please make the following calculation:

a. Amount of HOPWA funds providing permanent supportive housing (Total of Column B)	
b. Total amount of project activities (Total of Column A)	
c. Divide Row (a) by Row (b) and multiply by 100.	X100
d. Percentage of project funds providing permanent supportive housing.	*

***Please note:**

1) If the percentage is less than 51 percent, you are not eligible to apply for renewal under Part B.
2) If the percentage is 51 percent or over, you are eligible to apply for renewal under Part B and must complete the "Certification of Permanent Supportive Housing".

Part 3: Other Resources

If your project relies on other state, local, Federal, or private resources to provide the permanent housing or supportive services portion of your project, you must demonstrate that the other resources will continue to be available for that purpose throughout the term of the renewal grant. The continuing assistance must have been documented within the original application to HUD and be used in conjunction with requested HOPWA funds. Evidence of continuing assistance must be provided, as follows:

A. Permanent Housing. Permanent housing provided through other resources must be documented in the renewal application through a leveraging letter. The leveraging letter must outline the amount of funds for the housing to be provided, the term the funds will be made available, and be signed by the organization providing such housing or funding for the housing. See Part D, Section V, Rating 4: Leveraging Resources of the HOPWA NOFA, for acceptable leveraging letter examples.

B. Supportive Services. Supportive services provided through other resources must be documented through a commitment letter(s), which outline(s) the type of support that will be provided to clients, the organizations providing such support, and the length of time such supportive will be available. Supportive services must be available to clients in permanent housing throughout the term of the renewal grant.

BILLING CODE 4210-32-C

14. Assisted Living Conversion Programs, Beginning at Page 21794

On page 21795, in the third column, the table that appears at the end of the column and that continues to the first column on page 21796, is amended as follows:

Office	$ allocation
Boston, MA	2,758,217
Buffalo, NY	1,093,990
New York, NY	3,683,840
Baltimore, MD	2,111,481
Philadelphia, PA	4,575,436
Atlanta, GA	4,263,039
Greensboro, NC	2,650,130
Jacksonville, FL	4,152,573
Chicago, IL	3,508,109
Columbus, OH	1,796,621
Detroit, MI	1,717,273
Minneapolis-St. Paul, MN	1,573,456
Ft. Worth, TX	4,997,288
Kansas City, KS	2,530,207
Denver, CO	1,294,088
Los Angeles, CA	4,660,878
San Francisco, CA	4,587,804
Seattle, WA	2,045,568
Total	54,000,000

On page 21795, in the first column, in the first paragraph under "1. Application Due Date, Application, and Technical Assistance" the paragraph is corrected to read as follows:

"Application Due Date. Your completed application (one original and four copies) is due on July 10, 2003, at the address shown below."

On page 21805 in the first column, under the HUD Minneapolis Hub, the zip code is corrected to read: 55402–4012.

On page 21806, in the first column, under the HUD Minneapolis Hub, the zip code is corrected to read: 55402–4012.

15. Service Coordinators in Multifamily Housing Program, Beginning at Page 21855

In Appendix A, beginning in the third column on page 21861, the following corrections are made to the list of HUD Field Offices: (Information that is not corrected in this document remains unchanged from the April 25, 2003 publication)

Alaska, Idaho, Oregon, Washington, OFC Phone: (206) 220–6420.

Arizona, MF Division, Phoenix Program Center, One North Central, Suite 600, Phoenix, AZ 85004, OFC Phone: (602) 379–7153.

Connecticut, OFC Phone: (860) 240–4800 Ext. 3041.

Hawaii, Dept. of Housing and Urban Development, 500 Ala Moana Blvd., Suite 3A, Honolulu, HI 96813.

Minnesota, 920 2nd Ave. South, Suite 1300, Minneapolis, MN 55402–4012.

Montana, North Dakota, South Dakota, Utah, Wyoming, TTY Number: (303) 672–5113.

New York, HUD Buffalo Office, Multifamily Housing Program Center, 465 Main Street, Lafayette Court, 2nd Floor, Buffalo, NY 14203–1780.

Ohio:

HUD Cincinnati Office, Multifamily Housing Program Center, 15 East 7th Street, Cincinnati, OH 45202.

HUD Cleveland Office, Fax: (216) 522–4120.

Puerto Rico, HUD Caribbean Office, Multifamily Housing Program Center, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804.

South Carolina, OFC Phone: (803) 253–3288, Fax: (803) 253–3429.

Texas:

HUD Houston Office, OFC Phone: (713) 313–2274 ext. 7124, fax number (713) 313–2350.

HUD San Antonio Office, Office of Housing, Multifamily Program Center, One Alamo Center, 106 South St. Mary's, Suite 405, San Antonio, TX 78205.

Dated: June 11, 2003.

Vickers B. Meadows,

Assistant Secretary for Administration.

[FR Doc. 03–15370 Filed 6–16–03; 8:45 am]

BILLING CODE 4210–32–P

Reader Aids

Federal Register

Vol. 68, No. 116

Tuesday, June 17, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10
34775–35148	11
35149–35264	12
35265–35524	13
35525–35782	16
35783–36444	17

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339
7684 34775

Executive Orders:
13159 (See Notice of June 10, 2003) 35149

Administrative Orders:
Notices:
Notice of June 10, 2003 35149
Presidential Determinations:
No. 2003-24 of May 29, 2003 35525
No. 2003-25 of May 29, 2003 35526

4 CFR

81 33831

5 CFR

230 35265
301 35265
316 35265
333 35265
337 35265
410 35265
831 35270
842 35270
1600 35492
1601 35492
1603 35492
1604 35492
1605 35492
1606 35492
1640 35492
1645 35492
1650 35492
1651 35492
1653 35492
1655 35492
1690 35492

7 CFR

2 35256
319 34517
457 34261
723 34777
800 ..... 32623, 35490
802 34519
1400 33341
1464 34777

Proposed Rules:
810 33408
1220 35825
1951 35321
3560 32872
3565 34552
4284 35321

8 CFR

1 35273
103 35273
212 35151
239 35273
287 35273

9 CFR

82 34779
93 35529
113 35282
430 34208

Proposed Rules:
93 33028

10 CFR

35 35534
72 33611
73 33611
765 32955

Proposed Rules:
50 35585

12 CFR

37 35283
615 ..... 33347, 33617
703 32958
742 32958
1700 32627

Proposed Rules:
Ch. I 35589
Ch. II 35589
Ch. III 35589
Ch. V 35589

13 CFR

121 ..... 33348, 35285

Proposed Rules:
121 ..... 33412, 35334

14 CFR

25 ..... 33834, 33836, 35285
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787, 35152, 35155, 35157, 35160, 35163, 35286
71 ..... 32633, 33231, 33360, 33361, 33579, 33623, 35287, 35288, 35534, 35535, 35947
91 35524
95 34522
97 ..... 32633, 33536, 35538
401 35289
404 35289
413 35289
1260 35290

Proposed Rules:
25 ..... 33659, 35335, 45612

36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849, 35186, 35826
71 ..... 33426, 33427, 34340

15 CFR

734 35783
740 35783
742 ..... 34526, 35783
744 34192
745 34526
748 35783
770 35783
772 34192
774 ..... 34526, 35783

Proposed Rules:
930 34851

16 CFR

Proposed Rules:
1500 35191
1700 35614

17 CFR

1 34790
30 33623
40 33623
201 35787

18 CFR

201 34795

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

20 CFR

Proposed Rules:
220 34341

21 CFR

165 34272
201 32979
310 ..... 33362, 34273
347 ..... 33362, 35290
349 32981
350 34273
352 33362
369 34273
510 ..... 33381, 34293
520 ..... 34533, 34795
522 ..... 33856, 34533, 34796
524 33381
558 34534
601 34796
878 32983
888 32635
1308 35293

Proposed Rules:
201 33429
343 33429
347 35346

24 CFR

Proposed Rules:
1000 34344

25 CFR

170 33625
309 35164

26 CFR

1 ..... 33381, 34293, 34797
31 34797
301 33857
602 ..... 34293, 34797

Proposed Rules:
1 ..... 34344, 34874, 34875
14a 34344
25 34875
31 34875
49 35828
53 34875
55 34875
156 34875
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:
7 32698
25 32698

28 CFR

5 33629
571 ..... 34299, 34301
802 32985

29 CFR

1910 32637
1926 35172
4022 35294
4044 35294

Proposed Rules:
1910 ..... 33887, 34036
1915 34036
1926 34036

30 CFR

6 36408
7 36408
18 36408
19 36408
20 36408
22 36408
23 36408
27 36408
33 36408
35 36408
36 36408

Proposed Rules:
906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196

33 CFR

100 ..... 32639, 32641
117 ..... 32643, 34302, 34303, 34535, 34799, 34800, 34801, 35296
165 ..... 32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803, 35172

Proposed Rules:
117 34877
165 ..... 33894, 33896, 34370, 35615

36 CFR

215 33582
230 34309
242 33402
251 35117
1253 33404

Proposed Rules:
1280 35829

38 CFR

1 35297
3 34539
13 34539
21 ..... 34319, 34326, 35177
61 34332

Proposed Rules:
20 33040

39 CFR

111 ..... 33858, 34805

40 CFR

51 33764
52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821, 35790
60 35792
61 35792
62 ..... 34332, 35181, 35299, 35792
63 35792
86 35792
180 ..... 33876, 34825, 35303
261 32645
271 ..... 34334, 34829
439 34831
712 34832
725 35315

Proposed Rules:
Ch. I 33898
51 32802
52 ..... 33041, 33042, 33043, 33665, 33898, 33899, 34560
62 ..... 35191, 35348
82 33284
86 35830
146 33902
180 35349
194 33429

42 CFR

412 ..... 34122, 34494

Proposed Rules:
412 ..... 33579, 34492
413 ..... 33579, 34492, 34768

43 CFR

4 33794
3800 32656
4100 33794
5000 33794

44 CFR

64 32657
65 ..... 32659, 32660
67 ..... 32664, 32669
206 34545

Proposed Rules:
67 ..... 32699, 32717

46 CFR

10 35801
15 35801
221 33405

47 CFR

2 ..... 32676, 33020, 33640, 34336
21 34547
25 ..... 33640, 34336
52 34547
73 ..... 32676, 33654, 35540, 35541, 35542
74 ..... 32676, 34336
76 35818
78 34336
80 32676
87 32676
90 32676
95 32676
97 ..... 32676, 33020

Proposed Rules:
1 34560
2 ..... 33043, 33666
15 32720
21 34560
25 33666
64 32720
73 ..... 33431, 33668, 33669, 35617
74 34560
76 35833
101 34560

48 CFR

2 33231
32 33231
52 33231
252 33026

Proposed Rules:
15 33330
31 33326
52 33326
204 34879
206 33057

49 CFR

1 ..... 34548, 35183
26 35542
107 32679
171 32679
173 32679
177 32679
180 32679
192 35574
195 35574
375 35064
377 35064
567 33655
571 ..... 33655, 34838
574 33655
575 ..... 33655, 35184
579 ..... 35132, 35145
597 33655

Proposed Rules:
171 34880
172 34880
173 34880
271 35354

50 CFR

17 ..... 34710, 35950
100 33402
635 ..... 35185, 35822
648 33882

660 32680
679 34550

Proposed Rules:
16 33431
17 ..... 33058, 33234, 34569
402 33806
648 33432
660 ..... 33670, 35354, 35575

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 17, 2003

COMMERCE DEPARTMENT
Industry and Security Bureau
Export administration regulations:
Encryption clarifications and revisions; published 6-17-03

ENVIRONMENTAL PROTECTION AGENCY
Organization, functions, and authority delegations:
Address change for submission of certain reports; Region VII; published 6-17-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; published 5-13-03
Pilatus Aircraft Ltd.; published 4-29-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Grapes grown in—
California; comments due by 6-23-03; published 4-22-03 [FR 03-09843]
Pistachio nuts, in shell and shelled; grade standards; comments due by 6-23-03; published 5-23-03 [FR 03-12805]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications; comments due by 6-24-03; published 4-25-03 [FR 03-10242]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Support activities:
Technical service provider assistance; comments due by 6-23-03; published 3-24-03 [FR 03-06668]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; fishing capacity reduction program; comments due by 6-27-03; published 5-28-03 [FR 03-13274]
Marine mammals:
Incidental taking—
San Nicolas Island, CA; missile launch operations; pinnipeds; comments due by 6-23-03; published 5-9-03 [FR 03-11613]

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Patent statute; changes to implement 2002 inter partes reexamination and other technical amendments; comments due by 6-27-03; published 4-28-03 [FR 03-10412]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Acceptance of gifts; comments due by 6-23-03; published 4-22-03 [FR 03-09937]
Organization, functions, and authority delegations:
Agency seal; comments due by 6-23-03; published 4-22-03 [FR 03-09936]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Vermont; comments due by 6-23-03; published 5-22-03 [FR 03-12863]
West Virginia; comments due by 6-26-03; published 5-27-03 [FR 03-13176]
Air programs; State authority delegations:
New Hampshire; comments due by 6-27-03; published 5-28-03 [FR 03-13174]
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12612]
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12613]
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12614]
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12615]
Toxic substances:
Preliminary assessment information reporting—
Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl), etc.; comments due by 6-25-03; published 6-11-03 [FR 03-14749]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation—
Pay telephone reclassification and compensation provisions; comments due by 6-23-03; published 6-2-03 [FR 03-13722]
Radio stations; table of assignments:
California; comments due by 6-26-03; published 5-22-03 [FR 03-12793]

FEDERAL TRADE COMMISSION
Alternative fuels and alternative fueled vehicles; labeling requirements; comments due by 6-23-03; published 5-8-03 [FR 03-11391]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Billing privileges; establishment and maintenance requirements; comments due by 6-24-03; published 4-25-03 [FR 03-09943]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc.; comments due by 6-27-03; published 4-28-03 [FR 03-10301]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
St. Croix, U.S. Virgin Islands; security zone; comments due by 6-27-03; published 4-28-03 [FR 03-10293]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Cactus ferruginous pygmy-owl; Arizona distinct population segment; comments due by 6-27-03; published 4-28-03 [FR 03-10531]
Coastal California gnatcatcher; comments due by 6-23-03; published 4-24-03 [FR 03-09435]
Mussels in Mobile River Basin, AL; comments due by 6-24-03; published 3-26-03 [FR 03-06903]
San Diego fairy shrimp; comments due by 6-23-03; published 4-22-03 [FR 03-09434]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

NUCLEAR REGULATORY COMMISSION
Nuclear equipment and material; export and import:
Major nuclear reactor components; general import license; comments due by 6-27-03; published 5-28-03 [FR 03-13217]

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Nonmanufacturer rule; waivers—
Other ordnance and accessories manufacturing; comments due by 6-25-03; published 6-13-03 [FR 03-14851]
Small arms manufacturing; comments due by 6-25-03; published 6-13-03 [FR 03-14850]
Size for Multiple Award Schedule and other multiple award contract purposes and 8(a) business development/small disadvantaged business status determinations; comments due by 6-24-03; published 4-25-03 [FR 03-10286]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Aircraft operations; noise limitations; comments due by 6-23-03; published 3-24-03 [FR 03-06918]
Airspace:
Construction or alteration in vicinity of private residence of President of United States; comments due by 6-23-03; published 4-22-03 [FR 03-09886]
Airworthiness directives:
Airbus; comments due by 6-23-03; published 5-23-03 [FR 03-12836]
Boeing; comments due by 6-23-03; published 4-23-03 [FR 03-09691]
Bombardier; comments due by 6-23-03; published 5-23-03 [FR 03-12964]
Consolidated, Consolidated Vultee, and Convair; comments due by 6-23-03; published 4-22-03 [FR 03-09861]
de Havilland; comments due by 6-23-03; published 4-16-03 [FR 03-09304]
Dornier; comments due by 6-23-03; published 5-15-03 [FR 03-12112]
Dowty Aerospace Propellers; comments due by 6-27-03; published 4-28-03 [FR 03-10334]
Eurocopter France; comments due by 6-23-03; published 4-22-03 [FR 03-09864]
McDonnell Douglas; comments due by 6-24-03; published 4-25-03 [FR 03-09981]
Pratt & Whitney; comments due by 6-23-03; published 4-23-03 [FR 03-09984]
Class E airspace; comments due by 6-25-03; published 5-9-03 [FR 03-11645]
Class E5 airspace; comments due by 6-23-03; published 5-22-03 [FR 03-12818]

TREASURY DEPARTMENT
Comptroller of the Currency
International banking activities:
Foreign banks seeking to establish Federal branches and agencies in U.S.; approval procedures; comments due by 6-23-03; published 4-23-03 [FR 03-09733]

TREASURY DEPARTMENT
Fiscal Service
Checks drawn on U.S. Treasury; indorsement and payment; comments due by 6-23-03; published 4-23-03 [FR 03-09998]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks lacking Federal functional regulator; customer identification programs; comments due by 6-23-03; published 5-9-03 [FR 03-11015]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcoholic beverages:
Flavored malt beverages; comments due by 6-23-03; published 3-24-03 [FR 03-06855]
Labeling and advertising; organic claims; comments due by 6-23-03; published 5-9-03 [FR 03-11609]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                      DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR)**; *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

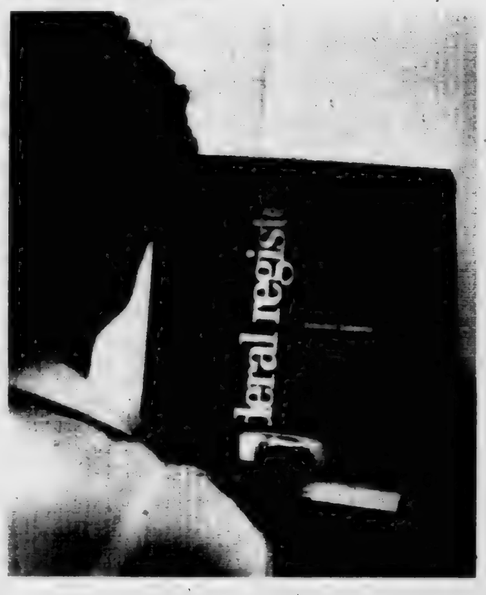
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

——— **Federal Register** (MFFR) ☐ One year at $264 each
☐ Six months at $132.00

——— **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $———. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

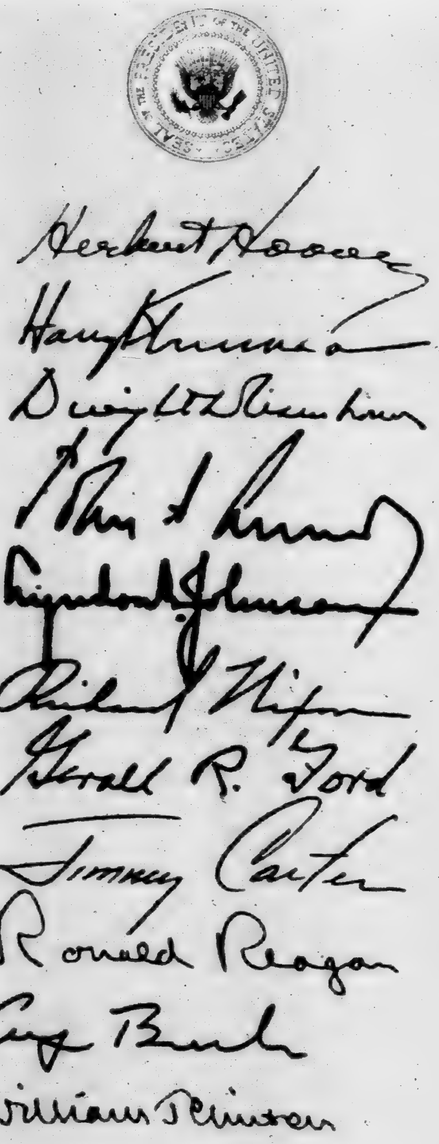
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**
1998 (Book I)	**$74.00**
1998 (Book II)	**$75.00**
1999 (Book I)	**$71.00**
1999 (Book II)	**$75.00**
2000–2001 (Book I)	**$68.50**
2000–2001 (Book II)	**$63.00**
2000–2001 (Book III)	**$75.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

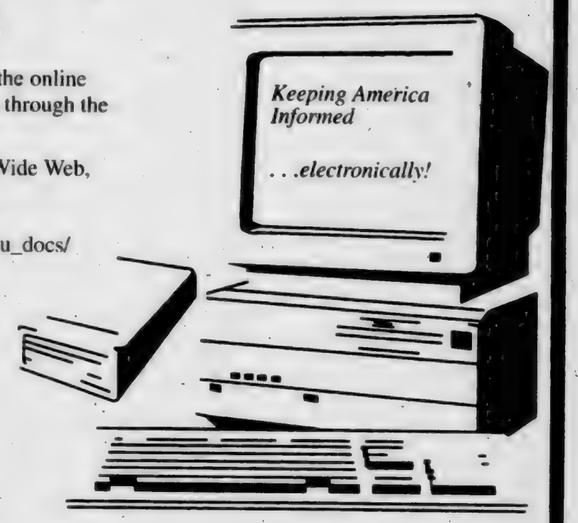
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.



Federal Register

6–18–03 Wednesday
Vol. 68 No. 117 June 18, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)



Federal Register

6–18–03 Wednesday
Vol. 68 No. 117 June 18, 2003

Pages 36445–36742

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register
Vol. 68, No. 117
Wednesday, June 18, 2003

Agricultural Marketing Service
PROPOSED RULES
Soybean promotion, research, and consumer information:
Small soybean producing States and regions; assessments reporting requirements, 36498–36499

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36565–36566
Communicable disease control:
Monkeypox; embargo and prohibition on transportation of all rodents from Africa, 36566–36567

Coast Guard
RULES
Ports and waterways safety:
Colorado River, NV; safety zone, 36466–36467
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36571–36572

Commerce Department
See National Oceanic and Atmospheric Administration

Community Development Financial Institutions Fund
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36631–36632

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 36545

Copyright Office, Library of Congress
RULES
Copyright Arbitration Royalty Panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determination, 36469–36470

Defense Department
See Engineers Corps
See Navy Department

Engineers Corps
RULES
Natural disaster procedures; preparedness, response, and recovery activities
Correction, 36467–36469

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 36470–36472
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azoxystrobin, 36480–36487
Bacillus pumilus (strain QST2808), 36476–36480
Glyphosate, 36472–36476
Solid wastes:
Residential lead-based paint waste disposal; solid waste disposal facilities and municipal solid waste landfills; classification and practices criteria, 36487–36495
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 36527–36528
Solid wastes:
Hazardous waste; identification and listing—
Exclusions, 36528–36534
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36545–36546
Reports and guidance documents; availability, etc.:
World Trade Center disaster—
Exposure and human health evaluation of airborne pollution; technical peer review meeting, 36546–36547
Water pollution control:
Total maximum daily loads—
Arkansas; state-wide waters list, 36547
Water supply:
Public water supply supervision program—
Louisiana, 36548

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Egypt; equipment and other goods and services to produce anhydrous ammonia from natural gas; finance application, 36548
Mexico; equipment and other goods and services to produce non-automotive flat glass; finance application, 36548

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 36451–36452
BAE Systems (Operations) Ltd., 36452–36454
Empresa Brasileira de Aeronautica, S. A. (EMBRAER), 36454–36455
General Electric Co., 36455–36458
Airworthiness standards:
Special conditions—
Boeing Model 747SP, 747-100, 747-200B, -200C, and -200F series airplanes, 36449–36451
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 36525–36526
Airbus, 36504–36506
Boeing, 36499–36502, 36506–36513, 36515–36518
Bombardier, 36513–36515

Learjet, 36502–36504
McDonnell Douglas, 36518–36525
NOTICES
Advisory circulars; availability, etc.:
Aircraft engines; turbine rotor strength requirements, 36623

Federal Communications Commission
NOTICES
Common carrier services:
Telecommunication carrier eligibility designation petitions—
ALLTELL Communciations, Inc.; Alabama service area; comment request, 36549–36550
ALLTELL Communciations, Inc.; Virginia service area; comment request, 36548–36549

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 36550

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36550–36551
Ocean transportation intermediary licenses:
American Logistics & Purchasing Services, Ltd., et al., 36551–36552
Martin Strauss Air Freight Corp. et al., 36552
Speedtrans International, Inc., et al., 36552

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Canadian National Railway, 36623–36624
Canadian Pacific Railway, 36624–36625
Dakota, Minnesota & Eastern Railroad, 36625
Eastern Maine Railway, 36625–36626
National Railroad Passenger Corp., 36626–36627
Traffic control systems; discontinuance or modification:
Burlington Northern & Santa Fe Railway, 36627–36628
CSX Transportation, Inc., 36628–36629
Norfolk Southern Corp., 36629

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 36552
Formations, acquisitions, and mergers, 36552–36553
Permissible nonbanking activities, 36553
Meetings; Sunshine Act, 36553

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 36553

Federal Trade Commission
RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Comparability ranges—
Clothes washers, 36458–36466
NOTICES
Premerger notification waiting periods; early terminations, 36553–36555
Prohibited trade practices:
Anesthesia Service Medical Group, Inc., 36557–36558
Grossmont Anesthesia Services Medical Group, Inc., 36558–36560

Food and Drug Administration
RULES
Human drugs:
Abbreviated new drug applications certifying that patent claiming drug is invalid or will not be infringed; patent listing requirements and 30 month stays, 36675–36712
PROPOSED RULES
Human drugs and biological products:
Pre- and postmarketing safety reporting requirements, 36527
NOTICES
Communicable disease control:
Monkeypox; embargo and prohibition on transportation of all rodents from Africa, 36566–36567
Food for human consumption:
Identity standards deviation; market testing permits—
Chiquita Processed Foods, LLC and Crown Cork & Seal Co.; canned asparagus, 36567

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36536–36537

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36537–36538

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
State innovation grants, 36560–36565

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36572–36578

Interior Department
See Land Management Bureau
See National Park Service
NOTICES
Central Arizona Project, AZ; water allocations and service contracting, 36578–36579

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36632–36633

Labor Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36584–36586
Grants and cooperative agreements; availability, etc.:
Women in Apprenticeship and Nontraditional Occupations Program, 36586–36601

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Committees—
Medford District, 36580
Resource Advisory Councils—
Eastern Montana, 36579–36580
Survey plat filings:
Wyoming, 36580–36581

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36629

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Vehicle compatibility and roll over mitigation; safety reports availability, 36534–36535

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36567–36568
Meetings:
National Human Genome Research Institute, 36568
National Institute of Child Health and Human Development, 36568–36569
National Institute of Diabetes and Digestive and Kidney Diseases, 36570
National Institute of General Medical Sciences, 36568–36570
National Institute of Mental Health, 36569
National Institute on Drug Abuse, 36570

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36538–36539
Environmental statements; notice of intent:
Northern fur seals; effects of subsistance taking on Pribilof Islands, AK, 36539–36540
Marine mammals:
Incidental taking; authorization letters, etc.—
EnCana Oil & Gas (USA) Inc.; steel drilling caisson move from Cross Island, AK through Beaufort Sea to Hershel Island, Yukon Territory, 36542–36545
Vandenberg Air Force Base, CA; harbor activities related to Delta IV/Evolved Expendable Launch Vehicle; Pacific harbor seals, etc., 36540–36542

National Park Service
NOTICES
Environmental statements; availability, etc.:
Colonial National Historical Park, Jamestown Unit, VA, and Jamestown National Historic Site, VA, 36581
Meetings:
Chesapeake and Ohio Canal National Historical Park Advisory Commission, 36581–36582
National Register of Historic Places:
Pending nominations, 36582–36583
Realty actions; sales, leases, etc.:
Maryland, 36583–36584

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 36545

Nuclear Regulatory Commission
RULES
Fee schedules revision; 94% fee recovery (2003 FY), 36713–36741
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36601
Environmental statements; availability, etc.:
Aventis Pharmaceuticals, Inc., 36601–36602

Presidential Documents
PROCLAMATIONS
Special observances:
Father's Day (Proc. 7686), 36447–36448
National Homeownership Month (Proc. 7685), 36445–36446

Securities and Exchange Commission
RULES
Securities, etc.:
Sarbanes-Oxley Act of 2002; implementation—
Exchange Act periodic reports; inclusion of management's report on internal control over financial reporting and certification, 36635–36673
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36602
Investment Company Act of 1940:
Exemption applications—
American Performance Funds et al., 36611–36614
Dresdener Bank AG et al., 36602–36607
Franklin Gold and Precious Metals Fund et al., 36607–36611
Securities, etc.:
Sarbanes-Oxley Act of 2002; implementation—
Proposed bylaws and amendment; comment request, 36614–36616
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 36616–36621
Pacific Exchange, Inc., 36621–36622

Small Business Administration
NOTICES
Disaster loan areas:
Tennessee, 36622
Virginia, 36622–36623

State Department
NOTICES
Meetings:
International Telecommunication Advisory Committee, 36623

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Mental Health Services Center National Advisory Council, 36571

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration

See Maritime Administration
See National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Maritime Administrator, 36496–36497

Treasury Department
See Community Development Financial Institutions Fund
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 36630–36631
United States Postal Service, President's Commission; comment request, 36631

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 36635–36673

Part III
Health and Human Services Department, Food and Drug Administration, 36675–36712

Part IV
Nuclear Regulatory Commission, 36713–36741

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7685.....36445
7686.....36447

7 CFR
Proposed Rules:
1220.....36498

10 CFR
170.....36714
171.....36714

14 CFR
25.....36449
39 (4 documents).....36451, 36452, 36454, 36455
Proposed Rules:
39 (11 documents).....36499, 36502, 36504, 36506, 36510, 36513, 36515, 36518, 36520, 36523, 36525

16 CFR
305.....36458

17 CFR
210.....36636
228.....36636
229.....36636
240.....36636
249.....36636
270.....36636
274.....36636

21 CFR
314.....36676
Proposed Rules:
310.....36527
312.....36527
314.....36527
320.....36527
600.....36527
601.....36527
606.....36527

33 CFR
165.....36466
203.....36467

37 CFR
260.....36469

40 CFR
52.....36470
180 (3 documents).....36472, 36476, 36480
257.....36487
258.....36487
Proposed Rules:
52.....36527
261.....36528

49 CFR
1.....36496
Proposed Rules:
571.....36534

Federal Register
Vol. 68, No. 117
Wednesday, June 18, 2003

Presidential Documents

Title 3—

The President

Proclamation 7685 of June 13, 2003

National Homeownership Month, 2003

By the President of the United States of America

A Proclamation

Homeownership is more than just a symbol of the American Dream; it is an important part of our way of life. Core American values of individuality, thrift, responsibility, and self-reliance are embodied in homeownership. I am committed to helping more families know the security and sense of pride that comes with owning a home.

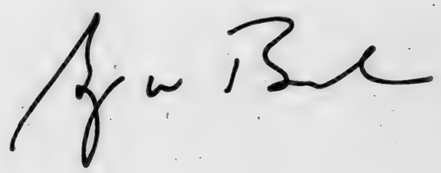
The Department of Housing and Urban Development is leading an Administration-wide effort to bring new tools and resources to would-be homeowners. We are providing financial assistance to qualified families through the American Dream Downpayment Fund, funding educational programs that stress financial literacy, and offering a compassionate hand to those who dream of moving from subsidized housing into homeownership. And through the Self-Help Homeownership Opportunity Program, my Administration partners with nonprofit organizations that offer homeownership opportunities to families willing to contribute their skills and labor to help build a home of their own. We are also proposing ways to make it easier to shop for a mortgage and to make mortgages available to more families through the Federal Housing Administration.

Today, the United States is fortunate in that our homeownership rate is at an all-time high, and low interest rates continue to encourage millions of Americans to become first-time homeowners. Although a record number of Americans own their own homes, we continue to see a gap between the homeownership rates of minorities and nonminorities. By a significant margin, minority families are less likely to own their own homes. Therefore, I have called upon the entire housing industry to join with my Administration to expand minority homeownership across the Nation. Our goal is to help at least 5.5 million minority families become homeowners by the end of this decade, and our Blueprint for the American Dream Partnership is taking bold steps to make this a reality.

Across our Nation, every citizen, regardless of race, creed, color, or place of birth, should have the opportunity to become a homeowner. Homeownership represents a pathway to pride and prosperity for many families, encourages values of responsibility and sacrifice, creates stability for neighborhoods and communities, and generates economic growth that helps strengthen the entire Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2003 as National Homeownership Month. I call upon the people of the United States to join me in recognizing the importance of offering every American the opportunity to realize their dream of homeownership and to help work towards making that dream a reality.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of June, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–15539
Filed 6–17–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7686 of June 13, 2003

Father's Day, 2003

By the President of the United States of America

A Proclamation

Fatherhood is one of life's most challenging yet fulfilling endeavors. On Father's Day, we honor America's fathers and express our appreciation for all they do to help build a strong foundation for our children and our Nation. We also reaffirm our commitment to supporting fathers and encouraging responsible fatherhood in our society.

Fathers have indispensable roles to play in the lives of their children: provider, protector, nurturer, teacher, and friend. Every caring father unconditionally loves his sons and daughters and strives for the best for his children in the future. In seeking to give their children the opportunity to succeed, fathers offer needed strength, guidance, and discipline.

Fathers teach their children many basic things in life: how to read a book, throw a ball, tie a necktie, ride a bike, or drive a car. More importantly, they also help instill time- honored values in their children, such as hard work, respect, honesty, and good citizenship. Through their words, actions, and sacrifices, fathers play an important role in shaping the characters of their sons and daughters.

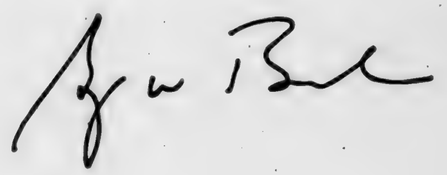
The time and attention that a father gives to a child is irreplaceable—there is no substitute for the involvement and commitment of a responsible father. Not only are fathers essential to the healthy development of children, they also influence the strength of families and the stability of communities.

For this reason, our Government is working to help fathers succeed in this challenging, but life-affirming, role. Over the last 2 years, my Administration has taken important steps to promote responsible fatherhood and encourage community-based initiatives that help them fulfill their important roles. We are working to provide funds for healthy marriage and parenting education and for community mentoring programs to help fathers become more engaged and involved in their children's lives.

This Father's Day, we recognize the many fathers who are heroes and role models for their children, and we encourage more men to fulfill this responsibility by loving their sons and daughters with all their heart and demonstrating this love daily. By working together to encourage America's fathers, we can strengthen our society and help ensure the well-being of all our children.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 15, 2003, as Father's Day. I encourage all Americans to express love, admiration, and thanks to their fathers for their contributions to our lives and to society. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day. I also call upon State and local governments and citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of June, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–15540
Filed 6–17–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 117
Wednesday, June 18, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM257; Special Conditions No. 25–238–SC]

Special Conditions: Boeing Model 747SP Series; 747–100 Series; and 747–200B, –200C, and –200F Series Airplanes; High-Intensity Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments

SUMMARY: These special conditions are issued for Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane modification includes the installation of an Electronic Flight Instrument System (EFIS), which performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: The effective date of these special conditions is June 10, 2003. Comments must be received on or before July 18, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM257, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM257.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for public comment in accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 1, 2002, J.R.G Design submitted an application to the New York Aircraft Certification Office for a Supplemental Type Certificate (STC). The Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes are being modified for use by a head of state; they are non N-registered airplanes operating under part 91. This project involves replacing round dial displays in the cockpit with four EFIS displays. The EFIS upgrade is for multiple airplane installations. These systems may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, J.R.G Design, Inc. must show that Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes meet the applicable provisions in effect on the date of application for the supplemental type certificate or applicable provisions of 14 CFR part 25, as amended by Amendments 21–1 through 25–106, for areas affected by the change to the greatest extent feasible. If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 747SP series; 747–100 series; and 747–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type

certification basis in accordance with § 21.101(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes will incorporate four EFIS displays (two for each pilot) that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual designs.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes. These special conditions require that avionic/electronic and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionic/electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHzs–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 747SP series; 747–110 series; and 747–200B, –200C, and –200F series airplanes. Should J.R.G. Design apply at a later date for a type certificate change for these airplane models incorporating the same novel or unusual design feature, these special conditions would apply to those airplanes as well, under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane. The FAA has determined that notice and opportunity for public comment are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. The FAA is satisfied that new comments are unlikely and finds, therefore, that good cause exists for making these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747SP series; 747–100 series; and 747–200B, –200C, and –200F series airplanes.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions*: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington on June 10, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15401 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–331–AD; Amendment 39–13195; AD 2003–12–10]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, –320, and –500 Series Airplanes; and Model ATR72–102, –202, –212, and 212A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72–102, –202, –212, and 212A series airplanes; that requires modification of the flight attendant's seat located in the front of the cabin, and follow-on actions. This action is necessary to prevent release of the forward flight attendant's shoulder restraint harness, which could result in injury to the flight attendant in case of turbulence. This action is intended to address the identified unsafe condition.

DATES: Effective July 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72–102, –202, –212, and 212A series airplanes was published in the **Federal Register** on February 21, 2003 (68 FR 8477). That action proposed to require modification of the flight attendant's seat located in the front of the cabin, and follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Clarification of Applicability

We have revised the applicability listed in Table 1 in this final rule to more clearly identify those airplanes affected by this AD.

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that approximately 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,786 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $147,680, or $1,846 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–10 Aerospatiale: Amendment 39–13195. Docket 2002–NM–331–AD.

Applicability: Airplanes listed in the following table, certificated in any category:

TABLE 1.—APPLICABILITY

Airplane models—	On which these modifications have been installed—	On which these modifications have not been installed—
ATR42–200, –300, and –320 series airplanes	0384, 1685, or 1991; or modifications per Avions de Transport Regional (ATR) Service Bulletins ATR42–25–0082, ATR42–98–331A, or ATR42–98–409C.	5328 per ATR Service Bulletin ATR42–25–0141, 0619, or 8023 per ATR Service Bulletin ATR42–98–025A
ATR42–500 series airplanes	4181 or 5042	5301 per ATR Service Bulletin ATR42–98–524D, or 5328 per ATR Service Bulletin ATR42–25–0141
ATR72–102, –202, –212, and –212A series airplanes.	(No applicable modification)	5328 (replacement of the inertia-reel harness with a fixed harness) per ATR Service Bulletin ATR72–25–1082

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent release of the forward flight attendant's shoulder restraint harness, which could result in injury to the flight attendant in case of turbulence; accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the forward flight attendant's seat located in the front of the cabin (including replacing the inertia-reel harness with a new fixed harness, and replace the backrest cover and backrest cushion with new components), per ATR Service Bulletin ATR42–25–0141, dated October 15, 2002 (for Model ATR42–200, –300, –320, and –500 series airplanes); or Service Bulletin ATR72–25–1082, dated October 15, 2002 (for Model ATR72–102, –202, –212, and 212A series airplanes); as applicable.

Follow-on Actions

(b) Before further flight following accomplishment of the modification required by paragraph (a) of this AD: Accomplish paragraphs (b)(1) and (b)(2) of this AD per ATR Service Bulletin ATR42–25–0141, dated October 15, 2002; or ATR Service Bulletin ATR72–25–1082, dated October 15, 2002; as applicable.

(1) Replace the seat identification placard with a new placard having a new part number (P/N).

(2) Install a new modification placard to indicate accomplishment of the SICMA Service Bulletin 138–25–008, dated September 18, 2002.

Note 2: ATR Service Bulletins ATR42–25–0141 and ATR72–25–1082 reference SICMA Service Bulletin 138–25–008 as an additional source of service information for procedures to modify the forward flight attendant's seat, and to perform follow-on actions (including replacing the seat identification placard with a new placard, and installing a new modification placard).

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–25–0141, dated October 15, 2002; or Avions de Transport Regional Service Bulletin ATR72–25–1082, dated October 15, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2002–539(B), dated October 30, 2002.

Effective Date

(f) This amendment becomes effective on July 23, 2003.

Issued in Renton, Washington, on June 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15220 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–271–AD; Amendment 39–13194; AD 2003–12–09]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited Model BAe 146 series airplanes, that requires modification of the flight annunciator box. This action is necessary to prevent traffic collision avoidance system (TCAS) aural messages and resolution advisories of the TCAS from being inhibited following a ground proximity warning system alert or test message, which could prevent the TCAS from providing attention-getting alerts, and could result in the consequent possibility of a mid-air collision or near mid-air collision. This action is intended to address the identified unsafe condition.

DATES: Effective July 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 series airplanes was published in the **Federal Register** on March 12, 2003 (68 FR 11760). That action proposed to require modification of the flight annunciator box.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency, this final rule retains the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,400, or $370 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–09 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13194. Docket 2001–NM–271–AD.

Applicability: Model BAe 146 series airplanes on which Modifications HCM50261X; HCM01077L or HCM50273B; and HCM50040E or HCM50040N; have been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent aural messages and resolution advisories of the traffic collision avoidance system (TCAS) from being inhibited following a ground proximity warning system alert or test message, which could prevent the TCAS from providing attention-getting alerts, and could result in the consequent possibility of a mid-air collision or near mid-air collision, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD: Modify the flight annunciator box (including installing 2 diode modules with associated wiring, and re-routing existing wiring), per the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.34–339–50261Y, dated April 11, 2001. Although paragraph 2.F.(2) of the Accomplishment Instructions references a reporting requirement, such reporting is not required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may

add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions must be done in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.34–339–50261Y, dated April 11, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 003–04–2001.

Effective Date

(e) This amendment becomes effective on July 23, 2003.

Issued in Renton, Washington, on July 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15221 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–98–AD; Amendment 39–13196; AD 2003–12–11]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that requires a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods, and replacement of any discrepant piston rod with a new piston rod. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG, and consequent reduced controllability of the airplane.

DATES: Effective July 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 5, 2000 (65 FR 35590). That action proposed to require a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods, and replacement of any discrepant piston rod with a new piston rod.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Credit Work Done Per Earlier Service Bulletin Versions

Several commenters request that the supplemental NPRM be revised to allow credit for work accomplished in accordance with the original version of EMBRAER Service Bulletin 145–32–0031, dated July 3, 1998; and Change 01, dated December 8, 1998. The commenters note that, if the inspection and related actions have been accomplished in accordance with either of those service bulletin versions, no additional work would be necessary to accomplish the actions specified in Change 02 of the service bulletin. The commenters suggest that failure to include this credit provision in the AD could unnecessarily require operators to request an alternative method of compliance to demonstrate compliance with the requirements of the AD.

The FAA agrees. The procedures described in the original issue and Change 01 of EMBRAER Service Bulletin 145–32–0031 are essentially the same as those described in Change 02. Therefore, the original issue and Change 01 of the service bulletin are also acceptable for compliance with this AD. Paragraph (a) of this final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 33 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $1,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–12–11. Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–13196. Docket 99–NM–98–AD.

Applicability: Model EMB–145 series airplanes, equipped with main landing gear maneuvering actuators, part and serial numbers as listed in EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in thepreceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the maneuvering actuator piston rod of the main landing gear (MLG), which would impede retraction of the MLG, and consequent reduced controllability of the airplane, accomplish the following:

Ultrasonic Inspection and Replacement, If Necessary

(a) Within the next 100 landings after the effective date of this AD, perform an ultrasonic inspection of the maneuvering actuator piston rods of the MLG to ensure adequate wall thickness of the piston rods, in accordance with EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999. An inspection is also acceptable for compliance with the requirements of this AD if done in accordance with EMBRAER Service Bulletin 145–32–0031, dated July 3, 1998; or Change 01, dated December 8, 1999.

(1) If the thickness of any measurement point in any piston rod is greater than 2.0 mm (.079 inch), no further action is required by this AD.

(2) If the thickness of any measurement point in any piston rod is from 1.5 mm (.059 inch) to 2.0 mm (.079 inch): Within 500 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

(3) If the thickness of any measurement point in any piston rod is less than 1.5 mm (.059 inch): Within 50 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions must be done in accordance with EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–09–01 R1, dated March 15, 1999.

Effective Date

(e) This amendment becomes effective on July 23, 2003.

Issued in Renton, Washington, on June 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15222 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–09–AD; Amendment 39–13193; AD 2003–12–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A1/A3 and CF6–80C2A PMC Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines. This amendment requires performing either a directional pilot valve (DPV) pressure switch moisture purge procedure and an operational check of the fan reverser or replacing the DPV assembly with a serviceable assembly and performing an operational check of the fan reverser. Thereafter, this AD requires one of these actions on a repetitive basis. This amendment is prompted by a review of fan reverser safety analyses resulting from the discovery of an undetectable failure mode of the DPV pressure switch on certain GE CF6–80C2A and CF6–80A1/A3 engine models. The actions specified by this AD are intended to prevent inadvertent fan reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

DATES: Effective July 23, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, telephone: (410) 682–0094; fax: (410) 682–0100. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines was published in the **Federal Register** on June 21, 2002 (67 FR 42202). That action proposed to require performing either a directional pilot valve (DPV) pressure switch moisture purge procedure and an operational check of the fan reverser, or replacing the DPV assembly with a serviceable assembly and performing an operational check of the fan reverser. Thereafter, that action proposed to require one of these actions on a repetitive basis in accordance with Middle River Aircraft Systems Alert Service Bulletins (ASBs) CF6–80A1/A3 SB 78A4030, dated April 4, 2002 or CF6–80C2A PMC SB 78A1118, dated April 4, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Revise Applicability Statement

One commenter requests that the applicability statement be revised to reference the left-hand fan reverser halves associated with the engines instead of the engine models themselves. The commenter believes that the DPV assembly is not a part of the engine, but is instead a part of the left-hand fan reverser half. The commenter notes the fact that the reverser halves and engines can be removed or installed separately.

The FAA does not agree. The FAA acknowledges that in service the engines and fan reversers can be separated, with the possibility of reversers remaining installed on-wing, while different engines are installed. However, the fan reverser assembly and, therefore, the DPV are part of the engine (14 CFR part 33) type design. The applicability to the engine model is, therefore, appropriate. No changes will be made to the AD as a result of this comment.

Request to Add Isopropyl Alcohol as an Alternate to Acetone

One commenter requests that isopropyl alcohol be allowed as an acceptable alternate to the acetone solvent listed in the consumables of the ASBs as the fluid used for purging moisture from the DPV pressure switch assemblies. The commenter notes that some airports may restrict the use of acetone. The commenter also notes that the DPV assembly manufacturer has agreed that alcohol is an acceptable alternate for acetone for the purposes of accomplishing the moisture purge service bulletins.

The FAA agrees that isopropyl alcohol is an acceptable alternate for acetone for this application. The FAA, GE, and the component manufacturer, previously identified this issue and the ASBs were revised on August 23, 2002, to allow the use of isopropyl alcohol. The compliance section of this final rule AD has been revised to add Revision 1 to each of the ASBs.

Alternative for Replacement of Serviceable DPV

One commenter requests that deactivation of the fan reverser be allowed as an alternative to replacement with a serviceable DPV. The commenter sites a previous AD (99–18–19) that allowed deactivation instead of a DPV leak check inspection.

The FAA agrees and the final rule is revised to allow deactivation. Limitations for operation with one or more reversers deactivated have also been added and are consistent with the previous AD.

Request to Rewrite Description of the Failure Sequence

One commenter requests that the description of the failure sequence in the discussion section of the NPRM preamble be reworded to clarify that an additional failure is required in order for the undetectable DPV pressure switch freezing failure to result in an inadvertent deployment (IAD). The commenter believes that the current statement is misleading. The commenter believes that in addition to the pressurization failure, a directional failure is required before an IAD can occur.

The FAA does not agree. While the FAA agrees that the wording could have been clearer, the requested change does not affect the conclusion that an unsafe condition has been identified. In addition, the Discussion section details are not repeated in the final rule after an NPRM, and therefore, the AD remains unchanged as a result of this comment.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–12–08 General Electric Company: Amendment 39–13193. Docket No. 2002–NE–09–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A PMC series turbofan engines. These engines are installed on, but not limited to Airbus Industrie A300–600 and A310 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done. To prevent inadvertent fan reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane, do the following:

GE CF6–80A1/A3 Series Engines

(a) For GE CF6–80A1/A3 series engines, perform one of the following no later than 1,400 flight hours time-since-new (TSN) or 600 flight hours time-in-service (TIS) after the effective date of this AD, whichever occurs later:

(1) Perform the directional pilot valve (DPV) pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems Alert Service Bulletins (ASBs) CF6–80A1/A3 SB 78A4030, dated April 4, 2002, or CF6–80A1/A3 SB 78A4030, Revision 1, dated August 23, 2002, or

(2) Replace the DPV assembly with a serviceable assembly, or

(3) Deactivate the thrust reverser. The DPV must be replaced with a serviceable assembly within 10 days after deactivation. Information on deactivating the thrust reverser can be found in the applicable Aircraft Maintenance Manual (AMM).

(b) After each purge or replacement done in accordance with paragraph (a)(1), (a)(2), or (a)(3) of this AD, perform an operational check of the fan reverser in accordance with Paragraph 3.E. of the Accomplishment Instructions of ASBs CF6–80A1/A3 SB 78A4030, dated April 4, 2002, or CF6–80A1/A3 SB 78A4030, Revision 1, dated August 23, 2002.

(c) Thereafter, for GE CF6–80A1/A3 series engines, at intervals not to exceed 1,400 hours TIS since the last pressure switch purge or replacement of the DPV assembly, perform one of the following:

(1) Perform the DPV pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASBs CF6–80A1/A3 SB 78A4030, dated April 4, 2002, or CF6–80A1/A3 SB 78A4030, Revision 1, dated August 23, 2002, or

(2) Replace the DPV assembly with a serviceable assembly, or

(3) Deactivate the thrust reverser. The DPV must be replaced with a serviceable assembly within 10 days after deactivation. Information on deactivating the thrust reverser can be found in the applicable AMM.

(d) After each purge or replacement done in accordance with paragraph (c)(1), (c)(2), or (c)(3) of this AD, perform an operational check of the fan reverser in accordance with Paragraph 3.E. of the Accomplishment Instructions of ASBs CF6–80A1/A3 SB 78A4030, dated April 4, 2002, or CF6–80A1/A3 SB 78A4030, Revision 1, dated August 23, 2002.

GE CF6–80C2A Series Engines

(e) For GE CF6–80C2A1/A2/A3/A5/A8 series engines, perform one of the following no later than 1,400 flight hours TSN or 600 flight hours TIS after the effective date of this AD, whichever occurs later:

(1) Perform the DPV pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASBs CF6–80C2A PMC SB 78A1118, dated April 4, 2002, or CF6–80C2A PMC SB 78A1118, Revision 1, dated August 23, 2002, or

(2) Replace the DPV assembly with a serviceable assembly, or

(3) Deactivate the thrust reverser. The DPV must be replaced with a serviceable assembly within 10 days after deactivation. Information on deactivating the thrust reverser can be found in the applicable AMM.

(f) After each purge or replacement done in accordance with paragraphs (e)(1), (e)(2), or (e)(3) of this AD, perform an operational check of the fan reverser, in accordance with Paragraph 3.E. of the Accomplishment Instructions ASBs CF6–80C2A PMC SB 78A1118, dated April 4, 2002, or CF6–80C2A PMC SB 78A1118, Revision 1, dated August 23, 2002.

(g) Thereafter, for GE CF6–80C2A1/A2/A3/A5/A8 series engines, perform one of the following at intervals not to exceed 1,400 hours TIS since the last pressure switch purge or replacement of the DPV assembly:

(1) Perform the DPV pressure switch moisture purge, in accordance with Paragraph 3.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASBs CF6–80C2A PMC SB 78A1118, dated April 4, 2002, or CF6–80C2A PMC SB 78A1118, Revision 1, dated August 23, 2002, or

(2) Replace the DPV assembly with a serviceable assembly, or

(3) Deactivate the thrust reverser. The DPV must be replaced with a serviceable assembly within 10 days after deactivation. Information on deactivating the thrust reverser can be found in the applicable AMM.

(h) After each purge or replacement done in accordance with paragraphs (g)(1), (g)(2), or (g)(3) of this AD, perform an operational check of the fan reverser, in accordance with Paragraph 3.E. of the Accomplishment Instructions of ASBs CF6–80C2A PMC SB 78A1118, dated April 4, 2002, or CF6–80C2A PMC SB 78A1118, Revision 1, dated August 23, 2002.

Serviceable DPV Assembly

(i) For the purpose of this AD, a serviceable DPV assembly is an assembly that has:

(1) Accumulated zero time since new, or

(2) Passed the tests in the Middle River Aircraft Systems Component Maintenance Manual GEK 85007 (78–31–51), Revision No. 7 or later, Directional Pilot Solenoid Valve, Page Block 101, Testing and Troubleshooting, and that has zero flight hours TIS since passing the tests, or

(3) Been successfully purged according to paragraphs (a)(1), (c) (1), (e)(1) or (g)(1) of this AD immediately before installation on the fan reverser.

Deactivation Requirements

(j) If one or both thrust reversers are deactivated, then prior to further flight, revise the Limitations Section of the FAA-approved AFM to include the following:

"The takeoff performance on wet and contaminated runways with a thrust

reverser(s) deactivated shall be determined in accordance with Airbus Flight Operations Telex (FOT) 999.0066/99, dated June 9, 1999, as follows:

For takeoff on wet runways, use performance data in accordance with paragraph 4.1.1 of the FOT.

For takeoff on contaminated runways, use performance data in accordance with paragraph 4.1.2 of the FOT."

(1) Notwithstanding the provisions of the FAA approved A300–600 and A310 Master Minimum Equipment List (MMEL), dispatch with both thrust reversers deactivated, for the purposes of complying with this AD, is approved.

(2) Notwithstanding the provisions of the FAA Approved A300–600 and A310 MMEL, airplanes which have deactivated one or both thrust reversers in compliance with this AD, may not conduct operation on contaminated runways, as defined in Airbus Flight Crew Operating Manual Section 2.18.50, unless all components of the Main Wheel Brakes, Green and Yellow Brake Systems, Antiskid System, Ground Spoiler System, and all Spoiler and Speed Brake Surfaces, operate normally.

Note 2: The "FCOM" referenced in Airbus FOT 999.0066/99, dated June 9, 1999, is Airbus Industrie Flight Crew Operating Manual (FCOM), Revision 27 for Airbus Model A310 series airplanes and Revision 22 for A300–600 series airplanes. [The revision number is indicated on the List of Effective Pages (LEP) of the FCOM.]

Alternative Methods of Compliance

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(m) The actions must be done in accordance with the following Middle River Aircraft Systems Alert Service Bulletins:

Document no.	Pages	Revision	Date
CF6–80C2A, PMC SB 78A1118	All	Original	April 4, 2002
Total Pages: 18.			
CF6–80C2A, PMC SB 78A1118	1	1	August 23, 2002
	2–4	Original	April 4, 2002
	5	1	August 23, 2002
	6–8	Original	April 4, 2002
	9–10	1	August 23, 2002
	11–18	Original	April 4, 2002
Total Pages: 18.			
CF6–80A1/A3, SB 78A4030	All	Original	April 4, 2002
Total Pages: 18.			
CF6–80A1/A3, SB 78A4030	1	1	August 23, 2002
	2–4	Original	April 4, 2002
	5	1	August 23, 2002
	6–8	Original	April 4, 2002
	9–10	1	August 23, 2002
	11–18	Original	April 4, 2002
Total Pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, telephone: (410) 682–0094; fax: (410) 682–0100. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(n) This amendment becomes effective on July 23, 2003.

Issued in Burlington, Massachusetts, on June 9, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–15223 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule and conditional exemption.

SUMMARY: The Federal Trade Commission ("Commission") announces amendments to the Appliance Labeling Rule and the issuance of a conditional exemption in response to a request from the Association of Home Appliance Manufacturers ("AHAM") related to certain labeling requirements for clothes washers.

DATES: The effective date of the amendments to 16 CFR part 305 is January 1, 2004. The effective date of the conditional exemption described herein is June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

I. Background

A. FTC Requirements

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979) ("Rule"), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA") (42 U.S.C. 6294). EPCA also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy certain appliances use, and to determine the representative average cost a consumer pays for the different types of available energy.

The rule covers, among other things, eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners. The rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The rule requires manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The rule requires manufacturers, after filing an initial report, to report annually the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the database from which the ranges of comparability are calculated is constantly changing. Under section 305.10 of the rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

B. New DOE Test Procedure and Energy Standards for Clothes Washers

New energy conservation standards and a new DOE test procedure for clothes washers will become effective on January 1, 2004. The new energy conservation standard requires that all new residential clothes washers manufactured after January 1, 2004, be 22% more efficient than today's minimally compliant clothes washer.[1] Accordingly, the 2004 energy standard will render a substantial portion of the existing clothes washer market obsolete.

The new DOE test procedure for clothes washers, which also will become effective on January 1, 2004, is found at 10 CFR part 430, subpart B, Appendix J1.[2] Application of the new test procedure (sometimes referred to as the "J1" test or the "Modified Energy Factor" test) will likely produce energy consumption figures different from those yielded by the old ("J") test procedure (10 CFR part 430, subpart B, Appendix J).[3] Because these test results are used to determine energy use information that appears on the FTC EnergyGuide label, consumers may not be able effectively to compare the energy performance of clothes washers if the labels are based on the two different test procedures.

[1] 66 FR 3314, 3315 (Jan. 12, 2001). A second amended energy efficiency standard, slated to take effect on January 1, 2007, requires that all new residential clothes washers manufactured after that date be 35% more efficient than today's minimally compliant clothes washer.

II. AHAM's Request

To ease the transition to the new energy efficiency standard and new (J1) test procedure, AHAM[4] wrote to FTC staff on February 7, 2003, requesting permission to begin using that test for labeling clothes washers during 2003, before the test becomes effective. In addition, AHAM's letter requests that the Commission allow its members to provide special wording on the EnergyGuide labels for these models to help consumers in distinguishing washers tested under the new (J1) procedure from those tested under the old (J) procedure (*see* Prototype Label 2 at the end of this document). AHAM proposed a modified label that would display a banner across the top stating: "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." AHAM requested that the Commission allow its members to begin using the new (J1) test and modified labels on May 1, 2003, and that the labeling changes be made "permanent."[5] To grant AHAM's request, the Commission would have to grant an exemption from certain EnergyGuide testing and labeling requirements for the remainder of this year and issue rule amendments to make the requested labeling changes a permanent requirement for all manufacturers after January 1, 2004.

AHAM submitted its request because it asserts that the transition to clothes washers compliant with the new 2004 energy efficiency standard and new test procedure, with respect to testing and labeling, could be unduly burdensome to manufacturers and confusing to consumers. According to AHAM, there will be hundreds of new energy efficient models introduced throughout the course of 2003. Under current requirements, manufacturers will have to test and rate these new models first under the old (J) procedure for 2003, and then again under the new (J1) procedure in order to distribute them in 2004. AHAM stated that, since several samples of each basic model need to be tested to determine statistically valid ratings, such duplicative testing would result in tremendous laboratory and manufacturer staff resources for hundreds of new models. Also, AHAM states that retail floor models are not changed frequently. Thus, without action by the FTC, retail display units for new models introduced this year will have energy labels based on the old (J) test well into 2004 and beyond. AHAM is concerned that these display units could be very confusing and misleading as consumers seek to compare units tested under different procedures in a single showroom without any notice that differences exist.

III. Proposed Exemption and Proposed Rulemaking

In an April 3, 2003, document (68 FR 16231), the Commission sought comments on AHAM's proposal. The proposal raised two procedural matters: (1) A request for an exemption from certain testing and labeling requirements for clothes washers from May through December 31, 2003 (to permit testing and labeling pursuant to the new (J1) test); and (2) a proposed "permanent" rule change, effective January 1, 2004, to conform existing label content and format requirements to label changes permitted by the 2003 exemption.

A. Proposed Conditional Exemption for 2003

The proposed exemption implicated several provisions of the Appliance Labeling rule. The rule requires that, for purposes of the EnergyGuide label, manufacturers use the estimated annual energy consumption as derived from the DOE clothes washer test procedures in 10 CFR part 430 (*see* 16 CFR 305.5(a)

[2] The EnergyStar program, run by DOE and the U.S. Environmental Protection Agency, already requires use of the new (J1) test to certify clothes washers under that program.

[3] According to AHAM, the clothes washer test procedures were revised to better reflect current usage habits by incorporating updated temperature utilization factors that are more appropriate for today's designs.

[4] The manufacturers identified in AHAM's request are Alliance Laundry Systems, Electrolux Home Products, Fisher & Paykel Ltd., GE Appliances, Maytag Appliances, Miele Corp., and Whirlpool Corp. Subsequently, AHAM informed Commission staff that BSH, Gonrenje, and Asko also are participating in AHAM's request. According to AHAM, these manufacturers produce over 95% of the clothes washers sold in the United States.

[5] AHAM also requested that the Commission change the reporting date for clothes washer data in the rule from March 1 to October 1 for each year. The Commission addressed the requested date change for data submission in an earlier **Federal Register** document (*see* 68 FR 8448 (Feb. 21, 2003)).

and 305.11(a)(5)(i)(E)). Because the new (J1) test for clothes washers will not become effective until January 1, 2004, the current rule does not authorize the use of that test for energy consumption information on EnergyGuide labels until that date. By granting the requested exemption, the Commission would allow manufacturers to begin using the new test results on EnergyGuide labels before 2004. In addition, the rule does not allow any marks or identification other than those specified in the rule to appear on the label except for some limited exceptions not applicable here (*see* 16 CFR 305.11(a)(5)(i)(K)). Accordingly, absent an exemption, the rule does not allow the kind of explanatory information proposed by AHAM.

B. Proposed Rule Change for EnergyGuide Labels for 2004 and Beyond

In the April 3, 2003, document, the Commission indicated that, by granting the exemption, it is probable that many new clothes washers distributed for sale in the United States for the remainder of 2003 would have labels containing the proposed advisory language that: "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." Once this change is made to EnergyGuide labels on units distributed in 2003, a return to the conventional label in the future may cause consumer confusion because the units with the modified label will stay on showroom floors into 2004 and beyond. Given these considerations, AHAM asked the Commission to make its proposed label changes permanent. The Commission proposed that the advisory language required by the rule after January 1, 2004, should be identical to that on the label during the exemption period. The Commission sought public comment on a proposed rule change that would incorporate AHAM's suggested label changes and require these changes for all clothes washers distributed for sale in the United States beginning January 1, 2004.

IV. Comment Analysis

The Commission received four comments in response to the April 3, 2003, document.[6] The three industry comments (from Alliance, Whirlpool, and AHAM) supported the proposed conditional exemption and rule change. AHAM stated that, "early compliance with J1 labeling requirements in 2003 is critical to the efficiency of testing and production as the industry transitions to new washer standards by the end of 2003."[7] Whirlpool echoed AHAM's comment, adding that, without the conditional exemption, it would be not be able "to meet existing commitments to trade partners."[8] These three commenters also supported the proposal to make the changes to the EnergyGuide label permanent. The fourth commenter, NRCan (the agency responsible for appliance labeling in Canada), raised concerns about the impact of the proposal on adjoining labels bearing both the U.S. EnergyGuide and the Canadian "EnerGuide" label (as allowed by the Commission's rule). An analysis of specific issues raised by the comments follows:

A. Differences Between the J and J1 Tests

Comments

The Commission requested comments on whether the differences between the results yielded by the new (J1) and old (J) tests are significant enough to warrant special advisory language on the EnergyGuide labels. The Commission also asked whether one test yields significantly higher or lower results than the other. The three industry comments indicated that the differences were significant enough to warrant the change. Alliance stated that the tests yielded a 25% difference for one of its models.[9] Whirlpool and AHAM commented that the new (J1) test results are generally lower than the older (J) test results and the differences could be as much as 40%.[10]

Discussion

According to the commenters, the differences in energy use results yielded by the two tests can be significant. Given this information, we believe the explanatory text on the labels is appropriate to aid consumers in distinguishing models tested under the two procedures. The Commission notes that DOE periodically modifies the test procedure for covered products and such changes can yield different test results for the same model. In the past, the Commission has not required additional information on the EnergyGuide label in response to test procedure changes. In this case, however, there are special circumstances that, in the Commission's view, warrant the explanatory language as requested by AHAM. First, because the new conservation standard will become effective on the same date as the new test procedure, a large number of new models will appear on the market over a short period of time in response to the more stringent efficiency standards. In addition, the differences between the results of the old and new test procedures could be quite substantial in this case, up to 40% as indicated by the industry comments. Finally, because the exemption will allow manufacturers to begin using the new (J1) test results for labeling early, manufacturers will distribute new products with labels based on the new test while they will continue to distribute older products with labels reflecting the old test. Accordingly, the transition between the old and new labels in showrooms will likely be longer than is usually the case when DOE amends a test procedure. Considering all these factors, the Commission believes that explanatory language as suggested by AHAM is appropriate.

B. Content, Size, and Placement of the Modified Language

Comments

The Commission solicited comments on the proposed changes to the label, such as the content, size, and placement of the modified language on the EnergyGuide. The Commission asked whether the proposed language on the EnergyGuide label will help consumers in their purchasing decisions, or cause undue confusion. In addition, commenters were asked whether the reference to the year "2004" on the label will create confusion in subsequent years if the proposed change becomes a permanent fixture on the label and whether the explanatory language should be required on both the top and the bottom of the label. The Commission sought comment on alternatives to the proposed advisory language, such as using the term "J1" or "Modified Energy Factor" in lieu of "2004" in describing the test.

The three industry comments stated that the proposed changes are appropriate and that the changes to the EnergyGuide label will help consumers. Whirlpool stated that there will be less need for dealers to "refloor" model units and less confusion for "energy conscientious consumers when selecting new appliances."[11] The industry commenters also preferred the reference to "the 2004 procedure" over other descriptors such as "J1" or "Modified Energy Factor" because consumers would have "no clue" as to the meaning of these latter terms.[12] They did not believe it was necessary to place the explanatory language on the bottom of the label (in addition to the statements proposed for the top and middle of the label). Whirlpool wrote that such information would be redundant for consumers.[13] Finally, AHAM and Alliance requested that the size of the new label be 7⅜ inch (18.73 cm.) as currently required by the Rule and not 8 inches (20.32 cm.) as proposed by the Commission.[14] Alliance suggested that the use of a 7⅜ inch (18.73 cm.) label can be accomplished by not incorporating the proposed text in the middle of the label.[15]

Discussion

The Commission agrees with the commenters that the "2004" language is preferable to alternatives such as "J1" and "Modified Energy Factor." It is possible that, in later years, the reference to "2004" on the label may raise questions for consumers. Ultimately, however, we do not believe that this reference will have a significant impact on consumers' ability to compare clothes washer energy use because the relevant energy use and operating cost information will be clearly marked on the label. Accordingly, we have retained the reference to "2004" in the explanatory language for the final rule.

The Commission recognizes that it may not be desirable to retain this "2004" reference on the clothes washer labels indefinitely. Although the explanatory language will aid consumers during the upcoming transition period, the language will eventually become unnecessary because all models will carry the same label. The Commission may consider eliminating the special advisory language from the rule in the future. Each year, the Commission analyzes energy use information submitted for all clothes washers sold in the United States to determine whether the ranges of comparability for the EnergyGuide labels should change. If the Commission determines to amend the ranges in a given year, new labels printed as a result will display different ranges and use updated information to calculate operating costs. Accordingly, if there is perceived need to discontinue the explanatory statements on the labels in the future, the issuance of new ranges could provide the Commission with the opportunity to consider eliminating the advisory language published here.

The Commission has decided to make minor revisions to the proposed wording of the explanatory language. Instead of stating in the banner on top of the label that, "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice," the Commission believes that it is preferable to state, "This model has been tested using the 2004 test procedure. Compare only with models displaying this statement." Similarly, the Commission has changed the explanatory text in the middle of the label to read: "Compare the energy use of this clothes washer only with models tested using the 2004 test procedure." These modifications replace the phrase "Tested to the" with "tested *using* the" (emphasis added). In addition, the phrase "with this Notice" in the top banner has been changed to "displaying this statement." The final language also eliminates stray capitalization that appeared in the proposed language. The Commission believes these minor changes will make it easier for consumers to understand the intended message.

Finally, some commenters stated that the conventional size label (7⅜ inches; 18.73 cm.) should be used for the exemption and final rule instead of an 8 inch (20.32 cm.) label as proposed. Upon further review, the existing label size (7⅜ inch; 18.73 cm.) will accommodate the additional banner. We see no significant benefit to requiring the proposed 8 inch (20.32 cm.) label instead of the conventional 7⅜ inch (18.73 cm.) label. The Commission, however, does not agree with Alliance that the modified language in the middle of the label should be removed. This language in the middle of the label reinforces the message provided by the explanatory information in the top banner. Using existing font and format requirements for the EnergyGuide label, the conventional (7⅜ inch; 18.73 cm.) label can accommodate the explanatory language at the top and in the middle of the label (as shown in Prototype Label 2).

C. Impact on Canadian and Mexican Labels

Comments

The Commission asked whether the implementation of AHAM's proposal would cause consumer confusion for those units with EnergyGuide labels adjoining energy labels required by Mexico or Canada. Manufacturers using such joint labels generally print them on hang tags with the U.S. label on one side and the Canadian label on the other. NRCan raised concerns about the impact of the proposal for consumers examining these adjoining labels. Beginning in 2004, NRCan will require an equivalent of the J1 test for labeling purposes. That agency, however, may not have time to harmonize fully with the FTC's exemption and rule if the changes are implemented as proposed before then. Therefore, NRCan is concerned that there may be confusion if both labels do not report the same information on both sides. NRCan indicated, however, that it has discussed options with the Canadian Appliance Manufacturers Association and is willing to work to identify non-regulatory approaches to this issue.[16] Without such a resolution, manufacturers would continue to use the Canadian equivalent of the old (J) test for new models sold in Canada until the end of this year.

The other commenters believed that the proposal would not cause confusion where adjoining labels are used. AHAM stated that the EnergyGuide label is discernable from that of Mexico or Canada because it is entirely in English, has a unique format, and clearly states that the results are based on U.S. government tests. In addition, AHAM suggested that the proposed J1 label would make it clear that the label should only be compared with other labels bearing the same message.[17] Alliance asserted that, "[t]he Commission's first priority is to provide accurate information to U.S. consumers, not withhold action or information because of potential impacts to consumers in neighboring countries." In its view, any confusion resulting from the change would be far less than the confusion that would result if the Commission does not issue the proposed exemption and amendment.[18]

Discussion

The Commission understands NRCan's concerns about the use of new (J1) test data on labels and the advisory language related to that test on adjoining U.S.-Canadian labels. We do not, however, believe that these concerns warrant a change to the proposed conditional exemption and rule amendments. Beginning January 1, 2004, all models distributed in the U.S. and Canada will display labels based on the same test. Before that time, it is

[6] The Commission received comments from Alliance Laundry Systems ("Alliance") (1), Whirlpool Corporation ("Whirlpool") (2), AHAM (3), and Natural Resources Canada ("NRCan") (4).

[7] AHAM (3) p. 1.

[8] Whirlpool (2) p. 3.

[9] Alliance (1) p. 1 (attachment).

[10] AHAM (3) p. 2; Whirlpool (2) p. 4.

[11] Whirlpool (2) p. 4

[12] AHAM (3) p. 2; Alliance (1) p. 2; and Whirlpool (2) p. 4.

[13] Whirlpool (2) p. 4.

[14] AHAM (3) p. 2; Alliance (1) p. 2.

[15] Alliance (1) p. 2.

[16] NRCan (4) pp. 1–2.

[17] AHAM (3) p. 2; *see also* Whirlpool (2) p. 4.

[18] Alliance (1) p. 2.

unclear whether manufacturers will distribute new models in Canada if, in doing so, they will have to conduct the same double testing they have sought to avoid through their petition to the Commission. In addition, NRCan, as suggested in its comment, may identify a "non-regulatory" solution that allows manufacturers to use the J1 test for labels on products sold in Canada and thus eliminate these concerns altogether.

Even assuming some new models are distributed this year bearing the joint label, the Commission does not expect that differences between the Canadian and U.S. labels will significantly impede consumers' ability to compare the energy use of competing products. Since 1996, the Commission's rule has allowed manufacturers to print the EnergyGuide label directly adjoining the Canadian EnerGuide. *See* 16 CFR 305.11(5)(i)(I). The U.S. EnergyGuide label contains operating cost information not found on the Canadian EnerGuide label. In addition, range of comparability information on the FTC EnergyGuide label may not be the same as that on the Canadian EnerGuide labels. We have no evidence that these differences have caused confusion. As Alliance suggests in its comments, the EnergyGuide's reference to U.S. government tests alerts consumers that the label is intended for U.S. consumers.[19] In the long term, the Commission believes it is important to harmonize the U.S. label with the Canadian label as much as possible. Given the relatively short duration of the exemption period and for the other reasons discussed above, however, the Commission is not requiring any specific conditions for the exemption with regard to adjoining labels.

D. Benefits and Costs of the Conditional Exemption and Amendments

Comments

The Commission asked for comments on the economic impact of the proposed rule and conditional exemption, including impacts on small business. AHAM stated that the proposals would impose no additional burdens on manufacturers and would assist manufacturers in meeting DOE efficiency standards by January 1, 2004.[20] Whirlpool added that it would suffer serious consequences if the FTC failed to implement these changes by early May.[21] Alliance indicated that the proposal would reduce a significant burden on manufacturers. It estimated that the proposal would save that company 35 working days of one laboratory technician dedicated to DOE energy testing.[22]

Discussion

The manufacturers have described the burdens they are seeking to avoid through the requested exemption. The Commission believes that issuance of the exemption and final rule will help to avoid those burdens while, at the same time, minimizing any consumer confusion associated with the transition from the old Appendix J test procedure to the new Appendix J1 procedure.

V. Final Conditional Exemption and Amendments

The Commission has considered the comments received and has decided to issue the conditional exemption and amendments as detailed in this section. The Commission believes that there are benefits to allowing manufacturers to begin changing over to the new labels and test results at this time. The exemption and rule change will allow manufacturers to avoid testing their new products multiple times pursuant to two test procedures for the purposes of FTC labeling.[23] In addition, consumers will obtain information based on the new test sooner. The Commission also believes that the changes to the label will minimize consumer confusion resulting from the exemption and transition to the new test by alerting consumers that the energy use information on some labels is derived from a new test procedure.

A. Final Conditional Exemption

The Commission grants AHAM's request for an exemption from the requirements in 16 CFR 305.5(a) and 305.11(a) only to the extent required to allow manufacturers to:

(1) Use the test procedure in 10 CFR part 430, subpart B, Appendix J1 for determining the energy use figure printed on EnergyGuide labels of clothes washers distributed between June 11, 2003, and December 31, 2003;[24] and

(2) For such models, use EnergyGuide labels that contain the following modifications to the format and content requirements in 16 CFR 305.11, as illustrated in Prototype Label 2 at the end of this document:

(a) The use of the statement "Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure" in lieu of the statement "Compare the Energy Use of this Clothes Washer with Others Before You Buy"; and

(b) The use of the statement "This model has been tested using the 2004 test procedure. Compare only with models displaying this statement." in a 10/16 inch (1.59 cm.) in height, process black bar across the top of the label.

The Commission grants the exemption with the following conditions: (1) That any manufacturers using this exemption must use it for all clothes washer models introduced between June 11, 2003, and December 31, 2003 (they may also use it for existing models that meet the new conservation standard), and (2) the modified EnergyGuide label must be used if the new (J1) test is used to derive energy use information on the EnergyGuide label for clothes washers. The manufacturers remain obliged to comply with all other Rule requirements. Manufacturers not specifically named in AHAM's request may use this exemption as long as they follow the conditions specified by the Commission.[25]

B. Final Amendments

After considering the comments, the Commission has determined to issue the final rule as described in this section. To avoid confusion that may result from switching back to the conventional label after the exemption period, the Commission believes that is preferable to amend the Rule to require the explanatory language on EnergyGuide labels for all models beginning January 1, 2004. These label changes are identical to those allowed by the conditional exemption. The final amendments published here will minimize consumer confusion that could result from a return to the conventional label at the end of the exemption period.

Consistent with the conditional exemption, the final rule does not require an 8 inch label as proposed but instead retains the 7⅜ inch (18.73 cm.) length currently required by the Rule. In addition, the final rule incorporates the minor wording and format changes to the explanatory statements described in the comment analysis and in the description of the conditional exemption. The final rule changes are printed at the end of this document. All manufacturers must follow these requirements beginning January 1, 2004.[26]

VI. Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has determined that the exemption and amendments to the rule will not have such effects on the national economy, on the cost of covered products, or on covered parties or consumers.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that agencies conduct analyses of the anticipated economic impact of proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

There are approximately 20 manufacturers of clothes washers sold in the United States. Most of these manufacturers are relatively large.[27] Because the clothes washer requirements of the Appliance Labeling rule cover a limited number of manufacturers, most of which are large, the Commission does not believe the proposed amendments or exemption will affect a substantial number of small businesses. In any event, the proposed amendments and exemptions are unlikely to have a significant economic impact upon such entities, if any. Specifically, the proposed rule and exemption involve minor text changes to labels already required by the rule. The content of these labels must be changed in response to new ranges of comparability published by the Commission from time to time. Moreover, for the reasons explained earlier, the final rule amendments and exemption are expected to lessen the compliance burdens that would be imposed on regulated entities if they were not permitted to label their products in accordance with the 2004 test procedures before those procedures officially take effect. In the Commission's view, the amendments and exemption should not have a significant or disproportionate impact on the costs of small manufacturers and retailers.

Based on available information, therefore, the Commission certifies that these amendments to the Appliance Labeling rule and the issuance of the requested exemption will not have a significant economic impact on a substantial number of small businesses.

VII. Paperwork Reduction Act

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[28] The Commission noted that the rule had been reviewed and approved by the Office of Management and Budget ("OMB") and has been assigned OMB Control No. 3084–0068 with respect to the rule's recordkeeping and reporting requirements until September 30, 2004, subject to further renewal. The exemption and amendments issued in this document do not change the substance, frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.[29]

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

VIII. Final Rule Amendments

■ For the reasons set out in the preamble, the Federal Trade Commission amends 16 CFR part 305 as follows:

PART 305—[AMENDED]

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Amend § 305.11 by revising paragraph (a)(5)(i)(A) and adding new paragraph (a)(5)(i)(L) to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(i) * * *

(A) Headlines and texts, as illustrated in the Prototype Labels in Appendix L to this Part, are standard for all labels except clothes washer labels, which must have the text and features described in 305.11(a)(5)(i)(L) of this part.

* * * * *

(L) Clothes washer labels must have the headlines and texts as illustrated in Prototype Label 2 of Appendix L of this Part. In particular, clothes washer labels must have the following headline as illustrated in Prototype Label 2: "Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure." In addition to the requirements for other labels, clothes washer labels must have a 10/16 inch (1.59 cm.) in height, process black bar across the top that contains the following text in process yellow as illustrated in Prototype Label 2: "This model has been tested using the 2004 test procedure. Compare only with models displaying this statement."

* * * * *

■ 3. Appendix L to part 305 is amended by revising Prototype Label 2 and Sample Label 3 to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750–01–C

---

[19] Alliance (1) p. 2.

[20] AHAM (3) p. 3.

[21] Whirlpool (2) p. 5.

[22] Alliance (1) p. 2.

[23] As stated in the proposal, it is the Commission's understanding that AHAM's members intend to test new models under the new (J1) test procedure and use limited testing under the old (J) procedure to develop data for the purposes of DOE and FTC reporting requirements during the remainder of 2003. 64 FR at 16232. The final conditional exemption and rule amendments announced in this document apply only to FTC labeling requirements and do not change existing DOE requirements or otherwise relieve manufacturers from complying with DOE requirements.

[24] The April 3, 2003, **Federal Register** document proposed that the exemption period begin May 1, 2003 (*see* 68 FR at 16233). This date is now infeasible given the timing of the April 3 document's publication.

[25] Given the limited duration of this conditional exemption, the Commission is not incorporating the exemption into the text of the rule (see 16 CFR 305.19).

[26] Prototype Label 2 in the final rule does not contain a specific reference to the 10/16 inch height for the black bar across the top of the label. Because the final graphic may not be to scale as it appears in the **Federal Register** or the Code, specific references to dimensions on the prototype label may be confusing. The text of the rule clearly states the 10/16 (1.59 cm.) inch requirement.

[27] Although no comments were received regarding the size of manufacturers subject to the Rule, the Commission believes that few would qualify as a small business under the relevant threshold (*i.e.*, 1000 employees). *See http://www.sba.gov/size/sizetable2002.html* (Small Business Standards Matched To North American Industry Classification System, Code 335224, Household Laundry Equipment Manufacturing).

[28] 44 U.S.C. 3501–20.

[29] The exemption and final rule amendments may modify the existing burden slightly by requiring additional information on the labels. However, because the labels are already required and their content changes from time to time when ranges of comparability are amended, we believe that the overall impact of this final rule and exemption is negligible and does not significantly alter the rule's overall burden.

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

This model has been tested using the 2004 test procedure.
Compare only with models displaying this statement.

13.5/14 Arial Narrow Bold Yellow

10/12 Arial Narrow → Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold → **Clothes Washer**
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83

12/14 Arial Narrow Bold

Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure.

16.5/19 Arial Narrow Bold

14/14 Arial Narrow →

This Model Uses
873kWh/year

10 Arial Narrow

1pt. Rule →

24pt. Rule →

Energy use (kWh/year) range of all similar models

16 Arial Narrow Bold

Uses Least Energy	Uses Most Energy
177	1298

14/14 Arial Narrow Bold

10/12 Arial Narrow Use bold where indicated → **kWh/year (kilowatt-hours per year)** is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

1pt. Rule →

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is:

14/14 Arial Narrow Bold

18Arial Narrow Bold → **$70**

when used with an electric water heater

$33

when used with a natural gas water heater

Box: 24 pt. Tall

10/12 Arial Narrow → Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

6/8 Arial Narrow → Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Prototype Label 2

This model has been tested using the 2004 test procedure.
Compare only with models displaying this statement.

Based on standard U.S. Government tests

ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83

Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure.

This Model Uses
873kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
177	1298

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is:

$70

when used with an electric water heater

$33

when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 3

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15369 Filed 6–17–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–023]

RIN 1625–AA00

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone near Laughlin, NV on the navigable waters of the Colorado River in support of the Laughlin 4th of July fireworks show. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:30 p.m. (PDT) on July 4, 2003 through 9:30 p.m. (PDT) on July 6, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–023] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days prior to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Laughlin, Nevada in support of the Laughlin 4th of July fireworks show. The fireworks will be launched from an area on land, however, the fallout area will be over a section of the Colorado River and a safety zone is necessary to provide for the safety of the spectators and users of this waterway.

Discussion of Rule

The Coast Guard proposes to establish this temporary rule to provide for the safety of the participants, spectators and other users of the waterways. The temporary safety zone is specifically defined as 600 yards around the point 35°09.270″ N, 114°34.222″ W. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to the temporary safety zone's short duration of one hour for two days, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 8:30 p.m. on July 4, 2003 through 9:30 p.m. on July 6, 2003 add a new § 165.T11–042 to read as follows:

§ 165.T11–042 Safety Zone; Colorado River, Laughlin, Nevada.

(a) *Location.* The temporary safety zone is specifically defined as 600 yards around the point 35°09.270′ N, 114°34.222′ W.

(b) *Enforcement period.* This section will be enforced from 8:30 p.m. to 9:30 p.m. (PDT) on July 4, 2003 and from 8:30 p.m. through 9:30 p.m. on July 6, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the designated representative. The designated representative may be contacted via VHF–FM channel 16.

Dated: June 6, 2003.

Robert E. McFarland,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Diego.

[FR Doc. 03–15302 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

RIN 0710–AA47

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers; Correction

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule; correction.

SUMMARY: The Corps promulgated a final rule to revise 33 CFR part 203. This file rule was published in the **Federal Register** on April 21, 2003, with inadvertent errors in section 203.62. The final rule completes the rulemaking process initiated on February 26, 2002, with publication of the proposed rule to revise 33 CFR part 203, which implements Pub. L. 84–99. The revisions are necessary to reflect current policy, add features required by the Water Resources Development Act of 1996 (WRDA–96), and streamline certain procedures concerning Corps authority addressing disaster preparedness, response, and recovery activities. WRDA 96 additions include the option to provide nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and the provision of a levee owner's manual. Other significant changes include expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

DATES: This rule became effective on May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey D. Jensen, Headquarters, U.S. Army Corps of Engineers, Civil Emergency Management Branch, CECW–HS–E, at (202) 761–4561.

SUPPLEMENTARY INFORMATION:

I. Background. Section 203.62 is corrected by redesignation of the second paragraph (d) "Guidance" as paragraph (e) and paragraph (e) "Guidance-transport of water" as paragraph (f) and

paragraph (f) "Request for assistance" as paragraph (g).

Dated: June 2, 2003.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

■ Accordingly, 33 CFR part 203 section 203.62 is correctly revised as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

§ 203.62 Drought assistance.

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells for farmers, ranchers, political subdivisions, and to transport water to political subdivisions, within areas determined to be drought-distressed.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.

(2) Identification of the specific needs of the State, and the required Corps assistance.

(3) Identification of the additional commitments to be accomplished by the State.

(4) Identification of the project sponsor(s).

(d) *Definitions applicable to this section.*

(1) *Construction.* This term includes initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Secretary of the Army determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching, which receives its majority income from such activity, is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost.* In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells, and

(B) The cost of investigation and report preparation to determine the suitability to construct a well, or,

(ii) The cost to a private business of constructing such a well.

(7) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(e) *Guidance—construction of wells.* (1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(f) *Guidance-transport of water.* (1) Assistance to an applicant in the transportation of water may be provided if:

(i) It is in response to a written request by a political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.

(4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

(g) *Request for assistance.* A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

[FR Doc. 03–15305 Filed 6–17–03; 8:45 am]

BILLING CODE 3710–92–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96–5 CARP DSTRA]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office is announcing the final regulations that will govern SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., when it functions as the designated agent for the purpose of receiving royalty payments and statements of accounts from nonexempt subscription digital transmission services which make digital transmissions of sound recordings under a statutory license.

DATES: *Effective Date:* July 18, 2003.

Applicability Date: The regulations apply to the license period which began on November 1, 1995.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform their copyrighted work publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain noninteractive digital audio services to transmit sound recordings under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the statutory license. Among the categories of services that may use the section 114 license are preexisting subscription services [1] of which there are only three: Digital Cable Radio Associates, now known as Music Choice; DMX Music, Inc. ("DMX"); and Muzak, L.P. ("Muzak").

In 1998, the Librarian of Congress adopted final rates and terms applicable to the preexisting services after a hearing before a copyright arbitration royalty panel ("CARP"). *See* 63 FR 25394 (May 8, 1998). In that proceeding, the parties proposed a term which gave the RIAA the responsibility for collecting and distributing the royalty fees to all copyright owners. *Id.* at 25397. The Librarian adopted this term, then crafted additional regulations that afforded copyright owners a means to verify the accuracy of the royalty payments made by the RIAA collective,[2] established the value of each performance, specified the nature of the costs that RIAA may deduct from the royalty fees prior to distribution, and set forth a procedure for handling royalty fees in the case where the collective is unable to identify or locate a copyright owner who is entitled to receive royalties collected under the statutory license.

RIAA appealed both the rate and the additional terms announced in the Librarian's determination and final order. *See, Recording Industry Ass'n* v. *Librarian of Congress,* 176 F.3d 528 (D.C. Cir. 1999). The United States Court of Appeals for the District of Columbia Circuit upheld the rate and found that the Librarian had the authority to impose additional terms on copyright owners or their agents. However, it remanded for further consideration certain terms imposed on RIAA under 37 CFR 260.2(d), 260.3(d), 260.6(b), and 260.7, because the CARP had not considered these issues, leaving the record devoid of any evidence upon which to fashion any terms concerning the collection and distribution of the royalty fees. *Id.* at 536.

In 2001, RIAA petitioned the Copyright Office to adopt new terms that would govern the RIAA collective. These terms were to be adopted pursuant to § 251.63(b) which allows the Librarian of Congress to adopt proposed terms that are the result of settlement negotiations, provided that no person with a substantial interest and an intent to participate in a CARP proceeding files an objection.

Accordingly, the Copyright Office published the proposed terms in the **Federal Register** and requested public comment. 66 FR 38226 (July 23, 2001). In response to this notice, the American Federation of Musicians ("AFM") and the American Federation of Television and Radio Artists ("AFTRA") filed a Notice of Intent to Participate and objections to certain of the proposed terms. Shortly thereafter, RIAA began discussions with AFTRA and AFM regarding their objections, and the matter was held in abeyance, pending the outcome of those discussions.

In the meantime, Congress passed the Small Webcaster Settlement Act of 2002 ("SWSA"), Public Law 107–321, 116 Stat. 2780, which, among other things, amended 17 U.S.C. 114(g) in two important ways that bear directly on two key issues raised in this proceeding. First, the SWSA provides for direct payment to featured recording artists and to the administrators of the escrow accounts provided for in 17 U.S.C. 114(g)(2)(B)&(C). Second, the act allows a designated agent, prior to the distribution of the royalty receipts, to deduct reasonable costs incurred by that agent in the administration of those receipts, including, but not limited to, costs associated with the collection and distribution of the royalty fees and the costs incurred in participating in negotiations or arbitration proceedings under sections 112 and 114.

Because of these changes in the law, RIAA revised its proposed amendments to 37 CFR part 260 to conform the terms in question to the new law and, in doing so, it addressed the concerns of AFM and AFTRA. However, the proposed rules could not be adopted until all interested parties had an opportunity to comment. Therefore, pursuant to § 251.63(b) of the CARP rules, the Library published in the **Federal Register** the proposed terms and sought comment from any party with a substantial interest in this proceeding. 68 FR 19482 (April 21, 2003).

[1] A "preexisting subscription service" is defined as:

a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a number of limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

17 U.S.C. 114(j)(11).

[2] In November 2000, RIAA formed "SoundExchange," an unincorporated division of RIAA, to administer statutory licenses, including its responsibilities under the Librarian's May 8 Order. See, Revised RIAA petition to Establish Terms Governing SoundExchange at 1 n.1 (March 12, 2003).

Having received no objections to the recently proposed terms, the Librarian is adopting the proposed amendments as final regulations. The proposed terms shall govern SoundExchange, the collecting rights entity that was formed from the designated RIAA collective, in its capacity as the sole agent designated to receive royalty payments from the three subscription services that were parties to this proceeding. Terms governing the administrative functions of any future collective or the designation of alternative agents shall be decided in future rate adjustment proceedings either through negotiations or after a hearing before a CARP based upon a fully developed written record. *See, e.g.*, 67 FR 45239 (July 8, 2002).

List of Subjects in 37 CFR Part 260

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulation

■ For the foregoing reasons, the Library amends part 260 of 37 CFR as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.2 [Amended]

■ 2. In § 260.2, remove paragraph (d).

■ 3. Section 260.3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these payments to those parties entitled to receive such payments according to the provisions set forth at 17 U.S.C. 114(g)(2); Provided that the designated agent shall only be responsible for making distributions to those parties who provide the designated agent with such information as is necessary to identify and pay the correct recipient for such payments. The agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances by Licensees; Provided, however, that parties who have designated the agent may agree to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the designated agent upon payment protocols to be used by the designated agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(d) The designated agent may deduct from the payments made by Licensees under § 260.2, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments according to 17 U.S.C. 114(g)(2) may agree to permit the designated agent to deduct any additional costs.

(e) Commencing June 1, 1998, and until such time as a new designation is made, SoundExchange, which currently is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent that receives royalty payments and statements of account under this part 260 and shall continue to be designated as such if it should be separately incorporated.

■ 4. Section 260.6 is revised to read as follows:

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the method of verification of the payment of royalty fees by the designated agent to interested parties; Provided, however, that the designated agent and any interested person may agree as to an alternative method of verification.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the designated agent during any given calendar year and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the designated agent. Such notice of intent shall also be served at the same time on the designated agent to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the **Federal Register** a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the designated agent shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those individuals or entities who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

§ 260.7 [Amended]

■ 5. Section 260.7 is amended by removing the word "collecting" after the phrase "If the designated'; by removing the word "collecting" each place it appears and adding the word "designated " in its place; and in the last sentence, by removing the word "fees" and adding the word "payments" in its place.

Dated: May 27, 2003.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 03–15384 Filed 6–17–03; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 180–1180a; FRL–7513–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to the rescission of two rules which control the emissions of Perchloroethylene Dry Cleaning Installations in the Kansas City and St. Louis areas. This revision will rescind two rules that have been superseded by the statewide Maximum Achievable Control Technology rule. There is no relaxation of controls by rescinding these rules. Approval of this revision will eliminate redundancy and conflicting requirements.

DATES: This direct final rule will be effective August 18, 2003, unless EPA receives adverse comments by July 18, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at *algoe-eakin.amy@epa.gov*.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Missouri rule 10 CSR 10–2.280 and Missouri rule 10 CSR 10–5.320 relate to the control of emissions from Perchloroethylene Dry Cleaning Installations for the Kansas City and St. Louis areas, respectively. These rules had been approved by EPA as representing Reasonably Available Control Technology (RACT) in the Kansas City and St. Louis areas.

This revision to Missouri's SIP will rescind rules 10 CSR 10–2.280 and 10 CSR 10–5.320, which have been superseded by the state-adopted Maximum Achievable Control Technology (MACT) rule 10 CSR 10–6.075. The latter rule incorporates by reference the EPA rule, 40 CFR part 63, subpart M. As such, prior to this action, there were three Federally enforceable regulations for the Perchloroethylene Dry Cleaning Installations.

An EPA review concluded that the rescission of these two Missouri rules does not result in any increase in emissions. There is no relaxation of controls by rescinding rules 10 CSR 10–2.280 and 10 CSR 10–5.320. Sources subject to the rule must still meet a control technology at least as stringent as RACT. Therefore, there are no adverse impacts on the ability of the Kansas City and St. Louis areas to maintain the 1-hour ozone standard. The controls on subject dry cleaning installations will remain enforceable by the state under 10 CSR 10–6.075, and by EPA, under 40 CFR part 63, subpart M. Approval of this revision will eliminate redundancy and conflicting requirements.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving the revision to rescind Missouri rule 10 CSRS 10–2.280, Control of Emissions from Perchloroethylene Dry Cleaning Installations and Missouri rule 10 CSR 10–5.320, Control of Emissions from Perchloroethylene Dry Cleaning Installations from the Missouri SIP.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: June 8, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. Section 52.1320 is amended by:
■ a. Revising paragraph (b)(3); and
■ b. In the table to paragraph (c) by removing the entries under Chapter 2 for 10–2.280 and under Chapter 5 for 10–5.320.

The revision reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(b) * * *

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW. (Mail Code 6102T), Washington, DC 20460.

* * * * *

[FR Doc. 03–15251 Filed 6–17–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0155; FRL–7308–8]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of glyphosate in or on corn, field, forage at 6.0 parts per million (ppm) and reduces the tolerance on grain, aspirated fractions from 200 ppm to 100 ppm. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 18, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0155, must be received on or before August 18, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAIC 111)
- Animal production (NAIC 112)
- Food manufacturing (NAIC 311)
- Pesticide manufacturing (NAIC 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0155. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of April 17, 2002 (67 FR 18894) (FRL–6830–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a number of pesticide petitions by Monsanto, 600 13th St., NW., Suite 660, Washington, DC 20005. The notice included a summary of the petition prepared by Monsanto, the registrant. Comments received in the public docket with respect to the Notice of Filing were addressed in the final rule publication in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2), and will not be presented again here in this final rule.

The petitions requested that 40 CFR 180.364 be amended by establishing a tolerance for residues of the herbicide glyphosate in or on corn, field, forage at 6 ppm; by reducing the tolerance on aspirated grain fractions from 200 ppm to 100 ppm. In addition, the Agency is taking this opportunity to change the commodity definition from aspirated grain fractions to grain, aspirated fractions; deleting the existing tolerance for soybean, aspirated grain fractions at 50.0 ppm since these soybean fractions are included in the "grain, aspirated fractions" tolerance described above; and by deleting the existing tolerance for animal, feeds, nongrass group, except alfalfa at 200 ppm, which is now included in the established tolerance for animal feed, nongrass, group at 400 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of glyphosate on grain, aspirated fractions at 100 ppm and corn, field, forage at 6.0 ppm. EPA's assessment of exposures and risks associated with establishing glyphosate tolerances for a number of feed commodities was performed previously and was presented in detail in the final rule on Glyphosate Pesticide Tolerances (67 FR 60934, September 27, 2002) (FRL–7200–2). Given that higher tolerances for glyphosate are currently established for other significant animal feed commodities, the dietary burden for cattle, poultry, and hogs will be unaffected by a glyphosate tolerance for aspirated grain fractions at 100 ppm and corn, field, forage at 6.0 ppm. EPA estimates a worst-case dietary burden for livestock animals by assuming an animal consumes dietary feeds bearing the highest permitted residues. In the case of glyphosate, the dietary feed bearing the highest permitted residue is alfalfa hay as the roughage component of the diet with a tolerance of 400 ppm whereas only 6 ppm of glyphosate is permitted in corn forage and 100 ppm in grain, aspirated fractions.

Accordingly EPA's previous assessment of exposures and risks will not change. Based on these prior risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant and livestock commodities. These methods include gas liquid chromatography (GLC) (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and high performance liquid chromatography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A gas chromatography mass spectrometry (GC/MS) method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL). Thus, adequate analytical methods are available for residue data collection and enforcement of the tolerances of glyphosate in/on aspirated grain, aspirated fractions and corn, field, forage. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

Codex and Mexican maximum residue limits (MRLs) are established for residues of glyphosate (glifosato) *per se* and Canadian MRLs are established for combined residues of glyphosate and AMPA in a variety of raw agricultural, processed, and animal commodities. Currently a relevant Codex MRL for maize forage is established at 1.0 ppm. No Canadian MRL is established for aspirated grain fractions or corn forage. The U.S. tolerance corn, field, forage at 6.0 ppm, cannot be harmonized with the Codex MRL for maize, forage at 1 ppm because the U.S. tolerance is based on higher application rates than those used in the residue studies previously considered by Codex.

V. Conclusion

Therefore, the tolerance is established for residues of glyphosate, in or on grain, aspirated fractions at 100 ppm and corn, field, forage at 6.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0155 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 18, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0155, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.364 is amended by removing the entire entries for "Animal feed, nongrass, group, except alfalfa," "Aspirated grain fractions," and "Soybean, aspirated grain fractions" and by alphabetically adding the following commodities to the table in paragraph (a) to read as follows.

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
Corn, field, forage	6.0
Grain, aspirated fractions	100.0

* * * * *

[FR Doc. 03–15128 Filed 6–17–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0113; FRL–7301–1]

Bacillus Pumilus Strain QST2808; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus pumilus* strain QST2808 in or on all agricultural commodities when applied/used in accordance with label directions. AgraQuest, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus pumilus* strain QST2808. The temporary tolerance exemption will expire on June 30, 2006.

DATES: This regulation is effective June 18, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0113, must be received by EPA on or before August 18, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail or through hand delivery/courier. Follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077 ; e-mail address: *cerrelli.susanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production/Agriculture (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0113. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of May 3, 2001 (66 FR 22225) (FRL–6773–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 1G6240), submitted by AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616. This notice included a summary of the petition prepared by the petitioner AgraQuest, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Bacillus pumilus* strain QST2808. Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Bacillus pumilus is a ubiquitous and naturally occurring bacteria found in soil. The results of the acute toxicology and pathogenicity studies required of the petitioner under section 408(d)(2)(A) of the FFDCA in support of its petition for a temporary exemption from the requirement of a tolerance for *Bacillus pumilus* strain QST2808 indicate negligible to no mammalian toxicity. In addition, no pathogenicity was observed in any of the tests conducted with the *Bacillus pumilus* strain QST2808 Technical product.

The toxicology and pathogenicity data generated by AgraQuest, Inc in support of this temporary exemption from the requirement of a tolerance are summarized below.

1. *Acute oral toxicity and pathogenicity rats (OPPTS Harmonized Guideline 885.3050; Master Record Identification Number (MRID) 451366–04).* Fifteen male and fifteen female rats each were administered 4.1 x 10^9 cfu of *Bacillus pumilus* strain QST2808 Technical and observed for 14 days. Based on the data, *Bacillus pumilus* strain QST2808 does not appear to be toxic, infective, and/or pathogenic in rats, when dosed at 4.1 x 10^9 cfu/animal. Classification: Acceptable; Toxicity Category IV. (C. Etsitty's Memorandum to John L. Kough, dated 1/7/02 (hereinafter referred to as "BPPD Review - 1/7/02")).

2. *Acute dermal toxicity (OPPTS Harmonized Guideline 885.3100; MRID 451366–05).* Five male and five female rabbits were dermally treated with 2g/kg body weight *Bacillus pumilus* strain QST2808 Technical for 24 hours and observed for the following 14 days. The acute lethal dose (LD_{50}) is greater than 2,000 mg/kg. Classification: Acceptable; Toxicity Category III. (BPPD Review - 1/7/02).

3. *Primary eye irritation (OPPTS Harmonized Guideline 870.2400; MRID 452679–01).* Three male rabbits each were administered 0.1 mL of QST2808 Technical in the everted lower lid of one eye and then observed for 72 hours. Based on the data, QST2808 Technical showed minimal effects to the eye. Classification: Acceptable; Toxicity Category IV. (BPPD Review - 1/7/02).

4. *Acute injection toxicity/pathogenicity (OPPTS Harmonized Guideline 885.3200; MRID 451366–07).* Eighteen male and eighteen female rats each were dosed at 1.6 x 10^8 cfu *Bacillus pumilus* strain QST2808 Technical intravenously and monitored over a period of 28 days. A gross necropsy was performed on all rats. Based on the data, the test organism was not toxic, infective, or pathogenic to rats. Classification: Acceptable. (BPPD Review - 1/7/02).

5. *Acute pulmonary toxicity/pathogenicity (OPPTS Harmonized Guideline 885.3150; MRID 451366–06).* Eighteen male and eighteen female rats each were administered 1.6 x 10^8 cfu *Bacillus pumilus* strain QST2808 Technical by a single intratracheal dosage and monitored over a period of 35 days for clinical signs of toxicity. Necropsy studies showed no significant signs of abnormalities due to the test organism. Based on the data, *Bacillus pumilus* strain QST2808 was not toxic, infective, and/or pathogenic to rats when dosed at 1.6 x 10^8 cfu/animal. Classification: Acceptable. (BPPD Review - 1/7/02).

6. *Acute Inhalation toxicity (OPPTS Harmonized Guideline 870.1300).* Results of the acute pulmonary toxicity/pathogenicity (MRID 451366–06) performed with *Bacillus pumilus* strain QST2808 Technical indicate that it is not toxic, infective, and/or pathogenic to rats when dosed at 1.6 x 10^8 cfu/animal. For the purposes of this specific action, the Agency has determined that the acute pulmonary toxicity/pathogenicity data are adequate to support and/or fulfill this particular data requirement.

7. *Primary dermal irritation (OPPTS Harmonized Guideline 870.2500; MRID 452679–02).* Each of three male adult rabbits were treated dermally with 0.5 mL QST2808 Technical for 4 hours and observed for the following 72 hours. Based on the data, no abnormal clinical signs were noted. Approximately 60 minutes after patch removal, very slight erythema was noted on one of the three rabbits with resolution by 24 hours. When dosed with QST2808 Technical at 0.5 mL/animal, QST2808 Technical was essentially non-irritating. Classification: Acceptable; Toxicity Category IV. (BPPD Review - 1/7/02).

8. *Hypersensitivity incidents (OPPTS Harmonized Guideline 885.3400).* The registrant reported (November 1, 2000) no incidents to date.

9. *Immune response.* There is no information to suggest that *Bacillus pumilus* strain QST2808 has an effect on the immune system. The submitted toxicity/pathogenicity studies in rodents indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient (MRID 451366–04; 451366–06, and 451366–07).

Based on the data generated in accordance with the Tier I data requirements set forth in 40 CFR § 158.740(c), the Tier II and Tier III data requirements were not triggered and, therefore, not required in connection with this action. In addition, because the Tier II and Tier III data requirements were not required, the residue data requirements set forth in 40 CFR § 158.740(b) also were not required.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or

buildings (residential and other indoor uses).

A. Dietary Exposure

Humans and animals are commonly exposed to *Bacillus pumilus*, a ubiquitous microorganism that inhabits soil. No toxicological endpoints were identified for *Bacillus pumilus* strain QST2808. The low toxicity and non-pathogenicity/infectivity of *Bacillus pumilus* strain QST2808 is demonstrated by the data summarized in Unit III of this action.

1. *Food.* While the proposed use pattern may result in dietary exposure with possible residues in or on agricultural commodities, negligible to no risk is expected for the general population, including infants and children, or animals because *Bacillus pumilus* strain QST2808 technical demonstrated no pathogenicity or oral toxicity at the maximum doses tested, as noted above in (Unit III).

2. *Drinking water exposure.* Most importantly, there is no evidence of adverse effects from oral, dermal, or inhalation exposure to this microbial agent. (See "Unit III. Toxicological Profile" above.) In addition, the potential for transfer of *Bacillus pumilus* strain QST2808 to surface or ground water during run-off associated with intended use applications is considered minimal to non-existent, due in part to its percolation through and resulting capture in soil. Accordingly, the use of this microbial pest control agent on terrestrial plants is not anticipated to negatively impact the quality of drinking water.

B. Other Non-Occupational Exposure

Based on the proposed use patterns, the potential of non-dietary exposures to *Bacillus pumilus* strain QST2808 pesticide residues for the general population, including infants and children, is unlikely. Accordingly, the Agency believes that the potential aggregate non-occupational exposure, derived from dermal and inhalation exposure through the application of *Bacillus pumilus* strain QST2808, should fall well below the currently tested microbial safety levels.

1. *Dermal exposure.* The potential for dermal exposure to *Bacillus pumilus* strain QST2808 pesticide residues for the general population, including infants and children, is unlikely because potential use sites are agricultural and horticultural. However, since *Bacillus pumilus* strain QST2808 is a naturally occurring bacteria in soil, there is a great likelihood of prior exposure for most, if not all individuals. Accordingly, the increase in exposure due to this proposed product would be negligible. Furthermore, and as demonstrated in Unit III of this action, the organism is of low dermal toxicity, the acute lethal dose (LD_{50}) is greater than 2,000 mg/kg, and the QST2808 Technical was essentially non-irritating (Toxicity Category IV). Accordingly, the risks anticipated for this route of exposure are considered minimal.

2. *Inhalation exposure.* The potential for inhalation exposure to *Bacillus pumilus* strain QST2808 pesticide residues for the general population, including infants and children is unlikely because potential use sites are agricultural and horticultural. However, since *Bacillus pumilus* is a natural occurring bacteria in soil, there is a great likelihood of prior exposure for most, if not all individuals. Accordingly, the increase in exposure due to this proposed product would be negligible. Furthermore, and as demonstrated in Unit III of this action, the acute pulmonary toxicity/pathogenicity testing performed on the technical formulation did not demonstrate pathogenicity or toxicity of *Bacillus pumilus* strain QST2808. (See Unit III above.) Accordingly, the risks anticipated for this route of exposure are considered minimal.

V. Cumulative Effects

The Agency has considered the potential for cumulative effects of *Bacillus pumilus* strain QST2808 and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. *Bacillus pumilus* strain QST2808 is practically non-toxic to mammals. Because no mechanism of pathogenicity or toxicity in mammals has been identified for this organism (see Unit III above), no cumulative effects from the residues of this product with other related microbial pesticides is anticipated.

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of *Bacillus pumilus* strain QST2808 due to its use as a microbial pest control agent. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, *Bacillus pumilus* strain QST2808 is not pathogenic or infective and is practically non-toxic to mammals. (See Unit III above.) Accordingly, exempting *Bacillus pumilus* strain QST 2808 from the requirement of a tolerance should be considered safe and pose no significant risk.

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are incorporated into EPA risk assessments either directly through the use of a margin of exposure analysis or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. Due to the ubiquitous nature of *Bacillus pumilus*, residues of this microbial pesticide in or on agricultural commodities are not expected to significantly increase exposure to the U.S. population, including infants and children. Here, EPA concludes that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of *Bacillus pumilus* strain QST2808 and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *Bacillus pumilus* strain QST2808 residues.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the screening program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, *Bacillus pumilus* strain QST2808 may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

To date, the Agency has no information to suggest that *Bacillus pumilus* strain QST2808 has an effect on the endocrine systems. Moreover, as is expected from a non-pathogenic microorganism that is practically non-toxic to mammals, the submitted toxicity/pathogenicity studies in rodents indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. (BPPD Review - 1/7/02).

B. Analytical Method

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including *Bacillus pumilus* strain QST2808's lack of mammalian toxicity. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purpose for *Bacillus pumilus* strain QST2808.

C. Codex Maximum Residue Level

There is no Codex Alimentarius Commission Maximum Residue Level for *Bacillus pumilus* strain QST2808.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0113 in the subject line on the first page of your submission. All objections and requests for hearings must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 18, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0113, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes a temporary exemption from the tolerance requirement for *Bacillus pumilus* strain QST2808 under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 3, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.1226 is added to subpart D to read as follows:

§ 180.1226 Bacillus pumilus strain QST2808; temporary exemption from the requirement of a tolerance.

A temporary exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Bacillus pumilus* strain QST2808 when used in or on all agricultural commodities when applied/used in accordance with label directions.

[FR Doc. 03–15129 Filed 6–17 –03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0196; FRL–7311–2]

Azoxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of azoxystrobin, methyl (E)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-∝-(methoxymethylene)-benzeneacetate, and its Z isomer, methyl (Z)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-∝(methoxymethylene)-benzeneacetate, in or on artichoke, globe; asparagus; brassica, head and stem, subgroup 5A; herb subgroup 19A, (dried) except chive; and herb subgroup 19A, (fresh) except chive. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 18, 2003. Objections and requests for hearings, identified by docket identification (ID) number OPP–2003–0196, must be received on or before August 18, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, and pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop Production (NAICS 111)
- Animal Production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0196. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 26, 2003 (68 FR 14622) (FRL–7299–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2E6375, 2E6488, 2E6489, and 2E6495) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Syngenta, the registrant.

The petitions requested that 40 CFR 180.507 be amended by establishing tolerances for combined residues of the fungicide azoxystrobin, methyl (*E*)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-∝-(methoxymethylene) benzeneacetate and its Z isomer methyl (Z)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-∝-(methoxymethylene) benzeneacetate, in or on artichoke, globe at 4.0 parts per million (ppm); asparagus at 0.02 ppm; brassica, head and stem, subgroup 5A at 3.0 ppm; herb subgroup 19A, dried, except chive at 260 ppm; and herb subgroup 19A, fresh, except chive at 50 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for combined residues of azoxystrobin on artichoke, globe at 4.0 ppm; asparagus at 0.04 ppm; brassica, head and stem, subgroup 5A at 3.0 ppm; herb subgroup 19A, dried, except chive at 260 ppm; and herb subgroup 19A, fresh, except chive at 50 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including

infants and children. The nature of the toxic effects caused by azoxystrobin are discussed in Unit III.A of the Final Rule on Azoxystrobin Pesticide Tolerance published in the **Federal Register** on September 20, 2002 (67 FR 59169)(FRL–7198–9).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is discussed in Unit III.B. of the Final Rule on Azoxystrobin Pesticide Tolerance published in the **Federal Register** on September 20, 2002 (67 FR 59169)(FRL–7198–9).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.507) for the combined residues of azoxystrobin, in or on a variety of raw agricultural commodities. Tolerances have been established for residues of azoxystrobin in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm (pecans) to 55 ppm (soybean hay), and on meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at levels ranging from 0.01 to 0.07 ppm, and on milk at 0.006 ppm. A time-limited tolerance (to expire on 12/31/2003) is currently established at 30 ppm for the head and stem Brassica vegetables, subgroup 5A. Risk assessments were conducted by EPA to assess dietary exposures from azoxystrobin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. In conducting this acute risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumption was made for the acute exposure assessment: A Tier 1 acute dietary exposure analysis was performed for azoxystrobin.

ii. *Chronic exposure.* In conducting this chronic risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure analysis was performed for the general U.S. Population and all population subgroups using tolerance level residues (livestock) and total residues of concern (plants; parent and metabolites) and 100% crop treated data for the proposed commodities and all registered uses.

iii. *Cancer.* EPA's Cancer Assessment Review Committee (CARC) evaluated the carcinogenic potential of azoxystrobin and classified azoxystrobin as "not likely to be a human carcinogen" based on the revised Cancer Guidelines.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for azoxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of azoxystrobin.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to azoxystrobin they are further discussed in the aggregate risk section in Unit III.E.

Although moderately persistent in soils and stable to hydrolysis, the likelihood of azoxystrobin moving into ground and surface water is low due to high soil/water partitioning coefficients and low single application rates. However, with multiple applications and repeated usage, azoxystrobin and especially its degradate ("compound 2", (*E*)-2-2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]-3-methoxyacrylic acid) may eventually build up in environmental compartments and move into drinking water resources.

Based on the Tier I modeling results using the FQPA Index Reservoir Screening Tool (FIRST) model, azoxystrobin EECs in surface water are not likely to exceed 170 parts per billion (ppb) for the acute (peak) concentration or 33 ppb for the chronic (365–day) concentration. These values represent upper-bound estimates of the concentrations that might be found in surface water which result from the use of azoxystrobin on turf.

The SCI-GROW screening model developed in the Agency estimates potential ground water concentrations under hydrologically vulnerable conditions. Based on the highest use rate (turf use, nine applications per year, 10–day interval, and 0.55 lb ai/A/application), the upper-bound concentration of azoxystrobin was estimated at 3.1 ppb. This value was used for both acute and chronic risk assessments. This value represents upper-bound estimates of the concentrations that might be found in ground water which result from the use of azoxystrobin on turf.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Azoxystrobin is currently registered for use on residential non-dietary sites (turf and ornamentals). The risk assessment was conducted using the following residential exposure assumptions: There is a potential for short-term dermal and inhalation exposures to homeowners who apply products containing azoxystrobin; however, EPA did not identify dermal endpoints for azoxystrobin. Because no dermal endpoints could be indentified, EPA expects no risk from dermal exposure to azoxystrobin. There is also potential for non-dietary, oral exposure following lawn treatment. Short- and intermediate-term non-dietary, oral exposure assessments were included for toddlers, since EPA selected toxicology endpoints for these exposures and there is a potential for hand-to-mouth and object-to mouth transfer of residues from treated turfgrass and incidential ingestion of soil from treated turfgrass.

Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. The exposure via incidental ingestion of other plant material may occur but is considered negligible. The residential exposure and risk assessment was conducted using the application for turf because it is the highest single use rate. Azoxystrobin may be applied to turf at rates of up to 0.9516 active ingredient (a.i.) per acre five times per year (i.e., not to exceed 5 lb/ai/acre/year).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to azoxystrobin and any other substances and azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Azoxystrobin studies have indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to azoxystrobin.

3. *Conclusion.* There is a complete toxicity data base for azoxystrobin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10–fold safety factor for increased susceptibility of infants and children be removed (i.e., reduced to 1X). The FQPA factor is removed because:

- The toxicology data base is complete
- The developmental and reproductive toxicity data did not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure
- Unrefined chronic dietary exposure estimates (assuming all commodities contain tolerance level residues) will overestimate dietary exposure
- Modeling data are used for ground and surface source drinking water exposure assessments resulting in estimates considered to be upper-bound concentrations

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a

point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to azoxystrobin will occupy 10% of the aPAD for the U.S. population, 17% of the aPAD for children 1–2 years old, 9% of the aPAD for females 13 years and older, and 10% of the aPAD for adults 50+ years old. In addition, there is potential for acute dietary exposure to azoxystrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AZOXYSTROBIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.67	10	170	3.1	21,000
Children 1–2 years old	0.67	17	170	3.1	5,600
Females 13–49 years	0.67	9	170	3.1	18,000
Adults (50+ years)	0.67	10	170	3.1	21,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to azoxystrobin from food will utilize 12% of the cPAD for the U.S. population, 22% of the cPAD for children 1–2 years old, 11% of the cPAD for females 13–49 years old, and 11% for adults 50+ years old. Based on the use pattern, chronic residential exposure to residues of azoxystrobin is not expected. In addition, there is potential for chronic dietary exposure to azoxystrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO AZOXYSTROBIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.18	12	33	3.1	5,500
Children 1–2 years	0.18	22	33	3.1	1,400
Females 13–49 years	0.18	11	33	3.1	4,800
Adults 50+ years	0.18	11	33	3.1	5,600

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Azoxystrobin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,200 for adults, and 430 for children 1–2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of azoxystrobin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO AZOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	1,200	100	33	3.1	8,000
Children 1–2 years old	430	100	33	3.1	1,900

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Azoxystrobin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 420 for children 1–2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of azoxystrobin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO AZOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Children 1–2 years old	420	100	33	3.1	1,600

5. *Aggregate cancer risk for U.S. population.* There is no evidence for mutagenicity or carcinogenicity. Azoxystrobin has been classified as "not likely to be carcinogenic in humans" by EPA; therefore, azoxystrobin is not expected to pose a carcinogenic risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to azoxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methodology is available for enforcement of these tolerances. The gas chromatography/nitrogen phosphorous detector (GC/NPD) method (RAM 243/04) has undergone a method validation by the EPA analytical laboratory. EPA comments have been incorporated and the revised method (designated RAM 243) will be submitted to FDA for inclusion in PAM, Volume II as an enforcement method.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

No Codex, Canadian, or Mexican Maximum Residue Levels (MRLs) have been established for residues of azoxystrobin. Therefore, no tolerance discrepancies exist between countries for this chemical.

V. Conclusion

Therefore, the tolerances are established for combined residues of azoxystrobin, methyl (*E*)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-α-(methoxymethylene)-benzeneacetate, and its Z isomer, methyl (Z)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-α-(methoxymethylene)-benzeneacetate, in or on artichoke, globe at 4.0 ppm; asparagus at 0.04 ppm; brassica, head and stem, subgroup 5A at 3.0 ppm; herb subgroup 19A, dried, except chive at 260 ppm; and herb subgroup 19A, fresh, except chive at 50 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0196 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 18, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions

on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0196, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 6, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.507 is amended by adding alphabetically commodities to the table in paragraph (a)(1) to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	*
Artichoke, globe	4.0
Asparagus	0.04
* * *	*
Brassica, head and stem, subgroup 5A	3.0
* * *	*
Herb subgroup 19A, dried, except chive	260
Herb subgroup 19A, fresh, except chive	50
* * *	*

* * * * * *

[FR Doc. 03–15261 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL–7514–7]

RIN 2050–AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: To help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is promulgating a change to its definition of "municipal solid waste landfill unit" in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. In addition, EPA is promulgating two new definitions for "construction and demolition (C&D) landfill" and "residential lead-based paint waste." This final rule will expressly allow residential lead-based paint waste that is exempted from the hazardous waste management requirements as household waste to be disposed of in construction and demolition landfills by stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action would not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

DATES: This final rule will become effective on June 18, 2003. The Agency finds good cause to make this rule effective immediately because today's final rule provides an additional disposal option for residential lead-based paint waste.

ADDRESSES: Copies of the documents relevant to this action (Docket No. RCRA–2001–0017) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the RCRA Information Center (RIC), located at EPA West, Room B–102, 1301 Constitution Ave., NW. Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of this rule, contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (703) 308–7281, *cassidy.paul@epa.gov*. The index and some supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially covered by this regulation are public or private individuals or groups that generate residential lead-based paint (LBP) waste as a result of abatement, rehabilitation, renovation and remodeling in homes, residences, and other households. By "households," we mean single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Affected categories and entities include:

Category	Examples of affected entities
Individuals and firms who generate residential LBP wastes.	Contractors and do-it-yourselfers who generate and dispose of residential LBP waste as a result of abatement, rehabilitation, renovation and remodeling in homes, residences, and other households.
Construction and demolition waste disposal firms.	Owners or operators of construction and demolition landfills that accept residential LBP waste for disposal.

The table above is not intended to be exhaustive but, rather, is intended to provide examples of entities likely to be regulated by this action. To determine whether your facility would be impacted by this action, you should carefully examine the applicability criteria in this rule. If you have questions regarding the applicability of this action to a particular facility, please contact Paul Cassidy, U.S. EPA, Office of Solid Waste (5306W), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone 703–308–7281; e-mail: *cassidy.paul@epa.gov*.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2001–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (RIC), located at EPA West, Room B–102, 1301 Constitution Ave. NW., Washington DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. In the Washington, DC, metropolitan area, call 202–566–0270 or TDD 703–412–3323 (hearing impaired). To review the docket materials in person, we recommend that the public make an appointment by calling 202–566–0270. The public can copy a maximum of 100 pages from the docket at no charge. Additional copies cost $0.15/page. If you access the information electronically, you can download or print copies free of charge.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http.www.epa.gov/fedrgstr*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above in Unit I.B.

C. Acronyms

Acronym	Definition
CDC	Centers of Disease Control and Prevention.
C&D	Construction and Demolition.
CFR	Code of Federal Regulations.
EA	Economic Analysis.
EPA	Environmental Protection Agency.
FR	Federal Register.
HUD	U.S. Department of Housing and Urban Development.
IQ	Intelligence Quotient.
LBP	Lead-Based Paint.
MSWLF	Municipal Solid Waste Landfill.
OMB	Office of Management and Budget.
OPPTS	Office of Prevention, Pesticides, and Toxic Substances.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation and Recovery Act.
RIC	RCRA Docket Information Center.
TC	Toxicity Characteristic.
TCLP	Toxicity Characteristic Leaching Procedure.
TSCA	Toxic Substances Control Act.
USEPA	United States Environmental Protection Agency.

Outline

I. Legal Authority
II. Summary of Proposed Lead-Based Paint Rule
A. Proposed Change to the Definition of "Municipal Solid Waste Landfill (MSWLF) Unit"
B. Proposed Definition of "Construction and Demolition (C&D) Landfill"
C. Proposed Definition of "Residential Lead-Based Paint Waste"
D. Rationale for Proposed Rule
III. Summary of Public Comments and the Agency's Responses to those Comments
IV. Other Applicable Federal, State, Tribal, and Local Requirements
V. How Will States and Tribes Implement this Rule?
VI. How Does this Rule Comply with Applicable Statutes and Executive Orders? Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Legal Authority

EPA is promulgating this rule pursuant to section 1008(a)(3), 2002(a), 4004(a) and 4010(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Secs. 6907(a), 6912(a), 6944(a), 6949a(c). We are also correcting a typographical error in the existing statement of authority in part 257 by amending the citation to 42 U.S.C. 6949(c) to read "6949a(c)."

II. Summary of Proposed Lead-Based Paint Rule

A. Proposed Change to the Definition of "Municipal Solid Waste Landfill (MSWLF) Unit"

In its October 23, 2001, proposal (see 66 FR 53566–53573) regarding the disposal of residential lead-based paint waste, the Agency proposed to expressly allow construction and demolition landfills to receive residential lead-based paint (LBP) waste.[1] This was to be accomplished in part by adding a sentence to the definition of municipal solid waste landfill (MSWLF) unit in 40 CFR 257.2 and 258.2, as follows: "A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit." The Agency explained in the preamble to the proposal that the existing definition of a MSWLF unit includes language which states that a disposal unit "that receives household waste" is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. As a result the Agency proposed to amend the definition of MSWLF unit, to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

[1] EPA published a direct final rule at 66 FR 53535 (Oct. 23, 2001) together with the proposed rule. EPA withdrew the direct final rule after receiving adverse comments. 66 FR 67108 (Dec. 28, 2001). Today's rule is final action on the proposed rule.

The definition as proposed is as follows: "Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit."

The proposed change was designed to simply distinguish residential LBP waste from other household wastes. The proposal would not alter what a MSWLF could or could not receive. MSWLFs would be allowed to continue to receive residential LBP waste as household waste. The proposed rule expressly provided an additional land-based waste disposal option for residential LBP waste.

B. Proposed Definition of "Construction and Demolition Landfill"

The October 23, 2001 notice also proposed to add a definition of a construction and demolition (C&D) waste landfill, which would expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257, to receive residential LBP waste. The Agency proposed to define a C&D landfill as follows: "Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in Sec. 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in Sec. 261.5 of this chapter), or industrial solid waste (defined in Sec. 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste." The proposed rule would add this definition to 40 CFR parts 257 and 258.

C. Proposed Definition of "Residential Lead-Based Paint Waste"

Finally, EPA proposed to define "residential lead-based paint waste" to clarify the scope of the waste stream addressed by the proposed rule. The proposed definition of residential lead-based paint waste is as follows: "Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges." Not included in the proposed definition of residential LBP waste were residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In proposing the definition of residential lead-based paint waste, the Agency included these particular LBP activities because they were limited to residences and would pose lead hazards to occupants, especially to children. We included the particular waste types (*i.e.*, debris, chips, dust, and sludges) because they are typically generated during the named LBP activities.

D. Rationale for Proposed Rule

In the preamble to the proposal, EPA explained the Agency's rationale and justification of the proposed changes, as well as the analytical basis for the proposal. The proposal provided a specific discussion of: (1) The reasons that residential lead-based paint is a concern to children; (2) the Congressional enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or Title X); (3) the concerns of stakeholders who have seen the application of RCRA's hazardous waste regulations as a barrier to the cost-effective abatement of lead hazards; (4) the 1988 proposed rule under the Toxic Substances Control Act (TSCA) which proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings; (5) the 1988 temporary suspension of the toxicity characteristic for specified lead-based paint debris under RCRA; and (6) the July 31, 2000 memorandum clarifying the regulatory status under RCRA Subtitle C of wastes generated as a result of LBP activities, including abatements, renovation and remodeling, and rehabilitations in homes and other residences. In the July 31, 2000 memorandum, the Agency interpreted residential LBP waste as a household waste excluded from the hazardous waste management requirements pursuant to the household waste exclusion in 40 CFR 261.4(b)(1), thus giving rise to the proposed amendments to parts 257 and 258 to expand disposal options for residential LBP waste to include C&D landfills, as well as MSWLF units.

III. Summary of Public Comments and the Agency's Response to Those Comments

The Agency received a total of eight comments on the proposed residential LBP waste rule: four from construction and/or demolition trade associations, and one each from a state, an association of state agencies, an environmental organization, and an individual. In general, commenters supported the proposal to allow residential LBP waste to be disposed of in C&D landfills. However, some commenters requested clarifications of the rule or preamble language or suggested additions to the rule language.

Definition of Residential Lead-Based Paint Waste

The state commenter argued that the proposed rule contained a significant flaw by including chips, dust and sludges in the definition of "residential lead-based paint waste," because EPA failed to take into account the potential for sleet, surface-water or wind-borne movement of lead paint chips, dust, and sludges off-site from a C&D landfill. The commenter stated that the placement of LBP dust, chips and sludges in an open environment (*i.e.*, a landfill that does not provide for daily cover) over an extended period of time, *e.g.*, 30 days, may allow a significant rain or wind event to transport lead-containing materials off-site. The commenter

further stated that sudden intense rain events or winds above 20 to 25 miles per hour can transport lead-containing wastes off-site by surface water or air currents. The commenter suggested that requiring daily cover or special packaging at C&D landfills for the above-mentioned wastes would mitigate the potential for adverse impact from surface water or air transport.

Because other features of C&D landfills and LBP waste handling practices serve to mitigate potential impacts from surface water or air transport, the Agency does not believe that requirements for daily cover or special packaging are needed on the federal level. Surface water transport off-site by sudden intense rain events would constitute "non-point source" pollution under the Clean Water Act. To mitigate potential surface water impacts, C&D landfills must comply with 40 CFR 257.3–3(c), which requires that a facility or practice shall not cause non-point source pollution that violates legal requirements implementing an areawide or statewide water quality management plan approved by EPA under the Clean Water Act.

To further mitigate potential water or air transport, both EPA and the U.S. Department of Housing and Urban Development (HUD) have issued guidance for LBP waste management, calling for the containment of LBP wastes in plastic with sealed seams. EPA's "Reducing Lead Hazards When Remodeling Your Home" EPA 747–K–97–001 *(http://www.epa.gov/lead/rrpamph.pdf)* and EPA's Model Renovation Training Course EPA 747–B–00–005/6 *(http://www.epa.gov/opptintr/lead/rrmodel.htm)* both call for safe and secure disposal. Safe and secure disposal involves placing the LBP wastes in plastic (4–6 mil poly) bags that are sealed closed. HUD modified the EPA training course and developed their own training program to serve the specific needs of HUD's constituents. The HUD training course entitled "Addressing Lead-Based Paint Hazards During Renovation, Remodeling and Rehabilitation in Federally Owned and Assisted Housing" (also referred to as "The 3R Course") *(http://www.hud.gov/offices/lead/training/3r/3r_course.cfm)* was first delivered to remodeling and rehabilitation workers during HUD's nationwide training initiative in 2001–2002. HUD's training recommends that safe disposal of LBP wastes be accomplished by means of plastic bags. Other HUD brochures and documents also recommend that LBP wastes be placed in plastic bags for safe disposal. These brochures include:

"Lead Paint Can Poison: Is Your Family at Risk?" *(http://www.hud.gov/offices/lead/outreach/parents.pdf)*.

"Lead Paint Safety—A Field Guide for Painting, Home Maintenance, and Renovation Work" *(http://www.hud.gov/offices/lead/training/LBPguide.pdf)*.

"Caution: Lead Paint Handle With Care" *(http://www.hud.gov/offices/lead/outreach/tradesOKAYTOPRINT.pdf)*.

"Lead Paint Can Poison: Protect Your Family When You Repaint or Remodel". *(http://www.hud.gov/offices/lead/outreach/remodel.pdf)*

HUD also operates the Lead-Based Paint Hazard Control Grant Program that has as its primary purpose to reduce the exposure of young children to lead-based paint hazards in their homes. The program provides grants to State and local governments for control of lead-based paint hazards in privately owned, low income owner-occupied and rental housing. These grants are designed to stimulate the development of a trained and certified hazard evaluation and control industry. Evaluation and hazard control work under the program must be conducted by either contractors who are certified and workers who are trained through a State-accredited program or by contractors trained in lead-safe work practices in the case of interim controls.

Moreover, as of March 1, 2000, lead service providers within the United States must be certified (or licensed) under an EPA authorized lead program. Most of the States have developed and are administering such a program and EPA certifies lead service providers in states that do not have their own programs. As of January 2003, 38 States had EPA-approved state lead programs that actively certify (license) lead service providers.

EPA has also discussed this issue with the National Association of Demolition Contractors (NADC). NADC re-confirmed EPA's understanding that paint chips and dust are managed in plastic bags. NADC stated that lead-based dust is removed with vacuums with HEPA filters and that the vacuum bags are removed and then tied closed prior to disposal. Paint chips that may fall on a plastic sheet are collected in the plastic sheet which is then placed in a tied plastic bag.

As stated above, the EPA believes that sufficient guidance, literature, training programs, EPA-approved state lead programs, and current practices exist so that whether the LBP waste is in the form of chips, dust, or sludge it will be managed appropriately (*i.e.*, containment in plastic bags on site prior to transport to disposal). At the disposal facility, the containment plastic serves to mitigate against potential impacts of water or wind transport.

Additionally, where water or wind transport are problematic, States have demonstrated their ability, even in the absence of a federal requirement, to impose additional requirements for weekly, monthly, or daily cover as necessary to control particulate releases. According to the 1995 report, "Construction and Demolition Waste Landfills," 14 States require on-site C&D units to provide daily cover, while 19 States require daily cover at off-site C&D units. Based on these C&D landfill features and LBP waste handling practices, the Agency does not believe it is necessary to impose on the federal level a requirement for daily cover at C&D landfills receiving LBP waste.

Two industry association commenters stated that lead-based paint architectural debris generated from all structures, commercial and industrial, as well as, residential, can safely be disposed of in C&D landfills (*i.e.*, Subtitle D facilities). The commenters disagreed with the Agency's statement in the preamble that demolition and deconstruction waste was not similar to household waste. The commenters believe that LBP material handled by the demolition industry in commercial and industrial structures is no more dangerous to public health and the environment than when LBP appears in a residential structure.

The Agency wishes to clarify that today's rule is an outgrowth of the July 31, 2000 Memorandum stating that waste generated as a result of LBP activities in homes and other residences falls within the exclusion for "household waste" in 40 CFR 261.4(b)(1). (See 66 FR 53569.) The scope of this rulemaking concerns only residential lead-based paint wastes and not lead-based paint wastes from commercial and industrial structures because lead-based paint waste from commercial and industrial structures does not fall within the exclusion for "household waste" in 40 CFR 261.4(b)(1) or the definition of "household waste" in 40 CFR 258.2. Thus, *residential* LBP waste that would otherwise be hazardous waste subject to the hazardous waste management requirements of Subtitle C of RCRA can be managed under Subtitle D of RCRA. The purpose of this rulemaking is to expand Subtitle D disposal options for this particular household waste, which, without today's rule could only be disposed of in municipal solid waste landfills pursuant to 40 CFR part 258.

The July 31, 2000 Memorandum did not affect the regulatory status of

nonresidential LBP waste, such as that generated during the abatement or renovation and remodeling of a commercial building. "Household waste" is defined as "any material (including garbage, trash and sanitary waste in septic tanks) *derived from households* (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas)." (Emphasis added.)

The Agency recognizes that not all lead-based paint waste, whether from residential, commercial, or industrial sources, is "hazardous waste" which must be managed under RCRA Subtitle C. Any LBP waste that is not hazardous waste can be safely disposed of in a Subtitle D landfill, including a C&D waste landfill.

Several commenters stated that the proposed rule was not sufficiently clear as to the distinctions between those LBP activities that generate waste that would qualify as "residential LBP waste" (*e.g.* abatement, rehabilitation, renovation, and remodeling") and those that would not fall within the scope of the rule (*e.g.*, "demolition and deconstruction"). One of these commenters stated that the regulated community might believe that there is some deconstruction or demolition occurring whenever you perform rehabilitation, renovation, remodeling, and perhaps to some extent abatement. The commenter suggested that the focus of the final rule be on waste type and not on waste activity.

The Agency distinguishes demolition and deconstruction activities from abatement, rehabilitation, renovation, and remodeling on the basis that demolition and deconstruction result in the elimination of the residential structure, while the residential structure remains where the other listed activities are conducted. The proposed definition of residential lead based paint waste does not include residential demolition and deconstruction activities. The proposed definition was limited to LBP waste that would be subject to Subtitle C of RCRA, except that it is included within the household waste exclusion in 40 CFR 261.4(b)(1). The Agency has applied two criteria to define the scope of the exclusion: (1) The waste must be generated by individuals on the premises of a household, and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978 and 63 FR 70241). In the case of LBP wastes, we have determined that demolition and deconstruction, which result in the elimination of the household structure, are outside the scope of the household waste exclusion and therefore are not included in the definition of "residential LBP waste." Although demolition activities and renovation activities may produce some of the same types of waste, the waste type is not a factor for consideration under 40 CFR 261.4(b)(1), and therefore, today's final rule continues to read as proposed. The Agency wants to make it clear that deconstruction and demolition wastes can continue to be placed in construction and demolition waste landfills provided that these types of wastes do not exhibit the toxicity or any other characteristic (*i.e.*, are not a hazardous waste).

One commenter was specifically concerned that the proposed definition of residential lead-based paint waste could create confusion about the scope of activities that are considered "lead-based paint activities" under the Toxic Substances Control Act (TSCA). The proposed residential LBP definition states that LBP activities include abatement, rehabilitation, renovation, and remodeling. Regulations promulgated under TSCA define "lead-based paint activities" to mean lead inspection, risk assessment, and abatement in the case of target (most pre-1978) housing (see 40 CFR 745.223). Renovation, remodeling, and rehabilitation are not considered lead-based paint activities under Title X. The commenter was concerned that the Agency was trying to change the scope of the TSCA regulation under the proposed RCRA regulation. The commenter suggested that the term lead-based paint activities be deleted and replaced with the phrase "activities that disturb lead-based paint."

The Agency did not intend or propose to change the scope of the TSCA regulation in the October 2001 proposal. However, to eliminate any potential confusion, the Agency has decided to change the definition of residential LBP wastes to eliminate the words "lead-based paint activities." The definition of residential LBP wastes included in today's final rule does not use the term "lead-based paint activities." This definition is as follows: "Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges."

Definition of Construction and Demolition Waste Landfill

A trade association commenter objected to the proposed definition of "construction and demolition waste landfill" because the proposed rule would define a C&D waste landfill as one that does not receive "industrial wastes," as defined in section 258.2. The commenter objected because the definition as proposed would preclude a C&D landfill that receives industrial waste in the form of manufacturer's "off-spec," rejected, or damaged construction materials from accepting residential lead-based paint waste. Thus C&D landfills in that state would have to choose between residential LBP waste or off spec., damaged, or rejected construction materials, but not both.

In the proposed definition of construction and demolition waste landfill, the Agency stated that C&D waste landfills were not eligible to receive "industrial solid wastes as defined in 40 CFR 258.2." The definition of "industrial solid waste" in section 258.2 covers "wastes resulting from" particular manufacturing or industrial processes. In defining C&D landfills, the Agency was concerned about C&D waste landfills receiving wastes generated by manufacturing or industrial processes and, as such, wrote the definition to exclude such wastes. In practice, industrial process wastes are typically managed on-site, or in limited cases, sent off-site to private/commercial industrial waste facilities. Industrial process wastes should not be received for disposal at a C&D waste landfill. The commenter was concerned that off-spec construction products (*e.g.*, toilets or shingles) would not be allowed in a C&D waste landfill because of the proposed definition. However, the Agency views "off-spec," rejected, or damaged construction materials as virtually identical in nature to the type of waste that is appropriately received at a C&D waste landfill and are not "industrial solid waste" as defined at 40 CFR 258.2. Because the definition of industrial solid waste does not explicitly include materials that do not meet manufactures' specifications, are damaged or rejected for use, EPA believes that industrial waste in the form of manufacturer's "off-spec," rejected, or damaged construction materials can be appropriately placed in a C&D landfill. In addition, the Agency expects that States would exercise judgment in what is considered industrial wastes. Thus, EPA believes that the definition in today's final rule accommodates disposal of unused construction materials that do not meet

manufacturers' specifications, are damaged or rejected for use.

Another commenter stated that the definition of C&D landfill as proposed could be interpreted to mean that conditionally exempt small quantity generator waste could be accepted in a 40 CFR part 257 Subpart A facility. The commenter suggested a wording change to eliminate this possible misinterpretation.

EPA does not intend that a C&D landfill be allowed to receive conditionally exempt small quantity generator wastes if the C&D landfill meets the requirements of 40 CFR part 257 Subpart A, but does not meet the requirements of part 257, subpart B. Therefore, the Agency has changed the definition of C&D waste landfill to eliminate any potential confusion. The definition has been changed to clarify that conditionally exempt small quantity generator wastes can only be disposed of in a C&D landfill that meets the requirements of 40 CFR part 257, Subpart B.

Effect on State Programs

The state association commenter indicated that it is important that EPA be explicit that states are not required to amend their programs to incorporate today's rule; however the commenter also suggested language to assure States that their prior approved programs will not be reopened regardless of whether they adopt today's rule or not. EPA agrees with the comment and has revised the language in Section V. of today's preamble to make this clear.

Lead-Contaminated Soils

Lastly, a commenter stated that EPA had missed a golden opportunity to allow lead-contaminated soils to be managed similarly and requested that EPA move expeditiously to craft a rule to allow lead-contaminated soils to be disposed of in C&D and municipal solid waste landfills. The commenter claimed that the disposal of lead-contaminated soils in C&D landfills and municipal solid waste landfills is environmentally safer than is the disposal of lead-based paint debris. The commenter also argued that the cost of managing those soils that fail the TCLP under the RCRA hazardous waste requirements discourages soil lead abatement from residences. As discussed previously, today's rulemaking is limited to providing the C&D landfill disposal option for residential lead-based paint waste addressed in the July 31, 2000 Memorandum. Lead-contaminated soils were not included in the July 31, 2000 Memorandum, thus EPA is not addressing disposal of lead-contaminated soils at this time.

Summary of Final Rule Changes

This final rule will expressly allow residential lead-based paint waste to be disposed of in construction and demolition waste landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action does not prevent a municipal solid waste landfill from continuing to receive residential lead-based paint waste. Two minor changes were made to the final regulatory language based on comments received on the proposal. Today's final rule was modified to remove "LBP activities" to one that includes "activities that disturb LBP." The definition of construction and demolition waste landfill was changed to eliminate any confusion so that small quantity generator waste can only be disposed of in a facility that meets the requirements of 40 CFR part 257, subpart B.

IV. Other Applicable Federal, State, Tribal, and Local Requirements

Today's final rule would not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. Generators of residential LBP waste should contact the appropriate State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators are subject to applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

V. How Will States and Tribes Implement This Final Rule?

Because today's final rule is less stringent than existing federal criteria, States are not required to amend their permit programs which have been determined to be adequate under 40 CFR part 239. States have the option of amending statutory or regulatory definitions pursuant to today's final rule. If a state chooses to amend its permit program pursuant to today's action, the State would be required to notify the Regional Administrator of the modification as provided by 40 CFR 239.12. Whether a State chooses to incorporate today's rule into its solid waste program has Statutory and Executive Order Reviews no effect on its existing status with respect to EPA approval, *i.e.*, State revisions will not open previously approved solid waste programs for Federal review.

Today's amendments are directly applicable to landfills in States without an approved permit program under part 239 and in Indian Country. We encourage Tribes to adopt today's rule into their programs to promote lead-based paint abatement activities in homes and other residences in Indian Country.

VI. How Does This Final Rule Comply With Applicable Statutes and Executive Orders?

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, "Economic Analysis of EPA's Final Rule Amending 40 CFR parts 257 and 258," which is available in the docket for today's rule. The Economic Analysis concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, as "household waste" under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. Therefore, EPA believes that, in those parts of the country where costs associated with transport to and disposal in C&D landfills is less expensive than costs associated with MSWLF disposal, some residential LBP waste will be diverted from MSWLFs to C&D landfills. Where this occurs, generators will benefit from lower waste management and disposal costs.

EPA believes that only residential LBP waste generators in the Midwest, Northeast, and South regions will shift disposal from MSWLFs to C&D landfills, based on an analysis of the relative costs of MSWLF and C&D landfill disposal by region. EPA further believes that the percentage of residential LBP waste that is affected is proportional to the share of these three regions in the number of housing units with LBP, which is 84.4 percent. Under these assumptions, an estimated 0.87 million tons of residential LBP waste may be diverted from MSWLFs to C&D landfills annually. This represents 0.73 percent of the total volume of all waste disposed of in MSWLFs annually. This shift in disposal would save residential LBP waste generators in the Midwest, Northeast, and South regions up to an estimated $16.76 million annually. The savings accruing to generators of residential LBP abatement waste is estimated at $0.79 million per year, while the savings accruing to generators of residential renovation and remodeling waste is $15.98 million per year.

EPA estimates that of the $0.79 million in savings that could accrue to generators of residential LBP abatement waste, an estimated 39.7 percent, or $0.31 million, will be generated annually in the public housing sector. EPA assumes that in the public sector, any savings in residential LBP waste management and disposal costs will be used to conduct additional LBP abatements. Given an average cost for LBP abatement in public housing units of $3,650, the $0.31 million in annual savings would fund an additional 86 abatements each year. This ensuing increase in LBP abatement projects would result in a more rapid reduction in the potential for exposure to the hazards of LBP, especially for children. These hazards include decreased intelligence (*i.e.*, lower IQ), behavioral problems, reduced physical stature and growth, and impaired hearing.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0154. Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Today's action does not impose any new information collection burden. The previously approved information collection requirements are contained in the existing regulations at 40 CFR 257.30. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business that is primarily engaged in lead paint removal as described in the North American Industry Classification System (see *http://www.sba.gov/size/SIC2NAICSmain.html);* (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on small entities. In fact, the rule will provide an additional non-mandatory option for the disposal of residential LBP waste, which could result in less cost in managing residential LBP waste.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This final rule does not impose any enforceable duty on any State, local or tribal governments or the private sector. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications' is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained in Section V. of this preamble, none of today's proposed revisions are more stringent or broaden the scope of the existing Federal requirements. Therefore, States are not required to adopt the revision to the definition of MSWLF unit nor the additional definitions of construction and demolition (C&D) landfill and residential lead-based paint waste in today's rule. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's final rule would expressly provide an additional option for disposal of certain waste applicable in Indian Country, but would not create any mandate on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. However, this rule will affect decisions involving the environmental health or safety risks to children. In fact, it will benefit children by allowing environmentally protective disposal of residential lead-based paint waste in C&D landfills, which is less costly than disposal in MSWLFs in certain areas of the U.S., therefore reducing the cost of lead abatements. Reducing the cost of LBP abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs may increase the amount of private homes undergoing abatements. By reducing costs associated with the disposal of LBP waste, the Agency believes that the number of abatements may marginally increase, thus resulting in a reduction of the number of children exposed to LBP.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 104–113, Sec. 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's final rule does not involve technical standards, voluntary or otherwise. Therefore, the NTTAA does not apply to today's final rule.

J. Executive Order 12898: Federal Action To Address Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and the National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's final rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities. On the contrary, since the rule will reduce the cost of performing LBP abatements in certain regions of the U.S., EPA believes that the savings will afford public housing authorities, in particular, the opportunity to conduct additional abatements of LBP hazards in affected housing units. Tenants of public housing units are possibly more likely to be minority and lower-income households, and the rule should have the effect of providing a differential benefit to such populations.

K. Congressional Review Act

The Congressional review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C., 804(2). This rule will be effective on June 18, 2003.

List of Subjects

40 CFR Part 257

Environmental protection, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 12, 2003.

Christine Todd Whitman,

Administrator.

■ For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 257—[AMENDED]

■ 1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and (e).

■ 2. Section 257.2 is amended:
■ a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste," and
■ b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit."

The revision and additions read as follows:

§ 257.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter). Only a C&D landfill that meets the requirements of subpart B of this part may receive conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

PART 258—[AMENDED]

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

■ 2. Section 258.2 is amended:
■ a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste," and
■ b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit."

The revision and additions read as follows:

§ 258.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements in part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter). Only a C&D landfill that meets the requirements of 40 CFR part 257, subpart B may receive conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

[FR Doc. 03–15363 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST 1999–6189]

RIN 9991–AA37

Organization and Delegation of Powers and Duties, Update of Secretarial Delegations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administrator his authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port as provided for in the Deepwater Port Act, of 1974, as amended. Section 106 of the Maritime Transportation Security Act of 2002 amended the Deepwater Port Act to include facilities that transport natural gas from the United States outer continental shelf. This rule does not change the previous delegation of license processing functions to the United States Coast Guard, now part of the Department of Homeland Security, and to the Maritime Administration. The two agencies will continue to coordinate their processing of the license applications. The rule also does not change the previous delegation of Deepwater Port Act authority to the Administrator of the Research and Special Programs Administration.

EFFECTIVE DATE: June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kessler, Senior Attorney-Advisor, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, Room 10102, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–9154.

SUPPLEMENTARY INFORMATION: This rule revises the Secretary's reservation of authority under the Deepwater Port Act, as amended. The Secretary is delegating to the Maritime Administrator his authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater oil or natural gas port as provided for in the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501–1524 (DWPA). The DWPA, as amended by section 106 of the Maritime Transportation Security Act of 2002, Pub. L. 107–295, 116 STAT. 2064 at 286 (MTSA), governs the licensing of any offshore facility used to handle and transport petroleum and natural gas, pursuant to the amendment of the DWPA. A deepwater port must be licensed by the Secretary. To date, LOOP LLC is the only offshore deepwater port facility licensed by the Secretary under the DWPA. LOOP LLC's License was issued on January 17, 1977, and was amended and updated on June 1, 2000.

The Commandant of the United States Coast Guard (USCG) and the Administrator of the Maritime Administration (MARAD) have operated under delegated authority to coordinate the processing of applications for the issuance, transfer, amendment, or reinstatement of a license for the construction and operation of a deepwater port. 62 FR 11382 (March 12, 1997); 49 CFR 1.46(s) and 1.66(aa). The USCG has the additional statutory responsibility to approve an operations manual for a deepwater port. 33 U.S.C. 1503(e)(1). The USCG retained the statutory and delegated authorities upon its transfer to the Department of Homeland Security (Department of Homeland Security Delegation Number: 0170, § 2. (75), March 3, 2003; Pub. L. 107–296, section 888.). This rule does not change the authorities delegated to USCG and to MARAD nor does it change the coordination between the USCG and MARAD for processing license applications. The rule clarifies that the authorities of USCG and MARAD for processing license applications include the authorities to process an application for a license reinstatement. 33 U.S.C. 1503(b) and (f) (as amended by Pub. L. 98–419, Sept. 25, 1984).

This rule does not change the Secretary's previous delegation of DWPA authority to the Administrator of the Research and Special Programs Administration (RSPA) in 49 CFR 1.53(a)(3) for the establishment, enforcement, and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. 1520).

By **Federal Register** notices dated, respectively, December 27, 2002 (67 FR 79234), and January 23, 2003 (68 FR 3299), the Department of Transportation through the USCG and MARAD gave notice, as required by the DWPA, of applications filed by Port Pelican LLC and El Paso Energy Bridge Gulf of Mexico, LLC for licenses to own, construct, and operate deepwater natural gas port facilities. Since then, MARAD and the USCG have been coordinating the processing of these applications. By this rule, MARAD has the authority over the issuance of the licenses for the respective applicants and for any future applicants.

This amendment to 49 CFR part 1 to reflect the Secretary's delegation of his authority to issue, transfer, amend or reinstate a license for the construction and operation of a deepwater port to the Maritime Administrator relates solely to departmental organization, procedure, and practice. Therefore, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the MARAD's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, (Act) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include all small businesses that are potential offerors and contractors bidding on Department of Transportation proposed acquisitions. The Act does not apply to this rulemaking, since a notice of proposed rulemaking was not required. However, the Department certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule makes administrative changes to 49 CFR Part 1; therefore, a Regulatory Flexibility Analysis has not been performed.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295.

■ 2. In § 1.44, revise paragraph (o) to read as follows:

§ 1.44 Reservation of authority.

* * * (o) Deepwater ports. Repealed.

* * * * *

■ 3. In § 1.66, redesignate paragraphs (aa)(1) through (6) as paragraphs (aa)(2) through (7). Add a new paragraph (aa)(1) and revise newly designated (aa)(2) to read as follows:

§ 1.66 Delegations to the Maritime Administrator.

* * * * *

(aa) * * *

(1) The authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

(2) The authority to process applications for the issuance, transfer, amendment, or reinstatement of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)), as amended, in coordination with the Commandant of the Coast Guard.

* * * * *

Issued in Washington, DC on this 4th day of June, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–15400 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 68, No. 117
Wednesday, June 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–02–14]

Amendment to the Soybean Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Soybean Promotion and Research Rules and Regulations (Rules and Regulations) established under the Soybean Promotion, Research, and Consumer Information Act (Act) by requiring first purchasers of soybeans and producers marketing processed soybeans or soybean products of a producer's own production in the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region, to remit and report assessments on a quarterly basis rather than a monthly basis. This proposed change would reduce the administrative costs of monthly reporting imposed on these smaller soybean producing States and regions.

DATES: Written comments must be received by July 18, 2003.

ADDRESSES: Send a copy of your comments to Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Comments may also be sent electronically to *SoybeanComments@usda.gov* or by facsimile at 202/720–1125. All comments should reference the docket number LS–02–14, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-soy.htm* or between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, except holidays at the above address.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Agricultural Marketing Specialist, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file a petition with the Department of Agriculture (Department) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review the Department's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling. Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Regulatory Flexibility Act

AMS has determined that this proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only revises the remittance of assessments and reports from a monthly basis to a quarterly basis for certain States or regions. The States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region will be changed from monthly remitting States or regions to quarterly remitting States or regions to reduce administrative costs. Because of the minimal number of first purchasers, producers, and total remittances from these States and regions, allowing the States or regions to remit and report assessments on a quarterly basis would benefit QSSBs, the States and regions, and the United Soybean Board (Board) by reducing the administrative costs of remitting and reporting assessments on a monthly basis. The proposed action would likely reduce administrative costs by approximately $10,000. As such, these changes will not have a significant impact on a substantial number of small entities. There are an estimated 30,000 soybean producers who pay assessments and an estimated 150 first purchasers who collect assessments in the four affected States and two regions. There are six QSSBs that would be affected under this proposed rule. Most of these entities would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned OMB control number 0581–0093. The purpose of this proposed rule is to change the remitting and reporting of assessments to a quarterly basis from a monthly basis in four soybean producing States and two regions. There are a minimal number of first purchasers and producers in these four States and two regions. This change would not substantially impact the overall total burden hours. As a result, no change to the previously submitted burden estimate is necessary.

Background and Proposed Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final Order establishing a soybean promotion, research, and consumer information program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Soybean Promotion and Research Rules and Regulations, 7 CFR part 1220, published in the **Federal Register** on July 2, 1992 (57 FR 29436), specify in § 1220.312(b) that first purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending upon the State or region in which they are located. This proposed rule would change the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region from remitting and reporting assessments on a monthly basis to a quarterly basis. Currently, 15 States and 2 regions report on a monthly basis and 14 States report on a quarterly basis.

The Board, in conjunction with the affected States and regions, recommended to AMS to change the period for remitting and reporting assessments for the following States or regions from a monthly basis to quarterly basis: Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region.

This proposed rule would assist these smaller soybean producing States and regions (listed above) in reporting and remitting their assessments to the Board. The Board has decided that the current requirement to remit and report assessments on a monthly basis is no longer necessary given the minimal number of first purchasers and total remitters from these smaller soybean producing States and regions. Allowing these States and regions to become quarterly remitters would reduce their administrative costs. It is estimated that administrative costs would be reduced by approximately $10,000 if first purchasers of soybeans and producers marketing processed soybeans and soybean products of a producer's own production in the States and regions of Delaware, Louisiana, South Carolina, Texas, the Eastern Region, and the Western Region could remit and report assessments on a quarterly basis. Producers that market soybeans to first purchasers would continue to pay the assessment at the time of settlement. Due to the minimal number of first purchasers and total remittances in these States and regions, allowing the States or regions to remit quarterly would be beneficial to the States, regions, and the Board by reducing the administrative costs of collecting assessments.

A 30-day comment period is provided for interested persons. For the aforementioned reasons, a 30-day comment period is deemed appropriate so that the proposed change, if adopted, can be implemented as soon as possible.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. In § 1220.312, the table in paragraph (b) is revised to read as follows:

* * * * *

(b) * * *

Monthly	Quarterly
Arkansas	Alabama
Iowa	Delaware
Kansas	Florida
Kentucky	Georgia
Michigan	Illinois
Minnesota	Indiana
Missouri	Louisiana
Mississippi	Maryland
North Carolina	North Dakota
Tennessee	Nebraska
Wisconsin	New Jersey
	Ohio
	Oklahoma
	Pennsylvania
	South Carolina
	South Dakota
	Texas
	Virginia
	Eastern Region
	Western Region

* * * * *

Dated: June 12, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15318 Filed 6–17–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–370–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires modification of the nacelle strut and wing structure. This action would reduce a certain compliance time in the existing AD. The actions specified by the proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–370–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–370–AD" in the subject line and need not be submitted in triplicate. Comments sent via the

Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–370–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–370–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 28, 2000, the FAA issued AD 2000–20–09, amendment 39–11920 (65 FR 59703, October 6, 2000), applicable to certain Boeing Model 757 series airplanes, that requires modification of the nacelle strut and wing structure. The requirements of that AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–20–09, the airplane manufacturer has done a new structural reassessment of the upper link of the strut of Boeing Model 757 series airplanes powered by Pratt & Whitney engines. This reassessment indicates that certain design changes are needed on the upper link to ensure that fatigue cracking does not occur on the primary strut structure before an airplane reaches its design service objective of 20 years, or 50,000 flight cycles. Analysis indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

The compliance time for the modification of the upper link (Boeing Service Bulletin 757–54–0036, dated May 14, 1998) required by paragraph (b) of AD 2000–20–09, has been reduced due to this new structural assessment.

Explanation of New Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 757–54–0034, Revision 1, dated October 11, 2001. (Boeing Service Bulletin 757–54–0034, dated May 14, 1998, was referenced as the appropriate source of service information for the actions required by paragraph (a) of AD 2000–20–09.) We find that the changes incorporated in Revision 1 of the service bulletin are not substantive, meaning that airplanes modified per the original issue of the service bulletin are not subject to any additional work under Revision 1 of the service bulletin. Therefore, we have added Revision 1 of the service bulletin as another source of service information for the accomplishment of the modification required by paragraph (a) of this AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–20–09 to continue to require modification of the nacelle strut and wing structure. This new action proposes to reduce a certain compliance time in the existing AD. The actions would be required to be accomplished in accordance with the service bulletins described previously, and as discussed below.

Difference Between This Proposed AD and Service Bulletin 757–54–0036

This proposed AD would add a grace period of 2 years to the thresholds recommended in the service bulletin for accomplishment of the modification of the upper link and wire support bracket of the strut, as specified in paragraph (d) of this AD, as follows: Prior to the accumulation of 27,000 total flight cycles (for Model 757–200 series airplanes) or 29,000 total flight cycles (for Model 757–200PF series airplanes), or within 2 years after the effective date of this AD, whichever is later.

Cost Impact

There are approximately 317 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry would be affected by this proposed AD. Since this proposed AD would merely reduce the compliance time for certain actions required by AD 2000–20–09 (Service Bulletin 757–54–0036), it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with AD 2000–20–09 are reiterated in their entirety (as follows) for the convenience of affected operators:

It will take approximately 800 work hours per airplane to accomplish the required modification of the nacelle strut and wing structure described in Boeing Service Bulletin 757–54–0034, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this required modification on U.S. operators is estimated to be $13,344,000, or $48,000 per airplane.

It will take approximately 26 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0027, Revision 1, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $433,680, or $1,560 per airplane.

It will take approximately 90 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0036, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $1,501,200, or $5,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11920 (65 FR 59703, October 6, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–370–AD. Supersedes AD 2000–20–09, Amendment 39–11920.

Applicability: Model 757 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 735 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Restatement of Requirements of AD 2000–20–09:

Modifications

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998; or Revision 1, dated October 11, 2001; at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in paragraph I.D. of the service bulletin is an acceptable alternative to the 20-year threshold.

(2) Within 3,000 flight cycles after November 13, 2000 (the effective date of AD 2000–20–09, amendment 39–11920).

(b) Except as provided by paragraph (d) of this AD: Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph I.D., Table I, "Strut Improvement Bulletins," on page 5 of Boeing Service Bulletin 757–54–0034, dated May 14, 1998; accomplish the actions specified in Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994; and Boeing Service Bulletin 757–54–0036, dated May 14, 1998, as applicable, in accordance with those service bulletins.

Repair

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

New Requirements of this AD:

Modification

(d) Modify the nacelle strut (includes replacing the upper link with a new, improved part and modifying the wire support bracket attached to the upper link) in accordance with Boeing Service Bulletin 757–54–0036, dated May 14, 1998, at the earlier of the times specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Prior to or concurrently with accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD.

(2) Prior to the accumulation of 27,000 total flight cycles (for Model 757–200 series airplanes) or 29,000 total flight cycles (for Model 757–200PF series airplanes), or within 2 years after the effective date of this AD, whichever is later.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15336 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–408–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Learjet Model 60 airplanes, that currently requires inspection to detect bends in or damage to the fuel crossflow tube; inspection to determine clearance between the fuel crossflow tube and the flight control cables; and replacement or repair of the tube, if necessary. This action would require a review of airplane maintenance records or an inspection to determine if a fuel crossflow tube having a certain part number is installed; and follow-on/corrective actions, as applicable. This action also would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–408–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–408–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–408–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–408–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 28, 1995, the FAA issued airworthiness directive (AD) 95–14–09, amendment 39–9303 (60 FR 36984, July 19, 1995), applicable to certain Learjet 60 airplanes, to require inspection to detect bends in or damage to the fuel crossflow tube; inspection to determine clearance between the fuel crossflow tube and the flight control cables; and replacement or repair of the tube, if necessary. That action was prompted by reports of chafing of the fuel crossflow tube by flight control cables. The requirements of that AD are intended to prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has implemented a design change to adequately preclude chafing or bending of the fuel crossflow tube. Although the minimum clearance required by AD 95–14–09 was adequate, there was a possibility that the fuel crossflow tube could be installed incorrectly due to installation variables, including rotation of the fuel crossflow tube. The design change calls for an increased minimum clearance and the installation of a specific part number for the fuel crossflow tube, which can be installed in only one way.

Explanation of New Service Information

The FAA has reviewed and approved Bombardier Learjet 60 Alert Service Bulletin SB A60–28–3, Revision 2, dated October 26, 1998. This service bulletin describes procedures for inspecting the fuel crossflow tube for damage (*e.g.*, chafing and/or bends), measuring the clearance between the crossflow tube and flight control cables, and correcting incorrect clearance. For certain airplanes, this service bulletin also describes procedures for replacing existing fuel crossflow tubes with new fuel crossflow tubes. This service bulletin also adds certain airplanes to the effectivity listing.

We also have reviewed and approved Bombardier Learjet 60 Service Bulletin SB 60–28–4, Revision 2, dated August 22, 2001. For certain airplanes, this service bulletin describes procedures for replacing existing fuel crossflow tubes with new fuel crossflow tubes, and measuring the clearance between the crossflow tube and flight control cables.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–14–09 to require a review of maintenance records or an inspection to determine if a fuel crossflow tube having a certain part number is installed; and follow-on/corrective actions, as applicable. Certain actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note the following differences between the proposed AD and the service bulletins:

- Bombardier Learjet 60 Alert Service Bulletin SB A60–28–3, Revision 2, recommends that the fuel crossflow tube be inspected for bends and evidence of damage (*e.g.*, contact with the flight control cables). It also recommends that the clearance between the fuel crossflow tube and flight control cables be measured to ensure that it is at least 0.150 inch. This proposed AD would not require those inspections because they pertain to the previous airplane design. In lieu of the previously described inspections for bends and evidence of damage, this proposed AD would require a review of the airplane maintenance records or an inspection to determine if a certain part number for the fuel crossflow tube is installed. In addition, the proposed AD would require measurement of the clearance between the fuel crossflow tube and flight control cables to ensure that it is at least 0.35 inch. We have determined that an interval of 25 flight hours (after the effective date of this proposed AD) for accomplishment of the review of the airplane maintenance records/inspection would address the identified unsafe condition in a timely manner.
- Alert Service Bulletin A60–28–3, Revision 2, also recommends a compliance time of 600 flight hours to replace the fuel crossflow tube, if necessary. This proposed AD would extend the compliance time to require replacement of any fuel crossflow tube not having the correct part number, with a new tube having the correct part number, within 90 days after the proposed inspection. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a longer compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.
- Bombardier Learjet 60 Service Bulletins SB A60–28–3, Revision 2, and SB 60–28–4, Revision 2, specify that if the correct fuel crossflow tube part number is installed and if the specified minimum clearance does not exist between the fuel crossflow tube and the flight control cables, the manufacturer may be contacted for disposition. This proposed AD would require that correction of any incorrect clearances be accomplished per a method approved by the FAA.

Clarification of Part Number for Installation

Operators should note that, in Bombardier Learjet 60 Alert Service Bulletin SB A60–28–3, Revision 2, the fuel crossflow tube to be installed in the airplane is incorrectly identified as part number (P/N) 6026020–001 in Figure 1, detail D; the correct P/N is 6026020–005. The FAA has been advised that the manufacturer will issue a revision to this alert service bulletin to correct the error.

Changes to the Applicability of the Existing AD

This proposed AD would expand the applicability to include affected airplanes having serial numbers 60–056 through 60–145 inclusive, in addition to serial numbers 60–001 through 60–055 inclusive identified in the existing AD. All of these airplanes are subject to the identified unsafe condition of this AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directive system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore paragraph (d) and Note 1 of AD 95–14–09 have not been included in this proposed AD. Paragraph (c) of AD 95–14–09 has been revised to only identify the office authorized to approve AMOCs, and is identified as paragraph (f) in this proposed AD.

Cost Impact

There are approximately 145 Model 60 airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the review of airplane maintenance records/inspection proposed in this AD action, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $13,080, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9303 (60 FR 36984, July 19, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Learjet: Docket 2000–NM–408–AD. Supersedes AD 95–14–09, Amendment 39–9303.

Applicability: Model 60 airplanes, serial numbers 60–001 through 60–145 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations, accomplish the following:

Part Identification

(a) Within 25 flight hours after the effective date of this AD, inspect the fuel crossflow tube to determine whether part number (P/N) 5026020–005 is installed. Instead of inspecting the tube, a review of airplane maintenance records is acceptable if the P/N of the tube can be positively determined from that review.

Clearance Measurement and Corrective Action

(b) For all airplanes: If P/N 6026020–005 is found installed during the review or inspection required by paragraph (a) of this AD, before further flight, measure the clearance between the fuel crossflow tube and the flight control cables to determine if it is at least 0.35 inch, per paragraph 2.B.(8) of the Accomplishment Instructions of Bombardier Learjet 60 Alert Service Bulletin SB A60–28–3, Revision 2, dated October 26, 1998.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair per a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Part Replacement, Measurement, and Repair

(c) For airplanes having serial numbers 60–001 through 60–055: If P/N 6026020–005 is not found installed during the review or inspection required by paragraph (a) of this AD, within 90 days after accomplishing the review or inspection, replace the existing fuel crossflow tube with a new fuel crossflow tube having P/N 6026020–005, and measure the clearance between the newly installed fuel crossflow tube and the flight control cables, per paragraph 2.A. of the Accomplishment Instructions of Bombardier Learjet 60 Service Bulletin SB 60–28–4, Revision 2, dated August 22, 2001.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair per a method approved by the Manager, Wichita ACO, FAA.

(d) For airplanes having serial numbers 60–056 through 60–145: If P/N 6026020–005 is not found installed during the review or inspection required by paragraph (a) of this AD, within 90 days after accomplishing the review or inspection, replace the existing fuel crossflow tube with a new fuel crossflow tube having P/N 6026020–005, and measure the clearance between the newly installed fuel crossflow tube and the flight control cables to determine if the clearance is at least 0.35 inch, per paragraph 2.B. of the Accomplishment Instructions of Bombardier Learjet 60 Alert Service Bulletin SB 60–28–3, Revision 2, dated October 26, 1998.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair per a method approved by the Manager, Wichita ACO, FAA.

Note 1: Alert Service Bulletin SB A60–28–3, Revision 2, Figure 1, detail D., incorrectly identifies the fuel crossflow tube to be installed as P/N 6026020–001. The manufacturer is aware of this error and plans to correct the part number in the next revision of the alert service bulletin.

Part Installation

(e) As of the effective date of this AD, only fuel crossflow tubes having P/N 6026020–005 shall be installed on any airplane.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Wichita ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15339 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes. This proposal would require electrical conductivity testing to verify the correct heat treatment of the two half fittings holding the ejection jack for the ram air turbine (RAT). This action is necessary to prevent decreased structural integrity of the two half fittings and loss of the RAT during extension, which could lead to reduced controllability of the airplane in the event of a dual engine failure, or in the event of loss of two or all hydraulic systems. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–179–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–179–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A310 series airplanes. The DGAC advises that an operator reported that the two half fittings holding the ejection jack for the ram air turbine (RAT) were found cracked. Investigation showed that the cracks were due to stress corrosion. Conductivity testing revealed that the heat treatment of the half fittings aluminum alloy was incorrect. Incorrect heat treatment of the half fittings decreased the material behavior against stress corrosion, and was identified as the cause of the cracking. This condition, if not corrected, could result in decreased structural integrity of the half fittings and loss of the RAT during extension, which could lead to reduced controllability of the airplane in the event of a dual engine failure, or in the event of loss of two or all hydraulic systems.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–57A2084, including Appendix 01, dated May 3, 2002, which describes procedures for a one-time electrical conductivity test of the half fittings, to check for the heat treatment status. The service bulletin also describes procedures for a detailed inspection of the half fittings for cracks or corrosion, if necessary. The service bulletin also describes procedures for replacement of the half fittings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–263(B), dated May 15, 2002, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule, the Foreign Airworthiness Directive, and the Service Bulletin

The proposed AD would differ from the parallel French airworthiness directive in that it would require all replacement half fittings to have successfully passed the electrical conductivity test per Airbus Service Bulletin A310–57A2084, including Appendix 01, dated May 3, 2002. Operators should note that the parallel French airworthiness directive requires that replacement half fittings have a certain part number and should either have been ordered after November 2001, or have successfully passed the electrical conductivity test. The FAA does not consider the "order date" as sufficient assurance that the replacement half fittings have the correct heat treatment.

Operators should also note that, although the service bulletin specifies reporting to Airbus the result of the inspections and any corrective actions, the proposed AD does not include such a requirement.

Cost Impact

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–179–AD.

Applicability: All Model A310 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent decreased structural integrity of the two half fittings and loss of the ram air turbine (RAT) during extension, which could lead to reduced controllability of the airplane in the event of a dual engine failure, or in the event of loss of two or all hydraulic systems, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Airbus Service Bulletin A310–57A2084, including Appendix 01, dated May 3, 2002.

(2) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Conductivity Test

(b) Within 600 flight hours after the effective date of this AD, perform a one-time electrical conductivity test of the two half fittings holding the RAT ejection jack, to verify correct heat treatment of the half fittings, per the service bulletin.

(1) If correct heat treatment of the two half fittings is verified, no further action is required by this paragraph.

(2) If incorrect heat treatment of any half fitting is found by the test performed in paragraph (b) of this AD, perform a detailed inspection of the two half fittings for any cracking or corrosion, per the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(c) For any half fittings that require a detailed inspection per paragraph (b)(2) of this AD: Do the actions specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, per the service bulletin.

(1) If no cracking or corrosion is found: Within one year after the effective date of this AD, replace the two half fittings with half fittings having part number A5721023800000 that have successfully passed the electrical conductivity test, per the service bulletin.

(2) If any cracking or corrosion is found: Before further flight, replace the two half fittings with half fittings having part number A5721023800000 that have successfully passed the electrical conductivity test, per the service bulletin.

Parts Installation

(d) As of the effective date of this AD, no person shall install a half fitting having part number A5721023800000 that has not successfully passed the electrical conductivity test per the service bulletin, on any airplane.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–263(B), dated May 15, 2002.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15335 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes. This proposal would require repetitive inspections for discrepancies of the structure near and common to the upper chord and splice fittings of the rear spar of the wing, and repair if necessary. This proposal also would provide for an optional modification that, if accomplished, would terminate the repetitive inspection requirement, but would necessitate eventual post-modification inspections. This action is necessary to find and fix fatigue cracking of structure near and common to the upper chord and splice fittings of the rear spar of the wing, which could result in loss of structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–238–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–238–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking has been found on the wing on several Boeing Model 747–100 and 747–200B series airplanes. The cracking is adjacent and common to the upper chord and splice fittings of the rear spar of the wing. Such cracking, if not corrected, could result in loss of structural integrity of the airplane.

The subject area on Model 747–100B, 747–100B SUD, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes is similar to that on the affected Model 747–100 and 747–200B series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, which describes procedures for repetitive inspections for discrepancies of the structure near and common to the upper chord and splice fittings of the rear spar of the wing, and repair if necessary. The inspection procedures include removing existing bolts; performing an ultrasonic or magnetic particle inspection for cracking of removed H–11 bolts; performing a detailed inspection of all other removed bolts for cracking, corrosion, or damage; replacing cracked, corroded, or damaged bolts with new improved bolts; removing any installed repair bushings; performing an open-hole high frequency eddy current (HFEC) inspection for cracking of the bolt holes; installing new bushings if necessary; reinstalling bolts that are not cracked, corroded, or damaged; torquing the nuts; performing a detailed inspection of the shim between the kick fitting and bulkhead strap for cracking or migration; and replacing the shim with a new shim if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The service bulletin also describes procedures for an optional modification, which involves removing installed repair bushings, performing an open-hole HFEC inspection for cracking of the bolt holes, repairing any cracking that is found, oversizing bolt holes, and installing new improved bolts. Accomplishment of the optional modification eliminates the need for the repetitive inspections described previously, but necessitates eventual post-modification inspections. The post-modification inspections involve procedures similar to those for the pre-modification inspections, which were described previously.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below under the heading "Differences Between Proposed Rule and Service Bulletin."

Clarification of Credit for Actions Accomplished Previously

Flag Note 1 of the logic diagram in Figure 1 of Boeing Alert Service Bulletin 747–57A2314, Revision 1, specifies that, for certain fastener holes on certain airplanes, an inspection per Figure 4, Step 14, of Boeing Service Bulletin 747–57–2110 is considered acceptable for compliance with the initial inspection specified in paragraph (a) of this proposed AD. We have reviewed and approved Boeing Service Bulletin 747–57–2110, Revision 6, dated November 21, 1991; and Revision 7, dated April 23, 1998; and have determined that accomplishment of an initial inspection before the effective date of this AD per Figure 4, Step 14, of one of those revisions of the service bulletin would provide an acceptable level of safety.

We have also reviewed Boeing Service Bulletin 747–57–2110, Revision 3, dated February 19, 1987; Revision 4, dated May 26, 1988; and Revision 5, dated October 26, 1989. We have determined that accomplishment of an initial inspection before the effective date of this AD per Figure 4, Step 9, of one of those revisions of the service bulletin would provide an acceptable level of safety. The first repeat inspection per paragraph (b) of this proposed AD would be required to be accomplished at the applicable interval established in paragraph (b) of this proposed AD after the most recent inspection per Figure 4, Step 14, of Boeing Service Bulletin 747–57–2110, Revision 6 or 7; or Figure 4, Step 9, of Boeing Service Bulletin 747–57–2110, Revision 3, 4, or 5.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators should also note that, although Appendix B of Boeing Alert Service Bulletin 747–57A2314, Revision 1, describes procedures for reporting discrepancies found during an inspection, this proposed AD would not require those actions.

Cost Impact

There are approximately 593 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $84,480, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 22 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $10,700 per airplane. Based on these figures, the cost impact of the optional terminating action would be approximately $12,020 per airplane.

If the optional terminating action provided by this AD action is accomplished, an eventual post-modification inspection would be necessary. That inspection would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the post modification inspections would be approximately $480 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–238–AD.

Applicability: All Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of structure near and common to the upper chord and splice fittings of the rear spar of the wing, which could result in loss of structural integrity of the airplane, accomplish the following:

Initial Inspections

(a) Perform inspections for discrepancies of the structure near and common to the upper chord and splice fittings of the rear spar of the wing, per Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003. The inspection procedures include removing existing bolts; performing an ultrasonic or magnetic particle inspection for cracking of removed H–11 bolts; performing a detailed inspection of all other removed bolts for cracking, corrosion, or damage; replacing cracked, corroded, or damaged bolts with new improved bolts; removing any installed repair bushings; performing an open-hole high frequency eddy current (HFEC) inspection for cracking of the bolt holes; installing new bushings, if necessary; reinstalling bolts that are not cracked, corroded, or damaged; torquing the nuts; performing a detailed inspection of the shim between the kick fitting and bulkhead strap for cracking or migration; and replacing the shim with a new shim if necessary, except as provided by paragraph (h) of this AD. Do the initial inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, whichever is later.

(1) Inspect at the earlier of the applicable times specified in the "Flights" and "Hours" columns under the heading "Initial Inspection Threshold" in Table 1 of Figure 1 of the service bulletin. Where the "Initial Inspection Threshold" column of Table 1 of Figure 1 of the service bulletin specifies "flights" and "hours," for the purposes of this paragraph the numbers in that column are considered to be the airplane's total flight cycles and total flight hours.

(2) Inspect within 18 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed the earlier of the times specified in the "Flights" and "Hours" columns under the heading "Repeat Inspection Intervals" in Table 1 of Figure 1 of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, until paragraph (d) of this AD is accomplished. Where the "Repeat Inspection Intervals" column of Table 1 of Figure 1 of the service bulletin specifies "flights" and "hours," for the purposes of this paragraph, the figures in that column are considered to be the number of flight cycles and flight hours from the time of the most recent inspection per paragraph (a) or (b) of this AD, except as provided by paragraph (g) of this AD.

Repair

(c) If any cracking is found during any inspection required by paragraph (a) or (b) of this AD, before further flight, repair per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, except as provided by paragraph (h) of this AD.

Optional Modification

(d) Accomplishment of the modification specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, constitutes terminating action for the initial inspections required by paragraph (a) of this AD and the repetitive inspections required by paragraph (b) of this AD, provided that the repetitive post-modification inspections required by paragraph (e) of this AD are initiated at the applicable time. The modification procedures include removing installed repair bushings, performing an open-hole HFEC inspection for cracking of the bolt holes, repairing any cracking that is found, oversizing bolt holes, and installing new improved bolts.

Post-Modification Inspections

(e) For airplanes on which the optional modification specified in paragraph (d) of this AD is accomplished: At the earlier of the times specified in the "Flights" and "Hours" columns under the heading "Post Modification Threshold" in Table 2 of Figure 1 of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, perform a post-modification inspection per Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003. The inspection procedures include removing existing bolts; performing a detailed inspection of removed bolts for cracking, corrosion, or damage; replacing cracked, corroded, or damaged bolts with new bolts; removing any installed repair bushings; performing an open-hole HFEC inspection for cracking of the bolt holes; installing new bushings if necessary; reinstalling bolts that are not cracked, corroded, or damaged; torquing the nuts; performing a detailed inspection of the shim between the kick fitting and bulkhead strap for cracking or migration; and replacing the shim with a new shim if necessary; except as provided by paragraph (h) of this AD. Where the "Post Modification Inspection Threshold" column of Table 2 of Figure 1 of the service bulletin specifies "flights" and "hours," for the purposes of this paragraph, the numbers in that column are considered to be the flight cycles and flight hours after accomplishment of the modification specified in paragraph (d) of this AD.

(1) Repeat the inspection at intervals not to exceed the earlier of the times specified in the "Flights" and "Hours" columns under the heading "Post Modification Repeat Inspection Intervals" in Table 2 of Figure 1 of the service bulletin. Where the "Post Modification Repeat Inspection Intervals" column of Table 2 of Figure 1 of the service bulletin specifies "flights" and "hours," for the purposes of this paragraph, the numbers in that column are considered to be the flight cycles and flight hours since the most recent inspection per paragraph (e) or (e)(1) of this AD.

(2) If any cracking is found during any inspection required by paragraph (e) or (e)(1) of this AD, before further flight, repair per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, except as provided by paragraph (h) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(f) Inspections, repairs, or modifications accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–57A2314, including Appendix A and B, dated June 28, 2001, are considered acceptable for compliance with the corresponding action specified in this AD, except as provided by paragraph (h) of this AD.

(g) As specified in Flag Note 1 of the logic diagram in Figure 1 of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003: An inspection accomplished before the effective date of this AD per Figure 4, Step 14, of Boeing Service Bulletin 747–57–2110, Revision 6, dated November 21, 1991; or Revision 7, dated April 23, 1998; is considered acceptable, as applicable, for compliance with the initial inspection required by paragraph (a) of this AD. An inspection accomplished before the effective date of this AD per Figure 4, Step 9, of Boeing Service Bulletin 747–57–2110, Revision 3, dated February 19, 1987; Revision 4, dated May 26, 1988; and Revision 5, dated October 26, 1989; is also considered acceptable, as applicable, for compliance with the initial inspection required by paragraph (a) of this AD. The first repeat inspection per paragraph (b) of this AD must be accomplished at the applicable interval established in paragraph (b) of this AD after the most recent inspection per Figure 4, Step 14, of Boeing Service Bulletin 747–57–2110, Revision 6 or 7; or Figure 4, Step 9, of Boeing Service Bulletin 747–57–2110, Revision 3, 4, or 5.

Exception to Instructions in Service Bulletin

(h) Where Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, specifies to contact Boeing for appropriate action, before further flight, repair per a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(i) Although Appendix B of Boeing Alert Service Bulletin 747–57A2314, Revision 1, dated January 9, 2003, refers to a reporting requirement, such reporting is not required by this AD.

Parts Installation

(j) Except as provided by paragraphs (a) and (b) of this AD, as of the effective date of this AD, no person may install any alloy steel bolt in any location specified in this AD on any airplane listed in the applicability of this AD.

Alternative Methods of Compliance

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15324 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200F and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 747–200F and –200C series airplanes, that currently requires repetitive detailed inspections or a one-time open-hole high frequency eddy current inspection to detect cracking of certain areas of the upper deck floor beams, and corrective actions if necessary. This action would add new one-time inspections for cracking of the web, upper chord, and strap of the upper deck floor beams. This action also would add a requirement to modify or repair the upper deck floor beams, as applicable, which would eventually necessitate accomplishment of new repetitive inspections for cracking of the upper deck floor beams. This action is necessary to prevent fatigue cracks in the upper chord and web of upper deck floor beams and the resultant failure of such floor beams. Failure of a floor beam could result in damage to critical flight control cables and wire bundles that pass through the floor beam, and consequent loss of controllability of the airplane. Failure of the floor beam also could result in the failure of the adjacent fuselage frames and skin, and consequent rapid decompression of the airplane. This action is intended to address the identified unsafe conditions.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–181–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–181–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 20, 1998, the FAA issued AD 98–09–17, amendment 39–10498 (63 FR 20311, April 24, 1998), applicable to all Boeing Model 747–200F and –200C series airplanes, to require repetitive inspections or a one-time inspection to detect cracking of certain areas of the upper deck floor beams, and corrective actions if necessary. That action was prompted by reports indicating that fatigue cracks were found in the upper chord and web of upper deck floor beams. The requirements of that AD are intended to prevent such fatigue cracking and the resultant failure of such floor beams. Failure of the floor beam could result in damage to critical flight control cables and wire bundles that pass through the floor beam, and consequent loss of controllability of the airplane. Failure of the floor beam also could result in the failure of the adjacent fuselage frames and skin, and consequent rapid decompression of the airplane.

In the preamble to AD 98–09–17, we specify that the actions required by that AD are considered "interim action" and that the manufacturer was developing a preventive modification to address the unsafe condition. We indicated that we might consider further rulemaking action once the modification was developed, approved, and available. Though the manufacturer now has developed such a modification, we have determined that it does not provide an adequate level of safety, as explained below under the heading "Differences Between Proposed AD and Service Bulletins." However, considering the nature of the identified unsafe condition, we have determined that it is necessary to proceed with rulemaking action at this time to ensure the continued operating safety of the affected airplane fleet. This proposed AD follows from that determination.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001. That service bulletin describes procedures for a one-time detailed inspection for cracking of the web, upper chord, and strap of certain upper deck floor beams; and an open-hole high frequency eddy current (HFEC) inspection for cracking of the fastener holes of the web and upper chord. The service bulletin also describes procedures for modifying the upper chord of the upper deck floor beams, if no cracking is found, and for installing a permanent repair if cracking is found. The service bulletin recommends new repetitive open-hole HFEC or surface HFEC inspections of the upper deck floor beams following such modification or permanent repair. However, the service bulletin does not contain instructions for such inspections.

We also have reviewed and approved Boeing Service Bulletin 747–53A2420, Revision 1, dated January 7, 1999. (AD 98–09–17 refers to Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998, as the appropriate source of service information for the inspections required by that AD.) In addition to procedures for inspections of the entire area subject to inspections per AD 98–09–17, Boeing Service Bulletin 747–53A2420, Revision 1, describes procedures for time-limited repairs of certain crack configurations in the upper deck floor beams. These time-limited repairs involve removing the existing strap; performing HFEC inspections of the chord, web, and angle, as applicable; stop-drilling cracks; trimming the angle and machining the vertical leg of the chord, if necessary; and installing a new strap.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–09–17 to continue to require repetitive detailed inspections or a one-time open-hole HFEC inspection to detect cracking of certain areas of the upper deck floor beams, and corrective actions if necessary. The proposed AD would add a requirement for new one-time detailed and open-hole HFEC inspections for cracking of the web, upper chord, and strap of upper deck floor beams. The proposed AD also would require modification or permanent repair of the upper deck floor beams, as applicable, which would eventually necessitate new repetitive open-hole HFEC or surface HFEC inspections for cracking of the upper deck floor beams. The actions would be required to be accomplished in accordance with Boeing Alert Service Bulletin 747–53A2429 and Boeing Service Bulletin 747–53A2420, Revision 1, except as discussed below.

Differences Between Proposed AD and Service Bulletins

Operators should note that, although Boeing Service Bulletin 747–53A2420, Revision 1, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method that we have approved, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who we have authorized to make such findings.

Operators should note that, although Boeing Alert Service Bulletin 747–53A2429 provides specific instructions for modifying the upper chord of the upper deck floor beams or installing a permanent repair, this proposed AD would require a modification or permanent repair be accomplished in accordance with a method that we have approved, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who we have authorized to make such findings. We have determined that the modification and permanent repair procedures specified in Boeing Alert Service Bulletin 747–53A2429 do not provide an adequate level of safety. This determination is based on two reports that we recently received, which indicate that cracks have been found on airplanes that had a modification similar to that specified in Boeing Alert Service Bulletin 747–53A2429. Boeing concurs with our determination and intends to revise that service bulletin in the future to include new modification and permanent repair procedures. Once we have reviewed the revised service bulletin, we may consider approving it as an alternative method of compliance to allow the modification or permanent repair to be accomplished per that service bulletin.

Explanation of Change Made To Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this action. Note 3 of this proposed AD defines such an inspection.

Cost Impact

There are approximately 81 airplanes of the affected design in the worldwide fleet. We estimate that 23 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes on which the repetitive detailed inspection that is currently required by AD 98–09–17 is accomplished, that inspection takes approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required detailed inspection is estimated to be $60 per airplane, per inspection cycle.

The HFEC inspection that is currently required by AD 98–09–17 takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,280, or $360 per airplane.

The new one-time detailed and HFEC inspections that are proposed in this AD action would take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new proposed inspection on U.S. operators is estimated to be $9,660, or $420 per airplane.

For airplanes subject to the modification that is proposed in this AD action, it would take approximately 172 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,959 per airplane. Based on these figures, the cost impact of the proposed modification is estimated to be $15,279 per airplane.

For airplanes subject to the repair that is proposed in this AD action, it would take approximately 172 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $21,646 to $21,857 per airplane. Based on these figures, the cost impact of the proposed repair is estimated to be $31,966 to $32,177 per airplane.

The follow-on repetitive inspections that are proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new proposed follow-on inspections on U.S. operators is estimated to be $8,280, or $360 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD

rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10498 (63 FR 20311, April 24, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–181–AD. Supersedes AD 98–09–17, Amendment 39–10498.

Applicability: All Model 747–200F and –200C series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane and/or rapid decompression of the airplane due to fatigue cracking in the upper deck floor beams, accomplish the following:

Requirements of AD 98–09–17

Note 2: For the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraphs (a) and (b) of this AD, "flight cycles" are considered to be flight cycles with a cabin pressure differential greater than 2.0 pounds per square inch (psi).

Repetitive Inspections of Certain Upper Deck Floor Beams

(a) For airplanes that have accumulated less than 18,000 total flight cycles as of May 11, 1998 (the effective date of AD 98–09–17, amendment 39–10498): Prior to the accumulation of 15,000 total flight cycles, or within 250 flight cycles after May 11, 1998, whichever occurs later, inspect the upper chord, web, and strap of the upper deck floor beams at body station (BS) 340 through BS 440 inclusive, and the upper deck floor beams at BS 500 and BS 520, on the right and left sides of the airplane, in accordance with paragraph (a)(1) or (a)(2) of this AD. The inspections shall be accomplished in accordance with Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998; or Boeing Service Bulletin 747–53A2420, Revision 1, dated January 7, 1999.

(1) Perform a detailed inspection to detect cracks in accordance with Figure 2 of the service bulletin.

(i) Repeat the detailed inspection thereafter at intervals not to exceed 25 flight cycles, until the requirements of paragraph (b)(1)(ii) or (e) of this AD are accomplished.

(ii) Within 500 flight cycles after accomplishment of the initial detailed inspection, accomplish paragraph (a)(2) of this AD.

(2) Perform a one-time open hole high frequency eddy current (HFEC) inspection to detect cracks in accordance with Figure 3 of the service bulletin. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(b) For airplanes that have accumulated 18,000 or more total flight cycles as of May 11, 1998: Within 25 flight cycles after May 11, 1998, inspect the upper chord, web, and strap of the upper deck floor beams at BS 340 through BS 440 inclusive, and the upper deck floor beams at BS 500 and BS 520, on the right and left sides of the airplane, in accordance with paragraph (b)(1) or (b)(2) of this AD. The inspections shall be accomplished in accordance with Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998; or Boeing Service Bulletin 747–53A2420, Revision 1, dated January 7, 1999.

(1) Perform a detailed inspection to detect cracks in accordance with Figure 2 of the service bulletin.

(i) Repeat the detailed inspection thereafter at intervals not to exceed 25 flight cycles, until the requirements of paragraph (b)(1)(ii) or (e) of this AD are accomplished.

(ii) Within 250 flight cycles after accomplishment of the initial detailed inspection, accomplish paragraph (b)(2) of this AD.

(2) Perform a one-time open hole HFEC inspection to detect cracks in accordance with Figure 3 of the service bulletin. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1)(i) of this AD.

Repair

(c) If any cracking is found during any inspection required by paragraphs (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

New Requirements of this AD

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Adjustments to Compliance Time: Cabin Differential Pressure

(d) For the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraphs (e), (h), (i), and (j) of this AD: The number of flight cycles in which cabin differential pressure is at 2.0 psi or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane: No fleet-averaging of cabin pressure is allowed.

Detailed and Eddy Current Inspections of Certain Upper Deck Floor Beams

(e) Within 5,000 flight cycles after accomplishing the most recent inspection required by paragraph (a) or (b) of this AD, or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do paragraphs (e)(1) and (e)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001. Accomplishment of both paragraphs (e)(1) and (e)(2) of this AD constitutes terminating action for the repetitive inspection requirement of paragraph (a)(1)(i) or (b)(1)(i) of this AD, as applicable.

(1) Do a one-time detailed inspection for cracking of the web, upper chord, and strap of the upper deck floor beams at BS 340 through BS 440 inclusive, BS 500, and BS 520, on the right and left sides of the airplane, as specified in Figure 1 of the service bulletin.

(2) Do an open-hole high frequency eddy current inspection for cracking of the fastener holes of the web and upper chord of the upper deck floor beams at BS 340 through BS 440 inclusive, BS 500, and BS 520, on the right and left sides of the airplane, as specified in Figure 2 of the service bulletin.

Compliance With Paragraphs (a) or (b) and (e)

(f) Airplanes on which the inspections required by paragraph (e) of this AD are accomplished within the compliance time specified in paragraph (a) or (b) of this AD, as applicable, are not required to be inspected in accordance with paragraph (a) or (b) of this AD, as applicable.

Modification of Upper Deck Floor Beams

Note 4: The modification procedures specified in Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001, do not provide an adequate level of safety and are not acceptable for compliance with paragraph (g) of this AD. Figure 3 of the service bulletin is used only for identifying the floor beams.

(g) If no cracking is found during the inspections required by paragraph (e) of this AD, before further flight, except as provided by paragraph (i) of this AD, modify the upper chord of the upper deck floor beams at the locations in Figure 3 of Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a modification method to be approved, the approval must specifically reference this AD.

Repair of Upper Deck Floor Beams

(h) If any crack is found during either inspection required by paragraph (e) of this AD: Before further flight, except as provided by paragraph (i) of this AD, do paragraph (h)(1) or (h)(2) of this AD.

(1) Accomplish all actions associated with the time-limited repair, including removing the existing strap; performing HFEC inspections of the chord, web, and angle, as applicable; stop-drilling cracks; trimming the angle and machining the vertical leg of the chord, as applicable; and installing a new strap. Do these actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2420, Revision 1, dated January 7, 1999; except, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD. Within 1,500 flight cycles or 18 months after the installation of the time-limited repair, whichever is first, do paragraph (h)(2) of this AD.

(2) Accomplish the permanent repair of the upper deck floor beams at the locations shown in Figures 4 and 5, as applicable, of Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

Note 5: The permanent repair procedures specified in Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001, do not provide an adequate level of safety and are not acceptable for compliance with paragraph (h)(2) of this AD.

Airplanes Modified or Repaired Previously

(i) For airplanes on which a repair per paragraph (c) of this AD or the modification or permanent repair specified in Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001, was accomplished before the effective date of this AD: Within 5,000 flight cycles after installation of such modification or repair, as applicable, inspect per paragraph (e) of this AD, then do paragraph (g) or (h) of this AD, as applicable.

Repetitive Inspections After Modification or Permanent Repair

(j) Within 15,000 flight cycles after installation of the modification or permanent repair in accordance with paragraph (g) or (h) of this AD, as applicable, do paragraph (j)(1), or (j)(2) of this AD, in accordance with a method approved by the Manager, Seattle ACO. For an inspection method to be approved, the approval letter must specifically reference this AD.

(1) *Option 1:* Do surface HFEC inspections along the lower edge of the upper chord of the upper deck floor beams at BS 340 through BS 440 inclusive, BS 500, and BS 520, on the right and left sides of the airplane. Repeat the surface HFEC inspections at intervals not to exceed 1,000 flight cycles.

(2) *Option 2:* Do open-hole HFEC inspections for cracking at fasteners common to the upper chord, reinforcement straps, and body frame of the upper deck floor beams at BS 340 through BS 440 inclusive, BS 500, and BS 520; on the right and left sides of the airplane. Repeat the open-hole HFEC inspections at intervals not to exceed 3,000 flight cycles.

Repair

(k) If any cracking is found during any inspection required by paragraph (j)(1) or (j)(2) of this AD: Before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

Alternative Methods of Compliance

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–09–17, amendment 39–10498, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15325 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–328–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–

2B19 (Regional Jet Series 100 & 440) airplanes. This proposal would require installing new vent tube assemblies for the main fuel tanks; and, on certain airplanes, inspecting to measure the clearance between the vent system tubing and the applicable wing ribs, and corrective action if necessary. This action is necessary to prevent a fire hazard due to fuel spillage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–328–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–328–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–328–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–328–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) series-airplanes. TCCA advises that fuel can enter the vent line system of the main tank and get trapped. During refueling, or ground and flight maneuvers, the fuel may spill from certain scoops onto the ground, run along the lower wing skin, accumulate in the dry bay, and possibly drip onto the main landing gear and brakes. This fuel spillage, if not corrected, could result in a fire hazard.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 601R–28–024, Revision 'A', dated November 11, 1998, which describes procedures for installing new vent tube assemblies for the main fuel tanks to prevent fuel escaping from the tank vent lines and spilling. The service bulletin also describes procedures for inspecting certain airplanes to measure the clearance between the vent system tubing and the applicable wing ribs, and installing bracket assemblies on those airplanes to provide the proper clearance, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–31, dated August 7, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

The FAA estimates that the proposed installation would be required to be accomplished on 45 Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes of U.S. registry, that it would take approximately 15 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,273 per airplane. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $502,785, or $11,173 per airplane.

The FAA estimates that the proposed inspection would be required to be accomplished on 43 Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes of U.S. registry, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $2,580, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–328–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes having serial numbers 7003 through 7067 inclusive and 7069 through 7109 inclusive, certificated in any category; excluding those airplanes on which the actions specified in Bombardier Service Bulletin 601R–28–024, dated May 21,1996, have been accomplished. (This applicability includes airplanes informally identified as "Series 200.")

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire hazard due to fuel spillage, accomplish the following:

Installation

(a) Within 180 days after the effective date of this AD, install new vent tube assemblies for the main fuel tanks, per Part A of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–024, Revision 'A', dated November 11, 1998.

Inspection and Corrective Action

(b) For airplanes having serial numbers 7003 through 7035 inclusive, and 7048 through 7057 inclusive: Before further flight after installing the vent tube assemblies as required by paragraph (a) of this AD, perform a general visual inspection to measure the clearance between the vent system tubing and the applicable wing rib, per Part B of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–024, Revision 'A', dated November 11, 1998.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the clearance between the vent system tubing and the applicable wing rib is 0.125 inch or more, no further action is required by this paragraph.

(2) If the clearance between the vent system tubing and the applicable wing rib is less than 0.125 inch, prior to further flight, install the bracket assemblies in accordance with paragraphs B.(8) through B.(10) of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–31, dated August 7, 2001.

Issued in Renton, Washington, on June 11, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15326 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–246–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections to find fatigue cracking of certain upper and lower skin panels of the fuselage, and follow-on and corrective actions, if necessary. This proposal also includes terminating action for the repetitive inspections of

certain modified or repaired areas only. This action is necessary to find and fix fatigue cracking of the skin panels, which could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–246–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–246–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracks were found along the edges of the chem-milled pockets in the upper skin at stringer S–12, and above the S–4, S–10, and S–14 lap joints, on several Boeing Model 737 series airplanes. The cracks were up to 6 inches long and multiple adjacent bays were found to be cracked along the same stringers on three of the airplanes. The airplanes had accumulated between 34,574 and 56,949 total flight cycles. Additionally, skin cracks up to 4 inches long located below the S–14 lap joint along the bonded skin doublers were reported on 25 other airplanes which had accumulated between 22,786 and 80,113 total flight cycles.

Analysis by the manufacturer revealed that these cracks are caused by fatigue due to high bending stresses at the edge of chem-milled pockets or bonded skin doublers. Such fatigue cracking could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane.

Related Rulemaking

This proposed AD is related to AD 2002–07–08, amendment 39–12702 (67 FR 17917, April 12, 2002). That AD references Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, as the appropriate source of service information for accomplishment of the specified actions. (The AD also referenced, for accomplishment of certain actions, Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Revision 2, dated July 24, 1997; Revision 3, dated September 18, 1997; Revision 4, dated September 2, 1999; and Revision 5, dated February 15, 2001.) That AD is applicable to certain Boeing Model 737 series airplanes and requires repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That AD also requires modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. Additionally, that AD requires replacement of a preventive modification with an improved modification.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–53A1210, Revision 1, including Appendix A and Evaluation Form, dated October 25, 2001. The service bulletin describes procedures for repetitive external detailed and eddy current inspections to find fatigue cracking of the upper and lower skin panels of the fuselage (crown area and lower lobe area) at stringer S–12, and above the S–4, S–10, and S–14 lap joints, and repair of any cracking with either a permanent or time-limited repair.

For airplanes on which a time-limited repair is done, Part 4 of the service bulletin describes procedures for a subsequent permanent repair within 10,000 flight cycles after installation of the time-limited repair. Doing a permanent repair eliminates the need for the repetitive inspections for the repaired area only.

For Group 3, 5, 6, and 8 airplanes only, on which no cracking is found, Part 5 of the service bulletin provides procedures for a preventive modification of the chem-milled pockets in the upper skins at stringer S–12, between body station (BS) 500D and BS 520, which would end the repetitive inspections for the modified area only.

The service bulletin also describes procedures for repetitive follow-on visual inspections for cracking of the lower lobe skins from S–15L to S–15R between stations 360 and 1016 and in section 41; replacement of any loose fasteners with new fasteners; an internal eddy current inspection of the skin, tear straps, and lap joint in each adjacent bay for cracking; and repair of any cracking found.

Accomplishment of the actions specified in Service Bulletin 737–53A1210, Revision 1, is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin 737–53A1210, Revision 1

The service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, but this proposed AD would require the repair of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The service bulletin recommends that, after installation of a time-limited repair, an internal eddy current inspection should be done at the first "C–check" or within 4,000 flight cycles, whichever is last. Because "C–check" schedules vary among operators, such a nonspecific interval would provide no assurance that operators would do the inspection within the prescribed schedule. This proposed AD would require that the inspection be done within 4,000 flight cycles after the repair installation. We find that a 4,000-flight-cycle interval is appropriate for affected airplanes to continue to operate without compromising safety.

Although the service bulletin recommends that operators report inspection results to the manufacturer, this proposed AD does not contain such a reporting requirement.

Interim Action

This is considered to be interim action for Group 7 airplanes. Although the service bulletin described previously does not include the inspection of the crown area (upper lobe) for Group 7 airplanes, as specified in paragraph (a) of this proposed AD, the manufacturer has advised that it currently is developing a new service bulletin to address those airplanes. Once the FAA has reviewed and approved the service bulletin, we may consider additional rulemaking to mandate those inspections.

Cost Impact

There are approximately 2,200 airplanes of the affected design in the worldwide fleet. The FAA estimates that 903 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 94 work hours per airplane to accomplish the proposed inspections of the crown area, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $5,092,920, or $5,640 per airplane, per inspection cycle.

It would take approximately 96 work hours per airplane to accomplish the proposed inspections of the lower lobe area, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $5,201,280, or $5,760 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to install the preventive modification, it would take approximately 108 work hours to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the preventive modification is estimated to be $6,480 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–246–AD.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes, as listed in Boeing Alert Service Bulletin 737–53A1210, Revision 1, dated October 25, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of certain upper and lower skin panels of the fuselage, which could result in sudden fracture and failure of the skin panels and consequent rapid decompression of the airplane, accomplish the following:

External Detailed and Eddy Current Inspections

(a) For Groups 1 through 6 and Group 8 airplanes: Before the accumulation of 35,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever is later, do external detailed and eddy current inspections of the crown area skin panels of the fuselage for cracking, per Part 1 and Figure 1 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, including Appendix A and excluding Evaluation Form, dated October 25, 2001. Repeat the inspections at least every 4,500 flight cycles until paragraph (c) or (d)(1)(ii) of this AD has been done, as applicable. Although paragraph 1.D. of the service bulletin references a reporting requirement, such reporting is not required by this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) For all airplanes: Before the accumulation of 40,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever is later, do an external detailed inspection of the lower lobe area and section 41 of the fuselage for cracking, per Part 2 and Figure 2 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, including Appendix A and excluding Evaluation Form, dated October 25, 2001. Repeat the inspection at least every 9,000 flight cycles until paragraph (d)(2) of this AD has been done, as applicable.

Preventive Modification

(c) For Groups 3, 5, 6, and 8 airplanes: If no cracking is found during any inspection required by paragraph (a) of this AD, doing the preventive modification of the chem-milled pockets in the upper skin as specified in Part 5 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, including Appendix A and excluding Evaluation Form, dated October 25, 2001, ends the repetitive inspections for the modified area only.

Corrective Actions

(d) If any cracking is found during any inspection required by paragraph (a) or (b) of this AD, before further flight, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, including Appendix A and excluding Evaluation Form, dated October 25, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(1) For cracking of the crown area, do the repair specified in either paragraph (d)(1)(i) or (d)(1)(ii) of this AD. Installation of the lap joint repair specified in paragraph (g) of AD 2002–07–08, amendment 39–12702, is considered acceptable for compliance with the corresponding action specified in this paragraph for the lap joint areas only.

(i) Do a time-limited repair per Part 4 of the Work Instructions of the service bulletin, then do the actions required by paragraph (e) of this AD at the times specified in that paragraph.

(ii) Do a permanent repair per Part 3 of the Work Instructions of the service bulletin. Installation of a permanent repair ends the repetitive inspections required by paragraph (a) of this AD for the repaired area only.

(2) For cracking of the lower lobe area and Section 41, repair per Part 2 of the Work Instructions of the service bulletin. Accomplishment of this repair ends the repetitive inspections required by paragraph (b) of this AD for the repaired area only.

Follow-on and Corrective Actions

(e) If a time-limited repair is done, as specified in paragraph (d)(1)(i) of this AD: Do the actions specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD, at the times specified, per the Work Instructions of Boeing Alert Service Bulletin 737–53A1210, Revision 1, including Appendix A and excluding Evaluation Form, dated October 25, 2001.

(1) Within 3,000 flight cycles after doing the repair: Do a general visual inspection of the repaired area for loose fasteners per Part 4 of the Work Instructions of the service bulletin. If any loose fastener is found, before further flight, replace with a new fastener per the service bulletin. Then repeat the inspection at least every 3,000 flight cycles until permanent rivets are installed in the repaired area, which ends the repetitive inspections for this paragraph.

(2) Within 4,000 flight cycles after doing the repair: Do an internal eddy current inspection of the skin, tear straps, and lap joint in each adjacent bay of the repaired area for cracking, per Part 4 of the Work Instructions of the service bulletin. If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(3) Within 10,000 flight cycles after doing the repair: Make the repair permanent per Part 4 and Figure 20 of the Work Instructions of the service bulletin, which ends the repetitive inspections for the repaired area only.

Credit for Actions Done per Previous Service Bulletin

(f) Inspections, repairs, and preventive modifications done before the effective date of this AD per Boeing Alert Service Bulletin 737–53A1210, dated December 14, 2000, are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15327 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes. This proposal would require reversing the ground stud installation of the main battery, and installing a new nameplate on the cover of the battery. This action is necessary to prevent damage to equipment or possible fire in the electrical/electronics equipment compartment due to electrical arcing between the ground stud of the main battery and adjacent structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–169–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received. Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–169–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of a report indicating that heat damage had been detected on the ground stud of the main battery and on adjacent structure of a Model DC–9–82 (MD–82) airplane. The heat damage has been attributed to a loose or inadequately tightened ground stud of the main battery, which resulted in electrical arcing. Such electrical arcing could result in damage to equipment or possible fire in the electrical/electronics equipment compartment.

The ground stud of the main battery on McDonnell Douglas Model DC–9–81 (MD–81), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes is identical to that on the affected Model. Therefore, all of these models may be subject to the same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model Douglas DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD–80–24A159, Revision 01, dated January 24, 2000, which describes procedures for reversing the ground stud of the main battery and installing a nameplate at stations Y=110.000 and Z=39.000 in the lower nose frame area. The manufacturer advises that reversing the ground stud installation will allow easier access to tighten the ground stud nut to proper torque, which will minimize the possibility of the ground stud coming loose and causing arcing or further damage. Installation of the nameplate will clarify installation and torque requirements for future maintenance. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this

proposed AD identifies the office authorized to approve AMOCs.

Cost Impact

There are approximately 1,224 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 600 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $38, per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $94,800, or $158 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies also may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–169–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–24A159, Revision 01, dated January 24, 2000; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to equipment or possible fire in the electrical/electronics equipment compartment due to electrical arcing between the ground stud of the main battery and adjacent structure; accomplish the following:

(a) Within 1 year after the effective date of this AD, reverse the installation of the ground stud for the main battery, and install a new nameplate on the cover of the battery; per McDonnell Douglas Alert Service Bulletin MD80–24A159, Revision 01, dated January 24, 2000.

(b) Accomplishment of the actions specified in paragraph (a) of this AD before the effective date of this AD, in accordance with McDonnell Douglas Service Bulletin MD80–24A159, dated March 15, 1996, is considered to be an acceptable method of compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15333 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require an initial general visual inspection of the power feeder cables of the integrated drive generator (IDG) and the fuel feed lines of engine plyons No. 1 and No. 3 on the wings for proper clearance and damage; corrective actions if necessary; and repetitive general visual inspections and a terminating action for the repetitive inspections. This action is necessary to prevent potential chafing of the power feeder cables of the IDG in engine pylons No. 1 and No. 3 on the wings, and consequent arcing on the fuel lines in the engine pylons and possible fuel fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–16–4AD" in the subject line and need not be submitted

in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–164–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of reports indicating that the power feeder cables of the integrated drive generator (IDG) are riding against structure and fuel lines in engine pylons No. 1 and No. 3 on the wings of certain McDonnell Douglas Model MD–11 and –11F airplanes. The cables are routed too closely to the components. This condition, if not corrected, could result in potential chafing of the power feeder cables of the IDG in engine pylons No. 1 and No. 3 on the wings, and consequent arcing on the fuel lines in the engine pylons and possible fuel fire.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD11–54A011, Revision 02, dated May 31, 2002. The service bulletin describes procedures for an initial general visual inspection of the power feeder cables of the IDG and the fuel feed lines of engine plyons No. 1 and 3 on the wings for proper clearance and damage; corrective action if necessary; and repetitive general visual inspections and a terminating action for the repetitive inspections. The corrective actions include:

- Repositioning cables with improper clearance; and
- Repairing damage or replacing damaged cables or fuel feed lines with new or serviceable cables or fuel feed lines.

The terminating action involves:

- Installing brackets to support the IDG harness;
- Installing new clamps on the power feeder cables of the IDG of engine pylons No. 1 and No. 3; and
- Replacing the existing fairlead with a new clamp, and installing new tape; as applicable.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing also has issued Information Notice MD11–54A011 R02 IN 02, dated July 11, 2002. The information notice informs operators of a typographical error for the string tie part number (P/N) specified in the Boeing Alert Service Bulletin MD11–54A011, Revision 02. The service bulletin specifies string tie P/N 190L0F21G/A; the correct P/N is 109 LOF 21G/A.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Clarification of Procedures in Service Bulletin

Boeing has informed us that, although the service bulletin specifies two options (*i.e.*, "Option 1" and "Option 2") for Conditions 1 through 3 findings, these actions are not optional. The intent is that the actions specified in Option 1 be accomplished until the actions specified in Option 2 are accomplished at a later time. If an operator elects to accomplish the actions specified in Option 2 before the actions specified in Option 1, the actions specified in Option 1 do not need to be accomplished.

Changes to 14 CFR part 39/Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve

AMOCs is identified in each individual AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,440, or $60 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to accomplish the terminating action, at an average labor rate of $60 per work hour. Required parts would cost approximately $91 per airplane. Based on these figures, the cost impact of this terminating action is estimated to be $24,494, or $331 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–164–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–54A011, Revision 02, dated May 31, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential chafing of the power feeder cables of the integrated drive generator (IDG) in engine pylons No. 1 and No. 3 on the wings, and consequent arcing on the fuel lines in the engine pylons and possible fuel fire, accomplish the following:

Note 1: Boeing has issued Information Notice MD11–54A011 R02 IN 02, dated July 11, 2002. The information notice informs operators of a typographical error for the string tie part number (P/N) specified in the Boeing Alert Service Bulletin MD11–54A011, Revision 02. The service bulletin specifies string tie P/N 190L0F21G/A; the correct P/N is 109 LOF 21G/A.

Initial Inspection

(a) Within 30 days after the effective date of this AD, do a general visual inspection of the power feeder cables of the IDG and the fuel feed lines of engine pylons No. 1 and 3 on the wings for proper clearance and damage, per Boeing Alert Service Bulletin MD11–54A011, Revision 02, dated May 31, 2002.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1: Proper Clearance and No Damage

(b) If proper clearance exists and no damage is detected during any inspection required by paragraph (a) of this AD, do the action(s) specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, as applicable, per Boeing Alert Service Bulletin MD11–54A011, Revision 02, dated May 31, 2002.

(1) For Group 1 and Group 2 airplanes identified in the service bulletin: Repeat the inspection required by paragraph (a) of this AD every 6 months until the modification required by paragraph (b)(2) or (b)(3) of this AD, as applicable, has been done.

(2) For Group 1 airplanes identified in the service bulletin: Within 18 months after the effective date of this AD, install the brackets to support the IDG harness, and install new clamps on the power feeder cables of the IDG of the No. 1 and No. 3 pylons.

(3) For Group 2 airplanes identified in the service bulletin: Within 18 months after the effective date of this AD, replace the existing fairlead with a new clamp, and install new tape.

Condition 2: Improper Clearance and No Damage

(c) If improper clearance exists and no damage is detected during any inspection required by paragraph (a) of this AD, do the action(s) specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, per Boeing Alert Service Bulletin MD11–54A011, Revision 02, dated May 31, 2002.

(1) For Group 1 and Group 2 airplanes identified in the service bulletin: Before further flight, reposition cables, and repeat the inspection required by paragraph (a) of this AD every 6 months until the modification required by paragraph (c)(2) or (c)(3) of this AD, as applicable, has been done.

(2) For Group 1 airplanes identified in the service bulletin: Within 18 months after the effective date of this AD, install the brackets to support the IDG harness, and install new clamps on the power feeder cables of the IDG of engine pylons No. 1 and No. 3.

(3) For Group 2 airplanes identified in the service bulletin: Within 18 months after the effective date of this AD, replace the existing fairlead with a new clamp, and install new tape.

Condition 3: Improper Clearance and Damage Detected

(d) If improper clearance exists and any damage is detected during any inspection required by paragraph (a) of this AD, do the action(s) specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD, as applicable, per Boeing Alert Service Bulletin MD11–54A011, Revision 02, dated May 31, 2002.

(1) For Group 1 and Group 2 airplanes identified in the service bulletin: Before further flight, reposition cables; repair damage or replace damaged cables or fuel feed lines with new or serviceable cables or fuel feed lines; and repeat the inspection required by paragraph (a) of this AD every 6 months until the modification required by paragraph (d)(2) or (d)(3) of this AD, as applicable, has been done.

(2) For Group 1 airplanes identified in the service bulletin: Within 18 months after the effective date of this AD, install the brackets to support the IDG harness, and install new clamps on the power feeder cables of the IDG of engine pylons No. 1 and No. 3.

(3) For Group 2 airplanes identified in the service bulletin: Within 18 months after the effective date of this AD, replace the existing fairlead with a new clamp, and install new tape.

Credit for Earlier Service Bulletin

(e) Accomplishment of the actions specified in this AD before the effective date of this AD per Boeing Alert Service Bulletin MD11–54A011, Revision 01, dated August 22, 2002, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15334 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes and Model MD–88 airplanes. This proposal would require a general visual inspection for chafing of the power feeder cables of the auxiliary power unit (APU), and repair if necessary. This proposal also would require replacement of a support bracket located on the left side of the lower cargo compartment with a new "U" shaped bracket. This action is necessary to prevent chafing of the power feeder cables of the APU, which could result in electrical arcing to adjacent structure and consequent fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–171–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer; Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–171–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the power feeder cables of the auxiliary power unit (APU) had chafed against a support bracket located in the forward lower cargo compartment of a Model MD–88 airplane. Investigation revealed that a spacer that separates the cable from the bracket might have been inadvertently omitted during maintenance. This condition, if not corrected, could cause chafing of the power feeder cables of the APU, which could result in electrical arcing to adjacent structure and consequent fire in the airplane.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes

to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000, which describes procedures for inspecting for any chafed power feeder cables of the APU, and repairing if necessary. The alert service bulletin also describes procedures for replacing a support bracket for the power feeder cable on the left side of the lower cargo compartment between fuselage stations Y=218.000 and Y=237.000 with a new "U" shaped bracket. The new bracket will eliminate the need for a spacer and minimize the possibility of cable chafing and arcing.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 634 airplanes of the affected design in the worldwide fleet. The FAA estimates that 438 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the inspection and replacement of the bracket, and that the average labor rate is $60 per work hour. Required parts would cost approximately $147 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $90,666, or $207 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–171–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the power feeder cables of the auxiliary power unit (APU), which could result in electrical arcing to adjacent structure and consequent fire in the airplane; accomplish the following:

No Reporting Requirement

(a) Although the alert service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Inspection for Chafing

(b) Within 1 year after the effective date of this AD, perform a general visual inspection for chafing of the power feeder cables of the auxiliary power unit, per McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000.

(1) If no chafing is detected, no further action is required by this paragraph.

(2) If any chafing is detected, before further flight, repair the cable(s) per the alert service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Replacement of a Support Bracket

(c) Within 1 year after the effective date of this AD, replace the support bracket for the power feeder cable located on the left side of the lower cargo compartment between fuselage stations Y=218.000 and Y=237.000 with a new "U" shaped bracket.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15337 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 and ATR72 series airplanes. This proposal would require inspecting the wire bundle in the area of electrical rack 90VU to detect damage, verifying that the conduit around the wire bundle is in the proper position, and installing a clamp between the wire bundles and the carbon shelves structure. This action is necessary to prevent chafing of a wire bundle, which could result in an electrical short and potential loss of several functions essential for safe flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–169–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–169–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–500 and ATR72 series airplanes. The DGAC advises that, after parking a Model ATR42–500 series airplane with the right-hand engine on, the flightcrew tried unsuccessfully to start the left-hand engine. Investigation revealed wire chafing on electrical rack 90VU between the carbon structure of the 95VU shelf and the main wire bundle. This chafing led to a short circuit, which burned several wires of the bundle (including the left-hand engine ignition circuits) and the protective sheath (conduit). It was determined that the chafing and subsequent electrical short circuit probably occurred when the wire bundle on the shelf was mispositioned during maintenance, and that this wire bundle is susceptible to such mispositioning. This created a direct contact between the wire bundle and the carbon shelf (an abrasive structure). This condition could also exist on shelves 93VU and 94VU and, if not corrected, could result in the loss of several functions essential for safe flight.

The design of the wire bundle routing is the same on Model ATR42–500 and ATR72 series airplanes; therefore, these airplane models are subject to the identified unsafe condition.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletins ATR42–92–0007 (for Model ATR42–500 series airplanes) and ATR72–92–1007 (for Model ATR72 series airplanes), both dated January 25, 2002. These service bulletins describe procedures for inspecting the wire bundles in the area of electrical rack 90VU to detect damage, verifying that the conduit around the wire bundles is in the proper position, and installing a clamp between the wire bundles and the carbon shelves structure (93VU, 94VU, 95VU). Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2002–090–092(B) and 2002–091–066(B), both

dated February 20, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of §21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletins

The service bulletins do not provide procedures to repair damaged wiring. This proposed AD would require that damaged wiring be repaired in accordance with the applicable ATR Aircraft Schematic Manual, Chapter 20–27–17, dated October 1, 1995.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). It is not necessary to include this material in each individual AD; however, the office authorized to approve AMOCs is identified in paragraph (b) of this proposed AD.

Cost Impact

The FAA estimates that 86 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $259 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $42,914, or $499 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2002–NM–169–AD.

Applicability: Model ATR42–500 and ATR72 series airplanes, certificated in any category, on which ATR Modification 1447 has been incorporated and ATR Modification 4840 has not been incorporated.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of a wire bundle in the area of electrical rack 90VU, which could result in an electrical short and potential loss of several functions essential for safe flight, accomplish the following:

Modification

(a) Within 500 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a detailed inspection to detect damage of the wire bundles in the area of electrical rack 90VU, ensure that the conduit around the wire bundles is in the proper position, and install a clamp between the wire bundles and the carbon shelves structure (94VU, 94VU, 95VU); in accordance with Avions de Transport Regional Service Bulletin ATR42–92–0007 (for Model ATR42–500 series airplanes) or ATR72–92–1007 (for Model ATR72 series airplanes), both dated January 25, 2002, as applicable. Repair any damaged wiring before further flight in accordance with Chapter 20–27–17 of the applicable ATR Aircraft Schematic Manual, dated October 1, 1995.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directives 2002–090–092(B) and 2002–091–066(B), both dated February 20, 2002.

Issued in Renton, Washington, on June 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15338 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 312, 314, 320, 600, 601, and 606

[Docket No. 2000N–1484]

RIN 0910–AA97

Safety Reporting Requirements for Human Drug and Biological Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 14, 2003, the comment period for a proposed rule published in the **Federal Register** of March 14, 2003 (68 FR 12406). The proposed rule would amend the agency's pre- and postmarketing safety reporting regulations for human drug and biological products. The agency is taking this action in response to a request for more time to submit comments to FDA.

DATES: Submit written or electronic comments on the proposed rule by October 14, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *FDADockets@oc.fda.gov* or on the Internet at *http://accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*.

FOR FURTHER INFORMATION CONTACT:

For information concerning human drug products: Audrey A. Thomas, Center for Drug Evaluation and Research (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5626.

For information concerning human biological products: Miles Braun, Center for Biologics Evaluation and Research (HFM–220), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6079.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 14, 2003 (68 FR 12406), FDA published a proposed rule that, if finalized, would amend its pre-and postmarketing safety reporting regulations for human drug and biological products to:

- Implement definitions and reporting formats and standards recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use and by the World Health Organization's Council for International Organizations of Medical Sciences;
- Codify the agency's expectations for timely acquisition, evaluation, and submission of relevant safety information for marketed drugs and licensed biological products;
- Require that certain information, such as domestic reports of medication errors, be submitted to the agency in an expedited manner; and
- Clarify certain requirements and make other minor revisions.

FDA also proposed to amend its postmarketing annual reporting regulations for human drug and licensed biological products by revising the content for these reports.

Interested persons were given until July 14, 2003, to submit written or electronic comments to the agency on the proposal. On May 7, 2003, FDA received a written request to allow an additional 90 days for interested persons to comment. FDA believes that an extension of 90 days to the comment period is appropriate, given the length and complexity of the proposed rule. Therefore, FDA is extending the comment period until October 14, 2003. This extension will provide the public with a total of 210 days to submit comments.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the proposal. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15341 Filed 6–17–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 180–1180; FRL–7514–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) which pertains to the control of emissions from Perchloroethylene Dry Cleaning Installations in Kansas City and St. Louis areas, respectively. This revision will rescind two rules that have been superseded by the statewide Maximum Achievable Control Technology rule. There is no relaxation of controls by rescinding these rules. Approval of this revision will eliminate redundancy and conflicting requirements. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by July 18, 2003.

ADDRESSES: Comments may be mailed to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at *algoe-eakin.amy@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final

rule which is located in the rules section of the **Federal Register**.

Dated: June 8, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–15252 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7514–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx), to exclude (or delist) on a one-time basis certain solid wastes generated at the SPSA Power Plant in Portsmouth, Virginia, from the lists of hazardous waste. This waste is currently located at the SPSA Regional Landfill in Suffolk, Virginia.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioners. This tentative decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The Agency is requesting comments on this proposed decision.

DATES: To make sure we consider your comments on this proposed exclusion, they must be postmarked by August 4, 2003. Comments received after the close of the comment period will be designated as late. EPA is not required to consider late comments.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by July 3, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, please contact David M. Friedman at the address above, at (215) 814–3395, or via e-mail at *friedman.davidm@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket

EPA has established an official docket for this action. The official docket consists of the petition submitted by SPSA/Onyx, the results of a risk assessment which evaluates the potential impact of the petitioned waste on human health and the environment, any public comments received, and other information related to this action. The official docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for you to view from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the docket at $0.15 per page.

Outline

The information in this preamble is organized as follows:

I. Background
  A. What laws and regulations give EPA the authority to delist waste?
  B. What does SPSA/Onyx request in their petition?
II. Waste-Specific Information
  A. How was the waste generated?
  B. What information did SPSA/Onyx submit to support their petition?
III. EPA's Evaluation of the Petition
  A. What method did EPA use to evaluate risk?
  B. What other factors did EPA consider in its evaluation?
  C. What conclusion did EPA reach?
IV. Conditions for Exclusion
  A. What conditions are associated with this exclusion?
  B. What happens if SPSA or Onyx fails to meet the conditions of this exclusion?
V. Effect on State Authorization
VI. Effective Date
VII. Administrative Requirements

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Waste?

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively.)

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility that would otherwise meet the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have a waste excluded, a petitioner must first show that the waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

B. What Does SPSA/Onyx Request in Their Petition?

On April 7, 2003, SPSA/Onyx petitioned EPA to exclude on a one-time basis a combustion ash generated at SPSA's waste-to-energy facility in Portsmouth, Virginia. The ash which is the subject of this petition is currently located at SPSA's Regional Landfill in Suffolk, Virginia. The total volume of the subject combustion ash at the SPSA Landfill was determined by SPSA/Onyx to be 1410 cubic yards.

The ash was produced by the routine combustion of a batch of municipal and commercial solid waste which was processed in SPSA's Refuse Derived Fuel (RDF) plant and burned in SPSA's Power Plant in Portsmouth, Virginia. A small amount of this waste consisted of materials containing the spent non-halogenated solvent, methyl ethyl ketone (EPA Hazardous Waste Number F005).

II. Waste-Specific Information

A. How Was the Waste Generated?

In January, 2002, Logan Aluminum, Inc. (Logan) sent a routine shipment of fourteen drums of hazardous waste generated at the Logan plant in Russellville, Kentucky, to Onyx's facility in West Carrollton, Ohio. Logan manufactures aluminum sheet used in making beverage cans. Its process includes application of an FDA-approved, food-safe coating by passing sheet aluminum through rollers. The rollers are cleaned periodically by wiping them with cloth strips using virgin methyl ethyl ketone (MEK) as the cleaning agent. MEK is the only solvent used by Logan in this process.

The used wipes are collected in drums along with other materials including personal protective equipment, excess coating, paper, cardboard and packing materials. These wipes are classified by the Kentucky Department for Environmental Protection as spent solvent wastes.

Onyx Environmental Services is a company that provides a wide range of environmental services to other companies. These services include hazardous and non-hazardous waste management.

Logan has a contractual arrangement with Onyx for the transportation and disposal of hazardous and non-hazardous wastes. Every two months, Logan ships its wastes to Onyx in 55-gallon drums.

On January 30, 2002, Onyx picked up a shipment of eighty-two drums from Logan. Fourteen of the drums contained MEK rags used in the roller cleaning process, and these drums were shipped with a Uniform Hazardous Waste Manifest. Sixty drums in this shipment contained only non-hazardous waste and eight others, which were not further involved in this incident, were also designated as hazardous. All the drums in this shipment were received at Onyx's West Carrollton facility on February 9, 2002.

In the petition, Onyx asserts that on February 16, 2002, the fourteen drums containing the used wipes were inadvertently included in a shipment of eighty-three drums sent under a non-hazardous waste manifest to Eagle Environmental Services, Inc.'s (Eagle) waste processing facility in Dorchester, South Carolina. Eagle operates a facility that processes non-hazardous industrial waste for recycling and disposal, and is permitted for such activities by the South Carolina Department of Health and Environmental Control.

Eagle emptied the fourteen drums containing the used wipes and processed their contents, along with approximately twenty-three drums of non-hazardous industrial waste, by shredding the combined material and mixing it with sawdust to absorb any free liquids that may have been present. On February 22, 2002, the processed material, totaling 47,380 pounds, was shipped in a single container under a non-hazardous waste manifest to SPSA's RDF plant in Portsmouth, Virginia. Here, this material was mixed with other non-hazardous solid waste and then burned in SPSA's Power Plant.

The ash resulting from combustion of this batch of RDF was delivered to the SPSA Regional Landfill in Suffolk, Virginia, on February 23, 2002. Following standard procedure, the ash was stockpiled there for use as daily cover in the Landfill.

According to Onyx, on February 26, 2002, it discovered its error and notified the Ohio Environmental Protection Agency and Eagle that the drums had been shipped to Eagle without the required hazardous waste manifest. On February 27, 2002, Eagle notified Chesapeake Waste Solutions, the waste broker that had arranged the shipment from Eagle to SPSA, and Chesapeake Waste Solutions notified SPSA. SPSA then notified the Virginia Department of Environmental Quality.

Approximately 510 tons (835 cubic yards) of this ash had been used as daily cover at the SPSA Regional Landfill before SPSA received notification on February 27, 2002, that the ash was subject to regulation as a hazardous waste. The remaining ash (about 250 tons or 575 cubic yards) has been segregated and stored on a liner under a water- and wind-tight cover on an adjacent area of the Landfill. The area of the Landfill where the material was used as cover is cordoned off and operations remain suspended in this area.

B. What Information Did SPSA/Onyx Submit To Support Their Petition?

In order to support their petition, SPSA/Onyx submitted detailed descriptions of the chemicals used and the wastes generated by Logan, detailed information related to the material shipments received for destruction at SPSA's Power Plant during the period of time between receipt of the shipment of material from Eagle and notification of the shipping error, and validated analytical results from representative samples of the ash obtained by SPSA/Onyx on October 15, 2002 and January 28, 2003.

Because of the number and variety of waste streams that were processed at the SPSA waste-to-energy facility, we requested that SPSA/Onyx analyze the ash for the entire list of constituents found in Appendix IX to 40 CFR part 264.

On October 15, 2002, SPSA/Onyx collected eight samples and one duplicate sample from ash being stored in a segregated waste pile at the SPSA Regional Landfill. The ash that was used for daily cover in the Landfill was not sampled. The ash has been homogenized by several processes such as loading out at the power plant, transportation and stockpiling, and, therefore, the ash currently stored in the waste pile (which is lined with a geosynthetic liner and covered with a high-density polyethylene cap) was determined to be representative of that portion of the ash which was used as daily cover.

Total analysis was performed on all samples for the entire list of Appendix IX constituents, which include volatiles, semi-volatiles, pesticides, herbicides, PCBs, polychlorinated dibenzodioxins (PCDDs), polychlorinated dibenzofurans (PCDFs) metals, cyanide, and sulfide. Toxicity Characteristic Leaching Procedure (TCLP) leachate analysis was performed on all Appendix IX metals. TCLP leachate analysis was not performed on the organic constituents or cyanide, since allowable holding times were exceeded, and any results obtained from such samples may not be reliable. Holding time requirements

were met, however, for total constituent analysis of the organic constituents and cyanide. Therefore, in our evaluation of the organic constituents (except for the PCDDs and PCDFs) and cyanide, we have calculated the theoretical maximum leachate concentrations by applying the most conservative assumption.

Analyzing a waste for TCLP constituent concentrations involves application of the TCLP followed by analysis of the TCLP leachate for the constituents of concern. For a waste that is a physical solid (*i.e.*, a waste that does not contain a liquid phase), the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by twenty. This twenty-fold dilution is part of the TCLP protocol and represents the liquid to solid ratio employed in the test procedure.

If the TCLP were performed on the actual waste, the concentration of this constituent in the TCLP leachate could not exceed the calculated value derived from the procedure described above. The actual TCLP concentration, if determined, may be substantially less than the calculated value because the calculated value assumes that 100 percent of the constituent leaches from the waste.

PCDD and PCDF analysis of the samples collected during the October 15, 2002 sampling event were inadvertently analyzed by SPSA/Onyx's laboratory using SW–846 Method 8280 rather than the specified method, SW–846 Method 8290. Method 8280 did not yield results that were sufficiently sensitive for this evaluation. On January 28, 2003, four additional composite ash samples were collected and analyzed for total and leachable PCDDs and PCDFs concentrations using Method 8290.

The maximum total constituent and maximum leachate concentrations for all detected inorganic constituents in SPSA/Onyx's waste samples are presented in Table 1.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by SPSA/Onyx using appropriate methods to analyze the waste.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] IN ASH

Inorganic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/1)
Antimony	125	0.54
Arsenic	45.9	0.18
Barium	375	0.21
Beryllium	1.7	<0.005
Cadmium	34.9	0.11
Chromium	808	<0.5
Cobalt	27.3	<0.05
Copper	2830	1.8
Lead	1650	<0.5
Mercury	6.8	0.003
Nickel	449	0.065
Selenium	4.6	<0.25
Silver	9.5	<0.5
Thallium	1.2	<2.0
Tin	149	<0.1
Vanadium	29.6	0.012
Zinc	9810	8.5
Cyanide (total	0.28	0.014 [2]

[1] These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in any one sample.
[2] This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.
< Denotes that the constituent was not detected at the concentration specified in the table.

The maximum total constituent and maximum leachate concentrations for all detected organic constituents in SPSA/Onyx's waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] IN ASH

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/1)
Actone	0.058	0.0029 [3]
Aceonitrile	<0.31	<0.0155 [3]
Bis(2-ethylhexyl)phthlate	2.6	0.13 [3]
Butylbenzylphthalate	<2.0	<0.1 [3]
DDD	<0.0022	<0.00011 [3]
Endrin aldehyde	<0.0022	<0.00011 [3]
Heptachlor	<0.002	<0.0001 [3]
Methyl ethyl ketone (2-butanone)	<0.049	<0.00245 [3]
Methylene chloride	0.0082	0.00014 [3]

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] IN ASH—Continued

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/1)
2,3,7,8-TCDD [2]	0.0175	0.00000000017

[1] These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in any one sample.
[2] For risk assessment of PCDDs and PCDFs compounds, toxicity values are expressed as 2,3,7,8-TCDD equivalents (TEQs).
[3] This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.
< Denotes that the constituent was not detected at the concentration specified in the table.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (See 40 CFR 260.22(i)(12)). SPSA and Onyx each submitted signed certifications stating that all submitted information is true, accurate and complete.

III. EPA's Evaluation of the Petition

A. What Method Did EPA Use To Evaluate Risk?

For this delisting determination, we used information gathered by SPSA/Onyx to identify plausible exposure routes (*i.e.*, groundwater, surface water, and air) for hazardous constituents present in the petitioned waste. Because of its physical form, we determined that disposal in a RCRA Subtitle D landfill was the most reasonable, worst-case (least protective) disposal scenario for SPSA/Onyx's petitioned waste. We then used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of, in order to evaluate the potential impact on human health and the environment. To perform this evaluation, we used a Windows-based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport model for estimating groundwater releases. For a detailed description of the DRAS program and the EPACMPT model, *See* 65 FR 58015, September 27, 2000. Subsequent revisions to the DRAS program are described in 65 FR 75637 (December 4, 2000). The DRAS program is available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*. The technical support document for the DRAS program is also available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm* as well as in the public docket for this proposed rule.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and insures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

In assessing potential risks to groundwater, we use the estimated waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

For constituents which are not detected in leachate analysis, the DRAS requires that the detection limit be entered along with the other data. In these circumstances, the DRAS uses one-half the detection limit to calculate risk. We believe it is inappropriate to evaluate constituents which are not detected in any sample analyzed, if an appropriate analytical method was used.

Similarly, the DRAS also predicts possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to perform this assessment.

In most cases, because a delisted waste is no longer subject to hazardous waste regulation, the Agency is generally unable to predict, and does not presently control, how a petitioner will manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The back-calculation procedure contrasts with the method used to compute the cumulative risk for a one-time delisting petition. To determine cumulative risk, the calculations proceed in a forward direction. Beginning with the leachate and total waste concentrations for each constituent in the waste (source concentrations), the waste volume and exposure parameters are used to estimate the upper-bound excess lifetime cancer risks(risk) and noncarcinogenic hazards (hazard). The risk is said to be cumulative because risks and hazards are summed separately for receptors (resident adults and children) across all applicable waste constituents and exposure pathways to obtain an estimate of the total individual risk and hazard for each receptor. Risk is the probability that a receptor will develop cancer. Risk is estimated based on a unique set of exposure, model, and toxicity assumptions.

Hazard is defined as the potential for noncarcinogenic health effects as a result of exposure to constituents of concern, averaged over an exposure period of less than an entire lifetime. A hazard is not a probability but rather a measure (expressed as a ratio) of the magnitude of a receptor's potential exposure relative to a standard exposure level. The standard exposure level is calculated over an exposure period such that there is no likelihood of adverse health effects to potential receptors, including sensitive populations.

If a delisting evaluation is performed for a one-time exclusion, the DRAS computes the cumulative carcinogenic

risk by summing the carcinogenic risks for all waste constituents for a given exposure pathway and then summing the carcinogenic risks for each pathway analyzed in the delisting risk assessment. The DRAS also computes the cumulative noncarcinogenic risk by summing the Hazard Quotients for all waste constituents for a given exposure pathway to obtain exposure pathway-specific Hazard Indexes (HIs), and then summing the HIs associated with each exposure pathway analyzed. For a one-time exclusion, the results of the cumulative risk assessment may be used in lieu of the calculated delisting levels. Since this is a one-time delisting, we do not need to establish monitoring concentrations for each batch of waste that is subsequently managed under the exclusion. Therefore, we set the evaluation levels in the cumulative risk process at the established target risk range (1×10^{-4} to 1×10^{-6} for carcinogenic waste constituents and a HI of 1.0 to 0.1 for noncarcinogenic waste constituents). Use of the cumulative risk analysis allows the risk associated with an individual waste constituent to extend to a less conservative risk level as long as the cumulative risk for the entire petitioned waste lies below or within EPA's target risk range.

For calculation of delisting levels for multi-year (batch) waste generation, EPA Region III generally defines acceptable risk levels as wastes with an excess cancer risk of no more than 1×10^{-6} and a hazard quotient of no more than 0.1 for individual constituents. For a one-time delisting, EPA Region III evaluates the cumulative cancer risk and cumulative hazard index of the petitioned waste. A cumulative cancer risk less than 1×10^{-4} and a cumulative hazard index less than or equal to 1 are considered to be protective of human health and will be considered acceptable for this type of delisting determination.

B. What Other Factors Did EPA Consider in Its Evaluation?

We also consider the applicability of groundwater monitoring data during the evaluation of delisting petitions where the petitioned waste is currently managed or was once managed in a land-based unit (*e.g.*, a landfill or surface impoundment).

We use the results of groundwater monitoring data evaluations as a check on the reasonable worst case evaluations performed, in order to provide an additional level of confidence in our delisting decisions. Because groundwater monitoring data are descriptive of the impact of the petitioned waste under actual conditions, and not reasonable worst case assumptions, we believe that evidence of groundwater contamination originating from a land-based waste management unit may be sufficient basis for petition denial.

In this case, SPSA/Onyx has not generated the subject ash until this recent incident (described earlier in this preamble) which resulted in a small amount of the ash being used as daily cover in the SPSA Regional Landfill. We have determined that it would not be helpful to request groundwater monitoring data since the small amount of ash used as daily cover would not have a detectable impact on the groundwater at this Regional Landfill.

C. What Conclusion Did EPA Reach?

EPA believes that the information provided by SPSA/Onyx provides a reasonable basis to grant SPSA/Onyx's petition. We, therefore, propose to grant SPSA/Onyx a one-time delisting for the 1410 cubic yards of petitioned ash currently located at the SPSA Regional Landfill. This includes both the ash which has been segregated in a waste pile at the site as well as the ash that has been used as cover material in the Landfill. The data submitted to support the petition and the Agency's evaluation show that the constituents in the SPSA/Onyx ash are below health-based levels used by the Agency for delisting decision-making, and that the ash does not exhibit any of the characteristics of a hazardous waste.

For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a RCRA Subtitle D landfill is the most reasonable, worst-case disposal scenario for SPSA/Onyx's petitioned waste. We applied the DRAS described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of SPSA/Onyx's petitioned waste on human health and the environment.

The estimated total cumulative risk posed by the waste, as calculated using the DRAS, is 4.1×10^{-5}. We believe that this risk is acceptable both because the value is within the generally acceptable range of 1×10^{-4} to 1×10^{-6} and, as stated above, for a one-time delisting, EPA Region III considers a cumulative cancer risk less than 1×10^{-4} to be protective of human health.

The estimated cumulative hazard index for this waste is calculated by DRAS to be 3.2×10^{-1}. We likewise believe that this risk is acceptable both because the value is within the generally acceptable range of 1.0 to 0.1 and, for a one-time delisting, EPA Region III considers a cumulative hazard index less than or equal to 1 to be protective of human health.

We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a RCRA Subtitle D landfill. We, therefore, propose to grant SPSA/Onyx's request for a one-time delisting for the 1410 cubic yards of ash currently located at the SPSA Regional Landfill.

IV. Conditions for Exclusion

A. What Conditions Are Associated With This Exclusion?

The proposed exclusion would apply only to the estimated 1410 cubic yards of ash currently located at the SPSA Regional Landfill as described in SPSA/Onyx's petition. No ash other than the ash described in this petition could be managed as nonhazardous waste under this exclusion.

If SPSA and/or Onyx discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, SPSA and/or Onyx will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that condition.

The purpose of this condition is to require SPSA and/or Onyx to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct. If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1978), (APA), to reopen the delisting under the conditions described above.

SPSA/Onyx state in their petition that the waste, if delisted, will remain at the SPSA Regional Landfill. However, in order to adequately track wastes that have been delisted, in the event that a decision is made to dispose of all or part of the ash off-site, we will require that SPSA/Onyx provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. SPSA/Onyx will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion.

B. What Happens if SPSA or Onyx Fails To Meet the Conditions of This Exclusion?

If SPSA or Onyx violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion, and may initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.*, to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, SPSA/Onyx must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today making a tentative decision to grant SPSA/Onyx's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of RCRA Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 10, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX of Part 261—[Amended]

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx).	Suffolk, Virginia	Combustion ash generated from the burning of the spent solvent methyl ethyl ketone (Hazardous Waste Number F005) and disposed of in a Subtitle D landfill. This is a one-time exclusion for 1410 cubic yards of ash and is effective after (insert publication date of the final rule). *(1) Reopener language*

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(a) If SPSA and/or Onyx discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then SPSA and/or Onyx must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. *(2) Notification Requirements* In the event that the delisted waste is transported off-site for disposal, SPSA/Onyx must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.

[FR Doc. 03–15361 Filed 6–17–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Vehicle Compatibility, Docket No. NHTSA–2003–14623; Rollover Mitigation, Docket No. NHTSA–2003–14622]

Vehicle Compatibility and Rollover Mitigation Integrated Project Team (IPT) Plans

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability of documents.

SUMMARY: This notice announces the availability of NHTSA's first two of four high priority safety reports describing the agency's current and planned activities to address vehicle compatibility and rollover mitigation. The reports are available from the Docket Management System, U.S. Department of Transportation, at *http://dms.dot.gov* or on NHTSA's Web site at *http://www.nhtsa.dot.gov/people/iptreports.html*. While the documents are final, the agency is offering the public the opportunity to comment on the agency's planned activities. The comments will be considered for future agency efforts.

DATES: Comments must be received no later than August 4, 2003.

ADDRESSES: You may submit comments identified by Vehicle Compatibility DOT DMS Docket Number [NHTSA–2003–14623] and/or Rollover Mitigation DOT DMS Docket Number [NHTSA–2003–14622] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

Vehicle Compatibility—Roger A. Saul, National Highway Traffic Safety Administration, Room 5307, 400 Seventh Street, SW., Washington, DC 20590, Telephone: 202–366–1740, or Dee Y. Williams, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–0498.

Rollover Mitigation—Jim Simons, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590, Telephone: 202–366–2555, or Dee Y. Williams, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–0498.

SUPPLEMENTARY INFORMATION:

Vehicle Compatibility

Since the 1970s, vehicle compatibility has been a concern to NHTSA. Recent sales and registrations of LTVs have steadily increased as a percentage of the passenger vehicle fleet, with LTVs representing 50 percent of new vehicle sales in 2001 and 37 percent of vehicle registrations. Consequently, this has led to an increased number of fatalities to car occupants who are struck by LTVs. This increase in passenger car fatalities has occurred even while the overall fatalities for the U.S. fleet has stabilized or decreased over the past several years. Therefore, NHTSA has made vehicle compatibility one of the agency's highest priorities. Initiatives the agency plans to pursue in improving vehicle compatibility include:

1. Vehicle Strategies
   a. Partner Protection
   b. Self Protection
   c. Lighting/Glare
   d. Reform CAFE
2. Roadway Strategies
   a. Improve Structural Engagement with Roadside Hardware
   b. Increase Awareness
3. Behavioral Strategies
   a. Consumer Information Program

Vehicle Rollover

Vehicle rollover is also a great concern to NHTSA. Many factors contribute to the occurrence of rollover crashes. Rollover crashes closely correlate with unsafe and reckless driving behaviors, poor road design and vehicle type. Certain categories of vehicles, such as sport utility vehicles and small pickup trucks, are more prone to rollover than other classes of light motor vehicles. In recognition of the increasing rollover problem, NHTSA has also made finding solutions one of the agency's highest priorities. Initiatives the agency plans to pursue in reducing deaths and injuries attributable to rollover crashes include:

1. Vehicle Strategies
   a. Handling and Stability
   b. Reform CAFE
   c. Ejection Mitigation
   d. Roof Crush
2. Roadway and Roadside Improvements
3. Consumer Information Program
4. Rollover Causation Study

NHTSA believes the initiatives described in these two IPT reports will lead to both near-term and longer-term solutions to improve vehicle compatibility in the fleet and reduce crashes attributable to rollover.

NHTSA has also assembled IPTs to address two other highway safety programs of high interest: safety belt use and impaired driving. For each of these programs, the agency will issue final IPT reports and provide the public with the same opportunity to comment on the planned agency activities. Similar to the reports on vehicle compatibility and rollover mitigation, the documents will be final and comments received will be evaluated and incorporated, as appropriate into future agency efforts. Each of these documents can be found at future dates on NHTSA's Web site at *http://www.nhtsa.dot.gov/people/iptreports.html* and also on DOT's docket management system (DMS) at *http://dms.dot.gov/*. The docket numbers for each of the respective reports will be as follows:

- ❑ Safety Belt Use NHTSA–2003–14620; and
- ❑ Impaired Driving NHTSA–2003–14621.

Each document will describe the safety problem and provide strategies the agency plans to pursue in increasing safety belt use and reducing impaired driving.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (Vehicle Compatibility, NHTSA–2003–14623; Rollover Mitigation, NHTSA–2003–14622) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

Will the Agency Consider Late Comments?

In our response, NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted By Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on "search."
- On the next page ((*http://dms.dot.gov/search/*) type in the five-digit Docket number shown at the beginning of this document (Vehicle Compatibility -14623; Rollover Mitigation—14622). Click on "search."
- On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 12, 2003.

Rose A. McMurray,

Associate Administrator for Planning, Evaluation & Budget.

[FR Doc. 03–15239 Filed 6–17–03; 8:45 am]
BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 68, No. 117

Wednesday, June 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Food Stamp Program: Federal Collection of State Plan of Operations, Operating Guidelines and Forms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment, a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0083.

DATES: Comments on this notice must be received by August 18, 2003, to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION: *Title:* Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Expiration Date: December 2005.

Type of Request: Revision of a currently approved collection.

Abstract: In accordance with section 11(e) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2020(e), State agencies are required to submit a Plan of Operation specifying the manner in which the Food Stamp Program will be conducted. The State Plan of Operations, in accordance with current rules at 7 CFR 272.2, consists of a Federal/State Agreement, annual budget and activity statements, and specific attachments (such as plans if the State elects to conduct program information activities or provide nutrition educational services). State Plans of Operation are a one-time effort with updates that are provided as necessary.

Under section 16 of the Act, 7 U.S.C. 2025, the Secretary is authorized to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the FSP. Under corresponding FSP regulations at 7 CFR 272.2, the State agencies must submit annually to FNS for approval, a Budget Projection Statement (Form FNS–366A), which projects the total costs for major areas of FSP operations, and a Program Activity Statement (Form FNS–366B), which provides a summary of FSP operations during the preceding fiscal year. The reports are required to substantiate the costs the State agency expects to incur during the next fiscal year. Form FNS–366A is submitted annually by August 15, for the upcoming fiscal year and Form FNS–366B must be submitted no later than 45 days after the end of each State agency's fiscal year.

FNS is proposing to add a new category of information to the FNS–366A to report data on Employment and Training (E&T) grants for able-bodied adults without dependent children (ABAWDs). Section 4121(b) of the Farm Security and Rural Reinvestment Act of 2002, Public Law 107–171, which was signed into law on May 13, 2002, gave FNS $20 million in new 100% funds (the ABAWD grants). FNS has determined that it needs the new category of information on the FNS–366A to separately track these funds in its budget information system. The funds benefit ABAWD food stamp recipients (who are subject to a 3-month time limit for FSP participation) to help them get jobs. The funding amount is allocated by FNS to the State agency for the ABAWD grant. Because the funding amount figure for this item is provided by FNS, the impact on the burden is negligible, and so there is no additional burden for this as a budget item. The FNS–366A data for this item will allow FNS to compare this budget item against actual expenditures.

Beginning July 1997, State agencies were allowed to submit the FNS–366B data electronically to the national database files stored in FNS' FSP Integrated Information System in lieu of a paper report. The voluntary changeover from paper to electronic reporting of FNS–366B data by States was done as part of FNS' State Cooperative Data Exchange (SCDEX) Project. This project is being expanded over time as more FNS forms are transformed to electronic formats for State data entry. As of February 2003, a total of nine State agencies submitted the FNS–366B data electronically and 44 State agencies submitted paper reports.

Under section 11(o) of the Act, 7 U.S.C. 2020(o), each State agency was required to develop a plan, no later than October 1, 1987, for implementing an automated data processing (ADP) and information retrieval system to administer the FSP. Corresponding FSP regulations at 7 CFR 277.18 require that a written plan of action, called an Advance Planning Document (APD), be prepared to acquire proposed ADP services, systems or equipment. The frequency of the APD submission is at the discretion of the State agency.

Under section 7(i) of the Act, 7 U.S.C. 2016(i), the Secretary is authorized to permit State agencies to implement on-line electronic benefit transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and analysis of the results of implementation in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit an APD.

Respondents: State agencies that administer the FSP.

Number of Respondents: 53.

Estimated Number of Responses per Respondent: Plan of Operation Updates: 53 State agencies once a year.

Form FNS–366A: 53 State agencies once a year.

Form FNS–366B: 53 State agencies once a year.

Advance Planning Documents: 15 State agencies once a year.

Advance Planning Documents for EBT Systems: 10 State agencies once a year.

EBT Reporting: 41 State agencies reporting four times a year.

Estimate of Burden: Plan of Operation Updates: The State agencies submit Plan updates at an estimate of 10 hours per respondent, or 530 total hours.

Form FNS–366A: The State agencies submit Form FNS–366A at an estimate of 13 hours per respondent, or 689 total hours.

Form FNS–366B: The total burden for the collection of information for Form FNS–366B is 18 hours per respondent, or 954 hours.

Outreach Plans: We estimate that up to 25 States may submit an Outreach Plan over the next year at an estimate of 1 hour per respondent or 25 total hours.

PRWORA Plan Updates: We estimate 34 States will choose one or more options, and thus will have to respond, at an average .25 hours per response, or a total burden of 8.5 hours.

Advance Planning Documents: Approximately 15 State agencies submit an APD each year at an estimate of 10 hours per respondent or 150 total hours.

Advance Planning Documents for EBT Systems: Approximately ten State agencies submit an APD each year for an EBT system at an estimate of 35 hours per respondent, or 350 total hours.

EBT Reporting: None.

Estimated Total Annual Burden on Respondents: The total annual reporting and recordkeeping burden for OMB No. 0584–0083 is estimated to be 2,707 hours, a decrease of 225 hours from the previous estimate and currently approved burden of 2,932 hours. The decrease in the burden is due to a decrease in the number of States who submit an APD and the time to complete an APD.

Dated: June 11, 2003.

Roberto Salazar,

Administrator.

[FR Doc. 03–15350 Filed 6–17–03; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Youth Conservation Corps

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a previously approved information collection for forms FS–1800–18, Youth Conservation Corps Application, and FS–1800–3, Youth Conservation Corps Medical History. The collected information will help the Forest Service evaluate the employment eligibility of youth 15–18 years old through the Youth Conservation Corps Program. Under this Program, the Forest Service cooperates with other Federal agencies to provide seasonal employment for youth.

DATES: Comments must be received in writing on or before August 18, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All comments should be addressed to: United States Department of Agriculture, Forest Service, Director, Youth Conservation Corps, Senior, Youth and Volunteer Programs, Mail Stop 1136, PO Box 96090, Washington, DC 20090–1136.

Comments also may be submitted via facsimile to (703) 605–5115 or by e-mail to: *syvp/wo@fs.fed.us.*

The public may inspect comments at the Office of the Director, Senior, Youth and Volunteer Programs, Forest Service, USDA, Room 1010, 1621 North Kent Street, Arlington, VA 22209. Visitors are asked to call (703) 605–4831 in advance to facilitate entrance into the office.

FOR FURTHER INFORMATION CONTACT: Ransom Hughes, Youth Conservation Corps, Senior, Youth and Volunteer Program at (703) 605–4854.

SUPPLEMENTARY INFORMATION:

Background

Under the Youth Conservation Corps Act of August 13, 1970, as amended (16 U.S.C. 1701)—1706), the U.S. Department of Agriculture Forest Service in cooperation with the U.S. Department of the Interior Fish and Wildlife Service, National Park Service and Bureau of Land Management provide seasonal employment for eligible youth 15 to 18 years old.

Youth who seek training and employment with the Forest Service through the Youth Conservation Corps must complete the following forms: (1) FS 1800–18, Youth Conservation Corps Application, and (2) FS–1800–3, Youth Conservation Corps Medical History. Forest Service and Department of the Interior employees use the information to evaluate the eligibility of each applicant.

The Youth Conservation Corps stresses three important objectives:

1. Accomplish needed conservation work on public lands;

2. Provide gainful employment for 15 to 18 year old males and females from all social, economic, ethnic, and racial backgrounds; and

3. Foster, on the part of the 15 to 18 year old youth, an understanding and appreciation of the Nation's natural resources and heritage.

Description of Information Collection

1. *Title:* FS–1800–18, Youth Conservation Corps (YCC) Application.

OMB Number: 0596–0084.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension of an information collection previously approved by the Office of Management and Budget.

Abstract: Employees of the U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Fish and Wildlife Service, National Park Service and Bureau of Land Management will evaluate the data and determine the eligibility of each youth for employment with the Youth Conservation Corps. To be considered for employment with the Corps, each youth must complete FS–1800–18, Youth Conservation Corps Application Form. Applicants are asked to answer questions that include their name, social security number, date of birth, mailing address, and telephone number. The applicant's parents or guardian must sign the form.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 6 minutes.

Type of Respondents: Youth 15 to 18 years old.

Estimated Annual Number of Respondents: 18,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,800 hours.

Description of Information Collection

2. *Title:* FS–1800–3, Youth Conservation Corps Medical History.

OMB Number: 0596–0084.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension of an information collection previously approved by the Office of Management and Budget.

Abstract: To be considered for employment with the Corps, each youth must complete FS–1800–3, Youth Conservation Corps Medical History Form. Applicants are asked to answer questions regarding their personal health. The purpose of FS–1800–3 is to certify the youth's physical fitness to work in the seasonal employment Program. The applicant's parents or guardian must sign the form.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 14 minutes.

Type of Respondents: Youth 15 to 18 years old.

Estimated Annual Number of Respondents: 18,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4,200 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purpose and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget.

Dated: June 11, 2003.

Irving W. Thomas,

Acting Deputy Chief Operations.

[FR Doc. 03–15314 Filed 6–17–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061203F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuaries - Socioeconomic Impacts of Marine Reserves.

Form Number(s): None.

OMB Approval Number: 0648-0408.

Type of Request: Regular submission.

Burden Hours: 1,330.

Number of Respondents: 665.

Average Hours Per Response: 2.

Needs and Uses: NOAA's National Marine Sanctuaries are authorized under the National Marine Sanctuary Act to use zoning to prohibit or restrict uses in certain portions (zones) of sanctuaries. Ecological Reserves, Sanctuary Preservation Areas, or Marine Reserves (no-take zones) are being proposed. There is a need to evaluate the socioeconomic impact that no-take zones might have on different user groups. Those activities that might be displaced from no-take zones include commercial fishing operations, recreational fishing operations, and individuals takes of anything in the area. The surveys will collect socioeconomic data for use by NOAA, sanctuary advisory councils, and similar participants in the planning process.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Frequency: Annually, one-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 11, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15404 Filed 6–17–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061203G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Vessel Monitoring and Communications.

Form Number(s): None.

OMB Approval Number: 0648–0404.

Type of Request: Regular submission.

Burden Hours: 974.

Number of Respondents: 150.

Average Hours Per Response: 1 hour for installation of a vessel monitoring system (VMS); 2 minutes for verification of installation; 5 seconds for an automatic position report; and 2 minutes for a Letter of Authorization Exemption request.

Needs and Uses: Owners or operators of vessels that have caught 500 metric tons of herring in the past year, or intend to catch 500 metric tons in the current year, must equip their vessels with an approved Vessel Monitoring System (VMS). The VMS units automatically report the vessel's position at least once per hour when the vessel is underway. Vessel owners must submit proof that the VMS has been installed. Herring carriers may be exempted from this requirement by obtaining a letter of authorization from NOAA.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion, hourly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 11, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15405 Filed 6–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060603E]

Intent to Analyze the Effects of the Subsistence Taking of Northern Fur Seals on the Pribilof Islands, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; scoping meetings; request for comments.

SUMMARY: NMFS intends to prepare an Environmental Impact Statement (EIS) regarding possible changes to the subsistence harvest of the Pribilof Islands stock of northern fur seals. The scope of the EIS will consist of a broad review of the subsistence harvest management on the Pribilof Islands including the manner in which the harvest is conducted. NMFS intends to hold scoping meetings to receive public input on the issues of concern and the appropriate range of management alternatives to be addressed in the EIS. In addition to holding the scoping meetings, NMFS solicits written comments related to the scope of the analysis.

DATES: Written comments will be accepted through September 16, 2003.

ADDRESSES: Written comments should be addressed to the Assistant Regional Administrator, Protected Resources Division, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Requests to be included on a mailing list of persons interested in the EIS should be sent to Mr. David Cormany at 222 West 7th Avenue, Box 43, Anchorage, AK 99513. Comments may also be hand-delivered to NMFS, Federal Building, 709 West 9th Street, Juneau, AK, or NMFS, Federal Building, Room 517, 222 West 7th Avenue, Anchorage, AK. NMFS is not accepting email or internet comments.

FOR FURTHER INFORMATION CONTACT: David Cormany, (907) 271–5006.

SUPPLEMENTARY INFORMATION: On July 9, 1985 (50 FR 27914), NMFS published an emergency interim rule to govern the subsistence taking of fur seals by Alaska Native (Aleut) residents of the Pribilof Islands. A final rule was subsequently published on July 9, 1986 (51 FR 24828). The subsistence harvest of northern fur seals on the Pribilof Islands is governed by regulations at 50 CFR 216 Subpart F—Pribilof Islands, Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* The purpose of these regulations was to provide for the subsistence needs of the Pribilof Aleuts using humane harvesting methods and to restrict taking by sex, age, and season for herd management purposes.

The Need for an EIS on this Action

An Environmental Assessment and a Finding of No Significant Impact of the harvest on the fur seal population have been considered adequate to address the Agency's NEPA compliance responsibilities in the past. However, evidence is building that continued management under the harvest regulations in combination with other past, present, and future actions, may be having a significant impact on the human environment. Therefore, preparation of an EIS for the proposed action may be required by NEPA and implementing regulations at 40 CFR 1501.4.

NMFS is required to publish a Notice of Intent (NOI) to, among other things, describe the proposed scoping process, including any scoping meetings to be held. The NOI also serves as the official notice that a Federal agency is commencing preparation of an EIS pursuant.

NMFS will examine all activities addressing the conduct of the subsistence harvest management. The cumulative effects section of the EIS will address the incremental cumulative effects of these management alternatives on northern fur seals when added to the effects of past, other present, or reasonably foreseeable future actions including the significant effects finding of the Steller Sea Lion Protection Measures EIS (NMFS 2001). The EIS for Steller sea lions examined the effects of management measures implemented in the groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) to protect endangered Steller sea lions in the area. In the analyses of the cumulative effects of the action on the environment, it was determined that commercial fishing and environmental changes (effects of a regime shift) may result in a conditionally significant adverse effect on northern fur seals. Therefore, while the subsistence harvest is not likely to have any direct or indirect effects on the fur seal population that would be considered significant under NEPA, the cumulative effects of the subsistence harvest alternatives when added to the effects of the groundfish fisheries on the harvest alternatives may result in a similar cumulative effects finding as identified in NMFS (2001).

Information and Comments Solicited

NMFS solicits comments and information to identify the complete range of alternatives to be analyzed. Alternatives analyzed in this EIS may include those identified below, plus additional alternatives identified through the public scoping process and through working with the Tribal Governments and other constituent groups. Potential alternatives that have already been identified include the following: (1) status quo alternative- No action will be taken to change existing regulations at 50 CFR 216 subpart F. The conduct and management of the harvest will remain as it has been; (2) an alternative that combines some of the existing regulations with agreed upon stipulations identified in the co-management agreements between NMFS and the Tribal Governments pursuant to section 119 of the MMPA; and (3) a harvest regime that is completely managed through co-management pursuant to section 119 of the MMPA.

NMFS has entered into co-management agreements with the Tribal Governments of St. Paul Island and St. George Island under section 119 of the MMPA in 2000 and 2001, respectively. These agreements are specific to the conservation and management of northern fur seals and Steller sea lions on the Pribilof Islands, with particular attention to the subsistence take and use of these animals. NMFS has worked with both communities to integrate the agreements into one management plan for the purpose of recovering and maintaining the fur seal population. Under this alternative all current regulations would be eliminated.

NMFS is also seeking information on the environmental, social and economic issues to be considered in the analysis.

The direct and indirect effects sections of the EIS will present the impacts of each identified alternative on the human environment. Major issues are likely to include: the impact of subsistence and commercial fisheries removals on this stock, the impacts of regulated harvests on the subsistence needs, traditional and cultural values of Alaskan Natives, and co-management of the subsistence harvest under section 119 of the MMPA.

Public Involvement

Scoping is an open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. A principle objective of this process is to identify a range of reasonable management alternatives that, with analysis, will provide a clear basis for distinguishing between the alternatives and selecting a preferred alternative.

Scoping meetings will be held on the Pribilof Islands, AK, and in Anchorage, AK. Dates have not been set at this time and will follow the cessation of the 2003 subsistence harvest. Times and locations of the scoping meetings will also be published in a subsequent notice.

Dated: June 11, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15407 Filed 6–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031203A]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at South Vandenberg Air Force Base, CA (VAFB) has been issued to The Boeing Company (Boeing).

DATES: Effective from May 20, 2003, until May 20, 2004.

ADDRESSES: A copy of the IHA and/or the application is available by writing to Ms. Kaja Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, (301) 713–2322, ext. 163 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 28, 2003, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in smaller numbers. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA, and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point). An Incidental Harassment Authorization (IHA) was issued to Boeing on May 20, 2002 and remains in effect for a one-year period (see 67 FR 36151, May 23, 2002).

Specified Activities

Additional information of the work proposed for 2003 is contained in the application, which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Comments and Responses

On April 9, 2003 (68 FR 17351), NMFS published a notice of receipt and a 30–day public comment period was provided on the application and proposed authorization. That notice described the activity and anticipated effects on marine mammals. Comments were received from Boeing which requested that the mitigation measure be modified to allow for the continuation of activities while seals are present. As the Notice stated, the rocks near the VAFB harbor are not typically used by large numbers of harbor seals nor is there pupping: "...on average the number of harbor seals hauled out near the site is less than 30 and there is no pupping at nearby sites" (68 Fed. Reg. 17351 at 17353). The monitoring that was performed for the VAFB harbor dredging during the fall of 2001 and winter of 2002 established that seals routinely hauled out on the adjacent rocks during ongoing activities within the harbor. On several occasions, these seals flushed, apparently due to activities on the dock or in the harbor. However, when they did leave the rocks during low tide they would quickly return or be replaced by other individuals in the same resting place. This quick return to the original haulout suggests that the response was short term and transient. Boeing's experience last year with the dredging and other harbor activities, however, also demonstrated that stopping work when seals are present on the adjacent rocks can have a considerable impact to schedules and costs. The data collected during last year's harbor activities, which is documented in the application for the IHA, supports the conclusion reached by NMFS in the proposed IHA that the occasional flushing of a limited number of seals from the rocks while harbor activities are underway has minimal impact on the species. Accordingly, Boeing requests that the IHA provide that the continuation of activities at VAFB harbor is authorized while seals are present even in the event of flushing seals.

NMFS concurs that continuation of activities would have a minimal impact on pinnipeds and has thus modified the mitigation measures contained in the authorization to allow for continuation of activities while seals are present. The mitigation measures still require marine mammal monitoring during all Boeing activities in the harbor and reporting of any possible disturbance of the harbor seals associated with those activities.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities.

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and its mooring dolphins at less than 0.75 knot.

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities,

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS 120 days prior to the expiration of this Authorization or within 120 days after the expiration of this Authorization if a new Authorization is not being requested. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Consultation

This action will not affect those marine mammal species listed under the Endangered Species Act (ESA), that are under the jurisdiction of NMFS, as these species are not expected to haulout on VAFB and thereby potentially be affected through harassment and fleeing from the haulout. No other marine species listed under the ESA will be affected by Boeing's harbor activities related to the Delta IV/EELV at VAFB. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. Southern sea otters were discussed in these documents and FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging. In addition, the FWS noting that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities.

NEPA

In accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined, based on the content and analysis of Boeing's request for an IHA, and the Final EA for Harbor Activities Associated with the Delta IV Program at VAFB (ENSRI, 2001) that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Impacts are not expected to be outside the scope of that EA. Therefore, this action meets the definition of a "Categorical Exclusion" and is exempted from further environmental review.

Determinations

NMFS had determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation will result in the harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; would have no more negligible impact on these marine mammal stocks; and would not have an

unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and therefore will not be affected. While behavioral modifications may be made by those pinniped species ashore in order to avoid the resultant acoustic and visual stimuli from the activity, there is no potential for large-scale movements, such as stampedes, since harbor seals, California sea lions, and elephant seals haul out in small numbers near the site (maximum number of harbor seals hauled out in one day estimated at 43 seals, averaging at 21 seals per day, maximum number of California sea lions hauled out in one day is estimated at six). The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Authorization

NMFS has issued an IHA to Boeing for harbor activities related to the Delta IV/EELV program at south VAFB for a 1–year period. A copy of this IHA is available upon request (see **ADDRESSES**). The issuance of this IHA is contigent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: June 10, 2003.

Donna Wieting,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15406 Filed 6–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061203I]

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Steel Drilling Caisson through the Beaufort Sea from Cross Island, McCovey Prospect to Herschel Island, Yukon Territory

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from EnCana Oil and Gas (USA) Inc. (EnCana) for an authorization to take small numbers of marine mammals by harassment incidental to movement of a Steel Drilling Caisson (SDC) from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island in the Yukon Territory and for associated activities in the Beaufort Sea. If there is a problem with this location for the SDC, the U.S. Outer Continental Shelf waters north of West Dock has been named as the backup location. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize EnCana to incidentally take, by harassment, small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and spotted seals in the above mentioned areas during August 2003 through January 2004 for SDC preparation, movement, refueling, and removal of equipment. The incidental take of polar bears and walrus from EnCana's planned activities are not covered by this proposed incidental harassment authorization, as these species are under jurisdiction of the U.S. Fish and Wildlife Service (USFWS). EnCana is applying for a Letter of Authorization from the USFWS for potential takes of polar bear and Pacific walrus.

DATES: Comments and information must be received no later than July 18, 2003.

ADDRESSES: Comments on the application should be addressed to Kaja Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, (301) 713–2322, ext 163 or Brad Smith, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 14, 2003, NMFS received an application from EnCana requesting an authorization for the harassment of small numbers of five species of marine mammals incidental to movement of the SDC from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island, Yukon Territory and associated activities beginning on or about August 1, 2003 to ice-up later in the year. The SDC will lift-off from its current location and will be towed to the new set down location. Once the SDC reaches Herschel Island, it will go into cold stack mode. Helicopter supported one-day reconnaissance trips to the SDC may occur to check on winterization conditions on-board the SDC. A detailed description of these activities proposed for 2003–2004 is contained in the application (Lynx Enterprises, Inc., 2003), which is available upon request (see **ADDRESSES**)

Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including bowhead whales (*Balaena mysticetus*), beluga whales(*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Descriptions of the biology, distribution, and current status of these species can be found in NMFS Stock Assessment Reports (2000, 1999, and 1997). Please refer to those documents for more information on these species. These documents can be downloaded electronically from: *http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/individual_sars.html*

Potential Effects of SDC Mobilization and Associated Activities on Marine Mammals

Potential harassment of marine mammals will result from the noise generated by the operation of towing vessels during SDC mobilization between Cross Island and Herschel Island and the noise generated during equipment removal of the SDC. The physical presence of the SDC tow vessels and helicopter could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between tug vessels and whales will be reduced by the slow tow speed (2 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the SDC mobilization phase (August) are: beluga whales, ringed seals, and bearded seals. Spotted seals are less likely to be harassed during the SDC mobilization phase because they reside closer to the shore. Bowhead whales are the only species listed under the ESA that could potentially be affected by these activities. However, they are not expected to be encountered during the mobilization phase because the majority of the whales will be at their summer feeding grounds in Canada. However, a few transitory whales may be encountered along the routes. Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed SDC relocation routes. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transit.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transit. Ringed seals are expected to be present all along the SDC mobilization routes. There is the possibility that bearded and spotted seals will also be harassed during transit. Spotted seals may be present in Prudhoe Bay, but it is likely that they may be closer to shore and therefore are not expected to be harassed during transit phase.

It is not likely that bowhead whales will be impacted by transit operations since EnCana plans to finish the relocation operations and shutdown (i.e., cold stack "quiet" mode) the SDC by late August, when bowhead whales begin their westward fall migration in the Beaufort Sea. According to 23 years of survey data collected by the Minerals Management Service (MMS), North Slope Borough, the Alaska Eskimo Whaling Commission (AEWC), and many more years of traditional knowledge from Cross Island-based whale hunters, the annual fall migration of the bowhead whales is normally many kilometers north of the McCovey Prospect, where the SDC currently resides. However, because the fall migration path of the bowhead whales is dependent on environmental conditions (i.e., extent of ice coverage) that vary from year-to-year, the extreme southern edge of the fall migration corridor may pass closer to McCovey Prospect, increasing the likelihood that bowhead whales may be harassed by activities. Transitory bowhead whales traveling ahead of the herd may be encountered during relocation. Beluga whales migrate along the pack ice edge north of the proposed relocation routes and are not expected to be seen.

Potential Effects of SDC Mobilization and Associated Activities on Habitat

The activity will not result in the disturbance of any habitat for the affected species.

Numbers of Marine Mammals Expected to Be Taken

The number of marine mammals that may be taken as a result of the SDC mobilization operation is unpredictable. Operations are scheduled to occur prior to the westward migration and associated subsistence bowhead whale hunts to purposely avoid any take of this species. Noise disturbance from vessels and helicopters or from noise generated from SDC might qualify as harassment to seals, but previous surveys have indicated little behavioral reaction from these animals to slow-moving or stationary vessels.

Effects of SDC Mobilization and Associated Activities on Subsistence Needs

No impact is anticipated on the availability of marine mammal species and stocks for subsistence uses since an amendment to the existing Conflict Avoidance Agreement (CAA) and Plan of Cooperation has been negotiated with the Alaska Eskimo Whaling Commission (AEWC) and affected village Whaling Captains Associations. EnCana has taken steps to disclose its project plans in initial consultation with the Executive Director and the president of the AEWC, the Mayor of the North Slope Borough, and village Whaling Captains. EnCana coordinated with the AEWC and amended the existing CAA to include the 2003 SDC relocation. The operation is scheduled to occur prior to the annual fall bowhead whale hunt.

Mitigation

During mobilization of the SDC from Cross Island at the McCovey Prospect through the Beaufort Sea to Herschel Island, EnCana will have on-board marine mammal monitors throughout the transit. The program will commence with the reoccupation of SDC at the current McCovey deployment and will continue on a nearly 24–hour basis until the rig exits U.S. waters and goes into cold stack mode in Canada.

EnCana proposes to mitigate the potential negative impacts from its relocation and supply removal activities by planning the timing of operations in such a way as to reduce the production of noise during the fall bowhead whale migration. This includes putting the SDC into cold stack mode during the entire bowhead migration period (approximately late-August through mid-October). In addition to these mitigation measures, EnCana worked with the AEWC, North Slope Borough, and other whaling communities and amended the existing CAA to include the 2003 relocation to eliminate impacts

to subsistence hunting of bowheads and thereby on bowheads themselves.

Monitoring

As part of its application, EnCana proposed a visual monitoring program for assessing impacts to marine mammals during the SDC's transit from Cross Island, McCovey Prospect to Herschel Island or the backup location in Federal Waters north of West Dock near Prudhoe Bay, Alaska.

EnCana proposes to initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where EnCana will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program. The observer protocol would be to scan the area around vessels and the SDC with binoculars of sufficient power. Range finding equipment will be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to EnCana activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24–hour basis from the time the SDC leaves Cross Island until the SDC crosses the Canadian border or, if the backup deployment in U.S. waters is used, is placed in cold stack mode. If the backup deployment in U.S. waters is used and re-supply efforts are necessary between the end of the fall bowhead whale harvest and ice-over, observers would be re-deployed on the SDC and supply vessels. All personnel stationed aboard the SDC during the open water season of 2003 would also receive training on marine mammal monitoring and utilize marine mammal reporting forms to document any incidental takes of marine mammals.

As required by the MMPA, this proposed monitoring plan will be subject to review and approval by NMFS.

Reporting

All monitoring data collected would be reported to NMFS and the USFWS on a weekly basis. EnCana must provide a final report on 2003–2004 activities to NMFS within 90 days of the completion of the activity. This report will provide dates and locations of the SDC movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including estimates of the level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

Endangered Species Act (ESA) Consultation

The effects of oil and gas exploration activities in the U.S. Beaufort Sea, which includes this proposed activity, on listed species were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of small takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. Pursuant to section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA to EnCana. The only species listed in the ESA that could be taken during these activities are bowhead whales. The effects of the proposed IHA on bowhead whales will be compared with the analysis contained in the 2001 biological opinion. If an authorization to incidentally harass marine mammals listed under the ESA is issued for this activity under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act

In 1997, NMFS prepared and released an EA that addressed the impacts on the human environment from issuance of an authorization for taking marine mammals incidental to moving an oil drilling structure through the Beaufort Sea during the summer and conducting oil exploration activities in the eastern Beaufort Sea and the alternatives to that proposed action. A Finding of No Significant Impact was signed on September 25, 1997. Because the action discussed in this document is not substantially different from the 1997 action, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6. A copy of that EA is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of SDC mobilization from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island, Yukon Territory, or mobilization to the U.S. Outer Continental Shelf waters north of West Dock, and associated activities will result, at worst, in a temporary modification in behavior by certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues, this behavioral change is expected to have a negligible impact on the survival and recruitment of stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the relocation route.

The principal measures undertaken to ensure that the SDC relocation will not have an adverse impact on subsistence activities is a Conflict Avoidance Agreement (CAA), Plan of Cooperation, and an operation schedule prior to the annual bowhead whale subsistence hunt, as amended on June 3, 2003.

Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to movement of a SDC from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island, Yukon Territory, or, as a backup, to the U.S. Outer Continental Shelf waters north of West Dock, and associated activities. This IHA proposal is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of bowhead whales, beluga whales, ringed seals, bearded seals and spotted seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses once the Plan of Cooperation and CAA is amended.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request to Kaja Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Dated: June 12, 2003.

Stephen L. Leathery,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15408 Filed 6–17–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, June 24, 2003, 2 p.m.

LOCATION: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b)(3), (7), (9), and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–7923.

Dated: June 16, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–15546 Filed 6–16–03; 4:01 p.m.]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 82,897, entitled "Anti-Charging Layer for Beam Lithography and Mask Fabrication."

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 11, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–15321 Filed 6–17–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,459,079 B1 entitled, "SHIPBOARD CHEMICAL AGENT MONITOR—PORTABLE (SCAMP)."

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Surface Warfare Center, Dahlgren Div:, Code XDC1, 17320 Dahlgren Rd., Dahlgren, VA 22448–5100.

FOR FURTHER INFORMATION CONTACT: Matthew J. Bussan, Patent Counsel, Naval Surface Warfare Center, Dahlgren Div., Code XDC1, 17320 Dahlgren Rd., Building 183, Room 4, Dahlgren, VA 22448–5100, telephone (540) 653–8061.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 11, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–15322 Filed 6–17–03; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0078, FRL–7514–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Under EPA's Landfill Methane Outreach Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting Under EPA's Landfill Methane Outreach Program, ICR Number 1849.02, OMB Control Number 2060–0446, expiration October 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brian Guzzone, Climate Protection Partnerships Division, Office of Atmospheric Programs, 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2666; fax number: (202) 565–2079; e-mail address: *guzzone.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0078, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public

docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, MC 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected Entities: Entities potentially affected by this action are those local agencies and municipalities that own landfills; State agencies; manufacturers and suppliers of equipment/knowledge to capture and utilize landfill gas; utility companies; end users of energy from the landfill.

Title: Reporting Under EPA's Landfill Methane Outreach Program (OMB Control Number 2060–0446; EPA ICR Number 1849.02; expiring October 31, 2003).

Abstract: The Landfill Methane Outreach Program (LMOP) is an EPA-sponsored voluntary program that encourages landfill owners, communities, and project developers to reduce emissions of methane, a potent greenhouse gas, by implementing landfill gas technologies that collect and utilize the methane as a source of energy. The Landfill Methane Outreach Program further encourages utilities and other energy customers to support and promote the use of landfill methane at their facilities. The Landfill Methane Outreach Program signs voluntary Memoranda of Understanding (MOU) with these organizations to enlist their support in promoting cost-effective landfill gas utilization. The information collection includes completion and submission of the MOU, and annual online completion and submission of information forms that include basic information on the organizations that sign the MOU and landfill methane projects in which they are involved. The information collection is to be utilized to maintain up-to-date data and information about Landfill Methane Outreach Program partners and landfill methane projects in which they are involved. In addition, the information collection will assist LMOP to evaluate the reduction of methane emissions from landfills. Responses to the information collection are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this (3) three year collection of information is estimated to equal 1,531 hours and to average 3.6 hours per year per respondent. The estimated number of respondents averaged over (3) three years is 422. The average capital, start-up, and operation and maintenance cost resulting from this three year collection of information is $212 per respondent.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 29, 2003.

Kathleen Hogan,

Director.

[FR Doc. 03–15362 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7514–8]

Technical Peer Review Meeting on the Draft Document Entitled, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a technical peer review meeting, organized and convened by Versar, Inc., a contractor to the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development, for review of the draft document entitled, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster (EPA/600/P–02/002A). The document was prepared by NCEA. The draft document was already subjected to public review and comment. NCEA will consider those public comments and any additional comments provided by the expert peer-review panel in revising the document.

DATES: The peer review meeting will be held on Monday, July 14 and Tuesday, July 15, 2003, from 9 a.m. to 5 p.m., eastern daylight time (EDT) each day. On December 27, 2002, the draft report was announced in the **Federal Register** (67 FR 79079) and made available for a 60-day public comment period that ended on February 25, 2003. The comment period was subsequently extended (**Federal Register** (68 FR 10723) dated March 6, 2003) until April 7, 2003. Copies of the public comments received by EPA have been provided to the expert peer reviewers.

ADDRESSES: The meeting will be held at the Sofitel New York Hotel, 45 West 44th Street, New York, NY 10036; telephone (212) 354–8844. Versar, Inc., an EPA contractor, will convene and facilitate the meeting. To attend the meeting as an observer, register by July 10, 2003, 5 p.m. EDT by visiting *http://www.versar.com/epa/wtcpeerreview.htm* or contacting Ms. Traci Bludis, Versar, Inc.; telephone: (703) 750–3000, extension 449; facsimile: (703) 642–6954; e-mail: bluditra@versar.com. There will be a limited time for oral comments from the public (registration is required). If you wish to make a statement during the observer comment period of the workshop, please check the appropriate box when you register at the Web site. Space is limited, and registration for attendance and oral comments will be accepted on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: For workshop information and logistics please contact Versar, Inc. The draft document, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster, is available via the Internet on the NCEA Web site at *http://www.epa.gov/ncea/wtc.htm*. Copies are not available from Versar, Inc. For information regarding the draft document, please contact Linda C. Tuxen, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment (8601–D), Washington, DC 20460; telephone: (202) 564–3332; fax: (202) 565–0090; e-mail: *tuxen.linda@epa.gov*.

SUPPLEMENTARY INFORMATION: Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency issues. EPA, other federal agencies, New York City, and New York State public health and environmental authorities focused on numerous air monitoring activities to better understand the ongoing human health impact of the disaster. Many EPA offices and programs quickly became involved with these activities, providing scientific, engineering, public health, and management expertise to help cope with the aftereffects of the collapse of the World Trade Center.

As part of these activities, a human health evaluation of exposure to air pollutants resulting from the World Trade Center disaster was initiated. This draft evaluation is the subject of the technical peer review meeting announced today. The primary purpose and scope of the draft report were to evaluate the environmental levels of various air pollutants to which the public could potentially be exposed as a result of the collapse of the towers. These data were evaluated in terms of available health benchmark concentrations and typical background concentrations for New York City or other urban areas. The draft evaluation concludes that, with the exception of those exposed immediately following the collapse and perhaps during the next few days, people in the surrounding community are not likely to suffer from serious long- or short-term health effects. While the primary focus of EPA's draft evaluation is on outdoor levels of various air pollutants to which the public could potentially be exposed as a result of the collapse of the towers, some information on indoor and occupational exposures is summarized in EPA's draft report.

Both the processes of public review and comment and expert scientific peer review are the usual steps that EPA takes to ensure full and open participation by interested parties. These steps help EPA identify areas where a draft document could be improved to strengthen both clarity and completeness of the draft. Comments from the public and from the expert peer reviewers during this meeting will be used to improve the draft report before it is finalized.

Dated: June 12, 2003.

George W. Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 03–15364 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7514–4]

Clean Water Act Section 303(d): Final Agency Action Adding Waters to the Arkansas 2002 Section 303(d) List

AGENCY: Environmental Protection Agency.

ACTION: Final agency action.

SUMMARY: This notice announces EPA's final agency action on the Arkansas 2002 section 303(d) list pursuant to Clean Water Act section 303(d).

On June 9, 2003, EPA took final action on its March 10, 2003, proposed decision to add 52 water quality limited segments (WQLSs) and associated pollutants to Arkansas' 2002 303(d) list.

ADDRESSES: Copies of the documents which explain the rationale for EPA's final decision, response to public comments, and a list of the 50 WQLSs that EPA added to Arkansas' 2002 section 303(d) list can be obtained from EPA Region 6's Web site at *www.epa.gov/earth1r6/6wq/artmdl.htm*, or by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–7513, facsimile (214) 665–6490, or e-mail: *caldwell.ellen@epa.gov*. Documents from the administrative record for these decisions also are available for public inspection at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish total maximum daily loads according to a priority ranking.

On March 10, 2003, EPA approved Arkansas' listing of 76 WQLSs and associated priority rankings. EPA disapproved Arkansas' decision not to list 52 WQLSs and associated pollutants. EPA proposed to add 52 of these additional WQLSs and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list and initiated public notice and comment for these proposed listings.

On June 9, 2003, EPA took final agency action not adding two of the proposed additional WQLSs and associated pollutants to the Arkansas 2002 section 303(d) list and adding 50 WQLSs to the Arkansas 2002 section 303(d) list.

Dated: June 9, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–15254 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7514–3]

Public Water System Supervision Program Revision for the State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Louisiana is revising its approved Public Water System Supervision Program. Louisiana has revised its administrative penalty authority, revised its definition for public water system, and adopted a consumer confidence report rule for all community water systems. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions. All interested parties may request a public hearing. A request for a public hearing must be submitted by July 18, 2003, to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 18, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 18, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Louisiana Department of Health and Hospitals, Engineering Services, Safe Drinking Water Program, 6867 Bluebonnet Drive, Baton Rouge, LA 70810 and the United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: David Reazin, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7501, or *reazin.david@epa.gov*.

Authority: (Sec. 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: June 9, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–15255 Filed 6–17–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank has received an application to guarantee up to $198 million of equipment and other goods and services on the behalf of U.S. exporters to a buyer in Egypt. The U.S. exports will enable the Egyptian company to produce anhydrous ammonia from natural gas. The Egyptian company will have a production capacity of 1,850 metric tons of ammonia per day. It is envisioned this new production will be consumed primarily in Jordan and India. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–15345 Filed 6–17–03; 8:45 am]

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank has received an application to guarantee up to $25 million of equipment and other goods and services on the behalf of U.S. exporters to a buyer in Mexico. The U.S. exports will enable the Mexican company to produce non-automotive flat glass. The Mexican company will produce 146,000 metric tons of glass with a thickness between 2.4 and 8.0 mm. It is envisioned this new production will be consumed in Mexico and the United States. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–15346 Filed 6–17–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–1881]

Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the ALLTEL Petition. ALLTEL Communications, Inc. (ALLTEL) is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Virginia, including rural and non-rural areas.

DATES: Comments are due on or before June 30, 2003. Reply comments are due on or before July 7, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Shannon Lipp, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released June 3, 2003. On April 14, 2003, ALLTEL Communications, Inc. (ALLTEL), a commercial mobile radio service (CMRS) carrier, filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Virginia, including rural and non-rural areas. On May 21, 2003, ALLTEL filed an amendment to its petition with regard to its proposed service areas. Specifically, ALLTEL contends that: the Virginia State Corporation Commission (Virginia Commission) has provided an affirmative statement that it does not regulate CMRS carriers; ALLTEL satisfies all the statutory and regulatory prerequisites for ETC designation; and designating ALLTEL as an ETC will serve the public interest.

Pursuant to § 54.207(c) of the Commission's rules, ALLTEL also requests that the Commission designate ALLTEL as an ETC in service areas defined along boundaries that differ from incumbent rural local exchange company (LEC) study area boundaries. ALLTEL requests that these service areas be redefined on a wire center by wire center basis such that each wire center is a separate service area. ALLTEL intends to serve each proposed wire center in its entirety. The service area requested by ALLTEL for ETC designation partially covers the study areas of Central Telephone Company—Virginia and United Inter-Mountain Telephone. ALLTEL maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service (Joint Board).

The petitioner must provide copies of its petition to the Virginia Commission. The Commission will also send a copy of this Public Notice to the Virginia Commission by overnight express mail to ensure that the Virginia Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due on or before June 30, 2003, and reply comments are due on or before July 7, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–15303 Filed 6–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–1862]

Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the ALLTEL Petition. ALLTEL Communications, Inc. (ALLTEL) is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Alabama, including rural and non-rural areas.

DATES: Comments are due on or before June 30, 2003. Reply comments are due on or before July 7, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Shannon Lipp, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released June 3, 2003. On April 14, 2003, ALLTEL Communications, Inc. (ALLTEL), a commercial mobile radio service (CMRS) carrier, filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Alabama, including rural and non-rural areas. On May 21, 2003, ALLTEL filed an amendment to its petition with regard to its proposed service areas. Specifically, ALLTEL

contends that: the Alabama Public Service Commission (Alabama Commission) has provided an affirmative statement that it does not regulate CMRS carriers; ALLTEL satisfies all the statutory and regulatory prerequisites for ETC designation; and designating ALLTEL as an ETC will serve the public interest.

Pursuant to § 54.207(c) of the Commission's rules, ALLTEL also requests that the Commission designate ALLTEL as an ETC in service areas defined along boundaries that differ from incumbent rural local exchange company (LEC) study area boundaries. ALLTEL requests that these service areas be redefined on a wire center by wire center basis such that each wire center is a separate service area. ALLTEL intends to serve each proposed wire center in its entirety. The service areas requested by ALLTEL for ETC designation partially cover the study areas of ALLTEL Alabama, Inc. (a wireline affiliate of ALLTEL by virtue of common ownership by ALLTEL Corporation), Butler Telephone Co. Inc., Castleberry Telephone Co. Inc., Frontier Communications of Alabama, Frontier Communications of The South, Graceba Total Communications, GTC Inc.—AL, Gulf Telephone Co., Hayneville Telephone Co. Inc., Millry Telephone Company, Mon-Cre Telephone Cooperative, Pine Belt Telephone Company, Union Springs Telephone Co. Inc. ALLTEL maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service (Joint Board).

The petitioner must provide copies of its petition to the Alabama Commission. The Commission will also send a copy of this Public Notice to the Alabama Commission by overnight express mail to ensure that the Alabama Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before June 30, 2003, and reply comments are due on or before July 7, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–15304 Filed 6–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Monday, June 23, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 26, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–05—National Association of Homebuilders of the United States by counsel, Mark Braden.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–15544 Filed 6–16–03; 2:16 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011284–052.

Title: Ocean Carrier Equipment Management Association.

Parties: APL Co. PTE Ltd; American President Lines Ltd; A.P. Moller-Maersk Sealand; CMA CGM, S.A.; Compania Sud Americana de Vapores, S.A.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Südamerikanische Dampfschifffahrtgesellschaft KG; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Lykes Lines Limited, LLC; TMM Lines Limited, LLC; Contship Container Lines, a division of CP Ships (UK) Limited; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Nippon Yusen Kaisha Line; Yangming Marine Transport Corp.; COSCO Container Lines Company Limited; and Kawasaki Kisen Kaisha, Ltd.

Synopsis: The amendment adds Crowley Maritime Corporation to the membership of the agreement.

Agreement No.: 011510–018.

Title: West African Discussion Agreement.

Parties: A.P. Moller-Maersk Sealand, Atlantic Bulk Carriers, HUAL AS, Mediterranean Shipping Company, P&O Nedlloyd Limited, Safmarine Container Lines, and Zim Israel Navigation Company.

Synopsis: The modification removes Mediterranean Shipping Company as a party to the agreement.

Agreement No.: 011733–008.

Title: Common Ocean Carrier Platform Agreement (INTTRA).

Parties: A.P. Moller-Maersk Sealand, P&O Nedlloyd Limited, Hamburg-Südamerikanische Dampfschifffahrtgesellschaft KG, Mediterranean Shipping Company, CMA CGM, Hapag-Lloyd Container Linie, United Arab Shipping Company, Alianca Navegaçao e Logistica Ltda., Safmarine Container Lines, Nippon Yusen Kaisha, and CP Ships Limited for its ocean common carrier subsidiaries.

Synopsis: The modification adds Tasman Orient Line C.V. as a non-shareholder party to the agreement.

Agreement No.: 011770–002.

Title: NSCSA/Oldendorff Slot Exchange Agreement.

Parties: National Shipping Company of Saudi Arabia, Oldendorff Carriers (Indotrans) Ltd.

Synopsis: The proposed modification reduces the scope of the agreement to the westbound trade from ports in India to U.S. East and Gulf Coast ports; revises the amount of space to be chartered; and revises agreement provisions on termination, notices, and force majeure.

Agreement No.: 011799–002.

Title: Evergreen/Lloyd Triestino/Hatsu Marine Alliance—TSA Bridging Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd.; Lloyd Triestino di Navegazione S.p.A.; Hatsu Marine Limited; AmericanPresident Lines, Ltd. and APL Co. Pte Ltd. (operating as one carrier); A.P. Moller-Maersk Sealand; CMA CGM S.A.; COSCO Container Lines Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; HyundaiMerchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yangming Marine Transport Corp.

Synopsis: The proposed amendment would extend the duration of the agreement through August 15, 2004.

Agreement No.: 011802–003.

Title: Evergreen/Lloyd Triestino/Hatsu Marine Alliance—WTSA Bridging Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd.; Lloyd Triestino di Navegazione S.p.A.; Hatsu Marine Limited; AmericanPresident Lines, Ltd. and APL Co. Pte Ltd. (operating as one carrier); China Shipping Container Lines Co., Ltd.; COSCO Container Lines Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yangming Marine Transport Corp.

Synopsis: The proposed amendment would extend the duration of agreement through August 15, 2004.

Dated: June 13, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–15390 Filed 6–17–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
4085F	American Logistics & Purchasing Services, Ltd., 1610 Parkview Avenue, Seaford, NY 11783	April 20, 2003.
1803NF	Blue Sky Blue Sea, Inc. dba America Export Lines, dba International Shipping Company 12919 S. Figueroa Street, Los Angeles, CA 90061.	March 29, 2003.
13754N	L.A.S. Incorporated, 8 Hook Road, Bayonne, NJ 07002	May 11, 2003.
4273NF	Primar International, Inc., 15402 Vantage Parkway East, Suite 314, Houston, TX 77032	May 7, 2003.
6098N	Sunshine Express Line, Inc., 3250 N.W. North River Drive, Miami, FL 33142	May 11, 2003.
3443F	Tradewinds Shipping Corp., 420 Sackett Point Road, Unit 4–B, New Haven, CT 06473–3171	April 20, 2003.
16228N	Air & Sea Pak Co. dba Corrigan Air & Sea Cargo Systems, 6170 Middlebelt Road, Romulus, MI 48174.	April 28, 2003.
18051N	Dominicana Air & Ocean Freight Corp., 1332 NW 36th Street, Jamaica, NJ 33142	May 22, 2003.
3307F	American Freight International, Inc., 8169 NW 7th Street, Miami, FL 33166	May 16, 2003.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–15388 Filed 6–17–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 3683F.
Name: Martin Strauss Air Freight Corp.
Address: P.O. Box 300666, JFK International Airport, Jamaica, NY 11434.
Date Revoked: May 27, 2003.
Reason: Surrendered license voluntarily.

License Number: 13475N.
Name: Triple Alliance Company, Inc.
Address: 177–25 Rockaway Blvd., Suite 204, Jamaica, NY 11434.
Date Revoked: May 29, 2003.
Reason: Surrendered license voluntarily.

License Number: 16483N.
Name: UniGlobal Logistics, Inc.
Address: 39 Old Ridgebury Road, Danbury, CT 07817.
Date Revoked: June 9, 2003.
Reason: Surrendered license voluntarily.

License Number: 4378NF.
Name: World 2000 Services, Inc.
Address: 8233 NW., 66th Street, Miami, FL 33166.
Date Revoked: May 21, 2003.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints, and Licensing.
[FR Doc. 03–15389 Filed 6–17–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Speedtrans International, Inc., Suite 1001 Federal Tower Condominium, Dasmarinas Street, Binondo, Manila, Officers: Edith P. Vaporoso, Exec. Vice President (Qualifying Individual), Susano D. Gemora, Jr., President.

Pacific-Net Logistics ATL, Inc., 6020 Dawson Blvd., #F, Norcross, GA 30093, Officers: David Hume Shafer, CEO (Qualifying Individual), Michael Tsang, CFO.

Marenas Shipping, L.L.C., 8074 NW., 66 Street, Miami, FL 33166, Officers: Freddy J. Zelaya, Exec. Manager (Qualifying Individual), Jorge Arenas, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

CAF Worldwide Inc., 154–09 146th Avenue, Jamaica, NY 11434, Officers: Joseph F. Barry, Vice President (Qualifying Individual), Joseph F. Barry, III, President.

M/S Galaxy Multimodal Systems Pvt. Ltd., 7, Kumtha Street, Ballard Estate, Mumbai-400 038, India, Officer: Capt. P. P. Singh, Managing Director (Qualifying Individual).

Dated: June 13, 2003.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–15387 Filed 6–17–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 2, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. James Fowler Justiss, III, Jena, Louisiana; to acquire voting shares of JBI Financial Corporation, Jena, Louisiana, and thereby indirectly acquire voting shares of Bank of Jena, Jena, Louisiana.

Board of Governors of the Federal Reserve System, June 12, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–15316 Filed 6–17–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Kankakee Bancorp, Inc., Kankakee, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Aviston, Aviston, Illinois.

In connection with this application, Applicant also has applied to retain control of KFS Bank, F.S.B., Kankakee, Illinois, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4) of Regulation Y.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Platte County Bancshares, Inc., Platte City, Missouri; to acquire an additional 6.2 percent, for a total of 18.7 percent, of the voting shares of MidAmerican Bancshares, Inc., Harrisonville, Missouri, and thereby indirectly acquire voting shares of Allen Bank and Trust Company, Harrisonville, Missouri.

2. Peoples Bancshares, Inc., Kansas City, Missouri; to acquire an additional 22.87 percent, for a total of 68.7 percent, of the voting shares of MidAmerican Bancshares, Inc., Harrisonville, Missouri, and thereby indirectly acquire voting shares of Allen Bank and Trust Company, Harrisonville, Missouri.

Board of Governors of the Federal Reserve System, June 12, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–15317 Filed 6–17–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Franklin Bancorp, Inc., DBA Sunrise Community Banks, St. Paul, Minnesota; to engage *de novo* in purchasing participations in loans originated by its subsidiary banks, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 12, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–15315 Filed 6–17–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, June 23, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 13, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–15420 Filed 6–13–03; 4:17 pm]
BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), June 20, 2003.

PLACE: 4th Floor: Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Discussion of litigation matters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 16, 2003.
Elizabeth S. Woodruff,
Secretary to the Board, Federal Retirement Thrift Investment Board.
[FR Doc. 03–15584 Filed 6–16–03; 4:00 pm]
BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration

and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET Date	Trans No.	ET Req Status	Party Name
12–May–03	20030530	G	Networks Associates, Inc.
	.....	G	IntruVert Networks Inc.
	.....	G	IntruVert Networks Inc.
	20030589	G	PRIMEDIA Inc.
	.....	G	PRIMEDIANet Inc.
	.....	G	Cover Concepts Marketing Services, LLC
	.....	G	PRIMEDIA California Digital Inc.
	.....	G	PRIMEDIA Magazine Finance, Inc.
	.....	G	PRIMEDIA Magazines Inc.
	.....	G	PRIMEDIA Speciality Group Inc.
	20030591	G	CVC European Equity Partners III L.P.
	.....	G	E.ON AG.
	.....	G	Viterra Energy Services AG.
	20030592	G	A. Jerrold Perenichio.
	.....	G	Family Stations, Inc.
	.....	G	Family Stations, Inc.
	20030600	G	Laird Norton Company LLC.
	.....	G	DLC Holdings, Inc.
	.....	G	Dixieline Lumber Company.
	.....	G	Dixieline Builders Fund Control, Inc.
	20030603	G	Oxford Industries, Inc.
	.....	G	Viewpoint International, Inc.
	.....	G	Viewpoint International, Inc.
14–May–03	20030483	G	CRH plc.
	.....	G	S.E. Johnson Companies Inc.
	.....	G	S.E. Johnson Companies Inc.
	20030485	G	Carlyle Partners III, L.P.
	.....	G	TA Acquisition Holdings, Inc.
	.....	G	The Aerostructures Corporation.
19–May–03	20030588	G	Sumner M. Redstone.
	.....	G	AOL Time Warner Inc.
	.....	G	Comedy Partners.
	20030596	G	Automatic Data Processing, Inc.
	.....	G	Deutsche Bank AG.
	.....	G	Deutsche Investment Management Americas Inc.
	.....	G	Scudder Trust Company.
	.....	G	Scudder Investments Service Company.
	.....	G	Scudder Distributors, Inc.
	.....	G	Deutsche Realty Holdings (II), LLC.
	20030604	G	Teva Pharmaceutical Industries Limited.
	.....	G	GlaxoSmithKline plc.
	.....	G	Glaxo Group Limited.
	20030607	G	David W. and Freda Barrick.
	.....	G	John D. Gaughan.
	.....	G	Exber, Inc.
	.....	G	Union Plaza Hotel and Casino, Inc.
	.....	G	Union Plaza Operating Company, Inc.
	.....	G	Gaughan South Corp.
	20030609	G	SmartMail, LLC.
	.....	G	Roy R. Ferber.
	.....	G	Drop Ship Express, Inc.
	20030610	G	General Motors Corporation.
	.....	G	Lend Lease Corporation Limited.
	.....	G	CapMark Services, L.P.
	.....	G	Lend Lease Asset Management, L.P.
	.....	G	Lend Lease Equities S.A. de C.V.
	.....	G	Lend Lease Japan Inc.
	.....	G	Lend Lease Real Estate Investments, Inc.
	.....	G	Lend Lease (US) Inc.
	.....	G	Pearl Mortgage, Inc.
	20030611	G	Churchill Equity and ESOP Capital Partners II, L.P.
	.....	G	Code, Hennessy & Simmons III, L.P.
	.....	G	CBSA Holdings, L.L.C.
	20030617	G	Berkshire Hathaway Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req Status	Party Name
	.....	G	Wal-Mart Stores, Inc.
	.....	G	McLane Company Inc.
21–May–03	20030621	G	Jupiter Partners II L.P.
	.....	G	Gary Damkoehler.
	.....	G	JSA Healthcare Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15365 Filed 6–17–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires person contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET Date	Trans No.	ET Req Status	Party Name
27–MAY–03	20030602	G	Biovail Corporation
	.....	G	Wyeth
	.....	G	American Cyanamid Company
	.....	G	Wyeth Pharmaceuticals Inc.
	20030613	G	Tekelec
	.....	G	Santera Systems Inc.
	.....	G	Santera Systems Inc.
	20030615	G	Delta Electronics (Thailand) Public Company Limited
	.....	G	Ascom Holding AG
	.....	G	Ascom India Prive Ltd.
	.....	G	Ascom Rompower, Inc.
	.....	G	Ascom Energy Systems GmbH
	.....	G	Ascom Energy Systems (Guangzhou) Ltd.
	.....	G	Ascom UK Limited
	.....	G	Ascom Energy Systems AG
	.....	G	Ascom Spain SA
	.....	G	scom Praha spol. s.r.o.
	20030622	G	Johnson & Johnson
	.....	G	Helmut D. Link
	.....	G	Link Spine Group, Inc.
	.....	G	Link Holding Company, Inc.
	20030632	G	Swift Transportation Co., Inc.
	.....	G	Wal-Mart Stores, Inc.
	.....	G	Merit Distribution Services, Inc.
	20030639	G	Bank One Corporation
	.....	G	Quintiles Transnational Corp.
	.....	G	Quintiles Transnational Corp.
	20030640	G	Barry Diller
	.....	G	LendingTree, Inc.
	.....	G	LendingTree, Inc.
28–MAY–03	20030627	G	Fenway Partners Capital Fund II, L.P.
	.....	G	Lincolnshire Equity Fund II, L.P.
	.....	G	Riddell Sports Group, Inc.
	20030628	G	Carlyle Partners III, L.P.
	.....	G	The UIS Industries, Inc. Voting Trust.
	.....	G	Pioneer, Inc.
	.....	G	Neapco Inc.
	.....	G	Wells Manufacturing Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req Status	Party Name
	.....	G	Champion Laboratories, Inc.
	.....	G	Mid-South Mfg., Inc.
	.....	G	Airtex Products, LLC.
	.....	G	Automotive Accessory Co. Ltd.
	.....	G	Talleres Mecanicos Montserrat, S.A. de C.V.
	.....	G	Brummer Mexicana en Puebla, S.A. de C.V.
	.....	G	Brummer Seal de Mexico, S.A. de C.V.
	.....	G	Wells Manufacturing Canada Limited.
	.....	G	Airtex Products S.A.
	.....	G	UIS Industries, Ltd.
	20030631	G	Petroliam Nasional Berhad.
	.....	G	Neptune Orient Lines Limited.
	.....	G	American Eagle Tankers Inc. Limited.
	20030634	G	Hewitt Holdings LLC.
	.....	G	Michael D. Blair.
	.....	G	Cybord Worldwide, Inc.
	20030637	G	SKM Equity Fund III, L.P.
	.....	G	Murray's Inc.
	.....	G	Murray's Inc.
	20030638	G	Green Equity Investors III, L.P.
	.....	G	Werner Holding Co. (PA), Inc.
	.....	G	Werner Holding Co. (PA), Inc.
	20030643	G	Odyssey Investment Partners Fund., L.P.
	.....	G	Scott K. Lemay.
	.....	G	United Site Services, Inc.
29–MAY–03	20030295	G	Southern Union Company.
	.....	G	CMS Energy Corporation.
	.....	G	Panhandle Eastern Pipeline Company.
	20030626	G	McCormick & Company, Inc.
	.....	G	Zatarain's Brands, Inc.
	.....	G	Zatarain's Brands, Inc.
	20030641	G	Olympus Growth Fund III, L.P.
	.....	G	Mettis Group Limited.
	.....	G	Mettis (UK) Limited.
	20030642	G	Brockway Moran & Partners Fund II, L.P.
	.....	G	KKR–FS Associates II LLC.
	.....	G	WS Acquisition Corp.
	20030645	G	Health Management Associates, Inc.
	.....	G	Sisters of Providence, Mother Joseph Providence.
	.....	G	Providence Health System—Washington.
	.....	G	Providence Home Care and Hospice.
	.....	G	Providence Toppenish Hospital.
	.....	G	John Gabriel Ryan Association.
	.....	G	Providence Yakima Medical Center.
02–JUN–03	20030612	G	Probitas Pharma, S.A.
	.....	G	Mitsubishi Chemical Corporation.
	.....	G	Alpha Therapeutic Corporation.
	20030649	G	Palomino Fund Ltd.
	.....	G	Conseco, Inc.
	.....	G	Conseco, Inc.
	20030655	G	Comcast Corporation.
	.....	G	George Lane.
	.....	G	Advanced TeleMedia, LLC
	20030657	G	Ripplewood Partners II, L.P.
	.....	G	Lillian Vernon Corporation.
	.....	G	Lillian Vernon Corporation.
	20030658	G	Citadel Broadcasting Corporation.
	.....	G	Wicks Communications & Media Partners, L.P.
	.....	G	Wilks Broadcasting LLC.
	20030659	G	Tellabs, Inc.
	.....	G	Vivace Networks, Inc.
	.....	G	Vivace Networks, Inc.
04–JUN–03	20030644	G	Yorktown Energy Partners, IV, L.P.
	.....	G	Duke Energy Corporation.
	.....	G	Duke Energy Field Services, L.P.
	.....	G	AIM Pipeline, LLC.
	.....	G	Duke Energy Intrastate Pipeline, LLC.
	.....	G	Duke Energy Field Services Marketing, LLC.
	20030654	G	Career Education Corporation.
	.....	G	Whitman Education Group, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req Status	Party Name
	.....	G	Whitman Education Group, Inc.
	20030656	G	Nautic Partners V, L.P.
	.....	G	Barry L. Downing.
	.....	G	Corporate Lodging Consultants, Inc.
	.....	G	Crew Transport Services, Inc.
	.....	G	Crew Transport Specialists, Inc.
05–JUN–03	20030614	G	ScanSoft, Inc.
	.....	G	SpeechWorks International, Inc.
	.....	G	SpeechWorks International, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15368 Filed 6–17–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0006]

Anesthesia Service Medical Group, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: John Wiegand or Kerry O'Brien, FTC Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 848–5100.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 30, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/05/index.htm*." A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed consent order with Anesthesia Service Medical Group, Inc. ("ASMG" or "Respondent"). The agreement settles charges that Respondent violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements with Grossmont Anesthesia Services Medical Group, Inc. ("GAS") on fees, quantity of anesthesia services provided, and other competitively significant terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

ASMG and GAS are competing anesthesiology groups that provide anesthesia services for a fee to patients in San Diego County, California. ASMG employs approximately 180 anesthesiologists. GAS is composed of approximately 10 anesthesiologists. ASMG and GAS anesthesiologists are

members of the medical staff of Grossmont Hospital in La Mesa, a municipality in central San Diego County, California. ASMG and GAS anesthesiologists make up approximately 75 percent of the anesthesiologists with active medical staff privileges at Grossmont Hospital and work on approximately 70 percent of the cases that require anesthesia services at the hospital.

Anesthesiologists provide anesthesia services to patients primarily at general acute care hospitals and outpatient surgery centers. Those services include evaluating a patient before surgery, consulting with the surgical team, providing pain control and support-of-life functions during surgery, supervising care after surgery in the recovery unit, and medically discharging the patient from the recovery unit. In addition to working on scheduled surgical procedures, anesthesiologists work on unscheduled obstetric and emergency cases at general acute care hospitals. An anesthesiologist who remains available to work on unscheduled cases is said to be "taking call."

Anesthesiologists in San Diego County are reimbursed for their services from several sources. Health insurance companies and other third-party payors typically reimburse anesthesiologists for services rendered to their subscribers during scheduled and unscheduled medical procedures and obstetrical cases through contracts that establish fees and other competitively significant terms. In addition, some hospitals pay anesthesiologists "stipends" for taking call and/or for rendering services to uninsured patients. Some hospitals pay anesthesiologists stipends through contracts that establish a stipend amount and other competitively significant terms.

Absent agreements among competing anesthesiologists, competing anesthesiologists or anesthesiology groups decide independently whether to seek a stipend from a hospital and the amount of the stipend. They also decide independently whether they will terminate or restrict the services they provide to unscheduled or uninsured patients if the hospital refuses to pay them a stipend or if they are dissatisfied with the stipend.

From as early as February 2001 through March 2002, ASMG and GAS discussed between themselves a joint strategy to secure stipends from Grossmont Hospital for taking obstetric call and for rendering services to uninsured emergency room patients. Eventually, ASMG and GAS agreed on the stipend amount both groups would demand from the hospital for taking obstetric call. ASMG and GAS also discussed reducing their hours of availability for taking call to increase their negotiating power with the hospital. Furthermore, they agreed to maintain a solid front against the hospital to prevent the hospital from (1) negotiating separately with each group to reduce the amount of the stipend or (2) seeking services solely from one group to the exclusion of the other. ASMG and GAS ceased this collusive activity only after the Commission contacted them about this conduct. While the Commission's investigation prevented any anticompetitive effects from occurring, this conduct is a naked restraint, which constitutes an unfair method of competition in violation of section 5 of the FTC Act.

The Proposed Consent Order

The proposed consent order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint while allowing Respondent to engage in legitimate joint conduct.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among medical practices: (1) To negotiate, to fix, or to establish any fee, stipend, or any other term of reimbursement for the provision of anesthesia services; (2) to deal, to refuse to deal, or to threaten to refuse to deal with any payor of anesthesia services; or (3) to reduce, or to threaten to reduce, the quantity of anesthesia services provided to any purchaser of anesthesia services. A "medical practice" is defined as a bona fide, integrated business entity in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph II.B prohibits Respondent from attempting to engage in any action prohibited by Paragraph II.A. Paragraph II.C prohibits Respondent from encouraging, pressuring, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A and II.B.

Paragraph II contains a proviso that allows Respondent to engage in conduct that is reasonably necessary to the formation or operation of a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." To be a "qualified risk-sharing joint arrangement," an arrangement must satisfy two conditions. First, all participating providers must share substantial financial risk through the arrangement and thereby create incentives for the participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. To be a "qualified clinically-integrated joint arrangement," an arrangement must satisfy two conditions. First, all participants must join in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among providers to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Both definitions reflect the analyses contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

Paragraphs III through V of the proposed order are reporting and compliance provisions. Paragraph VI is a provision "sunsetting" the order after 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15366 Filed 6–17–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 021 0006]

Grossmont Anesthesia Services Medical Group, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John Wiegand or Kerry O'Brien, FTC Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 848–5100.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 30, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/05/index.htm*." A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed consent order with Grossmont Anesthesia Services Medical Group, Inc. ("GAS" or "Respondent"). The agreement settles charges that Respondent violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements with Anesthesia Service Medical Group, Inc. ("ASMG") on fees, quantity of anesthesia services provided, and other competitively significant terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

GAS and ASMG are competing anesthesiology groups that provide anesthesia services for a fee to patients in San Diego County, California. ASMG employs approximately 180 anesthesiologists. GAS is composed of approximately 10 anesthesiologists. GAS and ASMG anesthesiologists are members of the medical staff of Grossmont Hospital in La Mesa, a municipality in central San Diego County, California. GAS and ASMG anesthesiologists make up approximately 75 percent of the anesthesiologists with active medical staff privileges at Grossmont Hospital and work on approximately 70 percent of the cases that require anesthesia services at the hospital.

Anesthesiologists provide anesthesia services to patients primarily at general acute care hospitals and outpatient surgery centers. Those services include evaluating a patient before surgery, consulting with the surgical team, providing pain control and support-of-life functions during surgery, supervising care after surgery in the recovery unit, and medically discharging the patient from the recovery unit. In addition to working on scheduled surgical procedures, anesthesiologists work on unscheduled obstetric and emergency cases at general acute care hospitals. An anesthesiologist who remains available to work on unscheduled cases is said to be "taking call."

Anesthesiologists in San Diego County are reimbursed for their services from several sources. Health insurance companies and other third-party payors typically reimburse anesthesiologists for services rendered to their subscribers during scheduled and unscheduled medical procedures and obstetrical cases through contracts that establish fees and other competitively significant terms. In addition, some hospitals pay anesthesiologists "stipends" for taking call and/or for rendering services to uninsured patients. Some hospitals pay anesthesiologists stipends through contracts that establish a stipend amount and other competitively significant terms.

Absent agreements among competing anesthesiologists, competing anesthesiologists or anesthesiology groups decide independently whether to seek a stipend from a hospital and the amount of the stipend. They also decide independently whether they will terminate or restrict the services they provide to unscheduled or uninsured patients if the hospital refuses to pay them a stipend or if they are dissatisfied with the stipend.

From as early as February 2001 through March 2002, GAS and ASMG discussed between themselves a joint strategy to secure stipends from Grossmont Hospital for taking obstetric call and for rendering services to uninsured emergency room patients. Eventually, GAS and ASMG agreed on the stipend amount both groups would demand from the hospital for taking obstetric call. GAS and ASMG also discussed reducing their hours of availability for taking call to increase their negotiating power with the hospital. Furthermore, they agreed to maintain a solid front against the hospital to prevent the hospital from (1) negotiating separately with each group to reduce the amount of the stipend or (2) seeking services solely from one group to the exclusion of the other. ASMG and GAS ceased this collusive activity only after the Commission contacted them about this conduct. While the Commission's investigation prevented any anticompetitive effects from occurring, this conduct is a naked restraint, which constitutes an unfair method of competition in violation of section 5 of the FTC Act.

The Proposed Consent Order

The proposed consent order is designed to prevent recurrence of the illegal concerted actions alleged in the

complaint while allowing Respondent to engage in legitimate joint conduct.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among medical practices: (1) To negotiate, to fix, or to establish any fee, stipend, or any other term of reimbursement for the provision of anesthesia services; (2) to deal, to refuse to deal, or to threaten to refuse to deal with any payor of anesthesia services; or (3) to reduce, or to threaten to reduce, the quantity of anesthesia services provided to any purchaser of anesthesia services. A "medical practice" is defined as a bona fide, integrated business entity in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph II.B prohibits Respondent from attempting to engage in any action prohibited by Paragraph II.A. Paragraph II.C prohibits Respondent from encouraging, pressuring, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A and II.B.

Paragraph II contains a proviso that allows Respondent to engage in conduct that is reasonably necessary to the formation or operation of a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." To be a "qualified risk-sharing joint arrangement," an arrangement must satisfy two conditions. First, all participating providers must share substantial financial risk through the arrangement and thereby create incentives for the participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. To be a "qualified clinically-integrated joint arrangement," an arrangement must satisfy two conditions. First, all participants must join in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among providers to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Both definitions reflect the analyses contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

Paragraphs III through V of the proposed order are reporting and compliance provisions. Paragraph VI is a provision "sunsetting" the order after 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15367 Filed 6–17–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Assistant Secretary for Planning and Evaluation; Notice of Funding Availability for Policy and Research Grants (State Innovation Grants)

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS.

ACTION: Notice of grant competition.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation announces its intention to conduct a grant competition for ASPE State Innovation Demonstration Grants. This competition is limited to current recipients of FY 2002 ASPE State Innovation Planning Grants.

The Catalog of Federal Domestic Assistance Number: The CFDA number is 93.239.

Closing Date: The closing date for submitting applications under this announcement is August 18, 2003. Please email Brenda Benesch at *Brenda.Benesch@hhs.gov* by July 8, 2003 to inform the government of your intent to submit an application. Please include the proposed title of the project and the name of the agency submitting the application. Providing notice of intent to submit is not a requirement for submitting an application. However, a notice of intent to submit will help the federal government in planning for the review process.

Mailing Address: Applications should be submitted *to be determined.*

You will receive email confirmation to notify you that your application was received within 14 days of the closing date. If you do not receive confirmation within 14 days of the closing date, please contact *to be determined* at the address above.

The printed **Federal Register** notice is the only official program announcement.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed *to be determined* at the address or phone number listed above. Administrative questions will be accepted and responded to up to ten working days prior to closing date of receipt of applications. Technical questions should be directed to Brenda Benesch, either by telephone (202–260–0382), fax (202–690–6562), e-mail (*Brenda.Benesch@hhs.gov*) or in writing at the following address, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 450G, Hubert H. Humphrey Building, Washington, DC 20201. If you send your question(s) in writing, please call to confirm receipt. Technical questions will be accepted and responded to up to ten working days prior to the closing date of receipt of applications.

Application Materials: Application materials are included in this package and are also available from the ASPE World Wide Web site: *http://aspe.hhs.gov/funding.htm* or by calling *to be determined.*

SUPPLEMENTARY INFORMATION: This program announcement consists of five parts: Part I: Background—Legislative authority, Background information, Purpose, Technical assistance and process evaluation; Part II: Project and Applicant Eligibility—Eligible applicants, Available funds, Budget and project period, and Matching requirements; Part III: The Review Process—Intergovernmental review, Initial screening, and Competitive review and evaluation criteria; Part IV: The Application—Application development, Application submission, Disposition of applications, and Components of a complete application; Part V: Questions and Answers.

Part I. Background

A. Legislative Authority

This announcement is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and section 310 of the Public Health Service Act and awards will be made from funds appropriated under the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7).

B. Background Information

In FY 2002 ASPE awarded state innovation demonstration grants to five states and planning grants to ten states to help them implement or develop inpovative approaches for providing health and human services more efficiently. Planning grants were awarded for up to a 17-month project period. The following planning grants were awarded:

- Alaska Department of Health and Social Sciences— "Planning for Comprehensive Early Childhood Mental Health in Alaska";
- Arizona Department of Health Services— "Arizona Diabetic Patient Self-Management Project";
- Arkansas Department of Human Services— "Improving Transitions from the Institutions into the Community";
- Delaware Health and Social Services— "Self-Directed Supports for Community Living";
- District of Columbia Department of Health— "DC Youth Violence Prevention Initiative-";
- Iowa Department of Human Services— "Healthy Marriage/ Responsible Fatherhood";
- Kansas Department of Social and Rehabilitation Services— "Child Welfare Wrap Around Service Delivery";
- Maryland Department of Aging— "Changing Interagency Service Delivery Systems to Help Older Public Housing Residents";
- New Hampshire State Department of Health and Human Services— "Granite State Data Archive"; and
- South Carolina Department of Social Services— "Keep Them Home: An Adult Protective Service Program."

C. Purpose

ASPE has determined that building on the efforts already underway is the most efficient use of the Fiscal Year 2003 state innovative grant funds. Since fiscal limitations prevent use from funding all ten planning grantees to move into a second-year, transitional planning/ demonstration phase, we plan to conduct a limited competition among the planning grantees in order to select 2–3 that will receive second-year resources. ASPE's goal in supporting this phase is to enable some states to implement their innovative ideas, as well as to improve our understanding of the process of successful innovation. Planning grantees that receive additional funding will be expected to strengthen their activities and begin implementation. We anticipate that lessons learned from the planning and implementation process will assist program directors and state officials across the country in planning and implementing innovative projects. We plan to provide additional funding to 2–3 grantees. Each applicant may request funds in the range of $300,000–$500,000 per year for a maximum of three years. Decision on subsequent funding will be made on a noncompetitive basis based on the availability of funds, the adequate progress of the grantee, and such other similar criteria as the Department determines. Any requested additional funding will be reviewed to determine that the continuation of the project is consistent with the purposes of the announcement.

D. Technical Assistance and Process Evaluation

The Lewin Group will provide a limited amount of tailored technical assistance to the states. The independent process evaluation begun in the FY2002 phase of the State Innovation Grants initiative will be expanded to document the progress of the FY2003 grantees. The process evaluation will, at a minimum, address key research questions:

1. What are the issues and challenges associated with implementing and operating the funded projects?
2. What are the expected short and long-term implications of this intervention for clients, as well as for agencies involved?
3. What other innovative ideas/ projects may grow out of each funded project and the program as a whole?

We expect that the work undertake through this evaluation will result in important operational lessons and sound information about implementing innovative approaches. ASPE expects that this investment will benefit low-income clients and families, state and local health and human service administrators, others who work with low-income people, and the general public.

Part II. Project and Applicant Eligibility

A. Eligible Applicants

This grant competition is limited to the FY2002 State Innovation Grant recipients (see Part I B).

B. Available Funds

Approximately $1 million is expected to be available from ASPE funds appropriated for fiscal year 2003. We estimate that this level of funding will support between 2–3 grants.

C. Budget and Project Period

Awards under this announcement will be made for 12-month budget periods. States may propose projects up to 36 months in duration. Subject to the availability of funds, grantees with projects which last longer then 12 months may be allowed to submit subsequent applications for additional funding, at a lower funding level, for additional budget period(s). Decisions on subsequent funding will be made on a noncompetitive basis based on the availability of funds, the adequacy of grantee progress, and such other similar criteria as the Department may determine. Any requests for additional funding also will be reviewed to ensure that the continuation of the project is consistent with the purpose of the announcement.

After a grant award is made, any purchase of computer hardware or software needs to be requested in writing by the grantee and approved in writing by the ASPE project officer and the grants officer. Purchases of computer hardware or software for routine uses will not be considered. See Part IV, Section II for more information on review criteria for MIS/Data System proposals.

No funds may be paid as profit to grantees or subgrantees, *i.e.*, any amount is excess of allowable direct and indirect costs of the recipient (45 CFR 74.81). Grant monies can be used for client services to the extent that the cost of the services cannot be covered under existing programs.

D. Matching Requirements

Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, a state with a project with a total budget (both direct and indirect costs) of $500,000 may request up to $450,000 in federal funds. Matching requirements cannot be met with funds from other federally-funded programs.

If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as a part of the abstract. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

Part III. The Review Process

A. Intergovernmental Review

State Single Point of Contact (E.O. No. 12372)—DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

B. Initial Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement; (2) the applicant is eligible for funding; (3) the applicant has included assurances that they and other relevant participating organizations will be willing to field test strategies, based on their initial planning phase, and will participate in a process evaluation to document the steps taken from planning to implementation [this must be indicated on the page with the project abstract—see part IV, section E, 8(a)]; and (4) is within the page limit (see part IV, section A). Note that applications exceeding the page limit will not be reviewed further and will be ineligible for funding.

C. Competitive Review and Evaluation Criteria

Applications that pass the initial ASPE pre-review screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria are designed to assess the quality of the proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria as provided in this program announcement.

In order to ensure that the interests of the Federal Government are met, in making the final selections, ASPE may consider additional factors, in addition to the review criteria identified below. These additional factors may include such things as the applicants' readiness to transition from a planning to an implementation phase; capacity for continued and sustainable innovation; the potential impact of the innovation on the target population; the potential for building upon funding activities; the extent of partnerships with local entities; and the overall diversity of program activities within the applicant pool.

Proposed projects will be reviewed using the following evaluation criteria:

(1) Approach: (40 points)

The application will be judged on the extent to which the proposed approaches to project activities are adequate and appropriate to meet the objectives for projects in this program as set out in this announcement. As a part of the proposed approach, the application should identify the key, relevant organizations that will be involved in project activity and describe operational relationships that exist or will be put into place among the state, local public, private and non-profit agencies, and any other entities. Plans for cross-agency collaboration should be clearly explained.

Applicants should include a discussion of the proposed approach for implementing and operating the innovative strategies identifying specific steps to be undertaken. The approach should include a discussion of the time frame and action steps necessary before the implementation/demonstration phase of the project becomes operational (*e.g.*, staff must be trained over the next six months; partnerships with local agencies, non-profits, employers, etc. must be established, etc.). Applicants should provide a detailed description of the steps necessary to transition from a planning grant to a larger demonstration grant. Applicants should also describe how the transition to a demonstration grant will affect goals and objectives. In particular, applicants should address whether or not goals and objectives identified for the planning phase will need to be modified for the transition to a demonstration phase. The application will be judged based on the extent to which the proposed project demonstrates a firm commitment of State, and/or local, and/or private funding and/or in-kind contributions dedicated to sustainability of the project, on the extent to which it is innovative, and on its potential for improving outcomes either in target populations or management of state programs.

The application should include a brief discussion of the location of the proposed project to be implemented. Maps or other graphic aids may be attached. Applications should include appropriate information about the size of the target population in the proposed site/area and other data or information available that relate to the project activity.

It may be necessary for agencies to provide data to Lewin or to HHS. The types of data possibly requested under this project may include administrative data, including data on program attendance, or other participation data. Data may also be collected from program managers and staff and from individuals participating in the demonstration program to be implemented. The proposed approach should indicate the availabilty of such data, the source of the data, the extent to which it can be obtained or accessed by the applicant organization, the existence of data exchange agreements with other agencies that are the source of needed data, and the willingness of the applicant agency to obtain data needed for the evaluation. Any limitations regarding data availability or access should be discussed, including any fees for data.

Any application for a project involving the use of personally-identifiable information about patients or clients that grantees collect should describe how the project intends to address the privacy and confidentiality issues presented by the data collection. The description should not include details of collection, consent, security and the like. It should describe the organizational and planning approaches that will ensure that the project addresses these issues in a thoughtful way, respectful of the patients' and clients' privacy and dignity, in accord with all applicable law, and, if appropriate, taking particular account of the special privacy issues created by systems that integrate or link administrative data across several programs that serve the same population.

(2) Objectives and Need for Assistance: (15 points)

The applications should describe (1) issues and challenges which the applicant has considered and dealt with to date in designing and/or implementing strategies for system improvements, including an assessment of the current delivery system and the most urgent needs of the project's target population or system, and (2) the proposed strategy for the transition from a planning to a demonstration phase and ways in which it will significantly enhance innovative services for the target population. (3) A description of existing resources and programs for the target population, barriers in the current delivery system, and gaps in service delivery should also be included. The applicant should include any supporting data or available information gained during the planning phase that further demonstrates why the innovation is needed, and how the planning phase contributed to the development of innovative ways to serve the target populations. Applications will be judged on the relevance of the discussion to the program objectives set out within this announcement. The application will also be judged on the extent to which the innovation proposed will help to address the target population's needs, build the knowledge base, and have applicability to a range of states and localities.

(3) Results or Benefits Expected: (15 points)

The application should describe how the proposed implementation phase will address the identified needs and improve the delivery of services or activities. The application should identify specific outcome measures (goals) to be achieved through implementation of the innovation.

Goals should be tied to discrete, measurable objectives. Examples include: increase in the proportion of participants entering jobs at higher wage levels; increased partnerships between agencies and employers to support working families; increased access to health and human services benefits; increased integration of programs or services targeting clients with multiple barriers; increased innovation related to "consumer-directed" approaches to home and community-based long-term care services; more rapid access to program and client date; etc. The application will be judged on the extent to which the proposed program design or policies can be expected to achieve the stated project goals.

In committing to participate in a process evaluation, applicants should be able to report baseline information, including the size of the target population and the expected number of individuals or families to be served by the project, as appropriate. Interim and final program reports will be required.

(4) Staff and Position Data (10 Points)

The application should include a listing of key individuals who will oversee and work on the project, specifically identifying the key individuals from the applicant agency who will serve as the primary contacts for ASPE and contractor staff, indicating their positions, areas of responsibility and authority, and the proportion of time that will be available for project activity.

Applications will be judged on the extent to which individuals with appropriate authority, positions, and experience will work on the project and the adequacy of time allocated for key staff to the project. In addition, the application will be judged on the extent to which there is a commitment to the project evidenced by the participation of senior state and local officials and managers and on the adequacy of the proposed plans for obtaining advice and direction regarding project work and involvement and assistance to resolve issues or problems, as appropriate.

(5) Adequacy of Workplan (10 points)

Applicants should provide details about how planning projects will be implemented. Applications should delineate tasks for completing the work, indicate staff assignments for each task, and provide a schedule for completing each task. Applicants should also describe mechanisms that will be put in place to maintain quality control over the project. The application will be judged on the appropriateness and timeliness of the work schedule and tasks, staff assignments, and quality assurance plan.

(6) Budget Appropriateness (10 points)

The application must include a narrative description and justification for proposed budget line items and demonstrate that the project's costs are adequate, reasonable and necessary for the activities or personnel to be supported. The budget and narrative should have a clear relationship to the approach. The application will be judged on the extent to which adequate staffing and other resources will be provided as required to successfully carry out the tasks and activities proposed. (Applicants should refer to the budget information presented in the Standard Forms 424 and 424A, which can be found at *http://aspe.hhs.gov/funding.htm*).

Part IV. The Application

A. Application Development

In order to be considered for an award under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ASPE. Application materials including forms and instructions are attached to this announcement. Additional copies are available from *to be determined*.

Applicants should refer to the attached application kit for instructions regarding which forms, certifications and assurances are required and for instructions on completing the forms and preparing and submitting the application. Each application package must include an *original and two copies* of the complete application. All pages of the narrative must be sequentially numbered and unbound.

Applications must be received in the following format:

- 12 point font size
- Single line spacing
- 1 inch top, bottom, left, and right margins
- Applications should not exceed 20 pages. Page limits apply to items Section IV, D, 8(b–e) only; page limits do not include standard forms, certificates, and the like. Forms are available from GRANTS OFFICER TO BE DETERMINED or may be obtained electronically from the ASPE World Wide Web site: *http://aspe.hhs.gov/funding.htm*. Applications that are not received in the format described above and/or exceed the page limit, will not be reviewed. Applicants are requested to be concise. Applicants are encouraged *not* to attach or include bound reports or other documents.

B. Application Submission

1. Mailed applications must be postmarked by midnight three days prior to the closing date. Otherwise, they will be classified as late.

2. *Deadline.* The closing date (deadline) for submission of applications is August 18, 2003. Please email Brenda Benesch at *Brenda.Benesch@hhs.gov* by July 8, 2003 to inform the government of your intent to submit an application. Providing notice of intent to submit is not a requirement for submitting an application. However, a notice of intent to submit will help the Federal government in the planning for the review process. USPS mailed applications shall be considered as meeting the announced deadline if they are either received on or before the deadline date or postmarked by midnight three days prior to the closing date and received by ASPE in time for the independent review (within 2 weeks of the deadline): *to be determined*.

If applicants use a commercial mail service, they must ensure that a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application. To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting the announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, at: *to be determined*. The address must appear on the envelope/package containing the application with the note "Attention: *to be determined*" (Applicants are cautioned that express/

overnight mail services do not always deliver as agreed).

Applications transmitted by fax or through other electronic means will not be accepted regardless of date or time of submission or receipt.

3. Late applications. Applications that do not meet the criteria above are considered late applications. *To be determined* shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. NICHD may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with *grants officer to be determined*, the ASPE Grants Management Officer.

C. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

D. Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard Form 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in six sections, addressing the following topics (b) through (e) are limited to twenty (20) single-spaced pages:
   (a) Abstract (must include assurance of willingness to participate in a process evaluation),
   (b) Goals, Objectives and Usefulness of the Project,
   (c) Methodology and Design,
   (d) Background of the Personnel and Organizational Capabilities,
   (e) Work plan (timetable), and
   (f) Budget narrative.
9. Certification Regarding Drug-Free Workplace;
10. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
11. Certification and, if necessary, Disclosure Regarding Lobbying;
12. Supplement to Section II—Key Personnel;
13. Application for Federal Assistance Checklist.

Standard forms are available from GRANTS OFFICER TO BE DETERMINED or may be obtained electronically from the ASPE world wide web site: *http://aspe.hhs.gov/funding.htm*

Part V. Questions and Answers

1. Who May Submit an Application Under This Announcement?

State agencies that received ASPE State Innovation Planning grants in FY 2002 are eligible to apply.

The following planning grantees are eligible to apply for an FY 2003 ASPE State Innovation Demonstration grant: (1) Alaska Department of Health and Social Services—"Planning for Comprehensive Early Childhood Mental Health in Alaska"; (2) Arizona Department of Health Services—"Arizona Diabetic Patient Self-Management Project"; (3) Arkansas Department of Human Services—"Improving Transitions from the Institutions into the Community"; (4) Delaware Health and Social Services—"Self-Directed Supports for Community Living"; (5) District of Columbia Department of Health—"DC Youth Violence Prevention Initiative—"; (6) Iowa Department of Human Services—"Healthy Marriage/Responsible Fatherhood"; (7) Kansas Department of Social and Rehabilitation Services—"Child Welfare Wrap Around Service Delivery"; (8) Maryland Department of Aging—"Changing Interagency Service Delivery Systems to Help Older Public Housing Residents"; (9) New Hampshire State Department of Health and Human Services—"Granite State Data Archive"; and (10) South Carolina Department of Social Services—"Keep Them Home: An Adult Protective Service Program".

2. How Much Money Is Available for Grants Under This Announcement?

The total that is available under this announcement is approximately $1 million. ASPE anticipates that individual awards will be between $300,000–$500,000 per year.

3. How Many Awards Will Be Made or How Many Applications Will Be Approved?

ASPE anticipates awarding 2–3 grants.

4. Are There Page Limits or Other Page Guidelines for the Narrative Section of the Application

Yes, there are page limits for the applications. Applicants are requested to be concise. The announcement indicates that applications are not expected to be lengthy (see Part III, Section C). Applications must be no longer than 20 pages. Applications must be typed in 12 point font size, with single line spacing, and 1 inch top, bottom, right, and left margins. Applications that exceed the page limits and other guidelines will not be considered.

5. Where Should Applications To Be Sent?

An original and two copies of the complete application should be sent to: *To be determined.*

6. What Is the Application Submission Deadline?

Applications must be received or postmarked by August 18, 2003.

7. What Is the Deadline for Applications Sent via Overnight Courier Services?

Applications that are hand-carried will be considered as meeting the deadline if they are *received on or before the deadline date between the hours of 8 a.m. and 4:30 p.m. EST* at NICHD, Grants Management Branch, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01 Bethesda, Maryland 20892–7510 (Regular Mail) or Rockville, Maryland 20852 (Express Mail), Phone: (301) 435–6997, Fax: (301) 402–0915. The address must include the designation: "Attention: *Grants Officer To Be Determined.*" (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

8. May Applications Be Faxed or Sent Electronically?

No. Applications transmitted by fax or through other electronic means will not be accepted regardless of date or time of submission or receipt.

9. Where Can Additional Copies of the Announcement and/or Forms Be Obtained?

The complete package, announcement and standard forms, may be obtained by calling *to be determined.*

Dated: June 9, 2003.

William F. Raub,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–15385 Filed 6–17–03; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–79]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Healthcare Safety Network (NHSN)—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). OMB first approved the information collection now known as the "National Nosocomial Infections Surveillance (NNIS) System" (OMB No.0920–0012) in 1970; it approved the "National Surveillance System for Healthcare Workers(NaSH)" (OMB 0920–0417) in 1997, and the "Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers" (OMB No. 0920–0442) in 1999. These three data collections have been modified and are being merged to create the NHSN. The NHSN will evolve with the addition of modules and participating healthcare institutions from a wide spectrum of settings.

The NHSN is a knowledge system for accumulating, exchanging, and integrating relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and to promote healthcare safety. Specifically, the data will be used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. They will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks.

Healthcare institutions that participate in NHSN voluntarily report their data to the Division of Healthcare Quality Promotion in the National Center for Infectious Diseases at the Centers for Disease Control and Prevention through the National Electronic Disease Surveillance System that uses a web browser-based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. The cost to participating institutions is a computer capable of supporting an internet service provider (ISP) and access to an ISP. The table below shows the estimated annual burden in hours to collect and report data.

Title	Number of respondents	Number of responses/ respondent	Burden per response (in hrs.)	Total burden (hrs.)
NHSN Application/Annual Survey	350	1	1	350
Dialysis Application/Annual Survey	80	1	1	80
Patient Safety Monthly Reporting Plan	350	9	25/60	1,313
Patient Data	350	111	5/60	3,238
Surgical Site Infection (SSI)	200	27	25/60	2,250
Pneumonia (PNEU)	200	54	25/60	4,500
Primary Bloodstream Infection (BSI)	230	54	25/60	5,175
Urinary Tract Infection (UTI)	150	45	25/60	2,813
Dialysis Incident (DI)	80	90	12/60	1,440
Denominator for Procedure	200	540	5/60	9,000
Denominator for Specialty Care Area (SCA)	75	9	5	3,375
Denominator for Neonatal Intensive Care Unit (NICU)	100	9	4	3,600
Denominator for Intensive Care Unit (ICU)/Other locations (Not NICU or SCA)	245	18	5	22,050
Denominator for Outpatient	80	9	5/60	60
Antimicrobia 1 Use and Resistance (AUR)—Pharmacy	20	36	2	1,440
Healthcare Personnel Safety Reporting Plan	90	2	10/60	30
Healthcare Personnel Exposures to Blood/Body Fluids	90	42	1	3,780
Healthcare Personnel Post-exposure Prophylaxis	90	6	15/60	135
Healthcare Personnel Demographic Data	90	42	10/60	630
Healthcare Personnel Vaccination History	90	42	15/60	945
Healthcare Personnel Facility Survey	90	1	6	540
Healthcare Personnel Implementation of Engineering Controls	90	1	6	540
Healthcare Personnel Survey	30	1	10/60	5

Title	Number of respondents	Number of responses/ respondent	Burden per response (in hrs.)	Total burden (hrs.)
Total				67,289

Dated: June 12, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–15330 Filed 6–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

RIN 0920–AA03

Control of Communicable Diseases

AGENCIES: Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), Department of Health and Human Services (HHS).

ACTION: Notice of embargo and prohibition on transportation or offering for transportation in interstate commerce, or sale, offering for sale, or offering for any other type of commercial or public distribution, including release into the environment, of certain rodents and Prairie dogs.

SUMMARY: Shipments of rodents (order *Rodentia*) from Africa capable of transmitting monkeypox virus in humans are being imported into the United States and further distributed. In the United States, Prairie dogs (*Cynomys sp.*) and certain rodents from Africa may further transmit the monkeypox virus in humans.

Because of the public health threat posed by the importation of rodents from Africa, GDC is implementing an immediate embargo on the importation of all rodents (order *Rodentia*) from Africa until further notice. In addition, as a public health measure, CDC and FDA are prohibiting, until further notice, the transportation or offering for transportation in interstate commerce, or the sale or offering for sale, or offering for any other type of commercial or public distribution, including release into the environment, of Prairie dogs and the following rodents from Africa: Tree squirrels (*Heliosciurus sp.*); Rope squirrels (*Funisciurus sp.*); Dormices (*Graphiurus sp.*); Gambian Giant Pouched Rats (*Cricetomys sp.*); Brush-tailed porcupines (*Atherurus sp.*), Striped mice (*Hybomys sp.*).

This prohibition does not apply to individuals who transport listed animals to veterinarians or animal control officials or other entities pursuant to guidance or instructions issued by Federal, State, or local government authorities.

This action is being taken because at least six different species of potentially infected rodents have been implicated in the current outbreak of monkeypox virus in humans. Monkeypox virus was also subsequently transmitted from infected rodents to native Prairie dogs. Based on epidemiologic and scientific knowledge gathered to date, specific interstate restrictions on the species within these genera are required to contain further movement of implicated animals. A ban on the intrastate sale or offering for sale or offering for any other type of commercial or public distribution of the species within these genera is also necessary because of the potential impact on interstate disease spread. Furthermore, a ban on the importation of shipments of all rodents from Africa is necessary to mitigate the harm of further introductions of monkeypox virus into the United States.

DATES: This embargo and prohibition is effective on June 11, 2003, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Thomas A. Demarcus, National Center for Infectious Diseases (E03), Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, 770–488–7100, or Gloria Dunnavan, Division of Compliance, Office of Surveillance and Compliance, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–230), Rockville, MD 20855, 301–827–1168.

SUPPLEMENTARY INFORMATION:

I. Background

As of June 10, a total of 50 persons with suspected monkeypox had been reported from Wisconsin, Illinois, Indiana, and New Jersey. Monkeypox had been confirmed by laboratory tests in four persons. Seven of the people with suspected monkeypox had been hospitalized for their illness; there have been no deaths related to the outbreak. The number of cases and States involved in the outbreak will likely change as the investigation continues.

Onset of illness among patients began in early May. All patients reported direct or close contact with Prairie dogs, most of which were sick. In May, the Prairie dogs were sold by a Milwaukee animal distributor to two pet shops in the Milwaukee area and during a pet "swap meet" (pets for sale or exchange) in northern Wisconsin. The Milwaukee animal distributor had obtained Prairie dogs and a Gambian giant rat that was ill at the time from a northern Illinois animal distributor. On the basis of preliminary findings from the trace-back investigation of the Prairie dogs and the Gambian giant rat, it appears that the source of the infection was a shipment of rodents from Africa, which included six distinct species of rodents. It appears that the primary route of transmission may be from infected rodents from Africa to native Prairie dogs and then to humans as a result of close contact.

II. Public Health Risks

Monkeypox is a rare zoonotic viral disease that occurs primarily in the rain forest countries of central and west Africa. Studies have shown that rodents from Africa are capable of transmitting monkeypox virus in humans. In humans, the illness produces a vesicular and pustular rash similar to that of smallpox. Limited person-to-person spread of infection has been reported in disease-endemic areas in Africa; the incubation period is about 12 days. Case-fatality ratios in Africa have ranged from 1 percent to 10 percent. It is likely the virus entered the United States via imported rodent species from Africa. Further transmission of the virus likely occurred in the storage and handling of these imported rodents during sale and distribution within the United States. This resulted in secondary transmission to domestic Prairie dogs housed in the same animal-holding facility or pet shop.

III. Immediate Action

Introduction of exotic species, such as rodents from Africa, poses a serious public health threat because of the potential of human monkeypox virus infection. Transportation in interstate commerce or sale or any other type of commercial or public distribution, including release into the environment, of species of rodents linked to the initial

infected shipment and Prairie dogs poses a serious public health threat because of the potential for further spread of the monkeypox virus to other species and humans.

The scope of this communicable disease problem is inherently and necessarily an interstate problem that cannot be controlled by individual state health authorities. Thus, the appropriate measures taken by the health authorities of any state or possession are insufficient to prevent the interstate spread of human monkeypox virus infection. Accordingly, CDC and FDA, pursuant to 42 CFR 70.2 and 21 CFR 1240.30, are prohibiting, until further notice, the transportation or offering for transportation in interstate commerce, or the sale, offering for sale, or offering for any other type of commercial or public distribution, including release into the environment, of Prairie dogs and the following rodents from Africa: Tree squirrels (*Heliosciurus sp.*); Rope squirrels (*Funisciurus sp.*); Dormices (*Graphiurus sp.*); Gambian Giant Pouched Rats (*Cricetomys sp.*); Brush-tailed porcupines (*Atherurus sp.*), Striped mice (*Hybomys sp.*).

This prohibition does not apply to individuals who transport listed animals to veterinarians or animal control officials or other entities pursuant to guidance or instructions issued by Federal, State, or local government authorities. In addition, pursuant to 42 CFR 71.32(b), CDC is implementing an immediate embargo on the importation of all rodents from Africa (order *Rodentia*).

Dated: June 12, 2003.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention.

Dated: June 12, 2003.

Mark B. McClellan,

Commissioner of Food and Drugs.

[FR Doc. 03–15423 Filed 6–13–03; 5:07 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0234]

Canned Asparagus Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Chiquita Processed Foods, LLC, and Crown Cork & Seal Co., to market test a product designated as "VERI-GREEN Cut Asparagus Spears" that deviates from the U.S. standard of identity for canned asparagus. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than September 16, 2003.

FOR FURTHER INFORMATION CONTACT: Catalina Ferre-Hockensmith, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Chiquita Processed Foods, LLC, P.O. Box 458, Walla Walla, WA 99362, and to Crown Cork & Seal Co., 11535 South Central Ave., Alsip, IL 60803.

The permit covers limited interstate marketing tests of a product designated as "VERI-GREEN Cut Asparagus Spears" that deviates from the U.S. standard of identity for canned asparagus (21 CFR 155.200) in that the test product will contain added zinc chloride and stannous chloride at a maximum level of 75 parts per million (ppm) of zinc and 35 ppm of stannous chloride in the finished food. The test product meets all requirements of the standard with the exception of the variation. The purpose of the variance is to test the use of added zinc chloride and stannous chloride to retain the green color of the food and fresh taste.

The permit provides for the temporary marketing of 387,192 pounds (lb) of the test product (175,200 kilograms (kg)) (10,000 cases, each containing 6 lb, 7 ounce (2.92 kg) cans). The product will be manufactured at Chiquita Processed Foods, LLC, 516 West Rose, Walla Walla, WA 99362. The product will be distributed in the United States.

For the purpose of the permit, the name of the product is "VERI-GREEN Cut Asparagus Spears." Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR parts 101 and 130. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but not later than September 16, 2003.

Dated: June 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15403 Filed 6–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Physicians' Experience of Ethical Dilemmas and Resource Allocation

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National institute of Dental and Craniofacial Research (NIDCR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Physicians' Experience of Ethical Dilemmas and Resource Allocation. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Health care costs are rising ceaselessly and there are currently no generally accepted way of controlling them. This study will access the experience of physicians regarding resource allocation in clinical practice, and how allocation decisions made at other levels shapes this experience. The primary objectives of the study are to determine if physicians make decisions to withhold interventions on the basis of cost, how often they report doing so, what types of care are withheld, and what criteria are used in making such decisions. The findings will provide valuable information concerning: (1) The practice if resource allocation in clinical practice, (2) the possible effects of perceived constraints on this practice, and (3) international comparisons on these two aspects. *Frequency of Response:* Once. *Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions. *Type of Respondents:* Physicians. The annual reporting burden is as follows: *Estimated number of Respondents:* 250; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:*

.0.3674; and *Estimated Total Annual Burden Hours Requested:* 91.85. The annualized cost to respondents is estimated at: $5,218. There are no capital costs, operating costs and/or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Samia Hurst, Department of Clinical Bioethics, Building 10, room 1C118, National Institutes of Health, Bethesda, MD 20892, or call non-toll-free number (301) 435–8713 or E-mail your request, including your address to: *shurst@cc.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: May 29, 2003.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel J. Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 03–15372 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, ENCODE Determination and Technology.

Date: July 14–15, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15374 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, National Research Service Award.

Date: July 15, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Brian R. Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18K, Bethesda, MD 20892, 301–594–3907, *pikbr@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.86, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15373 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(a)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–NICHD–2003–12 "Determinants of Male and Female Fecundity and Fertility".

Date: July 14, 2003.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh2mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15375 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–NICHD–2003–02—BPCA Coordinating Center Review.

Date: July 16, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20552, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15376 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITV Conflicts Cooperative Agreements.

Date: June 19, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15377 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Initiative for Minority Student Development.

Date: July 14–15, 2003.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: N. Kent Peters, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 18ANK, Bethesda, MD 20892, (301) 594—2408, *petersn@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance, Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 11, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15378 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: July 10–11, 2003.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Shiva P. Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13J, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 11, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15379 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Bariatric Surgery Clinical Research Consortium.

Date: July 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 747, 6706 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. (301) 594–8895. *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: June 11, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15380 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Subcommittee.

Date: July 16, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Elaine Lazar-Wesley, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–451–4530.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Transdisciplinary Prevention Research Centers.

Date: July 17–18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Translating Tobacco Addiction Research to Treatment.

Date: July 21, 2003.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Park Hyatt, 1201 24th Street, Washington, DC 20037.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 10, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15381 Filed 6–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub, L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in June 2003.

A portion of the meeting will be open and will include a roll call, general announcements, a budget update, and discussions about the President's New Freedom Commission on Mental Health, the Substance Abuse and Mental Health Services Administration's (SAMHSA) activities in translating science to services, SAMHSA/CMHS' Report to Congress on Co-occurring Disorder, and consumer/survivor issues. In addition, the meeting will include an orientation session for new council members.

Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10(d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Tracey Cooper, Committee Management Coordinator, CMHS, Room 17–99, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–1158.

Substantive program information may be obtained from the contact person listed below.

Committee Name: CMHS National Advisory Council.

Meeting Date: June 25–26, 2003.

Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037. 202–955–6400.

Type:

Closed: June 25, 2003–8:30 a.m.–10:30 a.m.

Open: June 25, 2003–11 a.m.–5 p.m.

Open: June 26, 2003–8:30 a.m.–11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Dale Kaufman, MPH, MA, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–99, Rockville, Maryland 20857, Telephone: (301) 443–2660 and FAX (301) 443–1563.

Dated: June 11, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–15340 Filed 6–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–14779]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 1625–0070, 1625–0047, and 1625–0084

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the three Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. (The Coast Guard has withdrawn a fourth ICR (1625–0077) under this docket number and will revise it and resubmit it to OMB for approval separately.) Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 18, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2003–14779) more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–14779 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street, SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (68 FR 16065 (April 2, 2003)) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3)

ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–14779. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Vessel Identification System.
OMB Control Number: 1625–0070.
Type of Request: Extension of a currently approved collection.
Affected Public: Goyernments of States and territories.
Form: This collection of information does not require the public to fill out forms, but does require the information to be collected electronically.
Abstract: The Coast Guard must establish a nationwide vessel-identification system (VIS) and centralize certain vessel-documentation functions. VIS provides participating States and territories with access to data on vessels numbered by States and territories. Participation in it is voluntary.
Annual Estimated Burden Hours: The estimated burden is 6,045 hours a year.

2. *Title:* Vital System Automation.
OMB Control Number: 1625–0047.
Type of Request: Extension of a currently approved collection.
Affected Public: Designers, manufacturers, and owners of vessels and shipyards.
Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.
Abstract: This collection pertains to the vital-system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.
Annual Estimated Burden Hours: The estimated burden is 57,375 hours a year.

3. *Title:* Audit Reports under the International Safety Management Code.
OMB Control Number: 1625–0084.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners and operators of vessels, and organizations authorized to issue certificates of compliance with the ISM Code for the United States.
Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.
Abstract: This information helps to determine whether U.S. vessels, subject to SOLAS 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety-management-systems
Annual Estimated Burden Hours: The estimated burden is 8,440 hours a year.

Dated: June 11, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–15301 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–33]

Notice of Submission of Proposed Information Collection to OMB: Previous Participation Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: July 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0118) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail: *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Previous Participation Certification.

OMB Approval Number: 2502–0118.

Form Numbers: HUD–2530.

Description of the Need for the Information and its Proposed Use: The collection of this information aids in protecting HUD's Multifamily Housing Programs by ensuring participation by responsible individuals and organizations. HUD evaluates the feasibility of applicants with respect to their previous track records. Respondents such as owners, managers, consultants, general contractors, and nursing home operators and administrators will be subject to review.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	4,300		1		0.5		2,150

Total Estimated Burden Hours: 2,150.
Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–15298 Filed 6–17–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–08]

Notice of Proposed Information Collection for Public Comment for the Section Eight Management Assessment Program (SEMAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (Text telephone) by calling the Federal Information Relay Services at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This notice also lists the following information:

Title of Proposal: Section Eight Management Assessment Program (SEMAP).

OMB Control Number: 2577–0215.

Description of the Need for the Information and Proposed Use: Public Housing Agencies (PHAs) prepare and submit an electronic submission to HUD that certifies the PHA's SEMAP performance in 14 key program areas involving the administration and operation of the Housing Choice Voucher Program. The certification profile is reviewed by HUD. Following review, HUD assigns each PHA an annual SEMAP score and performance designation denoting whether the PHA is a High, Standard or Troubled PHA. PHAs that are designated High or Standard must correct all cited deficiencies within a stand timeframe and may be required to develop a corrective action plan to resolve the areas of program non-compliance. PHAs designated Troubled must submit a corrective action plan to HUD for review and approval that outlines the areas of program non-compliance and details the corrective strategies the PHA will implement to resolve the cited deficiencies. During the recovery process, HUD will monitor the success of the recovery progress and provide technical assistance to the PHA. Following completion of the corrective action plan, HUD will confirm the success of the recovery effort and remove the PHA from HUD's listing of troubled PHAs.

Agency form number: HUD–52648.

Members of the Affected Public: PHAs, State and Local Governments, businesses or other for-profits.

Estimation Including the Total Number of Hours Needed to Prepare the Information Collection for the Number of Respondents, Frequency of Response, and Hours of Response: The number of respondents (2500 PHAs) are required to submit an electronic SEMAP certification to HUD each year within 60 calendar days following the end of the PHA's fiscal year end date. The number of hours that are anticipated regarding the certification process should not exceed two hours per PHA per year, therefore, 5,000 hours. In addition, the number of hours that are anticipated regarding the requirement for the PHAs to examine samples of tenant file data, for quality control purposes, should not exceed 80 hours per PHA per year, therefore, 200,000 hours.

Of that number, it is anticipated that approximately 10 percent or 250 PHAs will be troubled and required to develop and implement a corrective active plan. The number of hours that are anticipated regarding the development and implementation of a corrective action plan for those PHAs that are designated troubled, varies based on the number and extent of program violations at each troubled PHA as well as the extent of correction that will be required to remedy the actual violation. The number of hours that will be required for this process are too difficult to estimate.

Status of the Proposed Information Collection: Extension is not anticipated to result in any substantive changes concerning the foregoing requirements.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 11, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Section 8 Management Assessment Program (SEMAP) Certification

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0215 (exp. 8/31/2003)

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This collection of information is required by 24 CFR sec 985.101 which requires a Public Housing Agency (PHA) administering a Section 8 tenant-based assistance program to submit an annual SEMAP Certification within 60 days after the end of its fiscal year. The information from the PHA concerns the performance of the PHA and provides assurance that there is no evidence of seriously deficient performance. HUD uses the information and other data to assess PHA management capabilities and deficiencies, and to assign an overall performance rating to the PHA. Responses are mandatory and the information collected does not lend itself to confidentiality.

Instructions Respond to this certification form using the PHA's actual data for the fiscal year just ended.

PHA Name	For PHA FY Ending (mm/dd/yyyy)	Submission Date (mm/dd/yyyy)

Check here if the PHA expends less than $300,000 a year in Federal awards ☐
Indicators 1 - 7 will not be rated if the PHA expends less than $300,000 a year in Federal awards and its Section 8 programs are not audited for compliance with regulations by an independent auditor. A PHA that expends less than $300,000 in Federal awards in a year must still complete the certification for these indicators.

Performance Indicators

1. Selection from the Waiting List. (24 CFR 982.54(d)(1) and 982.204(a))
(a) The PHA has written policies in its administrative plan for selecting applicants from the waiting list.

PHA Response Yes ☐ No ☐

(b) The PHA's quality control samples of applicants reaching the top of the waiting list and of admissions show that at least 98% of the families in the samples were selected from the waiting list for admission in accordance with the PHA's policies and met the selection criteria that determined their places on the waiting list and their order of selection.

PHA Response Yes ☐ No ☐

2. Reasonable Rent. (24 CFR 982.4, 982.54(d)(15), 982.158(f)(7) and 982.507)
(a) The PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units (i) at the time of initial leasing, (ii) before any increase in the rent to owner, and (iii) at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. The PHA's method takes into consideration the location, size, type, quality, and age of the program unit and of similar unassisted units, and any amenities, housing services, maintenance or utilities provided by the owners.

PHA Response Yes ☐ No ☐

(b) The PHA's quality control sample of tenant files for which a determination of reasonable rent was required shows that the PHA followed its written method to determine reasonable rent and documented its determination that the rent to owner is reasonable as required for (check one):

PHA Response ☐ At least 98% of units sampled ☐ 80 to 97% of units sampled ☐ Less than 80% of units sampled

3. Determination of Adjusted Income. (24 CFR part 5, subpart F and 24 CFR 982.516)
The PHA's quality control sample of tenant files shows that at the time of admission and reexamination, the PHA properly obtained third party verification of adjusted income or documented why third party verification was not available; used the verified information in determining adjusted income; properly attributed allowances for expenses; and, where the family is responsible for utilities under the lease, the PHA used the appropriate utility allowances for the unit leased in determining the gross rent for (check one):

PHA Response ☐ At least 90% of files sampled ☐ 80 to 89% of files sampled ☐ Less than 80% of files sampled

4. Utility Allowance Schedule. (24 CFR 982.517)
The PHA maintains an up-to-date utility allowance schedule. The PHA reviewed utility rate data that it obtained within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10% or more in a utility rate since the last time the utility allowance schedule was revised.

PHA Response Yes ☐ No ☐

5. HQS Quality Control Inspections. (24 CFR 982.405(b))
A PHA supervisor (or other qualified person) reinspected a sample of units during the PHA fiscal year, which met the minimum sample size required by HUD (see 24 CFR 985.2), for quality control of HQS inspections. The PHA supervisor's reinspected sample was drawn from recently completed HQS inspections and represents a cross section of neighborhoods and the work of a cross section of inspectors.

PHA Response Yes ☐ No ☐

6. HQS Enforcement. (24 CFR 982.404)
The PHA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or, if HQS deficiencies were not corrected within the required time frame, the PHA stopped housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce the family obligations for (check one):

PHA Response ☐ At least 98% of cases sampled ☐ Less than 98% of cases sampled

7. Expanding Housing Opportunities. (24 CFR 982.54(d)(5), 982.153(b)(3) and (b)(4), 982.301(a) and 983.301(b)(4) and (b)(12)).
Applies only to PHAs with jurisdiction in metropolitan FMR areas.
Check here if not applicable ☐

(a) The PHA has a written policy to encourage participation by owners of units outside areas of poverty or minority concentration which clearly delineates areas in its jurisdiction that the PHA considers areas of poverty or minority concentration, and which includes actions the PHA will take to encourage owner participation.

PHA Response Yes ☐ No ☐

(b) The PHA has documentation that shows that it took actions indicated in its written policy to encourage participation by owners outside areas of poverty and minority concentration.

PHA Response Yes ☐ No ☐

(c) The PHA has prepared maps that show various areas, both within and neighboring its jurisdiction, with housing opportunities outside areas of poverty and minority concentration; the PHA has assembled information about job opportunities, schools and services in these areas; and the PHA uses the maps and related information when briefing voucher holders.

PHA Response Yes ☐ No ☐

(d) The PHA's information packet for voucher holders contains either a list of owners who are willing to lease, or properties available for lease, under the voucher program, or a list of other organizations that will help families find units and the list includes properties or organizations that operate outside areas of poverty or minority concentration.

PHA Response Yes ☐ No ☐

(e) The PHA's information packet includes an explanation of how portability works and includes a list of neighboring PHAs with the name, address and telephone number of a portability contact person at each.

PHA Response Yes ☐ No ☐

(f) The PHA has analyzed whether voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, where such difficulties were found, the PHA has considered whether it is appropriate to seek approval of exception payment standard amounts in any part of its jurisdiction and has sought HUD approval when necessary.

PHA Response Yes ☐ No ☐

8. Payment Standards. The PHA has adopted current payment standards for the voucher program by unit size for each FMR area in the PHA jurisdiction and, if applicable, for each PHA-designated part of an FMR area, which do not exceed 110 percent of the current applicable FMR and which are not less than 90 percent of the current FMR (unless a lower percent is approved by HUD). (24 CFR 982.503)

PHA Response Yes ☐ No ☐

Enter current FMRs and payment standards (PS)

0-BR FMR _____	1-BR FMR _____	2-BR FMR _____	3-BR FMR _____	4-BR FMR _____
PS _____	PS _____	PS _____	PS _____	PS _____

If the PHA has jurisdiction in more than one FMR area, and/or if the PHA has established separate payment standards for a PHA-designated part of an FMR area, attach similar FMR and payment standard comparisons for each FMR area and designated area.

9. Annual Reexaminations. The PHA completes a reexamination for each participating family at least every 12 months. (24 CFR 982.516)

PHA Response Yes ☐ No ☐

10. Correct Tenant Rent Calculations. The PHA correctly calculates tenant rent in the rental certificate program and the family rent to owner in the rental voucher program. (24 CFR 982, Subpart K)

PHA Response Yes ☐ No ☐

11. Precontract HQS Inspections. Each newly leased unit passed HQS inspection before the beginning date of the assisted lease and HAP contract. (24 CFR 982.305)

PHA Response Yes ☐ No ☐

12. Annual HQS Inspections. The PHA inspects each unit under contract at least annually. (24 CFR 982.405(a))

PHA Response Yes ☐ No ☐

13. Lease-Up. The PHA executes assistance contracts on behalf of eligible families for the number of units that has been under budget for at least one year.

PHA Response Yes ☐ No ☐

14a. Family Self-Sufficiency Enrollment. The PHA has enrolled families in FSS as required. (24 CFR 984.105)
Applies only to PHAs required to administer an FSS program.
Check here if not applicable ☐

PHA Response

a. Number of mandatory FSS slots (Count units funded under the FY 1992 FSS incentive awards and in FY 1993 and later through 10/20/1998. Exclude units funded in connection with Section 8 and Section 23 project-based contract terminations; public housing demolition, disposition and replacement; HUD multifamily property sales; prepaid or terminated mortgages under section 236 or section 221(d)(3); and Section 8 renewal funding. Subtract the number of families that successfully completed their contracts on or after 10/21/1998.) ☐

or, Number of mandatory FSS slots under HUD-approved exception ☐

b. Number of FSS families currently enrolled

c. Portability: If you are the initial PHA, enter the number of families currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

Percent of FSS slots filled (b ÷ c divided by a)

14b. Percent of FSS Participants with Escrow Account Balances. The PHA has made progress in supporting family self-sufficiency as measured by the percent of currently enrolled FSS families with escrow account balances. (24 CFR 984.305)
Applies only to PHAs required to administer an FSS program.
Check here if not applicable ☐

PHA Response **Yes** ☐ **No** ☐

Portability: If you are the initial PHA, enter the number of families with FSS escrow accounts currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

Deconcentration Bonus Indicator (Optional and only for PHAs with jurisdiction in metropolitan FMR areas).

The PHA is submitting with this certification data which show that:

(1) Half or more of all Section 8 families with children assisted by the PHA in its principal operating area resided in low poverty census tracts at the end of the last PHA FY;

(2) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area during the last PHA FY is at least two percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the last PHA FY;

or

(3) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area over the last two PHA FYs is at least two percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last PHA FY.

PHA Response **Yes** ☐ **No** ☐ **If yes, attach completed deconcentrstion bonus indicator addendum.**

I hereby certify that, to the best of my knowledge, the above responses under the Section 8 Management Assessment Program (SEMAP) are true and accurate for the PHA fiscal year indicated above. I also certify that, to my present knowledge, there is not evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to administer Section 8 rental assistance in accordance with Federal law and regulations.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Executive Director, signature

Date (mm/dd/yyyy) _____

Chairperson, Board of Commissioners, signature

Date (mm/dd/yyyy) _____

The PHA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the PHA in providing its certification.

SEMAP Certification - Addendum for Reporting Data for Deconcentration Bonus Indicator

Date (mm/dd/yyyy) _____

PHA Name _____

Principal Operating Area of PHA _____
(The geographic entity for which the Census tabulates data)

Special Instructions for State or regional PHAs. Complete a copy of this addendum for each metropolitan area or portion of a metropolitan area (i.e., principal operating areas) where the PHA has assisted 20 or more Section 8 families with children in the last completed PHA FY. HUD will rate the areas separately and the separate ratings will then be weighted by the number of assisted families with children in each area and averaged to determine bonus points.

1990 Census Poverty Rate of Principal Operating Area _____

Criteria to Obtain Deconcentration Indicator Bonus Points

To qualify for bonus points, a PHA must complete the requested information and answer yes for only one of the 3 criteria below. However, State and regional PHAs must always complete line 1) b for each metropolitan principal operating area.

1) _____ a. Number of Section 8 families with children assisted by the PHA in its principal operating area at the end of the last PHA FY who live in low poverty census tracts. A low poverty census tract is a tract with a poverty rate at or below the overall poverty rate for the principal operating area of the PHA, or at or below 10% whichever is greater.

_____ b. Total Section 8 families with children assisted by the PHA in its principal operating area at the end of the last PHA FY.

_____ c. Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the last PHA FY (line a divided by line b).

Is line c 50% or more? **Yes** ☐ **No** ☐

2) _____ a. Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the last completed PHA FY.

_____ b. Number of Section 8 families with children who moved to low poverty census tracts during the last completed PHA FY.

_____ c. Number of Section 8 families with children who moved during the last completed PHA FY.

_____ d. Percent of all Section 8 mover families with children who moved to low poverty census tracts during the last PHA fiscal year (line b divided by line c).

Is line d at least two percentage points higher than line a? **Yes** ☐ **No** ☐

3) _____ a. Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the second to last completed PHA FY.

_____ b. Number of Section 8 families with children who moved to low poverty census tracts during the last two completed PHA FYs.

_____ c. Number of Section 8 families with children who moved during the last two completed PHA FYs.

_____ d. Percent of all Section 8 mover families with children who moved to low poverty census tracts over the last two completed PHA FYs (line b divided by line c).

Is line d at least two percentage points higher than line a? **Yes** ☐ **No** ☐

If one of the 3 criteria above is met, the PHA may be eligible for 5 bonus points.

See instructions above concerning bonus points for State and regional PHAs.

[FR Doc. 03–15299 Filed 6–17–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Arizona Project, Arizona; Water Allocations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final decision to modify the Secretary of the Interior's record of decision.

SUMMARY: The Department hereby issues notice of its final decision to modify the 1983 Central Arizona Project (CAP) Water Allocation Decision to delete the mandatory effluent pooling provision. As supported by public comment, we now view that provision as an impediment to effluent exchanges and effective water management in central Arizona. The decision that we are publishing in this notice eliminates the requirement for a mandatory effluent pooling provision in CAP water service subcontracts. We will grant the requests by the cities of Chandler and Mesa to amend their water service subcontracts to remove the mandatory effluent pooling provision and we will delete the mandatory effluent pooling provision in other CAP municipal and industrial water service subcontracts upon request.

DATES: This final decision is effective June 18, 2003 and amends the previous allocation decision published by Secretary Watt on March 24, 1983 (48 FR 12446).

ADDRESSES: To receive a copy of the Final Environmental Assessment and responses thereto, contact John McGlothen, NEPA Specialist, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069, telephone: 602–216–3866.

FOR FURTHER INFORMATION CONTACT: Paul Nelson, Contracts and Repayment Specialist, Phoenix Area Office, Bureau of Reclamation, telephone: (602) 216–3878.

SUPPLEMENTARY INFORMATION:

I. Previous Notices Related to CAP Water
II. Background
III. Rationale for Final Decision
IV. Comments on the Proposed Modification and Responses
V. Compliance with NEPA

I. Previous Notices Related to CAP Water

Previous notices related to CAP water were published in the **Federal Register** as 37 FR 28082, Dec. 20, 1972; 40 FR 17297, Apr. 18, 1975; 41 FR 45883, Oct. 18, 1976; 45 FR 52938, Aug. 8, 1980; 45 FR 81265, Dec. 10, 1980; 48 FR 12446, Mar. 24, 1983; 56 FR 29704, Jun. 28, 1991; 57 FR 4470, Feb. 5, 1992; and 57 FR 48388, Oct. 23, 1992. The above listed notices and decisions were made pursuant to the authority vested in the Secretary by the Reclamation Act of 1902 as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501) and in recognition of the Secretary's trust responsibility to Indian tribes.

II. Background

Following the 1983 CAP Water Allocation Decision, the Bureau of Reclamation, the Central Arizona Water Conservation District (CAWCD), and each of the non-Indian CAP water allottees desiring CAP water entered into three-party water service subcontracts providing for the delivery of CAP water. In order to ensure implementation of the mandatory effluent pooling provision, municipal and industrial (M&I) water service subcontractors who choose to circumvent the effluent pooling provision and directly exchange their effluent with Indian tribes are subject to a reduction in their entitlement to CAP water under their subcontracts by the amount of CAP water received from the effluent exchange.

The Department indicated in the 1983 CAP Water Allocation Decision that CAP M&I water allocations could be made more firm by execution of feasible non-potable effluent exchanges with Indian tribes. The 1983 CAP Water Allocation Decision also implemented a pooling provision whereby all M&I water service subcontractors share in the benefits of effluent exchanges. In a time of shortage of CAP water under the effluent pooling provision, the additional CAP water made available as a result of any effluent exchanges with Indian tribes would be shared by all M&I subcontractors, thereby reducing the amount of shortage for each subcontractor. The pooling provision was included in the CAP M&I water service subcontracts.

The 1983 CAP Water Allocation Decision also provided that the Department could require Indian tribes located in close proximity to metropolitan areas to take delivery of effluent in lieu of CAP water. This requirement was eliminated by a Secretarial decision published in the **Federal Register** on October 23, 1992, so that any effluent exchanges involving Indian tribes would occur on a voluntary basis.

The major cities in Maricopa County, which are the sources of most of the exchangeable effluent, prefer to exchange effluent on their own, incur all related treatment and transportation expenses, and receive any benefits from the exchange.

The notice of proposed modification of the Secretary of the Interior's Record of Decision to remove the mandatory effluent pooling provision and request for comments was published in the **Federal Register** (67 FR 38514, June 4, 2002). Implementation of the proposed modification was the only option presented.

III. Rationale for Final Decision

The Department favors elimination of the mandatory effluent pooling provision from the 1983 CAP Water Allocation Decision for the following reasons:

(1) In response to public comments submitted by the City of Phoenix in 1992 concerning the mandatory effluent pooling provision, the Department committed to re-evaluate this provision at a later date after consultation with the Arizona Department of Water Resources (ADWR) (*see* 57 FR 48389, Oct. 23, 1992). In part, the City of Phoenix stated "* * * The City of Phoenix agrees with the reasons for deleting the mandatory substitute water provision from the Indian CAP Contracts and believes that it is equally important to remove the provision from CAP M&I subcontracts that would penalize a subcontractor for entering into a direct effluent exchange with an Indian Community for CAP water." The Department acknowledged the City of Phoenix's concerns that the provisions of the effluent exchange article in the CAP M&I water service subcontracts may no longer be critical to the management of water supplies in central Arizona.

(2) The mandatory effluent pooling provision removes any incentive for a municipality to exchange effluent with an Indian tribe. The Department believes that effluent producing entities, Indian tribes, the State of Arizona, and other local organizations should be free to pursue local water management decisions that are in the best interest of the local economies, and that they should not be constrained in such water management decisions by the mandatory effluent pooling provision.

(3) ADWR now supports removing the mandatory effluent pooling provision from the 1983 CAP Water Allocation Decision and the CAP M&I water service subcontracts.

(4) CAWCD, as a party to the CAP M&I water service subcontracts, does not object to deletion of the mandatory effluent pooling provision from the subcontracts.

(5) The Department is aware of two pending effluent exchange agreements that require Departmental approval. The cities of Chandler and Mesa each have a proposed effluent exchange agreement with the Gila River Indian Community (GRIC). The benefits resulting from the proposed exchanges to the cities and GRIC will not occur unless and until the mandatory effluent provision is removed from the cities' CAP water service subcontracts.

(6) The Department received four responses to the proposed action during the **Federal Register** notice public comment period. Each respondent provided rationale and recommendations that support the option of modifying the Secretary's Record of Decision to remove the mandatory effluent pooling provision. The Department received no objections to this proposed action.

IV. Comments on the Proposed Modification and Responses

(1) Salt River Project, July 5, 2002

Comment 1–1: "SRP agrees with the Department's determination that the mandatory effluent pooling provision is an impediment to effluent exchanges and effective water management in central Arizona. For example, without the modification the cities of Chandler and Mesa will not be able to undertake effluent-CAP water exchanges pursuant to the Reclaimed Water Exchange Agreement portion of the Gila River Indian Community Settlement."

Response 1–1: SRP's expression of support for the Department's proposal is noted.

(2) City of Phoenix, July 5, 2002

Comment 1–2: "The City of Phoenix has long supported the removal of that sentence. In 1982 the City sent two letters to then Secretary of the Interior James Watt asking that the mandatory effluent exchange pooling concept be eliminated from the Secretary's proposed allocation decision. We maintained then that the inclusion of such a provision would serve to inhibit future exchanges which would otherwise be mutually beneficial to the exchanging parties * * *. We are pleased that you are now proposing to eliminate the mandatory effluent exchange pooling requirement from both the Secretary's record of decision and also from the CAP M&I subcontracts."

Response 1–2: The City of Phoenix position has remained consistent throughout the period following the Secretary's decision. It has been instrumental in spurring the Department's investigation of the issues arising from the mandatory effluent exchange provision.

(3) City of Chandler, July 3, 2002

Comment 1–3: "The City of Chandler, Arizona submits this letter in support of the proposed modification of the Secretary of Interior's March, 1983 Record of Decision, which deletes the mandatory effluent pooling provision from Central Arizona Project ("CAP") water service contracts. This provision, and the related M&I subcontracts' effluent exchanges restriction, prevent municipalities from exchanging effluent for CAP water held by Indian communities. The proposed modification encourages better water management, and will allow for a necessary effluent exchange as part of the Gila River Indian Community water rights settlement."

Response 1–3: The Department acknowledges the City of Chandler's statements of support for the Secretary's proposed modification of the 1983 Record of Decision. It also notes that Chandler's position supports and is consistent with its formal request for an amendment of its CAP water service contract to remove the mandatory effluent pooling provision, which is pending.

(4) City of Mesa, June 17, 2002

Comment 1–4: "The City of Mesa fully supports the Department's proposal to modify the 1983 Central Arizona Project (CAP) Water Allocation Decision to delete the mandatory effluent pooling provision. We agree with Department's determination that the mandatory effluent pooling provision is an impediment to effluent exchanges and effective water management in central Arizona. * * * The City of Mesa intends to enter into an effluent exchange agreement with the Gila River Indian Community (GRIC) through the proposed GRIC water rights settlement. The benefits resulting from the proposed exchanges to Mesa and GRIC will not occur unless and until the mandatory effluent provision is removed from Mesa's CAP water service subcontracts * * * We urge the Secretary to amend Mesa's CAP water service subcontracts to delete the mandatory effluent pooling provision."

Response 1–4: The Department acknowledges and accepts the City of Mesa's statements of support for the Secretary's proposed modification of the 1983 Record of Decision. Its comments are consistent with its formal request for an amendment of its CAP water service contract to remove the mandatory effluent pooling provision, which is pending.

V. Compliance With NEPA

The Department has completed a Final Environmental Assessment (EA) on the impact of modifying the 1983 CAP Water Allocation Decision to delete the mandatory effluent pooling provision. The Final EA resulted in a "Finding of No Significant Impact" (FONSI) to the human environment and was signed August 5, 2002 by Reclamation's Phoenix Area Office Manager, Phoenix, Arizona.

Final Decision

The following sentence is hereby deleted from the 1983 CAP Water Allocation Decision (March 24, 1983, 48 FR 12447): "This allocation is subject to adoption of a pooling concept whereby all M&I allottees share in the benefits of effluent exchanges."

Dated: May 14, 2003.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 03–15280 Filed 6–17–03; 8:45 am]
BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–AC]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City field offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 14, 2003, in Billings, MT beginning at 8 a.m. When determined, the meeting place will be announced in a News Release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include: Sustaining Working Landscapes Initiative, OHV Update, National RAC meeting report, Weatherman Draw Subcommittee update, Oil and Gas EIS Update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: June 6, 2003.

David McIlnay,

Field Manager.

[FR Doc. 03–15331 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–88–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR113–5882–PF, HAG03–0197]

Notice of Resource Advisory Committee Field Trips and Meetings

AGENCY: Medford District, Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Committee field trips and meetings.

SUMMARY: The Medford District BLM will be hosting a series of field trips and meetings for the Medford Resource Advisory Committee. The purpose of the field trips and meetings will be to discuss and make recommendations for projects submitted for funding under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The committee will also be reviewing the progress of projects funded in previous years.

The field trips will leave from the BLM office at 3040 Biddle Road, Medford, Oregon at 8:30 a.m. and will return to the BLM office at approximately 4 p.m. on July 14, 2003 and July 28, 2003. The itinerary of the field trips will vary depending on the types of projects to be visited, but all locations will be within the Medford BLM District.

The primary office meeting of the Resource Advisory Committee will be held on August 11, 2003 at the BLM office at 3040 Biddle Road, Medford, Oregon beginning at 10 a.m. The objective of this meeting is to review proposals for projects to be funded in Fiscal Year 2004. If there is not enough time to adequately consider all the proposed projects, a follow-up meeting will be held at the BLM office on August 14, 2003, also beginning at 10 a.m.

DATES: The field trips will take place on July 14 and July 28. They will leave the BLM office at 8:30 and return at approximately 4 p.m. The meeting will take place at the BLM building on August 11, 2003 beginning at 10 a.m.; a follow-up meeting will take place at the BLM office on August 14, 2003, if necessary to review all the proposals and make recommendations. These times and dates will be published on the Medford District Web site *http://www.or.blm.gov/Medford* and in the "Medford Mail Tribune" and "Grant's Pass Courier" newspapers.

FOR FURTHER INFORMATION AND ADDRESSES: Comments and questions should be sent to Roger Schnoes, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon, 97504, (541) 618–2417, or fax to (541) 618–2400, or e-mail to *110mb@or.blm.gov*.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) established the Resource Advisory Committees associated with the BLM Districts and National Forests in western Oregon to assist the BLM and Forest Service fund projects to restore stability and predictability to the annual payments to the States and counties and to benefit public schools, roads and other purposes. The Medford BLM Resource Advisory Committee has met in 2001 and 2002 and made recommendations for funding projects. Projects for Fiscal Year 2004 have been submitted by BLM staff and by the public and these have been made available to the Resource Advisory Committee. They will also be published on the BLM Web site at *http://www.or.blm.gov/Medford*. The Resource Advisory Committee will have two opportunities to visit project sites during the field trips in July which are the subject of this notice. The field trips will include some of the projects being proposed for Fiscal Year 2004 as well as some of the projects already approved and funded in Fiscal Years 2002 and 2003.

At the formal meeting, the Resource Advisory Committee will discuss the projects which were submitted for funding in Fiscal Year 2004. The public will be able to comment on those projects at that time. The Resource Advisory Committee will make recommendations on project funding to the Designated Federal Official, who is the Medford BLM District Manager. The Designated Federal Official will then make a final determination on which projects will be funded in Fiscal Year 2004.

The purposes of the field trips and the meetings are to allow the Resource Advisory Committee to discuss and fully understand the projects. They will have the opportunity to ask questions of BLM managers and staff as well as the public parties who made the submissions. Considering the proposals in a meeting format will allow the Committee to exchange information and alternatives and reach a set of recommendations for funding.

Authority: Federal Land Policy and Management Act (FLPMA) and Secure Rural Schools and Community Self-Determination Act of 2000.

Dated: June 10, 2003.

Mary L. Smelcer,

Acting District Manager, Medford District, Bureau of Land Management.

[FR Doc. 03–15332 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–02–1420–BJ]

Plats of Survey Filing; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 28, and the metes and bounds survey of Parcel A, section 28 Township 26 north, Range 105 west, Sixth Principal Meridian, Wyoming, was accepted June 9, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section lines and the subdivision of section 27, Township 34 north, Range 109 west, Sixth Principal Meridian, Wyoming, was accepted June 9, 2003.

Copies of the preceding described plats are available to the public.

Dated: June 12, 2003.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 03–15328 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–02–1910–BJ]

Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plat of survey of the lands described below, thirty (30) calender days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs and are necessary for the managements of resources. The lands surveyed are:

The plat representing the dependent resurvey of portion of the First Guide Merdian west, through Township 5 N, between Ranges 4 and 5 west, and a portion of the subdivisional lines, and the subdivision of section 24, Township 5 North, Range 5 west, Wind River Meridian, Wyoming, was accepted June 9, 2003.

Copies of the preceding described plat is available to the public.

Dated: June 12, 2003.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 03–15329 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jamestown Project Development Concept Plan, Final Environmental Impact Statement, Colonial National Historical Park, Jamestown Unit, Jamestown, Virginia, and Jamestown National Historic Site, Jamestown, Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a record of decision on the final environmental impact statement for the Jamestown Project Development Concept Plan, Colonial National Historical Park, Jamestown Unit, and Jamestown National Historic Site.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 Pub. L. 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Jamestown Project Development Concept Plan, Environmental Impact Statement, Colonial National Historical Park, Jamestown Unit, Jamestown, Virginia, and Jamestown National Historic Site, Jamestown, Virginia. ON May 13, 2003, the Director, Northeast Region, approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the Final Environmental Impact Statement issued on April 2, 2003: The Preferred Alternative includes strategies for an updated interpretive experience; the improvement or repalcement of facilities (including the current Visitor Center, collections storage, and parking); the addition of comfort/hospitality services and new interpretive venues; and enhanced and multimodal transportation options (including water taxis/tours/ hike/bike trails, and shuttle services). This course of action and 4 alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, a description of the project background, a detailed description of the alternative to be implemented, the basis for the decision, synopses of other alternatives considered, an overview of public and agency involvement in the decision-making process, findings on impairment of park resources and values, a description of the environmentally preferred alternative, and a listing of measures to minimize and/or mitigate environmental harm. It also includes the Programmatic Agreement between and the NPS, the Advisory Council on Historic Preservation, and the Virginia State Historic Preservation Office for Implementation of the Jamestown Project Development Concept Plan; the Statement of Findings on Floodplains and Wetlands; and the U.S. Fish and Wildlife Service Biological Opinion.

FOR FURTHER INFORMATION CONTACT: Mike Litterst, Information Officer, Colonial National Historical Park, (757) 898–2409, *Mike_Litterst@nps.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://www.nps.gov/colo*.

Dated: May 13, 2003.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 03–15306 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historic Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historic Park Advisory Commission will be held at 10 a.m. on Friday, June 20, 2003, at park headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows: Mrs. Sheila Rabb Weidenfeld, Chairman, Mr. Charles J. Weir, Mr. Barry A. Passett, Mr. Terry W. Hepburn, Ms. Elise B. Heinz, Ms. JoAnn M. Spevacek, Mrs. Mary E. Woodward, Mrs. Donna Printz, Mrs. Ferial S. Bishop, Ms. Nancy C. Long, Mrs. Jo Reynolds, Dr. James H. Gilford, Mrs. Sue Ann Sullivan, Brother James Kirkpatrick.

Topics that will be presented during the meeting include:

1. Status of the draft Lands Protection Plan.

2. Major construction/development projects.
3. Historic Leasing program.
4. Mecklenburg warehouse planning project.
5. Western Maryland Railroad right-of-way planning study.
6. Business Plan.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Douglas D. Faris, Superintendent, C&O Canal National Historic Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland, 21740.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: May 5, 2003.

Douglas Faris,

Superintendent, C&O Canal National Historical Park.

[FR Doc. 03–15307 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–6V–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 31, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 3, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

California

Sacramento County

Ehrhardt, William, House, Dartmoor Way and Percheron Dr., Elk Grove, 03000614

Yolo County

Union Church of Dunnigan, 3615 Cty Rd. 89A, Dunnigan, 03000613

Colorado

Boulder County

Jamestown Town Hall, 118 Main St., Jamestown, 03000615

Louisiana

East Baton Rouge Parish

Broussard House, 4512 Highland Rd., Baton Rouge, 03000616

Maine

Cumberland County

Freeman Farm Historic District, 342 W. Gray Rd., Gray, 03000621

Knox County

Beechnut Hut Historic District, 316 Beech Hill Rd., Rockport, 03000617

Lincoln County

Arch Bridge, Over the Pemaquid R on Benner Rd., Bristol, 03000618

Oxford County

Bell Hill Meetinghouse, 191 Bell Hill Rd., Otisfield, 03000620

Bell Hill School, 185 Bell Hill Rd., Otisfield, 03000619

Michigan

Alpena County

Fishing Tug Katherine V, 491 Johnson St., Alpena, 03000622

Benzie County

Watervaile Historic District, 975–1422 Watervale Rd., Blaine Township, 03000624

Houghton County

Vivian, Jr., J., and Company Building, 342 Hecla St., Laurium, 03000625

Leelanau County

Fountain Point, 990 South Lake Leelanau Dr., Suttoms Bay Township, 03000623

Texas

Bexar County

Bungalow Colony Historic District, Roughly bounded by Duncan Dr., Crockett Dr.; Walker Rd. and Robins Dr., San Antonio, 03000627

Kelly Field Historic District, Roughly encompassing the 1600 abd 1700 Areas of Kelly AFB, San Antonio, 03000626

Utah

Salt Lake County

Crown Cleaning and Dyeing Company Building, (Sugar House Business District MPS), 1989 South 1100 East, Salt Lake City, 03000633

Granite LDS Stake Tabernacle, (Sugar House Business District MPS), 2005 South 900 East, Salt Lake City, 03000630

Granite Lumber Company Building, (Sugar House Business District MPS), 1090 East 2100 South, Salt Lake City, 03000629

Petty Motor Company Annex, (Sugar House Business District MPS), 2030 South 900 East, Salt Lake City, 03000634

Redman Van and Storage Company Building, (Sugar House Business District MPS), 1240 East 2100 South, Salt Lake City, 03000635

Richardson—Bower Building, (Sugar House Business District MPS), 1019 East 2100 South, Salt Lake City, 03000636

Sprague Branch of the Salt Lake City Public Library, (Sugar House Business District MPS), 2131 S. Highland Dr., Salt Lake City, 03000637

Sugar House LDS Ward Building, (Sugar House Business District MPS), 1950 South 1200 East, Salt Lake City, 03000631

Sugar House Monument, (Sugar House Business District MPS), 1100 East and 2100 South, Salt Lake City, 03000638

Utah Stato Liquor Agency #22, (Sugar House Business District MPS), 1938 South 1100 East, Salt Lake City, 03000639

Sanpete County

Mortensen—Nelson House, 291 East 100 South, Moroni, 03000632

Virginia

Arlington County

Al's Motors, 3910 Wilson Blvd., Arlington, 03000628

[FR Doc. 03–15309 Filed 6–17–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 24, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by July 3, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

AMERICAN SAMOA

Eastern District

Thompson, Sadie, Building, along main road, Malaloa, 03000582.

CALIFORNIA

Madera County

Gerry Building, 910 S. Los Angeles St., Los Angeles, 03000583.

DISTRICT OF COLUMBIA

District of Columbia

Capitol Hill Historic District (Boundary Increase), Roughly bounded by 7th St. NE, I–295, M St. SE and 11th St. SE, Washington, 03000585.

Connecticut Avenue Bridge, Connecticut Ave., NW., of Rock Creek, Washington, 03000584.

GEORGIA

Jeff Davis County

Pace House, 61 E. Coffee St., Hazlehurst, 03000591.

IDAHO

Lincoln County

Wood River Center Grange No. 87, 375 W 4 Mile Rd., Shoshone, 03000586.

MISSISSIPPI

Bolivar County

Downtown Cleveland Historic District (Boundary Increase), 201 S. Court St. and 200–215 N. Pearman Ave., Cleveland, 03000588.

Coahoma County

Clark, John, House, 211 Clark St., Clarksdale, 03000589.

Lauderdale County

Terminal Building, Old, Hangar and Powerhouse at Key Field, 2525 U.S. 11 S, Meridian, 03000587.

NEW YORK

Allegany County

Belmont Literary and Historical Society Free Library, 2 Willets Ave., Belmont, 03000599.

Bolivar Free Library, 390 Main St., Bolivar, 03000606.

Cattaraugus County

Bedford Corners Historic District, NY 305 at Deer Creek and Dodge Creek Rds., Portville, 03000590.

Bryant Hill Cemetery, Bryant Hill Rd. near Crane Rd., Ellicottville, 03000605.

Columbia County

Clermont Civic Historic District, (Clermont MRA) 1795 US 9, Clermont, 03000604.

Erie County

Reformed Mennonite Church, Former, 5178 Main St., Williamsville, 03000596.

Nassau County

Underhill, George, House, 28 Factory Pond Rd., Locust Valley, 03000592.

Onondaga County

Fuller, James and Lydia Canning, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS) W. Genesee St., Skaneateles, 03000595.

Rensselaer County

Sherman Farm, 35 Sherman Rd., Pittstown, 03000597.

Rockland County

Perry, Jacob P., House, 15 Sickeletown Rd., Pearl River, 03000594.

Saratoga County

First United Methodist Church, 36 Second St., Lion, 03000601.

Steuben County

Wombough, William, House, 145 E. Front St., Addison, 03000593.

Tioga County

Waverly Village Hall, 358–360 Broad St., Waverly, 03000600.

Ulster County

Childs, Walstein, House, Sand Hill Rd., Wallkill Correctional Facility, Wallkill, 03000602.

Forsyth, James and Mary, House, 31 Albany Ave., Kingston, 03000603.

Westchester County

St. Peter's Episcopal Church, 137 N. Division St., Peekskill, 03000598.

NORTH CAROLINA

Dare County

Bodie Island Light Station, Off NC 12, Nags Head, 03000607.

OHIO

Summit County

Lutz—Martin Farm, 2470 Martin Rd., Bath, 03000608.

SOUTH DAKOTA

Lake County

Lake Badus Rural Agricultural Historic District, Roughly bounded by US 81, Cty Rte. 16, Cty Rte. 37, and Cty Rte 20, Nunda, 03000609.

TEXAS

Gonzales County

Spooner, Thomas Harrison and Mollie, House, 207 St. Francis St., Gonzales, 03000610.

The following resource is being REMOVED for procedural error:

NORTH CAROLINA

Pitt County

Greenville Commercial Historic District, Roughly bounded by West Third, South Evans and East and West Fifth St.s, Greenville 03000419.

A request for a MOVE has been made for the following resource:

LOUISIANA

St. John the Baptist Parish

Graugnard House, 2294 LA 44, Reserve vicinity, 94001249.

[FR Doc. 03–15310 Filed 6–17–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action Proposed Exchange of Interests in Federally-Owned Land for Privately-Owned Lands Located in Montgomery County, State of Maryland

AGENCY: National Park Service, Interior.

ACTION: Notice of realty action for proposed land exchange.

SUMMARY: The following described interests in federally-owned land which was acquired by the National Park Service has been determined to be suitable for disposal by exchange. The authority for this exchange is section 3 of Public Law 91–664 (84 Stat. 1978), which authorized the donation, purchase with donated or appropriated funds, or exchange of land and interests therein on the Chesapeake and Ohio Canal National Historical Park, and section 5 of Public Law 90–401 (82 Stat. 356), which also authorizes land exchanges.

DATES: Comments on this proposed land exchange will be accepted through August 4, 2003.

ADDRESSES: Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan, environmental and cultural analysis and reports are available at the National Trails Land Resources Program Center, 1314 Edwin Miller Boulevard, PO Box 908, Martinsburg, West Virginia 25402. Comments may also be mailed to this address.

FOR FURTHER INFORMATION CONTACT: Judy L. Brumback, Chief, Acquisition Division, National Park Service, National Trails Resources Program Center, PO Box 908, Martinsburg, WV 25402–0908. Phone (304) 263–4943.

SUPPLEMENTARY INFORMATION: The selected interest in federal land is located within the boundaries of the Chesapeake and Ohio Canal National Historical Park and is not required for inclusion into the park unit area. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request.

The United States of America will acquire a 16.10-acre parcel of land currently owned by Jacob R. Ramsburg, Jr., *et al.*, lying within the boundaries of the Chesapeake and Ohio Canal National Historical Park. Three cabins are located on the tract. Acquisition of this land will allow the Park to consolidate its inholdings and provide

for visitor access by foot to the Potomac River and Canal. The land is being acquired in fee simple subject to a reservation of a 17-year term estate for use and occupancy of structures located on the land.

In exchange for the land described in the previous paragraph, the United States will convey a term estate, for seventeen years, for use and occupancy of structures located on the following federally-owned property: Tract 17–116 is an interest in a 21.38-acre tract acquired in fee (formerly Tract 17–101) by the United States of America by deed recorded in Book 4598, Page 621, in the Land Records of Montgomery County, State of Maryland. Twenty-two cabins are located on the tract. Conveyance of the interests in land by the United States of America will be done by Quitclaim Deed.

The land to be acquired by the United States of America is described as follows: Tract 17–100 is a 16.10-acre tract acquired by Jacob R. Ramsburg, Jr., *et al.*, and recorded in Book 5322, Page 501, in Land Records of Montgomery County, State of Maryland. Conveyance of the fee simple title will be done by a Special Warranty Deed as approved by the Solicitor's Office.

The value of the interests and land to be exchanged has been determined by a current fair market value appraisal and the value of land and/or interests to be conveyed is equal.

Interested parties may submit written comments to the address listed in the **ADDRESSES** paragraph. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: February 25, 2003.

Kevin Brandt,

Acting Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 03–15308 Filed 6–17–03; 8:45 am]

BILLING CODE 4310–6V–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 5, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Type of Review: Extension of a currently approved collection.

Title: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Frequency: On occasion.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions; farms; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 6,655,000.

Information collection requirement	Annual responses	Average response time	Annual burden hours
Employee Notice of Need for FMLA Leave	4,150,000	0.02	69,167
Notice to Employees of FMLA Rights— WH–381: Providing Guidance	388,000	0.17	64,667
Providing Written Notice to Employees	4,150,000	0.08	345,833
Medical Certifications and Recertifications (Serious Health Condition)—WH–380:			
Medical Certifications—Initial	1,660,000	0.33	553,333
Medical Certifications—Additional	166,000	0.33	55,333
Medical Recertifications	83,000	0.33	27,667
Fitness-for-Duty Medical Certifications	207,500	0.17	34,583
Notice to Employees of Change 12-Month Period for Determining FMLA Entitlement	38,800	0.17	6,467
Key Employee Notification:			
First Notice	41,500	0.08	3,458
Second Notice	20,750	0.08	1,729
Recordkeeping	4,150,000	0.05	207,500
Total	15,055,550		1,369,737

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 107 Stat. 6, 29 U.S.C. 2601, which became effective on August 5, 1993, requires private sector employers of 50 or more employees, and public agencies to provide up to 13 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons.

This ICR contains recordkeeping and notification requirements associated with the Act and implementing regulations found at 29 CFR Part 825. Two optional forms are included in this information collection request. The WH–380, Certification of Health Care Provider, may be used to certify a serious health condition under FMLA. The WH–381, Employer Response to Employee Request for Family or Medical Leave may be used by an employer to respond to a leave request under FMLA. Both forms are third-party notifications and are sent to the employee; they are not submitted to the Department of Labor. This information collection is currently approved for use through July 31, 2003.

The Department of Labor seeks OMB approval for the extension of this information collection in order to ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under FMLA, and in order for the Department of Labor to carry out its statutory obligation under FMLA to investigate and ensure employer compliance have been met.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–15342 Filed 6–17–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 11, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR's) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR's, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on 202–693–4121 (this is not a toll-free number) or E-Mail: *reeves.vanessa2@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Agency, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Prohibited Transaction Class Exemptions for Multiple Employer & Multiple Employer Apprenticeship Plans, PTCE 76–1, PTCE 77–10, PTCE 78–6.

OMB Number: 1210–0058.

Affected Public: Business or other for-profit and individuals or households.

Frequency: On occasion.

Type of Response: Recordkeeping.

Number of Respondents: 4,810.

Information collection requirements	Annual responses	Average response time (hours)	Annual burden hours
PTCE 76–1, Part A	0	0.00	0
PTCE 76–1, Part B	58	0.25	15
PTCE 76–1, Part C	4,623	0.25	1,156
PTCE 77–10	0	0.00	0
PTCE 78–6	645	0.08	54
Total	5,326		1,225

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 76–1, approved under OMB No. 1210–0058, provides an exemption, under specified conditions, from certain of ERISA's prohibited transaction provisions at section 406(a) for various transactions involving multi-employer or multi employer plans (together, multiple employer plans). Part A of PTCE 76–1 provides that an agreement between a plan and an employer for extending the time for a contribution must be in writing. Part B provides that permanent financing for construction loans involving plans and participating employers must be in writing, and records must be maintained for six years. Part C permits plans to lease office space and provide administrative services or sell goods to a participating employer, employee organization, participating employer association or to another multiple employer plan that is a party in interest. A related exemption, PTCE 77–10, also approved under OMB No. 1210–0058, complements Part C of PTCE 76–1 by providing an exemption from sections 406(a) and 407(a) of ERISA.

The Department proposes to combine the information collection under PTCE 76–1 with the information collection in PTCE 78–6, currently approved under OMB No. 1210–0080, by incorporating the information collection provisions of PTCE 78–6 into the revision ICR number OMB No. 1210–0058 and allowing the control number for PTCE 78–6 to expire. PTCE 78–6 provides an exemption to multiple employer apprenticeship plans for the purchase of personal property or the lease of real property by a plan to a contributing employer. The Department believes that the public will benefit by having the opportunity to comment on the three information collection provisions at the same time because the three exemptions are closely related in that they provide relief from prohibited transactions for multiple employer plans or multiple employer apprenticeship plans and they

have the same recordkeeping provisions.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Bank Collective Investment Funds; Prohibited Transaction Class Exemption 91–38.

OMB Number: 1210–0082.

Affected Public: Business or other for-profit; individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Type of Response: Recordkeeping.

Number of Respondents: 1,036.

Number of Annual Responses: 1,036.

Estimated Time Per Responses: 5 minutes.

Total Burden Hours: 86.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 91–38 provides an exemption from the prohibited transaction provisions of ERISA for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan provided that the plan's participation in the collective investment fund does not exceed a specific percentage of the total assets in the collective investment fund. To insure that the exemption is not abused, that the rights of the participants and beneficiaries are protected, and that a bank is complying with the conditions of the exemption, the Department requires records pertaining to the exempted transaction to be maintained by the bank for six years. The recordkeeping requirement is the subject of this proposed extension of an ICR.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Prohibited Transaction Class Exemptions 90–1; Pooled Separate Accounts.

OMB Number: 1210–0083.

Affected Public: Business or other-for profit; individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Type of Response: Recordkeeping.

Number of Respondents: 128.

Number of Annual Responses: 128.

Estimated Time Per Responses: 5 minutes.

Total Burden Hours: 11.

Total Annualized Capital/Startup Costs: $0

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions involving insurance company pooled separate accounts in which employee benefit plans participate and which are otherwise prohibited by ERISA. Specifically, the exemption allows persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. This ICR covers the recordkeeping requirements for insurance companies.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Foreign Exchange Transactions; Prohibited Transaction Class Exemption 94–20.

OMB Number: 1210–0085.

Affected Public: Business or other-for profit; individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Type of Response: Recordkeeping.

Number of Respondents: 130.

Number of Annual Responses: 650.

Estimated Time Per Responses: 5 minutes.

Total Burden Hours: 54.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof that is a party in interest with respect to such plan. In the absence of this exemption, certain aspects of these transactions could be prohibited by section 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974. This ICR covers the disclosure and recordkeeping requirements for a bank, broker-dealer, or affiliate thereof.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–15343 Filed 6–17–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992 FY–2003 Budget, Training and Employment Services (TES) 1630174

AGENCY: Women's Bureau, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation For Grant Applications (SGA 03–12).

This notice contains all of the information needed to apply for grant funding. Grant proposals that are not completed as directed will be judged non-responsive and will not be evaluated.

SUMMARY: The Women's Bureau, U.S. Department of Labor (DOL), announces the 2003 Solicitation for Grant Applications (SGA) authorized under the *Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992.* The purpose of this program is to assist employers and labor unions in the placement and retention of women in apprenticeship and nontraditional occupations. To that end, WANTO grant funds are disbursed to eligible community-based organizations, which may be faith-based, which, in turn, provide employers and labor unions with technical assistance geared towards the successful placement and retention of women in apprenticeship and nontraditional occupations.

DATES: One signed original, complete grant application plus two copies of the Technical Proposal and two copies of the Cost Proposal must be submitted. The original and copies must be submitted by 4:45 p.m. e.s.t., August 11, 2003. Hand-delivered applications must be received by that time. An application received after August 11, 2003, will not be considered unless it is received before awards are made and:

1. It was sent by registered or certified mail not later than August 6, 2003.

2. It is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the U.S. Department of Labor at the address listed under **ADDRESSES**; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 4:45 p.m. e.s.t. on August 9, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the specified time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service—Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in the preceding paragraph. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–12, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline.* You assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if it was timely mailed, the Department is not required to consider the application. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center; (202) 693–4570 (this is not a toll-free number), prior to the closing deadline.

Application announcements or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Women's Bureau's Web site at *http://www.dol.gov/wb/nontra.htm.*

All questions about this SGA should be directed to Cassandra Willis, U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210; 202–693–4570.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. *Authority and Funding.* The Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992 (29 U.S.C. 2501 *et seq.*) authorizes the Department of Labor (DOL) to disburse technical assistance grants. The WANTO grants for Fiscal Year (FY) 2003 are funded by DOL FY 2003 Budget: Training and Employment Services (TES) 1630174. The Women's Bureau (WB) co-administers the WANTO program with the DOL Office of Apprenticeship Training, Employer and Labor Services (ATELS). WB has responsibility for implementing the grant process.

B. *Purpose.* The WANTO Act's purpose is to provide technical assistance to employers and labor unions (E/LU) to encourage employment of women in apprenticeships and nontraditional occupations (A/NTO). WANTO grants are awarded to community-based organizations (CBOs), which may be faith-based, to deliver technical assistance to E/LU to prepare them to successfully recruit, train, employ and retain women in A/NTO. DOL has found that placement and retention of women in A/NTO pose significant challenges.

C. *Grant Awards.* The WB is soliciting proposals on a competitive basis for the WANTO program. The WB anticipates awarding grants of $50,000 to $100,000 to approximately 10 grantees to conduct innovative projects that comply with the goals set forth in the WANTO Act and this SGA. The period of performance begins September 30, 2003, and ends on September 29, 2004. The initial performance period may be extended once, for up to three months, at no additional cost to DOL, so that a grantee can finish its final report. Each application shall clearly state the applicant's intention to begin performance no later than October 1, 2003.

D. *Acronyms and Definitions.* The following terms are defined for the convenience of prospective applicants:

WANTO refers to Women in Apprenticeship and Nontraditional Occupations.

A/NTO refers to apprenticeship and nontraditional occupations.

E/LU refers to employers and labor unions.

ATELS refers to the Apprenticeship Training, Employer and Labor Services office of the Employment and Training Administration, U.S. Department of Labor.

WB refers to the Women's Bureau, U.S. Department of Labor.

TA refers to technical assistance.

NTO (Nontraditional Occupations) are those where women account for less than 25 percent of all persons employed in a single occupational group. For the most recent listing of nontraditional jobs, *see* the WB Web site at *www.dol.gov/wb/stats/main.htm.*

Pre-Apprenticeship Programs are those programs that prepare individuals for apprenticeship or entry-level employment in NTO. Depending on the apprenticeable or other nontraditional occupation for which the program is preparing students, the curriculum would vary. For example, a curriculum for the construction trades may include pre-vocational identification and use of tools, blueprint reading, basic shop skills, safety procedures, math skills, and physical conditioning. English as a Second Language and team-building skills such as effective listening and feedback might be included in curricula preparing students for some entry-level nontraditional jobs.

Apprenticeship is a formal employment relationship designed to promote skill training and learning on the job. "Hands on" learning takes place in conjunction with related theoretical instruction (often in a classroom setting). An apprentice who successfully completes an ATELS registered program, which usually requires 3 to 5 years, is awarded a certificate of completion. An ATELS-registered program is one in which employers, or groups of employers, and unions design, organize, manage, and finance apprenticeship programs under the standards developed and registered with ATELS or ATELS-recognized State Apprenticeship Agencies. Employers, or groups of employers, and unions also select apprentices who are trained to meet certain predetermined occupational standards. For more

information, *see* the ATELS Web site at *http://www.doleta.gov/atels_bat/.*

High-technology occupations are those in which cutting-edge, state-of-the-art technologies are used. The technologies shape the design, development, and introduction of new products and innovative production processes. These scientific, technical and engineering occupations require in-depth knowledge of the theories and principles of science, engineering, and mathematics, acquired through post-secondary specialized education. For the purposes of this solicitation, this definition also includes other occupations which have many high-tech aspects, for example, repairing the products used in high-tech industries.

CBO (Community-Based Organization) is a private nonprofit organization, which may be faith-based, that is representative of a community or a significant segment of a community, and that has demonstrated experience administering programs that train women for A/NTO.

Part II. Eligible Applicants

An applicant must be a community-based organization. That is, it must:

- Be a private, nonprofit organization. *A public body such as a governmental body, public school, college, or hospital is not a CBO.*
- Represent a community or a significant segment of a community.
- Have demonstrated experience administering programs that train women for A/NTO.

In addition, a CBO must not be classified under the IRS Tax Code as a 501(c)(4) entity.

All proposals must document that these eligibility requirements have been, and will continue to be, satisfied.

A faith-based organization is an eligible applicant provided it meets the eligibility requirements stated above.

A consortium of CBOs may apply for a grant provided they include a copy of the consortium agreement and identify the entity/entities that will administer the grant.

Applications that fail to establish eligibility according to these criteria will not be evaluated.

Part III. Application Contents

A. Technical Proposal

The technical proposal text is limited to twenty (20) 8½ by 11 inch pages (not including the Table of Contents and any attachments), numbered, double-spaced, single-sided, in 8 to 12 pitch (font size).

The following information is required:

1. A Table of Contents, listing the application sections.

2. Documentation of applicant eligibility, as described in part II of this notice.

3. A 2-page abstract, summarizing the proposed project.

4. Documentation of its experience, capability, and qualifications for providing TA to E/LU for the purpose of recruiting, training, hiring and retaining women in A/NTO, as described in part IV, section A1 "Organizational Overview" of this notice.

5. Documentation of commitments from a minimum of six (6) up to a maximum of eight (8) E/LU to receive TA, and a description of the E/LU's previous experience in recruiting, training, placing and retaining women in A/NTO, as described in part iv, section A2 "Established Employer and Labor Union Linkages" of this notice.

6. A Statement of Work as described in part IV section A3 "Scope of WANTO Project and Projected Outcomes" of this notice.

7. A list of all items for which grant funds will be expended. Do not include any cost information, only expenditure items.

8. The CBO's budget and major funding sources for the past three (3) years, including foundation and government funds, as well as other types of funding.

B. Cost Proposal

The Cost Proposal is a physically separate document and must not be included within the twenty-page limit of the technical proposal. The Cost Proposal must include the following:

1. A Standard Form (SF) 424, "Application for Federal Assistance." All copies of the SF 424 must have original signatures of the legal entity applying for grant funding. Applicants must indicate on the SF 424 the organizations IRS status. The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 17.700, which should be entered on the SF 424, block 10.

2. A certification prepared within the last six (6) months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The certification should be obtained as follows:

a. For incorporated organizations, a certification from a Certified Public Accountant or

b. For other applicants, their employers' identification number (EIN) issued by the IRS;

3. Budget Information Form 424A, with a narrative of description of each line item.

4. A copy of the most current Indirect Cost Rate Agreement issued by the cognizant federal agency, if applicable.

5. Applications from a consortium of organizations also must include a copy of the consortium agreement and must identify the consortium that will act as the administrative entity for the project. No member of a consortium shall make a separate application under his grant program. In addition, the agreement must specify the consortium's arrangements for handling the administrative and financial responsibilities for the program.

6. The applicants must include the Assurances and Certifications Signature Page.

Potential applicants who do not have the current version of the standard grant forms 424 and 424A listed above can download them from the following OMB Web site address: *http://www.whitehouse.gov/omb/grants/grants_forms.html.* The Assurances and Certifications Signature Page will be available on the WB WANTO Web site at *http://www.dol.gov/wb/nontra.htm.*

Part IV. Evaluation Criteria and Selection Process

Technical proposals will be carefully reviewed by an evaluation panel using the following criteria under section A of this part. Up to 115 points may be awarded to an application. This total is based on up to 100 points for the required information described in A. 1, 2, and 3 below, and up to 15 bonus points for special program emphasis described in A. 4 below. The ranked scores of the proposals will serve as the primary basis for selection of applicants for a potential award in accordance with the process in section B of this part.

A. Technical Evaluation Criteria/Points

1. Organizational Overview (Up to 20 Points Awarded)

The applicant must demonstrate its experience, capability and qualifications for administering a grant project to provide technical assistance to E/LU. The applicant must:

(a) Describe the organization's experience and leadership in providing *technical assistance to E/LU* for the purpose of recruiting, training, placing and retaining women in A/NTO.

(b) Highlight the qualifications of the key staff and the organizational structure that would ensure the success of the project. Include the CBO's organizational chart and the names and full resumes of all primary staff managing the grant project.

(c) Include job descriptions which identify all key tasks, the hours required for the completion of such tasks, and the persons responsible for completing each task.

(d) Indicate if tradeswomen or women in nontraditional occupations serve as active members of the organization, as either employed staff or as board members.

(e) Where applicable, differentiate between the CBO and any proposed consultants or subcontractors, providing information on each of the above.

2. Established Employer and Labor Union Linkages (Up to 20 Points Awarded)

The applicant must demonstrate commitments from a minimum of six (6) E/LU up to a maximum of eight (8) E/LU to receive technical assistance during the grant award period. The applicant must also demonstrate a level of understanding of the E/LU's previous experiences with recruitment, training, placement, and retention of women in A/NTO sufficient to enable the applicant to provide targeted technical assistance. The applicant must:

(a) Document commitments (in the form of written agreements or letters) from a minimum of six (6) E/LU up to a maximum of eight (8) E/LU to receive technical assistance for the purpose of training or employing women in A/NTO. As stated in the WANTO Act, at a minimum such agreements or letters should include: (1) A description of the need for technical assistance; (2) a description of the types of apprenticeable occupations or nontraditional occupations in which the employer or labor union would like to train or employ women; (3) assurances that there are or will be suitable and appropriate positions available in the apprenticeable occupations program or in the nontraditional occupations being targeted; and (4) commitments that reasonable efforts shall be made to place qualified women in apprenticeable occupations or nontraditional occupations.

(b) Document the previous programs and experiences, and success or lack thereof, of the E/LU in recruiting, training, placing, and retaining women in A/NTO. Such documentation may include descriptions of previous outreach and orientation provided to women, mentoring programs, support groups, networks, workplace consultations, employee and supervisory workshops, and other workplace-specific strategic planning to increase the participation of women in apprenticeship and nontraditional occupations.

3. Scope of WANTO Project and Projected Outcomes (Up to 60 Points Awarded)

The applicant must demonstrate comprehensive, targeted, and effective technical assistance to be provided to E/LU with WANTO funding. The applicant must also project the types and amounts of successful outcomes that can reasonably be expected as a result of the TA provided with WANTO funding. The WB considers the successful placement of women in *apprenticeships* and *nontraditional occupations* the primary successful outcome a grantee can achieve with WANTO funding.

The applicant must include a Statement of Work which:

(a) Details all forms of technical assistance to be provided to the E/LU identified in the previous section, "Established Employer and Labor Union Linkages." (According to the WANTO Act, technical assistance provided with WANTO grant funds may include: (1) Developing outreach and orientation sessions to recruit women into the employers' apprenticeable occupations and nontraditional occupations; (2) developing preapprenticeable occupations or nontraditional skills training to prepare women for A/NTO; (3) providing ongoing orientations for E/LU and workers on creating a successful environment for women in A/NTO; (4) setting up support groups and facilitating networks for women in A/NTO on or off the job site to improve their retention; (5) setting up a local computerized data base referral system to maintain a current list of tradeswomen who are available for work; (6) serving as a liaison between tradeswomen and E/LU to address workplace issues related to gender; and (7) conducting exit interviews with tradeswomen to evaluate their on-the-job experience and to assess the effectiveness of the program.)

(b) Documents any leveraging or co-funding anticipated for the accomplishment of the proposed project. This must include a description of the value-added of the WANTO grant, *i.e.,* what technical assistance will be provided to E/LU *as a result of WANTO grant funding?*

(c) Describes the outcomes the applicant projects *as a result of WANTO funding.* This must include the number of women to be placed in (1) pre-apprenticeships; (2) apprenticeships; and (3) nontraditional occupations.

4. Bonus Points (Up to 15 Points Awarded)

Bonus points will be awarded for projects that demonstrate their experience or indicate their plans to provide one or more of the following:

a. Opportunities for women to be placed and retained in A/NTO in high technology occupations. (Up to 5 points awarded.)

b. Services for disabled women to be placed in A/NTO. (Up to 5 points awarded.)

c. Mentoring services to at least one other CBO that is providing technical assistance to E/LU. (Up to 5 points awarded.)

B. Total Score

The review panel's recommendations are advisory in nature and not binding on the Grant Officer. Final awards will be made based on the best interest of the government, including, but not limited to, such factors as technical quality, geographic balance, occupational and/or industrial impact, and past grant performance. The submission of a successful previous application for a WANTO grant from any prior year does not guarantee an award under this solicitation. A previous grantee's failure to complete a WANTO grant project within the grant award period, or failure to provide required reports in a timely manner are aspects of past grant performance that may result in denial of a 2003 grant.

Although the government reserves the right to award on the basis of the applicant's initial submissions, the government may establish a competitive range or technically acceptable range based upon proposal evaluation for the purpose of selecting qualified applicants. The government reserves the right to ask for clarification or hold discussion, but may elect to award a grant without such discussion. The Grant Officer's determination of award under this SGA is the final agency action.

Part V. Deliverables

This section is provided so that applicants may more accurately estimate the staffing budgetary requirements when preparing their proposal. Applicants are to exclude from their cost proposal the cost of any requested travel to Washington, DC.

A. Post Grant Award Conference.

No later than *eight (8)* weeks after an award, the grantees shall meet with the WB and ATELS at the Post-Award Conference to discuss the project, related components and TA; timelines; technical assistance outcomes; assessment for comment; and final approval. The grantees and the WB will discuss and make decisions on the following program activities:

1. The proposed TA commitments for employment, registered apprenticeship, and related skilled nontraditional occupation activities and responsibilities; the number of targeted partnerships with E/LU; and the number of women who will be served.

2. The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in A/NTO.

3. The types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO.

4. The occupational, industrial, and geographical impact anticipated.

5. The supportive services to be provided to employers and women after successful placement into A/NTO.

The WB and ATELS will provide further input orally or in writing, if necessary, within *ten (10)* working days after the Post-Award Conference.

B. Grant Plan of Action.

If revisions have been necessary, no later than *ten (10)* weeks after an award, the grantees and the WB will confirm the "plan of action" and detailed timeline for program implementation.

C. Grant Implementation.

No later than *twelve (12)* weeks after an award, the grantee(s) shall have begun providing E/LU with TA to recruit, select, train, place, retain, and otherwise prepare women for A/NTO, with progress to be measured in terms of employment growth and rising earnings.

D. Quarterly Reports

1. No more than *thirty (30)* calendar days after the end of each quarter, the grantee shall submit a progress report of work done under this grant.

2. Quarterly reports shall generally contain brief information on each of the following:

(a) A comparison of actual accomplishments with the goals and objectives established for the period. This must include discussion of placements in pre-apprenticeship programs, apprenticeships and nontraditional jobs, giving the name and address of each workplace/company involved; and TA provided to E/LU, giving the E/LU name and address as well as the nature of the TA provided.

(b) Reasons why established goals were not met, if appropriate.

(c) Any problems that may impede the performance of the grant and the proposed corrective action.

(d) Any changes in the proposed work to be performed during the next reporting period.

3. In addition, between scheduled reporting dates, the grantee(s) shall immediately inform the Women's Bureau National Office Grant Officer's Technical Representative of significant developments affecting the ability to accomplish the work.

E. Final Report

1. The Final Report shall cover findings, final performance data, outcome results, an assessment of the grant project, and any employer or labor organization plans for follow-up of participants. It shall include an Executive Summary of no more than three (3) pages.

2. No later than *ninety (90)* days after the expiration of the grant award, the grantee(s) shall submit two (2) copies of the camera-ready final report, each bound in a professional manner in a loose-leaf notebook. These materials must be paid for with grant funds.

3. Upon request of either the Women's Bureau or the grantee, the grantee shall submit a draft final report no more than *sixty (60)* days after the expiration of the grant award. The Women's Bureau will then review the draft report, consult with ATELS as necessary, and provide written comments to the grantee within *fifteen (15)* days of receipt.

Part VII. Grant Requirements

A. Administrative Standards and Provisions

Except as specifically provided, DOL acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Grants Management circulars (available on the OMB Web site at *http://www.whitehouse.gov/omb/grants/grants_circulars.html*) require, and an entity's procurement procedures must require, that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

The grants awarded under this SGA shall be subject to the following administrative standards and provisions as applicable:

29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

B. Allowable Costs

The WB shall determine what constitutes allowable costs in accordance with the following applicable Federal cost principles: (1) State and Local Government—OMB Circular A–87; (2) Educational Institutions—OMB Circular A–21; (3) Nonprofit Organizations—OMB Circular A–122; and (4) Profit-making Commercial Firms—48 CFR Part 31.

C. Grant Nondiscrimination Assurances

As a condition of the awards, applicants must certify that they will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of title VI of the Civil Rights Act of 1964.

29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)

29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

In addition, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet those programs' eligibility requirements. Comprehensive policy guidance is being developed and will be issued in the near future.

Part VIII. Paperwork Reduction Act Notice (Public Law 104–13)

This collection of information is approved under the Office of Management and Budget (OMB) control number 1225–0080, which expires 12/31/05. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to average six (6) to twelve (12) hours to complete the grant application; two (2) to five (5) hours for quarterly reports; and four (4) to ten (10) hours for the final report. These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Women's Bureau, U.S. Department of Labor, Room S3311, 200 Constitution Ave., NW., Washington, DC 20210, to the attention of Diane Faulkner. Please reference OMB control number 1225–0080.

Signed in Washington, DC, this 12th day of June, 2003.

Lawrence J. Kuss,

Grant Officer.

Appendix

A. Standard Form 424: Application for Federal Assistance

B. Standard Form 424A: Budget Information—Non-Construction Programs

C. Assurances and Certifications Signature Page

D. Survey on Ensuring Equal Opportunity for Applicants, OMB No. 1225–0083

BILLING CODE 4510–23–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED: June 5, 2003	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

1. Assurances - Non-Construction Programs
2. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.
3. Certification of Release of Information
4. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?
   ❑ Yes ❑ No
2. How many full-time equivalent employees does the applicant have? *(Check only one box).*
   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100
3. What is the size of the applicant's annual budget? *(Check only one box.)*
   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more
4. Is the applicant a faith-based/religious organization?
   ❑ Yes ❑ No
5. Is the applicant a non-religious community-based organization?
   ❑ Yes ❑ No
6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?
   ❑ Yes ❑ No
7. Has the applicant ever received a government grant or contract (Federal, State, or local)?
   ❑ Yes ❑ No
8. Is the applicant a local affiliate of a national organization?
   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1225-0083. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–15344 Filed 6–17–03; 8:45 am]
BILLING CODE 4510–23–C

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 150, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* 10 CFR 150.16(b), 150.17(c), and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

5. *Who will be required or asked to report:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. *An estimate of the number of annual responses:* 12.

7. *The estimated number of annual respondents:* 9 Agreement State licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 35 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 18, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0032), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 11th day of June, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–15349 Filed 6–17–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–08963]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 29–15354–01, Aventis Pharmaceuticals, Inc, East Millstone, NJ

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Aventis Pharmaceuticals, Inc. for Materials License No. 29–15354–01, to authorize release of its facility in East Millstone, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's East Millstone, New Jersey facility for unrestricted use. Aventis Pharmaceuticals, Inc. has been authorized by NRC since August 10, 2000, to use radioactive materials for research and development including animal studies at the site. On January 20, 2003, Aventis Pharmaceuticals, Inc. requested that NRC release the facility for unrestricted use. Aventis Pharmaceuticals, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Aventis Pharmaceuticals, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031620018, ML030280251, ML030870319, and ML031611141. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 11th day of June, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–15348 Filed 6–17–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form S–11, OMB Control No. 3235–0067, SEC File No. 270–064

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Form S–11 is the registration statement form used to register securities issued in real estate investment trusts by issuers whose business is primarily that of acquiring and holding investment interest in real estate under the Securities Act of 1933. The information filed with the Commission permits verifications of compliance with securities law requirements and assures public availability and dissemination of such information. Information provided is mandatory. Approximately 150 issuers file Form S–11 annually and it takes approximately 1,892 hours per response for a total burden of 283,800 hours. It is estimated that 25% of the total burden hours (70,950 reporting burden) is prepared by the company. Finally, persons who respond to the collection of information contained in Form S–11 are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15311 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26073; 812–12859]

Dresdner Bank AG, *et al.*; Notice of Application

June 11, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, under section 6(c) of the Act for an exemption from section 17(e) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit: (a) Certain registered investment companies and certain private investment companies to use cash collateral from securities lending transactions ("Cash Collateral") to purchase shares ("Shares") of certain registered open-end management investment companies ("Registered Investment Funds") and private investment companies ("Private Investment Funds", together with the Registered Investment Funds, the "Investment Funds"); (b) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (c) Dresdner Bank AG ("Bank"), Dresdner Kleinwort Wasserstein Securities LLC ("DKWS") and any other Dresdner Entity (as defined below) (each, an "Affiliated Borrower") to engage in principal transactions with, and receive brokerage commissions from, certain registered investment companies that are affiliated persons because they hold 5% or more of the outstanding voting securities of an Investment Fund; and (d) certain registered investment companies to lend portfolio securities to Affiliated Borrowers.

Applicants: Bank, DKWS and PIMCO Funds: Multi-Manager Series (the "Trust").

Filing Dates: The application was filed on July 19, 2002 and amended on June 2, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 7, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Robert Boyd, Dresdner Bank AG, New York Branch, 75 Wall Street, 31st Floor, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Bank, a German public limited company, is wholly-owned by Allianz AG ("Allianz"), a German international financial services company. DKWS, registered as a broker-dealer under the Securities Exchange Act of 1934, is a wholly-owned subsidiary of Allianz. The Trust, a Massachusetts business trust, is an open-end management investment company registered under the Act and advised by PIMCO Advisors Fund Management LLC, an investment adviser under the Investment Advisers Act of 1940 that is an indirect subsidiary of Allianz. Series of the Trust and any other registered management investment companies or series thereof currently or in the future advised by the Bank or any entity controlling, controlled by, or under common control with the Bank (the Bank and each

entity, a "Dresdner Entity") are referred to as "Affiliated Lending Funds." [1]

2. The New York branch of the Bank operates a securities lending program ("Program"). Lenders in the Program include, among others: (a) Affiliated Lending Funds, (b) other registered management investment companies or series thereof ("Other Lending Funds," together with the Affiliated Lending Funds, the "Registered Lending Funds") and (c) investment entities excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act ("Private Lending Funds," together with the Registered Lending Funds, the "Lending Funds").

3. The Registered Investment Funds will be open-end management investment companies registered under the Act and advised by a Dresdner Entity. The Private Investment Funds will rely on section 3(c)(1) or 3(c)(7) of the Act and will be advised by a Dresdner Entity. Shares of the Investment Funds will not be subject to any sales load, redemption fee, asset-based sales charge or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Conduct Rules"). Certain Investment Funds will hold themselves out as money market funds and will comply with rule 2a–7 under the Act. Other Investment Funds will seek to achieve a high level of current income consistent with the preservation of capital and the maintenance of liquidity and will invest in high quality securities with relatively short maturities.

4. Under the Program, the Bank will enter into an agreement ("Lending Agreement") with each Lending Fund that appoints the Bank to serve as its lending agent and authorizes the Bank to enter into a master borrowing agreement ("Borrowing Agreement") with persons designated by the Lending Fund as eligible to borrow its portfolio securities (each a "Borrower"). Under the Lending Agreement, the Bank will invest any Cash Collateral received in the Program on behalf of a Lending Fund directly in various types of instruments, accounts and investment vehicles, including Shares of one or more Investment Funds. The Lending Agreement and the Borrowing Agreement will also establish for each transaction the initial and on-going collaterization requirements and the types of collateral that may be accepted. Personnel providing day-to-day lending agency services to the Affiliated Lending Funds will not provide investment advisory services to the Affiliated Lending Funds or participate in any way in the selection of portfolio securities for, or other aspects of the management of, the Affiliated Lending Funds. The duties to be performed by the Bank as lending agent with respect to any Registered Lending Fund will not exceed the parameters described in Norwest Minnesota, N.A., SEC No-Action Letter (pub. avail. May 25, 1995). The Bank will not purchase Shares of an Investment Fund with Cash Collateral unless participation in the Program has been approved by a majority of the directors or trustees of the Registered Lending Fund that are not "interested persons" within the meaning of section 2(a)(19) of the Act.

5. When a securities loan is collateralized by Cash Collateral, the Borrower is entitled to receive a fixed return on the collateral for the term of the loan ("Borrower's Rebate"). The difference between the Borrower's Rebate and the actual return on the investment of the collateral will be divided between the Lending Fund and the Bank in accordance with the terms of the Lending Agreement. When the collateral is not Cash Collateral, the Lending Agreement will set a loan fee to be paid by the Borrower, which likely will approximate the return the Lending Fund would receive had the Borrower delivered Cash Collateral. The amount of the fee will be divided between the Lending Fund and the Bank in accordance with the terms of the Lending Agreement.

6. The applicants request relief to permit: (a) The Lending Funds to invest Cash Collateral in the Investment Funds, (b) the Registered Lending Funds to pay the Bank a fee based on a share of the revenue derived from securities lending activities, (c) Affiliated Lending Funds to lend portfolio securities to the Affiliated Borrowers, and (d) a Dresdner Entity to engage in principal transactions with, and receive brokerage commissions from, the Other Lending Funds.

Applicants' Legal Analysis

A. Investment of Cash Collateral by the Lending Funds in the Investment Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit the Lending Funds to invest Cash Collateral in Shares of the Registered Investment Funds in excess of the limits imposed by section 12(d)(1)(A), and each Registered Investment Fund to sell its Shares to the Lending Funds in excess of the limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by section 12(d)(1) of the Act will be created by the proposed investment of Cash Collateral in the Registered Investment Funds. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because Shares of the Investment Funds will be sold without a sales load, redemption fee, asset-based sales charge or service fee as defined in the NASD Conduct Rules. Applicants also represent that no Investment Fund will acquire shares of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Sections 17(a)(1) and 17(a)(2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person ("second-tier affiliate") from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser. Control is defined

[1] All existing Affiliated Lending Funds that currently intend to rely on the requested relief have been named as applicants. Any other existing or future entity may rely on the requested relief only in accordance with the terms and conditions of the application.

in section 2(a)(9) of the Act to mean "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company."

5. Applicants state that because Dresdner Entities will serve as investment advisers to Affiliated Lending Funds and the Investment Funds, the Dresdner Entities could be deemed to control the Affiliated Lending Funds and the Investment Funds, and the Dresdner Entities are under common control. Accordingly, the Affiliated Lending Funds and the Investment Funds may be deemed to be under common control and affiliated persons of each other. Further, applicants state that if any Other Lending Fund acquires 5% or more of an Investment Fund's Shares, the Investment Fund may be deemed an affiliated person of the Other Lending Fund. As a result, applicants state that the sale of Shares of the Investment Funds to the Registered Lending Funds, and the redemption of such Shares in connection with the investment of Cash Collateral may be prohibited under Section 17(a).

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Registered Lending Funds to invest Cash Collateral in Shares of the Investment Funds. Applicants submit that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair, do not involve overreaching and are consistent with the general purposes of the Act as well as the policies of the respective Registered Lending Funds. The Registered Lending Funds will purchase and redeem Shares on the same terms and the same basis as the Shares are purchased and redeemed by all other shareholders of the Investment Funds. Applicants state that the Registered Lending Funds will only be permitted to invest in an Investment Fund if that Investment Fund invests in instruments that the Registered Lending Fund has previously determined are acceptable medium for the investment for Cash Collateral. Applicants state that Cash Collateral of a Registered Lending Fund that is a money market fund will not be used to acquire Shares of any Investment Fund that does not comply with rule 2a–7 under the Act. Applicants further state that the investment of Cash Collateral will comply with all present and future Commission and staff positions concerning securities lending arrangements. Applicants also state that the Private Investment Funds will comply with the provisions of the Act dealing with affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter for a registered investment company, or any second tier affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the Commission. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the participation of the registered investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

9. Applicants state that the Lending Funds (by purchasing and redeeming Shares of the Investment Funds), the Dresdner Entities (by managing the portfolio securities of the Affiliated Lending Funds and Investment Funds at the same time that the Affiliated Lending Funds' Cash Collateral is invested in Shares), the Bank (by acting as lending agent, investing Cash Collateral in Shares, and receiving a portion of the revenue generated by securities lending transactions), and the Investment Funds (by selling Shares to and redeeming Shares from the Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act. Applicants request an order in accordance with section 17(d) and rule 17d–1 to permit the transactions incident to the investment of Cash Collateral of the Lending Funds in the Investment Funds.

10. Applicants state that the investment by the Lending Funds in Shares will be on the same basis and will be indistinguishable from any other shareholder account maintained by the Investment Funds. In addition, applicants state that all investors in Shares will be subject to the same eligibility requirements imposed by the Investment Funds and all Shares will be priced in the same manner and will be redeemable under the same terms.

B. Payment of Lending Agent Fees to the Bank

1. Applicants also believe that a lending agent agreement between the Registered Lending Funds and the Bank, under which compensation is based on a share of the revenue generated by the Program, may be a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act. Consequently, applicants request an order permitting the Registered Lending Funds to pay, and the Bank, as lending agent, to accept fees based on a share of the revenue generated by securities lending transactions under the Program.

2. Applicants propose that each Affiliated Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Bank, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of the Bank as lending agent for an Affiliated Lending Fund and implementation of the proposed fee arrangement, a majority of the board of directors or trustees of the Affiliated Lending Fund (the "Board"), including a majority of the directors or trustees that are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Directors"), will determine that (i) the Lending Agreement with the Bank is in the best interests of the Affiliated Lending Fund and its shareholders, (ii) the services to be performed by the Bank are appropriate for the Affiliated Lending Fund, (iii) the nature and quality of the services provided by the Bank are at least equal to those services offered and provided by others, and (iv) the fees for the Bank's services are within the range of, but in any event no higher than, the fees charged by the Bank to comparable unaffiliated securities lending clients for services of the same nature and quality.

(b) Each Affiliated Lending Fund's Lending Agreement with the Bank for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board, including a majority of Independent Directors, makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby the Bank will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program, the Affiliated Lending Fund's Board shall secure a certificate from the Bank attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board will request and evaluate, and the Bank shall furnish, such information and materials as the Board, with and upon the advice of agents, consultants or counsel, determines to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by the Bank to other institutional investors for providing similar services.

(d) The Board of each Affiliated Lending Fund, including a majority of the Independent Directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Affiliated Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period of not less than six (6) years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two (2) years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

3. With respect to Other Lending Funds, applicants state that the affiliations with the Bank arise solely as result of the investment of Cash Collateral in the Investment Funds. Applicants state that a Dresdner Entity would not have any influence over the decisions made by any Other Lending Fund, and that any fee arrangement between the Other Lending Funds and the Bank will be the product of arm's-length bargaining.

C. Lending to Affiliated Borrowers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of a registered investment company or second-tier affiliate, acting as principal, to borrow money or other property from the registered investment company. Under section 2(a)(3)(C) of the Act, an Affiliated Borrower would be deemed a second-tier affiliate of Affiliated Lending Funds for which Dresdner Entities serve as investment advisers. In addition, applicants state that to the extent that an Affiliated Lending Fund or Other Lending Fund acquires Shares of an Investment Fund, an Affiliated Borrower also could be deemed a second-tier affiliate of the Affiliated Lending Fund or Other Lending Fund. Accordingly, section 17(a)(3) would prohibit the Affiliated Borrowers from borrowing securities from the Registered Lending Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting the Registered Lending Funds from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit the Registered Lending Funds to lend portfolio securities to Affiliated Borrowers.

3. Applicants state that each loan to an Affiliated Borrower by an Affiliated Lending Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated Borrowers.[2] Applicants further state that at least 50% of the loans made by the Affiliated Lending Funds, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads which will be established by each Affiliated Lending Fund's Board and a majority of the Independent Directors and monitored by an officer of the Affiliated Lending Fund. The Board, including a majority of the Independent Directors, also will review quarterly reports on all lending activity.

[2] A "spread" is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the Borrower to the Lending Fund (when non-cash collateral is posted) or of the excess retained by the Lending Fund over a rebate rate payable by the Lending Fund to the Borrower (when Cash Collateral is posted and then invested by the Lending Fund).

D. Transactions by Other Lending Funds with Dresdner Entities

1. As noted above, sections 17(a)(1), (2) and (3) prohibit certain principal transactions between a registered investment company and its affiliates. To the extent that a Dresdner Entity and the Investment Funds are deemed to be under common control, they could be affiliated persons of one another. Applicant also asserts that each Dresdner Entity that serves as investment adviser to an Investment Fund could be deemed an affiliated person of the Investment Fund and a second-tier affiliate of an Other Lending Fund that owns 5% or more of an Investment Fund.

2. Applicants request relief under sections 6(c) and 17(b) from section 17(a) to permit principal transactions between Other Lending Funds and Dresdner Entities where the affiliation between the parties arises solely as a result of an investment by an Other Lending Fund in Shares of the Investment Funds. Applicants state that there will be no element of self-dealing because the Dresdner Entities will have no influence over the decisions made by any Other Lending Fund. Applicants assert that each transaction will be the product of arm's length bargaining. Because the interests of the Other Lending Funds' investment advisers are solely and directly aligned with those of the Other Lending Funds, applicants believe it is reasonable to conclude that the consideration paid to or received by the Other Lending Funds in connection with a principal transaction with a Dresdner Entity will be reasonable and fair.

3. Section 17(e) of the Act makes it unlawful for any affiliated person of a registered investment company, or any second-tier affiliate, acting as a broker in connection with the sale of securities to or by that registered investment company, to receive from any source a commission for effecting the transaction that exceeds specified limits. Rule 17e–1 provides that a commission shall be deemed an usual and customary broker's commission if certain procedures are followed by the registered investment company.

4. Applicants request relief under section 6(c) from section 17(e) to the extent necessary to permit Dresdner Entities to receive fees or commissions for acting as broker or agent in connection with the purchase or sale of securities for any Other Lending Fund for which a Dresdner Entity becomes a second-tier affiliate solely because of the investment by the Other Lending Fund in Shares of Investment Funds.

5. Applicants submit that brokerage or similar transactions by Dresdner Entities for the Other Lending Funds raise no possibility of self-dealing or any concern that the Other Lending Funds would be managed in the interest of the Dresdner Entities. Applicants believe that each transaction between an Other Lending Fund and a Dresdner Entity would be the product of arm's length bargaining because each investment adviser to an Other Lending Fund would have no interest in benefiting a Dresdner Entity at the expense of an Other Lending Fund.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

General

1. The securities lending program of each Registered Lending Fund will comply with all present and future applicable guidelines of the Commission and its staff regarding securities lending arrangements.

2. The approval of an Affiliated Lending Fund's Board, including a majority of the Independent Directors, shall be required for the initial and subsequent approvals of the Bank's service as lending agent for the Affiliated Lending Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Affiliated Lending Fund, and for any periodic review of loan transactions for which the Bank acted as lending agent pursuant to the Program.

3. No Registered Lending Fund will purchase Shares of any Investment Fund unless participation in the Program has been approved by a majority of the Independent Directors of the Registered Lending Fund. The Independent Directors will evaluate the Program no less frequently than annually and determine that investing Cash Collateral in the Investment Funds is in the best interests of the shareholders of the Registered Lending Fund.

Investment of Cash Collateral

4. Investment in Shares of an Investment Fund by a particular Registered Lending Fund will be consistent with the Registered Lending Fund's investment objectives and policies. A Registered Lending Fund that complies with rule 2a-7 under the Act will not invest its Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

5. Investment in Shares of an Investment Fund by a particular Registered Lending Fund will be in accordance with the guidelines regarding the investment of Cash Collateral specified by the Registered Lending Fund in the Lending Agreement. A Registered Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Registered Lending Fund and if that Investment Fund invests in the types of instruments that the Registered Lending Fund has authorized for the investment of its Cash Collateral.

6. An Investment Fund will not acquire securities of any investment company in excess of the limits in Section 12(d)(1)(A).

7. Shares will not be subject to a sales load, redemption fee, asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

Private Investment Funds

8. Each Registered Lending Fund will purchase and redeem Shares of a Private Investment Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis as other shareholders of the Private Investment Fund. A separate account will be established in the shareholder records of the Private Investment Fund for the account of each Registered Lending Fund.

9. Each Private Investment Fund in which a Registered Lending Fund invests will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Investment Fund were a registered open-end investment company. With respect to all redemption requests made by a Registered Lending Fund, the Private Investment Fund will comply with section 22(e) of the Act. The Dresdner Entity serving as investment adviser, trustee, general partner or managing member of a Private Investment Fund will adopt procedures designed to ensure that the Private Investment Fund will comply with the requirements of sections 17(a), (d), and (e), 18, and 22(e) of the Act, will periodically review and periodically update as appropriate such procedures, will maintain books and records describing such procedures, and will maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be maintained pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

10. The net asset value per Share with respect to Shares of the Private Investment Funds will be determined separately for each Private Investment Fund by dividing the value of the assets belonging to that Private Investment Fund, less the liabilities of that Private Investment Fund, by the number of Shares outstanding with respect to that Private Investment Fund.

11. Any Private Investment Fund that operates as a money market fund and uses the amortized cost method of valuation, as defined in rule 2a-7 under the Act, will comply with rule 2a-7. With respect to each such Private Investment Fund, the Dresdner Entity serving as investment adviser, trustee, general partner or managing member shall adopt and monitor the procedures described in rule 2a-7(c)(7) under the Act and will take such other actions as are required to be taken pursuant to these procedures. The Registered Lending Funds may only purchase Shares of such Private Investment Fund if the Dresdner Entity serving as investment adviser, trustee, general partner or managing member determines on an ongoing basis that the Private Investment Fund is in compliance with rule 2a-7. Such investment adviser, trustee, general partner or managing member shall preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

Loans to Affiliated Borrowers

12. The Affiliated Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

13. An Affiliated Lending Fund will not make any loan to an Affiliated Borrower unless the income attributable to such loan fully covers the transaction costs incurred in making the loan.

14. a. All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Affiliated Lending Fund's Board and by a majority of the Independent Directors (the "Schedule of Spreads").

b. The Schedule of Spreads will set forth rates of compensation to the Affiliated Lending Funds that are reasonable and fair and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of the Affiliated Lending Fund's portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is lent to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to Affiliated Borrowers will be made at no less than the higher spread.

e. The securities lending program for each Affiliated Lending Fund will be monitored on a daily basis by an officer of each Affiliated Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to Affiliated Borrowers for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Affiliated Lending Fund's Board, including a majority of the Independent Directors.

15. The total value of securities loaned to any one Borrower on the approved list of Borrowers of securities from an Affiliated Lending Fund will be in accordance with a schedule to be approved by the Board of each Affiliated Lending Fund, but in no event will the total value of securities loaned to any one Affiliated Borrower exceed 10% of the net assets of the Affiliated Lending Fund, computed at market.

16. The Boards of the Affiliated Lending Funds, including a majority of the Independent Directors, (a) will determine no less frequently than quarterly that all transactions with the Affiliated Borrowers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Boards and the conditions of this order if granted and that such transactions were conducted on terms that were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

17. The Affiliated Lending Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan, and any other information or materials upon which the finding was made that each loan made to an Affiliated Borrower was fair and reasonable, and that the procedures followed in making such loan were in accordance with the procedures and other undertakings set forth in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15312 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26076; 812–12674]

Franklin Gold and Precious Metals Fund, et al.; Notice of Application

June 12, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

APPLICANTS: Franklin Gold and Precious Metal Fund, Franklin Capital Growth Fund, Franklin High Income Trust, Franklin Custodian Funds, Inc., Franklin California Tax-Free Income Fund, Inc., Franklin New York Tax-Free Income Fund, Franklin Federal Tax-Free Income Fund, Franklin Tax-Free Trust, Franklin California Tax-Free Trust, Franklin New York Tax-Free Trust, Franklin Investors Securities Trust, Institutional Fiduciary Trust, Franklin Value Investors Trust, Franklin Managed Trust, Franklin Municipal Securities Trust, Franklin Floating Rate Master Trust, Franklin Strategic Mortgage Portfolio, Franklin Strategic Series, Adjustable Rate Securities Portfolios, Franklin Templeton International Trust, Franklin Global Trust, Franklin Real Estate Securities Trust, Franklin Templeton Global Trust, Franklin Templeton Variable Insurance Products Trust, Franklin Universal Trust, Franklin Multi-Income Trust, Franklin Templeton Fund Allocator Series, Franklin Money Fund, Franklin Templeton Money Fund Trust, Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin Mutual Series Fund Inc., Franklin Floating Rate Trust, The Money Market Portfolios (collectively, the "Franklin Funds"); Templeton Growth Fund, Inc., Templeton Funds, Inc., Templeton Global Smaller Companies Fund, Inc., Templeton Income Trust, Templeton Capital Accumulator Fund (formerly, Templeton Capital Accumulator Fund Inc.), Templeton Global Opportunities Trust, Templeton Institutional Funds, Inc., Templeton Developing Markets Trust, Templeton Global Investment Trust, Templeton Emerging Markets Fund (formerly Templeton Emerging Markets Fund, Inc.), Templeton Global Income Fund, Inc., Templeton Emerging Markets Income Fund, Templeton China World Fund, Inc., Templeton Dragon Fund, Inc., Templeton Russia and East European Fund, Inc. (formerly, Templeton Russia Fund, Inc.) (collectively, the "Templeton Funds") FTI Funds; (the Franklin Funds, the Templeton Funds and the FTI Funds are collectively, together with any other registered management investment company or series thereof advised by an Adviser, as defined below, the "Franklin Templeton Funds"); Franklin Advisers, Inc., Franklin Advisory Services, LLC, Franklin Investment Advisory Services Inc., Franklin Mutual Advisers, LLC, Franklin Private Client Group, Inc., Templeton/Franklin Investment Services Inc., Templeton Investment Counsel, LLC, Franklin Templeton Asset Strategies, LLC, Fiduciary International, Inc., Franklin Templeton Investment Management Limited, Franklin Templeton Investments (Asia) Limited, Franklin Templeton Investments Corp., Templeton Asset Management LTD., Templeton Global Advisors Limited, Fiduciary Investment Management International, Inc., Fiduciary Trust International Limited, FTI Institutional, LLC ("Advisers"), together with any entity controlling, controlled by, or under common control with Advisers that acts in the future as investment adviser for the Franklin Templeton Funds, the Unregistered Funds (as defined below), or a Managed Account (as defined below) (included in the term "Advisers"); the Advisers on behalf of certain private investment companies or series thereof that are excluded from the definition of "investment company" pursuant to section 3(c)(1), section 3(c)(7) or section 3(c)(11) of the 1940 Act for which one of the Advisers

currently or in the future serves as investment adviser or trustee (the "Unregistered Funds"); and the Advisers on behalf of institutional and individual accounts that are not pooled investment vehicles for which one of the Advisers currently or in the future serves as investment adviser (the "Managed Accounts").

SUMMARY OF APPLICATION: The applicants request an order that would permit (a) certain registered management investment companies, Unregistered Funds and Managed Accounts to invest uninvested cash and cash collateral in affiliated registered and unregistered money market funds, and (b) the registered investment companies and certain affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a–7 under the Act. The order would supersede a prior order.[1] The order also would amend a prior order.[2]

FILING DATES: The application was filed on October 26, 2001 and amended on October 18, 2002, and June 10, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 7, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o David P. Goss, Esq., Franklin Templeton Investments, One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Franklin Templeton Funds are organized as Maryland Corporations, California Corporations, Massachusetts business trusts, or Delaware statutory trusts. The Franklin Templeton Funds are registered under the Act as open-end or closed-end management investment companies. The Advisers are each registered under the Investment Advisers Act of 1940 ("Advisers Act") together with any entity controlling, controlled by and under common control with Advisers that acts in the future as investment adviser for the Franklin Templeton Funds, an Unregistered Fund, as defined below, Managed Account, as defined below, included in the term Advisers.[3]

2. Certain of the Franklin Templeton Funds or series thereof are money market funds subject to the requirements of rule 2a–7 under the Act ("Registered Money Market Funds"). The Franklin Templeton Funds or series thereof that are not money market funds are the "Registered Funds." Certain of the Unregistered Funds that rely on section 3(c)(1) or 3(c)(7) of the Act also operate as cash management vehicles ("Unregistered Money Market Funds,"[4] together with the Registered Money Market Funds, the "Money Market Funds"). The Unregistered Money Market Funds will comply with rule 2a–7 under the Act.

3. The Registered Funds, Unregistered Funds and Managed Accounts ("Participating Funds") have, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash").[5] Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for strategic purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. Certain of the Registered Participating Funds have the ability to increase their income by participating in a securities lending program ("Securities Lending Program") under which they may lend portfolio securities to registered broker-dealers or other institutional investors deemed by the respective Adviser to be of good standing. The loans are continuously secured by collateral which may include cash ("Cash Collateral," together with Uninvested Cash, "Cash Balances") equal at all times in value to at least the market value of the securities loaned.

4. Applicants request an order of the Commission to permit: (i) The Participating Funds to use their Cash Balances to purchase shares of one or more of the Money Market Funds; (ii) the Money Market Funds to sell their shares to, and purchase (redeem) such shares from, the Participating Funds; and (iii) the Advisers to effect the above transactions (the "Proposed Transactions"). The requested order also would permit the Participating Funds and the Money Market Funds to continue to engage in interfund purchase and sale transactions ("Interfund Transactions").

Applicants' Legal Analysis

I. Investment of Cash Balances by the Participating Funds in the Money Market Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company, and no investment company may inquire securities of a registered investment company, if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Any entity that is excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for the purposes of the 3% limitation specified in sections 12(d)(1)(A) and (B) with respect to purchases by and sales to such entity of securities of a registered investment company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Participating Funds to use their Cash Balances to acquire shares of the Registered Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Registered Participating Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Registered Participating Fund's total assets at any time. Applicants also request relief to permit the Registered Money Market Funds to sell their securities to the Participating Funds in excess of the percentage limitations in section 12(d)(1)(B).[6]

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Registered Money Market Fund maintains a highly liquid portfolio and the Advisers will serve as investment advisers to both the Participating Funds and the Money Market Funds, the Advisers will not be susceptible to undue influence regarding their management of the Registered Money Market Funds due to threatened redemptions or loss of fees. Applicants state that the proposed arrangement will not result in inappropriate layering of fees. Shares of the Money Market Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers Inc., (a "Service Fee"). If a Money Market Fund offers more than one class of shares, a Registered Participating Fund will invest in the class with the lowest expense ratio at the time of investment. Before the next meeting of the board of directors or trustees ("Board") of the Registered Participating Fund that invests in the Money Market Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Registered Participating Fund that can be expected to be invested in the Money Market Fund. Before approving any advisory contract under section 15, the Board of the Registered Participating Fund, including a majority who are not "interested persons," as that term is defined in section 2(a)(19) of the Act ("Disinterested Directors"), shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by the Adviser should be reduced to account for reduced services provided to the Registered Participating Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person or, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by such other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Because the Advisers serve, or will serve, as investment adviser or trustee exercising investment discretion for the Participating Funds and Money Market Funds, they may be deemed to be under common control and therefore, affiliated persons of each other. In addition, if a Participating Fund purchases more than 5% of the voting securities of a Money Market Fund, the Money Market Fund and the Participating Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Money Market Funds to the Participating Funds, and the redemption of the shares by the Participating Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that the consideration paid and received on the sale and redemption of shares of the Money Market Funds will be based on the net asset value per share of the Money Market Funds. Applicants state that the Registered Participating Funds will retain their ability to invest Cash Balances directly in money market instruments and other short-term obligations as authorized by their respective investment objectives and policies. Applicants represent that a Money Market Fund reserves the right to discontinue selling shares to any of the Participating Funds if the Money Market Fund's Board determines that such sale would adversely affect the Money Market Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that the Participating Funds and the Money

---

[1] *Franklin Gold Fund, et. al*, Investment Company Act Release Nos. 23633 (Jan. 5, 1999)(Notice) and 23675 (Feb. 2, 1999)(Order).

[2] *Franklin Templeton Fund Manager, et. al*, Investment Company Act Release Nos. 21964 (May 20, 1996)(Notice) and 22022(June 17, 1996)(Order) (the "Fund of Funds Order").

[3] All existing Advisers and Franklin Templeton Funds that currently intend to rely on the requested order are named as applicants. Any other entity will not rely on the relief requested except in accordance with the terms and conditions in the application.

[4] In addition to cash management vehicles that are excluded from the definition of an investment company pursuant to section 3(c)(1) or section 3(c)(7) of the 1940 Act, Unregistered Money Market Funds may include one or more entities that are organized offshore and offer their shares privately to U.S. investors ("Offshore Money Market Funds," included in the term "Unregistered Money Market Funds"). Any Offshore Money Market Fund will have as its investment adviser or trustee one of the Advisers.

[5] The Participating Funds that are Registered Funds are the "Registered Participating Funds." The Participating Funds that are Unregistered Funds and Management Accounts are the "Unregistered Participating Funds."

[6] Applicants also seek relief to allow the Registered Participating Funds to acquire shares of an offshore Money Market Fund in excess of the limits in section 12(d)(1)(A) of the Act.

Market Funds, by participating in the proposed transactions, and the Advisers by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Proposed Transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that they currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between registered investment companies that are affiliated persons (or an affiliated person of an affiliated person), or between a registered investment company, and a person that is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers and/or common directors or trustees. Applicants state that the Participating Funds and Money Market Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to each other, because some of the Participating Funds may own 5% or more of the outstanding voting securities of a Money Market Fund and, therefore, an affiliation would not exist solely by reason of having a common investment adviser, common officers and/or common directors or trustees.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that by complying with the conditions of Rule 17a–7, the interests of the shareholders of the Registered Participating Funds and the Registered Money Market Funds are protected. Thus, the Applicants submit that the Interfund Transactions are reasonable and fair, do not involve overreaching, and will be consistent with the purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee under a plan adopted in accordance with Rule 12b–1, or Service Fee.

2. Before the next meeting of the Board of the Registered Participating Fund that invests in the Money Market Fund is held for the purpose of voting on an advisory contract pursuant to section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Registered Participating Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract pursuant to section 15 of the Act, the Board of the Registered Participating Fund, including a majority of the Disinterested Directors, shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by the Adviser should be reduced to account for reduced services provided to the Registered Participating Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The minute books of Registered Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Registered Participating Fund's aggregate investment of Uninvested Cash in the Money Market Funds will not exceed 25% of the Registered Participating Fund's total assets. For purposes of this limitation, each Registered Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with the investment policies and restrictions of each Registered Participating Fund as set forth in its registration statement.

5. Each Registered Fund and Managed Account that may rely on the order shall be advised by an Adviser. Each Unregistered Fund shall be advised by, or have as its trustee, an Adviser.

6. No Money Market Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. The Unregistered Money Market Funds will comply with the requirements of sections 17(a), (d), and (e), and 18 of the 1940 Act. With respect to all redemption requests made by a Participating Fund, the Unregistered Money Market Funds will comply with section 22(e) of the Act. The Advisers will adopt procedures designed to ensure that each Unregistered Money Market Fund complies with sections 17(a), (d), (e), 18 and 22(e) of the Act. The Advisers also will periodically review and update as appropriate the procedures, and will maintain books and records describing such procedures, and will maintain books and records describing such procedures, and will maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

8. Each Unregistered Money Market Fund will comply with rule 2a–7. With respect to each Unregistered Money Market Fund, the Advisers will adopt and monitor the procedures described in rule 2a–7(c)(7) under the Act and will take such other actions as are required to be taken under those procedures. A Participating Fund may only purchase shares of an Unregistered Money Market Fund if the Adviser determines on an ongoing basis that the Unregistered Money Market Fund is in compliance with rule 2a–7. The Advisers will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

9. Each Participating Fund will purchase and redeem shares of any Unregistered Money Market Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Unregistered Money Market Fund. A separate account will be established in the shareholder records of each Unregistered Money Market Fund for the account of each Participating Fund that invests in such Unregistered Money Market Fund.

10. To engage in Interfund Transactions, the Registered Funds, Unregistered Funds, Managed Accounts and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser, or investment advisers which are affiliated persons of each other, common officers, and/or common directors or trustees, solely because a Participating Fund and a Money Market Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. The net asset value per share with respect to shares of an Unregistered Money Market Fund will be determined separately for each Unregistered Money Market Fund by dividing the value of the assets belonging to that Unregistered Money Market Fund, less the liabilities of that Unregistered Money Market Fund, by the number of shares outstanding with respect to that Unregistered Money Market Fund.

12. Before a Registered Participating Fund may participate in the Securities Lending Program, a majority of the Board (including a majority of the Disinterested Directors) will approve the Registered Participating Fund's participation in the Securities Lending Program. No less frequently than annually, the Board also will evaluate, with respect to each Registered Participating Fund, any securities lending arrangement and its results and determine that any investment in Cash Collateral in the Money Market Funds is in the best interest of the Registered Participating Fund.

Condition 2 to the Fund-of-Funds Order is amended to read as follows: "No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Underlying Portfolio other than a money market fund acquires securities of another registered or unregistered investment company pursuant to exemptive relief from the Commission permitting the Underlying Portfolio to purchase securities of an affiliated registered or unregistered money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15354 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26075; 812–12779]

American Performance Funds, et al.; Notice of Application

June 12, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act. Prior to relying on the requested order, Applicants would cease relying on a prior order.[1]

APPLICANTS: American Performance Funds, AmSouth Funds, BNY Hamilton Funds, Inc. ("BNY Hamilton Funds"), Citizens Funds, Fifth Third Funds, HSBC Advisor Funds Trust, HSBC Investor Funds and HSBC Investor Portfolios (collectively, the "HSBC Funds"), Legacy Funds Group ("Legacy Funds"), Mercantile Funds, Inc. ("Mercantile Funds"), Old Westbury Funds, Inc. ("Old Westbury Funds"), Performance Funds Trust ("Performance Funds"), The Victory Portfolios, Vintage Mutual Funds, BOk Investment Advisers, Inc. ("BOk") (formerly, Investment Concepts, Inc.), AmSouth Investment Management Company, LLC ("AmSouth"), The Bank of New York ("BNY"), Citizens Advisers, Inc. ("Citizens Advisers"), Fifth Third Asset Management, Inc. ("Fifth Third"), HSBC Asset Management (Americas) Inc. ("HSBC"), First Financial Capital Advisors LLC ("First Financial"), Bessemer Investment Management LLC ("Bessemer"), Mercantile Capital Advisors, Inc. ("Mercantile"), Trustmark Investment Advisors, Inc. (formerly, Trustmark Financial Services, Inc.) ("Trustmark"), Victory Capital Management, Inc. ("Victory") and Investors Management Group, Ltd. ("Investors Management Group").

Filing Dates: The application was filed on February 1, 2002 and was amended on June 9, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 7, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Ryan M. Louvar, Esq., BISYS, 60 State Street, Suite 1300, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Annette M. Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

[1] On February 19, 2000, the Commission issued an order amending prior orders under Sections 6(c) and 17(b) of the Act that exempted certain Applicants and certain other entities who are not parties to the application from the provisions of Section 12(d)(1)(A) and Section 17(a) of the Act and that permitted pursuant to rule 17d–1, certain joint transactions in accordance with Section 17(d) and rule 17d–1. *See* Investment Company Act Rel. Nos. 24274 (Feb. 1, 2000) (notice) and 24325 (Feb. 19, 2000) (order); Investment Company Act Rel. Nos. 23962 (Aug. 23, 1999) (notice) and 24021 (Sept. 21, 1999) (order); Investment Company Act Rel. Nos. 23393 (Aug. 18, 1998) (notice) and 23436 (Sept. 15, 1998); Investment Company Act Rel. Nos. 22636 (April 24, 1997) (notice) and 22677 (May 20, 1997) (order); Investment Company Act Rel. Nos. 19695 (Sept. 9, 1993) and 19759 (Oct. 5, 1993) (order).

Applicants' Representations

1. American Performance Funds, AmSouth Funds, Citizens Funds, Fifth Third Funds, HSBC Advisor Funds Trust, HSBC Investor Funds, Legacy Funds and Old Westbury Funds are Massachusetts business trusts that are registered under the Act as open-end management investment companies. BNY Hamilton Funds, Mercantile Funds and Vintage Mutual Funds are Maryland corporations that are registered under the Act as open-end management investment companies. HSBC Investor Portfolios is a New York trust that is registered under the Act as an open-end investment management company. The Performance Funds and The Victory Portfolios are Delaware statutory trusts that are registered under the Act as open-end management investment companies.

2. BOk is the investment adviser to each of the twelve series of the American Performance Funds. AmSouth is the investment adviser to the twenty-four series of the AmSouth Funds. Citizens Advisers is the investment adviser to the twelve series of the Citizens Funds. BNY is the investment adviser to the twenty series of BNY Hamilton Funds. Fifth Third serves as the investment adviser to thirty-five of the thirty-six series of the Fifth Third Funds. HSBC serves as investment adviser to the twenty-one series of the HSBC Funds. First Financial serves as the investment adviser to the three series of the Legacy Funds. Mercantile serves as the investment adviser to the fourteen series of the Mercantile Funds. Bessemer serves as the investment adviser to the five series of the Old Westbury Funds. Trustmark is the investment adviser to the seven series of the Performance Funds. Victory is the investment adviser to the twenty-six series of The Victory Portfolios. Investors Management Group is the investment adviser to the nine series of the Vintage Mutual Funds.

3. The American Performance Funds, AmSouth Funds, BNY Hamilton Funds, Citizens Funds, Fifth Third Funds, the HSBC Funds, Legacy Funds, Mercantile Funds, Old Westbury Funds, Performance Funds, The Victory Portfolios and the Vintage Mutual Funds and their respective series (each series, a "Fund," and collectively, the "Funds") each is in the American Performance, AmSouth, BNY Hamilton, Citizens, Fifth Third, HSBC, Legacy, Mercantile, Old Westbury, Performance, Victory and Vintage group of investment companies, respectively, within the meaning of section 12(d)(1)(G)(ii) of the Act (each a "Fund Group").

4. Applicants request that relief be extended to any registered open-end management investment company or series thereof for which BOk, AmSouth, BNY, Citizen Advisers, Fifth Third, HSBC, First Financial, Bessemer, Mercantile, Trustmark, Victory or Investors Management Group (each an "Adviser," and any entity controlled by, controlling or under common control with each Adviser, an "Adviser")[2] now or in the future serves as investment adviser (collectively with the Funds, the "Funds").[3]

5. Each Fund Group has one or more money market Funds ("Money Market Funds"). The Money Market Funds comply with rule 2a–7 under the Act. The Funds that are not Money Market Funds invest in a variety of debt and/or equity securities or other investments in accordance with their respective investment objectives and policies.

6. Applicants state that certain Funds ("Investing Funds") have, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. The Investing Funds may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

7. Applicants request an order to permit each of the Investing Funds to invest its Cash Balances in one or more of the Money Market Funds within the same Fund Group, and to permit each of the Money Market Funds to sell its shares to, and redeem its shares from, the Investing Funds within the same Fund Group. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Investing Fund's investment objectives, restrictions, and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquired company's total assets. Section 12(d)(1)(B) of the Act provides, in pertinent part, that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund would not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules) or if such shares are subject to any such sales load, redemption fees, distribution fees or service fees, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's investment) at the time of the investment. In connection with approving any advisory contract for an Investing Fund, the Investing Fund's board of directors/trustees (the "Board"), including a majority of the directors/trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Directors"), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for the reduced services provided to the Investing Fund by the Adviser as a result of the investment of Uninvested Cash in a Money Market Fund. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of a registered investment company or an affiliated person of such person acting as principal. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly controlling, controlled by, or under common control with the other person; (b) any officer or director of such other person; and (c) if such other person is an investment company, any investment adviser thereof. Applicants state that each Fund within the same Fund Group may be deemed to be affiliated persons of one another by virtue of having a common board of directors or common investment advisers. In light of these possible affiliations, section 17(a) could prevent a Money Market Fund from selling shares to and redeeming shares from an Investing Fund.

5. Section 17(b) of the Act authorizes the Commission to grant an order exempting a transaction otherwise prohibited by section 17(a) if (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards for relief under sections 6(c) and 17(b) of the Act. Applicants note that the shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Fund (by purchasing shares of Money Market Funds), the Adviser for each Investing Fund (by managing the assets of the Investing Funds invested in Money Market Funds), and each Money Market Fund (by selling shares to Investing Funds) could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which participation by the registered investment company is on a basis different from, or less advantageous than, that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Money Market Funds would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser for the Investing Fund will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees that are incurred by the Investing Fund.

2. Prior to reliance on the order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. The Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Directors, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by such Fund's Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in one or more of the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, Money Market Funds only to the extent that the Investing Fund's aggregate investment in such Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will

[2] Each Adviser is registered under the Investment Advisers Act of 1940 or will be exempt from registration.

[3] Each Fund that currently intends to rely on the order has been named as an applicant. Any other Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund that may rely on the order may invest only in Money Market Funds within the same Fund Group as the Investing Fund.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Arrangements, a majority of the Board, including a majority of the Disinterested Directors, will approve the Fund's participation in the Securities Lending Arrangements. Such Disinterested Directors also will evaluate the Securities Lending Arrangements and their results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15356 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48027; File No. PCAOB–2003–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Bylaws and Amendment No. 1 Thereto

June 13, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act" or "Act"),[1] notice is hereby given that on March 3, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule as described in Items I, II, and III below, which items have been prepared by the Board. On April 30, 2003, the PCAOB filed Amendment No. 1 to the proposed rule. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 7217(b).

I. Board's Statement of the Terms of Substance of the Proposed Rule

On January 9, 2003, the Board adopted its bylaws. On April 25, 2003, the Board adopted an amendment to Article VI of the bylaws to specify the powers of the Chair. In general, the bylaws implement Title I of the Sarbanes-Oxley Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board, and the powers and duties of the Governing Board and officers. The bylaws are intended by the Board to be effective as of their initial adoption by a unanimous vote of the Board members. The Board is therefore proposing that the Commission approve the bylaws effective as of January 9, 2003.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

The Sarbanes-Oxley Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, to oversee the audits of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

The Board's bylaws implement Title I of the Sarbanes-Oxley Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board, and the powers and duties of the Governing Board and officers. Among the provisions of the bylaws are rules for establishing a quorum and providing that an act approved by majority vote of the members of the Governing Board present at a meeting of the Board at which a quorum is present shall be an act of the Board. The bylaws also provide for including a recused Board member in the count for quorum purposes only in exigent circumstances, in which the Board is required to act within a limited period of time or in which the public interest or the protection of investors otherwise prevents the deferral of action until a quorum of non-recused members is available.

The Board's bylaws also provide that the Governing Board shall hold at least one public meeting each month, on the first Tuesday of the month (the "Regular Public Meeting") or at such other time as the Chair shall determine. The bylaws require the Board to adopt a written Open Meeting Policy defining the circumstances under which meetings of the Board will be open to the public and to include in that Open Meeting Policy procedures to ensure that the public is informed, at least five calendar days in advance, of the time, location, and general topics scheduled for discussion at each Regular Public Meeting. The bylaws also permit the Governing Board to hold additional meetings ("Special Meetings"), which may be public or non-public (in accordance with the Open Meeting Policy), as it deems necessary or appropriate to further the purposes of the Sarbanes-Oxley Act. The bylaws require that the Open Meeting Policy set forth procedures for providing the public with reasonable notice of public Special Meetings, and they permit the Governing Board to meet by telephone, provided that, in the case of a public meeting, at least one Board member is present at the location specified in the meeting notice.

The bylaws provide that the Chair shall also be the President and Chief Executive Officer of the Corporation and that the other Governing Board members shall also be Vice Presidents of the Corporation. Section 6.2 of the bylaws provides that the other officers of the Corporation shall include a Secretary, Treasurer, General Counsel, Chief Auditor, Chief Administrative Officer, Director of Inspections and Registration, Director of Investigations and Enforcement, and such other officers as the Governing Board may establish in accordance with such rules of the Board as may be adopted for establishing officers.

Section 6.3 of the bylaws provides that the Chief Executive Officer is responsible for, and has authority over, the management and administration of the Corporation, including: (i) Responsibility and authority for the appointment, dismissal, and supervision of personnel (other than Board members and personnel employed regularly and full-time within the immediate offices of the Board members); (ii) the distribution of business among such personnel and among organizational units of the Corporation; (iii) the use and expenditure of funds (including the procurement of goods and services); and (iv) the development (for Board review) of strategic policy initiatives.

The bylaws also provide that in carrying out any of the responsibilities under the provisions of section 6.3 of the bylaws, the Chief Executive Officer shall be governed by the general policies of the Governing Board and by such rules and decisions as the Governing Board may lawfully make. The bylaws also provide that the appointment by the Chief Executive Officer of the officers of the Corporation designated in and established under section 6.2 shall be subject to the approval of, and made in consultation with, the Governing Board. The bylaws also provide that the dismissal of the officers of the Corporation designated in and established under section 6.2 shall be made in consultation with the Governing Board, except that when the Board determines that the dismissal arises out of a conflict regarding the general policies of the Governing Board, it is also subject to the approval of the Governing Board.

The bylaws also provide that each Board member has the responsibility and authority for the appointment, dismissal, and supervision of personnel employed regularly and full-time within the immediate office of the Board member. The Board member's responsibility and authority for these persons would be subject to the Governing Board's overall personnel policies.

The bylaws also provide that the Chief Executive Officer has the responsibility and authority to develop, and present to the Board for approval, an annual budget as well as mid-year adjustments, if any. The bylaws further provide that there is reserved to the Governing Board its responsibility and authority with respect to determining the distribution of funds according to major programs and purposes, including those related to salary schedules and other conditions of employment.

The bylaws also provide that no contract entered into by or on behalf of the Corporation shall personally obligate any employee, officer, or Governing Board member, including the employee, officer or Governing Board member authorizing or executing such a contract. Further, unless otherwise prohibited by law, the bylaws provide for the Corporation to indemnify employees, officers, and Governing Board members, and any former employees, officers, or Governing Board members, against any and all expenses and liabilities actually and necessarily incurred by him or her, or imposed on him or her, in connection with any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals), to which he or she may be or is made a party by reason of being or having been an employee, officer, or Board member, except that there shall be no indemnification in relation to matters as to which the Board finds that the employee, officer, or Board member acted in bad faith or engaged in willful misconduct in the performance of a duty to the Corporation. Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel and other related fees, costs and disbursements, and judgments, fines and penalties against, and amounts paid in settlement by, such employee, officer, or Board member. The bylaws further permit the Corporation to advance expenses to, or where appropriate to itself, at its expense, undertake the defense of any employee, officer, or Board member, so long as the employee, officer, or Board member undertakes to repay or reimburse such expense if it should be ultimately determined that he or she is not entitled to indemnification under the bylaws.

The bylaws also permit the Governing Board to purchase insurance on behalf of any employee, officer, or Governing Board member against any liability which may be asserted against or incurred by him or her which arises out of such person's status as an employee, officer, or Board member, whether or not the Corporation would have the power to indemnify such person against that liability under law.

The bylaws permit the Governing Board to adopt such rules of the Corporation as it deems necessary or appropriate to discharge its responsibilities under the Sarbanes-Oxley Act. The bylaws also prohibit any capital expenditure or investment without the approval of the Board, except as expressly delegated by the Governing Board. Finally, the bylaws require the Governing Board to retain an accounting firm to annually audit the Corporation's financial records, which firm shall not perform any other services, except tax services, for the Corporation.

In the event that the Commission approves the Board's bylaws, the Board seeks that they be approved so as to be retroactively effective as of January 9, 2003.

B. Board's Statement on Burden on Competition

The proposed rule does not impose any burden on competition.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board has not solicited, and does not intend to solicit, comments on this proposed rule. The Board has not received any unsolicited written comments.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

(a) by order approve such proposed rule; or

(b) institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of the Sarbanes-Oxley Act and the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. SR–PCAOB–2003–01 and should be submitted by July 9, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15355 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48023; File No. SR–Amex–2003–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Maximum Bid/Offer Differentials for Option Contracts

June 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 958 to set the maximum bid/offer differential for option contracts at $0.40 where the prevailing bid is at or above $2 but does not exceed $5, and $0.80 where the prevailing bid is more than $10 but does not exceed $20. The text of the proposed rule change is set forth below. [Bracketing] indicates text to be deleted, and *italics* indicates text to be added.

* * * * *

Options Transactions of Registered Traders

Rule 958

(a)–(b) No change

(c) With respect to each class of options as to which he is assigned by the Exchange, a Registered Trader, whenever he enters the trading crowd in other than a floor brokerage capacity, or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a Registered Trader is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) If the underlying security is a stock or Exchange-Traded Fund Share, bidding and offering so as to create differences of no more than $0.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2, no more than [$0.37] *$0.40* where the prevailing bid is $2 but does not exceed $5, no more than $0.50 where the prevailing bid is more than $5 but does not exceed $10, no more than [$0.75] *$0.80* where the prevailing bid is more than $10 but does not exceed $20, and no more than $1 where the last prevailing bid is more than $20. In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Pursuant to the industry-wide conversion of the pricing of securities from fractions to decimals, the Exchange converted all stocks and options pricing in its rules to decimals. Among the rules affected was Exchange Rule 958, which sets forth the obligations of registered options traders and options specialists.[3] Subparagraph (c)(i) of Rule 958 requires registered options traders and options specialists, in the course of maintaining a fair and orderly market, to adhere to maximum bid/offer differentials specified in the rule.[4] In connection with this conversion from fractions to decimals, the Exchange converted (i) the maximum bid/offer differential of 3/8 of $1 to $0.37 where the prevailing bid is at or above $2 but does not exceed $5; and (ii) the maximum bid/offer differential of 3/4 of $1 to $0.75 where the prevailing bid is more than $10 but does not exceed $20.

The requirements of related Exchange Rule 952, however, created anomalies in the maximum bid/offer differentials as stated in Rule 958. Amex Rule 952, which sets forth the minimum price variation ("MPV") for option contracts, requires a MPV of $0.05 where an option contract trades less than $3.00 and a MPV of $0.10 where an option contract trades at or above $3. Consequently, option contracts trading at or above $2 but less than $3 are restricted to a maximum bid/offer differential of $0.35, not $0.37, because the MPV at those prices is $0.05, and option contracts trading at or above $3 but not exceeding $5 are restricted to a maximum bid/offer differential of $0.30, not $0.37, because the MPV at those prices is $0.10. Similarly, option contracts where the prevailing bid is more than $10 but does not exceed $20 are allowed a maximum bid/offer differential of $0.75 under Amex Rule 958, but since the MPV is $0.10 at those prices, registered options traders and options specialists are required to quote with a maximum differential of $0.70.

Because maximum bid/offer differentials were reduced from levels permitted before the conversion from fractions to decimals, the Exchange now proposes to amend Amex Rule 958 to increase the maximum bid/offer differential (i) from $0.37 to $0.40 where the prevailing bid is at or above $2 but does not exceed $5; and (ii) from $.075 to $0.80 where the prevailing bid is more than $10 but does not exceed $20. These changes will conform Amex Rule 958 to the Exchange's current practice of allowing registered options traders and options specialists to quote bids and offers with maximum bid/offer differentials of $0.40 and $0.80 under the abovementioned conditions.[5]

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because (i) it does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay will permit the Amex to amend Rule 958 without undue delay. For this reason, the Commission designates the proposal to be effective upon filing with the Commission.[10] At any time within sixty (60) days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–53 and should be submitted by July 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15352 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240 19b–4.

[3] Exchange Rule 950(n) requires options specialists to adhere to the maximum bid/offer differentials set forth in Amex Rule 958(c).

[4] The maximum bid/offer differential varies depending upon the prevailing bid for the option contract.

[5] Under Amex Rule 958(c)(i), the Exchange may establish, where appropriate, maximum bid/offer differentials other than those set forth in the rule.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48024; File No. SR–Amex–2003–36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 by the American Stock Exchange LLC To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading Under $20

June 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendments No. 1 and 2 to the proposal on June 3, 2003,[3] and June 11, 2003,[4] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended, through June 5, 2004.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to initiate a pilot program ("Pilot Program") that will allow the Exchange to list options on selected stocks trading below $20 at one-point intervals. The text of the proposed rule change appears below. Additions are in *italics*.

Rule 903. Series of Options Open for Trading

(a)–(d) No Change.

Commentary

.01–.03 No Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Division of Market Regulation, Commission, dated June 10, 2003 ("Amendment No. 2"). Amendment No. 2 revises the proposal to indicate that: (1) The pilot program will expire on June 5, 2004; (2) the strike price interval for options on individual stocks will be $5 or greater where the strike price is greater than $25 but less than $200 and $10 or greater where the strike price is greater than or equal to $200; and (3) the strike price interval for options on Exchange-Traded Fund Shares ("ETFs") will be $5 or greater where the strike price is over $200.

.04 The interval between strike prices of series of options on individual stocks may be (a) $2.50 or greater where the strike price is $25 or less, provided however, that the Exchange may not list $2.50 intervals below $20 (e.g. $12.50, $17.50) for any class included within the $1 Strike Price Pilot Program, as detailed below in Commentary .05, if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart; (b) $5 or greater where the strike price is greater than $25 but less than $200; or (c) $10 or greater where the strike price is greater than or equal to $200. For series of options on Exchange-Traded Fund Shares that satisfy the criteria set forth in Commentary .06 to Rule 915, the interval of strike prices may be $1 or greater where the strike price is $200 or less or $5 or greater where the strike price is over $200. Exceptions to the strike price intervals above are set forth in Commentaries .05 and .06 below.

.05 The interval between strike prices of series of options on individual stocks may be:

a. $1.00 or greater ("$1 Strike Prices") provided the strike price is $20 or less, but not less than $3. The listing of $1 strike prices shall be limited to option classes overlying no more than five (5) individual stocks (the "$1 Strike Price Pilot Program") as specifically designated by the Exchange. The Exchange may list $1 Strike Prices on any other option classes if those classes are specifically designated by other national securities exchanges that employ a similar $1 Strike Price Pilot Program under their respective rules.

b. To be eligible for inclusion into the $1 Strike Price Pilot Program, an underlying security must close below $20 in the primary market on the previous trading day. After a security is added to the $1 Strike Price Pilot Program, the Exchange may list $1 Strike Prices from $3 to $20 that are no more than $5 from the closing price of the underlying on the preceding day. For example, if the underlying security closes at $13, the Exchange may list strike prices from $8 to $18. The Exchange may not list series with $1 intervals within $0.50 of an existing $2.50 strike price (e.g. $12.50, $17.50) in the same series. Additionally, for an option class selected for the $1 Strike Price Pilot Program, the Exchange may not list $1 Strike Prices on any series having greater than nine (9) months until expiration.

c. A security shall remain in the $1 Strike Price Pilot Program until otherwise designated by the Exchange. The $1 Strike Price Pilot Program shall expire on June 5, 2004.

.06 The options exchanges may select up to 200 options classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50. The 200 options classes are selected by the various options exchanges pursuant to any agreement mutually agreed to by the individual exchanges and approved by the Commission. In addition to those options selected by the Exchange, the strike price interval may be $2.50 in any multiply-traded option once another exchange trading that option selects such option, as part of this program. The Exchange and any of the other options exchanges may also list strike prices of $2.50 on any option class that was selected by the NYSE pursuant to this program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to amend Amex Rule 903, "Series of Options Open for Trading," to implement the Pilot Program, which will operate until June 5, 2004. The Pilot Program will allow the Amex to list options on up to five underlying equities trading below $20 at one-point intervals and to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange.

In addition to implementing the Pilot Program, the Amex proposes to amend Amex Rule 903 to codify certain existing strike price interval guidelines that the Commission approved but that have not been codified in Amex Rule 903.[5] In this regard, the Amex proposes to amend Amex Rule 903 to indicate that: (1) the strike price interval for series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less,[6] $5 or greater where the strike price is greater than $25 but less than $200 (except for options included in the options exchanges' $2 ½-point strike price program, as described below), or $10 or greater where the strike price is greater than or equal to $200; and (2) the strike price interval for series of options on ETFs may be $1 or greater where the strike price is $200 or less or $5 or greater where the strike price is over $200. In addition, the Amex proposes to revise Amex Rule 903 to describe more specifically the options exchanges' 2½-point strike price program.[7]

Pilot Program

The Amex notes that stock prices in general have dropped over the past few years, with many listings suffering severe declines. As a result, there has been a proliferation of stocks trading below $20. The Amex lists options on more than 900 of these stocks. Some of these stocks are among the most widely held and actively traded equity securities listed on the New York Stock Exchange, Inc., the Amex, and Nasdaq, including, for example, Cisco, Oracle, Lucent, JDS Uniphase, AT&T, and Motorola. Accordingly, the options overlying these stocks are among the most actively traded options.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, when a stock trades at $10 an investor that wants to purchase a slightly out-of-the-money call option would have to buy the $12.50 call. At these levels, the stock price would need to increase by 25% to reach in-the-money status. According to the Amex, a 25% or higher gain in the price of the underlying stock is especially large given the lessened degree of volatility that has accompanied many stocks and options over the past several months. Accordingly, Amex member firms have expressed an interest in listing additional strike prices on these classes so that they can provide their customers with greater flexibility in achieving their investment strategies. For this reason, the Exchange proposes to implement the proposed Pilot Program.

1. *Pilot Program Eligibility:* The Exchange proposes to amend Amex Rule 903 to allow the Exchange to list options on selected stocks trading below $20 at one-point intervals, provided that the strike prices are $20 or less, but not less than $3. An option would become eligible for inclusion in the Pilot Program provided that the underlying stock closed below $20 in its primary market on the preceding trading day. Once the underlying stock is part of the Pilot Program, the Exchange may continue to list $1 strike prices provided the underlying stock remains below $20. As described more fully below, although an option class will not be removed automatically from the Pilot Program if the underlying stock trades at or above $20, the Amex will not add $1 strike prices when the underlying stock closes above $20. Once the stock closes below $20, it will again be eligible for the addition of $1 strike prices. An underlying stock will remain in the Pilot Program until the Amex removes it from the Pilot Program. Options on stocks trading under $20 that are not included in the Pilot Program may continue to trade in $2.50 and $5.00 strike price intervals. Although the Amex may only select up to five individual stock options for its Pilot Program, the Exchange will not be precluded from also listing at $1 strike price intervals equity options included in the $1 strike price programs of other option exchanges.

2. *Procedure for Adding $1 Strike Price Intervals:* The Exchange proposes to amend Amex Rule 903 to set forth the standards regarding the addition of $1 strike price intervals. Under the Pilot Program, the closing price of the underlying stock serves as the reference point for determining which $1 strike prices the Exchange may open for trading. To minimize the proliferation of options series, the Exchange intends to restrict the number of $1 strike prices that may be added to those strikes that fall within a $5 range of the price of the underlying stock. The Amex will not add strike prices outside of the $5 range. For example, if the underlying stock trades at $6, the Exchange could list $1 strike prices from $3 to $11, while if the underlying stock trades at $10, the Exchange could list $1 strikes from $5 to $15. By restricting the number of strike prices that may be listed to a predetermined $5 range, the Exchange believes it will be able to provide investors with more flexibility without burdening The Options Price Reporting Authority ("OPRA") capacity by bringing up strike prices that are not reasonably related to the price of the underlying stock.

Currently, when an underlying stock trades below $25, the Exchange may list strike prices with $2.50 intervals.[8] For this reason, several classes have $7.50, $12.50, and $17.50 strike prices. To further avoid the proliferation of series, the Exchange does not intend to list $1 strike prices at levels that "bracket" existing $2.50 intervals (*e.g.*, $7 and $8 strikes around a $7.50 strike). Accordingly, the Exchange does not intend to list $7, $8, $12, $13, $17, and $18 levels in an expiration month where there is a corresponding $2.50 level. As the $2.50 intervals are "phased-out," as described below, the Exchange will introduce the $1 levels that bracket the phased-out price. For example, when a $7.50 series expires, the Exchange will replace it by issuing a new expiration month with $7 and $8 strike price intervals.

3. *Procedures for Phasing-Out $2.50 Strike Price Intervals:* When an individual stock becomes a part of the Pilot Program, the Exchange will begin to phase-out the existing $2.50 strike price intervals for options on that stock in favor of the $1 strike price intervals. To phase-out the $2.50 strike price intervals, the Exchange first will delist any $2.50 series for which there is no open interest. Second, the Exchange will no longer add new expiration months at $2.50 strike price intervals below $20 when existing months expire. This will cause the $2.50 strike price intervals below $20 to be phased-out when the farthest-out month with a $2.50 interval expires.

4. *$1 Strikes for Longer Dated Options:* The Exchange will not list $1 strikes on any series of individual equity option classes that have greater than nine months until expiration.

5. *Procedures for Adding Expiration Months:* Amex Rule 903(a)(i) will govern the addition of expiration months for $1 strikes series. Pursuant to this rule, the Exchange generally opens up to four expiration months for each class upon the initial listing of an options class for trading. Thus, for options included in the Pilot Program, the Amex will list an additional expiration month upon expiration of the near-term month, provided that the underlying stock prices closes below $20 on Expiration Friday. If the underlying closes at or above $20 on its primary market on Expiration Friday, the Exchange will not list an additional month of $1 strike price series until the stock again closes below $20.

6. *Procedures for Delisting $1 Strike Price Intervals:* At any time, the Exchange may cease listing $1 strike prices on existing series by submitting a cessation notice to The Options Clearing Corporation ("OCC").[9] As discussed above, if the underlying closes at or above $20 on its primary market on Expiration Friday, the Amex will not list any additional months with $1 strike prices until the stock subsequently closes below $20. If the underlying stock does not subsequently close below $20, thereby precluding the listing of additional strike prices and months, the existing $1 series eventually will expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the five option classes available on the Exchange pursuant to the Pilot Program, thereby allowing the Exchange to list options on an additional stock at $1 strike price intervals. Once the Exchange submits the cessation notice it will not list any additional months pursuant to the Pilot Program for trading with strikes below $20, unless the underlying stock again closes below $20.[10]

7. *OPRA Capacity:* The Exchange believes that OPRA has the capacity to accommodate the increase in the number of series that could be added pursuant to the Pilot Program. In this regard, the Amex notes that, on a daily basis, the options exchanges use an average of less than 7,000 messages per second ("mps") during peak periods,

---

[5] See Securities Exchange Act Release Nos. 21929 (April 10, 1985), 50 FR 15258 (April 17, 1985) (File No. SR–Amex–85–6) (order approving $2.50 strike price intervals for options on individual stocks where the strike price is $25 or less) ("April 1985 Order"); 21644 (January 9, 1985), 50 FR 2360 (January 16, 1985) (File No. SR–Amex–84–31) (order approving $5 strike price intervals for options on stocks trading below $200); and 40157 (July 1, 1998), 63 FR 37426 ((July 10, 1998) (File No. SR–Amex–96–44) (order approving strike price intervals of $1 or greater for options on ETFs up to a strike price of $200 and strike price intervals of $5 or greater for ETF options where the strike price is over $200).

[6] As discussed more fully below, the Pilot Program will impose certain limitations on the Amex's ability to list $2½-point strike prices on options included in the Pilot Program.

[7] See Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (File Nos. SR–Amex–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26) (order permanently approving the 2½-point strike price pilot program). The 2½-point strike price program allows the Amex, the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. to list up to 200 equity options trading at a strike price greater than $25 but less than $50 at 2½-point intervals.

[8] See April 1985 Order, *supra* note 5.

[9] The reasons for submitting a cessation notice are as follows: (1) Expiration of available $1 strikes (*i.e.* the underlying stock price remains at or above $20); (2) series proliferation concerns; and (3) delisting because of, among other things, low price, merger, or takeover. In any event, with prior notice to the membership and customers, the Amex will continue to have the ability to cease trading any series that has became inactive and has no open interest.

[10] If the underlying stock trades below $20 after the Amex submits a cessation notice, the Amex could again list options on that stock at $1 strike prices provided the Amex included the class as one of its five allowable classes.

which is less than 25% of the total system capacity of 32,000 mps. According to the Amex, the Amex listed approximately 108,094 series in December 2000, approximately 100,632 series in September 2001, and approximately 88,494 series in April 2003. The Amex believes that the increase in the number of series resulting from the Pilot Program should be substantially less than the decreases in listed series experienced by the Exchange.

Furthermore, the Amex states that, to date, the options exchanges have not exceeded 11,000 mps for any extended period of time.[11] Therefore, the Amex believes that implementing the Pilot Program would not have a negative impact on OPRA system capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act [12] in general and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–36 and should be submitted by July 9, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than $3 but less than $20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that the Amex monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the Amex's proposal on a pilot basis. In the event that Amex proposes to extend the Pilot Program beyond June 5, 2004; expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal.[16] The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Amex selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Amex's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed them; (6) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission believes that the proposal to codify previously approved options strike price interval guidelines in Amex Rule 903 and to revise Amex Rule 903 to describe the options' exchanges existing 2½-point strike price program with greater specificity should help to clarify the Amex's rules and facilitate compliance with them, thereby protecting investors and the public interest.

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amex's Pilot Program is identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved.[17] Notice of the CBOE Pilot was published for comment [18] and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the Amex's Pilot Program raises no issues of regulatory concern. Amendment No. 2 clarifies the proposal by specifying the expiration date for the Pilot Program and the strike price intervals for options on individual stocks and ETFs. For these reasons, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,[19] to approve the Amex's proposal, as amended, on an accelerated basis, through June 5, 2004.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–2003–36) and Amendments No. 1 and 2 thereto are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15353 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

[11] According to the Amex, on November 6, 2002, the OPRA five-minute message peak was 8,203 mps and on November 13, 2002, the one-minute peak was 10,091 mps.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission expects the Amex to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the Amex wishes to extend, expand, or seek permanent approval of the Pilot Program.

[17] *See* Securities Exchange Act Release No. 47991 (June 5, 2003) (order approving File No. SR–CBOE–2001–60).

[18] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

[19] 15 U.S.C. 78f(b)(5) and 78s(b).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48019; File No. SR–PCX–2003–16]

Self-Regulatory Organizations; Notice of Filing and Order Accelerating Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to an Amendment to the Auto-Ex Incentive Program

June 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 21, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 6, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its rules to extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program until June 30, 2004. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 25, 2001, the Commission approved, as a nine-month pilot program, the Exchange's proposal to amend Rule 6.87, which governs the operation of Auto-Ex,[4] to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.[5] On June 7, 2002, the Commission extended the Auto-Ex Incentive Program pilot for six months [6] and on December 24, 2002, the Commission extended the pilot for an additional six months.[7] The pilot program is currently set to expire on June 24, 2003.

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to the percentage of their in-person agency [8] contracts traded in an issue (excluding Auto-Ex contracts) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.[9] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program from June 24, 2003 through June 30, 2004. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus", on an issue-by-issue basis.[10] As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Incentive Program. PCX Plus will eventually replace the Auto-Ex Incentive Program in its entirety. Therefore, the Exchange believes that an extension of the program is warranted until June 30, 2004, the date on which PCX Plus will be completely operative.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)[11] of the Act, in general, and furthers the objectives of

[3] *See* Letter from Tania J. Cho, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 5, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX amended its proposal to request an extension of its Auto-Ex Incentive Program pilot until June 30, 2004, rather than June 24, 2004, as stated in the original proposal, so that the pilot's expiration coincides with the date on which the Exchange's "PCX Plus" system will be completely operative. *See supra* n. 10 and accompanying text.

[4] Auto-Ex is the Exchange's Automated Execution system feature of POETS for market or marketable limit orders. The Pacific Options Exchange Trading System ("POETS") is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements of the Exchange.

[5] *See* Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001) (SR–PCX–01–05).

[6] *See* Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002) (SR–PCX–2002–34).

[7] *See* Exchange Act Release No. 47088 (December 24, 2002), 68 FR 140 (January 2, 2003) (SR–PCX–2002–78).

[8] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Markets Makers in person in the trading crowd.

[9] The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

[10] *See* Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (" PCX Plus Order").

[11] 15 U.S.C. 78f(b).

section 6(b)(5),[12] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to the File No. SR–PCX–2003–16 and should be submitted by July 9, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the Commission approve this proposed rule change on an accelerated basis. After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[13] The Commission notes that this proposal is the latest in a series of Auto-Ex Incentive Pilot Program extensions previously approved by the Commission.[14] Further, the Commission notes that the Auto-Ex Incentive Pilot Program itself has remained substantively unchanged since it was originally approved by the Commission as a nine-month pilot.[15] The Commission believes that an extension until June 30, 2004 provides an appropriate period of time for the Exchange to continue its Auto-Ex Incentive Program while it phases-in its new trading platform for options, "PCX Plus," on an issue-by-issue basis. Once "PCX Plus" is fully implemented, the Exchange no longer will need to operate its Auto-Ex system.[16] Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

Is it therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PCX–2003–16), as amended, is hereby approved on an accelerated basis, as a pilot program scheduled to expire on June 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15313 Filed 6–17–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] Id. In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[14] *See* Exchange Act Release No. 47088 (December 24, 2002), 68 FR 140 (January 2, 2003) (SR–PCX–2002–78) (six-month extension); Securities Exchange Act Release No. 46115 (June 25, 2002); 67 FR 44494 (July 2, 2002) (SR–PCX–2002–34) (six-month extension).

[15] *See* Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001) (SR–PCX–01–05).

[16] *See* PCX Plus Order, supra n. 10.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee; (Amendment #5)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 10, 2003, the above numbered declaration is hereby amended to include Blount, Cocke, Jefferson and Sevier Counties in the State of Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing through May 30, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Greene and Hamblen in the State of Tennessee; and Haywood and Madison counties in the State of North Carolina may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 12, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–15357 Filed 6–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3510]

Commonwealth of Virginia

Southampton County and the contiguous counties of Greensville, Isle of Wight, Surry, Sussex, and the Independent Cities of Franklin and Suffolk in the Commonwealth of Virginia; and Gates, Hertford, and Northampton Counties in the State of North Carolina constitute a disaster area due to damages caused by severe storms, hail, and tornadoes that occurred on May 9, 2003. Applications for loans for physical damage may be filed until the close of business on August 11, 2003 and for economic injury until the close of business on March 11, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The numbers assigned to this disaster for physical damage are 351012 for Virginia and 351112 for North Carolina. The numbers assigned to this disaster for economic damage are 9V8100 for Virginia and 9V8200 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 11, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–15358 Filed 6–17–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4351]

United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on Wednesday, July 9, 2003 from 10:30 a.m. to 12 p.m. at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC.

This meeting announcement does not meet the official deadline due to constraints imposed by the travel of senior officials who will brief on WSIS. Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov*.

Dated: June 5, 2003.

Joseph P. Richardson,

Office of Multilateral Affairs, International Communications and Information Policy, Department of State.

[FR Doc. 03–15386 Filed 6–17–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Turbine Rotor Strength Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed advisory circular (AC) Number 33.27–1, Turbine Rotor Strength Requirements of 14 CFR 33.27.

DATES: Comments must be received on or before August 1, 2003.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7114; fax: (781) 238–7199; e-mail: *timoleon.mouzakis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by donwloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl*. The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

Background

This AC provides guidance and acceptable methods, but not the only methods, for demonstrating compliance with the rotor strength (overspeed) requirements of § 33.27 of title 14 of the Code of Federal Regulations (14 CFR 33.27).

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on June 11, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–15402 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with title 49 Code of Federal Regulations (CFR) section 211.41, and 49 U.S.C. 20103, this notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being sought, and the petitioner's argument in favor of relief.

Canadian National Railway; FRA Waiver Petition No. FRA–2003–15012

Canadian National Railway (CN) located in Montreal, Canada, seeks a permanent waiver of compliance from 49 CFR 241.7(c), *United States Locational Requirements for Dispatching of United States Rail Operations*, to allow the continuation of Canadian dispatching of that part of the Sprague Subdivision located in the United States, extending between Baudette, Minnesota, and International Boundary, Minnesota, approximately 43.8 miles and on those parts of the Strathroy and Flint Subdivisions located in the United States, forming a continuous line between Sarnia, Ontario, Canada, through the St. Clair River Tunnel, and Port Huron, Michigan, approximately 3.1 miles, as defined in appendix A to part 241. This request formalizes the request for waiver requirement contained in part 241, specifically § 241.7(c)(3), which refers to territory that was previously

grandfathered in the exceptions to extraterritorial dispatching contained in FRA's Interim Final Rule (*see* 66 FR 63942, December 11, 2001).

In this regard, the track segments identified in the Interim Final Rule remains the same as identified above. With respect to the Sprague Subdivision, this is part of a continuous line extending between Rainy River, Ontario, and Navin, Manitoba, Canada, a distance of 145.2 miles, a portion of which cuts across a corner of the State of Minnesota, from the U.S./Canadian border near Baudette, Minnesota (milepost 1.1), and the U.S./Canadian border at a point identified as International Boundary, Minnesota, milepost 44.9, a distance of approximately 43.8 miles. Approximately 15 trains per day are operated over this segment. Each train that traverses this territory is operated by the same crew. The entire Sprague Subdivision is single track and is operated under a Centralized Traffic Control system, controlled from a single dispatching desk at CN's Rail Traffic Control Center in Edmonton, Alberta, Canada. With respect to the Strathroy and Flint Subdivisions, this is part of a continuous line extending between London, Ontario, Canada, and Port Huron, Michigan, a distance of 61.7 miles, a 3.1 mile portion of which is located in the United States. Approximately 26 trains per day are operated over this segment. Each train that traverses this territory is operated by the same crew. This segment consists of a single track for approximately 1.1 miles, and two main tracks for the remaining 2.0 miles, and is operated under a Centralized Traffic Control system, controlled from a single dispatching desk at CN's Rail Traffic Control Center in Toronto, Ontario, Canada. Dispatching of all trackage of the Sprague Subdivision and the Strathroy and Flint Subdivisions is an entirely English operation and fully dispatched in English. Canadian Rail Operating Rules (CROR) and CN's Timetable and Special Instructions govern train operations on this trackage. CN uses English (or Imperial) units for all aspects of railroad operations, including distance, speed, and location. The CN dispatchers are covered under their company drug and alcohol policies and their dispatching office is under 24-hour security. Transport Canada Rail Safety Directorate has the legislative safety jurisdiction over CN in accordance with the provisions contained in the Railway Safety Act over all federally regulated railways operating in Canada.

Based on the foregoing, CN seeks a permanent waiver of compliance from 49 CFR 241.7(c), *United States Locational Requirements for Dispatching of United States Rail Operations*, to allow the continuation of Canadian dispatching on that part of the Sprague Subdivision located in the United States and on those parts of the Strathroy and Flint Subdivisions located in the United States, as described above.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with the request for a waiver of certain regulatory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA 2003–15012) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including CN's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued in Washington, DC on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15394 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) section 211.41, and 49 U.S.C. 20103, this notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being sought, and the petitioner's argument in favor of relief.

Canadian Pacific Railway; FRA Waiver Petition No. FRA–2003–15010

Canadian Pacific Railway (CP) located in Montreal, Canada, seeks a permanent waiver of compliance from 49 CFR 241.7(c), *United States Locational Requirements for Dispatching of United States Rail Operations* to allow the continuation of Canadian dispatching of that part of the Windsor Subdivision located in the United States, extending between Windsor, Ontario, Canada, and Detroit, Michigan, approximately 1.8 miles, as defined in appendix A to part 241. This request formalizes the request for waiver requirement contained in part 241, specifically § 241.7(c)(3), which refers to territory that was previously grandfathered in the exceptions to extraterritorial dispatching contained in FRA's Interim Final Rule (*see* 66 FR 63942, December 11, 2001).

In this regard, the track segment identified in the Interim Final Rule remains the same as identified above. All trains operated into the United States are of very short distances to an interchange point with a U.S. railroad and are always under the control of a single crew. All dispatching is conducted in English. All units of measure are the same as those used in the U.S. Because of the very short distances, all train operations in the U.S. are under the control of a single dispatching desk, located in CP's Network Management Center in Montreal, Quebec, Canada. CP operates approximately 6 to 8 trains a day over this segment. The trackage is operated under a Centralized Traffic Control system and consists of two main tracks for the entire 1.8 mile distance. Movements are governed by the Canadian Rail Operating Rules (CROR) and CP's Timetable and Special Instructions. CP's train dispatchers are covered under their company drug and alcohol policies and their dispatching office is under 24-hour security. Transport Canada Rail Safety Directorate has the legislative safety jurisdiction over CP in accordance with the provisions contained in the Railway Safety Act over all federally regulated railways operating in Canada.

Based on the foregoing, CP seeks a permanent waiver of compliance from 49 CFR 241.7(c), *United States Locational Requirements for Dispatching of United States Rail Operations*, to allow the continuation of Canadian dispatching on that part of the Windsor Subdivision located in the United States, between Windsor, Ontario, Canada, and Detroit, Michigan, approximately 1.8 miles.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with the request for a waiver of certain regulatory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA 2003–15010) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including CP's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued in Washington, DC, on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15391 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Dakota, Minnesota & Eastern Railroad

[Docket Number FRA–2003–14986]

Dakota, Minnesota & Eastern Railroad (DM&E) seeks a waiver of compliance from the provisions of the *Track Safety Standards*, 49 CFR 213.113(a), regarding defective rails.

The DM&E is petitioning for a waiver which would provide relief from replacing rails that contain bolt hole/rail crack-outs that emanate from the edge of the rail to the bolt hole 'one' location of various rail joint locations.

The petitioner states that rails with bolt-hole/rail crack-outs up to 6″ maximum from the end of the rail to the bolt hole 'one' location can be allowed to remain in service as the broken-out piece of rail remains tightly held by the joint bars and thus poses less danger of breaking loose. The petitioner proposes to institute a 10 MPH slow order at these locations as well as schedule daily visual inspections in lieu of constant visual inspection of each operation over that defect (for up to no more than 30 days for any instance) by qualified personnel as per 49 CFR 213.7. If the cracks grow greater than 6″ from the edge of rail or the rail section becomes loose, priority will be given to that location for an immediate rail replacement. The petitioner feels that this will enable the DM&E to more efficiently utilize its limited resources.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2003–14986) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov*.

Issued in Washington, DC on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15399 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with title 49 Code of Federal Regulations (CFR) section 211.41 and 49 U.S.C. 20103, this notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being

sought, and the petitioner's argument in favor of relief.

Eastern Maine Railway; FRA Waiver Petition No. FRA–2003–15011

Eastern Maine Railway (EMRY), located in St. John, New Brunswick, Canada, seeks a permanent waiver of compliance from 49 CFR 241.7(c), *United States Locational Requirements for Dispatching of United States Rail Operations*, to allow the continuation of Canadian dispatching of that part of Mattawamkeag Subdivision located in the United States extending between Vanceboro, Maine, and Brownville Junction, Maine, approximately 99 miles, as defined in Appendix A to Part 241. This request was submitted in accordance with § 241.7(c)(3), which permits waiver of the requirements found in Part 241 that all dispatching of U.S. rail operations be conducted in the U.S. This territory was previously grandfathered in the exceptions to extraterritorial dispatching contained in FRA's Interim Final Rule (*see* 66 FR 63942, December 11, 2001).

In this regard, the track segment identified in the Interim Final Rule remains the same as identified above. This segment consists of a single main track dispatched from a single desk at the EMRY's Rail Traffic Control office in St. John, New Brunswick, Canada, under Canadian Rail Operating Rules (CROR), and the EMRY's Timetable and Special Instructions. The trackage is non-signaled and operated under Occupancy Control System rules. All dispatching is conducted in English. All units of measure are the same as those used in the U.S. EMRY operates approximately 2 trains a day over this segment. The train dispatchers who perform the dispatching function for the EMRY are employed by the New Brunswick Southern Railway (NBSR) and are therefore covered under the NBSR's company drug and alcohol policies and their dispatching office is under 24-hour security. The Department of Transportation of the Province of New Brunswick, Canada, is the regulatory authority which exercises safety jurisdiction over the New Brunswick Southern Railway, which provides dispatching services for the EMRY.

Based on the foregoing, EMRY seeks a permanent waiver of compliance from 49 CFR 241.7(c), *United States Locational Requirements for Dispatching of United States Rail Operations*, to allow the continuation of Canadian dispatching on that part of the Mattawamkeag Subdivision located in the United States, as described above.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with the request for a waiver of certain regulatory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA 2003–15011) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including EMRY's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued in Washington, DC on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15395 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

National Railroad Passenger Corporation

[Docket Number FRA–2003–14444]

The National Railroad Passenger Corporation (Amtrak) has petitioned for a permanent waiver of compliance for the Acela trainsets and HHP–8 Electric locomotives from certain dimensional requirements of the Railroad *Passenger Equipment Safety Standards*, 49 CFR 238.429 and Safety Appliance Standards, 49 CFR 231.14. Amtrak requests this relief due to the unique carbody design of this new equipment and its structural frame that precludes installation of safety appliances compliant with the safety standards. Amtrak and the equipment's manufacturer have made every effort to bring the safety appliance arrangement into compliance, but find it not possible for the following items:

- Requirements of § 238.429(d)(4) & § 231.14(c)(3)(ii)—"The maximum and minimum distances from the top of the rail for vertical handrails and handholds shall be 51 inches * * *".

Proposed alternate compliance—The current handholds are approximately 68 inches from the top of the rail. The structural integrity of the carbody side sill would be compromised by strict adherence to this dimensional requirement. Amtrak proposes an alternate solution with the installation of additional horizontal handholds on either side of the cab door, approximately 53 to 54 inches from the top of the rail. These additional handholds will provide personnel the support necessary for a safe ingress to the powercar or locomotive cab area while eliminating the danger of weakening the side sill structure. Additionally, carbody clearance constraints and strict infrastructure clearance limits dictate that the horizontal handholds have a maximum clearance of 2.0 inches..

- Requirements of § 238.429(d)(5)—"Vertical handrails and handholds shall continue to a point equal to the top edge of the control cab door."

Relief Requested—The powercar's structural members are arranged such that they extend to a point several inches below the top of the control cab door to maximize the integrity of the upper framework. The vertical handholds are arranged to avoid interference with these structural members. Serious consideration was given toward applying a horizontal handhold on the uppermost portion of the doorframe interior as an alternate compliance, but after further analysis Amtrak determined that this would pose a greater safety risk during the ingress and egress of personnel at this location. Therefore, permanent relief from the requirement that the vertical handhold continue to a point equal to the top edge of the control cab door is requested.

- Requirements of § 238.429(e)(4) & 231.14(b)(2)—"The minimum clear depth of the sill step shall be 8 inches".

Regarding the sill steps, to decrease the distance in the vertical rise measurement from the original 21 inches it was necessary to raise the upper step. This revised design maintains the clear depth measurement at 7.5 inches. Amtrak believes that decreasing the vertical rise while maintaining the depth between the step and the carbody ensures a safer sill step area.

- Requirements of § 238.429(e)(6) & § 231.14(b)(4)—"Sill steps shall not have a vertical rise between treads exceeding 18 inches".

Proposed alternate compliance—The original sill step configuration had a vertical rise of 21 inches due to constraints with the design of the carbody's side sill. This alternate design lowers this distance to approximately 20 inches. However, further decrease of this dimension would result in a corresponding decrease of the 7.5-inch clear depth of the sill step.

- Requirements of § 238.429(e)(10)—"50% of the tread surface area of each sill step shall be open space".

Proposed alternate compliance—Amtrak believes that the current serrated design for the lower step, with 2.25-inch high foot guards on each side, combined with a non-skid surface material would provide a safer tread surface than a more traditional open space design.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Waiver Petition Docket Number FRA–2003–14444) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued in Washington, DC on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15392 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15301

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway (BNSF) seeks approval of the proposed modification of the traffic control system, on the two main tracks at Burlington, Iowa, milepost 205.48, on the Nebraska Division, Ottumwa Subdivision. The proposed changes consist of the conversion of the power-operated switch to hand operation, equipped with an electric lock, and removal of the three associated absolute controlled signals on Main Track No. 2, and the discontinuance and removal of the back to back intermediate signals on Main Track No. 1.

The reasons given for the proposed changes are that the switch at one time was used for passenger service to the depot, but now the track is used to tie up a switch engine once or twice a week, and due to the short blocks on Main Track No. 1.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15393 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15145

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway (BNSF) seeks approval of the proposed discontinuance and removal of the automatic block signal system, between Hettinger, North Dakota, milepost 926.0 and Terry, Montana, milepost 1078.9, on the Montana Division, Hettinger Subdivision, a distance of approximately 153 miles, with governance of train movements by Track Warrant Control.

The reason given for the proposed changes is that due to an ice storm which disabled about 35 percent of the pole line on the Subdivision, the signal pole line is in need of large amounts of replacement capital to restore and rehabilitate this line. BNSF believes that this scarce capital would be much better spent on other lines with greater track density, because this line averages only four trains per day.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15397 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15194

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system at South Wye, milepost ANA 587.80, near Waycross, Georgia, on the Jesup Subdivision, Jacksonville Service Lane. The proposed change consists of the discontinuance and removal of controlled absolute signal 220RD, associated with the addition of aspects to controlled absolute signal 222RA to govern southward diverging routes from Rice Yard to the Main Track.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15398 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15102

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer C&S Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303.

The Norfolk Southern Corporation seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the two main tracks between Clair, New Jersey, milepost 11.7 and DB-Junction, New Jersey, milepost 4.3, on the Orange Running Track, Harrisburg Division. The proposal includes retention of the interlocking signals at DB-Junction.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation. Both tracks are only used for local access to the Orange Industry Track.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on June 11, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–15396 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 4, 2003. No comments were received.

DATES: Comments must be submitted on or before July 18, 2003.

FOR FURTHER INFORMATION CONTACT: James Zok, maritime Administration (MAR–500), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0364; FAX: 202–366–9580, or e-mail: *jim.zok@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Customer Service Survey.

OMB Control Number: 2133–0528.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals receiving goods and services from the Maritime Administration.

Forms: MA–1016, MA–1017, and MA–1021.

Abstract: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of satisfaction with existing services. This collection provides the instruments used to collect the information regarding MARDAD programs and services.

Annual Estimated Burden Hours: 256 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on June 13, 2003.

Joel C. Richard,

Secretary Maritime Administration.

[FR Doc. 03–15371 Filed 6–17–03; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 18, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0139.
Form Number: IRS Form 2106.
Type of Review: Revision.
Title: Employee Business Expenses.
Description: Internal Revenue Code (IRC) section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing "Adjusted Gross Income". Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106 is used to figure these expenses.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 5,567,188.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 11 min.
Learning about the law or the form—27 min.
Preparing and sending the form—1 hr., 27 min.
Copying, assembling, and sending the form to the IRS—34 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 22,809,519 hours.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120	71 hr., 18 min	43 hr., 29 min	75 hr., 24 min	8 hr., 18 min.
1120–A	43 hr., 44 min	23 hr., 6 min	41 hr., 35 min	4 hr., 49 min.
Schedule D (1120)	7 hr., 10 min	4 hr., 6 min	6 hr., 16 min	32 min.
Schedule H (1120)	5 hr., 58 min	35 min	43 min	0 min.
Schedule N (1120)	3 hr., 35 min	1 hr., 7 min	3 hr., 6 min	32 min.
Schedule PH (1120)	15 hr., 18 min	6 hr., 12 min	8 hr., 35 min	32 min.

OMB Number: 1545–0890.
Form Number: IRS Form 1120–A.
Type of Review: Extension.
Title: U.S. Corporation Short-Form Income Tax Return.
Description: Form 1120–A is used by small corporations, those with less that $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 191,769.
Estimated Burden Hours Per Respondent/Recordkeeper:
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 19,152,552 hours.

OMB Number: 1545–1057.
Form Number: IRS Form 8800.
Type of Review: Extension.
Title: Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.
Description: Form 8800 is used by partnerships, real estate mortgage investment conduits (REMICs), and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 11 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 3,800 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–15382 Filed 6–17–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 9, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 18, 2003 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0056.
Form Number: SF 3881.
Type of Review: Extension.
Title: ACH Vendor/Miscellaneous Payment Enrollment Form.
Description: Payment data will be collected from vendors doing business with the Federal Government. FMS/Treasury will use the information to electronically transmit payments to vendors' financial institutions. The affected public includes (but not limited to) business, state/local governments, corporations, educational institutions, and other organizations.
Respondents: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 70,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17,500 hours.
Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–15383 Filed 6–17–03; 8:45 am]
BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.
ACTION: Notice and request for comments.

SUMMARY: Now that the Commission has concluded the testimonial portion of its work, it will accept final written comments from any party who wishes to submit them for consideration.

The Commission has established three methods by which final comments can be submitted for consideration and review:

1. Transmission by E-mail to the following address: *pcusps_final@do.treas.gov*. Statements can be embedded in the E-mail as ASCII text or sent as a MS Word or ASCII text attachment. Do not include artwork or other graphic elements.

2. Stored on 3½ inch high density computer disk as a MS word or ASCII text document (Windows format only) and mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

3. Typewritten statements may be mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

DATES: E-mail transmissions of all final comments must be received by the Commission no later than 5 p.m. eastern standard time on Tuesday, July 8. Mailed submissions must be postmarked no later than 5 p.m. eastern standard time on Tuesday, July 8.

To be accepted by the Commission, final comments must not exceed a maximum length of 10 pages of double-spaced written text.

SUPPLEMENTARY INFORMATION: Please be aware that the Commission may, at its discretion, post any final comments it receives on the Commission's Web site at *www.treas.gov/offices/domestic-finance/usps*.

FOR FURTHER INFORMATION CONTACT: If you have any questions about this final-comment process, please contact Jana Sinclair White or James Cox of the Commission staff at (202) 622–5930.

Dated: June 12, 2003.

Roger Kodat,
Designated Federal Official.
[FR Doc. 03–15319 Filed 6–17–03; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Fund's conflict of interest reporting requirements for contract readers of applications submitted for funding under the Fund's various programs.

DATES: Written comments should be received on or before August 18, 2003 to be assured of consideration.

ADDRESSES: Direct all comments to Jeffrey C. Berg, Legal Counsel, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: A copy of the conflict of interest information collection or requests for additional information may be obtained by contacting Jeffrey C. Berg, Legal Counsel, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Telephone Number (202) 622–8662, Facsimile Number (202) 622–7754.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Fund—Conflict of Interest Package for Non-Federal Readers.
OMB Number: 1559–0011.
Abstract: Through its programs the Fund supports financial institutions around the country that are specifically dedicated to financing and supporting community and economic development activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investments areas and targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions, particularly in the areas of promoting homeownership, developing of affordable housing, and stimulating small business development, as well as providing financial services to those that have not previously accessed financial institutions.

Consistent with the Federal Acquisition Regulations provisions on conflicts of interest, the Fund has applied, and will continue to apply, a conflict of interest policy with respect to its contract (non-Federal employee) readers that avoids a reader's participation in the evaluation or process of selection of applications where such participation creates a conflict of interest or an appearance of a conflict of interest. The conflict of interest review materials are used by the Fund to determine whether or not a contractor's financial interest, or that of the contractor's spouse, parent, dependent child, or member of household, may result in a conflict, or apparent conflict of interest with the individual's duties and responsibilities as a contractor evaluating applications. The completion of the package is mandatory for all contractors prior to their selection as readers.

Current Action: Extension.
Type of Review: Renewal.
Affected Public: Individuals.
Estimated Number of Respondents: 80.
Estimated Annual Time Per Respondent: 0.75 hours.
Estimated Total Annual Burden Hours: 60 hours.
Requests for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703(c); and 48 CFR subpart 9.5.

Dated: June 11, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–15359 Filed 6–17–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions ("CDFI") Program; Certification/Re-certification Application.

DATES: Written comments should be received on or before August 18, 2003 to be assured of consideration.

ADDRESSES: Direct all comments to Linda G. Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The Certification/Re-certification application will be in the same form as the Eligibility and Certification Materials section of the CDFI Program—Technical Assistance Component application (located at Part II, page 21), except that questions under Subparts A and C will not be included in the stand-alone Certification/Re-certification application and there will be no opportunities for applicants that do not meet a specific certification requirement(s) to provide a narrative describing its proposal to meet such requirement(s).The Technical Assistance Component application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda G. Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Program—Certification/Re-Certification Application.

OMB Number: 1559–0006.

Abstract: The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified CDFIs. Through the CDFI Program, the Fund makes financial investments in and may provide technical assistance grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development finance purposes. In order to be certified as a CDFI, an entity must submit an application for certification to the Fund.

Type of Review: Extension.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 215.

Estimated Annual Time Per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 8,600 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: June 12, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–15360 Filed 6–17–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–103805–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–103805–99 (TD 9002), Agent for Consolidated Group (§ 1.1502–77).

DATES: Written comments should be received on or before August 6, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agent for Consolidated Group.

OMB Number: 1545–1699.

Regulation Project Number: REG–103805–99.

Abstract: The information is needed in order for a terminating common parent of a consolidated group to designate a substitute agent for the group and receive approval of the Commissioner, or for a default substitute agent to notify the Commissioner that it is the default substitute agent, pursuant to Treas. Reg. § 1.1502–77(d). The Commissioner will use the information to determine whether to approve the designation of the substitute agent (if approval is required) and to change the IRS's records to reflect the information about the substitute agent.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15284 Filed 6–17–03; 8:45 am]

BILLING CODE 4830–01–M

Federal Register

Wednesday,
June 18, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 210, 228, et al.

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240, 249, 270 and 274

[Release Nos. 33–8238; 34–47986; IC–26068; File Nos. S7–40–02; S7–06–03]

RIN 3235–AI66 and 3235–AI79

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by Section 404 of the Sarbanes-Oxley Act of 2002, we are adopting rules requiring companies subject to the reporting requirements of the Securities Exchange Act of 1934, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The internal control report must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company; management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year; a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting; and a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on management's assessment of the company's internal control over financial reporting. Under the new rules, a company is required to file the registered public accounting firm's attestation report as part of the annual report. Furthermore, we are adding a requirement that management evaluate any change in the company's internal control over financial reporting that occurred during a fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. Finally, we are adopting amendments to our rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to revise the Section 302 certification requirements and to require issuers to provide the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as exhibits to certain periodic reports.

DATES: *Effective Date:* August 14, 2003.

Compliance Dates: The following compliance dates apply to companies other than registered investment companies. A company that is an "accelerated filer," as defined in Exchange Act Rule 12b–2, as of the end of its first fiscal year ending on or after June 15, 2004, must begin to comply with the management report on internal control over financial reporting disclosure requirements in its annual report for that fiscal year. A company that is not an accelerated filer as of the end of its first fiscal year ending on or after June 15, 2004, including a foreign private issuer, must begin to comply with the annual internal control report for its first fiscal year ending on or after April 15, 2005. A company must begin to comply with the requirements regarding evaluation of any material change to its internal control over financial reporting in its first periodic report due after the first annual report required to include a management report on internal control over financial reporting. Companies may voluntarily comply with the new disclosure requirements before the compliance dates. A company must comply with the new exhibit requirements for the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 and changes to the Section 302 certification requirements in its quarterly, semi-annual or annual report due on or after August 14, 2003. To account for the differences between the compliance date of the rules relating to internal control over financial reporting and the effective date of changes to the language of the Section 302 certification, a company's certifying officers may temporarily modify the content of their Section 302 certifications to eliminate certain references to internal control over financial reporting until the compliance date, as further explained in Section III.E. below.

Registered investment companies must comply with the rule and form amendments applicable to them on and after August 14, 2003, except as follows. Registered investment companies must comply with the amendments to Exchange Act Rules 13a–15(a) and 15d–15(a) and Investment Company Act Rule 30a–3(a) that require them to maintain internal control over financial reporting with respect to fiscal years ending on or after June 15, 2004. In addition, a registered investment company's certifying officers may temporarily modify the content of their Section 302 certifications to eliminate certain references to internal control over financial reporting, as further explained in Section II.I. below. Registered investment companies may voluntarily comply with the rule and form amendments before the compliance dates.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, or Andrew D. Thorpe, Special Counsel, Division of Corporation Finance, at (202) 942–2910, or with respect to registered investment companies, Christian Broadbent, Senior Counsel, Division of Investment Management, at (202) 942–0721, or with respect to attestation and auditing issues, Edmund Bailey, Assistant Chief Accountant, Randolph P. Green, Professional Accounting Fellow, or Paul Munter, Academic Accounting Fellow, Office of the Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are revising Items 307, 401 and 601 of Regulations S–B [1] and S–K; [2] adding new Item 308 to Regulations S–B and S–K; amending Form 10–K,[3] Form 10–KSB,[4] Form 10–Q,[5] Form 10–QSB,[6] Form 20–F,[7] Form 40–F,[8] Rule 12b–15,[9] Rule 13a–14,[10] Rule 13a–15,[11] Rule 15d–14 [12] and Rule 15d–15 [13] under the Securities Exchange Act of 1934 (the "Exchange Act"); [14] amending Rules 1–02 and 2–02 [15] of Regulation S–X; [16] amending Rules 8b–15,[17] 30a–2 [18] and 30a–3 [19] under the Investment Company Act of 1940 ("Investment Company Act"); [20] and amending Forms N–CSR [21] and N–SAR [22] under the Exchange Act and the Investment Company Act.

Table of Contents

I. Background
A. Management's Report on Internal Control over Financial Reporting
B. Certifications
II. Discussion of Amendments Implementing Section 404
A. Definition of Internal Control
1. Proposed Rule
2. Comments on the Proposal
3. Final Rules
B. Management's Annual Assessment of, and Report on, the Company's Internal Control over Financial Reporting
1. Proposed Rule
2. Comments on the Proposal
3. Final Rules
a. Evaluation of Internal Control over Financial Reporting
b. Auditor Independence Issues
c. Material Weaknesses in Internal Control over Financial Reporting
d. Method of Evaluating
e. Location of Management's Report
C. Quarterly Evaluations of Internal Control over Financial Reporting
1. Proposed Rule
2. Comments on the Proposal
3. Final Rules
D. Differences between Internal Control over Financial Reporting and Disclosure Controls and Procedures
E. Evaluation of Disclosure Controls and Procedures
F. Periodic Disclosure about the Certifying Officers' Evaluation of the Company's Disclosure Controls and Procedures and Disclosure about Changes to its Internal Control over Financial Reporting
1. Existing Disclosure Requirements
2. Proposed Amendments to the Disclosure Requirements
3. Final Disclosure Requirements
4. Conclusions Regarding Effectiveness of Disclosure Controls and Procedures
G. Attestation to Management's Internal Control Report by the Company's Registered Public Accounting Firm
H. Types of Companies Affected
1. Foreign Private Issuers
2. Asset-Backed Issuers
3. Small Business Issuers
4. Bank and Thrift Holding Companies
I. Registered Investment Companies
J. Transition Period
III. Discussion of Amendments Related to Certifications
A. Proposed Rules
B. Final Rules
C. Effect on Interim Guidance Regarding Filing Procedures
D. Form of Section 302 Certifications
E. Transition Period
IV. Paperwork Reduction Act
V. Cost-Benefit Analysis
VI. Effect on Efficiency, Competition and Capital Formation
VII. Final Regulatory Flexibility Analysis
VIII. Statutory Authority and Text of Rule Amendments

[1] 17 CFR 228.10 *et seq.*
[2] 17 CFR 229.10 *et seq.*
[3] 17 CFR 249.310.
[4] 17 CFR 249.310b.
[5] 17 CFR 249.308a.
[6] 17 CFR 249.308b.
[7] 17 CFR 249.220f.
[8] 17 CFR 249.240f.
[9] 17 CFR 240.12b–15.
[10] 17 CFR 240.13a–14.
[11] 17 CFR 240.13a–15.
[12] 17 CFR 140.15d–14.
[13] 17 CFR 240.15d–15.
[14] 15 U.S.C. 78a *et seq.*
[15] 17 CFR 210.1–02 and 2–02.
[16] 17 CFR 210.1–01 *et seq.*
[17] 17 CFR 270.8b–15.
[18] 17 CFR 270.30a–2.
[19] 17 CFR 270.30a–3.
[20] 15 U.S.C. 80a–1 *et seq.*
[21] 17 CFR 249.331; 17 CFR 274.128.
[22] 17 CFR 249.330; 17 CFR 274.101.

I. Background

A. Management's Report on Internal Control Over Financial Reporting

In this release, we implement Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),[23] which requires us to prescribe rules requiring each annual report that a company, other than a registered investment company,[24] files pursuant to Section 13(a) or 15(d) of the Exchange Act to contain an internal control report: (1) Stating management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. Section 404 also requires every registered public accounting firm that prepares or issues an audit report on a company's annual financial statements to attest to, and report on, the assessment made by management. The attestation must be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board ("PCAOB").[25] Section 404 further stipulates that the attestation cannot be the subject of a separate engagement of the registered public accounting firm.

We received over 200 comment letters in response to our release proposing requirements to implement Sections 404, 406 and 407 of the Sarbanes-Oxley Act.[26] Of these, 61 respondents commented on the Section 404 proposals.[27] These comment letters came from corporations, professional associations, accountants, law firms, consultants, academics, investors and others. In general, the commenters supported the objectives of the proposed new requirements. Investors supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Other commenters, however, thought that we were requiring more disclosure than necessary to fulfill the mandates of the Sarbanes-Oxley Act and suggested modifications to the proposals. We have reviewed and considered all of the comments that we received on the proposals. The adopted rules reflect many of these comments—we discuss our conclusions with respect to each topic and related comments in more detail throughout the release.

B. Certifications

We also are adopting amendments to require companies to file the certifications mandated by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to annual, semi-annual and quarterly reports. Section 302 required the Commission to adopt final rules that were to be effective by August 29, 2002, under which the principal executive and principal financial officers, or persons performing similar functions, of a company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act [28] must provide a certification in

[23] Pub. L. 107–204, 116 Stat. 745 (2002).

[24] Section 404 of the Sarbanes-Oxley Act does not apply to any registered investment company due to an exemption in Section 405 of the Sarbanes-Oxley Act. See sec. 405 of Pub. L. 107–204, 116 Stat. 745 (2002).

[25] On April 25, 2003, the Commission approved the PCAOB's adoption of the auditing and attestation standards in existence as of April 16, 2003 as interim auditing and attestation standards. See Release No. 33–8222 (Apr. 25, 2003) [68 FR 23335].

[26] Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208] ("Proposing Release"). The public comments we received can be viewed in our Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–40–02. Public comments submitted by electronic mail are available on our Web site, *http://www.sec.gov.*

[27] The commenters on File No. S7–40–02 are as follows: *Academics* Paul Walker, Ph.D., CPA; *Accounting Firms* BDO Seidman, LLP; Deloitte & Touche LLP; Ernst & Young LLP; KPMG LLP; PricewaterhouseCoopers LLP; *Associations* America's Community Bankers; American Bankers Association; American Bar Association; American Corporate Counsel Association; American Institute of Certified Public Accountants; Association for Financial Professionals; the Association of the Bar of the City of New York; Association for Investment Management and Research; the Business Roundtable; Community Bankers Association of New York State; Edison Electric Institute; Financial Executives International; Independent Community Bankers of America; the Institute of Internal Auditors; Maine Bankers Association; Manufacturers Alliance/MAPI Inc.; Massachusetts Bankers Association; National Association of Real Estate Investment Trusts; New York Bankers Association; New York County Lawyers' Association; New York State Bar Association; Software & Information Industry Association; Software Finance and Tax Executives Council; Wisconsin Bankers Association; *Corporations* Cardinal Health, Inc.; Compass Bancshares, Inc.; Computer Sciences Corporation; Eastman Kodak Company; Eli Lilly and Company; Emerson Electric Co.; Executive Responsibility Advisors, LLC; Greif Bros.; Intel Corporation; International Paper Company; Protiviti; *Government Entities* Federal Reserve Bank of Atlanta; Small Business Administration; *Law Firms* Dykema Gossett PLLC; Karr Tuttle Campbell; Fried, Frank, Harris, Shriver and Jacobson; Sutherland, Asbill & Brennan LLP; *Individuals* Thomas Damman; D. Scott Huggins; Tim J. Leech; Simon Lorne; Ralph Saul; Lee Squire; Robert J. Stuckey; *Foreign Companies* Siemens Aktiengesellcraft; *International Entities* British Bankers Association; British Embassy; Canadian Bankers Association; Confederation of British Industry; European Commission; Institute of Chartered Accountants of England and Wales.

[28] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78*l*] to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the "Securities Act") to file such supplementary and periodic information, documents and reports as may be required pursuant

Continued

each quarterly and annual report filed with the Commission. Section 906 of the Sarbanes-Oxley Act added new Section 1350 to Title 18 of the United States Code,[29] which contains a certification requirement subject to specific federal criminal provisions and that is separate and distinct from the certification requirement mandated by Section 302.[30] On August 28, 2002, we adopted Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2 and amended our periodic report forms to implement the statutory directive in Section 302.[31] These rules and amendments became effective on August 29, 2002. On January 27, 2003, we adopted Form N–CSR to be used by registered management investment companies to file certified shareholder reports with the Commission.[32] The provisions added to Title 18 by Section 906 were by their terms effective on enactment of the Sarbanes-Oxley Act.

To enhance the ability of interested parties to effectively access the certifications through our Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system and thereby enhance compliance with the certification requirements, we proposed to amend our rules and forms to require a company to file the certifications as an exhibit to the periodic reports to which they relate.[33] The proposals addressed both Section 302 and 906 certifications. After discussions with the Department of Justice, we concluded that, in light of the inconsistent methods that companies have been employing to fulfill their obligations under Section 906,[34] an exhibit requirement would consistently enable investors and the Commission staff, as well as the Department of Justice, to more effectively monitor compliance with this certification requirement.

II. Discussion of Amendments Implementing Section 404

A. Definition of Internal Control

1. Proposed Rule

The proposed rules would have defined the term "internal controls and procedures for financial reporting"[35] to mean controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

As noted in the Proposing Release, there has been some confusion over the exact meaning and scope of the term "internal control," because the definition of the term has evolved over time. Historically, the term "internal control" was applied almost exclusively within the accounting profession.[36] As the auditing of financial statements evolved from a process of detailed testing of transactions and account balances towards a process of sampling and testing, greater consideration of a company's internal controls became necessary in planning an audit.[37] If an internal control component had been adequately designed, then the auditor could limit further consideration of that control to procedures to determine whether the control had been placed in operation. Accordingly, the auditor could rely on the control to serve as a basis to reduce the amount, timing or extent of substantive testing in the execution of an audit. Conversely, if an auditor determined that an internal control component was inadequate in its design or operation, then the auditor could not rely upon that control. In this instance, the auditor would conduct tests of transactions and perform additional analyses in order to accumulate sufficient, competent audit evidence to support its opinion on the financial statements.

From the outset, it was recognized that internal control is a broad concept that extends beyond the accounting functions of a company. Early attempts to define the term focused primarily on clarifying the portion of a company's internal control that an auditor should consider when planning and performing an audit of a company's financial statements.[38] However, this did not improve the level of understanding of the term, nor satisfactorily provide the guidance sought by auditors. Successive definitions and formal studies of the concept of internal control followed.

In 1977, based on recommendations of the Commission, Congress enacted the Foreign Corrupt Practices Act ("FCPA").[39] The FCPA codified the accounting control provisions contained in Statement of Auditing Standards No. 1 (codified as AU § 320 in the Codification of Statements on Auditing Standards). Under the FCPA, companies that have a class of securities registered under Section 12 of the Exchange Act, or that are required to file reports under Section 15(d) of the Exchange Act, are required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- transactions are executed in accordance with management's general or specific authorization;
- transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (2) to maintain accountability for assets;
- access to assets is permitted only in accordance with management's general or specific authorization; and
- the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.[40]

In 1985, a private-sector initiative known as the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission, was formed to study the financial reporting system in the United States. In 1987, the Treadway Commission issued a report recommending that its sponsoring organizations work together to integrate the various internal control concepts and definitions and to develop a common reference point.

In response, the Committee of Sponsoring Organizations of the Treadway Commission ("COSO")[41] undertook an extensive study of internal control to establish a common definition that would serve the needs of companies, independent public accountants, legislators and regulatory agencies, and to provide a broad framework of criteria against which companies could evaluate the effectiveness of their internal control systems. In 1992, COSO published its *Internal Control—Integrated Framework*.[42] The COSO Framework defined internal control as "a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives" in three categories—effectiveness and efficiency of operations; reliability of financial reporting; and compliance with applicable laws and regulations. COSO further stated that internal control consists of: the control environment, risk assessment, control activities, information and communication, and monitoring. The scope of internal control therefore extends to policies, plans, procedures, processes, systems, activities, functions, projects, initiatives, and endeavors of all types at all levels of a company.

In 1995, the AICPA incorporated the definition of internal control set forth in the COSO Report in Statement on Auditing Standards No. 78 (codified as AU § 319 in the Codification of Statements on Auditing Standards).[43] Although we recognized that the AU § 319 definition was derived from the COSO definition, our proposal referred to AU § 319 because we thought that the former constituted a more formal and widely-accessible version of the definition than the latter.

2. Comments on the Proposal

We received comments from 25 commenters on the proposed definition of "internal control and procedures for financial reporting." Eleven commenters stated that the proposed definition of internal control was appropriate or generally agreed with the proposal.[44] Two of these noted that the definition in AU § 319 had been adopted by the bank regulatory agencies for use by banking institutions.[45] Fourteen of the 25 commenters opposed the proposed definition. Two of these asserted that the proposed definition was too complex and would not resolve the confusion that existed over the meaning or scope of the term.

Several of the commenters that were opposed to the proposed definition thought that we should refer to COSO for the definition of internal control, rather than AU § 319.[46] Some of these commenters noted that the objective of AU § 319 is to provide guidance to auditors regarding their consideration of internal control in planning and performing an audit of financial statements. The common concern of these commenters was that AU § 319 does not provide any measure or standard by which a company's management can determine that internal control is effective, nor does it define what constitutes effective internal control. One commenter believed that absent such evaluative criteria or definition of effectiveness, the proposed rules could not be implemented effectively.[47] In addition, several of the commenters opposed to the proposed definition suggested that we use the term "internal control over financial reporting" rather than the term "internal controls and procedures for financial reporting,"[48] on the ground that the former is more consistent with the terminology currently used within the auditing literature.

A few of the commenters urged us to adopt a considerably broader definition of internal control that would focus not only on internal control over financial reporting, but also on internal control objectives associated with enterprise risk management and corporate governance. While we agree that these are important objectives, the definition that we are adopting retains a focus on financial reporting, consistent with our position articulated in the Proposing Release. We are not adopting a more expansive definition of internal control for a variety of reasons. Most important, we believe that Section 404 focuses on the element of internal control that relates to financial reporting. In addition, many commenters indicated that even the more limited definition related to financial reporting that we proposed will impose substantial reporting and cost burdens on companies. Finally, independent accountants traditionally have not been responsible for reviewing and testing, or attesting to an assessment by management of, internal controls that

---

to Section 13 in respect of a security registered pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any fiscal year. See Exchange Act Rule 12h-3 [17 CFR 240.12h-3].

[29] 29 18 U.S.C. 1350.

[30] See Release No. 34–46300 (Aug. 2, 2002) [67 FR 51508] at n. 11, containing supplemental information on the Commission's original certification proposal in light of the enactment of the Sarbanes-Oxley Act of 2002.

[31] See Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276].

[32] See Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348].

[33] See Release No. 33–8212 (Mar. 21, 2003) [68 FR 15600].

[34] These methods have included: (1) Submitting the statement as non-public paper correspondence; (2) submitting the statement as non-public electronic correspondence with the EDGAR filing of the periodic report; (3) submitting the statement under (1) or (2) above supplemented by an Item 9 Form 8-K report so that the statement is publicly available; (4) submitting the statement as an exhibit to the periodic report; and (5) submitting the statement in the text of the periodic report (typically, below the signature block for the report).

[35] We proposed to use this term throughout the rules implementing the annual internal control report requirements of Section 404 of the Sarbanes-Oxley Act, as well as the revised Sarbanes-Oxley Section 302 certification requirements, to complement the defined term "disclosure controls and procedures" referred to in the Section 302 requirements. Congress used the term "internal controls" in Section 302 and "internal control structure and procedures for financial reporting" in Section 404.

[36] For a history of the development of internal control standards, see Steven J. Root, *Beyond COSO—Internal Control to Enhance Corporate Governance* (1998).

[37] In 1941, the Commission adopted amendments to Rules 2–02 and 3–07 of Regulation S-X that formally codified this practice. See Accounting Series Release No. 21 (Feb. 5, 1941) [11 FR 10921].

[38] An early definition for the term appeared in *Internal Control—Elements Of a Coordinated System and Its Importance to Management and the Independent Public Accountant*, a report published in 1949 by the American Institute of Accountants, the predecessor to the American Institute of Certified Public Accountants ("AICPA"). The report defined internal control to mean "the plan of organization and all of the coordinate methods and measures adopted within a business to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies." Subsequent definitions of the term attempted to clarify the distinction by labeling the controls relevant to an audit as "internal accounting controls" and the non-accounting controls as "administrative controls." The AICPA officially dropped these distinctions in 1988. See Root, at p. 76.

[39] Title I of Pub. L. 95–213 (1977). Beginning in 1973, as a result of the work of the Office of the Watergate Special Prosecutor, the Commission became aware of a pattern of conduct involving the use of corporate funds for illegal domestic political contributions. A subsequent Commission investigation revealed that instances of undisclosed questionable or illegal corporate payments—both domestic and foreign—were widespread. On May 12, 1976, the Commission submitted to the Senate Banking, Housing and Urban Affairs Committee a report entitled *Report on Questionable and Illegal Corporate Payments and Practices*. The report described and analyzed the Commission's investigation concerning improper corporate payments and outlined legislative and other responses that the Commission recommended to remedy these problems. One of the Commission's recommendations was that Congress enact legislation aimed expressly at enhancing the accuracy of the corporate books and records and the reliability of the audit process.

[40] See Exchange Act Section 13(b)(2) [15 U.S.C. 78m(b)(2)].

[41] The Treadway Commission was sponsored by the AICPA, the American Accounting Association, the Financial Executives International (formerly Financial Executives Institute), the Institute of Internal Auditors and the Institute of Management Accountants (formerly the National Association of Accountants). The Treadway Commission's report, the Report of the National Commission on Fraudulent Financial Reporting (Oct. 1987), is available at *www.coso.org*.

[42] See COSO, *Internal Control—Integrated Framework* (1992) ("COSO Report"). In 1994, COSO published an addendum to the *Reporting to External Parties* volume of the COSO Report. The addendum discusses the issue of, and provides a vehicle for, expanding the scope of a public management report on internal control to address additional controls pertaining to safeguarding of assets. In 1996, COSO issued a supplement to its original framework to address the application of internal control over financial derivative activities.

[43] Auditing Standards Board, AICPA, Statement on Auditing Standards No. 78, *Consideration of Internal Control in a Financial Statement Audit: An Amendment to Statement on Auditing Standards No. 55* (1995).

[44] See letters regarding File No. S7–40–02 of: America's Community Bankers ("ACB"); American Corporate Counsel Association ("ACCA"); American Institute of Certified Public Accountants ("AICPA"); Compass Bancshares, Inc. ("Compass"); Computer Sciences Corporation ("CSC"); the Edison Electric Institute ("EEI"); the Independent Community Bankers of America ("ICBA"); the Institute of Internal Auditors ("IIA"); the Association of the Bar of the City of New York, Committee on Corporate Law ("NYCB–CCL"); Protiviti; and Siemens AG.

[45] See letters regarding File No. S7–40–02 of ACB and ICBA.

[46] See letters regarding File No. S7–40–02 of: the American Bar Association, Committee on the Federal Regulation of Securities and the Committee on Law and Accounting ("ABA"); the Federal Reserve Bank of Atlanta ("FED"); IIA; Simon Lorne ("Lorne"); and Pricewaterhouse Coopers LLP ("PwC").

[47] See ABA letter regarding File No. S7–40–02.

[48] See letters regarding File No. S7–40–02 of: AICPA; Compass; Deloitte & Touche LLP ("D&T"); IIA; KPMG LLP ("KPMG"); and PwC.

are outside the boundary of financial reporting.

3. Final Rules

After consideration of the comments, we have decided to make several modifications to the proposed amendments. We agree that we should use the term "internal control over financial reporting" in our amendments to implement Section 404, as well as our revisions to the Section 302 certification requirements and forms of certification.[49] Rapidly changing terminology has been one obstacle in the development of an accepted understanding of internal control. The term "internal control over financial reporting" is the predominant term used by companies and auditors and best encompasses the objectives of the Sarbanes-Oxley Act. In addition, by using this term, we avoid having to familiarize investors, companies and auditors with new terminology, which should lessen any confusion that may exist about the meaning and scope of internal control.

The final rules define "internal control over financial reporting" as:

> A process designed by, or under the supervision of, the registrant's principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant's board of directors,[50] management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:
>
> (1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant;
>
> (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the registrant are being made only in accordance with authorizations of management and directors of the registrant; and
>
> (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant's assets that could have a material effect on the financial statements.[51]

We recognize that our definition of the term "internal control over financial reporting" reflected in the final rules encompasses the subset of internal controls addressed in the COSO Report that pertains to financial reporting objectives. Our definition does not encompass the elements of the COSO Report definition that relate to effectiveness and efficiency of a company's operations and a company's compliance with applicable laws and regulations, with the exception of compliance with the applicable laws and regulations directly related to the preparation of financial statements, such as the Commission's financial reporting requirements.[52] Our definition is consistent with the description of internal accounting controls in Exchange Act Section 13(b)(2)(B).[53]

Following the general language defining internal control over financial reporting, clauses (1) and (2) include the internal control matters described in Section 103 of the Sarbanes-Oxley Act that the company's registered public accounting firm is required to evaluate in its audit or attestation report.[54] This language is included to make clear that the assessment of management in its internal control report as to which the company's registered public accounting firm will be required to attest and report specifically covers the matters referenced in Section 103. A few commenters believed that it would cause confusion if the definition of internal control did not acknowledge the objectives set forth in Section 103 of the Sarbanes-Oxley Act. As discussed in Section II.G below, the PCAOB is responsible for establishing the Section 103 standards.

Our definition also includes, in clause (3), explicit reference to assurances regarding use or disposition of the company's assets. This provision is specifically included to make clear that, for purposes of our definition, the safeguarding of assets is one of the elements of internal control over financial reporting and it addresses the supplementation of the COSO Framework after it was originally promulgated. In the absence of our change to the definition, the determination of whether control regarding the safeguarding of assets falls within a company's internal control over financial reporting currently could be subject to varying interpretation.

Safeguarding of assets had been a primary objective of internal accounting control in SAS No. 1. In 1988, the ASB issued Statement of Auditing Standards No. 55 (codified as AU § 319 in the Codification of Statements on Auditing Standards), which replaced AU § 320. SAS No. 55 revised the definition of "internal control" and expanded auditors' responsibilities for considering internal control in a financial statement audit. The prior classification of internal control into the two categories of "internal accounting control" and "administrative control" was replaced with the single term "internal control structure," which consisted of three interrelated components—control environment, the accounting system and control procedures. Under this new definition, the safeguarding of assets was no longer a primary objective, but a subset of the control procedures component.[55] The COSO Report followed this shift in the iteration of safeguarding of assets. The COSO Report states that operations objectives "pertain to effectiveness and efficiency of the entity's operations, including performance and profitability goals and safeguarding resources against loss."[56] However, the report also clarifies that safeguarding of assets can fall within other categories of internal control.[57]

In 1994, COSO published an addendum to the *Reporting to External Parties* volume of the COSO Report. The addendum was issued in response to a concern expressed by some parties, including the U.S. General Accounting Office, that the management reports contemplated by the COSO Report did not adequately address controls relating to safeguarding of assets and therefore would not fully respond to the requirements of the FCPA.[58] In the addendum, COSO concluded that while it believed its definition of internal control in its 1992 report remained appropriate, it recognized that the FCPA encompasses certain controls related to safeguarding of assets and that there is a reasonable expectation on the part of some readers of management's internal control reports that the reports will cover such controls. The addendum therefore sets forth the following definition of the term "internal control over safeguarding of assets against unauthorized acquisition, use or disposition":

> Internal control over safeguarding of assets against unauthorized acquisition, use or disposition is a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the entity's assets that could have a material effect on the financial statements.

As indicated above, to achieve the desired result and to provide consistency with COSO's 1994 addendum, we have incorporated this definition into our definition of "internal control over financial reporting." We are persuaded that this is appropriate given the fact that our definition will be used for purposes of public management reporting, and that the companies that will be subject to the Section 404 requirements also are subject to the FCPA requirements. So, under the final rules, safeguarding of assets as provided is specifically included in our definition of "internal control over financial reporting."

B. Management's Annual Assessment of, and Report on, the Company's Internal Control Over Financial Reporting

1. Proposed Rule

We proposed to amend Item 307 of Regulations S–K and S–B, as well as Forms 20–F and 40–F, to require a company's annual report to include an internal control report of management containing:

- A statement of management's responsibility for establishing and maintaining adequate internal controls and procedures for financial reporting;
- The conclusions of management about the effectiveness of the company's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures; and
- A statement that the registered public accounting firm that prepared or issued the company's audit report relating to the financial statements included in the company's annual report has attested to, and reported on, management's evaluation of the company's internal controls and procedures for financial reporting.

The proposed amendments did not list any additional disclosure requirements for the management report, but rather would have afforded management the flexibility to tailor the report to fit its company's particular circumstances.

2. Comments on the Proposal

We received comments from 17 commenters on our proposed annual internal control report requirements. All of these commenters believed, in varying degrees, that we should set forth additional disclosure criteria or standards for the management report. Nine commenters stated that we should provide guidance as to the topics to be addressed in the management report, or specify standards or a common set of internal control objectives to be considered by management when assessing the effectiveness of its company's internal control over financial reporting to ensure that control objectives are addressed in a consistent fashion.[59] These commenters believed that consistent standards for management's report on internal control would help investors to understand and compare the quality of various management internal control reports.

Several commenters also thought that we should require management's internal control report to include certain recitations that would parallel recitations that the registered public accounting firm would have to make in its report attesting to management's assessment.[60] Additional commenters believed that the management report on internal control should specifically reference the objectives contained in Section 103 of the Sarbanes-Oxley Act.[61] Furthermore, although Section 404(b) of the Sarbanes-Oxley Act does not explicitly direct us to require companies to file the registered public accounting firms' attestation reports as part of the companies' annual report filings, we proposed a filing

---

[49] See new Item 308 of Regulations S–K and S–B, amended Items 1–02 and 2–02 of Regulation S–X; amended Items 307and 401 of Regulations S–K and S–B; amended Exchange Act Rules 13a–14, 13a–15, 15d–14 and 15d–15; and amended Forms 20–F and 40–F.

[50] The COSO Report states that the composition of a company's board and audit committee, and how the directors fulfill their responsibilities related to the financial reporting process, are key aspects of the company's control environment. An important element of the company's internal control over financial reporting "* * * is the involvement of the board or audit committee in overseeing the financial reporting process, including assessing the reasonableness of management's accounting judgments and estimates and reviewing key filings with regulatory agencies." See COSO Report at 130. The Commission similarly has stated in the past that both a company's management and board have important roles to play in establishing a supportive control environment. In its 1981 Statement of Policy regarding the FCPA, the Commission stated, "In the last analysis, the key to an adequate 'control environment' is an approach on the part of the board and top management which makes clear what is expected and that conformity to these expectations will be rewarded while breaches will be punished." See Release No. 34–17500 (Jan. 29, 1981) [46 FR 11544].

[51] See amended Exchange Act Rules 13a–14(d) and 15d–14(d). The scope of the term "preparation of financial statements in accordance with generally accepted accounting principles" in the definition encompasses financial statements prepared for regulatory reporting purposes.

[52] Codification of Statements on Auditing Standards Section 317 requires auditors to consider a company's compliance with laws and regulations that have a direct and material effect on the financial statements.

[53] 15 U.S.C. 78m(b)(2)(B).

[54] Section 103 of the Sarbanes-Oxley Act requires the PCAOB to establish by rule standards to be used by registered public accounting firms in the preparation and issuance of audit reports. In carrying out this responsibility, the PCAOB must include in the auditing standards that it adopts, among other things: a requirement that each registered public accounting firm describe in each audit report the scope of its testing of the company's internal control structure and procedures performed in fulfilling its internal control evaluation and reporting required by Section 404(b) of the Sarbanes-Oxley Act; present in the audit report (or attestation report) its findings from such testing; and an evaluation of whether the company's internal control structure and procedures: (1) Include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the company's assets; and (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with the authorization of management and directors of the company. In the audit report (or attestation report), the registered public accounting firm also must describe, at a minimum, material weaknesses in such internal controls and any material noncompliance found on the basis of such testing. See Sections 103(a)(2)(A)(iii)(I), (II) and (III) of the Sarbanes-Oxley Act. See also, Interim Professional Attestation Standards Rule 3300T, adopted in PCAOB Release No. 2003–006 (Apr. 18, 2003), and approved by the Commission on April 25, 2003.

[55] Control procedures were described as policies and procedures in addition to the control environment and accounting system that management established to provide reasonable assurance that specific entity objectives will be achieved. SAS 55 also states that control procedures may generally be categorized as procedures that include, among other things, "adequate safeguards over access to and use of assets and records, such as secured facilities and authorization for access to computer programs and data files." See Statement on Auditing Standards No. 55, paragraph no. 11.

[56] See COSO "Addendum to Reporting to External Parties," *Internal Control—Integrated Framework*, (1994) ("1994 Addendum") at p. 154.

[57] The COSO Report states: "Although these [objectives relating to safeguarding of resources] are primarily operations objectives, certain aspects of safeguarding can fall under other categories * * * [T]he goal of ensuring that any such asset losses are properly reflected in the entity's financial statements represents a financial reporting objective." The category in which an objective falls can sometimes depend on the circumstances. Continuing the discussion of safeguarding of assets, controls to prevent theft of assets—such as maintaining a fence around inventory and a gatekeeper verifying proper authorization of requests for movement of goods—fall under the operations category. These controls normally would not be relevant to the reliability of financial statement preparation, because any inventory losses would be detected pursuant to periodic physical inspection and recorded in the financial statements. However, if for financial reporting purposes management relies solely on perpetual inventory records, as may be the case for interim reporting, the physical security controls would then also fall within the financial reporting category. This is because these physical security controls, along with other controls over the perpetual inventory records, would be needed to ensure reliable financial reporting. *Id.* at 37.

[58] As stated in n. 1 to the 1994 Addendum, the FCPA requires companies, among other things, to "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary * * * to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

[59] See letters regarding File No. S7–40–02 of: ABA; CSC; EEI; FED; Eastman Kodak Co. ("Kodak"); KPMG; Protiviti; and PwC.

[60] See letters regarding File No. S7–40–02 of: ACCA and Financial Executives Institute ("FEI").

[61] See letters regarding File No. S7–40–02 of: AICPA; BDO Seidman, LLP ("BDO"); D&T; Ernst & Young LLP ("E&Y"); KPMG; and PwC.

requirement that most of those commenting on this aspect of the proposal supported.

3. Final Rules

After evaluating the comments received, we are adopting the proposals with several modifications. The final rules require a company's annual report to include an internal control report of management that contains:

- A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company;
- A statement identifying the framework used by management to conduct the required evaluation of the effectiveness of the company's internal control over financial reporting;
- Management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year, including a statement as to whether or not the company's internal control over financial reporting is effective.[62] The assessment must include disclosure of any "material weaknesses"[63] in the company's internal control over financial reporting identified by management. Management is not permitted to conclude that the company's internal control over financial reporting is effective if there are one or more material weaknesses in the company's internal control over financial reporting; and
- A statement that the registered public accounting firm that audited the financial statements included in the annual report has issued an attestation report on management's assessment of the registrant's internal control over financial reporting.[64]

As proposed, our final rules also require a company to file, as part of the company's annual report, the attestation report of the registered public accounting firm that audited the company's financial statements.

a. Evaluation of Internal Control Over Financial Reporting

In the Proposing Release, we requested comment on whether we should establish specific evaluative criteria for management's report on internal control. All of the commenters responding to this request supported the establishment of such evaluative criteria in order to improve comparability among the standards used by companies to conduct their annual internal control evaluations.[65] Several commenters believed that we either should adopt the COSO Framework as the means by which management must evaluate its company's internal control over financial reporting or, alternatively, simply acknowledge the COSO Framework as being suitable for purposes of management's evaluation. Other commenters suggested that we require management to evaluate the effectiveness of a company's internal control over financial reporting using suitable control criteria established by a group that follows due process procedures.

After consideration of the comments, we have modified the final requirements to specify that management must base its evaluation of the effectiveness of the company's internal control over financial reporting on a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.[66]

The COSO Framework satisfies our criteria and may be used as an evaluation framework for purposes of management's annual internal control evaluation and disclosure requirements. However, the final rules do not mandate use of a particular framework, such as the COSO Framework, in recognition of the fact that other evaluation standards exist outside of the United States,[67] and that frameworks other than COSO may be developed within the United States in the future, that satisfy the intent of the statute without diminishing the benefits to investors. The use of standard measures that are publicly available will enhance the quality of the internal control report and will promote comparability of the internal control reports of different companies. The final rules require management's report to identify the evaluation framework used by management to assess the effectiveness of the company's internal control over financial reporting.[68]

Specifically, a suitable framework must: be free from bias; permit reasonably consistent qualitative and quantitative measurements of a company's internal control; be sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of a company's internal controls are not omitted; and be relevant to an evaluation of internal control over financial reporting.[69]

b. Auditor Independence Issues

Because the auditor is required to attest to management's assessment of internal control over financial reporting, management and the company's independent auditors will need to coordinate their processes of documenting and testing the internal controls over financial reporting. However, we remind companies and their auditors that the Commission's rules on auditor independence prohibit an auditor from providing certain nonaudit services to an audit client.[70] As the Commission stated in its auditor independence release, auditors may assist management in documenting internal controls. When the auditor is engaged to assist management in documenting internal controls, management must be actively involved in the process. We understand the need for coordination between management and the auditor, however, we remind companies and auditors that management cannot delegate its responsibility to assess its internal controls over financial reporting to the auditor.[71] The rules adopted today do not amend the Commission's rules on auditor independence.

c. Material Weaknesses in Internal Control Over Financial Reporting

In the Proposing Release, we did not propose any specific standard on which management would base its conclusion that the company's internal control over financial reporting is effective. We requested comment on whether we should prescribe specific standards upon which an effectiveness determination would be based, and also what standards we should consider. Several commenters agreed that the final rules should specify standards, and all believed that the existence of a material weakness in internal control over financial eporting should preclude a conclusion by management that a registrant's internal control over financial reporting is effective. We have considered these comments, and agree that the rules should set forth this threshold for concluding that a company's internal control over financial reporting is effective.

The final rules therefore preclude management from determining that a company's internal control over financial reporting is effective if it identifies one or more material weaknesses in the company's internal control over financial reporting.[72] For purposes of the final rules, the term "material weakness" has the same meaning as in the definition under GAAS and attestation standards.[73] The final rules also specify that management's report must include disclosure of any "material weakness" in the company's internal control over financial reporting identified by management in the course of its evaluation.[74]

d. Method of Evaluating

Many commenters addressed the method of evaluating internal control over financial reporting, and some sought additional precision or guidance regarding the extent of evaluation, including the documentation required.[75] The methods of conducting evaluations of internal control over financial reporting will, and should, vary from company to company. Therefore, the final rules do not specify the method or procedures to be performed in an evaluation. However, in conducting such an evaluation and developing its assessment of the effectiveness of internal control over financial reporting, a company must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the company's internal control over financial reporting. Developing and maintaining such evidential matter is an inherent element of effective internal controls.[76] An instruction to new Item 308 of Regulations S–K and S–B and Forms 20–F and 40–F reminds registrants to maintain such evidential matter.[77]

The assessment of a company's internal control over financial reporting must be based on procedures sufficient both to evaluate its design and to test its operating effectiveness. Controls subject to such assessment include, but are not limited to: controls over initiating, recording, processing and reconciling account balances, classes of transactions and disclosure and related assertions included in the financial statements; controls related to the initiation and processing of non-routine and non-systematic transactions; controls related to the selection and application of appropriate accounting policies; and controls related to the prevention, identification, and detection of fraud. The nature of a company's testing activities will largely depend on the circumstances of the company and the significance of the control. However, inquiry alone generally will not provide an adequate basis for management's assessment.[78]

An assessment of the effectiveness of internal control over financial reporting must be supported by evidential matter, including documentation, regarding both the design of internal controls and the testing processes. This evidential matter should provide reasonable support: for the evaluation of whether the control is designed to prevent or detect material misstatements or omissions; for the conclusion that the tests were appropriately planned and performed; and that the results of the tests were appropriately considered. The public accounting firm that is required to attest to, and report on, management's assessment of the effectiveness of the company's internal control over financial reporting also will require that the company develop and maintain such evidential matter to support management's assessment.[79]

e. Location of Management's Report

Although the final rules do not specify where management's internal control report must appear in the company's annual report, we think it is important for management's report to be in close proximity to the corresponding attestation report issued by the company's registered public accounting firm. We expect that many companies will choose to place the internal control report and attestation report near the companies' MD&A disclosure or in a portion of the document immediately preceding the companies' financial statements.

C. Quarterly Evaluations of Internal Control Over Financial Reporting

1. Proposed Rule

We proposed to require a company's certifying officers to evaluate the effectiveness of the company's internal controls and procedures for financial reporting as of the end of the period covered by each annual and quarterly

---

[62] Management must state whether or not the company's internal control over financial reporting is effective. A negative assurance statement indicating that nothing has come to management's attention to suggest that the company's internal control over financial reporting is not effective will not be acceptable.

[63] A "material weakness" is defined in Statement on Auditing Standards No. 60 (codified in Codification of Statements on Auditing Standards AU § 325) as a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by errors or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. See discussion in Section II.B.3.b. below.

[64] See new Item 308 of Regulations S–B and S–K, Item 15 of Form 20–F and General Instruction B(6) of Form 40–F.

[65] Many commenters cited the absence of evaluative criteria in AU § 319 in their arguments against the reference to AU § 319 in our proposed definition of "internal controls and procedures for financial reporting."

[66] See amended Exchange Act Rule 13a–15(c) or 15d–15(c), amended Item 15 of Form 20–F and amended General Instruction (B) to Form 40–F.

[67] The *Guidance on Assessing Control* published by the Canadian Institute of Chartered Accountants and the *Turnbull Report* published by the Institute of Chartered Accountants in England & Wales are examples of other suitable frameworks.

[68] We are aware that some of the evaluation frameworks used to assess a foreign company's internal controls in its home country do not require a statement regarding whether the company's system of internal control has been effective. Under our final rules, management of a foreign reporting company who relies on such an evaluation framework used in its home country is nevertheless under an obligation to state affirmatively whether its company's internal controls are, or are not, effective.

[69] See AT § 101, paragraph 24.

[70] See Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006].

[71] Management's acceptance of responsibility for the documentation and testing performed by the auditor does not satisfy the auditor independence rules.

[72] This is consistent with interim attestation standards. See AT § 501.

[73] The term "significant deficiency" has the same meaning as the term "reportable condition" as used in AU § 325 and AT § 501. The terms "material weakness" and "significant deficiency" both represent deficiencies in the design or operation of internal control that could adversely affect a company's ability to record, process, summarize and report financial data consistent with the assertions of management in the company's financial statements, with a "material weakness" constituting a greater deficiency than a "significant deficiency." Because of this relationship, it is our judgment that an aggregation of significant deficiencies could constitute a material weakness in a company's internal control over financial reporting.

[74] See new Item 308(d) of Regulations S–B and S–K.

[75] See, for example, letters re: File No. S7–40–02 of: ABA; AICPA; BDO; Intel; and Eli Lilly and Company.

[76] Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. 78m(b)(2)(A)] requires companies to "make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." See also Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. 78m(b)(2)(B)] and *In re Microsoft Corp.*, Administrative Proceeding File No. 3–10789 (June 3, 2002). In the *Microsoft* order, the Commission stated that such books and records include not only general ledgers and accounting entries, but also memoranda and internal corporate reports. We have previously stated, as a matter of policy, that under Section 13(b)(2) "every public company needs to establish and maintain records of sufficient accuracy to meet adequately four interrelated objectives: appropriate reflection of corporate transactions and the disposition of assets; effective administration of other facets of the issuer's internal control system; preparation of its financial statements in accordance with generally accepted accounting principles; and proper auditing." Statement of Policy Regarding the Foreign Corrupt Practices Act of 1977, Release No. 34–17500 (Jan. 29, 1981) [46 FR 11544].

[77] See Instruction 1 to new Item 308 of Regulations S–K and S–B, Instruction 1 to Item 15 of Form 20–F and Instruction 1 to paragraphs (b), (c), (d) and (e) of General Instruction B.6 to Form 40–F.

[78] This statement should not be interpreted to mean that management personally must conduct the necessary activities to evaluate the design and test the operating effectiveness of the company's internal control over financial reporting. Activities, including those necessary to provide management with the information on which it bases its assessment, may be conducted by non-management personnel acting under the supervision of management.

[79] See Statements on Standards for Attestation Engagements No. 10.

report that the company is required to file under the Exchange Act. The company's certifying officers already are required to evaluate the effectiveness of the company's disclosure controls and procedures on a quarterly basis.[80] We noted that a quarterly evaluation requirement with respect to internal controls would create symmetry between our requirements for periodic evaluations of both the company's disclosure controls and procedures and its internal controls and procedures for financial reporting, and give effect to the language in the Section 302 certification requirements regarding quarterly internal control evaluations.

2. Comments on the Proposal

We received responses from 25 commenters on the proposed amendments. Of the 25 commenters, four supported the proposal to require quarterly evaluations of internal controls and procedures for financial reporting.[81] One commenter specifically concurred with our objective of creating symmetry between the requirements to conduct periodic evaluations of both the company's disclosure controls and procedures and its internal controls and procedures for financial reporting.[82]

Twenty-one commenters opposed quarterly evaluations of internal controls.[83] Many of these believed that quarterly evaluations would impose substantial additional costs on companies without producing any incremental benefit to investors. One individual stated that the proper evaluation of a company's system of internal controls is a weighty and time-consuming process.[84] Twelve of the commenters opposed to quarterly evaluations indicated that quarterly evaluations of all aspects of internal controls and procedures would be extremely burdensome, expensive and difficult to perform under the time constraints of quarterly reporting, particularly as the accelerated filing deadlines for quarterly reports take effect.[85] Several other commenters argued that we should not go beyond the requirements of Section 404 of the Sarbanes-Oxley Act with respect to the frequency of internal control reporting without an adequate basis for doing so.[86] These commenters remarked that such a decision would be better made after we have had sufficient experience with the Section 302 certification requirements adopted in August of 2002.

Several commenters suggested alternatives to quarterly evaluations. Five commenters stated that it would be more appropriate and desirable if companies were required to make quarterly disclosure only of material changes to their internal control that occurred subsequent to management's most recent annual internal control evaluation.[87] Two other commenters similarly recommended that the quarterly evaluation be less rigorous than the annual evaluation.[88] One commenter stated that we should instead adopt an approach that requires less effort and assurance for purposes of quarterly reports, such as permitting companies to test compliance with controls relating to major applications on a rotating basis throughout the year.[89] This commenter further stated that the objective of the quarterly evaluation should be to identify changes in controls during the quarter and evaluate whether they would change the certifying officers' conclusions about disclosure controls and internal controls as stated in the most recent annual report. The other commenter, although opposed to any quarterly evaluation requirement, believed that if we did require it, the quarterly evaluation should be viewed as an update of the annual evaluation, just as the quarterly report on Form 10–Q is an update of the annual report on Form 10–K.[90] One commenter stated that if we require some form of quarterly certification, it should be limited to negative assurance that nothing has come to the certifying officers' attention since the prior year's evaluation to suggest that the controls are no longer effective.[91]

3. Final Rules

After consideration of the comments received, we have decided not to require quarterly evaluations of internal control over financial reporting that are as extensive as the annual evaluation. We recognize that some controls operate continuously while others operate only at certain times, such as the end of the fiscal year. We believe that each company should be afforded the flexibility to design its system of internal control over financial reporting to fit its particular circumstances. The management of each company should perform evaluations of the design and operation of the company's entire system of internal control over financial reporting over a period of time that is adequate for it to determine whether, as of the end of the company's fiscal year, the design and operation of the company's internal control over financial reporting are effective.

Accordingly, we are adopting amendments that require a company's management, with the participation of the principal executive and financial officers, to evaluate any change in the company's internal control over financial reporting that occurred during a fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. We also have adopted a modification to the Section 302 certification requirement and our disclosure requirements to adopt this approach, as discussed below.

The management of a foreign private issuer that has Exchange Act reporting obligations must also, like its domestic counterparts, report any material changes to the issuer's internal control over financial reporting. However, because foreign private issuers are not required to file quarterly reports under Section 13(a) or 15(d) of the Exchange Act, the final rules clarify that a foreign private issuer's management need only disclose in the issuer's annual report the material changes to its internal control over financial reporting that have occurred in the period covered by the annual report.[92]

D. Differences Between Internal Control Over Financial Reporting and Disclosure Controls and Procedures

Many of the commenters on the Proposing Release indicated that they were confused as to the differences between a company's disclosure controls and procedures and a company's internal control over financial reporting. Exchange Act Rule 13a–15(d) defines "disclosure controls and procedures" to mean controls and procedures of a company that are designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The definition further states that disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that the information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

While there is substantial overlap between a company's disclosure controls and procedures and its internal control over financial reporting, there are both some elements of disclosure controls and procedures that are not subsumed by internal control over financial reporting and some elements of internal control that are not subsumed by the definition of disclosure controls and procedures.

With respect to the latter point, clearly, the broad COSO description of internal control, which includes the efficiency and effectiveness of a company's operations and the company's compliance with laws and regulations (not restricted to the federal securities laws), would not be wholly subsumed within the definition of disclosure controls and procedures. A number of commenters suggested that the narrower concept of internal control, involving internal control over financial reporting, is a subset of a company's disclosure controls and procedures, given that the maintenance of reliable financial reporting is a prerequisite to a company's ability to submit or file complete disclosure in its Exchange Act reports on a timely basis. This suggestion focuses on the fact that the elements of internal control over financial reporting requiring a company to have a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles can be viewed as a subset of disclosure controls and procedures.

We agree that some components of internal control over financial reporting will be included in disclosure controls and procedures for all companies. In particular, disclosure controls and procedures will include those components of internal control over financial reporting that provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles. However, in designing their disclosure controls and procedures, companies can be expected to make judgments regarding the processes on which they will rely to meet applicable requirements. In doing so, some companies might design their disclosure controls and procedures so that certain components of internal control over financial reporting pertaining to the accurate recording of transactions and disposition of assets or to the safeguarding of assets are not included. For example, a company might have developed internal control over financial reporting that includes as a component of safeguarding of assets dual signature requirements or limitations on signature authority on checks. That company could nonetheless determine that this component is not part of disclosure controls and procedures. We therefore believe that while there is substantial overlap between internal control over financial reporting and disclosure controls and procedures, many companies will design their disclosure controls and procedures so that they do not include all components of internal control over financial reporting.

E. Evaluation of Disclosure Controls and Procedures

The rules in place starting in August 2002 requiring quarterly evaluations of disclosure controls and procedures and disclosure of the conclusions regarding effectiveness of disclosure controls and procedures have not been substantively changed since their adoption, including in the rules that we adopt today. These evaluation and disclosure requirements will continue to apply to disclosure controls and procedures, including the elements of internal control over financial reporting that are subsumed within disclosure controls and procedures.

With respect to evaluations of disclosure controls and procedures, companies must, under our rules and consistent with the Sarbanes-Oxley Act, evaluate the effectiveness of those controls and procedures on a quarterly basis. While the evaluation is of effectiveness overall, a company's management has the ability to make judgments (and it is responsible for its judgments) that evaluations, particularly quarterly evaluations, should focus on developments since the most recent evaluation, areas of weakness or continuing concern or other aspects of disclosure controls and procedures that merit attention. Finally, the nature of the quarterly evaluations of those components of internal control over financial reporting that are subsumed within disclosure controls and procedures should be informed by the purposes of disclosure controls and procedures.[93]

The rules adopted in August 2002 required the management of an Exchange Act reporting foreign private issuer to evaluate and disclose conclusions regarding the effectiveness of the issuer's disclosure controls and procedures only in its annual report and not on a quarterly basis. The primary reason for this treatment is because foreign private issuers are not subject to mandated quarterly reporting requirements under the Exchange Act. The rules adopted today continue this treatment.[94]

F. Periodic Disclosure About the Certifying Officers' Evaluation of the Company's Disclosure Controls and Procedures and Disclosure About Changes to its Internal Control Over Financial Reporting

1. Existing Disclosure Requirements

The rules that we adopted in August 2002 to implement the certification requirements of Section 302 of the Sarbanes-Oxley Act included new Item 307 of Regulations S-B and S-K. Paragraph (a) of Item 307 requires companies, in their quarterly and annual reports, to disclose the conclusions of the company's principal executive and financial officers (or persons performing similar functions) about the effectiveness of the company's disclosure controls and procedures as of a date within 90 days of the filing date of the quarterly or annual report. This disclosure enables the certifying officers to satisfy the representation made in

[80] See Exchange Act Rules 13a–15(b) and 15d–15(b) [17 CFR 240.13a–15(b) and 240.15d–15(b)].

[81] See letters regarding File No. S7–40–02 of: AICPA; Executive Responsibility; FED; and Protiviti.

[82] See Protiviti letter regarding File No. S7–40–02.

[83] See letters regarding File No. S7–40–02 of: ABA; ACB; ACCA; Association for Financial Professionals ("AFP"); Am. Bankers Assoc.; BDO; Business Roundtable ("BRT"); Computer Sciences Corporation ("CSC"); Compass; Thomas Damman ("Damman"); EEI; Emerson Electric Co. ("Emerson"); FEI; Fried, Frank, Harris, Shriver and Jacobson ("Fried Frank"); International Paper Company ("IPC"); ICBA; NYCB–CCL; New York State Bar Association ("NYSBA"); Siemens AG ("Siemens"); Software & Information Industry Association ("SIIA"); and Software Finance and Tax Executives Council ("SOFTEC").

[84] See Damman letter regarding File No. S7–40–02.

[85] See letters regarding File No. S7–40–02 of: ABA; ACB; ACCA; BRT; CSC; Emerson; Fried Frank; ICBA; IPC; NYCB–CCL; SIIA; and SOFTEC.

[86] See letters regarding File No. S7–40–02 of: Am. Bankers Assoc.; CSC; Fried Frank.

[87] See letters regarding File No. S7–40–02 of: Damman; Compass; EEI; Executive Responsibility Advisors, LLC ("Executive Responsibility"); and Siemens.

[88] See letters regarding File No. S7–40–02 of: ABA and BDO.

[89] 89 See BDO letter regarding File No. S7–40–02.

[90] See ABA letter regarding File No. S7–40–02.

[91] See Emerson letter regarding File No. S7–40–02.

[92] See Exchange Act Rules 13a–15(d) and 15d–15(d) [17 CFR 240.13a–15(d) and 240.15d–15(d)].

[93] For example, where a component of internal control over financial reporting is subsumed within disclosure controls and procedures, even where systems testing of that component would clearly be required as part of the annual evaluation of internal control over financial reporting, management could make a different determination of the appropriate nature of the evaluation of that component for purposes of a quarterly evaluation of disclosure controls and procedures.

[94] See Exchange Act Rules 13a–15(b) and 15d–15(b).

their certifications that they have "presented in the quarterly or annual report their conclusions about the effectiveness of the disclosure controls and procedures based on their evaluation."

Paragraph (b) of Item 307 requires the company to disclose in each quarterly and annual report whether or not there were significant changes in the company's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses. This disclosure enables the certifying officers to satisfy the representation made in their certifications that they have "indicated in the quarterly or annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses."

2. Proposed Amendments to the Disclosure Requirements

In the Proposing Release, we proposed several revisions to the existing disclosure requirements regarding: (1) The certifying officers' evaluation of the company's disclosure controls and procedures; and (2) changes to the company's internal control over financial reporting. We also proposed to require quarterly disclosure regarding the conclusions of the certifying officers about the effectiveness of the company's internal control over financial reporting.

Moreover, we proposed to require evaluations of both types of controls as of the end of the period covered by the quarterly or annual report, rather than "as of a date within 90 days of the filing date" of the quarterly or annual report, as currently required with respect to disclosure controls. With respect to the disclosure about changes to the company's internal control over financial reporting, we proposed to require a company to disclose "any significant changes made during the period covered by the quarterly or annual report" rather than "whether or not there were significant changes in the company's internal control over financial reporting that could significantly affect these controls subsequent to the date of their evaluation."

The commenters were mixed in their reaction to these proposed changes. A couple of the commenters remarking on the point at which a company must undertake an evaluation of its controls "strongly agreed" with the proposed change to require evaluations as of the end of the period. Several other commenters preferred the existing "90 days within the filing date" evaluation point, noting that it provides more flexibility than the fixed point. Some of these commenters expressed concern that it would be hard to conduct evaluations on the last day of the period. One of the commenters suggested that the proposed requirement that a company disclose changes to its internal control over financial reporting that occurred at any time during a fiscal quarter was inconsistent with the proposed requirement that management evaluate such changes "as of the end of each fiscal quarter."[95] An additional commenter asserted that it was critical that we offer companies some guidance as to the types of changes that constitute "significant changes."[96] Finally, a few commenters noted that while we had proposed to delete the words "or other factors" from Exchange Act Rules 13a–14(b)(6) and 15d–14(b)(6) regarding disclosure of "significant changes in internal controls or in other factors that could significantly affect internal controls, * * *" we had not likewise proposed to delete those words from the actual certification language.

3. Final Disclosure Requirements

After consideration of the comments, we are adopting the proposals with several modifications. We are adopting as proposed the change of the evaluation date for disclosure controls to "as of the end of the period" covered by the quarterly or annual report. We are not specifying the point at which management must evaluate changes to the company's internal control over financial reporting. Given that the final rules do not require a company to state the conclusions of the certifying officers regarding the effectiveness of the company's internal control over financial reporting as of a particular date on a quarterly basis as proposed, as the company must with respect to disclosure controls and procedures, it is unnecessary to specify a date for the quarterly evaluation of changes in internal control over financial reporting. We believe that this change is consistent with the new accelerated reporting deadlines.[97]

We are amending the proposal that would have required companies to disclose any significant changes in its internal controls. Under the final rules, a company must disclose any change in its internal control over financial reporting that occurred during the fiscal quarter covered by the quarterly report, or the last fiscal quarter in the case of an annual report, that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.[98] Furthermore, we have deleted the phrase "or in other factors" from Exchange Act Rules 13a–14 and 15d–15 and the form of certification. Although the final rules do not explicitly require the company to disclose the reasons for any change that occurred during a fiscal quarter, or to otherwise elaborate about the change, a company will have to determine, on a facts and circumstances basis, whether the reasons for the change, or other information about the circumstances surrounding the change, constitute material information necessary to make the disclosure about the change not misleading.[99]

While an evaluation of the effectiveness of disclosure controls and procedures must be undertaken on a quarterly basis, we expect that for purposes of disclosure by domestic companies, the traditional relationship between disclosure in annual reports on Form 10–K and intervening quarterly reports on Form 10–Q will continue. Disclosure in an annual report that continues to be accurate need not be repeated. Rather, disclosure in quarterly reports may make appropriate reference to disclosures in the most recent annual report (and, where appropriate, intervening quarterly reports) and disclose subsequent developments required to be disclosed in the quarterly report.

We note that, as required by the Sarbanes-Oxley Act, the quarterly certification regarding disclosure that the certifying officers must make to the company's auditors and audit committee provides:[100]

> The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
>
> (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
>
> (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

We expect that if a certifying officer becomes aware of a significant deficiency, material weakness or fraud requiring disclosure outside of the formal evaluation process or after the management's most recent evaluation of internal control over financial reporting, he or she will disclose it to the company's auditors and audit committee.

4. Conclusions Regarding Effectiveness of Disclosure Controls and Procedures

In disclosures required under current Item 307 of Regulations S–K and S–B, Item 15 of Form 20–F and General Instruction B(6) to Form 40–F, some companies have indicated that disclosure controls and procedures are designed only to provide "reasonable assurance" that the controls and procedures will meet their objectives. In reviewing those disclosures, the Commission staff generally has not objected to that type of disclosure. The staff has, however, requested companies including that type of disclosure to set forth, if true, the conclusions of the principal executive and principal financial officer that the disclosure controls and procedures are, in fact, effective at the "reasonable assurance" level. Other companies have included disclosure that there is "no assurance" that the disclosure controls and procedures will operate effectively under all circumstances. In these instances, the staff has requested companies to clarify that the disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives and to set forth, if true, the conclusions of the principal executive and principal financial officers that the controls and procedures are, in fact, effective at the "reasonable assurance" level.

The concept of reasonable assurance is built into the definition of internal control over financial reporting that we are adopting. This conforms to the standard contained in the internal accounting control provisions of Section 13(b)(2) of the Exchange Act[101] and current auditing literature.[102] If management decides to include a discussion of reasonable assurance in the internal control report, the discussion must be presented in a manner that neither makes the disclosure in the report confusing nor renders management's assessment concerning the effectiveness of the company's internal control over financial reporting unclear.

G. Attestation to Management's Internal Control Report by the Company's Registered Public Accounting Firm

In the Proposing Release, we proposed to amend Rules 210.1–02 and 210.2–02 of Regulation S–X to make conforming revisions to Regulation S–X to reflect the registered public accounting firm attestation requirements mandated by Section 404(b) of the Sarbanes-Oxley Act. Under the proposals, we set forth a definition for the new term "attestation report on management's evaluation of internal control over financial reporting" and certain requirements for the accountant's attestation report. We are adopting the proposals substantially as proposed. However, the final rules define the expanded term "attestation report on management's evaluation of internal control over financial reporting." Several commenters suggested that we use this more specific term, noting that auditors currently perform attestation engagements on a broad variety of subjects. Amended Rule 2–02 requires every registered public accounting firm that issues an audit report on the company's financial statements that are included in its annual report required by Section 13(a) or 15(d) of the Exchange Act containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must attest to, and report on, such assessment.

At the time of the enactment of the Sarbanes-Oxley Act, the applicable standard for attestation by auditors of internal control over financial reporting was set forth in Statements on Standards for Attestation Engagements No. 10 ("SSAE No. 10"). That standard was used by auditors providing attestations on a voluntary basis to companies, as well as by auditors whose financial institution clients are required to obtain attestations under Federal Deposit Insurance Corporation Improvement Act of 1991,[103] as discussed below. Under the Sarbanes-Oxley Act, the PCAOB has become the body that sets auditing and attestation standards generally for registered public accounting firms to use in the preparation and issuance of audit reports on the financial statements of issuers, and under Section 404(b) of the Sarbanes-Oxley Act, the PCAOB is required to set standards for the registered public accounting firms' attestations to, and reports on, management's assessment regarding its internal control over financial reporting.

On April 16, 2003, the PCAOB designated Statements on Standards for Attestation Engagements as existed on April 16 as the standard for attestations of management's assessment of the effectiveness of internal control over financial reporting pending further PCAOB standard-setting in the area (and subject to our approval of the PCAOB's actions), and on April 25, we approved the PCAOB's action. SSAE No. 10 is thus the standard applicable on a transition basis for attestations required under Section 404 of the Act and the rules we are adopting today, again pending further PCAOB standard-setting (and our approval). We expect that the PCAOB will assess the appropriateness of those standards and modify them as needed, and any future standards adopted by the PCAOB will apply to registered public accounting firms in connection with the preparation and issuance of attestation reports on management's assessment of the effectiveness of internal control over financial reporting.

H. Types of Companies Affected

Section 404 of the Sarbanes-Oxley Act states that the Commission must prescribe rules that require each annual report required by Section 13(a) or 15(d) of the Exchange Act to contain an internal control report. The Act exempts registered investment companies from this requirement.[104]

1. Foreign Private Issuers

Section 404 of the Sarbanes-Oxley Act makes no distinction between domestic and foreign issuers and, by its terms, clearly applies to foreign private issuers. These amendments, therefore, apply the management report on internal control over financial reporting requirement to foreign private issuers that file reports under Section 13(a) or 15(d) of the Exchange Act. We have, however, adopted a later compliance date for

---

[95] 95 See ABA letter regarding File No. S7–40–02.

[96] See Intel letter regarding File No. S7–40–02.

[97] See Release No. 33–8128 (Sept. 16, 2002) [67 FR 58480]. The final rule amendments do not require that the evaluation take place on the last day of the period, but that the statement of effectiveness of the issuer's disclosure controls and internal control over financial reporting be as of the end of the period.

[98] 98 We have also made conforming changes to Forms 20–F and 40–F to clarify that the management of a foreign private issuer must disclose in the issuer's annual report filed on Form 20–F or 40–F any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report and that materially affected, or is reasonably likely to affect, this internal control. See Item 15(d) of Form 20–F and General Instruction B(6)(e) of Form 40–F.

[99] *See* Exchange Act Rules 10b–5 and 12b–20 [17 CFR 240.10b–5 and 17 CFR

[100] This is the disclosure required by paragraph 5 of the certification form.

[101] 101 15 U.S.C. 78m(b)(2).

[102] *See* Codification of Statement on Auditing Standards AU § 319.18.

[103] Pub. L. 102–242, 105 Stat. 2242 (1991).

[104] *See* Section 405 of the Sarbanes-Oxley Act.

foreign private issuers than for accelerated filers.

2. Asset-Backed Issuers

In the Proposing Release, we proposed to exclude issuers of asset-backed securities from the proposed rules implementing Section 404 of the Act. We noted that because of the unique nature of asset-backed issuers, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are generally not required to file the types of financial statements that other companies must file. Also, such entities typically are passive pools of assets, without a board of directors or persons acting in a similar capacity. We did not receive any comments on the proposed exclusion of asset-backed issuers from the internal control reporting requirements, and we are excluding asset-backed issuers from the new disclosure requirements as proposed.

3. Small Business Issuers

Our proposed rules implementing Section 404 of the Act did not distinguish between large and small issuers. Similarly, Section 404 of the Act directs that the management report on internal control over financial reporting apply to any company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act. Accordingly, these amendments apply to all issuers that file Exchange Act periodic reports, except registered investment companies, regardless of their size. However, we are sensitive that many small business issuers may experience difficulty in evaluating their internal control over financial reporting because these issuers may not have as formal or well-structured a system of internal control over financial reporting as larger companies. Accordingly, we are providing an extended compliance period for small business issuers and other companies that are not accelerated filers.[105] In addition, our approach of not mandating specific criteria to be used by management to evaluate a company's internal control over financial reporting should provide small issuers some flexibility in meeting these disclosure requirements.

4. Bank and Thrift Holding Companies

In the Proposing Release, we stated that we were coordinating with the Federal Deposit Insurance Corporation (the "FDIC") and the other federal banking regulators to eliminate, to the extent possible, any unnecessary duplication between our proposed internal control report and the FDIC's internal control report requirements. Under regulations adopted by the FDIC implementing Section 36 of the Federal Deposit Insurance Act,[106] a federally insured depository institution with total assets of $500 million or more ("institution"), is required, among other things, to prepare an annual management report that contains:

- A statement of management's responsibility for preparing the institution's annual financial statements, for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and for complying with designated laws and regulations relating to safety and soundness;[107] and
- Management's assessment of the effectiveness of the institution's internal control structure and procedures for financial reporting as of the end of the fiscal year and the institution's compliance with the designated safety and soundness laws and regulations during the fiscal year.[108]

The FDIC's regulations additionally require the institution's independent accountant to examine, and attest to, management's assertions concerning the effectiveness of the institution's internal control structure and procedures for financial reporting.[109] The institution's management report and the accountant's attestation report must be filed with the FDIC, the institution's primary federal regulator (if other than the FDIC), and any appropriate state depository institution supervisor and must be available for public inspection.[110]

Although bank and thrift holding companies are not required under the FDIC's regulations to prepare these internal control reports, many of these holding companies do so under a provision of Part 363 of the FDIC's regulations[111] that permits an insured depository institution that is the subsidiary of a holding company to satisfy its internal control report requirements with an internal control report of the consolidated holding company's management if:

- Services and functions comparable to those required of the subsidiary by Part 363 are provided at the holding company level;[112] and
- The subsidiary has, as of the beginning of its fiscal year, (i) total assets of less than $5 billion or (ii) total assets of $5 billion or more and a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.[113]

Section 404 of the Sarbanes-Oxley Act does not contain an exemption for insured depository institutions that are both subject to the FDIC's internal control report requirements and required to file Exchange Act reports. In fact, it makes no distinction whatsoever between institutions subject to the FDIC's requirements and other types of Exchange Act filers. Accordingly, regardless of whether an insured depository institution is subject to the FDIC's requirements, insured depository institutions or holding companies that are required to file periodic reports under Section 13(a) or 15(d) of the Exchange Act are subject to the internal control reporting requirements that we are adopting today.

Although our final rules are similar to the FDIC's internal control report requirements, the rules differ in a few significant respects. Most notably, our final rules do not require a statement of compliance with designated laws and regulations relating to safety and soundness. Conversely, the following

[105] See Section II. J. below.

[106] 12 U.S.C. 1831m.

[107] The designated laws and regulations are federal laws and regulations concerning loans to insiders and federal and state laws and regulations concerning dividend restrictions. See 12 CFR part 363, Appendix A, Guideline 12.

[108] See 12 CFR 363.2, adopted in 58 FR 31332. These requirements only apply to an insured depository institution with total assets of $500 million or more. We recognize that the FDIC's regulations use the term "internal control structure and procedures for financial reporting" rather than the term "internal control over financial reporting" used in our rules. We think the differences in the meaning of the two terms are insignificant because both Section 36(b)(2) of the Federal Deposit Insurance Act and Section 404(a) of the Sarbanes-Oxley Act refer to "internal control structure and procedures for financial reporting." Nevertheless, the FDIC has defined the term "financial reporting" to include financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and those prepared for regulatory reporting purposes (see FDIC Financial Institution Letter FIL–86–94, dated December 23, 1994).

[109] 12 CFR 363.3.

[110] 12 CFR 363.4(a) and (b).

[111] 12 CFR Part 363.

[112] Services and functions are considered "comparable" if the holding company prepares and submits the management assessment of the effectiveness of the internal control structure and procedures for financial reporting and compliance with the designated safety and soundness laws and regulations based on information concerning the relevant activities and operations of those subsidiary institutions subject to Part 363. See 12 CFR Part 363, Appendix A, Guideline 4.

[113] This rating is more commonly known as the CAMELS rating, which addresses Capital adequacy, Asset quality, Management, Earnings, Liquidity and Sensitivity to market risk. See 12 CFR 363.1(b)(2). The appropriate federal banking agency may determine that an insured depository institution with total assets in excess of $9 billion that is a subsidiary of a holding company may not satisfy its FDIC internal control report requirement with an internal control report of the consolidated holding company's management if the agency determines that there could be a significant risk to the affected deposit insurance fund if the institution were allowed to satisfy its requirements in this manner. See 12 CFR 363.1(b)(3).

provisions in our rules are not included in the FDIC's regulations:

- The requirement that the report include a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting;[114]
- The requirement that management disclose any material weakness that it has identified in the company's internal control over financial reporting (and related stipulation that management is not permitted to conclude that the company's internal control over financial reporting is effective if there are one or more material weaknesses);
- The requirement that the company state that the registered public accounting firm that audited the financial statements included in the annual report has issued an attestation report on management's assessment of the company's internal control over financial reporting; and
- The requirement that the company must provide the registered public accounting firm's attestation report on management's assessment of internal control over financial reporting in the company's annual report filed under the Exchange Act.[115]

Several commenters generally supported our goal to eliminate or reduce duplicative reporting requirements. Some of these commenters asserted that we should recognize the substantial protections to depositors and investors provided by the federal laws that govern depository institutions and their holding companies. They suggested that our final rules should state that compliance with the FDIC's internal control report requirements satisfies the internal control report requirements that we are adopting under Section 404. A number of these commenters also thought that if we did not exempt insured depository institutions already filing internal control reports under the FDIC's requirements, we should provide an exemption in our rules mirroring the FDIC's exemption that excludes insured depository institutions or their holding companies with less than $500 million in assets from the internal control report requirements.

After consultation with the staffs of the FDIC, the Federal Reserve Board, the Office of Thrift Supervision and the Office of the Comptroller of Currency, we have determined that insured depository institutions that are subject to Part 363 of the FDIC's regulations (as well as holding companies permitted to file an internal control report on behalf of their insured depository institution subsidiaries in satisfaction of these regulations) and also subject to our new rules implementing Section 404 of the Sarbanes-Oxley Act[116] should be afforded considerable flexibility in determining how best to satisfy both sets of requirements. Therefore, they can choose either of the following two options:

- They can prepare two separate management reports to satisfy the FDIC's and our new requirements; or,
- They can prepare a single management report that satisfies both the FDIC's requirements and our new requirements.

If an insured depository institution or its holding company chooses to prepare a single report to satisfy both sets of requirements, the report of management on the institution's or holding company's internal control over financial reporting (as defined in Exchange Act Rule 13a–15(f) or 15d–15(f)) will have to contain the following:[117]

- A statement of management's responsibility for preparing the registrant's annual financial statements, for establishing and maintaining adequate internal control over financial reporting for the registrant, and for the institution's compliance with laws and regulations relating to safety and soundness designated by the FDIC and the appropriate federal banking agencies;
- A statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting as required by Exchange Act Rule 13a–15 or 15d–15;
- Management's assessment of the effectiveness of the registrant's internal control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not management has concluded that the registrant's internal control over financial reporting is effective, and of the institution's compliance with the designated safety and soundness laws and regulations during the fiscal year. This discussion must include disclosure of any material weakness in the registrant's internal control over financial reporting identified by management;[118] and
- A statement that the registered public accounting firm that audited the financial statements included in the registrant's annual report has issued an attestation report on management's assessment of the registrant's internal control over financial reporting.

Additionally, the institution or holding company will have to provide the registered public accounting firm's attestation report on management's assessment in its annual report filed under the Exchange Act.[119] For purposes of the report of management and the attestation report, financial reporting must encompass both financial statements prepared in accordance with GAAP and those prepared for regulatory reporting purposes.

I. Registered Investment Companies

Section 404 of the Sarbanes-Oxley Act does not apply to registered investment

[114] The FDIC's regulations do not specifically require that management identify the control framework used to evaluate the effectiveness of the institution's internal control over financial reporting. However, given the requirements of Sections 101 and 501 of the American Institute of Certified Public Accountants' attestation standards, the FDIC believes that the framework used must be disclosed or otherwise publicly available to all users of reports that institutions file with the FDIC pursuant to Part 363 of the FDIC's regulations.

[115] The FDIC's regulations do require an independent public accountant to examine, attest to, and report separately on, the assertion of management concerning the institution's internal control structure and procedures for financial reporting, but these regulations do not require the accountant to be a registered public accounting firm. See 12 CFR 363.3(b).

[116] Our rules do not provide an exemption that parallels the FDIC's exemption for insured depository institutions with less than $500 million in assets. It would be incongruous to provide an exemption in our rules for small depository institutions and not other small, non-depository Exchange Act reporting companies.

[117] An insured depository institution subject to both the FDIC's requirements and our new requirements choosing to file a single report to satisfy both sets of requirements will file the report with its primary federal regulator under the Exchange Act and the FDIC, its primary federal regulator (if other than the FDIC), and any appropriate state depository institution supervisor under Part 363 of the FDIC's regulations. A holding company choosing to prepare a single report to satisfy both sets of requirements will file the report with the Commission under the Exchange Act and the FDIC, the primary federal regulator of the insured depository institution subsidiary subject to the FDIC's requirements, and any appropriate state depository institution supervisor under Part 363.

[118] Management will not be permitted to conclude that the registrant's internal control over financial reporting is effective if there are one or more material weaknesses in the registrant's internal control over financial reporting.

[119] An insured depository institution subject to both the FDIC's requirements and our new requirements choosing to file a single management report to satisfy both sets of requirements will file the attestation report with its primary federal regulator under the Exchange Act and the FDIC, its primary federal regulator (if other than the FDIC), and any appropriate state depository institution supervisor under Part 363 of the FDIC's regulations. A holding company choosing to prepare a single management report to satisfy both sets of requirements will file the attestation report with the Commission under the Exchange Act and the FDIC, the primary federal regulator of the insured depository institution subsidiary subject to the FDIC's requirements, and any appropriate state depository institution supervisor under Part 363.

companies, and we are not extending any of the requirements that would implement section 404 to registered investment companies.[120] Several commenters objected to the proposed requirement that the Section 302 certification include a statement of the officers' responsibility for internal controls.[121] These commenters argued that this requirement would contradict Section 405 of the Sarbanes-Oxley Act and represent a "back-door" application of Section 404, from which registered investment companies are exempt.[122] We disagree. The certification requirements implement Section 302 of the Sarbanes-Oxley Act, from which registered investment companies are not exempt.[123] We are not subjecting registered investment companies to the requirements implementing Section 404 of the Sarbanes-Oxley Act, including the annual and quarterly evaluation requirements with respect to internal control over financial reporting and the requirements for an annual report by management on internal control over financial reporting and an attestation report on management's assessment.

We are adopting the following technical changes to our rules and forms implementing Section 302 of the Sarbanes-Oxley Act for registered investment companies in order to conform to the changes that we are adopting for operating companies.[124]

- *Paragraph (d) of Investment Company Act Rule 30a–3.* The amendments use the same term "internal control over financial reporting" that we are using in the rules for operating companies and include the same definition of "internal control over financial reporting" that we are adopting in Exchange Act Rules 13a–15(f) and 15d–15(f).
- *Paragraph (a) of Investment Company Act Rule 30a–3.* The amendments require every registered management investment company, other than a small business investment company, to maintain internal control over financial reporting. These amendments parallel those that we are adopting for operating companies in Exchange Act Rules 13a–15(a) and 15d–15(a).
- *Introductory text and sub-paragraph (b) of paragraph 4 of the certification in Item 10(a)(2) of Form N–CSR.* The amendments require the signing officers to state that they are responsible for establishing and maintaining internal control over financial reporting, and that they have designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.
- *Paragraph (4)(d) of the certification of Item 10(a)(2), and Item 9(b) of Form N–CSR.* The amendments require disclosure of any change in the investment company's internal control over financial reporting that occurred during the most recent fiscal half-year that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.
- *Paragraph (5) of the certification of Item 10(a)(2) of Form N–CSR.* The amendments require the signing officers to state that they have disclosed to the investment company's auditors and the audit committee all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the investment company's ability to record, process, summarize, and report financial information.

We are not, however, adopting proposed amendments that would have required the evaluation by an investment company's management of the effectiveness of its disclosure controls and procedures to be as of the end of the period covered by each report on Form N–CSR, rather than within 90 days prior to the filing date of the report, as our certification rules currently require.[125] Commenters noted that this would require investment company complexes that have funds with staggered fiscal year ends to perform evaluations of their disclosure controls and procedures as many as twelve times per year. They argued that requiring such frequent evaluations would be extremely costly, inefficient, and operationally disruptive, and would not provide any benefits to shareholders.[126] We agree that the costs of requiring investment company complexes to perform evaluations of their disclosure controls and procedures twelve times per year would outweigh the benefits to investors. The certification rules we are adopting will require an investment company complex to perform at most four such evaluations per year.[127]

Transition Period for Registered Investment Companies

Registered investment companies must comply with the rule and form amendments applicable to them on and after August 14, 2003, except as follows. Registered investment companies must comply with the amendments to Exchange Act Rules 13a–15(a) and 15d–15(a) and Investment Company Act Rule 30a–3(a) that require them to maintain internal control over financial reporting with respect to fiscal years ending on or after June 15, 2004. In addition, registered investment companies must comply with the portion of the introductory language in paragraph 4 of the certification in Item 10(a)(2) of Form N–CSR that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting, as well as paragraph 4(b) of the certification, beginning with the first annual report filed on Form N–CSR for a fiscal year ending on or after June 15, 2004.

J. Transition Period

We received a number of comments urging us to adopt an extended transition period for compliance with the new disclosure requirements.[128] We have decided to delay the compliance date of the requirement to provide a management report assessing the effectiveness of internal control over financial reporting and an auditor's attestation to, and report on, that assessment beyond that in the Proposing Release so that companies and their auditors will have time to prepare and satisfy the new requirements. These compliance dates do not apply to registered investment companies, which are not required to provide the management report assessing the effectiveness of internal control over financial reporting and the related auditor's attestation.[129] A company that is an "accelerated filer," as defined in Exchange Act Rule 12b–2, as of the end of its first fiscal year ending on or after June 15, 2004, must begin to comply with the management report on internal control over financial reporting disclosure requirements promulgated under Section 404 of the Sarbanes-Oxley Act in its annual report for that fiscal year. We recognize that non-accelerated filers, including smaller companies and foreign private issuers, may have greater difficulty in preparing the management report on internal control over financial reporting. Therefore, these types of companies must begin to comply with the disclosure requirements in annual reports for their first fiscal year ending on or after April 15, 2005. A company must begin to comply with the quarterly evaluation of changes to internal control over financial reporting requirements for its first periodic report due after the first annual report that must include management's report on internal control over financial reporting. We believe that the transition period is appropriate in light of both the substantial time and resources needed to properly implement the rules[130] and the corresponding benefit to investors that will result. In addition, the transition period will provide additional time for the PCAOB to consider relevant factors in determining and implementing any new attestation standard as it finds appropriate, subject to our approval.

Consistent with this extended compliance period for management's internal control report and the related attestation, and for the subsequent evaluation of changes in internal control over financial reporting, the following provisions of the rules adopted today are subject to the extended compliance period:

- The provisions of Items 308(a) and (b) of Regulations S–K and S–B and the comparable provisions of Forms 20–F and 40–F requiring management's internal control report and the related attestation;
- The amendments to Rules 13a–15(a) and 15d–15(a) under the Exchange Act relating to maintenance of internal control over financial reporting; and
- The provisions of Rules 13a–15(c) and (d) and 15d–15(c) and (d) under the Exchange Act requiring evaluations of internal control over financial reporting and changes thereto.

The extended compliance period does not in any way affect the provisions of our other rules and regulations regarding internal controls that are in effect, including, without limitation, Rule 13b–2 under the Exchange Act.

Other rules relating to evaluation and disclosure adopted today are effective on August 14, 2003. These other rules include amendments to Items 308(c) of Regulations S–K and S–B and the comparable provisions of Forms 20–F and 40–F requiring disclosure regarding certain changes in internal control over financial reporting. These amendments modify existing requirements regarding disclosure of changes in internal control over financial reporting, are related to statements made in the Section 302 certifications of principal executive and financial officers, and provide clarifications that are beneficial and whose implementation need not be delayed. These other rules that are effective on August 14, 2003 also include amendments relating to disclosure controls and procedures.

III. Discussion of Amendments Related to Certifications

A. Proposed Rules

We proposed to amend our rules and forms to require companies to file the certifications required by Section 302 of the Sarbanes-Oxley Act as an exhibit to the periodic reports to which they relate. Specifically, we proposed to amend the exhibit requirements of Forms 20–F and 40–F and Item 601 of Regulations S–B and S–K to add the Section 302 certifications to the list of required exhibits. In addition, we proposed to amend Exchange Act Rules 13a–14 and 15d–14 to require that Section 906 certifications accompany the periodic reports to which they relate, and to amend Forms 20–F and 40–F and Item 601 of Regulations S–B and S–K to add Section 906 certifications to the list of required exhibits. We also proposed to amend Investment Company Act Rule 30a–2 to require that Section 906 certifications accompany the periodic reports on Form N–CSR to which they relate and Item 10 of Form N–CSR to add the Section 906 certifications as a required exhibit.

We received eight comment letters in response to the proposals.[131] The primary topic addressed by the commenters was whether Section 906 of the Sarbanes-Oxley Act applied to annual reports filed on Form 11–K. Most of the commenters believed that issuers required to file annual reports on Form 11–K should be exempt from the requirement to furnish a Section 906 certification as an exhibit.[132] Two commenters noted that the language of Section 906 that requires certification of the chief executive officer and chief financial officer (or equivalent thereof) is inconsistent with the actual administration of employee benefit plans because such plans do not have individuals acting as chief executive officer and chief financial officer.[133] Those commenters noted that employee benefit plans are typically administered through one or more committees that are appointed as the plan's named fiduciaries to administer the plan and oversee investments.[134] In addition, some commenters believed that we should provide an exemption for Form 11–K because employee benefit plans are already subject to extensive regulation under the Employee Retirement Income Security Act of 1974 ("ERISA"),[135] which includes a requirement for the plan administrator to certify, under penalties of perjury and other criminal and administrative

---

[120] *See* Section 405 of the Sarbanes-Oxley Act ("Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)."). The provisions that would not extend to registered investment companies include amendments to Exchange Act rules 13a–15(c) and 15d–15(c) (requiring annual evaluation of the effectiveness of internal control over financial reporting); Exchange Act rules 13a–15(d) and 15d–15(d) (requiring quarterly evaluation of any change in internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, internal control over financial reporting); and Items 308(a) and (b) of Regulations S–K and S–B (requiring annual report by management on internal control over financial reporting and attestation report on management's evaluation of internal control over financial reporting).

[121] Proposed paragraph 4 of the certification section of proposed Form N–CSR. Proposing Release, note 26 above, 67 FR at 66250. We received 7 comment letters on the proposed changes to the certification rules with respect to investment companies in the Proposing Release. See letters regarding File No. S7–40–02 of: the Investment Company Institute ("ICI"); Protiviti; OppenheimerFunds, Inc. ("Oppenheimer"); The Association of the Bar of the City of New York; Leslie Ogg of Board Services Corporation ("Ogg"); Federated Funds; and D&T.

[122] *See* letters regarding File No. S7–40–02 of: Association of the Bar of the City of New York; ICI; and Oppenheimer.

[123] *See* Section 302(a)(4)(A) and (B) of the Sarbanes-Oxley Act (requiring signing officers to certify that they are responsible for establishing and maintaining internal controls and have designed the internal controls to ensure that material information relating to the issuer is made known to the signing officers).

[124] For a discussion of changes to the form of the Section 302 certification for operating companies, *see* Section III.D. below.

[125] Proposed Exchange Act Rules 13a–15(c) and 15d–15(c), proposed Investment Company Act Rule 30a–2(b)(4)(iii), and proposed Investment Company Act Rule 30a–3(b).

[126] *See* letters regarding File No. S7–40–02 of: D&T; ICI; Ogg; and Oppenheimer.

[127] *See* Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348, 5352 n. 43] (noting that in the case of a series fund or family of investment companies in which the disclosure controls and procedures for each fund in the series or family are the same, a single evaluation of the effectiveness of the disclosure controls and procedures for the series or family could be used in multiple certifications for the funds in the series or family, as long as the evaluation has been performed within 90 days of the report on Form N–CSR).

[128] *See*, for example, the letters regarding File No. S7–40–02 of: AICPA; D&T; CSC; E&Y; and Association of the Bar of the City of New York, Committee on Securities Regulation ("NYCB–CSR").

[129] *See* Section II. I., above, for compliance dates applicable to registered investment companies.

[130] *See* Section V. below.

[131] *See* letters regarding File No. S7–06–03 of: ABA; Cleary, Gottlieb, Steen & Hamilton ("Cleary"); Prof. Paul A. Griffin ("Griffin"); Intel Corporation ("Intel"); ICI; PwC; John Stalnaker and Patrick Derksen ("Stalnaker"); and Rooks Pitts ("Rooks").

[132] *See* letters regarding File No. S7–06–03 of: ABA; Cleary; Intel; and PwC.

[133] *See* letters File No. S7–06–03 of ABA and Cleary.

[134] *Id.*

[135] Pub. L. No. 83–406, 88 Stat. 129 (1974).

penalties, the accuracy of the plan's disclosures under ERISA.[136]

Commenters also addressed other topics related to Section 906. One commenter requested that the Commission allow Section 906 certifications to remain confidential.[137] That commenter expressed concern that a plaintiff could use a Section 906 certification to create a basis for liability that did not otherwise exist.[138] One commenter objected to the proposal to deem Section 906 certifications as "furnished," rather than as "filed."[139] After considering all of the comments, we are adopting the proposals substantially as proposed.

On April 11, 2003, U.S. Senator Joseph Biden introduced a statement into the Congressional Record that discusses Section 906.[140] The statement asserts that Section 906 "is intended to apply to any financial statement filed by a publicly-traded company, upon which the investing public will rely to gauge the financial health of the company," which includes financial statements included in current reports on Forms 6–K and 8–K and annual reports on Form 11–K.[141] The language added to Title 18 by Section 906 refers to "periodic reports containing financial statements," and our proposals to require companies to furnish Section 906 certifications as exhibits applied to periodic (annual, semi-annual and quarterly) reports but did not address current reports on Forms 6–K and 8–K.[142] One commenter addressed the statement in the Congressional Record, indicating that the suggested requirements would create substantial practical burdens for companies to provide Section 906 certifications in current reports filed on Forms 6–K or 8–K.[143] We are also concerned that extending Section 906 certifications to Forms 6–K or 8–K could potentially chill the disclosure of information by companies. As noted above, four commenters argued that Section 906 should not apply to Form 11–K.[144] In light of these developments, we are considering, in consultation with the Department of Justice, the application of Section 906 to current reports on Forms 6–K and 8–K and annual reports on Form 11–K and the possibility of taking additional action.

B. Final Rules

We are amending the exhibit requirements of Forms 20–F and 40–F and Item 601 of Regulations S–B and S–K to add the Section 302 certifications to the list of required exhibits.[145] In the final rules, the specific form and content of the required certifications is set forth in the applicable exhibit filing requirement.[146] To coordinate the rules requiring an evaluation of "disclosure controls and procedures" and "internal control over financial reporting," we are moving the definition of the term "disclosure controls and procedures" from Exchange Act Rules 13a–14(c) and 15d–14(c) and Investment Company Act Rule 30a–2(c) to new Exchange Act Rules 13a–15(c) and 15d–15(c) and Investment Company Act Rule 30a–3(c), respectively.

We are amending Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 to require the Section 906 certifications to accompany periodic reports containing financial statements as exhibits. We also are amending the exhibit requirements in Forms 20–F, 40–F and Item 601 of Regulations S–B and S–K to add the Section 906 certifications to the list of required exhibits to be included in reports filed with the Commission. In addition, we are amending Item 10 of Form N–CSR to add the Section 906 certifications as a required exhibit. Because the Section 906 certification requirement applies to periodic reports containing financial statements that are filed by an issuer pursuant to Section 13(a) or 15(d) of the Exchange Act, the exhibit requirement will only apply to reports on Form N–CSR filed under these sections and not to reports on Form N–CSR that are filed under the Investment Company Act only.[147] A failure to furnish the Section 906 certifications would cause the periodic report to which they relate to be incomplete, thereby violating Section 13(a) of the Exchange Act.[148] In addition, referencing the Section 906 certifications in Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 subjects these certifications to the signature requirements of Rule 302 of Regulation S–T.[149]

Section 906 requires that the certifications "accompany" the periodic report to which they relate. This is in contrast to Section 302, which requires the certifications to be included "in" the periodic report. In recognition of this difference, we are permitting companies to "furnish," rather than "file," the Section 906 certifications with the Commission.[150] Thus, the certifications would not be subject to liability under Section 18 of the Exchange Act.[151] Moreover, the certifications would not be subject to automatic incorporation by reference into a company's Securities Act registration statements, which are subject to liability under Section 11 of the Securities Act,[152] unless the issuer takes steps to include the certifications in a registration statement.

Although Section 906 does not explicitly require the certifications to be made public, we believe that it is appropriate to require certifications that "accompany" a publicly filed periodic report to be provided publicly in this manner. We believe that Congress intended for Section 906 certifications to be publicly provided. Civil liability already exists under our signature requirements and the Section 302 certifications. In addition, any Section 906 certification submitted to the Commission as correspondence is subject to the Freedom of Information Act.[153] Finally, the requirement to furnish Section 906 certifications as exhibits serves a number of important functions. First, the exhibit requirement enhances compliance by allowing the Commission, the Department of Justice and the public to monitor the certifications effectively. Second, by subjecting the Section 906 certifications to the signature requirements of Regulation S–T, companies are required to retain a manually signed signature page or other authenticating document for a five-year period. This requirement helps to preserve evidential matter in the event of prosecution.

There are important distinctions to be made between Sections 302 and 906 of the Sarbanes-Oxley Act. Unlike the Section 302 certifications, the Section 906 certifications are required only in periodic reports that contain financial statements. Therefore, amendments to periodic reports that do not contain financial statements would not require a new Section 906 certification, but would require a new Section 302 certification to be filed with the amendment.[154] In addition, unlike the Section 302 certifications, the Section 906 certifications may take the form of a single statement signed by a company's chief executive and financial officers.[155]

C. Effect on Interim Guidance Regarding Filing Procedures

We provided interim guidance regarding voluntary filing procedures for Section 906 certifications.[156] That guidance encouraged issuers to submit their Section 906 certifications as exhibits to the periodic reports to which they relate.[157] For issuers that are not investment companies, that interim voluntary guidance shall remain in effect until the rules become effective. In the event that the EDGAR system is not updated by the effective date, companies should submit the required certifications as Exhibit 99.[158] For registered investment companies, the interim guidance shall remain in effect until the rules become effective.[159]

D. Form of Section 302 Certifications

We proposed several amendments to the form of certifications to be provided pursuant to Section 302 of the Sarbanes-Oxley Act. In particular, we proposed the following:

- The addition of a statement that principal executive and financial officers are responsible for designing internal controls and procedures for financial reporting or having such controls and procedures designed under their supervision;
- The clarification that disclosure controls and procedures may be designed under the supervision of principal executive and financial officers; and
- The revision of the statement as to the effectiveness of disclosure controls and procedures and internal controls and procedures for financial reporting would be as of the end of the period.

We have adopted the proposals referred to above substantially as proposed. In addition, we have made the following changes:

- We have incorporated the term "internal control over financial reporting" into the certification;
- We have amended the provision of the certification relating to changes in internal control over financial reporting, consistent with the final rules discussed above regarding evaluation and disclosure, so that it refers to changes that have materially affected or are reasonably likely to materially affect internal control over financial reporting;
- We have clarified that the statement as effectiveness of disclosure controls and procedures be as of the end of the period, but that the date of the evaluation is not specified; and
- We have made minor changes in the organization of the certification.

E. Transition Period

The final rules regarding filing of certifications under Sections 302 and 906, for companies other than registered investment companies, will be effective on August 14, 2003. The compliance dates applicable to registered investment companies are described in Section II. I., above.

We believe that changes in the form of Section 302 certification described above are beneficial to both registrants and investors because they clarify the provisions of the certification. With one exception, discussed below, the changes are also not related to our new requirements regarding management's internal control report. With that one exception, appropriateness of the modified certification is thus not affected by the extended compliance period we are providing in connection with management's internal control report and the related attestation. Our rules adopted today also therefore provide that the form of Section 302 certification will be modified, with that one exception, in accordance with these rules effective on August 14, 2003.

We are applying the extended compliance period to the portion of the introductory language in paragraph 4 of the Section 302 certification that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b), which must be provided in the first annual report required to contain management's internal control report and thereafter. As noted above, this extended compliance period does not in any way affect the provisions of our other rules and regulations regarding internal controls that are in effect.

IV. Paperwork Reduction Act

A. Background

Certain provisions of our final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[160] We published a notice requesting comment on the collection of information requirements in the proposing release for the rule amendments, and we submitted these requirements to the Office of

---

[136] *See* letters regarding File No. S7–06–03 of: ABA; Cleary; and PwC.

[137] *See* ABA letter regarding File No. S7–06–03.

[138] *Id.*

[139] *See* Stalnaker letter regarding File No. S7–06–03.

[140] *See* 149 Cong. Rec. S5325 (daily ed. Apr. 11, 2003).

[141] *Id.* at S5331.

[142] *See* Release No. 33–8212 (Mar. 21, 2003) [68 FR 15600] at fn. 37.

[143] *See* ABA letter regarding File No. S7–06–03.

[144] *See* letters regarding File No. S7–06–03 of: ABA; Cleary; Intel; and PwC.

[145] We recently adopted Form N–CSR, to be used by registered management investment companies to file certified shareholder reports with the Commission. *See* Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348]. As adopted, Form N–CSR requires the Section 302 certifications to be filed as an exhibit to a report on Form N–CSR. Item 10(b) of Form N–CSR.

[146] Accordingly, we are revising Exchange Act Rules 13a–14 and 15d–14 to delete from those rules the detailed description of the contents of the required certifications and to revise the instructions to Forms 10–Q, 10–QSB, 10–K, and 10–KSB to delete the references to the Section 302 certification requirements. We are also adopting similar changes to Investment Company Act Rule 30a–2 and Form N–CSR.

[147] *See* General Instruction A of Form N–CSR (Form N–CSR is a combined reporting form to be used for reports of registered management investment companies under Section 30(b)(2) of the Investment Company Act and Sections 13(a) or 15(d) of the Exchange Act); n. 28 above (discussing issuers covered by Sections 13(a) and 15(d) of the Exchange Act). Registered management investment companies that are required to file reports on Form N–CSR pursuant to Section 13(a) or 15(d) of the Exchange Act will be required to provide the Section 906 certifications under Exchange Act Rules 13a–14(b) and 15d–14(b) as well as Investment Company Act Rule 30a–2(b). By contrast, registered management investment companies that are required to file reports on Form N–CSR are required to provide the Section 302 certifications solely under Investment Company Act Rule 30a–2(a), which was adopted under Sections 13(a) and 15(d) of the Exchange Act as well as the Investment Company Act. Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276, 57295]; Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348, 5365].

[148] *See also* Section 3(b)(1) of the Sarbanes-Oxley Act, which provides that "[a] violation by any person of this Act * * * shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 * * * and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act* * *."

[149] *See* Rule 302(b) of Regulation S–T [17 CFR 232.302(b)]. Among other things, this rule requires that an issuer maintain manually signed certifications or other authenticating documents.

[150] *See*, for example, Item 601(b)(32)(ii) of Regulation S–K.

[151] 15 U.S.C. 78r.

[152] 15 U.S.C. 77k.

[153] 5 U.S.C. 552 *et seq.*

[154] *See* Exchange Act Rule 12b–15 [17 CFR 240.12b–15] and Investment Company Act Rule 8b–15 [17 CFR 270.8b–15]. Depending on the contents of the amendment, the form of certification required to be included may be subject to modification.

[155] *See* Exchange Act Rules 13a–14(b) and 15d–14(b) [17 CFR 240.13a–14(b) and 240.15d–14(b)] and Investment Company Act Rule 30a–2(b) [17 CFR 270.30a–2(b)].

[156] *See* Release No. 33–8212 (Mar. 21, 2003) [68 FR 15600] at Section III.

[157] We are modifying that interim guidance, however, to more closely parallel the provisions of Section 302 of Regulation S–T that require retention of manual signatures for electronically filed signed statements. Issuers furnishing Section 906 certifications to the Commission as an exhibit to the periodic reports to which they relate during the period covered by the interim guidance should insert the following legend after the text of each certification: "A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to [name of issuer] and will be retained by [name of issuer] and furnished to the Securities and Exchange Commission or its staff upon request."

[158] Use of Exhibit 99 for this purpose will remain in effect until we announce that our EDGAR system permits registrants to file or furnish exhibits 31 and 32 for Section 302 and 906 certifications. We will issue a statement and post it on the Commission's website to announce this date as soon as it becomes known.

[159] For a registered management investment company filing reports on Form N–CSR, the EDGAR document type should be EX–99.906CERT for the Section 906 certifications.

[160] 44 U.S.C. 3501 *et seq.*

Management and Budget ("OMB") for review in accordance with the PRA.[161] The titles for the collection of information are:

(1) "Form 10–Q" (OMB Control No. 3235–0070);

(2) "Form 10–QSB" (OMB Control No. 3235–0416);

(3) "Form 10–K" (OMB Control No. 3235–0063);

(4) "Form 10–KSB" (OMB Control No. 3235–0420);

(5) "Form 20–F" (OMB Control No. 3235–0288);

(6) "Form 40–F" (OMB Control No. 3235–0381);

(7) "Regulation S–X" (OMB Control No. 3235–0009);

(8) "Regulation S–K" (OMB Control No. 3235–0071);

(9) "Regulation S–B" (OMB Control No. 3235–0417); and

(10) "Form N–CSR" (OMB Control No. 3235–0570).

The forms are periodic reports adopted under the Exchange Act and the Investment Company Act. The regulations set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the requirements is mandatory. Under our rules for the retention of manual signatures,[162] companies must retain, for a period of five years, an original signature page or other document authenticating, acknowledging or otherwise adopting the certifying officers' signatures that appear in their electronically filed periodic reports. Responses to the information collections are not kept confidential.

B. Summary of the Final Rules

The final rules require the annual report of every company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act, other than reports by registered investment companies, to contain a report of management that includes:

- A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company;
- A statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting;
- Management's assessment of the effectiveness of the company's internal control over financial reporting, as of the end of the most recent fiscal year; and
- A statement that the registered public accounting firm that audited the financial statements included in the annual report has issued an attestation report on management's evaluation of the company's internal control over financial reporting.

We are adding these requirements pursuant to the legislative mandate in Section 404 of the Sarbanes-Oxley Act. Under our final rules, a company also will be required to evaluate and disclose any change in its internal control over financial reporting that occurred during the fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

We are also adopting amendments to require companies to file the certifications mandated by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to their annual, semi-annual and quarterly reports. These amendments will enhance the ability of investors, the Commission staff, the Department of Justice and other interested parties to easily and efficiently access the certifications through our Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system and facilitate better monitoring of a company's compliance with the certification requirements.

C. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the proposing releases addressing Section 404 and Sections 302 and 906 of the Sarbanes-Oxley Act.[163] We received no comments on our PRA estimates for the certification requirements. With respect to our PRA estimates for the rules implementing Section 404 of the Sarbanes-Oxley Act, eight commenters thought that our PRA estimates significantly understated the actual time and costs that companies would have to expend evaluating and reporting on their internal control over financial reporting.[164] However, few of these commenters provided actual alternative cost estimates, and none provided estimates that could be applied generally to all types and sizes of companies. One commenter believed that, based on its experience, we understated the burden estimate by at least a factor of 100.[165] In response to these commenters, and based on follow-up conversations with several of the commenters who expressed a view on our burden and cost estimates, we have revised our estimates as discussed more fully in Section IV.D below.

We have made a substantive modification to the proposed rules in response to the cost concerns expressed by commenters. Specifically, the final rules require companies to undertake a quarterly evaluation only of any change occurring during the fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. This change should substantially mitigate some of the costs and burdens associated with the proposed requirements.

We have made additional substantive changes to the proposed rule as well. First, the final rules require management to evaluate the company's internal control over financial reporting using a suitable framework, such as the COSO Framework. Second, the final rules expand the list of information that must be included in the management report and specify that management cannot conclude that a company's internal control over financial reporting is effective if there are one or more material weaknesses in such control. Under the final rules, management must identify the framework used to evaluate the company's internal control over financial reporting and disclose any material weaknesses in the company's internal control over financial reporting discovered through the evaluation. We do not believe that these changes significantly alter the burdens imposed on companies resulting from the required assessment of internal control over financial reporting.

D. Revisions to PRA Reporting and Cost Burden Estimates

As discussed above, in consideration of commenters' remarks, we are revising our PRA burden and cost estimates for the rules pertaining to Section 404 that we originally submitted to the OMB in connection with the proposed rules.

[161] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[162] *See* Rule 302 of Regulation S–T [17 CFR 232.302].

[163] See Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208] and Release No. 33–0212 (Mar. 21, 2003) [68 FR 15600].

[164] 164 See letters regarding File No. S7–40–02 of: AICPA; BDO; D&T; Emerson; E&Y; IPC; Intel; and NYCB–CCL.

[165] See Intel letter regarding File No. S7–40–02.

We derived our new burden hour estimates for the annual report forms by estimating the total amount of time that it will take a company's management to conduct the annual evaluation of its internal control over financial reporting and to prepare the required management report.[166] Our annual burden estimate is based on several assumptions. First, we assumed that the annual number of responses for each form would be consistent with the number of filings that we received in fiscal year 2002.[167] Second, we assumed that there is a direct correlation between the extent of the burden and the size of the reporting company, with the burden increasing commensurate with the size of the company. We believe that there will be a marked disparity of burdens and costs resulting from the new internal control requirements between the largest and smallest reporting companies. Our estimates reflect an average burden for all sizes of companies. Third, we assumed that the first-year burden would be greater than that for subsequent years, as a portion of the costs will reflect one-time expenditures associated with complying with the rule, such as compiling documentation, implementing new processes, and training staff. We also adjusted the second and third year estimates to account for the fact that management should become more efficient at conducting its internal control assessment and preparing the disclosure after the first year as the process becomes more routine.[168] Under these assumptions, we estimate that the average incremental burden for an annual filing will be 383 hours per company and the portion of that burden that is reflected as the cost associated with outside professionals is approximately $34,300 per company. For large corporations, we expect that this burden will be substantially higher. Indeed, we received estimates in the thousands of hours for some large and complex companies. Conversely, we expect small companies to find their burden to be less than this average. We also believe that many companies will experience costs well in excess of this average in the first year of compliance with the final rules. We believe that costs will decrease in subsequent years. This burden will also vary among companies based on the complexity of their organization and the nature of their current internal control procedures. We therefore calculated our estimates by averaging the estimated burdens over a three-year period.

We derived our burden estimates for the quarterly report forms by estimating the total amount of time that it will take a company's management to conduct the quarterly evaluation of material changes to the company's internal control over financial reporting and for the company to prepare the required disclosure about such changes. We believe that these quarterly evaluations will impose little additional burden, as much of the structure to conduct these evaluations will be established in connection with the annual evaluations. We estimate that the quarterly reporting will impose an additional burden of five hours per company in connection with each quarterly report. Accordingly, we did not revise our original burden hour estimates for the quarterly report forms.

We estimate the total annual incremental burden (for annual and quarterly reports) associated with the new internal control evaluation and disclosure requirements for all companies to be approximately 3,792,888 hours of company personnel time and a cost of $481,013,550 for the services of outside professionals.[169]

Table 1 below presents these burdens and costs for each form affected by the final rules implementing Section 404 of Sarbanes-Oxley. We calculated the burden by multiplying the estimated number of affected responses by the estimated average number of hours that management will spend conducting its assessment of the company's internal control over financial reporting and preparing the related disclosure. For Exchange Act annual reports, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour.[170] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. There is no change to the estimated burden of the collections of information entitled "Regulation S–K," "Regulation S–B" and "Regulation S–X" because the burdens that these regulations impose are reflected in our revised estimates for the forms.

TABLE 1.—INCREMENTAL PAPERWORK BURDEN FOR THE RULES IMPLEMENTING SECTION 404

	Annual responses (A)	Incremental hours/form (B)	Total burden (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional costs (F)=(E)*$300
10–K	8,484	383	3,249,372	2,437,029	812,343	243,702,900
10–KSB	3,820	383	1,463,606	1,097,295	365,765	109,729,500
20–F	1,194	383	457,302	114,326	342,977	102,892,950
40–F	134	383	51,322	12,831	37,989	11,547,450
10–Q	23,743	5	118,715	89,036	29,679	8,903,625
10–QSB	11,299	5	56,495	42,371	14,124	4,237,125
Reg. S–K	N/A	1	1	N/A	N/A	N/A
Reg. S–B	N/A	1	1	N/A	N/A	N/A
Reg. S–X	N/A	1	1	N/A	N/A	N/A
Total				3,792,888		$481,013,550

[166] Our estimates are based on information from with several large and small firms, accounting firms and trade and professional associations.

[167] The estimates used in the releases proposing these rules were based on the number of filings that we received in fiscal year 2001.

[168] We assumed the estimated burdens in the second and third years would decline by 75% from the first year estimate.

[169] Our PRA estimates do not include any additional burdens or costs that a company will incur as a result of having to obtain an auditor's attestation report on management's internal control report because the PCAOB, rather than the Commission, is responsible for establishing the attestation standards and the Sarbanes-Oxley Act itself requires companies to obtain such an attestation. We have, however, included an estimated 0.5 hour burden in our revised annual burden estimates to account for the filing by the company of the attestation report.

[170] The burden allocation for Forms 20–F and 40–F, however, use a 25% internal to 75% outside professional allocation to reflect the fact that foreign private issuers rely more heavily on outside professionals for the preparation of these forms.

We do not believe that the amendments with respect to the Section 302 certifications result in a need to alter the burden estimates that we previously submitted to OMB because they merely relocate the certifications from the text of quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of the reports. We are, however, revising the burden estimates for quarterly and annual reports and for Form N–CSR based on the amendment with respect to the Section 906 certification.[171] The PRA estimates for these amendments do not reflect a cost because we believe that the entire burden will be borne by company personnel. With respect to semi-annual reports on Form N–CSR, because the financial statements of registered management investment companies are not as complex as those of operating companies, we estimate that the amendments relating to the Section 906 certifications would result in an increase of one burden hour per portfolio.[172] We estimate that there are approximately 3,700 registered management investment companies that are required to file reports on Form N–CSR, containing 9,850 portfolios. The following table illustrates the incremental PRA estimates for the new Section 906 certification[173] requirements:

TABLE 2.—INCREMENTAL PAPERWORK BURDEN FOR CERTIFICATION REQUIREMENTS

Form	Annual responses	Hours/form	Total hours added
20–F	1,194	2	2,388
40–F	134	2	268
10–K	8,484	2	16,968
10–KSB	3,820	2	7,640
10–Q	23,743	2	47,486
10–QSB	11,299	2	22,598
N–CSR	7,400	[173]2.66	19,700
Total			117,048

V. Cost-Benefit Analysis

The amendments implementing Section 404 of the Sarbanes-Oxley Act are congressionally mandated. We recognize that implementation of the Sarbanes-Oxley Act will likely result in costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have considered costs and benefits of our amendments.

A. Benefits

One of the main goals of the Sarbanes-Oxley Act is to enhance the quality of reporting and increase investor confidence in the financial markets. Recent market events have evidenced a need to provide investors with a clearer understanding of the processes that surround the preparation and presentation of financial information. These amendments are intended to accomplish the Act's goals by improving public company disclosure to investors about the extent of management's responsibility for the company's financial statements and internal control over financial reporting and the means by which management discharges its responsibility. The establishment and maintenance of internal control over financial reporting has always been an important responsibility of management. An effective system of internal control over financial reporting is necessary to produce reliable financial statements and other financial information used by investors. By requiring a report of management stating management's responsibility for the company's financial statements and internal control over financial reporting and management's assessment regarding the effectiveness of such control, investors will be able to better evaluate management's performance of its stewardship responsibilities and the reliability of a company's financial statements and other unaudited financial information.

The required annual evaluation of internal control over financial reporting will encourage companies to devote adequate resources and attention to the maintenance of such control. Additionally, the required evaluation should help to identify potential weaknesses and deficiencies in advance of a system breakdown, thereby facilitating the continuous, orderly and timely flow of information within the company and, ultimately, to investors and the marketplace. Improved disclosure may help companies detect fraudulent financial reporting earlier and perhaps thereby deter financial fraud or minimize its adverse effects. All of these benefits will increase market efficiency by improving investor confidence in the reliability of a company's financial disclosure and system of internal control over financial reporting. These benefits are not readily quantifiable. Commenters overwhelmingly supported the benefits of the amendments.

The amendments related to Section 302 of the Sarbanes-Oxley Act relocate the certifications required by Exchange Act Rules 13a-14 and 15d-14 from the text of quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports. The amendments related to Section 906 of the Sarbanes-Oxley Act require that the certifications required by Section 1350 of Title 18 of the United States Code, added by Section 906 of the Act, accompany the periodic reports to which they relate as exhibits. These changes will enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the changes will enable the Department of Justice, which has responsibility for enforcing Section 906, to review effectively the form and content of the certifications required by that section.

B. Costs

The final rules related to Section 404 of the Sarbanes-Oxley Act require companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The management report on internal control over financial reporting must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting; a statement identifying the framework used to evaluate the effectiveness of the company's internal control over financial reporting; management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year; and a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on management's evaluation of the company's internal control over financial reporting. The final rules will increase costs for all reporting companies. These costs are mitigated somewhat because companies have an existing obligation to maintain an adequate system of internal accounting control under the FCPA. Moreover, one commenter noted that some companies already voluntarily include management reports on their internal controls in their annual reports. The preparation of the management report on internal control over financial reporting will likely involve multiple parties, including senior management, internal auditors, in-house counsel, outside counsel and audit committee members.

Many commenters believed that our proposal to require quarterly evaluations of a company's internal control over financial reporting would significantly increase the costs of preparing periodic reports. Several commenters also were concerned that the proposals would result in increased audit fees. We have limited data on which to base cost estimates of the final rules.

Using our PRA burden estimates, we estimate the aggregate annual costs of implementing Section 404(a) of the Sarbanes-Oxley Act to be around $1.24 billion (or $91,000 per company).[174] We recognize the magnitude of the cost burdens and we are making several accommodations to address commenters' concerns and to ease compliance, including:

- Requiring quarterly disclosure only of any change that has materially affected, or is reasonably likely to materially affect, a company's internal control over financial reporting; and
- An extended transition period for the new internal control reporting requirements.

We originally proposed to require a company to include an internal control report in its annual report for fiscal years ending on or after September 15, 2003. Under the final rules, a company that is an "accelerated filer" under the definition in Exchange Act Rule 12b-2 must begin to comply with the internal control report requirement in its annual report for its first fiscal year ending on or after June 15, 2004. All other companies must begin to comply with the requirement in their annual reports for their first fiscal year ending on or after April 15, 2005.

A longer transition period will help to alleviate the immediate impact of any costs and burdens imposed on companies. A longer transition period may even help to reduce costs as companies will have additional time to develop best practices, long-term processes and efficiencies in preparing management reports. Also, a longer transition period will expand the period of availability of outside professionals that some companies may wish to retain as they prepare to comply with the new requirements.

The PRA burden estimate, however, excludes several costs attributable to Section 404. The estimate does not include the costs associated with the auditor's attestation report, which many commenters have suggested might be substantial. It also excludes estimates of likely "indirect" costs of the final rules. For instance, the final rules increase the cost of being a public company; therefore the final rules may discourage some companies from seeking capital from the public markets. Moreover, the final rules may also discourage non-U.S. firms from seeking capital in the United States.

The incremental costs of the amendments related to Section 302 of the Sarbanes-Oxley Act are minimal. Since companies must already include the certifications required by Exchange Act Rules 13a-14 and 15d-14 in their quarterly and annual reports, there should be no incremental cost to relocating the certifications from the text of the reports to the "Exhibits" section of these reports. Requiring the Section 906 certifications to be included as an exhibit to the periodic reports to which they relate will lead to some additional costs for companies that currently are submitting the certifications to the Commission in some other manner. While these costs are difficult to quantify, we estimate that the annual paperwork burden of the amendments will be approximately $23.4 million.[175]

One commenter has expressed concern that companies may assume greater legal risk by making their Section 906 certifications publicly available.[176] To the extent that companies may assume greater legal risk by including the Section 906 certifications as part of their periodic reports filed pursuant to the Exchange Act where these reports are incorporated by reference into Securities Act registration statements, we address this risk by requiring companies to "furnish," rather than "file," the certifications with the Commission for purposes of Section 18 of the Exchange Act or incorporation by reference into other filings. Thus, the amendments should mitigate this potential indirect cost of compliance. We believe that it is appropriate to require the certifications that accompany a periodic report to be publicly available. We believe that Congress intended for Section 906 certifications to be publicly available. Civil liability already exists by virtue of the pre-existing signature requirements and Section 302 certifications. In addition, any Section 906 certification submitted to the Commission as correspondence is subject to the Freedom of Information Act.[177]

---

[171] While Section 906 of the Sarbanes-Oxley Act requires that certifications must accompany a periodic report, we are increasing our PRA burdens in view of the fact that the amendments explicitly require companies to furnish Section 906 certifications as exhibits to these reports. To date, companies have used various methods to fulfill their obligations under Section 906, and have not consistently submitted the certifications as part of the report.

[172] Many registered management investment companies have multiple portfolios. However, they prepare separate financial statements for each portfolio. Thus, the burden of the Section 906 certifications is estimated on a portfolio basis rather than a registered management investment company basis.

[173] This number represents the burden associated with the average number of portfolios per form. This number will vary for each registered management investment company depending on the number of portfolios. We estimate that the paperwork burden for each portfolio is one hour.

[174] This estimate is based on the estimated total burden hours of 5,396,266, an assumed 75%/25% split of the burden hours between internal staff and external professionals, and an hourly rate of $200 for internal staff time and $300 for external professionals. The hourly cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission. Our PRA estimate does not reflect any additional cost burdens that a company will incur as a result of having to obtain an auditor's attestation on management's internal control report.

[175] This calculation is based on an estimate of burden hours multiplied by a cost of $200.00 per hour (117,048 hours multiplied by $200.00 per hour). The hourly cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

[176] 176 *See* ABA letter regarding File No. S7–06–03.

[177] 5 U.S.C. 552 *et seq.*

VI. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [178] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments related to Section 404 of the Sarbanes-Oxley Act represent the implementation of a congressional mandate. The final rules require management reports that improve investors' understanding of management's responsibility for the preparation of reliable financial information and maintaining adequate internal control over financial reporting. We anticipate that these requirements will enhance the proper functioning of the capital markets by increasing the quality and accountability of financial reporting and restoring investor confidence.

Section 2(b) of the Securities Act,[179] Section 3(f) of the Exchange Act [180] and Section 2(c) of the Investment Company Act [181] require us, when engaging in rulemaking to consider or determine whether an action is necessary or appropriate in the public interest, and consider whether the action will promote efficiency, competition, and capital formation. The amendments related to Section 404 are designed to enhance the quality and accountability of the financial reporting process and may help increase investor confidence, which implies increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation. We requested comments on the effect of these amendments on efficiency, competition and capital formation analyses in the proposing release addressing Section 404. We received no comments in response to these requests.

The amendments related to Section 302 of the Sarbanes-Oxley Act would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports. This relocation will enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The amendments related to Section 906 of the Sarbanes-Oxley Act also will streamline compliance with Section 1350 of Title 18 of the United States Code, added by Section 906 of the Act, and will enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing Section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the amendments related to certifications will impose any burden on competition, nor are we aware of any impact on capital formation that would result from the amendments. Depending on how an issuer's principal executive and principal financial officers presently satisfy the Section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We requested comment on whether the amendments would affect competition, efficiency and capital formation. We received no comments in response to this request.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act.[182] This FRFA relates to new rules and amendments that require Exchange Act companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The management report on internal control over financial reporting must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting; a statement identifying the framework used to evaluate the effectiveness of the company's internal control over financial reporting; management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year; and a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on management's evaluation of the company's internal control over financial reporting. This FRFA also addresses new rules and amendments that require companies to file the certifications mandated by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to their periodic reports. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with the Regulatory Flexibility Act in conjunction with each of the releases proposing these rules.[183] The proposing releases solicited comments on these analyses.

A. Need for the Amendments

We are adopting these disclosure requirements to comply with the mandate of, and to fulfill the purposes underlying the provisions of, the Sarbanes-Oxley Act of 2002. The new evaluation and disclosure requirements regarding a company's internal control over financial reporting are intended to enhance the quality of reporting and increase investor confidence in the fairness and integrity of the securities markets by making it clear that a company's management is responsible for maintaining and annually assessing such controls. The amendments related to Sections 302 and 906 of the Sarbanes-Oxley Act will enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The amendments also will streamline compliance with Section 1350 of Title 18 of the United States Code and will enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing Section 1350, to verify a company's submission of the Section 906 certification and efficiently review the form and content of the certifications.

B. Significant Issues Raised by Public Comment

In the Proposing Releases, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, and both quantitative and qualitative nature of the impact. Several commenters expressed concern that small business issuers, including small entities, would be particularly disadvantaged by our proposal to require quarterly evaluations of internal control over financial reporting. We received no commentary on the impact

[178] 15 U.S.C. 78w(a)(2).
[179] 15 U.S.C 77b(b).
[180] 15 U.S.C. 78c(f).
[181] 15 U.S.C. 80a–2(c).
[182] 5 U.S.C. 601.
[183] 5 U.S.C. 603.

on small entities of the new certification requirements.

C. Small Entities Subject to the Amendments

The new disclosure items affect issuers that are small entities. Exchange Act Rule 0–10(a) [184] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a "small entity" if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[185] We estimate that there are approximately 190 registered management investment companies that, together with other investment companies in the same group of related investment companies, have net assets of $50 million or less as of the end of the most recent fiscal year.[186]

The new disclosure items with respect to management's report on internal control over financial reporting and the registered public accounting firm's attestation report apply to any small entity, other than a registered investment company, that is subject to Exchange Act reporting requirements. The new certification requirements apply to any small entity that is subject to Exchange Act reporting requirements.

D. Reporting, Recordkeeping and Other Compliance Requirements

The amendments require a company's management to disclose information regarding the company's internal control over financial reporting, including management's assessment of the effectiveness of the company's internal control over financial reporting. All small entities that are subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, other than registered investment companies, are subject to these evaluation and disclosure requirements. Because reporting companies already file the forms being amended, no additional professional skills beyond those currently possessed by these filers necessarily are required to prepare the new disclosure, although some companies may choose to engage outside professionals to assist them in complying with the new requirements. We expect that these new disclosure items will increase compliance costs incurred by small entities. We have calculated for purposes of the Paperwork Reduction Act that each company would be subject to an added annual reporting burden of approximately 398 hours and the portion of that burden that is reflected as the cost associated with outside professionals is approximately $35,286.[187] We believe, however, that the annual average burden and costs for small issuers are much lower.[188] For the new certification requirements, we estimate that a company, including a small entity, will be subject to an additional reporting burden of eight hours per year.[189] These burden estimates reflect only the burden and cost of the required collection of information.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Several of these alternatives were considered but rejected, while other alternatives were taken into account in the final rules. We believe the final rules fulfill the intent of the Sarbanes-Oxley Act of enhancing the quality of reporting and increasing investor confidence in the fairness and integrity of the securities markets.

Sections 302, 404 and 906 of the Sarbanes-Oxley Act make no distinction based on a company's size. We think that improvements in the financial reporting process for all companies are important for promoting investor confidence in our markets. For example, a 1999 report commissioned by the organizations that sponsored the Treadway Commission found that the incidence of financial fraud was greater in small companies.[190] However, we are sensitive to the costs and burdens that small entities will face. The final rules require only a quarterly evaluation of material changes to a company's internal control over financial reporting, unlike the proposed rules that would have required management to evaluate the effectiveness of a company's internal control over financial reporting on a quarterly basis. In response to comments, including comments submitted by the Small Business Administration, we have decided not to adopt this proposal.

We believe that a blanket exemption for small entities from coverage of the requirements is not appropriate and would be inconsistent with the policies underlying the Sarbanes-Oxley Act. However, we have provided an extended transition period for companies that do not meet the definition in Exchange Act Rule 12b–2 [191] of an "accelerated filer" for the rules implementing Section 404 of the Sarbanes-Oxley Act. Under the adopted rules, non-accelerated filers, including small business issuers, need not prepare the management report on internal control over financial reporting until they file their annual reports for fiscal years ending on or after April 15, 2005. This deferral provides non-accelerated filers more time to develop structured and formal systems of internal control over financial reporting.

We believe that the new disclosure and certification requirements are clear and straightforward. The amendments require only brief disclosure. An effective system of internal control over financial reporting has always been necessary to produce reliable financial statements and other financial information. Our amendments do not specify any particular controls that a company's internal control over financial reporting should include. Each company is afforded the flexibility to design its internal control over financial reporting according to its own set of circumstances. This flexibility should

[184] 17 CFR 240.0–10(a).
[185] 17 CFR 270.0–10.
[186] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Forms N–1A, N–2 and N–3, which are required to file reports on Form N–CSR.
[187] This estimate includes the burden for one annual report and three quarterly reports.
[188] Under the method we used to estimate the PRA burdens associated with the Section 404 rules, we estimated that companies with less than $100 million in revenues would be subject to an added annual reporting burden of approximately 100 hours.
[189] The estimated burden for one annual report and three quarterly reports.
[190] *See* Beasley, Carcello and Hermanson, Fraudulent Financial Reporting: 1987–1997. *An Analysis of U.S. Public Companies* (Mar. 1999) (study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission).
[191] 17 CFR 240.12b–2.

enable companies to keep costs of compliance as low as possible. Therefore, it does not seem necessary to develop separate requirements for small entities.

The final rules impose both design and performance standards regarding disclosure of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company and management's assessment of the effectiveness of such controls. The rules do, however, afford a company the flexibility to design its internal control over financial reporting to fit its particular circumstances. We believe that it would be inconsistent with the purposes of the Sarbanes-Oxley Act to specify different requirements for small entities.

VIII. Statutory Authority and Text of Rule Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 5, 6, 7, 10, 17 and 19 of the Securities Act, as amended, Sections 12, 13, 15, 23 and 36 of the Exchange Act, Sections 8, 30, 31 and 38 of the Investment Company Act, as amended and Sections 3(a), 302, 404, 405 and 906 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Section 210.1–02 is amended by:
■ a. Removing the authority citation following § 210.1–02;
■ b. Redesignating paragraph (a) as paragraph (a)(1); and
■ c. Adding paragraph (a)(2).

The revisions read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(a)(1) * * *

(2) *Attestation report on management's assessment of internal control over financial reporting.* The term *attestation report on management's assessment of internal control over financial reporting* means a report in which a registered public accounting firm expresses an opinion, or states that an opinion cannot be expressed, concerning management's assessment of the effectiveness of the registrant's internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter) in accordance with standards on attestation engagements. When an overall opinion cannot be expressed, the registered public accounting firm must state why it is unable to express such an opinion.

* * * * *

■ 3. Amend § 210.2–02 by:
■ a. Revising the section heading;
■ b. Revising the headings of paragraphs (a), (b), (c) and (d); and
■ c. Adding paragraph (f).

The addition and revisions read as follows.

§ 210.2–02 Accountants' reports and attestation reports on management's assessment of internal control over financial reporting.

(a) *Technical requirements for accountants' reports.* * * *

(b) *Representations as to the audit included in accountants' reports.* * * *

(c) *Opinions to be expressed in accountants' reports.* * * *

(d) *Exceptions identified in accountants' reports.* * * *

* * * * *

(f) *Attestation report on management's assessment of internal control over financial reporting.* Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must attest to, and report on, such assessment. The attestation report on management's assessment of internal control over financial reporting shall be dated, signed manually, identify the period covered by the report and clearly state the opinion of the accountant as to whether management's assessment of the effectiveness of the registrant's internal control over financial reporting is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, explain why. The attestation report on management's assessment of internal control over financial reporting may be separate from the accountant's report.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 4. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, 7202, 7241, and 7262; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Revise § 228.307 to read as follows:

§ 228.307 (Item 307) Disclosure controls and procedures.

Disclose the conclusions of the small business issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the small business issuer's disclosure controls and procedures (as defined in § 240.13a-15(e) or 240.15d-15(e) of this chapter) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of § 240.13a-15 or 240.15d-15 of this chapter.

■ 6. Add § 228.308 to read as follows:

§ 228.308 (Item 308) Internal control over financial reporting.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the small business issuer's internal control over financial reporting (as defined in § 240.13a-15(f) or 240.15d-15(f) of this chapter) that contains:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the small business issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the small business issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a-15 or 240.15d-15 of this chapter;

(3) Management's assessment of the effectiveness of the small business issuer's internal control over financial reporting as of the end of the small business issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the small business issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the small business issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the small business issuer's internal control over financial reporting; and

(4) A statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the small business issuer's internal control over financial reporting.

(b) *Attestation report of the registered public accounting firm.* Provide the registered public accounting firm's attestation report on management's assessment of the small business issuer's internal control over financial reporting in the small business issuer's annual report containing the disclosure required by this Item.

(c) *Changes in internal control over financial reporting.* Disclose any change in the small business issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a-15 or 240.15d-15 of this chapter that occurred during the small business issuer's last fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting.

Instructions to Item 308

1. The small business issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the small business issuer's internal control over financial reporting.

2. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a-14(g) and § 240.15d-14(g) of this chapter) is not required to disclose the information required by this Item.

§ 228.401 [Amended]

■ 7. Amend § 228.401 by removing the phrase "internal controls and procedures for financial reporting" in paragraph (e)(2)(iv) of Item 401 and adding, in its place, the phrase "internal control over financial reporting".

■ 8. Amend § 228.601 by:

■ a. Removing the last sentence of paragraph (a)(1);
■ b. Revising the Exhibit Table;
■ c. Revising paragraph (b)(7) to read "No exhibit required.";
■ d. Revising the heading in paragraph (b)(11) to read "Statement re: computation of per share earnings"; and
■ e. Revising paragraphs (b)(27) through (b)(98).

■ The revisions read as follows.

§ 228.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities act forms						Exchange act forms		
	SB–2	S–2	S–3	S–4 [3]	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement	X	X	X	X			X		
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession	X	X	X	X		X	X	X	X
(3) (i) Articles of Incorporation	X			X		X		X	X
(ii) By-laws	X			X		X		X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X
(5) Opinion on legality	X	X	X	X	X				
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion on tax matters	X	X	X	X					
(9) Voting trust agreement and amendments	X			X		X			X
(10) Material contracts	X	X		X		X		X	X
(11) Statement re: computation of per share earnings	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual report to security holders for the last fiscal year, Form 10-Q or 10-QSB or quarterly report to security holders [1]	X	X		X					X
(14) Code of ethics [4]									X
(15) Letter on unaudited interim financial information	X	X	X	X	X			X	

EXHIBIT TABLE—Continued

	Securities act forms						Exchange act forms		
	SB–2	S–2	S–3	S–4[3]	S–8	10–SB	8–K	10–QSB	10–KSB
(16) Letter on change in certifying accountant[4]	X	X		X		X	X		X
(17) Letter on director resignation							X		
(18) Letter on change in accounting principles								X	X
(19) Reports furnished to security holders								X	
(20) Other documents or statements to security holders or any document incorporated by reference								X	X
(21) Subsidiaries of the small business issuer	X			X		X			X
(22) Published report regarding matters submitted to vote of security holders								X	X
(23) Consents of experts and counsel	X	X	X	X	X		X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X					
(26) Invitations for competitive bids		X	X	X	X				
(27) through (30) [Reserved]									
(31) Rule 13a-14(a)/15d-14(a) Certifications								X	X
(32) Section 1350 Certifications								X	X
(33) through (98)[Reserved]									
(99) Additional exhibits	X	X	X	X	X	X	X	X	X

[1] Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An issuer need not provide an exhibit if: (1) an election was made under Form S–4 to provide S–2 or S–3 disclosure; and (2) the form selected (S–2 or S–3) would not require the company to provide the exhibit.

[4] If required under Item 304 of Regulation S-B.

(b) *Description of exhibits.* * * *

(27) through (30) [Reserved]

(31) *Rule 13a-14(a)/15d-14(a) Certifications.* The certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) exactly as set forth below:

Certifications *

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify small business issuer];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15(e) and 15d–15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a–15(f) and 15d–15(f)) for the small business issuer and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and

5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date:

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14(a) and 15d–14(a)

(32) *Section 1350 Certifications.*

(i) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this Item will not be deemed "filed" for purposes of section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the small business issuer specifically incorporates it by reference.

(33) through (98) [Reserved]

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 9. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, 7202, 7241, and 7262; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. By revising § 229.307 to read as follows:

§ 229.307 (Item 307) Disclosure controls and procedures.

Disclose the conclusions of the registrant's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the registrant's disclosure controls and procedures (as defined in § 240.13a–15(e) or 240.15d–15(e) of this chapter) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of § 240.13a–15 or 240.15d–15 of this chapter.

■ 11. By adding § 229.308 to read as follows:

§ 229.308 (Item 308) Internal control over financial reporting.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the registrant's internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter) that contains:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the registrant;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or 240.15d–15 of this chapter;

(3) Management's assessment of the effectiveness of the registrant's internal control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the registrant's internal control over financial reporting identified by management. Management is not permitted to conclude that the registrant's internal control over financial reporting is effective if there are one or more material weaknesses in the registrant's internal control over financial reporting; and

(4) A statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the registrant's internal control over financial reporting.

(b) *Attestation report of the registered public accounting firm.* Provide the registered public accounting firm's attestation report on management's assessment of the registrant's internal control over financial reporting in the registrant's annual report containing the disclosure required by this Item.

(c) *Changes in internal control over financial reporting.* Disclose any change in the registrant's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or 240.15d–15 of this chapter that occurred during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

Instructions to Item 308

1. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

§ 229.401 [Amended]

■ 12. By amending § 229.401 by removing the phrase "internal controls and procedures for financial reporting" in paragraph (h)(2)(iv) of Item 401 and adding, in its place, the phrase "internal control over financial reporting".

■ 13. By amending § 229.601 by:

■ a. Removing the second and third sentences of paragraph (a)(1);

■ b. Revising the Exhibit Table which follows the Instructions to the Exhibit Table; and

■ c. Revising paragraphs (b)(27) through (b)(98).

■ The revisions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* * * *

Instructions to the Exhibit Table

* * * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms			
	S–1	S–2	S–3	S–4[3]	S–8	S–11	F–1	F–2	F–3	F–4[3]	10	8–K	10–Q	10–K
(1) Underwriting agreement	X	X	X	X	.....	X	X	X	X	X	.....	X	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	.....	X	X	X	X	X	X	X	X	X
(3) (i) Articles of incorporation	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(ii) By-laws	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	.....	.....	.....	.....
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion re tax matters	X	X	X	X	.....	X	X	X	X	X	.....	.....	.....	.....
(9) Voting trust agreement	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(10) Material contracts	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(11) Statement re computation of per share earnings	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(12) Statements re computation of ratios	X	X	X	X	.....	X	X	X	.....	X	X	.....	.....	X
(13) Annual report to security holders, Form 10–Q and 10–QSB, or quarterly report to security holders[1]	.....	X	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	.....	.....	X	.....
(16) Letter re change in certifying accountant[4]	X	X	.....	X	.....	X	.....	.....	.....	.....	X	X	.....	X
(17) Letter re director resignation	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....
(18) Letter re change in accounting principles	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(19) Report furnished to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....
(20) Other documents or statements to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....
(21) Subsidiaries of the registrant	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	.....	X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X	.....	X	X	X	X	X	.....	.....	.....	.....
(26) Invitations for competitive bids	X	X	X	X	.....	.....	X	X	X	X	.....	.....	.....	.....
(27) through (30) [Reserved]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
(31) Rule 13a–14(a)/15d–14(a) Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(32) Section 1350 Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(33) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Forms S–2, S–3, F–2 or F–3 and (2) the form, the level of which has been elected under Forms S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S–K.

(b) *Description of exhibits.* * * *

(27) through (30) [Reserved]

(31) *Rule 13a–14(a)/15d–14(a) Certifications.* The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

*Certifications**

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15(e) and 15d–15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a–15(f) and 15d–15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

_____

_____

[Signature]

_____

[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14(a) and 15d–14(a).

(32) *Section 1350 Certifications.*

(i) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 15. By revising § 240.12b–15 to read as follows:

§ 240.12b–15 Amendments.

All amendments must be filed under cover of the form amended, marked with the letter "A" to designate the document as an amendment, *e.g.*, "10–K/A," and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. An amendment to any report required to include the certifications as specified in § 240.13a–14(a) or § 240.15d–14(a) must include new certifications by each principal executive and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 240.13a–14(b) or § 240.15d–14(b) must be accompanied by new certifications by each principal executive and principal financial officer of the registrant. The requirements of the form being amended will govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. See § 232.309 of this chapter (Rule 309 of Regulation S–T).

■ 16. By amending § 240.13a–14 by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing paragraph (c);

■ c. Redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e);

■ d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e); and

■ e. Adding and reserving new paragraph (f).

The revisions read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section), must include certifications in the form specified in the applicable exhibit filing requirements of such report and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) and such certifications must be furnished as an exhibit to such report as specified in the applicable exhibit requirements for such report. Each principal executive and principal financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's principal executive and principal financial officers.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section) under

section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items: * * *

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

(f) [Reserved]

* * * * *

■ 17. Section 240.13a–15 is revised to read as follows:

§ 240.13a–15 Controls and procedures.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78l), other than an Asset-Backed Issuer (as defined in § 240.13a–14(g)), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined by section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (e) of this section) and internal control over financial reporting (as defined in paragraph (f) of this section).

(b) Each such issuer's management must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the issuer's disclosure controls and procedures, as of the end of each fiscal quarter, except that management must perform this evaluation:

(1) In the case of a foreign private issuer (as defined in § 240.3b–4) as of the end of each fiscal year; and

(2) In the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), within the 90-day period prior to the filing date of each report requiring certification under § 270.30a–2 of this chapter.

(c) The management of each such issuer, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. The framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.

(d) The management of each such issuer, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

(e) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(f) The term *internal control over financial reporting* is defined as a process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements.

■ 18. Amending § 240.15d–14 by:
■ a. Revising paragraphs (a) and (b);
■ b. Removing paragraph (c);
■ c. Redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e);
■ d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e); and
■ e. Adding and reserving new paragraph (f).

The revisions read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section), must include certifications in the form specified in the applicable exhibit filing requirements of such report and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) and such certifications must be furnished as an exhibit to such report as specified in the applicable exhibit requirements for such report. Each principal executive and principal financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's principal executive and principal financial officers.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section) under section 15(d) of the Act (15 U.S.C. 78o(d)), must include a certification addressing the following items: * * *

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

(f) [Reserved]

* * * * *

■ 19. Section 240.15d–15 is revised to read as follows:

§ 240.15d–15 Controls and procedures.

(a) Every issuer that files reports under section 15(d) of the Act (15 U.S.C. 78o(d)), other than an Asset-Backed Issuer (as defined in § 240.15d–14(g) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (e) of this section) and internal control over financial reporting (as defined in paragraph (f) of this section).

(b) Each such issuer's management must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the issuer's disclosure controls and procedures, as of the end of each fiscal quarter, except that management must perform this evaluation:

(1) In the case of a foreign private issuer (as defined in § 240.3b–4) as of the end of each fiscal year; and

(2) In the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), within the 90-day period prior to the filing date of each report requiring certification under § 270.30a–2 of this chapter.

(c) The management of each such issuer, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. The framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.

(d) The management of each such issuer, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

(e) For purposes of this section, the term disclosure controls and procedures means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(f) The term *internal control over financial reporting* is defined as a process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 20. The general authority citation for Part 249 and the subauthority citation for "Section 249.331" are revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.331 is also issued under 15 U.S.C. 78j-1, 7202, 7233, 7241, 7264, 7265; and 18 U.S.C. 1350.

* * * * *

■ 21. By amending Form 10-Q (referenced in § 249.308a) by:
■ a. Removing the last sentence of General Instruction G;
■ b. Revising Item 4 to "Part I—Financial Information;" and
■ c. Removing the "Certifications" section after the "Signatures" section.
■ The revision reads as follows.

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part I—Financial Information

* * * * *

Item 4. Controls and Procedures.

Furnish the information required by Items 307 of Regulation S-K (17 CFR 229.307) and 308(c) of Regulation S-K (17 CFR 229.308(c)).

* * * * *

■ 22. By amending Form 10-QSB (referenced in § 249.308b) by:
■ a. Removing the last sentence of paragraph 2 of General Instruction F;
■ b. Revising Item 3 to "Part I—Financial Information;" and
■ c. Removing the "Certifications" section after the "Signatures" section.

■ The revision reads as follows.

Note: The text of Form 10-QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part I—Financial Information

* * * * *

Item 3. Controls and Procedures.

Furnish the information required by Items 307 of Regulation S–B (17 CFR 228.307) and 308(c) of Regulation S–B (17 CFR 228.308(c)).

* * * * *

■ 23. By amending Form 10–K (referenced in § 249.310) by:

■ a. Removing the phrase "(who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form)" each time it appears in the first sentence of paragraph (2)(a) of General Instruction D.;

■ b. Removing the phrase "(Items 1 through 9 or any portion thereof)" and adding, in its place, the phrase "(Items 1 through 9A or any portion thereof)" in the first sentence of paragraph (2) of General Instruction G.;

■ c. Removing the phrase "(Items 10, 11, 12 and 13)" and adding, in its place, the phrase "(Items 10, 11, 12, 13 and 14)" in the first sentence of paragraph (3) of General Instruction G.;

■ d. Removing the phrase "(Items 1 through 9)" in the third sentence of paragraph (4) of General Instruction G and adding, in its place, the phrase "(Items 1 through 9A)";

■ e. Removing the phrase "(Items 10 through 13)" in the third sentence of paragraph (4) of General Instruction G and adding, in its place, the phrase "(Items 10 through 14)";

■ f. Redesignating Item 14 of Part III as Item 9A of Part II and revising newly redesignated Item 9A;

■ g. Redesignating Item 15 in Part III as Item 14;

■ h. "Instruction to Item 15" is corrected to read "Instruction to Item 14";

■ i. Redesignating Item 16 in Part IV as Item 15;

■ j. Removing the "Certifications" section after the "Signatures" section and before the reference to "Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Issuers Which Have Not Registered Securities Pursuant to Section 12 of the Act."

■ The revision reads as follows.

Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-K

* * * * *

Part II

* * * * *

Item 9A. Controls and procedures.

Furnish the information required by Items 307 and 308 of Regulation S-K (17 CFR 229.307 and 229.308).

■ 24. By amending Form 10-KSB (referenced in § 249.310b) by:

■ a. Removing the phrase "(who also must provide the certification required by Rule 13a-14 (17 CFR 240.13a-14) or Rule 15d-14 (17 CFR 240.15d-14) exactly as specified in this form)" each time it appears in the first sentence of paragraph 2 of General Instruction C.;

■ b. Redesignating Item 14 of Part III as Item 8A of Part II and revising newly redesignated Item 8A;

■ c. Redesignating Item 15 of Part III as Item 14;

■ d. "Instruction to Item 15" is corrected to read "Instruction to Item 14";

■ e. Revising Item 2 of Part III of "INFORMATION REQUIRED IN ANNUAL REPORT OF TRANSITIONAL SMALL BUSINESS ISSER"; and

■ f. Removing the "Certifications" section after the "Signatures" section and before the reference to "Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers."

Note: The text of Form 10-KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

PART II

* * * * *

Item 8A. Controls and Procedures

Furnish the information required by Items 307 of Regulation S-B (17 CFR 228.307) and 308 of Regulation S-B (17 CFR 228.308).

* * * * *

Information Required in Annual Report of Transitional Small Business isser

* * * * *

PART III

* * * * *

Item 2. Description of Exhibits.

As appropriate, the issuer should file those documents required to be filed as Exhibit Number 2, 3, 5, 6, and 7 in Part III of Form 1-A. The registrant also shall file:

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F-X*—Canadian issuers shall file a written irrevocable consent and power of attorney on Form F-X.

(31) The exhibit described in paragraph (b)(31) of Item 601 of Regulation S-B.

(32) The exhibit described in paragraph (b)(32) of Item 601 of Regulation S-B.

■ 25. By amending Form 20–F (referenced in § 249.220f) by:

■ a. Revising paragraph (e) to General Instruction B;

■ b. Revising Item 15 of Part II;

■ c. Removing the phrase "internal controls and procedures for financial reporting" in paragraph (b)(4) of Item 16A of Part II and adding, in its place, the phrase "internal control over financial reporting";

■ d. Removing the "Certifications" section after the "Signatures" section and before the section referencing "Instructions as to Exhibits"; and

■ e. In the "Instruction as to Exhibits" section, redesignate paragraph 12 as paragraph 14 and add new paragraph 12 and paragraph 13.

■ The revisions and addition read as follows.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

* * * * *

B. General Rules and Regulations That Apply to this Form.

* * * * *

(e) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by Rule 13a-14 (17 CFR 240.13a-14) or Rule 15d-14 (17 CFR 240.15d-14).

* * * * *

Part II

* * * * *

Item 15. Controls and Procedures.

(a) *Disclosure Controls and Procedures.* Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the issuer's disclosure controls and procedures (as defined in 17 CFR 240.13a-15(e) or 240.15d-15(e)) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of 17 CFR 240.13a-15 or 240.15d-15.

(b) *Management's annual report on internal control over financial reporting.* Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide a report of management on the issuer's internal control over financial reporting (as defined in 17 CFR 240.13a–15(f) or 240.15d–15(f)) that contains:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting as required by paragraph (c) of 17 CFR 240.13a–15 or 240.15d–15;

(3) Management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the issuer's internal control over financial reporting; and

(4) A statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(c) *Attestation report of the registered public accounting firm.* Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of the issuer's internal control over financial reporting in the issuer's annual report containing the disclosure required by this Item.

(d) *Changes in internal control over financial reporting.* Disclose any change in the issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of 17 CFR 240.13a–15 or 240.15d–15 that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Instructions to Item 15.

1. The issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

2. An issuer that is an Asset-Backed Issuer (as defined in 17 CFR 240.13a–14(g) and 17 CFR 240.15d–14(g)) is not required to disclose the information required by this Item.

* * * * *

Instructions as to Exhibits

* * * * *

12. The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20–F of [identify company];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15(e) and 15d–15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a–15(f) and 15d–15(f)) for the company and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date:

_____

_____

_____

[Signature]

_____

[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the company. See Rules 13a–14(a) and 15d–14(a).

13. (a) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(b) A certification furnished pursuant to Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of

that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the company specifically incorporates it by reference.

■ 26. By amending Form 40–F (referenced in § 249.240f) by:

■ a. Revising paragraph (6) to General Instruction B; and

■ b. Removing the phrase "internal controls and procedures for financial reporting" and adding, in its place, the phrase "internal control over financial reporting" in paragraph (8)(b)(4) of General Instruction B; and

■ c. Removing the "Certifications" section after the "Signatures" section.

■ The revision reads as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on this Form

* * * * *

(6) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act:

(a) (1) Provide the certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) as an exhibit to this report exactly as set forth below.

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40–F of [identify issuer];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;

4. The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15(e) and 15d–15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a–15(f) and 15d–15(f)) for the issuer and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and

5. The issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date:

_____

_____

_____

[Signature]

_____

[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the issuer. See Rules 13a–14(a) and 15d–14(a).

(2) (i) Provide the certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as an exhibit to this report.

(ii) A certification furnished pursuant to Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the issuer specifically incorporates it by reference.

(b) *Disclosure Controls and Procedures.* Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the issuer's disclosure controls and procedures (as defined in 17 CFR 240.13a-15(e) or 240.15d-15(e)) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of 17 CFR 240.13a-15 or 240.15d-15.

(c) *Management's annual report on internal control over financial reporting.* Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide a report of management on the issuer's internal control over financial reporting (as defined in 17 CFR 240.13a-15(f) or 240.15d-15(f)) that contains:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting as required by paragraph (c) of 17 CFR 240.13a-15 or 240.15d-15;

(3) Management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the issuer's internal control over financial reporting; and

(4) A statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(d) *Attestation report of the registered public accounting firm.* Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of internal control over financial reporting in the annual report containing the disclosure required by this Item.

(e) *Changes in internal control over financial reporting.* Disclose any change in the issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of 17 CFR 240.13a-15 or 240.15d-15 that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B. 6.

1. The issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

2. An issuer that is an Asset-Backed Issuer (as defined in 17 CFR 240.13a-14(g) and 240.15d-14(g)) is not required to disclose the information required by this Item.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 27. The authority citation for Part 270 is amended by revising the subauthority citation for "Section 270.30a-2" to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

* * * * *

Section 270.30a-2 is also issued under 15 U.S.C. 78m, 78o(d), 80a-8, 80a-29, 7202, and 7241; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 28. By revising the last sentence of § 270.8b-15 to read as follows:

§ 270.8b-15 Amendments.

* * * An amendment to any report required to include the certifications as specified in § 270.30a-2(a) must include new certifications by each principal executive and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 240.13a-14(b) or § 240.15d-14(b) and § 270.30a-2(b) must be accompanied by new certifications by each principal executive and principal financial officer of the registrant.

■ 29. Section 270.30a-2 is revised to read as follows:

§ 270.30a-2 Certification of Form N–CSR.

(a) Each report filed on Form N-CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include certifications in the form specified in Item 10(a)(2) of Form N–CSR and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N–CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) and that contains financial statements must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) and such certifications must be furnished as an exhibit to such report as specified in Item 10(b) of Form N–CSR. Each principal executive and principal financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's principal executive and principal financial officers.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

■ 30. By revising § 270.30a-3 to read as follows:

§ 270.30a-3 Controls and procedures.

(a) Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section) and internal control over financial reporting (as defined in paragraph (d) of this section).

(b) Each such registered management investment company's management must evaluate, with the participation of the company's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the company's disclosure controls and procedures, within the 90-day period prior to the filing date of each report on Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N–CSR (§§ 249.331 and 274.128 of this chapter) is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N–CSR is accumulated and communicated to the investment company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) The term *internal control over financial reporting* is defined as a process designed by, or under the supervision of, the registered management investment company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the investment company;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the investment company are being made only in accordance with authorizations

of management and directors of the investment company; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the investment company's assets that could have a material effect on the financial statements.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 31. The authority citation for Part 274 is amended by revising the authority citation for "Section 274.128" to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under 15 U.S.C. 78j-1, 7202, 7233, 7241, 7264, and 7265; and 18 U.S.C. 1350.

■ 32. Form N–SAR (referenced in §§ 249.330 and 274.101) is amended by revising the reference "internal controls and procedures for financial reporting" in paragraph (b)(6)(iv) of the Instruction to Sub-Item 102P3 to read "internal control over financial reporting".

■ 33. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

■ a. In General Instruction D, revising the reference "Items 4, 5, and 10(a)" to read "Items 4, 5, and 10(a)(1)";

■ b. Revising paragraph 2.(a) of General Instruction F;

■ c. In paragraph (c) of Item 2, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

■ d. In paragraph (f)(1) of Item 2, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

■ e. In paragraph (b)(4) of Item 3, revising the reference "internal controls and procedures for financial reporting" to read "internal control over financial reporting";

■ f. Revising Item 9; and

■ g. In Item 10:

■ (i) The introductory text and paragraphs (a) and (b) are redesignated as paragraphs (a), (a)(1) and (a)(2), respectively;

■ (ii) Revising newly redesignated paragraph (a) and newly redesignated paragraph (a)(2); and

■ (iii) Adding new paragraph (b) and an Instruction to Item 10.

The revisions and additions read as follows.

Note: The text of Form N-CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N–CSR

* * * * *

General Instructions

* * * * *

F. Signature and Filing of Report.

* * * * *

2. (a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive and principal financial officers.

* * * * *

Item 9. Controls and Procedures.

(a) Disclose the conclusions of the registrant's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the registrant's disclosure controls and procedures (as defined in Rule 30a-3(c) under the Act (17 CFR 270.30a-3(c))) as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph, based on the evaluation of these controls and procedures required by Rule 30a-3(b) under the Act (17 CFR 270.30a-3(b)) and Rules 13a-15(b) or 15d-15(b) under the Exchange Act (17 CFR 240.13a-15(b) or 240.15d-15(b)).

(b) Disclose any change in the registrant's internal control over financial reporting (as defined in Rule 30a-3(d) under the Act (17 CFR 270.30a-3(d)) that occurred during the registrant's last fiscal half-year (the registrant's second fiscal half-year in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

Item 10. Exhibits.

(a) File the exhibits listed below as part of this Form.

* * * * *

(a)(2) A separate certification for each principal executive and principal financial officer of the registrant as required by Rule 30a-2(a) under the Act (17 CFR 270.30a-2(a)), exactly as set forth below:

Certifications

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N-CSR of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 30a-3(c) under the Investment Company Act of 1940) and internal control over financial reporting (as defined in Rule 30a-3(d) under the Investment Company Act of 1940) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of a date within 90 days prior to the filing date of this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal half-year (the registrant's second fiscal half-year in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

[Signature]

[Title]

(b) If the report is filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by Rule 30a-2(b) under the Act (17 CFR 270.30a-2(b)), Rule 13a-14(b) or Rule 15d-14(b) under the Exchange Act (17 CFR 240.13a-14(b) or 240.15d-14(b)); and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as an exhibit. A certification furnished pursuant to this paragraph will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

Instruction to Item 10.

Letter or number the exhibits in the sequence that they appear in this item.

* * * * *

By the Commission.

Dated: June 5, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14640 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
June 18, 2003

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 314

Applications for FDA Approval To Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 02N–0417]

RIN 0910–AC48

Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its patent submission and listing requirements for new drug applications (NDAs). The final rule clarifies the types of patents that must and must not be submitted and revises the declaration that NDA applicants must provide regarding their patents to help ensure that NDA applicants submit only appropriate patents. The final rule also revises the regulations regarding the effective date of approval for certain abbreviated new drug applications (ANDAs) and certain other new drug applications, known as 505(b)(2) applications, submitted under the Federal Food, Drug, and Cosmetic Act (the act). In certain situations, Federal law bars FDA from making the approval of certain ANDA and 505(b)(2) applications effective for 30 months if the applicant has certified that the patent claiming a drug is invalid or will not be infringed, and the patent owner or NDA holder then brings suit for patent infringement. The final rule also states that there is only one opportunity for a 30-month stay in the approval date of each ANDA and 505(b)(2) application. The final rule will make the patent submission and listing process more efficient as well as enhance the ANDA and 505(b)(2) application approval processes.

DATES: *Effective Date*: This final rule is effective on August 18, 2003.

Compliance Date: The compliance date is December 18, 2003, for the submission of information on polymorph patents.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy and Planning (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule revises implementing regulations in part 314 (21 CFR part 314) for certain statutory amendments to the act, 21 U.S.C. 301 *et seq.*, relating to new drug applications and generic drug approvals. The statutory provisions were added to the act through the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417 (21 U.S.C. 355, 360cc; 35 U.S.C. 156, 271, 282) ("Hatch-Waxman Amendments")). These statutory provisions reflect an attempt to balance two competing interests: Promoting competition between "brand-name" or "innovator drugs" and "generic" drugs, and encouraging research and innovation. The act promotes competition by creating a process to expedite the filing and approval of ANDA and 505(b)(2) drug applications (applications submitted under the provisions of section 505(b)(2) of the act) and for resolving challenges to patents in court before marketing begins. At the same time, the act encourages research and innovation by protecting the patent interests of the patent owner and innovator drug company.

The final rule maintains a balance between the innovator companies' intellectual property rights and the desire to get generic drugs on the market in a timely fashion. The final rule limits to one per ANDA or 505(b)(2) application the maximum number of statutory 30-month stays of approval to which an innovator will be entitled when it submits multiple patents for the same NDA. Eliminating multiple 30-month stays will speed up the approval and market entry of generic drugs. The final rule also clarifies patent submission and listing requirements, which will reduce confusion and help curb attempts to take advantage of this process. Specifically, patents claiming packaging, intermediates, or metabolites must not be submitted for listing. Patents claiming a different polymorphic form of the active ingredient described in the NDA must be submitted if the NDA holder has test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA.

A. What Are the Statutory Provisions Which Affect Patent Submissions and the Approval of New Drugs?

To explain why we (FDA) issued the proposal, we first describe how Federal law requires NDA applicants to file patent information and how that patent information can affect the approval of ANDA and 505(b)(2) applications. (We will refer to these as "ANDA and 505(b)(2) applicants" or "ANDA or 505(b)(2) applicants" and refer to their applications as "ANDA and 505(b)(2) applications" or "ANDA or 505(b)(2) applications" throughout the remainder of the preamble of this document.)

Section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) requires all NDA applicants to file, as part of the NDA, "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." Section 505(c)(2) of the act (21 U.S.C. 355(c)(2)) imposes a similar patent submission obligation on holders of approved NDAs when the NDA holder could not have submitted the patent information with its application.

Under section 505(b)(1) of the act, we publish patent information after approval of an NDA application in our approved drug products list entitled "Approved Drug Products With Therapeutic Equivalence Evaluations." This list is known popularly as the "Orange Book" because of its orange-colored cover. If patent information is submitted after NDA approval, section 505(c)(2) of the act directs us to publish the information upon its submission.

The act also requires ANDA or 505(b)(2) applicants to make certifications regarding each of the listed patents pertaining to the drug they intend to reference (see sections 505(b)(2)(A)(i) through (b)(2)(A)(iv) and 505(j)(2)(A)(vii)(I) through (j)(2)(A)(vii)(IV) of the act (21 U.S.C. 355(b)(2)(A)(i) through (b)(2)(A)(iv) and 21 U.S.C. 355(j)(2)(A)(vii)(I) through (j)(2)(A)(vii)(IV)). In brief, these certifications state that:

- Patent information has not been filed,
- The patent has expired,
- The patent will expire on a specific date, or
- The patent is invalid or will not be infringed.

If the ANDA or 505(b)(2) applicant certifies that the patent is invalid or will not be infringed (a certification known as a "paragraph IV" certification because it is the fourth type of patent certification described in the act[1]), the act requires the applicant to notify the NDA holder and patent owner (see sections 505(b)(3) and 505(j)(2)(B) of the act (21 U.S.C. 355(b)(3) and 355(j)(2)(B)). The notice states that an ANDA or 505(b)(2) application containing a paragraph IV certification to a listed patent has been submitted for the NDA holder's approved drug product (known as the "listed drug"). The notice also includes a "detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed" (*id.*). If the NDA holder or patent owner brings an action for patent infringement within 45 days after notice of the paragraph IV certification has been received, then we may not make the approval of an ANDA or 505(b)(2) application effective for 30 months, or such shorter or longer period as a court may order, or until the date of a court decision (see sections 505(c)(3)(C) and 505(j)(5)(B)(iii) of the act (21 U.S.C. 355(c)(3)(C) and 355(j)(5)(B)(iii)). (We will refer to the date the approval of an ANDA or 505(b)(2) application is made effective as the "approval date" throughout the remainder of this preamble.)

[1] Paragraph IV throughout also refers to paragraph iv, the comparable provision in section 505(b)(2)(A) of the act.

B. What Did the Proposed Rule Say?

In the **Federal Register** of October 24, 2002 (67 FR 65448), we published a proposed rule (proposed rule) that would address:

- The types of patents that must and must not be submitted by NDA applicants and NDA holders or patent owners (for purposes of this preamble, an NDA applicant is someone who is seeking FDA approval of a specific new drug application or supplement, whereas an NDA holder is someone whose NDA we have approved);
- The types of patents that we will list in the Orange Book;
- The patent declaration that NDA applicants must submit as part of an NDA, an amendment, a supplement, or when submitting information on a newly issued patent; and
- The 30-month stay of the effective date of approval for an ANDA or 505(b)(2) application.

The preamble to the proposed rule noted that, on occasion, we have seen NDA holders submit new patents for listing shortly before other listed patents for the same drug were to expire (see 67 FR 65448 at 65449). We explained that, in some disputes over recently listed patents, the parties had questioned whether particular patents met the regulatory requirements for submission and listing in the Orange Book. These disputes sometimes resulted in judicial decisions that are inconsistent with our regulatory policies or our interpretation of our own regulations (*id.*). We proposed to clarify our regulatory policies regarding patent submission, listing, certification, and notice. We also issued the proposal to respond, in part, to concerns raised by the Bureau of Competition and the Policy Planning Staff of the Federal Trade Commission (FTC). On May 16, 2001, the FTC submitted a citizen petition to FDA (FDA docket number 01P–0248) ("FTC Citizen Petition") asking for guidance concerning the criteria that a patent must meet before it is listed in the Orange Book. The FTC Citizen Petition asked us to clarify several patent listing issues and indicated that the FTC was conducting an extensive study of generic drug competition.

In July 2002, the FTC published the results of the study in a report entitled "Generic Drug Entry Prior to Patent Expiration: An FTC Study" ("FTC Report"). The FTC Report focused on the procedures used to facilitate a generic drug's entry into the market before the expiration of a patent or patents that claim the brand-name drug product. The FTC also recommended changing Federal law to "permit only one automatic 30-month stay per drug product per ANDA to resolve infringement disputes over patents listed in the Orange Book prior to the filing date of the generic applicant's ANDA" (see FTC Report at page ii). The FTC Report explained "To permit only one 30-month stay per drug product per ANDA should eliminate most of the potential for improper Orange Book listings to generate unwarranted 30-month stays" (*id.* at page v (footnote omitted)). In an appendix to its report, the FTC asked us to issue a regulation or guidance clarifying whether an NDA holder could submit various types of patents for listing in the Orange Book. The types of patents for which the FTC sought clarification were patents that claimed metabolites, polymorphs, intermediates, product-by-process patents, and double patents (see FTC Report at pages A–39–A–45).

C. What Does This Final Rule Do?

The comments received expressed both support for, and opposition to, various provisions of the proposed rule. After careful review of these comments, we are making final most of the provisions of the proposed rule with certain modifications. The final rule:

- Allows a full opportunity for only one 30-month stay per ANDA or 505(b)(2) application;
- Prohibits the submission of patents claiming packaging, intermediates, or metabolites;
- Requires the submission of certain patents claiming a different polymorphic form of the active ingredient described in the NDA;
- Adds a requirement that for submission of polymorph patents the NDA holder must have test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA;
- Makes changes to the patent information required to be submitted and provides declaration forms for submitting that information to FDA, both with the NDA and after NDA approval; and
- Does not require claim-by-claim listing on the declaration form except for method-of-use patents claiming approved methods of use.

II. Comments on the Proposed Rule

We received over 35 comments on the proposed rule. The comments represenied a diverse range of interests such as: Health insurance programs, brand name pharmaceutical companies, generic pharmaceutical companies, law firms, consumer organizations, pharmacy associations, the FTC, the New York Department of Health, large corporations, and individuals. In general, most comments supported the rule, either in whole or in part, and believed that the rule would help reduce prescription drug costs by making generic drugs available more quickly. However, other comments opposed the rule because they felt we had misinterpreted the act or because they felt that new legislation, rather than a regulation, was necessary. We describe the comments, and our responses to the comments, in this section. To make it easier to identify the comments and our responses, the word "Comment" in parentheses, will appear before the description of the comment, and the word "Response" in parentheses, will appear before our response. We also have numbered each comment to make it easier to identify a particular comment. The number assigned to each comment is only for organizational purposes. It does not signify the comment's value, importance, or the order in which we received it.

A. Comments on Specific Aspects of the Proposed Rule

1. What Patents Must and Must Not Be Submitted? (Section 314.53(b))

Proposed § 314.53(b) would require NDA applicants and holders or patent owners to submit information on the following types of patents for listing in the Orange Book. In brief, the proposed

rule would clarify that we would list only patents that claim:

- The drug substance (ingredient);
- The drug product (formulation and composition); and
- Method of use.

Proposed § 314.53(b) would not allow listing of process patents and patents claiming packaging, metabolites, or intermediates.

a. *Patents Claiming a Drug Substance—Must Patents that Claim the "Same" Active Ingredient Be Submitted and Listed?* For patents that claim a drug substance, the proposal stated that an applicant "shall submit information only on those patents that claim the form of the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application." We explained that an NDA applicant or holder would determine whether the drug substance was the "same" as the active ingredient in the NDA by considering "whether the drug substances can be expected to perform the same with respect to such characteristics as dissolution, solubility, and bioavailability" (see 67 FR 65448 at 65452).

Drug substances that are the same active ingredient, but that are in different physical forms, are often called "polymorphs." For example, the different crystalline forms of a drug substance are sometimes known collectively as polymorphs, and drug substances with different waters of hydration are sometimes referred to as "polymorphs" as well. (For purposes of this final rule, polymorphs include chemicals with different crystalline structures, different waters of hydration, solvates, and amorphous forms.) Under the proposed rule, an NDA applicant or holder would be required to submit a patent claiming a different polymorph from that of the drug substance described in the NDA if a drug product containing the polymorph will perform the same as the drug product described in the NDA with respect to dissolution, solubility, and bioavailability.

The proposed rule would make the patent listing standards generally consistent with the ANDA approval standards. For ANDA approval purposes, the active ingredient in a generic drug product can be the "same" as that in the reference listed drug notwithstanding differences in the physical forms of their active ingredient if the drug product performs the same. Thus, we stated that it would be consistent to interpret "drug substance" for patent submission and listing purposes as including certain drug substances having different physical forms if they would be considered the same active ingredient for ANDA approval purposes (*id.*).

We invited comment on whether we should revise the codified language to require an NDA holder to submit additional information regarding the basis for its assertion that the drug substances are the "same" active ingredient. We also invited comment on the potential impact of the change (allowing the submission of patents claiming different polymorphs) on the submission of ANDA and 505(b)(2) applications.

(Comment 1) Several comments disagreed with our proposal to allow listing of patents claiming different polymorphs of the active ingredient in the listed drug. Some comments stated that section 505(b)(1) of the act requires the patent to claim the drug substance that is the subject of the NDA. Several comments asserted that a patent claiming a polymorph that was not the subject of an NDA did not satisfy section 505(b)(1) of the act. Other comments argued that "sameness" for ANDA approval purposes differed from "sameness" in patent law, so we did not have to develop an identical interpretation of the two concepts. Several comments maintained that no such patents could exist if the active ingredients were truly the "same" because a subsequent patent for the "same" active ingredient should not have been issued. Some comments agreed that patents claiming different polymorphs of the same active ingredient should be listed, but only with submission of additional information such as clinical trial data required for FDA approval or proof that "sameness" is beneficial. A few comments maintained that the proposal did not change our pre-existing position because we have permitted NDA holders and applicants to submit patents claiming different polymorphs of the active ingredient. In response to our request for comment on the impact on ANDA and 505(b)(2) applications, one comment expressed the belief that listing patents claiming different polymorphs of the active ingredient would reduce the ability of generic manufacturers to "design around" the existing patents, an option which was contemplated by the Hatch-Waxman Amendments.

(Response) We decline to modify our position taken in the proposed rule which would require patents to be submitted for listing that claim different polymorphs of the active ingredient described in the NDA. If the NDA applicant or holder is able to establish that a polymorph claimed in a patent is the "same" active ingredient (i.e., that a drug product containing the polymorph will perform the same as the drug product described in the NDA with respect to such characteristics as dissolution, solubility, and bioavailability), the NDA applicant or holder must submit the patent to us for listing. We acknowledge that there may be some legitimate confusion regarding our prior position concerning submission of such patents for listing, which resulted in the listing of some polymorph patents in the Orange Book. The uncertainty over our policy resulted from certain court decisions, our response to those court decisions, and other public statements. The FTC Citizen Petition highlighted the need for clarification and is one reason we decided to implement this final rule and clarify our position. For the reasons explained in the preamble to the proposed rule (see 67 FR 65448 at 65452 to 65453), it is appropriate to have a consistent interpretation of the "sameness" principle in the patent listing and ANDA approval contexts. Accordingly, we will not treat polymorphs differently for patent submission and listings and ANDA approval. The argument that certain polymorph patents should never have been issued is not a matter for us to address. The Patent and Trademark Office (PTO) is responsible for reviewing and issuing patents. We will not question whether the PTO should have issued a particular patent, nor will we conduct a "patent law" or other analysis to determine "sameness."

We agree with the comments that suggested we needed to take additional steps to help ensure that the submitted patents claim the "same" active ingredient as that described in the NDA. A polymorph patent must claim the drug substance (active ingredient) to meet the statutory requirements for submission. We have modified the declaration requirement and created forms to help ensure that the NDA applicant or holder or patent owner confirms that the patent does claim the "same" active ingredient. The final rule and the declaration forms require that the NDA applicant or holder or patent owner certify that test data exist demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA. If a patent claims more than one polymorph, each polymorph for which the required test data are available must be identified by claim or description in the declaration forms.

The final rule does not require these tests to be submitted to FDA at the time of patent submission, nor does it require the NDA applicant or holder to conduct the tests itself. The testing requirements, however, will ensure that only relevant polymorphs are submitted for listing.

Whether two different polymorphs are the "same" active ingredient for purposes of drug approval is a scientific determination based upon the specific characteristics of the forms of the drug substance involved. Only with testing can the scientific determination be made that the drug product containing the polymorph will perform the same as the drug product described in the NDA. The test data that the NDA applicant or holder or patent owner must certify exist at the time of patent submission are similar to the type of information required under §§ 314.50 and 314.94. The following explains more fully the required tests or data that would support the statement in the declaration forms:

- A full description of the polymorphic form of the drug substance, including its physical and chemical characteristics and stability; the method of synthesis (or isolation) and purification of the drug substance; the process controls used during manufacture and packaging; and such specifications and analytical methods as are necessary to assure the identity, strength, quality, and purity of the polymorphic form of the drug substance;
- The executed batch record for a drug product containing the polymorphic form of the drug substance and documentation that the batch was manufactured under current good manufacturing practice requirements;
- Demonstration of bioequivalence between the executed batch of the drug product that contains the polymorphic form of the drug substance and the drug product as described in the NDA;
- A list of all components used in the manufacture of the drug product containing the polymorphic form and a statement of the composition of the drug product; a statement of the specifications and analytical methods for each component; a description of the manufacturing and packaging procedures and in-process controls for the drug product; such specifications and analytical methods as are necessary to assure the identity, strength, quality, purity, and bioavailability of the drug product, including release and stability data complying with the approved product specifications to demonstrate pharmaceutical equivalence and comparable product stability; and
- Comparative in vitro dissolution testing on 12 dosage units each of the executed test batch and the NDA product.

This test data requirement corresponds to the test data required of ANDA applicants to demonstrate the drug product containing the polymorph described in the ANDA will perform the same as the drug product described in the NDA. In addition to the data requirements described in our regulations cited above (§§ 314.50 and 314.94), we have published guidance documents describing the test data ANDA applicants may use to demonstrate that the drug product will perform the same as the drug product described in the NDA. (See "Guidance for Industry: Changes to an Approved NDA or ANDA" (November 1999) and "Guidance for Industry: Immediate Release Solid Oral Dosage Forms CMS 5" (November 1995); these guidances are available at www.fda.gov/opacom/morechoices/industry/guidedc.htm.)

The stringency of these requirements regarding "sameness" also should address the concerns that the submission of polymorph patents might lead to submission of other patents claiming components which are not, but might be, included in a drug described in an NDA. Given the narrow legal and scientific basis for submission of polymorph patents, the final rule does not open the door to submission of any patents claiming formulations or inactive ingredients not contained in the drug product described in the NDA.

We believe that these changes will help deter submission of inappropriate polymorph patents. The assumption that a product containing a polymorph will perform the same as the product containing a different polymorph and described in the NDA will have to be substantiated.

b. *Product-by-Process Patents—Should These Patents Be Listed?* Proposed § 314.53(b) would allow an NDA applicant or holder or patent owner to submit information on product-by-process patents. The act requires that NDA holders submit patents that claim the drug product. However, NDA applicants or holders must not submit patents that claim a process for making that product.

We explained that a product-by-process patent claims a product by describing or listing process steps to wholly or partially define the claimed product. In a product-by-process patent, the patented, novel invention is the product and not the process that is used to make the product. We recognized that the distinction between a product-by-process patent and a process patent might not be readily apparent to persons who are unfamiliar with patent law. We sought comment on ways to ensure that only appropriate product-by-process patents are listed in the Orange Book.

(Comment 2) Several comments argued that product-by-process patents must not be listed. Some comments stated that product-by-process patents "closely resemble" process patents and that the act does not allow listing of process patents. One comment asserted that listing product-by-process patents would have a "profound negative effect" on generic drug approvals because NDA applicants and holders or patent owners would attempt to list any product-by-process patent, whether or not the process defined in the patent was actually used to manufacture the drug product approved in the NDA.

Similarly, other comments sought to limit the type of product-by-process patents that could be listed. Several comments would revise the rule to require the product-by-process patent to claim a "novel" product, so that if the drug product described by the product-by-process patent was a "known" drug product or the product already had been listed in the Orange Book, we would not list the product-by-process patent. In other words, the comments sought to ensure that the product-by-process patent covered a product that was "new and patentably distinct" from previously-approved drug products. One comment suggested adding a new paragraph to the patent declaration to read as follows:

F. For each drug substance or drug product claim that was (1) identified as listable in subparts B and C and (2) is drafted in product-by-process format, please provide the following information:

1. Is the product of the recited process novel? [If the answer to question F.1 is "no," stop. The patent cannot be listed. If yes, please identify the claim(s) by number.]

Another comment thought that few drugs would be the subject of a product-by-process patent. The comment recommended that we investigate any product-by-process patents that were listed in the Orange Book to see if these related to the NDA drug product. Yet another comment would amend the patent declaration to identify the product-by-process claims in the patent, the effective filing date of the patent application, whether the product has been previously sold, and, if the product had been previously sold, whether such sales occurred more than 1 year before the effective filing date of the patent application. The comment explained that if the drug's active ingredient has been previously sold for more than 1 year before the effective filing date of the product-by-process patent

application, the patent would be ineligible for listing because the patent would violate a specific provision in patent law.

In contrast, three comments supported listing product-by-process patents. These comments agreed that product-by-process patents are a form of a product patent. Two comments stated that we did not need to revise the rule to distinguish between product-by-process patents (which must be listed) and process patents (which must not be listed). The comment suggested revising § 314.53(b) to replace its mention of product-by-process patents with "patents that claim the drug substance or drug product at least in part in terms of its method of manufacture (product-by-process patents)."

(Response) We agree that, to be submitted for listing, the product-by-process patent must claim the drug product that is the subject of the NDA. We explained in the proposed rule why a product-by-process patent is a type of product patent (see 67 FR 65448 at 65452). We also agree that the declaration should be clear enough to ensure that the patents that are submitted for listing are product-by-process patents and not process patents. In the response to comment 12 in section II.A of this document we detail the changes we have made to the declaration (including declaration forms) to help ensure that the patents submitted for listing are patents that claim the drug product that is the subject of the NDA and do not claim the process that is used to manufacture the drug product.

The declaration forms include a question which requires the NDA applicant or holder or patent owner to certify whether the patent being submitted is a product-by-process patent in which the product claimed is novel. Although we do not adopt the wording suggested by several comments, we agree that a requirement to identify the product as novel will help ensure that the patent is a product-by-process patent. We acknowledge that when the PTO issues a patent, the PTO necessarily determines that some aspect of the patent claims is "novel." We want to make sure that the NDA applicant or holder or patent owner is identifying the product claim as the novel aspect. This clarification should eliminate the submission of patents that may be mistakenly identified as product-by-process patents but, in reality, are process patents which cannot be submitted for listing.

We expect that product-by-process patents will not be submitted often. Drug products approved under section 505 of the act typically are capable of being described by their chemical formula. Most such drug products approved are not of the type that can be described only in terms of the process used to produce the product. We decline to add any additional questions to the declaration relating to the patented product's length of time in the commercial market or other related questions, as we believe that the declaration questions we have added will accomplish the clarification necessary to prevent the submission of process patents.

c. *Patents Claiming Packaging—Do We Consider Containers and Delivery Systems to be "Packaging?"* Proposed § 314.53(b) would not have allowed an applicant to list a patent that claimed packaging.

(Comment 3) Most comments agreed that patents claiming packaging should not be submitted for listing. However, some comments stated that patents claiming devices or containers that are "integral" to the drug product or require prior FDA approval should be submitted and listed. These comments distinguished between packaging and devices such as metered dose inhalers and transdermal patches, which are drug delivery systems used and approved in combination with a drug.

(Response) We agree that patents claiming a package or container must not be submitted. Such packaging and containers are distinct from the drug product and thus fall outside of the requirements for patent submission. However, we have clarified the rule to ensure that if the patent claims the drug product as defined in § 314.3, the patent must be submitted for listing.

Section 314.3 defines a "drug product" as "* * * a finished dosage form, for example, tablet, capsule, or solution, that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients." The appendix in the Orange Book lists current dosage forms for approved drug products. The list includes metered aerosols, capsules, metered sprays, gels, and pre-filled drug delivery systems. The key factor is whether the patent being submitted claims the finished dosage form of the approved drug product. Patents must not be submitted for bottles or containers and other packaging, as these are not "dosage forms." The revised declaration requirements, described in the response to comment 12 in section II.A of this document, detail the information required for submission.

d. *Patents Claiming Metabolites—Are Any Patents Claiming Metabolites Eligible for Submission and Listing?* The proposed rule would prohibit submission and listing of a patent claiming a metabolite of the approved drug. A metabolite is the chemical compound that results after the active ingredient of the drug has broken down inside the body. We explained that a patent claiming a metabolite does not claim the approved drug, as required by the act, because the metabolite exists only after the approved drug has been broken down inside the body (see 67 FR at 65451).

(Comment 4) Most comments agreed with our exclusion of patents claiming a metabolite. One comment, however, asked whether we would list "a patent that claims a method of using an approved drug to administer a metabolite." The comment distinguished a method-of-use patent from a patent that claimed the metabolite.

(Response) The final rule prohibits submission of patents claiming metabolites when the metabolite is not the active ingredient described in the NDA. The submission of a metabolite patent does not meet the legal requirements for patent submissions as discussed in the proposed rule (see 67 FR 65448 at 65451). By contrast, if a patent submitted for listing claimed an approved method of using an approved drug to administer a metabolite, the submission of the patent would be permissible as long as all the conditions for submitting "method-of-use" patents are met. We describe the requirements for submission of method-of-use patents in the response to comment 7 in section II.A of this document. Briefly, if a method of use is described in the labeling for the drug product, and there is a patent claiming that method of use, the patent must be submitted for listing in the Orange Book, the method-of-use claim must be identified in the declaration forms, and the labeling language related to the method-of-use claim must be provided in the declaration forms.

e. *Patents Claiming Intermediates—Must We Allow Them to Be Submitted?* The proposed rule would not allow the submission of patents that claimed an intermediate. We explained that intermediates are materials that are produced during preparation of the active ingredient and are not present in the finished drug product. We consider intermediates to be "in-process materials" rather than drug substances or components in the finished drug product (see 67 FR 65448 at 65451 to 65452).

(Comment 5 and Response) The comments that addressed this issue agreed with the proposal. Consequently, the final rule does not allow submission of patents that claim intermediates for the reasons explained in the proposal.

f. *"Double" Patents—What Are They, and Must We Allow Them to Be Submitted?* The proposal did not discuss "double" patents.

(Comment 6) One comment suggested that we prohibit the listing of patents that contain a terminal disclaimer over a patent that had already been listed. The comment explained that patent law generally prevents an inventor from double patenting—that is, extending the term of the patent "by the subsequent patenting of variations that are not patentably distinct from the first-patented invention." The comment stated that this "double patenting" can be cured if the patent holder files a "terminal disclaimer" which "acts to disclaim the term of the later patent that extends beyond the term of the original patent, so that both patents expire on the same day." The comment expressed concern that NDA holders could list a later patent and have an opportunity to obtain a 30-month stay even if the later listed patent had a terminal disclaimer. In other words, the terminal disclaimer would prevent the inventor from enjoying a longer term of patent protection, but it would not prevent the imposition of another 30-month stay if the NDA holder or patent owner sued to enforce the later patent. The comment noted that, for the drugs PAXIL and FOSAMAX, the NDA holder had submitted earlier patents and a later-issued patent that had a terminal disclaimer. The patents were listed in the Orange Book, paragraph IV certifications were required for both patents and the NDA holder sued ANDA applicants on both patents, triggering 30-month stays.

(Response) We acknowledge that the "double patenting" described by the comment may, indeed, provide an NDA holder an opportunity to obtain an additional 30-month stay under the prior interpretation of the act. Under the final rule, there is no opportunity for multiple 30-month stays if patents with terminal disclaimers are submitted for listing. If such a patent is submitted after an ANDA applicant has filed a paragraph IV certification to a previously filed patent, and one full opportunity was provided for the 30-month stay, no notice need be given for a subsequent paragraph IV certification and no additional 30-month stay for that ANDA applicant can result under the final rule.

The act expressly contemplates listing of patents after NDA approval. It does not prevent an NDA holder or patent owner from submitting a patent with a terminal disclaimer. As long as the patent meets the statutory requirements, the patent must be submitted, even if it contains a terminal disclaimer. Again, we note that the PTO is responsible for the issuance of such patents. We defer to the PTO on matters of patent issuance.

g. *Method-of-Use Patents—Must the "Use" Be Approved in the Approved Drug Product?* The preamble to the proposed rule mentioned that patents claiming a method of use would be able to be submitted, but did not address such patents except to confirm our position that patents may not be submitted for listing if they claim methods of use that are not approved for the listed drug or are not the subject of a pending application.

(Comment 7) Comments disagreed as to whether the method-of-use claim in a patent submitted for listing must be a use approved in the NDA. Several comments urged us to list only those patents claiming methods of use approved in the NDA or that required clinical trials. One comment argued that listing only patents for approved uses was the only way to stop NDA holders from claiming broad uses or indications not in the approved labeling. In contrast, other comments argued that the act did not prevent NDA applicants or holders or patent owners from submitting patents for listing that claimed uses not approved by FDA. Some comments stated that patent infringement is not limited to approved uses. Other comments stated that section 505(b)(1) of the act contemplates the listing of patents claiming unapproved uses if a claim of patent infringement could reasonably be asserted, citing *Purepac Pharm. Co.* v. *Thompson*, 238 F. Supp. 2d 191 (D.D.C. 2002) (*Purepac*).

(Response) If an NDA applicant or holder or patent owner intends to submit information on a patent that claims a method of use, the patent must claim a use that is described in the NDA. If we have already approved the NDA, the patent must claim a method of use that is in the labeling of the approved NDA. This has been our position since before we issued the final patent information rule in 1994 (see 59 FR 50338, 50363–50364 (Oct. 3, 1994)). The pre-existing requirement can be found at § 314.53(b) and (c)(2).

Sections 505(b) and (c) of the act support our position that only patents claiming approved methods of use be submitted for listing. Section 505(b)(1) of the act provides that the NDA applicant "shall file with the application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug * * * ." The corresponding language in section 505(c)(2) of the act is nearly identical. Only method-of-use patents "which claim the drug for which the applicant submitted the application" must be listed. "Drug" is an ambiguous term, one which, for many years, we have consistently interpreted in the Hatch-Waxman Amendments to refer to the drug product. One court has said that:

> The meaning of the word "drug" in 21 U.S.C. § 355(b)(1) cannot be determined apart from its context. Neither the FDA nor this court disputes that the definition of drug in § 321(g) covers both drug products and active ingredients. The relevant statutory section in this case, however, modifies the word "drug" by attaching the phrase "for which the applicant submitted the application." In that context the FDA's interpretation of drug as meaning drug product is consistent with and indeed required by the statute.

(See *Pfizer, Inc.* v. *FDA*, 753 F. Supp. 171, 176 (D. Md. 1990).) All of the benefits afforded NDA holders under the Hatch-Waxman Amendments, such as the 30-month stay, derive from obtaining our approval of a particular drug product. Accordingly, only method-of-use patents that claim a use of the drug product in the pending or approved application must be submitted. Method-of-use patents for uses that the NDA holder "has not chosen to make available to the public" (*id.* at 177) must not be submitted for listing.

This construction of the statute is also supported by the more recent case law. Since we issued the proposed rule, there have been several judicial opinions discussing method-of-use patents. In *Purepac Pharm. Co.* v. *Thompson*, 238 F. Supp. 2d 191 (D.D.C. 2002), and in the related case *TorPharm, Inc.* v. *Thompson*, Civ. No. 03–0254 (D.D.C. April 25, 2003) (appeal pending for both *Purepac* and *TorPharm*), the district court held that, where a patent did not claim a use approved in the NDA, an ANDA applicant could not be required to certify to that patent, and the agency could properly find that no ANDA applicant was entitled to 180-day exclusivity on that patent. In *Warner-Lambert Co.* v. *Apotex Corp.*, 316 F.3d 1348 (Fed. Cir. 2003), the Federal Circuit held that an ANDA applicant does not need to certify to a patent claiming a use not covered by the applicable NDA, and there is no cause of action against an ANDA applicant for patent infringement under 35 U.S.C. 271(e)(2)(A) for patents that claim an unapproved use. In *Allergan, Inc.* v. *Alcon Labs., Inc.*, 324 F.3d 1322 (Fed.

Cir. 2003), the Federal Circuit issued a per curium opinion that held that a method-of-use patent holder does not have an infringement action against an ANDA applicant when the use claimed in the patent is not FDA approved and the ANDA applicant is not seeking approval of that use. These decisions are consistent with our position that sponsors must not submit method-of-use patents that do not claim an approved use for listing in the Orange Book. They also highlight the need for an improved declaration that will clarify the claimed scope of the method-of-use patents being submitted.

We have modified the required declaration relating to method-of-use patents submitted. Although we agree, as discussed in the response to comment 11 of section II.A of this document, that each individual claim of a patent does not need to be listed on the declaration forms for drug substance and drug product patents, we do require identification of individual claims for method-of-use patents. The declarant must describe each individual method of use for which a patent is submitted for listing, and identify the corresponding language found in the labeling of the approved NDA that corresponds to that method of use. This information will expedite our review of ANDA and 505(b)(2) applications that do not seek approval for all the approved uses. In determining whether an ANDA applicant can "carve out" the method of use, rather than certify to the listed patent, we will rely on the description of the approved use provided by the NDA holder or patent owner in the patent declaration and listed in the Orange Book.

The need for accurate and detailed information related to the approved methods of use claimed in the patent being submitted for listing is underscored by the decision in *Purepac Pharm. Co.* v. *Thompson*, 238 F. Supp. 2d 191 (D.D.C. 2002). In that case, the NDA holder submitted information on a patent claiming what was later determined to be an unapproved use of the approved drug product. This submission was accompanied by the required signed declaration from the NDA holder that the patent covered the method of use for the approved product. Accordingly, we listed the patent and the use code information submitted with the patent. Years later, well after litigation over this patent was underway, the NDA holder clarified to FDA that the patent did not, in fact, claim the use for which the NDA was approved.

This submission of inappropriate patent information led to confusion and then to litigation over an ANDA applicant's obligation to submit either a paragraph IV certification under section 505(j)(2)(A)(vii)(IV) of the act or a "section viii" statement under section 505(j)(2)(A)(viii) of the act. The section viii statement, which is also applicable to 505(b)(2) applications, permits the ANDA or 505(b)(2) applicant to avoid certifying to a patent by stating that it is not seeking approval for the use claimed in the listed patent. A section viii statement does not carry the requirement for notice to the NDA holder and patent owner, and the related opportunity for a 30-month stay.

We have implemented the section viii provisions of the act by deferring to the NDA holder's or patent owner's assertion that the method-of-use patent claims an approved use of the drug product. When the NDA holder or patent owner submits a method-of-use patent for an approved NDA, we rely upon the requirements in the regulations and the required declaration as the evidence that the patent claims an approved use. Therefore, when an ANDA applicant has sought to duplicate the labeling for which the innovator has submitted the patent, and not to specifically omit, or "carve out" labeling, we require the ANDA applicant to submit a certification to that patent. A section viii statement would not be appropriate because the ANDA applicant is seeking approval for exactly the same labeling as that in the NDA for which the patent was submitted.

Our position has been that, for an ANDA applicant to file a section viii statement, it must "carve out" from the proposed ANDA labeling, the labeling protected by the listed patent. Unless the ANDA applicant can show that it is carving out certain method-of-use labeling, a section viii statement is not a correct submission for the listed patent. In *Purepac*, the court rejected our reliance on the regulations and the general declaration as a reasonable basis for this approach to implementation. The court specifically pointed to the patent submissions in the case, and noted that the NDA holder had not complied with the requirement that NDA holders submit only those patents claiming an approved use for the drug. Although the court noted that the facts in *Purepac* were unique (the NDA holder later admitted that it made its submission "without regard" to FDA's regulations), there may be other cases in which NDA holders have submitted patents claiming unapproved uses of approved drug products.

Following the *Purepac* decision, we have two options for implementing the section viii statement provisions under sections 505(b)(2)(B) and 505(j)(2)(A)(viii) of the act that intersect with the patent submission considerations described in the proposed rule. One approach would be to permit each ANDA and 505(b)(2) applicant to make its own independent decision on whether a listed method-of-use patent claims the use for which the ANDA applicant seeks approval, and then to submit a paragraph IV certification or section viii statement as the applicant sees fit. The second approach would be to require the NDA applicant or holder to identify specifically the approved uses claimed by the method-of-use patent, with reference to the approved labeling, and declare under penalty of perjury that the patent claims an approved use. This would permit ANDA and 505(b)(2) applicants, and us, to assess whether the ANDA or 505(b)(2) applicant is seeking approval for a use the sponsor states is claimed in the listed patent, and thus determine whether the applicant must submit a patent certification or may submit a section viii statement under section 505(b)(2)(B) or 505(j)(2)(A)(viii) of the act.

In the absence of explicit statutory language, we believe an approach that requires the NDA applicant or holder or patent owner to identify the approved methods of use protected by the patent is most consistent with the general balance adopted in Hatch-Waxman. This approach permits the NDA applicant or holder to determine which patents claim its approved drug product and then, when appropriate, to resolve disputes over infringement of those patents through patent litigation. If ANDA and 505(b)(2) applicants could always avoid the possibility of a 30-month stay by asserting in a section viii statement that certain labeling for which the applicant is seeking approval is not protected by a listed method-of-use patent—despite the NDA holder's assertion to the contrary—there would be little reason for any applicant to submit a paragraph IV certification for a method-of-use patent. This approach would essentially eliminate the certification, notice, and litigation process as to any listed method-of-use patent, producing an outcome that is inconsistent with the act.

To effectively implement the certification and section viii statement provisions set out in the statute, we must have adequate information concerning method-of-use patents. Since 1994, we have requested, but not required, that NDA applicants submit to FDA information on the approved use claimed by the patent. Since the

Purepac case and other instances have raised questions about what aspects of the approved drug are claimed by a listed use patent, we believe that it is necessary that an NDA holder submit more specific information on the approved methods of use protected by a submitted patent. Only with this information can we determine what submission is required of the ANDA and 505(b)(2) applicants referencing the approved drug.

We further note that we list methods of use for approved products in the Orange Book in the section on use codes. Due to the limitations of our database system and software constraints, we are limited to using 240 total characters for the use code description in the Orange Book. Traditionally, we have created the use code description for the Orange Book from the information submitted by the NDA applicant or holder. After considering the comments, and in light of the previously described litigation, we have determined that it is more efficient and accurate to ask the NDA holder to give us the exact use code description to be published in the Orange Book. Use codes are intended to alert ANDA and 505(b)(2) applicants to the existence of a patent that claims an approved use. They are not meant to substitute for the applicant's review of the patent and the approved labeling. We understand that in some cases 240 characters may not fully describe the use as claimed in the patent. The declaration, which includes the complete description of the method-of-use claim and the corresponding language in the labeling of the approved drug, will be publicly available after NDA approval.

h. *Miscellaneous Patent Listing Comments.* i. *Should We Create an Administrative Process to Challenge Patent Listings or to De-List Patents or to Review the Listability of Patents?* The proposed rule did not propose an administrative process for challenging patent listings or for seeking removal of a patent from the Orange Book, nor did we propose a new process to internally review the patents for listability.

(Comment 8) Several comments stated that parties, such as generic drug companies and even third parties, need a method for challenging patent listings or for de-listing patents in the Orange Book. Some comments explained that the lack of an administrative procedure for challenging patent listings either encouraged NDA applicants to submit inappropriate patent information, or did not deter the practice, to delay generic competition. A number of comments maintained that FDA has more than a ministerial role and should review patents to determine if they meet the requirements for listing. Several comments contend that we have the authority to determine the attributes of the approved drug and thus to determine the appropriate patent listings. Various administrative mechanisms were suggested through which FDA could conduct a review of patents. These suggestions ranged from hiring patent lawyers to review submitted patents to development of a full administrative hearing process.

One comment stated that patent owners need an administrative process to enforce the listing of their patents because an NDA holder might "fail" to list eligible patents.

(Response) A fundamental assumption of the Hatch-Waxman Amendments is that the courts are the appropriate mechanism for the resolution of disputes about the scope and validity of patents. The courts have the experience, expertise, and authority to address complex and important issues of patent law. This final rule supports that assumption in two ways. First, the final rule clarifies what patents must and must not be submitted for listing. This will make it easier for NDA applicants and holders and patent owners to avoid inadvertently submitting patents that do not meet the statutory and regulatory requirements. The clarification will reduce the pressure on us to intercede in patent listing disputes and will allow the courts and parties to focus on the ultimate issue of patent invalidity or non-infringement. Second, the final rule requires NDA applicants or holders or patent owners to submit detailed information and to certify to its correctness. This should further ensure that only patents meeting the statutory requirements will be submitted for listing.

We decline to create an additional administrative process for challenging patent listings beyond that already established in § 314.53(f). We also decline to create a new process for de-listing patents or for internal FDA review of patents beyond the limited review of the patent declaration described in this final rule. Section 505(b)(1) of the act directs NDA applicants to submit certain patent information. It requires that "[u]pon approval of the application, the Secretary shall publish" the patent information (emphasis added). In section 505(j)(7)(A)(ii) and (iii) the statute mandates that we publish revisions to this information every 30 days. These short time frames do not contemplate a substantive agency review of the scope of the patent and its application to the approved drug product. Indeed, the requirement of prompt publication ("upon submission"), combined with the 30-day timeframe for updating the Orange Book, are strong evidence that Congress did not intend us to undertake anything other than a ministerial action.

In addition to the absence of any statutory basis for a substantive agency review of patents, we have long observed that we lack expertise in patent matters. An administrative process for reviewing patents, assessing patent challenges, and de-listing patents would involve patent law issues that are outside both our expertise and our authority. Although we will continue to relay questions about the accuracy of a patent submission to the NDA holder (see § 314.53(f)), our patent listing role remains ministerial. Courts have upheld our determination that our role with respect to patent listing is ministerial. (See *aai Pharma* v. *Thompson*, 296 F.3d 227, 242–43 (4th Cir. 2002), cert. denied, 123 S. Ct. 1582 (2003); *American Biosci., Inc.* v. *Thompson*, 269 F.3d 1077, 1084 (D.C. Cir. 2001); *In re Buspirone Patent Litigation*, 185 F. Supp. 2d 363, 371 (S.D.N.Y. 2002); *Watson Pharm., Inc.* v. *Henney*, 194 F. Supp. 2d 442, 445–446 (D. Md. 2001); *Mylan Pharm., Inc.* v. *Thompson*, 139 F. Supp. 2d 1, 10–11 (D.D.C.), *rev'd on other grounds*, 268 F.3d 1323 (Fed. Cir. 2001).) We recognize that one court has held that parties have no private right of action to seek de-listing of patents (see *Mylan Pharmaceuticals, Inc.* v. *Thompson*, 268 F.3d 1323 (Fed. Cir. 2001)). Nevertheless, it would be inappropriate and impractical for us to create regulatory mechanisms for reviewing patent listings or permitting third parties to submit patents for listing. We lack both the resources and the expertise to resolve such matters.

Furthermore, even if we were to establish an administrative process for patent review, our decisions on these patent listing matters would inevitably lead to disputes and increased litigation against us. This litigation could question whether such an administrative process was within our legal authority. Even if the courts were to decide that we may review submitted patents, there would be repeated litigation over individual patent listing decisions. Given the uncertainty of the listing status of the challenged patent during the litigation, there is no assurance that, if we reviewed submitted patents, ANDAs or 505(b)(2) applications would be approved sooner and generic drugs would enter the market any more rapidly.

We agree that there have been a few cases in which legitimate concerns have been raised about whether specific submitted patents meet the statutory requirements for submission and listing. We believe that these concerns will be adequately and efficiently addressed by the clarification of the types of patents that must and must not be submitted and by improvements to the patent information required. We further believe that even if legally permissible, it is not necessary for us to develop a patent review mechanism. The final rule permits us to allocate our limited resources to public health activities, while leaving questions of patent law to the courts, which are better able to handle such questions. This division of responsibility is fully consistent with the process established in the Hatch-Waxman Amendments.

(Comment 9) One comment suggested that we create an administrative mechanism to ensure timely patent infringement litigation if no statutory notice is provided to the NDA holder.

(Response) We decline to amend the proposed rule as suggested by the comment. The act does not contemplate that we will play an active role in determining the timing of patent infringement litigation. In the absence of the 45-day timetable imposed when notice is given for a paragraph IV certification, a decision on whether and when to file suit for patent infringement may depend on multiple variables. For example, did the NDA holder or patent owner have sufficient information to decide whether to sue the ANDA or 505(b)(2) applicant for patent infringement? An ANDA applicant and the NDA holder may disagree on when the NDA holder had sufficient information to decide to file suit. The parties may also disagree as to what constitutes "timely" litigation. For example, an NDA holder who defers filing a lawsuit on a later-filed patent until a 30-month stay has elapsed may feel that the subsequent litigation is still "timely," given the information available to the NDA holder. The ANDA or 505(b)(2) applicant may view this latter lawsuit as an obstacle to marketing its drug product. Given the limits of our statutory authority as well as complex issues of patent litigation strategy that lie outside our expertise, we decline to create a mechanism to ensure "timely" patent litigation in situations where the NDA holder and patent owner did not receive notice of subsequent paragraph IV certifications.

ii. *Should There Be Time Limits on Patent Submissions or Certifications*? The proposed rule did not specify when patent information would need to be submitted, or whether ANDA or 505(b)(2) applicants would need to provide certifications for patents listed after they had filed an ANDA or 505(b)(2) application.

(Comment 10) Several comments suggested revising the rule to create time limits relating to the submission of patent information or patent certifications. For example, one comment asserted that "abuse" occurs when NDA holders submit non-meritorious patent information to us shortly before an earlier-submitted patent is to expire. Another comment suggested that we limit the time during which NDA holders can submit patent information to a defined time period after we have approved their NDAs. Another comment said we should not require ANDA applicants to submit amended patent certifications if the patent was submitted after the first ANDA had been filed.

Similarly, one comment asserted that a patent submitted after NDA approval cannot claim the approved drug product because the later-submitted patent would be invalid. The comment explained that, under patent law, a person cannot obtain a patent if the subject of the patent is known and therefore "anticipated" under patent law.

(Response) We decline to amend the proposed rule as suggested by the comments. The act clearly contemplates the submission of additional patent information after an NDA has been filed. For example, section 505(b)(1) of the act instructs applicants to amend their NDAs to include information on a patent issued after the NDA has been filed, but before the NDA has been approved, which claims the drug or a method of using the drug that is the subject of the application. Section 505(c)(2) of the act directs NDA holders to submit patent information if the patent issued after we have approved the NDA. We do not interpret the act as permitting us to refuse to accept submissions of new patents either after an NDA has been filed or approved, or after an ANDA has been submitted.

Section 505(c)(2) of the act also instructs NDA holders to submit information on patents issued after NDA approval no later than 30 days after the date the patent issued. This deadline ensures prompt public notice that the NDA holder believes the patent claims the approved drug product and permits legal issues regarding these later-issued patents to be resolved as early as possible. Under § 314.94(a)(12)(vi), we do not require an ANDA or 505(b)(2) applicant with a pending application to certify to a patent issued after NDA approval but not submitted to us within 30 days after issuance. However, the patent will be listed in the Orange Book upon submission of a complete declaration, and ANDA and 505(b)(2) applications filed after the patent is listed will be required to contain a certification to the patent. This longstanding interpretation is consistent with the statutory language describing patent submission deadlines, the notice concept inherent in patent publication, and early judicial resolution of patent disputes. We are not persuaded by the comments that we should change our interpretation.

We believe that removing the possibility of multiple 30-month stays per ANDA will diminish the incentive to obtain additional patents late in the patent life of the product described in the NDA. As described in the FTC Report, of the patents reviewed by FTC, many of the patents submitted well after NDA approval, and usually after an ANDA application was filed, were ultimately found to be invalid. Therefore, in the absence of the 30-month stay, these patents would have been unlikely to serve as a basis for a preliminary injunction precluding market entry of generic drugs.

We also decline to amend the proposed rule to exempt ANDA applicants from submitting patent certifications if the patent was listed after the ANDA was filed. Our pre-existing regulations do not require ANDA applicants to amend their patent certifications if:

- The NDA holder failed to provide the required patent information within 30 days after the issuance of the patent; and
- The ANDA had already been submitted and had contained an appropriate patent certification before the submission of new patent information (see § 314.94(a)(12)(vi)).

However, if the NDA holder has submitted patent information in a timely manner, consistent with section 505(c)(2) of the act, then section 505(j)(2)(A)(vii) of the act requires the ANDA applicant to certify to that patent. Section 505(j)(2)(A)(vii) of the act requires ANDA applicants to provide a certification with respect to "each patent which claims the listed drug," not only patents that are listed at the time the ANDA is submitted. The act contemplates the submission of patent certifications even if the patent was listed after the ANDA or 505(b)(2) application had been submitted.

We do not have the authority to declare any patent to be invalid. We leave questions regarding the issuance and validity of patents to the PTO and the courts.

iii. *What Should the Patent Declaration Say*? (Proposed § 314.53(c)). Proposed § 314.53(c) would require a patent declaration for NDA applicants and holders and patent owners to complete as part of the NDA, an amendment, a supplement, or for information on a later-issued patent. The proposed revised declaration in the proposal was a "checklist" that focused on individual patent claims. The proposed declaration required information on each claim to help ensure that applicants submit only appropriate patent information, and that they stand behind the accuracy of the information. The proposed requirement to identify claims was intended to help all parties focus on the same claim and help prevent arguments as to whether a particular claim claimed the approved drug product.

(1) *Should the Declaration Identify Individual Patent Claims*?

(Comment 11) Several comments objected to identifying patent claims as part of the declaration. The comments stated that a claim-by-claim listing:

- Would be "unnecessarily onerous" because patents may contain many claims;
- Could threaten the patent holder's legitimate rights if the NDA applicant failed to list a patent claim because the failure to list that claim could be used as an admission against the NDA holder's or patent owner's interests in litigation;
- Could expose the NDA holder to criminal and civil liability if the claim cited in the declaration is later found not to claim the drug; or,
- Is irrelevant to patent listing because the patent, and not the patent claims, is what we must list in the Orange Book.

Other comments supported the claim-by-claim listing. Some comments requested that we impose a 30-month stay only if the specific claims submitted in the patent declaration were the subject of the patent litigation filed within the 45-day time period.

(Response) We have re-examined our rationale for proposing a claim-by-claim listing and have concluded that submission of a claim-by-claim declaration for all patents is not warranted. Such detailed information is not explicitly required by the act and is not necessary for a patent to be listed in the Orange Book. Section 505(b)(1) of the act requires that the patent be one that "claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted * * *." The number of claims contained within a particular patent does not affect the ability of the patent to be listed as long as there is at least one claim that meets the two required elements.

Individual patent claims are relevant for purposes of the Orange Book only in the context of method-of-use patents. The specific method-of-use claims are essential to our review because sections 505(j)(2)(A)(viii) and 505(b)(2)(B) of the act allow ANDA and 505(b)(2) applicants to file statements which assert that the method-of-use patent does not claim a use for which the applicant is seeking approval. The ANDA or 505(b)(2) applicant does not have to seek approval for all uses approved for the reference listed drug. Thus, the claim-by-claim listing of method-of-use patents will permit ANDA and 505(b)(2) applicants to assess whether they are seeking approval for a use claimed in the listed patent, and thus determine whether to submit a patent certification or a section viii statement. Additionally, we can verify that the certification or statement is correct, and that only the appropriate methods of use are included in the proposed labeling for the ANDA or 505(b)(2) drug product.

We decline to adopt the recommendation made in some comments to require all claims to be listed and then provide a 30-month stay only for litigation involving a claim listed in the Orange Book. This suggestion would require us to significantly exceed our ministerial responsibility in listing patents because we would be obliged to evaluate patent lawsuits and their relation to individual patent claims. We discuss our ministerial role in the response to comment 8. Removing the proposed requirement of a claim-by-claim listing in the final rule should not be detrimental to ANDA or 505(b)(2) applicants. In fact, several generic companies, the FTC and the Generic Pharmaceutical Association (GPhA), stated in their comments that no "prudent generic company" would rely solely on Orange Book listings to evaluate patent information for litigation exposure, particularly when all patents cannot be listed in the Orange Book. Thus, we believe that identification of the relevant patent(s), as opposed to the individual patent claims (other than for method-of-use patents), satisfies the act's explicit requirements, provides sufficient information to potential applicants to determine if a more thorough patent search or analysis is warranted, and will help to ensure appropriate patent submissions.

(2) *Should the Declaration Be Expanded or Modified*? The proposed rule would revise § 314.53(c)(2) and would replace the existing, general declaration with a more detailed declaration. The proposed declaration would be a "checklist" that required information on the approved drug product including trade name, active ingredient(s), strength(s), dosage form(s), and approval date. For each patent submitted, each claim of a patent which applied to the drug substance (active ingredient), drug product (formulation or composition), and method of use would need identification. A "yes" or "no" check-off would be required as to each individual applicable patent claim. The proposed § 314.53 would require the NDA applicant or holder or patent owner to state in the declaration that the information was provided for an NDA submitted under section 505 of the act.

(Comment 12) Several comments supported our proposed changes to the declaration but also suggested additions to the declaration. These comments would add the following information to the declaration:

- Specific exclusions of patents for forms of the active ingredient not marketed, such as acids, freebases, salts, and isomers;
- Exclusion of patents claiming labeling matters such as business methods, registries, titration/dosing schedules, or ornamental designs;
- Exclusion of a patent claiming a drug substance claimed in conjunction with another active ingredient or method of using the combination which is not the claimed drug substance;
- Various forms of statements indicating or certifying the submitter has filed accurate information;
- Identification of the NDA applicant's pending patent applications; and
- Additional information for product-by-process patents.

The comments suggested that it was necessary to identify each of the excluded patents in the declaration form and the codified text. Several comments suggested requiring a sworn statement and an acknowledgement that a false statement was subject to criminal penalties. For example, one comment suggested that the declaration include the statement: "The undersigned declares that all of the above information has been provided in accordance with Title 28, section 1746, entitled 'Unsworn declarations under penalty of perjury'," followed by the signature, date, title, and telephone

number. The comment also would require additional information on patents in the declaration form to identify that the product in the product-by-process patent was a novel product.

(Response) We agree, in part, with the comments that the information that would be required in the declaration should be modified. Also, we have created standardized declaration forms which will encompass the required patent declaration information.

The final rule changes the general requirements in pre-existing § 314.53(c)(1) by requiring that the patent information which must be submitted must be provided on the declaration forms in full. In final § 314.53(c)(2), we substitute declaration forms which must be used in place of the checklist described in the proposed rule. Each declaration form is a standard form that must be used by all NDA applicants or holders or patent owners for submission of patent information at the time of initial NDA or supplement filing, and upon and after NDA or supplement approval.

For several years our Internet Web site has included a sample format which can be used in submitting patent information required under pre-existing regulations. Although use of the sample format is purely voluntary, it is used extensively to submit patent information to us. Based on this experience, and given the additional information required in the final rule, we concluded that mandatory declaration forms are appropriate to obtain the patent information. We, thus, require use of forms in the final rule. Since we determined that forms are appropriate, we have consolidated information currently required by pre-existing regulations with the new required information. For example, we require a response on whether there are relevant patents related to the drug product, information currently required under pre-existing § 314.53(c)(3). This was not contained in the proposal but, for administrative efficiency, and to lessen the burden on NDA applicants or holders or patent owners, we have included in the declaration forms all of the required information relating to the patent submission.

The NDA applicant must provide a declaration form when an NDA, amendment, or supplement to an NDA is filed. The NDA holder must also submit another declaration form after NDA or supplement approval to provide information on all patents relevant to the approved NDA or supplement, whether or not information on any such patent was previously submitted. The declaration forms filed with us must be attested to as to the accuracy of the patent information being submitted. Examples of the two declaration forms, FDA Form 3542 and 3542a, are provided in the Appendix found at the end of this document. The declaration forms will be available on the Internet at http://www.fda.gov by searching for the word "forms".

The final rule also revises pre-existing § 314.53(c)(2)(ii) and (c)(3) to conform to the changes we made to the patent information required on the declaration forms. The final rule requires a declaration form to be filed with us within 30 days after NDA approval; this is consistent with the pre-existing requirement. This form must also be used to file patent information on any patents submitted or issued after NDA approval. This declaration form requires the NDA holder or patent owner to provide the patent information applicable to the approved NDA. It is similar to the declaration form filed upon the filing of an NDA, supplement, or amendment. However, the declaration form filed upon or after NDA approval requires information on the approved product and a description of the approved methods of use for the use code listing in the Orange Book. This description will be limited to 240 characters as discussed in the response to comment 7.

The final rule describes other information required for the declaration forms not identified in the proposed rule. Some of the additional information will allow us to more easily determine the eligibility of the patent for listing, while other information will provide more complete information related to the responsibilities of the NDA holders or ANDA applicants. For example, we require the issue date of the patent in order to determine whether the patent has been submitted to us within the required 30 days. We require information on whether the patent being submitted has been submitted previously for the NDA or supplement referenced in the declaration. For example, an earlier listed patent may have included several method-of-use claims but only one method of use previously approved and submitted. A second method of use may be approved in a supplement and must be submitted for listing. Such information will assist the Orange Book staff with its administrative listing responsibilities. The address and contact information of the patent owner required in the declaration forms will assist in the required notification to the patent owner of a paragraph IV certification. We have elaborated on the requirement for asserting that the polymorph is the "same" as the active ingredient approved in the NDA. We require information on whether the patents submitted claim metabolites or intermediates to help ensure that the patents prohibited from submission under final § 314.53(b) are not submitted. Similarly, we require information on patents claiming the drug product to prevent the submission of patents claiming packaging.

The final rule also requires information on product-by-process patents as discussed in the response to comment 2 of section II.A of this document. We have added a requirement that the NDA applicant or holder or patent owner state whether the patent being submitted is a product-by-process patent in which the product claimed is novel. This is to help ensure that process patents are not submitted for listing.

We agree that the attestation in the declaration form should be revised in the final rule. In the proposal, we stated that we had revised the declaration so that applicants would "make careful and well-considered representations" and "stand behind the accuracy of that information" (see 67 FR 65448 at 65453). In the final rule, we revise the statement to be more specific about the need to ensure the information is accurate. We adopt the attestation statement contained in 28 U.S.C. 1746 for unsworn declarations and include attestations in the declaration forms. The attestation statements in the declaration forms read as follows:

(Declaration Form 3542a submitted with NDA, amendment or supplement.)

The undersigned declares that this is an accurate and complete submission of patent information for the NDA, amendment, or supplement pending under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct.

(Declaration Form 3542 submitted upon or after NDA approval.)

The undersigned declares that this is an accurate and complete submission of patent information for the NDA or supplement approved under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct.

We also include a warning statement in the declaration forms to alert the submitter that a willfully and knowingly false statement is a criminal offense under 18 U.S.C. 1001.

We decline to revise the proposed rule to list every excluded type of patent as requested by some comments. Based on our experience, we believe that if we attempted to include questions on all types of patents, such as "business method" or "registry" patents, or specifically list all exclusions in the final rule, there would be disagreements over whether the examples are all-inclusive or whether other types of patents were excluded as well. We believe the patent information requested is sufficient to ensure only eligible patents are submitted for listing.

We also decline to revise the declaration to require identification of an NDA applicant or NDA holder's patent applications that are under review by the PTO. The act does not contain any references to pending patents. In contrast, sections 505(b) and 505(c)(2) of the act contain requirements for patent information to be submitted after the patent is issued. Section 505(b) of the act requires that the information submitted on any patent claiming the drug include the patent number and expiration date of the patent. We publish that information when we list the patent in the Orange Book. A patent number and expiration date are available only when the PTO issues a patent and are not available for pending patent applications. Accordingly, we will not require submission of information regarding pending patent applications.

Although we do not require submission of information concerning pending patent applications, we understand that pending patent applications are generally publicly disclosable by the PTO if pending for more than 18 months at the PTO or foreign patent offices. In addition, information concerning pending patents would not provide any useful information if the PTO never issued the patent.

We note that we will not evaluate a patent to assess whether the declaration is accurate or whether the patent has been appropriately submitted for listing (see our response to comment 8). We will, however, review the declaration for completeness and to determine that the information given by the NDA applicant or holder or patent owner indicates that the patent is eligible for listing.

Although section 505(b)(1) of the act requires submission of patent information upon the filing of an NDA, we will rely only on the declaration form filed upon or after NDA approval under § 314.53(c)(2)(ii) to list patent information in the Orange Book. Patent information for newly approved NDAs, NDA supplements, or newly issued patents will not be published in the Orange Book unless and until we receive a complete declaration submitted post-NDA approval indicating the patent is eligible for listing.

We interpret the statute to permit listing of only those patents claiming the approved drug product and its approved uses. Even though the NDA applicant must submit patent information prior to NDA approval, it is not until the NDA or supplement has been approved that the scope of that approval is known. For example, we might approve only one of two indications proposed in an NDA and, thus, patents on an unapproved indication or use, although submitted with the original NDA, could not be listed. Therefore, as a way of confirming or amending the original patent information, a declaration form must be submitted after approval. If the declaration form submitted after NDA approval is incomplete or indicates a patent is not eligible for listing, we will notify the NDA holder and indicate the reason. The NDA holder must resubmit the declaration form with complete information indicating that the patent is eligible for listing. If the declaration form is incomplete or indicates the patent is not eligible for listing, we will refuse to list the patent until an appropriate declaration form has been submitted.

For patents newly issued by the PTO after the NDA is approved, section 505(c)(2) of the act requires that the NDA holder submit the patent information to us within 30 days to be considered timely filed. All such patent information must be contained in a complete declaration submitted post-NDA approval indicating that the patent is eligible for listing. A patent is considered listed in the Orange Book as of the date it is received in the Central Document Room as required in § 314.53(d)(4) and (d)(5), if it is accompanied by a declaration form that is both complete and contains information indicating that the patent is eligible for listing. If we must notify an NDA holder that a declaration form is incomplete or the patent is not eligible for listing, and the NDA holder then submits an acceptable declaration within 15 calendar days, we will consider the patent timely filed. So, for example, suppose an NDA holder submits information on a new patent to us 20 days after the patent is issued by PTO, and we notify the NDA holder 5 days later that the declaration is incomplete. If the NDA holder submits an adequate declaration within 15 calendar days of the notification, we will consider the patent information to have been submitted as of the date we originally received it, that is, within the 30 day period allowed by the statute. If the NDA holder submits the adequate declaration more than 15 calendar days after notification, we will consider the patent information to have been submitted on the day the revised declaration form is received, which may be more than 30 days after the date of patent issuance. Such patents will be subject to patent certification only as described in § 314.94(a)(12)(vi). If the NDA holder does not submit an adequate declaration for the newly issued patent, we will not list the patent in the Orange Book. This approach is appropriate because it gives the NDA holder who promptly submits information on a newly-issued patent a reasonable period of time to correct a mistake in a patent declaration, while at the same time ensuring that there are adequate declarations and minimal delays for listed patents. We will accept certifications to any patent only from the date an acceptable declaration is submitted.

The process established in § 314.53(f) for patent listing challenges is not altered by our requirements for patent information and declaration forms. Interested parties may still rely on that process if they believe a patent has been submitted and listed in error.

We are aware of NDA holders that have submitted patents for listing that have been listed in the Orange Book and then, at a later time, been removed from the Orange Book at the NDA holder's request. If, after the patent has been removed from the Orange Book, the NDA holder again seeks to submit the patent for listing, we will require resubmission of the patent information and the filing of an accompanying patent declaration before the patent will be relisted. Such resubmission will be governed under the final rule. If the resubmission of a previously listed patent takes place after the effective date of this rule, the final rule applies as described in section IV of this document.

The final rule does not require us to review or evaluate patents, but will simplify and clarify the submission process for NDA applicants and holders and patent owners, and will promote administrative efficiency. The additional information required by the declaration form will help ensure that only appropriate patents are submitted for listing.

2. How Many Times Can an ANDA or § 505(b)(2) Application's Approval Date Be Delayed by 30-Month Stays?

The proposed rule offered an interpretation of the act that would limit the number of 30-month stays to only one possible stay per ANDA or 505(b)(2) application. The proposed interpretation in the proposed rule differed from our previous interpretation of the act (which allowed for multiple 30-month stays). Under our proposed interpretation, the ANDA or 505(b)(2) applicant would continue to file the appropriate certifications as required under section 505(j)(2)(A)(vii)(I) through (j)(2)(A)(vii)(IV) or section 505(b)(2)(A)(i) through (b)(2)(A)(iv) of the act. However, under the proposed interpretation in the proposed rule, the notice to the NDA holder and patent holder of the paragraph IV certification is required only when a paragraph IV certification is included in the initial ANDA or 505(b)(2) application or when such an application is amended to include, for the first time, a paragraph IV certification. Notice to the NDA holder and patent owner is one of the requirements for a 30-month stay; if the ANDA or 505(b)(2) applicant is not obliged to provide a subsequent notice to the patent owner and NDA holder, no successive 30-month stay is possible.

a. *When Must Notice Be Provided and What Is a Full Opportunity for a 30-Month Stay?* The proposed rule would require an ANDA or 505(b)(2) applicant to provide notice to NDA holders and patent owners only when the applicant files a paragraph IV certification with the initial application or amends the application to include a paragraph IV certification for the first time. If the application were amended to add additional paragraph IV certifications, no notice to the NDA holder and patent owner would be required.

(Comment 13) Several comments claimed that the lack of notice for subsequent paragraph IV certifications would delay initiation of patent litigation. To avoid this "delay," the comments suggested that, if we retained our proposed interpretation allowing only one 30-month stay per ANDA or 505(b)(2) application, we should amend the rule to:

- Give the ANDA applicant the "option" to provide voluntary notification;
- Give the ANDA applicant the "option" to provide notification and be subject to an "optional" additional 30-month stay;
- Require us to notify the NDA holder as to a subsequent paragraph IV certification.

Similarly, several comments expressed concerns that ANDA and 505(b)(2) applicants could manipulate the rule to avoid even a single 30-month stay. The comments explained that in the absence of notice for all paragraph IV certifications, there could be several scenarios in which an ANDA or 505(b)(2) applicant could take advantage of the regulations to avoid a meaningful 30-month stay under our revised interpretation. For example, an ANDA or 505(b)(2) applicant could file a paragraph IV certification on a narrow patent or a narrow patent claim and provide notice to the NDA holder and patent owner on that certification, thereby satisfying the regulatory requirements, while providing a paragraph III certification on broader patents or claims. The NDA holder or patent owner could bring a patent infringement suit within the 45 days, triggering a 30-month stay, or decide not to bring suit on the narrow claim or patent. The comments argued that, after suit was filed, or after the 45 days expired with no suit initiated, the ANDA or 505(b)(2) applicant could change the paragraph IV certification to a paragraph III. If suit had been filed, the applicant could seek dismissal of the patent infringement suit and avoid the 30-month stay. At a later date, the ANDA or 505(b)(2) applicant could change its paragraph III certification on the broader patent or claim to a paragraph IV certification, but because there had already been an opportunity for a 30-month stay, no further 30-month stay would be possible.

The comments maintained that we should not allow such manipulation and that it could be avoided by treating the new or revised certification as though it relates back to, and substitutes for, the original certification so that the notification requirements for original applications, and not those for amendments, apply. Under this suggested approach, the changed paragraph III certification would be treated as if the original application had contained the paragraph IV certification. The new certification, thus, would require notice to the NDA holder and patent owner and have the potential to trigger a 30-month stay. The comment cited § 314.94(a)(12)(viii) which relates to amended certifications to support this approach. In this instance, it was argued that there should be the opportunity for at least one 30-month stay when the ANDA or 505(b)(2) applicant "alters or amends" a patent certification for reasons other than the listing of a patent subsequent to the filing of an ANDA.

(Response) We decline to modify the proposed rule as suggested. We conclude, however, that clarification of the proposed rule is required in the final rule to ensure that our revised interpretation allows for one full opportunity for a 30-month stay after notice of a paragraph IV certification.

Our long experience with administering the Hatch-Waxman Amendments convinces us that any regulatory scheme in this area will be complex, and that any advantage that a party can find in manipulating the regulatory program will be pursued. Despite our conviction that the final rule will substantially reduce such manipulation, we do not believe we can completely prevent attempts at "creative compliance" by the parties.

Our revised interpretation of the statute reads all three subparagraphs of section 505(j)(2)(B) of the act as a coherent whole. We believe that Congress considered the first paragraph IV certification, notice and the opportunity for a single 30-month stay, to be part of an inter-connected process. In the final rule we keep these provisions operating together, as much as possible, requiring that certifications be made and notification provided in such a way that there always will be one full opportunity for a 30-month stay.

The notice requirement in the final rule depends on whether the ANDA or 505(b)(2) application contained a paragraph IV certification before the submission of an amendment containing a paragraph IV certification. We note three potentially confusing situations concerning applicability of that principle and describe how these will be treated under the final rule.

First, an ANDA or 505(b)(2) applicant who filed a paragraph IV certification could change to a paragraph III certification after notice is given but before the 45 days for filing suit has run and before a suit is filed. In this situation, because the opportunity for a 30-month stay has not vested (the 45 days has not expired or patent litigation has not yet been initiated), under the final rule, this ANDA or 505(b)(2) application will not be considered to have ever included a paragraph IV certification. If a paragraph IV certification is submitted later, the notice obligation and one full opportunity for a 30-month stay will attach. This ensures that, consistent with the statute, for at least one paragraph IV certification, the NDA holder or patent owner has a full 45 days to determine whether to exercise the right to sue for patent infringement and to obtain a 30-month stay on ANDA or 505(b)(2) approval. The phrase "one full opportunity for a 30-month stay" used throughout this preamble means a notice of a paragraph IV certification followed by either the full 45 day period, or notice followed by the initiation of patent litigation before the 45 days expire.

Only where both the 45 days have not run and the ANDA or 505(b)(2) applicant has not been sued for patent infringement will this exception apply. If the NDA holder brings suit before the 45 days, and the ANDA or 505(b)(2) applicant then changes its application to omit any paragraph IV certifications, the court where suit is pending can determine how to proceed.

For effective enforcement of this provision of the regulations, notice of the first paragraph IV certification(s) must be given by the ANDA or 505(b)(2) applicant either: (1) When the applicant receives from us an acknowledgement that the ANDA or 505(b)(2) application is sufficiently complete to permit substantive review, or (2) at the same time that the amendment to the ANDA or 505(b)(2) application is submitted to us. These requirements are already contained in our regulations at § 314.95(b) and (d) and § 314.52(b) and (d). (These also apply to a second notice of a paragraph IV certification when the first notice did not result in a full opportunity for a 30-month stay.) The importance of ANDA and 505(b)(2) applicants providing this notice was recently reaffirmed in *TorPharm, Inc.* v. *Thompson*, Civ. No. 03–0254 (D.D.C. April 25, 2003) (appeal pending). ANDA and 505(b)(2) applicants shall submit proper documentation of notice to us as required by §§ 314.95(e) and 314.52(e).

Second, an applicant who filed a paragraph IV certification with its original ANDA or 505(b)(2) application could change its paragraph IV certification (generally to a paragraph III certification) after a patent infringement suit is filed and after the 30-month stay has commenced. Such a change could occur, for example, as a result of a court order after a finding of infringement in the patent litigation. In this circumstance, an application that previously contained a paragraph IV certification would no longer do so. If such an application is subsequently amended to add a new paragraph IV certification, the notice obligation will not be triggered for the new certification. The notice requirement and one full opportunity for 30-month stay will have been exhausted when the first patent lawsuit was filed and a 30-month stay was imposed.

The third situation could occur when an applicant withdraws an ANDA or 505(b)(2) application that contained a paragraph IV certification after it has provided notification to the NDA holder and patent owner. If an ANDA or 505(b)(2) applicant were to reactivate its withdrawn application, it might contend that the notice that it provided prior to withdrawal of the ANDA or 505(b)(2) application was the only notice that could trigger a 30-month stay, regardless of whether the 45 day period had run, whether patent infringement litigation was initiated, or whether that litigation was terminated because of withdrawal of the application.

Our pre-existing regulations prevent an applicant from using withdrawal to defeat the opportunity for one 30-month stay. Under §§ 314.52(b) and 314.95(b), the applicant is not to give notice until it receives an acknowledgement letter from us stating that its application is sufficiently complete to permit review. Any notice sent prior to receipt of such letter will not constitute the notice that creates the full opportunity for the single 30-month stay.

Once the review period begins, an application may not be withdrawn and then "reactivated." If the ANDA or 505(b)(2) application is withdrawn during the review period, we "will treat the resubmission as a new application or abbreviated application" under § 314.100(b). If the applicant wishes to have the withdrawn ANDA or 505(b)(2) application reviewed, it must submit it as a new ANDA or 505(b)(2) application. The "decision to withdraw the application is without prejudice to refiling" as noted in § 314.65. However, we will treat the new ANDA or 505(b)(2) application in the same manner as any other original application. The applicant will be required to provide notice for paragraph IV certifications contained in the new ANDA or 505(b)(2) application, with the possibility of a single 30-month stay. If the new ANDA or 505(b)(2) application contains no paragraph IV certification, notice must be provided if it is later amended to include such a certification. In short, withdrawal of an ANDA or 505(b)(2) application will not defeat the opportunity for a 30-month stay of approval for the resubmitted ANDA or 505(b)(2) application.

We do not agree that § 314.94(a)(12)(viii) supports a "relation back" theory. The provision does provide that when an ANDA or 505(b)(2) applicant changes a certification in its application, "the application will no longer be considered to contain the prior certification," but it cannot be read to suggest that the application will be considered to have contained only the changed certification retroactively to the date that the original certification was filed. If interpreted in that manner, an ANDA or 505(b)(2) applicant could amend certifications to other patents and make them paragraph IV certifications. Among other difficulties, an applicant could then argue that, by virtue of relating back, such a paragraph IV certification was the "first" application with a paragraph IV certification, potentially entitling the applicant to exclusivity under section 505(j)(5)(B)(iv) of the act. This theory would lead to absurd results in the application of 180-day exclusivity.

Furthermore, we note that ANDA applicants have substantial incentives to avoid manipulation of the patent certification process. The 180-day marketing exclusivity provided in section 505(j)(5)(B)(iv) of the act is a significant incentive for ANDA applicants to file legitimate paragraph IV certifications. Exclusivity as to each listed patent is available only to the first ANDA applicant filing a paragraph IV certification. Frequently, there is a race to submit the first paragraph IV certification. Consequently, given this incentive, we do not anticipate that ANDA applicants will manipulate their patent certification filings, because they could jeopardize their chances of obtaining the valuable 180-day exclusivity.

We encourage ANDA and 505(b)(2) applicants to resolve their concerns about commencing litigation quickly by providing voluntary notice to the NDA holder and patent owner as they wish. There is nothing in the final rule to prevent ANDA or 505(b)(2) applicants from providing notice on their own initiative, nothing to prevent NDA holders or patent owners from responding with patent litigation, and nothing to prevent ANDA or 505(b)(2) applicants from not marketing during the litigation. To the extent that ANDA or 505(b)(2) applicants seek resolution of outstanding patent issues before entering the market, we note that the applicant can file a declaratory judgment action (as discussed below) and enter into a stipulated preliminary injunction pursuant to which the ANDA or 505(b)(2) applicant will not enter the market during the course of the litigation. Such a stipulation, of course, must be consistent with FTC precedent and established antitrust requirements. Information on pertinent FTC consent orders may be obtained from the FTC or its Internet Web site.

The interpretation we are adopting in the final rule allows only one 30-month stay per ANDA or 505(b)(2) application;

it does not permit multiple 30-month stays. Revising the rule to impose additional 30-month stays would be contrary to our interpretation of the act and the reasons for the rulemaking. Furthermore, requiring notice and imposing a second full opportunity for an additional 30-month stay under the circumstances described would be inconsistent with our legal basis for a single 30-month stay since we permit notice and one full opportunity for a 30-month stay per ANDA or 505(b) application. Multiple 30-month stays increase the delay in approval of generic drugs and result in increased costs to consumers because the cost of individual drugs is reduced when generic drugs enter the marketplace and compete with the NDA drug.

b. *Should All Paragraph IV Certifications Be Made Public and Should the Notice Requirements Be Modified?* The proposed rule would limit when a notice of a paragraph IV certification is provided to NDA holders and patent owners but did not address the content or format of the notice. The proposed rule did not address whether or not paragraph IV certifications were subject to public disclosure. We invited comment on whether our regulations regarding the notice by ANDA and 505(b)(2) applicants to the NDA holder and patent owner could and should be amended (67 FR 65454).

(Comment 14) Several comments suggested that we should post all paragraph IV certifications on our Web site because, these comments argued, there is no basis to exempt the paragraph IV certifications from public disclosure. The comments also suggested that we disclose all paragraph IV certifications.

(Response) We decline to amend the proposed rule to make public all paragraph IV certifications or otherwise provide notice of paragraph IV certifications to NDA holders and patent owners. Under current practice, paragraph IV certifications are subject to public disclosure under the Freedom of Information Act (FOIA) and FDA's public disclosure regulations once the notice of the paragraph IV certification has been provided to the NDA holder and patent owner. Because the notice to the NDA holder or patent owner of the paragraph IV certification is considered a public disclosure after notice has been given, the certification is available under FOIA. The final rule requires notice only for the first paragraph IV certification of an ANDA or 505(b)(2) application if that notice results in a full opportunity for a 30-month stay. Notice for a subsequent paragraph IV certification will be required only if the full opportunity did not result. Only the paragraph IV certifications for which notice is required will be routinely subject to public disclosure prior to approval. All other certifications in an application would be considered confidential, commercial information. Unless the ANDA or 505(b)(2) applicant makes the subsequent certification public on its own accord, we are prohibited from any disclosure that would reveal the applicant's identity, contents of the application, or the timing of the application (see §§ 20.61(b) and 314.430). We do not believe that amending our FOIA regulations to permit the release of information typically considered confidential, commercial information, i.e. information that could cause competitive harm is appropriate, without deciding at this time that we could even do so.

Although parties are free to make paragraph IV certifications public themselves, we will continue to adhere to our pre-existing FOIA and public disclosure requirements as applicable to paragraph IV certifications. We also intend to publish on our Internet Web site, for each drug, the number of paragraph IV certifications filed to patents submitted after the effective date of this final rule, if it can be done in a manner that is consistent with FOIA. To avoid any inappropriate public identification, we will not publish the number of subsequent paragraph IV certifications if there is only one ANDA or 505(b)(2) application containing a paragraph IV certification because such publication would be tantamount to a public disclosure of that applicant's confidential, commercial information.

The NDA holder and patent owner also have other means to determine whether subsequent paragraph IV certifications have been filed. If a lawsuit is filed after notice of the paragraph IV certification, the NDA holder or patent owner can use the litigation process to discover the ANDA or 505(b)(2) applicant's certifications to subsequent patents. Furthermore, additional public information is available if we issue a tentative approval letter to the ANDA or 505(b)(2) applicant with a paragraph IV certification. These letters are publicly available before the ANDA or 505(b)(2) applicant receives an approval and note the applicable patents, patent certifications, and exclusivities affecting the timing of the approval of the ANDA or 505(b)(2) application.

We note that comments concerning public disclosure of paragraph IV certifications and the need for quick resolution of patent issues were submitted both by brand name or innovator firms and their trade associations and by generic drug firms or related interests. We believe such mutual interests will encourage the voluntary disclosure of paragraph IV certifications.

(Comment 15) Several comments responded to our request for comments on whether our regulations concerning the certifications filed by ANDA and 505(b)(2) applicants and the notice to NDA holders and patent owners could or should be modified. Most comments agreed that we had the authority to modify both the certifications and the notice. One comment suggested that we "clarify the elements of a proper paragraph IV notification" to "ensure that paragraph IV notifications communicate meaningful information regarding the basis for an assertion that a listed patent is invalid or not infringed" and that "adequate" information is provided. Another comment suggested that the notice provided to the NDA holder and patent owner of a paragraph IV certification should include an explanation of the relationship between the patent claims as construed by the ANDA or 505(b)(2) applicant and the drug product. Another comment said we should require the NDA holder and patent owner to identify an "agent for service" and require service by registered mail to ensure that the notice will reach its "proper location within the corporation in a timely manner."

(Response) In reviewing the current notification requirements at § 314.95(c), we do not believe that the suggested solutions for clarification or more detailed explanations would improve upon the current regulation. The current regulation requires specific information in a notice that explains in full, and in detail, the nature of the claim that the listed patent is invalid or, unenforceable or will not be infringed. Our regulations, at §§ 314.52(a) and 314.95(a), require notification by registered or certified mail, return receipt requested. Our regulations also require documentation of a receipt establishing that the notice was received by the listed NDA holder and patent owner (see § 314.52(e) and § 314.95(e)). A receipt other than a return receipt or a letter from the recipient acknowledging receipt can be provided only with advance FDA agreement.

We do not believe it would be appropriate to further limit delivery of the notice, nor do we believe it is appropriate to require "agents for service." We are not persuaded that such agents would solve the comment's problem that "notice is not reaching its proper location within the corporation in a timely manner." In addition, the individual listed as the "agent for service" could change, resulting in confusion and delay in providing notice.

(Comment 16) Another comment suggested we require ANDA and 505(b)(2) applicants to file a new complete application for every drug product listed separately in the Orange Book rather than allow applicants to file supplements to approved applications. This comment would require new applications for each drug strength listed in the Orange Book as a separate product.

(Response) We decline to adopt the comment's suggestions. Our current policies regarding supplements to ANDA and 505(b)(2) applications allow for significant administrative efficiencies and reduced application review times. Requiring separate ANDA or 505(b)(2) applications would substantially increase costs for applicants, as well as the agency, to accommodate the burden of creating, submitting, processing, and reviewing multiple, complete applications. Our policy regarding supplemental ANDAs for multiple strengths of a drug has been a major factor in reducing ANDA review times. Before 1991 (when applicants had to submit separate ANDAs for different strengths of a drug), the median approval time for an ANDA was 33 months. Today it is approximately 18 months. A key purpose of this final rule is to help expedite the approval of generic products so that they can more quickly be introduced to the marketplace. If we adopted the suggestion, the probable effect would be to delay the introduction of generic drugs into the market because the review times would increase. Requiring multiple applications would not provide any additional value to our review of ANDA applications. Consequently, we decline to require separate applications as suggested by the comment.

c. *Should the Single 30-Month Stay Be Further Limited?*

(Comment 17) Many comments agreed with our determination that the delay in approval of ANDA or 505(b)(2) applications could be limited to one 30-month stay per application. Other comments agreed with the limitation but stated that the single 30-month limitation was or should be:

- Per drug;
- Per ANDA, for all patents submitted before any ANDA filing; or
- Limited only to patents submitted within 30 days of NDA approval.

(Response) We decline to adopt the additional limitations as suggested by the comments. The act requires a certification for each listed patent for each application filed under sections 505(b)(2) or 505(j) of the act. We construe section 505(c)(2) of the act to require submission of patent information after NDA approval, without regard to when an ANDA or 505(b)(2) application has been filed. We decline to limit the 30-month stay resulting from a paragraph IV certification to only those patents submitted before any ANDA or 505(b)(2) filing, or those filed only within 30 days of NDA approval, or per listed drug instead of per application.

d. *Will the Application of Only One 30-Month Stay Affect Declaratory Judgment Actions Under the Act?*

(Comment 18) Several comments supported the single 30-month stay but expressed concern that limiting the notice requirement and 30-month stays to the first paragraph IV certification could affect the ability of ANDA and 505(b)(2) applicants to file a declaratory judgment action to resolve patent infringement issues. Some comments believed that in the absence of both notice to the NDA holder and patent owner and the ensuing 45-day period within which a patent infringement suit could be initiated, a declaratory judgment action could not be brought. Other comments opposed the single 30-month stay and also expressed concern about the ability to pursue a declaratory judgment action under the proposal. Some comments questioned whether a declaratory judgment action could be filed under other statutory provisions; the comments explained that the Hatch-Waxman Amendments created the act of patent infringement and, if litigation were bought "outside" the act, there would be no "case or controversy" required by those provisions. One comment cited *Cordis Corp.* v. *Medtronic, Inc.*, 835 F.2d 859, 862 (Fed. Cir. 1987), noting that "when the generic cannot meet the subjective standard of proving a reasonable apprehension of a suit by the brand company," the case may be dismissed because there was no "case or controversy." Another comment cited *Teva Pharmaceuticals, USA, Inc.* v. *FDA*, 182 F.3d 1003 (D.C. Cir. 1999), to claim that if no notification were received, arguably no declaratory action could be brought. Other comments suggested that limiting NDA holders to a single 30-month stay per ANDA or 505(b)(2) application would encourage the delay of litigation designed to resolve patent issues and thus would reduce "certainty" for ANDA applicants.

(Response) We appreciate the desire to resolve patent issues quickly, but believe the concerns expressed about the ability to pursue declaratory judgment actions are unwarranted. Section 505(j)(5)(B)(iii) of the act provides: "Until the expiration of forty-five days from the date the notice made under paragraph (2)(B)(i) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent." We interpret this particular section as creating an exception to the general right of a party to bring a declaratory judgment action at any time that jurisdictional requirements are satisfied under title 28, United States Code. The general rule allowing declaratory judgments under 28 U.S.C. 2201 would be applicable as long as a party can satisfy the "case or controversy" requirement that is necessary to file a declaratory judgment action. The exception created in section 505(j) of the act restricts the timing when a declaratory judgment action may be filed under certain limited circumstances. Under the act, if notice of a paragraph IV certification is required, no declaratory judgment action can be filed until 45 days after that notice is given to the NDA holder and patent owner. However, if no notice is required to be provided to the NDA holder and patent owner, the exception created in section 505(j) of the act no longer applies, and the general rule permitting declaratory judgments to be filed at any time under 28 U.S.C. 2201 would apply.

We also disagree with the conclusions drawn from the cases cited in the comments that, in the absence of the notice of subsequent paragraph IV certifications, there would be no case or controversy on which to base a declaratory judgment action. A case or controversy can exist where first, there is reasonable fear of a lawsuit and, second, the plaintiff has actually produced the product in question or is prepared to produce the product. (See *Cordis Corp.* v. *Medtronic, Inc.*, 835 F.2d 859 (Fed. Cir. 1987)). In *Vanguard Research, Inc.* v. *PEAT, Inc.*, 304 F.3d 1249, 1255 (Fed. Cir. 2002), the court found that fear of a lawsuit existed when the competitor was engaged in activity subject to a patent infringement charge, and the patent holder already had sued the competitor to protect its technology. The court noted that: "[f]iling a lawsuit for patent infringement would be just another logical step in its quest to protect its technology." This is similar to the

situation in which an ANDA or 505(b)(2) applicant has filed an initial paragraph IV certification and the NDA holder or patent owner has filed a lawsuit to protect the patent and obtain a 30-month stay. There is little reason to doubt that an NDA holder or patent owner who had submitted a second patent to us for listing would bring another lawsuit to protect the second patent if an ANDA or 505(b)(2) applicant were to manufacture the drug, even if no notice of a subsequent paragraph IV certification was provided. In other words, the NDA holder or patent owner should have an incentive to protect the patented invention regardless of whether the ANDA or 505(b)(2) applicant provided notice.

We acknowledge that the court in *Jervis B. Webb Co.* v. *Southern Systems, Inc.*, 742 F.2d 1388 (Fed. Cir. 1984), found that a case or controversy did not exist when the plaintiff had not produced a product (a device) at the time of the declaratory judgment counterclaim. However, an ANDA or 505(b)(2) applicant is engaged in "producing" a product at the time the ANDA or 505(b)(2) application is filed. Although 35 U.S.C. 271(e)(1) makes it an act of non-infringement to use a patented invention for uses related to submitting an ANDA or 505(b)(2) application (such as testing and producing sample batches of drug product), 35 U.S.C. 271(e)(2) expressly makes it an act of infringement to submit an ANDA or 505(b)(2) application seeking approval of the drug product before a patent expires. This statutory provision does not require that the NDA holder or patent owner receive formal notice of a paragraph IV certification for the submission of the application to be an act of infringement. Thus, unlike the plaintiff in *Jervis B. Webb Co.* v. *Southern Systems, Inc.*, the second element of the case or controversy test would be satisfied.

In another case cited in the comments, *Teva Pharmaceuticals, USA, Inc.* v. *FDA*, 182 F.3d 1003 (D.C. Cir. 1999), the court explained that a case or controversy did not exist in the underlying declaratory judgment action. There was no reasonable apprehension of suit—the first element of the case or controversy test—because the patent owner had disavowed an intent to sue. A disavowal of the intent to sue is an unusual circumstance that we do not expect to occur in many cases. In any event, the availability of a declaratory judgment action is less important when the innovator or patent owner disavows an intent to sue because the ANDA applicant will face less risk in marketing its competing product. We are not aware of any other Hatch-Waxman patent infringement case in which a court has found no reasonable apprehension of suit.

In response to the comments arguing that a single 30-month stay would create uncertainty regarding litigation and later-submitted patents, we note that a firm's inability to predict whether it will or will not be sued for patent infringement is a matter outside the scope of this final rule. A decision by the NDA holder or patent owner on whether to file suit for patent infringement may depend on many factors. For example, litigation decisions could be affected by the strength of the underlying patent, the party's resources, licensing agreements if the patented invention is made under a license, or other factors. We also note that some patent infringement suits may be initiated after the 45 day period available to obtain a 30-month stay has expired. The act only requires the initiation of a patent infringement suit within a specific time if the NDA holder or patent owner wishes to get the benefit of a 30-month stay in the approval of an ANDA or 505(b)(2) application; the NDA holder or patent owner can bring suit at a later time, but loses the opportunity to obtain a 30-month stay of approval.

In addition, there are various types of patents which must not be submitted for listing in the Orange Book. These patents are not subject to the certification, notice, and 30-month stay provisions. The fact that such patents must not be listed does not prevent the NDA holder or patent owner from defending those patents in litigation as it deems appropriate.

e. *Is the Correct Legal Interpretation Applied to Provide Only One 30-Month Stay?*

(Comment 19) Numerous comments challenged our proposed interpretation of the act to permit only one 30-month stay per ANDA or 505(b)(2) application. Some comments advanced a legal analysis different than the one we described in the preamble to the proposal to support a single 30-month stay. The comments asserted that their legal theories were either better than ours or were the only appropriate legal arguments possible.

In contrast, other comments maintained that section 505(j)(2)(B)(iii) of the act requires that notice be provided to the NDA holder and patent owner each time a new paragraph IV certification is added to an ANDA. These comments maintained that multiple 30-month stays are clearly required if the notices result in patent litigation. Several comments contended that the plain meaning of "include" or "amended to include" is to "contain" or "comprise as part of a whole," and that our interpretation of section 505(j)(2)(B)(iii) of the act is not reasonable. The comments also argued that our interpretation of "include" in this provision differs from its use elsewhere in section 505 of the act. One comment stated that the meaning of "include" in sections 505(j)(7)(A)(ii) and (iii) of the act cannot be reconciled with our interpretation of that term in section 505(j)(2)(B)(iii) of the act. Section 505(j)(2)(B)(iii) of the act states that "If an application is amended to include a certification described in subparagraph (A)(vii)(IV), the notice required by clause (ii) shall be given when the amended application is submitted." The comment noted that section 505(j)(7)(A)(ii) of the act provides that the Secretary "shall revise the list [Orange Book] to include each drug which has been approved . . . during the [intervening] thirty-day period" and, when that updated drug information is recorded "in revisions made under clause (ii), [shall] include such [patent] information for such drug."

Several comments questioned whether the legislative history of the Hatch-Waxman Amendments supported our proposed interpretation of section 505(j)(2)(B)(iii) of the act. One comment contended that House Report language (see 67 FR 65448 at 65456) we had cited should be read as supporting multiple 30-month stays. The comments also argued that our interpretation failed to consider the importance of the final compromise that led to a 30-month, rather than 18-month, stay to ensure that patent litigation was resolved before a generic drug was approved. Finally, other comments criticized our failure to consider other language from a House Report that allegedly shows that Congress intended the availability of multiple 30-month stays. This language, found at H. Rept. 98–857, Part 1, 98th Cong., 2d Sess. at 28, states: "In the case where the patent certification is amended in an ANDA to allege invalidity or non-infringement of a patent, the FDA may not make the approval effective within the 45 day period that an action for patent infringement may be brought."

(Response) We agree that section 505(j)(2)(B)(iii) of the act can be read to permit multiple 30-month stays. Indeed, this has been our position since the enactment of the Hatch-Waxman Amendments. The proposal put forth a different interpretation, one that we believe is equally reasonable and more in line with the intent of the Hatch-Waxman Amendments—to maintain a balance between the rights of the NDA holders and patent owners, and the desire to have more rapid availability of generic drugs. Our revised interpretation of section 505(j)(2)(B)(iii) of the act accomplishes two statutory objectives: (1) It closes a possible loophole that would have allowed ANDA applicants to avoid any 30-month stay and (2) it prevents multiple 30-month stays per ANDA application. A similar conclusion applies to the parallel provisions of section 505(b)(2) of the act.

We based our change in position on a reevaluation of the statutory text and concluded that the act is ambiguous on this issue of multiple 30-month stays. We note that certain other legal interpretations or theories may support a single 30-month stay, but we believe that the position we have taken in the final rule is the most appropriate.

The preamble to the proposed rule explained the rationale for our different interpretation (see 67 FR 65448 at 65454 to 65456). In brief, after reviewing the text of section 505(j)(2)(B)(i) through (iii) of the act, we believe that these provisions may be reasonably interpreted so that notice and the opportunity for a 30-month stay do not flow from all paragraph IV certifications. However, one notice of a paragraph IV certification and one full opportunity for a 30-month stay will always be required. This outcome—the opportunity for one 30-month stay during which patent rights can be litigated, but no multiple 30-month stays per ANDA or 505(b)(2) application to unreasonably delay approvals of competitor drugs—is a reasonable and balanced interpretation of the act.

We disagree with the comments that claimed that notice and 30-month stays are required only for paragraph IV certifications contained in original ANDAs because the notice provision at section 505(j)(2)(B)(ii) references only section 505(j)(2)(B)(i) of the act. This interpretation would eliminate the opportunity for a 30-month stay in any situation where an ANDA applicant waits until an amendment to submit a paragraph IV certification. As we explained in the proposed rule (see 67 FR 65448 at 65455 to 65456), section 505(j)(2)(B)(iii) of the act specifically requires ANDA applicants to give notice if they amend their applications to include their first paragraph IV certification. For these reasons, we do not interpret the act to require that only paragraph IV certifications contained in original ANDA applications will trigger the notice requirements and the possibility of a 30-month stay.

Our interpretation ensures that the NDA holder and patent owner will receive notice of at least one paragraph IV certification and have one full opportunity for a 30-month stay. However, we also disagree that every paragraph IV certification requires notice and an opportunity for a 30-month stay. We will require notice to the NDA holder and patent owner of a later paragraph IV certification if: (1) The ANDA or 505(b)(2) application did not previously contain a paragraph IV certification, but is amended to include a paragraph IV certification; or (2) a previous notice of a paragraph IV certification did not result in one full opportunity for the 30-month stay under the act.

This approach is consistent with the statutory language. By its terms, section 505(j)(2)(B)(i) of the act, and the nearly identical language applicable to 505(b)(2) applicants, requires that the ANDA applicant submitting a paragraph IV certification in its original ANDA "include in the application" that it will provide the required notice. Section 505(j)(2)(B)(ii) of the act sets forth the required content of the notice referred to in clause (i). Under section 505(j)(5)(B)(iii) of the act, we are prohibited from approving an application with a paragraph IV certification if an action has been brought within 45 days of the date the notice under section 505(j)(2)(B)(i) is received. The text of section 505(j)(5)(B)(iii) refers multiple times to "the notice provided [or made] under paragraph (2)(B)(i)." Thus, at a minimum, it cannot be said the statute clearly applies the notice requirement to all paragraph IV certifications, whether in original or amended ANDAs.

By contrast, section 505(j)(2)(B)(iii) of the act refers to amended, not original, ANDAs. It addresses the question of notice when an ANDA is amended to include a paragraph IV certification. Our interpretation eliminates the possibility that an ANDA applicant could evade any notice that could lead to a 30-month stay by omitting any paragraph IV certification in an original ANDA, and then later amending the application to include such a certification. By providing one full opportunity for the 30-month stay, we reduce the opportunity for intentional manipulation of the filing of paragraph IV certifications.

We do not agree that the act's language governing the operation of paragraph IV certifications, notice, and 30-month stays is clear and unambiguous. As the multiple interpretations advanced by the comments demonstrate, the statutory language may plausibly be read in different ways. It is certainly reasonable to interpret "include" as used in the act to mean "contain." That is the meaning we understood the word to have when we issued the proposed rule (see 67 FR 65448 at 65455). Thus, it is a reasonable construction of the act to conclude that when an application is amended to contain a paragraph IV certification (when it did not previously contain such a certification), it is thus amended to include such a certification; and, that once an application contains such a certification, adding a new one does not amend or change the application to include or contain one, since it already contained such a certification. In any event, reliance on words in isolation is misplaced. As Judge Learned Hand observed, "Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used * * *." *NLRB* v. *Federbush Co.*, 121 F.2d 954, 957 (2d Cir. 1941). Our interpretation of the 30-month stay provision is fully consistent with this principle.

We also reject the view that our interpretation of the statutory language "amended to include" is inconsistent with the use of the word "include" elsewhere in the statute. We do not agree that the use of "include" in section 505(j)(7)(A)(ii) and (j)(7)(A)(iii) of the act cannot be squared with our interpretation of that term in section 505(j)(2)(B)(iii) of the act. Sections 505(j)(7)(A)(ii) and (j)(7)(A)(iii) of the act, which relate to updating the Orange Book every 30 days to take into account drug approvals and patent listings, provide that the Secretary "shall revise the list to include each drug which has been approved * * * during the [intervening] thirty-day period" and when that updated drug information is recorded, "in revisions made under clause (ii), [shall] include such [patent] information for such drug." That language requires publication of revisions to include something that was not previously contained in the Orange Book, i.e., approved drugs and patents that were not listed in the version of the Orange Book that existed immediately before the amendments were filed. The Secretary would publish nothing, under this statutory directive, if in the preceding 30 days, no new drugs were approved or patent listings filed. Similarly, when an ANDA or 505(b)(2) application is amended to include a paragraph IV certification, when no such certification is contained in the

application prior to the amendment of the application, section 505(j)(2)(B)(iii) of the act applies. But when an ANDA or 505(b)(2) application contained a paragraph IV certification prior to the amendment and one full opportunity arose for a 30-month stay, no notice obligation is triggered for subsequent paragraph IV certifications.

We do not agree with the comment that the legislative history indicates that Congress changed the 18-month stay to a 30-month stay because it intended that patent litigation be resolved before a generic application could be approved. The House Judiciary Committee rejected an "amendment [that] would have required that either the patent expire before approval, or that there be a final decision by a Federal District Court that the patent in question was not valid" (see H. Rept. 98–857, Part 2, 98th Cong. 2d Sess., 9 (1984)). It appears that the amendment was rejected because the effect "would have been to substantially delay generics from getting onto the market when they seek to challenge the validity of a patent" (*id.* at 10). Congress explicitly rejected amendments to prohibit generic entry before judicial resolution of the patent issues prior to approval, but accepted a 30-month stay period, whether or not litigation was finally resolved, because, as a practical matter, it was believed the time period would not affect when generic manufacturers would begin to market their drugs (see 130 Congressional Record H9118 (September 6, 1984) (remarks of Rep. Waxman)).

We also believe that the legislative history quoted in the comments is ambiguous at most and can be interpreted in a way that does not undercut our changed interpretation. The report states: "In the case where the patent certification is amended in an ANDA to allege invalidity or non-infringement of a patent, the FDA may not make the approval effective within the 45 day period that an action for patent infringement may be brought." Although this language does not distinguish explicitly between situations when an application already contained a paragraph IV certification and those when it did not, it would not be unreasonable to interpret it to apply only when invalidity or non-infringement of a patent is alleged for the first time. Language describing when an ANDA is "amended * * * to allege invalidity or non-infringement of a patent" can be read in another way as "amended to include" a paragraph IV certification. When an ANDA or 505(b)(2) application is amended to include an allegation of invalidity or non-infringement of a listed patent for the first time, we cannot approve the application for 45 days, and notification of the paragraph IV certification will be required. For additional paragraph IV certifications, when a patent has already resulted in a paragraph IV certification and a full opportunity for a 30-month stay, no notice is required and we do not need to wait for 45 days to approve an ANDA or 505(b)(2) application if it is otherwise ready for approval.

f. *Is There a Sufficient Basis to Adopt the Change in Legal Interpretation?* In the preamble to the proposed rule, we detailed the factual basis for our decision to reevaluate our legal interpretation of the maximum number of 30-month stays per ANDA or 505(b)(2) application (see 67 FR 65448 at 65455). We noted that our impression that multiple 30-month stays were increasing was confirmed by the FTC Report. In addition, the FTC Report found that there was an increase in submission of later-issued patents, many of which "do not appear to claim the approved drug product or an approved use of the drug" (*id.*).

(Comment 20) Several comments questioned the factual basis for what they called our "dramatic change in position" and argued that the information used in the FTC Report was already known to us. Since there was no "new information," the comments maintained that the facts did not provide an "adequate" basis for our adoption of a single 30-month stay per ANDA or 505(b)(2) application.

(Response) We disagree with the contention that our factual basis underlying our rule was inadequate. At the outset, we note that the comments proceed from a false premise to a flawed conclusion. The "newness" of the underlying data is not the appropriate legal standard for evaluating the reasonableness of our different interpretation. An agency must consider "the wisdom of its policy on a continuing basis" "with or without a change in circumstances" (see *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863, 104 S. Ct. 2778, 2792 (1984); *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 57, 103 S. Ct. 2856, 2873 (1983)). Our pre-existing regulations permitting multiple 30-month stays have led to protracted delays in generic drug approvals and, therefore, need to be changed.

If "newness" of the underlying data were the test, the data here would satisfy it. Over the last several years, there has been an increasing number of multiple 30-month stays for a single drug product. These stays have caused significant delays in the approval of generic versions of frequently prescribed drugs. We anticipate that if we do not address the current situation, these multiple 30-month stays and resulting delays in generic drug approvals would continue to increase. There will be an increasing number of patents expiring in the next few years covering innovator drugs currently on the market. According to our records, over 500 drug patents will expire between 2003 and 2009. We have identified 26 top-selling drugs subject to patents with expiration dates between 2003 and 2005. These 26 drugs had combined 2001 retail sales exceeding $38 billion (over 25 percent of all 2001 prescription drug expenditures) and include 7 of the top 10 best selling drugs. The pressure on NDA holders and innovator companies to protect their market share and delay generic competition into the market will continue to increase. We would expect to see an increase in the conduct documented in FTC Report if our regulations remained the same.

The FTC's comprehensive and discerning analyses of the data it collected substantiated the seriousness of the problem. The FTC analyzed the relationship between patent listings and multiple 30-month stays, conducted an extensive review of various lawsuits involving multiple 30-month stays (including lawsuits in which we were not a party) and analyzed the outcome of the litigation. Although we provided some raw data to the FTC to assist its investigations (and thus that information was not "new" to us), we did not have all of the data that the FTC collected nor had we analyzed the data in the manner done by the FTC.

We have concluded that our regulations permitting multiple 30-month stays have led to considerable delays in the approval of generic drugs. This consequence was not intended either by Congress or by FDA. Thus, we have changed our regulations to address this problem.

B. Miscellaneous Comments

1. Do We Need Legislation to Accomplish Our Goals?

The preamble to the proposed rule did not discuss any legislative efforts to enhance the availability of generic drugs.

(Comment 21) Several comments said that legislation would be better than rulemaking or that we should support legislation. In general, the comments felt that legislation would:

- Better resolve intellectual property issues than our rule;
- Give us clear legal authority to act or be less vulnerable to judicial review; or,
- Result in timely and predictable access to generic drugs.

One comment noted that Congress had considered several bills to address 30-month stays. The comment declared that such proposed legislative action indicated both that we lacked authority to issue the rule and that new legislation was needed. Another comment suggested that we support legislation to allow only one 30-month stay and only for patents that are listed within 30 days of an NDA's initial approval.

(Response) We believe that, under our existing regulations, there have been delays in generic drugs reaching the market, as well as confusion over certain patent listing requirements. This rule is intended to help ensure that lower cost, safe and effective generic drugs become available to Americans without any inappropriate delays, while still preserving incentives to innovate. These changes can be achieved through rulemaking, using our existing legal authority. We cannot predict whether, if at all, legislation addressing these issues will be enacted. The possibility that there could be legislation to address problems associated with 30-month stays and generic drug approvals cannot, and should not, preclude us from using our existing authority to address these problems. We also note that those comments favoring legislative solutions over regulatory ones apparently assume that legislative changes would necessarily lead to less litigation than a rule. Based on our past experience in defending statutory interpretations, we question whether such a presumption is appropriate here. We recognize that a regulation may not always be a perfect solution due to limits on our statutory authority, but that recognition does not mean that we cannot use our existing legal authority to engage in rulemaking to improve our regulatory approach.

Additionally, we disagree with the comments that claimed we lack authority to issue the rule. The preamble to the proposed rule discussed our legal authority (see 67 FR 65448 at 65457). We will not repeat that discussion here. The fact that Congress has considered, or is currently considering, bills on the 30-month stay issue does not preclude us from exercising our existing authority, nor demonstrate that we presently lack that authority. As the Supreme Court has explained:

> We have stated * * * that failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute. Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that existing legislation already incorporated the offered change.

(See *Central Bank of Denver* v. *First Interstate Bank of Denver*, 511 U.S. 164, 187 (1994).)

(Citations and internal quotation marks omitted.)

Although it would be both inappropriate and premature for us to take a position on any legislative concept without seeing the details of any specific proposed or draft legislation, we are always willing to work with Congress. Until then, we will not take a position on legislation to allow only one 30-month stay for patents filed within 30 days after NDA approval.

2. Will the Different Interpretation Affect Existing Exclusivities?

We stated in the preamble to the proposed rule that the implementation of the final rule would not affect an ANDA's eligibility for 180-day exclusivity under 505(j)(5)(B)(iv) of the act (see 67 FR 65448 at 65457).

(Comment 22) Several comments addressed different aspects of the 180-day and 3 year exclusivity provisions of the Hatch-Waxman Amendments. The comments offered suggestions on changing the exclusivity trigger, requiring the forfeit of the exclusivity if parties agree to delay marketing and expressed concerns about the potential increase in the availability of 180-day exclusivity if we allow additional patents to be filed.

(Response) We appreciate the complexities of the various exclusivities provided by the act. As we noted in the proposed rule, eligibility for 180-day exclusivity will follow the same general principles as before implementation of this final rule. The first ANDA applicant to file a substantially complete ANDA, or supplement, containing a paragraph IV certification to a listed patent will be eligible for exclusivity as to that patent under section 505(j)(5)(B)(iv) of the act. For a paragraph IV certification to be effective for exclusivity purposes, when notice is required, notice must be given as described in the response to comment 13 of section II.A of this document. However, when notice is not required, a paragraph IV certification will be effective for exclusivity purposes without notice. We understand that each patent listed in the Orange Book may form the basis for a claim to 180-day exclusivity. Thus an increase or decrease in listed patents as a result of this final rule could affect the number of exclusivity periods. Other suggestions made in the comments are beyond the scope of the final rule. We are not altering our interpretation of exclusivity in the final rule.

3. Should the Provisions of the Final Rule Be Severable?

The proposed rule did not address whether each provision should be considered independent of other provisions and, thus, severable if any provision were determined to be invalid.

(Comment 23) Although there were no comments that directly addressed severability, one comment suggested that the limitation on multiple 30-months stays was unnecessary because the revised patent listing provisions would prevent improper patents from being submitted for listing in the Orange Book.

(Response) Although we agree that the changes to the patent submission and listing provisions and the information required on the declaration forms will help ensure that improper patents are not submitted for listing, we also believe that eliminating multiple 30-month stays will help maintain the balance intended by the Hatch-Waxman Amendments and is equally important to the final rule. Each of the final rule provisions reinforces interrelated goals. Clarifying that certain patents may not be submitted for listing should lead to the submission of fewer improper patents. Requiring additional patent declaration information from NDA applicants or holders or patent owners also should help ensure that only eligible patents are submitted. Eliminating the opportunity for multiple 30-month stays also should reduce incentives to submit improper patents.

Based on our past experience we acknowledge that the provisions of this final rule will neither completely resolve all issues governing patent submission, nor will they eliminate attempts to manipulate the final rule for market advantage. We also believe that each provision will reduce the opportunities for manipulation and, thus, is independently justified and worthwhile. However, we believe each provision stands on its own as a legal and practical matter.

From the comments we have received to the proposed rule, we believe there is a possibility that we will be challenged on various portions of the final rule. We expect we will prevail in any such challenge, as the final rule and each of its provisions is legally sound. If, however, a court should conclude that any one or more provisions of the final

rule is invalid, we wish to emphasize our intent that the remaining provisions of the final rule be permitted to take effect.

4. Implementation and Effective Date

The preamble to the proposed rule described how a final rule would be applied to pending applications (see 67 FR 65448 at 65457) as follows:

- For patents filed for an NDA that has not been approved by the effective date of a final rule, the rule would apply on the effective date. For example, if the final rule were to become effective 60 days after the date of publication in the **Federal Register**, and an NDA was pending on the 60th day after the final rule's publication date, the NDA applicant would have to comply with the final rule's patent listing and patent declaration requirements. ANDA and 505(b)(2) application applicants would be subject to the revised notice requirement. Each ANDA or 505(b)(2) application referencing that NDA would be subject to the possibility of only one 30-month stay per ANDA or 505(b)(2) application.
- If we have approved the NDA as of the final rule's effective date, and no ANDA has been filed before that date, then any patent listed before that date would be subject to the pre-existing regulation. For example, if the final rule were to become effective 60 days after the date of publication in the **Federal Register**, and we approved the NDA on the 59th day after the date of publication, the NDA applicant would not have to amend its patent listing and patent declaration to comply with the final rule. ANDA and 505(b)(2) applications submitted after the effective date would be subject to the revised notice requirement. Each ANDA or 505(b)(2) application referencing that NDA would be subject to the possibility of only one 30-month stay per ANDA or 505(b)(2) application.
- If we have approved the NDA as of the final rule's effective date, and an ANDA or 505(b)(2) application has been filed before that date, then any patent listed before that date would be subject to the pre-existing regulations, as described in the example immediately above. The ANDA or 505(b)(2) application applicant would have to provide notice to the patent owner and NDA holder if the ANDA or 505(b)(2) application contained a paragraph IV certification. Multiple 30-month stays in the approval date would be possible.
- If the NDA holder or NDA applicant files patent information after the final rule's effective date, then the NDA holder or applicant is subject to the final rule's patent listing and patent declaration requirements, and ANDA or 505(b)(2) application applicants would not have to provide notice if their applications previously contained a paragraph IV certification. Only one 30-month stay per each ANDA's or 505(b)(2) application's approval date would be possible.

We invited comment on how a final rule should be implemented.

(Comment 24) Several comments suggested alternative effective dates including the following:

- Apply the final rule to all ANDAs filed before the effective date of the final rule and cancel any existing multiple 30-month stays;
- Apply the final rule retroactively to all current NDA holders by requiring all NDA holders to be subject to only one 30-month stay and apply the declaration provisions to require all current NDA holders or patent owners to file a new declaration and certification for already listed patents using the declaration statement in the proposal;
- Apply the new declaration requirements retroactively to require the new information on patents currently listed in the Orange Book; if the propriety of a patent listed in Orange Book for a current NDA holder or patent owner is questioned, the NDA holder or patent owner must file a new declaration or FDA should delist the patent.

In contrast, other comments supported the implementation plan as proposed.

(Response) We will implement the final rule on a prospective basis, as we stated in the proposed rule. The fact that we made our intent public in a proposed rule and the time lag between when the rule was proposed and when this final rule is effective provides sufficient time for most parties to adjust their practices and expectations, or to take other steps to suit their business practices.

We do delay the implementation date for submission of information concerning a patent claiming a polymorph that is the active ingredient of the drug product described in the approved NDA. We provide a longer period of implementation to accommodate the tests required to establish that the drug product containing the polymorph will perform the same as the drug product described in the NDA. This test data must exist when a polymorph patent is submitted to us. We recognize that the testing necessary to obtain the data for submission of polymorph patents claiming the active ingredient of the product described in the NDA may take at least 6 months to complete. There will be NDA applicants and holders and patent owners who have not already conducted testing. The 6 months will provide time for NDA applicants and holders and patent owners with patents pending at the PTO to conduct the tests needed to produce the data required for the declaration statement in time to submit any newly issued patent within 30 days of issuance.

We also decline to apply the final rule retroactively. If we canceled all multiple 30-month stays currently applicable to ANDAs and 505(b)(2) applications or applied the declaration requirements to already submitted patents for existing NDAs, we would be applying the provisions retroactively. As we noted in the proposal (67 FR 65448 at 65457): "If we were to adopt an alternative implementation plan, we would risk upsetting legitimate expectations held by those who had relied on our earlier interpretation of the act." As a general matter, a statutory grant of legislative rulemaking does not encompass the power to implement such regulations on a retroactive basis in the absence of express language granting such power (see *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 208–09 (1988)). There is no question that this rule "changes the legal landscape" (see *National Mining Ass'n* v. *Department of Labor*, 292 F.3d 849, 858 (D.C. Cir. 2002)). Applying this rule retroactively would subject us to potential legal challenge. Thus, adopting these suggestions would lead to even greater uncertainty as to the applicability of the provisions.

After further consideration, however, we believe that the proposed rule's implementation plan will not fully effect our intent to implement the provisions only prospectively. Accordingly, as described in section IV of this document, we have clarified our implementation plan to ensure prospective application of the final rule. Nevertheless, patent owners may voluntarily complete, and NDA holders may voluntarily complete and submit, new patent declarations, using FDA Forms 3542 and 3542a, for patents not subject to the final rule and currently listed in the Orange Book. This course is particularly advisable for method-of-use patents, in light of the *Purepac* decision and concerns about implementation of section 505(j)(2)(A)(viii) of the act. Such voluntary submission of new patent declarations will not bring patents within the scope of the final rule with respect to notice and 30-month stays.

III. Description of the Final Rule

A. Section 314.53(b)—What Patents Must Be Submitted?

1. Which Patents Would the Final Rule Require To Be Submitted?

Section 314.53(b) describes the patents for which information must be submitted. The final rule states, in relevant part, that information must be submitted on the required declaration forms for each patent that claims the drug or a method of using the drug that is the subject of the NDA and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. The patents include patents that claim:

- The drug substance (active ingredient),
- The drug product (formulation and composition), and
- A method of use.

Those patents that claim a different polymorphic form of the drug substance that is the active ingredient described in the NDA must be submitted if the applicant has test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA. The drug product (formulation and composition) patents submitted must claim the specific drug product described in the pending or approved NDA. For patents that claim a method of use, the NDA applicant or holder must submit only those patents that claim indications or other conditions of use that are the subject of a pending or approved application. Each pending or approved method of use and related patent claim must be described.

2. What Patents Must Not Be Submitted?

Section 314.53(b), as finalized, states that information on patents claiming packaging, patents claiming metabolites, and patents claiming intermediates must not be submitted. Process patents also must not be submitted. The final rule clarifies that the prohibition on submission of packaging patents does not apply to patents that claim the drug product as defined in § 314.3. If a patent claims the finished dosage form of the drug product, it must be submitted for listing.

B. Section 314.53(c)—What Does the Patent Declaration Say?

Section 314.53(c)(1) describes the general requirements for submission of patent information and the conditions for acceptance of the patent information. Section 314.53(c)(2)(i) requires a person submitting an NDA, an amendment, or a supplement, to submit an original signed declaration form as part of its submission of patent information. The appropriate declaration form must be used for submitting patent information. The information required to be submitted is described. Each form seeks specific patent information and requires a signed attestation from the NDA applicant or holder or patent owner that the information is accurate and complies with the requirements of the regulations.

Section 314.53(c)(2)(ii) requires that the NDA holder submit a declaration form with information relating to the approved NDA and additional information on use codes within 30 days of NDA approval. The information required to be submitted is described. Each form includes specific patent information and requires a signed attestation from the NDA holder or patent owner that the information is accurate and complies with the requirements of the regulations. This section also requires submission of information on patents submitted for listing after NDA approval. This declaration form is the only declaration form that we will rely on to determine whether a patent is eligible for listing based on the patent information submitted.

C. Section 314.53(c)(3)—What Is Required to Be Filed If There Are No Relevant Patents?

The final rule modifies the statement used to describe the fact that the NDA applicant or holder believes there are no relevant patents to be submitted. The language is changed to conform to the descriptions used for drug substance (active ingredient), drug product (formulation and composition) and method of use to those used in the other regulatory provisions.

D. Sections 314.95(a) and 314.52(a)—When Are Notice and Certification Required?

The final rule modifies §§ 314.95(a) and 314.52(a) to state that, if an ANDA or 505(b)(2) application is amended to include a paragraph IV certification, notice must be provided to the NDA holder and patent owner only if the application did not already contain a paragraph IV certification or there was not a full opportunity for a 30-month stay. If an ANDA or 505(b)(2) applicant changes its paragraph IV certification before the 45-day period after notice to the NDA holder and patent owner has expired, and the NDA holder or patent owner has not initiated patent litigation, such paragraph IV certification and related notice are not considered to have satisfied the requirement of providing one notice of a paragraph IV certification and a full opportunity for a 30-month stay.

IV. Implementation

The final rule will be effective on August 18, 2003.

- Patent information submitted to us (FDA) before the effective date will be subject to our pre-existing regulations governing patent submission, declarations, certifications, notice and availability of 30-month stays;
- Patent information submitted to us on or after the effective date will be subject to the final rule's provisions governing patent submission, accompanying declarations, certifications, notice and availability of 30-month stays;
- Patent information submitted to us on a newly applicable claim, even if the patent was previously submitted to us, will be subject to the final rule's provisions.

The final rule will have a compliance date of December 18, 2003, for patent information submitted to us on patents claiming a polymorph of the same active ingredient of the product described in the NDA.

As a result, within a single same approved or pending NDA, some patents may be subject to our pre-existing regulations while other patents may be subject to the final rule. The date on which the patent information was submitted to us will determine which set of regulations applies.

We believe that the effective dates will provide adequate time for the NDA applicants, NDA holders, and patent owners to adjust their business practices. The patent information required for submission is information readily available to the NDA applicants and holders and patent owners.

We have delayed the implementation date for patent information to be submitted to us on patents claiming a polymorph that is the active ingredient of the drug product described in the approved NDA. NDA applicants and holders and patent owners with patents pending at the PTO will have additional time (i.e., until 6 months after the date of publication in the **Federal Register**) to conduct the tests needed to produce the data required for the declaration statement in time to submit any newly issued patent within 30 days of issuance.

V. Legal Authority

Our principal legal authority for the final rule is section 505 of the act, in

conjunction with our general rulemaking authority in section 701(a) (21 U.S.C. 371) of the act. Section 505(b) and (c) of the act describes the contents of an NDA and 505(b)(2) application, including the patent submission and patent certification requirements. Section 505(j) of the act describes the contents of an ANDA, including patent certification requirements. Sections 505(b)(2)(A) and 505(j)(2)(A)(vii) of the act, respectively, require patent certifications, while sections 505(b)(3) and 505(j)(2)(B) of the act require those applicants who have made a paragraph IV certification to provide notice to the NDA holder and patent owner.

The final rule clarifies the types of patents which NDA applicants and NDA holders must and must not submit to FDA for listing in the Orange Book. It also requires a more detailed patent declaration from NDA applicants and NDA holders or patent owners using declaration forms. The specific legal authority for each provision is set forth in the preamble discussion accompanying it.

For ANDA and 505(b)(2) applicants, the final rule reduces the number of notifications sent to patent owners and NDA holders. The specific legal authority for this action is set forth in the preamble discussion of our changed interpretation.

VI. Environmental Impact

We have determined under 21 CFR 25.30(h) and 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Executive Order 13132: Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that this final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the final rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe these provisions below in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed

Description: The final rule clarifies the types of patent information that must and must not be submitted to FDA as part of an NDA, an amendment or supplement. The final rule also requires persons submitting an NDA, amendment or supplement, or submitting information on a patent after NDA approval, to make a detailed patent declaration using required FDA declaration forms. The final rule permits the possibility of only one 30-month stay per each ANDA or 505(b)(2) application's approval date in the event of patent infringement litigation because the final rule does not require ANDA or 505(b)(2) applicants to provide a notice of certification of invalidity or noninfringement of a patent if the application already contains such a certification or if a full opportunity for a 30-month stay resulted after such notice.

Description of Respondents: Persons submitting an NDA, amendment or supplement, or submitting information on a patent after NDA approval, and persons submitting an ANDA or 505(b)(2) application containing a patent certification of invalidity or noninfringement of a patent.

We estimate the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
314.50(a) through (f), (h), and (k) (citing 21 CFR 314.53) FDA Forms 3542 and 3542a	107	2.8	296	1,684	498,464
314.50(i)(1)(i) and 314.94(a)(12)	74	1.5	111	4	444
314.52(a)(3) and 314.95(a)(3)	74	1.01	74	12	897
Total					499,805

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on the following assumptions. For the years 1998 to 2002, the annual number of original applications we have received containing a paragraph IV certification has been 61, 58, 79, 90, and 82, respectively. The annual average is 74 ((61 certifications + 58 certifications +79 certifications + 90 certifications + 82 certifications) / 5 years = 74 certifications / year). Because the final rule requires notice of a paragraph IV certification filed in the original ANDA or 505(b)(2) application or when the application is amended to include a paragraph IV certification or when such notice did not provide a full opportunity for a 30-month stay, this would mean that these applicants would provide one notice to NDA holders and patent owners, and, in rare instances, a second notice. We increase the frequency of response to account for these rare second notices. There may still be multiple certifications made by ANDA or 505(b)(2) applicants which will not require notice. In previous estimates, we have combined the information collection burden for both the notice and certification. For purposes of the final rule, we assume that the certification information collection burden is 4 hours and the information collection burden for the notice is 12 hours. We also account for the multiple number of certifications that may have to be provided by an ANDA or 505(b)(2) applicant. Under pre-existing regulations, we have had

NDA holders submit two or more patents for a single NDA. While this may continue to occur, we believe that this final rule may reduce the number of patents submitted for listing because we have clarified the type of patents that must be submitted. The number of patents submitted could increase because we allow polymorph patents to be submitted or it could decrease if no test data exist to demonstrate that a drug product containing the polymorph will perform the same as the drug product described in the NDA. We, thus, estimate the number of annual certifications at 1.5 x 74 (the number of original certifications). Thus, the information collection burden for §§ 314.50(i)(1)(i) and 314.94(a)(12) (certifications) would be 444 hours (74 respondents x 1.5 response per respondent x 4 hours per response = 444 hours). The information burden for §§ 314.52(a)(3) and 314.95(a)(3) (notices) would be 897 hours (74 respondents x 1.01 response per respondent x 12 hours per response).

To estimate the number of enhanced patent declarations that will be submitted annually, we referred to historical data on patent submissions. For the years 1998 to 2002, the numbers of patents submitted to us were 159, 205, 321, 280, and 268 respectively, for an annual average of 246.6 ((159 patents +205 patents +321 patents+280 patents+268 patents) / 5 years = 247 patents / year). Because many of these individual patents are included in multiple NDA submissions, there could be multiple declarations for a single patent. From our review of submissions, we believe the number of duplicate patent listings to be 20 percent of the number of unique patents. Therefore, we estimate 49.2 (246.6 patents x 20 percent) patent declarations will be multiple listings, and there will be 296 (247 declarations + 49 declarations = 296 declarations) total annual patent declarations. As we received 115 and 99 NDAs in 2000 and 2001, respectively, we assume there will be 107 ((115 applications + 99 applications) / 2 years = 80 applications / year) instances where an NDA holder would be affected by the patent declaration requirements and that each of these holders would, on average, submit 2.8 (296 declarations / 107 instances = 2.8 declarations per instance) on FDA Forms 3542 or 3542a.

However, § 314.53(b) and (c) have different impacts on the hours per response. On the one hand, § 314.53(b) might decrease the reporting burden because it would specify certain patents that must not be submitted, and thus NDA applicants and holders and patent owners will not submit information on those patents. On the other hand, § 314.53(b) will require NDA applicants and holders or patent owners to submit patent information on different forms of the active ingredient described in the NDA, and this could result in more patent information being submitted or less patent information if test data do not exist to demonstrate that a drug product containing the polymorph will perform the same as the drug product described in the NDA. We cannot determine whether the potential net effect will increase, decrease, or not change the overall burden associated with submitting patent information, so we have not assigned any change in the total reporting burden for the change in patent information alone.

In contrast, § 314.53(c) makes the patent declaration more detailed. The change in the declaration will increase the burden hours per response under § 314.50(h) (the provision under which we covered patent declarations described in § 314.53(c)) because respondents will be required to be more precise in their declarations. Based on other rules that require respondents to compile and submit information in their possession, we estimate that the information required to be submitted on the patent declaration forms, FDA Forms 3542 or 3542a, will result in an additional information collection burden of 18 hours. However, the previous burden hour estimate of 1,666 hours for § 314.50 covered paragraphs (a) through (f), in addition to paragraphs (h) and (k) (see 66 FR 29143 at 29146, May 29, 2001). We are unable to determine how many of the 1,666 hours were devoted to patent declarations, so, in this table, we simply add 18 hours to the 1,666 hour estimate for § 314.50(a) through (f), (h), and (k), resulting in a burden hour estimate of 1,684 hours (1,666 hours + 18 hours) to account for a respondent's need for more time to make and verify the patent declaration. Thus, the information collection burden for § 314.50(a) through (f), (h), and (k)(citing § 314.53) will increase from the estimate we made in the proposed rule of 209,560 hours to 498,464 hours (296 annual responses x 1,684 hours per response = 498,464 hours).

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. Analysis of Economic Effects

We have examined the impacts of the rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in expenditures by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). We have conducted analyses of the rule, and have determined that the rule is consistent with the principles set forth in the Executive Order and in these statutes.

The final rule is a significant regulatory action as defined by the Executive Order. With respect to the Regulatory Flexibility Act, we certify that this final rule is not expected to have a significant impact on a substantial number of small entities. This regulatory action is also a major rule under the Congressional Review Act. The discussion of costs and benefits is consistent with the requirements of the UMRA.

A. Summary

The economic impacts arise from a variety of effects of this rule. The primary effect is the elimination of multiple 30-month stays, which (as explained earlier) will result in earlier market entry by generic drug manufacturers without appreciable effects on pharmaceutical innovation. Earlier generic competition will result in gains for two groups. It will reduce pharmaceutical prices to consumers and increase net revenues of generic drug manufacturers. Earlier competition also

will result in a revenue loss for innovator drug companies, which will be offset slightly by a reduction in associated costs. We believe that the rule will also reduce legal fees associated with disputed patents, although we are unable to provide quantitative estimates of this effect. In addition, innovator drug companies will face a burden of completing revised patent declaration forms. Finally, those NDA holders wishing to submit patents claiming different polymorphs of the active ingredient described in the NDA will need to have test data demonstrating "sameness." Table 2 below provides a summary of our estimates of these effects and overall net benefits. The benefits and costs are annualized at a 7-percent discount rate over 10 years. We have chosen this time period because the Centers for Medicare and Medicaid Services (CMS), the source of the most reliable pharmaceutical expenditure estimates, projects these expenditures only for the next 10 years. We expect that this rule will generate substantial net benefits beyond this time period.

TABLE 2.—ECONOMIC EFFECTS OF THE RULE[1]

Effects	Amount per year (millions of dollars)
Gains	
•Savings to consumers	3,290
• Net revenues to generic manufactures	1,810
•Reduced legal costs	Not quantified
Losses	
• Revenue loss to innovator firms (net of associated costs)	4,870
• Costs of patent declarations and data to support polymorph patent submissions	<10
Net Benefits	220

[1] Gains and Losses include impacts of an economic transfer in addition to changes in resource costs.

These estimates are derived using methods and data similar to those described at more length in the preamble to the proposed rule published in the **Federal Register** on October 24, 2002 (*see* 67 FR 65448 at 65459 to 65464). In that analysis, we found that the increase in revenues to generic drug manufacturers would be $19.117 billion over 10 years, or $1.8 billion per year if annualized assuming a 7-percent discount rate. The benefit to consumers would be $34.822 billion over 10 years or an annualized $3.3 billion. We found that the reduction in revenues to innovator firms would be mitigated somewhat by the reduction in marketing expenses and that the cost would be $51.508 billion over ten years, or an annualized $4.9 billion. The 10-year net benefit is $2.356 billion, and the annualized net benefit is approximately $220 million.

With respect to the changes in market shares, the gains to consumers and generics equal the losses to innovators. An uncertainty estimate on the cost side would equal the uncertainty on the benefit side of such a transfer and would not affect our projection of net benefits. Our projection of net benefits is driven by our estimate of support costs. The primary economic impact of this action is a transfer from innovator drug firms to consumers and generic drug firms. But as innovator drug firms face a decline in revenues, they will save substantial resources used to support their products. These support costs, which include marketing, advertising, and administration, outweigh the costs associated with polymorph testing and completing the revised declaration, so the rule is a net benefit. These support costs are based on a point estimate provided by literature that does not customarily provide confidence intervals. We cannot, therefore, provide confidence intervals about our net benefit estimate, but believe the uncertainty to be small, relative to the projected net benefit.

We received no comment on the analysis published with the proposal. We continue to believe these estimates to be reasonable and include them in the final rule. This final rule, however, contains provisions that differ from what was in the proposed rule. To account for these provisions, we have changed our analysis of the burden of providing the information required for completing the patent declaration and we assess the impact of the requirement that NDA applicants or holders or patent owners submitting patents claiming different polymorphs of the active ingredient described in the NDA. In all other major respects, however, our analysis is unchanged from the proposal, so we do not repeat here some parts of our analysis that were described in detail in the proposal (see 67 FR 65448 at 65459 to 65464).

B. Benefits of the Regulation

We have identified two principal effects from the elimination of 30-month stays. These effects are impacts associated with parties gaining in economic transfer. Generic drug manufacturers gain the market share lost by innovators. Generic revenues, therefore, would be expected to increase. Also, to the extent that these generic drugs are less expensive than innovator drugs, consumers will benefit from saving money as a result of earlier access. Our model, as described in the proposed rule (see 67 FR 65448 at 65460 to 65462), estimates costs and benefits to consumers and innovators and generic drug firms for the first year the rule would be in effect. The projected changes in market shares and prices in the model are based on studies published in the economic literature and by FDA. We then escalate the 1-year estimates by the CMS—projected annual percentage increases in prescription drug expenditures to obtain estimates for 10 years. This 10-year stream is then annualized at a 7-percent discount rate to obtain the annualized estimate.

1. Gains to Consumers

Generic drugs are cheaper than their innovator counterparts. As a generic drug gains market share and its price falls, consumers save more money. The elimination of multiple 30-month stays per ANDA and 505(b)(2) applications and earlier market entry by generic drugs will reduce consumer expenditures on pharmaceuticals. We estimate that the 1-year savings to consumers are projected to be $2.040 billion. We use the CMS pharmaceutical expenditure projections to escalate the base year figure results in a 10-year consumer savings estimate of $34.822 billion for the final rule. Our annualized benefit using a 7-percent discount rate is $3.288 billion, the same as the proposed rule.

2. Gains to the Generic Drug Industry

Innovator market share erosion is accompanied by a gain in generic market share. We estimate the 1-year increase in revenues to be $1.120 billion. Escalating this impact by the annual increases in pharmaceutical expenditures yields a 10-year revenue gain of $19.117 billion. Our annualized impact using a 7-percent discount rate is $1.805 billion. These estimates are the same as in the proposed rule.

3. Benefits Not Quantified

Many important benefits associated with this final rule are difficult to quantify. The benefits to consumers from lower prices also involve favorable secondary benefits from improved access to less expensive drugs. While the economic literature indicates generic competition does not lead to significant overall increases in the quantity of drugs demanded, we nevertheless recognize this rule has favorable distributional effects for consumers who otherwise may not have been able to afford some medications. Such a benefit is consistent with the objective of improving access to affordable quality healthcare. Consumers with better access to affordable safe and effective therapies are healthier and enjoy a higher quality of life.

By addressing multiple 30-month stays, this final rule is removing a barrier to entry for generic drug firms. In principle, the removal of a barrier to entry would imply an increase in economic efficiency. The existing economic literature, however, indicates no significant increase in the quantity of drugs demanded with generic entry, implying no gain in efficiency from the removal of the barrier to entry. Thus, we do not quantify any efficiency gains in our analysis. Nevertheless, this rule encourages more and earlier market entry by generic drug firms and may impact consumption in a way not captured by the economic literature. To that extent, we believe this rule has the potential to increase economic efficiency.

The costs of allocating legal resources to defend patent protections are substantial. We do not know the extent to which this final rule will reduce such costs, but by eliminating multiple 30-month stays per ANDA and 505(b)(2) application, we are reducing the number of instances where innovator and generic drug firms would engage in such litigation. Moreover, we believe that this rule will reduce litigation because it clarifies which patents must and must not be submitted and reduces incentives for submitting patents that may ultimately be found invalid. It logically follows that the reduction in resources devoted to litigation would result in savings to both innovator and generic drug firms.

This final rule reduces the level of uncertainty associated with drug marketing decisions. For example, the final rule diminishes incentives associated with submitting later-issued patents late in the patent life or exclusivity period of the product described in the NDA. Increasing the predictability of the generic drug entry process reduces product introduction costs faced by generic drug firms. In the final rule, we are also addressing a source of confusion over the submission of polymorph patents for listing in the Orange Book. We believe that a more predictable business environment benefits both innovator and generic drug firms.

Another important benefit of the final rule involves the balance between rewarding innovation and the availability of less expensive drugs. In striking this balance, we do not believe that the Hatch-Waxman Amendments intended to create the potential for NDA holders to obtain multiple 30-month stays to unduly delay generic competitors. We believe this balance to be important, yet find the value difficult to quantify. Nevertheless, in addressing the issue of multiple 30-month stays, we believe this action has the very valuable benefit of preserving the balance struck in the Hatch-Waxman Amendments.

4. Total Benefits of the Regulation

The total quantified benefits of this final rule include the gains in generic drug manufacturer revenues and consumer savings from earlier access to less expensive pharmaceuticals. These quantified gains to consumers and generic drug companies are the result of an economic transfer. The 1-year benefits to generic drug manufacturers and consumers are $1.119 billion and $2.040 billion, respectively. Escalating these base year costs over 10 years yields generic drug manufacturer revenue gains of $19.117 billion and consumer savings of $34.822 billion, for a total of $53.940 billion. The 10-year annualized benefits, using a 7-percent discount rate, are $1.805 billion for generic drug manufacturers and $3.288 billion for consumers, for a total of $5.093 billion.

C. Costs of the Regulation

In the proposed rule, we identified two sources of costs. Innovators lose revenues from earlier generic competition and innovators must complete patent declarations. The loss in revenues to innovator drug companies is part of an economic transfer, but is included in this analysis with the resource costs associated with this action. We summarize the revenue loss and we assess the costs associated with the declaration requirement. In addition, we estimate the burden to industry from the requirement that, for submission of patents claiming different polymorphs of the active ingredient described in the NDA, there must be test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA.

In the proposed rule, we addressed potential concerns about the effect this action may have on innovation. After considering potential impacts, we concluded that any negative effect would be minimal. As discussed in the proposed rule, while the initial 30-month stay is part of the balance struck in the Hatch-Waxman Amendments to reward innovation, the subsequent stays are not part of this balance. According to the FTC report, most of the court rulings examined by the FTC, which involved a subsequent 30-month stay, found the underlying patent to be either invalid or not infringed. Extending market exclusivity through multiple stays is a strategy that has become popular in the last few years and is not a longstanding source of research funding. Subsequent stays could actually hinder innovation through the replacement effect, in that they provide a disincentive for an NDA holder to improve upon its own product. Moreover, to the extent that subsequent 30-month stays might be associated with increases in spending on research, these increases do not necessarily improve social welfare (see 67 FR 65460). We received no comment on our assessment of the impact on innovation and continue to believe it to be reasonable.

1. Innovator Revenue Loss

As discussed in the analysis of impacts in the proposed rule, the elimination of multiple 30-month stays per ANDA or 505(b)(2) application allows generic drugs to enter the market earlier. Upon entry, generic versions of an innovator drug gradually lower their prices and take market share from the innovator. With the loss of market share, innovator revenues are lower than they would be had the innovator been allowed to use multiple 30-month stays to delay generic entry. In the analysis in the proposed rule, we used data from instances where generics had been blocked with multiple 30-month stays and calculated the impact of a typical

drug being blocked for a typical period of time. We estimated the 1-year loss in innovator revenues to be $3.160 billion. As discussed in the proposed rule, we believe that the negative impact on innovators from earlier generic competition will be mitigated somewhat by a reduction in required innovators' costs. With earlier generic competition, innovators will reduce marketing expenses. In the proposed rule, we estimated the 1-year reduction in support costs to be approximately $142 million. For the final rule, we estimate that the 1-year loss in revenues, after adjusting for the reduction in support costs, is $3.017 billion, the same as in the proposed rule.

2. Declaration Costs

In the proposed rule, we used earlier information collection data to estimate there will be 124 annual patent declarations by innovator firms. We now believe that the number of patents submitted to us each year would better estimate the annual number of patent declarations. For the years 1998 to 2002, the numbers of patents submitted to us were 159, 205, 321, 280, and 268 respectively, for an annual average of 246. We understand that many of these individual patents are included in multiple NDA submissions, so there could be multiple declarations for a single patent and this method could underestimate the number of declarations. From our review of submissions, we believe the number of duplicate patent listings to be 20 percent of the number of unique patents. Therefore, we estimate 49.2 (246.6 x 20 percent) patent declarations will be multiple listings, and there will be 295.8 (246.6 + 49.2) annual patent declarations. We have created patent declaration forms to make the submission of patent information less burdensome. The two forms, for filing with an NDA submission and upon or after NDA approval, will contain more information, but we have simplified the format to make these easier to complete. In simplifying the forms, we believe our initial estimate of 24 additional hours per declaration to complete these forms likely overstates the actual burden. To account for the simplification of the declaration process, we have lowered the expected time required to complete a patent declaration to 18 hours.

A regulatory affairs specialist could perform the tasks associated with this process. Based on the total average hourly compensation of $55.14[2] the estimated cost would be $992 ($55.14 per hour x 18 hours) per event. The burden on individual firms would depend on the number of declarations they submit. We estimate that the 1-year burden for submitting patent declaration forms is $293,000 ($992 per event x 295.8 events).

3. Cost of Submitting Polymorph Patents

We are requiring the submission of patent information for patents that claim different polymorphs of the active ingredient described in the NDA. NDA holders will now be able to submit these polymorph patents for listing in the Orange Book, as long as they have test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA.

We cannot make a precise estimate of the impact of these requirements, as costs can vary substantially depending on the substance being tested, the number of subjects required, the cost of raw materials, and other factors. As part of an unrelated study in 1998, we commissioned a contractor, Eastern Research Group (ERG) to estimate the cost of bioequivalence testing. We believe the burden of demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA to be similar to that of demonstrating bioequivalence. Our estimates include both the cost of manufacturing the batch and the cost of conducting the bioequivalence testing. ERG found the cost of performing such testing to be between $70,000 and $750,000.[3] We believe the cost of showing "sameness" to be at the higher end of this range, and estimate the burden to be between $500,000 and $750,000. The midpoint of this estimate is $625,000. (We did not adjust the ERG estimates for inflation.)

We believe a firm's decision to submit a polymorph patent for listing will depend on whether the expected benefits to the firm from listing exceed the costs of showing "sameness." We recognize that potential benefits from listing polymorph patents may be reduced by the elimination in the final rule of multiple 30-month stays in approval of ANDA or 505(b)(2) applications. Thus, the cost of demonstrating "sameness" would deter submitting patents for listing with expected values less than approximately $625,000. We believe the typical value of a deterred polymorph patent to be substantially less than the cost of submission of the patent for listing, as many of the patents have little value without the ability to delay generic entry through multiple 30-month stays. For this analysis, we assume such low value patents to be worth approximately 20 percent of the cost of showing "sameness," or $125,000.

We believe the annual number of polymorph patents that will be submitted for listing to be small, but we do not know with certainty. We reviewed a publicly available listing of NDAs in which an outside party had identified patents it judged to be polymorph patents. Of the 105 NDAs in the sample, there were 13 polymorph patents. Applying that same ratio to the 107 expected NDAs per year, we estimate 13.2 (107 x 13 / 105) potential polymorph patents to be submitted for listing per year. We assume that a polymorph patent will have a high potential value (greater than $625,000—the midpoint of the testing cost estimates) and be submitted, or will have a low potential value ($125,000) and not be submitted. With the elimination of multiple 30-month stays per ANDA or 505(b)(2) application, we believe the number of high-value polymorph patents to be a subset of the number of total polymorph patents, and assume three-fourths of the potential patents will not be submitted for listing. Thus, we assume 3.3 (13.2 potential patents x 0.25 likelihood of being high value) patents will be submitted for listing at a 1-year cost of $2.06 million (3.3 patents x $625,000 cost per patent). Likewise, we assume 9.9 (13.2 potential patents x 0.75 likelihood of being low value) patents will not be submitted each year. We estimate the 1-year cost from the inability to submit these patents for listing to be $1.24 million (9.9 patents x $125,000 value of low-value patent) and the 1-year burden associated with the test data demonstrating "sameness" for polymorph patents to be submitted for listing is estimated to be $3.3 million ($2.06 million + $1.24 million).

4. Total Costs of the Regulation

The total costs of the final rule include the lost revenues to innovator firms from the erosion of market share, mitigated by the decrease in support costs, the cost of completing a more detailed patent declaration, and the costs associated with the requirement that test data exist demonstrating "sameness" in order to submit a polymorph patent for listing. The estimated 1-year loss in revenues from erosion of market share is $3.160 billion and the reduction in support costs would reduce this loss by $142 million. We estimate the 1-year cost of providing the patent declaration information by completing the patent declaration forms is $293,000 and the cost associated with polymorph patents is $3.3 million. Thus, we estimate the 1-year cost to innovator firms is $3.022 billion.

We recognize that in projecting the future impact of this final rule, we must account for changes in the market for pharmaceuticals. The Office of the Actuary at CMS, projects that expenditures on prescription pharmaceuticals will increase dramatically in the near future. As in the proposed rule, we account for the projected growth in pharmaceutical expenditures by escalating our 1-year estimate by the annual CMS projected growth in prescription drug expenditures. We estimate the 10-year costs for the final rule are $51.584 billion. We annualized over the 10-year period at a 7 percent discount rate yields to obtain a cost of $4.871 billion.

D. Summary of Costs and Benefits

We estimate the 10-year cost of this final rule to be $51.584 billion and the annualized cost to be $4.871 billion. The 10-year benefit of this final rule is estimated to be $53.940 billion and the annualized benefit is $5.093 billion. These benefit and cost figures include the estimated impacts of an economic transfer. Thus, the 10-year net benefit is $2.356 billion and the annualized net benefit is $222 million. The quantified benefits exceed the quantified costs.

Moreover, there are benefits that are difficult to quantify. These benefits include reduced costs of litigation and more predictability in the business environment. The benefits to consumers also involve favorable secondary benefits, such as improved access to less expensive drugs. It also preserves the balance struck in the Hatch-Waxman Amendments.

E. Regulatory Alternatives

In creating this final rule, we considered several regulatory alternatives, including not enacting this rule. We rejected the alternative of not enacting this final rule because under the current situation, NDA holders and patent owners are able to use multiple 30-month stays to delay generic entry and frustrate the intent of the Hatch-Waxman Amendments. We considered allowing the submission of polymorph patents for listing in the Orange Book without the required test data demonstrating "sameness." We rejected this alternative as we decided that a patent claiming different polymorphs of the active ingredient described in the NDA needed to have test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA. This requirement is similar to the requirement of establishing bioequivalence.

We also considered using the current system of patent declarations. This alternative was also rejected because the pre-existing declaration information may be insufficient to prevent NDA applicants and holders and patent owners from submitting patents to us that should not be submitted and listed under the act. The choices to require tests demonstrating "sameness" for polymorph patents and the required patent information provided in the patent declarations are particularly important in light of the fact that we lack the authority, expertise and resources to evaluate patents submitted to determine whether they should be listed in the Orange Book.

F. Small Business Impact

Unless the agency certifies that the rule is not expected to have a significant impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by SBREFA, requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. In the proposed rule, we certified that we believed the rule is not expected to have a significant impact on a substantial number of small entities, as we did not know of any small innovator companies that use or would use multiple 30-month stays to block entry from generic competitors. We did not receive comment on this certification and we continue to believe that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 2. Section 314.52 is amended by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding new paragraph (a)(3) to read as follows:

§ 314.52 Notice of certification of invalidity or noninfringement of a patent.

(a) * * *

(3) This paragraph does not apply if the applicant amends its application to add a certification under § 314.50(i)(1)(i)(A)(*4*) when the application already contained a certification under § 314.50(i)(1)(i)(A)(*4*) to a patent unless:

(i) The notice of the previous certification under § 314.50(i)(1)(i)(A)(*4*) was withdrawn or changed to a certification other than a certification under § 314.50(i)(1)(i)(A)(*4*); and

(ii) The 45-day period under section 505(c)(3) of the act had not expired; and

(iii) No person receiving notice under paragraphs (a)(1) and (a)(2) of this section had brought an action against the applicant for infringement of the patent that was the subject of the withdrawn or changed certification under § 314.50(i)(1)(i)(A)(*4*).

* * * * *

■ 3. Section 314.53 is amended by revising paragraph (b) and paragraphs (c)(1) through (c)(3) to read as follows:

§ 314.53 Submission of patent information.

* * * * *

(b) *Patents for which information must be submitted and patents for which information must not be submitted*—(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the required information on the declaration form set forth in paragraph (c) of this section for each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (active ingredient) patents, drug product (formulation and composition) patents, and method-of-use patents. For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending

[2] The figure of $55.14 represents the hourly rate for "lawyer" from the Bureau of Labor Statistics 2003 National Compensation Survey of $38.77, and then adjusted for inflation at 1.58 percent (unadjusted CPI–U) and increased 40 percent to account for benefits.

[3] Pharmaceutical Industry Cost Savings Through Use of the Scale-up and Post-Approval Change Guidance for Immediate Release Solid Oral Dosage Forms (SUPAC–IR), prepared for FDA, 1998, p. 63.

application. For patents that claim a polymorph that is the same as the active ingredient described in the approved or pending application, the applicant shall certify in the declaration forms that the applicant has test data, as set forth in paragraph (b)(2) of this section, demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the new drug application. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product, as is defined in § 314.3, that is described in the pending or approved application. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use that are described in the pending or approved application. The applicant shall separately identify each pending or approved method of use and related patent claim. For approved applications, the applicant submitting the method-of-use patent shall identify with specificity the section of the approved labeling that corresponds to the method of use claimed by the patent submitted. Process patents, patents claiming packaging, patents claiming metabolites, and patents claiming intermediates are not covered by this section, and information on these patents must not be submitted to FDA.

(2) *Test Data for Submission of Patent Information for Patents That Claim a Polymorph.* The test data, referenced in paragraph (b)(1) of this section, must include the following:

(i) A full description of the polymorphic form of the drug substance, including its physical and chemical characteristics and stability; the method of synthesis (or isolation) and purification of the drug substance; the process controls used during manufacture and packaging; and such specifications and analytical methods as are necessary to assure the identity, strength, quality, and purity of the polymorphic form of the drug substance;

(ii) The executed batch record for a drug product containing the polymorphic form of the drug substance and documentation that the batch was manufactured under current good manufacturing practice requirements;

(iii) Demonstration of bioequivalence between the executed batch of the drug product that contains the polymorphic form of the drug substance and the drug product as described in the NDA;

(iv) A list of all components used in the manufacture of the drug product containing the polymorphic form and a statement of the composition of the drug product; a statement of the specifications and analytical methods for each component; a description of the manufacturing and packaging procedures and in-process controls for the drug product; such specifications and analytical methods as are necessary to assure the identity, strength, quality, purity, and bioavailability of the drug product, including release and stability data complying with the approved product specifications to demonstrate pharmaceutical equivalence and comparable product stability; and

(v) Comparative in vitro dissolution testing on 12 dosage units each of the executed test batch and the new drug application product.

(c) *Reporting requirements*—(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the required patent information described in paragraph (c)(2) of this section for each patent that meets the requirements described in paragraph (b) of this section. We will not accept the patent information unless it is complete and submitted on the appropriate forms, FDA Forms 3542 or 3542a. These forms may be obtained on the Internet at http://www.fda.gov by searching for "forms".

(2) *Drug substance (active ingredient), drug product (formulation or composition), and method-of-use patents*—(i) *Original Declaration.* For each patent that claims a drug substance (active ingredient), drug product (formulation and composition), or method of use, the applicant shall submit FDA Form 3542a. The following information and verification is required:

(A) New drug application number;

(B) Name of new drug application sponsor;

(C) Trade name (or proposed trade name) of new drug;

(D) Active ingredient(s) of new drug;

(E) Strength(s) of new drug;

(F) Dosage form of new drug;

(G) United States patent number, issue date, and expiration date of patent submitted;

(H) The patent owner's name, full address, phone number and, if available, fax number and e-mail address;

(I) The name, full address, phone number and, if available, fax number and e-mail address of an agent or representative who resides or maintains a place of business within the United States authorized to receive notice of patent certification under sections 505(b)(3) and 505(j)(2)(B) of the act and §§ 314.52 and 314.95 (if patent owner or new drug application applicant or holder does not reside or have a place of business within the United States);

(J) Information on whether the patent has been submitted previously for the new drug application;

(K) Information on whether the expiration date is a new expiration date if the patent had been submitted previously for listing;

(L) Information on whether the patent is a product-by-process patent in which the product claimed is novel;

(M) Information on the drug substance (active ingredient) patent including the following:

(*1*) Whether the patent claims the drug substance that is the active ingredient in the drug product described in the new drug application or supplement;

(*2*) Whether the patent claims a polymorph that is the same active ingredient that is described in the pending application or supplement;

(*3*) Whether the applicant has test data, described in paragraph (b)(2) of this section, demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the new drug application or supplement, and a description of the polymorphic form(s) claimed by the patent for which such test data exist;

(*4*) Whether the patent claims only a metabolite of the active ingredient; and

(*5*) Whether the patent claims only an intermediate;

(N) Information on the drug product (composition/formulation) patent including the following:

(*1*) Whether the patent claims the drug product for which approval is being sought, as defined in § 314.3; and

(*2*) Whether the patent claims only an intermediate;

(O) Information on each method-of-use patent including the following:

(*1*) Whether the patent claims one or more methods of using the drug product for which use approval is being sought and a description of each pending method of use or related indication and related patent claim of the patent being submitted; and

(*2*) Identification of the specific section of the proposed labeling for the drug product that corresponds to the method of use claimed by the patent submitted;

(P) Whether there are no relevant patents that claim the drug substance (active ingredient), drug product (formulation or composition) or method(s) of use, for which the applicant is seeking approval and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product;

(Q) A signed verification which states: "The undersigned declares that this is an accurate and complete submission of patent information for the NDA, amendment or supplement pending under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct."; and

(R) Information on whether the applicant, patent owner or attorney, agent, representative or other authorized official signed the form; the name of the person; and the full address, phone number and, if available, the fax number and e-mail address.

(ii) *Submission of patent information upon and after approval.* Within 30 days after the date of approval of its application or supplement, the applicant shall submit FDA Form 3542 for each patent that claims the drug substance (active ingredient), drug product (formulation and composition), or approved method of use. FDA will rely only on the information submitted on this form and will not list or publish patent information if the patent declaration is incomplete or indicates the patent is not eligible for listing. Patent information must also be submitted for patents issued after the date of approval of the new drug application as required in paragraph (c)(2)(ii) of this section. As described in paragraph (d)(4) of this section, patent information must be submitted to FDA within 30 days of the date of issuance of the patent. If the applicant submits the required patent information within the 30 days, but we notify an applicant that a declaration form is incomplete or shows that the patent is not eligible for listing, the applicant must submit an acceptable declaration form within 15 days of FDA notification to be considered timely filed. The following information and verification statement is required:

(A) New drug application number;

(B) Name of new drug application sponsor;

(C) Trade name of new drug;

(D) Active ingredient(s) of new drug;

(E) Strength(s) of new drug;

(F) Dosage form of new drug;

(G) Approval date of new drug application or supplement;

(H) United States patent number, issue date, and expiration date of patent submitted;

(I) The patent owner's name, full address, phone number and, if available, fax number and e-mail address;

(J) The name, full address, phone number and, if available, fax number and e-mail address of an agent or representative who resides or maintains a place of business within the United States authorized to receive notice of patent certification under sections 505(b)(3) and 505(j)(2)(B) of the act and §§ 314.52 and 314.95 (if patent owner or new drug application applicant or holder does not reside or have a place of business within the United States);

(K) Information on whether the patent has been submitted previously for the new drug application;

(L) Information on whether the expiration date is a new expiration date if the patent had been submitted previously for listing;

(M) Information on whether the patent is a product-by-process patent in which the product claimed is novel;

(N) Information on the drug substance (active ingredient) patent including the following:

(*1*) Whether the patent claims the drug substance that is the active ingredient in the drug product described in the approved application;

(*2*) Whether the patent claims a polymorph that is the same as the active ingredient that is described in the approved application;

(*3*) Whether the applicant has test data, described at paragraph (b)(2) of this section, demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the approved application and a description of the polymorphic form(s) claimed by the patent for which such test data exist;

(*4*) Whether the patent claims only a metabolite of the active ingredient; and

(*5*) Whether the patent claims only an intermediate;

(O) Information on the drug product (composition/formulation) patent including the following:

(*1*) Whether the patent claims the approved drug product as defined in § 314.3; and

(*2*) Whether the patent claims only an intermediate;

(P) Information on each method-of-use patent including the following:

(*1*) Whether the patent claims one or more approved methods of using the approved drug product and a description of each approved method of use or indication and related patent claim of the patent being submitted;

(*2*) Identification of the specific section of the approved labeling for the drug product that corresponds to the method of use claimed by the patent submitted; and

(*3*) The description of the patented method of use as required for publication;

(Q) Whether there are no relevant patents that claim the approved drug substance (active ingredient), the approved drug product (formulation or composition) or approved method(s) of use and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product;

(R) A signed verification which states: "The undersigned declares that this is an accurate and complete submission of patent information for the NDA, amendment or supplement approved under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct."; and

(S) Information on whether the applicant, patent owner or attorney, agent, representative or other authorized official signed the form; the name of the person; and the full address, phone number and, if available, the fax number and e-mail address.

(3) *No relevant patents.* If the applicant believes that there are no relevant patents that claim the drug substance (active ingredient), drug product (formulation or composition), or the method(s) of use for which the applicant is seeking approval, and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product, the applicant will verify this information in the appropriate forms, FDA Forms 3542 or 3542a.

* * * * *

■ 4. Section 314.95 is amended by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding new paragraph (a)(3) to read as follows:

§ 314.95 Notice of certification of invalidity or noninfringement of a patent.

(a) * * *

(3) This paragraph does not apply if the applicant amends its application to add a certification under § 314.94(a)(12)(i)(A)(*4*) when the application already contained a certification under § 314.94(a)(12)(i)(A)(*4*) to a patent unless:

(i) The notice of the previous certification under § 314.94(a)(12)(i)(A)(*4*) was withdrawn or changed to a certification other than a certification under § 314.94(a)(12)(i)(A)(*4*);

(ii) The 45-day period under section 505(j)(5)(B)(iii) of the act had not expired; and

(iii) No person receiving notice under paragraphs (a)(1) and (a)(2) of this section had brought an action against the applicant for infringement of the patent that was the subject of the withdrawn or changed certification under § 314.94(a)(12)(i)(A)(*4*).

* * * * *

Dated: May 23, 2003.

Mark B. McClellan,

Commissioner of Food and Drugs.

Dated: June 9, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

[This appendix will not appear in the Code of Federal Regulations.]

BILLING CODE 4160-01-S

Department of Health and Human Services
Food and Drug Administration

Form Approved: OMB No. 0910-XXXX
Expiration Date: XX-XX-XX
See OMB Statement on Page 3.

PATENT INFORMATION SUBMITTED WITH THE FILING OF AN NDA, AMENDMENT, OR SUPPLEMENT

For Each Patent That Claims a Drug Substance (Active Ingredient), Drug Product (Formulation and Composition) and/or Method of Use

NDA NUMBER

NAME OF APPLICANT / NDA HOLDER

The following is provided in accordance with Section 505(b) and (c) of the Federal Food, Drug, and Cosmetic Act.

TRADE NAME (OR PROPOSED TRADE NAME)

ACTIVE INGREDIENT(S) | STRENGTH(S)

DRAFT

DOSAGE FORM

This patent declaration form is required to be submitted to the Food and Drug Administration (FDA) with an NDA application, amendment, or supplement as required by 21 CFR 314.53 at the address provided in 21 CFR 314.53(d)(4).
Within thirty (30) days after approval of an NDA or supplement, or within thirty (30) days of issuance of a new patent, a new patent declaration must be submitted pursuant to 21 CFR 314.53(c)(2)(ii) with all of the required information based on the approved NDA or supplement. The information submitted in the declaration form submitted upon or after approval will be the *only* information relied upon by FDA for listing a patent in the Orange Book.

For hand-written or typewriter versions (only) of this report: If additional space is required for any narrative answer (i.e., one that does not require a "Yes" or "No" response), please attach an additional page referencing the question number.

FDA will not list patent information if you submit an incomplete patent declaration or the patent declaration indicates the patent is not eligible for listing.

For each patent submitted for the pending NDA, amendment, or supplement referenced above, you must submit all the information described below. If you are not submitting any patents for this pending NDA, amendment, or supplement, complete above section and sections 5 and 6.

1. GENERAL

a. United States Patent Number	b. Issue Date of Patent	c. Expiration Date of Patent
d. Name of Patent Owner	Address *(of Patent Owner)*	
	City/State	
	ZIP Code	FAX Number *(if available)*
	Telephone Number	E-Mail Address *(if available)*
e. Name of agent or representative who resides or maintains a place of business within the United States authorized to receive notice of patent certification under section 505(b)(3) and (j)(2)(B) of the Federal Food, Drug, and Cosmetic Act and 21 CFR 314.52 and 314.95 (if patent owner or NDA applicant/holder does not reside or have a place of business within the United States) ☞	Address *(of agent or representative named in 1.e.)*	
	City/State	
	ZIP Code	FAX Number *(if available)*
	Telephone Number	E-Mail Address *(if available)*

f. Is the patent referenced above a patent that has been submitted previously for the approved NDA or supplement referenced above? ☐ Yes ☐ No

g. If the patent referenced above has been submitted previously for listing, is the expiration date a new expiration date? ☐ Yes ☐ No

PSC Media Arts (301) 443-6960 EF

For the patent referenced above, provide the following information on the drug substance, drug product and/or method of use that is the subject of the pending NDA, amendment, or supplement.

2. Drug Substance (Active Ingredient)

2.1 Does the patent claim the drug substance that is the active ingredient in the drug product described in the pending NDA, amendment, or supplement?	☐ Yes	☐ No
2.2 Does the patent claim a drug substance that is a different polymorph of the active ingredient described in the NDA, amendment, or supplement?	☐ Yes	☐ No
2.3 If the answer to question 2.2 is "Yes," do you certify that, as of the date of this declaration, you have test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA? The type of test data required is described at 21 CFR 314.53(b).	☐ Yes	☐ No
2.4 Specify the polymorphic form(s) claimed by the patent for which you have the test results described in 2.3.		

DRAFT

2.5 Does the patent claim only a metabolite of the active ingredient pending in the NDA or supplement? (Complete the information in section 4 below if the patent claims a pending method of using the pending drug product to administer the metabolite.)	☐ Yes	☐ No
2.6 Does the patent claim only an intermediate?	☐ Yes	☐ No
2.7 If the patent referenced in 2.1 is a product-by-process patent, is the product claimed in the patent novel? (An answer is required only if the patent is a product-by-process patent.)	☐ Yes	☐ No

3. Drug Product (Composition/Formulation)

3.1 Does the patent claim the drug product, as defined in 21 CFR 314.3, in the pending NDA, amendment, or supplement?	☐ Yes	☐ No
3.2 Does the patent claim only an intermediate?	☐ Yes	☐ No
3.3 If the patent referenced in 3.1 is a product-by-process patent, is the product claimed in the patent novel? (An answer is required only if the patent is a product-by-process patent.)	☐ Yes	☐ No

4. Method of Use

Sponsors must submit the information in section 4 separately for each patent claim claiming a method of using the pending drug product for which approval is being sought. For each method of use claim referenced, provide the following information:

4.1 Does the patent claim one or more methods of use for which approval is being sought in the pending NDA, amendment, or supplement?		☐ Yes	☐ No
4.2 Claim Number *(as listed in the patent)*	Does the patent claim referenced in 4.2 claim a pending method of use for which approval is being sought in the pending NDA, amendment, or supplement?	☐ Yes	☐ No
4.2a If the answer to 4.2 is "Yes," identify with specificity the use with reference to the proposed labeling for the drug product.	Use: *(Submit indication or method of use information as identified specifically in the proposed labeling.)*		

5. No Relevant Patents

For this pending NDA, amendment, or supplement, there are no relevant patents that claim the drug substance (active ingredient), drug product (formulation or composition) or method(s) of use, for which the applicant is seeking approval and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product.	☐ Yes

6. Declaration Certification

6.1 The undersigned declares that this is an accurate and complete submission of patent information for the NDA, amendment, or supplement pending under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct.

Warning: A willfully and knowingly false statement is a criminal offense under 18 U.S.C. 1001.

6.2 Authorized Signature of NDA Applicant/Holder or Patent Owner *(Attorney, Agent, Representative or other Authorized Official) (Provide information below)*	Date Signed

NOTE: Only an NDA applicant/holder may submit this declaration directly to the FDA. A patent owner who is not the NDA applicant/holder is authorized to sign the declaration but may not submit it directly to FDA. 21 CFR 314.53(c)(4) and (d)(4).

Check applicable box and provide information below.

☐ NDA Applicant/Holder	☐ NDA Applicant's/Holder's Attorney, Agent (Representative) or other Authorized Official
☐ Patent Owner	☐ Patent Owner's Attorney, Agent (Representative) or Other Authorized Official
Name	
Address	City/State
ZIP Code	Telephone Number
FAX Number *(if available)*	E-Mail Address *(if available)*

DRAFT

The public reporting burden for this collection of information has been estimated to average 9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Food and Drug Administration
CDER (HFD-007)
5600 Fishers Lane
Rockville, MD 20857

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Department of Health and Human Services
Food and Drug Administration

Form Approved: OMB No. 0910-XXXX
Expiration Date: XX-XX-XX
See OMB Statement on Page 3.

PATENT INFORMATION SUBMITTED UPON AND AFTER APPROVAL OF AN NDA OR SUPPLEMENT

For Each Patent That Claims a Drug Substance (Active Ingredient), Drug Product (Formulation or Composition) and/or Method of Use

NDA NUMBER

NAME OF APPLICANT / NDA HOLDER

The following is provided in accordance with Section 505(b) and (c) of the Federal Food, Drug, and Cosmetic Act.

TRADE NAME

ACTIVE INGREDIENT(S)

STRENGTH(S)

DRAFT

DOSAGE FORM

APPROVAL DATE OF NDA OR SUPPLEMENT

This patent declaration form is required to be submitted to the Food and Drug Administration (FDA) within thirty (30) days after approval of an NDA or supplement or within thirty (30) days of issuance of a patent as required by 21 CFR 314.53(c)(2)(ii) at the address provided in 21 CFR 314.53(d)(4). To expedite review of this patent declaration form, you may submit an additional copy of this declaration form to the Center for Drug Evaluation and Research "Orange Book" staff.

For hand-written or typewriter versions of this report: If additional space is required for any narrative answer (i.e., one that does not require a "Yes" or "No" response), please attach an additional page referencing the question number.

FDA will not list patent information if you file an incomplete patent declaration or the patent declaration indicates the patent is not eligible for listing.

For each patent submitted for the approved NDA or supplement referenced above, you must submit all the information described below. If you are not submitting any patents for this NDA or supplement, complete above section and sections 5 and 6.

1. GENERAL

a. United States Patent Number	b. Issue Date of Patent	c. Expiration Date of Patent

d. Name of Patent Owner	Address *(of Patent Owner)*	
	City/State	
	ZIP Code	FAX Number *(if available)*
	Telephone Number	E-Mail Address *(if available)*

e. Name of agent or representative who resides or maintains a place of business within the United States authorized to receive notice of patent certification under section 505(b)(3) and (j)(2)(B) of the Federal Food, Drug, and Cosmetic Act and 21 CFR 314.52 and 314.95 (if patent owner or NDA applicant/holder does not reside or have a place of business within the United States) ☞	Address *(of agent or representative named in 1.e.)*	
	City/State	
	ZIP Code	FAX Number *(if available)*
	Telephone Number	E-Mail Address *(if available)*

f. Is the patent referenced above a patent that has been submitted previously for the approved NDA or supplement referenced above? ☐ Yes ☐ No

g. If the patent referenced above has been submitted previously for listing, is the expiration date a new expiration date? ☐ Yes ☐ No

PSC Media Arts (301) 443-1090 EF

For the patent referenced above, provide the following information on each patent that claims the drug substance, drug product, or method of use that is the subject of the approved NDA or supplement. FDA will not list patent information if you file an incomplete patent declaration or the patent declaration indicates the patent is not eligible for listing. FDA will consider an incomplete patent declaration to be a declaration that does not include a response to all the questions contained within each section below applicable to the patent referenced above.

2. Drug Substance (Active Ingredient)

2.1 Does the patent claim the drug substance that is the active ingredient in the drug product described in the approved NDA or supplement? ☐ Yes ☐ No

2.2 Does the patent claim a drug substance that is a different polymorph of the active ingredient described in the NDA? ☐ Yes ☐ No

2.3 If the answer to question 2.2 is "Yes," do you certify that, as of the date of this declaration, you have test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA? The type of test data required is described at 21 CFR 314.53(b). ☐ Yes ☐ No

2.4 Specify the polymorphic form(s) claimed by the patent for which you have the test results described in 2.3.

2.5 Does the patent claim only a metabolite of the approved active ingredient? (Complete the information in section 4 below if the patent claims an approved method of using the approved drug product to administer the metabolite.) ☐ Yes ☐ No

2.6 Does the patent claim only an intermediate? ☐ Yes ☐ No

2.7 If the patent referenced in 2.1 is a product-by-process patent, is the product claimed in the patent novel? (An answer is required only if the patent is a product-by-process patent.) ☐ Yes ☐ No

FDA will not list the patent in the Orange Book as claiming the drug substance if:

- **the answers to 2.1 and 2.2 are "No," or,**
- **the answer to 2.2 is "Yes" and the answer to 2.3 is "No," or,**
- **the answer to 2.3 is "Yes" and there is no response to 2.4, or,**
- **the answer to 2.5 or 2.6 is "Yes."**
- **the answer to 2.7 is "No."**

DRAFT

3. Drug Product (Composition/Formulation)

3.1 Does the patent claim the approved drug product as defined in 21 CFR 314.3? ☐ Yes ☐ No

3.2 Does the patent claim only an intermediate? ☐ Yes ☐ No

3.3 If the patent referenced in 3.1 is a product-by-process patent, is the product claimed in the patent novel? (An answer is required only if the patent is a product-by-process patent.) ☐ Yes ☐ No

FDA will not list the patent in the Orange Book as claiming the drug product if:

- **the answer to question 3.1 is "No," or,**
- **the answer to question 3.2 is "Yes," or,**
- **the answer to question 3.3 is "No."**

4. Method of Use

Sponsors must submit the information in section 4 separately for each patent claim claiming an approved method of using the approved drug product. For each method of use claim referenced, provide the following information:

4.1 Does the patent claim one or more approved methods of using the approved drug product? ☐ Yes ☐ No

4.2 Patent Claim Number *(as listed in the patent)*	Does the patent claim referenced in 4.2 claim an approved method of use of the approved drug product? ☐ Yes ☐ No
4.2a If the answer to 4.2 is "Yes," identify the use with specific reference to the approved labeling for the drug product.	Use: *(Submit indication or method of use information as identified specifically in the approved labeling.)*

4.2b If the answer to 4.2 is "Yes," also provide the information on the indication or method of use for the Orange Book "Use Code" description.	Use: *(Submit the description of the approved indication or method of use that you propose FDA include as the "Use Code" in the Orange Book, using no more than 240 total characters including spaces.)*

FDA will not list the patent in the Orange Book as claiming the method of use if:

- **the answer to question 4.1 or 4.2 is "No," or**
- **if the answer to 4.2 is "Yes" and the information requested in 4.2a and 4.2b is not provided in full.**

5. No Relevant Patents

For this NDA or supplement, there are no relevant patents that claim the approved drug substance (active ingredient) or the approved drug product (formulation or composition) or approved method(s) of use with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. ☐ Yes

6. Declaration Certification

6.1 ***The undersigned declares that this is an accurate and complete submission of patent information for the NDA or supplement approved under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct.***

Warning: A willfully and knowingly false statement is a criminal offense under 18 U.S.C. 1001.

6.2 Authorized Signature of NDA Applicant/Holder or Patent Owner *(Attorney, Agent, Representative or other Authorized Official) (Provide Information below)*	Date Signed

NOTE: Only an NDA applicant/holder may submit this declaration directly to the FDA. A patent owner who is not the NDA applicant/holder is authorized to sign the declaration but may not submit it directly to FDA. 21 CFR 314.53(c)(4) and (d)(4).

Check applicable box and provide information below.

☐ NDA Applicant/Holder	☐ NDA Applicant's/Holder's Attorney, Agent (Representative) or other Authorized Official
☐ Patent Owner	☐ Patent Owner's Attorney, Agent (Representative) or Other Authorized Official
Name	
Address	City/State
ZIP Code	Telephone Number
FAX Number *(if available)*	E-Mail Address *(if available)*

DRAFT

The public reporting burden for this collection of information has been estimated to average 9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Food and Drug Administration
CDER (HFD-007)
5600 Fishers Lane
Rockville, MD 20857

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[FR Doc. 03–15065 Filed 6–12–03; 1:00 pm]
BILLING CODE 4160–01–S

Federal Register

Wednesday,
June 18, 2003

Part IV

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2003; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 94 percent of its budget authority in fiscal year (FY) 2003, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2003 is approximately $526.3 million.

EFFECTIVE DATE: August 18, 2003.

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Ann Norris, telephone 301–415–7807; or Tammy Croote, telephone 301–415–6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Final Action
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 94 percent of its FY 2003 budget authority, less the amounts appropriated from the NWF, through fees. In the Energy and Water Development Appropriation Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), Congress appropriated $584.6 million to the NRC for FY 2003. This sum includes $24.7 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2003 is approximately $526.3 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

II. Response to Comments

The NRC published the FY 2003 proposed fee rule on April 3, 2003 (68 FR 16374) to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 26 comments dated on or before the close of the comment period (May 5, 2003) and several additional comments thereafter, for a total of 32 comments that were considered in this fee rulemaking. The comments have been grouped by issues, and are addressed in a collective response.

A. Legal Issues

Information Provided by NRC in Support of Proposed Rule

Comment. Several commenters urged the NRC to provide licensees and the public with a more detailed explanation of the activities and associated costs that form the basis for NRC's fees. Some commenters stated that the NRC should provide specific accounting of the major elements that comprise the annual fee, including detailed information on the outstanding major contracts, their purpose, and their costs. Other commenters indicated that this information should also be available for part 170 fees, claiming it is difficult to understand exactly what is included in the hourly rate. One of these commenters also stated that more detailed information on the total costs associated with each component of reactor regulation and all other generic costs would allow stakeholders to provide more effective feedback on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility.

Several commenters raised concerns that the NRC could not specifically identify where resources are being applied, as the agency identified approximately 76 percent of the NRC's budget for recovery under part 171 and only 24 percent under the discrete fee provisions of part 170. These commenters stated this meant that the NRC could only identify 24 percent of its expenditures as directly supporting the licensees, and that neither NRC nor industry management can determine whether applicable resources are being applied to appropriate priorities in such a case. These commenters further stated that the aggregation of a substantial portion of non-discrete expenditures to be recovered through part 171 fees makes it virtually impossible for licensees to understand and comment on the appropriateness of these expenditures, and that the NRC should revise parts 170 and 171 to discretely allocate generic program costs to individual dockets in order to improve the visibility of management oversight and associated accountability of these programs.

Response. Consistent with the requirements of OBRA–90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 94 percent of the NRC's FY 2003 budget authority, less the amounts appropriated from the NWF, from the various classes of licensees. The efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are outside the scope of this rulemaking. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted full time equivalent (FTE) and contract costs at the planned accomplishment level for each agency activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

The NRC has also made available in the Public Document Room NUREG–1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003" (February 2002), which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. This document is also available on the NRC public Web site at *http://www.nrc.gov/reading-rm.html*. The extensive information available to the public meets all legal requirements and the NRC believes it has provided the public with sufficient information on which to base their comments on the proposed fee rule. Additionally, the contacts listed in the proposed fee rule were available during the public comment period to answer any questions that commenters had on the development of the proposed fees. No inquiries were received about the fee development process.

With regard to the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, the NRC notes that it has taken action to increase the amount recovered under part 170, consistent with existing Federal law and policy. For example, in FY 1998 the agency began charging part 170 fees for resident inspectors and in FY 1999 the agency started charging part 170 fees for project manager activities associated with oversight of the assigned license or plant. Additionally, in FY 2003 the NRC amended its regulations to allow the agency to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and utilization of mixed oxide fuel (MOX). The NRC assesses part 170 fees under the IOAA, and consistent with OMB Circular A–25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Generic costs that do not provide special benefits to identifiable recipients can not be recovered under part 170.

The NRC clearly sets forth the components of these generic costs in its workpapers and how those costs are recovered through annual fees.

B. Specific Part 170 Issues

1. Increase in Hourly Rates

Comment. Several commenters raised concerns with the proposed increase to $158 for the hourly rate for the materials program. One commenter stated that there seems to be no reason that the hourly rate for the materials program is higher than the hourly rate for reactors. This commenter also thought that the rates are out of line with rates paid by industry for safety professionals and managers.

Response. The NRC's hourly rates are based on budgeted costs and must be established at the revised levels each year to meet the fee recovery requirements. The hourly rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory, secretarial, and information technology support, as well as general and administrative costs, such as rent, utilities, supplies, and payroll and human resources staffs. These hourly rates are not developed in relation to one another but are based on budgeted costs for the reactors program and the materials program. Since the budgeted costs are different for each program, different rates result. These rates do not necessarily track with private sector rates, nor should they be used as a benchmark for industry standards. Instead, these rates reflect the budgeted costs of the reactors and materials programs.

A major reason for the four percent increase in the hourly rate for the materials program is the salary and benefits increase resulting primarily from the Government-wide pay raise. While salary and benefits also increase similarly for the reactor program, the increase is offset by a reduction in the average overhead cost per direct FTE for the reactor program. The hourly rates, coupled with the direct contract costs, recover through part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA. The revised hourly rates plus direct contract costs recover, through part 171 annual fees, the required amount of NRC's budgeted costs for activities not recovered through part 170 fees, as mandated by OBRA–90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. For part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

2. Project Manager Billing Issues

Comment. Several commenters expressed concern with the increase in charges for Project Manager (PM) time to uranium recovery licensees and other materials licensees. Some of these commenters would like clarification of the status of the NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) policy change that was implemented in July 2001, which states that a PM's costs are not billed to the licensee as part 170 fees if that PM spends 75 percent or less of his/her time in any two-week period on duties to support that licensee. Other commenters said that after an initial drop in part 170 charges for PM duties to uranium recovery licensees, these charges had increased recently even though duties related to the sites had not changed, and stated that PM time should not be charged to part 170 fees, whenever possible. Some commenters thought the Commission should reduce the impact of the hourly rate increase on

uranium recovery licensees by doing everything possible to reduce the amount of time spent by staff working on licensing issues related to uranium recovery licenses. They suggested that this could be accomplished through the streamlining of the regulatory process, including delegating regulation of in-situ leach wellfields to the States through Memoranda of Understanding and more reliance on Safety and Environmental Review Panels and performance based-licensing.

Response. NMSS modified its policy for project management fee billing effective July 29, 2001. The modified policy states that an NRC employee must spend more than 75 percent of his/her time in any two-week period performing duties to support a facility's license or certificate review to be considered a PM for full-cost fee billing purposes (Full-cost fee billing causes a prorated portion of a PM's indirect time to be charged to the licensee. The modified NMSS policy reduced the number of PMs whose indirect time is billed to the licensee.). The NRC has not changed that policy, nor how it is being implemented. The FY 2003 proposed fee rule did not propose to change the NMSS PM fee billing policy, so there was no need for the proposed rule to address its implementation status. If licensees have specific questions about particular invoices, they may request more details from the NRC and the staff will provide additional information. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

The NRC only charges fees to uranium recovery (or any other) licensees based on its budgeted costs. Regarding the comments suggesting that staff time devoted to regulating uranium recovery facilities should be reduced, the NRC notes that the manner in which NRC carries out its regulatory responsibilities is not addressed in this final rule, since this issue is outside the scope of this rulemaking. Nonetheless, the Commission strives to ensure that all of its efforts are needed to carry out its health, safety, common defense and security responsibilities and frequently modifies its regulatory regime to reduce unnecessary burden on the regulated community. Concerns about specific licensee review efforts conducted by the staff should be directed to the appropriate program office.

3. Fee Waivers for Special Projects

Comment. One commenter raised a number of concerns with NRC's fee waiver policy. This commenter stated that this policy is flawed, unworkable, and counterproductive to regulatory efficiency and effectiveness. In particular, this commenter stated that NRC's fee waiver policy is not consistent with the definitions of part 170 and part 171 fees as described in the FY 2003 proposed fee rule. The commenter stated that the Office of the Chief Financial Officer (OCFO) had been charging part 170 fees for documents that did not fall under the description in the FY 2003 proposed fee rule of documents for which part 170 fees should be assessed. This commenter challenged as flawed various reasons that OCFO had previously given to deny fee waivers in the past. The commenter advocated cooperative efforts between NRC and industry, and expressed concern that OCFO positions blocked this cooperation. The commenter suggested changing NRC's fee waiver policy to eliminate disincentives for industry to be proactive in addressing generic regulatory issues.

Response. The NRC did not propose to revise its policy for those services which part 170 fees are assessed, nor the existing fee waiver policy in this rulemaking. The proposed rule's description of purposes for which part 170 fees would apply is intended to be illustrative, not exhaustive. The NRC clarified its fee waiver policy in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), and responded extensively to comments similar to the one summarized above in the Response to Comments section of that final rule. The Commission's position with respect to its existing fee waiver policy has not changed. In brief, the NRC has consistently applied its policy of waiving the part 170 fees for a special project submitted to the NRC for the purpose of supporting "NRC's" generic regulatory improvements, and assessing part 170 fees for the review of a special project that is submitted for other purposes, including those that support "industry" generic improvements. The NRC finds no justification for granting a part 170 fee waiver, as the comment suggests, whenever a nuclear industry organization submits a proposal for generic regulatory improvement. Fee waivers will be granted only if the NRC determines the submission will be used for NRC's generic regulatory improvements, and the initiative was submitted specifically for that purpose. Thus, fee waivers are only appropriate where the NRC's review of the industry initiative is part of the process of developing the NRC's generic regulatory program, and the review activities are similar to other NRC generic regulatory activities whose costs are recovered through part 171 annual fees.

The NRC does not believe its fee waiver policy discourages cooperative efforts between the agency and industry, and that its assessment of part 170 fees for a special project is fully consistent with the NRC's policies on industry initiatives. Under the existing fee waiver criteria, NRC will waive the review fees for a special project submitted for the purpose of supporting the agency's regulatory improvements as long as the NRC staff agrees with the applicant at the time of submission that it will be used by the NRC in developing or improving its regulatory framework. The NRC encourages any special project applicant who believes that its proposal will help improve NRC's regulatory process to discuss its proposal with the cognizant NRC program office staff prior to requesting a fee waiver from the Chief Financial Officer.

C. Specific Part 171 Issues

1. Annual Fees vs. Hourly Fees

Comment. One commenter stated that it prefers annual fees to hourly fees, since it is easier to plan and allocate resources related to annual fees, while hourly fees are more unpredictable and more difficult to incorporate into a licensee's financial plan. Some commenters complained, however, that a disproportionate amount of the budget is recovered through annuals fees.

Response. While the NRC appreciates the concerns raised by this commenter, the agency notes that its collection of part 170 fees is consistent with Federal law. The NRC assesses part 170 fees under the IOAA, which allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. In addition, the Conference Report accompanying OBRA–90 specifically states that the Conference Committee "* * * expects the NRC to continue to assess fees under the [IOAA] to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives" (136 Cong. Rec. H12692–3, daily ed. October 26 1990). The NRC has received additional direction on this issue in the Office of Management and Budget (OMB) Circular A–25, in which OMB states it is Federal policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The NRC abides by this direction in charging part 170 fees to recover the costs of providing special benefits to identifiable recipients.

Further, the NRC notes that, as required by OBRA–90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. As explained above, the NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, as statute controls fee allocation. This applies both to comments that more of the budget should be shifted from part 170 fees to part 171 as to the position advocating the reverse.

2. Annual Fees for Materials Users, Including Small Entities

Comment. Two nuclear density gauge users commented that their fees are too high, and create a significant financial burden on small business owners. One of these users indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that these activities are essential to support projects it designs and monitors. With respect to the NRC's upper fee level for small entities, this commenter stated that the broad revenue range encompassing $350,000 to $5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, they urge the NRC to consider adding more tiers for small businesses to reduce the license fee burden on smaller entities. The other commenter stated that license fees make it difficult for small projects to recover expenses, and requested smaller fees.

Response. The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fee every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101–578, November 15, 1990, 104 Stat. 2838). Accordingly, as discussed in the FY 2003 proposed fee rule, this year the NRC re-examined the small entity fees, and determined that no change to the small entity fee is warranted for FY 2003. The NRC last revised its small entity fees in FY 2000 (65 FR 36936; June 12, 2000), when it increased the small entity annual fee and the lower tier small entity fee by 25 percent. For FY 2003, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the NRC costs associated with regulatory activities that benefit them.

The NRC has addressed comments regarding the impact of fees on industry in previous fee rulemakings. The NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA–90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for each class of license reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts that it is required to address by law.

Based on the provisions of the Regulatory Flexibility Act (RFA), the NRC provides reduced annual fees for licensees who qualify as small entities under the NRC's size standards. The materials users class has the most licensees who qualify for these reduced fees of any class. As such, the materials users class receives the largest amount of annual fee reductions of any class. About 24 percent of these licensees (approximately 1,200 licensees) have requested small entity certification in the past. The FY 2003 total estimated fee amount that will not be collected from licensees who pay reduced annual fees based on their small entity status is approximately $4.5 million, which must be collected from other NRC licensees in the form of a surcharge. Further reductions in fees for materials users would create an additional fee burden on other licensees, thus raising fairness and equity concerns.

As stated in 10 CFR 2.810, the NRC uses the Small Business Administration's (SBA) definition of receipts. Based on the SBA definition, revenue from all sources, not solely receipts from NRC licensed activities, is considered in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards.

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid by other NRC licensees in order to comply with the OBRA–90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA–90 and the RFA requirement that an agency must examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC does not plan to modify its small entity fee structure, nor provide any further reduction in annual fees beyond that already established for small entities. The NRC will re-examine the small entity fees again in FY 2005.

3. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received several comments regarding annual fees for uranium recovery licensees. These comments supported the reduction in annual fees for these facilities that resulted from the decision to rebaseline FY 2003 annual fees. One commenter also supported the continued implementation of last year's determination that the DOE must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. However, despite the proposed reductions, these commenters stated that there continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from such services. These commenters believe there is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort, The commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs.

Additionally, the commenters stated that the NRC has failed to adequately address the issue of decreasing numbers of uranium recovery licensees. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. These commenters urged NRC to continue its efforts to seek cost efficiencies through its annual reviews conducted as part of the budget process. One commenter stated that uranium recovery licensees continue to be

subject to unnecessary costs due to overlapping Federal or State agency jurisdiction. The commenter stated that in non-Agreement States, the NRC should accept the groundwater quality assessments conducted by the state or the Environmental Protection Agency rather than performing duplicative environmental assessments. Several commenters suggested that the agency proceed expeditiously with extension of the reactor oversight process for these and other facilities as a risk-informed, performance-based oversight process that recognizes the inherent safety of these operations should further reduce unnecessary regulatory burdens.

Response. The NRC has responded to similar concerns raised by commenters in several previous fee rulemakings. First, in response to the specific suggestions about how the NRC should regulate these licensees or operate more efficiently, the NRC again notes that the purpose of this rule is to recover the required percentage of its FY 2003 budget authority, and that the manner in which the NRC carries out its regulatory activities is outside the scope of this rulemaking.

The NRC must assess annual fees to NRC licensees to recover the budgeted costs not recovered through part 170 fees and other receipts. The NRC recognizes that this presents fairness and equity issues as costs must be recovered from licensees for activities that do not directly benefit them. To address these fairness and equity concerns, as previously noted, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005.

The Commission is concerned about the issue of decreasing numbers of licensees and its implications. Although a decreasing licensee base is only one of several possible factors affecting annual fees, it presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry, and the NRC, which must by statute recover its budgeted costs from the licensees it regulates. Potential remedies to this problem involve establishing arbitrary fee caps or thresholds for certain classes of licensees, or combining fee categories. However, alternatives involving caps or thresholds, and combining fee categories, also raise potential legal and fairness and equity concerns. As noted previously, given the requirements of OBRA–90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. Combining fee categories would also have the potential to increase the annual fees for certain licensees in the new combined category to cover part of the cost for the licensees whose fees were reduced by this action. At this time, the Commission is not prepared to adopt any of these approaches. The NRC notes that the annual fees for the Uranium Recovery class decreased from FY 2001 to FY 2002, and remained stable for FY 2003 due in part to the concerted efforts by the program offices to reduce budgeted costs associated with this program. However, the NRC recognizes the concerns expressed and will continue its efforts to seek cost efficiencies and reduce regulatory burdens, without compromising its commitment to public health and safety.

4. Annual Fees for Power Reactor Licensees

Comment. One commenter stated that there is insufficient basis to support the required costs to the power reactor licensees for activities not directly attributable or beneficial to their operation. Another commenter expressed concern about the 15 percent increase in the operating power reactor annual fee, despite the two percent drop in the agency's overall recovery rate as mandated by the FY 2001 Energy and Water Appropriations Act. Both commenters raised fairness and equity concerns regarding utilities paying for agency activities that do not provide a direct benefit to them.

Response. The part 171 power reactor annual fees are established to recover the costs for generic activities related to power reactors such as research, rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (*e.g.*, allegations, most contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders). The annual fees for each class also include a share of the total surcharge costs. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensees, such as activities that are exempt from part 170 fees by law or Commission policy. The surcharge is required in order for NRC to meet its statutory fee recovery requirements. To address fairness and equity concerns related to charging NRC license holders for these expenses that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. This decrease of six percent in FY 2003 is applied to help offset the surcharge amount.

The annual fee for the power reactor class includes the agency's homeland security costs related to power reactors for this fiscal year, which significantly contributed to the 15 percent increase in power reactor fees. Additionally, the increased workload for the new reactor licensing activities contributed to the increase.

The agency workpapers supporting both the proposed and final fee rules show the budgeted costs for each activity at the NRC's planned accomplishment level, and the classes of licenses to which these costs are allocated. Furthermore, the workpapers show by class the total costs allocated, and the estimated part 170 collections. The annual fees are established to recover the difference between the NRC's total recoverable budgeted costs (less the Nuclear Waste Fund) and the estimated part 170 collections, in accordance with OBRA–90, as amended.

5. Annual Fees for Fuel Facilities Licensees

Comment. Several commenters expressed concerns with the annual fees for fuel facilities licensees. One commenter stated that these fees are unreasonably high and not in accord with NRC's Strategic Plan: Fiscal Year 2000–Fiscal Year 2005. Other commenters did not understand why there was a significant discrepancy between the increase in annual fees for fuel fabricators (43 percent) in comparison to power reactors (15 percent), when much of the annual fee increase was attributed to the costs of security-related activities and these activities are similar for both types of facilities. These commenters requested that NRC review this discrepancy and consider revisions to more equitably allocate these costs. Another commenter expressed concerns about the annual fees for gaseous diffusion plants (GDPs), stating that it did not believe that the annual fee for a GDP should be equal to or more than the annual fee for a power reactor. This commenter suggested that NRC reevaluate its methodology to establish the FY 2003 fees with the objective of achieving a fee structure that is fair and equitable when viewed in its entirety. Another commenter stated that low enriched uranium fuel facilities constitute a very small part of the nuclear fuel cycle and pose only minimal risk, and that their facility operated in a very competitive international market and so the magnitude of the fee increase represents a serious economic burden. The commenter asked that the proposed fees for fuel facilities be reviewed and that the amount of the increase be reduced to a more reasonable level (on the order of 10 percent) to be consistent with other facilities and the general increasing costs of NRC operations.

Response. The part 171 annual fees for each class of licenses are established to recover the costs for generic activities related to that class of licenses, including rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees. The NRC believes this methodology is consistent with all applicable laws, regulations, and policies. Because the costs for one class of licenses may increase or decrease at different rates than the costs for other classes of licenses, fees for different classes will increase or decrease at different rates accordingly. The NRC has considered capping fee increases for classes of licenses, but has not chosen to do so for potential legal and fairness and equity reasons.

The NRC appreciates the concerns raised about fee predictability and stability. In order to recover its budgeted annual costs in compliance with the OBRA–90, as amended, the NRC annually promulgates a rule establishing licensee fees. In light of concerns about annual fluctuations in these fees, the NRC announced in FY 1995 that annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated by rebaselining. Commission policy sets the maximum interval between rebaselined fee schedules at three years. Based on the change in the magnitude of the budget to be recovered through fees, the Commission determined that it was appropriate to rebaseline its part 171 annual fees in FY 2003. Rebaselining fees resulted in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities), and decreased annual fees for two classes (non-power reactors and uranium recovery). For the small materials users and transportation classes, some categories of licensees will have increased annual fees and others will have decreased annual fees.

Regarding the comment that fees to fuel facilities represent an economic burden, since FY 1991 the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the policies reflected in the Regulatory Flexibility Act. Granting fee relief to the fuel facility licensees on the basis of economic considerations could set an untenable precedent for the NRC with the potential to unravel the stability and viability of the entire fee system. Not only would other classes of licenses be required to subsidize fuel facilities through increased fees, but other categories of licensees may also request similar treatment based on analogous economic considerations. Thus, it would be difficult to develop a rationale for waiving the fees for one class of licenses while denying similar requests from other NRC licensees which may also be experiencing economic downturns.

The annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance and follow-up of orders directing the fuel facility licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

The NRC initially established a fuel facility "effort/fee" matrix in the FY 1995 fee rule (60 FR 32218; June 20, 1995), further revising it in the FY 1999 fee rule (64 FR 31448; June 10, 1999). The purpose of this matrix is to accurately reflect the NRC's current costs of providing generic and other regulatory services to each type of fuel facility. The matrix depicts the categorization of licenses according to their activities, level, scope, depth of coverage, and rigor or generic regulatory programmatic effort applicable to each facility category from a safety and safeguards perspective. The relative weighted factors for each facility type for the various fee subclasses are depicted in Table VII. The matrix has been quite valuable in helping the NRC assign appropriate fees for each type of fuel facility. It is routinely available among the workpapers during the public comment process of each year's rulemaking for revision of fee schedules and the fact that it has withstood this scrutiny for many years continues to lend support to the NRC's confidence in it as a robust tool in the fee development process.

Annual Fees for Spent Fuel Storage/Reactor Decommissioning

Comment. One commenter stated that the proposed 29.3 percent increase in annual fees for spent fuel storage/reactor decommissioning licensees is not equitable and places an undue burden on this particular class of licensees, which do not generate revenue through the sale of electricity and do not have a guarantee of recovering additional costs by petitioning local public utility commissions. The commenter further stated that rapidly rising annual fee increases for spent fuel storage/reactor decommissioning licensees place undue budget constraints that could affect the resources available for performing plant decommissioning activities.

Response. The NRC has responded to similar comments in previous rulemakings. Annual fees for the classes of licenses are based on the budgeted costs for the classes, as well as a surcharge to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, including activities that are exempt from part 170 fees by law or Commission policy. Since budgeted costs for one class of licenses may rise or fall at different rates than for other classes of licenses, so will annual fees. The increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since FY 2002, including homeland security activities that are on the fee base for FY 2003. Recovering the costs associated with spent fuel storage and reactor decommissioning from operating power reactors, power reactors in decommissioning or possession only status if they have fuel on site, and independent spent fuel storage part 72 licensees who do not hold a part 50 license, is consistent with the intent of OBRA–90 to assess annual fees to licensees or classes of licenses, commensurate with the expenditure of the NRC's resources. The Commission believes it would be inequitable to grant fee relief to one class of licenses (except to address small entity issues in accordance with the Regulatory Flexibility Act) on the basis of economic considerations, since this class would then need to be subsidized by other classes of licenses.

D. Other Issues

1. Security Costs

Comment. The majority of comments did not support the NRC collecting security-related costs from licensees. These commenters noted that the FY 2003 NRC budget includes $29.3 million for homeland security activities, and stated that these activities should be funded through the General Treasury as part of the nation's protection of critical infrastructure. Some of these commenters also stated that significant security costs are being incurred for nuclear vulnerability assessments without due consideration of the evaluated threats or rigor of the methodology for conducting these assessments, which is not the best way to allocate the nation's resources in defending against terrorist attacks. Other commenters noted their belief that there is overlap and duplication of functions in Nuclear Security and Incident Response with those of other Federal agencies, particularly the Department of Homeland Security. One comment suggested that the increased fees for FY 2003 did not appear to reflect a consideration for the substantial work and engineered solutions that have already been implemented in the area of security.

Response. The NRC appreciates the concerns raised by commenters with regard to homeland security costs being funded through licensee fees. The NRC notes that the President's FY 2003 budget requested that NRC's funding for homeland security activities be excluded from the fee base, as was the case in FY 2002. However, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), included NRC's budget for homeland security activities in the fee base. Therefore, the FY 2003 fees must include the $29.3 million budgeted for NRC's homeland security activities. The Commission agrees there are merits to the arguments that licensees should be treated in the same fashion as other owner/operators of critical infrastructure that do not generally pay user fees for Federal agency homeland security costs. The NRC notes that S. 1043, the "Nuclear Infrastructure Security Act of 2003," recently approved by the Senate Committee on Environment and Public Works, provides that amounts appropriated to the NRC for homeland security activities would be excluded from the fee base except for costs associated with fingerprinting, background checks and security inspections.

In response to the comments that expressed concern regarding how the NRC is expending homeland security funds, as stated previously, the NRC's budget and manner in which the agency carries out its activities are not within the scope of this rulemaking. Nonetheless, the NRC is addressing the issues raised regarding the costs of vulnerability assessments and NRC's relationship with the Department of Homeland Security.

2. NRC Budget

Comment. Many commenters offered suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently. Commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process and risk-informed changes to inspection, assessment, and enforcement processes, should result in reduced fees. One commenter suggested that increased cooperation between the NRC and industry could increase efficiency and conservation of limited resources.

Response. The NRC's budgets and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' suggestions concerning the NRC's budget and the use of NRC resources. The NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA–90, the fees are established to recover the required percentage of the approved budget.

3. Cost Recovery for Agreement State Activities

Comment. One commenter stated that it supported the approach to allocate Agreement State Program activities to user fees, rather than the General Fund. Another commenter suggested the opposite approach, and stated that the costs for activities like Agreement State Programs should not be allocated to user fees, but rather paid for from the General Fund.

Response. The FY 2003 proposed fee rule did not propound to change how the NRC recovers costs for Agreement State Program activities, nor does this final rule make any changes with regard to recovery of these costs. The Commission has the authority to, but as a matter of policy does not, assess part 170 fees for specific services rendered to an Agreement State. Agreement States devote significant monetary and staff resources to national radiation control programs, and this effort assists the NRC and other Federal agencies in protecting public health and safety. The NRC costs for these Agreement State activities are funded through a surcharge, which is allocated to the various license classes on a prorated basis.

The surcharge is being funded from the general fund of the U.S. Treasury as a result of the FY 2001 Energy and Water Development Appropriations Act. This act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, to address fairness and equity concerns related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee. The 2 percent per year reduction from the fee base accounts for activities such as Agreement State Oversight and Agreement State Regulatory Support.

4. Fee Increase Communication and Timing

Comment. Several commenters suggested that the NRC communicate the potential magnitude of fee increases earlier in the process. The commenters stated that this communication would allow licensees to forecast and mitigate financial impacts. These commenters expressed disappointment that the NRC gave its licensees no warning that significant increases were being contemplated. Several commenters expressed concern that NRC fee increases are seen by licensees almost a year after their budgets have been initially set, and suggested that NRC shift its process by one year (*e.g.*, the 2003 fee collection would be the 2004 fee projection). One commenter specifically requested that NRC review and forecast ongoing costs and fees over the next five years so that licensees can make accurate business forecasts. One commenter stated that NRC's method of collecting retroactive fees during the last government quarter for the previous three quarters will create a significant and unanticipated negative financial impact.

Response. The NRC appreciates the concerns raised by these commenters. However, as a matter of law (OBRA–90, as amended) and policy the NRC must collect the statutorily mandated level of fees by the end of the fiscal year to which they are attributed, in this case, September 30, 2003. The law also requires that these fees be established through the rulemaking process. The NRC makes every effort to issue its proposed and final fee rules in a timely manner to afford licensees as much time as possible to plan for fee increases. However, the agency must ensure that it fully complies with all applicable legislation, regulations, and policies, as well as perform the required fee calculations, in a relatively short time each year to produce its fee rules. This year Congress did not enact NRC appropriations for FY 2003 until February 20, 2003. Because the NRC does not know in advance what its future budgets will be (*i.e.*, proposed budgets must be submitted to the Office of Management and Budget for its review before the President submits the budget to Congress for enactment), the agency believes it is not practicable to set fees based on future estimated budgets, nor would such an approach be consistent with its statutory mandate. The NRC will continue to strive to issue its fee regulations as early in the process as is practicable in order to give as much time as possible for licensees to plan for changes in fees.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 94 percent of its FY 2003 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. The NRC's total budget authority for FY 2003 is $584.6 million, of which approximately $24.7 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must recover approximately $526.3 million in FY 2003 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2003 is $46.8 million more than the amount estimated for recovery in FY 2002.

The NRC estimates that approximately $127.5 million will be recovered in FY 2003 from part 170 fees and other offsetting receipts. For FY 2003, the NRC also estimates a net adjustment of approximately $1.9 million for FY 2003 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2003 for FY 2002 invoices. The remaining $396.8 million will be recovered through the part 171 annual fees, compared to $345.6 million for FY 2002.

A primary reason for the increase in total fees, as well as the annual fee amount, for FY 2003 compared to FY 2002 is that the amount to be recovered for FY 2003 includes $29.3 million for homeland security activities, whereas the FY 2002 funding for homeland security was excluded from fees. While the President's FY 2003 budget requested that NRC's funding for homeland security activities continue to be excluded from the fee base, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), included NRC's budget for homeland security activities in the fee base. Therefore, the FY 2003 fees include the $29.3 million budgeted for NRC's homeland security activities. Other reasons for the fee increases include the 2003 Federal pay raise, and the increased workload for new reactor licensing activities and reactor license renewal.

Table I summarizes the budget and fee recovery amounts for FY 2003. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2003

[Dollars in millions]

Total Budget Authority	$584.6
Less NWF	−24.7
Balance	$559.9
Fee Recovery Rate for FY 2003	×94.0%
Total Amount to be Recovered For FY 2003	$526.3
Less Carryover from FY 2002	−0
Amount to be Recovered Through Fees and Other Receipts	$526.3
Less Estimated Part 170 Fees and Other Receipts	−127.5
Part 171 Fee Collections Required	$398.8
Part 171 Billing Adjustments:	
Unpaid FY 2003 Invoices (estimated)	2.4
Less Payments Received in FY 2003 for Prior Year Invoices (estimated)	−4.3
Subtotal	−1.9
Adjusted Part 171 Collections Required	$396.8

The FY 2003 final fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2003 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2003 final rule. For these licensees, payment will be due on the effective date of the FY 2003 final rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the final FY 2003 rule will be billed for the annual fee during the anniversary month of the license at the FY 2002 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2003 rule will be billed for the annual fee at the FY 2003 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule

to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2003 final fee rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov*. The NRC plans to publish the final fee rule in June 2003. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is revising the hourly rates used to calculate fees and is adjusting the part 170 fees based on the revised hourly rates and the results of the agency's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101–578, November 15, 1990, 104 Stat. 2838).

Additionally, the NRC is revising fee category 15.A. of § 170.31 to cover all categories of radioactive waste import license applications and to revise category 15.B. to remove the radioactive waste import license applications.

The amendments are as follows:

1. Hourly Rates

The NRC is revising the professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2003 direct program FTEs and the FY 2003 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The rate for the reactor program is $156 per hour ($276,661 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The rate for the materials program (nuclear materials and nuclear waste programs) is $158 per hour ($280,876 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were $156 and $152, respectively.

A major reason for the 4 percent increase to the materials program rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the reactor program, the increase is offset by a reduction in the average overhead cost per direct FTE.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (*e.g.*, Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2003 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits (millions)	$134.1	$34.4
Overhead Salaries & Benefits, Program Travel and Other Support (millions)	62.3	17.1
Allocated Agency Management and Support (millions)	118.5	31.1
Subtotal (millions)	$314.9	$82.6
Less offsetting receipts (million)	−0.1	−0.00
Total Budget Included in Hourly Rate (millions)	$314.8	$82.6
Program Direct FTEs	1138.0	294.1
Rate per Direct FTE	$276,661	$280,876
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$156	$158

As shown in Table II, dividing the $314.8 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1138.0) results in a rate for the reactor program of $276,661 per FTE for FY 2003. The Direct FTE Hourly Rate for the reactor program is $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,661) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Similarly, dividing the $82.6 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (294.1) results in a rate of $280,876 per FTE for FY 2003. The Direct FTE Hourly Rate for the materials program is $158 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($280,876) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect both the revised hourly rates and the results of the biennial review of part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions.

The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2001 (66 FR 32452; June 14, 2001). Thus, the revised average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2001.

As a result of the biennial review, the licensing fees that are based on the average professional staff hours reflect an increase in average time for new license applications for six of the 33 materials program fee categories, a decrease in average time for eight fee categories, and the same average time for the remaining 19 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§ 170.21 and 170.31, and decreased for two other fee categories.

The licensing fees for fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the revised materials program professional hourly rate for FY 2003.

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the fee per registration is $620, compared to $450 in FY 2002. The revised fee is based on the current estimated number of registrants, current annual resource estimates for the program, and the FY 2003 materials program FTE rate. This increase to the current fee of $450 is based on experience with the registrations to date, which indicates that the average cost per registrant is higher than originally estimated. The next biennial review of the registration fee will be included in the FY 2005 fee rule; however, the registration fee may change in the FY 2004 fee rule if there is a change to the materials program FTE rate for FY 2004.

The amounts of the materials licensing "flat" fees are rounded as follows: fees under $1,000 are rounded to the nearest $10, fees that are greater than$1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

The NRC is expanding fee Category 15.A. of § 170.31 to include all categories of radioactive waste import license applications, and modifying Category 15.B. of § 170.31 to exclude these types of import license applications. This change is being made because all applications for the import of radioactive waste must be reviewed by the Executive Branch and require the involvement of all states and compacts, as well as extensive coordination within the NRC. Therefore, the NRC efforts for the waste import license applications are more closely aligned with the efforts for the other types of export and import licenses currently covered by Category 15.A.

In addition, the Office of Nuclear Reactor Regulation revised its policy of charging the sites for administrative/overhead fees for early assignment of resident inspectors. Under this new policy, the administrative/overhead fees for the individuals selected for early assignments will not be charged to the site.

In summary, the NRC is amending 10 CFR Part 170 to —

1. Revise the materials and reactor programs FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise Category 15.A. of § 170.31 to include radioactive waste import licenses, and exclude these types of applications from Category 15.B.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC is revising the annual fees for FY 2003 as follows.

1. Annual Fees

The NRC is establishing rebaselined annual fees for FY 2003. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2002. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees will result in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities), and decreased annual fees for two classes (non-power reactors and uranium recovery). For the small materials users and transportation classes, some categories of licenses will have increased annual fees and others will have decreased annual fees.

The annual fees in §§ 171.15 and 171.16 will be revised for FY 2003 to recover approximately 94 percent of the NRC's FY 2003 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2003 is $396.8 million, compared to $345.6 million for FY 2002.

Within the fee classes, the FY 2003 annual fees will increase for many categories of licenses, decrease for other categories, and for two categories remain the same from the previous year. The two largest categories of materials licensees (which together include nearly 3,500 of NRC's approximately 4,900 materials user licenses) show annual fee decreases compared to FY 2002 of 7.4 percent and 9.8 percent. The increases in annual fees range from approximately 1.2 percent for DOE's transportation activities to approximately 62 percent for licenses issued to distribute items containing byproduct material that require device review to persons exempt from licensing requirements of part 30. The decreases in annual fees range from approximately 2.7 percent for two materials categories and for the quality assurance approvals for users to approximately 53 percent for materials licenses authorizing possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies (other than field flooding). The fees remain the same for materials licenses

authorizing possession and use of byproduct material in sealed sources for irradiation of materials where the source is not removed from its shield and licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material.

Factors affecting the changes to the annual fee amounts include adjustments in budgeted costs for the different classes of licenses (including the addition of budgeted costs for NRC's homeland security activities), the reduction in the fee recovery rate from 96 percent for FY 2002 to 94 percent for FY 2003, the estimated part 170 collections for the various classes of licenses, the increased hourly rate for the materials and waste program, and decreases in the numbers of licensees for certain categories of licenses. In addition, there is no carryover from FY 2002 to reduce the FY 2003 fees. The FY 2002 fees were reduced by a $1.7 million carryover from FY 2001.

Table IV below shows the rebaselined annual fees for FY 2003 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2003

Class/category of licenses	FY 2003 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,251,000
Spent Fuel Storage/Reactor Decommissioning	319,000
Nonpower Reactors	63,300
High Enriched Uranium Fuel Facility	5,836,000
Low Enriched Uranium Fuel Facility	1,957,000
UF_6 Conversion Facility	839,000
Uranium Mills	63,700
Transportation:	
Users/Fabricators	76,200
Users Only	7,100
Typical Materials Users:	
Radiographers	12,200
Well Loggers	4,700
Gauge Users	1,900
Broad Scope Medical	24,700

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2003 will be reduced by about $33.6 million. The total FY 2003 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2003 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$10.3
b. Agreement State oversight	8.8
c. Low-level waste disposal generic activities	2.7
d. Site decommissioning management plan activities not recovered under part 170	3.6
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	6.7
b. Licensing and inspection activities associated with other Federal agencies	2.9
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.4
b. Generic decommissioning/reclamation (except those related to power reactors)	4.9
Total surcharge costs	57.8
Less 6 percent of NRC's FY 2003 total budget (less NWF)	−33.6
Total Surcharge Costs to be Recovered	$24.2

As shown in Table V, $24.2 million is the total surcharge cost allocated to the various classes of licenses for FY 2003. The NRC will continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the budget for that class. The NRC will continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The surcharge costs allocated to each class will be included in the annual fee assessed to each licensee. The FY 2003 surcharge costs allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge $,M
	Percent	$,M	Percent	$,M	
Operating Power Reactors	74	2.0	79.3	17.1	19.1
Spent Fuel Storage/Reactor Decomm.			8.2	1.8	1.8
Nonpower Reactors			0.1	0.0	0.0
Fuel Facilities	8	0.2	6.7	1.4	1.6
Materials Users	18	0.5	3.8	0.8	1.3
Transportation			1.2	0.3	0.3
Rare Earth Facilities			0.2	0.0	0.0
Uranium Recovery			0.7	0.1	0.1
Total Surcharge	100	2.7	100.0	21.5	24.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.gov/reading-rm/adams.html*. For a period of 90 days after the effective date of this final rule, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

a. *Fuel Facilities.* The revised annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance and follow-up of orders directing the fuel facility licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

The FY 2003 budgeted costs of approximately $27.0 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into five categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in them not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders, resulting in higher fees for those affected licensees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors (In percent)	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0)	76 (57.1)
Enrichment	2	70 (27.7)	34 (25.6)

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES—Continued

Facility type	Number of facilities	Effort factors (In percent)	
		Safety	Safeguards
Low Enriched Uranium Fuel	3	66 (26.1)	18 (13.5)
UF_6 Conversion	1	12 (4.7)	0 (0)
Limited Operations Facility	1	8 (3.2)	3 (2.3)
Others	1	6 (2.4)	2 (1.5)

Applying these factors to the safety, safeguards, and surcharge components of the $27.0 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the subcategories of this class summarized in Table VIII.

TABLE VIII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2003 annual fee
High Enriched Uranium Fuel	$5,836,000
Uranium Enrichment	3,634,000
Low Enriched Uranium	1,957,000
UF_6 Conversion	839,000
Limited Operations Facility	769,000
Others	559,000

b. *Uranium Recovery Facilities.* The FY 2003 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.5 million. Approximately $1.0 million of this amount will be assessed to DOE. The remaining $0.5 million will be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This results in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE • Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$393,227
50% of generic/other uranium recovery budgeted costs	485,513
50% of uranium recovery surcharge	70,829
Total Annual Fee Amount for DOE	949,569
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	485,513
50% of uranium recovery surcharge	70,829
Total Annual Fee Amount for Title II Specific Licenses	556,342

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (*e.g.*, rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Category weight	Level of benefit total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

Applying these factors to the $0.5 million in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	FY 2003 annual fee
Class I (conventional mills)	$ 63,700
Class II (solution mining)	53,300
11e.(2) disposal	39,300
11e.(2) disposal incidental to existing tailings sites	6,200

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2003 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2003 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

c. *Power Reactors.* The approximately $305.0 million in budgeted costs to be recovered through FY 2003 annual fees assessed to the power reactor class, which includes NRC's budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2003 annual fee of $2,932,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2003 spent fuel storage/reactor decommissioning annual fee of $319,000. This results in a total FY 2003 annual fee of $3,251,000 for each power reactor licensed to operate.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2003, budgeted costs of approximately $38.6 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs are divided equally among the 121 licensees, resulting in a FY 2003 annual fee of $319,000 per licensee.

e. *Non-power Reactors.* Approximately $253,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2003. This amount is divided equally among the four non-power reactors subject to annual fees. This results in a FY 2003 annual fee of $63,300 for each licensee.

f. *Rare Earth Facilities.* The FY 2003 budgeted costs of approximately $187,000 for rare earth facilities to be recovered through annual fees will be divided equally among the two licensees who have a specific license for receipt and processing of source material. Prior to the beginning of FY 2003, one rare earth facility permanently ceased operations and requested that its license be amended to authorize decommissioning activities only. Consequently, this license is no longer subject to annual fees. The result is a FY 2003 annual fee of $93,600 for each of the two remaining rare earth facilities.

g. *Materials Users.* To equitably and fairly allocate the $23.7 million in FY 2003 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $18.0 million in general costs and is 1.18 for FY 2003. The inspection multiplier is the multiple necessary to recover approximately $4.5 million in inspection costs for FY 2003, and is 0.92 for FY 2003. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2003, approximately $65,300 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the $800,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $500,000 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in § 171.16(d).

h. *Transportation.* Of the approximately $5.0 million in FY 2003 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses (including homeland security costs), approximately $1.4 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.6 million, approximately 25 percent is allocated to the 89 quality assurance plans authorizing use only and the 40 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent is allocated only to the 40 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of $7,100 for each of the holders of quality assurance plans that authorize use only, and an annual fee of $76,200 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2003. The revision to the small entity fees in FY 2000 (65 FR 36946; June 12, 2000) was based on the 25 percent increase in average total fees assessed to other materials licensees in selected categories since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit

them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

In summary, the NRC has—

1. Established rebaselined annual fees for FY 2003;

2. Retained the current reduced fees for small entities.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 94 percent of its budget authority in FY 2003 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2003 is 94 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2003 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 94 percent of the Commission's FY 2003 budget of $584.6 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 94 percent of its FY 2003 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2003. The final rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2003.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors. Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

■ 2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities): $156 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities): $158 per hour

■ 3. In § 170.21, Category K in the table is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.	
Application-new license	$10,300
Amendment	$10,300
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8). This category includes application for the export of radioactive waste.	
Application-new license	$6,000
Amendment	$6,000
3. Application for export of components requiring foreign government assurances only.	
Application-new license	$1,900
Amendment	$1,900
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application-new license	$1,300
Amendment	$1,300

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review. Amendment	$240

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

■ 4. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only: Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI): Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4] Application	$730.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4] Application	$1,500.
E. Licenses or certificates for construction and operation of a uranium enrichment facility: Licensing and inspection	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1): Licensing and inspection	Full Cost
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1): Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding: Application	$170.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee [2,3]
C. All other source material licenses: Application	$6,200
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application	$7,400.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application	$2,900.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D. Application	$6,100.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Application	$2,700.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units): Application	$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. Application	$3,700.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. Application	$8,800.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter: Application	$4,300.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter: Application	$4,300.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: Application	$1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: Application	$650.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution: Application	$6,200
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution: Application	$3,000.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C: Application	$3,300.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations: Application	$3,300.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D: Registration	$1,200.
Q. Registration of a device(s) generally licensed under part 31 of this chapter: Application	$620.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,900.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,800.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$2,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,600.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,900.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$1,900.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$360.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,700.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,800.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$600.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$2,100.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.	
Application—new license	$10,300.
Amendment	$10,300.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export of radioactive waste.	
Application—new license	$6,000.
Amendment	$6,000.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,900.
Amendment	$1,900.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$240.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,500.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 5. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

■ 6. In § 171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2003 annual fee for each operating power reactor which must be collected by September 30, 2003, is $3,251,000.

(2) The FY 2003 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2003 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, *e.g.*, updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2003 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $319,000.

(2) The FY 2003 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2003 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2003 surcharge allocated to the operating power reactor class of licenses is $19.1 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2003 operating power reactor surcharge to be assessed to each operating power reactor is approximately $183,300. This amount is calculated by dividing the total operating power reactor surcharge ($19.1 million) by the number of operating power reactors (104).

(3) The FY 2003 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $1.8 million. The FY 2003 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $14,900. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2003 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$63,300
Test reactor	$63,300

■ 7. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	$2,300
Less than 35 employees	$500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (*See* 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's Web site at *http://www.nrc.gov*. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2003 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2003 surcharge are shown for convenience in paragraph (e) of this section. The FY 2003 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
BWX Technologies SNM–42	$5,836,000
Nuclear Fuel Services SNM–124	5,836,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Global Nuclear Fuel SNM–1097	1,957,000
Framatome ANP Richland SNM–1227	1,957,000
Westinghouse Electric Company SNM–1107	1,957,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome ANP SNM–1168	769,000
(b) All Others:	
General Electric SNM–960.	559,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11]N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,900
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	4,500
E. Licenses or certificates for the operation of a uranium enrichment facility	3,634,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	839,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities[4]	63,700
Class II facilities[4]	53,300
Other facilities[4]	93,600
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	39,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	6,200
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	730
C. All other source material licenses	11,400
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	21,800
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,600
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	10,900
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,700
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,600
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,100
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,000
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,100
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,200
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,400
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,800
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	5,600
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and,	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,100
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,200
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,400
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,700
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	23,100
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	11,000
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	24,700
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,300
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	7,000
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	730
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
Users and Fabricators	76,200
Users	7,100
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	228,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,386,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) Activities	950,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2002, and permanently ceased licensed activities entirely by September 30, 2002. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.*, human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses(in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] *See* § 171.15(c).

[12] *See* § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*)

Dated at Rockville, Maryland, this 30th day of May, 2003.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Final Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established on the basis of the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2003 is approximately $526.3 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2003. Rebaselining fees will result in increased annual fees for a majority of the categories of licenses, decreased annual fees for other categories (including many materials licensees), and no change for one category.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2003 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 24 percent of these licensees (approximately 1,200 licensees for FY 2002) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that a change was not warranted to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC has re-examined the small entity fees for FY 2003, and does not believe that a change to the small entity fees is warranted this year. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 94 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small

businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2003.

Attachment 1 to Appendix A—U.S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2003

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees in complying with the FY 2003 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2003 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration's regulations (13 CFR Part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates— not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources —not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. *Licensees will not be issued a new invoice for the reduced amount.* The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 03–14960 Filed 6–17–03; 8:45 am]
BILLING CODE 7590–01–P

Reader Aids

Federal Register

Vol. 68, No. 117

Wednesday, June 18, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954	2
32955–33338	3
33339–33610	4
33611–33830	5
33831–34260	6
34261–34516	9
34517–34774	10
34775–35148	11
35149–35264	12
35265–35524	13
35525–35782	16
35783–36444	17
36445–36742	18

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Subtitles A and B 33883

3 CFR

Proclamations:
7683 33339
7684 34775
7685 36445
7686 36447

Executive Orders:
13159 (See Notice of June 10, 2003) 35149

Administrative Orders:
Notices:
Notice of June 10, 2003 35149
Presidential Determinations:
No. 2003-24 of May 29, 2003 35525
No. 2003-25 of May 29, 2003 35526

4 CFR

81 33831

5 CFR

230 35265
301 35265
316 35265
333 35265
337 35265
410 35265
831 35270
842 35270
1600 35492
1601 35492
1603 35492
1604 35492
1605 35492
1606 35492
1640 35492
1645 35492
1650 35492
1651 35492
1653 35492
1655 35492
1690 35492

7 CFR

2 35256
319 34517
457 34261
723 34777
800 ..... 32623, 35490
802 34519
1400 33341
1464 34777

Proposed Rules:
810 33408
1220 ..... 35825, 36498
1951 35321
3560 32872
3565 34552
4284 35321

8 CFR

1 35273
103 35273
212 35151
239 35273
287 35273

9 CFR

82 34779
93 35529
113 35282
430 34208

Proposed Rules:
93 33028

10 CFR

35 35534
72 33611
73 33611
170 36714
171 36714
765 32955

Proposed Rules:
50 35585

12 CFR

37 35283
615 ..... 33347, 33617
703 32958
742 32958
1700 32627

Proposed Rules:
Ch. I 35589
Ch. II 35589
Ch. III 35589
Ch. V 35589

13 CFR

121 ..... 33348, 35285

Proposed Rules:
121 ..... 33412, 35334

14 CFR

25 ..... 33834, 33836, 35285, 36449
39 ..... 32629, 32967, 32968, 33355, 33356, 33358, 33618, 33621, 33840, 33842, 33844, 33854, 34781, 34786, 34787, 35152, 35155, 35157, 35160, 35163, 35286, 36451, 36452, 36454, 36455
71 ..... 32633, 33231, 33360, 33361, 33579, 33623, 35287, 35288, 35534, 35535, 35947
91 35524
95 34522

97 ..... 32633, 33536, 35538
401 35289
404 35289
413 35289
1260 35290

Proposed Rules:

25 ..... 33659, 35335, 45612
36 34256
39 ..... 32691, 32693, 32695, 33030, 33416, 33418, 33420, 33423, 33663, 33885, 34557, 34843, 34847, 34849, 35186, 35826, 36499, 36502, 36504, 36506, 36510, 36513, 36515, 36518, 36520, 36523, 36525
71 ..... 33426, 33427, 34340

15 CFR

734 35783
740 35783
742 ..... 34526, 35783
744 34192
745 34526
748 35783
770 35783
772 34192
774 ..... 34526, 35783

Proposed Rules:

930 34851

16 CFR

305 36458

Proposed Rules:

1500 35191
1700 35614

17 CFR

1 34790
30 33623
40 33623
201 35787
210 36636
228 36636
229 36636
240 36636
249 36636
270 36636
274 36636

18 CFR

201 34795

19 CFR

201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

20 CFR

Proposed Rules:

220 34341

21 CFR

165 34272
201 32979
310 ..... 33362, 34273
314 36676
347 ..... 33362, 35290
349 32981
350 34273
352 33362
369 34273
510 ..... 33381, 34293
520 ..... 34533, 34795
522 ..... 33856, 34533, 34796
524 33381
558 34534
601 34796
878 32983
888 32635
1308 35293

Proposed Rules:

201 33429
310 36527
312 36527
314 36527
320 36527
343 33429
347 35346
600 36527
601 36527
606 36527

24 CFR

Proposed Rules:

1000 34344

25 CFR

170 33625
309 35164

26 CFR

1 ..... 33381, 34293, 34797
31 34797
301 33857
602 ..... 34293, 34797

Proposed Rules:

1 ..... 34344, 34874, 34875
14a 34344
25 34875
31 34875
49 35828
53 34875
55 34875
156 34875
157 32698
301 33887
602 32698

27 CFR

Proposed Rules:

7 32698
25 32698

28 CFR

5 33629
571 ..... 34299, 34301
802 32985

29 CFR

1910 32637
1926 35172
4022 35294
4044 35294

Proposed Rules:

1910 ..... 33887, 34036
1915 34036
1926 34036

30 CFR

6 36408
7 36408
18 36408
19 36408
20 36408
22 36408
23 36408
27 36408
33 36408
35 36408
36 36408

Proposed Rules:

906 33032
934 33035
938 33037

31 CFR

1 32638
210 33826
594 34196

33 CFR

100 ..... 32639, 32641
117 ..... 32643, 34302, 34303, 34535, 34799, 34800, 34801, 35296
165 ..... 32643, 32996, 32998, 33382, 33384, 33386, 33388, 33390, 33392, 33393, 33395, 33396, 33398, 33399, 33401, 33402, 34303, 34305, 34307, 34535, 34537, 34803, 35172, 36466
203 36467

Proposed Rules:

117 34877
165 ..... 33894, 33896, 34370, 35615

36 CFR

215 33582
230 34309
242 33402
251 35117
1253 33404

Proposed Rules:

1280 35829

37 CFR

260 36469

38 CFR

1 35297
3 34539
13 34539
21 ..... 34319, 34326, 35177
61 34332

Proposed Rules:

20 33040

39 CFR

111 ..... 33858, 34805

40 CFR

51 33764
52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018, 33631, 33633, 33635, 33638, 33873, 33875, 34543, 34808, 34813, 34821, 35790, 36470
60 35792
61 35792
62 ..... 34332, 35181, 35299, 35792
63 35792
86 35792
180 ..... 33876, 34825, 35303, 36472, 36476, 36480
257 36487
258 36487
261 32645
271 ..... 34334, 34829
439 34831
712 34832
725 35315

Proposed Rules:

Ch. I 33898
51 32802
52 ..... 33041, 33042, 33043, 33665, 33898, 33899, 34560, 36527
62 ..... 35191, 35348
82 33284
86 35830
146 33902
180 35349
194 33429
261 36528

42 CFR

412 ..... 34122, 34494

Proposed Rules:

412 ..... 33579, 34492
413 ..... 33579, 34492, 34768

43 CFR

4 33794
3800 32656
4100 33794
5000 33794

44 CFR

64 32657
65 ..... 32659, 32660
67 ..... 32664, 32669
206 34545

Proposed Rules:

67 ..... 32699, 32717

46 CFR

10 35801
15 35801
221 33405

47 CFR

2 ..... 32676, 33020, 33640, 34336
21 34547
25 ..... 33640, 34336
52 34547
73 ..... 32676, 33654, 35540, 35541, 35542
74 ..... 32676, 34336
76 35818
78 34336
80 32676
87 32676
90 32676
95 32676
97 ..... 32676, 33020

Proposed Rules:

1 34560
2 ..... 33043, 33666
15 32720
21 34560
25 33666
64 32720
73 ..... 33431, 33668, 33669, 35617
74 34560
76 35833
101 34560

48 CFR

2 33231
32 33231
52 33231

252 33026

Proposed Rules:

15 33330
31 33326
52 33326
204 34879
206 33057

49 CFR

1 ..... 34548, 35183, 36496
26 35542
107 32679
171 32679
173 32679
177 32679
180 32679
192 35574
195 35574
375 35064
377 35064
567 33655
571 ..... 33655, 34838
574 33655
575 ..... 33655, 35184
579 ..... 35132, 35145
597 33655

Proposed Rules:

171 34880
172 34880
173 34880
271 35354
571 36534

50 CFR

17 ..... 34710, 35950
100 33402
635 ..... 35185, 35822
648 33882
660 32680
679 34550

Proposed Rules:

16 33431
17 ..... 33058, 33234, 34569
402 33806
648 33432
660 ..... 33670, 35354, 35575

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 18, 2003

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azoxystrobin; published 6-18-03; comments due by 12-30-99; published 6-18-03 [FR 03-15261]
Bacillus pumilus (strain QST2808); published 6-18-03; comments due by 12-30-99; published 6-18-03 [FR 03-15129]
Glyphosate; published 6-18-03; comments due by 12-30-99; published 6-18-03 [FR 03-15128]
Solid wastes:
Residential lead-based paint waste disposal; solid waste disposal facilities and municipal solid waste landfills; classification and practices criteria; published 6-18-03; comments due by 12-30-99; published 6-18-03 [FR 03-15363]

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Child support enforcement program; revision or elimination of obsolete or inconsistent provisions; published 5-12-03; comments due by 12-30-99; published 5-12-03 [FR 03-11223]

TRANSPORTATION DEPARTMENT
Organization, functions, and authority delegations:
Maritime Administrator; published 6-18-03; comments due by 12-30-99; published 6-18-03 [FR 03-15400]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 6-3-03; comments due by 8-4-03; published 6-3-03 [FR 03-13654]

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Grapes grown in—
California; comments due by 6-23-03; published 4-22-03 [FR 03-09843]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Pistachio nuts, in shell and shelled; grade standards; comments due by 6-23-03; published 5-23-03 [FR 03-12805]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications; comments due by 6-24-03; published 4-25-03 [FR 03-10242]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Support activities:
Technical service provider assistance; comments due by 6-23-03; published 3-24-03 [FR 03-06668]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Pacific Coast groundfish; fishing capacity reduction program; comments due by 6-27-03; published 5-28-03 [FR 03-13274]
Marine mammals:
Incidental taking—
San Nicolas Island, CA; missile launch operations; pinnipeds; comments due by 6-23-03; published 5-9-03 [FR 03-11613]

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Patent statute; changes to implement 2002 inter partes reexamination and other technical amendments; comments due by 6-27-03; published 4-28-03 [FR 03-10412]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Acceptance of gifts; comments due by 6-23-03; published 4-22-03 [FR 03-09937]
Organization, functions, and authority delegations:
Agency seal; comments due by 6-23-03; published 4-22-03 [FR 03-09936]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Vermont; comments due by 6-23-03; published 5-22-03 [FR 03-12863]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Vermont; comments due by 6-23-03; published 5-22-03 [FR 03-12864]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
West Virginia; comments due by 6-26-03; published 5-27-03 [FR 03-13176]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
West Virginia; comments due by 6-26-03; published 5-27-03 [FR 03-13177]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
New Hampshire; comments due by 6-27-03; published 5-28-03 [FR 03-13174]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
New Hampshire; comments due by 6-27-03; published 5-28-03 [FR 03-13175]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12612]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12613]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12614]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-23-03; published 5-22-03 [FR 03-12615]

ENVIRONMENTAL PROTECTION AGENCY
Toxic substances:
Preliminary assessment information reporting—
Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl), etc.; comments due by 6-25-03; published 6-11-03 [FR 03-14749]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telcommunications Act of 1996; implementation—
Pay telephone reclassification and compensation provisions; comments due by 6-23-03; published 6-2-03 [FR 03-13722]
Radio stations; table of assignments:
California; comments due by 6-26-03; published 5-22-03 [FR 03-12793]

FEDERAL TRADE COMMISSION
Alternative fuels and alternative fueled vehicles; labeling requirements; comments due by 6-23-03; published 5-8-03 [FR 03-11391]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Billing privileges; establishment and maintenance requirements; comments due by 6-24-03; published 4-25-03 [FR 03-09943]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc.; comments due by 6-27-03; published 4-28-03 [FR 03-10301]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
St. Croix, U.S. Virgin Islands; security zone; comments due by 6-27-03; published 4-28-03 [FR 03-10293]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Cactus ferruginous pygmy-owl; Arizona distinct population segment; comments due by 6-27-03; published 4-28-03 [FR 03-10531]
Coastal California gnatcatcher; comments due by 6-23-03; published 4-24-03 [FR 03-09435]
Mussels in Mobile River Basin, AL; comments due by 6-24-03; published 3-26-03 [FR 03-06903]
San Diego fairy shrimp; comments due by 6-23-03; published 4-22-03 [FR 03-09434]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal Prison Industries, Inc.; increased waiver threshold; comments due by 6-23-03; published 5-22-03 [FR 03-12305]

NUCLEAR REGULATORY COMMISSION
Nuclear equipment and material; export and import:
Major nuclear reactor components; general import license; comments due by 6-27-03; published 5-28-03 [FR 03-13217]

NUCLEAR REGULATORY COMMISSION
Nuclear equipment and material; export and import:
Major nuclear reactor components; general import license; comments due by 6-27-03; published 5-28-03 [FR 03-13216]

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Nonmanufacturer rule; waivers—
Other ordnance and accessories manufacturing; comments due by 6-25-03; published 6-13-03 [FR 03-14851]
Small arms manufacturing; comments due by 6-25-03; published 6-13-03 [FR 03-14850]
Size for Multiple Award Schedule and other multiple award contract purposes and 8(a) business development/small disadvantaged business status determinations; comments due by 6-24-03; published 4-25-03 [FR 03-10286]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Aircraft operations; noise limitations; comments due by 6-23-03; published 3-24-03 [FR 03-06918]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airspace:
Construction or alteration in vicinity of private residence of President of United States; comments due by 6-23-03; published 4-22-03 [FR 03-09886]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 6-23-03; published 5-23-03 [FR 03-12836]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 6-23-03; published 4-23-03 [FR 03-09691]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 6-24-03; published 4-25-03 [FR 03-10115]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 6-23-03; published 5-23-03 [FR 03-12964]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Consolidated, Consolidated Vultee, and Convair; comments due by 6-23-03; published 4-22-03 [FR 03-09861]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; comments due by 6-23-03; published 4-16-03 [FR 03-09304]
Dornier; comments due by 6-23-03; published 5-15-03 [FR 03-12112]
Dowty Aerospace Propellers; comments due by 6-27-03; published 4-28-03 [FR 03-10334]
Eurocopter France; comments due by 6-23-03; published 4-22-03 [FR 03-09864]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 6-24-03; published 4-25-03 [FR 03-09981]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Pratt & Whitney; comments due by 6-23-03; published 4-23-03 [FR 03-09984]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 6-25-03; published 5-9-03 [FR 03-11645]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E5 airspace; comments due by 6-23-03; published 5-22-03 [FR 03-12818]

TREASURY DEPARTMENT
Comptroller of the Currency
International banking activities:
Foreign banks seeking to establish Federal branches and agencies in U.S.; approval procedures; comments due by 6-23-03; published 4-23-03 [FR 03-09733]

TREASURY DEPARTMENT
Fiscal Service
Checks drawn on U.S. Treasury; indorsement and payment; comments due by 6-23-03; published 4-23-03 [FR 03-09998]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks lacking Federal functional regulator; customer identification programs; comments due by 6-23-03; published 5-9-03 [FR 03-11015]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcoholic beverages:
Flavored malt beverages; comments due by 6-23-

03; published 3-24-03 [FR 03-06855]

Labeling and advertising; organic claims; comments due by 6-23-03; published 5-9-03 [FR 03-11609]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Printed on recycled paper


END